67TH ISSUE

08 MAY 2016 - 14 MAY 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

EDITORIAL

Friends

Indirect tax collections have shown turn around during the Financial Year 2015-16. **With growth in indirect tax collections, the indirect tax : GDP ratio for FY 2015-16 is about 5.17 per cent as compared to 4.36 per cent for FY 2014-15.** Indirect tax: GDP ratio for the current Financial Year 2016-17 is estimated to be 5.20 per cent.

Indirect Tax : GDP ratio reflects the state of economy somewhat and the improvement in such ratio augurs well for the economy.

In a notable release, The MoF has issued a press release as follows :

QUOTE:

"There is a general perception that no action is taken against the defaulting tax officials for their non performance as well as in case of harassing the tax assesses among others. The present Government has taken various steps to change this perception following the principle of good governance. After the present Government took over two years back, it has taken strict action against such revenue officers/officials in order to fix their accountability.

For the first time, 33 officers / officials of the Revenue Services, including seven Group 'A' officers, have been prematurely retired for non-performance under Rule 56(j) of CCS (Pension) Rules.

Further, 72 officers / officials have been dismissed including six Group 'A' officers, in other departmental/ disciplinary actions in the last two years."

UNQUOTE:

It is always in the best interest of Trade & Industry, The Country and society if accountability if demanded from all stakeholders. For the country to prosper, equal distribution of Income is the key and this would never be achieved if people incharge of governance are themselves violating the control systems. This said, it is also imperative that dishonest taxpayers should also not be benefitted at the expense of honest taxpayer's money.

We hope that this Modi Government is a Government which will bring the change it had promised!

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 8th May, 2016 to 14th May, 2016	STATUTE
08th May, 2016	Deposit of WCT of previous month	Chattisgarh VAT Act Madhya Pradesh VAT Act West Bengal VAT Act Nagaland VAT Act Meghalaya VAT Act Mizoram VAT Act Arunachal Pradesh VAT Act
	Issuance of monthly/quarterly WCT certificate	Madhya Pradesh VAT Act (Monthly)
	Deposit of Ptax of previous month	Andhra Pradesh Commercial Tax Act Madhya Pradesh Commercial Tax Act
10th May, 2016	Deposit of Entry tax of previous month	Chattisgarh Entry Tax Act Madhya Pradesh Entry Tax Act
	Deposit of VAT of previous month	Chattisgarh VAT Act Madhya Pradesh VAT Act
14th May, 2016	Deposit of VAT of previous month	Rajasthan VAT Act
	Deposit of Entry tax of previous month	Rajasthan Entry Tax Act

REPORT OF SUB COMMITTEE - II ON MODEL GST ACT, 2016: POWER TO ARREST, SUMMON AND ACCESS TO BUSINESS PREMISES

The provisions relating to "Power to arrest, summon and access business premises" covered in CHAPTER XII of the model GST Act can be summarized as follows:

Power to arrest

- The Commissioner of CGST/SGST may arrest or authorize any officer to arrest any person if he has committed an offence punishable under Section 63(1)(i) or 63(1)(ii) i.e. cases where the tax evasion exceeds Rs.50 lacs or 63(2) i.e repeated offence under Section 63.

- In case of cognizable offence, the arrested person shall be informed of the grounds of arrest and shall be produced before a magistrate within 24 hours.

- In the case of a non-cognizable and bailable offence, the Deputy/Assistant Commissioner shall have the same powers as an officer-in-charge of a police station has, under section 436 of the Code of Criminal Procedure, 1973.

- All arrests shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 relating to arrest.

Power to summon persons to give evidence in inquiries

- Any CGST/SGST officer shall have power to summon any person whose attendance is necessary to give evidence in any inquiry by him.

- The persons so summoned shall be bound to attend or make statements and produce such documents and other things as may be required:

- Every such inquiry as aforesaid shall be deemed to be a "judicial proceeding" within the meaning of section 193 and section 228 of the Indian Penal Code, 1860 (45 of 1860).

Access to business premises

- Any authorized CGST/SGST officer shall have access to any business premises to inspect books of account, documents, computers, computer programs, computer software etc. for the purposes of carrying out any audit, scrutiny, verification and checks to safeguard the interest of revenue.

- The person in charge of premises shall make available all the relevant books records for the scrutiny of the officer or audit party or the cost accountant or chartered accountant, within 15 working days .

All officers of Police, Customs and those of State/Central Government engaged in collection of goods and services tax and all officers of State/Central Government engaged in the collection of land revenue, and all village officers are hereby empowered and required to assist the CGST/SGST Officers in the execution of this Act.

