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Contents

Service Tax

CESTAT Larger Bench rules on taxability of 'Works Contract' prior to June 2007 by 3:2 majority.

The Delhi Tribunal in Larsen and Toubro Limited vs. CST disallowed the assessee's appeal and held that service elements in a composite contract could be subject to service tax prior to June 1, 2007 as well, if these are classifiable under "Commercial or Industrial Construction" (CICS), "Construction of Complex" (COCS) or "Erection Commissioning or Installation" (ECIS).

On the other hand, CESTAT President and Judicial Member concluded that a composite contract cannot be vivisected pre-2007 and 'works contract' would be taxable only under 'Works Contract Service u/s 65(105) (zzzza) of the Finance Act, 1994.

Members (Technical) observed that Sec 67 of Finance Act itself provides for measure of levy, and several exemption Notifications such as 12/2003-ST, 15/2004-ST and 1/2006-ST which provided for an alternative / optional / hassle free method of quantification of tax liability.

However, CESTAT President & Member (Judicial) dissented with Members (Technical) and observed that pre-2007, "composite contract, involving transfer of property in goods and rendition of services, cannot be vivisected…service components in works contract are taxable only under Works Contract Service defined and enumerated in Section 65(105)(zzzza) of the Finance Act, 1994".

Comments: The judgment by Delhi Tribunal clears the air over Works Contract pre-2007. An appeal to SC is imminent though.

CESTAT upholds tax liability on IPL Cricket Association, cannot utilise CENVAT for payment / deposit of amount collected as service tax, when not required to do so, in terms of Sec 73A(2) of Finance Act, same must be paid in cash

Recently, in the case of Jaipur IPL Cricket Pvt. Ltd. vs Commissioner of Service Tax, Mumbai, Tribunal disposed the appeal by holding that sponsorship of sporting events is not taxable service u/s 65(105)(zzzn), and hence, assessee who is the sponsor / service recipient, cannot be said to be rendering any 'output service'

Further, the Tribunal interpreted Rule 3(4) of CENVAT Credit Rules, and held that the said Rule did not provide for utilisation of credit for payment of amount specified in Sec 73A(2) of the Finance Act or Sec 11D of Central Excise Act.

Moreover, Tribunal held that the provision of CENVAT credit was available only for duties or taxes paid on taxable services used in or in relation to manufacture of excisable goods or consumed for providing taxable service, and observed that, "*…Rules cannot be interpreted in such a way as to go beyond or contrary to the Rule making powers conferred on the Central Government.*"

However, the penalty under section 77 was set aside as there was no intention to evade or avoid tax payment and also allowed restoration of CENVAT credit utilised, subject to non-claiming of any refund of amount paid in cash.

Comments: This decision comes as a huge relief to Revenue as sponsors/service recipients like IPL Association have been termed as not being service providers.

CESTAT Third Member rules on levy of penalty u/s 76 and 78 of Finance Act on assessee rendering helicopter charter-hire services to corporate towards off-shore operations

Recently, in Global Vectra Helicorp Ltd vs CST, Third Member of Bombay Tribunal disposed of assessee's appeal by concurring with Member (Judicial) with regards to non-imposition of penalty u/s 78 in the absence fraud, collusion, willful misstatement, suppression of facts with intent to evade tax .

Further, Tribunal upheld Sec 76 penalty for the period April 2009 to March 2011 for failure to pay tax, since no contumacious conduct or mens rea on the part of tax-payer required is thereunder.

Rejecting assessee's reliance on plethora of rulings including Greatship (India), Tribunal observed that *"the question of penalty has to be examined in the facts and circumstances of each case…*"

Consequently, the majority bench upheld the taxability u/s 65(105)(zzzj) as 'supply of tangible goods services' in the absence of transfer of right to possession and effective control for use by clients, and penalties u/s 76 and 77 (for non-compliance of statute)

Comments: This decision of Bombay Tribunal reiterates the need for determining mens rea whilst imposing penalty.

