# Tax News

**PKF SRIDHAR & SANTHANAM**
**Chartered Accountants**

**In this Issue......**

## INCOME TAX

***Reminder for Jan-2013***

| Action Due | Due Date |
|---|---|
| TDS/TCS for Dec 2012 | 07-01-13 |
| PF for Dec 2012 | 14-01-13 |
| ESI for Dec 2012 | 21-01-13 |
| Quarterly TDS return for the quarter ending Dec 31, 2012 | 15-01-13 |



## SERVICE TAX

| Action Due | Due Date |
|---|---|
| Service Tax for Dec 2012 in case of company | 05-01-2013 |
| Service Tax for Dec 2012 in case of a company for which e-payment is mandatory. | 06-01-2013 |
| Service tax for Quarter ending 31st Dec in case of assessee other than company that makes payment electronically. | 06-01-2013 |
| Service tax for Quarter ending 31st Dec in case of assessee other than company that does not make payment electronically. | 05-01-2013 |

# INCOME TAX

## Important Circulars/ Notifications

**Search & Seizure:** As per provisions contained in section 153A and 153C of the Income Tax Act, 1961, the Assessing Officer is required to issue notice for assessing or reassessing the total income for six assessment years, immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made. The Central Government has amended the Income Tax Rules, 1962, to insert a new Rule 112F specifying the classes of cases in which the Assessing Officer shall not be required to issue notice in the above circumstance.

In such cases, the officer investigating the case, with the approval of the Director General of Income Tax, shall certify that:

(*i*) the search is conducted under section 132 in the territorial area of an assembly or parliamentary constituency in respect of which a notification has been issued under section 30, read with section 56 of the Representation of the People Act, 1951, or

(*ii*) the assets seized or requisitioned are connected in any manner to the ongoing election process in an assembly or parliamentary constituency, and

(*iii*) no evidence is available or investigation is required for any assessment year other than the assessment year relevant to the previous year in which search is conducted or requisition is made.

The certificate of the investigating officer shall be communicated to the Commissioner of Income Tax and the Assessing Officer having jurisdiction over the case of such person. *Circular No. 10/2012, Dated 31-12-2012.*

**Deductions in respect of profits and gains from industrial undertakings:** The Central Government has framed and notified a scheme for industrial park, by the notifications of the Government of India in the Ministry of Commerce and Industry (Department of Industrial Policy and Promotion). The Central Government hereby notifies the undertaking, being developed, maintained and operated by M/s. iLABS Hyderabad Technology Centre Pvt. Ltd., Hyderabad, as an industrial park for the purposes of the said clause (iii) subject to the terms and conditions mentioned in the annexure of the notification. Some key conditions are:

- The minimum investment on infrastructure development in an Industrial Park shall not be less than 50% of the total project cost. In the case of an Industrial Park which provides built-up space for industrial use, the minimum expenditure on infrastructure development including cost of construction of industrial space, shall not be less than 60% of the total project cost.

- Infrastructure development shall include, roads (including approach roads), water supply and sewerage, common effluent treatment facility, telecom network, generation and distribution of power, air-conditioning and such other facilities as are for common use for industrial activity which are identifiable and are provided on commercial terms.
- No single unit referred to in column (2) of the Table given in sub-paragraph (b) of paragraph 6 of S.O. 354(E) dated the 1st April, 2002, shall occupy more than fifty per cent of the allocable industrial area of an Industrial Park. For this purpose a unit means any separate and distinct entity for the purpose of one and more state or Central tax laws.
- Necessary approvals, including that for foreign direct investment or non-resident Indian investment by the Foreign Investment Promotion Board or Reserve Bank of India or any authority specified under any law for the time being in force, shall be taken separately as per the policy and procedures in force.
- M/s. iLABS Hyderabad Technology Centre Pvt. Ltd., Hyderabad, shall continue to operate the Industrial Park during the period in which the benefits under clause (iii) of sub-section (4) of section 80-IA of the Income-tax Act, 1961 are to be availed.
- In case the Industrial Park did not commence by the prescribed date, fresh approval will be required under the Industrial Park Scheme, 2008 subject to the applicability under that Scheme for availing benefits under sub-section 4(iii) of Section 80-IA of the Income Tax Act, 1961. *Notification No. 55/2012 [F.NO. 178/49/2009-ITA-I], Dated 28-12-2012.*

