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## BUDGET 2016: A GUIDE TO INDIRECT TAX

- 1. Proposal:** A Krishi Kalyan Cess ('KKC') shall be levied and collected at 0.5 per cent on value of any or all taxable services (effective from June 1, 2016).

**Impact:** Total effective service tax rate (along with cesses) will thus be 15 per cent up from current rate of 14.5 per cent. With introduction of KKC, a monthly telephone bill of Rs 1,000 may now cost Rs 1,005, a one-day rent-a-cab ride priced at Rs 3,200 is set to be dearer by Rs 6 and current fee of Rs 50,000 charged by private coaching classes will become pricier by Rs 218.

- 2. Proposal:** A 2-year full time PG programme in management and 5-year Integrated programme in management and fellowship programme in management offered by IIMs are being exempted from service tax (from March 1, 2016).

**Impact:** The exemption would lead to savings of Rs 1.65 lakh approximately on a 2-year full time PG programme in management from IIM Indore which costs around Rs 13 lakh.

- 3. Proposal:** Service tax is proposed to be exempted on construction of affordable houses built under recognized government schemes, which is admeasuring up to 60 sqm (effective from March 1).

**Impact:** If an under construction property, under the Pradhan Mantri Awaas Yojana, is being purchased savings to the tune of Rs 20,500 could be envisaged on a house costing Rs 5 lakh.

- 4. Proposal:** Service tax negative list entry relating to service of transportation of passengers, by a stage carriage shall be omitted wef June 1, 2016; however, such services by a non-air-conditioned carriage will be exempted.

**Impact:** Services of air-conditioned carriage shall become costlier. Travelling the Mumbai-Goa route on air-conditioned stage carriage at Rs 1,200 could become costlier by Rs 72.

- 5. Proposal:** New Baggage Rules, 2016 are being notified. Under the new rules, duty free baggage allowance carried by an international passenger, when coming to India, is increased from Rs 45,000 to Rs 50,000 per person (from April 1).

**Impact:** This incremental allowance would result in customs duty saving of approximately Rs 1,800 for international passengers. However, limits for importing alcohol, cigarettes, cigars, tobacco, etc remain unchanged.

- 6. Proposal:** International passenger, when coming to India, need not file declarations if not carrying dutiable goods as part of baggage (from April 1, 2016).

**Impact:** This proposal should enable a hassle free entry for international passengers in India carrying goods within the prescribed duty free allowance.

- 7. Proposal:** Customs and or basic excise duty rates reduced on inputs relating to information technology hardware, capital goods, defense production, textiles, minerals fuels and mineral oils, chemicals, etc (from March 1).

**Impact:** The duty rationalization measures are essentially to promote Government's Make in India programme and incentivize businesses in relevant sectors.

8. **Proposal:** A new levy called Infrastructure Cess is being introduced in case of motor vehicles at 1 to 4 per cent depending upon variant of the vehicle and type of fuel (effective from March 1, 2016).

**Impact:** Upon implementation of the new cess levy, WagonR VXI (petrol) with an ex-showroom price in Mumbai of Rs 4.50 lakh could get costlier by Rs 3,700 approximately, Swift Dzire LDI (diesel) with an ex-showroom price in Mumbai of Rs 6.72 lakh could get dearer by Rs 13,500 approximately.

9. **Proposal:** Basic excise duty on branded readymade garments having retail sale price of Rs 1,000 or more is being increased to 2 per cent from NIL (without cenvat credit and to 12.5 per cent from 6 per cent (with cenvat credit) (from March 1).

**Impact:** One will have to shell more for a wide range of ready to wear. A premium Van Heusen shirt priced at Rs 2,200 could get costlier by Rs 135.

10. **Proposal:** Basic excise duty of 1 per cent (without cenvat credit) or 12.5 per cent (with cenvat credit) is being levied on articles of jewellery. The levy is, however, exempted for jewellers falling below the turnover threshold (from March 1).

