Dear readers,

We are pleased to present the June 2015 edition of EY’s quarterly newsletter Tax Digest, which summarizes significant tax and regulatory developments.

This newsletter is designed as a ready reckoner and covers landmark tax judgments, an update on tax treaties and alerts on topical developments in the tax arena. It provides access to “In the press” section, which includes published articles on various issues in the tax realm over the last quarter. It also details the key thought leadership reports and other topics of interest to tax professionals.

We hope you find this edition, both timely and insightful.

Best regards,
EY Tax Update team

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- Liaising with collieries/Railways for timely delivery to principal, not C&F agents
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- Finding rendered by adjudicating authority based on facts, even if incorrect, cannot be stated to be a ‘jurisdictional aspect’ warranting interference by HC in its writ jurisdiction
- Service element in works contract would be subject to Service tax even prior to the introduction of Works Contract Service with effect from 1 June 2007
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- Outdoor catering services/canteen services used for employees are eligible for input service credit. However, if cost of food is borne by employee, assessee cannot take credit of that part of Service tax which is borne by employee
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- In case of any reduction in contract price after clearance of goods and payment of duty thereon, the difference between the duty paid and the duty applicable on the reduced price should be refunded
- Sterilization of syringes and needles do not attract Excise duty
- In case of manufacture of medicines on job work basis, job worker is the manufacturer, and not the raw material supplier/loan licensee
- Even if the goods are different, so long as the trade name or brand name of some other company is used, the benefit of the notification, granting exemption or concessional rate of Excise duty to small scale industrial units (SSI units), will not be available
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- SC quashes 1% notional loading in Customs valuation when actual charges are ascertainable
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- Commissioner (Appeals) is not empowered to condone delay beyond the extended period of 30 days

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- Where assessee was engaged in execution of jobs design, supply and installation of air-conditioning plants, assessee's works contract for fabrication and installation of water chilling plant at factory of customer would fall under Entry No. 5 of notification dated 18 October 1993 issued under section 55A
- HC confirms powers of the legislature to determine measure of tax; upholds stage-wise taxability under Rule 58 of MVAT Rules
- VAT cannot be demanded on the profit element of the main contractor where entire contract is executed by sub-contractor
- Builder/developer who had entered into agreements with prospective buyers to construct flats and thereafter sold the same with some portion of land against valuable consideration; would be covered under term “works contract”
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Key statutory updates

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- CENVAT credit
- Customs
- Foreign Trade Policy 2015-20
- VAT
- Updates relating to the Constitution Amendment Bill for Goods and Services Tax

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*Foreign Exchange Management Act (FEMA) 1999*

- Enhancement of the limit for resident individuals under Liberalized Remittance Scheme (LRS) - US$125,000 to US$250,000
Review of FDI Policy on investments by NRIs, PIOs and OCIs

Introduction of Real Estate Investment Trusts (REITs) as an eligible financial instrument / structure under FEMA

Foreign Direct Investment Policy

Department of Industrial Policy and Promotion (DIPP)
- Consolidated FDI Policy Circular 2015
- Clarification on Press note 10 of 2014 issued in respect of Construction development sector
- Extension of initial validity of Industrial license for defence sector up to 7 years
- Foreign investment in Pension sector

 Reserve Bank of India
- Removal of limit of US$20 million of Buyer’s credit prescribed in Project Export Memorandum (PEM)
- Review of sector specific conditions applicable to insurance sector under FDI policy
- Export of Goods and Services - Declaration of Exports of Goods/Software
- Existing All-in-cost ceiling of External Commercial Borrowing (ECB) and Trade credits extended till March 2015
- ECB denominated in Indian Rupees (INR) - Mobilization of INR

In the press
Compilation of alerts
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What's new
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Royalty/technical fee “used interchangeably” in regulatory authority document, allowable where commercially expedient

In the case of Govindlal C. Mandhana (Bom HC) [ITA Nos. 1221 of 2012 & 1222 of 2012], the Taxpayer had entered into a technology license agreement with its two foreign principals and paid license fees to operate restaurants under their name in India. The Tax Authority contended that since the regulatory authority, Secretariat for Industrial Assistance (SIA), restricted payment of technical service fee for seven years, the Taxpayer had changed the nomenclature to “royalty”. Therefore, the expenditure should not be allowed. The High Court (HC) observed that the SIA had used the terms “technical license fee” and “royalty” interchangeably. Expenditure incurred was motivated by commercial expediency. “Commercial expediency” implies everything that serves to promote trade and commerce and includes every means suitable to that end which a prudent man may incur for the purpose of his business. Royalty paid by the Taxpayer was for business purposes and, hence, allowable as expenditure under the provisions of the Income Tax Laws (ITL).

Expenditure incurred on maintenance of assets deductible in spite of no business activity during the year

In the case of Milan D. Shah [6526/Mum/2010], the Mumbai Income Tax Appellate Tribunal (ITAT) held that expenditure incurred on maintenance of assets to keep it ready for use, cannot be disallowed on the ground that no business was actually carried on and no income has been earned. It was not a case where the Taxpayer had completely abandoned or has closed the business forever. Rather, the Taxpayer was unable to get business after an agreement was terminated. It was the Taxpayer’s endeavor to sustain its business that it had to incur lay-up cost for maintenance of such asset, so that it is ready for use at any time. Considering the business was a going concern, such expenditure was allowable as business expenditure.

**Significant Supreme Court rulings**

Supreme Court rules on year of deductibility of debenture interest paid upfront

In the case of Taparia Tools Ltd. v. JCIT [TS-134-SC-2015], the Supreme Court (SC) had to decide on deductibility of upfront payment of debenture interest, though it was amortized over the tenure of the debenture in the books of account of the Taxpayer. The SC held that since the Taxpayer had claimed deduction for the full amount of upfront interest payment, the same should be allowed in the year of payment and should not be spread over the term of debentures. The SC reiterated that there is no concept of deferred revenue expenditure under the ITL. Furthermore, the treatment given in the books of account is not an estoppel against the statute to claim deduction.

*(For more details, please refer EY Alert dated 26 March 2015)*

Depreciation allowed on assets leased out pending start of own manufacturing plant

The SC, in the case of K.M. Sugar Mills Ltd. v. CIT [TS-159-SC-2015], held that depreciation could be claimed on an asset leased out, when income out of leasing is offered to tax as business income. The Taxpayer had purchased gas cylinders during the year for its manufacturing plant, which could not be started during the year. Hence, the Taxpayer had leased out those cylinders and claimed 100% deduction as depreciation. The SC held that once the cylinders had been dispatched to the lessee, it could be said that they have been put to use by the lessor for the business of hiring/leasing the cylinders, and hence, depreciation on the cylinders could be allowed to the Taxpayer to be set off against its business income earned from leasing.

Educational institute is eligible for exemption in spite of considerable profits at the year-end

In the case of Queen’s Education Society v. CIT [TS-119-SC-2015], the SC held that exemption to an education institute cannot be denied on the grounds of considerable profits earned. The surplus generated is ploughed back for educational purposes, and the educational institution exists solely for educational purposes and not for the purposes of profit. The fact that the Taxpayer makes surplus does

Vend fees are statutory dues allowable as deduction only on actual payment

In the case of Travancore Sugars & Chemicals Ltd. [TS-261-SC-2015], the Taxpayer was a company engaged in the manufacture and sale of sugar and liquor. It was liable, under state law, to collect from customers and pay a vend fee to the State Government to be used for repairs/replacement of old machinery of the Taxpayer and two other sugar mills. The SC held that the vend fee compulsorily collected by the State Government was in the nature of a “fee” and, hence, covered within the scope of the ITL provision, which permits deduction for “tax, duty, cess or fee, by whatever name called, under any law for the time being in force” on actual payment thereof. Even if the vend fee is not regarded as “fee” in the sense of recompense for a special service/benefit but is consideration paid for granting a “privilege” by parting with exclusive right of the Government, it would still fall within the wide scope of the provision which covers “fee, by whatever name called”. Hence, it is allowable as deduction only on actual payment.

(For more details, please refer EY Alert dated 15 May 2015)

Rental income when assessable as business income

In the case of Chennai Properties & Investments Ltd. [TS-238-SC-2015], the SC observed that the main object of the Taxpayer according to its Memorandum of Association, as well as actual activities carried on by the Taxpayer, comprised only acquisition, holding and letting of properties. No other activities were carried out by the Taxpayer. On these facts, the SC held that owning and letting out of properties was part of the Taxpayer’s core trading operations and, hence, rental income was assessable as Business Income.

(For more details, please refer EY Alert dated 7 May 2015)

Restriction on extent of commercial area in housing project cannot apply on a retroactive basis

In the case of Sarkar Builders [TS-279-SC-2015], the SC held that amendment introduced w.e.f. 1 April 2005 restricting commercial area, which could form part of housing project cannot apply retroactively to housing projects, which were approved by local authority and which had commenced construction prior to 1 April 2005. The SC held that the said condition of the ITL was inextricably linked with the factor of approval and commencement of construction of housing project prior to 1 April 2005, and asking a taxpayer to comply with the said condition for such project at a later stage would tantamount to seeking impossibility of performance.

(For more details, please refer EY Alert dated 20 May 2015)

Decisions on profit-linked deductions

Karnataka HC confirms exemption benefits to DTA unit converted into STPI

In the case of CIT v. E 4 E Application Services P. Ltd. [TS-139-HC-2015(Kar)], the Karnataka HC held that the Taxpayer, engaged in the business of software development, is eligible for income-linked deduction for export of computer software under Section 10A of the ITL post conversion into an STP unit. The Taxpayer was an existing Domestic Tariff Area (DTA) unit, which converted into STP unit during the year under consideration. The Tax Authority contended that the STP unit was formed out of splitting up or reconstruction of existing DTA unit and, hence, is not eligible for the exemption. The HC noted that Central Board of Direct Taxes (CBDT) Circular No.1 of 2005 that provides for grant of Section 10B benefit in a comparable context and relying on Karnataka HC Division Bench ruling in case of CIT v. Expert Outsource (P) Ltd. [2013] 358 ITR 518] held that benefits under Section 10A should be available to the Taxpayer as the STP scheme itself provides for converting of a DTA unit into an STPI unit.
Taxpayer qualifies as “manufacturer” despite outsourcing part of its activities

In the case of MKU (Armours) Pvt. Ltd. v. CIT [TS-213-HC-2015(All)], the Allahabad HC held that the Taxpayer, a 100% export oriented undertaking engaged in the manufacturing of the “Ballistic Helmet” and “Bullet Proof Jackets”, was eligible for income-linked exemption. The HC did not accept the Tax Authority’s contention that the Taxpayer cannot be said to be a “manufacturer” since most of the activities were outsourced. The HC noted that the Taxpayer had outsourced only certain well defined “process”; that too, under the direct control and supervision of its managerial/technical staff due to critical and sensitive nature of the final products. The HC upheld the Taxpayer’s claim as a manufacturer and, hence, eligible for the exemption.

No deduction available in respect of amount of voluntary TP adjustment absent remittance in India

In the case of Agilisys IT Services India Pvt. Ltd. [TS-257-ITAT-2015(Mum)], the Taxpayer was a 100% export oriented unit (EOU) eligible to claim tax holiday benefit under the ITL. The Taxpayer had underpriced its transaction with its associated enterprise and made a suo motu transfer pricing (TP) adjustment only in its corporate tax return without realizing the corresponding proceeds in foreign exchange and claimed the tax holiday benefit on this enhanced amount. The ITAT held that the tax holiday benefit cannot be allowed in respect of such TP adjustment because the legislative intention of the tax holiday was to incentivize the EOU only when money was brought into India in convertible foreign exchange.

(For more details, please refer EY Alert dated 12 May 2015)

Telangana and Andhra Pradesh HC explains “services rendered outside India”

In the case of Peters & Prasad Association [TS-839-HC-2014(TEL&AP)], the issue before the Telangana and Andhra Pradesh HC was whether the activity of conducting survey and submitting the report in India for the benefit of foreign enterprises is rendered within India or outside India for availing deduction under the provisions of Sec.80-O of the ITL. The HC held that since the survey report submitted to the foreign enterprises was used outside India the services were regarded as rendered outside India. The mere fact that the submission of report was within India will not make the Taxpayer ineligible for deduction under Sec.80-O of the ITL.

Gujarat HC holds that retrospective amendment to the meaning of the term “undertaking” is unconstitutional

In the case of Niko Resources Ltd. (Special Civil application No. 13134 of 2009 with Special Civil application No. 10903 of 2009), the Gujarat HC stated that the retrospective application of the definition of “undertaking” with reference to profit-linked deduction in case of “industrial undertakings engaged in production of mineral oil” is unconstitutional and, hence, liable to be struck down. The said definition was inserted in the Finance (No.2) Act 2009 by way of an explanation wherein it was defined that all blocks licensed under a single contract shall be treated as a single undertaking. The Explanation was not clarificatory, declaratory or curative but took away an accrued and vested right of the taxpayer. Furthermore, it was substantive and, hence, could not be applied retrospectively.

The HC also clarified that for the purpose of claiming tax holiday under the said provisions, the term “mineral oil” includes both crude oil and natural gas.

Foot over bridge and bus shelters are part of infrastructure facility; advertising income eligible for profit-linked deduction

In the case of DCIT v. Vantage Advertising (P) Ltd [TS-207-ITAT-2015(Kol)], the Kolkata ITAT, relying on its own decisions in the Taxpayer’s own case and in case of DCIT v. Selvel Advertising Pvt. Ltd. [ITA Nos. 657 to 659/ Kot/2011], held that development of foot over bridge and bus shelter amounts to development of infrastructure facility, and hence, is eligible for profit-linked deduction.
Rulings on tax withholding

Credit of taxes withheld not permissible without offering the corresponding income to tax

In the case of Y. Rathiesh [TS-856-HC-2014 (Tel & AP)], the Taxpayer, an individual, adopted cash basis for accounting interest received on a loan given to a company. The company withheld taxes on accrual basis and issued tax withholding certificate to the Taxpayer but did not pay the corresponding interest. The taxpayer sought credit of taxes withheld without offering corresponding interest income to tax. The Telangana and Andhra Pradesh HC held that it was not possible to do so. Furthermore, the HC held that the amount of taxes withheld is to be treated as income. Substance, not nomenclature of the agreement, is relevant

In the case of CIT v. Manipal Health Systems Pvt. Ltd. [TS-118-HC-2015(Kar)], the Karnataka HC held that payment of loan instalment/interest obligations of the payee plus a fixed annual payment, though represented as payment towards right to manage, administer and control hospitals, were, in fact, in the nature of “rent” for building and infrastructure. It is the substance of the agreement, which is to be seen and not its nomenclature. The payments under consideration were in the nature of rent and, hence, liable to tax withholding.

Deductibility of expenditure

Share issue expenditure capitalized as part of plant and machinery not eligible for depreciation

In the case of International Computers Indian Manufacture Ltd. v. CIT [TS-144-HC-2015(Bom)], the Bombay HC held that share issue expenditure incurred by the Taxpayer, for setting up a manufacturing unit, that was capitalized as part of plant and machinery, is not eligible for depreciation. The expenditure incurred was in the nature of preliminary expenditure that could be amortized under a specific provision of the ITL.

No disallowance for unpaid service tax until liability to pay service tax arises

In the case of CIT v. Ovira Logistics Pvt. Ltd. [TS-215-HC-2015(Bom)], the Bombay HC deleted the addition towards unpaid service tax since the liability to pay that amount of service tax had not accrued till the end of the relevant tax year. The HC noted that the outstanding service tax pertained to the amount, which had not been received from its service recipients. The HC, therefore, held that as the liability to pay service tax arises only upon receipt of consideration, absence of such liability till year end in the given case, the unpaid service tax amount cannot be disallowed.

Characterization of income: revenue v. capital

Award being linked with personal achievement, is a capital receipt and hence not taxable

The Delhi HC, in the case of Aroon Purie v. CIT [TS-172-HC-2015(Del)], held that prize money received by the Taxpayer for excellence in journalism is a capital receipt. The receipt was not directly relatable to the Taxpayer’s carrying on of vocation as a journalist or as a publisher but linked with his personal achievements and personality. Therefore, the receipt being in the nature of testimonial is not taxable under the Act.

Non-compete fees received by directors of transferor-company is taxable as business income

In the case of Arun Toshniwal and Anr v. DCIT [TS-191-HC-2015(Bom)], the Taxpayers were directors of a company, which transferred one of its division to a transferee company whereby the Taxpayers received non-compete fees for not engaging in any business similar to that of the sold division for at least four years. The Taxpayers offered the non-compete fees to tax as capital gains. The Bombay HC noted that it is the sale of the said division that had deprived the Taxpayers of their income and as part of sale consideration itself, they were required to execute an agreement of non-compete. Therefore, relying on the SC decision in case of Gillanders Arbuthnot and Co. Ltd. v. CIT [53 ITR 283], the HC held that said income is taxable as business income under the provisions of the ITL.
Issues on reassessment

Re-assessment notice without obtaining prior approval of CCIT/CIT is not valid

In the case of Dhadda Exports v. ITO [TS-96-HC-2015(Raj)], the Rajasthan HC held that notice for re-assessment issued without sanction of CCIT (Chief Commissioner of Income Tax)/CIT (Commissioner of Income Tax) is invalid and needs to be quashed. The HC observed that sanction of the Commissioner or the Chief Commissioner is a prerequisite for issue of notice. This is an inherent lacuna affecting the correctness of the reassessment notice and is not a curable defect.

