# LATEST AMENDMENTS – MAY 2017

## EXCISE DUTY

### TAX HIERARCHY

| Provision | Amendment |
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| **Section 37B – Circulars** | The Board is now empowered under Section 37B to issue orders, instructions and directions not only for uniformity in the classification of excisable goods or with respect to levy of duties of excise on such goods but also for the implementation of any other provision of the CEA, 1944 |

### CLASSIFICATION OF GOODS

| Provision | Amendment |
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| **Section 5A(5) / (6) – Exemption Notifications** | Now the requirement of publishing and offering for sale any notification issued, by the Directorate of Publicity and Public Relations of CBEC under Section 5A is done away with. Similar amendment is made in Customs by virtue of Section 25 of CA, 1962. Similar amendment is automatically made in Service Tax by virtue of Section 93 read along with Section 83 of FA, 1994. |

### CENTRAL EXCISE RULES, 2002

| Provision | Amendment |
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| **Explanation 1 to Second Proviso to Rule 8 – Payment of Excise Duty** | Earlier, the benefit of quarterly payment facility was available to any assessee if the turnover is upto Rs.4 crores in Preceding Financial Year. Now it has been provided that for a particular assessee engaged in manufacture articles of jewellery or parts of articles of jewellery or both, quarterly payment facility will be available if the turnover is upto Rs.12 crores (now read as Rs.15 crores) in Preceding Financial Year. However, the same is now omitted as it is now governed by Articles of Jewellery (Collection of Duty) Rules, 2016. |
| **NN 30/2016 & CBEC Circular – Rule 9 – Registration** | Now, CBEC has specified that a dealer who is dealing with both domestic goods & imported goods and who wants to pass on the CCR for both the categories of goods make take either FSD registration or Importer registration. Now, the need to take both FSD registration & Importer registration for such dealers dealing with both domestic goods & imported goods is not mandatory. However, this facility is optional and any assessee |

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| | needing separate registration for his own business purposes, may so register. Further, such an assessee will also have an option to file a single quarterly return giving details of transactions as a first stage dealer and an importer, one after the other in the same table of return. |
| **CBEC Circular: Rule 11, CER, 2002 & Rule 4A/4B/4C, STR, 1994** | ***Manual Signature on Digitally Signed Invoices are valid under Excise and Service Tax:*** Such invoices in effect would be authenticated by two signatures, digital signature as well as manual signature and would be considered to be in conformity with Rule 11 of CER, 2002 or Rule 4A/4B/4C of STR, 1994. Such invoices would also be a valid document to avail CCR. |
| **Rule 12(8) – Return & Rule 17(7) – Return for 100% EOU** | Earlier, there was no specific provision of filing Revised Return unlike Service Tax. Now Revised Return for Monthly / Quarterly Return can be filed by the end of the calendar month in which the Original Monthly / Quarterly Return is filed provided that the Original Monthly / Quarterly Return is filed on or before due-date. When such Revised Return is filed, the "Relevant Date" for recovery of Excise Duty shall be the date of filing of such Revised Return.<br>Also, Revised Return for Annual Return can be filed within one month from the date of filing of Original Annual Return provided that the Original Annual Return is filed on or before due-date.<br>The concept of filing of Revised Return (Normal and Annual) is introduced even for 100% EOU in Rule 17 |
| **Jewellery Manufacturers excluding Manufacturers of Plain Silver Jewellery** | The following are the important points for Jewellery Manufacturers excluding Manufacturers of Plain Silver Jewellery<br>(a) Valuation shifted from Tariff Value to Transaction Value under Section 4(1), CEA, 1944<br>(b) Facility of Centralized Registration granted under Rule 9, CER, 2002<br>(c) Post Registration Physical Verification done away with under Rule 9, CER, 2002<br>(d) Exempted from submitting Factory Plan for Registration under Rule 9, CER, 2002<br>(e) Exempted from filing the Declaration under Rule 9, CER, 2002<br>(f) Exempted from filing of Annual Return under Rule 12, CER, 2002<br>(g) Manufacturers of parts of articles of jewellery availing exemption under NN 12/2012 permitted to file Quarterly Returns under Rule 12, CER, 2002<br>(h) 100% CENVAT Credit on Capital Goods if PY TO <= Rs.15 Cr. under Rule 4(a), CCR, 2004<br>(i) If PY TO <= Rs.15 Cr. then CY Exemption upto Rs.10 Cr as per SSI EN – EN 8/2003 |
| **Manufacturers of Readymade Garments** | Manufacturers of Readymade Garments and made up Articles of Textiles (other than laminated jute bags) under Chapter 61 / 62 /63 sold under a Brand Name with RSP of Rs.1000 or more exempt from physical verification of premises during Registration |

## REMOVAL AT CONCESSIONAL RATE

| Provision | Amendment |
|---|---|
| **Rule 4 – Information by Applicant Manufacturer to obtain benefit** | Applicant manufacturer shall execute a General Bond with Surety. Execution of General Bond with Security which was not required under new set of rules initially is now again added implying that Applicant manufacturer may be asked to execute a General Bond with Security. |

## EXPORT PROCEDURES

| Provision | Amendment |
|---|---|
| **Notifications under Rule 18 & Rule 19** | Infrastructure Cess considered to be duty for Notifications issued under Rule 18 (NN 21/2004 & NN 19/2004) & Rule 19 (NN 43/2001 & NN 42/2001) |

## DEMAND & REFUND

<table>
<tr><th>Provision</th><th>Amendment</th></tr>
<tr><td>Section 11A – Demand</td><td>The time-limit for issuance of SCN under Section 11A for recovery of Excise for bona-fide cases is enhanced by 1 year. Similar amendment is made in Service Tax and Customs by virtue of Section 73 of FA, 1994 and Section 28 of CA, 1962 respectively.</td></tr>
<tr><td>CBEC Instruction under Section 11A – Authorized CEO to issue SCN</td><td>Monetary limit for adjudication is revised in Excise. Similar amendment is there in service tax where the monetary limit for adjudication is revised in Excise by virtue of NN 44/2016.
<table>
<tr><th>Monetary Limit [Amount of Duty / Tax / Credit in SCN]</th><th>Authorized CEO</th></tr>
<tr><td>Above Rs.2 Crores</td><td>CCE</td></tr>
<tr><td>Above Rs.50 Lakhs but Upto Rs.2 Crores</td><td>Additional / Joint Commissioner</td></tr>
<tr><td>Upto Rs.50 Lakhs except where SCE is empowered to adjudicate</td><td>Deputy / Assistant Commissioner</td></tr>
<tr><td>Upto Rs.10 Lakhs excluding the following cases:<br>➔ Cases involving Classification or Valuation or Taxability<br>➔ Cases involving Extended Period of Limitation [i.e. Fraud Cases]</td><td>SCE</td></tr>
</table>
The above monetary limit is not applicable to the following cases:<br>(a) Cases of refund (including rebate) under Section 11B of CEA, 1944 or Section 83 of FA, 1994 as all the cases of refund shall be adjudicated only by Deputy Commissioner or Assistant Commissioner</td></tr>
</table>

<table>
<tr><td></td><td>(b) Cases related to issues mentioned in S.No. (a) [loss of goods in transit or during processing or during storage] and S.No.(d) [utilization of CCR of any duty against payment of ED on final product – not yet made effective] to Proviso to Section 35B(1) as these cases shall be adjudicated in the following manner:
<table>
<tr><th>Monetary Limit</th><th>Authorized CEO</th></tr>
<tr><td>Above Rs.50 Lakhs</td><td>Additional Commissioner / Joint Commissioner</td></tr>
<tr><td>Above Rs.10 Lakhs but Upto Rs.50 Lakhs</td><td>Deputy Commissioner / Assistant Commissioner</td></tr>
<tr><td>Upto Rs.10 Lakhs</td><td>SCE</td></tr>
</table>
(c) When different SCN have been issued on the SAME ISSUE, then all the SCN shall be adjudicated by the CEO competent to decide the case involving the highest amount of duty.</td></tr>
<tr><td>CBEC Instruction under Section 11 – Recovery of Confirmed Demands of Indirect Taxes during Pendency of Stay Applications</td><td>CBEC in an attempt to provide relief to taxpayers from recovery of confirmed demands during pendency of stay, has rescinded Old Circular issued in 2013.<br>New Circular issued in 2016 provides the following:<br>(i) In cases where stay application is pending before Commissioner (Appeals)/CESTAT, no recovery shall be made during the pendency of the stay application for period prior to 06.08.2014 and for period on/after 06.08.2014, Circular issued in 2014 shall continue to be followed.<br>(ii) Further, in cases where demand is confirmed by CESTAT / High Court, recovery proceeding may be initiated after a period of 60 days from date of order of CESTAT / High Court, as the case may be, where no stay has been granted by High Court / Supreme Court against the order of CESTAT / High Court, respectively.</td></tr>
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# SERVICE TAX

