June 2015

TAX UPDATES

(containing recent case laws, notifications, circulars)

Prepared in association with

KPMG cutting through complexity

BMR & Associates

Foreword

I am pleased to enclose the June 2015 issue of FICCI's Tax Updates. This contains recent case laws, circulars and notifications pertaining to direct and indirect taxes.

A FICCI delegation led by Mr Harsh Neotia, Senior Vice President had a meeting with Mr Jayant Sinha, Hon'ble Minister of State for Finance, to discuss certain tax issues on June 10, 2015. Along with other issues, it was represented on behalf of FICCI that the industry was not being taken into confidence on the GST framework and there was need for consultations to evolve a simplified GST architecture and ensure its smooth implementation. The Hon'ble Minister agreed to constitute a Council comprising of Government and Trade representatives, which will hold periodic meetings at monthly intervals. He observed that he would like to Chair the first meeting of the Council sometime in the month of July, 2015.

On the taxation regime, 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 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.

The Supreme Court observed (SRF Ltd. v/s Collector of Chennai) that excise exemption which is subject to non-availability of cenvat is available even in the case of import of goods. The taxpayer had import nylon filament yarn and claimed nil rate of additional duty under a notification which provided for exemption subject to a condition that no credit was availed in respect of inputs or capital goods used for the manufacture of goods. The Revenue Authorities were of the view that the exemption was applicable only to indigenous manufacturers and was not available for imported goods. The Supreme Court observed that in a situation where cenvat credit is not admissible to the taxpayer, there could be no question of taxpayer fulfilling the condition of non-availment under the notification. It allowed the benefit of exemption notification to the taxpayer.

We do hope that this newsletter keeps you updated on the latest tax developments.

We would welcome any suggestions to improve the content and the presentation of this publication.

A. Didar Singh

Recent Case laws

I. Direct Tax

High Court Decision

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)

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, and 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

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 UN TP 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

Tribunal 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 nonresidents 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

'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. [ITA NOs.5389 & 5390/Mum/2013, AY: 2009-10 & 2010-11] (Mum)

Notification & Circulars

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

II. SERVICE TAX

High Court Decisions

High Court rejects petition for stay of operation of Rule 5A of Service Tax Rules, 1994 with regard to competency of Comptroller and Auditor General of India to conduct audit of private assessees

The taxpayer filed writ petitions before the High Court ("HC") seeking to stay operation of Rule 5A of the Service Tax Rules, 1994 ("ST Rules"), as ultra vires the Finance Act, 1994 ("Finance Act"). Rule 5A of the ST Rules grants power to the Revenue Authorities ("RA") and Comptroller and Auditor General of India ("CAG") to conduct audit of taxpayers. The taxpayer, while relying on the decisions of Delhi HC and Calcutta HC in the cases of Travelite (India) and SKP Securities Ltd respectively, contented that CAG / Departmental Audit Committee does not have the power to look into the accounts of a private assessee in terms of Section 72A of the Finance Act.

The RA highlighted that the Department has gone into appeal against the decision of Delhi HC and the SC has stayed the operation of the order of Delhi HC.

The HC further observed that SC in the case of Association of Unified Tele Services Providers and Others, clarified that CAG has the right to audit the accounts of private persons who were obliged to make payments to the Central Government pursuant to contracts entered into with the Central Government.

The HC denied to grant stay of operation of Rule 5A of the ST Rules, but admitted the writ only for the purpose of examining the validity of Rule 5A of the ST Rules.

Inditrade Derivatives and Commodities Limited vs UOI [WP (C) No 30080 of 2014 and 3541 of 2015, Kerala HC]

Mandatory pre-deposit for filing appeal before Tribunal for which proceedings initiated before August 2014 – Contrary views of Kerala and Gujarat High Court

The issue involved was whether the taxpayer was required to make a pre-deposit for filing an appeal against the decision of the adjudicating authority before the Tribunal when the dispute commenced in 2013 and the requirement to make the pre-deposit was introduced vide amendment to the Finance Act with effect from August 16, 2014.

The Kerala High Court while deciding the matter referred to the decision of the High Court of Telangana & Andhra Pradesh in the case of *K Rama Mohanarao & Co Vs Union of India* wherein a prima facie view was taken that when the dispute had commenced prior to the introduction of the amendment in the Finance Act, the taxpayer's right of appeal as per the erstwhile provisions of law would not be affected by the pre-deposit provisions introduced by the amendment of 2014. The Kerala High Court observed that the interim order passed by the High Court of Telangana & Andhra Pradesh is consistent with the settled law that the institution of a suit carries with it an implication that all rights of appeal then in force are preserved to the parties thereto till the rest of the career of the suit. It was further observed that the right of appeal is to be governed by the law prevailing at the date of institution of the suit or proceeding, and not by the law that prevails at the date of its decision or at the date of filing of the appeal. For these reasons, the High Court held that the taxpayer would not be required to make a pre-deposit for filing an appeal before the Customs, Excise and Service Tax Appellate Tribunal ("CESTAT").

