

Indirect Tax Newsletter

(CENVAT, Service Tax, Sales Tax & VAT)

pwc

June 2011 – Volume 14, Issue 3

In this Issue

CENVAT

Service Tax

Sales Tax / VAT

Contacts

In this Issue

CENVAT

Notifications/Circulars

- Single registration permissible for a person engaged in the manufacture of recorded smart cards in multiple units.
- Guidelines issued for appointment of Ombudsman, enabling resolution of public grievances against Customs, Central Excise & Service tax Department.

Case Law

Manufacture

- Mixture of graphite & clay arising during the course of manufacture having short shelf life, is not an excisable item.

Valuation

- In the absence of any evidence establishing place of delivery being different from place of removal, deduction of freight expenses from value of goods not permissible.

Others

- Principle of Unjust enrichment not applicable in relation to refund of excess duty paid due to arithmetical mistake.

Service Tax

Case Law

- No interest is applicable where CENVAT Credit has been availed wrongly but reversed before utilization.

Sales Tax

- Ink used in printing of lottery tickets liable to VAT as works contract.
- No deduction available towards depreciation on self owned machinery for computing taxable turnover liable to VAT under a works contract transaction.
- HSD used for running mining machinery and primary use of cement for construction of foundation for machinery is eligible to be purchased against Form C.

VAT

- Electronic filing of returns made mandatory in Assam.
- Time limit for filing Form DVAT 51 extended in Delhi.

Indirect Tax Newsletter

(CENVAT, Service Tax, Sales Tax & VAT)

pwc

June 2011 – Volume 14, Issue 3

CENVAT

Notifications/Circulars

- The Government has issued a Notification permitting a person engaged in the manufacture of recorded smart cards in multiple units, to seek a single registration. The single registration for all the units would be granted at a unit where such a person maintains a centralized billing or accounting system in respect of goods manufactured in different units.

(Notification No. 14/2011 – CE (NT) dt. 3/06/11).

- The Government has issued 'The Indirect Tax Ombudsman Guidelines, 2011' (effective from 11/05/11) with an objective of resolution of complaints related to public grievances against the Customs, Central Excise & Service tax Department and to facilitate the satisfaction/settlement of such complaints. The main highlights of the guidelines are as under:

- A representation can be made alleging deficiency in the working of the concerned department, in relation to any delay in reference to refunds, adjudication, grant of registration of tax payers, giving effect to Appellate orders; non-adherence to the rules prescribed for disbursement of draw back; non-acknowledgement of submission of documents; non-adherence to prescribed working hours; unwarranted rude behavior of officials or any other matter relating to violation of the administrative instructions and circulars.
- The Ombudsman is proposed to be set up in metropolitan cities at Delhi, Mumbai, Chennai, Kolkata, Bangalore, Ahmedabad and Lucknow.

- The Ombudsman will consider complaints received & facilitate their satisfaction or settlement by agreement through conciliation & mediation and may also pass appropriate award as required in accordance with the guidelines.
- Such award shall be binding on the concerned authorities as well as the complainant and shall be complied within one month from the date of award & intimate the compliance to the Ombudsman.

(Source CBEC website)

Case Law

Manufacture

- The High Court of Himachal Pradesh, in CCE Vs. Dabur India Ltd. (2011 (267) ELT 452), has held that no duty is payable by manufacturer on samples preserved/retained during the period of investigation of complaints.
- The Tribunal, in Umesh Pencil Processor Pvt. Ltd. Vs. CCE (2011 (267) ELT 74), has held that graphite and clay mixture arising at inter-mediate stage during the course of manufacture, cannot be held as excisable goods, being not marketable even if it is specifically mentioned in the Excise Tariff.
- In CCE Vs. Geeta Engineering Works Pvt. Ltd. (2011 (267) ELT 373), the Tribunal has held that no duty is payable on bought out spare parts cleared along with manufactured machines when no CENVAT credit has been availed on such parts.

Valuation

- In Geco Electricals Corporation Vs. CCE (2011 (267) ELT 394), the Tribunal has held that in the absence of any evidence to the fact that the place of delivery being different from the place of removal, the deduction of freight expenses from value of goods under Rule 5 of Valuation Rules is not permissible.

Indirect Tax Newsletter

(CENVAT, Service Tax, Sales Tax & VAT)

pwc

June 2011 – Volume 14, Issue 3

Others

- In *CCE Vs. Mysore Electrical Industries Ltd.* (2011 (267) ELT 607), the Karnataka High Court has held that principle of unjust enrichment is not applicable in relation to refund of excess duty paid due to arithmetical mistake.
- In *Sri Jayajothi Co. Ltd. Vs. CCE* (2011 (268) ELT 164), the Chennai High Court has held that recovery of Govt. dues under Section 11 of the CE Act cannot be made from the bonafide buyer of assets of defaulter in circumstances when the assets has are not purchased as a part of transfer of business.
- The Tribunal, in the case of *CCE Vs. Jindal Drugs Ltd.* (2011 (267) ELT 653), has held that in areas based excise free zone, no exemption or refund is admissible in respect of Education Cess and Secondary & Higher Education Cess payable on manufactured goods, since the same are levied under the different acts.

Service Tax

Case Laws

- The Punjab & Haryana High Court, in *CCE Vs. Jagatjit Industries Ltd.* (2011 (22) STR 518), has held that no interest is applicable where CENVAT Credit has been availed wrongly but reversed before utilization. This is however contrary to the position of the Apex Court in the recent case of *UoI vs. Ind-Swift Laboratories Ltd.*
- The Gujarat High Court, in *CCE&C Vs. Gujarat Heavy Chemicals Ltd.* (2011 (22) STR 610), has held that the provision of security services at the residential quarters maintained for the workers by the manufacturer has no direct or indirect nexus

with the manufacturing activity and hence not eligible for CENVAT credit.

