TAX CONNECT

THIRTEENTH ISSUE DECEMBER 2014

Friends

By now most of us would have filed the Tax Audit Reports in Income Tax under the extended time of 30th November. **Now WB VAT dealers should gear up for filing the WB VAT Audit Report by 31st December.** As we complete one compliance another stands knocking at the doors!

WB VAT dealers should note that all e-services provided by www.wbcomtax.nic.in [WB Commercial Taxes Website] [including generation of Way Bills] will remain shut down from 01.12.2014 to 05.12.2014 due to system migration.

Further, there is always a confusion in minds of dealers as to the **circumstances under which VAT has to be paid on the freight amount**. Would the transportation costs incurred after passing on the risks and reward of the goods to the purchaser, paid by the dealer on behalf of the purchaser, be liable to WB VAT. We have tried to clarify this issue somewhat in our "Query & Reply" Section.

For Service Tax/Excise Assessees a pre-deposit of 7.5% - 10% of the duty demanded or penalty imposed was made mandatory for filing appeal before the Commissioner (Appeal) or the Tribunal at the first stage or second stage. **In case you have filed your appeal before 4.8.2014 without such pre deposit, do not be surprised to receive a hearing notice for Stay petition.** Also do not be surprised if you are asked to pre deposit the said amount within 8 weeks!! Under the veil of providing a level playing ground, the so called "Tax Terrorism" continues in Indirect Taxes...

In a clarification vide **Circular No. 990/14/2014-CX-8 dated 19th November, 2013, the CBEC has stated** that the limitation of six months as per Rule 4(1) and 4(7) of **CENVAT Credit Rules would not apply for taking re-credit of amount reversed**, after meeting the conditions prescribed in these rules. This is an important circular.

In a positive development in Income Tax, **The CBDT vide Office Memorandum has directed that the officials of the Income-tax Department must adhere to the guidelines laid down for achieving a non- adversarial tax regime.** This should bring some change in the attitude of the revenue authorities.

Before signing off, may we reiterate that we shall be available 24x7 on our mail id or over a telecon.

DUE DATE	COMPLIANCES
06-Dec-14	**Online Payment** of Service Tax for the month of Nov.,2014 (Mandatory as per Finance Budget, 2014)
07-Dec-14	Payment of TDS/TCS
07-Dec-14	Submission of Form No. 15G, 15H and 27C received in Nov. to IT Commissioner
10-Dec-14	West Bengal Sales Tax TDS Payment for the month of Nov.,2014
10-Dec-14	ER1, ER2, ER6 Return for Nov.,2014
15-Dec-14	Payment of Advance Income Tax: Companies (75%) & Others (60%)
15-Dec-14	Provident Fund e-Payment for Nov.,2014
21-Dec-14	West Bengal VAT/CST/ Entry Tax/ Professional Tax Payment for the month of Nov., 2014
21-Dec-14	Payment of ESI for the month of Nov.,2014
25-Dec-14	West Bengal Sales Tax TDS Certificate Issue for the month of Nov.,2014
31-Dec-14	**Due Date of VAT Audit of West Bengal VAT**

Truly Yours

Timir Baran Chatterjee
M.Com, FCS, MBA (International Business)-IIFT, ACMA

Vivek Jalan
***FCA, CIDT (ICAI),* B.Com**

1 Old Court House Corner; **"Tobacco House"**
1st Floor; Room No.13 (North)
Kolkata – 700001

Contact: +9331042424; +919831594980; +913322625203
e-mail: **tb.chatterjee@dic.co.in; tb.chatterjee@yahoo.co.in**
cavivekjalan@gmail.com; vivek.jalan@icai.org

CENTRAL TAXES

SERVICE TAX

COURT DECISIONS

HIGH COURT DECISIONS

SERVICE TAX IS NOT REQUIRED TO BE PAID ON GOODS USED IN THE REPAIRING PROCESS ON WHICH EXCISE DUTY AND VAT HAS BEEN PAID

In the case of **Commissioner of Central Excise vs M/s. Goverdhan Transformer Udyog Pvt. Ltd., the Hon'ble Allahabad High Court** held that where an agreement quantifies separately value of the goods or materials from the value of the services rendered, service tax cannot be levied on the component of goods or materials since that component is not liable to service tax. Service tax can be levied only on the value of the services rendered.

