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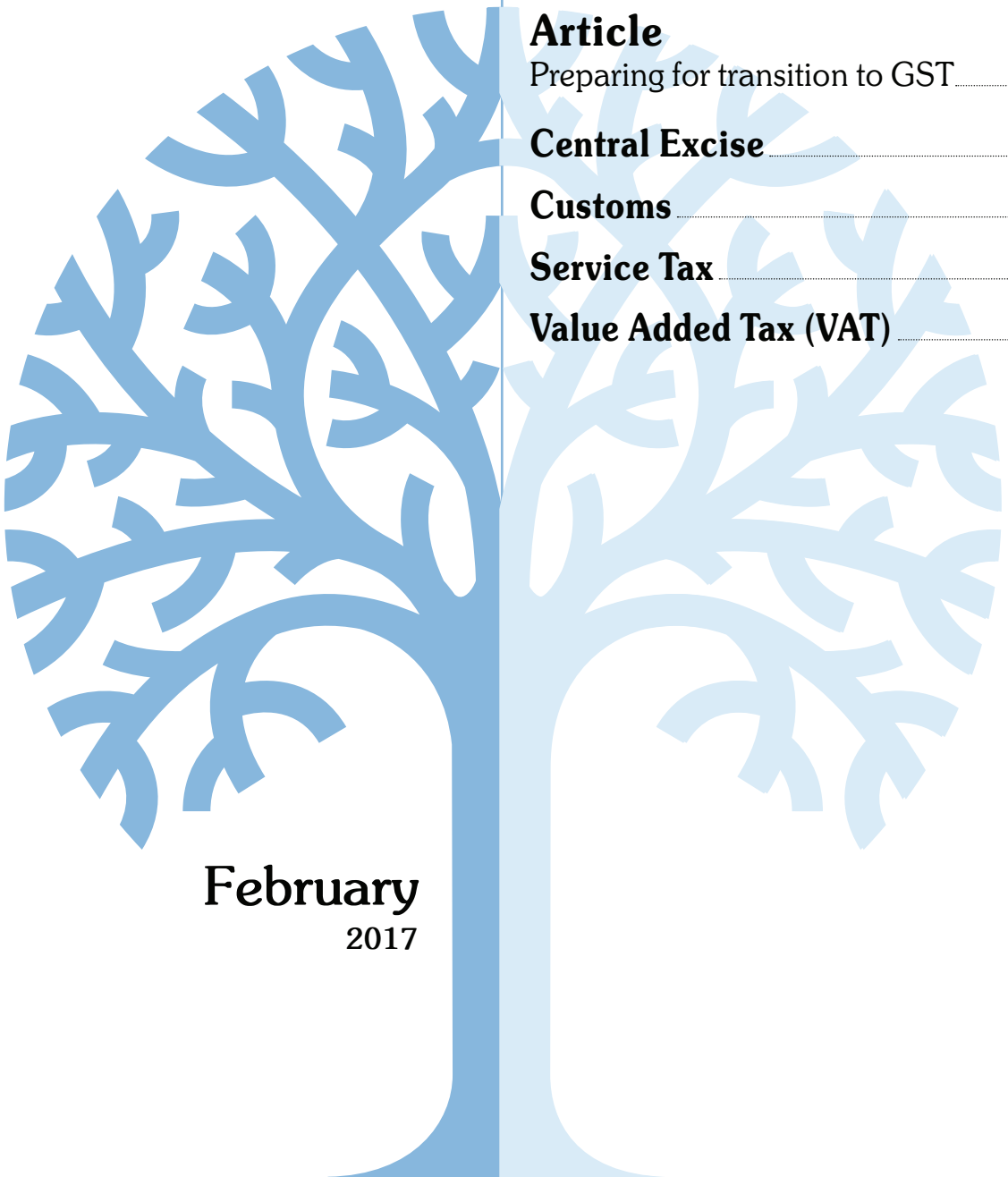

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ARTICLE

# Preparing for transition to GST

By **Hitesh Arora**

GST being the largest indirect tax reform in Indian tax history is on the verge of implementation. Every business, small or big, will get impacted by GST. Amidst other changes in Indian economy, like demonetization, application of IND AS, changing business environment etc., GST implementation is likely to be the biggest change and it becomes vital for every business to gear itself for smooth transition to GST regime from the existing regime.

Businesses and Government are running against time to prepare for and implement GST in a manner that it creates less hassle after implementation date. Section 165 to Section 197 of Revised Model GST law deal with various situations like carry forward of credit, refunds, job work, goods lying in stock on transition date, etc. There may be many legal points which will arise during transition to GST regime but few other areas which need appropriate action to ensure seamless transition are discussed in this article.

## *Revamping IT Systems*

IT systems like SAP and other ERP need to be changed substantially, to make business GST compliant. Many new transactions are being covered under GST e.g. cost allocation by head office to its various units across India would attract GST. Also, various transactions will go out of GST ambit too, e.g. transfer of stock within the same State between two units having single registration. There are many other procedural changes too e.g. change in format of invoice, change in returns frequency and format. IT systems need to be modified to cover all such modified legal requirements.