**Impact:** Now there shall be a price difference of 1 per cent between buying articles of jewellery from small jewellers (having a turnover of less than Rs 6 crore in a year) and large jewellery stores. Thus, a gold bracelet costing Rs 60,000 shall now cost Rs 60,600 approximately at a large branded store.

11. **Proposal:** Increase in existing normal period of limitation for issuance of show cause notices by one year under customs, excise and service tax (effective from enactment of Finance Bill, 2016).

**Impact:** The change would allow tax authorities to have greater time for scrutinizing taxpayer's self-assessment. The intent seems to call for greater accuracy in self-assessment.

12. **Proposal:** An Indirect Tax Dispute Resolution Scheme, 2016 is being introduced to reduce the litigation currently lying before Commissioner (Appeals) ie at the first appellate level. Those seeking benefit would be expected to pay the amount of tax in dispute along with applicable interest and 25 per cent penalty. The scheme will be available till December 31, 2016. Once applied for, the scheme entails an immunity from further prosecution (from June 1).

**Impact:** An order passed by any officer below commissioner (having monetary tax limit up to Rs 50 lakh) can be settled with payment of only 25 per cent of penalty along with tax and applicable interest. Incentive of reduced penalty and reduced interest due to early payment of tax could be a lucrative option.

13. **Proposal:** Cenvat credit rules amended with view of simplification and rationalization. Proposals such as credit for capital goods valued up to Rs 10,000 to be allowed in single instalment as 'inputs', manufacturers to be allowed credit on job-worker goods, ad valorem payments in lieu of credit taken in relation to exempted goods and services to be restricted up to the amount of credit taken, transfer input services credit to outsourced manufacturers under certain circumstances, deemed FIFO basis utilization of credit done away with, etc.[Effective implementation date for each specific proposal varies]

**Impact:** The proposals either result in savings, capping on outgo or administrative convenience. Thus, meet government's broad vision of ease of doing business in India.

**14. Proposal:** Interest for delayed payment of tax duties rationalized across customs, excise and service at 15 per cent per annum.

**Impact:** Previously, rate of interest for delay in payment of service tax beyond one year was 30 per cent, below one year but more than 6 months was 24 per cent and below 6 months was 18 per cent. This has now been rationalised to 15 per cent. Rate of interest for delay in payment of excise duty and customs duty has been reduced from 18 per cent to 15 per cent.

**15. Proposal:** An annual service tax cenvat return shall be required to be filed by specified tax payers (from April 1, 2016).

**Impact:** An additional compliance is being charged on taxpayers and it does not reconcile with Finance Minister's remark of reducing the compliance burden.

## CENTRAL EXCISE

### Notifications and circulars

- CENVAT Credit Rules have been amended to include an explanation in the definition of input service, to clarify that sales promotion includes services by way of sale of dutiable goods on commission basis. The Rules have been further amended to provide that CENVAT credit cannot be used for making payment of Swachh Bharat Cess.

(Notification No. 2/2016-Central Excise (N.T.) dated 3 February, 2016)

### Case laws

- In *Skoda Auto (India) Ltd v CCE (2016-TIOL-85-CESTAT-MUM)*, the Mumbai Tribunal held that clearance of manufactured car for use by company officials was assessable under Rule 4 (i.e. price adopted for customers) and not under Rule 8 i.e. 115% of the cost of production).
- In *CCE v Manchukonda Prakasham & Co (2016-TIOL-100-CESTAT-BANG)*, the Bangalore Tribunal held that excess collection on account of freight from buyer could not form part of the assessable value of the goods unless the Revenue produced evidence to show that value of the goods was collected in the garb of the freight charges
- In *Centaur Pharmaceuticals Pvt Ltd v CCE (2016-TIOL-299-CESTAT-MUM)*, the Mumbai Tribunal held that valuation of physician samples distributed free of cost had to be done on cost of production basis, and not on the basis of value of the same goods sold in the market.
- In *CCE v Pepsico India Holdings Ltd (2016-TIOL-51-CESTAT-MUM)*, the Mumbai Tribunal held that capital goods have a life over several accounting years, and as such, the intention at the time of installation to use such capital goods in the manufacture of dutiable products was the relevant factor. In such cases, the temporary use of such capital goods for few months in manufacture of only exempted goods did not disentitle the assessee from availing CENVAT Credit and utilizing it for manufacture of dutiable goods
- In *Seiko Watch India Pvt Ltd v CCE (2016-TIOL-110-CESTAT-BANG)*, the Bangalore Tribunal held that repair and maintenance of the goods during the warranty period was an activity relating to sale of goods, and such an activity was eligible for credit as input services.

