

Staying Updated

Indirect tax newsletter

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- Valuation of physician samples distributed free of cost to be on cost of production basis.

CENVAT

- Bought out wire supplied along with transmission tower is an accessory, and eligible for input credit.
- CENVAT credit admissible on moulds directly sent to the job worker premises without bringing the same into the factory.

VAT/Sales tax

Case law

- Form C could not be denied on account of non-disclosure of inter-state purchases in returns due to genuine mistake by dealer.

Notifications and circulars

- VAT on diesel has been decreased from 18% to 16.75% in Delhi.
- VAT on battery operated electrical vehicles has been decreased from 13.125% to 5.25% in Haryana.

Service tax

Notifications and circulars

- CBEC has issued various notifications and circulars clarifying the levy of Krishi Kalyan Cess ('KKC').

Central excise

Notifications and circulars

- The CBEC has clarified that clearance of segregated foreign materials, namely, iron, steel, rubber, plastic, dust etc. from honey grade brass scrap before feeding into furnace cannot be treated as removal of "inputs as such"; the same should be cleared on payment of Central Excise duty on transaction value.

(Circular no. 1029/17/2016 - CX dated 10 May, 2016)

Case law

Valuation

- In *Bharat Bijlee Ltd v CCE* (2016-TIOL-495-CESTAT-MUM), the Mumbai Tribunal held that cost of additional testing and documentation charges collected from a customer for their own quality control test, being undertaken at the request of customers, was not includible in the assessable value.
- In *CCE v Lupin Ltd* (2016-TIOL-412-CESTAT-DEL), the Delhi Tribunal held that valuation of physician samples distributed free of cost had to be done on cost of production basis, and not under MRP-based assessment.

- In *Rathi Transpower Pvt Ltd v CCE* (2016-TIOL-577-CESTAT-MUM), the Mumbai Tribunal held that 50% of the advertisement cost recovered from dealers was not includible in the assessable value, since such sharing of cost was optional in nature.
- In *Petals Engineers Pvt Ltd v CCE* (2016-TIOL-643-CESTAT-MUM), the Mumbai Tribunal held that integration/commissioning charges were post-clearance expenses, and that the same would not form part of the assessable value of the goods.

CENVAT/MODVAT

- In *CCCE & ST v Tarapur Grease India Pvt Ltd* (2016 (334) ELT 416), the Bombay High Court held that demand for reversal of credit on inputs removed 'as such' to sister-unit was not sustainable on the ground of revenue neutrality inasmuch as the assessee had not derived any substantive benefit, since the sister-unit was eligible to avail credit.

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- In *CCE v KEC International Ltd* (2016-TIOL-424-CESTAT-MUM), the Mumbai Tribunal held that bought-out wire supplied along with transmission tower was an accessory, eligible for credit as ‘input’ under Rule 2(k) when value of such wire was included in the assessable value and duty had been paid on the whole amount.
- In *Abdos Oil Pvt Ltd v CCE* (2016-TIOL-542-CESTAT-KOL), the Kolkata Tribunal held that CENVAT credit was admissible on moulds directly sent to the job workers’ premises without bringing the same into the factory, irrespective of whether such moulds would be returned or not, since such moulds may be consumed in the job workers’ premises.
- In *Tristar Equipment Pvt Ltd v CCE* (2016-TIOL-447-CESTAT-MUM), the Mumbai Tribunal held that goods cleared without payment of duty on the basis of CT 2 certificate could not be termed as exempted clearance, and consequently, demand of 8% / 10% of the value of such goods was not sustainable in law.
- In *Bajaj Hindusthan Ltd v CCE* (2016-TIOL-774-CESTAT-ALL), the Allahabad Tribunal held that credit was admissible on steel items used in fabrication of biogas plant, which was a pollution control equipment.
- In *Suyash Chemicals v CCE* (2016-TIOL-476-CESTAT-MUM), the Mumbai Tribunal held that endorsed bill of entry was a valid document for availing CENVAT credit.
- In *Polaris Cables & Wires Pvt Ltd v CCE* (2016-TIOL-586-CESTAT-MUM) & *RR Donnelley Publishing India Pvt Ltd v CCE* (2016-TIOL-527-CESTAT-MAD), the Tribunals held that the refund of unutilized credit under Rule 5 was admissible on clearance made to SEZ unit.
- In *Elecon Engineering Co Ltd v CCCE & ST* (2016-TIOL-452-CESTAT-AHM), the Ahmedabad Tribunal held that time limit of 6 months from the date of invoice under the erstwhile MODVAT rules would be applied to receipt of goods in factory, and not to the process of taking credit, and hence, delay in availing credit for the reason that the invoices were sent for some rectification, did not debar the claim of credit on such invoice.

