Bimal Jain

FCA, ACS, LLB, B.Com (Hons)

Important News of the Week

- **TRU's Clarification on issues relating to CENVAT Credit Rules 2004– Circular No.943/04/2011-CX, Dated : New Delhi, 29th April 2011 (the Circular):**

  Various amendments have been made in Cenvat Credit Rules, 2004 vide Union Budget 2011. Definitions of the terms like 'inputs', 'input services', 'exempt services', etc., have been amended. Also, amendments have been made in the methodology prescribed for credit reversal in case an assessee is engaged in both taxable and exempted activities. However, given the manner in which some of the clauses have been worded, the same has given rise to various interpretational ambiguities. Accordingly, during the past few weeks, the trade and industry has been making representations to the Government seeking clarifications on number of interpretational issues with respect to these amendments.

  In order to clarify some of these issues, the Government has recently come up with the Circular (For details, please read digest column of this newsletter).

- **Service provided by Sub-Contractor in relation to exempted Works Contract Services Chargeable to Service Tax**: Vides Circular No. 138/07/2011–ST, Dated May 6, 2011 - Representation by Jaiprakash Associates Limited, Noida, in terms of Judgement dated 14.02.2011 in W.P. No. 7705 of 2008 – regarding

  The Works Contract service (WCS) in respect of construction of Dams, Tunnels, Road, and Bridges etc. is exempt from service tax. WCS providers engage sub-contractors who provide services such as Architect's Service, Consulting Engineer's Service, Construction of Complex Service, Design Services, Erection Commissioning or Installation Service, Management, Maintenance or Repair Service etc. The representation by Jaiprakash Associates Limited seeks to extend the benefit of such exemption to the sub contractors providing various services to the WCS provider by arguing that the service provided by the sub contractors are 'in relation to' the exempted works contract service and hence they deserve classification under WCS itself. it is clarified that the services provided by the subcontractors / consultants and other service providers are classifiable as per Section 65 A of the Finance Act, 1994 under respective sub clauses (105) of Section 65 of the Finance Act, 1944 and chargeable to service tax accordingly.

- **Negative list of Services - public debate - CBEC invites feedback by June 15, 2011:** Ministry of Finance has initiated a public debate on the issue of a negative list for taxation of services. While presenting the Budget 2011, the Finance Minister had in his speech announced the initiation of a public debate.

  The main issues that are sought to be deliberated in the debate are advantages and disadvantages of a negative viz a viz a positive list, the right approach for India, the International experience of taxation of services based on negative list, important issues arising by moving towards the taxation of services base on negative list, definition of the term "service" and possible list of services that merit to be included in the negative list. Areas that would need to be exempted separately even after moving towards the proposed negative list and the revenue implication of moving towards negative list are also to be deliberated upon.

  All comments and suggestions regarding the issue are requested to be submitted by June 15, 2011. The Directorate General of Service Tax has been appointed as the nodal agency for the in-house debate and consultation on the subject by calling for the comments from field formations. A concept paper on the subject is proposed to be drafted after the feedback from the stakeholders.

- **Project Imports Regulations - Fresh Instructions Vides CBEC Circular No.22/2011-Customs, Dated May 4, 2011:**

  THE C&AG have taken a serious view on the weak monitoring of the Project Imports and on the substantial delay in finalization of Project Imports. Based on the CAG report, CBEC has provided fresh instructions to comply with Porject Imports.

- **Manual filing and processing of Bills of Entry - Board Wants Stringent Checks Vides CBEC Instructions in F.No.401/81/2011-Cus.III, Dated : May 4, 2011:**

  In view of several cases in which Bills of Entry/Shipping bills were processed manually or manual clearance was allowed on EDI documents, resulting in possibility of illegal import / export of restricted / prohibited goods and substantial loss of revenue to the Government exchequer. Hence Board decided that only in the rarest of **rare and genuine cases** manual processing and clearance will be allowed/ Data for manual documents is compulsorily entered and transmitted at all locations within the stipulated time period/ Facility of manual documentation should be an exception to the rule of EDI processing and should be withdrawn no sooner EDI processing is possible/ This authority should be vested in a senior officer of the level of Joint/Additional Commissioner of Customs and it should be closely monitored by the Commissioner of Customs/ Data for manual documents should be compulsorily entered and transmitted at all locations within the stipulated time period. For this purpose the Commissioner of Customs shall nominate an officer of the level of Assistant/Deputy Commissioner of Customs to oversee this task and shall closely monitor the same to ensure there is no deficiency in data quality or gap in entry and transmission of data.

- **FTP – Export of Samples as baggage Vides DGFT Notification No. 45 (RE-2010)/2009-2014, Dated May 3, 2011:** Now exporters can take bona fide trade samples as part of their passenger baggage.

- **RBI raises Repo, Reverse repo rates, lower growth projections: -** RBI raised the repo and reverse repo rates by 50bps. Repo rate has been increased from 6.75% to 7.25% and Reverse repo rate from 5.75% to 6.25%.

  In the current policy stance, RBI introduced a new Marginal Standing Facility (MSF). Under this facility Banks can borrow overnight from the MSF up to one per cent of their respective net demand and time liabilities (NDTL).Other important highlights:-

  1. MSF rate, determined with a spread of 100 basis points above the repo rate, at 8.25%.
  2. The Bank Rate remains at 6.0%.
  3. The cash reserve ratio (CRR) remains unchanged at 6%.
  4. Provisioning on sub-standard loans has been hiked to 15%
  5. An additional 10% provision on unsecured sub-standard loans
  6. 25% provision on secured portion of up to 1-year doubtful loans and
  7. 40% provision on secured portion of up to 1-3 year doubtful loans
  8. Interest on saving bank account increased to 4% from 3.5%.

  Inflation in India is the highest after Russia among the BRICS economies. It is 9.5% in Russia, 6.3% in Brazil, 5.4% in China, and 4.1% in South Africa.

