



INDIRECT TAX UPDATES

Updates on GST

Amid stiff opposition from states, the Centre is proposing to drop the veto powers which the Government had earlier proposed to bestow upon the Union Finance Minister through the constitution amendment bill on GST. The Bill is being redrafted to say that no proposal will be cleared by the GST Council unless there is a consensus among all the 30 states & union territories, including the Centre.

Notifications/Circulars

Changes have been incorporated vide the following notifications/circulars:

SERVICE TAX

1. Circular No.124/6/2010-TRU, dated 29th June, 2010: Accounting codes under major Head '0044-Service tax' has been Introduced for the eight new taxable services vide the Finance (No.14) Act, 2010.
2. Circular No.125/7/2010-ST, dated 30th July, 2010: Vide this Circular the Department of Revenue has clarified that the Grant released by the Central Government under a centrally sponsored scheme cannot be presumed to be a consideration for providing a taxable service. Therefore no service tax is to be charged on services rendered by the state Government under such schemes.
3. Notification no.45/2010-ST dated 20th July, 2010: The Central Government has clarified that all taxable services related to transmission & distribution of electricity which have not been levied by any such service provider to a service receiver for the period from 26th February 2010 upto 21st June, 2010 will not be subject to Service tax for such taxable services rendered under Section 11C of the Central Excise Act, 1944.

4. Notification No.44/2010-ST, dated 20th July, 2010: The Central Government has made amendments in the Service Tax Return Preparer Scheme, 2009.

EXCISE

1. Notification No.26/2010-CE(NT), dated 29th June, 2010: Vide this Notification the further amendments have been made in the CENVAT Credit Rules, 2004 to state that CENVAT Credit shall not be utilized for payment of Clean Energy Cess.

2. Notification No.27/2010-CE(NT), dated 1st July, 2010: Vide this notification the Central Government has made amendments to the CENVAT Credit Rules, 2004. As per the new provisions, foreign diplomatic missions, consular missions, career consular offices or diplomatic agents will be exempted from compliance requirements under the CENVAT Credit Rules in case goods cleared without payment of duty are supplied for use by the above diplomatic missions, agents, etc. The amended rules will be known as the CENVAT Credit amendment Rules, 2010.

3. Circular No. 932/22/2010, dated 4th August, 2010: The administrative control of EOUs has been passed over from Customs to the Central Excise formations at all locations.

CUSTOMS

1. Notification No.81/2010, dated 10th August, 2010: The Central Government has further amended notification no.20/2006-Cus, dated 1st March, 2010 to add items in the list which would be subject to nil rate of Special CVD subject to fulfillment of certain specified conditions.

2. Notification No.70/2010-Cus, dated 30th July, 2010: The Central Government has imposed provisional anti-dumping duty on PVC flex films originating in & imported from the People's Republic of China.

3. Notification No.75/2010-Cus, dated 14th July, 2010: The Central Government has imposed provisional anti-dumping duty on glass fibre and articles thereof originating in & imported from the People's Republic of China.

4. Notification No.76/2010-Cus, dated 26th July, 2010: The Central Government has imposed provisional anti-dumping duty on viscose staple fibre originating in & imported from the Peoples Republic of China & Indonesia.

5. Notification No.77/2010-Cus, dated 26th July, 2010: The Central Government has imposed provisional anti-dumping duty on PVC paste resin originating in & exported from People's Republic of China, Japan, Republic of Korea, Malaysia, Russia, Taiwan and Thailand.

VAT

Delhi

1. Notification No. F/3(35)/ Fin.(Rev.1)/2010-11DS-II/115, dated 19th July, 2010: Amendments have been made in the Third & Fourth Schedules of the Delhi VAT Act, 2004 to reduce the VAT rate on dry fruits from 12.5 percent to 5 percent and on diesel from 20 percent to 12.5 percent respectively.

2. Notification No. F.3(27)Fin.(T&E)/2009-10, dated 7th May, 2010: Amendments have been made in the DVAT Rules to include the format for maintenance of registers for purchase & sales for inward/ outward branch transfers in Forms DVAT 30 & 31 respectively. These details are to be submitted along with the Returns by assesses.

