May 2014

TAX UPDATES

(containing recent case laws, notifications, circulars)

Prepared in association with

Foreword

I am pleased to enclose the May 2014 issue of FICCI's Tax Updates**.** This contains recent case laws, circulars and notifications pertaining to direct and indirect taxes.

FICCI was invited for consultations with the Tax Administration Reform Commission (TARC) headed by Dr. Parthasarathi Shome, on 15th April, 2014 to discuss measures aimed at improving the Indian tax administration. The issues discussed included, inter-alia, organizational structure of the tax department, its vigilance administration, business processes of tax administration, mechanism of dispute resolution and taxpayer services etc. On behalf of FICCI, Mr. Dinesh Kanabar, and Mr. Rajeev Dimri, Chairman and Co-Chairman respectively of the Taxation Committee made a presentation before the Commission highlighting various issues affecting the trade and industry in the existing tax administration system. The FICCI delegation was led by Dr Arbind Prasad, Director General and comprised of tax experts and industry representatives.

Co-Chairman of the FICCI's Taxation Committee, Mr. Rajeev Dimri, along with the Adviser – Taxation, met Dr. Justice Arijit Pasayat, Chairman, Authority for Advance Rulings (AAR), a body set up to pronounce binding rulings on tax matters, on 3rd April, 2014, to discuss proposals for enhancing the scope of the Authority. A note was handed over to the Chairman suggesting recommendations to the Government for amendment of the provisions of law for making the AAR forum more effective.

As required by the Ministry of Finance, FICCI has submitted a soft copy of its Pre-Budget Memorandum for the General Budget 2014-15 on 5th May, 2014. The document has been prepared on the basis of the suggestions and recommendations received from its members. FICCI would also be submitting the printed copies of the memorandum to the officials of the Finance Ministry.

On the taxation regime, the Tribunal has held that activity of purchase of old cars for re-sale after overhauling activities, without registration in own name is a sale and not a service. The taxpayer was in the business of purchase and sale of used cars. The taxpayer purchased vehicles, without registering the same in his name, carried out repair and overhauling activities on the same before selling the same

to customers. Each vehicle was directly registered in the name of the customer. The CESTAT held that as per Sale of Goods Act, 1930, registration is irrelevant for transfer of property since in case of vehicles, transfer could take place even without transferring the registration. CESTAT held that the activity was a sale and that the margin was not liable towards service tax.

As per information made available, tax authorities in India have signed the first batch of Advance Pricing Agreements (APAs) with 5 Multinational Corporations (MNCs) fixing their tax liability in cross-border transactions over the APA term. These agreements cover a range of international transactions, including interest payments, corporate guarantees, non-binding investment advisory services and contract manufacturing. These companies are engaged indifferent industrial sectors including pharmaceuticals, telecom, exploration and financial services. It is a good development and it minimises the uncertainty on tax liabilities.

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

Provisions of Section 14A not applicable to Chapter VI-A deductions

The taxpayer was a cooperative society engaged in procuring, processing and manufacturing milk and milk products and supplies them. During the assessment proceedings, the AO observed that the taxpayer had claimed deduction under Section 80P(2)(d) of the Act on account of interest receipts amounting to INR22.8 million and dividend receipts amounting to INR8.244 million. The taxpayer had also debited interest expense of INR76.4 million. The AO disallowed the claim for interest expense to the extent of INR1.821 million, under Section 14A of the Act. The CIT(A) allowed the taxpayer's claim and deleted the addition of INR 1.821 million made by the AO. The Tribunal also affirmed the CIT(A)'s view and dismissed the tax department's appeal.

The High Court observed that deductions provided under Chapter VI-A could not be compared with the exempted income, which did not form part of the total income as provided in Sections 10 to 13A under Chapter III of the Act. The High Court further observed that Section 14A was introduced retrospectively with effect from April 1, 1962 vide Finance Act, 2001 to prevent any expenditure in relation to exempted income from being allowed as a deduction. However, there was a clear absence of any reference to the income on which deduction under Chapter VI-A was provided. Relying on the Delhi High Court's decision in the case of CIT v. Kribhco [TS-522-HC-2012(DEL)] the High Court held that the provisions of Section 14A would not apply to Chapter VI-A deductions.

CIT v. Banaskantha District Co. Op. Milk Producers Union Ltd. (Tax Appeal No. 271 of 2014) (Guj)

Tribunal Decisions

Disallowance under Section 40(a)(ia) of the Act would also cover amounts paid at any time during the year

During the original assessment, the AO had disallowed payment of INR 3.314 million as AMC paid to Wipro G.E. Medical Services (Wipro) on the grounds of non-deduction of tax under Section 40(a)(ia) of the Act. The matter travelled up to the Tribunal, which set aside the issue, remitting the matter to the AO's file. The AO was directed to decide whether the contract between the taxpayer and Wipro was a work contract or whether it was a service contract because a service / work contract agreement was not furnished before the Tribunal. The maintenance service agreement was filed before the AO with the contention that it was a mere service contract to which Section 194C was not attracted. The AO rejected the contentions and disallowed the payment made to Wipro under Section 40(a)(ia) of the Act. The CIT(A), solely relying on the special bench decision in Merilyn Shipping

& Transports [2012] 136 ITD 23 Visakhapatnam) (SB) ruled in the favour of the taxpayer and deleted the addition made by AO.

Aggrieved by the order of CIT(A), the revenue filed an appeal before Lucknow Tribunal. Before the Tribunal the taxpayer relied on the decision of Allahabad High Court in the case of Vector Shipping Services P. Ltd [2013] 218 Taxman 93 (All) and argued that the Tribunal was bound to follow the decision of the jurisdictional High Court. The Tribunal observed that the jurisdictional High Court in Vector Shipping had only made a simple passing reference to the decision of Special Bench in the case of Merilyn Shipping and hence it could not be said that the ratio laid down by Merilyn Shipping had been approved by the jurisdictional High Court. Further, the Tribunal, relying on the decision of Gujarat High Court in the case of CIT v. Sikandarkhan N. Tunvar [2013] 357 ITR 312 (Guj) and the decision of Calcutta High Court in the case of CIT v. Crescent Exports [2013] 262 CTR 525, held that the disallowance under Section 40(a)(ia) also applied to amounts paid at any time during the year. The Tribunal also referred to the circular No. 10/DV/2013 dated 16 December 2013.

