

**A2Z TAXCORP LLP  
NEW DELHI, INDIA**

***Indirect Tax and Other Laws Communiqué  
December 7, 2015***

***This bulletin brings to you the highlights of recent updates and important judgments in the field of indirect taxation along with key inputs from other fields to keep you abreast of all the latest happenings.***

<b>CONTENTS</b>	<b>Page No</b>
-----------------	----------------

<b>Service Tax</b>	
--------------------	--

<b>Notifications and Circulars</b>	
------------------------------------	--

- |  |   |
|--|---|
| <ul style="list-style-type: none"><li>• Seed testing and all ancillary activities thereto are not liable to Service tax – CBEC clarifies</li></ul> | 5 |
|--|---|

<b>Case Laws</b>	
------------------	--

- |  |   |
|--|---|
| <ul style="list-style-type: none"><li>• Cenvat credit is admissible even though the Appellant was not registered with the Service Tax Department at the time of availing input services</li></ul>  | 5 |
| <ul style="list-style-type: none"><li>• No Service tax leviable on handling charges incurred for bringing goods, when it was included in value of goods liable to VAT</li></ul>  | 6 |
| <ul style="list-style-type: none"><li>• Cenvat credit is allowable of Service tax paid on the insurance premium to the Insurance Company for Group Insurance and medi-claim policies taken for existing employees as well as for the retired employees</li></ul> | 7 |
| <ul style="list-style-type: none"><li>• Cenvat credit cannot denied to the service recipient for non-payment of Service tax by the service provider</li></ul>  | 9 |

<b>Central Excise</b>	
-----------------------	--

<b>Notifications and Circulars</b>	
------------------------------------	--

- |   |   |
|---|---|
| <ul style="list-style-type: none"><li>• Exemption from Excise duty on all raw material and parts for use in manufacture of certain specified ships/vessels subject to actual user condition</li></ul>   | 9 |
| <ul style="list-style-type: none"><li>• Amendment made in order to enable EOUs to become eligible for duty exemption on raw materials/parts consumed in manufacture of certain specified ships/vessels and cleared to DTA, even if such ships/vessels are exempt from Basic Customs duty and Central Excise/Countervailing duty</li></ul> | 9 |

- Exemption from Central Excise duty pursuant to suspension of benefits under North East Industrial and Investment Promotion Policy, 2007 by DIPP 10

## Case Laws

- No need to affix MRP on goods declared to be 'not meant for retail sale', thus Excise duty payable on transaction value under Section 4 of the Excise Act 10
- Simultaneous availment of SSI exemption and Cenvat on inputs used in goods cleared on payment of duty is permissible 11
- Refund claim cannot be denied when excess duty has been returned through debit/credit Notes, and, the said amount is accounted as 'receivable' in the Balance Sheet - sufficient evidence that incidence of duty has not been passed on 12
- Cenvat credit on input services availed prior to initiation of manufacturing activity is admissible 12

## Customs

### Notifications and Circulars

- Revision in Rate of Exchange for valuation of exported and imported goods 13
- Revision in Tariff value of Edible oil, Brass, Poppy seed, Areca nut, gold and Silver 13
- Exemption on raw material and parts for use in manufacture of certain specified ships/vessels, without the requirement of manufacturing of ships/vessels in a custom bonded warehouse 13
- Amendment made in order to enable EOUs to become eligible for duty exemption on raw materials/parts consumed in manufacture of certain specified ships/vessels and cleared to DTA, even if such ships/vessels are exempt from Basic Customs duty and Central Excise/Countervailing duty 13

• Anti-Dumping Duty imposed on imports of Melamine, Tableware and Kitchenware originating in, or exported from the People’s Republic of China, Thailand and Vietnam	14
• Anti-Dumping Duty imposed on imports of Phthalic Anhydride, originating in, or exported from Japan and Russia	14
• Anti-Dumping Duty imposed on imports of all kinds of plastic processing or injection moulding machines	14
<b>Case Laws</b>	
• Provisions of interest on belated refund in terms of Section 27A of the Customs Act also applies on belated refund of SAD	14
• Assessable value would be the transaction value where it isn’t influenced by the relationship between the buyer and the seller	15
• Assessable value would be the transaction value where it isn’t influenced by the relationship between the buyer and the seller	16
<b>Value Added Tax</b>	
<b>Case Laws</b>	
• Purchasing dealer need not reverse tax credit unless selling dealer has issued credit note for post sales discount and revised his tax liability	17
• Where the smart cards are prepared in terms of an agreement with the customer by embedding requisite information, which couldn’t be sold in open market, it is a contract for rendering service and there is no element of sale	17
<b>CEA led panel recommends RNR at 15-15.5% and proposes to delete additional tax of 1% on inter-state supply of goods</b>	19
<b>News Flash</b>	22

## SERVICE TAX

### NOTIFICATIONS/CIRCULARS

➤ [Seed testing and all ancillary activities thereto are not liable to Service tax – CBEC clarifies](#)

It came to the notice of the CBEC that certain field formations have taken a view that all activities incidental to seed testing are leviable to Service tax and only the activity in so far it relates to actual testing has been exempted in the Negative List.

After elaborate interpretation of the words in the Statute, the CBEC vide **Circular No. 189/8/2015-Service Tax dated November 26, 2015** has issued clarification that all testing and ancillary activities to testing such as seed certification, technical inspection, technical testing, analysis, tagging of seeds, rendered during testing of seeds, are covered within the meaning of 'testing' as mentioned in sub-clause (i) of clause (d) of Section 66D of the Finance Act. Therefore, such services are not liable to Service tax under Section 66B of the Finance Act.

### RECENT CASE LAWS

➤ [Cenvat credit is admissible even though the Appellant was not registered with the Service Tax Department at the time of availing input services](#)

***India Housing Vs. Commissioner of Central Excise, Lucknow [2015 (11) TMI 1422 – CESTAT NEW DELHI]***

**Facts:**

India Housing (“**the Appellant**”), a service provider, took Cenvat credit on certain input services. The Department denied the Cenvat credit on the ground that the Appellant has taken Cenvat credit on the documents which are not the correct documents as per the Rule 9(2) of the Credit Rules. Few invoices were rejected on the ground that that Appellant was not registered at the time of issuance of invoices, few on the ground that the invoices are not in the name of Appellant etc.

**Held:**

The Hon’ble CESTAT, New Delhi, after following the decision of the Tribunal in the case of ***Imagination technologies India P. Ltd. [2011 (4) TMI 406 - CESTAT, MUMBAI]***, held that neither in the show cause notice nor in the impugned order, it has been disputed that the Appellant has not availed input service and has not paid Service tax. Hence, the Appellant is

entitled to take Cenvat credit even though the Appellant was not registered at the time of availing the services.

