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Important News of the Week

- **Service tax on Renting – Delhi HC Reserves the Judgment – Copy of Rejoinder submitted:**

  Delhi HC Reserves the Judgment in the case related to applicability of of service tax on renting of immovable Property on 20.05.2011 after hearing the submission of by way of rejoinder from Sr. Counsels Mr. Abhishek Manu Singhvi, Mr. S. Ganesh and Mr. PK Sahu, Advocate (a fromer IRS officer).

- **Clarification on applicability of service tax on overseas Trade Fairs/Exhibition under 'Business Exhibition Services':**

  Clarification: *"2. Organizing a business exhibition involves three activities viz. (a) hiring of premises outside India, (b) arranging/coordinating installation of stalls and (c) renting of stalls to Indian Exhibitors. The first two activities are the services received by CII from outside India and third activity is service provided by CII within India.*
  3. The first two activities are services performed entirely outside India and thus will not qualify for taxation as per Taxation of Services (Provided from Outside India & Received in India) Rules, 2006, being Category I and Category II services respectively.

  4. The third activity is service provided by CII to Indian Exhibitors to participate in exhibition held abroad and does not qualify as export as the consideration is not received by CII in convertible foreign currency as provided under Rule 3(2)(b) of the Export of Services Rules, 2005.

  5. As the notification No. 5/2011-ST, dated 1-3-2011 exempting Business Exhibition Service when provided by an organiser of business exhibition for holding a business exhibition outside India has been issued, the scope of this clarification will be limited till 28-2-2011."

- **Exemption from filing IT return for salaried taxpayers with annual income below Rs. 5 lakhs:**

  Salaried taxpayers who do not have other sources of income and whose income are below 5 lakh rupees per annum, are being exempted from filing income tax return. The Finance Minister Mr. Pranab Mukherjee said on Tuesday that this will apply in 2011-12 assessment year for the income earned in 2010-11. He said that a notice to this effect is being brought out soon. The Finance Minister was addressing the 27th Annual Conference of Chief Commissioners and Directors General of Income Tax in New Delhi.

Asking the Central Board of Direct Taxes to be vigilant in suspected money laundering cases, Mr. Mukherjee cautioned that terror activities and other crimes are being funded by anti-national elements through illegal transfers. Mr. Mukherjee disclosed that to check these transfers, government has approved setting up of Directorate of Criminal Investigation in Income Tax Department itself. The Directorate will track the criminal activities before, during and after the crime is committed.

Expressing his keenness on fiscal consolidation, Mr. Mukherjee stressed that fiscal deficit has to be reduced drastically to achieve the goal.

- **Appointment of LLP as Statutory Auditors now permissible -LLP will not be treated as Body Corporate for Limited Purpose**

The Ministry of Corporate Affairs has paved the way for the appointment of LLP, as the Statutory Auditor of the Company.

MCA vide its notification, has notified that LLP, which is a Body Corporate as per the Limited Liability Partnership Act 2008, shall not be treated as Body Corporate, for the purpose of section 226(3)(a) of the Companies Act 1956, in exercise of its powers under 2(7)(c) of the Companies Act 1956.

As section 2(7)(c) of the Companies Act 1956, the Central Government may by notification, notify that a Body Corporate, will not be recognized as Body Corporate for the purpose of the Companies Act 1956.

The text of section is given below:

(7) “body corporate” or “corporation” includes a company incorporated outside India but does not include—

(a) a corporation sole ;

(b) a co-operative society registered under any law relating to co-operative societies ; and

(c) any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification in the Official Gazette, specify in this behalf ;

Section 226 (3) of the Companies Act 1956 provides for the disqualification for appointment of auditor of a company and as per clause (a) of this sub section, a body corporate cannot be appointed as Auditor. The MCA by its aforesaid notification has taken LLP out of the purview of the Body Corporate under this sub section and therefore, LLP can be appointed as the Auditor of the company.

It is to be noted that MCA vide its circular no No 10/2011 dated 04/04/2011 has allowed CA/CS/CWA to practice under LLP in partnership with other fellow members of same institute and in case of CS, also with members of such recognized profession as may be prescribed.

