May 2013

TAX UPDATES

(containing recent case laws, notifications, circulars)

Prepared in association with

Foreword

I am pleased to enclose the May 2013 issue of FICCI's Tax Updates. This contains recent case laws, circulars and notifications pertaining to direct and indirect taxes.

FICCI had organized an 'Interactive Session on Goods and Service Tax (GST)' with Shri Sushil Kumar Modi, Hon'ble Deputy Chief Minister, Government of Bihar and Chairman, Empowered Committee of State Finance Ministers on 22nd April, 2013, at Mumbai. The session provided a platform to deliberate upon various aspects of this important fiscal reform. FICCI also released a document "*Towards the GST – An Approach Paper*" on the occasion. The document lists out some key issues concerning GST and FICCI's viewpoint thereon. The issues covered include the rates of GST, threshold limits for exemptions, the administrative set up, the transition arrangements for switch-over to GST, the IT Systems necessary for data capture etc. The paper is accessible on FICCI's website.

The Finance Minister tabled the amendments to the Finance Bill 2013 and the same has been passed by both the Houses of Parliament. Recommendation made by FICCI with regard to the requirement of obtaining the Tax Residency Certificate (TRC) containing prescribed particulars has been accepted. The taxpayer can continue to obtain the TRC as issued by the foreign tax administrations. Further, the amendment to provide that interest income of foreign institutional investors and qualified foreign investors earned during the period 1 June 2013 to 31 May 2015 from investment in government securities or rupee denominated bond of an Indian Company would be taxable at a lower rate of 5 percent as against existing rate of 20 percent, is in line with the recommendation made by FICCI in its post budget memorandum.

Under the taxation regime, the Bombay High Court observed that Section 142 of the Customs Act read with the Customs Recovery of Government Dues Rules purported to initiate the recovery process against the defaulter viz. the person from whom government dues are recoverable under the Customs Act. The HC observed that there is no provision under the Customs Act akin to Section 179 of the Income Tax Act, 1971 where dues of a private limited company can be recovered from the directors. Thus, HC held that dues of private limited

companies cannot be recovered from its directors until and unless corporate veil is lifted.

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 TAXES

High Court Decisions

The Delhi High Court issues remedial directions to improve hardships faced by taxpayers in claiming TDS credit

In order to speed up the processing of returns, the tax department has introduced electronic filing of Income tax returns, TDS returns and e-payment of taxes, and operates the Centralised Processing Centre (CPC) at Bangalore. The problems faced by taxpayers when demand was raised or refund was reduced was on account of either suo-motu adjustment by the tax department of refunds against tax demands, or mismatch of TDS credit claimed by the taxpayer in the return and uploaded by the deductor in its e-TDS returns. The adjustments of refunds against the existing demands were based on details uploaded by the AO to the CPC website. However, some of the details were not uploaded by the AO. Further, in most of the cases the TDS claims did not match due to mistakes committed by deductors in filing TDS statements. Therefore, in view of such grievances faced by the taxpayers, a Chartered Accountant filed a letter which was treated as Public Interest Litigation (PIL) by the Delhi High Court in the instant case. Thereafter, a notice was also issued to the tax department seeking information on action being taken by them to resolve such grievances.

The Delhi High Court has issued the following major remedial directions:

- Each rectification application has to be disposed of and decided by a speaking order.
- While adjusting tax refunds against existing demands, prior intimation needs to be given to taxpayers, so that they can respond before any adjustment of refund is made towards the demand.
- In case where returns have been processed by the CPC and refunds have been fully or partly adjusted against the past arrears, the AOs shall issue notice to the taxpayers which would be served as per the procedure prescribed under the Act.
- Interest on refund should be paid for false or wrong uploading of past demands and failure to follow the mandate before adjustment of refund by the tax department. Further, interest cannot be denied to the taxpayer when the conditions provided under the Act are satisfied and are in favour of the taxpayer.
- In case an order under Section 143(1) of the Act is not communicated or served on the taxpayer, the return as filed/declared would be treated as deemed intimation and as an order under Section 143(1) of the Act.

- The tax department should fix a time limit within which they shall verify and correct all unmatched challans and details. This will necessarily require communication with the deductor and steps to rectify those details.

- The AO shall verify whether or not the deductor has made payment of the TDS and if the payment has been made, credit of the same should be given to the taxpayer.

Court on its own Motions v. CIT [Writ Petition (Civil)2659/2012]

Punjab and Haryana High Court dismissed the appeal by the Revenue department against the Chandigarh Tribunal ruling and held that there was no substantial question of law involved and that the taxpayer has not violated any provision of law while making sales to its sister concerns at a lesser rate than that to non sister concerns

The AO made an addition to the taxpayer's income on account of difference in rate of profit on sale made to sister concerns as compared to that on sales made to non-sister concerns. The AO made the addition alleging that the taxpayer had resorted to a device to reduce its tax burden by charging lesser sale price from the sister concerns as compared to the non-sister concerns. On appeal, the CIT(A) set aside the addition made by the AO. The Tribunal upheld the order of the CIT(A) and confirmed the deletion of the adjustment made by the AO. The Tribunal observed and reproduced the following findings of the CIT(A):

- The AO has not invoked any provisions of the Act to justify addition in this matter. The provisions of Section 40A of the Act could not have been invoked as no payment has been made to the sister concerns for any item of expenditure, which the taxpayer might have claimed as revenue expenditure;

- The sister concern to whom sales have been made in this case has paid tax at the rate of 33.6 percent as compared to 30.6 percent paid by the taxpayer, which repudiates the very basis of the AO for making the addition;

- A taxpayer can manage his affairs to reduce tax liability within the framework of law.

The High Court held that the findings recorded by the Tribunal do not raise any substantial question of law. The taxpayer has not violated any provision of law while making sales to its sister concerns at a lesser rate than to non-sister concerns. Thus, the High Court held that no interference was called for by the Court in the given case.

CIT v. Sh Rajnish Ahuja (Income Tax Appeal No. 27 of 2013) (P&H HC)

Punjab and Haryana High Court allows section 54F exemption if

investment before due date of filing belated tax return

The Punjab and Haryana High Court in the case of Sri Jagtar Singh Chawla held that under the Income-tax Act, 1961, exemption from tax on long term capital gains on sale of a long term capital asset (other than a residential house) is available, where investment in new residential house property is made before the due date of filing a belated tax return.

