

# Staying Updated

## Indirect tax newsletter

May 2015, Volume 18 Issue 02

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## **Central excise**

### **Case law**

#### *Manufacture*

- In *Satnam Overseas Ltd v CCE* (2015 (318) ELT 538), the Supreme Court held that processing of original products with mere value addition does not amount to 'manufacture' unless its original identity also undergoes a transformation and it becomes a distinctive and new product.
- In *Leo Circuit Boards Pvt Ltd v CCE* (2015-TIOL-894-CESTAT-MUM), the Mumbai Tribunal held that activity of assembling lottery terminal from various imported components amounted to 'manufacture'.

#### *Valuation*

- In *CCE v Baron International Ltd* (2015 (319) ELT 3), the Supreme Court held that a job worker was not a related person merely because of taking a loan from the principal manufacturer, particularly when the goods were supplied by the job worker to principal manufacturer at the same rate at which other companies were supplying.
- In *CCE v Shree Rajasthan Syntex Ltd* (2015 (318) ELT 626), the Supreme Court held that the retention of 75% of the sales tax amount under the Sales

Tax Incentive Scheme would be treated as additional consideration after 1 July, 2000, since deduction of sales tax was available only when it was actually paid to the Sales Tax Department.

- In *CCE v Roofit Industries Ltd* (2015 (319) ELT 221), the Supreme Court held that the amount of freight, insurance and unloading charges for delivery of goods at buyer premises was includible in the assessable value when the place of removal was the buyer's place.
- In *CCE v Addisons Paints and Chemicals Ltd* (2015 (318) ELT 17), the Supreme Court held that the cost of the carton was includible in the assessable value when the final products were placed in such carton for sale from the factory gate, or for stock transfer.
- In *KG Naidu Mills v CCE* (2015 (318) ELT 680), the Chennai Tribunal held that transportation and handling charges for inputs sent to the job worker was includible in the assessable value of job worked goods.
- In *CCE v Sharp Batteries and Allies Inds Ltd* (2015 (318) ELT 506), the Mumbai Tribunal held that transportation charges from factory to godown were includible in assessable value of final products.

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- In *CCE v Indian Air Gases Ltd* (2015 (318) ELT 434), the Delhi Tribunal held that cylinder rental charges and cylinder repair/testing charges were not includible in the assessable value of gas because such goods were marketable as such without being packed in any special container, and the same could be sold even in the cylinder brought by the customer.

#### *CENVAT*

- In *Kailash Steels v CCE* (2015 (319) ELT 329), the Delhi Tribunal held that when capital goods were bought by the lessor and transferred to the lessee's factory, CENVAT credit could be taken on the basis of endorsed invoices.
- In *Accosoic Controls Pvt Ltd v CCE* (2015-TIOL-765-CESTAT-MUM), the Mumbai Tribunal has held that supplies to SEZ developers were to be treated as deemed export and hence there was no question of paying 10% of the price of goods in terms of rule 6.
- In *Atcom Technologies Ltd v CCCE&ST* (2015-TIOL-763-CESTAT-AHM), the Ahmedabad Tribunal held that eligibility of credit had to be determined with reference to the dutiability of the final product on the date of receipt of capital goods, and hence, credit would not be admissible if final products were exempted on the

date of receipt of such capital goods.

- In *Cadbury India Ltd v CCE* (2015-TIOL-714-CESTAT-MUM), the Mumbai Tribunal held that demand of 10% of the sale price would not be applicable in a case where exempted product emerged as an unavoidable waste or by-product during the course of manufacture of dutiable product.

