

India Tax Konnect



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Editorial

The Government of India announced the Foreign Trade Policy to provide further boost to the 'Make in India' initiative. The policy is also expected to house all export related incentive schemes under two categories - Merchandise Exports from India Scheme and Services Exports from India Scheme.

In its first bi-monthly monetary policy review for the new fiscal year, the Reserve Bank of India maintained the repo rate at 7.5 per cent, the reverse repo at 6.5 per cent and the cash reserve ratio at 4 per cent.

On the international tax front, the Pune Bench of the Income-tax Appellate Tribunal in the case of Serum Institute of India Limited held that where tax has been deducted on the basis of the beneficial provisions of the relevant tax treaties, Section 206AA of the Income-tax Act, 1961 (the Act) cannot be invoked by the assessing officer to insist on deduction of tax at 20 per cent, having regard to the provisions of Section 90(2) of the Act where it is provided that tax treaties override domestic law in cases where the provisions of tax treaties are more beneficial to the taxpayer.

Declaration of dividend by a foreign company outside India does not have the effect of transfer of any underlying assets located in India. Recently, the Central Board of Direct Taxes clarified that dividends declared and paid by a foreign company outside India in respect of shares which derive their value substantially from assets situated in India would not be deemed to be income accruing or arising in India.

On the transfer pricing front, the Delhi High Court, in the case of Cotton Naturals India Private Limited, held that transfer pricing determination is not primarily undertaken to re-write the character and nature of the transaction. Further actual business transactions that are legitimate cannot be restructured. It also said that the interest rate should be market determined and should be applicable to the currency in which the loan is borrowed/repaid.

The Central Government vide a Circular has reiterated that the new Service tax rate of 14 per cent (subsuming Education Cess and Secondary & Higher Education Cess), shall come into effect from a date to be notified by Central Government after enactment of Finance Bill, 2015. The Circular further, clarified that abatement resulting in taxing 40 per cent of value of services provided in relation to restaurants, eating-joints or mess shall remain unchanged (i.e. at 4.944 per cent) till the date notified for increase in Service tax rate to 14 per cent.

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 Konnect more relevant.

International tax

Decisions

Section 206AA of the Act does not override the beneficial provisions of the tax treaty

The taxpayer is engaged in the business of manufacture and sale of vaccines and is a major exporter of vaccines. During the Financial Year (FY) 2010-11 the taxpayer made payments to non-residents on account of interest, royalty and fees for technical services (FTS). These payments were subject to withholding of tax under Section 195 of the Act. The tax rate provided in the relevant tax treaties was lower than the rate prescribed under the Act, and therefore in terms of the provisions of Section 90(2) of the Act, the tax was deducted at source by applying the beneficial rate prescribed under the relevant tax treaties.

The tax department noted that on account of payment of royalty and FTS in case of some of the non-residents, the recipients did not have Permanent Account Number (PAN). Relying on Section 206AA of the Act, the tax department treated payments to those non-residents who did not furnish the PAN as cases of 'short deduction'. Accordingly, demands were raised on the taxpayer for the short deduction of tax and also for interest under Section 201(1A) of the Act. The Commissioner of Income-tax (Appeals) [CIT(A)] held that Section 206AA of the Act would override the other provisions of the Act but not the provisions of Section 90(2) of the Act. Therefore, where the tax treaties provide for a tax rate lower than that prescribed in 206AA of the Act, the provisions of the tax treaties shall prevail and the provisions of Section 206AA of the Act would not be applicable. Accordingly, the CIT(A) deleted the tax demand raised by the tax department.

The Pune Tribunal held that in case of non-residents, tax liability in India is liable to be determined in accordance with the provisions of the Act or the tax treaty, whichever is more beneficial to the taxpayer, having regard to the provisions of Section 90(2) of the Act. The Supreme Court in the case of *Azadi Bachao Andolan and Others v. UOI* [2003] 263 ITR 706 (SC) held that the tax treaties will prevail over the general provisions contained in the Act to the extent they are beneficial to the taxpayer.

Charging Section 4 as well as Section 5 of the Act which deals with the principle of ascertainment of total income under the Act is also subordinate to the principle enshrined in Section 90(2) of the Act as held by the Supreme Court in the case of *Azadi Bachao Andolan and Others*. Section 206AA of the Act is not a charging section but is a part of the procedural provisions dealing with collection and deduction of tax at source. It would be incorrect to say that though charging Sections 4 and 5 of the Act (dealing with ascertainment of total income) are subordinate to the principle enshrined in Section 90(2) of the Act, but the provisions governing tax deduction at source are not subordinate to Section 90(2) of the Act.

