

# *Staying Updated*

## Indirect tax newsletter

October 2015, Volume 18 Issue 07

**pwc**

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#### *Entry Tax*

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## Central excise

### Case law

#### Valuation

- In *CCE v Hitkari Fibres Ltd.* (2015 (324) ELT 24), the Supreme Court held that additional amount received after clearance of goods should not be added to the transaction value unless undervaluation had been proved by the department.
- In *Purolator India Ltd v CCE* (2015 (323) ELT 227), the Supreme Court held that cash and volume discount were allowable as deduction when the same was stipulated in the sale agreement between the assessee and its buyers and known at, or prior to, clearance of goods.
- In *Lakhanpal Ltd v CCE* (2015 (323) ELT 645), the Supreme Court held that the royalty paid to the buyer for use of brand name was not an additional consideration, as the appellant had paid the buyer, not the other way round. (The appellant was making approximately 50% of its sales to other buyers – other than the brand owner.)
- In *Cadbury India Ltd. v CCE* (2015 (323) ELT 606), the Delhi Tribunal held that cheque discounting charges collected to cover delay in realisation of payment by up-country buyers was nothing but interest on receivable and that the same was not includible in the

assessable value.

- In *Castrol India Ltd v CCE* (2015-TIOL-2194-CESTAT-KOL), the Kolkata Tribunal held that the *pro rata* value attributable to the bonus quantity of lubricant was not includible in the assessable value when the bonus/ combo pack had already suffered duty under MRP-based assessment.
- In *Essel Propack Ltd v CCE* (2015-TIOL-2173-CESTAT-MUM), the Mumbai Tribunal held that cost of secondary packing not ordinarily used, and given at specific request of customer, was not includible in the assessable value of goods.
- In *CCE v Uttam Galva Steels Ltd* (2015-TIOL-2242-CESTAT-MUM), the Mumbai Tribunal held that difference between sales tax collected from the customers and sales tax paid to the state authorities at Net Present Value of deferred taxes under Package Incentive Scheme could not be treated as an additional consideration, since payment of sales tax at NPV (which was less than originally payable), could not make the amount actually payable at a different time and place of removal, particularly when under Sales Tax Law such a payment was considered as deemed payment of the sales tax payable.

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*CENVAT/ MODVAT*

- In *CCE v CESTAT* (2015 (323) ELT 290), the Madras High Court held that there was no requirement to reverse CENVAT credit on inputs and capital goods under rule 3(5) on leasing out of factory to another company since there was no physical removal of such goods.
- In *National Engineering Industries Ltd v CCE* (2015-TIOL-1976-CESTAT-DEL), the Delhi Tribunal held that omission by Head Office to register as an Input Service Distributor was a procedural lapse, and therefore, CENVAT credit was admissible on invoice issued in name of the Head Office
- In *Sabic Innovative Plastics Pvt Ltd v CCE* (2015-TIOL-2014-CESTAT-AHM), the Ahmedabad Tribunal held that CENVAT Credit was admissible on inputs and capital goods used exclusively for R & D and Quality Control Laboratory, since such R&D activities were essential for manufacture of finished goods.
- In *Bell Ceramics Ltd v CCE* (2015-TIOL-2227-CESTAT-AHM), the Ahmedabad Tribunal held that CENVAT credit was admissible on pipes used for transportation of natural gas from supply point of GAIL to the appellant's factory for further use in the manufacture of finished goods.
- In *SPL Ltd v CCE* (2015-TIOL-2092-CESTAT-DEL), the Delhi Tribunal held that there was no requirement to reverse CENVAT credit on inputs, inputs contained in work in progress/ finished goods lying in stock on the date of availing full exemption under notification no. 6/2002-CE dated 1.3.2002.

## ***Service tax***

### ***Case law***

- In the case of Future Gaming & Hotel Services P Ltd & Anr v Union of India & Ors (TS-564-HC-2015(SIK)-ST), the Sikkim High Court held that the activity of buying and selling lottery tickets did not amount to provision of services to the State, and hence, there was no service tax liability, even after the amendment of explanation 2 to Section 65B(44) in June 2015.
- In the case of Reliance Infratel Limited v Commissioner of Central Excise (TS-569-CESTAT-2015-ST), the CESTAT held that even in case of an associated enterprise transaction, for an entry to be included in the 'gross amount charged', it must be a payment in the nature of a consideration for a service. In the present case, the entry for lease rent equalisation was only an accounting entry in the balance sheet to comply with the accounting standard 19; it was not an income for the purpose of Income Tax Act also. Accordingly, such entries made in books could not be treated as consideration subject to service tax.
- In the case of Commissioner of Service Tax v Vijay Television P Ltd (TS-565-HC-2015(MAD)), the Madras High

Court held that the findings of facts by the Tribunal, which is the final fact-finding authority, could not be overturned by the High Court merely based on a plea made in appeal, without any grounds being advanced by the Department to substantiate the same.

### ***Notifications & Circulars***

#### **Circular No. 354/98/2015-TRU dated 5 October 2015**

- The CBEC has clarified in the context of Goods Transport Agency (GTA) services that if ancillary services are provided in the course of transportation of goods by road, and the charges for such services are included in the invoice issued by the GTA, such services would form a part of the GTA services and the corresponding abatement shall be allowed. Further, even in cases where GTA undertakes to deliver goods within stipulated time, it would be considered as GTA services till the time the entire transport is by road and the GTA issues a consignment note.

