Lakshmikumaran & Sridharan tax

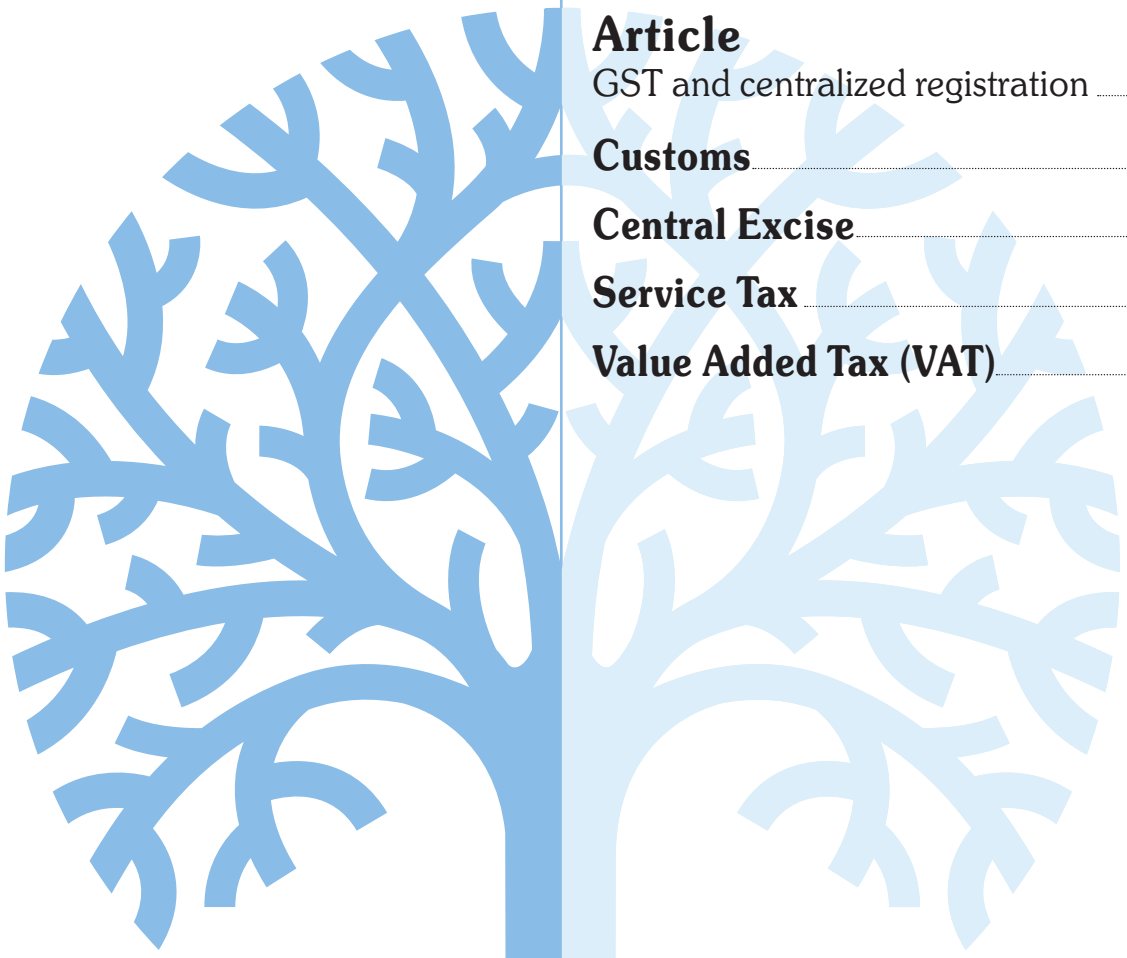
TAX

amicus

An e-newsletter from
Lakshmikumaran & Sridharan, New Delhi, India

July 2015 / Issue – 49

Contents



July
2015

Article

GST and centralized registration

By **K. Srikanth**

Much has been said about the introduction of levy of additional 1% tax proposed under clause 18 of the Constitutional (122nd Amendment) Bill 2014, (duly passed in Lok Sabha and which is now placed before a special committee, pending for approval by the Rajya Sabha, and subsequently by 50% of State Legislatures) on supply of goods moved from one State to another including stock transfers which are presently being effected against Form F without payment of CST. Further, the consequence of proposed 1% non-creditable origin-based tax on all interstate supply of goods including branch transfers, as a measure to help the manufacturing states in the initial phase of introduction of GST adds more complication and the situation gets further compounded due to break in GST credit chain, resulting in ultimate increase in the cost of the goods at the hands of end consumer.

