

DECEMBER'17 INDIRECT TAX LAW REPORT

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Goods & Service Tax Judgments

- 1. Construction of flats** under low cost housing scheme of Govt of UP or Welfare Scheme not liable to service tax. Activities not liable either under Works Contract or under Construction of Complex Service. **CCE v. Ganesh Yadav, 2017 (6) GSTL 428 Tri.Allahabad.**
- 2. Arrangement fees** payable to ICICI Bank Ltd. Singapore for arranging ECB. Service tax payable on the basis of Reverse Charge Mechanism by Appellant. **CCE v. JSE Steels Ltd., 2017 (6) GSTL 397 Madras High Court.**
- 3. Cheque rendering charges, minimum balance charges** quarterly average balance charges (though penal in nature) yet liable to be included in the assessable value. **Karur Vyasa Bank v. CCE, 2017(6) GSTL 436 Tri.**
- 4. Out of pocket reimbursable expenses** are not required to be included in the assessable value for calculation of service tax while rendering Business Auxiliary Service. The Tribunal relied upon Delhi High Court judgment in International Consultant and Technocrat vs. UOI. **Dream Loansz v. CCE, 2017 (6) GSTL 443 (Tri.)**
- 5. Registration-** The Allahabad High Court has directed GST Department to place on record the reasons for cancellation of order GST registration without giving person hearing and directed the reasons for communicating in writing but only keeping the same on GST website. **Annsurna International v. State of UP, 2017 (6) GSTL 233 ALL.**

6. **Advance Ruling-** The Delhi High Court held that Department must accept manually application for advance ruling under GST since web portal would not be ready to accept till January, 2018. **Sanjeev Sharma v. UOI, 2017 (6) GSTL 261 Delhi.**
7. The **Writ Petition** challenging assessment order assessing liability of 18% IGST on imported goods by assessing officer not maintainable as alternative remedy is available since reasoned order has been passed by AO after proper hearing. **Jap Auto Industries vs. A.C., 2017 (6) GST 262 Mad.**
8. The Delhi High Court dismissed the appeal of HT Media Ltd. since appellant could not take advantage of second proviso to Section 11B and also payment of service tax not made under protest. **HT Media Ltd. vs. CST, 2017 (6) GST 266 DEL.**

Service Tax Judgments

1. **Denial of CENVAT Credit** taken by the service receiver on the ground of failure to deposit tax by the service provider is neither equitable nor necessary under the law when there is not any express condition to that effect of CENVAT Credit Rules, 2004. **2017-TIOL-4371-CESTAT-MUM.**
2. **Input service-** Rule 2(I) of CENVAT Credit Rules, 2004 provides that any service used for providing output service is an input service. Any service of taking repossession of the vehicle from the borrower by recovery agent is a part of 'security' service

which is specifically included in the definition of input service.
2017-TIOL-4355-CESTAT-MUM.

3. **Wrong recovery of service tax-** once the demand of wrongly availed CENVAT Credit is proposed, there cannot be another demand for recovery of service tax which was discharged by utilizing so-called wrongly availed credit. **2017-TIOL-4322-CESTAT-MUM.**
4. **Works contract-** Installation of street lights is an independent service which has nothing to do with road construction- clearly falls under Works Contract service. **2017-TIOL-4248-CESTAT-MUM.**
5. **Goods and Transport Agency Service-** Where the consignment note had not been issued by the service provider in relation to the transport of goods, the appellant will not be covered under scope of GTA on reverse charge basis. **2017-TIOL-4224-CESTAT-MUM.**
6. **Valuation Rules, 2006** were not for exempting any portion of value, which is otherwise taxable u/s 67 of Finance Act, 1994. The main provision of valuation stated that “the value of any taxable service shall be the gross amount charged by the service provider for the service rendered by him. **2017-TIOL-4115-CESTAT-DEL.**

7. **Construction of residential units for army personnel-** no tax liability arises if their layout does not require approval by an authority under any law for the time being in force. **2017-TIOL-4082-CESTAT-DEL.**
8. **CENVAT Credit-** It is settled position that once duty has been paid it is to be considered as reversal of CENVAT Credit availed. **2017-TIOL-4095-CESTAT-MUM.**
9. **Management education-** When a person takes part in conferences, seminars, workshops with reference to his expertise, skill etc. he is no more a part of general public and becomes a part of a select group or recognized group of public with certain common basis. These activities organized by appellant are taxable under Convention service. **2017-TIOL-4065-CESTAT-DEL.**

Central Excise Judgments

1. **Job work-** When the principal manufacturer is not discharging excise duty on the boiler and did not follow conditions of Notif 2014/86, the job worker is liable to pay duty on the parts manufactured by them. **2017-TIOL-4390-CESTAT-MUM-LB.**
2. **CENVAT Credit-** The appellant taking credit on Readymade Garments and after making changes in MRP and putting labels, clearing same on payment of duty- credit cannot be denied. Rule 16 of Central Excise Rules, 2002 suggests credit can be availed when the goods are bought in factory for certain processes. It is

not necessary, the said process should amount to manufacture.
2017-TIOL-4319-CESTAT-MUM.

3. Classification of medicament- The name of the medicament, i.e. “Acetyl Salicylic Acid Tablets IP 50 MG (ASA)” (Aspirin tablets) is not a brand name but a generic name, therefore, it does not fall under the definition of Patent & Proprietary medicament. **2017-TIOL-4336-CESTAT-MUM.**

4. CESTAT- The appellants have claimed that they have paid the duty along with interest and 25% of penalty within one month of receipt of show-cause notice. Thus, if the law as it existed prior to 08/04/2011 is applied, this proceedings against the appellant would stand concluded. **2017-TIOL-4527-CESTAT-MUM.**

5. Common registration cannot be denied merely because appellant had separate electric connections for both units. Both the units are separated by a public road, raw material in both the units are common, there is a common labour work force, common administration, common sales tax registration , common Income tax assessment and common balance sheet etc. **2017-TIOL-4204-CESTAT-MUM.**

6. Admissibility of documents- Certified Photostat of triplicate copy of Bill of Entry is admissible document for taking credit as per Rule 57G(3) of Central Excise Rules, 1944 for the availment of MODVAT Credit. **2017-TIOL-2479-HC-MAD-CX.**

- 7. Job work-** Since principal manufacturer after receipt of goods from appellant did not clear his final products on payment of duty, benefit of job work Notification No. 214/86 will not be available to appellant. **2017-TIOL-4112-CESTAT-MUM.**
- 8. CESTAT-** Where the respondents are merely loan licensee they cannot be treated as a manufacturer. Since the respondents are not manufacturer they cannot be allowed to operate under the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996 as manufacturer and no registration cannot be granted to them as manufacturer. **2017-TIOL-4062-CESTAT-MUM.**
- 9. Blinds are in the nature of curtains** and cannot be said to become immovable properties when they are mounted on the wall. The roller blinds can be unbolted and removed at any time which renders these blinds to be in the nature of movable rather than immovable property. **2017-TIOL-4055-CESTAT-DEL.**

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