## SC / HC Judgments

**Taxability of costs incurred to bring assets to working condition:** The assessee was in the business of promoting and establishing telecom services and allied activities, including mobile and cellular services. It leased certain plant and machinery to M/s. Bharti Telenet. The expenditure incurred towards installation of these plant and machinery, was claimed as a deduction, debiting it to the profit and loss account. Also, expenses that were incurred for procuring software necessary for running the hardware that was leased out, was shown as deferred revenue expenditure and claimed as a deduction. The assessing officer disallowed both these amounts. The CIT (Appeals) and the Tribunal upheld the AO's order. The HC held that:

- The Supreme Court in *Challapalli Sugars Ltd. v. CIT* had held that expenditure necessary to bring into existence and to put the assets in a working condition would be capital in nature. In this case clearly the authorities have applied the test and correctly held the expenditure in question to be capital in nature.
- The software procured was for bringing the leased hardware into a working condition. The Tribunal

correctly held that the test to discern whether the expenditure incurred by the assessee in this regard was capital or revenue did not in any manner differ from the content or character which were applicable while considering issue No.1. Hence the expenditure incurred on procuring the software is capital expenditure and no deduction can be claimed on it. *2012-TIOL-1044-HC-DEL-IT.*

**Benefit u/s 80JJA available for sugar industry:** Assessee, an individual, was engaged in the business of manufacturing fuel briquettes from bagasse. It had filed its Return after claiming deduction u/s 80JJA. During assessment, AO disallowed the claim for deduction u/s 88JJA on the ground that bagasse was not a waste; it was not generated in municipal/urban limits i.e. by local authorities; it was not collected but it was purchased and the process of its manufacture had not involved any treatment or recycling of a biodegradable waste. Both CIT(A) and the Tribunal allowed the assessee's appeal.

Before HC, the Revenue submitted that bagasse which was purchased by the respondent was not a waste but a by product of sugar industry. Also, as per a circular of CBDT, the intention behind the insertion of section 80JJA was to encourage local bodies to manage waste arising in Urban areas. Thus the benefit was available only to local bodies. Therefore, Section 80JJA could not be applied in this case. The High Court held that:

- Bagasse is a waste of the sugar factory. This waste is a bio-degradeable waste and the same is collected on consideration by the assessee from the factory. The fact that sugar industry also regards bagasse as waste is evident from Circular dated 4/2/2006 issued by the Sugar Commissioner, Pune. Besides the ITC classification of the Exim policy also classifies bagasse as a waste of sugar industry under Chapter 23.
- Collection of waste does not necessarily mean collecting free of charge. The assessee collected bagasse from sugar factories after having made payment for the same. Therefore, the aforesaid requirement of collecting as provided u/s 80JJA is satisfied.
- The reliance upon the circular No.772 dated 23/12/1998 by the appellant is misplaced. The aforesaid Circular does not restrict its benefits only to local bodies. In any event the circular cannot over ride the clear words of Section 80JJA which provides deduction in respect of profits and gains derived from the business of collecting and processing/treating of bio- degradable waste i.e. bagasse into briquettes for fuel. Revenue's appeal was dismissed. *2012-TIOL-1022-HC-MUM-IT.*

**Letting out building with furniture and fixtures:** Assessee was an individual carrying on business in the name of Garg Dyeing and Processing Industries. The AO noted that the rent received consisted of three components i.e. (1) rent for building, (2) rent for the furniture, fittings and fixtures and (3) charges for the maintenance of the above. Since the rent was composite, AO was of the view that it was assessable under the head "income from other sources" u/s 56 and consequently the deductions claimed by the assessee u/s 24 were not allowed. The assessee had contended that the rent received was not composite and it was the prevailing practice that commercial buildings were generally let out with additional facilities such as furniture and fixtures, air conditioner, electricity backup, false ceilings, generators, water tanks etc.

