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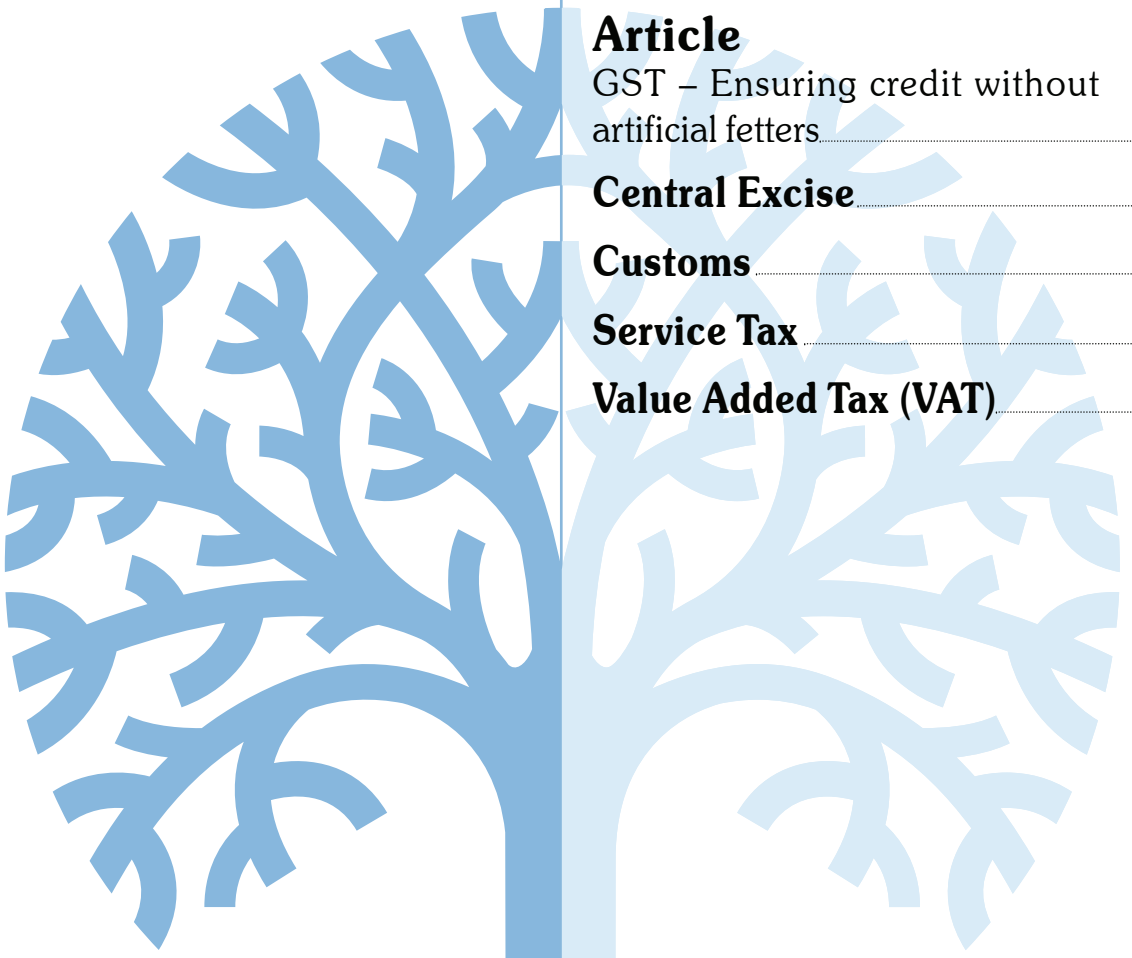

July
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Article

GST – Ensuring credit without artificial fetters

By **Dr. G. Gokul Kishore**

At the time when this article is being written, the air is thick with optimism and hope that Constitutional Amendment Bill on Goods & Services Tax (GST) will be passed by the Rajya Sabha in this monsoon session itself. It appears that the government is inclined to accept certain amendments and therefore, if it is passed by in the Upper House, it will have to be passed by Lok Sabha again. Once the Bill clears the legislative sanction of the Parliament, approval by majority of State Legislatures is seen as very certain. All these developments may well bring GST from 1st April, 2017. The biggest differentiator of GST vis-à-vis other taxation systems is availability of credit of GST paid on every taxable supply so as to be set off against output supply liability without too many fetters. At present, the model law on GST contains certain indicative provisions relating to credit or Input Tax Credit (ITC) but for the final version and finer details, one has to wait for the government to bring the next version of the draft GST law and also draft ITC Rules. This article attempts to take a broad look at the emerging scenario on ITC.

Capital goods – Why the definition?

