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TAX UPDATE

July, 2010

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Domestic Tax

1. CIT, Mumbai v. Walfort Share & Stock Brokers Pvt. Ltd. [2010-TIOL-47-SC]

Transaction cannot be ignored on ground that it is for tax-planning

In respect of AY 2000-01, the assessee bought units of a mutual fund on 24.3.2000 (the record date) for Rs. 17.23 each and immediately became entitled to receive dividend of Rs. 4 per unit. After the dividend payout, the NAV of the unit fell by Rs. 4 to Rs. 13.23. The assessee redeemed the units on 27.3.2000 at Rs. 13.23 per unit and claimed a loss of Rs. 4. The dividend of Rs. 4 was claimed exempt u/s 10(33). Assessee claimed set off this loss. The AO & CIT (A) rejected the claim of loss on the ground that the loss was "artificial" and could not be allowed. On appeal by the assessee, a Five Member Special Bench of the Tribunal upheld the claim and this was confirmed by the Bombay High Court. Revenue filed appeal to the Supreme Court wherein it was argued that the assessee had also received dividend on these units and receipt of dividend is nothing but the return of investment and hence the cost of the investment got reduced and if that cost would be taken into consideration then there was no loss to the assessee. Beside this it was also urged that as per the provisions of Section 14A such expenditure should be netted against the receipt of dividend.

The Supreme Court, held, dismissing the appeal that:

(i) The argument of the department that the transaction was entered into in a pre-meditated manner and that the loss is not genuine is not acceptable because the transaction was a "sale", the sale-price and dividend was received by the assessee. Even assuming that the transaction was pre-planned there is nothing to impeach the genuineness of the transaction. With regard to the ruling in McDowell & Co.[1], it may be stated that in the later decision of this Court in Azadi Bachao Andolan[2] it has been held that a citizen is free to carry on its business within the four corners of the law. That, mere tax planning, without any motive to evade taxes through colourable devices is not frowned upon even by the judgment of this Court in McDowell & Co. Ltd.'s case. Hence, in the cases arising before 1.4.2002, losses pertaining to exempted income cannot be disallowed.

(ii) The object of Section 94(7) is to curb the short term losses. Applying Section 94(7) in a case for the assessment year(s) falling after 1.4.2002, the loss to be ignored would be only to the extent of the dividend received and not the entire loss. In other words, losses over and above the amount of the dividend received would still be allowed from which it follows that the Parliament has not treated the dividend stripping transaction as sham or bogus. It has not treated the entire loss as fictitious or only a fiscal loss. If the argument of the Department is to be accepted, it would mean that before 1.4.2002 the entire loss would be disallowed as not genuine but, after 1.4.2002, a part of it would be allowable u/s 94(7) which can never be the object of S. 94(7).

(iii) As regards the reconciliation of SS. 14A and 94(7), the two operate in different fields. S. 14A deals with disallowance of expenditure incurred in earning tax-free income while S. 94(7) refers to disallowance of loss on acquisition of an asset. In cases falling under Section 94(7), there is acquisition of an asset and existence of the loss which arises at a point of time subsequent to the purchase of units and receipt of exempt income. It occurs only when the sale takes place. Section 14A comes in when there is claim for deduction of an expenditure whereas Section 94(7) comes in when there is claim for allowance for the business loss. One must keep in mind the conceptual difference between loss, expenditure, cost of acquisition, etc. while interpreting the scheme of the Act.

(iv) Para 12 of AS 13, indicates that interest/ dividends received on investments are generally regarded as return on investment and not return of investment. It is only in certain circumstances where the purchase price includes the right to receive crystallized and accrued dividends/ interest, that have already accrued and become due for payment before the date of purchase of the units, that the same has got to be reduced from the purchase cost of the investment. A mere receipt of dividend subsequent to

[1] 154 ITR 148
[2] 263 ITR 706

purchase of units, on the basis of a person holding units at the time of declaration of dividend on the record date, cannot go to offset the cost of acquisition of the units.

