

Staying Updated

Indirect tax newsletter

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- Sale of paper cartons used for packing of goods to be exported held not to constitute a penultimate sale for export
- Activity of providing passive infrastructure to telecommunication operators on sharing basis held not covered under the purview of VAT as deemed sale.

Central excise

Case law

Manufacture

- In *Mettur Thermal Power Station v CBEC* (2015-TIOL-1948-HC-MAD-CX), the Madras High Court held that generation of ‘fly ash’ during burning of coal did not involve any manufacturing activity; hence it did not fall under the purview of excisable goods so as to attract levy of excise duty.

Valuation

- In *CCE v Indorama Synthetics (I) Ltd* (2015-TIOL-190-SC-CX), the Supreme Court held that transfer of advance licence in favour of the assessee by the buyer for duty free import of raw material was additional consideration, and hence monetary value of the licence was includible in terms of Rule 6 of Valuation Rules.
- In *Chackolas Spinning and Weaving Mills Ltd v CCE* (2015-TIOL-153-SC-CX), the Supreme Court held that notional profit had to be added to cost of production to determine assessable value of the intermediate product, even if the assessee had suffered losses.
- In *Aquamall Water Solutions Ltd v CCE* (2015 (321) ELT 519), the Bangalore Tribunal held that Rule 8 of

the Valuation Rules was applicable on spares parts cleared by appellant to its holding company for use in their Annual Maintenance Contract Work. This decision has been affirmed by the Supreme Court in 2015 (321) ELT A203 (SC).

- In *Indian Hume Pipe Co. Ltd. v CCE* (2015 (321) ELT 460), the Chennai Tribunal held that pipes manufactured by assessee for use in execution of turnkey project awarded by the State Water Board had to be assessed under Rule 11 read with Rule 8 of the Valuation Rules. This decision has been affirmed by the Supreme Court in 2015 (320) ELT A101 (SC).

CENVAT

- In *Kohinoor Printers Pvt. Ltd. v CCE* (2015 (321) ELT 456), the Chennai Tribunal held that CENVAT credit was available on goods supplied by job worker on payment of duty; and that the same could not be denied on the ground that the job worker ought to have availed of benefit of exemption under Notification No. 214/86-CE.
- In *Triveni Engineering and Industries Ltd v CCE* (2015-TIOL-1759-CESTAT-DEL), the Delhi Tribunal held that CENVAT credit was admissible on transit insurance when the goods were sold on FOR destination basis.

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- In *Tata Motors Ltd v CCE (2015-TIOL-1738-CESTAT-MUM)*, the Mumbai Tribunal held that there was no requirement to reverse CENVAT credit on inputs used in job-worked goods when the principal manufacturer had paid duty on the final product.
- In *CCE v Park Nonwoven Pvt. Ltd (2015-TIOL-1735-CESTAT-DEL)*, the Delhi Tribunal held that there was no requirement to reverse credit on input contained in work in progress destroyed in fire
- In *ISMT Ltd v CCE (2015-TIOL-1776-CESTAT-MUM)*, the Mumbai Tribunal held that demand under Rule 6(3)(i) was not sustainable in respect of any waste, byproduct or refuse cleared without payment of duty
- In *TCS e-Serve Ltd v UOI (2015 (321) ELT 564)*, the Bombay High Court held that refund claim arising out of favorable order of Tribunal could not be rejected on the ground that Department had filed appeal before High Court, unless the Tribunal order was stayed.

Others

- In *CCE v Delphi TVS Diesel System Ltd (2015 (322) ELT 279)*, the Madras High Court held that interest was payable on wrong availment of credit even if it was reversed before utilization.

Service tax

Notifications and circulars

- The Board has provided the following clarifications in the context of the discoveries/ observations during audit, investigations and scrutiny:
 - In cases involving fraud, suppression of facts, etc.:
 - Where an assessee pays the service tax/ excise duty, interest and reduced penalty equal to 15% of the tax, then assessee can request waiver of written SCN.
 - Where the assessee makes a written request for waiver of written SCN, the 30-days period to deposit reduced penalty will be computed from date of receipt of such waiver request by the Department.
 - In cases not involving fraud, suppression of facts, etc.:
 - Where an assessee pays the tax along with interest within 30 days of issuance of SCN or before issuance of SCN, then no penalty is payable and the proceedings shall be deemed to be concluded.