Non-verification of documents at the time of original assessment, is not a valid ground for initiating reassessment

In the case of IBS Software Services Pvt. Ltd. v. UoI [TS-157-HC-2015(Ker)], the Kerala HC quashed the reassessment proceedings as the Tax Authority failed to examine the basic documents, which were placed on record by the Taxpayer during original assessment. The HC observed that the Business Corporate Agreement, which provided that the Taxpayer was formed by a takeover of an existing company, was on record. Hence, there was no failure on the part of the Taxpayer to “fully and truly disclose all material facts”. The HC pointed out that the Tax Authority was at default for not examining the basic and essential document before granting Sec. 10A exemption.

Delhi HC quashes re-assessment proceedings as the issue was dealt with during DRP proceedings

In the case of Lahmeyer Holdings Gmbh v. DCIT [TS-283-HC-2015(DEL)], re-assessment proceedings were initiated in respect of an issue, which was not considered by the Tax Authority during the normal assessment proceeding but was dealt with by Dispute Resolution Panel (DRP) in the proceedings against draft order. The HC held that any new issue, dealt with by the DRP for the first time in the course of the DRP proceedings, will be regarded as an issue considered and dealt with during the original assessment proceedings and the DRP having formed an opinion by accepting the transaction, issuance of reopening notice by the Tax Authority for the same issue will result in “change of opinion” not permissible in law. The HC, accordingly, quashed the notice of reassessment issued by the Tax Authority.

Rulings specific to nonresidents

Treaty rate applicable over punitive tax rate under ITL, even in the absence of a PAN

In the case of Serum Institute of India Ltd. [TS-158-ITAT-2015], the issue was on applicability of tax withholding at an increased punitive rate of 20% under the ITL in case the nonresident (NR) payee does not furnish a valid Permanent Account Number (PAN), as compared to the lower tax rate (of 10%) prescribed for payments in the nature of interest/royalty/fees for technical services (FTS) under the relevant Double Taxation Avoidance Agreement (DTAA). The Pune ITAT held that the higher rate prescribed under the ITL will not prevail over the lower rate under the DTAA on account of a specific provision, which permits a NR to claim benefits under the ITL only to the extent it is advantageous. Accordingly, the ITL provisions cannot override the beneficial provisions of the DTAA. Therefore, the reduced tax rate prescribed under the DTAA applies, whether or not the NR furnishes a valid PAN.

(For more details, please refer EY Alert dated 7 April 2015)

No accrual of income when the payment is subject to obtaining RBI approval

In the case of DIT v. Booz Allen and Hamilton (India) Ltd. & Co. [TS-200-HC-2015(Bom)], the Bombay HC held that amount payable by the Taxpayer to its overseas group entities cannot be said to constitute “income accrued” to group entities until the necessary permission from the Reserve Bank of India (RBI), as required under Foreign Exchange Regulations, is obtained. The HC noted that the Taxpayer had not sought any permission from the RBI as due to losses, it was not in a position to remit any amount to the overseas group entities. The HC rejected the Tax
Authority’s reliance on the SC ruling in case of LIC of India v. Escorts Ltd. [AIR 1986 SC 1370] in the context of Foreign Exchange Regulation Act, 1973, which held that permission obtained subsequently from the RBI should be treated as having retrospective effect, because this ruling did not involve the issue of “accrual” of income under the provisions of the ITL.

Mobilization advances received outside India taxable on presumptive basis under ITL

In the case of Fugro Geoteam AS v. ADIT [TS-173-HC-2015(Utt)], the Uttarakhand HC held that provisions of presumptive taxation in case of income of a NR, from exploration of mineral oil, will cover within its ambit, mobilization advances received on account of vessels operated outside India. Presumptive taxation provisions are a special mechanism to obviate the procedure of regular assessment, which would have been made, had the Taxpayer not invoked the aid of presumptive taxation. The provisions provide for considering the amount received outside India for calculating the taxable amount. Hence, the contention that being an NR, amount that is neither received nor accrued within India cannot be taxed in India, under the provisions of presumptive taxation, cannot be accepted.

Other significant rulings

Bombay HC disregards retrospective “Appointed Date” for tax purposes in a scheme of amalgamation

In the case of Casby CFS Pvt. Ltd. [TS-152-HC-2015(8OM)], the Bombay HC sanctioned a scheme of amalgamation with a direction to the Tax Authority to not be bound by the retrospective Appointed Date, fixed under the scheme while carrying out pending and/or future assessments of companies. The transferor and transferee companies, in this case, had filed petitions for sanctioning amalgamation in 2011 with retrospective “Appointed Date” of 1 April 2008 on the basis that the transferor company had become wholly owned subsidiary of transferee company from that date. However, since this basis was not corroborated by filings made by respective companies and corporate shareholders with the Registrar of Companies, the HC concluded that the companies were trying to mislead the court by not bringing correct facts on record.

Mumbai ITAT holds gift transactions by corporates legally valid and non-taxable

In case of KDA Enterprises Pvt. Ltd. [ITA No. 2662/M/2013], the Taxpayer received as a gift from four companies (donors), their entitlement to receive dividends from a certain company. The Mumbai ITAT agreed that the laws regulating corporate entities and the transaction under consideration recognize that a valid gift transaction can be entered between two Indian corporate entities. Furthermore, the provisions of the ITL subject to only receipts in the nature of “income” to tax, unless expressly provided otherwise in the ITL. Therefore, the amount of gift so received by the taxpayer, being a capital receipt, is not taxable under any provisions of the ITL.

(For more details, please refer EY Alert dated 24 March 2015)

Disallowance of expenditure incurred in relation to exempt income cannot be more than the exempt income itself

In case of Joint Investments Pvt. Ltd. v. CIT [TS-92-HC-2015(Del)], the Delhi HC set aside the Tax Authority’s order determining the amount of disallowance, toward expenditure relatable to exempt income, at an amount higher than the exempt income itself. The HC referred to a co-ordinate bench ruling in the case of CIT v. Taikisha Engineering India Ltd. (ITA 115/2014) and held that under the ITL, the Tax Authority can determine amounts of disallowance according to the Rules provided therein, only after examining accounts and rejecting the Taxpayer’s claim, if any. However, in the given case, the Tax Authority neither scrutinized the accounts, nor provided any reason for rejecting the amount of disallowance calculated by the Taxpayer. Under the ITL, expenditure can be disallowed only to the extent of exempt income earned by the Taxpayer and surely cannot be more than the tax-free amount. Hence, the HC remitted the matter to the Tax Authority for fresh consideration in accordance with the above directions.
Delhi ITAT clarifies that BEPS is merely a tax policy consideration; law to be interpreted as it exists in the statute

In the case of Baker Hughes Singapore Pte. Ltd. [TS-214-ITAT-2015 (Del)], the Taxpayer was engaged in the business of hiring of equipment and rendering of services to entities/contractors engaged in oil exploration work and offered its income to tax on presumptive basis. One of the issues discussed was whether the benefit can be denied on the ground that it has a Base Erosion and Profit Shifting (BEPS) consequence in India. The ITAT held that BEPS is a matter of tax policy consideration, not relevant for the process of judicial decision making. Law has to be interpreted, since it exists in the statute and not as how it ought to have been. Therefore, a benefit cannot be denied where the law otherwise provides for such benefit.

(For more details, please refer EY Alert dated 29 April 2015)

Adoption of percentage completion method was held not permissible if it violates the principles of consistency

In the case of CIT v. Malibu Estate P Ltd [TS-140-HC-2015(Del)], the Delhi HC deleted the addition of advances received for property as deemed sales. The Taxpayer, a real estate developer, had been following a particular method of accounting consistently, which was upheld by First Appellate Authority (FAA) and the ITAT in earlier years. The Tax Authority, however, tried to apply the percentage completion method according to Accounting Standards issued by the Institute of Chartered Accountants of India (ICA). The HC noted that though the project completion method was appropriate in the circumstances of the case, the Tax Authority cannot adopt it on a selective basis.

Furthermore, the HC applied the ratio laid down by the SC in case of CIT v. Excel Industries Ltd. [TS-506-SC-2013] and held that income tax cannot be levied on hypothetical income and also the rule of consistency ought not to have been disturbed in this case.

Is there a Permanent Establishment (PE)?

No agency PE triggered where Indian subsidiary had no authority to conclude contracts

In the case of DIT v. B4U International Holdings Ltd. [TS-246-HC-2015(Bom)], the Taxpayer was a Mauritius company, which earned income from time slot collections given to advertisers from India through one of its Indian group entity (B4U India). The HC upheld the ITAT order, which referred to the clauses in the agreement between the Taxpayer and B4U India and concluded that B4U India was neither a decision maker nor did it have the authority to conclude contracts on behalf of the Taxpayer. Therefore, B4U India does not create a dependent agency PE of the Taxpayer in India under Article 5 of India Mauritius Treaty. Furthermore, referring to the SC ruling in case of Morgan Stanley & Company Inc. [292 ITR 416], the HC held that even so no further profits can be attributed to the Indian PE where the Indian associated enterprise (B4U India) is remunerated at arm's length price.
Some key issues on which Special Leave Petitions were dismissed by the SC

<table>
<thead>
<tr>
<th>Citation</th>
<th>Particulars</th>
<th>Ruling of HC</th>
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| *Adobe Systems Software Ireland Ltd. v. ADIT (Int. Tax)* [TS-108-SC-2015] | Taxpayer preferred an SLP against Delhi HC order dismissing Taxpayer’s writ challenging reassessment proceeding without furnishing Return of Income (RoI). | ▶ Taxpayer had filed a writ before Delhi HC challenging the validity of reassessment notice. Taxpayer contended that it does not have a PE in the jurisdiction of notice issuing authority, and hence, the notice issued was without jurisdiction.  
▶ The Delhi HC dismissed the Taxpayer’s writ on the ground of non-compliance on the part of the Taxpayer by not filing an RoI in response to the notice.  
▶ The HC held that the Taxpayer did not act in accordance with law by not having made the Tax Authority aware that no income chargeable to tax had escaped assessment, but merely told the Tax Authority that it has no jurisdiction to issue reassessment notices.  
▶ The HC, however, refused to decide on the matter of jurisdiction of the Tax Authority to issue the notice being question of fact. |
| *CIT v. Ambassador Industrial* [TS-161-SC-2015] | Taxpayer preferred an SLP against Punjab and Haryana HC order rejecting claim for reduction in value of closing stock on account of goods confiscated by Customs. | ▶ The HC denied the claim of Taxpayer to reduce the value of closing stock by the value of goods confiscated by the Customs.  
▶ The HC noted that the goods were confiscated on account of violation of provisions of the Customs Act. The Taxpayer had over invoiced the value in the shipping documents to claim excess drawback benefit.  
▶ Noting the provisions of ITL, the HC held that Taxpayer is not entitled to claim any expenditure, which had been incurred on account of any infraction of law. |
| *Star Television News Ltd. v. UoI* [TS-254-SC-2015] | Taxpayer preferred an SLP against Bombay HC ruling “reading down” the settlement commission (SetCom) cut-off date of 31 March 2008. The Taxpayer argued that the provisions must be struck down as “unconstitutional” and not merely read down. | ▶ ITL provisions related to SetCom provide that all applications pending before 1 June 2007 will stand abated if not disposed of by 31 March 2008.  
▶ Taxpayer had filed writ with Bombay HC contending the said provisions are ultra vires and violative of the Constitution of India.  
▶ Bombay HC held that the said provision is “arbitrary” to the extent it fixes the cut-off date being unrealistic.  
▶ HC, therefore, held that is possible to read down the said provision and in such case the provision will not be held unconstitutional.  
▶ HC, therefore, clarified that if the delay in proceedings was not attributable to the applicant, then SetCom ought to proceed with the application as if not abated. |
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<tr>
<th>Citation</th>
<th>Particulars</th>
<th>Ruling of HC</th>
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| Dept of Income Tax v. Vodafone Essar Gujarat Ltd.  
[TS-197-SC-2015] | Tax Authority preferred an SLP against Gujarat HC’s ruling sanctioning the scheme of internal reorganization. | ▶ The Division Bench (DB) of the Gujarat HC, based on the various commercial and business rationale involved in the transaction, ruled that a scheme of demerger of infrastructure assets between group companies for “nil” consideration could not be said to be undertaken solely for the purpose of avoidance of tax.  
▶ The DB also held that the Court does not have the jurisdiction to sit in appeal over the decision taken by the shareholders, who have, in their commercial wisdom, given their approval to the scheme. |
Recent decisions on taxation of Royalty/FTS payments

Summarized below are some decisions on Royalty and FTS, also considering relevant DTAA provisions:

<table>
<thead>
<tr>
<th>Case law</th>
<th>Payment description</th>
<th>Ruling</th>
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| DIT v A.P. Moller Maersk [TS-247-HC-2015(Bom)] Bombay HC India Denmark DTAA | Receipt from agents toward use of global telecommunication system | ► Payment was received from Indian agents toward utilization of integrated communication system maintained by the Taxpayer.  
► The communication system was an automated system using advanced technology with no human element involved to render services.  
► The arrangement was a kind of cost sharing and was merely in the nature of reimbursement that did not qualify as FTS under the treaty. |
| Qualcomm Inc. v. ADIT [TS-70-ITAT-2015(Del)] Delhi ITAT | Royalty received for use of patents by NR manufacturers of CDMA handsets | ► Taxpayer had licensed patents outside India, which were used for manufacture of CDMA handsets and royalty was payable by manufacturers as a percentage of total sales of CDMA headsets to telecom operators/service providers world over (including India).  
► The ITAT held that when the royalty is for use of a technology in manufacturing, it is to be taxed at the sites of manufacturing the product. However, when the royalty is for use of technology in functioning of the product so manufactured, it is to be taxed at the sites of use.  
► The issue of whether the CDMA products were specific to Indian service providers, whether the manufacturers carried on business in India and whether royalty was paid for the use of technology in functioning of CDMA products in India, being highly technical, was remanded back to the Tax Authority to examine the matter after obtaining expert technical opinion. |
| DCIT v. UPS Jet air Express Pvt. Ltd. [TS-102-ITAT-2015(Mum)] Mumbai ITAT | Reimbursement of payment made by JV partner on behalf of the Taxpayer | ► Taxpayer received debt collection services for which payment was initially made by the JV partner and later on reimbursed by the Taxpayer on cost-to-cost basis without any mark up.  
► ITAT ruled that it was reimbursement of expenditure, since the invoice raised by the JV partner matched back-to-back with invoiced raised by the service provider.  
► The Tribunal further held that these services did not involve any make available and hence, will not get covered under Royalty/FTS article of the India US treaty. |
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| Le Passage to India Tours & Travel (P.) Ltd v. DCIT                    | Retainer ship charges paid to overseas NR agent to promote business in foreign countries | ▶ Taxpayer was engaged in the business of organizing tours and travel arrangements for foreign tourists visiting India and paid retainer ship fee and commission to its appointed agents in various countries to market its services.  
▶ The Tax Authority contended that the payment of retainer ship charges, commission and tour expenses were in the nature of FTS under the provisions of ITL.  
▶ ITAT held that the payment cannot be classified as FTS since the services rendered by the agents were purely in the nature of advancement of business of the taxpayer and hence, could not be categorized as managerial/technical/consultancy services. |
| Bureau VERITAS-Indian Division v. ADIT                                 | Technical expenses allocated by head office to Taxpayer – Indian division.            | ▶ Taxpayer was a company incorporated in France with operating division in India (Indian division).  
▶ The Indian division was engaged in the business of providing services related to shipping industries, which inter alia included classification, statutory instructions and surveys.  
▶ Head office (HO) of the Taxpayer had allocated expenditure to its Indian division which, according to the Tax Authority, was in the nature of FTS.  
▶ ITAT noted that the payment was in the nature of reimbursement of technical expenses to the HO. Such amount was not on account of technical services making available any technical knowledge, skill, experience, etc.  
▶ Hence, it is not taxable under FTS article of the DTAA. |
Indian Parliament passes the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax, 2015 Bill (Bill)

The Government of India (GOI) has acknowledged the importance on immediate measures to curb undisclosed incomes/assets stashed overseas. The Bill applies to a person resident of India and who has undisclosed foreign income/assets (including financial interest in any entity). The Bill proposes to tax such income at the rate of 30% and also levy stringent penalties. The Bill also provides for stringent prosecution mechanism. However, as a one-time voluntary compliance, the Bill proposes to provide immunity from prosecution if appropriate taxes and penalty have been paid. The Bill has been approved by both the houses of the Parliament, and is before the President of India for his assent. The Bill, once passed, proposes to be effective from tax year 2015-16.

(Refer, EY Alert dated 22 March 2015)

CBDT circular clarifies overseas dividend not covered by indirect transfer provisions of the ITL

The ITL was amended retrospectively in 2012 to tax indirect transfer of an Indian company, by providing that a share or interest in a company or entity registered or incorporated outside India will be deemed to be situated in India if the share or interest derives, directly or indirectly, its value substantially from assets located in India (“indirect transfer provisions”). In this context, the CBDT has clarified that declaration of dividend outside India by a foreign company will not be taxable in India under the indirect transfer provisions where such declaration and payment does not have an effect of transferring any underlying asset located in India.

(Refer, EY Alert dated 26 March 2015)

CBDT circular clarifies investors not liable to capital gains tax on rollover of fixed maturity plan

The CBDT has clarified that rollover of fixed maturity plan (FMP) in accordance with the applicable SEBI (Mutual Funds) Regulations, 1996 (Regulations) will not amount to transfer under the provisions of the ITL. The CBDT has noted that according to Securities and Exchange Board of India (SEBI) clarification on rollover, in accordance with the Regulations, the FMP scheme remains the same and it does not constitute a different scheme. Accordingly, such rollover in accordance with the Regulations will not amount to transfer under the ITL. The capital gains, however, arise at the time of redemption of the units or opting out.

(Refer, EY Alert dated 10 April 2015)

CBDT notifies increase in transport allowance exemption from INR800 to INR1600

With effect from 1 April 2015, the limit of transport allowance exemption has been increased to INR1,600 per month from the existing limit of INR800 per month. Furthermore, in case of blind or orthopedically handicapped employees, the exemption limit has been increased to INR3,200 per month from the existing limit of INR1,600 per month.