PROPRIETORY COMMERCIAL CONCERN CANNOT BE TREATED AS A GOODS TRANSPORT AGENCY

In the case of **Commissioner of Central Excise, Salem vs KMB.Granites Pvt. Ltd., the Hon'ble Madras High Court** held that Section 65(50b) of Finance Act did not cover a case of proprietary commercial concern to be treated as 'Goods Transport Agency', and that an individual operator would also be covered within the meaning of expression 'commercial concern' as appeared under Section 65(50b) of Finance Act.

CONDONATION OF DELAY CANNOT BE BASED MERELY ON A CERTIFICATE FROM THE DOCTOR AND NO OTHER CORRESPONDING RECORD

In the case of **S. Xavier vs The Customs, Excise & Service Tax Appellate Tribunal, the Hon'ble Madras High Court** held that there cannot be any condonation of delay merely based on a vague certificate issued by the doctor because it is not clear whether this certificate was issued by the doctor who treated the appellant or it was issued on the basis of some material.

SERVICE WILL BE TAXABLE ONLY WHERE THERE IS RECRUITMENT OR SUPPLY OF MANPOWER BY A MANPOWER RECRUITMENT OR SUPPLY AGENCY

In the case of **The Commissioner of Central Excise vs M/s. Computer Sciences Corporation India Pvt. Ltd., the Hon'ble Allahabad High Court** held that the assessee had paid the salaries of the employees who were directly employed by him or were transferred from other Group Companies. The service will be taxable only when the supply of manpower is provided by a manpower recruitment or supply agency.

CESTAT DECISIONS

COMMISSION PAID TO SALES REPRESENTATIVES FOR CANVASSING ORDERS AND PURSUING THE DELIVERY OF THE GOODS CANNOT BE CALLED CLEARING AND FORWARDING SERVICE

In the case of **Commissioner of Central Excise And Customs, Aurangabad vs Hoganas India Ltd, the Hon'ble CESTAT, Mumbai** held that sales representative appointed by the respondent were only canvassing orders and not clearing or forwarding the goods manufactured by the appellant. Hence commission paid to them cannot be called clearing and forwarding service.

PENALTY CANNOT BE IMPOSED IF THE ASSESSEE HAS PAID THE SERVICE TAX AND INTEREST IMMEDIATELY BEFORE ISSUE OF ANY SHOW CAUSE NOTICE

In the case of **Commissioner of Service Tax, Mumbai vs SVS Marine Services Pvt Ltd, the Hon'ble CESTAT, Mumbai** held that if the service tax and interest has been paid immediately after being pointed out by the Revenue before issue of any show cause notice, no penalty can be imposed u/s 76 and 78 of Finance Act, 1994.

THERE CANNOT BE ANY TAX LIABILITY ON THE LENDING OR BORROWING OF MONEY BY THE GOVERNMENT

In the case of **Enam Securities Pvt Ltd and Reema Business Services Pvt Ltd vs Commissioner of Service Tax, Mumbai, the Hon'ble CESTAT, Mumbai** held that whenever RBI undertakes any borrowing activities, it is on behalf of the Government of India to manage the Indian economy which is its constitutional responsibility. Since the sale of RBI Bonds is a sovereign function of the Government there cannot be any tax liability on such functions whether by way of direct tax or by way of indirect tax.

