

# *Staying Updated*

## Indirect tax newsletter

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**pwc**

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- Goods supplied under a turnkey contract are not eligible for in-transit sales exemption under section 6(2) of the CST Act

## ***Central excise***

### ***Case law***

#### ***Manufacture***

- In *Bajaj Auto Ltd v CCE* (2015 (322) ELT 419), the Supreme Court held that aluminium dross and ash emerging as by-products during the die-casting of aluminium parts were not manufactured goods, and hence the same was not liable to central excise duty.
- In *CCE v Tejo Engineering Services P. Ltd.* (2015 (322) ELT 418), the Supreme Court held that mere cutting of the lengthy conveyor belt into smaller sizes did not amount to manufacture.

#### ***Valuation***

- In *Tamilnadu Petro Products Ltd v CCE* (2015 (322) ELT 805), the Supreme Court held that cost plus principle method would not apply where the arm's length price was below cost of production.
- In *Biochem Pharmaceuticals Ind. Ltd. v CCE* (2015 (322) ELT 808), the Supreme Court held that valuation of physician samples distributed free of cost would be done on cost of production basis, and not on basis of value of same goods sold in market.

### ***CENVAT***

- In *Union of India v DSCL* (2015 (322) ELT 769), the Supreme Court held that bagasse that emerged during the manufacture of sugar as a waste product was a non-excisable item even after introduction of Explanation to section 2(d) effective from 16 May, 2008, and therefore Rule 6(3) was not applicable to such waste products.
- In *CCE v Matsushita Television and Audio India Ltd* (2015-TIOL-2003-HC-ALL-CX), the Allahabad High Court held that when bill of entry was misplaced, CENVAT credit could be claimed on the basis of authenticated exchange control copy of the bill of entry obtained by the assessee from the bank.
- In *Sreepathi Pharmaceuticals Ltd v CCE* (2015-TIOL-1823-CESTAT-BANG), the Bangalore Tribunal held that there was no requirement to reverse credit on inputs destroyed in fire at the job worker's premises before reaching final stage of goods.
- In *Ultra-Tech Cement Ltd v CCE* (2015-TIOL-1826-CESTAT-MUM), the Mumbai Tribunal held that CENVAT Credit was admissible on welding electrodes used for repair & maintenance of plant and machinery.

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- In *Castrol India Ltd v CCE* (2015-TIOL-1852-CESTAT-MUM), the Mumbai Tribunal held that CENVAT credit could not be denied on loss of inputs when shortage was below 0.5% of the total quantity used in the manufacturing process.
- In *CCE v Facor Alloys Ltd* (2015-TIOL-1854-CESTAT-BANG), the Bangalore Tribunal held that CENVAT credit was admissible on iron and steel items used in erection and fabrication of plant and machinery.
- In *Maharashtra Seamless Ltd v CCE* (2015-TIOL-1880-CESTAT-MUM), the Mumbai Tribunal held that service tax paid on commission agent's services was admissible when agent not only sold the goods, but also actively approached new clients, put advertisements, and gave away diaries and calendars, since such activities could clearly be termed as "sales promotion" activities.

*Others*

- In *Rajaram Steel Industries Pvt Ltd v CCE* (2015-TIOL-1917-CESTAT-MUM), the Mumbai Tribunal held that when the property was sold under auction by secured creditors such as banks and financial institutions, recovery of Government dues under

Section 11 could not be made from the buyer of such property.

- In *CCE v Western Cans Pvt Ltd* (2015-TIOL-1869-CESTAT-MUM), the Mumbai Tribunal held that interest under Section 11BB was payable from the expiry of three months from the date of refund application, and not from the date of the refund order.

## ***Service tax***

### ***Case law***

- In the case of *Damco India Private Limited v Union of India* (2015-TIOL-2118-HC-MUM-ST), the Mumbai High Court observed that matters which essentially raised disputed questions of fact could not be decided by the High Court by way of writ, and needed to be adjudicated appropriately by the Adjudicating Authority.
- In the case of *Dell India Private Limited v CCE, Bangalore* (2015-TIOL-1824-CESTAT-BANG), the CESTAT held that refund claim of service tax paid on services approved by the approval committee, and consumed for authorised operations by a SEZ unit, could not be denied for want of nexus.
- In the case of *Landmark Construction v Commissioner, Service Tax* (2015-TIOL-2059-HC-MUM-ST), the Mumbai High Court held that the CESTAT could dismiss an appeal for non-compliance with pre-deposit order without hearing the appeal on merits.
- In the case of *Mah India v Commissioner, Service Tax* (2015-TIOL-1846-CESTAT-DEL), the CESTAT held that CENVAT credit of service tax paid on input services availed and utilised at other offices,

although not registered, could be availed at the registered office, so long as there was no dispute regarding the availment of CENVAT credit at the other offices.

