

Staying Updated

Indirect tax newsletter

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Manufacture

- In *CCE v Jindal Praxair Oxygen Co (P) Ltd (2013 (298) ELT 136)*, the Bangalore Tribunal held that gases vented out to the atmosphere due to technical reasons neither amounted to manufacture nor clearance and hence, were not subject to central excise duty.
- In *WIN Enterprises v CCE (2013-TIOL-1777-CESTAT-MAD-LB)*, a larger Bench of Chennai Tribunal held that cutting of carpet rolls into smaller sizes and subjecting such cut sizes to a process of stitching of linings at the edges did not amount to manufacture as no new and distinct product emerged.
- In *Thermax Culligan Water Technologies Ltd v CCE (2013-TIOL-1877-CESTAT-MUM)*, the Mumbai Tribunal held that excise duty was not payable on samples retained by appellants for in-house testing which were not cleared from the factory.
- In *CCE v Puissance De DPK (2013 (297) ELT 443)*, the Chennai Tribunal held that erection & commissioning charges were in the nature of service and covered by service tax law and that such charges could not form part of the assessable value for the purpose of excise duty.
- In *Techno Force (I) Pvt Ltd v CCE (2013-TIOL-1871-CESTAT-Mum)*, the Mumbai Tribunal held that charges collected from a customer for trial of equipment, being optional and at the request of customers, was not includible in the assessable value.
- In *Piaggio Vehicles Pvt Ltd v CCE (2013-TIOL-1831-CESTAT-MUM)*, the Mumbai Tribunal held that value of tool kits cleared by the spares division of the appellant could not be included in the assessable value of a vehicle merely because the manufacturers were mandatorily required to supply tool kits along with the vehicle as per the Motor Vehicle Rules, especially when such tool kits were not supplied along with the vehicle at the time of clearance from the factory.

Valuation

- In *Sukalp Agencies v CCE (2013 (298) ELT 38)*, the Allahabad High Court held that installation and testing

charges formed part of the assessable value when such charges were not shown separately in the tender/ invoices.

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- In *India Cement Ltd v CCE* (2013-TIOL-1649-CESTAT-MAD), the Chennai Tribunal held that CENVAT credit was admissible on MS angles, MS beams, MS channels and TMT bars used in the erection of machineries, which were the part of Dry Process Cement Manufacturing Plant.
- In *Indian Oil Corporation Ltd v CCE* (2013-TIOL-1664-CESTAT-DEL), the Delhi Tribunal held that CENVAT credit of the capital goods, namely, Sulphur Recovery Unit (SRU) and Standby Sulphur Recovery Unit (SSRU), could not be denied on the ground that sulphur was exempted goods, since use of the SRU and SSRU were in the nature of Pollution Control Equipment, being installed in terms of the directions of the Pollution Control Authorities for manufacture of the dutiable final product i.e. HSD.
- In *CCE v JSW Ispat Steel Ltd* (2013-TIOL-1758-CESTAT-MUM), the Mumbai Tribunal held that CENVAT credit on machinery/ equipment assembled at the site to set up Oxygen plant could not be denied on the ground that such plant was immovable property.

Others

- In *National Aluminium Co Ltd v CCE* (2013-TIOL-1691-CESTAT-KOL), the Kolkata Tribunal held that interest was payable for irregular availment of credit in view of Supreme Court decisions in the case of *Ind-Swift Laboratories* even if the appellant had sufficient balance in credit account.
- In *CCE v Mahavir Crimpers* (2013-TIOL-1690-CESTAT-AHM), the Ahmedabad Tribunal held that there were no provisions in the Central Excise Act to grant interest on belated payment of interest.

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Service tax

News

- Shri Anil Kumar Jain has been appointed as the Commissioner of Service Tax, New Delhi.
(Office Order No. 264/2013 dated 12 December, 2013)

Notifications and circulars

- Effective from 1 January, 2014, the mandatory e-payment threshold limit of service tax has been reduced from INR 1 Mn to INR 0.1 Mn.

(Notification No 16/2013 dated 22 November, 2013)

- SEZ units and developers are required to furnish a quarterly statement in form A-3 with the jurisdictional Superintendent of Central Excise, providing details of specified services received by it without payment of service tax latest by 30th of the month following the particular quarter.

However, for the quarter ending on September, 2013, the said statement has to be submitted latest by 15 December, 2013.

(Notification No. 15/2013-Service Tax dated 21 November, 2013)

Case law

- The Punjab and Haryana High Court, in

Barnala Builders & Property Consultant *v* DCCEST (2013-TIOL-1016-HC-P&H-ST), held that the order passed by the designated authority, rejecting the application under the Service Tax Voluntary Compliance Encouragement Scheme, 2013 (STVCES), was appealable under section 86 of the Finance Act, 1994.

- The Mumbai Tribunal, in case of ICC Reality (India) Pvt Ltd and ors *v* CCE (2013-TIOL-1751-CESTAT-MUM), held that electricity was 'goods' and electricity charges recovered from tenant amounted to sale of goods, hence not liable to service tax.
- In DC *v* CCE and CCE *v* MSRTC (2013-TIOL-1769-CESTAT-MUM), the Mumbai Tribunal held that where the appellant merely rented buses for excursions, sight-seeing, marriages, election duty, etc and activities such as planning, scheduling and organising tours were not carried out, the same could not be held liable to tax under 'tour operator services'.
- In CST *v* Boprai's Martial Security Services P Ltd (2013-TIOL-1781-CESTAT-MUM), the Mumbai Tribunal held that where the security agency provided security services to banks in relation to security of building, fittings, fixtures, equipment, cash, etc., the exemption under service tax

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notification No. 56/98-ST dated 7 October, 1998 would not be available.

