

Staying Updated

Indirect tax newsletter

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Valuation

- In *Symphony Comforts System Ltd v CCE (2013-TIOL-772-CESTAT-AHM)*, the Tribunal held that supply of moulds free of cost per se, will not mean that the appellant is a job worker when they had independently procured inputs, utilised their own manpower and sold the finished product to the purchaser, based upon the price agreed between them. It further held that the transaction will be covered by section 4 read with rule 6 of the Valuation Rules and not under rule 10A.

CENVAT/MODVAT

- In *Hindustan Coca-Cola Beverages Pvt Ltd v CCE (2013 (290) ELT 255)*, the Tribunal held that the credit of duty paid on broken glass bottles is admissible when the breakage is within the condonation limit of 0.5%.
- In *Monnet Sugar v CCE (2013 (196) ECR 243)*, the Tribunal held that CENVAT credit is admissible on welding electrodes used for maintenance and repair of machinery.
- In *CCE v Hemani Organics and Chemicals Pvt Ltd (2013 (196) ECR 219)*, the Tribunal held that steel items used for the fabrication of storage tanks

is eligible for CENVAT credit.

- In *CCE v Sterlite Industries Ltd (2013-TIOL-545-CESTAT-MAD)*, the Tribunal held that permission for removal of copper anodes under job work cannot be denied on the ground that it is not an input or a partially processed input since it is an admitted fact that a copper anode is further used in the manufacture of cathodes or wire rods.
- In *Varsha Forgings Ltd v CCE (2013-TIOL-504-CESTAT-MUM)*, the Tribunal held that when the original duty paying documents are lost in transit, CENVAT credit can be claimed on the basis of photocopy of the invoice along with copies of the FIR.
- In *Voltamp Transformers Ltd v CCE (2013-TIOL-629-CESTAT-AHM)*, the Tribunal held that CENVAT cannot be demanded in respect of process loss at the job worker end.

Others

- In *Gujarat State Fertiliser Co Ltd v UOI (2013 (290) ELT 161)*, the Gujarat High Court quashed the Board Circular No 967/01/2013-CE issued on 1 January, 2013, insofar as it caused initiation of recovery proceedings within 30 days of filing an appeal, in cases where the stay application remained pending with the Tribunal for reasons beyond the assessee's control.

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- In *CCE v Gujarat Glass Pvt Ltd* (2013 (290) ELT 538), the Gujarat High Court held that the extended period of limitation is not applicable when the assessee voluntarily disclosed the facts of non-payment of tax and paid the duty on demand.
- In *Gujarat Engineering Works v CCE* (2013-TIOL-693-CESTAT-AHM), the Tribunal held that refund claim of amount paid during investigation consequent to the Tribunal's favourable order cannot be denied on ground of limitation since provisions of section 11B shall apply only in case of duty and not when the amount is paid during investigation as a deposit.
- In *Tenneco RC India P Ltd v CCE* (2013-TIOL-574-CESTAT-MAD), the Tribunal held that the limitation period shall not apply for the demand of interest, and that the assessee should pay such interest even without a notice being served on them.

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Service tax

Notifications, circulars

- The Central Board of Excise and Customs (CBEC) has amended the service tax Notification No 26/2012 dated 20 June, 2012. Henceforth, the service provider claiming a higher abatement (i.e. 75% of taxable value) with respect to taxable services provided in relation to the construction of a residential unit will be required to fulfill both the following conditions:
 - Carpet area of the unit is less than 2000 square feet
 - Amount charged for the unit is less than 10 million INR.

(Notification No 9/2013-ST, dated 8 May, 2013)

- The CBEC, with the intent to bring into effect the Service Tax Voluntary Compliance Encouragement (STVCE) Scheme, 2013, has come out with the STVCE Rules, 2013. The rules prescribe the form and manner of declaration of tax dues, payment of tax dues and other relevant guidelines related to the scheme.

The CBEC has also come out with service tax Circular No 169/4/2013 dated 13 May, 2013 to clarify the issues related to the applicability and

eligibility of taxpayers or non payers to avail the benefits of the scheme.

(Notification No 10/2013-ST and Circular No 169/4/2013-ST dated 13 May, 2013)

Case laws

- The High Court, in Delhi Chit Fund Association v UOI (2013-TIOL-331-HC-DEL-ST), held that the services rendered by a foreman in relation to a chit fund business in lieu of a commission are services in relation to a transaction merely in money which has been excluded from the definition of the term 'service' and is hence not chargeable to service tax.

Accordingly, service tax Notification No 26/2012 dated 20 June, 2012 to the extent of entry no 8, which provides the rate of abatement in respect of services provided in relation to chit, has also been quashed.

- The high court, in CST v Ratan Singh Builders Pvt Ltd (2013-TIOL-403-HC-DEL-ST), held that the rate of tax applicable would be the one prevailing at the time of providing the services and not at the time of payment receipt.

This ruling, however, is relevant for the period prior to the introduction of the Point of Taxation Rules, 2011.

