66TH ISSUE

01 MAY 2016 - 07 MAY 2016

TAX CONNECT

GST

SERVICE TAX

CENTRAL EXCISE

CUSTOMS

INCOME TAX

STATE TAXES

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Friends

The www.aces.gov.in lived up to its reputation once again and got completely jammed under the pressure of filing of returns. Hence the due date for filing Service Tax return was extended by CBEC. However, the order had come in the wee hours of 25th April, after gifting a terribly frustrating day to assesses where the website almost didn't move. This has now become a regular feature now with Service Tax return filing and should be seriously looked into by Central Govt. A leaf should be taken out of the CBDT's book where the website is as good as normal even under tremendous return filing pressure.

Further, as expected, due to elections the due date of filing returns of WB Commercial Taxes has also been increased till the 16th May 2016.

A very important development to note for Service Tax on The real estate sector is that the Madras High Court has Dismissed the Writ Petition filed by the Landowner and prima facie agreed with service tax on JDA's- 2016-TIOL-824-HC-MAD-ST.

With regard to the Joint Development Agreement, The Hon'ble High Court has held that the agreement gave the developer the right to construct and a part of which could be sold by them to third parties along with undivided share of land. Those parties had availed services of the developer. Therefore, the challenge of the Appellant to the circular, apart from the question of locus standi does not merit acceptance.

In Central Excise, the Central Govt. has decided not to roll back the Excise Duty imposed on jewelers in this Finance Budget. However, as a small relief, the time limit for taking central excise registration of an establishment by a jeweller has been extended up to 01.07.2016. It is important to note that the liability for payment of central excise duty will still be w.e.f. 1st March, 2016.

To further hasten the process of sorting out issues with the jewellery industry w.r.t. levy of excise duty, a sub-committee of the High Level Committee [Circular No. 1025/13/2016-CX] has been formed regarding Imposition of Central Excise duty on jewellery.

In Income Tax, the CBDT, Vide CIRCULAR NO.9/DV/2016 has clarified that officer below the rank of JCIT can't initiate penalty proceedings u/s 271D or 271E. This clarification comes in the backdrop of conflicting interpretations of various High Courts on the issue whether the limitation for imposition of penalty under sections 271D and 271E commences at the level of the Assessing Officer (below the rank of Joint Commissioner of Income Tax.) or at level of the Range authority i.e. the Joint Commissioner of Income Tax./Addl. Commissioner of Income Tax. Since this is a circular and clarificatory in nature, benefit may be taken for periods previous to the date of issuance of this circular too.

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

Truly Yours

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

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FCA, CIDT (ICAI), B. Com

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COMPLIANCE CALENDAR

Due date	COMPLIANCES FROM 01st May, 2016 to 07th May, 2016	STATUTE
5th May, 2016	Service Tax deposit of previous month (Company/ Society)	Finance Act
	Deposit of WCT of previous month	Kerala VAT Act
7th May, 2016	Deposit of WCT of previous month	Assam VAT Act Tripura VAT Act Manipur VAT Act
	TDS/TCS deposit of previous month	Income Tax Act

REPORT OF SUB COMMITTEE - II ON MODEL GST ACT, 2016: POWER OF INSPECTION, SEARCH AND SEIZURE

The provisions relating to "Power of inspection, search and seizure" covered in CHAPTER XII of the model GST Act can be summarized as follows:

Power of inspection, search and seizure

- The CGST/SGST officer, not below the rank of Joint Commissioner, **may perform/authorize inspection** if he has reasons to believe that –

  a) a taxable person

  - has suppressed any transaction relating to goods/services, or
  - has claimed excess ITC, or
  - has indulged in contravention of any of the provisions of this Act to evade tax

  b) any transporter or operator of a warehouse have escaped or evaded tax

- The CGST/SGST officer (not below the rank of Joint Commissioner) **may perform/authorize search and seizure** if he has reasons to believe that any goods/documents/books/things useful for any proceedings under this Act, are secreted in any place

  - In the above case, the officer shall have the power to seal/break/open the door of any premises or any almirah, box, receptacle where such goods/documents/books/things are suspected to be concealed

  - The person in custody of the above shall be entitled to make copies or take extracts therefrom in the presence of the officer.

  - If no notice is given within 60 days of the seizure, the goods shall be returned. The period of 60 days may be extended for a further period not exceeding 60 days at a time subject to a maximum of 6 months.

- The Central or a State Government may notify disposal of the specified seized goods having regard to its perishable or hazardous nature, depreciation in the value with the passage of time, constraints of storage space or any other relevant considerations. The officer shall prepare an inventory of such goods before disposal.

- The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure, shall apply to search and seizure under this section subject to the substitution of the words "Principal Commissioner/Commissioner of CGST/Commissioner of SGST" in place of "Magistrate".

