69TH ISSUE

22 MAY 2016 - 28 MAY 2016

TAX CONNECT

GST

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CUSTOMS | INCOME TAX

STATE TAXES

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EDITORIAL

Friends

Yet another 4 states have given their verdict for their Government for the next 5 years. Whatever be the results, yet as time passes and the country moves ahead, there are 3 distinct changes being witnessed -

1. A clean political face is a major differentiator.
2. Meritocracy rather than Heritage and Tradition is slowly gaining ground even in politics.
3. Electorates now like to give full majorities.

As far as GST is concerned, the win of BJP in Assam and with TMC in WB, it is a positive development.

A very important development to note in respect of Entry tax. The Levy of entry tax by the state government across India has always been subject matter of dispute.

Various companies have challenged levy of entry tax on the ground that it is against Article 301 (Freedom of trade commerce and intercourse) of the Constitution of India and the matter is pending before the Hon'ble Apex Court.

Now, The Supreme Court vide order dated 11-05-2016, in the case of M/s. Vedanta Aluminium Ltd. vs. State of Orissa & Ors. has directed that the papers shall be placed before the Hon'ble Chief Justice for constituting an appropriate Bench to hear the main appeals/petitions in the month of July 2016.

What does this development in Entry tax hold for Trade & Industry- Well even earlier in March, The Apex Court had hinted that it may vacate entry tax stay upto 50%. In this the backdrop of this order the intention of the Apex Court to fast forward the Entry Tax Matter seems clear. Hence dealers who have stopped paying entry tax post filing Writs may look at the provisions in books of accounts and should gear up for some action ahead.

In Service Tax, Notification No. 25/2016 has directed that the service tax payable by Kumaon Mandal Vikas Nigam Limited & Haj Committee in respect of a religious pilgrimage facilitated by the Ministry of External Affairs of the Government of India, under bilateral arrangement, in the period 01.07.2012 to19.08.2014 shall not be required to be paid. Well, in our country no authority would ever want to tickle around with religious sentiments!

In Income tax, The Government of India vide LETTER F.NO.225/12/2016/ITA.II dated 02.05.2016 has decided that the income arising from transfer of unlisted shares would be considered under the head 'Capital Gain', irrespective of period of holding.

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 22nd May, 2016 to 28th May, 2016	STATUTE
22nd May, 2016	Deposit of VAT of previous month	Gujarat VAT Act
	Deposit of WCT of previous month	Gujarat VAT Act
	Issuance of WCT certificate	Delhi VAT Act
	Deposit of Entry tax of previous month	Gujarat Entry Tax Act
25th May, 2016	Filing of monthly/quarterly VAT return	Jharkhand VAT Act (Monthly)
	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)
28th May, 2016	Deposit of VAT of previous month	Arunachal Pradesh VAT Act
	Filing of monthly/quarterly VAT return	Arunachal Pradesh (Monthly, if turnover>Rs. 1 crore)

REPORT OF SUB COMMITTEE - II ON MODEL GST ACT, 2016: APPEALS AND REVIEW

The provisions relating to "Apppeals and Review" covered in CHAPTER XV of the model GST Act can be summarized as follows:

Second Appeals to the Appellate Tribunal

- Any person aggrieved by the order of the first appellate authority u/s 82(10) may appeal to the Appellate Tribunal.

- The Tribunal may refuse to admit appeals where the disputed amount does not exceed Rs 2 lacs.

- A Committee (of two designated officers of GST) may be constituted for filing appeals against the orders of the first Appellate Authority.

  If the Committee is of the opinion that the order passed is not legal or proper, it may direct any GST Officer to apply to the Appellate Tribunal. Such application shall be dealt with by the Appellate Tribunal as if the appeal is made by the aggrieved person.

- The appeal shall be filed within 3 months from the date of the order passed.

- On receipt of notice of appeal, the party against whom the appeal has been preferred shall file a memorandum of cross-objection within 45 days of the receipt of the notice.

- The Appellate Tribunal may admit the appeal or memorandum of cross-objections after the expiry of the period referred if sufficient cause for delay is presented.

- The appellant shall deposit 10% percent of the amount in dispute alongwith the prescribed fee.

  The "amount in dispute" shall include –

  - amount determined under section relating to demands
  - amount of erroneous or irregular input tax credit
  - amount payable under GST Credit Rules
  - amount of penalty imposed

  A higher amount may be ordered if the case is considered to be a "serious case"(if the case involves disputed tax liability of Rs. 25 crores or more and it is considered that the department has a very good case against the taxpayer).

