

**A2Z TAXCORP LLP
NEW DELHI, INDIA**

***Indirect Tax and Other Laws Communique
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This bulletin brings to you the highlights of recent updates and important judgments in the field of indirect taxation along with key inputs from other fields to keep you abreast of all the latest happenings.

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WHAT'S NEW!

➤ [Enhanced monetary limits for filing appeals by the Department before CESTAT/High Courts to apply even for pending appeals – CBEC clarifies](#)

The CBEC vide Instruction F. No. 390/Misc./163/2010-JC dated December 17, 2015, enhanced the monetary limits for filing appeals by the Department in the following manner:

Appellate Forum	Revised Monetary Limit	Previous Monetary Limit
CESTAT	Rs. 10,00,000/-	Rs. 5,00,000/-
High Courts	Rs. 15,00,000/-	Rs. 10,00,000/-
Supreme Courts	Rs. 25,00,000/-	Rs. 25,00,000

Now, the Central Government vide **Instruction F. No. 390/Misc./163/2010-JC dated January 1, 2016** has directed that the Board's Instruction F. No. 390/Misc./163/2010-JC dated December 17, 2015 shall apply to all the pending appeals in High Courts/ CESTAT. Accordingly, Principal Chief Commissioners/ Chief Commissioners are directed to take immediate necessary action in this regard for cases which are below the new threshold limits subject to the conditions of the Earlier Instruction F. No. 390/Misc./163/2010-JC dated August 17, 2011 and December 17, 2015.

It is pertinent here to note that appeals may be filed by the Department in the following cases irrespective of the monetary limits:

- a) Where the constitutional validity of the provisions of an Act or Rule is under challenge;
- b) Where Notification/ Instruction/ Order or Circular has been held illegal or ultra vires;
- c) Classification and refunds issues, which are of legal and/or recurring nature.

SERVICE TAX

RECENT CASE LAWS

➤ [Advance received as an earnest money for which bank guarantee of equal amount is given to the customers, is more in the nature of a deposit and accordingly not liable to Service tax unless it is adjusted towards the consideration for services rendered](#)

Thermax Instrumentation Ltd. Vs. Commissioner of Central Excise, Pune – I [2015 (12) TMI 1222 - CESTAT MUMBAI]

Facts:

Thermax Instrumentation Ltd. (“**the Appellant**”) was providing services in relation to Erection, Installation and Commissioning activity. To meet the contractual commitments, the Appellant used to receive 10% as an advance payment from the customers, for which counter bank guarantee of equal amount was provided to the customers. The amount of advance given by the customer was reduced in proportion to the value of work completed as shown in the invoices raised upto any stage of work executed as per the terms of the contract. The amount of bank guarantee provided by the Appellant was correspondingly reduced in proportion to the amount of advance adjusted by them. Accordingly, Service tax was paid on the invoice value on accrual basis even before the receipt of consideration.

The Department alleged that the advance payment received by the Appellant is liable to Service tax while the Appellant contended that the advance received was only in the nature of security deposit which were shown as current liability in their books of accounts and not shown as income towards consideration for services rendered.

Period involved: April 2006 to March, 2011

Held:

The Hon’ble CESTAT, Mumbai relying upon the judgments in the case of ***Paharpur Cooling Towers Ltd. Vs. Commissioner of Central Excise and Custom, Raipur [2015 (1) TMI 727 – CESTAT New Delhi]*** and ***Commissioner of Central Excise, Ludhiana Vs. JR. Industries [2009 (5) TMI 521 - CESTAT New Delhi]***, held that in the present case, the advance is like earnest money for which a Bank Guarantee is given by the Appellant. It is a fact that the customer can invoke the Bank Guarantee at any time and take back the advance. Hence, the Appellant does not show the advance as an income, not having complete dominion over the amount and therefore the same cannot be treated as a consideration for any service provided.

The Appellant has rightly paid the taxes that are at the time of issue of invoices on accrual basis even when tax was to be paid on receipt of payment basis as per law existing during the relevant period.

Our Comments:

It is to be noted that w.e.f. April, 2011, the Central Government has introduced the POT Rules which shifted the tax incidence from receipt of payment (Receipt basis) to earliest of issuance of invoice or receipt of payment. The general Rule 3 of the POT Rules stipulates that POT shall be the earlier of the following:

- Date of Receipt of Money;
- Date of Invoice provided it is raised within the stipulated time period prescribed under Rule 4A of the Service Tax Rules i.e. 30 days (45 days for financial sector) from the date of completion of service,
- Further, if the invoice is not raised within 30 days/ 45 days from the date of completion of service, then, POT shall be the date of completion of service.

However, the stated judgment may be applicable even in present scenario also when advance received from service receiver is in the form of a deposit against which bank guarantee of equal amount is provided by service receiver.

➤ **No denial of Cenvat credit availed on invoices issued in the name of branch offices, which were not registered**

Gail India Ltd. Vs. Commissioner Of Central Excise And Service Tax, LTU, New Delhi [2016 (1) TMI 299 - CESTAT NEW DELHI]

Facts:

Gail India Ltd. (“**the Appellant**”) has obtained Centralized Registration on February 25, 2010 which included Vaghodia compressor station (“**branch office**”). The Appellant was availing Cenvat credit on capital goods and input services received and used at Vaghodia compressor station. But the Department denied Cenvat credit availed for the period prior to February 25, 2010 on the ground that the invoices were in the name of branch office, which was not registered.

Held:

The Hon’ble CESTAT, New Delhi relied upon the decisions of Tribunal in the case of ***Manipal Advertising Services Pvt. Ltd. Vs. C.C.E.,Mangalore [2009 (10) TMI 434 - CESTAT, BANGALORE]*** and ***Well Known Polyesters Ltd. Vs. C.C.E., Vapi [2011 (1) TMI 664 - CESTAT, AHMEDABAD]***, wherein it was clearly declared the principle that if a person is discharging Service tax liability from his registered premises, the benefit of Cenvat credit of Service tax paid by the service provider cannot be denied, only on the ground that the invoices were issued in the name of branch offices, which was not registered.

