Indirect Tax News Update

VOLUME II, ISSUE XI

NOVEMBER, 2015

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Contents

Service Tax

GTA Services cannot be broken into its components and considered as constituting separate services : CBEC Circular

October 5, 2015 Circular No.186/5/2015-ST

CBEC issues detailed clarification on levy of service tax on various services provided by Goods Transport Agency (GTA) in course of transportation of goods by road.

Further, GTA service being composite in nature that may include various ancillary services such loading / unloading, packing / unpacking, transhipment & temporary storage, CBEC states that same cannot be broken into its components and considered as constituting separate services.

Thus, CBEC clarified that composite bundled service should be treated as single service based on main / principal service.

In addition, interpretation of specified description of services in such cases shall be based on principle of interpretation enumerated in Sec 66F of Finance Act. Accordingly, clarifies that 70% abatement presently applicable to GTA service would be available to ancillary services if provided in ordinary course of business and charges included in invoice issued by GTA.

Lastly, clarifies that where GTA undertakes to reach / deliver goods at destination within stipulated time, same should be considered as "services of GTA in relation to transportation of goods" for the purpose of Notification No. 26/2012-ST so long as (a) entire transportation of goods is by road, and (b) GTA issues a consignment note, by whatever name called.

Comments: The Circular is of great aid as it settles the confusion that GTA services has been plagued with for the last decade or so..

Service tax exemption extended to services provided by business facilitator / business correspondent to banking company : Finance Ministry Notification

October 21, 2015 Notification No. 20/2015-Service Tax

Central Govt. extends service tax exemption to services provided by business facilitator / business correspondent to banking company w.r.t. Basic Savings Bank Deposit Accounts covered by Pradhan Mantri Jan Dhan Yojana (PMJDY) in banking company's rural area branch by way of account opening / cash deposits / cash withdrawals / obtaining e-life certificate / Aadhar seeding.

Also, CBEC extended exemption to i) any person as an 'intermediary' to business facilitator / business correspondent w.r.t. said services; ii) business facilitator / business correspondent to insurance company in rural area; Defines 'Basic Savings Bank Deposit Account' as opened under guidelines issued by Reserve Bank of India.

Lastly, it exempted charitable activities relating to advancement of yoga in addition to religion & spirituality by amending Notification No. 25/2012-ST

Comments: The Notification is of note to services providers viz., business facilitator / business correspondent to banks.

No service tax on sale of flats / dwellings, where entire consideration is received after issue of occupancy : Press Release

Ministry of Finance Press Release October 26, 2015

Finance Ministry issues clarification on levy of service tax on sale of flats / dwellings, after issue of occupancy certificate but before issue of completion certificate in areas under jurisdiction of Municipal Corporation of Greater Mumbai.

Fin Min press release states that sale of flats / dwellings, where entire consideration is received after issue of occupancy certificate by Municipal Corporation, leading to a mere transfer of title in immovable property, would fall outside the definition of "service" u/s 65B(44) of Finance Act.

that sale of flats / dwellings, where entire consideration is received after issue of occupancy is not taxable.

Comments: This press release is of note as the long standing issue of relating to levy of Service Tax on sale of flats/dwellings etc. after issue of occupancy certificate but before issue of completion certificate in areas under the jurisdiction of Municipal Corporation of Greater Mumbai i.e. Brihanmumbai Municipal Corporation (BMC) has been resolved.

Prior to July 2012, service of construction for education institutions and hospitals exempt

Decision Date : July 28, 2015 **Period of Dispute:** Pre-2012

In G. Ramamoorthi Constructions (I) Pvt Ltd vs. Commissioner (Adjudication) and Others, Madras HC sets aside Commissioner's order. Madras HC states that prior to July 2012, service of construction for education institutions and hospitals exempt in terms of Circular No. 80/10/2004-ST dated September 17, 2004 subject to condition that same not intended for commercial or industrial use.

HC ruled that Revenue's claim that assessee a profit earning concern and hence, cannot be construed as non-commercial but only as 'Industry' and that exemption available only to institutions imparting education without any profit, fallacious and untenable.

Also, Revenue's reliance on definition of 'Industry' under Industrial Disputes Act and SC ruling in Bangalore Water Supply case misplaced, as present subject matter deals with altogether different issue under 'Finance Act'

Absent any evidence, Revenue not justified to hold contrary and that too, on mere non-production of evidence by assessee and therefore, issue not properly dealt in terms of said Circular, holds HC.

