Bimal Jain

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

Important News of the Week

- **Soon you will be able to Check your balance in EPF account online:**

  The first ever review meeting of the Regional Provident Fund Commissioner was held here today under the chairmanship of Shri Mallikarjun Kharge, Union Minister of Labour and Employment. Total 120 officers from regional and sub regional offices attended the meeting to review the progress in improving the service delivery to the employee provident fund members. Speaking on the occasion the Minister said 4.72 crore accounts up to 2008-09 are likely to be updated online by 15.7.2011 to ensure more transparency. He said that the Provident Fund Organisation has been directed to update all accounts by December 2011 and expressed the hope that this will be done as per schedule as this will be one of the major achievements since nearly 14 crore accounts were pending for updation on 1.4.2011 i.e. the beginning of the new financial year. He expressed his happiness that EPFO will now put the account balances of members on website so that any member can check his balances up to the year his account are updated. Considering this as a big achievement he added that most of the members grievances will be resolved once they are able to access their accounts through website.

- **Deemed exports - Govt. seeks stakeholders' views on review of policy:**

  The Government has invited comments and suggestions from stakeholders on the review of the ‘deemed export' policy by June 28. The move is to prevent any misuse of the policy, especially after such reports emerged about the power sector. ‘Deemed exports' are transactions where goods supplied by main/sub-contractors do not leave the country and payment for such supplies is received either in Indian rupees or in free foreign exchange. The rider is that goods should be manufactured in the country. Under the Foreign Trade Policy, transactions regarded as ‘deemed exports' include supply of goods to export-oriented units, software/hardware technology parks, projects financed by multilateral or bilateral agencies, as well as to power projects and refineries. The benefits of deemed exports include advance authorization, deemed export drawback and exemption/refund from terminal excise duty.

  An inter-departmental committee under the Chairmanship of Dr Anup K. Pujari, the Director-General of Foreign Trade, constituted to review the policy, has sought the views of the stakeholders by June 28 in person or by e-mail to vkgupta99@nic.in and lb.singhal@nic.in. This was decided during the Committee's meeting earlier this month.

- **A Committee constituted to examine Ways to strengthen laws to curb generation of black-money in India, its illegal transfer abroad and its recovery:**

  It has been decided with the approval of competent authority to constitute a Committee to examine ways to strengthen laws to curb the generation of black-money in India, its illegal transfer abroad and its recovery. The Committee shall consist of the following officers:- (i) Chairman, CBDT – Chairman of Committee, (ii) Member (L&C), CBDT – Member, (iii) Director, ED – Member, (iv) DG, DRI – Member, (v) DG Currency – Member, (vi) Joint Secretary (FT&TR), CBDT – Member, (vii) Joint Secretary, MoL – Member, (viii) Director, FIU-IND – Member (ix) CIT (Inv.), CBDT – Member Secretary.

  The Committee shall examine the existing legal and administrative framework to deal with the menace of generation of black money through illegal means including, inter alia,

  (a) Declaring wealth generated illegally as national asset;
  (b) Enacting/amending laws to confiscate and recover such assets; and
  (c) Providing for exemplary punishment against its perpetrators.

  The Committee shall consult all stakeholders and submit its report within a period of six months.

Important Judicial Pronouncements of the Week

- **M/s Raj Trans Stampings (P) Ltd Vs CCE, Jaipur (2011-TIOL-772-CESTAT-DEL)**

  - **Issue:** Whether Maintenance or repair service taxable prior to 16.6.2005 under rate contract?

  - **Held:** Maintenance or repair service - Repair service rendered prior to 16.6.2005 under rate contract is not taxable as also clarified by the CBEC.

- **M/s Flat Products Equipments India Limited Vs CCE, Belapur (2011-TIOL-781-CESTAT-MUM)**

- **Issue:** Is it necessary that CENVAT Credit Rules or Central Excise Rules have to be read harmoniously to give effect to policy of the government to promote exports by relieving the burden of taxes on the product exported and also on the products consumed in the manufacture of the goods?