The model law on GST contains definitions of capital goods, input and input service. Capital goods are defined almost in an identical manner as they are contained in the present day Cenvat Credit Rules including the references to particular chapter headings of Central Excise Tariff. For tobacco and specified petroleum products which will be out of GST, the existing Central Excise Tariff may be relevant. But for most of the other taxable goods, it is not clear as to the role and relevance of tariff headings in the GST law. Though the Business Process Report on Returns recommend mentioning of HS Code at 2 / 6/ 8 digit level in certain cases in the invoices, the correlation of such codes / headings with respect to eligibility to ITC is not clear.

Even more incomprehensible is retention of such restrictive definition because GST law is required to provide credit of all purchases irrespective of any distinction as long as they are put to business purpose by the taxable person and who uses such credit to offset his GST liability on taxable supplies provided by him. Still more perplexing factor would be the idea of having separate definitions for capital goods and inputs since GST will talk about creditable acquisitions (as Australian GST uses) and the artificial line drawn and maintained vigorously so far by the Revenue Administration between machinery and raw materials will become obsolete both conceptually as well as statutorily. Claim of depreciation under Income Tax law on capital goods may be a reason for the proposed provisions maintaining such distinction. But definition clauses are the thresholds to be crossed for availment of credit and the

proposed definitions do not suggest the doors will be wide open. The model law on GST points to lurking danger of continuation of the Modvat mindset – credit is a largesse to be bestowed on the tax payers and deniable when the administration chooses to do so. This needs to change as otherwise taxpayers may have to battle disputes over admissibility of credit on a routine factory item like welding electrode.

Inputs – Will discretion be exercised rationally?

The term 'input' is sought to be defined as *'means any goods other than capital goods, subject to exceptions as may be provided under this Act or the rules made thereunder, used or intended to be used by a supplier for making an outward supply in the course or furtherance of business.'* This appears to be reasonable on the face of it but the rider *'subject to exceptions as may be provided'* may provide the handle to the administration to restrict credit on purchases without any rationale or reason because such exceptions can be carved by way of rules also. But one need not anticipate a very constricted definition given the wider and exhaustive meaning attributed through the jurisprudence evolved so far in so far as credit on inputs is concerned and the same will be a legacy which cannot be departed from to a great extent. The inevitable as far as inputs are concerned is that the ITC system will get skewed to certain extent owing to specified petroleum products being kept out and the excise duty paid on such products will not be available as credit under GST law.

Input service – A step in the right direction

Input service is proposed to be defined as (using means clause) any service used or intended to be used by a supplier for making an outward supply in the course or furtherance of business. This definition is also subject to the exceptions as may be provided either under the GST Act or the rules. Compared to the present day Rule 2(l) of Cenvat Credit Rules, 2004, the proposed definition under GST dispensation appears to be lot more leaner and simpler but one has to wait for the ITC Rules before commenting on the same since consequences of statutory wordings are aftershocks which are felt years and decades after the tremor.

Unshackling credit from place of removal

Two issues or disputes gripping the entire industry on inputs and input services vis-à-vis credit namely determination of place of removal and relationship with manufacture are likely to become the ghosts destined to be extinguished eternally once the angel of GST appears. That credit needs to be artificially restricted to place of manufacture and removal and cannot extend to places where the manufacturer or service provider conducts his business including post-manufacturing activities, is a sad story only to be forgotten once GST is ushered in. The definition of input service, which had a very progressive clause 'activities relating to business' was omitted taking the credit system years back, is set to reappear in GST law. Business is being given an exhaustive definition and it includes any trade, commerce, manufacture, profession,

vocation or any other similar activity, whether or not it is for a pecuniary benefit, as the model law indicates.

ITC under VAT laws

The restrictions on ITC under present VAT laws of various State are broadly similar to the current regime of Cenvat credit as most States do not permit credit on goods used for civil construction, office equipment, motor vehicles, fuel used for electricity generation, etc. In general, no set off is allowed when tax is paid under Composition Scheme. When common ITC Rules are framed for both CGST and SGST, one can hope less frugality and more generosity with most goods likely to get covered under the fold of ITC.

ITC under GST – Good days ahead?

The heart of GST is credit mechanism and therefore, one expects the definitions and statutory provisions to entitle the tax payer, without much restrictions, to take and utilise ITC on all the supplies on which input tax has been paid when such supplies are received and used for business purpose of providing taxable output supplies. The draft ITC Rules which the government will float in public domain will be a pointer to the regime which will enable industry to concentrate on business more by easing the transitionary pains and cash flow through a broader and liberal credit system.

