

Staying Updated

Indirect tax newsletter

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- The CBEC has issued various notifications and circulars clarifying the levy of service tax on services provided by the Government.

Central excise

Notifications and circulars

- For a person removing non-exempted as well as exempted goods, or providing non-exempted as well as exempted services, and opting to pay 6%/7% of the value of exempt turnover, the upper limit of such payment has been amended to “sum total of opening balance of credit of inputs and input services available at the beginning of the period to which the payment relates and the credit of inputs and input services taken during that period” as compared with previous upper limit of “total credit available in the account of the assessee at the end of the period to which the payment relates”.

(Notification No. 23/2016-Central Excise-NT dated 1 April, 2016)

- The CBEC has clarified that bagasse, dross and skimmings of non-ferrous metals or any such by-product or waste are not excisable goods even after insertion of Explanation to Section 2(d) of the Central Excise Act, 1944. However, if such waste is cleared for a consideration from the factory, then proportionate credit on inputs and input services should be reversed in terms of Rule 6 of the CENVAT Credit Rules, 2004.

(Circular no. 1027/15/2016 - CX dated 25 April, 2016)

Case law

Manufacture

- In *Exide Industries Ltd. v CCE* (2016 (333) ELT 101), the Delhi Tribunal held that the process of conversion of semi-finished/incomplete batteries into complete batteries amounted to ‘manufacture’.

Valuation

- In *ITC v CCE* (2016 (333) ELT 287), a larger Bench of the Chennai Tribunal held that for computing the cost of production of packing material (final products), the value of intermediate goods received from sister unit would be the actual cost of production, and not 110% of the cost of production of such goods.
- In *Symphony Comfort Systems Ltd. v CCE & ST* (2016 (334) ELT 82), the Ahmedabad Tribunal held that valuation under Rule 10A for job worker cannot be applied unless there was predominant supply of inputs or goods free of charge to the assessee. It was further held that monitoring and supervision of manufacturing activities undertaken only to sustain timely supply and maintain quality could not be treated as job work under Rule 10A of the Valuation Rules.

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CENVAT/ MODVAT

- In *Dwarikesh Sugar Industries Ltd. v CCE* (2016 (334) ELT 58), the Allahabad High Court held that capital goods credit was not admissible on welding electrodes used for repair and maintenance of plant & machinery .
- In *Srinathji Ispat Ltd. v CCE & ST* (2016 (333) ELT 454), the Delhi Tribunal held that input credit was admissible on TMT bars, shapes, angles and channels, used for manufacture of moulds for steel ingots/ casting.
- In *Euro Containers v CCE* (2015 (327) ELT 303), the Delhi Tribunal held that steel items used for fabrication of conveyor system for handling of material were eligible for input credit.
- In *Mukand Ltd. v CCE* (2016 (333) ELT 479), the Mumbai Tribunal held that capital goods credit was admissible on corrugated aluminum and cement sheets used for providing cover to the machinery and its moving parts in order to protect them from dust particles, etc., and to maintain temperature for good quality of output.
- In *Ericsson India Pvt. Ltd. v CCE&ST* (2016 (334) ELT 107), the Delhi Tribunal held that once inputs were

issued for manufacture and found defective in assembly line, CENVAT credit was not reversible on removal of such defective inputs.

- In *CCE v Aarti Sponge and Power Ltd.* (2016 (333) ELT 415), the Delhi Tribunal held that iron ore fine emerged as a waste material during the manufacture of sponge iron, and there was no requirement to pay 10% of value of such iron ore under rule 6.
- In *Jagatjit Industries Ltd. v CCE* (2015 (327) ELT 364), the Delhi Tribunal held that a supplementary invoice issued on account of finalization of provisional assessment was an eligible document for credit, and that the exception provided in Rule 7(1)(b) to restrict credit in case of suppression / misstatement of facts was not applicable in such cases.

Others

- In *Apar Industries (Polymer Division) v UOI* (2016 (333) ELT 246), the Gujarat High Court held that the time limit for refund claim had to be computed from the date of filing of the original claim, and not from the date of resubmission of claim after removal of defects.

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Notifications and circulars

- The Point of Taxation Rules have been amended to provide that in cases where there is a change in liability or extent of liability of person liable to pay service tax under reverse charge, the point of taxation would be date of issue of invoice, if the service has been provided and the invoice for such services is issued before the effective date of such change.

