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In Focus

- Sales tax arrears cannot be collected from purchaser of property from original debtor
- Special CVD refund admissible on goods imported and transferred on right to use basis
- Cosmetics less than 10g or 10ml not covered under MRP based assessment
- Amount of waiver of loan can be deducted to determine 'actual cost' of asset
- Octroi not applicable on aircrafts entering municipal limits and leaving after fuelling
- Cenvat credit admissible based on provisionally assessed bill of entry
- PAN card issuance on behalf of IT Dept. not taxable under BAS
- Early payment incentive not liable to Service Tax under BAS
- Entry Tax introduced in West Bengal
- Cenvat credit admissible on structural components of boilers

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Contents

Article

Cosmetics less than 10g or 10ml not covered under
MRP based assessment

3

Customs

4

Central Excise

5

Service Tax

7

VAT

10

Income Tax

11

Article

Cosmetics less than 10g or 10ml not covered under MRP based assessment

By Charanya Lakshmikumaran

Importation of goods into India attracts customs duty which usually consists of BCD, CVD and SAD along with education cess and secondary and higher education cess. CVD is levied in order to countervail the excise duty on like articles that are domestically manufactured. In cases where the domestic goods are valued on MRP less abatement, the same principle would be followed for calculating CVD as well.

It is settled law that for levy of excise duty or CVD on MRP basis, two conditions have to be simultaneously fulfilled. First, there must be a requirement under the Legal Metrology Act, 2009 or any rules made thereunder or any other law for the time being in force to affix MRP on the said goods and second the goods must be specified in the notification issued under Section 4A of the Central Excise Act, 1944.

The Apex Court in its landmark decision in *Jayanti Food Processing (P) Ltd. v. Commissioner* [2007 (215) E.L.T. 327 (S.C.)] while elaborating the scope of Section 4A of the Central Excise Act, 1944 laid down certain conditions that are to be fulfilled for assessment based on MRP for excise duty purpose. The same principles would be applicable in cases involving CVD on goods covered under MRP-based assessment since proviso to Section 3(2) of Customs Tariff Act, 1975 is in *pari materia* with Section 4A of Central Excise Act.

The Legal Metrology (Packaged Commodity) Rules, 2011 ['PC Rules, 2011'] provide for cases where it is required to declare MRP and other labels on any packaged commodity. Several exceptions have been carved out, such as when the packaged

commodities are sold to industrial or institutional buyers etc., where there would be no requirement to affix MRP. Naturally in such cases, CVD or excise duty assessment would not be on the basis of MRP. Similarly, Rule 26 of the PC Rules, 2011 grants exemption from the application of those rules to packages containing a commodity if the net weight or measure of the commodity is ten grams or ten millilitre or less, if sold by weight or measure.

The Fourth Schedule of the PC Rules, 2011 provides a list of declarations as to weight, measure, volume, length or number that is to be provided for different commodities. It provides that cosmetics including creams, shampoo, lotions and perfumes are to be sold in terms of weight or measure and therefore, it is clear that such goods are not to be sold not in terms of number.

In a recent decision, CESTAT, Mumbai in the case of *Hindustan Unilever Ltd. v. Commissioner* [2011-TIOL-1040-CESTAT-MUM], has held that lipsticks cannot be extended the exemption under Rule 26 of PC Rules, 2011 since they are sold on per piece basis and not by weight or measure. Relying on this decision CVD has been sought to be levied based on MRP in respect of several consignments of cosmetics and similar articles. However, this decision has since been set aside by the Hon'ble High Court of Bombay and the matter has been remanded back for de-novo adjudication by CESTAT.