(This space is left intentionally)

Despite significant increase in policy rates, inflation rose significantly

%

Components	Sep '2009	Sep '2010	May 3 '2011	Change since Sep'2009
CRR	5.00%	6.00%	6.00%	100bps
Repo Rate	4.75%	5.75%	7.25%	250bps
Reverse Repo Rate	3.25%	4.50%	6.25%	300bps
WPI Inflation	1.08%	8.9%	8.98%	790bps
IIP growth	6.00%	13.00%	3.60%*	(-)240bps
Real GDP growth*	8.60%	8.90%	8.00%**	(-) 60bps

Source: PHD Research Bureau, compiled from RBI
*Note: *Data pertains to February2011, **Data pertains to RBI projection for FY2012*

Going forward, high oil and other commodity prices and the impact of the tight money stance can have some impact on economic growth. However, measures to increase agricultural output in the Union Budget 2011-12, particularly in items facing structural supply-demand imbalances, can contribute to easing inflation over time.

- **RBI relaxes norms for making payments using mobile phones - Raises Limit to 50K:**

Relaxing the norms for making payments using mobile phones, known as m-wallet, the Reserve Bank decided to increase the limit of money-loading to Rs 50,000 from the existing limit of Rs 5,000. "The maximum value of such prepaid semi-closed m-wallet shall not exceed Rs 50,000," a RBI notification said. Leading mobile operators Bharti Airtel and Vodafone had tied up with SBI and ICICI Bank respectively to offer such facilities to their subscribers.

The central bank has also decided to treat semi-closed mobile wallet on par with the other semi-closed prepaid instruments. In the semi-closed mobile wallet, money can be loaded into your cell phone from a licensed company which can be used to make payments but it can't be used to withdraw money.

The Semi-Closed System Payment Instruments are redeemable at a group of clearly identified merchant locations or establishments. These instruments do not permit cash withdrawal or redemption by the holder."Keeping in view the need to facilitate the larger acceptance of mobile phone based prepaid instruments as a mode of payment, it has now been decided to bring semi-closed mobile wallet on par with the other semi-closed prepaid instrument," it said.

Those using other Semi-Closed System Payment Instruments were already enjoying the upper limit of money value of Rs 50,000. M-wallet can be used for various services like payment of utility bill including electricity, water telephone or mobile phone, insurance premium, cooking gas payments, ISP for internet or broadband connections, cable or direct to home (DTH) subscriptions and citizen services by government. PTI

- **Escrow accounts for securing FDI transactions:**

To provide structured flexibility and easiness to the resident/non-resident shareholders of Indian Company, Reserve Bank of India vide its Circular RBI/2010-11/ 498 A. P. (DIR Series) Circular No. 58 dated May 02, 2011 has decided to permit AD category -1 banks to open and maintain, without prior approval of the Reserve Bank, non-interest bearing Escrow accounts in Indian Rupees in India on behalf of residents and/or non-residents, towards payment of share purchase consideration and / or provide Escrow facilities for keeping securities to facilitate FDI transactions subject to the terms and conditions. Further, It has also been decided to permit SEBI authorized Depository Participants, to open and maintain, without prior approval of the Reserve Bank, Escrow accounts for securities subject to the terms and conditions. These facilities will be applicable for both issue of fresh shares to the non- residents as well as transfer of shares from / to the non- residents.

- **Pledge of shares for business purposes:**

Reserve Bank of India vides its Circular RBI/2010-11 /497 A. P. (DIR Series) Circular No. 57 dated May 02, 2011 has reviewed the guidelines relating to Pledge of Shares by non-resident investor. RBI delegated its powers to the AD Category – I banks to allow pledge of shares of an Indian company held by non-resident investor(s) in accordance with the FDI policy in the following cases subject to defined compliances:

Shares of an Indian company held by the non-resident investor can be pledged in favour of an Indian bank in India to secure the credit facilities being extended to the resident investee company for bonafide business purposes subject to the defined conditions.

- **Payment of fees under the RTI Act by Indian Postal Order -** No.F.10/9/2008-IR, Dated April 26, 2011:

  It is directed to say that the Right to Information (Regulation of Fee and Cost) Rules, 2005 provide that a person seeking information under the RTI Act. 2005 can make payment of fee for obtaining information by cash or demand draft or banker's cheque or Indian Postal Order. It has been brought to the notice of this Deportment that some pubic authorities do not accept fee through the Indian Postal Orders.

  As stated above, one of the approved modes of payment of fee under the Rules is through Indian Postal Order. Refusal to accept tee through the IPO may be treated as refusal to accept the application. It may result into imposition of penalty by the Central Information Commission on the concerned Central Public Information Officer under Section 20 of the Act. All the public authorities should, therefore, ensure that payment of fee by IPO is not denied.

- **Government likely to announce opening of multi-brand retail to foreign investors after state Assembly election results:**

  The Government is likely to announce opening of multi-brand retail to foreign investors after the state Assembly election results, in a move to revive confidence of global investors in the country. However, for starters, multi-brand retail giants like Wal-Mart, Carrefour and Tesco may be allowed only in 36 large cities which have population of over 1 million, according to 2001 census, high level sources said. At present, India allows FDI only in single brand retail chains with a cap of 51 per cent. It also permits 100 per cent overseas investment in wholesale cash-and-carry format. Several of the big chains like Wal-Mart and Carrefour have set up their joint ventures in India, waiting in the wings for their full-scale entry into the multi-brand retailing. A discussion paper on opening of the sector has been in the public domain since July, 2010 and the stakeholders have submitted their feedback. Since there are still some apprehensions over the impact of the entry of giant retailers on the small kirana shops, the government wants to open the sector with riders like back-end investment, the sources said. India's total retail sector is estimated at USD 590 billion, of which unrecognized is at USD 496, according to an Icier report. FDI in India has dipped by 25 per cent between April-February of 2010-11, while concerns over sustaining robust economic growth of over 8.5 per cent have surfaced in the backdrop of inflation. Besides, the India Inc confidence has also been dented because of a spate of scams such as 2G telecom spectrum and Commonwealth Games.

