Indirect Tax News Update

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Service Tax

Govt. prescribes point of taxation in case of change in liability under reverse charge

Notification No. 21/2016-ST **March 30, 2016**

Central Govt., vide Notification No. 21/2016-ST dated March 30, 2016 has notified Point of Taxation (Second Amendment) Rules, 2016, thereby prescribing point of taxation in case of change in liability to pay service tax under reverse charge.

Vide the Notification, the second proviso has been inserted in Rule 7 in order to provide that where there is change in liability or extent of liability of a service recipient notified u/s 68(2), in case service has been provided and invoice issued before date of such change, but payment has not been made, point of taxation shall be date of 'issuance of invoice.'

Comments: The insertion of second proviso to provide for issuance of invoice to be the point of taxation is a welcome step.

Procuring services on behalf of Participating Group Cos. under 'cost sharing arrangement' not taxable as BSS

Pre-May, 2011

Recently, Mumbai CESTAT in Reliance ADA Group Pvt Ltd vs. Commissioner of Service Tax, Mumbai IV, ruled in favour of Reliance ADA Group, and held that activity of procuring services on behalf of Participating Group Cos. under 'cost sharing arrangement' not taxable as Business Support Services (BSS) u/s 65(104c) r/w 65(105)(zzzq) of Finance Act.

Also, CESTAT noted that assessee carried out only agency functions by acting as Manager / Trustee for procuring services such as aircraft hiring, branding, professional services and auditing, whereby cost / expenses incurred thereof were reimbursed by said Group Cos., and that such activities of assessee enabled Participating Group Cos. to share common services, best available talent and resources required for carrying out their business activities, and as no taxable service was rendered by assesse per se, demand of Rs. 15 Cr (approx.) is unsustainable.

At the relevant time, definition of BSS covered only specific activities in inclusive part and Adjudicating Authority's attempt to link all assessee's activities to them was without statutory & documentary evidence, also activity of incurring cost as service is not in nature of outsourced activity as contemplated by Sec 65(104c). Amendment to said section w.e.f. May 2011 enhancing the scope of BSS vide insertion of words "operational or administrative assistance in any manner" is only prospective, hence any such assistance prior thereto cannot be considered as taxable, states CESTAT.

Comments: As recipient of same group company is eligible to avail CENVAT of duty paid by assessee, assessee could not be alleged to have mala fide intent to evade payment of duty.

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Reverse charge not applicable on income tax deducted at source

The Mumbai CESTAT, in Magarpatta Township Development & Construction Co Ltd. vs. Commissioner of Central Excise, Pune-III has held that income tax deducted at source (TDS) and paid to Govt. of India by assessee on amount remitted to foreign architect towards technical consultancy services is not liable to service tax on 'reverse charge' basis.

CESTAT observed that Section 67 of Finance Act clearly states that 'value' of taxable services shall be 'gross amount' charged by service provider, and as per Rule 7 of Service Tax (Determination of Value) Rules, value shall be equal to actual consideration charged for services provided or to be provided from outside India; Observes, assessee discharged service tax on consideration stipulated in invoice / bill raised by foreign architect and nothing on record indicated that income tax amount so paid had been recovered.

Moreover, there is no other material available to hold that the amount so paid is consideration for services received from service provider. Consequently, on reading of Section 67 with Rule 7 of Valuation Rules, it is clear that service tax liability needs to be discharged on amounts which have been billed by service provider.

Comments: As per the provisions of Income Tax Act, assessee is only required to pay income tax on such amount, which it had done so from own pocket.

GoDaddy India Services to GoDaddy US does not qualify as intermediary services

Recently, the Advanced Authority in GoDaddy India Web Services Pvt Ltd vs. Commissioner of Service Tax, Gurgaon, has held that services by GoDaddy India (applicant) to GoDaddy US in relation to direct & offline marketing, branding, supervision of third party customer care centre quality and payment processing, constitute “bundle of services” being naturally bundled in the ordinary course of business, and accordingly, classifiable as single service viz. ‘business support service’ (BSS) in terms of Sec 66F of Finance Act.

