

# INDIRECT TAX LAW REPORT

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# GST HIGHLIGHTS

- 1. 15 stocks to gain from new dynamics with the rollout of GST-** There are expectations that the immediate benefit of GST would be felt across sectors, but the biggest beneficiaries would be industries where the unorganized sector has a large market share. Based on various brokerage recommendations, here is a list of 15 stocks that can see immediate gains under the GST regime- Tata Steel, Colgate, Emami, Ashok Leland, Kajaria Ceramics, Symphony, Page Industries, La Opala, Titan, ITC, Hindustan Unilever, GMDC, Marico, Future Retail, and Future Consumer.
- 2. GST rollout from July 1, don't be misled by delay rumors-** The Government emphasized that GST will be rolled out from July 1, 2017 and preparations are in full swing for a smooth implementation of the landmark reform GST. The GST Council chaired by Union Finance Minister Arun Jaitley and comprising state counterparts have over the last three weeks decided the tax rates on over 1200 goods and 500 services and filtered them in either of 5, 12,18 or 28 per cent slab.
- 3. GST Council lowers tax rates of 66 items-** The Council has lowered tax rates on insulin from 12% to 5%, packaged food including some fruits and vegetables from 18% to 12% and agarbatti from 12% to 5%. Additionally, tax rate on computer printers has been lowered to 18%.

**4. 37 returns instead of 13: One of the many challenges threatening**

**GST rollout-** A small scale manufacturing company with operation in only one state will have to file a minimum of 37 returns instead of the current 13 once the GST goes live from July 1. If it does business from offices in more than one state, the number of returns will go up accordingly. The industry will face implementation challenges that include system upgrades, manpower training and understanding new taxes. Every transaction of sale or purchase will now have to be recorded online to benefit from the tax paid earlier. Tally accounting software is widely used by companies. The company is waiting for the GST rules to be finalized, so that it can roll out its GST software for Indian companies. While it is good that the taxation system will be streamlined and we will not have to deal with the multiple tax payments, we still don't know how much time it will take for everybody to be on board.

**5. Education exempted from GST; transport to attract 5% tax-**

The GST Council finalized tax rates for services under the GST regime, scheduled to be rolled out from July 1. There will be four rates for services at 5%, 12% a standard rate of 18% and luxury rate of 28%. Healthcare and education will be exempted from GST.

- 6. Milk exempted from GST; Sugar, edible oil to attract 5%-** The GST Council discussed the tax rates for 1,211 items with a majority of items being kept under 18%. Food grains will get cheaper, milk and cereals will be exempted, while sugar and edible oil will attract 5% tax. Revenue secretary said that only 19% of items will be taxed at the highest rate of 28%.
- 7. Lower GST rate for telecom, insurance-** The Centre and the States are working to ensure that there is a lower GST burden on telecom and financial services. For telecom and financial services, the rates may be kept at 5% to ensure that insurance premium or phone bills do not jump massively after GST.
- 8. GST gains: Prices of flats may drop by up to 5%-** Housing prices are likely to fall by up to 5% following the implementation of GST after 12% rate is pegged on finished houses or apartments. After allowing for credit for taxes paid on inputs such as cement, steel, paints and other items, the actual burden will be lower. As a result, price of Rs. 1 crore apartment may come down by Rs. 3-5 lakh. Once GST kicks in, home buyers will not have to pay the 4.5% service tax on the final price that they shell out while taking possession. According to a CRISIL report, a developer pays excise tax and VAT on inputs like cement and steel at 27.7% and 18% respectively; but the final product will be taxed at 12%.

**9. GST benefit: Mercedes cuts prices, more luxury brands to follow-**

Mercedes-Benz India has announced that the transactional price of its entire locally assembled model range will decrease by 4%. Price reduction will, however, vary from state to state between 2% and 9%. Others like Jaguar-Land Rover have announced a price reduction on three of its models.

**10. E-way bills pose threat to business of small transporters-**

In the GST era, movement of goods worth more than Rs. 50,000 within or outside the state will require securing an e-way bill by prior online registration of the consignment. The draft rules say that to generate an e-way bill, the supplier and the transporter has to upload the details on the GSTN portal. Once an e-way bill has been generated, a unique e-way bill number (EBN) shall be made available to the supplier and the transporter on the common portal. Transporters especially in smaller towns who are not tech-savvy may fail to comply with the process or complain about detention, so many transporters may not opt for it.

