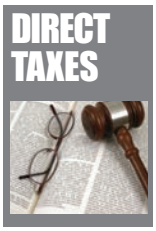
Legal Decisions[1]



Service Tax

LD/64/105

Commissioner of Central Excise
vs.
Dashion Ltd.
8th January 2016(GUJ)

Rule 2(m), Rule 7 of CENVAT Credit Rules, 2004-Input Service Distribution.

Since there was no restriction for utilisation of service tax credit of one unit for another unit of the same assessee without pro-rata allocation, assessee was held entitled to rightly avail such credit in discharging liability of its unit. There is nothing in the Service Tax (Registration of Special Category of Persons), Rules 2005 or in the Rules of 2004 which would automatically and without any additional reasons, disentitle an input service distributor from availing CENVAT credit unless and until such registration was applied and granted.

The assessee was engaged in manufacture of water treatment plant and other connected items and was availing benefit of CENVAT credit on the duty paid on inputs, capital goods and input services as permissible under CENVAT Credit Rules, 2004. The assessee had five manufacturing units and had its registered office at Vatva, Ahmedabad. The assessee was also providing several taxable services such as erection and commissioning, repairing and maintenance of water treatment plant, *etc*. Revenue noticed that the assessee was availing credit of service tax paid for various services by one unit for the purpose of clearance of other unit.

A show-cause notice was issued raising two primary objections; firstly, that the assessee had not registered itself under the Service Tax (Registration of Special Category of Persons), Rules 2005, and secondly, that the tax credit from one unit was utilised for discharging tax liability of another unit instead of pro-rata distribution amongst different units. Adjudicating authority passed an order confirming demand along with interest and penalty.

The tribunal reversed the order of adjudicating authority and allowed assessee's appeal. Tribunal held that the registered office and Vatva office were both located at the same place and assessee had simply utilised the credit at Vatva instead of distributing it to various units. Tribunal noted that during the relevant period, there was no restriction for utilization of such credit without allocating proportionately to various units. Further, the omission to take registration as an Input Service Distributor can at best be considered as procedural irregularity so had to be considered sympathetically.

HC perused Rule 2(m) which defines 'input service distributer' and Rule 7 which explains the manner of distribution of credit. HC observed that the additional condition of by way of clause (d) to Rule 7 was introduced later, which talked about distribution of credit on pro-rata basis. Since no such restriction existed during the relevant period, Revenue was incorrect in stating that assessee was at fault while distributing credit of one unit against another without pro-rata allocation.

With respect to Revenue's objection of non-registration aspect, HC observed that there was nothing in the Service Tax (Registration of Special Category of Persons), Rules 2005 or in the Rules of 2004 which would automatically and without any additional reasons disentitle an input service distributor from availing CENVAT credit unless and until such registration was applied and granted. HC remarked that when it was found that full records were maintained and the irregularity, if at all, was procedural and when it was further found that the records were available for the Revenue to verify the correctness, tribunal was justified in allowing assessee's appeal. Further, on the ground of lack of evidence to support the allegations of willful misstatement, suppression, fraud or collusion on the part of the assessee, penalty was dropped.

LD/64/106

Commissioner of Central Excise, Customs And Service Tax-LTU
vs.
Canara Bank
12th January 2016(KANT)

Rule 6 of CENVAT Credit Rules 2004 - Obligation of manufacturer of dutiable and exempted goods and provider of taxable and exempted services

CESTAT erred in not following statutory provisions and proceeded to direct the assessee to make the payment of ₹3.71 lakh towards the amount due for the normal period with one month interest; CESTAT proceeded to pass the order based on sentiments which was uncalled for; Matter remanded back to original authority for fresh consideration.

[1] *Contributed by CA. Sahil Garud, Indirect Taxes Committee and ICAI's Editorial Board Secretariat.*
Readers are invited to send their comments on the selection of cases and their utility at eboard@icai.in. For full judgment, write to eboard@icai.in

Legal Update

The assessee is a banking company providing banking and other financial services under Section 65(12) of the Finance Act, 1994. The assessee is providing both taxable and exempted services. During the course of verification of input tax credit availed by assessee, it was observed by the authorities that the respondent had shown certain services under the category of management, maintenance or repair service and technical and analysis service *etc.* which are one of the services specified in Rule 6(5) of the CENVAT Credit Rules. Further, the respondent had wrongly utilised credits of service tax paid on these services to the extent of 100% of the amount of service tax payable on taxable output services for the period up to 31.3.2008 and for the period from 1.4.2008, assessee had not proportionately reversed the credit attributable to the exempted services. Revenue alleged that assessee had utilised the service tax credit in excess of 20% of the service tax payable on taxable output services permissible under erstwhile Rule 6(3)(c) of the Rules during the period up to 31.3.2008 and failed to pay the amounts towards the credit taken on the services attributable to exempted services during the years 2008-09 and 2009-10 respectively in terms of Rule 6(3A) of the Rules.