  The above provision shall also apply mutatis mutandis to memorandum of cross objections.

- Every application made before the Appellate Tribunal,
  - in an appeal for rectification of mistake or for any other purpose; or
  - for restoration of an appeal or an application,

  shall be accompanied by a prescribed fee

  Provided that no such fee shall be payable in the case of an application filed by or on behalf of the Commissioner of GST under this sub-section.

THIS SPACE HAS BEEN INTENTIONALLY KEPT VACANT

SERVICE TAX

NOTIFICATIONS/CIRCULARS

SERVICES PROVIDED BY THE SPECIFIED ORGANISATIONS IN RESPECT OF RELIGIOUS PILGRIMAGE FACILITATED BY THE MINISTRY OF EXTERNAL AFFAIRS UNDER BILATERAL ARRANGEMENT, SHALL NOT BE REQUIRED TO BE PAID

OUR COMMENTS: The CBEC, Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 25/2016-Service Tax dated 17.05.2016** has directed that the service tax payable under section 66B of the Finance Act, 1994, on the services provided by the said specified organizations in respect of a religious pilgrimage facilitated by the Ministry of External Affairs of the Government of India, under bilateral arrangement, in the period 01.07.2012 to19.08.2014 shall not be required to be paid.

According to a practice that was generally prevalent, there was non levy of service tax on the above mentioned services. These services were liable to service tax, which was not being paid according to the said general practice.

CASE LAWS

C.C.E., CUS. & S.T., LTU, BANGALORE VERSUS SANSERA ENGINEERING PVT. LTD. [KATNATAKA HIGH COURT]

BRIEF: As per Factories Act, 1948, factories employing more than 250 workers should provide catering services.
However, if the establishments with less than 250 employees provide catering service, such service shall be eligible as input services for the purpose of cenvat credit.

OUR COMMENTS: In the above case, the assessee is an organization with less than 250 employees. It provides catering services to its employees and claims cenvat credit on it as the same is eligible as input services.

The Revenue contended that factories or establishments having less than 250 workers are not entitled to the benefit of Cenvat credit and passed an order. Here, it relied on Section 46(1) of the Factories Act, 1948, which requires that factories employing more than 250 workers should provide catering services.

The assessee filed an appeal against the said order. The Tribunal, after relying on the decisions of the Bombay High Court in the case of Ultratech Cement Limited [2010 (260) E.L.T. 369 (Bom.) = 2010 (20) S.T.R. 577 (Bom.)] and Gujarat High Court in the case of Ferromatik and Milacron India Limited [2011 (21) S.T.R. 8 (Guj.)], held that there is no law providing for catering service to qualify as input service only if number of employees exceed 250.

The Revenue thereafter appealed against the order passed by the Tribunal.

The **Hon'ble High Court** found no reason to interfere with the view taken by the Tribunal and dismissed the appeal of the Revenue.

[Decided against Revenue]

CENTRAL EXCISE

NOTIFICATIONS/CIRCULARS

AMENDMENTS IN NOTIFICATION NO. 12/2012 DATED 17.03.2012

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 23/2016-Central Excise dated 17.05.2016** has further amended **Notification No. 12/2012-Central Excise dated 17.03.2012.**

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

MEASURES TO BE TAKEN FOR EQUITABLE DISTRIBUTION OF CASES AMONG THE SR/JR STANDING COUNSELS AND SPECIAL PUBLIC PROSECUTORS (SPPS) CONDUCTING CBEC CASES AT DIFFERENT FORA

OUR COMMENTS: The CEBC, Dept. of Revenue, Ministry of Finance, Government of India vide **F. No. 278A/25/2016-Legal dated 11.05.2016** has reiterated **para '4' of Instruction F.No. 278A/54/2015 Legal dated 29.2.2016,** and requested the concerned Chief Commissioner to ensure that there is a proper and equal distribution of cases among the Sr./Jr. Standing Counsels and the SPPs for effective utilization of their services.

The Board is of the view that uneven distribution is not desirable as it affects the quality of the litigation work as some Counsels would be overburdened, while others will not have much work. Further, it is difficult to gauge the performance of the Sr./Jr. Standing Counsels/SPPs on panel, if very few/nil cases are assigned to them.

CASE LAWS

COMMISSIONER OF CENTRAL EXCISE, FARIDABAD-II VERSUS KAPOOR LAMP SHADE COMPANY (FACTORY SHOP) [PUNJAB & HARYANA HIGH COURT]

BRIEF: Assembly of different parts of decorative lamp shades and chandeliers does not amount to manufacturing.