Declaration under VCES, 2013 acceptable where service tax computed in terms of half yearly returns though liability not correctly disclosed in returns: Bombay HC

In the case of Indokem Ltd.vs UOI, HC allowed writ petition of assessee to hold that declaration under Voluntary Compliance Encouragement Scheme, 2013 (VCES) was acceptable, and that any person may declare his tax dues where no notice or order of determination has been issued or made before March 2013, provided that any person who has furnished return and disclosed his true liability but had not paid his tax amount shall not be eligible to make declaration for period covered by said return.

The Bombay HC further observed that, *"It may be that the eventual order or direction would uphold the declaration or while upholding it issue such other orders and directions, as are permissible in the scheme. However, to reject the scheme outright by the exercise undertaken was not permissible"*

Perusing the Scheme, HC observed that there was nothing in scheme or in the statute that enabled Revenue to reject VCES declaration.

Comments: The ruling is important for all the 'no-filers' or 'stop-filers' who remitted the collected amount because of VCES.

Writ filed by film actor seeking parity with theatre artists with regard to service tax exemption dismissed

In a recent ruling, Siddharth Suryanarayan v UOI and ors., Madras HC rejected the contention of film actor-petitioner that contested that the exemption given to theatre artists by virtue of Notification No. 25/2012 dated June 20, 2012 that provides exemption in respect of services provided by performing artist or folk or classical art forms of music, dance or theatre from the liability of service tax was discriminatory and violative of Article 14 and Article 19(1)(g) of Constitution of India.

Lauding the 'Salutary Endeavour' of Govt. to promote native art, HC observed that, "T*he mere fact that there is an element of drama or acting both in case of theatre and in case of films does not mean that the two activities are identical, taking into consideration the circumstances in which films are made and theatre is performed.*"

Accepting Revenue's submission that exemption is in furtherance of Article 29 of Constitution of India, seeking to give protection to cultural and educational rights and preserving rich heritage of composite culture, HC observed that taxation statutes ought to be dealt with on a different plank with " due deference to legislative intent."

Further, HC observed that ,"*much latitude is allowed to the State for classification upon a reasonable basis, and what is reasonable is a question of practical details and variety of factors which the Court would be reluctant and ill-equipped to investigate.*"

Comments : The Madras HC decision rests the speculation surrounding the controversy as to why theatre artists were treated different to film actors.

Assessee not liable to mandatory pre-deposit of 7.5% of confirmed tax as a condition for pursuing appellate remedy before CESTAT: Kerala HC

In a recent case, Muthoot Finance Ltd. vs. Union of India & Others, Kerala HC allowed assessee's writ by holding that assessees are not liable to pre-deposit 7.5% of confirmed tax, after referring to prima facie view taken by Division Bench of Telangana & AP HC that, inasmuch as the lis in question commenced prior to introduction of amendment to Finance Act with effect from August 2014, assessee's right of appeal as per the erstwhile provisions of law would not be affected by provisions introduced in 2014.

Although HC did not expressly referred to in HC of Telangana & Andhra Pradesh's interim order, HC opined that the view seemed to be consistent with settled law that, "*the institution of a suit carries with it an implication that all rights of appeal then in force are preserved to the parties thereto till the rest of the career of the suit and, further, that the right of appeal that is vested is to be governed by the law prevailing at the date of institution of the suit or proceeding, and not by the law that prevails at the date of its decision or at the date of filing of the appeal*'.

Thus, HC held that the assessee in whose case the lis commenced in 2012, would not be required to deposit amount of 7.5%, as required pursuant to 2014 amendment, and in that respect, it would have an efficacious alternate remedy before CESTAT where it can file an appeal, together with an application for waiver of pre-deposit and stay of recovery of confirmed demand. HC opined that assessee will not be required to make any payment as a pre-condition for the hearing of waiver application by CESTAT.

Comments: This decision comes as a huge relief to all assessees wanting to litigate before the Tribunal.

Central Excise

Respite to car manufacturer, differential duty demand on bumpers, grills and other spares cleared from factory after subjecting them to a process of anti-rust coating quashed.