BENEFICIARY OF A TRANSACTION IS NOT LIABLE TO PAY SERVICE TAX

In the case of **Kingfisher Airlines Pvt Ltd. vs Commissioner of Service Tax, Mumbai, the Hon'ble CESTAT, Mumbai** held that if the appellant is only a beneficiary of transaction held between two other parties and is neither a service provider nor a service recipient, the appellant is therefore not liable to pay any service tax under Reverse Charge mechanism.

SERVICES RENDERED FOR FACILITATING EXPORT ARE NOT TAXABLE

In the case of **M/S APM Terminals India Pvt Ltd. vs Commissioner of Central Excise, Raigad, the Hon'ble CESTAT, Mumbai** held that as per Rule 6(6)(v) duty is not levied on inputs going to the export products. It is further provided that by virtue of export of goods or service, if an assessee is unable to adjust such input credit taken, he is entitled to refund of such CENVAT Credit taken under Rule 5 of the Cenvat Credit Rules, 2004.

ENTITLEMENT OF CENVAT CREDIT ON CONSTRUCTION SERVICES AND CONSULTING ENGINEERING SERVICES AVAILED PRIOR TO 1.4.2011

In the case of **M/s Prakruti Resorts Ltd. vs Commissioner of Central Excise, Raigad, the Hon'ble CESTAT, Mumbai** held that the appellant is entitled to take CENVAT Credit on the construction services and consulting engineering services availed by it during the financial year 2007-08 as they were disallowed only w.e.f 1.4.2011.

MERE HELPING A CLIENT IN EXECUTING THE EXPORT ORDERS IS NOT COVERED BY THE MANAGEMENT CONSULTANCY SERVICE

In the case of **Pushkar Steels (P) Ltd. vs Commissioner of Central Excise, Meerut-I, the Hon'ble CESTAT, New Delhi** held that mere helping a client in executing the export orders or in selecting granite blocks is not at all covered by the management consultancy service, as there is no element of any consultancy. The service provided has to be in relation to the management of an organization including advice, consultancy or technical assistance for rectification or improvement of system of the organization.

HIRING OF PAY LOADER FOR MECHANICAL TRANSFER WITHIN THE MINING AREA COMES UNDER THE PURVIEW OF CARGO HANDLING SERVICE

In the case of **Triveni Coal Transport Pvt Ltd. vs Commissioner of Central Excise, Nagpur, the Hon'ble CESTAT, Mumbai** held that activity of activity such as hiring of pay loader for mechanical transfer within the mining area is covered under the scope of cargo handling service and not under the scope of transportation of goods by road.

COMMITMENT CHARGES CANNOT BE SEPARATED FROM LENDING SERVICE AND ARE CHARGEABLE TO SERVICE TAX

In the case of **Punjab National Bank vs Commissioner of Central Excise & Service Tax. - Jaipur-II, the Hon'ble CESTAT, New Delhi** held that commitment charges recovered by the Bank are imposed to compensate for the loss of interest that the bank would have earned if the customer had drawn money from loan account. Therefore, commitment charges cannot be separated from lending service.

CENTRAL EXCISE

NOTIFICATIONS, CIRCULARS & INSTRUCTIONS

CBEC CLARIFIES ON AUDIT BY OFFICERS OF CENTRAL EXCISE

The Ministry of Finance vide **Notification No.23/2014–Central Excise dated 21st November, 2014** hereby exempts the following goods with their description in the table below from the whole of excise duty leviable:

Sl. No.	Category	Description of goods
(1)	Anti-Malarial drugs	**1.**Artemisinin based CombinationTherapy(ACT) for adults and pediatric use(Artemether 20mg + Lumefantrine 120 mg co-formulated tablet) **2.** Artesunate Injection Kit (InjectableArtemisinin Derivatives)
(2)	Diagnostics & Medical Products	**1.** Bivalent Rapid Diagnostic Test Kit (Pf and Pv specific) **2.** Long Lasting Insecticidal Nets (LLIN)

This exemption is subject to producing a certificate at the time of clearance of the said goods, before the ACCE or DCCE having jurisdiction, from an officer not below the rank of Deputy Secretary to the Govt. of India in the Ministry of Health and Family Welfare to the effect that the said goods are required for the Intensified Malaria Control Project (IMCP)-II under the National Vector Borne Disease Control Programme (NVBDCP), funded by Global Fund to fight AIDS, TB and Malaria (GFATM).