The AO held that the premises were let out on condition that the assessee was to provide certain facilities and apart from these there were also specifications for sound-proofing for windows etc. AO therefore, took the view that the provisions of Section 56(2)(iii) were applicable and that the letting out of the machinery, plant and furniture and the letting out of buildings were inseparable and therefore the rental income was chargeable to tax under the head "income from other sources". CIT(A) ruled in favour of Revenue, while the Tribunal ruled in favour of the assessee. Upon appeal, the High Court held that:

- The intention of the parties was that there was to be a single inseparable letting as evidenced by a composite lease deed for which a consolidated lease rent was fixed.

- The rental income in this case needs to be treated as "income from other sources". *2012-TIOL-991-HC-DEL-IT.*

## Tribunal Judgments

**Expense incurred for Investments in tax-exempt mutual fund:** The issue before the Tribunal was - when the assessee made investments in mutual fund from which income was tax exempt, whether expenses incurred for investments were to be disallowed u/s 14A, irrespective whether any dividend was earned or not from those investments. The Tribunal held that:

- The assessee had made investment in mutual fund, from which if income was received, would have been tax exempt. Therefore, whether any income had actually been earned or not, expenses incurred in relation to the said investment which was not going to result into any taxable income, had to be disallowed u/s 14A. *2012-TIOL-775-ITAT-MUM.*

**Deduction made against Advance received from customers:** The assessee-company was carrying on the business of product sales and job contracts. The profits on contracts had been recognized on percentage of completion method as per AS 7 and offered for taxation accordingly. AO made an addition on account of TDS claimed by the assessee on advance received from customers.

Assessee contended that AO had misunderstood that the advance received against running contracts was after deduction of TDS, and so considered the advance amount as assessee's income which was factually wrong. As per Sec 99, credit for TDS should be given to the assessee for the amount so deducted, on the production of the certificate furnished u/s 203 in the AY in which such income was assessable. Such income was included in the value of the jobs completed during the year as well as jobs which were in work-in-progress and considered as income based on percentage completion method of recognizing income. Earning of income was a continuous, indivisible process embedded in the business dynamics especially in the case of contractors' job contract accounting. Section 199 does not contemplate that there should be immediate nexus between the income as such and the TDS made out of a particular payment. Thus, addition should be deleted.

CIT (A) allowed the appeal of assessee observing that no addition is warranted as these are not advances on account of receipt but are on account of advance on running jobs. Upon appeal by the Department, the ITAT held that:

- The assessee has shown contract sales revenue after reducing advance received, which implies that the said advance has not been considered as income of AY 2008-09 but considered as liability in the balance sheet. If credit for TDS corresponding to advance would have been claimed by the assessee, the AO would have been fully justified in denying credit of the said TDS as the corresponding advance were not offered to tax for the relevant year, but it is not understandable as to why the advance should be brought to tax only during the year under appeal. The assessee has neither offered advance to tax in the relevant year nor claimed credit for TDS corresponding to the said advance.
- As per TDS clauses of the Act, the tax deduction has to match in time, the earlier of the payment (receipt) or accrual. The deduction of tax at source does not necessarily match alongside the corresponding income, recognition of which by the recipient could be either on accrual or on receipt basis. There is thus an inherent mismatch, in terms of time, between the payment of tax (per TDS) and the accrual of tax liability against the corresponding income. It is in view of, and to address this mismatch in time, so that the tax stands deducted while the corresponding income is yet to accrue, the law clarifies that the credit for the TDS shall be available for the year for which the corresponding income is assessable.
- The important conditions for getting benefit of TDS as per section 199 of the Act are (a) the assessee should produce the certificate for the amount of tax deducted at source and (b) show that income subjected to TDS is disclosed in the return of the assessment year as 'assessable'. The assessee will not be entitled to have benefit or credit for the amount though mentioned in the certificate for the AY if income relatable to the amount is not shown and is not assessable in that AY.
- In the present case, the assessee has been following accounting for construction contracts prescribed by the AS 7 since its inception. Benefit for TDS is to be allowed as per Sec 199 of the Act. Accounts regularly maintained

in the course of business have to be taken as correct unless there are strong reasons to indicate that they are unreliable and incorrect. Thus, the view taken by CIT (A) that addition is not warranted is confirmed. *2012-TIOL-765-ITAT-DEL.*

**Valuation of closing stock upon conversion of firm into company:** The assessee was a partnership firm, carrying on jewellery and diamond business. The partnership firm was converted into a private limited company on 1st January, 2008, on a going concern basis, without any interruption. All the assets, liabilities, etc. of the erstwhile firm vested with the company on incorporation, as provided u/s 575 of the Companies Act, 1956.

