

## INDIRECT TAX LAW REPORT

### PATRON

**SH.V.K.AGARWAL**  
Formerly  
Member-Customs, Excise & Service Tax  
Appellate Tribunal, New Delhi  
Mobile No. 9818903406  
E-mail: agrawalnagrawal@yahoo.co.in

**SH. L.P.ASTHANA**  
Formerly  
Jt. Chief Departmental Representative,  
Commissioner of Customs & Excise  
Dy. Director, World Customs  
Organisation, Brussels.  
E-mail: lpasthana@gmail.com  
asthanakhair@gmail.com

### ADVISER

**Mr. PRADEEP K. MITTAL**  
B.Com., LL.B., FCS, Advocate  
PKMG Law Chambers  
Past Central Council Member,  
The Institute of Company Secretaries of India  
E-mail: pkmittal171@gmail.com  
www.pkmgcorporatelaws.com 9811044365, 9911044365

### ADVISER

**Dr. SANJEEV KUMAR**  
M.Com. LL.B., Ph.D, PGDPIRL, AICWA, FCS  
Former Executive Director– Bajaj Hindusthan Limited

### ASSISTED BY

**Ms. SEHRISH NAZ**

## SERVICE TAX NOTIFICATIONS& CIRCULARS

NOTIFICATIONS		
Notification No.	Date of Issue	Subject
1. Notification No.- 37/2016-Service Tax	18-08-2016	The CBEC with this notification gives the powers of Chief Commissioner to Principal Commissioner who have been given the additional charge vide office orders No. 79/2016 dated 14.07.2016 and 86/2016 dated 26.07.2016
CIRCULARS		
Circular No.	Date of Issue	Subject
1. Circular No.- 199/09/2016- ST	22-08-2016	Exemptions are available to the services provided to the Government, a local authority or a governmental authority with regard to water supply
2. Circular No. - 198/08/2016- ST	17-08-2016	Service Tax liability in case of hiring of goods with out the transfer of the right to use goods

3. Circular No.- 197/07/2016- ST	12-08-2016	Service Tax on freight forwarders on transportation of goods from India
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## SERVICE TAX JUDGMENTS

- The petitioners are aggrieved against the action of Haryana Housing Board where according to the Board service tax to be payable in its hands and is sought to be deducted from the bills of the petitioners. The High Court held that Haryana Housing Board is a “Governmental Authority” as it is fully under the control of State Government and the kind of contract entered into between the petitioners and the Board for the construction of BPL houses, no service tax is leviable. Such services being provided by the petitioners would clearly fall in the exemption clause. **2016-TIOL-1775-HC-P&H-ST.**
- **Availment of CENVAT Credit-** Where the Management Consultancy Services are procured for infusing finance in manufacturing company, such arrangement of finance is undoubtedly said to be related to manufacturing activity. Such service having nexus with manufacture, is an input service and credit is admissible under CENVAT Credit Rules. **CCE, Bangalore v. Sanmar Speciality Chemicals Ltd., 2016 (43) S.T.R. 347 (Kar.)**

- **Service Tax Voluntary Compliance Encouragement Scheme, 2013 (VCES)**- Section 107 of Finance Act, 2013 read with Article 226 of the Constitution- Deposit of balance 50% of due tax should be made within the prescribed time limits and alteration of the terms of settlement by allowing petitioner to belatedly deposit dues, is not permitted. The benefit of scheme is not admissible if the petitioner does not even pay the dues within the extended period permitted in the said scheme. **Kasmisons Builders Pvt. Ltd. v. Assisstant Commissioner, 2016 (43) S.T.R. 348 (Ker.)**
- **Best Judgment Assessment**- A SCN was issued by the Department invoking the provisions of Section 72 of Finance Act, 1994 mentioning that any person liable to pay service tax , if fails to furnish the returns and having made a return, fails to assess the tax in accordance with the provisions of this Chapter, the Central Excise Officer may require officer him to produce the requisite documents. The High Court in the present case may observed that Section 72 could not be invoked as the returns for the relevant period has been filed by the assessee and the question of adopting best judgment assessment does not arise. Further, when the Department has failed to specify the specific information that is required, the Respondents cannot be said to have failed to provide the information. **2016-TIOL-1617-HC-DEL-ST.**
- **Stay/ Dispensation of pre-deposit**- The petitioner is engaged in the business of Goods Transport Agency Services where he has taken CENVAT Credit prior to the payment of tax under