DCIT v. Ama Medical & Diagnostic Centre (ITA No.119/LKW/2013)

Second proviso to Section 40(a)(ia), which provides relief to payer when recipient has paid tax, operates prospectively from 1 April 2013 and not retrospectively

The taxpayer was a functional industrial estate to create basic infrastructure facility and let them out to sea food exporters. The taxpayer was promoted by the Sea Food Export Association of India, Sea Food Exporters and Marine Products Infrastructure Development Co-operation (P) Ltd (MIDCON), a subsidiary of Marine Product Export Development Authority (MPEDA) to promote sea food processing units. The taxpayer entered into an agreement with the Sea Food Export Association of India on 3 May 2006 whereby the taxpayer had to pay 20 percent of gross revenue to them as a royalty. During AY 2008-09, the taxpayer had claimed a deduction of INR6.2 million of the royalty paid to the Sea Food Export Association; however, it had not deducted tax at source from the payment. It was claimed that the recipient i.e. Sea Food Export Association of India, had, however, paid tax in respect of the amount received from the taxpayer and therefore the amount could not be disallowed under Section 40(a)(ia) of the Act. Referring to second proviso to Section 40(a)(ia), it was submitted that when the taxpayer was not deemed to be an 'assessee in default' under proviso to Section 201(1), it should be deemed that the taxpayer had deducted and paid the tax on the sum on the date of furnishing of return of income by the recipient of the amount. Further, the taxpayer argued that, though the provision came into effect from 1 April 2013, it would operate retrospectively; therefore, the proviso would be applicable for the subject AY 2008-09 as well.

The Cochin Tribunal observed that the Kerala High Court, in the case of Prudential Logistics And Transports v. ITO (ITA No.1 of

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2014 dated 13 January 2014), while examining the provisions in second proviso to Section 40(a)(ia) of the Act has held that the benefits conferred by proviso to Section 40(a)(ia) was not available for AY 2007-08. Relying on the abovementioned High Court decision the Tribunal held that the second proviso to Sec 40(a)(ia), which provides relief to payer when recipient has paid tax operates prospectively from 1 April 2013 and not retrospectively and hence it cannot be made applicable to AY 2008-2009.

Sea Food Park India Limited v. DCIT (ITA No. 762/Coch/2013)

Section 80HHC deduction claim cannot be made ignoring deduction already claimed and allowed under Section 80IA in view of Section 80IA(9) of the Act

The taxpayer filed its return of income for AY 2001-02 claiming deduction of Rs.16.54 lakhs under Section 80IA and of Rs.52.75 lakhs under Section 80HHC of the Act, thereby declaring total income nil. The AO held that by introduction of sub-section (9) to Section 80IA, double deductions had been barred by statute. According to him, the amount of deduction claimed and allowed under Section 80IA had to be reduced from profit of industrial undertaking for the purpose deduction under Section 80HHC in the present case. Accordingly, the AO ordered for re-computation of Section 80HHC deduction. The CIT(A) confirmed the Order of the AO. The Tribunal, relying on the decision of Bangalore Tribunal in the case of Irfan Sheriff v. CIT [2006] 7 SOT 57 (Bang), ruled in favour of the taxpayer.

The Gujarat High Court noted that Section 80IA(9) could be divided into two clear parts. The first part pertained to non-allowability of deductions under any other provision contained in Part-C of Chapter VI to the extent of profits and gains of an enterprise or undertaking with respect to which deduction under section 80IA was claimed and allowed, and the second part provided that, in any case, such deduction should not exceed the profits and gains of eligible business of an undertaking or enterprise. After referring to the provisions of Section 80IA(9), the High Court held that a deduction under Section 80HHC could not be made ignoring deduction already claimed and allowed under Section 80IA . Restricting its application only to limiting maximum permissible deduction under Section 80HHC to profits and gains of eligible business would render sub-section (9) of Section 80IA redundant, purposeless and otiose. It further held that merely because Section 80IA(9) does not contain non-obstante clause does not mean that it can have no effect on Section 80HHC deduction. It also held that the CBDT Circular No. 772 does not restrict the scope of Section 80IA(9), it only prevents claims of double deductions. Thus the High Court upheld the view already taken by Delhi High Court in the case of Great Eastern Exports v. CIT [2011] 332 ITR 14 (Del), Kerala High Court in the case of Olam Exports (India) Ltd. v. CIT [2011] 332 ITR 40 (Ker) and Punjab & Haryana High Court in the case of Broadway Overseas Ltd. v. CIT [2014] 41 taxmann.com 75 (P&H) and rejected the contrary decision of Bombay High Court in the case of Associated Capsules P. Ltd. v. DCIT [2011] 332 ITR 42 (Bom) and Karnataka High Court in the case of CIT v.

Millipore India P. Ltd. [2012] 341 ITR 219 (Kar).

CIT v. Atul Intermediates (Tax Appeal No. 508 of 2007)

Notifications / Circulars / Press releases

CBDT lays down Standard Operating Procedure for verification / correction of tax-demand

The CBDT has issued instructions to AOs laying down Standard Operating Procedure (SOP) for verification and correction of tax demands. By virtue of this SOP, taxpayers can get their outstanding tax demand reduced/deleted by applying for rectification along with documentary evidence of tax-demand already paid. In the case of individuals/HUFs, the SOP makes special provision for dealing with tax demands up to INR1 lakh. The taxpayers committing mistakes while furnishing tax credit claims in return of income, may file rectification request correcting their claims.

Press note No.402/92/200

India signs its first set of APA in one year since introduction of the APA program

The APA program was introduced in India by the Finance Act, 2012 as a method of proactive Dispute Resolution and took off operationally on 1 July 2012. Although the introduction of APA was perceived as a positive step taken by the Government of India as a measure to curb the unprecedented litigation which had greatly affected investor sentiment, taxpayers were apprehensive of the practical challenges associated therewith. Amidst the prevailing uncertainty, Indian taxpayers filed over 140 APA applications in 2013 with KPMG India handling over 40 of these applications.

India has signed its first batch of APAs with 5 Multinational Corporations (MNCs) fixing their tax liability in cross-border transactions over the APA term. Per press reports*, these agreements cover a range of international transactions, including interest payments, corporate guarantees, non-binding investment advisory services and contract manufacturing. These companies are engaged indifferent industrial sectors including pharmaceuticals, telecom, exploration and financial services. The Central Board of Direct Taxes has been able to conclude the first set of APAs within one year, against the internationally accepted norm of at least two years.

