

# Staying Updated

## Indirect Tax Newsletter

August 2012 - Volume 15 Issue 05

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- Cutting of marble blocks into marble slabs does not amount to manufacture

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- Demand of an amount of 10% of the sale price is not sustainable on clearance of exempted by-product
- CENVAT credit on Capital goods cannot be denied on the ground that 98% of the total production out of it is exempted from duty

###### *Others*

- Clearance to SEZ unit is to be treated at par with physical export under Rule 19(2)

- Period of limitation is applicable to demand of interest also.

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##### *Notifications/Circulars*

- Mr. S. Dutt Majumdar has been appointed as Indirect Tax Ombudsman, New Delhi.

##### *Case Law*

- The adjudication order sent to the correct address through registered post is sufficient compliance towards service of order on assessee
- Service tax paid on exempt services can be claimed as refund
- Where the demand of service tax has been set aside, penalty cannot be imposed by revisionary proceedings.

#### *VAT*

- VAT rate increased in Karnataka from 5% to 5.5% and from 14% to 14.50%
- Facility for online generation of statutory forms introduced in Tamil Nadu

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## **CENVAT**

### **Case Law**

#### *Manufacture*

- In *Arihant Tiles & Marbles Pvt. Ltd. v. Union of India* (2012 (281) ELT 692), the Rajasthan High Court held that cutting of marble blocks into marble slabs does not amount to manufacture.
- In *Shivam Industries v. CCE* (2012 (281) ELT 598), the Tribunal held that the process of filtration and heating of transformer oil to make it suitable for own industrial use does not amount of manufacture as the word ‘consumer’ in the expression ‘adoption of any other treatment to render the product marketable to consumer’ does not include industrial user or manufacturer.
- In *MSRTC’s Central Workshop v. CCE* (2012 (282) ELT 101), the Tribunal held that component of bus bodies meant only for specific use in buses made by assessee for repair and maintenance purpose are not marketable and hence non-excisable.

#### *Valuation*

- In *East India Udyog Pvt. Ltd. v. CCE* (2012 (281) ELT 634), freight charges were collected on an equalised basis,

irrespective distance covered for the specific customer. The Tribunal held that no duty is payable on collection of freight charges which are in excess of the actual cost of transportation.

- In *CCE v. PRS Rolling Mills Pvt. Ltd.* (2012 (281) ELT 560), the Tribunal held that when the place of removal is factory gate, transportation charges will not be included in the assessable value.

#### *CENVAT/MODVAT*

- In *CCE v. Nirma Ltd.* (2012 (281) ELT 654), the Gujarat High Court held that demand of an amount of 10% of the sale price is not sustainable on clearance of exempted by-product, when the main product was excisable.
- In *Rana Sugar Ltd. v. CCE* (2012 (281) ELT 617), the Tribunal held that credit on capital goods cannot be denied on the ground that 98% of the total production is exempted from duty.
- In *Oswal Woollen Mills Ltd. v. CCE* (2012 (192) ECR 197), the Tribunal held that the credit on capital goods cannot be denied merely on the ground that there is no clearance of dutiable final product during the period when such capital goods were received in the factory.

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- In *Roots Industries Ltd. v. CCE* (2012 (192) ECR 170), the Tribunal held that credit originally taken on capital goods and inputs is required to be reversed on 'as such' removal of the goods, irrespective of rate of duty applicable at the time of removal.
- In *JSW Steel Ltd. v. CCE* (2012 (281) ELT 582), the Tribunal held that service tax paid on clearing charges, commission on export sales, material handling charges, terminal handling charges, bank commission charges and aviation charges are eligible for input service credit.
- In *CCE v. Ferromatik Milacron India Ltd.* (2012 (192) ECR 195), the Tribunal held that CENVAT credit is admissible on outdoor catering services provided in factory canteen and air ticket booking services.

#### *Others*

- In *Everest Flavours Ltd. v. Union of India* (2012 (192) ECR 11), the Bombay High Court held that mere presentation of ARE-1 Form did not constitute filing of valid application for rebate and filing of refund application is mandatory to claim export rebate.
- In *Kwality Ice Cream Company v. Union of India* (2012 (281) ELT 507),

the Delhi High Court held that period of limitation which applies to a claim of principal amount shall also apply to the claim of interest thereon.