CIT v. Jagtar Singh Chawla [ITA No. 71/2012, Assessment Year 2007-08]

Tribunal Decisions

Capital gains arising on transfer of shares of an Indian company holding infrastructure facilities by a Netherlands company to a Singapore company are not taxable in India

The taxpayer, a company incorporated in, and a tax resident of the Netherlands, transferred the shares of an Indian company (Indian Co), holding infrastructure facilities in India, to a Singapore-based company. In the return of income filed, the taxpayer claimed refund of taxes withheld by the Singapore company on the basis that the capital gains from transfer of shares of Indian Co are not taxable in India under the provisions of Article 13(5) of the India-Netherlands tax treaty as well as under Section 10(23G) of the Act.

The Assessing Officer (AO) and the Commissioner of Income-tax Appeals [CIT(A)] denied exemption under Section 10(23G) of the Act and held that the transfer of shares of the Indian Co holding infrastructure facilities constitutes transfer of immovable property. Accordingly, Article 13(1) of the tax treaty dealing with capital gains on immovable property was triggered.

Based on the facts of the case, Hyderabad Tribunal, inter alia, observed and held as follows:

- The transaction of sale of shares of an Indian Co by the taxpayer is not taxable under Article 13(1) of the tax treaty for the following reasons:
  - The taxpayer has not sold any immovable property or any rights directly attached to the immovable property;
  - Under the Act, 'immovable property' has different connotations depending on the section in which it is defined. The definition of immovable property provided under section 269UA(d) of the Act has restricted applicability and cannot be considered as a general purpose definition under the common law;
  - In the current context, 'immovable property' includes land, building or any rights pertaining to that, but does not include shares;
  - Sale of shares is different from sale of assets and the

shareholder is different from the property of the company.

- In accordance with the provisions of Article 13(5) of the tax treaty (which inter-alia includes transfer of shares), the taxpayer is entitled to get exemption from capital gain tax in India.

- The Indian Co was approved for the purpose of section 10(23G) of the Act and therefore the investment of the taxpayer in the Indian Co qualifies for exemption under the provisions of Section 10(23G) of the Act.

Vanenburg Facilities B.V. v. ACIT (ITA Nos. 739 & 2118/ Hyd/2011)

Payment made to search engines for online advertisements is not taxable in India

The taxpayer, a florist, had made payments in respect of online advertisements to Google and Yahoo without deducting taxes on the basis that since these entities did not have any Permanent Establishment (PE) in India, the payment made to them was not taxable in India.

The AO disallowed the payments in the hands of the taxpayer under Section 40(a)(i) of the Act on the basis that tax was required to be deducted from the payments made to Google and Yahoo.

The issue for consideration before the Kolkata Tribunal was whether the payment in respect of online advertising on search engines of Google and Yahoo is taxable in India.

Based on the facts of the case, the Tribunal, inter alia, observed and held as follows:

- A search engine's presence in a location, other than the location of its effective place of management, is only on the internet or by way of its website, which is not a physical form of presence;

- In accordance with the High Power Committee report, so far as the basic rule of PE is concerned, a website per se cannot be a PE under the Act;

- The interpretation of the expression PE, even in the context of tax treaties, does not normally extend to websites unless the servers on which websites are hosted are also located in the same jurisdiction;

- A search engine, which has only its presence through its website, cannot be treated as a PE unless its web servers are also located in the same jurisdiction. As Yahoo and Google's servers are not located in India, its presence in India merely through websites cannot be construed as PE in India;

- The Government of India's reservations on OECD (relating to websites constituting a PE in certain circumstances) does not have an impact in the instant case;

- Relying on the decisions of the Mumbai Tribunal in the case of Pinstorm Technologies Pvt. Ltd. and Yahoo India Pvt. Ltd, the Tribunal held that the payments to Google and Yahoo are not in the nature of 'Royalty';

- As long as there is no human intervention in a technical service, it cannot be treated as a technical service under Section 9(1)(vii) of the Act. As there was no human touch involved in the whole process of the advertising service provided by Google and Yahoo, the payments are not in the nature of 'fees for technical services';

- Therefore, the payments were not taxable in India and there was no requirement for the taxpayer to deduct tax at source.

ITO v. Right Florists Pvt Ltd (ITA No.1336/ Kol/2011)

No deduction for portfolio management fees while computing capital gains

The taxpayer is engaged in the business of employment and investment. The taxpayer had earned Short Term Capital Gain (STCG) of INR 6.155 million on the sale of shares and units of mutual funds. The taxpayer had claimed deduction of Portfolio Management Services (PMS) Fees, PMS Custody Fees and Audit Fees of INR 3.669 million against such STCG. During the assessment proceedings, the AO denied the deduction for these expenses.

The Mumbai Tribunal relied on the decision of Pune Tribunal in the case of Vineeta R. v. ACIT and noted that "Pune Benches relied on the judgment of the Bombay High Court in CIT v. Smt. Sakuntala Kantilal, (190 ITR 56), which have been subsequently held to be not a good law by the Bombay High Court in the case of CIT v. Roshanbau Mohammed Hussein Merchant (2005), 275 ITR 231". It was also observed that the decision of the Pune Tribunal would not hold good in the present case, as it was further distinguished in Pradeek Kumar Harlaka v. ACIT [47 SOT 204 (URO)]. The Tribunal had further held that the issue was covered by co-ordinate bench rulings in Devendra Motilal Kothari v. DCIT [(2011)136 TTJ 188 (Mum)] and Homi K. Bhabha v. ITO [TS-577-ITAT-2011(Mum)]. Based on the above, the Tribunal ruled that PMS fees paid by the taxpayer could not be allowed as a deduction while computing the capital gains.

ACIT v. Vibha S. Poddar [TS –142 – ITAT – 2013 (Mumbai)]

Distribution network/right is eligible for depreciation under Section 32(1)(ii) of the Act

The taxpayer was engaged in the business of trading in animal health products. The taxpayer vide business transfer agreement dated 4 May 2006 acquired an animal health business [Agrivet Farm Care (AFC)] from GlaxoSmithKline Pharmaceuticals Limited (GSK) on a going concern basis for a lump sum consideration of Rs 207.10 crores. The transaction was a slump sale transaction and no values were assigned

to individual assets and liabilities of the AFC undertaking. The taxpayer followed the well established approach of getting the valuation of intangible assets done through an independent valuer and recognizing those assets according to the values arrived at by the valuer. The Independent Valuer, based on the nature of the AFC business, has identified three intangible assets, namely: Distribution Network Brand and Trademark; and Technical Know-how. A further sum of INR 396 million was allocated towards goodwill after making adjustment for tangible and intangible assets as balancing figure. The taxpayer claimed depreciation on the abovementioned recognized intangible assets and also on the goodwill under Section 32(1)(ii) of the Act. The AO denied the existence of intangible asset and treated the entire difference between purchase consideration and net tangible assets as goodwill, and consequently denied depreciation on the same. The CIT(A) deleted the addition made by the AO.