**Our Comments:**

The Hon'ble High Court of Karnataka in the case of ***mPortal India Wireless Solutions P. Ltd. Vs. C.S.T., Bangalore [2012 (27) S.T.R. 134 (Kar.)]***, has held that the Credit Rules does not mandate registration with the Department for availing Cenvat credit and denial of benefit on the ground non-existent in law is unjustified. We are reproducing herewith relevant extract of the judgment for the ease of your reference:

*"...7. Insofar as requirement of registration with the department as a condition precedent for claiming Cenvat credit is concerned, learned counsel appearing for both parties were unable to point out any provision in the Cenvat Credit Rules which impose such restriction. In the absence of a statutory provision which prescribes that registration is mandatory and that if such a registration is not made the assessee is not entitled to the benefit of refund, the three authorities committed a serious error in rejecting the claim for refund on the ground which is not existence in law. Therefore, said finding recorded by the Tribunal as well as by the lower authorities cannot be sustained. Accordingly, it is set aside."*

The said decision of the Hon'ble High Court was further followed/ referred in the following cases:

- ***3M India Ltd. Vs. C.C.E. & S.T., LTU, Bangalore [2013 (31) S.T.R. 110 (Tri. - Bang.)];***
- ***Commissioner of S.T., Bangalore Vs. Focus Infosys (India) Pvt. Ltd. [2013 (31) S.T.R. 553 (Tri. - Bang.)];***
- ***Kpit Cummins Infosystems Ltd. Vs. Commissioner of C. EX., Pune-I [2013 (32) S.T.R. 356 (Tri. - Mumbai)];***
- ***Commr. of S.T., Bangalore Vs. Aviva Global Services (Bang.) P. Ltd. [2014 (33) S.T.R. 270 (Tri. - Bang.)];***
- ***Business Process Outsourcing (I) Pvt. Ltd. Vs. C.C. & S.T., Bangalore [2014 (34) S.T.R. 364 (Tri. - Bang.)]***

➤ **[No Service tax leviable on handling charges incurred for bringing goods, when it was included in value of goods liable to VAT](#)**

***Automotive Manufacturers (P.) Ltd. Vs. Commissioner of Central Excise & Customs, Nagpur [2015 (63) taxmann.com 236 (Mumbai - CESTAT)]***

### **Facts:**

Automotive Manufacturers (P.) Ltd. (“**the Appellant**”), an authorised dealer of Maruti Udyog Ltd. (“**Maruti**”), was registered with the Department as an authorised service station for Maruti cars and they have been discharging the Service tax liability on servicing/repairing of the vehicles undertaken by them. However, while repairing or servicing of the vehicles, the Appellant sometimes used parts, procured from Maruti on which Sales tax/ VAT liability was discharged. For bringing these parts from the warehouse/ depots to their service station, the Appellant had to incur handling charges, which is included in the value of parts sold to the clients, on which Sales tax/ VAT has been discharged. The Department alleged that Service tax was leviable on handling charges.

### **Held:**

The Hon’ble CESTAT, Mumbai, relying upon the decision in the case of ***Ketan Motors Ltd. Vs. CC, CE & ST [Final Order No. A/321/2013-WZB/C-1 (CSTB), dated 18-2-2013]***, held that Section 67 of the Finance Act mandate levy of Service tax on a value or consideration received for rendering the services. Therefore, any consideration received for supply of goods is not covered within the scope of Section 67 of the Finance Act.

- [Cenvat credit is allowable of Service tax paid on the insurance premium to the Insurance Company for Group Insurance and medi-claim policies taken for existing employees as well as for the retired employees](#)

***Reliance Industries Ltd. Vs. Commissioner, Central Excise & Service Tax (LTU), Mumbai [2015 (11) TMI 969 - CESTAT MUMBAI]***

### **Facts:**

The Department denied the Cenvat credit to Reliance Industries Ltd. (“**the Appellant**”) on the ground that the Service tax paid on the life insurance/ medi-claim policy for the existing employees and retired employees is ineligible as they are not covered under the definition of Rule 2(l) of the Credit Rules.

### **Held:**

The Hon’ble CESTAT, Mumbai, held that the Appellant is eligible to avail Cenvat credit of the Service tax paid on insurance premium to the Insurance Company for Group Insurance and medi-claim policies taken for existing employees as well as for the retired employees as the same Bench has decided in the Appellant's own case in ***Appeal No. E/1283/2012-Mum [2015 (7) TMI 231 - CESTAT MUMBAI]*** wherein it was held that such credit is available relying on the judgement of the Hon'ble High Court of Karnataka in the case of ***Millipore India Ltd. [2011 (4) TMI 1122 - KARNATAKA HIGH COURT]***.

### **Our Comments:**

Here, we would like to draw your attention towards the definition of the term 'Input services' as was prevalent prior to April 1, 2011, which specifically mentioned **activities relating to business** under 'includes-clause'. However, post facto April 1, 2011, definition of the term 'Input service' given under Rule 2(l) of the Credit Rules was substituted vide Notification No. 3/2011-CE(NT) dated March 1, 2011, *inter alia*, deleting the phrase 'activities relating to business'. Thus, limiting the wide scope of the term 'Input services'. In other words, effective from April 1, 2011, one has to be very careful while determining eligibility of any Input service under Rule 2(l) of the Credit Rules.

Further, effective from April 1, 2011, scope of wide interpretation of the term 'Input service' has been further curtailed/ limited by inserting exclusion-clause in the stated definition, which, *inter alia*, **excludes employee related services under Clause (C):**

*"(C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee"*

However, in the case of ***Hindustan Coca Cola Beverages Pvt. Ltd. Vs. Commr. of C. Ex., Nashik [2015 (38) S.T.R. 129 (Tri. - Mumbai)]***, the Hon'ble CESTAT, Mumbai has held that what is not eligible is that service which is meant for personal use or consumption by an employee or the cost of which is included as part of salary of the employee as a cost to company basis. When, the outdoor catering service is used in relation to business activities of the appellant and the cost of such services are admittedly borne by the company and not by the employee, the appellant has correctly claimed the Cenvat credit on outdoor catering services even after April 1, 2012. Relevant extract of the judgment is reproduced hereunder for the ease of reference:

*"...4.1 I find considerable force in the submissions made by the Id. Counsel for the appellant, that what is excluded is only the services 'primarily for personal use or consumption of any employee' under clause (C) of Rule 2(l) of the definition of input service. When the Government has specifically used the words such as "used primarily for personal use or consumption of any employee", the same has to be given due effect to. In the present case the outdoor catering service is used in relation to business activities of the appellant and the service is used by all employees in general. Also, the Revenue has not rebutted the contention of the appellant, that the costs of these input services form part of the cost of final product...."*

4.2 I further find that even the Government while issuing the budget clarification or subsequent circular has clarified that what is not eligible is that service which is meant for personal use or consumption by an employee or the cost of which is included as part of salary of the employee as a cost to company basis. In the present case, the cost of such services are admittedly borne by the company and not by the employee. Therefore, I hold that the appellant has correctly claimed the Cenvat credit on outdoor catering services....”

➤ **Cenvat credit cannot be denied to the service recipient for non-payment of Service tax by the service provider**

***Memories Photography Studio Vs. Commr. of C. EX. & S.T., Vadodara [2015 (12) TMI 266 - CESTAT AHMEDABAD]***

**Facts:**

The Department denied Cenvat credit to Memories Photography Studio (“**the Appellant**”), on the ground that the service provider has not discharged the duty liability. It was alleged that the Appellant should have taken precaution to verify whether the service provider has discharged Service tax liability or not.

**Held:**

The Hon’ble CESTAT, Ahmedabad, held that a service recipient can only see the Cenvatable document under which Service tax paid/ payable has been indicated. However, it is not the case of the revenue that the service provider does not exist. Hence, the Appellant has correctly availed the Cenvat credit and it is not deniable.

