March 2014

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 March 2014 issue of FICCI's Tax Updates**.** This contains recent case laws, circulars and notifications pertaining to direct and indirect taxes.

Based on various suggestions received from our constituents, FICCI has submitted its 'Preliminary Suggestions for the Union Budget 2014-2015' to the Finance Ministry so that the officials have adequate time to examine the proposals before the regular budget is presented in June-July, 2014 by the new Government. We plan to submit FICCI's 'Pre Budget Memorandum 2014-2015' to the Government by the end of May, 2014 and have accordingly, requested for inputs from all our members to finalize the budget memorandum.

A symposium hosted by U.S. India Business Council and KPMG featuring a delegation from Business and Industry Advisory Committee (BIAC) to OECD was held in New Delhi. The objective of the symposium was to apprise the BIAC leadership about the tax issues faced by the investors in India to enable them to have a constructive dialogue with the Government of India. FICCI shared with the BIAC leadership the major concern of the industry in India, that is, the huge amount of tax litigation in India and the need to overhaul our dispute resolution mechanism.

Finance Minister presented a Vote-On-Account/Interim Budget 2014 in the Lok Sabha on 17th February, 2014. In his speech he analyzed the state of the economy dealing with investment, foreign trade, manufacturing, infrastructure and other sectors. Apart from highlighting the Government's performance in the last two terms across sectors, the Budget made no changes in the direct tax provisions, but provided a few concessions in excise duties aimed at reviving specified sectors of the economy.

On the taxation regime, the Tribunal has given a decision on the concept of unjust enrichment for sanction of refunds. It has held that uniformity in price/ MRP before and after levy of a particular duty by itself could not conclusively determine whether or not burden of duty was passed on. The contention of the taxpayer that Section 28C of the Customs Act was applicable only in cases where the price of the goods is duty delivered price, was rejected. The Tribunal observed that Section 28C required every person liable to pay customs duty to indicate in the sales invoice and other like documents, the amount of duty which form part of the price at which goods were sold. The document specified under Section 28C is the means for a person to rebut the presumption of unjust enrichment.

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 Decisions

Indian subsidiary of a foreign company providing back office support operations does not constitute a PE in India

e-fund India, an Indian company, was engaged in performing back office operations for its associated companies (AEs). The Tribunal held that e-Fund India constitutes a fixed place/service PE of the AEs in India.

Based on the facts of the case, the Delhi High Court, inter alia, held that:

- Article 5(1) of the tax treaty was not invoked in the instant case as the AE's neither had a fixed place of business in India through which their business was wholly or partly carried on, nor had the right to use any of the premises belonging to e-Fund India;

- A PE would not be created in India merely because the AE's had sent employees to India for providing stewardship services.

While reaching its conclusion as above, the High Court also placed reliance on the Supreme Court's decision in the case of DIT v. Morgan Stanley and Co. Inc., [2007] 292 ITR 416 (SC).

The High Court also observed that as the transactions between the AEs and e-Fund India were at arm's length, Article 5(5), dealing with Agency PE was not triggered.

DIT v. E-Fund IT Solution [2014] 42 taxmann.com 50 (Del)

In the absence of violation of any conditions prescribed under Section 10A, deduction held to be grated on conversion of firm into company

The taxpayer is engaged in the business of exporting software having Software Technology Park unit. The taxpayer was originally a firm formed in year 1993-94 and was converted into a company in FY2001-02. Post conversion, the Company registered itself as a unit with STPI and started claiming deduction under section 10A of the Act.

The tax officer disallowed the claim of the taxpayer contending that the taxpayer is an existing unit and it has continued its business which it was doing from the year 1993 and no new unit/undertaking came into after the approval of STPI. The CIT(A) and the Tribunal set aside the order of the officer and therefore department is in appeal before the Karnataka High Court.

The Court considered the Central Board of Direct Taxes (CBDT) circular No. 1/2005 dated 6 January 2005, and that existing Domestic Tariff Area (DTA) Units which were approved as 100 per cent Export Oriented Unit (EOU) units by the CBDT shall be eligible for deduction. The Court held that as the taxpayer has not violated any of the conditions prescribed under section 10A of the Act, it is not formed by splitting up or reconstruction of the business already in existence and it is not formed by transformation of new business of plant or machinery previously used for any purpose. Therefore, the taxpayer is entitled for deduction under section 10A of the Act.

CIT v. Foresee Information Systems (P) Ltd. (ITA NO.592/2007) (Kar)

Tribunal Decisions

Provisions of Section 292BB of the Act cannot come to the rescue of the department when notice under Section 143(2) of the Act is delayed

The taxpayer filed a belated return for Assessment Year (AY) 2008-09 on 1 October 2008. The taxpayer filed a revised return of income on 30 September 2009. However, the revised return was not accepted in terms of Section 139(5) of the Act as the original return itself was filed belated. A notice calling for scrutiny assessment under Section 143(2) of the Act was issued and served on the taxpayer on 19 August 2010. Before Commissioner of Income-tax (Appeal) [CIT(A)], the taxpayer contended that notice under Section 143(2) of the Act had not been issued within the time permitted under the proviso to Section 143(2) i.e. within six months from the end of the financial year in which the return is furnished. The taxpayer submitted that since the revised return was not accepted by the AO, the time limit under Section 143(2) of the Act had to be taken from the date of filing of the original return (1 October 2008) and that period would expire on September 30, 2009. Thus, taxpayer prayed for the assessment order to be annulled for the reason that no notice under Section 143(2) had been issued and served within the time period contemplated under proviso to Section 143(2) of the Act. However, CIT(A) dismissed the taxpayer's appeal.

Before the Tribunal, the Revenue placed reliance on Section 292B/292BB of the Act and contended that the taxpayer, having participated in the proceedings, could not at the appellate stage raise a plea regarding non-service of notice. Section 292B of the Act, inter alia, provides that no return of income, assessment, notice etc. furnished or made or issued or taken or purported to have been furnished / made / issued / taken in pursuance of any of the provisions of the Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such return of income, assessment, notice etc, if such return , assessment, notice, etc. is in substance and effect in conformity with or according to the intent and purpose of this Act. Section 292BB of the Act states that once the taxpayer participates in any proceedings and co-operates in any enquiry relating to assessment or reassessment, he shall be deemed to have been served with any notice which was required to be served and stopped from objecting that the notice was not served upon him or was served upon him in an improper manner. However, proviso to Section 292BB of the Act states that the section shall not apply where the taxpayer has raised such objection before the completion of assessment or reassessment.