THIS SPACE HAS BEEN INTENTIONALLY KEPT VACANT

SERVICE TAX

CASE LAWS

THE DEPUTY COMMISSIONER, CENTRAL EXCISE & ANOTHER VERSUS SUSHIL & COMPANY [SUPREME COURT]

BRIEF: Supply of labour for packing, loading and unloading etc. of the goods does not amount to providing any 'Cargo Handling Service', hence not liable to service tax.

OUR COMMENTS: In the above case, the assessee is a service provider under 'Business Auxiliary Service' and 'Manpower Recruitment Agency'. It entered into a contract with another company for supplying labour for the working at the packing plant as per the customer's requirement.

The Revenue issued a show cause notice to the respondent-assessee alleging that the above services provided by the respondent to its customers amounted to 'Cargo Handling Service', and therefore, liable to pay service tax. It was also alleged that it was a modus operandi to evade service tax as it was raising two separate bills for the same work i.e. one bill for payments made to labour and another bill for other expenses and in this manner, service tax was not paid.

The respondent challenged this show cause notice in the High Court, contending that no services were provided by him in the given contract, as it was only supplying labour and the labour was not doing any work of packing, unpacking, loading and unloading of any cargo. The same work was carried out by automatic machines at the plant.

'Cargo Handling Service' within the meaning of Entry 23 of Section 65 of the Act reads as under :-

" 'Cargo Handling Service' means loading, unloading, packing or unpacking of cargo and includes cargo handling services provided for freight in special containers or for no containerized freight, services provided by a contrainers freight terminal, for all mode of transport and cargo handling service incident to freight, but does not include handling of export cargo or passenger baggage or mere transportation of goods."

The Hon'ble High Court interpreted the above definition and observed two conditions are necessary for considering any service to be 'Cargo Handling Service'

(1) there must be a cargo i.e. a packed or unpacked commodity accepted by a transporter or carrier for carrying the same from one destination to another. It is only after the commodity becomes a cargo, its loading and unloading at the freight terminal becomes a cargo handling service, if it is provided by an independent agency and;

(2) the service provider must be independently involved in loading-unloading or packing-unpacking of the cargo.

In the given case, as the labour supplied by the assessee was not directly involved in the loading, unloading, packing or unpacking of cargo, it was held that the aforesaid services would not fall within the definition of 'Cargo Handing Services'.

Further, the Hon'ble Supreme Court upheld the conclusion of the High Court and dismissed the appeal by the Revenue.

[Decided against Revenue]

CENTRAL EXCISE

NOTIFICATIONS/CIRCULARS

AMENDMENT IN NOTIFICATION NO.1/2011 AND 2/2011-CENTRAL EXCISE DATED 1.03.2011

OUR COMMENTS: The Ministry of Finance, Government of India

vide **Notification No. 20/2016- Central Excise** has amended Notification No. 1/2011 – Central Excise dated 01.03.2011 and deleted "Wireless data modem cards with PCMCIA or USB or PCI express ports" from the list of goods having effective rate of duty @2% on which exemption has been withdrawn, without availing cenvat credit.

And,

vide **Notification No. 21/2016- Central Excise** has amended Notification No. 2/2011 – Central Excise dated 01.03.2011 and deleted "Wireless data modem cards with PCMCIA or USB or PCI express ports" from the list of goods with the option to pay duty at 6% with cenvat credit on which exemption has been withdrawn

M/S. SANMAR FOUNDRIES LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, TRICHY [CESTAT CHENNAI]

BRIEF: Show cause notice is the foundation for any proceeding. The assessee's contention against the vague allegations or allegations without basis in the notice cannot be doubted.

OUR COMMENTS: In the above case, the assessee is a manufacturer of excisable goods and has availed benefit of Cenvat credit scheme on the following input services:

1. Management, Maintenance and Repair service of helicopter owned by the Company,
2. Rent-a-cab service,
3. Management and Consultancy service.

The Department alleged that since the assessee has not proved that these services were used in or in relation to the manufacturing activity, credit is not available to them and raised a show cause notice on the following contention:

1. Management, Maintenance and Repair service of helicopter owned by the Company: The helicopter was used for the purpose of other companies also, as the Managing Director of this Company was also the Managing Director of other group companies

2. Rent-a-cab service: This service has no nexus with the manufacturing activity since such service was availed to transport employees from their residences to the factory and back. Also, a part of the expenses was recovered from the employees.

3. "Management and Consultancy service": Managing Director of the appellant company was also the Managing Director of other group companies and therefore, the expenses cannot be considered as nexus with the manufacturing activity of the assesee company.