[The author is a Joint Partner, Lakshmikumaran & Sridharan, New Delhi]

CENTRAL EXCISE

Circulars

Manual authentication of digitally signed invoices: Manufacturers or service providers have been allowed to manually sign the print copies of digitally signed invoices. Central Board of Excise and Customs (CBEC) has, by Circular No. 1038/26/2016-CX, dated 19-7-2016, clarified that such invoices, would be considered to be in conformity with Rule 11 of the Central Excise Rules, 2002, Rules 4A, 4B and 4C of the Service Tax Rules, 1994 and would also be valid for the purposes of Cenvat credit. Manually signed invoices are required in case the buyer is unable to accept or receive digitally signed invoices.

Tamarind kernel powder – Classification of: CBEC has clarified that tamarind kernel powder is classifiable under Tariff Item 1302 32 90 of the Central Excise Tariff Act, 1985 and not under Tariff Item 1106 30 10. Circular No. 1037/25/2016-CX,dated 19-7-2016 issued for this purpose states that said classification would be applicable for both treated (modified) tamarind kernel powder and plain (unmodified) powder and both the types of tamarind kernel powder are manufactured products.

Ratio decidendi

Cenvat credit on capital goods – Balance 50% credit when not deniable: According to a recent order of Delhi Bench of CESTAT, second half ofCenvat credit relating to capital goods is not deniable when credit as such was not disputed on merit and that the first 50% of

the credit was not disputed on the ground of improper documents, etc. In the case before it the department had denied such crediton the ground that assessee had not maintained proper records and not produced relevant documents in support of the credit. [*Magnum Iron & Steel Pvt. Ltd.* v. *Commissioner* - Final Order No. 52281/2016, dated 30-6-2016, CESTAT Delhi]

Cenvat credit on light fittings as capital goods: CESTAT Delhi has rejected department's contention that light fittings when mounted on civil structures become part and parcel of such civil structures and cannot be categorized as capital goods for the purpose of Cenvat credit. Noting that the goods are used within the building premises, mills and shops to enhance illumination and to enable round the clock operation, the Tribunal found no substance in the reasoning of the Original Authority regarding light fittings becoming part of civil structure. [*Steel Authority of India* v. *Commissioner* - Final Order No. 52245/2016, dated 28-6-2016, CESTAT Delhi]

Refund – Unjust enrichment when duty booked as expenditure: Merely because excise duty is booked as expenditure in Profit & Loss account, it cannot be said the incidence of duty has been passed on. Holding so, CESTAT Mumbai was of the view that treatment of duty paid amount in the books of account is not conclusive proof that the incidence has been passed on to some other person. It was observed that even if the duty paid was booked under expenditure and the same has not been charged, the result will be in profit reduction. Further, considering the fact that price of the final product remained same, it was held that incidence of duty on intermediate product was not passed on by the assessee. [*Elantas Beck India Ltd.* v. *Commissioner* - Appeal Nos. E/352/11 & E/89849/14-Mum, decided in June 2016, CESTAT Mumbai]

Conversion of part of factory to EOU – Effect of Cenvat Rule 3(5): Rule 3(5) of Cenvat Credit Rules requires reversal of credit taken when inputs or capital goods are removed as such from the factory. In a recent case, Delhi Bench of CESTAT has upheld the contention that 'removal' contemplated in Rule 3(5) is physical removal, of inputs or capital goods on which credit is taken, from the factory of the manufacturer. Since the dispute involved conversion of part of factory to EOU, noting that the inputs and capital goods were not removal physically from the factory, it was held that Rule 3(5) will not be applicable. The Tribunal in this regard also noted that the situation was revenue neutral inasmuch as the credit of any duty payable would be available to the EOU. [*Lupin Ltd.* v. *Commissioner* - Final Order No. 52172/2016, dated 14-6-2016, CESTAT Delhi] It may be noted that similar view was also expressed by Mumbai Bench of the Tribunal in the case of *Behr India Ltd.*decided on 10-5-2016 in Appeal No. E/1407/05.

Cenvat credit - Lack of vehicle number on invoice not relevant: Observing that the show cause notice did not challenge the receipt of goods, CESTAT Mumbai has held that lack of vehicle number on the invoice was not relevant for the purpose of Cenvat credit on the strength of those invoices. The department had issued SCN seeking reversal of Cenvat Credit availed on the strength of invoices, alleging as being issued by another unit fraudulently. The Tribunal however noted that the assessee had received the invoices from the registered manufacturers after verifying the registration, and held that it cannot be alleged that the assessee had deliberately suppressed any factual position regarding the closure of the processor. [*DM Exporters* v. *Commissioner* – Order dated 21-4-2016 in Appeal No.E/1775 & 1776/11, CESTAT Mumbai]

Cenvat credit on invoices issued by non-registered input supplier, permissible: CESTAT Delhi has held that denial of Cenvat credit for mere technical lapse of not obtaining the registration certificate at the time of issuance of invoice, cannot be a defensible ground to deny Cenvat credit. Tribunal in this regard was of the view that Cenvat credit, being a beneficial piece of legislation intended to arrest cascading effect of duties/taxes, cannot be denied in view of the fact that the goods had suffered duty and used in the assessee's factory for production of final product. [*South Eastern Coalfields Ltd.* v. *Commissioner* – 2016 (337) ELT 308 (Tri. – Del.)]

