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MCTC Bulletin

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President's Communiqué

Dear Members,

उत्साहो बलवानार्य नस्त्युत्साहात् परं बलं ।
सोत्साहस्यहि लोकेषु न किञ्चिदपि दुर्लभं ।।
4.1.121

Enthusiasm has great strength. There is no greater strength than enthusiasm. There is nothing which is not attainable in this world for the enthusiastic.

Inclusion of yuan in freely traded currencies with weightage of 10.92% will surely impact foreign trade mechanism and will reduce dominance of USD. Indian exporters need to be careful while choosing their currencies for billing.

We are pleased to inform you that this year Diwali get-together and Saraswati Sanman Samaritan was grand successful with participation of more than 50 persons. Members may come forward to give creative ideas.

We are making representation for pre-budget memorandum. Members may send their ideas / thoughts by mail to us.

While I am writing this, joint workshop on Direct Taxes is currently going on with very big participation. Participants as well as learned speakers have appreciated the team effort.

Eagerly awaited half day seminar under the auspices of Rajubhai Chokshi will be organised in February Details are given in Forthcoming events.

Wish you happy • NEW YEAR • UTTARAYAN

Regards,
Jayprakash M Tiwari
President

With Regards

≈ TEAM MCTC ≈

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DIRECT TAXES – LAW UPDATE

Compiled by CA. Haresh P. Kenia

- **MONITORING OF DOSSIER CASES – RE-FIXATION OF MONETARY LIMITS FOR VARIOUS INCOME TAX AUTHORITIES [234 TAXMANN (ST.) 1]**

  The monetary threshold for classification of a case of outstanding demand as a dossier case has not been revised in last 30 years. It has been decided to raise the primary threshold for Dossier cases from ₹ 10 lakhs to ₹ 30 lakhs and re-adjust intermediate thresholds for focused monitoring and rationalization of the workload.

  Accordingly, the CBDT *vide* instruction no. 10/2015 [F.No.404/02/2015-ITCC] dated 16-9-2015, gives the revised jurisdiction of Income Tax Authorities in respect of dossier cases. One may refer to above citation for revised jurisdictions of respective monitoring authority. It has been decided to give a supervisory role in dossier cases to the Pr. CCsIT as well for greater focus on the critical area of recovery of outstanding taxes.

- **INTRODUCTION OF SOVEREIGN GOLD BONDS SCHEME [234 TAXMAN (ST.) 2]**

  The office memorandum [F.No.20/10/2014-FT] dated 15-9-2015 intimates the introduction of the 'Sovereign Gold Bonds Scheme' (SGB) which has been approved and also gives guidelines of the scheme. The guidelines are in nature of introduction, objective, agency, sale to Indian entities, features, redemption, hedging and marketing.

- **INTRODUCTION OF GOLD MONETISATION SCHEME [234 TAXMAN (ST.) 4]**

  The office memorandum [F.No.20/6/2015-FT] dated 15-9-2015 intimates the introduction of the 'Gold Monetisation Scheme' which has been approved and also gives the guidelines. The Gold Monetization Scheme provides different options to the people to monetise the gold, by modifying the already existing two schemes, namely, the Gold Deposit Scheme and the Gold Metal Loan Scheme, in the light of past experience and fresh developments and feedback. Thus, the Gold Monetisation Schemes comprise of the 'Revamped Gold Deposit Scheme' and the 'Revamped Gold Metal Loan Scheme', linked together. One may refer to above citation for the basic features of the scheme.

- **AMENDMENT IN RULE 2BB [234 TAXMAN (ST.) 66]**

  The CBDT *vide* Notification No. 75/2015 [F.No.142/02/2015-TPL] dated 23-9-2015 gives the Income-tax **(Thirteenth Amendment)** Rules, 2015. It amends Rule 2BB wherein the exemption of transport allowance granted to employees who are blind is now extended to 'deaf and dumb' as prescribed under item no. 11 of Rule 2BB of Income Tax Rules.

- **ASSESSMENT UNDER SECTION 143 OF INCOME-TAX ACT,1961-ASSESSMENT - GENERAL - FRAMING OF SCRUTINY ASSESSMENTS IN CASE OF ASSESSEES ENGAGED IN BUSINESS OF MINING**

  The CBDT *vide* Notification No. 14/2015 [F.No.225/259/2015-ITA.II] dated 14-10-2015 directed to all concern officers while scrutinising the cases of entities engaged in business of mining. It has been directed that the annual return filed with Indian Bureau of Mines (IBM) by the respective assessee should be obtained and compared with the detail submitted to the Income Tax Department so as to ascertain whether any suppression of production and discrepancy in stock exists and further necessary action as per provisions of the law may be taken.

