

Indirect Tax Newsletter

(CENVAT, Service Tax, Sales Tax & VAT)

pwc

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- Goods meant for free distribution to be assessed under Section 4 and not under Section 4A (i.e. MRP based valuation).

CENVAT/MODVAT

- Refund of unutilised credit in respect of deemed export clearance is admissible under Rule 5.
- Refund of CENVAT credit under Rule 5 cannot be reduced based on any input/output norms fixed by DGFT.

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News

- Mr. S.K. Goel takes charge as Chairman, CBEC w.e.f. 01/10/2011.

Case Law

- Refunds claims not to be denied on grounds of unjust enrichment without deciding on admissibility of credit.
- Penalty not imposable where service tax discharged along with interest before issuance of SCN

Sales Tax

- Light energy used as a carrier in the rendition of telecommunication service cannot be treated as goods for levy of sales tax.
- Entry tax on entry of Motor Vehicles in Andhra Pradesh held as constitutionally valid.
- The provision for levy of VAT on advances under works contract transaction is unconstitutional.
- Excavators and their parts are not motor vehicles for levy of VAT.

VAT

- Rate of purchase tax and the tax rate applicable to specified dealers paying tax under composition scheme increased from 4% to 5% in Andhra Pradesh.

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CENVAT

Case Law

Manufacture

- The Apex Court in the case of Union of India vs. HMM Ltd. (2011 (272) ELT 338) has reaffirmed that the excise duty is payable on the basis of date of clearance of goods even if the same were exempted on the date of manufacture.
- In Mahindra Hinoday Industries Ltd. vs. CCE (2011 (188) ECR 43), the Tribunal has held that duty liability on waste and scrap generated at job worker premises lies in the hand of job worker and not the principal manufacturer.

Valuation

- In CC vs. Chordiya Food Products Ltd. (2011 (272) ELT 378), the Tribunal has held that goods meant for free distribution to be assessed under Section 4 and not under Section 4A (i.e. MRP based valuation).
- The Tribunal, in the case of Glenmark Pharmaceuticals Ltd. vs. CCE (2011 (272) ELT 385) has held that refund is eligible to be claimed towards duty paid on free quantities given as quantity discount.
- In Daman Ganga Board Mills Pvt. Ltd. vs. CCE (2011-TIOL-1227-CESTAT-AHM), the Tribunal has held that where a part of the production is being transferred to another plant of the same assessee and balance production sold to independent buyers, the goods stock transferred to be assessed on such third party independent price and not in terms of Rule 8 of the Valuation Rules i.e. at 115% cost of the manufactured goods.

CENVAT/MODVAT

- In Refron Valves Ltd vs. CCE (2011 (187) ECR 446), the Tribunal has held that refund of unutilised credit in respect of deemed export clearance (i.e. from one EOU to another EOU) is admissible under Rule 5 of the CENVAT Credit Rules, 2004.
- In Philco Exports Ltd. vs. CCE (2011-TIOL-1436-CESTAT-DEL), the Tribunal has held that refund of CENVAT credit under Rule 5 cannot be reduced based on any input/output norms fixed by DGFT.

Others

- In Ford India Pvt. Ltd. vs. ACCE (2011 (272) ELT 353), the Madras High Court has held that rebate claim under Rule 18 would also be applicable on clearance of inputs as such for the purpose of export.
- In a revision petition filed before the Department of Revenue in Honda Motorcycles and Scooters India Ltd. (2011 (272) ELT 473), the Government of India has held that rebate claim to an extent of credit availed on capital goods would be eligible on export of such goods as such.
- In Enar Chemic Pvt. Ltd. vs. CCE (2011 (188) ECR 72), the Tribunal has held that benefit of the exemption notification cannot be denied merely on the ground of delay in submission of eligibility certificate.
- In Vadilal Dairy International Ltd. vs. CCE (2011-TIOL-1371-CESTAT-MUM), the Tribunal has held that once the demand for the previous period has been held as time barred, the demand for the subsequent period has also to be necessarily held as time barred, since all facts were known to the Department.