Haryana

3. Notification No. SO 73/CA74/ 1956/S.8/2010, dated 28th May, 2010: Goods produced in the Naphtha Cracker Complex of Indian Oil Corporation, Panipat, shall be subject to a CST rate of half percent of the inter-state sales turnover of goods produced in the cracker complex. This duty rate will be valid for a period of 7 years from the date of commencement of such commercial production. Thereafter, the applicable rate of CST will be 1 percent of such turnover for a further period of 3 years, subject to the production of a declaration in Form C.

4. Notification No. SO 74/HA6/2003/S 60/ 2010: The Haryana Government has imposed new lump sum rates of tax in lieu of the VAT leviable on brick kiln owners.

UP

5. Notification No. KANI-2-485XI-9(1)/08-UP Act-5-2008-Order-(60)-2010: With effect from May 13, 2010, a power project industrial unit in the state of unit with a minimum investment of Rs.1000 crore or more in new capacity or expansion/renovation of existing capacity upto March 31st, 2009, will be liable for

payment of tax on sale or purchase of goods of other dealers if such goods are ultimately sold to the power project industrial unit. The unit shall further issue the relevant declarations to such dealers.

6. Notification no.KANI-2-939/XI-9(81)/91-UPACT-30-07-Order(62)-2010, dated 28th June, 2010: Rebate has been granted to the extent of the amount of tax payable by a dealer on sale or purchase of natural gas under the UPVAT Act, 2008 from the UP Entry Tax Act on entry of the said goods into the local area subject to the condition that the amount of rebate shall not exceed the amount of entry tax levied.

CASE LAWS

1. In Commissioner of Central Excise, Guntur Vs. CCL Products India Ltd., the respondents used metal tins for packing their final product. The metal tins were put in plastic pallets. In order to transport the metal tins, the pallets are sent back to the supplier by the respondents and it incurs service tax under GTA for such transportation. The service involved is in relation to procurement of inputs which is covered by the definition of input service in Rule 2(l) of the Cenvat Credit Rules. This activity would also get covered by 'activities relating to business', which is an input service on which cenvat credit under GTA services is allowed.

EXCISE

2. In the Civil Appeal of 2010, in the case of the Commissioner of Central Excise Vs. Raghav Alloys Ltd., the Punjab & Haryana High Court has held that CENVAT credit availed at the time of purchase & installation of capital machinery need not be reversed if the machinery is sold at transaction value after being put to use for nine years. Since the machinery has not been cleared as such, the CENVAT credit need not be reversed by the assessee.

3. In the case of the National Leather Cloth Manufacturing Co. Vs. Union of India & another, the Supreme Court has held that the cost of secondary packaging need not be included in the value of the goods for the purpose of assessment of Excise duty leviable as per Section 4(4)(d)(1) of the Central Excise Act.

CUSTOMS

4. In the case of Indian Farmers & Fertilizers Cooperative Vs. Customs & Central Excise Commissioner, Bhuvaneshwar, the Supreme Court has held that when transaction value can be determined as per Section 14 of the Customs Act, 1962, read with Rule 3(1) of the Valuation Rules, the question of resorting to assessment under Rule 5 of the Customs Valuation Rules does not arise.

VAT

5. In State of Bihar & Others Vs. Kalyanpur Cements Ltd., the Apex Court has held that in order to invoke the doctrine of promissory estoppel, it must be established that :

- a) a party must make an unequivocal promise or representation by word or conduct to the other party
- b) The representation was intended to create legal relations or affect the legal relationship

6. In the Civil Appeal in the case of the state of Andhra Pradesh & Others Vs. Larsen & Toubro & Others, the Apex Court has decided that in case of works contract awarded by the main contractor to sub-contractors, the main contractor is not required to include the turnover of the sub-contractor in its turnover while filing its returns. Therefore no tax is to be payable on the consideration paid for the sub-contract.