62ND ISSUE

03 APR 2016 - 09 APR 2016

TAX CONNECT

GST

SERVICE TAX

CENTRAL EXCISE

CUSTOMS

INCOME TAX

STATE TAXES

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EDITORIAL

Friends

On 31st March the hearts of Kolkatans sank when a part of the Ganesh Talkies Flyover came crashing down. Any figure of casualty which we will get would only be an under estimate considering Ganesh Talkies is a primary business place and the incident happened during peak business Hour. We pray for the families of those who have lost their lives or are injured. A lot has been said on the dire need to cleanse our system, so we will not add on but only pray that someday our administrators will do some soul searching. It has to be top down!

In Service Tax, There has been change in liability to pay tax incase of Three Types of Services w.e.f. 1st April –

1. For Services provided by Mutual Fund Agents to AMCs – from AMCs to Mutual Fund Agents
2. Services provided by Senior Advocates – from recipient to Senior Advocates
3. Certain Services by Govt./Local Authority - from Govt./Local Authority to recipient

W.r.t. this change N No 21/2016 has been published on 30/3/2016 whereby Rule 7 of the Point of Taxation Rules, 2011 has been amended and it has been specified that where the service has been provided and invoice has been issued before the date of such change, however, the payment has not been made as on such date, the point of taxation shall be the date of issuance of invoice. This has created more confusion than clarity. Just to clarify the same by means of examples :

Eg. 1 : For commission paid to Mutual Fund Agents by AMCs, which is accrued before 01.04.2016 and paid on/after 01.04.2016, the liability to pay tax is on the AMCs. It is important to note here that as per practice Mutual Fund Agents generally do not raise invoice. **This may please be taken note of by Mutual Fund Agents as generally in this industry it is difficult to track the commission with the services.**

Eg 2 : Where a senior advocate has raised a bill & rendered services before 1.4.2016 and payment has been made on/after 1.4.2016, there is a shift of responsibility from the senior advocate to the recipient.

Eg 3 : Where a Govt Authority has raised a bill & rendered services (which have now come under reverse charge) before 1.4.2016 and payment has been made on/after 1.4.2016, there is a shift of responsibility from the recipient to the Govt. Authority.

Just to note that The Hon'ble Gujarat High Court has vide order dated 30.03.2016 in Percy Cawas Kavina vs. UOI, directed an ad-interim stay on levy of Service Tax on Senior Advocates. Further, The Hon'ble Delhi High Court has also stayed the levy of Service Tax on Senior Advocate in the Writ Petition filed by Delhi High Court Bar Association.

Further, many changes in Indirect Taxes and Direct Taxes as proposed in the Budget, have come into effect from 1.4.2016. Our budget publication may please be referred for the same.

Just to reiterate that we remain available over a telecom or e-mail.

Truly Yours

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COMPLIANCE CALENDAR

Due date	COMPLIANCES FROM 03rd April, 2016 to 09th April, 2016	STATUTE
5th April, 2016	Deposit of WCT of previous month	Kerala VAT Act
7th April, 2016	Deposit of WCT of previous month	Assam VAT Act Tripura VAT Act Manipur VAT Act
	Deposit 15G/15H Forms	Income Tax Act

REPORT OF SUB COMMITTEE - II ON MODEL GST ACT, 2016: AUDIT

The provisions relating to "Audit" covered in CHAPTER XI of the model GST Act can be summarized as follows:

Audit

- An audit may be conducted by the Commissioner of CGST or of SGST or any officer authorised by him at the place of business of the taxable person and/or in their office by giving a notice (not less than 15 working days) in advance.
- The audit shall be completed within 3 months and if required, the period can be extended for another 3 months.
- If the audit results in detection of tax not paid or short paid or erroneously refunded, or input tax credit erroneously availed, the proper officer may initiate action under section 20 of the Act.

Special audit

- If during scrutiny, enquiry, investigation or any other proceedings, any officer (not below the rank of Deputy/Assistant Commissioner) is of the opinion that the value has not been correctly declared or the credit availed is not within the normal limits, he may require the taxable person to get his records examined and audited by a chartered accountant or a cost accountant nominated by the Commissioner in this behalf.
- The same shall be affected even if the accounts of the taxable person have been audited under any other provision of this Act.
- The chartered accountant or cost accountant shall submit his report within 90 days and if required, the period can be extended for another 90 days.
- The taxable person shall be given an opportunity of being heard in respect of any audit finding proposed to be used in any proceedings under this Act or rules made there under.
- The expenses of examination and audit including the remuneration of chartered accountant or cost accountant shall be determined and paid by the Commissioner.

