

# JULY INDIRECT TAX LAW REPORT

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## SERVICE TAX NOTIFICATIONS& CIRCULARS

NOTIFICATIONS		
Notification No.	Date of Issue	Subject
1. Notification No.- 36/2016-Service Tax	23-06-2016	The Central Government, if satisfied, seeks to exempt service tax on taxable services by way of transportation of goods by a vessel from outside India upto customs station in India with respect to which the invoice for the service has been issued on or before 31st May, 2016 subject to the condition of production of customs certified copy of the import manifest or import report required to be delivered under section 30 of the Customs Act, 1962.
2. Notification No.- 35/2016-Service Tax	23-06-2016	The Central Government being satisfied, seeks to exempt taxable services from the whole of Krishi Kalyan Cess leviable thereon with respect to which the invoice for the service has been issued on or before 31st May, 2016 subject to the condition that the provision of the service has been completed on or before 31st May, 2016.

3. Notification No.- 34/2016-Service Tax	06-06-2016	Seeks to amend notification No. 30/2012-Service Tax dated 20th June, 2012, so as to prescribe extent of payment of service tax by a business entity as a recipient of services provided by senior advocates.
4. Notification No.- 33/2016-Service Tax	06-06-2016	Seeks to amend Service Tax Rules, 1994 so as to specify the business entity as the person liable to service tax in respect of services provided by senior advocates.
5. Notification No.- 32/2016-Service Tax	06-06-2016	Seeks to amend notification No.25/2012 - Service Tax, dated the 20th June, 2012, so as to exempt the legal services provided by senior advocates to a business entity with a turnover up to rupees ten lakh in the preceding financial year.

### CIRCULARS

Circular No.	Date of Issue	Subject
1. Circular No.- 195/05/2016- ST	15-06-2016	Refund claims under rule 5 of the CENVAT Credit Rules, 2004 Vide this circular, it has been clarified that certain additional documents are also required to be submitted in addition to those required to be filed along with the refund claim already

		<p>filed by exporters of service under Rule 5 of the Cenvat Credit Rules, 2004 on or before 31.03.2015:-</p> <ol style="list-style-type: none"><li>1. The certificate has to be furnished by the statutory auditor in case of companies ,and from Chartered Accountant in case of assessees are not companies, in the prescribed format.</li><li>2. The Certificate has to be given in Annexure-1</li></ol> <p>While discharging the duties the auditors are bound by the provisions of the statute governing them as well as guidance notes.</p>
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## SERVICE TAX JUDGMENTS

- Voluntary Compliance Encouragement Scheme, 2013- The petitioner applied under the said scheme and deposited service tax. The Department rejected their application stating that service tax is to be calculated @12.36% and not @10.3% and the actual shortfall should not be overlooked. This case came before Delhi HC who opined, firstly, that rate of tax should not be disputed and tax to be calculated @12.36%, secondly, it is not obligatory on the part of Respondent to inform the petitioner about the rate of tax and thirdly, VCES scheme does not permit correction of errors. **2016-TIOL-1382-HC-DEL-ST.**
- Condonation of delay- The Assessee's appeal is rejected on the grounds of delay to which he filed the Writ petition- In Writ appeal, the HC observed that when the Writ Court has directed the Commissioner (Appeals) to decide the appeal, it is not open for any Appellate Authority to examine the cause for delay and reject the appeal as time-barred. **2016-TIOL-1365-HC-MAD-ST.**
- Services rendered by overseas entities to appellant who is engaged in courier agency and air travel services are destination-based, performance-based and beneficiary-based services and to become taxable, requires that at least some portion be rendered in India. The role of overseas entity commences and ends beyond border of India. **2016-TIOL-1706-CESTAT-MUM.**
- The Kolkata High Court in the present case held that writing any article or anchoring TV shows, person does not render any service with the object of enhancing any business or commercial interest. Any remuneration

received by the petitioner for anchoring TV shows does not attract service tax. Whereas in case of brand endorsement, where the petitioner is engaged in business promotion or marketing services, attracts tax because such activities like establishing goodwill would fall under the newly introduced service head of business promotion. **2016-TIOL-1283-HC-KOL-ST.**