AAR rejected Revenue’s stand that services proposed to be provided by applicant qualify as “Intermediary Services”, which fall under Rule 9 of Place of Provision of Service Rules 2012 (POPS Rules); Noting that definition of “intermediary” u/s 2(f) of POPS Rules does not include person who provides the main service on his own account, observes, “In the present case, applicant is providing main service i.e. “business support services” to WWD US and on his own account. Therefore, applicant is not an “intermediary” and the service provided by him is not intermediary service.”. Further, services are proposed to be provided with the sole intention of promoting the brand ‘GoDaddy US’ and thus augmenting its business in India, for which applicant would receive a consolidated lumpsum payment (operating costs + 15% mark-up), notes AAR.

Also rejected Revenue contention that services provided by applicant are consumed by customers of GoDaddy US in India and therefore, there is no export of service, noting that benefit thereof accrues to recipient outside India. Observes, “…business support services are proposed to be provided by the applicant to GoDaddy US on principal to principal basis…applicant is not concerned in respect of services provided by GoDaddy US to Indian Customers, which relates to domain name registration, transfer services, web hosting services, designing services etc…no remuneration / consideration is received by the applicant from Indian Customers.”

Hence, by providing payment processing services to GoDaddy US, applicant is not providing any service to the customers of GoDaddy US in India, observes AAR. Consequently, said service is classifiable under Rule 3 of POPS Rules and as all ingredients enlisted under Rule 6A of Service Tax Rules are satisfied, it will qualify as export of service.

Comments: This comes as a huge relief to all related service providers.

For purposes of outward transportation, place of removal to be point where seller detaches himself from his right over goods

CESTAT, in Lucas TVS Ltd vs South Zonal Bench, Chennai, rules on principles for determining 'place of removal' in context of CENVAT credit eligibility w.r.t. outward transportation of goods upto buyers premises/port of export.

CESTAT noted that, mandate contained in Section 19 of Sale of Goods Act, 1930 (SOGA) is that, sales is outcome of contract of sale of specific or ascertained goods and property therein is transferred to buyer at such time as parties to contract intend to do so. Further, CESTAT observes, "It may be seen that para 8.2 of the Circular No.97/8/2007-ST, dated 23.08.2007, para 3 of the Circular No.988/12/2004-Cx., dated 28.10.2014 and Circular No.999/6/2015, dated 28.02.2015 follow the concept that when property in goods is transferred under the Sale of Goods Act, 1930 as is envisaged by Section 19 thereof, at that point only, removal of the goods from the control of the seller is said to have occurred".

Referring to Board's Circular No.999/6/2015-CX., states, codified provisions in SOGA has been adopted in Circular, therefore, there should not be any ambiguity by Adjudicating Authority to understand 'sale' concept, where that takes place and intention of parties entitling seller of goods to CENVAT credit of service tax paid on transportation of goods to place of export or for delivery thereof at place agreed between parties. Holding that, tax paid under reverse charge mechanism u/s 68 of Finance Act, 1994 r/w Section 19 of SOGA and Circular, becomes input service to fulfill contractual obligation, which does not disentitle taxpayer to credit of service tax paid on transport service availed to make delivery of goods at destination which otherwise would make rule of cascading effect otios and export shall be taxable, remands matter to Adjudicating Authority.

Comments: Precisely, sales is outcome of contract of sale of specific or ascertained goods. The property therein is transferred to the buyer at such time as the parties to the contract intend to do so.

Service tax paid on royalty by transferee to transferor company eligible for refund

In a recent decision, Usha International Ltd Vs CST, Delhi, CESTAT held that Service tax paid on royalty by transferee company (assessee) to transferor company (Jay Engineering works (JEW)) where HC approved merger from prior date, becomes 'service to self', grants refund thereof. CESTAT moreover, observes, "As the service was rendered to self and service tax was paid thereon, burden can only passed on to self and passing on the burden to self is not tantamount to passing it to any other person."

Comments: As assessee was neither a manufacturer of goods nor was it providing any service, presumption that incidence of duty passed on to buyer contained u/s 12B of Central Excise Act made applicable to Service Tax Act was not attracted.

