Tax Edge

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Supreme Court rules that twisting and texturising of Partially Oriented Yarn amounts to manufacture

The taxpayer claimed deduction under section 80IA of the Income-tax Act, 1961 ("the Act") in respect of profits derived from manufacture and sale of texturised yarn. The Revenue rejected the claim by holding that the process undertaken by the taxpayer did not amount to "manufacture". On appeal, the Supreme Court noted that it was important for the Revenue to consider the process applicable to the product and not merely rely on dictionary meanings. The Court noted that Partially Oriented Yarn ("POY") by itself could not be used to make fabric. The activity undertaken by the taxpayer was to twist and texturise the yarn using a thermo mechanical process. The Court also referred to its recent decision in the case of *Oracle Software* and held that the process undertaken by the taxpayer rendered the yarn fit for use to make fabric. The Court held that since the process undertaken makes the POY usable for making fabric, the process should be treated as amounting to 'manufacture' and accordingly, ruled in favor of the taxpayer.

CIT vs Emptee Poly Yarn Pvt Ltd (2010 TIOL 7)

DIRECT TAX

Supreme Court decision

Provision for NPAs as per norms prescribed by the RBI cannot be deducted in computing the profits liable to tax under the Act

The taxpayer, a non-banking financial company ("NBFC") made a provision towards Non Performing Assets ("NPA") as per the Prudential Norms, 1998 issued by the Reserve Bank of India ("RBI"). The taxpayer claimed the sum as deductible under

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Upcoming Events

- Analysing the India Budget 2010, Powered by BMR Advisors
- Indian Corporate Taxation Course, March 18-19, 2010, Singapore

Awards & Recognitions

- BMR wins ITR's Asia Award for "Transfer Pricing Firm of the Year" for the third consecutive year
- BMR wins "India Case of the Year" award at ITR Asia Awards
- BMR named the leading Financial Advisor in the mid market segment in India and 10th in APAC
- BMR is Tier 1 Firm in India for second

section 36(1)(vii) of the Act in computing the profits from its business. It also made an alternative claim that the provision should be allowed as a deduction under the residual category of expenses under section 37 of the Act as a loss in the value of assets. The Revenue disallowed the claims holding that the directions of the RBI cannot be used to compute income for tax purposes. On appeal, the Supreme Court observed that the norms prescribed by the RBI were restricted to disclosure and presentation of the financial statements of the taxpayer and was not related to the computation of profits from business. It held that section 36(1)(vii) of the Act allow ed deduction of bad debts only to the extent it was actually written off as irrecoverable in the accounts during the year and a provision towards NPA cannot be allowed as bad debts. It further held section 37 of the Act is applicable only to expenditure, not covered under sections 30 to 36 of the Act. Since the provision for doubtful debt was expressly excluded from section 36(1)(vii) of the Act, it cannot be claimed as an expenditure under section 37 of the Act. Accordingly, the Court rejected the claim of the taxpayer of deducting the provision towards NPA in computing its business profits.
Southern Technologies Ltd vs JCIT (2010 TIOL 1)

High Court decisions

Guideline value for the levy of stamp duty cannot be adopted as sale consideration, if the asset is a business asset and not a capital asset

The taxpayer, a property developer, obtained a power of attorney in its favor from a property owner for dealing with a certain property. The taxpayer accounted the payment to the property owner as 'loan and advances' in its balance sheet. Subsequently, the taxpayer sold the property and treated the gain as business profits. While registering the sale deed, the Registrar adopted the guideline value which was higher than the actual sale price and levied the stamp duty and registration charges on the higher guideline value. The Revenue officer applied section 50C of the Act by adopting the guideline value as the sale consideration for computing capital gains from the sale of the property. On appeal, the Court held that that the property was treated by the taxpayer as a business asset and not as a capital asset. It further held that section 50C of the Act would apply only when the asset was capital asset and when inco me was computed under the head "capital gains". Since the taxpayer treated the assets as business assets, it held that the Revenue officer was not justified in adopting the guideline value as the sale consideration and accordingly, held in favor of the taxpayer.
CIT vs Thiruvengadam Investments Pvt Ltd (2010 ITOL 78) (Madras)

Difference between spot rate and forward rate is allowable as a deduction in the year of contract itself

The taxpayer, a financial institution, borrowed in foreign currency for augmenting its funds in the lending business. It entered into forward currency contracts to hedge its potential losses on foreign currency fluctuation. The taxpayer treated the difference between the spot rate and the forward rate as cost of borrowing and amortised it in

consecutive year

- BMR is top mid-market dealmaker

Contributors

Direct tax

- Sriram Seshadri
- Sivam Subramanian
- Balaji Venkatasubramaniam
- Ashka Dave

Indirect tax

- K Sivarajan
- S Vinodh
- Debasis Nayak

Contacts

- Bobby Parikh, Mumbai
  Phone: +91 22 3021 7010
  Email ID:
  bobby.parikh@bmradvisors.com

- Mukesh Butani, New Delhi
  Phone: +91 11 3081 5010
  Email ID:
  mukesh.butani@bmradvisors.com

- Rajeev Dimri, New Delhi
  Phone: +91 11 3081 5050
  Email ID:
  rajeev.dimri@bmradvisors.com

- Abhishek Goenka, Bangalore
  Phone: +91 80 4032 0100
  Email ID:
  abhishek.goenka@bmradvisors.com

- Sriram Seshadri, Chennai
  Phone: +91 44 4298 7000
  Email ID:
  sriram.seshadri@bmradvisors.com

- Gagan Malik, Singapore
  Phone: +65 6408 8004
  Email ID:
  gagan.malik@bmradvisors.com

its books of accounts over the period of the borrowing. It claimed the difference fully in the first year itself for the purposes of income-tax. The Revenue allowed deduction only to the extent it was accounted in the books of accounts and treated the balance as deferred revenue expenditure. On appeal, the High Court observed that when the taxpayer entered into the legally binding contract for purchase of foreign currency on a future date under a forward contract, the rate at which and the date on which the foreign currency would be purchased were determined. It held that the difference w as fully deductible in the first year, as the liability had accrued on date of contract itself and was allowable as business expenditure.
CIT vs Industrial Finance Corporation of India Ltd (2010 TIOL 42) (Delhi)

If the TPO does not provide adequate opportunity of being heard, the taxpayer can challenge it before the DRP

The audit of the taxpayer was referred for transfer pricing scrutiny before the Transfer Pricing Officer ("TPO"). During the course of audit, the taxpayer furnished the details to the TPO and requested for an adequate opportunity of being heard, if the TPO proposes to make any adjustment to the arms length price reported by the taxpayer. However, the TPO failed to provide such opportunity before finalizing his order. Based on the TPO's order, the Revenue served a draft assessment order under section 144C of the Act proposing to vary the reported income of the taxpayer based on the order of the TPO. The taxpayer challenged this action before the High Court on a writ petition and contended that the TPO did not provide adequate opportunity of being heard. The Court observed that the taxpayer had the option of approaching the Dispute Resolution Panel ("DRP"), wherein it could file its objection to th e order of the TPO passed without hearing. The Court held that an alternate remedy was available to the taxpayer under the Act and such remedy must be pursued.
Messe Dusseldorf India Pvt Ltd vs DCIT (2010 TIOL 74) (Delhi)