THIS SPACE HAS BEEN INTENTIONALLY KEPT VACANT

SERVICE TAX

NOTIFICATIONS/CIRCULARS

POINT OF TAXATION (SECOND AMENDMENT) RULES, 2016: AMENDMENT IN RULE 7

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 21/2016-Service Tax dated 30.03.2016 has** amended rule 7 of the Point of Taxation Rules, 2011. These rules may be called the Point of Taxation (Second Amendment) Rules, 2016

Rule 7 contains provision for determination of point of taxation in case of specified services or persons

The amendment has inserted a provision which states that if there is change in the liability of a person required to pay tax as recipient of service [notified under sub-section (2) of section 68 of the Act], the service has been provided and the invoice has been issued before the date of such change, however, the payment has not been made as on such date, the point of taxation shall be the date of issuance of invoice.

COURT DECISIONS

RELIANCE ADA GROUP PVT LTD VERSUS COMMISSIONER OF SERVICE TAX, MUMBAI-IV [CESTAT MUMBAI]

BRIEF: Acting as Manager for sharing of resources and cost / expenses with the group companies under a cost sharing arrangement is not a taxable service.

OUR COMMENTS: In the above case, the assessee has entered into contractual agreements with its participating Group Companies to procure certain services on their behalf and to share the cost. His role is to monitor and coordinate the arrangement for all participants. The expenses incurred by the assessee in this respect will be reimbursed by the Group Companies. The cost of the services procured will be allocated on the estimated use by each of the Group Companies.

The Revenue demanded Service tax on the service rendered by the assessee to the Participating Group Companies under taxable category "Support Services of Business or Commerce" under Section 65(105)(zzzq) of the Finance Act, 1994.

The Hon'ble CESTAT held that the assessee is merely acting as a manager/trustee to incur expenses on behalf of the Participating Group Companies. The object of the cost sharing arrangement is to reduce the cost of operation by sharing the common services, the best available talent and resources required for carrying out their business activities. The assessee here is not rendering any taxable service.

Therefore, the demand of Service tax is not sustainable.

[Decided in favour of assessee]

THIS SPACE HAS BEEN INTENTIONALLY KEPT VACANT

CENTRAL EXCISE

COURT DECISIONS

TAJ SATS AIR CATERING LTD. VERSUS CCE, DELHI-II [CESTAT NEW DELHI]

BRIEF: Complete food tray bearing the brand-name of the caterer and served to the passengers on board the aircraft is not liable to central excise duty.

OUR COMMENTS: In the above case, the assessee is engaged in the business of airline catering and supply meal and food items in accordance with menu given by the respective airline from time to time. In the complete food tray served to the passengers some of the items like dal, rice, curry, etc. are prepared by the assessee, some like curd, pickles etc. are procured by the assessee and the cutlery, crockery, soft drinks, juices and water are provided by the airlines. As per the requirement of the airlines a slip containing the name of the assessee (caterer) is put inside the pouch containing cutlery.

The Revenue demanded duty on the complete food tray from the assessee for being engaged in the manufacture of excisable goods i.e. food preparations which also contained a logo and name of the assessee by classifying the same as "branded food preparations" under the heading 2108 and 2106.

The Hon'ble CESTAT noted that the duty was demanded on the full value of the final complete food tray served to the passengers on board. However, out of food preparations in the food tray, the assessee only prepared prepare dal, roti, rice, curry etc. which are not the items on which Central Excise duty is sought to be demanded.

Also, regarding the brand-name, the food prepared by the assessee is supplied without brand-name. It is only the cutlery pouch which contains the logo and name of the assessee and the same is also supplied separately. The airline staff put everything together and serves the food tray to the passengers.

Accordingly, the demand is not sustainable.

[Decided in favor of assessee]

M/S CLASSIC POLYTUBES PVT LTD VERSUS COMMISSIONER OF CENTRAL EXCISE, LUCKNOW [CESTAT ALLAHABAD]

BRIEF: Pre-delivery inspection charges cannot be included in the assessable value

OUR COMMENTS: In the above case, the assessee is a manufacturer. He use to get the goods inspected where buyers wanted to get such inspection from a particular agency. Initially, the assessee use to pay the inspection charges and subsequently buyers reimbursed it.

The Revenue contended that these inspection charges should be included in the assessable value of the goods for the purpose of imposing excise duty.

