Lakshmikumaran & Sridharan attorneys

TAX

amicus

An e-newsletter from
Lakshmikumaran & Sridharan, India

February 2018 / Issue – 80

Contents

February
2018

Articles

Legal metrology - New labelling rules could agitate businesses

By **Ekansh Agrawal**

The Legal Metrology (Packaged Commodities) Rules, 2011 which govern the pre-packed commodities, were amended by Notification Number G.S.R. 629 (E) dated 23rd June 2017 and the said amendments have become effective from 1-1-2018. In the Lok Sabha, such amendments were stated as an aim towards balancing with the requirement of ease of doing business. Since the amended rules have now become effective, let us have a look at some of the amendments which will have an impact on the trade practices and see whether the same will truly ease the way of doing business.

Country of origin

The new rules require a declaration of 'country of origin' or 'country of manufacture' or 'country of assembly' on the imported products. Jurisprudence is well developed on interpretation of the terms 'manufacture' and 'assembly' under excise and income tax laws. However, a doubt may arise as to the meaning of the term 'origin' used in the aforesaid rules. In many cases, it may happen that the importer is oblivious of the country where the product has undergone manufacturing or the country where it was assembled. Therefore, can the said importer declare the country from where the product is last sourced/received as the "country of origin" so as to comply with the amended rules? Here, it is pertinent to note that this is not the first time the declaration of 'country of origin' is being contemplated, rather in several other labelling legislations (both domestic and foreign), the said declaration is already required. However, in such legislations, the requirement is to mention only the 'country of origin'. Whether the principles contained in such legislations would truly hold good in the amended PC Rules is something which needs to be analysed as the amended rule envisages origin, manufacture and assembly separately.

Amendment to 'institutional consumer'

The definition of 'institutional consumer' has been further amended to prevent any scope for transactions effected for commercial or trade purposes. Retail sale of commodities will constitute as trade, however, what is to be looked at are the transactions that would get covered under the scope of "commercial purpose". The Supreme Court, for the purposes of the Consumer Protection Act ("COPRA"), has held that a person who purchases goods "with a view to using such goods for carrying on any activity on a large scale for the purpose of earning profit" will be treated as if he has obtained such goods for commercial purpose. Whether the principles, laid down by the Apex Court under COPRA, can be applied in the context of the PC Rules is something that requires examination. Suppose an institution (say, dealer) is sourcing a commodity (say, spare parts) for use by that institution by way of rendering services (say, repairs and servicing) to the public, whether the transaction would get hit by 'commercial purpose'?

Goods in stock

A doubt may also arise about the status of packages which are in stock as on 31-12-2017. Whether the said stock, if bearing the old

declarations, is required to comply with the amended rules? In this regard, we may refer to Circular (WM-10(65)/2017) dated 19-12-2017 which allows the industry to utilize the old packaging material till 31-3-2018 provided that a revised label with the amended declaration is affixed on the said packages. Therefore, the question for examination is whether the said stock which is already manufactured and packed with the old labels is required to have the revised label as contemplated in the aforesaid circular or the amended rules will only apply for the commodities which are manufactured/packed after 1-1-2018. At this juncture, reference can also be made to Circular No. WM-10(8)/2005 dated 5-7-2007 issued in the context of the amendments made under the provisions of the erstwhile Standards of Weights and Measures (Packaged Commodities) Rules, 1977 which were effective from 14-1-2007. In the said Circular, it was clarified that packages manufactured or imported or packed prior to that date (14-1-2007) would be exempt from the additional labelling requirements introduced by Notification dated 17-7-2006.

From above, it can be inferred that the amendments in question should be applicable in respect of the pre-packed commodities which are manufactured or packed, as the case may be, after 1-1-2018. However, considering the fact that no such clarification has been issued in the context of amended PC Rules, taking a similar stand now would be highly prone to litigation.

