

# Staying Updated

## Indirect tax newsletter

July 2015, Volume 18 Issue 04

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### In the issue

Central excise

Service tax

VAT/Sales tax/Entry tax

Contacts

### *In the issue*

#### *Central excise*

##### **Case law**

###### *Valuation*

- Performance bonus received after clearance of goods not includible in assessable value

###### *CENVAT*

- Provisions of rule 6 not attracted on goods supplied under International Competitive Bidding

#### *Service tax*

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

- Conditions and procedures for issuance of digital invoices and their authentication by means of digital signatures have been prescribed
- Detailed guidelines for manual scrutiny of service tax returns have been prescribed by the central Government

##### **Case law**

- Two High Courts (HCs) deliver contradictory decisions with respect to mandatory pre-deposit of 7.5%/10% while filing appeal

- Commission received by sponsoring distributor from the trading company with respect to sale effected by second level distributors/ sub-distributors is liable to service tax

#### *VAT/Sales tax*

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

- Extension in due date for filing of form DP-1 in Delhi
- VAT rate revised for specified goods under various State VAT laws

##### **Case law**

- Declaration forms can be filed after completion of assessment; not necessary to file along with returns
- Goods cannot be **detailed** if the vehicle driver has taken a different route from the regular route
- Input tax credit cannot be denied merely because the seller has failed to deposit the tax so collected

#### *Entry tax*

- Entry tax on sugar to be levied at 5% in Uttarakhand

## ***Central excise***

### ***Case law***

#### ***Manufacture***

- In *Dr Writer's Food Products Pvt Ltd v CCE (2015-TIOL-1464-CESTAT-MUM)*, the Mumbai Tribunal held that excise duty was not payable on sample drawn for quality control, in absence of any evidence of clearance of such sample from the factory.

#### ***Valuation***

- In *Meghdoot Chemicals Ltd v CCE (2015 (320) ELT 643)*, the Mumbai Tribunal held that physicians' sample cleared to principals was liable to duty under section 4, and not under MRP-based assessment.
- In *Vishwakarma Refractories P Ltd v CCE (2015 (320) ELT 622)*, the Bangalore Tribunal held that performance bonus received after clearance of goods was not includible in the assessable value.
- In *Bharat Heavy Electricals Ltd v CCE (2015-TIOL-1226-CESTAT-DEL)*, the Delhi Tribunal held that the recovery of 5%/10% amount from the customer, which already stood paid to the Department, could not be held as liable to be added in the assessable value of the goods.

- In *Delta Electrotrade Control Pvt Ltd v CCE (2015-TIOL-1273-CESTAT-MUM)*, the Mumbai Tribunal held that erection and installation charges being post clearance expenses, were not includible in the assessable value of the goods.
- In *Hero Honda Motors Ltd v CCE (2015-TIOL-1495-CESTAT-DEL)*, the Delhi Tribunal held that advertisement expenses initially incurred by the appellant, which were recovered later from dealers, was not includible in the assessable value, since it promoted the dealers' sales.

#### ***CENVAT***

- In *Jindal Stainless Ltd v CCE (2015-TIOL-1397-CESTAT-DEL)*, the Delhi Tribunal held that CENVAT credit was admissible on fuel (furnace oil) used in generation of electricity cleared to Electricity Board for synchronization and subsequently received back after synchronisation.
- In *Vako Seals Pvt Ltd v CCE (2015-TIOL-1296-CESTAT-MUM)*, the Mumbai Tribunal held that CENVAT credit on renting services could not be denied merely because the premises were not included in the registration certificate.

