February 2014

TAX UPDATES

(containing recent case laws, notifications, circulars)

Prepared in association with

KPMG cutting through complexity

BMR & Associates

Foreword

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

The budget to be presented by the Hon'ble Finance Minister in February, 2014 would be a vote on account. Regular Budget is expected to be introduced by the new Government sometime in June-July, 2014. FICCI has decided to submit its 'Preliminary Suggestions for the Union Budget 2014-2015' to the Finance Ministry at this stage. A Pre Budget Memorandum is proposed to be submitted to all the relevant Government departments in May, 2014.

On the taxation regime, in line with the Rajasthan High Court's decision in the case of Rajasthan Urban Infrastructure Development Project, the Central Board of Direct Taxes vide Circular No.1/2014 dated January 13, 2014, has clarified that in terms of an agreement/contract between the payer and the payee, if the service tax component comprised in the amount payable to a resident is indicated separately, tax shall be deducted at source under the withholding tax provisions of the Act on the amount paid/payable without including such service tax component.

In a service tax matter, the Tribunal has held that builders and developers are not liable to pay service tax on the deposit taken from flat owners for one time maintenance charge collected from the buyers of the flats in the building. The taxpayers recovered the onetime charges from the customers and deposited the same in a separate bank account as fixed deposits. The interest income of this deposit was spent in discharging common electricity bills, security charges etc. After the owners formed a cooperative housing society, the deposit was transferred in the name of the society. The Tribunal rejected the contention of the Revenue Authorities that the taxpayers had been providing "maintenance and repair" service and the deposit was chargeable to service tax.

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

In-spite of enduring benefit derived, expenditure incurred for setting up new V-SAT facility for improving data transfer speed held as revenue expense

During AY 1997-98, the taxpayer had set up new V-SAT facility to increase the data transfer speed. It borrowed money for setting up the V-SAT application. The taxpayer claimed deduction of the said expenditure for setting up the V-SAT facility along with interest on the loan as revenue expenditure. The AO disallowed the expenditure incurred for setting up the V-SAT facility, treating the same as capital in nature and also denied deduction for interest on the loan. This disallowance was upheld by the CIT(A). The Tribunal observed that the taxpayer was using telephone lines for receiving and sending the data.

To improve the communication between its clients in connection with receipt and sending data, the taxpayer had set up the aforesaid facility. Thus, the licence fee paid by the taxpayer for the said new technology was revenue in nature. The Tribunal further held that the interest paid on the loan borrowed for setting up the said facility is also deductable as revenue expenditure.

The Karnataka High Court referred to the Supreme Court's decision in the case of Empire Jute Co. Ltd. v. CIT [1980] 124 ITR 1 (SC), wherein it was held that the test of enduring benefit is not a certain or conclusive test and cannot be applied blindly and mechanically without regard to the particular facts and circumstances. The High Court observed that in order to transfer data at a much higher speed, V-SAT application through satellite was adopted. After setting up of the new facility, the taxpayer continued to manage the project as part and parcel of the existing project. Though, the amount spent resulted in advantage of enduring benefit, the expenditure was revenue in nature and allowable as a deduction under Section 37 of the Act. Further, in respect of deduction of interest on the loan borrowed for the new facility, the High Court allowed this deduction of interest relying on the decision of the Supreme Court in the case of DCIT v. Core Health Care Ltd. [2008] 298 ITR 194 (SC).

CIT vs. Kirloskar Computer Services Ltd. [TS-662-HC-2013(KAR)]

High Court sets aside Tribunal's decision that sale and lease back transaction was merely a colourable device for tax evasion

The taxpayer purchased imported Metal Cops from the Kota factory of the vendor, J.K. Synthetics Ltd., and thereafter leased them to the Delhi factory of the same vendor. The transaction was executed to resolve the acute financial crises faced by the Kota factory, due to labour unrest and closure of the factory, while at the same time benefiting the Delhi factory which needed the Metal Cops. The Metal Cops were directly transported from the Kota factory to the Delhi factory for commercial reasons (of saving freight costs) after payment of appropriate sales tax. The taxpayer (lessor)

claimed 100 percent depreciation under Section 32 of the Act after classifying the Metal Cops as plant & machinery and having a value below INR 5,000.

The High Court observed that there was no material on the basis of which the Tribunal could have arrived at the conclusion that the entire transaction relating to purchase and leasing of Metal Cops was merely a paper transaction. Further, the High Court relied on the Supreme Court's decision in the case of CIT v. Daulat Ram Rawatmull [1973] 87 ITR 349 (SC) wherein it was held that when a Court of fact acted on material partly relevant and partly irrelevant and it was impossible to say to what extent the mind of the Court was affected by the irrelevant material used by it in arriving at its finding, the finding would be vitiated for the use of inadmissible material and thereby an issue of law would arise. Similarly, if the Court of fact based its decision partly on conjecture, surmises and suspicions, and partly on evidence, in such a situation an issue of law would arise. Ruling in favour of the taxpayer, the High Court held that, in the present case, the Tribunal's decision is at least partly, if not wholly, based on conjectures and surmises and is therefore liable to be interfered with.

Steel Products Ltd. v. CIT [TS-669-HC-2013(CAL)]

Expenditure on further improvement and development of software held as capital in nature; allowable as expenditure in respect of scientific research

The taxpayer acquired intellectual property, i.e. software, for INR 108.2 million, which was capitalized in its books. For AY 2001-02, the taxpayer spent a sum of INR 92.7 million in further developing and improving the software to secure an enduring benefit. The development expenditure mainly included the salary cost of the employees and other general administrative expenses incurred in connection with development of the software product called 'Talisma'.

The tax department was contending that any expenditure incurred on further development of the software had to be treated as capital in nature, since the expenditure on purchase of 'Talisma' software had been capitalized by the taxpayer.

The High Court noted that Section 35 of the Act deals with expenditure on scientific research. Section 35(1)(iv) of the Act provides for deduction in respect of any expenditure of a capital nature on scientific research related to business carried on by the taxpayer. Referring to the definition of 'scientific research' under Section 43(4) of the Act, the High Court noted that any activities for extension of knowledge in the field of natural science fall within the definition of 'scientific research'. Thus the High Court held that such development of software was on account of 'scientific research'. As the expenditure on further development of software incurred by the taxpayer was capital in nature, the High Court held that it was an allowable deduction under Section 35(1)(iv) of the Act, as it was incurred in relation to the business carried on by the taxpayer.