Applicability of 'Best before' declaration

Further, an additional declaration in terms of "best before" or "use by" for commodities which become unfit for human consumption has been inserted in Rule 6. However, the said declaration is not applicable to commodities for which specific provision in this regard is made in any other law. For example; in respect of food, beverages, drugs, cosmetics, etc. provision to specify the expiry date on the package has already been provided under respective regulatory legislations i.e. Food Safety and Standards Act and Drugs and Cosmetics Act. Therefore, the moot question which arises here is whether commodities such as lubricants, toners, etc. which are neither ingested by humans nor applied by them on their body but having an expiry date, are required to have the declaration of "best before" or "use by" on their packages now.

Though, the above amendments are aimed at enhancing consumer protection, at the same time they are bound to create difficulties for the trade. Industry can only hope that the Ministry of Consumer Affairs, Food and Public Distribution comes out with appropriate clarifications so that the industry is not faced with disputes at a later date.

[The author is an Associate, GST Practice in Lakshmikumaran & Sridharan, Gurgaon]

E-way bill provisions and valuation of goods

By **Tushar Mittal**

The objective of plugging revenue leakage or tax evasion will take a step ahead with the introduction of E-way bill rules as the tax administration can keep track of every movement of goods above the specified value. E way bill which is required to accompany every movement of goods barring some exceptions, is expected to improve the logistic operations by eliminating interception by the respective authorities at multiple check posts.

As the rules stipulate, an e-way bill is required to be generated for every movement of goods if value of the consignment moved exceeds Rs. 50,000. The obligation for generation of e-way bill is not contingent only on supply of goods but also on all kinds of movement of goods irrespective of whether any supply is involved or not. One possible situation is where there is movement of goods from principal to a job worker premises for getting job work done. In such case, there is no invoice raised but only a delivery challan is issued which shall be the supporting document for e-way bill.

However, obligation to generate an e-way bill is contingent on value of the consignment of the underlying goods for which a reference has been made in the CGST Rules to valuation provisions contained in Section 15 of the Central Goods and Service Tax Act (CGST Act), 2017. However, it is pertinent to note that the marginal note to Section 15 mentions 'Value of taxable supply' and the provision essentially seeks to lay down the statutory basis for taking transaction value which is the price actually paid or payable for supply of goods or services. It may, therefore, be argued that Section 15 may not cover situations when taxable supplies are not made i.e. Section 15 is not applicable for valuation of goods in cases other than supply. Hence, in cases of job work where delivery challan is issued and no tax invoice is generated, determination of value as per Section 15 may neither be required nor feasible.

It is understood that delivery challan contains fields for disclosing the taxable value of the underlying goods, tax rate and tax amount, but the question arises as to why taxable value is required to be disclosed in the delivery challan at the first place for the reason that no supply is involved in such cases. There can be few situations where if there is a sale in transit, the need for ascertaining the value as per Section 15 might crop up but until such event happens there may not be any requirement to determine value of such goods in advance as it is one off rare situation and assesses may not come across it usually. Even if, it is assumed that value for delivery challan can be determined as per the provisions of Section 15 by deeming as if it were a taxable supply made to unrelated buyer, the same will unnecessarily add on to the burden of assessee in valuing the semi-finished goods sent for job work which they might not intend to sell as it is.

Another pertinent point to be noted is while Section 15 seeks to exclude GST payable from taxable value, Rule 138 on e-way bill seeks to include GST also for the purpose of reckoning consignment value. It is ironical that while for value, Section 15 is made applicable for e-way bill provisions, for the purpose of inclusions or exclusions, divergent provisions have been made. As e-way bill is a document to cover movement of goods which includes movement not involving supply (sale), it will be prudent to exclude GST from consignment value.

GST is expected to be business friendly tax regime but multiple issues keep cropping up every now and then resulting in compliance havoc. There is an urgent need for the tax administration to resolve such issues at the earliest.

