

INDIRECT TAX LAW REPORT

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GST HIGHLIGHTS

1. Debate on who will tax Companies with up to Rs.1.5 crore turnover.

The Centre is not keen on letting the States have exclusive jurisdiction over imposing GST on entities with turnover of up to Rs.1.5 crore, setting the stage for a likely confrontation at the first meeting of the GST council.

The GST rates and the list of exempted goods and services are seen as other possible flashpoints, although the Centre has agreed to raise the threshold for taxation to Rs.25 crore instead of Rs.10 crore proposed in the draft GST Bill.

The agenda note circulated to State Finance Ministers has also given the modalities and compensation formula and has suggested that the base year be fixed as 2015-16. The average for three years- 2013-14 to 2015-16 will be calculated and linked to the base year and the difference between the actual collection and the base year will be the compensation that the Centre will pay to the States. The Centre has committed to compensate States for revenue losses for the five years of GST rollout.

The agenda has also provided the proposed calendar, where the rules will be finalised and the details of electing a vice-chairman, who will be a State Finance Minister. The time table has suggested that the three draft Bills- IGST, CGST and SGST- will be cleared this week and their passage by Parliament is likely in December.

2. GST Council to decide on cess treatment

The Cess, including, Krishi Kalyan Cess and Swachh Bharat Cess, might not be subsumed under GST. The Finance Ministry officials said, the constitution amendment act on GST does not state how a cess is to be treated under the new regime. The Act leaves it to the GST Council to decide which cess may be subsumed in GST.

A Government official said if the taxes continue, these would be levied on GST, instead of only services or goods. “These cesses were put in place by Government for a very specific purpose, whether it is infra cess, Krishi Kalyan or Swachh Bharat, he said”.

3. GST may have multiple rates initially

The Revenue Secretary, Hasmukh Adhia, said that the GST may have multiple rates on the lines of some European countries and a revenue neutral rate (RNR) will not be possible initially. We too may have to begin with multiple rates and this is required to protect the poor and the middle class. The Revenue Secretary further added that the exemption limit for GST is being raised to Rs.25 lakhs from Rs.10 lakhs as proposed earlier, and most States are on board.

4. GST recasts Indirect Tax Board’s name

The “Central Board of Excise and Customs” is proposed to be renamed as the “**Central Board of Indirect Taxes (CBIT)**” as

India readies itself for a paradigm shift in indirect taxation by transitioning to a GST regime. The renaming of the Board also reflects the major administrative reset that the Central Indirect Tax Authority will have to bring about. Under the restructured CBIT, there will be six members besides the Chairman.

SERVICE TAX NOTIFICATIONS

NOTIFICATIONS		
Notification No.	Date of Issue	Subject
1. Notification No. 45/2016-ST, MANU/DSTX/0063/2016	30-09-2016	<p>Non-Payment of service tax on the service of transportation by educational institutions during the first day of April, 2013 and ending with the tenth day of July, 2014</p> <p>Now, in exercise of the powers conferred by section 11C of the Central Excise Act, 1944 (1 of 1944), read with section 83 of the Finance Act, 1994 (32 of 1994), the Central Government hereby directs that the service tax payable under section 66B of the Finance Act, 1994 but for the said practice, on the service of transportation,</p>

		by educational institutions as defined in clause (1) of section 66D of the Finance Act, 1994(32 of 1994) during the said period, to students, faculty and staff of such institutions, shall not be required to be paid.				
2. Notification No. 44/2016-ST, MANU/DSTX/0061/2016	28-09-2016	<p>Amendment in notification No. 30/2005 - Service Tax, dated the 10th August 2005</p> <p>In the said notification, for the table the following table shall be inserted.</p>				
		<table border="1"> <thead> <tr> <th>Sr. No</th> <th>Rank of the Central Excise Officer</th> <th>Amount of service tax or CENVAT credit specified in a notice issued under the Finance Act 1994.</th> </tr> </thead> <tbody> <tr> <td>(1)</td> <td>Superintendent</td> <td>Not exceeding rupees ten lakh (excluding the cases relating to taxability of services or valuation of services and cases involving</td> </tr> </tbody> </table>	Sr. No	Rank of the Central Excise Officer	Amount of service tax or CENVAT credit specified in a notice issued under the Finance Act 1994.	(1)
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(1)	Superintendent	Not exceeding rupees ten lakh (excluding the cases relating to taxability of services or valuation of services and cases involving				