The APA program is an important step towards providing certainty to taxpayers. Generally, an APA is valid upto 5 years and the Income-tax Act, provides for renewal, revision or cancellation of an APA under certain circumstances. During the 5-year period, the taxpayer is required to file an annual report to confirm compliance with the terms of the APA. The tax authorities shall accordingly conduct a limited audit of the taxpayer to ensure compliance with the terms of the APA.

The Indian APA program has been introduced and designed to bring in positive changes in the Indian TP litigation system which was being perceived internationally

as highly aggressive. The highlight of the APA regime is the ethical and fair approach of the Indian APA authority. Since the APA has the potential to reduce transfer pricing litigation and aid international transactions, the investor confidence would be regained and the Indian economy would be benefitted.

Source – Economic Times, Newspaper publication, dated 1 April 2014

Employees' Provident Fund Organisation issues new circulars to secure proper compliance in respect of International Workers

Recently, the Employees' Provident Fund Organisation (EPFO) has issued two circulars for securing proper compliance in respect of International Workers.

The two circulars issued by EPFO pertain to:

- Reconciliation of International Workers data with the office of Foreigners Regional Registration Office (FRRO).
- Introduction of a revised application form for obtaining a 'Certificate of Coverage' (COC) under Social Security Agreements (SSA) with various countries.

These circulars are a continuation of EPFO's effort to tighten its enforcement machinery and to identify the Indian employees who qualify as IWs and to monitor non-compliance in respect of expatriate employees under the EPF Act.

The changes in the COC application form will help the Provident Fund authorities in identifying Indian employees who will be considered as IWs. Since the employers have to identify whether an outbound employee will be considered an Indian worker or an International worker, therefore companies will need to exercise greater vigilance on their international assignments to ensure IWs meet the necessary compliances under the EPF Act.

Source: www.epfindia.com

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II. SERVICE TAX

High Court Decisions

Newly introduced imprisonment rules to apply to continuing offences- where the first act of offence was committed prior to the introduction of the new rules

The taxpayer had collected service tax from customers amounting to INR 2.59 crores from the period 2010-2011 till 2013-2014 but had deposited only a sum of INR 15 lakhs to the Revenue Authorities. The liability to pay balance sum due was not disputed by the taxpayer. The taxpayer had contended that there was no authority for the Revenue Authorities to deny bail since relevant provisions had come into effect only from May 10, 2013 and that the instant offence was pertaining to the period prior to May 10, 2013. The taxpayer had contended that the same is bailable relying on the judgment of the Kolkata HC in Sudip Das vs UOI [2014 TIOL 314 HC KOL], where it was held that though the offence was a continuing offence, when the offense was triggered, the bailing provisions were applicable. The Revenue Authorities on the other hand contended that the arrest is not bailable.

Aggrieved by the Revenue Authorities' contention, the taxpayer preferred an appeal before the Mumbai HC. The HC dismissed the appeal, refusing to accept the reliance placed on Sudip Das (supra), held that, since the offence is a continuing offence and that the amounts outstanding were far beyond INR 50 lakhs (the threshold limit), which were still outstanding at the time of arrest, the taxpayer cannot be released on bail. The taxpayer, therefore, was not granted bail on account of the continuing nature of the offence committed.

Superintendent (AE) Service Tax v Kandrarameshbabu Naidu [2014 TIOL 307 HC Mum]

Where production of additional evidences is permitted, raising of additional grounds must also be made sustainable based on relevant facts already on record

The taxpayer is engaged in the business of providing security services. Show cause notices were issued for recovery of service tax, interest and penalty for short payment of service tax. The Revenue Authorities confirmed the levy, which was appealed against by the tax payer before the Commissioner (Appeals) by raising additional grounds. The Commissioner (Appeals) did not consider the additional grounds and rejected the appeal filed by the taxpayer. The taxpayer challenged this decision before the CESTAT, which upheld the decision of the Commissioner (Appeals).

Aggrieved by the above, the taxpayer had filed an appeal before the Gujarat HC. The HC held that subject to rule 5 of the Central Excise (Appeals) Rules, 2001, ("CE Appeal Rules") Commissioner (Appeals) is empowered with sufficient discretion to entertain additional evidence. It was held that if entertaining additional evidence is

permissible, raising of additional legal grounds on the basis of relevant facts already on record is also permissible. The appeal of the taxpayer was therefore, allowed and the Commissioner (Appeals) was directed to reconsider the matter to examine all grounds raised.

Commissioner of Central Excise and Service Tax v Utkarsh Corporate Services [2014 (34) STR 35 (Guj)]

Tribunal Decisions

Supply of manpower to unrelated party is liable to service tax even if the supply is made at a loss, and even if the taxpayer is not usually engaged in such business

The taxpayer had entered into an agreement with Bajaj Organic Limited ("Bajaj") to lease out plant and machinery, and to supply technical and other staff to the latter. The salary of each staff was mutually agreed upon by the two parties, which was to be reimbursed by Bajaj to the taxpayer. The Revenue Authorities vide their order, imposed service tax, interest and penalties under section 76 and 78 of the Act on the taxpayer for supply of manpower to Bajaj.

Aggrieved by the order, the taxpayer preferred an appeal before the Mumbai CESTAT. The taxpayer argued that it had received only 75 percent of the amounts paid as salaries to its employees from Bajaj. The taxpayer also contended that it was not in the business of supply of manpower. On these two grounds the taxpayer submitted that it was not providing the alleged manpower supply services. The taxpayer relied on judicial precedents in case of *Arvind Mills Limited v Commissioner of Service Tax [2014 TIOL 441 HC AHM ST], Paramount Communication Limited v Commissioner of Central Excise [2013 TIOL 37 CESTAT DEL], and Volkswagen India Pvt Limited v Commissioner of Central Excise [2013 TIOL 1640 CESTAT MUM]*, where deputation of staff was held not to be supply of manpower.

The CESTAT however, held that the law does not envisage that services must always be rendered on a profit basis. Besides, the CESTAT also held that the taxpayer need not be in the business of supply of manpower services to various clients to be liable to pay service tax. The CESTAT also dismissed reliance on the judicial precedents specified by the taxpayer as they were all pertaining to deputation of staff within the group companies and that in the instant case the supply of manpower was to an unrelated entity. Thus, the CESTAT held that the taxpayer's activity amounted to supply of manpower and would be liable to service tax along with interest and penalty under section 76 of the Act. However, the CESTAT held that penalty under section 78 of the Act would not be leviable as there was no suppression or misstatement of facts, or collusion or fraud on the part of the taxpayer.

