

Staying Updated

Indirect tax newsletter

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Case law

- Input tax credit can be claimed based on the value of input invoice even though the goods are subsequently sold to the consumer at a price lower than the purchase price
- Payment received by a dealer by way of credit notes for replacement of defective parts under warranty arrangement liable to VAT

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- Rate of entry tax on Natural Gas increased in Madhya Pradesh

Central excise

Case law

Manufacture

- In *CCE v Sundaram Clayton Ltd* (2015 (317) ELT 433), the Madras High Court held that aluminium castings could not be called as marketable products when marketing of such goods was forbidden under the agreement between the assessee and Ministry of Defence.
- In *Chemplast Sanmar Ltd v CCE* (2015 (317) ELT 495), the Chennai Tribunal held that anything which was sold could not be termed as an excisable good unless there was evidence to establish that such goods were known in the market as distinctive products.

Valuation

- In *Dewas Metal Section Ltd v CCE* (2015-TIOL-599-CESTAT-DEL), the Delhi Tribunal held that the amount charged from customers as carrying cost of extra raw material inventory was includible in assessable value.
- In *Mahindra & Mahindra Ltd v CCE* (2015-TIOL-684-CESTAT-MUM), the Mumbai Tribunal held that in case of stock transfer of goods from factory to depot, and again from depot to another depot, the assessable value would be the price prevailing at second depot

from where the goods are finally sold.

CENVAT

- In *Dalmia Cements (Bharat) Ltd v CCE* (2015-TIOL-587-CESTAT-MAD), the Chennai Tribunal held that input credit was admissible on steel and cement used in the manufacture of storage tank in the factory premises.
- In *Cauvery Stones Impex Pvt Ltd v CCE* (2015-TIOL-589-CESTAT-MAD), the Chennai Tribunal held that CENVAT credit on outward transportation up to the port was admissible when the goods were sold on FOB basis.
- In *Jubilant Engineering Ltd v CCE* (2015-TIOL-586-CESTAT-MAD), the Chennai Tribunal held that once the appellant's rebate claim was cancelled they were entitled to take re-credit of the amount *suo-moto* in their CENVAT account.
- In *Ishu Super Steel Pvt Ltd v CCE* (2015-TIOL-557-CESTAT-MUM), the Mumbai Tribunal held that CENVAT credit could be reversed only to the extent of quantity of inputs lost in fire as certified by surveyor, even though the appellant had lodged claim with the Insurance company for loss of higher quantity of inputs.

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- In *Asian Colour Coated Ispat Ltd v CCE* (2015 (317) ELT 538), the Delhi Tribunal held that when inputs were removed on payment of duty higher than the credit availed, the question of reversal of credit did not arise even if the process did not amount to manufacture.
- In *Neuland Laboratories Ltd v CCE* (2015 (317) ELT 705), the Bangalore Tribunal held that once the recipient had received the goods on payment of duty, the CENVAT credit could not be denied on the ground that the supplier of the inputs was not required to pay excise duty on the goods supplied.

Others

- In *Karamchand Appliances Private Ltd v UOI* (2015 (318) ELT 221), the Delhi High Court held that the Central Board of Excise and Customs (CBEC) had no right to issue a circular incorporating directions which were contrary to the decision of the Tribunal, and it was open to the Revenue to move either the High Court or the Supreme Court to get the correctness of the Tribunal's decision contested or challenged.
- In *Ruchi Soya Industries Ltd v CCE* (2015 (318) ELT 309), the Delhi Tribunal held that the lower authority was bound to follow the law declared by Tribunal in similar matter unless the

said declaration of law stood set aside by any other higher forum.

Service tax

Notifications and circulars

- The Central Government has exempted the taxable services provided or agreed to be provided against 'Merchandise Exports from India Scheme (MEIS) duty credit scrip' and 'Service Exports from India (SEIS) Scheme duty credit scrip' from the whole of the service tax.

