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Contents

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Article

Intra-State supplies v. Inter-State supplies under GST law

By **Nipun Arora**

While levying tax on various supplies of goods or services, it becomes pertinent to decide whether supplies shall be treated as intra-State supplies or inter-State supplies. Also, this is necessary to determine because it will be a decisive factor for charging correct taxes, i.e. CGST and SGST/UTGST or IGST.

The relevant provisions for determining inter-State and intra-State supplies are governed by Section 7 and Section 8 of IGST Act. Section 8 of IGST Act pertains to intra-State supplies. Sub-section (1) of Section 8 of IGST Act deals with intra-State supply of goods. The said section provides that "*subject to provisions of section 10, supply of goods where the location of the supplier and place of supply of goods are in the same State or same Union territory shall be treated as intra-State supply*", the proviso to above section excludes three supplies from being treated as intra-State supply even if the location of supplier and place of supply are in same State or Union territory, these are:

(i) supply to or by an SEZ developer or unit;

(ii) goods imported into India and;

(iii) supplies made to tourist referred in Section 15

Sub-section (2) to Section 8 deals with intra-State supply of services and it provides that "*Subject to the provisions of Section 12, supply of services where the location of the supplier and the place of supply of services are in the same State or same Union territory shall be treated as intra-state supply".* The proviso to Section 8(2) provides that the intra-State supply of services shall not include supply of services to or by a Special Economic Zone developer or Special Economic Zone Unit.

A plain reading of the above provisions makes it clear that whereas Section 8(1) is subject to provisions of Section 10, Section 8(2) is subject to provisions of Section 12. In other words, these provisions shall not be applicable in case of export/import of goods which are covered by the provisions of Section 11 of IGST Act, as well as cases where the place of supply of services is determined as per the provisions of Section 13, i.e., in case where either the supplier or the recipient of services is located outside India.

As per Section 13(8) of IGST Act where either the location of supplier and or the location of recipient is outside India, in case of services mentioned below the place of supply of services shall be the location of supplier:

(a) Services supplied by the banking company, or a financial institution, or a non-banking financial company, to account holders;
(b) Intermediary services;
(c) Services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month.

In all the above-mentioned supplies, in a case where the location of recipient is outside India and the supplier of services is in India, the location of supplier and place of supply will fall within same State by the reason of location of supplier being the place of supply.

Since the location of supplier and place of supply are in the same State, the same should be treated as intra-State supply of services. But, the provisions of Section 8(2) dealing with definition of intra-State supplies begins with *"Subject to provisions of Section 12"* i.e. the provisions of Section 8(2) shall be governed by or will be applicable only where the place of supply is determined as per provisions of Section 12 of IGST Act. As per the wordings of Section 8 of IGST Act, it can be considered that where the place of supply of services is determined as per provisions of Section 13, Section 8(2) should not be applied.

To determine the appropriate tax leviable on the supplies mentioned above, let us analyse the provisions of Section 7 of IGST Act which deals with Inter-State supplies. The said section does not specifically provide the kind of supplies satisfying the conditions as mentioned above shall be treated as inter-State supplies. However, Section 7(5)(c) provides that *"Supply of goods or services or both in the taxable territory, not being an intra-state supply and not covered elsewhere in this section, shall be treated to be supply of goods or services or both in the course of inter-state trade or commerce".* Through these provisions one may conclude that the supplies of above nature made to a person outside India shall be treated as inter-State supplies. But, the same appears to be conflicting, for the reason that supplies are made to a recipient outside India and not in a taxable territory and therefore different views may be possible giving rise to litigation in the near future. Use of the words 'Supply….in the taxable territory' seems to point to major elements of supply being present in the taxable territory and when the location of recipient is not in India, it is possible to argue that sub-section (5) of Section 7 will not come into play at all.