## RATE OF SERVICE TAX

| Provision | Amendment |
|---|---|
| **Section 161 of FA, 2016 – 0.5% Krishi Kalyan Cess on Value of Taxable Services** | KKC will be charged along with Service Tax and SBC on the value of any or all services, effectively making the service tax rate as 15% (14% + 0.5% + 0.5%).<br>It is important to note the following important aspects of KKC in relation to service tax:<br>(i) KKC shall always be calculated **on the net value of taxable services** (value in terms of STVR, 2006). In case of Services not covered by Section 66-B [i.e. Non-Taxable Services] or Services which are fully exempt from service tax under Section 93(1)/(2) [i.e. Exempted Services], there would be no KKC. In case of Services which are partially exempt from service tax [i.e. Abated Services], KKC would be calculated on the net value of taxable services after abatement and not on the entire value of taxable services i.e. KKC would be calculated as follows:<br>**KKC = Net Value * 0.5%**<br>(ii) In case of Services which are falling under Composition Schemes, KKC would be calculated on equivalent value of taxable services based on the service tax paid on composition scheme and not on the entire value of taxable services i.e. KKC would be calculated as follows:<br>**KKC = Net Service Tax * 0.5% / 14%**<br>(iii) In case of Services which are falling under Reverse Charge Cases / Joint Charge Cases, KKC shall be paid by the person whosoever is paying service tax.<br>(iv) Service tax, SBC and KKC should be separately shown in invoice<br>(v) KKC paid on specified services used in an SEZ is entitled for refund under EN 12/2013 and KKC paid on all services used in providing services which is exported in terms of Rule 6A of STR, 1994 is entitled for rebate under EN 39/2012<br>(vi) Separate Accounting Codes have been allotted for KKC<br>(vii) KKC on input services is available as credit ONLY for Service Provider i.e. KKC is not CENVATABLE for Manufacturer.<br>(viii) KKC on output services can be paid by using CENVAT Credit of KKC on input services by a Service Provider. |

## BASIC CONCEPTS & CHARGING SECTION

| Provision | Amendment |
|---|---|
| **Explanation 2(ii)(a) to Section 65-B(44) – Definition of Service** | Section 4(c) of the Lotteries (Regulation) Act, 1998 provides that the State Government shall sell the tickets either itself or through distributors or selling agents. Thus, as per the provisions of the Lotteries (Regulation) Act, 1998, the transaction between the State Government and the distributors or selling agents is on principal to agent basis. Any contract contrary to the aforesaid legal provisions is ultra vires the provisions of Indian Contracts Act, 1872 and thus not legally enforceable. Explanation 2 in Section 65B(44) is amended to clarify that activity carried out by a lottery distributor or selling agents of the State Government under the provisions of the Lotteries (Regulation) Act, 1998, is leviable to service tax. The above amendment is mere clarification as the main amendment was made by FA, 2015. Consequential amendment is made under Rule 2(1)(d) read along with NN 30/2012. |

## POINT OF TAXATION RULES, 2011

| Provision | Amendment |
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| **Section 67A(2) – Relevant Date for Rate of Tax & Opening Paragraph of POTR, 2011 – Relevant Date for Rate of Tax** | Section 67A of FA, 1994 prescribes the provisions relating to date of determination of rate of tax, value of taxable service and rate of exchange. A new subsection (2) has been inserted in Section 67A to provide that the time or the point in time with respect to the rate of service tax will be such as may be prescribed. Therefore, the amendment aims to obtain specific rule making powers in respect of Point of Taxation. Consequential amendment is made in Opening Paragraph of POTR. |
| **EN 35/2016 – EN for KKC (Rule 5 – Levy of KKC for the First Time)** | EN 35/2016 provides that in case where the invoice has been issued and service has been completed on or before 31-05-2016, then KKC on such service is exempted. In simple, one need not pay KKC on debtors (service is provided and invoice is raised) as on 31-05-2016. Thus, the need to apply Rule 5 of POTR and thereby raising supplementary invoice on debtors as on 31-05-2016 only for KKC is no more required. |

## REGISTRATION, PAYMENT & RETURN

| Provision | Amendment |
|---|---|
| **Rule 2(1)(d) read with Notification No. 30/2012 – Person Liable to Pay Service Tax – Advocate Services** | Exemption to services provided by a senior advocate to an advocate or partnership firm of advocates is being withdrawn by amending Mega Exemption Notification 25/2012. The amendments in reverse charge mechanism is summarized in table below: |

| Service Provider | Service Recipient | Service | MEN 25/2012 | Person liable to pay ST |
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| | Junior Advocate | Non-Business Entity | Any Service (including Rep. Sr.) | Yes | - |
| | Junior Advocate | Business Entity with TO less than Rs.10 lakhs in Previous FY | Any Service (including Rep. Sr.) | Yes | - |
| | Junior Advocate | Business Entity with TO more than Rs.10 lakhs in Previous FY | Any Service (including Rep. Sr.) | No | RC (Business Entity has to pay Service Tax) |
| | Junior Advocate | Junior Advocate / Senior Advocate / Firm of Advocate | Any Service (including Rep. Sr.) | Yes | - |
| | Senior Advocate | Non-Business Entity | Any Service (including Rep. Sr.) | Yes | - |
| | Senior Advocate | Business Entity with TO less than Rs.10 lakhs in Previous FY | Any Service (including Rep. Sr.) | Yes | - |
| | Senior Advocate | Business Entity with TO more than Rs.10 lakhs in Previous FY | Any Service (including Rep. Sr.) | No | RC (Business Entity has to pay Service Tax) |
| | Senior Advocate | Junior Advocate / Senior Advocate / Firm of Advocate with TO less than Rs.10 lakhs in Previous FY | Any Service (including Rep. Sr.) | Yes | - |
| | Senior Advocate | Junior Advocate / Senior Advocate / Firm of Advocate with TO more than Rs.10 lakhs in | Service other than Rep. Sr. | No | RC (Junior Advocate / Senior Advocate / Firm of Advocate has to pay Service Tax) |

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| | Previous FY | | | |
| Senior Advocate | Junior Advocate / Senior Advocate / Firm of Advocate with TO more than Rs.10 lakhs in Previous FY | Rep. Sr. for BE | No | RC (Business Entity has to pay Service Tax) |

Senior Advocate has the meaning assigned to it in Section 16 of the Advocates Act, 1961 which, inter alia, provides that an advocate may, with his consent, be designated as senior advocate if the Supreme Court or a High Court is of opinion that by virtue of his ability standing at the Bar or special knowledge or experience in law he is deserving of such distinction. Senior advocates shall, in the matter of their practice, be subject to such restrictions as the Bar Council of India may, in the interest of the legal profession, prescribe.

## PLACE OF PROVISION OF SERVICE RULES, 2012

<table>
<tr><th>Provision</th><th colspan="2">Amendment</th></tr>
<tr><td rowspan="3">CBEC Circular: Rule 9 v. Rule 10 - Determination of service tax on freight forwarders in case of transportation of goods from India</td><td colspan="2">CBEC has clarified as to what would be the place of provision of service for the services provided by the freight forwarders, dealing with the exporter, each (i) in the capacity of the agent of an airline / carrier / ocean liner and (ii) in the capacity of the principal, who is providing the service of transportation of goods outside India.</td></tr>
<tr><td>When the freight forwarder acts as an agent of an airline / carrier / ocean liner, the service of transportation of goods outside India is provided by the airline / carrier / ocean-liner and the freight forwarder is merely an agent with no responsibility for the actual transportation.<br>He merely charges the rate prescribed by the airline/carrier/ocean liner and cannot vary it unless authorized by them.</td><td>In such cases, the freight forwarder may be considered to be an intermediary under Rule 2(f) read with Rule 9 of PoPS since he is merely facilitating the provision of the service of transportation, but not providing it on his own account.</td></tr>
<tr><td>Freight forwarders may also act as a principal</td><td>In such cases where the freight forwarder is undertaking</td></tr>
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| | | who is providing the service of transportation of goods and destination of the goods is outside India.<br>In such cases, the freight forwarders negotiate the terms of freight with the airline / carrier / ocean liner as well as the actual rate with the exporter.<br>The invoice is raised by the freight forwarder on the exporter. He is bearing all the risks and liability for transportation. | entire legal responsibility for the transportation of the goods and undertakes all the attendant risks, he is providing the service of transportation of goods, from a place in India to a place outside India.<br>Thus, he is not covered under the category of intermediary as the definition of intermediary excludes a person who provides a service on his account.<br>Instead, the place of provision of service in terms of Rule 10 of PoPS is the destination of the goods. Consequently, a freight forwarder, when acting as a principal, will not be liable to pay service tax when the destination of the goods is from a place in India to a place outside India. |

## EXPORTER OF SERVICE EN

| Provision | Amendment |
|---|---|
| **Section 93A – Rebate on Service Tax** | Section 93A is amended so as to enable allowing of rebate by way of notification as well as rules. |

## DEMAND & REFUND

| Provision | Amendment |
|---|---|
| **Section 73 – Recovery of Service Tax for Bona-fide Cases** | The time-limit for issuance of SCN under Section 73 for recovery of service tax for bona-fide cases is enhanced by 1 year. Similar amendment is made in Excise and Customs by virtue of Section 11A of CEA, 1944 and Section 28 of CA, 1962 respectively. |
| **Notification under Section 73B – Recovery of Interest on Surplus Amount** | Rate of interest on delayed payment of surplus amount collected under Section 73B is being decreased from 18% pa to 15% pa. Similar rationalization of rate of interest on delayed payment is made under Section 11AA of CEA, 1994 and Section 28AA of CA, 1962. It is important to note that 3% relaxation for small provides (<= Rs.60 lakhs in previous year OR year for which SCN is served) is available in Service Tax ONLY. |
| **Proviso to Section 75 & Notification under Section 75 – Interest on Service Tax** | Rate of interest on delayed payment of service tax under Section 75 is being decreased in line with rationalization of rate of interest on delayed payment is made under Section 11AA of CEA, 1994 and Section 28AA of CA, 1962. It is important to note that 3% relaxation for small provides (<= Rs.60 lakhs in previous year OR year |