- **International Accounting Standards Board (IASB) wants full IFRS adoption in India:**

(PTI) The International Accounting Standards Board (IASB) has requested the government to adopt the global accounting standards IFRS in toto or at least allow companies to voluntarily do so and not go ahead with the convergence approach. Stating it is in India"s own interest to adopt the International Financial Reporting Standards (IFRS, as India"s problems will soon be the problems of the global community too, IASB Board member Prabhakar Kalavacherla said "we (IASB) strongly encourage adoption as against convergence."
"If this is not possible," he said over the weekend here, "to begin with please give domestic companies the option of full IFRS adoption while keeping the carve-outs. Let the market decide what is correct. In five years, India can revisit the issue and see what should be done."

"Secondly, India needs to get more actively involved in the global standard-setting process (on accounting)."

The London-based IASB is the global accounting body that is spearheading implementation of the new financial reporting standards across the globe. The move for IFRS implementation got a leg-up after the financial meltdown when the G-20 Governments agreed to usher in a more robust and common language for financial reporting for better stability.

In February this year, the government had postponed convergence of Ind AS (the modified Indian version of the IFRS) with the international standards, following lobbying by corporates, and unresolved taxation issues. Earlier, the Government had announced converge from April 1, 2011 in a phased manner. .

- **Commerce Minister to take up DEPB issue with Pranab Mukherjee**

(PTI) Making out a case for extension of the popular incentive scheme – DEPB – for Indian exporters, Commerce Minister Anand Sharma today said he will take up the issue with Finance Minister Pranab Mukherjee on his return to New Delhi. "I am one who is not subscribing to this view that our exports have reached a stage where we can do away with some of the incentives…I am going to discuss DEPB and interest rates with the Finance Minister," Sharma told PTI here.
He said the issue would be taken up with the Finance Minister after his return to New Delhi. Sharma is here in connection with India-Africa Forum Meeting.

With the country"s exports registering an impressive growth of 37.55 per cent in 2010-11, the Finance Ministry is not in favour of any more extensions to the tax rebate scheme – Duty Entitlement Pass Book (DEPB).

The Indian government spends annually about Rs 8,000 crore reimbursing exporters the taxes paid on import content of export products.

The DEPB scheme is due to end on June 30, but exporters are lobbying hard with the Commerce Ministry which is pursuing their case with the Finance Ministry.

India has to look at ways and means to keep the exports high because the share of the country"s shipments in the global merchandise trade is low, he said.

"There has to be a cushion. The cushion can only be by increasing exports. How do we increase exports? How do we make up trade deficits? These are concerns which I will be discussing (with the Finance Minister)," he added.

India"s exports went up by 37.55 per cent year-on-year to USD 245.86 billion during 2010-11.

- **CBDT extends domain of PAN-quoting to many more transactions like Insurance Premium, puchase of bullion and jewellery and also debit and credit cards Vides NOTIFICATION NO. 27/2011, Dated: May 26, 2011.**

- **Govt to soon finalise Rs 40000 crore disinvestment roadmap:**

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The government will soon finalise the roadmap to raise a whopping Rs 40,000 crore through disinvestment during the current fiscal. It will include sale of equity in blue chip companies like SAIL and ONGC. “Cabinet has so far given approval for the disinvestment of four state-run firms – PFC , SAIL, ONGC and HCL . We are in talks with various ministries and working on a roadmap that should be finalised by June-end,” Department of Disinvestment additional secretary Siddharth Pradhan told PTI.
Exuding confidence that DoD would be able to achieve the Rs 40,000 crore target for the current fiscal, he said by way of share sales of the identified four PSUs through follow -on offers, a little over Rs 15,000 crore was expected to be garnered.

The government has already raised Rs 1,162 crore by divesting five per cent stake in Power Finance Corporation in May. The follow-on public offer of SAIL is likely to hit the market next month and ONGC in July. Share sale programme of Hindustan Copper (HCL) is yet to take a concrete shape.

When asked about the potential PSUs that could hit the market this fiscal, Pradhan while refusing to divulge details, maintained that his department was in touch with Steel, Mines, Heavy Industries and Petroleum & Natural Gas Ministries for identifying the companies.

The government, according to sources, have already identified RINL, MMTC and NBCC for stake sale and would be required to add more companies to the list to achieve Rs 40,000 crore target during 2011-12.

