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INDIRECT TAX REVIEW
DECEMBER 2014

EXCISE

CUSTOMS

SERVICE TAX

VALUE ADDED TAX

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GST: NEW TALK OF THE TOWN

Finally a step towards GST – major indirect tax reform in India, has been taken when 122nd Constitutional Amendment Bill, 2014 made its way through the Lok Sabha on 17th December, 2014. –

Highlights of the Constitutional Amendment

- GST defined as "any tax on supply of goods or services or both except taxes on supply of alcoholic liquor for human consumption"
- The term 'Service' defined for the first time in the Constitution as "Service means anything other than goods"
- To empower the Centre and the States to impose taxes on supply of goods or services or both
- Setting up of 'Goods And Service Tax Council' which shall provide recommendations on various matters relating to implementation of GST such as the rates of GST, exemption, threshold limit, taxes which may be subsumed, special provisions for backward States, date from which GST shall be levied on crude petroleum, diesel, petrol, natural gas and aviation turbine fuel etc.
- Additional 1% GST on interstate supply of goods for a period of not exceeding 2 years or as may be prescribed by the Council, proceeds of which shall be assigned to the State wherefrom the goods originate
- Supply of services in the course of import shall now be deemed to be as interstate transaction
- Loss of revenue to the States due to implementation of GST would be compensated for a period not exceeding 5 years.

Possible Impact

- Words triggering levy of indirect taxes now viz. manufacture, sale, provision of service, entry etc. will lose its importance and the term "supply" will be of apex significance
- CST to be replaced by the upcoming IGST on interstate supply as well as supply in the course of import of goods or services or both
- Bill provides for setting up of Council having only a recommendatory role

- The following taxes are proposed to get subsumed in the arena of GST:

CEENTRAL LEVIES

- Central Excise Duty
- Additional Excise Duty
- Excise duty under Medical and Toilet Preperations Act 1955
- Additional Customs Duty CVD
- Special Additional Duty of Customs SAD
- Service Tax
- Central surcharge and cesses as far as they relate to such supply of goods and services
- Central Sales Tax

STATE LEVIES

- VAT/Sales Tax
- Entertainment Tax
- Octroi, Entry Tax
- Purchase Tax
- Luxury Tax
- Tax on lottery, betting and gambling
- Sate surcharge and cesses as far as they relate to such supply of goods and services

FM's Assurance

The Union Finance Minister, Shri Arun Jaitley said that Goods and Services Tax (GST) will benefit most of the States from day one especially the consumer States. He said that to remove any apprehension among the States about the fall in their revenue collections, provisions have been made in the Constitution Amendment Bill on GST introduced by him in the Lok Sabha on the last Friday, 19th December, 2014 to ensure that none of them lose any revenue after the implementation of the GST. In this regard he mentioned that it is proposed to levy a non-VATable additional tax of not more than 1% on supply of goods in the course of inter-State trade or commerce. The Finance Minister said that this tax will be for a period not exceeding 2 years, or further such period as recommended by the GST Council. This additional tax on supply of goods shall be assigned to the States from where such supplies originate. The Finance Minister further said that the States have been ensured that there will be no revenue loss and the centre will compensate States for any loss of revenue arising on account of implementation of the GST for a period up to five years. He

said that a provision in this regard has been made in the Constitution Amendment Bill. He said that the compensation will be on a tapering basis i.e., 100% for first three years, 75% in the fourth year and 50% in the fifth year.

The road ahead

On analysing the above table, it transpires that Basic Customs Duty shall still prevail. Also, alcoholic liquor, crude petroleum, diesel, petrol, natural gas, aviation turbine fuel, tobacco and tobacco products are kept out of the GST preview for a limited period. The first white paper on GST was out in 2009. Thereafter, draft Constitutional Amendment Bill was introduced in 2011 which did not see the light of the day and has already lapsed. Now, after a gap of around 3 years, the latest Constitutional Amendment Bill, 2014 is presented in Lok Sabha. For various reasons, introduction of GST is delayed since years. Let us hope and wait that emergence of GST boosts Indian markets and provide new avenues for growth and prosperity.

