

Staying Updated

Indirect tax newsletter

March 2016, Volume 18 Issue 12

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- CENVAT credit of excise duty paid on telecom towers and prefabricated shelters not available to telecom operators as well as tower companies.
- No service tax payable on amount of TDS borne by the service recipient.

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Central excise

Notifications and circulars

- The CBEC has clarified that the judgment of Hon'ble Tribunal in the case of M/s. Bharti Telemedia Ltd. v CC [2016 (331) E.L.T. 138 (Tri.-Mumbai)] may be followed for assessment of CVD on imported Set Top Boxes (STBs), where the circumstances are identical. In this case, it was held that the STBs imported by the appellants and supplied free of cost to distributor are not subject to CVD on RSP/ MRP basis under Section 4A, since there was no sale of STBs.

(Circular no. 1020/8/2016 - CX dated 11 March, 2016)

Case law

Manufacture

- In Quippo Energy Private Ltd. and Ors v CCE (2016 (331) ELT 617), the Ahmedabad Tribunal held that assembly of indigenous components/ parts with imported machinery to make it operational amounts to 'manufacture'.

Valuation

- In CCE v Diffusion Engineering Ltd. (2016 (331) ELT 153), the Mumbai

Tribunal held that the amount collected from dealers towards diaries and calendars was not includible in the assessable value, since purchase of such material by dealers was optional and only a few dealers were buying them.

- In Shriram Holographics v CCE (2016 (331) ELT 612), the Delhi Tribunal held that 'mastering charges' collected from customers for producing specific holograms was includible in the assessable value.
- In Ultraseal India Pvt Ltd v CCE (2016-TIOL-352-CESTAT-MUM), the Mumbai Tribunal held that erection and commissioning of plant was undertaken on request of customers, and charges collected towards the same were not includible in the assessable value.

CENVAT/ MODVAT

- In Commissioner v Metflow Cast Pvt. Ltd. (2016 (331) ELT 355), the Gujarat High Court held that refund of unutilised CENVAT credit under Rule 5 was admissible to DTA unit that cleared the final products to 100% EOU under ARE-3/CT-3 without payment of duty.

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- In *Shree Cement Ltd. v CCE* (2016 (332) ELT 759), the Delhi Tribunal held that the cable tray used for holding cables for a power distribution system was eligible for credit as an accessory of capital goods.
- In *West Coast Paper Mills Pvt. Ltd. v CCE* (2016 (332) ELT 847), the Bangalore Tribunal held that input credit was admissible on cement used in the construction of a chimney, which was a part of the pollution control system.
- In *Andhra Polymers Pvt. Ltd. v CCE* (2016 (332) ELT 831), the Bangalore Tribunal held that eligibility of credit had to be determined with reference to the dutiability of the final product on the date of receipt of capital goods, and hence, credit would not be admissible if final products were exempt on the date of receipt of such capital goods.
- In *Steel Authority of India Ltd. v CCE* (2016 (332) ELT 825), the Delhi Tribunal held that input credit was admissible on goods transferred to a power plant owned by another entity within the factory premises, since such inputs were fully utilized in or in relation to the manufacture of electricity, which in turn was fully used by the appellants.
- In *Veer-O-Metals Pvt. Ltd. v CCE* (2016 (331) ELT 475), the Bangalore Tribunal held that input credit could not be denied on the sole ground that there were no corresponding GRNs and bin cards, since the revenue had not made any enquiries from the sender of the inputs, and there was no conclusive evidence so as to arrive at a finding of non-receipt of the goods.
- In *South Eastern Coalfields Ltd v CCE* (2016-TIOL-372-CESTAT-DEL), the Delhi Tribunal held that input credit was admissible on goods received prior to obtaining central excise registration.

Others

- In *Grasim Bhiwani Textiles Ltd. v CCE* (2016 (332) ELT 865) & *Garden Silk Mills Ltd. v CCE* (2016 (332) ELT 820), the Delhi/ Ahmedabad Tribunal held that interest and penalty was not payable when wrongly taken CENVAT credit was reversed before utilization.
- In *CCE v Kent Introl Pvt. Ltd* (2016 (331) ELT 77), the Bombay High Court held that goods supplied by a sub-contractor to the main contractor who was executing a mega project by International Competitive Bidding, were eligible for the benefit of excise duty exemption under Notification No. 6/2002-CE dated 1 March, 2002.

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Service tax

Notifications and circulars

- The format of ST 3 return has been amended to provide for disclosure of *Swachh Bharat Cess* in the return

(Notification No. 20/2016-Service Tax dated 8 March, 2016)

Case law

- In *Tower Vision India Pvt. Ltd. v CCE (Adj) (2016-TIOL-539-CESTAT-DEL-LB)*, a larger Bench of the Tribunal held that CENVAT credit of excise duty paid on telecom towers and prefabricated shelters was not available to both, telecom operators and tower companies.
- In *Magarpatta Township Development & Construction Co. Ltd. v CCEx (TS-90-CESTAT-2016-MUM)*, the Mumbai Tribunal held that service tax under reverse charge was not payable on the amount of TDS paid by the service recipient on the remittance made for such service, when he bore the TDS over and above the amount of invoice raised by the service provider.
- In *Godaddy India Web Services Pvt. Ltd. (2016-TIOL-08-ARA-ST)*, the Advance Ruling Authority held that various marketing and promotion services, supervision of third party customer care centre services, and payment processing

services proposed to be provided by Godaddy India to Godaddy US were naturally bundled in the ordinary course of business, and was a single service, categorised as ‘Business Support services’ and not as ‘Intermediary services’. Since the recipient of services was located outside India, the place of provision of such services would be outside India, and qualify as export of taxable services.

