1 Rulings impacted by Budget 2017

A quick analysis of Finance Bill, 2017 fine print indicates that a few of the proposed amendments may impact some CESTAT & Court decisions.

Taxsutra Team has compiled an update on indicative list of case-laws that are likely to be overruled / impacted when the amendments take effect.

Sr. No.	Proposed Amendment	Case Laws
	Service Tax	
1.	**No service tax on the value of undivided share of land** Rule 2A of Service Tax (Determination of Value) Rules, 2006 is proposed to be retrospectively amended w.e.f. July 7, 2010 so as to make it clear that value of service portion in execution of works contract involving transfer of goods and land/undivided share of land, shall not include value of property in such land /undivided share of land.	**Overruled:** **Suresh Kumar Bansal & Anr. vs. Union of India [TS-231-HC-2016(DEL)-ST]** Delhi HC held that absent any machinery provision for ascertaining service element involved in composite construction contract, service tax cannot be levied on value of undivided share of land acquired by a buyer of a dwelling unit or on value of goods incorporated in project by a developer. According to the HC, Rule 2A only provided mechanism to ascertain value in case of composite works contracts. Hence, service tax u/s 65(105)(zzzh) of Finance Act (construction of residential complex services) could only be imposed on contracts of service simplicitor, i.e. where builder agrees to perform services of constructing a complex for buyer. **Commissioner, Central Excise & Customs, Kerala vs. Larsen & Toubro Ltd [TS-437-SC-2015-ST]** SC held that indivisible composite works contracts are not taxable under Finance Act prior to June 2007 absent charge or machinery to levy and assess service tax on such works contracts. Noting the taxation scheme under Constitution, SC stated that it becomes very important to segregate the two elements completely for if some element of transfer of property in goods remains when service tax is levied, said levy would be found to be constitutionally infirm. Hence, it ruled that any charge to tax u/s 65(105)(g), (zzd), (zzh), (zzq) and (zzh) would only be "*of service contracts simpliciter and not composite indivisible works contracts*".

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2.	**No service tax on one time upfront amount (premium, salami, cost price, development charge or by whatever name called) for long-term lease of industrial plots** Section 104 is sought to be inserted in Finance Act, 1994 so as to exempt service tax from June 1, 2007 to September 21, 2016 on one time upfront amount in respect of long term lease (30 years or more) of industrial plots by State Govt. industrial development corporation / undertaking to industrial units.	**Affirmed:** **Greater Noida Industrial Developmental Authority vs. CCE [TS-389-Tribunal-2014-ST]** CESTAT held that service tax u/s 65(105)(zzzz) r/w Section 65(90a) of Finance Act (renting of immovable property) cannot be charged on the premium or salami paid by the lessee to the lessor for transfer of interest in the property from the lessor to the lessee, as this amount is not for continued enjoyment of the property leased.
	Central Excise	
1.	**Duty exemption available on inputs / raw materials utilized for manufacture of goods cleared by EOU to DTA** As per Section 5A(1) of Central Excise Act, no exemption shall apply to excisable goods which are produced or manufactured by EOU and cleared to DTA. Vide TRU-I dated February 1, 2017, it has been clarified that non-applicability of exemption is not in respect of inputs / raw materials procured by EOUs domestically and utilized for production / manufacture of goods cleared to DTA. In other words, EOUs are eligible to import or procure inputs / raw materials at concessional / Nil rate of BCD, excise duty / CVD or SAD provided they fulfil all conditions thereof.	**Synergies-Doorway Automotive Ltd & Ors. vs. CC&CE Visakhapatnam-I [2008 (226) ELT 529 (Tri-Bang)]** CESTAT held that no duty could be demanded on the imported inputs, if there was DTA clearance claiming exemption. **Indira Printers [2010 (262) ELT 940 (Tri. Del.)]** CESTAT held that input duty would be payable after September 6, 2004 where finished goods, though excisable, were exempted or charged to NIL duty. **Green Brilliance Energy Pvt. Ltd. vs. Commissioner, Central Excise & Service Tax [2015 (325) ELT 351 (Tri-Ahmd.)]** Larger Bench held that word 'non-excisable' used in second proviso to Clause 6 of Notification No. 22/2003-CE and Proviso to Clause 3 of Notification No.52/2003-Cus will include within its ambit all zero rated finished goods including those eligible for exemption or where no rate was specified under the relevant tariffs. It was observed, *"If this strict interpretation is not followed, then the provisos under consideration can never be made applicable for the recovery of input duty where finished goods are cleared at 'Nil',*

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		'Exempted' or free rates because all of them will be excisable as per the definition of "excisable goods" u/s 2(d) of the Central Excise Act, 1944. Such an interpretation will be discriminating to DTA units as all such inputs could be routed through 100% EOU to claim full exemption when similar clearances by DTA units will affect duty at intermediate stage."
2.	**Transfer of CENVAT credit shall be allowed within 3 months from date of receipt of application from manufacturer / service provider, in case of shift of factory, transfer of business due to change in ownership / sale / merger / amalgamation / lease** Rule 10 of CCR is proposed to be amended to provide that transfer of CENVAT credit shall be allowed by the jurisdictional Dy. / Asst. Commissioner, within 3 months (extendable to 6 months on sufficient cause being shown) from the date of receipt of application from the manufacturer / service provider in this regard, subject to fulfillment of other conditions.	**Overruled:** **S. C. Johnson Products (P) Ltd. vs. Commissioner of Central Excise, Chandigarh [2016 (337) ELT 422 (Tri – Del)]** **Commissioner of Central Excise, Pune – II vs. Dow Agro Sciences India (P) Limited [2009 (11) TMI 652 (Tri)]** **Solaris Bio-Chemicals vs. CCE [2005 (179) ELT 216 (Tri)]** **Hewlett Packard (I) Sales vs. CC [2008 (211) ELT 263 (Tri)]** CESTAT held that no provision is required to transfer the CENVAT credit in terms of Rule 10.

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