(Notification No(s). 10/2015-service tax and 11/2015-service tax, both dated 8 April, 2015)

- The CBEC has clarified that the proposed change in service tax rate from 12.36% to 14% would come in effect from the date to be notified post enactment of the Finance Bill 2015 only.

(Circular No. 183/02/2015-service tax dated 10 April, 2015)

Case law

- The Andhra Pradesh High Court, in *CCEST v Hyundai Motor India Engineering (P) Ltd* (2015-TIOL-739-HC-AP-ST) held that the 'relevant date' for calculating time limit for filing refund claim under rule 5 of CENVAT credit rules would be the date of receipt of payment, and not the date on which services were provided.
- The Madras High Court, in *Life Cell International (P) Ltd v Union of India and Ors* (2015-TIOL-6844-HC-MAD-

ST) held that an amendment, like the original statute, would only be effective prospectively, unless expressly stated in the language that the amendment was clarificatory and should be given retrospective effect. Accordingly, in the absence of an express intent to give retrospective effect, it was held that the exemption granted to cold blood banks by amending mega exemption Notification No. 25/2012-service tax vide Notification No. 4/2014-service tax was available only from the date of amendment.

- The Kerala High Court, in *Secretary to Government, Government of Kerala and Anr v Union of India and Anr* (2015-TIOL-895-HC-KERALA-ST) held that the State Government or a department of the State Government would be liable to pay service tax, unless the services provided by it fell under the 'Negative list of services'.
- In *Sify Technologies Ltd v CCEST* (2015-TIOL-525-CESTAT-MAD), the Chennai Tribunal held that a statute making an amendment to the effect of declaration/valuation of liability, even if it was by way of an amendment to an explanation, could not be retrospective unless specifically expressed by the legislature.

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Accordingly, it was held that the amendment to explanation (c) of sub-section 4 of section 67 of the Finance Act, 1994 which brought debit or credit of any amount in the books of accounts relating to associated enterprises into the fold of taxation could only be applied prospectively.

- The larger bench of Delhi Tribunal, in *Larsen and Toubro Ltd and Ors v CST and Ors (2015-TIOL-527-CESTAT-DEL-LB)* held that works contracts which could be appropriately classified under ‘commercial or industrial construction’, ‘construction of complex’ or ‘erection, commissioning or installation’ services, were liable to service tax under the respective service categories even prior to 1 June, 2007, i.e., the date on which the ‘works contract services’ were first introduced as taxable services.
- The Mumbai Tribunal, in *Raje Vijaysingh Dafale SSK Ltd v CCE (2015-TIOL-535-CESTAT-MUM)* held that where the bank had taken over the borrower’s factory to recover its dues, and leased out the factory to a lessee who continued to hire the employees of the factory and paid salary directly to employees, there was no element of provision of manpower supply services by lessee to lessor. Accordingly, it was held that the lessee was not liable to

pay service tax on the salary paid to employees under ‘manpower supply services’.

- The Ahmedabad Tribunal, in *Metro Motors v CCE (2015-TIOL-581-CESTAT-AHM)* held that the limitation period specified under section 11B of Central Excise Act, 1944 would not be applicable to claims of refund towards the excess amount paid during adjudication proceedings, arising as result of favourable order by the Commissioner (Appeals).

VAT/Sales Tax

Notifications and circulars

Andhra Pradesh

- Effective 15 April, 2015, e-way bills are made mandatory for LTU dealers and dealers dealing in sensitive goods. Also, e-way bills are made mandatory when the goods are exported to or imported from outside India and vehicle passes through the border check post.

(Circular No. CCTs Ref. No.A I(1)/45/2014 dated 2 April, 2015)

Chandigarh

- Effective 18 April, 2015, VAT rate on mobile phones has been increased from 5% to 9.35% and VAT rate on batteries has been increased from 12.50% to 14.30%.

