TAX UPDATES

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INCOME TAX

Case Laws

Service tax not part of gross receipt for the purpose of computation of income under Section 44B of IT Act

The taxpayer is a shipping company incorporated under the laws of Korea and opted that its income from operations in India be taxed on presumptive basis, at the rate of 7.5 percent of the aggregate amount, as per the provisions of Section 44B of the IT Act read with Article 9 of the DTAA between India and Korea.

The AO held that the gross receipts should include service tax for computation of income under Section 44B of the IT Act. Aggrieved by the order of AO, the taxpayer appealed before the CIT(A). The CIT(A) confirmed the order of the AO and held that the amount of service tax collected by the taxpayer is to be included in the total receipts for determining the presumptive profit.

On appeal, the ITAT, following the decision of a coordinate bench in the case of the very same taxpayer, held that since service tax collected by the taxpayer is paid to the Government account, therefore, the service tax amount has no profit element and cannot be included in the gross receipts for computation of income under Section 44B of the IT Act.

M/s Hanjin Shipping Company Ltd. vs. Deputy Director of Income Tax; 2016-TII-121-ITAT-MUM-INTL

Payment towards prospecting for or exploration of mineral oils would not amount to FTS, assessable under Section 44BB of the IT Act

The taxpayer is a company incorporated under the laws of India and engaged a non-resident company based out of UK for exploring and prospecting mineral oils in India. The taxpayer applied to the Department for determination of withholding tax in respect of the payments to be made to the non-resident company.

The Department took a view that the services rendered by the non-resident company to the taxpayer is in the nature of technical services and accordingly directed the taxpayer to withhold 10 percent tax plus surcharge and education cess on the gross contractual payments, including the payments arising on account of all type of expenditure to be made to the non-resident.

On appeal, the CIT(A) held that the services of exploring and prospecting of mineral oils amounts to mining services and therefore would be out of the purview of technical services as envisaged under Section 9(1)(vii) of the IT Act. Accordingly, the assessment of the consideration should be as per Section 44BB of the IT Act and not as per Section 44D of the IT Act, which pertains to technical services.

Department filed an appeal before the ITAT challenging the above order. The ITAT while relying on the decision of the SC in the taxpayer's own identical case, held that the payments made by the taxpayer does not qualify as fee for technical services and amounts to mining services, and therefore assessable under the provisions of Section 44BB of the IT Act.

Income Tax Officer vs. Oil and Natural Gas Corporation Ltd.; 2016-TII-129-ITAT-DEL-INTL

CUSTOMS

Case Laws

Service of SCN on CHA is not a proper service as per Section 153 of Customs Act, 1962

The taxpayer is an importer of goods and placed order through a commercial invoice for Polyester Quilt Covers for which full payment was made in advance. On the arrival of goods, a bill of entry was filed by the taxpayer. However, the goods were not cleared and were detained by the DRI officers after conducting an examination. The taxpayer made various representations before the Department regarding release of goods, arguing that the imported goods were covered and used as quilt covers as they had been assembled by sewing, and the three sides were closed whereas one side was kept open for filling up. The Department intimated to the taxpayer the conditions for provisional release of the goods and was directed to submit PD Bonds and bank guarantees for different amounts against the two bills of entry. The amounts were based on a provisional reassessment of the price.

A SCN was issued as to why the time limit for issuance of SCN should not be extended in terms of the provisions of Section 110 (2) of the Customs Act, 1962 for a further period of six months due to expected expiry of six months from the date of the panchnama. A personal hearing was proposed to be held on the same date and an order was passed.

The taxpayer contended that the impugned order although dated 23.01.2015 was dispatched only on 31.01.2015. Hence, a writ petition was filed stating that in view of the expiry of six months from the date of seizure of goods without issuance of any SCN, in terms of Section 110 (2) of the Customs Act, 1962, the goods are liable to be returned to the taxpayer.

The Department filed a counter affidavit and submitted that the notice was duly served on the authorized customs broker/CHA of the taxpayer on 23.01.2015 with a request to appear for a personal hearing on the same date. The customs broker/CHA submitted a letter on the same date conveying that they did not want any personal hearing on behalf of the taxpayer. It is only thereafter that the impugned order was passed by the CC extending the period by six months. Reliance was placed on Sections 146, 146A and 147 of Customs Act, 1962 to submit that authorized customs brokers/CHAs were duly empowered to make an appearance before an officer of the Customs.