- **Foreign Contribution Regulation Act (FCRA) 2010 has been notified and it has come into force with effect from 1/5/2011:** Key features of FCRA 2010 include the following:-

  - Concept of 'permanent' registration done away with; A five-year registration is provided so that dorman organizations do not continue. All existing registered organizations are deemed to be on five-year validity from now.
  - 'Person' has been defined in a broader sense.
  - 'Organizations of political nature' cannot receive foreign funds.
  - Ceiling on administrative expenses has been prescribed.
  - Procedure for suspension and cancellation of registration has been prescribed.
  - Statutory role provided for banking sector in regulation.
  - Time limits have been provided for accountability of officials
  - To deal with bona fide mistakes of NGOs, provision has been made for 'compounding' of offences.
  - Details are available on Ministry of Home Affairs website- mha.nic.in

- **Important Changes in the Companies Act, 1956:**

  - **General Exemption under Section 211 of the Companies Act, 1956**

    Section 211 of the Companies Act, 1956 requires that the balance sheet and profit and loss account of a company shall be in the form set out in Part I of Schedule VI or in such other form as may be approved by the Central Government either generally or in any particular case. So far, these exemptions were being given on a case-by-case basis with certain conditions. The MCA has decided to give general exemption specifying the categories of companies that will be exempted from certain disclosures.

  - **Directions under Section 212 of the Companies Act, 1956**

    Section 212 of the Companies Act, 1956 requires Holding companies to attach with their Balance sheet, a copy of the balance sheet, profit and loss account etc. of each of its subsidiaries. The Ministry has been granting permission not to attach the account of subsidiaries on case-by-case basis on the basis of certain conditions which are intended to protect the interests of investors. The Ministry has vide its general circular no. 1/2011 decided that the permission may be granted on a general basis wherever the Board of Directors of the holding company gives its consent and the conditions prescribed by the Ministry are complied with.

- **Schedule XIII of the Companies Act, 1956 being amended:**

  Schedule XIII of the Companies Act is being amended to provide that unlisted companies (which are not subsidiaries of listed companies) shall not require Government approval for managerial remuneration in cases where they have no profits/inadequate profits, provided they meet the other conditions stipulated in the Schedule.

- **Appointment of Agency for providing electronic platform for electronic voting under the companies act 1956:**

  The Ministry of Corporate Affairs has vide its circular number 21/2011 dated 2nd May 2011 clarified that in order to have secured electronic platform for capturing accurate electronic voting process, the agency appointed for providing and supervising electronic platform for electronic voting shall be an agency duly approved by the Ministry of Corporate Affairs and that for the purpose National Securities Depository Limited (NSDL) and Central Depository Services (India) Limited (CDSL) have been approved subject to the condition that they obtain a certificate from Standardization Testing and Quality Certification (STQC) Directorate, Department of Information Technology, Ministry of Communications and IT, Government of India.

- **Straight through process (STP) for intimation of appointment of Directors and changes therein e-form 32 under 303(2) of companies act 1956:**

  In order to cut timelines and bring more transparency in the working of office of Registrar of Companies, The Ministry of Corporate Affairs has vide its general circular no. 20/2011 dated 2nd May 2011 has made e-form 32 to be taken on records under Straight Through Process (STP) mode i.e. information given in the e-form 32 to be taken on file maintained by Registrar of Companies through electronic mode on the basis of statement of correctness given by the filing company and further verification by the practicing professional i.e. Chartered Accountants, Cost Accountants and Company Secretaries.

- **Limit u/s 217(2A) increased from Rs. 24 Lakhs to Rs. 60 lakhs w.e.f. 1/4/2011:**

  MCA has clarified Vides Circular No. 23/2011 dated. 3/5/2011 that irrespective of the Accounting year of the Annual Report, this shall be applicable to all Directors' Report approved on or after 1st April, 2011

- **General Cost Audit Orders issued by CAB for 14 Industries: Opportunity for CWAs**

Ministry of Corporate Affairs, Government of India, has issued two notifications through which 14 Industries have been brought under the purview of Cost Audit. (Industry specific Cost Audit Orders issued in place of practice of issuing Company specific Cost Audit Order) - F. NO. 52/26/CAB-2010; Dated the 2nd May, 2011 & F. NO. 52/26/CAB-2010 Dated the 3th May, 2011, Ministry of Corporate Affairs – Cost Audit Branch. The 14 Industries have been covered under Cost Audit w.e.f. Financial year commencing on or after 01.04.2011

The main features of the notifications are as under:

Category -1: In case of following industries:

- Bulk Drugs
- Formulations
- Fertilizers
- Sugar
- Industrial Alcohol
- Electricity Industry
- Petroleum Industry
- Telecommunications

Cost Audit is applicable to the following companies:

- Companies having Net Worth exceeding Rupees Five Crores
- Companies having Turnover exceeding Rupees Twenty Crores
- Companies whose equity or debt securities are listed or in the process of listing on any stock exchange in or outside India.

Category -2: In case of following industries:

- Cement
- Tyres & Tubes
- Steel Plants
- Steel Tubes and Pipes
- Paper
- Insecticides

Cost Audit is applicable to the following companies:

- Companies having Turnover exceeding Rupees One Hundred Crores
- Companies whose equity or debt securities are listed or in the process of listing on any stock exchange in or outside India.

- **Large Companies may have to adopt IFRS from next financial Year:**

Large Indian firms may have to adopt international accounting norms, IFRS, from the next fiscal when the new direct tax regime comes into effect, bringing clarity on the tax structure for companies. In a meeting held recently, the Corporate Affairs Ministry and the Finance Ministry is learnt to have found a common ground on how companies would be taxed under the International Financial Reporting Standards (IFRS). "We are expecting that with the Direct Taxes Code in place, there will be clarity on how companies would be taxed. So, after that companies can smoothly converge," a senior MCA official told PTI.

According to the roadmap laid by the MCA, companies with a net worth of over Rs 1,000 crore were to converge their account books as per IFRS from April 1 this year, but no clarity on tax-related issues had pushed the date for implementation. One of the key contentions was introduction of Minimum Alternate Tax (MAT) under the DTC regime.

Under IFRS, assets such as investments and derivatives are fair valued with corresponding gains/losses recognised through the profit and loss statement. An important issue that needs to be resolved is imposing tax on notional loss or gain. Another issue that needs a re-look is projecting value of an asset in the account books. While some are in favour of arriving at the value in terms of historical cost, others believe in the fair value concept.