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## Service tax

### Case law

- The Supreme Court of India, in *Coal Handlers Pvt Ltd v CCE (2015-TIOL-101-SC-ST)*, held that the activities, carried out by the appellant were of supervision and liaison with coal companies and the railways to see that the material required by the appellant's client was loaded as per the schedule. The appellant neither took custody of the goods, nor was responsible for arranging transportation of the goods. Accordingly, it was held that the activities rendered by the appellant could not be held liable to tax under 'clearing and forwarding agent' services.
- The Allahabad High Court, in *Greater Noida Industrial Development Authority v CCCE and Ors (2015-TIOL-1008-HC-ALL-ST)*, held that if a sovereign/ public authority provided a service which was not in the nature of a statutory activity, and the same was undertaken for a consideration, the same would be liable to tax as long as the activity undertaken fell within the scope of taxable services.

Accordingly, it was held that the lease rental received by the appellant for

allotting plots for business/commercial purposes would be liable to service tax under 'renting of immovable property services'.

The High Court further held that since the applicable provisions did not carve out any distinction between short-term, long-term or lease in perpetuity, the lease rentals would be liable to tax, irrespective of the tenure of the lease.

- The Mumbai Tribunal, in *Kunal IT Services Pvt Ltd v CCE (2015-TIOL-723-CESTAT-MUM)*, held that where the franchisee has been rendering services under a brand name, and the entire consideration for services rendered was directly billed and received by the brand owner, the franchisee would be liable to pay service tax only on the share of revenue received by it from the brand owner, and not on the entire amount received by the brand owner.
- In *Ind Swift Lands Ltd v CCEST (2015-TIOL-826-CESTAT-DEL)*, the Delhi Tribunal held that where the tax was paid under protest, the limitation period applicable to tax refunds as prescribed under section 11B of the Central Excise Act could not be applied.

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The Tribunal further held that where the provider of service informed the service recipients about the tax dispute with respect to services rendered, and it was clearly mentioned that the amount charged for services did not include the tax amount, the principle of unjust enrichment could not be applied in relation to such refund.

- The Mumbai Tribunal, in *Trizetto India Pvt Ltd v CCE (2015-TIOL-845-CESTAT-MUM)*, held that where the appellant, an SEZ unit, applied to the committee for approval of eligible list of input services required for rendering output services much before the actual export, merely because the approval was granted after the date of export, the benefit of refund under Service tax Notification No. 17/2011 could not be denied.
- The Mumbai Tribunal, in *Lear Automotive (I) Pvt Ltd v CCE (2015-TIOL-851-CESTAT-MUM)*, held that the arrangement for hiring employees of the foreign associate on full-time employment basis created an employer-employee relationship between the appellant and the employees so hired. Despite the fact that a portion of salary of such employees had been paid at their home location through the foreign associate,

the reimbursement of such cost to the foreign associate by the appellant could not be held liable to service tax under 'manpower supply services'.

## VAT/Sales Tax

### Notifications and circulars

#### Delhi

- Effective 1 May, 2015, State Bank of Patiala has been notified as 'Appropriate Government Treasury' for collection of tax, interest, penalty etc., in addition to already notified banks.

*(Notification No. F.7(400)/Policy/VAT/2011/PF/142155 dated 1 May, 2015)*

- Due date for filing of online/hard copy of fourth quarter return for FY 15 in form DVAT-16, DVAT-17 and DVAT-48 has been extended to 22 May, 2015.

*(Circular No.10 of 201516 No.F.7(420)/Policy/2011/PF/186192 dated 15 May, 2015)*

- Procedure for provisional registration within a day (pending physical verification) has been prescribed to be effective from 30 April, 2015.

*(Circular No. 3 of 201516 No.F.3(521)/Policy/VAT/2015/PF/8692 dated 27 April, 2015)*

#### Maharashtra

- Effective 7 May, 2015, simplified procedure has been prescribed for VAT/CST registration.

*(Circular No. 5 of 2015 dated 6 May,*

*2015)*

#### Rajasthan

- Effective 27 April, 2015, rate of VAT on Bitumen Emulsion, Crumb Rubber Modified Bitumen and Polymer Modified Bitumen has been notified at 5%.

*(Notification No. F.12(34)FD/TAX/201011 dated 27 April, 2015)*

- Procedure for claiming refund has been prescribed for dealers whose turnover of inter-state sale in the previous year is more than 50% of total turnover.