The Tribunal opined that as far as Section 292B of the Act was concerned, it did not think that 'the notice issued by the AO under Section 143(2) of the Act in the present case will fall within any mistake, defect or omission which, in substance and effect, is in conformity with or according to the intent and purpose of this Act.' The Tribunal also stated that the requirement of giving notice cannot be dispensed with by taking recourse to the provisions of Section 292B of the Act. With respect to Section 292BB of the Act, the Tribunal observed that in the decisions of the Allahabad High Court in Manish Prakash Gupta (INCOME TAX AP-

PEAL No. 288 of 2006) and Parikalpana Estate Development (P) Ltd. [2012] 79 DTR 246 (Alh) and Punjab & Haryana High Court in the case of Cebon India Ltd. [TS-105-HC-2009(P & H), on which the taxpayer had placed reliance, it was held that Section 292BB of the Act could not be applied in a case where admittedly no notice under Section 143(2) of the Act had been issued within the time limit prescribed in law. The Tribunal further observed that the question in the present appeal was not with regard to issue and service of notice under Section 143(2), but whether the notice issued and served on 19 August 2010 was within the time contemplated under Section 143(2) of the Act. The provisions of Section 292BB of the Act lay down presumption in a given case. It cannot be equated to a conclusive proof. The presumption is rebuttable. The provisions of section 292BB of the Act cannot extend to a case where the question of limitation is raised on admitted factual position in a given case. The Tribunal held that the provisions of Section 292BB of the Act could not be held to be applicable to the present case.

Amiti Software Technologies Pvt. Ltd. v. ITO [TS-89-Tribunal-2014(Bang)]

Legal ownership irrelevant in case of BOT project operator for claiming depreciation

The taxpayer, a private limited company, was awarded a contract by NHAI for widening, rehabilitation and maintenance of an existing highway. The entire cost of construction was borne by the taxpayer. The construction was completed during AY 2005-06 after which the highway was opened to traffic for use and the taxpayer started claiming depreciation from such year onwards. During the assessment proceedings for AY 2005-06 to 2010-11, the AO held that no ownership, leasehold or tenancy rights were ever vested with the taxpayer for the asset in question, i.e., roads, in respect of which it had claimed depreciation and, therefore, disallowed the depreciation claimed on the highways. On appeal, the CIT(A) observed that though the NHAI remained the legal owner of the site with full powers to hold, dispose of and deal with the site consistent with the provisions of the agreement, the taxpayer had been granted not merely possession but also right to enjoyment of the site. NHAI was obliged to defend this right and the taxpayer had the power to exclude others. Being so, the taxpayer is entitled for depreciation. In this regard, the CIT(A) also placed reliance on an array of decisions on the matter. Aggrieved by the CIT(A)'s order, Revenue filed an appeal before the Tribunal.

The Tribunal held that the issue was squarely covered by various Tribunal judgments such as Reliance Ports and Terminals Ltd (ITA Nos. 1743 to 1745/Mum/07), Ashoka Buildcon Ltd (ITA No. 1302/PN/09), Kalyan Toll Infrastructure Ltd (ITA Nos. 201 & 247/Ind/2008), Ashoka Infraways Pvt Ltd [TS-171- Tribunal-2013(PUN)] etc. Further, the Tribunal also considered the Supreme Court's decision in Mysore Minerals Ltd (239 ITR 775), wherein while explaining the meaning of the term 'owner', it was held that the concept of depreciation suggests that the tax benefit belongs to the one who has invested in the capital asset, is utilizing the capital asset and thereby losing gradually investment cost by wear and tear. The Tribunal placed reliance on the decision of Allahabad High Court in Noida Toll Bridge Co Ltd [TS-837-HC-2012(ALL)], wherein after considering various precedents on the concept of ownership, the High Court had allowed the depreciation claim under Section 32 of the Act to the taxpayer who was in uninterrupted possession / operation / maintenance and use of leased land on which it had constructed a road. The Tribunal also referred to the Hyderabad Tribunal's decision in PVR Industries, wherein the claim of amortization of BOT project expenditure, which was held to be revenue in nature, was allowed. Tribunal also placed reliance on Supreme Court's decision in Vegetable Products Ltd. [1973] 88 ITR 192 (SC), wherein it was held that if the court finds that the language of a taxing provision is ambiguous or capable of more meanings than one, then the court has to adopt that interpretation which favours the taxpayer, more particularly so where the provision relates to the imposition of penalty. The Tribunal thus, ruled in favour of the taxpayer and allowed the depreciation claim.

DCIT v. Swarna Tollway Pvt Ltd. [TS-19-ITAT-2014(HYD)]

AO's action of invoking explanation to Section 43(1) of the Act to disallow claim of depreciation on goodwill held to be incorrect

The taxpayer is engaged in the business of publication, printing, distribution and marketing of magazines and also organizing mastheads events. During AY 2005-06, the taxpayer acquired business of magazines and events division of another company as a going concern on a slump sale basis. The taxpayer claimed depreciation on the total value of 'intangibles' of Rs. 85 crores. However, AO invoked the provisions of Explanation 3 to Section 43(1) and held that such huge value had been assigned to trade mark and copyright, only for the purpose of reducing the tax liability by claiming depreciation on such enhanced cost. The AO, therefore, estimated value of goodwill at INR250 million and apportioned the balance sum of INR600 million towards copyright and trade mark. The AO thus disallowed the depreciation on goodwill. Explanation 3 to Section 43(1) gives power to AO to determine the actual cost of asset where he believed that assets were transferred to taxpayer at enhanced value, mainly for claiming higher depreciation. On appeal, the CIT(A) ruled in favour of taxpayer. Aggrieved, the Revenue preferred an appeal before the Tribunal.