(Notification No. 21/2016-Service Tax dated 30 March, 2016)

- Notification no. 25/2012-ST has been amended to exempt various services provided by the Government.

(Notification No. 22/2016-Service Tax dated 13 April, 2016)

- The Service Tax Valuation Rules have been amended to provide for levy of service tax on interest chargeable on deferred payment, where payment for services provided by Government is allowed to be deferred on payment of interest or any other consideration.

(Notification No. 23/2016-Service Tax dated 13 April, 2016)

- The Point of Taxation Rules have been amended to provide that in case of

services provided by the Government to any business entity, the point of taxation would be the earlier of the date on which any payment becomes due as specified in the invoice, bill, challan or any other document issued by the government, or the date of actual payment.

(Notification No. 24/2016-Service Tax dated 13 April, 2016)

- The CENVAT Credit Rules have been amended to provide that CENVAT credit of service tax paid on one-time charges payable upfront or in instalments, for assignment of the right to use natural resources shall be spread equally over a period of three years, instead of being spread over the period for which the rights were assigned as per the previous provision. The time limit of one year for availment of CENVAT credit is not applicable to CENVAT credit of service tax paid on assignment of right to use any natural resource.

(Notification No. 24/2016-Central Excise-NT dated 13 April, 2016)

- The CBEC has issued a circular clarifying various aspects of levy of service tax on the services provided by the Government.

(Circular No. 192/02/2016-ST dated 13 April, 2016)

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- The CBEC has extended the due date for filing service tax returns for the period October, 2015 to March, 2016 from 25 April, 2016 to 29 April, 2016.

(Order No. 01/2016-ST dated 25 April, 2016)

Case law

- In FIEM Industries Ltd v CCE (TS-149-CESTAT-2016-CHNY), the Chennai Tribunal held that CENVAT credit of service tax paid on health insurance of the employees in factory was available even after 1 April, 2011.
- In Hinduja Global Solutions Ltd. v Commissioner (2016-TIOL-728-CESTAT-BANG), the Bangalore Tribunal held that CENVAT credit of services received by head office in respect of divestments undertaken was available, as such services were received for raising finance.
- In Franco Indian Pharmaceutical Pvt. Ltd. v CST (2016-TIOL-885-CESTAT-MUM), the Mumbai Tribunal held that if the intention of the parties was joint employment, then recovery of employee costs by one entity from other entities would not be subject to service tax.
- In Indago v CST (TS-128-CESTAT-2016-MUM), the Mumbai Tribunal held that the time limit for filing refund claim of accumulated CENVAT credit by an

exporter was one year from the end of the period for which refund claim is filed.

- In Khanna International Pipes Pvt. Ltd. v CCEx (2016-TIOL-961-CESTAT-MUM), the Mumbai Tribunal held that CENVAT credit of services received at port of clearance was available to a manufacturer exporter. However, CENVAT credit of services received at destination was not admissible.
- In N Bala Baskar v UOI and others (2016-TIOL-824-HC-MAD-ST), the Madras High Court held that in case of joint development agreements, where the developer constructed and handed over the agreed share of built-up area to the land owner in consideration for a share in the undivided land and ownership of balance built-up area, such activity of construction for the land owner was subject to service tax.
- In Berco Undercarriages (India) Pvt. Ltd. (TS-145-AAR-2016-ST), the Advance Ruling Authority held that when a foreign C & F agent raised a composite invoice, including freight and insurance etc., the Indian service recipient was liable to pay service tax on the value of invoice excluding expenditure or costs incurred by C & F agent as a pure agent, if the conditions enumerated in Rule 5 of the Service Tax Valuation Rules were complied with.

VAT/ Sales Tax

Notifications and circulars

Chhattisgarh

- Effective 13 April, 2016, dealers establishing units under the Electronics, IT and ITeS Investment policy of Chhattisgarh exempted from VAT for 5 years from the date of commencement of commercial production or up to the date of Goods and Service Tax coming into force, whichever is earlier.

(Notification F1014/2016/CT/V (50) Dated 13 April, 2016)

- Sale of bicycle and bicycle parts exempted from VAT for the period 1 April, 2016 to 31 March, 2017.

(Notification F10-17/ 2016/CT/V (26) Dated 31 March, 2016)

- Rate of VAT reduced on sale of mobile phone from 14.5% to 5% for the period 1 April, 2016 to 31 March, 2017.