In accounting, fair value is defined as an estimate of the potential market price of goods or service, taking into consideration factors like acquisition, production and distribution costs and replacement costs. However, the historical cost does not consider these factors and instead is calculated at the initial value. Once the issues are resolved, over 1,000 large companies will have to prepare their accounts as per the new norms.

Further, while scheduled commercial banks and urban cooperative banks will adopt IFRS from April 1, 2013, all insurance companies will convert their opening balance sheets with IFRS from April, 2012. Large, listed non-banking finance companies (NBFCs), will converge their opening books of accounts with IFRS norms from April 1, 2013.

Important Judicial Pronouncement of the Week

- **M/s Bansal Wire Industries Ltd Vs State Of U P (2011-TIOL-44-SC-CT)**

  - **Issue:** It is settled principle of law that words used in section, rule or notification should not be rendered redundant

  - **Held:** UP Trade Tax - stainless steel wire is not covered within entry (ix) of clause (iv) of Section 14 of Central Sales Tax Act: the language used in entry no. (ix) is plain and unambiguous and that the items which are mentioned there are "tools, alloy and special steel". By using the words "of any of the above categories" in entry Nos. (ix) Would refer to entries (i) to (viii) and it cannot and does not refer to entry no (xv). However, entry (xvi) of Clause (iv) would be included in entry (xvi) particularly within the expression now therein any of the aforesaid categories. It is a settled principle of law that the words used in the section, rule or notification should not be rendered redundant and should be given effect to: It is also one of the cardinal principles of interpretation of any statue that some meaning must be given to the words used in the section. Besides, in a taxing Act one has to look merely at what is clearly said and there is no room for any intendment. In a taxing statute nothing is to be read in, nothing is to be implied, one can only look fairly at the language used.

- **UOI Vs Ashok J Ramsinghani (2011-TIOL-259-HC-MUM-FEMA)**

  - **Issue:** Whether Appeal filed under FEMA after abolition of FERA - High Court can condone delay beyond 60 days.

  - **Held:** High Court cannot condone delay beyond 60 days: Interpreting similar provisions contained in the Central Excise Act, 1944, the Apex Court in the case of M/s. Singh Enterprises V/s. CCE reported in (2007-TIOL-231-SC-CX) held that where the statute bars appeal beyond sixty days, the Court cannot condone the delay and entertain the appeal filed beyond sixty days. In the present case, since the appeal is filed beyond 120 days, the High Court cannot condone the delay and consequently, the appeal would be time barred. the appeal filed by the applicant against the decision / order of the Appellate Tribunal dated 18/8/2009 being an appeal filed under Section 35 of FEMA would be subject to the limitation prescribed there under. Under Section 35 of FEMA, this Court can condone the delay, not beyond 60 days. In the present case, the appeal is beyond time by 291 days. Therefore, this Court cannot condone the delay of 291 days in filing the appeal.

- **M/s Excel Rubber Ltd Vs CCE, Hyderabad (2011-TIOL-536-CESTAT-DEL-LB)**

  - **Issue:** Refund of excess Central Excise Duty upon Finalization of Provisional assessment - Only subject to unjust enrichment

  - **Held:** On finalization of assessment, any amount of money having been paid in excess of the duty liability ascertained in the final assessment, the excess amount so ascertained would become refundable to the assessee. Such excess amount can certainly be adjusted towards any other duty liability of such assessee under the Excise Act, 1944 and Rules made there under, however, such adjustments are subject to the applicability of the principle of unjust enrichment. Therefore, before grant of adjustment, the authority will have to ascertain whether such excess amount is to be actually refunded to the assessee or is liable either wholly or partly to be credited to the account of consumer benefit fund and only thereafter make an order of adjustment to the extent the amount is found to be actually refundable and not liable to be credited to the account of consumer benefit fund. Needless to say, that the burden of proof in this regard would lie upon the assessee.

- **M/s Invincible Security Vs CCE, Noida (2011-TIOL-548-CESTAT-DEL)**

  - **Issue:** Whether Demand of Service Tax being obligation on Service Provider, is tenable if paid by service recipient instead of provider

  - **Held:** Tribunal was not inclined to keep the matter pending further and accepted the submission of the Appellant that in this case the service tax liability and interest have has been discharged, though not by the service provider but by the person who received the service. So there are technical violations of the relevant laws. However considering that these difficulties were caused due to the improper stand of a Government Company Tribunal was inclined to take a lenient view in the matter. Since all duties have been remitted into the treasury as per submission of the Appellant tribunal waived the related demands made in the impugned order. Further invoking the provisions of section 80 of the Finance Act, 1994 tribunal dropped all penalties imposed in the impugned order.

650, Pocket -V, Mayur Vihar, Phase –I, Delhi - 110091
Email:bimaljain@hotmail.com; Mobile: 91-9810604563;

Important Digests of the Week

- **TRU's Clarification on issues relating to CENVAT Credit Rules 2004– Circular No.943/04/2011-CX, Dated: New Delhi, 29th April 2011:-**

In order to clarify some of these issues, the Government has recently come up with a Circular No. 943/04/20 1 1-CX dated 29 April 2011 (the Circular). The purpose of this is to summarize some of the key clarifications issued vide the Circular (please refer Annexure for full extract of the Circular) and possible action points on the part of the companies pursuant to these clarifications.

Clarification towards Negative list - The list of goods and services for which credit has been disallowed (such as catering, club services, etc.) is only illustrative and not exhaustive. The principle is that Cenvat credit is not allowed when any goods and services are used primarily for personal use or consumption of employees.

Clarification – Scope of the term 'inputs' - It has been clarified that goods such as furniture and stationary used in an office within the factory would be construed to be goods used in the factory. Thus, the same would be deemed to be used in relation to the manufacturing business and hence credit of the same shall be allowed.

Clarification – Treatment of credit of common inputs and input services used in trading before 1 April 2011 - It has been clarified that the same could be availed subject to prescribed restrictions as were applicable during the relevant period. This clarification seems to suggest that trading was all along an 'exempt service' (i.e. the recent amendment clarifying that trading is an exempt service will have retrospective effect).

