

INDIRECT TAX LAW REPORT

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GST HIGHLIGHTS

1. More Time Sought For GST Migration

Now that the Central government has moved the roll-out of the GST regime to July 1, the All Kerala Distributors' Association has asked the State government to postpone the deadline for traders' migration from VAT to GST to February 28. Association general secretary Babu Kunnoth pointed out that the Commercial Taxes Department had earlier asked traders to sign up for the GST online by January 24, but later postponed the date to February 5. Mr. Kunnoth told The Hindu that it would be hard for the trading community to migrate to the GST regime in the next less than two weeks. He pointed out that only less than a half of the 2.5 lakh traders paying VAT could so far migrate to the new regime. He noted that for GST enrolling, a trader needed an Aadhaar number and a TAN (tax indication number). Since there were thousands of traders without an Aadhaar card it would be really tough for them to get enrolled. They would have to get 14 documents from various government departments to get enrolled which would take a long time.

2. Textile Industry Seeks 5% Duty under GST

The textile industry wants a uniform duty of 5% under the Goods and Services Tax (GST), which is expected to be rolled out from July this year. The textile and clothing sector has sought the lowest duty slab of 5% without exemptions for any segment of the value chain, according to industry representatives. About 60% of the Indian textile industry is

cotton-based and 80% of textile and clothing exports are also cotton-based.

3. Centre Mulls Hike in Service Tax Rate if GST Rollout is delayed

“There is some thinking of an increase in the service tax rate in case the GST is not implemented from April. A higher rate will help improve revenue and also bring it closer to the proposed standard rate under GST,” said a person familiar with the development. Most services are likely to be taxed at a higher rate of 18 per cent under GST against the current rate of 15 per cent. This was part of the four-tier rate structure approved by the GST Council at its meeting on November 3. The other three rates proposed under GST are 5 per cent, 12 per cent and 28 per cent. Budget 2016-17 hiked the service tax rate to 15 per cent with the introduction of the Krishi Kalyan Cess at the rate of 0.5 per cent on all taxable services. At present, the service tax rate changes announced in the Budget come into effect from May or June, once the Finance Bill receives Presidential assent

4. GST Network Extends Taxpayer Enrolment Date to End of Month

The goods and services tax (GST) network has extended the date of enrolment for taxpayers under GST till the end of this month after a tepid response from taxpayers in many states. Taxpayers located across different states can log into the website—www.gst.gov.in—to update their information and other relevant documents as a first step towards obtaining a registration number under GST. All traders will need a GST ID

number—a 15-digit number based on their income tax permanent account number (PAN)—to operate under GST, which is expected to take effect from June or July 2017.

5. Agriculture Definition Revised: Absentee Landlords, Food Processing Firms Brought Under GST Net

As per the definition agreed at the Council's fifth meeting on December 2-3, agriculture would include floriculture, horticulture, sericulture, pisciculture, raising of crops, grass or garden produce, grazing, dairy, poultry, stock breeding, piggery, apiculture, the mere cutting of wood or grass, gathering of fruit, collection of minor food produce, raising of man-made forest or rearing of seedlings or plants.

Exemption to agriculturists would have implied tax relief to a person, while exemption to products like dairy and poultry provide tax relief to the products.

The Council retained its proposed definition of 'agriculturist' to allow a land to have been personally cultivated only if it's farmed by individuals and family members of a HUF. Similar dispensation would be given to serving member of the armed forces, widows, minors or people with physical or mental disability even when land is cultivated by servants or hired labour.

6. Migration from Value Added Tax to GST

Having started from January 1, 2017, dealers have a fortnight's time to complete the enrollment. Data available with the department reveals that there are 6.16 lakh registered dealers in Karnataka. Of these, around 3 lakh have already enrolled for migration to the GST. The provisional IDs were given to all the dealers who gave their PAN data for the process. Those who were registered under VAT, Entertainment Tax and Luxuries Tax in the state will now have to enroll for the GST also.

The department has set up help desks in several places, including divisional-level VAT offices, local VAT offices and VAT sub offices to make it easy for the dealers. An interactive interface is also available to answer frequently asked questions on www.ctax.kar.nic.in. The FKCCI has also started a help desk in co-ordination with the department of commercial taxes at the Federation House on KG Road. Department officials will be available to provide information on migration to the GST.