The Mumbai Tribunal, relying on the decision in the case of Jyoti (India) Metal Industries Pvt. Ltd. v. ACIT (ITA No.181/M/2008), has held that a distribution network is an intangible asset eligible for depreciation under Section 32(1)(ii) of the Act. Further the Tribunal, relying on the decision of Supreme Court in the case of CIT vs. Smifs Securities Ltd. [2012] 210 Taxman 428 (SC), has held that goodwill is eligible for depreciation under Section 32(1)(ii) of the Act.

ITO v. Virbac Animal Health India P. Ltd [TS-134-ITAT-2013(Mum)]

Payment to third party through related entity cannot be called as 'reimbursement' of expenses

The taxpayer is engaged in the business of certification of activities in respect of quantity, quality, pre-shipment inspections, surveys etc. For AY 2006-07, the taxpayer claimed INR 1.544 million as deduction towards training expenses for its employees. The training was arranged by the holding company and given by outside trainers, solely to the employees of the taxpayer. The said amount was reimbursed to its holding company without deduction of tax. For the training, the holding company had raised a bill on the taxpayer and the amount in dispute is the reimbursement of expenses by the taxpayer to the holding company for such employee training. The AO disallowed the said amount under Section 40(a)(ia) for non-deduction of tax at source. The CIT(A) upheld the disallowance.

The Mumbai Tribunal observed that TDS provisions would be applicable if the Indian subsidiary company incurs expenses or makes purchases or avails any service from some third party abroad and if the payment to such a third party is routed through its holding or related company abroad. The provision for deduction of tax at source therefore applies as if the taxpayer has made the payment to such independent party de hors the routing of payment through the holding company. The Tribunal further observed that only where the payment is ultimately stopping with the related party, it could be considered as payment to the associated concern and not otherwise.

C.U. Inspections (I) Pvt. Ltd. vs. DCIT [TS-132-ITAT-2013(Mum)]

Revenue cannot withhold refund due to taxpayer arising out of favourable tribunal order

The taxpayer is constituted under the Water (Prevention and Control of Pollution) Act, 1974. The taxpayer is engaged in providing services relating to prevention and control of water pollution. During assessment proceedings, the AO observed that the taxpayer's registration under Section 12A of the Act was withdrawn. On appeal, the registration under Section 12A was allowed / restored by the Tribunal. However, the AO did not accept the restoration of registration allowed by the Tribunal. The AO took a view that the Revenue had filed an appeal against the Tribunal's order before Himachal Pradesh High Court. Based on this premise, the AO made certain additions to the taxpayer's income and also withheld the refund due to the taxpayer. The CIT(A) granted relief to the taxpayer based on the Tribunal order. The Revenue filed an appeal with the Tribunal and the taxpayer filed cross objections thereto. The refund due to the taxpayer was also not granted by the AO.

Following the earlier Tribunal order which had restored the taxpayer's registration under Section 12A, Chandigarh Tribunal dismissed the Revenue's appeal. Further, ruling in favour of the taxpayer, the Tribunal directed the AO to grant the refund. The Tribunal observed that the Revenue did not have any right to withhold the refund, simply because it had not accepted the decision of the Tribunal. The Tribunal observed that if the order of Tribunal were reversed by the High Court, then the appeal effect could be given again. Thus, the Tribunal held that such an action of the AO was impermissible under the law.

ACIT v. HP State Environment Protection & Pollution Control Board and cross objections [TS-148-ITAT-2013(CHANDI)]

Deduction on windmill profits allowable without adjusting notional losses of earlier years – Special Bench decision distinguished

The taxpayer is a partnership firm engaged in the business of export of hand embroidered items and supplying the same to top fashion houses in Europe and the USA. The taxpayer is also engaged in power generation through windmills. The taxpayer, for the first time in AY 2008-09, claimed deduction under Section 80-IA on its profits from power generation operations. The taxpayer's windmill undertaking commenced its operation in AY 2007-08. But, it had incurred losses from windmill operations in AY 2007-08, which were set off against its income from its export business. While computing deduction under Section 80-IA for AY 2008-09, the taxpayer did not set off losses of earlier year against the profits from windmill operations. During assessment, the AO allowed deduction under Section 80-IA as claimed by the taxpayer Thereafter, the CIT invoked provisions of Section 263 and held that the assessment order was erroneous and prejudicial to the interest of revenue. Relying on Tribunal's Special Bench ruling in Goldmine Shares And Finance Pvt. Ltd. [2008] 302

ITR (AT) 208 (SB) (Ahd.), the CIT observed that in accordance with Section 80-IA(5), the deduction under Section 80-IA was required to be computed after reducing notional brought forward losses and unabsorbed depreciation of eligible unit, even though they were already set off against other income in earlier years.

On appeal to the Tribunal, it noted that applying amended provisions of Section 80-IA(2), an option was given to the assessee for claiming deduction for any 10 years out of 15 years in which undertaking begins to operate. The Tribunal held that the taxpayer has an option to choose the initial assessment year. Hence, under Section 80-IA(5), only the losses of the years starting from the initial AY alone are to be brought forward and set off. In coming to this conclusion the Tribunal observed that Finance Act 1999 had deleted the definition of "initial assessment year" for various assessees and had replaced it by giving the taxpayers the right to choose the initial assessment year. The Tribunal distinguished the decision relied on by the CIT in the case of Goldmine Shares And Finance Pvt. Ltd. (supra) as the same was based on the erstwhile definition of "initial assessment year". The Tribunal set aside the order of the CIT under Section 263 since the order of the AO could not be termed as erroneous in law.