(Refer, EY Alert dated 10 April 2015)

CBDT instructs Tax Authority to not issue fresh notices to foreign companies for re-opening of MAT cases

Pursuant to the Finance Minister’s announcement to form a committee to examine the issue of applicability of Minimum Alternate Tax (MAT) provisions to Foreign Institutional Investors (FIIs), the CBDT has issued instruction to the Tax Authority not to take any coercive action against foreign companies for recovery of tax demand under MAT provisions. The CBDT has also instructed Tax Authority not to issue any fresh notices to foreign companies and also to keep the ongoing assessments on hold unless the case is getting time barred.

(Refer, FTS No. 96370/2015 dated 11 May 2015)
The GoI notifies ten Income Computation & Disclosure Standards (ICDS) effective 1 April 2015

The GoI notified ten ICDS for compliance by all taxpayers following mercantile system of accounting. The notified ICDS are effective from tax year 2015-16 onward for computation of income, taxable under the heads “Profits and gains of business or profession” or “Income from other sources”. The Preamble of each ICDS clarifies that ICDS is not applicable for the purposes of maintenance of books of accounts. Furthermore, the provisions of the ITL will prevail where there is a conflict between provisions of the ITL and ICDS. Most of the ICDS also contain transitional provisions for outstanding contracts and transactions as on 1 April 2015.

(Source: Notification No 33/2015 dated 31 March 2015)
(Refer, EY Alert dated 2 April 2015)

Finance Act, 2015 enacted

The Finance Bill, 2015 was presented by the Finance Minister on 28 February 2015 and enacted into the Finance Act, 2015 with the President’s assent on 14 May 2015.

(Source Link: http://indiabudget.nic.in)
(Refer, EY Alert dated 1 May 2015)

Links to our EY budget Booklet, various EY sector wise alerts:

1. International tax provisions
2. Retail & Consumer products
3. Auto Sector
4. Infrastructure
5. Real Estate
6. Financial Services
7. Technology
8. Media & Entertainment
9. Life Sciences
10. Chemical
11. Budget Booklet
**Italy considers introduction of tax on digital activities**

Following the steps of OECD BEPS, the Government of Italy is considering introduction of a 25% withholding tax on virtual presence of foreign multinationals selling into the Italian market without a presence of a physical structure falling within the traditional definition of PE. The withholding tax will be applied on the assumption of a presence of a virtual PE, based on the concept of a significant digital presence and will be triggered when the “presence” exceeds, in terms of payments, certain thresholds, which are currently identified at a level of €1 million within a period of six months. The new tax is likely to be introduced in June 2015 as part of a second phase of a major tax reform currently in progress.

*(For more details, refer EY Alert dated 27 April 2015)*

**Hong Kong (HK) extends offshore funds exemption to private equity funds**

Under the current HK Offshore Funds Exemption, the HK Revenue Department’s current interpretation is that transactions, mostly in shares and other related interests in private companies do not fall under the definition of “specified transactions.” Accordingly, profits derived by offshore Private Equity (PE) Funds from investing in private companies could be subject to Hong Kong profits tax. To amend the above position, the Inland Revenue (Amendment) Bill 2015 now provides for extending the Exemption to transactions in securities of, or issued by, certain private companies incorporated outside Hong Kong, directly or through special purpose vehicles (SPVs). While the Bill has included certain changes to the existing provisions and introduced additional provisions catering to PE Funds, it should not impact offshore funds, which already enjoy the current exemption regime.

*(For more details, refer EY Alert dated 3 April 2015)*

**UK HMRC issues update on diverted profits tax**

In advance of final legislation being published in the Finance Bill on 24 March 2015, HM Revenue & Customs (HMRC) has responded to the representations that it has received on the draft clauses on diverted profits tax (DPT) released on 10 December 2014. A key concern expressed was the breadth of the notification requirements. These have been narrowed from the original draft, focusing on situations where the financial benefit of the tax reduction is significant; relative to the non-tax benefits of the material provision. As expected, it has been confirmed that DPT will not apply where there has been a wholesale transfer to a low tax jurisdiction of the economic activity needed to generate the associated income. The other changes proposed by the HMRC include clarifying rules for giving tax credit, economic substance of arrangements, avoidance of a UK taxable permanent establishment etc.

Furthermore, Finance Bill 2015 was published on 25 March 2015 wherein amendments to the tax mismatch condition and the insufficient economic substance conditions were included.

DPT has entered into force from 1 April 2015.

*(For more details, refer EY Alert dated 20 March 2015 and that dated 26 March 2015)*

**South Africa publishes draft guidelines for determination of ‘Place of Effective Management’**

The South African Revenue Service has published a draft interpretation note No. 6 (Issue 2) (IN) on the concept of “Place of Effective Management” (POEM) for public comments. The IN discusses the principles and guidelines to be applied for determining residency of companies under the domestic law of South Africa. The IN acknowledges the following two aspects from OECD commentary as factors of relevance, i.e., (i) POEM is the place where key management and commercial decisions that are necessary for the conduct of entity’s business as a whole are in substance made (ii) a company can have multiple places of management but only one POEM.

*For more details, refer South African Revenue Service Draft Interpretation Note : No. 6 (Issue 2)*
Greece tightens substance scrutiny for cross-border transactions

Greece's new law introduces a major development to the Greek transfer pricing regulatory framework. According to the new law, taxes will have to be withheld at the rate of 26% on cross-border transactions with non-cooperative jurisdictions, with jurisdictions that have a privileged tax regime and for transactions lacking required substance. For transactions with entities that are not located in non-cooperative jurisdictions in tax matters nor in countries with a privileged tax regime, the taxpayer may provide before the commencement of a tax audit, an evidence that the other party in the transaction is not a qualifying entity, thereby, defending the tax deduction of the amount without taxing it. The new rules entered into force on 21 March 2015.

(For more details, refer EY alert dated 25 March 2015)

Australia and the UK announce a diverted profits joint working group

During the G20 finance ministers and Central Bank governors meeting, held in Washington DC on 16–17 April 2015, it was announced that Australia and the UK have formed a joint working group to “further consider and develop initiatives in relation to diverted profits by multinational enterprises.” An official press release from the Government of Australia confirms that the working group will be open to all G20 members. The desire of the initiative to align with current OECD work was further outlined in the press release.

(For more details, refer EY alert dated 20 March 2015)
Treaty/OECD Updates

Treaty Updates

DTAA signed with Czech Republic in 1986 applicable to Slovak Republic

A DTAA was signed between GoI and the Government of the Czechoslovak Socialist Republic on the 27 January 1986. The Slovak Republic is one of the independent states that have succeeded the Czechoslovak Socialist Republic. The CBDT has clarified that the DTAA signed between the GoI and the Government of the Czechoslovak Socialist Republic on 27 January 1986 continues to apply to residents of the Slovak Republic.

(Source : Notification No. 25/2015 dated 23 March 2015)

India’s first DTAA with Croatia effective from 1 April 2016

The India-Croatia DTAA (signed on 12 February 2014) entered into force on 6 February 2015. The DTAA will be effective from 1 April 2016 in India. The DTAA provides for withholding rates of 5% on dividends and 10% on interests, royalties and FTS. It also includes provisions for Mutual Agreement Procedure (MAP), Exchange of Information (EOI) and assistance in collection of taxes.


Protocol to 1989 India Denmark treaty effective from 1 February 2015

A protocol amending the 1989 India Denmark treaty was signed on 10 October 2013 and entered into force from 1 February 2015. The protocol replaces Article 26 - EOI of the treaty and specifies that the EOI articles includes tax examinations abroad within its scope. The Protocol is effective in India from 1 February 2015.

(Source: Notification No. 45/2015 [F.NO.503/02/1998-FTD-I], dated 22 May 2015)

OECD BEPS updates

OECD releases new discussion draft on BEPS Action 7 (Prevent the Artificial Avoidance of PE Status) for public comments

On 15 May 2015, OECD released a discussion draft on BEPS Action 7 (AP 7) for public comments. AP 7 stresses the need to update the treaty definition of PE in order to prevent abuses of that threshold. Based on the comments received on the earlier discussion draft of October 2014, a public consultation meeting was held in January 2015. The main objective of that meeting was to move from a series of alternative options to one specific preferred proposal with respect to each PE avoidance strategy previously identified. This new discussion draft reflects the proposals resulted from that meeting on which comments are now invited. The comments received will be discussed at a meeting on 22-26 June 2015, when the Working Party will be asked to finalize the changes to the OECD Model Tax Convention that will be proposed as the result of the work on AP 7.

(For more details, refer OECD website)

OECD releases discussion draft on cost contribution arrangements under BEPS Action 8

On 29 April 2015, the OECD released a discussion in connection with Action 8 on transfer pricing for intangibles under its Action Plan on BEPS. The document titled BEPS Action 8: Revisions to Chapter VIII of the Transfer Pricing Guidelines on Cost Contribution Arrangements (CCAs), contains proposed modifications to the OECD Transfer Pricing Guidelines relating to CCAs. CCAs are commonly used among business enterprises to share the contributions and risks involved in the joint development, production or acquisition of intangibles, tangible assets or services. The proposed guidance takes into account the final and interim guidance on the transfer pricing aspects of intangibles and the draft guidance on Chapter I of the OECD Transfer Pricing Guidelines relating to allocation of risks.

(For more details, refer EY Alert dated 4 May 2015)

OECD issues discussion draft on economic analysis of base erosion and profit shifting under BEPS Action 11

On 16 April 2015, the OECD issued a discussion draft on economic analysis of base erosion and profit shifting under BEPS Action 11. The document titled BEPS Action 11: Improving the Analysis of, assesses currently available data, recommends potential indicators and reviews existing empirical studies of the scale and economic impacts.
of BEPS. The BEPS Action Plan calls for the work on methodologies to collect and analyze data on BEPS to be completed by September 2015

(For more details, refer EY Alert dated 22 April 2015)

OECD releases discussion draft on CFC rules under BEPS Action 3

On 3 April 2015, the OECD released a discussion draft in connection with Action 3 on strengthening controlled foreign company (CFC) rules under its Action Plan on BEPS. The document titled BEPS Action 3: Strengthening CFC Rules addresses how to use CFC rules to address BEPS. The Draft discusses in detail core elements or “building blocks” of CFC rules such as, definition of a CFC, threshold requirements, definition of control, definition of CFC income, rules for computing income, rules for attributing income, rules for preventing or eliminating double taxation.

(For more details, refer EY Alert dated 10 April 2015)

OECD issues discussion draft on mandatory disclosure rules under BEPS Action 12

On 31 March 2015, the OECD issued a discussion draft on mandatory disclosure rules under Action 12 (Disclosure of aggressive tax planning arrangements) of the BEPS project. The discussion draft makes a series of recommendations about the design of mandatory disclosure regimes intended to allow maximum consistency between countries while also being sensitive to local needs and to compliance costs. The discussion draft focuses, in particular, on international tax schemes, which are viewed as an area of special concern and the primary focus of the BEPS project. It notes that disclosure schemes that are intended to address domestic avoidance might not be sufficient to capture cross-border arrangements and provides recommendations for an alternative approach. The BEPS Action Plan calls for final recommendations on the design of mandatory disclosure regimes to be made by September 2015.

(For more details, refer EY Alert dated 3 April 2015)
Service tax

Supreme Court

Liaising with collieries/Railways for timely delivery to principal, not C&F agents

Finance Act, 1994; in favor of assessee

According to the agency agreement, the assessee was required to undertake various activities on behalf of the Principal companies, such as following up on the allotment of coal rakes by the Railways, expediting and supervising the loading and labeling of rail wagons, drawing samples of coal loaded on the wagons, complying with the formalities relating to payments for freight to the Railways and dispatching of rail receipts to the Principal companies.

The issue before the SC was whether the assessee can be construed to be a “Clearing and Forwarding agent” (C&F agent) in terms of Section 65 (25) of the Finance Act, 1994 (the Act), to make the services provided by the assessee liable to Service tax. The SC observed that in order to qualify as a C&F agent, such a person is to be found to be engaged in providing any service connected with “clearing and forwarding operations”. Once it was found that such a person is providing services, which are connected with the clearing and forwarding operations, then whether such services were provided directly or indirectly will be of no significance and such a person will be covered by the definition in terms of Section 65(25) of the Act. The SC held that C&F agent will essentially include getting the coal cleared as an agent on behalf of the principal from the supplier of the coal (i.e. collieries) and thereafter, dispatching/forwarding the coal to different destinations according to instructions of the Principal. The assessee may further include warehousing of the goods so cleared, receiving dispatch orders from the Principal, arranging dispatch of the goods according to instructions of the Principal by engaging transport on its own or through the transporters of the principal, maintaining records of the receipt and dispatch of the goods and the stock available on the warehouses and preparing invoices on behalf of the Principal. Therefore, it was held that aforesaid services rendered by the assessee will not qualify as C&F agent services within the meaning of Section 65(25) of the Act.

Coal Handlers Pvt. Ltd. v. CCE; [2015-TIOL-101-SC-ST]

High Court, Madras

Amendment granting exemption from levy of Service tax for services provided by cord blood banks is remedial in nature and not clarificatory; held that exemption cannot be availed with retrospective effect

Finance Act, 1994; in favor of Revenue

The assessee was inter alia involved in establishing stem cell bank, for collection, processing, cryopreservation and release of stored samples for transplantation of umbilical cord blood and tissue stem cells. The Mega Exemption notification (Notification No. 25/2012-ST dated 20 June 2012) was amended vide Notification no. 4/2014-ST dated 17 February 2014, for granting exemption from levy of Service tax to services provided by cord blood banks by way of preservation of stem cells or any other service in relation to such preservation.

The assessee contended that the services provided by them were already covered within the ambit of “Healthcare services,” which were exempted under the Mega Exemption notification. Therefore, the amending notification has to be considered as only clarificatory in nature and, hence, the assessee claimed exemption with effect from 1 July 2012. The issue before the Madras HC was whether the said amendment in Notification No. 25/2012-ST is retrospective or prospective.

The HC observed that while the provisions of the legislation may be retrospective, i.e., to cover the transactions, which have taken place before the enactment it cannot have a retrospective effect, i.e., it cannot be deemed to have come into force from a “backdate”. The HC relied upon several SC rulings including the decision in the case of K.S.Paripoornan v. State of Kerala; [1995 AIR 1012] and concluded that an amendment will usually take effect only from the date of its enactment, and will have no application to prior transactions in the absence of an expressed intent and that where a statutory provision is clarificatory in nature, it will be presumed to be retrospective unless the contrary intention is clearly indicated by the legislature.

The intention of the legislature to provide exemption to services provided by cord blood banks by way of preservation of stem cells is clear. However, it has not been specifically mentioned that the said amendment should be with effect from the date of Mega Exemption Notification.
Therefore, it should be construed that the establishments, which provide the said services will get exemption of Service tax with effect from the date of amendment, i.e., 17 February 2014 only and they cannot claim it with retrospective effect. Accordingly, the assessee's writ petition was dismissed and the HC held that, the amendment notification was remedial in nature and can only operate prospectively.

Life Cell International (P) Ltd v. Union of India & Others; [TS-106-HC-2015(MAD)-ST]

High Court, Madras

Finding rendered by adjudicating authority based on facts, even if incorrect, cannot be stated to be a "jurisdictional aspect" warranting interference by HC in its writ jurisdiction

Finance Act, 1994; Central Excise Act, 1944

The assessee, a real estate agent, collected monies from its customer, DLF, for purchase of lands and disbursed the same to land owners, agents etc. Revenue demanded Service tax on entire amount received by assessee. The assessee challenged the demand order in writ arguing that the entire amount cannot be charged to Service tax and actual consideration was a commission amount. Revenue argued that writ was not maintainable in view of appeal remedy; whereas the assessee argued that: (a) Appeal was maintainable only on pre-deposit of 7.5%; (b) No "service" was provided by the assessee. Furthermore, assessee contended that Revenue had no jurisdiction and the jurisdictional aspect could be raised in writ. It was held that demand was confirmed after taking note of assessee's submissions, commission received and invoices raised by assessee and based on the finding that assessee's customer was DLF. A finding rendered by adjudicating authority based on facts, cannot be stated to be a “jurisdictional aspect” warranting interference by the HC. It was therefore, held that merely because the assessee will have to shell out more than INR0.75 million as pre-deposit, it cannot be a ground to exercise Article 226 of the Constitution. The HC observed that it may interfere only in rarest of rare cases. Since decision taken by Revenue cannot be said to be an arbitrary action without sanction of law, writ was not maintainable and was dismissed with the liberty to file appeal (after excluding period of pendency of writ).

Dream Castle v. Commissioner of Central Excise; 2015 (57) taxmann.com 71 (Madras)

CESTAT (Larger Bench), Delhi

Service element in works contract would be subject to Service tax even prior to the introduction of Works Contract Service with effect from 1 June 2007

Finance Act, 1994; in favor of Revenue

During the period from 2004 to 2007, the assessee had undertaken certain turnkey contracts. Works contract services (WCS) were introduced as a taxable service only with effect from 1 June 2007 by inserting the sub-clause (zzzza) in Section 65(105) of the Finance Act, 1994. Prior to 1 June 2007, services such as Commercial or Industrial Construction Services (CICS), Construction of Complex Service (COCS) and Erection, Commissioning or Installation Service (ECIS) were specified as taxable services. The issue before the CESTAT was whether the composite contract can be vivisected, to make the service component therein subject to Service tax prior to 1 June 2007. In view of the conflicting decisions in the cases of Jyoti Ltd v. CCE; [2007-TIOL-2337-CESTAT-AHM], CCE v. Indian Oil Tanking Ltd; [2010-TIOL-1015-CESTAT-MUM], CCE v. BSBK Ltd.; [2010-TIOL-646-CESTAT-Del-LB], the matter was referred to a larger bench of five members.