## *Vendor Management/Education*

Unorganized vendors of businesses shall be educated about GST to make them understand how their GST compliances are going to impact recipient's business. To illustrate, input tax credit will be available in electronic ledger only when vendor pays tax to government and files the GST return timely. Those vendors who are GST compliant as per compliance records shall be chosen for dealing to avoid loss of credit under GST.

Also, as per Section 163 of revised model law, anti-profiteering clause is proposed to be introduced which states that taxpayer has to pass on the benefit to its customers on account of (a) increase in input tax credit and (b) reduction in tax rates. Hence, vendors shall be asked to send their quotes again (after) considering the above mentioned benefits under GST. Vendors can further re-negotiate with their sub-vendors to pass on the benefit.

## *GST Enrolment*

Enrolment process which covers updating existing business information is underway. Decision shall be taken considering impact of registrations taken before migration, whether

separate registration would be required for more than one business place or vertical of a legal entity under one State or single registration to be obtained for one State. There is no concept of centralized registration under GST as of now.

### *Modifying agreements*

Corporates may have entered into many long term contracts with various clauses related to taxes, price variations, advances, etc. All those contracts shall be re-visited and safeguard clauses shall be inserted to make them GST compliant. To illustrate, advances shall be received with GST amount now as otherwise recipient shall have to pay GST from the advance received. Also, safeguard clauses regarding payment of taxes shall be inserted in all the contracts.

### *Filing of last return under existing regime*

As per Section 167 of revised model law, credit of Cenvat/VAT/Entry tax appearing in return filed related to the last day (existing regime) shall be eligible to be carried forward under GST regime. Hence, returns filed on last day shall capture maximum details related to the period belonging to the existing regime to avoid any credit loss or to avoid any procedural hassle. Model law provides for refund in cash in certain situations. Considering all these, extra efforts shall be made to file last return carefully.

### *Representations*

Final GST law is expected to be released next month. Industry can look at the issues arising out of revised GST law so that appropriate representations can be made to the government seeking relaxations/clarity. To illustrate, whether input tax credit of excise duty present in goods lying with unregistered / registered depots on transition date will be available is not yet clear.

### *Business restructuring decisions*

GST is a major change which will impact various other areas of business also along with taxation. For instance, many companies have opened warehouses/depots in other States due to tax reasons (to avoid CST sales). As all transactions would be tax neutral under GST, whether inter-State or intra-State sale, retaining depots opened in earlier regime due to tax reasons may have to be reconsidered, as separate registration shall be required for depots, etc., in the States where they are located.

### *Conclusion*

It appears there may be some delay in implementation of GST. However, slight delay is welcomed by industry as every business will get time to prepare itself for GST. As per old saying *"The early bird catches the worm"*, which means the person who takes the earliest opportunity to do something will gain the advantage over others. For smooth transition from existing regime to GST regime and to ensure proper implementation, every business should plan and prepare for GST from today.

**[The author is an Associate, Lakshmikumaran & Sridharan, Gurgaon]**

# CENTRAL EXCISE

## Notifications and Circulars

**Time limits fixed for grant of permission for transfer of Cenvat credit and for remission:** Rule 10(4) has been introduced in Cenvat Credit Rules, 2004 to specify a time limit of 3 months from the date of receipt of application for allowing transfer of credit by the Deputy Commissioner or Assistant Commissioner of Central Excise. Similarly, Rule 21(2) has been added in Central Excise Rules, 2002 to provide that the authority referred in Rule 21(1) shall decide remission of duty within a period of 3 months from the date of receipt of application. It may be noted that these time periods can be further extended by 6 months by higher authorities. Notification Nos. 4 & 5/2017-C.E. (N.T.), both dated 2-2-2017 have been issued in this regard, as part of Budget 2017 proposals.

**EOU – Benefit of exemption notifications issued under Excise Section 5A:** CBEC has clarified that non-applicability of exemptions under notifications issued under Section 5A of the Central Excise Act, 1944 is only in respect of excisable goods produced or manufactured by an EOU and cleared to DTA. This clarification contained in the communication DOF No. 334/7/2017-TRU, dated 1-2-2017issued to explain Budget 2017 proposals states that notifications providing exemption on inputs / raw materials will be applicable on procurement by EOUs. It may be noted that proviso to Section 5A of the Central Excise Act states that unless specifically provided in such notification, exemption notifications issued thereunder shall not apply to excisable goods which are produced or manufactured by a 100% EOU and brought to any place in India. It is also clarified that if an EOU is already registered with the jurisdictional Central Excise authority, it will not be required to take any fresh registration under Customs or Central Excise concessional duty rules.