# SERVICE TAX JUDGMENTS

## Exclusive CESTAT Cases:

- 1. Money changing activities-** The buying of foreign currency on its own by the respondents and then issuing the instruments to the customers such as letter of credit, demand draft, traveler's cheque is covered under money changing activity and is liable to tax w.e.f. 16.05.2008; as it is an activity of sale and purchase of foreign exchange at the prevalent market rates. The amount charged by the respondents from the customers for issuing instruments is not earned by foreign exchange broking. **2017-TIOL-1985-CESTAT-DEL.**
- 2.** When department is relying upon the statement of two persons for the undervaluation against assessee whose cross examination has been denied by the Adjudicating Authority, the proceedings are vitiated and order is liable to be set aside. **2017 (50) S.T.R. 93 SC.**
- 3. Construction of Complex Services-** Various residential units built independently sharing common roads, street lights, sewerage line, and water supply or nearby park will not be liable to tax under construction of complex services. The common area and common shared facilities should be with reference to a layout approved by local authorities in order to be covered by tax entry under Section 65(91a) of the Finance Act, 1994. **2017-TIOL-1932-CESTAT-DEL.**
- 4.** When department has carried out audit repeatedly, extended period of five years cannot be invoked. **Andaman Timber Industries v. CCE, 2017 (50) S.T.R. 93 SC.**

5. **Real Estate-** The respondent purchased land and Transferable Development Rights (TDR) and sold the same for premium or profit. It was held that these are not taxable under 'Real Estate Agent' or 'Real Estate Consultant Services'. **2017-TIOL-1948-CESTAT-MUM.**
6. **Manpower Recruitment services-** The appellant has undertaken the work of conversion of the raw material into finished goods within the factory premises and the said conversion charges are calculated and being paid on per MT and on lump sum basis. It is held where the rates are fixed for lump sum job work undertaken by the appellant, the same is not covered under 'Manpower recruitment and supply agency services'. **2017-TIOL-1826-CESTAT-MUM.**
7. **Mandap Keeper services-** A SCN notice was issued to the appellant to discharge service tax under the head 'Mandap keeper services' for the amount collected as fees for hiring and renting out of halls/ open spaces/theatres. It was held that appellant being Municipal Corporation and statutory body cannot suppress the facts with intention to evade payment of duty. **2017-TIOL-1846-CESTAT-MUM.**
8. Penalty is not imposable when duty or taxes could not be paid in time because of conflicting judgments. **CCE v. Andhra Pradeep Papers Ltd., 2017 (50) S.T.R. 121 SC.**
9. **Service tax on TDS-** The issue is whether the service receiver is required to discharge the service tax on an amount paid by them as TDS for the payment remitted to overseas service provider. Relying on the decision of **Magarpatta Township Development and Construction Co. Ltd., 2016-TIOL-660-CESTAT-MUM** wherein the Bench held in favor of

service receiver, the amount paid as TDS is not included in the gross amount charged by the service providers who are situated abroad and any amount paid as CENVAT Credit will qualify for CENVAT Credit. **2017-TIOL-1866-CESTAT-MUM.**

- 10. Business Auxiliary services-** Where there is no written or implied contract to enter into an agreement with a financier or the borrower for arranging finance or loans for the borrowers and receiving commission therefrom as consideration does not form a connection with the sale of product or service belonging to borrower and hence, not taxable under Business Auxiliary Service. **2017-TIOL-1878-CESTAT-MUM.**

## CENTRAL EXCISE NOTIFICATIONS

EXCISE TARIFF NOTIFICATION		
Notification No.	Date of Issue	Subject
1. Notification No.- 08/2017-CE	16-05-2017	<b>Amendment in Notification No. 12/2012- CE dated 17.03.2017</b>  Amendment in such notification is carried out to extend the time period for furnishing the final Mega power project certificate from 60 months to 120 months and extending the period of validity of security in the form of Fixed Deposit Receipt or Bank Guarantee from 66 months to 126 months, in case of provisional mega power projects.

<b>EXCISE NON-TARIFF NOTIFICATION</b>		
<b>Notification No.</b>	<b>Date of Issue</b>	<b>Subject</b>
1. Notification No.- 15/2017-CENT	12-06-2017	<p><b>CENVAT Credit (Third Amendment) Rules, 2017</b></p> <p>In Rule 4(7) of CENVAT Credit Rules, 2004, amendment is carried out to allow an un-availed CENVAT Credit in respect of services provided by the Government, local authority or any other person by way of assignment of the right to use of any natural resource.</p>
2. Notification No.- 14/2017-CENT	09-06-2017	<p><b>Delegation of powers for the purpose of assignment of adjudication of show cause notices</b></p> <p>The Central Government directs that the powers exercisable by the Central Board of Excise and Customs under Rule 3 of Central Excise Rules, 2002 and Rule 3 of Service Tax Rules, 1994 may be exercised by-</p> <p>a) The Principal Chief Commissioner of Central Excise and Service Tax; or b) The Chief Commissioner of Central Excise and Service Tax.</p>
3. Notification No.- 13/2017-CENT	09-06-2017	<p><b>Territorial Jurisdiction</b></p> <p>Territorial jurisdiction of Principal Chief Commissioners/ Chief Commissioners, Principal Commissioners/ Commissioners, Commissioner of</p>