2. Rain Commodities v. DCIT [ITA. No. 673/Hyd/2009 - SB]

Exempt capital gains forming part of book profits, will be taxable under MAT / S. 115JB

The assessee filed return of income for the AY 2004-05, declaring a loss of Rs. 45.81 crores. The assessment was completed determining a loss of at Rs. 36.27 crores after making adjustment towards deferred revenue expenditure. As per P&L A/c, prepared in accordance with Part II & III of Schedule VI to the Companies Act, the profit before tax was Rs. 99.42 crores, however, no income was offered u/s. 115JB. As such, the CIT assumed jurisdiction u/s 263 for revision. The CIT observed the results of the assessee which was arrived after adding the extraordinary item of Rs. 116.11 crores is to be considered for arriving the book profit u/s 115JB. One of the item credited under the head extraordinary item was profit on sale of assets to its wholly owned subsidiary amounting to Rs. 149.77 crores. The said profits were not chargeable to tax u/s 47(iv) of the Act. According to assessee, the receipts which were not taxable under normal provisions of the Act, cannot be treated as part of book profit u/s. 115JB. Therefore, the assessee took the view that the same had to be reduced from the "book profits" u/s 115JB.

The CIT u/s. 263 contended that the assessee was liable to pay income tax on book profits as declared by the assessee in its P&L A/c i.e. including the gains not chargeable to tax u/s. 47(iv). It was argued that except for two cases, the AO has no power to alter the net profit shown in the P&L A/c.

The two cases were (a) if the P&L A/c is not drawn up in accordance with Parts II & III of Schedule VI to the Companies Act or (b) If accounting policies & standards, method & rate of depreciation have been incorrectly adopted for preparation of the P & L A/c. The Department relied on the decisions of the Apex Court, in the case of Apollo Tyres[1] & HCL Comnet Systems & Services Ltd.[2], wherein it was held that the AO cannot go beyond the net profit shown in the P&L account prepared in accordance with Parts II and III of Schedule VI of the Companies Act, except for the adjustments permissible under the Explanation 1 to S. 115JB of the Act.

The Honourable Tribunal ruling against the assessee, held that, except for the above two cases, the AO has no power to alter the net profit shown by the companies for the purpose of computing the book profits. The assessee had included the said capital gains in the P&L A/c and it was not its' case that same was not includable. The fact that the capital gains was exempt u/s 47(iv) does not mean it can be excluded from the "book profit" because no such exclusion was permitted under the Explanation to S. 115JB. The taxability of capital gain is relevant only for the purpose of computation of income under the normal provisions and has nothing to do with the computation of "book profits". Accordingly, in the absence of any provision for exclusion of exempted capital gain in the computation of book profit u/s 115JB, the assessee is not entitled to the exclusion claimed.

[1] 255 ITR 273
[2] 305 ITR 409

3. CIT, Mumbai v. Larsen & Toubro Ltd.[2010-TIOL-433-HC-MUM-IT]

Interest under Section 244A cannot be denied on the ground that the TDS certificates were not furnished with the return of income.

The assessee had claimed credit of TDS of Rs.1,44,34,030/- in the return of income filed for assessment year 2000-01. The TDS certificates were submitted to the Assessing Officer during the course of assessment proceedings.

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The Assessing Officer computed the income of the assessee under Section 115JA and gave credit for TDS claimed. However, while calculating interest under Section 244A, the A.O. held that the TDS certificates were furnished only during the course of assessment proceedings and such delay attributable to the assessee was excluded from the period for which the interest was payable to the assessee.

The Court noted that as per the provisions of Section 244A(2), in the event the proceeding resulting in refund has been delayed for reasons attributable to the assessee, the period so attributable shall be excluded from the period for which the interest is payable.

The Court confirming the order of the Tribunal observed that though the TDS certificates were not submitted with the return, it cannot undermine the fact that tax was deducted at source at the right time.

The Court held that since tax was deducted and deposited with the exchequer at the right time, to the credit of the assessee, there was no delay attributable to the assessee due to non-submission of TDS certificates with the return of income.

4. CIT vs. Gem Plus Jewellery India Ltd. [2010-TIOL-456-HC-MUM-IT]

Export turnover in the numerator has the same meaning as the export turnover which is a constituent element of the total turnover in the denominator.

The assessee had claimed deduction under Section 10A in the return of income filed for the assessment year 2003-2004. During the course of assessment proceedings, the Assessing Officer, while computing the claim of deduction under Section 10A, reduced the amount of freight and insurance from the 'export turnover' of the undertaking.

The assessee argued that freight and insurance should also be deducted from the 'total turnover' of the undertaking. However, the Assessing Officer held that no specific exclusion has been provided from 'total turnover' and therefore, freight and insurance cannot be deducted from the 'total turnover'.