[The author is an Associate, GST Practice in Lakshmikumaran & Sridharan, New Delhi]

Goods and Services Tax (GST)

Notifications and Press Releases

National E-way Bill System postponed but certain States decide to continue old system: CBEC has on 2-2-2018 issued a notification to postpone implementation of national E-Way Bill system. Notification No. 74/2017-Central Tax providing for the new system to be effective from 1-2-2018 has been rescinded by Notification No. 11/2018-Central Tax. It may be noted that the government had on 1st of February, in its Twitter handle, stated that the trial phase for generation of the e-way bill, both for inter and intra-State movement of goods, has been extended. It was stated that the provisions shall be made compulsory from a date to be announced.

Various States have issued notification / circular to the effect that the e-way bill system in their State which was in force till last month, is being implemented again. Uttar Pradesh Government has issued circular which conveys that after 9th February, 2018, goods moving without e-way bill may be liable for action relating to detention. Bihar, West Bengal and Assam are few of the other States which have stated that old system of e-way bills will continue for now.

GST on construction of affordable flats - Finance Ministry issues Press Release: Builders and developers should not recover GST payable on certain category of flats/houses from the buyers. Stating so, Ministry of Finance Press Release notes that all inputs and capital goods used in construction attract GST of 18% or 28%, and hence builders who are liable to GST @ 12% on certain category of flats/houses would have enough ITC available. The Press Release dated 7-2-2018 also states that builders/developers are expected to follow the principles laid down under Section 171 (anti-profiteering), scrupulously. Further, it notes that there is no GST on supply of land whether by way of sale or lease or sub-lease to the buyer of flats.

GST Returns – Fees for delayed filing of GSTR-1, 5, 5A and 6, reduced: Ministry of Finance has reduced the fees payable by a taxable person in case of delay in filing of specified returns. By Notification Nos. 4 to 7/2018-Central Tax, all dated 23-1-2018, fees in respect of delayed filing of Forms GSTR-1, GSTR-5, GSTR-5A, and GSTR-6 have been reduced. The fees payable would be Rs. 25 for every day during which such failure continues. The fees would however be Rs. 10 per day when there is no outward supply in relevant period in case of GSTR-1, and when the tax payable is nil under GSTR-5 and 5A.

CGST Rules amended to revise provisions for registration and e-way bills: As recommended by the GST Council, the Central Government has amended the Central Goods and Services Tax Rules, 2017. While certain amendments have come into force from 23-1-2018, specific dates have been provided for others. Provisions restricting cancellation of registration taken on voluntary basis, before one year of registration, have been omitted, while persons who have migrated to GST though not liable now can submit application for cancellation of registration till 31-3-2018. Rule 138 dealing with E-way Bills has also been substituted with effect from 1-2-2018. Further, changes have been made to make it mandatory for the person-in-charge of the conveyance to carry copy of tax invoice or bill of supply in case he is not required to carry an e-

way bill. New Rule 55A has been inserted in this regard with effect from 23-1-2018.

Supplies to Railways – Classification and rate of duty clarified: CBEC has clarified that only the goods classifiable under Chapter 86, supplied to the Railways would attract 5% GST rate with no refund of unutilised input tax credit (ITC). Circular No. 30/4/2018-GST, dated 25-1-2018 further clarifies that other goods, falling under any other chapter of the Tariff, will attract the applicable GST rates to such goods, even if they are supplied to Railways.

GST payable on net quantity when only portion of raw material retained: GST will be payable by the oil refinery on the value of net quantity of polybutylene feedstock and liquefied petroleum gas retained for the manufacture of Poly Iso Butylene and Propylene or Di-butyl Para Cresol by manufacturers of such products. Circular No. 29/3/2018-GST, dated 25-1-2018 while clarifying so, also states that the refinery will be liable to pay GST on such returned quantity of Polybutylene feedstock and Liquefied Petroleum Gas when the same is supplied by it to any other person. Manufacturers of Propylene or Di-butyl Para Cresol and Poly Iso Butylene were receiving LPG and Poly butylene feed stock from oil refineries, and while a portion of the raw material is retained by these manufacturers the remaining quantity is returned to the oil refineries.

