Tax News

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INCOME TAX

Reminder for July 2013

Action Due	Due Date
TDS/TCS for June 2013	07-07-13
PF for June 2013	15-07-13
ESI for June 2013	21-07-13
Due date for filing of TDS return for the qtr ended 30th June 2013	15-07-13
Due date for issuing TDS certificate for the first Quarter	30-07-13
Due date for filing of IT return	31-07-13

SERVICE TAX

Action Due	Due Date
Service Tax for June 2013 in case of company	05-07-2013
Service Tax for June 2013 in case of a company for which e-payment is mandatory.	06-07-2013
Service tax for qtr ending 30th June in case of assessee other than company that makes payment electronically.	06-07-2013
Service tax for Quarter ending 30th June in case of assessee other than company that does not make payment electronically.	05-07-2013

INCOME TAX

Important Circulars / Notifications

- **Income Tax (8th Amendment) Rules:** The Central Board of Direct Taxes has prescribed rules that may be called the Income-tax (8th Amendment) Rules, 2013. In brief, after rule 21AB, the following rule shall be inserted, namely, 21AC"Furnishing of authorization and maintenance of documents etc. for the purposes of section 94A**.** Under this rule, for the purposes of clause (a) of sub-section (3) of section 94A, the authorization to be submitted by the assessee, shall be in Form No. 10 FC. *Notification No. 47/2013 dated 26-Jun-2013.*

- **Commodities Transaction Tax Rules, 2013:** The Central Government has notified rules relating to commodities transaction tax, which shall come into effect from July 1, 2013. In brief the notification describes the definitions and rules regarding:
  - Exempted Agricultural commodities
  - Rounding off value of taxable commodities transaction, commodities transaction tax, etc.
  - Payment of commodities transaction tax
  - Procedure for filing Return of taxable commodities transactions
  - Time limit to be specified in the notice calling for return of taxable commodities Transaction
  - Notice of demand
  - Prescribed time for refund of tax to the person from whom such amount was collected
  - Form of appeal to Commissioner of Income-tax (Appeals)
- **Income-tax (Seventh Amendment) Rules, 2013:** These rules shall come into force with effect from the 1st day of April, 2013. In rule 12, sub-rule (2) after the words, letters and figure "Form No. ITR-6" the words, letters and figure "or Form No. ITR-7" shall be inserted. As per these rules:
  - where an assessee is required to furnish a report of audit specified under sub-clauses (iv), (v), (vi) or (via) of clause (23C) of section 10, section 10A, clause (b) of sub-section (1) of section 12A, section 44AB, section 80-IA, section 80-IB, section 80-IC, section 80-ID, section 80JJAA, section 80LA, section 92E or section 115JB of the Act, he shall furnish the same electronically.
  - a person claiming any relief of tax under section 90 or 90A or deduction of tax under section 91 of the Act, other than a person to whom clause (aaa) or clause (ab) is applicable, shall furnish the return for assessment year 2013-14 and subsequent assessment years in the manner specified in clause (ii) or clause (iii).
  - a person who is required to furnish any report of audit referred to in proviso to sub-rule (2) electronically, other than a person to whom clause (aaa) or clause (ab) of the first proviso is applicable, shall furnish the return, in

Form as applicable to him, in the manner specified in clause (ii) or clause (iii). *Notification No. 42/2013 dated 11-Jun-2013.*

- **Income-tax (Sixth Amendment) Rules, 2013:** These rules shall come into force with effect from the 1st day of April, 2013. The rules have expanded upon the definition of "associated enterprise" and "enterprise" as defined in sec 10A, 92A and 92F. Rule 10A has been renamed as Rule 10AB, and in rule 10AB, after the words "international transaction", the words "or a specified domestic transaction" shall be inserted. Details are in *Notification No. 41/2013 dated 10-Jun-2013.*

SC / HC Judgments

- **Debt barred by Limitation: Assessee,** an Indian company, was engaged in the business of trading in agricultural commodities. For the AY 2008-2009 it showed a loss and declared taxable income as nil. During assessment, the AO examined the balance sheet, and noted that a significant sum was shown as sundry creditors, which was outstanding for several years. The AO called upon the assessee to provide confirmations from the creditors regarding the balance outstanding to their credit, which the assesse could not provide.