However, in this article an attempt has been made to briefly discuss and share the thoughts on the probable impact of GST on service providers who have opted for centralized service tax registration at present.

Impact of proposed GST on service providers having centralized registration

Under the present negative list based service tax regime,where the person liable for paying service tax on a taxable service is having more than one premises or offices, which are engaged in relation to such service in any other manner, and has centralized billing or centralized accounting system in respect of such service, and such centralized billing or centralized accounting systems are located in one or more premises, he may, at his option, register such premises or offices from where centralized billing or centralized accounting systems are located.

Thus, as per Rule 4(2) of the Service Tax Rules, 1994, facility is provided to the provider of output service to opt for centralized service tax registration for a single premise instead of having separate registration at different places.

Furthermore, by exercising this option, the provider of output service can have control over the entire business operations from single location from where invoices for services provided from different places are raised, receive payments against the invoices raised, make payment to the provider of input services as well as to the supplier of inputs and capital goods. Besides, the major benefit of having centralized registration is the facility to avail credit on inputs, capital goods and input services at single location, irrespective of the location of the receipt and use of such inputs, capital goods and input services and the name of the location to which such invoices were addressed.

No doubt such class of service providers presently are enjoying this benefit to a great

extent as it allows the service provider to avail credit at single location and utilize such credit effectively for discharging service tax on output services and also can handle litigations at single location from the central place thereby reducing the compliance cost to a great extent.

If one looks at sector-wise distribution of such class of assessees, telecom, insurance and banking are the major sectors which are presumably operating under centralized service tax registration presently, say from corporate offices located in different cities.

Report of the Task Force of 13th Finance Commission

The Task Force appointed by the Thirteenth Finance Commission, Government of India, had issued a report on December 15, 2009 with recommendations on various issues relating to the design and implementation of the proposed GST in India. According to this report, all persons with turnover of more than Rs. 10 lakhs will be required to obtain registration and it will be a single registration for all branches in a State. Dealers in multiple states / having operations across States will have multiple GST registration number. A relevant point here would be to note that the model GST Registration Form floated by NSDL as part of pilot project, in effect, envisages single registration certificate for multiple business premises within a particular state only and not inter-state.

Proposals made by GST Core team

The CBEC set up a GST Core Team for providing a comprehensive conceptual framework for the proposed GST legislation and submitted its report in the form of a Discussion Paper in October 2011. The Paper suggested that while framing the place of supply rules, as far as practicable, the state where the service is performed should be taken as the place of supply. This Paper acknowledged the importance of requirement of registration at multiple places and also discussed exceptions like telecommunication service which may necessitate special place of supply of services rules. Hence, one of the foremost challenges would be to determine the place of supply of services to fasten GST liability and to require a person engaged in supply of goods or services to apply for registration.

Position under the proposed GST regime

However, in the proposed GST regime conceptually supply of service can be again inter-state or intra state and hence in all probability the question of having provisions / facility for centralized registration for assessee supplying services appears to be remote.

In addition, importers of services and persons who make inter-state supplies will, however, be considered as 'taxable persons', irrespective of turnover and accordingly need to take GST registration compulsorily.

Thus, if we weigh the overall impact of GST on service providers having centralized registration, the most crucial issue that emerges, will be the need for taking separate GST registration in multiple locations and the need to have separate books of account for each such premises and also to have control and monitoring system for both receipts and

payments (income and credits) by such service providers. Such requirement is subject to the caveat of introduction of any other alternative scheme.

Thus the service industry will have to wait, watch and lookout for provisions governing registration under the to-be enacted GST legislations and find an answer to the issue as to whether the concept of centralized registration shall continue under GST atleast for CGST and IGST.

Impact analysis is sine qua non

The need of the hour for all service providers in general and service providers who have opted for centralized registration in particular is to see GST as a reality in the near future considering the Government's commitment to roll out this mega tax reform from April 2016. The industry should well accord priority to study their existing processes and revamping the existing ERP / other accounting software systems to make them compatible with proposed GST. Procedural requirements may not be counted as one of the high impact factors. But an impact study in respect of GST will indicate even registration and having locations in multiple states from where supply is undertaken, are issues which cannot be placed out of the periphery of relevant issues.