M/s. Shevie Exports v. JCIT [ITA no. 321/Mum./2012 dated 10 April 2013

Depreciation allowed on bundle of business rights akin to license

The taxpayer purchased entire animal health care and diagnostics business divisions for a total consideration of INR 620 million. As per the valuation report INR 492.6 million was apportioned towards brands and tangible assets and the balance amount of INR 127.4 million was shown as goodwill. The taxpayer contended that goodwill consisted of licenses, permissions, approvals, concessions, health registrations, manufacturing know-how, distribution network, information and documentation in relation to products. The taxpayer claimed depreciation on such goodwill.

The AO disallowed the claim of depreciation on goodwill on the ground that the taxpayer was entitled to depreciation only on specified categories of intangible assets.

The Tribunal held that the assets acquired by the taxpayer were the 'business or commercial rights or license acquired' in order to carry on new business acquired by the taxpayer and accordingly depreciation was allowed on the assets acquired. It was also held that even otherwise, the Taxpayer is entitled to claim depreciation on goodwill.

RFCL Limited v. DCIT [ITA Nos. 293 & 294/Chd/2012]

Share valuation under FEMA irrelevant for computing capital gains

The taxpayer, a tax resident of Germany, had an Indian subsidiary engaged in manufacturing of prefab structures,

telecom shelters and derivatives. During the AY 2007-08, the taxpayer sold part of its investment in Indian subsidiary at the rate of INR 390 per share and paid capital gain tax on it. As per valuation carried out under the RBI guidelines for Foreign Exchange Management Act (FEMA) purposes, per share value came to about INR 400.

The AO assessed the capital gains on the basis of INR 400 per share, being the value per share for FEMA purpose, and made addition of INR 10 per share.

The Tribunal held that the RBI Guidelines was for the banks, issued for FEMA purposes. Since the Guidelines have been issued for FEMA purposes, it was for the FEMA authorities to take appropriate action against the Taxpayer on breach of the Guidelines and it was not the duty of income tax authorities to examine the compliance or otherwise of these Guidelines.

Zeppelin Mobile System GmbH v. ADIT [2013] 32 taxmann.com 250 (Del)

Non-compete fees is not an intangible asset - Depreciation not allowed

The taxpayer acquired the glass manufacturing business. It also entered into a non-compete agreement with the seller whereby it agreed to pay Rs. 18 crores to the seller for not carrying on a competing business for a period of 18 years. The taxpayer claimed the said payment as a revenue deduction and in the alternate claimed depreciation on the amount paid.

The AO rejected both the claims.
The Tribunal held that non-compete fee does not fall within the ambit of 'any other commercial or business rights' under Section 32(1)(ii) of the Act and is therefore not eligible for claim of depreciation.

Gujarat Glass Private Limited v. ACIT (ITA No. 4842/Mum/2004)

II. SERVICE TAX

High Court Decisions

Services provided in relation to execution of a work contract in respect of railways are not liable to service tax as they are specifically excluded from the definition of works contract

Taxpayer had filed the writ petition to seek a clarification on the legal position that services provided in relation to the execution of works contract in respect of Railways are not liable to service tax.

HC disposed of the writ petition with the clarification that any service provided in relation to the execution of a works contract in respect of Railways is specifically excluded from the definition of "works contract" services under clause (zzzza) of Section 65(105) of the Finance Act , 1994 ("Finance Act"). Consequently, no service tax would be liable under Section 66 of the Finance Act on the value of such services.

B M R Corporation Ltd v Ministry of Finance, Govt of India, [2013 (29) STR 469 (Kar)]

Tribunal Decisions

Consideration received for giving the right to other party to construct and own the advertisement board for limited period is not taxable under the category of sale of space and time for advertisement services ("SOSTA Services") when the consideration is collected in the form of advertisement tax

Taxpayer entered into a contract with M/s Shri Durga Publicity Service ("SDPS") wherein SDPS agreed to invest money in installments for the construction of a rail over bridge on Build Own Operate Transfer ("BOOT") basis. In turn, SDPS was given the right to construct and own for a period of 11 years a specified number of advertising boards (sky-signs, uni-poles, kiosks, lollipops etc.) on the bridge where advertisement could be displayed. While collecting the installments, taxpayer issued bills showing the amount received as advance tax for permitting display of the advertisement. SDPS in turn was renting out the spaces to other persons who wanted to advertise using the space and SDPS was paying service tax on such activity.

The dispute was whether the money collected by the taxpayer can be considered to be value for sale of advertisement or is it to be considered as tax for putting up the advertisement.

Revenue Authorities were of the view that the taxpayer by permitting the use of various spots by various parties for putting up the advertisement boards are providing services taxable under the category of SOSTA Services. The tax liability of the taxpayer was confirmed by the adjudicating authority.

The taxpayer filed an appeal before the Tribunal against the findings of the adjudicating authority. The taxpayer contended that the amount collected by the taxpayer in lieu of giving the above rights

was in the nature of advertisement tax which is collected in exercise of sovereign and statutory function and cannot be treated as amount received for provision of SOSTA Services. The taxpayer further contended that the advertising space is not owned by them and hence there is no question of having sold such advertisement space to SDPS whereas SDPS was discharging service tax liability on the activity of renting of such advertisement space to third parties.

Revenue Authorities on the other hand contended that the taxpayer's contract with SDPS was nothing but the agreement for sale of advertising space and the amount charged by the taxpayer is the consideration for provision of SOSTA Service.

There was difference in opinion between the judicial and technical member of the Tribunal and the matter was referred to the third member.

The third member held that the contract is not a conventional BOOT scheme because SDPS does not own or operate the bridge but is given the right to build and own the advertisement boards and hence had limited ownership of the bridge to the extent of right to construct the advertising board. The third member of the Tribunal referred to the provisions of the Punjab Municipal Corporation Act, 1976 and notifications issued there under and held that the amount collected by the taxpayer was being received as advertisement tax and there is no notification exempting this tax. The Revenue Authorities have not made out a case that the money received is in excess of the advertisement tax and hence it is not reasonable to conclude that the money paid by SDPS to taxpayer is for sale of space. Accordingly, requirement of pre-deposit was waived of this case.