  The AO held that the liabilities in respect of sundry creditors, which were lying unclaimed since several years, were liable to be added back to the income of the assessee u/s 41(1). The AO was of the view that there was cessation of these liabilities as there was no possibility of the creditors claiming the same in the near future.

  The assessee explained that the sundry creditor (EOVL) was also a debtor, and thus in net terms, the amount payable to EOVL was liable to be adjusted against the amount receivable from EOVL, and thus there could not be any cessation of liability towards the said creditor. It was, thus, contended by the assessee that, since the assessee continued to acknowledge the credit balances in the subsequent balance sheets, there could be no cessation of its liability to pay the creditors. The Tribunal upheld the assessee's contention. Upon appeal by Revenue, the High Court held that:

  - The Supreme Court in the case of '*Bombay Dyeing and Manufacturing Co. Ltd.' v. State of Bombay* has clearly held that even in cases where the remedy of a creditor is barred by limitation, the debt itself is not extinguished, but merely becomes unenforceable. In the present case, the assessee is acknowledging the debt payable to EOVL and there is no material to indicate that the parties have contracted to extinguish the liability. Thus, it cannot be concluded that the debt owed by the assessee stood extinguished.
  - It is also not possible to conclude that the debt has become unenforceable. It is well settled that reflecting an amount as outstanding in the balance sheet by a company

amounts to the company acknowledging the debt for the purposes of Section 18 of the Limitation Act, 1963 and, thus, the claim by EOVL can also not be considered as time barred.

- In order to attract the provisions of Section 41(1), there should have been an irrevocable cession of liability without any possibility of the same being revived, which is not the case here. So Revenue's appeal is dismissed. 2013-TIOL-449-HC-DEL-IT***, May 30, 2013.***

➢ **Writing off bad debt:** Assessee**,** a private limited company, was engaged in the business of dealing and servicing motor vehicles and had taken certain property on lease from three landowners for a period of three years renewable for two further periods of 3 years each. The property consisted of a plot of land whereupon the lessors were required to build a warehouse cum workshop and hand over the same to the assessee. In this regard, the assessee advanced certain sums to the lessors which were liable to be adjusted against monthly rent. In addition to the advance paid by the assessee to the lessors, the assessee also incurred substantial expenditure on the development and interiors of the property.

However, the workshop was demolished by the DDA as the land belonged to the DDA and not the lessors. The assessee, thereafter, filed a suit in HC which was still pending before HC for recovery of the sums advanced by the assesse to the lessors. Assessee had written off the sum as irrecoverable in the previous year. During assessment, the AO had disallowed such write offs on the basis that the amount represented capital expenditure. Upon appeal, the HC held that:

- The assessee had come to a conclusion that chances of recovery, of the amounts claimed from the lessors, in the near future were remote and had therefore written off the amount as irrecoverable in the previous year.
- For an assessee to claim deduction in relation to the bad debts it was not necessary for the assessee to establish that the debt had become irrecoverable and it was sufficient if the assessee formed such an opinion and wrote off the debt as irrecoverable in its accounts. 2013-TIOL-393-HC-DEL-IT**.**

➢ **Trust for medical education: Assessee,** a public charitable educational Trust, registered under the provisions of the Rajasthan Public Trust Act, 1959, filed writ contending that the assessee Trust was established solely for educational purpose and since its inception, was imparting education in several of its institutions. It was further stated that the Trust was registered under the provisions of Section 12A(a) for availing exemption u/s 11 and 12 thereof.

The Trust filed an application seeking exemption of its income u/s 10(23C)((vi). The application was rejected on the ground that the Trust had violated the procedure of admission into its medical college as laid down by the Government / Medical Council and, therefore, it had not qualified as an

institute within the meaning of Section 10(23C)(vi) and (via). **Upon appeal the HC held that:**

- A plain reading of section 10(23C), would reveal that what is required for the purpose of seeking approval thereunder is that the University or other educational institution should exist 'solely for educational purposes and not for purposes of profit'. It is nowhere the case that on account of the said defect in the admission procedure, the Trust ceased to exist solely for educational purposes and / or it existed for the purposes of profit.
- Of course, the requirement of an educational institution to provide admissions strictly in accordance with the prescribed rules and regulations cannot be less emphasized, but then, the said violation cannot lead to its losing the character as an entity existing solely for the purpose of education.
- From the above, it is clear that the entire controversy was regarding procedure of admission and not the legality or character of the institution. The exemption under sec 10(23c)(vi) was available. 2013-TIOL-358-HC-RAJ-IT.