CLARIFICATION REGARDING AVAILMENT OF CENVAT CREDIT AFTER SIX MONTHS

The CBEC vide **Circular No. 990/14/2014-CX-8 dated 19th November, 2013** hereby gave clarification that the limitation of six months as per Rule 4(1) and 4(7) would apply when the credit is taken for the first time on an eligible document. It would not apply for taking re-credit of amount reversed, after meeting the conditions prescribed in these rules.

EXEMPTION TO SEZ FOR THE PROCEDURE OF SERVICE TAX REFUND

The Ministry of Finance vide **Order-Instruction-Central Excise F. No. B1/6/2013-TRU dated 25th November 2014** hereby amends the procedure prescribed under Notification No. 12/2013 for proper accounting and monitoring of benefit availed by SEZ Unit and developer. It also provides that SEZ units and developer may, if they so desire, route their application for issuance of authorization by department through the specified officer of SEZ instead of submitting directly to the department

COURT DECISIONS

SUPREME COURT DECISIONS

TRIBUNAL CANNOT DISMISS THE APPEAL FILED BY THE APPELLANT FOR WANT OF PROSECUTION

In the case of **Balaji Steel Re-Rolling Mills vs Commissioner of Central Excise and Customs, the Hon'ble Supreme Court** held that the Act does not give any power to the Tribunal to dismiss any appeal for default or for want of prosecution in case the appellant is not present when the appeal is taken up for hearing. The Tribunal should have decided the appeal on merits, even if the appellant was not present when the appeal was taken up for hearing.

HIGH COURT DECISIONS

INTEREST U/S 11AB ON LATE PAYMENT OF EXCISE DUTY

In the case of **KC. & Sons Appliances Pvt. Ltd. vs Union Of India**, **the Hon'ble Gujarat High Court** held that where an an assessee fails to pay excise duty by the due date, he is liable to pay the outstanding amount along with interest at the rate of 2% per month or for that matter 24% per annum, as notified by the Government in terms of Section 11AB of the Central Excise Act.

LEVY OF NCCD WHILE ALLOWING AREA BASED EXEMPTION UNDER NOTIFICATION NO.50/2003

In the case of **M/s. Bajaj Auto Limited Vs Union of India And Three Others., the Hon'ble Uttarakhand High Court** held that exemption granted by Notification No.50/2003 dated 10th June, 2003 must be read limited to the duty of excise as mentioned in the notification. It cannot be extended to cover any other kind of duty like NCCD.

TRIBUNAL HAS NO JURISDICTION TO ASK THE APPELLANT TO MAKE ANY DEPOSIT AS A PRE-CONDITION FOR FRESH ADJUDICATION

In the case of **Maa Mahamaya Industries Ltd. vs Commissioner Of Central Excise, Customs And Service Tax Visakhapatnam-I, Commissionerate, the Hon'ble Andhra Pradesh High Court** held that the Tribunal does not have any inherent power like Civil Court to pass appropriate order for the ends of justice. The Tribunal only has those powers that are mentioned in the statute itself.

CESTAT DECISIONS

CENVAT CREDIT CANNOT BE TRANSFERRED WITHOUT INPUT SERVICE DISTRIBUTOR REGISTRATION

In the case of **Mangalore Refinery & Petrochemicals vs. Commissioner of Central Excise, Mangalore, the Hon'ble CESTAT Bangalore** held that for the purpose of distributing CENVAT Credit on any input service received by manufacturing unit or an output service providing unit, to its own manufacturing unit or output service providing unit, an ISD registration should be taken.