The AO held the view that on conversion of the firm into a company, the business of the firm needed to be considered as dissolved and the closing stock of the firm was to be valued at market price and the profit of the firm had to be computed on the basis of that market value of jewellery. Also, since the assessee was collecting old gold jewellery from its customers and in its place selling new ornaments, the AO held that the assessee firm was making cash payments equivalent to the value of the old ornaments purchased and to that extent there was violation of Sec 40A(3). The AO held that in all such cases cash payments exceeded the limit of Rs. 20,000/- and such payments need to be disallowed.

The Tribunal held that:

- The purchase of old gold was only part of exchange of old jewellery against sale of new jewellery to the same person and there was no de facto payment of cash by the assessee to the customers. So provisions of section 40A(3) were not applicable.
- The business of the firm was never discontinued, but was taken over on succession by another firm. Where there is no discontinuance of business the closing stock is to be valued at cost or market price, whichever is lower. *2012-TIOL-757-ITAT-MAD.*

**Rental income from residential property owned by company:** The assessee company was owner of two flats. The same were given on rent to the MD of the assessee company and her daughter. The income was treated as business income and the actual rent received had been shown as annual value. Assessee contended that the property had been held as a business asset and as per memorandum of association, it was business of the company to let out properties. Thus, the rental income should be assessed as business income. As regards annual letting value, assessee submitted that the flats were occupied by tenants since last several years and it was not possible to revise the rent with respect to market value.

AO did not accept the claim of assessee stating that leasing out the property could not be considered as trade or commerce. He assessed the rental income under the head “house property”. AO did not accept the argument that the fair rental value should be assessed on the basis of rent received. AO calculated the rent based on market rates. The ITAT held that:

- The assessee had received rent from letting out of the property being flats and therefore, income has to be assessed as income from house property. However, the assessee has raised a plea that the part of the property i.e. 65% had been let out to the director for her residence which had to be treated as business user of the property and in such cases income from such asset has to be treated as business income. The balance 35% rental income from shareholder is treated as income from house property.
- The provisions of Rent Control Act can be applied only in case of bonafide letting out of properties and not in case of colourable transactions which are only an arrangement to reduce tax liability. In this case the company had let out the property to the daughter of the director who controlled the company and is responsible for taking all decisions. Instead of letting out the property at market rate which is very high, the director had let out property to her daughter at a very low rent, obviously to reduce tax liabilities. Therefore, the provisions of Rent Control Act cannot be applied to such arrangements. Annual value in relation to part of the property let out will be the fair rent in the market based on comparable cases. *2012-TIOL-754-ITAT-MUM.*

**Taxability of royalty under retrospective law & reimbursement of expenses:** The assessee, a USA company, received Rs. 6.41 crores towards reimbursement of international telecom connectivity charges. The assessee claimed that the said amount did not fall within the definition of “royalty” in Article 12 of the India-USA DTAA apart from the fact that as it was a “reimbursement of expenses“, it was not income. The department claimed that irrespective of the position under the DTAA, in view of the retrospective insertion of Explanation 5 to s. 9(1)(vi) by the FA 2012 w.r.e.f. 1.6.1976, the said amount had to be assessed as “royalty“. On appeal by the assessee to the Tribunal, held:

- A retrospective amendment to the Act has no bearing on the DTAA because s. 90(2) makes it clear that the provisions of the Act shall apply only to the extent that it is favourable to the assessee. Further, though the DTAA provides that the laws in force in India shall govern the taxation of income, this is subject to the exception that there is nothing to the contrary in the DTAA. Similarly, under Article 3(2), as the term “royalty” is defined in Article 12, the definition in s. 9(1)(vi) will have no application.
- Even if the retrospective amendment applied, the amount would not constitute “royalty” because it was not received “for the use or right to use any industrial, commercial or scientific equipment” owned by the assessee. The equipment was owned by the telecom operators and the amount could be considered as royalty

in their hands but not in the hands of an intermediary like the assessee who merely made the payment and got the reimbursement.