The Delhi HC after considering the provisions of Customs Brokers Licensing Regulations, 2013, observed that it is no part of the usual and ordinary duty of the customs broker/CHA to accept service of orders, summons, decisions or notices issued by the custom authorities. In case customs broker/CHA represents, having such an authority, he would have to produce the same before the concerned statutory authority. In this case the taxpayers neither sought production of the authority nor did the customs broker/CHA supply any such documents to the customs authorities, which could, in the ordinary course, have persuaded them to serve the notices on the customs broker/CHA. Therefore, in the ordinary course, the customs authorities were required to follow the provisions of Section 153 of the Customs Act, 1962, which required the service to be effected on the importer i.e. the taxpayer in this case.

PR CC vs. Santosh Handloom; 2016-TIOL-936-HC-DEL-CUS

CENTRAL EXCISE

Case Laws

Value on the invoice would be the assessable value in case of transfer of inputs to sister concern, no other expenses to be added

The taxpayer is engaged in the manufacture of HR coils, sheets, plates, etc. and avails credit on inputs such as iron ore pellets and clears the final product on payment of excise duty. The taxpayer's group company ("sister concern") has another plant adjacent to the manufacturing unit of the taxpayer which is engaged in the manufacture of pig iron and molten metal. The principal raw material for manufacture for both these units is iron ore pellets. Under a tripartite agreement between the taxpayer, sister concern and the vendor of pellets, the raw material viz. iron ore pellets are purchased by the taxpayer from the vendor and is stocked in the unit of the taxpayer. The taxpayer avails the credit of the duty paid on iron ore pellet. The taxpayer further transfers the iron ore pellets to the sister concern, as and when requisitioned, by reversing the CENVAT credit availed on such iron ore pellets under the cover of an invoice.

In addition to such invoices, the sister concern raised debit notes to the taxpayer for recovering actual expenditure incurred by it in relation to the procurement of such iron ore pellets, such as bank commission, interest, etc.

The Department issued SCNs to both the units alleging that iron ore pellets were sold by sister concern to the taxpayer and that the amounts recovered by sister concern in the form of debit notes towards bank charges, interest, etc. were includible in the assessable value of such inputs that were cleared.

The adjudicating authority, upheld the SCN's holding that the assessable value of the pellets is to be determined in terms of Section 4(1)(a) of the CEA and all additional consideration mentioned in the debit notes recovered by the sister concern from the taxpayer is to be included.

The CESTAT reversed the order of the adjudicating authority.

The SC observed that the transfer of iron ore pellets by sister concern to the taxpayer was not a sale of goods but was only a transfer of raw materials procured under the tripartite agreement between the two of them and the supplier. The SC relying on the

CBEC circular dated 1.7.2002 held that transaction value is to be adopted only in case of sale of inputs as such. In the present case, since there is no sale of inputs, therefore, it is reasonable to adopt the value shown in the invoice on the basis of which CENVAT credit was taken by the taxpayer and reverse the said credit. The SC dismissed the Department's appeal**.** *Commissioner of Central Excise, Raigad vs. M/s Ispat Metallics Industries Ltd and Ors; 2016-TIOL-59-SC-CX*

Installation and commissioning charges undertaken after removal of goods from the factory cannot be included in the assessable value

The taxpayer is engaged in the manufacture of Vial Washing Machines, Ampoules Washing Machines & Sterilization Tunnels, etc. During the course of audit in 2003, the Department observed that the taxpayer has raised separate commercial invoices towards integration/commissioning charges from its customers over and above the excise invoices raised for clearance of such goods from the factory.

The Department was of the view that the charges towards integration and commissioning should have been included in the transaction value. SCN was issued proposing to charge additional CE duty on the integration/commissioning charges collected by the taxpayer.