(Notification No. E&T/ETO(Ref)-2015/991 dated 17 April, 2015)

Chhattisgarh

- Effective 1 April 2015, every registered dealer whose annual turnover is less than INR 10 Mn is required to furnish an annual electronic statement in Form 18, instead of return in form 17. The same needs to be filed within three months from the end of the year.
- Effective 1 April 2015, electronic payment of tax has been made

compulsory for every dealer.

(Notification No. F-10-15/2015/CT/V (26) dated 31 March, 2015)

Delhi

- Effective 31 March, 2015, a dealer can carry forward the unutilized input tax credit pertaining to a financial year to the subsequent year.

(Notification No. F.14 (2)/LA-2015/cons21aw/40-54 dated 30 March, 2015)

- Due date for online submission of form DP-1 and reconciliation return in form 9 has been extended from 31 March, 2015 to 30 June, 2015.

(Notification No. F.3(352)/Policy/VAT/2013/936-947 dated 31 March, 2015 and Circular No. 30 of 2014-15 No.F.7 (420)/Policy/2011/PF/948-954 dated 31 March, 2015)

Goa

- Effective 1 April, 2015, VAT rate on petrol sold by public sector as well as private sector oil marketing companies to their authorized retail outlets within the state has been increased from 10% to 15%.

(Notification No. 4/5/2005-Fin(R&C) (119) dated 31 March, 2015)

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- Effective 1 April 2015, VAT rate on cellular phones and CDMA phones costing more than INR 12,000 has been increased from 5% to 12.50%.

(Notification No. 4/5/2005-Fin(R&C) (120) dated 31 March, 2015)

Haryana

- Effective 1 April, 2015, VAT rate on ‘all types of liquor when sold in the State for the first time, in the hands of distilleries in the case of country liquor, L-1B and L-1AB in the case of Indian Made Foreign Spirit, and L- IB-1 and L-1-AB-1, L-1W & S-1A in the case of beer and wine etc., L-1B1-A for RTB (Ready to drink beverages), except Imported Foreign Liquor (Bottled in Origin) sold by L-1BF’ has been increased from 4% to 8.4%.

(Notification No. 4/ST-1/H.A.6/2003 /S.59/2015 dated 31 March, 2015)

Jammu and Kashmir

- Every registered dealer having a gross annual turnover of INR 5 Mn and above is mandatorily required to file the return electronically from 1st quarter of FY 16.

(Notification No. 02 Dated 21 April, 2015)

Jharkhand

- Effective 10 April, 2015, VAT rate on Plywood, Block Board, Flush Doors and Laminates has been reduced from 14% to 5%.

(Notification No. S.O.2 dated 10 April, 2015)

Karnataka

- Effective 1 April, 2015, exemption from tax has been provided on sale of paddy, rice, wheat, pulses, flour, soji of rice and wheat, maida of wheat till 31 March, 2016.

(Notification-I No. FD 40 CSL 2015 dated 31 March, 2015)

- Effective 1 April, 2015, VAT rate on ‘mobile phone charger whether sold along with mobile phone in sealed pack or otherwise’ has been notified as 5.5%.

(Notification-III No. FD 40 CSL 2015 dated 31 March, 2015)

- Effective 1 April, 2015, VAT rate on ‘cigarettes, cigars, *gutkha* and other manufactured tobacco’ has been increased from 17% to 20%.

(Karnataka Value Added Tax (Amendment) Act, 2015)

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Madhya Pradesh

- Effective 1 April, 2015, residuary VAT rate (on goods not specified under any other schedule) has been increased from 13% to 14%.

(Notification-I No. FD 40 CSL 2015 dated 31 March, 2015)

Maharashtra

- Effective 1 April, 2015, following changes have been introduced:
 - An explanation has been added to the definition of 'Purchase Price' and 'Sale Price' to clarify that service tax component shall be excluded therefrom if collected separately on the invoice;
 - Late fees for filing of return within 30 days from expiry of due date has been reduced from INR 2,000 to INR 1,000;
 - Limitation period for initiation of assessment has been increased from five years to six years.