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In the issue

**Central excise**

---

Service tax

---

VAT/Sales tax/Entry tax

---

Contacts

---

- In *CCE v Aditya Birla Nuvo Ltd* (2015-TIOL-1244-CESTAT-KOL), the Kolkata Tribunal held that there was no requirement to maintain separate accounts under rule 6(2) of CENVAT credit rules for inputs consumed in the emergence of exempted byproduct; further demand of 8% of the price of exempted byproduct was also not sustainable in law.
- In *CCE v Bharat Heavy Electricals Ltd* (2015-TIOL-1317-CESTAT-DEL), the Delhi Tribunal held that rule 6 was not attracted on goods supplied under International Competitive Bidding. It rejected the department's contention that rule 6(6)(vii) was not applicable to goods manufactured in India, but was applicable only to imported goods.
- In *Mercedes Benz India (P) Limited v CCE* (2015-TIOL-1550-CESTAT-MUM), the Mumbai Tribunal held demand of 5% of the exempted services was not sustainable merely because assessee had not submitted an option letter under rule 6 at the beginning of the financial year.

#### *Others*

- In *Bata India Ltd v CCE* (2015 (321) ELT 194), the Supreme Court held that exemption on captive consumption was not extendable to goods sent to other factory of same manufacturer.

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## Service tax

### Notifications and circulars

- The central government has prescribed safeguards, procedures and conditions for issue of digital invoices, preserving records in electronic form and authentication of records and invoices by digital signatures.

*(Notification No. 18/2015-Service tax dated 6 July, 2015)*

- Detailed guidelines have been prescribed for manual scrutiny of service tax returns filed by the assesseees with service tax liability up to INR 5 Mn. Special Return Scrutiny Cell(s) would be created, which would issue detailed scrutiny programmes for each Commissionerate.

*(Circular No. 185/4/2014-Service Tax dated 30 June, 2015)*

### Case law

- The Allahabad HC, in Ganesh Yadav v Union of India and 3 Ors (2015-TIOL-1490-HC-ALL-ST), held that the amended section 35F of the Central Excise Act, which stipulated mandatory pre-deposit of 7.5%/10% while filing an appeal before the Commissioner (Appeals) or the Tribunal, would be applicable to all appeals filed on or after the date on which the amendment came

into effect, even if the proceedings were initiated before the amendment date. The High Court distinguished the view taken by the Kerala High Court in Muthoot Finance Ltd v Union of India (2015-TIOL-632-HC-KERALA-ST) wherein it had been held that the provisions prevailing at the time of initiation of proceeding would be applicable, irrespective of the fact that the appeal was filed after the amendment date.

- The Madras HC, in Fifth Avenue Sourcing Pvt Ltd v CST (2015-TIOL-1592-HC-MAD-ST), held that the amendment in section 35F of the Central Excise Act, which stipulated mandatory pre-deposit of 7.5%/10% while filing an appeal before the Commissioner (Appeals) or the Tribunal, was not retrospective in nature. The HC relied on the Kerala HC decision in Muthoot Finance Ltd v Union of India (2015-TIOL-632-HC-KERALA-ST), and held that the provisions prevailing at the time of initiation of proceeding would apply irrespective of the fact that the appeal was filed after the date of amendment.
- The Kerala HC, in Geojit BNP Paribas Financial Services Ltd v CCECST (2015-TIOL-1602-HC-KERALA-ST) held that excess service tax paid

---

In the issue

---

Central excise

**Service tax**

VAT/Sales tax/Entry tax

---

Contacts

---

---

In the issue

---

Central excise

**Service tax**

VAT/Sales tax/Entry tax

---

Contacts

---

inadvertently was merely a deposit and could not be treated as tax paid under the law. Accordingly, the limitation period specified under section 11B of the Central Excise Act would not be applicable for filing the refund claim towards such excess payment.

