January 2017

TAX UPDATES

(containing recent case laws, notifications, circulars)

Prepared in association with

Foreword

I am pleased to enclose the January issue of FICCI's Tax Updates. This contains recent case laws, circulars and notifications pertaining to direct and indirect taxes.

The revised Model GST Laws have been released by the Government in November 2016. FICCI has submitted its suggestions/comments on the revised Model GST Laws for the consideration of the Government on January 12, 2017.

In the direct tax regime, Central Board of Direct Taxes has issued a press release stating that in order to achieve the government's mission of moving towards a cashless economy and to incentivise small traders/businesses to proactively accept payments by digital means, it has been decided to reduce the existing rate of deemed profit of 8 per cent under Section 44AD of the Act to 6 per cent in respect of the amount of total turnover or gross receipts received through banking channel/digital means for the Financial Year 2016-17. Section 44AD of the Act provides that the taxpayer engaged in any eligible business and having a turnover of Rs. 2 crore or less, the profit is deemed to be 8 per cent of the total turnover or gross receipts. However, the existing rate of deemed profit of 8 per cent referred to in Section 44AD of the Act, shall continue to apply in respect of total turnover or gross receipts received in cash. Legislative amendment in this regard shall be carried out through the Finance Bill, 2017.

In respect of Service Tax, the Supreme Court has recently held that sharing of expenses for a common storage facility does not constitute 'service'. The issue in the instant case was whether an arrangement between two parties for sharing cost of certain expenses in relation to a common pipeline would amount to provision of a service from one party to another. The Supreme Court held that there has to be an element of 'service' provided by one person to another for which consideration towards provision of services are collected. Therefore, mere arrangement for sharing of expenditure for a common pipeline facility between two parties would not qualify as a 'service' and hence not taxable.

We hope that this newsletter keeps you updated on the latest tax developments.

We would welcome any suggestions to improve the content and the presentation of this publication.

A. Didar Singh

Recent Case laws

I. DIRECT TAX

Supreme Court Decisions

Subvention receipt from the parent company to recoup losses of the subsidiary is not taxable as revenue receipt

The taxpayer was engaged in the business of manufacturing digital electronic switching systems, computer software and also software services. The taxpayer was a potentially sick company, and that its capacity to borrow had reduced substantially leading to shortage of working capital. During the AYs 1999-2000 and 2001-02, the taxpayer received subvention amount from its parent company. The taxpayer claimed that the subvention payment received was to make good the loss incurred by it, and it was capital receipt in nature and, hence, could not be treated as income or revenue receipt. The AO treated such subvention as a revenue receipt. However, CIT(A) and Income-tax Appellate Tribunal (the Tribunal) held it as capital receipt.

The Karnataka High Court held that subvention received from the parent company to recoup the losses of the subsidiary is taxable as revenue receipt, since the subvention was extended to run the subsidiary's business more profitably. Further, the purpose of the subvention was to meet the working capital needs/recurring expenditure and hence the payments were on revenue account. The High Court has observed that the purpose of the subsidy/subvention determines the character of the payment (i.e. revenue or capital). Further, the High Court also observed that the point of time at which the subsidy was paid, the source, or the form of subsidy, is not relevant.

Supreme Court ruling

The Supreme Court in the case of Ponni Sugars & Chemicals Ltd.1 and Sahney Steel and Press Works Ltd.2 observed that unless the grant-in-aid received by the taxpayer is utilised for acquisition of an asset, the same must be understood to be in the nature of a revenue receipt. In these cases the subsidies received were in the nature of grant-in-aid from public funds and not by way of voluntary contribution by the parent company as in the present cases.