Incorrect determination of nature of supply as inter-State or intra-State will lead to payment of incorrect type of tax as well i.e. instead of CGST and SGST, the tax payer may pay IGST and vice versa. Section 77(2) of CGST Act, provides that "*A registered person who has paid integrated tax on a transaction considered by him to be an inter-state supply, but which is subsequently held to be an intra-state supply, shall not be required to pay any interest on the amount of central tax and state tax, or as the case may be, the central tax and the union territory tax payable."* As per this provision, if the type of tax is wrong, an assessee shall be liable to make the payment of appropriate tax but interest shall not be payable on the same. Section 55 contains provisions for refunding the tax paid wrongly, but the same will lead to blockage of working capital from the time of payment of tax till the time refund is processed by the department. These issues need to be appropriately represented before the authorities for clarification or amendment, if necessary, so as to avoid penal consequences at later stage.

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Goods and Services Tax (GST)

Notifications, Circulars and Press Releases

Refund to exporters clarified: Refund of eligible credit on account of SGST will be available even if the supplier of goods or services or both has availed of drawback in respect of CGST. Further, in cases involving delay in furnishing of LUT, Circular No. 37/11/2018-GST, dated 15-3-2018 clarifies that substantive benefits of zero rating may not be denied where it has been established that exports as per provisions have been made. It has also been clarified that as long as goods have actually been exported even after a period of three months (as prescribed in Rule 96A (1) of the CGST Rules), payment of IGST first and claiming refund at a subsequent date should not be insisted upon.

According to the Circular, deficiency memo with respect to a refund application will be issued only once unless the deficiencies pointed out in such original / first deficiency memo remain unrectified or any other substantive deficiency is noticed subsequently. It is also clarified that asking for self–declaration with every refund claim where the exports have been made under LUT is not warranted. The Circular further clarifies issues relating to discrepancy between values mentioned in GST invoice and shipping bill/bill of export, refund of taxes paid under existing laws, filing frequency of refund applications, non-insistence on proof of realization of export proceeds for processing of refund claims related to export of goods, supplies to merchant exporters, and also lists documents required for processing the various categories of refund claims in respect of exports.

GST exemptions for exporters to be extended till 30-9-2018: GST Council in its 26th meeting held on 10th March, 2018 has decided to extend present exemptions on imports and domestic procurements by holders of various types of Advance authorisation, EPCG authorisation, and by EOUs. The exemptions will be available for 6 more months, i.e. till 30th of September, 2018. Consequently, according to the Press Release issued for the purpose, implementation of e-wallet scheme has also been deferred till 1st of October 2018. Under the scheme, e-wallets will be credited with notional or virtual currency by DGFT which can be used by exporters to pay GST/IGST on goods procured/imported.

Existing system of Returns filing to be extended for three more months: GST Council has on 10-3-2018 in its 26th meeting decided to extend the existing system of filing returns by another three months, i.e., till June 2018. At present GSTR-3B is being filed by 20th of next month. GSTR-1 at present has to be filed by 10th of the second succeeding month (i.e., March 2018 return is to be filed by 10-5-2018) if the aggregate turnover is more than Rs.1.5 crore. In case aggregate turnover is less than Rs. 1.5 crore, GSTR-1 for the quarter of January-March 2018 has to be filed by 30th of April, 2018, at present.

E-way bills set to be implemented from 1-4-2018 for inter-State transportation: Provisions relating to e-way bill are set to be amended. Ministry of Finance has issued Notification No. 12/2018-Central Tax, dated 7-3-2018 to amend provisions relating to e-way bill, in the Central Goods and Services Tax Rules, 2017. It may be noted that according to Press Release dated 10-3-2018, issued after the 26th meeting of the GST

Council, the provisions for e-way will be implemented from 1st of April in respect of inter-State transportation of goods.

According to the new provisions, e-way bills in respect of over-dimensional cargo (exceeding dimensional limits prescribed in Rule 93 of Central Motor Vehicle Rules, 1989) will be valid for period of one day for a distance of up to 20 km within the country. Further, one day shall be counted as the period expiring at midnight of the day immediately following the date of generation of e-way bill. Transporter, on an authorization received from the registered person, will also be able to furnish information in Part A of Form GST EWB-01, electronically, on the common portal. Similarly, in case of inter-State supplies from principal to job worker, e-way bill can also be generated by the job worker, if registered, irrespective of the value of consignment.

