

Staying Updated

Indirect tax newsletter

July 2016, Volume 19 Issue 4

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In the issue

Central excise

Service tax

VAT/Sales tax/Entry tax

Contacts

In the issue

Central Excise

Case law

Manufacture

- Assembly of different parts of decorative lamp shades and chandeliers held not to amount to manufacture.

CENVAT

- Input credit held admissible on jumbo bags sent to job worker for dispatch of bulk detergent powder by job worker to principal manufacturer.
- Transfer of unutilised CENVAT credit permissible in case of de-bonding of 100% EOU to DTA unit.

VAT/Sales tax

Notifications and circulars

- Mandatory use of digital signature in Delhi.
- Due date of filing of quarterly return extended in West Bengal.

Case law

- Loader used for execution of works contract, even if it happened to be a vehicle, held to fall under the expression, 'machinery'.

Central excise

Notifications and circulars

- The CBEC has specified that a person registered as a First Stage Dealer shall not be required to take registration as an importer, and *vice versa*.
(Notification No. 30/ 2016-CE(NT) dated 28 June, 2016 & Circular no. 1032/ 20/ 2016 - CX dated 28 June, 2016)
- The CBEC has issued revised instructions in relation to recovery of confirmed demands during the pendency of stay application. It has clarified that recovery proceedings in relation to an HC or Tribunal order confirming demand of duty may be initiated only after 60 days from the date of HC/ Tribunal order, as the case may be, where no stay has been granted by the SC or HC against the Tribunal/ HC order, respectively.
(Circular no. 1035/23/2016 - CX dated 4 July, 2016)
- The CBEC has issued instructions in relation to scope of the word 'site' appearing in the Notification No. 12/2012-CE dated 17.03.2012. It states that in some field formations, the distance at which goods manufactured

at site is used in the project, has been considered as criterion for examining the eligibility of goods for exemption. It has been clarified that this is an extraneous criterion not flowing from the language used in the notification, particularly when the expression, 'site' stands explained in the notification. The eligibility criteria must flow from the plain reading of the explanation of the expression 'site' in the notification, and therefore, each case had to be decided on the facts of each individual case.

(Circular no. 1036/24/2016 - CX dated 6 July, 2016)

- The CBEC has clarified that a manufacturer or a service provider who opts to issue invoice authenticated by digital signature, may print a copy of such invoice, sign them manually and forward the same to customers who are unable to accept or receive the digitally signed invoice.
(Circular no. 1038/26/2016 - CX dated 19 July, 2016)

In the issue

Central excise

Service tax

VAT/Sales tax/Entry tax

Contacts

Central excise

Case law

Manufacture

- In CCE v Kapoor Lamp Shade Co. (2016 (337) ELT 14), the Punjab & Haryana High Court held that assembly of different parts of decorative lamp shades and chandeliers did not amount to manufacture as no new product came into existence.
- In Max India Ltd v CCE (2016 (336) ELT 661), the Delhi Tribunal held that waste generated in the form of stationery, carbon paper, envelopes, wooden scraps, loose polythene scrap (packing wrappers of inputs), etc. in various departments of a factory, were not exigible to duty since these goods could not be said to be generated in the process of manufacture of BOPP films.

Valuation

- In CCE v Inox Air Products Ltd. (2016 (336) ELT 316), the Mumbai Tribunal held that rental charges for retention of cylinders beyond free loan period, not being related to sale of goods, were not includible in the assessable value of gases.

- In Hindustan Zinc Ltd. v CCE (2016 (336) ELT 328), the Delhi Tribunal held that if, on finalisation of assessment, the assessee was required to pay shortfall of duty during a particular period and was denied the excess payment made during another period of the same financial year, the entire purpose of keeping the assessment provisional would be rendered futile, and hence, denial of adjustment of excess and short payment of duty was held not to be tenable in law.

CENVAT/MODVAT

- In Northern Coalfields Ltd v CCE&ST (2016 (337) ELT 289), the Delhi Tribunal held that CENVAT credit was admissible on lubricants used in dumpers which had been used within the mining area, in or in relation to production of coal.
- In Shree Rubber Plast Co. P. Ltd. v CCE (2016 (336) ELT 313), the Mumbai Tribunal held that credit was admissible on bought out plastic bottles fitted with own manufactured cap, when cleared on payment of duty that was higher than the CENVAT credit availed on such plastic bottles.