SERVICE TAX NOTIFICATIONS

NOTIFICATIONS		
Notification No.	Date of Issue	Subject
1. Notification No. 04/2017-Service Tax MANU/DSTX/0004/2017	12-01-2017	<p>Amendment in Notification No.26/2012- Service Tax</p> <p>The Central Government makes the following amendment in the said Notification</p> <p>In the said notification, in the first paragraph, in the TABLE, for Sl. No. 11 and the entries relating thereto, the following shall be substituted, namely:-</p> <p>Tour Operator Services</p> <p>(i) CENVAT credit on inputs and capital goods used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.</p> <p>(ii) The bill issued for this purpose indicates that it is inclusive of charges of accommodation and transportation required for such a tour and the amount charged in the bill is the gross amount charged for such a tour including the charges of accommodation and transportation required for such a tour.</p>

<p>2. Notification No. 0-3/2017-Service Tax MANU/DSTX/0002/2017</p>	<p>12-01-2017</p>	<p>Amendment in notification No. 30/2012-Service Tax. The Central Government makes the following amendments in the said Notification pursuant to sub-section (2) of Section 68 of Finance Act, 1994. The said amendment specify the person complying with the sections 29, 30 or 38 read with section 148 of the Customs Act, 1962 (52 of 1962) as the person liable for paying service tax in case of services provided or agreed to be provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India.</p>
<p>3. Notification No. 02/2017-Service Tax MANU/DSTX/0003/2017</p>	<p>12-01-2107</p>	<p>Service Tax (Amendment) Rules, 2017 The Central Government makes the following amendments in Service Tax Rules, 1994 so as to, (i) exclude such persons from the definition of aggregator who enable a potential customer to connect with persons providing services by way of renting of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes subject to fulfillment of certain conditions; (ii) Specify the person complying with</p>

		<p>the sections 29, 30 or 38 read with section 148 of the Customs Act, 1962 (52 of 1962) as the person liable for paying service tax in case of services provided or agreed to be provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India.</p>
<p>4. Notification No. 01/2017- Service Tax MANU/DSTX/0001/2017</p>	<p>12-01-2017</p>	<p>Amendment in notification No.25/2012-Service Tax</p> <p>The following amendments are carried out in Notification No. 25/2012-ST dated 20.06.2012 so as to</p> <p>(i) withdraw the exemption from service tax for services provided or agreed to be provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India;</p> <p>(ii) exempt services provided by a business facilitator or a business correspondent to a banking company with respect to accounts in its rural area branch.</p>

SERVICE TAX JUDGMENTS

- **Valuation-** The issue before the Supreme Court is that in a contract of re-treading of tyres, when service tax is said to be leviable. The Supreme Court held that service tax is payable only on the service part of retreading thereby excluding the value of materials/ goods sold in the execution of the contract.
2017-TIOL-28-SC-ST.
- **Defective Show Cause Notice (SCN) -** When the SCN does not speak clearly about allegations and break-up of demands, it is a denial of natural justice to defend and the same is ill founded and violates natural justice. Accordingly, the orders are set aside and appeals are allowed. **A.L.R.K. Interiors Pvt. Ltd. v. Commissioner of Service Tax, 2017 (47) S.T.R. 243 (Tri. - Chennai)**
- **CENVAT Credit on Input Service-** If any input service provider avails any service in the course of business of output service is entitled to input service credit. In fact, the transportation of empty containers to yards is integral to service provided by the appellant. Since the said service is availed in relation to business activity, credit is available under CENVAT Credit Rules, 2004. **Seabird Marine Services Pvt. Ltd. v. CCE, 2017 (47) S.T.R. 244 (Tri.- Mumbai)**

- **Refund Claim-** The upgradation activity undertaken by M/s. Hindustan Aeronautics Limited did not amount to providing of Maintenance and Repair Services but classified as a manufacturing activity. The appellants deposited service tax voluntarily and contract numbers mentioned in the refund claim were different from the ones mentioned in the invoices. The amount deposited as service tax is directed to be refunded which is deposited on account of Maintenance and Repair Services since tax was not due to Exchequer and the amount deposited as service tax is to be refunded. **2017-TIOL-29-CESTAT-ALL.**
- The requirement of accounting standards which mandates that financials of overseas branch are to be included in the financials of corporate entity is not sufficient to conclude that services were rendered by Foreign Service providers to Indian HQ. Hence, not liable to tax u/s 66A of Finance Act, 1994. **2016-TIOL-3340-CESTAT-MUM.**

CENTRAL EXCISE NOTIFICATIONS

TARIFF NOTIFICATIONS		
Notification No.	Date of Issue	Subject
<p>1. Notification No.- 02/2017-CE MANU/EXCT/0003/2017</p>	<p>11-01-2017</p>	<p style="text-align: center;">Amendment in notification No.12/2012-Central Excise</p> <p>The amendment carried out in Notification No. 12/2012-Central Excise dated 17.03.2012 to prescribe an effective rate of excise duty of 12.5% on Motor Vehicles falling under heading 8702 90 21, 8702 90 22, 8702 90 28 and 8702 90 29 of the First Schedule of the Central Excise Tariff Act, 1985.</p>
<p>2. Notification No.- 01/2017-CE MANU/EXCT/0002/2017</p>	<p>05-01-2017</p>	<p style="text-align: center;">Amendment in notification No. 2/2011-Central Excise</p> <p>The Central Government amends the Notification No. 02/2011-Central Excise dated 1st March, 2011. In the said notification, in the Table, serial number 49 and the entries relating thereto shall be omitted</p>