Tribunal decisions

License fee paid for film distribution rights should not be treated as royalty

The taxpayer was in the business of home entertainment. It paid license fee to a non-resident for the distribution of films on compact diskettes. The Revenue officer treated this fee as royalty and disallowed the fee for default in withholding tax at source. The taxpayer contended that it was an advance payment of minimum guarantee fees and was to be adjusted against the ultimate sale proceeds of compact disks. It contended that the payment was not royalty as per the Act. On appeal, the Tribunal noted that 'royalty' as defined under section 9(1)(vi) of the Act includes transfer of all or any rights in respect of any copyright, literary, artistic or scientific work including films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting, but does not include consideration for the sale, distribution or exhibition of cinematograph films. Since, the rights acquired by the taxpayer were not for any bro adcasting in television or radio, the payment did not fit within the meaning of the term 'royalty' under the Act.

Snippet

The Central Board of Direct Taxes ("CBDT") has set up a committee to formulate rules for the safe harbour provisions that would enable the Income-tax authorities to accept the transfer pricing returns without scrutiny. The committee, which is chaired by Director General of International Taxation, comprises of senior tax officials and representatives of trade and industry as well as Institute of Chartered Accountants of India. Foremost among the committee's task is to set an acceptable margin which would act as a benchmark for the industry and if the transfer price declared by a company, engaged in that industry, is not less than the benchmark, then the authorities would accept the return without scrutiny. The rules, once introduced, will lend an investment friendly image to India and will also put an end to the requirement of collecting huge amount of data regarding transfer pricing transactions, thereby saving time and energy.

Source: The Economic Times
January 11, 2009

Snippet

The Finance Ministry is planning to reduce the number of personal Income-tax rates from the current three to two in the forthcoming Budget 2010-11. The Finance Ministry is looking to simplify the number of rates without sacrificing

Accordingly, the Tribunal ruled that the taxpayer was not required to withhold tax on the payments.
Asiavision Home Entertainment Pvt Ltd vs ACIT (2009 TIOL 806) (Mumbai)

Depreciation is allowable even if an asset included in the 'block of assets' was not used during the year

The taxpayer owned two manufacturing units, one of which was not operational. It continued to claim depreciation for the assets in the non-operational unit. The Revenue disallowed the claim on the basis that the assets were not used during the year. On appeal, the taxpayer contended that under the concept of 'block of assets', the actual use of the asset is not required for the years subsequent to the year of purchase, once the assets entered the block of assets. The Tribunal observed that actual cost of any new asset purchased and put to use must be added to the block and sale proceeds of assets sold, discarded, demolished or destroyed must be reduced. It noted that there was nothing under the Act that provides for removal of an asset from the block of assets if the asset was not used in the year. It held that the use of individual asset was relevant only in the first year and accordingly, the Tribunal held that the taxpayer was entitled to the c laim.
Swati Synthetics Limited vs ITO (Unreported) (Mumbai)

Income of a shipping company is not liable to tax in India unless passengers travel from or to India

The taxpayer was engaged in booking tickets on behalf of Star Cruises Management Limited ("SCML") based in Isle of Man. SCML ran cruise ships from Malaysia and did not touch any port in India. The taxpayer applied to the Revenue authorities seeking its permission to remit the proceeds to SCML without any withholding tax. The Revenue rejected the application of the taxpayer and directed that tax be withheld at 7.5 percent of the proceeds as per section 44B of the Act, which provides a presumptive profit for shipping businesses. On appeal, the Tribunal noted that SCML operated the cruise without touching any part of the Indian Territory and the role of the taxpayer was limited to the booking of tickets and remittance of proceeds. It held that activity of bookings of tickets would not result in a "business connection" between the taxpayer and SCML, which was a precondition for taxing any business income in India. It held that no income ca n be deemed to accrue to SCML under section 9(1)(i) of the Act. It further held that section 44B of the Act would apply only when the passengers travel either from or to any port in India. Accordingly, the Tribunal held that income of SCML was not liable to tax in India and that there was no requirement for withholding tax from the proceeds.
DDIT vs Star Cruises (India) Travels Services Pvt Ltd (2010 TIOL 04) (Mumbai)

Payment for product evaluation services should be taxed as fees for technical service

The taxpayer, a manufacturer of cars, paid a French company, a fee for evaluation of the safety standards of the cars manufactured by it. The tests were carried out in

revenues.

Source: Business Line
January 07, 2010

Snippet

The CBDT is envisaging a system in which taxpayers do not meet any tax official for routine assessments. Assessments are proposed to be centralized at a place where a set of officers would supervise the assessments. Each officer will be specializing in certain segment of the assessment process, such as giving credit, refunds, etc. Four such Central Processing Centers ("CPC") would be set up soon in four major cities where the computerized assessment of the returns will take place. Once the CPCs are in place, the tax payer will have to meet the department officials only when the returns are selected for scrutiny.

Source: The Economic Times
January 14, 2010

Snippet

The Income-tax department has

France where the representatives of the taxpayer were also present. The taxpayer approached the Revenue under section 195(2) of the Act to allow remittance to the French Company without withholding of taxes. It contended that the services of the French company did not enrich its technical knowledge and should not be treated as fees for technical services. The Revenue rejected the arguments of the taxpayer, treated the payments as fee for transfer of technical know-how taxable in India. On appeal, the Tribunal observed that the evaluation reports enhanced the product development capability of the taxpayer and were utilized in the taxpayer's business for modification of the products. The presence of taxpayer's personnel at the time of testing in Franc e would have enriched their technical knowledge. Accordingly, the Tribunal held that the service was a "fees for technical services" chargeable to tax in India and held that the taxpayer had to withhold taxes on the payments.
Maruti Udyog Ltd vs ADIT (International Taxation) (34 SOT 480) (Delhi)

Order passed by Revenue pursuant to resolution under MAP can be appealed against by the taxpayer if the order does not give full effect to the MAP resolution

