

# Staying Updated

## Indirect tax newsletter

January 2014, Volume 16 Issue 10

**pwc**

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- Compensation for delay in supply of goods can be reduced while computing transaction value
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- Refund of excess duty paid not admissible in case of post clearance reduction in price of the goods

##### *CENVAT/MODVAT*

- Principal manufacturer cannot distribute credit to job worker through ISD invoice

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- Time limit for completion of assessment extended in Madhya Pradesh and Chhattisgarh
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##### **Sales tax**

- Permission to use trade mark on non-exclusive basis not liable to VAT as deemed sale
- RAM and Pen-drive do not fall under the entry description 'computer systems and peripherals' for levy of VAT in UP

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## ***CENVAT***

### ***Case law***

#### ***Valuation***

- In *CCE v Victory Electricals Ltd* (2013 (298) ELT 534), the Larger Bench of the Chennai Tribunal held that value payable after factoring in any liquidated damages contractually stipulated for delayed supply would be the transaction value for levy of excise duty.
- In *CCE v JCB India Ltd* (2014-TIOL-09-CESTAT-MUM), the Mumbai Tribunal held that parts, components and assemblies of Loader, Backhoe Loader and Road Rollers were covered by the expression, 'parts, components and assemblies of Automobiles' mentioned in the Third Schedule and in notification issued under section 4A, and hence said goods would be subject to MRP-based assessment.
- In *Hindustan Petroleum Corpn Ltd v CCE* (2014-TIOL-20-CESTAT-MUM), the Mumbai Tribunal held that when the goods were sold from different depots, assessable value under rule 7 would be determined on the basis of price prevailing at a particular depot from where the goods were ultimately going to be sold and not the price prevalent at other depots.

- The Mumbai Tribunal, in the case of *Videocon International Ltd v CCE* (2014-TIOL-50-CESTAT-MUM), held that a claim of refund of excess duty was not admissible in case of post-clearance reduction in prices by passing on higher discounts to the customers.

#### ***CENVAT/MODVAT***

- In *CCE v Navodhaya Plastic Industries Ltd* (2013 (298) ELT 541), the Larger Bench of Chennai Tribunal held that when capital goods were removed after use, there was no requirement to reverse the entire credit taken at the time of receipt of such goods.
- In *Sunbell Alloys Co of India Ltd v CCE* (2014-TIOL-38-CESTAT-MUM), the Mumbai Tribunal held that principal manufacturer could not distribute service tax credit to job worker since CENVAT Rules did not envisage distribution of credit to manufacturing unit belonging to others.
- In *Indian Oil Corporation Ltd v CCE* (2013 (298) ELT 556), the Kolkata Tribunal held that CENVAT credit was admissible on a supplementary invoice issued by the manufacturer who had been granted immunity from imposition of penalty and prosecution under the Central Excise Act, 1944 by the Settlement Commission.

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- In *Jay Ushin Ltd v CCE* (2013 (298) ELT 728), the Delhi Tribunal held that the invoice issued by the registered dealer, who had purchased the entire business from another registered dealer, was a valid document for CENVAT credit.
- In *Chettinad Cement Corpn Ltd v CCE* (2013 (200) ECR 472), the Chennai Tribunal held that CENVAT credit was admissible on input and capital goods used in captive mines in view of the decision of Supreme Court in the case of *Vikram Cement* (2006 (197) ELT 145).
- In *Balmer Lawrie & Co Ltd v CCE* (2014-TIOL-69-CESTAT-MUM), the Mumbai Tribunal held that when trading goods were cleared on payment of duty by reversing the CENVAT credit availed on such goods, there was no question of demand of CENVAT credit again on the ground that such goods were not used in the manufacture of final product.

#### *Others*

- In *CCE v Electroforce (India) Pvt Ltd* (2014-TIOL-94-CESTAT-MUM), the Mumbai Tribunal held that Central excise dues could not be recovered from a subsequent buyer of the land who had purchased the premises in an

auction from a third person, without any condition of fastening the liability of Central Excise duty.