The voluntary payments made by the parent company to its loss-making Indian company can also be understood to be payments made in order to protect the capital investment of the taxpayer. Therefore, there was no hesitation to hold that the payments made to the taxpayer by the parent company for AYs in question cannot be held to be revenue receipts. The Supreme Court referred the favourable view adopted by the Delhi High Court in the case of Handicrafts and Handlooms Export Corporation of India Ltd3. The Delhi High Court in that case held that receipt of subvention from parent in order to enable the subsidiary company to recoup losses and meet its liabilities is akin to equity support and is not chargeable capital receipt. The Supreme Court respectfully agreed with the view adopted by the Delhi High Court in that case.

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[1] CIT v. Ponni Sugars & Chemicals Ltd. [2008] 306 ITR 392 (SC)

[2] Sahney Steel and press Works Ltd. v. CIT [1997] 228 ITR 253 (SC)

[3]CIT v. Handicraft and Handlooms Export Corpn of India Ltd [2014] 360 ITR 130 (Del)

Accordingly, the Supreme Court set aside the order of the High Court and held the decision in favour of the taxpayer.

Siemens Public Communication Networks Ltd. v. CIT (SLP No. 6946/2014) – Taxsutra.com

High Court Decisions

Formula One championship circuit constitutes a fixed place of business/PE in India under the India-U.K. tax treaty

The taxpayer, a U.K. tax resident company; the Federation Internationale de l' automobile (FIA), an international motor sports events regulating association; and Formula One Asset Management Limited (FOAM) entered into certain agreements. Based on these agreements, FOAM licensed all commercial rights in the FIA Formula One World Championship (Championship) to the taxpayer for the 100-year term effective 1 January 2011. The taxpayer entered into a Race Promotion Contract (RPC) dated 13 September 2011, by which it granted to Jaypee Sports (Jaypee) the right to host, stage and promote the Formula One Grand Prix of India event for a consideration of USD40 million. An artworks licence agreement (ALA) contemplated in RPC was also entered into between the taxpayer and Jaypee, permitting the use of certain marks and intellectual property (IP) belonging to the taxpayer for a consideration of USD1. The RPC of 2011 was preceded by another RPC of 25 October 2007; signed by the taxpayer and Jaypee.

All the participating teams known as 'constructors' enter into a contract, known as the 'concorde agreement' with the taxpayer and the FIA. The concorde agreement assured the participating teams that the FIA would have the exclusive right in the F1 championship and would be entitled to grant to the Commercial Rights Holder the exclusive right to exploit the commercial rights in the F1 championship. In this agreement, they bind themselves to an unequivocal negative covenant with the taxpayer that they would not participate in any other similar motor racing event. This is, in effect, a closed circuit event since no team other than those bound by contract with the taxpayer is permitted participation.

Every F1 racing event is hosted, promoted and staged by a promoter with whom the taxpayer as the right holder, enters into a contract and whose event is nominated by the CRH (i.e. Contract Right Holder, which is in effect, the taxpayer), to the FIA for inclusion in the official F1 racing calendar. The FOWC had the right to draw the FIA F1 Championship for any season to be approved by FIA.

The taxpayer and Jaypee both approached the Authority for Advance Ruling (AAR). The AAR held that the taxpayer had no fixed place of business in India; it is not doing any business activity in India and has not authorised any entity to conclude contracts on their behalf, and therefore has no PE in India in terms of Article 5 of the tax treaty. Further, it was held that the amounts paid were royalties. The taxpayer, Jaypee and the tax department then filed a writ petition before the High Court under Article 226 of the Constitution.

The Delhi High Court held that as long as the presence of the taxpayer is in a physically-defined geographical area, permanence in such fixed place could be relative in the context of the nature of the business. The taxpayer carried on business in India for the duration of the race, two weeks before it and a week after the race. Consequently, the Formula One championship circuit (the circuit) constitutes a fixed place of business under Article 5(1) of the India-U.K. tax treaty (the tax treaty).

Payments made to the taxpayer under a specific agreement are not royalty either under the Act or under the tax treaty, as they are not for the use of trademarks or intellectual property (IP) rights, but rather for granting of the privilege of staging, hosting and promoting the event at the promoter's racing circuit. The taxpayer carried out business in India through a PE (the circuit); therefore, the payments made to the taxpayer are business income.

