TAX CONNECT

first ISSUE DECEMBER 2013

Heartiest wishes on the advent of Christmas. This is the first issue of our monthly bulletin **"TAX CONNECT"**. As the country is slowly taking baby steps towards an integrated Goods And Services Tax (GST), through our monthly bulletin, we have tried to make a modest attempt to update our readers about the current amendments and changes in the dynamic scenario surrounding Indirect Central and West Bengal Taxes. Our bulletin would also cover a host of important current issues w.r.t. Foreign Trade Policy and Income Tax. This being the first issue of Tax Connect , we seek blessings and support from our readers. We also invite suggestions from our readers for improvement to help us serve you better

In the present economic scenario and after the Finance Budget, 2013-2014, service tax is acting like a role model on the economic field of our country. VCES has been introduced and to make it successful, our Hon'ble Finance Minister, Mr. P. Chidambaram is visiting various cities to hold conferences and clarify the doubts relating to VCES. **He also had a recent visit to Kolkata on 26th November, 2013. A Circular No. 174/9/2013- Service Tax dated 25th November, 2013 has also been issued which gives clarifications on the issued raised in VCES.**

Now assessees who have paid **total excise duty or service tax of Rs.1 lakh or more** including the amount of duty paid by utilization of CENVAT credit in the preceding financial year shall be liable to **deposit the duty/tax electronically through internet banking**.

In West Bengal VAT, **a new one day registration scheme** has been introduced. Big Companies seeking registration in West may take the benefit of this scheme.

For the benefit of our readers we also have an **"ARTICLES and QUERIES"** section on the last page of our bulletin. In this section we shall publish articles and some of the queries of common interest raised and answered by us.

Further our readers may contact us 24x7 on any issue on our mail id or over a telecon.

Due Date	Compliance
5-Dec-13	Service Tax Payment
5-Dec-13	Excise Duty Payment
7-Dec-13	Income Tax TDS Payment
10-Dec-13	Sales Tax TDS Payment
10-Dec-13	ER1, ER2 & ER6 Return
15-Dec-13	Provident Fund Payment
15-Dec-13	Advance Income Tax Payment
21-Dec-13	VAT Payment
21-Dec-13	CST Payment
21-Dec-13	Entry Tax Payment
21-Dec-13	Professional Tax Payment
25-Dec-13	Provident Fund Return
25-Dec-13	Sales Tax TDS Certificate Issue
31-Dec-13	ESI Tax Payment
31-Dec-13	VAT Audit Report

Truly Yours

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CENTRAL TAXES

SERVICE TAX

Addition in Mega-Exemption Notification

The Notification No. 25/2012-Service Tax dated 20th June, 2012 has been amended. **It has further exempted the following** - any services provided by the National Skill Development Corporation **(NSDC),** a Sector Skill Council approved by NSDC, an assessment agency and a training partner approved by the NSDC or the Sector Skill Council in relation to the National Skill Development Programme implemented by the National Skill Development Corporation or a vocational skill development course under the National Skill Certification and Monetary Reward Scheme or any other Scheme implemented by the National Skill Development Corporation. This has been inserted after Entry 9 as Entry 9A.

[Notification No. 13/2013-ST dated 10.09.2013]

Quarterly Statement to be furnished by SEZ

The Notification No. 12/2013-Service Tax dated 1st July, 2013 has been amended. **The SEZ Unit or the Developer shall furnish to the jurisdictional Superintendent of Central Excise a quarterly statement, in Form A-3,** furnishing the details of specified services received by it without payment of service tax, by 30th of the month following the particular quarter. For the quarter of July, 2013 to September, 2013, the said statement shall be furnished by the 15th of December, 2013.

[Notification No. 15/2013- ST dated 21.11.2013]

Further Clarifications on the issues in VCES

Attention: **The last date of depositing at least 50% of the declared dues under VCES is 31st December, 2013.**

Service tax bharo, nai shuruaat karo

A new Circular regarding VCES has been issued to **clarify the doubts raised relating to VCES.** The clarifications are mentioned below:

a) If an inquiry, investigation or audit, pending as on 1.3.2013 was being carried out for the part period i.e. 2008-2011 , benefit of VCES **would be eligible** in respect of 'tax dues' for the **period not covered by the inquiry, investigation or audit i.e. for the year 2012.**

b) If an inquiry or investigation, pending as on 1.3.2013 was in respect of a specific issue, say renting of immovable property, benefit of VCES **would be eligible** in respect of 'tax dues' concerning **any other issue** in respect of which no inquiry or investigation was pending as on 1.3.2013.