## CENTRAL EXCISE

### NOTIFICATIONS/CIRCULARS

➤ **Exemption from Excise duty on all raw material and parts for use in manufacture of certain specified ships/vessels subject to actual user condition**

The Central Government vide **Notification No. 44/2015-CE dated November 24, 2015** has amended Notification No. 12/2012-CE dated March 17, 2012 by inserting new entry which exempts all raw material and parts for use in manufacture of certain specified ships/vessels subject to actual user condition from levy of Excise duty. Further, the requirement of manufacturing of ships/vessels in a custom bonded warehouse under the provisions of Section 65 of the Customs Act, for availing duty benefits has also been removed.

➤ **Amendment made in order to enable EOUs to become eligible for duty exemption on raw materials/parts consumed in manufacture of certain specified ships/vessels and cleared to**

### DTA, even if such ships/vessels are exempt from Basic Customs duty and Central Excise/Countervailing duty

The Central Government has amended Notification No. 22/2003-CE dated March 31, 2003, vide **Notification No. 45/2015-CE dated November 24, 2015**, clarifying that, EOUs are now eligible for duty exemption on raw materials/parts consumed in manufacture of certain specified ships/vessels and cleared to DTA, even if such ships/vessels are exempt from Basic Customs duty and Central Excise/Countervailing duty.

### ➤ Exemption from Central Excise duty pursuant to suspension of benefits under North East Industrial and Investment Promotion Policy (“NEIIPP”) 2007 by DIPP

The Department of Industrial Policy & Promotion (DIPP) had suspended fresh registrations for the schemes under NEIIPP with effect from December 1, 2014 vide OM No.10(1)/2014-DBA-II/NER dated December 1, 2014.

Doubts have been raised regarding availability or otherwise of Central Excise duty exemption under Notification No. 20/2007-Central Excise dated April 25, 2007 to new units or units undertaking substantial expansion after December 1, 2014 in the North Eastern Region including Sikkim pursuant to the suspension of fresh registrations by the DIPP.

The CBEC vide **Circular No. 1012/19/2015-CX dated December 02, 2015** has issued clarification that fresh registrations for the schemes under NEIIPP, have been suspended by the DIPP essentially due to shortage of funds allocated to DIPP. New units or units undertaking substantial expansion after December 1, 2014 and upto the cut-off date of March 31, 2017 shall continue to be eligible for Excise duty exemption under Notification No. 20/2007-Central Excise dated April 25, 2007 which exempts the goods cleared from a unit located in the States of Assam or Tripura or Meghalaya or Mizoram or Manipur or Nagaland or Arunachal Pradesh or Sikkim from the levy of Excise duty, subject to the conditions specified thereunder.

## RECENT CASE LAWS

### ➤ No need to affix MRP on goods declared to be 'not meant for retail sale', thus Excise duty payable on transaction value under Section 4 of the Excise Act

***Commissioner of Central Excise, Noida Vs. Control & Switchgears Contactors Ltd. [2015 (63) taxmann.com 82 (SC)]***

#### **Facts:**

Control & Switchgears Contactors Ltd. (“**the Respondent**”) was engaged in the manufacture of contactors over load relays, electrical timers and accessories thereof and motor starters.

The Respondent was declaring on goods that they were for exclusive use of industries as a 'raw material' and not intended to be displayed for sale at a retail outlet. Thus, the Respondent did not affix Market Retail Price ("**MRP**") thereon and claimed assessment under Section 4 of the Excise Act based on transaction value. The Department has alleged and passed the Order that valuation of these goods was to be under Section 4A of the Excise Act, despite the fact that no MRP was written on the packages.

**Held:**

The Hon'ble Supreme Court affirmed the decision of the Tribunal, wherein it was held that while the Respondent had declared that goods were not meant for retail sale, revenue could not produce any evidence to contrary and hence, duty was rightly paid as per Section 4 of the Excise Act.

➤ **[Simultaneous availment of SSI exemption and Cenvat on inputs used in goods cleared on payment of duty is permissible](#)**

***Commissioner of Central Excise, Pondicherry Vs. Shrushti Plastics (P) Ltd. [2015-TIOL-2461-CESTAT-MAD]***

**Facts:**

Shrushti Plastics (P) Ltd. ("**the Respondent**") was availing the benefit of exemption under Notification No. 8/99-CE dated February 29, 1999 ("**the SSI exemption**") on the goods manufactured by them. Simultaneously, the Respondent has paid full Excise duty on the goods bearing the brand name of another person, which were manufactured on job work basis and accordingly, claimed Cenvat credit on inputs used in the manufacturing of these goods. The Department alleged that the Respondent cannot simultaneously avail the benefit of SSI exemption and Cenvat credit on inputs used in the manufacturing of goods cleared on payment of duty.

**Held:**

The Hon'ble CESTAT, Chennai, applied the ratio of the Apex court decision in case of ***Nebulae Health Care Ltd. Vs. CC Chennai [2006-TIOL-1380-CESTAT-MAD]***, which squarely applies to the instant case, wherein the Hon'ble Supreme Court after distinguishing their own case in the case of ***Commissioner Vs. Ramesh Food Products [2004 (174) ELT 310 (S.C)]*** upheld this Tribunal's order. The Hon'ble Supreme Court has held that the Respondent can avail simultaneously the benefit of SSI exemption on the goods pertaining to them and Cenvat credit on inputs used in the manufacturing of goods cleared on payment of duty.

- [Refund claim cannot be denied when excess duty has been returned through debit/credit Notes, and, the said amount is accounted as 'receivable' in the Balance Sheet - sufficient evidence that incidence of duty has not been passed on](#)

*Shree Krishna Nylon Pvt. Ltd. Vs. Commissioner of Central Excise, Mumbai-III [2015 (11) TMI 1470 - CESTAT MUMBAI]*

**Facts:**

Shree Krishna Nylon Pvt. Ltd. ("**the Appellant**"), on having a confusion regarding applicability of the duty rate on the products, chose to pay duty at higher rate under protest and sought clarification from the Department. Consequent to the clarification, the Appellant issued Credit Notes to the buyers of goods and filed refund claim for excess duty paid under protest. However, the Department rejected the refund claim on the ground of unjust enrichment alleging that the Appellant has not been able to prove that the burden of Excise duty had not been passed on to the buyers.

**Held:**

The Hon'ble CESTAT, Mumbai, relying upon following legal pronouncements:

- *CCE, Bangalore-I Vs. Om Pharmaceuticals Ltd. [2011 (268) ELT 79 (Kar.)];*
- *Sudhir Papers Ltd. Vs. CCE, Bangalore-I [2012 (276) ELT 304 (Kar.)];*
- *CCE, Chandigarh Vs. Vardhman Industries Ltd. [2006 (205) ELT 241 (Tri.-Del.)]. This was upheld by the Hon'ble Punjab & Haryana High Court in CEA No. 97 of 2006, which was subsequently upheld by the Hon'ble Supreme Court as reported in 2011 (267) ELT A25 (SC).*

held that on clarification, the Appellant has issued Credit Notes & against the said Credit Notes, the buyer of the goods has returned the excess charged Excise duty. Further, the Appellant has shown that amount in Balance Sheet as receivable under the head 'loan and advances'. Hence, it is a sufficient evidence to hold that incidence of duty has not been passed on and accordingly, allowed the refund claim.