Formula One World Championship Limited v. CIT [W.P.(C) 10307/2016, C.M. APPL.40563/2016 & 40564/2016]

Revenue not debarred from making Section 14A disallowance absent express recording of dissatisfaction

The taxpayer had reported a tax exempt income to the tune of INR105.24 crore during AY 2009-10. The taxpayer further offered disallowance of INR25 lakhs as expenses attributable to that exempt income. The AO after carrying out an elaborate analysis of the provisions as well as Rule 8D concluded that INR3.87 crore had to be disallowed. On further appeal the CIT(A) held that by independent reasoning and analysis of Section 14A and Rule 8D the preliminary stage of recording the satisfaction with regard to amount offered by the taxpayer as disallowance i.e. expenses attributable to earning of exempt income was not carried out by AO and thus he did not have jurisdiction to enter into next stage and calculate the disallowance in terms of Rule 8D. On further appeal, the Tribunal held that the opinion expressed by AO was sufficient and justified the disallowance ultimately made.

The High Court held that even though the language of Section 14A presupposes that the AO has to adduce some reasons if he is not satisfied with the amount offered by way of disallowance by the taxpayer, Section 14A(2) read Rule 8D(i) leave the AO equally with no choice in the matter inasmuch as the statute in both these provisions mandates that the particular methodology enacted should be followed. The High Court held that the AO is under a mandate to apply the formulae under Rule 8D because of Section 14A(2) of the Act. Therefore, the AO is confronted with a figure which, prima facie, is not in accord with what should approximately be the figure on a fair working out of the provisions, he is bound to reject it. In such circumstances, the AO ordinarily would express his opinion by rejecting the disallowance offered and then proceed to work out the methodology enacted.

In this case, elaborate analysis was carried out by the AO and three important steps as indicated by him in the order show that all elements were present in his mind and that he did not expressly record his dissatisfaction. It would not per se justify this Court in concluding that the AO was not satisfied or did not record cogent reasons for his dissatisfaction. To insist that the AO should pay such lip service regardless of the substantial compliance with the provisions would, in fact, destroy the mandate of Section 14A. Having regard to these facts, this Court is satisfied that the disallowance which is otherwise in accord with Rule 8D was justified.

Indiabulls Financial Services Ltd v. DCIT (ITA 470/2016) (Delhi High Court)

Intra-group services may be rendered orally and would not necessarily be recorded in writing

- The taxpayer is engaged in various activities through different divisions such as packaging, metallise, max foil, pharmaceuticals, treasury and healthcare divisions.

- During the year, the taxpayer incurred an expenditure of about INR1.25 crore towards legal and professional charges paid to its AE viz. Max UK Ltd. The taxpayer had entered into an agreement with its AE for provision of various services such as exploration of business opportunities initially in the field of healthcare, financial services, identification and due diligence of potential collaborators/partners, etc. that may be required from time-to-time for facilitating collaboration/joint venture arrangements, etc.

- During the assessment proceedings, the AO disallowed the aforesaid expenditure on the ground that taxpayer had not furnished any details to establish that the services were actually rendered. The CIT(A) upheld the same. Aggrieved, the taxpayer filed an appeal before the Tribunal.

- The Tribunal accepted the taxpayer's contention that the taxpayer was in fact able to achieve an export turnover of INR29 crore, and it has benefited in the area of healthcare services, which prima-facie demonstrated that the services were rendered by AE. Thus, the Tribunal ruled in favour of the taxpayer. Aggrieved by the said Tribunal order, the revenue preferred an appeal before the High Court.

Issue before the High Court

- Whether the Tribunal was right in holding that the legal and professional expenses are allowable, ignoring the fact that the taxpayer has failed to discharge its onus with respect to providing evidence of services rendered and benefits received.

High Court's ruling

- The High Court observed that this issue was essentially a question of fact and not one of law and held that the conclusion arrived at by the Tribunal was not absurd or perverse, and it was a possible view.