Our Comments:

There are various other judgments also on similar issues of Cenvat credit availment when invoices were issued in the name of branch offices, neither included in centralized registration or nor separately registered:

- *Manipal Advertising Services Pvt. Ltd. Vs. C.C.E., Mangalore [2009 (10) TMI 434 - CESTAT, BANGALORE];*
- *Portal India Wireless Solutions P. Ltd. Vs. C.S.T., Bangalore [2011 (9) TMI 450 - KARNATAKA HIGH COURT];*
- *Allspheres Entertainment Pvt. Ltd. Vs. CCE, Meerut [2015 (8) TMI 953 – (CESTAT DELHI)].*

➤ [No Service tax leviable on 'car lease scheme' of providing vehicles by employers to employees as the same is excluded from the definition of 'service'](#)

J.P. Morgan Services India Private Ltd, Mumbai Vs. Commissioner of Service Tax [2016 (1) TMI 25 - AUTHORITY FOR ADVANCE RULINGS]

Facts:

J.P. Morgan Services India Private Ltd, Mumbai (“**the Applicant**”) floated the scheme as an employment retainment programme, under which, the Applicant was to provide cars, hired from car leasing companies, to the employees who are, firstly, continuing to be the employees of the Applicant, and, secondly, who accept the option to have the car for their personal as well as official use. In lieu of this, the Applicant was to charge the employees same amount, which the Applicant would be paying to the car leasing company. Now, the question posed to the Advance Ruling Authority was whether the amount charged by the Applicant to its employees for use of the vehicles is subject to Service tax.

Held:

The Hon’ble Authority for Advance Rulings held that in the instant case, the Applicant charge the amount to its employees for use of the vehicles, which is equivalent to the rent amount paid to the car leasing company i.e. no extra amount is charged from employee. Further, there is also an option given to the employee to ultimately purchase the car at the end of his employment at the written down value. There can be no dispute that the service of "making available" a car to the employees is being rendered by the Applicant, which fulfills both the conditions prescribed under Section 65B(44)(b) of the Finance Act, i.e. the services are rendered in the course of employment and in relation to his employment. Thus, the same will not amount to ‘service’.

➤ [No denial of refund claim on period of limitation if wrongly filed in incorrect jurisdiction on bona fide ground](#)

Jindal Steel & Power Ltd. Vs. Commissioner of Customs & Central Excise, Raipur [2015(64) taxmann.com 383 (New Delhi - CESTAT)]

Facts:

Jindal Steel & Power Ltd. (“the Appellant”) filed a refund claim before the Delhi Commissionerate for the amount of Service tax paid on the services received for construction of a bridge since Commercial or Industrial Construction service excluded construction of a bridge. However, the refund claim was rejected on the ground of beyond jurisdiction. Thereafter, the Appellant preferred a claim for refund before the Bilaspur Commissionerate where the refund claim was rejected on the ground of period of limitation and that the Appellant is falling under the Delhi jurisdiction & not under Bilaspur jurisdiction.

Period involved: May 17, 2011 to August 12, 2011

Held:

The Hon’ble CESTAT, New Delhi relying upon the judgment of Hon’ble Supreme Court in the case of *Mafatlal Industries Ltd. Vs. Union of India [1997 (89) ELT 247 (SC)]*, held that rejecting the claim arbitrarily on the point of jurisdiction, is not correct and Thus, the Appellant is entitled to refund since the claim is found to be within the period of limitation and further, initially filed its refund claim before the Delhi Commissionerate and subsequently, before the Bilaspur Commissionerate as well.

CENTRAL EXCISE

NOTIFICATIONS/CIRCULARS

➤ **Amendment made in Rule 9 of the Credit Rules – Cenvat credit on Courier Imports**

The Central Government vide **Notification No. 27/2015-Central Excise (N.T) dated December 31, 2015** has amended Clause (d) of Sub-Rule (1) of Rule 9 of the Credit Rules to provide that Cenvat credit can also be taken by manufacturer or provider of output service or input service distributor, on the basis of certificate issued by an appraiser of Customs in respect of goods imported through a Foreign Post Office or as the case may be, an Authorized Courier, registered with the Principal Commissioner of Customs or the Commissioner of Customs in-charge of the customs airport.

Hitherto, Clause (d) of Sub-Rule (1) of Rule 9 of the Credit Rules, prescribed certificate issued by an appraiser of Customs in respect of goods imported through a Foreign Post Office, as an eligible document for taking Cenvat credit.

➤ **Amendment in Notification No. 12/2012- Central Excise dated March 17, 2012 to increase Basic Excise duty rates on petrol and diesel**

The Central Government vide **Notification No. 01/2016-Central Excise dated January 01, 2016**, has made an amendment in the Notification No. 12/2012- Central Excise dated March 17, 2012 to increase Basic Excise duty rates on petrol and diesel, in the following manner:

Sl. No.	Description of Excisable Goods	Existing	Revised
70	Motor spirit commonly known as petrol,-		
	(i) intended for sale without a brand name;	Rs. 7.36	Rs. 7.73
	(ii) other than those specified at (i)	Rs. 8.54	Rs. 8.91
71	High speed diesel (HSD),-		
	(i) intended for sale without a brand name;	Rs. 5.83	Rs. 7.83
	ii) other than those specified at (i)	Rs. 8.19	Rs. 10.19

RECENT CASE LAWS

- [No question of passing the burden of duty arise when it was paid under protest during the pendency of adjudication proceedings](#)

Union of India &Anr.Vs. Gujarat Insecticides Ltd. &Anr. [2015 (12) TMI 1214 - SUPREME COURT]

Facts:

Gujarat Insecticides Ltd. &Anr. (“**the Respondent**”) has deposited amount under protest during pendency of appeal before the Hon’ble Supreme Court as no stay was granted. The Hon’ble Supreme Court allowed appeal in favour of the Respondent. Thereafter, the Respondent filed refund claim of the amount so deposited under protest. The Ld. Sr. Central Government Standing Counsel alleged that the amount, which had been paid under protest was the amount of duty and, therefore, it was obligatory on the part of the Respondent to adduce evidence to the effect that the Respondent had not passed on the incidence of the duty to the buyers so as to be entitled to the refund.