- [Cenvat credit on input services availed prior to initiation of manufacturing activity is admissible](#)

*Shree Cement Ltd. Vs. Commissioner of Central Excise, Jaipur [2015 (63) taxmann.com 151 (New Delhi - CESTAT)]*

**Facts:**

The Department denied the Cenvat credit on the ground that Shree Cement Ltd. (“**the Appellant**”) is not entitled to take Cenvat credit on Service tax on cargo handling service which has been distributed to them by their head office prior to start of production.

**Held:**

The Hon’ble CESTAT, New Delhi, held that a plain reading of Rule 3 and Rule 7 of the Credit Rules clarifies that there would be no restriction if assessee avails Cenvat credit on procurement of inputs/input services prior to start of manufacture. In fact, without procuring some inputs/ inputs services, the Appellant cannot start manufacturing activity. Hence, the Appellant has correctly availed the Cenvat credit of input services prior to initiation of manufacturing activity.

## CUSTOMS

### NOTIFICATIONS/CIRCULARS

➤ **[Revision in Rate of Exchange for valuation of exported and imported goods](#)**

In exercise of the powers conferred under Section 14 of the Customs Act, the CBEC vide **Notification No. 136 /2015-Customs (N.T.) dated December 3, 2015** has revised Rate of Exchange (“**ROE**”) applicable with effect from December 4, 2015 to determine the Assessable Value in respect of imported and exported goods.

➤ **[Revision in Tariff value of Edible oil, Brass, Poppy seed, Areca nut, gold and Sliver](#)**

In the exercise of the power conferred under Section 14(2) of the Customs Act, the Central Government vide **Notification No. 135/2015-Customs (N.T.) dated November 30, 2015** has revised the Tariff value of Edible oil, Brass, Poppy seed, Areca nut, Gold and Sliver w.e.f. November 30, 2015.

➤ **[Exemption on raw material and parts for use in manufacture of certain specified ships/vessels, without the requirement of manufacturing of ships/vessels in a custom bonded warehouse](#)**

The Central Government vide **Notification No. 54/2015-Customs dated November 24, 2015** has amended Notification No. 12/2012-Customs dated March 17, 2012 by inserting new entry, which dispenses the requirement of manufacturing of ships/vessels in a custom bonded warehouse under the provisions of Section 65 of the Customs Act for availing duty benefits.

➤ **[Amendment made in order to enable EOUs to become eligible for duty exemption on raw materials/parts consumed in manufacture of certain specified ships/vessels and cleared to](#)**

**DTA, even if such ships/vessels are exempt from Basic Customs duty and Central Excise/Countervailing duty**

The Central Government vide **Notification No. 55/2015-Customs dated November 24, 2015** has amended Notification No. 52/2003-Customs dated March 31, 2003, clarifying that, EOUs are now eligible for duty exemption on raw materials/parts consumed in manufacture of certain specified ships/vessels and cleared to DTA, even if such ships/vessels are exempt from Basic Customs duty and Central Excise/Countervailing duty.

➤ **Anti-Dumping Duty imposed on imports of Melamine, Tableware and Kitchenware originating in, or exported from the People's Republic of China, Thailand and Vietnam**

The Central Government vide **Notification No. 55/2015-Customs (ADD) dated December 4, 2015**, has imposed the Anti-Dumping Duty on imports of Melamine, Tableware and Kitchenware for the period of five years originating in, or exported from the People's Republic of China, Thailand and Vietnam.

➤ **Anti-Dumping Duty imposed on imports of Phthalic Anhydride, originating in, or exported from Japan and Russia**

The Central Government vide **Notification No. 56/2015-Customs (ADD) dated December 4, 2015**, has imposed the Anti-Dumping Duty on imports of Phthalic Anhydride, originating in, or exported from Japan and Russia for a period of five year.

➤ **Anti-Dumping Duty imposed on imports of all kinds of plastic processing or injection moulding machines**

The Central Government vide **Notification No. 57/2015-Customs (ADD) dated December 4, 2015**, has imposed the Anti-Dumping Duty on import of all kinds of plastic processing or injection moulding machines, also known as injection presses used for processing or moulding of plastic materials, having clamping force not less than 40 tonnes and not more than 1000 tonnes for a period of five years.

## RECENT CASE LAWS

➤ **Provisions of interest on belated refund in terms of Section 27A of the Customs Act also applies on belated refund of SAD**

***Principal Commissioner of Custom Vs. Riso India (P.) Ltd. [(2015) 63 taxmann.com 205 (Delhi)]***

**Facts:**

Riso India (P.) Ltd. (“**the Respondent**”) was belatedly allowed refund claim of Special Additional Duty of Customs (“**SAD**”) filed on March 2, 2010. However the claim of interest on the SAD was rejected on the ground that the Respondent had not specifically claimed interest and Section 27A of the Customs Act is not applicable for the interest on refund of SAD.

**Held:**

The Hon’ble High Court of Delhi relied upon the following judgments:

- ***KSJ Metal Impex (P.) Ltd. v. Under Secretary (Cus.), M.F. (D.R) [(2013) 40 taxmann.com 199 (Mad.)]***
- ***Sony India (P.) Ltd. v. Commissioner of Customs [(2014) 44 taxmann.com 475/45 GST 322 (Delhi)]***

and held that 'Duty' as defined in Section 2(15) of the Customs Act, is wide enough to cover all kinds of duty, including SAD. Hence, as per Section 3(8) of Customs Tariff Act, provisions of Customs Act insofar as they relate to 'refund' and 'interest on delayed refund' viz. Sections 27 and 27A ibid would apply to refund of SAD. Where the Respondent got refund of SAD in terms of Section 27 of the Customs Act and it was granted belatedly, he will also be eligible to get interest on SAD refund in terms of Section 27A of the Customs Act.

- **[Assessable value would be the transaction value where it isn’t influenced by the relationship between the buyer and the seller](#)**

***Dailmer Chrysler India Pvt. Ltd. Vs. Commissioner of Customs, New Delhi [2015 (11) TMI 1151 - CESTAT MUMBAI]***

**Facts:**

Dailmer Chrysler India Pvt. Ltd. (“**the Appellant**”) is the subsidiary company of Daimler Chrysler AG, Germany. The parent company of the Appellant had imported three cars into India against an ATA Carnet for the purpose of exhibition at Auto Expo. These cars were sold to the Appellant after the permission from the Government.

The value declared on Bills of Entry was substantially lower than that on the Carnet document. The Carnet document provides for declaration of value which is the commercial value in the country of its issue. The Adjudication Authority had rejected the transaction value on the ground that the value declared in the Carnet is much higher and thus ordered that the assessable value would be inclusive of Carnet price, Insurance, Freight and Landing Charges.

**Held:**

The Hon'ble CESTAT, Mumbai held as under:

- When import of identical cars have been made at lower values which are comparable to the value declared at the time of filing Bill of Entry for sale of the cars imported under Carnet, there is no justification to take the higher value mentioned in the Carnet;
- It is established by the order of the Special Valuation Branch (SVB), Mumbai, making investigation in respect of other cars imported into India, that the price of these cars aren't influenced by relationship of the buyer and the seller. Hence the transaction value cannot be rejected;
- Rule 8(2)(iii) of the Valuation Rules, which provides for residual method of determining the value, clearly states that no value should be determined on the basis of the price of the goods on the domestic market of the country of exportation.

Therefore, the Hon'ble Tribunal held there is no reason to differentiate between the cars imported under Carnet and the cars imported otherwise. Valuation under Section 14 of the Customs Act clearly provides that the value shall be the transaction value where the buyer and seller are not related.