Commissioner of Central Excise and Customs vs Sanjivani (Takli) Sahakari Sakhar Karkhana Limited [2014 TIOL 355 CESTAT Mum]

Service received by an overseas branch of an Indian company from an overseas service provider, not liable to service tax under reverse charge

The taxpayer had branches located overseas which undertook software development activities that were outsourced to overseas sub-contractors. The sub-contractors located overseas provided services to the overseas branch for which payments were made by the taxpayer through its Exchange Earners' Foreign Currency ("EEFC") account in foreign currency. The Revenue Authorities vide their order, contended that the taxpayer must pay service tax on the same on reverse charge basis, arguing that in substance, it was the taxpayer who was receiving the said service as they render services abroad through their branches located overseas and also make payments to the overseas sub-contractor through their EEFC account in foreign currency.

Aggrieved by the order, the taxpayer preferred an appeal before the Bangalore CESTAT. The CESTAT relied on the decision of the Mumbai CESTAT in case of KPIT Cummins Infosystems Limited vs CCE [2011 (22) STR 215] where it was held that the provisions of section 66A of the Finance Act, 1994 ("the Act") are attracted only when the service is received in India by a person situated in India even if such person may have permanent establishments abroad. Placing reliance on this decision, the CESTAT held that for the purposes of applicability of section 66A of the Act, a branch office has to be treated as a separate person. The CESTAT held that since the contract was entered into between the overseas branch and overseas sub-contractor, and since the invoice was also raised on the overseas branch, it was the overseas branch who is the receiver of services. Thus, demand order was set aside and appeal of taxpayer was allowed.

Commissioner of Service Tax v Infosys Limited [2014 TIOL 409 CESTAT Bangalore]

In respect of Works Contract, valuation can be made as per rule 2A of the Service Tax (Determination of Value) Rules, 2006, only if the value is not ascertainable as per the provisions of section 67 of the Act

The taxpayer was discharging service tax for works contract services on the entire value of the contract and was availing CENVAT Credit of duty paid on inputs. The Revenue Authorities contended that the taxpayer did not have an option to pay service tax on the full amount (and thereby to avail credit on inputs) and should have paid tax as per the provisions of rule 2A of the Service Tax (Determination of Value) Rules, 2006 ("Service Tax Valuation Rules"). Therefore, the Revenue Authorities, vide an order, raised a demand to the extent of CENVAT Credit availed, with interest and penalty.

Aggrieved by the order, the taxpayer preferred an appeal before the Ahmedabad CESTAT. The CESTAT held that as per section 67 of the Act, service tax has to be discharged on the gross amount charged by the service provider. Only where the value is not ascertainable as per section 67(1), or section 67(2) or section 67(3) of the Act,

recourse can be taken for determination of value as per the Valuation Rules. Thus, it was held, allowing the taxpayer's appeal that valuation must be as per section 67 of the Act, and not as per rule 2A of the Service Tax Valuation Rules

Commissioner of Central Excise and Service Tax v SV Jiwani [Appeal No E / 464 of 2011 CESTAT Ahmedabad]

Activity of purchase of old cars for re-sale after overhauling activities, without registration in own name is a sale and not a service

The taxpayer was in the business of purchase and sale of used cars. For the period in dispute, the taxpayer purchased vehicles, without registering the same in his name, carried out repair and overhauling activities on the same before selling the same to customers. Each vehicle was directly registered in the name of the customer. The taxpayer had obtained registration for Value Added Tax ("VAT") and was paying VAT on sale price of the vehicles sold.

The Revenue Authorities contended that since the vehicle was not registered in the taxpayer's name before it was sold, the same did not amount to sale, but amounted to provision of business auxiliary service, and that the difference between the sale price and the purchase price was liable to service tax.

Aggrieved by the contention of the Revenue Authorities, the taxpayer preferred an appeal before the Bangalore CESTAT, wherein the claim of the taxpayer was allowed. The CESTAT held that as per Sale of Goods Act, 1930, registration is irrelevant for transfer of property since in case of vehicles, transfer could take place even without transferring the registration. Reliance in this regard was placed on the decision of Kerala HC in Premsankar KG vs Sunil Krishnan [AS No 506 of 2000] to contend that once a price is received and the property is handed over, sale is complete. Therefore, the CESTAT held that the activity was a sale and that the margin was not liable towards service tax.

Commissioner of Central Excise, Customs and Service Tax v Sai Service Station [Service Tax Appeal No 28543 of 2013 CESTAT Bangalore]

III. VAT/ CST

High Court Decision

Additional security / penalty / composition money collected to be accounted for adjustment against output tax liability

The taxpayer was engaged in the business of wholesale trade of coal and other minerals and procured coals from various coal miners and other traders in Meghalaya; while also sold the same to customers outside the state. The taxpayer was also a registered dealer under the Central Sales Tax Act, 1956 ("CST Act") and also under the Meghalaya Value Added Tax Act, 2003 ("MVAT Act"). The trucks were loaded manually and at times when the trucks were weighed at the check post where the

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weighbridges were available, actual weight was found to be in excess of the permissible limit. In such situations, additional security deposit was required to be made and earlier, the same was allowed to be adjusted against the tax payable by the taxpayer. The taxpayer was also required to deposit a sum of INR 122 as security deposit under section 7(3E) of the CST Act. The Revenue Authorities through a letter cancelled the right to adjust the additional security payable against the tax liability of the taxpayer. The taxpayer contended that the said letter deprived the taxpayer to adjust the additional security and thus resulted in double taxation of the goods as this additional amount was left unaccounted.

The Revenue Authorities contended that transportation of excess coal inter-state was a punishable offence under the MVAT Act and as per the CST Act, the Revenue Authorities were allowed to assess / re-assess / collect and enforce the payment of tax. Thus the Revenue Authorities were not in contravention of any law in force.

The taxpayer preferred a writ before the Meghalaya HC which allowed the writ. The HC reasoned that taxpayer was made to pay the tax and penalty thereon as per the assessment finally made. In light of this, if the additional security was not adjustable, the same was liable to refunded or carried forward. Further, if the taxpayer was made to pay the entire tax and penalty separately without adjustment against the final tax payable, the same was refundable under section 9(2) of the CST Act and section 49 of the MVAT Act. Accordingly, the writ of the taxpayer was allowed.