The Tribunal observed that the Revenue had not challenged the total value of 'intangibles'. The sole dispute was with regard to adoption of the value of copyright and trade mark. The taxpayer submitted to the Tribunal that goodwill is a generic term which comprises of trade mark, copy rights etc. Further it was argued that there was no reason to have separate valuation on account of goodwill. It was submitted that, whether the depreciation is to be allowed on goodwill or not was now been settled by Supreme Court ruling in CIT v. Smifs Securities Ltd., [TS-639-SC-2012]. Further, it was argued that explanation to Sec. 43(1) cannot be invoked in this case as it was a genuine transaction for acquiring the business with unrelated party and further, there was no dispute with regard to the value of consideration received. The Tribunal observed that the goodwill is a kind of benefit arising from the reputation of a brand or business which is generated with the passage of time. Goodwill is a Generic term which has a very wider meaning and is generated while carrying on the business and the brand value associated with the products. The goodwill can be in the form of copy rights, patent, trade mark, marketing rights, particular customers, franchisee, brand value, etc. Once there is no dispute that the total consideration for tangible and intangible assets, as it has also been accepted by the AO, it is presumed that such consideration also includes goodwill on account of brand or product besides trade mark and copyrights. The Tribunal held that depreciation had to be allowed on such intangible assets, which includes goodwill in view of the Supreme Court's ruling. The very premise of the AO to invoke the provisions of Explanation 3 to Section 43(1) and to ascribe the value of goodwill gets vitiated when the law has been settled by the Supreme Court that the depreciation is to be allowed on goodwill also as any other intangible asset.

DCIT v. Worldwide Media Pvt Ltd. [TS-56-ITAT-2014(Mum)]

Retroactive amendment changes tax liability for 'income', not TDS obligation, hence no disallowance

The taxpayer is an exporter of leather footwear and footwear uppers. During the course of scrutiny assessment proceedings for AY 2008-09, the AO noticed that the taxpayer had, inter alia, made payments towards 'design and development expenses' to various non-residents without deducting tax at source. The AO was of the view that the taxpayer was under an obligation to deduct taxes at source on the subject payments, as required under Section 195 read with Section 9(1)(vii) of the Act and FTS clause of the respective tax treaties. As the taxpayer had failed to comply with these tax withholding requirements, AO held that the payments were ineligible for business deduction in light of Section 40(a)(i) of the Act. On appeal, the CIT(A) deleted the disallowance on the ground that no tax was deductible from these amounts and further held that no tax was required to be deducted at the time of credit / payment as per the law existing at that time because services were not rendered in India.

Aggrieved by CIT(A)'s order, Revenue preferred an appeal before the Tribunal. The Tribunal noted that the Supreme Court in Ishikawajima Harima Heavy Industries Ltd v. DIT [2007] 288 ITR 408 (SC) had held that in order to bring a fees for technical services to taxability in India, not only that such services should be utilized in India but these services should also be rendered in India. However, the Tribunal also noted that this legal position had undergone a change vide Finance Act, 2010, after which utilization of services in India was enough to attract its taxability in India. To that effect, the amendment in the statute by Finance Act, 2010 has virtually negated the judicial precedents supporting the proposition that rendition of services in India is a sine qua non for its taxability in India. The Tribunal stated that it was clear that till May 8, 2010 i.e. when the Finance Act, 2010 received the assent of the President, the prevailing legal position was that unless the technical services were rendered in India, the fees for such services could not be brought to tax under Section 9(1)(vii) of the Act. The Tribunal held that although the amendment in law was retrospective in nature, so far as TDS liability was concerned, it depended on the law that existed at the point of time when payments, from which taxes ought to have been withheld, were made. A retrospective amendment in law does change the tax liability in respect of an income, with retrospective effect, but it cannot change the tax withholding liability, with retrospective effect.

Also, the Tribunal held that the obligation under Section 195 of the Act requires that a person deducts tax at the time of payment or credit whichever is earlier. Such obligation can only be discharged in the light of the law as it stands at that point of time. In respect of payments made before 8 May 2010, the taxpayer did not have any withholding tax obligation from foreign remittances for fees for technical services unless such services were rendered in India, and therefore no disallowance could be made for failure to deduct tax. In the present case, there was no material to demonstrate and establish that the design and development services were rendered in India. Accordingly, the taxpayer did not have any withholding tax liability and therefore no disallowance could be contemplated. The Tribunal also rejected the Revenue's reliance on ACIT v. Evolv Clothing Pvt. Ltd., wherein on the basis of taxability of income alone, the coordinate bench had confirmed the disallowance under Section 40(a)(i) of the Act. In this regard, the Tribunal stated that the decision cannot be an authority for a legal question which had not been dealt with / raised in that decision.

DCIT v. Virola International [TS-79-ITAT-2014(AGR)]

Consideration for acquiring 'business advantage' on merger amounts to depreciable intangible asset

The taxpayer is an urban co-operative Society engaged in the business of banking. It took over four banks by way of merger and obtained the Reserve Bank of India (RBI) approval for the same. It determined the excess of liabilities over the realizable value of assets taken over at INR 266.8 million and claimed such excess as revenue loss, which was rejected by the AO and confirmed by the CIT(A). In the appeal before the Tribunal, the taxpayer raised an alternative claim to treat such excess as acquisition of an 'intangible asset' as contemplated under section 32(1)(ii) of the Act and claimed depreciation thereon. During the course of an appeal, it did not press the ground of revenue loss.

The taxpayer argued that the takeover of banks included huge client base along with fully functional branches (including customer's accounts/deposits, employees, licenses and other statutory approvals etc.) which provided easy and immediate access to the money markets of the localities where they were functioning and thus, it saved the hassle of getting licenses for opening new branches in different States. Hence, such excess amount is liable to be treated as 'an intangible asset' within the meaning of section 32(1)(ii) of the Act. It was argued by the revenue that such excess amount does not represent any 'business or commercial rights of the similar nature' as contemplated under Section 32(1)(ii) of the Act. Further, the mergers are not by way of purchase but in the nature amalgamation and therefore, no intangible assets, either by way of goodwill or otherwise, can be said to have been acquired by the taxpayer.

The Tribunal rejected the Revenue's plea that the excess payment does not represent any business or commercial rights and held that such excess payment is for 'business or commercial rights of similar nature' specified in section 32(1) (ii) of the Act and entitled for depreciation. Tribunal also held that the amalgamation not being by way of purchase but by merger is no ground to deny the claim of the taxpayer.

The Cosmos Co-op. Bank Ltd. v. DCIT (ITA Nos.460 & 461/PN/2012) (Pun)

The Bangalore Tribunal adjudicates on the most appropriate method for contract manufacturers

The taxpayer is engaged in the business of manufacture of X-ray and CT tubes, HV Tanks, Detectors, parts and accessories for medical diagnostic imaging equipments on a contract basis for its AEs. Taxpayer claimed Cost Plus Method (CPM) as the most appropriate method in the TP Study. The Transfer Pricing Officer (TPO) rejected the comparable companies stating that they vastly differ from the industry segment of the taxpayer and recomputed the arm's length price by identifying three new comparables. Drawing reference from the OECD guidelines, the taxpayer contended that the Transaction Net Margin Method (TNMM) could be adopted as an alternate to CPM, and therefore the net margins of the comparable companies selected by the TPO would be less than that of the taxpayer. Rejecting the contentions of the taxpayer the TPO made a TP adjustment.