CENVAT CREDIT OF TRANSFERRED UNIT CANNOT BE DENIED WHEN ALL ASSETS & LIABILITIES TRANSFERRED TO ASSESSEE

In the case of **M/s Jai Corporation Ltd. vs Commissioner of Central Excise Vapi, the Hon'ble CESTAT Ahmedabad** held that once all the assets and liabilities is taken over by the appellant, the appellant cannot be denied the CENVAT Credit which is lying in balance as unutilized credit.

CUSTOMS

NOTIFICATIONS & CIRCULARS

METHOD OF CALCULATION OF SAFEGUARD DUTY LEVIABLE ON IMPORT OF CARBON BLACK UNDER ADVANCE AUTHORIZATION SCHEME

The Ministry of Finance vide **Circular No. 11/2014-Customs dated 14th November, 2014** hereby clarifies that in the case of imports of carbon black against Advance Authorization Scheme, the applicable safeguard duty levied u/s 8C of the CTA, 1975 vide notification No.4/2012-Customs (SG) dated 05.10.2012 will be calculated as under:

- On import of carbon black from China, anti dumping duty is leviable @ USD 0.423 per kg vide notification No.9/2013-Customs (ADD) dated 26.04.2013. Though there is conditional exemption from ADD on such imports against Advance Authorisation vide notification No.96/2009-Customs dated 11.09.2009, the ADD payable is USD 0.423 per kg but for the exemption.

- Accordingly, safeguard duty leviable under section 8C of the CTA, 1975 will be 30% minus ADD payable, but for the exemption at the time of import i.e. 30% less USD 0.423 per kg. In a case where the SG duty payable is negative, the same shall be treated as NIL.

VALUATION/ ASSESSMENT PRACTICE IN RESPECT OF EXPORT OF IRON ORE

The CBEC vide **Circular No. 12/2014 –Customs 17th November, 2014** hereby lays down the procedure to be adopted by all Custom Houses to bring in uniformity, transparency and consistency in assessment of export of Iron Ore, fines and pellets. After the procedure is complete, the Custom Houses shall monitor receipt of Bank Realisation Certificates for the purposes of comparison with the final invoices submitted by the exporter to satisfy the accuracy of assessed values.

COURT DECISIONS

HIGH COURT DECISIONS

CONFISCATION OF GOODS IN CASE DUTY NOT PAID ON GOODS IMPORTED FOR BUSINESS PURPOSE

In the case of **Commissioner of Customs vs B.Dayalal Jain, the Hon'ble Karnataka High Court** held that where cigars are not meant for personal consumption but were meant for business and had foreign markings, duty is liable to be paid or else they are liable to confiscation under the Act.

FRAUDULENT CLAIM OF DUTY DRAWBACK AND MIS-DECLARATION OF GOODS

In the case of **Vineet Kumar Saggar vs Commissioner of Customs, the Hon'ble Punjab & Haryana High Court** held that charges levelled in the show cause notice stand established against the appellants where there is fraudulent claims of duty drawback and mis-declaration of goods.

INCOME TAX

NOTIFICATIONS, CIRCULARS & INSTRUCTIONS

The CBDT vide Office Memorandum hereby directs that the officials of the Income-tax Department must adhere to the following guidelines for achieving a non- adversarial tax regime:

- Cleanliness and punctuality should be implemented in letter and spirit for an efficient and taxpayer centric organization.

- Any appointment given to the public must be honoured and such appointments should not be cancelled or postponed without any unavoidable reason, especially when the assessee/representative is willing to attend.

- The Range Heads should ensure that frivolous additions or high-pitched assessments without proper basis are not made The Principal Commissioners of Income-tax/ Commissioners of Income-tax are required to supervise the work of their subordinates to ensure due discharge of these functions.

- Supervisory authorities are required to ensure that there is capacity building and improvement in the quality of work.