CASE UPDATE: CENTRAL EXCISE

Corrigendum amending conditions for claiming exemption would apply from date of original Exemption Notification

Polyplex Corp. N Ltd. Vs. Union of India [(2014) 51 taxmann.com 262 (Allahabad)] Polyplex Corporation Ltd.(the Petitioner) was engaged in manufacturing and export of polyester film. The polyester films were exported to various countries in terms of Rule 18 of Central Excise Rules, 2002 (the Excise Rules) for the period December 2004 to March 2005. The Petitioner did not claim any rebate on Inputs under Rule 18 of Excise Rules.

The Petitioner availed benefit of exemption in respect of 'imported raw materials' under Advance License in terms of Notification No. 93/2004-Customs (Tariff) dated September 10, 2004 ("the Exemption Notification").

The Department denied said exemption on the ground that as per condition in Para (v) of the Exemption Notification, exemption is not available if rebate under Rule 18 of the Excise Rules is taken.

The Petitioner argued that as per M.F. (D.R.) Corrigendum F. No. 605/50/2005-DBK, dated May 17, 2005, ("the Corrigendum") the condition (v) was modified and exemption was available if rebate under Rule 18 of the Excise Rules 'in respect of raw materials/ inputs' was not claimed, which was satisfied by the Petitioner.

On the contrary, the Department argued that the Corrigendum have prospective effect. The same was upheld by the Commissioner (Appeals). Being aggrieved, the Petitioner preferred Revision application to the Central Government which was also rejected vide order dated August 24, 2009.

Being aggrieved, the Petitioner filed a petition before the Hon'ble High Court of Allahabad. The Hon'ble High Court of Allahabad relied upon the following case laws:

- Commissioner, Sales Tax Dunlop India Ltd. [(1994) 92 STC 571 (AR)]
- State of Rajasthan J.K. Udaipur Udyog Ltd. [(2004) 7 SCC 673]
- Jugilant Organosys Ltd.Vs. CCE [2012(276) ELT 335 (Kar.)]
- Tata Iron & Steel Co. State of Jharkhand [(2005) 4 SCC 272]
- CCE Mahaan Dairies [(2004) 11 SCC 798]

and held that the Corrigendum is issued for the correction of error or omissions in the original document, which relates back to the date of initial authoring for the reason that correction means whatever written was not correct or there was some mistake which need be corrected. The Authorities have committed a manifest error of law. Accordingly, the Rebate claims were allowed to the Petitioner.

If goods not intended for retail sale than provision of valuation U/s, 4A not applicable

Wyeth Ltd. Vs. CCE, Nasik [2014 -TIOL-2530-CESTAT-MUM] Wyeth Ltd.(the Appellant) was engaged in manufacturing of toothpaste which is notified under Section 4A of the Central Excise Act, 1944 (Excise Act). The Appellant manufactured "Aquafresh" brand of toothpaste on job-work basis for Glaxo Smith Kline Asia Pvt. Ltd. (Smith Kline). The Appellant cleared a consignment of toothpaste which was intended for resale under Section 4A of the Excise Act. However another consignment of toothpaste which were given as free samples by Smith Kline along with the Horlicks manufactured and sold by them were cleared on Cost Construction basis in terms of the Hon'ble Apex Court judgment in the case of Ujagar Print case. The Department contended

that since the toothpaste is notified under Section 4A of the Excise Act, it should have been cleared as such. Accordingly, Show Cause Notice was issued and demands were confirmed by the Department.Being aggrieved, the Appellant preferred an appeal before the Hon'ble CESTAT, Mumbai. The Hon'ble CESTAT, Mumbai after considering the provisions of the Standards of Weights and Measures Act, 1976 and Packaged Commodity Rules, 1977 and relying upon the decision in the case of Geoffery Manners & Co. Ltd. Vs. CCE [2006 (204) ELT 403] held that since the toothpaste were supplied as 'free sample' and were not meant for retail sale, the provisions of Standards of Weights and Measures Act, 1976 and Packaged Commodity Rules, 1977 would not apply at all and, therefore, the provisions of Section 4A of the Excise Act would also not apply.

