

Staying Updated

Indirect tax newsletter

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Manufacture

- In *CCE v Fitrite Packers* (2015 (324) ELT 625), the Supreme Court held that printing on duty-paid paper as per design and specifications of customers with logo and name of products in colourful form would convert such paper into special wrapping paper, and hence this process was held to amount to manufacture.
- In *UOI v Alcobex Metals Ltd* (2015 (325) ELT 242), the Supreme Court held that 'industrial dust' arising during the course of manufacture of brass and copper, being identically placed as 'dross and skimmings', was not an excisable good.
- In *Hyderabad Ammonia & Chemicals (P) Ltd. v CCE* (2015 (325) ELT 167), the Bangalore Tribunal held that the activity of filling duty-paid ammonia from a tanker into cylinders did not amount to manufacture in terms of Chapter Note 9 to Chapter 28 since tankers could not be considered to be bulk packs.

Valuation

- In *CCCE v Ispat Industries Ltd.* (2015 (324) ELT 670), the Supreme Court held that insurance of goods during

transit could not possibly be the sole consideration to decide ownership or point of sale of goods. Hence, based on the fact that sales were ex-works, it was held that cost of insurance to cover risk of loss during transit was not includible in assessable value.

- In *CCE v Official Liquidator for Brimco Plastic Machinery P. Ltd.* (2015 (324) ELT 637), the Supreme Court held that installation, erection and commissioning of goods at buyer premises, being post-clearance charges, were not includible in the assessable value.
- In *Hindustan Lever Ltd. v CCE* (2015 (324) ELT 614), the Mumbai Tribunal held that while adopting the comparable cost of packed soap at job premises, deduction towards the cost of cartons should be allowed to arrive at assessable value of the soap cleared in bulk to job worker for packing individual soaps.

CENVAT/ MODVAT

- In *CCE v Precot Meridian Ltd.* (2015 (325) ELT 234), the Supreme Court held that reversal of credit on inputs used in exempted products amounted to not taking credit.

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- In *CCE v Sundaram Auto Components Ltd.* (2015 (325) ELT 104), the Madras High Court held that manufacturer could avail credit of duty paid by job worker even when he was not required to pay it.
 - In *Hitachi Life & Solution India Ltd. v CCE&ST* (2015 (325) ELT 148), the Ahmedabad Tribunal held that credit was admissible on trolleys used for carrying components in the assembly line of Air Conditioners.
 - In *Sandoz Pvt. Ltd. v CCE* (2015 (325) ELT 387), the Mumbai Tribunal held, based on facts, that refund of CENVAT credit under rule 5 was admissible when the amount was not debited on the date of filing refund claim, but was debited later.
- Uttarakhand High Court held that benefit of area-based exemption which otherwise admissible, could not be denied merely because the notification number was wrongly mentioned in the declaration.
- In *Hindustan Coca-Cola Beverages Pvt. Ltd. v UOI* (2015 (324) ELT 299), the Gujarat High Court held that even in the absence of any statutory provision, interest was payable by the department on delayed grant of permission for transfer of CENVAT credit under Rule 10 of CENVAT credit rules.

Others

- In *Larsen and Toubro Limited v CCE* (2015 (324) ELT 646), the Supreme Court held that Ready Mix Concrete (RMC) was different from Concrete Mix, and hence, exemption under Notification No.4/1997-C.E., dated 1 March, 1997 available on on-site manufacture of Concrete Mix for use in construction, could not be extended to RMC.
- In *CCCE v Rhydburg Pharmaceuticals Ltd* (2015 (324) ELT 457), the

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Case law

- In Kingfisher Airlines Limited, Jet Airways Limited v CST (2015-TIOL-2329-CESTAT-MUM), the tribunal held that excess baggage charges collected by the Airlines were an integral part of the main service, i.e., service of transportation of passengers by air, and therefore could not be classified as services of transportation of goods by air.
- In Tata Consultancy Services Limited v CST, Mumbai (2015-TIOL-2370-CESTAT-MUM), the Tribunal held that intellectual property rights that were not covered by the Indian laws would not be covered under the taxable service category of “Intellectual Property Right services”. Moreover, the phrase ‘law for the time being in force’ in the definition of ‘intellectual property right’ implied only such laws as were applicable in India. In the present case, the appellant was paying a royalty for technical know-how, which was not covered under any Indian law, and therefore such royalty was not liable to service tax as an intellectual property right.
- In International Overseas Services v CST, Mumbai (2015-TIOL-2331-CESTAT-MUM), the Tribunal held that manpower recruitment services provided to foreign clients, involving identifying,

shortlisting and confirming the employment of Indian personnel for working outside India, would qualify as export of services, and would not be taxable in India.