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Service tax

Notifications and circulars

- It has been clarified that service tax liability for services provided by an arbitral tribunal (including the individual arbitrators of the tribunal) shall be on the service recipient, if it is a business entity located in the taxable territory with a turnover exceeding rupees ten lakh in the preceding financial year.

(Circular No. 193/03/2016-Service Tax dated 18 May, 2016)

- KKC is exempted where the services are exempted from service tax, or are not subject to service tax. It is further provided that abatement from levy of KKC equal to abatement available for service tax would be available. It is also clarified that the value of taxable services for calculation of KKC would be the value computed in terms of the Valuation Rules.

(Notification No. 28/2016-Service Tax dated 26 May, 2016)

- Rebate is allowed of KKC paid on input services used for providing output services which are exported.

(Notification No. 29/2016-Service Tax dated 26 May, 2016)

- KKC paid on input services received and used by SEZ units and developers is

available as refund.

(Notification No. 30/2016-Service Tax dated 26 May, 2016)

- In case of services provided by an air travel agent, life insurer, person purchasing or selling foreign exchange or a distributor or selling agent of lottery, where the service tax rules provide for an alternative mechanism to compute service tax liability, such persons can compute and pay KKC as under:

*Amount payable as service tax × effective KKC rate
Rate of service tax as specified in s.66B*

The rule giving option for payment of Swachh Bharat Cess on similar lines has been amended to bring the language of both rules on par.

(Notification No. 31/2016-Service Tax dated 26 May, 2016)

- CENVAT credit of KKC paid on input services is allowed to a service provider. The notification further provides that CENVAT credit of any other duty will not be allowed to be utilised for payment of KKC, and CENVAT credit of KKC paid on input services can be utilised for payment of KKC on output services.

(Notification No. 28/2016-Central Excise (N.T.) dated 26 May, 2016)

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- Circular no. 194/04/2016-ST provides accounting code for payment of Krishi Kalyan Cess as per table below:

S. No.	KKC (Minor Head)	Tax Collection	Other Receipts (Interest)	Deduct Refunds	Penalties
1	0044-00-507	00441509	00441510	00441511	00441512

(Circular No. 194/04/2016-Service Tax dated 26 May, 2016)

Case law

- In *In Re Choice Estates and Constructions Ltd.* (TS-195-AAR-2016-ST), the authority for advance rulings held that in case of revenue sharing arrangements for jointly providing services to third parties, service tax was applicable on the respective revenue share of both parties on the basis of the activities carried out, and also on the revenue earned from third parties.
- In *In re AKQA Media India Private Ltd.* (TS-194-AAR-2016-ST), the authority for advance rulings held that volume discount received by the advertisement agency from media houses was not liable to service tax, as there was no service provided by the advertisement agency to the media house.
- In the *Deputy Commissioner, Central Excise v Sushil & Company* (TS-197-SC-2016-ST), the Supreme Court held that supply of labour for working in packing plant could not be considered as cargo handling services.
- In *Detect Electronics v CCEx* (2016-TIOL-1274--CESTAT-MUM), the Mumbai Tribunal held that initially claiming CENVAT credit which was later reversed does not jeopardise the availability of abatement, which is available only if no CENVAT credit is claimed.
- In *Edelweiss Securities Ltd v CST* (2016-TIOL-1214-CESTAT-MUM), the Mumbai Tribunal held that issue of credit notes to customers was sufficient to prove that there was no unjust enrichment.
- In *Rentworks India Pvt Ltd v CCEx* (2016-TIOL-1199-CESTAT-MUM), the Mumbai Tribunal held that if an amount paid to an individual was treated as salary by the income tax department, it could not be held by the service tax department as amount paid for consultancy charges and service tax demanded on the same.

VAT/Sales Tax

Notifications and circulars

Delhi

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- Digital signatures have been made mandatory for filing of periodical returns for the period effective from 1 April, 2016.