- The High Court observed that nature of services mentioned in the agreement between the taxpayer and its AE would not necessarily be recorded in writing. Further, the High Court observed that advice, introductions, information can be communicated orally and the possibility of the same would be enhanced on account of the fact that these were group companies.

- Thus, considering all the facts together, the High Court upheld the view taken by the Tribunal.

- The High Court also ruled on disallowance under Section 14A of the Act.

CIT vs Max India Limited - ITA No.186 of 2013 (O&M) (P&H)

Tribunal Decisions

Mumbai Tribunal rejects taxpayer's 'transaction genuineness' contention and disallowed expenditure under Section 40A(3) of the Act

The taxpayer was inter alia engaged in the business of supplier of ship stores to ocean-going ships calling at different Indian ports. The respective supplies were to be made at various ports of calls, wherein though at certain ports the taxpayer had its own offices, while for the remaining ports they had to rely on local agents, who as required by the vessels at their port of call would locally procure the items and supply the same on board.

Since the ships usually halt for a period ranging from a few hours to a maximum of two days, therefore the supplies had to be procured and supplied on board the ship prior to its sailing, failing which the taxpayer would lose its clients. During the year under consideration, certain supplies of stores were required at Vishakhapatnam port where the vessel of the customer had docked, however as the taxpayer who did not have an office at the said place, thus it had to rely on the local supplies. That keeping in view the short period within which the supplies were to be made and the taxpayer not being known personally in the said city. Therefore, their cheque was not accepted by the local suppliers, coupled with the fact that during the year under consideration the bank of the taxpayer was not having RTGS/NEFT facility. Therefore in light of the pressing business exigency and being left with no other alternative, the payments had to be made to the suppliers upfront in cash.

The AO had made disallowance of expenditure under Section 40A(3) of the Act.

The Tribunal held that Section 40A(3) of the Act is an overriding provision over other provisions related to the computation of income under the head 'Profits and gains of business or profession' and being mandatory in nature, calls for a strict compliance with the only exceptions under Rule 6DD.

The taxpayer had contended that when the genuineness of the purchase transactions, identity of the parties and the unavoidable circumstances compelling making of cash payments was demonstrated to the satisfaction of the AO, then no disallowance under Section 40A(3) was warranted. The Tribunal believed that such a proposition could be appreciated under the pre-amended provisions of Section 40A(3) read with Rule 6DD up to AY 1995-96. Rule 6DD(J) which laid down an exception to attract Section 40(A)(3) disallowance in case of genuine bonafide cases was scrapped with effect from 1 April 1996. The Tribunal held that pursuant to omission of the Rule 6DD(J) with effect from 1 April 1996 from the statute, and absence of any such pari materia rule or exception being thereafter made available, the concession or benefit which was earlier available to the taxpayer as per Sub-rule (J) of the pre amended Rule 6DD, cannot be transposed from the said pre-amended provisions and read into the post-amended provisions.

International Ships Stores Suppliers v. JCIT (ITA No. 2502/MUM/2013) – Taxsutra.com

AO cannot initiate and levy a penalty if the TPO's order contains no recommendation for initiating a penalty proceeding under section 271AA of the Act

The taxpayer is a foreign company engaged in providing services for manufacturing and selling fast moving consumer good (FMCG) products. The Transfer Pricing Officer (TPO) accepted the Arm's Length Price (ALP) with respect to international transactions. The TPO made an observation in his order that the taxpayer had failed to furnish the information or documents under section 92D of the Income Tax Act, 1961 (the Act). After completing the assessment under Section 143(3) of the Act, the AO initiated penalty proceedings u/s 271AA and levied a penalty at the rate of 2 per cent of the value of the taxpayer's international transaction. The CIT(A) upheld the penalty order.

Tribunal's ruling

- There is no dispute regarding the fact that TPO has not made any adjustment in respect of the international transactions of taxpayer with its Associated Enterprise (AE) and no further addition was proposed.