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| | for which SCN is served) is available in Service Tax ONLY.<br>Differential rates of interest for Service Tax not paid vis-à-vis Service Tax collected but not paid. |

| S.No. | Situation | Rate of simple interest |
|---|---|---|
| 1. | Collection of any amount as service tax but failing to pay the amount so collected to the credit of the Central Government on or before the date on which such payment becomes due. | 24% p.a. |
| 2. | Other than in situations covered under serial number 1 above. | 15% p.a. |

## PENAL PROVISIONS

| Provision | Amendment |
|---|---|
| **Section 78A – Relief to Co-Noticees** | This amendment provides a big relief for co-noticees, which provides that where any proceeding for the person liable to pay duty have been concluded Section 76 / 78, all proceedings pending against other persons shall be deemed to be concluded. Similar amendment is made in Rule 26 of CER, 2002. |

## NEGATIVE LIST, DECLARED SERVICES & EXEMPTIONS

### NEGATIVE LIST

| Provision | Amendment |
|---|---|
| **Section 66D(l) – Educational Services – Taxable** | Educational services is omitted from the Negative List and thus, has become taxable. However, service tax on them is exempted by incorporating them in the Mega Exemption Notification 25/2012. Consequentially the definition of Approved Vocational Education Course is omitted from Section 65B(11) and incorporated in Mega Exemption Notification 25/2012. |
| **Section 66D(o)(i) – Transportation of Passengers Service by Stage Carriage – Taxable** | (i) Transportation of Passengers by Stage Carriage is omitted from the Negative List and thus, has become taxable.<br>(ii) However, Transportation of Passengers by Non Air-Conditioned Stage Carriage is exempted by incorporating it in the Mega Exemption Notification 25/2012.<br>(iii) Consequently, Transportation of Passengers by Air-Conditioned Stage Carriage is taxable; however it is covered by Abatement Notification 26/2012 (60% Abatement and 40% Taxable) as applicable to the Transportation of Passengers by Contract Carriage, with same conditions of non-availment of CCR of Inputs, Input Service and Capital Goods. |

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| **Section 66D(p)(ii) – Transportation of Goods Service by Aircraft or Vessel from Outside India to First Customs Station in India – Taxable** | (i) Transportation of Goods by an Aircraft or Vessel from a place outside India upto the Customs Station of clearance in India is omitted from the Negative List and thus, has become taxable.<br>(ii) However, Transportation of Goods by an Aircraft (and not Vessel) from a place outside India upto the Customs Station of clearance in India is exempted by incorporating it in MEN 25/2012.<br>(iii) Domestic Shipping Lines registered in India will pay service tax under Forward Charge while the services availed from Foreign Shipping Line by a Business Entity located in India will get taxed under Reverse Charge at the hands of the Business Entity.<br>(iv) The service tax so paid will be available as CCR with the Indian manufacturer or service provider availing such services (subject to fulfillment of the other existing conditions of CCR, 2004).<br>(v) It is clarified that service tax levied on such services shall not be part of value for custom duty purposes.<br>(vi) It may be noted that transportation of goods by a vessel from customs station of clearance in India to a place outside India is not leviable to service tax in terms of Section 66B of FA, 1994 read with Rule 10 of POPOS Rules, 2012 and thus, it was an exempted service in terms of Rule 2(e) of the CCR, 2004.<br>(vii) However, w.e.f., 01.03.2016, CCR, 2004 have been amended to exclude this service from the definition of exempted service so as to allow CCR of the eligible inputs, input services and capital goods used in providing said service.<br>(viii) In other words, services provided by Indian shipping lines by way of transportation of goods by a vessel to outside India have been zero rated with effect from 01.03.2016.<br>(ix) The zero rating of such services provided by Indian shipping lines by way of transportation of goods by a vessel to outside together with imposition of service tax on services provided by Indian shipping lines by way of transportation of goods by a vessel from outside India up to the customs station in India completes the credit chain and enables Indian shipping lines to avail and utilize input tax credits.<br>(x) To sum up, the credit availed by the domestic shipping lines on eligible inputs, input services and capital goods used in providing the services by way of transportation of goods by a vessel to outside India can be utilized to pay the service tax leviable on services provided by them by way of transportation of goods by a vessel from a place outside India upto the customs station of clearance in India. |

**DECLARED SERVICES**

| Provision | Amendment |
|---|---|
| **Section 66E(j) – Right to Use the Radio-Frequency** | Assignment by the Government of the Right to Use the Radio-Frequency Spectrum and Subsequent Transfers thereof is declared as a service under Section 66E of the FA, 1994 so as to make it clear that such assignment of |

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| **Spectrum – Declared Services** | rights and subsequent transfers of such rights is a service leviable to service tax and not sale of intangible goods. |

**MEGA EXEMPTION NOTIFICATION**

| Provision | Amendment |
|---|---|
| **Services by Government or Local Authority** | (i) Services provided by Government or a Local Authority by way of allowing a Business Entity to operate as a Telecom Service Provider or use Radiofrequency Spectrum ~~**during the Financial Year 2015-16**~~ **during the period prior to 1st April 2016** on payment of Licence Fee or Spectrum User Charges, as the case may be;<br>(ii) Services provided by Government or a Local Authority to a Business Entity with a Turnover up to Rs.10 lakhs in the Preceding Financial Year.<br>**Explanation: For the purposes of this entry, it is hereby clarified that the provisions of this entry shall not be applicable to the following services, namely:-**<br>(a) **services specified in sub-clauses (i),(ii) and (iii) of clause (a) of Section 66D of FA, 1994;**<br>(b) **services by way of renting of immovable property** |
| **Transportation of Goods Services** | Services by way of Transportation of Goods by an Aircraft from a Place outside India upto the Customs Station of Clearance in India.<br>**Notes:**<br>(i) This is consequential amendment due to amendment in Section 66D (Negative List) as now services by way of Transportation of Goods by an Aircraft or Vessel from a place outside India upto the Customs Station of clearance in India is taxable service.<br>(ii) It is important to note that exemption is only to Transportation of Goods by an Aircraft (and not by Vessel) from a Place outside India upto the Customs Station of Clearance in India.<br>However, under EN 36/2016, a transitional exemption by CG is given for Transportation of Goods by a Vessel from outside India upto the Customs Station in India with respect to which<br>▪ the invoice for the service has been issued on or before 31-05-2016 and<br>▪ the import manifest or import report required to be delivered under Section 30 of the Customs Act, 1962 has been delivered on or before 31-05-2016 and<br>▪ the service provider or recipient produces Customs certified copy of such IGM or IR<br>(iii) Domestic Shipping Lines registered in India will pay service tax under Forward Charge while the services availed from Foreign Shipping Line by a Business Entity located in India will get taxed under Reverse |

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| | Charge at the hands of the Business Entity. The service tax so paid will be available as CCR with the Indian manufacturer or service provider availing such services (subject to fulfillment of the other existing conditions of CCR, 2004). It is clarified that service tax levied on such services shall not be part of value for custom duty purposes.<br>(iv) In addition, CCR of eligible Inputs, Capital Goods and Input Services is being allowed for providing the service by way of Transportation of Goods by a Vessel from the Customs Station of clearance in India to a place outside India. Consequential amendments are being made in CCR, 2004. |
| **Transportation of Passenger Services** | Transport of passengers, with or without accompanied belongings, by stage carriage other than air-conditioned stage carriage<br>**Notes:** This is consequential amendment due to amendment in Section 66D (Negative List) as now services by way of Transportation of Passengers by Stage Carriage is taxable service. It is important to note that exemption is only to Transportation of Passengers by Non Air-Conditioned Stage Carriage. Consequently, Transportation of Passengers by Air-Conditioned Stage Carriage is taxable; however it is covered by Abatement Notification 26/2012 (60% Abatement and 40% Taxable) as applicable to the Transportation of Passengers by Contract Carriage, with same conditions of non-availment of CCR of Inputs, Input Service and Capital Goods. |
| **Services by Advocates** | Exemption to following services is withdrawn:<br>(a) Services provided by a senior advocate to an advocate or partnership firm of advocates and<br>(b) Service provided by a person represented on an arbitral tribunal to an arbitral tribunal. However, for such service CBEC has issued a Circular clarifying the taxability of the same.<br>Consequential amendment is made in Rule 2(1)(d), Service Tax Rules, 1994 read along with Notification No. 30/2012 (Reverse Charge Mechanism). |
| **Services of Renting of Precincts of Religious Place** | The scope of this exemption is now restricted as exemption is now available only if such service of renting of precincts of a religious place meant for general public if such religious place is owned or managed by an entity registered under Section 12AA / Section 10(23C)(v) / Section 10(23BBA) of the Income-tax Act. |