Held:

The Hon’ble Supreme Court observed that there are two things which become apparent from the reading of the Order of the High Court that are:

- (i) The duty for which the claim of refund is made, was paid under protest by the Respondent during the pendency of the adjudication proceedings;
- (ii) Further, the intermediary product was not marketable.

Hence, it was held that there was no question of passing on this element of duty to consumers/buyers, and accordingly, refund claim was allowed.

➤ **Assessee is allowed to utilize Cenvat credit while making payment of duty foregone at the time of de-bonding of 100% EOU Unit**

Dishman Pharmaceuticals and Chemicals Pvt. Ltd. Vs. Union of India [2015 (12) TMI 1211 - GUJARAT HIGH COURT]

Facts:

Disham Pharmaceuticals and Chemicals Pvt. Ltd. (“the Appellant”) was manufacturing pharmaceuticals and chemical products, in their factory located at a village, which was allowed to be operated as a 100% Export Oriented Unit (“EOU”). The Appellant filed an application for partial de-bonding, which is permissible under the EOU Scheme. However, the Department informed that the Appellant has to pay the Excise duty foregone on the goods lying unutilized in the Petitioner’s plant that was proposed to be de-bonded, in cash and not from Cenvat credit by referring to Rule 3(4) of the Credit Rules. Whereas the Appellant wanted to pay the duty amount through Cenvat Credit and it was submitted that an EOU is also a manufacturer and therefore, all the benefits allowed to any manufacturer under the Central Excise law are also admissible to an EOU at the time of de-bonding.

Held:

The Hon’ble High Court, Gujarat relying upon the Order addressed by the Department to ***Alps Chemicals Pvt. Ltd.*** on the same facts and judgment in the case of ***Ralli Engine Ltd. Vs. Union Of India [2004 (4) TMI 590 - Gujarat High Court]***, held that the Appellant is permitted to pay the Excise duty foregone from the legally availed Cenvat credit account. Further, upon the Excise duty being paid through the Cenvat credit account, the Department shall issue “No Dues Certificate” to the Appellant for de-bonding out of 100% EOU Scheme.

➤ **Assessee cannot insist upon cross-examination of all the informers, especially the ones whose statement may not be relied upon by the Department for maintaining the demand**

Kurele Pan Products Pvt. Ltd. Vs. Union Of India Thru. Sec. And 2 Others [2015 (12) TMI 1206 - ALLAHABAD HIGH COURT]

Facts:

Kurele Pan Products Pvt. Ltd. (“**the Petitioner**”) filed a writ petition to insist upon the cross-examination of all the 15 informants, who had supplied information to the Department, leading to issuance of SCN.

Held:

The Hon’ble High Court of Allahabad opined that if the Department has recorded statement of 15 informants before issuance of SCN, it is not necessary that the evidence of all the 15 witnesses may be relied upon for the purpose of maintaining the demand. Further, it is always open to the Department to rely upon the evidence of such number of informers, as may be necessary in the facts of the case. Therefore, the Petitioner cannot insist upon cross-examination of all the informers, especially the ones whose statement may not be relied upon by the Department for maintaining the demand.

The Hon’ble High Court further held that as and when Final Orders are passed and the assessee feels that there has been violation of principles of natural justice or settled principles of law, he can always question the Order by filing the appeal before the Appellant Authority.

- [MRP based valuation applicable to institutional buyers for goods which are specified under Section 4A of the Excise Act, covered by SWM Act, 1976 & Rules thereof and further, MRP was affixed on the goods supplied which are not exempted under Rule 34 of the Rules thereof](#)

Commr. of Central Excise, Panchkula Vs. Liberty Shoes Ltd. [2015 (12) TMI 1159 - SUPREME COURT]

Facts:

Liberty Shoes Ltd. (“**the Respondent**”) was engaged in manufacturing of footwear under the brand name of ‘Liberty’ and selling their products to various buyers in retail as well as to various institutional buyers in bulk on contractual price, but was paying Excise duty on the basis of MRP as per Section 4A of the Excise Act. The Department alleged that clearing footwear to the institutional buyers by assessing their value under Section 4A of the Excise Act is not correct as in the case of sale of goods on the basis of contract price, Section 4A of the Excise Act will not be applicable and valuation of the same shall be governed by Section 4 of the Excise Act.

Held:

The Hon’ble Supreme Court, relying upon the judgment in the case of ***Jayanti Food Processing (P) Ltd. Vs. Commissioner of Central Excise, Rajasthan [2007 (8) TMI 3 - Supreme Court]***, held that footwear is an item which is specified under Section 4A of the Excise Act,

covered by Standard of Weights and Measures Act, 1976 and Rules made thereof, and MRP was also required to be affixed on the products supplied, which were not exempted under Rule 34 of the Rules thereof. Thus, the provision of Section 4A of the Excise Act shall stand attracted. Accordingly, the Respondent has correctly discharged Excise duty liability as per Section 4A of Excise Act.

- [Revenue neutrality allowed when bought out items cleared without payment of duty as the assessee did not avail corresponding Cenvat credit on its purchase](#)

CCE, Delhi –III Vs. Alcatel India Ltd. [2015 (12) TMI 1151 - CESTAT NEW DELHI]

Facts:

Alcatel India Ltd. (“the Respondent”) was engaged in the manufacture of Digital Switching Systems and parts thereof. The Respondent cleared certain bought out items such as Printer, PC Workstations, Modem, Cable Lines, Power Plant, Battery etc. (“the bought out item”) to their customers, as accessories to main equipment, without payment of Excise duty under the cover of non-excisable invoices, and accordingly, the Respondent was not availing corresponding Cenvat credit on the bought out items. The Department alleged that Excise duty is payable on the bought out items as the bought out items, which were received by the Respondent are essential parts of the finished goods.