The taxpayer submitted that it has correctly discharged duty on the sale price of the machine. Further, the integration/commissioning charges is towards installation, erection and commissioning of machines at site and this activity is independent to manufacture and sale of machines, therefore cannot be added in the assessable value. The taxpayer further submitted that the activity of installation and commissioning was undertaken after removal of the machines from the factory and at site of the customers and that after installation, commissioning and erection, it becomes immovable property and therefore it is not excisable. Any amount recovered towards non excisable activity cannot be formed part of the assessable value of the excisable machines cleared from the factory.

The CESTAT relying upon its decision in *Kirloskar Oil Engines Ltd.; 2012-TIOL-1057-CESTAT-MUM*, observed that integration and commissioning is an independent activity which can be performed either by the taxpayer or any outside agency; charges recovered towards integration and commissioning charges is not related to the sale of the goods but it is for independent and distinct identified activity. Accordingly, once the goods are fully manufactured and cleared from the factory, the charges towards erection and installation carried out subsequently cannot be included in the assessable value. The

CESTAT held that integration and commissioning charges of the machines undertaken after removal of machines from the factory cannot be included in the transaction/assessable value of the machines.

Petals Engineers Pvt. Ltd. vs. Commissioner of Customs and Central Excise, Goa; 2016-TIOL-643-CESTAT-MUM

Duty to be discharged on transaction value where duty paid goods returned to the factory are cleared without undertaking any process

The taxpayer is engaged in the manufacture of steel strips, sheets and tubes etc., falling under Chapters 72 and 73 of the CETA and discharging excise duty. The taxpayer received certain goods rejected by the customer under original invoices and availed CENVAT credit under Rule 16(1) CER. Subsequently, the same goods were sold in auction and the taxpayer paid duty on transaction value at the time of removal.

The Department alleged that the taxpayer ought to have reversed equal amount of CENVAT credit availed for the rejected goods at the time of removal. Accordingly, SCN was issued demanding differential duty between the CENVAT credit taken and duty paid on the clearances along with interest and penalty.

The taxpayer contended that where no process is undertaken on the goods returned to the factory, there is no requirement to reverse credit as duty is required to be discharged on the transaction value as per Rule 16 (2) of CER.

The CESTAT observed that Rule 16 (2) of CER contemplates two situations, one if the process undertaken by the taxpayer does not amount to manufacture, then they shall pay the amount equal to CENVAT credit taken and second 'in any other case', taxpayer shall pay duty on goods returned under sub-rule (1) of Rule 16 of CER as per transaction value. In the present case, it is clear that no process has been carried out on the returned goods, therefore, the taxpayer is covered by second part of the sub-rule, i.e., 'in any other case'. Accordingly, relying upon the decision of the CESTAT in the case of *Apollo Tyres Ltd. vs. CCE, Pune-III, 2010-TIOL-549-CESTAT-MUM* the CESTAT held that when returned goods are cleared as such without any process, the duty is required to be discharged on the transaction value and the CENVAT credit availed is not required to be reversed.

M/s Tube Products of India vs. CCE, Chennai-IV; 2016-TIOL-597-CESTAT-MAD

Advertisement expenses incurred by the customers is to be added in the assessable value only if it is mandatory for the customer to incur such expenses

The taxpayer is engaged in the manufacture of excisable goods and were selling the products to various distributors and dealers. The taxpayer entered into an agreement with some of the dealers and distributors whereby the said dealers and distributors were sharing the cost of advertisement on optional basis.

The Department issued SCN to the taxpayer seeking to add the amount recovered from the dealers in respect of advertisement cost to the assessable value.

The taxpayer contended that the advertising and publicity material taken by the dealers is purely on their own option and that the taxpayer is providing such material to the dealers at 50 percent of the cost. Accordingly, relying upon the decision of SC in the case of *Philips India ltd., 2002-TIOL-127-SC-CX*, the taxpayer submitted that unless cost of advertising is recovered from the dealers mandatorily as a condition of dealership, the same cannot be added to the assessable value.

The CESTAT observed that it is not mandatory for the dealers to bear the cost of advertising and it is only optional. Accordingly, relying upon the decision of the CESTAT in the case of *Maruti Suzuki India Ltd.; 2008 (232) ELT 566 (Tri-Del)* held that the advertisement expenditure incurred by a manufacturers' customer can be added to the sale price for determining the assessable value, only if the manufacturer has an enforceable legal right against the customer to insist of the incurring of such advertisement expenses by the customer.

