65TH ISSUE

24 APR 2016 – 30 APR 2016

TAX CONNECT

GST

SERVICE TAX | CENTRAL EXCISE

CUSTOMS | INCOME TAX

STATE TAXES

JAV & ASSOCIATES

Chartered Accountants

Kolkata:
1, Old Court House Corner
"Tobacco House" 1st Floor
Room No.-13 (North)
Kolkata-70001
West Bengal

Vadodara:
Quarter no. 3/174
Gujarat Refinery Township
Jawaharnagar
Vadodara-391320
Gujarat

Contact:
+919331042424; +91931594980;
+918697575185; +913322625203

Email:
tb.chatterjee@dic.co.in;
tb.chatterjee@yahoo.co.in;
cavivekjalan@gmail.com;
vivek.jalan@icai.org

Friends

In the next week, we have the due date for filing of Service Tax Return on 25th April and WB VAT return on 30th April. Since this would be the last return for FY 2015-16 under these laws, it is important to reconcile all figures of the returns with the books of accounts.

Further in Service Tax, "*any Service*" provided by Government or local authority have been brought within the ambit of Service Tax with effect from 01/04/2016. More so, these services shall be under reverse charge and hence all entities, whether selling services or goods, shall be affected by it. The CBEC has issued various notifications and circulars in this regard. We are just trying to summarize these here –

1. Public sector companies, electricity and public utility boards formed under the respective Acts, public sector banks and other corporations controlled by the Central and State Governments would not be treated as 'Government'. Only the Government Departments which are required to keep their accounts in accordance with article 150 of the Constitution would be treated as Government for the purposes of the Finance Act, 1994.

2. Certain services shall continue to be exempt.

3. Mechanism of payment shall be as follows –

   a. **Payment shall be on reverse charge except certain cases as below.**

   b. Under certain cases like speed post, life insurance, certain services inside/outside a port or airport, transport of goods/ passengers, renting of immovable property, etc, the payment shall be on forward charge.

4. The Point of Taxation shall be governed by Rule 7 of Point of Taxation Rules.

5. There will be no service tax on duties, cesses, fines and penalties.

6. Service Tax shall be applicable on fees, permissions and licenses except as mentioned In N No. 25/2012.

7. The mere fact that an activity is a statutory or mandatory requirement under the law or whether the amount charged is laid down in statute does not have any impact on the chargeability of service tax.

While the notifications have been dwelt in previous issues, the relevant circular is dwelt with in this issue.

In WB VAT, a very important circular to note is 04/2016 whereby it clarified that due to clerical mistakes committed while filing annexures along with the returns such as entering wrong TIN, etc., undue hardship is being caused to the purchaser while claiming input tax credit. The dealers must verify the quarter-wise sale-purchase mismatch list for each quarter available in the module named "Dealer Profile" on www.wbcomtax.nic.in and revise the returns within 6 months from the last date for submission of the original return for the respective quarter, if necessary; failing which demand notice may be issued to the purchasers. **It is important to note in this regard that for Q2 2015-16, the last date to revise the return in 30th April. Dealers may please refer their mismatches and revise their returns accordingly.**