Period involved: April 1, 1998 to May 31, 2000

Held:

The Hon’ble CESTAT, New Delhi relying upon the judgment of Hon’ble Gujarat High Court in the case of ***CCE, Vadodara-II Vs. Indeos ABS Ltd. [2010 (254) ELT 628 (Guj.)]***, which was further upheld by Hon’ble Supreme Court in ***[2011 (3) TMI 1575 - SUPREME COURT]***, decided the matter on the ground of revenue neutrality by observing that the Respondent had not availed Cenvat credit on the bought out items and thus the value of bought out items were not to be included in the assessable value. Hence, the demand of duty by the Revenue would not be sustainable as the entire exercise is revenue neutral.

- [Duty paid on manufacturing activity in earlier settled proceedings cannot be claimed as refund merely on the ground of the SC taking different stand in another assessee’s case](#)

Union of India & Ors. Vs. Saraswati Marble & Gran. Indus. P. Ltd. [2015 (12) TMI 1156 - SUPREME COURT]

Facts:

Saraswati Marble & Granite Industries P. Ltd. (“the Respondent”) received a SCN on the ground that the cutting of marble blocks into marble slabs and tiles amounted to

manufacturing activity, and thus, liable to Excise duty. The matter travelled till Tribunal wherein the demand was confirmed and accordingly, the amount of duty along with interest and penalty was recovered from the Respondent. However, the matter was not taken further by the Respondent and the proceedings were over sometime in February, 2001.

Later on, such identical issue was taken up to Supreme Court in the case of ***Rajasthan State Electricity Board Vs. Associated Stone Industries & Anr. [JT 2000 (6) SC 522]***, where it was held that such activity does not amount to manufacture. After this judgment was delivered, though in another assessee's case, the Respondent filed writ petitions seeking refund of the amount, which they had paid and the Hon'ble High Court allowed those writ petitions directing the Union of India to refund the amount of duty, interest and penalty.

Held:

The Hon'ble Supreme Court held that no such writ petition to claim refund of duty, interest and penalty was maintainable when the proceedings in respect of the Respondent had attained finality and the amount was recovered. Therefore, Order of refund of earlier recovered amount merely on the ground that this Court took different view thereafter in some other case would not be permissible.

The Hon'ble Supreme Court further held that once this Court has settled the position of law holding that the aforesaid process would not amount to manufacture, from the date of the judgment of this Court, the Excise Department is not entitled to recover any such Excise duty from the Respondent.

CUSTOMS

NOTIFICATIONS/CIRCULARS

➤ **[Revision in Rate of Exchange for valuation of exported and imported goods](#)**

In exercise of the powers conferred under Section 14 of the Customs Act, the CBEC vide the **Notification No. 2/2016-Customs (N.T.) dated January 7, 2016** has revised Rate of Exchange ("ROE") applicable with effect from January 8, 2016 to determine the Assessable Value in respect of imported and exported goods.



➤ [24x7 Customs clearance for specified imports](#)

The Board vide **Circular No. 01/2016-Customs dated January 6, 2016** has clarified that 24x7 Customs clearance facility in respect of specified imports viz. goods covered by 'facilitated' Bills of Entry and specified exports viz. factory stuffed containers and goods exported under free Shipping Bills would be available at Krishnapatnam Sea port in Nellore, Andhra Pradesh.

➤ [Customs Exemption for specified petroleum operations - Amendment in the Notification No 12/2012-Cus Tariff dated March 17, 2012](#)

The Central Government vide **Notification No. 2/2016-Customs(Tariff)dated January 6, 2016** has further amended Notification No 12/2012-Cus Tariff dated March 17, 2012 by inserting Entry 359A after Serial Number 359. Now the goods specified in the List 13 required in connection with petroleum operations undertaken under specified contracts under the Marginal Field Policy can be imported at nil rate of duty subject to the condition no. 44 of the Notification.

➤ [Expansion of list of Individuals who may undertake the Customs work](#)

The Central Government vide **Notification No. 01/2016-Customs (N.T.) dated January 5, 2016** has expended the list of the individuals who may undertake Customs work, by making an amendment, ACMA and FCMA has been inserted in the Customs Brokers Licensing Regulations, 2013.

➤ [No Export duty on Iron ore pellets](#)

The Central Government vide **Notification No. 1/2016-Customs(Tariff)dated January 4, 2016** has amended Notification No 27/2011-Cus Tariff dated March 1, 2011, to reduce the effective rate of Export duty on Iron ore pellets to Nil from earlier rate of 5%.

➤ [Revision in Tariff value of Edible oil, Brass, Poppy seed, Areca nut, gold and Silver](#)

In the exercise of the power conferred under Section 14(2) of the Customs Act 1962, the Central Government vide **Notification No. 150/2015-Customs (N.T.) dated December 31, 2015** has revised the Tariff value of Edible oil, Brass, Poppy seed, Areca nut, Gold and Silver w.e.f. December 31, 2015.

➤ [Concessional rate of duty provided in respect of specified goods imported from Korea RP](#)

The Central Government vide **Notification No. 60/2015-Customs(Tariff) dated December 30, 2015** has amended Notification No. 152/2009-Cus-Tariff dated December 31, 2009, to provide concessional rate of duty in respect of specified goods covered under the Preferential Trade Agreement between India and Korea. The revised rate of Basic Customs Duty will be effective from January 1, 2016.

➤ [Concessional rate of duty provided in respect of specified goods imported from Malaysia](#)

The Central Government vide **Notification No. 59/2015-Customs(Tariff) dated December 30, 2015** has amended Notification No. 53/2011-Cus-Tariff dated December 31, 2011, to provide concessional rate duty in respect of specified goods covered under the Preferential Trade Agreement between India and Malaysia. The revised rate of Basic Customs Duty will be effective from January 1, 2016.