(Notification F10-17/ 2016/CT/V (26) Dated 31 March, 2016)

Goa

- Effective 1 April 2016, VAT rate on sale of Aviation spirit, aviation turbine fuel and A V Gas has been increased from 12.5% to 18%.

(Notification No. 4/5/2005Fin(R&C) (134) Dated 30 March, 2016)

Haryana

- Due date for filing of online quarterly return for the period ending 31 March, 2016 has been extended to 31 July, 2016 for dealers who were affected by the reservation agitation in Haryana in February and have lodged claim for compensation with the designated authorities.

(Order Dated 18 April, 2016)

Himachal Pradesh

- Effective 28 March, 2016, dealers/ manufacturers dealing in sale of liquor, iron & steel, plywood and sunmica, medicines, electrical items, edible oil, marble, furniture, and timber are required to file a compulsory e-declaration in Form VAT-XXVI before dispatch of taxable goods in the course of intra-state transactions of goods.

(Notification No. EXNF(10)7/2011VolII Dated 28 March, 2016)

Jammu & Kashmir

- Online filing of returns has been made mandatory from 1st Quarter of FY 17 onwards for dealers having gross annual turnover of INR 20 lacs and above.

(Notification No. 03 of 2016 Dated 31 March, 2016)

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- Effective 1 April, 2016, sale of crude oil exempted from VAT as specified in clause (iic) of Section 14 of the Central Sales Tax Act, 1956.

*(Notification XI No. FD 34 CSL 2016
Dated: 31 March, 2016)*

- Effective 1 April, 2016, VAT rate on sale of cotton as specified in clause (ii) of Section 14 of the Central Sales Tax Act, 1956 has been reduced from 5% to 2%.

*(Notification IV No. FD 34 CSL 2016
Dated: 31 March, 2016)*

Maharashtra

- Effective 1 April, 2016, VAT rate on sale of goods covered under schedule C of Maharashtra VAT law, except declared goods, has been increased from 5% to 5.5%.

*(Notification No. VAT. 1516/C.R.
31/Taxation-1. Dated 30 March, 2016)*

- Effective 1 April, 2016, sale of hybrid electric buses and battery-operated buses sold to public transport undertakings in the state for public transportation have been exempted from VAT.

*(Notification No. VAT. 1516/C.R.
31/Taxation. Dated 30 March, 2016)*

Nagaland

- Effective 1 April, 2016, online filing of returns through “Tax Soft” has been made mandatory for all the registered dealers.

*(Notification NO.CT/LEG/CR/128
/2006 Dated 29 March, 2016)*

Uttar Pradesh

- Effective 5 April, 2016, VAT rate on sale of cement has been increased from 15.5% to 16.5%.

*(Notification No. K.A. NI2485/ XI 9
(13)/ 2010 U.P.Act 52008 Order (156)
2016 Dated 4 April, 2016)*

Case law

- In Commissioner, Delhi Value Added Tax v M/s. ABB Ltd [TS-155-SC-2016-VAT], the Supreme Court (SC) held that the movement of goods by way of imports was in pursuance of the conditions and/ or as an incident of the contract between the importer and ultimate customer in India. Hence, sale by importer to ultimate customer in India should qualify as ‘sale in the course of import’. The SC, relying on the decision in the case of M/s. K.G. Khosla & Co. v Deputy Commissioner of Commercial Taxes, Madras [(1966) 3 SCR 352], further held that privity of

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contract between the foreign supplier and the ultimate consumer in India was not mandatory to qualify as sale in the course of import.

- In *M/s Shah Khantilal Jayantilal v The State of Tamil Nadu* [2016-TIOL-812-MAD-VAT], the Madras High Court held that DEPB licences qualified as 'goods'. Further, input tax credit was available only for goods falling under the first schedule of Tamil Nadu VAT Act and DEPB licences were not included in first schedule of Tamil Nadu VAT law. Therefore, credit of VAT paid on purchase of such DEPB licences was not available.

Entry Tax

Notifications and circulars

Chhattisgarh

- Readymade garments, readymade cotton hosiery, cotton knitted garments and readymade nylon hosiery exempted from Entry tax for the period 1 April, 2016 to 31 March, 2017.

(Notification F1026/2016/CT/V (53)

Dated 21 April, 2016)

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