Consequently, HC remitted matter for verification of whether construction service provided by assessee meant for "use or to be used" for academic purpose or for commercial purpose

Comments: This decision of Madras HC is of huge relief to all constructors who had provided their services to education institutions and hospitals.

SIM cards issued by telecom service providers to its distributors for sale to customers not exigible to service tax

Decision Date : August 04, 2015

In a recent decision, Vodafone Cellular Ltd vs. Commissioner of Central Excise, Pune, CESTAT quashed demand in respect of free SIM cards distributed to dealers / distributors by telecom service provider (assessee).

Further, CESTAT rejected Adjudicating Authority's view that irrespective of whether any amount has been recovered from dealers for such issuance of SIM cards, since full price at MRP has been paid by customers (service recipients), value thereof would be taxable in terms of Sec 67 r/w Sec 68 of Finance Act.

Further, it noted that issue has been settled by an earlier order in assessee's own case, in relation to free of cost recharge vouchers distributed to dealers for sale of pre-paid SIM cards.

In that case, CESTAT had inter alia observed that w.e.f. March 1, 2011, service tax must be discharged on gross amount paid by person to whom telecom service is actually provided in terms of Rule 5 of Valuation Rules, which meant that prior to said date, amount received from dealer shall be the amount received for services provided by telecom service provider.

Hence, absent receipt of any amount from dealers / distributors by assessee, demand was unsustainable, had observed CESTAT while applying ratio of BPL Mobile Cellular Ltd & Tata Teleservices Ltd

Comments: This decision is important to all telecom service providers.

Activity of promoting, organizing or assisting in arranging sale of lottery tickets of State Govt. not taxable 'service'

Decision Date: October 14, 2015

In a recent decision, viz., Future Gaming & Hotel Services (Private) Limited & Anr. vs. Union of India & Others, Sikkim HC held that activity of promoting, organizing or assisting in arranging sale of lottery tickets of State Govt. not taxable 'service' under Finance Act 1994, as amended by Finance Act 2015.

The HC accepted assessees' challenge to insertion of Explanation 2 to Sec 65B(44) which provides that 'transaction in money' or 'actionable claim' does not include any activity carried out for consideration in relation to or for facilitation of such transaction, including that by a lottery distributor or selling agent.

Also, HC reiterated its findings in assessee's own cases by stating that lottery falls within meaning of "betting and gambling" as provided in Entry 34 of List II of Constitution and therefore, within exclusive domain of State Legislature.

As held earlier, HC noted that said activity does not establish relationship of a principal and agent but that of a buyer and seller on principal to principal basis, there being bulk purchase of lottery tickets by assessees from State Govt. at discounted price; Holds that two essential elements of 'service' u/s 65B(44) viz. (i) that activity should be carried out by a person for another and (ii) that such activity should be for a consideration, are unmistakably lacking.

Comments: This decision is of note as TRU clarification under D.O.F. Circular dated May 19, 2015 which said that though lottery per se is not subjected to service tax, but services in relation to lottery will be taxable w.e.f. June 1, 2015 has been quashed.

Central Excise

Monetary limits revised for arrest in Central Excise and Service Tax

Circular 1009/16/2015-CX and 1010/17/2015-CX Oct 23, 2015

Recently, CBEC revised guidelines for launching prosecution under Central Excise & Service Tax laws vide Circular 1009/16/2015-CX and 1010/17/2015-CX dated Oct 23, 2015 . CBEC raised the prosecution monetary limit to Rs 1 Cr for evasion of central excise duty or service tax or misuse of CENVAT credit in relation to offences u/s 9 (1) of Central Excise Act / Sec 89(1) of Finance Act.

However, prosecution would be launched against a habitually evading company / assessee, if it has been involved in 3 or more cases of confirmed demand (at first appellate level or above) involving fraud, suppression of facts in past 5 years from date of decision, such that total duty / tax evaded or CENVAT credit misused is Rs 1 Cr or more.

Further, Board clarified that nature of evidence collected during investigation should be carefully assessed, and must be adequate to establish beyond reasonable doubt about existence of 'mens-rea'.

A criminal complaint for prosecution shall be filed only after obtaining sanction of Principal Chief / Chief Commissioner of Central Excise / Service Tax and in case of DGCEI matters, of Principal Director General / Director General, CEI.