Central Excise

CVD not to be leviable on the basis of Retail Sale Price on set tops

Circular No. 1020/8/2016 - CX **March 11, 2016**

CBEC, vide Circular No. 1020/8/2016 - CX dated March 11, 2016, has issued clarification on valuation of set top boxes (STBs) imported by DTH service providers and supplied free of cost to consumers. CBEC relied on CESTAT's ratio in Bharti Telemedia Ltd. which held that absent sale in use of STBs by ultimate consumers, CVD shall not be leviable on the basis of Retail Sale Price in terms of proviso u/s 3(2) of Customs Tariff Act.

Accordingly, CBEC has clarified that in identical circumstances, aforesaid ratio shall be followed for calculation of CVD on imported STBs.

Comments: The clarification w.r.t. valuation of imported set top boxes under Section 4 of the Central Excise Act, 1944 in furtherance of CESTAT's decision in Bharti that there is no transfer of property or hire-purchase system involved nor there is a system of payment by instalments, and thus, there appears to be no sale in the use of the Set Top Box by the ultimate consumer is to be followed for assessment of CVD on imported STBs, where the circumstances are identical.

Unutilized CENVAT to be refunded absent possibility of utilization in future

Recently, The Chennai CESTAT, in Srinivasa Hair Industries vs. CCE, Chennai II, allowed refund of unutilized CENVAT credit under Rule 5 of CENVAT Credit Rules absent possibility of utilization in future on account of closure of unit.

The CESTAT accepted assessee's reliance on Karnataka HC decision in Slovak India Trading Co. Pvt. Ltd. which allowed such refund absent any prohibition in Rule 5. CESTAT noted Revenue contention that said Rule confines its scope to permissibility of refund only w.r.t. exportable goods and there is no Rule to entertain refund of unutilized credit pertaining to domestic clearances.

According to CESTAT, while Revenue's contention is correct, cases where assessee is unable to utilize CENVAT credit due to closure of business or other circumstances beyond its control cannot be interpreted to cause absurdity or impossibility.

Thus CESTAT stated that, scope of Rule 5 was confined only to exportable goods, and does not take care of domestic clearance. Therefore, CESTAT held that, "when the credit is not questioned as not genuine and there is no circumstance brought out by Revenue that there is a possibility to utilize the credit and also there being no law to carry forward such credit for future or to transfer the same to others, in such circumstance, it may be considered that the duty element paid by the assessee to the treasury shall serve no useful purpose of the taxpayer in the event of closure of the unit or impossibility of adjustment". CESTAT further stated that, State should not be enriched at cost of citizen in such circumstance following ratio laid down by SC in various judicial precedents.

Comments: CESTAT upholds the principle that State should not be enriched at the cost of the citizen, and allows refund to assessee of such unutilized credit.

Activity of putting together bought out components/parts and clearing same as Gas Conversion Kits amount to manufacture

Recently, in Commissioner of Central Excise, Chennai II vs. Shri. S.C. Rajan, the issue before Chennai CESTAT was whether activity of putting together bought out components and parts and clearance thereof as Gas Conversion Kits is 'excisable'.

CESTAT allowed Revenue's appeal, and held that packing together of components and manufactured parts in a carton box and clearance thereof as 'Gas Conversion Kits' (GCK) amounts to 'manufacture' in terms of Sec 2(f) of Central Excise Act. Also, CESTAT rejected Adjudicating Authority's finding that GCK consists of one number each of vaporizer, gas solenoid, petrol solenoid and tail assembly and these items do not lose their identity, hence there is no manufacturing activity involved. Also, CESTAT observed that, assessee developed the design, manufactured and sold kits based on imported kits and these were not cleared as parts but as GCK with brand name "Lovoto". Further, observes that, these goods were identified in market as GCK and consideration was received not on sale of parts, but for entire GCK.

Consequently, CESTAT sets aside Commissioner's order holding that 'GCK' cleared by assessee are excisable goods, chargeable to duty.

Comments: As goods were not cleared as parts but were cleared as Gas Conversion Kits and consideration was also received for the entire kit and not for sale of individual parts, gas conversion kit cleared by the assessee amounts to 'manufacture'.

Inputs, WIP not to be reversed if final products subsequently exempted from payment of duty

Recently, in Kitex Ltd. Vs Commissioner of Central Excise, Cochin, CESTAT allowed assessee's appeal, and held that CENVAT credit of inputs lying in stock, WIP and final products not required to be reversed when final products become exempt from payment of duty in terms of Notification No. 30/2004-CE. Assessee contended that Notification does not provide for credit reversal on inputs lying in stock, WIP and contained in finished products and as held by SC in Dai Ichi Karkaria Ltd., there is no machinery provisions to recover credit validly availed.