- The order of TPO under Section 92CA(3) of the Act does not mention that there was any failure on the part of the taxpayer to maintain documents as required under Rule 10D of the Income Tax Rules, 1962 (the Rules) but contains a reference that the taxpayer failed to submit documents and a TP Report. The TPO also stated in its order that since the transactions in question were replica transactions of the AE, the ALP determined by taxpayer is not being disturbed. Further, the taxpayer filed Form 3CEB and royalty agreements entered into with AE, which were duly acknowledged. The TPO order was made after due consideration of the documents and information furnished by the taxpayer.

- The Tribunal held that the taxpayer had sufficiently complied with the maintenance of records as required u/s 92D read with Rule 10D. Further in the TPO's order there was no recommendation for initiating any penalty proceeding u/s 271AA of the Act nor any finding that the taxpayer failed to maintain the records prescribed under Rule 10D of the Rules. Thus, the Tribunal upheld the taxpayer's appeal.

XYZ Ltd. vs ACIT (ITA No.921/Mum/2014) (Mum)

Notification/Circulars/ Press Releases

Transport, power and interest subsidy received by an industrial undertaking is eligible for deduction under Section 80-IB/80-IC of the Income-tax Act

The issue whether revenue receipts such as transport, power and interest subsidies received by an industrial undertaking/ eligible business are part of profits and gains of business derived from its business activities within the meaning of Sections 80-IB/80-IC of the Act and thus eligible for claim of corresponding deduction under Chapter VI-A of the Act has been a contentious one. Such receipts are often treated as 'income from other sources' by the AOs.

The Supreme Court in the case of Meghalaya Steels Ltd in (CA No. 7622 of 2014, dated 9 March 2016) has held that the subsidies of transport, power and interest given by the Government to the industrial undertaking are receipts, which have been reimbursed for elements of cost relating to manufacture/sale of the products. Thus, there is a direct nexus between profit and gains of the industrial undertaking/business and reimbursement of such business subsidies, and is eligible for deduction under Section 80-IB/80-IC of the Act.

Recently, the CBDT has issued a Circular No. 39/2016, dated 29 November 2016 stating that in view of the decision of the Supreme Court, the revenue subsidies received from the Government towards reimbursement of cost of production/manufacture or for sale of the manufactured goods are part of profits and gains of business derived from the industrial undertaking/eligible business, and are eligible for deduction under Chapter VI-A of the Act. Therefore, henceforth, appeals may not be filed by the tax department on the above settled issue, and those already filed may be withdrawn/not pressed upon.

Circular No. 39/2016, dated 29 November 2016

II. SERVICE TAX

Decisions

Sharing of expenses for a common storage facility does not constitute 'service'

The issue in the instant case was whether an arrangement between two parties for sharing cost of certain expenses in relation to a common pipeline would amount to provision of a service from one party to another.

The Supreme Court held that there has to be an element of 'service' provided by one person to another for which consideration towards provision of services are collected. Therefore, mere arrangement for sharing of expenditure for a common pipeline facility between two parties would not qualify as a 'service'.

Gujarat State Fertilizers & Chemical Ltd & Anr v. Commissioner of Central Excise [2016-VIL-67-SC-ST]

Service tax levy on 'construction service' under Joint Development Agreement upheld

The issue in the instant case was whether Service tax levy on construction services provided under a Joint Development Agreement (JDA) was constitutionally valid.

The Supreme Court dismissed the petition by upholding the decision of the High Court that Service tax levy on construction services under a JDA was constitutionally valid. Further, the Supreme Court also held that since a JDA provides a bouquet of rights to a developer, one of which is to put up a construction of an area and sell it to third parties along with an undivided share of land, such parties certainly availed services of developer as a service provider.

