

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
Contact nos. +91-9811044365, +91-9911044365

ADVISER

Dr. SANJEEV KUMAR

M.Com. LL.B., Ph.D, PGDPIRL, AICWA, FCS
Former Executive Director– Bajaj Hindusthan Limited

ASSISTED BY

Ms. SEHRISH NAZ

GST HIGHLIGHTS

1. GST - One Nation, Two Authorities, Three Taxes, Four Rates.

Finally, the *One Nation, One Tax* has become

One Nation	India that is a Union of States
Two authorities	CBEC and State Commercial Tax Departments
Three Taxes	SGST, CGST and IGST
Four rates	Zero, 5%, 12%, 18% and 28% with a gold rate and some cesses and a five year cess.

-The GST Council has decided the GST rate structure in its meeting held on 3.11.2016. These rates are 5%, 12%, 18% and 28%.

- Zero rate will apply to several items, which constitute 50% of Consumer Price Index basket including food grains used by common people.

- 5% rate will apply to items of mass consumption particularly used by common people.

- Considering the inflationary impact of one standard rate, there will be two standard rates of 12% and 18%.

- Rate of 28% will apply to several items particularly white goods & others now attracting effective tax rate of 30-31%.

- Even though these goods attract 12.5% Excise Duty and 14.5% VAT, net effective rate comes to 30-31% taking into account the cascading effect.

- However, some items used by large no. of people particularly lower middle class now attracting 30-31% effective tax will be in lower tax slab.

2. Monthly Returns to be mandatory under GST

Moving at a fast pace, the tax department came up with two more draft rules and formats on GST returns and refunds requiring assessee to file monthly returns and specifying procedure for claiming refund of taxes, interest and fees. As per the rules for refund, every registered taxable person will be required to furnish a monthly return in specified form in GSTR-3. There is also provision for electronic furnishing of annual return by the registered taxable person and composition supplier. The rules further said that every taxable person whose aggregate turnover during a financial year exceeds Rs. 1 crore will be required to submit annually a duly certified audited statement. The rules also provide for matching of input tax credit claim on inward supplies and procedure for output tax liability claim.

3. Goods and Service Tax: The way forward

There is still some work that needs to be done to ensure that the GST creates a world class ecosystem for business to flourish. These are outlined below:

➤ **Institutional Change:**

Creation of State-level GST Secretariat: A GST Secretariat must be constituted in each of the States where senior CBEC officers administering the CGST could be brought together with the senior State VAT officers. This body could be registered with the Societies Registration Act, 1860.

➤ **Procedural change:**

Under the present fiscal arrangement, the Centre has exclusive power for taxation of services. After the passing of the Constitutional Amendment Bill, the states have also acquired the power concurrently with the centre to tax services. The concurrent power to tax services has created some procedural problems which need resolution. One is the requirement of State-wise registration and the other is transfer of input credit pools between the States.

➤ **Changes in law:**

Moving from transaction value to invoice value for the purpose of valuation- One of the most retrograde features of the Model GST Law are the provisions relating to valuation. The transaction value concept creates problems in valuation especially for self-supplies and transfer of services. The solution lies in moving away from the concept of transaction to invoice value. This is a concept which has been followed by all the countries like Canada AND Australia which have implemented a Value Added Tax.

4. What is Cheaper and Dearer after GST?

Salt, bread, fresh fruit and vegetables, eggs, milk, curd, blood (yes blood, the human kind), prasad (the sacred kind), the national flag, kumkum, bindi-sindoor, glass bangles, even contraceptives — all these will continue to enjoy a taxfree run under the proposed goods and services tax (GST) regime. A few essential services will also escape the levy under the new regime that the government wants to roll out from April next year. All the same, the list of exempted items that will be thrashed out by state and central government officials shortly after the rate structure is finalised will be getting shorter.