- In CCE v Interface Microsystems (2016-TIOL-34-CESTAT-DEL), the Delhi Tribunal held that Courier Bill of Entry was an eligible document for taking credit as per Rule 9 of CENVAT Credit Rules, 2004.
- In Indian Oil Corporation Ltd v CCE (2016-TIOL-24-CESTAT-MUM), the Mumbai Tribunal held that CENVAT credit could not be denied on loss of base oil when shortage was within the permissible limit of 0.1%.•
- In N S Ispat Pvt Ltd v CCE (2016-TIOL-71-CESTAT-DEL), the Delhi Tribunal held that demand of 5% of the sale price would not apply in a case where exempted final product emerged as an unavoidable waste or by-product, and compliance with rule 6(2) was impossible.
- In Malhotra Cables Pvt Ltd v CCE (2016-TIOL-90-CESTAT-DEL), the Delhi Tribunal held that denial of CENVAT credit on the ground that the supplier had not paid duty was not tenable when there was no finding on conclusion of a proper proceeding at the supplier's end.
- In Cemetile Industries v CCE (2016-TIOL-105-CESTAT-MUM), the Mumbai Tribunal held that demand of 10% of value of goods under Rule 6(3) was not sustainable on supplies made to SEZ Developers.
- In Neelam Steels v CCE (2016-TIOL-195-CESTAT-DEL), the Delhi Tribunal held that benefit of export to Nepal could not be denied merely on the ground that the duplicate copy of the Nepal invoice was not forwarded by the Customs officer to the jurisdictional Central Excise officer, when the appellant had produced relevant documents, viz. shipping bills and BRCs, before the adjudication authority.
- In KEI Industries Ltd v CCE (2016-TIOL-61-CESTAT-DEL), the Delhi Tribunal held that benefit of exemption under Notification no. 6/2002-

CE could not be denied merely on the ground that the requisite certificate was not produced at the time of clearance of the goods.

## SERVICE TAX

### Notifications and circulars

- The scheme of grant of rebate of service tax paid on input services by exporters of goods under notification no. 41/2012-ST has been amended. Presently, services used beyond the place of removal, as per the Central Excise Act, were eligible for rebate. Now, the eligibility of rebate has been extended to services used beyond the factory or any other place or remises of production or manufacture of the said goods, for their export. Further, the rate at which rebate is granted under the notification (when claiming rebate at specified rates, instead of on actual basis) is increased, considering the increase in service tax rates. (Notification No. 1/2016-Service Tax dated 3 February, 2016)
- Notification no. 12/2013-ST granting outright exemption or refund of service tax on input services received and used by the Special Economic Zone ('SEZ') unit or developer has been amended. Now the SEZ unit or developer can claim refund of Swachh Bharat Cess charged by the service providers, if outright exemption is not claimed. The notification also provides for refund of Swachh Bharat Cess component in cases where there are common services used for SEZ and DTA units, and the credit of service tax on such common services is distributed to the SEZ. (Notification No. 2/2016-Service Tax dated 3 February, 2016)
- Notification no. 39/2012-ST, which grants rebate of service tax paid on input services by a service exporter if no CENVAT credit is claimed, has

been amended. Now, such exporter of services can also claim rebate of Swachh Bharat Cess paid on the eligible input services.

(Notification No. 3/2016-Service Tax dated 3 February, 2016)

- The CBEC has notified 1 April, 2016 as the effective date on which the amended section 109 (1) of the Finance Act, 2015 will come into effect. As a result, with effect from 1st April, 2016, any services provided by the Government to business entities would be subject to service tax.