Out of the five members, the President and the Judicial member concluded that such a composite contract cannot be vivisected to make the service components in the works contract subject to Service tax prior to 1 June 2007. The service component in works contract is to be made taxable only under "Works contract service," which was introduced w.e.f. 1 June 2007. The other three technical members, vide distinct orders, concluded to the contrary. It was held in view of the majority decisions (3-2), that service element in a composite contract could be made liable to Service tax prior to 1 June 2007 as well, if these are appropriately classifiable under CICS, COCS or ECIS.

Larsen & Toubro Ltd.; Kehems Engg Pvt. Ltd. v. CST, Delhi / CCE&ST, Indore / CCE, Rajkot; [2015-VIL-147-CESTAT-DEL-ST-LB]
CESTAT, Delhi

Representational rights given to distributors taxable as “franchise service”
Finance Act, 1994; partly in favor of Revenue

The assessee was a wholly owned subsidiary of Amway Corporation USA, which is a direct selling company. The sale pattern of the company is such that Amway products are sold by the distributor directly to consumers and no product of the company is available across the counter in any shop or market. Subscription income basically consists of “Joining and Business Fee”, “Business Renewal Fee” and “Back to Future Fee”. Revenue alleged that the assessee had not paid Service tax on expenditure incurred in foreign exchange on taxable service namely Intellectual Property Right service (IPR service) received from its associate enterprises based abroad and also under Franchise service on the income received by it in the form of subscription from various distributors appointed by the company, which were given the representational rights to sell the products of the assessee. All these products bore various brand names belonging to the assessee.

The issue involved in this case was whether the assessee gave to the distributor representational rights to sell its products. On perusal of the “Amway Business Starter Guide and Terms & Conditions”, the CESTAT observed that it is evident that the distributor is not merely granted right to sell Amway products but it has the representational rights to sell such products. Therefore, CESTAT upheld the Service tax demand on subscription received towards representational rights granted to various distributors to sell company products, under the Franchise service category. However, as regards the demand under IPR service, the case was remanded back to the primary adjudicating authority for de novo adjudication and passing a speaking order after giving the assessee an opportunity of being heard as the demand in respect of IPR services was confirmed vide a non-speaking order.

Amway India Enterprises Pvt. Ltd. v. Commissioner of Service Tax, Delhi; [TS-221-CESTAT-2015-ST]

CESTAT, Mumbai

Export condition is fulfilled even if payment is received in Indian Rupees (INR)
Finance Act, 1994; erstwhile Export of Service Rules, 2005; in favor of assessee

The assessee received payment against export of services in INR through Deutsche Bank, which issued a Foreign Inward Remittance Certificate (FIRC) as statutorily prescribed under Exchange Control Manual issued by the Reserve Bank of India (RBI). Furthermore, the FIRC also certified that the payment had not been received in non-convertible rupees or under any special trade or payment agreements. Accordingly, the assessee filed a refund claim in respect of the Service tax paid on export of services under the erstwhile Export of Service Rules, 2005 (Export Rules). Revenue however, denied refund to the assessee on the ground that, receipt of the payment was in INR and therefore the condition of Rule 3(ii) of Export Rules was not being fulfilled. Subsequent refund claim of the assessee was also rejected by the Commissioner (Appeals).

Being aggrieved, the assessee preferred an appeal before the CESTAT relying upon Notification Nos. FEMA 9/2000-RB and FEMA 14/2000-RB dated 3 May 2000 (Notifications of FEMA) issued by the RBI in terms of the Foreign Exchange Management (Realisation, Repatriation and Surrender of Foreign Exchange) Regulations, 2000 [FEMA] to provide that according to the Foreign Exchange Management Act, 1999 provisions, when payment against any export is received in Indian Rupees, but through an authorized dealer; the payment/remittance should be considered as foreign exchange.

The CESTAT held that according to clause 3A. 6(1) of the Exchange Control Manual, it was clear that an FIRC is issued only in respect of foreign exchange. The FIRC had a specific certification that the payment had not been received in non-convertible rupees, which establishes that the payments received and mentioned in the FIRC are payment in convertible foreign exchange. On review of the Notifications of FEMA, it is clear that when a person receives payment in INR from the account of a bank situated in any country outside India maintained with an authorized dealer, the receipt of the payment in INR should be deemed to have been repatriated in the realized foreign
exchange in India. Furthermore, in terms of Regulation 3, made under Section 47 of FEMA, the remittance in the instant case in INR through Deutsche Bank is to be construed as receipt of payment in convertible foreign exchange. In the case of J B Boda and Company Pvt. Ltd. v. Central Board of Direct Taxes; [AIR (1997) SC 1543], the payment toward insurance brokerage retained by the Indian agent from the total payment of premium to be paid to the foreign insurance company in foreign exchange, was held to be retained in foreign exchange. Therefore, accordingly, it was held that even though the assessee received the payment in INR, but the same should be deemed to be converted into foreign exchange and the condition in terms of Rule 3(ii) of the Export Rules, stood complied with.

Sun Area Real Estate Pvt. Ltd. v. Commissioner of Service Tax; [2015-TIOL-956-CESTAT-MUM]

CENVAT credit

High Court, Madras

Outdoor catering services/canteen services used for employees are eligible for input service credit. However, if cost of food is borne by employee, assessee cannot take credit of that part of Service tax, which is borne by the employee.

CENVAT Credit Rules, 2004; in favor of assessee

The assessee availed CENVAT credit on outdoor catering services provided in the factory premises to its employees. Revenue denied the CENVAT credit contending that such services do not fall within the ambit of definition of “input service” as specified under Rule 2(l) of CENVAT Credit Rules, 2004 (CCR). Revenue was of the view that catering/canteen services were neither used in or in relation to the manufacture or clearance of final product nor could it be said to be an activity relating to business and therefore, disallowed such CENVAT credit. Revenue’s appeal was dismissed by the CESTAT, following the Larger Bench decision of the CESTAT in the case of CCE, Mumbai v. GTC Industries Ltd.; [2008 (12) STR 468 (Tri-LB)], and held that CENVAT credit is admissible on outdoor catering service, since it is an input service relating to business.

Being aggrieved by the CESTAT’s orders, Revenue filed an appeal before the HC. The Madras HC relied on the decision of the Bombay HC in the case of CCE v. Ultratech Cement Ltd.; [2010-TIOL-745-HC-MUM-ST] and held that the CENVAT credit is admissible in respect of outdoor catering services/canteen services used for employees. However, if the cost of food is borne by the employee, assessee cannot take credit of that part of Service tax, which is borne by the employee.


High Court, Karnataka

Reinsurance service is an “input service” for providing output service of life insurance, and hence, credit cannot be denied

CENVAT Credit Rules, 2004; in favor of assessee

The assessee is engaged and licensed to carry out life insurance business and had procured reinsurance service from overseas companies. Service tax paid on such services was availed as CENVAT credit by them. Revenue alleged that the credit taken is inadmissible, since it is not an input service. Reinsurance had taken place after the insurance business was effected. The assessee got a favorable order from the CESTAT [2014-TIOL-1314-CESTAT-BANG], but Revenue filed an appeal in the HC against the CESTAT’s order.

Before the HC, Revenue submitted that it is only after the insurance policy is issued by the Insurer that the reinsurance is taken from another company, on which it pays Service tax and as such it would not be entitled to CENVAT credit, as the same cannot be termed as “Input Service’ within the meaning of Rule 2(1)(x) of CCR. It is also contended that there is no justification for the essential or indispensable nature of input service (i.e., reinsurance service) for provision of output service (i.e. insurance service).

The HC upheld the Bangalore CESTAT order, allowing CENVAT credit of tax paid on reinsurance services availed from overseas companies by Indian insurance provider. Revenue’s submission that, once Insurance Policy is issued by insurer, transaction comes to an end (not dependent on re-insurance policy) and as such service provided will not come within the ambit of “input service’, was rejected. The transfer of a portion of the risk of the re-insurance has
to be considered as having nexus with the output service, since the re-insurance is a statutory obligation and the same is co-terminus with the insurance policy issued by the assessee. If the entire Service tax which is collected by the insurer while selling its insurance policies, has to be deposited without being given the credit of the tax, which is paid by it while procuring a reinsurance policy, which is mandatorily required in law, the same would be against the ethos of CENVAT credit policy, as it would amount to double taxation, which is not permissible in law. Therefore, it was held that reinsurance taken by the assessee is an eligible input service and hence, credit will be admissible.

The Commissioner of Service Tax v. PNB Metlife India Insurance Company Ltd.; [2015-TIOL-1097-HC-KAR-ST]
High Court, Madras
CENVAT credit of Service tax paid on Access Deficit Charges (ADC) admissible
CENVAT Credit Rules; 2004; in favor of assessee
The assessee, engaged in the provision of telecommunications (telecom) services, had availed credit of Service tax paid on various input services used in providing taxable services. One of the credits so availed is the Service tax paid on ADC to BSNL. Revenue was in appeal before the Madras HC against the Chennai CESTAT order [2013-VIL-40-CESTAT-CHE-ST]; favoring the assessee. ADC is charged by BSNL on the basis of number of calls made by the assessee's subscribers to BSNL at remote locations. Service tax was charged by BSNL for the ADC charges and as mentioned, the assessee paid Service tax thereon under telecom services and wished to avail credit of it.

Revenue denied the input credit taken by the assessee on the ground that what is provided by BSNL is a facility and not telecom services. Revenue was of the view that such ADC are paid for fulfilment of a license obligation and are in no way connected with providing output service. They alleged that the assessee is not entitled to take credit of Service tax paid on such ADC.

It was held that the facility provided by BSNL to the assessee, which, in turn, provides such services to their subscribers, is nothing but a telecom service. Revenue had not produced any material to contradict this finding of fact. Plain reading of Rule 2(l) of the CCR makes it clear that the assessee is the user of the service provided by BSNL and that service is used for providing output service to the customers of the assessee. Therefore, the definition squarely applies to the facts. Since the assessee has satisfied the requirement of Rule 2(l) of the CCR, Revenue was not justified in taking a different view, and accordingly their appeal was dismissed.

Commissioner of Service Tax v. Aircel Cellular Ltd.; 2015-VIL-146-MAD-ST
CESTAT, Mumbai
Nexus between the input service credit and the output service exported need not be proved for claiming refund under Rule 5 of the CCR
CENVAT Credit Rules, 2004; in favor of assessee
Issue arose when Revenue preferred an appeal before the CESTAT, against an order of the lower appellate authority, which had granted refund claim to the assessee in terms of Rule 5 of the CCR read with Notification No. 5/2006-CE (NT) dated 14 March 2006. Revenue alleged that in light of the said Notification, assessee has to establish nexus between the exported output service and the input services utilized, in order to allow the refund.

The CESTAT held that nowhere in Rule 5 of the CCR is there any condition of establishing a nexus between the input service credit taken and the output service exported. Notification dated 14 March 2006 also does not stipulate any such condition. So long as the credit is admissible and has been taken and lying accumulated and the exporter is unable to utilize the credit, the assessee is eligible for refund of the accumulated credit. This is the whole purpose and aim of Rule 5 of the CCR.

Furthermore, the CESTAT placed reliance on the Central Board of Excise and Customs (CBEC)’s clarification in its Circular.

No. 120/01/2010-ST dated 19 January 2010 wherein it has been clarified that the entire purpose of Notification dated 14 March 2006 is to refund the accumulated input/service credit to exporters and zero-rate the exports. In terms of the CBEC's Circular there is no requirement of establishing one-to-one co-relation between the input
service credit taken and the output service exported. So long as the input service has been utilized and exports have taken place, the notification should be read in a liberal and harmonious manner, to achieve the object and purpose of the notification. The CESTAT also placed reliance on cases of Capiq Engineering Pvt. Ltd. v. CCE; [2011 (22) STR]; Tri-Ahm and Amdocs Business Services Pvt. Ltd. v. CCE, Pune; [2013-TIOL-324-CESTAT-MUM] which supported this view. Accordingly, the CESTAT held that the order passed by the lower appellate authority cannot be faulted at all and held against Revenue.

Commissioner of Central Excise, Pune v. Emerson Innovation Center; [2015-TIOL-887-CESTAT-MUM]

CESTAT, Mumbai

Activity of labelling/re-labelling would amount to manufacture according to the Chapter notes, even if it does not enhance the marketability of the product

Central Excise Act, 1944, CENVAT Credit Rules, 2004; in favor of assessee

The assessee is engaged in the business of export of “Coco Butter” and “Coco Powder”. These goods were manufactured at the assessee’s factory in Jammu and were received in the Taloja unit, where labels were affixed on two sides of the package. Thereafter, the assessee cleared the goods for export on payment of duty and claimed rebate of the duty paid. The assessee was also availing CENVAT credit of duty paid on these goods at the time of clearance from the Jammu factory. Revenue denied CENVAT credit on the ground that the activity of labelling does not enhance the marketability of the product, and hence, it does not amount to manufacture according to Note 3 to Chapter 18 of the Central Excise Tariff Act, 1985 (CETA).

The issue before the CESTAT in this case was whether the activity of labelling/re-labelling or putting additional labels on containers by the assessee, would amount to manufacture, although it does not enhance the marketability of the product in terms of Note 3 to Chapter 18 of the CETA. In view of the difference of opinion between the Judicial Member and the Technical Member, the matter was referred to a third Member.
The third Member (Judicial) analyzed the legislative changes to various Chapter notes, which are identically worded, including Note 3 to Chapter 18. It was observed that the word “and” appearing between the words “labelling or relabeling of containers” and “repacking from bulk packs to retail packs” was substituted by the word “or” to widen the scope of the Note 3 to Chapter 18. The third Member relied on the decision of the SC in the case of Air Liquide North India Pvt. Ltd.; [2011 (271) ELT 321], and held that the activity of labelling per se would amount to manufacture in view of the Chapter notes and there in the said Note that the labelling activity should enhance marketability. Therefore, it was held that the activity of labelling would amount to manufacture in terms of Note 3 to Chapter 18, and accordingly, the assessee is eligible for CENVAT credit of the duty paid.

Jindal Drugs Ltd. v. CCE Belapur; [TS-209-CESTAT-2015-EXC]

CESTAT, Mumbai

CENVAT credit on telecommunication towers and pre-fabricated buildings/shelters inadmissible for telecom service operators

CENVAT Credit Rules, 2004; in favor of Revenue

The assesses are engaged in the provision of telecommunication services and are discharging Service tax liability on the same. They availed CENVAT credit on towers and pre-fabricated building/shelter by considering them as either capital goods or input, as the case maybe. The appellant is also extending the facilities of these towers and shelters to various other telecom service providers from whom the appellant received consideration.

Service tax liability is discharged under the category of Business Auxiliary Service (BAS) or Business Support Service (BSS). The issue before the CESTAT was regarding the eligibility to avail CENVAT credit on towers and pre-fabricated buildings/shelters used by the assesses to provide telecommunication services as well as passive infrastructure services. The appeals relate to the period prior to April 2011.

The CESTAT observed that towers are covered under Chapter 73 and pre-fabricated shelters are covered under Chapter 94 of the CETA. The definition of capital goods does not include these two chapters in the scope for eligibility to avail CENVAT credit. Hence, towers and shelters are not capital goods in the form as they are received. Furthermore, towers and shelters cannot be covered under the definition of “inputs,” since there is no link between the said items and the output service provided.

Therefore, placing reliance on the case of Bharti Airtel Ltd. v. Commissioner of Central Excise; [2014-TIOL-1452-HC-MUM-ST] and State of Andhra Pradesh v. Bharat Sanchar Nigam Ltd.; [2012-25-STR-321-AP], the CESTAT disallowed CENVAT credit in respect of telecommunication towers and pre-fabricated buildings/shelters on the ground that the said items are neither regarded as “capital goods” nor “inputs”.

Tata Teleservices Ltd. & Others v. Commissioner of Service Tax, Pune; [TS-138-CESTAT-2015-ST]

CESTAT, Delhi

Admissibility of CENVAT credit on manpower and outdoor catering services

Finance Act, 1994 and CENVAT Credit Rules, 2004; partly in favor of Revenue

During the period 2011-12, the assessee had availed input service credit on manpower recruitment service and outdoor catering service, being manufacturer of excisable goods. The input service credit was sought to be denied on manpower recruitment service on the premises that in the invoices the name of the service were not mentioned. The Delhi CESTAT observed that on perusal of the invoice, they found that manpower recruitment agency was mentioned in the invoice instead of manpower recruitment service and held that such an issue cannot be a ground for denial of input service.

For outdoor catering service, it was alleged that the service does not directly relate to the manufacturing. Therefore, a show cause notice was issued to the assessee, denying them the input service credit. The Delhi CESTAT (Single Member Bench) has denied the said credit of the Service tax paid on outdoor catering services for the period after 1 April 2011 on the basis that the same is excluded from the definition of “input service” with effect from 1 April 2011. The ruling does not refer to or distinguish the ruling of
the Mumbai CESTAT (Single Member Bench) in the case of Hindustan Coca Cola Beverages Pvt. Ltd. v. Commissioner of Central Excise, Nashik, [2014-TIOL-2460-CESTAT-MUM], wherein CENVAT credit was allowed in respect of Service tax paid on outdoor catering services after 1 April 2011.