Also, CBEC laid down detailed procedure in this regard, and additionally, directs Director General, Directorate of Performance Management & Chief Commissioners to look into reasons for pendency & non-compliance of pending prosecution cases apart from recording of statistical data.

Consequently, CBEC revised monetary limit for 'arrest' to Rs 1 Cr. For offences punishable under Customs Act, CBEC revised prosecution guidelines and clarified that powers of arrest should be exercised in exceptional situations, which inter alia include - (i) unauthorised importation of baggage, or outright smuggling of high value goods / prohibited items or offence involving foreign currency, exceeding Rs 20 lakhs, (ii) importation of trade goods (appraising cases) involving wilful mis-declaration / concealment, where CIF value exceeds Rs 1 Cr, (iii) fraudulent availment of duty drawback or exemption of more than Rs 1 Cr or in case of fraudulent exports of goods exceeding Rs 1 Cr FOB value.

Comments : The fresh guidelines is to be noted as there are various changes brought on w.r.t. prosecution.

Coconut oil packed in small containers upto 200 ml would be classifiable under Chapter 15 covering Animal or Vegetable Fats and Oils

Circular 1007/14/2015 -CX October 12, 2015

Recently, CBEC has issued a clarification that coconut oil packed in small containers upto 200 ml would be classifiable under Chapter 15 covering Animal or Vegetable Fats and Oils and not Chapter 33 covering Cosmetics and Toilet Preparation.

CBEC took note of CESTAT rulings in Raj Oil Mills Ltd & Capital Technologies Ltd where in it was held that just because retail packs are in sizes of 200 ml or less, coconut oil could not be presumed to be meant for use as 'Hair Oil. However, CBEC stated that classification issue may be decided by field officers after taking into consideration facts of each case r/w judicial pronouncements.

In view of this, CBEC has withdrawn Circular No. 890/10/2009-CX dated June 3, 2009 which clarified that coconut oil packed in small containers upto 200 ml would be classifiable under CETH 3305.

Comments : This new classification is of note to Cocunut oil manufacturers.

Settlement Commission has no jurisdiction to entertain matters relating to seizure goods specified u/s 123 of Customs Act, including gold

F.No. 275/46/2015-CX.8A October 01, 2015

Pursuant to Delhi HC ruling in Shri Ram Niwas Verma, CBEC has issued an instruction that Settlement Commission has no jurisdiction to entertain matters relating to seizure goods specified u/s 123 of Customs Act, including gold.

CBEC asked jurisdictional field formations to file writ if Settlement Commission admits any such matter for settlement.

Comments : On August 25, 2015, Delhi HC in Additional Commissioner of Customs vs. Shri Ram Niwas Verma allowed Revenue's writ and held that Settlement Commission is barred from entertaining application in relation to seizure of smuggled gold. HC observed that plain reading of third proviso to Sec 127B(1) of Customs Act indicates that no application for settlement can be made if it relates to goods to which Sec 123 applies and since Sec 123(2) applies inter alia to gold, therefore, conjoint reading of two provisions makes it clear that no application u/s 127B(1) can be made i.r.t. gold.

Tower, blades, electrical boxes, nacelle, rotor and wind turbine controller to be treated as "parts and components" of Wind Operated Electricity Generators (WOEG)

Circular 1008/15/2015-CX October 20, 2015

Recently, CBEC clarified that that tower, blades, electrical boxes, nacelle, rotor and wind turbine controller must be treated as "parts and components" of Wind Operated Electricity Generators (WOEG) eligible for exemption under Notification No. 12/2012-CE.

CBEC noted SC observation in Gemini Instratech ruling, that windmill doors or tower are safety devices and hence, part of WOEG as also Ministry of New and Renewable Energy clarification in this regard. Sl. No. 332 of said Notification r/w List 8 exempts "Wind operated electricity generator, its component and parts thereof including rotor and wind turbine controller" from whole of duty.

Comments: It is of note as CBEC has stated states that opinion on eligibility of other parts & components would be sought from Ministry of New & Renewable Energy, if required.

Rebate of excise duty paid both on inputs and on manufactured product upon export allowed
Decision Date: October 9, 2015

In Spentex Industries Ltd vs. Commissioner of Central Excise & Others, SC SC allowed rebate of excise duty paid both on inputs and on manufactured product upon export, in terms of Rule 18 of Central Excise Rules, 2002.