CESTAT relied upon Karnataka HC ruling in TAFE Ltd. wherein it was held that input credit legally taken and utilized on dutiable final product need not be reversed on final product being exempted subsequently. Rejecting Revenue's contention that credit needs to be reversed in terms of Tribunal judgement in Albert David Ltd. upheld by SC, which is directly on issue, states ruling in TAFE Ltd. as upheld by SC being a recent judgement, has to be followed, further observes that, "It is settled law that ratio of the latter case needs to be followed". Moreover, CESTAT observed that issue in present case is not of demand of duty or reversal of CENVAT credit, but pertains to refund of amount paid by assessee erroneously under misunderstanding of law.

Comments: Reliance was placed on SC ruling in Dai Ichi Karkaria Ltd., where it was held that, " once the input credit is legally taken and utilized on the dutiable final product, it need not be reversed on the final product being exempted subsequently".

CENVAT Credit allowed on 19 services, pre-April 2011 period

Pre-April 2011

CESTAT, in Conexant Systems Pvt. Hyderabad vs. The Commissioner, C.C.E & ST, Hyderabad, has ruled in assessee's favor, and allowed CENVAT Credit for pre- April 2011 period w.r.t. 19 services including telecommunication services, CA services, Outdoor Catering Service, Rent-a-cab service, renting of immovable property service, etc., to 100% EOU providing software development services to overseas Parent entity.

CESTAT relied on rulings in Coca Cola India, KPMG and HCL Technologies and Circular dated January 19, 2010, and observed that, by denying credit on all input services by Department, on premise that, same do not have nexus with output services, "it seems to appear that the appellants has not availed any input service for providing output service during the relevant period, which is not possible".

States, prior to April 2011, 'input service' definition had a wide ambit covering almost all services relating to business of manufacture/providing of output services, further, distinguishes Maruti Suzuki and Vandana Global cases relied upon Commissioner (Appeals) holding that, same pertained to admissibility of credit on inputs and not input services. Laments Commissioner (Appeals) decision to remand matter to Adjudicating Authority without any averment as to document/fact required further to decide issue, when assessee furnished invoices, CENVAT register and other documents

Comments: Board has specifically clarified that in case of BPO/call centers, services like renting of premises, software technology services, telecom services, rent a cab services etc. would be needed for providing their output services efficiently and that such services would be eligible for credit.

Interest u/s 11BB of CE Act on delayed refund, payable on expiry of 3 months from date of receipt of application

Recently, in Union of India & Ors. vs. Hamdard (Waqf) Laboratories, the issue before the SC pertained to whether interest was grantable on delayed refund from date of application filing or rectification thereof. SC held that interest u/s 11BB of Central Excise Act, 1944 on delayed refund, payable on expiry of 3 months from date of receipt of application, by relying upon SC ruling in Ranbaxy Laboratories Ltd.

SC observed that Section 11-B of the Act deals with claim for refund of duty and interest, if any, paid on such duty, and Section 11-BB dealt with interest of delayed refund. Further, SC observed that the Sub-section (2) of Section 11-B stipulates filing of an application by assessee before the competent authority. SC further observed that the Section further postulates that the said authority is required to be satisfied that the whole or any part of the duty of excise and interest, if any, paid on such duty is refundable. SC also elucidated that, Section 11-BB which deals with interest on delayed refund clearly and categorically predicates that, if any duty ordered to be refunded under sub-section (2) of Section 11-B is not refunded within 3 months from date of receipt of application u/s (1) of Section 11-B, there shall be paid to the applicant interest at the notified rate from the date immediately after the expiry of 3 months from date of receipt of such application till the date of refund of such duty. SC observed that the significant words are "expiry of three months from the date of receipt of such application", and in the instant case, the application was filed on August 25, 1999. SC thus held that the said application was preferred under sub-section (2) of Section 11-B.