GST TRAN-2 to be submitted by 31st of March 2018: GST TRAN-2 relating to outward supplies made from the stock as declared on 1st of July, 2017 when GST regime came into effect, can now be filed till 31st of March, 2018. The details of such supplies made have to be filed for each of the six tax periods during which the scheme is in operation. Rule 117(4)(b)(iii) of the Central Goods and Services Tax Rules, 2017, has been amended in this regard by Notification No. 12/2018-Central Tax, dated 7-3-2018.

Joint Ventures – GST liability on service provided by members to JV and vice versa and between members: CBEC has clarified that Circular No. 179/5/2014-ST, dated 24-9-2014, in the context of Service Tax, is also applicable for the purpose of levy of GST. Circular No. 35/9/2018-GST, dated 5-3-2018 issued for this purpose however holds that the question whether cash calls, raised by an operating member of the joint venture on other members in proportion to their participating interests in the joint venture, are taxable or not, will entirely depend on the facts and circumstances of each case. Providing illustrations, the Circular states that if operating member uses its own machinery, he is providing 'service' within the scope of supply of CGST Act, 2017.

Disputed/blocked credit - Undertaking required if credit is more than Rs. 10 lakh: CBEC has issued directions relating non-utilization of disputed credit, i.e. credit held inadmissible by any existing Order, and regarding non-transition of blocked credit, which is credit not available in GST regime. According to Circular No. 33/7/2018-GST, dated 23-2-2018, if disputed credit or the blocked credit is higher than Rs. 10 lakh, taxpayers will be required to submit an undertaking to jurisdictional officer that such credit will not be utilized or has not been availed as transitional credit. Such credit if utilised will be recovered along with interest and penalty.

Priority Sector Lending Certificates are taxable at 18% GST: CBEC has clarified that Priority Sector Lending Certificates are taxable as goods at standard rate of 18% under the residuary Sl. No. 453 of Schedule III of Notification No. 1/2017-Central Tax (Rate). Circular No. 34/8/2018-GST, dated 1-3-2018 in this regard notes that PSLC are not securities, but are akin to freely tradeable duty scrips, Renewable Energy Certificates, REP license or replenishment license, which attracted VAT earlier.

Refund to entities having UIN clarified: CBEC has clarified certain issues relating to refund to entities having Unique Identity Number (UIN). Specialised agency of UNO or any Multilateral Financial Institution and Organisation notified under UN (Privileges and Immunities) Act, Consulate or Embassy of foreign countries, are eligible for refund under such dispensation. Circular No. 36/10/2018-GST, dated 13-3-2018 while prescribing procedure for manual filing of

refund claims by such entities, also lists nodal officers in each State in order to facilitate processing of refunds. It is also stated that facility of single UIN is optional.

Bus body building and tyre re-treading are composite supplies: Holding that activity of bus body building and re-treading of tyres is a composite supply, CBEC has clarified that classification of activity as supply of goods or services would depend on which supply is the principal supply. Circular No. 34/8/2018-GST, dated 1-3-2018 also states that pre-dominant element in re-treading is supply of service, with rubber used for it being an ancillary supply. The Circular also notes that value may be one of the guiding, but not the sole factor in this determination, which depends on element which imparts essential nature to such supply.

Hostel accommodation provided by Trust is not charitable activity: Hostel accommodation services do not fall within the ambit of charitable activities as defined in Para 2(r) of Notification No. 12/2017-Central Tax (Rate). CBEC Circular No. 32/6/2018-GST, dated 12-2-2018 stating so, however also clarifies that accommodation service in hostels including that by Trusts, having declared tariff of below Rs. 1000/day is exempt. The issue which was sought to be clarified was whether hostel accommodation provided by Trusts to students is covered within definition of 'charitable activities' and is thus exempt.

No GST on fee, penalty paid in Consumer Disputes Redressal Commissions: CBEC has clarified that any fee, penalty, or amount paid by litigants in Consumer Disputes Redressal Commissions is not leviable to GST. Circular No. 32/6/2018-GST, dated 12-2-2018 issued in this regard observes that though such Commissions may not be Tribunals literally - not having been set up directly under Article 323B, they are clothed with many characteristics of a Tribunal. The Circular in this regard notes that services by any Court or Tribunal established under any law for the time being in force is neither a supply of goods nor services.