CIT vs. Talisma Corporation Pvt. Ltd. [TS-654-HC-2013(KAR)]

Delhi High Court reversed the decision in the case of Li & Fung

India Private Limited and held that transfer pricing officer's determination of the arm's length price for sourcing support services based on markup on free on board value of exports is contrary to the provisions of the law

During FY 2005-06, the taxpayer rendered sourcing support services to its Hong Kong-based associated enterprise (AE), for which it received a remuneration of cost plus 5 percent. The taxpayer applied the Transactional Net Margin Method (TNMM) to determine the arm's length price (ALP) of such remuneration, considering operating profit/ total cost (OP/TC) as the profit level indicator (PLI). The Transfer Pricing Officer (TPO), while accepting the TNMM as the most appropriate method, held that the cost for the purpose of the 5 percent mark-up should include the free on board (FOB) value of exports that have been facilitated by the taxpayer. The dispute resolution panel (DRP) upheld the order of the TPO on principle, but reduced the markup to 3 percent on the FOB value of exports. The Tribunal, while upholding on principle the TPO's findings that the cost plus markup methodology adopted by the taxpayer is not at arm's length, held that the amount of adjustment cannot exceed the amount that has been retained by the AE out of the total remuneration received from third party customers. The Tribunal further held that the distribution of total compensation received by the AE from its customers between the taxpayer and the AE should be in the ratio of 80:20.

The High Court held that broad basing of the profit determining denominator as the FOB value of the exports to determine the ALP is contrary to provisions of the Act and the Rules. In this regard, the High Court held that:

- Rule 10B(1)(e) of the Rules does not enable imputation of cost incurred by third parties to compute the taxpayer's net profit margin for application of the TNMM.

- Attributing the costs of third party manufacture, when the taxpayer does not engage in that activity, and when those costs are clearly not the taxpayer's costs, is impermissible. Such adjustment is outside the provision of the law.

- The assessment carried out by the taxpayer must first be rejected for any further alterations to take place.

The High Court found merit in the taxpayer's submission that the lower authorities, including the Tribunal, misdirected themselves in holding that the taxpayer assumed substantial risk. The High Court held that the taxpayer is a low risk contract service provider exclusively rendering sourcing support to its AE and did not bear any significant operational risks for its functions. Rather, it is the AE that undertakes substantial functions and assumes enterprise risks. The High Court further held that tax authorities should base their conclusions on specific facts, and not on vague generalities, such a 'significant risk', 'functional risk', 'enterprise risk', etc., without any material on record to establish such findings. The impugned order has not shown how, and to what extent, the taxpayer bears 'significant' risks, or that the AE enjoys such locational advantages, as to warrant rejection of the transfer pricing exercise undertaken by the taxpayer. If such findings are warranted, they should be supported by demonstrable

reasons, based on objective facts and the relative evaluation of their weight and significance.

Li & Fung (India) Private Limited v. CIT (ITA No. 306 of 2012

ALP of an international transaction cannot exceed the 'Final Sales Price'- Supreme Court dismisses Revenue SLP against Global Vantedge Ruling

The taxpayer had entered into an arrangement with RCS Centre Corp (RCS), its AE, and was engaged in rendering IT enabled services/back office support services in the field of credit collection and telemarketing to its AE. The taxpayer considered RCS as the tested party and compared the profit margin of RCS with the average margin of foreign comparable companies in its transfer pricing study report. The TPO concluded that the AE is not to be treated as a tested party and considered the taxpayer as the tested party. The CIT(A) upheld the action of the TPO treating the taxpayer as 'tested party'. The CIT(A) granted partial relief in favour of the taxpayer by stating that the total adjustment together with the ALP cannot exceed the total revenue earned by the taxpayer and it's AE from third party clients. The Tribunal upheld the order of the CIT(A) on the ground that neither the taxpayer nor the Revenue had been able to provide any basis or material to rebut the findings and conclusions of the CIT(A).

The issue raised before the High Court was with regard to the determination of ALP. Also, the tax department contended that it was obligatory upon the Tribunal to record its own findings rather than merely confirming the findings of the CIT(A). The High Court observed that with regard to the determination of ALP, the Tribunal had examined the issue at length and extensively quoted the decision of the CIT(A), examined the CIT(A)'s order and thereafter confirmed his order. The High Court observed that after examining the findings of the CIT(A), the Tribunal had given the tax department an opportunity to controvert or rebut the findings and conclusions arrived by the CIT(A). However, the tax department was unable to any new evidence to enable the Tribunal to deviate from the CIT(A)'s view. Further, it was not the case that the Tribunal ignored any of the points made by the tax department, which could have been rectified. The Supreme Court did not find any substantial question of law arising out of the (impugned) High Court and hence it dismissed the tax department's SLP against the High Court order.

CIT v. Global Vantedge Pvt. Ltd. (ITA No. 1828/2010)

Tribunal Decisions

Payment for transfer of non-exclusive user right in respect of software for internal use is taxable as a royalty under the Act as well as under the tax treaty

The taxpayer, a company incorporated in the USA, granted the user rights of software to two of its subsidiaries in India, which the taxpayer had acquired under an agreement with Oracle Inc., USA.

The taxpayer claimed that payment received from its subsidiaries in India for granting user right of such software was not in the nature of a royalty or fees for technical services under the tax treaty, since there is no transfer of any part of

copyright and the transaction involves sale of a copy of the copyrighted software. Further, since the taxpayer did not have a Permanent Establishment (PE) in India, no income was offered to tax as business profit under Article 7 of the tax treaty.

The Pune Tribunal placed reliance on the decision of the Karnataka High Court in case of Samsung Electronics Co. Ltd. [2012] 345 ITR 494 (Kar), wherein it was held that the payment for right to make a copy of the software and use it for internal business operations would be treated as royalty since by making a copy of the software, storing it on hard disk and taking a back up copy, would trigger royalty provisions. Drawing an analogy from the said decision, the Tribunal held that the payment received by the taxpayer from its Indian subsidiaries is taxable as royalty under the Act and the tax treaty.

Cummins Inc. v. DDIT [2013] 38 taxmann.com 286 (Pune)

Note: It may be relevant to note that, recently, the Delhi High Court, in the case of Infrasoft Ltd. [2013] [39 taxmann.com 88] [Delhi HC] has not agreed with the view of the Karnataka High Court in the case of Samsung Electronics Co. Ltd.