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

CUSTOMS

Notifications, Circulars & Notices

Advance Authorization - Preferential treatment to status holder: With a view to give preferential treatment to status holders, reduced timelines have been provided for issuance of advance authorization, its revalidation and invalidation when applications are received through electronic mode. According to DGFT Trade Notice No. 4/2015, dated 8-6-2015 issued for this purpose, for four and five star status holders the timeline for these activities shall be one day, while for other star status holders time of two days has been allowed for issuance of advance authorisation or its subsequent amendments.

Courier Imports and Exports (Clearance) Regulations, 1998 amended: The Courier Imports and Exports (Clearance) Regulations, 1998, have been amended incorporating number of changes. Henceforth, goods specified in Appendix 3C of the FTP, proposed to be exported from specified airports under the Merchandise Exports from India Scheme (MEIS) in consignment of value up to Rs. 25000 and involving transaction in foreign exchange, can be exported through courier. Notification No. 62/2015-Cus. (N.T.), dated 17-6-2015 issued in this regard also makes changes in Form for Courier Shipping Bill and Bill of Export wherein value for export of *bona fide* commercial samples and prototypes has been increased to Rs. 50,000 per consignment.

Import clearances if Nomination Agency Certificate not valid on date of import: DGFT has clarified that goods shall not be denied import clearance on account of expiry of Nomination Agency Certificate at the time of clearance, when

the same was valid on the date of shipment/ dispatch from the supplying country. DGFT Policy Circular No. 2/2015-20, dated 12-6-2015 takes into consideration Para 2.17(a) and Para 9.11 of HBP, 2015-20 and states that date of shipment has to be evidenced from the date of Bill of Lading.

Appointment of common adjudicating authorities - Guidelines: Pursuant to Notification No. 60/2015-Cus. (N.T.), dated 4-6-2015 empowering the Principal Director General, DRI, to appoint a common adjudicating authority in respect of cases investigated by the DRI up to the level of Commissioner of Customs, CBEC has issued guidelines through Circular No. 18/2015-Cus., dated 9-6-2015 for appointment of common adjudicating authorities.

Milk and milk products from China - Import prohibition extended: Prohibition on import of milk and milk products (including chocolates and chocolate products and candies/confectionary/ food preparations with milk or mild solids as an ingredient) from China, has been extended to 23-6-2016 or until further orders, whichever is earlier, by DGFT Notification No.12/2015-20, dated 24-6-2015. This ban was otherwise valid till 23-6-2015.

Ratio decidendi

Seizure – Bank account when cannot be frozen under Customs Section 110: Allahabad High Court has held that power under Section 110 of the Customs Act cannot be exercised for passing an order so as to prohibit an individual from making withdrawal from bank account unless the individual is charged with illegally transacting in the currency by way of import or export. The High Court relied on the decisions of the Gujarat High Court in *Am Overseas* [2005-TIOL-217-HC-AHM-CUS] and that of Karnataka High Court in *Multitek Engineers* [2013 (287) E.L.T. 44]. It was also held that for the same reason, no conditions can be imposed on an individual pursuant to Section 110A to allow operation of bank account pending an order of the adjudicating authority. [*M.Z. Handicrafts* v. *Union of India* - 2015-TIOL-1446-HC-ALL-CUS]

Tariff value notification comes into force after same is published in official gazette and is offered for sale: Relying on *Harla* v. *The State of Rajasthan* [1952 (1) SCR 110], the Supreme Court has held that a notification fixing tariff values pursuant to Section 14(2) of the Customs Act will come into force after the notification is duly published in the official gazette, and has also been offered for sale by the Directorate of Publicity and Public Relations of the CBEC. The Apex Court hence held that it was not lawful on the part of the department to claim the differential amount of duty on the basis of said notification when it was published after office hours on 3-8-2001 and was offered for sale on 6-8-2001 with intervening days being holidays. [*Union of India* v. *Param Industries Ltd.* - 2015-TIOL-140-SC-CUS]

EDD cannot be asked to be deposited while remanding matters: Madras High Court has held that Extra Duty Deposit (EDD) cannot be asked to be deposited by the appellate authority at the time of remand. It was held that when a matter is remanded to the original authority,

all issues are to be adjudicated afresh without influence of any observation and a direction to pay EDD at the time of remanding the matter is likely to bear some influence on the merits of the matter and prejudice the mind of the original authority while deciding the case. [*Terumo Penpol Limited* v. *Commissioner* - 2015-TIOL-1423-HC-MADRAS-CUS]