reverse charge mechanism and the Service tax liability was subsequently discharged by the petitioner. The order of the Commissioner seeking 50% amount as pre-deposit, was set aside in the interest of justice and the entire pre deposit requirement was waived. Section 35F of Central Excise as applicable to Section 83 of Finance Act, 1994. **N. Mahalingam & Co. Additional Commissioner of Central Excise and Service Tax, Coimbatore, 2016 (43) S.T.R. 352 (Mad.)**

- The tax paid on insurance premium is eligible for availment as CENVAT Credit and the amount of premium payable under insurance cover would not alter or vary in the sense, that it does not increase merely because the family members are included in the coverage. **2016-TIOL-1851-CESTAT-MUM.**
- **CENVAT Dispute-** The appellants were engaged in “turnkey projects” on which they availed the benefit of Notification No.1/2006 as well as engaged in “projects undertaken on supervision and labour cost basis” on which they availed CENVAT. The Revenue denied the benefit of Notification on the grounds that appellants had availed CENVAT. Holding reliance in case of Bharat Heavy Electricals Ltd.-2012-TIOL-348-CESTAT-MUM, the Bench held that appellants can avail notification benefit so long as CENVAT Credit is not availed. The appellants further asserted that they availed credit in respect of those projects on which no benefit of Notification has availed-appeal allowed. **2016-TIOL-1818-CESTAT-MUM.**

## CENTRAL EXCISE NOTIFICATIONS

### TARIFF NOTIFICATIONS

Notification No.	Date of Issue	Subject
1. Notification No.- 30/2016-CE	10-08-2016	The Central Government seeks to further amend notification No.12/2012-Central Excise, dated 17.03.2012 so as to withdraw the excise duty exemption on ethanol produced from molasses generated in the sugar season 2015-16 (i.e. 1st October, 2015 to 30th September 2016), for supply to the public sector OMCs for blending with petrol.

### NON TARIFF NOTIFICATIONS

Notification No.	Date of Issue	Subject
1.Notification No.- 43/2016-CENT	18-08-2016	The Central Government with this notification gives the powers of Chief Commissioner to Principal Commissioner who have been given the additional charge vide office orders No. 79/2016 dated 14.07.2016 and 86/2016 dated 26.07.2016

2.NotificationNo.- 42/2016-CENT	11-08-2016	Specification of 17th August, 2016 as the date on which clause (v) of rule 5 and rule 6 of Central Excise (Amendment) Rules, 2016 notified by Notificaton No. 8/2016- Central Excise (NT) dated 1st March, 2016, shall come into force
3.Notification No.- 41/2016-CENT	10-08-2016	The Central Government seeks to amend CENVAT Credit Rules, 2004 so as to withdraw the facility to avail of CENVAT credit of duty paid on molasses generated in the sugar season 2015-16 (i.e. 1st October, 2015 to 30th September 2016) which is used for producing ethanol for supply to public sector OMCs for blending with petrol by omitting rule 6 (6) (ix) of the CENVAT Credit Rules, 2004.