The CIT(A) also confirmed the order passed by the A.O. In the appeal filed by the assessee, the Tribunal observed that the expression 'total turnover' has not been defined in Section 10A. Further, profits derived from export have to be computed by taking into consideration both the export turnover and total turnover of the business carried on by the undertaking and both should be comparable. The Tribunal held that freight and insurance have no element of profit and hence, cannot be included in the total turnover.

On appeal by the Department, the Court observed that as per the provisions of Section 10A(4), profits derived from export of articles or things or computer software are computed as follows:

Profits of the business of the undertaking x Export turnover in respect of articles or things or computer software

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Total Turnover of the business carried on by the undertaking

The total turnover of the business carried on by the undertaking would consist of the export turnover and the local sales turnover. The export turnover in the numerator is also a constituent of the total turnover in the denominator and hence, cannot have different meanings.

The Court observed that the contention of the Department would lead to two different interpretations of the term 'export turnover' and would be contrary to the statutory provisions.

The Court held that the expression 'export turnover' as defined in Explanation 2 to Section 10A, specifically excludes freight and insurance and hence, for calculating the 'export turnover' included in the total turnover the same should be excluded.

International Tax

1. DDIT Vs. Clough Projects International Pvt. Ltd. [2010-TII-55-ITAT-MUM-INTL]

For Engineering, Procurement and Commissioning service provider in Oil Fields, the determinative clause for constitution of PE would be Construction PE Clause as against Mine, oil or Gas well as PE.

Clough Projects Pvt. Ltd., ("the assessee") is a company incorporated in Australia, engaged in providing engineering, procurement, installation and commissioning service. The assessee has entered into an agreement with an Indian Company on 5th November, 2004 for providing the said services of three wellhead platforms and modifications to existing platforms in certain oil fields in India. The assessee filed its tax return for A.Y. 2005-06 declaring NIL return on the ground that it does not have Permanent Establishment (PE) in India by virtue of Construction PE article 5(2)(f) of the India-Australia tax treaty ("Treaty"), whereby the project was not last for more than 6 months. More particularly the assessee did only limited work of contracting with sub-contractor, identifying the vendor for procuring material and had not worked on the site. For its above contention, the assessee has relied on the AAR decision in case of Brown & Rout Inc Vs. CIT (1999) 237 ITR 156 (AAR).

The AO held that the assessee was exclusively dealing with the commissioning of new platform for oil well, mine and as such the assessee constitutes PE in India. Accordingly, AO computed 10% of the Gross revenue as income for A.Y. 2005-06 in terms of Section 44BB(2) of the Income Tax Act, 1961.

The CIT (A) while considering the issue on constitution of PE has observed that the assessee was an engineering company and not a natural resource company. The Gas or Oil wells were belonging to the Indian company. Accordingly the CIT (A) following the same AAR ruling has held that the determinative clause for constitution of PE would be Construction PE Clause as against Mine, Oil or Gas well as PE. Further on facts the CIT (A) has observed that the assessee entered into agreement on 5th November, 2004 and not complete six months during A.Y. 2005-06. Therefore, the assessee does not constitute PE in India.

Further during the year under consideration, the work performed by the assessee was limited to placing orders for the offshore supply of steel and fabrication outside India. The steel supply on the site was commenced on 30th April, 2005, which led CIT(A) to conclude that an Installation PE will commence when the supply of steel arrives at the Oil well Site, which falls in next year following the Apex Court decisions in case of Ishikawajima Harima Heavy Industries Ltd. (288 ITR 408) and Hyundai Heavy Industries Co. Ltd. (291 ITR 482).

On further appeal by Revenue, the Hon'ble Mumbai Tribunal upheld the decision of the CIT(A) considering the AAR ruling and held that since an installation project was not carried on for more than six months, assessee does not constitute construction PE in India.

2. Cartier Shipping Co. Limited [ITA NO. 3036/MUM/07]

Capital gain on sale of assets of a PE is taxable in India even when the PE ceased to exist.

Cartier Shipping ("the assessee"), a Mauritian tax resident, owned an oil rig which was used for drilling of mineral oil. The rig was given on charter basis to an Indian company to be used for operations in the Indian Territory.

The rig constituted a PE of the assessee. Accordingly, the PE claimed depreciation on the rig while computing its business income. The assessee pursuant to a sale agreement with another foreign company, discontinued its business operations in India and accordingly moved the said rig from Indian territorial waters to international waters. However, the actual delivery of the rig was postponed and was done after the date the PE ceased to exist. The assessee intimated its jurisdictional assessing officer ("AO") that it has discontinued its business operations in India and accordingly has moved the

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said rig from Indian territorial waters to international waters, though it did not mention the fact of the sale.