Settlement Commission's Final Order is conclusive for all purposes: CESTAT Mumbai has held that once the Settlement Commission has passed a final order, then the matter is deemed to be conclusive as per Section 127J of the Customs Act, 1962, and no matter covered by such order can be re-opened for a different purpose. The goods in the dispute were imported under EPCG licence and the Commission had earlier settled the case on payment of duty, etc. The department however issued another SCN on the ground that the goods were undervalued. [*Pankaj Kumar Das* v. *Commissioner* - 2015-TIOL-1186-CESTAT-MUM]

No Education Cess payable on goods imported under the Target Plus Scheme: Education Cess is not payable on goods imported under the Target Plus Scheme, as the BCD and CVD on such goods was exempt. CESTAT, Mumbai holding as above relied on the judgments of *Gujarat Ambuja Exports Limited* [2013 (289) ELT 272 (Guj.)] and *Pasupati Acrylon Limited* [2013 (297) ELT A102 (SC)]. The Tribunal also noted that there was no dispute that the customs duty liability was debited in Target Plus licence. [*Commissioner* v. *Bhushan Steel & Strips Ltd.* - 2015-TIOl-1272-CESTAT-MUM]

Tribunal cannot condone mandatory pre-deposit of 7.5% or 10%: CESTAT Mumbai has held that it cannot condone the amount of pre-deposit fixed under the statute. The Tribunal in this regard relied upon Section 129A [read 129E] of the Customs Act, 1962 as amended by Finance (No. 2) Act, 2014 mandating pre-deposit of 7.5% or 10% of the duty/penalty imposed. [*Shri Nand Kishore Sharma* v. *Commissioner* - 2015-TIOL-1190-CESTAT-MUMBAI]

SCN to CHA – Limitation: Madras High Court has set aside the show cause notice issued to the CHA under the Customs Brokers Licensing Regulations, 2013 as the same was issued beyond a period of ninety days from date of receipt of the offence report as prescribed in Regulation 22 of the said Regulations prescribing procedure for suspending or revoking the licence. The High Court in this regard relied upon an earlier decision in *MKS Shipping Agencies Pvt. Ltd.* in W.P. (MD) No.16351 of 2012. [*Sanco Trans Ltd.* v. *Commissioner* - 2015-TIOL-1524-HC-MAD-CUS]

CHA licence - Timelines laid down in the Customs House Agents Licensing Regulations are not mandatory: Relying on *PML Industries Ltd.*, 2013 (290) ELT 3 (P&H), the CESTAT Mumbai has held that timelines laid down in the Customs House Agents Licensing Regulations are directory in nature because there is no consequence stated in the Regulations for non-adherence of the said timelines. It was held that if the timelines under Customs House Agents Licensing Regulations, 2004 are considered mandatory, the purpose of the Regulations would be defeated. [*Unison Clearing Pvt. Ltd.* v. *Commissioner* - 2015-TIOL-1253-CESTAT-MUM]

CENTRAL EXCISE

Notification & Circular

Digital Signatures and Electronic Records – Guidelines issued for use and maintenance: CBEC has issued guidelines prescribing conditions, safeguards and procedures for issue of invoices, preserving records in electronic form and authentication of records and invoices by digital signatures under the Central Excise and Service Tax law. Every assessee who intends to use digital signature would have to intimate specified details to the jurisdictional officer in advance. Assessees already using digital signature are required to inform the jurisdictional Deputy Commissioner or Assistant Commissioner, within 15 days of Notification No. 18/2015-C.E. (N.T.), dated 6-7-2015 issued for this purpose. It may be noted that separate electronic records for each factory or each service tax registration is to be maintained and preserved for a period of 5 years immediately after the financial year to which said records pertain. CBEC Instruction F. No. 224/44/2014-CX.6, dated 6-7-2015, clarifying the notification, also prescribes procedures for verification of digitally signed invoices and documents.

Ratio decidendi

Stay - Mandatory pre-deposit for appeals filed prior to 6-8-2014: Rajasthan High Court has agreed with the earlier Order of the court (*Paramount Security* v. *UoI* – W.P. No. 12232) which had held that effect of the amendment to Section 35F of the Central Excise Act, 1944 in 2014 cannot be restricted only for appeals filed after 6-8-2014. According to the earlier order such restriction would violate Article 14 of the Constitution of India. The High Court also stayed the recovery proceedings while directing the appellant to comply with the amended provisions i.e. by depositing 10% of the adjudicated amount as pre-deposit. [*Ajay Industries Ltd.* v. *Commissioner* – 2015 (320) ELT 497 (Raj.)]