Healthcare service – GST liability clarified: Services provided by senior doctors/ consultants/ technicians hired by hospitals are covered under exempted healthcare services. CBEC has also clarified that since hospitals also provide healthcare services, entire amount charged from patients, including the retention money and fee/payments made to doctors etc., is towards such exempt healthcare services. Circular No. 32/6/2018-GST, dated 12-2-2018 issued for this purpose, however states that food supplied to patients (other than in-patients), or their attendants or visitors will be taxable.

Legal Metrology – Provision for placing stickers on old stock extended: Manufacturers, importers and packers can now clear their old stock, after putting stickers, tags, etc., by 30th of April, 2018. The stickers would be required to comply with the mandatory declarations under Legal Metrology (Packaged Commodities) Rules as amended by a 2017 notification. Advisory dated 1-3-2018 issued by the Department of Consumer Affairs to Controllers of Legal Metrology also states that during initial period there should be no prosecution for shortcomings in labelling, in respect of font size, if it is not affecting consumers.

Ratio decidendi

EU VAT – Public task by non-profit company owned by Municipality, liable: CJEU has upheld VAT liability in a case where a non-profit making limited company owned by Municipality, under contract with the Municipality, did activities like management of housing and local public roads, quarantine, control of mosquitoes, maintenance of public spaces, and upkeep of local market. The company was held as not a 'body governed by public law' since in performing

delegated public tasks, it did not enjoy any rights and powers of public authority as enjoyed by Municipality. Activities were also held as supply of services for consideration. [*Nagyszénás Településszolgáltatási Nonprofit Kft.* v. *Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága* – Judgement dated 22-2-2018 in Case C-182/17, Court of Justice of European Union]

EU VAT - Intra-EU transport in two successive supplies applies to second: CJEU has ruled that in case of two successive supplies of same goods giving rise to only one intra-EU transport, Article 32 of Council Directive of VAT (providing for exemption) will be applicable only to supply to which such transport is ascribed. The Court also held that in such second supply (exempted supply), right to deduct input VAT is not available solely on the basis of invoices of intermediary operator incorrectly classifying its supply. The principle of legitimate expectations was interpreted for this purpose. [*Kreuzmayr GmbH* v. *Finanzamt Linz* – Judgement dated 21-2-2018 in Case C-628/16, Court of Justice of European Union]

UK VAT - Powder to flavour milk taxable at standard rate of VAT: UK Upper Tribunal has held that banana and strawberry flavour Nesquik (powder to flavour milk) are to be taxed at standard rate. Contention that product was not a powder 'for preparation of beverage' as no new beverage resulted after adding it, was rejected observing that it would result in unintended subjective distinctions. It was held that the product was 'for' such preparation. The Tribunal also held that legislature had clear intention to zero rate milk and preparations of milk, and not supply of powder added to milk. [*Nestle UK Ltd.* v. *Commissioner for HMRC* – Decision dated 14-2-2018 in Appeal number UT/2016/120, Upper Tribunal Tax and Chancery Chamber]

Customs

Notifications and Circulars

Refund to exporters - Procedure in case of invoice mis-match notified: Considering that most common error hindering refund to exporters is the mismatch of invoice number, taxable value and IGST paid, in the shipping bill vis-à-vis same details mentioned in GSTR 1/Table 6A, CBEC has notified new procedure for refund in such cases. Customs officer is to verify information furnished in GSTN and Customs EDI system and sanction refund where invoice details provided in GSTR 1/ Table 6A are correct though details provided in shipping bill are at variance. According to CBEC Circular No. 5/2018-Cus., this new procedure is available only for shipping bills filed till 31-12-2017.