The commissioner passed an order raising a demand of ₹20.62 lakh in respect of wrong classification of services under Rule 6(5) of the Rules. The CESTAT rejected the appeal as regards the normal period, in respect of wrong classification of services and directed the assessee to make the payment of ₹3,71,501/- and interest of ₹4,025/-. Aggrieved, Revenue preferred an appeal before the Karnataka HC.

Revenue placed reliance on Rule 6(3)(IX)(c) of the Rules and contended that the assessee has utilised CENVAT Credit exceeding 20% of the amount of service tax payable on taxable output service, contrary to the Rules. It was further contended that the CESTAT without appreciating the statutory provisions based on sentiments, proceeded to decide the matter arbitrarily, directing the respondent to make payment of ₹3,71,501/- for the normal period along with the interest for a month's period. In terms of amended provisions of Rule 6(6) of the Rules, the respondent was liable to pay the amount determined by the original authority which was wrongly waived off by the Tribunal without assigning any valid reasons.

HC observed that the CESTAT without following the statutory provisions contemplated under the Act, proceeded to direct the assessee to make the payment of ₹3,71,501/- towards the amount due for the normal period with interest of ₹4,025/- for a month and closed the matter. The CESTAT proceeded to pass the order based on sentiments which were uncalled for, particularly, while adjudicating the revenue matters.

HC therefore remanded the matter back to the original authority for fresh adjudication, directing it to pass fresh orders expeditiously.

LD/64/107

M/s Raval Trading Company
vs.
Commissioner of Service Tax
7th January 2016 (GUJ)

Sections 76 and 78 of the Finance Act, 1994.

Penalties u/s 76 and 78 cannot be simultaneously imposed, even before insertion of proviso to Section 78 w.e.f. May 2008; Proviso is in nature of clarificatory amendment not creating liability for first time; May 2015 amendment to Section 76 gives further credence to this view, by way of which statute has ensured that Sections 76 and 78 apply in mutually exclusive areas; Penalty u/s 78 upheld.

The issue before the Gujarat HC pertained to imposition of penalties simultaneously u/s 76 and 78 of the Finance Act, 1994.

The assessee is engaged in the business of marketing and selling offset printing machines and related products as a commission agent. For the period from 09.07.2004 and 31.03.2006, though assessee was liable to pay service tax on services rendered by it, it failed to deposit the same with Revenue and it was only upon investigation, that assessee in November 2006 paid tax along with interest.

The adjudicating authority issued a show-cause-notice to the assessee calling upon it to state why the duties already deposited not be appropriated towards the service tax liability and interest and penalties u/s 76 and 78. Assessee contended that, service tax on the service in question was exempt till 08/07/2004 and that assessee was not aware about the revived service tax liability after 08/07/2004. The adjudicating authority confirmed the service tax demand and also imposed penalties u/s 76 and 78 of the Finance Act. The appellate authorities dismissed

assessee's appeal, aggrieved by which assessee preferred the matter before the High Court.

Assessee argued that by amendment in Section 78, brought into effect from May 16, 2008, a further *proviso* was added providing that if penalty is payable u/s 78, the provision of Section 76 shall not apply. Assessee further argued that, though this amendment was made, post the period in question in the present case, various HCs have held that, this amendment is merely clarificatory in nature and would apply to prior cases. Revenue also submitted that the *proviso* came to be added in Section 78 long after the period in question was over and the same therefore, cannot be applied to delete penalty u/s 76 of Act.

HC observed that the adjudicating authority, appellate authority and CESTAT, concurrently held that, assessee who was not a small firm and was liable to pay service tax as was admitted by its partner in a written statement, had not deposited the same with the Revenue authorities. HC observed that it was the case of the assessee that unaware of the tax liability, the service tax was not deposited with the department. Had this been the case, the assessee would have surely pleaded that such service tax was never collected from the service recipient. The defence that due to financial hardship such service tax was not paid would firstly destroy the assessee's case of ignorance of service tax liability. Secondly, the fact that the assessee even did not obtain registration with the Sales Tax Department would belie its stand that though willing to pay the tax could not do so due to financial hardship.