Comments: It is obligatory on the part of Revenue to intimate assessee to remove the deficiencies in the application within two days and, in any event, if there are still deficiencies, it can proceed

Customs

India-ASEAN Trade in Goods Agreement (Safeguard Measures) Rules, 2016 notified

Notification No. 37/2016 - Customs (N. T.) March 4, 2016

FinMin, vide Notification No. 37/2016 - Customs (N. T.) March 4, 2016, has notified India-ASEAN Trade in Goods Agreement (Safeguard Measures) Rules, 2016 w.e.f. date of publication in Official Gazette. Director General [DG], either suo-moto or upon receipt of application from Domestic Producer, may investigate existence of serious injury/threat of serious injury to domestic industry as consequence of increased imports of goods into India in terms of Trade Agreement and recommend adequate safeguard measure along with duration to prevent same.

Final Findings shall be determined within 8 months, and same, if affirmative, shall contain all information on matter of facts, law and reason which have led to conclusion; DG shall then issue a public notice recording final findings and send copy thereof to Central Govt. (CG) in Ministry of Commerce and FInance, Govts. of exporting State and other member States of Associations of Southeast Asian Nations, on receipt of which, CG may suitably amend notification issued u/s 25(1) of Customs Act i.e. suspend further rate reduction provided under trade agreement or increase rate of customs duty.

Differential duty collected to be refunded to importer, where safeguard measure taken after conclusion of investigation results in duty rate lower than duty rate resulting from provisional safeguard measure.

Comments: Safeguard measures shall be non-discriminatory, applicable to good imported from all other member States of ASEAN, further, unless revoked earlier, same shall cease to have effect after initial period not exceeding 3 years (extendable to one year upon DG's recommendation)

Deemed conclusion of proceedings against Other Persons

Circular No. 11/2016 - Cus **March 15, 2016**

CBEC has issued clarification w.r.t. deemed conclusion of proceedings against "other persons" u/s 28 of Customs Act. The clarification states that provision of deemed conclusion is contingent upon person to whom SCN has been issued u/s 28(1) or (4) paying up all dues of duty, interest and penalty, hence only on such compliance shall closure of proceedings against other persons come into effect. Therefore, “other persons” implies person(s) to whom no demand of duty is envisaged u/s 28(1) or (4). According to CBEC, other persons who happen to be co-noticees in the SCN for their acts of commission or omission other than demand of services, telecom services, rent a cab services etc. would be needed for providing their output services efficiently and that such services would be eligible for credit.

duty would be benefited by deemed closure in cases where main noticee has complied with conditions u/s 28(2) or (6)(i).

Comments: The cases involving seizure of goods u/s 110 or cases where confiscation provisions u/s 111, 113, 115, 118, 119, 120 & 121 are invoked, would be outside purview of Circular.

Customs' drawback not available where goods exported by EOU & indigenous inputs received without payment of duty

Recently, in Anandeya Zinc Oxides Pvt. Ltd. vs. The Union of India and Ors., the issue before Bombay HC (Goa Bench) was whether Duty Drawback was available in respect of Customs allocation of duty where assessee availed benefits under Rule 19(2) of Central and Excise Rules, 2002 (CER).

HC upheld lower authorities' orders, and held that 'Customs' drawback under Notification No. 26/2003-Cus not available where goods exported by EOU availing benefit under Rule 19(2) of Central Excise Rules, 2002 (CER) (i.e., indigenous inputs received without payment of duty). Also, HC rejected assessee's contention that, duty drawback w.r.t. Customs allocation cannot be denied merely because it is not entitled to claim drawback on account of excise.

Further, HC held that Proviso 2(f) of said Notification implies that All Industry Rate of Drawback is inadmissible where applicant has availed benefit of Rule 19(2) of CER, and further, para 4 of Circular dated October 6, 2003 clearly provides that while allowing drawbacks, it should be ensured that exporters do not avail facility under Rule 19(2). States, it is well settled that taxation and fiscal statutes have to be strictly construed and Court cannot read words into such proviso, accordingly holds that "there is no scope of bifurcating drawback towards customs and excise allocation"; Further, holds that SC decision in Parle Exports (P) Ltd. and CESTAT ruling in Meghdoot Pistons (P) Ltd. as relied by assessee, inapplicable to present case.