The taxpayer was a non-resident broadcasting company with operations in India through its Permanent Establishment ("PE") and received advertising income, net of commission paid to Indian agents. The Revenue assessed the income of the taxpayer at 30 percent of the net advertisement revenue. The taxpayer appealed against the assessment and subsequently approached the Indian Competent Authority ("CA") under Mutual Agreement Proceedings ("MAP") as per the Tax Treaty between India and USA ("Tax Treaty"). Under the MAP, the taxable income of the taxpayer was determined at 10 percent of the advertisement revenue. Accepting this, the taxpayer withdrew its appeal before the Commissioner (Appeals). In the order giving effect to the resolution under the MAP, the Revenue determined the taxpayer's income at 10 percent of gross revenue of the taxpayer. The taxpayer appealed against the order contending that the income had to be computed at 10 percent of the net revenue only. The Revenue contended that the MAP resolution did not specify that the attribution percentage had to be computed on only the net revenue. It further contended that the order made by the Revenue cannot be appealed against, as it was to rectify the earlier assessment order in light of the MAP resolution. Since, the appeal against the original assessment order was withdrawn by the taxpayer; it cannot be allowed to appeal against the rectification of the order made in pursuance of the MAP resolution. On appeal, the Tribunal ruled that the order passed pursuant to MAP resolution substituted the original order and had to be treated as an assessment order and not a mere rectification of the original order. Accordingly, it held that the taxpayer could appeal against the order, if the Revenue did not give full effect to the directions of the CAs. In light of the above, the tribunal allowed the appeal of the taxpayer and held that the income is taxable at the rate of 10 percent of the net advertisement revenues.
Cable News Network LP, LLLP vs ACIT (2010 TIOL 20) (Delhi)

Taxpayer entitled to exclude a company from the comparables even if it was originally selected in the taxpayer's own study

declared that all high-value refunds above INR 1 lakh will be verified to check the genuineness of those transactions as it has detected fraudulent tax refunds in certain cases. The Central Board of Direct Taxes ("CBDT") is therefore working to replace the current system of handling high value refunds with a more robust and foolproof system to prevent such recurrence.

Source: Indian Express
January 26, 2010

Snippet

The Government has decided to allow Indian arms of foreign firms to use internal accruals for reinvestment in downstream sectors, provided they are reckoned as debt and comply with relevant external commercial borrowing ("ECB") norms. The new regime would let these firms, owned or controlled by foreign companies, to bring in additional capital without breaching the foreign direct investment ("FDI") caps, as the reinvested funds are not treated as equity capital. The move would ease the cash flow of foreign companies present in India and enable them to compete with local firms on a level-playing field.

Source: The Financial Express
January 27, 2010

The taxpayer provided marketing and customer service support in India to its parent, a software developer. It benchmarked its revenues for the services rendered under the Transaction Net Margin Method ("TNMM"). The Revenue rejected one of the comparables selected by the taxpayer, as it was a start-up company with high losses, negative net-worth, lower turnover compared to the taxpayer and functionally different from the taxpayer. In the appeal before the Tribunal, the taxpayer contended that the company was comparable as it was classified under the same head and code as that of the taxpayer in the Prowess database. Further, the taxpayer sought to exclude one of its own comparables, as it had a high profit margin and significant levels of related party transactions. The Tribunal held that the loss making company could not be accepted as functionally comparable, merely because it was classified in the same head along with the taxpayer in the Prowess database, when the other factors indicated functional differences. It further observed that a company with a negative net worth cannot be treated on par with a normal business organization. On the exclusion of the high profit making company, the Tribunal held that the taxpayer is entitled to exclude a company wrongly taken as a comparable by the taxpayer in its own study. It further observed that if the high loss making company had to be rejected, the company making extra-ordinary profits and a high turnover need also be rejected. Accordingly, the Tribunal sent the case back to the Revenue to re-determine the arm's length price of the transactions.

Quark Systems Pvt Ltd (2010 TIOL 31) (Chandigarh Special Bench)

Arm's length price determined for a service rendered to an AE cannot exceed the total revenue ultimately earned by the AE from third parties for such services

The taxpayer, an Information Technology enabled service provider, was entitled to a tax holiday in respect of its profits under section 10A of the Act. The associated enterprise ("AE") of the taxpayer procured contracts from third parties, which were served by the taxpayer as a back office service provider. The taxpayer was compensated at a value of 90.6 percent of the revenue earned by the AE from the third party contracts. This apart, the taxpayer rendered services directly to third parties, which constituted about 18 percent of its revenue. In its Transfer Pricing study, the taxpayer selected the AE as the tested party and benchmarked the transaction against the margin of comparable foreign companies. The Transfer pricing Officer ("TPO") held that the tested party had to be the taxpayer and conducted a new search with Indian companies as comparables. The TPO arrived at an arm's length margin of 11.88 percent on operating costs as against the loss of 53.5 percent incurred by the taxpayer. The resultant arm's length price for services determined by the TPO exceeded even the total revenue earned by the AE from the third parties. In appeal, the Tribunal rejected the contention of the taxpayer that the transfer pricing provisions would not be applicable to it, as it enjoyed a tax holiday under the Act. It rejected the contention of the taxpayer that the tested party should be its AE on the basis of non availability of adequate data on foreign comparables. It accepted the claim of the taxpayer for an adjustment at 33.33 percent of profits on account of idle capacity as it was in a start-up phase. Finally, the Tribunal ruled that the arm's length price determined cannot exceed the total revenue earned by the AE from third parties.

Snippet

The Department of Industrial Policy and Promotion ("DIPP") has proposed that the current ceiling of INR 600 crores for projects to get the approval of the Cabinet Committee on Economic Affairs ("CCEA") be raised to anywhere between INR 1,000 crore and INR 1,500 crore. The new norms are likely to be notified after the introduction of a consolidated FDI policy framework on April 1st this year. Projects below the threshold would get their final approval from the finance minister after they have been cleared by the Foreign Investment Promotion Board ("FIPB"). This move of raising the threshold is part of the policy measures aimed at smooth FDI flow into the country.

Source: Business Standard
January 21, 2010

Snippet

The Reserve Bank of India ("RBI") proposes to announce rules for the Separate Trading of Registered Interest and Principal of Securities ("STRIPS"), the process of separating principal and interest payments on bonds to turn them into zero interest securities, in government debt by January-end.

DCIT vs Global Vantedge Pvt Ltd (2010 TIOL 24) (Delhi)

Notifications and Circulars

Eligibility criteria and procedural guidelines for establishment of BO / LO in India

Reserve Bank of India ("RBI") issued a circular dealing with the eligibility criteria and the procedural guidelines for establishment of Branch office ("BO") and Liaison Office ("LO") in India by foreign entities. The salient aspects are as follows:

- Applications in sectors falling under the automatic route would be considered by the RBI and all other cases would be considered by the Ministry of Finance. The approval of RBI is not required to establish a branch or unit in Special Economic Zones for undertaking manufacturing and service activities.
- The foreign entity should have a profitability record of five years and three years in its home country for establishing BO and LO respectively.
- It should have a minimum net worth of US $ 100,000 or US $ 50,000 for BO and LO respectively; and
- The foreign entities should apply to an authorized dealer category I Bank for this purpose. The authorized dealer has to examine the foreign entity's background, nature and location of activity, sources of funds etc and also ensure compliance with 'Know Your Customer' norms and forward the application with its comments or recommendations to the RBI.
  Circular No 23/RBI dated December 30, 2009

Delegation of powers to authorized dealers with respect to BO/LO in India

With effect from February 1, 2010, foreign entities have to approach the designated AD category I banks instead of the RBI for the following:

- Filing the annual activity certificate of LO or BO by April 30 every year
- Extension of validity period of LOs for up to three years
- Closure of BO or LO.
  Circular No 24/RBI dated December 30, 2009

FBT paid in advance for FY 2009-10 can be adjusted against advance tax liability

Consequent to the abolition of fringe benefit tax ("FBT") from the financial year 2009-10, the Central Board of Direct Taxes ("CBDT") has clarified that the advance FBT paid by taxpayers for the FY 2009-10 may be adjusted against the advance tax obligations of the taxpayers. It has also clarified that in case of a loss, where such advance tax is not payable, the excess tax could be claimed as a refund.
Circular No 2/2010 dated January 29, 2010

Revised Tax Treaty signed between India and Finland

Earlier, the RBI had released the draft guidelines on STRIPS on May 14, 2009. RBI had stated in the draft norms that bonds with maturity dates of January 2 and July 2, irrespective of the year of maturity, will be eligible for stripping.

