

# 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**

# GST HIGHLIGHTS

## **1. President of India notifies constitution of GST Council from Sep 15, 2016:**

The President on 15<sup>th</sup> September, 2016 constituted the GST Council with the Union Finance Minister as the Chairperson, in exercise of the powers conferred under Article 279A of the Constitution. In order to ensure that there is no slippage on date of implementation of GST from 1st April, 2017, the Prime Minister reviewed the progress made on various steps needed for the rollout of GST relating to preparation of Model GST laws and rules to be framed, establishment of IT infrastructure for both Centre and States, training of officers of Central and State Governments and outreach for awareness of trade and industry.

## **2. One hundred and first amendment of the Indian Constitution:**

The Constitution 101st Amendment Act has received presidential assent on 8th September 2016. This act paves the way for introduction of Goods & Services Tax (GST) by making Special provision with respect to goods and services tax.

Article 264 & 293 are related to the financial relations between the Union and the State Governments. Since, the state Governments have their interests in GST, the implementation of GST cannot take place without amendment of the Indian Constitution. For this purpose, Constitution (101st Amendment) Bill, 2016 has been passed. This amendment has made the following changes:

- **Introduced new Article 246A**

This articles provides that both parliament and state legislatures shall have concurrent powers to make laws with respect to goods

and services tax (GST). The Parliament will retain exclusive power to legislate on inter-state trade or commerce.

- **Introduced Article 269A**

In case of the inter-state trade, the tax will be levied and collected by the Government of India and shared between the Union and States as per recommendation of the GST Council.

- **Introduced Article 279A**

This article provides for constitution of a GST council by president within sixty days from this act coming into force.

### **Other Important amendments in existing articles**

- ✚ The residuary power of legislation of Parliament via article 248 is now subject to article 246A.
- ✚ Article 249 has been changed so that if 2/3rd majority resolution is passed by Rajya Sabha, the Parliament will have powers to make necessary laws with respect to GST in national interest.
- ✚ Article 250 has been amended so that parliament will have powers to make laws related to GST during emergency period.
- ✚ Article 268 has been amended so that excise duty on medicinal and toilet preparation will be omitted from the state list and will be subsumed in GST.
- ✚ Article 268A has been repealed so now service tax is subsumed in GST. Article 269 would empower the parliament to make GST related laws for inter-state trade or commerce.

## SERVICE TAX NOTIFICATIONS & CIRCULARS

### NOTIFICATIONS

Notification No.	Date of Issue	Subject
1. Notification No.- 40/2016-Service Tax, MANU/DSTX/0058/2016	06-09-2016	<p><b>Central Government hereby makes following further amendments in below mentioned notification.</b></p> <p>In the said notification, in the opening paragraph, in entry 5, for clause (a), the following clause shall be substituted, namely:-</p> <p>“(a) renting of precincts of a religious place meant for general public, owned or managed by an entity registered as a charitable or religious trust under section 12AA of the Income-tax Act, 1961(hereinafter referred to as the Income-tax Act), or a trust or an institution registered under sub clause (v) of clause (23C) of section 10 of the Income-tax Act or a body or an authority covered under clause (23BBA) of section 10 of the Income-tax</p>

		Act; or”
2. Notification No.- 39/2016-Service Tax, MANU/DSTX/0056/2016	02-09-2016	<p><b>Central Government hereby makes the following further amendment in the below mentioned notification.</b></p> <p>In the said notification, in the first paragraph, in entry 62, for the words and figures "during the financial year 2015-16",</p> <p>the words, figures and letters "during the period prior to 1st April, 2016" shall be substituted.</p>

## CIRCULARS

Circular No.	Date of Issue	Subject
1. Circular No.- 200/10/2016-ST	06-09-2016	<p><b>Clarification regarding scope of Notification No. 25/2012-Service Tax dated 20.06.2012, Sl. No. 5(a).</b></p> <p>The said notification exempts services by way of renting of precincts of a religious place meant for general public. Religious place, renting and general public has been defined in the Finance Act but the word 'precincts' appearing in the notification has not been defined and this gives rise to difficulty/disputes in interpreting scope of the said exemption notification. The field formations may not take a restricted view of the word 'precincts' and consider all immovable property of the religious place located within the outer boundary walls of the complex (of buildings and facilities) in which the religious place is located, as being located in the precincts of the religious place. The immovable property located in the immediate vicinity and surrounding of the religious</p>