*(Order No. F.16(1110)VAT/Tax/CCT/1314/1698 dated 12 May, 2015)*

- Effective 27 April, 2015, VAT rate on Bitumen (except Bitumen Emulsion, Crumb Rubber Modified Bitumen and polymer Modified Bitumen) has been notified at 14.5%.

*(Notification No. F.12(34)FD/TAX/201012 dated 27 April, 2015)*

#### Telangana

- Effective 8 May, 2015, VAT rate on auto components sold to automobile manufacturing units located in Telangana has been notified at 5%.

*(Notification G.O.Ms No. 50 dated 6 May, 2015)*

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**Uttarakhand**

- Effective 8 May, 2015, VAT rate on spirits and spirituous liquor of any kind excluding country liquors and wine manufactured from fruits produced in Uttarakhand has been notified at 20%. The VAT rate on country liquors has been notified at 10%.  
*(Notification No. 413/2015//141(120)/XXVII(8)/2008 dated 8 May, 2015)*
- Effective 22 April, 2015, full rebate of tax has been allowed on the amount of subsidy granted by Government of India, to the seller of LPG for domestic use at every point of sale on the condition that rebate is passed on to the purchaser.  
*(Notification No. 02//2015/146/(120)/XXVII(8)/2007 dated 22 April, 2015)*

**West Bengal**

- Effective 11 May, 2015, in order to streamline the process of bulk cancellation of already generated ‘C’ or ‘F’ forms, a new e-service has been launched.  
*(Trade Circular No. 04/2015 dated 11 May, 2015)*
- Due date for filing of online return in form 14/14D, form 15 and form 15R for the period ending on 31 March, 2015 has been extended to 15 May, 2015 and the due date of furnishing paper form of that return has been extended to 22

May, 2015.  
*(Order Memo No. 354CT/PRO 3C/PRO/2012 dated 29 April, 2015)*

**Case law**

- The Delhi High Court, in MRF Limited v Commissioner of Trade and Taxes (2015-TIOL-1311-HC-DEL-VAT), held that turnover discount through credit notes on quarterly basis was allowable as deduction from taxable turnover. The HC further held that it made no difference that discount was calculated on quarterly basis and accorded through 'credit notes' and not at the time of issuing the invoice itself.
- The Delhi High Court, in Hari Durga Travels v Commissioner of Trades and Taxes, Delhi (2015-TIOL-1300-HC-DEL-VAT), held that giving buses on hire to Delhi Transport Corporation (DTC) for being plied as per requirements of DTC, where the custody of buses, possession of registration certificate/permits were retained by the bus owner, did not qualify as transfer of right to use goods and hence was not liable to VAT/ CST.
- The Madras High Court, in K Selvamurugan v Commissioner of Commercial Taxes (2015-TIOL-1289-HC-MAD-VAT), held that an assessment order passed without issuing notice was liable to be quashed.

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## **Entry tax**

### **Notifications and circulars**

#### **Bihar**

- Effective 15 May, 2015, exemption from entry tax has been provided on import of Vaccine Van (Bolero vehicle) by 16 specified Civil Surgeon Offices under Universal Programme of Government of India.

*(Notification No. S.O.76 dated 15 May, 2015)*

#### **Assam**

- Effective 12 May, 2015, exemption from entry tax has been provided on import of 100 numbers of inflatable rubber boats meant for carrying out relief operation in flood prone districts by Assam State Disaster management Authority (ASDMA)

*(Notification No. FT.113/2015/8 dated 12 May, 2015)*

#### **Karnataka**

- Effective 1 October, 2014, exemption from entry tax on entry of plant and machinery and capital goods for use (including establishing captive power generation plant) has been provided to new Micro/ Small/ Medium Enterprise/ industrial units located in

specified areas.

*(Notification No. FD 01 CET 2015, dated 22 April, 2015)*

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