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Important News of the Week

- **Not to give effect to notification taxing representation services by CS, CWA ,CA – Delhi HC:**

  The Department of Revenue, Ministry of Finance vide notification no. 25/2006 dated 13 July 2006 had exempted the professionals ,viz., CS, CWA ,CA from taxable services provided by them in their professional capacity to a client relating to representation services before any statutory authority in the course of proceedings initiated under any law for the time being in force. Accordingly, PCS were exempted not to charge service tax on representation services before RoC, RD, CLB, MCA, etc. The Department of Revenue, Ministry of Finance, vide notification no. 32/2011 dated 25 April 2011 effective from 01st May 2011, rescinded the earlier notification no. 25/2006 dated 13 July 2006.

  A Writ Petition (CWP No. 4062 of 2011) was filed by Ms. Ashu Gupta, a PCS against (i) The Union of India (ii) The Central Board of Excise and Customs and (iii) The Chief Commissioner, Service Tax in the Hon'ble Delhi High Court challenging the validity of above notification No. 32/2011 dated 25th April 2011.

  The Writ Petition came up for hearing on 2nd June, 2011 before a Division Bench of the Hon'ble Delhi High Court (Court No. 1 headed by Hon'ble Chief Justice of Delhi High Court). Shri Vinay Bhasin, Sr. Advocate and Shri P K Mittal, Advocate appeared on behalf of the Petitioner Ms. Ashu Gupta. Mr. Mukesh Anand, Advocate appeared for the Respondents.

  The Hon'ble Division Bench of the Delhi High Court heard the learned Counsels on behalf of the Petitioner and the Respondents and directed that the Respondents shall not give effect to the Notification No. 32/2011 dated 25th April 2011 till the next date of hearing. The case has now been adjourned to 6th September, 2011.

- **Political battles on graft issue may derail GST:**

  The political differences over corruption and unaccounted money appears set to derail implementation of the much-discussed Goods and Services Tax (GST), formally scheduled to take final shape by April next year. A senior finance ministry official told that unlike value-added tax (VAT), implementation of GST demanded full support from all states at the time of its coming into force, something difficult task for the Centre to achieve in the current scenario.

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He noted that legislation for the levy of GST can be introduced only after enacting the Constitutional amendment in this regard, introduced in Parliament on March 23, 2011. The Bill needs to be passed by a two-third majority in both Houses of Parliament and subsequent ratification by at least half of all state legislatures. Subsequently, the GST Bills would need to be passed by a simple majority.

Levy of the tax can commence only after the GST law has been enacted by the respective legislatures. Unlike state VAT, the date of commencement of this levy would have to be synchronized across Centre and states. The integrated GST (IGST) model cannot function effectively otherwise. The Constitution envisages transfer of resources from the Centre to the states through the devolution of tax revenues based on a formula recommended by the Finance Commission from time to time. While this scheme would remain largely unaltered under GST, new provisions would be necessary for the periodic settlement of accounts between the Centre and the states to enable pass-through of input tax credit in transactions involving inter-state supply of goods or services.

In the new tax regime, it is the Centre that would levy and collect IGST. Since IGST paid by an exporting dealer would be collected by the central government, the Centre would subsequently pay an equivalent amount to the state concerned. The account settlement for IGST would require recovery of sums from net-exporting states and transfer of sums to net-importing states.

While the detailed scheme for the settlement of accounts in this manner would be contained in the IGST law, there needs to be an enabling provision in the Constitution to support it and allow funds to flow in both directions.

The finance ministry official said the whole process could be completed successfully only if there was political consensus on the issue.

- **Excise Rules for tobacco packaging set to change:**

The excise duty rules for tobacco packaging and manufacturing is set to change following the ban on the use of plastic, as packaging material for gutka, pan masala and chewing tobacco.

Besides, the government will also levy service tax on processing of tobacco and raw cashew under a law that says processing agricultural produce for or on behalf of the client is equivalent to the sale of agricultural produce.

Till now, the amount of excise duty to be levied on tobacco packaging and manufacturing was left to the discretionary powers of officials. Official sources said, the excise duty norms for manufacturing tobacco-based products were based on the number of packaging machines and the output capacity.

"Usually tax was calculated based on the number of pan masala packaging machines installed in the factory, average speed of the machines and the capacity to churn out the number of packets. It is difficult to monitor the number of packets leaving the premises and to avoid fudging, tax was calculated on the basis of machines installed," said an official.