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- The Tribunal, in the case of Shree Ambika Sugars Ltd. vs. CCE (2011-TIOL-1434-CESTAT-MAD), has held that extended period cannot be invoked when CENVAT credit of duty involved is available to the sister unit of the appellant.

Service Tax

News

- Mr. S.K. Goel has assumed the role of Chairman, CBEC with effect from October 31, 2011.
- The Central Board of Excise & Customs (CBEC) has released a revised Concept Paper on Taxation of Services based on a Negative List on for public comments.
- The Central Board of Excise & Customs (CBEC) has, through a draft circular dated October 28, 2011, sought comments and feedback on specific measures proposed to be taken to address issues faced by the department and assesseees during the process of sanctioning of service tax refund claims.

Notifications/Circulars

- The Service Tax – I Commissionerate, Mumbai has simplified the procedures and documents for obtaining centralized service tax registration.

(Mumbai Trade Notice No. 3/2011 – ST)

Case Law

- The High Court, in Precot Mills Ltd. Vs. UOI (2011 (24) STR 283), has held that no service tax demand can be raised for a past

period pursuant to a retrospective amendment to statutory provisions, if the matter was not kept alive at the time the original provision was in force.

- The Saraswati Engineering Vs. Commissioner (2011 (24) STR 298) and Hajarilal Jangid Vs. Commissioner (2011 (24) STR 510), the Tribunal has held that penalty provisions are not attracted where short paid service tax is discharged along with applicable interest before issuance of show cause notice.
- In Commissioner Vs. Micro Labs Ltd. (2011 (24) STR 272), the High Court has held that requirements mandated by statute amount to 'activity relating to business' and service tax paid in relation to such requirements is admissible as credit under Rule 2(l) of the CENVAT Credit Rules, 2004. *(This case pertains to the period prior to 01.04.2011)*
- The Tribunal, in Shobha Digital Lab Vs. CCE (2011 (24) STR 430) and Agarwal Colour Advance Photo System Vs. CCE (2011-TIOL-1208), has held that the cost of material consumed in providing photography services are includible in the gross value for levy of service tax.
- In Power Grid Corporation of India Ltd. Vs. CST (2011 (24) S.T.R. 307), the Tribunal has held that interconnecting services provided by one telegraph authority to another are not chargeable to service tax as *Telecommunication Services*.
- The Tribunal, in P. Gautam & Co. Vs. CST (2011 (24) STR 447) has held that discounts/incentives received by an advertising agency, which are excluded from the value of service for Advertising Agency Services, cannot be taxed as *Business Auxiliary Services* provided to the print media.
- In CCE Vs. Modest Infrastructure Ltd (2011 (24) S.T.R. 369), the Tribunal has held that unjust enrichment is not applicable to a claim for refund

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of service tax paid erroneously where the tax indicated on the invoice is not actually collected and books of accounts are rectified through issuance of credit notes.

- The Tribunal, in *Sree Lotus Exports Vs. CCE* (2011 (24) STR 444), has held that in cases of adjudication orders involving rectification, the limitation for filing appeals before the Commissioner (Appeals) is to be computed from the date of the order passed on the rectification application.
- The Tribunal, in *Fairline Worldwide express Vs. CCE* (2011 (24) STR 444), has held that in the absence of any statutory provision, the limitation of two years for rectification of orders, as applicable to Excise Officers, cannot be extended to orders of the Tribunal.
- In *Hughes Communications India Ltd. Vs. CST* (2011 (24) 446), the Tribunal has held that a refund claim cannot be denied solely on the basis of unjust enrichment without going into the question of eligibility to the refund on merits.
- In *Sri Bhagavathy Traders Vs. CCE* (2011 (24) STR 290), the Tribunal (Larger Bench) has held that the gross value of service for levy of service tax includes all costs other than those incurred as 'pure agent' and expenses incurred towards provision of services cannot be split and claimed as non taxable reimbursements.
- In *Microsoft Corporation (I) (P) Ltd Vs. Commissioner of Service Tax* [2011-TIOL-1508], the Tribunal has, in the light of diverging views of the members on the question of whether services provided to an overseas entity in the form of marketing of products in India constitutes export of service, referred the matter to a third member.