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

Truly Yours

Timir Baran Chatterjee

M.Com, FCS, MBA (International Business)-IIFT, ACMA

Vivek Jalan

FCA, CIDT (ICAI), B. Com

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COMPLIANCE CALENDAR

Due date	COMPLIANCES FROM 24th April, 2016 to 30th April, 2016	STATUTE
25th April	Filing of monthly/quarterly VAT return	Jharkhand VAT Act (Monthly) Delhi VAT Act (Quarterly, if filed online)
	Issuance of WCT certificate	West Bengal VAT Act (Monthly), Mizoram VAT Act (Monthly)
	Deposit of Entry tax of previous month	Maharashtra Entry Tax Act (if registered dealer)
	Filing of service tax second-half yearly return	Finance Act
28th April	Deposit of VAT of previous month	Arunachal Pradesh VAT Act
	Filing of monthly/quarterly VAT return	Arunachal Pradesh (Monthly, if turnover>Rs. 1 crore) Delhi VAT Act (Quarterly, if filed manual)
	Filing of monthly/quarterly WCT return	Delhi VAT Act (Quarterly), Jharkhand VAT Act (Annually)
30th April	Deposit of VAT of previous month	Andhra Pradesh VAT Act, Chattisgarh VAT Act Haryana VAT Act (if Tax< Rs. 1 lac), Tripura VAT Act Madhya Pradesh VAT Act, Himachal Pradesh VAT Act Punjab VAT Act (if payment otherwise than by cheque) Goa VAT Act (if Tax < Rs. 1 lac), Mizoram VAT Act Jammu & Kashmir VAT Act
	Filing of monthly/quarterly/annual VAT return	Himachal Pradesh VAT Act (Monthly, if PY turnover is>5 cr) Himachal Pradesh VAT Act (Quarterly, if PY turnover is< 5 cr) Tripura Vat Act (Monthly/Quarterly) Kerala VAT Act (Annually), Manipur VAT Act (Annually) Andhra Pradesh VAT Act (Quarterly), Bihar VAT Act (Monthly) Chandigarh VAT Act (Quarterly), Chattisgarh VAT Act (Quarterly), Haryana VAT Act (Quarterly), West Bengal VAT Act (Quarterly) Madhya Pradesh VAT Act (Quarterly) Punjab VAT Act (if payment otherwise than by cheque) Sikkim VAT Act (Quarterly), Nagaland VAT Act (Quarterly) Mizoram VAT Act (Quarterly), Goa VAT Act (Quarterly) Jammu & Kashmir VAT Act (Quarterly)
	Deposit of WCT of previous month	Goa VAT Act (Monthly, if Tax< Rs. 1 lac) Jammu & Kashmir VAT Act (Quarterly)
	Filing of monthly/quarterly WCT return	Rajasthan VAT Act (Monthly), Bihar VAT Act (Monthly) Chandigarh VAT Act (Monthly), Chattisgarh VAT Act (Quarterly) Gujarat VAT Act (Quarterly), Haryana VAT Act (Quarterly) Tamil Nadu VAT Act (Monthly) Madhya Pradesh VAT Act (Annually) Himachal Pradesh VAT Act (Quarterly) Jammu & Kashmir VAT Act (Quarterly), Goa VAT Act (Quarterly)
	Deposit of Entry tax of previous month	Chattisgarh Entry Tax Act , Madhya Pradesh Entry Tax Act Maharashtra Entry Tax Act (For unregistered dealers) Goa Entry Tax Act, Assam Entry Tax Act
	Issuance of WCT certificate	Rajasthan VAT Act (Quarterly), Assam VAT Act (Monthly) Jammu & Kashmir VAT Act (Quarterly)
	Deposit of P tax of previous month	Maharashtra Commercial Tax Act
	TDS/TCS deposit of March month	Income-tax Act

REPORT OF SUB COMMITTEE - II ON MODEL GST ACT, 2016: DETENTION, CONFISCATION AND PENALTY

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

Prosecution

If a taxable person commits any of the following offences:

- supplies goods/ services without issuing invoice or issuing false/invoice
- issues any invoice/bill without supply of goods/services
- collects tax but fails to deposit the same to the appropriate Government within 3 months beyond the due date
- takes/utilizes input tax credit without receipt of goods/services either fully or partially
- obtains refund by fraud
- falsifies financial records/produces fake accounts/furnishes any false information or return and evade tax
- obstructs or prevents any officer to discharge his duties
- acquires possession or involved in transporting, removing, depositing, keeping, concealing, supplying, or purchasing any goods which are liable to confiscation
- receives/supply/deals in any manner with any supply of services which are in contravention of the Act
- fails to furnish information or furnishes false information during any proceedings
- aids, attempt or abets any of the offences specified above

shall be punishable as follows:

(i) in case tax evasion exceeds Rs. 250,00,000 - with imprisonment of upto 5 years and with fine;

(ii) in case tax evasion is between Rs.50,00,000 - 250,00,000 - with imprisonment of upto 3 years and with fine;

(iii) in case tax evasion is between Rs. 25,00,000 – 50,00,000 - with imprisonment of upto 1 year and with fine;

The offences where the amount of tax evasion exceeds Rs. 250,00,000 shall be cognizable and non-bailable. All other offences under this Act shall be non-cognizable and bailable.

