

Staying Updated

Indirect tax newsletter

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Central excise

Notifications and circulars

- CENVAT Credit Rules have been amended to include an explanation in the definition of input service, to clarify that sales promotion includes services by way of sale of dutiable goods on commission basis. The Rules have been further amended to provide that CENVAT credit cannot be used for making payment of Swachh Bharat Cess.

(Notification No. 2/2016-Central Excise (N.T.) dated 3 February, 2016)

Case law

Valuation

- In *Skoda Auto (India) Ltd v CCE* (2016-TIOL-85-CESTAT-MUM), the Mumbai Tribunal held that clearance of manufactured car for use by company officials was assessable under Rule 4 (i.e. price adopted for customers) and not under Rule 8 (i.e. 115% of the cost of production).
- In *CCE v Manchukonda Prakasham & Co* (2016-TIOL-100-CESTAT-BANG), the Bangalore Tribunal held that excess collection on account of freight from buyer could not form part of the assessable value of the goods unless the Revenue produced evidence to show that value of the goods was collected in

the garb of the freight charges.

- In *Centaur Pharmaceuticals Pvt Ltd v CCE* (2016-TIOL-299-CESTAT-MUM), the Mumbai Tribunal held that valuation of physician samples distributed free of cost had to be done on cost of production basis, and not on the basis of value of the same goods sold in the market.

CENVAT/ MODVAT

- In *CCE v Pepsico India Holdings Ltd* (2016-TIOL-51-CESTAT-MUM), the Mumbai Tribunal held that capital goods have a life over several accounting years, and as such, the intention at the time of installation to use such capital goods in the manufacture of dutiable products was the relevant factor. In such cases, the temporary use of such capital goods for few months in manufacture of only exempted goods did not disentitle the assessee from availing CENVAT Credit and utilising it for manufacture of dutiable goods.
- In *Seiko Watch India Pvt Ltd v CCE* (2016-TIOL-110-CESTAT-BANG), the Bangalore Tribunal held that repair and maintenance of the goods during the warranty period was an activity relating to sale of goods, and such an activity was eligible for credit as input services.

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- In *CCE v Interface Microsystems* (2016-TIOL-34-CESTAT-DEL), the Delhi Tribunal held that Courier Bill of Entry was an eligible document for taking credit as per Rule 9 of CENVAT Credit Rules, 2004.
 - In *Indian Oil Corporation Ltd v CCE* (2016-TIOL-24-CESTAT-MUM), the Mumbai Tribunal held that CENVAT credit could not be denied on loss of base oil when shortage was within the permissible limit of 0.1%.
 - In *N S Ispat Pvt Ltd v CCE* (2016-TIOL-71-CESTAT-DEL), the Delhi Tribunal held that demand of 5% of the sale price would not apply in a case where exempted final product emerged as an unavoidable waste or by-product, and compliance with rule 6(2) was impossible.
 - In *Malhotra Cables Pvt Ltd v CCE* (2016-TIOL-90-CESTAT-DEL), the Delhi Tribunal held that denial of CENVAT credit on the ground that the supplier had not paid duty was not tenable when there was no finding on conclusion of a proper proceeding at the supplier's end.
 - In *Cemetile Industries v CCE* (2016-TIOL-105-CESTAT-MUM), the Mumbai Tribunal held that demand of 10% of value of goods under Rule 6(3) was not sustainable on supplies made to SEZ Developers.
- Others*
- In *Neelam Steels v CCE* (2016-TIOL-195-CESTAT-DEL), the Delhi Tribunal held that benefit of export to Nepal could not be denied merely on the ground that the duplicate copy of the Nepal invoice was not forwarded by the Customs officer to the jurisdictional Central Excise officer, when the appellant had produced relevant documents, viz. shipping bills and BRCs, before the adjudication authority.
 - In *KEI Industries Ltd v CCE* (2016-TIOL-61-CESTAT-DEL), the Delhi Tribunal held that benefit of exemption under Notification no. 6/2002-CE could not be denied merely on the ground that the requisite certificate was not produced at the time of clearance of the goods.

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Service tax

Notifications and circulars

- The scheme of grant of rebate of service tax paid on input services by exporters of goods under notification no. 41/2012-ST has been amended. Presently, services used beyond the place of removal, as per the Central Excise Act, were eligible for rebate. Now, the eligibility of rebate has been extended to services used beyond the factory or any other place or premises of production or manufacture of the said goods, for their export. Further, the rate at which rebate is granted under the notification (when claiming rebate at specified rates, instead of on actual basis) is increased, considering the increase in service tax rates.