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## **Notification No. 19/2015-Service Tax dated 14 October 2015**

- Service tax exemption has been granted to an Indian Bank or other entity acting as an agent to money transfer service operators in relation to remittance of foreign currency into India for the period 1<sup>st</sup> July, 2012 to 13<sup>th</sup> October, 2014. This exemption is granted by exercising the powers under section 11C of the Central Excise Act, 1944, which is made applicable to service tax vide section 83 of the Finance Act, 1994.

## **Notification No. 20/2015-Service Tax dated 21 October 2015**

- Service Tax exemption has been granted to services provided by business facilitator / business correspondent to a banking company in rural area, restricted to a Basic Savings Bank Deposit Account covered by Pradhan Mantri Jan Dhan Yojana in rural area branches by way of account opening, cash deposits, cash withdrawals, obtaining e-life certificate, and Aadhar seeding. The services provided by any person as intermediary to a business facilitator/ business correspondent with respect to the above-mentioned services provided by the business facilitator/ business correspondent have also been exempted from service tax.

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## **VAT/Sales Tax**

### **Notifications and circulars**

#### **Andhra Pradesh**

- Effective 22<sup>nd</sup> September 2015, entry for “Khandasari Sugar”, which is exempt from levy of VAT, has been substituted by “Sugar including Khandasari Sugar” (*Notification No. G.O.MS.No. 356 Dated 22nd September, 2015*)

#### **Chattisgarh**

- Due date for completion for assessment proceedings, which were required to be completed by 31<sup>st</sup> December 2015, has been extended to 30<sup>th</sup> June 2016. (*Notification No. F1036/2015/CT/V (64). Dated 30th September, 2015*)

#### **Delhi**

- Due date for submission of information in Form DP-1 has been extended from 30 September 2015 to 31 October 2015. (*Notification No.F.3 (352)/ Policy/ VAT/ 2013/ 818829 dated 30th September, 2015*)
- Due date for filing online returns in Forms EC-II and EC-III for the quarter ending June 2015 has been extended to 15<sup>th</sup> October 2015. (*Notification No . F.3 (515)/ Policy/VAT/2015/805816 dated 29th September, 2015*)

#### **Goa**

- Due date for filing of return for the quarter ending September 2015 has been extended to 29<sup>th</sup> November 2015. (*Order No. CCT/ 122/ 1112/ 2903 7th October, 2015*)

#### **Himachal Pradesh**

- Effective 1<sup>st</sup> October 2015, entry pertaining to ‘Bitumen & Coal tar’ has been substituted with ‘Bitumen & Coal tar of all kinds’ which is liable to VAT at 5%. (*Notification No. EXNF (10)20/ 2014 dated 1st October, 2015*)

#### **Rajasthan**

- Effective 24<sup>th</sup> September 2015, works contracts executed in Special Economic Zone are exempt from payment of tax up to 31<sup>st</sup> March 2016; where such Special Economic Zone is established in backward areas as specified by the State Government, such exemption shall be available up to 23<sup>rd</sup> August 2017. (*Notification No. F.12 (43) FD/Tax/05 Pt 88 dated 24th September, 2015*)

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- Effective 15<sup>th</sup> October 2015, transport memo in Form XXI is required to be issued and accompanied during transportation of edible oil of weight exceeding nine tons. (*Notification No. K.A. NI21422/XI9 (125)/09 U.P. Act 52008 Order (145) 2015 dated 14<sup>th</sup> October, 2015*)
- Effective 15<sup>th</sup> October 2015, VAT rate on Cigarette/ Cigar, Pan Masala without tobacco content and Khaini, Zarda, Surti and other manufactured tobacco and tobacco products excluding Bidi has been increased to 40%. (*Notification No. K.A. NI 21423/XI9 (1)/2008 U.P. Act 52008 Order (142) 2015 dated 14th October, 2015*)

## Case law

- The Karnataka High Court, in the case of State of Karnataka v IBM India P Ltd (2015-TIOL-2298-HC-KAR-VAT), held that in the course of ERP implementation, if any software came into existence, no VAT was payable on such software as the title of software rested with the client, and not the assessee. The HC observed that such software could not be held to be 'goods available in the market'.
- The Karnataka High Court, in the case of Zylog Systems P Ltd v Addl. Commissioner of Commercial Tax, Bangalore (TS-549-HC-2015-KAR-VAT),

held that smart cards designed specifically for RTO as part of providing computerized service delivery system were not liable to VAT. The HC observed that supply of smart cards was for providing service, and there was no element of sale involved therein.

- The Delhi High Court, in the case of Jagriti Plastics Ltd v Commissioner of Trade & Taxes (2015-TIOL-2332-HC-DEL-VAT), held that a taxpayer was eligible for credit of Value Added Tax paid on purchase of Duty Entitlement Passbook ('DEPB') scrip against output Delhi VAT liability on sale of imported goods in the State of Delhi.

## Entry Tax

### Notifications and circulars

#### Uttar Pradesh

- Effective 15<sup>th</sup> October 2015, entry for 'coal' has been substituted by 'coal including coke in all its forms' liable to entry tax at the rate of 2%. (*Notification No. KA. NI. 21498/ XI9 (1)/ 2008 U.P. Act 302007 Order (144) 2015 dated 14th October, 2015*)

#### Uttarakhand

- Effective 12<sup>th</sup> October 2015, 'Raw Petha and Petha Sweet' are liable to entry tax at the rate of 5% on the value of goods. (*Notification No. 904/ 2015/ 24 (120)/ XXVII (8)/ 2010 dated 12th October, 2015*)

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