The Gujarat HC, however, in a similar matter held that during the pendency of proceedings or after the order is passed by the adjudicating authority, if the law is amended and a condition of pre-deposit is also amended under section 35F the Central Excise Act, 1944 ("Excise Act"), the taxpayer would have to comply with amended provisions. Accordingly, the amended provisions would apply and the appeal of the taxpayer filed before the Tribunal would not be maintainable in the absence of payment of the prescribed statutory pre-deposit. It is important to note that Gujarat HC did not consider the earlier decisions by the Kerala High Court and the High Court of Telangana & Andhra Pradesh on this identical issue.

A M Motors vs Union of India, [WP(c).No. 9848 of 2015 (e), Kerala HC] Premier Polyspin Pvt Ltd vs UOI [Special Civil Application No 4663 of 2015, Gujarat HC]

Tribunal Decisions

Unjust enrichment does not apply if the taxpayer has sufficient proof to establish that the tax is not recovered/ recoverable from another person

The taxpayer was engaged in providing services falling under Banking and Other Financial Services, including to customers located in Special Economic Zones ("SEZ's"). The taxpayer while raising an invoice on the SEZ customer included service tax, however the customer refused to pay service tax on account of the exemption on services received by the SEZ units. The taxpayer accordingly filed a refund claim with the RA along with requisite documents. The refund claim was allowed, however refund was directed to be credited to the Consumer Welfare Fund, on the ground that, since the taxpayer has raised a cum-tax invoice, it has passed on the burden of tax on another person.

The Tribunal held that the ledger accounts of the taxpayer clearly establish that the customer of the taxpayer has not paid service tax (as charged on the invoice) and the entry of service tax was reversed in the books of the taxpayer to show it as receivable from the Government instead of customer. Further, the Chartered Accountant's Certificate and Affidavit issued by the customer, validate that the tax has not been recovered by the taxpayer from customer. Considering the above, the CESTAT held that the taxpayer is eligible for refund of the amount claimed.

SBI Capital Markets Limited vs CE&ST [Appeal No ST/123/10-Mum, CESTAT Mumbai]

Service tax not applicable on reimbursement of expenses (including postage)

The taxpayer was a Share Transfer Agent ("STA") and Registrar to an Issue ("RTI") and the services of the taxpayer became liable to service tax with effect from May 1, 2006. The taxpayer was discharging service tax under the taxable category of Business Auxiliary Services for the period prior to May 1, 2006 and started discharging service tax on its services under the category of STA service effective May 1, 2006. However, the taxpayer did not discharge service tax on the reimbursements (including reimbursements of postage) claimed by them from the customer during the period from September 2004 to June 2007.

The observations of the CESTAT in this case are as under:

- For the period prior to May 1, 2006, since the services of taxpayer were not liable to service tax, there is no question of levy of service tax on reimbursements, irrespective that the taxpayer was paying service tax under the wrong category;
- With respect to reimbursement of postage, it was held that, under Section 2(f) of the Indian Post Office Act, 1898, the expression 'postage', means 'the duty chargeable for the transmission by post of postal articles and therefore, postage is in the nature of a duty/ tax. Thus, service tax cannot be levied on reimbursement of tax paid by the taxpayer on behalf of its client;
- For the other reimbursement, claimed after May 1, 2006, the CESTAT relied on the decision of the Delhi HC in the case of Intercontinental Consultants & Technocrats Private Limited, wherein Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006 which provides for inclusion of reimbursements for the purpose of valuation, has been held ultra vires. Further, since there is no stay against the said order, the same has been followed in the instant case and it was held that no service tax is payable on reimbursement of expenses claimed by the taxpayer.

Link Intime India Private Limited vs CCE [Appeal No ST/14/2012, CESTAT Mumbai]

No service tax applicable on the reimbursement of social security fees to the offshore entity for the deputation of employee where Indian Company exercises control and management

- Taxpayer had entered into an agreement with its associated foreign company Lear Corporation, USA ("Lear, USA") wherein certain employees from Lear, USA were employed by the taxpayer
- Taxpayer deducted tax and deposited provident fund for the employees deputed in India and remitted the same to the Government of India
- Taxpayer reimbursed the social security fee paid by the associated foreign company in respect of such employees in USA
- The RA contended that the taxpayer would be liable to pay service tax under reverse charges mechanism on the amounts remitted to the associated

foreign company towards the reimbursement of social security fees.