- Services rendered in J&K are not chargeable to service tax and therefore are not taxable services. But this does not make them exempted services. A service becomes an exempted service when by notification or law, the service tax payable on such service is exempted. **2016-TIOL-1536-CESTAT-HYD.**
- Health Insurance- Availment of CENVAT Credit of service tax on insurance premium for the health insurance of factory employees is admissible even after amendment to Rule 2(I) of CENVAT Credit Rules, 2004. Now with effect from 01.04.2011, appellant cannot avail CENVAT Credit on insurance services and that is only in respect of insurance coverage giving to employees during journey availing leave travel concession. **2016-TIOL-1451-CESTAT-MAD.**
- SEZ- Section 26 of Special Economic Zones Act, 2005 grants exemption from Customs, Central Excise, Service Tax and other similar levies. Notification No. 4/2004- ST provides that a necessary condition for availing the exemption is that the services had to be consumed within the zone. There arises the contradiction between "Section 26" and "Notification No.4/2004" as to the availment of the exemption. It was held by the CESTAT that Section 26 shall govern exemption in supply of services for units or developers in SEZs for their

'authorised operations' and exemption notification is not valid since it imposes condition which is not enacted in Section 26 or Rule 31 of Special Economic Zone Rules, 2006. **2016-TIOL-1455-CESTAT-MUM.**

- For the purpose of claiming refund under Central Excise Act, Section 11B is the only provision which deals with the refund of the amount refundable to any person. The Tribunal under Central Excise Act and Customs Act cannot go beyond the statute and therefore cannot relax the time limitation provided under the statute. **2016-TIOL-1391-CESTAT-MUM.**
- Voluntary Compliance Encouragement Scheme, 2013- Small portion of 50% of amount of tax dues not paid by 31/12/2013- Time limit of this scheme cannot be extended in the absence of any provision for condoning the delay. On these grounds declaration is rightly rejected and appeal dismissed. **2016-TIOL-1344-CESTAT-MUM.**
- Ultra Vires Act- Rule 5A(2) of SERVICE tax Rules, 1994 which deals with the documents that can be asked by assessee on demand are cost audit reports, income tax audit reports etc. are ultra vires Finance Act, 1994. The Delhi High Court held that Audit is a special function which has to be carried out by duly qualified person like a Cost Accountant or Chartered Accountant and cannot be possibly be undertaken by any officer of Service Tax Department. **2016-TIOL-1061-HC-DEL-ST.**
- The assessee appealed for the waiver of 50% penalty imposed u/s 78 of Finance Act- The Bench observed that since the assessee have collected the service tax and not deposited to the Government exchequer and also did

not filed returns in respect of such transactions is a clear case of suppression of facts with intent to evade payment of tax. Held, penalty was rightly imposed by lower authority and cannot be waived. **2016-TIOL-1327-CESTAT-MUM.**



# CENTRAL EXCISE NOTIFICATIONS

## TARIFF NOTIFICATIONS

Notification No.	Date of Issue	Subject
1. Notification No.- 25/2016-CE	14-06-2016	Seeks to further amend notification No.67/95-CentralExcise dated 16.03.1995.  In the said notification, for the words “Free Trade Zone” the words “Special Economic Zone” shall be substituted.
2. Notification No.- 24/2016-CE	14-06-2016	Seeks to further amend notification No.214/86-Central Excises dated 25.03.1986  In the said notification, for the words “Free Trade Zone” the words “Special Economic Zone” shall be substituted.

## NON TARIFF NOTIFICATIONS

Notification No.	Date of Issue	Subject
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<p>1. Notification No.- 32/2016-CENT</p>	<p>11-07-2016</p>	<p>Seeks to further amend notification No. 35/2001-Central Excise (NT) dated 26.06.2001 so as to exempt mandatory physical verification of manufacturing premises in respect of manufacturers of readymade garments and made up articles of textiles bearing a brand name or sold under a brand name and having a retail sale price (RSP) of one thousand rupees and above.</p>
<p>2. NotificationNo.- 31/2016-CENT</p>	<p>04-07-2016</p>	<p>Amendment of notification no. 17/2004-CE (NT) dated 04.09.2004 for supply of exempted bunker fuel to the specified Indian Ships / Vessels from the warehouse.</p>
<p>3. Notification No.- 30/2016- CENT</p>	<p>28-06-2016</p>	<p>Pursuant to Rule 9(2) of Central Excise Rules, 2002 a person registered at a first stage dealer is not required to take registration as an importer and person registered as an importer is not required to take registration as a first stage dealer.</p>

## CIRCULARS

Circular No.	Date of Issue	Subject
1. 1036/24/2016-CX	06-07-2016	<p>Scope of word 'site' appearing in Notification No. 12/2012-Central Excise, dated 17.03.2012</p> <p>Representations have been received from the trade regarding difficulties being faced in availing of benefit of exemption applicable to goods manufactured at the site of construction for use in construction work at such site vide S. No. 186 of Notification No. 12/2012-Central Excise, dated 17.03.2012, as amended. The issue is, how should the expression "site" used and defined in the aforesaid notification be interpreted, particularly for projects which run long distances, such as construction of road, laying of pipelines or laying of railway tracks etc.</p>
2. 1035/23/2016-CX	04-07-2016	<p>Recovery of confirmed demands during the pendency of stay application</p> <p>The above notification deals with two aspects: Part I: When stay application is pending before Commissioner (Appeals) or CESTAT.</p>