Refund of Cenvat credit – Requirement of quarterly claims, not mandatory: CESTAT Mumbai has held that Notification No. 27/2012-C.E. (N.T.), for refund of Cenvat credit in case of exports, contemplates filing of refund claims quarterly, but it does not bar assessee from filing refund claim for the entire period which may be more than a quarter. The Tribunal in this regard held that in the absence of any explicit bar, refund claims, if otherwise eligible, cannot be rejected on the ground that they are not filed quarterly. [*Commissioner* v. *Fabrimax Engineering Pvt. Ltd.* – Order dated 17-6-2016 in Appeal No. E/86566/15, CESTAT Mumbai]

Remission of duty when department informed belatedly: Noting that excisable goods were destroyed in fire and that same were not removed from the factory, CESTAT Delhi has held that duty cannot be fastened on such destroyed goods, even though the assessee had reported the fire incident belatedly. While fire had occurred on 23-24 of June 2012, the assessee reported the matter to the department only on 2-11-2012. Penalty under Rule 25 was also set aside by the Tribunal, though it upheld the penalty imposed under Rule 27 observing that there was violation of statutory provisions inasmuch as incident was not informed. [*SAM Exports* v. *Commissioner* – 2016 (337) ELT 146 (Tri. – Del.)]

CUSTOMS

Ratio Decidendi

Refund – No requirement of filing Board Resolution and CA appointment letter: Relying on Madras High Court decision in the case of *BPL Ltd.* [2010 (259) ELT 526 (Mad)], CESTAT has held that the board resolution and appointment letter of chartered accountant are not required under law for granting refund of additional duty of customs. Observing that the authority should act only within the parameters of law, the Tribunal expressed surprise over novel ways of the authority to deny refund. [*Becton Dickinson India Pvt. Ltd.* v. *Commissioner* - Final Order Nos. 40719-40720/2016, dated 4-5-2016, CESTAT, Chennai]

No demurrage when goods withheld for testing at the instance of Customs: 20% of the cargo was withheld by the Customs for special testing and the petitioners were asked to pay demurrage for the goods withheld for testing. The Department contended that there was no order for detention of goods, hence demurrage was payable by the petitioner. The High Court however held that no demurrage is payable as the withholding of goods for testing at the instance of the Customs amounted to detention of goods. [*Express Clearing Agency* v. *Chennai Port Trust* - 2016 (336) ELT 217 (Mad.)]

Penalty not imposable under Customs Act for violation of provisions of other enactments: According to a recent order passed by Kolkata Bench of CESTAT, violation of provisions of the Drugs and Cosmetics Act, during movement of particular drug, cannot be made basis for taking action under the Customs Act, 1962. Further, observing absence of documentary evidence that the goods were meant for illegal export to Bangladesh, the Tribunal allowed the appeals of the assessee against imposition of penalty. [*New Modern Medico* v. *Commissioner* - Final Order No. 75325-75326/2016, dated 2-5-2016, CESTAT, Kolkata]

Redemption of goods restricted for import, permissible: Punjab & Haryana High Court has reiterated the principle that 'restricted' goods can be redeemed on payment of fine in lieu of confiscation under Section 125 of the Customs Act, as the same are not expressly 'prohibited' under the statute. The Court in this regard held that Section 110A relating to provisional release would be applicable in such cases. In the instant case cigarettes and restricted R-22 gas were imported by concealment. [*Horizon Ferro Alloys Pvt. Ltd.* v. *Union of India* - 2016-TIOL-1239-HC-P&H-CUS]

Refund – Unjust enrichment applicable in case of refund of encashed bank guarantee: Relying upon Supreme Court decision in the case of *DCW Ltd.* [2015 (324) ELT 702 (SC).], Gujarat High Court has held that provisions relating to unjust enrichment would be applicable in case of refund of encashed bank guarantee also. Decisions in the cases of *Oswal Agro Mills Ltd.* and *Somaiya Organics* were distinguished by the Court. The Court noted that encashment of bank guarantee was a step in furtherance of recovery of duty, and

thus in the hands of the department it was in the nature of duty and not security. Earlier, the High Court after granting interim relief of furnishing bank guarantee, had dismissed the writ petition of the assessee subsequently and duty became payable and the department encashed the bank guarantees. The decision of the Court was however reversed by the Apex Court, leading to claim for refund. [*Ruchi Soya Industries Ltd.* v. *Union of India* - 2016-TIOL-1216-HC-AHD-CUS]