The AO took the view that since depreciation has been allowed on the rig, the difference between the sale consideration and WDV was a short-term capital gain. This was upheld by the CIT(A).

On an appeal, the Tribunal held as follows:

- The PE is to be treated as independent unit of the non-resident. As such, the gains or losses attributable on sale of PE assets have to be treated as accruing or arising in India irrespective of whether the assets were sold in India or outside India.
- The gain on sale of asset will be treated as accrued or arisen in India as the asset was part of a business connection in India.
- Further, as per the Treaty, the situs of taxability of profits on sale of moveable assets is the same as that of taxability of income from such assets. The profits of the PE, in respect of income generated by chartering of the rig were taxable in India. Accordingly, the profits on sale of the rig are also taxable in India.
- Taxability of gains cannot be avoided by deferring the transfer of the asset after the closure of the PE. Reliance was placed on the case of Van Oord Dredging & Marine Contractors BV v. DDIT [105 ITD 97] wherein the ITAT held that the business profits of an assessee, which accrued to its PE, can be taxed even when received in a later year in which the PE ceased to exist.

In view of the above, the capital gain from the sale of the rig was taxed as short term capital gain.

3. Velankani Mauritius Limited [2010-TII-64-ITAT-BANG-INTL]

Profits from the sale of Shrink wrapped software cannot be treated as income from royalty.

Velankani Mauritius Limited, ("the assessee") was engaged in the business of supplying software. The assessee supplied off-the-shelf shrink-wrapped software to Infosys Technologies.The taxpayer filed its return of income declaring 'NIL' income on the belief that the sale was of copies of copyrighted articles and the transaction did not fall under the purview of 'Royalty' defined under Section 9(1)(vi) of the Act. Further, the taxpayer had no Permanent Establishment (PE) in India.

The Assessing Officer assessed the income from sale of software as royalty u/s 9(1)(vi). The CIT(A) confirmed the action of the AO.

On an appeal, the Tribunal considered the following decisions :

- The Delhi Special Bench in the case of Motorola Inc. [95 ITD 269], held that the core issue is whether the payment is for a copyright or a copyrighted article. If the payment is for a copyright then it is to be treated as 'Royalty' under the Act and the Tax Treaty. On the other hand, if the payment is for copyrighted article, then the same represents purchase price of an article and cannot be considered as payments made towards royalties.
- The above principle was reiterated by the AAR in Airports Authority of India and by the Tribunal in Sonata Software [6 SOT 700].
- In the case of Tata Consultancy Services [271 ITR 401], the Supreme Court held that though copyright in a software may remain with the originator of the programme, the moment copies are made and marketed, it becomes goods which are assessable to sales-tax.

In view of the above decisions, the Tribunal held in favour of the assessee by stating that profits on the sale of shrink–wrapped software cannot be assessed as royalty either under the Income Tax Act or under the provisions of the Tax Treaty.

Transfer Pricing

1 Maruti Suzuki India Ltd. v/s ACIT (TPO)

Maruti Suzuki India Ltd. ***("Maruti", "Assessee", "Petitioner"),*** formerly known as Maruti Udyog Ltd., had entered into a Technology and Trademark transfer agreement with Suzuki ***("Associated Enterprise")***, a Japanese car maker and also an equity shareholder holding more than 50% of the shares in Maruti, in the year 1992, whereunder the latter granted a right to use the ***"Licensed Information"*** and ***"Licensed Trademark"*** to the former in the manufacture, sale and after-sales service of four-wheeler cars and motor-car spares & components of Suzuki in India. As a consideration for the above use of technology and trademark, Maruti would pay Suzuki a lump sum as well as a running **Royalty** as obligated under the terms of the agreement.

In consonance with the terms of the Royalty agreement, Maruti substituted its ***"Maruti"*** trademark with a co-brand trademark ***"Maruti Suzuki"*** and also began using the logo ***"S"*** on the front and the rear side of the cars manufactured and sold by it, as against the erstwhile ***"M"***.

In the scrutiny assessment for AY 2005-06, the Assessing Officer (AO) referred the case to Transfer Pricing Officer (TPO) for the determination of the arm's length price in relation to the International Transactions, and in the course of the proceedings the TPO issued a show cause notice to the assessee.