On this issue, Allahabad High Court has held that only appeals which are filed on and after the enforcement of the amended provision on 6th August 2014 were to be governed by requirement of such mandatory pre-deposit. The Court in this regard relied upon opening words of Section 35F(1) and second proviso to the said provisions. The contention that the amended provisions of Section 35F(1) of the Act would not apply as the notice to show cause was issued prior to the enforcement of Finance (No.2) Act, 2014, was hence rejected. [*Ganesh Yadav* v. *Union of India* – Writ-C No. 33950/2015, decided on 29-5-2015, Allahabad High Court]

Cenvat credit on inputs used in production of electricity cleared to power grid: CESTAT Delhi has allowed Cenvat credit on inputs used in production of electricity cleared to the power grid when the said electricity was returned back from the grid after synchronization and used in manufacture of final product. Noting that there was no sale of electricity, the Tribunal held that inputs used in electricity sent to power grid for synchronization, who may be treated as job worker, and received back in the factory and used

in the manufacture of the final product, would fall within the purview of Rule 4(5)(a) of the Cenvat Credit Rules, 2004. [*Jindal Stainless Ltd.* v. *Commissioner* - Final Order No.51696/2015, dated 22-5-2015, CESTAT Delhi]

Cenvat credit on capital goods installed at other units: CESTAT Chennai has allowed Cenvat credit on capital goods installed at own units, situated at a distance, for job work and not returned within the stipulated period as prescribed in Rule 4 of the Cenvat Credit Rules, 2004. It was noted that there was no dispute that these two units belong to the assessee; they were exclusively doing job wok for the main unit, and they are not independent job workers. The Tribunal while allowing the appeal relied upon the Supreme Court ruling in the case of *Madras Cements* which had allowed credit on capital goods installed in captive mines. [*Sri Eswari Auto Components (P) Ltd.* v. *Commissioner* - Final Order No. 40670/2015, dated 18-6-2015, CESTAT Chennai]

Exemption notification – Applicability of Interpretative Rule 2(a): Three Judges Bench of the Supreme Court has on 1-7-2015 held that Rules of Interpretation of the Central Excise Tariff may not be applicable if the notification (exemption notification) commands and requires a different understanding. Holding that rules or principles of interpretation are always subject to context and are not binding commands, the Court rejected the contention of the department that car air-conditioning kits without gas compressors, and gas compressors cleared separately were to be considered as clearance of air conditioners. Further, upholding its earlier view as pronounced by two Judges Bench, in an earlier decision between the same parties, the Court was of the view that there was no conflict between the decisions in the cases of *Maestro Motors* and *Mewar Bartan Nirman Udyog,* both dealing with rules of interpretation. Clarifying the Division Bench decision, the Larger Bench of the Court held that if there are two invoices for separate pricing, the air-conditioning kit would come under Serial No. 8 of the Notification No. 166/86-C.E. and the automotive gas compressor with or without magnetic clutch would be liable to duty separately. [*Commissioner* v. *Sanden Vikas (I) Ltd.* - Civil Appeal No. 9730/2003, decided on 1-7-2015, Supreme Court]

Rebate of duty paid in excess of effective rate not permissible: Revisionary Authority in the Ministry of Finance has held that rebate is admissible only to the extent of duty payable at the effective rate of duty as applicable at the relevant date. The manufacturer-exporter in the present case had paid duty on export goods @ 10% under Notification No. 2/2008-C.E., while paying duty @ 4% under Notification No. 4/2006-C.E. on goods cleared for home consumption. The authority in this regard relied on Para 4.1 of Part-I of Chapter 8 of CBEC Excise Manual on Supplementary Instructions. [*In RE: Umedica laboratories (Pvt.) Ltd.* – 2015 (320) ELT 657 (GOI)]

Marketability when goods covered under HSN: Noting that the HSN covers all the commodities which are traded cross the world, CESTAT Delhi has held that if a product is specifically mentioned in the HSN, it would imply that it is a marketable product which is traded across the world. In this

dispute involving manufacture of pencil slats from logs of wood, the department was of the view that the process involved 'manufacture'. The Tribunal in this regard held that process of making pencil slats from timber logs amounts to manufacture as there is emergence of a new product with different and distinct commercial identity. It was noted that the process involved cutting of timber logs into blocks which were subjected to process of boiling and then sliced into slats. The slats were then subjected to high pressure and also treated with colouring material and anti-termite chemicals. [*Hindustan Pencils (P) Ltd.* v. *Commissioner* - Final Order No. 51725-51731/2015, dated 27-5-2015, CESTAT Delhi]

