



INDIRECT TAX UPDATES

News on GST

In a landmark decision, the UPA Government has resolved to amend the Constitution so that the centre & states have equal powers in administering the Goods & Services Tax (GST). A Fourth List is proposed to be created in the Seventh Schedule of the Constitution. The Fourth List will constitute a governing council of the Union Finance Minister & the State Finance Ministers who will have absolute powers on matters relating to indirect taxes, especially GST.

The Law Ministry in consultation with the Finance Ministry has prepared the Draft Bill on GST, which is to be sent to the States for approval.

Notifications/Circulars

Changes have been incorporated vide the following circulars/notifications:

SERVICE TAX

1. Circular No. 120/01/2010-ST, dated 19th January, 2010: Vide this Circular, the procedures & eligibility for claiming refund of unutilized CENVAT credit on inputs/input services by exporters of goods & services has been defined.
2. Circular No. 120 (a)/2/2010-ST dated 16th April, 2010: The Department has construed that no service tax is leviable on expenses shared between the insurance company & the reinsurer since there is no service involved in the transaction.
3. Circular No. 121/3/2010-ST, dated 26th April, 2010: The Department has clarified that no Service tax is payable on the container detention charges charged by any shipping line since there is no Service

involved in the transaction & the amount payable is only the penal rent for detention of containers beyond the pre-determined period.

4. Circular No. 122/03/2010-ST, dated 30th April, 2010: Vide this Circular, the Department has clarified that in case of payment of Service tax for input services to Associated Enterprises through Book adjustments as per Section 67 of the Finance Act, CENVAT credit should not be denied, provided Service tax has been paid into the Government Account. If there is a deduction in the invoice amount, then the credit taken should be equivalent to the amount of Service tax paid.

EXCISE

1. Circular No. 921/11/2010-CX, dated 10th May, 2010: Vide this Circular, the Department of Revenue has clarified that education cess & higher education cess is payable in addition to the Excise Duty payable under the compounded levy scheme on stainless steel pattas/pattis & aluminium circles.

2. Circular No. 21/2010-Central Excise(NT), dated 18th May, 2010: The Central Government has clarified that with effect from 1st June, 2010 first & second stage dealers who have paid Excise Duty of Rs.10 lacs or more in the previous year, are required to file their Returns & declarations electronically.

3. Notification No. 22/2010-Central Excise (N-T), dated 18th May, 2010 : The Central Government has granted rebate on excisable goods like unmanufactured Tobacco & chewing tobacco, bearing a brand name & falling under tariff heading 2401 & 24039910 respectively, on their exportation out of India.

4. Circular No. 923/13/2010-CX dated 19th May, 2010: The Central Government has clarified that cost of return fare of vehicles is not required to be added for determining the assessable value.

CUSTOMS

1. Notification No. 57/2010-Customs, dated 3rd May, 2010: Vide this Notification, the Central Government has imposed anti-dumping duty on Polytetrafluoroethylene (PTFE), when imported from Russia.

2. Notification No. 36/2010-Customs (NT), dated 5th May, 2010: The Central Government has announced the regulations for assessment & clearance of import or export goods by an authorized air courier on behalf of a consignor or consignee.

3. Notification No. 59/2010-Customs, dated 10th May, 2010 : Vide this Notification, the Central Government has exempted raw cotton from payment of Customs Duty in excess of Rs.2500/- per M. Ton when exported out of India.

CASE LAWS

SERVICE TAX

1.The larger bench of the CESTAT has ruled that turnkey contracts can be vivisected. Thus, the decision of the CESTAT in the Daelim case has been overruled, wherein it was held that a works contract cannot be vivisected.

2.The Punjab & Haryana High Court has held that an assessee can claim CENVAT credit only on the basis of invoices of duty paid goods which had reached the premises of the assessee & not otherwise.

CENTRAL EXCISE

4.The Punjab & Haryana High Court has ruled in favor of the larger bench of the CESTAT in the case of HMT(Tractor Division), Pinjore Vs. Commissioner of Central Excise, Panchkula, wherein the CESTAT had held that CENVAT credit taken legally on dutiable inputs & utilized subsequently need not be reversed if the final product becomes exempt at a later date.

5.The Punjab & Haryana High Court has held that an assessee can claim CENVAT credit only on the basis of invoices of duty paid goods which had reached the premises of the assessee & not otherwise.

6.The Karnataka High Court has held that an assessee cannot claim depreciation under Income tax on unutilized CENVAT credit.

7.In Madras Cements Ltd. Vs. Commissioner, the Supreme Court has held that assesses have to prove to the assessing authorities that capital goods in the form of spares, components and accessories have been utilized for manufacture of the finished product, ie. cement & cement clinkers.