

Staying Updated

Indirect tax newsletter

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Central excise

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- In *CCE v Lubi Submersibles Ltd* (2015 (317) ELT 299), the Ahmedabad Tribunal held that pre-delivery inspection charges incurred only at the instance of buyer was not includible in the assessable value.
- In *CCE v Ankur Packaging Pvt Ltd* (2015-TIOL-472-CESTAT-MUM), the Mumbai Tribunal held that the value of the scrap generated at job work premises was includible in the assessable value of goods cleared under job work arrangement.
- In *Indian Oil Corporation Ltd v CCE* (2015-TIOL-539-CESTAT-MUM), the Mumbai Tribunal held that charges collected from customers towards expenses incurred for transportation of goods from warehouse to depot, storage expenses and investment cost were includible in the assessable value.

CENVAT

- In *Hindustan Petroleum Corpn Ltd v CCE* (2015 (317) ELT 134), the Bangalore Tribunal held that steel plates and sheet used for maintenance of storage tank were eligible for input credit.

- In *NOCIL Ltd v CCE* (2015-TIOL-532-CESTAT-MUM), the Mumbai Tribunal held that CENVAT Credit was admissible on welding electrodes used for repair and maintenance of plant and machinery.
- In *CCE v Tractors And Farm Equipments Ltd* (2015-TIOL-531-CESTAT-MAD), the Chennai Tribunal held that the plastic crates used as material handling equipment in factory premises were eligible for credit as capital goods and as input also.
- In *Raheja Plastics v CCE* (2015-TIOL-435-CESTAT-MUM), the Mumbai Tribunal held that endorsed bill of entry was a valid document for availing CENVAT credit.
- In *S P Fabricators Pvt Ltd v CC* (2015-TIOL-474-CESTAT-MAD), the Chennai Tribunal held that supplies to Developer of SEZ by a DTA unit would not be considered as exempted supply, and hence provisions of rule 6 were not applicable in such cases.
- In *Ultratech Cement v CCE* (2015-TIOL-408-CESTAT-DEL), the Delhi Tribunal held that CENVAT credit was admissible on original triplicate copy of invoices issued by supplier when there was no dispute on duty paid nature of goods.

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- In *Perfo Chem (I) Pvt Ltd v CCE* (2015 (315) ELT 237), the Mumbai 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 packing activities did not amount to manufacture.
- In *Radhe Renewable Energy Development Pvt Ltd v CCE&ST* (2015 (315) ELT 33), the Ahmedabad Tribunal held that CENVAT credit on input services was admissible even if the same was availed beyond the place of removal, provided such services were availed in relation to manufacture.

Others

- In *Alstom T &D India Ltd v CESTAT* (2015 (315) ELT 182), the Madras High Court held that interest was payable on supplementary invoice issued subsequent to date of clearance of final product, even if differential duty was paid voluntarily.
- In *CCE v Bhandari Deepak Industries Pvt Ltd* (2015-TIOL-413-CESTAT-DEL), the Delhi Tribunal held that for achievement of 25% or more enhancement in installed capacity for the purpose of exemption under Notification No. 50/2003-Central excise, it was not necessary that the expansion should be in each and every

section of the manufacturing plant.

Service tax

Notifications and circulars

- The Central Board of Excise and Customs (CBEC) has issued central excise and audit norms to be followed by Audit Commissionerates, with detailed guidelines as to manpower utilization, criteria for selection of assesses for audit, frequency of audits, etc..

(Circular No. 995/2/2015-Central excise dated 27 February, 2015)

Case law

- The Bombay High Court, in *CCEST v Credit Suisse Services (I) Pvt Ltd (2015-TIOL-552-HC-MUM-ST)*, held that the dispute as to whether a service was exempt or not, or whether it was exempt under one notification or the other, related to the rate of duty. Accordingly, it was held that appeal was not maintainable before High Court and the same should be referred to the Apex Court. The underlying dispute related to refund claim filed by an SEZ unit towards input services wholly consumed in SEZ for authorized operations.
- The Kerala High Court, in *Muthoot Finance Ltd v Union of India and Ors (2015-TIOL-632-HC-KERALA-ST)* held that the right of appeal should be governed by the law prevailing at the time of initiation of the suit or

proceedings, and not by the law that prevails on the date of its decision or on the date of filing of appeal. Accordingly, it was held that the condition of mandatory pre-deposit of 7.5% would not be applicable for cases initiated before 16 August, 2014.