No Court shall take cognizance of any offence punishable except with the previous sanction of the competent authority, and no Court inferior to that of a Magistrate of the First Class, shall try any such offence.

SERVICE TAX

NOTIFICATIONS/CIRCULARS

CLARIFICATION ON SERVICE TAX ON THE SERVICES PROVIDED BY GOVERNMENT OR A LOCAL AUTHORITY

OUR COMMENTS: The CBEC, Dept. of Revenue, Ministry of Finance, Government of India vide **Circular No. 192/02/2016-Service Tax dated 13.04.2016** has clarified that any activity undertaken by Government or a local authority against a consideration constitutes a service and is liable to Service Tax. It is immaterial whether such activities are undertaken as a statutory or mandatory requirement and irrespective of whether the amount charged is laid down in a statute or not. As long as the payment is made (or fee charged), it has to be taxable.

Some of the other clarifications can be summarized as follows:

- Services provided by Government or a local authority to another Government or a local authority are exempted, however, **the exemption does not cover services specified in sub-clauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act, 1994.**

- Taxes, cesses or duties levied are not leviable to Service Tax. **These taxes, cesses or duties include excise duty, customs duty, Service Tax, State VAT, CST, income tax, wealth tax, stamp duty, taxes on professions, trades, callings or employment, octroi, entertainment tax, luxury tax and property tax.**

- Fines and penalty imposed for violation of a statute, bye-laws, rules or regulations are not leviable to Service Tax.

- Liquidated damages for non-performance of contract entered into with Government or local authority have been exempted

- Services by way of allocation of natural resources to categories of persons other than individual farmers would be leviable to Service Tax.

- Service Tax on yearly installments due after 1.4.2016 in respect of spectrum assigned before 1.4.2016 have been specifically exempted vide Notification No. 25/2012 -ST dated 20.6.2012 as amended by Notification No. 22/2016 -ST dated 13.4.2016. However, the exemption shall apply only to one time charge, payable in full upfront or in installments, for assignment of right to use any natural resource and not to any periodic payment made by the assignee, such as Spectrum User Charges, license fee in respect of spectrum, or monthly payments with respect to the coal extracted from the coal mine or royalty payable on extracted coal which shall be taxable.

- Interest on deferred payment for any service provided by Government or a local authority shall be included in the value of the taxable service.

- The point of taxation shall be the earlier of the dates on which:

  (a) any payment, part or full, becomes due, as indicated in the invoice, bill, challan, or any other document issued by Government or a local authority demanding such payment; or

  (b) such payment is made.

  The date on which such payment becomes due shall be determined on the basis of invoice, bill, challan, or any other document issued.

- CENVAT Credit of tax paid on one time charges paid in a year, may be allowed to be taken evenly over a period of 3 (three) years, as amended vide Notification No. 24/2016 C.E. (N.T.) dated 13.4.2016.

  CENVAT Credit for service tax paid on spectrum user charges, license fee, transfer fee on trading of spectrum and on royalty and other periodic payments shall be available in the year in which the same is paid.

- CENVAT Credit may be availed on the basis of challan evidencing payment by the Service recipient [Clause (e) of sub-rule (1) of rule 9 of CENVAT Credit Rules, 2004},

CENTRAL EXCISE

NOTIFICATIONS/CIRCULARS

CONSTITUTION OF SUB-COMMITTEE OF THE HIGH LEVEL COMMITTEE REGARDING IMPOSITION OF CENTRAL EXCISE DUTY ON JEWELLERY

OUR COMMENTS: The Ministry of Finance, Government of India vide **Circular No. 1025/13/2016-CX dated 22.04.2016 has** decided the composition of the sub-committee of the High Level Committee regarding imposition of Central Excise duty on jewellery, as follows:

(i) Dr. Ashok Lahiri, Chairman.