Rebate of Automobile Cess, Education Cesses paid thereon in case of exports: Karnataka High Court has allowed the rebate of Automobile Cess and the Education Cesses paid on the Automobile Cess in case of export of motor vehicles. Rebate was denied by the department contending that such cesses were not specified in *Explanation-I* to Notification No. 19/2004-C.E. (N.T.). The High Court in this regard noted that words "duties of excise" and "duty of excise" were used interchangeably prior to 2000 when the word 'CENVAT' was introduced and Section 2A inserted to indicate that all expressions to mean 'CENVAT'. Observing that cess is a duty of excise collected in terms of Central Excise Act, 1944, it was held that reference to "duty" in the said notification also includes cess collected as duty of excise. Rebate was allowed by the High Court while it also held that cess cannot be levied on exports and was hence required to be refunded. [*TVS Motor Co. Ltd.* v. *Union of India* – W.P. Nos. 51753/2013 & 38767-69/2014, decided on 12-6-2015, Karnataka High Court]

Erroneous duty payment would not make exempted goods 'other than exempted goods': Madras High Court has allowed exemption under Notification No. 89/95-C.E. to waste, etc., arising during manufacture of goods originally exempted but on which duty was paid erroneously. The Court in this regard upheld the finding of the Tribunal that erroneous payment of duty on the final products would not make those goods as those 'other than exempted goods' in order to deny the benefit of said notification to waste, etc. The Tribunal had in the impugned order held that so long as the goods manufactured are exempted goods, waste parings, scrap arising in the course of the manufacture of exempted goods would be entitled to said exemption. [*Commissioner* v. *Integral Coach Factory* – CMA No. 1182 of 2008, decided on 11-6-2015, Madras High Court]

SERVICE TAX

Circular

Returns – Guidelines on manual scrutiny of ST-3 returns: CBEC has issued fresh guidelines to departmental officers on detailed manual scrutiny of service tax returns. Taxability, valuation, exemption, abatement and Cenvat credit utilisation will be checked based on assessment-related documents like contracts and invoices. The Board instructs that detailed

financial records should not be called for in routine manner. Such manual scrutiny will cover only those assessees who have not been audited by the department in the past 3 years or selected for audit and tax paid (cash and Cenvat credit) in 2014-15 is less than Rs. 50 lakhs. However, the Chief Commissioner may direct detailed manual scrutiny even if tax paid exceeds the above said limit. As per this circular [No. 185/4/2015-ST., dated 30-6-2015] an assessee should not be subjected to both audit and detailed manual scrutiny.

Ratio decidendi

Adjudication to be completed before initiating steps for recovery: Quashing the notice for recovery issued by the department before the adjudication of SCN was completed the High Court of Karnataka has held that power vested by Section 87 (b) (i) and (ii) of the Finance Act, 1994 is to be exercised only for recovery of amount due and not prior to that. In the instant case, the legal heir have moved a petition against the action of the department issuing garnishee notices even before SCN was adjudicated. The High Court observed that mere investigation by the department is not sufficient to conclude that tax was to be recovered and to protect interests of revenue, property of the assessee must be attached. [*Mrs. Prashanthi* v. *UOI*, Order dated 29-4-2015 in W.P. No. 14504/2015, Karnataka High Court]

Identifying other distributors for products covered under BAS: Examining the taxability of gross commission received by distributors of the asseesee who supplied goods for multi-level marketing, the Tribunal held that activity of a distributor of identifying other persons (second level of distributors) is one of marketing or sale of the goods and the commission which is linked to the performance of his sales group (group of the second level of distributors appointed on being sponsored by the distributor) would have to be treated as consideration for Business Auxiliary Service of sales promotion rendered by the distributor. The other activities like earning profit on sale in retail and commission on the purchases of products during the month for sale or for personal consumption however could not be treated as promotion, marketing or sale of the goods produced or provided by or belonging to the client. [*Charanjeet Singh Khanuja* v. *Commissioner* - 2015-TIOL-1205-CESTAT-DEL]