Tribunal Judgments

- **Accounting for VAT refunds:** Assessee had been consistently following the Cash method of accounting in respect of the refund of VAT arising to it. Accordingly, the refund pertaining to AYs 2005-06 & 2006-07, received during the relevant year, was credited in its accounts, and shown as income for the current year, in the Return. The CIT, however, was of the view that the assessee was following Mercantile method of accounting, and so by not showing the accrued refund of VAT for the current year in its Return, it had shown less income to that extent. Secondly, the CIT took the view that the assessee was required to file its Return as prescribed by Section 145A, i.e., by following an inclusive method of accounting. Upon appeal, the Tribunal held that:
  - It is impermissible for the assessee to follow cash method of accounting in respect of the sales tax/VAT refund due to it, when it was following mercantile method of accounting for the rest of its business. As such, in terms of sec 5 read with sec 145, income becomes chargeable to tax when the assessee acquires the right to receive such income.
  - If there is uncertainty regarding receipt of VAT refund, no income can be said to have accrued to the assessee. However, in this case, the assessee has failed to exhibit the uncertainty, which made it defer the recognition of the said income. Once, a valid application for refund was submitted with the authorities in accordance with the prescribed procedure, the assessee was entitled to believe that its claim would be accepted.
  - CIT's claim that the amount of VAT refund accrued should be included in current year income was

upheld. 2013-TIOL-429-ITAT-MUM ***dated May 31, 2013.***

- **Sale of merchant banking business:** The assessee, M/s. Ind Global Financial Trust Ltd, was a company engaged in merchant banking business. Arthur Andersen & Associates (AA), a partnership firm, wanted to invest as strategic investor in the company. The assessee (Transferor) incorporated a wholly owned subsidiary in the name of M/s. Ind Global Corporate Finance Pvt Ltd (Transferee) to induct AA as strategic investor in the company. AA purchased the shares of the Transferee company from the seller (Transferor). The assesse surrendered its SEBI License and the Transferee received the SEBI license for merchant banking business. The assessee changed its name to IGFT Ltd, transferred its trademark to the Transferee, and signed a non-compete fee. For this it received from the Transferee - Rs 25 lakhs for the intangible assets, and Rs. Crore as a non-compete fee. The AO was of the opinion that this amount was revenue in nature and should be taxable. The assessee contended that the amount was paid for the transfer of the merchant banking business and was clearly a capital receipt.

  On appeal, the CIT(A) confirmed the order of the AO as it was of the opinion that the said transaction was a colorable device and that it defied all business prudence to transfer its business of merchant banking earning more than Rs. 7.50 cr for a negligible sum of Rs 1.25 cr. Upon appeal, the Tribunal held:

  - As per the Transfer of Business Agreement, the business being transferred meant the Employees and certain know-how related to the merchant banking business of the Transferor, but did not include the real Estate or any other tangible assets of the transferor. There is no reason to consider the transaction as sham.
  - Considering the fact that the assessee has received the consideration for transfer of the merchant banking business, and the assessee has discontinued its business, so it can be said that the receipt is capital in nature.
  - It is for the transferor and the transferee to fix the consideration for the transfer. It is beyond the purview of the Revenue to raise any issue on the adequacy of consideration.
  - After discontinuing the merchant banking activities, assessee company did not have any active source of income. Hence, there was a substantial fall in profit earning of the assessee after entering into non-compete agreement. Thus, the consideration received was in the category of 'capital nature'. Since no cost of acquisition was involved by the assessee for these assets, the same cannot be taxed under the head capital gains. 2013-TIOL-411-ITAT-MUM**.**

- **Gift received by HUF from a relative:** The assessee was an HUF who had received a gift from the Karta's uncle. The AO was of the opinion that as per the exemption given in section 56(2) sub-section (v) the term "Relative" covered only a relative of an individual and had not been used to include a