➤ [Concessional rate of duty provided in respect of specified goods imported from ASEAN countries](#)

The Central Government vide **Notification No. 58/2015-Customs(Tariff) dated December 30, 2015** has amended Notification No. 46/2011-Cus-Tariff dated June 1, 2011, to provide concessional rate duty in respect of specified goods covered under the Preferential Trade Agreement between India and Member States of the Association of South East Asian Nations (ASEAN). The revised rate of Basic Customs Duty will be effective from January 1, 2016.

RECENT CASELAWS

➤ [Transaction value of identical goods can be taken as assessable value of imported goods in terms of Rule 4 of the Customs Valuation Rules only after making an adjustment of commercial and comparable effects](#)

Richemont India Pvt. Ltd. Vs. CC, New Delhi [2015 (12) TMI 1043 (NEW DELHI – CESTAT)]

Facts:

Richemont India Pvt. Ltd. (“**the Appellant**”) imported certain watches from Richemont Dubai (FZE) (“**the Supplier**”) under a Distribution Agreement. The Department rejected the transaction value and alleged that the transaction value declared by the Appellant was not correct since the Supplier was providing the same watches to independent parties at 12.5% higher price than the price charged from the Appellant. The Appellant contended that the expenses incurred on advertisement and sales promotion are post importation expenses and therefore are not includible in the assessable value. Further, the level of import made by the retailer and the Appellant wasn’t comparable as the retailer imported 29 watches to 48 watches per year and imports made by the Appellant amounted to 1859 watches during 2012-13 and 2398 watches in 2013-14.

Held:

The Hon’ble CESTAT, New Delhi relying upon the judgments in the case of *Komet Precision Tolls India Pvt. Limited Vs. CC [2009 (245) ELT 737 (Tri. Bang.)]* and *CC Vs. Hewlett Packard Limited [1999 (108) ELT 221 (Tri. Mad.)]*, held as under:

- It is evident that the transaction value has been loaded by 12.5% only in terms of Rule 4 of the Customs Valuation Rules. Therefore, it is not relevant to dwell on the aspect whether the expenses on advertisement and sales promotion etc., incurred by the Appellant are includible in the assessable value in terms of Rule 10 of the Customs Valuation Rules;
- Rule 4 of the Customs Valuation Rules requires that in applying this Rule, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine value of imported goods and where no sale referred to in clause (b) of sub-rule (1) is found, the transaction value of identical goods sold at a different commercial level or in different quantities or both is required to be adjusted to take account of the difference attributable to the commercial level or to the quantity or both.

Thus, the Hon’ble CESTAT, New Delhi held that the loading of 12.5% is not sustainable in terms of Rule 4 of the Customs Valuation Rules.

➤ **[Charges for technical knowhow wouldn’t be includable in the value of the imported goods if it isn’t condition to import of goods](#)**

Continental Coffee Ltd. Vs. Commissioner of Customs, Chennai [2015 (12) TMI 1201 – (CHENNAI – CESTAT)]

Facts:

Continental Coffee Ltd. (“**the Appellant**”) imported capital goods under EPCG license from Brazilian Food Projects (“**the Supplier**”), a related party to the Appellant. The Appellant also entered into an agreement with the Supplier to supply technical knowhow, design and drawings. The Department alleged that the consideration paid for technical knowhow, design and drawings are addable to the value of imported goods in term of Rule 9 of the Customs Valuation Rules. The Appellant advocated that the payment of technical knowhow is not towards imported goods and it is not a condition of sale of imported goods. It was also contended that the technical knowhow fees relates to post importation activity.

Held:

The Hon’ble CESTAT, Chennai relied upon the following judgments:

- ***Saint Gobain Glass India Ltd. Vs. CC Chennai - 2014 (310) ELT 757 (Tri.-Chennai)***
- ***Godrej Agrovet Ltd. Vs. CC Chennai vide Final Order No.41538-41539/2015 dated July 17, 2015 [2015 (11) TMI 1025-CESTAT Chennai] and***
- ***Commissioner Vs. Toyota Kirloskar Motor Pvt. Ltd. – [2007 (213) ELT 4 (SC)]***
- ***CC Mumbai Vs.Hindalco Industries Ltd. [2015 (320) ELT 42 (SC)]***

Andheld that the charges of technical knowhow cannot be included in the value of imported goods in terms of Rule 9 of the Customs Valuation Rules where these expenses aren’t condition to sale of the imported goods. Thus, technical knowhow fee is for design, drawing and technical information provided to Appellant by overseas supplier is purely a post importation activity not related to the imported goods, hence it wouldn’t be includable to the value of imported goods.

- **[The Orders after a Personal Hearing should be passed expeditiously and within a reasonable time, enormous delay should be avoided](#)**

Excel Production Audio Visuals Pvt. Ltd and Another Vs. The Union of India and others [2015-TIOL-2926-HC-MUM-CUS]

Facts:

Excel Production Audio Visuals Pvt. Ltd and Another (“**the Petitioners**”) in terms of Article 226 of the Constitution of India challenged the Order of the Commissioner of Customs (Airport-II) Airport Special Cargo, Chhatrapati Shivaji Maharaj International Airport, Mumbai.

The Petitioners submitted that the Personal Hearing before the Adjudicating Authority was conducted on November 5, 2013, however the Order-in-Original is passed on March 30, 2015, which was substantially delayed.



transactions, falls below 45% for particular specified tax period. However, such restriction shall be removed when the ratio of sale to purchase of two cumulative tax periods moves upto or beyond 45%. Further purchase of capital goods shall be kept out of the proposed mechanism, which shall be available only to eligible dealers.

➤ **VAT registration for the person engaged in providing e-portals or websites to other dealers**

The Delhi Government vide Notification No. 3(515)/Policy/VAT/2015/330-341 dated June 26, 2015 prescribed the return to be filed by the person engaged in providing facility of electronic shopping (commonly known as e-commerce) through their web portals.

Now the Delhi Vat Department vide **Circular No. 33 of 2015-16 dated December 29, 2015** clarified that those persons who are engaged in providing e-portals/websites to other dealers for passing on the orders from customers to the dealers /other vendors are required to register and file the VAT Returns.