The assessee's contention:

Management, maintenance and repair service and management consultancy service are the services specified under Rule 6 (5) of the Cenvat Credit Rules. For services specified under the said sub-rule even if part of the service is used in the manufacturing activity of dutiable products, then credit of service tax paid on the entire service has to be allowed.

Also, the person concerned did not provide any service to any other company and the allegation of the Department is without any basis.

Regarding **rent-a-cab service,** since, only a part of the expenses was recovered from the employees, credit of service tax paid on the entire service cannot be held as ineligible.

The Hon'ble CESTAT accepted the assessee's contention and held that the show cause notice is the foundation for any proceeding. In the given case, the allegation of the Department is too vague and therefore, the appellant's contention to the contrary cannot be doubted. Accordingly, credit is eligible.

[Decided in favour of assessee]

CUSTOMS

NOTIFICATIONS/CIRCULARS

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. 64/2016-Customs (N.T.) dated 05.05.2016 & in supersession of Notification No. 55/2016-Customs (N.T.) dated 21.04.2016** 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. **06.05.2016** 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	50.55	49.25
2.	Bahrain Dinar	182.10	171.60
3.	Canadian Dollar	52.45	51.35
4.	Danish Kroner	10.45	10.15
5.	EURO	77.40	75.55
6.	Hong Kong Dollar	8.65	8.50
7.	Kuwait Dinar	228.10	215.50
8.	New Zealand Dollar	46.50	45.30
9.	Norwegian Kroner	8.30	8.10
10.	Pound Sterling	97.85	95.70
11.	Singapore Dollar	49.65	48.60
12.	South African Rand	4.60	4.35
13.	Saudi Arabian Riyal	18.25	17.30
14.	Swedish Kroner	8.35	8.15
15.	Swiss Franc	70.50	68.70
16.	UAE Dirham	18.65	17.65
17.	US Dollar	67.15	66.10
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	62.90	61.45
2.	Kenya Shilling	68.05	64.30

VILLAGE SACHANA IN AHMEDABAD APPOINTED AS INLAND CONTAINER DEPOT FOR UNLOADING OF IMPORTED GOODS AND LOADING OF EXPORT GOODS IN GUJARAT

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 59/2016-Customs (N.T.) dated 27.04.2016** has appointed **Village Sachana, Viramgam, District Ahmedabad** as inland container depot for the purpose of unloading of imported goods and loading of export goods in Gujarat.

FIXATION OF TV OF EDIBLE OIL, BRASS, POPPY SEED, ARECA NUT, GOLD AND SLIVER

OUR COMMENTS: The CBEC (Dept. of Revenue), Ministry of Finance, Government of India vide **Notification No. 60/2016-Customs (N.T.) dated 29.04.2016** has amended **Notification No.36/2001-Customs, dated 03.08.2001** and fixed tariff value of edible oil, brass, poppy seed, areca nut, gold and silver by substituting tables, TABLE – 1, TABLE – 2 and TABLE – 3.

INCOME TAX

NOTIFICATIONS & CIRCULARS

INCOME-TAX (10TH AMENDMENT) RULES, 2016 & INCOME-TAX (11TH AMENDMENT) RULES, 2016

OUR COMMENTS: The CBDT, Dept. of Revenue, Ministry of Finance, Government of India

vide Notification No. 29/2016 dated 28.04.2016 has further amended Income-tax Rules, 1962 and has made Income-tax (10th Amendment) Rules, 2016. There are amendments in rule 6 and in several forms (3CK, 3CL, 3CLA) in Appendix II.

vide Notification No. 30/2016 dated 29.04.2016 has further amended Income-tax Rules, 1962 and has made Income-tax (11th Amendment) Rules, 2016. The amended rules introduce new Rule 26C and amends rule 30, 31A, 37CA and in several forms (12BA, 24G, 24Q, 26Q, 27Q) in Appendix II.

The notifications are self-explanatory. The readers may refer the same.

RESIDENT DEDUCTOR IS ENTITLED FOR THE REFUND OF TDS DEDUCTED U/S 195 WITH INTEREST

OUR COMMENTS: The CBDT, Dept. of Revenue, Ministry of Finance, Government of India vide **Circular No. 11/2016 dated 26.04.2016** has settled that in view of the **judgment of the Hon'ble Supreme Court** of India in the case of **Tata Chemical Limited, Civil Appeal No. 6301 of 2011 vide order dated 26.02.2014,** a resident deductor is entitled for the refund of tax deposited under Section 195 of the Act with interest under section 244A of the Act, from the date of payment of such tax.

The issue of eligibility for interest on refund of excess TDS to a tax deductor has been a subject matter of controversy and litigation since long.