Bajaj Motors Ltd. v. Commissioner of Central Excise; [2015-TIOL-755-CESTAT-DEL]

Central Excise

Supreme Court

In case of any reduction in contract price after clearance of goods and payment of duty thereon, the difference between the duty paid and the duty applicable on the reduced price should be refunded

Central Excise Act, 1944; in favor of assessee

The assessee, engaged in the manufacture of electronic meters, received a purchase order dated 31 October 2001 from a customer for supply of 65,000 single phase electronic meters at the rate of INR1120 per meter. The full quantity was required to be supplied by 31 March 2002. However, the assessee was able to supply only 30,000 meters by the stipulated date at the predetermined rate. Prior to the supply of the balance 35,000 meters (which the assessee was unable to supply by the stipulated date), the customer sought an undertaking from the assessee to the effect that on account of delay in supply of the meters, the assessee will accept the lower of the following – lowest rate to be finalized according to the new rate contract between the assessee and the customer; or penalty of up to 5% due to delay in delivery of the meters according to the purchase order. The assessee gave the necessary undertaking on 15 April 2002 agreeing to the new rate contract and provisions stated therein. Pursuant to the above, the assessee supplied the balance 35,000 meters in the month of May 2002 and paid the applicable excise duty at the time of removal, based on the rate of INR1120 per meter. While the undertaking was given by the assessee before the date of removal, since the new rate was not fixed at the time of removal, the assessee paid excise duty at the originally agreed rate. The customer informed the assessee in October 2002 that the meter rate according to the new rate contract had been decided as INR600 per meter. Hence, the assessee filed refund claim of INR2.1 million for difference between the duty paid at the time of clearance of meters (i.e., on INR1120 per meter) and the duty applicable on the reduced rate (i.e., INR 600 per meter).

The Commissioner (Appeals) upheld the order passed by the Deputy Commissioner rejecting the refund claim of the assessee. He contended that the transaction value for payment of Excise duty would be the value of the goods on their date of removal from the factory premises (i.e., INR1120 per meter) according to Section 4 of Central Excise Act, 1944 (CEA). The CESTAT supported the order of the Commissioner (Appeals) stating that the change in amount to INR600 per meter was on account of penalty involved and that there was no provision in the Excise law for allowing deduction of penalty from the sale price to derive the assessable value.
The SC set aside the order passed by the CESTAT and Commissioner (Appeals). The SC held that the previous Courts had failed to consider the new price contract and undertaking provided by the assessee in April 2002 regarding the changes to the price clause and that the change in the price had been fixed prior to removal of the meters from the factory premises. The SC also held that the change in the price to INR600 could not be construed as penalty for the delayed period. Accordingly, the SC ordered complete refund to be granted to the assessee along with interest at 9% per annum.

HPL Socoma Ltd. v. Commissioner of Central Excise, Gurgaon; [2015-TIOL-117-SC-CX]

Supreme Court

Sterilization of syringes and needles do not attract Excise duty

Central Excise Act, 1944; in favor of assessee

The assessee purchased syringes and needles in bulk from the open market; they would then sterilize the syringes/needles and package them in plastic pouches. The products can be used only once and, were disposable in plastic pouches (so packed) when sold to an industrial customer; bearing the brand name “Behring”. The brand name “Behring” belonged to the industrial customer/purchaser. Revenue alleged that as a result of sterilization, assessee was liable to pay Excise duty again on syringes and needles (for which the manufacturers have already paid Excise duty). Revenue alleged that sterilization brings about a change in the character of the final product, due to which the products become disposable. Therefore, a new commodity with a different character has come into existence. The assessee argued that the activity of sterilization will not amount to manufacture, since no new product comes into existence by merely sterilizing disposable syringes and needles, which continue to be disposable syringes/needles even post-sterilization. The CESTAT, however, held in favor of Revenue. The assessee approached the SC, being aggrieved by the CESTAT’s ruling.

The SC held that sterilization does not produce a transformation in the syringes and needles and does not lead to any value addition in the said product; it merely removes bacteria, which settle on the surface of syringes and needles. Sterilization does not lead to any value addition in the said product. Therefore, the process of sterilization of syringes and needles for medical purposes does not amount to manufacture.

Servo-Med Industries (P) Ltd. v. CCE; [(2015) 57 taxmann.com 314 (SC)]

Supreme Court

In case of manufacture of medicines on job work basis, job worker is the manufacturer, and not the raw material supplier/loan licensee

Central Excise Act, 1944; in favor of assessee

The assessee is a manufacturer of medicaments with license under the provisions of the Drugs and Cosmetics Act, 1940. It also gets certain medicaments manufactured through other job-workers. According to the agreement entered into between the assessee (loan licensee) and the job-workers, raw material and packing material are supplied by the loan licensee and the job-workers manufacture the medicaments under the supervision of the loan licensee. Revenue contended that the assessee (loan licensee) should be treated as a manufacturer according to the provisions of the CEA in respect of the medicaments manufactured by the job-workers and should therefore, be liable to duty. The issues before the SC were (a) whether the assessee, which was getting its medicaments manufactured through the job-workers, can be considered to be an independent manufacturer? (b) What would be the assessable value of the medicaments manufactured by job-workers for the purpose of assessment under the CEA?

The SC observed that the manufacturing activity was done only by the job-workers in their premises with the help of their labor force and machinery. Simply because the job-workers had to adhere to the quality control or the specification with regard to the quality prescribed by the assessee, it would not mean that the assessee is the manufacturer.
The term “manufacturer” or the “loan licensee” used under the provisions of the Drugs and Cosmetics Act, 1940 had nothing to do with the manufacturing activity or term “manufacture” under the provisions of the CEA. Both the Acts referred to hereinabove have been enacted for different purposes. Furthermore, the agreements entered between the assessee and the job-workers showed that the relationship between the parties is that of principal to principal, and not that of principal and agent. Therefore, it is clear that the job-workers were not manufacturing the drugs on behalf of the assessee, but they were carrying out the manufacturing activity independently and therefore, they were manufacturers of the drugs according to the provisions of the CEA. The SC therefore, held that manufacturer will not be such “job-workers” and not “raw material supplier/licensee” according to whose instructions said goods are manufactured. As regards the assessable value, it was held that the assessable value of the goods will be a sum total of cost of raw material, labor charges and profit of the job-workers, according to Circular No.619/10/2002-CX, dated 19 February 2002 and the law laid down by the SC in the case of Pawan Biscuits Co (P) Ltd v. Collector of Central Excise; [2000 taxmann.com 1980] and other cases.

Commissioner of Central Excise, Goa v. Cosme Farma Laboratories Ltd.; [2015 (57) taxmann.com 59 (SC)]

Supreme Court

Even if the goods are different, so long as the trade name or brand name of some other company is used, the benefit of the notification, granting exemption or concessional rate of Excise duty to small scale industrial units (SSI units), will not be available

Central Excise Act, 1944; Matter remanded

The assessee is engaged in the manufacture of composite diagnostics or laboratory regents and pharmaceutical goods and is registered as a small scale industrial unit (SSI unit). The assessee was using the brand name “Stangen” on the goods manufactured by it. This brand name was affixed on the packaging of the goods and even on the goods manufactured. The assessee was availing benefit under Notification No.175 /86-CE dated 1 March 1986, which granted exemption or concessional rate of Excise duty to the SSI units. In the year 1997, a show cause notice was issued to the assessee by Revenue stating that they are wrongly claiming the benefit of the aforesaid Notification in as much as use of the brand name “Stangen” and also the logo belonged to Dr. K. Angi Reddy, Chairman, Dr.Reddy’s Laboratories (DRL). It was stated that DRL is the manufacturer of bulk drugs falling under Chapter 30 of the CETA, and the trade mark “Stangen” and the logo are used on the printed labels foils of the medicine manufactured by DRL and also appear on the classification list filed by DRL.

The assessee replied to the show cause notices in which it was admitted that Dr. K. Angi Reddy is the Chairman of Dr. Reddy Group of Industries, which included assessee-company as well as DRL. However, Dr. K. Angi Reddy had not assigned the trade mark either to the assessee company or any other manufacturer. It was also mentioned that the assessee as well as DRL are public limited companies having separate legal entities of their own with their own independent spheres of activities. The contention was that DRL manufactured altogether different products than the products mentioned by the assessee company. A plea was also raised that Dr. K. Angi Reddy in his individual capacity was not a manufacturer within the meaning of said expression as defined in the CEA. In light of the above, a request was made to drop the proceedings. The Adjudicating Authority dropped the proceedings; the CESTAT upheld this and therefore, Revenue was in appeal before the SC.

The SC remanded the matter basis the earlier SC decisions in Commissioner of Central Excise, Chandigarh-I v. Mahaan Dairies; [2004-TIOL-52-SC-CX]; wherein it was held that it makes no difference whether the goods on which the trade name or mark is used are the same in respect of which the trade mark is registered. Even if the goods are different, so long as the trade name or brand name of some other company is used the benefit of the notification will not be available. Furthermore, once a trade name or brand name is used, then mere use of the additional words will not enable the party to claim the benefit of the notification.

CCE v. Stangen Immuno Diagnostics; [2015-TIOL-133-SC-CX]
Supreme Court

**Principal manufacturer did not secure any benefit from the relationship with the job worker**

The assessee is a distributor of AKAI products and purchased AKAI brand color television sets that were manufactured in India on a job work basis from various manufacturers including a job worker. During an investigation, the investigation officer found out that loans from principal manufacturer and payment of interest were not shown in the books of job worker. Due to this, Revenue alleged that job worker was a dummy of principal manufacturer, created for cost reduction by bifurcation of sale promotion, advertisements, after sales services etc. The CESTAT however, rejected Revenue's contention. Being aggrieved, Revenue approached the SC.

The SC held that the relationship between the job worker and principal manufacturer was on a principal-to-principal basis. The job worker had an independent establishment and supplied goods to the principal manufacturer at the same rates as other suppliers. For this purpose, the SC placed reliance on its earlier order, in the case of CCE v. Detergent of India Ltd. & Another; C. A. Nos. 9049-9051 of 2003 decided on 8 April 2015. Hence, it was held that the principal manufacturer did not secure any benefit from the relationship and SC held that no demand was sustainable against the assessee.

**Commissioner of Central Excise v. Baron International Ltd.; [2015 (319) ELT 3 (SC)]**

Supreme Court

**Excise duty payable on expenses incurred till transfer**

Central Excise Act, 1944; in favor of assessee

The assessee had entered into various agreements for execution of work orders for government authorities and private contractors, which involved designing, manufacturing, providing at site, laying, jointing and testing of PSC pipes of specified sizes. Revenue alleged that the place of removal of finished goods was the buyer's premises and not the factory gate and therefore, freight, insurance and unloading charges could not be deducted from the price of excisable goods for Excise duty payment.
The SC observed that, terms and conditions of the work order clearly indicated that the goods were to be delivered at the place of the buyer and the acceptance of supplies, were to be effected only at that place. The price of the goods were inclusive of the cost of material, Central Excise duty, loading, transportation, transit risk and unloading charges etc. Transit damage/breakage was due to the assessee, which clearly implied that ownership of the goods remained with the assessee till the goods had reached the destination. The SC concluded that the sale of goods had not taken place at the factory gate. Consequently, the CESTAT order was set aside and Revenue’s appeal was allowed, restoring the order passed by the Adjudicating Authority, which included the said expenses in assessable value for payment of Excise duty. The SC thereby confirmed inclusion of freight, insurance and unloading charges in assessable value for Excise duty under Section 4 of CEA wherein the terms of delivery was at the premises of the buyer.

Commissioner of Central Excise v. Roofit Industries Ltd.; [2015 (319) ELT 221 (SC)]

Supreme Court

Prior to 1 July 2000, as per Rule 6(b) of the Central Excise (Valuation) Rules, 1975, captive consumption of “yarn” must be valued at “Ex-factory price of yarn sold by assessee” less “Costs incurred on yarn sold but avoided on captive consumption” Central Excise (Valuation) Rules,1975; partly in favor of Revenue

During the period 1 April 1994 to 1 June 1998, the assessee was manufacturing “yarn”, which was captive consumed in manufacture of fabrics and was also sold in the open market. The assessee was paying duty on captive consumption based on cost. In so far as the captive consumption of yarn is concerned, the assessee was paying Excise duty on the basis of the costs, which according to the appellant is the cost of production of the yarn. The duty on the yarn, which is sold in the market, is paid thereon at the factory gate price. Revenue alleged that duty for captive consumption should have been paid on the same price at which the yarn sold by the assessee in the market.

It was held by the SC that according to proviso to Rule 6(b) (i) of the erstwhile Central Excise (Valuation) Rules, 1975, market value from open market sale was available, and applicable to captive consumption. Therefore, assessable value included the stage beyond common processes in production of yarn captively consumed and sold in open market. However, the assessee was entitled to adjustment of costs (winding, warping, sizing, packing, godown rent and selling cost) incurred in sale of same product in open market as that could not be held to be included in cost that was to be captive consumed.

Hindustan Spinning and Weaving Mills Ltd v. CCE; [2015 (318) ELT 374 (SC)]

Customs

Supreme Court

Benefit granted to excisable goods covered under exemption notification with a condition not to avail CENVAT credit, can also be extended to imports for payment of Countervailing duty (CVD)

Customs Tariff Act, 1975; in favor of assessee

The assessee had imported Nylon Filament yarn of 210 deniers falling under Chapter 54 of the Customs Tariff. The assessee claimed exemption from payment of additional duty of customs, which is levied under Section 3(1) of the Customs Tariff Act, 1975, by relying on the exemption from Excise duty as provided in terms of Notification no. 6/2002-CE dated 1 March 2002. Vide the said notification, the Central Government, in exercise of the powers conferred by Section 5A(1) of the CEA provides exemption to certain excisable goods from payment of Excise duty, subject to specified conditions. Entry 122 of the said notification grants exemption to the specified goods falling under Chapter 54, subject to the fulfilment of the condition that no credit under Rule 3 or Rule 11 of the erstwhile
CENVAT Credit Rules, 2002 has been taken in respect of the inputs or capital goods used in the manufacture of these goods.

The issue before the SC was whether the assessee was entitled to exemption from payment of additional duty of customs (also known as CVD) in terms of the said notification, which provides exemption from payment of Excise duty on certain excisable goods, subject to the fulfilment of specified conditions. The SC relied on its decisions in the case of Thermax Pvt. Ltd. v. Collector of Customs (Bombay); [1992 (4) SCC 440] and Aidek Tourism Services Pvt. Ltd. v. Commissioner of Customs, New Delhi; [2015 (3) TMI 690].

The SC, therefore, held that the assessee was eligible to claim exemption from the payment of CVD, by relying on the said Notification. It was observed that for quantification of CVD on imported articles, it has to be imagined that the article has been manufactured or produced in India and, accordingly, the amount of Excise duty leviable thereon should be ascertained.

SRF Ltd v. Commissioner of Customs, Chennai and ITC Ltd. v. Commissioner of Customs (Import & General), New Delhi; [2015-TIOL-74-SC-CUS]

Supreme Court

Value of services provided under License agreement and Basic Engineering, Training and Technical Services agreement will not be included in the assessable value of capital goods imported, for the purpose of levy of Customs duty

Customs Act, 1962 and Customs Valuation (Determination of Price of Imported Goods) Rules, 1988; in favor of assessee

The SC observed that the fees paid under the License Agreement and the Basic Engineering, Training and Technical Services Agreement are neither related to the import of the capital goods nor was it a condition of sale. Furthermore, the agreements pertained to the services that were to be provided following import of the aforesaid goods. Therefore, placing reliance on the SC decision in the case of Commissioner of Customs, Ahmedabad v. Essar Steel Ltd.; [2015-TIOL-63-SC-CUS], it was held that the value pertaining to the license agreement and the technical services agreement should not be included in the assessable value of capital goods imported.


Supreme Court

SC quashes 1% notional loading in Customs valuation when actual charges are ascertainable

Customs Act, 1962 and Customs Valuation (Determination of Price of Imported Goods) Rules, 1988; in favor of assessee

The value for determining Customs duty of imported goods includes loading, unloading and handling charges associated with their delivery, at the place of import. Such charges are statutorily fixed at 1% of Free on Board (FOB) value of the goods in terms of proviso (ii) to Rule 9(2) of the erstwhile Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 (Valuation Rules). The assessee is engaged in the manufacture and marketing of Mini and Micro Computer Systems and peripheral devices such as printer, drivers etc. The assessee, imported various components including software from time to time. In the year 1993, the assessee had presented a Bill of Entry to the Customs authorities. The chargeable weight of their consignment was 315 kg and the actual loading, unloading and handling charges amounted to INR65 according to the tariff of the International Airport Authority of India, Madras. However, Revenue on the basis of Notification No. 39/90 dated 5 July 1990 added handling charges.
calculated at 1% of the FOB value of goods on account of loading, unloading and handling charges in terms of proviso (ii) to Rule 9(2).

The SC overruled the Madras HC Division Bench ruling which confirmed notional fixation of loading, unloading and handling charges at 1% of FOB value for Customs valuation. The SC has held the relevant proviso (ii) to Rule 9(2) of Valuation Rules, prescribing the notional fixation of loading, unloading and handling charges at 1% of the FOB value has been held as ultra vires, especially when such actual costs are ascertainable. The SC observed that the HC had missed the point that decision in the case of Garden Silk Mills Ltd; [1998 (8) SCC 744] had been given in the scenario where actual cost was not ascertainable. Therefore, the SC held that the aforesaid proviso had to be read down to mean that it would apply only when actual charges referred were not ascertainable.