Megha Trade Links v State of Meghalaya [2014 VIL 75 (Meg)]

Failure to establish the bona fide of the selling dealer to result in disentitlement of input tax credit

The taxpayer, a registered dealer under the CST Act and Karnataka Value Added Tax Act, 2003 (“KVAT Act”) was engaged in the business of trading edible oils, along with packing and marketing of soyabean and palmolein oil. During the course of business, the taxpayer purchased oil from both – dealers located within Karnataka and those located outside. The taxpayer filed returns for the period from April 2005 to March 2006 and also availed – input tax credit in respect of purchase of oil, rebate on purchase of capital goods and claimed deduction of input tax in respect of capital goods.

An audit was conducted at the premises of the taxpayer and it was found that one of the dealers from whom the taxpayer had purchased the oil was not a registered dealer. It was also found that in respect of certain capital goods on which the taxpayer had claimed input tax were not duly recorded in the returns filed. On these grounds, the claims of input tax credit were denied.

The taxpayer contended that it had sufficiently complied with the provisions of the KVAT Act as it made every effort at its disposal to prove that the transactions with the dealer were genuine and it was for the Revenue Authorities to verify the

genuineness of the TIN number of the dealer. When once the taxpayer had produced acceptable evidence to show that they had purchased the goods from the person who is liable to pay tax, it would be appropriate for the Revenue Authorities to accept the same in absence of any negative finding to that effect.

The matter reached before the Karnataka HC which held against the taxpayer. The HC reasoned that section 70 of the KVAT Act cast the burden on the taxpayer to prove that any transaction between the dealer and the taxpayer was genuine. However, the taxpayer did not discharge its obligation by producing a valid registration certificate of the dealer. Therefore, since the dealer was not registered with the department on the relevant date, the input tax credit claimed on purchases made from it could not be allowed. As regards deduction of input credit on purchase of capital goods, the HC held that since the purchases were not claimed in the returns filed and in the absence of relevant supporting records, the same could not be allowed. Accordingly, the appeal of the taxpayer was dismissed.

Suma Oil Agencies v Commissioner of Commercial Taxes [2014 VIL 76 (Kar)]

Harmonised System of Nomenclature and Central Excise Tariff heading descriptions to be adopted only if specifically provided for in the schedule

Typically, some VAT Acts across India specify Harmonised System of Nomenclature ("HSN") and Central Excise Tariff ("CET") heading descriptions in their schedules against the respective commodities for classification purposes.

The taxpayer was a manufacturer and dealer of various types of Industrial Cables and contended that the same were classifiable under Entry 40 to Schedule III of Delhi Value Added Tax Act, 2004 ("DVAT Act") which read as "Industrial Cables / High Voltage Cables, XLPE, Jelly Filled Cables, Optical Fibres". It is pertinent to note that there was no mention of the HSN / CET descriptions against this entry in the DVAT Act Schedule. Thus it was the contention of the taxpayer that VAT was payable only at 5 percent.

On the other hand, the Revenue Authorities relied on the circulars issued by them which indicated that the HSN / CET descriptions would prevail in classifying the goods manufactured and sold by the taxpayers. According to these circulars, the goods in question would fall within the residuary entry and would consequentially attract a rate of 12.5 percent and not 5 percent as contended by the taxpayer.

The matter came up for consideration before the Delhi HC which allowed the appeal of the taxpayer. It was held that in cases where there is clear guidance by the act to adopt HSN / CET, only in those cases such descriptions could be adopted. If no such guidance flowed from the act, it would not be logical to import HSN / CET references for the purposes of classification or interpretation. In the absence of a specific reference in the act; as in the

present case, the common parlance test would become applicable.

Further it was held that there cannot be any dispute that the Indian Electricity Act, 2003 and the Electricity Supply Act, 1948 along with the rules and regulations framed under these legislations would guide and regulate the technical aspects which traders such as the taxpayer would understand. Such being the case, the statutory determination under the abovementioned relevant legislations would come into effect. Therefore, the goods manufactured and sold by the taxpayer were correctly classifiable under Entry No 40 of Schedule III of the DVAT Act and not the residuary entry as envisaged by the circulars. Accordingly the appeal of the taxpayer was allowed

Anchor Electricals Private Limited v Commissioner of Sales Tax [2014 VIL 81 (Del)]

Mere non-affixation of name of the dealer on the product will not render the products unbranded

The taxpayer was a manufacturer and dealer of food preparations viz puffs. It prepared the puffs in its kitchen, froze them and transported the same to the premises of Food World Super Market ("Food World") where the puffs would be fried and served to customers as and when required. It was the contention of the taxpayer that its products were unbranded products and were sold to Food World which in turn would sell those to the consumer. It was further submitted by the taxpayer that except for the Food World, which bore a house name, there was no other material to show that the goods sold by it were branded under any name. Thus it was contended by the taxpayer that this sale of food items to Food World would be taxable at 8 percent; i.e. the rate applicable for unbranded products as opposed to 16 percent as proposed by the Revenue authorities applicable for branded products.

The matter reached before the Madras HC which held against the taxpayer. It was held that as per the Tamil Nadu General Sales Tax Act, 1959 ("TNGST Act") it was not necessary to sell goods under registered trade mark to qualify as sale of branded products. The HC observed that it was admitted by the taxpayer that what was sold by it had the unregistered mark of the taxpayer, which was a distinct one from what one would otherwise find on fried stuff sold on the streets without any name. Further, the taxpayer admitted that the puff prepared by them had its own dressing, ketchup, paper napkin etc. The taxpayer also admitted that the puffs supplied were with specially made sauce and had a distinct character of its own. In addition, the taxpayer stored the frozen curry puffs in their own freezer, the taxpayer had their own display cabinets and fryers at their outlets, their own staff did the process of frying their curry puffs in oil using their own fryer and served on their own paper plate, napkin along with the sauce. Thus it was amply clear that the product of the taxpayer had a unique identity.

