India Tax Konnect

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Editorial

After the rate cut announced in the policy review by the Reserve Bank of India in January 2015, several Indian banks have started lowering lending rates to make credit availability easier for consumers and corporates. However, any short-term impact of this announcement is not likely to be visible. In addition to the rate cuts, the upcoming Budget may also introduce certain measures which, in turn, will provide a boost to credit growth in India in 2015.

Wholesale Price Inflation, in December 2014, remained stable at 0.1 per cent, primarily as a result of a decline in global crude oil prices and subdued demand pressures. The Consumer Price Index (CPI) increased marginally from 4.4 per cent in November to 5 per cent in December as a result of higher inflation in food, beverages and tobacco at 5.1 per cent in December. However, core CPI inflation eased to 5.2 per cent in December from 5.5 per cent in the preceding month.

As per press note, dated 28 January 2015, the Government of India has decided not to appeal against the Bombay High Court decision in the case of Vodafone India Services Private Limited (VISPL) on a transfer pricing adjustment to avoid fruitless litigation. Indian company had issued shares at a premium to its foreign holding company. Consideration on such issue was shown as capital receipts in the books of accounts. VISPL reported this transaction as an 'International Transaction' and stated that this transaction does not affect its income. Tax authorities determined the arm's length price of the shares on the basis of Net Asset Value, and made an upward adjustment by treating it as 'deemed loan'. The Bombay High Court had held that there is no charge under the Income-tax Act, 1961 on account of capital amounts received and/or arising on account of issue of shares by an Indian entity to a non-resident entity.

On the international tax front, the Jabalpur Tribunal, in the case of Birla Corporation Ltd., held that the installation and commissioning activities were in connection with machinery/equipment supplied by parties from outside India. Such activities do not create permanent establishment, since the activities did not exceed the threshold provided in the tax treaties. Further, the payments would not be covered as the fees for technical services under the tax treaties. Hence, the payment towards such activities is not taxable in India and the taxpayer is under no obligation to deduct tax at source on such payments.

On the transfer pricing front, the Mumbai Tribunal, in the case of Watson Pharma Private Limited has laid down some important principles on the issue of location savings. The Tribunal held that where the taxpayer operates in a perfectly competitive market and benchmarking is done by the taxpayer using comparables in the jurisdiction of the tested party, then in such case no additional allocation is called for on account of location savings.

We at KPMG in India would like to keep you informed of the developments on the tax and regulatory front and its implications on the way you do business in India. We would be delighted to receive your suggestions on ways to make this publication more relevant.

International tax

Decisions

Taxability of fees for technical services for installation and commissioning activities

The taxpayer is engaged in the business of manufacturing and selling cement. The taxpayer made certain remittances to foreign parties[1] without deducting tax at source. These foreign parties also provided services for installation and commissioning of plant and machinery. The technicians of the respective foreign party visited India for the purpose of the said installation/commissioning. The taxpayer claimed that the income embedded in these payments was not chargeable to tax in India as these payments were for imports of plant, and machinery. Accordingly, there was no requirement of withholding of tax from these payments.

The Assessing Officer (AO) held that the contract was a composite contract for supply of plant and machinery and also for ancillary services of installation, commission and erection of such plant and machinery. Accordingly, the taxpayer was required to deduct tax at source from these payments.

The Jabalpur Tribunal held that part of the consideration which can be attributed to installation, commissioning or assembly of the plant and machinery, or any supervision activity in connection thereto, was taxable under the Income-tax Act, 1961 (the Act). Such portion accrues and arises in India, since the related economic activity was performed in India.

The taxpayer's work of installation and commissioning in respect of all transactions did not exceed the time threshold prescribed under the installation Permanent Establishment (PE) clause of all the respective tax treaties. The India-Belgium and the India-U.K. tax treaties provides an additional condition of value of such installation/commissioning services to be more than 10 per cent of the sale value. This condition was also not fulfilled in the present case. Accordingly, an installation PE was not created under the relevant tax treaties.