  The assessee engaged in business of mining are required to file annual return with Indian Bureau of Mines (IBM) (Form H-1 in case of Iron Ore Mining and Form H-2 to H-8 in case of mining in other Ores). The instruction is outcome of the report of the justice M. B. Shah Commission of Enquiry, constituted by the Government to probe illegal Iron and Manganese Ore Mining which shows that in some cases there were significant differences in figures regarding production and closing stock as reported in the annual return filed with IBM vis-a-vis the details furnished in the Income-tax Return.

- **ASSESSMENT UNDER SECTION 143 OF INCOME-TAX ACT,1961-ASSESSMENT-GENERAL-USE OF EMAIL BASED COMMUNICATION FOR PAPERLESS ASSESSMENT PROCEEDINGS [234 TAXMAN(ST.) 165]**

  The CBDT *vide* letter [F.No.225/267/2015-ITA.II] dated 19-10-2015 intimates the initiation of the concept of using e-mail for corresponding with tax-payers and sending through mails the questionnaires, notice, etc. at time of scrutiny proceeding and getting responses from them using the same medium on a pilot basis.

  This would eliminate the necessity of visiting the Income Tax Offices by the taxpayers, particularly in small cases, involving limited issues and where taxpayer is able to provide details required by the Assessing Officer without necessitating his physical presence.

  Steps are being taken by CBDT to devise suitable mechanism for setting up a standardised platform for making such e-mail based communication between the taxpayer and Income-tax Department seamless and user friendly. To start with, it has been decided to launch a pilot project in this regard in five non-corporate charges at Delhi, Mumbai, Bengaluru, Ahmedabad and Chennai stations.

  The cases covered under the aforesaid pilot project should be those which have been selected for scrutiny on the basis of AIR/CIB information or non-matching with 26AS-data. Consent of taxpayers should also be obtained in beginning and cases of only willing taxpayers be considered under pilot project.

  It has been decided in order to improve the taxpayer services, enhance the efficiency and to usher in a paperless environment for carrying out the assessment proceedings.

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JUDICIAL JUDGMENTS

Compiled by CA Dharmen Shah and CA Rupal Shah

Hero Cycles (P) Ltd. vs. CIT (Supreme Court), 5th November 2015

Section 36(1)(iii): Law on when interest expenditure on loans diverted to sister concerns and directors can be allowed as business expenditure explained

Facts of the case:

In the income tax return filed by assessee, the assessee claimed deduction of interest paid on borrowed sums from Bank under the provisions of Section 36(1)(iii) of the Income-Tax Act (hereinafter referred to as 'Act'). The aforesaid deduction was partly disallowed by the Assessing Officer *vide* his Assessment Order on the following two grounds:

a. Out of the sum borrowed by the assessee Company from the Bank, a substantial part was advanced to one of the sister concerns without any interest being charged from the sister concern.

b. A part of the sum borrowed by the assessee Company from the Bank was advanced to the Directors at a rate of interest lower than that charged by the Bank from the assessee Company.

The assessee made a representation on the above two points as follows:

a. Being a Promoter of the sister concern, advance given by the assessee Company was in course of an undertaking given to the financial institutions to provide the additional margin to meet the working capital for meeting any cash losses. It was also mentioned that no interest was to be paid on this loan unless dividend is paid by that company. On that basis, it was argued that the amount was advanced by way of business expediency.

b. For the advances given to its Directors, the assessee claimed that the advance given to the Directors was not out of the borrowed funds but from its business surplus funds. The assessee Company also presented the bank statements to this effect.

These points were also supported by CIT(A) and ITAT in the appeal filed by the Income tax department. However, High Court disallowed the said expenses on the grounds explained earlier. The assessee then filed a petition at the Supreme Court and

The Court held in the favour of the assessee observing that:

Subsequently, the assessee company had off-loaded its share holding in the said sister concern and at that time, the sister concern not only refunded back the entire loan given by the assessee but this was refunded with interest. In the year in which the aforesaid interest was received, same was shown as income and offered for tax. The Court also admitted the proofs that loans given to Directors was out of the own surplus funds of the assessee Company.

On the basis of the above case, interest paid by the assessee of which deduction was claimed, on the facts of this case, was for business purposes and, therefore, the entire interest paid by the assessee should have been allowed as business expenditure.

CIT vs. Sonic Biochem Extractions Pvt. Ltd. (Bombay High Court), 17 November 2015

Section 32/43(6): Even assets installed in a discontinued business are eligible for depreciation as part of 'block of assets'

Facts of the case:

The respondent assessee had claimed depreciation in respect of its machinery which was used in its business of refining edible oil. The machinery had not been used during the assessment year as the respondent has discontinued its business of refining edible oil.

The above depreciation was claimed on the block of assets on the written down value including the refining edible oil machinery.