The exemption under the above notification was available with respect to services of providing safe deposit lockers or security or safe vaults for security of movable property.

- The Mumbai Tribunal, in *Kumar Beheray Rathi and ors v CCE (2013-TIOL-1806-CESTAT-MUM)*, held that the builder's recovery of 'one time maintenance charges' from buyers of flats on cost-to-cost basis as a pure agent/ trustee to pay off municipal taxes, security agencies, house-keeping service provider, etc., which was also a statutory obligation of the builder under the Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963, the same could not be held taxable under 'management, maintenance or repair service'.
- The Mumbai Tribunal, in *Sadhana Educational and People Development Services Ltd v CCE (2013-TIOL-1830-CESTAT-MUM)*, held that MBA is a professional management course and academic in nature, and could not be considered as a vocational training course. Accordingly, it was held liable to service tax under 'commercial

training or coaching services'.

- In *Sodexho Pass Services India Private Limited v CST and CST v Sodexho Pass Services India Private Limited (2013-TIOL-1838-CESTAT-MUM)*, the Mumbai Tribunal held that Sodexho meal vouchers promoted sale of goods and service of its affiliates. Accordingly, the services rendered by Sodexho to its affiliates were held liable to tax under 'business auxiliary services'.

The Tribunal further held that due to the restrictions as to usage associated with Sodexho meal vouchers these could neither be compared with credit/debit cards nor could they be treated as an alternate system to cash payments.

- In *Zenith Rollers Ltd v CCE (2013-TIOL-1841-CESTAT-DEL)*, the Delhi Tribunal held that re-rubberisation of old, worn out rubberised rollers could be classified under 'business auxiliary services' (BAS) as well as under 'management, maintenance or repair services. However, as the BAS appeared first among the clauses of section 65(105) of the Finance Act, 1994, the same was held as the more appropriate category as per section 65A(2)(c).

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- In *Associated Soapstone Distributing Co Pvt Ltd v CCE (2013-TIOL-1850-CESTAT-DEL)*, the Delhi Tribunal held that though separate consideration was paid for different activities of site formation, excavation, clearance, earthmoving, etc. in the contract, the real essence of the contract was to render mining services. Accordingly, it was held to be a composite contract and splitting of different activities for classification under different service categories was not allowed.
- The Mumbai Tribunal, in *HSBC Securities and Capital Markets (I) Pvt Ltd v CST (2013-TIOL-1869-CESTAT-MUM)*, held that advisory services rendered before 16 July, 2001 relating to financial restructuring of business of clients, were classifiable under 'management or business consultant's services' (MBCS). Simply, because a new, more specific service category, 'banking and other financial services' was introduced effective from 16 July, 2001, it did not mean that the same service could not be taxed under MBCS prior to 16 July, 2001.

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VAT

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Andhra Pradesh

- The mandatory usage of e-way bills has been deferred till further orders to be issued in this regard.

(Circular No. CCT'sRef.No.CS(1)/39 /2013 dated 25 November, 2013)

Delhi

- The due date for submission of audit report has been extended to 10 January, 2013.

(Notification No. F.3(384)/Policy/VAT /2013/1029-1041 dated 29 November, 2013)

Haryana

- Effective 6 December, 2013, sale of goods to Government at concessional rate of tax against certificate VAT-C3 has been discontinued.

(The Haryana Value Added Tax (Amendment) Ordinance, 2013)

Karnataka

- The due date for submission of application under “Karasamdhana Scheme 2013” (amnesty scheme) has been extended to 28 February, 2014. Further, the due date for payment of tax under the scheme has also been extended to 31 March, 2014.

(Government Order No. FD184CSL 2013, dated 4 December, 2013)

Sales tax

Case law

- The Madras High Court, in *ECE Industries Ltd v State of Tamil Nadu (2013-66-VST-163)*, held that a contract for design, manufacture, supply and installation of lifts by a dealer from its Ghaziabad factory to the customer's location in Tamil Nadu, pursuant to the contract negotiated and deliveries effected by the dealer's Chennai branch, was taxable as inter-State works contract from UP to Tamil Nadu. The mere fact that lifts were first received by the Chennai branch office and subsequently transported to the customer's location for installation would not render the transaction as intra-State works contract in Tamil Nadu.
- The Calcutta High Court, in *Cipla Ltd v Commissioner, Commercial Tax (2013-NTN-Vol 53-208)*, held that declaration in form F covering transactions of stock transfer for more than one month could not be rejected by the authorities on the ground that CST laws required dealers to issue form F for transactions of stock transfer only for a period of one calendar month. The Court observed that there was nothing in the rules

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which could be construed to vitiate a declaration form only on the ground that it covered transactions exceeding a period of over one month.

- The Rajasthan High Court, in *Assistant Commercial Tax Officer v Electrolux Kelvinator Ltd* (2013-NTN-Vol 53-210), held that optional service charges recovered from buyers who intend to avail the benefit of extended warranty period, would not be included in the sale price. The Court observed that the definition of sale price clearly envisages that only that amount which was paid or payable to a dealer as consideration for sale of goods (including the same charged for anything done by the dealer in respect of goods at the time of, or before, the delivery of goods) would be included in the sale price. The optional service charges had been recovered for future acts and not for goods delivered, and thus could not be included in the sale price.

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