The CIT(A) held that:

- Since the taxpayer itself considered CPM as the most appropriate method in its TP study, the taxpayer cannot take a ground that CPM is not the right method.

- Product similarity cannot be overlooked in determining comparable companies.

- Agreed with the taxpayer to apply the filter of export revenues to operating revenues being more than 25 percent, and re-compute ALP.

The Tribunal concluded that the TPO has given due weightage to functional similarity along with product similarity by providing for an adjustment to the additional Functions in the nature of selling and marketing thus evidencing functional differences. With regard to selecting TNMM in the present case, the Tribunal observed that although the OECD guidelines, in exceptional circumstances, permit the use of more than one TP method to demonstrate the arm's length nature of related party transactions, the Indian TP Rules advocate the use of only one TP method as the most appropriate method. The Tribunal held that the most appropriate method can be changed only if there were any changes in the facts, functionalities or availability of data. The Tribunal, relying on the UN Practical TP Manual for developing countries, 2012, also observed that as a general rule, the UN TP manual advocates use of CPM in the case of Contract manufacturers. The Tribunal held that since the parameters laid down in Rule 10C(1) and (2) of the Income-tax Rules, 1962 (the Rules) are satisfied by CPM in the case of contract manufacturers like the taxpayer, the same should be considered as the most appropriate method.

The Tribunal also held that the 25 percent export earning is an appropriate filter and the fact that by applying that filter only one company is left as a comparable will not be enough grounds not to apply the aforesaid filter.

DCIT vs. GE BE Pvt. Ltd. [ITA No.815/Bang/2010)]

Notifications/Circulars/ Press releases

Double taxation avoidance agreement signed between India and Fiji

The Government of the Republic of India signed a Double Taxation Avoidance Agreement (tax treaty) with the Government of Republic of Fiji on 30 January 2014 for the prevention of fiscal evasion with respect to taxes on income. The benefit of the tax treaty shall be available only to the residents of the two countries. The tax treaty provides, inter-alia, the following:

- Business profits will be taxable in the source state if the activities of an enterprise constitute a PE in the source state;

- Profits derived from the operation of aircraft in international traffic shall be taxable in the country of place of effective management of the enterprise;

- Dividends, interest, royalty income and fees for technical or professional services will be taxed both in the country of residence and in the country of source of such income;

- Capital gains from sale of shares will be taxable only in the country of source.

CBDT Press Release, dated 30 January 2014

Clarification with regard to section 185 of the Act

The Ministry of Corporate Affairs (MCA) vide its circular in November 2013 had clarified that section 372A of the Companies Act, 1956, would continue to remain in force till Section 186 of the Companies Act, 2013 is notified. However, despite this clarification, there were different interpretations in practice with reference to the validity of loans made, guarantee given or security provided by a holding company to a subsidiary under section 185 vis-a-vis the exemption provided under Section 372A of the Companies Act, 1956.

The MCA vide circular no. 3/2014, dated 14 February 2014, has issued a further clarification with regard to section 185 of the Act. In order to harmonise the two conflicting sections, MCA has now clarified that for any guarantee given or security provided by a holding company in respect of loans made by a bank or financial institution to its subsidiary company, the exemption as provided in Section 372A(8)(d) shall be applicable till section 186 of the Companies Act is notified. This clarification will be applicable to cases where loans so obtained are exclusively utilized by the subsidiary for its principal business activities.

Ministry of Corporate Affairs - General Circular No. 03l2014.

Taking accounts of comments/inputs from Income-tax department and other sectoral Regulators while filing reports by Regional Director.

In case of arrangement / amalgamation, Section 394A of the Companies Act, 1956 requires service of a notice on Regional Director, who also files, representations on behalf of the Government wherever necessary.

The MCA has now directed that within 15 days of receipt of notice, the Regional Director shall invite specific comments from Income tax department. If no response from Income Tax Department is forthcoming, it may be presumed that Income Tax Department has no objection. The Regional Director must also see if in a particular case feedback from any other sectoral regulator is to be obtained and if appears necessary for him to obtain such feedback, it will also be dealt with in a like manner. It was emphasized that the Regional Director should include objections received from Income Tax Department / other regulators. In case the same are not included, the Regional Director should not take decision but make a reference to the MCA.

Ministry of Corporate Affairs General Circular 01 of 2014

SEBI Board Meeting – 13 February 2014 – important points

On February 13, 2014, in a meeting held in New Delhi, Securities Exchange Board of India (SEBI) has taken certain important decisions to streamline the listing agreement with the requirements of the Companies Act, 2013. The Important ones amongst them are listed below:

- Alignment of Corporate governance norms
- Exclusion of nominee Director from the definition of Independent Director
- Prohibition of stock options to Independent Directors
- Separate meeting of Independent Directors
- Performance evaluation of Independent Directors and the Board of Directors
- Prior approval of Audit Committee for all material Related Party Transactions
- At least one woman director on the Board of the company
- Maximum independent directorship capped at 7
- To restrict the total tenure of an Independent Director to 2 terms of 5 years.

SEBI PR No. 12/2014

OECD-BEPS-related transfer pricing documentation, country-by-country reporting draft guidance

The OECD has released an initial draft of revised guidance on TP documentation and country-by-country reporting pursuant to Action 13 under the BEPS Action Plan (the revised guidance). The revised guidance is proposed as a replacement of Chapter V of the OECD Transfer Pricing Guidelines. It envisages contemporaneous, enhanced and standardised reporting requirements regarding multinational entities' global allocation of income, economic activity, and payment of taxes for the countries in which they operate.

The revised guidance recommends the implementation of a two-tiered reporting regime that would present a comprehensive picture of the global operations of a multinational entity, as well the local operations of the taxpayer through the preparation of a master file and local file. Under the OECD's suggested approach, a single master file consisting of the MNE's blueprint, would be prepared for the multinational group. The substance of the master file would include:

- The group's organisational structure.

- A description of the group's business, intangibles, intercompany financial activities, and financial and tax positions.

The revised guidance states that the section on the group's financial and tax positions would include country-by-country reporting of information regarding the group's global allocation of profits, taxes paid, and other indicators of the location of the group's economic activity among countries in which the group operates.