After analyzing the relevant clauses of the agreement and relying on judicial precedents, the Tribunal observed that the taxpayer would not be liable to pay service tax under reverse charge mechanism on the social security amount remitted to the associate foreign company under the category of manpower supply services as:

- The deputed employees were taken on the rolls of the taxpayer as the employees.
- Such employees were working under the direct control and management of the taxpayer during the period of employment.
- The taxpayer could proceed against the deputed employees in terms of disciplinary issues on the same terms as its own employees. Hence, no manpower supply service was being received by the taxpayer for reverse charge provisions to apply.

Lear Automotive (I) Pvt Ltd vs CCE, Pune [Appeal No ST/878/12, CESTAT Mumbai]

III. VAT/ CST/Entry Tax

High Court Decisions

Composite contract for installation and erection cannot be split for the purpose of VAT payment under composition scheme

The taxpayer, pursuant to award of work for installation, erection and commissioning of Wind Turbine Generators ("WTG") entered into separate work orders for such work viz. (a) laying down civil foundations, (b) supply and installation of electric lines, (c) supply of electrical items and (d) erection and commissioning of WTG supplied by the customers.

The taxpayer discharged VAT under the composition scheme vide section 15(1)(b) of the Karnataka Value Added Tax Act, 2003 ("KVAT Act") in respect of contracts (a) to (c). The taxpayer discharged service tax on the consideration received for erection and commissioning of the WTG work order, since it was a pure labour contract. The RA alleged that VAT under composition scheme would be leviable on the erection and commissioning of WTG work as well, since it is a part of one integrated single composite contract for installation and erection of WTG.

The HC after reviewing the offer letters, with the terms and conditions of the work orders entered between the taxpayer and the customer observed the following:

- The scope of work and the insurance clause specifically establish that the taxpayer has entered into an agreement for the installation, erection and commissioning of the WTG, which includes labour work also;
- All the segregated activities are related to the very same project with the very same customer involving transfer of goods and labour. Further, all the four activities mentioned in the work orders as individual activities are intrinsically linked with each other and the main objective of the same is installation and commissioning of WTG;

- The entire contract, if perused as a whole, is in the nature of composite single integrated contract, though designed as four separate work orders;
- Payment of service tax on labour contract receipts does not absolve the taxpayer from paying VAT under composition scheme, as both the laws are two different enactments operating in two different fields.

In view of the above, the HC held that since the taxpayer had executed a single integrated contract for installation, erection and commissioning of WTG, the value of the contract cannot be segregated to exclude value of erection and commissioning work for the purpose of payment of VAT under composition scheme.

Suzlon Infrastructure Ltd vs State Of Karnataka [STRP No 4&5 -13/2015, Karnataka HC)

Freight charges includible in 'sale price' for levy of VAT, in the absence of evidence of separate reimbursement from the buyer for the freight charges

The taxpayer was supplying diesel to Indian Railways and the mode of transportation of diesel was either through road or rail. The taxpayer recovered freight charges for transportation of diesel in the invoice raised by the taxpayer on the Railways for supply of diesel. The taxpayer did not include the freight charges in the taxable turnover under the Rajasthan Value Added Tax Act, 2003 ("RVAT Act") on the basis that the freight charges were reimbursed separately by the Railways and therefore did not form a part of sale price. The RA contended that since the freight formed part of the invoice, the same must form part of the turnover.

The HC after analyzing the explanation III to section 2(36) of the RVAT Act noted that if according to the terms of the contract, the cost of freight and other expenses in respect of transportation of goods, are incurred by the taxpayer for or on behalf of the buyer, such cost of freight and other expenses shall not be included in the 'sale price'. However the burden of such proof would lie on the taxpayer to demonstrate that such amounts was separately reimbursable from the buyer.

Further, HC referred to the terms and conditions of the contract entered between the taxpayer and Railways and noted the following:

- Taxpayer was required to deliver the goods at the destination after taking into consideration the transit risk i.e. the taxpayer was responsible for any shortage, damages or deterioration for the consignment in transit;
- As per the rate contract, sale price of the petroleum products would include actual delivery charges, freight with the transit risk being borne by the supplier. This establishes that it was the duty of the taxpayer to deliver the goods up to the destination point;
- The taxpayer was unable to demonstrate that freight was separately charged and was paid separately to Railways.

In view of the above, HC held that the freight charges received by the taxpayer from Railways towards delivery, would fall within the definition of 'sale price'. Accordingly, VAT shall be levied on such freight charges under the provisions of RVAT Act.