- In *Radiant Indus Chem Pvt Ltd v CCE* (2014-TIOL-47-CESTAT-MUM), the Mumbai Tribunal held that there would be no delay in filing of appeal if the due date fell on a Saturday and the appeal was filed on the next working day, i.e. Monday.

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## **Service tax**

### **Notifications and circulars**

- The Central Board of Excise and Customs has clarified different aspects pertaining to taxability of services rendered by Resident Welfare Associations (RWAs) to their members, and the related exemptions that are available under service tax. It has further clarified that CENVAT credit would also be available to RWAs.

*(Circular No. 175/01/2014 dated 10 January, 2014)*

- The CBEC has clarified that the discharge certificate under the VCES scheme would be issued within 7 working days from the date of furnishing of details of payment of 'tax dues' in full. It has further clarified that the availability of CENVAT credit in lieu of payments under the VCES scheme would be governed by the applicable CENVAT Credit Rules.

*(Circular No. 176/02/2014 dated 20 January, 2014)*

- Sponsorship of sporting events organised by a national sports federation or its affiliates, where participating teams/ individuals represent a country, shall be exempt from service tax liability.

*(Notification No. 1/2014-Service Tax Dated 10th January, 2014)*

## **Case laws**

- The Mumbai Tribunal, in case of CCE v Reliance Industries Ltd (2014-TIOL-11-CESTAT-MUM), held that where the service provider had not rendered any advisory, consultancy or technical assistance, just because it undertook the activity of cleaning of paraxylene plant using sophisticated equipment and processes, the same could not be held liable to tax under 'consulting engineers service'.
- In Sai Labour Contract v CCE (2014-TIOL-18-CESTAT-MUM), the Mumbai Tribunal held that in case of manpower supply services, service tax had to be discharged by the service provider on the gross amount received, which included the labour wages and other incidental expenses received from the service receiver.

The Tribunal distinguished the High Court ruling in Intercontinental Consultants & Technocrats Pvt Ltd v UOI (2012-TIOL-966-HC-DELST) on the ground that the valuation in this case was governed by section 67 itself, and not by rule 5(1) of service tax rules.

It was further held that the TDS retained by the recipient of service from the payment was also a part of the gross amount chargeable to service tax.

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- The Ahmedabad Tribunal, in *CCEST v Deshpande Patil Consultants (2013-TIOL-1913-CESTAT-AHM)*, held that the activities of soil testing, exploration survey and map-making for laying pipelines, to prepare and deliver drawings/ reports containing factual information were not in nature of advice, consultancy or technical assistance, and were held liable to service tax under 'survey and map-making service' instead of under 'consulting engineer's services'.
- The Mumbai Tribunal, in *HDFC Bank Ltd v CST (2014-TIOL-27-CESTAT-MUM)*, held that since the sale of tax saving bonds by RBI, being a sovereign function of the Central Government, was not subject to service tax, any brokerage earned by the private banks on sale of such bonds to general investors could not be held taxable under 'banking and other financial services'.
- In *CST v J K Investors (Bombay) Ltd (2014-TIOL-45-CESTAT-MUM)*, the Mumbai Tribunal held that in the absence of direct handling and warehousing of goods, the activities of a selling agent in managing dealers, arranging sales meetings, forwarding orders and ensuring recovery of dues from the dealers could not be held liable to tax under 'clearing and forwarding agent's service'.
- In *RS Earth Movers Pvt Ltd v CCE (2014-TIOL-51-CESTAT-MUM)*, the Mumbai Tribunal held that the services of removal of overburden material at mining sites using equipment such as tippers and dozers, etc., had to be classified under 'site formation and clearance services' and not under 'mining of mineral, oil or gas service'.
- In *RM Dhariwal v CCE (2013-TIOL-1897-CESTAT-MUM)*, the Mumbai Tribunal held that transfer of trade name and formulae by a brand owner for further manufacturing was classifiable under 'intellectual property right service' and not under 'scientific or technical consultancy service'.
- In *Vidarbha Cricket Association v CCE (2013-TIOL-1915-CESTAT-MUM)*, the Mumbai Tribunal held that the services provided by a club/ association for promoting the game of cricket, even though held charitable under Income Tax Act, were not in nature of public service, and were therefore held liable to tax under 'club or association services'.