BCD increased on certain metal items for mobile phone, and specific screws: Screw falling under Tariff Item No. 7318 15 00 of the Customs Tariff, and SIM socket / other mechanical items of metal for cellular mobile phone covered under Tariff Item No. 7326 90 99 have been excluded from the lower rate of 10% BCD earlier available to all goods of Chapter 73. Sl. No. 377 of Notification No. 50/2017-Cus. has

been amended for this purpose by Notification No. 27/2018-Cus., dated 23-2-2018. Tariff rate of Basic Customs duty for these goods is at present 15%.

Certificate of Origin for specified imports from Japan – Time limit revised: Certificate of Origin in respect of specified imports from Japan under Comprehensive Economic Partnership Agreement can be issued retroactively within 12 months from the date of shipment. Clause 3(b) in Appendix-A to Annexure-2 in Customs Tariff (DOGCEPA between India and Japan) Rules, 2011 has been amended for this purpose with effect from 1st of March 2018 by Notification No. 14/2018- Customs (N.T.) dated 19-2-2018. The time limit for issuance of such certificate, in exceptional cases, was hitherto 9 months.

MEIS claims – Matching of SB description when not required: DGFT has directed its regional authorities to process applications for MEIS claims, other than in few specified cases, only on the basis of ITC (HS) Code as specified in the shipping bill. The authorities however would continue to process claim applications in respect of specified 154 ITC (HS) codes, after also matching the description in the shipping bill with Export Product Description in Table 2 of Appendix 3B of Handbook of Procedures Vol. 1. According to DGFT Public Notice No. 65, dated 16-2-2018, this will improve ease of doing business and cut down delays.

Ratio decidendi

No provision for two proper officers for assessing imported goods: After holding that importer was not eligible for exemption, CESTAT Delhi has held that since Rule 8 of Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996 was not applicable, Excise Officer would have no jurisdiction to issue SCN. It was also held that differential duty cannot be recovered by enforcing a bond, without first adjudicating the same. The goods in the dispute were assessed by Customs officer at port on the basis of declaration/bond executed by assessee, however, the jurisdictional Central Excise officer issued SCN denying exemption. [*Shilpi Cables Technologies* v. *Commissioner* – Final Order No. 50782/2018, dated 23-2-2018, CESTAT Delhi]

DTA sale by EOU - 'Suitable for repeated use' clarified: CESTAT Chennai has allowed benefit of Notification No. 52/2003-Cus. to empty drums cleared as scrap in DTA by an EOU. The EOU had imported raw material in these drums availing concessional rate of duty under the said notification. Rejecting department's view that since drums can be reused, condition 4(b) of said notification will apply, the Tribunal held that test of being suitable for repeated use was whether drums were being reused for containing and transporting very same goods in [with] which they had initially arrived. Observing that goods were in the nature of used packing material unsuitable for repeated use, the Tribunal allowed the drums to be cleared without payment of duty, as per provisions of 4(c) of the said notification. [*Sun Pharmaceuticals Industries* v. *Commissioner* - Final Order No. 40428/2018, dated 16-2-2018, CESTAT Chennai]

TED Refund – Amendment in 2013 not retrospective: Delhi High Court has rejected the contention that amendment in FTP on 18-4-2013, restricting TED refund only to cases where exemption is not available, is retrospective. The dispute involved supplies to EOU, prior to amendment. The Court in this regard noted that

tenor of 2013 notification did not show that it was clarificatory, there was no ambiguity in earlier FTP Paragraph 8.3(c), the amendment was substantive, and that the Central Government cannot change FTP retrospectively. Minutes of Policy Interpretation Committee dated 4-12-2012 and the Policy Circular dated 15-3-2013 were also set aside by the High Court. [*Deepak Enterprises* v. *UOI* – Judgement dated 19-1-2018 in W.P. (C) 5935/2017 & CM No. 42082/2017, Delhi High Court]

Interest payable on delayed refund of SAD: Observing that SAD levied under the Customs Tariff Act is a duty within the meaning of Section 27 of the Customs Act, Delhi High Court has held that interest under provisions of Section 27A would be payable in case such refunds are delayed beyond 3 months from the date of application. Reliance in this regard was placed on earlier decision of the Court in the case of *Riso India Pvt. Ltd.* and Madras High Court Order in case of *KSJ Metal Impex (P) Ltd.* The High Court further, struck down Paragraph 4.3 of the Circular No. 6/2008-Cus. observing that said Circular did not correctly interpret provisions of Section 27A. [*Micromax Informatics Ltd.* v. *UOI* - 2018-TIOL-344-HC-DEL-CUS]