Notifications & Circulars

- 15 November, 2015 notified as date on which Swachh Bharat Cess levy comes into effect.
(Notification No. 21/2015, dated 6 November, 2015)
- Effective rate of Swachh Bharat Cess notified as 0.5% of the value of taxable services. Swachh Bharat Cess not to be applicable on services that are exempted from service tax.
(Notification No. 22/2015, dated 6 November, 2015)
- Abatement equal to abatements available for determination of service tax liability have been granted for Swachh Bharat Cess as well. It has also been clarified that the value of taxable services for calculation of Swachh Bharat Cess would be the value computed in terms of the Valuation Rules.
(Notification No. 23/2015, dated 12 November, 2015)
- Reverse charge mechanism for collection of service tax also made applicable to collection of Swachh Bharat Cess.
(Notification No. 24/2015, dated 12 November, 2015)

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- Persons providing services of air travel agents, life insurers, purchasing or selling foreign exchange, or a distributor or selling agent of lottery, for which the service tax rules provide for an alternate mechanism to compute service tax liability, can compute and pay Swachh Bharat Cess as under:
Amount payable as service tax × 0.5/14 (Notification No. 25/2015, dated 12 November, 2015)
- The Board has issued a circular directing payment of 80% of amount of CENVAT credit claimed as refund by service exporters on provisional basis, subject to submission of a certificate from statutory auditor/Chartered Accountant for corporate/non-corporate assessees. The scheme is applicable only for refund claims filed on or before 31st March, 2015, and does not cover any refund claim that has to be reviewed in terms of any remand by a higher authority.
(Circular No. 187/6/2015-ST, dated 10 November, 2015)

Accounting codes for payment of Swachh Bharat Cess notified as under:

Swachh Bharat Cess (Minor Head)	0044-00-506
Tax Collection	00441493
Other Receipts (Interest)	00441494
Penalties	00441496
Deduct Refunds	00441495

(Circular No. 188/7/2015-ST, dated 16 November, 2015)

FAQs on levy of Swachh Bharat Cess

- The Board has released a document containing answers to Frequently Asked Questions on various issues relating to levy of Swachh Bharat Cess.

VAT/Sales Tax

Notifications and circulars

Delhi

- Due date for filing reconciliation return for FY 15 in Form 9 has been extended to 15 December, 2015.
(Circular No. 28 of 2015-16 F, 3 (589)/Policy/V/2015/963-970 Dated 30 October, 2015)

Haryana

- Input tax credit has been restricted in cases where goods, other than goods falling in Schedule "C" and goods of special importance mentioned in section 14 of the CST Act, are sold as such in the course of inter-state trade or commerce, to the extent of amount of tax actually paid on purchase of such goods in the State, or tax payable on sale of such goods under the CST Act, whichever is lower.
(Notification No.27/ST-1/H.A.6/2003/S.59/2015 Dated 24 November, 2015)

Madhya Pradesh

- Effective 16th November 2015, an additional tax of Rs. 1/litre will be levied on sale of petrol.
(Notification No. F-A-3-60/2015/1/V (35) Dated 13 November, 2015)

Maharashtra

- Exemption from VAT has been provided between 26 October, 2015 and 31 March, 2017 on sale of e-bid Re-gasified Liquid Natural Gas by Gas Authority of India Limited to the Ratnagiri Gas and Power Private Ltd.
(Notification No. VAT. 1515/C.R. 118/Taxation-I Dated 26 October, 2015)

Punjab

- Effective 17 November, 2015, VAT rate on all automobiles (i.e., commercial vehicles, passenger vehicles, three-wheelers and two-wheelers) has been reduced from 14.30% to 13.20%.
(Notification No. S.O.50/P.A.8/2005/S.8/2015 – Dated 17 November, 2015)

Case law

- In ABL Traders v CTO (2015-TIOL-2554-HC-MAD- VAT), the Tamil Nadu High Court held that input tax credit could not be denied to a buyer for failure on the seller's part to disclose the transaction in its return and deposit the tax so collected from the buyer.

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- In *ACTO v Swastik Agencies* [2015-TIOL-2567-HC-RAJ-VAT], the Rajasthan High Court held that even though batteries and their parts could be used for other purposes, they were primarily used in motor cars, and therefore, they would be classified as parts of motor cars for levy of VAT. In this case, the assesseees were carrying on the business of sale of battery and its parts, and were charging VAT at the rate applicable on 'parts of motor vehicles'. The AO imposed differential tax on sale of battery and its parts, contending that since battery and its parts were being used for diverse purposes and not exclusively for installation/ fitting in a motor vehicle, the rate as applicable on motor-parts could not be applied.

Entry Tax

Notifications and circulars

Rajasthan

- Effective 9 March 2015, earth moving and mining machinery including hydraulic excavator, backhoe loader, wheel/track excavator, mobile crane etc. brought into the local area have been exempted from payment of entry tax, subject to the condition that tax already deposited will not be refunded.

(Notification No. F. 12(93) FD/TAX/2012-102 Dated 20 November, 2015)

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