N Balabaskar v. Union of India [2016-TIOL-225-CESTAT-SC -ST]

Notification/Circulars/ Press Releases

Invoice related relaxation and other amendments for online information and database access or retrieval

The Service tax law has been amended to allow foreign-service providers providing online information and database access or retrieval (OIDAR) services to Government, local authority or an individual, to issue online invoices without authentication by means of digital signature up to 31 January 2017. Also, the definition of 'telecommunication services' has been amended to exclude OIDAR services from its ambit. Further, for all OIDAR services provided by a foreign-service provider, Principle Commissioner, Large Taxpayer Unit, Bangalore shall have exclusive jurisdiction on the same.

Notification No. 53/2016-Service Tax dated 19 December 2016, Notification No. 51/2016-Service Tax dated 30 November 2016 and Notification No. 50/2016-Service Tax dated 22 November 2016

Exemption on settlement services provided by acquiring bank for transactions below INR2000

The services by an acquiring bank to any person in relation to settlement of an amount up to INR2000 in a single card transaction has been exempted from the ambit of Service tax.

Notification No. 52/2016-Service Tax dated 8 December 2016

Non-reopening of past assessments due to increased turnover after demonetization

In the context of apprehensions that increased turnover due to use of digital means of payment may lead to demands for earlier periods, it has been clarified that in indirect taxes, past assessments will not be reopened for this reason alone.

Circular F.No.137/155/2012-Service Tax (Part-I) dated 9 December 2016

III. CENTRAL EXCISE

Decisions

CENVAT credit admissible if availed against debit note

In the present case, the taxpayer availed CENVAT credit on the strength of debit notes issued by the service provider. The adjudicating authority as well as first appellate authority denied CENVAT credit on the ground that debit note is not a prescribed document for availing CENVAT credit and such debit notes do not bear the information required in terms of Rule 9 of CENVAT Credit Rules, 2004 ('the CENVAT Rules'). Being aggrieved by the impugned order, the taxpayer filed this appeal.

The Mumbai Tribunal held that the information on the debit notes primarily contains all the information required to be mentioned in terms of Rule 9 of the CENVAT Rules. As regards the registration number of service provider, which was not mentioned on the debit notes, the taxpayer has provided a copy of service tax registration certificate of the service provider who issued the debit notes. Accordingly, the CENVAT credit should be allowed on basis of debit notes.

SPM Tools vs CCE, Kolhapur (2016-TIOL-3226-CESTAT-MUM)

CENVAT credit cannot be denied on short payment of invoice value by the recipient

In the instant case, the taxpayer, on basis of terms of contract with the service providers, while making payment to such service providers against the invoices raised by them, retained a percentage of the billed amount towards performance guarantee, which was being paid subsequently after a certain period. The invoices raised by the service providers showed payment of service tax on full invoice value. This fact was not disputed by the tax authorities.

The taxpayer took CENVAT credit of full amount of service tax shown on the invoices while the balance amount was paid much later. Rule 4 (7) of the CENVAT Rules provides that the CENVAT credit in respect of input services for which payment to vendor has not been done within 90 days of invoice, shall be allowed on or after the day on which payment is made of the value of input service and the service tax paid or payable, as is indicated in the invoice, bill or as the case may be, challan referred to in the said Rule 9.

However, revenue denied CENVAT credit. The show cause notice was adjudicated by the jurisdictional Assistant Commissioner who confirmed the above-mentioned CENVAT credit demand along with interest and imposed penalty.

The taxpayer filed an appeal against Order-in-Original, which was decided by the Commissioner (A), wherein the demand was set aside and appeal was allowed. Against this impugned order passed by the Commissioner (Appeals), Revenue filed the present appeal.

The Delhi Tribunal relying on the Board Circular dated 30 April 2010 held that CENVAT credit of full service tax paid by a service provider in respect of service provided to a manufacturer would be available to the manufacturer even if the amount payable to the service provider has been reduced, so long as the service tax paid by the service provider has not changed. Accordingly, the appeal filed by Revenue was rejected.