Comments: Assessee admittedly availed of the said benefits and removed exported excisable goods without payment of duty from the factory and, as such, the question of availing of any drawback in terms of said Scheme was not at all justified.

Writ petitions allowed against rejection of refund claims filed u/s 27 of Customs Act towards excess CVD paid on import of mobile phones

Recently, Micromax Informatics Limited had filed writ petitions before Delhi HC against rejection of refund claims absent appeal against assessment of B/Es u/s 27 of Customs Act. In Micromax Informatics Limited vs. Union of India & Ors., Delhi HC allows writ petitions against rejection of refund claims filed u/s 27 of Customs Act towards excess CVD paid on import of mobile phones.

HC noted that the decision in Priya Blue Industries Ltd was rendered i.r.o. Sec 27 as it stood prior to April 8, 2011. Factually, the said decision did not apply to the facts of the present case. In that case, there was an assessment order passed on the B/Es filed by the importer. In Flock (India) (P) Ltd, again an assessment order had been passed. Also, in Aman Medical Products Limited, Division Bench had answered in the negative, the question whether non-filing of appeal against the assessed B/E in which there was no lis between the importer and Revenue at the time of payment of duty would deprive the importer of his right to file refund claim u/s 27 of Customs Act. Analysing the said Section, Division Bench had Hence, it was held that the assessee therein was entitled to maintain the refund claim notwithstanding that there was no appeal filed against the assessed B/Es.

HC noted that w.e.f. April 8, 2011, the structure of Sec 27 has undergone a change; a person can now claim refund of duty or interest as long as same was paid or borne by such person. The conditionality of such payment having been made pursuant to an order of assessment does not exist. Secondly, once an application is made u/s 27(1), it is incumbent on the authority to make an order u/s 27(2) determining if any duty or interest as claimed is refundable to the applicant. In other words, u/s 27 as it now stands, it is not open to an authority to refuse to consider the application for refund only because no appeal has been filed against the assessment order, if there is one.

Comments: After 8th April 2011…...as long as customs duty or interest has been paid or borne by a person, a claim for refund made by such person under Section 27 (1) of the Act as it now stands, will have to be entertained and an order passed thereon by the authority concerned even where an order of assessment may not have reviewed or modified in appeal.

'Speakers' having additional facility of USB port with USB playback or F.M radio classifiable as speakers, not 'sound recording/reproducing apparatus or reception apparatus for broadcasting'

The issue before Bangalore CESTAT, in Logic India Trading Co. vs. Commissioner of Customs, Kerala, pertained to classification of imported goods i.e. speakers having additional facility of USB port with USB playback and FM radio. Therein, CESTAT upheld classification of 'Speakers' having additional facility of USB port with USB playback or F.M radio, under Customs Tariff Heading (CTH) 8518 22 00, instead of 'sound recording/reproducing apparatus or reception apparatus for broadcasting' under CTH 8519 or 8527, while rejecting Revenue's reliance on Circular No. 27/2013.

CESTAT state that, speaker is primarily a 'speaker' and some additional feature of USB playback/FM radio will not convert same into a product equivalent to products covered by other CTHs. Observes that for arriving at conclusion that speaker with USB playback / FM radio would fall under CTH 8519 / 8527, CBEC in Circular No. 27/2013 referred to General Interpretation Rules (specifically Rule 1) and Section Note 3 to Section XVI, principal function of multimedia speaker is amplification of sound and hence, even in accordance with said Section Note, items have to be classified as 'speakers'.

In fact, interpretation adopted in said Circular runs contrary to other Circulars viz., No. 17/2007 and No. 20/2013 dealing with cellular / smartphone and Tablet Computer classification; Relying on SC ruling in Xerox India, CESTAT observes, "We really fail to understand as to how subsequent Circular stands issued wherein a different view stands expressed without assailing the fact that a speaker remains a speaker but with some additional facilities and features".

Comments: It is to be noted that the Supreme Court in the case of Xerox India Ltd. vs. Commissioner of Customs, Mumbai, SC had held that the multifunctional printing machines having fax facility and screening facility would continue to fall under Heading 8471 of the Customs Tariff Act as "digital printers" only inasmuch as the predominant function of the machine in question was printing.