But it is interesting to note that despite the Tribunal's decision having been set aside by the Hon'ble High Court, the Department has been insisting that CVD be

paid on MRP basis. This stand may not be sustainable because there are several decisions with regard to an identical rule in the erstwhile Standards of Weights and Measures (Packaged Commodity) Rules, 1977. In *Commissioner v. Kraftech Products* [2008 (224) E.L.T. 504 (S.C.)] the issue was regarding valuation of multi-piece hair-dyes, lip smootheners and shampoos. The Supreme Court held that exemption under Rule 34 would be applicable to all these products, even though they were part of multi-piece package since each individual piece weighed or measured less than 10 gm or 10 ml. An identical issue was decided in *Bharat*

Cosmetics v. Commissioner [2007 (211) E.L.T. 449] by the Tribunal and affirmed by the Supreme Court in 2010 (255) E.L.T. A14 (S.C.).

Therefore, following the law laid down in *Kraftech* and *Bharat Cosmetics* rulings, clearance of subject goods should be allowed without insisting on CVD on MRP basis. May be, the position will become clear if de novo order of the Tribunal in *Hindustan Lever Ltd.*, adopts the ratio in the cited precedents.

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CUSTOMS

Notifications & Circulars

Special CVD exemption - Revamped scheme for specified goods to come into force in June 2012: The new scheme providing for exemption from Special CVD (SAD) to import of specified products including pre-packaged goods, as proposed to be introduced by Notification No. 21/2012-Cus., dated 17-3-2012 for Sl. No. 2, 46, 70, 87 and 98 of the above notification, from 1st of May, has been postponed by one month. Notification No. 29/2012-Cus., dated 30-4-2012 issued in this regard, amends the earlier notification and makes the date of effect as 1st of June, 2012.

Proper officer under various provisions of Customs Act, 1962 appointed: The CBEC by Notification No. 40/2012-Cus. (N.T.), dated 2-5-2012 has appointed various officers of Customs and Central Excise as proper officers for the purpose of specified provisions under the Customs Act, 1962. As no explanation has been provided, it is

still unclear as to the impact of this notification on actions already initiated under the respective provisions of the Customs Act, 1962.

Classification of Mini/Micro SD cards: By Circular No. 12/2012-Cus., dated 1-5-2012 the Customs Department has clarified that Micro/Mini SD Cards, where the PCB has been substituted by substrate which itself fully qualifies as PCB and where the connecting pins qualify as connecting sockets, are classifiable under sub-heading 8523 51 of the Customs Tariff as semiconductor media, solid-state non-volatile storage devices. The other contending entry was sub-heading 8523 52 which applies to semiconductor media, smart cards. General Rules for Interpretation of Import Tariff (GRIs) 1 (Note 4(a) to Chapter 85) and 6 were applied for the classification after also taking inputs from Department of Information Technology.

Ratio decidendi

Special CVD refund admissible on goods imported and transferred on right to use basis:

Transfer of right to use would be sufficient to constitute a sale for the purpose of the Notification No. 102/2207-Cus. pertaining to refund of Special CVD (SAD) paid at the time of import. CESTAT, Delhi has held that though the word 'sale' has not been defined in the notification, it must be construed in the sense in which it has been defined under Sales tax / VAT laws. In the present case, the assessee imported set top boxes and transferred them to the customers on right to use basis. Transfer of right to use goods being a deemed sale, assessee discharged appropriate VAT burden on such transfers. The Tribunal hence allowed the refund claim while dismissing the Department's appeal [*Commissioner v. Reliance Communications Infrastructure Ltd.* - 2012-TIOL-499-Tri Del].

Person liable for duty when financial institution also figures in bill of entry:

In the present case, goods were imported under 100% EOU scheme. Bill of entry was filed jointly in the name of the 100% EOUs as well as the financial institutions which were recorded as owners of the goods. It was held

that duty liability arising out of any short levy / non-levy may be demanded from the 100% EOU unit as well as the financial institution jointly and severally [*Sundaram Finance Ltd. v. Commissioner* - 2012-TIOL-360-CESTAT-MAD].