HUF. The AO observed that, since the gift was not received from the relative of an individual, but that of a HUF, the exemption was not applicable. Therefore, the entire amount was taxed in the hands of the assessee and the AO initiated the penalty proceedings. On appeal, the CIT(A) confirmed the order. On further appeal, the Tribunal held that:

- Section 56(2)(v) was applicable for both - (i) individual, and (ii) Hindu Undivided Family (HUF). The gift shall not be charged to tax, if the gift was from a "relative" - either an "individual" or a "HUF".
- Finance Act of 2009 which came into effect from 1/10/2009 prescribes that if an individual or HUF receives any sum of money without consideration exceeding Rs.50,000/- the whole of the aggregate value of such sum shall be chargeable to income-tax. Provided that the charging clause shall not to apply to any sum of money received from any relative. Therefore the assesse is not chargeable to tax. 2013-TIOL-403-ITAT-AHM**.**

➢ **Sec 80IB benefits:** The assessee was a partnership firm registered as a Small Scale Industry. The assessee was exclusive supplier of food packets for the "mid day meal scheme" of the Government. For this purpose, it was converting raw food material into therapeutic food in packets. The assessee claimed deduction u/s 80IB. The AO and the CIT(A) disallowed the entire claim of deduction u/s 80IB on the reasoning that the list of ingredients submitted by the appellant as raw materials & final product did not indicate that any new product had come into existence. Different food items (raw materials) had been merely ground & mixed together, the chemical composition had not changed intrinsically. On appeal, the Tribunal held that:

- various raw materials are subject to various stages of processing like roasting, grinding, mixing, blending, etc through skilled labours and machines in a proper proposition and ratio. The ultimate product which comes into existence is a therapeutic food, which is a new product, definitely separate and distinct from the raw materials. It has different characteristics altogether and commercially also it is no longer regarded as original commodity. This therapeutic food cannot be reversibly changed to original form once again. Thus CIT(A) is not correct in holding that the assessee was not engaged in a manufacturing of therapeutic food.
- The computation of deduction u/s 80IB as made by the assessee was wholly erroneous. The assessee had removed the interest paid on partners capital which had resulted into enhancement of profit. This working is wrong as the profit of the firm is always worked out after the interest and remuneration paid to the partner, which is an outgoing expense while computing the net profit of a partnership firm. 2013-TIOL-394-ITAT-MUM**.**

➢ **Exemption u/s 54 for 'residential house' having multiple floors:** The assessee, an individual, had filed his return, in which in the annexure it was indicated that LTCG was earned and claimed as exempt u/s 54 and 54EC, on account of

investment in new flats. The AO disallowed the exemption under the contention that the house was having multiple floors with independent entry for each floor, and so it was not a 'unit' and that the exemption could be allowed for only one of the five floors. Upon appeal, the Tribunal held that:

- The question as to whether exemption u/s 54 should be restricted to one floor or all the floors has been duly considered and finally the view has been taken that the benefit of section 54 should be granted for all the floors.
- The Delhi HC in *CIT v. Gita Duggal*, had held that relief u/s 54 is available in respect of "a residential house" which should not be restricted to "a residential unit". A person may construct a house according to his plans and requirements. One may build a house consisting of four bedrooms (all in the same or different floors) in such a manner that an independent residential unit may be carved out with an independent entrance so that it can be let out. The fact that the residential house consists of several independent units cannot be an impediment to the allowance of the deduction u/s 54/54F. 2013-TIOL-381-ITAT-MUM**.**

➢ **Foreclosure charges paid to bank on housing loan:** The AO had disallowed prepayment charges paid by the assessee company to HDFC Limited for closure of loan taken from HDFC Limited for the purpose of acquisition of the premises. The AO held that the prepayment charges of Rs. 1.56 crore would not fall u/s 24(b). Thus, the deduction was denied for such amount. On appeal, the Tribunal held that:

- The definition of interest u/s 2(28A) has basically two components, firstly, the amount with nomenclature of interest for moneys borrowed and secondly, the amount paid by whatever name called in respect of the money borrowed or debt incurred. The second category may also encompass any charge paid for not utilizing the credit facility.
- The assessee obtained loan from HDFC Limited for acquisition of property. Later on it arranged the money from other sources and repaid the loan which was taken for acquisition of property. The bank accepted the early repayment of loan on receipt of prepayment charges. By such repayment, the assessee managed to wipe out its interest liability in respect of the loan, which would have otherwise qualified for deduction u/s 24(b) during the continuation of loan. Both the direct interest and prepayment charges are species of the term 'interest', and hence deduction is available under sec 24(b). 2013-TIOL-368-ITAT-MUM**.**

➢ **One time conversion charges paid by assessee to municipal authorities:** The assessee company was engaged in running sweet shops and fast food restaurants in various parts of Delhi. The AO made disallowance u/s 14A for the amount which was paid by assessee to MCD on account of conversion of its rented outlet from industrial unit to commercial unit. The AO considered expenditures to be of enduring benefit to the assesse, and so termed them as capital expenditure. Upon appeal, **the Tribunal held that:**

- the assessee had paid amounts for one time conversion charges and for parking charges at the two outlets, the benefits of which might accrue to the assessee for indefinite period of time. However, these were incurred to enable the profit making structures to work more efficiently leaving the source or the profit making structure untouched.
- Moreover, the expenditure was in the nature of levies/taxes paid by an assessee to a government authority for making available the required infrastructure to run the business efficiently and effectively. Hence deduction should be allowed. 2013-TIOL-337-ITAT-DEL**.**

➢ **Insurance premium paid by a relative on behalf of beneficiary:** Assessee, an individual, filed his Return by claiming deduction of Rs.1.00 lakh u/s 80C. During assessment, AO noticed that the premium amounts were paid by the grandfather of the assesse and the LIC policy appeared as an asset in the balance sheet of grandfather's firm. Thus, AO held that the assessee was not in receipt of any amount as gift or loan from the grandfather for making payments towards LIC premiums. Accordingly, AO rejected the claim of deduction u/s 80C. Upon appeal, the Tribunal held that:

- Old provisions of sec. 80C prescribed the condition that the eligible payments should have been made out of income chargeable to tax. However, there is no dispute that the present provisions of sec. 80C do not contain the words "out of income chargeable to tax".

- The deduction under sec. 80C is available if the sums specified in sub-section (2) are paid or deposited in the previous year. It does not place any condition about the source for making the payments or deposit. The AO is therefore directed to allow the deduction u/s 80C claimed by the assessee. 2013-TIOL-315-ITAT-COCHIN**.**

➢ **Unutilisation of export quota:** The assessee got the contract from AAI to extend the length of the runway. The assessee claimed deduction u/s 80IA. AO disallowed the claim observing that as per modification made by Finance Act, 2001 as per clause (d), deduction under section 80IA(4) was available only to the assessee who develops, operates and maintains an airport. Developing, operating and maintenance or airport is a very vast infrastructure facility having numerous operations. The only agency which provides all these facilities is Airport Authority of India. Thus the deduction u/s 80IA(4) is admissible to Airport Authority of India only, and not to the assessee. Upon appeal, the ITAT held that:

- As per the AO, the three conditions to develop, operate or maintain the airport should be cumulative. However, the law has been amended, and the new provisions use the word "or" which means that each provision is independent to each other and accordingly if a person

fulfils any of the above three conditions, then he will be said to have complied with the conditions laid down under section 80IA(4) of the Act.

- Assessee does not have to develop the entire infrastructure facilities in order to qualify for deduction u/s 80IA of the Act. The assessee having fulfilled all the conditions as laid down in section 80-IA of the Act, therefore, is eligible for deduction. 2013-TIOL-310-ITAT-AMRITSAR**.**