- **Held:** It is the avowedly policy of the government to promote exports by relieving the burden of taxes on the product exported and also on the products consumed in the manufacture of the goods exported - rules, whether they be CENVAT Credit Rules or Central Excise Rules have to be read harmoniously to give effect to this objective - Appellant entitled to take credit on bought out items cleared for export along with machinery.

- **CCE, Salem Vs M/s ITC Ltd (2011-TIOL-780-CESTAT-MAD)**

  - **Issue:** Whether Cenvat Credit available on services like road levelling, JCB and manpower supply for cleaning swimming pool, yard, trench work, draining work, waste yard leveling, etc.?

  - **Held:** CENVAT Credit - Credit on services like road levelling, JCB and manpower supply for cleaning swimming pool, yard, trench work, draining work, waste yard levelling is admissible as the said services have nexus to manufacture of excisable goods - The department has not adduced any evidence to contradict the factual findings of the Commissioner (Appeals) - Revenue appeal has no merit.

- **Iswari Spinning Mills Vs CCE, Madurai (2011-TIOL-767-CESTAT-MAD)**

  - **Issue:** Whether Payment of Service Tax on Goods Transport service from CENVAT account was permissible prior to 19/4/2006?

  - **Held:** Service Tax - Payment of Service Tax on Goods Transport service from CENVAT account - Till 18.4.2006, CENVAT credit can be availed for payment of service tax on GTA. From 19.4.2006, in view of the amendment to Rule 2(p) of the CENVAT Credit Rules, 2004, payment cannot be made from CENVAT account.

- **CCE, Chennai Vs M/s Viki Industries (P) Ltd (2011-TIOL-769-CESTAT-MAD)**

  - **Issue:** Whether Cenvat credit available on TR -6 Challan when the recipients are required to pay service tax as a deemed service provider?

- **Held:** Central Excise - CENVAT Credit - Credit availed on GTA service based on TR 6 Challan - When the recipients are required to pay service tax as a deemed service provider, the document used by the service recipient for paying service tax, namely, TR-6 challan should be allowed to be treated as documents covered by Rule 9(1)(e) of the CENVAT Credit Rules, 2004 - Credit is admissible.

- **CCE & CC Vs M/s Gujarat Heavy Chemicals Ltd (2011-TIOL-383-HC-AHM-ST)**

  - **Issue:** Whether CENVAT Credit on Security Services provided at residential quarters of workers available?

  - **Held:** Service Tax - Security Services provided at residential quarters of workers - not input service: In the present case, the act of providing residential quarters by the manufacturer to its employees was voluntary. Providing further security service in such residential quarters was also an act voluntary in nature. No connection between the security service provided by the manufacturer in the residential quarters maintained for the workers as having any direct or indirect relation in the activity of manufacture of the final product.

- **M/s National Trades And Agencies Vs CCE,CC & ST, (Cochin 2011-TIOL-754-CESTAT-BANG)**

  - **Issue:** Whether the amount collected as reimbursable should not be included in the gross value for chargeability of Service tax in case of Pure Agent scenario?

  - **Held:** Service Tax - Pure Agent - Issue requires detailed analysis - Pre-Deposit Ordered: the appellant has been taking a stand before the Adjudicating Authority and Tribunal, that they are acting as pure agent and the amount collected as reimbursable should not be included in the valuation. The issue involved in this case needs detailed analysis of the provisions of the Service Tax (Deduction of Value) Rules, 2008, which can be done only at the time of final disposal of the appeal.

- **Rungta Sizing Works & Process Vs CCE, Thane (2011-TIOL-755-CESTAT-MUM)**

  - **Issue:** Whether facts stated by Assessee – Not taken cognizance of by the Department – Alleged as Suppression of Facts?