The Supreme Court in Maruti Suzuki India Ltd vs. Commissioner of Central Excise, New Delhi , in Vasantham Enterprises vs CCE, held that that bumpers and grills, in the instant case, were most certainly of commercial use in themselves whether the process of ED coating was applied or not.

Further, SC rejected Revenue's contention that said process of anti-rust coating leads to value addition, which amounts to 'manufacture' and therefore, "input" not the same so as to qualify under Rule 57F(1)(ii) of CER for reversal of MODVAT duty.

Additionally, SC opined that anti-rust treatment to bumpers and grills was only to increase their shelf life (value addition) and same does not convert them into a new commodity known to market as such.

Following the law laid down in S.R. Tissues Pvt. Ltd., SC observed that inputs procured by assessee continue to be the same even after anti-rust coating and therefore, duty of excise payable would be the amount of credit that had been availed in respect of such inputs under Rule 57A.

Comments: The ruling of the SC comes is of note to the car manufacturers all over the country.

Refund claim of unutilised accumulated CENVAT credit of inputs under Rule 5 of CENVAT Credit Rules barred by limitation of 1 year u/s 11B of Central Excise Act

In the case, Commissioner of Central Excise, Chennai vs. Celebrity Designs India Pvt. Ltd and Anr., Kerala HC allowed the appeal on the grounds that refund application should be filed before expiry of period specified in Sec 11B in lieu of Notification No. 11/2002-CE (NT), which governs Rule 5 refunds.

HC noted that in identical circumstances, Division Bench earlier had considered the same issue in case of Commissioner of Central Excise, Coimbatore vs. GTN Engineering (I) Ltd. [2012 (281) ELT 185 (Mad)], wherein after considering the provisions of Sec 11B, it had observed, "……but for the provision of Rule 5 r/w notification, the respondent could not have filed the application for refund, he has to satisfy the limitation clause as provided under Section 11B of the Act."

Comments: It is important to note that one has to satisfy the clause as provided under Section 11B of the Act in order to be not barred by limitation.

Credit of Additional Excise Duty (AED) paid under Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 cannot be utilised towards payment of duty under AED (Goods of Special Importance) Act 1957

In the case, Raymond limited vs. Commissioner of Central Excise & Customs, Nashik, that credit in respect of specified duty under the 1957 & 1978 Acts can be utilised subject to restrictions, but cannot be cross-utlised .

Further, HC observed that all the contentions of assessee overlooked the fundamental distinction between the two additional duties which were imposed by two different enactments on goods of special importance and textiles and textile articles.

Additionally, HC rejected assessee's alternate contention that Rule 3 (3) of the Cenvat Credit Rules, 2002 permitted utilization of CENVAT Credit for payment of any duty of excise on any final products or for payment of duty on inputs on capital goods themselves.

Comments: It is important to note that cross-utilization isn't allowed.

Matter whether services consumed within SEZ stated to be exempt from tax, could be subject matter of refund claim relates to determination of 'rate of duty", not maintainable before HC u/s 35G of Central Excise Act: Bombay HC

In the case, CCE & CST vs Credit Suisse Services (I) Pvt. Ltd., Bombay HC dismissed Revenue's appeal on the grounds that cases relating to determination of rate of duty were not maintainable before it.

Further, HC accepted assessee's contention that issue of availability of refund u/s 11B of Central Excise Act, when claim actually filed under Notification No.9/2009-ST or under Notification No.15/2009-ST, relates to determination of 'rate of duty', and remedy with Revenue is to challenge Tribunal's order by way of appeal before SC.

Relying upon SC ruling in Navin Chemicals, HC observed that dispute pertaining to classification of goods and inclusion of same in exemption Notification, relates directly and proximately to rate of duty applicable thereto for purposes of assessment

Comments: The ruling clarifies that disputes relating to inclusion of classification of goods in exemption notification are not maintainable before the HC.