OUR COMMENTS: In the above case, the assessee procures various components of lamp shades and chandeliers from different sources and thereafter pack the same in cartons, put its logo, besides the code number of the product.

The revenue raised the duty demand and penalty on the grounds that the assembly of various components of lamp shades and chandeliers amounts to 'manufacture of the lamps and light fittings' covered by the Central Excise Act, 1944.

The Tribunal observed that the assessee is engaged in fitting of various lamp shades and chandeliers procured from different sources which are re-assembled and thereafter sealed with its own logo and code number. Accordingly, it held that procuring the manufacturing items and packing them with its own brand name by the assessee, does not amount to creation of a new product which may invite the duty.

The Hon'ble High Court upheld the finding of the Tribunal and dismissed the appeal of the Revenue.

[Decided against Revenue]

THIS SPACE HAS BEEN INTENTIONALLY KEPT VACANT

CUSTOMS

NOTIFICATIONS/CIRCULARS

EXEMPTION TO SPECIFIED GOODS IMPORTED BY DEFENCE, COAST GAURD, DEPTT. OF REVENUE, POLICE FORCES, HAL,OF GOODS ETC. WITHDRAWN

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 33/2016-Customs dated 17.05.2016** has further amended **Notification No. 39/96-Customs dated 23.07.1996** and has withdrawn exemption to specified goods imported by specified organisations.

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

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. 65/2016-Customs (N.T.) dated 17.05.2016** 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.

SPECIFIED GOODS (GOLD, SILVER ETC.) SHALL BE DEPOSITED IN A SPECIAL WAREHOUSE LICENSED UNDER SECTION 58A (1)

OUR COMMENTS: The CBEC, Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 66/2016-Customs (N.T.) dated 14.05.2016** has specified the following class of goods which shall be deposited in a special warehouse licenced u/s 58A(1):

(1) gold, silver, other precious metals and semi-precious metals and articles thereof;

(2) goods warehoused for the purpose of -

(a) supply to duty free shops in a customs area;

(b) supply as stores to vessels or aircrafts under Chapter XI of the Customs Act, 1962;

(c) supply to foreign privileged persons in terms of the Foreign Privileged Persons (Regulation of Customs Privileges) Rules, 1957.

WAREHOUSED GOODS (REMOVAL) REGULATIONS, 2016 WAREHOUSE (CUSTODY AND HANDLING OF GOODS) REGULATIONS, 2016, AND WAREHOUSE LICENSING REGULATIONS, 2016

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

vide Notification No. 67/2016-Customs (N.T.) dated 14.05.2016 has made **Warehoused Goods (Removal) Regulations, 2016.**

vide Notification No. 68/2016-Customs (N.T.) dated 14.05.2016 has made **Warehouse (Custody and Handling of Goods) Regulations, 2016.**

vide Notification No. 69/2016-Customs (N.T.) dated 14.05.2016 has made **Special Warehouse (Custody and Handling of Goods) Regulations, 2016.**

vide Notification No. 70/2016-Customs (N.T.) dated 14.05.2016 has made **Public Warehouse Licensing Regulations, 2016.**

vide Notification No. 71/2016-Customs (N.T.) dated 14.05.2016 has made **Private Warehouse Licensing Regulations, 2016.**

vide Notification No. 72/2016-Customs (N.T.) dated 14.05.2016 has made **Special Warehouse Licensing** Regulations, 2016.

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

INCOME TAX

NOTIFICATIONS & CIRCULARS

RELEASE OF TIME SERIES DATA FOR FINANCIAL YEAR 2000-01 TO 2014-15

OUR COMMENTS: The CBDT, Dept. of Revenue, Ministry of Finance, Government of India **vide Press Release dated 29.04.2016** has released Time Series Data for Financial Year 2000-01 to 2014-15 based on internal reporting/MIS or figures reported by Controller General of Accounts or data published by other Government agencies along with PAN Allotment Statistics pertaining to Financial Year 2013-14 and Income Tax Return Statistics for Assessment Year 2012-13 (FY 2011-12).

The data is available on the official website www.incometaxindia.gov.in.

The objective of publishing it is to encourage wider use and analysis by Departmental personnel as well as various stakeholders including economists, scholars, students, researchers and academicians for purposes of tax policy formulation and revenue forecasting.

INCOME ARISING FROM TRANSFER OF UNLISTED SHARES WOULD BE CONSIDERED UNDER THE HEAD 'CAPITAL GAIN', IRRESPECTIVE OF PERIOD OF HOLDING

OUR COMMENTS: The Government of India **vide LETTER F.NO.225/12/2016/ITA.II dated 02.05.2016** has decided that **the income arising from transfer of unlisted shares** would be considered under the head 'Capital Gain', irrespective of period of holding. This is to avoid disputes/litigation and to maintain uniform approach in assessments.