The CIT(A) has correctly inferred that Section 206AA of the Act does not override the provisions of Section 90(2) of the



Act. While making payments to non-residents, the taxpayer correctly applied the rate of tax prescribed under the tax treaties and not as per Section 206AA of the Act because the provisions of the tax treaties are more beneficial. Accordingly, the Tribunal affirmed the CIT(A)'s ruling.

DDIT v. Serum Institute of India Limited (ITA No.792/PN/2013) (Pune) – Taxsutra.com

Circulars/Notifications/Press Releases

CBDT clarifies that dividend declared and paid by a foreign company outside India would not be taxable under the indirect transfer provisions of the Act

Section 9(1)(i) of the Act provides that all income accruing or arising, directly or indirectly from any business connection in India, or through or from any property in India or through or from any asset or source of income in India, or through the transfer of a capital asset situate in India shall be deemed to accrue or arise in India. These provisions were amended retrospectively by the Finance Act, 2012 by way of an Explanation to provide that an asset or a capital asset being any share or interest in a company or entity registered or incorporated outside India would be deemed to be situated in India if the share or interest derives, directly or indirectly, its value substantially from assets located in India.

Apprehensions have been expressed about the applicability of the Explanation to the transactions not resulting in any transfer, directly or indirectly of assets situated in India. It has been pointed out that such an extended application of the provisions of the Explanation may result in taxation of dividend income declared by a foreign company outside India. This may cause unintended double taxation and would be contrary to the generally accepted principles of source rule as well as the object and purpose of the amendment.

Declaration of dividend by a foreign company outside India does not have the effect of transfer of any underlying assets located in India. Therefore, Central Board of Direct Taxes (CBDT) clarified that the dividends declared and paid by a foreign company outside India in respect of shares which derive their value substantially from assets situated in India would not be deemed to be income accruing or arising in India by virtue of the provisions of Explanation 5 to Section 9(1)(i) of the Act.

CBDT Circular No. 4/2015, dated 26 March 2015

Corporate tax

Decisions

Non-compete fees received by directors of the transferor company is taxable as business income

The taxpayers were directors of Chemito Technologies Pvt. Ltd. (Chemito). In May 2008, Chemito sold one of its divisions to Thermo Electron LLS India Pvt. Ltd. (Thermo). Subsequently, Thermo entered into agreements of non-compete and non-solicitation under which the taxpayers agreed and undertook not to engage in any business directly or indirectly or otherwise be involved in activity which was similar to that of the division sold to Thermo for a period of four years from the appointed date. In consideration of such non-compete agreement, Thermo had made payment to the taxpayers. The Assessing Officer (AO) held that the sum received by the taxpayers were revenue receipts.

In the present case, the Bombay High Court relied on the Supreme Court's decision in the case of *Guffic Chem P. Ltd. v. CIT* [2011] 332 ITR 602 (SC) wherein it was held that non-compete fee would bear the character of property received and treated as a capital receipt till the Assessment Year (AY) 2003-04. Subsequently, the same amount is revenue receipt. It is only vide the Finance Act, 2002 with effect from 1 April 2003 that the said capital receipt is now made taxable under Section 28(va) of the Act.

Relying on the above decision, the High Court held that the amount received by the taxpayer was taxable under Section 28(va) of the Act. If the taxpayer had not entered into an agreement of non-compete, he would have earned the amount from the business carried on out of the division sold. It is the sale of the said division that has deprived him of the income, and part of the sale consideration. The compensation received under the said agreement was relatable to a consideration for sale of the business of the division and therefore, for these reasons also, that the amount is taxable under Section 28(va) of the Act. Further, both the taxpayers have received the amount pursuant to the agreement dated 2 June 2008 that is well after 1 April 2003 and would be covered by the provisions of Section 28(va) of the Act.

Arun Toshniwal v. DCIT [ITA NO. 1257 of 2013], Anurag A. Toshniwal v. DCIT [ITA No. 1295 of 2013] (Bom)

'Bus shelter' and 'Foot over bridge' are eligible for deduction allowed to infrastructure development facility

The taxpayer is a company and had claimed that 'bus shelter' is an integral part of highway project as per clause (b) of the Explanation to Section 80-IA(4)(i) of the Act. The taxpayer was earning income by way of advertising on the 'foot over bridges' and 'bus shelters' and claimed deduction for such income under Section 80-IA of the Act.

The AO held that 'bus shelters' is an area on the side of the road where passengers wait for the arrival of their bus and the same is totally independent to the road and disallowed taxpayer's claim of deduction under section 80-IA of the Act on Bus Shelters and Foot Over Bridges.