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- The Tribunal, in *Zaheerkhan B Khan v CCE (2013-TIOL-643-CESTAT-MUM)*, held that section 65 allows the agent to discharge service tax liability on behalf of the principal. Accordingly, where the agent has discharged service tax liability on the entire consideration, it is sufficient compliance of service tax provisions by the principal.
- In *Ultratech Cement Ltd v CCE (2013-TIOL-675-CESTAT-AHM)*, the Tribunal held that it is not open to the authorities to reclassify the category of services at the receiver's end. Accordingly, it has held that input services availed by an exporter of goods cannot be reclassified to deny refund.
- In *Neel Sidhi Enterprises v CST (2013-TIOL-681-CESTAT-MUM)*, the Tribunal held that where, on account of conflicting judicial views, the service provider collected an amount representing service tax, accounted it as a 'contingent liability' and also made it clear that in case of a favourable outcome, the sum will be refunded with interest, the service provider cannot be asked to deposit this sum as service tax under section 73A.
- The Tribunal, in *Fertiplant Engg Co Pvt Ltd v CCE (2013-TIOL-748-CESTAT-MUM)*, held that the sale of space in a magazine for publishing ads is not

liable to service tax. It has held that the 'magazine' is also a 'newspaper' as defined in the Press and Registration of Books Act, 1867 and the sale of space in a newspaper has been specifically excluded from the scope of 'sale of space or time for advertisement services' category.

- The Tribunal, in *JM Financial Services Pvt Ltd v CST (2013-TIOL-757-CESTAT-MUM)*, held that while the incentives or processing fees are received by the lead merchant banker (LMB) from the bank chosen by it to deposit and keep the money collected from the investor, there is no service being rendered by the LMB to the bank. Hence the incentives are not liable to service tax.

Further, it held that where the LMB, under a profit-sharing contract with an NBFC, recommends and forwards the loan application of its clients to fund their investment in IPOs, the activity of sharing profit or loss by the LMB and NBFC is on principal-to-principal basis. There are no services being rendered by the LMB to the NBFC. Hence, share of profit cannot be held liable to service tax.

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VAT

Notifications, circulars

Bihar

- Effective 9 May, 2013, surcharge at following rates has been levied on select goods:

- 10% on motor spirit
- 15% on tobacco products (except *Biris*)

(Notification No S.O. 218 dated 9 May, 2013)

Chhattisgarh

- Electronic generation of form E-I and E-II introduced for registered dealers

(Notification No F-10/26/2013/CT/V (33) dated 4 May, 2013)

Delhi

- Time limit for filing DVAT 51 along with the statutory forms for all quarters of FY 2011-12 extended to 27 May 2013

(Notification No F.3(33)P-II/Vat/Misc /2006/168-178 dated 09 May, 2013)

Kerala

- Due date for filing annual return extended to 31 May of the succeeding financial year

- Due date for filing audit report in Form 13 and statement of particulars in Form 13A extended to 31 January of the succeeding financial year in case of companies and 31 December of the succeeding financial year in case of other registered dealers

(Circular No 6/2013-C1-33000/12/CT dated 26 April, 2013)

- Due date for filing application for availing option to pay tax at compounded rate for FY 2013-14 extended to 31 May, 2013

(Circular No 08/2012 dated 30 April, 2013)

Odisha

- Effective 1 May, 2013, facility for electronic filing of registration application introduced.

(Notification No 16308/FIN-CTI-TAX-01-2013 dated 1 May, 2013)

Puducherry

- Mandatory requirement for electronic payment of tax in case of dealers having tax liability of 0.10 mn INR or more deferred from April 2013 to June 2013

(Order No 4077/CTD/VAT/2011 dated 14 May, 2013)

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- Effective April 2013, electronic filing of return mandatory in case of dealers opting for payment of tax at compounded rates

(Order No 4077-1/CTD/VAT/2011 dated 23 April, 2013)

Rajasthan

- Time limits for filing quarterly return for the quarter ended 31 March, 2013 and annual return in form VAT 10 and 10A respectively extended to 27 May, 2013

(Notification No F.16 (375) Tax / VAT / CCT / 2006-/Pt-I-232 dated 15 May, 2013)

Sales tax

Case laws

- The Allahabad High Court, in *N V D Distributors v the state of UP (2013-NTN-Vol. 52-15)*, held that Himgange Ayurvedic Oil falls under the category of ayurvedic medicine for the levy of VAT and cannot be classified as a cosmetic item.
- The Allahabad High Court, in *JK Industries Ltd v the state of UP (2013-TIOL-396-HC-ALL-CT)*, held that stock transfers made to undisclosed branches outside the state cannot be rejected merely because the dealer has failed to

include the branches in its registration certificate. The benefit of stock transfer will be allowed, provided the transaction is genuine and the dealer has filed declaration in Form F.

- The Allahabad High Court, in *Samsung India Electronics Pvt Ltd v Commissioner of Commercial Tax (2013-NTN-Vol 52-33)*, held that fully automatic washing machines shall be liable to tax as electronic goods and not as electric items.
- The Principal Secretary to the Government of Haryana *vide* an advance ruling in *Hamdard Waqf Laboratories (2013-45-PHT-63-Hr.CC)*, clarified that *Rooh Afza* does not fall under the category of processed or preserved fruits and vegetables including juice, squash, etc. The department has relied on the contents mentioned on the bottle which indicate that sugar is the major content comprising 80% of the total quantity in *Rooh Afza* and the rest 20% contents are made from fruits, vegetables, herbs and flowers, etc. It should be taxed at the residual rate as an unclassified item.

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