LIMITATION PERIOD FOR PENALTY PROCEEDINGS U/S 271D AND 271E OF THE INCOME TAX ACT, 1961

OUR COMMENTS: The CBDT, Dept. of Revenue, Ministry of Finance, Government of India vide **Circular No. 10/2016 dated 26.04.2016** has settled that in view of the **judgment of the Hon'ble Delhi High Court in the case of Commissioner of Income Tax vs. Worldwide Township Projects Ltd, vide its order dated 21.5.14 in ITA No. 232/2014,** the limitation period for the imposition of penalty under U/S 271D and 271E of the Income Tax Act, 1961 would be the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later. The limitation period is not dependent on the pendency of appeal against the assessment or other order referred to in section 275(1)(a) of the Act.

FRAMEWORK FOR COMPUTATION OF BOOK PROFIT FOR MAT U/S 115JB OF THE INCOME-TAX ACT, 1961 FOR INDIAN ACCOUNTING STANDARDS (IND AS) COMPLIANT COMPANIES

OUR COMMENTS: The CBDT, Dept. of Revenue, Ministry of Finance, Government of India vide **Circular dated 28.04.2016** has placed the report (of Committee on MAT-Ind AS) relating to framework for computation of book profit for the purposes of levy of MAT under section 115JB of the Income-tax Act, 1961 for Indian Accounting Standards (Ind AS) compliant companies on www.incometaxindia.gov.in for inviting comments/suggestions from stakeholders by 10.05.2016.

CHATTISGARH

EXEMPTION OF ENTRY TAX ON "LAC"

OUR COMMENTS: The Commercial Tax Department, Government of Chattisgarh vide N**otification No. F-10/27/2016/CT/V (54) dated 29.04.2016** has exempted "Lac" from entry tax when entered into local area for consumption or use, as raw material for the process of manufacture.

GUJARAT

EXEMPTION ON KEROSENE SOLD THROUGH THE PUBLIC DISTRIBUTION WITHDRWAN

OUR COMMENTS: The Finance Department, Government of Gujarat vide **Notification No. No. (GHN-23)VAT-2016-S.5 (2) (49)-TH dated 30.04.2016** has amended **Notification No. (GHN-35)VAT-2006-S.5 (2) (1)-TH, dated the 31st March, 2006**, and withdrawn exemption to Kerosene sold through the public distribution system.

REMISSION OF TAX PAYABLE UNDER SECTION 7 OF THE ACT ON SALES OF KEROSENE THROUGH THE PUBLIC DISTRIBUTION SYSTEM

OUR COMMENTS: The Finance Department, Government of Gujarat vide **No. (GHN-24)VAT-2016-S.5 (2) (49)-TH dated 30.04.2016** remits the amount of tax payable under section 7 of the Act on sales of kerosene through the public distribution system in Gujarat subject to the following conditions:

1. The dealer shall not issue tax invoice for the sales

2. The dealer shall not charge tax from the purchaser

3. The dealer shall not contravene any of the provisions of the Act or rules made there under.

JHARKHAND

AMENDMENT REGARDING SPONGE IRON, PIG IRON, STEEL SCRAP, PELLET & FERRO ALLOYS

COMMENTS: The Commercial Taxes Department, Government of Jharkhand vide **Notification dated 30.03.2016** has made amendment in JVAT Schedule-II Part-F regarding Sponge Iron, Pig Iron, Steel Scrap, Pellet & Ferro Alloys.

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

KERALA

INSISTENCE ON PRODUCING PHOTOGRAPHS ON RENEWAL OF REGISTRATION

OUR COMMENTS: The Office of The Commissioner Commercial Taxes, Government of Kerala vide Circular **No. 4/2016 dated 29.04.2016** has instructed that since electronic records are available evidencing renewal of registration, only for those who need a fresh physical copy, photographs need be insisted for affixing in the certificate.

For others, if there is no change of constitution in the registration certificate already issued, renewal can be authenticated by the registering authority after obtaining the renewal fees..

WEST BENGAL

DUE DATE OF SUBMISSION OF RETURN UNDER SECTION 32 OF THE WEST BENGAL VALUE ADDED TAX ACT, 2003 EXTENDED TO 16.05.2016

OUR COMMENTS: The Directorate of Commercial Taxes, Government of West Bengal vide Order dated 29.04.2016 has extended the due date for filing Form 14/14D and Form 15 for Q.E. 31.03.2106 and for Form 15R for Y.E. 31.03.2016 to 16.05.2016.

The date of furnishing paper form of the above returns has been extended to 23.05.2016.