Interest payable on delayed refund of duty deposited during investigation:

CESTAT, Mumbai in its recent order has held that interest is payable on delayed refund of amount deposited during investigation. The Tribunal while holding so observed that payment made by the assessee at the time of investigation was subsequently apportioned towards duty demand and hence the same was not merely a pre-deposit. It was also noted that at the time of passing the refund order the lower authority had considered the applicability of unjust enrichment provisions which showed that what was refunded was only excess duty. Holding that Section 27A of the Customs Act, 1962 was invocable, the Tribunal held that interest would be payable if the payment was not made within 3 months from filing of the refund application irrespective of when the order of refund was actually passed. [*RK Chemicals v. Commissioner* - 2012-TIOL-395-Tri-Mum].

CENTRAL EXCISE

Notifications & Circulars

Cenvat credit availability in case of cutting, slitting and printing of aluminium foil:

CBEC has validated Cenvat credit taken on inputs, input services & capital goods used in cutting, slitting and printing of aluminium foils where the assessee had paid excise duty on the final products though the CESTAT had held that these activities do not

amount to manufacture and such decision was upheld by the Supreme Court. As per Notification No. 24/2012-C.E. (N.T.), dated 19-4-2012 the said benefit of non-reversal of credit would be available for the credit taken upto 15-3-2012 if excise duty on the final product has been paid and no refund thereof is claimed. The said notification also provides that

Cenvat credit taken by the buyer in respect of excise duty paid by the assessee on clearances made till 15-3-2012 need not be reversed.

ER-8 to be filed by manufacturers of specified goods: Filing of quarterly return (ER-8) of production and removal of goods has been also made applicable to persons manufacturing only articles of jewellery, articles of goldsmiths' or silversmiths' wares of precious metals, fertilizer and coal, briquettes etc. (all such goods are liable to 1% duty). As per Notification No. 23/2012-C.E. (N.T.), dated 18-4-2012 which amends Central Excise Rules, 2002 in this regard, the said return has to be filed within ten days after the close of the quarter to which the return relates. Presently, this return is applicable to manufacturers availing the benefit of Notification No. 1/2011-C.E.

J&K area based exemption – Date for computing exemption period: CBEC by Circular No. 965/08/2012-CX, dated 17-4-2012 has clarified that for the purpose of Notification No. 56/2002-C.E., dated 14-11-2002, in the case of new units commencing commercial production and also in case of existing units undertaking substantial expansion and starting production from such expanded capacity after the date of exemption notification, the 10 year exemption period is to be computed from the date of commencement of such commercial production. The circular also notes that the date of notification *ibid* is to be taken for computation of 10 year period when the production had started between 14-6-2002 and 14-11-2002.

Cenvat credit admissible on structural components of boilers: Structural components which are to be used essentially as a part of boiler

system would be classifiable as parts of boiler under Heading 8402 of the Central Excise Tariff Act, 1985. C.B.E.C. Circular No. 964/07/2012-CX, dated 2-4-2012 also clarifies that since such structural components are parts and accessories of the boiler, they would be covered by the definition of inputs under Rule 2(k)(iii) of the Cenvat Credit Rules, 2004 and would not be covered under the exclusion clause relating to goods used for laying foundation etc.

Ratio decidendi

Cenvat credit admissible based on provisionally assessed bill of entry: Cenvat credit of duty paid on the imported inputs would be available based on provisionally assessed bill of entry. The CESTAT, Mumbai has held that that Rule 9(1) of the Cenvat Credit Rules, 2004 which allows credit on the basis of bill of entry does not distinguish between a final bill of entry or a provisional bill of entry. The order notes that provisional assessment is also an assessment under the Customs Act, 1962 and that mention of bill of entry under Rule 9(1) *ibid*. will include bill of entry either provisionally assessed or finally assessed [*Monarch Catalyst Pvt. Ltd. v. Commissioner - 2012 (278) ELT 668 (Tri.-Mum.)*].

Cenvat credit on welding electrodes used in repairs: The Andhra Pradesh High Court has held that Cenvat credit would not be available on welding electrodes used for repair and maintenance of plant and machinery. It held that the second explanation to the definition of inputs under Rule 2(k) of the Cenvat Credit Rules, 2004 covered only those goods which are used for the manufacture of capital goods and since repair cannot be equated with manufacture,

credit on such welding electrodes would not be available [*Shree Rayalaseema Hi-Strength Hypo Ltd. v. Commissioner - 2012 (278) ELT 167 (AP)*].