The Assessing Officer disallowed the claim of depreciation on the ground that one of the twin requirements of ownership and user under Section 32(1)(ii) of the Act viz. user was not satisfied.

On appeal the Commissioner of Income Tax (Appeals) held that in the absence of the Machinery being put to use and the business of Refining edible oil having been discontinued, the respondent is not entitled to depreciation. Thus the order of the Assessing Officer was undisturbed to the extent it disallowed depreciation.

On further appeal to the Tribunal the impugned order held that the refining machinery was a part of the block of assets of plant and machinery. In such a case depreciation is granted to the entire block of assets whether or not an individual item therein has been used during the subject assessment year.

The Court held in the favour of the assessee observing that:

In the case of *DCIT vs. Boskalis Dredging India (P.) Ltd. 53 SOT 17 (Mum)* wherein it has been held that once the concept of block of assets was brought into effect from assessment year 1989-90 onwards then the aggregate of written down value of all the assets in the block at the beginning of the previous year along with additions made to the assets in the subject Assessment Year depreciation is allowable. The individual asset loses its identity for purposes of depreciation and the user test is to be satisfied at the time the purchased Machinery becomes a part of the block of assets for the first time. In the circumstances the respondent's appeal was allowed and the disallowance of depreciation was deleted.

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GIST OF RECENT JUDGMENTS WITH RESPECT TO SERVICE TAX AND CENTRAL EXCISE

Compiled by CA Bhavin Mehta

1. Tata Steel Ltd. vs. Commissioner of Service Tax, Mumbai-I (2015) 63 taxmann.com 247 (Mumbai - CESTAT) (TM)

Facts: The assessee, for the purpose of financing its international acquisitions and capital expenditures, took loan from various foreign banks (10 non-resident Banks as Mandated Lead Arrangers (MLA's) and 6 other foreign banks). The assessee entered into an agreement with the Mandated Lead Arrangers for Arrangement of finance.

The MLAs appointed Standard Chartered Bank as the co-ordinator for this purpose.

The assessee paid loan arrangement fees/agency fees to the lender banks as well as Standard Chartered Bank.

The Service Tax Dept. issued show cause notice stating that the arrangement/agency fees paid to foreign banks/Mandated Lead Managers for providing finance (and/or co-ordinating in providing finance) for international acquisitions is liable to service tax under reverse charge in hands of Indian borrower under 'Banking and Other Financial Services', which was confirmed. The matter pertains for the period from 16/6/2005 to 30/11/2007.

Appellant submission:

- The petitioner contended that the services availed are in relation to borrowing and not in relation to lending and as such the services does not fall under Banking and Other Financial Services *vide* Section 65(12) of the Finance Act, 1994.
- It is also contended that the lenders, the MLAs and the agent bank are all located outside India and the money received was also spent abroad beyond the Indian Territory. Hence, the appellant is not liable to pay service tax as recipient of service in terms of Section 66A of the Finance Act, 1994. In this regard, the petitioner relied upon the decision of the Tribunal in *Cox & Kings India Ltd. vs. CST 2014 (35) STR 817* and another unreported decision of the Tribunal in *Grey Worldwide (India) (P.) Ltd. v. CST vide* Final Order No. A/3014/15/STB dated 20-8-2015.
- It is also submitted that the agent bank was appointed by the lender banks. Therefore, the agent bank did not provide any service to the appellant-borrower.
- It was also contended that the extended period of limitation is not applicable to the facts of the case as the relevant facts were informed to the dept. in the year August, 2007 and the show cause notice was issued in 2009.
- It was contended that the appellant had *bona fide* belief that no service tax was payable on the arrangement fees and the agent's fees and as such imposition of penalty is not warranted.

TRIBUNAL (Two Member Bench): After hearing both sides, the opinions of learned Member (technical) and the learned Member (judicial) are not in consonance with regard to whether the fee paid is taxable in the hands of the petitioner and whether extended period is invocable and penalties under sections 76 & 78 are imposable. Hence the matter was referred to the learned Third Member (technical).

It was held by the Third Member that

- The Ld. Member observed that lending and borrowing go together. The arrangement fees/agency fees is a service in relation to 'lending' and falls under 'Banking and Other Financial Services' and is liable to service tax under reverse charge in hands of the assessee-borrower.
- Even if funds are used outside India, the services are consumed/used in India and are taxable under Section 66A read with section 65(12) for period on or after 18-4-2006.
- The demand was confirmed with interest and penalties, along with extended period of limitation.
- It was stated that a careful reading of clauses (a) & (b) of Section 66A, it is quite clear that when the service provider is from outside India and the recipient of the service who has his place of business, fixed establishment, permanent address or usual place of residence in India, then the recipient of such service will be liable to pay service tax. This is also clear from the reading of Rule 3(iii) of Taxation of Services (Provided from Outside India & Received in India) Rules, 2006.
- It is also stated that the so called MLAs are none other than the banking and financial institutions and 10 of them put together has extended 90% of the loan and the remaining six banks have extended only remaining 10% of the loan. Thus, keeping in view the trade practices as also the holistic view of the operations, no distinction can be made for the services in connection with the loan *vis-a-vis* borrowing.