Balance 10 percent of additional depreciation available in the subsequent year on new asset acquired post September

The taxpayer is engaged in the business of manufacturing tyres in India. The taxpayer claimed additional depreciation in respect of new machinery and plant acquired after 30 September 2005 in the Assessment Year (AY) 2006-07 in accordance with the provisions of Section 32(1)(iia) of the Act. In the subsequent AY, i.e. AY 2007-08, the taxpayer claimed the balance 10 percent of depreciation. However, the AO disallowed the taxpayer's claim for the remaining 10 percent additional depreciation claimed in AY 2007-08. The AO rejected the claim of the taxpayer on the ground that there was no provision for carry forward of any additional depreciation, which was confirmed by the Dispute Resolution Panel (DRP).

The Cochin Tribunal noted that the Act is silent about the allowance of the balance 10 percent additional depreciation in the subsequent year and, in light of this, the eligibility of the taxpayer for claiming 20 percent of the additional depreciation cannot be denied by invoking the second proviso to Section 32(1)(ii) of the Act. The Cochin Tribunal, relying on the decisions of Delhi Tribunal in the case of DCIT v. Cosmo Films Ltd [2012] 139 ITD 628 (Del) and ACIT v. SIL Investment Ltd. [2012] 148 TTJ 213 (Del) and the decision of Mumbai Tribunal in the case of MITC Rolling Pvt. Ltd v. ACIT (ITA No. 2789/Mum/2012), held that where new machinery is purchased after the month of September of the relevant AY then the balance 50 percent of the additional depreciation is to be allowed in the subsequent year.

Apollo Tyres Ltd v. ACIT [TS-646-ITAT-2013(COCH)]

Third member bench of Mumbai Tribunal held that the disallowance under Section 14A of the Act read with Rule 8D of Income tax Rules, 1962 ('the Rules')applies to tax-free securities held as stock-in-trade

The taxpayer is engaged in the business of share trading and held shares as stock-in-trade. In its return for AY 2008-09, the taxpayer had declared income from dividends which was exempt, and had suo-moto disallowed INR 0.122 million under Section 14A of the Act. The AO rejected the quantum of disallowance made by the taxpayer under Section 14A holding it as without any basis, and applied rule 8D of the Rules for computing the disallowance.

The matter was referred to the Third Member bench due to the difference of opinion between the Accountant Member (AM) and Judicial Member (JM). Before the Third Member bench, the taxpayer relied on the decisions in the case of CCI Ltd v. JCIT [2012] 71 DTR 141 (Kar), DCIT v. India Advantage Securities Ltd. (ITA No. 6711/Mum/2011) and Yatish Trading Co. Pvt. Ltd. v. ACIT [2011] 129 ITD 237 (Mum), in which it was held that Section 14A of the Act and Rule 8D of the Rules apply to shares held as investment and not to the shares held as stock-in-trade. The tax department relied on Godrej & Boyce Manufacturing Co. Ltd. v. DCIT & Anr. [2010] 328 ITR 81 (Bom) (where it was held that Rule 8D of the Rules is mandatory) and ITO v. Daga Capital [2009] 117 ITD 169 (Mum) (SB) (where it was held that Section14A of the Act applies to stock-in-trade). It was held by the Tribunal that the issue under appeal is squarely covered by the principles laid down in the decision of Godrej & Boyce Mfg. Co, Dhanuka & Sons [2011] 339 ITR 319 (Cal), JCIT v. American Express Bank Ltd. [2012] 24 taxmann.com 50 (Mum) and Damani Estates & Finance, in which the issue has been elaborately considered. The argument that the judgment of the Karnataka High Court in CCI Ltd is the solitary High Court judgment on the point and it should be followed is not correct because the issue has also been considered by the Calcutta High Court in Dhanuka & Sons. Also, while CCI Ltd has not considered the jurisdictional High Court judgment in Godrej & Boyce, Dhanuka & Sons has duly considered Godrej & Boyce in taking the view that Section 14A/Rule 8D apply to shares held as stock-in-trade. Accordingly, it was held that the disallowance under Section 14A of the Act has to be made even when shares are held as stock-in-trade.

DCIT v. D.H. Securities Pvt. Ltd. [TS-643-ITAT-2013(Mum)]

Rental income from temporary letting of unsold units held as stock-in-trade to be treated as 'business income'

The taxpayer has constructed a Commercial Complex. All the units in the Complex were put on sale; however, with a fall in demand, a few units were not sold and continued to be part of the taxpayer's stock-in-trade. Some such units were let out on rent. In the past, the rental income from these units was offered as income from house property; however, in the current year, it was included as part of the business income. The taxpayer claimed that the treatment as income from house property was due to ignorance about the legal position. The AO treated the rental income as income from house property.

Considering the fact that the unsold units in the stock-in-trade were already treated as business assets, the Tribunal held that the rental income from unsold units in the complex should be treated as 'income from business'. As regards the past conduct of the taxpayer, the Tribunal held that ignorance of law could be an excuse.

Late (Smt) Nirmala Sahu v. CIT (All) – (ITA No 48 to 53 of 2007)

AAR Rulings

Application to AAR cannot be rejected merely because return of income has been filed

The applicant, a company incorporated in Japan, entered into two separate contracts with an Indian company, i.e. (i) an offshore supply contract, and (ii) an onshore service contract. The applicant filed the return of Income and also made an application before the AAR with regard to issues relating to its taxability in India.

The tax department objected with regard to the admissibility of the application, relying on the decision of the AAR in the case of SEPCO III Electric Power Corporation [2011] 16 taxmann.com 195 (AAR) and NetApp B.V [2012] 19 taxmann.com 79 (AAR), wherein it was held that when the return of income is filed, the issue should be treated as pending before an Income-tax Authority.

The AAR observed that when the return of income is filed, it is processed under Section 143(1) of the Act. While processing the return of income, the tax department does not have any jurisdiction to examine or adjudicate any issue other than those mentioned in Section 143(1) of the Act. Further, before or without issuing notice under section 143(2) or section 142(1) in cases whether a return is not filed, the Income-tax department has no jurisdiction to examine or adjudicate debatable issues claimed or shown in the return of income. The AAR, relying on the decisions of Jagtar Singh Purewal [1995] 213 ITR 512 (AAR) and Hyosung Corporation Korea [2013] 36 taxmann.com 150 (AAR), held that mere filing of the return does not attract a bar on the admission of the application as provided in section 245R (2) of the Act. Only when the issues are shown in the return and notice under section 143(2) is issued, will the question raised in the application be considered as pending for adjudication before the Income-tax Authorities.