		<p>place and owned by the religious place or under the same management as the religious place, may be considered as being located in the precincts of the religious place and extended the benefit of exemption under Notification No. 25/2012-<b>Service Tax</b>, Sl. No. 5(a) dated 20.6.2012.</p>
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## SERVICE TAX JUDGMENTS

- **Mid Day Meal Scheme-** The Appellant providing Mid Day meals to various schools and are paid for same by Schools/ Government- Appellants does not fall within the definition of “Outdoor Caterer”. The outdoor caterer as defined in Section 65(76a) means a caterer providing catering services at a place other than his own but includes a place provided by way of tenancy by the person receiving such services. Since the activity of appellants are not covered by outdoor caterer, they do not fall within the ambit of taxable service u/s 65 (106(zzt). Accordingly, the duty demand on this count would not be sustainable. **2016-TIOL-2412-CESTAT-MUM.**
- **Taxability of Consulting Engineer-** As per the two provisions contained in Section 66(3) and Section 66(72)(g) of Finance Act, 1994, it is quite clear that the person who falls within the ambit of charging section is a “consulting engineer” no matter whether

he is an individual, firm, company or an association of persons. In this case, assessee being a company providing consultancy service as consulting engineer is chargeable to Service Tax as consulting engineer.

- The money/ contribution received by company against shares from the prospective members for raising funds which can be used for achieving the sole object of the company i.e. establishing a luxurious club, is taxable as service as per the provisions of Finance Act, 1994. **2016-TIOL-27-ARA-ST.**
- **Place of Provision of Service-** Clinical pharmacology and clinical research service provided in respect of goods that are required to be made physically available by the service receiver to the service provider in India are taxable in the light of Rule 4 of Place of Provision of Services (POP) Rules, 2012. Therefore, the place of provision of service must be taxable in India in order to render the service taxable. **2016-TIOL-26-ARA-ST.**
- **Refund claims-** It was opined by High Court that, to say a notification is clarificatory, there should be something enunciated in original or base notification itself. Services added to Refund Notification 41/2007-ST by subsequent notifications cannot be given retrospective effect. **2016-TIOL-2069-HC-DEL-ST.**
- The appellants are contractors for infrastructure projects and the demands pertain to alleged non-payment of tax by them



under Finance Act. The Bench observed that work undertaken by the appellant of constructing the railway slidings fall within the exclusionary portion of Section 65(25a) of Finance Act and are outside the ambit of taxation. The Railways with public investment and private investment function under the same statute i.e. Railways Act, 1989. **2016-TIOL-2396-CESTAT-MUM.**

- **Undervaluation-** The issue is regarding undervaluation of the amounts received for the ‘catering services’ provided in addition to the ‘mandap-keeper’ services. The CESTAT observed that the definition of ‘mandap-keeper’ was amended to include ‘marriage’ as a social function, the appellant could have discharged the service tax liability together with interest. By invoking the provisions of Section 80 of Finance Act, 1994 (which provides for no penalty to be imposed) the Bench set aside the penalties (the appellants being under bona fide impression that service tax liability does not arise on religious functions) while upholding the service tax liability and interest thereof. **2016-TIOL-2285-CESTAT-MUM.**

# CENTRAL EXCISE NOTIFICATIONS

## TARIFF NOTIFICATIONS

Notification No.	Date of Issue	Subject
1. Notification No.- 34/2016-CE, MANU/EXCT/0053/2016	08-09-2016	<p><b>Central Government hereby makes the following further amendments in the below mentioned notification.</b></p> <p>The Central Government seeks to further amend notification No.12/2012-Central Excise dated 17.03.2012. for entry No. 192 in the said notification, the entries has been substituted.</p>

## CIRCULARS

Circular No.	Date of Issue	Subject
1. Circular No. 1047/35/2016- CX	16-09-2016	Rebate of duties paid on raw materials used in manufacture or processing of export goods and admissibility of duty drawback in such cases.
2. Circular No. 1046/34/2016- CX	16-09-2016	Supply of goods manufactured by EOUs without payment of Central Excise Duty against Advance Licence/Authorisation- reg.