(Notification No. F.3(643)/Policy/VAT/2016/157169 Dated 3 May, 2016)

- Effective 1 June 2016, a dealer is required to submit details of goods moving out of Delhi before the actual movement of goods in form Delhi Sugam -1 (DS1).

(Notification No. F.3 (671)/Policy/VAT/2016/251-63 Dated 19 May, 2016)

- Effective 7 May 2016, VAT rate on sale of Diesel (High Speed Diesel, Super Light Diesel Oil and Light Diesel Oil) has been reduced from 18% to 16.75%.

(Notification No. F.3 (2)/Fin (Rev-I)/201617/dsvi/141 Dated 6 May, 2016)

- All registered dealers are required to display their registration certificate at their principal place of business, and certified copy of the registration certificate at all other places of business. Also, dealers are required to display their TIN and ward number outside the main entrance of their place of business in Delhi.

(Circular No. 4 of 2016-17 F.3 (667)/Policy/VAT/2016/200-205 Dated 10 May, 2016)

- The due date for submission of returns in Form CR-II for all four quarters of FY 16 have been extended to 16 June, 2016.

(Notification No. F.3 (628)/Policy/VAT/2016/238-50 Dated 19 May, 2016)

- The Delhi VAT department has started a facility of obtaining registration through a mobile application called the DVATMsewa App.

(Circular No. 6 of 201617 F.3 (521)/Policy/2015/2212 Dated 17 May, 2016)

Goa

- Effective 17 May, 2016, VAT rate on sale of 'Motor spirit', commonly known as petrol, including ethanol blended petrol, has been reduced from 22% to 20%.

(Notification No. 4/5/2005-Fin(R&C)(135)/242 Dated 17 May, 2016)

Gujarat

- Exemption from VAT has been provided on sale of motor vehicles to dealers engaged in the business of sale/ purchase of such vehicles to the extent VAT exceeds 15 percent, including additional tax.

(Notification No. (GHN-28) VAT-2016-S-5(2) (51)-TH Dated 12 May, 2016)

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Haryana

- Effective 29 April, 2016, exemption from VAT has been provided on sale of cotton yarn when manufactured and sold by manufacturing units established in Haryana. The exemption is not extended to sale of cotton yarn waste and yarn manufactured from cotton waste.

(Notification No. 14/ST-1/H.A. 62003/S.59/2016.Dated 29 April, 2016)

- Effective 29 April, 2016, VAT rate on “Battery operated electrical vehicle” has been reduced from 13.125% to 5.25%.

(Notification No. 14/ST1/H.A. 62003/S.59/2016.Dated 29 April, 2016)

Maharashtra

- Effective 1 April, 2016, exemption from VAT has been provided on transfer of property in goods involved in the sizing and warping of yarn subject to prescribed conditions.

(Notification No. VAT 1516/C.R. 62/Taxation1. Dated 29 April, 2016)

Case law

- In *Ingram Micro India Pvt Ltd v Commissioner, Department of Trade & Taxes [TS-192-HC-2016(DEL)-VAT]*,

the Delhi High Court held that issue of C forms to dealers towards concessional central sales tax on inter-state purchases could not be denied on the ground that inter-state purchases were not reported in the revised returns due to genuine mistake by the dealer. The HC observed that the inter-state purchases claimed by the dealer were genuine, with no adverse impact on the revenue of the State.

- In *M/s. Enercon (India) Ltd v State of Karnataka [TS-173-SC-2016-VAT]*, the Supreme Court held that foundation/installation work in respect of setting up of wind mills was not liable to sales tax. The SC observed that even if foundation/ installation work did not fall under the term, ‘wind mill’ for which exemption was available, the same could not be treated as goods liable to sales tax.

Entry Tax

Notifications and circulars

Gujarat

- Exemption from entry tax has been provided on entry of motor vehicles for specified categories of dealers to the extent such entry tax exceeds 15 percent.

(Notification No. (GHN-29)GEA-2016-S.12 (12)-TH: Dated 12 May, 2016)

- Exemption from entry tax on entry of tractors has been provided to the extent entry tax exceeds 5 percent.

(Notification No. (GHN-29)GEA-2016-S.12 (12)-TH: Dated 12 May, 2016)

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