## ABATEMENT NOTIFICATION

| Provision | Amendment |
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| **Transportation of Passengers by Air** | An abatement for Transport of Passengers by Air, embarking from or terminating in a Regional Connectivity Scheme Airport is added for upto 1 year from the date of commencement of operations of the Regional Connectivity Scheme Airport where Abatement is 90% and Taxable is 10% with the condition that CCR on Inputs, Capital Goods and Input Services shall not be availed. |

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| **Transportation of Passengers by Stage Carriage** | This is consequential amendment due to amendment in Section 66D (Negative List) as now services by way of Transportation of Passengers by Stage Carriage is taxable service. It is important to note that exemption is only to Transportation of Passengers by Non Air-Conditioned Stage Carriage. Consequently, Transportation of Passengers by Air-Conditioned Stage Carriage is taxable; however it is covered by Abatement Notification 26/2012 (60% Abatement and 40% Taxable) as applicable to the Transportation of Passengers by Contract Carriage, with same conditions of non-availment of CCR of Inputs, Input Service and Capital Goods. |

**OTHER EXEMPTION NOTIFICATION**

| Provision | Amendment |
|---|---|
| **EN 41/2016** | Exemption from service tax has been granted to taxable services provided by State Government Industrial Development Corporations / Undertakings to Industrial Units by way of granting Long Term Lease (30 years or more) of Industrial Plots on the one time upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable for such lease. |

**CIRCULARS**

| Provision | Amendment |
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| **CBEC Circular – Services by Arbitral Tribunal** | (i) Services provided by an arbitral tribunal to (a) any person other than a business entity; or (b) a business entity with a turnover up to Rs.10 lakh in the preceding financial year, are exempt from service tax vide MEN 25/2012. "Arbitral tribunal" as per Section 2(d) of the Arbitration and Conciliation Act 1996, which is as follows: "arbitral tribunal means a sole arbitrator or a panel of arbitrators".<br>(ii) In the Budget 2016-17, exemption to services provided by a person represented on an arbitral tribunal to an arbitral tribunal has been withdrawn with effect from 01.04.2016.<br>(iii) It may be noted that the services provided or agreed to be provided by an arbitral tribunal to a business entity (turnover exceeding Rs.10 lakh) located in the taxable territory, is taxable under reverse charge mechanism and recipient of service is liable to discharge service tax liability [Rule 2(d) of STR, 1994 read with NN 30/3012]. There is no change in the Budget 2016-17 with respect to the said provisions.<br>(iv) It could be argued that service provided by an arbitrator on the panel of arbitrators, to the arbitral tribunal is taxable under forward charge. However, this does not appear to be a correct interpretation of law. Any reference in service tax law to an "arbitral tribunal" necessarily includes the natural persons on the arbitral tribunal, by virtue of Section 2(d) of the Arbitration and Conciliation Act, 1996.<br>(v) Services are provided or agreed to be provided by the panel of arbitrators, as comprising the several |

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| | natural persons on the said panel, to the business entity or to the arbitration institution approached by the business entity for purposes of arbitration. The liability to discharge service tax is on the service recipient, if it is a business entity located in the taxable territory with a turnover exceeding Rs.10 lakh in the preceding financial year.<br>(vi) In view of the above, it is clarified that service tax liability for services provided by an arbitral tribunal (including the individual arbitrators of the tribunal) shall be on the service recipient if it is a business entity located in the taxable territory with a turnover exceeding Rs.10 lakh in the preceding financial year. |
| **CBEC Circular: Service of construction of tube wells for water supply provided to Government is exempt under service tax** | Considering Serial Nos. 12(e) and 25(a) of MEN 25/2012, it follows that among others, exemption is available to the following services provided to the Government, a local Authority or a Governmental Authority, by way of-<br>(a) construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of pipeline, conduit or plant for (i) water supply (ii) water treatment, and<br>(b) water supply<br>The phrase 'water supply' is a general phrase. Principally, it will involve providing users, access to a source of water. The source may be natural or artificial like tanks, wells, tube wells etc.<br>Providing users access to such a source will involve construction of the source (if artificial) and the transmission of water to the user. It will involve activities like drilling, laying of pipes, valves, gauges etc., fitting of motors, testing etc., so as to eventually result in the supply of water.<br>Similarly, the word 'plant' has to be understood and interpreted with reference to the context. A plant for water supply need not necessarily involve a huge assembly of machinery and apparatus.<br>Thus, exemption under Serial Nos. 12(e) and 25(a) of MEN No. 25/2012 would cover a wide range of activities/services provided to a government, a local authority or a governmental authority and will include the activity of construction of tube wells. |
| **CBEC Circular: Service Tax Liability in a case involving Hiring, Leasing or Licensing of Goods** | CBEC has clarified that to determine the service tax liability in any given case involving hiring, leasing or licensing of goods, it is essential to determine whether, in terms of the contract, there is a transfer of the right to use the goods. For ascertaining whether there is transfer of the right to use the goods, the following criteria has been laid down by the Supreme Court in the case of **BHARAT SANCHAR NIGAM LIMITED V UOI – 2006 – SC:**<br>(a) There must be goods available for delivery;<br>(b) There must be a consensus ad idem as to the identity of the goods;<br>(c) The transferee should have a legal right to use the goods - consequently all legal consequences of such use, |

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| | including any permissions or licenses required therefor should be available to the transferee;<br>(d) For the period during which the transferee has such legal right, it has to be to the exclusion to the transferor this is the necessary concomitant of the plain language of the statute - viz. a "transfer of the right" to use and not merely a licence to use the goods;<br>(e) Having transferred the right to use the goods during the period for which it is to be transferred, the owner cannot again transfer the same right to others.<br>The Circular further clarified that to determine the service tax liability in each case, the terms of the contract must be studied carefully vis-a-vis the above criteria laid down by the Supreme Court.<br>In other words, no a priori generalisations or assumptions about service tax liability should be made and the terms of the contract should be examined carefully, against the backdrop of the criteria laid down by the Supreme Court in the Bharat Sanchar Nigam Limited case as well as other judicial pronouncements |
| **CBEC Circular: Meaning of "Precincts"** | CBEC has clarified that the word 'precincts' should not be interpreted restrictively. All immovable property of the religious place located within the outer boundary walls of the complex (of buildings and facilities) in which the religious place is located will be considered as being located in the precincts of the religious place.<br>The immovable property located in the immediate vicinity and surrounding of the religious place and owned by the religious place or under the same management as the religious place, may be considered as being located in the precincts of the religious place and would be eligible for the benefit of exemption under MEN 25/2012. |

# CENVAT CREDIT

## CENVAT CREDIT – MANUFACTURER & SERVICE PROVIDER

| Provision | Amendment |
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| **Rule 2(e) – Exempted Service** | Scope of Exempted Services is narrowed down; thereby scope of CCR is widened. "Exempted Service" will not include a Service by way of Transportation of Goods by a Vessel from Customs Station of Clearance in India to a Place Outside India. This would allow shipping lines to take CCR on Inputs, Input Services and Capital Goods used in providing the transportation service in vessel from outside India to India. Consequential amendment is made in Rule 6(7) of CCR, 2004. These amendments are consequential amendments due to amendment in Section 66D [Negative List] and MEN 25/2012. |
| **Rule 2(naa)(i) – Manufacturer or Producer** | Manufacturer of Jewellery Articles (under Heading 7113) is a person who is liable to pay excise duty under Rule 9(1) of Articles of Jewellery (Collection of Duty) Rules, 2016 whereas Manufacturer of Precious Metals Articles (under Heading 7114) is a person who is liable to pay excise duty under Rule 12AA(1) of Central Excise Rules, 2002. |
| **Rule 3(1a) – Availment of CENVAT Credit** | It is provided that only a Service Provider can avail the CCR of KKC levied under Section 161 of FA, 2016. A manufacturer cannot avail the CCR of KKC levied under Section 161 of FA, 2016. |
| **10th Proviso to Rule 3(4) – Utilization of CENVAT Credit** | It is also provided that CCR of Inputs, Input Services and Capital Goods of any duty shall not be utilised for payment of KKC leviable under the Finance Act, 2016. |
| **Rule 3(7)(d) – Utilization of CENVAT Credit** | It is also provided that CCR of KKC on Input Services shall be utilised only for payment of KKC on Output Service by a Service Provider. |
| **Explanation to Rule4(2)(a) – Condition for Availing CENVAT Credit on Capital Goods** | Earlier, the benefit of 100% CCR on Capital Goods in 1st year was available to any assessee if the turnover is upto Rs.4 crores in Preceding Financial Year. Now it has been provided that for a particular assessee engaged in manufacture articles of jewellery or parts of articles of jewellery or both, 100% CCR on Capital Goods in 1st year will be available if the turnover is upto Rs.15 crores (instead of Rs.4 crores) in Preceding Financial Year. |
| **Rule 6(7) – Reversal of CCR under Rule 6 not required in case of Service of Transportation of Goods in** | Prior to 01.03.2016, Rule 6 (7) provided that the provisions of sub-rules (1), (2), (3) and (4) would not be applicable in case the taxable services are provided, without payment of service tax, to a unit in a Special Economic Zone (SEZ) or to a developer of a SEZ for their authorised operations or when a service is exported. In other words, that credit taken on inputs and input services used in providing such service need not be |