HC observed that Section 78 of the Finance Act, 1994, provided for penalty in cases of tax not being levied or paid, or short-levied or short-paid or erroneously refunded, by reason of fraud or collusion or willful mis-statement *etc.*, whereas Section 76 covered the cases of non-payment of tax on any ground whatsoever. The penalty that authority could impose under Section 78 is hundred per cent of the amount of the service tax evaded. On the other hand, the penalty under Section 76 which could be imposed is at the fixed amount per day for the entire duration of the failure to deposit the tax which, in any case, would not exceed fifty percent of the service tax payable.

HC stated that, tenor, background and purpose for which penalty could be imposed u/s 78, is entirely different than Section 76, however, language of Section 76 did not specifically exclude situation otherwise covered u/s 78 namely non-payment of tax on account of wilful misstatement, fraud or collusion *etc.* HC stated that, one plausible argument therefore, could be that, Section 76 would also cover such situations and permit Department to levy a further penalty for default as envisaged u/s 76 of Act over and above penalty imposed u/s 78 of Act. However, HC observed that in order to clarify this position, a further *proviso* was introduced in Section 78.

HC held that the concerned *proviso* was in the nature of clarificatory amendment and not creating a liability for the first time. HC stated that, even without the aid to this further proviso to Section 78, one entire plausible view was that, situation envisaged u/s 76, would exclude cases covered u/s 78. HC stated that, further *proviso* to Section 78 made it explicit which was till then implicit. HC stated that, Section 76 as is now amended w.e.f. May 14, 2015 gives further credence to this argument, since, by way of this amendment, statute has ensured that Sections 76 and 78 apply in mutually exclusive areas.

Thus, HC deleted penalty u/s 76 and upheld penalty imposed u/s 78.

LD/64/108

M/s Tata Technologies Ltd.

vs.

CCE

4th January 2016 (SC)

Rule 6 of CENVAT Credit Rules 2004 – Section 93 of the Finance Act, 1994

Rule 6 of CENVAT Credit Rules, 2004 cannot override the provisions of Section 93 of the Finance Act, 1994 and/or negate the exemption provided under Section 93 of the Finance Act, 1994; the former is a delegated legislation and subservient to the main Act.

Assessee provided taxable as well as exempted services and availed credit of service tax paid on common input services. For the period from April 2008 to September 2008, assessee opted to follow reversal of credit proportionate to exempt services in terms of Rule 6(3A) and also filed declaration in May 2009. The proportionate credit was reversed along with interest in the month of May 2009. However, department issued show cause notice demanding 8% of value of exempt services on the ground that assessee has not filed declaration before opting for proportionate credit.

Legal Update

The Tribunal setting aside the demand held that under the provisions of CENVAT Credit Rules, 2004, the condition of filing the declaration is only directory and not mandatory. Since the appellant has already reversed proportionate credit within the period as prescribed under Rule 6(3A), the demand for 8% of value of exempted services, does not sustain. The Tribunal further observed that Rule 6 cannot be used as tool of oppression to extract the amount which is much beyond the remedial measure and what cannot be collected directly, cannot be collected indirectly, as well.

Excise

LD/64/109

Commissioner of Central Excise, Pune vs. Hindustan National Glass & Industries Ltd. 14th January 2016(SC)

Section 11A of the Central Excise Act, 1944 - Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.

Sale price between two competing parties may get depressed when substantial and huge advance are periodically extended and given with objective and purpose that sale price paid or charged would be lowered, to set off consideration paid by grant of advances; Evidence and material to establish the said factual matrix has to be uncovered and brought on record to connect and link the sale price paid on paper and the "other" consideration, not gratis, but by way of interest free advances"; SC remanded matter to back to CESTAT for giving regard to amount of money paid by purchasers and to determine the effect of the sales made to the two companies in percentile terms and to check whether this had the effect of depressing the sale price.

A show cause notice (SCN) was issued alleging that the manufacturing company was not adding the additional consideration received from the customers in the form of advance due to which notional interest accrued thereon was ought to be added to the sale price, since such non-addition had resulted in depression of the assessable value of the goods, namely, the bottles manufactured by the assessee.