(Maharashtra Tax Laws (Levy, Amendment and Validation) Act, 2015)

Rajasthan

- Effective 1 April, 2015, levy of Cess at five percent has been introduced on purchase of wheat made by the registered dealers having purchase

turnover of wheat of more than INR 15,000 Mn in the FY 14 or thereafter.

(Notification No. F. 12 (14) FD/TAX/2015-3-dated 1 April, 2015)

Tamil Nadu

- Effective 1 April, 2015, exemption from tax has been provided to works contract relating to sizing of yarn.

(Notification No. II(2)/CTR/143(a-1)/2015.G.O.Ms.No.45, Commercial Taxes and Registration (B1), dated 25 March, 2015)

Case law

- The Rajasthan High Court, in *Commercial Tax Officer v Jyoti Electronics* (2015-TIOL-1016-HC-RAJ-CT), held that an assessee could claim input tax credit based on invoice value even though the goods were subsequently sold to the consumers at a price lower than the invoice price. The HC observed that there was no restriction under the VAT law to sell goods below the invoice value.
- The Gujarat High Court, in *State of Gujarat v Gujarat Ambuja Export Ltd* (2015-TIOL-1032-HC-AHM-VAT), held that no interest and penalty was payable when additional assessed tax had been paid from the available balance of input tax credit.

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- The Punjab and Haryana High Court, in *Shakti Industries v Revisional Authority-Cum-Deputy Excise and Taxation Commissioner (Inspection), Rohtak* (2015-TIOL-1018-HC-P&H-CT), held that in the absence of any legislative intent to confine the meaning of the term "utensil", as referred to in the entry of goods liable to concessional rate of tax, to any particular place, mode or manner of user, "hooka" must necessarily fall within the meaning of the word "utensil". The HC observed that a utensil is not necessarily confined to articles used in a kitchen, a hotel or a restaurant but is often misunderstood as referring to an item used in a kitchen.
- The Gujarat High Court, in *Kataria Automobiles Pvt Ltd v State of Gujarat* (2015-TIOL-958-HC-AHM-VAT), held that payment received by a dealer by way of credit notes from the manufacturer for replacement of defective spare parts of the motor vehicles sold to the customer during the warranty period amounted to sale, and hence was liable to VAT. The HC relied on the landmark decision of the Supreme Court in the case of *Mohd Ekram Khan and Sons* (2004-136-STC-515-SC).
- The Rajasthan High Court, in *Commercial Tax Officer v Goyal Colour Lab* (2015-TIOL-899-HC-RAJ-CT), held that chemicals used in printing/developing the photograph were not liable to sales tax. The HC observed that it was sale of duly developed photograph to the customers and not of the chemical. The contract had to be seen as one of art and labour, and whatever chemical was used, could not be said to be sale, directly or indirectly, to the customers.

Entry tax

Notifications and circulars

Assam

- Effective 24 March, 2015, exemption from entry tax has been provided in respect of 15 vaccine delivery vans procured by the Government of India and supplied to the State to run the routine immunization program in the State of Assam.

(Notification No. FTX.39/2015/2 dated 24 March, 2015)

Chhattisgarh

- Effective 1 April, 2015, entry tax rate on limestone has been increased to INR 30 per MT from INR 25 per MT.

(Notification No. F-10-14/2015/CT/V (25) dated 31 March, 2015)

Madhya Pradesh

- Effective 1 April, 2015, rate of entry tax on natural gas including compressed natural gas has been increased to 10%.

(Notification No. F-A-3-13-2005-1-V(15) dated 31 March, 2014)

Rajasthan

- Effective 8 April, 2015, New Voluntary Amnesty Scheme for Entry Tax-2015 has been notified for payment of demand

outstanding up to INR 50 Mn. This scheme is effective till 30 April, 2015.

(Notification No. F.12(17)FD/TAX/2015-Pt-4 dated 8 April, 2015)

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