2. Commissioner of Central Excise, Pune-I vs. Rosy Blue (India) (P) Ltd.

Facts:

Assessee was engaged in import of rough diamonds and export of cut/processed diamonds and jewellery made out of it. Assessee claimed refund of tax paid on 'clearing and forwarding services', 'banking and financial services', 'technical inspection and certification' and 'general insurance service' used for import/export. Department denied refund on the ground that it had no relation with work of exemption. First Appellate Authority set aside the adjudication order in respect of the non-sanctioning of refund on 'banking and other financial services' and 'technical inspection and certification services'. Department has filed appeal before CESTAT against the order of First Appellate Authority.

The issue involved in this case is regarding refund of the amount of Service Tax paid on input services, namely, banking and financial services and technical inspection and certification services.

Department submission: Department submission is that banking and financial services and technical inspection and certification services were also utilised by assessee in respect of import of goods. Notification 17/2009-ST talks about the services received and used for export of goods.

Assessee Submission: There is no dispute as to the fact that there were exports of the manufactured diamond jewellery by the appellant and for that purpose they had imported the rough diamonds. The services which are rendered by the banking and other financial services is in respect of the business activity of the respondent of import and export of diamonds and the issue is now squarely covered by the decision of the Tribunal in the case of *CST vs. Convergys India (P.) Ltd.* [2009] 21 STT 67 (New Delhi - CESTAT). Assessee submitted that the Hon'ble High Court of Bombay in the case of Oil & Natural Gas Corpn. Ltd. vs. CCE,ST & C [2013] 32 taxmann.com 141 (Bom.) has clearly stated that as to the meaning of the expressions "directly or indirectly" and "in or in relation to" has wide import and the service need not be a service which is directly used in manufacture of final product.

Held:

The case is decided in favour of the respondent assessee.

For the purpose of exporting the jewellery, cut & polished diamonds, the respondents used various input services. The respondent is engaged in the business of export of goods which entitles him to avail CENVAT credit of the various services which are used for rendering the goods exportable.

In the case in hand, banking services are utilised by the respondents for raising finance for import as well as for the purpose of export of goods manufactured by him.

The above view is fortified by the judgment of the Tribunal in case of *Convergys India services (P.) Ltd (supra)* which held as under:

1. There cannot be two different yardsticks, one for permitting credit and the other for eligibility for granting rebate. Whatever credit has been permitted to be taken, the same are permitted to be utilised and when the same is not possible, there is a provision for of refund or as rebate.
2. In common parlance, if the cost of such and services becomes part of the cost of the final product or the cost of output services, as the case may be, then they are understood as input and input services in relation to the said final products or the output services.

The Hon'ble Bombay High Court in the case of ONGC (supra) laid down the law as to what should be construed as of the expression 'input services' as defined under CENVAT Credit Rules:

1. The Expression "input services" is defined under Rule 2(1) as follows:-

   "Input Service" means any service, ----

   i. used by a provider of taxable service for providing an output service, or

   ii. used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal,

   Under Clause (ii) of Rule 2(1), the expression "input service" is defined in broad terms. In order to be an input service under clause (ii) the following requirements must be satisfied:

   - Firstly the expression requires the utilisation of "any service";
   - Secondly the service must be used by the manufacturer;
   - Thirdly the service may be used, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal.

   The service, in other words, need not be a service which is directly used by the manufacturer in the manufacture of the final product. The definition allows a service which is used by the manufacturer even indirectly, and in or in relation to the manufacture of final product.

Rule 6(1) stipulates that no CENVAT credit shall be allowed on such quantity of input or input service which is used in the manufacture of exempted goods or for provision of exempted services.

Rule 6(2) deals with a situation where a manufacturer manufactures both dutiable final products as well as exempted goods. This rule stipulates that a manufacturer can take CENVAT credit only on that quantity of input service which is intended for use in the manufacture of dutiable goods.

Accordingly the appeals filed by the Revenue, against Order-in-Appeal passed by the Commissioner of Central Excise (Appeals). Mumbai IV, were rejected.

3. Infosys Ltd. vs. The Deputy Commissioner Of Commercial Taxes (2015-TIOL-2106-HC-KAR-VAT) - Karnataka High Court rules that implementation of software is a service and cannot be subject to VAT
Facts:

The petitioner was entering into several types of contracts with its customers. One type of contract involves contract of supply of customized products, contract of implementation and contract of ATS services. Another type of contract is only for supply of customized software and ATS contract, without contract of implementation. On perusal of a sample contract with one of the client banks, it was observed that it comprised of supply of software as well as its implementation.