(Notification No. 6/2016-Service Tax dated 18 February, 2016)

- The CBEC has exempted the services provided by Government or a local authority to a business entity with a turnover up to Rs.1 million in the preceding financial year. The notification will be effective 1 April, 2016.

(Notification No. 7/2016-Service Tax dated 18 February, 2016)

### Case laws

- In Omega Associates v CST (TS-35-CESTAT-2016(MUM)), the Mumbai Tribunal held that no service tax would be applicable on amounts collected by the builder for maintenance of building, since the builder was under statutory obligation as per provisions of Maharashtra Ownership Flats (Regulations of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 to maintain the building before handing it over to the society
- In CCE v HSBC Software Development (India) Pvt.Ltd. (2016-TIOL-415-CESTAT-MUM), the Mumbai Tribunal held that when employees sitting in India access the servers/ computer networks of the clients abroad,

at least part of the services could be said to have been performed outside India, and the services qualified as export of services

- In Polaris Software Lab Ltd v CCE (2016-TIOL-427-CESTAT-MAD), the Chennai Tribunal held that maintenance of computer software was not subject to service tax before 1 June, 2007
- In CCE v Zensar Technologies Ltd (TS -740-CESTAT-2015(MUM)), the Mumbai Tribunal held that turnover of onsite services provided through overseas branch had to be considered towards export turnover as well as total turnover of business, to determine the amount of CENVAT credit eligible for refund to exporter of service.
- In Whirlpool of India Ltd v CCE&ST (TS-735-CESTAT-2015(Del)), the Delhi Tribunal held that no service tax would be applicable on transfer of IPR which was not covered under Indian law in force.

### VAT/SALES TAX

#### Notifications and circulars

#### Andhra Pradesh

- Input tax credit can be allowed only when the selling dealer has sold the goods and paid tax on the sale.
- A dealer is liable to reverse input tax credit when goods on which input tax credit has been claimed are subsequently lost or destroyed. Also, the dealer is liable to show such reversal in the return in the month in which such goods are lost or destroyed.

- A dealer acquiring business on a going concern basis will be eligible to claim input tax credit available to such business as on date of transfer.
- Every VAT and TOT dealer will be liable to file VAT audit report by 31 December of subsequent financial year
- Any vehicle passing through a State shall be required to obtain a transit pass along with Radio Frequency Identification (RFID) Tag from the officer in charge of the first check post, and deliver it to the officer in charge at the last check post.
- If details of tax invoices are not uploaded along with the return, the dealer will be liable to pay a penalty of 5% of the total turnover covered by such invoices.

(Andhra Pradesh Value Added Tax Act, 2005 vide Act No.4 of 2016)

### **Bihar**

- Effective 28 January 2016, rate of tax under residual category of goods has been increased from 13.5% to 14.5%.(Bihar Value Added Tax Act, 2005 vide Bihar Ordinance No.1 of 2016)
- Effective 2 February 2016, surcharge on High Speed Diesel Oil, Light Diesel Oil and motor spirit has been increased from 20% to 30%.(Notification No. S.O. 22 Dated 2 February, 2016)

### **Chandigarh**

- Effective 27 January 2016, sale of 'Battery Operated Vehicles' are exempted from VAT. (Notification No. E&T/ETO (Ref) - 2016/166 Dated 27 January, 2016)

### **Daman & Diu**

- Effective 18 February 2016, online facility for obtaining and uploading of statutory forms has been introduced for the period starting FY 2005-06.(Circular No. DMN/VAT/VAT Soft/2013-14/502 Dated 18 February, 2016)

### **Delhi**

- Facility of auto-downloading of statutory forms will not be available in cases where the ratio of sale to purchase including stock transfer falls below 45% subject to other prescribed restrictions.(Circular No F.3(556)/Policy/VAT /2015/1366-71 Dated 27 January, 2016)
- Firms/ companies engaged in the business of courier activities are liable to furnish an online quarterly return in Form CR-II within 28 days from the end of the relevant quarter. (Order No. F.III/7)/T&T/Misc/Estt/Pt.File-I/1067-71 Dated: 12 February, 2016)

