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## Important News of the Week

- **CENTRAL Government has issued a Notification No. 29/2011 – Service Tax dated 25/4/2011 in exercise of the powers conferred by clauses (A) and (B) of section 71 of the Finance Act appointing May 1, 2011 as the date on which the provisions of the said Act shall come into force.**

- **SERVICE TAX ON HOTELS / RESTAURANTS w.e.f 1st May, 2011 - Notification No. 29, 31, 34 dated. 25.04.2011** has introduced two new services i.e. Accommodation Services and Restaurant Services under the ambit of service tax.

  - The limit of exemption/ abatement applicable on both the services:- Accommodation Services S. 65(105)(zzzzw): 50% & Restaurant service S.65(105)(zzzzv): 70%.
  - In case of hotel accommodation, rooms with declared tariff of less than Rs 1000 per room per day shall not be subjected to service tax.
  - The Notification explains 'declared tariff' for this purpose to include charges for all amenities provided in the unit of accommodation like furniture, air-conditioner, refrigerators etc but does not include any discount offered on the published charges for such unit.

- **Govt. withdrawn exemption w.e.f 1st May, 2011 on representation service provided by CA, CWA, CS related to representation of client before any statutory authority vides Notification No. 32/2011 Dated Monday, April 25, 2011 – Rescinds Notification No.25/2006-Service Tax, dated the 13th July, 2006 i.e. any service** provided or to be provided by a practicing chartered accountant, a practicing cost accountant and a practicing company secretary respectively, in his professional capacity, to a client, relating to representing the client before any statutory authority in the course of proceedings initiated under any law for the time being in force, by way of issue of notice, from the whole of service tax leviable thereon under section 66 of the said Finance Act. Now the Government is withdrawing this exemption with effect from May 1, 2011 which will bring CAs/CWAs/CSs on par with lawyers from May 1, 2011 but……………………….

- **Delhi & Guwahati High Court stays levying service tax on lawyers:** The Bar Association of Delhi & Guwahati has filed a Writ Petition in the respective High Court to challenge the levy of service-tax on "Legal Consultancy Services". The Delhi & Guwahati High Court has said the matter requires in-depth scrutiny and directed that service-tax would not be recovered till the next date of hearing being 23/5/2011 & 25/5/2011 respectively.

- **Govt. exempts services provided by any Hospital, nursing home or multi-specialty clinic** to an employee of a business entity or any person covered by Health Insurance Scheme Vides Notification No. 30/2011 – ST dated 25/4/2011 i.e. Any Service Provided to be provided U/S **65 (105) (zzzzo)** by any hospital, nursing home or multi-specialty clinic,—

  - To an employee of any business entity, in relation to health check-up or preventive care, where the payment for such check-up or preventive care is made by such business entity directly to such hospital, nursing home or multi-specialty clinic; or
  - To a person covered by health insurance scheme, for any health check-up or treatment, where the payment for such health check-up or treatment is made by the insurance company directly to such hospital, nursing home or multi-specialty clinic.

- **Exemption to Services provided by Clinical Establishments:** CG has provided exemption to taxable service referred to section 65(105)(zzzzo) of Finance Act, 1994 from the whole of levy of service tax, effective from May 1, 2011. The Finance Act, 2011, the text of clause (zzzzo) was completely replaced and the phrase 'clinical establishment' is defined in terms of the newly amended sub-section 25a of section 65 of Finance Act, 1994. **Notification No. 30/2011 - ST., Dated: April 25, 2011**

- **Exemption provided for Certain Commercial training & coaching services:** Govt. has exempted from the whole of levy of service tax, 'pre-school coaching and training' and also 'any coaching or training leading to grant of a certificate or diploma or degree or any educational qualification which is recognised by any law for the time being in force', provided by any commercial training or coaching centre. This exemption shall come into effect from May 1, 2011. Notification No. 33/2011 - ST., Dated: April 25, 2011.