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VAT

Maharashtra Govt. notifies Budget 2016-17

MVAT Notifications **March 30, 2016**

Recently, Maharashtra Govt. has notified Budget 2016-17 proposals in change of composition rates for dealers w.e.f. April 1, 2016. For registered "restaurants, clubs & hotels", rates would be (i) 5% if sales turnover < Rs 3 Cr in previous year, and (ii) 8% if sales turnover > Rs 3 Cr in previous year, while unregistered dealers can avail 10% composition rate.
It has been notified that such dealer who opts out / ceases to be eligible for composition scheme, can claim set-off in his first return as non-composition dealer, of purchases held in stock on the date of opting out and on which he had not claimed set-off earlier

In case of "bakers", both registered and unregistered, sale of and import of bread in loaf / rolls / slices, toasted or otherwise, shall be excluded while calculating first Rs 50 lakhs of total turnover. For "retailers", turnover limit for composition enhanced to Rs 1 Cr, while condition of applying in Form-4 has been deleted.

Comments: The Govt. also notified new VAT rates for various commodities, thereby amending Schedules A & C respectively.

Delhi Govt. presents State Budget for 2016-17

Recently, Delhi Govt. presented State Budget for 2016-17, which focuses on simplification, promotion of 'ease of doing business', reduction in tax arbitrage and encouragement of voluntary compliance. It has, inter alia, reduced VAT rates on (i) battery operated transport means such as e-rickshaws and Hybrid Automobiles from 12.5% to 5%, (ii) sweets & namkeens from 12.5% to 5%, (iii) all readymade garments to 5%.

Whereas, budget rationalizes rates of (i) all kinds of watches to 12.5%, (ii) all variety of textiles and fabrics (including sarees) except khadi & handloom fabrics to 5%, (iii) plastic waste @ 5%, (iv) inverters and UPS by omitting entry in Schedule III, and (v) footwear & school bags irrespective of price to 5%;.Also modifies the entry relating to tobacco and tobacco products, which is currently taxable @ 20%, to comprehensively include cigarettes (irrespective of form and length), chewing tobacco, cigars, khaini, zarda, surti, bidis etc.

Comments: Proposes amendments to Rule 17 of Registration Act so as to make compulsory registration of several new instruments.

For purposes of outward transportation, place of removal to be point where seller detaches himself from his right over goods

In Accurate Steels and Engg. Co. & Another vs. State of Karnataka & Another, Karnataka Appellate Tribunal rules in favour of Revenue, by holding that mere production of tax invoice / proof of tax payment to selling dealer not sufficient to claim Input tax credit (ITC) and it is necessary to furnish details of vehicle used for transporting goods and existence of selling dealers, while rejecting Revenue's reliance on Circular No. 27/2013.

Comments: It is trite that when existence of selling dealers, transportation of goods, payments through cheques and non-disclosure of same in selling dealers' bank accounts are in dispute, assesse has burden to prove that all transactions are valid and supported by valid documents to claim ITC.

Dealer entitled to Form C for purchase of tricycles from outside state

In Vadilal Enterprises Limited vs. State of U.P and another, Allahabad HC allowed writ petitions by holding that assessee (dealer of Vadilal products) is entitled to Form-C for purchase of tricycles and deep-freezers from outside State, at concessional CST.

HC noted that said goods were included in registration certificate issued u/s 8(3)(b) of CST Act and in turn were given to distributors and sub-dealers on lease rent basis, which amounted to 'transfer of right to use goods'.

HC further observed that by deeming fiction, definitions of "sale" u/s 2(g) of CST Act and u/s 2(ac)(iv) of U.P. VAT Act include transfer of right of use any goods for any purpose, and a perusal of Sec 3(6)(a) of VAT Act indicates that sales turnover also includes lease rent in case of such transfer. Hence, Sec 3 of U.P. VAT Act r/w Rule 10 of U.P. VAT Rules makes it "absolutely clear that the "transfer of right to use any goods" is considered to be a sale and any amount received as lease rent is subjected to payment of VAT under the VAT Act.", concluded HC.

Comments: Deep-freezers and tricycles were clearly intended "for resale" in same form, as contemplated u/s 8(3)(b) of CST Act, while finding rejection of assessee's application for Form-C issuance on account of amendment to registration u/s 7(4) of CST Act erroneous.

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