SC Rejected Revenue's stand that as per relevant rules, rebate is admissible in respect of one duty alone, i.e. either on duty paid excisable goods 'or' duty paid on materials used in manufacture / processing of such goods. Also, Perusing the history of statutory scheme for grant of rebate, SC observed that since under Rule 19 of said Rules, a manufacturer is entitled to export without paying duty either on final product or on materials used therein, it cannot be Legislature's intention to provide rebate only on one item in case of Rule 18.

Comments: SC reduced Bombay HC's view as myopic as it ignores overall scheme pertaining to grant of rebate in respect of goods exported out of India, and accordingly sets aside judgment.

Excise duty not liable to be recovered on freight charges incurred for transportation of goods from factory gate to buyer's premise
Decision Date: October 7, 2015

In Commissioner of Customs & Central Excise, Nagpur vs. Ispat Industries Ltd, SC dismissed Revenue appeal by holding excise duty not liable to be recovered on freight charges incurred for transportation of goods from factory gate to buyer's premises, states that in facts of present case, buyer's premises cannot be treated as 'place of removal'.

SC noted that in instant case, all prices were "ex-works", goods were cleared from factory on payment of appropriate sales tax by assessee itself thereby indicating that manufactured goods were sold at factory gate; When goods were handed over to transporter, assessee had no right to their disposal nor did it reserve such right inasmuch as title had already passed to customer.

Comments: SC upheld CESTAT's reliance on SC judgment in Escorts JCB Ltd and CBEC Circular dated March 3, 2003, that ownership of goods in transit cannot be determined solely with reference to an Insurance Policy taken out by manufacturer.

Printing product logo as per customer's specifications on GI paper (a duty paid base paper) and delivering to customer in jumbo rolls without slitting, amounts to 'manufacture'
Decision Date: October 7, 2015

In Commissioner of Central Excise, Mumbai - IV vs. Fitrite Packers, Mumbai, SC held that printing product logo as per customer's specifications on GI paper (a duty paid base paper) and delivering to customer in jumbo rolls without slitting, amounts to 'manufacture' u/s 2(f) of Central Excise Act. SC rejected CESTAT's findings which were based on apex court decision in J.G. Glass Industries that, printing only incidental and primary use of GI printing paper roll viz. wrapping, not changed by printing process.

Comments: Printing is not merely a value addition but transforms from general wrapping paper to special paper.

No justifiable reason to condone delay of 191 days in filing revision petitions
Decision Date: July 28, 2015

Recently, in Commissioner of Central Excise, Jaipur II vs. Super Synotex (India) Pvt Ltd & Ors., SC dismissed Revenue's review petitions after finding no justifiable reason to condone delay of 191 days in filing said petitions, nor finds any error apparent in earlier order warranting reconsideration.

Earlier, SC had allowed assessee deduction of 75% sales tax collected but retained (along with balance 25% actually paid) as per 'Rajasthan Sales Tax Incentive Scheme 1989' (Scheme), from assessable value u/s 4 of Central Excise Act, prior to July 2000; Relying on CBEC Circular dated March 12, 1998, SC had held that such retention being deemed payment of sales tax to State Exchequer under the Scheme, would be construable as 'incentive', not 'exemption.

Comments: This judgment is of note as SC lays down the difference between incentive and exemption.

Additional consideration received on account of price escalation subsequent to clearance of goods, not includible in 'transaction value' of non-woven carpets cleared to customer
Decision Date: September 03, 2015

The SC, in CCE vs Hitkari Fibres Ltd, held that additional consideration received on account of price escalation subsequent to clearance of goods, not includible in 'transaction value' of non-woven carpets cleared to customer.

SC upheld CESTAT's reliance on MRF Ltd ruling thereby distinguishing International Auto Ltd decision cited by Revenue, observes that nowhere does latter decision state that MRF Ltd case is not a good law.

Further, SC stated that demand of excise duty at ex-factory stage has been retained even post amendment, i.e. duty is payable at the place, price & time of clearance of goods

Comments: This judgment is of note as SC compared provisions of unamended Sec 11A vis-a-vis new Sec 11A of Central Excise Act.