		Appeals and Audit are discussed
4. Notification No.- 12/2017-CENT	09-06-2017	<p><b>Appointment of Central Excise officers and vesting them with powers under Central Excise Act, 1944 and under Chapter V of Finance Act, 1994</b></p> <p>Following Central Excise officers are appointed:</p> <ul style="list-style-type: none"> <li>a) The Principal Chief Commissioner of Central Excise and Service Tax;</li> <li>b) The Chief Commissioner of Central Excise and Service Tax;</li> <li>c) Principal Commissioner of Central Excise and Service Tax;</li> <li>d) Commissioners of Central Excise and Service Tax;</li> <li>e) Commissioners of Central Excise and Service Tax (Appeals);</li> <li>f) Commissioners of Central Excise and Service Tax (Audit); and</li> <li>g) any other officer of the Central Excise Department</li> </ul>

## CENTRAL EXCISE JUDGMENTS

### CESTAT Cases:

1. **Jurisdiction of CESTAT to entertain appeals-** The appellant was misguided and wrongly filed the appeal before the Tribunal against the order of Dy. Commissioner. The Tribunal as per Section 35B of the Central Excise Act, 1944 can entertain only those appeals which are filed either against the order of Commissioner or Commissioner (Appeals). In

the present case, Tribunal has no jurisdiction to entertain the appeal. **2017-TIOL-1992-CESTAT-MUM.**

2. **Forgery-** The appellants cannot gain, in any manner, on the basis of forged document. The appellants have submitted forged documents to the Department. The said documents have no recognition in law. It is clear that that no clearance of excisable goods can be permitted based on the said illegal, non-recognised, forged documents. The appellants cannot take a plea that they have followed the procedure set out for payment of central excise duty. **2017-TIOL-1964-CESTAT-DEL.**
3. **Valuation on the basis of Retail Sale Price-** The appellants are manufacturing pens and writing instruments under the brand name of 'Luxor', 'Pilot' and 'Parker' and selling to M/s. Luxor who in turn sell the same to the customers. The appellants were discharging duty liability on the basis of retail sale price charged by Luxor and were claiming the benefit of exemptions. The Audit Party alleged that claiming deduction on account of cum-duty price was not correct. Held, computing value for exemption purpose by treating price as cum-duty is legal and proper. **2017-TIOL-1812-CESTAT-DEL.**
4. **CENVAT Credit-** When the capital goods were cleared after substantial use, duty equal to CENVAT Credit availed on capital goods or on transaction value cannot be levied. As second proviso to Rule 3(5) of CENVAT Credit Rules, 2004 makes it clear that under any circumstances, in case of removal of used capital goods, the duty equal to CENVAT Credit availed cannot be leviable. **2017-TIOL-1952-CESTAT-MUM.**
5. **What amounts to admissible evidence-** The data retrieved from CDs can be an admissible evidence if it satisfies the provisions of Section 36(b) of the Central Excise Act. Where the printouts have been taken in the absence of the appellants with no cross examination being allowed and the data retrieved from the CD was never confronted with them during the course of investigation, then in such circumstances, the data retrieved from the CD is not admissible to conform the demand. **2017-TIOL-1827-CESTAT-DEL.**

- 6. Remand of matter-** It is a well settled law that if one person hears the matter and the other decides it, then the personal hearing becomes an empty formality. This ground alone is enough to remand the matter to the learned adjudicating authority to grant a fresh hearing to the appellant on all issues which were the subject matter of the show cause notice. **2017-TIOL-1841-CESTAT-MUM.**
- 7. SSI Exemption-** The respondent is engaged in the manufacture of various engineering equipment for M/s. L&T and goods were cleared on the payment of full duty by treating such goods as branded goods. The respondent availed benefit of SSI Exemption notification 8/2003-CE in relation to the goods manufactured and cleared for home consumption. The Revenue disputed that exemption should not be claimed as such goods manufactured are not branded and duty is intentionally paid to avail the benefit of value based exemption. The Bench in this significant case observed that revenue has not adduced any evidence which shows that goods are not branded. Therefore, one has to go by the understanding between the buyer and seller/ manufacturer of goods. Thus revenue appeal stands rejected. **2017-TIOL-1943-CESTAT-DEL.**
- 8. Classification-** The product is supplied in the form of printed sheet which is used for packing and wrapping the battery cell. The primary function of the product is packing and printing is incidental to the primary function of the item. It is held where no distinct, identifiable commodity emerges out of the printing process there is no justification to charge Central Excise duty on printed paper rolls. **2017-TIOL-1864-CESTAT-DEL.**
- 9. Solitary sale is not a normal sale-** The solitary sale cannot be said to be a normal sale in the normal market and slag (a stony waste matter separated from metals during refining of ore) cannot be charged to excise duty since it is not an outcome of manufacture of principal goods. Therefore, supported by the following judicial pronouncements of Apex Court as laid down in **Board of Trustees v. CCE, 2007-TIOL-178-SC-CX.** **2017-TIOL-1885-CESTAT-MUM.**

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