M/s Rathi Transpower Pvt. Ltd. vs. Commissioner of Central Excise, Pune-III; 2016-TIOL-577-CESTAT-MUM

SERVICE TAX

Case Laws

Activity of integrated testing of rolling stocks for metro rail and bringing them into operation are eligible for exemption under Notification No. 25/2012-ST dated 20.6.2012

The taxpayer entered into contracts with DMRC and with Hyderabad Metro Project with L&T Metro Rail Hyderabad Ltd. for design, manufacture, testing, supply and commissioning of rolling stock for a lump sum price which is to be received by the taxpayer on a milestone basis.

Notification No. 25/2012 dated 20.06.2012 provides for exemption from service tax in respect of services provided by way of construction, erection, commissioning or installation of original works pertaining to metro. The taxpayer approached the ARA to determine whether the taxpayer was eligible for claiming exemption from payment of Service Tax in terms of Notification No. 25/2012 dated 20.06.2012 for the activities in relation to Testing & Commissioning, Integrated Testing & Commissioning and Trial runs of trains to be undertaken under the above contracts.

ARA relying on the decisions of the SC in the matter of *CIT vs. Mir Mohammad Ali; (1964) 7 SCR 846* and *CIT vs. Taj Mahal Hotel (1971) 3 SCC 550*, observed that the rolling stocks are plants and machinery. Further, held that the activity of bringing the rolling stock into operation amounts to commissioning. Regarding condition of "original works", it was observed that integration of rolling stock would qualify as original works as per the meaning given in Rule 2A of Service Tax (Determination of Value) Rules, 2006. ARA held the taxpayer is eligible for benefit under Notification No. 25/2012-ST dated 20.6.2012.

M/s Hyundai Rotem Company, New Delhi vs. Commissioner of Customs, Central Excise and Service Tax Hyderabad II; 2016-TIOL-13-ARA-ST

No service tax on construction of residential complexes as no mechanism for determination of value is prescribed

The taxpayer entered in to separate agreements with builder/developer to buy flats in a residential complex being developed by the builder/developer. Builder collected service tax in addition of the consideration for the flats. The taxpayer challenged the levy of service tax on services covered under erstwhile Section 65(105) (zzzh) of the FA and also the explanation to Section 65(105) (zzzh) inserted

vide Finance Act, 2010 as being ultra-vires to the Constitution of India. Further, the taxpayer challenged the Section 65(105) (zzzzu) of the FA which enables the service provider to charge preferential location charges.

The question before the Delhi HC was whether the consideration paid by the flat buyer could be subject to service tax for acquiring a flat in an under construction/ underdevelopment residential complex.

The taxpayer argued that the agreement entered into by them are for purchase of fully developed immovable property and the Parliament has no competence to levy service tax on such transaction. The taxpayer also argued that in absence of mechanism for collection of tax there could be no levy of tax.

The HC observed that the explanation inserted to Section 65(105) (zzzh) expands the scope of taxable service by creating a deeming fiction whereby construction of complex which is intended for sale by the builder to any person before, during or after construction become service. The only exception to this, being, where no sum is received by the developer from the buyer before obtaining completion certificate. The completion certificate implies completion of project and at that stage all services and goods used for construction are subsumed in immovable property, thus constituting the outright sale of immovable property on which no service tax is leviable. The HC held that the agreement between the buyer and the developer is a composite contract comprising supply of goods, transfer of immoveable property and rendition of services and that the Parliament was competent to create legislative legal fiction to tax the service portion in such composite contract. Hence, the explanation inserted vide the above amendment under challenge was upheld by the HC.

Accordingly, the HC held that in case of the service pertaining to construction of complexes, neither the FA nor the valuation rules, provides for a mechanism to ascertain the value of service portion in such composite contract. Following the decision of the SC in the case of Commissioner *Central Excise and Customs, Kerala and Ors. vs. Larsen & Toubro Ltd. and Ors.; (2016) 1 SCC 170* and *CIT vs. B.C. Srinivasa Shetty; (1981) 2 SCC 460*, the HC held that one of the imperatives of any tax levy is the measure of tax and in absence of any mechanism for determining the measure of tax the levy should fail.

