

Staying Updated

Indirect tax newsletter

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Central excise

Notifications and circulars

- The Central Board of Excise & Customs (CBEC) has issued guidelines for transfer of funds directly to beneficiary's bank account after sanction of the refund/rebate claim.

(Circular No. 1013/1/2016-CX, dated 12 January, 2016)

- The excise exemption available under notification 56/2002 and 57/2002 to new units set up/ units undertaking substantial expansion/ units making new investment to generate additional employment in Jammu and Kashmir State is restricted to units commencing commercial production/ undertaking substantial expansion/ making investment to generate employment, on or before 31 March, 2016.

Further, the exemption under these notifications is no longer available to goods which have only undergone processes ancillary to manufacture such as preservation during storage, cleaning, sorting, declaration or amendment of MRP etc.

(Notification no. 03/2016-CE dated 22 January, 2016)

Case law

Manufacture

- In *CCE v Dabur India Ltd. (2015 (325) ELT 613)*, the Delhi Tribunal held that conversion of raw tamarind into tamarind paste/ concentrate by subjecting it to the processes of boiling, washing, filtering, squeezing, and concentrating did not result in manufacture of a new product.
- In *Goyal M.G. Gases Pvt. Ltd. v CCE (2015 (325) ELT 768)*, the Delhi Tribunal held that the process of filling compressed gas into cylinders for supply to manufacturer did not amount to manufacture, as the word 'consumer' in the expression 'adoption of any other treatment to render the product marketable to consumer' did not include an industrial user or manufacturer.

Valuation

- In *United Telecom Ltd v CCE (2015-TIOL-2824-CESTAT-BANG)*, the Bangalore Tribunal held that the assessee was entitled to claim refund of excess duty paid on account of deduction of liquidated damages from the invoice price.

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- In *Central Cables Ltd v CCE* (2015-TIOL-2683-CESTAT-MUM) & *CCE v Sulzer Pumps India Ltd.* (2015 (326) ELT 619), the Mumbai Tribunal held that amounts received from a customer towards third party inspection charges undertaken on request of such customer was not includible in the transaction value.

CENVAT/ MODVAT

- In *CCE v Tata Motors Ltd.* (2015 (325) ELT 569), the Jharkhand High Court held that the manufacturer was eligible to take credit of CVD paid on imported goods even in absence of a declaration by the importer that ‘no refund of CVD shall be claimed’, when there was no allegation of double benefit of CVD, i.e., credit by manufacturer and refund by importer, levelled in the show cause notice.
- In *CCE v Birla Textile Mills* (2015 (325) ELT 651), the Delhi High Court held that cash refund of pre-deposit made through CENVAT credit was allowable when assessee was not in a position to utilize credit on account of shifting unit to exempted hill area.
- In *CCE v Millennium Appliances India Ltd* (2015-TIOL-2851-CESTAT-BANG), the Bangalore Tribunal held that cables used as conductors in providing electric power and plastic crates used in the factory to carry machine tools were eligible for credit as capital goods.
- In *United White Metal Ltd. v CCE* (2015 (326) ELT 202), the Mumbai Tribunal held that there was no requirement of reversal of CENVAT credit on removal of capital goods after use for ten years.
- In *Bharat Heavy Electricals Ltd. v CCE* (2015 (326) ELT 611), the Delhi Tribunal held that demand for reversal of CENVAT credit on damaged parts was not sustainable when the appellant had paid duty on full value of the transformer, including the value of the damaged parts.
- In *Manoranjan Singh Duggal v CCE* (2015 (325) ELT 892), the Delhi Tribunal held that CENVAT credit cannot be denied on the ground that first stage dealer did not supply goods to the second stage dealer, when appellant had maintained records showing receipt of goods from second stage dealer and made payment through banking channels.
- In *Lona Industries Ltd v CCE* (2015-TIOL-2694-CESTAT-MUM), the Mumbai Tribunal held that there was no bar in the CENVAT Credit Rules on distribution of credit earned prior to taking registration by ISD.

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Others

- In *Malu Sleepers (Maharashtra) Pvt Ltd v CCE (2015-TIOL-2849-CESTAT-MUM)*, the Mumbai Tribunal held that interest was not payable on supplementary invoice raised subsequent to clearance of goods, when finalisation of price took place only after publication of RBI price index as per escalation clause in the contract.

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Service tax

Notifications and circulars

- The CBEC has clarified that where a land owner has transferred the land/ development rights to the builder/ developer for consideration in the form of constructed flats, the value of the construction services provided by the builder/ developer would be the value of such flats charged by the builder/ developer from the buyers of such flats nearer to the time at which the land is made available for construction.