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| **Vessel for Export of Goods** | reversed.<br>The said Rule 6(7) has been amended to provide that credit taken on inputs and input services used in providing or agreeing to provide a service by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India would also not be reversed by the shipping lines.<br>Such service qualified as an "exempted service" on account of Rule 10 of Place of Provision of Services Rules, 2012. However, service by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India has now been excluded from the definition of exempted service by amending Rule 2(e) of the CENVAT Credit Rules, 2004. Amendment in Rule 6(7) coupled with the corresponding amendment in the definition of exempted service Rule 2(e) is aimed at allowing credit of eligible inputs, input services and capital goods used for providing the said service.<br>The credit available may be used by Indian shipping lines to pay service tax on the services of transportation of goods by a vessel for import of goods in India, which have become taxable w.e.f 1st June, 2016. |
| **Rule 9(1)(fa) & CBEC Circular – Supporting Documents** | Now, railway receipts would not be required to be enclosed with STTG certificate for availing the CCR.<br>CBEC has prescribed the following procedure for availing CCR on goods transportation by rail:<br>▪ STTG Certificate (as per prescribed format) will be issued by the railways to rail customer (consignor / consignee, whosoever makes the payment of service tax). The certificate will capture various details such as name of customer, no. of RRs issued, total service tax/cess paid, Service Tax Code, registration no. details of RRs (as certified by railway authority) issued etc.<br>▪ Where service tax is paid by the consignor and he intends to avail the CCR, CCR can be availed by him on the strength of the STTG certificate issued in his name.<br>▪ However, if the service tax is paid by the consignor but CCR is to be availed by the consignee as per CCR, the consignor will have to make a written request to railways for issue of consignee wise STTG certificate. The consignor will transfer such consignee-wise STTG certificate in original to consignee concerned. The consignee will avail CCR on the basis of such certificate. |
| **CBEC Circular: Rule 3(5) – Removal of Inputs As Such** | CBEC has has clarified that segregation from honey grade brass scrap in order to weed out other foreign materials before the process of melting in the furnace is an essential process relating to manufacture of brass articles. The foreign materials, emerging during the process of segregation have to be treated as process waste and cannot be treated like removal of inputs as such. The segregated foreign material has an altogether different character and use vis-a-vis brass scrap. Value per unit and classification of the segregated foreign material is also different from that of imported brass scrap. |

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| | Accordingly, clearance of segregated foreign material such as iron, steel, rubber, plastic, dust etc. from honey grade brass scrap before feeding the same in the furnace cannot be treated as clearance of "inputs as such" as envisaged under rule 3(5) of CCR. The segregated foreign material in such situation, as has been explained above, shall be cleared on payment of central excise duty on transaction value as per its appropriate classification and rate of duty determined on merits. |

# CUSTOMS DUTY

## TAX HIERARCHY

| Provision | Amendment |
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| **Section 156(2)(c) – General Power to make Rules** | This is consequential amendment due to amendment in Section 47 and Section 51 since deferred payment of custom duty will be allowed for the certain class of the importer or exporters as explained in Section 47 or Section 51. |

## TYPES OF CUSTOMS DUTIES

| Provision | Amendment |
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| **Section 8C of CTA, 1975 – Safeguard Duty on China Products** | Section 8C which deals with power of Central Government to impose transitional product specific Safeguard Duty on imports in increased quantities from People's Republic of China is being abolished. |

## CLASSIFICATION OF GOODS

| Provision | Amendment |
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| **Section 25(4) / (5) – Exemption Notification** | Now the requirement of publishing and offering for sale any notification issued, by the Directorate of Publicity and Public Relations of CBEC under Section 25 is done away with. Similar amendment is made in Excise by virtue of Section 5A of CEA, 1944. Similar amendment is automatically made in Service Tax by virtue of Section 93 read along with Section 83 of FA, 1994. |
| **Import at Concessional Rate of Duty Rules** | Following amendments have been done in Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2016<br>(i) Service providers also allowed to import goods at concessional rate of duty<br>(ii) Furnishing of security also permitted<br>(iii) Time period for re-export of unutilized or defective imported goods extended from 3 months to 6 months |

## ASSESSMENT OF DUTY

| Provision | Amendment |
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| **Customs (Provisional Duty Assessment) Regulations, 2011 rescinded** | CBEC reviewed and rescinded Customs (Provisional Duty Assessment) Regulations, 2011 since Section 18 itself lays down the procedure to be followed in the case of provisional assessment.<br>Further, for the sake of uniformity of practice, transparency and predictability for the taxpayer, the CBEC has issued following revised and simplified guidelines for provisional assessment vide Circular:<br>Wherever, duty is to be assessed provisionally, the importer shall:<br>(a) execute a bond in the prescribed form, for the purposes of undertaking to pay on demand the deficiency, if any, between the duty as may be finally assessed and the duty provisionally assessed; and<br>*(b)* furnish prescribed amount of security for the payment of the duty deficiency. ***No sureties*** shall be obtained. The ***security*** to be obtained shall be in the form of a ***bank guarantee or a cash deposit, as convenient to the importer.***<br>Further, the requirement of depositing 20% deposit of the provisional duty has been dispensed with. |

## IMPORT PROCEDURES

| Provision | Amendment |
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| **Proviso to Section 47 (1) / Section 47(2) – Payment of Import Duty** | (i) Now honest importer having un-blemished track record can make deferred payment. However, class of importer and the deferment period / installment may be notified by separate rules.<br>(ii) Also, the provision for interest payment on delayed payment of import duty has been amended in line with amendment made for deferred payment for certain class of importers. In such a case of deferred payment of duty, interest will be payable when the importer fails to pay the import duty, either in full or in part, within 2 days excluding holidays from such due date as may be specified by rules made in this behalf.<br>(iii) It is also clarified that interest will be payable where the importer fails to pay the import duty, either in full or in part and the same will be payable on duty not paid or short paid.<br>(iv) Consequential amendment has been made in Section 156 to empower the CG to make rules for deferred payment of duty. |

## EXPORT PROCEDURES

| Provision | Amendment |
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| **Proviso to Section 51 (1) / Section 51 (2) – Payment of** | (i) Now honest exporter having un-blemished track record can make deferred payment. However, class of exporter and the deferment period / installment may be notified by separate rules. |

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| **Export Duty** | (ii) Also, the provision for interest payment on delayed payment of export duty has been introduced in line with amendment made for deferred payment for certain class of exporters. In such a case of deferred payment of duty, interest will be payable when the exporter fails to pay the export duty, either in full or in part, within such due date as may be specified by rules made in this behalf.<br>(iii) It is also clarified that interest will be payable where the exporter fails to pay the export duty, either in full or in part and the same will be payable on duty not paid or short paid.<br>(iv) Consequential amendment has been made in Section 156 to empower the CG to make rules for deferred payment of duty. |

## TRANSIT & TRANSSHIPMENT PROCEDURES

| Provision | Amendment |
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| **Section 53 – Transit of Goods** | Earlier, transit of goods in the same conveyance (mentioned in IGM or IR) was allowed without the payment of duty. There were no regulations by Board in this regard. Now, Section 53 now enables the Board to frame regulations for allowing transit of goods in the same conveyance (mentioned in IGM or IR) without payment of duty i.e. now the Proper Officer may allow the goods and the conveyance to transit without payment of duty subject to conditions as may be prescribed by the Board. |

## WAREHOUSING PROCEDURES

| Provision | Amendment |
|---|---|
| **Section 2(43) – Warehouse, Section 2(45) – Warehousing Station and Section 9 – Power to declare places to be Warehousing Stations** | (i) Earlier, Section 2(45) defined warehousing station to mean a place declared as a warehousing station under Section 9. Section 9 provided that public or private warehouses could only be established in a warehousing station as notified by the CBEC.<br>This power had been delegated to the Principal Chief Commissioners / Chief Commissioners and in respect of EOUs to Principal Commissioners / Commissioners. However, despite the delegation, there used to be delays in notifying warehousing stations which led to delays in setting up of warehouses.<br>(ii) The Finance Act, 2016 has now deleted Section 9 and Section (45). This means that a notification notifying any place such as a village or town as a Warehousing Station by the Chief Commissioner / Commissioner would no longer be required. An applicant can straight away make an application to the licensing officer seeking a warehouse to be licensed.<br>The power to issue warehouse license has, however, now been vested with a higher level of officer. |