Now, with the ban on recycled plastic packets for tobacco and tobacco packaging, the industry is moving towards paper packaging and the excise duty calculations need to be changed accordingly. Officials said new rules will be framed once data is collected on the use of paper packaging for tobacco products. However, a section of manufacturers continues to pack tobacco products in plastic wraps. The department has also asked its field officers to collect data on factories that are flouting the rules.

The government had on February 4 notified the Plastic Management and Disposal Rules 2009 in order to regulate the use of plastic for packaging gutka and other tobacco products. The move was followed by a Supreme Court order that refused to grant more time to the Centre for implementing the law to regulate the use of plastic for packaging tobacco products.

The Plastic Waste (Management and Handling) Rules, 2011, also ban the packaging of food items in recycled plastic. The new rules state that plastic carry bags should be of a minimum thickness of 40 microns, from the previous 20 microns. The new notification replaces the earlier Recycled Plastics Manufacture and Usage Rules, 1999, with immediate effect.

- **Documents / records which are not relied upon in the Show Cause Notice are required to be returned Vides Board's D.O. LETTER F. No. 207/09/2006-CX.6 dated 08.09.2006 from Member (CX & ST), CBEC, New Delhi**

It has been brought to the notice of the Board that the records seized in connection with offence cases are not being returned to the assessees in spite of repeated requests made by them. This not only causes undue hardship to the assessees, as they require such records for various statutory obligations, but it also unnecessarily occupies space in our offices.

In this regard, attention is invited to the Board's Circular No. 42/88-CX, dated 24.05.1988 and No. 48/88-CX.6 dated 10.06.1988. As per these circulars, the documents / records which are not relied upon in the Show Cause Notice are required to be returned under proper receipt to the persons from whom they are seized. We wish to reiterate compliance of these instructions. In fact, the Show Cause Notice itself may incorporate a clause that unrelied upon records may be collected by the concerned persons within 30 days of receipt of the Show Cause Notice. The designation and address of the officer responsible for returning the relied upon records should also be mentioned in the Show Cause Notice.

- **Service Tax - India in IATA's Wall of Shame - killing goose laying golden eggs!:**

THE International Air Transport Association (IATA), has placed India on its "Wall of Shame", for its excessive Service Tax. IATA's Director-General and CEO, Giovannio Bisignani in his address to the 67th Annual General Meeting in Singapore, said, "Taxing aviation does not pay. The Dutch repealed a USD 412 million departure tax because it cost the economy USD 1.6 billion. And the Irish plan to cancel their USD 165 million Travel Tax because it cost USD 594 million and 3,000 jobs. The lesson for governments is simple: don't kill the goose that lays golden eggs."

"Aviation fuels global trade that is stimulating economies and restoring government budgets. Tax the bankers. They created the mess. Their billions in bonuses should help to clean it up," he added. The DG usually embarrasses governments with facts and figures and has perfected the 'art of shouting politely', though he calls the 'WALL' a hit parade of 'government tax bandits'.

- **Small industry body wants DEPB scheme extended:**

The Chamber of Small Industry Associations (COSIA) has requested the Centre to extend the the Duty Entitled Pass Book (DEPB), a tax refund scheme for exporters, by another three years. The renewal of the DEPB was absolutely essential to meet the export target, M R Khambete, President of the city-headquartered COSIA, said in a release here.The demand has been forwarded to the Centre, he said.

The scheme, under which exporters get refund of duties on import content of their export products, ends this month and the Government has indicated that it will be withdrawn. Amongst other incentives, DEPB scheme is most beneficial to boost exports, Khambete said. "The proposed withdrawal is a matter of concern for exporters, particularly those in the Micro, Small and Medium Enterprises (MSMEs)."The Government has fixed an export target of USD 500 billion within the next three years. Continuation of the scheme, at least for the next three years, will help achieve the ambitious target, he added.

- **Govt. to declare tax offences criminal if the source of income is illegal:**

Amid reports that the government is planning to make tax evasion a criminal offence, a finance ministry official today said it could be done only if the source of income is illegal. But "if it is a tax evasion alone, it is a civil offence," the official said. He, however, asserted that "if there is an element of illegality about the source of income or if funds are used for illegal purpose…we can think of classifying these as criminal tax offences". The Government has set up a committee, headed by Central Board of Direct Taxes (CBDT) Chairman Prakash Chandra, to examine ways to strengthen laws to curb generation of unaccounted money in India, its illegal transfer abroad and its recovery. Harsher punishments, the official said, could substantially check tax evasion. "We can tighten laws to permit harsher punishment to those who are involved in such criminal tax offences," the official added.