The local file, by contrast, would document the material transfer pricing positions of the local taxpayer with its foreign affiliates, with the goal of demonstrating the arm's length nature of those positions. The local file would contain the comparable analysis.

The revised guidance also discusses various compliance issues like:

- **Contemporaneous documentation**: The taxpayer is expected to ordinarily give consideration to whether its TP is appropriate for tax purposes before the pricing is established and should confirm the arm's length nature of its financial results at the time of filing its tax return.

- **Materiality**: Tax administrations being interested in seeing the most important information, materiality forms the basis of documentation. The revised guidance states that certain materiality thresholds should be taken into account by the countries while drafting the documentation rules.

- **Frequency of updates**: The revised guidance suggests that the master file and local file should be reviewed and updated annually. To reduce compliance burdens, documentation rules can specify that comparable sets supporting part of the local file should be refreshed every 3 years.

- **Penalties**: The revised guidance suggests the general use of civil monetary document related penalty regimes, but at the same time suggests a lenient approach towards taxpayers who, in good faith, demonstrate reasonable efforts or produce reliable documentation to support that their controlled transactions satisfy the arm's length principle.

- **Confidentiality**: Disclosure should be made to the extent required and Public disclosure of trade secrets, scientific secrets, or other confidential information filed during audits should be avoided.

- **Benchmarking:** The revised guidance suggests that reliance on the selection of comparables has to be placed on the 'most reliable information'. The OECD provides that local comparables, when available are preferable against regional comparables.

PAN allotment process proposed to be changed (original documents re-

quired to be produced for verification at the time of application), subsequently kept in abeyance by CBDT

The Central Board of Direct Taxes (CBDT) had changed the process of allotment of Permanent Account Number (PAN). According to the Circular, every PAN applicant will have to submit self-attested copies of Proof of Identity (POI), Proof of Address (POA) and Date of Birth (DOB) documents and also produce original documents of such POI/POA/DOB documents, for verification at the counter of PAN Facilitation Centres.

It was later, through a PIB press release, decided to keep in abeyance the decision to change the procedure for PAN allotment till further orders. In the meantime, the old procedure of PAN application and allotment shall continue.

Circular No. 11 dated 16 January 2014 issued to PAN Service providers; PIB Press Release dated 30 January 2014.

Kolkata Tribunal holds the income from 'transfer of right to purchase flat' as 'capital gains'

Recently, the Kolkata Tribunal, in the case of Subhas Chandra Parmanandka, held that income from the transfer of right to purchase a flat is taxable as capital gains. Further, where the right was so held for a period of more than 36 months, the gain will be treated as a long term capital gain, thereby allowing relief from capital gains if invested in residential property.

Subhas Chandra Parmanandka v. ITO (ITA No.1614/Kol/2010, AY 2006-07, dated 16 January 2014)

II. SERVICE TAX

High Court Decisions

Suo Moto availment of CENVAT Credit reversed earlier is allowed, Section 11B not attracted

The taxpayer was engaged in manufacture of both dutiable and exempted goods and was availing CENVAT credit on various common input services. The Revenue Authorities disputed the availment of CENVAT credit and as a result, the taxpayer reversed entire CENVAT credit availed. After the reversal, the taxpayer suo moto availed CENVAT credit in respect of input services mentioned in Rule 6(5) of the Cenvat Credit Rules, 2004 ('CCR').

The Revenue Authorities alleged that the taxpayer should have filed a refund claim in under Sec 11B of the Central Excise Act, 1944 ("Excise Act") in respect of such credit reversed, instead of suo moto availing the CENVAT Credit. The Revenue Authorities placed reliance on the decision of the Supreme Court in the case of Indo-Nippon Chemicals Co Ltd v Union of India [2005 (186) ELT 117] wherein it was held that such availment of CENVAT credit amounted to 'unjust enrichment' and action of taxpayer was not permissible in absence of a formal refund application.

The present matter reached before the Madras High Court wherein it was held that suo moto credit taken by taxpayer was forming part of original credit which was earlier reversed by the taxpayer. Further, there was only an accounting entry reversal and factually there was no outflow of funds from the taxpayer to result in filing of application under Section 11B. The High Court held that suo moto credit taken was a mere technical adjustment, and was not a case of refund of duty falling under Section 11B and that the question of unjust enrichment did not arise.

ICMC Corporation Ltd v CCE [Civil Miscellaneous Appeal 208 of 2013 (Mad-HC)]

Reimbursable expenses received by the taxpayer not to be added to the taxable value of the Clearing and Forwarding Agent Services

The taxpayer was providing Clearing and Forwarding Agent services to the Principal and also receiving charges from the Principal towards freight, labour, electricity, telephone etc as reimbursements. It was alleged in the show cause notice that as per Rule 6(8) of the Service Tax Rules, 1994, such reimbursements were to be added to the value of the taxable service of Clearing and Forwarding Agent service. The Tribunal relied on the decision of the Bangalore Tribunal in the case of Sri Sastha Agencies Pvt Ltd v Assistant Commissioner [2007 (6) STR 185] which was held in favor of the taxpayer stating that no element, other than remuneration received by the Clearing and Forwarding Agent from their Principal was to be included in the value of the taxable service.

Aggrieved by the decision of the Tribunal, the Revenue Authorities preferred an appeal before the Madras High Court. The High Court held that mere act of reimbursement would not justify the revenue's contention that the same has character of commission or remuneration. Thus, it was held that the reimbursed charges should not be added to the value of taxable service provided by clearing and forwarding agent

Commissioner of Service Tax v Sangamitra Services Agency [2014 (33) STR 137 (Mad)]

Tribunal Decisions

Refund of input services received prior to registration allowed

The taxpayer, an exporter had claimed refund of accumulated CENVAT credit. The same was however rejected by the Adjudicating Authority on the premise that the said credit was availed before obtaining service tax registration. The Adjudicating Authority also relied on the decision of Tribunal Bangalore in the case of Portal Wireless Solutions India Pvt Ltd v CCE [2012 (27) STR 134] wherein the refund was disallowed since the taxpayer was not registered with the service tax department.