Cost of packing cartons used for transportation not includible in assessable value of final products: SC

In a recent case, CCE vs. Addisons Paints & Chemicals Ltd. and another, SC dismissed Revenue's appeals to hold that duty payable on cost of cartons were not to be included in assessable value of final products.

Further, SC accepted assessee's contention that finished products were packed in tin and plastic containers and put in cartons only for transportation and that the cartons not an integral part of final product

Relying on its own judgment in Hindustan Safety Glass Works, SC reiterated the test - see if packing done to put goods in marketable condition & if goods not capable of reaching market without packing, if answer is yes, cost of such packing would be includible.

In addition, SC observed that all goods are to be dealt on its own fact, and the crucial/determining factor is to keep in mind that goods generally sold in wholesale market at the "factory gate."

Comments: The test reiterated in this ruling is of note.

Customs

Refund of 10% countervailing duty (CVD) paid on import of cars to be used as tourist taxis.

In a recent decision, in AIDEK Tourism Services Pvt. Ltd. vs. Commissioner of Customs, New Delhi, SC upheld Mumbai CEGAT order and held that the granted refund of 10% countervailing duty (CVD) paid on import of cars is to be used as tourist taxis.

Interpreting Notification No. 64/93-CE, SC rejected Revenue contention that only manufacturer of saloon car, which is imported and used solely as taxi, was entitled to additional exemption benefit of 10% CVD.

By applying the principle laid down in Thermax Private Limited & Hyderbad Industries Ltd. rulings, SC noted that Sec 3 of Central Excise Tariff Act levies additional duty on import to counter balance excise duty payable on like article indigenously manufactured.

Further, SC observed that the words 'if produced or manufactured in India' in said section do not mean that the like article should be actually produced or manufactured in India.

Referring to catena of cases including apex court decision in J.K. Synthetics, SC observes "*it is now settled that the rate of duty would be only that which an Indian manufacturer would pay under the Excise Act on a like Article...*";

In lieu of this, SC held that importer was entitled to concessional / nil rate of CVD if any Notification provides exemption / remission of excise duty for like article if produced / manufactured in India; Reverses contrary view of Delhi CEGAT which held that importer must be treated as manufacturer only to the extent of granting benefit of levying CVD @ 40% in terms of said Notification, not for additional 10% concession.

SC further observed that if importer was not deemed as manufacturer, there cannot be a situation where benefit of said Notification would be extended to any person, and held, "*...it was almost impossible to visualise a situation where a foreign manufacturer would import the saloon cars in this country and would utilise those cars for tourist taxis..*"

Comments : This ruling is important as it AEB benefit has been extended to other imported cars as well, apart from prevailing saloon cars, imported and used as taxi.

Customs duty on import of television sets by members of joint family upheld: Calcutta HC

In a recent case, Dinesh Kumar Goyal & Anr. vs. Air Customs Superintendent & Ors, Calcutta HC dismissed HC's writ and upheld customs cuty on import of television sets by members of joint family.

Further, the Calcutta HC rejected assessees' argument that the word 'family' in Rule 2 of Baggage Rules includes all persons residing in the same house, forming part of same domestic establishment and therefore, exemption limit of Rs 25,000/- for each member can be clubbed to enable duty free allowance of imported goods.

HC observed that the word 'family' appearing in Sec 79(1)(b) of Customs Act r/w Rule 2(d) of Baggage Rules relates to 'user' of article(s) brought by any passenger from foreign countries and that while framing Baggage Rules, Central Govt conscious that exemption granted in respect of article(s) in baggage of individual passenger brought for his own use or for the use of his/her family

Comments : The said ruling clarifies the position on levy of custom duty on import of television by a joint family.

VAT and Octroi

Request to re-open assessment not deniable where 'Form C' & 'F' under Central Sales Tax Act produced subsequently

In the case of Tata Global Beverages Limited vs. CTO, the Madras HC allowed the appeal filed by the assessee and observed that the request to re-open the case of assessee cannot be denied, as, higher rate of tax, than that has been prescribed under section 8(1), has been levied in the absence of forms 'C' and 'F' that have been produced subsequently.