Obligations imposed under exemption notification cannot be enforced after such notification is rescinded: Madras High Court has held that for the medical equipments imported duty free under Notification No. 64/88-Cus., the obligations under the notification can no longer be enforced for the period after the same has been rescinded. The Court in this regard relied upon Supreme Court decisions in the cases of *Titaghur Paper Mills Co. Ltd.* and *State of Rajasthan* v. *Mangilal Pindwal,* and rejected the contention of the department that the obligation was a continuous one. [*Union of India* v. *Seashore Hospitals Ltd.* - 2016-VIL-334-MAD-CU]

Duty free goods transferred after exemption notification is rescinded, will not oblige the transferee to fulfill conditions of such notification: The transferee had purchased trawlers in an auction, after which it had sent the same for ship breaking. As per the terms of Notification No. 133/87-Cus., the trawlers were exempt from payment of duty provided the same are not sent for ship breaking. The High Court, on reading of Section 159A(c) of the Customs Act, held that the liability of duty cannot be saved and demanded from the transferee as they had purchased the trawlers after rescission of the notification. The Court was of the view that in the absence of Notification No. 133/87-Cus., at the time of transfer of vessel for breaking up, liability thereunder could not have been acquired or incurred, to attract clause (c) of Section 159A. [*Sadiq Brothers Marine Works* v. *Union of India* - 2016-TIOL-1279-HC-KERALA-CUS]

Anchor rings & load spreading plates allowed CVD exemption as parts of 'Wind Operated Electricity Generator': The Larger Bench of Tribunal has held that since anchor rings and load spreading plates are specifically designed for purpose of attaching tower to the ground, the same are an extension of the tower and, thus, part of the tower. The Tribunal was of the view that as tower was clarified to be a part of "wind operated electricity generator" by CBEC Circular dated 20-10-2015, parts of tower are also entitled to the exemption. [*Rakhoh Enterprises* v. *Commissioner* - M/88182-88184/16/LB dated 21-6-2016]

LED panels without speakers, mother board, etc., cannot be considered as television: CESTAT, New Delhi has held that LED panels encased in television casing but without speakers, remote control, power cable, mother board and sockets cannot give essential character of TV by applying Rule 2(a) of General Rules of Interpretation. The Tribunal was of the view that therefore, the goods in dispute would remain classifiable as LED panels which do not require BIS registration. [*Xing International* v. *Commissioner* - Final Order No. 51761/2016, dated 4-5-2016, CESTAT, Delhi]

SERVICE TAX

Ratio Decidendi

Refund – Limitation when amount deposited on audit objection: The assessee had deposited a sum as service tax with department on audit objection raised. Subsequently, show cause notice was issued demanding payment of service tax along with interest which included the amount deposited at audit objection stage. Demand was later dropped and assessee sought refund of amount deposited by him. Issue for consideration was whether the relevant date for Section 11B of Central Excise Act, 1944 shall be taken as date of deposit of tax or date of adjudication. Relying on various decisions, the CESTAT held that any amount deposited with the department at audit objection stage shall be treated as pre-deposit and refund arising in respect of deposit made during the proceedings shall be refundable as outcome of the adjudication of such demand. Therefore the relevant date in this case for the purpose of refund under Section 11B is the date of the adjudication order and not the date of deposit of service tax. [*USV Ltd* v. *CST*, 2016 (5) TMI 133 - CESTAT Mumbai]

Interest on refund cannot be claimed upto date of actual payment: The assessee contended that interest was payable on refund due to it from the date of sanctioning of refund to the date on which it actually received the same. It had deposited service tax with the department against which a refund claim was filed on 24-1-2005 and was sanctioned on 3-6-2008. However, it was transferred to the Consumer Welfare Fund on the ground of unjust enrichment. The CESTAT held that unjust enrichment was not applicable and refund was held as grantable to the assessee. However, interest was calculated only for the period up to 3-6-2008. The CESTAT upheld calculation of interest as applicable till date of transfer of refund amount to Welfare Fund and held that interest was not payable up to the date of actual refund. [*Purnima Advertising Agency Pvt Ltd* v. *CST*, Order No. A/11615/2015, CESTAT, Allahabad]