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| | (iii) Pursuant to the said amendment, Chapter heading of Chapter III namely, "Appointment of Customs Ports, Airports, Warehousing Stations, etc." has been amended to omit the word "Warehousing Stations" therefrom.<br>(iv) In short, an additional category of Special Warehouse has been introduced which will be under physical control of customs for certain class of goods.<br>Public Warehouse / Private Warehouse will no more be under physical control of customs and they will no more be appointed / licensed by AC / DC. Warehousing Station will no more be declared by CBEC under Section 9 from now onward.<br>Public Warehouse / Private Warehouse / Special Warehouse will now be under record-based control and they will now be licensed by Principal Commissioner of Customs or Commissioner of Customs.<br>Consequently, Section 9 giving powers to CBEC for declaring places to be Warehousing Station [Public Warehouse / Private Warehouse] is omitted and Section 2(45) defining Warehousing Station is omitted thereby resulting in ease of doing business |
| **Section 57 – Public Warehouse** | Now Public Warehouse will be licensed (not appointed) by Principal Commissioner of Customs or Commissioner of Customs (not by Assistant Commissioner of Customs or Deputy Commissioner of Customs). This facility is for most of the goods with record based control and not physical control by Proper Officer. Consequential amendment is there in Section 2(43) defining Warehouse. |
| **Section 58 – Private Warehouse** | Now Private Warehouse will be licensed by Principal Commissioner of Customs or Commissioner of Customs (not by AC / DC). This facility is for most of the goods with record based control and not physical control by Proper Officer. Consequential amendment is there in Section 2(43) defining Warehouse. |
| **Section 58A – Special Warehouse** | Now Special Warehouse will be licensed by Principal Commissioner of Customs or Commissioner of Customs. This facility is for certain class of goods notified by CBEC with physical control by Proper Officer (under Customs Lock). Such warehouse will be caused to be locked by the proper officer and no person will enter the warehouse or remove any goods therefrom without the permission of the proper officer. Consequential amendment is there in Section 2(43) defining Warehouse.<br>**Notified Goods – Notification No. 66/2016**<br>(i) Gold, Silver, Other Precious Metals and Semi-Precious Metals and Articles thereof;<br>(ii) Goods warehoused for the purpose of -<br>(a) Supply to Duty Free Shops in a Customs Area;<br>(b) Supply as Stores to Vessels / Aircrafts |

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| | (c) Supply to Foreign Privileged Persons (FDM / Consular Post) |
| **Section 58B – Cancellation of License** | (i) A new Section 58B has been inserted to provide for cancellation of a warehouse license. Earlier, this provision extended only to private warehouses licensed under Section 58. However, now this provision will uniformly extend to all types of warehouses.<br>(ii) At the same time, considering that such powers are to be exercised with a great deal of circumspection, the same will vest with the Principal Commissioner / Commissioner in place of the AC / DC.<br>(iii) License of the Warehousing Units contravening any provision of Customs Act or breaching any condition of license will be cancelled after giving the licensee the opportunity of being heard.<br>(iv) During enquiry for cancellation, their license may be suspended and no goods shall be deposited during the period of suspension. However, goods already deposited in Warehouse will continue to be governed by Warehousing Provisions. Such suspension of operations will be in addition to any other action that may be taken against the licensee and the goods under CA, 1962 or any other law for the time being in force.<br>(v) After cancellation of license unit will have to be discharged duty liabilities within 7 days or extended period (by Proper Officer). The warehoused goods can be taken to another warehouse or cleared for home consumption or cleared for export.<br>(vi) Goods already deposited in Warehouse will continue to be governed by Warehousing Provisions till they are removed to another warehouse or be cleared for home consumption or cleared for export. |
| **Section 59 – Warehousing Bond** | The following important amendments are made under Section 59:<br>(i) Now, bond amount has been increased from twice of the duty amount to thrice of the duty amount.<br>(ii) Now, furnishing of security along with the Bond has been made a statutory requirement.<br>(iii) Now, the subject matter of private contract between the warehouse-keeper and the importer is kept outside the CA, 1962 and thus, Section 59 is correspondingly amended.<br>(iv) Now, bond is enforceable even if the goods are transferred to another warehouse. Consequential amendment is made in Section 73 of CA, 1962.<br>(v) Now, bond is to be given by transferee in case of transfer of ownership of goods (and the bond given by original importer will be released). |
| **Section 60 – Permission for Removal of Goods for Deposit in Warehouse** | Now the regulations will be prescribed by Board for depositing the goods into the Warehouse. Section 60, read with warehouse keeper's responsibilities under Section 73A and the introduction of self-removal procedures, will bring the system of escorting of goods by bond officers to an end, except for situation, which Board will specify. |

**Section 61 – Period for which goods may remain Warehoused**

Section 61 relating to warehousing period has been comprehensively revised. The period for which imported goods may be kept in a warehouse without payment of duty is called the warehousing period. Such period may be extended to a limited extent, with interest on the duty thus deferred. The provisions of substituted Section 61 as also the difference between the new and the old provisions are explained hereunder:

(i) Time period for which different class of goods may be warehoused is tabulated as under:

| S.No. | Class of Goods | Warehousing Period |
|---|---|---|
| 1. | Goods for use in any 100% EOU / EHTP / STP / warehouse where manufacture or other operations are permitted under Section 65 | |
| | (i) Capital Goods | Till clearance of such goods from warehouse |
| | (ii) Other Goods | Till consumption or clearance of such goods from warehouse |
| 2. | Goods other than 1. above | Till the expiry of 1 year from the date of order under Section 60(1) (permitting removal of goods from a customs station for deposit in warehouse) |

(ii) Under the erstwhile provisions, capital goods intended for use in 100% EOU could be stored in the warehouse for a period of 5 years and other goods intended for such use could be stored for 3 years. The warehousing period for goods imported for use other than in a 100% EOU was one year.

In case of 100% EOUs, the warehousing period could be extended by Principal Commissioner/ Commissioner for such period as he may deem fit. In other cases, the Principal Commissioner/ Commissioner could extend the period for 6 months and Principal Chief Commissioner/ Chief Commissioner for such period as deemed fit.

(iii) Under the amended provisions, the Principal Commissioner/ Commissioner may extend the warehousing period by not more than 1 year at a time. The extension may be reduced based on the shelf life of the goods.

(iv) Provisions relating to interest payable on goods which remain warehoused beyond the prescribed period are tabulated below:

| S.No. | Class of Goods | Interest Free Period |
|---|---|---|
| 1. | Capital Goods and Other Goods for | No interest is payable as goods can remain in the |

<table>
<tr><td></td><td>use in any 100% EOU / EHTP / STP / warehouse where manufacture or other operations are permitted under Section 65</td><td>warehouse till their clearance or consumption</td></tr>
<tr><td>2.</td><td>Goods other than 1. above</td><td>Interest will be payable if goods remain in the warehouse beyond 90 days from the date on which the order under Section 60(1) is made.
<table>
<tr><td>Rate of Interest</td><td>Rate fixed under Section 47 which is 15% p.a.</td></tr>
<tr><td>Amount on which Interest is payable</td><td>Duty payable at the time of clearance of the goods</td></tr>
<tr><td>Period for which Interest is payable</td><td>From the expiry of the 90 days till the date of payment of duty on the warehoused goods.</td></tr>
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(v) It had been observed that EOUs, EHTPs and STPs have to constantly keep track of multiple warehousing bonds and extension thereof. In order to address this issue, the warehousing period of capital goods has been extended till their ex-bonding and for goods other than capital goods, till their ex-bonding or consumption.

As a corollary, no interest would be chargeable for the period that the goods remain warehoused. These changes will also apply mutatis mutandis to units manufacturing in bond, such as ship building yards. These changes are expected to add to the ease of doing business and thereby provide a fillip to manufacturing.

(vi) The erstwhile provisions provided for charging of interest on the duty deferred on warehoused goods beyond a period of 90 days. Disputes had arisen regarding the relevant date of warehousing and the computation of the period of 90 days. This had necessitated issue of Circular clarifying the law as it stood.

(vii) Now, the amended provisions provide for the period of warehousing to be reckoned from the date of orders under section 60. Hence, the period of 90 days, will be computed from the date on which the proper officer gives out of charge orders on an into-bond bill of entry at the Customs station, which is clearly ascertainable.

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| | (viii) The Board may waive the interest (whole or partial) in individual cases by ad-hoc orders and by notification in respect of any class of goods.<br>Further, the Board may also notify the class of goods in respect of which the interest will be chargeable from the date of order under Section 60(1). |
| **Section 62 – Control over Warehoused Goods** | Now there will be a record based control on warehouses (Public Warehouse or Private Warehouse) except for warehouses setup under Section 58A (Special Warehouse) and thus, Section 62 is omitted.<br>Thus, the licensee of a public warehouse / private warehouse will have the custody and control of the warehouse and goods kept therein. This amendment, thus, seeks to do away with the requirement of physical control of warehouses (under customs lock) and move to a system of record based controls. However, Special Warehouses would still remain under customs control (customs lock) |
| **Section 63 – Payment of Rent and Warehouse Charges** | Now the subject matter of private contract between the warehouse-keeper and the importer is kept outside the CA, 1962 and thus, Section 63 is omitted. |
| **Section 64 – Owner's Right to deal with Warehoused Hoods** | Section 64 relating to owner's rights to deal with warehoused goods has been substituted so as to rationalize the facilities and rights extended under that section.<br>(i) Now there is no need of obtaining sanction from Proper Officer on payment of charges.<br>(ii) Further, owner of the warehouse cannot allow the importer to separate damaged or deteriorated goods from the rest OR change their containers for the purpose of preservation, sale, export or disposal of the goods OR take samples of goods without entry for home consumption, and if the proper officer so permits, without payment of duty on such samples. |
| **Section 65(1) – Manufacture and Other Operations in relation to Goods in a Warehouse** | Now EOU, STP and EHTP Units will have to obtain permission under Section 65 from Principal Commissioner / Commissioner of Customs (not from AC / DC of Customs) for manufacture and other operations in relation to goods in Warehouse. Also, now there is no requirement of payment of any fees for doing such activity in Warehouse. |
| **Section 68 & 1st Proviso to Section 68 – Clearance of Warehoused Goods for Home Consumption** | Now the subject matter of private contract between the warehouse-keeper and the importer is kept outside the CA, 1962 and thus, Section 68 and first proviso to Section 68 is correspondingly amended. |
| **Section 69(1) – Clearance of Warehoused Goods for** | Now the subject matter of private contract between the warehouse-keeper and the importer is kept outside the CA, 1962 and thus, Section 69 is correspondingly amended. |