## Ratio decidendi

**Manufacture - Filling gases in cylinders from tanker and mixing of gases does not amount to manufacture:** Taking note of the CESTAT decision in the case of *Ammonia Supply Company* which has attained finality, and department's Circular dated 8-10-1997, the Supreme Court has upheld Tribunal's decision that activity of filling gases in cylinders from tanker would not amount to manufacture in terms of first limb of Note 10 of Chapter 28 of the Central Excise Tariff. Further, in respect of second limb of said Note, i.e. deployment of any other treatment to render a product marketable, the Court was of the view that activity of mixing of inert gases (like argon, nitrogen, helium etc.) with other gases like oxygen, nitrogen, carbon dioxide and making available such combination to the consumers in smaller cylinders, would also not amount to manufacture. Earlier decision of the Court in the case of *Goyal Gases,* to the effect that such mixture does not result in creation of a new marketable commodity, was relied by the

Apex Court while dismissing department's appeal. [*Commissioner* v. *Vadilal Gases Ltd.* - 2017-TIOL-34-SC-CX]

**Cenvat credit of CVD not to be reversed on re-export of defective goods:** CESTAT Delhi has held that Cenvat credit of the CVD paid by the importer-manufacturer is not required to be reversed when certain capital goods on being found to be defective, were re-exported as such under bond. Relying on the CBEC Circular dated 29-8-2000 stating that there was no bar for manufacturer to export capital goods under bond, the Tribunal was of the view that if the capital goods were cleared for export on payment of duty, same would be allowed as rebate in accordance with Rule 19 of the Central Excise Rules, 2002. Definition of the term 'use' as interpreted by the Tribunal in the case of *Ispat Metallics,* was also relied by the Tribunal to reject Revenue department's contention of non-use. [*Commissioner* v. *Universal Cables Ltd.* - 2017 (345) ELT 308 (Tri. - Del.)]

**Export of goods procured under CT-1, not in original packing, when not fatal:** The assessee had procured excisable goods without payment of duty under CT-1 certificate in their capacity as merchant exporter under Notification No. 42/2001-C.E. (N.T.), but contravened the condition mentioned in the said notification by not exporting the goods in their original packed condition, and using the same as raw materials in goods which were ultimately exported. Distinguishing the facts of the present case from the decision of *Eagle Flask Industries* [2004(171) ELT 296 (SC)], CESTAT Chandigarh has held that when there was no allegation relating to the non-filing of undertaking /declaration or about the fact as to export of goods, demand of duty was not sustainable. [*Modern Insecticides Ltd.* v. *Commissioner* - 2017 (345) ELT 233 (Tri. - Chan.)]

**Denial of exemption based on unsubstantiated definition available on internet or any other sources not justified:** CESTAT Delhi, in a case wherein the assessee manufactured security paper used for printing of currency and other security instruments and availed exemption under Notification No. 4/2006-C.E., has held that the exemption cannot be denied on the ground that these papers did not bear water mark, security thread, etc. The Tribunal in this regard observed that the only condition mentioned in the said notification was that security paper must be cylinder mould vat made, which has been fulfilled by the assessee. It was also held that the definition of 'security paper', providing that it must bear a water mark, as obtained from various internet sources, cannot be relied upon. [*Security Paper Mills* v. *Commissioner* - 2017 (345) ELT 661 (Tri. – Del.)]

**Remission of duty – "Year" includes part of year:** Considering the fact that the loss of molasses was less than 2%, Allahabad High Court has allowed assessee's appeal against rejection of remission of duty. Revenue department's contention that the loss was a sudden loss in a short period of time, and hence the duty should not be waived, was rejected by the Court observing that Rule 8(4) of U.P. Sheera

Niyantran Niyamwali, 1974 does not require that "year" would mean the entire period of 12 months, and not a smaller part thereof. [*Balrampur Chini Mills Ltd.* v. *Commissioner* - 2017-TIOL-211-HC-ALL-CX]

**Refund – Re-credit of duty earlier paid through Cenvat account – Letter to department for re-credit can be considered as refund claim:** Observing that the duty was paid twice, once through Cenvat account and second time by cash, CESTAT Mumbai has rejected the contention of the department demanding amount re-credited in the Cenvat account by the assessee after informing the department. It was noted that re-credit was not taken *suo motu* but number of letters were written to the department. The Tribunal in this regard also held that request in writing for re-credit in the Cenvat account, should have been disposed by the department considering the same to be refund claim of the appellant. [*Dew-Pond Engineers Pvt. Ltd.* v. *Commissioner* - 2017-TIOL-295-CESTAT-MUM]

**Climbers and thrillers used by children in playgrounds classifiable as sports goods:** CESTAT Mumbai has rejected Revenue department's contention that only sports played nationally and internationally are sports, and that play of children in garden and playground, are not sports. Allowing assessee's appeal in respect of Climbers (covering various types of nets attached to frames which are similar to the ones used in obstacle course) and Thrillers (items like Balancing Beams, Rolling Barrel, Walking Barrel, Stationery Cycle, Rock N Roll Bar, Double Bar, Gliders, Loop Ranges, Horizontal Bars, etc.), the Tribunal was of the view that these equipments are used in children's playground, and hence would be classifiable as sports goods. Reliance in this regard was placed on HSN Explanatory Notes and standards published by Bureau of Indian Standards. [*Arihant Industrial Corpn. Ltd.* v. *Commissioner* – Order dated 14-12-2016 in Appeal No. E/1868/06-Mum, CESTAT Mumbai]