Further, the Tribunal held that services in the nature of installation and commissioning would, de facto, amount to 'technical services'. There is an overlapping effect, such that, there is a general provision [of Fees for Technical Services (FTS)/Fees for Included Services (FIS)] for taxability of technical services and a specific provision (of installation PE) for taxability of technical services in the nature of construction, installation and supervision activities. The Tribunal relied on the Supreme Court's rulings in the cases of Union of India v. India Fisheries (P) Ltd. [1965] 57 ITR 331 1965 (SC) and ITO v. Titagarh Steels Ltd. [2001] 79 ITD 532 (SC) and observed that if there is an apparent conflict between two independent provisions, a specific provision must prevail over the general provision. If one were to proceed on the basis that, even if the PE test fails, taxability can be held under the FTS provisions; such an approach would render the PE provisions meaningless. In a case where there is a specific PE clause for a specific type of service and such services are also covered by the scope of FTS/FIS provision, the taxability of consideration for such services must remain confined to the relevant specific PE clause. The provisions of taxability as FTS/FIS will not come into play in such cases.

[1] Parties located in USA, U.K., Belgium, Switzerland, Austria, Germany, China

Alternatively, even if the FTS/FIS article was applied to the instant case, the payment might not qualify as FTS/FIS under the India-U.K. and the India-U.S. tax treaties because of 'make available' clause under these tax treaties. Installation or commissioning by the parties does not transfer technology, in the sense that the recipient of these services cannot perform such services on its own, without recourse to the service provider. Therefore, make available condition was not satisfied.

In view of Most Favoured Nation (MFN) clause under the India-Belgium tax treaty, benefit of 'make available' clause under the India-U.K. and the India-U.S. tax treaties is available under the India-Belgium tax treaty. In view of the same, payment made to Belgian parties cannot be treated as FIS.

Article 12(5)(a) of the India-Switzerland tax treaty specifically excludes services which are ancillary and subsidiary, as well as inextricably and essentially linked, to the sale of a property from taxation i.e. plant, equipment or machinery. Accordingly, even if there be any income embedded in the payments, in respect of installation, commissioning or assembly activities, or supervisory activities connected therewith, the same cannot be brought to tax.

The receipts in the hands of the parties were in the nature of business income and the same were not taxable in India in the absence of a PE under the relevant tax treaties. The matter was remanded to the AO to verify the existence of a PE of foreign parties.

Birla Corporation Limited v. ACIT (ITA No. 251 and 252/Jab/13) – Taxsutra.com

Reimbursement of salary paid to deputed employees by a foreign company having Service PE in India, taxable as business profit and not FIS under the India-USA tax treaty

The taxpayer is a resident of USA and is a 100 per cent subsidiary of Morgan Stanley USA. The taxpayer entered into an agreement with an Indian company for providing support services. In respect of this agreement, the taxpayer deputed its employees to the Indian company. The taxpayer made payment of salary after deduction of tax at source under Section 192 of the Act to such employees. Such a payment of salary was made on behalf of its Indian subsidiaries, only for administrative convenience and the same amount was reimbursed by the subsidiaries without any mark-up.

The Mumbai Tribunal observed that that the seconded employees were the real employees of the taxpayer who have

come to India to render services and once they are rendering services on behalf of the taxpayer in India, they constitute Service PE in India. Article 12(6) of India-USA tax treaty provides that provisions of Article 12 shall not apply to 'royalty' and FIS arising through PE situated in India. In such a situation provisions of Article 7 (Business Profits) of the tax treaty shall apply. In other words, if there is a PE, then Royalty or FIS cannot be taxed under Article 12, but only under Article 7 of the tax treaty.

The Delhi High Court had not considered this concept in the case of Centrica India Offshore (P.) Ltd v. CIT [2014] 364 ITR 336 (Del). Further in all other decisions relied upon by the tax department, this concept was not considered and therefore such decisions will not apply to taxpayer's case.

In view of above, the Tribunal held that the payment made by the Indian entity to the taxpayer on account of reimbursement of salary cost of the seconded employees will have to be examined under Article 7 of the tax treaty. Further, under Article 7 of the tax treaty, payment received by the taxpayer is to be treated as revenue receipt and any cost incurred had to be allowed as deduction including salary payment. Accordingly, the AO was directed to compute the payment strictly as business profit under Article 7 of the tax treaty and not as FIS under Article 12 of the tax treaty.