(Notification No. 1/2016-Service Tax dated 3 February, 2016)

- Notification no. 12/2013-ST granting outright exemption or refund of service tax on input services received and used by the Special Economic Zone ("SEZ") unit or developer has been amended. Now the SEZ unit or developer can claim refund of Swachh Bharat Cess charged by the service providers, if outright exemption is not claimed. The notification also provides for refund of Swachh Bharat Cess component in cases where there are common services used for SEZ and DTA units, and the credit of service tax on such common services is

distributed to the SEZ.

(Notification No. 2/2016-Service Tax dated 3 February, 2016)

- Notification no. 39/2012-ST, which grants rebate of service tax paid on input services by a service exporter if no CENVAT credit is claimed, has been amended. Now, such exporter of services can also claim rebate of Swachh Bharat Cess paid on the eligible input services.

(Notification No. 3/2016-Service Tax dated 3 February, 2016)

- The CBEC has notified 1 April, 2016 as the effective date on which the amended section 109 (1) of the Finance Act, 2015 will come into effect. As a result, with effect from 1st April, 2016, any services provided by the Government to business entities would be subject to service tax.

(Notification No. 6/2016-Service Tax dated 18 February, 2016)

- The CBEC has exempted the services provided by Government or a local authority to a business entity with a turnover up to Rs.1 million in the preceding financial year. The notification will be effective 1 April, 2016.

(Notification No. 7/2016-Service Tax dated 18 February, 2016)

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- In *Omega Associates v CST* (TS-35-CESTAT-2016(MUM)), the Mumbai Tribunal held that no service tax would be applicable on amounts collected by the builder for maintenance of building, since the builder was under statutory obligation as per provisions of Maharashtra Ownership Flats (Regulations of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 to maintain the building before handing it over to the society.
- In *CCEx v HSBC Software Development (India) Pvt. Ltd.* (2016-TIOL-415-CESTAT-MUM), the Mumbai Tribunal held that when employees sitting in India access the servers/ computer networks of the clients abroad, at least part of the services could be said to have been performed outside India, and the services qualified as export of services.
- In *Polaris Software Lab Ltd v CCEx* (2016-TIOL-427-CESTAT-MAD), the Chennai Tribunal held that maintenance of computer software was not subject to service tax before 1 June, 2007.
- In *CCEx v Zensar Technologies Ltd* (TS-740-CESTAT-2015(MUM)), the Mumbai Tribunal held that turnover of onsite services provided through overseas branch had to be considered towards export turnover as well as total turnover of business, to determine the amount of CENVAT credit eligible for refund to exporter of service.
- In *Whirlpool of India Ltd v CCE&ST* (TS-735-CESTAT-2015(Del)), the Delhi Tribunal held that no service tax would be applicable on transfer of IPR which was not covered under Indian law in force.

VAT/Sales Tax

Notifications and circulars

Andhra Pradesh

- Input tax credit can be allowed only when the selling dealer has sold the goods and paid tax on the sale.
- A dealer is liable to reverse input tax credit when goods on which input tax credit has been claimed are subsequently lost or destroyed. Also, the dealer is liable to show such reversal in the return in the month in which such goods are lost or destroyed.
- A dealer acquiring business on a going concern basis will be eligible to claim input tax credit available to such business as on date of transfer.
- Every VAT and TOT dealer will be liable to file VAT audit report by 31 December of subsequent financial year.
- Any vehicle passing through a State shall be required to obtain a transit pass along with Radio Frequency Identification (RFID) Tag from the officer in charge of the first check post, and deliver it to the officer in charge at the last check post.
- If details of tax invoices are not uploaded along with the return, the dealer will be liable to pay a penalty of 5% of the total turnover covered by such invoices.

(Andhra Pradesh Value Added Tax Act,

2005 vide Act No.4 of 2016)

Bihar

- Effective 28 January 2016, rate of tax under residual category of goods has been increased from 13.5% to 14.5%.

(Bihar Value Added Tax Act, 2005 vide Bihar Ordinance No.1 of 2016)

- Effective 2 February 2016, surcharge on High Speed Diesel Oil, Light Diesel Oil and motor spirit has been increased from 20% to 30%.

(Notification No. S.O. 22 Dated 2 February, 2016)

Chandigarh

- Effective 27 January 2016, sale of 'Battery Operated Vehicles' are exempted from VAT.

(Notification No. E&T/ETO (Ref)-2016/166 Dated 27 January, 2016)

Daman and Diu

- Effective 18 February 2016, online facility for obtaining and uploading of statutory forms has been introduced for the period starting FY 2005-06.

(Circular No. DMN/VAT/VAT Soft/2013-14/502 Dated 18 February, 2016)

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Delhi

- Facility of auto-downloading of statutory forms will not be available in cases where the ratio of sale to purchase including stock transfer falls below 45% subject to other prescribed restrictions.

(Circular No F.3(556)/Policy/VAT /2015/1366-71 Dated 27 January, 2016)

- Firms/ companies engaged in the business of courier activities are liable to furnish an online quarterly return in Form CR-II within 28 days from the end of the relevant quarter.

