INDIRECT TAX LAW REPORT

SERVICE TAX:

- The High Court observed the scope of Adjudication Order and held that such orders cannot be passed without considering overall material on record, including reply to Show Cause Notice.In the absence thereof, there is violation of principles of natural justice.**Himalaya Construction Pvt.Ltd.v.Union of India.2016-(41)S.T.R.587(P&H).**

- The Tribunal demanded Service Tax from assessee under "Commercial or Industrial Construction Service"-Assessee presented the documents showing that (a)goods supplied by them were part of composite works contract for which VAT was collected from principal contractor and (b)entire Service Tax had already been remitted by principal contarctor.In such case, the High Court was of the view that service performed by assessee under works contract have not merited consideration by CESTAT, the impugned order should be set aside and issue concerning pre-deposit should be considered afresh by CESTAT-Sec.35 of Central Excise Act,1944 as applicable to Service Tax vide Sec.83 of Finance Act,1944.**Alchons India Pvt.Ltd.v.Commissioner of Service Tax.2016(41)S.T.R.599(Del.)**

- The appellant entered into "International Market Service Agreements" with various companies overseas for rendering sales promotion service and availed input credit of service tax. The CESTAT set aside the order of Revenue denying availment of CENVAT Credit on sales commission and

allowed the appeal with consequential reliefon the grounds that Explanation inserted in Rule 2(I)of Central Credit Rules,2004 says there is no bar on availment of CENVAT credit on sales commission basis.**2016-TIOL-520-CESTAT-AHM.**

- The agreement between the appellants and vendor is for transfer of immovable property by way of sale. The CESTAT held that transaction is exclude from service and therefore, outside the ambit of tax because u/s 65B(44) service means any activity carried out by aperson for another for consideration and "includes a declared service" but shall not include construction of a complex ,buiding intended for sale to buyer u/s 66E(b). The tax collected from appellants by vendor is without authority of law and is liable to be refunded u/s 11B of Central Excise Act,1944.**2016-TIOL-528-CESTAT-MUM.**

- The Tribunal after relying on the decisions of the Bombay High Court in the case of Ultratech Cement Limited and Gujarat High Court in case of Ferromatik and Milacron India Limited,has held that there is no law providing that credit on 'Outdoor Catering Service' available only if number of employees in factory exceeding 50. Accordingly, Input Credit is available under Rile 2(I) of Cenvat Credit Rules, 2004.**C.C.E.,CUS.&S.T.,LTU,Bangalore v. Sansera Engineering Private Limited. 2016 (41) S.T.R.611(Kar.)**

- Since the appellant has no requirement of 'advertising agency service' for manufacture and export of goods, the tax demanded in the impugned order is not on the consideration for a service received in India but a tax on the funds transferred in a cross-border transaction.Such a tax is not contemplated in Finance Act,1994. The CESTAT held that

demand of tax on the appellant is not in accordance with law,and thus impugned order set aside and appeal allowed.**2016-TIOL-529-CESTAT-MUM.**

- Manpower Recruitment or Supply Agency Services-Lumpsum work-Appellant deploying his employees in factory premises of manufacturer for doing specific job as per purchase order-The said manufacturer paying consideration to appellant based on the number of pieces manufactured. This issue is res integra(untouched) in view of Tribunal's decision, such aforesaid lumpsum work is not covered under 'Manpower Recruitment or Supply Agency Services' and hence not taxable under Section 65(68) of Finance Act,1994. **Shivshakti Enterprises v.CCE, Pune. 2016 (41) S.T.R. 648 (Tri.-Mumbai)**

- In BPO Companies, health and fitness of the employees is very essential factor in order to run the function of a BPO company.Therefore, CESTAT held that service tax paid on Health Club and Fitness Center is an Input Service.**2016-TIOL-538-CESTAT-MUM.**

- The Authority for Advance Ruling opined that Services provided by GoDaddy India Web Services to GoDaddy US bundle of services ,being the place of provision is outside India, such services are considered as export services and hence, outside the purview of service tax.**2016-TIOL-08-ARA-ST.**

- Goods Transport Agency Service-Recipient of service-Transportation of mined coal to railway slidings-In view of the law declared and the factual matrix of this appeal since where admittedly no consignment notes were issued by the 24 transporters for transportation of the appellant's coal, the

Goods Transport Agency Service cannot be held to have been rendered. Therefore, the appellant is not liable to service tax u/s 65(50b) and 65(105)(zzp) of Finance Act,1994.**South Eastern Coal Fields Ltd.v.CCE,Raipur. 2016 (41) S.T.R. 636 (Tri-Del.)**

- The appellant is providing services from both Delhi and Mumbai office and the accounts are centralized at Mumbai office -Centralized Registration obtained by Appellant -The Delhi office have rightly distributed CENVAT Credit to its Mumbai office in terms of Rule 7 of Cenvat Credit Rules and accordingly,the disallowance of credit is set aside and refund is held to be admissible by CESTAT.**2016-TIOL-546-CESTAT-MUM.**

- The appellant availed marine insurance policy and paid service tax on the same.The credit of Service Tax paid on such insurance denied by Revenue appeared to be improper and unreasonable to survive.Being an integral part of export, credit is available under Rules 2(I) and 3 of Cenvat Credit Rules,2004.**Alstom& D Ltd.v.Commissioner, LTU, Chennai. 2016(41) S.T.R.646 (Tri-Chennai.)**