Sales Tax

Case Law

- The Karnataka High Court, in *Bharti Airtel Ltd Vs. State of Karnataka* [(2011) NTN (Vol. 47) 157], relying on the landmark decision by Supreme Court in *BSNL Vs. Union of India* [(2006) 3 SCC 160], has held that artificially created light energy ("ACLE") being one form of the electromagnetic waves cannot be classified as 'goods' for levy of sales tax under the State VAT laws. ACLE is used as a carrier in the rendition of telecommunication service and is taxable under the Finance Act, 1994.
- The Andhra Pradesh High Court, in *Vijaya Traders Vs. Commercial Tax Officer* [(2011) 45 VST 113], has upheld the constitutional validity of Andhra Pradesh Tax on Entry of Motor Vehicles into Local Areas Act, 1996.
- The Karnataka High Court, in *Nagarjuna Construction Company Ltd Vs. State of Karnataka* [(2011) 45 VST 390 (Karn.)], has held that the explanation to the specific rule under the Karnataka VAT laws, which requires a works contractor to pay VAT on the advance amounts is unconstitutional and invalid as levy of sales tax even before the property in goods passes to the buyer is contrary to the definition of 'sale' under the Act itself.
- The Haryana Tax Tribunal, in *JCB India Ltd Vs. State of Haryana* [Sales Tax Appeals Nos 24-25 of 2011-12], has held that though Excavators are liable to be registered under the Motor Vehicles Act, nevertheless the excavators and its parts are not to be classified as motor vehicles under entry no Entry 42 of Notification No S.O. 92/H.A. 6/2003/S.7/2003 for levy of VAT in the State of Haryana.
- The Punjab and Haryana High Court, in *Gheru Lal Bal Chand Vs. State of Haryana* [(2011) 40 PHT 145 (P&H)], has held that input tax credit on eligible purchases cannot be denied to the buyer if the seller has failed to deposit the tax to the Government treasury. Accordingly, no liability can

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be fastened on the buyer on account of non payment of tax by the seller unless fraud, collusion by the purchasing dealer is established.

VAT

Notifications/ Circulars

Andhra Pradesh

- Rate of purchase tax has been increased from 4% to 5% w.e.f September 14, 2011.
- VAT rate for following dealers opting for composition scheme has been increased from 4% to 5%
 - Dealers executing works contracts (w.e.f September 14, 2011)
 - Dealers liable to pay tax on transfer of right to use goods (w.e.f September 15, 2011)
- Percentage of reversal of input tax credit on stock transfer of taxable goods outside the State has been increased from 4% to 5% w.e.f September 14, 2011.

[Andhra Pradesh Ordinance No 9 of 2011 dated November 16, 2011]

Bihar

- New formats have been prescribed for tax payment challans and periodical returns to be filed under the Bihar Value Added Tax Rules, 2005.

[Notification No SO 385 dated October 24, 2011]

Madhya Pradesh

- Electronic filing of application for issue of C forms has been made mandatory for dealers having turnover of more than Rs 5 crores.

[Notification No F-3-14-2010-1-V (79) dated November 16, 2011]

Maharashtra

- Due date for submission of refund application for the year 2009-10 has been extended upto December 31, 2011.

[Trade Circular No 15T of 2011 dated November 02, 2011]

Contacts

Delhi

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

Mumbai

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

Kolkata

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

Bangalore

Pramod Banthia
Ph: +91(80) 4079 6000

Hyderabad

Pramod Banthia/N V Raman
Ph: +91(40) 6624 6394

Chennai

B Sriram/ Niranjan JV
Ph: +91(44) 4228 5000

Pune

Suresh Rohira/G.P Kawathekar
Ph: +91(20) 4100 4444

Ahmedabad

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

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