Wipro Ltd. v. Assistant Collector of Customs & Others; [2015-TIOL-79-SC-CUS]

High Court, Madras

Suo motu refund of Extra Duty Deposit on finalization of provisional bills of entry

Customs Act, 1962; in favor of assessee

The assessee imported RDB Palmolein (edible grade) and paid extra duty deposit (EDD) for the purpose of provisional assessment of the imported goods, pending survey report. On submission of the report, Revenue finalized the provisional assessment and forwarded the file to the Refund Section for refund of the EDD. The Assistant Commissioner of Customs (Refund), suo motu, passed an order holding that no refund application has been filed as required under Explanation II to Section 27 of the Customs Act and the refund application should have been filed within six months from the date of finalization of provisional assessment and, therefore, rejected the claim. The assessee/importer appealed to the Commissioner (Appeals), who, on considering the facts of the case, allowed appeals holding that the EDD is only a deposit as a protection to safeguard the interests of Revenue and it is not a deposit of difference in terms of Section 27 of the Customs Act. The EDD of 1% has been obtained from the assessee as a precaution to safeguard the interests of Revenue. If after final assessment, any part of this deposit is found in excess it is liable to be refunded suo motu once the bill of entry is finalized, on a simple letter request by the importer, without making him run from pillar to post. EDD is a misnomer and has to be understood correctly as nothing that is collected “extra” or over and above what is allowed under the statute can be termed as a duty. What is meant is that an extra amount has been deposited toward duty liability that may arise in future as a safeguard and not as an advance deposit of extra duty, as the amount collected cannot be treated as duty until and unless the said deposit is adjusted toward such duty on finalization thereof according to law.

Being aggrieved by the Commissioner (Appeals) order, Revenue pursued the matter before the CESTAT. The CESTAT, while taking note of the fact that provisional assessment, forwarded the file to the refund section for refund of EDD and took note of the statutory prescription, which stated that the assessee is entitled to refund upon finalization of assessment. It held that there is no need to insist on a formal claim for refund. Subsequently, being aggrieved by the CESTAT’s order, Revenue filed an appeal before the HC.

The Madras HC held that the assessee is entitled to suo motu refund of extra duty deposit under Section 18 of the Customs Act arising out of finalization of provisional bills of entry prior to July 2006. The HC held that provisions of Explanation II to Section 27 of the Customs Act will not apply to such refunds. The HC also placed reliance on Mafatlal Industries Ltd. & Others v. Union of India; [2002-TIOL-54-SC-CX-CB].


High Court, Madras

Commissioner (Appeals) is not empowered to condone delay beyond the extended period of 30 days

Customs Act, 1962; in favor of Revenue

The assessee had obtained EPCG License from Joint Directorate General of Foreign Trade (DGFT), Mumbai for import of duty-free capital goods under Notification No.49/2000 dated 27 April 2000. Though they had fulfilled the export obligation within the stipulated time, applied to the DGFT for a redemption certificate and also obtained redemption letter, Revenue had passed an Order-
in-Original (OIO) demanding INR 0.2 million along with interest.

On appeal, the Commissioner (Appeals) dismissed assessee's appeal, observing that he had no power to condone the delay of 1,346 days. Thereafter, another Assistant Commissioner (ARC) issued a demand notice demanding the payment of duty along with interest according to the impugned OIO. Being aggrieved, the assessee approached the HC.

The HC observed that when such an order was challenged by way of a writ petition, the Customs Act is independent and complete in itself. Hence, reliance was not required to be placed upon Limitation Act, 1963 for the benefits contained therein. It was therefore, held by the HC that delay in filing the appeal beyond the stipulated 30 days of extended period (as provided in the statute) cannot be condoned by the Commissioner (Appeals).

The HC observed that the Customs Act, 1962 itself is a complete Code. Reading various chapters and various sections thereof, it is very clear that it is an Act independent of other provisions. It provides for search, seizure, arrest, confiscation of goods, conveyance, imposition of penalties, settlement of cases, appeals including the appeal to and hearing before the SC, period of limitation, offenses and prosecution. Thus, it is an independent Act. Therefore, the Customs Act, 1962 is a complete code and the provisions of Section 128 (1) clearly indicate that the provisions of the Limitation Act were to apply only to the extent and during the extended period of 30 days and not beyond. Delay could be condoned by the Commissioner (Appeals) within the extended period of 30 days and thereafter, he had no power left in him to entertain any application for condensation of delay or to entertain the appeal itself. Therefore, it is clear that the provisions of the Limitation Act are necessarily excluded and the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. Thus, the HC held that delay, which is beyond the statutory period of limitation, cannot be condoned by the Commissioner (Appeals).

**VAT/CST**

**Supreme Court**

Where assessee was engaged in execution of jobs design, supply and installation of air-conditioning plants, assessee's works contract for fabrication and installation of water chilling plant at factory of customer would fall under Entry No. 5 of notification dated 18 October 1993 issued under section 55A Gujarat Sales Tax Act, 1969; in favor of assessee

The assessee was engaged among others in the business of execution of jobs design, supply and installation of air-conditioning plants construed to be indivisible works contracts.

A customer had placed an order with the assessee for fabrication and installation of water chilling plant at its factory. The assessee filed an application before the Deputy Commissioner under section 62 for determination of the composition rate of tax payable on the works contract involved and insisted that the works contract involved came within the purview of Entry No. 5 of the Notification dated 18 October 1993 issued under Section 55A attracting the composition rate of tax at 5% only. The Deputy Commissioner rejected the plea of the assessee and instead held that the works contract was covered by Entry No. 2 of the Notification dated 18 October 1993, as the assessee had to air-condition the plant to be erected by it. The CESTAT upheld the order of the Deputy Commissioner. The HC sustained the determination made by the lower authorities declaring that the assessee's works contract for fabrication and for installation of water chilling plant did fall under Entry 2 of the notification dated 18 October 1993 and was taxable at the composition rate of 15%. Being aggrieved, the assessee appealed to the SC.

Dismissing Revenue's appeal, the SC held that the HC had confined itself wholly to the components of various air-conditioning devices available and the range of the use thereof and had missed the significant aspect of "fabrication" integrally involved in the works contract to supply the water chilling plant with the design parameters stipulated by the customer. It did adopt a general approach vis-à-vis the air-conditioning devices commercially available in different forms “de hors” the singular factual aspects of the work order constituting the

Hindustan Apparel Industries v. Assistant Commissioner & Another; [2015-TIOL-842-HC-MAD-CUS]
works contract. The HC, by overlooking the component of fabrication in the works contract, opined that the same was within the purview of Entry No. 2 and not Entry No. 5. Notification dated 18 October 1993 in the instant case being apparently statutory in nature is akin to subordinate legislation to actualize and advance the legislative intent engrafted in Section 55A. It not only owes its existence to the Act but would also be amenable to the cardinal principles of interpretation. In the overall legal and factual perspectives as obtained herein, any endeavor to drag the works contract involved within the framework of Entry No. 2 would be repugnant to the basic principles of interpretation of statutes and subordinate legislation such as the statutory notification under Section 55A. To exclude the work of fabrication from the works contract according to the work order would render it (works contract) truncated to a form not intended by the customer. This would strike as well at the root of the mandate of co-relation of a works contract and the corresponding composition rate of tax as envisaged by Section 55A and the notification issued thereunder. Therefore, the assessee's works contract for fabrication and installation of water chilling plant at the factory of the customer was held to fall under Entry No. 5 of the notification dated 18 October 1993 issued under Section 55A and would be taxable at the composition rate of 5% as prescribed thereby.

Volta Ltd. v. State of Gujarat; [2015 Indlaw SC 254]

High Court, Bombay

HC confirms powers of the legislature to determine measure of tax; upholds stage-wise taxability under Rule 58 of MVAT Rules

Maharashtra Value Added Tax Act, 2002; partly in favor of Revenue

Assessee was engaged in the business of real estate development and construction. They filed a group of writ petitions challenging the constitutional validity and propriety of Notification dated 29 January 2014, amending Rule 58 of Maharashtra Value Added Tax Rules, 2005 (MVAT Rules) and Trade Circulars, 7T of 2014 and 12T of 2014. Assessee requested the HC to issue writ of certiorari, to quash and set them aside. Assessee also requested for determination of value of works contract on percentage of material consumption instead of stages given under Notification dated 29 January 2014 and to allow them to submit revised VAT returns with “material cost plus gross profit” method. Assessee sought direction to permit them to deduct consideration paid toward land while determining the sale price for the purpose of Rule 58 (1) of MVAT Rules. Rule 58 of MVAT Rules provides for determination of sale price in respect of sale by transfer of property in goods involved in the execution of a works contract. Circular 7T of 2014 granted time up to 30 April, 2014 for submission of returns by developers. Circular 12T of 2014 comprised responses to certain frequently asked questions, making reference to the existing provisions of Maharashtra Value Added Tax Act, 2002.

The HC held that it is legislature’s power to legislate in respect of the basis for determining the measure of tax. It is open for the legislature to adopt any basis for determining the value of a taxable article. The measure for assessing the levy need not correspond completely to the nature of levy, and no fault can be found with the measure, so long as it bears nexus with the charge. While prescribing the modalities of valuation under Rule 58 and particularly under Rules 58 (1), 58 (1A) and 58 (1B) of MVAT Rules, the object all along appears to adopt a standard and measure for assessment of subject of tax. The HC thus upheld constitutional validity of Notification dated 29 January 2014, amending Rule 58 of MVAT Rules and Trade Circulars, 7T of 2014 and 12T of 2014. Accordingly, stage-wise taxability under Rule 58 stands confirmed.

Confederation of Real Estates Developers’ Association of India v. State of Maharashtra & Other; [2015-TIOL-1267-HC-MUM-VAT]

High Court, Kerala

VAT cannot be demanded on the profit element of the main contractor where entire contract is executed by sub-contractor

Kerala Value Added Tax Act, 2003; in favor of assessee

The assessee is a works contractor who was awarded a contract by BPCL (awardee). The entire contract, so awarded, was sub-contracted to a sub-contractor by the assessee. No portion of the contract was executed by the assessee. The assessee approached Revenue to issue a certificate in Form 20B. This certificate was a prerequisite for obtaining a release of the principal amount by the
awarder of the contract. The said Form 20B signified that the assessee has discharged its tax liability, if any. The assessee was of the view that it is not liable to pay any tax in respect of the amount released by the awarder, since the said amount only represented profit from the transaction.

However, Revenue did not accept the contention of the assessee and issued a demand for tax. The assessee submitted objection to the tax demand but then paid tax under protest to obtain the Form 20B. Thereafter, it filed a writ petition seeking refund of the tax so paid. Revenue filed a counter affidavit wherein it contended that while seeking the Form 20B, the assessee indicated that amount to be received from the awarder was representative of establishment charges and profit for supplying labor and services. It contended that it was not a permissible deduction under the provisions of the Kerala Value Added Tax Act, 2003 (KVAT). Furthermore, on account of Circular No.5/2006, Revenue alleged that the assessee will be liable to pay tax even on the profit made out of the contract.

The HC held that no tax can be levied in terms of KVAT on the profit element of the assessee when the entire work is sub contracted to a sub-contractor. Furthermore, it observed that there was no sale of material in the course of execution of works contract that emanated from the assessee to the awarder of contract. Reliance was placed on the decision of the SC in the case of State of Andhra Pradesh and Other v. Larsen & Toubro and Others; [2008-17-VST-1 (SC)], wherein it was held that lack of privity of contract between the contractee and the sub-contractor will not do away the principle of transfer of property by the sub-contractor. In the absence of any taxable event under KVAT, Revenue could not have demanded tax on the amounts received by the assessee as profits. Therefore, the demand of tax is illegal and liable to be set aside. Revenue was directed to refund the tax amount or give credit of amount mentioned in the return submitted by the assessee.

Surya Constructions v. Commercial Tax Officer and State of Kerala; [2015-4-TMI-570]

High Court, Punjab & Haryana

Builder/developer who had entered into agreements with prospective buyers to construct flats and thereafter, sold the same with some portion of land against valuable consideration; would be covered under term “works contract”

Haryana Value Added Tax Act, 2003 and Haryana Value Added Tax Rules, 2003; partly in favor of Revenue

The assessee, a builder/developer entered into agreements with the prospective buyers to construct flats/apartments/villas/commercial projects and thereafter, sell the same with some portion of land against valuable consideration. It had sold the said flats etc. to the buyers by execution of sale deed on payment of stamp duty on total consideration. Assessing authority levied VAT on transaction of sale of flats, floors and villas in terms of circulars dated 7 May 2013, 4 June 2013 and 10 February 2014. The assessee filed a writ petition for declaring Explanation (i) to Section 2 (1) (zg) and Rule 25 (2) in particular and other related provisions contained in Sections 9 and 42 and Rule 49 in so far as they included the value of land for charging VAT on developers to be ultra vires the Constitution.

Placing reliance on the SC decisions, arising under Article 366 (29A) of the Constitution, it follows that the agreement between the promoter/builder/developer and the flat purchaser to construct a flat and thereafter, sell the flat with some portion of land does involve activity of construction, which would be covered under the term “works contract”. The term “works contract” encompasses a contract in which one of the parties is obliged to undertake or to execute works. The activity of construction has all the attributes, elements and characteristics of works contract though essentially it may be a transaction of sale of flat. To put it differently, so long as construction is for and on behalf of the purchaser, it remains a “works contract”. Building contracts are species of the works contract. A contract comprising both a works contract and a transfer of immovable property is not denuded of its character of being a works contract. Article 366 (29A) (b) of the Constitution does contemplate a situation where the goods may not be transferred in the form of goods but may be transferred in some other form, which may even be in the form of immovable property. No doubt, there is no legislative competence in the State legislature to levy tax on the transfer of immovable property under Entry 54 of List II of the Seventh Schedule. However, the States are empowered to levy Sales tax on the sale of goods in an agreement of sale of flat, which also has a component of a deemed sale of goods.
The Division Bench of the HC therefore, held that Explanation 1 to Section 2(1)(xg) did not suffer from any vice or defect of unconstitutionality. Furthermore, it observed that since the legislature had not made any express provision in Rule 25 for exclusion of value of immovable property from works contract, necessary changes are required to be made in said Rule. It was held that Section 42 could not be said to be arbitrary, discriminatory or unreasonable in any manner. Furthermore, provisions contained in Section 9 and Rule 49 was held to be purely optional in nature and method of determining tax liability under these provisions could not be questioned by a dealer. Therefore, the impugned order passed by Assessing authority was set aside with liberty to the Assessing authority to pass fresh orders.

CHD Developers Ltd. v. State of Haryana; [2015 (57) taxmann.com 315 (Punjab & Haryana)]

High Court, Bombay

**Vouchers held to be goods for levy of local body tax and octroi**

Maharashtra Municipal Corporation Act, 1949; Pune Municipal Corporation Octroi Rules, 2008; Bombay Provincial Municipal Corporation (LBT) Rules, 2010; in favor of Revenue

The assessee is engaged in the business of providing pre-printed Sodexo meal vouchers. The printed vouchers were sold to customers for the value printed on said vouchers and the customers in turn, handed them over to their employees, who used them for acquiring food and beverages. The issue before the HC in this writ petition was whether octroi and local body tax (LBT) will be levied on the Sodexo meal vouchers. The HC referred to the decision in Burmah Shell Oil Storage and Distributing Company of India Ltd. v. Belgaum Borough Municipality; [AIR 1963 SC 906], wherein it was held that for the levy of octroi, the commodity concerned should be brought within the municipal limits for consumption for being totally used up or it was to be used for an indefinite period within the municipality limits.

The HC observed that vouchers, i.e., pre-printed Sodexo meal vouchers are capable of being sold, delivered and possessed after they are brought within the limits of the Maharashtra Municipal Corporation Act, 1949 and have a utility of its own. The HC while holding that the goods to be liable to octroi also discussed the meaning of the term “goods” as held in Tata Consultancy Services; [2005 (1) SCC 308]. The HC therefore, observed that such vouchers are goods for the purpose of levy of local body tax and octroi.

Sodexo SVC India Pvt. Ltd. v. State of Maharashtra; [2015-VIL-132-BOM]
Key statutory updates

Service tax

- Exemption granted to specified services
  
  Exemption from Service tax has been granted to various welfare schemes such as Pradhan Mantri Suraksha Bima Yojana, Pradhan Mantri Jeevan Jyoti Bima Yojana, Pradhan Mantri Jan Dhan Yojana, Atal Pension Yojana (APY) by amendment to the Mega Exemption Notification No. 25/2012 dated 20 June 2012.
  
  Notification No. 12/2015-ST dated 30 April 2015

- Amendment to Abatement Notification No. 26/2012-ST dated 20 June 2012
  
  Definition of “chit” as given in Notification no. 26/2012-ST has now been deleted.
  

- Notification providing date from when certain provisions are to be made effective, which pertains to:
  
  - **New rate of Service tax at 14% to be effective from 1 June 2015**
    
    Service tax rate increased from 12.36% to 14% (Education cess (EC) and Secondary & Higher Education cess (SHEC) subsumed in the new rate of tax). Moreover, the sections of Finance Act, 2004 and Finance Act, 2007, levying EC and SHEC have been omitted.

  - **Admission to entertainment events or access to amusement facilities to be taxable with effect from 1 June 2015**
    
    Entry providing for exemption to admission to entertainment events or access to amusement facilities by way of Section 66D (j) of the Act has been removed from the negative list. This amendment will be effective from 1 June 2015.


- Amendment to Service Tax Rules, 1994 with respect to the alternative rates of tax for certain services to be effective from 1 June 2015

  Notification No. 15/2015-ST dated 19 May 2015

- **Effective date for the amendments in Notification no. 6/2015-ST dated 1 March notified**

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### Amendment to alternative tax rates such as -

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<td>6(7)</td>
<td>Air Travel Agent Service</td>
<td>0.7% of basic fare 1.4% of basic fare</td>
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<tr>
<td>6(7A)</td>
<td>Life Insurance service provider</td>
<td>3.50% 1.75%</td>
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<td>6(7B)</td>
<td>Services of purchase/sale of foreign currency, including money changing</td>
<td>0.14% (min. INR 35)</td>
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<td>INR140 + 0.07%</td>
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<td>INR 770+0.014% (max. INR 7000)</td>
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<td>6(7C)</td>
<td>Services provided by distributor or selling agent of lottery tickets</td>
<td>INR8200 on every 10 lakhs or part thereof of aggregate face value of lottery ticket</td>
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<td>INR12800 on every 10 lakhs or part thereof of aggregate face value of lottery ticket</td>
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Amendment in relation to withdrawal of exemption for job work in case of potable liquor will be effective from 1 June 2015; and

Exemption to the following services which are effective from 1 June 2015

- Services by way of right to admission to:
  - Exhibition of cinematographic film, circus, dance or theatrical performance including drama or ballet;
  - Recognized sporting event;
  - Award function, concert, pageant, musical performance or any sporting event other than a recognized sporting event, where the consideration for admission is not more than INR500 per person.