- House-keeping and Rent-a-cab services are input services. House-keeping used to keep factory premises clean which is a stattutory requirement under Factories Act,1948. As regards, Rent-a-cab, same not a welfare measure but a basic necessity as late reaching in factory by workers would hamper work. Thus, both having nexus with manufacturing activity, Cenvat Credit is available on aforesaid services under Rule 2(I) and 3 of Cenvat Credit Rules, 2004. **CCE, Delhi-III v.Pricol Ltd. 2016(41)S.T.R.649(Tri.-Del.)**

CENTRAL EXCISE:

- The findings of the adjudicating authority on denial of cenvat credit on repair and maintenance service is held unsustainable. It was held by CESTAT that rent paid for Branch offices which are used for procurement of orders and provision of Service is admissible for CENVAT Credit on renting service.**2016-TIOL-450-CESTAT-CHD**

- Valuation - The CESTAT merited that where no ex-factory price is available and the entire goods is sold through depots,the Assessable Value (AV) has to be determined on the price prevalent at the depot at the time of removal of goods from the factory and the assessee is not entitled to claim the refund for lower price and the Department also cannot demand the duty of higher price at depot.The findings of the Adjudicating Authority that the appellant is required to pay the duty on such goods sold from the depot at a higher price over and above price as declared in their declaration, is contrary to the provisions of Section 4(1)(a) of Central Excise Act,1944 and the case laws.**2016-TIOL-484-CESTAT-AHM.**

- CESTAT held that modification carried on moulds & dies received from supplier unit does not amount to manufacture u/s 2(f) of Central Excise.Moreover, supplier unit can send said Moulds & Dies for further processing , testing and repairs of intermediate goods necessary for manufacturing of final product in terms of Rule 4(5)(a) of Central Credit

Rules,2002 and appellant can recondition the same under Exemption Notfn.214/86.Therefore, appellant is not saddled with Central Excise duty liability.**2016-TIOL-500-CESTAT-MUM**

- The Hon'ble High Court held that staff colony provided by the company, being directly and intrinsically linked to its manufacturing activity and therefore, appellants are eligible for input credit of service tax. Consequently,the services which are crucial for maintaining staff colony such as lawn mowing, garbage cleaning,maintenance of swimming pool,harvest cutting, weeding etc. necessarily had to be considered as "Input Services" falling within the ambit of Rule 2(I) of CENVAT Credit Rules,2004.**2016-TIOL-515-CESTAT-DEL.**

- Refund-Interest on delayed refund u/s 11 of Central Excise Act.The Supreme Court dismissed the Revenue Appeal on the grounds that it is obligatory on the part of Revenue to intimate the assessee to remove deficiencies in the application within two days, if there are still deficiencies it can proceed with adjudication and reject the application for refund. The adjudicatory process is required to be concluded within three months from the date of application.**2016-TIOL-21-SC-CX.**

- The CESTAT Larger Bench denied CENVAT credit on Telecom Towers and Pre-fabricated shelters relying on the judgments of Bombay High Court in BhartiAirtel Limited and Vodafone India Limited which are directly on the issue

of the character of towers and shelters and parts,and held to be immovable property constitutes a binding law.**2016-TIOL-539-CESTAT-DEL-LB.**

- Valuation – The CESTAT relying upon the judgment in Ford India Ltd. v. CCE held that "Pre-Delivery Inspection" and "After Sales Service" charges are not includable in assessable value.**2016-TIOL-548-CESTAT-MAD**.

CUSTOMS:

- It was held by CESTAT Larger Bench that, valuation of imported fixed wireless telephones (FWT) and a media containing software CD ROMs presented with such telephone required to be classified and assessed as phones with no segregation of value assignable to the software seperately. Hence, the value of software for discharging Customs duty should be included.**2016-TIOL-454-CESTAT-HYD-LB.**

- The High Court observed that the prosecution in violation of Section 155(2) of the Customs Act is not valid.There is a mandatory requirement of issuance of prior notice and, that having not been done, the present action has to be quashed. It would not be in the interest of justice to subject the petitioners to a trial which will ultimately be still-born.For this purpose, recourse can be taken to the provisions of Section 482 of CrPC which deals with the inherent powers

of High Court to quash criminal cases involving non-compoundable offences and therefore, criminal revisions are allowed. **2016-TIOL-295-HC-P&H-CUS.**

- Where the transferee imported goods fradulently under DFIA (Duty Free Import Authorization) Licenses, the plea by transferees that licences not cancelled by DGFT (Directorate General of Foreign Trade) is held unsustainable by CESTAT. Accordingly, the Tribunal upheld the demand of customs duty and partly allowed the appeals by setting aside the penalties imposed.**2016-TIOL-457-CESTAT-KOL.**

- SEZ-Refund of Customs Duty-Jurisdiction-The High Court quashed the communication by Assistant Commissioner and directed the competent office of the Customs Commissionerate,Surat to decide the application on the grounds that unless proper mechanism is framed under the SEZ laws and statutory provisions are enacted,the Commissionerate of Customs would continue to hold the authority u/s 27 of Customs Act,1962 to refund claims of excess payment of Customs Duty, redemption of fines and penalties adjudicated and collected by Customs Authorities.**2016-TIOL-319-HC-AHM-CUS.**

- The Authority for Advance Ruling observed that Galaxy K Zoom is classified as a telephone under Tariff Heading 8517 and not as a camera under CTH 8525. It is noticed that mobile phone is essentially a communication device working on the basis of towers and base stations which send and

receive radio signals for cellular phones for communication and therefore,classifiable as mobile phones as per tarde parlance and consumer perception test.**2016-TIOL-07-ARA-CUS.**

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