- In *Shri Bajrang Power & Ispat Ltd v. CCE* (2012 (282) ELT 108), the Tribunal held that clearance to a SEZ unit shall be treated at par with physical export under Rule 19(2) of the Central Excise Rules, 2002.
- In *Mysore Chipboards Ltd. v. CCE* (2012 (282) ELT 112), the Tribunal held that retraction of statement made before Notary or other authority is not relevant as the statements made before the excise officer was voluntary. Therefore, the retraction could be taken on record only from the date it was submitted to Excise/Customs Officer.
- In *IDMC v. CCE* (2012 (281) ELT 554), the Tribunal allowed the appellant to pay 25% of the duty as penalty, subject to condition that interest on irregularly availed CENVAT credit (reversed before issuance of SCN) and penalty was paid within thirty days from date of its order.

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## **Service Tax**

### **Notifications / Circulars**

- The Central Board of Excise & Customs (CBEC) has appointed Mr. S. Dutt Majumdar as Indirect Tax Ombudsman, New Delhi in accordance with “Indirect Tax Ombudsman Guidelines, 2011”. Indirect Tax Ombudsman, New Delhi will have jurisdiction over the states of Delhi, Haryana, Punjab, Himachal Pradesh and Jammu & Kashmir.

(Public Notice No. 1/2012 dated 21 August, 2012)

- The CBEC has issued a draft circular to clarify a number of issues raised post implementation of Negative list in relation to manpower supply or services provided by directors of a company or by the employer to the employees. The draft circular seeks comments and suggestions from all the stakeholders concerned.

(Draft Circular dated 27 July, 2012 issued by Tax Research Unit, CBEC)

### **Case Laws**

- The High Court, in *Kandla Shipchandlers and Ship Repairers Asso. v. Union of India* (2012-VIL-57-GUJ-ST), has held that the ship chandlers executing repair works in relation to

vessels in addition to supply of provisions to the crew would be liable to service tax under the service category of ‘Port services’.

- The High Court, in *Delhi Chartered Accountant Society (Regd.) v. Union of India & ors* (2012-TIOL-585-HC-DEL-ST), has stayed the proceedings of department to collect differential tax on the back of service tax circular issued on 8 May, 2012 to clarify that where the services provided and invoice raised before 1 April, 2012 but the payment is received after 1 April, 2012 the applicable rate of tax would be 12% instead of earlier rate of 10%, as this, *prima facie*, seems ultra vires the specific provisions available under the Point of Taxation Rules, 2011.
- The Tribunal, in *Bihari & Company v. CCE* (2012-TIOL-941-CESTAT-DEL), has held that the adjudication order sent to the correct address through registered post is sufficient compliance and the onus is upon assessee to rebut the presumption of service by producing cogent evidence for non-delivery.
- The Tribunal, in *Crown Products Pvt. Ltd. v. CCE* (2012-TIOL-975-CESTAT-MUM), has held that there is no bar in the Finance Act, 1994 (Service Tax) on the assessee from paying tax on exempt services and claiming refund there after.

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- The Tribunal, in *Cybertech Software & Services Ltd. v. CCE (2012-TIOL1008-CESTAT-MUM)*, has held that application for restoration of appeal has no merit where the appeal at first was dismissed as withdrawn on the request of applicant seeking withdrawal just to buy peace with the department.
- In *Pioneer Services v. CST (2012-TIOL-949-CESTAT-MAD)*, the Tribunal has held that the CMC charges levied by computer centre for filing of bill of entry and shipping bills are the expenses incurred by CHA while rendering their primary services as CHA and therefore, should be included in gross value of taxable services for the purpose of charging service tax.
- In *Sinhal Engineering Enterprises v. CCE (2012-TIOL-918-CESTAT-KOL)*, the Tribunal has held that where the demand of service tax has been set aside by the order of Commissioner (Appeals), penalty cannot be imposed even under the revisionary proceedings initiated by Commissioner.
- The Tribunal, in *Skoda Auto India Pvt. Ltd. v. CCE (2012-TIOL-961-CESTAT-MUM)*, has held that since the appellant has utilised the amount of service tax paid during the pendency of SCN proceedings as CENVAT credit instead of filing for refund arising on the back of a favorable order, the appellant is not eligible for refund of interest paid thereon as the utilisation of service tax as CENVAT implied that the assessee has admitted the tax liability and once the tax liability is admitted interest is required to be paid.
- The Tribunal, in *Tata Consultancy Services Ltd. v. CCE & ST (LTU) (2012-TIOL-1034-CESTAT-MUM)*, has held that:
  - where the SEZ Approval committee has given nexus and justification for use of particular services in relation to authorised operations of SEZ, the refund claim in relation to such input services cannot be disallowed on the ground that it has no nexus to output services; and
  - where the service tax liability was discharged in relation to services which were wholly consumed within SEZ and as such there was no necessity to pay service tax thereon, even then there is no bar from claiming refund for the same.