5. GST Council Okays Draft Rules

The Goods and Service Tax (GST) Council approved draft rules for the proposed levy and agreed to a refund mechanism for Central and State tax holidays that will continue under the new regime, making further progress toward rolling out India's biggest tax reform by April 1 next year. These rules will be finally notified only after the GST legislation is passed.

SERVICE TAX JUDGMENTS

- **Limitation Rule-** Any deposits made by an assessee towards demand which is disputable, will not attract provisions of limitation, whereas any payments made towards tax amount would attract limitation. **2016-TIOL-2887-CESTAT-MUM.**
- **Printing Services-** Printing of cheque book services cannot be considered incidental or ancillary to Business Auxiliary Services under Section 65(19) of Finance Act, 1994 because business auxiliary services covers services such as promotion or marketing of goods/ services produced or provided by the client; any customer care services provided on behalf of the client or any incidental or auxiliary support services. The printing services being an independent activity fall outside the purview of Business Auxiliary Service and hence demand of service tax is liable to be set aside. **2016-TIOL-2860-CESTAT-MUM.**
- **Business Auxiliary Services-** The appellant entered into an agreement with M/s. Duflon Europe Ltd. (DEL) for the sale of exported goods by them to DEL. The allegation is that the appellant had paid commission to this entity and such commission is liable to be taxed under the category of “Business Auxiliary Services”. The Bench holding a strong force in the case held that in order to tax this amount as commission, there has to be necessarily three parties; purchaser, seller and a person who

negotiates such transaction. There is nothing on record to show that the said DEL entity was appointed as “Commission Agent” for the sale of goods of the appellant to the third parties. Therefore, service tax under the reverse charge mechanism from the appellant is unsustainable. **2016-TIOL-2872-CESTAT-MUM.**

- **Collection of Taxes-** State of Bank Patiala is an agent of RBI, not liable to pay tax. State Bank of Patiala has been appointed by Reserve Bank of India as its agent u/s 45 of the RBI Act. RBI itself has been entrusted by the Central Government to transact Government business. Hence, once State Bank of Patiala has been appointed as an agent of RBI, it is transacting Government business which is in the nature of sovereign function performed on behalf of the Government and hence not liable to Service Tax. **2016-TIOL-2849-CESTAT-DEL-LB.**
- Activities undertaken by a partner/ co-venturer for the mutual benefit of the partnership / joint venture cannot be regarded as a service rendered by one person to another for consideration and cannot be taxed. The CESTAT while interpreting the same has held that a contractor-contractee or the principal-agent relationship which is an essential element of any taxable service is absent in the relationship amongst partners/ co-venturers or between the co-venturers and joint venture. In order to render a transaction liable for service tax, the nexus between the consideration agreed and service activity to be undertaken should be direct and clear. **2016-TIOL-2843-CESTAT-MUM.**

- **Denial of CENVAT Credit:** Denying CENVAT Credit on the ground that amounts towards export of software are not received in convertible foreign currency seems to be irrational way of denying legitimate refund to an assessee. **2016-TIOL-2828-CESTAT-MUM.**
- **Manpower Services-** The query arises whether the activity of loading/ unloading by contractor amounts to Manpower Recruitment Agency Services. The Bench observed that the appellant has given contract for loading/ unloading on the basis of weight of goods and not as per the labour provided, the activity cannot be termed as supply of Manpower, therefore, the demand of duty cannot be sustained. **2016-TIOL-2764-CESTAT-CHD.**
- **Mandap Keeper/ Banquet Services-** Once it is accepted that Appellant is rendering 'Mandap Keeper Service' and Bills were raised for gross amount towards food, assessee would be not eligible for abatement of 40% from value of payment of service tax. **2016-TIOL-2763-CESTAT-MUM.**
- **Commission Agent Services-** The appellant is a manufacturer as well as a service provider and is registered with the department. The issue arises whether commission agent services are entitled to CENVAT Credit. The Bench observed that there is no legal basis to restrict CENVAT Credit to the extent of the service portion of the erection, commissioning and installation service contract executed by the appellant. There is no bifurcation in the commission agent agreement regarding

supply of goods and supply of services. Thus the entire quantum of the service tax paid by the commission agent is entitled as credit to the appellant. **2016-TIOL-2559-HC-DEL-ST.**