SERVICE TAX

CESTAT JUDGMENT

- **Packaging Services in Fertilizer industry:** The appellant was engaged in providing packaging services in relation to fertilizer manufactured by M/s. Zuari Industries Ltd., Goa, for which they received consideration. The department was of the view that the activity would come within the purview of "packaging services" as defined in Section 65 (76b) of the Finance Act, 1994 and, therefore, the appellant was issued a SCN demanding service tax. Upon appeal, the CESTAT held that:
  - From the Fertiliser (Control) Order, 1985, it is clear that the fertilizer cannot be marketed without packaging, in the manner specified under the said order and thus packaging of fertilizer is a statutory requirement. Under Section 2(f)(i) of the Central Excise Act, 1944, "manufacture" includes any process incidental or ancillary to the completion of a manufactured product. Thus the completion of fertilizer as a manufactured product would be over only when the packaging is completed.
  - There is merit in the contention of the appellant that the activity of packaging undertaken in respect of fertilizer is an integral part of the manufacturing activity and cannot be viewed as a service activity as defined in Section 65 (76b). Thus, the appellant has made out a strong case in its favour against pre-deposit of the dues. *2013-TIOL-975-CESTAT-MUM.*

- **Commission from foreign airlines for marketing products:** The appellant was an International Air Transport Association (IATA) agent and also it was a General Sale Agent (GSA) for foreign airlines namely Hannair, Brussels and Iceland Airlines. While acting as IATA agent, it provided the service of issuing air tickets to passengers for which it received commission and on this commission it paid the service tax. Besides, it also received 3% commission from the Airlines in respect of the ticket sold on flown basis, in its capacity as their General Sales agents (GSA). The dispute in this case is as to whether the appellant was liable to pay service tax on the 3% commission. The CESTAT held that:
  - There is no dispute that the commission is being received in convertible foreign currency and that the airlines do not have any office or establishment in India.

- As decided by the Tribunal in the case of Paul Merchants Ltd, the services being provided by the appellant to the foreign airlines have to be treated as export of service in terms of Rule 3 of the Export of Service Rules. Therefore, the appellant have a strong prima facie case and, hence, the requirement of pre-deposit is waived. *2013-TIOL-980-CESTAT-DEL.*

➢ **Interior repair work:** The applicant had undertaken interior renovation of the part of the building, i.e. 9th floor of the building. According to the appellant, as per the definition of commercial or industrial construction service, only the construction of **new** building and civil construction, or part thereof, was covered under the scope of tax leviable under the commercial or industrial construction service. As the applicant has undertaken the interior work at the 9 th floor of the building, the applicants could not be held liable for providing commercial or industrial construction service hence the demand was not sustainable. Upon appeal, the Tribunal held:

- As per the definition, construction of new building or civil structure or part thereof is covered under the scope of taxable service. In respect of repair, alteration, renovation or restoration, it is specifically mentioned that it is in relation to building or civil structure.
- There is no mention in the definition 'part thereof' in sub-clause (d) of the definition. In view of this, prima facie we find that the applicant has a strong case in their favour, therefore the pre-deposit of the dues is waived. *2013-TIOL-956-CESTAT-MUM.*

➢ **Supply of tangible goods for use:** The appellant had provided shipping vessels to M/s. ONGC on charter hire basis for which it was receiving consideration. The said vessels were used during monsoon period and on call out basis for storage and transportation of crude oil from Bombay High. From the agreement for charter hire it appeared that the vessel was to be used for at a particular place or site for operation and service, which indicated that the vessel was stationary and primarily not used for voyage/transport of oil. The vessel was sought to be moored to the ONGC rig and act as a mother vessel receiving oil from the rig and pumping it to other daughter vessels which did the actual transporting.

Therefore, the department was of the view that the activity undertaken by the appellant in charter hiring the mother vessel was primarily for the purpose of storage of crude oil at Bombay High and the transportation was only an incidental function to the primary function of storage. Accordingly, the department sought to classify the services under the category of "storage and warehousing services" and sought service tax. Upon appeal, the CESTAT held that:

- The contract entered into between the appellant and ONGC is one for supply of vessels on charter hire basis and the operation and control of the vessel remains with

the appellant. The vessels are used to store the crude oil produced at Bombay High and also to transport the same to the refineries or to the ports situated in various parts of India.