Morgan Stanley International Incorporated v. DIT (I .T.A. No.6882/Mum/2011) (Mum) – Taxsutra.com

Corporate tax

Decisions

Premium paid on premature redemption of debentures is revenue in nature

The taxpayer paid premium on redemption of debentures. The AO as well as the Commissioner of Income Tax (Appeals) [CIT(A)] held that premium on redemption of debentures was in the nature of capital expenditure since the taxpayer derived the benefit by paying the sum on premature redemption of debentures. Accordingly, both the AO and the CIT(A) have disallowed the premium paid on redemption of debentures. However, the Mumbai Tribunal allowed the same.

The Bombay High Court held that the Tribunal had correctly observed that if the debentures were redeemed by the taxpayer prior to the period for which they were issued and if there was a mutual arrangement for premature redemption thereof, then, the premature redemption premium cannot be said to be a capital expenditure and need not be spread over the entire period of debentures. This was because the contract was brought to an end due to premature redemption. There was no obligation thereafter on the taxpayer to redeem it. The Supreme Court's decision in the case of Madras Industrial Investment Corporation Ltd. v. CIT [1997] 225 ITR 802 (SC) relied upon by the tax department is distinguishable on the facts of the present case. Accordingly, the premium paid on premature redemption of debentures was treated as revenue expenditure.

CIT v. Grindwell Norton Ltd. (ITA No. 694 OF 2012) (Bombay High Court)

Data link is a standard facility without human intervention, hence not liable for deduction of tax at source on its payment

The taxpayer, a software company made payments for data link charges to various telecom service providers. The connection/link is used for the transmission of data from one service provider to the designated client server. Further, there was no human intervention for the transmission of the data. The taxpayer had not deducted tax at source (TDS) from the data link charges paid to various telecom service providers. The Assistant Commissioner of Income-tax - TDS held that the taxpayer was liable to deduct tax at source on such amounts in view of Section 194J of the Act.

The Pune Tribunal held that when the taxpayer makes any FTS payment, the tax needs to be deducted under Section 194J of the Act. FTS involves rendering of any managerial, technical or consultancy services. In order to provide such services, the element of human involvement is necessary.

In the present case, data link and inter-connection facilities were provided. The technical equipments were utilised for inter-connection purposes only. The same does not result into managerial, technical or consultancy services. In absence of any human intervention between the taxpayer and the services provided by the data link provider, the payment

made by the taxpayer was not for technical services. Merely because for the purpose of maintenance certain human intervention was provided, this cannot lead to the conclusion that the data link charges paid to various telecom service providers were in the nature of technical services. In the absence of any human intervention while transmitting the data through such data link, the payments made for utilsing such services was not in the nature of technical services under Section 194J of the Act.

iGATE Computer Systems Ltd. v. DCIT [ITA Nos.1301 to 1303 & 1616/PN/2013)

Depository charges paid without TDS are allowable expenditure on the basis of Special Bench decision in the case of Merilyn Shipping, and SLP dismissal by the Supreme Court in the case of Vector Shipping

The taxpayer is engaged in the business of share and stock broking. It had debited certain sum to the Profit & Loss Account under the head 'depository charges' which was payable on account of services provided with regard to transactions in securities through the stock exchange. The taxpayer paid depository charges in accordance with the agreement made with depository participants for the execution of work, without deducting the tax on such payments. The AO held that such payments were for technical services covered under Section 194J and 194C of the Act. The taxpayer had not deducted tax at source while making such payments and therefore was liable for disallowance of the business expenditure under Section 40(a)(ia) of the Act.

The Mumbai Tribunal in the case of Amit Naresh Shah (ITA No.4154/Mum/2013), relied on the dismissal of SLP by the Supreme Court in the case of CIT v. Vector Shipping Services (P) Ltd. [CC No(s). 8068/2014], and held that Section 40(a)(ia) is not applicable to payments already made since the term 'payable' has to be satisfied for invoking provisions of Section 40(a)(ia) of the Act.

In the present case, the amount was already paid and the taxes were discharged by the recipient and therefore, the decision of the Special Bench in the case of Merilyn Shipping & Transports [2013] 136 ITD 23 (Del) (SB) was applicable. Accordingly, the provisions of Section 40(a)(ia) of the Act cannot be invoked.