Source: The Economic Times
January 11, 2010

Snippet

With the objective of facilitating easy payment terms for the proposed 3G spectrum auction during the current fiscal, the government relaxed the External Commercial Borrowings ("ECB") norms further to permit the successful 3G bidders to raise rupee funds from domestic markets for paying the spectrum allocation fees, which can be subsequently refinanced through ECB, under the approval route. This is in view of the short timeline prescribed by the Department of Telecommunication requiring the successful bidders to pay 25 percent of the bid amount within 5 days of the close of the auction and the balance amount within 15 days of the auction closure.

Source: The Hindu
January 26, 2010

India has signed a revised Double Taxation Avoidance Agreement ("Tax Treaty") with Finland on January 15, 2010. The Tax Treaty will enter into force on completion of the internal procedures in both countries. The salient aspects of the Tax Treaty are as follows:

- Withholding tax rates on dividend reduced from 15 percent to 10 percent, and on royalties and fees for technical services from 15 or 10 percent to a uniform rate of 10 percent.
- 'Limitation of Benefits' has been introduced limiting the benefits under the Tax Treaty to the residents of the contracting countries subject to specified conditions.
- Provisions relating to Service PE have been included.
- The duration test for Independent Personal Services has been extended from 90 days or more in the relevant fiscal year to 183 days or more in any period of 12 months commencing or ending in the fiscal year concerned.
- Provision relating to Mutual Agreement Procedure (MAP) has been included under the Tax Treaty.
- Other changes include provisions relating to collection of taxes and exchange of information between the authorities of the two states.

CBDT notifies 14 more sports as eligible for deduction under the Act available for donations to charitable institutions

Section 80G of the Income tax Act, 1961 permits taxpayer to claim deduction from the total income for donations made to charitable institutions, including institutions established with the objective of controlling, supervising, regulating or encouraging notified games or sports. The CBDT had earlier notified 37 types of sports for this purpose. It has now added 14 more sports including Baseball, Karate and Snooker.
Notification 3 dated January 12, 2010

Time limit for filing the return of income in form ITR-V (without digital signature) extended

The CBDT has extended the time limit for filing ITR-V form relating to income-tax returns filed electronically (without digital signature) on or after April 1, 2009. The extension is up to March 31, 2010 or 120 days from the date of uploading e return, whichever is later. The ITR-V form is to be sent by ordinary post to Post Bag No.1, Electronic City Post Office, Bengaluru 560100 (Karnataka). However, in cases where e mail acknowledgement for ITR-V form is not received by the taxpayer from the Centralized Processing Centre ("CPC") Bengaluru, the taxpayer may send another duly signed ITR-V form by speed post to CPC, Bengaluru.

Snippet

The Government plans to introduce a single Foreign Direct Investment ("FDI") document by the end of the financial year. The consolidated FDI document would subsume all 177 press notes issued so far. The Government also plans to review and update the document rules every six months. The draft document was kept open for public comments till January 31, 2009.

Source: Business Standard
January 12, 2010

Snippet

The Government is planning to relax the rules on FDI, so as to treat foreign funds brought in the form of warrants and partly paid-up shares as FDI, once they are issued by Indian companies in favour of their foreign counterparts. Currently, the FDI policy does not recognise the use of these instruments. Hence, even in case of sectors falling under the automatic route, FDI through these instruments require scrutiny by authorities before approval. Companies would have to convert these warrants and partly paid-up shares into fully-paid up shares within 18 months and six months of issue respectively. Funds brought in through these instruments would be subject to sectoral conditions like minimum

Press Release dated January 27, 2010

Provisions pertaining to Winding up of LLPs notified

The Ministry of Corporate Affairs ("MCA") has notified that the provisions of the Companies Act, 1956 pertaining to winding up of companies would now apply to Limited Liability Partnerships ("LLP") as well. The winding up matters relating to LLPs would be handled by National Company Law Tribunal ("NCLT"). However, till the NCLT is established, the High Court of the respective State in which the LLP is established would have the jurisdiction over winding up of LLPs.
Notification GSR 6(E) dated January 6, 2010

INDIRECT TAX

Excise

High Court decision

Cenvat credit on inputs lying in stock need not be reversed, though final products are subsequently exempt

The taxpayer took Cenvat credit on inputs used in the manufacture of final products. The taxpayer subsequently opted for the benefit of an exemption notification and the final product was exempted from excise duty. The taxpayer reversed the Cenvat credit in respect of the inputs lying in stock or in process or contained in the final product lying in stock, but thereafter claimed refund on the ground that such reversal was not required. The Revenue rejected the refund claim since Rule 9(2) of the Cenvat Credit Rules, 2004 ("Cenvat Rules") provides for such reversal.

The Court held that even though the final product was exempted from excise duty, the taxpayer cannot be asked to reverse the Cenvat credit already taken. The High Court relied on the decision in Dai Ichi Karkaria Ltd [rendered in the context Rule 57H(5) of erstwhile Central Excise Rules, 1994 ("Excise Rules")], where in the Supreme Court held that credit taken is indefeasible. The Court observed that the language of Rule 9(2) of the Cenvat Rules was identical to that of Rule 57H(5) of the Excise Rules and hence the decision of the Supreme Court would apply.
CCE vs Saboo Alloys Pvt Ltd (2010 TIOL 13) (Himachal Pradesh) Similar views held in CCE vs United Vanaspati LTD (2009 TIOL 723) (Himachal Pradesh)

Tribunal Decisions

SSI exemption eligible for the period from effective date of amalgamation up to the

capitalisation and lock-in after they get fully converted into fully paid-up shares.

Source: The Financial Express
January 18, 2010

Snippet

With a view to effectively utilise the installed capacities in the special economic zones ("SEZs"), especially in times of economic downturn, and also to help the domestic tariff area ("DTA") units to get the benefit of value addition as would have obtained from overseas, the government plans to allow SEZs to make available their excess installed capacities for the use of industrial consumers in the DTA. According to the proposed rule, a SEZ will be considered as operational when a unit gets approved as against the current practice which requires that at least one unit will have to start exporting goods to declare the SEZ operational.