**Kulfi classifiable as milk product and not as ice cream:** Relying on earlier decision concerning classification of Kulfi Mix powder, CESTAT Mumbai has held that 'Kulfi' would be classifiable under Heading 0404 of the Central Excise Tariff. The Tribunal observed that when dry powder merits classification under the Heading 0404, then Kulfi, which is ready to consume would definitely merit classification under the Heading 0404. Department's contention that Kulfi should be covered as ice cream under Heading 2105 as ice cream is also product of milk and under Prevention of Food Adulteration Act and rules thereunder, same is obtained from cow/buffalo milk and combination thereof with or without addition of other various ingredients, was rejected by the Tribunal. [*Parsi Dairy Farm* v. *Commissioner* – Order dated 1-9-2016 in Appeal No. E/3206/05, CESTAT Mumbai]

**Duty when not payable on capital goods cleared after long use:** CESTAT Delhi has held that in a case where the assessee clears capital goods after use for a long time (not as waste and scrap) and reverses the Cenvat credit on the same, no extra duty can be demanded

under Rule 3(5) of the CENVAT Credit Rules, 2004. It observed that where capital goods have been cleared after prolonged use, the same cannot be called "as such" clearance. Further, relying on the judgment of *Modernova Plastyles Pvt. Ltd.* [2008 (232) ELT 29], it was held that Rule 3(5) cannot be considered as charging section to collect more revenue from the manufacturer. It may be noted that the period involved was February-March 2007. [*Jaypee Bela Plant* v. *Commissioner* - 2017 (345) ELT 542 Tri.- Del.]

# CUSTOMS

## Finance Bill and Circular

**Time limit for filing bill of entry and duty payment proposed to be revised:** Section 46(3) of the Customs Act, 1962 is being proposed to be amended to make it mandatory for the importer to present bill of entry before the end of the next day following the date of arrival of vessel at customs station. It is further proposed that where the B/E is not presented within such time, the importer would be liable to pay charges for late filing, unless sufficient cause is shown for the delay. Similarly, Section 47(2) is proposed to be amended to state that the importer would be liable to pay the import duty on date of presentation of the B/E in case of self-assessment. However, in case of assessment, reassessment or provisional assessment, the duty would have to be paid within one day from the date of return of B/E. It may be noted that at present import duty has to be paid within 2 days. Clauses 99 and 100 of the Finance Bill, 2017 refer to the above.

**Seizure - Appropriate orders to be passed for seizure under Customs Section 110:** The CBEC has directed all its field formations to pass appropriate orders, stating reasons for which they believe that goods are liable for confiscation, for seizure of goods under Section 110 of the Customs Act, 1962. It has also been clarified that show cause notices are to be issued within the stipulated time period irrespective of the fact that the goods remain seized or are provisionally released. Customs Instruction No. 1 of 2017, dated 8-2-2017 has been issued in this regard.

## Ratio Decidendi

**Valuation - Enhancement of value based on market enquiry when not justifiable:** CESTAT Delhi has held that there is no legal justification to conduct a market enquiry in the presence of comparable data authenticated in NIDB for identical goods for material period. The enhancement of value based on the market enquiry was, therefore, held as not sustainable in terms of Section 14 of Customs Act, read with the Valuation Rules. Further taking note of the fact that the value declared was lesser than NIDB data by a small margin only, and that re-determination of value as per NIDB data was not contested by the importer, the Tribunal directed for determination of the value in terms of data based on NIDB. [*Balaji International* v. *Commissioner* - 2017-TIOL-358-CESTAT-DEL]

**Confiscation – No mis-declaration when two views equally possible in classification:** CESTAT Delhi has held that when two views are possible for the classification of a product, mis-declaration with intent to evade payment of duty cannot be alleged. The assessee in SEZ had compacted the brass scrap before clearing same in DTA. Confiscation was set aside by the Tribunal though it observed that looking to the shapes in which the goods are being cleared, the classification as a brass bar was more appropriate than classification as brass scrap. [*Sterling Ornaments Pvt. Ltd.* v. *Commissioner* - 2017-TIOL-134-CESTAT-DEL]

**Bringing a rig into India for repairs is not import for home consumption:** Noting that the adjudication order did not record that the rig was in operation within the territorial waters of India, or that the rig did not operate outside the territorial waters of India, Supreme Court has set aside the demand of duty on said rig, brought in India for the purpose of repairs and subsequently sent out. The Court was of the view that mere repair of a vessel is not putting the vessel to use in India and would not result in home consumption. Department's plea of taxable import, considering the fact that there was release of foreign exchange and grant of various approval and import licence, was rejected by the Court holding that for deciding the question whether the rig was imported into India, the requirement of home consumption has to be satisfied. [*Commissioner* v. *Aban Loyd Chiles Offshore Ltd.* - 2017-VIL-08-SC-CU]