- Storage of crude oil is only incidental to the main activity of transportation and the vessels are hired only when pumping of crude cannot be made through pipelines laid under the sea bed or in specific weather conditions. Thus, the primary object of charter of hiring the vessel is for transportation of crude from the place of production i.e. in the High Sea to the refineries in India and not for "storage and warehousing".
- The appellant being a Government of India undertaking, whose solvency is beyond doubt, there is no risk to Revenue. Considering these facts, the appellant has made out a strong case in its favour for unconditional waiver from pre-deposit of the dues. *2013-TIOL-942-CESTAT-MUM.*

➢ **Export of exempted service:** The appellant was registered for the purpose of service tax under the category of Management Consultant, Maintenance or Repair Services, Auxiliary Service, Online Information and Data Services, Business Support Service, Bank and Financial Services, Commercial Coaching and Training Services, Renting of Immovable Property Service, etc. It filed refund claims in terms of Rule 5 of CCR, 2004 on the ground that in view of the export of services made by it, it was unable to utilize the accumulated CENVAT credit and, therefore, the unutilized CENVAT should be allowed to be refunded in terms of the above said rule.

The department was of the view that the services exported by the appellant were software development and software consultancy services falling under the taxable service category of 'Consulting Engineer' and during the impugned period it had not obtained service tax registration in respect of the said service. It was also noted that the appellant had not maintained any separate accounts for the inventory of 'input services' meant for use in providing taxable output service and quantity of input service which was intended for use in the exempted services as required under Rule 6 of the CCR, 2004. Thus, SCN was issued proposing to reject the refund claims. Upon appeal, the CESTAT held:

- Under Rule 6(3)(c) of CENVAT Credit Rules, 2004, the provider of output service shall utilize credit only to the extent of an amount not exceeding 20% of the amount of service tax payable on taxable output service. In the present case, the services provided by the appellant and exported are not a taxable output service, since software development service and software consultancy service became taxable only in the Budget 2008. Therefore, the cap of 20% prescribed under Rule 6(3)(c) has no application whatsoever. Therefore, there was no bar on the appellant in availing full credit in respect of IT software services during the material period.

- Service tax being a destination based consumption tax, in the case of exports there should not be any tax burden and the tax burden, if any, is to be imposed by the Government of the country where the services are consumed. Otherwise, it would render the exports of software uncompetitive. Keeping in view of above policy objective of the government, it is appropriate to hold that the appellant is eligible for the refund of the amount claimed by it. *2013-TIOL-931-CESTAT-MUM.*

➢ **HSBC's Rs 200 Cr case:** The assesse, M/s. HSBC Electronic Data Processing (I) Pvt. Ltd., a 100% Export-Oriented Units (EOUs) registered with the Software Technology Parks of India (STPIs) was a delivery centre for the HSBC group. HSBC group, one of the largest banking and financial services groups in the world, had formed HSBC Global Resourcing (UK) Ltd. (HGRL), for the purpose of co-ordination and control of the services rendered by the delivery centres. HGRL was operating through a model of delivery centres spread all over the world, and the assessee was one of such delivery centres established to operate in India. Under this entire scheme of business, the assessee was said to have rendered to the customers of the HSBC group, various services such as credit card and debit card operations, contact centre services, payment services, claims processing, global research, strategic transaction support, investment administration of funds etc. HGRL appointed the assessee to provide such services to the Business Partners and their banking customers, which HGRL had contracted to provide under the Master Service Agreement with the Business Partners.

The assessee claimed to have provided the aforesaid services on behalf of its client viz. HGRL and, therefore, all such services were claimed to be covered by the definition of "Business Auxiliary Service" (BAS) under Section 65(19) of the Finance Act, 1994. The assessee accordingly obtained Service Tax registration. As the service recipients viz , the Business Partners (HSBC banking entities) and their customers were located outside India and payments for such services were received in convertible foreign exchange, the services provided by the assessee appeared to have satisfied the relevant conditions laid down under the Export of Services Rules, 2005. For providing output services, the assessee procured various input services and took CENVAT credit of the service tax paid thereon. As only a small part of such credit was utilized for payment of service tax on domestic output services, a major portion of the CENVAT credit remained unutilized.