Indian Oil Corporation Limited vs. Assistant Commissioner, Commercial Taxes, Jaipur [SB Sales Tax Revision Petition No 1/2011, 39, 40, 41, 43/2013, Rajasthan HC]

Grant of opportunity should not be a mere formality but should be such that it can be reasonably availed by taxpayer

The taxpayer was engaged in the business of manufacture and sale of electrical and electronic products and also engaged in the execution of works contract for transmission and distribution of electricity. With regard to interstate sales made at a concessional rate of tax during the period April 2013 to March 2014, the taxpayer could not furnish some of the statutory declarations in Form C ("Statutory Forms") to the RA within the prescribed time limit.

On the request of the taxpayer to grant additional time to submit the balance Statutory Forms, the RA granted additional time of seven days only. The order of the RA was challenged by the taxpayer on the ground that it was not given adequate opportunity to submit the additional forms, nor was the taxpayer given a personal hearing as for requested by the taxpayer.

The HC noted that grant of opportunity should not be a mere formality but should be such that it can be reasonably availed by the taxpayer. Requiring a person to do something in a short period and merely completing the formality of issuing notice and not considering the reasons given in the response/ reply for grant of further reasonable time to furnish the documents, would not amount to giving adequate or fair opportunity to the party.

HC, further noted that while the provisions of Central Sales Tax (Registration & Turnover) Rules, 1957 provides for furnishing the declaration within three months, the prescribed authority, if satisfied that the taxpayer was prevented by sufficient cause from furnishing the declaration within the prescribed time, may allow further time for furnishing such declaration. Thus, where discretion to grant extension if exercised by the RA, should have been exercised in a judicious and fair manner and further to the same, taxpayer was granted time of two months to furnish the balance Statutory Forms.

ABB India Ltd vs The Deputy Commissioner of Commercial Taxes (Audit), Bangalore [W.A No 1098-1109/2015 (T-RES), Karnataka HC]

Commercial activity undertaken by a Trust would have to satisfy the requirement of Value Added Tax laws

The taxpayer was a charitable trust carrying various charitable activities. The trust also ran a sweet shop wherein sweetmeats, 'farsan' etc are manufactured and sold to customers. The taxpayer did not discharge sales tax liability on sale of sweetmeats and farsan, on the ground that manufacture and sale of sweetmeats and farsan are part of charitable activities of the trust and therefore not liable to sales tax Bombay Sales Tax Act, 1959 ("Bombay Sales Tax Act"). The RA contended that the activity of manufacture and sale of sweetmeat and farsan is a commercial activity, independent of the charitable activities, and therefore the sweet shop is liable to obtain registration and discharge sales tax liability under the Bombay Sales Tax Act.

The HC noted that such activity, involving sale to public at large is in no way related to main object of the trust viz., providing medical aid, education, managing Pyaus (Kiosks), and providing food free of charge or at concessional rate. Further, profit motive has no bearing on declaring a taxpayer's activity as 'business', but the regularity of transaction, with motive of carrying on business and making available not only to restricted persons / beneficiaries of trust, but public at large, makes it a 'business' covered under the Bombay Sales Tax Act.

In view of the above, the taxpayer's activities of manufacture and sale of sweetmeat and farsan were held as 'business' and accordingly the taxpayer was held to be treated as a 'dealer' under Bombay Sales Tax Act.

The Commissioner of Sales Tax, Maharashtra State, Mumbai vs. Paramhans Shri Ganeshji [WP No 2539 of 2006, Sales Tax reference no 33 of 2009, Bombay HC]

Purchasing dealer is not liable to reverse Input Tax Credit on the ground that selling dealer has not paid the collected tax under the provisions of Tamil Nadu Value Added Tax Act, 2006

The RA proposed to reverse Input Tax Credit ("ITC") on the ground that taxpayer has reported excess ITC on its purchases whereas the selling dealers have reported less sales in their returns. Taxpayer contended that all its vendors are registered under the Tamil Nadu Value Added Tax Act, 2006 ("TNVAT Act") and RA must take action against the vendors for not remitting the tax collected by them.

The Madras HC, after relying on the decision of *Sri Vinayaga Agencies and Althaf Shoes (P) Ltd* pronounced by the same forum held that section 19(16) of the TNVAT Act states that the ITC availed is provisional. This however, does not empower the RA to revoke the ITC availed by the taxpayer on a plea that the selling dealer has not paid the tax. The HC also noted that if the selling dealer has not paid the collected taxes the liability had to be fastened on the selling dealer and not on the taxpayer which had shown proof of payment of tax on the purchases made. In view of the above, the writ petitions filed by the taxpayer were disposed of in the favour of the taxpayer.

Bharat Steels vs The Commercial Tax Officer [Writ petition 9717 to 9720 of 2015 & MP No s 1 to 1 of 2015, Madras HC]

Replacement of defective parts by a dealer during warranty amounts to sale and is subject to sales tax

The taxpayer was a car dealer and replaced certain defective parts during the warranty period of the cars. The dispute was whether the taxpayer was liable to pay sales tax on the defective parts replaced during warranty.