RECENT CASE LAWS

➤ **Assessee is eligible to claim concession rate of taxes in respect of plant, machinery and other items used in execution of Works contract by including the same in CST registration certificate**

Nagarjuna Construction Co. Ltd. Vs. Assistant Commissioner of Commercial Taxes [2015 (64) taxmann.com 323 (Calcutta)]

Facts:

Nagarjuna Construction Co. Ltd. (“**the Petitioner**”) was engaged in the business of Works contracts such as construction of bridges, flyovers, roads and multi-storied buildings across the India. Being a Works contractor, the Petitioner applied for registration under the CST Act and also claimed CST registration in respect of machinery, tools and equipment such as hydraulic mobile cranes, concrete mixers, welding machines, pumps, computers, vehicles, etc., (“**the goods**”) used for execution of Works contracts, so that it can be purchased at concessional rate of taxes in terms of Section 8(3)(b) read with Rule 13 of CST Rules.

Since these items were merely used in the execution of Works contract and were not transferred to the contractee, the Department denied inclusion of the goods in CST registration certificate.

Held:

The Hon’ble High Court of Kolkata relied upon the following case laws:

- *Indian Copper Corpn. Ltd. v. CCT [(1965) 16 STC 259 (SC)];*
- *J.K. Cotton Spg. &Wvg. Mills Co. Ltd. v. STO [(1965) 16 STC 563 (SC)];*
- *Chowgule& Co. Pvt. Ltd. v. Union of India [(1981) 47 STC 124 (SC)] and*
- *Member, Board of Revenue, West Bengal v. Phelps and Co. (P.) Ltd. [(1972) 29 STC 101 (SC)]*

Andheld that there is plethora of legal pronouncements wherein the Hon’ble Supreme Court has held that the goods were eligible for inclusion in the CST registration certificate as much as the same were used in the manufacturing goods for sale. Hence, it was held that the goods were integral to the process of the manufacture, thus eligible for concessional tax even though such goods may not actually be incorporated in execution of the Works contract. Hence, in regard to scope of the provisions of Section 8(3)(b) of the CST Act and Rule 13 of the CST Rules, the goods which was used for the execution of Works contracts were eligible for inclusion in CST registration certificate.

- [Sales tax liability of the assessee could not be recovered from spouse’s property unless the assessee had any right/interest in that property](#)

Geetaben J. Patel Vs. The Assistant Sales Tax Commissioner and 1 [2015 (12) TMI 1137 (GUJARAT - HIGH COURT)]

Facts:

Geetaben J. Patel (“**the Petitioner**”) purchased a property by way of leasehold rights granted by Kandla Port Trust for a period of 99 years under registered deed. Such property was purchased by the Petitioner from own earning and from StriDhan. The Petitioner claimed that she was the sole and exclusive owner of the said property. The Petitioner’s husband started timber business in which he was the sole proprietor. Since there were some Sales tax dues from husband of the Petitioner, the Sales tax Department attached the property of the Petitioner without the formal intimation to the Petitioner. The Petitioner contented that the Revenue can’t attach her property for such dues. As per the fact of the case, property was purchased on December 31, 1994 and business was started in 1998 and Sales tax dues were in respect of Financial Year 1999-00 i.e. after purchase of the property.

Held:

The Hon’ble High Court of Gujarat relying upon following judgment:

- ***JayeshVadilal Parekh Vs. Commercial Tax Officer-TWO &Ors. in SCA No. 2320 of 2014 dated September 11, 2014 and***

- ***JashibenVishnubhai Patel Vs. Assistant of Sales Tax in SCA No.1144 of 2015 dated April 30, 2015***

held that mere reference to the power under Section 48A of the Gujarat Sales Tax Act doesn't empower the Department to attach the property of the Petitioner unless it is proved that husband had any right or interest in the property of the Petitioner.

FOREIGN TRADE POLICY

NOTIFICATIONS/CIRCULARS

- **[Enlistment under Appendix 2E – Agencies Authorized to issue Certificate of Origin \(Non – Prudential\)](#)**

The DGFT vide **Public Notice No. 54/2015-2020 dated January 5, 2016**, has authorized the branch office of M/s Indian Industries Association at New Delhi under Appendix 2E of FTP, 2015-2020, for issuing Certificate of Origin (Non-Preferential).

- **[Procedure for modification/change in Branch Office/Head Office/Registered Office Address in IEC involving change in jurisdictional RA](#)**

The DGFT vide **Public Notice No. 53/2015-2020 dated January 5, 2016** has introduced Para 2.14(A) in the Handbook of Procedure (2015-20) which states the procedure for modification/change in Branch Office/Head Office/Registered Office Address in IEC involving a change in jurisdictional RA. The said procedure is as under:

A request shall be made to the new RA (new jurisdiction) and a copy of such a request shall be sent to the old/ original RA. On the basis of which, the old RA (the custodian of the IEC file till now) will transfer the IEC file to the new RA (the new custodian), who in turn shall make appropriate amendment based on the transferred file and fresh documents submitted to it by the applicant and further allow the person in its new address to carry out necessary functions and also apply for eligible benefits as per FTP.

- **[Implementation of the Track and Trace system for export of Pharmaceuticals and drug consignments](#)**

The DGFT vide **Public Notice No. 52/2015-2020 dated January 5, 2016** has amended Para 2.89A of Handbook of Procedure, 2015-20 so as to lay down the procedure for implementation of the Track and Trace system for export consignments of drug formulations.

Further, the dates for implementation of Track and Trace system for export of drug formulations along with maintaining the Parent-Child relationship in packaging have been

extended to April 1, 2016 for non-SSI manufactured drugs and to April 1, 2017 for SSI manufactured drugs.

➤ [Permission for export of Finished Leather, Wet Blue and EI Tanned Leather through ICDs](#)

The DGFT vide **Public Notice No. 55/2015-2020 dated January 6, 2016**, has permitted that in addition to ports/ICDs notified by DGFT from time to time, export of finished leather, Wet Blue and EI Tanned leather would also be permitted through ICD at Khedaby utilising the facilities regarding drawl of samples and its testing and certification available at the Regional Centre of CLRI at Ahmedabad on call basis.