Issue:

1) In the absence of transfer of a right to use a software under a contract, can it be said that the activity of implementation involves a deemed transfer of goods as contemplated under Article 366 (29A)(d) of the Constitution of India ?

(2) After supply of packaged and customized software, if any service is required to integrate the software into the system to make the software functional or usable, does it amount to presale activity which is chargeable to VAT or is it a post sale activity, which is in the nature of service simplicitor?

Held:

1. Agreement does not mention of any software coming into existence which will be made use of in the implementation process. On the contrary, it was specifically stated therein that before the implementation program commences, there should be installation of software. It was thus held that, in substance, implementation means the customised software is integrated into several other systems so that the bank can start using the licenced software. The Hon'ble High Court observed "Therefore it is clear, in substance implementation means the customized software is integrated into several other systems so that the bank can start using the licensed software. In the process, there is no transfer of any goods or right to use any goods, what is rendered is service and therefore, the said consideration paid as service charges is not subjected to VAT but subjected to service tax". **It is a service contract and therefore, the consideration for the implementation of software should not be subject to VAT.** It was also held that implementation phase starts after the installation of the software and hence, it is not a part of customisation process. It is in the nature of a post-sale activity. Further, though there is one composite contract, it is in two parts – one for contract of sale of customised software and another for services in relation to implementation of software.

   Once implementation of software is covered under the Service tax law, the jurisdiction of the State to levy tax on such activity stands excluded.

2. With respect to levy of tax on Annual Technical Support (ATS), it was observed that ATS amounts to a works contract as it is a contract to permit right to use enhancements, upgrades, maintenance and releases as well as support services. The Hon'ble Court observed as under:
   "Clause 5 of the agreement speaks about the "technical support". It provides that the scope of technical support includes:

   A. Help Desk Technical assistance on Software and if agreed, on Third Party Software through Telephone/ Facsimile/Email for Problem solving and troubleshooting, Rectification of any bugs reported

   B. Upgrades and Maintenance releases of Software and if agreed, Third Party Software, excluding separately Priced/optional products or modules for which BANK has not purchased any rights.

   Therefore, the copyrights in the enhancements, upgrades, maintenance and releases vests with the assessee and the same is not transferred to the customer and what is transferred is only the right to use. Therefore, the said right to use these enhancements, upgrades, maintenance and releases also constitutes goods and is liable to VAT. The record shows that the assessee has paid VAT on these enhancements and upgrades. Therefore, it is clear ATS is a works contract. It is a contract to permit right to use enhancements, upgrades, maintenance and releases as well as annual technical support services as it was indivisible by virtue of 46th amendment which falls under Clause (b) of Article 366 (29A)".

   Comments: Judgment does not provide answer as to whether granting of licence to use software through internet (not on tangible medium) is deemed sale or a service transaction? Whether composite contract consisting of (i) transfer of right to use the goods in the form of upgrades, enhancement, etc. and (ii) support services can be considered as works contract?

4. International Overseas Services vs. Commissioner of Service Tax-I, Mumbai [Appeal No.ST/08/2012]
Facts: Appellant organises recruitment of employees for overseas employment and charges an amount as fees. It is undisputed that services rendered by appellant falls under the category of manpower recruitment and supply agency

services. Appellant submitted that demand is unsustainable for the reason that appellant had recruited the employees for client situated abroad and therefore the services so rendered are export of services.

Held: The Hon'ble Tribunal held that the employees were recruited by the appellant for clients abroad for working, salaries are paid by the clients of appellant and the services of the appellant was engaged by the foreign clients for identifying the potential employees who can work abroad. It is to be seen that though the services of the appellant were for identifying, short listing and confirming the employment of the personnel in India, it was for working abroad and not in India. This would, in our considered opinion, fall under the category of export of services.

5. State of Karnataka vs. United Breweries Ltd. (2015) 63 taxmann.com 41 (Karnataka)
Facts:

(a) Assessee has entered into contract with certain Contract Bottling Units (CBUs) for manufacturing beer, in terms of which the assessee was to transfer the know-how for manufacturing of beer under its brand name. Such manufacture of beer was to be on behalf of the assessee and supplied only to the assessee or its indentors. No right was given to the CBUs to directly sell the beer to its own customers. In fact, the CBUs were captive manufacturers of beer for the assessee -United Breweries Limited. The entire production, as well as the trade mark, etc., belonged to the assessee and not to the CBUs. The right to market, sell, distribute and package the beer, according to the know-how and specifications prescribed by the assessee, was to remain under the supervision and control of the assessee, as per a registered user right. Assessee charged ₹ 10/- per case from CBUs as 'brand franchise fees', treating as royalty and paid service tax on the same.