Assessee entitled to SSI exemption in respect of goods manufactured on own account, as also MODVAT / CENVAT credit in relation to goods manufactured on job-work basis
Decision Date: October 27, 2015

In Commissioner of Central Excise, Chennai vs. Nebulae Health Care Ltd, SC has affirmed CEGAT view that assessee entitled to SSI exemption in respect of goods manufactured on own account, as also MODVAT / CENVAT credit in relation to goods manufactured on job-work basis.

CEGAT had rejected Revenue's stand that assessee had no liberty to avail both benefits simultaneously and by availing credit for goods cleared with brand name of others, SSI unit forfeited its option to avail benefit of exemption Notification.

Comments: The age hold principle that each Notification has to be construed strictly on its own terms has been affirmed.

Customs

Electronic Delivery Order instead of a paper based system introduced

CBEC Circular No. 24/2015-Cus October 14, 2015

Recently, CBEC introduced electronic Delivery Order instead of a paper based system in order to simplify the Customs Clearance process and to reduce transaction costs and time taken in clearance of Cargo.

As prerequisite, Custodian of goods are to have technical capability to implement an electronic messaging system for receipt of electronic Delivery Order while Shipping Lines, Airlines and Consol Agents should have capacity to generate electronic Delivery Order in required format.

Board opined that trade will facilitate if Shipping Lines, Airlines and Consol Agents can adopt a system of electronic invoicing of all charges along with e-Payment facilities, thus avoiding mandatory personal visit by importer or his customs broker to office of Shipping Line / Airline or Consol Agent.

In some categories of imports viz. unaccompanied baggage, direct delivery and one-time individual importers, Shipping Line/ Airline can retain manual (paper copy) of Delivery Order, if desired.

Comments: The introduction of such electronic Delivery Order or e-payment of D.O. Charges does not change any current Customs procedures, due diligence involved in verification of Delivery Orders, obtaining 'out of charge' from Customs and issuance of 'Gate Pass' will continue.

Mere 'sole distributorship' not conclusive consideration for transaction value rejection between assessee (importer) and foreign party

Recently, in Commissioner of Customs (Imports), Mumbai vs. Bayer Corp Science Ltd. and Ors., SC upheld CESTAT's order by holding that mere 'sole distributorship' not conclusive consideration for transaction value rejection between assessee (importer) and foreign party.

Taking note of factual matrix, SC noted that one must demonstrate that arrangement between parties falls under one of clauses mentioned in Rule 2(2) of Customs (Determination of Price of Imported (Goods) Rules, 1988) to make 'sole distributor' a 'related person'.

Further, SC perused Apex Court's decision in Commissioner of Customs, Calcutta vs. South India Television (P) Ltd. [2007(6) SCC 373], where it was held that, before rejecting invoice price, Revenue has to give cogent reasons for such rejection, and that strict rules of evidence would not apply to adjudication proceedings.

SC noted that Explanation-II appended to Rule 2(2) would make a sole distributor a 'related person' only if it falls within the criteria of this sub-rule.

Therefore, SC elucidated that mere sole distributorship was not the conclusive consideration; it was also to be demonstrated that the case fell in one of the clauses mentioned in Rule 2(2).

Further, SC observed that the transaction between R&H and assessee, as it was clear from the reading of agreement, was at arm's length. The same did not equate to R&H controlling the assessee either directly or indirectly.

Comments: This judgment of the SC is important as it clarifies the law relating to transaction value rejection.

Deemed exports' to be taken into account for the purpose of computation of entitlement of DTA clearances.

SC in Commissioner of Central Excise vs. Gujarat Fashions P Ltd affirmed Gujarat HC's decision which allowed inclusion of 'deemed exports' (supplies to EOUs) for purpose of computing assessee-EOU's entitlement to DTA clearances under Notification No. 2/95-CE.

Commissioner (Appeals) had earlier allowed Notification benefit to assessee stating that, where finished goods cleared in DTA basis deemed export value duly permitted by Development Commissioner, said clearance has to be treated as legally permissible.

Revenue's appeal before CESTAT was rejected by following decision in Amitex Silk Mills Pvt. Ltd., which was confirmed by SC in Bannari Amman Sugars Ltd.

HC stated that question of treating DTA clearances by an EOU for the purpose of deemed export had come up for consideration before it in Shilpa Copper Wire Industries.