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## **VAT**

### **Notifications and circulars**

#### **Delhi**

- Effective 17 January, 2014 notices, summons and orders ('documents') shall be issued through electronic means, which includes pasting on web-page of the dealer, SMS alert and email at the registered email id of the dealer. The documents issued through electronic medium shall be treated at par with service of documents by registered post.

*(Order No. 3 (366)/Policy/VAT/2013/1235-1245 dated 17 January, 2014)*

#### **Haryana**

- It has been clarified by the Additional Excise and Taxation Commissioner that additional tax in the nature of surcharge @ 5% leviable under section 7A, shall be applicable on all composition schemes except for the lumpsum scheme prescribed for retailers.

*(Circular No. Memo No.41/ST-1 dated 14 January, 2014)*

- Effective 1 January, 2014, the requirement of using inward and outward waybills has been discontinued.
- Form VAT-D2A has been prescribed in respect of intra-State sales to SEZ units.

*(Notification No. S.O.132/H.A.6/2003/*

*S.60/2013 dated 31 December, 2013)*

#### **Himachal Pradesh**

- Effective 1 July, 2014, electronic filing of returns has been made mandatory for all dealers.

*(Notification No. EXN-F (10)-7/2011-Vol.-I dated 30 December, 2013)*

#### **Madhya Pradesh**

- The due date for completion of assessment and reassessment for the FY 2011-12 has been extended from 31 December, 2013 to 30 June, 2014.

*(Notification No. F-A-3-34-2010-1-V (58) dated 30 December, 2013)*

#### **Punjab**

- Effective 1 January, 2014, select goods such as televisions, air conditioners, kitchen appliances, cold drinks, branded chocolates, etc. have been subjected to first point taxation at manufacturer or importer level. The rate of tax on such products varies from 14.50% to 22.50%.

*(Notification No. S.O.116/P.A.8/2005/S.8/2013 dated 13 December, 2013)*

#### **Uttarakhand**

- The due date for filing annual return for the FY 2012-13 has been extended to 15 March, 2014.

*(Notification No.24/2014/19(120)/XXVII(8)/2012 dated 7 January, 2014)*

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## **Sales tax**

### **Case law**

- The Allahabad High Court, in *Commissioner of Commercial Tax v Seagram India Pvt Ltd* (2013-NTN-Vol 53-283), held that no VAT was leviable on grant of permission to use a trade mark on a non-exclusive basis. The transaction of permitting use of trade mark was treated as a mere license of trade mark, and not deemed sale. The High Court relied on the landmark Supreme Court decision in the case of *Bharat Sanchar Nigam Ltd v Union of India and others* (2006-3-SCC-1).
- The Andhra Pradesh High Court, in *Sri Venkateshwar Trading Company v The Deputy Commercial Tax officer* (2014-VIL-08-AP), held that a notice sent by registered post which was returned with a postal endorsement 'refused' or 'not available in the house' was a valid service of the notice.
- The Uttar Pradesh VAT Commissioner in *In Re: Ram Infotech* (2013-NTN-Vol 53-77), clarified that 'RAM' and 'Pen Drive' being computer part and external memory device respectively, were different from 'Computer System and Peripherals'. Accordingly, these two items merited classification as residuary items and were liable to VAT @ 12.5%.
- The Uttar Pradesh VAT Commissioner,

in *In Re: Mehrotra Biotech Private Limited* (2013-NTN-Vol 53-91), clarified that 'Blood Bags' were used for safe storage of human blood and blood plasma, and therefore they were liable to VAT at a concessional rate of 4% under the entry description 'all kinds of packing material'.

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