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**Case Law**

**Manufacture**

- In Lessac Research Laboratories (P) Ltd. _v._ CCE (2013-TIOL-30-CESTAT-MAD), the Tribunal has held that excise duty is not payable on samples retained by the appellants for in-house testing, which are not cleared from factory.

**Valuation**

- In CCE _v._ Star Oxochem Pvt. Ltd. (2013 (289) ELT 165), the Tribunal has held that when the goods are sold at factory gate, the transportation expenses incurred from factory to railway station & recovered separately from buyer at actual is not includible in assessable value.

- In Sharda Ispat Ltd. _v._ CC (2013 (288) ELT 547), the Tribunal has held that when the goods are sold in open market as well as to related person, the sale price applicable for independent sale shall be adopted for valuation of goods sold to related person.

- In CCE _v._ Mahavir Cylinders (2013-TIOL-48-CESTAT-DEL), the Tribunal has held that refund of excess duty paid can be granted to an assessee in a situation where assessments were not made provisionally but the price of excisable goods are revised downwards retrospectively after clearance of goods due to price variation clause in the contract.

**CENVAT/MODVAT**

- In Birla Corporation Ltd. _v._ CCE (2013 (288) ELT 427), the Tribunal has held that service tax paid on commission agent’s services is admissible for CENVAT credit since it is in the nature of “sales promotion”, which were specifically included in the definition of input services. Similarly, in CCE _v._ Central Cables Ltd (2013-TIOL-99-CESTAT-Mum), it was held that input service credit is admissible on commission paid to selling agent.

- In CCE _v._ Bhusan Steel Ltd (2012-TIOL-1964-CESTAT-KOL), the Tribunal has held that diesel locomotive engine falling under chapter 86 is an accessory to the Torpedo Ladle car used for carrying molten metal within factory for manufacture of iron & steel products and entitled to CENVAT Credit.

- In Natco Pharma Ltd _v._ CCE (2013-TIOL-39-CESTAT-BANG), the Tribunal has held that credit of duty on printed aluminium foils cannot be denied on the ground that supplier has not undertaken any manufacturing activity and duty should not have been paid on such goods.
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• In Shiv Shakti Nutrifoods Pvt. Ltd. v. CCE (2013-TIOL-38-CESTAT-BANG), the Tribunal has held that CVD equivalent to sugar Cess paid on import of raw sugar is eligible for CENVAT credit.

• In Kirloskar Brothers Ltd. v. CCE (2013-TIOL-05-CESTAT-MUM), the Tribunal has held that supplies to SEZ developers/ unit in the SEZ are deemed export and hence there is no question of paying 10% of the price of goods cleared to SEZ in terms of rule 6.

Others

• In CCE v. R.B. Jodhamal & Co Pvt. Ltd. (2013 (288) ELT 446), the Tribunal has held that units located in State of J&K and availing refund of duty paid through PLA under area based exemption notification are not eligible to utilise credit of Basic Excise Duty for payment of Education Cess and Secondary & Higher Secondary Cess in as much as it tantamount to refund of Cesses which is not permissible under the said notification.
**Service Tax**

**News**

- Justice G Raghuram, retired Judge of High Court of Andhra Pradesh has been appointed as the president of Customs, Excise and Service tax Appellate Tribunal (CESTAT), New Delhi.  
  *(CESTAT Office Order dated 1 March, 2013)*

**Notifications/Circulars**

- The Central Board of Excise and Customs (CBEC) has extended the last date of filing Service tax return form ST-3 for the period 1 July, 2012 to 30 September, 2012, from 25 March, 2013 to 15 April, 2013.  
  *(Order No. 01/2013-Service Tax, dated 6 March, 2013)*