Adjudication under CGST Act & IGST Act – Monetary limits of officers prescribed: CBEC has issued Circular No. 31/05/2018-GST dated 9-2-2018 prescribing monetary limits of officers to issue show cause notices (SCN) and pass adjudication orders under CGST Act and IGST Act. Superintendents (of Central Tax) will be empowered to issue SCN and pass order where CGST not paid or short paid or erroneously refunded or ITC of CGST has been wrongly availed or utilised is upto Rs. 10 lakhs. This limit in respect of IGST will be Rs. 20 lakhs. Deputy / Assistant Commissioners can issue SCN and pass order in cases where such CGST not paid, etc., is above Rs. 10 lakhs (IGST – Rs. 20 lakhs) and upto Rs. 1 crore (IGST – Rs. 2 crore). Additional / Joint Commissioners have been empowered to issue SCN and pass adjudication order without any monetary limit. Officers of Audit Commissionerates and Directorate General of GST Intelligence can issue SCN but adjudication will be undertaken by officers concerned in executive Commissionerate in whose jurisdiction noticee is registered.

EU proposes more flexibility to States on VAT rates: The European Commission has proposed new rules to give Member States of EU more flexibility to set VAT rates. Currently, Member States can apply a reduced rate of as low as 5% to two distinct categories of products in their country. States will now be able to have two separate reduced rates of between 5% and the standard rate chosen by the Member State; one exemption from VAT (or 'zero rate'); and one reduced rate set at between 0% and the reduced rates. According to the EU Press Release dated 18-1-2018, States will however have to ensure that the weighted average VAT rate is at least 12%.

Ratio decidendi

GST regime not tax (payer) friendly – State of affairs not satisfactory: In a Writ Petition filed by a manufacturer expressing various difficulties faced by him in accessing the GST online portal, for filing returns, etc., the Bombay High Court has held that GST regime is not tax friendly. The Court was of the view that special session of Parliament or special or extraordinary meetings of the Council would mean nothing to the assessees unless they obtain easy access to the website and portals. Directing the Union of India to file affidavit, the Court expressed hope that those in charge of implementation and

administration of GST law would put in place the requisite mechanism which is necessary to preserve the image, prestige and reputation of the country.

Further, taking note of the recent Allahabad High Court Order directing the government to reopen the portal or entertain the application manually, the Court in the present case stated that it would also be constrained to pass such order which would not be restricted to the petitioner alone. Observing that state of affairs was not satisfactory, it was stated that it is for the authorities to work out the necessary mechanism and also set up and establish a grievance redressal mechanism. [*Abicor and Binzel Technoweld Pvt. Ltd.* v. *Union of India* - 2018-VIL-61-BOM]

Detention not permissible for mere infraction of Kerala State GST Rules 55 and 138: Kerala High Court has held that mere infraction of the procedural rules like Rules 55 and 138 of the State GST Rules cannot result in detention of goods, though it may result in imposition of penalty. The Court in this regard noted that detention is contemplated under the statutes only when it is suspected that the goods are liable to confiscation. It was observed that according to Section 130 of the Kerala GST Act confiscation of goods is contemplated only when a taxable supply is made otherwise than in accordance with the provisions, with the intent to evade payment of tax. The High Court also noted that the Revenue department had not disputed the genuineness of the delivery challan issued by the assessee-petitioner for transporting the goods involved. [*Indus Towers Limited* v. *Assistant State Tax Officer* - 2018-VIL-48-KER]

Detention of goods cleared under delivery challan when not sustainable: Kerala High Court has set aside detention of goods cleared under Delivery Challan, without declaration under Section 138(2) of Kerala State GST Act (e-way bill). The Court rejected plea of suspicion of evasion since goods were intended for unregistered firm, holding that registration of person to whom goods are supplied is irrelevant. Plea of non-accompanied documents was rejected, relying on earlier order holding that in such cases unless authenticity of delivery challan is doubted, goods cannot be detained. [*Age Industries v. Asst. STO* - 2018-VIL-45-KER]