(b) With regard to 'Kingfisher' packaged drinking water, manufacturers were to pay royalty to the assessee for use of brand name/trade name, and were free to sell the manufactured packaged water to their own customers, and exploit the trade name/brand name. Assessee paid service tax on royalty amount charged to manufacturer of packaged drinking water.

Held:

(a) With respect to *royalty charged for beer,* the Hon'ble High Court observed "The manufacturer, as per the agreement, has the right to use the brand name only for, and on behalf of, the assessee, and does not acquire any right over such brand name/trade mark belonging to the assessee, as it is not free to sell the product in the market, to customers of its choice. It is also not disputed that the manufacturing is done as per the specifications given by the assessee. Thus, it can be concluded that the CBU is the captive manufacturer of the assessee, who has to produced the beer in terms of the specifications and other conditions as provided by the assessee. The CBUs cannot sell the beer to customers of its choice, but only to the intended customers of the assessee at the price fixed by the latter. In return, the manufacturer is given the price of the raw material and the labour charges. Since the produce is to be transferred by the CBUs on behalf of, and at the price fixed by the assessee, to the intended customers of the assessee, after deducting the price of raw material and other variable costs plus the labour cost, the remainder of the amount so received by the manufacturer is given to the assessee, which is split as 'brand franchise fees' and other surplus profit of the assessee. Such 'brand franchise fee' in the present case is ₹ 10/- per case." The Hon'ble High Court in the case of manufacture of beer concluded that the assessee has not transferred any right to the CBUs to exploit the brand name for its own use and as such it cannot be considered as sale of intangible goods (transfer of right to use goods) by the assessee.

(b) However, with respect to *royalty charged for 'Kingfisher' packaged drinking water,* the Hon'ble High Court held "In our opinion, since it is not disputed that under the agreement, the trade mark-'Kingfisher' is transferred to the licensee dealers, with a right to use the trade mark and exploit the same for commercial use, which was on payment of royalty to the assessee, the same would amount to transfer of right to use the intangible goods, being the trade mark 'Kingfisher', which would thus be subject to tax under KST Act". The Hon'ble High Court observed that the effective control over the brand name is transferred to the licensees to use and exploit the brand name for commercial use, which would amount to transfer of right to use goods and liable to tax under the KVAT Act.

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UPDATES ON SERVICE TAX

Compiled by CA Bhavin Mehta

1. Speedy disbursal of pending refund claims of exporters of service under Rule 5 of the CENVAT Credit Rules, 2004 [Circular No.187/6/2015-ST dated 10-10-2015]: The Board has drawn up a scheme for speedy disbursal of pending refund claims of exporters of services under Rule 5 of the CENVAT Credit Rules, 2004. The highlights of the said scheme are as follows:

The scheme is applicable to service tax registrant who are exporters of service, with respect to refund claims under Rule 5 of the CENVAT Credit Rules, 2004, which have been filed on or before 31-3-2015 and which has not been disposed off as on date of issue of this circular.

Claimant to submit additional documents in the form of:

a) A certificate of the statutory auditor in the case of companies, and from a chartered accountant in case of Non-company assessee, in specified format.

b) An undertaking from the claimant in the specified format.

On receipt of aforesaid documents, the jurisdictional AC/DC would make a provisional payment of 80% of the amount claimed as refund, within 5 working days of the receipt of the documents.

After making the provisional payment, the jurisdictional AC/DC shall undertake checking the correctness of the refund claim in terms of the relevant notification.

2. Applicability of Swachh Bharat Cess

— Swachh Bharat Cess (SBC) is introduced and made effective from November 15, 2015. SBC will be levied @ 0.5% on all the taxable services. SBC will not be leviable on exempted service and services covered under negative list of services.

— Thus effective tax rate on taxable services will be 14.5% i.e. 14% Service tax + 0.5% SBC **[Notification No. 21/2015-ST, 22/2015-ST dated 06-11-2015]**

— In case where abatement is claimed in terms of Notification No.26/2012-ST (as amended), SBC @ 0.5% will be levied on abated value of such service. **[Notification No.23/2015-ST dated 12.11.2015]**

— SBC shall be applicable *mutatis mutandis* for services taxed under reverse charge mechanism basis **[Notification No. 24/2015-ST dated 12.11.2015]**

— The person liable for paying the service tax under sub-rules (7), (7A), (7B) or (7C) of rule 6, shall have the option to pay such amount as determined by multiplying total service tax liability calculated under sub-rules (7), (7A), (7B) or (7C) of Rule 6 by 0.5 and dividing the product by 14 (fourteen), during any calendar month or quarter, as the case may be, towards the discharge of his liability for SBC. **[Notification No. 25/2015-ST dated 12.11.2015]**

Some of the Important Points in FAQ on Swachh Bharat Cess:

— SBC is required to be charged separately on the invoice, accounted for separately in the books of account. SBC should be charged separately after service tax as a different line item in invoice.

