

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.- 31/2016-Service Tax	26-05-2016	<p>Service Tax (Third Amendment) Rules, 2016</p> <p>In Service Tax Rules, 1994 certain, the Central Government seeks to inter alia provide composition rate for Krishi Kalyan Cess as applicable to ST under sub-rules 7,7A,7B,7C of rule 6 of STR, 1994.</p>
2. Notification No.- 30/2016-Service Tax	26-05-2016	<p>Amendment to Notification No. 12/2013-ST</p> <p>The Central Government seeks to amend notification No. 12/2013- ST, dated the 1st July, 2013 so as to allow refund of Krishi Kalyan Cess paid on specified services used in an SEZ.</p>
3. Notification No.- 29/2016-Service Tax	26-05-2016	<p>Amendment to Notification No.- 39/2012</p> <p>The Central Government seeks to amend notification No. 39/2012-ST, dated the 20th June, 2012 so as to provide for rebate of Krishi</p>

		Kalyan Cess paid on all services, used in providing services exported in terms of rule 6A of the Service Tax Rules.
4. Notification No.- 28/2016-Service Tax	26-05-2016	Seeks to exempt such taxable services from whole of Krishi Kalyan Cess leviable thereon which are either exempt from the whole of service tax by a notification or otherwise not leviable to service tax. Further, the notification seeks to provide that abatement notification shall be applicable for computing Krishi Kalyan Cess.
5. Notification No.- 27/2016-Service Tax	26-05-2016	The Central Government provide that notification No. 30/2012 - Service Tax, dated the 20th June, 2012, shall be applicable mutatis mutandis for the purposes of Krishi Kalyan Cess.
6. Notification No.- 26/2016-Service Tax	20-05-2016	The Central Government seeks to amend notification No. 25/2012 – ST dated 20.6.2012, so as clarify the scope of Entry 48 to the said notification that the exemption from Service Tax to services provided by Government or a local authority to a business entity with a turnover up to rupees ten lakh in the preceding financial

		year, shall not be applicable in case of services specified in sub-clauses (i),(ii) and (iii) of clause (a) of section 66D of the Finance Act, 1994 and renting of immovable property.
7. Notification No.- 25/2016-Service Tax	17-05-2016	Service tax payable u/s 66B of Finance Act, 1994 on the services provided by the specified organisations in respect of a religious pilgrimage facilitated by the Ministry of External Affairs of the Government of India, under bilateral arrangement shall not be required to be paid.

CIRCULARS

Circular No.	Date of Issue	Subject
Circular No.- 194/04/2016-ST	26-05-2016	Accounting code for payment of Krishi Kalyan Cess Krishi Kalyan Cess is leviable on all taxable services, other than services which are fully exempt from Service Tax or services which are otherwise not liable to Service Tax under section 66B of the Finance Act, 1994, at the rate of 0.5%. KKC need to be paid under following accounting codes: Basic (0.50%) = 00441509 Interest = 00441510 Deduct Refund=00441511 Penalty= 00441512 KKC accounting code will be applicable from 01.06.2016.

SERVICE TAX JUDGMENTS

- Mandatory pre-deposit of 7.5% or 10% is prospectively applicable to appeals filed on or after 06.08.2014; the same cannot be retrospective unless it is definitely shown that the amended condition is more onerous than the unamended condition. The rights so vested with the person cannot be taken away retrospectively by an amendment. **2016-TIOL-1009-HC-MAD-ST.**
- Job work exemption under Notification No.-8/2005-ST. whether optional- Payment of duty by principal manufacturer on returned finished goods is an essential condition for job worker to avail benefit of this exemption notification. Hence, it's a conditional notification therefore, job worker is free not to avail exemption on such conditional notification. Section 35 G of Central Excise Act, 1944 as applicable to Service Tax vide Section 83 of Finance Act, 1994. **CCE, Bangalore-II v. Federal Mogul TPR India Ltd., 2016(42) S.T.R.427 (Kar.)**
- Holding the reliance in case of Motilal Nehru Institute of Technology, the Bench observed that placement fees collected from students covers expenses for organising campus interview. The recipient client must be prospective employer and consideration must flow from such employer to service provider. Hence, not taxable under Manpower Supply Services. **2016-TIOL-1189-CESTAT-MUM.**