EU VAT – Tax rate under composite supply where each element of supply identifiable: In a dispute involving guided tour of the stadium and visit to the museum after the tour, the CJEU has held that the supplies are closely connected to each other that they should be regarded as a single supply of services for VAT purposes. It was held that the supply must be taxed solely at the rate of VAT applicable to that single supply. The Court was of the view that rate of tax has to be determined according to the principal element, even if the price of each element forming the full price paid by a consumer, for the service, can be identified. It was held that exception to principles cannot be made because such identification is possible or that the parties agree on price corresponding to each distinct element. [*Stadion Amsterdam CV* v. *Staatssecretaris van Financiën* – Judgement dated 18-1-2018 in Case C-463/16, CJEU]

Customs

Finance Bill, 2018 (Budget) and Notifications

Edible/food products – Import conditions revised: Import of all edible/food products will now be allowed only if the product, at time of import, is having a valid shelf life of not less than 60% or 3 months before expiry, whichever is less. This condition will apply to the import food products in addition to the provisions of Food Safety & Standards (Import) Regulation, 2017. According to DGFT Notification No. 49/2015-20, dated 5-2-2018, amending Para 4(A) of General Notes in Schedule-I to ITC (HS) 2017, this condition is not applicable to re-import for export purposes under Para 2.46 of the current Foreign Trade Policy.

Import duties increased on sugar and chickpeas: Ministry of Finance has, on 6-2-2018, increased Basic Customs duty payable on import of Sugar and Chickpeas. Notification No. 24/2018-Cus. issued in this regard omits certain entries providing for reduced rate of duty under Notification No. 50/2017-Cus. on goods of Heading 1701, raw sugar, refined or white sugar, etc. It may be noted that the Tariff rate for goods of Heading 1701 is 100% at present. BCD on Chickpeas has been increased to 40% by Notification No. 25/2018-Cus.

Customs redemption fine to be paid within 120 days: Section 125 of the Customs Act, 1962 has been proposed to be amended by Clause 93 of the Finance Bill, 2018 to provide for payment of redemption fine within 120 days from the date when such option is provided. According to the proposed sub-section (3) such option otherwise will become *void* unless an appeal against order providing such option is pending. It may be noted that in cases where order providing option of redemption fine is passed before Finance Bill, 2018 receives the Presidential assent, this option can be exercised within 120 days from the date of assent.

Demand - Pre-consultation before SCN and time limit for adjudication under Customs: Clause 61 of the Finance Bill, 2018 seeks to amend Section 28 of the Customs Act, 1962 to provide for pre-notice consultation before SCN in cases not involving collusion, willful mis-statement and suppression. Further, adjudication of SCN – both under normal and extended period, will have to be mandatorily done within 6 months and 1 year respectively. As per the proposals, this period can be extended once, after which notice will be deemed as not issued, subject to certain conditions. Notices issued after 14-5-2015 but before Presidential assent of the Finance Bill, 2018, will however continue to be governed by existing Section 28.

Exemption to inward and outward processing of goods: Finance Bill, 2018 (Clause 60) proposes to insert two sections in the Customs Act, 1962 to empower the government to exempt inward and outward processing of goods. While new Section 25A seeks to exempt goods imported for the purposes of repair, further processing or manufacture, Section 25B will empower the government to exempt goods re-imported after being exported for repair, further processing or manufacture. Re-exports or re-imports will have to be made within a period of one year from the order of clearance of imports and exports, respectively.

Finance Bill introduces Social Welfare Surcharge of 10% on imports: Finance Bill, 2018 has proposed a Social Welfare Surcharge as Customs duty on goods specified in the First

Schedule to the Customs Tariff Act. The new levy which replaces Education Cess and Secondary and Higher Education Cess, will be levied on imports at the rate of 10% on aggregate of Customs duties. While certain goods are exempted, surcharge at the rate of 3% will be levied on petrol, HSD and certain silver and gold. It may be noted that while Clause 108 of the Finance Bill proposing the surcharge has come into effect immediately, exemption, till the Bill receives the Presidential assent, has been provided from Education Cesses by Notification Nos. 7 and 8/2018-Cus., both dated 2-2-2018.