The present matter reached before Tribunal Delhi wherein the Tribunal observed that the ruling in Portal (Supra) had been reversed by Karnataka High Court. Thus the Delhi Tribunal held that non-registration with the service tax department could not be a ground for denying the refund of accumulated credit as the procedural requirements to allow CENVAT Credit should be construed liberally so that they do not obstruct the substantive rights of the taxpayers. Reliance was also placed on the order of Tribunal Chennai wherein a similar view in the case of E-Care India Pvt Ltd v CCE [2011 (22) STR 529] was adopted

Kronos Solutions India Pvt Limited v CCE Noida [Service Tax Appeal No 2189 of 2012-ST CESTAT-Del]

Consideration received to be understood as 'not cum tax', in the absence of documents to evidence the contrary

The taxpayer moved to Mumbai Tribunal in appeal against the order of Commissioner (Appeals) confirming demand along with interest and penalty. The principal contention of the taxpayer was that consideration received should be treated as cum tax. The Revenue Authorities relied on the decision of the SC in the case of Amrit Agro Industries Ltd v CCE [2007 (210) ELT 183 (SC)] to contend that there was nothing on record to show that the taxpayer had collected the consideration cum tax and therefore the taxpayer was not entitled to the benefit of cum tax value.

The Mumbai Tribunal observed that the taxpayer did not dispute the tax liability but only sought abatement towards the tax from the total consideration received. The Tribunal relied on the decision of Amrit Agro (Supra) and held that in the absence of any documentary evidence to prove that the consideration received was inclusive of tax, the cum tax value benefit could not be granted to the taxpayer. In result, both demand and penalty were upheld.

Commissioner of Central Excise Aurangabad v Rudra Galaxy Channel Ltd [2014 TIOL 140 CESTAT Mumbai]

III. VAT/ CST

High Court Decisions

License Agreements do not fall within the ambit of 'deemed sales' therefore not chargeable to Sales Tax

The taxpayer, a manufacturer and seller of Indian made foreign liquor entered into certain transactions whereby it allowed various parties to use its trademarks for valuable consideration. The Revenue Authorities imposed Sales Tax under Section 3F of Uttar Pradesh Sales Tax Act, 1948 alleging the said transactions to be 'transfer of right to use' and thus liable to sales tax. The VAT Tribunal struck down the demand and consequently the Revenue Authorities preferred an appeal before the Allahabad High Court.

The Allahabad High Court relied on the five- fold test laid down by the Supreme Court in the case of Bharat Sanchar Nigam Limited v Union of India [2006 (3) SCC 1] to determine as to when a transaction would qualify as a 'transfer of right to use' so as to be chargeable to Sales Tax.

The High Court observed that the factual situation did not fulfill the test laid down by the Supreme Court in the case of Bharat Sanchar (Supra). Specifically, the two factors of the five-fold test which were not fulfilled in the present situation were:

- During the subsistence of the right to use, the transferee has the legal right to use the trademark to the exclusion of the transferor; and
- After the transfer of the right to use, during the period of the transfer, the same rights cannot be transferred by the transferor to any other person.

It was therefore held that the permission granted to use the trademark would only be treated as 'license' and not as 'transfer of right to use the trade mark'; thereby not chargeable to sales tax.

The Commissioner of Commercial Tax v Seegram India Private Limited [2014 VIL 30 ALH]

Inclusion or otherwise of the transportation and installation charges in the taxable turnover dependent upon contractual arrangement between the buyer and seller

The taxpayer, a seller of house-hold articles, electric and electronic goods was registered with the Sales Tax Department and the Service Tax Department. The Revenue Authorities inspected the business premises of the taxpayer and proposed various disallowances and levy of VAT on various issues. The main part of the disallowances made was on account of installation and transportation charges. The taxpayer contended that installation and transportation charges were recovered separately and hence are not a part of the sale price/taxable turnover. On the other hand, the Revenue Authorities were of the view that the taxpayer was obligated to transport and install the goods and for this reason, the transportation and installation charges formed a part of the sale price.

The taxpayer preferred a writ before the Karnataka High Court wherein the decision was held in favour of the taxpayer. The High Court observed that the definition of Taxable Turnover (as per Karnataka VAT Act, 2003) refers to the aggregate amount for which goods are sold and includes any sums charged for anything done by the taxpayer in respect of the goods sold at the time of or before the delivery of the goods. The High Court further stated that when the transfer of title in goods is to be at the place of the buyer, then all charges incidental thereto like transport of goods, installation charges and other expenditures incurred by the seller would become a part of the sale price. However, if the transfer of title in the goods is to be at the place of the seller, then the subsequent charges would not form a part of the sale price.

In view of the above, the High Court examined the factual situation of the taxpayer and found that the sale prices of the goods as per the price list are exclusive of installation charges, and the invoices raised specify only the ex-showroom price. The High Court also found that the transfer of title in goods takes place at the place of the seller; therefore it concluded that the ex-showroom price of the goods attracts sales tax.

The High Court held that the taxpayers collected transportation and installation charges from the customers under different heads and have also discharged their obligation of paying service tax on these services rendered by them. Thus High Court concluded by stating that the State Government cannot enrich by wrongly bringing the transportation and installation charges within the Taxable Turnover

Prakash Retail Pvt Ltd v Deputy Commissioner of Commercial Tax [2014 (1) TMI 458 Kar]

IV. CUSTOMS

High Court Decisions

Not providing reasons for enhancement in the final assessment for Bill of Entry ("BoE") is breach of Principles of Natural Justice

The taxpayer was an importer of Muriate of Potash ("MoP"). During the relevant period, four BoE were presented and the same were provisionally assessed under Section 18 of the Customs Act, 1962 ("Customs Act") for want of original documents. Thereafter, Revenue Authorities proceeded to finalize the assessment ex-parte and enhanced the duty to the prejudice of assessee without any personal hearing or a speaking order. The Revenue Authorities were of the opinion that there was no requirement of a show cause notice ("SCN"), a personal hearing or a speaking order while finalizing provisionally assessed BoE as the finally assessed BoE on endorsement, would itself be an appealable order without the requirement of a speaking order.

The taxpayer preferred a writ before the Bombay High Court wherein it was observed that even in cases where there was no specific provision under the customs law for issuance of show cause notice, personal hearing or a speaking order before final assessment, the principles of natural justice must be read into the same. The High Court further observed that it is only when a party is given an opportunity to make its case against the proposed variation, the probable mistakes during final assessments could be precluded. If the Adjudicating Authority is unable to provide a hearing to the taxpayer, it should provide reasons for the enhancement in a speaking order at the least. Thus, in the absence of reasons provided for enhancement in customs duty, the High Court held that assessment of BoE was in breach of natural justice and thus, bad in law.