The name of "Old Chang Kee" as stated on the bills issued by the taxpayer also played

a little role in buttressing the contention of the Revenue Authorities. The HC held that merely because the name of the taxpayer was not registered or imprinted on the product, it would not mean that the taxpayer was selling unbranded products. Accordingly, the claim of the taxpayer was dismissed and the food products were held to be taxed at 16 percent

Chang Foods Private Limited v The State of Tamil Nadu [2014 VIL 80 (Mad)]

Liability to pay tax under the Central Act must be judged by reference to that act and not by invoking provisions of the Local Act

The taxpayers were engaged in business as registered retail and wholesale dealers. A fire broke out in their premises which resulted in loss of all statutory forms obtained from buyers to whom the taxpayer had made sales under the CST Act and the Delhi Sales Tax Act, 1956 ("DST Act"). Consequently, the taxpayers made applications before the Commissioner of Sales Tax under rule 7(3) of the Delhi Sales Tax Rules, 1975 ("DST Rules") seeking an exemption from the production of the statutory declaration forms. The same was granted (in light of the fire accident) by the Revenue Authorities under the DST Act but was denied under the CST Act. The taxpayers claimed that since there are no Rules framed under the CST Act, the rules framed under the DST Act would become applicable as the enforcement / implementation of the Central Act has been entrusted with the local Revenue Authorities. It was the contention of the taxpayers that if the local Revenue Authorities had no difficulty in accepting the request from the taxpayers that their premises were gutted by fire and relieving them from the rigors of the local act; they should have no difficulty in accepting the same contention for Central Act as well.

The matter came up for consideration before the Delhi HC which held against the taxpayers. It held that while the substantive rights in the CST Act are to be located and interpreted within the main enactment, the procedural aspects such as assessment, collection of duty etc will be dictated by the DST Act and the Rules made thereunder. It further held that the exemption from the production of the statutory forms provided for by rule 7(3) of the DST Rules cannot come to the rescue of the taxpayers because the benefit under sections 5(3) and 5(4) of the CST Act are available only on the production of the statutory forms. Since the benefit conferred upon the taxpayers under these sections is a substantive right, the same cannot be diluted by grafting the provisions of the DST Act. Further, permitting the local Revenue Authorities to grant such relief would lie beyond the scope of the power and responsibility vested in them by virtue of section 9(2) of the CST Act. Accordingly, the claim of the taxpayers was rejected

Anand Traders and Tiles Emporium v Commissioner of Sales Tax [2014 VIL 78 (Del)]

Revenue Authorities to not invoke suo motu jurisdiction for a mere

change of opinion; relevant material and evidence needed to prove 'prejudice caused to the interest of Revenue'

The taxpayer, a manufacturer and seller of confectionary and biscuits across the country, was registered under the Assam General Sales Tax Act, 1993 ("AGST Act"). For the relevant period, the Revenue Authorities assessed the turnover of the taxpayer under the Act and the taxpayer paid the tax payable as per the assessment of the Revenue Authorities. Later, the Commissioner of Sales Tax ("the Commissioner") issued a notice to the taxpayers invoking the suo motu jurisdiction to reassess the decision of the Revenue Authorities. In substance, the Commissioner sought to reopen the assessment on two grounds – firstly, the taxpayer suppressed the sales figures and secondly the profit margin was shown less by it. The taxpayer contended that they applied a different marketing strategy for the North Eastern region considering its distance from the rest of the country and such market strategies were permissible and no flaw could be attributed to them.

The taxpayer preferred a writ before the Guwahati HC which allowed the same for the following reasons:

- There was no factual basis to substantiate or prove the existence of the aforesaid two grounds taken by the Commissioner.
- The Commissioner did not look into the detailed reply submitted by the taxpayer wherein they explained the marketing strategies deployed by them for sales in the North Eastern region.
- Further, such marketing strategies were permissible under law and no fault could be attached to them. Not perusing and considering the detailed reply was a legal error.
- The taxpayer had the right to decide its profit margin.
- No order of assessment could be said to erroneous only because in the opinion of the Commissioner, the taxpayer claimed a low profit margin.
- Commissioner in his suo motu jurisdiction could not substitute his opinion and act like an appellate court over the observations of the Revenue Authorities.

Thus it was held that the phrase to be satisfied to invoke suo motu jurisdiction is "prejudicial to the interest of the Revenue" and the same was not satisfied in the case of the taxpayer. Accordingly the writ was allowed

Parle Biscuits Limited v The State of Assam [2014 VIL 83 (Gau)]

Exemption certificates can be revoked by the Revenue by application of notification retrospectively

The taxpayer was engaged in the execution of works contracts awarded by the State as

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well as the Central Government. Notification no F12 (63) FD / Tax / 2005-80 dated August 11, 2006 exempted the taxpayer and other such contractors from the payment of tax leviable on the transfer of property upon payment of an exemption fee at 1.5 percent. The taxpayer made applications under the said notification and paid an exemption fee at the rate specified therein. Later on vide Notification no F12 (15) Finance / Tax / 12 /114 dated March 26, 2012, the Revenue Authorities revised the rate of exemption fee and increased it to 3 percent. The taxpayer argued that since the notification is prospective, it intends to cover the contracts awarded after April 1, 2012 or exemption certificates granted after April 1, 2012. The Revenue Authorities, on the other hand, contended that the taxpayers were required to pay fee at the rates specified in the notification (at 3 percent) and not at the rates prevailing prior to its issuance (at 1.5 percent). The Revenue Authorities also contended that it was incumbent upon the taxpayer to get the exemption certificate modified in compliance with the new notification.

The matter came up for consideration before the Rajasthan HC which held in favour of the Revenue Authorities. The HC held that the contention of the taxpayer that the administrative machinery could not amend the exemption certificate to accommodate the new tax rate of 3 percent could not be accepted. The administrative machinery had in its power to amend the exemption certificate so that the same complied with the mandate of new notification. It further held that the later notification mentions with clarity and precision that the notification is required to be applied prospectively and the Revenue Authorities were doing the same. This was held in light of the fact that only the subsequent payments (even for subsisting contracts) would be taxed at 3 percent. Accordingly, the HC allowed the claim of the Revenue Authorities.

Anurag Enterprises v State of Rajasthan [2014 VIL 82 (Raj)]

IV. CUSTOMS

High Court Decisions

No revenue deposit payable for import of exempted goods from related parties; for other imports, assessment by the Special Valuation Branch to be completed within 4 months, beyond which revenue deposit is not to be sought

The taxpayer was importing rough and polished diamonds from its related party abroad. The rough diamonds imported were exempted from customs duty under Notification 12 / 2012 – Customs dated March 17, 2013 (“the notification”). However, import of polished diamonds was not subject to exemption. The Revenue Authorities vide communication dated May 9, 2013, increased the Extra Duty Deposit, i.e. revenue deposit from 1 percent to 5 percent for import of rough and polished diamonds since it did not file the Special Valuation Branch (“SVB”) questionnaire within the prescribed period of 30 days.