Arcadia Share & Stock Brokers Pvt. Ltd. v. DCIT [ITA No. 1871/Mum/2013 (AY: 2006-07)]

Telecom license is non-exclusive and does not secure any enduring advantage, hence such license fees are allowable as revenue expenditure

The taxpayer is engaged in providing Cellular Mobile Telephony services. The taxpayer charged license fee paid to the Department of Telecommunication (DOT) as revenue expenditure and claimed deduction while computing income under the Act. However, the AO held that the payment of license fee was a capital expenditure as the same was incurred to acquire and keep in force license/right to operate the telecommunication services and accordingly, granted pro-rata deduction under Section 35ABB of Act.

The Ahmedabad Tribunal in the taxpayer's case in earlier years, on the same issue, had decided the issue in favour of the taxpayer. Similarly, in relation to the present case, the Tribunal held that without utilising the network, the taxpayer cannot provide telecommunication services. The payment does not secure for taxpayer any asset or right of permanent character. The license does not acquire any enduring advantage because the license granted under Section 4 of the Indian Telegraph Act, 1885, can be revoked for breach of any of the condition subject to which it was issued or any default of payment of any consideration payable for license. License is a non-exclusive license and it is open to the Government of India to grant similar license to other enterprises. Thus, the taxpayer was not an exclusive user of such facility. Accordingly, license fees paid to DOT is an allowable expenditure under Section 37(1) of the Act.

Idea Cellular Ltd. v. ACIT [2014] 47 taxmann.com 341 (Mum)

Transfer pricing

Decisions

The Mumbai Tribunal held that no adjustment on account of location savings is required when arm's length price is determined on the basis of appropriate comparables

The taxpayer is engaged in providing contract manufacturing and contract research and development services to its Associated Enterprise (AE). The AEs compensate the taxpayer on a total operating cost plus arm's-length mark-up basis. The taxpayer used Transactional Net Margin method (TNMM) as Most Appropriate Method to benchmark the transaction relating to contract manufacturing and contract research and development services.

During the course of the transfer pricing assessment and proceeding before the Honourable Dispute Resolution Panel (DRP), both the Transfer Pricing Officer (TPO) as well as the DRP contended that location saving arises as manufacturing activities, which were being undertaken in the U.S./ European countries, are transferred to India which is a low cost jurisdiction; and location savings is computed based on certain articles appearing in some journal and websites. The location savings so computed was then allocated on ad-hoc basis by dividing the savings equally between the taxpayer and its AEs.

Tribunal ruling

The Tribunal observed that the taxpayer as well as the AE operates in a perfectly competitive market and the taxpayer does not have exclusive access to the factors that may result in location specific advantages.

The Tribunal relied on Action 8: Guidance on Transfer Pricing Aspects of Intangibles which is part of Organisation for Economic Co-operation and Development (OECD) and G20 Base Erosion and Profit Shifting (BEPS) project which provides that where local market comparables are available, specific adjustment for location saving is not required.

The Tribunal agreed with the taxpayer's submission that reliance placed by the TPO on the United Nations Practical Manual on Transfer Pricing for Developing Countries (UN TP Manual) was incorrect, because Chapter 10 of the UN TP Manual is basically a view of the Indian tax administration and not binding on Appellate Authorities.

Further, the Tribunal placed reliance on the decision in the case of GAP International Sourcing (India) Pvt Ltd v. ACIT (2012) 149 TTJ 437 (Del) and held that comparables selected by the taxpayer, being local Indian comparables do not require additional allocation on account of location savings.

On the point of non-submission of details called for by the TPO, the Tribunal relied on the Special Bench decision in the

case of UCB India (P) Ltd. v. ACIT (2009) 124 TTJ 289 (Mum SB) wherein it was held with respect to requirements of Rule 10(D)(1)(f) that, 'The maintenance of these records is procedural and non-maintenance of the same is not such that it would affect the determination of ALP...' The Tribunal noted that the Special Bench interpreted use of the words 'if any' in the provisions as meaning that 'non-submission of records cannot form the basis of making adjustments in the ALP on bald assertions'.

Further, the US Tax Court cases relied upon by the TPO were found by the Tribunal to be different from the taxpayer's facts as these case laws were related to fiscal years 1970s and 1980s in which the economic scenario was completely different. Further, in these case laws, taxpayers were not operating in a perfectly competitive market unlike in the case of taxpayer.