Clarification – Availability of credit on services received before 1 April 2011 on which credit is not allowed now – e.g. Rent-a-cab service - It has been clarified that the credit on such services shall be available if their provision had been completed before 1 April 2011.

Clarification – Manner of determining 'value' of trading activities It has been clarified that for calculating the value of trading - As regards application of specific principle of LIFO, FIFO, etc. – the method normally followed by the concern for its accounting purposes as per generally accepted accounting principles should be used. With respect to the taxes and year end discounts –

generally accepted accounting principles need to be followed in this regard. All taxes for which set off or credit is available or are refundable/ refunded may not be included. Discounts are to be included.

Is it an End to disputes: - There are still number of issues that have not been addressed, such as:

- Whether credit of General business expenses, like Rent, telecommunication, equipment maintenance, etc. would be allowed
- Whether the credit reversal formula prescribed for trading activities can be applied retrospectively.
- Whether expenses incurred by employees during their official trips would be construed as being personally used/ consumed by these employees.
- Still there are many other issues open for disputes which may vary from one company to another.

- **TRU's Clarification on issues relating to CENVAT Credit Rules 2004– Circular No.943/04/2011-CX, Dated : New Delhi, 29th April 2011:-**

The CENVAT Credit Rules 2004 were amended along with the Budget 2011 announcements vide Notification 3/2011-CE (NT) dt 1.3.2011. A few changes were further effected vide Notification 13/2011-CE (NT) dt 31.3.2011. On a few issues trade has requested for clarity. Accordingly the following clarifications are presented issue wise in a tabular format.

S. No.	Issue	Clarification
1	**Can credit of capital goods be availed of when used in manufacture of dutiable goods on which benefit under Notification 1/2011-CE is availed or in provision of a service whose part of value is exempted on the condition that no credit of inputs and input services is taken?**	As per Rule 6(4) no credit can be availed on capital goods used exclusively in manufacture of exempted goods or in providing exempted service. Goods in respect of which the benefit of an exemption under notification No. 1/2011-CE, dated the 1st March, 2011 is availed are exempted goods [Rule 2(d)]. Taxable services, whose part of value is exempted on the condition that no credit of inputs and input services, used for providing such taxable service, shall be taken, are exempted services [Rule 2(e)]. Hence credit of capital goods used exclusively in manufacture of such goods or in providing such service is not allowed.

Bimal Jain

FCA, ACS, LLB, B.Com (Hons)

2	**Is the credit of only specified goods and services listed in the definition of inputs and input services not allowed such as goods used in a club, outdoor catering etc, or is the list only illustrative?**	The list is only illustrative. The principle is that Cenvat credit is not allowed when any goods and services are used primarily for personal use or consumption of employees.
3	**How is the "no relationship whatsoever with the manufacture of a final product" to be determined?**	Credit of all goods used in the factory is allowed except in so far as it is specifically denied. The expression "no relationship whatsoever with the manufacture of a final product" must be interpreted and applied strictly and not loosely. The expression does not include any goods used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not. Only credit of goods used in the factory but having absolutely no relationship with the manufacture of final product is not allowed. Goods such as furniture and stationary used in an office within the factory are goods used in the factory and are used in relation to the manufacturing business and hence the credit of same is allowed.
4	**Is the credit of input services used for repair or renovation of factory or office available?**	Credit of input services used for repair or renovation of factory or office is allowed. Services used in relation to renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, are specifically provided for in the inclusive part of the definition of input services.
5	**Is the credit of Business Auxiliary Service (BAS) on account of sales commission now disallowed after the deletion of expression**	The definition of input services allows all credit on services used for clearance of final products up to the place of removal. Moreover activity of sale promotion is specifically allowed and on many occasions the remuneration for same is linked to actual sale. Reading the provisions

	"activities related to business"?	harmoniously it is clarified that credit is admissible on the services of sale of dutiable goods on commission basis.
6	**Can the credit of input or input services used exclusively in trading, be availed?**	Trading is an exempted service. Hence the credit of any inputs or input services used exclusively in trading cannot be availed.
7	**What shall be the treatment of credit of input and input services used in trading before 1.4.2008?**	Trading is an exempted service. Hence credit of any inputs or input services used exclusively in trading cannot be availed. Credit of common inputs and input services could be availed subject to restriction of utilization of credit up to 20% of the total duty liability as provided for in extant Rules.
8	**While calculating the value of trading what principle to follow- FIFO, LIFO or one to one correlation?**	The method normally followed by the concern for its accounting purpose as per generally accepted accounting principles should be used.
9	**Are the taxes and year end discounts to be included in the sale price and cost of goods sold while calculating the value of trading?**	Generally accepted accounting principles need to be followed in this regard. All taxes for which set off or credit is available or are refundable/ refunded may not be included. Discounts are to be included.
10	**Does the expression "in or in relation" used in Rule 6 override the definition of "input" under Rule 2(k) for determining the eligibility of Cenvat credit?**	The definition of "input" is given in Rule 2(k) and Rule 6 only intends to segregate the credits of inputs used towards dutiable goods and exempted goods. While applying Rule 6, the expression "in or in relation" must be read harmoniously with the definition of "inputs".
11	**Sub-rules 3B and 3C of rule 6 apply to whole entity or independently in respect of each registration?**	The sub-rules 6(3B) and 6(3C) impose obligation on the entities providing banking and financial services (in case of a bank and a financial institution including a non-banking financial company) or life insurance services or management of investment under ULIP service. The obligation is applicable independently in respect of each registration. When such a concern is exclusively rendering any other service from a registered premises, the said

		rules do not apply. In addition to BoFS and life insurance services if any other service is rendered from the same registered premises, the said rules will apply and due reversals need to be done.
12	**Is the credit available on services received before 1.4.11 on which credit is not allowed now? e.g. rent-a-cab service**	The credit on such service shall be available if its provision had been completed before 1.4.2011.