- Further, conclusion of proceedings against the assessee may be approved by an officer equal in rank to the officer who is competent to adjudicate such cases.

(F.No 137/46/2015-Service Tax dated 18 August, 2015)

Case law

- The Supreme Court reversed the judgment of the CESTAT 5-member bench and held in *CCE v Larsen and Toubro Ltd (TS-437-SC-2015-ST)*, that indivisible works contracts could not be taxed under any other category before 1.6.2007.
- The Bombay High Court, in the case of *Sai Vardha Power Company Ltd. v Union of India (2015-TIOL-1637-HC-MUM-ST)*, held that once the SEZ unit had furnished form A1, duly verified by the SEZ authorities, for procurement of input services without payment of service tax, the jurisdictional service tax authorities have a duty to issue form A2.
- The Mumbai Tribunal, in *Mistair Health and Hygiene Pvt Ltd v CCE, Pune-II (2015-TIOL-1521-CESTAT-MUM)*, held that manufacture of medicines containing alcohol on job work basis would not attract service tax since medicines were manufactured as

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per the provisions of Drugs and Cosmetics Act; hence there was manufacture of excisable goods

- The Mumbai Tribunal, in *Ideal Road Builders Pvt Ltd v CST, Mumbai (2015-TIOL-1549-CESTAT-MUM)*, held that the activity of collecting and depositing toll tax on behalf of NHAI and retaining a certain sum of money as commission could not be categorized as Business Auxiliary Service, as the appellant is not promoting or marketing or selling goods produced by a client, nor was he promoting or marketing services provided by the client.
- The Delhi Tribunal, in case of *Allspheres Entertainment Pvt Ltd v CCE, Meerut (2015-TIOL-1629-CESTAT-DEL)*, held that CENVAT credit could not be denied merely because the invoices were issued at the appellant's unregistered office address. This defect was procedural and curable.
- The Mumbai Tribunal, in *SA Enterprises v CCE, Pune-I (2015-TIOL-1682-CESTAT-MUM)*, held that penal provisions were substantive in nature and therefore only those penal provisions which were in force during the time of commission of offence would apply, and not provisions amended thereafter.

Entry Tax

Notifications and circulars

Assam

- Effective 30 July, 2015, a simplified procedure has been notified for transportation and delivery of consignments of specified goods by a transporter, courier agent or any other person for import of taxable goods into Assam purchased through online shopping for personal use and not for commercial use.

(Notification No.CTS62/2014/60: Dated 30th July, 2015)

- Effective 22 July, 2015, import of plant and machinery by industrial units have been exempted from entry tax, subject to fulfillment of prescribed conditions

(Circular No. 10/2015 No. CTS81/ 2007 /400 Dated 22nd July, 2015)

VAT/Sales Tax

Notifications and circulars

Chhattisgarh

- Effective 15 August, 2015, the tax rate for batteries except cell phone battery, torch battery, watch battery and other toys related batteries, has been provided at 14.30%, and rates for mobile phones/cell phones including all its parts and accessories such as head phones, data

cable, mobile charger memory card, ear phone, audio device, and mobile holder, has been provided at 9.35%.

(Notification No. E&T/ETO(Ref)-2015/2289 Dated 14th August, 2015)

Dadra and Nagar Haveli

- Effective 5 August, 2015, registration certificate is to be granted within one day of submission of documents for non-sensitive goods, which includes all goods except goods like petroleum products, acids, chemicals etc..

(Circular No. DNH/VAT/CT-MMP/AMDT/Rules/2011/1215 Dated 5th August, 2015)

Daman and Diu

- Effective 30 July, 2015, Punjab National Bank, Daman Branch has been notified as authorized bank for payment of taxes, penalty, interest and any other dues payable under the Act.

(Notification No DMN/VAT2015/201415/236 Dated 30th July, 2015)

- Effective 12 August, 2015, registration certificate is to be granted within one day of submission of documents for non-sensitive goods which includes all goods except goods like petroleum products, acids, chemicals etc.