Notification No. 16/2015-ST dated 19 May 2015

Exemption granted to certain services under Power System Development Fund (PSDF) Scheme of Ministry of Power


Clarifications in the TRU issued by the Ministry of Finance, after enactment of the Finance Bill, 2015

Para 5 of the TRU Clarification letter, issued by the Ministry of Finance, mentioned that the dates for the following amendments will be notified in due course.

- Taxability of services provided by Government/local authority to business entity, which were earlier under the negative list to be notified at a later date. (Sec. 66D (a) (iv))
- Levy of Swachh Bharat Cess on all or any of the taxable services at 2% or at a lower rate on value of taxable services to be notified at a later date.


Central Excise Duty

- Amendment to Notification nos. 14/2015-CE and 15/2015-CE, which seek to exempt goods from the levy of EC and SHEC respectively.

Notification nos. 26/2015-CE and 27/2015-CE seek to provide exemption from levy of EC and SHEC respectively, to excisable goods which are manufactured by 100% EOUs and brought to any place within India in accordance with the provisions of the Foreign Trade Policy (FTP).

Notification No. 26/2015-CE dated 30 April 2015; Notification No. 27/2015-CE dated 30 April 2015

- Rebate of duty on goods cleared from Domestic Tariff Area (DTA) to Special Economic Zone (SEZ)

In view of the amendment in the definition of “export” under Rule 18 of the Central Excise Rules, 2002 and the definition of “export goods” in Rule 5 of the CCR, the CBEC has clarified that clearance of goods from DTA to SEZ will continue to be export, and therefore, will be entitled for the benefit of rebate/refund as the case may be.

Circular No. 1001/08/2015-CX dated 28 April 2015

CENVAT Credit

- CENVAT Credit Rules amended to provide for the utilization of EC and SHEC against the Excise duty

Rule 3(7)(b) of CCR, 2004 has been amended to allow utilization of credit of EC and SHEC for payment of basic Excise duty in the following situations:

- (a) EC and SHEC on inputs or capital goods received in the factory of manufacture of final product on or after 1 March 2015;
- (b) Balance 50% EC and SHEC on capital goods received in the factory of manufacture of final product in the FY14-15; and
- (c) EC and SHEC on input services received by the manufacturer of final product on or after 1 March 2015.

Notification No. 12/2015-CE (NT) dated 30 April 2015

- CBEC clarification on amendment in Rule 11(2) of Central Excise Rules

CBEC clarifies that in case of direct dispatch of goods to the consignee on the directions of an unregistered
dealer, credit can be availed by the consignee on the basis of the invoice issued by the manufacturer or registered importer and there is no requirement for the unregistered dealer to get registered for the purpose of passing on the benefit of CENVAT credit to the consignee.

Circular No. 1003/10/2015-CX dated 5 May 2015

► Amendment in Rule 6(3) of the CCR to be effective 1 June 2015

Provider of output service, opting not to maintain separate accounts will now be required to pay an amount equal to 7% of the value of exempted services earlier as compared to 6%.

Notification No. 14/2015-CE (NT) dated 19 May 2015

► Refund claim available to service providers under Rule 5B of CCR — amends Notification No. 12/2014-CE (NT) dated the 3 March 2014

Service provider providing services in the nature of supply of manpower for any purpose or security services will no longer be eligible to claim refund under Rule 5B of CCR from 1 April 2015.

Notification No. 15/2015-CENT dated 19 May 2015

Customs

► Circular regarding 4% SAD refund claim — amends CBEC Circular No 6/2008-Cus dated 28 April 2008

The CBEC clarifies that as a trade facilitation measure, importers can now file refund claim of 4% SAD in terms of Notification No. 102/2007-Cus at the Customs Stations where imports are made. An importer will now be allowed to file refund claims at a single customs location for imports made at multiple locations, subject to one refund application per month.

Earlier, the importer could file one refund claim in a month in a single Commissionerate, though having multiple Customs locations. However, they retain the limit on number of claims at a Customs Station to one in a particular month.

Circular No 12/2015-Cus dated 9 April 2015

► Setting up of Customs Clearance Facilitation Committee

The CBEC has taken measures for simplification of Customs procedures, reduction of documents, message exchange between government agencies engaged in Customs clearance, and use of digital signature for electronic submission of Customs process documents. Moreover, it has now been decided with the approval of the Cabinet Secretary to establish a high-level administrative body at each seaport and airport with the responsibility of ensuring expeditious Customs clearance of imported and export goods.

CBEC Circular No. 13/2015-Cus dated 13 April 2015
Anti-dumping duty (ADD) Notifications

The Central Government imposes ADD on the following items:

- **Import of Flexible Slabstock Polyol of molecular weight 3,000–4,000, classifiable under Heading 39.07 of the Customs Tariff, which originate in or are exported from Australia, EU and Singapore.**
  
  Notification No. 09/2015-Cus (ADD) dated 7 April 2015

- **Import of polyvinyl chloride resin, originating in or exported from Norway and Mexico.**
  
  Notification No. 10/2015-Cus (ADD) dated 7 April 2015

- **Import of electrical insulators of glass or ceramics/porcelain, whether assembled or un-assembled originating in, or exported from the People’s Republic of China for a period of five years.**
  
  Notification No. 11/2015-Cus (ADD) dated 11 April 2015

- **Import of Acetone, originating in or exported from Chinese Taipei and Saudi Arabia.**
  
  Notification No. 13/2015-Cus (ADD) dated 16 April 2015

- **Import of Sodium Citrate, originating in or exported from China PR for a period of five years.**
  
  Notification No. 19/2015-Cus (ADD) dated 20 May 2015

- **Import of Pentaerythritol, originating in, or exported from, Russia for a period of five years.**
  
  Notification No. 20/2015-Cus (ADD) dated 22 May 2015

- **Import of cast aluminium alloy wheels or alloy road wheels, originating in or exported from People’s Republic of China, Korea RP and Thailand for a period of five years from the date of imposition of the provisional anti-dumping duty, i.e., 11 April 2014.**
  
  Notification No. 21/2015-Cus (ADD) dated 22 May 2015

- **Import of USB Flash Drives, originating in, or exported from, People’s Republic of China and Chinese Taipei for a period of five years.**
  
  Notification No. 22/2015-Cus (ADD) dated 22 May 2015

- **Import of Purified Terephthalic Acid, originating in or exported from Korea RP and Thailand for a period of five years from the date of imposition of provisional anti-dumping duty, i.e., 25 July 2014.**
  
  Notification No. 23/2015-Cus (ADD) dated 27 May 2015

- **Import of Electronic Calculators of all types (excluding calculators with attached printers, commonly referred to as printing calculators; calculators with ability to plot charts and graphs, commonly referred to as graphing calculators; programmable calculators), originating in, or exported from, People’s Republic of China for a period of five years.**
  
  Notification No. 24/2015-Cus (ADD) dated 29 May 2015

Foreign Trade Policy 2015-20 (FTP)

Public Notices

- **Overview of FTP**

  The FTP introduces two schemes, namely, Merchandise Exports from India Scheme (MEIS) for export of specified goods to specified markets and Services Exports from India Scheme (SEIS) for exports of notified services, in place of the schemes issued earlier. The benefits of these reward schemes are also extended to SEZ units.

  Furthermore, measures have been taken to encourage manufacturing and exports under 100% EOU/EHTP/
STPI/BTP schemes such as fast-track clearance facility, sharing of infrastructural facilities etc. The major focus areas of this FTP are trade facilitation and ease of doing business. Accordingly, a number of steps have been taken such as reduction in number of mandatory documents for export and import, creation of facility for uploading documents in exporter/importer profile etc.

- **FTP 2015-20** was released by the Ministry of Commerce and Industry on 1 April 2015. The Handbook of Procedures, Appendices and Aayat Niryat Forms have been notified vide Notification No. 1/2015-2020 with effect from 1 April 2015.
  
  DGFT Public Notice No. 1/2015-2020 dated 1 April 2015

- For MEIS, list of products [ITC (HS) code wise list of products with reward rates] and list of markets, which are eligible under Appendix 3B are notified.
  
  DGFT Public Notice No. 2/2015-2020 dated 1 April 2015

- For SEIS, Schedule of list of eligible services under Appendix 3D notified
  
  DGFT Public Notice No. 3/2015-2020 dated 1 April 2015

- Restoration of the facility of acceptance of Demand Draft towards application fee/penalty/any other fee
  
  Facility of payment of application fee/penalty/any other fee through demand draft is being restored by suitably amending the Appendix 2K of Appendices and Aayaat Niryat Forms, 2015-20
  
  DGFT Public Notice No. 6/2015-2020 dated 16 April 2015

- Amendment in para 2.07 (a) (iv) of Handbook of Procedures (2015-2020)
  
  For border trade between India and China, the CIF value per consignment is being increased from INR0.1 million to INR0.2 million in case of Nathula, while for Gunji and Namgaya Shipkila, the existing CIF value limit of INR25,000 is being increased to INR0.1 million.
  

- Amendment in Appendix- 4 J relating to Export Obligation Period under Advance Authorizations
  
  Pre-import condition will be mandatory for import of “raw sugar” under Advance Authorization scheme. Export obligation period for “raw sugar” imported under Advance Authorization has been reduced to six months from the date of clearance of each consignment by customs authority.
  

- Allocation of quantity for export of sugar to EU under CXL quota and to the US under Tariff Rate Quota (TRQ)
  
  The quantity of sugar to be exported to EU under CXL Quota and to the US under TRQ up to 30 September 2015 has been notified.
  

- Implementation of the procedure for export of certified organic products notified vide Public Notice No. 73 (RE-2013)/2009-2014 dated 18 November 2014
  
  Procedure notified vide Public Notice No. 73 (RE-2013)/2009-2014 for export of certified organic products, except textiles, will come into effect from 1 June 2015.
  

- Amendment in Public Notice No. 42 (RE-2013)/2009-2014 dated 3 December 2013 relating to export of Value Added products of Red Sanders wood by Andhra Pradesh Government
  
  Time up to 30 April 2016 has been prescribed for export of 1998.5917 MTs value added products of Red Sanderswood by the Andhra Pradesh Government, as permitted vide Public Notice No. 42 (RE-2013)/2009-2014.
  
Amendment in para 2.55 and 2.56 of Handbook of Procedures of FTP 2015-20 regarding issue of pre-shipment Inspection Certificates.

Supersession of earlier Public Notice No. 5/2015-20 dated 10 April 2015 through which provisions of para 2.55 and para 2.56 of Handbook of Procedures, 2015-20 were kept in abeyance till further orders. In exercise of powers conferred under paragraph 2.04 of the FTP 2015-20, the DGFT substituted para 2.55 and para 2.56 of Handbook of Procedures of FTP 2015-20 vide the Notification.


Implementation of Track and Trace System for export of drug formulations

In supersession of the earlier Public Notice No. 4/2015-20 dated 1 April 2015, DGFT modifies the procedure for implementation of the Track and Trace system for export of drug formulations has been modified.

Accordingly, manufacturer/exporter of drug formulations will print barcode according to GS1 Global Standard at primary, secondary and tertiary levels to facilitate tracking and tracing of its products.

w.e.f. 1 October 2015, all drugs with manufacturing date on or after said date can be exported only if both tertiary and secondary packaging carry barcoding as applicable and the relevant data as prescribed by DGFT is uploaded on the central portal of Government of India. Exports of drugs having manufacturing date prior to 1 October 2015 will be exempted from requirement of data uploading on the central portal.


Application Form for Served From India Scheme (SFIS) for Net Foreign Exchange

DGFT notifies Application Form “ANF 3B-2” for availing benefit of SFIS toward net foreign exchange earned in 2014-15. While the Net Foreign Exchange condition has been brought in for SEIS in this FTP (effective from 1 April 2015); the form for SFIS of FY14-15 also suggests that the benefit will be available only on the net foreign exchange. Moreover, the form for FY13-14 (notified in September 2014) suggests that SFIS benefit is available only on net foreign exchange.


Trade Notices

Online update of Importer-Exporter Profile

Importers/exporters are required to update their Importer-Exporter Profile by 15 June 2015 by logging into the DGFT website and updating the requisite information with their digital signature. All Export Promotion Councils (EPCs) are requested to update the details of Registration cum Membership Certificates (RCMCs) issued to its members on the DGFT website, for linking of the same with the Importer-Exporter Profiles latest by 15 June 2015 so that their members can avail the benefit of paper-less submission of applications.

Trade Notice No. 2/2015 dated 26 May 2015

FTP related: Service Tax notifications

Implementation of MEIS

The Central Government has issued the notification for implementation of the MEIS in terms of Chapter 3 of the FTP, with respect to Service tax. Under this notification, the Central Government has exempted taxable services provided or agreed to be provided against the MEIS duty credit scrip by a person located in the taxable territory from Service tax leviable thereon, subject to certain conditions.

Notification No. 10/2015-ST dated 8 April 2015

Implementation of SEIS

The Central Government has issued the notification for implementation of the SEIS in terms of Chapter 3 of the FTP, with respect to service tax. Under this notification, the Central Government has exempted the taxable services provided or agreed to be provided against SEIS duty credit scrip by a person located in the taxable territory from Service tax leviable thereon, subject to certain conditions.

Notification No. 11/2015-ST dated 8 April 2015
FTP related: Excise notifications

- **Excise duty exemption to goods when cleared against “Post Export for the Export Promotion Capital Goods (EPCG) duty credit scrip”**
  The Central Government has issued the notification operationalizing the provisions of post-export EPCG duty credit scrip in terms of Chapter 5 of the FTP, with respect to Excise duty. The notification exempts the goods specified in the First Schedule and the Second Schedule to the Excise Tariff Act from Excise duty when cleared against post export EPCG duty credit scrip issued by the Regional Authority in accordance with the FTP (which provides for duty remission in proportion to export obligation fulfilled from Excise duty).

  Notification No. 18/2015-CE dated 1 April 2015

- **Amendment to Notification 33/2012-CE dated 9 July 2012 pertaining to exemption to capital goods cleared against Status Holder Incentive Scrip (SHIS)**
  Exemption from whole of customs duty and additional customs duty available subject to condition that said scrip has not been issued in violation of conditions contained in Notification Nos. 101/2009-Cus, 102/2009-Cus, 22/2013-Cus and 16/2015-Cus (EPCG Scheme), 5/2013-Cus, 23/2013-Cus and 17/2015-Cus (Post Export EPCG Duty Credit Scrip Scheme); other conditions remain unchanged.

  Notification No. 19/2015-CE dated 1 April 2015

- **Implementation of Merchandise Exports from India Scheme (MEIS)**
  The Central Government has issued the notification for implementation of the MEIS in terms of Chapter 3 of the FTP with respect to Excise duty. Under this notification, the Central Government has exempted the goods specified in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) from Excise duty, when cleared against MEIS duty credit scrip issued by the Regional Authority under the FTP.

  Notification No. 20/2015-CE dated 1 April 2015

- **Implementation of SEIS**
  The Central Government has issued the notification for implementation of the SEIS in terms of Chapter 3 of the FTP with respect to Excise duty. Under this notification, the Central Government has exempted the goods specified in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) from Excise duty, when cleared against SEIS duty credit scrip issued by the Regional Authority under the FTP.

  Notification No. 21/2015-CE dated 1 April 2015

- **Central Government amends Notification Nos. 22/2003-CE and 52/2003-Cus**
  The Export Oriented Units (EOUs)/Software Technology Parks (STPs) /Electronics Hardware Technology Parks (EHTP units) are to execute a bond to pay on demand, Excise/Customs duty + applicable interest in case of:

  (i) Indigenously procured/imported capital goods are not proved to have been installed or otherwise used within the unit,

  (ii) Goods other than capital goods have not been used in connection with production/packaging of export products/cleared for home consumption, within validity of Letter of Permission.

  Duty will not be payable in respect of capital goods, raw material, consumables or rejects destroyed within the unit after intimation to Authorities or destroyed outside the unit with permission.

  Notification No. 30/2015-CE dated 22 May 2015:

FTP related: Customs Notifications and Circulars

- **Several notifications have been issued regarding the implementation of following schemes under FTP 2015–20:**
  - **Implementation of EPCG Scheme;** Notification No. 16/2015-Cus dated 1 April 2015
  - **Implementation of Post Export EPCG Scheme;** Notification No. 17/2015-Cus dated 1 April 2015
Implementation of Advance Authorization Scheme; Notification No. 18/2015-Cus dated 1 April 2015

Implementation of Duty Free Import Authorization Scheme; Notification No. 19/2015-Cus dated 1 April 2015

Implementation of Advance Authorization Scheme for annual requirement; Notification No. 20/2015-Cus dated 1 April 2015

Implementation of Advance Authorization Scheme for deemed export; Notification No. 21/2015-Cus dated 1 April 2015

Implementation of Advance Authorization Scheme for export of prohibited goods; Notification No. 22/2015-Cus dated 1 April 2015

Notification No. 104/2009-Customs dated 14 September 2009, regarding exemption to the capital goods imported under Status Holder Incentive Scheme (SHIS), amended

Substitutes condition (2) as follows:

“(2) that the said scrip has not been issued in violation of the condition contained in the sub-paragraph (5) of paragraph 2 of notification No.101 of 2009 - Customs, dated the 11 September, 2009 or sub-paragraph (4) of paragraph 2 of notification No.102 of 2009 - Customs, dated the 11 September, 2009 or the second proviso to sub-paragraph (1) of paragraph 2 of notification No. 05 of 2013 - Customs, dated the 18 February, 2013 or sub-paragraph (3) of paragraph 2 of notification No. 22 of 2013 - Customs, dated the 18 April, 2013 or first proviso to sub-paragraph (1) of paragraph 2 of notification No. 23 of 2013-Customs, dated the 18 April, 2013 or sub-paragraph (3) of paragraph 2 of notification No.16 of 2015 - Customs, dated the 1 April, 2015 or first proviso to sub-paragraph (1) of paragraph 2 of notification No. 17 of 2015 - Customs, dated the 1 April, 2015, as the case may be”.