The government had proposed a disinvestment target of Rs 95,000 crore from sale of shares in public sector companies over the next three fiscals, including Rs 40,000 crore in the current fiscal.

Against the same Rs 40,000 crore target set for the last fiscal, the government is estimated to have raised only Rs 22,400 crore by way of disinvestment in PSU companies. The gap could have been bridged a little more had the movement of the market not been topsy-turvy towards the end of the last fiscal.

Important Judicial Pronouncements of the Week

- **C Form Cannot Be Refused To be Issued On Arrears of Tax [2011] 40 Vs 249 (Mad) in the matter Sri Rajeswari Agencies V. Additional Deputy Commercial Tax Officer II, Puducherry, K. Venkatraman J. May 6, 2010.**

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- Sales Tax – Declaration Forms – Arrears Of Tax – C Form Cannot Be Refused To Be Issued On Ground Of Arrears Of Tax – Central Sales Tax Act (74 Of 1956), S. 9(2) – Central Sales Tax (Registration And Turnover) Rules, 1957, Form C.

  Writs Under Constitution – Show – Cause Notice Alleging Arrears Of Tax And Proposing To Refuse Issuance Of Statutory Forms – With-Out Jurisdiction – Petition Challenging Notice – Maintainable – Constitution Of India, Art 226 – Central Sales Tax Act (74 Of 1956), S. 9(2).

- **CCE, Bangalore Vs M/s Stella Rubber Works (2011-TIOL-325-HC-KAR-CX)**

  - **Issue:** Whether Adjustment from the refund amount Under Section 11 of Central Excise Act provides for adjustment of the amount due to the Revenue.

  - **Held:** Central Excise - Recovery of dues - Adjustment from the refund amount - Section 11 of Central Excise Act - Section 11 does not provide for adjustment of monies due to the assessee towards the amount due to the revenue. Appeal dismissed.

- **Bimal Kumar Mehra Vs CC, Mumbai (2011-TIOL-641-CESTAT-MUM)**

  - **Issue:** Whether Objection on Jurisdiction should be raised at the earliest stage of quasi-judicial proceedings.

  - **Held:** Customs – Yes, Objection on Jurisdiction should be raised at the earliest stage: A jurisdictional objection should be raised at the earliest stage of quasi-judicial proceedings. The appellant could have raised the objection in his replies to the show-cause notices. He has not chosen to raise it even in the present appeals. Such an objection raised by the counsel for the appellant, at this late stage, is only liable to be over-ruled.

    Person filing the Bill of Entry is the Importer - "Importer" as defined under Section 2 (26) of the Customs Act includes any owner or any person holding himself out to be the importer. In the present case, the appellant, by filing the Bills of Entry, held himself out to be the importer of the goods and, therefore, he is the importer for purposes of Section 28 of the Customs Act. Where the taxable event is "import", the tax has to be paid by the importer. Therefore, the importer is the person chargeable with the duty on the goods imported and presented under the Bill of Entry.

- **CRI Pumps Pvt. Ltd Vs CCE, Coimbatore (2011-TIOL-633-CESTAT-MAD)**

  - **Issue:** Whether CENVAT credit is admissible on research and development equipment even though it was not used for manufacturing or processing of goods in relation to the final product.

  - **Held:** Central Excise - CENVAT - Samples - Capital goods - Electric motors and pumps etc. received into factory are dismantled to find out the technology used. There is no dispute that the goods fall under Chapter 84 & 85 and were used in the factory of the assessee who manufactures the final products. CENVAT credit is admissible on research and development equipment even though it was not used for manufacturing or processing of goods in relation to the final product - Appeal allowed.

- **Kundan Castings Vs CCE, Kanpur (2011-TIOL-626-CESTAT-DEL)**

  - **Issue:** Whether Service tax applicable on portion of Commission payable to Sub-Contractor if Main Contractor has discharged the full service tax liability including portion payable to Sub-Contractor.

  - **Held: -** Commission received by sub-broker - Demand - Stay / Dispensation of pre-deposit - The main contractor has discharged service tax liability on the commission received from mutual fund companies and then passed on some portion of his share of commission received to the sub-broker. Assessee claims that service tax is not liable to be paid by the sub-broker as Finance Act does not provide for double taxation of the services. Prima facie case made out. Stay granted along with waiver of pre-deposit of demand and penalties.