(Circular No. DMN/VAT/VAT Soft/201314/254 Dated 12th August, 2015)

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Delhi

- Due date for filing of online/ hard copy return for the first quarter of FY16 has been extended to 25th August 2015. Dealers filing the return using digital signature are not required to file hard copy of the return.

(Circular No. 19 of 201516 No.F.7 (420)/Policy/2011/PF/582588 Dated 17th August, 2015)

- Dealers registered within the last three years, and whose turnover (excluding turnover of exempted goods and of exports) has crossed INR 10 crores in any financial year, and who has deposited tax less than 0.1% of such turnover, are required to furnish an additional security of 0.1% of their turnover.

(Circular No. 20 of 201516 No.F.3 (556)/Policy/2015/59193 Dated 19th August, 2015)

- Effective 17 August, 2015, Andhra Bank and State Bank of Travancore have been authorized for collection of tax, interest, penalty or any other dues under the Act.

(Notification No F.7(400)/Policy/VAT/2011/PF/565-79 Dated 17th August, 2015)

- Effective 1 August, 2015, cutlery made of metals has been inserted in Third

Schedule, to be taxed at 5%.

(Notification No. F.3(11)/Fin.(Rev.-1)/2015-16/DSVI/599 .-Dated 31st July, 2015)

Karnataka

- Effective 1 August, 2015, VAT exemption has been provided on sale of 'Solar PV Panels' and Solar Inverters'.

(Notification No. FD 71 CSL 2015 Dated: 1st August, 2015)

Kerala

- In case of works contracts, SEZ unit exemption is now available to sub-contractor also, if the work is done by him.

(Circular No. 22/2015 No.C1-1/15/CT Dated 7th August, 2015)

Nagaland

- Effective 29 July, 2015, dealers claiming input tax credit are required to obtain login id and password from its jurisdictional officer and upload sales and purchase invoice details in Taxsoft (tax administration application software). No input tax credit shall be allowed effective 01 April, 2015 unless the details are uploaded in Taxsoft

(Notification No. CT/LEG/130/2006: Dated 29th July 2015)

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Rajasthan

- Due date for filing of return for the first quarter of FY16 has been extended to 21 August, 2015.

(Notification No. F. 26(315) ACCT/ MEA/2014/Part/Tax/6465 Dated 14th August, 2015)

- Effective August 14, tax rate on cigarettes increased, depending on the length of the cigarette.

(Notification No. F. 12(74) FD/Tax/ 2014- 20 Dated 2nd June, 2015)

West Bengal

- Effective 7 August, 2015, dealers who were earlier deselected for online generation of waybills can now generate online waybills in restricted manner, subject to fulfillment of prescribed conditions.

(Circular No. 15/2015 dated 7th August, 2015)

Case Laws

- The Kerala High Court, in the case of M/s. Super Packaging Industries v The Sales Tax Officer, II circle Ernakulum (TS-408-HC-2015-KER-VAT), held that sale of paper cartons used for packing of goods to be exported did not constitute a ‘sale in the course of export against form H’. The HC observed held

that the agreement between the exporter and foreign buyer was for export of packed goods, and not packing material, and therefore the goods exported were different from the packing cartons for which exemption was claimed.

- The Delhi High Court, in the case of BPCL Petrol Dealers Association & Ors v The Commissioner DVAT & Ors (2015-TIOL-1812-HC-DEL-VAT) held that explanation 2 to Section 2(1)(zd) of the DVAT Act, which provided for levy of VAT on sale of petrol and diesel by oil marketing companies at a price equivalent to the price at which the retail outlets sold these commodities to the customer, as *ultra vires* the Constitution of India. The HC observed that the said explanation 2 permitted levy of VAT on the sale price of a transaction that was yet to take place
- The Madhya Pradesh High Court, in the case of Bharti Infratel Ltd. v State of Madhya Pradesh & Ors (TS-445-HC-2015(MP)-VAT), held that the activity of providing passive infrastructure and related operation and maintenance services to various telecommunication operators did not fall within the ambit of deemed sale as transfer of right to use goods, and hence were not chargeable to VAT. The HC relied

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on the decisions of the Karnataka and Delhi High Courts in the matter of Indus Towers Ltd to hold that permissive/ limited use of passive infrastructure by sharing telecom operators did not constitute sale as “transfer of right to use passive infrastructure”, and hence were not liable to VAT.

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