c) In case designated authority has reasons to believe that the declaration filed by declarant is covered by section 106(2), a **notice** of intention to reject the declaration will be given to the declarant within **30 days** from the date of filing of declaration stating reasons of rejection to give so as an opportunity of being heard before the rejection.

d) The designated authority may take a view on merit on the basis of facts and circumstances of each case as to whether the inquiry is of roving nature or whether the provisions of section 106 (2) are to be attracted.

e) Benefit of scheme **would be** available for payment of tax made after 10.05.2013 even though the declaration under the scheme has been made later on.

f) Benefit of scheme **would not** be available for waiver from penalty and other proceedings where service tax pertaining to the scheme along with interest has already been paid by the assessee.

[Notification No. 174/9/2013-ST dated 25.11.2013]

Mandatory electronic payment in case of service tax payment of `1 lakh

The Central Government has **amended sub-rule 2 of rule 6 in the Service Tax Rules, 1994. With effect from 1st January, 2014,** the assessee has to deposit the service tax liable to be paid by him electronically, through internet banking, if he has paid a total service tax of **"rupees one lakh or more" instead of "rupees ten lakhs or more"** including the amount paid by utilization of CENVAT credit, in the preceding financial year.

[Notification No. 16/2013-ST dated 22.11.2013]

cENTRAL EXCISE

SUPREME COURT DECISIONS

1. **15th Nov., 2013: 'Moisturex' cream having medicinal ingredients and meant for curing of skin ailments/diseases is a medicament** (duty @15%) and not cosmetic (duty @70%). (Commissioner of Central Excise, Mumbai-IV Vs. Ciens Laboratories (2013))

2. **23rd Nov., 2013:** Requirement of taking **"reasonable steps"** does not mean that assessee is required to verify from department whether duty stands paid by supplier because that would be practically impossible and would lead to transactions getting delayed; therefore, **assessee is entitled to credit even if supplier has not paid duty to department.** (Commissioner of Central Excise, Jalandhar Vs. Kay Kay Industries (2013))

Mandatory electronic payment in case of Excise payment of `1 lakh

An assessee who has paid **total duty of Rs.1 lakh or more** including the amount of duty paid by utilization of CENVAT credit in the preceding financial year shall thereafter, **deposit the duty electronically through internet banking**.

[Notification No. 15/2013 -CX dated 22.11.2013]

Amendment of Rule 8 ,9 and 10 of the Central Excise Valuation Rules, 2000

Rules 8, 9 and 10 of the Central Excise Valuation Rules, 2000 dealing with determination of assessable value in case of captive consumption and sale to related person have been amended to provide that **irrespective of whether the whole or a part of the clearances of manufactured goods are covered by the circumstances given in these rules, each clearance is required to be assessed** according to section 4(1)(a) of the Central excise Valuation Rules, 2000 or the relevant rule dealing with the circumstances of clearance of the goods, as the case may be.

[Notification No. 14/2013 -CX dated 22.11.2013 and Circular No. 975/09/2013-CX dated 25.11.2013]

CUSTOMS

Exemption from payment of SAD to parts, components and accessories of Mobile Handsets

It is clarified that **exemption from payment of SAD to parts, components and accessories etc. of Mobile Handsets** under notification No. 21/2012-Customs (S.No.1 of the Table) may be **allowed at the port of import on the basis of registration and the certificate issued by the jurisdictional central excise authorities** w.r.t. S.No. 431 of Notification No. 12/2012-Customs without any requirement of a separate registration/certificate issued under the said Rules w.r.t Notification No. 21/2012-Customs dated 17th March, 2012. **The certificate which is valid for claiming exemption from BCD and CVD ought to be taken cognizance of and the benefit of SAD exemption allowed.**

[Circular No. 43/2013-Customs dated 8.11.2013]

Increase in import duty on jewellery

The Central Government has **increased the import duty to 15%, leviable on articles of jewellery and parts thereof, of precious metal or of metal clad with precious metal and articles of goldsmiths' or**

silversmiths' wares and parts thereof, of precious metal or of metal clad with precious metal, falling under headings 7113 and 7114 respectively of the First Schedule to the Customs Tariff Act, 1975 (51of 1975) with **immediate effect from 17th September, 2013.**