The Revenue Authorities also challenged the writ on the grounds that alternate remedy was available with the taxpayer under Section 128 of the Customs Act. The High Court rejected the Revenue Authorities' contention and held that a speaking order was a prerequisite to make the alternate remedy efficacious. In the absence of a speaking order an importer would be at a loss and the actions of Revenue Authorities could be challenged in a writ. Accordingly, the writ petition was allowed.

Zuari Agro Chemicals Ltd v Union of India [2014-TIOL-107-HC-MUM-CUS]

Tribunal Decisions

Application for refund of customs duty paid on exempted goods not to result in reassessment of BoE; taxpayer not to be forced to avail a particular exemption

The taxpayer imported certain pre-packaged goods intended for retail sale which were covered by Notification No 29/2010-Cus that allowed upfront exemption from payment of Special Additional Duty ("SAD") of customs. However, the taxpayer did not claim such exemption and inadvertently paid the applicable duty and consequently filed a refund claim for SAD paid. The Adjudicating Authority rejected the refund claim and held that allowing such refund would amount to change of assessment originally done and such a change was possible only if an appeal was filed against the orders of assessment. The taxpayer asserted that refund under Notification No 102/2007-Cus was granted much after importation and SAD payment and in such cases, no reassessment of BoE is done. The taxpayer further asserted that under the Customs Act, the taxpayer is not barred from paying customs duty on unconditionally exempted goods.

The matter reached Tribunal, Chennai wherein it was held that such refund would amount to reassessment only where there was a dispute between Revenue Authorities and the taxpayer at the time of import and the matter had been adjudicated either through BoE assessment or through further proceedings. The Tribunal further observed that a taxpayer could not be forced to avail any particular exemption on unconditionally exempt goods. The Tribunal also opined on the adverse implications of filing such refund claims and stated that payment at the time of importation and claiming subsequent refund could cause financial disadvantage to the taxpayer and no such consequence to the Revenue. Thus, the Tribunal rejected the Revenue's appeal and held the ground taken by the Revenue Authorities as not maintainable.

Redington India Ltd and Others v CC Air Chennai [Appeal No C/ S/ 40922 - 40926/ 2013]

Mere uniformity in price of goods before and after the assessment is not conclusive proof against unjust enrichment

The taxpayer had imported 75 consignments of aloe-vera products. There was a dispute with regard to the classification of the product and the duty was provisionally paid. Thereafter, the Tribunal held the differential duty to be refundable. However, the refund claim filed by the taxpayer was rejected on account of 'unjust enrichment'.

The Revenue Authorities contended that uniformity in price of the goods before and after assessment did not conclusively prove that incidence of duty had not been passed on to the buyer since such uniformity may be due to various factors. They further asserted that Certificate of Chartered Accountant was merely a piece of evidence acknowledging certain facts and did not support the taxpayer's claim. The incidence of duty was deemed to have been passed on to the buyer as the price of the goods was not indicated by the taxpayer on the sales invoice which was in contravention of Section 28C of the Customs Act.

The matter reached before the Tribunal wherein the contentions of the Revenue Authorities were accepted and it was held that uniformity in price/ MRP before and after levy of a particular duty by itself could not conclusively determine whether or not burden of duty was passed on. It was further observed that even when the taxpayer was acting under the direction of the overseas supplier, it cannot lead to a conclusion that burden of duty had not been passed on.

Moreover, given the facts of the case, the Tribunal held that the 'cost construction method' could also not be adopted to determine whether the customs duty was passed on or not. The contention of the taxpayer that Section 28C of the Customs Act was applicable only in cases where the price of the goods is duty delivered price, was also rejected. The Tribunal observed that Section 28C required every person liable to pay customs duty to indicate in the sales invoice and other like documents, the amount of duty which form part of the price at which goods were sold. In addition, it was held that the document specified under Section 28C is the means for a person to rebut the presumption of unjust enrichment.

Commissioner of Customs (Import), Mumbai v M/s Forever Living Health Nutrition & Beautycare Products Pvt Ltd [2014-TIOL-174-CESTAT-MUM]

V. CENTRAL EXCISE

High Court Decisions

Scrap/ waste generated deemed to be final products for the purposes of availing CENVAT credit if chargeable to excise duty

The taxpayer was engaged in the manufacture of intravenous fluids which were exempted from excise duty. During the course of manufacture, plastic scrap was generated as waste on which the taxpayer was paying excise duty and availing proportionate CENVAT credit on inputs (viz plastic granules) contained in the plastic scrap. The Revenue Authorities denied such credit availed by the taxpayer on the grounds that waste/ scrap was generated during the course of manufacture of the final products and the waste itself was not a final product. This demand was upheld by the Tribunal.

The matter came up before the Allahabad High Court wherein it was unequivocally observed that waste and scrap are final products within erstwhile Central Excise Rules, 1994 for the simple reason that they are chargeable to duty. The High Court referred to a departmental circular which provided that scraps were 'final products' and relied on the principle of 'contemporanea expositio' which means that a document has to be interpreted in reference to the exposition it has received from competent authority. It was held that the same principle was applicable to the present case and as a result, plastic waste and scrap were final products for the purpose of payment of excise duty. Accordingly, CENVAT credit on inputs contained in the plastic scrap was allowed.

Albert David Ltd v Commissioner of Central Excise [2014] 43 GST 30 (Allahabad)

Tribunal Decisions

Supplies made to Special Economic Zones ('SEZ') not to be treated as export for claiming refund under Rule 5 of the CCR

The taxpayer was manufacturing goods which were exempt from the payment of excise duty vide Notification No 50/2003-CE (i.e. area based exemption) and supplied them to SEZ units. The taxpayer filed a refund claim under Rule 5 of the CCR in respect of unutilized CENVAT credit. The Revenue Authorities contended that CENVAT credit is not admissible as the goods are exempted under the said notification and therefore covered by Rule 6(1) of CCR. The taxpayer contended that supplies to SEZ amounted to export and hence, rules of proportionate credit were not applicable to his case. The tax payer also contended that provisions of Rule 6(1) were not applicable in view of the provisions in Rule 6(6). The Commissioner (Appeals) confirmed the contention of the Revenue Authorities and subsequently the taxpayer preferred an appeal before the Tribunal, Delhi.

The Tribunal referred to Rule 5 of the CCR and observed that refund of CENVAT credit would be available on inputs used in manufacture of final products which were cleared for export. The Tribunal analyzed whether supply of goods to SEZ amounted to 'export' and in this regard it referred to the decision of Mumbai Tribunal in CCE v Tiger Steel Engineering (India) Pvt Ltd [(2010) 29 STT 25 (Mum - Tri)] wherein it was held that for supplies under CCR to qualify as export, the same must be 'physical exports', as envisaged under the Customs Act. Given that supply to SEZ units would not qualify as 'physical exports', the taxpayer was not entitled to claim refund. Accordingly the refund claim under Rule 5 of the CCR was rejected.