The taxpayer contended that while replacing the defective parts during the warranty period of the motor cars, there is no element of sale at all and the assessee/ dealer as such did not charge anything from the owner of the cars. Further, details of the replaced parts were sent to the manufacturer who gave credit notes to the dealer. As there is no element of sale, taxpayer is not liable to pay tax on the same. The taxpayer relied on the decision in the case of *C.T.O (AE) vs. Marudhara Motors* wherein Rajasthan High Court distinguished the decision of Supreme Court in the case of *Mohd Ekram Khan and Sons vs. Commissioner of Trade Tax, U.P. Lucknow* and held that the credit notes received from the manufacturer could not be taxed as sale value of spare parts replaced for defective parts under warranty by the manufacturer to the customer.

The RA contended that the facts of the case are squarely covered by the decision of Supreme Court in the case of Mohd Ekram Khan wherein it was held that the assesse was held to be liable to pay tax on the credit notes pertaining to value of parts purchased by the dealer from the market.

After considering the submissions made by both the parties, the High Court held that that the taxpayer had purchased parts from the open market and replaced the same in the place of defective parts during the warranty period of cars and for which credit note was being issued by the car manufacturer. The aforesaid facts are squarely covered against the taxpayer by the decision of the Hon'ble Supreme Court in the case of Mohd. Ekram Khan. Thus, the High Court upheld the decision of the Tribunal and dismissed the appeal. It was further held that the manufacturer would have paid taxes if he brought parts from market and the position would not be any different in the case of the taxpayer who supplied parts and received price for it. The Gujarat High Court distinguished the decision of Rajasthan High Court in Marudhara Motors and the present case was decided against the taxpayer.

Kataria Automobiles Pvt Ltd vs State of Gujarat [2015-VIL-166-GUJ, Gujarat HC]

IV. CUSTOMS

Supreme Court Decisions

Inclusion of royalty charges in the value of duplicated CD produced by job worker

The taxpayer started manufacturing duplicate CDs on job work basis from a master tape/ CD issued to them by the distributor who had obtained the copyright in the contents of the CD from the producer. The taxpayer sold the CDs exclusively to the distributor, who in turn sold the CDs in the market. The revenue demanded duty on royalty charges paid by the distributor to the producer of the music.

The taxpayer contended that amount of royalty paid by distributor to producer could not be included in the assessable value as -

- The distributors are the copyright holders of the music and they sell these CDs in the market by loading the royalty cost paid to the producer on to the value of the CD; and

- The distributor has not passed on the royalty cost to the taxpayer.

The revenue argued that royalty would form a part of the assessable value of the goods to be produced by the taxpayer and then sold to the distributor/ copyright holder as –

- The taxpayer handed over the CD to the distributor with music on it and the music was inextricably bound with the royalty that was paid for it; and
- Master tape could not be given for duplication unless royalty had been paid.

The Supreme Court observed that –

- Rule 6 of the Central Excise (Determination of Value) Rules, 2000 requires that use must not merely be in connection with production but must also be in connection with the sale of such duplicate CDs.
- No part of the copyright which may have been passed on by the distributor to the taxpayer is used by the taxpayer in selling the duplicate CDs to the distributor who is himself the owner of the copyright
- The distributor sells the duplicate CDs in the market with the cost of the royalty loaded thereon;

Basis above, it was held that no part of the royalty can be loaded on to the duplicate CDs produced by the taxpayer.

M/s. K.R.C.D. (I) Pvt Ltd vs CCE [Civil Appeal No.6709 OF 2004, SC]

Supreme Court held that if a hot mix plant is imported in an unassembled form not complete in itself, exemption under the Notification 17/2001 dated March 1, 2001 would not be available

The taxpayer entered into a joint venture contract with another party under a joint venture awarded by the National Highways Authority of India ("NHAI") for the construction of roads. Pursuant to the contract, the taxpayer imported hot mix plant in unassembled form for the construction of roads and claimed exemption from the payment of customs duty for the impugned goods under Notification 17/2001 dated March 1, 2001 ("Exemption Notification").

The RA contended that the benefit of the duty exemption is available only for import of the plant in full either in CKD or SKD condition and the taxpayer would be not eligible for the exemption on the ground that taxpayer has imported only a part of the hot mix plant in the form of parts / components.

SC after analyzing the relevant entry i.e. *'Hot mix plant batch type with electronic controls and bag type filter arrangement 160 tons per hour capacity'* under the Exemption Notification noted that only a hot mix plant of the type mentioned alone is exempt for payment of customs duty. Thus, plant in its entirety must be imported albeit in an unassembled form to avail the customs duty exemption.