— SBC should be paid separately under separate accounting code – 00441493

— SBC shall be levied @ 0.5% on the value of taxable services.

— Credit of SBC cannot be availed and SBC cannot be paid by utilising credit of any other duty or tax.

— Reverse charge under section 68(2) is applicable to SBC. Liability arises on the date on which consideration is paid to the service provider as per Rule 7 of Point of taxation rules.

— As regards Point of Taxation, since this levy has come for the first time, all services (except those services which are in the negative list or are wholly exempt from service tax) are being subjected to SBC for the first time. SBC, therefore, is a new levy, which was not in existence earlier. Hence, Rule 5 of the Point of Taxation Rules would be applicable in this case. SBC will also be payable where service is provided on or after 15th November, 2015 but payment is received prior to that date and invoice in respect of such service is not issued by 29th November, 2015

— Table below gives different events where SBC is applicable or not applicable.

Sr. No.	Date of provision of service	Date of invoice	Date of payment	SBC applicable
1	Prior 15.11.2015	Prior 15.11.2015	Prior 15.11.2015	NO
2	On or After 15.11.2015	Prior 15.11.2015	Prior 15.11.2015	NO
3	On or After 15.11.2015	Prior 15.11.2015	After 15.11.2015	YES
4	On or After 15.11.2015	Upto 29.11.2015 (within 14 days)	Prior 15.11.2015	NO
5	On or After 15.11.2015	After 29.11.2015	Prior 15.11.2015	YES
6	On or After 15.11.2015	On or after 15.11.2015	On or after 15.11.2015	YES

Comment: As per section 67A the rate of service tax shall be at the time when the taxable service has been provided or agreed to be provided. Therefore, for services provided prior to 15.11.2015, irrespective of when the invoice is issued or payment is received, SBC would not be applicable. Further, Rule 5 of POT rules prescribes when the new service would not be taxable, which does not mean that other than those event mentioned in Rule 5 service would become taxable.

3. Clarification regarding leviability of service tax in respect of Seed Testing with effect from 01.07.2012 [Circular No.189/8/2015-ST dated 26.11.2015]

Seed from testing in agricultural operations was deleted so as to broaden the scope of coverage of the negative list entry and to cover any testing in agricultural operations in negative list, which are directly linked to production of agriculture produce and not to limit its scope only to seeds.

In view of the above, it is clarified that all testing and ancillary activities to testing such as seed certification, technical inspection, technical testing, analysis, tagging of seeds, rendered during testing of seeds, are covered within the meaning of testing as mentioned in sub-clause (i) of clause (d) of section 66D of the Finance Act, 1994. Therefore, such services are not liable to Service Tax under section 66B of the Finance Act, 1994.

■■■

IMPLICATION OF NON-PAYMENT OR DELAYED PAYMENTS TO MICRO AND SMALL ENTERPRISES UNDER THE MICRO, SMALL AND MEDIM ENTERPRISES DEVELOPMENT ACT, 2006 (MSMED, 2006)

Compiled by CA Amit D. Kothari

1. Classification under MSMED, 2006

Under MSMED, 2006, an Enterprise is classified as Micro, Small or Medium Enterprises based on the

- Investment in Plant & Machinery in case of Manufacturing Sector, and
- Investment in Equipment in case of Service Sector.

Manufacturing Sector	
Enterprises	**Investment in plant & machinery**
Micro Enterprises	Does not exceed twenty five lakh rupees
Small Enterprises	More than twenty five lakh rupees but does not exceed five crore rupees
Medium Enterprises	More than five crore rupees but does not exceed ten crore rupees
Service Sector	
Enterprises	**Investment in equipments**
Micro Enterprises	Does not exceed ten lakh rupees
Small Enterprises	More than ten lakh rupees but does not exceed two crore rupees
Medium Enterprises	More than two crore rupees but does not exceed five core rupees

In calculating the investment in plant and machinery, the cost of pollution control, research and development, industrial safety devices and such other items as may be specified, by notification, shall be excluded.