Everest Industries Ltd v CCE [2014 (43) GST 6 (New Delhi – Tri])

CENVAT credit availed originally on inputs to be used in manufacture of intermediate products and subsequently on intermediate products again, CENVAT credit held to be allowed

The taxpayer availed credit on inputs and sent them to the job worker for further processing under Rule 4(5)(a) of the CCR without reversing the credit taken on such inputs. The job worker after processing the inputs, returned intermediate products to the taxpayer on payment of duty on the cost of inputs originally supplied by tax payer, plus job work charges and cost of own material used. The Revenue Authorities denied credit of the duty paid on the intermediate products received by the taxpayer. The Revenue Authorities contended that the taxpayer was availing credit twice on the same inputs – initially on receipt of inputs and subsequently on the intermediate products received from the job-worker (which included those inputs on which credit was already availed).

The matter came up for consideration before the, Delhi Tribunal. The Tribunal rejected the Revenue's contention and observed that the inputs have suffered duty twice, first in the hand of input manufacturers from whom the taxpayer had procured them and subsequently in the hand of job workers, who at the time of clearing the intermediate products paid duty on the value which was inclusive of the cost of such inputs. In such a situation, it was held that the credit of the duty paid on such intermediate product cannot be denied, even if the taxpayer had earlier taken CENVAT Credit on such inputs. It further observed that there was no condition in Rule 4(5)(a) of the CCR that mandated a job-worker to avail full duty exemption under Notification No 214/86-CE. Such exemption being conditional, the job-workers could opt to pay excise duty on intermediate goods while clearing the same to the principal manufacturer, in terms of the decision of the Supreme Court in Ujagar Prints v Union of India [1989 (3) ELT 432 (SC)].

Bharat Heavy Electricals Ltd v CCE & ST, Meerut-I [Appeal No. E/55412/2013-EX(DB)]

Goods Transport Agency ('GTA') Service credit available for outward transportation upto the premises of the customer only in respect of goods valued under Section 4 of Excise Act

The taxpayer; a manufacturer of cement, undertook sale of goods through factory/ depot. For the period between January 2005 and March 2009 ("Relevant Period") the Revenue Authorities disallowed CENVAT credit of service tax availed on GTA service for transportation of cement from factory gate to the customer premises, and from depot to the customer premises. The Adjudicating Authority confirmed the demand of CENVAT Credit, along with interest and penalty.

The taxpayer placed reliance on the Central Board of Excise and Customs ("CBEC") circular No 97/6/07-ST dated August 23, 2007 and argued that the credit of service tax paid on GTA service should be allowed for outward transportation of goods upto the premises of the customer as the goods were Free on Rail ('FOR') and therefore the customer's premises should be treated as the place of removal. However, the Revenue Authorities were of the view that for the relevant period, the duty was calculated on a specific value not on ad-valorem basis hence the definition of 'place of removal' provided for in Section 4(3)(c) of the Excise Act cannot be adopted. Instead, (as provided by Section 4A) the 'factory gate' should be taken as the place of removal as decided by Tribunal in the case of Lafarge India Pvt Ltd [2012 (285) ELT 39] and Karnataka High Court in CCE v ABB Ltd [2011(23) STR 97].

The present matter reached before Tribunal Delhi wherein the scope of application of Section 4(3)(c) was discussed. It was observed that CCR is a legislation by reference and not a legislation by incorporation, because Rule 2(t) of CCR refers to Excise Act or Finance Act for definition, without specifying the exact year or name of enactment of either of the two legislations. Applying this principle, the Tribunal observed that the scope of definition of 'place of removal' under Section 4(3)(c) of Act, is for the purpose of Section 4 only.

Thus, applying the abovementioned principle, Tribunal held that for the period post April 2008, the definition of 'place of removal' would be applicable to only those cases where the duty is charged on an ad- valorem basis and for all other cases, such as Section 4A, Section 3(2), clearly the factory gate would be the 'place of removal'. It was held that since ad-valorem tax allows the manufacturer to claim credit of tax paid on inputs/ input services, the same should be accompanied by increase in the tax on the final product. In other words, the Tribunal held that if the manufacturer claims the 'place of removal' to be as per Section 4(3)(c) of the Act, then valuation of goods should also be done as per Section 4. The taxpayer is not at a liberty to value the goods as per Section 4A and claim the 'place of removal' as per Section 4(3)(c) as the latter is only applicable to Section 4.

The Tribunal placed reliance on the decision of the SC in Continental Foundation Joint Venture [2007 (216) ELT177] and refused to invoke the extended period of limitation for the period prior to April 2008 in light of conflicting judicial opinion on the issue.

Ultratech Cement Ltd v CCE, Raipur [Excise Appeal No E/381/2010, E/2440/2011 and E/112/2012 CESTAT-Del]

Notification & Circulars

Definition of 'Governmental Authority' amended

The CBEC has amended the definition of 'governmental authority' in the Notification No 25/2012-Service Tax, dated June 20, 2012 issued by Government of India, Ministry of Finance (Department of Revenue).

Notification No 2/2014-Service Tax, dated January 30, 2014

CBEC clarifies the position on issuance of discharge certificate and availment of CENVAT Credit under Voluntary Compliance Encouragement Scheme

In response to the queries of trade and Industry regarding the immediate availability of CENVAT Credit on payment of the first installment of tax dues paid under VCES, 2013, it was clarified that CENVAT Credit can be availed only after payment of tax dues in full and receipt of Acknowledgement of Discharge in form VCES-3

Circular No 176/2/2014-Service Tax, dated January 20, 2014

Decision of Hon'ble Supreme Court in case of Fiat India Ltd implemented

The CBEC has clarified the cases as to when can revenue reject the transaction value declared under section 4 and invoke the provisions of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 to assess Central Excise duty. This is in the context of sale of goods at a price substantially lower than the cost of manufacture over a very long period of time.

Circular No 979/03/2014-Central Excise, dated January 15, 2014

Sponsorship of national sporting events exempted from service tax

The Central Government has amended the mega exemption notification list and exempted sponsorship of national sporting events from the whole of service tax payable

Notification No 1/2014- Service Tax, dated January 10, 2014