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## **VAT**

### **Notifications/ Circulars**

#### **Delhi**

- Filing of online declaration of tax rate wise details of closing stock as at 31 March has been made mandatory for all dealers. The due date for filing the declaration is 30 June of the relevant year. However, information pertaining to stock as on 31 March, 2012 has to be furnished online by 31 October, 2012.

*(Notification No. F.7/433/Policy-II/VAT/2012/472-483 dated 16 August, 2012)*

#### **Karnataka**

- The VAT rate slabs of 5% and 14% have been increased to 5.5% and 14.5% respectively effective from 1 August, 2012.

*(Karnataka Value Added Tax (Second Amendment) Act, 2012)*

#### **Rajasthan**

- The due date for submission of return for the first quarter of 2012-13 in Form VAT-10 has been extended from 15 August, 2012 to 10 September, 2012.

*(Notification No. F.16(375) Tax/VAT/CCT/2012-467 dated 14 August, 2012)*

- The due date for submission of annual

return in Form VAT-11, for the year 2011-12 has been extended from 31 July, 2012 to 31 August, 2012.

*(Notification No.F.16(375) Tax/VAT/CCT/06-590 dated 31 July, 2012)*

#### **Sikkim**

- The due date for submission of on-line return for Ist Quarter of 2012-13 has been extended from 31 July, 2012 to 14 September, 2012.

*(Notification No. GOS /CTD/2005-06/12-A1(14)/10 dated 25 July, 2012)*

#### **Tamil Nadu**

- A facility for online generation of Form C & Form F from Commercial Tax Department website has been introduced in Tamil Nadu.

*(Notification No. SRO A-20(a-1)/2012 dated 10 August, 2012)*

#### **West Bengal**

- A new return in Form e-Sahaj with modified annexures has been prescribed effective from 1 October, 2012 for specified VAT dealers in West Bengal. Online process is available on the website i.e.www.wbcomtax.gov.in.

*(Notification No.1297 & 1299 F.T. dated 6 August, 2012)*

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## **Entry Tax**

### **Rajasthan**

- The due date for submission of return for the first quarter of 2012-13 in Form ETLA-3 has been extended from 15 August, 2012 to 15 September, 2012.

*(Notification No.F.16 () ET/CCT/Date Ext. /2012-469 dated 14 August, 2012)*

### **Sales Tax**

#### **Case Laws**

- The Madras High Court, in *Emerald Stone Export v. Assistant Commissioner [(2012) 52 VST 286 (Mad)]*, has held that the last sale preceding the export of goods outside India will be a sale in the course of export and therefore eligible for VAT benefits in the nature of input credits/refunds as available to zero rated sales.
- The Kerala High Court in *Indus Towers Limited v. Commercial Tax Officer and Others* and in *TVS Interconnect Systems Limited v. Assistant Commercial Tax Officer and others [(2012) 52 VST 447 (AP)]*, has held that the mere use of goods in the 'telecommunication network' is sufficient to entitle the dealer to purchase goods against Form C in terms of section 8(1) read with Section

8(3)(b) of the Central Sales Tax Act, 1956. There is no obligation on the purchasing dealer to either resell or use the goods in manufacture/processing of goods for sale so long as the goods are used in telecommunication network.

- The Chhattisgarh High Court, in *Kamesh Traders v. State of Chhattisgarh [(2012) 52 VST 120]*, on classification of serving tray, flask, stainless steel tiffin with plastic body under the entry description of "All utensils including pressure cookers/pans except utensils made of precious metals" held that entry starts with the word "all utensils" which has a wide connotation. The Court observed that there is no distinction between utensils made of stainless steel, plastic or any other metals and therefore all articles which are useful for kitchen and domestic purposes, will come within the definition of "utensils".
- The Andhra Pradesh High Court, in *Bharat Heavy Electricals Limited v. The Commercial Tax Officer [(2012) VIL 53-AP]*, has held that the Contractor is eligible to claim refund of WCT-TDS, which was wrongly deducted and deposited by the Contractee, on pure labour and service contracts not involving any transfer of property in goods.

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- The Gujarat High Court, in *Amulakh & Company v. State of Gujarat* [(2012-VIL-51-Guj)], on classification of towels and bed sheets under the entry description of cotton fabric observed that once the cotton fabric is stitched on both the ends, it ceases to be cotton fabric and a new commercial commodity comes into existence, which is called towel or bed sheet. Consequently, the towels and bed sheets fall under the entry description of ready-made garments and not that of cotton fabric.



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