The Kolkata Tribunal in taxpayer's own case had held that 'bus shelters' and 'foot over bridges' should be considered as part of the infrastructure facility for claiming deduction under Section 80-IA of the Act. Similarly, the Calcutta High Court in the case of *CIT v. Selvel Advertising Pvt. Ltd.* (ITAT No. 49 OF 2010/GA No.894 of 2010) (Cal) had held the same. Accordingly, the taxpayer is entitled to deduction under 80-IA of the Act for construction of 'foot over bridge' as well as 'bus shelter'.

DCIT v. Vantage Advertising (P) Ltd. [I.T.A Nos. 1388 to 1392/ Kol/2012, AY - 2004-05, 2006-07 to 2009-2010] (Kol)

Service providers were acting as collection centres for patient's samples on behalf of a laboratory hence the transactions between them were not on a 'Principal to Principal' basis

Taxpayer is a company and has a network of Thyrocare Service Providers (TSPs) all over the country. TSPs are entities, hospitals, nursing homes, etc, which are having no association with the taxpayer. To become a TSP, the entity is required to follow stringent terms and conditions wherein Standard Operating Procedures have been prescribed by the taxpayer for collecting sample from the patient, dispatch of the sample to the taxpayer, etc. The taxpayer has defined catalogue rates and the TSPs shall not charge any amount above the catalogue rates. The taxpayer contended that the relationship between it and TSPs/collectors/aggregators is that of Principal to Principal basis and therefore, there was no need to deduct tax at source under section 194H of the Act while making payment to such TSPs.

The Mumbai Tribunal held that if the totality of facts are examined, the following points emerge:

- The TSPs are agents of the taxpayer company who are allowed to collect necessary charges, from its clients, for collecting samples and delivery of test report.
- The arrangement has been made by the taxpayer to expand its business throughout the country.
- The sharing of testing charges between the taxpayer and such TSPs/collectors/aggregators is so arranged to give it colour distinguishable from commission or brokerage as envisaged in Section 194H of the Act.

The TSPs appear to act as mere agents of the taxpayer in collecting the samples from the patients and giving the results to them. The traders of the goods cannot be compared with the TSPs, as they provide only agency services. Accordingly, the AO is directed to examine the issues afresh, collect the

details from such TSPs and the taxpayer, and if necessary examine them and decide the issue in accordance with law.

ITO (TDS) v. Thyrocare Technologies Ltd. IITA NOs.5389 & 5390/Mum/2013, AY: 2009-10 & 2010-11 (Mum)

The High Court disapproves the CBDT's rejection of the taxpayer's application for deduction of income earned from the Industrial Park Scheme

The taxpayer, an Association of Persons (AOP) owned and possessed certain land. In 2007, a declaration was executed to develop the land for constructing an Information and Technology Park and a letter of intent was obtained from the Joint Director of Industries (IT), Government of Maharashtra. The taxpayer developed this Information Technology Park. The taxpayer demarcated the area into industrial use, area for infrastructure facility, commercial use, etc. and subsequently, preferred an application for approval of the Information Technology Park under the Industrial Park Scheme, 2008 (the Scheme). This application has to be made to the Secretary (ITA-1 Section) to the CBDT, Department of Revenue, Ministry of Finance, New Delhi.

In relation to procuring of an occupation certificate from the competent authority, namely, the Municipal Corporation of Greater Mumbai (the Corporation), notices were issued by the AO and eventually, deduction under section 80-IA(4)(iii) of the Act was disallowed by him.

Subsequently, a writ petition was filed in the Bombay High Court against the inaction on the part of the CBDT in disposing of the application of the taxpayer and staying the demand. However, the writ petition was rejected on the ground that the petitioners have failed to comply with the condition of obtaining the 'occupation certificate'. Accordingly, a further writ petition was filed seeking to direct the CBDT to issue a notification under section 80-IA(4)(iii) of the Act.

Perusal of Section 80-IA(4) of the Act indicates that if an undertaking develops and operates or maintains and operates any infrastructural facility which fulfills all the conditions, it

would be entitled to deduction. Before the High Court, the taxpayer pointed out that 'Intimation of disapproval' was issued by the Corporation, 'commencement certificate' which is based on the plans and/or approvals was received from the Corporation. During the calendar year 2009 and 2010, three 'occupation certificates' have been issued by the Corporation pursuant to an application which has been made by a licensed Surveyor. It is not for the CBDT to sit in judgment over the said certificates or the contents thereof as if it is an appellate authority.

The application of the taxpayer to develop and construct individual plots was scrutinised, in terms of the development plan proposals, by the Planning Authority i.e. the Corporation and therefore, the 'occupation certificate' could not be faulted for its contents and particularly whether it is part or complete. There is nothing in the law which prohibits grant of a certificate of this nature phase-wise or stage-wise, based on the completion of construction of the areas. Such a certificate, completion or occupation is granted only on completion of the construction.