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Aggrieved, the taxpayer preferred a writ petition before the Mumbai HC. The HC held that rough diamonds are exempt from the payment of customs duty at the time of import under the notification and ipso facto, the valuation of imports from related persons will not make any difference as the duty payable would continue to be nil. The court found no justification in demanding even a bond for the value of rough diamonds pending the final assessment order.

Further, in case of polished diamonds, where no exemption from customs duty is available at the time of import, the HC invoked Circular 11, 2001 – Customs dated February 23, 2001 (which provides for completion of assessment in (4) months from filing of reply) and held that (4) months limit had already expired after submission of complete reply, consequently, no revenue deposit should be sought from the importer on expiry of (4) months period.

Dimexon Diamonds Limited v Union of India & Others [Writ Petition No 8027 of 2013 Bombay High Court]

Tribunal Decisions

CESTAT cannot suo-moto reopen matters concluded on merits

The taxpayer had received a favorable ruling from CESTAT Chennai in respect of exemption benefit on Domestic Tariff Area sales against foreign currency. On conclusion of the hearing, the CESTAT had delivered the gist of decision in the open court, which was signed by both parties on the same day. Pronouncement of the detailed ordered was reserved for a later date. Such order was to be passed by the technical member. However, instead of passing the order consonant with gist of decision, the member sought to reopen the matter on merits. Accordingly, with Vice President's acceptance, a notice was issued for rehearing of the matter.

Aggrieved by the action of the CESTAT, the taxpayer preferred a writ petition before the Madras HC challenging the order of the President to re-hear the matter on merits. It was contended by the taxpayer that once the CESTAT had pronounced the gist of decision and the parties thereto had signed the same in open court, it was bound to pass final detailed order on the same lines. It submitted that after pronouncement of the gist of decision, the CESTAT became functus officio and was vested with any power to either modify or alter the order or reopen the matter for rehearing which would amount to reviewing of its own order, without any procedure under CESTAT Procedure Rules ("CESTAT Rules").

The HC held that the CESTAT has inherent powers of review, which could be recognized only in respect of any procedural error under misapprehension and that the same did not apply to suo motu reopening / rehearing on merits. The HC held that the detailed order must be consonant with the gist of decision for all practical purposes. Aggrieved by HC's order, Revenue Authorities appealed before the Supreme Court, which was dismissed.

Commissioner of Customs v CP Aquaculture [Civil Appeal No 718 of 2012 SC]

V. CENTRAL EXCISE

High Court Decisions

Court to not order pre-deposit if the demand has no legs to stand on

The taxpayer prayed for a waiver of the entire pre-deposit demanded by the Revenue Authorities denied by the Commissioner (Appeals). Subsequently, the taxpayer preferred a writ before the Chhattisgarh High Court ('HC') on the ground that the Commissioner (Appeals) did not spell out the reasons in the order denying the waiver of pre deposit.

The matter was taken up by the HC wherein guidelines for allowing pre deposit were elucidated. It was held that in the case of the taxpayer, the Commissioner (Appeals) had given reasons in his order, but had not elucidated those points. The HC observed that had there been elucidation, the same would have been a case of prejudging the matter. In order to determine whether the taxpayer has made a sufficient case the following points need to be considered:

- If on a cursory glance, it is found that the demand has no legs to stand on, the taxpayer should not be forced to deposit the entire demand or a substantial part thereof.

- An order should be sustainable on the touchstone of fairness, justice, legality and equity. If the order does not yield to public interest and created public mischief or grave irreparable damage to the taxpayer, interim relief should be allowed.

- The words 'undue hardship' should be construed to mean an out of proportion requirement imposed by the Revenue Authorities. It also has to be considered in the light of the benefit the taxpayer would gain as a result.

- The adjudicating authority has to strike a fair balance between the undue hardship caused to the taxpayer and safeguarding the interest of the Revenue.

- If on apparent reading of the matter it is found that the order impugned is grossly violative of the law and not in line with the judicial precedents, or if the authority passing the order lacks competence, the taxpayer should not suffer the condition of pre-deposit.

- When it is found that the order is passed on non-application of mind or appropriate law or patently contrary to the Supreme Court / HC decision, pre-deposit should not be ordered.

Hira Ferro Alloys Limited v Commissioner of Customs, Excise and Service Tax (Appeals) [Writ Petition no 2090/ 2014 Chhattisgarh HC]

Tribunal Decisions

No CENVAT Credit available for trading as it was not a service,

exempted service or an activity relating to business even prior to April 1, 2011

The taxpayer, a manufacturer of motor vehicles, was discharging excise duty on vehicles cleared from their factory. In addition, it also carried out trading activity of motor vehicles imported from their principals abroad and sold them in India. The taxpayer availed CENVAT Credit on certain input services which were common to both manufacture and trading. It is pertinent to note that the period of dispute is March 2005 to December 2009.

The Revenue Authorities contended that the entire CENVAT Credit availed on account of trading was liable to be reversed because trading qualified as an 'exempted service' and the definition of 'exempted service' was amended w.e.f. April 1, 2011 to include trading. The Revenue Authorities further contended that such amendment should be made applicable retrospectively as it merely declaratory / clarificatory in nature. On the other hand, the taxpayer contended that it was not required to reverse any CENVAT Credit on account of trading as the definition of input service included services used for 'activities relating to business'. Since trading is an activity relating to business, CENVAT Credit becomes available for trading activity.

As an alternate line of argument, the taxpayer also contended that if its abovementioned contention is not accepted, it could be argued that the amended Explanation to rule 6(3D) of the CENVAT Credit Rules, 2004 ("CCR") should be made applicable. Rule 6(3D) governs payment of duty in case taxpayer is not able to maintain separate accounts for dutiable and exempted services / goods. The amended Explanation to rule 6(3D) provides that for trading the value on which duty becomes payable is the difference between the sale price and the cost of goods. The taxpayer further argued that since the explanation only clarified an ongoing interpretational dispute, the same should be brought into effect retrospectively. Thus it was contended that in the event entire CENVAT Credit was not allowed, the value of trading for payment of tax was difference between sale price and cost of imported motor vehicles.