Important Digests of the Week

- **Tax reforms – GST around the corner, state Govts should cooperate, not play politics:**

  Next month, state finance ministers will formally name a new head of the empowered committee (EC) to forge a consensus among states on the goods and services tax (GST) system. Hectic back-room negotiations have already begun on a possible candidate, acceptable both to the Centre and the states. The front runners are BJP's Sushil Modi , deputy chief minister and finance minister of Bihar and Amit Mitra, West Bengal's new finance minister from the Trinamool

Congress. Amit Mitra, a reformer with impressive academic achievements, would automatically be at the helm if the post has to be retained by the finance minister of West Bengal.

His predecessor Asim Dasgupta who successfully steered the panel for years, stepped down after his defeat in the recent assembly polls. But there is no such rule. Besides, Mitra has his plate full, given the messy state of West Bengal's finances. It may, therefore, be a politically astute move to appoint Sushil Modi, who played a key role in ensuring the party's success in Bihar's assembly polls in 2010 as the next chairman of the EC, for two reasons. One, his own party has raised fresh hurdles in the path of rolling out GST. Modi, a moderate face of the BJP, would have to take the reform agenda forward if he is at the helm.

Two, the Centre would also find it easier to keep the dialogue on with the BJP to build a consensus on implementing GST. This is precisely what happened after Asim Dasgupta was appointed chairman of the EC. Former BJP finance minister Yashwant Sinha, in a politically shrewd move, prevailed upon him to steer the EC on VAT. Dasgupta brought credibility to the exercise with his administrative experience, academic authority, and political non-partisanship and guaranteed defence of the rights of states. The spin-offs were evident, with state finances showing a marked improvement between 2005 and 2008.

Major gainers included Andhra Pradesh, Kerala and Tamil Nadu. However, the economic slowdown, following the global financial crisis and moderation in the pace of revenue growth impacted state finances in 2008-09 and 2009-10. VAT revenues are expected to turn buoyant again, with the economy out of the woods. A dual GST, comprising a central GST and a state GST, will raise revenue buoyancy and compliance as the tax system will be simplified even further. Most indirect tax levies will be subsumed in GST. So, the effective rates of taxes on most goods will be lower, enhancing the competitiveness of Indian industry.

Nevertheless, the government has missed several deadlines on its commitment to introduce GST. It has now done well to introduce the Constitution Amendment Bill in Parliament. The next step is to ensure that the parliamentary standing committee, chaired by former finance minister Yashwant Sinha, clears the Bill. Two amendments in the Constitution are a prerequisite to implementing a dual GST. These include new powers for the Centre to tax goods up to the retail stage and for the states to tax services.

- **New Initiatives of Ministry of Corporate Affairs for Corporate Governance:**

In order to save trees and environment by cutting down the consumption of costly paper habits, the Ministry of Corporate Affairs has taken a “Green Initiative in the Corporate Governance” by allowing paperless compliances by the companies under the provisions of the Companies Act, 1956. Giving details of the initiatives to the media persons here today Shri Avinash Kumar Shrivastav, Joint Secretary in the Ministry of Corporate Affairs expressed the hope that these initiatives will save the time as well as the environment for a better future. Some of the important initiatives are as under:

- **Allowing service of Documents including Balance Sheets and Auditors report etc., through e-mail addresses :**

  In order to reduce cost of posting and speedy delivery of documents, service of documents through electronic mode has been permitted under section 53 of the Companies Act, 1956 in place of service of document under certificate of posting.

  Similarly, to reduce the consumption of papers and speedy secure delivery, service of copies of Balance Sheets and Auditors Report etc., to the members of the company as required under section 219 of the Companies Act, 1956 has been allowed to be served through electronic mode by capturing their e-mail addresses available with the depositories or by obtaining directly from the shareholders.

- **Participation by Directors and shareholders in meetings through video conferencing :**

  To provide larger participation and for curbing the cost borne by the Company, Directors, and shareholders to attend various meetings under the provisions of the Companies Act, 1956, participation through video conferencing has been permitted subject to certain compliances.