IGST and Compensation Cess on warehoused goods sold before clearance: Customs Tariff Act, 1975 has been proposed to be amended by Clause 100 of the Finance Bill 2018 to provide for the method of computation of Integrated Tax and GST Compensation Cess where goods are warehoused before clearance. The new provisions will be applicable where the warehoused goods are sold before clearance for home consumption or export. According to proposed sub-sections 3(8A) and (9A), the value in such case would be the **transaction value** or the value determined under sub-sections (8) and (9), respectively, whichever is higher.

Customs Act – Scope to be expanded: The scope of Customs Act, 1962 is sought to be expanded to make it applicable to a person who commits any offence or makes any contravention thereunder outside India. Section 1 of the Customs Act is proposed to be amended in this regard by Clause 55 of the Finance Bill 2018. Further, according to Notes on Clauses of the Finance Bill, Section 17 of the Customs Act is proposed to be amended to broaden the scope of verification by the proper officer. Similarly, the scope of re-assessment is also proposed to be broadened beyond valuation, classification and exemption or concession of duty.

Ratio decidendi

Valuation - Loading of profit margin of foreign supplier: CESTAT, Bangalore has held that it was not justified to attribute loading of profit margin of the related unit in Ireland to the goods imported from the related unit in Singapore. The Tribunal accordingly dismissed the appeal upholding the order passed by Commissioner (Appeals). The adjudicating authority had loaded the value observing that the goods were received by the Singapore company from Ireland and subsequently supplied to the Indian importer, and that profit margin of Singapore unit was extremely low in comparison to that of unit in Ireland. [*Commissioner* v. *Apple India* - Final Order No. 22966/2017, dated 4-12-2017, CESTAT Bangalore]

No redemption fine in case of bona fide import: Refund of redemption fine and penalty paid by the importer under protest has been ordered by CESTAT (Mumbai Bench) in a case where there was no restriction on import of seamless pipes - both at the time of placing the orders and also when the Bill of Entry was filed subsequently when the restriction was removed. The goods had arrived in India when such restriction was in place. The Tribunal observed that an application for opening Letter of Credit was filed by the importer before the issue of notification restricting such imports, which was issued/opened by the bank on the date on which the notification imposing restriction on future import of such goods was issued by DGFT. Fact that effective steps were also taken by the importer for obtaining license was also taken note of by the Tribunal. [*Oil and Natural Gas Corporation Ltd.* v. *Commissioner* – Order dated 8-1-2018 in Appeal No. C/440/09, CESTAT Mumbai]

Central Excise and Service Tax

Ratio decidendi

Commercial construction service – Nature of occupant's activities important: CESTAT Delhi has set aside demand of Service Tax under Commercial and Industrial Construction service for construction of headquarter building of National Rifle Association of India and another building for a recognised university. The Tribunal was of the view that collection of fees for promoting or allowing a person to use the facility by the Rifle Association or the University will not make the buildings 'commercial'. Demand was set aside by the Tribunal considering the nature of occupants' activities. [*Vij Construction Pvt. Ltd. v. Commissioner* - Final Order No. 50291/2018, dated 11-1-2018, CESTAT Delhi]

Cleaning of railway coaches not liable under Cleaning Service: Observing that railway coaches are rolling stock of railways and they are not covered under commercial objects of industrial building, factory, plant or machinery, CESTAT Delhi has set aside demand under Cleaning service in respect of cleaning of railway coaches. Original authority's contention that railway coaches are either standing on platform or running on the track and the same are to be considered as object on the premises for Indian Railway, was hence rejected. [*R.K. Refreshment & Enterprises (P) Ltd.* v. *Commissioner* - Final Order No.50298-50299/2018, dated 22-1-2018, CESTAT Delhi]