Mitsubishi Corporation (A.A.R. No.1309 of 2012) (AAR)

Notifications/Circulars/ Press releases

India signs tax information exchange agreement with Government of Belize

The Government of India (GOI) signed an agreement with the Government of Belize on 18 September 2013 for exchange of information with respect to taxes. Vide notification dated 7 January 2014, in exercise of the powers conferred by Section 90 of the Act, the GOI has directed that the provisions of the said agreement shall be given effect to in the Union of India with effect from the date of entry into force of the said agreement, i.e. 25 November 2013.

Source: http://indianacts.taxmann.com

Protocol amending the India-UK and Northern Ireland tax treaty

India and UK had signed a Protocol on 30 October 2012, amending the Convention for Avoidance of Double Taxation and Prevention of Fiscal Evasion with respect to Taxes on Income and Capital Gains. Recently, Her Majesty's Revenue and Customs, UK (HMRC), notified the protocol

and provided an entry into force date, being 27 December 2013. However, India is yet to issue a notification on this.

http://www.hmrc.gov.uk/taxtreaties/news/uk-indiaprotocol.htm

Central Board of Direct Taxes accepts High Court verdict. No TDS under Section 194J of the Act on service tax component if indicated separately

The Central Board of Direct Taxes (CBDT) has issued Circular No. 1/2014, dated 13 January 2014, pointing out that the Rajasthan High Court has taken a view in CIT(TDS) v. Rajasthan Urban Infrastructure [2013] 37 taxmann.com 154 (Raj) that if as per the terms of the agreement between the payer and the payee, the amount of service tax is to be paid separately and was not included in the fees for professional services or technical services, no TDS is required to be made on the service tax component u/s 194J of the Act. Pursuant thereto, the CBDT has decided in exercise of powers under Section 119 of the Act that wherever in the terms of the agreement/contract between the payer and the payee the service tax component comprised in the amount is indicated separately, tax shall be deducted at source under Chapter XVII-B of the Act on the amount paid/payable without including such service tax component.

Circular No. 1/2014 dated 13 January 2014

Circular on Section 40(a)(ia) of the Act

The CBDT has issued a Circular (CBDT Circular No. 10/DV/2013, dated 16 December 2013), wherein it has been clarified that the provision of Section 40(a)(ia) of the Act would cover not only the amounts which are payable as on 31 March of a previous year but also amounts which are payable at any time during the year.

The CBDT clarified that in case any High Court decides an issue contrary to 'Departmental view', the 'Departmental view' thereon shall not be operative in the area falling in the jurisdiction of the relevant High Court. Further, the tax authority shall examine the said judgment on a priority basis to decide as to whether filing a Special Leave Petition (SLP) to the Supreme Court will be adequate for the said decision or whether some legislative amendment is called for.

CBDT Circular No. 10/DV/2013, dated 16 December 2013

CBDT issues important directives on Safe Harbour Rules

The CBDT issued a letter dated 20 December 2013 in which it has laid down important directives/clarifications regarding the implementation of the Safe Harbour Rules. The following issues were discussed/clarified:

- AOs should carefully verify and provide in writing to the Board, the details of all Form 3CEFAs, i.e. applications for exercising the Safe Harbour option, received by them.

- The Safe Harbour option in Form 3CEFA in paper format should not be confused with Form 3CEB (detailing International Transactions) which is filed electronically.

- AOs are required to examine the Form within two months from the end of the month in which the option was filed, and decide whether to accept the Safe Harbour option or make a reference to the TPO, failing which, the Safe Harbour option will be considered as having been accepted with a validity of five years.

- If there are minor defects in Form 3CEFA, the AO can provide an opportunity to the taxpayer to rectify these, but the statutory time limit of two months provided in the Safe Harbour Rules cannot be exceeded.

- Safe Harbour Rules will not apply to eligible international transactions entered into with an associated enterprise located in any country or territory notified under Section 94A of the Act (e.g. Cyprus) or in a 'no tax' or 'low tax' countries.

- In cases where the taxpayer has opted for Safe Harbour, but has reported rates or margins lower than the Safe Harbour rates/margins, the income is to be computed on the basis of Safe Harbour rates/ margins.

- Safe Harbour rates/margins are not to be considered as a benchmark by the AO/TPO in cases not covered by the Safe Harbour Rules. Cases of regular transfer pricing audit shall be carried out without regard to the Safe Harbour margins/rates.

Source: www.itatonline.org

II. SERVICE TAX

Tribunal Decisions

Special Economic Zone ("SEZ") Act has overriding effect: Notification for refund of service tax for the services consumed wholly within SEZ, to be read harmoniously to effectuate the intention of the legislature of granting exemption to SEZ units

The taxpayer was a SEZ Unit and had availed Architect Service, Interior Decorator Service and Consulting Engineer Service to be consumed within the SEZ. The service provider had charged service tax on this service hence the taxpayer claimed refund of service tax under Notification no 15/2009–ST dated May 20, 2009. The Revenue Authorities rejected the claim on the ground that these services were consumed wholly within the SEZ and therefore the refund Notification was inapplicable. The Revenue Authorities held that though the architect service included advice, preparation of sketches, drawings, supervision at each stage of construction and commenced outside the SEZ, were however ultimately consumed in SEZ and thus fell beyond Notification no 15/2009-ST.

The matter reached before the Tribunal wherein it was held that under Sections 7 and 26 of the Special Economic Zones Act, 2005 ("SEZ Act"), taxable services provided to a developer or an SEZ Unit are wholly exempted from the payment of service tax. Section 51 of the SEZ Act also provides that the SEZ Act will have overriding effect. Further, the Notification merely contoured the process by which benefit of exemption is granted under the SEZ Act. Hence, immunity granted under the SEZ Act cannot be eclipsed by the procedural requirements under the Notification.

The Notification stated that the refund be granted except for services wholly consumed within SEZ cannot be inferred to be imposing a disability on recipient of services consumed wholly within SEZ from seeking refund of service tax remitted by the service provider.

Intas Pharma Limited v Commissioner of Service Tax, Ahmedabad [2013(32) STR 543 (Tribunal-Ahd)]

Sodexo meal vouchers promote sale of goods and services, thus falling under the ambit of taxable category of Business Auxiliary Services and not under the Business Support Services

The taxpayer was in the business of issuing meal/gift coupon vouchers. The taxpayers had a number of affiliates which were different business entities such as restaurants, eating places and other establishments that had agreed to accept the vouchers of the taxpayers as payment of goods/services provided by the affiliates. The affiliates are paid by the taxpayer the face value of the voucher after deducting service charges. The customers who are government or private business organizations used to purchase these vouchers on payment of face value of the voucher and service fee and delivery charges. These customers then made available these vouchers to their employees. The taxpayer paid service tax under Business Support Services with effect

from May 1, 2006; however the Revenue Authorities demanded service tax on the service charges collected from the affiliates for period from July 1, 2003 to December 31, 2005 as well as on the services charges collected from the customers for period from September 10, 2004 to December 31, 2005 under the category Business Auxiliary Service.