CCE, Jaipur Vs Hindustan Zinc Ltd. (2016-TIOL-3174-CESTAT-DEL)

IV. Customs Duty - Notification/Circulars/ Press Releases

Outsourcing by an authorised courier

According to Courier Imports and Exports (Clearance) Regulations, 1998, an authorised courier is obligated not to subcontract/outsource functions permitted to any other person, without the written permission of the Commissioner of Customs.

In view of this, Board is of the view that relaxation from such permission merits consideration with regard to certain components of the supply chain before entry inwards/after clearance of the imported courier shipments and before carting in/after 'Let Export' of the export shipments.

Accordingly, Board has decided that for functions namely pick-up or local delivery of export/imported courier packages/shipments, transportation for officials and housekeeping activities, permission will not be required. Prior intimation would suffice.

Circular No. 59/2016-Customs, dated 2 December 2016

V. VAT

Decisions

Sale of goods from customs bonded warehouse to licence holders does not amount of 'sale in course of import'

The taxpayer, in the present case, is engaged in import, sale and marketing of liquor, including wines and spirits. The taxpayer had applied for deferment of custom duty by executing bond and transferred the imported goods to a custom bonded warehouse. In this regard, the taxpayer had claimed that he had transferred goods from bond to bond by issuing delivery challan. Further, the taxpayer had contended that since such transfer occurred before the removal of goods from a bonded warehouse, it will be 'sale in course of import' in terms of section 5(2) of Central State Act, 1956 (CST Act) and accordingly, will not be subject to VAT.

In this connection, the taxpayer made an application to advance ruling authority for determination of taxability in case of sale of imported goods to licence holders from a customs bonded warehouse.

Advance Ruling authority examined the meaning of 'sale in course of import' in terms of section 5(2) of CST Act and stated that, a transaction in order to constitute as 'sale in course of import' in terms of section 5(2) of CST Act, relevant documents in relation to title to goods shall be transferred before the goods have crossed customs frontiers of India. Further, 'crossing of custom frontier' as defined under section 2(ab) of CST Act shall mean crossing the limits of area of customs station in which imported goods are kept before clearance by customs authorities. In a nutshell, if goods are kept in a port before clearance by custom authorities, then only the transfer of documents of title to goods amounts to 'sale in course of import'.

Further, Advance Ruling authority analysed the definition of customs station, which includes customs port, customs airport and land customs station. Also, warehouse is not a declared custom station under Section 7 of Custom Act, 1962 though it may be part of custom area but not a part of customs station. Thus, goods stored outside the customs station as per any special scheme does not get the status of goods stored in customs station. Further, it also highlighted that the term 'custom area', which covers the custom bonded warehouse is a wider term as compared to customs station i.e. all customs stations can be termed as custom area but all custom areas cannot be construed as customs station.

There are various judicial pronouncements by the apex court, which specifically states that in order to consider a particular transaction as 'sale in course of import', transfer of title in goods before crossing of custom frontier is a mandate.

Accordingly, in the present scenario, the advance ruling authority concluded that the sale of imported goods to licence holders from custom bonded warehouse not be treated as sale in the course of import under Section 5(2) of CST Act and accordingly, shall be considered as normal sale under provisions of MVAT and hence, liable to VAT.

Advance Ruling Authority's ruling in case of Moet Hennessy India Private Limited - [TS-502-AAR-2016-VAT

Notifications/Circulars/ Press Release

Rajasthan

With effect from 30 November 2016, Point of Sale (PoS) devices including Micro ATM, have been exempted from VAT levy.

Notification No. F12 (102)/FD/TAX/2016-62 Dated 30 November 2016

The Rajasthan Government has introduced New Amnesty Scheme 2016 which shall be effective from 2 December 2016, up to 15 February 2017. This scheme shall be applicable to the dealer against whom total outstanding demand is less than INR25 crore and has been created upto 31 July 2016.

Notification No. F12 (16)/FD/TAX/2009-65 Dated 2 December 2016