- The CESTAT held that since boiler is the final product of manufacturer, every component within it and every input that goes into component manufactured in factory would be an input as far as Central Credit Rules, 2004 are concerned. Bought-out items (the finished product that one is manufacturing and is cleared without any process) shipped along with boilers are also inputs for the purpose of taking credit. **2016-TIOL-1227-CESTAT-MUM.**
- Wrong disclosures in ST-3 returns – Non-mentioning challan numbers of duty payment for a particular month in ST-3 returns and still stating under service tax payment column that full payment made, amounted to suppression of facts with intent to evade payment of service tax when assessee already collected the amount from the customers but not paid to the Department. The penalty is imposed u/s 78 of Finance Act, 1994 and held that financial hardship for non-payment of Service Tax could not be a ground for waiver of penalty u/s 80 of Finance Act. **3 Guys v. CCE, Haldia, 2016 (42) S.T.R. 443 (Tri.-Kolkata)**
- The Applicant enters into a partnering agreement to combine mutual expertise for setting up and operation of an educational institution to provide pre-school education and education up-to higher secondary. The AAR in his ruling observed that Service tax is not leviable on the fees collected from the students since it is covered under the Negative List u/s 66D (I) of Finance Act, 1994. **2016-TIOL-12-ARA-ST.**
- Valuation under Service Tax- Right to use optic fibre cable network for telecommunication- Whether Service Tax is payable on total amount of consideration received every

year or by taking average of total gross consideration for ten years in each financial year, inclusive of lease rent advance not actually received. Since "Lease rent advance" is not actually received it is a notional amount. As per AS-19, notional amount is not an 'income' for the purpose of Income tax and held not liable to Service Tax on amount of lease rent advance shown in balance sheet.- Section 67 of Finance Act, 1994. **Reliance Infratel Ltd. v. CCE, Thane-II, 2016 (42) S.T.R. 452 (Tri. Mumbai)**

- Freezing of Bank Accounts- The HC observed that the petitioner had rendered services to various clients and the invoices and bills have been raised on them and price charged from the clients include the component of service tax which had been recovered from the clients but not deposited in Govt. treasury. Held, that non-remittance in Govt. treasury would invite interest and penalty. To enable the petitioners to deposit the service tax, the accounts of the petitioner released temporarily which can be reattached or refrozen in case of default. **2016-TIOL-917-HC-MUM-ST.**
- Rule 5 of CCR, 2004- The refund claim filed by appellant for quarter October to December 2009 sanctioned and later for the same period another claim filed for additional amount. Notification No. 5/2006-CE(NT) prohibits filing of more than one refund claim for any quarter in a calendar year. **2016-TIOL-1084-CESTAT-MUM.**
- The appellant collected service tax from the customers but not credited to the treasury of the Government but prayed for the extension of time to make payment. On failure to

recover the dues, the Service Tax authorities filed a remand application on which the appellant filed an undertaking to pay the entire balance amount once the bail is granted. On granting the bail to the appellant, the appellant gone back from his words and filed writ petition challenging the remand application. Held, failure to deposit service tax is a cognizable offence and hit by Section 89(1)(ii) of Finance Act. **Tirthankar Ghosh v. Superintendent (SIV) Service Tax-II, Kolkatta, 2016 (42) S.T.R. 431 (Cal.)**

CENTRAL EXCISE NOTIFICATIONS

Notification No.	Date of Issue	Subject
TARIFF NOTIFICATIONS		
1. Notification No.- 23/2016-CE	17-05-2016	<p>The Central Government further amended notification No. 12/2012-Central Excise dated 17.03.2012 so as to carry out the following changes:</p> <ol style="list-style-type: none">i. to exempt excise duty on RBD Palm Stearin, Methanol and Sodium Methoxide for the manufacture of bio-diesel on actual user basis for a period upto and inclusive of 31st March, 2017;ii. to withdraw excise duty exemption on biodiesel with effect from 1st April, 2017; andiii. to levy 6% excise duty on biodiesel and its inputs namely, RBD Palm Stearin, Methanol and Sodium Methoxide with effect from 1st April, 2017.
NON TARIFF NOTIFICATIONS		
2. Notification No.- 27/2016-CENT	14-05-2016	<p>CENVAT Credit (Sixth Amendment) Rules, 2016.</p> <p>The Central Government makes the following rules further to amend the CENVAT Credit Rules, 2004, which seeks to replace the</p>

		references to sub-clauses to clause 159 of the Finance Bill, 2016 with sub-sections to section 162 of the Finance Act, 2016.
3. Notification No.- 26/2016-CENT	05-05-2016	In pursuance of Rule 18 or Rule 19 of the Central Excise Rules, 2002, the Central Government seeks to further amend notification No.42/2001-CE(NT), No.43/2001-CE(NT), No.19/2004-CE(NT) and No. 21/2004-CE(NT)
4. Notification No.- 25/2016-CENT	05-05-2016	The Central Government amended notification No.49/2008-Central Excise (N.T.) In the said notification, after serial No. 88, entry No. 88A is inserted.