Classification of service – Separate identifiable service as part of composite contract: CESTAT Delhi has held that when there were identified specific activities, though part of a general contract involving both taxable and non-taxable activity, it was not proper to invoke the provisions of Section 65 of the Finance Act, 1994 to decide classification of service. The dispute involved supply of newspaper to railway passengers, under a composite contract involving outdoor catering. Observing that the amount attributable to supply of newspaper was clearly identified, the Tribunal held that Section 65 was applicable in cases of composite services involving combination of different services. [*R.K. Refreshment & Enterprises (P) Ltd.* v. *Commissioner* - Final Order No.50298-50299/2018, dated 22-1-2018, CESTAT Delhi]

Composite contract – Liability not determined by nature of invoice: In a dispute involving invoices for specific services, though contract covered design, supply, erection, commissioning and maintenance, CESTAT Chennai has upheld findings of composite contract for period before 2007. Dismissing the appeal, the Tribunal held that in a contract executed over a period of time, periodical invoices may be issued for supply of goods/labour or for both. It was held that contract liability was not decided by nature of invoices and that the rate schedule in contract did not convey its nature. [*Commissioner* v. *Raghavendra Automations* - Final Order No. 40166/2018, dated 22-1-2018, CESTAT Chennai]

Valuation – Quantification of cost of drawings supplied free of cost: Mumbai Bench of the CESTAT has directed the manufacturer to obtain Chartered Engineer's certificate for certifying the cost of drawing supplied free of cost to them by their principal. The Adjudicating Authority had taken 0.90% which was overall R & D expenses of the company to which assessee cleared its goods and which had provided the drawing free of cost. The Tribunal in this regard observed that

cost of drawing is much less than overall R & D expenses for the reason that it also included expenses towards development and design of their final product and also parts which were manufactured by various other vendors. [*Deluxe Engineering* v. *Commissioner* – Order dated 11-1-2018 in Appeal No. E/772/09, E/62, 1952/10, E/1095/11 & E/755/12, CESTAT Mumbai]

IPR service – Continuous usage is not continuous rendering of service: In a case involving transfer of right to use trademark, CESTAT Delhi has held that continuous usage by another company cannot be construed as continuous rendering of service. Order of the Original Authority was set aside by the Tribunal in observing that the tax entry [Section 65 (55b) of Finance Act, 1994] was not for continuous usage of intellectual property but on the event of transfer or permission. It was noted that transfer in the dispute was made before introduction of tax on such Intellectual Property Service. [*Hamdard National Foundation (India) v. Commissioner* - Final Order No. 50335/2018, dated 15-1-2018, CESTAT Delhi]

No charge under RCM on expenditure when income shown in accounts already suffered tax: CESTAT Delhi has held that expenditure which was part of same accounting for income cannot be taxed for same service, even under Reverse Charge Mechanism. The assessee had paid Service Tax on consideration paid by Indian recipient to assessee's foreign office, which was captured in assessee's accounts and further adjusted in accounts of the foreign firm. The department however had sought to tax expenditure as shown in same accounts under the category of consultancy fee, which again was reflected in accounts of the foreign firm, under RCM. Noting that the assessee had no agreement or arrangement with the foreign firm to receive any consulting service, the Tribunal allowed the appeal. [*Lea International v. Commissioner* - Final Order No. 50313/2018, dated 12-1-2018, CESTAT Delhi]

BAS – Media monitoring services not covered under 'sales promotion': CESTAT Delhi has rejected the contention of the Revenue department that media monitoring services covering analysis and/or supply of copies of media contents of interest, and news and views, relating to technological advancements pertaining to products and services being dealt with by clients, were 'sales promotion' liable under Business Auxiliary Service. The Tribunal in this regard was of the view that such activity though may help the client to formulate certain policies to improve business, it had no direct nexus to sales promotion. It was observed that such public relation activities were subsequently brought under tax liability from 1-5-2006. [*Commissioner v. IPAN* - Final Order No.50306/2018, dated 24-1-2018, CESTAT Delhi]