SEZ units entitled for exemption from CVD on goods cleared in DTA notwithstanding bar U/s. 5A of Central Excise Act, 1944

Roxul* Rockwool Insulation *India Pvt. Ltd.Vs. Union of India and 6[2014-TIOL-2123-HC-AHM-CUS]

Roxul Rockwool Insulation India Pvt. Ltd. (**the Petitioner**)was engaged in the manufacture of stone-wool insulation products (**Impugned goods**) and their manufacturing unit was located at Dahej Special Economic Zone (**SEZ**). The Impugned goods were exported as well as sold in the local market, subject to certain conditions imposed by the Government. In terms of Section 3(1) of the Customs Tariff Act, 1975 (**the Customs Tariff Act**), any article which is imported into India shall, in addition, be liable to additional Customs duty (**CVD**) equal to Excise duty for the time being leviable on a like article if produced or manufactured in India. Accordingly, the Department demanded CVD from the Petitioner on the Impugned goods cleared to DTA from SEZ unit.

The Petitioner urged that since the local manufacturers are not liable to pay any Excise duty on manufacture of the Impugned goods by way of exemption notification issued under Section 5A of the Central Excise Act, 1944 (**the Excise Act**), no CVD can be collected from them. Hence, the Petitioner applied for refund of CVD already collected, and for exemption from payment of CVD on the clearances made, where CVD was not so collected.

However, the Department relying on Section 5A of the Excise Act dismissed the application made and held that SEZ units are specifically excluded from the purview of Section 5A of the Excise Act and hence the Petitioner is not entitled for the exemption.Being aggrieved, the Petitioner filed a petition before the Hon'ble High Court of Gujarat.

The Hon'ble High Court of Gujarat held that:

- Section 3(1) of the Customs Tariff Actuses the expression 'excise duty for the time being leviable on a like article if produced or manufactured in India'. In other words, if Excise duty levied on such articles manufactured in India is nil, the CVD would also be nil;
- After the Special Economic Zones Act, 2005 (the SEZ Act) was enacted, Section 3(1) of the Excise Act was amended thereby excluding the goods manufactured in SEZ from payment of Excise duty. However, Section 5A of the Excise Act continued without corresponding change;
- Section 5A of the Excise Act continues to contain a reference to a Special Economic Zone in the proviso providing that any exemption granted by a Notification under Section 5A of the Excise Act would not apply to any goods produced or manufactured in SEZ and brought to any other place in India;
- This omission to omit the reference to SEZ from said proviso appears to be a legislative oversight.
- Hence, the Hon'ble High Court decided the matter in favour of the Petitioner and held that SEZ unit will have to liability to pay CVD, if the local manufacturer of like goods is exempt from payment of whole of the Excise duty.

Deemed exports & exports not distinguishable for Central Excise Law

Commissioner of Central Excise, Noida Vs. JBM Auto Components Ltd. [(2014) 51 taxmann.com 36 (New Delhi – CESTAT)] In the instant case, the Department preferred an appeal to the Hon'ble CESTAT, Delhi, against the order of the Ld. Commissioner (Appeals) wherein it was held that deemed exports and exports are not different. The Department sought to distinguish exports and deemed exports before Hon'ble CESTAT, Delhi. The Hon'ble CESTAT, Delhi held that there is no law to advance such proposition and accordingly, the two concepts i.e. exports and deemed exports are not different. Thus, the appeal filed by the Department was dismissed.

Our Comments:

In the case of E.I. Dupont India (P) Ltd. Vs. Union of India [(2014) 41 taxmann.com 479/43 GST 461 (Guj.)] the Hon'ble Gujarat high Court held that refund under Rule 5 of the CENVAT Credit Rules, 2004 ("the Credit Rules") would be allowed in respect of credit attributable to turnover of deemed export.