Limitation for demand of interest: Period of limitation for demand of duty is also applicable for demand of interest. Delhi High Court while relying on an earlier Supreme Court order has held that the limitation period given in Section 11A of the Central Excise Act, 1944 will also apply to interest demand. It was further noted by the court that since the period of limitation for demand was one year in

the case before it, period of limitation for demand of interest would also be one year. In this case, the reduced amount of duty, as per order of Commissioner (Appeals), was deposited by the assessee and neither the Order-in-Original nor the Commissioner (Appeals) order had any direction to pay interest. The Department had issued SCN demanding interest alone after three years of the Commissioner (Appeals) order [*Kwality Ice Cream Company v. Union of India - 2012-TIOL-252-HC-Del-CX*].

SERVICE TAX

Circulars

Payment of tax for specified eight services: The C.B.E. & C. by Circular No. 154/5/2012-ST, dated 28-3-2012 has clarified that in respect of specified eight services where the invoice was issued on or before 31-3-2012 but the payment was not received before 1-4-2012, the point of taxation shall continue to be governed by erstwhile Rule 7 of the Point of Taxation Rules, 2011 as it stood till 31-3-2012. This rule which provided for tax payment on receipt of payment in case of individuals or proprietary firms or partnership firms in respect of specified eight services, has been omitted from Point of Taxation Rules, 2011 but by amending Service Tax Rules, 1994, similar facility has been extended to all service providing individuals and partnership firms having turnover upto Rs. 50 lakhs from 1-4-2012.

Payment of tax when tax rate revised before rendering of service: The C.B.E. & C. has clarified that in respect of air tickets issued by airlines before 1-4-2012 for journey after 1-4-2012, where

payment is also received before 1-4-2012 by the airlines or by the agents, the point of taxation will be governed by Rule 4(b)(ii) of the Point of Taxation Rules, 2011 and accordingly tax has to be paid @ 10% as applicable then. The Circular No. 155/6/2012-ST, dated 9-4-2012 notes that in case of airline industry, ticket issued for journey is recognized as invoice by virtue of proviso to Rule 4A of the Service Tax Rules, 1994 and the payment to an agent is also payment to the principal according to the Indian Contract Act, 1872. The circular states that extra amount already collected by the airlines has to be paid to the govt. as per Section 73A of the Finance Act, 1994.

Market fee collected by APMC covered under BAS and not BSS: Market fee (popularly known as 'mandi shulk') collected by Agricultural Produce Marketing Committee (APMC) from the licensees is covered under Business Auxiliary Services and not under Business Support Services. Benefit

of exemption Notification No. 14/2004-ST is also available on such fees. As per C.B.E.C. Circular No. 157/8/2012-ST, dated 27-4-2012 issued in this regard, the said services of providing basic facilities in the market area, out of the market fee collected from the licensees, mainly to facilitate the farmers, purchasers and others are not in the nature of outsourced services. The Circular notes that APMCs provide a host of services to the licensees in relation to procurement of agricultural produce, which are 'inputs' in terms of the definition given in Section 65(19) of the Finance Act, 1994 and that the scope of 'inputs' is wider here than in Cenvat Rule 2(k). Any other service provided by APMCs for a separate charge to licensees, farmers or any other person, however, would be liable to tax under the respective taxable heads.

Ratio decidendi

PAN card issuance on behalf of IT Dept. not taxable under BAS: The Mumbai Bench of CESTAT has held that services rendered for issue of PAN cards on behalf of the Income Tax Department cannot be taxed under the category of "Business Auxiliary Services" since the IT Department is engaged in the sovereign function of levy and collection of income tax and issue of PAN card on behalf of IT Department is in relation to such sovereign function and not in relation to any business. It further held that services in respect of managing and monitoring the modernization and computerization of various operations of the service recipient as well as services in respect of acquisition, installation, commissioning and system integration of the IT systems, hosting facilities for the central site, preparation and issue of NSSN cards, would merit

classification under "Information Technology Software Service" and not under the category of "Management Consultancy Service" [*UTI Technology Services Ltd. v. Commissioner - 2012 (26) STR 147 (Tri.-Mumbai)*].