The matter reached before the Tribunal and the question before it was whether the provision of vouchers constituted Business Auxiliary Services. The Tribunal answered this question in affirmative and held that these vouchers promote the sale of only certain goods and services. The Tribunal held that since these vouchers could be tendered only at a restricted number of affiliates, they were promoting the sale of those specific goods and services. The Tribunal holding that the vouchers are not similar to credit / debit cards observed that user does not purchase the vouchers, but it is the employer of the user who purchases and makes payment to the taxpayer. Further, the vouchers which remain unused by the purchaser or user, the taxpayer still gets to retain the value of such vouchers and in case value of goods and services availed is less than the value of vouchers, he does not get refund and the excess amount is retained by the affiliates. No such thing happens in credit / debit card. Moreover, since these vouchers could not be used freely like cash, they could not be equated to a credit / debit card. Thus the demand of service tax was confirmed.

Sodexo Pass Services India Private Limited v Commissioner of Service Tax, Mumbai [2013 TIOL 1838 Tribunal MUM]

Test with reference to 'place of removal' not to be applied in the case of 'output service'

The taxpayer was in the business of the re-treading of tyres. With certain clients, they had agreed to go to the client's location, take the defective tyres, bring it to their premises, re-tread them and take them back to the client's location and fix them on the vehicles. In such cases, the taxpayer included the cost of transportation of tyres for the purpose of service tax. The taxpayer availed CENVAT Credit on the goods transport service of bringing the tyres to taxpayer's premises and then transporting it back to the client's premises. The Revenue Authorities were of the view that CENVAT Credit taken on tax paid under the category of Goods Transport Agency ("GTA") service cannot be allowed, as the credit of outward transportation from the place of removal was not covered by the definition of 'input service'. It was the contention of the taxpayer that the concept of 'place of removal' can only be applied in case of manufacturer for clearing the finished goods and not in case of service providers.

The matter reached before the Tribunal wherein it was held that the test of 'place of removal' was not applicable in the case of services as the place of removal for service cannot be easily determined; further, the said expression is defined in the Central Excise Act and has no relevance for service providers. Transport of tyres to and fro from the place of removal has nexus with the provision of output service as per the contract. Thus the CENVAT Credit with respect to the GTA was allowed.

Sundaram Industries Limited v Commissioner of Service Tax, Tiruchirapally [2013 TIOL 1798 Tribunal- Mad]

Builders and developers not liable to pay service tax on the deposit taken from flat owners for one-time maintenance charge collected from the flat buyers of the building

The taxpayers were builders and developers of residential flats and various commercial complexes and sold the same to various customers over a period of time. After the sale of all the flats, the owners form a co-operative housing society ("society") and thereafter the title in the land etc is passed over to this co-operative housing society. The taxpayers recovered one time maintenance charges, security charges etc from the customers and deposited the same in a separate bank account as fixed deposit. The interest income of this deposit was spent in discharging common electricity bills, water charges, security charges etc. After the society was formed, the deposit was then transferred in the name of the society. The contention of the Revenue Authorities was that the taxpayers had been providing "Maintenance and Repair" service and the deposit was chargeable to service tax.

The taxpayers contended that various expenses were made on behalf of the flat owners' society and they had no claim over the deposits made. This action on part of the taxpayers was a statutory duty that they had to fulfill under the provisions of the Maharashtra Ownership of Flats Act, 1963. Thus the activity relating to maintenance, management and repair is in accordance with the said act and they are not providing any service for consideration.

The matter reached the Tribunal and the decision was held in favor of the taxpayers. The Tribunal held that the taxpayers were neither in the business of maintenance or repair service, nor were they charging anything on their own. Thus, the taxpayers could not be held as providers of maintenance or repair service as they were paying those amounts on behalf of the flat owners to the respective municipal, revenue Authorities and various service providers.

Kumar Beheray Rathi and Others v Commissioner of Service Tax, Pune-III [2013 TIOL 1806 Tribunal-Mum]

Relevant date for limitation for refund of service tax paid on input service under reverse charge, where refund is applied by exporter of goods, would be the date of making the payment of service tax and not the date of export of goods

The taxpayer was an exporter of leather goods and had availed the services of sales agents abroad to whom it paid sales commission. The taxpayer also paid service tax on such sales commission under the reverse charge mechanism. Thereafter it claimed refund of tax paid under notification no 41/2007-ST dated October 6, 2007. The taxpayer filed the refund claim within one year from the payment of service tax. However, the Revenue Authorities were of the opinion that the refund claims of the taxpayer were time barred as they were filed after a year from the date of export.

The matter reached the Tribunal and the question before it was whether the date of export or the date of payment of service tax was the relevant date for the filing of refund claims. It was argued on behalf of the

Revenue that clause (a) of explanation B to Section 11B of the Central Excise Act should be applicable to the present case and thus the relevant date would be the date of export. The Tribunal observed that the refund claimed was of service tax on input services of sales commission for export; the liability to pay service tax (by taxpayer under reverse charge) arose only making the payment of commission to overseas supplier which was much after the date of export and until the service tax was paid taxpayer could not have taken credit and claim refund. Hence, the principles relating the relevant date being the date of export applicable for inputs and capital goods upheld in GTN Engineering (I) Ltd v Commissioner of Central Excise, Coimbatore [2011 TIOL 149 Tribunal- Mad] could not be applied in the instant case. Consequently, clause (f) of explanation to section 11B stating that the relevant date for computing limitation would be the payment of tax was held to be applicable. Thus, the claim of the taxpayer was allowed being within the limitation period of one year from the date of payment of service tax.