HC also observed that it was not in dispute that the authority has the powers to extend the time for filing forms 'C' and 'F'.

Further, HC held that the authority was not to deny the request of assessee for re-opening the final assessment and the only thing that was to be considered was whether sufficient cause for re-opening the assessment was given to the assessee or not.

In addition, HC noted that provisions did not propose any levying of penalty without giving assessee an opportunity, and the authority decision to impose penalty was bad in the eyes of law.

Accepting assessee's argument and placing reliance on Vispro Foundry Engineers Limited, HC directed the lower authority to consider the declaration under forms 'C' and 'F'.

Comments: This is a very important ruling with regards to the re-opening of assessment.

Taxability of Electrical Insulated Press Board upheld

In the case of Raman Boards Ltd. vs. State of Karnataka, the Karnataka HC dismissed the revision petitions by the assessee and upheld the taxability of Electrical Insulated Press Board (commonly known as High Density Board) under residuary entry of Karnataka VAT Act @ 12.5%, thereby rejecting assessee's classification of said goods as 'paper' taxable @ 4% or 5% under Entry 69 of Third Schedule to the Act.

Relying on Grenfell vs. Commrs. of Inland Revenue, HC observed that an article of merchandise whenever used in a taxation statute must always be understood in a common parlance and must be given its popular sense meaning, with which people are conversant and while dealing with the articles would attribute to it. Discussing the case at hand, HC observed that the paper boards or a thicker variety of paper containing thin sheets of paper would not take it out of category of "paper" and where a word has a scientific or technical meaning and also an ordinary meaning according to common parlance, it is in the latter sense that in a taxing statute the word must be held to have been used, unless contrary intention is clearly expressed by the Legislature.

Also, perusing the process of manufacture of said item, HC noted that the raw material used is a wood pulp or sulphate pulp, the process it undergoes and the purposes for which it is manufactured, clearly demonstrates that it is not used as a paper. HC further observed that if one looked at the relevant factors such as basic character, function and use of goods and the statutory fiscal entry, it became clear that the intention was not to treat it as paper.

Going by the trade meaning and not the popular meaning, HC stated that even the persons who are in trade, and may be aware that the same process is undergone, similar to the one which is used for manufacturing paper, they would be clear in their mind that it is not a paper but it is an electrical insulation press board or high density board which is used in the electrical transformers as conductor wrapping and insulation barriers between winding coils.

Comments: This is a very important ruling with regards to classification of goods and the various tests and determining factors that ought to be kept in mind.

Levy of octroi and local body tax (LBT) on Sodexo Meal Vouchers sold by assessee to customers viz. organizations for use by their employees

The Bombay HC in Sodexo SVC India Pvt Ltd vs The State of Maharashtra and others, upheld the levy of octroi and local body tax (LBT) on Sodexo Meal Vouchers sold by assessee to customers viz. organisations for use by their employees.

Perusing the sodexo scheme, HC held that such vouchers which are printed on paper have their own utility and therefore, constitute "goods" within the meaning of Municipal Corporations Act.

Further, HC rejected assessee's reliance on BSNL ruling to contend that sodexo vouchers are only a medium of payment for acquiring food & beverages and observed that "*the said vouchers cannot be equated with electromagnetic waves*" dealt with by apex court therein.

Additionally, HC observed that LBT / Octroi payable on entry of goods into the limits of city for consumption, use or sale, and said vouchers "*are goods which are capable of being used, consumed or sold within the Municipal Corporation limits...*"

Hence, test laid down by SC that electromagnetic waves are neither abstracted nor consumed in the sense they cannot be delivered, stored or possessed and therefore same are not marketable, was held to inapplicable to present case by HC.

Further, HC accepted Pune Municipal Corporation's stand that the said vouchers fall within the category of printed material which attracts octroi of 2% in terms of Octroi Rules but however, refused to entertain the issue of availability of alternate remedy of appeal since the same was already dealt with earlier.

Comments: The said ruling is important as it discusses classification of goods in octroi.

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