- Where scrutiny is selected only on the basis of AIRICIB/26AS information, the scrutiny shall be limited to that information. Wider scrutiny would be possible only with the sanction of PCIT/ CIT in specified cases and under the monitoring of the Range Head.

- Withholding of refunds due to mismatch of TDS data has been sought to be remedied which provides for grant of credit on the basis of evidence submitted by the assessee.

- Measures to deal with recovery of demand, stay of demand and grant of instalments should be implemented properly in the deserving cases.

- In cases of remand the CIT(Appeals) should specify the aspect which needs to be verified and the AOs would be required to submit a remand report only in cases where the remand is on a specific matter.

- Threshold limits have been set for appeals to ITA T, High Courts and Supreme Court at Rs. 4 lakhs, Rs. 10 lakhs and Rs. 25 lakhs respectively. However the officer concerned should ensure that where the tax effect is above these amounts, the same should be filed only if it is feasible to do so on merits of the case.

- The decision to file a reference before the High Court in case of SLPs should be taken in accordance with the decisions of the Principal CCIT.

- All the supervisory authorities are directed to ensure that the taxpayers' grievances are disposed off within the specified time period.

- Supervisory authorities have to ensure that the summons are issued only in deserving cases. The summons should also clarify the matter for which a person has been called.

COURT DECISIONS

SUPREME COURT DECISIONS

LEVY OF SURCHARGE ON TAX U/S 113

In the case of **CIT., Bangalore & Another vs. M/s. K. Raheja Hotels & Estate Pvt. Ltd.** it was held that provisions of Block Assessment u/s 158BC cannot be treated as declaratory/statutory or curative in nature and if the rate at which the tax is to be imposed is not stipulated or it cannot be applied with precision, then it would be difficult to tax a person.

VALIDITY OF WARRANT OF AUTHORIZATION ISSUED U/S 132(1)(b)

In the case of **Hemendra Ranchhoddas Merchant vs. Director of Income Tax (Investigation) & Others**, it was held that if a warrant of authorization u/s 132(1) of the Act is not raised in the memorandum of appeal so filed before the dissolution of the firm, then the assessee can raise the contentions and approach the authorities for returning/furnishing the copies of the seized documents appended to the warrant of authorization issued under Section 132 (1) (b) of the Act.

HIGH COURT DECISIONS

1. Only if the assessee is a beneficial owner of the shares besides being a registered shareholder, then only the question of assessment of deemed dividend u/s 2(22)(e) would arise. Thus it was held that the assessee not being a registered or beneficial shareholder is not liable to be taxed. *[CIT vs M/s. Printwave Services P. Ltd. (Madras High Court)]*

2. Where the contributions made by the assessee are in terms with providing medical benefits to the workers of the assessee under Standing Orders and Rules duly certified under the provisions of the Industrial Employment (Standing Orders) Act, 1946, then the assessee is eligible for such deduction u/s 37(1) of the Income Tax Act. [*CIT. Kolkata –I vs Bata India Ltd. (Calcutta High Court)]*

3. With respect to any sum received by the assessee from any of his employees to which the provisions of 2(24)(x) applies, assessee shall not be entitled to deduction of such amount in computing the income referred to in section 28 if such sum is not credited by the assessee to the employees' account in the relevant fund or funds on or before the due date as per explanation to section 36(1)(va) of the Act. *[CIT - I vs Checkmate Services P. Ltd.(Gujarat High Court)]*

4. Cash deposited in the Bank Account of the recipient shall be allowed as deduction u/s 40A(3) as there is no objective to evade tax. As per Rule 6DD of the Income Tax Act, payment of cash to the banks and other statutory agencies is recognized. Therefore, ince the cash has been deposited in the recipient's bank account , there is no reason to justify that the deposit of cash should be disqualified for allowances. *[CIT vs Grandhi Venkata Ramana, Rajahmundry (Andhra Pradesh High Court)]*