The above may not be applied where:

- the genuineness of transactions in unlisted shares itself is questionable; or
- the transfer of unlisted shares is related to an issue pertaining to lifting of corporate veil; or
- the transfer of unlisted shares is made along with the control and management of underlying business and the Assessing Officer would take appropriate view in such situations.

For listed shares, CBDT had clarified earlier (vide Circular no. 6/2016 dated 29th February, 2016) that income arising from transfer of listed shares and securities, which are held for more than 12 months would be taxed under the head 'Capital Gain' unless the taxpayer itself treats these as its stock- in-trade

VERIFICATION OF TAX-RETURNS FOR ASSESSMENT YEARS IN THE PERIOD 2009-2015 THROUGH EVC WHICH ARE PENDING DUE TO NON-FILING OF ITR-V FORM

OUR COMMENTS: The CBDT, Dept. of Revenue, Ministry of Finance, Government of India **vide Circular No. 13/2016 dated 09.05.2016** has permitted verification of such returns for assessment years in the period 2009-2015 through EVC. The verification process is to be completed by 31.08.2016.

Alternatively, the taxpayer is allowed to send a duly signed copy of ITR-V to the CPC, Bengaluru by this date by speed post.

In situations where the taxpayer concerned had submitted the ITR-V Form after the permitted time which was earlier being treated as Non-est/declared Non-est and evidence of same is available with the Department, the same shall be treated as valid compliance of this order and dealt with accordingly.

It is the final opportunity to the taxpayers to regularize their pending income-tax returns pertaining to the Assessment Year's 2009-2010 till 2014-2015.

DELHI

EXTENSION OF DUE DATE OF FILLING OF ONLINE RETURN FOR FOURTH QUARTER OF 2015-16 TO 23.05.2016

OUR COMMENTS: The Department Of Trade And Taxes, Government Of National Capital Territory Of Delhi vide **CIRCULAR No. 5 of 2016-17 dated 16.05.2016** has extended the last date of filling of online/hard copy of fourth quarter return for the year **2015-16, in Form DVAT-16, DVAT and DVAT-48 to 23.05.2016.**

However, the tax due shall continue to be paid in the usual manner. The Dealers filling the returns through digital signature need not file hard copy of the return/Form DVAT-56.

GOA

TAX RATE ON MOTOR SPIRIT SOLD BY PUBLIC SECTOR INCREASED FROM 15% TO 20%

OUR COMMENTS: The Department Finance, Government of Goa vide **Notification No. 4/5/2005-Fin(R&C)(135)/242 dated 17.05.2016** has amended Schedule C and increased the tax rate on motor spirit sold by public sector oil marketing companies to their authorized retail outlets within the State from 15% to 20%.

JHARKHAND

EXEMPTION TO RAF, BSF AND CRPF

COMMENTS: The Commercial Taxes Department, Government of Jharkhand vide **Notification No. S.O.07, S.O.08, S.O.09 dated 20.04.2016** has granted exemption to CRPF, Jamshedpur, RAF Jamshedpur and BSF Hazaribagh from payment of tax on any goods (excluding Automobiles & Luxury items like Cosmetics, Electronics Goods and Electrical Goods and Liquor) required for their bonafide use.

Luxury items like Cosmetics, Electronics Goods, Electrical Goods and Automobiles will be taxable @ 5%.

The notification shall be effective from the date of its issue till 31.03.2017.

MAHARASHTRA

SUBSTITUTION OF FORM 101, FORM 103 & FORM 105

OUR COMMENTS: The Government of Maharashtra vide **Notification No. VAT/ADM-2016/1B/ADM-8.—dated 28.04.2016** has substituted Form 101, 103 and 105.

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

AMENDMENT IN RULE 11, 40, 40A, 63 & 73;
INSERTION OF NEW FORM 402A, 404A, 424A, 703, 703A, 703B, 703C, 703D & 703E

OUR COMMENTS: The Finance Department, Government of Maharashtra vide **Notification No. VAT. 1516/CR 64/Taxation-1 dated 29.04.2016** has made Maharashtra Value Added Tax (Third Amendment) Rules, 2016 and has amended the following rules:

Amendment in Rule 11, 40, 40A, 63 & 73;

Insertion of New Form 402A, 404A, 424A, 703, 703A, 703B, 703C, 703D & 703E

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