  - **Held:** Appellants have declared their availment of CENVAT credit in the year 2003 itself but the departmental officers did not take any action and SCN was issued on 22/03/2007 alleging suppression of facts - SCN not sustainable as the appellants have not suppressed any facts from the department - order set aside with consequential relief.

- **CST, Ahmedabad Vs M/s Bosch Rexroth (India) Ltd (2011-TIOL-749-CESTAT-AHM)**

  - **Issue:** Whether Section 66A inserted in the Finance Act, 1994 with effect from 18.4.2006 laying down that recipient of services in India from outside India shall be liable to pay tax can be made applicable retrospectively?

  - **Held:** NO.

- **M/s ABB Ltd Vs CST, Bangalore (2011-TIOL-748-CESTAT-BANG)**

  - **Issue:** Whether levy of Service tax on Works Contract can be made applicable prior to 1/6/2007?

  - **Held:** Service Tax - Levy of service tax on activities involving design, manufacture, supply, installation, testing and commissioning of electrical, hydraulic & fire systems for DMRC Project through indivisible contracts - Deduction of Works Contract Tax by way of TDS under DVAT Act by DMRCL on running account bills provided by assessee indicates that impugned contracts are works contracts, liable to service tax only with effect from 01.06.2007 - Judgment of Karnataka High Court in Turbotech Engineering = 2010-TIOL-498-HC-KAR-ST relied upon and Larger Bench decision in BSBK Ltd = 2010-TIOL-646-CESTAT-DEL-LB distinguished - Impugned order demanding service tax with interest and levy of penalties set aside.

Important Digests of the Week

- **Kerala High Court grants interim stay on recovery of Service tax on Restaurant and short term accommodation service - 16th day of June 2011/26TH JYAISHTA 1933 WP(C).No.14045/2011 (E):**

  Writ Petition praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to stay the operation of amendment made by the Finance Act, 2011 to the Chapter V of the Finance Act,1994 inserting sub clause (ZZZZV) & (ZZZZW) to clause 105 of section 65 of the Finance Act, 1994 and section 66 of the Finance Act, 1994(as amended) and related provisions seeking to levy service tax on taxable services referred to in sub-clause(ZZZZV) & (ZZZZW) to clause 105 of section 65 of the Finance Act, 1994 (as amended); till the final disposal of the Writ petition and render justice.

ORDER → Admit Issue urgent notice to respondents by speed post. There will be an interim stay against any coercive steps of recovery of service tax or against any proceedings for imposing penalty for a period of two months.

- **GST regime unlikely from April 2012 as many States oppose draft Bill:**

The introduction of big-ticket tax reforms through the Goods and Services Tax (GST) regime seems unlikely from next April with the BJP-ruled states that they would not like to be reduced to "municipality or corporations". "The kind of draft that they [central government] have presented…I do not think it could be passed. Which state will agree to become a municipality or corporation? To hand over all the powers to the Centre and then beg before it for money is against the spirit of the Sarkaria Commission report," Madhya Pradesh Finance Minister Raghavji told reporters here. He said the states were not inclined to accept the draft Bill, which had been circulated by the Centre, for the introduction of the GST.

The Constitution Amendment Bill introduced by the Centre is reactionary, said Raghavji. "It is absolutely useless and against the interest of the states. It has provisions which will curtail the autonomy of states. The Centre is interfering in the rights of the states," he added. The Bill needs approval of two-thirds of Parliament and half of India's 28 states to become the law. Hence, BJP support is crucial at the state as well as the central level.

The Bill was introduced in the Lok Sabha in the last Budget Session. It was the fourth draft prepared by the Centre after the first three were rejected by the states, citing autonomy issues. Raghavji said there had been no changes in the latest draft as against the previous one. "In fact, the previous draft was in some aspects much better. This one is even worse," he added. The draft is also against the spirit of federalism enshrined in the constitution, he said, adding, "This disturbs the basic structure of the Constitution".