- In *Universal Pharmacy, Universal Ayurvedate v CCE (2015-TIOL-373-CESTAT-MUM)*, the Mumbai Tribunal held that in a slump sale of manufacturing facility on going concern basis including technical know-how and the entire technical staff, the royalty could not be held liable to service tax under 'scientific and technical consultancy' services merely because a royalty had been paid in addition to a lumpsum consideration. This was based on the argument that there was complete absence of any kind of scientific or technical advice or consultancy in lieu of royalty.
- The Mumbai Tribunal, in *Automotive Manufacturers Private Ltd v CCEC (2015-TIOL-390-CESTAT-MUM)*, held that the handling charges incurred in relation to procurement of spares used while rendering services of repairing or servicing of vehicles could not be included in the value of services liable to service tax. This was based on the fact that the handling charges were included in the value of spares while calculating VAT liability.

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- The Mumbai Tribunal, in *Shriram Oos Tod Majoor Seva Sangh v CCECST (2015-TIOL-420-CESTAT-MUM)*, held that the activity of cutting/ harvesting of sugarcane and transporting the same to the sugar factory of the owner of sugarcane under supervision of the service provider, could not be classified as ‘manpower supply services’, liable to tax under ‘Business auxiliary service’ category.
- The Mumbai Tribunal, in *Reliance Infratel Ltd v CST (2015-TIOL-516-CESTAT-MUM)*, held that cement, tower parts, structural steel, etc. used in construction of passive telecom infrastructure (telecom towers) would qualify as ‘input’ while rendering services of letting those towers on hire to telecom service providers would be taxable under ‘business support services’ (BSS).

The Tribunal distinguished the decision of the Bombay High Court in *Bharti Airtel Ltd v CCE (2014-TIOL-1452-HC-MUM-ST)*, wherein the High Court held that towers were not directly used for providing ‘telecommunication services’ therefore tower parts, structural steel, etc., could not be held to be ‘inputs’. However, for the case in hand, the towers were directly used for rendering services of letting those on hire to telecom operators.

VAT/Sales Tax

Notifications and circulars

Andhra Pradesh

- Effective 25 March, 2015, refund upto 5% tax can be claimed on purchase of all components used in construction and erection of water treatment plants under scheme 'Sujala Pathakam' within 6 months from the date of purchase.

(Notification No. G.O.M.S No. 100 dated 24 March, 2015)

Bihar

- Effective 9 March, 2015, surcharge on sale of following goods has been increased from 10% to 20%.
 - High Speed Diesel Oil and Light Diesel Oil
 - Motor Spirit
 - Tobacco products except *Biri*

(Notification No. S.O 21 dated 9 March, 2015)

Chhattisgarh

- Due date for completion of assessment (required to be completed by 31 December, 2012) has been further extended from 28 February, 2015 to 30 April, 2015.

(Notification No. F-10-06/2015/CT/V(09) dated 27 February, 2015)

Daman and Diu

- Effective 4 March, 2015, Indian Overseas Bank has been notified as an authorized bank for payment of taxes, penalty, interest and other dues.

(Notification No. DMN/VAT-2015/2014-15/987 dated 4 March, 2015)

Jharkhand

- Effective 24 February, 2015, VAT rate on High Speed Oil, Light Diesel Oil and Petrol has been increased 18% and 20% respectively to 22%.

(Notification No. S.O.73 dated 24 February, 2015)

Meghalaya

- Effective 20 March, 2015, VAT rate on cigarette, cheroots, cigar, *bidi*, smoking mixture has been increased from 20% to 27%.