- **Rule 6 of Service Tax Rules Amended:** Rule 6 of the Service Tax Rules, 1994, for the existing sub-rule (7A), the following sub-rule shall be substituted, namely,- (7A) An **insurer carrying on life insurance business shall have the option to pay** tax:

  (i) on the gross premium charged from a policy holder reduced by the amount allocated for investment, or savings on behalf of policy holder, if such amount is intimated to the policy holder at the time of providing of service;

(ii) 1.5 per cent of the gross amount of premium charged from a policy holder in all other cases;

Towards the discharge of his service tax liability instead of paying service tax at the rate specified in section 66 of Chapter V of the said Act - Provided that such option shall not be available in cases where the entire premium paid by the policy holder is only towards risk cover in life insurance. This amendment will come into force from May 1, 2011 in the wake of amendment to section 65(105)(zx) of Finance Act, 2004. Notification No. 35/2011 – ST Dated: April 25, 2011

- **Export of Services Rules and Import of Services Rules Amended:** Taxable services as defined in clauses (zzzzv) and (zzzzw) of section 65(105) of Finance Act, 1994 are included in clause (i) of sub-rule (1) of Rule 3 of Export of Services Rules, 2005. After this amendment, for a Hotel or Restaurant, services are to be treated as export, if they are provided "in relation to immovable property situated outside India".

  Similarly, taxable services as defined in clauses (zzzzv) and (zzzzw) of section 65(105) of Finance Act, 1994 are included in clause (i) of sub-rule (1) of Rule 3 of Taxation of Services (Provided from Outside India and Received in India) Rules, 2006.**Notification Nos. 36/2011 - ST., and 37/2011 - ST., Both Dated: April 25, 2011**

- **Anti-Dumping Duty 'extended' on imports of Silk fabric of weight 20 to 100 gms per metre:** Govt. has extended anti-dumping duty on imports of silk fabric of weight 20 to 100 gms per metre, originating in, or exported from People's Republic of China till December 5, 2011 by amending Notification No. 121/2006-Cus dated December 26, 2006 - Notification No. 37/2011-Cus., Dated: April 21, 2011

- **Govt. may hike penalty for improper use of names to 1000 times:** The government is mulling hiking penalty for improper use of names and emblems conveying state patronage or ownership for the purpose of professional and commercial gains to Rs 5 Lakh. At present, the penalty for violating the provisions of the Emblems and Names (Prevention of Improper Use) of 1950 is only Rs 500. "The penalty has not been increased since the law came into force in September 1950. As a result, lower penalty has made the law ineffective. We are thinking of an amendment to the Act to increase penalty to at least Rs 5,00,000", a senior government official told PTI. Indiscriminate use of names, flags and emblems misleads the consumers. So, it is necessary to impose higher fine as some offenders are big corporations and institutions who get away easily by paying existing meager penalty of Rs 500, the official said.

- **Final Hearing on Service Tax on Commercial Renting:** Larger Bench of Delhi HC fixes 9th May, 2011 for final hearing on Petitions challenging levy of service tax on commercial renting- Judgement to be pronounced by 30th May 2011, according to HC - When the Court assembled today, Ms. Sonia Sharma, representing UOI, rose to inform the Court that Mr. A.S. Chandiok, ASG, was indisposed (food poisoning). The matter thereupon was adjourned to 9th May. It was however, made clear by CJ Mr. Dipak Misra that no more adjournments would be granted. In case, anyone else is unable to cause appearance, the case must still be argued by nominee. It was assured by Mr. Mukesh Anand, Sr. Counsel. Mr. Ganesh, Sr. Counsel from the petitioner's side assured that he will take barely 45 minutes to argue the rejoinder. The Court was categorical that matter must be concluded on that day, as almost all the points have by and large been covered, but all those still willing to argue the rejoinder must come with written arguments. The Court also stated that it would like to pronounce the judgement before the summer vacations (4th to 30th June), and therefore need for early conclusion of proceedings.

- **No Income Tax return scheme for salaried class earning less than Rs. 5 Lakh to be notified by June, 2011:** The Chairman of Central Board of Direct Taxes (CBDT), Sudhir Chandra, today said the scheme to exempt salaried people earning up to Rs 5 lakh annually from filing income tax returns will be notified in the first week of June. The scheme was announced in the Union Budget 2011-12 by Finance Minister Pranab Mukherjee. "A category of small-salaried tax payers whose net salaried income is not above Rs 5 lakh and whose tax is deducted at source by the employer who files return, will be exempted from filing returns," Chandra told reporters here.
  "The scheme for this category will be notified in the first week of June," he said. "But if the taxpayer is claiming a refund from the I-T department, then he will have to file the return." The scheme will provide relief to about 70 to 80 lakh people from filing I-T returns. "We are also trying to exempt small bank-interest income, the tax on which has been deducted at source, under this scheme," he said. "A new facility has been introduced on filing of electronic returns. At the click of the mouse, a portal will open…on which you can view every month how much money your employer has deducted, and whether it has been deposited in the government kitty," Chandra said.

