



INDIRECT TAX UPDATES

Updates on GST

The law ministry is likely to finalise the Constitutional Amendment Bill on Goods and Services Tax (GST) in July. It will send the draft Bill to the finance ministry which will share it with the empowered group of state finance ministers on GST for its feedback.

The empowered committee is likely to have its next meeting on GST on July 21, 2010. The Centre plans to send the draft Bill for consideration to the states before this meeting so that its provisions can be discussed early & finalised before its introduction in the monsoon session of Parliament which is likely to begin on July, 26th ,2010.

Notifications/Circulars

Changes have been incorporated vide the following notifications/circulars:

SERVICE TAX

1. Notification No.30/2010-ST, dated 22nd June, 2010: Sponsorship Services shall be exempted from payment of Service tax if they are provided in relation to tournaments or championships organized by any of the national sports federations or federations affiliated to such national sports federations, where the participating teams or individuals represent any district, zone or state.
2. Notification No.32/2010-ST, dated 22nd June, 2010: All services provided to an authorized distributor of power under the Electricity Act, 2003 for distribution of electricity are exempted from Service tax.
3. Notification No.34/2010-ST, dated 22nd June, 2010: Exemption granted earlier to transport of goods by rail service has now been further extended from July 1, 2009 upto January 1, 2011.

4. Notification No.36/2010-ST, dated 28th June, 2010: Any advance payment received for taxable services to be rendered on or after 1st July, 2010 shall be exempted from payment of education & higher education cess, barring services provided by a commercial/coaching institute or for renting of commercial property.

5. Notification No.37/2010-ST, dated 28th June, 2010: Service tax paid on service provided by Airports Authority or any other person in any airport with respect to goods that are exported shall be refunded to the exporter provided no CENVAT credit has been availed on such input services.

6. Notification No.38/2010-ST, dated 28th June, 2010: When commercial or industrial construction services are provided wholly within the port or any other port for construction, repair, alteration & renovation of wharves, quays, docks, stages, jetties, piers & railways shall be exempted from payment of Service tax wef 1st July, 2010.

7. Notification No.41/2010-ST, dated 28th June, 2010: 7. Notification No.41/2010-ST, dated 28th June, 2010: Taxable services provided by the category of persons stated below within any port or airport in relation to the following shall be exempted from payment of Service tax:

- By a cargo handling agency in relation to agricultural produce or goods intended to be stored in cold storage;

- By a storage or warehouse keeper in relation to storage & warehousing of agricultural produce or any service provided for any storage or by a cold storage;

- By an aircraft operator in relation to transport of export goods in an aircraft; and

- Site formation & clearance, excavation, earthmoving, demolition & such similar activities.

EXCISE

1. Notification No.02/2010-Clean Energy Cess, dated 22nd June, 2010: Vide this notification, clean energy cess shall be imposed under various sections of the Central Excise Act, 1944.

2. Notification No.03/2010-Clean Energy Cess, dated 22nd June, 2010: Clean Energy Cess has been imposed on goods at the rate of Rs.50/- per M Ton.

3. Notification No.06/2010-Clean Energy Cess, dated 22nd June, 2010: Vide this Notification, the Clean Energy Cess Rules have been notified.
4. Notification No.23/2010-Central Excise (NT) dated 20th May, 2010: The new rates of Excise Duty have been imposed on items specified in the First Schedule to the Central Excise Tariff Act.
5. Notification No.24/2010-CE(NT), dated 26th May, 2010: Vide this notification, amendments have been prescribed to notification no. 42/2001-CE(NT), dated 26th June, 2001, whereby export of goods which are subject to nil rate of duty or goods which are wholly exempted from payment of duty shall not be allowed, other than goods cleared by a 100 percent EOU.
6. Notification No.25/2010-CE(NT), dated 22nd June, 2010: Vide this notification, amendments have been made in the CENVAT Credit Rules, 2004, whereby registered owners of dumpers or tippers can provide site formation & clearance, excavation, mining of mineral oil & other related taxable services.
7. Notification Nos.28/2010-CE & 29/2010-CE, dated 22nd June, 2010: Vide these notifications, the Central Government has exempted goods falling under Tenth Schedule of the Finance Act, 2010 from levy of education cess & higher education cess respectively.

CUSTOMS

1. Notification No.51/2010Cus (NT) dated 30th June, 2010: The earlier notification no. 49/2007-Cus(NT), dated 8th May, 2007 has been superseded. The Central Government has prohibited import of certain goods intended for sale or use in India subject to fulfillment of the conditions and procedures specified in the Intellectual Property Rights (Import Goods) Enforcement Rules, 2007.
2. Notification No.68/2010-Cus, dated 18th June, 2010: Anti-dumping duty has been imposed on import of certain specific phosphorous based chemical compounds originating in or exported from Peoples Republic of China or European Union.
3. Notification No. 69/2010-Cus, dated 23rd June, 2010: Notification no.21/2002-Cus, dated 1st March, 2002 has been amended to include the exemption provided to melting scrap of heat resisting steel.

4. Notification No.70/2010-Cus, dated 25th June, 2010: Anti-dumping duty has been imposed on PVC paste resin also called emulsion PVC resin which is originating in or has been exported from the European Union.

1. Maharashtra VAT-Notification No. VAT1510/CR-64/Taxation-1, dated 1st June, 2010: Assesses who are liable to file monthly Returns are required to make their VAT payments electronically as per the Maharashtra VAT Act.

VAT

2. Gujarat VAT-Notification No.(GHN-14)VAT-2010-S11(6)(2)TH, dated 29th June, 2010: Input tax credit will be disallowed on Naphtha, Natural gas & associated gases, including LSHS which is used in the manufacture of fertilizers. Further, input tax credit will be reduced by 2 percent on inputs which are used in the manufacture of goods which are sold inter-state or goods which are bought within the state & sold inter-state.

CASE LAWS

SERVICE TAX

In the Civil Appeal no. 5832 of 2007, in the case of Kerala State Electricity Board Vs. the Commissioner of Central Excise, Thiruvananthapuram, the Apex Court has held that as per the proviso appended to sub rule(1) of Rule 6 of the Service tax Rules, in the case of a non resident service provider who does not have an office in India, the liability for payment of Service tax is on the Indian service recipient. Further in case of delay in deposit of the tax, the interest also has to be paid by the service recipient & the return has to be filed by him.

CENTRAL EXCISE

In the Civil Appeal No. 5190-5191/ 2008, in the case of Commissioner of Central Excise, Pune Vs. SKF Ltd., the Apex Court has held that in case of upward revision of prices with retrospective effect through the issue of supplementary invoices, the liability for payment of the balance duty & interest is on the assessee. However, no penalty is payable if there is no malafide intent. Further, it has also held that the guiding provisions, i.e. Sections 11A, 11AA, 11AB & 11AC of the Central Excise Act need to be revisited since they are very confusing.

VAT

In the Civil Appeal No. 3160 of 2008, in the case of Punjab Aromatics Vs. State of Kerala, the Apex Court held in its judgment of 30th April, 2008, that when raw-material is converted into a final product, one of the important tests to be applied to ascertain whether the process of conversion amounts to manufacture is whether the raw-material is subsumed into the final product. In the instant case the final product i.e. sandalwood oil can be brought back to its original state i.e. red oil by adding impurities in it. Since the process is reversible, it cannot be construed to be manufacture. Since this is not amounting to manufacture, there should not be any fresh levy of sales tax under Section 5A of the Kerala Sales Tax Act.