The HC also negated the contention of the Department that the notification or circular providing for abatement of 75 percent of the gross amount

charged by the builder would not be sufficient to determine the value of service in a composite contract in absence of such machinery provisions being provided under the statute or the rules made thereunder. It was also held that circulars or notifications cannot be relied upon to levy tax.

Regarding levy of service tax on preferential location charges, the HC rejected the taxpayer's contention that there is no element of service involved in the preferential location charges levied by a builder. In this respect, the HC observed that preferential location charges are charged by the builder based on the preferences of customers, thus such charges are not solely related to the location of land and are measure of additional value a particular customer derives from acquiring a particular unit. Such charges may be attributable to the preferences of a customer in relation to the directions in which a flat is constructed; the floor on which it is located; the views from the unit; accessibility to other facilities provide in the complex etc. As there is value addition, service tax is leviable on charges paid against allocation of units as per the preferences of a particular customer.

Suresh Kumar Bansal vs. Union of India; 2016-TIOL-1077-HC-DEL-ST

Audit of the taxpayer's records not permissible under amended Rule 5A (2) of the STR

The taxpayer received a letter from the office of Department under Rule 5A (2) of the STR as amended by Notification No. 23/2014-Service Tax dated 5.12.2014 informing that its officers had been deputed to conduct the audit/verification of the taxpayer's records for the period from 2010-11 to 2013-14.

The taxpayer challenged the notice and also challenged the validity of Rule 5A (2) of STR before the Delhi High Court. Rule 5A (2) of STR inter alia empowers any officer deputed by the CAG or the Commissioner to enter the premises of the taxpayer and demand prescribed documents for the purpose of audit.

The HC held as under:

(i) Rule 5A (2) of STR as amended in terms of Notification No. 23/2014-ST dated 5.12.2014, to the extent that it authorizes the officers of the ST Department, the audit party deputed by a Commissioner or the CAG to seek production of the documents mentioned therein on demand, is ultra vires the FA and amounts of excessive delegation of power by the Central Government in garb of making rules.

(ii) Section 94 (2) (k) of the FA cannot be construed as empowering Central Government to make rules for the purpose of audit of the accounts of any taxpayer and the term verification used in the section cannot be construed as audit.

(iii) The Circular No. 181/7/2014-ST dated 10.12.2014 of the Central Government is ultra vires to the FA.

(iv) Circular No. 995/2/2015-CX dated 27.02.2015 on the Central Excise and Service Tax Audit norms to be followed by the Audit Commissionerates and the Central Excise and Service Tax Audit Manual 2015, are ultra vires to the FA, do not have any statutory backing and cannot be relied upon by the Department to legally justify the audit undertaken by officers of the Department.

Mega Cab Pvt. Ltd. vs. Union of India; 2016-TIOL-1061-HC-DEL-ST

Notifications

Levy of Krishi Kalyan Cess and relevant Notifications

The Government of India has announced the levy of Krishi Kalyan Cess ('KKC') with effect from 1.06.2016 on all taxable services at the rate of 0.5 percent on the gross value of services. In this regard, Notification No. 30/2012-ST dated 20.06.2012 has been made applicable mutatis mutandis for the purposes of KKC vide Notification No. 27/2016-ST dated 26.05.2016.

Notification No. 26/2012-ST dated 20.06.2012 has been amended vide Notification No. 28/2016-ST dated 26.05.2016 to extend the benefit of abatement on value of taxable services to the levy of KKC. Further, the value of specified services for the purposes of levying KKC shall be the value as determined in accordance with the Service Tax (Determination of Value) Rules, 2006.

Further, Rule 3 of the CCR has been amended vide Notification No. 28/2016-C.E.(N.T.) dated 26.05.2016 to allow the CENVAT credit of KKC paid on taxable services. It is further provided that credit of any other duty shall not be utilized for the payment of KKC and CENVAT credit of KKC can be utilized only for payment of KKC.

Notification No. 39/2012-S.T. dated the 20.06.2012 has been amended vide Notification No. 29/2016-S.T. dated 26.05.2016 to provide for rebate of KKC

paid on all services, used in export of services in terms of Rule 6A of the STR.