KKSK Leather Processors Private Limited v Commissioner of Service Tax, Salem [2013 TIOL 1797 Tribunal- Chennai]

III. CUSTOMS

Tribunal Decisions

Revenue Authorities have to maintain consistency in classification: Goods once classified as E-bikes in Completely Knocked Down ("CKD") condition for payment of duty cannot be subsequently regarded as "parts" of E-bikes for refund

The taxpayer imported E-bikes in CKD condition and cleared the same on payment of Additional Duty of Customs ("ACD") as per Section 3(5) of the Customs Tariffs Act, 1975. Subsequently, they claimed refund of the same as per Notification no 102/2007- Cus dated September 14, 2007 that allowed the refund of the ACD if the imported goods were sold after the discharge of value added tax ("VAT"). The Revenue Authorities were of the opinion that the taxpayer was not entitled to the refund because the goods imported by the taxpayers were "parts" of E-bikes and not E-bikes itself.

The matter reached before the Tribunal which held that at the time of import, the goods were assessed as E-bikes in CKD condition and not as "parts" of E-bikes and hence they cannot be regarded as "parts" of E-bikes for the purposes of refund, when such goods has been sold as E-bikes and upon discharge of VAT. Therefore, the contention of the Revenue Authorities that the taxpayer was not entitled to refund of ACD was rejected and the decision was delivered in favor of the taxpayer.

Commissioner of Customs, Amritsar v Hero Exports [2013 (298) ELT 410 (Tri-Del)]

IV. CENTRAL EXCISE

High Court Decisions

100 percent CENVAT Credit availed on Capital Goods in the initial year

instead of 50 percent as allowed under the law; however 50 percent was not utilized till the subsequent financial year and hence no prejudice caused to the Revenue Authorities

The taxpayer had availed 100 percent of CENVAT Credit available on capital goods in the initial year instead of availing 50 percent in the initial year and the balance 50 percent in the subsequent year. The Revenue Authorities were of the opinion that this CENVAT Credit was wrongly availed in respect of balance 50 percent. The Tribunal held in favor of the taxpayer in light of the fact that by the time the matter reached Tribunal taxpayer was entitled to second 50 percent and the wrongly availed Credit was not utilized by the taxpayer.

The matter reached before the Hon'ble Bombay HC which ruled in favor of the taxpayer and held that if the credit of subsequent financial year wrongfully taken in the initial financial year, but is not utilized till the commencement of the subsequent financial year, then no prejudice is caused to the Revenue Authorities and hence the decision of the Tribunal was upheld.

Commissioner of Central Excise Pune-II v Satish Industries [2013 (298) ELT 188 (Bom)]

'Input Service' does not include expenses with regards to post manufacturing stage except for the transportation of goods from one place of removal to another place of removal

The issue in dispute was eligibility of CENVAT credit to a taxpayer (manufacturer) on outward transportation of goods upto the point of delivery to the customer. The Tribunal allowed such CENVAT Credit following the decision of the Karnataka HC in the case of Commissioner of Central Excise and Service Tax v ABB Limited, [2011 (23) STR 97 (Kar)]. Aggrieved by the decision of the Tribunal, the Revenue Authorities preferred an appeal to the Calcutta HC.

The taxpayer further relied upon the judgment of Karnataka HC in ABB Ltd and Gujarat HC in the case of Commissioner of Central Excise v Parth Poly Wooven Pvt Ltd [2012 (25) STR 4 (Guj)]. The taxpayer also contended that the Central Board of Excise and Customs ("CBEC") vide its circular dated August 23, 2007 allowed the CENVAT credit available on the services received upto the customer's premises. The definition of 'input service' was amended with effect from April 1, 2008 to include 'clearance of final products upto the place of removal' in place of 'clearance of final products from the place of removal'.

The Hon'ble Calcutta HC allowed the appeal of the Revenue Authorities and held that the interpretation that definition of input service covered transportation from one place to another is erroneous and therefore, it did not agree with Karnataka and Gujarat HC's rulings. The Calcutta HC also held that the relaxation provided by the CBEC circular dated August 23, 2007 could be availed in certain circumstances as provided in the circular however, the circular cannot amend the rules which do not allow credit of outward transportation. The Court further held that the amendment in the definition of 'input service' (April 1, 2008) by substituting the

word 'from the place of removal' by the words 'upto the place of removal' had been done only to clarify the issue and if the definition of 'Input Service' is read as a whole, it would appear that outward transportation charges or taxes paid in regard thereto are claimable only with regard to those transports which are made from one place of removal to another

Commissioner of Central Excise, Kolkata v Vesuvious India Limited [2013 TIOL 1038-Cal-HC]

Tribunal Decisions

Diesel supplied free of cost by the Service Recipient to the Service Provider for providing site formation and clearance, excavation and earth moving and demolition services not to be included in the gross value of the service

The taxpayer was providing services of "site formation and clearance, excavation and earth moving and demolition" to Jindal Steel and Power Limited ("JSPL") under distinct contracts. It was agreed that JSPL will supply diesel free of cost to the taxpayer for carrying out the taxable service. The Revenue Authorities were of the opinion that the cost of the diesel supplied free of cost should also be added to the assessable value of the taxable service.

The matter reached before the Tribunal wherein it was held that as per the ruling in the case of Intercontinental Consultants & Technocrats Pvt Limited v Union of India [2013 (29) STR 9 (Del)], the value of the free diesel supplied to the taxpayer would not be a component of the gross value charged under section 67 of the Finance Act, 1994 for the service provided. Further, the Tribunal held that even extended period of limitation was not invocable.

Karamjeet Singh and Company Limited v Commissioner of Central Excise, Raipur [2013 (32) STR 740 (Tri-del)]

If activity undertaken is not "manufacture" and the goods are cleared on payment of duty, the same may be treated as reversal of CENVAT Credit on inputs

The taxpayers were engaged in the activity of cutting and packing and were granted registration under Central Excise. Accordingly, the taxpayer availed CENVAT Credit on inputs and cleared the finished goods on payment of applicable excise duty. The Revenue Authorities were of the view that the taxpayer's process did not amount to manufacture and hence disputed the credit taken by the taxpayer.

The matter reached before the Tribunal. The Tribunal held that that although the activity undertaken by the taxpayer did not amount to "manufacture" but once they cleared their finished product on payment of duty, the same may be treated as reversal of CENVAT Credit on inputs. The Tribunal further held that the activity undertaken by the taxpayer was in the knowledge of the tax officer and hence the extended period of limitation was not invocable.

Anutone Acoustics Limited v Commissioner of Central Excise, Thane –I [2013 (298) ELT 246 (Tri-Mum)]

Credit available on Hydraulic jack, supplied with every order of power transformer considering it to be essential part of transformer

The taxpayer was the manufacturer of electrical goods such as transformers, and had availed Modified VAT ("MODVAT") Credit on the hydraulic jack, ammonia paper and parts of locomotive. The Revenue Authorities were of the view that MODVAT Credit on hydraulic jack was not available to the taxpayer.