Source: The Financial Express
January 12, 2010

Snippet

date of sanction by the High Court

Under a scheme of amalgamation, a Small Scale Industrial unit ("SSI") availing exemption from central excise was amalgamated with the taxpayer. The SSI exemption was claimed up to the date of sanction of the scheme by the High Court and the subsequent filing of application with the Registrar of Companies ("ROC"). The Revenue disallowed the exemption beyond the date of amalgamation mentioned in the scheme (which was a prior date).

The Tribunal observed that though the scheme envisaged the effective date as an earlier date, the scheme was subjected to approval by the High Court as well as the ROC. The Tribunal relied on the decision of the Mumbai Tribunal in Technocraft Industries and held that the taxpayer is entitled to the SSI exemption for the limited period subsequent to the effective date of amalgamation
Palani Andavar Cotton And Syntehtic Spinners Ltd vs CCE (2010 TIOL 05) (Chennai)

Larger Bench lays down the factors to be considered for determining eligibility to Cenvat credit on inputs short received

The issue for consideration before the larger bench of the Tribunal was whether Cenvat credit can be denied on the ground that the weight of the inputs recorded on receipt in the premises of the manufacturer of the final products shows a shortage compared to the weight recorded in the relevant invoice.

The Revenue contended that under Rule 3(1) of the Cenvat Credit Rules, 2004 ("Cenvat Rules"), credit is allowed only of duty paid on inputs or capital goods actually received in the factory of the manufacturer.

The Tribunal observed that each case has to be decided according to its merits and that no hard and fast rule can be laid down for dealing with different kinds of shortages. The Tribunal further observed that the decision to allow or not to allow credit in any particular case will depend on the following factors:

- Whether the inputs/capital goods have been diverted en-route or the entire quantity with the packing intact has been received and put to the intended use at the recipient factory.
- Whether the impugned goods are hygroscopic in nature or are amenable to transit loss by way of evaporation etc.
- Whether the impugned goods comprise countable number of pieces or packages and whether all such packages and pieces have been received and accounted for at the receiving end.
- Whether the difference in weight in any particular case is on account of weighment on different scales at the despatch and receiving ends and whether the same is within the tolerance limits with reference to the Standards of Weights and Measures Act, 1976.
- Whether the recipient taxpayer has claimed compensation for the shortage

The government in order to facilitate greater flow of welfare benefits to employee in the private sector has proposed to amend the Payment of Gratuity Act, 1972. The gratuity ceiling currently capped at INR 3.5 lakhs, even if employee accumulates more money after completing 5 years of service with an organization, would be upwardly revised up to INR 10 lakhs even for the private sector employees which is on par with the Central Government employees.

Source: The Financial Express
January 25, 2010

Snippet

SEBI has allowed exchanges to introduce currency futures in three more currencies — euro, yen and pound. The permitted contract sizes for euro-rupee, pound-rupee and yen-rupee are 1000 euros, 1000 pounds and 1,00,000 yen respectively. The maximum maturity of the contract would be 12 months. The contracts would be settled in cash in rupees. The client-level position limit has been capped at 6 per cent of the total open interest position.

Source: Business Standard
January 20, 2010

of goods either from the supplier or from the transporter or the insurer of the cargo.

The Tribunal further observed that the tolerances in respect of hygroscopic, volatile and such other cargo has to be allowed as per industry norms and that minor variations arising due to weighment by different machines has to be ignored if such variations are within tolerance limits.
Bhuwalka Steel Industries Ltd vs CCE (2010 TIOL 9) (Chennai) (Larger Bench)

Cenvat credit eligible on EPABX system installed and used in factory

The issue arose before the Tribunal as to whether the taxpayer is entitled to Cenvat credit on EPABX system. The Tribunal observed that the EPABX system was installed and used in the factory premises for communication from one department to another department and thus was used indirectly in the manufacture of the final product. The Tribunal distinguished the decision in the case of Usha Ispat Ltd and held that credit is eligible on the EPABX system.
Kopran Ltd vs CCE (2010 TIOL 189) (Mumbai)

Cenvat Credit eligible on cogeneration plant intended to generate power for use in sugar mill

The taxpayer setup a manufacturing facility for a sugar mill along with a cogeneration plant for generation of power required for consumption in the sugar mill. The cogeneration plant became operational ahead of the sugar mill and the taxpayer supplied the entire power generated to an electricity company. The Revenue denied the capital goods credit on equipments purchased for the cogeneration plant since the sugar and molasses were not produced at the time of receipt of the capital goods.

The Tribunal observed that the cogeneration plant was setup to generate power for intended eventual use in the manufacture of sugar and molasses, which are dutiable excisable goods. The Tribunal further observed that the taxpayer cannot be disentitled to the credit on the ground that the sugar mill was not operational on the date of receipt of the capital goods or that the final product at the time of receipt was ‘electricity’, which was non dutiable. The Tribunal thus held that he taxpayer is entitled to capital goods credit.
Sagar Sugars and Allied Products Ltd vs CCE (2010 TIOL 197) (Bangalore)

Customs

High Court decisions

No interest payable on failure to fulfill export obligation due to natural calamity

The taxpayer imported capital goods at ‘nil’ rate of duty against EPCG licence. Due to cyclonic storm, the taxpayer suffered heavy damage and huge financial loses and

Snippet

SEBI has signed a Capital Market Collaborative agreement with Malaysian Securities Commission after the conclusion of official delegation level talks between the Prime Ministers of the two countries on January 20, 2010. India has similar collaborative agreements with several countries, including Pakistan and the US.

Source: Business line
January 20, 2010

Snippet

SEBI has made it mandatory for all credit rating agencies (“CRAs”) to get an internal audit, covering all aspects of CRA operations and procedures, including the investor grievance redressal mechanism, done every six months.

Source: Business Standard
January 08, 2010

could not fulfill the export obligation. The taxpayer paid the applicable duty on the capital goods but contested the liability to pay interest before the Settlement Commission ("Commission"). The Commission granted immunity form payment of interest. The Revenue filed a writ petition before the High Court seeking for setting aside of the Commission's order.

The Court applied the law of frustration of contract which lays down the principle that a contract is discharged if its performance is impossible. The Court observed that frustration of contract was proved in the facts of the case and dismissed the writ petition. The Court further observed that restoring the petition to the Commission will not serve any purpose since the Commission has no power to enforce a contract which is frustrated.

Union of India vs CCESC (2010 TIOL 01) (Mumbai)

Tribunal decision

No interest is payable on duty paid on debonding of capital goods on exit from STPI scheme

The taxpayer was an Export Oriented Unit ("EOU") registered under the STPI scheme and was engaged in business process outsourcing ("BPO") operations. The taxpayer procured capital goods (both imported and indigenous) without payment of duty. The taxpayer opted for exit from the STPI scheme since the unit went sick by reason of their client not honouring the invoices for services. The taxpayer was given permission for debonding and the capital goods were removed on payment of applicable customs and central excise duties. The Revenue demanded interest for the entire period during which the goods were warehoused in an EOU on the ground that export obligation was not fulfilled. The taxpayer contested the levy of interest.