Revenue alleged that assessee had short paid the duty on its products, that is, printed glass bottles, by under-valuing the same at the time of clearance from its factory inasmuch as it did not add "additional consideration" received from M/s. Coca Cola India and M/s. Pepsico India Holdings Pvt. Ltd. The assessee received 90% advance from M/s. Coca Cola and 100% advance from M/s. Pepsico for the goods and it was giving 3-4% discount to these Companies.

Adjudicating authority passed an order, confirming demand of ₹33.91 crore u/s 11A(1) of Central Excise Act, 1944, being the duty payable on the additional consideration received by the assessee from the customers in the form of notional interest accrued on advance payments and also imposed penalty for the same amount under Section 11AC of the Act.

Being aggrieved, the assessee preferred an appeal before CESTAT. There was a difference of opinion among the members of the division bench, due to which the matter was referred to Third Member (TM). The TM cogitated on the concept of AV under the Act, the concept of two prices and eventually opined that the decisions in *Commissioner of Central Excise, New Delhi vs. Hero Honda Motors Ltd.* [(2005) 4 SCC 182] and *Metal Box India Ltd. vs. Collector of Central Excise, Madras* [(1995) 2 SCC 90] were not applicable to this case. Accordingly, Third Member concurred with the opinion expressed by Member (Technical) who had held that the revenue had not been able to discharge the onus by adducing cogent material evidence that the advances obtained from a buyer had really been instrumental in depression of the price, and further that there was no nexus of interest with the price and hence, the demand was not acceptable and consequently, no penalty could be levied. Aggrieved, the Revenue filed an appeal before SC.

In Metal Box India Ltd. case, the Court had accepted the view of the Tribunal and held that *"the extent of benefit obtained by the assessee on interest-free loan was required to be reloaded by hiking the price charged from M/s. Ponds (I) Limited to that extent"*. Further, in Hero Honda Motors Ltd. case, the Court had stated that there was conspectus of decisions which clearly established that inclusion of notional interest in the AV or wholesale price will depend upon the facts of each case. The matter in that case was remanded the matter back to Tribunal to examine *"whether or not the advances or any part thereof have been used in the working capital and whether or not the advances received by the respondent and/or the interest earned thereon have been used in the working capital and/or whether it*

has the effect of reducing the price of the motorcycle".

SC observed that it could not be said that no material was produced by Revenue. The concerned Commissioner has taken note of the statement made by the Manager (Sales) of the assessee-Company. An aspect raised relates to percentage of total sales made to two companies, but the core issue is whether there was a depression of the sale price on account of receipt of advance.

SC observed that the sale price agreed between two competing parties may get depressed, when substantial and huge advances are periodically extended and given with the objective and purpose that the sale price paid or charged would be lowered, to set off the consideration paid by grant of advances. There should be a connect and link between the two i.e. the money advanced it should be established was a consideration paid which could form the basis for depression of sale price. Evidence and material to establish the said factual matrix has to be uncovered and brought on record to connect and link the sale price paid on paper and the "other" consideration, not gratis, but by way of interest free advances.

SC stated that there was no application of mind by Tribunal in the present case regard being had to the amount of money paid by purchasers, namely, M/s. Coca Cola India and M/s. Pepsico India Holdings Pvt. Ltd. and what is the effect of the sales made to the two companies in percentile terms, whether this had the effect of depressing the sale price. SC stated that, the onus would be on the Revenue. SC thus allowed the appeal by setting aside the order of Tribunal ordering a fresh disposal of matter by the Tribunal.

LD/64/110

Mercedes Benz India Pvt. Ltd.

vs.

Commissioner of Central Excise, Pune.

11th January 2016(MUM)

RULE 6 of Cenvat Credit Rules 2004 - Obligation of a manufacturer or producer of final products and a provider of output service.

CESTAT to re-determine inter alia whether margin/value addition on trading of goods is to be considered and not entire sale price/turnover of traded goods while calculating amount of eligible CENVAT credit on common input services; No justification to hold that the Parliament intended to encourage trading of goods rather than manufacturing of the same; As far as working of the denominator is concerned (and even the numerator) and to apportion the input credit, matter remitted back to the Tribunal; Tribunal must firstly refer to the substantive Rule and as operative prior to 1st April 2011 and then arrive at a conclusion in relation to the Explanation introduced with sub-clauses with effect from 1st April 2011.