The letter from the Corporation acknowledged that it granted part occupancy certificate so that part portions could be occupied. The development permission is sought under Section 44 of the Maharashtra Regional Town Planning Act, 1966 and it may be granted as contained in the certificate conditionally or unconditionally. Once such certificates are issued by a Competent Authority and certifying the work having been completed or the premises being fit to be occupied on the same being completed, then, it is not for anybody else to question the contents.

The High Court directed that until the CBDT considers the application and decides the same in accordance with the High Court's directions, none of the tax authorities shall initiate coercive methods to recover the amount of taxes and in terms of the order of the assessment passed by the AO.

Techniplex & Anr. v. CBDT [Writ Petition No.2922 of 2014] (Bombay High Court) - Taxsutra.com



Transfer pricing

Decisions

Delhi High Court held that actual business transactions that are legitimate cannot be restructured. Further interest rate should be market determined and correspond to the currency in which the loan is borrowed/ repaid

The taxpayer selected the Comparable Uncontrolled Price (CUP) method to benchmark the interest received on loan advanced to the associated enterprise (AE). The Transfer Pricing Officer (TPO) observed that London Inter-Bank Offered Rate (LIBOR) is not a proper reference to calculate the corresponding interest on loan and stated that the interest rates for outbound loans from an Indian company to its foreign AE would be benchmarked against interest rates prevailing in India for investing in corporate bonds or other investment avenues. Although, the TPO determined the arm's length interest rate to be 14 per cent per annum, the Dispute Resolution Panel (DRP) granted partial relief in the form of reduction of rate of interest to 12.20 per cent. Both, the TPO and the DRP referred to domestic rates by way of analogy, however while applying CUP method for comparability, the LIBOR rate was referred to, along with a mark-up of 700 points on account of low credit rating of the AE and the cost of transaction.

High Court ruling

Transfer Pricing determination is not primarily undertaken to re-write the character and nature of the transaction, though this is permissible under two exceptions (Paragraphs 1.36 to 1.38 of the Transfer Pricing Guidelines for Multinational



Enterprises and Tax Administrations, 2010 published by the Organisation for Economic Cooperation and Development – 'OECD TP guidelines'). Chapter X of the Act and Income-tax Rules, 1962 (the Rules) do not permit the Revenue authorities to step into the shoes of the taxpayer and decide whether or not a transaction should have been entered into. Actual business transactions that are legitimate cannot be restructured. In support of the above, the High Court referred to the rulings by the Delhi High Court in case of CIT v. EKL Appliances Limited [2012] 345 ITR 241 (Del) and Sony Ericsson Mobile Communication India Pvt. Ltd vs CIT (ITA No. 16/2014) (Del) wherein the above principle was upheld and also placed reliance on the UN Model Double Taxation Convention between Developed and Developing Countries wherein reference was made to the OECD Model Convention Commentary on Paragraph 6 of Article 11.

High Court referred to the OECD Guidelines, the United Nations Practical Manual of TP for Developing Countries (UN TP Manual) as well as Rules 10B and 10C of the Rules to reject the reasoning given by the TPO that TP adjustment could restructure the transaction. The High Court held that Chapter X of the Act and the Rules neither curtail commercial freedom nor prohibit a legitimate transaction.