**Refund of SAD to EOU on DTA clearances:** CESTAT Mumbai has rejected the contention of the Revenue department that refund of additional duty under Notification No. 102/07-Cus. cannot be granted as the duty was not paid at the time of the import but at the time of domestic clearance by EOU and hence there was violation of the condition of said notification. The Tribunal noted that the assessee was an EOU and hence there was no occasion for payment of duty at the time of import. Further, considering the fact that SAD was paid by the assessee along with VAT, the Tribunal allowed the benefit of said notification. The decision in the case of *Meneta Automotive Components Pvt. Ltd.*, was relied upon. [*Metaplast Exim India Pvt. Ltd.* v. *Commissioner* - 2017-VIL-130-CESTAT-MUM-CE]

**External Hard Disk Drives classifiable under TI 8471 70 20:** External hard disk drives are classifiable under the Tariff Item 8471 70 20 of Customs Tariff and not under TI 8471 70 30 according to CESTAT Delhi. It was held that the same are also covered by exemption Notification No. 12/2012-C.E. as the exemption is available at a 6-digit level, and hence both hard disk drives (CTI 8471 70 20) and the removable or exchangeable disk drives (CTI 8471 70 30) are covered by the notification. The Tribunal took note of the technical literature of the manufacturer and technical opinion of the Ministry of Communication and Information Technology and noted that the description in the notification mentioned only

hard disc drive without amplifying either by adding 'external' or 'internal'. [*Commissioner* v. *Supertron Electronics Pvt. Ltd.* - 2017-TIOL-125-CESTAT-DEL]

**Inland Air Travel Tax (IATT) – Monies deposited by third parties not to be adjusted against tax dues:** Delhi High Court has held that the amount deposited by the lessor of the aircraft for release of distrained aircraft cannot be appropriated towards the outstanding dues of tax on the part of the carrier. Observing that the deposit by lessor would represent only the aircraft and not such amounts as were to be recovered from the carrier, it was held that the responsibility of the carrier to pay IATT dues subsisted and the recovery is to be made from the carrier itself till the tax, interest and penalty so determined are paid. [*Spicejet Ltd.* v. *Union of India* - 2017-TIOL-274-HC-DEL-CUS]

**Omnical Calcium Nitrate Solution Grade Fertilizer classifiable under TI 2834 29 90:** The Tribunal has held that Omnical Calcium Nitrate Solution Grade Fertilizer is classifiable in Tariff Item 2834 29 90 of the Customs Tariff Act, 1975. The Tribunal observed that the impugned goods were primarily composed of calcium nitrate with small amount of ammonium nitrate and hence shall subscribe neither to TI 3105 90 90 nor 3102 60 00. [*Advanced Agri Solutions (India) Pvt. Ltd.* v. *Commissioner* - 2017-VIL-135-CESTAT-CHE-CU]

**Chappals or sandals – Classification:** High Court of Delhi has rejected the contention of the department that since the impugned goods did not contain a strap at the back, they were classifiable as chappals and not sandals. The Court placed reliance on the opinion of Leather Export Promotion Council while disagreeing with that of the Footwear Design and Development Institute (FDDI). It was held that once the Council made its determination based on inspection of the sample and that the opinion was based on objective material, there ought to have been something more for the FDDI to conclude differently. Further, wondering as to whether any of the experts in this case was a woman, the ultimate customers, the Court allowed the writ petition. [*Wishall International* v. *Union of India* - 2017-TIOL-181-HC-DEL-CUS]

# SERVICE TAX

## Finance Bill

**Works Contract service - Service Tax Valuation Rules proposed to be amended retrospectively:** Finance Bill, 2017 has proposed to amend Service Tax (Determination of Value) Rules, 2006, retrospectively from 1-7-2010. The amendment seeks to provide for exclusion of value of land. Clause 128 of the Finance Bill read with Sixth Schedule thereto make it clear that in works contract where the amount charged includes the value of goods as well as land or undivided share of land, service tax shall be payable on 25% of the total amount charged for the said contract. It may be noted that tax would be payable on 30% of the amount charged, in respect of the rule prevalent from 1-4-2016 onwards.

**Research and Development Cess Act, 1986 proposed to be repealed:** Provisions for imposition of R&D Cess are proposed to be withdrawn with the repeal of Research and Development Cess Act, 1986. At present, R&D Cess @ 5% is leviable on taxable services involving import of technology by an industrial concern on all payments made under a foreign collaboration, and Notification No. 14/2012-S.T. grants exemption from service tax to the extent of R&D Cess paid. The provisions relating to repeal of the said Act will come into force with effect from 1-4-2017, and hence from such date, full service tax will be applicable on such taxable services.