Central Excise and Service Tax

Ratio decidendi

Reimbursable expenses not includible for Service Tax, prior to 14-5-2015: Supreme Court of India has held that for valuation of taxable services, prior to 14-5-2015, reimbursable expenses are not to be included in 'gross amount charged' in providing such taxable services. Deliberating on the term 'such' in Section 67 of the Finance Act, 1994, the Apex Court upheld High Court's interpretation that value of taxable service cannot be anything more or less than the 'consideration' paid as *quid pro qua* for rendering such a service. It was held that Rule 5 of the Service Tax Rules, 1994 went much beyond the mandate of Section 67. [*UOI* v. *International Consultants & Technocrats* – Judgement dated 7-3-2018 in Civil Appeal No. 2013/2014 and Ors., Supreme Court]

Cost of goods supplied free by recipient for use in provision of service, not includible: Supreme Court has held that value of goods supplied free of cost by the service recipient and used for providing Construction of Industrial Complex service, was not includible in the gross amount for valuation of said service, for availing benefit of Notification No. 15/2004-ST. The Court was of the view that such cost was neither an amount 'charged' by the service provider nor a consideration for the service provided. It noted that such value was not part of contract between the service provider and the recipient and that it had no nexus with the service provided. [*Commissioner* v. *Bhayana Builders Pvt. Ltd.* – Judgement dated 19-2-2018 in Civil Appeal Nos. 1335-1358/2015 and Ors., Supreme Court]

Affixing particulars of buyer when not amounts to putting 'brand name': Affixing the name, logo and particulars of buyers like the FCI and State Governments does not amount to affixing brand name on the jute bags. Supreme Court has held so in a dispute involving exemption under Notification No. 30/2004-C.E. for period 2011 to 2013. The Apex Court in this regard noted that markings were compulsory by law, and were not for the purpose of enhancing value by indicating connection in course of trade between the product and its manufacturer. The Court was of the view that there was no 'brand name' involved in this case. [*RDB Textiles* v. *Commissioner* - 2018-VIL-07-SC-CE]

Valuation when goods sold at less than manufacturing cost and profit: CESTAT Delhi has held that if lower price was due to commercial consideration of competing in market and there was no evidence of flow back of extra commercial consideration, it cannot be held that transaction value was not based on principle of price being the sole consideration. The Tribunal further, distinguishing the SC Judgement in *Fiat*, remanded the case for consideration of various disruptions and fluctuations affecting manufacturing cost. It noted that true legal implication of Section 4(1)(a) of Central Excise Act, 1944 and the CBEC Circular No. 979/3/2014-CX. was not examined in the impugned order. The dispute involved sale of certain cars for some period below manufacturing cost and profit. [*Honda Cars India Ltd.* v. *Commissioner* - Final Orders No. 50809-50812/2018, dated 26-2-2018, CESTAT Delhi]

Cenvat credit on service used for organising Vishwkarma Pooja, available: CESTAT Chandigarh has allowed Cenvat credit on Pandal and Shamiana service used for organising Vishwkarma Pooja by a manufacturer. The Tribunal in this regard observed that said pooja which is organised by the workers for worship of their plant and machinery to be used in manufacturing activity is customary in all the manufacturing entities. Allowing the Cenvat credit, it was observed that the activity was directly related to the manufacturing activity. [*Maruti Suzuki India ltd.* v. *Commissioner* - Final Order No. 60096/2018, dated 20-2-2018, CESTAT Chandigarh]

Mandatory pre-deposit can be deposited from Cenvat credit a/c: Kolkata Bench of the CESTAT has allowed payment of mandatory pre-deposit under Section 35F(i) of the Central Excise Act, 1944, to be made from the Cenvat credit account. The Tribunal in this regard observed that said provision did not specifically mention that the amount has to be deposited only by way of cash payment. It was held that in cases involving admissibility of Cenvat Credit or demand of duty, the amount can be debited from Cenvat credit account as long as the Cenvat Credit is permissible for utilisation according to Rule 3(4) of Cenvat Credit Rules, 2004. [*SRD Nutrients Pvt. Ltd.* v. *Commissioner* - 2018-VIL-138-CESTAT-KOL-ST]