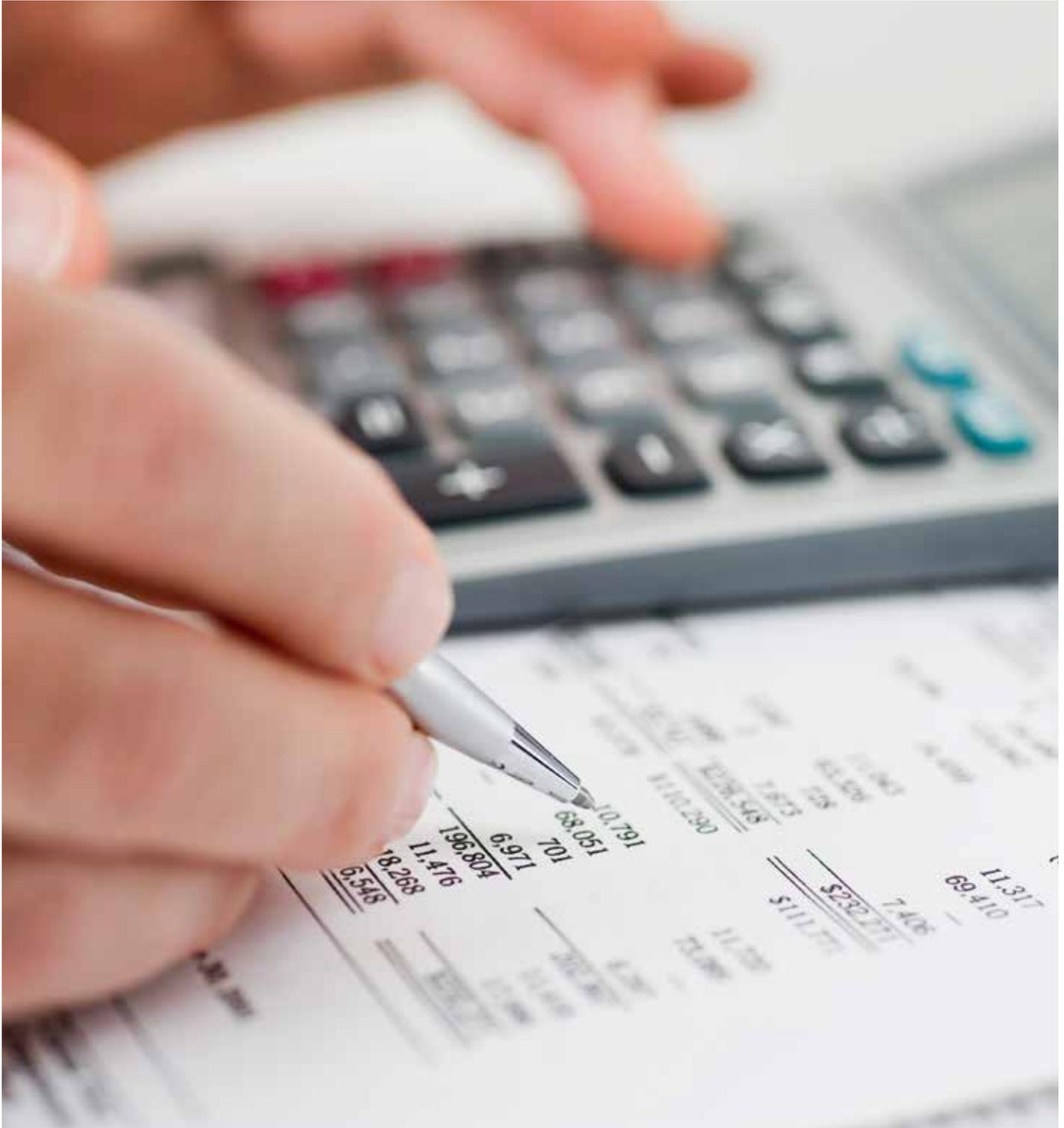
High Court held that interest rate should be market determined interest rate applicable to the currency of loan. High Court referred to the book, Klaus Vogel, on Double Taxation Conventions (Third Edition) under Article 11, paragraph 115 i.e. Klaus Vogel's recommendation on the Double Taxation Conventions and held that the currency in which the loan is to be re-paid normally determines the rate of return on the money lent.

High Court disagreed with tax department's reference to Chapter 10 of the UNTP Manual and held that the reasoning given therein is contrary to accepted international tax jurisprudence and the said Chapter sets out an individual

country's view point only and does not reflect the view of the tax administration or the Government.

Based on the above, High Court ruled in favour of the taxpayer.

CIT v. Cotton Naturals India Private Limited (ITA No. 233/2014) (Delhi High Court) – Taxsutra.com



Indirect tax

Service Tax - Decisions

Right to use packaged software is only sale of goods and Service tax is not applicable on the same, both prior to and post 16 May 2008

In the instant case, the issue was whether payment of royalty for right to use packaged software (which was procured from outside India and sold in India) would be liable to Service tax.

The Mumbai Tribunal, on the basis of the following observations, held that Service tax is not applicable on the activity of right to use software:

- There is no transfer of copyrights rather the transaction is of sale of goods [on the basis of Apex Court Judgment in the case of Tata Consultancy Services Ltd. 2004 (178) ELT 22 (SC), which distinguished between sale of copy of a software and sale of copy right in a software];
- The fact of purchase and resale of software and payment of VAT on the software also, point to the fact that the transaction entailed 'sale of goods' and not supply of service;
- Sale of software is only a sale of goods and Service tax cannot be levied on the entire value of transaction again; and
- Since right to use software is given to the end user and the service recipient is only an intermediary, service recipient is not liable to pay Service tax.

Ingram Micro (India) Ltd v. Commissioner of Service Tax [2015-VIL-166-CESTAT-MUM-ST]

Notifications/Circulars/Press Release

Circular clarifying that increase in Service tax rate is effective only from a date to be notified after enactment of Finance Bill

The Central Government vide a Circular has reiterated that the new Service tax rate of 14 per cent (subsuming Education Cess and Secondary & Higher Education Cess), shall come into effect from a date to be notified by Central Government after enactment of Finance Bill, 2015.

