

Staying Updated

Indirect tax newsletter

June 2015, Volume 18 Issue 03

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CENVAT

- Inputs and input services used in setting up of windmills, and their operation and maintenance held eligible for credit
- CENVAT credit held not reversible on slump sale of working factory along with raw materials, packing materials, etc.

Service tax

Notifications and circulars

- Effective from 1 June, 2015, rate of service tax on restaurant services would be 5.6% of the total amount charged

Case law

- ISD held neither liable to pay tax nor to provide any taxable service, hence could not be called as an assessee
- Permitting users to explore and download images from a website for a fee held liable to service tax

VAT/Sales tax

Notifications and circulars

- Due date for filing of annual return extended in Kerala
- VAT rate revised for specified goods under various State VAT laws

Case law

- Transaction of spare parts' replacement amounted to sale, held liable to tax

Entry tax

- Entry tax exempted on import of specified goods by tourism units in Karnataka

Central excise

Case law

Manufacture

- In *Servo-Med Industries Pvt Ltd v CCE* (2015-TIOL-103-SC-CX), the Supreme Court held that sterilisation of syringes and needles did not amount to manufacture, as no new product with distinct name, usage and character emerged.
- In *Escorts Ltd v CCE* (2015 (319) ELT 406), the Supreme Court held that excise duty was payable on transmission assemblies which came into existence as intermediate products during manufacture of exempted tractors, since such products were known in the market as distinctive products.
- In *BSNL v CCE* (2015-TIOL-1018-CESTAT-DEL), the Delhi Tribunal held that installation of bought out items of telephone exchanges at site did not amount to manufacture as no new commodity with distinct commercial identity or character or use emerged.

Valuation

- In *CCE v Aeons Construction Products Ltd* (2015 (319) ELT 548), the Supreme Court held that transportation charges collected from buyers was not

includible in the assessable value when ownership of the goods was transferred at the factory gate.

- In *Mahendra Sponge and Power Ltd v CCE* (2015-TIOL-1139-CESTAT-DEL), the Delhi Tribunal held that amount received as insurance claim could not be termed as transaction value of the damaged goods.

CENVAT

- In *Tractor and Farm Equipment Ltd v CCE* (2015 (320) ELT 357), the Madras High Court held that CENVAT credit already availed on inputs lying in stock or contained in final product lying in stock was not required to be reversed when, subsequently, the final product became exempted, since no correlation between the input and the final product was required under law.
- In *Century Laminating Com v CCE* (2015 (320) ELT 406), the Allahabad High Court held that when certain inputs based on a particular invoice were received during the six-month period, but the last and final lot was received after the six-month period, the six-month time limit under the erstwhile MODVAT rules, being procedural in nature, did not disentitle the claim of credit on such invoice.

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- In *India Cement Ltd v CCE* (2015-TIOL-982-CESTAT-MAD), the Chennai Tribunal held that CENVAT credit was admissible on inputs and input services used in setting up of windmills and operation and maintenance of such mills, when electricity generated from such mills were made available through electricity board under barter system.
 - In *Ultratech Cement Ltd v CCE* (2015 (320) ELT 492), the Delhi Tribunal held that CENVAT credit could not be denied on the ground of non-payment of duty by input supplier inasmuch as buyer of inputs was not expected to know whether the supplier had discharged duty burden.
 - In *CCE v Hindustan Lever Ltd* (2015-TIOL-966-CESTAT-MUM), the Mumbai Tribunal held that when there was a slump sale of working factory along with raw materials, packing materials, etc., there was no cause for reversal of CENVAT credit on inputs as there was no 'removal' from factory.
- In *Bajaj Healthcare Ltd v CCE* (2015-TIOL-1110-CESTAT-MUM), the Mumbai Tribunal held that fire caused in factory on account of electrical short circuit had to be held as covered by the expression, 'unavoidable accident' and therefore eligible for remission under rule 21.

Others

- In *CCE v Rana Castings Ltd* (2015 (320) ELT 396), the Uttarakhand High Court held that replacement of existing machinery with new ones resulting in expansion of installed capacity by 25% would fulfil the requirement of area-based exemption Notification No.

Service tax

Notifications and circulars

- It has been clarified that effective from 1 June, 2015, the rate of service tax on services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess having the facility of air-conditioning or central air-heating in any part of the establishment would be 5.6% (14% of 40%) of the total amount charged.