- **All Show Cause Notices to be issued by jurisdictional Commissioners** from where imports have taken place-Customs under Section 28 of the Customs Act, 1962 in respect of cases investigated by DRI/Customs Preventive formations – Instructions No. **F. No.437/143/2009-Cus.IV (pt) dated. 15/4/2011**.

- **Govt. allows companies to send notices, documents by email:** The government has allowed companies to send notices and documents to their shareholders and members electronically in order to facilitate paperless communication. The Green Initiative for Corporate Governance announcement by the Corporate Affairs Ministry comes after the Department of Posts discontinued the postal facility under the 'Certificate of Posting'. It is also in line with the Information Technology Act, 2000, which "permits service of documents, etc, in electronic mode", the ministry said in a circular. "Keeping in view the above, it is hereby clarified that a company would have complied with **Section 53 of the Companies Act** if the service of document has been made through electronic mode, provided that the company has obtained e-mail addresses of its members for sending the notice/documents through e-mail…," it said.

- **List of financial transactions with mandatory PAN provision set to grow:** In order to check the number of unaccounted financial transactions happening in the country the finance ministry is now planning to bring more transactions under the ambit of the already existing list of financial transactions where-in quoting of permanent account number (PAN) is compulsory. Apart from keeping a tab on the unaccounted income, these transactions will further help the Income Tax Department strengthen its data base and help increase tax compliance. An official at the finance ministry stated that "rules are being changed with regard to PAN requirement in cash transactions to track the investment pattern of high net worth individuals". He said the same was aimed at 'curbing black money transactions'.

  Some of the transaction that are expected to be added to list are,
  - Sale and purchase of bullion or jewellery involving cash transfer of Rs 5 lakh or more;
  - Cash payment of Rs 1 lakh or more as life insurance premium;
  - Changes are expected to be brought about in the limits for cash payment for foreign travel.

## Important Judicial Pronouncement of the Week

- **State of Tamil Nadu & ANR. Vs. India Cements Ltd. & ANR.(2011-TIOL-42-SC-CT)**

  - **Issue:** Sales tax benefit available when one of the criteria was fulfilled

  - **Held:** The Supreme Court last week dismissed the appeal of the Tamil Nadu government which denied sales tax benefits to India Cements Ltd. The high court had held that the cement firm was entitled to the benefit of deferral of sales tax as claimed by it under the interest free sales tax deferral scheme. With a view to promote industrialization, the government of Tamil Nadu had declared 105 taluks as industrially backward for the purpose of grant of interest free sales tax loan, interest free sales tax deferral, state capital subsidy etc. Among them, 30 taluks were declared most backward, offering them further incentives. It was directed that the new industries to be set up in these 30 most backward taluks as also in the three industrial complexes of the State Industries Promotion Corporation, in addition to the existing concessions, would be entitled to full waiver of sales-tax dues for a period of five years up to a ceiling of the total investment made in the fixed assets. However, dispute arose over whether the criterion for the benefit was the volume of sales or production. The court ruled that the benefit should be given when one of the criteria was fulfilled.

- **Union of India & Ors. Vs. Tantia Construction Pvt. Ltd. SLP (c) No.18914 of 2010 dated.18-04-2011**

  - **Issue:** Whether Arbitration clause in a contract would not exclude the power of the High courts or the Supreme Court to decide disputes between the parties.

  - **Held:** The Supreme Court last week ruled that an **arbitration clause** in a contract would not exclude the power of the high courts or the Supreme Court to decide disputes between the parties. The court thus dismissed the appeal of East Central Railway in the case, **Union of India Vs. Tantia Construction Ltd.** In this case, the railway awarded a project to the construction firm. Later, additional work had to be done and the firm was asked to undertake that too, at the cost dictated by the railway. This was resisted by the firm which moved the Patna high court. It stated that the entire work could not be thrust on the firm at its risk and cost. The Government appealed to the Supreme Court, arguing that it could vary the nature of the work according to the terms of the contract. The government also argued that the courts could not interfere in the dispute as there was an arbitration clause. The Supreme Court rejected both the arguments and emphasized that the courts need not force the parties to go for the alternative remedy of arbitration every time. "Injustice, whenever and wherever it takes place, has to be struck down as anathema to the rule of law and the provisions of the Constitution," the judgment said.

- **COMMISSIONER CE Vs. M/s TAFE LIMITED (2011-TIOL-242-HC-KAR-CX)**

  - **Issue:** Whether CENVAT Credit – once legally taken and utilized on dutiable final product, required to be reversed on final product being exempted subsequently.