Short payment of tax under VCES cannot be corrected when there is no legal error on part of the department: The petitioner's application under the VCES, 2013 was rejected by the authorities on the ground that the petitioner paid service tax at the rate of 10.3% instead of the correct rate of 12.36%. The petitioner applied to the High Court against this rejection stating that the shortfall was less than 0.1%. The High Court rejected the plea of the petitioner stating that there was no legal error on the part of the authorities. Further, it was the obligation of the petitioner to have stated the correct rate of tax and there was no provision in the VCES, which permitted correction of errors of this nature. Hence it was held that the rejection of the application could not be set aside by the Court. [*Techno Concept India Pvt Ltd* v. *D CST*, 2016-TIOL-1382-HC-DEL-ST]

Provision for mandatory pre-deposit applies to pending proceedings also: Opining that imposing a condition precedent to avail the right of appeal does not amount to taking away

the right, the High Court declined relief to the petitioner who sought a declaration that the provision of mandatory pre-deposit would apply only to proceedings initiated on or after 6-8-2014. The petitioner had not challenged the *vires* of the amended Section 35F but argued that where show cause proceedings had been initiated prior to 6-8-2014 (when the amended section came into force) but order was issued after the said date, the assessee cannot be asked to comply with the requirement for pre-deposit in order to avail right of appeal. But, differing from the views expressed by the High Courts of Kerala and Andhra Pradesh, the Madras High Court declined to give relief to the petitioner. [*Dream Castle* v. *UOI*, 2016 (43) S.T.R. 25 (Mad.)]

Post compliance with pre-deposit, appellant is entitled to decision on merits: The Madhya Pradesh High Court has held that once pre-deposit has been made, the Tribunal has to decide the issue on merits. In the instant case, the appellant complied with the order to pre-deposit a certain sum belatedly due to financial constraints and sought restoration of his application. The Tribunal dismissed the appeal on the first occasion for not making the required deposit and on the second occasion for non-prosecution. The appellant explained that his counsel had failed to appear and had not advised the appellant correctly. The High Court held that once pre-deposit had been made, though belatedly, the Tribunal cannot dismiss the appeal on technical grounds but should decide the case on merits. [*Avtar & Company* v. *UOI*, 2016 (43) S.T.R. 61 (M.P.)]

Date of presentation of cheque, not realisation would be date of deposit of service tax : Holding that the date of presentation of the cheque (being deposit of service tax), would be the date of payment of service tax, subject to realisation, the High Court of Delhi set aside the order of the department rejecting the declaration under VCES. The applicant had deposited the first instalment of service tax due by 31-12-2013, but the amount was realised on January 8, 2014 due to certain processing delay by the bank. Thus, once the amount had been realised, the date of payment of service tax would be within the date specified in the scheme and the department could not reject the application stating that the service tax due had not been paid in time. [*Disha Securities and Manpower P Ltd* v. *Asst. CST*, 2016 (43) S.T.R. 82 (Del.)]

Refund application cannot be returned without processing: The assessee paid service tax on certain services which it claimed were not taxable and also claimed refund of tax paid. The department returned the refund application as being premature. The assessee requested that till the proceedings against it were complete, the refund application may be kept in abeyance. However, the department declined stating that it had no statutory power to do so. Deciding on the question whether the department could return a refund application without sanction or rejection, the Tribunal held that once tax was paid, the department should process the refund claim as per applicable provisions. It could not accept a refund application and pass an adjudication order

returning the application. [*Persistent Systems Ltd* v. *CCE & ST,* 2016 (43) S.T.R. 117 (Tri.-Mumbai)]

VCES - *Suo motu* correction of erroneous calculation is not false declaration: The department denied abatement of 40% of taxable value in case of the assessee stating the he had made a false declaration. The assessee discovered some short payment of dues under VCES and paid the amount along with applicable interest. The Tribunal thus held that no intention to make a false declaration emerged and set aside the order which proposed to treat the declaration as false and also demanded tax, interest and penalty. [*Renuka Mangal Seva Kendra* v. *Commissioner,* 2016 (43) S.T.R. 135 (Tri.-Mumbai)]

Transaction involving exchange can also be liable to service tax: The petitioner had entered into an agreement for development of land owned by him and his siblings and had agreed to bear the burden of taxes payable on construction. However, the petitioner challenged the *vires* of CBEC Circular No. 151/2/2012 dated 10-2-2012 contending that the transaction was not one of rendering of service and there was mere exchange of property. The High Court denied relief holding that as a service recipient who had agreed to bear the burden, the petitioner could not now challenge the vires of the levy of tax as he did not have the *locus standi.* The High Court also did not accept the argument that no element of service was involved in the transaction. The petitioner had availed the service of construction and transferred the right to sell some part of the constructed portion along with undivided share of land. The fact that a part of the transaction was not in terms of cash but in kind in as much as the developer was not paid in cash for the super-built up area did not make the transaction one of exchange or sale of immovable property. [*N. Bala Baskar* v. *UOI,* 2016 (43) S.T.R. 161 (Mad.)]