Further, SC after considering the oral and documentary evidences placed on record held that taxpayer have not imported the complete hot mix plant as the imported components did not have the essential characteristics of the hot mix plant.

Accordingly, the impugned goods would not be eligible for customs duty exemption.

IVRCL Infrastructure & Projects Ltd vs CC [Civil Appeal No. 5282 OF 2004, SC]

Excise exemption which is available to Indian manufacturers has to be extended to Countervailing Duty ("CVD") payable by importers

The taxpayer was engaged in the business of tourism and operated taxis to ferry tourists. The taxpayer had imported Honda Accord cars and had discharged customs duty on the same after availing the benefit of Notification No 64/93-CE dated February 28, 1993, which provided for a concessional rate of excise duty in respect of goods falling under heading 87.03 of the Central Excise Tariff Act, 1985. The proviso to the Notification further provided a reduction of duty of 10 percent to manufacturers of saloon cars, if such saloon cars are registered and used solely as taxis, subject to fulfilment of specified conditions. However, the additional benefit of 10 percent was not claimed by the taxpayer at the time of import of the car and therefore a refund claim was filed by the taxpayer for such additional 10 percent benefit.

In this case, while the Mumbai Tribunal passed a favourable order to the taxpayer by viewing the case from the philosophy behind section 3 of the Customs Tariff Act and treating the importer as the manufacturer of such goods, the Delhi Tribunal rejected the refund claim of the taxpayer on the ground that the additional 10 percent benefit was available only to an actual manufacturer of saloon cars and not to an importer.

In its decision, the Supreme Court has followed the decision in the case of *Thermax (P) Ltd vs Collector of Customs [1992-4-SCC-440] and Hyderabad Industries Ltd vs Union of India [1999-5-SCC-15]* and held as under:

- Section 3(1) of the Customs Tariff Act, 1975 ('Customs Tariff Act') deals with levy of CVD which is levied with a view to levy additional duty on an import to counter balance the excise duty payable on a like article indigenously manufactured.
- CVD would be leviable at the same rate which an Indian manufacturer would pay under the excise laws on a like article.
- Therefore the importer would be entitled to payment of concessional / reduced or nil rate of countervailing duty if any notification is issued providing exemption / remission of excise duty for a like article if produced / manufactured in India.

AIDEK Tourism Services (P) Ltd vs CC, New Delhi [Civil Appeal Nos. 2616 & 7786-7787 OF 2001 AND 2271 OF 2006, SC]

Excise exemption which is subject to non-availability of CENVAT is available even in case of import of goods

The taxpayer had imported Nylon Filament Yarn and claimed a NIL rate relying on the exemption provided by Notification 6 / 2002-CE dated March 1, 2002, which provided for exemption subject to a condition that no credit was availed in respect of inputs or capital goods used for the manufacture of the goods.

The RA was of the view that an importer was not entitled to the exemption provided under the Notification which was meant for a manufacturer.

The Supreme Court observed that the taxpayer was neither entitled to nor availed any credit in respect of inputs or capital goods. The court held that, in a situation where CENVAT credit is not admissible to the taxpayer (in his capacity of a trader), there could no question of the taxpayer fulfilling the condition of non-availment under the Notification. Thus, the benefit of the exemption was allowed to the taxpayer.

SRF Ltd vs CC, Chennai [Civil Appeal No.1623 OF 2009, SC]

No duty payable on capitalized duty-free spare parts at the time of debonding of EOU

The taxpayer was an Export Oriented Unit engaged in the manufacture of denim fabrics chargeable to central excise duty. The taxpayer had imported capital goods and spare parts free of customs duty. The taxpayer had also procured indigenously manufactured capital goods free of central excise duty.

At the time of de-bonding, the taxpayer paid duty on the depreciated value of capital goods and inputs and was issued a no due certificate after payment. The revenue contended that the taxpayer had capitalized the spare parts and in this process, the value of the capital goods got increased. Accordingly, revenue sought to demand duty on the increased value of capital goods.

The taxpayer argued that the spare parts were not physically available at the time of debonding, as the same has been used up and that by replacing the old and worn out parts of the machinery by the new spare parts, the value of the machinery does not increase.

The Revenue argued that since the taxpayer had capitalized the spare parts, there is double enrichment, as they have availed depreciation on the value of the spare parts and at the same time, they have also enjoyed the customs duty exemption

After considering the submissions made by both the sides, the Tribunal ruled in favor of the assesse and observed that once spare parts have been used for replacement of the old and worn out machinery parts, the same become part of the machinery and they lose their separate identity. At the time of debonding, the duty is payable on the value of the duty free raw materials and the depreciated value of the imported or indigenously procured capital goods and for this purpose, the value of the capital goods cannot be enhanced by adding the value of the spare parts used from time to time, even if the same have been capitalized.