- Further, the said amount, being a pure reimbursement of expenses without any mark up cannot be considered as income in the hands of the assessee. *WNS North America Inc vs. ADIT (ITAT Mumbai), December 18th, 2012.*

**Transfer Pricing:** The assessee provided software research development services to its USA based AE and was remunerated on a 'cost plus' basis. The assessee claimed that applying the TNMM and using operating profits to cost as the Profit Level Indicator ("PLI"), its PLI of 9.98% was at arms length. The TPO & DRP rejected the assessee's claim and computed the PLI at 24.35% and made an adjustment of Rs. 6.20 crores. The Tribunal held that:

- S. 92C & Rule 10B(2) clearly lay down the principle that the turnover filter is an important criteria in choosing the comparables because significant differences in size of the companies would impact comparability even if there is no functional difference in their activities. As the assessee's turnover is Rs. 47 crores, only companies with a turnover between Rs. 1 to Rs. 200 crore should be considered for comparability.
- There is no bar to considering companies with either abnormal profits or abnormal losses as comparable to the tested party, as long as they are functionally comparable. This issue does not arise in the OECD guidelines and the US TP regulations because they advocate the quartile method for determining ALP under which companies that fall in the extreme quartiles get excluded and only those that fall in the middle quartiles are reckoned for comparability. Cases of either abnormal profits or losses (referred to as outliners) get automatically excluded. However, Indian regulations specifically deviate from OECD guidelines and provide Arithmetic Mean method for determining ALP. In the arithmetic mean method, all companies that are in the sample are considered, without exception and the average of all the companies is considered as the ALP.
- Though the functions performed by offshore service providers and onsite service providers is the same, i.e. development of computer software, under Rule 10B(2)(b) one has to have regard to the functions performed, taking into account assets employed or to be employed and the risks assumed by the respective parties to the transactions. Since, the entire operations of the assessee took place offshore i.e. in India; it should be compared with companies with major operations offshore, due to the reason that the economics and profitability of onsite operations are different from that of offshore business model.
- The TPO is entitled to collect information u/s 133(6) though if it is sought to be used against the assessee, it must be furnished to the assessee and his objections taken into account. *Trilogy E-Business Software India vs. DCIT (ITAT Bangalore), December 27th, 2012.*

# SERVICE TAX

## Important Circular / Notification

- **Services of Life Insurance business:** The Central Government, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.25/2012-Service Tax, dated the 20th June, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), number G.S.R. 467 (E), dated the 20th June, 2012, namely:-

  In the said notification, after entry 26, the following shall be inserted namely:-

  "26A. Services of life insurance business provided under following schemes -

  - Janashree Bima Yojana (JBY); or
  - Aam Aadmi Bima Yojana (AABY);".

  *Notification No.49 /2012 - Service Tax,* New Delhi, the 24th December, 2012

**Service tax on services by way of transportation of goods by rail/vessel**: It is clarified that the service by way of transportation of milk by rail or a vessel from one place in India to another, is covered by the Notification No.25/2012-ST dated 20.06.2012. *Circular No.167/2 /2013 - ST*

**Clarification in respect of notices/ reminder letters issued for life insurance policies:** It has been represented by life insurance companies that in terms of the practice followed, reminder notices/letters are being issued to the policy holders to pay renewal premiums. Such reminder notices only solicit furtherance of service which if accepted by policy holder by payment of premium results in a service. Clarification has been desired whether service tax needs to be paid on the basis of such reminders.

The matter has been examined. Under the Point of Taxation Rules 2011, the point of taxation generally is the date of issue of invoice or receipt of payment whichever is earlier. The invoice mentioned refers to the invoices as issued under Rule 4A of the Service Tax Rules 1994. No tax point arises on account of such reminders. Thus it is clarified that reminder letters/notices for insurance policies not being invoices would not invite levy of service tax. In case of issuance of any invoice, point of taxation shall accordingly be determined. The above clarification is issued only for life insurance sector. *Circular No.166/1/2013 –ST.*

## SC / HC JUDGMENTS

**Runways are similar to Roads:** The appellant was registered as Service Tax Provider and carried on the business of maintenance and repairs of roads including runways at different airports. A show-cause notice was issued to the appellant seeking to tax the appellant's service of maintaining and repairing roads and runways under the head 'Management, Maintenance or the repairs of properties whether immovable or not' under Section 65(64) of the Act. The CCE & Customs, Nagpur confirmed the demand and imposed penalties.