BAS – Trade facilitation work after exports, not covered: At issue was the taxability of the services rendered by the appellant-assessee, namely, filing of drawback claims, application for DEPB, EPCG licenses and so on, under Business Auxiliary Services (BAS). The Tribunal accepted the argument of the appellant that the activities undertaken by it did not fall within the ambit of BAS since they did not relate directly to promotion or marketing of goods. These services could not be treated as inputs since the role of appellant came after the goods were sold and exported. [*JAK Traders Pvt Ltd* v. *CCE,* 2016 (43) S.T.R. 259 (Tri.-All.)]

Membership of sports club not input service for service of chartered accountant: The department denied credit of tax paid on lifetime membership fees of Mumbai Cricket Association to the assessee providing Chartered Accountant Services citing lack of nexus between the input service and output service. The Tribunal held in favour of the department, further observing on facts that there was no break up of the charges and the claim of the assessee that the fee was for availing the facility of the club since he did not have an

office in the city. [*Pradeep Singh Associates* v. *Commissioner,* 2016 (43) S.T.R. 265 (Tri.-Ahmd.)]

Tax paid on services provided by sister concern – Credit cannot be denied citing lack of service element: The assessee had paid service tax on invoices raised by sister concerns for providing certain services like IT support, marketing, logistics etc. The department however, argued that there was no relationship of service provider and service recipient and the invoices had been raised only for sharing of common expenses. Finding that the services rendered by the sister concerns were integrally connected with the manufacturing activities and stating that the department could not on the one hand accept payment of service tax and yet deny credit of the same, the Tribunal granted relief to the assessee. [*Amara Raja Power Systems Ltd* v. *Commissioner,* 2016 (43) S.T.R. 313 (Tri.-Hyd)]

VALUE ADDED TAX (VAT)

Ordinance and Notification

Jharkhand VAT Act – Provisions made for Advance Rulings: By Ordinance dated 1st June, 2016 (with effect from 1st April, 2016), Jharkhand Value Added Tax Act, 2005 has been amended. A new Section 80A dealing with advance rulings has been inserted in the JVAT Act. It allows any registered dealer to apply to the Tribunal for obtaining an advance ruling on interpretation of any provision of Act, Rules or Notifications issued in respect of a transaction proposed to be undertaken by him. A time period of four months from the date of receipt of the application has been provided for disposing an application. However, this period of limitation will not apply in cases where on application from Commissioner, the Tribunal exercises its power to review, amend or revoke the ruling, after hearing the applicant.

The advance ruling will have prospective effect and shall be binding on the applicant and the authorities under the JVAT Act, unless there is a change in law or facts. However, it may be declared void *ab initio,* after giving an opportunity of hearing to the applicant, if the Tribunal finds that the ruling pronounced by it was obtained by misrepresentation of facts.

Rajasthan Entry Tax – Amendments relating to goods sold through electronic media: In Rajasthan, Notification No. F.12(23)FD/Tax/2015-211, dated 9th March, 2015 specifies the goods and the rate of entry tax applicable on such goods. The Government by Notification No. F.12(61)FD/Tax/2014-Pt-I-25, dated 16-6-2016 has inserted Entry 48 in the aforesaid notification to impose entry tax on goods not covered by Entries 1 to 47, but included in Schedules III, IV, V and VI of the Rajasthan Value Added Tax Act, 2003, exigible to entry tax at 5.5%. It may be noted that the goods covered under said Entry 48 have also been exempted from entry tax by Notification No. F.12(61)FD/Tax/2014-Pt-I-26, of the same date. However, in respect of the goods whose sale or purchase is affected thorough electronic media, this exemption would be available only if VAT has been paid in respect of such goods in Rajasthan.

Hence, the liability for entry tax on goods under Entry 48 will arise if the same are sold or purchased through electronic media and are not for further sale in Rajasthan on payment of VAT. However, in respect of the goods under Entries 1 to 47, entry tax will continue to be levied irrespective of the medium through which such goods are sold or purchased.

Ratio Decidendi

Uniform price does not prove charging of tax from buyers: Supreme Court has held that uniform pricing cannot be a ground to hold that the assessee was charging sales tax on the sale price of goods manufactured in the exempt unit. The assessee was engaged in manufacture of blended packet tea in its factory at Dharwad in Karnataka, wherein it was granted sales tax exemption for five years from the date of commencement of production in accordance with exemption eligibility certificate. Exemption was later denied contending that the sale of tea packets from the unit which had the benefit of exemption and the units manufacturing tea which did not have the benefit of exemption, were similarly priced i.e. the assessee ought to have determined lesser price for the tea manufactured at the exempted unit in comparison to other units.