M/s. Century Yarn vs CCE & ST (Appeal No. C/105/2010-CU(DB))

V. CENTRAL EXCISE

Supreme Court Decisions

Rule 8 of Central Excise (Valuation) Rules, 2000 will not apply for goods manufactured on job work basis

Taxpayer was a job worker engaged in the manufacture of motor vehicle parts from inputs supplied by the principal manufacturer. The parts manufactured by the taxpayer were supplied back to the principal manufacturer for use in the manufacture of motor vehicles on which excise duty was discharged by the principal manufacturer. On the parts manufactured by the taxpayer, the RA sought to levy excise duty on 115 percent of cost of production under Rule 8 read with proviso to Rule 9 of Central Excise (Valuation) Rules, 2000 ("Excise Valuation Rules"). The Tribunal held that the valuation should be done in accordance to Rule 11 of Excise Valuation Rules (i.e. basis total of the cost of raw material, manufacturing cost and the manufacturing profit as stipulated in the judgment of the SC in Ujagar Prints).

The question before the Honourable SC was whether the goods supplied by the taxpayer to the principal manufacturer should be valued under Rule 8 of the Excise Valuation Rules or Rule 11 of Excise Valuation Rules.

The SC observed that Rule 8 of Excise Valuation Rule will not apply in taxpayer's case, as it does not satisfy the condition of use of goods for consumption by himself or by any person on his behalf, instead the goods (i.e. parts) were supplied to the principal manufacturer who used the parts in the manufacture of motor vehicles. As regards applicability of proviso to Rule 9, the SC observed that the taxpayer and principal manufacturer are not related in the manner specified in Rule 9 of Excise Valuation Rules. Hence, Rule 9 of Excise Valuation and proviso thereto will also not apply in the instant case.

Thus, the SC upheld the decision of Tribunal in this case.

Commissioner of Central Excise vs Mahindra Ugine Steel Co Ltd [Appeal No E/435/05, SC]

A person who has borne the burden of the tax has the locus standi to file a refund claim

The taxpayer was purchasing Naptha from manufacturers, on which exemption could be claimed, subject to furnishing of CT 2 certificate by the taxpayer to the manufacturer. During the relevant period, Naptha was procured by the taxpayer without submission of CT2 certificate, as there was a delay in obtaining the certificate from the RA, and therefore, the manufacturer charged excise duty on the supplies made to the taxpayer. Once the CT 2 certificate was obtained by the taxpayer from the RA, the taxpayer filed a refund claim of the excise duty charged by the manufacturer and paid to the Government.

The refund application was rejected by Assistant Commissioner on the grounds that the taxpayer did not have the locus standi to claim refund (since the duty was deposited by the manufacturer) and the refund application is time barred, as it was not filed with the timelines prescribed under the law. Subsequent appeal of the taxpayer to the Tribunal was also dismissed and the Tribunal maintained that the taxpayer does not have the locus standi for refund and the refund application was filed before the wrong authority.

SC after considering provisions of section 11B of the Excise Act held that the provision allows any person who is aggrieved with the payment of duty to file a refund claim. The taxpayer, since has borne the burden of the duty, has the locus standi to file a refund application. However, the claim of the taxpayer was rejected on the ground of being time barred, as the refund application was filed much beyond the time limit prescribed under the law.

Oswal Chemicals and Fertilizers Ltd vs Commissioner of Central Excise [Civil Appeal No 2807 of 2004, SC]

Notification & Circulars

Benefits under SEIS and MEIS Scheme

Central Board of Excise and Customs ("CBEC") has issued various notifications with regard to implementation of Service Export from India Scheme ("SEIS") and Merchandise Export from India Scheme ("MEIS") issued under the new Foreign Trade Policy 2015-2020.

Notification No 11/2015-ST, Notification No 10/2015-ST, Notification No 21/2015-CE,
Notification No 20/2015-CE, Notification No 25/2015-Cus, Notification No 24/2015-Cus

Positive consequences of Foreign Trade Policy on EPCG scheme

Pursuant to the new Foreign Trade policy 2015-2020 announced on April 1, 2015, the Central Government has granted exemption for certain domestic goods and imported goods cleared against post-export EPCG duty scrip.

Notification No 18/ 2015 -CE, Notification No 17/2015-Cus

Conditions for implementation of EPCG scheme

Pursuant to the new Foreign Trade policy 2015-2020 announced on April 1, 2015, CBEC has notified various conditions for implementation of EPCG Scheme, mentioning the proportion of total export obligation to be fulfilled, subject to which import of some specific capital goods would be exempted

Notification No 16/2015-Cus dated April 1, 2015

Advance Authorisation scheme

Pursuant to the new Foreign Trade policy 2015-2020 announced on April 1, 2015, CBEC has issued a notification providing exemption to various materials imported into India against Advance Authorisation scheme and Duty free Import Authorisation.