In its first meeting held yesterday, it was decided that public comments should be sought to strengthen the laws to unearth the unaccounted wealth. The Income Tax Department had recently set up the Directorate of Criminal Investigation (DCI) to deal with tax crimes related to illegal activities.

- **Ashok Chawla to be next CCI Chairman:**

Ministry of Corporate Affairs has proposed the name of former Finance Secretary Ashok Chawla as the next Chairman of the anti-trust watchdog Competition Commission of India (CCI). The Ministry of Corporate Affairs has sent Chawla's name for ACC (Appointments Committee of Cabinet) approval, a top source in the ministry told PTI. Chawla retired as Finance Secretary on January 31 and was heading a committee on allocation, pricing and utilisation of natural resources till recently. The term of incumbent Chairman Dhanendra Kumar ended on June 5.

Other shortlisted candidates included Anurag Goel, a member in the Commission and Vijay Sharma, former secretary in the environment and forests ministry. They were among the three names shortlisted from a total of 65 persons for the post. The CCI chairman post is considered coveted as henceforth all high-value merger and acquisition deals will come under the purview of the commission. CCI was established in 2003 to replace the erstwhile Monopolies and Restrictive Trade Practices Commission and Kumar was appointed as its first chairman in February, 2009.

- **Extra efforts would be required to achieve tax targets – FM:**

Union Finance Minister Pranab Mukherjee has said sustained efforts would be needed to achieve indirect tax collection target of Rs. 3.92 lakh crore, about 15% more than the last fiscal. The Minister, while addressing the annual conference of chief commissioners and directors general of CBEC in New Delhi on last Wednesday, also called upon the tax officials to work towards reducing the tax litigations.

Noting that doubts were being raised over growth projection of 9 percent for the current fiscal, Mukherjee said, it would be possible to achieve a growth rate of 8.75 percent (plus-minus 0.25 percent) with "hard work". To realize indirect tax collection of Rs. 3.92 lakh crore in 2011-12, the Minister said, "You (tax officials) would need a growth of nearly 15 per cent. The task before you is very challenging and will require sustained and strategic efforts throughout the (this) financial year".

On taxes locked in litigations, Mukherjee said it currently stood at around Rs. 35,000 crore as against a little over Rs. 9,000 in March 2005. "This in an area of serious concern. You must, therefore, jointly devise a strategy for realization and liquidation of at least 50 per cent of this locked up revenue during the current fiscal. This would also provide the necessary fillip to your efforts in attaining the budget revenue targets for 2011-12," he said. Expressing concern over increasing number of "avoidable litigation with taxpayers", Mukherjee said this did not signify a healthy trend and was a pointer to serious administrative issues. "This also requires introspection about routine filing of appeals," the minister said.In the last five years, the number of appeals filed by the Department and pendency before the Supreme Court has grown by close to 25 percent.

While such appeals before the High Court grew by over 65 percent, it went up by 49 percent in Customs, Excise and Service Tax Appellate Tribunal (CESTAT) and 58 percent before Commissioner (Appeals).Mukherjee further said that to meet the expectations of taxpayers, the Government has decided to set up seven 'Indirect Tax Ombudsman'. They will be located at Delhi, Mumbai, Chennai, Kolkata, Bengaluru, Ahmedabad and Lucknow. "Using this establishment, CBEC can move for faster disposal of grievances leading to higher satisfaction level amongst the taxpayers," he said.

He asked the CBEC officials to continue their preparations for the roll out of proposed Goods and Service Tax (GST). The Government had introduced a Constitutional Amendment Bill in the last Budget session and matter was referred to a Parliamentary Standing Committee for deliberations with the stakeholders. "This process will take a little time….I would advise you that there must not be any let up in your preparatory work for GST," he said. After missing the original April, 2010 deadline for GST roll out, the government had proposed to introduce it in April, 2011.

- **Ministry of Environment and Forest (MoEF) first time notifies e-waste management Rules Vides NOTIFICATION dated. 12th May, 2011 (Pls read for details in Digests column of this Newsletter):**

- **Know your Provident Fund (PF) account details online from 1st July, 2011:**

The Employees Provident Fund Organization (EPFO) on Wednesday said account details would be available online from July 1. You can watch the account balance of your PF online from July 1," Assistant PF Commissioner Kanchan Roy said at an interactive session at Bengal National Chamber of Commerce and Industry.

This indeed would be a great help to about 5 crore PF subscribers in India, he said. EPFO plans to replace PF account number with unique identification number, a move which will help in speedy transfer of a subscribers' funds in case of job change and allow them to track their accounts online. The replacement of PF account number with the UID number will be done after inter-connecting all regional and sub offices of the EPFO by March, 2012.