Refund of such *CENVAT credit* which remained unutilized was claimed by the assessee from time to time under Rule 5 of the CENVAT Credit Rules (CCR) 2004 read with Notification No.5 /2006- CE(NT) dt. 14/03/2006. The refund claim was rejected by the adjudicating authority on the ground that the services exported by the assessee were Information Technology Services which were excluded from BAS and hence not taxable. Upon appeal, the Tribunal held:

- The assessee has consistently claimed that their output services were classifiable under BAS in terms of clause (iii), (vi), or (vii) of the definition under Section 65(19) of the Finance Act 1994 and has accordingly obtained registration with the Department. However, the stand taken by the Department regarding the nature of the services exported by the assessee has not been consistent. For some period the Department classified the services under ITS which was excluded from BAS, while for some period, the Department was agreeable to consider the assessee's services as "operational or administrative assistance in any manner". However, subsequently, the services were not classified under BSS but held to be not taxable under BAS. In this approach of the Department, there is an element of arbitrariness which is anathema to taxation.
- The question whether the input services in respect of which the refund was claimed were essential for the assessee to provide the output services to the service recipients located abroad, has not been examined appropriately by the adjudicating authority.

- The entire exercise including determination of the nature of output service and its classification, determination of nexus between input service and output service and quantification of refund has to be undertaken at the original level. Therefore, the case is required to be remanded to the adjudicating authorities. *2013-TIOL-918-CESTAT-BANG.*

➢ **Project Office:** The appellant was a company incorporated in Canada. In terms of agreement between Government of Uttaranchal and Canada Commercial Corporation (CCC), the appellant had been appointed as Executing Engineer to fulfil the obligation of CCC and as per the scope of the said agreement the appellant was required to provide design and consultancy service related to the project. The appellant had a project office in India, which was registered with Service Tax Department under the category of consulting engineer service. The service of designing, engineering and other technical inputs related to project was provided by the head office from Canada. The project office of the appellant in India undertook executing the activities relating to, and incidental to the project. The head office of the appellant company at Canada had deputed some of its officials at the project office in India for which the debit notes had been raised by the head office in respect of the expenditure incurred on their salary and other expenses.
The department was of the view that in view of the provisions of sub-Section (2) of Section 66A read with Explanation I, the project office had to be treated as a person separate from the head office and that since the project office had received the services of manpower recruitment or supply agency taxable under Section 65 (105) (k) of the Finance Act, 1994, the project office in India (appellant) as service recipient was liable to pay service tax in respect of the same.
Upon appeal, the CESTAT held:

- The appellant company's head office is at Canada and in India they have set up only a project office for implementation of a project in terms of agreement between them and the Government of Uttaranchal.
- The project office cannot be called the permanent establishment of the appellant company in India, as the project office is not doing any work other than the work relating to the project and would get wound up once the project is completed. The term "permanent establishment" referred to in sub-Section (2) of Section 66A would cover branch or agency of a foreign based company, which has been set up in India to carry out its business on long term basis and this term would not cover the project office, which has been temporarily set up in India only for implementation of a particular project.
- The provisions of Section 66A would not be applicable and this has to be treated as where the appellant have provided the service to itself. The requirement of pre-deposit of the service tax demand, is therefore, waived. *2013-TIOL-911-CESTAT-DEL.*

➢ **Vocational coaching service:** The appellant ran a film and media business and conducted the courses in B.A in journalism; post graduate diploma courses in Print, Television; on-line journalism and media management apart from short term courses such as anchoring and dramatic arts, direction and script writing; television production; TV and Radio anchoring and presentation etc. During the period under consideration, the appellant claimed exemption from payment of Service Tax on the taxable activity of "commercial training and coaching centre" as it claimed itself to be under the category of ‘a vocational training institute' which is defined as a commercial training or coaching centre, which provides vocational coaching or training that impart skills to enable the trainee to seek employment or undertake self-employment, ***directly*** after such training or coaching.

The lower adjudicating authority opined that the course offered by the appellant could not be described as a vocational course as the courses provided by the assessee did not enable employment or self-employment directly after such training or coaching. Upon appeal, the CESTAT held that:

- The exemption Notification, merely requires that vocational coaching or training imparted must impart skills which enable the trainee to seek employment or undertake self-employment. It does not require establishment of the fact whether one or some or all of the students of the assessee institute have obtained employment or have pursued self employment after conclusion of the course of instruction.

- Hence the order of the lower authority cannot be sustained. *2013-TIOL-879-CESTAT-DEL.*

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