

Indirect Taxes Updates

GST, Excise, Service Tax, Customs & VAT

Month: - May 2017 (updated upto 4th June 2017)

GST

Major highlights of outcome of the 15th meeting of the GST Council chaired by Finance Minister Arun Jaitley held on 3rd June 2017 are as under -

- All the states have agreed to rollout GST from July 1, 2017.
- The GST Council has cleared all the pending rules related to transition provisions and returns. As per the news reports, following changes have been made in 'GST transition rules':
 - The deemed credit (available in the absence of duty paying documents) has been increased to 60 percent (of applicable CGST) on transition stocks subject to GST of 18 percent and above. The stocks subject to GST of 5 and 12 percent would get credit of 40 percent;
 - The benefit of deemed credit will also be available for goods manufactured in tax exempted regions like Himachal Pradesh and Uttarakhand;
 - Full credit will be available on branded goods valuing over Rs.25000/- that are serially numbered (such as TV, fridge or car chassis). This credit will be available basis credit transfer document issued by the manufacturer.
- Gold, Gems, Jewellery to be taxed at 3 percent.
- GST on apparel below Rs 1,000 fixed at 5 percent.
- GST on all biscuits to be 18%.
- Readymade garments to attract 12% GST; Yarn and fabric cotton 5 per cent.
- Footwear priced below Rs 500 to be taxed at 5%, the rest at 18%.
- Bidi to be taxed at 28% without cess.
- A nominal rate of 0.25 imposed on rough diamond.
- GST Council will set up committee to look into complaints regarding anti-profiteering clause.

The GST Council will meet on June 11 (Sunday) for its 16th meeting. In this meeting, the GST Council will review the rates on the basis of feedback to be received from Industry and also review the preparedness before the July 1 rollout. Pending Draft Rules like Accounts and Records, E-way Bill etc., may also be taken up in this meeting.

In its previous meeting on 18th and 19th May held in Srinagar, the GST Council-

- Placed in public domain, schedule containing rates of GST for both goods and services and the revised draft of 7 procedural GST Rules.
- Approved rules relating to Registration, Valuation, Input Tax Credit (ITC), Invoice, Composition and Refund along with the rates on more than 1200 goods and host of services.
- Released GST Compensation Cess Rate Schedule covering Cess Rate on specified goods like motor vehicles, aerated waters, tobacco and tobacco products.
- Approved list of 18 services that will be covered under reverse charge mechanism.
- Mentions heading at 4 digit level in contrast to current 8 digit tariff items in the present Central Excise Tariff.
- Proposed Classification Scheme for Services with more than 500 services being classified under 6-digit code.
- Also, around 82 exemptions available under Service Tax will also be available under GST.

GST slab rates for services are same as that of goods, i.e., 5%, 12%, 18% and 28%. For instance-

Nature of service	GST Rate	ITC Available or Not
Transport of Goods by GTA	5%	Not Available
Services by way of admission to entertainment events or amusement facilities including cinemas.	28%	Available
Composite supply of works contract	18%	Available

Excise

Valuation:-

➤ **Commissioner v/s AVS Industries-2017(349) ELT 344(Mumbai-Tribunal)**

Issue:- Freight for supply of raw materials from Principal Manufacturer to job worker's premises to be added or not, over and above the invoice value for arriving at Assessable value (u/s 4 of Central Excise Act) of the job work goods manufactured and returned by Job worker when same not shown separately?

Conclusion: - Not to be added while calculating Assessable value.

Reason: - Freight would be deemed as included in the invoice value as the same was paid by the principal manufacturer. So, invoice value of principal manufacturer becomes the landed cost of raw materials, requiring no further addition in assessable value.

➤ **Jai Shree Udyog v/s Commissioner- Final Order no 70352/2017, dated 06.04.2017, CESTAT Allahabad**

Issue: -Should freight only be shown separately in Excise Invoice(issued for such clearance) or it can be shown separately by the assessee through debit notes/ separate invoice?

Conclusion: - Freight can be shown separately by the assessee through debit notes/ separate invoice.

Reason: -Showing of freight through debit notes/ separate invoice is valid and hence not includible in the assessable value.

➤ **Kriti Industries (I) Ltd. v/s Commissioner-2017 VIL 390 CESTAT LB**

Issue: -Payment of 8%/10% under Cenvat Rule 6(3) (b) to be deducted from price of exempted goods or not?

Conclusion: - Not to be deducted from price of exempted goods

Reason: - Proposition to equate reversal of 8%/10% of price of exempted goods to 'other taxes' is wrong in as much as reversal of such amount is not tax at all. It was also held that cost of exempted goods needs to be considered as a whole.

Cenvat Credit:-

➤ **India Pesticides Ltd. v/s Commissioner- Final Order No. 70350/2017, dated 03.03.2017, CESTAT Allahabad**

Issue: -Reasons for return or evidence of further use for being remade to be provided to the department in case of return or not?

Conclusion: - No need of providing any such reason or evidence of further use to the department.

Reason: -No such requirement under Rule 16 of Central Excise Rules, 2002 and hence cenvat credit may be availed.

➤ **Hindustan Zinc Ltd. v/s Commissioner-2017(349) ELT 316 (Tribunal- Delhi)**

Issue: - Cenvat Credit on rock bolts used as capital goods in a captive mine is eligible or not?

Conclusion: - Eligible for Cenvat Credit

Reason: - Cenvat Credit on rock bolts used as support for mining wall and grouted/ fitted against rock mining is available since these goods are in the nature of fixtures and fixtures were covered in the definition of capital goods. Reliance was also placed on Apex court judgement in case of *Vikram Cement- 2006(197) ELT 145(SC)*.