The Hon'ble CESTAT noted that inspections in the given case are not mandatory inspections during the manufacture of the goods. These additional inspections are got done at the instance of the buyers.

Commissioner of Central Excise, Mysore Vs. M/s. TVS Motors Company Ltd. (2015 (12) TMI 874 - SUPREME COURT) also held that pre-delivery inspection charges cannot be included in the assessable value.

In view of the above observations and settled proposition of law, it was held that optional inspection charges at the instance of buyer cannot be included in the assessable value under Section 4 of the Central Excise Act, 1944.

[Decided in favor of assessee]

CUSTOMS

NOTIFICATIONS/CIRCULARS

BASIC CUSTOM DUTY OF 25% ON IMPORT OF WHEAT EXTENDED BEYOND 31.03.2016 UPTO 30.06. 2016 AND OF 40% ON IMPORT OF GHEE BUTTER AND BUTTEROIL EXTENDED BEYOND 31.03.2016 UPTO 30.09.2016

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 24/2016-Customs dated 28.03.2016 has** amended **Notification No. 12/2012-Customs, dated the 17th March, 2012** and extended the basic custom duty of 25% on import of wheat beyond 31.03.2016 upto 30.06.2016 and of 40% on import of Ghee Butter and Butter oil, beyond 31.03.2016 upto 30.09.2016.

INSTRUCTION TO STRICTLY FOLLOW THE PROVISIONS FOR REVIEW UNDER SECTION 129A (2) OR SECTION 129D OF THE CUSTOMS ACT, 1962, SECTION 35B (2) OR SECTION 35E OF THE CENTRAL EXCISE ACT, 1944 AND SECTION 86 (2A) OR SECTION 86 (2) OF FINANCE ACT, 1994

OUR COMMENTS: The CBEC, Dept. of Revenue, Ministry of Finance, Government of India vide **Instruction F. No. 390/Review/36/2014-JC dated 17.03.2016** has instructed Field Formations to abide strictly by the provisions mentioned in law for reviewing the orders and counter check revenue figures in the disputed demands before taking a view whether a case is fit for preferring an appeal.

The Board noted that an Order in Appeal was reviewed twice.

As per the provisions of Section 129A (2) or Section 129D of the Customs Act, 1962, Section 35B (2) or Section 35E of the Central Excise Act, 1944 and Section 86 (2A) or Section 86 (2) of Finance Act, 1994, there is no provision for reviewing the same order twice.

COURT DECISIONS

M. RATHAKRISHNAN, D. MURALIDHARAN VERSUS ADDITIONAL DIRECTOR GENERAL DIRECTORATE OF REVENUE INTELLIGENCE, THE COMMISSIONER OF CUSTOMS [MADRAS HIGH COURT]

BRIEF: Show cause notice issued with a pre-judged mind is not valid.

OUR COMMENTS: In the above case, the first respondent issued the show cause notices dated asking the assessee to show cause that why the penalty should not be imposed on them under sections 112 and 114AA of the Customs Act, 1962.

The assessee contended that the show cause notice is liable to be set aside on the ground that the first respondent pre-judged the issue involved in the matters. The first respondent should have issued the show cause notices with an open mind as they have to act fairly in adjudging the guilt or otherwise of the person proceeded against.

The Hon'ble High Court held that a showcause proceeding is meant to give the person proceeded against a reasonable opportunity of making his objection against the proposed charges indicated in the notice.

The first respondent should take utmost care to manifestly keep an open mind, as they have to act fairly in adjudging the guilt of the petitioners and especially when he has a power to take punitive steps against the petitioners after giving them a show cause notice.

In the given case, the first respondent had issued the show cause notices with pre-judged mind, there is no purpose in issuing show cause notices at all.

The show cause notice accordingly stood quashed.

[Decided in favor of assessee]

INCOME TAX

NOTIFICATIONS & CIRCULARS

AMENDMENT IN RULE 114E FOR INSERTING THE WORDS "OR STATEMENT OF FINANCIAL TRANSACTIONS" AFTER THE WORDS "INFORMATION RETURN"

OUR COMMENTS: The CBDT, Dept. of Revenue, Ministry of Finance, Government of India **vide Notification No. 19/2016 dated 18.03.2016** has amended Rule 114E and inserted the words "or Statement of financial transactions" with the words "Information return".

This rule shall be applicable for the specified financial transactions carried out during the period from 01.04.2015 to 31.03.2016.