CENTRAL EXCISE JUDGMENTS

- The CESTAT observed that Rule 9(1)(b) of CENVAT Credit Rules, 2004 does not put any restriction for availing CENVAT Credit in supplementary invoice in respect of input service received by the assessee. The restrictions was brought by Rule 9 (1)(bb) w.e.f 1.4.2011. Prior to 1.4.2011, the credit cannot be denied. **2016-TIOL-1247-CESTAT-MUM.**
- It is obligatory upon Tribunal to satisfy itself about delivery or tendering of notice before presuming that notice was served as per Section 37C(2) of Central Excise Act. The matter remanded to Commissioner of Central Excise of Appeals who shall decide the appeal on merits. **2016-TIOL-956-HC-RAJ-CX.**
- Availment of CENVAT Credit: Rule 7 of Central Credit Rules, 2002 provides an easy procedure of endorsement on body of invoice, but where an appellant have not followed the same and made endorsements in a seperate letter, the credit is rightly denied to the appellant as this act gives rise to the suspicion of evasion. **2016-TIOL-1218-CESTAT-MUM.**
- Process of removal of moisture render the product markettable to customers. Customer purchases product from appellants needs to have specification of non-existence of moisture in final products for his consumption. The process amounts to manufacture and is covered u/s 2(f) of Central Excise Act. **Deepak Nitrite Ltd. v. CCE, Raigad,2016 (335) E.L.T.502 (Tri.-Mumbai).**

- Packaged Commodity Rules- The CESTAT Bench observed the net weight or measure contained in individual pieces should not exceed 10gm or 10ml. This is covered by exception in Rule 34 (b) of Packaged Commodity Rules and if individual pieces did not have RSP declared on them, declaration on the individual pieces is merely voluntary. Therefore, 'Sticks' and 'Pens' being secondary packing and containing commodities that are below threshold are beyond the ambit of Section 4A of Central Excise. **2016-TIOL-1089-CESTAT-MUM.**
- Private records recovered from the assessee indicated clandestine removal of goods and so is admission by the Director of the company but however no investigation regarding manufacture and transportation of such goods. The statements of directors and employees so recorded was later on contested. The demand for clandestine removal of goods cannot be confirmed merely on the basis of statements of directors or employees and buyer of goods. **Raipur Forgings P. Ltd.v. CCE, 2016 (335) E.L.T. 297 Tribunal.**
- The Tribunal observed that interest can be demanded even when the duty has been paid. Proviso to Section 11AB(1) of Central Excise becomes operational only when duty becomes payable consequent to the issue of an order, instruction or direction by the Board u/s 37B. **2016-TIOL-1061-CESTAT-MUM.**

- The petitioner having availed “drawback” at full rate, the grant of “rebate” would result in double benefit. The Madras High Court held that since both terms are covered under different statutes, both of them not allowed simultaneously. The rebate and drawback permissibility has been discussed under Rule 3 of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. **Raghav Industries Ltd. v. UOI, 2016 (334) E.L.T. 584 (Mad.)**
- The Show Cause Notice (SCN) is the foundation of demand under Central Excise Act and order-in-original and subsequent orders passed by appellate authorities would be confined to SCN. The validity of impugned order which is not the subject matter of SCN cannot be questioned. **Commissioner v. Reliance Ports and Terminals Ltd., 2016 (334) E.L.T. 630 (Guj.)**
- The Delhi High Court rightly concluded that if the petitioner fails to comply with the statutory mandatory requirement of depositing 7.5% of demand of duty and penalty, his petition is liable to be dismissed. It is also outside its jurisdiction under Article 226 of the Constitution to modify mandatory conditions as set out u/s 35F of Central Excise Act. **2016-TIOL-843-HC-DEL-CX.**

CUSTOMS ACT NOTIFICATIONS

Notification No.	Date of Issue	Subject
TARIFF NOTIFICATIONS		
1. Notification No.- 34/2016-Cus	19-05-2016	<p>Seeks to further amend notification No. 96/2008-Customs dated 13.08.2008, so as to carry out the following changes:</p> <ul style="list-style-type: none"> i. to omit 'Samoa' and 'Maldives' from the list of countries eligible for preferential tariff under the said notification; ii. to amend the name of 'Republic of East Timor' as 'Democratic Republic of Timor-Leste'.
NON TARIFF NOTIFICATIONS		
2. Notification No. 66/2016-Cus (NT)	14-05-2016	<p>In exercise of the powers conferred by sub-section (2) of section 58A of the Customs Act, 1962 (52 of 1962), the Central Board of Excise and Customs specifies the following class of goods which shall be deposited in a special warehouse licenced under sub-section (1) of the said section namely:-</p> <p>gold, silver, other precious metals and semi precious metals and articles thereof;</p> <p>2)goods warehoused for the purpose</p>