- **Treatment of Effluent Waste-** The issue is regarding the demand of service tax on the activity of disposable waste water (industrial waste). It was held that treatment of effluent waste cannot be considered as processing of goods and such activity does not qualify as processing under the category of Business Auxiliary Services for levy of tax. Hence, such activity is not taxable. **2016-TIOL-2702-CESTAT-MUM.**

CENTRAL EXCISE JUDGMENTS

- **Exemption from Education and Secondary Higher Education Cess on Clean Energy Cess-** Clean Energy Cess is one of the duties of Excise leviable on coal and any exemption from E. Cess and S.H.E.Cess on Clean Energy Cess does not mean exemption from E.Cess and S.H.E.Cess on Central Excise duty vide Notification No. 28 and 29/2010. **2016-TIOL-2858-CESTAT-HYD.**
- **CENVAT Credit-** The appellants manufactured “Parle” brand sugar boiled confectionery and cleared their entire production to M/s Parle Products Private Limited (PPPL). The appellants availed CENVAT Credit on the input invoices issued by the

principal manufacturer and cleared the finished goods after discharging duty. The Department contended that appellant being only a job worker cannot avail CENVAT Credit on the input invoices. The Tribunal held that the appellant would fall under the category of manufacturing unit of M/s. PPPL since appellant is manufacturing on behalf of M/s. PPPL as provided in Rule 7 of Central Credit Rules, 2004. The amendment brought forth to Rule 7 of CCR, 2004 with effect from 01.04.2016 where a specific provision is made for an ISD to distribute credit of input services to job workers is to apply prospectively and not retrospectively. Therefore, appellants not eligible to avail CRNVAT Credit on the input invoices distributed by ISD, M/s. PPPL. **2016-TIOL-2871-CESTAT-HYD.**

- **Legal validity of the orders of the Settlement Commission-** The High Court rightly held that an order passed by Settlement Commission could be inferred with only if the said order is found to be contrary to any statutory provisions of the Act. The same is not opened for examination either by the High Court or by the Supreme Court. The assessee cannot be permitted to dissect the Settlement Commission's order with a view to accept what is favourable to them and reject what is not. **2016-TIOL-2532-HC-MAD-CX.**
- **Excisability on Debit Notes-** The contract is for the manufacture and supply of Electrical Transmission towers for a specified amount and of specified weight and the Central Excise duty has been discharged as per the invoices raised. In the case in hand, debit notes raised for the excess quantity of steel used

in the manufacturing of goods. The Bench held that such debit notes are liable to Excise duty u/s 4 of Central Excise Act. **2016-TIOL-2749-CESTAT-MUM.**

- **Availment of CENVAT Credit-** The imported 'sinks' were checked/ packed/ labelled and cleared. The Department alleges that activity amounts to manufacture u/s 2(f)(iii) of Central Excise Act, 1944. It is a settled law when duty liability has been demanded and discharged, the inputs used for such goods if dutiable and duty has been discharged, the assessee is eligible to avail CENVAT Credit of the same. **2016-TIOL-2712-CESTAT-MUM.**
- **No demand of duty when item is not classifiable-** Shredding of Band-Aids for incineration- The issue is whether the appellant is liable to pay duty on the waste of band-aid generated in the hands of job-worker. It was held that Band-aid falls under Chapter 30 of the Central Excise Tariff Act, hence any scrap that arises during the course of manufacturing activity needs to be classified. There is no tariff heading for classifying scrap arising during course of manufacturing of goods. Hence, in the absence of any classification of the product, demand of the duty is unsustainable. **2016-TIOL-2706-CESTAT-MUM.**

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