(Notification No. ERTS(T)5/2010/Pt/2 dated 20 March, 2015)

Odisha

- Due date for filing of monthly return for the month of February, 2015 has been extended from 21 March, 2015 to 30 March, 2015.

(Circular No. 485/CT No. III(III) 112/10 dated 20 March, 2015)

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Punjab

- Effective 11 March, 2015, rate of advance tax on import of following goods has been increased from 2.5% to 3.5%
 - Iron and steel (including its scrap) and iron and steel goods specified in clause (iv) of section 14 of Central Sales Tax Act, 1956 except wheels, tyres, axles, wheel sets and non-CENVAT paid iron and steel scrap
- (Notification No. S.O.10/P.A.8/2005/S.8/2015 dated 11 March, 2015)*

Rajasthan

- Effective 9 March, 2015, exemption from tax has been granted on sale of aviation turbine fuel to the extent the rate of tax exceeds 5% upon production of prescribed certificate by a registered dealer to an Airline:
 - which establishes hub in the state; or
 - which operates scheduled or non-scheduled commercial flight from a place in the state to another place in the state.
- (Notification No. S.O. 260 No. F. 12 (23) FD/TAX/2015-196 dated 9 March, 2015)*
- Effective 9 March, 2015, residual rate of tax has been increased from

14% to 14.50%.

(Notification No. S.O.263 No. F.12 (23)FD/TAX/2015-199 dated 9 March, 2015)

- Effective 1 April, 2015, rate of tax deduction at source on works contracts has been increased from 3% to 6% in case of registered dealer, and from 4% to 7% in case of unregistered dealers.
- (Notification No. S.O.272 No. F.12 (23)FD/TAX/2015-208 dated 9 March, 2015)*

Tamil Nadu

- Effective 1 April, 2015, VAT rate on cellular telephones (mobile phones) has been reduced from 14.50% to 5%.
- (Notification No. II(2)/CTR/143(a-3)/2015 dated 25 March, 2015)*

Case law

- The Karnataka High Court, in *Southern Motors v State of Karnataka* (2015 (3) TMI 433), held that under the provisions of Karnataka VAT laws, a dealer was eligible to claim tax benefit on discounts only when such discounts were shown on the face of the invoice. The court further observed that discounts given by way of credit notes were not allowed to be adjusted from taxable turnover.

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- The Supreme Court, in *Commissioner of Commercial Taxes v Desai Beedi Company (2015-TIOL-21-SC-CT-LB)*, held that in order to constitute inter-State sales, the movement of goods from one State to another should be inextricably connected to each other. When a sale transaction concludes in one State, the mere transport of goods from one State to another cannot result in an inter-State sale.
- The Madras High Court, in *Heritage Printers v The Joint Commissioner of Commercial Taxes (2015-TIOL-608 (HC)-Mad-CT)*, held that a contract for printing of annual reports as per the instructions of the customer was a works contract transaction, and not a sale contract. The HC observed that where the finished goods supplied to a particular customer were not commercial commodities in the sense that they could not be sold in the market to any other person, the transaction was a works contract.

Entry tax

Notifications and circulars

Himachal Pradesh

- Effective 1 April, 2015, rate of entry tax on diesel and lubricants has been increased from 7% to 12%.

(Notification No. EXN-F(10)-28/2014, dated 19 March, 2015)

Rajasthan

- Effective 18 March, 2015, Voluntary Amnesty Scheme for Entry Tax-2015 has been notified for payment of demand outstanding up to INR 50 Mn.

(Notification No. F.12 (17) FD/TAX /2015-240 dated 18 March, 2015)

Case law

- The Bombay High Court, in *Sodexo SVC India Private Limited v The State of Maharashtra and Others* (Writ Petition No. 5653 of 2010 with Writ Petition No. 7503 of 2013), held that Sodexo meal vouchers were 'goods' within the meaning of the Maharashtra Municipal Corporations Act, and would be subject to Octroi @ 2% as 'printed material'. The HC further observed that the said vouchers, which were printed on paper, were capable of being sold, delivered and possessed. The vouchers could not be equated with a lottery ticket, which was

merely an actionable claim or electromagnetic waves.

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