  - **Held:** it need not be reversed on the final product being exempted subsequently: it is clear from the aforesaid judgment of the Apex Court that once the input credit is legally taken and utilized on the dutiable final product, it need not be reversed on the final product being exempted subsequently. Only if any products are purchased subsequent to the said exemption and if any tax is paid on such inputs, as the final product is exempted from payment of tax, the assessee would not be entitled to avail the Cenvat credit on such inputs. But the Cenvat credit availed on such inputs till the date of exemption, they vest in the assessee and the assessee cannot be divested of that credit as the law does not provide for the same. Therefore the authorities taking advantage of the notification exempting the final product cannot claim reversal of Cenvat credit either in respect of final product which have come into existence on the date of the notification or on the inputs stored in the godown or the work in progress and finished products.

- **Willis Europe BV Vs. Willis India Insurance Brokers (P) Ltd.**

  - **Issue:** Whether Mere fact that a company is doing business in India or it is a party to a Joint venture in India would mean that it has established a place of business in India.

  - **Held:** The Bombay high court has stated that according to Section 591 of the Companies Act, the mere fact that a company is doing business in India or that it is a party to a joint venture in India would not mean that it has established a place of business in India. The case was about winding up of a company which was a joint venture with a Dutch insurance company doing business in India but had no place of business here.

- **Karnataka Industrial Areas Development Board & ANR. Vs. M/s. Prakash Dal Mill & Ors**

  - **Issue**: Whether Arbitrary raise of plot prices wrong even if the rules/Agreement allows the same

  - **Held**: The Karnataka Industrial Areas Development Board was wrong in raising the price of industrial plots arbitrarily, the Supreme Court stated while dismissing its appeal against the high court ruling. The board had allotted plots after receiving payment. But 13 years later, it asked the allottees to pay more. This was challenged by the allottees. The board claimed that it has power under the rules to raise the demand. The high court rejected this stand. The Supreme Court also underlined that though the rules may grant undefined power to fix the final price, the power would have to be exercised "in accordance with the principle of rationality and reasonableness."

- **S.E. Investments Ltd. V. Union of India & Ors in WP(C.) 2393 of 2010**

  - **Issue**: Whether Stamp duty payable for increase in Authorized Share capital of company.

  - **Held**: The Delhi High Court has held that in absence of any specific provision for charging the stamp duty on increase of authorized share capital of a company in the State of Delhi, It would not be open to the Registrar of Companies or any other concerned authority to insist upon payment of stamp duty on increase of authorized share capital since the increase in share capital constitutes change in memorandum of association and not the articles of association of company. Please note that stamp duty will not be payable in respect of Companies having their Registered office in Delhi since the judgment deals with interpretation of fiscal clause contained under Article 10 of the Schedule IA of the Indian Stamp (Delhi Amendment) Act, 2007 only, hence the companies registered in Delhi will only be benefited by this judgment.

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## Important Digests of the Week

- **TRU Clarification on New services and Service tax changes effective 1st May 2011:-**

The new services specified in clauses (zzzzv) and (zzzzw) of section 65 (105) of the Finance Act, 1994 and amendments to the existing clauses of the same section are being operationalized w.e.f. May 1, 2011. The scope of these services was explained in D.O. letter of even number dated Feb. 28, 2011. In accordance with the budget announcements certain changes are necessitated and the related clarifications are given as follows:

**Services provided by a Restaurant**

An exemption @ 70% of the gross value i.e. the total price charged by the restaurant has been given by amending the notification No. 1/2006-ST dated 01.03.2006 vide notification No. 34/2011-ST dated April 25, 2011. The exemption is available provided no Cenvat credit is availed either of inputs or input services. It is clarified that the exemption is available on the gross price charged by the restaurant for the taxable service, including any portion shown separately e.g. service charge. However the amount paid by the customer ex-gratia e.g. as tip to any member of the staff doesn’t constitute consideration paid to the restaurant and shall remain outside this levy.

**Short Term Accommodation**

In accordance with the budget announcement, the levy will be applicable on short-term accommodation with a declared tariff of Rs 1000 per day or above. A suitable exemption has been given below this amount vide notification No. 31/2011-ST dated April 25, 2011. Declared tariff has been defined within the notification as charges for all amenities provided in the unit of accommodation. Thus it will include cost of all electronic gadgets installed in the room and any other facility normally provided by a hotel as part of the stay. Cost of extra bed will not form a part of the declared tariff. No further exclusions are provided from the declared tariff e.g. on account of breakfast or any other meal whose cost is included in the declared tariff including any discount given to the customer. However an exemption @ 50% has been given by amending the


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notification No.1/2006-ST dated 01.03.2006 vide notification No. 34/2011-ST dated April 25, 2011 provided no Cenvat credit is availed either of inputs or input services.