The Tribunal also held that the TPO has based his computation on a method, which is not ascribed by the provisions of the Act. Further, the calculation of location savings made by the TPO is based on assumptions since it is based on articles published in the year 2012, whereas the taxpayer's case is for the financial year 2008-09. Further, the said web articles have not been accepted by any forum.

Thus, based on the above, the Tribunal deleted the adjustment made on account of location savings.

Watson Pharma Pvt Ltd (ITA No. 1423/Mum/2014 and 1565/ Mum/2014)

Indirect tax

Service tax - Decisions

Renting is different from hiring of vehicle since it does not involve transfer of possession and control of the vehicle to the customer

In the instant case, the issue was whether renting of metered cabs falls under the taxable category of 'Rent-a-cab service' under the erstwhile service tax regime. The High Court inter alia held the following:

- Renting differs from hiring. Under hiring of cabs, the owner (who may or may not be the driver) retains control and possession of vehicle with himself. The customer is merely using the cab and pays the metered charges (collected on the basis of the number of kilometres travelled). However, on the contrary, renting of cabs involves transfer of control and possession of the vehicle by the owner to the person renting such cab.
- In the present case, the taxpayer continued to retain control and possession of the vehicle with himself. Therefore, the case is that of hiring of vehicle and not renting of cabs and is not liable to Service tax.

Commissioner of Customs & Central Excise v. Sachin Malhotra, Raj Kumar Taneja and M/s Shiva Travels [2014-TIOL-2039-HC-UKHAND-ST]

Central Excise - Decisions

Banding of goods with tapes pre-printed with brand name and MRP of combo pack amounts to 'manufacture'

In the present case, the taxpayer carried soap banding job for principal manufacturer (HUL) for which, they received soap cakes of different brands from HUL. The taxpayer repacked the soaps after banding the cakes as per scheme of HUL e.g. 'buy 4 pcs get INR5 off'. The banding tapes were preprinted with brand name and Maximum Retail Price (MRP) of the combo pack. MRP on single unit of soap was not mentioned as the individual packs were not allowed to be sold separately. The tax payer received service charges from HUL and paid service tax on the same.

The soaps are covered under Chapter 34 of the of the Central Excise Tariff Act and Note 6 of Chapter 34 which states that in relation to products of this Chapter, labelling or re-labelling of containers and repacking from bulk pack to retail packs or adoption of any other treatment to render the product marketable to the consumer will amounts to manufacture. Accordingly, the Central Excise authorities demanded Excise duty on the said activity.

The Delhi Tribunal held that the taxpayer is banding more than one soap by a preprinted band affixed with MRP, which rendered the goods marketable at the price mentioned on the band. There was no unit price mentioned on each unit of the soap. Further, as the soap is covered by Note 6 of Chapter 34, the activity carried out by the taxpayer amounts to manufacture and subject to Excise duty.

Vasantham Enterprises v. CCE [2014-TIOL-2553-CESTAT-DEL]

Customs Duty

Notifications/Circulars/Press Releases

Duty rates reduced under the various Preferential Trade Agreements

Vide various Notifications, the central government has reduced the duty rates prescribed under the free trade agreements entered between India and ASEAN, Malaysia, Korea and Singapore.

Notification No. 38/2014-Cus dated 29 December 2014, Notification No. 37/2014-Cus dated 29 December 2014, Notification No. 35/2014-Cus dated 29 December 2014 and Notification No. 01/2015-Cus dated 05 January 2015

Exemption from execution of Bank Guarantee to the license holders

The Circular No. 58/2004-Cus dated 21 October 2004 provides exemption from the execution of Bank Guarantee (BG) to the Duty Exemption Entitlement Certificate (DEEC) and Export Promotion Capital Goods (EPCG) license holders on the condition that the license holder has not been penalised under the provisions of the Customs Act, 1962, the Central Excise Act, 1944, the Foreign Exchange Management Act, 1999 or the Foreign Trade (Development and Regulation) Act, 1992 during the previous three financial years.