Municipal Corporation, Jalandhar v Commissioner of Central Excise, Ludhiana, [2013 (29) STR 481 (Tri-Del)]

Underwriting and lead manager services relating to issue of Foreign Currency Convertible bond ("FCCB") in foreign country – it cannot be said that the dominant nature of services is the lead managers' service and the contract cannot be classified as a bundle of service treating it as Banking and Financial services

In the present case, taxpayer issued FCCB's in foreign countries to raise funds in foreign exchange. The taxpayer appointed M/s JP Morgan Securities Ltd. ("JPMS") as a lead manager as well as underwriters to the issue of such bonds. The taxpayer did not pay service tax under reverse charge on the payments made to JPMS for the aforesaid services. Relevant to note here that under the erstwhile service tax regime, the services provided by JPMS as a lead manger were classifiable under the taxable category of 'banking and financial services' ("BFS Services") and services provided by JPMS as an underwriter were classifiable under the taxable category of 'underwriting services'. Further, as per the provisions of Taxation of Service (Provided from Outside India and Received in India) Rules, 2006 ("Import Rules"), BFS services received from outside India become taxable in India if the service recipient is located in India and 'underwriting services' become liable to service tax in India only if such services are

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either partly or fully performed in India. An audit was conducted by the department and pursuant to discussions between the taxpayer and the departmental authorities, taxpayer paid service tax only on the charges paid for the services rendered by JPMS as a lead manager under the category of BFS Services.

Later on an investigation was conducted by Director General of Anti Evasion who was of the view that the entire payment made by the taxpayer to JPMS would be liable to service tax in India under the category of BFS Services on a reverse charge basis.

The matter reached before the Tribunal and after hearing both the sides, the Tribunal held that services provided by JPMS as a lead manger are separate and distinct from the services provided by JPMS as an underwriter. The Tribunal rejected the contention of the Revenue Authorities that the Agreement has to be considered as a whole and classified considering it as a single service and subjected it to tax because the aforesaid services are distinct in nature and the Agreement also lays down such services as distinct services and provides for separate remuneration fixed for the two services. Further, if the services are to be considered as bundled, as per the rules of classification of services provided under Section 65A of Finance Act, 'underwriting services' are specified under a sub-clause which occurs before the sub-clause under which BFS Services are specified. Therefore, going by the criterion laid down in Section 65A(c) of the Finance Act it is more appropriate to classify the services provided by JPMS as 'underwriting services'.

Basis the above reasoning, the Tribunal decided the issue in favour of the taxpayer.

Jubilant Life Sciences Ltd v CCE [2013 (29) STR 529 (Tri-Del)]

No service tax is payable on commercial training and coaching services under reverse charge in case where a company receives training services from its offshore parent entity and no training fee is charged for the provision of these services and the expenditure incurred was only towards travel, accommodation etc

The taxpayer was engaged in procuring orders for its offshore parent entity for installation and maintenance of printing machinery. The taxpayer was availing the services of its offshore parent entity for training of its employees both outside India and in India. The Revenue Authorities contended that the taxpayer was liable to pay service tax under reverse charge under the category of "commercial coaching and training services" on the receipt of these training services since their employees were trained both outside India and in India. The taxpayer contended that its employees had gone to the offshore parent entity located outside India and got training there. The offshore parent entity did not charge any consideration for providing the training services and the expenses incurred for training are only towards travel, accommodation and other expenses in relation to training. Further, relevant certificates were also furnished by the taxpayer certifying that its offshore entity did not charge any training fee.

The matter reached the Tribunal who observed that the taxpayer's contention that no training fee was charged by its offshore parent entity was not countered by the Revenue Authorities. On that basis it was held that the taxpayer is not liable to pay any service tax under reverse charge mechanism on the services availed by them from their parent company as they have not paid any remuneration for the training charges.

CST, Chennai v Heidelberg India Pvt Ltd [2012-TIOL-1739-CESTAT-MAD]

III. VAT/ CST

High Court Decisions

The general principle that different commodities would attract different tax is not applicable when the entry is wide enough to cover all forms / variants of a product even where such variants are distinct commercial commodities

Taxpayer was a registered dealer under the Central Sales Tax Act, 1956 ("CST Act") and the Assam General Sales Tax Act, 1993 ("AGST Act"). The taxpayer was engaged in the conversion of raw petroleum coke ("RPC") to calcined petroleum coke ("CPC"). The finished goods i.e. CPC were sold in different states. Section 30 of the AGST Act provided for refund of tax in case of sale and purchase of declared goods which are subsequently sold in the course of interstate sales. Accordingly, the taxpayer applied for the refund of the local sales tax as his goods were falling in the category of declared goods under the entry 'coke in all its forms'.

However, the state tax authorities were of the view that RPC loses its original identity in manufacture of CPC as it undergoes an irreversible chemical change and they are two different products. Further, under the Central Excise Act, 1944, RPC and CPC are treated as different products being subjected to different rate of excise duty.

The tax payer filed a writ petition before the HC of Guwahati. The HC while deciding the issue placed reliance on the judgment of the Supreme Court in the case of State of Tamil Nadu v Mahi Traders [(1989) 73 STC 228 (SC)] wherein it was held that it was not of any importance to ascertain that coloured leather is a form of leather or a different commercial commodity as the entry under the Tamil Nadu General Sales Tax Act was comprehensive enough to include the products emerging from 'hides and skins until the process of dressing or finishing is done'. Applying the same principle in the taxpayer's case, it was held that RPC and CPC are well covered under the entry "coke in all its forms" and thus, the principle that different commodities attract different tax was distinguishable. Accordingly, the order against the taxpayer was set aside and the matter was remanded back for fresh adjudication.

Guwahati Carbon Ltd v State of Assam [2013-058-VST-0412 (Guw)]

Transaction of surrender of the Replenishment Licences ("REP licences") to the Government of India ("GOI") for a premium cannot

be treated as an activity of 'sale' as the REP licenses immediately lost their value on transfer as they were canceled. Such transfer for surrender was in fact pursuant to the Circular issued by the government

The REP licence scheme was introduced by GOI to provide registered exporters the facility of importing essential inputs required for the manufacture of the product being exported. These REP Licences were freely transferable and allowed to be sold in the open market as there was no requirement of endorsement or permission from the licensing authority. Such transfer was considered to be sale as it could be used by the transferee for import of inputs and accordingly, was subject to the levy of sales tax [Vikas Sales Corporation v CCT (1996) 102 STC 106 (SC)]. However, the GOI introduced a policy for surrendering the unused licences vide Circular No.11/1993 dated May 5, 1993 ("circular") and provided a premium of 20 percent on such surrender of REP licenses. The Circular also mentioned that if the REP licences are not surrendered during the relevant period, they would cease to remain useful in the hands of the holder and would not be eligible for further sale.

