

# Staying Updated

## Indirect tax newsletter

February 2015, Volume 17 Issue 11

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## **Central excise**

### **Case law**

#### *Manufacture*

- In *CCE v Navneet Publications (I) Ltd* (2015-TIOL-284-CESTAT-MUM), the Mumbai Tribunal held that the process of cutting and slitting of paper roll into foolscap sheets did not amount to manufacture since there was no change in the identity of the paper.
- In *Amrut Bhagini Mandal (Trading Unit) v CCE* (2015-TIOL-356-CESTAT-MUM), the Mumbai Tribunal held that the process of cutting PVC sleeves into horizontal pieces and subjecting them to heat treatment to form sealing sleeve for the purpose of shrink wrap amounts to manufacture, as a new commodity with different name, character and use emerged.
- In *CCE v Ambuja Cement Ltd* (2015 (316) ELT 272), the Mumbai Tribunal held that waste and scrap of HDPE bags used in packing had not arisen during the manufacturing process and hence central excise duty was not payable on such waste and scrap.

#### *Valuation*

- In *CCE v Surya Alloys Industries (P) Ltd* (2015 (316) ELT 104), the Delhi Tribunal held that cost of inspection

was includible in assessable value when goods could not be sold without such inspection.

- In *Soma Papers & Industries Ltd v CCE* (2015-TIOL-254-CESTAT-MUM), the Mumbai Tribunal held that transportation charges of inputs up to the job-worker's premises was includible in the assessable value of goods manufactured by job worker.

#### *CENVAT*

- In *CCE v Suvera Processed Foods Pvt Ltd* (2015 (315) ELT 517), the Andhra Pradesh High Court held that CENVAT credit availed on inputs was not required to be reversed when the final product was exempted at a later date.
- In *Hindustan Zinc Ltd v CCE* (2015-TIOL-227-CESTAT-DEL), the Delhi Tribunal held that credit was not admissible on inputs to the extent it was used in generation of electricity and sold to third parties.
- In *Zandu Chemicals Ltd v Union of India* (2015 (315) ELT 520), the Bombay High Court held that rebate claim could not be rejected for non-submission of original and duplicate copies of ARE-1 when the proof of export was available in other documents like shipping bill.

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- In *Ultratech Cement Ltd v CCE (2015-TIOL-325-CESTAT-DEL)*, the Delhi Tribunal held that CENVAT credit could not be denied on the ground of non-payment of duty by the input supplier inasmuch as the buyer of inputs could not be expected to know as to whether the supplier had actually discharged the duty burden.
- In *Tata Chemicals Ltd v CCE (2015-TIOL-240-CESTAT-AHM)*, the Ahmedabad Tribunal held that interest under section 11BB was payable from the expiry of three months from the date of refund application, and not from the date of order of Tribunal.
- In *Ama India Enterprises P Ltd v CCE (2015 (316) ELT 268)*, the Delhi Tribunal held that CENVAT credit was admissible on invoice showing the old name of company.

#### *Others*

- In *Prism Cement Ltd v CCE (2015-TIOL-241-CESTAT-DEL)*, the Delhi Tribunal held that since RSP was not required to be declared on export of cement to Nepal, the manufacturer was eligible for benefit under Sr. No. 1C of Notification No. 4/2006-CE dated 1 March, 2006 as applicable in case of goods cleared in other than packaged form.
- In *CCE v Indian Explosives Ltd (2015 (315) ELT 606)*, the Delhi Tribunal held that the bar of unjust enrichment could not be applied when the goods were cleared under provisional assessment, and credit notes were issued to buyers who adjusted the amount against outstanding payments.

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## Service tax

### Case law

- The Supreme Court of India, in *CST v Citibank NA* (2015-TIOL-09-SC-ST) held that irrespective of the commercial element of the Indian Premier League (IPL) matches, sponsorship money paid to BCCI in relation to the IPL had to be classified as ‘sponsorship of a sports event’, which had been excluded from the scope of ‘Sponsorship services’. Hence, the payment was not liable to service tax.
- The Delhi Tribunal, in *NIS Sparta Ltd v CST* (2015-TIOL-209-CESTAT-DEL) held that since the mandatory training imparted to candidates intending to become insurance agents had been prescribed by the Insurance Regulatory and Development Authority (IRDA) as per the powers assigned to it by the Insurance Act, 1938, the same was held to be ‘recognised by law’. Accordingly, the activity of imparting such trainings by the training institute could not be held liable to service tax under ‘commercial training and coaching services’.
- In *ATE Enterprises Pvt Ltd v CST* (2015-TIOL-252-CESTAT-MUM), the Mumbai Tribunal held that services of obtaining sales order in India for the overseas manufacturers, where the manufacturer directly executed the sale transaction with the customers in India, were ‘business auxiliary services’ (BAS). Though the services were provided in India, they were used by the foreign entity for its business outside India, and hence qualified as export of services.
- The Delhi Tribunal, in *Ahluwalia Contracts (India) Ltd v CST* (2015-TIOL-270-CESTAT-DEL) held that the construction of flats/buildings for Delhi Development Authority or BSNL or Municipal Corporation of Delhi would qualify as ‘commercial or industrial construction service’ (CICS). Even the construction of hospital building for a charitable organisation was held liable to tax under CICS.
- The Mumbai Tribunal, in *Kirloskar Ebara Pumps Ltd v CCE* (2015-TIOL-328-CESTAT-MUM) held that the principal of unjust enrichment does not arise in the case of export of services. Accordingly, the refund claim was allowed.
- The Mumbai Tribunal, in *CCE v Yashwantrao Mohite Krishna SSK Ltd* (2015-TIOL-336-CESTAT-MUM) held that where the sole selling agent was

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selling branded products manufactured by the brand owner under the invoice of brand owner itself, even if a minimum guarantee profit per month was provided by the selling agent to the brand owner, it could not be held that the selling agent had received “intellectual property services” by using the brand name. Especially, where the goods were owned and manufactured by the brand owner.