[Notification No. 44/2013-Customs dated 17.09.2013]

INCOME TAX

COURTS' DECISIONS RELATING TO INCOME TAX

SUPREME COURT DECISIONS

1. **31st Oct., 2013:** Voluntary disclosure does not lead to assessee being free from mischief of penal proceedings under section 271(1)(c). Surrender of income is not voluntary when the offer for surrender is made in view of the detection made by the AO in the search conducted in the sister concern of the assessee. It is the statutory duty of the assessee to record all its transactions in the books of account, to explain the source of payments made by it and to declare its true income in the return of income filed by it from year to year. But the assessee had no intention to declare his true income in the given case. So, the judgement is given against the assessee. **Penalty u/s 271(1)(c) of the Income Tax Act, 1961 has been imposed on the assessee.** (MAK Data P. Ltd. Vs. Commissioner of Income Tax-II (2013))

2. **13th Nov., 2013: Assessing Officer can issue 'general' notice** under section 133(6) **to Financial Institutions to furnish information regarding account holder with cash transactions or deposits of more than Rs. 1,00,000.** (Kathiroor Service Cooperative Bank Ltd. Vs. Commissioner of Income-tax (CIB) (2013))

HIGH COURT DECISIONS

1. **30th Oct., 2013: Conversion of rights of lessee in property from leasehold right into freehold right only results in improvement of his or her rights over property** and it would not have any effect on taxability of gain from such property, which is related to period over which property is held. (CIT Vs. Smt. Rama Rani Kalia (2013)) (Allahabad)

2. **1st Nov., 2013:** Where due to confusion created by CBDT's circular and amendment made to section 54EC, assessee was under a bona fide **belief of availing exemption, and did not pay capital gains tax, levy of interest for default in payment of advance tax was to be restricted.** (P.S. Seshadri Vs. Chief CIT(2013)) (Karnataka)

3. **7th Nov., 2013: Where revenue dispatched notice under section 143(2), and the fact that notice was not received back raise a presumption of service** under Section 27 of the General Clauses Act, 1897. (Shahbad Cooperative Sugar Mills Ltd. V. Dy.CIT(2013)) (Punjab & Haryana)

4. **9th Nov., 2013:** Where **capital gain arose out of long-term capital asset and was invested in specified assets, exemption under section 54EC could not be denied** due to deeming fiction created under section 50. (CIT Vs. Aditya Medisales Ltd. (2013)) (Gujarat)

5. **25th Nov., 2013:** The Delhi High Court upheld the order of the Tribunal that **amount received by the assessee under the license agreement for allowing the use of the software would not be royalty under the DTAA.** (DIT v. Infrasoft Ltd. (2013)) (Delhi)

VAT

Scheme of One Day VAT Registration

A **One Day VAT Registration Scheme** has been introduced under West Bengal VAT **where a dealer can get VAT registration in West Bengal by giving a security deposit of minimum Rs. 10 lakhs.**

Composition Registration Scheme for Small Dealers

A new **Composition Registration Scheme** has been introduced under West Bengal VAT Act, intended for **RESELLERS (not for manufacturer or importer or works contractor) whose turnover of sales in the previous year did not exceed Rs. 50 lakhs.** Dealers registered under the Scheme will **compulsorily** be required to pay the fixed amount per year under the composition scheme and does not have to furnish returns.

Entry tax

West Bengal Entry Tax matter adjourned further

West Bengal Entry Tax matter was adjourned (from 12th November, 2013) since the regular divisional bench of High Court was not functioning in absence of Chief Justice and further the State Senior Counsel had matter scheduled for hearing before Supreme Court on the same day [Singur Matter against Tata Motors Ltd.]. **The matter has been next listed for hearing on 6th January 2014**, which is expected to be adjourned further. In the meanwhile, **the Stay from payment of Entry Tax for the all the Writ Petitioners would continue.** Moreover, the Divisional Bench has directed that **Assessment Proceedings should continue, however, payment may not be made until any further orders.** But **Commercial Tax Department is issuing notices on the assessees** [who have discontinued payment of Entry Tax] **for recovery of Entry Tax unpaid.**

pROFESSIONAL TAX

AMENDMENTS IN WEST BENGAL PROFESSIONAL TAX (As per West Bengal Finance Budget, 2013)

Profession Tax exemption limit raised from Rs. 5,000 to Rs. 7,000 w.e.f. 1st April, 2013.