Taxpayer surrendered unutilized REP licences on which they received the said premium. The assessing authorities took a view that the act of surrender of licence was sale under Section 2(1)(n) of the APGST Act and the premium received was equivalent to the turnover received for the same. The same was challenged by the taxpayer before the Tribunal and subsequently, it filed a tax revision case before the Andhra Pradesh HC.

The taxpayer's submission in this regard was that the activity of surrender would not amount to sale in course of business as the basic requirement of sale i.e. transfer of title of the right to import against the REP licences, had not taken place but they were in fact cancelled. It was also contended that there was no mutual consent in the transaction but it was owing to operation of law and compensation is a payment gratis which cannot be equated to sale consideration.

The Andhra Pradesh HC held that the surrender of REP licenses did not amount to 'sale' as it was not in course of the business but by the virtue of the sovereign power of the GOI. It was also held that the premium paid by GOI was nothing but a compensation being paid to an exporter for the inability of the exporter to avail the benefit of incentives. Therefore, such premium would not qualify as 'turnover' within the meaning of Section 2(1)(s) of the APGST Act. Accordingly, the taxpayer's tax revision case was allowed.

National Mineral Development Corporation Limited v State of Andhra Pradesh [2013-58-VST-136 (AP)]

The tax exemption granted to fresh milk, recombined milk and milk drink (with or without any addition thereto) sold as beverage would include flavored milk within its ambit since milk with any addition thereto is included in the entry

The taxpayer was a registered dealer under the Tamil Nadu General Sales Tax Act, 1959 ("TNST Act") and dealt in flavored milk. It

sought the benefit of the tax exemption granted to “fresh milk, recombined milk and milk drink with or without any addition thereto for being sold as a beverage” vide Notification No II (1)/ CTRE/69/81 dated January 3, 1981 under the TNST Act.

The Revenue Authorities rejected the claim of the taxpayer in an assessment under Section 16(2) of TNST Act on the basis that the beverage sold by the taxpayer contains additives and hence would not fall within exemption notification. The dispute reached before the Tribunal. The Tribunal allowed the appeal of the taxpayer by relying on the decision of the SC in the case of Deputy Commissioner of Sales Tax v Pio Food Packers [1980] 46 STC 63 (SC) wherein it was held that flavored milk sold as beverage is entitled to the benefit of tax exemption. Aggrieved by the said order, the Revenue Authorities filed an appeal before the Madras HC.

The Madras HC relied on the dictionary meaning of the term ‘beverage’ in the absence of any definition in the TNST Act. It also relied on the aforesaid judgment of Pio Food Packers and decided in favour of the taxpayer and accordingly, dismissed the Revenue’s appeal.

State of Tamil Nadu v Ganesh Corporation [2013-058-VST-0368 (Mad)]

Where no sales tax is payable under Section 10 of the Assam Value Added Tax Act, 2003 (“Assam VAT Act”) on branch transfer of oil-cakes outside the State of Assam, the dealer is liable to pay purchase tax under Section 12 on that part of mustard seeds locally procured from unregistered dealers which was used as a raw material in the manufacturing of oil-cakes

The taxpayers were engaged in oil manufacturing in the State of Assam and the oil so manufactured was sold by them locally. Oil-cakes, the by-products of the manufacturing process, were disposed of by way of stock transfer on consignment basis outside the State of Assam. The Revenue Authorities sought to levy purchase tax on the proportionate purchase value of the mustard seeds referable to the production of oil-cakes under Section 12 of the Assam VAT Act which were purchased locally from unregistered dealers without payment of VAT. The taxpayers filed a writ petition against this proposed levy of purchase tax.

The taxpayers contended that they were already paying tax on the sale of oil which is manufactured from the mustard seeds and oil-cake was merely by-product. It was argued that the proportionate value of purchase turnover of mustard seeds referable to value of oil-cakes, produced therefrom, could not be subjected to purchase tax as manufacture of oil-cakes is automatic.

The Revenue Authorities contended that the levy of purchase tax was completely justified as the value of mustard oil-cake was significant part of the taxpayers’ total turnover and the same cannot be claimed as wastage. Although mustard oil-cake was not the main product of the process of manufacture, but it was also a product of manufacture.

The HC observed the decisions given in the case of Hotel Balaji v State of Andhra

Pradesh [1993 (88) STC 98 (SC)] and Shri Krishna Oil and General Mills v State of Punjab [2010 (35) VST 226 (P&H)] where it was held that where the manufactured goods are not sold within the State but are disposed of or where the manufactured goods are sent outside the State (otherwise than by way of inter-State sale or export sale) the tax has to be paid on the purchase value of the raw material. Relying on the abovementioned case laws and other relevant judicial precedents, the Court ruled the matter in favour of the Revenue Authorities.

Pawan Industries v State of Assam [(2013) 58 VST 281 (Guw)]

Movement of goods from one state to another pursuant to a contract of sale and the fact that insurance charges were not borne by the buyer does not alter the character of inter-state sale due to which the same cannot be taxed as a local sale

The taxpayers were based out of Calcutta and their head office at Mumbai entered into a contract with Neyveli Lignite Corporation ("Neyveli") based out of Tamil Nadu for design and manufacture of machineries, which were to be transferred on inter-state sale basis. The contract detailed out the conditions for supply by way of interstate movement along with the separate conditions for commissioning, test running, erection and subsequent handing over to the customer. The contract also provided cost break-up of different activities like design, engineering, manufacture, erection, testing and commissioning, etc. The contract also contemplated movement of machinery as well as manufacture and movement of goods from Head Office at Mumbai and branch office at Calcutta.

The Tamil Nadu Revenue Authorities sought to tax the sale value of the materials under the TNST Act by applying the theory of accretion. The matter reached before the Madras HC where the taxpayers contended that the contract was a divisible one and Neyveli were not bound to award the erection portion of the contract to the taxpayers. Further, when the goods moved from Mumbai and Calcutta the delivery of the same was taken by Neyveli and the ownership in goods got transferred at that very instant. It was further argued that when the contract itself was with the Mumbai Head Office, the taxpayers being a branch office had nothing to do with the contract and as a result the State of Tamil Nadu had no authority to tax the inter-state transaction emanating from Mumbai and Calcutta.

The Revenue Authorities argued that since the payment was made by Neyveli part by part and full payment was made only after the successful completion of the performance; there was no outright purchase of materials by Neyveli and thus the turnover was assessable to the provisions of the TNST Act. Further, the responsibility to pay the insurance on the goods remained with the taxpayers and the goods ever remained the property of the taxpayers alone till they were assembled and installed before handing over to the contractee.