**Life Insurance Services**

The new definition will include all services provided by a life insurance company. The optional scheme available in rule 6(7A) of the Service Tax Rules, 1994 has been amended vide notification No. 35/2011-ST dated April 25, 2011. The assessee will have the option to pay tax on that portion of the premium which is not invested, when such break-up is given to the policy holder. Where the break-up is not so provided, tax amount shall be 1.5% of the gross premium. However, where the entire premium is only for the risk portion the same shall constitute the taxable value of the service.

**Health Services**

The new levy on medical services in terms of sub-clause (zzzzo) of section 65(105) has been exempted vide notification No. 30/2011-ST dated April 25, 2011. It may be noted that the earlier levy on certain services provided by hospitals imposed last year was substituted by the new entry. Thus the levy imposed last year will not be applicable anymore.

**Commercial Coaching and Training**

The revised definition is intended to bring into the tax net all unrecognized education within its ambit irrespective of the fact whether the institute imparting the education is conducting any one or more course recognized by law. Accordingly, an exemption has been given to pre-school education and all education that leads to the award of a qualification recognized by law vides Notification No. 33/2011-ST dated April 25, 2011.

**Legal Services**

With the amendments coming into force, exemption provided to CAs, CWAs and CSs vide notification No. 25/2006-ST dated 13.07.2006 for similar services is being withdrawn by notification No. 32/2011-ST dated April 25, 2011.

**Other Services**

Changes have also been made in other services namely club or association, business support services and service centre for motor vehicles and have already been explained in previous D.O. letter dated Feb. 28, 2011.

**Other changes**

Both the new services i.e. Services provided by Restaurants and short-term Accommodation have also been notified for the purpose of Export of Services Rules, 2005 and Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 and placed in category 1 i.e. based on the location of the property.

All the above changes may be carefully studied and any issues in their implementation may be informed as and when they arise. Potential new assessee as well existing assessees who are required to pay tax on certain hitherto non-taxable services may be informed suitably of the changes and assisted in any desired manner.

- **Steps to Be Taken In Respect of "Information" Received Against Members/Firms Registered With ICAI, ICWAI and ICSI:** -

  - **Announcement containing certain extracts taken from a communication addressed by the ministry of corporate affairs to the three professional institutes namely, ICAI, ICWAI and ICSI on the steps to be taken in respect of "information" received against members/firms registered with the respective institutes**

(i) As soon as it comes to the notice of the Institute, either on the basis of press reports or otherwise, that a member of the Institute has been, or appears to have been, **arrested by the police or any other law enforcement agency**, it shall immediately take steps to obtain details in respect of the matter from the concerned agency and such other sources as may be appropriate. On receipt of details, if it is ascertained that the member was indeed arrested, the Institute shall treat this as "information" under Section 21(2) of the respective Acts, and shall initiate disciplinary action and take such further steps as may be necessary.

(ii) If details as per (i) above are not received within 3 weeks of the matter coming to the notice of the Institute, the Institute shall nevertheless initiate disciplinary action on the basis of available information treating it as "information" under Section 21(2) of the respective Acts and take such other steps as may be necessary to pursue the matter. If details are subsequently received from the law enforcement agency or other appropriate source, they shall be appropriately taken into account.

(iii) The Institute shall take steps to pursue such matters vigorously and bring them to a conclusion as early as possible, while following the procedures correctly.

(iv) The Institute shall continuously monitor press reports and take note of matters involving its members which fall within the scope of these directions or otherwise bring disrepute to the profession.

(v) The Institute shall put out the factual details of such cases on its website in all such cases in the following format:-

INFORMATION# REGARDING MEMBERS ARRESTED BY LAW ENFORCEMENT AGENCIES:-

| Name of Member | Membership No. | Gist of information received by/available with Institute | Action initiated by the Institute |
|---|---|---|---|

This information shall remain on the website till the disciplinary proceedings are concluded. The details in the above format shall also be published in the Institute's journal in the month following initiation of action. #Certain issues in connection with the above, including timing and nature of disclosure, have been taken up with the Ministry for clarification

***Note: Please do write to us for any clarifications/ suggestion.***

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