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INDIRECT TAX LAW REPORT
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SERVICE TAX:

- When the petitioner company is a separate and independent entity, the bank account of the petitioner company (which is a Private Ltd. Company) cannot be attached for the

recovery of dues of the proprietary concern. **2016-TIOL-662-HC-MAD-ST.**

- The petitioner seeks a writ petition from High Court where he is entitled to a balance reward from the Revenue Department. The High Court concluded that writ jurisdiction is not a remedy for the petitioner and the petitioner has an alternate and equally efficacious remedy of bringing in civil suit in a competent court. (In our humble submission, judgment requires reconsideration.) **2016-TIOL-645-HC-MUM-ST.**

- A Demand letter to deposit service tax issued by Assisstant Comissioner to the petitioner to which the petitioner challenged this demand letter by way of writ petition in High Court.The High Court disposed of the writ petition directing petitioner to treat demand letter as Show Cause Notice (SCN) and file its reply. The Petitioner accordingly, filed a reply to which Commissioner of Service Tax (Respondents) filed miscellaneous petition for modifications of earlier order and simultaneously issued second SCN with entirely different allegations. The High Court

held issuance of second SCN contrary to the directions of High Court. **2016-TIOL-596-HC-MAD-ST.**

- The appellant is an output service provider; discharging service tax liability; having head office at Mumbai and registered with the department as ISD. The appellant received advisory services in respect of finance for the expansion of business and had raised finances by investment, divestment and disinvestment of the business interest they had in various entities.The CESTAT held that CENVAT credit can be availed on such services received by the appellant for raising the finance.**2016-TIOL-728-CESTAT-BANG.**

- The appellant are engaged in manufacture of excisable goods and were availing CENVAT Credit in respect of service tax paid on services received from Customs House Agents (CHA).The Revenue denied credit on the grounds that services are availed beyond the place of removal and not covered under the definition of the input services. In view of clear-cut clarifications by CBEC & C.Circular No.999/6/2015 clarifying that place of

removal in case of export of goods being Port/Inland Container Depot (ICD)/Container Freight Station (CFS), credit available under Rule 2(1) and 3 of Cenvat Credit Rules, 2004.**Piramal Healthcare Ltd.v.CCE. 2016 (41) S. T. R. 900 (Tri.-Mumbai).**

- Stay/Dispensation of pre-deposit - The Tribunal seeking pre-deposit from appellant holding that services provided by the appellant falls under 'Construction Services' to which appellant contended that such classification of services falls under 'Works Contract'. The above contentions have not been considered by CESTAT, the Delhi High Court sets aside the impugned order and matter remanded to Tribunal for fresh decision as per law-Section 35F of Central Excise Act, 1944 vide Section 83 of Finance Act, 1994.**Ahluwalia Construction Group v. Commissioner of Service Tax, Delhi-I. 2016 (41) S.T.R. 898 (Del.)**

- Since the SCN issued before enactment of Finance Bill, 2015 and adjudication order passed after enactment, provisions of substituted Section 76 come into play. As per amended Section 76 of Finance Act, if the

Service Tax and interest is paid within 30 days from the date of service of notice under Sub-section (1) of Section 73 of the Act, no penalty shall be payable and proceedings in respect of such service tax and interest shall be deemed to have been concluded. Therefore, no penallty is payable by appellant in view of Section 78B(1)(b) of Finance Act.- CESTAT.**2016-TIOL-710-CESTAT-MUM**.

- The Petitioner is carrying on cable laying and rehabiliation works to various parties,including the first respondent, who is the main contarctor for BSNL. The entire service tax was paid by the petitioner and are yet to be reimbursed from the respondent. The High Court held that when service tax was not reimbursed by main contractor to sub-contractor, writ petition under Article 226 is not maintainable and is liable to be dismissed since it is devoid of merits. Cliam of petitioner can be decided only by a competent civil court.**2016-TIOL-610-HC-MAD-ST.**

CENTRAL EXCISE:

- The High Court held that officers should inculcate in them a habit of following and implementing binding Division Bench judgments. If officers are reluctant, Court would visit them with individual penalties including forfeiture of their salaries until they take a corrective action. Such negative reactions and responses hurt eventually the National pride and heritage.**2016-TIOL-639-HC-MUM-CX.**