				extended period of limitation).
		(2)	Assistant Commissioner or Deputy Commissioner	Not exceeding rupees fifty lakh (except cases where Superintendents are empowered to adjudicate).
		(3)	Joint Commissioner or Additional Commissioner	Rupees fifty lakh and above but not exceeding rupees two crore.
		(5)	Commissioner	Without limit."
1. Notification No. 42/2016-ST MANU/DSTX/0060/2016	26-09-2016	<p>Non-payment of service tax by way of advancement of Yoga provided by entities registered under section 12AA of Income-tax Act, 1961</p> <p>In exercise of the powers conferred by section 11C of the Central Excise Act, 1944 (1 of 1944), read with section 83 of the Finance Act, 1994 (32 of 1994), the Central Government hereby directs that the service tax payable under section 66B of the Finance Act, 1994, on the service by way of</p>		

		advancement of Yoga provided by entities registered under section 12AA of Income-tax Act, 1961 (43 of 1961) in the said period, but for the said practice, shall not be required to be paid.
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SERVICE TAX JUDGMENTS

- **Landmark Judgment: Two Remedies not contested-** Services provided by Rajasthan Police- The case of the plaintiff is that no service tax is payable on the activity of the Rajasthan police in providing or deploying additional police force at various Banks/ Institutions/ Organisations etc. In this respect, the plaintiff filed the suit against Union of India and Ors. and at the same time also preferred an appeal before CCE. The Supreme Court held that after choosing one particular remedy, the plaintiff cannot avail the other remedy as well, in respect of the same relief founded on the same cause of action. Therefore, the Doctrine of Election would become applicable in a case like this.
2016-TIOL-171-SC-ST.
- **CENVAT Credit on Input Services-** Photograph service, Outdoor catering service, and Research and Development service- The Appellant contends that Photograph service is used for verification of manufacturing activity, Outdoor catering is used for providing food to employees and R & D is used for

improving technology. Since all aforesaid services have been justified to be input services as these serve purpose of and integrally connected with the manufacturing activity. Therefore credit is allowable under Rule 2(I) of CENVAT Credit Rules, 2004. **Wabco TVS (India Ltd.) v. CCE, Chennai- II, 2016 (44) S.T.R. 417 (Tri.- Chennai).**

- **Classifiability of Services-**The appellant undertakes financial advisory services in respect of energy, banking, development, finance, etc. Relying on the decision of HSBC Securities and Capital Markets (I) Pvt. Ltd., the Bench observed that advisory service provided by the appellant does not fall under the category of “Management Consultancy Service” and it is correctly classifiable under “Banking and Other Financial Services”. **2016-TIOL-1869-CESTAT-MUM.**
- **Intellectual Property Right Service-** Qualcomm Inc USA, entered into three agreements for procuring software and software service. The Adjudicating Authority classified it as “Intellectual Property Service” which according to the appellant is “Information Technology Service” The Tribunal observed that nature of “technical knowhow” transferred to appellant from among trade mark, design, patent, has not been identified in SCN. Terming this as a critical flaw in the SCN, the CESTAT held that demand of service tax is also without sancity of law. **2016-TIOL-1869-CESTAT-MUM.**
- The following instances has been decided in the instant case law:

- i. Advisory and Retainership fees** received for providing independent/ stray opinions; fees received towards activities of financial valuation/ private placement are taxable under Banking and Other Financial Services and not under “Management Consultancy Service”.
- ii. Fees earned by appellant’s subsidiary** cannot be a ground for demanding Service Tax from company merely because income is shown in consolidated financial statement of company and its subsidiary.
- iii.** No service tax is payable on “**Merger and Acquisition services**” prior to 16-7-2001 under the category of ‘Management Consultancy Service’. Since “Merger and Acquisition” is a highly technical and restrictive term, cannot be related to running of affairs of an organization. Therefore, no penalties are imposable.