The Circular further, clarified that abatement resulting in taxing 40 per cent of value of services provided in relation to restaurants, eating-joints or mess shall remain unchanged (i.e. at 4.944 percent) till the date notified for increase in Service tax rate to 14 per cent.

Circular No. 183/02/2015-ST dated 10 April 2015

Notification for payment of Service tax through duty credit scrips issued under Service Exports from India Scheme of Foreign Trade Policy 2015-2020

Procedure for payment of Service tax through "Merchandise Exports from India Scheme" and "Service Exports from India Scheme" duty credit scrips issued under Foreign Trade Policy 2015 – 2020 has been notified. Further, the holder of the scrip to whom taxable services are provided would be entitled to Duty Drawback or CENVAT credit of Service tax debited in scrip.

Notification No. 10/2015-ST dated 8 April 2015 and Notification No. 11/2015-ST dated 8 April 2015



Central Excise - Decisions

Credit on input services relating to post removal activity is not admissible in certain cases

In the present case, the taxpayer, a manufacturer of aerated water, availed CENVAT credit of Service tax paid on annual maintenance charges on refrigerators and cooling equipment stored in the premises of dealers/retailers. The Central Excise authorities denied the credit considering such maintenance charges as post removal activity.

The Bangalore Tribunal held that CENVAT credit of input services in connection with procurement of inputs is admissible and in respect of input services, there is no restriction that services should be used in the factory premises. However, in case of CENVAT credit claim by the taxpayer, it relates to annual maintenance charges of refrigerators and cooling equipment stored in the premises of dealers/retailers which is basically a post removal activity and credit of input services is not admissible in respect of post removal activities.

Nectar Beverages Private Limited v. CCE (2015-TIOL-512-CESTAT-Bang)

Quantum of Excise duty payable on inputs cleared 'as such', when certain value addition/ process has been undertaken on such inputs

In the present case, the taxpayer procured various parts which are 'inputs' for their manufacturing activity. The taxpayer cleared these inputs on payment of an amount equal to the credit availed on these inputs at the time of their receipts into the factory. Before clearance of the inputs, the taxpayer has undertaken the process of Electro deposition coating (which is in the nature of anti-rust so that the shelf life of the parts/ inputs, would be generally increased), on such inputs. The Central Excise authorities demanded the differential duty on the value addition by way of Electro deposition coating.

The Supreme Court held that Electro deposition coating would increase the shelf life of the parts/ inputs and provide anti-rust treatment to the same but the same would not convert these parts/ inputs into a new commodity known to the market as such activity is merely value addition activity. Accordingly, the demand of differential duty has been set aside.

Maruti Suzuki India Limited v. CCE (2015-TIOL-30-SC-CX)



Customs duty

Decisions

With respect to obsolete goods, duty is not payable by EOU units until such goods are cleared into DTA

In the instant case, the taxpayer has been operating as an Export Oriented Unit (EOU) unit and has imported/ domestically procured the goods without payment of Customs duty. The taxpayer had written off some portion of the duty free goods in the financial records, as obsolete raw materials and semi-finished goods. The Central Excise authorities demanded Excise duty on such goods.

The Delhi Tribunal held that, the question of payment of Customs duty would arise only when the goods are cleared into Domestic Tariff Area (DTA) or EOU is allowed to be de-

bonded and is converted into DTA unit. Accordingly, until the goods are cleared into the DTA, no duties are payable.