SHOW CAUSE NOTICE AND THE CONSEQUENT WRIT PETITION:

In the notice issued by the TPO, the assessee was asked to show cause as to why shouldn't the replacement of the front logo from "M" to "S" during FY 2004-05 be regarded as sale of brand "Maruti" to Suzuki. The TPO valued the brand "Maruti" as the aggregate of the advertisement, marketing and distribution expenses incurred by the assessee from 1989 to 2004 plus a mark-up of 8% which came up to be Rs. 4,420 Cr. In its reply to the show cause notice, Maruti disputed the jurisdiction of the TPO, claiming that there was no sale of the brand "Maruti" and in fact by using the Suzuki logo there has incurred an advantage to the Indian company as well as Indian exchequer and there was no evasion of any sorts in the Indian tax base pursuant to the use of the logo of Suzuki.

Failing to obtain a response from the TPO to drop the proceedings, assessee filed a writ petition with the Delhi High Court seeking stay of the proceedings of conducted by the TPO. The High Court gave an interim order allowing the proceedings to continue but stated that the final order shall be subject to the outcome of the writ petition.

In the course of the proceedings, subsequent to the interim order of the High Court, the TPO dropped the original contention of sale of "Maruti" brand and instead took the stand that the assessee had spent more than routine advertisement expenses and inferred that the excess has been incurred for creating a brand for the associated enterprise Suzuki in India against which no Royalty has been earned by it.

The ALP for the Royalty paid by Maruti to Suzuki was determined based on the Internal CUP i.e. the Royalty paid by Suzuki to Maruti for the co-branded trademark, which was ***"Nil"***, and thus an adjustment of Rs. 99.3 Cr was made to satisfy the arm's length notion.

The key highlights of the final proceedings before the High Court are as follows:

TPO'S CONTENTIONS:

- Transfer Pricing order cannot be examined in a writ petition in the presence of an alternative remedy in the form of CIT(A) and also since the impugned show cause notice was never acted upon.
- The TPO in its final order took a view that "Maruti" was a stronger brand in India, developed by incurring several thousand crores of expenditure over a period of two decades and hence the co-branding process resulted in a reinforcement in value of "Suzuki" brand, which though strong globally was relatively weaker in India, at the cost of impairment of the "Maruti" brand. "Suzuki" has piggybacked on the "Maruti Brand" without any corresponding compensation to Maruti.
- TPO also contended that since the ***"Advertisement/Net Sales"*** ratio of Maruti ***(1.843%)*** was higher than that of the comparable entities ***(0.876%)***, the excess has been incurred for the ***Promotion of the Suzuki***

Transfer Pricing

brand and creation of the ***"Marketing Intangibles"*** for Suzuki in India and other markets stipulated in the agreement.

Therefore, in the absence of any compensation being paid to Maruti by Suzuki, the excess of the advertisement expenses incurred by Maruti were disallowed.

PETITIONER'S CONTENTIONS:

- The TPO did not give an appropriate show cause notice and an opportunity of being heard hence the order of the TPO violates the principle of natural justice and a writ petition is maintainable against such an order
- De-licensing of the passenger car industry had resulted into entry of a number of multinational companies and to ward off this competition Maruti had entered into a trademark licensing agreement with "Suzuki" by projecting itself as an international brand. The benefit from this arrangement is manifest from the average growth in turnover over the period of 13 years which is 18%.
- The advertisement expenditure incurred by Maruti is ***1.843%*** was in line with the industry average and also the ratio of Royalty/Sales was in the past 13 years was in the range of ***0.8% to 1.47%*** whereas that allowed by RBI policy was 5% of the domestic sales and 8% of the export sales. These facts affirm that no benefit to Suzuki and detriment to Maruti has been rendered under the current arrangement.

HIGH COURT'S RULING:

- Oral hearings are meaningless in the absence of an appropriate show cause notice and hence the writ petition was maintainable.

  The High Court upheld the need for a Royalty agreement to counter the competition from the multinationals in India. Having observed that, it also stated that the obligation granted on Maruti to use the co-branded trademark on the product as well as the packaging assisted in brand building for Suzuki in India. However, it also discerned that it is not always possible for the TPO to devise an objective framework to determine the monetary value of the benefit obtained to Suzuki from the compulsory co-branding and under such circumstances the ALP for both the parties shall be determined by finding out the stipulations exhibited under an agreement of a comparable nature entered into by a comparable independent domestic entity.
- The comparables chosen and the method adopted by the TPO for benchmarking the advertisement expenditure were faulty and unjustified. The ALP for the Marketing Intangibles developed, if any, of Suzuki in India shall be determined on the basis of the expenses incurred on promotion, advertisement, marketing, etc. by comparable independent entities. The comparables should be chosen by undertaking a proper comparability analysis and making economic adjustments to the ALP, wherever necessary.