- **Entry Tax stayed in Punjab by P&H HC – Bhushan Steel case:-**

Punjab & Haryana High Court in Bhushan Power & Steel Limited Vs. State of Punjab & others has granted interim stay to the petitioners on the levy of entry tax u/s 3-A of Punjab Tax on Entry of Goods into Local areas Act 2000 (hereinafter called as the Act), by considering it to be as ultra-vires of the State Government's power to levy tax under the Constitution of India.

The State in this case contested the petition by saying that the entry tax has been levied as advance tax on sale or purchase of goods in view of Entry 54 of List II of seventh schedule of the Constitution, which contention did not find any merit in the order of High Court, hence no test of entry tax in Punjab was made on merits as to whether it is compensatory or not i.e. whether it is intra or ultra vires of Article 301 of Constitution of India and the Powers of the State Govt. to levy tax in view of entry 52 of List II of seventh schedule of the Constitution of India, as was done in Jindal strips case.

Whereas in Jindal Strips case Entry Tax in Haryana was contested by the State on the ground that the said tax was a compensatory one and is intra vires of the power of the State Govt. to levy tax under entry 52 of list II of seventh schedule of the constitution, which contention also did not find any place in the judgment of the Hon'ble High court.

Held: "In view of our aforesaid discussion, we are of the prima facie view that though the Act proposes to levy entry tax, the same has not been justified as entry tax. The same cannot be held to be valid as advance collection of value-added tax in absence of a charging provision to that effect.

In the circumstances, the petitioner is certainly entitled to the interim relief in line with what has been granted by Hon'ble the Supreme Court in cases pertaining to entry tax from different States. The interim order similar to what has been passed in the appeal filed by the State of Haryana challenging the judgment of this court declaring the Haryana Act to be ultra vires can very well be granted to the petitioner in the present case."

"Considering the fact that in the Entry Tax Act in question, the collection of tax is at ICC barrier and there is no provision for filing of returns or framing of assessments, we direct that information regarding entry of all the goods into the State of Punjab shall be furnished at the point of entry in the State of Punjab so that the same could be compiled to enable the State to recover the amount of tax due from the concerned persons in case of dismissal of the writ petition. However, they shall file an undertaking to the State and also in this court that in the event of the writ petitions being dismissed, they shall be liable to pay the amount of tax due along with interest at such rate, as may be fixed by this court at the time of final disposal of the matter. The undertaking shall be furnished within four weeks. It is made clear that this order will not affect the liabilities of the petitioner under the relevant provisions of the VAT Act."

The interim stay has been granted by the HC now on the entry tax in Punjab and consequently a general circular has also been issued by the Punjab Govt. allowing all similar placed dealers as in Bhushan Steel case to apply for deferment from the payment of entry tax until the final orders of the court. The thing remains to be seen whether entry tax in Punjab will stand the test of constitutionality or will be struck down as unconstitutional.

GENERAL CIRCULAR REGARDING PUNJAB ENTRY OF GOODS IN TO LOCAL AREAS ACT, 2000, PUNJAB. (N-1-2011spl./1-30 Dated 29th April,2011)

As per the orders of Hon'ble Punjab & Haryana High Court in CM No.5160 of 2010 in amended CWP No. 15378 of 2008 delivered on 28-3-2011 and in CWP Nos. 18609 of 2007, 578, 1670, 3342, 5537, 6705, 7099, 11542, 16081, 18991, 19001 of 2008, 5362, 9237, 9906 and 10334, 15493, 21494 of 2010, 6064, 6066 and 6379 of 2011 delivered on 8-4-2011, the Department has evolved an appropriate mechanism to facilitate the extension of the applicability of the interim order of the Hon'ble High Court to "similarly placed persons" who have not filed any writ petitions in the Hon'ble Court, and who desire to avail of the relief afforded to the petitioner. As per this the concerned persons are required to submit the following documents (to be furnished before the concerned authorities), namely-

1) UNDERTAKING (before the AETC incharge of the District where the importer is registered)

2) AFFIDAVIT (before the AETC incharge of the District where the importer is registered)

3) INDEMNITY BOND (along with each transaction at the ICC of entry point along with the other statutory documents presently being submitted.)

- **List of major differences between the Old and the New Schedule VI of the Companies Act, 1956:-**

Sr. No.	Particulars	Old Schedule VI	Revised Schedule VI
1	**Rounding off of Figures appearing in financial statement**	Turnover of less than Rs. 100 Cr - R/off to the nearest Hundreds, thousands or decimal thereof Turnover of Rs. 100 Cr or more but less than Rs. 500 Cr - R/off to the nearest Hundreds, thousands, lakhs or millions or decimal thereof Turnover of Rs. 500 Cr or more - R/off to the nearest Hundreds, thousands, lakhs, millions or crores, or decimal thereof	Turnover of less than Rs. 100 Cr - R/off to the nearest Hundreds, thousands, lakhs or millions or decimal thereof Turnover of Rs. 100 Cr or more - R/off to the nearest lakhs, millions or crores, or decimal thereof
2	**Net Working Capital**	Current assets & Liabilities are shown together under application of funds. The net working capital appears on balance sheet.	Assets & Liabilities are to be bifurcated in to current & Non-current and to be shown separately. Hence, net working capital will not be appearing in Balance sheet.

Bimal Jain
FCA, ACS, LLB, B.Com (Hons)

3	**Fixed Assets**	There was no bifurcation required in to tangible & intangible assets.	Fixed assets to be shown under non-current assets and it has to be bifurcated in to Tangible & intangible assets.
4	**Borrowings**	Short term & long term borrowings are grouped together under the head Loan funds sub-head Secured / Unsecured	Long term borrowings to be shown under non-current liabilities and short term borrowings to be shown under current liabilities with separate disclosure of secured / unsecured loans.
			Period and amount of continuing default as on the balance sheet date in repayment of loans and interest to be separately specified
5	**Finance lease obligation**	Finance lease obligations are included in current liabilities	Finance lease obligations are to be grouped under the head non-current liabilities
6	**Deposits**	Lease deposits are part of loans & advances	Lease deposits to be disclosed as long term loans & advances under the head non-current assets
7	**Investments**	Both current & non-current investments to be disclosed under the head investments	Current and non-current investments are to be disclosed separately under current assets & non-current assets respectively.
8	**Loans & Advances**	Loans & Advance are disclosed along with current assets	Loans & Advances to be broken up in long term & short term and to be disclosed under non-current & current assets respectively.
		Loans & Advance to subsidiaries & others to be	Loans & Advance from related parties & others to