		<p>of -(a) supply to duty free shops in a customs area;</p> <p>(b) supply as stores to vessels or aircrafts under Chapter XI of the Customs Act,1962;</p> <p>(c) supply to foreign privileged persons in terms of the Foreign Privileged Persons (Regulation of Customs Privileges) Rules, 1957.</p>
3. Notification No.- 77/2016-Cus (NT)	19-05-2016	Rate of exchange of conversion of the foreign currency will take effect from 20th May, 2016
ANTI DUMPING DUTY		
4. Notification No.- 19/2016-Cus (ADD),	19-05-2016	The Central Government seeks to amend notification No. 40/2012 - Customs (ADD) dated 30th August, 2012, so as to amend, for the purposes of levy of Anti-Dumping Duty on imports of 'Metronidazole' originating in, or exported from China PR, the name of the Exporter changed from 'M/s Hubei Hongyuan Pharmaceutical Co., Ltd' to 'M/s Hubei Hongyuan Pharmaceutical Technology Co., Ltd'.
5. Notification No.- 18/2016-Cus (ADD)	17-05-2016	Seeks to levy provisional anti-dumping duty on Seamless tubes, pipes & hollow profiles of iron, alloy or non-alloy steel (other than cast iron and stainless steel), whether hot finished or cold drawn

		or cold rolled of an external diameter not exceeding 355.6 mm or 14'' OD, originating in or exported from China PR, for a period not exceeding six months
--	--	---

CUSTOMS ACT JUDGMENTS

- Interpretation of statute- Perspective or retrospective effect of notification- It's a settled law that a notification has a prospective effect unless a contrary intention is evident from the language thereof. **J.P. Overseas Ltd. v. Commissioner of Customs, ICD, New Delhi.**
- The High Court held that power under Article 226 is only to ensure that authorities whose action is the subject-matter of judicial review, have acted in accordance with law. **2016-TIOL-974-HC-DEL-CUS.**
- After taking into account S.129E of Customs Act, it was held by CESTAT that in the absence of any statutory provisions, miscellaneous application for stay of impugned order or for waiver of pre-deposit of any amount cannot be entertained. **2016-TIOL-1201-CESTAT-MUM.**
- The CESTAT held that either delivery of goods should be given to appellant and if department has failed to give delivery of goods then appellant shall be entitled for refund of duty and interest paid by them. **2016-TIOL-1164-CESTAT-MUM.**
- After taking into account S.129A of Customs Act, the CESTAT held that new grounds/plea cannot be raised before Tribunal which was not before adjudicating authority or lower appellate authority. Therefore, new grounds not maintainable. **C.C. v. Kwang Sung Brake India (P.) Ltd., 2016(335) E.L.T.520 (Tri.-Chennai).**

- The Full Bench of Bombay High Court has held that the penalty on partnership firm as well on the partners could be imposable provided partner has held to have abated the offence with the knowledge or connivance u/s 112 (a) read with Section 140 of Customs Act. **Amrit Laxmi Machine Works v. CCE, 2016 (335) E.L.T. 225 Bom.**
- After extracting Section 112 of Customs Act, the High Court considered that when a provision provides for the punishment, it has to be strictly construed. The expression 'goods in respect of which prohibition is in force' implies goods which are prohibited from being imported and not the goods which have been smuggled into the country. **2016-TIOL-925-HC-KOL-CUS.**
- Cargo withheld for testing and verification standards- The High Court remarked that petitioner is entitled for 45 days' free period during which goods were detained by the Commissioner and is not liable to pay demurrage charges. **2016-TIOL-930-HC-MAD-CUS.**
- After reading Section 110A with Section 125 of Customs Act, the High Court held that after adjudication, the Customs Authority is bound to release the goods to any person from whom the goods have been seized and not necessarily to the owner of goods. **2016-TIOL-HC-KERALA-CUS.**

Your suggestions and contributions are of great importance to us. Please give us your FEEDBACK, so that this Bulletin may be made of real use to you. Please write to us with your views and contributions at pkmittal171@gmail.com

DISCLAIMERS

All reasonable care has been exercised in compilation of information in this report. However, the PKMG Law Chambers, its members on panel(s) or advisors or employees shall not in any way be responsible for the consequences of any action taken on the basis of reliance upon the contents.

This report has been sent to you upon your being a client or associate of the PKMG Law Chambers or on the recommendation/suggestion of any of our client or associates.

This is not a spam mail.

CIRCULATION BY

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