Notification No. 12/2013-S.T. dated 1.07.2013 has been amended vide Notification No. 30/2016-S.T. dated 26.05.2016 to allow refund of KKC paid specified services on which ab-initio exemption is admissible but has not been claimed.

Rule 6 of STR has been amended vide Notification No. 31/2016-ST dated 26.05.2016 to provide that KKC would also be computed in proportion to the alternative rate where service tax is payable at such alternative rate.

Circular

Clarification on services provided by Arbitral Tribunal to business entity having turnover more than Rs. 10 lakh located in taxable territory

The CBEC vide Circular No. 193/03/2016-ST, dated 18.05.2016 has issued a clarification with regards to payment of service tax on services provided or agreed to be provided by an arbitrator on a panel of arbitrators to the arbitral tribunal. It has been clarified that the liability for payment of service tax regarding services provided by an arbitral tribunal (a sole arbitrator or a panel of arbitrators) to a business entity located in the taxable territory with a turnover exceeding rupees ten lakh in the preceding financial year shall be on the service recipient.

VALUE ADDED TAX (VAT)

Case Laws

Credit of Input tax cannot be availed on the basis of photocopy of invoices.

The taxpayer was a registered dealer under the KVAT Act. The taxpayer purchased iron and steel and claimed input tax credit in its monthly returns. The assessing authority concluded reassessment proceedings and disallowed the input tax credit claimed by the taxpayer and levied penalty under Section 72(2) of KVAT Act on the ground that the selling dealers were absconding and were involved in bill trading.

The taxpayer preferred an appeal before the Joint Commissioner of Commercial Taxes (Appeals) that confirmed the orders passed by the assessing authority. The taxpayer preferred second appeal before the Karnataka Appellate Tribunal, which was dismissed. Aggrieved by the order of the Karnataka Appellate Tribunal, the taxpayer filed the revision petition before HC of Karnataka.

The taxpayer contended that the goods were purchased from a registered dealer, who had issued tax invoices as per the procedure prescribed under the KVAT Act and the reassessment orders were passed without giving opportunity to the taxpayer to provide explanation to the proposition. Further that the first appellate authority did not consider the tax invoices produced by the taxpayer.

The Department contended that the taxpayer had purchased the goods from a bogus or non-existent dealer and was unable to provide the books of accounts or tax invoices to establish that the selling dealer was a genuine registered dealer. Further the tax invoice produced before the first appellate authority were photostat copies.

The HC observed that under Section 70 of the KVAT Act, the burden lies on the taxpayer to establish that the dealers from whom the taxpayer had purchased the goods have remitted the tax collected to the State Government. Mere obtaining the registration number by the selling dealers would not suffice to claim input tax credit unless the taxpayer has discharged the burden of proof in support of the input tax claimed. No input tax credit could be allowed on the basis of the photostat copies of tax invoices. Availing of input tax credit on photostat copies of tax invoices / bogus invoices in the absence of selling dealer remitting the taxes to the State Government and the investigations providing that they are non-existing dealers amounts

to violation of the provisions of the KVAT Act and attracts levy of penalty under Section 72(2) of the KVAT Act.

M/s Nav Bharat Steel vs. State of Karnataka; 2016-VIL-274-KAR

Stock transfer of goods from SEZ unit to distributors in DTA would not attract purchase tax under the TNVAT Act

The taxpayer is a company having a unit located in the SEZ at Sriperumbudur for the purpose of Trading and Warehousing Services for Mobile Phone and Sets and Mobile Phone Parts and Accessories. The taxpayer also has a manufacturing unit in the same SEZ. The taxpayer purchased mobile phones from the said manufacturing unit and sold it in the DTA after payment of applicable duties and taxes or transferred the goods to its branches in other states.

The Department issued notice demanding purchase tax on the value of the goods transferred to the branches of the taxpayer in other states on the ground that under Section 15(a) of the TNSEZ Act, every removal of goods from the SEZ to the DTA is chargeable to purchase tax. Further, that Section 12 of the TNVAT Act provides for purchase tax on the value of goods where no tax is paid by selling dealer.