The Supreme Court in this regard held that adoption of uniform market price throughout India, in spite of production taking place in both exempted and non-exempted units, was a matter of business policy and could not be taken exception to. It was held that the assessee was entitled to fix the maximum retail price of its products. The Court accepted the contention that a uniform MRP ensured that the goods from one State did not flow to other States, thereby distorting sales. Department's appeal was dismissed by the Apex Court holding that the sale consideration received should not be bifurcated on the basis of any assumption that the sale price received must have included the tax. [*Deputy Commissioner of Commercial Taxes* v. *Hindustan Lever Limited* - 2016-VIL-35-SC]

Valuation - Sale when gets completed at buyer's place: Kerala High Court has held that in case of sale of Ready Mix Concrete, transportation charges and mobilisation charges realised by the assessee were part of the taxable turnover. It was held that though the transaction of sale was bifurcated into different agreements, one for sale and another for transportation, sale was completed only when RMC was delivered at the site of the customer in specially designed vehicles of the assessee. The Court in this regard noted that product in question cannot be transported by a customer, except by entering into the second contract with the assessee and availing of the specially designed vehicles maintained by the assessee and the same showed that the transaction of sale is completed only when the product is delivered at the site of the customer.

The Court accepted Tribunal's view that one of the essential elements of sale was the transfer of possession and such transfer of property in goods from seller to buyer was inevitable for the completion of sale. The Tribunal had held that any expenses incurred till the delivery

of the goods to the customer was pre-sale expenses. [*Neptune Readymix Concrete Pvt. Ltd.* v. *State of Kerala* - 2016-VIL-360-KER]

Tamil Nadu VAT – Purchase tax on goods sold to SEZ units: Madras High Court has rejected the contention of the department that exemption from purchase tax, in respect of goods sold to SEZ units, is not available after the repeal of the Tamil Nadu General Sales Tax Act. The department was of the view that unless the legislature amends Section 12(1)(a) of the TNSEZ Act, which provides that there shall be no levy of tax under the Tamil Nadu General Sales Tax Act, 1958, with reference to TNVAT Act, exemption would not be available. The Court in this regard noted Sections 87 and 88(1) of the TNVAT Act which provided that any reference to TNGST Act in any Act, Rule, Notification proceedings, order or other instrument made or issued under TNGST Act shall be construed as reference to TNVAT Act and that notification granting exemption, issued by the Government of Tamil Nadu, continued to be in force. The assessee had also contended that the levy of purchase tax on the turnover of goods sold to the dealer located in a SEZ was directly in conflict with Section 12(1) of the Tamil Nadu Special Economic Zones (Special Provisions) Act, 2005. [*Nokia Solutions and Networks India Private Limited* v. *Commissioner of Commercial Taxes* - 2016-VIL-336-MAD]

Credit of discounted sale price – Availability in subsequent year: In A.Y. 2007-08, the assessee sold cement to various customers and in the last quarter at the end of the year, finalised the discount to be given on sales. Credit notes were given in the next financial year to such customers discounting the VAT already collected from them on the basis of the original price. The assessee claimed credit of such discounted sale price and the consequential reduced tax collected from the consumers in A.Y. 2007-08. The benefit was denied stating that the same could be granted to the dealer only during the year in which the sale transactions took place and for which credit notes were issued in the same year and the said claim could not be made during the subsequent year.

The Gujarat High Court however has held that in terms of Sections 60 and 61 of the Gujarat Value Added Tax Act, 2003, the assessee was entitled to issue credit notes once the amount of tax shown as charged in the tax invoice exceeded the actual tax charged in respect of the sale concerned. The Court further held that the same was not prohibited by Section 8 of the GVAT Act as it permitted adjustment of tax which was found to be in excess of what was payable during the period when it had become apparent that the tax paid was incorrect. [*State of Gujarat* v. *Ambuja Cement Ltd.* - 2016-VIL-349-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

INTERNATIONAL OFFICES :

LONDON
Lakshmikumaran & Sridharan Attorneys (U.K.) LLP
Octagon Point,
St. Paul's,
London EC2V 6AA
Phone : +44 20 3823 2165
E-mail : lslondon@lakshmisri.com

GENEVA
Lakshmikumaran & Sridharan SARL
35-37, Giuseppe Motta
1202 Geneva
Phone : +41-22-919-04-30
Fax: +41-22-919-04-31
E-mail : lsgeneva@lakshmisri.com