

Staying Updated

Indirect tax newsletter

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- In *CCE v Super Synotex (India) Ltd* (2013 (301) ELT 273), the Supreme Court held that retention of 75% of the sales tax amount under the Sales Tax Incentive Scheme should be treated as additional consideration and subjected to central excise duty since deduction of sales tax is available only when it is actually paid to the Sales Tax Department.
- In *CCE v Bajaj Auto Ltd* (2014 (300) ELT 434), the Mumbai Tribunal held that expenses reimbursed by a manufacturer to a dealer towards pre-delivery inspection (PDI) fees as well as free after sales services were not includible in assessable value in absence of any flow back from dealer to manufacturer towards recovery of reimbursed charges.
- In *CCE v General Metallisers Ltd* (2014 (300) ELT 534), the Mumbai Tribunal held that when the goods were sold ex-factory, the freight and insurance charges realised for delivery of goods at customer's premises on their request was not includible in the assessable value.
- In *Tata Iron & Steel Co Ltd v CCE* (2014 (300) ELT 571), the Mumbai Tribunal

held that for computing the cost of production of wire rod (final products), the value of the billet (i.e. intermediate goods) received from sister unit should be 110% of the cost of production, and not the cost of raw material consumed for the manufacture of billet.

- In *Tirupati Structural Ltd v CCE* (2014 (300) ELT 582), the Delhi Tribunal held that optional inspection charges recovered from customers which had nothing to do with the marketability of goods in the ordinary course was not includible in the assessable value.

CENVAT/MODVAT

- In *Balrampur Chini Mills Ltd v Union of India* (2014 (300) ELT 372), the Allahabad High Court held that bagasse coming into existence during the manufacture of sugar as waste product was a non-excisable item even after introduction of Explanation to section 2(d) effective from 16 May, 2008, and hence, demand for reversal of proportionate credit or 5% of the sale price was not sustainable in law.

The High Court also struck down the CBEC Circular 904/24/2009-CX dated 28 October, 2009 wherein it was clarified that the assessee was required to reverse the proportionate credit or pay 5% amount in relation to exempted waste.

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- In *CCE v India Cement Ltd* (2014 (299) ELT 176), the Madras High Court held that underground telephone cable falling under chapter 85.44 used in the factory for providing communication between different locations was eligible for credit as capital goods.
- In *Bharat Heavy Electricals Ltd v CCE* (2014 (300) ELT 442), the Delhi Tribunal held that CENVAT credit on goods sent to job worker under rule 4(5)(a) of CENVAT Credit Rules, 2004 could not be denied on the ground that the job worker had opted to pay duty on intermediate product inasmuch as there was no requirement in law that job worker should necessarily have availed exemption under Notification No. 214/86-CE.
- In *Hino Motors Sales India Pvt Ltd v CCE* (2014 (299) ELT 49) and *Bhushan Steel Ltd v CCE* (2014 (299) ELT 254), the Mumbai and Delhi Tribunals respectively held that once the duty on final products had been accepted by the department, CENVAT credit availed need not be reversed even if the activity did not amount to manufacture.
- In *Century Denim v CCE* (2014 (301) ELT 358), the Delhi Tribunal held that CENVAT credit was admissible on input used in captive power plant which was a part of the factory even if

the power plant was considered as a new & separate industrial undertaking for availing benefit of section 80-I of the Income Tax Act, 1961.

- In *Sarjoo Sahkari Chini Mills Ltd v CCE* (2014 (301) ELT 387), the Delhi Tribunal held that MS Plates, MS sheet, etc used in repairs and maintenance of capital goods were eligible for CENVAT credit.

Others

- In *Accurate Chemicals Industries v CCE* (2014 (300) ELT 451), the Delhi Tribunal held that extended period could not be invoked when CENVAT credit of duty involved was available to the sister unit of the appellant.
- In *CCE v Balrampur Chini Mills Ltd* (2014 (300) ELT 449), the Delhi Tribunal held that interest and penalty was not imposable where CENVAT credit irregularly availed had been reversed on being pointed out by the Department, without having utilized the same.