BAS – Providing SMPP service to client's subscribers whether covered: In the present case, the appellants were providing Short Message Peer to Peer (SMPP) service to various clients but were not paying service tax thereon. The SMPP service inter alia involves sending SMS to customers of their clients on a bulk basis. The said service was provided to a large number of clients and described in their invoices as 'charges for short messaging enabling software on per SMS basis and peer to peer and person to person basis'. The Tribunal did not accept the contention of the appellant that it was providing telecommunication services as it did not have the requisite license under Indian Telegraph Act, 1985. Reasoning that if services provided by them to their clients' subscribers were not on behalf of their clients there would be no reason

for their clients to pay the appellants for the said service, the Tribunal held that the service was taxable under BAS. [*Cellebrum Technologies Ltd* v. *Commissioner* – 2015-TIOL- 1098-CESTAT-DEL]

Procuring orders for overseas entities - Service not rendered in India: The department sought to collect service tax under BAS on commission received by appellants for procuring orders on behalf of overseas manufacturers. The Tribunal held that though the activity culminated in supplies to an Indian entity, services were not provided in India. In the instant case, the appellant procured orders for overseas manufacturers and execution of the orders and payment were done by parties themselves. Thus, the appellant was held to have rendered services, if any outside India and was not liable to pay service tax on the same. [*A.T.E Enterprises* v. *Commissioner* - 2015 (39) S.T.R. 81 (Tri.- Mumbai)]

Transfer of technology when not covered under IPR service: Only rights which are registered with the trademark or patent authorities are considered as intellectual property rights. Though the Tribunal agreed with the assessee that the entire demand was barred by limitation, as regards the exigibility to tax of payment made towards transfer of technology and use of trademarks, it opined that revenue authorities had not analysed in detail the nature of agreements. The department sought to tax the entire payment under Intellectual Property Service. The Tribunal was of the view that based on the agreements distinct services of provision of technology transfer and providing transfer of intellectual property right were involved and they could not be clubbed together. [*Rochem Separation Systems* v. *Commissioner* - 2015 (39) S.T.R. 112 (Tri.-Mumbai)]

Order rejecting entitlement to VCES is appealable: An aggrieved assessee can appeal against order rejecting his entitlement to avail VCES. The High Court held that since in the impugned order the Assistant Commissioner of Central Excise had given such categorical finding on going through the facts and circumstances of the case he had acted as adjudicating authority and not as designated authority. It was further observed that VCES is construed as part of the Finance Act, 1994, all other provisions of the Act, except to the extent specifically excluded, would automatically apply to proceedings under the scheme and consequently, order passed by the Assistant Commissioner is appealable under Section 85. [*The Narasimha Mills Pvt. Ltd.* v. *Commissioner* - 2015-TIOL-1504-HC-MAD-ST]

Financial services used for raising capital is input service: Examining admissibility of Cenvat credit of service tax paid on service of private placement of shares, the Tribunal held that the definition of input service covers services relating to the business activity of manufacture. Thus 'input services' need not be restricted to services directly linked with manufacturing activity. The said services having been used by the manufacturer-assessee to raise finances for implementing automotive wheel line project, credit was held as admissible. [*Steel strips Wheels Limited* v. *Commissioner* - Final Order No. 51907/2015 dated 5-6-2015, CESTAT, Delhi]

Construction of dormitory within the factory for stay of technicians – Cenvat credit admissible: Holding that construction of dormitory within factory premises to ensure that the technicians are available at all times for maintenance is integrally connected with manufacturing activity, the Tribunal upheld the entitlement to Cenvat credit on construction services. [*Bajaj Hindusthan Ltd.* v. *Commissioner* - Final Order Nos. 5186-51863/2015 dated 8-6-2015, CESTAT, Delhi]

VALUE ADDED TAX (VAT)

Notifications & Circular

Rajasthan VAT Act – Clarification on liability of sub-contractor: By Circular 6/2015-16, dated 23-6-2015, it has been clarified that where a developer/builder undertakes construction of flats, buildings or premises and transfers them along with goods and land or interest underlying the land in pursuance of an agreement, opting for payment in lump-sum in lieu of tax, has awarded whole or part of the contract to a sub-contractor, no tax shall be levied on the turnover of the sub-contractor with respect to such sub-contract, subject to the conditions mentioned in Rule 22A(6) of the Rajasthan Value Added Tax Rules, 2006. It is also stated that hence the contractor is not liable to deduct tax at source from the payment made to the sub-contractor in such circumstances.