Notification No 22/2015-Cus, Notification No 21/2015-Cus, Notification No 20/2015-Cus, Notification No 19/2015-Cus, Notification No 18/2015-Cus

Exemptions to certain goods imported by the Defense Department

The Ministry of Finance has extended exemption to a list of additional goods imported into India by various authorities in the Ministry of Defence in addition to goods in the existing list under Notification 39/96-Cus dated July 23, 1996

Notification No 26/2015-Cus dated April 9, 2015

Setting up of Customs Clearance Facilitation Committee

CBEC is to set up high level administrative body viz. Customs Clearance Facilitation Committee (CCFC) at every major Customs sea port and airport with immediate effect. The Committee, headed by Chief Commissioner of Customs / Commissioner of Customs, shall be responsible for expeditious clearance of imported and export goods and for resolving trade grievances in a time bound manner. The Committee is expected to meet once a week, with the first meeting on May 1, 2015, and its working shall be reviewed on a quarterly basis.

Circular No 13/2015-Cus dated April 13, 2015

Simplification of procedure to be adopted for refund of Additional Duty of Customs

CBEC as a trade facilitation measure has clarified that the importers may file refund claim of 4 percent Special Additional Duty ("SAD") in terms of Notification No 102/2007- Customs dated September 19, 2007 at the Customs stations where imports are made, restricted to one claim every month. Earlier under the Board Circular No 6/2008-Customs, dated April 28, 2008, it was provided that an importer can file only one refund claim in month in a Commissionarate.

Circular No 12/2015-Cus dated April 9, 2015

Circular issued on salient changes made in various schemes

Pursuant to the new Foreign Trade policy 2015-2020 announced on April 1, 2015, CBEC notifies various salient features of the changes made in the schemes to avoid any confusion at the ground level for implementing the same. Various reward/ incentive schemes were introduced such as the free transfer of SEIS and MEIS scrips and allowance of duty drawback of the customs duty debited from the scrips including significant changes under Advance Authorization, DFIA schemes and Export Promotion Capital Goods (EPCG) Scheme were announced simplifying the procedures relating to imported/domestically procured goods.

Circular No 14/2015-Cus dated April 20, 2015

Clarification on supplies to SEZ from Domestic Tariff Area ("DTA"), to be considered as export

In the recent Union Budget 2015-2016, Rule 18 of Central Excise Rules, 2002 and Rule 5 of the Cenvat Credit Rules, 2004 were amended to define 'export' to mean any goods which are to be taken out of India to a place outside India. The amendment was being interpreted to restrict rebate/ refund benefits on supplies to SEZs.

However, the CBEC has clarified that clearance of goods to an SEZ from the DTA will continue to be treated as export (as SEZ is deemed to be outside the Customs territory of India) and entitled to the benefit of rebate/refund, as the case may be.

Circular No 1001/8/2015-CX.8 dated April 28, 2015

CBEC clarifies that dealer registration not mandatory for transit sale

This Circular seeks to clarify the issue regarding availment of CENVAT Credit in case of in-transit sale through dealers.

The Circular inter-alia clarifies that in case of 'bill to ship to' arrangements made by unregistered dealers, the end customer can continue to avail credit on the basis of invoice issued by the manufacturer. The dealer making such 'bill to ship to' arrangements can continue to be unregistered as in the past.

Circular No. 1003/10/2015-CX dated May 5, 2015

Amendments in the definition of industrial and institutional consumers under Legal Metrology (Packaged Commodities) Rules, 2011

The definition of industrial and institutional consumers under Rule 2(bb) and 2(bc) of the LMPC Rules, respectively, has been amended to provide that industries and institutions making purchases from importers and/ or wholesale dealers would now qualify as 'industrial' or 'institutional' consumers. Further, it has been provided that the packages which are meant for sales to industrial/ institutional consumers are mandatorily required to bear a declaration 'not for retail sale' thereon.

Some procedural amendments have also been made in the LMPC Rules with respect to declaration requirements on retail packages, namely:

- Requirement of mentioning email address of concerned person on the package has been made mandatory
- For declaring 'complete address', the address at which the firm or company is registered would now be required vis-à-vis earlier requirement of mentioning the address of manufacturing factory
- Affixing of a label for making declarations required under LMPC Rules in respect of imported packages has been permitted
- Certain other changes with respect to nature and dimensions of the declarations to be made have been introduced

While the key amendments outlined above are effective immediately, a few procedural amendments are effective from January 1, 2016.

Notification under Legal Metrology dated May 14, 2015