**Case Laws**

- The Supreme Court, in Narne Construction (P.) Ltd. v. Union of India ((2013) 38 STT 502/30 taxmann.com 42 (SC)) held that the sale of plots with an assurance by the seller to build housing sites, provide infrastructure/amenities, lay-out approvals, etc. as a package deal to the customers cannot be held as mere transfer of immovable property, held liable to service tax.  
- The High Court, in CCE v. Kundalia Industries ((2013) 38 STT 308/29 taxmann.com 322(Delhi)) held that the Committee of Commissioners while directing an appeal to be filed against the order of Commissioner (Appeals) has to record satisfactory grounds to challenge such an order on legality. Where the records reflects that neither a meeting of the Committee of Commissioners was held nor did they record their opinion before directing the appeal, the same is liable to be dismissed.
  - In Bosch Chassis Systems India Ltd. v. CCE (2013-TIOL-350-CESTAT-MUM), the Tribunal has held that the Managing Director (MD) of the company performs the function of management, hence cannot be taxed as advisory or consultancy services under “Management Consultancy” (MC) service category. Accordingly, sharing of remuneration paid to a common MD by two companies cannot be held to be MC services rendered by one company to another.
  - In CST v. Landmark Automobiles Pvt. Ltd. (2013-TIOL-364-CESTAT-AHM), the Tribunal has held that for insurance agent services, the liability to pay service tax is on the receiver of the services, therefore the tax on commission received cannot be demanded from the insurance agent.
• In Provincial Life Style Retail Services v. CCE (2013-TIOL-389-CESTAT-MUM), the Tribunal has held that where the agent performs the services of designing, managing and operating showroom, undertakes sales promotion, collect cash and issue invoices and receipts on behalf of principal, the activities goes beyond the scope of definition of “commission agent”. Accordingly, the exemption to commission agents available under Notification No. 13/2003 dated 20 June, 2003 cannot be held to be available to such agents.

• In CCE v. S S Engineers & Contractors ((2013) 38 STT 312/(2012) 26 taxmann.com 232 (Mumbai-CESTAT)), the Tribunal has held that the sale of goodwill on transfer of business, irrespective of the fact that the payment to be received in the form of royalty at a fixed rate for every unit of production, cannot be taxed under “Business Auxiliary services” category.

• In CCE v. D R Polymers (2013 (29) STR 536 (Tri. – Del.), the Tribunal has held that where, as per agreement, the C & F agent is free to sell the goods to the buyers at its own discretion and not merely dispatching the goods as per the instruction of the principal, the same cannot be held liable to service tax as C & F agent services.

• The Tribunal, in T P Pai Management Institute v. CCE (2013(29) STR 577(Tri. – Bang.,) has held that the right to appeal is governed by the law prevailing on the date of institution of revisionary proceedings and not by the law prevailing on the date of decision by revisionary authority or on the date of filling of appeal against such decision.

• The Tribunal, in CST v. Heidelberg India Pvt. Ltd. (2013 (29) STR 620 (Tri. – Chennai) has held that since the Indian subsidiary has not paid any remuneration to the foreign parent company for imparting training to its employee, furthermore, the training was imparted outside India, the same cannot be held liable to service tax under reverse charge mechanism.
**VAT**

**Notifications/Circulars**

**Andhra Pradesh**
- Separate Central Sales Tax (‘CST’) registration certificates will be issued to dealers registered under the CST Act effective 1 April, 2005.
  
  \(\text{(Circular No. 5 CCT's Ref. DC (CT), CRU/A1/3/2011 dated 23 February, 2013)}\)

**Bihar**
- The CST rate on goods manufactured and sold by micro, small and medium industries has been reduced to 1% effective 14 March, 2013.
  
  \(\text{(Notification No. S.O. 164 dated 14 March, 2013)}\)

**Delhi**
- A new composition scheme has been prescribed under the works contract provisions for different types of contracts subject to the fulfilment of prescribed conditions. The WCT rate depends upon the nature of the contract and conditions stipulated under the scheme. Also, the WCT-TDS rate has been aligned to the composition rate of tax rate prescribed in the scheme. The scheme is effective 1 April, 2013.
  
  \(\text{(Notification No. 3(13)/Fin.(Rev-I)/2012-13/dsvi/180 dated 28 February, 2013)}\)
- The due date for implementation of the scheme of online submission of purchase/stock transfer details in form "T-2" has been extended to 1 April, 2013 for dealers having GTO more than or equal to INR 100 Mn. In case of other dealers, the effective date is yet to be notified.
  
  \(\text{(Notification No.F.7(433)/Policy-II/VAT/2012/1429-38 dated 21 March, 2013)}\)
- The time limit for filing DVAT 51 along with the statutory forms for all the quarters of FY 2011-12 has been extended to 10 April, 2013.
  