## CENTRAL EXCISE JUDGMENTS

- **Valuation-** The issue involved in the present appeal is whether goods returned from the job workers' premises after processing subjected to further manufacturing process like cutting, stitching, folding, ironing etc. The grey fabric processed by job worker involved folding and processing of fabrics; the valuation adopted by the principal manufacturer of grey fabrics by taking cost of raw materials plus job charges is correct in terms of Rule 12B of Central Excise Rules and CBEC Circular No. 557/53/2000-CX, as activities undertaken by him did not amount to manufacture u/s 2 (f) and 4 of Central Excise Act. **CCE, Cochin v. Kitex Ltd., 2016 (338) E.L.T. 174 (S.C.)**
- **Writ petition under Article 226 of the Constitution-** The petitioner who has filed Public Interest Litigation (PIL) has been booked and detained under Conservation of Foreign Exchange and Prevention of Smuggling Activities (COFEPOSA). The nature of allegation is of unauthorized import of chemicals of raw materials used for manufacturing drugs. It was held any PIL filed by or on behalf of such person to promote his private interest, shall not be entertained. **S Jamal v. Central Government of India, 2016 (338) E.L.T. 191 (Mad.)**
- **Valuation of comparable goods in case of captive consumption-** Reading Rule 6(b)(i) of Central Excise (Valuation) Rules, 1975 in consonance with Section 4 of Central Excise Act, 1944, it was held that when there is only one



comparable price available with the Tribunal, the valuation adopted by the Tribunal cannot be faulted with. **CCE, Thane v. Essel Propack Ltd., 2016 (338) E.L.T. 162 (S.C.)**

- **Clandestine manufacture and removal-** The Tribunal after appreciating the available evidence held that no case of clandestine removal is made out because principally, the Revenue placed reliance on challans. Such challans were, however, neither original nor the Xerox copies. There was no identification of the author of these challans and neither the vehicle number nor the name of the transporter was mentioned. The said order is said to be sustainable and there is no substantive question of law is involved in the appeal. **CCE, Surat v. Jai Bhawani Metal Industries, 2016 (338) E.L.T. 203 (Guj.)**
- **Valuation under Section 4 of Central Excise-** The respondent-company is in liquidation; he has informed that the assets of the company have been disposed of by the official liquidator and only a sum of Rs. 6L is lying with the Official Liquidator. Since there is no money for payment, even if the appeal is allowed, it would not be able to recover the amount. Therefore, without going into the merits, Revenue's appeal dismissed keeping question of law open. **CCE, Nagpur v. Vidarbha Veneer Industries Ltd., 2016 (338) E.L.T. 161 (S.C.)**
- **Valuation of goods-** The question raised whether the Central Excise Duty paid on transaction value arrived at on the quantity of petroleum products at normal room temperature amounts to short payment of duty? The High Court considering Section 4(1)

of Central Excise Act opined, for the purpose of calculating excise duty and there is no justification of undervaluation of goods with a view to evade payment of duty. **2016-TIOL-1597-HC-P&H-CX.**

- **Refund of Pre-deposit-** Relying on the decision of ITC Ltd.-2004-TIOL-112-SC-CX-LB, the Bench observed that SC and HC have inherent powers to grant interest. The Tribunal being a creature of Central Excise Act cannot grant the relief not prescribed under the Act. In the instant case, the appellant claimed to allow an interest @12% to which 6% had already been granted earlier, the appeal in respect of refund of pre-deposit was dismissed. **2016-TIOL-1815-CESTAT-MUM.**

## CUSTOMS ACT NOTIFICATIONS

<b>TARIFF NOTIFICATIONS</b>		
Notification No.	Date of Issue	Subject
1. Notification No.- 45/2016-Cus,	13-08-2016	The Central Government provides for exemption for import of fabrics under Special Advance Authorization Scheme under para 4.04A of FTP 2015-20 for manufacture and export of garments.
<b>NON TARIFF NOTIFICATIONS</b>		
1. Notification No.- 113/2016-Cus (NT)	22-08-2016	The CBEC rescinds Customs (Provisional Duty Assessment) Regulations, 2011 - Notification No. 81/2011-Customs (N.T.) dated the 25th November, 2011
2. Notification No.-112/2016- Cus (NT)	18-08-2016	Rate of exchange of conversion of the foreign currency with effect from 19th Aug., 2016
3. Notification No.- 110/2016-Cus (NT)	13-08-2016	The Central Government amends notification no. 110/2015-Customs (NT) dated 16.11.2015 to specify All Industry Rates of