The assessee is manufacturer of motor vehicles and parts thereof falling under Chapter 87 of the Central Excise Tariff Act, 1985 and sells the said vehicles through a dealer network spread across India. The assessee imports Completely Built-up Units ("CBU") from the parent company, Daimler AG, Germany on payment of appropriate Customs Duties, which are also sold through the same dealer network. The revenue stated that credit of service tax paid on common input services attributable to the activity of import and sale of cars was not available but the same could be availed of only in respect of the manufacture and sale of cars, and the Assessee accepted this position as correct. Assessee claims that they have not availed of credit of Countervailing Duty ("CVD") paid on imported cars for sale in the domestic market and of CENVAT credit on input service exclusively relatable to activity of import and sale of cars.

Assessee's contention is that there are common input services used for manufacture and sale of cars as also import and sale of cars. Issue before the court was whether, in calculating amount of eligible CENVAT credit of service tax on common input services, margin/value addition on trading of goods is to be considered and not entire sale price/ turnover of traded goods. The assessee argued that total common input service must be considered and multiplied by a suitable fraction/percentage and thereafter, common input service credit relatable to manufacturing activity and trading activity can be arrived at. The former can be allowed while the latter must be disallowed. The question, therefore, is the basis for determining this fraction/percentage.

Assessee argued that the Tribunal ought to have considered that the amount of credit attributable to trading and to be disallowed must be calculated as prescribed by Rule 6(3A). In such a case, the disallowance would come to ₹20.67 lakh for the period of September 2004 to March 2011, instead of ₹2.65 crore based on the simple *pro-rata* formula of trading turnover divided by total turnover.

Rule 6(3A) came into effect from 01/04/2011. According to the assessee, the amendment is correct, reasonable and avoids distortions, therefore, there is no question of any retrospectivity or applying it retrospectively and the computation can be made on the basis that the Rule always read as above and not otherwise.

Though the Tribunal rejected assessee's argument that amendments are substantive in nature and though introduced in the form of an Explanation, they would cover certain cases prior to insertion or introduction of same, the tribunal agreed that the changes made by Explanation were substantive.

HC stated that, Explanation have been made in Rules by a Notification without giving it retrospective effect and though the same was issued on March 1, 2011, it came into force w.e.f. 1st April 2011, thus, cannot have retrospective effect. HC remarked that the Revenue's action in considering trading as an exempted service for the period from August 2010 to March 2011 and covered by Appeal No. E/1019/2012 and demanding 6% of the trading turnover is not correct. To that extent, the Tribunal agrees with the Assessee and renders a finding against the Revenue.

HC observed that the Tribunal deals with the apportionment of the credit of the common input service where such input services have been used both in relation to the manufacture of goods and trading activities in respect of the imported goods. Reliance was placed upon the judgment of the High Court of Justice of England and Wales, Queen's Bench Division, and *Commissioner of Wealth Tax, Meerut v Shravan Kumar Swarup & Sons*, to conclude that clause (c) of Explanation 1 had no application for determining the apportionment of the credit of service tax on input services.

HC observed that *"Tribunal must firstly refer to the substantive Rule and as operative prior to 1st April 2011 and then arrive at a conclusion in relation to the Explanation introduced with sub-clauses with effect from 1st April 2011. On its introduction and even prior thereto, we do not find any justification then to hold that the Parliament intended to encourage trading of goods rather than manufacturing of the same. The Parliamentary intent has to be gathered from the language used. If the words are plain, simple and clear, there is no scope for interpretation or applying any principle thereof".*

HC thus held that, to the extent working of the denominator was concerned (and even the numerator, technically speaking) and to apportion the input credit, it would be appropriate to send the matter back to the Tribunal. Further, HC stated that Tribunal should not reopen everything that is concluded in assessee's favour since once the Revenue had not challenged those conclusions by way of substantive appeal, those questions hold to be in favour of assessee.

HC thus remitted the matter to Tribunal, however stating that Tribunal should not arrive at a conclusion that the amendment has been adopted to encourage trading in goods rather than manufacturing the same.

LD/64/111

M/s Saraya Distillery

vs.

Commissioner of Central Excise, Allahabad.

21st January 2016 (ALL)

RULE 57G of Central Excise Rules 1944 - Accounting procedures for persons issuing invoices under Rule 57G.