(ii) Shri Gautam Ray, Member.

(iii) Shri Rohan Shah, Legal expert [Managing Partner, Economic Laws Practice].

(iv) Shri Manoj Kumar Dwivedi, Joint Secretary [Department of Commerce].

(v) Shri Alok Shukla, Joint Secretary [Tax Research Unit, Central Board of Excise and Customs, Department of Revenue].

- The trade representatives in the Sub-Committee shall be decided in consultation of with Dr. Ashok Lahiri, Chairman of the Sub-Committee.
- Terms of reference of the Sub-Committee will include the issues related to compliance procedure for the excise duty, including records to be maintained, operating procedures and any other issues that may be relevant.
- All associations will be given an opportunity to submit representation before the subcommittee in writing and the all India associations to state their case in person.

CASE LAWS

M/S. COVESTRO (INDIA) PVT. LTD. VERSUS CCE, PONDICHERRY [CESTAT CHENNAI]

BRIEF: There is no requirement of one to one correlation of inputs and output so long as inputs are not used for manufacture of exempted goods.

OUR COMMENTS: In the above case, the assessee is a manufacturer of goods namely thermoplastic polyurethane called "Desmopan' on job work for a customer (the customer supplies inputs to the assessee.). The inputs for manufacturing on own's account and that for job work are common but are separately identifiable by marks on the packages. All the inputs are stocked together and diverted (and also replaced) if there is an urgent requirement. This diversion of inputs is duly recorded in Goods Receipt Notes (GRN).

The revenue issued notice to the assessee for alleged diversion of such inputs without following the procedure under erstwhile rule 57AC or 57F (3) and without payment of duty or paying an amount equal to credit taken on such diverted inputs.

The Hon'ble CESTAT held that under the rules there is no requirement of one to one correlation of inputs and output so long as inputs are not used for manufacture of exempted goods. Within the factory, for manufacture, the inputs can be utilised irrespective for whom the goods are manufactured. Removal within factory is not removal for home consumption from factory which alone invites reversal of credit or payment of duty.

Accordingly, the impugned order was set aside with consequential relief.

[Decided in favour of assessee]

THIS SPACE HAS BEEN INTENTIONALLY KEPT VACANT

CUSTOMS

NOTIFICATIONS/CIRCULARS

CUSTOMS (FEES FOR RENDERING SERVICES BY CUSTOMS OFFICERS) AMENDMENT REGULATIONS, 2016

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 46/2016-Customs (N.T.) dated 01.04.2016** has inserted a proviso in regulation 3 that - where the working hours in respect of clearance of cargo in Customs ports or Customs airports, has been prescribed as twenty- four hours on all days for customs clearance, no fee shall be leviable in such locations for the services rendered by the Appraisers Superintendent Customs Preventive and Superintendent Central Excise.

BILL OF ENTRY (ELECTRONIC DECLARATION) (AMENDMENT) REGULATION, 2016

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 45/2016-Customs (N.T.) dated 01.04.2016** has amended the Bill of Entry (Electronic Declaration) Regulations, 2011.

In the said regulations, for the words electronic declaration, the words electronic integrated declaration has been substituted.

The notification is self-explanatory. The readers may refer the same.

REVISION OF EXCHANGE RATE OF FOREIGN CURRENCIES INTO RUPEE & VICE VERSA

OUR COMMENTS: The CBEC (Dept. of Revenue), Ministry of Finance, Government of India vide **Notification No. 55/2016-Customs (N.T.) dated 21.04.2016 & in supersession of Notification No. 48/2016-Customs (N.T.) dated 7.04.2015** has **revised the exchange rate of foreign currencies** specified in col.(2) of each of **Schedule I** and **Schedule II** annexed hereto, into Indian currency or vice versa, w.e.f. **22.04.2016** to be the rate mentioned against it in the corresponding entry in column (3) thereof, for the purpose of the said section, relating to imported and export goods.