Manufacture: -

- **Tinna Rubber & Infrastructure Ltd. v/s Union of India-2017 VIL 249 DEL CE**
Issue: - Whether cutting of old tyres to produce two or more pieces of cut tyres amounts to manufacture or not?
Conclusion: - Does not amount to manufacture u/s 2(f) of the Central Excise Act, 1994
Reason: - Since the essential character of the goods remain the same. Reliance was also placed on Apex court judgement in case of *Servo Med Industries*.
- **Moulds & Dies P. Ltd. v/s Commissioner-2017 (349) ELT 186 (Tribunal- Mumbai)**
Issue: - Whether gear teeth cutting of machined blanks amounts to manufacture or not?
Conclusion: - Amounts to manufacture as per Section Note 6 to Section XVI of the Central Excise Tariff Act, 1985.
Reason: - Since the product attained the essential character of the finished goods even if the same were being thereafter subjected to processes like heat treatment, slotting, etc. by the supplier of blanks. Contention of the appellant that merely gear teething of blanks would not result in a marketable commodity was rejected.

EOU: -

- **Nitin Spinners Ltd. v/s Commissioner-2017 (349) ELT 174 (Tribunal- Delhi)**
Issue: - Whether credit has to be reversed on input services received prior to de-bounding of EOU even if the goods manufactured post de-bounding are cleared without payment of duty or not?
Conclusion: - No need to reverse credit under Notification No. 30/2004-CE.
Reason: - Since the services in respect of which credit was availed were consumed as soon as the same were received and since at the time of taking credit, no liability to reverse credit under Rule 6 would arise.

Classification: -

- **Commissioner v/s ShubhamGoldiee Masala Pvt. Ltd. – Final Order No. 70366-70368/2017, dated 01.03.2017, CESTAT Allahabad.**
Issue: - Whether heena powder in retail pack for use on hand classified under Heading 1401 of Central Excise Tariff or under Heading 3305 of Central Excise Tariff?
Conclusion: - Classifiable under Heading 1401 of Central Excise Tariff.
Reason: - Goods with indication of use as hair dye to be classifiable under heading 3305.

Service Tax

Exemption: -

- **United News of India v/s Commissioner-2017 (51) STR 23 (Tribunal- Delhi)**
Issue: - Benefit of exemption notification No. 13/2010-ST will be available to service recipient liable to pay service tax under reverse charge mechanism u/s 66A of the Finance Act, 1994 or not?
Conclusion: -Benefit of Exemption will be available.
Reason: - Since the legal fiction u/s 66A cannot be restricted only to collection of tax without applying any concession when the conditions of the notifications are fulfilled by the recipient.

Cenvat Credit: -

- **Dhampur Sugar Mills Ltd. v/s Commissioner- Final Order No. 70296-70297/2017, dated 16.03.2017, CESTAT Allahabad**
Issue: - Whether cenvat credit on telephones installed at schools maintained in close vicinity of factory are available or not?
Conclusion: - Cenvat Credit available.
Reason: - Since school was run and maintained by assessee with mostly children of workers studying there.

Penalty: -

- **Indian Oil Corporation Ltd. v/s Commissioner- Final Order No. 52939/2017, dated 13.04.2017, CESTAT Delhi**

Issue: - Whether longer duration of tax liability bar closure of case u/s 73(3) of the Finance Act, 1994 or not?

Conclusion: - No, it will not bar closure of case under the said provisions.

Reason: - Bar will come into effect only in cases where mis statement, suppression, intention to evade are present.

Refund: -

- **Commissioner v/s Scioinspire Consulting Services (India) Pvt. Ltd.-2017 TIOL 798 HC MAD ST**
Issue: - Can refund of cenvat credit be denied if premises of service provider are not registered?
Conclusion: - No, refund cannot be denied.
Reason: - Since Rule 5 of Cenvat Credit Rules, 2004 and sub rules (2) and (3) of Rule 4 of the Service Tax Rules, 1994 did not stipulate registration of the premises for the purpose of claiming refund.

Customs

EO Discharge Certificate

- **Circular no. 16/2017 Cus dated 02-05-2017**
Issue: - EODC issued to license / authorization holder.
Conclusion: - Custom to keep matter in abeyance till DGFT decision
Reason: - Field formations have also been directed to issue only a simple notice for submission of proof of discharge of export obligation

STGU Service

- **K-Air Specialty Gases Vs. Commissioner -2017 VIL 396 CESTAT MUM ST**
Issue: - Liability on rental of containers transporting gas, utilized further in manufacture
Conclusion: - No, as rent on cylinder was paid by the importer to the foreign supplier
Reason: - Cylinders were in effective control and possession of the assessee till the time empty containers were re-exported, and Central excise duty was paid on gas considering the process of re-packing and relabeling as amounting to “manufacture” and it was case of revenue neutrality service tax, if paid would be available as Cenvat credit.

Valuation

- **Aman Trading Company vs. Commissioner 2017 VIL 417 CESTAT DEL CU**
Issue: - Importer had used the name of another firm to avoid sales tax.
Conclusion: -. Appeal of importer allowed by Delhi CESTAT.
Reason: - Tribunal rejected the contention of the department that **Impugned goods were brought on high seas , same could not be considered be at level with the goods imported elsewhere directly.**

VAT

- **Amnesty schemes under Rajasthan VAT and Rajasthan Entry tax extended- Notification no. 16-2009-09 dt 30-04-2017 amnesty scheme 2017.**
- **ITC on goods used in construction of silos available – Allahabad High court has upheld view of the Tribunal (Comm V. Ambuja Cement Ltd. -2017 VIL 233 ALH)**

With Warm Regards & Jai Hind

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