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| **Export** | Also, grammatical correction is done to avoid litigation and the word "re-exportation" is replaced by "export" as re-exportation and export may have different meaning. The term "exportation" connote intend and term "export" connote physical export. Also, the term "re-exportation" may be considered export to same party to whom the goods were exported first. Moreover, the term "export" is defined under Section 2(18) whereas there is no definition for "re-exportation". |
| **Section 71 – Goods not to be taken out of Warehouse except as provided by this Act** | Grammatical correction is done to avoid litigation and the word "re-exportation" is replaced by "export" as re-exportation and export may have different meaning. The term "exportation" connote intend and term "export" connote physical export. Also, the term "re-exportation" may be considered export to same party to whom the goods were exported first. Moreover, the term "export" is defined under Section 2(18) whereas there is no definition for "re-exportation". |
| **Section 72 – Goods Improperly Removed from Warehouse, etc.** | Since samples cannot be taken in the warehouse as amended in Section 64, corresponding provision has been deleted. Also, now the subject matter of private contract between the warehouse-keeper and the importer is kept outside the CA, 1962 and thus, Section 72 is correspondingly amended. |
| **Section 73 – Cancellation and Return of Warehousing Bond** | Now, when goods are transferred from one warehouse to another warehouse, then bond given to earlier warehouse is allowed to be transferred. This is consequential amendment due to amendment in Section 59(4). |
| **Section 73A – Custody and Removal of Warehoused Goods** | (i) In view of the amendment of doing away with physical controls over warehouses and moving to a system of record based controls, the responsibilities of warehouse keepers assume greater significance. Hence, a new section 73A has been inserted vide the Finance Act, 2016 making the warehouse keeper as a custodian of the warehoused goods.<br>(ii) The new section 73A prescribes the provisions for custody and removal of warehoused goods. As per section 73A, all warehoused goods will remain in the custody of the person who has been granted a license under Section 57/58/58A until they are cleared for home consumption/ transferred to another warehouse / exported / removed as otherwise provided under this Act.<br>(iii) The responsibilities of the warehouse keeper (licensee) who has custody of the warehoused goods will be such as may be prescribed.<br>(iv) Where any warehoused goods are removed in contravention of Section 71, the licensee shall be liable to pay duty, interest, fine and penalties. This would be in addition to any other action that may be taken against him under this Act or any other law for the time being in force. |

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| **CBEC Circular: Requirement of Payment of Interest prior to allowing Extensions of Warehousing Period dispensed with** | In order to secure revenue and discourage protracted duty deferment arising due to warehousing, the CBEC has prescribed conditions for furnishing of security by importers vide Circular. The said circular also specifies the amount (which is a percentage of the sum of duty and interest) of bank guarantee that would have to be furnished before allowing an extension in warehousing period.<br>In view of having prescribed the requirement of furnishing a bank guarantee as security, it has been decided by the CBEC that henceforth there would be no requirement of payment of interest prior to allowing extensions of warehousing period nor would there be any need to issue a demand for payment of interest. Interest, if any, shall be paid at the time of ex-bonding of the goods from the warehouse. |
| **CBEC Circular: Online Filing of Ex-Bond Bill of Entry and EDI based Monitoring of Warehouses at Customs Station of Import** | CBEC has decided that henceforth the ex-bond bills of entry shall be filed electronically on ICES and the customs station of import shall assess the Bill of Entry for clearance of the warehoused goods for home consumption. The filing of ex-bond bills of entry on ICES will provide the benefits of automation to importers availing the warehousing facility and lend efficiency to the process of clearance of the warehoused goods.<br>On receipt of copy of the ex-bond bill of entry, jurisdictional bond officer shall verify its details from ICEGATE to check that the order of clearance for home consumption has been made by the proper officer. In case of any discrepancy, he shall not permit the removal of goods from the warehouse and immediately inform his Deputy or Assistant Commissioner for resolution of the same.<br>The warehouses where the goods are to be warehoused are under EDI based monitoring at the customs station of import. Thus, the issue of goods lying in the warehouses beyond the warehousing period will be addressed as the systems managers at the customs stations will be able to identify Bills of Entry where the initial period of warehousing is near expiry for initiating necessary action. |
| **CBEC Circular: Duty-Free Shop (DFS) in the Airport need not be Licensed as a Warehouse** | CBEC has clarified that DFS does not meet the ingredients of Section 58A. Further, Section 64 providing owner's rights to deal with warehoused goods does not permit retail sales from a warehouse.<br>From this, it flows that a DFS located in a customs area should not be treated as a warehouse. In fact, it is a point of sale for the goods which are to be ex-bonded and removed from a warehouse for being brought to a DFS in the customs area for sale to eligible persons, namely, international passengers arriving or departing from India.<br>DFS operator stores its goods in the warehouse located in the city and /or in and around the precinct of the airport which acts as a staging area for replenishing stocks in the duty free shopping area. It is the warehouse of the DFS operator which qualifies as a bonded warehouse as it is capable of being under the lock of customs.<br>As per NN 66/2016, goods warehoused for the purpose of (i) supply to DFS (Duty Free Shops) / (ii) supply as |

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| | stores to vessels/aircrafts/ (iii) supply to diplomatic stores have been notified as the class of goods which can be deposited in a special warehouse. Thus, it is the end use which determines whether a warehouse is eligible for being licensed under Section 58A, and there are no restrictions on the type of goods that can be stored in such warehouses as long as they are meant for such notified end use. |

## DUTY DRAWBACK

| Provision | Amendment |
|---|---|
| **CBEC Circular: Admissibility of duty drawback in such cases** | CBEC Circular has clarified that:<br>(i) Rule 18 (Rebate on Inputs) or Rule 19 (Procurement of Inputs without ED) for Inputs being Diesel<br>➔ No DBK<br>(ii) Rule 18 (Rebate on Inputs) or Rule 19 (Procurement of Inputs without ED) for Inputs other than Diesel<br>➔ DBK when CCR facility has been availed |

## DEMAND & REFUND

| Provision | Amendment |
|---|---|
| **Section 28 – Demand** | The time-limit for issuance of SCN under Section 28 for recovery of Customs for bona-fide cases is enhanced by 1 year. Similar amendment is made in Service Tax and Excise by virtue of Section 73 of FA, 1994 and Section 11A of CEA, 1944. Also, it has been clarified that SCN will be served if the duty is not-paid or short-paid. |

## CONFISCATION & PENALTY

| Provision | Amendment |
|---|---|
| **NN 103/2016 – Notified Goods under Section 123** | CG has superseded old notification notifying few Section 123 goods and has given a new notification notifying Silver Bullion and Cigarettes as Section 123 goods. |
| **CBEC Circular – Immediate Prosecution in case of Gold** | CBEC Circular issued in 2015 contains the guidelines for launching of prosecution in relation to offences punishable under CA, 1962. It, inter alia, provided that where the offence relates to certain specified items; prosecution may preferably be launched ***immediately after issuance of show cause notice (and not on completion of adjudication proceedings)***.<br>Henceforth, gold has also been included in the list of such specified goods. In other words, where the offence relates to gold, prosecution may preferably be launched immediately after issuance of show cause notice. |

# FOREIGN TRADE POLICY

| Provision | Amendment |
|---|---|
| **Only Online Application permitted for IEC and Only 2 Documents required along with Digital Photograph** | With effect from 01.04.2016, application for IEC /modification in IEC to be made only electronically by applicants through digital signature (Class-II or Class-III). Further, with effect from 29.01,2016, only the following are required to be uploaded / submitted along with the application for IEC:<br>(a) Digital photograph of the signatory applicant;<br>(b) Copy of the PAN card of the business entity in whose name Import/Export would be done;<br>(c) Cancelled cheque bearing entity's pre-printed name or Bank certificate in prescribed format ANF-2A(I). |
| **Provision that Import of Capital Goods for Generation/Transmission of Power not Permitted under EPCG Scheme clarified** | Import of capital goods is not permitted under EPCG Scheme for generation/transmission of power. In order to further clarify the said provision, the words in grey box below have been added/ substituted in the category of capital goods ineligible for EPCG scheme:<br>Any CG for generation/transmission of power (including Captive Plants & Power Generator Sets) for:<br>(a) Export of electrical energy (power)<br>(b) Supply of electrical energy (power) under deemed exports<br>(c) Supply of power (energy) in their own unit, and<br>(d) Supply/export of electricity transmission services |
| **E-Commerce Defined** | E-commerce means buying and selling of goods and services, including digital products, conducted over digital and electronic network. For the purposes of Merchandise Exports from India Scheme (MEIS), e-commerce shall mean the export of goods hosted on a website accessible through the internet to a purchaser. While the dispatch of goods shall be made through courier or postal mode, as specified under MEIS, the payment for goods purchased on e-commerce platform shall be done through international credit/debit cards and as per RBI Circular (RBI/2015-16/185) as amended from time to time. |
| **Exports in the Current and Previous 3 FYs – Status Holder** | With effect from 01.04.2016, an applicant shall be categorized as status holder on achieving export performance during the ***current and previous 3 financial years****.<br>*However, for Gems & Jewellery Sector, the existing criteria shall continue, i.e., the performance during the current and previous two financial years shall be considered for recognition as status holder. |