SCHEDULE-I

Sl. No	Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
(1)	(2)	(3)	
		(a)	(b)
		(For Imported Goods)	(For Export Goods)
1.	Australian Dollar	52.50	51.20
2.	Bahrain Dinar	181.45	170.95
3.	Canadian Dollar	53.10	51.95
4.	Danish Kroner	10.20	9.95
5.	EURO	75.95	74.10
6.	Hong Kong Dollar	8.65	8.50
7.	Kuwait Dinar	226.40	213.90
8.	New Zealand Dollar	47.00	45.60
9.	Norwegian Kroner	8.30	8.05
10.	Pound Sterling	96.35	94.20
11.	Singapore Dollar	49.95	48.80
12.	South African Rand (w.e.f 08.01.2016) South African Rand (w.e.f 13.01.2016)	4.80	4.55
13.	Saudi Arabian Riyal	18.20	17.20
14.	Swedish Kroner	8.25	8.05
15.	Swiss Franc	69.15	67.55
16.	UAE Dirham	18.60	17.60
17.	US Dollar	66.90	65.85
18.	Chinese Yuan	10.35	10.15

SCHEDULE-II

Sl. No	Foreign Currency	Rate of exchange of 100 units of foreign currency equv. to Indian rupees	
(1)	(2)	(3)	
		(a)	(b)
		(For Imported Goods)	(For Export Goods)
1.	Japanese Yen	61.15	59.75
2.	Kenya Shilling	67.50	63.75

INCOME TAX

NOTIFICATIONS & CIRCULARS

DRAFT RULES FOR GRANT OF FOREIGN TAX CREDIT

OUR COMMENTS: The CBDT, Dept. of Revenue, Ministry of Finance, Government of India **vide Circular dated 18.04.2016** has notified that the draft rules for grant of Foreign Tax Credit are uploaded on the website of the Department at www.incometaxindia.gov.in for comments from stakeholders and general public.

The Income-tax Act, 1961 (the Act) provides that the CBDT may prescribe rules specifying the procedure for grant of relief or deduction of income-tax paid in any country or specified territory outside India, under section 90/ 90A/ 91 of the Act against the income-tax payable under the Act.

In exercise of the above, the draft rules for grant of FTC are proposed as under:

1) A resident assessee shall be allowed credit of any foreign tax paid by him in a country or specified territory outside India in the year in which the income corresponding to such tax has been offered /assessed to tax in India.

(2) The foreign tax shall mean,-

- tax of a country or specified territory with which India has entered into avoidance of double taxation agreement as per section 90 or 90A of the Act

- tax of any other country or specified territory, in the nature of income-tax referred to in clause (iv) of the Explanation to section 91.

(3) The credit shall be available against tax, surcharge and cess but not for interest, fee or penalty or any disputed amount.

(4) The credit shall be the aggregate of the credits computed separately for each source of income and shall be allowed in the following manner:

-lower of the tax payable under the Act and the foreign tax paid on such income;

-determined by currency conversion at the telegraphic transfer buying rate on the date on which such tax has been paid or deducted.

(5) Where tax is payable under section 115JB or 115JC, the credit shall be allowed in the same manner. Any excess tax paid shall be ignored while computing credit under section 115JAA or section 115JD

(6) The credit shall be allowed against the following documents:

(i) certificate from the tax authority of the foreign country or certificate of tax deducted from the person responsible for deduction of such tax;

(ii) acknowledgement of online tax payment or bank counter foil or slip or challan

And

(iii) a declaration that foreign tax in respect of which credit is being claimed is not under any dispute.

REVIEW OF GRIEVANCES BY SENIOR OFFICERS

OUR COMMENTS: The CBDT, Dept. of Revenue, Ministry of Finance, Government of India **vide Circular dated 04.04.2016** has decided for timely and proper resolution of public grievances that

-all the Members of CBDT and all the Pr.CCsIT/Pr.DGsIT will personally examine 10 CPGRAMS grievances every week.