The CBEC has also clarified that the Education Guide, 2012 is merely an educational aid based on a broad understanding of a team of officers on the issues, and it is neither a 'Departmental Circular' nor a manual of instructions issued by the CBEC. To that extent, it does not command the required legal backing to be binding on either side in any manner. Hence, circulars issued by the CBEC would prevail on Education Guide, 2012.

(Circular no. F.No. 354/311/2015-TRU dated 20 January, 2016)

Case law

- In *Jet Airways (India) Limited v Commissioner of Service Tax, Mumbai I* (TS-693-CESTAT-2015-ST), the Mumbai

Tribunal held that the package tours offered by the appellant in addition to air travel were not classifiable as 'tour operator services' as the appellant did not plan, schedule or organise the tours for the passengers.

- In *J P Morgan Services India Private Limited (2015-TIOL-12-ARA-ST)*, the Advance Ruling Authority held that in case of vehicles provided to employees under a 'Car Lease Scheme' for the duration of their employment, the activity of 'making available' a car would not amount to provision of 'service' as it would be treated as provided in the course of employment and in relation to employment, and correspondingly, would be covered under the exclusion in the definition of 'service'.
- In *Kooltek Air Conditioning Work v Commissioner of Central excise, Lucknow (2016-TIOL-200-CESTAT-ALL)*, the Allahabad Tribunal held that the Tribunal did not have the powers to direct the Commissioner (Appeals) to admit an appeal beyond the period prescribed for filing of appeal (including the period for which delay could be condoned by him).

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- In *Vodafone Essar Spacetel Limited v Commissioner of Central Excise, Customs & Service Tax, BBSR-I (2016-TIOL-249-CESTAT-KOL)*, the Kolkata Tribunal held that CENVAT credit on capital goods installed in Jammu and Kashmir, and input services received in Jammu and Kashmir, could not be availed. In arriving at this conclusion, the Tribunal observed that capital goods/ towers installed in Jammu and Kashmir could not be said to have been used in providing roaming services in Jammu and Kashmir, which were liable for service tax, in the absence of any specific additional charge collected for roaming in Jammu and Kashmir, and accordingly, such services were deemed to have been rendered at the place where registration was obtained.
- In *Vodafone Cellular Limited v Commissioner of Central Excise, Pune (TS-4-CESTAT-2016-ST)*, the Mumbai Tribunal held that service tax would be payable on the SMS termination charges levied by the terminating telecom operators on the originating telecom operators on the basis of demand letters issued, since the demand letters contained all details which needed to be mentioned on the invoice.
- In *PSP Projects Private Limited v Commissioner of Service Tax, Ahmedabad (2016-VIL-42-CESTAT-AHM-ST)*, the Ahmedabad Tribunal held that in case of merger of companies ,wherein one legal entity merged with another and ceased to exist, the unutilised balance in the PLA shall be available to the merged entity. Non-surrender of service tax registration by the legal entity which had ceased to exist, could not be said to mean that the PLA balance was available to such entity.
- In *Inox Leisure Limited v Commissioner of Service Tax, Mumbai (2016-TIOL-239-CESTAT-MUM)*, the Mumbai Tribunal held that in case of separate service tax registrations for different premises, the Commissioner of Service Tax of one jurisdiction did not have the power to adjudicate cases originating outside his jurisdiction, although the consolidated balance sheets were prepared at the head office located in his jurisdiction. In such a case, the Commissioner could make show cause notices answerable to the respective jurisdictional Commissioners, or seek approval from the CBEC for adjudicating the case of services rendered pan-India.

VAT/Sales Tax

Notifications and circulars

Andhra Pradesh

- The due date for submission of monthly return in Form VAT 200 for the month of November, 2015 has been extended to 5 January, 2016.
(Circular No. CCTs Ref No. CCW/CS (1)238/2015, dated 22 December, 2015)

Delhi

- The due date for submission of reconciliation return for FY15 in form 9 has been extended to 29 February, 2016.
(Circular No. 34 of 2015-16 F.3 (589)/Policy/V/2015/1328-1334 dated 15 January, 2016)
- Effective 8 January, 2016, Delhi Sugam-2 (DS2) is required to be carried by the owner, driver or person in-charge of the goods vehicle who is bringing the goods into Delhi.
(Notification No. F.7 (433)/Policy-II/VAT/2012/PF/1259-70-dated 8 January, 2016)
- Effective 12 January, 2016, all government entities are required to file a quarterly return in Form GE-II, disclosing purchases made by them from registered dealers of goods for the purpose of their consumption or use.
(Notification No. F.3 (619)/Policy/VAT/2016/1291-1304 dated 12 January, 2016)
- Effective 18 January 2016, the VAT rate on Petrol and Diesel has been increased from

25% to 27% and 16.6% to 18% respectively.