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- The Delhi High Court, in *Teknow Overseas Pvt Ltd v Asst CST (VCES)* (2014-TIOL-471-HC-DEL-ST) held that the date for payment of first installment of 50% of 'tax dues' was a pre-condition for acceptance of application under the "Service Tax Voluntary Compliance Encouragement Scheme, 2013" and there was no provision in the scheme to allow extension beyond the date specified under the scheme.
- A two-member bench of the Bombay High Court, in *Indian Hotels and Restaurant Association and ors v UoI and ors* (2014-TIOL-498-HC-MUM-ST) upheld the constitutional validity of levy of service tax on supply of food and beverages by hotels, restaurants, etc. The Bombay High Court ruling was contrary to the decision of the Kerala High Court in *Kerala Classified Hotels and Resorts Association v UoI* (2013-TIOL-533-HC-Kerala-ST).
- In *Graphite India Ltd v CCE* (2014-TIOL-433-CESTAT-MUM), the Mumbai Tribunal held that the Gujarat Industrial Development Corporation (GIDC), though a Government of India undertaking set up under State legislature, its activities related to commerce and industry. Accordingly, 'commercial or industrial construction services', in relation to laying of pipeline for water supply to industrial estates and commercial centers, provided to GIDC was held liable to service tax.
- In *Silverline Estates v CST* (2014-TIOL-458-CESTAT-BANG), due to lack of clarity with respect to leviability of service tax on the transaction of construction of flats, the builder had collected a certain amount from the buyer of the flat to safeguard against any future exposure of service tax liability and kept the same in an escrow account. The Bangalore Tribunal held that the same could not be held to be collection of service tax, and hence, the amount was not required to be deposited with the Government under section 73A(2) of the Finance Act, 1994.
- In *Gap International Sourcing (India) Pvt Ltd v CST* (2014-TIOL-465-CESTAT-DEL), the Delhi Tribunal held that services rendered to a foreign entity relating to procurement of goods, recommending manufacturing process and vendors, reporting the status of manufacture, analyzing samples, inspecting export consignments and issuing inspection certificates were 'business auxiliary services' (BAS). These services, though provided in India, were used by the foreign entity for its business outside India, hence qualified as export of services.

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- In *Jet Airways (India) Ltd v CCE (2014-TIOL-502-CESTAT-MUM)*, the Mumbai Tribunal held that the collection charges received by the airline from Airport Authority of India (AAI) towards the collection of the ‘passenger service fees’ from the passengers and its timely remittance back to AAI was liable to service tax under BAS category.
- In *Alpine Modular Interiors (P) Ltd v CST(Adj) (2014-TIOL-517-CESTAT-DEL)*, the Delhi Tribunal held that the services of evaluation of market trends and identification of prospective customers in India for the overseas entity, though provided in India, was used by the foreign entity for its business outside India, and hence qualified as export of services.
- In *Religare Securities Ltd v CST and CST v Religare Securities Ltd (2014-TIOL-539-CESTAT-DEL)*, the Delhi Tribunal held that the ‘delayed payment charges’ collected by service provider from clients who failed to make payment for services within the agreed time period, were penal in nature, and could not be held liable to service tax.
- In *S V Jiwani v CCEST (2014-TIOL-559-CESTAT-AHM)*, the Ahmadabad Tribunal held that the scheme of valuation of works contract prescribed under rule 2A of Service Tax (Determination of Value) rules, 2006 was optional. Accordingly, the works contractor had the option to pay service tax under section 67 of the Finance Act, 1994 on the gross amount charged and claim full CENVAT credit.
- In *Landmark Education India v CST (2014-TIOL-581-CESTAT-MUM)*, the Mumbai Tribunal held that the programs to impart personality development skills, excellence in life and to achieve peace of mind by means of unstructured session, lectures and workshops, though for short duration, and not resulting in any test or certificate, would still qualify as coaching and training liable to tax under ‘commercial training and coaching center’ services.

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VAT

Notifications and circulars

Andhra Pradesh

- In the light of re-organisation of the State of Andhra Pradesh into Telengana and Andhra Pradesh, all dealers are required to file a declaration by 30 April, 2014 specifying whether they wish to keep their registration in the State of Telengana or in the State of Andhra Pradesh, or in both the States.