## Ratio decidendi

**BAS – Liability on expenses incurred for joint operation of centre:** In a dispute where the assessee was managing and maintaining various facilities at the premises of IHC and receiving amounts towards expenses incurred for operation of the centre, CESTAT Delhi has rejected the contention of liability under Business Auxiliary Services. The Revenue department was of the view that assessee was providing Customer Care Services (inclusive of pantry, maintenance, security, housekeeping, hospitality, etc) to the occupants of the premises on behalf of their client, IHC. Considering the agreement between the parties, and various bills, the Tribunal was of the view that dealings were more like co-venture agreement with joint purpose and shared income, and hence there was absence of any service provider and service recipient relationship which is liable to service tax. It was also noted that even if there is promotion of business of facilities of IHC, the increased income was shared by both the parties, and hence it would be self-service. Period involved was from 2005-06 to 2011-2012. [*Old World Hospitality Limited* v. *Commissioner* - 2017-VIL-97-CESTAT-DEL-ST]

**Supply of water - Coverage under BSS:** CESTAT Delhi has rejected the contention of the Revenue department that assessee engaged in supply of water to M/s. Chhattisgarh State Industrial Development Corporation (CSIDC) in terms of the agreement, would be liable to service tax under Support Services of Business or Commerce. In terms of the agreement, the assessee was to own, develop, operate and maintain water supply, and in return was paid by CSIDC as per the tariff agreed upon for supply of water. The Revenue department was of the view that since assessee was supporting the business of CSIDC, they would be liable to pay service tax under the category of "Infrastructure Support" for the business. Noting that scope of the agreement was for supply of water to CSIDC on a fixed tariff, and that supply thereafter by CSIDC to various industrial units was of no consequence for the said arrangement as far as the appellant is concerned, CESTAT allowed the appeal. It was also noted that there was no reference to third party in the agreement. [*Radius Water Ltd.* v. *Commissioner* - 2017-VIL-107-CESTAT-DEL-ST]

**Construction of commercial portion of ISBT not liable to Service tax:** CESTAT Delhi has rejected the contention of the Revenue

department that exclusion for transport terminals is not available for commercial portion of Inter-State Bus Terminal (ISBT). It may be noted that definition of Commercial or Industrial Construction Service under Section 65(25b) of the Finance Act, 1994, during the relevant period, excluded service provided in respect of the roads, airports, railways, transport terminals, bridges, tunnels and dams. The Tribunal in this regard was of the view that when construction of ISBT was not a taxable service, there cannot be any bifurcation of that activity for service tax. [*Commissioner* v. *Amar Construction Co.* – Final Order No.55260/2016, dated 22-11-2016, CESTAT Delhi]

**Deploying police personnel on payment basis, statutory – Not liable to tax:** CESTAT Delhi has held that activity of deploying police personnel on payment basis is to be considered as part of statutory function of the State Government and that the fees recovered is to be considered as statutory. The Tribunal in this regard was of the view that Superintendent of Police, which is an agency of the State Government, cannot be covered under the term 'person' as given in the definition of 'Security service' during relevant period. Further, it was held that said activity would not also be in the nature of business activity as the charges were only in nature of cost recovery for additional force deployed for maintaining security. While allowing the appeal filed by the Police department, CESTAT also noted that amounts recovered were deposited in the government treasury. [*Deputy Commissioner of Police* v. *Commissioner* - Final Order Nos.55321-55348, dated 25-11-2016, CESTAT Delhi]

**Refund – Locus standi to file refund claim and limitation in case of provisional prices:** CESTAT Delhi has reiterated that service recipient is entitled to claim refund of service tax paid by him to the service provider and that such recipient can file refund application before the authorities having jurisdiction over the service recipient or before the jurisdictional authorities of the service provider. Further, in respect of limitation for filing refund claim, the Tribunal was of the view that since only on issuance of credit note by the service provider the provisional prices were finalised, the said date will be the relevant date in terms of clause (eb) of Explanation-B to Section 11B of the Central Excise Act, 1944. Question of unjust enrichment was also answered in favour of assessee by the Tribunal while it observed that subject refund was reflected in Schedule 13 of the Balance sheet under the head "Loans and Advances" as "Receivable-Govt./Statutory Bodies", and that it was certified by the CA. [*Chambal Fertilisers and Chemicals Ltd.* v. *Commissioner* - 2017-TIOL-407-CESTAT-DEL]

**Legal Consultancy services – Scope encompasses advisory services:** Terming the finding of the lower authority that since the legal firm did not represent the appellant-assessee in any court or legal proceeding, the service is not legal consultancy service, as fallacious, CESTAT Delhi has held that scope of legal services encompasses advisory services also. The Tribunal in this regard

perused assessee's request for proposal for selection of international legal consultant and also the billing made by the service provider in connection with extension project of their LNG terminal. Revenue department's plea of classification of the service under Management or Business Consultant service was hence rejected by the Tribunal. Further, relying on precedent, the Tribunal reiterated that immunity granted by the International Finance Corporation (Status, Immunities and Privileges) Act, 1958 will also apply to the party who is dealing with IFC. [*Petronet LNG Ltd.* v. *Commissioner* - 2017-TIOL-351-CESTAT-DEL]

**Cenvat credit – Effect when goods capitalised including service portion and depreciation claimed:** The assessee had capitalised payment made for erection and installation of capital goods. The department sought to deny credit of service tax paid on input service of installation on the ground that depreciation was claimed in respect of capital goods and the same included service tax portion. CESTAT Delhi has held that the restriction contained Rule 4(4) of the Cenvat Credit Rules, 2004, on availing credit if the depreciation is availed, was only in respect of capital goods and not on services. Department's contention of double benefit was hence rejected by the Tribunal. [*Shree Pandurang SSK Ltd.* v. *Commissioner* - 2017-TIOL-366-CESTAT-MUM]