Cenvat credit on services used at wind mill, available: Cenvat credit of Service tax paid in relation to services received at the wind mill situated far from the factory is available. CESTAT, Delhi in its order has held that these wind mills are to be considered as captive plant and the services of erection, installation, commissioning, repair, maintenance and insurance used in respect of wind mills are eligible for Cenvat credit. The Tribunal noted that if the captive power plant happens to be wind power generator, it may not be always possible to locate the same in the close vicinity of the factory and hence the agreement with the State Electricity Board for its transmission was a necessity. CESTAT further observed that there was a clear nexus with the manufacture of the final product as the electricity generated by the wind mill was used for running the factory of the appellant and just because the electricity was not directly supplied, but was supplied through the M.P. electricity grid, it cannot be said that the wind mills are not captive power plant [*Rajratan Global Wires Ltd. v. Commissioner - 2012 (26) STR 117 (Tri.-Del.)*].

Cenvat credit on security services provided at residential quarters for workers: Cenvat credit of Service tax paid on security services provided at the residential quarters maintained for the workers of the factory is not available. Gujarat High Court in its order has held that the

act of providing residential quarters and further to provide security services therein was an act voluntary in nature. The Court observed that in the Bombay High Court decision in the case of Ultra Tech Cement, the provision of canteen facility for the workers was mandatory. The Court held that there is no connection, direct or indirect, between the security services provided by the manufacturer in the residential quarters maintained for the workers and the activity of manufacture of the final product and that such service is not covered under the scope of 'input services' under Cenvat Rule 2(l) [*Commissioner v. Gujarat Heavy Chemicals Ltd.* - 2012 (34) STT 587 (Gujarat)].

Trademark transfer when covered under Intellectual Property service: CESTAT, New Delhi has held that transfer of trademark by the assessee, though permanently, is covered under the scope of Intellectual Property service. The Tribunal held that the agreement was not for sale of goods and that the licensor continued to have property in the trademark and stake in proper use of the trademark. The use is supervised by the licensor so that no harm was caused to the goodwill of the property which continued to belong to the licensor. It was observed that an agreement to sell becomes a sale only when all the conditions of the agreement are complied with and that while there were conditions to be complied with by the appellant in perpetuity, at no point of time the conditions can be fully complied with. It was hence held that no transfer in property of the goods took place as per section 4 of the Sale of Goods Act, 1930. Benefit of Notification No. 12/2003-S.T. was also denied as there was no sale involved in the transaction [*Eicher Good Earth*

Ltd. v. Commissioner - 2012 (35) STT 46 (New Delhi - CESTAT)].

Early payment incentive not liable under BAS: The CESTAT, Ahmedabad has held that retaining early payment incentive is not any service rendered but a discount to the assessee and hence will not be covered for service tax liability under Business Auxiliary Services. The appellant was engaged as distributors and was discharging tax liability under BAS on the commission received from their principals. However, they were also collecting the amount due to the principal and remitting the same to the principal after retaining an amount as early payment incentive. It was this amount which was stated by Department as being taxable [*Tradex Polymers Pvt Ltd. v. Commissioner* - 2012-TIOL-315-CESTAT-AHM].

Permission to use trademark covered under IP services: Permission to the oil companies, to use the trade marks 'Hero Honda' and 'Hero Honda 4T plus' is covered by the definition of intellectual property right and hence such activity will fall under Intellectual Property Service. CESTAT, Delhi has held that the appearance of the said trade marks on the oil companies' products would indicate a connection between the said companies and the appellant's (Hero Honda's) product. It observed that had the oil companies used the said trade mark without entering into an agreement with the appellant, the same would have amounted to infringement of latter's right in terms of Trade Mark Act and hence the need for the agreement and payment of royalty. [*Hero Honda Motors Ltd. v. Commissioner* - 2012-TIOL-379-CESTAT-DEL].