Excise – Software supplied separately when distinct from firmware: CESTAT Chennai has held that software supplied separately for loading in the client's computer linked to the access control device for retrieval and monitoring of data cannot be considered as part and parcel of the said device. The assesse was engaged in manufacture of Electronic Circuit and Safety Equipment, and the dispute pertained to classification of separately supplied software which according to the department must be categorised along with said equipment. [*Siemens Ltd*. v. *Commissioner* - Final Order No. 40233/2018, dated 29-1-2018, CESTAT Chennai]

BAS – 'Sales promotion' does not cover non-compete agreement: CESTAT, Chandigarh has held that non-compete and non-solicitation agreement was not covered under sales promotion to be liable to tax under Business Auxiliary Services. Taking note of definitions of

'marketing' and 'promotion' in various dictionaries, and the Gujarat High Court decision in *Cadila Healthcare*, the Tribunal observed that assessee was not involved in targeting large population of consumers, but was paid for not to target consumers. It was also held that such activity was not liable before 1-7-2012. [*Ashwini Kumar Bajaj* v. *Commissioner* – Final Order No. 60015-60017/2018, dated 1-1-2018, CESTAT Chandigarh]

Commercial Coaching or Training services – Scope of vocational training: New Delhi Bench of the CESTAT has allowed exemption under Notification No. 24/2004-S.T. to an institute conducting courses in hotel management in collaboration with a foreign university. Rejecting the contention that degree in hotel management was not a vocational course, it was held that amendment made in 2010 was not retrospective. Plea that such course should result in self-employment, was also rejected, holding that if trainee can seek employment directly after such training, institute would fall under "vocational training institute". [*Rosalinds Mediretta Institution Foundation* v. *Commissioner* - Final Order No. 50239-50244/2018, dated 18-1-2018, CESTAT Delhi]

Cenvat credit on outward transportation, from place of removal, prior to 1-4-2008: Supreme Court of India has rejected the contention of the Revenue department that outward transportation provided beyond the place of removal was not eligible for Cenvat credit as input service. The period involved in this dispute was prior to 1-4-2008. Reliance in this regard was placed on CBEC Circular dated 23-8-2008 mentioning three conditions. It was held that it was not department's case that the conditions laid down in the Circular were not satisfied, and that accepting department's contention would amount to nullifying effect of the word 'from' in the then relevant definition of input service. [*Commissioner* v. *Andhra Sugars Ltd.* – Civil Appeal No. 11711, 11872, 11873 and 11910/2016, decided on 5-2-2018, Supreme Court]

VAT

Ratio decidendi

VAT – Mobile phone charger when not to be charged separately from mobiles: Distinguishing the Supreme Court judgement in case of *Nokia India Pvt. Ltd.*, Allahabad High Court has held that mobile charger when sold as part of a composite package bearing a single MRP, along with a mobile phone, was not liable to be taxed separately. Holding that the Apex Court judgement was not a precedent on question of a composite contract, the High Court considered the 'dominant intention', and held that there was no separate or distinct intention to sell the charger. Lower authorities had treated charger as accessory and not integral part of mobile phone. [*Samsung (India) Electronics Pvt Ltd.* v. *Commissioner* - 2018-VIL-41-ALH]

Valuation – Admissibility of deduction of discounts not shown in invoice: Supreme Court of India has rejected the contention of the Revenue department that discount was permissible as deduction when computing the taxable turnover only if such discount was shown in the tax invoice. Taking note of the provisions of Rule 3(2)(c) of the Karnataka Value Added Tax Rules 2005, the Court was of the view that the

words "in respect of the sales relating to such discount" cannot be construed to mean that the discount would be inadmissible unless the tax invoice pertaining to the goods originally issued shows the discount. It was held that this was a matter of ascertainment, and that the assessee must establish from its accounts that the discount related specifically to the sales with reference to which it was allowed. [*Maya Appliances (P) Ltd.* v. *Addl. Commissioner* - 2018-VIL-05-SC]

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.R)
phone . +91-0532 - 2421037, 2420359
Email:lsallahabad@lakshmisri.com