		drawback for export of garments under Special Advance Authorization Scheme under para 4.04A of FTP 2015-20.
4. Notification No.- 109/2016-Cus (NT)	12-08-2016	Tariff Notification in respect of Fixation of Tariff Value of Edible Oils, Brass Scrap, Poppy Seeds, Areca Nut, Gold and Sliver
5. Notification No.- 108/2016-Cus (NT)	11-08-2016	Amending Import Manifest (Aircraft )Regulations, 1976
6. Notification No.- 107/2016-Cus (NT)	11-08-2016	Amending Export Manifest (Aircraft) Regulations, 1976
7. Notification No.- 106/2016-Cus (NT)	04-08-2016	Rate of exchange of conversion of the foreign currency with effect from 5th Aug., 2016
8. Notification No.- 105/2016-Cus (NT)	03-08-2016	Exchange Rate notfn. with effect from 04th Aug., 2016 thereby amending Notfn. 102/2016-Cus (NT)

## CUSTOMS ACT JUDGMENTS

- **Import of prohibited drug** - goods should have been absolutely confiscated instead of allowing re-export by paying redemption fine and penalty -In such case, it is not necessary for the Customs authorities to prove that any particular person is concerned with their illicit importation or exportation. It is enough, if the Department furnishes prima facie proof of the offending goods being smuggled one. Therefore, it is left to the Chairman of the CBE&C to deal with this matter and to protect interest of Revenue since the action of redemption of the goods and re-export has caused detriment to interest of justice.**2016-TIOL-2143-CESTAT-MAD.**
- The assessee imported crude palm oil for the manufacture of soap at concessional rate. The Supreme Court observed that Exemption cannot be availed because the conditions of Notification No. 21/2002 read with Notification No. 66/2004 cannot be fulfilled. In order to qualify exemption, the goods should meet the following criteria.
  - i)the goods should be non-edible goods;
  - ii)the goods should have a free fatty acid of 20%
  - iii)the goods should be used for the manufacture of soaps, industrial fatty acids and fatty alcohol and

iv)the importer follows the procedure a set out in Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996. **2016-TIOL-118-SC-CUS.**

- **Dismissal of Writ Appeal by High Court-** Gold jewellery of foreign origin seized are to be treated as prohibited goods and is not entitled for provisional release. Relying on the Supreme Court decision in case of Om Prakash Bhatia v. CC, 2016-TIOL-06-SC-CUS, the HC held that when the import is in contravention of Section 11 or 11A of Customs Act, 1962, the goods squarely fall under the definition of “illegal import” and held to be “prohibited goods” and liable for confiscation. If the importer fails to discharge the burden that the goods seized from him were not smuggled, then there is a strong reason for proper officer to seize such goods. **2016-TIOL-1664-HC-MAD-CUS.**
- **Draft and final orders-** The revision application of the petitioner was rejected on the grounds that alterations made in the draft order is not initialed. It was observed by HC that an Adjudicating Authority who make corrections to the draft order has to sign the same and then only other officer can attest it and issue it (certified copy) to the parties. **2016-TIOL-1502-HC-CUS.**
- By a Special Leave Petition (SLP), the State of Madhya Pradesh have challenged the order passed by Division Bench of Madhya Pradesh HC **imposing entry tax** on “Mediker” and “Revive”. The same products held not to be within the ambit of entry tax on

the following grounds: “Mediker” which is used for anti-lice treatment is a drug because of its medicinal affect. Once it is a drug, it is not a shampoo. On “Revive Instant Starch”, SC holding reliance in case of UOI v. Garware Nylons Ltd. held that burden of proof is on the taxing authorities to show that item in question is taxable. In common parlance, it is neither a chemical nor a bleaching powder; once it has a chemical composition then only it would make the substance a chemical. **2016-TIOL-112-SC-CT.**

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## CIRCULATION BY

THIS REPORT IS CIRCULATED  
FOR PKMG LAW CHAMBERS,  
171 CHITRA VIHAR, DELHI-110092,  
PHONES: (011) 22540549  
E-MAIL : [pkmittal171@gmail.com](mailto:pkmittal171@gmail.com)  
Web-Site: [www.pkmgcorporatelaws.com](http://www.pkmgcorporatelaws.com)