The Tribunal observed that Notification No 132/2004-Customs of November 25, 2004 exempted the interest accrued on the customs duty payable by an EOU and that Section 61 of the Customs Act, 1962 specifically excluded liability to pay interest for a period of five years from the date of bonding. Relying on the decision of the Tribunal in the case of Stelfast India Private Ltd, the Tribunal held that interest is not payable on the duty paid at the time of debonding.

Business Process Technologies (I) Private Limited vs CC (2010 TIOL 155) (Bangalore)

Service Tax

High Court decisions

If no service tax was payable, limitation period would not apply to claim of refund of amount already paid

The taxpayer paid service tax on architectural services for the construction of a building outside India. Realizing that the transaction would not attract service tax,

Snippet

Life Insurance Council, the representative body of life insurers, would be making a representation to the Finance ministry shortly, urging the introduction of a uniform taxation platform for the life insurance sector. The life insurance industry wants service tax on fund management charges to be withdrawn as is the case with mutual funds

Source: Economic Times
January 2, 2010

Snippet

Indian industry have urged the Centre to continue with the fiscal stimulus at least for six months, as withdrawing them could hinder faster recovery of the economy. In a pre budget meeting with Union Finance Minister, industry representatives have also demanded tax reforms through introduction of a Goods and Services Tax ("GST") and reduction of the fiscal deficit. Industry bodies have recommended that GST should be implemented in October 2010.

Source: Reuters
January 5, 2010

the taxpayer claimed refund of service tax. Revenue rejected the refund claim as it was filed beyond the prescribed period of one year under section 11B of the Central Excise Act, 1944 (as applicable to service tax). The taxpayer filed a writ petition before the High Court.

The Court observed that when no service tax was payable by the taxpayer, any amount paid would not be in the nature of service tax and therefore, the limitation period would not apply. The Court further observed that there was no unjust enrichment since the taxpayer had not collected service tax from its customer. Accordingly, the Court directed refund of the amount paid.
Natraj and Venkat Associates vs ACST (2010 TIOL 67) (Madras)

Amount paid by mistake is in the nature of a deposit and not tax; limitation period for refund claim would not apply

The taxpayer was engaged in construction of buildings and paid service tax on construction services. The taxpayer subsequently claimed refund based on a circular issued by the Central Board of Excise and Customs ("CBEC") clarifying that service tax was not payable on construction of buildings used for non commercial purposes. Although the adjudicating authority observed that service tax was not payable on merits, he rejected the refund claim since it was filed beyond the prescribed period of one year under section 11B of the Central Excise Act, 1944 ("Excise Act"). The taxpayer filed a writ petition before the High Court.

The Court observed that, in such cases, the amount paid by mistake is in the nature of a deposit and not tax and consequently, there was no necessity for the taxpayer to make a refund claim invoking section 11B of the Excise Act. The Court further observed that the adjudicating authority assumed applicability of the limitation period under misconception of law and thus directed refund of the amount paid.
KVR Constructions vs CCE (2010 TIOL 68) (Karnataka)

However, in a writ appeal, the operation of the above order has been stayed by the division bench of the High Court (2010 TIOL 89)(Karnataka)

Revenue makes an assurance not to initiate coercive steps to recover service tax on rental of immovable property

The Delhi High Court held in the case of Home Solution Retail India Limited and Others that mere renting of immovable property is not a taxable service. The Government filed a Special Leave Petition ("SLP") before the Supreme Court against the order of the High Court. Since the SLP is pending before the Supreme Court, the field officers had been issuing notices to several taxpayers seeking payment of service tax. In some cases, the officers have threatened to initiate action for non compliance.

In a batch of writ petitions filed against such notices, the High Court observed that the field officers are bound to follow the order in Home Solution Retail India Limited

Snippet

The Thirteenth Finance Commission ("TFC") has recommended that states should be compensated for introduction of the GST only when the tax model is free of distortions and too many exemptions. The TFC in its report has proposed a INR 50,000 crore compensation package over a period of five years.

Source: Business Standard
January 6, 2010

Snippet

With a view to improve investments in the food processing industry, the Union Minister for food processing has urged that the rate of tax on the processed food should be kept between zero to four percent under the Value Added Tax system and in the proposed GST regime. Further it was suggested that the rate of tax could be increased if the production level of the processed food increases to 50 percent from the current level of 10 percent

Source: Press Trust of India
January 8, 2010

although the SLP is pending, since the Supreme Court has not stayed the operation of the order. The High Court further observed that the officers cannot demand payment of service tax or to resort to other means to protect revenue

The counsel for the Government assured the Court that further instructions would be issued to the officers directing them not to issue such demand notices to the taxpayers. On this assurance, the High Court disposed the writ petition.
SSIPL Retail Ltd & Ors vs Union Of India (2010 TIOL 84) (Delhi)

Commission agent acting as a consignment agent also covered under clearing and forwarding agent service

The taxpayer was registered with the service tax authorities under clearing and forwarding agent services (“CFA services”). The taxpayer requested for deregistration on the ground that their activities did not fall within the purview of the category of CFA services. The Revenue denied the deregistration.

The Court considered the following significant aspects of the agreement:

- The taxpayer was mentioned as a consignment agent in the agreement.
- Apart from procuring orders, the taxpayer is engaged in other activities.
- The principal and the taxpayer shall determine the price of the goods after mutual consultations; price determination would not be in the domain of a commission agent.
- The taxpayer was authorised by the principal to appoint stockists or dealers; the taxpayer was thus responsible to carry out the activity of storing the goods, clearing it and forwarding it to the stockists and dealers.
- The taxpayer had not restricted is activities to that of a commission agency but has carried on activities of a consignment agent.
- The definition of C&F agent services specifically includes a consignment agent.

Based on the above, the Court held that the activities of the taxpayer would fall under the purview of CFA services.
CCE vs Mahaveer Generics (2010 TIOL 20) (Karnataka)

Tribunal decisions

Construction of Government buildings to be let out for commercial purposes is liable to service tax

The taxpayer executed a contract with Central Warehousing Corporation (“CWC”) for construction of godowns with ancillaries, roads and electrical installations at railside warehousing complex. The taxpayer paid service tax on the contract under ‘Commercial and Industrial construction services’ in pursuance of an audit conducted by the revenue. The taxpayer subsequently claimed refund of service tax on the ground that services provided to railways were excluded from levy of service

Snippet

The Institute of Chartered Accountants of India (“ICAI”) has asked the Government to defer the implementation of GST from April 1, 2010 by an year to allow for a smoother transition to the new indirect tax framework. ICAI has favoured a dual GST structure and desires GST to be administered by a common authority. Further, to safeguard the suppliers from increased tax liability, ICAI has suggested that the indirect tax on on going works contracts/turnkey contracts and lease transactions could be discharged on similar basis prior to introduction of GST.