2. Important Definitions

Buyer

Whoever buys any goods or receives any services from a supplier for consideration;

Goods

Every kind of movable property other than actionable claims and money;

Supplier

A duly registered *micro* or *small* enterprise, which includes,

i. The National Small Industries Corporation,

ii. The Small Industries Development Corporation of a State or a Union territory, by whatever name called,

iii. Any company, co-operative society, trust or a body, by whatever name called, registered or constituted under any law for the time being in force and engaged in selling goods produced by micro or small enterprises and rendering services which are provided by such enterprises;

Day of acceptance/deemed acceptanc

Where no objection is made in writing by the buyer within fifteen days from the day of the delivery of goods or the rendering of services	The day of Actual Delivery of goods or the rendering of services
Where any objection is made in writing by the buyer within 15 days of delivery of Goods or rendering of service	The day on which such objection is removed by the supplier

Appointed date

Sixteenth day from the day of Acceptance/Deemed Acceptance.

3. Delayed Payments to Micro and Small Enterprises

Liability of buyer to make payment

The buyer has to make payment:

- On or before the date agreed upon between him and the supplier in writing (latest date to be 45 days from the day of acceptance or day of deemed acceptance), or
- Where there is no agreement in this behalf, before the appointed day.

Interest on delayed payment

Where any buyer fails to make payment to the supplier within the time limit mentioned above, the buyer shall pay Interest to the supplier as detailed below:

Rate of Interest	Three times the Bank Rate notified by the Reserve Bank of India
Interest payable on	The amount paid after the time limit mentioned above
Interest Calculated from	Appointed Date or the date immediately following the date agreed upon
Interest Calculated up to	The actual date of payment
Compounded	Compounded with monthly rest

The Interest is compulsorily payable notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force,

Requirement to specify unpaid amount with interest in the annual statement of accounts

Where any buyer is required to get his annual accounts audited under any law for the time being in force, such buyer shall furnish the following additional information in his annual statement of accounts, namely:

- The principal amount and the interest due thereon (to be shown separately) remaining unpaid to any supplier as at the end of each accounting year;
- The amount of interest paid by the buyer, along with the amounts of the payment made to the supplier beyond the appointed day during each accounting year;
- The amount of interest due and payable for the period of delay in making payment (which have been paid but beyond the appointed day during the year) but without adding the interest specified under this Act;
- The amount of interest accrued and remaining unpaid at the end of each accounting year; and
- The amount of further interest remaining due and payable even in the succeeding years, until such date when the interest dues as above are actually paid to the small enterprise, for the purpose of disallowance as a deductible expenditure under section 23.

Interest not to be allowed as deduction from Income under Income-Tax Act,1961

The amount of interest payable or paid by any buyer under or in accordance with the provisions of this Act, shall not be allowed as deduction while computation of income under the Income-tax Act, 1961

Overriding effect

The above provisions shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

■■■

FORTHCOMING EVENTS

1	**3rd Study Circle Meeting**	
	SUBJECT	IMPORTANT ASPECT OF VAT APPLICABLE TO VAT AUDIT
	SPEAKER	CA Vikram Mehta
	DAY & DATE	Sunday, 27th December, 2015
	TIME	10.00 a.m. to 1.00 p.m.
	VENUE	SNDT College, Liberty Garden, Malad (W), Mumbai-400 064.
2	**Hald-Day Seminar under the Auspicious of Shri Rajubhai J. Chokshi Oration Fund**	
	SUBJECT	ICDS
	SPEAKER	Eminent Speaker
	DAY & DATE	Saturday, 6th February, 2016
	TIME	To be Announced
	VENUE	To be Announced

With Regards : TEAM MCTC

SARASWATI SANMAN SAMAROH & DIWALI GET-TOGETHER

Chief Guest
Dr. M. S. Kurhade
addressing the audience.

L-R : CA Adarsh Parekh, Dr. Bharat Vasani, CA Jayprakash Tiwari, Chief Guest Dr. M. S. Kurhade, CA Amit Kothari

CA Haresh Kenia, CA Manish Chokshi, Dr Bharat Vasani, CA Kailash Agrawal, CA Vadan Shah, CA Jayprakash Tiwari

Name Of Students Felicitate With Appreciation Award

At Dr.Bhart D.Vasani Saraswati Sanman Samarambh
on 22nd November, 2015.

1.	Harsh Rajesh Modi	B.Com.
2.	Kushal Hiten Shah	CA
3.	Haseet Pankaj Bathiya	CS
4.	Gunja Pankaj Bathiya	CA
5.	Vivek Vikas Goel	CA
6.	Drashti Natwar Thakrar	CA
7.	Jinisha Atul Ruparelia	MS
8.	Kalpak Vaibhav Seth	B.Com.
9.	Adithya Vaibhav Seth	B.Com.
10.	Rishika Jayprakash Tiwari	10TH ICSE
11.	Yash Jayesh Shah	B.E. (Biomedical Engineering
12.	Tejas Jayesh Shah	CPT + HSC
13.	Ankit Jitendra Patel	MBA (Fin)
14.	Nirvish Manish Chokshi	MBA from UK (Fin & Maths)

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