The HC held that the contract contemplated divisibility and rightly specified the price, both in respect of goods which were to be

moved from outside the State and for the erection portion. Moreover, the movement of goods from Mumbai to Tamil Nadu was pursuant to the contract of sale. The fact that the insurance coverage was borne by the taxpayers could not dilute the fact that sale is an inter-state sale. On the basis of the foregoing, the matter was decided in favour of the taxpayers.

State of Tamil Nadu v Mahindra & Mahindra Ltd [(2013) 58 VST 483 (Mad)]

IV. CUSTOMS

High Court Decisions

The recovery process contemplated under Section 142(1) of the Customs Act, 1962 ("Customs Act") can only be pursued against the person from whom government dues are recoverable under the Customs Act

A show cause notice was issued under Section 124 of the Customs Act to several entities and persons viz. Nisum Exports and Finance Private Limited; Nisum Global Limited; Mehul Exports; Nirmal Agarwal and Mayur Vakharia. The underlying issue for issuance of show cause notice was fraudulent claim of duty drawback. The petitioner and her spouse were directors of Nisum Global Limited and Nisum Exports and Finance Private Limited whereas Mehul Exports was a proprietary concern of the petitioner's spouse. Adjudicating authority confirmed demand against Nisum Exports and Finance Private Limited, Nisum Global Limited and against Mehul Exports and also imposed fine in lieu of confiscation and penalty. No order of adjudication was passed against the petitioner since no show cause notice was issued against the petitioner.

Subsequently, a notice of demand was issued to the petitioner and her husband for recovery of the confirmed demand as petitioner and her husband were directors of two companies and her husband was proprietor of Mehul Exports. The petitioner challenged the notice in the present writ petition as demand without jurisdiction.

The property which was attached was a joint ownership property in the joint names of the petitioner/ her spouse and one third person. The property comprising of one flat was stated to have been divided into three portions each of which was registered individually and separately in the names of the aforesaid three persons. The Revenue Authorities attached the property which was registered in the name of the petitioner and her spouse.

The petitioner contended that Section 142(1)(c)(ii) of the Customs Act provided the mode of recovery of sums due to Government where any sum payable by any person under the Customs Act is not paid. It was submitted that the expression "such person" used in Section 142(1)(c)(i) must refer to and mean the person by whom any sum is payable.

The Bombay HC observed that Section 142 of the Customs Act read along with the Customs (Attachment of Property of Defaulters for Recovery of Government Dues) Rules 1995 purported to initiate the recovery process against the defaulter viz.

the person from whom government dues are recoverable under the Customs Act. The HC observed that there is no provision under the Customs Act akin to Section 179 of the Income Tax Act, 1971 or Section 18 of the CST Act where dues of a private limited company can be recovered from the directors. Thus, HC held that dues of private limited companies cannot be recovered from its directors until and unless corporate veil is lifted and in the present case no such exercise was carried out because neither was the show cause notice issued to the petitioner nor was adjudication order passed against her. Hence, the action of initiating recovery proceedings against the petitioner and consequential attachment is wholly without the authority of law.

Suman N Agarwal v UOI [(2013) 38 STT 598 (Bom)]

Tribunal Decisions

Date of payment of tax to be excluded for computing the period of limitation

The taxpayer had filed a refund claim in respect of the duty paid on July 2, 2009 under Notification No 102/2007 – Customs dated September 14, 2007. The refund was rejected by the Revenue Authorities on the ground that the refund claim was time barred. The taxpayer filed an appeal against the order rejecting the refund claim with the Commissioner of Customs. The Commissioner allowed the claim of the taxpayer in view of section 9 of the General Clauses Act, 1897 ("GC Act"). The Revenue Authorities in the appeal to the Tribunal contended that the Commissioner could not rely on the provisions of the GC Act for the refund under Notification No 102/2007-Customs dated September 14, 2007.

The Tribunal in the present case relying on section 9 of the GC Act, the day on which the event takes place has to be excluded. Thus, in the present situation the date on which the duty was paid by the taxpayer has to be excluded and thus the refund claim is not time barred.

Commissioner of Customs v S S Steels [2013 (289) ELT 350 (Tribunal – Ahmadabad)]

Notification & Circulars

Circular clarifying the scope and ambit of the recent amendments for the implementation of the Post Export EPCG duty credit scrip(s) Scheme under the Foreign Trade Policy.

The Customs authorities have issued a detailed clarificatory circular clarifying the scope and ambit of the recent amendments carried out in various customs notifications to implement the Post Export EPCG duty credit scrip(s) Scheme under the Foreign Trade Policy.

Customs Circular No 10/2013 dated March 6,2013

Import policy with respect to import of second hand goods.

The DGFT has issued a Notification and a Public Notice vide which it has clarified the import policy vis a vis import of second hand goods.

DGFT Notification No 35(RE-2012)/2009-2014 dated February 28, 2013 read with DGFT Public Notice No 50(RE 2012)/2009-2014 dated 28/02/2013

V. CENTRAL EXCISE

High Court Decisions

Activity involving fabrication of steel angles, channels, etc in relation to a structure embedded in earth cannot be regarded as "manufacture" and therefore, no excise duty can be demanded on such fabrication activity

The taxpayer, a GOI undertaking registered under the Companies Act, 1956, was awarded a fabrication and erection work by Punjab State Electricity Board for which tenders were invited by the taxpayer. The steel structures fabrication job was transferred to an independent contractor who was provided with steel trusses, angles, channels and other raw material by the taxpayer. The entire fabrication task was executed at site by the contractor under the taxpayer's supervision.

A Show Cause Notice ("SCN") was issued demanding excise duty on the allegation that the fabrication activity undertaken by the taxpayer amounted to manufacture and excise duty was leviable thereon. The taxpayer filed a writ petition against the SCN.

The HC observed that the fabrication work was being done by the independent contractor under the supervision of the taxpayer on job-charge basis. It was further observed that the job work undertaken by the contractor did not fit in the term "manufacture" as the word "manufacture" was normally associated with movables (i.e. articles and goods) and was never connected with the fabrication of a structure embedded in earth. After noting the conditional exemption granted to goods fabricated at the site of construction for use in construction work from the payment of excise duty, the HC decided the matter in favour of the taxpayer.