THIS SPACE HAS BEEN INTENTIONALLY KEPT VACANT

SERVICE TAX

NOTIFICATIONS/CIRCULARS

DUE DATE FOR FILING ST-3 RETURNS EXTENDED TO 29.04.2016

OUR COMMENTS: The CBEC, Dept. of Revenue, Ministry of Finance, Government of India vide **F.No.137/99/2011-Service Tax dated 25.04.2016** extended the date of submission of Form ST-3 for the period 0.1.10.2015 to 31.03.2016 from 25th April, 2016 to 29th April, 2016. This was done due to difficulties faced by the assessees in accessing the ACES application on 25th April 2016

CASE LAWS

IMPLEX INFRASTRUCTURES LTD. VERSUS COMMISSIONER OF SERVICE TAX, KOLKATA [CALCUTTA HIGH COURT]

BRIEF: Two show cause notices cannot be issued in relation to the same period. There cannot be double assessment for the period, overlapped to an appreciable extent

OUR COMMENTS: In the above case, the Department issued a Show Cause-cum-Demand Notice on 21st April, 2006 demanding service tax for consulting engineering service for the period from 1st October, 2000 to 31st March, 2005.

The assessee filed its reply dated 24th May, 2006 to the said Show Cause-cum-Demand Notice and reiterated that it did not render any consulting engineering service and only executed construction work for which it is regularly paying the applicable service tax.

As per the said Show Cause-cum-Demand Notice, if no cause was shown within a period of 30 days from the date of receipt of the notice, the case was to be decided ex parte.

Thereafter, there was silence on the part of the department for more than 3 years.

The Department then issued another Show Cause-cum-Demand Notice on 7th September, 2009 for the period 10th September, 2004 to 15th June, 2005 on account of service tax. The period covered by the said show cause notice over lapped with the period covered by the earlier show cause notice dated 21st April, 2006.

The assessee contended that double assessment for the same period is not permissible under the law. The assessee here relied on a decision in the case of Avery India Ltd.-vs. -Union of India reported in 2011 (268) ELT 64 where it was held by the Calcutta High Court that there could not be two assessments for the same period. The Calcutta High Court followed the decision of the Hon'ble Supreme Court in the case of Dankan Industries Ltd. vs. Commissioner of Central Excise, New Delhi.

Accordingly, in the given case, the **Hon'ble High Court** upheld the above decision and held that two show cause notices could not have been issued in relation to the same period and the impugned show cause notice cannot be sustained.

CENTRAL EXCISE

NOTIFICATIONS/CIRCULARS

TIME LIMIT FOR REGISTRATION BY A JEWELLER EXTENDED UP TO 01.07.2016

OUR COMMENTS: The Ministry of Finance, Government of India vide **Circular No. 1026/14/2016-CX dated 23.04.2016** has extended the time limit for taking central excise registration of an establishment by a jeweller up to 01.07.2016.

The liability for payment of central excise duty will still be w.e.f. 1st March, 2016. The assessee jewelers may make the payment of for the months of March, 2016; April, 2016 and May, 2016 along with the payment of for the month of June, 2016.

WITHDRAWAL OF CIRCULARS/INSTRUCTION ON EXCISABILITY OF BAGASSE, ALUMINIUM/ ZINC DROSS

OUR COMMENTS: The Ministry of Finance, Government of India vide **Circular No. 1027/15/2016-CX dated 25.04.2016** has withdrawn the following Circulars/Instruction issued on excisability of bagasse, aluminium/ zinc dross:

(a) Circular No. 904/24/2009-CX dated 28.10.2009,

(b) Circular No. 941/02/2011-CX dated 14.02.2011,

(c) Instruction F.No.17/02/2009-CX (Pt.) dated 12.11.2014.

The above have become non-est and are rescinded.

In consequence, Bagasse, Dross and Skimmings of non-ferrous metals or any such by product or waste, which are non-excisable goods and are cleared for a consideration from the factory need to be treated like exempted goods for the purpose of reversal of credit of input and input services, in terms of rule 6 of the CENVAT Credit Rules, 2004.

DISPOSAL OF CALL BOOK CASES WHICH HAVE BEEN DECIDED BY COURTS OR BOARD

OUR COMMENTS: The Ministry of Finance, Government of India vide **Circular No. 1028/16/2016-CX dated 26.04.2016** has clarified that specified cases shall be taken out of Call Book and adjudicated where:-

(i) The issue involved has either been decided by Hon'ble Supreme Court or Hon'ble High Court and such order of the Hon'ble High Court has attained finality or,

(ii) Board has issued new instruction or circular clarifying the issue involved, subsequent to issue of the order to transfer the case to the Call Book.

The specified cases are:

a. Cases in which the department has gone in appeal to the appropriate authority,

b. Cases where injunction has been issued by Supreme Court/ High Court/ CEGAT, etc.

c. Cases where the board has specifically ordered the same to be kept pending and to be entered into the Call Book.