Further, HC had observed when the issue again came up, Revenue relied upon BAPL Industries Ltd. However, Court in the case of NBM Industries rejected Revenue's appeal by following earlier decision in Shilpa Copper Wire and held that, decision of this Court being directly on the issue, Court was bound by it. It was held that in Virlon Textile Mills Ltd. while examining nature of DTA sales to 100% EOU's observed that DTA sales against foreign exchange or other supplies in India can be equated with physical exports.

Gujarat HC observed that issue was covered by decisions in Shilpa Copper Wire Industries & NBM Industries and hence, Revenue's appeal had no merits.

Thereafter, Revenue filed a Special Leave Petition (SLP) before SC, which came to be dismissed after hearing both the sides.

Comments: The decision is of note as issue of treating DTA clearances by an EOU for the purpose of deemed export has been resolved.

VAT

Supply of "Water for Injection (WFI) / De-mineralized water" in the course of manufacture of formulized products, viz. injection, constitutes 'deemed sale' taxable as "works contract"
Decision Date : Sep 9, 2015

Karnataka HC, in Hicure Pharmaceuticals Pvt. Ltd. vs. Deputy Commissioner of Commercial Taxes, ruled in favor of Revenue, supply of "Water for Injection (WFI) / De-mineralized water" in the course of manufacture of formulized products, viz. injection, constitutes 'deemed sale' taxable as "works contract" u/s 2(37) of Karnataka VAT Act r/w CST Act.

HC rejected assessee's stand that firstly, WFI water an exempt commodity under Entry 54 of First Schedule to the Act and secondly, that contract for manufacture of pharmaceutical preparational medicines entered into with principals / customers a pure 'service contract', not a 'composite contract'.

Since WFI water is demineralized water used for medicinal preparation, same would be excluded from Entry 54, and exigible to levy of tax under provisions of KVAT Act; Term "works contract" takes within it fold all types of works contract by virtue of 46th Constitutional Amendment, SC in L&T Ltd as also Imagic Creative (P) Ltd rulings has elucidated that 'sale' & 'service' may be involved in single transaction under different legislative powers and therefore, levy of tax on both aspects is legally permissible.

Comments: The decision is another judicial pronouncement that aids in clarifying the difference between composite contract and pure service contract.

SC refuses to interfere with Himachal Pradesh HC order that refrained from entertaining writ petition against initiation of revision proceedings u/s 46 of HP VAT Act

SC, in Micromax Informatics Ltd vs. State of Himachal Pradesh & Ors, dismissed mobile manufacturer's SLP, refused to interfere with Himachal Pradesh HC order that refrained from entertaining writ petition against initiation of revision proceedings u/s 46 of HP VAT Act.

However, SC clarified that assessee may bring to notice of Revision Authority that apex court judgment in Nokia India Pvt Ltd is distinguishable. SC in that case had held mobile battery charger to be an 'accessory' capable of being sold separately, thereby reversing P&H HC view that same is part of cell phone taxable at concessional rate of 4%.

As regards assessee's contention about non-applicability of Nokia India Pvt Ltd ruling, HC stated that assessee must take all these grounds before Revision Authority while filing reply to show cause notice. It further expressed its inability to understand how the show cause has violated the principles of natural justice and how assessee had been condemned unheard. According to HC, assessee had to carve out a case by the medium of reply and arguments before Revision Authority; giving a slip and by-passing the remedy available was impermissible.

Comments: The judgment is of note to all sellers in HP.

Kerala HC lambasts Revenue for issuing notices predetermining the guilt of Flipkart and seller on Myntra

Decision Date: October 20, 2015

In Flipkart Internet Private Limited & Another vs. State of Kerala & Others, HC quashed orders imposing penalty on Flipkart and another assessee (seller on Myntra) for neither getting registered as 'dealer' nor filing returns nor maintaining true and correct accounts as mandated under Kerala VAT Act.

HC stated *"…The notices issued cannot confront an assessee with definite conclusions as regards the commission of an offence by him as, otherwise, it would make a mockery of the process of quasi-judicial adjudication…".*

HC found no justification in Revenue's stand that assessees effected local sales and even if Flipkart was not a seller, it would nevertheless be liable to tax in view of Sec 16(13) since online portal could be seen as an intangible shop and situs would be Kerala where agreement to sell with customer was made

Comments : The decision is of note to every start-up company/

ERP software implementation and business consultancy service (BCS) are pure services

Karnataka HC, in The State of Karnataka vs. IBM India Pvt. Ltd., upheld Tribunal's findings, ERP software implementation and business consultancy service (BCS), are pure services, not involving any sale/transfer of property in goods, under Karnataka Sales Tax Act, own decision in Infosys Ltd. relied.