The matter came up before Tribunal wherein it was argued by the taxpayer that hydraulic jacks are used for lifting the transformer tank in order to move it on the rails for changing the oil in the event of a short circuit fault. This hydraulic jack is necessarily supplied against each order for transformer and hence should be treated as an input. The Tribunal ruled in favor of the taxpayer relying on the larger bench decision of the Tribunal in the case of Bajaj Auto Ltd v Commissioner of Central Excise [1996 (88) ELT 355 Trib-Delhi] wherein credit of excise duty paid on tool kits was allowed and consequential relief was granted to the taxpayer

Commissioner of Central Excise, Bhopal v Bharat Heavy Electricals Limited [2013 (298) ELT 408 (Tri-Delhi)]

Value of goods and services supplied by the buyer free of charge for production of goods should be included in the value of goods in case of inter-connected undertaking selling goods below cost of production

The taxpayer was engaged in the manufacture of distribution boards and other electrical goods. The distribution boards manufactured by it were exclusively sold to Legrand India Private Limited ("Legrand"). Prior to 1996 the taxpayer and Legrand were owned and managed by the same management. In the year 1996, 100 percent shares of Legrand were sold to another group and the ownership and control of Legrand underwent substantial changes. However, it was found that for a substantial period after the takeover of Legrand, the taxpayer supplied goods to Legrand at a loss of approximately INR 12 Lacs per year. The Revenue Authorities disputed the value for the purpose of payment of excise duty.

It was the contention of the Revenue Authorities that the sale price cannot be taken as the assessable value because the parties were related and the goods were sold below cost of production without considering cost of tools, dies, moulds, drawings, and the cost of research and development work undertaken by Legrand for goods manufactured by tax payers. On the other hand, the taxpayer contended that unless there is a financial flowback between the parties, it cannot be alleged that they are related or under the same management.

The matter reached before the Tribunal wherein it observed the taxpayer and Legrand were connected undertakings and since the taxpayer had been selling its products to Legrand at a price lower than its manufacturing cost, the sale price cannot be the sole consideration for sale rely-

ing on the judgment of Hon'ble Supreme Court in the case of Commissioner of Central Excise v Fiat India Limited [2012 (283) ELT 161]. The Tribunal held that assessable value for the purpose of excise duty would be under Rule 11 read with Rule 6 of the Central Excise Valuation Rules and hence money value of goods and services (being cost of tools, dies, research and development etc) supplied by Legrand should be included. It further held that extended period of limitation was invocable as the taxpayer suppressed the facts by not disclosing the agreement between the taxpayer and Legrand that they were inter connected undertakings.

Commissioner of Central Excise and Customs, Nashik v Dipareena Investment Private Limited [Appeal nos E/972/2007 & E/303 to 306/2011 Bom-Tribunal]

No service tax under the category Business Support Service is imposable on a job worker- manufacturer irrespective of the fact that the principal had taken registration and discharged excise duty on manufacture

The taxpayer company entered into an agreement with Jubilant Life Sciences Limited ("JLSL") under which the taxpayer agreed to manufacture excisable goods from raw materials supplied by JLSL. The terms of the agreement clearly showed that the taxpayer was carrying out the manufacturing activity for JLSL and the products after processing were either supplied to JLSL's depot or directly to the customers on payment of excise duty. As consideration for carrying out the activities, the taxpayer recovered processing charges from JLSL, which had a fixed and a variable component. After consultation with the excise authorities, the parties changed the excise registration in the name of JLSL and under the new arrangement; JLSL would discharge the excise duty.

It was the contention of the Revenue Authorities that the taxpayer was providing Business Support Services to JLSL as defined under the Finance Act, 1994 and subsequently show cause notices were issued for recovery of Service Tax from the taxpayer.

The matter reached before the Tribunal and it was held that the taxpayer was carrying out the activities of making available the factory and infrastructure, handling of raw material, accounting etc and the same were not distinct from the manufacturing activity. The activities of the taxpayers when seen together as a whole amounted to manufacturing activity. The fact that JLSL got itself registered under Central Excise, supplied the raw materials to the taxpayers and discharged excise duty cannot take away the fact that the taxpayers were engaged in the manufacturing activity. The excise registration is only to effect that one of the parties undertakes to pay the excise duty and that should not mean that the activity done by the taxpayer is not manufacturing activity. The fact that the taxpayer was charging two components under job charges fixed under fixed cost for salary, wages, depreciation, security charges, stationery, telephone etc and variable charges for power, fuel, contract worker, repair, consumable stores etc would not change the nature of activity of the taxpayer being one of manufacturing.

The Tribunal also noted that Service tax is levied under the category Business Auxil-

iary Services on processing of goods not amounting to manufacture and the activity of processing amounting to manufacture being kept out of the scope of that category cannot be brought under Service Tax levy under the category Business Support Services. Thus, the Tribunal held in favour of the taxpayers and rejected the applicability of service tax under Business Support Service.

Jubilant Industries Limited v Commissioner of Central Excise, Ghaziabad [ST/1772/2011 Tribunal- Delhi]

Liquidated damages or penalty payable by the manufacturer for the delay in supply of the goods allowed to be adjusted to arrive at the "transaction value" for the computation of excise duty

The taxpayer was engaged in the manufacture of electrical transformers and during the relevant period it supplied these transformers to the Andhra Pradesh State Electricity Board ("APSEB") under a contract. This contract provided for a variation in prices (upward or downward) as well as 'penalty' for delayed supply of the electrical transformers. This penalty was deducted from the invoice amount and thus brought down the value of the goods supplied for computation of excise duty. However, the Revenue Authorities were of the opinion that this penalty was in the nature of 'liquidated damages' and the taxpayer was liable to compensate APSEB on account of breach of contract and it cannot be termed as a 'reduction / variation in price'.