M/S. ASCENDAS IT PARK (CHENNAI) LTD. NOTIFIED AS AN INDUSTRIAL PARK FOR THE PURPOSES OF SECTION 80-IA(4)

OUR COMMENTS: The CBDT, Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 20/2016 dated 21.03.2016** has notified the undertaking M/s. Ascendas IT Park (Chennai) Ltd as an industrial park for the purpose of Section 80-IA(4) from the date of commencement of the park i.e. 31.03.2011.

THE FUNCTIONALITY FOR ONLINE CORRECTION OF FORM 26QB HAS BEEN ENABLED

OUR COMMENTS: The Directorate of Income Tax (Systems) vide **F. No. DIT(S)-2/Form26QB/100/2015 dated 22.03.2016** has enabled the functionality for online correction of Form 26QB.

The form is a statement cum challan relating to TDS on sale of property u/s 194IA of the IT Act. It is filled and submitted by the buyer of the property for making TDS payment on sale of property. It contains details of buyer, seller, property being sold, sale consideration, tax deposit details etc.

Earlier the bank branches could not make any corrections in the form through the existing RT18 mechanism as it is an internet challan.

Now, CPC-TDS has enabled functionality for online correction in the form 26QB from 29.02.2016.

The Standard operating procedures (SOP) dated 20.04.2015 for correction in form 26QB challan is withdrawn with immediate effect.

THE ONLINE TMS FUNCTIONALITY IS BEING ENABLED FROM 15.03.2016 FOR PROCESSING OF RETURNS FILED IN FY 2014-15 GETTING TIME BARRED

OUR COMMENTS: The Directorate of Income Tax (Systems) vide **Instruction No. 140 [F.NO.DGIT(S)/DIT(S)-3/AST/TMS/ONLINE/27-C/2015-16] dated 15.03.2016** has enabled the online TMS functionality for Processing of returns filed in FY 2014-15 getting time barred.

The functionality will be available till 31-3-2016 for processing time barring returns only

THIS SPACE HAS BEEN INTENTIONALLY KEPT VACANT

DELHI

ASSESSMENT OF ENFORCEMENT SURVEY/SEIZURE CASES BY RESPECTIVE WARD OFFICERS

OUR COMMENTS: The Department of Trade & Taxes, Government of National Capital Territory of Delhi, **vide Circular No. 42 OF 2015-16 dated 19.03.2016 has** directed that the assessment of all cases pursuant to Enforcement surveys shall be to transferred to the concerned ward officers immediately. After transfer ward authorities shall ensure that assessments are completed within the time frame specified under the said Act.

This circular does not cover the cases for which proceedings/jurisdiction has been transferred by the Commissioner, Value Added Tax through a separate order under section 67 of Delhi Value Added Tax Act, 2004.

SEALING AND DE-SEALING OF THE PREMISES

OUR COMMENTS: The Department of Trade & Taxes, Government of National Capital Territory of Delhi, **vide Circular No. 43 OF 2015-16 dated 21.03.2016** has stated that Section 60 of the Delhi Value Added Tax, 2004 empowers the Commissioner to enter premises and seize records and goods of any person during surveys. The Surveys are to be conducted on the premises of a dealer to detect tax evasion.

The survey teams are headed by an officer of the level of Assistant Commissioner/VATO and comprises of AVATOs and VATIs. The team size depends upon the size of the dealer to be surveyed.

HARYANA

AMENDMENT OF RULE 42 – APPROVAL AUTHORITY FOR REFUND ABOVE RS. 25 LACS

OUR COMMENTS: The Excise & Taxation Department, Government of Haryana vide **Notification S.O. No. 7/ST-1/H.A. 6/2003/S.60/2016. dated 11.03.2016** has amended Rule 42 of the Haryana Value Added Tax Act, 2003.

Earlier Commissioner was entitled to allow refund of any amount.

Now, Committee comprising of 3 senior most Additional Excise and Taxation Commissioners from department side posted at the Head Quarter and an officer not below the rank of Deputy Excise and Taxation Commissioner nominated by the Commissioner as the Member Secretary shall be entitled to allow refund above twenty five lakh rupees.

NAGALAND

EXEMPTION OF ENTRY TAX TO MOTOR VEHICLES

OUR COMMENTS: The Finance Department, Government of Nagaland vide N**otification No. FIN/REV-3/44/03/23 dated 09.02.2016** has notified that the following categories of goods will be exempted from entry tax.

1. Heavy goods vehicles above 10 MT of payload

2. Heavy Passenger Vehicles above 35 seating capacity

3. Vehicles belonging to manufacturers that do not have authorized dealership in the State of Nagaland