Similarly, In the case of Inox Air Products Ltd. Vs. CCE [(2007) taxmann.com 949 (Ahd. – CESTAT)] the Hon'ble CESTAT, Ahmedabad held that rebate under Rule 18 of the Central Excise Rules, 2002 would be applicable to deemed exports.

CASE UPDATE: SERVICE TAX

Malafide cannot be attributed to the Assessee on detection of short payment by the Department prior to filing of ST-3

Pectjem Classes Vs. Commissioner of Central Excise, Kanpur [2014 (12) TMI 590 – CESTAT NEW DELHI] Pectjem Classes (the Appellant) is a service provider under the category of Commercial Training and Coaching services. Their premises was visited by the officers on October 14, 2008 and from the records maintained by the Appellant, it was found that for the period May 2008 to September 2008, they have deposited less Service tax to the tune of Rs. 2,96,480/-. Thus, proceedings were initiated against the Appellant for recovery of Service tax along with interest and imposition of penalties under various Sections of the Finance Act, 1994 (the Finance Act). Being aggrieved, the Appellant preferred an appeal before the Hon'ble CESTAT, Delhi contesting the amount of penalties. The Appellant contended that the period involved is from May 2008 to September 2008 and the ST-3 for the said period was yet to be filed by October 25, 2008. Inasmuch as ST-3 return was yet to be filed, the Appellant would have reconciled the entire figures at the time of filing of return and would have deposited the Service tax accordingly. Hence, the Appellant prayed for setting aside the penalties.

The Hon'ble CESTAT, Delhi held that detection of short payment by the officers prior to filing of ST-3 is a premature detection. The Appellant has given a plausible explanation of short payment by submitting that inasmuch as entries were not made in the computers and the data was yet to be entered, there was no mala fide on their part not to pay Service tax.

It was further held when that the entire case of the Revenue is based upon the scrutiny of the statutory records maintained by the Appellant, the Appellant was not in a position to evade any Service tax. Hence, the penalties imposed upon the Appellant were set aside while the demand of Service tax was confirmed along with interest.

SC grants stay on Delhi HC verdict on service tax audits

In August,2014, Hon'ble High Court of Delhi in the matter of ***UNION OF INDIA & ORS. v. M/S TRAVELITE (INDIA)*** pronounced that the service tax audits conducted u/r 5A(2) of Service tax rules, 1994 are not valid in law.

Thereafter, department moved to SC against the impugned judgement. The matter was admitted by the court and on 18th Dec'14, Hon'ble Apex Court has granted a stay on the operation of the judgement made by High Court.

It would be quite interesting to see the fate of service tax audits in the eyes of this case. And it might become a landmark judgement with respect to service tax audits conducted by department since inception.

Renting Vs Hiring

In the case of ***Commissioner of Customs & Central Excise Vs Sachin Malhotra, Raj Kumar Taneja, and M/s Shiva Travels [2014-TIOL-2039-HC-UTTRAKHAND-ST]*** wherein the difference between renting and hiring has been reported for the purpose of levying service tax under the category of "Rent a cab services". The highlights of the decision are summarised as follows:-

- Service tax is leviable under 65(105)(o) of the Finance Act, 1994 under the category of "Rent-a-cab" if and only if there is renting of cabs. Mere hiring of cabs will not be leviable to service tax.
- Hiring means when the owner of the vehicle, who may or may not be the driver, will provide the services while retaining the control and possession of the vehicle with himself. The customer is merely enabled to make use of the vehicle by travelling in the vehicle and is expected to pay metered charges which are usually collected on the basis of the number of kilometres travelled. Hence, the essence of hiring is that the control and possession of the vehicle is not transferred to the person hiring the vehicle.

- Renting refers to a situation wherein the control and possession of the vehicle is being transferred by the owner to the person hiring the vehicle thereby meaning that the hirer is endowed with the freedom to take the vehicle wherever he desires with the obligation to keep the owner informed of his movements from time to time.