The matter came up before the Mumbai Bench of CESTAT which held in favor of the Revenue Authorities. The following points emerge from the ruling herein:

- Trading is not a service in the first place (let alone exempted service), as the elements of a service provider and service recipient are absent. The taxpayer only imports goods from its principals abroad, stores them and sells them for a profit. Therefore, trading is not a service.

- Trading is not an 'activity relating to business'. The term 'business' in the definition of input services has to be read to mean 'manufacture'. Therefore, the term 'input services' should be interpreted to mean

services employed by a taxpayer in relation to 'manufacture'.

- The explanation to the definition of 'exempted service' which now includes trading cannot be said to be merely clarificatory / declaratory in nature as it widens the tax base. An amendment which widens the tax base is a substantive amendment and does not merit retrospective application.

- Explanation to rule 6(3D) is not a computational or procedural provision and therefore does not merit retrospective application. The issue here is not the computation of tax, but the apportionment of credit of service tax on input services availed for manufactured goods and traded goods.

- Since explanation to rule 6(3D) cannot be applied retrospectively, the apportionment of CENVAT Credit has to be performed on proportional / pro rata basis.

Accordingly, the appeal of the taxpayer was dismissed.

Commissioner of Central Excise v Mercedes Benz India Private Limited [2014 TIOL 476 (Mum CESTAT)]

Place of Removal to be as specified by the Central Excise Act, 1944 at relevant time; Central Excise Valuation Rules, 2000 to comply with the Central Excise Act, 1944

The taxpayer, a manufacturer of scooters / motorcycles, cleared goods from his factory to its depots during October 2000-November 2011 on payment of duty, wherefrom they were supplied to dealers. The Revenue Authorities issued show cause notices contending that the cost of transportation of goods upto the depot should be included in the assessable value of the goods as per rule 7 of the Central Excise Valuation Rules, 2000 ("Valuations Rules"). The taxpayer contended that at the relevant time the definition of "place of removal" in section 4(3)(c) of the Central Excise Act, 1944 ("CEA") did not include depots, hence the cost of transportation upto the depots could not be included in the assessable value of the goods.

The matter reached before the Customs Excise and Service Tax Appellate Tribunal ("CESTAT"), Delhi wherein the claim of the taxpayer was allowed. The CESTAT reasoned that as per section 4(1) of the CEA, the assessable value of the goods is the transaction value of goods at the time and place of removal. The definition of place of removal as per CEA at the time of removal did not include depots. Therefore, notwithstanding rule 7 of the Valuation Rules, the assessable value would be the transaction value at the time and place of removal, i.e. the factory. The CESTAT further held that in case of a conflict between the CEA and the delegated legislation (here, Valuation Rules), the CEA will prevail over the Valuation Rules. Accordingly, in terms of the judgment of the Supreme Court ("SC") in Ispat Industries vs Union of India [2006 (202) ELT 561 (SC)], the appeal of the Revenue Authorities was rejected, whereby the cost of

transportation upto the depots was held not includible in the transaction value.

Commissioner of Central Excise, Kanpur v LML Limited [Excise Appeals nos 2895-2896 / 2005 (Del CESTAT)]

Monitoring of input by the buyer does not reduce the manufacturer to a job worker

The taxpayer was a manufacturer of excisable goods such as lubricants, coolants, blended oil and other industrial pipes for Atlantic Lubricants Private Limited ("Atlantic") and Petronas Marketing India Limited ("Petronas"). The Revenue Authorities contended that the taxpayer was not an independent manufacturer but was only a job worker for Atlantic and Petronas (collectively referred to as the "buyers") who acted as principals. The Revenue Authorities based their contentions on the following facts:

- The buyers provided intellectual property, technical know-how, secret confidential formulae, specifications etc to the taxpayer so as to aid the manufacture.
- The taxpayer was not allowed to mention its name on the manufactured products.
- The status of the taxpayer is that of a job worker as envisaged in rule 10A of the Valuation Rules.
- The taxpayer admitted that brand names used by them belong to the buyers and no cost has been charged for such use.
- The products are manufactured exclusively for the buyers and there are no other independent buyers.
- The buyers indulged in price negotiations with the suppliers of additives, packing materials which forms 20 percent of the total cost of the manufactured products.

Therefore, the excise duty ought to be charged on the value at which the buyers sold these products as per rule 10A of the Valuation Rules and not according to section 4 of the CEA as contended by the taxpayer. The Revenue Authorities consequently alleged that the products were undervalued and demanded differential duty thereon.

On the other hand, the taxpayer contended that they did not act as job workers for the buyers and the agreements were entered into on a principal to principal basis; therefore the taxpayer could not be treated as an agent of the buyers. Further, all raw and packing materials used in the manufacture of the products was procured by the taxpayer itself and it also employed its own machinery and labor for production. Moreover, the taxpayer was engaged in the manufacture of the said products even before it starting selling its products to the buyers. Therefore, the contention of the Revenue Authorities that the taxpayer was a job worker of the buyers was liable to be rejected as it was an independent manufacturer in its own capacity.

The matter came up for consideration before the Ahmedabad Bench of CESTAT which held in favour of the taxpayer. The CESTAT reasoned that mere monitoring of inputs and goods procured / manufactured by the taxpayer, would not make the taxpayer a job worker of the buyers, given that the taxpayer had procured the inputs / goods used for manufacture of the final products. It further observed that the factory, set up, employees etc were all under the control and ownership of the taxpayer; and only because the quality of the manufactured / final product was monitored by the buyer by deputing their technical person, would not render the taxpayer as the job worker of the buyers.

The CESTAT observed that section 4(1) of the CEA envisages valuation of excisable goods on the basis of the transaction value on the condition that the sale of goods taken place between unrelated parties and price is the sole consideration for sale. It further held that where it is found that the price is not the sole consideration for sale, Revenue Authorities could not invariably resort to rule 10A of the Valuation Rules. Even if the price is not the sole consideration for sale, as per rule 6 of the Valuation Rules, an amount equivalent to any additional consideration can be added to the price to arrive at the true assessable value of the goods for computation of the excise duty. Accordingly, the appeal of the taxpayer was allowed

Standard Greases & Specialties Private Limited v Commissioner of Central Excise, Vapi [Appeal No E/ 11963, 11970, 11988, 11989/ 2013- DB (Ahmd CESTAT)]

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