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3. 1034/22/2016-CX	01-07-2016	Circular regarding clearance of bunker fuels to Indian Ship/Vessel carrying containerized cargo
4. 1033/21/2016-CX	01-07-2016	Circular regarding extension of time limit for taking Central Excise registration by a jewellery establishment and payment of central excise duty for the assessee jeweler.
5. 1032/20/2016-CX	28-06-2016	Common registration and return for First Stage Dealer and Importer

### INSTRUCTIONS

File No.	Date of Issue	Subject
F.No.276/104/2016-CX.8A	29-06-2016	Inclusion of Show Cause Notices issued in relation to sub-section (11) of Section 28 of the Customs Act, 1962 on the competency of officers of DGDRI, DGCEI and Customs (Prev.), in the "Call Book"
F.No.221/01-2016-CX.6	06-06-2016	Instructions on Information returns to be furnished under Notification No. 4/2016-ST dated 15.02.2016
F.No.1080/06/DLA/IDRS/2016	01-06-2016	Indirect Tax Dispute Resolution Scheme, 2016 has been given effect with this notification.

## CENTRAL EXCISE JUDGMENTS

- SEZ- Supplies to SEZ either prior to 2008 or thereafter has been considered as exports and consequently assessee is entitled for all benefits and incentives which is otherwise available to physical export of goods out of India including refund under Rule 5 of CCR, 2004 or Rule 18 of CER, 2002. **2016-TIOL-1743-CESTAT-MUM.**
- Bail- The petitioner arrested in-charge of evasion of customs duty is before the High Court seeking grant of bail. On the close scrutiny, only Customs duty is leviable on the goods cleared without payment of duty under Section 12 of Customs Act, 1962 and not CVD i.e. duty equal to excise. It was observed by HC that the Central Excise Officers have the power to arrest and after arrest, Department is bound to follow the procedure prescribed under the Act. Power to arrest is independent from disposal of person arrested. Where the petitioner is not presented before the Magistrate by the concerned authorized officer, a strong case of bail would be made out. Therefore, the Court finds it an appropriate case for releasing the petitioner on bail. **2016-TIOL-1357-HC-P&H-CX.**
- No Education Cess on Oil Cess- The Petitioner is engaged in extraction of crude oil on which he is required to pay Oil Cess which is collected as duty of excise. In addition to oil cess, from 2004 onwards,

the petitioner had been paying Education cess on oil cess. On 07/01/2014, CBEC clarified that Education not applicable on Sugar cess, tea cess etc. To this, the petitioner filed refund claim of Education cess paid from 2004 to 2014 and such refund is allowed. Limitation period for filing an application starts from the date when the petitioner comes to the knowledge of the mistake. Refund is admissible even when any amount has been wrongly paid and the authority concerned is bound to return it as such amount would be hit by Article 265 of the Constitution- no tax shall be levied or collected except by the authority of law. **2016-TIOL-1240-HC-AHM-CX.**

- Refund- The appellant is doing job work and getting lumpsum amount from the Principals. At the end of the month the appellant raised debit notes against the principal for the entire amount of excise duty paid. It was held by CESTAT that if it is established that the debit note was issued to the appellant by the principal towards excise duty which was initially paid by the appellant and the same has been accounted for in the books of accounts of both the parties, it is clear that the incidence of duty paid by the appellant does not stand passed on to the principal. **2016-TIOL-1625-CESTAT-MUM.**
- The High Court while considering Section 110(2) held that notwithstanding provisional release order, if no SCN is issued u/s 124 (a) within six months, importer

is entitled to return of goods. **2016-TIOL-1136-HC-MAD.**

- Exemption to Spectacle Lenses- The appellant had imported spectacle lenses- While classifying these lenses under Customs Tariff Heading, the appellant sought exemption from the payment of Countervailing duty which was denied by the Department who treated such spectacles as semi-finished. The Supreme Court noted such goods not to be treated as semi-finished but treated as spectacle lenses and are entitled to Exemption Notification as per Notification No. 6/06 CE dated 1<sup>st</sup> March, 2006. **2016-TIOL-87-SC-CUS.**
- Since the collaboration agreement is towards technical know how which is related to the manufacture of final product and not related to sale of imported goods, documentation fees and royalty cannot be include in the Assessable value of imported goods. **2016- TIOL-1400-CESTAT-MUM.**
- Where the respondents is 100% EOU, their import is not chargeable to Customs duty, therefore, even if there is any variation in valuation, there will be no effect on customs duty payment. **2016- TIOL-1392-CESTAT-MUM.**