NON-TARIFF NOTIFICATIONS		
Notification No.	Date of Issue	Subject
1. Notification No.- 02/2017-CENT MANU/EXNT/0001/2017	11-01-2017	<p>Non-payment of excise duty on Plain (Un-modified) Tamarind Kernel Powder except for the practice specified</p> <p>Whereas the Central Government is satisfied that according to a practice that was generally prevalent regarding levy of duty of excise (including non-levy thereof) under section 3 of the Central Excise Act, 1944 on Plain (Un-modified) Tamarind Kernel Powder falling under heading 1302 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) was not being levied according to the said practice, during the period commencing on the 19th day of July, 2011 and ending with the 18th day of July, 2016;</p> <p>2. Now, in exercise of the powers conferred by section 11C of the said Act, the Central Government hereby directs that the whole of the duty of excise payable under section 3 of the said Act on the said goods but for the said practice, shall not be required to be paid in respect of the said goods on which the said duty of excise was not levied during the period aforesaid in accordance with the said practice.</p>

CENTRAL EXCISE JUDGMENTS

- **Electricity as consumable “goods”-** The petitioner being a company incorporated under the Companies Act claimed the benefit of deemed export on the electricity consumed by 100% EOU. The Domestic Tariff Area (DTA) unit of the petitioner is having a captive power plant which supplies electricity to 100% EOU that manufactures zinc. The electricity supplied to exporter in EOU by DTA unit is entitled to the benefit of deemed export in terms of Foreign Trade Policy. Electricity is a good, and that goods, though intangible, is consumed in obtaining the final product; having a separate identity and its production could be measured and quantified in physical units. Declared that petitioner is entitled to deemed export benefit for its DTA unit to 100% EOU. **Hindustan Zinc Ltd. v. UOI, 2017(345) E.L.T. 209 (Raj.)**
- **Recovery of rebate wrongly granted-** The petitioner being an exporter exports the final products and claimed the rebate of Excise duty paid on inputs used in the manufacturing of goods exported in terms of Rule 18 of Central Excise Rules. The issue as to whether recovery of rebate is permissible. The Gujarat High Court directed Revisional Authority to adjudicate and render its decision within a period of 3 months of the order of the Court. Further, the Court designated Revisional Authority to

be of the same rank as that of the Commissioner of Central Excise and ordered revision of rebate order to be decided by Revisional Authority (Officer on the post of joint Secretary). **Five Star Agrico Pvt. Ltd., 2017 (345) E.L.T. 203 (Guj.)**

- **Valuation of excisable goods with reference to Retail Sale Price-** “Dummy fans” cleared for display at depot is no different from normal electric fans which are sold by valuing under Section 4A of Central Excise Act, 1944. There is no exemption under the Legal Metrology Act from affixing the retail sale price on such clearance. Therefore, goods are rightly valued under Section 4A of Central Excise Act. **2017-TIOL-81-CESTAT-MUM.**
- **Excisability of Waste-** The appellant is engaged in the manufacture of various brands of cigarettes classifiable under Central Excise Tariff Heading. The issue as to whether generation of paper and aluminum foil waste during the course of manufacture is excisable. The taxable event for the purpose of Excise duty is manufacture of goods and the duty liability arises only when there is manufacture. In the instant case, since there is no manufacture, no duty can be levied. **ITC Ltd. v. CCE, Bangalore, 2016 (341) E.L.T. 417 (Tri.-Bang.)**
- **Exemption Notification-**The benefit of Exemption Notification No. 67/95-CE in respect of intermediate products can be availed if obligation under Rule 6 of CENVAT Credit Rules, 2004 is discharged. Rule 6(1) prescribes that assessee is not required to

avail CENVAT Credit in respect of inputs used in the manufacture of exempted goods. Since appellant satisfies Rule 6(1), benefit of nil duty can be availed in respect of packing boxes used captively in the manufacture for packing exempted goods. **2017-TIOL-44-CESTAT-MUM.**

- Rule 18 of Central Excise Rules, 2002 accords rebate of duties paid on goods that are exported and do not distinguish between exempted goods and dutiable goods. The failure on the part of lower authorities to perceive the intent of Rule 18 appears to be blindsided viz. burdening the export value with domestic taxes. **2017-TIOL-18-CESTAT-MUM.**
- On inputs received under Rule 4(5) (a) of CENVAT Credit Rules, 2004, job worker manufactures intermediate parts and sends them to supplier who clears under exemption. Whether job worker is liable to pay duty on parts manufactured? Rule 4(5) (a) is not the authority to grant exemption to the job worker from the payment of duty. In the present case, the principal cleared the final products without payment of duty under Exemption Notification No. 3/2001-CE. When the principal manufacturer is not discharging excise duty, the job worker is liable to pay duty on the parts manufactured by them. The payment of duty can be avoided only when there is an exemption notification. **2016-TIOL-3351-CESTAT-MUM.**

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