Tribunal held that no new software developed and process involved is ERP software configuration, wherein certain codification done to existing system so that client's system accepts it, and unless marketable commodity, tangible or intangible exists, there cannot be a 'sale or 'works contract'.

Comments: The judgment is of note as it clarifies concept of pure service.

Input credit utilisation of VAT paid on purchase of Duty Entitlement Passbook (DEPB) Scrips towards discharge of output tax on sale of imported goods

Recently, Delhi HC, in Jagriti Plastics Ltd. & Another vs. Commissioner of Trade & Taxes, overruled Tribunal and allowed input credit utilisation of VAT paid on purchase of Duty Entitlement Passbook (DEPB) Scrips towards discharge of output tax on sale of imported goods.

Drawing analogy with CENVAT / MODVAT Credit scheme and relying on Bombay HC rulings in ONGC and Coca Cola India Pvt Ltd, HC stated that DEPB scrip has contributed, if not directly then indirectly, to price of imported commodity sold by assessees in the market

Comments: The judgment is in consonance with the object of introducing VAT system viz. to reduce cascading effect of multiple taxes at various stages.

GST

Joint Committee Reports on Business Processes for GST containing proposals w.r.t. refund, registration and payment processes : Joint Committee Reports on GST Business Processes.

Finance Ministry has released Joint Committee Reports on Business Processes for GST containing proposals w.r.t. refund, registration and payment processes under new regime, invites stakeholders comments / feedback for public discussion.

As per the Reports, person engaged in supply of goods and service would be required to take registration through GST common portal set up by GSTN once Gross Annual Turnover (including exports and exempted supplies) threshold on pan-India basis, is crossed.

Further, taxpayer would require to obtain registration State-wise but within the State, he may opt for single registration or multiple registrations for different business verticals.

System shall be designed to migrate cleaned, verified data of existing registrants with State/Centre to GST Common Portal and GST Identification Number (GSTIN) shall be generated.

Report pertaining to refund process lists down situations where refunds would arise such as excess payment by inadvertence, export of goods/services, provisional assessment finalization, credit accumulation and year-end / volume based incentives through credit notes.

State Tax authorities to deal with SGST refund and Central Tax authorities to deal with CGST and IGST refund. Report provides relevant forms to be filed electronically, and stipulates period of 1 year from relevant date (as defined) for filing refund application.

Further, Report on payment process proposes three modes of payment, i.e. internet banking, over the counter (OTC) and NEFT/RTGS from bank; Recommends RBI to play role of an aggregator through its e-Kuber system, which shall consolidate luggage files from all authorized banks, debit their accounts and correspondingly credit CGST, IGST and Additional Tax accounts of Government of India and SGST accounts of each State/UT Government.

Further, the report recommends that under the charge back claim, a taxpayer after making payment through credit card may seek refund of the money till 60 days of the transaction. in case payment was made fraudulently by someone using the card of others, extra payment was made because of some technical error during payment or if, some service was not delivered for the payment made.

Comments: The comments/feedback on the final report can be submitted through the MyGov.in portal, on which the discussion threads on GST have been made available.

Report of Joint Committee on Business Process for GST in relation to 'GST Return'

Finance Ministry has released Report of Joint Committee on Business Process for GST in relation to 'GST Return', calling for a common periodic e-return for CGST, SGST, IGST and additional tax to be filed by every registered person, even if there is no business activity (i.e. NIL return) during tax period.

It has been clarified that return to be filed in prescribed forms by (i) 10th of next month in case of outward supplies by taxpayer, (ii) 15th of next month in case of inward supplies received by a taxpayer, (iii) 20th of next month in case of monthly returns, (iv) 18th of month next to quarter in case of quarterly return for compounding taxpayer, (v) last day of registration in case of periodic return by Non-Resident Foreign Taxpayer, (vi) 15th of next month by ISD, (vii) 10th of next month for TDS and (viii) 31st December for Annual return.

Additionally, ITC ledger, cash ledger and tax ledger of taxpayer shall be filed on 'continuous' basis; Return to be filed by taxpayer at GST Common Portal either on own or through authorized representative, same can also be filed through any Facilitation Centre approved by Tax authorities.