5. Interest u/s 234C of the Income Tax Act is to be calculated based on the date of presentation of cheque, if the cheque issued by the assessee is not dishonoured. *[CIT vs Repco Home Finance Ltd***.** *(Madras High Court)]*

6. Once the assessment u/s 143(3) or 147 of the Income Tax Act has been made for the relevant assessment year, no action shall be taken under this section after the expiry of 4 years from the end of the relevant year unless the assessee has failed to file a return u/s 139 or in response to a notice u/s 142(1) or u/s 148 of the Income Tax Act or disclose all material facts necessary

for the assessment year. *[CIT vs M/s. Ace Impex (Bombay High Court)]*

ITAT DECISIONS

1. Reference to District Valuation Officer cannot be made if assessee has challenged the valuation by the stamp authorities and even if the said challenge is dismissed on ground that as purchaser paid the duty, assessee had no locus standing to challenge stamp valuation. *[(Seksaria Industries Pvt. Ltd vs. ITO (ITAT Mumbai)]*

2. Where assessee had not claimed payment made to non-resident for providing engineering site services as expenditure but capitalised it and claimed only depreciation thereon, no disallowance could be made under section 40(a)(i).[*Muthoot Finance Ltd. v. ACIT (Cochin ITAT)]*

3. Reopening of case on the possibility that the assessee AOP may or may not be a taxable unit is based on surmise and presumption, and is therefore invalid. Hence entire proceedings u/s 147 are held as null and void, as reasons recorded by the A.O. do not give him jurisdiction to reopen the case u/s 148. [*Investeringsforeningen BankInvest vs. DDIT (ITAT Mumbai)]*

4. Reimbursement of share of costs towards administrative and management support services in connection with technology updates, etc is not taxable. Since, even the revenue does not deny the fact that they are reimbursement of expenses the assessee is not liable to deduct TDS u/s. 195 of the Act. *[DCIT vs. Ernst & Young Pvt. Ltd (ITAT Kolkata)]*

5. Area of projected terrace (open to sky) is not liable to be included within the meaning of expression "built-up area" of clause (c) of section 80IB(10). On the strength of the definition given u/s 80IB(14)(a) of the Finance (No.2) Act, 2004 the projected terrace falls within the meaning of words 'projections' and 'balconies' of section 80IB(14)(a) and the same is not a common area shared with other residential units. Thus as per section 80IB(14)(a) of the Act, such an area is liable to be included in the expression 'built-up area'. *[(Naresh T Wadhwani vs. DCIT (ITAT Pune)]*

6. Where the given or claimed expenditure on legal fees and proceedings is remotely connected or unconnected to carrying on of business of the assessee, then the same may not be allowable u/s 37 of the Income Tax Act. Thus, expenditure to defend in custom duty evasion criminal case, having no connection with carrying on of business, is held to be rightly disallowed by the AO.*[(Praveen Saxena vs. JCIT (ITAT Delhi)]*

WEST BENGAL TAXES

VAT

COURT DECISIONS

ASSESSEE CONSIDERED AS AN AGENT OF THE BORROWER WHERE IT SELLS VEHICLES OWNED BY BORROWERS ON DEFAULT IN REPAYMENT OF LOAN

In the case of **Tata Motors Finance Ltd.vs Assistant Commissioner of Sales Tax, the Hon'ble Calcutta High Court** held that WB VAT Act, 2003 does not make any distinction between a seller of its own goods or a seller of goods belonging to someone else. Where an assessee stands in a fiduciary relationship by an irrevocable Power of Attorney from borrowers for purpose of selling vehicles on default in repayment of loan, the assessee has to take care to sell the vehicle at a fair price. Thus, fact of agency cannot be denied in view of Power of Attorney. Hence, covered within the scope of 'dealer' u/s 2(11)(d) as agents/mercantile agents and liable to VAT.