- **Voting in General Meeting of Companies through electronic mode :**

  In order to have secured electronic platform for capturing accurate electronic processes, Central Depository Services (India) Ltd (CDSL) and National Securities Depositories Limited (NSDL) are being given approval by the Ministry of Corporate Affairs to provide their electronic platform for capturing accurate electronic voting in General meetings of the company.

- **Issue of Digital Certificates by Registrar of Companies:**

The Registrar of Companies has to issue a number of certificates to the companies and other stakeholders as required under the provisions of the Companies Act, 1956. In order to cut timelines and an another step towards “Green Initiative” it has been decided that all certificates and standard letters issued by the Registrar of Companies will now be issued electronically under the Digital Signatures of the Registrar of Companies.

- **Improvements in process in MCA21 to help stakeholders / Corporates:**

  - **Introduction of Refund Process:**

Earlier there was no process in MCA21 for refund of fees wrongly paid by the stakeholder while availing various services at MCA 21. Now the Ministry has introduced process of refund of statutory fees paid for certain services.

The refund of MCA21 fees is available in the following cases:

a) Multiple Payments; b) Incorrect Payments & c) Excess Payment

Refund process is not applicable for certain services/ eForms like Public Inspection of documents, Request for Certified Copies, Payment for transfer deeds, Stamp duty fee (D series SRN), IEPF Payment, STP Forms, DIN eForm, etc.

The refund form is to be filed within the stipulated time period. Also, there shall be deduction in the amount to be refunded based on time period within which refund eForm is filed. The following is the time slab for filing refund form and the corresponding deduction in refund amount:

Time within which refund application is made	Default value for deduction
0-90 days	2.5%
91-180 days	5%
181- 270 days	7.5%
271-365 days	10%
>365 day	25%

Filing of refund form shall not be allowed after expiry of 1095 days of filing of the original request. For all earlier cases, (i.e. cases filed before introduction of refund process), the time limit shall be considered from the date on which the refund process is introduced i.e. from 01/05/2011.

- **Removal of Prioritizing by MCA officers:**

  Earlier while processing a eForms by the MCA, there was a facility available to officers to mark a work item as urgent to bypass the First in First Out (FIFO) processing. However, in order to bring in more transparency, this functionality has been stopped. The work items will be processed in the order of their filings only.

- **Automatic approval for Form 2, Form 3 regarding return of allotment of shares, Form 18** for change of registered office and for 32 for change in directors details to be processed under STP mode (Straight through processing)

  (a) Form 2 and Form 3 have been made as STP (Straight Through Process) form and are not required to be processed by RoC.

  (b) Form 18 filed for existing company for change in registered office where there is no change in State or RoC has been made as STP form and is not required to be processed by RoC user.

  (c) Similarly Form 32 filed by an existing company for change in directors has also been made as a STP form.

  Now the form is process and taken on record without intervention of ROC it will save time for approving the form and immediately available for public inspection.

- **Mandating stamping for the state of Jammu and Kashmir:**

  With effect from 1st May, 2011, facility has been introduced to pay stamp duty fee of eForm 1, AOA, MOA and Form 44 for the state of Jammu and Kashmir mandatorily in electronic manner through MCA21 system. Now 30 States and UTs are covered by estamps leaving only 2 States and 2 UTs (Nagaland, Goa, UTs Daman & Diu and Dadar & Nagar Heveli.

- **Delegation of power to issue section 25 license to a company from RD to RoC:**

Presently, any company seeking approval for issue of license u/s 25, makes an application to regional director in eForm 24A. The application is processed and approval/ rejection order is passed by the concerned regional director.

Now the power to issue license under section 25 companies has been delegated to Registrar of Companies by amendment in the relevant notification. In view of this, all applications for issue of license u/s 25 in e Form 24A shall be henceforth processed by the concerned office of Registrar of Companies. It will reduce the time taken in incorporation of section 25 companies (Companies not for profit).

- **Changes w.r.t filing of Form 8, Form 10 and Form 17 for Dormant companies:**

  The companies which had defaulted in filing their annual returns and balance sheets for a continuous period of three years have been moved into a separate basket as “Dormant “companies.

  Forms 8, 10 (for registration of charges) are not allowed to be filed by a dormant company. However the same have been allowed in case of charge modification in favor of ARC or assignee under SARFASI Act.

  Similarly, Form 17 for satisfaction of charges is also allowed to be filed by Dormant Company.

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

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