In this regard, Central Board of Excise and Customs (CBEC) has now clarified that where the said condition is not fulfilled and if the jurisdictional Commissioner of Customs is satisfied that 100 per cent BG is not justified on account of absence of risk to revenue, the waiver from the execution of BG may be granted.

Circular No. 15/2014-Cus, dated 18 December 2014

Instructions on endorsement of documents by the Central Excise authorities for the purpose of claiming deemed export benefits

For the purpose of claiming deemed export benefits, in terms of Circular No. 15/2008-Cus dated 26 September 2008, the supply invoice/ARE-3 needs to be authenticated by the Superintendent of Central Excise. In this regard, the CBEC has now clarified that, such authentication/endorsement shall bear the dated signature of the Superintendent of Central Excise. It has also been clarified that, where the recipient unit is operating under the self-bonding/ self-warehousing procedure, the Superintendent of Central Excise shall provide an attested true photocopy of the original ARE-3.

Circular No. 16/2014-Cus and Circular No. 17/2014-Cus both dated 18 December 2014

CBEC merges commercial invoice and packaging list as part of simplification drive

As per the relevant Customs provisions relating to both import and export, an importer / exporter is required to submit a commercial invoice and the packing list along with the Customs declaration form viz. Bill of Entry/Shipping Bill. However, there are many identical data fields in a commercial invoice and packing list which lead to duplication of work. Therefore, now CBEC has clarified that in case an importer/exporter submits a commercial invoice cum packing list that contain all the required data fields / information, a separate packing list will not be insisted upon by the Customs authorities.

Circular No. 1/2015-Cus dated 12 January 2015

CBEC simplifies shipping related Customs procedures

In addition to the above Circular, CBEC has prescribed the following simplified procedures:

- The number of hard copies of Import General Manifest (IGM) required to be submitted by shipping lines/steamer agents at a Customs House shall be restricted to two only.
- At present, the port clearance is given on the strength of both bond and guarantee. Now, the Board has decided to give an option to the steamer agent to (a) give a continuity bond and (b) merge the guarantee with the continuity bond. This would reduce the number of required documents from two to one and periodicity (of submission) would also get reduced drastically.

Circular No. 02/2015 dated 15 January 2015

Foreign Trade Policy

Notifications/Circulars/Press Releases/ Public Notices

Guidelines for issue of IEC amended

The Directorate General of Foreign Trade (DGFT)has amended the 'Detailed Guidelines for Issue / Modification of Importer Exporter Code Number (IEC)' to provide for inclusion of certain additional documents to obtain the IEC. Further, applicants will have to submit online application for modification in IEC and pay INR 500 as application fee.

Public Notice No. 79 (RE-2013)/2009-2014, dated 31 December 2014

Requirement of filing applications mandatorily through the online portal for obtaining IEC postponed

Vide the Public Notice No. 76(RE-2013) /2009-2014 dated 27 November 2014, applications for obtaining IEC were mandated to be submitted online with effect from 01 January 2015. However, due to some technical reasons, the new online IEC system could not become operationalised. Therefore, the DGFT has clarified that till the time the new online system is operationalised and made effective, the IEC application related procedures existing prior to 1 January 2015 will be applicable.

Public Notice No. 80 (RE-2013)/2009-2014 dated 06 January 2015

SEZ

Notifications/Circulars/Press Releases

Provisions relating to duty exemptions available for non-processing area amended

The central government has amended the Special Economic Zone (SEZ) Rules, 2006 by way of inserting new Rule 11A. The said Rule prescribes guidelines for bifurcation of processing area and non-processing area and the conditions for claiming duty exemptions with respect to the non-processing area.

Notification No. F.No.C.1/2/2014-SEZ dated 02 January 2015

VAT - Decisions

Battery charger an 'accessory' taxable at general and not concessional rate

In the instant case, the issue before the Supreme Court was whether cell phone battery charger, sold as a composite package along with a cell phone was eligible to concessional rate of tax applicable to 'cell phones and parts thereof'.

The taxpayer sold cell phones along with battery charger and other accessories in a single pack, and paid tax at 4 per cent, as applicable to sale of cell phones under Entry 60 of Schedule B of the Punjab VAT Act. Revenue was of the view that battery charger sold by taxpayer would not be eligible for 4 per cent concessional rate, but instead be taxable at general rate of 12.5 per cent as it is an 'accessory'.