- [Where purchase price fixed in first contract has been subsequently revised prior to importation of goods, then the Customs duty would be payable on revised price](#)

***Gupta Steel Vs. Commissioner of Customs, Jamnagar [(2015) 63 taxmann.com 188 (SC)]***

**Facts:**

Gupta Steel ("the Appellant") is engaged in business of ship breaking. On August 23, 2000 the Appellant entered into Memorandum of Agreement ("MoA") with the owner of the vessel for import of the said vessel for the purposes of breaking the same which was subsequently amended on August 30, 2000 and the price which was reflected in the earlier MoA was marginally reduced.

The ship was arrived and Bill of Entry ("the BOE") was filed on September 1, 2000. The Assessable value was declared in the BOE in terms of the revised MOA. The Assessing officer accepted the value declared in the BOE. The Department filed an appeal against the order of the assessing officer and contended that the assessable value should be determined in terms of the MOA entered on August 23, 2000.

**Held:**

The Hon'ble Apex Court held that price was genuinely revised & gets reduced by amending the MOA and there was nothing wrong on the part of the Appellant to declare the price in

the BOE. Hence, Customs duty should be determined on the basis of assessable value declared in the BOE.

## VALUE ADDED TAX

### RECENT CASE LAWS

- [Purchasing dealer need not reverse tax credit unless selling dealer has issued credit note for post sales discount and revised his tax liability](#)

*Challenger Computers Ltd. Vs. Commissioner of Trade & Taxes, Delhi [(2015) 63 taxmann.com 120 (Delhi)]*

#### **Facts:**

Challenger Computers Ltd. (“the Appellant”) is engaged in trading of computer hardware and software. During audit for the period of 2008-09, the VATO noticed that the Appellant had received incentives and discounts from the selling dealer subsequent to sales of the goods.

The Department took a view that in terms of Section 10(1) read with Section 51(a) of the DVAT Act, it was incumbent on the purchasing dealer to claim Input tax credit (“ITC”) only to the proportionate extent after accounting for the discount received from the selling dealer. Accordingly, the Appellant was asked for the reversal of ITC claimed on discounts and incentives received from the selling dealer.

#### **Held:**

After considering the combined reading of Section 10, Section 51, Section 38 and Section 40A of the DVAT Act, the Hon’ble High Court of Delhi held that in terms of the Section 51(a) of the DVAT Act, the selling dealer will issue the credit note to the buying dealer where the sales are subsequently reduced. The buying dealer will accordingly adjust his ITC in terms of Section 10 of the DVAT Act. Thus, without issuance of such credit notes, the buying dealer should not be insisted to adjust the ITC in terms of Section 10 of the DVAT Act and the tax reflected in the tax invoice would continue to stand.

- [Where the smart cards are prepared in terms of an agreement with the customer by embedding requisite information, which couldn’t be sold in open market, it is a contract for rendering service and there is no element of sale](#)

*Zylog Systems (P) Ltd. Vs. Additional Commissioner of Commercial Taxes [(2015) 63 taxmann.com 128 (Karnataka)]*

### Facts:

Zylog Systems (P) Ltd. (“**the Appellant**”) is a service provider having expertise in providing information technology services. The Transport Department of Karnataka had awarded a contract to the consortium of members in which, the Appellant was a member for supply, installation and maintenance of computer systems, supply and printing of smart cards, provision of data entry services and to carry out other activities incidental thereto.

The Appellant purchased ID smart cards for a certain amount and prepared therefrom smart cards as desired by the Transport Department which were supplied after lamination. The Appellant claimed that the entire contract was a service contract and consumption of smart cards was only incidental to the contract. A major portion of the value/consideration of the contract was towards providing the information technology services and the value towards the smart cards was negligible. It was not indulging in any sale of ID smart cards as such.

The Vat Department had taken a view that the Appellant had supplied the goods to the Transport Department for consideration and it was liable for payment of VAT.

### Held:

The Hon’ble High Court of Karnataka held that:

- Unless the transaction in truth represents two distinct and separate contracts and is discernible as such, the State does not have the power to separate the 'agreement to sell' from the 'agreement to render service', and impose tax on the sale;
- The job of preparation of smart card involves skill like entering requisite data in the computers. The data so entered is to be transferred and stored in magnetic media in a manner so that the data can be utilized at a subsequent date for preparation of smart card;
- The smart cards, which are produced by the Appellant, have no utility or value to any other person than the Transport Department who paid for the services rendered by the Appellant;
- The smart cards are not the commodities saleable in open market. It fetches no commercial value in the open market. Hence, supply of smart cards cannot be held as sale. It is a contract for labour and service.

### Our Comments:

The Hon’ble Supreme Court in the case of ***Bharat Sanchar Nigam Ltd. Vs. Union Of India [2006 (2) S.T.R. 161 (S.C.)]*** (“**BSNL Case**”) has very clearly held that “*Of the three types of the composite contracts i.e. a work contract, hire purchase contract and catering contract,*

*splitting of service and supply has been constitutionally permitted in case of works contract and catering contract and no other composite contract has been permitted to split.”*

Similarly in ***Larsen Toubro and another Vs. State of Karnataka and another [2013-TIOL-46-SC-CT-LB]*** (“Larsen Toubro Case”), it was held that by the 46<sup>th</sup> amendment, States have been empowered to bifurcate the contract to levy Sales tax on the value of the material in the execution of the Works contract.

Relying upon the decisions in BSNL Case and Larsen Toubro Case, the five Judge Constitution Bench of the Hon’ble Supreme Court of India in its land mark judgment in the case of ***Kone Elevator India Private Limited Vs. State of Andhra Pradesh [2014-TIOL-57-SC-CT-CB]*** (“Kone Elevator Case”), held that the Works contract is an indivisible contract but, by legal fiction, is divided into two parts, one for sale of goods, and the other for supply of labour and services. Further, the concept of “Dominant nature test” or for that matter, the “Degree of intention test” or “Overwhelming component test” for treating a contract as a Works contract is not applicable.

Further, the recent judgment of the Hon’ble Supreme Court in the case of ***State of Karnataka Etc. Vs .Pro LAB and Ors [2015-TIOL-08-SC-CT-LB]*** has re-affirmed the position laid down in Larsen Toubro Case followed by landmark judgment of Five Judge Constitution Bench of the Hon’ble Supreme Court in Kone Elevator Case, regarding inapplicability of ‘Dominant Intention Test’ in case of Works contract.

The Hon’ble Supreme Court held that after insertion of clause 29A in Article 366 of the Constitution, the Works contract which was indivisible one by legal fiction, altered into a contract, is permitted to be bifurcated into two: one for ‘sale of goods’ and other for ‘services’, thereby making goods component of the contract exigible to Sales tax. ‘Dominant Intention Test’ for treating a contract as a Works contract is not applicable.

## **CEA LED PANEL RECOMMENDS RNR AT 15-15.5% AND PROPOSES TO DELETE ADDITIONAL TAX OF 1% ON INTER-STATE SUPPLY OF GOODS**

Bracing to roll out the new Indirect tax regime — Goods and Services Tax (“GST”) from April 1, 2016, the Central Government on June 17, 2015 announced the setting up of two Committees to suggest tax GST rates and to look into IT preparedness for GST.