- **MCA's instruction on settlement of prosecutions cases Vides F.No.3/57/2011-CL.II Dated 03.06.2011.**

Important Judicial Pronouncements of the Week

- **CCE, Nagpur Vs M/s Ispat Industries Ltd (2011-TIOL-689-CESTAT-MUM)**

- **Issue:** Whether variation within tolerance limits as prescribed under SWAM Act and Variation in weight of material shown on invoice and on physical verification can be ignored.

- **Held:** Variation in weight of material shown on invoice and on physical verification - variation within tolerance limits as prescribed under SWAM Act and can be ignored - Unless the invoices are found to be wrong or diversion of inputs received under invoice is proved, there is no provision to deny CENVAT credit - there is also nothing on record to prove that respondent actually recovered any "proportionate amount" by way of deduction from transporter's bill on account of loss of material by theft - Revenue appeal dismissed.

• **M/s Karvy Consultants Ltd Vs CCE, Hyderabad (2011-TIOL-690-CESTAT-BANG)**

- **Issue:** Demand of Service tax when audit objection is dropped but confirmed later by Commissionerate.

- **Held:** Service Tax - Courier Service - Audit Drops Objection, but demand confirmed - Strong Prima Facie case - Pre-Deposit waived: On the Commissionerate explaining that service tax was not chargeable on the said amount, the audit department had dropped the objection raised. Appellant submits that in view of the correct legal stand taken by the Commissioner in respect of sister concern, the demand on same charges confirmed for the same activity by the appellant is not sustainable. Strong Prima facie case: Stay Application partly allowed

• **CCE, Tirunelveli Vs M/s PSA Sical Terminal Ltd (2011-TIOL-691-CESTAT-MAD)**

- **Issue:** Whether Remand by Commissioner (Appeals) consequent to amendment of Section 35A (3) w.e.f. 11.05.01 is permissible?

- **Held:** Service Tax - CENVAT Credit - Remand by Commissioner (Appeals) - It is settled legal position that consequent to amendment of Section 35A (3) w.e.f. 11.05.01, Commissioner (A) has no powers of remand - Matter remanded to original authority.

• **M/s Reshmi Industries India Pvt Ltd Vs CCE, Coimbatore (2011-TIOL-696-CESTAT-MAD)**

- **Issue:** Whether Penalty leviable on wrongly availing Cenvat credit on Value on which income tax depreciation availed by the assessee and Cenvat credit reversed voluntarily on pointing out the same?

- **Held:** Central Excise - CENVAT - Income Tax depreciation - Reversed Credit voluntarily - Penalty - Assessees have voluntarily reversed the credit availed when it was pointed out that simultaneous benefit of CENVAT credit and income tax depreciation were not permissible under the Central Excise law. No malafide intention to suppress any facts with intent to evade payment of duty. Penalty set aside.

Important Digests of the Week

- **FM cautions CBEC officers against any let up in preparation for GST:**

  THE Union Finance Minister, Mr. Pranab Mukherjee, while addressing the Chief Commissioners and DGs of Customs and Central Excise, today, advised the officers that there must not be any let up in their preparatory work for GST. He said that for projects related to Goods and Service tax, a National Information Utility for CBEC has been approved by the Government on the recommendation of TAGUP, a Committee headed by Mr. Nandan Nilekani.

  He has urged the officers to make sustained and strategic efforts throughout the year for the realization of the challenging revenue target of Rs. 3,92, 908 crore for indirect taxes for 2011-12.

  Mr Mukherjee said that in the Budget proposals for 2011-12, he had outlined a significant legislative agenda for the financial sector. He said that a Financial Sector Legislative Reforms Commission (FSLRC) has been already set-up. The Finance Minister said that the RBI is in the process of issuing additional banking licences to private sector players. Discussions are underway to further liberalize the FDI policy. Major steps are being taken to simplify and place the administrative procedures concerning taxation, trade and tariff and social transfers on electronic interface, free of discretion and bureaucratic delays, the Minister added.

  The FM said that in a globalised economy, the expectations of taxpayers from Department are rising exponentially which has led to increase in taxpayers' grievances across the country. To address this issue, the Government has decided to set up seven Indirect Tax Ombudsman, the Minister added. They will be located at Delhi, Mumbai, Chennai, Kolkata, Bengaluru, Ahmedabad and Lucknow. Using this establishment, CBEC can move for faster disposal of grievances leading to higher satisfaction level amongst the taxpayers, he said.