SIMPLIFIED PROCEDURE FOR UNITS ENGAGED IN MAINTENANCE, REPAIR AND OVERHAUL OF AIRCRAFTS

OUR COMMENTS: The Ministry of Finance, Government of India vide **Notification No. 19/2016-Central Excise dated 26.04.2016** has amended Notification No.12/2012-Central Excise, dated the 17th March, 2012, and simplified procedure for units engaged in maintenance, repair and overhaul of aircrafts.

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

CUSTOMS

NOTIFICATIONS/CIRCULARS

SIMPLIFIED PROCEDURE FOR UNITS ENGAGED IN MAINTENANCE, REPAIR AND OVERHAUL OF AIRCRAFTS

OUR COMMENTS: The Ministry of Finance, Government of India vide **Notification No. 29/2016-Customs dated 26.04.2016** has amended Notification No.12/2012-Customs, dated the 17th March, 2012, and simplified procedure for units engaged in maintenance, repair and overhaul of aircrafts.

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

CLARIFICATION ON AVAILABILITY OF BENEFIT UNDER NOTIFICATION NO. 151/94-CUS DATED 13.07.1994

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India vide **F. No. 528/15/2016-STO (TU) dated 08.04.2016** has clarified that exemption of custom duty provided vide Notification No. 151/94-CUS dated 13.07.1994 to Indian Air Lines, Indian Air Force and United Arab Airlines is not limited to the 'Indian Airlines' (now called as 'National Aviation Company of India Limited'). It is available to all Indian airlines.

The exemption relates to import of aircraft equipments, engine and spare parts, specified catering and ground equipment, fuel in tanks of aircrafts and lubricating oils.

ADDITIONAL MANPOWER TO ENHANCE THE PERFORMANCE OF PCA AND SPECIAL INVESTIGATION AND INTELLIGENCE BRANCH (SIIB) IN CUSTOMS HOUSES

OUR COMMENTS: The CBEC (Dept. of Revenue), Ministry of Finance, Government of India vide I**nstruction No. 18/2016-Customs dated 12.04.2016** has directed that the concerned competent authority may reconsider the staff position in their jurisdiction and reallocate additional manpower to enhance the performance of PCA and Special Investigation and Intelligence Branch (SIIB) in Customs Houses.

OFFICERS ARE SUFFICIENTLY SENSITIZED NOT TO INSIST ON REGISTRATION DOCUMENTS UNDER LEGAL METROLOGY ACT, 2009 WHEREVER IT IS NOT REQUIRED

OUR COMMENTS: The CBEC (Dept. of Revenue), Ministry of Finance, Government of India vide **F. No. 401/69/ 2016- Cus III dated 22.04.2016** has directed that all officers are sufficiently sensitized not to insist on registration documents under Legal Metrology Act, 2009 wherever it is not required.

Insistence on such documents causes undue delay in the clearance of such consignments.

RE-CREDITING BOND VALUE AT DESTINATION AIR CARGO COMPLEX WITHOUT ANY DELAY

OUR COMMENTS: The CBEC (Dept. of Revenue), Ministry of Finance, Government of India vide **F. No. 401/69/ 2016- Cus III dated 22.04.2016** has directed that all Chief Commissioners shall ensure that while moving bonded truck from one Air cargo complex to another air cargo complex, the bond value debited from the online running bond shall be re-credited at the destination air cargo complex upon completion of transshipment without any delay.

INCOME TAX

NOTIFICATIONS & CIRCULARS

CENTRAL POWER RESEARCH INSTITUTE BENGALURU NOTIFIED AS APPROVED ORGANISATION U/S 35(1) (II)

OUR COMMENTS: The CBDT, Dept. of Revenue, Ministry of Finance, Government of India **vide Notification NO. 27/2016 dated 07.04.2016** has notified that Central Power Research Institute Bengaluru (PAN:- AAAAC0268P) has been approved in the category of `Scientific Research Association' for the purpose of Section 35(1)(ii) of the Income tax Act, 1961 from assessment year 2003-2004 onwards, subject to the following conditions:

i) Its sole objective should be scientific research;

(ii) It shall carry out scientific research by itself;

(iii) It shall maintain separate books of accounts in respect of the sums received for scientific research,
(iv) It shall get its books audited by an accountant as per Section 288(2) and furnish the audit report by the due date.

(iv) It shall maintain a separate statement of donations received and amounts applied for scientific research in social science and submit a copy of such statement along with the audit report.