- The Mumbai Tribunal, in *Sadhana Educational and People Development Services Pvt Ltd v CCE (2015-TIOL-1200-CESTAT-MUM)*, held that a two-year course in management is a professional course, and could not be considered as vocational course. Accordingly, services provided by the appellant would not be eligible for the exemption under Notification No. 24/2004-ST, which was available only for vocational training courses.
  - The Delhi Tribunal, in *Charanjeet Singh Khanuja and Ors v CST and Ors (2015-TIOL-1205-CESTAT-DEL)*, held that in direct selling model activity of distributor of roping in second level distributors/ sub-distributors for the trading company/ manufacturer was covered under the category of 'business auxiliary services'. Accordingly, the commission received by the sponsoring distributor from the trading company/ manufacturer on account of sale effected by the second level Distributor/ sub-distributor was held liable to service tax.
- The Tribunal further held that distributors were not acting as agents selling goods belonging to their client. The sale of goods by distributors was on their own account, and the commission received by the distributors was on account of goods purchased by them from the trading company/ manufacturer, and not towards sale effected. Accordingly, the commission was held to be volume discount not liable to service tax.
- The Mumbai Tribunal, in *Archivista Engineering Projects Pvt Ltd v CCE (2015-TIOL-1278-CESTAT-MUM)*, held that where, in the case of construction services, conditions prescribed in the abatement notifications were amended to deny the CENVAT credit of input services in addition to input and capital goods with effect from 1 March, 2006, credit of input services availed before this date would still be available to contractor.
  - The Delhi Tribunal, in *Shubham Electricals v CST (2015-TIOL-1339-CESTAT-DEL)*, held that where, in the 'show cause notice' (SCN) and the adjudication order, the service category under which the demand had been confirmed was not specified, both the SCN as well as the adjudication order were defective and unsustainable in law.

## VAT/Sales Tax

### Notifications and circulars

#### Bihar

- Effective 10 July, 2015, no declaration is required in case of intra-state movement of goods of worth INR 0.2 Mn or less.  
(Notification No. Bikrikar/Vividh43/2011/3605 dated 10 July, 2015)

#### Chandigarh

- Effective 18 July, 2015, VAT rate on diesel has been increased from 9.68% to 16.40%.  
(Notification No. E&T/ETO(Ref)2015/1914 dated 17 July, 2015)

#### Chattisgarh

- VAT rate on steel bars and steel structural has been reduced to 3% for the period 9 January to 31 January, 2015.  
(Notification No. F-I 028/2015/CT/V(53) dated 3 July, 2015)

#### Delhi

- Due date for submission of information in form DP-1 has been extended from 30 June, 2015 to 31 August, 2015.  
(Notification No. F.3(352)/Policy/VAT/2013/346357 dated 30 June, 2015)
- Effective 16 July, 2015, VAT rate on petrol has been increased from 20% to 25%.  
(Notification No. F.3(10)/Fin.(Rev.1)/201516/DSVI/547 dated 15 July, 2015)

- Effective 26 June, 2015, all persons engaged in e-commerce business are required to enroll through the Delhi VAT portal, and file quarterly returns in form EC-II & EC-III by 10th of the following month.  
(Notification No. F.3(515)/Policy/VAT/2015/33041 dated 26 June, 2015)

#### Haryana

- Effective 15 July, 2015, VAT rate on diesel has been increased from 11.5% to 16.4%.  
(Notification No. 18/ST1/H.A.6/2003/S.59/2015 dated 15 July, 2015)

#### Jharkhand

- Effective 26 June, 2015, the Karasamadhana Scheme has been introduced for partial waiver of penalty and interest in case the dealer makes full payment of arrear of tax subject to the conditions specified in the notification.  
(Notification No. G.O. No 2262 dated 26 June, 2015)

#### Maharashtra

- Effective 1 July, 2015, facility of online payment of Entry tax has been introduced.  
(Circular No. 9 of 2015 dated 1 July, 2015)

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In the issue

---

Central excise

---

Service tax

---

VAT/Sales tax/Entry tax

---

Contacts

---

---

In the issue
Central excise
Service tax
<b>VAT/Sales tax/Entry tax</b>
Contacts

---

**Odisha**

- Effective 23 June, 2015, exemption from tax on sale of aviation turbine fuel has been granted to international flights subject to the condition that international flights give a certificate to selling dealers in the prescribed format.  
*(Notification No. 17764FINCT1TAX 00552012 dated 23 June, 2015)*