Among the objections raised by the BJP-ruled states is the proposal to bring the sales tax in ambit of the GST. "Sales tax is an exclusive state subject. Now the Centre wants to interfere with that. This is unacceptable to us," Raghavji said, adding that one of the solutions could be having separate GST regimes for the states and the Centre. The GST would subsume most of the indirect taxes like excise duty and service tax at the central level and VAT on the state front, besides local levies.

The implementation of GST, considered to be a major tax reform, has been stuck for years due to differences between the Centre and some states over the new structure. Despite political differences, the UPA government at the Centre is hopeful of being able to introduce new indirect taxes regime from April 1, 2012.

- **Board has taken a serious note of non-compliance of its instructions by the Commissioners who are not issuing licence to eligible applicants Vides CBEC Circular No. 25/2011-Cus.,Dated: June 22, 2011:**

  Board reiterates that Commissioners should not restrict the number of CHAs and shall grant licences to all eligible applicants. A compliance report indicating number of eligible applicants who have been granted licence may be sent by 15.07.2011.

- **Branded Readymade Garments - Excise Duty – Clarifications Vides CBEC Circular No. 947/8/2011- CX. Dated: June 21, 2011:**

  Query: Applicability of excise duty on school uniforms, uniforms for private security guards, companies, hotels, airlines etc and made-ups such as linens, towels etc bearing the name or logo of a hotel, restaurant or airlines etc and Applicability of mandatory levy of excise duty on made-ups such as blankets bearing the name of the manufacturer and supplied to the Ministry of Defence or its organizations.

  Clarification: Such products would not merit treatment as “branded” products merely because the name of the school, institution or company or their logo is printed, embroidered or etched on them. This is equally true of made ups such as towels, linen etc bearing the name of a hotel, restaurant or airlines. In all these cases, there is no nexus between such a name or logo & the product at the time of its sale which is essential ingredient in the definition of the term “brand name”. Unless such garments/made- ups also bear a brand name in addition to the name or logo of the school, security agency, hotels, airlines and company, such goods would not attract the excise duty. It is also gathered that in some cases, apart from the name or logo of such organisations, the name of the tailor or manufacturer is affixed on such garments. However, mere affixing of name of the tailor or manufacturer would not constitute a brand name. Another related issue is the applicability of the mandatory excise duty to blankets which are supplied to the defence establishment, armed forces, police forces etc against tenders that stipulate that the name of the manufacturer should be clearly indicated or marked on the product. As pointed out above, affixing the name of the manufacturer on such goods would not, by itself, bring them within the ambit of branded goods.

Query: SSI Benefit: Self-Certification. Determination of eligibility of a manufacturer or factory to the benefit of small-scale exemption contained in notification no. 8/2003-CE dated 1.3.2003.

Clarification: Under the exemption, a manufacturer or a factory whose aggregate value of clearances for home consumption did not exceed Rs.4 crore in the preceding financial year is eligible for full exemption on similar clearances not exceeding Rs. 1.5 crore in this financial year. It has already been clarified that a certificate from a chartered Accountant about the aggregate value of clearances for home consumption in the preceding financial year may be accepted. It has now been decided that self certification by a manufacturer may also be accepted for this purpose.

Clarification on Maintenance of records: Central Excise law does not prescribe any specific record, which is to be maintained by an assessee. Hence records of production, clearance & purchases that are maintained for the purpose of VAT purposes can be accepted for purposes of Central Excise.

- **Should auto import duty be relaxed?**

The final draft of the much-hyped India free trade pact with the European Union is in progress and there is still no sign of any consensus on reduction of customs duty among various stakeholders in the automotive industry. If the European Union's gambit of reduction in excise duty succeeds, it will change the dynamics of the Indian luxury car market to some extent.