STANDARD DEFINITION OF CERTAIN TERMS

OUR COMMENTS: The CBDT, Dept. of Revenue, Ministry of Finance, Government of India **F.NO.309/11/2016-OT dated 22.04.2016** has accepted the following definitions recommended by the Committee set up for providing standard definition to commonly used terms in direct tax administration:

With reference to a given Financial Year:-

I. **Tax-base - as on the first date of a Financial Year**

Number of persons who have either filed ITRs, or in whose case tax has been paid, or deducted/collected (TDS/TCS), in any of the three consecutive financial years previous to the financial year under reference;

II. **New taxpayer added - during a Financial Year**

Number of persons who are not included in the tax-base, as on first date of the Financial Year, but who have either filed ITRs, or in whose case tax has been paid, or deducted/collected (TDS/TCS), for the first time, during the financial year under reference;

III. **Taxpayer - for a Financial Year**

Any person who has either filed a return of income or in whose case tax has been paid or deducted or collected at source during the financial year under reference.

IV. **Potential taxpayer - for a Financial year**

Any person who is not included in the tax-base, as on the first date of the Financial Year, but in whose case information is available on record to indicate that such person was liable to file ITR, or pay any tax, or tax was required to be deducted/collected (TDS/TCS) in respect of such person, during the financial year under reference;

With reference to a given Assessment Year:-

I. **Assessee - for a given Assessment Year**

As per the definition provided in the Income Tax Act, including any person who is liable to pay any tax, or in respect of whom any proceedings is pending under the Act, for the reference assessment year;

II. **Non-filer - for a given Assessment Year**

Any person who is liable to pay any tax, or file an ITR for the reference assessment year, as per information available on record, but no such ITR for the relevant assessment year has been entered on the System.

The words "tax paid" includes taxes paid by way of Advance Tax, Self-Assessment Tax, Taxes deducted/collected at source (TDS/TCS), Tax paid against regular assessment, Dividend Distribution Tax etc.

The words "information available on record" in the above definition would include information received from departmental sources, third parties e.g. banks, financial intermediaries, law enforcement agencies, foreign tax authorities, etc. and information available in public domain.

ANDHRA PRADESH

EVALUATION OF TENDER FOR PROCUREMENT OF GOODS BY THE GOVERNMENT DEPARTMENTS AND PSUS EXCLUDING TAX

OUR COMMENTS: The Revenue (Commercial Taxes –II) Department, Government of Andhra Pradesh vide **G.O.Ms.No.170 dated 26.04.2016** has directed all the Government Departments / PSUs and other Government Bodies to evaluate the prices quoted by the Bidders in the tenders called for procurement of Goods by excluding the tax element.

It will prevent trade diversion to other States as local bidders could not compete with the bidders from other States because of the difference in rates of tax under APVAT Act, 2005 (14.5%/5%) and CST Act, 1956 (2%).

MAHARASHTRA

AMENDMENT IN FORM III(E)

OUR COMMENTS: The Finance Department, Government of Maharashtra vide **Notification No. CST.- 1516/C.R.-45/Taxation dated 22.04.2016** has amended Form III(E) appended to the Central Sales Tax (Bombay) Rules, 1957.

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

ORISSA

DELEGATION OF POWER U/S 42-A AND RULE 49A & 49B

OUR COMMENTS: The Office of The Commissioner Of Commercial Taxes, Orissa vide **Notification No. III-36/1/2016-Policy/6312/CT dated 19.04.2016** delegated the power to exercise function of the assessing authority u/s 42-A and Rule 49A & 49B to Joint Commissioners of Sales Tax, Deputy Commissioners of Sales Tax, Assistant Commissioners of Sales Tax and Sales Tax Officers.

PUNJAB

E-FILLING OF VAT-15 FOR THE 4TH QUARTER OF 2015-16 EXTENDED TO 06.05.2016

OUR COMMENTS: The Department Of Excise And Taxation Commissioner, Government of Punjab vide **Notice dated 26.04.2016** has extended the period of e-filing VAT-15 for the 4th quarter of 2015-16 to 06.05.2016.

AMENDMENT IN RULE 37 AND FORM 2A

OUR COMMENTS: The Department Of Excise And Taxation Commissioner, Government of Punjab vide **Notification No. G.S.R.35/P.A.8/2005/S.70/Amd.(59)/ 2016 dated 12.04.2016** has amended the Punjab Value Added Tax Rules, 2005 as follows:

In rule 37, the following sub-rule shall be inserted, after sub-rule (1):

"(1-A) Any amount payable by the dealers and manufactures of cigarettes and cigars in respect of tax, excluding additional tax under section 8-B of the Act, shall be paid into the Government Treasury in Form VAT-2 A. One third of tax payable shall be credited to the Punjab State Cancer and Drug Addiction Treatment Infrastructure Fund.".

Further, in the Form VAT-2A, in item 7, for sub-items "(d1) and (d2)" the following shall be substituted namely:-

(d1) Two third of 7 (d) 0040-00-111-10

(d2) One third of 7 (d) 0040-00-111-12".