  \(\text{(Notification No.F.3(33)P-II/Vat/Misc/2006/1383-1393 dated 14 March, 2013)}\)

**Goa**
- The time limit for completion of assessment for the FY 2010-11 has been extended from 31 March, 2013 to 30 September, 2013.
  
  \(\text{(Notification No. CCT/12-2/12-13/5655 dated 21 March, 2013)}\)

**Karnataka**
- Effective 1 April, 2013, the VAT rate on Containers used in kitchen or household, namely, Tiffin carriers, vessels, pots, boxes, cans and drums of different shapes with or without lids, basins, bowls, tumblers, jars and jugs has been reduced to 5.50%.
  
  \(\text{(Notification No. FD 36 CSL 2013 dated 5 March, 2013)}\)
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Maharashtra
- The time limit for completion of assessment for the FY 2005-06 and 2008-09 has been extended from 31 March, 2013 to 30 June, 2013.
  (Maharashtra Ordinance No. V of 2013 dated 7 March 2013)

Rajasthan
- Effective 1 May, 2013, electronic payments (for VAT, CST and Entry Tax) using Electronic Government Receipt Accounting System (e-GRAS) have been made mandatory for select class of dealers.
- The due date for submission of all the returns of the FY 2011-12 has been extended to 30 April, 2013.
  (Notification No. F.16 (375) Tax/VAT/CCT/06/Pt-I/1995 dated 6 March, 2013)
- The VAT rate on utensils made of steel has been reduced from 5.00% to 1.00% effective 13 March, 2013.
  (Notification No. F.12(11)FD/Tax/2013-119 & 120 both dated 13 March, 2013)
- The VAT rate on Tobacco & its products and Pan Masala has been increased from 50% to 65% effective from 6 March, 2013.

Uttarakhand
- The time limit for completion of assessment or re-assessment for the FY 2009-10 has been extended from 31 March, 2013 to 31 March, 2014.
  (Notification No.280/2013 /108(120)/XXVII (8)/02 dated 7 March, 2013)

Sales Tax

Case Laws
- The Gauhati High Court, in Dainik Janambhumi v. State of Assam (2013-58-VST-519-Gauhati), has held that newspaper printing contracts are not works contracts but pure service contracts as there is no element of transfer of property in goods in the form of ink. After the ink is used in the process, it does not remain goods as it has no physical existence thereafter.
- The Haryana Tax Tribunal, in Food Corporation of India v. State of Haryana (2013-44-PHT-335-HTT), has disallowed the benefit of penultimate exports under section 5(3) of the CST Act, on the ground that the goods were exported to the foreign buyers other
than the original foreign buyers for whom the goods were supplied to the merchant exporter. The Tribunal observed that one of the essential conditions to qualify as sale in the course of export is inextricable link between the sale of goods and its actual exportation, which is missing in the current transaction.

• The Kerala High Court, in Malabar Gold Private Limited v. Commercial Tax Officer (2013-58-VST-191-Ker.), has held that consideration received under the franchise arrangement for allowing the use of trademark is taxable as deemed sale under VAT laws. The taxability of such royalty fee under VAT will not change even if the dealer has already deposited service tax on such arrangement.

• The Karnataka High Court, in Smt. Geetha D. Raju v. State of Karnataka (2013-58-VST-180-Kar.), has held that in a works contract transaction, where part of contract is sub-contracted to a third party, the property in goods, in respect of work executed by the sub-contractor, is transferred directly to the contractee through the principle of accretion. Therefore, once the sub-contractor has paid VAT on its turnover, the same cannot be added to the contractor’s turnover for computing his tax liability. The Court has relied on the landmark decision of the Apex Court, in State of Andhra Pradesh v. Larsen & Toubro Ltd (2008-17-VST-1).

• The Uttar Pradesh VAT Commissioner vide an advance ruling in Naseem Ahmed (2013-51-NTN-64), has clarified that ‘metal spoon’ which is normally used in preparing, serving or eating food falls under the entry description of ‘All utensils’ and hence liable to VAT at a concessional rate of 4% in UP.
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