Impact In Post Negative List Era

The impact of the said decision creating distinction between renting and hiring remains more or less same in the negative list era also. The only difference being that under negative list tax regime, the taxable services are not defined and all services except those specified in the negative list or mega exemption notification no. 25/2012-ST dated 20.06.2012 are chargeable to service tax. Therefore, hiring not being specifically covered by exemption is leviable to service tax. Moreover, the clause (f) of the declared list of services under section 66E specifically covers the activity of hiring without transfer of right to use goods. The clause (f) of section 66E reads as follows:-

"Transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods".

The meaning of the term "transfer of right to use goods" is explained in the Education Guide released by the Board as transfer of possession and effective control over the goods in terms of the judgment of the Supreme Court in the case of State of Andhra Pradesh Vs RashtriyaIspat Nigam Ltd. [2002-TIOL-560-SC-CT]. Hence, the hiring of vehicles will be covered by the clause (f) of the section 66E of the Finance Act, 1994. Further, the ambiguity as regards levy of service tax on renting would prevail, particularly when the taxable service of rent a cab is not defined in the Finance Act, 1994.

Before parting:- First and foremost, the decision by differentiating between hiring and renting has created the dispute of classification of service as hiring attracts service tax at the rate of 12.36% while there is abatement available for the renting of cab. The rent a cab service has been given abatement vide notification no. 26/2012-ST dated 20.06.2012 and is also covered under reverse charge mechanism. The abatement notification seeks to grant abatement of 60% to the renting of motor vehicle designed to carry passengers subject to the condition of non-availment of cenvat credit on inputs and capital goods. It is practically observed that no assessee is aware of the distinction between hiring and renting and normally, service tax is paid

by availing the benefit of abatement without even examining whether the services fall under renting of cab or hiring. This decision will give an additional tool to the revenue department to deny the benefit of abatement to the assessees by contending that they are required to pay service tax at full rate instead of claiming the benefit of abatement notification. Furthermore, the service tax on renting of cab is to be paid by the service recipient under reverse charge mechanism if the benefit of abatement is availed and when the service is not provided to a person engaged in similar business. But, when the difference between hiring and renting is not known to assessees, the confusion as regards service tax liability under reverse charge mechanism will also increase. This is for the reason that the renting of cab is covered under reverse charge mechanism while hiring is not covered. The provisions as regards levy of service tax under the rent a cab services are already very complex and this decision pronounced by the High Court adds to the complicacies.

Extended period not invocable when penalties waived off on the ground of interpretational issue

Sankhla Udyog Vs. Commissioner of Central Excise & Service Tax, Jaipur [(2014) 51 taxmann.com 264 (New Delhi – CESTAT)] In the instant case, Sankhla Udyog (the Appellant) was engaged in rendering Repairs and Maintenance Services. A Show Cause Notice was issued to the Appellant by invoking the extended period alleging that there was a difference between the amount shown in their ledger and in the Service Tax Returns (ST-3) on which the Appellant had not paid Service tax and the same was liable to be recovered along with interest and penalty. The Appellant contended that prior to June 16, 2005, Repair service other than under a Maintenance contract was not liable to Service tax and thereafter, they became eligible for Small Scale Exemption under the erstwhile Notification No. 6/2005-ST dated March 1, 2005 effective from June 16, 2005. Further, the difference between the figures shown in the ledger and in the ST-3 occurred because in the ledger the figures were shown on accrual basis whereas in ST-3 the figures were shown on actual realization basis and that there had been no suppression or wilful mis-statement on their part. However, the Adjudicating Authority confirmed demand on the

Appellant by invoking extended period but waived off penalties under Section 80 of the Finance Act, 1994 ("the Finance Act") on ground that there was interpretation of law involved.