'HEARING AID' SHOULD BE TREATED AS AN AID/ IMPLEMENT USED BY HANDICAPPED PERSONS AND SHOULD BE EXEMPT FROM VAT

In the case of **C. C. Saha Ltd.vs Sales Tax Officer, New Market Charge, the Hon'ble West Bengal Taxation Tribunal** held that **'Hearing aid**' should not be confined only to physically disabled persons as the word **"handicap"** encompasses all types of impairments and disabilities. Since 'Hearing aid' enhances quality of hearing therefore, it should be treated as an aid/ implement used by handicapped persons and an exempted item.

MANUFACTURER OF FERRO ALLOYS USING COAL AND COKE AS RAW MATERIALS CANNOT BE REGARDED AS 'DEALER OF COAL/COKE'

In the case of **Rohit Ferro Tech Ltd.vs Joint Commissioner of Sales Tax, Bowbazar Charge, the Hon'ble West Bengal Taxation Tribunal** held that as per section 2(11), dealer means any person who carries on business of selling or purchasing goods. However a manufacturer of ferro alloys cannot be regarded as 'dealer of coal/coke' as he is not engaged in the business of purchase and sale of coal/coke. Therefore, input tax credit for the same cannot be allowed.

QUERY & REPLY

QUERY – WB VAT

We are a concern selling furniture. An item was sold for Rs.1 lakh to a client. However, as per direction of the client, the costs incurred for transportation from our workshop to the clients premises were paid by us on behalf of the client, which is later on reimbursed to us. We raised two separate bills for the sale of furniture and the reimbursement of the transportation charges paid by us.

The department is of the view that sales tax should be payable on the said transportation charges. However, the said costs are not a part of the sale price. Please advise.

Name and Address Withheld

REPLY

Legal Content: As per Section 2(41) of the WB VAT Act, 2003, sale price does not include any costs incurred on behalf of the purchaser which are to be later on reimbursed by the purchaser.

Held in the case of **M/s India Potteries Limited vs ACCT Taltala Charge & Others, reported in (2009) 54 STA 52(WBTT),** that sale in the legal sense was completed at the time of issue of despatch clearance, and purchaser is liable to pay the freights at the agreed rate for obtaining physical delivery of the goods.

Explanation: The transportation being a post sale event, payment received as transportation charges is nothing but reimbursement of the transportation costs at the agreed rate.

Opinion

In the given case it is clear that the transportation costs have been incurred only after the risks and reward of the goods are transferred to the purchaser and that too on behalf of the purchaser. Therefore, the reimbursement received for the same is not liable to tax.

QUERY – SERVICE TAX

We are handling sub-contractors to a government undertaking. Our company rendered cargo handling services to this government undertaking in 2011-12 and raised an invoice with service tax. This Government undertaking further billed the final client and charged service tax. The government undertaking was of the opinion that since it has rendered the final service and it pays the service tax on such service, it need not pay the service tax on our invoice. It also specified on its payment receipt provided to us that that it will pay the tax to the Govt.'s exchequer directly by collecting it from the ultimate consumer. Hence, we haven't received any amount of service tax charged by us on the invoice. The government undertaking has deducted the amount of service tax from our invoice amount and paid us only for the value of services rendered. Now the Department is of the opinion that we should pay the service tax on the services rendered by us to the government undertaking even though we have not received the same. Please advise.

Name and Address Withheld

REPLY

Legal Content

In the case of **Invincible Security v. Commissioner of Central Excise, Noida, the Hon'ble CESTAT New Delhi** held that since service tax liability and interest had been discharged, though not by service provider but by the service receiver, there was only technical violation of relevant laws and since all duties have been remitted, the related demands were waived.

Also, in the case of **Royal Ocean Agency (P) Ltd. v. Union of India, [2011], the Hon'ble Calcutta High Court** held that when assessee was working as a sub-contractor and service tax on its behalf had been deposited with service tax authorities then taxing the appellant may lead to double taxation.

Opinion

While the above judgments support your case somewhat, there are also judgements which can go against your company. The matter is therefore disputable.