DSP Merrill Lynch Limited v. Commissioner of Service Tax, Mumbai, 2016 (44) S.T.R. 436 (Tri.- Mumbai)

- **No denial of CENVAT on genuine grounds-** The goods are transferred to sister unit, the Revenue denies the credit on the ground that credit ought to have been taken by sister concern and not appellant unit. When Service Tax liability is incurred by the appellant and there is no law to deny the genuine liability incurred to be allowed as CENVAT Credit under reverse charge mechanism, there is no question of depriving the appellant from

the CENVAT Credit of the service tax paid on the outward transportation. **Exide Industries Ltd. v. CCE, Chennai- III, 2016 (44) S.T.R. 418 (Tri.- Chennai).**

- **Services provided free without consideration by SEZ (Special Economic Zone) unit to its DTA (Domestic Tariff Area) unit-** The Tribunal holds that no Service tax under **Business Support Services** is payable by SEZ unit of assessee company to its DTA unit of same company on principles of mutuality as value of services is NIL. In fact, invoices were raised and that too merely for the purpose of convenience. For the purpose of taxation, units located in SEZ receives special consideration with regard to exemption, drawback and other concessions. It is based on the simple assumption that when **no charge** was collected for providing the service, there would be **no question of applying a rate of tax** on the value of such service. **Commissioner v. Larsen and Toubro Ltd., 2016(44) S.T.R. 391 (Guj.)**
- **Tour Operator Services-**The petition is contested on the grounds that whether the petitioner is a tour operator or not. It was held that any person who is engaged in the business of operating tours in a tourist vehicle covered by permit is liable to be termed as a tour operator. The findings discovered that petitioner as owner of contract carriage not merely let out vehicles (so they cannot escape the service tax liability) but also is engaged in other activities amounting to providing tour operator service. Section 65(105(n) and 65(115) of the Finance

Act, 1994 read with Article 226 of the Constitution of India. **V.K. Rakesh v. CCE (Appeals), Cochin, 2016(44) S.T.R. 377 (Ker.)**

- **Exemption to the Contractor of State Housing Board for Construction of Houses for Below Poverty Line (BPL) persons:** Exemption is granted on two grounds, first, State Housing Board is a Governmental Authority and is wholly controlled by the State Government, second, BPL houses constructed are meant for residential purpose and not for commerce, industry or any other business or profession. Hence, service provided by contractors fall within the Exemption Clause 12 of Notification No. 25/2012-ST effective from 1-7-2012, and from that date Board could not deduct Service Tax from the bills of Contractor. **Bharat Bhushan Gupta & Co. v. State of Haryana, 2016 (44) STR 195 (P&H).**
- **Maintainability of Appeal before High Court in relation to religious trips:** The issue raised is as to whether the services provided in relation to religious trips in connection with Hajj and Umrah mainly to Mecca, Madina, Mina are chargeable with Service Tax. Where the rate of duty is 0% or any higher amount in terms of Section 35G(1) of Central Excise Act, such appeal does not lie with HC. Therefore, appeal is dismissed with liberty to take recourse to appropriate remedies in accordance with law. **CCE, ST&C., Cochin v. Al-Hussam India Hajj & Umrah Services Management, 2016 (44) STR 204 (Ker.)**

CENTRAL EXCISE NOTIFICATIONS

NON-TARIFF NOTIFICATIONS

Notification No.	Date of Issue	Subject
1. Notification No.- 48/2016-CENT, MANU/EXCT/0053/2016	07-10-2016	The Central Government amends Notification No. 27/2014-Central Excise(NT), dated 16.09.2014
2. Notification No.- 47/2016-CENT,	28-09-2016	The Central Government amends Notification No. 30/2014-CE (NT) dated 14th October, 2014 In the said Notification, in the Table, in column (4), for the entries, the following entries against serial No. 1 to 7, shall be substituted, namely- “Audit, Issuance of Show Cause Notice and Adjudication”.