- When the Ministry of Commerce treats the paper cones as packing material explicitly, it cannot be said that they are the “raw materials” under Notification No. 8/97 -CX. The expression “raw material” is a material used in the manufacture of goods. The Bench observed that paper cones are packing materials and were permitted to import the same without the payment of duty. **2016-TIOL-1578-CESTAT-MUM.**



## CUSTOMS ACT NOTIFICATIONS

<b>TARIFF NOTIFICATIONS</b>		
<b>Notification No.</b>	<b>Date of Issue</b>	<b>Subject</b>
1. Notification No.- 42/2016- Cus	11-07-2016	Seeks to further amend notification No. 12/2012-Customs, dated 17.03.2012 [S. No. 284A] so as to provide that the manufacturer or merchant-exporter, referred to therein, may also be registered with the Cotton Textiles Export Promotion Council, in addition to Apparel Export Promotion Council or the Synthetic and Rayon Textile Export Promotion Council and may seek certification from any of the aforesaid bodies for the purposes of availing duty free import entitlement under the said entry
2. Notification No.-41/2016- Cus	06-07-2016	Seeks to further amend Notification No. 27/2011-Customs, dated the 1st March, 2011, so as to provide exemption from export duty to sugar exported under Advance Authorization Scheme subject to specified conditions.

**NON TARIFF NOTIFICATIONS**

3. Notification No.101/2016- Cus (NT)	15-07-2016	Tariff Notification in respect of Fixation of Tariff Value of Edible Oils, Brass Scrap, Poppy Seeds, Areca Nut, Gold and Sliver
4. Notification No. 96/2016- Cus (NT)	06-07-2016	Rate of exchange of conversion of the foreign currency with effect from 7th July, 2016
5. Notification No. 95/2016- Cus (NT)	05-07-2016	Tariff Notification in respect of fixation of Tariff Value of Edible Oils, Brass Scrap, Poppy Seeds, Gold and Sliver

## CUSTOMS ACT JUDGMENTS

- Mis-declaration of goods- The appellant, a courier agency were imposed a penalty of Rs. 50,000/- in a case involving mis-declaration of goods of Rs.8 lakhs. The Bench observed that courier company to exercise due diligence when he submits information to the proper officer on the work related to import/ export of goods. It is noticed that the import documents of courier agency revealed that consignment was abnormal for the goods declared. The CESTAT rightly held that when the Customs could detect the mis-declaration by simply examining the weight of the consignment with respect to the declaration made, the courier agency could've exercised due diligence.  
Decision- since no due diligence was exercised, the CESTAT upheld the imposition of penalty.**2016-TIOL-1755-CESTAT-MUM.**

- Duty Drawback claims- In the matter of non-sanction of drawback claims, where the drawback or rebate claim of any nature cannot be processed after filing of export bills, it was held by HC that there is no need to treat all exporters alike if it is only some exporters who are indulging in wrongful act. If for any reason drawback claim is held back, claimants ought to know the reasons thereof. **2016-TIOL-1349-HC-MUM-CUS.**
- For maintaining an appeal before CESTAT, pre deposit of 10% or 7.5% is required to be deposited u/s 129 E of Customs Act, 1962. The question raised in the instant petition is that whether the amount deposited during investigation or audit at other locations qualify for adjustment as pre-deposit. The High Court remanded the matter to the Commissioner with the directions that if the amount to the extent of pre-deposit can be adjusted out of 'extra' or 'spare' amount lying deposited with the Department, then the Commissioner will issue a requisite certificate of such pre-deposit requirement having been satisfied by the petitioner. **2016-TIOL-1264-HC-KAR-CUS.**
- Doctrine of unjust enrichment is applicable to every case of claim of refund of duty- The assessee having passed on the incidence of duty to his customers has no locus standii to claim the refund of the duty wrongly paid. In the present case, the petitioner was allowed to clear the goods under the interim orders of the HC. For that he furnished Bank Guarantee for the difference of duty of Customs payable. Encashment of bank guarantee by the department amounts to recovery of duty payable. The HC held that unjust enrichment is applicable even for refund of amount recovered by way of encashment of bank guarantee. **2016-TIOL-1216-HC-AHM-CUS.**

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