VALUE ADDED TAX (VAT)

Notifications

Entry Tax introduced in West Bengal: The West Bengal Tax on Entry of Goods into Local Areas Act, 2012 has come into force with effect from 1-4-2012 by Notification No. 457-L. dated 31-3-2012 read with Notification No. 451-F.T, dated 31-3-2012. Notification No. 452-F.T., of the same date provides the rate of tax as 1% for specified goods, to be paid by the dealer or importer other than the dealer.

VAT rate increased in Odisha: The rate of VAT on goods falling under Schedule B, Part II of the Orissa VAT Act, 2004 has been increased from 4% to 5% with effect from 1st of April 2012 by Notification S.R.O. No. 126/2012-NO. 12277-FIN.-CT1-TAX-0025/2012, dated 30-3-2012.

Tax Deduction at Source (TDS) rate increased in Maharashtra: The rate of TDS in case of works contract awarded to unregistered dealers has been increased from 4% to 5% with effect from 1-4-2012 vide Notification No. JC(HQ)1/VAT/2005/97, dated 4-4-2012.

Increase in rate of reversal of input tax credit on stock transfer of goods from Maharashtra: The rate of reversal of input tax in case of stock transfer of goods outside Maharashtra has been increased from 2% to 4% with effect from 1-4-2012 vide Notification No. VAT 1512/C.R. 43/ Taxation -1, dated 31-3-2012.

Ratio decidendi

Sales tax arrears cannot be collected from purchaser of property from original debtor:

The Madras High Court has held that when the purchase of property was not fraudulent in nature

and without any knowledge of the existing sales tax arrears, no sales tax arrears can be recovered from the petitioner-purchaser of property. The question that arose for determination before Hon'ble Court was whether sales tax dues of the seller can be recovered from the purchaser by creating a charge on the property purchased wherein the said property was purchased after exercising due diligence. The court held that the petitioner had purchased the property in question for a valid consideration, without notice of the charge said to have been created on the property in question in respect of the alleged arrears of sales tax payable by the vendor. The Court noted that the assessee had made necessary enquiries from the Special Tahsildar, Land Acquisition and held that when the petitioner had purchased the property in good faith and for a valid consideration, without having notice of the sales tax arrears said to be due from the vendor, it would not be open to the Department to proceed against the petitioner company, or against the property in question, for collecting such sales tax arrears [*Tata Consultancy Service v. Commercial Tax Officer, Chennai - 2012-VIL-31-MAD*].

Octroi not applicable on aircrafts entering municipal limits and leaving after fuelling:

The Bombay High Court has held that where the aircraft enters and lands in Mumbai after taking off from a place outside Mumbai and then takes off to fly to another destination outside Mumbai, the aircraft cannot be said to have entered for 'use' in Mumbai. In this case the court examined whether the aircraft whose flight originated outside Brihan Mumbai and which land at Mumbai airport,

disembark passengers, take on fuel, food and beverages, embark passengers and take off for a destination outside Brihan Mumbai can be said to be used in Brihan Mumbai. The court observed that octroi is attracted only where there is an entry of articles mentioned in the schedule for sale, use or consumption within municipal limits and that the aircraft cannot be said as 'used' in Mumbai. The aircraft is in the airport for a transient period of time while not flying, which is what it is designed and

meant for. It was also observed that once landed and parked, the aircraft ceases to be 'used' for the purpose it is meant for i.e. flying. Thus, it was held that by the court that the aircrafts have not entered the municipal limits of Brihan Mumbai for the purpose of *use therein* i.e. for the purpose of flying within the municipal limits and accordingly no octroi can be demanded [*Jet Airways (India) Ltd. v. Municipal Corporation of Greater Mumbai - 2012-VIL-30-BOM*].