Being aggrieved, the Appellant preferred an appeal before the Hon'ble CESTAT, Delhi, inter alia, questioning invocation of extended period when penalty was waived off under Section 80 of the Finance Act on the ground of interpretation of law being involved. The Hon'ble CESTAT, Delhi held that when benefit of Section 80 of Finance Act has been extended for not imposing any penalty, it clearly shows that the ingredients required for invoking extended period are not present in the instant case. Indeed in the entire Adjudication Order there is no word as to how the extended period is invocable.

Hence, the extended period is not invocable. It was further held by the Hon'ble Tribunal that once the Appellant explained the reason for mismatch between the figures of their ledger and in their ST-3 return, a clear finding was required to be given by the Adjudicating Authority instead of brushing it aside on the ground that it was not possible to verify their claim. Hence, the Adjudicating Order was set aside and matter was remanded back to decide the same afresh but without invoking the extended period.

CASE UPDATE: CUSTOMS

Stock transfers by 100% EOU to DTA unit wasn't liable to SAD

[2014] 52 taxmann.com 130 (Mumbai - CESTAT)CESTAT, MUMBAI BENCH VVF Ltd. v Commissioner of Central Excise,Belapur

Section 3, of the Central Excise Act, 1944, read with section 3(5), of the Customs Tariff Act, 1975 - Charge/Levy - Excise Duty on DTA Clearances by 100% EOU - Assessee-EOU made stock transfers to its own units in DTA but did not pay special additional duty of customs (SAD) portion of customs duty claiming exemption under Notification 23/2003-CE - Department denied said exemption on ground that stock transfer to DTA is not liable to sales tax and therefore, same is liable to SAD .

HELD : To be eligible for exemption from payment of SAD, condition in Notification 23/2003 to be satisfied is "goods being cleared into DTA are not exempt by State Govt. from payment of sales tax/VAT" - In this case, since goods when sold in DTA have not been exempted by State Government by any Notification, hence, SAD is exempt - Since

condition of exemption is satisfied, Tribunal is not required to go into analysis as to whether goods are leviable to sales tax - Hence, assessee was entitled to exemption from SAD and department's miscellaneous application placing reliance on Circular No. 44/2013-CUS., dated 30.12.2013 was dismissed [Paras 7, 7.1 and 7.3] [In favour of assessee]

Rule 3, of the Cenvat Credit Rules, 2004, read with section 3, of the Central Excise Act, 1944 - CENVAT Credit - Utilisation of - Assessee-EOU utilised credit of Education Cesses (EC and SHEC) for payment of corresponding Educational Cesses (EC and SHEC) on DTA clearances - Revenue argued that as per Rule 3(7)(b)(iii)/(iiia), CENVAT Credit in respect of EC/SHEC on excisable goods can be utilised only towards payment of EC/SHEC on excisable goods whereas assessee had utilised same for payment of Customs duties, which was not permissible - HELD : Proviso to section 3(1) merely provides that Central Excise duty payable would be aggregate of Customs duty; duty paid by assessee continues to be Central Excise duty and not Customs duties - Therefore, assessee has correctly utilised CENVAT Credit in respect of cess of excisable goods towards payment of duty/cess leviable under section 3 ibid [Para 7.2] [In favour of assessee]

Circulars and Notifications : Notification 23/2003-CE dated 31-03-2003, Notification No. 45/2005-Cus., dated 16-5-2005 and Circular No. 44/2013-CUS., dated 30-12-2013

E-rickshaws imported in completely knocked down condition without battery don't require “type approval”

[2014] 51 taxmann.com 318 (New Delhi - CESTAT) CESTAT, NEW DELHI BENCH Vansh Enterprises v. Commissioner of Customs, New Delhi (Import & General)