**Refund – Proof of protest payment:** Noting that payment can be made under protest in several ways, Punjab & Haryana High Court has held that for the act to be under protest, it is not necessary that it should be accompanied by the very words "under protest". The Court in this regard was of the view that whether an act is performed under protest or not must be determined on the basis on which it is performed. It was held that if the conduct indicates that it is not voluntary and is done out of compulsion, the act would be under protest even within the meaning of these words in the second proviso to Section 11B(1) of the Central Excise Act, 1944. Relying on the nature of content of the letter written by the assessee to the department, stating that tax was being paid "under the pressure of the Department", appeal of the Revenue department was dismissed. [*Commissioner* v. *Ind. Swift Lands Ltd.* - 2017-VIL-64-P&H-ST]

# VALUE ADDED TAX (VAT)

## Notifications

**Rajasthan VAT - Clarification regarding declaration in VAT-47:** Commissioner of Commercial Taxes has issued a clarification bearing No. F.16(1150)/VAT/Tax/CCT/2015/2161-2164, dated 19-1-2017 regarding Rule 53 of the Rajasthan Value Added Tax Rules, 2006, which provides for declaration in Form VAT-47/VAT-47A required to be carried with the goods for import in the State of Rajasthan. It has been clarified that the declaration under Rule 53 is not required to be carried along with the goods brought directly into the State from outside the country, in view of various judicial pronouncements which

have laid down that "outside the State" cannot be extended to mean "outside the country", and regulatory provisions for imports from outside the State shall not be applicable to the imports from outside the country.

**Himachal Pradesh Entry Tax and VAT – Amendments for e-commerce transactions:** By Notification No. EXN-F(10)-21/2016 dated 31-1-2017 amendments have been made to the Himachal Pradesh Tax on Entry of Goods into Local Area Rules, 2012 and the Himachal Pradesh Value Added Tax Rules, 2005, with effect from 1-2-2017. Rule 4A has been inserted in the HP Entry Tax Rules providing for procedure for registration and payment of tax by the carrier of goods/ courier agent/ any other person-in-charge of the goods (referred to as "deemed importer") who intends to cause the entry into the local area of goods specified in Entry 15 of Schedule-II of the Himachal Pradesh Entry Tax Act, 2010, purchased through e-commerce, for personal use. Further, Entry No. 15 has been added to Schedule-II of the said Act which provides for *all taxable goods mentioned in Part-I, Part-I 'A', Part-II, Part-II 'A', Part-II 'AA' and Part-III of Schedule-A appended to the HP VAT Act when purchased online through ecommerce* to be taxable at the rate of 5%. Further, Rule 59A has been inserted in HP VAT Rules, providing for the procedure and conditions for registration of the carrier of goods/ courier agent/ any other person-in-charge of the goods.

## Ratio decidendi

**No declaration required under Section 51(2) of Punjab VAT Act for goods brought by railway train:** While answering the question as to whether a person bringing the goods from outside the State of Punjab by train, is required to report the goods at the Information Collection Centre ('ICC') considering Section 51(2) of the Punjab Value Added Tax Act, 2005 which puts the burden on the "owner or person in charge of a goods vehicle" to carry the requisite declarations, the Punjab and Haryana High Court has held that the obligation to submit the declaration in terms of the first proviso to Section 51(2) is on the 'owner or person in charge of the goods vehicle' and not on any other person. The Court in this regard noted that 'goods vehicle' specifically excludes 'vehicle running upon fixed rails' (as held in the case of *State of Punjab* v. *Indo Arya Central Transport Ltd.* - 2016-VIL-705-P&H) and therefore, Section 51(2) will not be attracted. It was held that the proviso will also take colour from the main provision despite there being no reference to the phrase 'owner or person in charge of goods vehicle' therein, and the term 'person' in the proviso will be construed with reference to the main part of Section 51(2) to mean the 'owner or person in charge of the goods vehicle' only. Reliance in this regard was also placed on form for declaration at ICC (VAT-12) and Rule 64 of the Punjab VAT Rules, 2005. [*Unique Chains* v. *State of Punjab* - 2017-VIL-47-P&H]

**Works Contracts - Revision of assessment invoking extended period:** Several petitions challenging notice for revision of assessment under the Haryana Value Added Tax Act, 2003 were disposed of by the High Court of Punjab & Haryana. The findings of the Court on relevant issues are as follows:

- Whether revisional power could be exercised on the basis of the Apex Court judgment in *K. Raheja* v. *State of Karnataka* [2005 (141) STC 298], even if the matter has been referred to be considered by a larger bench of the Supreme Court - It was held that the said judgment is a binding precedent declaring law at that time on the subject to be followed by all subordinate courts and authorities and action could have been taken by the authorities on the basis thereof, if considered appropriate.
- Whether extended period of limitation for exercise of revisional jurisdiction will apply even in cases where the period provided in the Act prior to the amendment had already expired - In view of the amendment made to proviso 2 to Section 34(1) of the Act, it was held the extended period for exercise of revisional powers is applicable only in the case where the period prescribed prior to the amendment was yet to expire and not where such period had expired earlier, as said amendment cannot put life to a dead claim.
- Whether the circulars issued by the Department are binding on the department and the assessees - It was held that any circulars/ instructions issued by the Department are binding on the departmental authorities except on the issue where any judgment to contrary exists. Such circulars/ instructions are not binding on the Court and where the same is contrary to statutory provisions, it has no existence in law.
- Whether explanation (i) to Section 2(1)(zg) of the Act (which provides for definition of 'sale price' in respect of goods involved in execution of works contracts) is *ultra vires* - The Court refused to examine the issue in light of the case of *CHD Developers Limited* v. *State of Haryana*, [2015-VIL-173-P&H] wherein the validity of the above provision has already been upheld by the division bench of the Court.
- Whether levy of tax on builders can be sustained in absence of machinery provisions - In view of the absence of rules or instructions providing for manner of calculation of taxable turnover in the relevant circumstances for the period up to 16-5-2010, the levy has become unenforceable up to said date. Further, the Court held that from 17-5-2010, there being Rules for such computation after having been amended in light of *CHD Developers* (supra), the levy is sustainable.
- Whether assessment could be framed in the name of a company which stood merged in another company and lost its identity by operation of law - It was held that no assessment can be framed against a company, which stood dissolved after its merger with another company. [*Dhingra Jardine Infrastructure Pvt. Ltd.* v. *State of Haryana* - 2017-VIL-60-P&H]

**Interest on refund of pre-deposit under Gujarat Sales Tax:** Gujarat High Court has allowed appeal of the assessee in a dispute involving interest on refund of pre-deposit made while preferring appeal before the Tribunal. The assessee contended that under Section 54(1)(aa) of the Gujarat Sales Tax Act, 1969, interest at the rate of 9% p.a. was payable on the refund of pre-deposit, while it was the contention of the State that said provisions are applicable only in case of refund of tax amount. Observing that amount deposited was towards payment of tax, and if the appeal against the assessment order was dismissed confirming tax liability, the amount deposited was required to be given credit while depositing the balance amount, it was held that on the appeal being allowed and the tax liability being either reduced or set aside by the appellate authority, the concerned person was entitled to get back the said amount with interest on completion of 90 days from the date of order. The petitioners were held as entitled to interest at the rate of 9% p.a on the amount deposited by them as pre-deposit while preferring appeal against the assessment order. [*Crompton Greaves Limited* v. *State of Gujarat* - 2017-VIL-52-GUJ]

**NEW DELHI**
5 Link Road, Jangpura Extension,
Opp. Jangpura Metro Station,
New Delhi 110014
Phone : +91-11-4129 9811
---
B-6/10, Safdarjung Enclave
New Delhi - 110 029
Phone : +91-11-4129 9900
E-mail : lsdel@lakshmisri.com

**MUMBAI**
2nd floor, B&C Wing,
Cnergy IT Park, Appa Saheb Marathe Marg,
(Near Century Bazar)Prabhadevi,
Mumbai - 400025.
Phone : +91-22-24392500
E-mail : lsbom@lakshmisri.com

**CHENNAI**
2, Wallace Garden, 2nd Street
Chennai - 600 006
Phone : +91-44-2833 4700
E-mail : lsmds@lakshmisri.com

**BENGALURU**
4th floor, World Trade Center
Brigade Gateway Campus
26/1, Dr. Rajkumar Road,
Malleswaram West, Bangalore-560 055.
Ph: +91(80) 49331800
Fax:+91(80) 49331899
E-mail : lsblr@lakshmisri.com

**HYDERABAD**
'Hastigiri', 5-9-163, Chapel Road
Opp. Methodist Church,
Nampally
Hyderabad - 500 001
Phone : +91-40-2323 4924
E-mail : lshyd@lakshmisri.com

**AHMEDABAD**
B-334, SAKAR-VII,
Nehru Bridge Corner, Ashram Road,
Ahmedabad - 380 009
Phone : +91-79-4001 4500
E-mail : lsahd@lakshmisri.com

**PUNE**
607-609, Nucleus, 1 Church Road,
Camp, Pune – 411 001.
Phone : +91-20-6680 1900
E-mail : lspune@lakshmisri.com

**KOLKATA**
2nd Floor, Kanak Building
41, Chowringhee Road,
Kolkatta-700071
Phone : +91-33-4005 5570
E-mail : lskolkata@lakshmisri.com

**CHANDIGARH**
1st Floor, SCO No. 59,
Sector 26,
Chandigarh - 160026
Phone : +91-172-4921700
E-mail : lschd@lakshmisri.com

**GURGAON**
OS2 & OS3, 5th floor,
Corporate Office Tower,
Ambience Island,
Sector 25-A,
Gurgaon- 122001
Phone: +91- 0124 – 477 1300
Email: lsgurgaon@lakshmisri.com

**ALLAHABAD**
3/1A/3, (opposite Auto Sales),
Colvin Road, (Lohia Marg),
Allahabad -211001 (U.P.)
Phone : +0532 – 2421037, 2420359
Email: lsallahabad@lakshmisri.com