## CENTRAL EXCISE JUDGMENTS

- **Pre- deposit-** Amendment of Section 35F of Central Excise Act, 1944 requiring to make pre-deposit of fixed percentage of tax demanded or penalty levied or both to entertain appeal by Commissioner (A) or CESTAT. Any appeal filed after 06/08/2014 cannot be entertained unless the pre-deposit is made in terms with the Statute. Therefore, the petitioners are liable to deposit 7.5% or 10% as the case may be for preferring appeals before CESTAT or Commissioner (A). **2016-TIOL-2017-HC-KERALA-CX.**
- **Adjudication-** Principle of natural justice- The plea of not permitting cross-examination of persons from whom statements were recorded, has to be dealt with and specific finding recorded thereon. The Department's plea that when burden is discharged by Department, there is no need for cross-examination. **NGA Steels (P) Ltd. v. CESTAT, Chennai, 2016 (339) E.L.T. 217 (Mad.)**
- **Manufacture-** Importing parts of dumpers in bulk and subjecting the same to packing, repacking in unit containers/ packages marked with "Komatsu" brand and affixed with MRP tags- as goods are part of "automobiles", activity is manufacture u/s 2(f)(iii) of Central Excise Act, 1944 and chargeable to duty. **2016-TIOL-2360-CESTAT-MUM.**

- **EXIM-** Notification issued by Ministry of Commerce and Industry, record indicating that Director General of Foreign Trade (DGFT), in his capacity as Additional Secretary to Government, issued the notification based on decision taken by Central Government. DGFT had jurisdiction to issue notification under section 5 of Foreign Trade (Development and Regulation) Act, 1992. It could not be said that DGFT himself has issued notification. Merely for the reason that DGFT also hold post of Additional Secretary to the Government of India does not mean that he cannot exercise powers vested in him as per Rules especially when he had issued notification in accordance with the procedure prescribed after due approval of concerned authority. **DGFT, New Delhi v. Mustafa Traders, 2016 (339) E.L.T. 215 (Ker.)**
- **Maintainability of Appeal before High Court-** The present appeal involved the matter of substantial question of law as to whether Central Excise duty paid on transaction value arrived at on the quantity of petroleum products at normal room temperature converted to notional temperature amounts to short payment of duty. The Tribunal having considered the valuation provisions u/s 4 of Central Excise Act held appeal is not maintainable before High Court u/s 35G of Central Excise. **CCE Panchkula v. Indian Oil Corporation, 2016 (339) ELT 9 (P&H).**
- **Manufacture-** Isolate soya protein is nutritionally very different from its raw material i.e. soya flour in terms of its use,

nature and character. The use for which soya protein is put to is different from which the soya flour is used and also, both the items are marketed and sold differently. A new product which is perceived differently and which has a name, character and use which is totally different from the raw material, the activity amounts to manufacture. **2016-TIOL-2361-CESTAT-DEL.**

- **Confiscation and penalty-** Non notified goods of smuggled character- It is a settled proposition that burden of proof, to a demonstrable degree, in such cases is on Department to prove the nature of the goods. It may not be possible and, therefore, necessary to have direct evidence of smuggling but various circumstances such as the place and the condition of the goods at the time of the seizure, manner of its packing, labelling and transportation may show by way of circumstantial evidence that the goods bear the nature of smuggled goods. Only in such a situation the onus would shift on the person that the goods had been validly imported and were duty paid. **Commissioner of Customs, Patna v. Manish Kakrania, 2016 (339) E.L.T. 247 (Pat.)**

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## CIRCULATION BY

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