In the issue

Central excise

Service tax

VAT/Sales tax/Entry tax

Contacts

In the issue

Central excise

Service tax

VAT/Sales tax/Entry tax

Contacts

- In Hindustan Unilever Ltd v CCE (2016-TIOL-1159-CESTAT-MAD), the Chennai Tribunal held that input credit was admissible on jumbo bags sent to job workers for dispatch of bulk detergent power back to the appellant, when the cost of such jumbo bags were included in the assessable value of the final products.
- In Thermax Ltd v CCE (2016-TIOL-1227-CESTAT-MUM), the Mumbai Tribunal held that credit was admissible on bought-out items shipped along with boilers. It was also held that demand for reversal of credit was not sustainable, since these goods had been supplied to SEZ or exported outside India.
- In Indo Rama Synthetics (I) Ltd. v CCE (2016 (336)ELT 541), the Mumbai Tribunal held that sludge settled at the bottom of storage tank during storage of oil was a waste product, and hence, there was no requirement for reversal of credit on such goods.
- In Sarda Energy and Minerals Ltd. v CCE (2016 (337) ELT 143), the Delhi Tribunal held that CENVAT credit on short receipt of coal to the extent of 3%, due to washing loss at job worker's end, could not be denied when there was no evidence that the assessee had diverted the duty paid inputs with intent to evade duty.
- In Tecumseh Products India P. Ltd. v CCE (2016 (336) ELT 685), the Bangalore Tribunal held that transfer of accumulated CENVAT credit was permissible in case of de-bonding of 100% EOU to DTA unit.
- In Madras Cements Ltd v CCE (2016 (336) ELT 175), the Hyderabad Tribunal held that 100% credit availed on capital goods in first year instead of 50% was tantamount to availment of credit in advance; demand for reversal of credit could not be upheld in such case inasmuch as balance 50% credit would be admissible in the next year. Thus, the appellant was liable to pay only interest on such premature availment of CENVAT credit.
- In M/s. Featherlite Products Pvt Ltd v CCE (2016-TIOL-1288-CESTAT-MAD), the Chennai Tribunal held that transfer of unutilised CENVAT credit lying in the account at the time of shifting of factory from Hosur to Bangalore was permissible under Rule 10 of CENVAT Credit Rules, 2004.

In the issue

Central excise

Service tax

VAT/Sales tax/Entry tax

Contacts

Others

- In *Kohinoor Ropes Pvt. Ltd v CCE* (2016 (336)ELT 513), the Andhra Pradesh High Court held that attachment of plant and machinery by the Central Excise Department to recover dues of original defaulter was not sustainable when the plant and machinery was acquired from a Bank through auction under the SARFAESI Act.

In the issue

Central excise

Service tax

VAT/Sales tax/Entry tax

Contacts

Case law

- In *Afcons Infrastructure Ltd v CST* (2016-TIOL-1818-CESTAT-MUM), the Mumbai Tribunal held that availment of CENVAT credit pertaining to output services, where the abatement under notification no. 1/2006 was not taken, did not disentitle the assessee from claiming abatement for other services, if conditions for claiming abatement under notification 1/2006 were fulfilled for services where abatement is claimed.
- In *Highend Properties Pvt. Ltd. v CCCE&ST* (2016-TIOL-1622-CESTAT-HYD), the Hyderabad Tribunal held that CENVAT credit of service tax paid on financial services for processing loan to acquire immovable property could be claimed.
- In *Reliance Industries Ltd. v CCEx & ST* (2016-TIOL-1654-CESTAT-MUM), the Mumbai Tribunal held that service tax under intellectual property services could be levied only on services which were recognised by a law in India, and not on intellectual property right recognised under the law of some other country.
- In *Reliance Gas Transportation Infrastructure Ltd. v CST* (2016-TIOL-1593-CESTAT-MUM), the Mumbai Tribunal held that CENVAT credit of services of laying pipeline for transporting gas could be claimed by a company engaged in transporting gas by pipeline.
- In *Karnataka Trade Promotion Organisation v CST* (2016-TIOL-1783-CESTAT-BANG), the Bangalore Tribunal held that the amounts collected from customers towards electricity and water used while providing space on rent were not subject to service tax.