(Order No. F.III/7)/T&T/Misc/ Estt/Pt.File-I/1067-71 Dated: 12 February, 2016)

Gujarat

- Effective 27th January 2016, no input tax credit will be allowed on inter-state sale of Cigarettes.

(Notification No. (GHN-10) VAT-2015-S 11 (6) (5)-TH Dated 27 January, 2016)

Rajasthan

- Effective January 2016, e-commerce companies are required to submit monthly information in the prescribed form within 15 days from the end of the relevant month.

(Circular- No. 10/2015-16- No. F.16

(95)/Tax/CCT/14-15/2171 to 2178
Dated 28 January, 2016)

- Effective 2 February 2016, concessional rate of tax on goods covered under Schedule IV has been increased from 5% to 5.5%.

(Notification F. 12 (42) FD/TAX/2010-123-Dated 1 February, 2016)

Tamil Nadu

- Effective 29th January 2016, various goods have been notified for production of inward way bill for goods entering from a place outside the State.

(Notification III No. G.O. Ms. No. 15, Dated 29 January, 2016)

- Statutory forms under the CST Act are required to be submitted within 3 months from the end of the relevant period.

(Notification No. G.O. (Ms.) No. 35, Commercial Taxes and Registration (C1), Dated 16 February, 2016)

Telangana

- Effective 1 April 2016, issuance of e-waybills by VAT dealers has been made mandatory.

(Circular-CCT's Ref No. Enft/D2/172/2010, Dated 3 February, 2016)

Uttarakhand

- Effective 11 February 2016, rate of tax on bricks has been changed from 5% to 5% or 250 per thousand, whichever is more.

(Notification No.133/2016/01(A)(120)/XXVII(8)/2001 Dated 11 February, 2016)

Case law

- In Commissioner of Commercial Taxes v KTC Automobiles (Civil Appeal No 2446 of 2007), the Supreme Court held that sale of motor vehicle was co-terminous with the registration of a motor vehicle. The Supreme Court opined that since motor vehicle could not be used by the purchaser until it was registered, appropriation was deemed to take place only when the goods were handed over at or near the office of registration authority in a deliverable and registerable condition. Thus, the sale was deemed to have taken place at the time, or immediately before, the vehicle was brought by the seller to the office of the registration authority.
- In Sri Lakshmi Textiles v the Commissioner of Commercial Taxes and others (2016-VIL-81-MAD), the Madras High Court held that the input tax credit could not be denied to the buyer for failure on the seller's part to

report the transaction to the department.

- In Johnson Matthey Chemicals India Pvt. Ltd. v The State of Maharashtra (2016-TIOL- 310-HC-MUM-VAT), the Bombay High Court held that Form F had to be furnished by the dealer when goods were sent to other States for job work.
- In Parle Agro Pvt. Ltd v Commissioner of Commercial Taxes (2016-VIL-107-Ker), the Kerala High Court held that Appy Fizz had to be classified as aerated branded fruit drink, and not fruit juice-based drink for levy of VAT. The classification of a product as fruit juice-based drink under Central Excise and Salt act WAS irrelevant in view of the fact that Kerala VAT Act DID not refer to HSN based codification, which WAS a basis of classification for excise purposes.

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- In *Panasonic India Pvt. Ltd v The State of Kerala (2016-VIL-104-Ker)*, the Kerala High Court held that benefit of stock transfer was not allowable solely on the strength of declaration in F form. The assessee was liable to produce necessary supporting documents such as lorry receipt, delivery notes, etc., in addition to declaration in F form to substantiate the inter-state movement of goods for reasons otherwise than by way of sales.

Entry Tax

Notifications and circulars

Odisha

- Effective 9 February, 2016, entry tax has been exempted to Orissa Power Transmission Corporation Limited on goods used in construction or installation of rural electrification projects under the Deen Dayal Upadhyama Gram Jyoti Yojana.

(Notification No. 3411-FIN-CT1-TAX-0034-2015 dated 9 February, 2016)

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Delhi

Vivek Mishra/Gautam Khattar
Ph: +91 (124) 3306000

Mumbai

Dharmesh Panchal/S Satish
Ph: +91 (22) 6689 1000

Kolkata

Pulak Saha/Gopal Agarwal
Ph: +91 (33) 4404 3098/4404 6000

Bangalore

Pramod Banthia
Ph: +91 (80) 4079 6000

Hyderabad

Ananthanarayanan S
Ph: +91 (40) 4424 6363

Chennai

K Sivarajan/ Harisudhan M
Ph: +91 (44) 4228 5000

Pune

Nitin Vijaivergia
Ph: +91 (20) 4100 4444

Ahmedabad

Dharmesh Panchal/Niren Shethia
Ph: +91 (22) 6689 1000

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