(Notification No. F.3 (26)/Fin (Rev-I)/2015-2016/dsvi/22-dated 18 January, 2016)

Daman and Diu

- Effective 14 January, 2016, the concessional rate of tax on goods covered under the Third schedule has been increased from 4% to 5%.

(Notification No. DMN/VAT/Part-File/57-2/2014-15/453 dated 14 January, 2016)

Goa

- Effective 29 December, 2015, dealers whose turnover for previous financial year is Rs. 25 lakhs and below, except those who have opted for composition of tax, are required to file a single annual return of their sales in Form VAT III online. The first compulsory e-return for FY 16 is required to be filed by 30 April, 2016.

(Notification No. 4/5/2005-Fin(R&C) (131) dated 29 December, 2015)

- Effective 29 December, 2015, dealers whose turnover for FY 15 has exceeded Rs.25 Lakhs, are required to file their quarterly returns electronically. The first compulsory e-return for quarter ended December, 2015 is to be filed by 30 January, 2016. Earlier, the threshold for e-return was Rs. 50 Lakhs.

(Notification No. 4/5/2005-Fin(R&C) (130) dated 29 December, 2015)

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Madhya Pradesh

- Effective 23 January, 2016, an additional tax of Rs. 3/liter on 'Petrol' and Rs. 1.50/ liter on 'High Speed Diesel' has been levied, subject to fulfillment of prescribed conditions.
(Notification No.F-A-3-60-2015-1-V-(11) dated 22 January, 2016)

Maharashtra

- Effective 21 December, 2015, facility of downloading digitally signed registration certificate from the website of the Maharashtra Sales Tax Department has been introduced for dealers to whom registration certificate has been granted on or after 22 December, 2015.
(Trade Circular No. 19T of 2015 dated 21 December, 2015)
- Effective 2 January, 2016, exemption from VAT has been prescribed on drugs and medical equipment used in dialysis for the treatment of patients suffering from kidney disease.
(Notification No. VAT.1515/CR-169/Taxation-1 dated 2 January, 2016)
- The due date of filing audit report acknowledgement in form e-704 has been extended from 25 January, 2016 to 1 February, 2016.
(Trade Circular No 3T of 2016 dated 28 January, 2016)

Nagaland

- Effective 26 January, 2016, online issuance of entry permits has been made mandatory.
(Notification No. CT/M/5/69(Pt) dated 15 January, 2016)

Odisha

- The residual VAT rate has been increased from 13.5% to 14.5%.
(Notification No. 80-FIN-CT1-Tax-0020-2015 dated 1 January, 2016)
- Effective 5 January, 2016, VAT rate on motor spirit, including 'petrol' and 'high speed diesel' has been increased from 23% to 26%.
(Notification No. 276-Fin-CT1-Tax-0020-2015-dated 4 January, 2016)

Rajasthan

- An amnesty scheme has been introduced for dealers or persons whose total outstanding demand up to 30 June, 2015 under the sales tax, VAT or CST Act is less than Rs.15 Crores. The scheme provides for waiver from interest and penalty subject to the fulfillment of prescribed conditions. The scheme will remain valid up to 15 March, 2016.
(Notification No. F.12 (16)/FD/Tax/2009-116 dated 21 January, 2016)

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Uttar Pradesh

- Effective 2 January, 2016, VAT rate on plastic footwear with maximum retail price exceeding Rs.300 has been reduced from 14.5% to 5%.

(Notification No. K.A NI-2-1979/XI-9(235)/12-U.P. Act-5-2008-Order-(150)-2015 dated 1 January, 2016)

West Bengal

- Effective 8 January, 2016, VAT rate on solar thermal, solar photovoltaic device and spare parts of these devices has been reduced to Nil.

(Notification No. 25 FT dated 7 January, 2016)

Case law

- In *Sanjeev Stone Crushing Company v State of Haryana and others* [2015-TIOL-2743-HC-P&H-VAT], the Haryana High Court held that a buyer could not be denied input tax credit on account of procedural defects on the invoice such as name and TIN not being mentioned on the invoice.
- In *HS Power Projects Pvt. Ltd v Commissioner of Trade & Taxes* [TS-2-HC-2016(DEL)-VAT], the Delhi High Court held that pure labour contracts were outside the purview of sales tax, and hence the consideration received

towards labour activities could not be subject to tax.

Entry Tax

Notifications and circulars

Bihar

- The schedule of goods liable to entry tax has been expanded to goods such as medical equipment, devices and implants, electronic goods and readymade garments other than hosiery.

(Notification No. S.O. 18 dated 20 January, 2016)

Odisha

- Exemption from entry tax has been provided on all scheduled goods brought into the processing area of an SEZ by a developer, co-developer and SEZ units, subject to fulfillment of prescribed conditions.

(Notification No.33077-Fin-CT1-Tax-0025-2015 dated 26 December, 2015)

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