- Placing the reliance in CCE v.Acer Ltd.-2004-TIOL-81-SC-CX-LB, the scope of Section 3, Section 4(1)(a), Section 4(3)(d) of Central Excise Act, 1944 came up for consideration. The question that arose whether value of software which is otherwise exempt from duty is liable to be included in the Assessable Value of Computer. The Supreme Court observed that computer and software are distinct goods and differently classified. Chapter 85 clearly states that "a software contained in hardware does not lose its character as

such.” When an exemption is granted, no excise duty can be levied indirectly as it is impermissible to levy tax indirectly.**2016-TIOL-38-SC-CX-LB.**

- The appellant have raised two invoices - one towards sale of the machines and second for integration and commissioning of the machines supplied to the customers. Since integration and commissioning is an independent and distinct activity, charges recovered towards integration and commissioning is not related to the sale of the goods and therefore, cannot be included in the Assessable Value.**2016-TIOL-643-CESTAT-MUM.**

- Accumulated CENVAT Credit of Additional Excise Duty (AED) paid on Nylon Tyre Cord Fabric (NTCF) leviable under Section 3 of Additional Duties of Excise (Goods of Special Importance) Act, 1957 is permitted to be utilized towards the payment of duty of excise leviable under the First Schedule (BED) or the Second Schedule (SED) to the

Central Excise Tariff Act. **Commissioner of Central Excise, Customs & Service Tax, Kozhikode v. Apollo Tyres Ltd. 2016 (333) E.L.T. 10 (Ker.)**

- Appeal- Restoration of order of Superintendent of imposition of penalty and interest appealed to the Commissioner (Appeals) with a request to grant a personal hearing- Commissioner (Appeals) issued a communication to the petitioner that since the communication has been done by the Superintendent, the appeal would lie before CESTAT and not before him. Even if the appeal preferred by petitioner before the Commissioner is not maintainable, the Commissioner ought to have passed a reasoned order that too after giving a reasonable opportunity of hearing to the petitioner. Communication by Commissioner was set aside and petition allowed u/s 35 of Central Excise Act, 1944.**Prem Fabrications v. Union of India, 2016 (333) E.L.T.28 (Guj.)**

- When duty drawback of Customs, Central Excise and Service Tax is availed on exported goods, assessee is not entitled for rebate under Rule 18 of Central Excise Rules, 2002 as it would result in double benefit. The 'rebate' of duty paid on excisable goods exported and 'duty drawback' on export goods are governed by Rule 18 of Central Excise Rules, 2002 and Customs, Central Excise Duties and Service Tax Drawback Rules 1995.-High Court.**2016-TIOL-581-HC-MAD-CX**.

- The appellant’s head office is registered as Input Service Distributor (ISD) and they had availed credit on the basis of invoice issued by ISD. The Adjudicating Authority disallowed credit on grounds that appellant availed credit on the basis of invoices, which were not in their name. The CESTAT observed that Adjudicating Authority cannot credit; the jurisdictional officer of recipient of input/input service credit, is not competent to adjudicate ISD invoice over the jurisdictional officer of ISD who is competent to decide this matter.**2016-TIOL-421-CESTAT-AHM.**

CUSTOMS ACT:

- The High Court referred to in Section 110(2) of Customs Act, 1962 observed that there is a definite limit within which the Department has to determine if seized goods are to be confiscated and if so, for giving a Show Cause Notice (SCN) u\s 124(a). If the Department is unable to give SCN within six months, then u\s 110(2) goods are liable to be released to person from whom they were seized. **2016-TIOL-635-HC-DEL-CUS.**

- Confiscation and Penalty- Export of Gutkha-The appellant attempted to export goods improperly by misdeclaring quantity of goods to be exported. The difference comes out to 30% in physical quantity shown in packing list found on physical verification. Misdeclaration proved, goods liable for confiscation and penalty Imposed u/s 113, 114 and 114AA of Customs Act, 1962. **Rajat Industries**

Pvt. Ltd. v. Commissioner of Customs, New Delhi. 2016 (333) E.L.T. 97 (Tri.-Del.)

- Valuation- Related Party Transactions- Commission received from foreign supplier on account of service rendered by Indian firm in respect of third party import is not to be included in the transaction value: CESTAT. **2016-TIOL-663-CESTAT-MAD.**

- The assessee has sought amendment to the Bill of Entry filed u/s 149 and 154 of Customs Act, 1962 and claimed benefit of Notfn no. 56/2008-CUS for import of ferroniobium (mainly used to manufacture high strength stainless steel). The CESTAT opined when the benefit of notification which importer was eligible to was not extended due to an error and non upgradation of EDI (Electronic Data Interchange) system, the same cannot be held against assessee only on ground that they had not challenged the assessment for the bills of entry. **2016-TIOL-735-CESTAT-MUM.**

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