CIRCULARS

Circular No.	Date of Issue	Subject															
1. Circular No.- 1049/39/2016- CX	29-09-2016	<p>Revised Monetary Limits for adjudication of Show Cause Notice in Central Excise and Service Tax has been issued by CBEC.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">S No.</th> <th style="text-align: center;">Central Excise Officer</th> <th style="text-align: center;">Monetary Limits</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">1.</td> <td style="text-align: center;">Superintendent</td> <td style="text-align: center;">Not exceeding rupees ten lakhs</td> </tr> <tr> <td style="text-align: center;">2.</td> <td style="text-align: center;">Deputy/Assistant Commissioner</td> <td style="text-align: center;">Above ten lakhs but not exceeding fifty lakhs</td> </tr> <tr> <td style="text-align: center;">3.</td> <td style="text-align: center;">Additional/ Joint Commissioner</td> <td style="text-align: center;">Above fifty lakhs but not exceeding two crores</td> </tr> <tr> <td style="text-align: center;">4.</td> <td style="text-align: center;">Commissioner</td> <td style="text-align: center;">Without limit i.e. exceeding two crores.</td> </tr> </tbody> </table>	S No.	Central Excise Officer	Monetary Limits	1.	Superintendent	Not exceeding rupees ten lakhs	2.	Deputy/Assistant Commissioner	Above ten lakhs but not exceeding fifty lakhs	3.	Additional/ Joint Commissioner	Above fifty lakhs but not exceeding two crores	4.	Commissioner	Without limit i.e. exceeding two crores.
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CENTRAL EXCISE JUDGMENTS

- **Rule 9 of Valuation Rules-**The Appellant, a subsidiary company, are engaged in the manufacture of Sintered Products and were supplying three types of components. The prices charged by the appellants were negotiated prices on principal to principal basis. The appellants paid CE duty considering the same as 'Transaction Value' as per Section 4 of the CEA, 1944. Revenue alleged that the valuation adopted is improper as the two companies are related persons. After extracting rule 9 of the Valuation Rules, 2000, the Bench held that plain reading of the said rule will indicate, assuming that the subsidiary and holding company are interconnected, the said rule will be applicable only if the excisable goods manufactured by the appellants are not sold except to or to related person. It is to be noted the rule contemplates that entire production needs to be sold through the holding company. In the case in hand, the entire production is not sold to the holding company. In view of this, provisions of rule 9 are not invocable in the case in hand. On this point itself, the impugned order is liable to set aside. **2016-TIOL-2620-CESTAT-MUM.**

- **Gross undervaluation and misdescription of goods-** The petitioner imported goods and subsequently filed a Bill of Entry for the clearance of goods. The officers of the Customs noticed the undervaluation and referred the matter to Special Intelligence Investigation Branch. The petition was disposed of with the following directions: The petitioner directed to remit the entire duty; further directed to pay 50% of the differential duty which has been arrived at by the Department and execute a bond for the remaining amount to the satisfaction of the respondents. **Green Line v. CC, Chennai- I, 2016 (340) E.L.T. 140 (Mad.)**
- **Recovery of Interest on delayed payment**–The High Court held that Section 11AA of Central Excise Act, 1944 was meant to apply to all cases where the duty remained unpaid after introduction in the statute. **2016-TIOL-2393-HC-GUJ-CX.**
- **Clubbing of Clearances:** When the manufacturing operations are under the common management and financial control and there is mutuality of financial interest, clearance values of all units are required to be clubbed. **2016-TIOL-2599-CESTAT-DEL.**
- **Refund claim:** The appellant had sought refund claim of the unutilized amount of CENVAT credit lying in their account. The Bench observed that there is no provision in the CENVAT Credit Rules, 2004 which requires the appellant-assessee to reverse the CENVAT credit against the receipt of refund order. There is also no provision which mandates for demand of interest for

late deposit of the refund cheques given to an assessee. In the absence of any such provision, demand of interest from the appellant for the period from the date of issue of cheque till the date of deposit for non reversal of CENVAT credit seems inconsistent with law.**2016-TIOL-2630-CESTAT-MUM.**

- **Settlement:** The assessee was not amortizing the value of dies/ fixtures supplied by M/s. Tata Motors Limited in the value of goods. Naturally a SCN is issued on the petitioners demanding duty. The Settlement Commission made it a clear case of suppression and mis-declaration of facts with intent to evade the duty. The High Court by virtue of this order, made it clear that the petitioner will not derive any benefit in the form of refund of duty, interest and penalty already paid under the order of Settlement Commission. **2016-TIOL-2313-HC-MUM-CX.**

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