The Government has entrusted Chief Economic Advisor, Dr. Arvind Subramanian—head of one of the two panels—with the task of proposing a Revenue Neutral Rate (“RNR”), or a rate at which there will be no revenue loss to States under the proposed GST regime.

Earlier, a rate of 27% recommended by a sub-committee of the State and Central Government officials, based on a report of the National Institute of Public Finance and Policy (“NIPFP”), was considered unacceptable and too high by the Government.

The Committee headed by the Chief Economic Adviser Dr. Arvind Subramanian (“the Committee”) on Possible Tax rates under GST submitted its Report to the Finance Minister yesterday, recommending a RNR range of 17-18 % for the proposed GST. At the outset, the Committee clarifies the terminology ‘RNR’ as under:

**“The term revenue neutral rate (RNR) will refer to that single rate, which preserves revenue at desired (current) levels. In practice, there will be a structure of rates, but for the sake of analytical clarity and precision it is appropriate to think of the RNR as a single rate. It is a given single rate that gets converted into a whole rate structure, depending on policy choices about exemptions, what commodities to charge at a lower rate (if at all), and what to charge at a very high rate...”**

Because the prerogative of deciding the precise numbers will be that of the future GST Council, the Committee has chosen to recommend a range for the RNR rather than a specific rate. For the same reason, the Committee has decided to recommend not one but a few conditional rate structures that depend on policy choices made on exemptions, and the taxation of certain commodities such as precious metals.

The summary of recommended options is provided in the table below:

Summary of Recommended Rate Options (in %)					
RNR	Rate on precious metals	“Low” rate (goods)		“Standard” rate (goods and services)	“High/Demerit” rate or Non-GST excise (goods)
Preferred	15	6	12	16.9	40
		4		17.3	
		2		17.7	
Alternative	15.5	6	12	18.0	40
		4		18.4	
		2		18.9	

**\*The Committee’s recommendations on rates summarized in the table above are all national rates, comprising the sum of Central and State GST rates. How these combined rates are allocated between the Center and States will be determined by the GST Council, which must reflect the revenue requirements of the Centre and States so that revenues are protected.**

**Following are the summarised highlights of the Executive Summary of the Report submitted by the Committee:**

- On the RNR, the Committee's view is that, the range should be between 15% and 15.5% (Centre and States combined) but with a preference for the lower end of that range based on the analysis in this report;
- On structure, in line with growing international practice and with a view to facilitating compliance and administration, India should strive toward a one-rate structure as the medium-term goal;
- Meanwhile, the Committee recommends a two-rate structure. In order to ensure that the standard rate is kept close to the RNR, the maximum possible tax base should be taxed at the standard rate. The Committee recommends that lower rates be kept around 12% (Centre plus States) with standard rates varying between 17 and 18%;
- The Committee recommends that this sin/demerit rate be fixed at about 40% (Centre plus States) and apply to luxury cars, aerated beverages, paan masala, and tobacco & tobacco products (for the States).
- Choices that the GST Council makes regarding exemptions/low taxation (for example, on gold and precious metals, and area-based exemptions) will be critical. **The more the exemptions that are retained, the higher will be the standard rate**;

As the table shows, very low rates on precious metals would lead to a high standard rate closer to 20%, distorting the economy and adding to inflationary pressures. On the other hand, moderately higher taxes on precious metals, which would be consistent with the Government's efforts to wean consumers away from gold, could lead to a standard rate closer to 17%.

- A rationalization of exemptions under the GST will complement a similar effort already announced for corporate taxes, making for a much cleaner overall tax system. The rationalization of exemptions is especially salient for the Center, where exemptions have proliferated. Indeed, revenue neutrality for the Center can only be achieved if the base for the Center is similar to that of the States (which have fewer exemptions—90 products versus 300 for the Center);
- The Committee recommends **eliminating all taxes on inter-state trade (including the 1% additional tax)** and replacing them by one GST will be critical to achieving the objective of "Make in India by Making One India";
- It would be advisable at an early stage in the future, and taking account of the experience of the GST, to consider **bringing fully into the scope of the GST**

commodities that are proposed to be kept outside, either constitutionally or otherwise. Bringing alcohol and real estate within the scope of the GST would add the Government's objectives of improving governance and reducing black money generation without compromising on States' fiscal autonomy. Bringing electricity and petroleum within the scope of the GST could make Indian manufacturing more competitive; and eliminating the exemptions on health and education would make tax policy more consistent with social policy objectives.

The Committee in its concluding observations has stated that this is a historic opportunity for India to implement a game-changing tax reform. The nation is on the cusp of executing one of the most ambitious and remarkable tax reforms in its independent history. Domestically, it will help improve governance, strengthen tax institutions, facilitate **"Make in India by Making One India,"** and impart buoyancy to the tax base. It will also set the global standard for a Value Added Tax (VAT) in large federal systems in the years to come.

*"The report has been submitted. The department of revenue and finance ministry will go through it and put it into consultation with state governments, through mutual consultation between the state and Centre, through the empowered committee."*

**Shri. Shaktikanta Das, Economic Affairs Secretary**

#### Our Comments:

We welcome and appreciate the recommendations made by the Committee. The Industry has been keenly looking forward to this report and it is expected that recommendations of a modest rate will clear the way for implementation of the much-awaited GST regime.

Per the suggestion of the Committee, standard rate of 17-18%, appears modest for goods, presently levied with Excise duty of 12.5% at Central level and State levies ranging high between 14.5 to 15%. In contrast, the recommended rate will trigger concerns for the services, as services are likely to become expensive, considering the present Service tax rate of 14.5% (with Swachh Bharat Cess). Further, elimination of 1% additional tax on inter-state supply of goods is definitely a recommendation worth applauding

## NEWS FLASH

### ➤ [CEA panel for removing tax on Inter-State trade](#)

A panel headed by Chief Economic Adviser Arvind Subramanian has recommended the one per cent tax proposed to be levied on the GST on Inter-State trade of goods to help manufacturing States be done away with. This is one of the major demands of the Congress and the recommendation could help the Government break the GST gridlock in Parliament.

In a report to Finance Minister Arun Jaitley on Friday, the committee recommended the main or standard GST rate be in the range of 16.9-18.9 per cent. It prefers it to be between 16.9 per cent and 17.7 per cent. The standard rate will apply to most goods and services in the new indirect tax regime. These rates were calculated by excluding real estate, electricity, alcohol and petroleum products.

The panel also recommended other rates, with the lower rate for goods at 12 per cent and the highest rate at 40 per cent. The highest rate is for demerit goods such as alcohol, luxury cars, tobacco, etc.

The panel recommended the rate on precious metals in the range of two per cent to six per cent. As this rate increases, the main GST rate should come down.

The panel said petroleum, alcohol, real estate and electricity should be brought under GST early on. According to the Constitution amendment Bill on GST, petroleum will be kept out till the proposed GST Council can decide on it. Alcohol and a few other items are to be kept out of GST, according to the Bill. This was another demand of the Congress. However, the panel advocated against putting any rate in the Constitution amendment Bill, in contrast to what the Congress wants. The party wants an 18 per cent cap on GST to be prescribed in the Constitution amendment Bill.

Economic affairs secretary Shaktikanta Das said, "The report has been submitted. The department of revenue and finance ministry will go through it and put it into consultation with State Governments, through mutual consultation between the State and Centre, through the empowered committee."