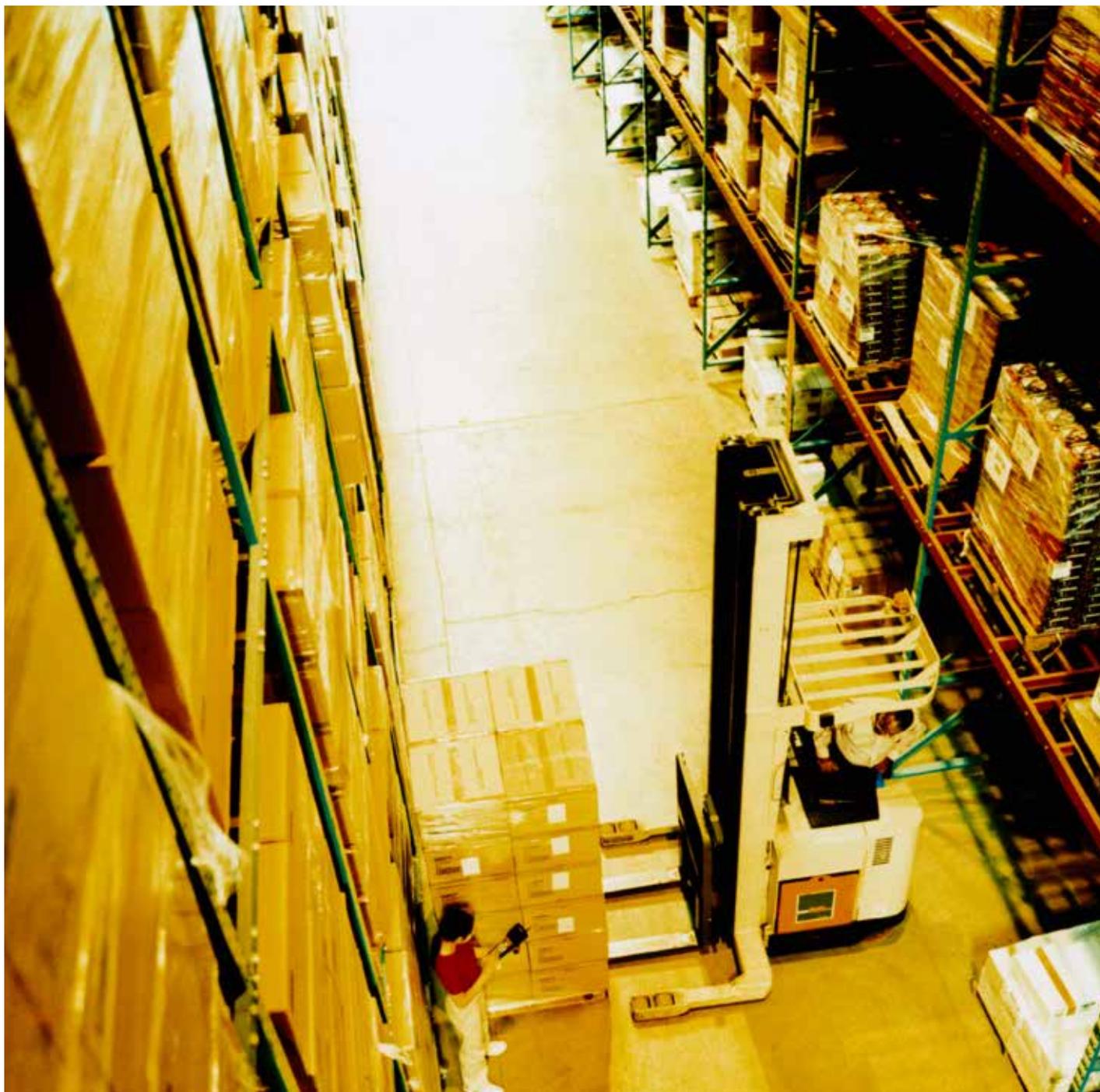
Barco Electronic Systems Private Limited v. CCE (2015-TIOL-605-CESTAT-DEL)

Notifications/Circulars/Press Release

Customs and Central Excise exemptions notified to align with the new Foreign Trade Policy

The Central Board of Excise and Custom (CBEC) notified Customs and Central Excise exemptions to align with the new Foreign Trade Policy 2015-20 announcements.

Notification No 16/2015-Cus to 23/2015-Cus all dated 1 April 2015



Facility for suo-moto payment of customs duty in case of bona fide default in export obligation under the Advance/EPCG authorisations

The CBEC has considered the issue of increased interest cost for authorisation holders who come forward to the Regional Authority for regularisation of their cases of bona fide default in export obligation under the Advance Authorisation or Export Promotion Capital Goods (EPCG) Schemes. At present, such Authorisation holder has to wait for the detailed calculations in this regard before being able to deposit the duty involved. Accordingly, CBEC has introduced the facility for suo-moto payment of customs duty in case of bona fide default in export obligation under the Advance/EPCG authorisations.

Circular No. 11/2015-Cus dated 1 Apr 2015

Foreign Trade Policy

New Foreign Trade Policy 2015 -2020 has been introduced

The Central Government notified the Foreign Trade Policy 2015-20 and the Handbook of Procedures 2015-20, which is effective from 01 Apr 2015. The key highlights are under:

- The Schemes viz., Focus Product Scheme, Market Linked Focus Product Scheme, Focus Market Scheme, Agri. Infrastructure Incentive Scrip, Vishesh Krishi and Gram Udyog Yojana, have been merged into a single Scheme viz., Merchandise Export from India Scheme (MEIS).
- Served from India Scheme (SFIS) has been replaced with Service Exports from India Scheme (SEIS), which provides

for rewards to service providers of notified services, who are providing services from India, regardless of the constitution or profile of the service provider.