GST CORNER

➤ [Non-passage of GST a blow to Indian economy, democracy: Sinha](#)

The non-passage of GST bill will be a blow to the Indian democracy, economy and the overall development process, Union Minister of State for Finance Jayant Sinha has said.

"We are very desirous to get the GST bill and we are doing everything and making all efforts for this," Sinha told reporters here, a day after Parliamentary Affairs Minister M Venkaiah Naidu called on Congress chief Sonia Gandhi seeking her support for its passage.

Referring to Naidu's meeting with Sonia Gandhi, Sinha said the BJP-led NDA government has been making all efforts to ensure passage of the GST bill.

Sinha said passage of the GST bill was crucial, especially after the NDA government successfully put the economy back on track through deft fiscal management, which has been acknowledged by international agencies too.

While the economy was growing at around 7.5 per cent, inflation has been contained effectively and deficit was also brought down substantially, he said, claiming that Congress has stalled development by not allowing Parliament to run.

"We can say Achhe Din promised by us have really arrived," Sinha said.

To a query, the minister said it would not be proper to compare Parliament disruptions caused by NDA during UPA-2 to what Congress is doing now.

When Parliament was stalled by NDA, there were serious allegations pertaining to telecom scam, coal and other issues, while the Congress is now disrupting Parliament on trivial issues, he claimed.

Moreover, no legislative business was blocked by BJP during UPA-2, he said.

GST

Goods &
Services
Tax



“Modi and the BJP government are now camouflaging paralysis of governance and failure of leadership over the last 19 months to misguide people by stating that current day grave economic crisis as also deflation of economy is happening because of non-passage of the GST,” Gohil said. “The government has no interest in passing the GST Bill. It is interested only in doing politics on GST,” he said.

➤ **Health care service providers want tax sops in Budget**

Healthcare Federation of India (Nathealth), which represents hospitals, medical equipment manufacturers, and insurance companies, has sought tax sops and creation of funds to boost medical innovation and healthcare infrastructure in India.

Anjan Bose, secretary-general of Nathealth, said, “Goods and services tax (GST), once implemented, would put various sectors under the purview of service tax. Patient treatment service is currently exempted from service tax and this should continue under the GST regime for at least 10 years.

➤ **Failure to pass GST may affect Indian govt's ability to ramp up: World Bank**

The World Bank warned that failure to pass the GST bill by the Indian Parliament could hamper the government's ability to ramp up spending on infrastructure.

"A failure to pass the Goods and Services Tax could hamper the Indian government's ability to ramp up spending on infrastructure needs and preserve the status quo of fragmented domestic markets," it said in its latest report Global Economic Outlook.

In its report, the World Bank said that risks are mostly of domestic origin and mainly on the downside.

"Slow progress on land reforms could add to investment delays, and private investment growth may be unable to build further momentum," the report said, adding that the financing of public-private partnerships also remains a challenge.

➤ **Traders came openly in support of GST demand single tax single authority GST regime in India**

Nagpur: At a national conference of trade leaders of Country, more than 200 leading trade leaders of prominent trade bodies from all over the Country unanimously resolved to support the Union Government for early implementation of GST in India though traders have many concerns related to procedures of GST for which the Conference made an appeal to Union Finance Minister Arun Jaitley to began dialogue with trade and industry on future roadmap of GST.

The Conference demanded the Government to draw GST in a manner which simplify and rationalise the taxation system in the Country and get rid the trading community from multiple taxes and multiple Authorities. The Conference demanded GST as a Single Tax regime to be governed by single Authority having uniform GST law and uniform tax rate across the Country in all States and no State should be allowed to deviate under any circumstances without the approval of proposed GST Council.

Taking cognizance of the media reports that under GST about eight types of return forms need to be comply by the traders, the Conference observed that if such a procedure is adopted it will complicate the taxation structure and will demoralize the traders to opt for self-compliance and will certainly affect adversely the concept of widening the tax base through GST.

The Conference has also decided to launch a nationwide campaign about GST in India from 10th January to next budget session of the Parliament. During this campaign, the CAIT delegations will meet Chief Ministers and Finance Ministers of all States and by submitting a memorandum will urge upon them to support GST and also initiate talks with Trade Federations and Associations of their respective States for obtaining their concerns and views. The CAIT is also planning to hold 100 GST Conferences all over the Country for making public opinion. Trade Federations and Associations across the Country will be asked to send letters to Prime Minister urging for early implementation of GST in India and a copy of the same will be sent to Leader of Opposition in both houses. A big rally in support of GST at New Delhi is also be planned during budget session. An online petition in support of GST will also be launched.

➤ **Govt considering hike in Excise duty rate to 14%**

The Government is considering a proposal to increase the average rate of Central Excise duty from the current level of 12.5 per cent to 14 per cent, in line with the prevailing service tax rates, reports a business daily.

The proposal is still at a nascent stage, according to the paper.

“It is being looked into as the rates of central excise and service tax are different and should ideally be aligned before the start of GST,” an official has been quoted as saying.

The move, if it goes through, would be announced in the Union Budget for FY 2016-17.

This could also act as an interim measure to increase revenue collections for the Centre to meet its expenditure obligations in FY 2016-17, the official adds.

The Finance Ministry is also planning to harmonize some of differing rates for central excise closer to the average rate, besides reviewing exemptions for the GST regime, reports the daily.

➤ **GST roll-out deadline likely to be pushed back to April 1, 2017**

The Central government has set a new deadline for GST as April 1, 2017, a good one year after the current one of April 1, 2016.

Top finance ministry sources said the announcement may be made in the upcoming Budget session. The official said major progress would be made in budget session on GST, which would subsume all indirect taxes into one uniform levy across the country.

The official said initially the finance ministry considered October 1, 2016, deadline, but after getting inputs from various sources including field formation on GST infra preparation, it is now considering to extend the implementation of deadline for a year.