➤ **[Government may scrap 1% Inter-state tax to move closer to GST](#)**

India may have moved closer to the much-awaited GST with the Government and Opposition finding some common ground on crucial elements of the proposed levy. This follows PM Narendra Modi and the ruling Bharatiya Janata Party reaching out to Congress in the search for a compromise to break the stalemate on GST. The Government is likely to concede the Congress demand to do away with the 1% tax on interstate sales, which was proposed to compensate manufacturing states such as Maharashtra, Gujarat and Tamil Nadu that fear loss of revenue in the new indirect tax regime. Government sources, however, indicated that capping the GST rate in the Constitution — as demanded by Congress — is not acceptable.

➤ **[Parliament: Govt-Opposition relations turn sour again](#)**

Relations between the Opposition and Government turned prickly on Wednesday after a brief period of bonhomie since the start of the winter session of Parliament on November 26.

There was little progress on negotiations between the Government and the Congress on the GST Constitution Amendment Bill. But, Ministers were hopeful that the Congress would bend to “public opinion” to support the Bill.

A senior Minister said the Government has apprised the Congress of the limitations in accepting all of its three amendments to the Bill and was awaiting Congress’ response.

The Congress indicated it was in “no hurry” on the issue. The party would take a decision only after its president Sonia Gandhi returns from abroad. It insisted there be discussions on price rise and intolerance in the Rajya Sabha.

The day started on a sour note in the Lok Sabha when Congress members rushed to the well demanding an apology from Union Minister V K Singh for his earlier remarks. The opposition said he had insulted Dalits with his dog analogy.

The protest continued throughout question hour. Parliamentary Affairs Minister M Venkaiah Naidu pleaded that the House take up for discussion the situation in many parts of India, particularly Chennai, because of floods.

➤ **[Government may dodge Congress hurdle to push GST Bill](#)**

The GST Bill might have to wait for some more time to be tabled in the Rajya Sabha. While the ruling dispensation claimed to have garnered the support of some of the major parties with sizeable presence in the Upper House, the Congress was still eluding.

Observers believe that Congress is trying to make a public statement that it has not gone out of context in national politics. They also maintain that the entire Congress exercise is to cut down the size of the prime Minister and sap the impression that the BJP was fast becoming a juggernaut.

The reticent attitude of the Congress was being looked at in the context of the Bihar elections results in which the BJP got a drubbing while the Congress did relatively good.

"If the Congress continues its intransigence over the bill by demanding impractical amendments, we will be forced to look for ways other than consensus in the Upper House. The most obvious resort in front of us is that we could go in for a joint sitting of the two Houses and get the bill passed. Another way out can be that we represent the bill as a finance or money bill and thus take it away from the purview of the Rajya Sabha. We have a majority in the Lok Sabha where the bill will get passed," said one of the senior BJP leaders who has been in the thick of things to resolve the impasse.

➤ **[Akhilesh Yadav condemns BSP’s outright support to GST bill in Parliament](#)**

At a time when BJP is hoping to get support of Samajwadi Party in the Parliament over GST Bill, surprise reaction came from Uttar Pradesh Chief Minister Akhilesh Yadav on Tuesday in Lucknow, who condemned Bahujan Samajwadi Party for “outright support” to the bill without understanding “its harmful effects on the States” and at the same time expressed his own apprehensions about the Bill.

A day before, Mayawati had assured BSP’s support for the Bill while speaking in the Rajya Sabha.

“Without thinking much, anyone is expressing support to GST Bill in the parliament. State would be at loss.” said Akhilsh Yadav in Lucknow adding that the loss would be of the State Government and expressing his apprehension that a State like Uttar Pradesh, which has a bigger population might end up losing more.

“The discussion on GST is yet to take place in the Parliament. The loss would be of the Government. Traders are protesting but without thinking much, anyone is expressing their support to the Bill” said Akhilesh after a cabinet meeting on Tuesday morning. Explaining further, he said “Some of the centrally sponsored schemes have already been closed and we have suffered the maximum loss. How would we get refund in accordance to our population, what would be the formula etc? Without having knowledge about these things, BSP is saying that they would support GST, even if it means that State has to suffer a loss or lesser funds would come to the State exchequer”

Alleging that Central Government was ignoring demands and needs of the State, he said that he would personally write to all the Members of Parliament and would send them the copy of the letters that he has sent to Prime Minister as well as Union Ministers raising several issues of the State so that they can raise issues of the State in the parliament. “I have written several letters to the centre. They have not yet given funds sought for supporting farmers affected with the hail storm, now State is facing drought. I would send copy of all the letters that I have written in the past to all the MPs from the State so that they speak for the State in the parliament”.

➤ **[After BSP, JD\(U\) extends support to GST](#)**

After BSP, JD(U) also announced its support to the Government's economic reform measures including GST but the BJP-led ruling dispensation continued to face combined opposition attack on the issue of "intolerance" and the controversial remarks of some Union Ministers.

➤ **[Sinha spells out four pillars of Budget '16](#)**

As the Finance Ministry begins drafting the 2016-17 Union Budget - to be presented in a mere 12 weeks - Minister of State for Finance Jayant Sinha told Business Standard on

Tuesday that "three or four themes" would guide the Finance Ministry through the lengthy and complex process.

On the prospects for the GST Constitutional Amendment Bill in this session of Parliament, the Minister said that the Government had earlier managed to build consensus - except for the Congress - in the Select Committee of Parliament, and was "in consultation with colleagues of the Opposition" in order to rebuild that consensus.

Sinha did indicate that the Government viewed the GST as just one in a bouquet of broad structural reforms that it intended to undertake, which would create both hard and soft infrastructure, with the "right balance between regulation and market forces".

The Finance Ministry's legislative agenda for the winter session of Parliament extended beyond the GST, he said. The number two priority was the new bankruptcy bill. "Number three on our agenda is the legislative action required to form the Public Debt Management Agency and the Monetary Policy Committee. Apart from that we are working on arbitration and conciliation laws."

➤ [\*\*Plywood and packaging stocks see upward movement on hopes that GST bill will be passed\*\*](#)

MUMBAI: Stocks of plywood manufacturers and packaging companies saw hectic activity and a sharp upward movement in share prices on hopes that the GST bill will be passed in the winter session of Parliament.

Similarly, analysts estimate a large chunk of sales for the packaging industry coming from the unorganised segment, and if GST is implemented, it could well be a game changer.

"It is expected that the large indirect tax differential between the unorganised and organised sectors will narrow, thereby providing a level playing field. This is also likely to give plywood manufacturers an opportunity to tap into the unorganised market," said Dipen Shah, head of private client group research, Kotak Securities.

Dipen Shah reckons that after GST is implemented, carrying out clandestine business will be very difficult which will eventually help organised players.

The Government is looking to roll out GST from April 1, next year. GST will not only replace Central and State levies such as excise, value added tax and octroi with a single unified tax but also remove double taxation. Experts believe GST could boost GDP by 100-150 bps.

➤ [\*\*Mayawati pledges support to GST but attacks Government on 'intolerance'\*\*](#)

Mayawati extended her Bahujan Samaj Party's support to the GST bill in Rajya Sabha on Monday, even as she charged the BJP with paying lip service to BR Ambedkar's principles of

affirmative action and demanded dismissal of Union Minister VK Singh and Assam governor PB Acharya for their allegedly intemperate remarks about Dalits and Muslims, respectively.