INCOME TAX

Ratio decidendi

Section 14A – No disallowance in case of shares held as stock in trade: The assessee was a distributor of state lotteries and dealer in shares and securities. For funding its investment in shares it took interest free loan whereon brokerage charges were incurred. Some of such investments were sold and the remaining unsold shares resulted in tax free dividend. The revenue authorities contended that the brokerage charges were directly attributable to earning dividend income and disallowed the same. A portion of business expenditure was also disallowed applying Rule 8D of the Income Tax Rules, 1962. In appeal ITAT held that part of brokerage related to business since profit from sale of shares was taxed as business income and directed that only proportionate part of brokerage and other business expenditure should be disallowed. Reasoning that the unsold shares had not been retained with the intention of earning dividend and hence brokerage cannot be said to have been incurred for earning exempt income, the High Court deleted the proportionate disallowance as well. [*CCILtd. v. JCIT*, ITA 359/2011 (*Karnataka HC dated 28-2-2012*)]

Deduction under Section 10A – Stage of set-off of losses: The assessee was eligible to deduction under Section 10A of Income Tax Act, 1961 and had brought forward losses pertaining to a unit which not eligible for such deduction. The assessee claimed deduction under Section 10A first and partly set off the brought forward losses against the remaining profits. The revenue authorities however sought to set off the losses and allowed deduction under Section 10A only on remaining profits. Accepting the stand of the assessee the High Court held that Section 10A has to be given effect to at the stage of computing the profits and gains of business. The judgement notes that application of Section 10A is anterior to application of provisions of Section 72 dealing with carry forward and set off of business losses. [*CIT v. Black & Veatech Consulting P. Ltd.* ITA 1237 of 2011 (*Bombay HC dated 9-4-2012*)]

Slump sale need not be a 'sale': In this case the assessee transferred its project finance business and assets based financing business, including its shareholding in SIBPL in accordance with a Scheme of Arrangement which was sanctioned by the High

Court of Calcutta under Section 391 to 394 of the Companies Act, 1956 and received a consideration of Rs.375 lacs for the same. The contention of the Assessee was that this transaction did not amount to Slump Sale as per section 50B of the Income tax Act, 1961 in as much as a scheme sanctioned under section 391 of Companies Act does not tantamount to sale which is a precondition for taxing a transaction as a slump sale.

The High Court rejected the arguments of the assessee and held that Section 50B was inserted to supercede decisions which held that a slump sale (i.e. transfer of business as a going concern) was not taxable for want of cost of acquisition. The term 'slump sale' is defined in Section 2(42C) to mean the "transfer" of an undertaking as a result of a "sale" and the word 'transfer' therein is significant and any type of "transfer" which is in nature of slump sale i.e. when lump sum consideration is paid without values being assigned to individual assets and liabilities is covered by Section 2(42C) and 50B. The High Court noted that this was the reasonable, plausible and natural grammatical meaning which had to be given to the definition of 'slump sale' and it was not correct to construe the word 'slump sale' to mean that it applies to 'sale' in a narrow sense. [*SREI Infrastructure Finance*

Limited v. ITSC, WP (Civil) no. 1592 of 2012 (Delhi HC) dated 30-3-2012]

Amount of waiver of loan can be deducted to determine 'actual cost' of asset: The assessee had taken loans from Steel Development Fund (SDF) and due to financial stress it requested Government for waiver thereof which was accepted by Government. The waiver was treated as reduction from cost of assets for the accounting records however for tax purpose depreciation was claimed on the WDV without any adjustment on account of such waiver. Revenue authorities alleged that waiver needs to be adjusted from WDV even for tax depreciation. The High Court looked in to the nature of transaction, treatment by assessee in books of accounts and contemporaneous conduct of the parties and held that that the assessee understood the receipt of the loans from the Government as having been given towards meeting a part of the cost of the assets. It also held that even if waiver is not explicitly covered in Explanation 10 to Section 43 (1) of the Income Tax Act, 1961, the transaction fell within the condition that part of the cost had been met directly or indirectly by specified authorities and that portion of the cost could not be included in actual cost of the asset. [*Steel Authority of India Limited v. CIT*, ITA 37, 38,41 of 2010 (Delhi HC) dated 30-3-2012]

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