The taxpayer contended that the inter-state stock transfer made by them to their own branches located in other States, is an operation authorized by the LOA and hence, the taxpayer is exempted by virtue of Section 12(1)(a) of the TNSEZ Act which provides that every developer or an entrepreneur is entitled to exemption from the levy of taxes both on the sale as well as the purchase of goods, if such goods are meant to carry on the authorized operations

The writ petition filed by the taxpayer was dismissed by Single Judge on the ground that the levy of purchase tax was in accordance with law.

On appeal, the HC observed that the taxpayer was obliged primarily to export the goods procured for trading and services but, since the taxpayer was obliged to achieve positive net foreign exchange, only over a period of time, the LOA specifically permits the taxpayer to supply/sell goods or services in the DTA. Further, the export obligation imposed upon the taxpayer was not with the idea of making the taxpayer a 100 percent export oriented unit. Accordingly, the taxpayer was entitled to apportion their exports and domestic sales in such a manner that they achieve a positive net foreign exchange within the stipulated period. Further, that the operations indicated in the LOA as “authorized operations” satisfy the definition of authorized

operations under Section 2(c) of TNSEZ Act. Consequently, the HC held that the inter-state stock transfer made by the taxpayer to its own branches located outside the State, is authorized by condition no.(v) of the LOA.

Further, the HC held that the transaction of inter-state stock transfer of goods from SEZ unit to distributors of taxpayer in the DTA would be exempt from payment of purchase tax since the TNSEZ Act exempts developer or entrepreneur from levy of all taxes listed under Clauses (a) to (h) of Section 12(1) TNSEZ Act. It was further held that Section 12(1) of the TNVAT Act is not intended to cover developers and entrepreneurs located in SEZ. Accordingly, in the present case no tax is payable by the taxpayer on inter-state stock transfer of goods.

Nokia India Sales Private Ltd. vs. The Assistant Commissioner (CT), Chennai; 2016-VIL-249-MAD

GLOSSARY OF TERMS

AO	*Assessing Officer*
ARA	*Authority of Advance Ruling*
CAG	*Comptroller and Auditor General*
CBEC	*Central Board of Excise and Customs*
CC	*Commissioner of Customs*
CCE	*Commissioner of Central Excise*
CCR	*CENVAT Credit Rules, 2004*
CE	*Central Excise*
CEA	*Central Excise Act, 1944*
CER	*Central Excise Rules, 2002*
CESTAT	*Custom Excise & Service Tax Appellate Tribunal*
CETA	*Central Excise Tariff Act, 1985*
CHA	*Custom House Agent*
CIT	*Commissioner of Income Tax*
CIT(A)	*Commissioner of Income Tax (Appeals)*
Cus	*Customs*
CX	*Central Excise*
Del	*Delhi*
DMRC	*Delhi Metro Rail Corporation*
DRI	*Directorate of Revenue Intelligence*
DTA	*Domestic Tariff Area*
DTAA	*Double Taxation Avoidance Agreement*
ELT	*Excise Law Time*
FA	*Finance Act, 1994*
FTS	*Fee for Technical Services*
HC	*High Court*
INTL	*International*
IT Act	*Income Tax Act, 1961*
ITAT	*Income Tax Appellate Tribunal*
KKC	*Krishi Kalyan Cess*
KVAT Act	*Karnataka Value Added Tax Act, 2003*
LB	*Larger Bench*
LOA	*Letter of Approval*
Ltd.	*Limited*
M/s	*Messers*
Mum	*Mumbai*

NT	*Non-Tariff*
PD	*Provisional Duty Bond*
Pvt.	*Private*
SC	*Supreme Court of India*
SCC	*Supreme Court Cases*
SCN	*Show Cause Notice*
SEZ	*Special Economic Zone*
ST	*Service Tax*
STR	*Service Tax Rules, 1994*
TII	*Taxindiainternational.com*
TIOL	*Taxindiaonline.com*
TNSEZ Act	*Tamil Nadu Special Economic Zone Act, 2005*
TNVAT Act	*Tamil Nadu Value Added Tax Act, 2006*
Tri	*Tribunal*
UK	*United Kingdom*
UP	*Uttar Pradesh*
VAT	*Value Added Tax*
VIL	*Vatinfoline.com*
vs.	*Versus*
VST	*VAT & Service Tax Reporter*