"If you (Government) are completely sure that passage of GST bill will improve economy, our party will support this Bill," Mayawati said, while participating in the debate on 'Commitment to the Constitution'. The BSP chief, however, came down heavily against VK Singh's remarks made after the killing of two Dalit children in BJP-ruled Haryana recently and demanded that the Minister be "dismissed" from the council of Ministers and "sent to jail as such people deserve to be in jail and not in Parliament".

➤ **Do not cross limits while confronting opposition: Modi Government to its MPs**

The Modi dispensation has learnt lessons from the near washout of the monsoon session and instructed its MPs in both the Houses not to "get trapped" by the Opposition provocations as retaliation may lead to adjournments and prevent passage of key bills in the ongoing winter session. BJP sources said parliamentary affairs Minister M Venkaiah Naidu and other senior Ministers of the Government have told party MPs to practice restraint and "stay quiet" when the Congress, Left and TMC members try to corner the Modi regime through remarks that may annoy them.

"Our MPs in both the Houses have been instructed that they should work hard to ensure Parliament functions. The message is not to get provoked or get trapped by the Opposition into joining issue that may lead to repeated adjournments and delay in legislative business," a senior Minister said. The monsoon session had been a bitter experience for the Government as the Opposition pushed it on the backfoot on the Vyapam.

"The aim is to let Opposition have its say and the Government have its way in this session," the Minister said. The real estate bill is also in rough weather as TN is opposed to it. The NDA is in talks with all parties to see this bill as well as other pending legislation through in this session.

➤ **Govt may go with more than one GST rate**

In a bid to get Congress on board for one of the biggest tax reform moves, the Centre may back more than one GST rate — targeted mainly at luxury and sin goods — amid indications that it could drop the proposal allowing manufacturing States to levy up to 1% additional tax.

Instead, the Government will compensate manufacturing States such as Gujarat, Maharashtra and Tamil Nadu directly, which will increase the burden on the exchequer during the first two years.

➤ **30 of 32 parties back GST Bill: Government claims, hopeful of its passage**

Amid all the uncertainty over the fate of the GST Bill, the Government has claimed that 30 of the 32 political parties are supporting the proposed legislation and it is confident about the passage of the Constitution amendment bill in the winter session of Parliament.

"We are making efforts for its passage. The public mood is almost one-sided in favour of the GST," Parliamentary Affairs Minister M Venkaiah Naidu told reporters.

He claimed that of the total 32 parties represented at the all-party meet, 30 were in favour of the legislation and favoured its early passage. However, sources said BJP was concerned about the Congress adamance on some issues in the bill and this had put a hurdle in its passage. Finance Minister Arun Jaitley has been in touch with senior Congress leaders from both Houses of Parliament and discussed the contentious issues in the bill.

➤ **[Failure to pass GST this Winter Session will cost India dear; BJP must not let this happen](#)**

Parliament's Winter Session, which started Thursday and follows a wasted monsoon session, is crucial not just for the NDA Government but for Narendra Modi himself to reaffirm his reform intent to the world.

If Modi fails to deliver in this session that would send a horribly wrong signal to the world on India's prospects to advance on the reform front.

The BJP can't complain if the Congress takes the obstructionist path because the BJP too had done no different in the past when it was in the opposition, even on the critical GST Bill.

The only way the BJP can avoid an intolerance wash-out is if Modi himself takes the lead and makes the Government's stance clear and this is precisely what the Congress has been demanding. If the BJP tries to play down the issue and not address it, a replay of Monsoon session is well on the cards.

There are other issues too, where the opposition will also try to corner the Government such as price rise of essential food items, mainly pulses.

➤ **[Parliament Winter Session: Day 1 sees verbal jousting by Sonia, Rajnath](#)**

The Congress and the Bharatiya Janata Party (BJP) sparred – but amicably – as behind the scenes negotiations went on to work out a via media on the GST Constitutional Amendment Bill as Parliament opened for the winter session.

There was no repeat of the monsoon session – in the sense that nobody from either side of the house tried to shout down speakers – but the two day session to remember BR Ambedkar's contribution to the Constitution on his 125<sup>th</sup> birth anniversary was a way by both the Congress and the BJP to restate political positions.

"It took three years to write the Constitution. There were serious debates on it and the Constitution Committee was guided by four eminent personalities at all levels -- Jawaharlal Nehru, Sardar Patel, Rajendra Prasad and Maulana Azad. When Dr Ambedkar was chosen to head the committee he asked, 'why me, when there are people better qualified to lead?' But he was still chosen to head the committee. That's where the Congress Party's discipline comes in," said Sonia Gandhi, sniping at the BJP about the rebellion of Mardarshak Mandal. "Constitution is result of decades of struggle. Mahatma Gandhi made a huge contribution in this struggle. After serious debates, the Constitution was written and I can say that the history of the Constitution is closely linked to the Congress," she said.

Early in the day, it became clear that while there would be no disruption, the opposition was not going to take anything lying down. Rajya Sabha was adjourned after obituary references as a sitting member from Nagaland had died during the inter-session period. In the morning, PM in brief remarks outside Parliament said political battles should not be brought inside Parliament - suggesting while efforts were on, there was still no consensus on GST and other legislation.

➤ **[GST rate should be below 20%: Congress](#)**

The proposed GST should be set at a rate of less than 20%, the opposition Congress party said on Thursday, signalling willingness to compromise as long as the Government takes into account its concerns.

"The Government should come up with structured proposals on GST," Sharma, chief tax negotiator for Congress and its deputy leader in the upper house, told Reuters.

Congress would like to cap the rate of GST at less than 20%, scrap a proposed State levy and create an independent mechanism to resolve disputes on revenue sharing between States, Sharma said.

Finance Minister Arun Jaitley said in a television interview on Wednesday night that these three Congress demands had not been included in its original GST bill.

"GST was not our idea - it was a Congress idea but it's a good idea," Jaitley told the NDTV news channel. "I hope the Congress sticks to the good it proposed rather than flaw it."

➤ **[GST is in the interest of the nation, says PM Modi at all-party meet](#)**

"PM Narendra Modi says at the all party meeting that GST legislation is in the interest of nation," added Venkaiah Naidu. "PM says that Finance Minister will speak to all parties to address their doubt on GST legislation."

As for the GST bill, Union Finance Minister Arun Jaitley on Tuesday expressed the Government's willingness to discuss with the Congress-led opposition the possibility of

making changes to the GST Bill in a clear bid to break the stalemate on the proposed tax reform.

## Glossary

Finance Act, 1994	<b>Finance Act</b>
Service Tax (Determination of Value) Rules, 2006	<b>Service Tax Valuation Rules</b>
Service Tax Rules, 1994	<b>Service Tax Rules</b>
Place of Provision of Service Rules, 2012	<b>POP Rules</b>
Point of Taxation Rules, 2011	<b>POT Rules</b>
Show Cause Notice	<b>SCN</b>
Central Excise Act, 1944	<b>Excise Act</b>
Central Excise Tariff Act, 1985	<b>Excise Tariff Act</b>
Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000	<b>Excise Valuation Rules</b>
Customs Act, 1962	<b>Customs Act</b>
Customs Tariff Act, 1975	<b>Customs Tariff Act</b>
Delhi Value Added Tax Act, 2004	<b>DVAT Act</b>
Central Board of Excise and Customs	<b>CBEC</b>
Goods and Services Tax	<b>GST</b>

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