CONCLUSION:

The High Court set aside the impugned order and directed the TPO to carry out a fresh assessment to determined appropriate arm's length price in respect of the International transactions, in accordance with the provisions contained in Section 92C of the Act and in the light of the observations made and views taken by the High Court.

CENVAT Credit

Judicial Rulings

Commercial or Industrial Construction Services

SPM Construction Pvt. Ltd. v. CCE Vadodara
[2009(16) STR-763 (Tri.-Ahmd)]

The appellant was registered under "Commercial or Industrial Construction services" and claimed abatement for certain contracts as per the Notification 1/2006 - ST and claimed "NIL" CENVAT Credit and in some other contracts claimed CENVAT Credit. The assessee contented that service tax is a charge on the services rendered and not the person rendering the same and as such, each contract should be viewed independent of each other. The Tribunal agreeing with the contention of the assessee has granted unconditional Stay of demand.

CENVAT Credit on vehicles and mobile phones – business and personal use

Force Motors Ltd. v. CCE, Pune-1
[2009 (16) STR 616 (Tri.-Mum.)]

The Appellant were not able to produce evidence of use of vehicles and mobile phones for business purposes only and there was no check on use for the personal work of employees. Considering decision in the case of Conzerve Systems (P) Ltd. reported at *[2009 (16) STR195 (Tri.-Mum.)]* wherein it was held that mobile phones standing in the name of the company and used by the employees in relation to work only and incidentally used for personal work by itself was no ground for denial of Credit; the Tribunal allowed the appeal by way of remand to the adjudicating authority to ascertain the quantum of taxable service beyond the allotted limit of use of mobile phones and vehicles and allowed Credit availed to the extent of allotted limits and directed to follow the principle of natural justice to pass appropriate order.

CENVAT Credit on outward freight and commission paid on air tickets

CCE, Ahmedabad v. Fine Care Bios systems
[2009 (26) STR 701 (Tri.-Ahmd.)]

The Commissioner (Appeals) allowed CENVAT Credit of service tax on outward freight and commission on air tickets. The Tribunal observed that CENVAT Credit is allowed on outward freight till the place of removal; that is the port from which the goods are loaded for export made on FOB basis. In respect of service tax paid on commission for air tickets, the Tribunal observed that the definition of input service was wide enough to cover all services used directly or indirectly in the manufacture process and thus CENVAT Credit was admissible in this case.

CENVAT Credit and abatement

CCE, Vadodara v. Ram Krishna Travels Pvt. Ltd.
[2010 (17) STR 487 (Tri.-Ahmd)]

The assessee availed CENVAT Credit and also availed benefit of abatement under Notification No. 7/2006-ST (as amended). On realizing the mistake, they reversed the credit with interest. The Tribunal observed that the order in favour of the assessee relying on precedents that proportionate reversal for Credit amounts to non-availment of Credit is sustainable.

CENVAT Credit on Input service analysed

CCE, Nagpur v. UltraTech Cement Ltd.
[(2009 (16) STR 611 (Tri.- Mum)]

The question for consideration was whether the lower authority rightly allowed CENVAT Credit of service tax paid on security service received at the off-factory residential colony of the assessee, considering the service to be 'input service' as per Rule 2(l) of the CENVAT Credit Rules, 2004.

CENVAT Credit

The Tribunal observed that services mentioned in the inclusive part of the definition of input service have also to satisfy the parameters laid down in the main part of the definition as the two parts were not independent of each other and as such, the security service used for residential activity was neither a service received prior to the commencement of manufacture, but the value of which got absorbed in the value of goods, nor was it the case of a service received after the clearance of goods where the service is received up to the stage of clearance of goods. It was also not the case of a service like advertising which was not directly related to manufacture but is related to sale of manufactured goods and as such, the Credit was ineligible.

CENVAT Credit on security agency services

GHCL Ltd. v. CCE, Bhavnagar
[2009 (16) STR 588 (Tri-Ahmd.)]