- Chapter -3 Incentives (MEIS & SEIS) have been proposed to be extended to units located in special economic zone (SEZs).
- All scrips issued under MEIS and SEIS and the goods imported against these scrips would be fully transferable.
- The nomenclature of Export House, Star Export House, Trading House, Star Trading House, Premier Trading House certificate has been changed to One, Two, Three, Four, Five Star Export House.
- Manufacturers who are also Status Holders would be enabled to self-certify their manufactured goods as originating from India with a view to qualify for preferential treatment under different Preferential Trading Agreements etc.
- Reduced Export Obligation for domestic procurement under EPCG scheme.
- Some procedural simplifications are provided for procurement and de-bonding of goods by EOU/ Software Technology Park (STP)/ Electronic Hardware Technology Park (EHTP) units.

Notification No. 01/2015-2020 dated 1 April 2015



VAT - Decisions

Segregation does not alter nature of contract; segregation of composite contract not permissible

In the present case, the taxpayer had entered into agreements with the customer for laying of civil foundation, supply and installation of electrical lines, supply of electrical items and erection and commissioning of Wind turbine generator (WTG)'s supplied by the customer. The taxpayer opted for composition scheme for the period September 2006 to March 2007, May 2007, June 2007 and August 2007. The taxpayer had paid applicable VAT in relation to all the aforementioned activities except on the activity of erection and commission of WTG's, as the said activity was purely a labour contract and had discharged Service tax on the same.

However, the assessing authority levied VAT on all the aforementioned activities treating the same as a single integrated composite contract. On appeal, the findings of the assessing authority were upheld against which the taxpayer filed appeal before the Tribunal. Considering the terms of the agreement, the tribunal dismissed the appeals filed by the taxpayer. Aggrieved by Tribunal order, the taxpayer filed revision petition before the High Court.

The High Court observed that any dealer executing works contract may select to pay by way of composition on total consideration (which includes both the amount received towards transfer of property in goods and towards labour work) for works contract during the relevant tax periods. The High Court opined that on perusal of the offer letter, the scope of work and insurance clause specifically established that the petitioner had entered into the agreement for installation, erection and commissioning of WTG's, which included labour work also. Further, since the WTG's did not come in assembled manner, the petitioner had to compulsorily employ labour work to erect and install WTG's, which was an integral activity. Further, the taxpayer, by voluntarily opting for composition, is liable to pay tax on total consideration of the works contract involving both labour and transfer of goods. Segregation of composite contract is not permissible under the Act and segregation made, if any, does not alter the nature of composite contract. Accordingly, HC dismissed the revision petitions.

Suzlon Infrastructure Ltd v. State of Karnataka & Others [TS-101-HC-2015(KAR)-VAT]

Notifications/Circulars/Press Release

Andhra Pradesh

It has been clarified that, Large Taxpayer Unit dealers and dealers dealing in sensitive goods namely pulses and dhalls, sugar, edible oils, paddy and rice, timber, ceramic tiles, granites, marble, plywood and laminations, electrical goods, automobile parts, hardware, iron and steel and cement shall mandatorily furnish the sale/ purchase details in the prescribed Annexures - I and II from the tax period March 2015

onwards. All other dealers are mandatorily required to file the prescribed Annexures from the tax period April 2015 onwards.

Circular CCT's Ref No. A I(1)/26/2014 dated 26 March 2015

Chhattisgarh

With effect from 1 April 2015, every dealer is required to pay tax electronically (earlier only dealers having liability to pay tax of INR 0.2 million or more in the preceding year were required to pay tax electronically).

Notification No. F-10-15/2015/CT/V (26) dated 31 March 2015

Delhi

The due date for filing online reconciliation return in Form 9 for FY 2013-14 for dealers who have made interstate sale at concessional rates against statutory Form C or stock transferred against Form F or sold the goods against Form H to dealers (other than Delhi) or claimed deduction from taxable turnover against Form E-I/EII or I/J etc., has been further extended from 31 March 2015 to 30 June 2015.

Circular No. 30 of 2014-15 No. F.7(420)/Policy/2011/PF/948-954 dated 31 March 2015

Maharashtra

The key highlights of Maharashtra VAT budget 2015-16 are as under:

- New explanation has been inserted to exclude the component of service tax from the definition of purchase price and sale price;
- Permitting multiple filing of revised returns, in case of return filed in accordance with the observation contained in intimation received, as a result of any proceedings by the authorities;
- Limitation period of 6 years for transaction-wise assessment and also, assessments can be commenced if the assessing authority has reasons to believe that the tax is being evaded;
- Women drawing salary up to INR 10,000 per month exempted from the payment of Profession tax;
- In the event a dealer fails to file return within the prescribed time period, the late filing fees to be reduced to INR1000, if the return is filed within 30 days of due date.
- Local Body Tax (LBT) has been proposed to be abolished from 1 August 2015. This loss of revenue will be compensated by enhancing VAT tax rates.

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