Mr Mukherjee expressed concern over avoidable litigation with taxpayers which has been continuously growing over the years. He said that this is not a healthy trend and requires introspection especially about routine filing of appeals. He said that a Committee was appointed, which recommended monetary limits for filing of appeals before the various appellate forums. These recommendations have been accepted and it is likely to reduce future litigation with taxpayers by around 20-25 per cent.

The FM asked the CBEC officers to make an honest Endeavour to address the problems faced by their stakeholders in the quickest possible time. He said that they should strive to have all their formations Sevottam by 2014. He noted that the CBEC has undertaken a series of initiatives in the last two years towards e-Governance. He said that the IT initiatives should be taken forward by adopting innovating practices.

- **Registration of companies in 24 hours from first week of July, 2011:**

From Next month, you can register a company in India in 24 hours! The Union ministry of corporate affairs has set the first week of July as the target date for launching a completely digitized service that will allow anyone with all relevant documents and approvals to complete the process of registering a company in one day. Offices of the Registrar of Companies (ROC) are busy putting in place the new system and an announcement of the launch of the new service is likely by the end of June.

Currently, the process of registering a new company takes anywhere between 10 days and a month. Registration of a new company within 24 hours is only one of the many new initiatives the ministry of corporate affairs has planned for the next few months. It has decided to streamline the functioning of its oversight mechanism. At present, there are over 75,000 cases languishing in different courts that the ministry has to deal with. Most of these cases pertain to non-compliance of procedures by companies that have ceased to operate. The ministry has decided that it would wind up such insignificant cases through close monitoring and follow-up action in the next few months.

The target is to bring down the number of cases pertaining to violation of provisions under the Companies Act to a more manageable figure of 5,000. Ministry officials said it would be possible to close all the frivolous and inconsequential cases that wasted the government's time, money and energy and focus only on the substantive cases where serious violation of the Companies Act had taken place. The objective was not to spread the ministry's resources thin, but concentrate on the few cases that needed greater monitoring.

Already, the ministry has taken a firm stance on companies that continue filing various returns and documents even without filing the annual reports, including the balance sheet. Companies that have not filed the last year's annual report, including the balance sheet, would now be unable to file any other reports electronically. Several companies delay filing their annual reports in violation of the procedures under the Act. This move would ensure greater compliance in a key area of corporate governance, the officials said.

Ever since its launch a few years ago, MCA-21, a website service run by the ministry, has been offering a slew of services to companies for electronic filing of returns or registration of digital signature. Researchers also find MCA-21 hugely useful for the information on companies that are now accessible on payment of fees. The new moves, initiated by the ministry, will make compliance of corporate laws more transparent and easy, the officials said.

- **<u>COMPLIANCE OF PROVISIONS OF COMPANIES ACT AND RULES THERETO:</u>**

  - **All Stocks, debentures etc, to be in DMAT form only - Suggestions invited Vides MCA No. 17/143/2011-CL.V, Dated: June 06, 2011:**

    MCA is proposing to issue the Companies (Dematerialization of Certificates) Rules, 2011 with effect from 1st October 2011 stipulating that:

    All public Companies and their subsidiaries which have raised money by issue of shares, debentures, by accepting public deposits, stock, bond or any other financial instruments from public, other than from directors of the company, shall issue and keep such share certificates, debenture certificates and certificates issued for receipt of deposits, stock, bond or any other financial instruments in dematerialized form only, in the manner prescribed in the Depositories Act, 1996 and regulation made there under.

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The Ministry has invited comments / recommendations to the Ministry latest by 30th June, 2011 by e-mail to monika.gupta@mca.gov.in.

MCA - Settlement of prosecutions cases

- **MINISTRY of Corporate Affairs (MCA) has decided to review pending prosecution cases by holding Lok Adalats Vides MCA CIRCULAR [F.NO.3/57/2011-CL.II], Dated: June 3, 2011**

  Lok Adalats are to be organized on 9th, 16th, 23rd & 30th June in the offices of concerned ROCs between 10.00 AM to 1.00 PM by giving an advance advertisement in the local Newspapers. The chapters of ICSI, ICWAI, ICAI and Bar Council are to be used for wide publicity and efforts are to be made to dispose of compoundable offences there itself. In next month, two Lok Adalats will be held by each RD per month. These would be held on Saturdays.

  The object of organizing Lok Adalats should be to ascertain the legal cases where the companies and their officers in default are inclined to get the offences compounded so that necessary applications may be moved by the companies for this purpose and on payment of compoundable fees, the prosecutions may be withdrawn.

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

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