The matter reached before the Tribunal; since there was a conflict of opinion between decisions of the Tribunal and hence, the matter was referred to the Larger Bench of Tribunal. The Larger Bench of Tribunal held that wherever the taxpayer, as per the terms of the contract and on account of delay in delivery of manufactured goods is liable to pay a lesser amount than the agreed price as a result of the contractual terms, such resultant reduced price should be treated as the 'transaction value', regardless of whether the clause is titled 'penalty' or 'liquidated damages'

Commissioner of Central Excise, Hyderabad-IV v Victory Electricals [2013 TIOL 1794 Tribunal MAD LB]

V. VAT/ ENTRY TAX

High Court Decisions

In case of sale of entire unit or business as a whole, bifurcation of price towards movable and immovable, tangible and intangible assets would not in any manner make it as the transaction of sale of individual assets

The taxpayer carried on business in Agro Engine, Light Engineering Components, Power Genset and Two Wheelers. The taxpayer had factories at Ranipet, Thoripakkam and Thiruvotriyur. The taxpayer entered into a Business Transfer Agreement dated December 15, 1993 with Greaves Limited for the sale and transfer of business at Ranipet and Thoraipakkam units as going concerns. The taxpayer claimed exemption on the consideration received in lieu of transfer of three lines of business i.e. Agro Engine, Light Engineering Components

and Power Genset. The taxpayer claimed exemption under Explanation 3 to Section 2(r) of the Tamil Nadu General Sales Tax Act, 1959. The Revenue Authorities were of the opinion that the taxpayer was not eligible for the said exemption as the clauses of the agreement clearly pointed out that the parties agreed to separate values of movable and immovable assets, intangible and tangible assets.

The matter reached before the Madras High Court which observed that entire business consisting of land, building, furniture/fixtures, manufacturing equipment, leased assets, tools, gauges, instruments, drawings, trademarks, process sheets, patents collaboration agreement, dealership network, contract etc were all transferred as a whole and in entirety with non- compete clause. Hence, the High Court held that the intention of the parties was to sell the business units and bifurcation of price would not go against the intention of the parties to effect sale of the entire units at Ranipet and Thoraipakkam. Thus, the contention of the Revenue Authorities that the sale consideration should be included in the turnover of the taxpayer was rejected.

Eicher Motors Limited (Formerly Enfield India Limited) v The State of Tamil Nadu [2013 (12) TMI 629 Madras High Court]

Amendments reducing the time limit for filing of refund claims to be prospective unless expressly specified otherwise

The taxpayer filed its refund claim under the Maharashtra VAT Act, 2002 for the year 2009-10 on August 20, 2012. The time limit for filing the refund claim was reduced from three years to eighteen months by an amendment dated April 21, 2011. The Revenue Authorities were of the opinion that the refund claim of the taxpayer was time barred i.e. beyond the period of eighteen months in view of the amendment and hence communicated the same to the taxpayer.

The taxpayer preferred a writ petition before the Bombay High Court. The High Court held that a right was vested with the taxpayer on April 21, 2011 which could not be taken away without express terms or necessary intendment. The High Court therefore held that the amendment reducing the statutory limitation should be applied prospectively and not retrospectively. Accordingly, it was held that amendment will apply to claims that arose after the amendment and those claims which arose prior to the amendment will not be hit by the amendment.

Vaibhav Steel Corporation v Additional Commissioner of Sales Tax (VAT) [2013 TIOL 998 High Court Bom VAT]

Sale price for the purpose of sales tax is not to include value of material supplied free of cost by the buyer

The taxpayer was engaged in the manufacture of railway sleepers and ballast for South Central Railway and was registered under the Andhra Pradesh General Sales Tax Act, 1957. The Railway supplied fastenings, malleable cast iron inserts and HTS wire to be incorporated in the sleepers, free of cost. The Revenue Authorities were of the opinion that the value of the free issue of supplies should be included in

the sale price of the concrete sleepers and that the taxpayer is liable to pay tax on the same. It was the contention of the taxpayer that the cost of free issue material was added in the invoice only for the purpose of complying with the Central Excise laws and for the purpose of levy of sales tax, the value of the free issue material could not be included for arriving at the net sale price. Both, Assessing Officer as well as all the authorities, including the Tribunal had rejected the claim of the taxpayer.

The matter reached before the Andhra Pradesh High Court wherein the High Court held that the petitioner had not collected any sales tax and the Railways had not paid any amount on the value representing the free issue material. Further, as held by the Hon'ble SC in the case of Morriroku UT India (P) Limited v State of Uttar Pradesh and others [Civil Appeal no 1709/2008 SC] only the actual consideration received/receivable by the dealer alone formed the basis for the levy of sales tax. Consequently, the revision case was held in favour of the taxpayer.

VS Engineering Private Limited v State of Andhra Pradesh [Tax Revision Case no 22 of 2005 and batch dated October 11, 2013, Andhra Pradesh-High Court]

Notification & Circulars

Government adopts Dr Shome's suggestions on credit availment against importer's invoice; amends the CENVAT Credit Rules, 2005 and Central Excise Rules, 2002

The Central Government has amended the CENVAT Credit Rules, 2004 and the Central Excise Rules, 2002 with effect from March 1, 2014 for implementing Dr. Shome led Forum's suggestion on setting up of mechanism for availment of countervailing duty credit against importer's invoices. Basis this amendment, importers will have to get registration and undertake compliance at par with the first stage dealers

Notification nos 17, 18/2013- CE dated December 31, 2013

Draft CENVAT Credit Amendment Rules notified

The CBEC has issued draft CENVAT Credit amendment rules to simplify provisions relation to distribution of input service credit by Input Service Distributer. The draft rules have been issued to elicit public response. The Central Government has amended the Central Excise Valuation Rules relating to valuation for captive consumption and for related party and inter-connected undertakings.

F No 354/246/2012- TRU

CBEC issues clarification regarding exemption from Special Additional Duty of Customs on goods cleared from the SEZ/ Free Trade Warehousing Zone ("FTWZ") into the Domestic Tariff Area ("DTA")

In view of the varying practices being followed by the field formations regarding exemption from Special Additional Duty of Customs ("SAD") on goods stock transferred from SEZs /FTWZs into the DTA under notification No 45/2005-Customs, dated 16.05.2005, for self-consumption. The CBEC

has clarified that the benefit of the said notification is not available in such circumstances

Circular No 44/2013- Cus dated December 30, 2013

Input Tax Credit denied due to purchases from non- filer supplier

The Bombay High Court had delivered a judgment on the case of Mahalaxmi Cotton Ginning Pressing and Oil Industries [WP no. 33 of 2012- Bom-High Court] and upheld the validity of Section 48(5) of the Maharashtra VAT Act and denied Input tax credit due to purchase from suppliers not filing returns/not paying taxes. However, during the hearing the Tax department had assured that as and when these suppliers file return/pay tax, refund would be granted to the purchaser without applying for the same. Accordingly, the Tax department has rolled out the procedure for refunding the amount of tax and updating the list of non-filers.

Trade Circular No. 9T of 2013 dated December 11, 2013