### **Gujrat**

- Effective 27th January 2016, no input tax credit will be allowed on inter-state sale of Cigarettes.(Notification No. (GHN-10) VAT-2015-S 11 (6) (5)-TH Dated 27 January, 2016)

## Rajasthan

- Effective January 2016, e-commerce companies are required to submit monthly information in the prescribed form within 15 days from the end of the relevant month.(Circular-No. 10/2015-16-No. F.16 (95)/Tax/CCT/14-15/2171 to 2178 Dated 28 January, 2016)
- Effective 2 February 2016, concessional rate of tax on goods covered under Schedule IV has been increased from 5% to 5.5%.(Notification F. 2 (42) FD/TAX/2010-123-Dated 1 February, 2016)

## Tamil Nadu

- Effective 29th January 2016, various goods have been notified for production of inward way bill for goods entering from a place outside the State.(Notification III No. G.O. Ms. No. 15, Dated 29 January, 2016)
- Statutory forms under the CST Act are required to be submitted within 3 months from the end of the relevant period.(Notification No. G.O. (Ms.) No. 35, Commercial Taxes and Registration (C1), Dated 16 February, 2016)

## Telangana

- Effective 1 April 2016, issuance of e-waybills by VAT dealers has been made mandatory.(Circular-CCT's Ref No. Enft/D2/172/2010, Dated 3 February, 2016)

## Uttarakhand

- Effective 11 February 2016, rate of tax on bricks has been changed from 5% to 5% or 250 per thousand, whichever is more.(Notification No.133/2016/01(A)(120)/ XXVII(8)/2001 Dated 11 February, 2016)

## Case Laws

- In Commissioner of Commercial Taxes v KTC Automobiles (Civil Appeal No 2446 of 2007), the Supreme Court held that sale of motor vehicle was co-terminous with the registration of a motor vehicle. The Supreme Court opined that since motor vehicle could not be used by the purchaser until it was registered, appropriation was deemed to take place only when the goods were handed over at or near the office of registration authority in a deliverable and registerable condition. Thus, the sale was deemed to have taken place at the time, or immediately before, the vehicle was brought by the seller to the office of the registration authority.
- In Sri Lakshmi Textiles v the Commissioner of Commercial Taxes and others (2016-VIL-81-MAD), the Madras High Court held that the input tax credit could not be denied to the buyer for failure on the seller's part to report the transaction to the department
- In Johnson Matthey Chemicals India Pvt. Ltd. v The State of Maharashtra (2016-TIOL-310-HC-MUM-VAT), the Bombay High Court held that Form F had to be furnished by the dealer when goods were sent to other States for job work
- In Parle Agro Pvt. Ltd v Commissioner of Commercial Taxes (2016-VIL-107-Ker), the Kerala High Court held that Appy Fizz had to be classified as aerated branded fruit drink, and not fruit juice-based drink for levy of VAT. The classification of a product as fruit juice-based drink under Central Excise and Salt act was irrelevant in view of the fact that Kerala VAT Act did not refer to HSN based codification, which was a basis of classification for excise purposes



- In Panasonic India Pvt. Ltd v The State of Kerala (2016-VIL-104-Ker), the Kerala High Court held that benefit of stock transfer was not allowable solely on the strength of declaration in F form. The assessee was liable to produce necessary supporting documents such as lorry receipt, delivery notes, etc., in addition to declaration in F form to substantiate the inter-state movement of goods for reasons otherwise than by way of sales.

### **Entry Tax**

#### **Notifications and circulars**

##### **Odisha**

- Effective 9 February, 2016, entry tax has been exempted to Orissa Power Transmission Corporation Limited on goods used in construction or installation of rural electrification projects under the Deen Dayal Upadhyama Gram Jyoti Yojana.

(Notification No. 3411-FIN-CT1-TAX-0034-2015 dated 9 February, 2016)

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