'Return related liability' means tax liability for transactions during return period and arrears pertaining to audit/reassessment/ enforcement outcomes would be handled separately, however, payment on this account needs to be reflected.

Defaulters list shall be generated in case of failure to submit periodic returns, which shall be provided to respective GST authorities for necessary enforcement and follow-up action, states that law may provide for automatic imposition of late fees for non-filers and later filers which can also be in-built in notices..

A return without full payment of tax though may be allowed to be uploaded, will be treated as an invalid return and same would merely be recorded with unique transaction ID, but not accepted in system.

Revision of returns is disallowed, further, Govt. entities/PSUs not dealing in GST supplies would neither be required to obtain registration nor file returns under GST

Comments: The judgment is of note as it interprets S. 6 of the FTDR Act..

FTP

Purport behind issuance of Notification No. 28 dated January 28, 2004 and Notification No. 38 dated April 23, 2004 was bonafide, actuated with conditions of public interest in mind

Decision Date : October 27, 2015

In Director General of Foreign Trade & Others vs. Kanak Exports and Others, SC has ruled in favour of Revenue, and upheld exclusion of - (i) export turnover of SEZ / EOU / STP / EHTP units or products manufactured by them & exported through DTA units, (ii) supplies by one status-holder to / on behalf of another status-holder, and (iii) exports affected by non status-holder to a status-holder, for purpose of calculating value of exports under "Duty Free Credit Entitlement Scheme" (Scheme) of EXIM Policy 2002-07.

Perusing the rationale for such exclusion, SC accepted Revenue's stand that purport behind issuance of Notification No. 28 dated January 28, 2004 and Notification No. 38 dated April 23, 2004 was bonafide, actuated with conditions of public interest in mind.

SC concurred with Bombay & Gujarat HCs' view that growth in assessees' exports was merely on paper and not 'incremental' within the meaning of said Scheme, and that Scheme was not to encourage status-holder / export house to pool exports made by others for purpose of showing such incremental growth.

Hence, Notification dated January 28, 2004 by which Notes 1 to 5 to para 3.7.2.1 were inserted in EXIM Policy is only clarificatory in nature, concludes SC.

However, holds that DGFT Public Notice No. 40 dated January 28, 2004 inserting Para 3.2.6 in Handbook of Procedures, whereby export of rough, uncut and semi polished diamonds inter alia also excluded from DFCE entitlement, in fact alters the provisions of EXIM Policy and hence, ultra vires.

Observes, "There may be a valid justification and rational for exclusion of four items contained therein….However, it had to be done in accordance with law. When the DGFT had no power in this behalf, he could not have excluded such items from the purview of EXIM Policy by means of a Public Notice….".

In fact, it is for this reason that Central Govt. formalised what was sought to be achieved by said Public Notice, by issuing Notifications dated April 21 & 23, 2004 in exercise of powers u/s 5 of Foreign Trade (Development & Regulations) Act.

Comments: The judgment is of note as legality of important Notification has been upheld.

Challenge to Policy Interpretation Committee meeting & ensuing show cause notice denying benefit of duty credit entitlement under "Served From India Scheme" for use of foreign brand by hotelier dismissed

Decision Date : October 19, 2015

In Provenance Land Pvt. Ltd. vs. the Union Of India, Bombay HC dismissed challenge to Policy Interpretation Committee meeting & ensuing show cause notice denying benefit of duty credit entitlement under "Served From India Scheme" for use of foreign brand by hotelier.

HC applied ratio laid down by Division Bench in case of Shri Naman Hotels Pvt Ltd, that intention behind scheme is to encourage Indian brand, and whole purpose is to accelerate growth in export of services so as to create a powerful and unique "served from India" brand instantly recognised and respected world over.

According to Division Bench, anybody who earns free foreign exchange of at least Rs. 10 lakhs does not have vested right, and an entity establishing a foreign brand of service prior to entry in India not eligible for SFIS benefit.

However, HC refrained Revenue from recovering incentives granted under prior policies and earlier to FTP 2009-14. Making the rule absolute, HC refuses to stay operation of order to enable assessee to appeal before higher forum

Comments: The judgment is of some respite to assessees as HC refrained Revenue from recovering incentives granted under prior policies and earlier to FTP 2009-14.

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