**Punjab**

- Effective 16 July, 2015, VAT rate on diesel other than premium diesel has been increased from 11.25% to 13.4%.  
*(Notification No. S.O.30/P.A.8/2005/S.8/2015 dated 15 July, 2015)*

**Rajasthan**

- An android-based mobile application ‘RAJ VAT’ has been introduced for generating VAT-47A and VAT-49A.  
*(Circular No.03/201516No.F.16 (95)/Tax/CCT/1415/5958 dated 23 June, 2015)*

**Uttar Pradesh**

- Effective 7 July, 2015, exemption from tax on sale of ‘Solar Energy devices, Solar Energy equipment and parts thereof’.  
*(Notification No. K.A. NI2905/XI9 (65)15U.P. Act 52008 Order(135)2015 dated 6 July, 2015)*

**West Bengal**

- Effective 7 July, 2015, dealers submitting online returns without digital signatures need to submit hard copy of returns with the authorities.  
*(Trade Circular No. 12/2015 dated 7 July, 2015)*

**Case law**

- The Karnataka HC, in the case of Weir BDV Valves v The Assistant Commissioner of Commercial Taxes (TIOL-1547-HC-KAR-VAT), relying on the Supreme Court decision in State of Himachal Pradesh v Gujarat Ambuja Cements (2001-121-STC-273), held that declaration forms could be filed at a stage subsequent to completion of assessment, and not necessarily along with returns.
- The Andhra Pradesh and Telangana High Court, in the case of Andhra Cements Company Limited v The Commissioner of Commercial Taxes Andhra Pradesh (TS-276-HC-2015(TEL & AP)), held that HDPE bags/ packing material used for packing of cement should be taxed separately at the rates provided for such packing materials under the relevant schedule, and should not be integrated with the sale of cement itself as one single sale. The HC observed that HDPE bags were not

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In the issue

---

Central excise

---

Service tax

---

**VAT/Sales tax/Entry tax**

---

Contacts

---

provided free of cost, considering their significant cost, and the invoices produced established such separate sale of packing material.

- The Rajasthan HC, in the case of *Commercial Tax Officer v Penar Industries Limited* (2015-TIOL-1660-HC-RAJ-VAT), held that the words, ‘relating to’ in the context of an exemption notification for construction of roads, had a wide meaning and could not be restricted to putting of concrete, grit, coal tar, etc., but it should mean everything related to roads. The Court observed that expressions such as ‘arising out of’, ‘in respect of’, ‘in connection with’, ‘in relation to’, ‘in consequence of’, ‘concerning’ or ‘relating to’ were of the widest amplitude and content, and included even questions as to the existence, validity and effect (scope).
- The Madras HC, in the case of *Shanmuga Traders v The Commercial Tax Officer* (2015-TIOL-1597-HC-MAD-VAT), held that input tax credit claimed by a buyer could not be reversed merely because the seller had failed to deposit the tax in the Government treasury.
- The Madras HC, in the case of *Green Agency v The Commercial Tax Officer*

(2015-TIOL-1508-HC-MAD-VAT), held that when goods were moved under cover of an invoice and other supporting movement documents, the goods could not be detained merely because the vehicle driver had changed the route from the regular route.

### ***Entry tax***

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

##### **Rajasthan**

- Effective 1 July, 2015, entry tax to specified companies exempted on entry of capital goods required for setting up of plant of new unit.

*(Notification No. F.12(37)FD/Tax/2015-49 dated 1 July, 2015)*

##### **Uttarakhand**

- Effective 14 July, 2015, rate of entry tax on sugar brought from other states has been notified at 5%.

*(Notification No. 604/2015/03(120)/XXVII(8)/2007 dated 14 July, 2015)*



## Contacts

In the issue

Central excise

Service tax

VAT/Sales tax/Entry tax

### Contacts

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