(Circular No. 184/3/2015-Service tax dated 3 June, 2015)

Case law

- The Mumbai Tribunal, in SKF India Ltd, SKF India Ltd (ISD) v CCE (2015-TIOL-914-CESTAT-MUM) held that the input service distributor (ISD) was neither liable to pay tax nor does it provide any taxable service, therefore, could not be termed an assessee. Even though the 'input service distributor' (ISD) had to file half yearly return/declaration, the question of assessment/self-assessment would not arise. Accordingly, it was held that where both the factory and the ISD were located in the same jurisdiction, SCN proceedings initiated against factory instead of ISD for denial of CENVAT credit distributed by ISD was permissible.

- The Mumbai Tribunal, in CST v Pulcra Chemicals (India) Pvt Ltd (2015-TIOL-915-CESTAT-MUM), held that the marketing support services in India provided by the appellant to its principal located outside India for which commission was received in foreign exchange, would qualify as export of services under the erstwhile export of services rules.
- In Premier Pest Control Pvt Ltd v CST (2015-TIOL-943-CESTAT-DEL), the Delhi Tribunal held that just because the sub-contractor provided pre-construction anti-termite treatment services in relation to a construction project carried on by the contractor, he (the sub-contractor) could not be held liable to tax under 'commercial or industrial construction service' (CICS) or 'construction of complex service' (CCS).
- The Mumbai Tribunal, in Sun-Area Real Estate Pvt Ltd v CST (2015-TIOL-956-CESTAT-MUM), held that where the export remittances were settled by the exporter's banker using a 'Nostro account' maintained in the importer's country, resulting in realisation of export proceeds in Indian rupees instead of in foreign currency, the proceeds were deemed to have been received in convertible foreign exchange (approved by RBI as a valid manner of receipt of foreign exchange).

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Since the banker had issued Foreign Inward Remittance Certificate (FIRC) to certify the receipt of foreign exchange in the exporter's account, the benefits of export of services were granted to the service provider.

- The Mumbai Tribunal, in *Photolibary India Pvt Ltd v CST (2015-TIOL-1013-CESTAT-MUM)*, held that where the appellant maintained a library of images on a website which could be explored online and downloaded by paying the quoted price, it would be liable to tax under the category of 'online information and database access or retrieval services' even if the images were protected by copyright.
- In *Cellebrum Technologies Ltd and Ors v CCE (2015-TIOL-1098-CESTAT-DEL)*, the Delhi Tribunal held that where the appellant provided services of sending bulk SMSs to their clients' customers with contents supplied by clients, the services were held liable to tax under 'business auxiliary services'.

The Tribunal further held that since the price charged for the services did not include service tax, cum-tax benefit could not be granted to the appellant.
- In *Technocrate Transformers v CCE (2015-TIOL-1106-CESTAT-DEL)*, the Delhi Tribunal held that in a repair and maintenance contract, where the values of goods and of labour were separately disclosed, and applicable VAT charged on the value of goods, service tax would be payable only on the value of labour charges.
- The Mumbai Tribunal, in *Alfa Laval (India) Ltd, Employees Co-operative Consumers Society v CCE (2015-TIOL-1184-CESTAT-MUM)*, held that the activities of preparing and serving food in the employer-run canteen by the employees' co-operative society would be liable to tax under the service category of 'outdoor catering services'. The Tribunal observed that employees' cooperative society was a different legal entity from the employer or its employees/ members.

VAT/Sales Tax

Notifications and circulars

Andhra Pradesh

- Effective 17 June, 2015, every VAT dealer is required to submit details of invoices of purchases and sales effected from/ to VAT dealers before filing their monthly returns.

(Circular No. CCTsRef.No.AI (1)/26/2014, dated 17 June, 2015)

- Effective 25 May, 2015, exemption from VAT has been granted on sale of e-bid RLNG by GAIL/GSPCL to gas based power plants.

(Notification No. G.O.MS.No.182 dated 25 May, 2015)

Assam

- Effective 1 June, 2015, facility of issuance of online 'C' and 'F' forms has been introduced. This has been made mandatory for interstate purchases/ stock transfers made from 1 April, 2015.

(Circular No. 6/2015 No.CT/COMP49 /2013/7 dated 4 June, 2015)

Chandigarh

- Effective 16 June, 2015, forms VAT-23 (detail of sales) and VAT -24 (details of purchases) have been amended.