The Tribunal allowed CENVAT Credit of service tax paid on security agency services relating to residential colonies of employees of the appellant, which is in the proximity to their factory. The Tribunal relied on decision in *Manikgarh Cement reported at [2008 (9) STR554 (Tribunal)]*.

CENVAT Credit - Centralised registration

CCE, Vapi v. ITW India Ltd.
[2010 (17) STR 587 (Tri-Ahmd.)]

The Commissioner (Appeals) allowed Cenvat Credit even though the bills were in the name of different location registered as Centralized registration. The Tribunal held that, substantive benefit is not deniable when name and address of head office or branch office is absent in invoice and when there is no dispute about input services received and utilized.

CENVAT Credit on various input services

ITC Ltd. v. CCE, Hyderabad
[2010 (17) STR 146 (Tri-Bang.)]

CENVAT Credit on various services such as lawn mowing, garbage cleaning, maintenance of swimming pool, etc. received for maintenance of residential staff colony as the appellant was under obligation to maintain such colony was allowed. Also Credit of service tax paid on activities related to plantation of trees, as trees being raw material for manufacturing of paper allowed.

CENVAT Credit on outdoor catering and garden maintenance

GKN Sinter Metals Ltd. v. CCE, Aurangabad,
[2009 (16) STR 615 (Tri.-Mum.)]

On the issue of allowability of CENVAT Credit of service tax paid to outdoor catering service used for the supply of food to factory workers, the Tribunal relying on the Larger Bench's decision in the case of *CCE, Mumbai vs GTC Industries Ltd.,* 2008 (12) STR468 (Tri.-LB) observed that such Credit could not be denied to a manufacturer where the cost of such supply of food was reflected on the cost of production of the final product.

However, in the case of CENVAT Credit of service tax taken by the assessee on garden maintenance service, relying on the decision in the case of *Kirloskar Oil Engines Ltd. vs CCE,* 2009 (241) ELT 474, it was held that garden maintenance service had no nexus even remotely to the manufacture or clearance of excisable goods. It further held that the matter being very clear, the assessee could not take undue benefit of pending clarificatory decisions and therefore, penalty maintained was also sustainable.

CENVAT Credit

Input Service Distributor and CENVAT Credit

Ecof Industries Pvt. Ltd. v. CCE, Bengaluru [2010 (17) STR 515 (Tri.-Bang.)]

The Appellant was registered as Input Service Distributor and accordingly it distributed CENVAT Credit to its various units. The department contended that the Appellant cannot distribute service tax Credit to Malur unit on the ground that services on which Credit was taken and distributed were used in respect of Cuttack unit. The Tribunal relied on Rule 7 of CENVAT Credit Rules, 2004 and Master Circular dated 23-8-2007 and observed that the distribution of Credit is subject to the condition that credit is not to exceed amount of tax paid and Credit should not be attributable to services used in manufacture of exempted goods or providing exempted service. Accordingly, the Tribunal observed that restriction on distribution of Credit on any other condition is not sustainable and hence the order is required to be set aside.

CENVAT Credit on various input Services

HEG Ltd. v. CCE, Jaipur [2010 (17) STR 178 (Tri-Del.)]

The Tribunal allowed Credit of service tax paid on following input services/expenses:

- Telephone landlines installed at residence of staff;
- Cleaning and maintenance of garden near power plant and transit house;
- Pandal or Shamiana used during strike call, for workers inside factory to safeguard them from strike disturbance; and
- Group Mediclaim policy and workmen accident policy.

FEMA

A.P. (DIR Series) Circular No.57, dated June 29, 2010 ('the Circular') - Export of Goods and Software - Realisation and Repatriation of export proceeds - Liberalisation.

RBI has recently issued the Circular extending the period of relaxation for realisation and repatriation of export proceeds from export of goods and software upto March 31, 2011.

RBI had earlier vide its A.R (DIR Series) Circular no. 70 dated June 30, 2009 augmented to increase the period for realisation and repatriation to India of the amount representing the full value of goods or software exported, from six months to twelve months from the date of export, subject to review after one year. On review, the RBI in consultation with the Government of India has decided to extend the said relaxation vide the circular of June 29, 2010 mentioned above.

The provisions in regard to period of realisation and repatriation to India of the full export value of goods or software exported by a unit situated in a Special Economic Zone (SEZ) as well as exports made to warehouses established outside India remains unchanged i.e. stipulation of period of realisation and repatriation to India of full export value of goods or software shall not apply.

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