Motor vehicles when classifiable as tippers and not dumpers: Vehicles having speed in range of 70 to 85 km/hr and having wheels/ tyres of the type used on highways and not off-road are covered under Tarif Item 8704 23 90 as tippers. CESTAT Delhi rejected department's contention of classification under sub-heading 8704 10 of the Central Excise Tariff as dumpers, and set aside the demand of differential NCCD after perusing the catalogue also (of the vehicle concerned). The Tribunal was also of the view that classification under Central Excise Tariff was

not to be made on basis of any reference in the Cenvat Credit Rules. [*VE Commercial Vehicles Ltd.* v. *Commissioner* - Final Order Nos. 50795-50799/2018, dated 26-2-2018, CESTAT Delhi]

Donations without condition to do service, not liable to Service Tax: Donations received by a club from members as well as non-members were not liable to Service Tax under Club or Association service according to a recent order of CESTAT Chennai. It noted that there was no evidence of *quid pro quo vis-a-vis* such donations by way of providing any service to such donors by the assessee in return. Further, observing that such amounts would not in any way come within the ambit of amounts received against provision of Club or Association service, it was held that such donations even if made by non-members cannot be made liable. [*Cosmopolitan Club* v. *Commissioner* - Final Order Nos. 40366-40385/2018, dated 6-2-2018, CESTAT Chennai]

Choosing flowers for processing is activity in relation to 'agriculture': Service of picking and choosing flowers supplied by the customers, for enabling further production of dried flowers, would be covered under exemption Notification No. 14/2004-S.T. as activity in relation to agriculture. CESTAT Chennai while holding so, rejected department's contention that the activity was a post-cultivation activity. The Tribunal in this regard noted that it was held in the order impugned before it that services rendered were with reference to flowers and not with reference to dried flowers. [*Commissioner* v. *Decoshyam Arts Pvt. Ltd*. - Final Order No. 40180/2018, dated 23-1-2018, CESTAT Chennai]

GTA - Transportation of cut wood not covered under 'agricultural produce': Exemption available to GTA service for transport of 'agricultural produce' under Notification No. 25/2012-ST (Sl. No. 21) did not cover transport of cut wood of trees. CESTAT Delhi, while holding so, observed that there was no evidence that trees were cultivated/grown by specific effort and intent, using human skill and labour. Considering Indian AS41 and US Internal Revenue Service Code, it was held that there was clear distinction between plants and trees, and that said activity came more appropriately under Forestry Operations. [*Commissioner* v. *Balaji Action Buildwell* - Final Orders No. 50665/2018, dated 19-2-2018, CESTAT Delhi]

Envelope not classifiable as general packing container: Envelopes made of paper and custom made for particular type of content are classifiable under Heading 4817 and not as packing container under Heading 4819 of Central Excise Tariff. CESTAT Delhi in this regard rejected the department's contention that envelope should necessarily be used for correspondence or should contain paper stationery only. It observed that since specific entry of envelope was available, it was not correct to classify it under broad category of packing container like cartons, boxes, bags, etc. [*Universal Offset* v. *Commissioner* - Final Order No. 50001-50002/2018, dated 1-1-2018, CESTAT Delhi]

Refund of Cenvat credit on export of services – 'Relevant date' clarified: Larger Bench of CESTAT at Bangalore has held that relevant date for refund claim under Cenvat Rule 5 in case of export of services should be the end of quarter in which Foreign Inward Remittance Certificate (FIRC) is received, if claims are filed on quarterly basis. View that amendment in 2016 to Notification No. 27/2012-C.E. (N.T.) was retrospective and thus relevant date for such refund was date of receipt of foreign exchange,

was hence rejected. The Tribunal relied on Supreme Court judgement in the case of Vatika Township holding that any amendment imposing burden or liability on the assessee should be viewed only prospectively. [*Commr.* v. *Span Infotech* - Interim Order No. 4/2018, dated 9-2-2018, CESTAT LB]