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| **Amendments in EOU, EHTP, STP and BTP Schemes** | (i) Transfer of manufactured goods from one EOU / EHTP / STP / BTP unit to another EOU / EHTP / STP / BTP unit is allowed with prior intimation to concerned Development Commissioners of the transferor and transferee units as well as ***concerned Customs authorities***, as per following procedure for movement of goods:<br>(a) Any procurement by one unit from another should be supported by a ***Procurement Certificate*** or pre-authenticated procurement certificates, as applicable;<br>(b) The supply of the goods from one unit to another shall be based upon the usual ***commercial documents***, such as, invoice and delivery challan;<br>(c) Upon receipt of goods, copies of documents shall be provided to the jurisdictional office of the sending and receiving unit by way of ***intimation***.<br>(ii) EHTP / STP units, who have applied for conversion / merger to EOU unit and vice-versa, can avail exemptions in duties and taxes as applicable ***without having to remain in bond***. |

# COMMON TOPICS

## OFFENCES & PROSECUTION

| Provision | Amendment |
|---|---|
| **Section 89 – Monetary Limit for launching Prosecution** | The monetary limit for launching prosecution under Service Tax is increased from Rs.50 lakhs to Rs.2 crores. |
| **Section 90 – Power to Arrest** | The power to arrest in service tax law is restricted only to situations where the tax payer has collected the tax but not deposited it with the exchequer beyond a period of 6 months and amount of such tax collected but not paid is above the threshold of Rs.2 crores as given under Section 89(1)(ii). Sections 90 and 91 of the FA, 1994 are being amended accordingly. As now there can be no arrest in cases other than offence under Section 89(1)(ii), the need to mention that all other offences other than offence under Section 89(1)(ii) is non-cognizable and bailable is no more required under Section 90. |
| **Section 91 – Power to Arrest** | The power to arrest in service tax law is restricted only to situations where the tax payer has collected the tax but not deposited it with the exchequer beyond a period of 6 months and amount of such tax collected but not paid is above the threshold of Rs.2 crores as given under Section 89(1)(ii). Sections 90 and 91 of the FA, 1994 are being amended accordingly. As now there can be no arrest in cases other than offence under Section 89(1)(ii), the need to mention that for all other offences other than offence under Section 89(1)(ii), AC / DC is empowered to release an arrested person is no more required under Section 91. |

# LATEST CASE LAWS – MAY 2017

## EXCISE DUTY

### BASIC CONCEPTS

| Subject & Issue | Case Law & Decision | Key Points |
|---|---|---|
| *Manufacture – General Meaning*<br>Will the process of crushing of coal amount to manufacture under the CEA, 1944? | *Dhunseri Petrochem Ltd – 2016 – AAR*<br>It was held that neither the coal crushing activity would amount to 'manufacturing activity' nor the crushed coal would be a manufactured product. | |

### DEMAND & RECOVERY

| Subject & Issue | Case Law & Decision | Key Points |
|---|---|---|
| *Recovery of Erroneous Refund*<br>Can Department recover such refund under Section 11A without review of the refund order in terms of Section 35E of the Act? | *Eveready Industries India Ltd. – 2016 – Mad. HC*<br>It was held that once an application for refund is allowed under Section 11B, the expression 'erroneous refund' appearing in Section 11A(1) cannot be applied. If an order of refund is passed after adjudication, the amount refunded will not fall under the category of erroneous refund so as to enable the order of refund to be revoked under Section 11A(1). One authority cannot be allowed to say in a collateral proceeding that what was done by another authority was an erroneous thing. Therefore, recovery of such refund Section 11A is not possible without review of refund order in terms of Section 35E. | |

# SERVICE TAX

## PLACE OF PROVISION OF SERVICE RULES, 2012

| Subject & Issue | Case Law & Decision | Key Points |
|---|---|---|
| ***Payment Processing Service – Rule 3/Rule 9***<br>The applicant proposes to provide payment processing service to a US company which in turn provides name registration, web hosting, designing and other services to customers in India.<br>(i) Whether the place of provision of payment processing service proposed to be provided by the applicant, is outside India in terms of Rule 3 of POPOSR, 2012?<br>(ii) Whether services proposed to be provided by applicant would qualify as 'export of service'? | ***Universal Services India (P) Ltd. – 2016 – AAR***<br>It was held that<br>(i) POP proposed to be provided by applicant would be location of recipient of service, i.e., location of WWD, i.e. outside India, in terms of Rule 3 of POPOSR as the applicant was providing service on his own account and thus, he cannot be called as an "intermediary" for application of Rule 9 of POPOSR.<br>(ii) Since all the conditions enlisted under Rule 6A of STR, 1994, are satisfied, said service will also qualify as export of service. | **May 2017** |

## DEMAND & REFUND

| Subject & Issue | Case Law & Decision | Key Points |
|---|---|---|
| ***No Recovery without SCN & DO***<br>Whether recovery provisions under Section 87 of FA, 1994 can be invoked without an adjudication proceeding under Section 73? | ***UOI V. Prashanthi – 2016 – Kar. HC***<br>It was held that the submission that the power under Section 87 is independent and irrespective of the procedure under Section 73, is not viable. The contention that when the power under Section 87 is to be invoked, no procedure under Section 73 can be undertaken, is not acceptable. Accepting such submissions and contentions would result in a situation that the power under Section 87 be without an adjudication mechanism under Section 73, which is neither conceived by the legislature nor can be the accepted position. | |

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| ***No Provisional Attachment with PONJ***<br>Can the order directing the provisional attachment of property be made without giving any opportunity of being heard to the assessee? | ***Kunj Power Projects V. UOI – 2016 – All. HC***<br>It was held that the respondents need to be careful while resorting to exercise the powers contemplated under Rule 3 of the Service Tax (Provisional Attachment of Property) Rules, 2008. Such exercise of power has to be resorted to with utmost circumspection and with maximum care and caution. In the light of the aforesaid discussion, order for provisional attachment of property was quashed. | |

## NEGATIVE LIST, DECLARED SERVICES & EXEMPTIONS

| Subject & Issue | Case Law & Decision | Key Points |
|---|---|---|
| ***Food Services – Deemed Sales/Declared Srs.***<br>Whether Section 66E(i) of FA, 1994 to the extent it seeks to constitute the service portion in an activity of supply of food or other articles as 'declared service' and Rule 2C of STVR, 2006, constitutionally valid? | ***Federation of Hotel & Restaurants Association of India V. UOI – 2016 – Del. HC***<br>It was held that Section 66E(i) of FA, 1994 read with Section 65B(22) and Section 65B(44) is constitutional valid (as Parliament has the right to levy in terms of Constitution of India)<br>It was also held that Rule 2C of STVR, 2006 is constitutionally valid (as machinery provisions including valuation can be provided by CG as a matter of administrative convenience) | |
| ***Complex Construction – Levy & Collection***<br>Whether levy of service tax on construction of complex services and on preferential location charges is constitutionally valid? | ***Suresh Kumar Bansal V. UOI – 2016 – Del. HC***<br>It was held that to ***levy*** of service tax on construction of complex services and preferential location charges is constitutionally valid. However, it was also held that service tax cannot be ***collected*** on such charges as contracts are composite including the ***value of immovable property*** in the present case. | |

# CENVAT CREDIT

## CENVAT CREDIT – MANUFACTURER & SERVICE PROVIDER

| Subject & Issue | Case Law & Decision | Key Points |
|---|---|---|
| ***Refund under Rule 5 by Unregd. Person*** Can the Department deny the claim for refund of CCR available under Rule 5 of the CCR, 2004 on the ground that the person claiming the refund is not registered? | ***Tavant Technologies India Pvt Ltd. – 2016 – Kar. Hc*** It was held that Department could not deny the claim for refund of CCR available under Rule 5 of the CCR, 2004 on the ground that the person claiming the refund was not registered. | |

# CUSTOMS DUTY

## CONFISCATION & PENALTY

| Subject & Issue | Case Law & Decision | Key Points |
|---|---|---|
| ***Smuggled Goods v. Prohibited Goods*** Whether the expression 'goods in respect of which any prohibition is in force' refers to smuggled goods or prohibited goods? | ***Gopal Saha V. UOI – 2016 – Cal. HC*** It was held that 'goods in respect of which any prohibition is in force' in the context of Section 112 implies goods which are prohibited from being imported and not goods which have been smuggled into the country in contravention of the procedure established by law for the import thereof. Consequently, the order imposing penalty on the petitioner was set aside and the matter was remanded for such limited purpose for the imposition of other permissible penalty. **Note:** Smuggled Goods are treated as Prohibited Goods for the purpose of confiscation under Section 111 whereas Smuggled Goods are NOT treated as Prohibited Goods for the purpose of penalty under Section 112. | |