Source: Economic Times
January 16, 2010

Snippet

Aviation Turbine Fuel (“ATF”), crude, motor spirit and high speed diesel would be excluded from the proposed GST regime. Therefore ATF could attract sales tax even after the introduction of GST. The Finance Ministry is proposing to introduce a positive list for service that will be under GST although the States are for a concept of negative list on services. In order to ensure that States do not unilaterally change GST rates when the new tax system comes into force, the Finance Ministry is proposing to setup a new committee that may be headed by the Finance Minister. Any change in the GST rates would

tax

The Revenue relied on Circular No. 80/10/2004-Service Tax of September 17, 2004 issued by the Central Board of Excise and Customs clarifying that government constructions would not be normally be taxable; however, if such constructions are for commercial purposes like local government bodies getting shops constructed for letting them out, such activity would be commercial and builders would be subjected to service tax

The Tribunal held that the service was taxable since the godown was to be let out by the CWC for earning revenue.
A B Projects Pvt Ltd vs CCE (2010 TIOL 110) (Mumbai)

Benefit of abatement is not eligible if the value of pipes supplied by the customer for laying pipelines is not included in the 'gross amount charged'

The taxpayer was engaged in laying pipelines and was registered with the service tax authorities under the category 'Commercial or Industrial Construction Service'. The pipes were supplied to the taxpayer free of cost by the service recipient ("customer"). The taxpayer availed the exemption under Notification No 15/2004 ST of September 10, 2004 ("Notification") and paid service tax on 33 per cent of the gross amount charged. Revenue denied the benefit under the Notification since the gross amount charged did not include the value of pipes supplied by the customer and used for providing the service of laying the pipelines. The taxpayer contended the following:

- Value of taxable services as per Section 67 of the Finance Act, 1994 ("Finance Act") is gross amount charged by service provider. The operative part of notification required the tax to be paid on 33 percent of gross amount charged. Therefore, an amount not charged by the service provider should not form part of the value of the taxable service.
- An explanation to the notification was only to clarify the scope of the operative part and cannot expand the scope of notification.
- The expression "includes" used in the explanation to the notification cannot expand the scope of the gross amount charged.
- The expression 'used' employed in the explanation has to be read along with and contextually with the expression 'supplied' or 'provided'.
- The expression 'used' is inserted to cover consumables like electricity, water, cutting gas etc which are used up in the construction work.
- Pipe cannot be used for providing the service of construction of pipeline.

The Tribunal observed as under:

- Section 67 of the Finance Act provides of valuation of taxable service when the consideration is received in monetary as well as non-monetary terms.
- As per Rule 3 of Service Tax (Determination of Value) Rules, 2006 ("Valuation Rules"), supply of pipes by the receiver, which is an essential

be subject to prior approval from the committee

Source: Business Line
January 19, 2010

Snippet

The Centre has suggested setting up a common dispute resolution scheme for settlement of cases in the proposed GST. The Centre has also suggested sharing of service centres between the Centre and States, besides common registration facilities for traders. The Government is deliberating as to when the tax should be imposed, at the stage of raising invoice, making payment, provisioning or supply of goods and services.

Source: Business Standard
January 19, 2010

Snippet

The Central Government may consider withdrawal of fiscal stimulus in Budget 2010-11 as it is facing the pressure of a higher fiscal deficit in the current financial year. Service tax may be restored to 12 percent. The Centre is evaluating as to whether excise

component for providing pipeline laying service, has to be treated as consideration other than in the form of money and value of pipes has to be included.

- Gross amount charged is not limited to the amount charged by the service provider and therefore the expression "includes" in the notification cannot have a restrictive meaning.
- The use of the word 'or' in the expression 'supplied or provided or used' clarifies that irrespective of the source of supply, if some goods have been used in providing the service, the value of such goods need to be included.
- The objective of the explanation is to bring parity among all service providers providing such services.
- Accordingly, the Tribunal held that if the value of pipes is not included in the gross amount charged, the taxpayer is not eligible for abatement under the Notification. However, since the issue involved interpretation of law, the Tribunal observed that there was no suppression and accordingly set aside the penalty imposed under section 78 of the Finance Act.
  Jaihind Projects Ltd vs CST (2010 TIOL 124) (Ahmedabad)

Cenvat credit allowed on service tax paid on mobile phone services

The taxpayer provided mobile phones to its employees and the phone bills were paid by the taxpayer. The taxpayer took Cenvat credit on the service tax paid on the phone bills. The Revenue denied the credit since the taxpayer does not have any control over the use of mobile phones, which would be used for personal purposes also.

The Tribunal observed that from the face of the phone bills, it cannot be determined for what purpose the mobile phones are being used. Since the mobile phones were provided to the employees for business use and since the Revenue did not provide any evidence to support the usage of mobile phones for personal use, the Tribunal allowed the Cenvat credit on the mobile phone services
Sidel India Pvt Ltd vs CCE (2009 TIOL 2114) (Mumbai)

Cenvat credit eligible on garden maintenance services

The issue for consideration before the Tribunal was whether garden maintenance service is an input service as per the definition under section 2(l) of the Cenvat Credit Rules, 2004. The Tribunal referred to the five categories of input services listed in the decision of the Mumbai High Court in Coca Cola India Ltd and observed that the garden maintenance services would fall under category V ie services used in relation to activities relating to business

The Revenue relied on the decision of the Supreme Court in Maruti Suzuki Ltd wherein it was held that 'inputs' mentioned in the inclusive part of the definition would be eligible for Cenvat credit only if they are used in or in relation to the manufacture of final product ie only when they satisfy the main part of the definition. The Tribunal observed that the definition of 'input' and 'input service' are not

duty should be increased on specific sectors such as automobiles, which are showing recovery or to increase it marginally for all sectors to avoid disparity.

Source: Business Standard
January 19, 2010

Snippet

GST will not be implemented from April 1, 2010 as there is lack of convergence among the States on the GST structure and rate and also due to difficulties connected with passing of the required constitutional amendment bill in the budget session. The new date for introduction of the GST would be announced in the month of April, 2010. With regard to the Central Sales Tax compensation, the Centre has agreed to compensate about 68 percent of the total revenue loss.