- all the CCsIT and Pr.CsIT/CsIT will personally examine 20 and 30 CPGRAMS grievances respectively every week.

A monthly report will be forwarded to the Zonal Members and all the Members of the Board will, in turn, forward a consolidated report to Chairman for submission to the Secretary, Revenue for onward transmission to the PMO/DARPG.

CIT(C&S) will share the user id and password of CPGRAMS with all the Members of CBDT so that they can directly monitor grievances in their respective zones.

BIHAR

SELECTION CRITERIA FOR VAT AUDIT OF FY 2014-15

OUR COMMENTS: The Commercial Taxation Department, Government of Bihar vide **Notification No. No.- TRU/VAT Audit(Dirgh.Yo.) 20/2015(Khand-II)/1303 dated 05.04.2016** has decided to adopt the following criteria for selecting dealers for detailed VAT audit for FY 2014-15 :-

(1) Top 15 taxpaying dealers of the Circle,

(2) Excluding dealers selected as per Para 1 :-

(i) Top 4 taxpaying works contractors

(ii) Top 4 ITC Carry forwarding dealer

(iii) Top 4 taxpaying dealers with negative growth

(iv) Top 4 dealers who do not use D-IX but send goods outside State on basis of D-X.

(v) Top 4 manufacturing dealers (excluding Brick kiln dealers).

(vi) Dealers who have claimed refund of more than 5 Lakhs rupees.

(vii) Top 3 dealers dealing in each of these commodities — edible oil / Iron & Steel / Marble & granite / Timber / Footwear / Jewellers/ Auto parts.

(3) The following dealers have been exempted

(i) Dealers who have filed return under small taxpayer scheme and compounding scheme.

(ii) Retail dealers of petrol and Diesel

(iii) (Retail dealers of MRP goods viz., Medicine, Fertilizer and Insecticides u/s 15(5)(b)(ii).

(iv) (Retail dealers of Country Liquor, Spiced Country Liquor and IMFL

(v) Dealers who have paid admitted tax exceeding Rs. 1 Crore for FY 2013-14 and have registered 30% growth in payment of admitted Tax in FY 2014-15.

GUJARAT

SALT USED IN MANUFACTURE OF GOODS MADE TAXABLE

OUR COMMENTS: The Finance Department, Government of Gujarat vide N**otification No. (GHN-17)VAT-2016-SCH-II (42A) (23)-TH:dated 01.04.2016** has made "Pure sodium chloride salt used as raw material in manufacture of goods" taxable under the heading 2501**.**

HARYANA

FILING OF ONLINE QUARTERLY RETURNS FOR THE Q.E. 31.03.2016 EXTENDED TO 31.07.2016

OUR COMMENTS: The Office Of Excise And Taxation Commissioner, Government of Haryana vide **Order dated 18.04.2016** has extended the period upto 31.07.2016 for filing online quarterly returns for the quarter ending 31.03.2016, by the affected registered dealers who have lodged valid claim for compensation within the prescribed period before the appropriate authority designated by the Government for this purpose.

TAX RATE ON LIQUOR INCREASED FROM 8% TO 10%

OUR COMMENTS: The Excise & Taxation Department, Government of Haryana vide **Notification No. 13 /ST-1/H.A.6/2003/S.59/2016 dated 07.04.2016** has increased the tax rate on liquor from 8% to 10% w.e.f. 01.04.2016.

MADHYA PRADESH

NOTIFICATION OF EXERCISE BOOKS, GRAPH BOOKS, DRAWING BOOKS AND LABORATORY BOOKS FOR THE PURPOSE OF SECOND PROVISO TO SECTION 14(1)(A)

OUR COMMENTS: The Commercial Tax Department, Government of Madhya Pradesh vide N**otification No. F-A-3-15-2016-1-V-(18) dated 31.03.2016** has notified Exercise books, graph books, drawing books and laboratory books for the purpose of second proviso to clause (a) of sub-section (1) of Section 14 of the Madhya Pradesh VAT Act, 2002 w.e.f. 01.04.2016.