Notification No. 23/2015-Cus dated 1 April 2015

Implementation of MEIS

Exempts goods when imported into India against duty credit scrip issued by the Regional Authority under MEIS from specified duties of customs, subject to conditions.

Notification No. 24/2015-Cus dated 8 April 2015

Implementation of SEIS

Exempts goods when imported into India against an SEIS duty credit scrip issued by the Regional Authority from specified duties of customs, subject to conditions.

Notification No. 25/2015-Cus dated 8 April 2015

Clarifies procedure for payment of Customs duty to cover instances of regularization of bona fide default in fulfilment of the export obligation (EO) under the Advance/EPCG authorizations

While the erstwhile procedure mandated payment of Customs duty for non-fulfilment of Customs duty only after verification of the detailed calculation by the DGFT, the new procedure allows for suo motu payment of Customs duty by the exporter without a detailed verification by the Regional Authority. The CBEC has considered the issue of interest cost for authorization holders, who have approached the Regional Authority of DGFT for regularization of their cases of bona fide default in export obligation under the Advance Authorization or EPCG Schemes, but have to wait for the detailed calculations in this regard before being able to deposit the duty involved.

The Ministry has taken note of the issue and the Circular explains the procedure and facility for suo motu payment of Customs duty in case of bona fide default in export obligation under the Advance/EPCG authorizations.

Circular No. 11/2015-Cus dated 1 April 2015

Salient features of Schemes of reward or incentive/advance authorization or Duty Free Import Authorization (DFIA)/EPCG or post-export EPCG under new FTP 2015–20 enlisted.

Circular No. 14/2015-Cus dated 20 April 2015
VAT

Andhra Pradesh

- E-way bills are made mandatory for large taxpayer unit (LTU) dealers and dealers dealing in sensitive goods, with effect from 15 April 2015. Moreover, e-way bills are made mandatory when the goods are exported to or imported from outside India and vehicle passes through the border check post.
  
  Circular No.CCTs Ref.No.A (K1)/45/2014 dated 2 April 2015

Chandigarh

- VAT rates on mobile phones have been increased from 5% to 9.35%; and batteries from 12.5% to 14.30% with effect from 18 April 2015.
  
  Notification No E&T/ETO (Ref)-2015/991 dated 17 April 2015

Delhi

- Procedure for provisional registration within a day (pending physical verification) has been prescribed to be effective from 30 April 2015.
  
  Circular No 3 of 201516 No F 3(521)/Policy/ VAT/2015/PF/8692 dated 27 April 2015

Goa

- VAT rate on mobile phones and CDMA phones costing more than INR12,000 has been increased from 5% to 12.50% with effect from 1 April 2015.
  
  Notification No. 4/5/2005-Fin(R&C)(120) dated 31 March 2015

Himachal Pradesh

- Sale of goods manufactured by dealers running new industrial units in Category C areas (namely tribal areas and backward areas) are exempted from VAT, subject to satisfaction of certain conditions. The limit of exemption from VAT and CST will be 80% and 60% of the fixed capital investment, respectively.
  
  Notification No.EXN-F(10)-17/2014 dated 6 April 2015

Jammu & Kashmir

- Every registered dealer with a gross annual turnover in excess of INR5 million is required to mandatorily e-file returns under the Jammu & Kashmir Value Added Tax Act, 2005.
  
  Notification No. 2 dated 21 April 2015

Karnataka

- VAT rate on “mobile phone charger whether sold along with mobile phone in sealed pack or otherwise” has been reduced to 5.5% with effect from 1 April 2015.
  
  Notification-III No. FD 40 CSL 2015 dated 31 March 2015

- Turnover limit for obtaining registration under VAT has been increased from INR0.75 million to INR1 million. The aforesaid changes are effective from 1 April 2015.
  
  Karnataka Value Added Tax Amendment Act, 2015

- Exemption from Entry tax on entry of plant and machinery and capital goods for use (including establishing captive power generation plant) has been provided to new micro/small/medium enterprises/ industrial units located in specified areas with effect from 1 October 2014.
  
  Notification No. FD 01 CET 2015, dated 22 April 2015

Kerala

- The time limit for filing application for compounding and renewal of registrations has been extended to 20 May 2015 and 15 May 2015, respectively.
  
  Circular No 12/15 No C1-14518/15 dated 25 April 2015
Maharashtra

- Following changes have been introduced with effect from 1 April 2015:
  - An explanation has been added to the definition of “purchase price” and “sale price” to clarify that the Service tax component will be excluded therefrom if collected separately on the invoice;
  - Late fees for filing of return within 30 days from expiry of due date has been reduced from INR2,000 to INR1,000;
  - Limitation period for initiation of assessment has been increased from five years to six years.

Maharashtra Tax Laws (Levy, Amendment and Validation) Act, 2015

- Simplified procedure has been prescribed for VAT/CST registration, with effect from 7 May 2015

Circular No. 5 of 2015 dated 6 May 2015

Rajasthan

- Procedure for claiming refund has been prescribed for dealers whose turnover of inter-state sale in the previous year is more than 50% of total turnover.

Order No. F.16(1110)VAT/Tax/CCT /1314/1698 dated 12 May 2015

Updates relating to the Constitution Amendment Bill for Goods and Services Tax

- Lok Sabha has passed the Constitution Amendment Bill on 6 May 2015 and it is introduced with minor amendments in the Rajya Sabha.

- On 12 May 2015, Rajya Sabha referred the Bill for review to the Select Committee. The Select Committee will submit its report by the end of the first week of the monsoon session of the Parliament scheduled to commence in July 2015.
Foreign Exchange Management Act (FEMA) 1999

1. Enhancement of the limit for resident individuals under Liberalized Remittance Scheme (LRS) – US$125,000 to US$250,000

In line with announcements made in the review of the monetary policy, the RBI, has notified the amendment of Current Account Rules, 2000 under FEMA, enhancing the limit under the LRS. In terms of the said notification:

- Limit for LRS has been enhanced from US$125,000 to US$250,000 per financial year for any permitted current or capital account transaction or a combination of both. If an individual has already remitted any amount under the LRS, then the applicable limit for such an individual will be reduced from the current limit of US$250,000 for the financial year by the amount already remitted.

- The permissible capital account transactions by an individual under LRS are:
  - Opening of foreign currency account abroad with a bank;
  - Purchasing property abroad;
  - Investing money abroad;
  - Setting up wholly owned subsidiaries and joint ventures abroad;
  - Extending loans, including loans in Indian Rupees (INR), to Non-resident Indians (NRIs) who are relatives as defined in Companies Act, 2013.

The limits as provided for individual transactions under Schedule III of the Current Account Rules have been merged into an overall cap of US$250,000 and henceforth, there will not be any transaction specific limit for individuals. However, in respect of expenses for emigration, expenses in connection with medical treatment abroad and studies abroad, individuals may avail of exchange facility for an amount in excess of the overall limit prescribed under the LRS, if it is so required by a country of emigration, medical institute offering treatment or the university, respectively.

- Definition of infrastructure as provided for remittance in respect of consultancy for infrastructure projects have been aligned with the definition of the infrastructure sectors as provided in the External Commercial Borrowings (EC B) regulations.


2. Review of FDI Policy on investments by NRIs, PIOs and OCIs

Union Cabinet has approved the following decisions in respect of the review of FDI policy on investments by NRIs, Persons of Indian Origin (PIOs) and Overseas Citizens of India (OCIs):

- Amendment of the definition of NRI to include OCI cardholders as well as PIO cardholders;
- Investment by NRIs on non-repatriable basis will be domestic investment – earlier also, NRI investment on non-repatriable basis was not required to comply with the FDI Policy and now, the same has been specifically clarified.

The decision will take effect after the issuance of the relevant press note.

Source: Press release (PIB) dated 21 May 2015

3. Introduction of Real Estate Investment Trusts (REITs) as an eligible financial instrument/structure under FEMA

The Government of India has allowed the REITs as an eligible financial structure under the FEMA. Securities and Exchange Board of India (SEBI) has already issued REIT regulations vide SEBI (Real Estate Investment Trusts) Regulations, 2014; however, due to restriction under FEMA Regulations, the investment from overseas has not occurred so far.
As a result of this decision, entities registered and regulated under the SEBI (REITs) Regulations 2014 will be able to access foreign investments, which as of now, are prohibited under the FEMA Regulations as any investment in real estate sector is prohibited. The intent of introducing the instrumentality of REITs is to reduce pressure on the banking system to which the real estate sector looks for funds, free up existing funds of banks and to encourage construction activities. REITs, while attracting long-term finance from foreign and domestic sources including NRIs, would make available fresh equity to the sector. The above will be effective once the corresponding changes have been carried out in FEMA.


Foreign Direct Investment Policy (FDI Policy)

Department of Industrial Policy and Promotion (DIPP)

1. Consolidated FDI Policy Circular 2015

DIPP has issued this year's consolidated FDI Policy [FDI Policy Circular - 2015] effective from 12 May 2015, which subsumes all press notes/clarifications/press release issued in relation to FDI, which were in force as on 11 May 2015.

The key changes/clarifications are as under:

- Increase in the pecuniary limit for consideration of FDI proposals by the Cabinet Committee of Economic Affairs (CCEA) from the existing US$190 million (INR12 billion) to US$312.5 million (equivalent of INR20 billion). Now FDI proposals below this limit will be considered by the Foreign Investment Promotion Board.

- Clarification with respect to transfer of shares done over the stock exchange – It has been clarified that in cases where the non-resident investor, including an NRI, acquires shares on the stock exchanges under the FDI scheme, the responsibility of filing Form FC-TRS would be on the investee company instead of transferor or transferee.

- Clarification that FIPB approval would not be required in case of mergers and acquisitions taking place in sectors under the automatic route.

- Clarification on the requirement of obtaining FIPB approval in cases of transfer of shares from one non-resident to another non-resident where the Indian investee company is under Government (approval) route.

- FIPB approval will not be required in respect of the additional foreign investment if the approved foreign equity percentage is maintained.

Source: Consolidated FDI Policy issued by DIPP dated/effective from 12 May 2015

2. Clarification on Press note 10 of 2014 issued in respect of Construction development sector

The DIPP had issued a clarification in furtherance of Press note 10 of 2014, which is subsumed in the aforementioned policy. The key clarifications brought in this respect are listed as under:

- No new FDI can be brought in the project if the minimum capitalization of US$5 million has not been achieved within six months of commencement of the project. If such minimum capitalization was achieved, FDI can be brought in till the period of 10 years or the completion of the project, whichever is earlier.

- Exit from the construction development project is permitted with FIPB approval on case-to-case basis even before completion of the project or development of trunk infrastructure.

- Press Note 10 of 2014, which provides more liberal FDI regime supersedes the earlier FDI policy on construction development sector contained in the FDI Policy Circular of 2014.

- Transfer of stake from one non-resident to another non-resident before completion of
the project or before completion of trunk infrastructure is through the FIPB route.

• Business center includes where multiplicity of businesses of the same or different nature are being carried out from a particular building.

• Minimum capitalization condition is project specific, not company specific.

• FDI is permitted in completed projects for operation and management of townships, malls/shopping complexes and business centers as long as they do not get into the realm of real estate business.


3. Extension of initial validity of industrial license for defence sector up to seven years

The DIPP has extended the initial validity period of industrial license from three years to seven years for the defence sector, which is further extendable up to three years for existing as well as future licenses. The initial validity period till now was three years further extendable up to seven years. This is being done as a measure to further promote ease of doing business, in view of long gestation period of defence contracts to mature.


4. Foreign investment in pension sector

The DIPP has permitted foreign investment in the pension sector up to 49% (automatic up to 26%, and government approval beyond 26% and up to 49%) subject to the following conditions:

• Investing foreign company will obtain the necessary registration from Pension Fund Regulatory and Development Authority and will comply with the requirements of Pension Fund Regulatory and Development Authority (PFRDA) Act, 2013;

• Transfer of ownership or control of an existing pension fund from resident entities to foreign entities (by whatever mode) will require FIPB approval in consultation with Department of Financial Services, PFRDA. The meaning of ownership and control will be according to the FDI policy.


Reserve Bank of India (RBI)

1. Removal of limit of US$20 million of buyer’s credit prescribed in Project Export Memorandum (PEM)

According to the revised Memorandum of instructions on Project and Service exports Exim Bank, in participation with commercial banks in India, is allowed to extend buyer’s credit up to the limit of US$20 million to foreign buyers in connection with export of goods on deferred payment terms and turnkey projects from India. The RBI has now done away with the limit in order to liberalize the procedure.

Source: A.P.(DIR Series) Circular No.93 Dated 1 April 2015

2. Review of sector-specific conditions applicable to insurance sector under FDI policy

The RBI has aligned the FDI policy in respect of the insurance sector according to the recent liberalization and has thus enhanced FDI cap in the insurance sector up to 49%. This is subject to the revised conditions specified in the Press Note 3 (2015 Series) dated 2 March 2015.

Source: A. P. (DIR Series) Circular No. 94 dated 8 April 2015

3. Export of Goods and Services – declaration of exports of goods/software

The RBI has dispensed off with the requirement of declaring the export of goods/software in the SDF Form in case of exports taking place through the EDI ports, as the mandatory statutory requirements contained in the SDF Form have been subsumed in the shipping bill format. This has been done in order to liberalize the procedural compliance on exports front.

4. **Existing all-in-cost ceiling of ECB and trade credits extended till March 2015**

The RBI has further extended the all-in-cost ceiling prescribed in respect of ECB till 31 March 2015 and the same is subject to review thereafter. The existing ceilings so prescribed are 350 bps (more than 6 month LIBOR) for ECB having average maturity period ranging from three to five years and 500 bps (over 6 month LIBOR) for ECB having average maturity period of more than five years. All other aspects of ECB policy will remain unchanged.

Similarly, the all-in-cost ceiling prescribed in respect of trade credit for imports into India has also been extended till 31 March 2015 and the same is subject to review thereafter. The existing ceiling so prescribed is 350 basis points (more than 6 months LIBOR) for maturity period for up to 1 year to 5 years.


5. **ECB denominated in INR: mobilization of INR**

During September 2014, the RBI has permitted recognized non-resident ECB lenders to extend loans in INR subject to, *inter alia*, the lender mobilizing Indian Rupees through a swap undertaken with an AD Category-I bank in India.

Recently, to facilitate ECB lending denominated in INR by overseas lenders, it has been decided that such lenders may enter into swap transactions with their overseas bank, which will, in turn, enter into a back-to-back swap transaction with any AD Category-I bank in India subject to certain conditions.

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EY offices

Ahmedabad
2nd floor, Shivalik Ishaan
Near C.N. Vidhyalaya Ambawadi
Ahmedabad - 380 015
Tel: + 91 79 6608 3800
Fax: + 91 79 6608 3900

Bengaluru
6th, 12th & 13th floor
“UB City”, Canberra Block
No.24 Vittal Mallya Road
Bengaluru - 560 001
Tel: + 91 80 4027 5000
+ 91 80 6727 5000
Fax: + 91 80 2210 6000 (6th & 12th floor)
Fax: + 91 80 2224 0695 (13th floor)

1st Floor, Prestige Emerald
No. 4, Madras Bank Road
Lavelle Road Junction
Bengaluru - 560 001
Tel: + 91 80 6727 5000
Fax: + 91 80 2224 4112

Chandigarh
1st Floor, SCO: 166-167
Sector 9-C, Madhya Marg
Chandigarh - 160 009
Tel: + 91 172 671 7800
Fax: + 91 172 671 7888

Chennai
Tidel Park, 6th & 7th Floor
A Block (Module 601,701-702)
No.4, Rajiv Gandhi Salai, Taramani
Chennai - 600113
Tel: + 91 44 6654 8100
Fax: + 91 44 2254 0120

Hyderabad
Oval Office, 18, iLabs Centre
HiTech City, Madhapur
Hyderabad - 500081
Tel: + 91 40 6736 2000
Fax: + 91 40 6736 2200

Kochi
9th Floor, ABAD Nexus
NH-49, Maradu PO
Kochi - 682304
Tel: + 91 484 304 4000
Fax: + 91 484 270 5393

Kolkata
22 Camac Street
3rd floor, Block ‘C’
Kolkata - 700 016
Tel: + 91 33 6615 3400
Fax: + 91 33 2281 7750

Mumbai
14th Floor, The Ruby
29 Senapati Bapat Marg
Dadar (W), Mumbai - 400028
Tel: + 91 022 6192 0000
Fax: + 91 022 6192 1000

NCR
Golf View Corporate Tower B
Near DLF Golf Course
Sector 42
Gurgaon - 122002
Tel: + 91 124 464 4000
Fax: + 91 124 464 4050

6th floor, HT House
18-20 Kasturba Gandhi Marg
New Delhi - 110 001
Tel: + 91 11 4363 3000
Fax: + 91 11 4363 3200

Pune
C-401, 4th floor
Panchshil Tech Park
Yerwada
(Near Don Bosco School)
Pune - 411 006
Tel: + 91 20 6603 6000
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