## VAT/Sales Tax

### Notifications and circulars

#### Andhra Pradesh

- Effective 25 November, 2014, every dealer is required to file Annexure-1 (purchase details) and Annexure-2 (sales details) along with periodic returns.

*(Notification No. G.O.MS.No. 26 dated 5 February, 2015)*

- Effective 5 February, 2015, VAT rate on following goods has been increased as follows:

Goods	Earlier rate	Revised rate
Petrol	31%	31% + Rs. 4/- per liter
Diesel Oils	22.25%	22.25% + Rs. 4/- per liter

*(Notification No. G.O.MS.No. 27 dated 5 February, 2015)*

#### Chhattisgarh

- Effective 9 January, 2015, partial exemption granted on sale of steel bars manufactured in the state of Chattisgarh has been withdrawn.

*(Notification No F-10-2/ 2015/ CT/ V (02) dated 31 January, 2015)*

#### Delhi

- The due date for filing of online return in form 9 for the year 2013-14 has been extended to 31 March, 2015.

*(Circular No. 26 of 2014-15 No.F.7 (420)/VAT/Policy/2011/PF/761-767 dated 16 February, 2015)*

- The due date for filing of online/hard copy of third quarter return for the year 2014-15 has been extended to 15 February, 2015.

*(Circular No. 25 of 2014-15 No.F.7 (420)/VAT/Policy/2011/PF/754-760 dated 16 February, 2015)*

#### Goa

- Effective 1 February, 2015, facility for payment of tax online through SBI payment gateway has been implemented.

*(Circular No. 2014-15/130 dated 30 January, 2015)*

#### Haryana

- Effective 5 February, 2015, VAT rate on Petrol has been increased from 20% to 25%.

*(Notification No. 1/ST-1/H.A. 6/2003 /S.59/2015 dated 12 February, 2015)*

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## Himachal Pradesh

- Effective 1 April, 2015, due date for filing of return in form VAT-XV by every registered dealer has been revised as under:

Gross Turnover	Frequency	Time Limit
Up to INR 10 Mn	Quarterly	Within 40 days from the end of the quarter
Exceeding INR 10 Mn but not exceeding INR 50 Mn	Quarterly	Within 45 days from the end of the quarter
Exceeding INR 50 Mn	Monthly	Within 45 days from the end of the month

*(Notification No. EXN-F(10)-7/2011-Vol.I dated 30 January, 2015)*

## Punjab

- Effective 31 January 2015, requirement for filing form VAT 12A has been dispensed off for intra-state movement of Iron and steel, Yarn, Sarson, Cotton, Vegetable oils and Paper Board.

*(Order dated 31 January, 2015)*

## Rajasthan

- The due date for filing revised return for quarterly returns/annual returns for the year 2013-14 has been extended to 28 February, 2015.

*(Notification No. F26 (315)ACCT/MEA/2015/ dated 30 January, 2015)*

- Procedure for filing of online application for closure of business in form VAT-06A has been prescribed.  
*(Circular No 20 F.16 (95)Tax/CCT/14-15/1081 dated 6 February, 2015)*
- Procedure for generation of online application in form AS-1 under the Amensty Scheme-2015 has been prescribed.  
*(Circular No 21 F.16 (95)Tax/CCT/14-15/5637 dated 19 February, 2015)*

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## Uttar Pradesh

- Following amendments have been taken place under UP VAT schedule:

Relevant entry	Earlier	Revised	Effective from
Entry number 123 of Schedule-II, in Part-A	Tools, aari and Kanni used by Carpenter and masons including aari and Kanni	Tools including aari and Kanni	14 February, 2015
Entry number 62 of Schedule-II, in Part-A	Rice polish, rice bran and rice husk	Rice polish, rice bran and rice husk; paddy husk	29 January, 2015

*(Notification No K.A. NI-2-221/XI-9(27)20/14-U.P. Act-5-2008-Order-(128)-2014 dated 13 February, 2015 and K.A. NI-2-136/XI-9(11)/14-U.P. Act-5-2008-Order-(127)-2014 dated 28 January, 2015)*

### Case law

- The Karnataka High Court, in *State of Karnataka v Infosys Technologies Ltd* (2015-TIOL-385-HC-KAR-VAT) allowed input tax credit on work stations. The court observed that work stations or a cubicle used to sit and operate a computer were an accessory of computer, computer peripherals, which in common parlance not understood as 'furniture' for convenience or decoration.
- The Uttar Pradesh High Court, in *Anand Tyres v State of Uttar Pradesh* (2015-TIOL-413-HC-VAT) held that

excavator in a wider sense could be said to be a 'machinery' but when a specific entry was there i.e. 'motor vehicles of all kinds' an excavator merited classification as 'motor vehicle' and not as 'machinery'. The issue before the Court was classification of hydraulic excavator as 'machinery' or 'motor vehicles' for levy of entry tax in Uttar Pradesh under Entry of Goods into Local Areas Act, 2007 (the Act).

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## ***Entry tax***

### ***Notifications and circulars***

#### **Odisha**

- Effective 2 February, 2015, exemption from payment of entry tax on specified laboratory equipment, instrument and accessories to be procured by the Central Laboratory, State Pollution Control Board for Scientific Research and Development (R&D) purpose under the Department of Forest & Environment, Government of Odisha.

*(Notification No. S.R.O.No 34/2015No. 2402-CT1-TAX-0016/2013/FIN dated 2 February, 2015 and S.R.O.No 34/2015 No. 2402-CT1-TAX-0016/2013/FIN dated 2 February, 2015)*

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