(Notification No. E&T/ETO(Ref) 2015/

1544 dated 16 June, 2014)

Dadra and Nagar Haveli

- Effective 1 May, 2015, dealers are required to file DVAT 30/30A/31/31A before online filing of DVAT-16 (Return).

(Circular No. DNH/VAT/CTMMP/AMDT/Rules/2011/896 dated 27 May, 2015)

Delhi

- Due date for filing online/hard copy of fourth quarter return for FY 15 in form DVAT-16, DVAT-17 and DVAT-48 has been extended to 29 May, 2015.

(Circular No. 11 of 2015-16; No. F.7(420)/Policy/2011/PF/209-215 dated 22 May, 2015)

Haryana

- Effective 1 April, 2015, sale of bio-fertilizer has been exempted from VAT.

(Notification No. 15/ST1/ H.A.6/ 2003/S.59/2015 dated 15 June, 2015)

Himachal Pradesh

- Effective 3 June, 2015, tax is required to be paid within 30 days from the expiry of each month or quarter.

(Notification No. EXNF(10)2/2015 Loose dated 3 June, 2015)

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Karnataka

- Effective 30 May, 2015, exemption from VAT has been granted on Biogas produced and bottled in cylinder and sold by units using municipal solid waste, subject to condition that these units have been notified by the Government.

(Notification No. FD127CSL2014 dated 30 May, 2015)

Kerala

- Due date for filing of annual return for the FY 15 has been extended to 30 June, 2015.

(Circular No. 16/2015No.C118945 /15/CT dated 3 June, 2015)

- Effective 29 May, 2015, procedure for registration and filing of details by e-commerce websites has been introduced.

(Circular No. 15/2015 No.C223004/2013/CT dated 29 May, 2015)

Rajasthan

- Effective 28 May, 2015, procedure for e-amendment of registration certification has been prescribed.

(Circular No. 01/201516No.F.16 (95)/Tax/CCT/1415/5752 dated 28 May, 2015)

Uttar Pradesh

- Effective 2 June, 2015, sale of all kinds of footwear including *Hawai Chappals* and straps thereof with maximum retail price not exceeding Rs.300 per pair exempted from VAT on the condition that the maximum retail price is indelibly marked or embossed on the footwear itself.

(Notification No. K.A. NI2729/XI9 (235)12U.P. Act 52008 Order(133)2015 dated 1 June, 2015)

Uttarakhand

- Effective 1 June, 2015, sale of prostheses used by handicapped persons has been exempted from tax.

(Notification No. 467/2015/16(120)/XXVII(8)/2014 dated 1 June, 2015)

- Effective 8 June, 2015, VAT rate on scrap of aluminium, aluminium alloy has been reduced from 13.5% to 5%.

(Notification No. 226/2015/181(120)/XXVII (8)/2008 dated 8 June, 2015)

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- The Gujarat High Court, in the case of *Kataria Automobiles (P) Ltd v State of Gujarat* ((2015) 57 taxmann.com 244 (Gujarat)), held that the transaction of replacement of spare parts amounted to sale and hence was liable to tax. The High Court relied on the Supreme Court's (SC) judgement in *Mohd Ekram Khan and Sons v CTT* (2004 taxmann.com 1806), wherein it had been held that since the assessee had received the payment for parts supplied to customers, transactions were subject to levy of tax.
- The Punjab and Haryana High Court (HC), in *Fortis Health Care Ltd v State of Punjab* ((2015) 57 taxmann.com 44 (Punjab and Haryana)), held that supply of drugs, medicines, implants, stents, valves and other implants was integral to medical services/procedures and could not be severed to infer a sale, and therefore was not liable to VAT. The HC, relying on the SC judgment in *Bharat Sanchar Nigam Ltd v Union of India*, held that sub-clauses of article 366(29A) of the Constitution did not cover hospital services.

Entry tax

Notifications and circulars

Karnataka

- Effective 26 March, 2015, tourism units on entry of plant and machinery, capital goods, raw materials, inputs, component parts and consumables have been exempted from Entry tax for a specified period.

(Notification No. FD3CET2015, dated 9 June, 2015)

Odisha

- Effective 25 May, 2015, entry of certain specified goods to the office of the Regional Institute of Education, Bhubaneswar from CIET, NCERT, HQ, New Delhi for installation, to be exclusively used for education and training purposes, have been exempted from Entry tax.

(Notification No. 1545CT1TAX0004 /2013 dated 25 May, 2015)

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