- In *Trans Engineers India Private Limited v CCE* (2015-TIOL-1947-CESTAT-MUM), the CESTAT observed that when the assessee's records were audited by the revenue once, and no short payment was observed, the revenue could not invoke the extended period of limitation to demand tax for the period for which audit was done earlier.

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## VAT/Sales Tax

### Notifications and circulars

#### Chhattisgarh

- Effective 1st September 2015, all varieties of cloth (excluding hessian cloth) and sugar and *khandsari* (excluding *mishri*, *chironji*, *elaichi dana* and *batasha*) have been exempted from tax for the period 1 September 2015 to 31 March 2016.

*(Notification No. F-10-34 /2015/CT/V (61) dated 1st September, 2015)*

#### Delhi

- Due date for submission of information in Form DP-1 has been extended from 31 August 2015 to 30 September 2015.

*(Notification No. F.3(352)/Policy/VAT/2013 /625-36 dated 31st August, 2015)*

- Effective 15 September 2015, details of invoices and goods receipt notes in respect of all goods purchased, or received as stock transfer, or received on consignment agreement basis from outside Delhi have to be submitted online, in Form Delhi Sugam-2 (DS2) by all registered dealers before physical entry of the goods in Delhi.

*(Notification No. F.7 (433)/Policy/VAT/2012/PF/703-712 dated 10th September, 2015)*

#### Goa

- Due date of filing quarterly return by registered dealers other than composition dealers for quarter ending 30 June 2015

has been extended to 28th October 2015.

*(Notification No. 4/5/2005Fin (R&C) (122) dated 28th August, 2015)*

#### Haryana

- Due date of filing quarterly return for the quarter ending 30 June 2015 has been extended to 15 September 2015.
- Where locally purchased goods are sold on inter-State basis, or such goods are used in manufacture of goods and the manufactured goods are sold on inter-State basis, input tax credit shall be allowed to the extent of amount of tax actually paid on purchase of such goods, or tax payable on sale of such goods on inter-State basis, whichever is lower.

*(Notification No 22/ST-1/H.A.6/2003/S.59/2015 dated 7<sup>th</sup> September, 2015)*

#### Himachal Pradesh

- Effective 1 October 2015, payment of tax electronically through the web portal of the Excise and Taxation Department has been made mandatory for all dealers except for composition dealers.

*(Notification No. EXN-F (10)7/2011 dated 16th September, 2015.)*

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## Rajasthan

- Effective 10 September 2015, tax rate on aviation turbine fuel has been increased from 20% to 26%.

*(Notification No. F.12 (100) FD/Tax/87-Pt-87 dated 9th September, 2015)*

## Uttar Pradesh

- Effective 4 September 2015, additional tax on goods covered under Schedule V has been increased from 1.5% to 2%.

*(Notification No. K.A. NI-2-1309/XI-9 (1)/2014-U.P. Act-5-2008-Order (138)-2015-Dated 3rd September, 2015)*

- Effective 11 August 2015, exemption from tax has been provided to select category of motor/ battery operated e-rickshaws.

*(Notification No. K.A. NI-2-1291/XI-9 (150)/15-U.P. Act-5-2008-Order (139)-2015-Dated 11th September, 2015)*

## Case Laws

- The Karnataka High Court, in the case of Infosys Ltd v Deputy Commissioner of Commercial Taxes, Bangalore & Others (2015-TIOL-2106-HC-KAR-VAT), held that no VAT was payable on consideration charged for implementation of customized software

under a separate service contract. The Court observed that implementation of software was a post-sale activity undertaken to integrate the software with the banking system.

- The Andhra Pradesh High Court, in the case of M/s. Larsen and Toubro v State of Andhra Pradesh (TS-507-HC-2015(TEL & AP)-VAT), held that supply of goods in a turnkey contract was not eligible for CST exemption available for in-transit sales under section 6(2) of the CST Act, as the goods were considered to be sold post their incorporation in the project.
- The Madras High Court, in the case of PVC Leathers, Paper Mills Ltd. v State of Tamil Nadu (TS-476-HC-2015 (MAD)-VAT), held that sale of goods to purchaser's branch office in Chennai pursuant to an export order executed by the head office in Bombay was eligible for CST exemption under Section 5(3) of the CST Act. The Court observed that it was immaterial whether the declaration in form H was issued by the branch office or head office, so long as the sale had occasioned export of goods outside India.

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