Bimal Jain, head of indirect tax committee at PHD Chambers of Commerce and Industry, said, "Delay of GST is detrimental to the growth and ease of doing business in India. All political parties should support the early passage and implementation of GST in India at an early date so as we can get fruits of the new tax."

➤ **Relief for retailers: GST may consider discounts**

The draft Model GST Act, which is being given the final touches by the government, is likely to alleviate a major concern of retailers as the proposed GST will be paid on the actual supply price and will factor in discounts given to customers.

The main challenge with the proposal to levy GST on MRP in the earlier draft of the Model GST Act was that the discounted prices during sales (which retail chains typically engage in, especially during the festive season) would not have been considered. Irrespective of the discounted price paid by the customer, the GST would have been levied on the MRP itself, resulting in a higher tax outgo. Consequently, sales would have become less attractive.

Currently, an importer pays a basic custom duty rate of 10%, a countervailing duty (CVD) of 12.5%, and a special additional duty (SAD) of 4%. He gets a tax credit only for the SAD.

Under the proposed GST regime, while the custom duty will remain, both CVD and SAD will be replaced by Integrated GST (IGST) for which the importer will get full credit, resulting in a lower tax outflow. TOI had pointed out both these issues in its series of articles on GST last month. Government officials say that the final draft of the model GST Act will be released this month for public comments. Stakeholders will be given time to give their feedback.

➤ [Safety match producers expect introduction of GST](#)

Safety match manufacturers are looking forward to the introduction of GST Bill, which will bring them the much-awaited relief.

Once the bill was introduced, the match producers, who had been facing a downtrend in the market, would have a big sigh of relief. The introduction of GST would certainly minimise the expenditure burden and more importantly evasion of duty and tax would also come down significantly. Currently, the manufacturers were liable for Excise duty, Sales tax, Service tax and also tax deduction at source. If the GST is implemented, the manufacturers need not have to pay such duty and taxes to market matches.

In the present scenario, the manufacturers had to pay six per cent Excise duty on total goods manufactured through semi mechanised units, 12 per cent duty for matches manufactured by fully mechanised units and incur a five percent Sales tax. Besides, service tax was also levied based on utility of logistics. Not only was the domestic market, the export trend also not enterprising as stakeholders could hardly compete in the international market. Moreover, Mr. Devadoss, Secretary, South India Match Manufacturers Association, Kovilpatti, said the match manufacturing industry was at its peak during 1996.

But with the advent of lighters and automatic strikers in gas stoves, its consumption reduced considerably after 1996. Much to the dislike of manufacturers, this industry was removed from the small scale sector and included in the large scale sector this year, he said.

➤ [Jaitley hopeful of GST Bill in ensuing Budget session](#)

After hitting the Congress wall in two successive Parliament sessions, Finance Minister Arun Jaitley exuded confidence that landmark GST Bill will be passed in the next session as numbers in the Rajya Sabha will tilt in favour of the new indirect tax regime. "The next session is going to be extremely important. And half way through the next session, the numbers of the Upper House are also going to change. So I am reasonably optimistic, as far as the next session is concerned, that we may be able to push it through," Jaitley said. Parliament's Budget session will start in last week of February. Addressing the officer trainees of the Indian Revenue Service, he said there is virtually a consensus for GST among political parties and "everybody supports it". "...Parliamentary obstructionism has prevented it from happening in the last two sessions".

"I continue to discuss with the states and with all political groups, so that we can ensure its safe passage in the Upper House," he said. The idea of GST was born in the earlier part of the last decade, he said. "Though people have been discussing this since the 1990s, radical idea of this kind takes time before a consensus can develop". He said after the Constitution Amendment Bill is passed in Parliament, there are three more legislations - Central GST



GST

GOODS AND SERVICES TAX

Glossary

Finance Act, 1994	Finance Act
Service Tax (Determination of Value) Rules, 2006	Service Tax Valuation Rules
Service Tax Rules, 1994	Service Tax Rules
Place of Provision of Service Rules, 2012	POP Rules
Point of Taxation Rules, 2011	POT Rules
Show Cause Notice	SCN
Central Excise Act, 1944	Excise Act
Central Excise Tariff Act, 1985	Excise Tariff Act
Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000	Excise Valuation Rules
Customs Act, 1962	Customs Act
Customs Tariff Act, 1975	Customs Tariff Act
Customs Valuation (Determination of Price of imported Goods) Rules, 2007	Customs Valuation Rules
Delhi Value Added Tax Act, 2004	DVAT Act
Central Sales Tax Act, 1956	CST Act
Central Sales Tax (Registration and Turnover) Rules, 1957	CST Rules
Central Board of Excise and Customs	CBEC
Goods and Services Tax	GST

ABOUT US

A2Z TAXCORP LLP is a boutique Indirect Tax firm having professionals from Multi disciplines which includes Central Excise, Custom, Service Tax, VAT, DGFT, Foreign Trade Policy, SEZ, EOU, Export – Import Laws, Free Trade Policy, with way forward Goods and Services Tax (GST).

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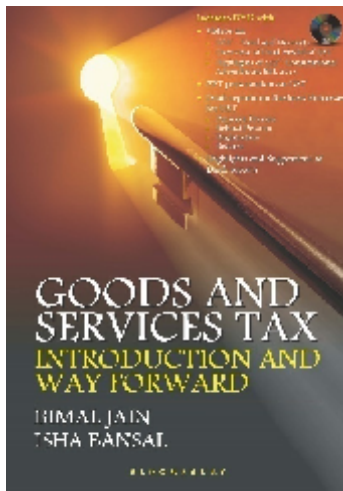
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OUR LATEST RELEASE



With the blessings of the Almighty God and your best wishes and gratitude, we would like to apprise you about our book on GST, titled, “**GST – Introduction and way forward**” (Ist Edition) going successfully and getting wide acceptance in the market, hence, reprinted edition is now available in the market. This book has been published by Bloomsbury India and it can be ordered online on <http://bit.ly/1LLjBi2> or order it from your local supplier.

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