Amnesty Scheme as per Finance Act, 2013 (Section 5C)

An Amnesty Scheme has been introduced under West Bengal Professional Tax where a registered employer who **has not furnished return** under sub-section (1) of Section 6, **for one or more periods ending on the 31st day of March, 2012**, **may, without payment of interest or late fee, furnish the pending returns for the period of last two years within 31st January, 2014**, enclosing a receipt showing payment of full amount of tax according to such returns.

Each branch is a separate person

Every branch or office of a firm, company, corporation or other corporate body, any society, club or association shall be deemed to be separate person**. Each branch has to be enrolled separately under Professional Tax.**

Introduction of Audit of accounts, etc. and raising of demand in certain cases (Section 6A)

The **Departmental Professional Tax Audit** shall be done within 3 months from the date of selection of the employer on random basis. The period of 3 months can be further extended by another 3 months. The concept of **"Audit"** has been introduced for the first time in the Profession Tax **to check the veracity of returns of certain numbers of dealers/tax payers.**

ARTICLE: A CRITICAL ANALYSIS OF ANNUAL SUPPLEMENT OF 2013-14 TO THE FOREIGN TRADE POLICY 2009-14

The Annual Supplement 2013-14 of Foreign Trade Policy 2009-14 was announced by Mr. Anand Sharma, Minister for Commerce, Industry and Textiles, Government of India on 18th April, 2013. . The Indian government has announced a slew of measures to boost the foreign trade activities of the country as under:

1. Measures to revive investors' interest in SEZs:

- **Reduction in the Minimum Land Area Requirement by half**. For Multi-product SEZ from 1000 hectares to 500 hectares and for Sector-specific SEZ from existing 100 hectares to 50 hectares.

- **introduction of a Graded Scale for Minimum Land Criteria** which would permit a SEZ an additional sector for each contiguous 50 hectare parcel of land.

- Further flexibility to set up additional units in a sector specific SEZ is being provided

- **On the issues relating to Vacancy of Land**, while the existing policy allows for parcels of land with pre-existing structures not in commercial use to be considered as vacant land for the purpose of notifying an SEZ, it has now been decided that additions to such pre-existing structures and activities being undertaken after notification would be eligible for duty benefits similar to any other activity in the SEZ.

- Now there would be no minimum land requirement for setting up an **IT/ITES SEZ**. Only the minimum built up area criteria would be required to be met by the SEZ developers.

- **The minimum built up area requirement has also been considerably relaxed** with the requirement of one lakh square meters to be applicable for the 7 major cities viz: Mumbai, Delhi (NCR), Chennai, Hyderabad, Bangalore, Pune and Kolkata. For the other Category B cities 50,000 square meters and for remaining cities only 25,000 square meters built up area norm will be applicable.

-**Exit Policy**: It has now been decided to permit transfer of ownership of SEZ units, including sale.

2. Zero Duty Export Promotion Capital Goods (EPCG) Scheme:

Based on the request of all stakeholders, Government has decided to harmonize Zero Duty EPCG and 3% EPCG Scheme into one scheme which will be a Zero Duty EPCG Scheme covering all sectors.

3. Reduction of EO by 10% for Domestic Sourcing of Capital Goods:

4. Widening the Scope of Utilization of Duty Credit Scrip

5. Furthering of benefits under Served from India Scheme (SFIS), VKGUY Scheme, Status Holder Incentive Scheme (SHIS) & Duty Free Import Authorization Scheme (DFIA)

6. Import of Cars would also be allowed at ICD Faridabad and Ennore Port (TN)

7. Easing of Documentation and procedural simplification

QUERIES AND ANSWERS:

Q. It is very clear that the Cenvat credit cannot be utilised for the payment of tax dues under the VCES scheme. But there is still a lot of confusion that whether CENVAT credit under VCES scheme can be carried forwarded for the next period or not. Or, the whole amount of CENVAT credit during the period of VCES scheme will not be allowed.

Amit Jaiswal; Amit Jaiswal & Associates; Chartered Accountants; New Delhi

A. *The amount of CENVAT Credit shall not be utilized for the tax payment under VCES.* Except for this condition, all issues relating to admissibility of CENVAT credit are to be determined in terms of the provisions of the CENVAT Credit Rules. Thus, as per the CENVAT Credit Rules, 2004, the amount paid under VCES would be eligible as CENVAT Credit on all the other issues and can be carried forward for indefinite period of time.