New cars and SUV imports at present attract 60% custom duty, which turns out to be around 100% with the addition of various other levies such as the countervailing duty (CVD) and the value-added tax (VAT) that, for the buyer, is a tax on purchase. Thus, the price of a completely imported car from Europe is more than doubled by the time it finds a customer in India. If the duty goes lower, our domestic market will no doubt attract world class technology products and this will open up new options for luxury vehicle buyers.

- **Service tax Payable on billing (Accrual) basis from July 1 2011:**

The Finance Act, 2011 has introduced with effect from April 1, 2011, Point of Taxation Rules in which, these rules will determine the point in time when the services shall be deemed to be provided. The general rule will be that the time of provision of service will be the earliest of the following dates:

i. Date on which service is provided or to be provided
ii. Date of invoice
iii. Date of payment

Consequential changes have also been made in the Service Tax Rules, 1994 to alter the payment of service tax from receipt of payment to provision of service and also to permit adjustment of tax when service is not finally provided. As per Notification no.25/2011 where in the tax payer was given an option to pay service tax on receipt basis till June 30, 2011 or pay service tax on billing basis from April 1, 2011. The option to pay service tax on receipt basis is only till June 30, 2011. Hence, all the assessee, except professionals, will have to pay service tax on billing basis from July 1, 2011.

STATEMENT OF IMPORTANT DUE DATES UNDER VARIOUS LAWS & AS PER BUSINESS NEEDS – July, 2011			
DUE DATES	PARTICULARS	PERIOD	Form / Challan Number
1-Jul-11	Physical Stock Checking - Monthly	Jun-11	RM/ FG/ SFG/ Mould/ Job work
5-Jul-11	Service Tax - Monthly payment , Electronically (6th of the Month) deposit through Internet Banking if assessee has paid a total service tax Rs.10 Lac or more including the amount paid by utilization of cenvat credit in the preceding FY i.e. 2011-2012	Jun2011, Apr2011-Jun2011	Challan no. GAR -7
5-Jul-11	Excise Duty Payment - Monthly {mandatory electronic payment (6th of Month) 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 utilization of Cenvat credit) in the previous financial year}	Jun-11	Challan no. GAR -7
7-Jul-11	TDS/TCS payment	Jun-11	Challan no. 281
10-Jul-11	Excise Return - Monthly (mandatory electronic filing of Excise Tax returns by all the assessees who have paid central excise duty or service tax of Rs. 10 Lakhs or more (including payment	Jun-11	ER-1

	by utilisation of Cenvat credit) in the previous financial year}		
10-Jul-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	Jun-11	ER-6
14-Jul-11	TDS Return - Payment to Non-Resident other than Salary - Quarterly	Apr2011-Jun2011	Form 27Q
15-Jul-11	TDS/TCS Return - Quarterly	Apr2011-Jun2011	Form 24Q/26Q/27EQ
15-Jul-11	PF Deposit - Monthly	Jun-11	PF Challan
16-Jul-11	ESI Deposit - Monthly	Jun-11	A1/B
20-Jul-11	VAT - Monthly payment - UPVAT	Jun-11	UPVAT Form - 1
20-Jul-11	CST Payment - Monthly - UPVAT	Jun-11	UPVAT Form - 1
20-Jul-11	VAT - Monthly Return - UPVAT	Jun-11	Form 24
20-Jul-11	CST - Monthly Return - UPVAT	Jun-11	Form - I
20-Jul-11	VAT - Monthly payment - DVAT	Jun-11	DVAT-20
25-Jul-11	VAT - Monthly E-Return - DVAT	Jun-11	E-Return on Site
25-Jul-11	PF Return - Monthly	Jun-11	Form 12 A
30-Jul-11	Issue of TDS Certificate - Non Salary for Q1 FY 2011-12	April-11- June 11	Form 16A Quarterly
31-Jul-11	Income Tax and Wealth Tax Return excluding Non Audit / Tax Audit Cases and the Working partners of the firm	**FY:2010-2011**	ITR FORM 1 TO 8, For Wealth-tax:- Form no. BA

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

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

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