Renting out lake for boat rides and skating ring for skating not liable to Service Tax: Boat/balloon ride on the lake and skating in the skating ring will fall under the overall ambit of 'entertainment'. CESTAT Delhi while holding so has set aside the Service Tax liability on Nagar Palika Mandal which had let out the lake for boating and balloon rides, etc., and skating ring for skating. The period involved was from 2007 to 2012. The Tribunal was of the view that the term 'entertainment' should be given a wider meaning in the absence of statutory definition. [*Nagar Palika Mandal* v. *Commissioner* - Final Order No. 50629/2018, dated 9-2-2018, CESTAT Delhi]

Refund under Notification No. 17/2009-ST when invoice not in assessee's name: CESTAT Delhi has allowed refund of Service Tax under Notification Nos. 41/2007-ST and 17/2009-ST in respect of CHA services even when the invoices issued by Customs House Agent were not in the name of the concerned assessee. The Tribunal, for this purpose noted that the shipping bill mentioned the name of the CHA and that it was not disputed that the said service was not received by the assessee for export of goods. Assessee's appeal was allowed observing that Cenvat credit and consequentially the refund was available. [*Vippy Industries Ltd.* v. *Commissioner* - Final Order No. 50586/2018, dated 9-2-2018, CESTAT Delhi]

Cenvat credit on hiring of machines for levelling of land for mining of ore for use in manufacture: Delhi Bench of the CESTAT has allowed Cenvat credit on the service of hiring of JCB/PCB machines used for levelling the land for preparing for mining. The assessee was engaged in the activity of extraction of ore for use in manufacture of their final product. The Tribunal observed that unless and until the machines were hired for levelling the land to prepare it for mining purpose, manufacturing activity cannot take place, and therefore, the said service was directly related to the manufacturing activity. [*Hindustan Zinc* v. *Commissioner* - Final Order No. 50572-50573/2018, dated 7-2-2018, CESTAT Delhi]

Non-declaration of records to department when not material: CESTAT Mumbai has held that even if record maintained by the assessee was not declared to the department, but if from such record non-availment of credit was established, department cannot ask assessee to pay such not-availed credit. The issue involved alleged non-reversal of credit on opting for SSI exemption. The authorities below had rejected claim that no credit was taken on the stock, observing that private record maintained for non-cenvatable inputs was not declared to the department under Excise Rule 22(2). [*Shraddha Steel* v. *Commissioner* - Order No. A/85286/2018, dated 15-2-2018, CESTAT Mumbai]

VAT

Ratio decidendi

KVAT - No uniform rate mandated for goods in works contract, before 1-4-2006: Three Judge Bench of Supreme Court has held that prior to 1-4-2006 the goods involved in execution of works contract were not mandated by legislature for uniform rate of tax. The Court rejected the contention that Section 4(1)(b) of Karnataka VAT Act, as it existed prior to 1-4-2006, was a catch-all entry providing for uniform rate of tax on goods involved in execution of works contract. The amendment in 2006 introducing Section 4(1)(c) was also held as not clarificatory by the Court. [*State of Karnataka* v. *Durga Projects Inc.* – Judgement dated 6-3-2018 in Civil Appeal No. 811/2018 and Ors., Supreme Court]

Rajasthan Sales Tax - Refund on reduction of provisional price: In a case where provisional price as per purchase order was subsequently reduced, Supreme Court of India has allowed refund of Sales Tax paid on excess amount. Considering definition of 'sale price' in Section 2(39) of Rajasthan Sales Tax Act, the Court was of the view that assessee was bound to refund excess amount collected and therefore legally entitled to refund. The Apex Court for this purpose also noted that price of cylinders supplied to government oil companies was fixed by Ministry of Petroleum and Natural Gases. [*Universal Cylinders Ltd.* v. *CTO* – Judgement dated 23-2-2018 in Civil Appeal No. 2431/2018 and Ors., Supreme Court]

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