Bharat Heavy Electricals Ltd v Collector of Central Excise [2013 (289) ELT 293 (P & H)]

CENVAT credit of excise duty paid is not available where seller has actually not paid/credited any excise duty to government and buyer has not exercised 'reasonable steps' under erstwhile Rule 7(2) of CENVAT Credit Rules, 2002 ("Credit Rules, 2002") to ensure payment of excise duty by the seller

The taxpayers were the merchant exporters who have been purchasing unprocessed fabrics from the open market which were processed through independent textile processing units for exports. During the period June 2004 to April 2005 the taxpayer purchased

unprocessed fabrics from various weavers who were registered as weavers/manufacturers with the Central Excise Department. Payment against these purchases was made by account payee cheque by the taxpayer. The credit of the excise duty paid by such weavers as shown on the Excise Invoice was passed on by the taxpayer to the independent textiles processors. The independent textile processors processed such fabrics, paid excise duties on the processed fabrics by utilizing CENVAT Credit of excise duty on the basis of invoice of weavers and returned the processed fabrics to the taxpayer under their Excise Invoice. The taxpayer exported all such processed fabric to the foreign countries under the claim of rebate of duties paid thereon ("Rebate Claims").

The above Rebate Claims were rejected by the Assistant Commissioner of the Central Excise ("AC") on the ground that weavers from whom unprocessed fabrics were procured were fake and non-existent as declared by the Alert Circulars issued by the Surat Central Excise Commissioner. Payment of excise duties on the processed and finished goods out of such CENVAT Credit was not actual payment of duties for allowing rebate thereof. Being dissatisfied with the above findings, the taxpayer preferred an appeal before the Commissioner (Appeal) which upheld the findings of the AC. Being dissatisfied, the taxpayer preferred a Revision before the Joint Secretary, Government of India who affirmed the above order. Again being dissatisfied the taxpayer went to HC

HC accepted the contention of the Revenue Authorities that in order to get the CENVAT credit, Rule 7(2) of Credit Rules, 2002 cast a further duty upon the taxpayer to take all reasonable steps to ensure that excise duty has been actually paid by the seller. In view of HC, the taxpayer has not taken those 'reasonable steps' to ensure that duty has been actually paid. HC relied upon the case of Sheela Dyeing and Printing Mills Pvt Ltd v CCE, Surat-1 [2008 (232) ELT 408] and held that credit is not available and dismissed the applications.

Multiple Exports Private Limited and Ors v Union of India – Through Joint Secretary and Ors [2013 (38) STT 522 (Guj)]

The manufacturer was not required to reverse the credit on inputs used in the manufacturing of final product on which duty has been remitted for the period prior to the insertion of Rule 3(5C)

The taxpayers were engaged in the manufacture of drugs. They procured necessary 'input' required to manufacture drugs and claim CENVAT Credit of the excise duty. During the period prior to September 7, 2007 certain drugs manufactured by the taxpayer were found unfit for human consumption and the same were destroyed by the taxpayer. On such drugs the remission of excise duty (i.e. waiver of duty) was granted by the excise authorities.

With effect from September 7, 2007 a new Rule 3(5C) was introduced in CENVAT Credit Rules which lays down that the CENVAT credit taken on the inputs used in the manufacture of finished goods shall be

reversed where on such manufactured goods, the payment of duty is ordered to be remitted under Rule 21 of the Central Excise Rules, 2002.

A dispute arose and reached the HC on the issue whether the introduction of Rule 3(5C) is clarificatory in nature and would have a retrospective effect or the same is prospective in nature.

The HC observed that prior to introduction of sub-rule (5C) to Rule 3 there was no provision, which provided for reversal of the credit by the excise authorities where it has been lawfully taken by a manufacturer. Therefore, the credit accrued at the moment the input was used in manufacturing of a final product which was neither exempt from duty nor carried nil rate of duty. The moment sub-rule (5C) was introduced in Rule 3, the Legislature made its intention clear that from the date of coming into force of the said amended rule, there will be reversal of the credit in future if excise duty on the manufactured goods is remitted.

The HC also relied on the judgment of SC in case of Delta Engineers v State of Goa [2009 (12) SCC 110] laying down the principles to be followed in determining whether the statutory amendment is retrospective or clarificatory in nature. The HC observed that amendment has been effected from a particular date and at the same time, prior to such amendment, there was no provision of reversal in the Rules dealing with the circumstances stated therein. Thus, the amendment has created a new right in favour of the Revenue Authorities and in such circumstances, the amendment must be held to be prospective.

Commissioner of Central Excise & Customs v Intas Pharmaceuticals Ltd [2013 (289) ELT 256 (Guj])

Tribunal Decisions

'Bagasse' generated from crushing of sugarcanes is not a manufactured good but a residue/waste which cannot be regarded as a final product exempt from levy of excise duty, therefore credit reversal envisaged under Rule 6 of the CENVAT Credit Rules,2004 (“CENVAT Credit Rules”) doesn’t get triggered

The taxpayers were engaged in the manufacture of sugar from sugarcane and during this manufacturing process, molasses, industrial alcohol and ‘bagasse’ also got generated. Excise duty was being paid on clearances of sugar, molasses and industrial alcohol. 'Bagasse' emerged as a waste/ residue of sugarcane during this entire process and it was mainly used as fuel in the factory for manufacture of final products and the surplus, if any, was transferred by the taxpayers to their sister concern.

The tax authorities demanded that proportionate input credits be reversed in terms of Rule 6 of the CENVAT Credit Rules on the ground that ‘bagasse’ was a manufactured final product and not a refuge, dirt or porridge as it possessed the characteristics of durability, exchangeability and economic value. The taxpayers countered that the aforementioned proceedings are baseless as ‘bagasse’ was

not a manufactured final product as held by the SC and credit reversal provisions apply only when both dutiable and exempted final products were manufactured, which was not a case in the present situation.

The matter reached the Tribunal who took note of the decision given in the case of CCE v Shakumbhari Sugar and Allied Industries Limited wherein it was held that 'bagasse' may find an entry in Schedule to the Central Excise Tariff 1985, but it did not become a final product merely on the basis of such entry. The Tribunal further held that such 'bagasse' was nothing but a waste obtained during the manufacture of sugar and such waste cannot be regarded as a final product exempt from excise duty. Based on the above observations, the Tribunal ruled that provisions of Rule 6 did not get trigger in the present case and the matter was decided in the favour of the taxpayers.

Balrampur Chini Mills Ltd v UOI [2013 (38) STT 635]

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