In appeal before the CESTAT, the appellant pointed out that no service tax was payable in respect of repairs of roads as the same were exempted with retrospective effect from 16/6/2005 to 26/7/2009 by virtue of Section 97 of the Finance Act, 2012. It was also submitted that vide notification 24/2009-ST, dated 27/7/2009 the Central Government had exempted service tax leviable in relation to maintenance and repairs of roads. The CESTAT held that repairs and maintenance of roads were exempted from service tax and, therefore, demand made by the revenue to that extent was not tenable. However, the Tribunal took a view that the repairs and maintenance of runways at airports was chargeable to service tax. Upon appeal, the Bombay High Court held that:

- Prima facie, Runways at the airports are species of the genus "road". Therefore, the runways should also normally receive the same treatment as roads for service tax purpose.

- As the amount involved in the appeal is over Rs.10 crores, the Tribunal is directed to hear the appeal on merits itself at the earliest and hopefully within a period of three months. The appeal was disposed of accordingly. *2012-TIOL-1030-HC-MUM-ST*.

## CESTAT JUDGMENT

- **Separate Service Tax registrations do not necessarily imply separate legal entities:** The appellant was the logistic division of M/s. Mahindra and Mahindra Limited. It was providing various logistics services to another division - Farm Equipment Sector (FES) Division - of Mahindra and Mahindra Ltd.

  A show cause notice was issued for demand of service tax for the logistics services provided by the appellant to their FES division for the period Dec 2007 to March 2010, which was confirmed by the CCE, along with interest and various penalties, and so the appellant was before the CESTAT.

  The appellant submitted that it was one of the divisions of M/s Mahindra and Mahindra Limited and by taking separate service tax registration it could not be held that both the divisions were separate legal entity. Therefore, service tax demand was not sustainable. The Bench observed -

- We find that Mahindra and Mahindra Limited is a legal entity which is having two separate divisions. Merely by taking two separate service tax registrations it cannot be said that both are separate legal entities. Therefore, demand for the period 15/12/2007 to 10/09/2008 is not sustainable. *2012-TIOL-1919-CESTAT-MUM.*

**Money Transfer from abroad is Export of Service:** PML entered into an agreement with M/s Western Union Network Ltd, Ireland, a company engaged in money transfer from persons located in one country to persons located in any country. The contract entered into between the two parties dealt with both inward and outward remittances to/from India. However it was affirmed by PML that they did not do any outward remittances as they did not have the RBI permission to do so. So the dispute before the Tribunal was in relation to remittance from persons abroad to persons in India.

In this business, the person located abroad approaches any of the offices of the Western Union or its agents and give money to be remitted to a person in India. The office abroad charges the person abroad commission for remitting money to India. They convert the foreign exchange into Indian rupees and pay the recipient in India after ensuring the identity of the person to whom the money is delivered. No charges are levied from the recipient of money in India. PML gets its remuneration from Western Union by sharing the commission collected from the person abroad. It also make some profits due to changes in exchange rate between the date of receipt of money abroad and date of delivery of equivalent Indian Rupees in India. However, this profit is subject to the risk of loss if the exchange rate changes adversely for the Western Union and its agents.

PML did some promotional activities like advertising, organizing promotional programs, distributing promotional material etc. which was reimbursed by Western Union.

PML appointed sub-agents within the territories allotted to them to establish a large number of outlets in the area to make it easy for the recipient in India to get the money easily without much travel and hassles. PML compensates these sub-agents by sharing the commission received by them from Western Union. The question was whether service provided by PML could be classified as 'Business Auxiliary Service' as defined under section 65(105) (zzb) of Finance Act, 1994, and so PML should pay service tax on the commission received by them in this business from Western Union. The CESTAT held that:

- The consumer of the service provided by the Agents and sub-agents of WU in India is the Western Union, located abroad who use this service for their money transfer business not the persons receiving money in India. Since the service provided is Business Auxiliary Service classifiable under Section 65(105)(zzb) read with Section 65(19) of the Finance Act, 2005, and has been provided, received and used abroad, and the payment for the service has been received in India in convertible foreign currency, the same has to be treated as export of service. The destination has to be decided on the basis of the place of consumption, not the place of performance of Service. No service tax is payable.