Delhi VAT Act – Return prescribed for e-commerce entities: By Notification No. F-3(515)/Policy/VAT/2015/330-41, dated 26-6-2015, issued by the Commissioner, Value Added Tax, Delhi, a Return has been prescribed in respect of the entities or persons engaged in providing facility of electronic shopping (commonly known as e-commerce) through their web portals. The notification further provides that the e-commerce entities may either be acting as facilitators, directing the transaction to the dealer concerned for supplying the goods to the customer or supplying the goods directly to the customer from the godown maintained, managed and owned by such facilitating entities, where the goods of concerned dealer have already been stored. The e-commerce entities are *interalia* required:

- To enrol themselves by logging on to the website of the department.
- To file their basic information in Form EC-I.
- To file quarterly returns providing details of dealers located in Delhi (in Form EC-II), supplying goods either to customers of Delhi or outside Delhi and details of dealers located outside Delhi (in Form EC-III), supplying goods to customers of Delhi.
- To file the abovementioned quarterly returns by 10th day of the month following the quarter to which the return pertains.
- The return should be uploaded on the above said portal of the department in off-line/online mode by digitally signing the same.

The notification, effective 26-6-2015, provides that non-compliance with the above by the e-commerce entities would be treated as violation of provisions of D-VAT Act and that suppression

of information relating to any dealer engaged in supplying goods directly or indirectly through the portal of e-commerce entities would also be treated as violation of provisions of D-VAT Act/ CST Act. Such turnover would be *deemed as sale* made by the e-commerce entity.

Ratio decidendi

Transfer of right to use – VAT liability on set-top box for providing DTH service:

Noting that one of the important elements of determining whether the right to use goods has been transferred or not is by ascertaining who has effective control over the goods, the High Court of Tripura has held that the right to use was transferred in the case where set-top boxes were given to the customers during provision of DTH service. It was held that the State hence has full authority to levy VAT on the sale portion of the transaction, i.e., value of the set top box. The petitioners provided DTH service whereby satellite signals of various television channels are sent to the house of the customer. The issue before the High Court was whether handing over of the set top boxes to the customers qualified as sale within the meaning of the Tripura Value Added Tax Act, 2005.

The High Court observed that the effective control of the set top boxes installed was with the customer and under his effective control the set top boxes were installed in his house. It was noted that the customer can use the set top boxes when he wants to; can use the same to view whichever channel he wants to view; and may or may not use the set top box. The Court in this regard also observed that the petitioner did not even have the power to enter the premises of the customer, and was responsible for the functioning of the set top boxes only for a period of six months and thereafter there was no warranty. [*Bharti Telemedia Limited* v. *State of Tripura* - 2015-VIL-227-TRI]

Sale in course of import – Back to back order:

The appellant placed back to back orders on his foreign vendors for purchases of the goods ordered by the customers in India. The bills of entry were filed in the name of its customers within India and the goods were cleared by the customers only. The Maharashtra Sales Tax Tribunal in the dispute, as to whether the transaction qualified as sale in the course of import, has held that on the basis of the design of the transaction, it cannot be said that the purchase orders placed by the Indian customers on the appellant occasioned such imports under the first limb of Section 5(2). It was also held that the sale was not effected by transfer of document of title to the goods before the goods have crossed the customs frontier of India under the second limb of Section 5(2).

The Tribunal analyzed the transaction and noted the fact of absence of goods being purchased as per any specific order with particular customer in India and that they were not exclusively manufactured as per the drawings, specification and design supplied by the customers, but were general goods for which there were more than one customer in India. It was further observed that though the appellant was a sole distributor, the relationship between the foreign suppliers and that of the appellant was on principal to principal basis. It was held that back to back

contracts by themselves did not establish that the first limb of Section 5(2) was attracted and that even though the bills of entry were in the name of the customers it cannot per se be said to be the document of title to the goods. The Tribunal applied the decision in the case of *Giesecke and Devrient I.P. Ltd.* v. *State of Maharashtra*, ST Appeal No.1 of 2006, decided on 2-1-2012 (Delhi High Court). [*Avdel India Pvt Ltd.* v. *State of Maharashtra* - 2015-VIL-17-MSTT]

NEW DELHI
5 Link Road,
Jangpura Extension,
Opp. Jangpura Metro Station,
New Delhi 110014

B-6/10, Safdarjung Enclave
New Delhi - 110 029
Phone : +91-11-4129 9811
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. Maharashtra
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

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