Modvat credit cannot be taken by a manufacturer after six months of the date of issuance of any document specified in Sub Rule (3), namely, on the inputs received by the manufacturer in its factory; If a manufacturer fails to make Modvat credit declaration but provides sufficient reasons, the competent authority under Rule 57G(10) may condone the delay on being satisfied that the inputs were received in the factory prior to six months from the date of filing of such declaration.

The assessee was engaged in the manufacture of country liquor, Indian made Foreign Liquor, rectified spirit and denatured ethyl alcohol. The assessee was not aware of Modvat Rules and could not claim credit being a new assessee. On becoming aware of the same, an application dated 27/08/1994 was filed claiming benefit of Modvat credit of duty paid on molasses for the period of 01/03/1994 to 20/7/1994 under Rule 57G of the Central Excise Rules. The declaration form was filed previously on 27/7/1994 along with an application for condonation of delay. Instead of allowing Modvat credit as per Rule 57G(9) & (10), a show cause notice dated 21/12/1994 was issued to show cause why the Modvat credit availed by the appellant should not be rejected and penalty should not be imposed. The appellant submitted a reply and thereafter the appellant's application for condonation of delay was rejected. The Tribunal ruled against assessee, aggrieved by which the assessee filed the present appeal before HC.

HC observed that under Section 57G (5), credit cannot be taken by a manufacturer after six months of the date of issuance of any document specified in sub Rule (3), namely, on the inputs received by the manufacturer in its factory. If a manufacturer was not in a position to make a declaration under subrule (1) with regard to the availing Modvat credit but provides sufficient reasons, the competent authority under subrule (10) would condone the delay if he is satisfied that the inputs were received in the factory prior to six months from the date of filing of such declaration or for other reasons mentioned in that subrule.

HC observed that show-cause notice itself indicates that the Modvat credit was applied for inputs received in the appellant's factory for the period March, 1994 to 28th July, 1994 which was within the prescribed period of six months. HC remarked that in its opinion sufficient reasons had been given by the appellant for the purpose of condoning the delay in filing the declaration form. HC further remarked that once sufficient reasons have been given, the competent authority was required to give Modvat credit in terms of subrule (9) of Rule 57G.

HC thus allowed the assessee's appeal.

LD/64/112

CCE

vs

TVS Motors Company Ltd.

15th December, 2015 (SC)

Section 4 of the Central Excise Act, 1944

Pre-delivery inspection charges and after sales service charges are not to be included in the assessable value.

Issue before the Hon'ble Supreme Court was whether the pre-delivery inspection charges and after sales service charges are to be included in the assessable value. The Supreme Court held that pre-delivery inspection charges and free After Sales Service charges would not be included in the assessable value under Section 4 of the Act for the purposes of paying excise duty. The expenses incurred by the dealer for PDI and said services has nothing to do with the term "servicing" mentioned in the transaction value and as such, the said expenses cannot be added to assessable value. The Court observed that what is liable to duty is only the amount charged by the manufacturer for sale of the goods to the dealer. As these charges are not collected by the manufacturer separately from the dealers such amounts shall not be added to the transaction value.

LD/64/113

Steel Authority of India Ltd.

vs.

CCE

7th December, 2015 (SC)

Section 11AB of the Central Excise Act, 1944.

Issue before the Hon'ble Supreme Court was whether interest shall be payable under Section 11AB of the Central Excise Act, 1944 on differential duty amount paid under supplementary invoices due to price increase by price variation clause in sale contract.

The Supreme Court in the cases of SKF [2009 (239) E.L.T. 385 (S.C.)] and International Auto Ltd. [2010 (250) E.L.T. 3 (S.C.) had taken a view that interest shall be computed from the date of original invoice in case of differential duty arising out of issue of supplementary invoices due to price variations. In the present case, the Supreme Court differed with the view of the said decisions and matter has been referred to a Larger Bench of the Supreme Court. While referring matter to Larger Bench, the Court observed that right of seller to receive revised price crystallises only when buyer agrees to sanction the same, and only at that time can liability to pay duty on revised price arise. Further, it was observed that it could not be said that price was 'understated' on date of removal of those goods and hence interest clock for differential duty will start ticking from date differential duty is due, which is date of agreement of escalated prices and not before.

Sales Tax

LD/64/114

CCT

vs.

KTC Automobiles

29th January, 2016(MUM)

Section 4(2) of the Central Sales Tax Act, 1956.