(Help file on Andhra Pradesh Reorganisation)

Chhattisgarh

- The time limit for completion of assessment for the FY 2009-10 has been extended from 31 March, 2014 to 30 June, 2014.

(Notification No. F-10-56/2014/CT/V (55)- dated 1 April, 2014)

Delhi

- Effective 26 March, 2014, the facility of affixing digital signature on returns and other documents filed electronically has been introduced.

(Circular No. F.3(21)/FIN(REV-I)/2013-14/DSVI/347 dated 26 March, 2014)

Haryana

- Effective 16 April, 2014, the rate of

VAT on the following earthmoving equipment has been reduced from 13.125% to 5.25%:

- Wheel excavators
- Track excavators
- Backhoe loaders
- Loadall
- Wheel loading shovel
- Skid steer
- Road roller

The reduced rate of 5.25% was earlier applicable only on sales made to government.

(Notification No. S.O.49/H.A.6/2003 /S.59/2014 dated 16 April, 2014)

Maharashtra

- Electronic filing of sales and purchase listing in annexure(s) J1 and J2 has been made mandatory along with filing of periodical returns for the tax period starting April 2014.

(Trade Circular No. 9T of 2014 dated 25 March, 2014)

Punjab

- The due date of electronic filing of return for the quarter ended 31 March, 2014 has been extended to 31 May, 2014.

(Public notice dated 22 April, 2014)

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Tamil Nadu

- Effective 1 April, 2014, the time limit for filing monthly returns has been extended from 12th day of the subsequent month to 20th day of the subsequent month for dealers having taxable turnover of INR 2000 Mn or more during the preceding year.
- Effective 1 April, 2014, electronic payment of tax has been made mandatory for dealers having taxable turnover of more than INR 20 Mn during the preceding year.

(Notification No. 30 dated 25 March, 2014)

Uttarakhand

- The time limit for completion of assessment for FY 2010-11 has been extended to 31 May, 2014.
- (Notification NO. 302/2014/25(120)/XXVII(8)/2014 dated 20 March, 2014)*

Sales tax

Case law

- The Supreme Court of India in *Akzo Nobel India Ltd v Commissioner Sales Tax (2014-TIOL-41-SC-CT)* held that the transformer installed for supply of electricity to manufacturing unit to ensure its optimal performance qualified as 'accessories' to the machinery installed in the

manufacturing unit. Transformer being an adjunct to the efficient use of manufacturing unit was eligible for concessional rate of tax under UPVAT laws as goods required for use in manufacture.

- The Himachal Pradesh High Court in *Bharat Sanchar Nigam Ltd v State of Himachal Pradesh (2014-VIL-93-HP)* held that no sales tax could be levied on supply of SIM cards to subscribers as the SIM card had no intrinsic value and it was supplied to the customer for providing telephone services. The Court has relied on the Supreme Court decision in the matter of *Idea Mobile Communication Limited (2011-VIL-17-SC-ST)*.
- The Rajasthan High Court in *Commercial Tax officer v Britannia Dairy Pvt Ltd (2014-VIL-73-Raj)* held that *mandi* fee deposited by the seller for and on behalf of the purchaser and subsequently recovered separately on the invoice could not be included in the sale price of goods for levy of VAT. The Court observed that the mode of collection of *mandi* fee could not alter the character of the transaction.
- The Delhi High court, in *Anchor Electricals (P) Ltd v Commissioner of Sales Tax (2014-VIL-81-Del)*, held that while classifying a product under the relevant entry description of any

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schedule, reference to HSN or central excise tariff should be made only when the relevant entry description referred to the HSN based classification. In other cases, the classification had to be done on the basis of the common parlance test.

- The Karnataka High Court in *State of Karnataka v Mysore Thermo Electric Private Limited* (2014-TIOL-538-HC-Kar-VAT), held that 'batteries' were essential parts of railway coaches, and without battery, railway engines could not function. There could not be air-conditioning and lighting, if railway coaches were not fitted with the batteries. Thus, batteries qualified as 'parts' of railway engine and were eligible for concessional VAT rate of 4%.

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