650, Pocket -V, Mayur Vihar, Phase –I, Delhi - 110091
Email:bimaljain@hotmail.com; Mobile: 91-9810604563;

		disclosed separately.	be disclosed separately.
9	**Deferred Tax Assets/ Liabilities**	Deferred Tax assets / liabilities to be disclosed separately	Deferred Tax assets / liabilities to be disclosed under non-current assets / liabilities as the case may be.
10	**Cash & Bank Balances**	Bank balance to be bifurcated in scheduled banks & others	Bank balances in relation to earmarked balances, held as margin money against borrowings, deposits with more than 12 months maturity, each of these to be shown separately.
11	**Profit & Loss (Dr Balance)**	P&L debit balance to be shown under the head Miscellaneous expenditure & losses.	Debit balance of Profit and Loss Account to be shown as negative figure under the head Surplus. Therefore, reserve & surplus balance can be negative.
12	**Sundry Creditors**	Creditors to be broken up in to micro & small suppliers and other creditors.	It is named as Trade payables and there is no mention of micro & small enterprise disclosure.
13	**Other Current liabilities**	No specific mention for separate disclosure of Current maturities of long term debt	Current maturities of long term debt to be disclosed under other current liabilities.
		No specific mention for separate disclosure of Current maturities of finance lease obligation	Current maturities of finance lease obligation to be disclosed.
14	**Separate line item Disclosure criteria**	Any item under which expense exceeds one per cent of the total revenue of the company or Rs. 5,000 whichever is higher; shall be disclosed separately	Any item of income / expense which exceeds one per cent of the revenue from operations or Rs. 1,00,000, whichever is higher; to be disclosed separately

15	**Expense classification**	Function wise & nature wise	Expenses in Statement of Profit and Loss to be classified based on nature of expenses
16	**Finance Cost**	Finance cost to be classified in fixed loans & other loans	Finance cost shall be classified as interest expense, other borrowing costs & Gain / Loss on foreign currency transaction & translation.
17	**Foreign exchange Gain / loss**	Gain / Loss on foreign currency transaction to be shown under finance cost	Gain / Loss on foreign currency transaction to be separated into finance costs and other expenses
18	**Purchases**	The purchase made and the opening & closing stock, giving break up in respect of each class of goods traded in by the company and indicating the quantities thereof.	Goods traded in by the company to be disclosed in broad heads in notes. Disclosure of quantitative details of goods is diluted

- **XBRL format for Financial Statement for F.Y 2010-11:-**

On 1 April 2011, the Ministry of Corporate Affairs (MCA) in India posted a circular on its website mandating a certain class of companies (Phase 1) to file balance sheets and profit and loss accounts for the year 2010-11 onwards by using eXtensible Business Reporting Language (XBRL). The financial statements required to be filed in XBRL format will be based upon the taxonomy on XBRL developed for the existing Schedule VI and non-converged accounting standards notified under the Companies (Accounting Standards) Rules, 2006 (as amended).

XBRL (e**X**tensible **B**usiness **R**eporting **L**anguage) is a language for electronic communication of business and financial data which is revolutionizing business reporting around the world. It offers major benefits to all those who have to create, transmit, use or analyze such information.

Companies can use XBRL to save costs and streamline their processes for collecting and reporting financial information. Consumers of financial data, including investors, analysts, financial institutions and regulators, can receive, find, compare and analyze data much more rapidly and efficiently if it is in XBRL format.

XBRL can handle data in different languages and accounting standards. It can flexibly be adapted to meet different requirements and uses. Data can be transformed into XBRL by suitable mapping tools or it can be generated in XBRL by appropriate software

The following class of Companies have to file the Financial Statements in XBRL Form only from the year 2010-2011:-

- All companies listed in India and their subsidiaries, including overseas subsidiaries
- All companies with a paid up capital of 5 crores and above or a turnover of Rs. 100 crores or above

A detailed reading of the circular yielded a number of key areas outlined in our Supplement to Assurance Eye: MCA mandates XBRL filing for Phase 1 Companies, upon which further clarification from the MCA would be critical. Companies are strongly encouraged to reach out to the MCA in order to obtain further guidance on such topical issues. The underlying taxonomy is central to the preparation of XBRL format financial information. The MCA has released draft taxonomy, with a comment period deadline of 30 April 2011, with regards to commercial and industrial (C&I) entities.

Outlined below are some key steps, which companies should consider when deciding on the appropriate strategy for complying with the MCA requirements. These steps are important as there is potentially very limited time, given the 30 September 2011 filing requirement in accordance with the circular to prepare XBRL information.

The first step is to build an understanding of XBRL within the organization. The next step is to identify which entities within the group would have to prepare XBRL information. The criteria are outlined in the circular issued by the MCA:

Having understood what XBRL is and how it applies to the company or group of companies, the final step is to build a strategy for compliance. The appropriate strategy will depend on a number of factors such as the availability of resource within the organization with the right skill set, the complexity of the financial statements and the existing information technology environment in the company. Broadly, there are three primary solution strategies:

- Outsourced tagging: Outsourcing the tagging of the statutory accounts to XBRL AND Could also be done concurrently with outsourcing financial statements preparation
- Partially "integrated" solution in ERP, Provides tagging within the ERP environment. Aims to implement automated financial statements production, Some manual tagging of non-financial data may be required
- Data warehouse solution - Separate software that tags general ledger reports
- One-time mapping required

While there are a number of key areas, which require further clarification, it is essential that corporate entities begin to educate themselves with regards to these new requirements and assess the appropriate strategy for compliance.