VAT/Sales Tax

Notifications and circulars

Andhra Pradesh

- Effective 14th July 2016, VAT rate on cell phones, cell phone batteries and cell phone battery chargers has been reduced from 14.5% to 5%.
(Notification No. G.O.MS. No. 307 Dated: 12th July, 2016)

Assam

- Effective 4th July 2016, VAT rate on cigarettes has been prescribed according to the length of the cigarettes. Earlier, the cigarettes were liable to VAT @ 30%.
(Notification No. FTX.55/2005/Pt.VII/31 Dated 2nd July, 2016)
- Effective 4th July 2016, VAT rate on goods (other than the declared goods specified in section 14 of the CST Act) specified under the second schedule has been increased from 5% to 6%.
(Notification No. FTX.55/2005/Pt-VII/29 - Dated 2nd July, 2016)
- Effective 4th July 2016, VAT rate on sale of pre-owned cars having engine capacity upto 1000 cc has been increased from Rs. 3,000 per car to Rs. 6,000 per car.
(Notification No. FTX.55/2005/Pt-VII/29 - dated 2nd July, 2016)

Delhi

- Effective 26th July 2016, the Delhi Government has been empowered to notify goods on which a dealer shall be liable to pay advance tax on their import into Delhi from a place outside India. However, no such goods have been notified till date.
(Notification No. F.3 (4)/Fin.Rev-1)/2016-17/DS-VI/238 Dated 25th July, 2016)
- Effective 1st July 2016, use of digital signature for filing of return for the period April 2016 onwards has been made mandatory for dealers whose gross turnover has crossed Rs. 1 crore during FY 16.
(Notification No. F.3 (643)/Policy/VAT/2016/41931 Dated 1st July, 2016)

Jammu and Kashmir

- Effective 1st July 2016, exemption from VAT has been provided on sale of 'LED lights, Lamps & Tubes'.
(Notification No. SRO 210 Dated 29th June, 2016)
- Effective 1st July 2016, VAT rate on goods covered under schedule D-I has been increased from 13.5% to 14.5%.
(Notification No. SRO 210 Dated 29th June, 2016)

In the issue

Central excise

Service tax

VAT/Sales tax/Entry tax

Contacts

In the issue

Central excise

Service tax

VAT/Sales tax/Entry tax

Contacts

West Bengal

- Due date of filing of online return for the quarter ending June 2016 has been extended to 24th August 2016.
(*Order Memo No. 660/CT/PRO/3C/PRO/2015 dated 25th July, 2016*)
- Use of digital signature for filing of return for the quarter ending June 2016 onwards has been made mandatory for dealers whose turnover has crossed Rs. 50 lakhs during FY 16, or those registered under the Companies Act.
(*Circular No. 05/2016 dated 25th July, 2016*)

Case law

- In State of Gujarat through Commissioner v GMM Company Ltd c/o Manibhai & Brothers Estate [2016-TIOL-1495-HC-AHM-VAT], the Gujarat High Court held that a 'loader' used for execution of works contract, even though it happened to be a vehicle, would fall under the expression, 'machinery'. The HC observed that if an equipment satisfied the description of being a machinery used in the execution of a works contract, the fact that it also happened to be a motor vehicle would not change this fundamental feature.

- In Cairn India Ltd & another v State of Rajasthan [2016-TIOL-1472-HC-RAJ-VAT], the Rajasthan High Court held that supply of crude oil produced in an oilfield in Rajasthan to Central Government-nominated refineries in Karnataka would qualify as inter-state sales transaction. The HC observed that even though the point of sale was within the State of Rajasthan, the transaction would qualify as inter-State sales so long as the crude oil produced in Rajasthan had occasioned the movement outside the State

Entry Tax

Notifications and circulars

Chhattisgarh

- Exemption from entry tax has been provided to registered dealers who have established a new industry in the form of Micro/ Small/ Medium/ Large Industrial Unit, Mega Project or Ultra Mega Project, or to those who undertake expansion or diversification in an existing industrial unit. The exemption is subject to fulfillment of conditions specified in the notification.
(*Notification No. F-10-28 /2016/CT/V (67) dated 19th July, 2016*)

Contacts

In the issue

Central excise

Service tax

VAT/Sales tax/Entry tax

Contacts

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