The Assessing Authority upheld the Revenue's decision that battery charger was a separate commodity chargeable at 12.5 per cent and also observed that Entry 60 to Schedule B of the Punjab VAT Act includes only cellular phones and not its accessories. On further appeal, Deputy Excise & Taxation Commissioner (Appeals) confirmed the Assessing Authority's order. Aggrieved by the same, the taxpayer approached the Tribunal, who dismissed the appeal and confirmed the Revenue's demand of tax and interest thereon. The taxpayer further filed an appeal before the Punjab and Haryana High Court, which was allowed by the High Court holding that battery charger is a part of composite package of cell phone. Hence, Revenue appealed before Supreme Court.

The Supreme Court held that the Assessing Authority, Appellate Authority and the Tribunal had rightly held that the battery charger is not a part of the mobile/cell phone. If the charger was a part of the cell phone, then the cell phone could not have been operated without using the battery charger, but in reality, it is not required at the time of operation. The Supreme Court stated further that, the battery in the cell phone can also be charged directly by other means like laptop without employing the battery charger, hence implying that battery charger is nothing but an accessory to the mobile phone. Accordingly, the Supreme Court held that the mobile/cell phone charger is an accessory to cell phone and not a part of the cell phone, it can be sold separately, without selling the cell phone.

Therefore, Supreme Court set aside the impugned the High Court order and allowed the Revenue appeal.

State of Punjab & Others v. Nokia India Pvt Ltd (TS-590-SC-2014-VAT)

Goods transferred after filing BoE/assessment an 'inter-state sale', not 'high seas sale'

In the present case, the issue before the High Court was whether contract of sale of goods in transit before such goods enter into the Customs frontiers of India would be considered as inter-state sale and taxable as per Central Sales Tax Act, 1956.

The taxpayer was an import facilitator having infrastructure facilities for import at Customs port (Visakhapatnam). Under the quadri-partite agreement entered with Indus Tropics Ltd. (Indus), Radha Industries (Radha) and World Best Trading Co. (L.L.C.), Dubai (U.A.E), the taxpayer was purchasing the goods from Indus (who purchased these goods from World Best Trading Co.) as agent of Radha and transferred the documents of purchase to Radha on high seas. Further, Radha agreed to pay commission of 2 per cent plus bank charges. The taxpayer claimed that the said transaction is in nature of commission transaction and not an inter-state sale and hence, exempted from Central Sales Tax (CST). It was submitted that the importer endorsed the bill of Lading (invoice) in favour of the taxpayer and taxpayer thereafter endorsed the same in favour of Radha, while the goods were still on high seas. Therefore, the ultimate purchaser of the goods was Radha Industries and the sale was effected by the endorsement of the bill of lading. In view of this, the taxpayer stated that endorsement and subsequent transfer of title of goods took place before the goods left the customs station and hence, would be considered as sale in course of import.

However, Revenue argued that the disputed transaction would amount to inter-state sales and therefore, subject to CST. During adjudication, said demand was confirmed. Being aggrieved, the taxpayer filed the present writ before the High Court.

The High Court dismissed the taxpayer's writ and held that transfer of goods after filing bill of entry (BOE) is not a sale in the course of import but an interstate sale. The High Court observed that the taxpayer would be considered the importer as the goods were imported in its name and not in the name of the subsequent buyer. Further, the High Court pursued the high seas sales agreement and observed that as per Customs Act only the name of the last purchaser would reflect in IGM. Further, the High Court noted that the taxpayer's name was recorded in IGM as a last purchaser and therefore, the taxpayer would be considered the importer of goods. Further, Bill of Entry to the Custom House for assessment contained the name and Permanent Account Number (PAN) of the taxpayer as importer. Hence, the goods were treated to be importner by the taxpayer and subsequent sale in India liable to tax and not high seas sale transaction.

Vellanki Frame Works v. the Commercial Tax Officer and others (TS-598-HC-2014(TEL and AP)

Notifications/Circulars/Press Releases

Delhi

With effect from 15 December 2014, the registered dealers who have not filed information in Form DP-1(Online form for updating business related information) till date, are required to file information online in Form DP-1. The dealers who have already filed the information can also update the information and attach scanned copy of the signature sheet after getting it duly signed. The dealers who have changed the constitution of their business are required to file hard copy of the acknowledgement, generated at the time of submission of Form DP-1 online, along with supporting legal document(s) in the ward concerned.