- **CBDT issues new Circular substituting old Circular on refund procedure for Excess TDS on payments to residents:-**

Recent circular issued by the Central Board of Direct Taxes (CBDT), Circular No. 2/2011 [F. No. 385/25/2010-IT(B)] (new Circular) dated 27 April 2011, outline the procedure for refund of excess payment of tax deducted at source (TDS) from payments to residents. The new Circular is applicable for refunds pertaining to the period up to 31 March 2010. The procedure for refunds for the period from 1 April 2010 is governed by a specific provision in the Indian Tax Laws (ITL) dealing with centralized processing of quarterly TDS statements. The refund for the period after 1 April 2010 will be granted based on data furnished in the statements, subject to rectification of apparent inconsistencies, without the requirement of a separate claim for refund.

Key features of the procedure for refund under the new Circular

- The excess payment to be refunded will be the difference between:

  - The actual payment made by the Deductor to the credit of the Central Government and the tax deductible at source *(The old Circular referred to 'the tax deducted at source or that deductible, whichever is more'.)*

- If excess payment is discovered by the Deductor during the relevant financial year, the present system of filing quarterly statements of TDS permits the adjustment of such excess in the next quarter of the same financial year.

- If the excess payment is discovered beyond the relevant financial year, the claim for refund needs to be made to the Tax Authority. Presently, no form is prescribed for putting up such a claim. In the circumstances, the claim needs to be put up by a simple letter application with necessary supporting documents.
- Furthermore, no claim of refund can be made after two years from the end of the financial year in which tax was deductible at source. The old Circular did not provide any specific time limit for putting up such a claim.

Administrative safeguards to be exercised by the Tax Authority

The applicant Deductor is required to establish before the Tax Authority that:

- The excess payment is a case of genuine error and that the error had occurred inadvertently.

- The TDS certificate for the refund amount requested has not been issued to the deductee(s).

- The credit for the excess amount has not been claimed by the deductee(s) in the return of income or the deductee(s) undertakes not to claim such credit.

Effective period of the refund procedure under the new Circular

- The procedure outlined in the new Circular is applicable for claim of refunds for the period up to 31 March 2010.
- Having regard to the requirement of making application within the two year time limit, this effectively means that the claim for refund can be made only for FY 2009-10 on or before 31 March 2012. The claims for refund for FY 2008-09 and earlier years may need to be made independent of the new Circular.
- The procedure for refunds for the period from 1 April 2010 is governed by a specific provision in the ITL (Section 200A) which provides for centralized processing of quarterly TDS statements under a scheme to be made by the CBDT. The refund of excess payment of TDS under this procedure will be granted based on data furnished in the statements, subject to rectification of apparent inconsistencies, without the requirement of a separate claim for refund.

Comments- The long awaited new Circular provides clarity on the procedure for refund of excess TDS and removes ambiguity in respect of refund of TDS from categories of withholding which were not covered in the old Circular. Having regard to the two year time limit, Deductor may need to expedite the process for claiming refund of excess TDS.

Important Due Dates for May, 2011

STATEMENT OF IMPORTANT DUE DATES UNDER VARIOUS LAWS & AS PER BUSINESS NEEDS

DUE DATES	PARTICULARS	PERIOD	Form / Challan Number
1-May-11	Physical Stock Checking - Monthly -Excise	Apr-11	RM/ FG/ SFG/ Mould/ Jobwork
5-May-11	Service Tax - Monthly payment , Electroncially deposit through Internet Banking if assessee has paid a total service tax Rs.10 Lac or more including the amount paid by utilisation of cenvat credit in the preceeding FY i.e. 2010-2011	Apr-11	Challan no. GAR -7
5-May-11	Excise Duty Payment - Monthly (mandatory electronic payment of Excise duty by all the assessees who have paid central excise duty or service tax of Rs. 10 Lakhs or more (including payment by utilisation of Cenvat credit) in the previous financial year}	Apr-11	Challan no. GAR -7
7-May-11	TDS/TCS payment	Apr-11	Challan no. 281
10-May-11	Excise Return - Monthly	Apr-11	ER-1
10-May-11	Monthly - Details of receipt and consumption of principal inputs and finished excisable goods - Declarations under central excise to be filed by a unit paying total duty (Cenvat Credit + Cash) of more than 1 crore	Apr-11	ER-6
11-May-11	ESI Return - Half yearly	**Oct2010- Mar2011**	
15-May-11	PF Deposit - Monthly	Apr-11	PF Challan
15-May-11	TDS Return - Quarterly	Jan2011- Mar2011	Form 24Q/26Q
15-May-11	TCS Return - Quarterly	Jan2011- Mar2011	Form 27EQ
16-May-11	ESI Deposit - Monthly	Apr-11	A1/B
20-May-11	UP VAT - Monthly payment	Apr-11	cl
20-May-11	UP CST Payment - Monthly	Apr-11	Form -1
20-May-11	UP VAT - Monthly Return	Apr-11	Form 24
20-May-11	UP CST - Monthly Return	Apr-11	Form - I
25-May-11	PF Return - Monthly	Apr-11	Form 12 A
30-May-11	Issue of TDS Certificate - Non Salary for Q4 FY 2010-11	April-10- March11	Form 16A Quarterly
31-May-11	Issue of TDS Certificate - Salary for FY 2010-11	April-10- March11	Form 16 Annually
Note:	1) Please note that the details for submission of returns and other details should be submitted at least one week before the specified due dates noted in this chart.		
	2) As VAT is applicable state wise & still in the Instant stage in UP, please confirm the due dates and Form nos. for changes, if any, to avoid confusion.		
	3) In case of PF/ ESI Deposit - 5 days of Grace Period is available		
	4) In case of Due date is on Holiday, then such dues should be deposit 1 days earlier from such date resources.		

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

Disclaimer: *Our views expressed herein are based on the facts and assumptions indicated above. The views cannot be considered as an authorized representation,* *warranty or guarantee that the revenue authorities or the courts will concur with the same. The views are based on the existing provisions of law and its interpretation, which are subject to change from time to time. The views contained may not be used or reproduced in whole or in part or otherwise referred to in any document or delivered to any one without our prior written consent.*

650, Pocket -V, Mayur Vihar, Phase –I, Delhi - 110091

Email:bimaljain@hotmail.com; Mobile: 91-9810604563;