The assessee was a dealer in Hyundai cars and was registered in state of Kerala as well as at Mahe within the Union Territory of Pondicherry. The allegation of the department of sales tax of Kerala State was that, though the cars were sold from Kerala, the same were registered with Motor vehicles registration authority at Mahe by using fake address proofs and sales were wrongly accounted at Mahe instead of accounting in the state of Kerala. On the

Legal Update

basis of such allegations, it was contended by the department that the assessee has evaded payment of tax in State of Kerala.

In the factual background, dealing with the issue of imposition of penalty on assessee, the Supreme Court observed that as per Section 4(2) of the Central Sales Tax Act, 1956 in the case of unascertained or future goods, the sale or purchase shall be deemed to have taken place in a State where the goods happened to be at the time of their appropriation by the seller or buyer, as the case may be. Section 18 of the Sale of Goods Act, postulates that when a contract for sale is in respect of unascertained goods, no property in goods is transferred to buyer unless and until goods are ascertained. Hence, in the present case, the seller/dealer is bound to transport motor vehicle to office of registering authority and only when it reaches there safe and sound, in accordance with statutory provisions governing motor vehicles it can be said to be in a deliverable state and only then property in such a motor vehicle can pass to buyer, once buyer has been given notice that motor vehicle is fit and ready for his lawful possession and registration. Therefore, it was held that the sale in the present case concluded at a place outside the State of Kerala.

LD/64/115

K. K. Kuda

vs.

Chief Enforcement Officer, ED & Anr

6th January 2016 (SC)

Section 56 of Foreign Exchange Regulation Act, 1973 - Offences and Prosecutions

Charges of consent and connivance for wrong credit into bank account against bank officials for were dropped from show-cause notice but were still made in prosecution. Prosecution quashed by SC.

The Chief Enforcement Officer (hereinafter referred to as 'officer') issued a show cause notice against ANZ Grindlays Bank, Account Holder and three bank officials for having credited Non-convertible Rupee Funds of ₹1,15,00,000/- (Rupees One Crore and Fifteen Lakhs only) during the period August to December, 1991 received from Moscow, into the Non-Resident (External) Account of Dr. P. K. Ramakrishnan in contravention of Section 6(4), 6(5) read with Section 49 of FERA, alleging that it had taken place with the consent, connivance of and attributable to the negligence on the part of the said Officials. However, by notice dated 21.01.1994, the officer deleted charges of 'consent' and 'connivance'.

The Additional Chief Metropolitan Magistrate, New Delhi, took cognizance of the complaint for the offence under Section 56 of FERA on 29.5.2002 itself and issued summons to the accused. This was challenged before the Delhi HC. In the meanwhile, the adjudicating authority passed the final Order dated 14.5.2010 holding that the Officials of the Bank have not consented or connived in the performance of the official duties and they were negligent. The HC by the impugned order held that the prosecution of the accused persons shall be confined to the negligence on their part and not for they having consented or connived in the commission of the said offence. This instant order of HC was challenged before the Hon'ble SC in the present appeal.

SC observed that by letter dated 10.7.2001, charges relating to 'consent' and 'connivance' were ordered to be deleted from the show-cause notice. Though FEMA came into force on 1.6.2000, Sunset clause under Section 49 of the said Act provided for filing of complaints under the FERA, 1973 till 31.5.2002. Taking advantage of it, the Respondent No. 1 issued Opportunity Notice to all the three officials on 12.5.2002 and lodged the complaint on 29.5.2002. The Additional Chief Metropolitan Magistrate, New Delhi, on the same day took cognizance of the complaint for the offence under Section 56 of FERA and issued summons.

SC observed that though the allegations of 'consent' and 'connivance' were dropped, the respondent in their complaint leveled allegations of all the three components, namely, consent, connivance and negligence. Further, to substantiate the averments in the complaint, not even a single original document was enclosed by the Respondents. SC remarked that *"It is not known as to, on what material the Additional Chief Metropolitan Magistrate applied his mind, while taking cognizance of the statutory offence. Though the allegation of negligence can be independently looked into, considering the standard of proof in criminal prosecution, we are of the view that, in the present case, the continuance of prosecution against the appellant is not tenable in law and the proceedings are liable to be quashed".*

SC thus allowed the appeal and ordered quashing of proceedings in Criminal Complaint before the Additional Chief Metropolitan Magistrate. ■