Notification No. F.3(352)/Policy/VAT/2013/585-596, dated 15 December 2014

Karnataka

The time for revision option under electronic uploading of Purchase and Sales Statement (e-UPaSS) pertaining to the tax periods May 2014 to August 2014 has been extended till 31 March 2015.

Circular 22 of 2014/15, dated 30 December 2014

Maharashtra

It has been clarified that if an appellant receives few declaration forms after the assessment order is passed, then the appellant should produce the list of such forms in prescribed formats at the time of filing the appeal. The Appellate authority (after checking the declarations as per the list) will accordingly fix the part payment. It has also been clarified that the declarations received upto the date of filing the appeal only shall be considered for the purpose of fixing part payment / pre-deposit for the purpose of granting of stay.

Trade circular no. 1T of 2015, dated 7 January, 2015

Dadra Nagar and Haveli

Dealers filing refund application are also required to submit hardcopy of the system generated Form DVAT-21 (Refund application Form), duly signed by the Authorised Signatory, to the department within 15 working days after online submission of Form DVAT-21 along with all mandatory documents (List of mandatory documents is provided in Annexure 1 of the circular).

Circular No. ADM/AC/VAT/Compt/2009/2128, Dated 29 December 2014

Daman and Diu

Dealers are now required to file Return DVAT-16 online within prescribed limit. Post submission of e-return, the dealer will be required to furnish Form DVAT-49 (Acknowledgement Slip of e-Return Form DVAT-16), in duplicate, duly signed and sealed by the authorised signatory, along with proof of payment of tax, interest or any other sum in Form DVAT-20, and copy of TDS Certificate(s) as specified within seven working days of submission of online Return.

Notification No. DMN/VAT/Rules/2015/2014-15/840, Dated 5 January 2015

Personal tax

Decisions/Notifications/Circulars/ Press Releases

Tourist visa on arrival to India extended to 43 countries

The Tourist Visa on Arrival (TVoA) scheme was introduced in 2010 and the facility is currently available to the nationals of 12 countries. To boost tourism in India, the Government of India has made positive changes in the original TVoA scheme and extended this facility to 31 more countries.

As per the amended scheme, eligible foreign nationals need to obtain Electronic Travel Authorisation (ETA) as per the procedure laid down under the TVoA scheme before coming to India.

Key Changes

- TVoA facility is available to foreign nationals of 43 countries whose sole objective of visiting India is for recreation, sight-seeing, casual visit to meet friends or relatives, short duration medical treatment or casual business visit.
- The TVoA facility can be availed twice in a calendar year and the foreign national should possess onward journey ticket or return ticket and have sufficient money to spend during his stay in India.
- TVoA will be valid for a period of 30 days from the date of arrival in India.

Source : www.mha.nic.in

Assets purchased by spouse from interest free loan given by taxpayer should not be included in taxpayer's net wealth

The taxpayer's wife had purchased assets from the interest free loan given by taxpayer. The AO treated it as an indirect 'transfer of asset' within the meaning of Section 4(1)(a)(i) of the Wealth Tax Act (Wealth Tax Act) and clubbed the value of loan amount in the net wealth of the taxpayer. Aggrieved by the decision of the AO and subsequent decision of the Commissioner of Wealth-tax (Appeals), the taxpayer appealed before the Tribunal.

The Tribunal held that extending cash loan to wife does not come within the definition of 'asset' as provided under Section 2(ea) of the Wealth Tax Act. The fact that the wife of the taxpayer is having an independent source of income, filing her return of income and even subsequently repaying part of the loan strengthened the taxpayer's case. The Tribunal also commented on the taxpayer's decision to not purchase the assets directly and follow the loan mechanism as an internal family matter which cannot be questioned by the Revenue.

Thus, the Tribunal held that the impugned loan amount was not includible in the wealth of the taxpayer and there was no unjustified method used to avoid taxability.

Shah Rukh Khan v. Asst. Commissioner of Wealth Tax [2014] 52 taxmann.com 252 (Mum)

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