Source: Business Standard

January 28, 2010

comparable, that coverage of the 'input service' is wider and that there was no finding in the case of Maruti Suzuki Ltd with regard to 'input service'. The Tribunal thus held that the taxpayer is entitled to Cenvat credit on the garden maintenance services.
ISMT Ltd vs CCE&C (2010 TIOL 27) (Mumbai)

Issue of credit note is a sufficient document to prove that there is no unjust enrichment

The taxpayer was engaged in providing advertisement services. The taxpayer filed a refund claim of service tax paid in excess on the gross amount charged from the media without considering the discount offered to their clients. The Revenue rejected the refund on the ground of unjust enrichment. The taxpayer contended they had issued credit notes for the excess service tax collected and therefore, there was no unjust enrichment. The Tribunal referred to the frequently asked questions issued by the Central Board of Excise and Customs ("CBEC") wherein it was clarified that any amount of service tax paid in excess of the actual liability is refundable if it is proved that the amount had already been refunded to the person from whom it was received. The Tribunal held that issue of credit note by the taxpayer is sufficient and unjust enrichment clause cannot be invoked.
CST vs Purnima Advertising & Promotion Pvt Ltd (2010 TIOL 99) (Ah medabad)

Adjustment of excess payment of service tax towards short payment for previous period not possible
If goods transporter has paid service tax, consignor or consignee is not liable to pay the tax again

The taxpayer adjusted service tax paid in excess against short payments for the previous months. The Revenue contended that such adjustment was not permissible. The Tribunal referred to Rule 6(3) of Service Tax Rules, 1994 ("Service Tax Rules") which provides for adjustment of excess service tax paid against service tax liability for the subsequent period and observed that there is no provision for adjustment of short payment of tax of earlier period against excess payment of tax in the subsequent period. The Tribunal held that such adjustment is contrary to the provisions of Rule 6(3) of the Service Tax Rules.

The other issue before the Tribunal was whether tax can be demanded from the taxpayer in cases where the goods transport agency ("GTA") has paid the service tax. The Revenue contended that liability to pay tax under the Rules is on the taxpayer, which cannot be shifted to the transporter. The Tribunal held that service tax is levied on the service and that since the transporter had paid the service tax on the service, demand of tax again on the same service is not sustainable.
Lilason Breveries Ltd vs CCE (2010 TIOL 15) (Delhi)

VAT/CST

High Court Decisions

Refund of tax collected in excess cannot be claimed by inflating the value of the goods sold

The taxpayer collected Central Sales Tax ("CST") on inter state sales at the rate of 10 percent instead of 4 percent. The tax payer paid the CST collected and filed regular returns. Subsequently the taxpayer filed a revised return and claimed refund of the excess tax paid. Revenue denied the refund claim on the ground of unjust enrichment as the excess tax has been collected from the customers.

Relying on the decisions of the Supreme Court in Maruti Udyog Ltd and Delhi Cloth & General Mills Co Ltd, the taxpayer contended that the goods sold were inclusive of tax and therefore the excess amount paid to the Government cannot be considered as towards tax and to be considered as adjustment towards sale price. The Court observed that the invoices raised by the taxpayer showed the value of the goods and the tax amount separately and therefore excess amount collected by the taxpayer could not be adjusted by raising the value of the goods sold. Accordingly, the Court held that the taxpayer cannot be benefited in an unjust manner by claiming refund of excess tax collected
Electronics & Controls Power Systems Pvt Ltd vs State of Karnataka (2010 VIL 4) (Karnataka)

Refund of tax collected in excess cannot be claimed by inflating the value of the goods sold

The taxpayer supplied track ballast for Railways in terms of the order issued by the Indian Railways. Revenue permitted payment of tax at compounded rate classifying the activity of the taxpayer as 'other contracts' under the provisions of the Kerala General Sales Tax Act, 1963 ("KGST Act") dealing with works contract. The taxpayer preferred a revision petition before the High Court to classify the contract as a 'civil contract', which has a lower compounded rate of tax.

On perusal of the purchase order/work order issued by the Railways, the Court observed that the taxpayer stacked the goods at a particular station, carried the goods in the wagons or hoppers supplied by the railways and delivered the goods on either side of the railway track. The Court further observed that assessment as a contract for railway track maintenance (included in the definition of 'civil works') can be claimed only when an indivisible work order is issued for track maintenance and not when order for supply of ballast at a fixed rate is issued with separate delivery charges. The Court observed that this is a sale of goods with instruction to deliver goods at a particular spot and that the labour charges and other costs incurred by the taxpayer till delivery of the goods would form part of turnover of goods. Accordingly, the High Court held that the assessment of the contract as 'other contract' is also not correct. However, s ince the assessment had become final, the

Court did not disturb the same.
Govindankutty vs State of Kerala (1 GST 67) (Kerala)

Notifications and Circulars

Excise

Cenvat credit on inputs not admissible if process does not amount to manufacture

The Board has reiterated that if a process does not amount to manufacture, duty is not required to be paid and hence no Cenvat credit of duty paid on inputs is admissible. This is based on references form field officers that processors who carry out activities like connectorising, testing, repacking and relabeling of feeder cables, cutting of HR/CR coils into sheets or slitting into strips etc which do not amount to manufacture are taking Cenvat credit and justifying their Cenvat availment on ground that they are paying duty on final products.

The Board has further clarified that in a case where the taxpayer has already paid duty on the final product and availed credit on inputs, but the Courts subsequently hold that the process does not amount to manufacture, the taxpayer can approach the Central Government for issue of appropriate notification for regularisation of the Cenvat credit availed under section 5B of the Central Excise Act, 1944.
Circular No 911 /01 /2010-CX dated January 14, 2010

Area based exemption available for substantial expansion of specific goods only

Area based exemption is available to the units in the specified areas in the North-East region, Jammu & Kashmir, Himachal Pradesh and Uttarakhand under different notifications. The exemption is applicable to the new industrial units set up after the specified date and also to the existing units which have undertaken substantial expansion by way of increase in installed capacity by not less than 25 percent. The Board has clarified the benefit of notification would be applicable only when the substantial expansion of the installed capacity of the specified goods is undertaken. To illustrate, if a unit is making tobacco product (say- gutkha, a non-specified goods, which is not allowed benefit of exemption) and also iron and steel articles (specified goods, which are lowed benefit of exemption), in that case, only when units increase installed capacity of iron and steel articles by 25 percent, benefit would be available. But if it increases production of gutkha by 100 percent, then it would not get benefit.
Circular No 912/02/2010-CX dated January 22, 2010

Customs

Customs duty benefits for expansion of mega power projects

Exemption from levy of Customs duty has been provided on import of goods required for expansion of existing certified mega power projects. While basic customs duty has been exempted in excess of 2.5 percent, countervailing duty,

education cess and additional Customs duty have been fully exempted.
Notification Nos 137/2009, 138/2009 & 139/2009-Customs dated December 11, 2009

Service Tax

Extension of Export Obligation for import of raw sugar

A reference was made by the Ministry of Agriculture Food and Public Distribution to consider extension of export obligation period for those Advance License Holders who had imported raw sugar between September 21, 2004 and April 15, 2008 but had not yet fulfilled their export obligations. In this regard the Central Board of Excise and Customs ("Board") has clarified that the Advance License Holders could exercise either of the following options:

- Extension of the export obligation period upto December 31, 2011 without payment of composition fees
- Abolition of export obligation for past imports provided the importer pays the customs duties as applicable during the relevant period on normal imports on the quantity of unfulfilled export obligation
  Circular No 1/2010-Customs dated January 11, 2010

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