- Reimbursement of advertisement and sales promotion activities received from WU is not taxable as the same are for the services provided to WU, which are export of service. *2012-TIOL-1877-CESTAT-DEL.*

**Legal and customer support activities are to be treated as Input Service:** The appellant was engaged in providing Business Auxiliary Services to its customers located abroad. For rendering these services, it used various input services such as legal services, market data, payroll processing, customers support activities etc. The appellant filed a refund claim for the service tax paid on input services under Rule 5 of CENVAT Credit Rules, 2004, on the ground that it was unable to utilize the credit inasmuch as all its output services were exported. The lower appellate authority rejected the refund claim on the ground that there was no direct nexus between input services received and output service rendered. Upon appeal, the CESTAT held:

- Any service which has nexus with the business activity of the appellant, whether it is manufacturing or rendering service, has to be treated as "input service" coming within the purview of Rule 2(1) of the CENVAT Credit Rules, 2004.
- All the services utilised by the appellant are essential in running the business of rendering the output service 'Business Auxiliary Service' which is exported. So they areto be treated as 'input service'. *2012-TIOL-1854-CESTAT-MUM.*

**Service Tax on Technical knowhow service:** The applicant was a manufacturer of bulk drugs and was having separate Research and Development Division which provided technical knowhow service to other companies. Alleging that service tax was payable, a demand was raised and the same was confirmed by the CCE, Raigad. The Revenue submitted that as the appellant had raised invoices for technical know services which are classified under the category of 'Scientific and Technical Consultancy Services', it was immaterial whether or not it had received the amount. The applicant submitted that it had not received any amount towards providing the above service, therefore, it was not liable to pay any service tax at all. The CESTAT Bench observed:

- Prior to May 2008 service tax was payable on receipt basis and the applicant had not received any amount towards this service. Therefore, the applicant has made out a case for 100% waiver of pre-deposit. *2012-TIOL-1789-CESTAT-MUM.*

**Service Tax paid on leased telecom lines available as CENVAT credit:** The appellant was a 100% EOU engaged in providing "Business Auxiliary Services". It filed refund claims which were rejected by the lower authorities on the following three grounds -

- a part of the amount on which CENVAT credit was taken was distributed by its Head Office as Input service distributor and at the relevant time the Head Office was not registered as an input service distributor and, therefore, it could not have distributed the input service tax credit.
- the other part of the refund claim was rejected on 'directly availed services' on the ground that the service provided by the telecom service providers who leased the telecommunication lines to the appellant and charged service tax on the same, was not an eligible input service.
- the appellant has not directly exported the output service from its premises but has routed the same through telecom authorities located in India and, therefore, the definition of export is not satisfied.

The CESTAT observed:

- For leased telecom lines, the appellants are rightly entitled for Service tax credit and refund thereon for the reason that the exports are undertaken electronically and to undertake this export they need dedicated lines from their office premises to the telecom authorities, who will receive the data for transmitting the same abroad. Without these dedicated lines, the appellant cannot deliver the output service and, therefore, leasing of telecom lines by the telecom authorities is an eligible input service as defined in Rule 2(l) of the CENVAT Credit Rules, 2004.
- As regards the denial of CENVAT Credit on the services tax distributed by the Head Office the only ground for denial is that the Head Office was not registered as Input service distributor. However, this requirement for registration came only in 2006 and prior to this there was no such requirement. Therefore, if it can be established that input service in respect of which the credit is taken is required for providing the output service, the appellant would be rightly entitled for the credit of the service tax paid thereon.
- As regards the third contention that the appellant has not exported the output service because the service was transmitted through telecom service providers in India, this view adopted by the Revenue authorities is completely irrational. When data is transmitted through electronic medium, it has to be first transmitted to a server of the telecom authorities in India and thereafter uplinked/transmitted to the foreign service recipient. In the instant case, there is no doubt that the foreign service recipient has received the output service and has made payment in convertible foreign exchange to the appellant towards the services received. Therefore, there is no reason to sustain the order of the lower authorities in this regard. *2012-TIOL-1799-CESTAT-MUM.*

# OUR OFFICES

| Head Office | Branches: | Branches: |
|---|---|---|
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