Section 111, read with sections 112 and 125 of the Customs Act, 1962, Rule 126 of the Central Motor Vehicle Rules, 1989 and section 5, read with section 3 of the Foreign Trade (Development And Regulation) Act, 1992 - Confiscation - Smuggling/Illegal Import - Assessee was importing E-rickshaws in CKD condition and without battery and was assembling them in India - Department co

nfiscated them on ground that said 'new vehicles' were imported without production of 'type approval' certificate from Auto Mobile Research Association of India or any other agency in terms of rule 126 of Central Motor Vehicle Rules - HELD : As per Chapter Note 2 of Chapter 87 of Import Export Policy, 2014, a new imported vehicle does

not include vehicle which is manufactured or assembled in India - Since E-rickshaws were imported by assessee in CKD condition and without battery and were assembled in India; they cannot be treated as new vehicle - Hence, provisions of rule 126 ibid, which are applicable only to import of new vehicles, would not apply - Accordingly, matter was remanded back for fresh adjudication in light of aforesaid [Paras 4 and 5] [In favour of assessee]

CASE UPDATE: SALES TAX/VAT

HC remands issue of levying penal rate on inter-State sales to unregistered dealers without filing 'C' form

[2014] 52 taxmann.com 313 (Karnataka) HIGH COURT OF KARNATAKA Telco Construction Equipment Co. Ltd. v. State of Karnataka

Where assessee made inter-State sales to unregistered dealers for which 'C' forms could not be produced and thereupon Deputy Commissioner levied tax at penal rate on such sales and Single Judge of High Court upheld same, matter was remitted for reconsideration.

Section 8 of the Central Sales Tax Act, 1956 - Charge/Levy - Rate of Central Sales Tax - Assessment years 2002-03 to 2004-05 - Assessee made inter-State sales to unregistered dealers for which 'C' forms could not be produced - Deputy Commissioner levied tax at penal rate on such sales - Single Judge of High Court upheld action of Deputy Commissioner - Whether in view of judgment of Karnataka High Court rendered in case of Adeshwar Granites (P.) Ltd. v. Addl. CCT [2013] 64 VST 519, impugned orders passed by Single Judge and also Deputy Commissioner were liable to be set aside - Held, yes - Whether matter required to be remitted back to Deputy Commissioner for reconsideration - Held, yes [Para 12] [In favour of assessee/Matter remanded]

Mobile charger is an accessory of mobile phone and not its integral part; leviable to VAT at 12.5%

[2014] 52 taxmann.com 410 (SC) SUPREME COURT OF INDIA State of Punjab v. Nokia India (P.) Ltd

CST & VAT: Punjab VAT - Where assessee sold mobile/cell phone with battery charger in same packing and it did not charge any separate

amount for battery charger from customers and only amount charged was for handset, battery charger was an accessory to cell phone and was not a part of same and was liable to tax at general rate of 12.5 per cent

Section 8 of the Punjab Value Added Tax Act, 2005 - Classification of goods - Mobile battery charger - Assessment years 2005-06 and 2006-07 - Assessee sold mobile/cell phone with battery charger in same packing - It did not charge any separate amount for battery charger from customers and only amount charged was for handset - Whether battery charger was an asscessory to cell phone and was not a part of same - Held, yes - Whether battery charges was liable to be taxed at rate of 12.5 per cent falling under Schedule 'F' of VAT Act - Held, yes [Para 19][In favour of revenue]

Entire input credit is available on purchase of raw material irrespective of generation of by-product

[2014] 51 taxmann.com 219 (Madhya Pradesh) HIGH COURT OF MADHYA PRADESH Jindal Agro Oils v. Commissioner of Commercial Tax

CST & VAT: M.P. VAT Entire input tax credit would be available on purchase of cotton seeds for manufacture of cotton seed oil, even if by-product of oil cake was generated

Section 14 of the Madhya Pradesh Value Added Tax Act, 2002 - Input tax Credit - Assessee took input tax credit of taxes paid on purchase of cotton seed that was used for manufacturing cotton seed oil - Department reduced input tax credit proportionately for reason that by-product (being oil cake) was also generated - Whether such disallowance to extent of generation and sale of by-product oil cake was not proper and assessee was entitled to get benefit of set off/input tax paid on entire amount of tax paid; and principle of proportionate liability could not be invoked in such cases - Held, yes [Para 6][In favour of assessee]

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