- In *Usha International Ltd. v CST (TS-81-CESTAT-2016-DEL)*, the Delhi Tribunal held that in case of merger of companies, services provided by the transferee company to transferor company from the appointed date of the merger became service to self and would not be subject to service tax.
- In *Adani Power Ltd. v CST (TS-72-CESTAT-2016-AHD)*, the Ahmedabad Tribunal held that supply of surplus power in DTA by a power sector SEZ did not disentitle such SEZ from claiming full refund of service tax paid on various services received by the SEZ.

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- In *Tech Mahindra Ltd. v CCEx* (2016-TIOL-709-CESTAT-MUM), the Mumbai Tribunal held that the intent of section 66A in taxing the activity rendered by an overseas branch to its headquarters in India was limited to the local commercial or business activities of the head office. Consequently, mere existence as a branch for the overall promotion of the objectives of the primary establishment in India which was essentially an exporter of services, did not render the transfer of financial resources to the branch taxable under section 66A.
- In *CCEx and ST v Honda Siel Cars India Ltd* (2016-TIOL-651-CESTAT-DEL), the Delhi Tribunal held that extended warranty charges collected by the company were not liable to service tax under 'Business Auxiliary services'.
- In *CST v Deutsche Asset Management (I) Pvt. Ltd.* (2016-TIOL-610-CESTAT-MUM), the Mumbai Tribunal held that in case of transactions between associated enterprises, service tax was payable at the time of making provisional entries in the financial statements.

VAT/Sales Tax

Notifications and circulars

Chandigarh

- Effective 1 March, 2016, filing of online application for registration has been made mandatory.

(Circular dated 15 March, 2016)

Daman and Diu

- Effective 8 March, 2016, Corporation Bank, Daman branch has been notified as authorized bank for payment of taxes, penalty, interest and any other dues.

(Notification No. DMN/VAT 2015/201415/17/ DCVAT 2016 Dated 8 March, 2016)

Delhi

- Filing of quarterly online return through digital signature has been made mandatory for following dealers:
 - whose gross turnover under VAT/CST during FY15 exceeded 50 lakhs for the tax period 1 January, 2016 to 31 March, 2016 and subsequent tax periods;
 - who are registered on or after 1 April, 2015 for the tax periods following the year during which their gross turnover exceeds 50 lakhs.

(Notification No. F.3 (643)/ Policy/ VAT/ 2016/ 15851597 Dated 1 March, 2016)

Himachal Pradesh

- Effective 1 March, 2016, VAT rate on sale of all kind of concrete blocks including Autoclaved Aerated Concrete (AAC) Blocks, has been decreased from 13.75% to 5%

(Notification No. EXNF (10)5/ 2015 Dated 24 February, 2016)

- Effective 1 March, 2016, VAT rate on sale of all types of cables viz Industrial cables, high voltage cables, XL cables, PF cables, jelly-filled cables, optical fibre cables including household electrical wires and electrical cables has been increased from 5% to 9%.

(Notification No. EXNF (10)5/2015 Dated 24 February, 2016)

Uttar Pradesh

- Effective 3 March, 2016, sale of 'LED bulbs' have been made exempt from VAT.

(Notification No. K.A. NI2319/ XI9 (135)/ 12 U.P. Act 52008 Order (151) 2016 Dated 3 March, 2016)

- Effective 12 September, 2015, for a period of ten years, the UP government has brought in an exemption on sale of machinery operated by Bio Fuel.

(Notification No. K.A. NI2230/XI9 (205)/ 2014 U.P. Act 52008 Order (153) 2016 Dated 11 March, 2016)

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Uttarakhand

- Effective 4 March, 2016, every transporter who intends to transport goods from any place in the State to any place within or outside the State is required to prepare a Lorry Challan.

(Notification No. 126/ 2016/ 03(120)/ XXXVII (8)/ 2016 Dated: 3 March, 2016)

West Bengal

- Effective 15 March, 2016, procedure has been prescribed for obtaining registration within 1 working day of furnishing hard copy of completed application, along with necessary documents, including application fees and security payment details.

(Circular No 2/2016 dated 15 March, 2016)

Case law

- In *Tata Power Delhi Distribution Ltd v Commissioner of Sales Tax, Delhi & Ors* [2016-TIOL-559-HC-DEL-VAT], the Delhi High Court held that a lease transaction occasioning the movement of goods from one state to another was an inter-state sale. It could not be construed to be an intra-state sale merely on the grounds that the goods were located within a particular state at the time of transfer of the right to use the goods.

- In *Maple Exports Pvt Ltd v Additional Commissioner, Sales Taxes Central Refund Unit & Ors* [2016-TIOL-538-HC-KOL-VAT], the Calcutta High Court held that an assessee seeking input tax credit was not obliged to take any responsibility for his seller's valid registration.

Entry Tax

Notifications and circulars

Uttar Pradesh

- Effective 3rd March 2016, entry tax exempted on sugar manufactured during crushing season in 2015-16, subject to conditions mentioned in the notification.

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

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