- The Tribunal, in *SGS India Pvt. Ltd. Vs. CST* (2011-TIOL-666-CESTAT-MUM), has held that testing and certification services provided to the foreign client in relation to the goods to be procured from India will qualify as export of service as benefit of such service will accrue outside India.
- The Tribunal, in *CCE Vs. India Cements Ltd.* (2011-TIOL-681-CESTAT-MAD), has held that insurance services procured for insuring plant and machinery to safeguard risk against interruption, destruction, break-down etc and to cover loss of profit because of stoppage of work due to perils like fire, riot, terrorist attack, damages etc. are necessary precautionary measures for running business and therefore eligible input service for claiming CENVAT credit.

Corrigendum

In the Newsletter of May 2011, it was inadvertently mentioned that the Supreme Court had pronounced the judgement of *Utkal Builders Ltd Vs Union of India* (2011 (22) STR 257). This judgement was actually pronounced by Orissa High Court.

Sales Tax

Case Law

- The Allahabad High Court, in *Commissioner of Trade Tax Vs. Aristo Printers Pvt. Ltd* [(2011) 41 VST 102 (All)], has held that a contract for printing of lottery tickets is a works contract and tax is payable on the value of ink and processing material used in the printing of lottery tickets.
- The Kerala High Court, in *State of Kerala Vs. Thampi & Company* [(2011) 41 VST 107 (Ker)], has held that in the absence of any specific provision, the works contractor while computing the taxable turnover liable to VAT, is not eligible to claim deduction towards depreciation on self owned

Indirect Tax Newsletter

(CENVAT, Service Tax, Sales Tax & VAT)

pwc

June 2011 – Volume 14, Issue 3

machinery and tools used in the execution of works contract.

- The Orissa High Court, in *Essel Mining and Industries Ltd Vs. Commissioner of Sales Tax [(2011) 41 VST 154 (Orissa)]*, has held that HSD used for running mining machinery for extracting and processing of minerals and cement used during primary stage for construction of foundation for installation of mining machinery and construction of benches and plates are integrally related to mining activities. Hence, the dealer is eligible to purchase HSD and cement at a concessional rate of tax against Form C.
- The West Bengal Taxation Tribunal, in *Epitome Petrochemical Pvt Ltd Vs. Commissioner of Sales Tax [(2011) 41 VST 22 (WBTT)]*, has held that “pet preform” used in the manufacture of plastic containers shall be classified as packing material and chargeable to concessional rate of VAT under the West Bengal Value Added Tax Act, 2003.

VAT

Notifications/ Circulars

Andhra Pradesh

- Input tax credit shall be available on second and all subsequent sale of DEPB licenses within the State subject to the production of tax invoices.

[Circular CC No. 5; CCT's Ref. AIII (2)/ 91/ 2011 dated June 08, 2011]

- Faxed/scanned copy of e-waybills in lieu of original e-waybills can be accepted by the check post authorities for allowing the movement of vehicles from the check posts.

[CCT's Ref. D2/ 172/2010 dated June 07, 2011]

Assam

- Electronic filing of returns has been made mandatory for dealers having annual gross turnover in excess of Rs. 1 Crore during any of the previous three years. The amendment shall be effective for returns which are due to be filed on or after August 1, 2011.

[Circular No. 12/2011 dated June 20, 2011]

Chhattisgarh

- Input tax credit on capital goods shall be available in single installment w.e.f. June 02, 2011.
- A declaration in Form No. 76 has been prescribed for claiming benefit of zero rated sales made to the SEZ unit. The declaration is to be issued by SEZ unit in duplicate.

[Notification No. F 10-29/2011/CT/V (35) dated June 02, 2011]

Delhi

- The time limit for filing DVAT 51 along-with the statutory forms for all the quarters of FY 2010-11 and for the first quarter of FY 2011-12 has been increased to September 30, 2011 and December 31, 2011 respectively.

[Notification No: F.3(33)/VAT/Misc./2006/ 22-92 dated May 26, 2011]

Professional Tax

Notifications/ Circulars

Bihar

- An Act titled “The Bihar Tax on Professional, Trades, Callings and Employments Act, 2011” has been enacted for levy of professional tax. The Act shall be effective from the date notified by the State Government.

[Notification No. L.G.-1-10/2011/Leg.111 dated May 27, 2011]

Indirect Tax Newsletter

(CENVAT, Service Tax, Sales Tax & VAT)

pwc

June 2011 – Volume 14, Issue 3

Contacts

Delhi

S. Madhavan / Vivek Mishra / R. Muralidharan
Ph: +91(124) 3306000

Mumbai

S. Madhavan/ Dharmesh Panchal/ Rahul Renavikar
Ph: +91 (22) 6689 1000

Kolkata

Somnath Ballav / Siladitya Sarkar
Ph: +91(33) 2357 9100/ 4404 6000

Bangalore

Pramod Banthia
Ph: +91(80) 4079 6000

Hyderabad

Vivek Mallya/ N V Raman
Ph: +91(40) 6624 6394

Chennai

B Sriram / Niranjan JV
Ph: +91(44) 4228 5000

Pune

Suresh Rohira / G.P Kawathekar
Ph: +91(20) 4100 4444

Disclaimer: The materials contained in this Newsletter have been compiled by the Indirect Tax Practice team from various sources. The subjects are discussed in brief/general terms and are intended to provide a simple overview of the relevant developments in CENVAT, Service Tax, Sales Tax and VAT. This information is for guidance only and should not be regarded as a substitute for appropriate professional advice. PricewaterhouseCoopers accepts no liability with regard to the information herein or any action that may be taken by readers of this Newsletter.