72ND ISSUE

12 JUN 2016 - 18 JUN 2016

TAX CONNECT

GST	
SERVICE TAX	CENTRAL EXCISE
CUSTOMS	INCOME TAX
	STATE TAXES

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EDITORIAL

Friends

We all await the judgment of the 9 member bench of The Apex Court in the matter of Entry Tax. It would be a historic moment as post independence it is only the 2nd or 3rd time that a tax matter has been referred to such a large bench. The stake of The Government is very high!

As we await the decision, we will take you through the **various questions which are before the Apex Court in the matter -**

1. Whether the Levies of Entry Tax have to be tested with reference to both clauses (a) and (b) of Article 304 of the Constitution. Whether the use of the word 'and' between clauses (a) and (b) of Article 304 makes these two clauses conjunctive.
2. Whether imposition of Entry Tax levied in terms of Entry 52 List II of 7th Schedule is violative of Article 301 of the Constitution? If the answer is in the affirmative whether such levy can be protected if Entry Tax is compensatory in character and what are the yardsticks to be applied to determine the compensatory character of the Entry Tax
3. Whether Entry 52, List II, 7th Schedule of the Constitution like other taxing entries in the Schedule, merely provides a taxing field for exercising the power to levy and whether collection of Entry tax which ordinarily would be credited to the Consolidated Fund of the State being a revenue received by the Government of the State and would have to be appropriated in accordance with law and for the purposes and in the manner provided in the Constitution as per Article 266.
4. Whether the non discriminatory indirect State Tax which is capable of being passed on and has been passed on by traders to the consumers infringes Article 301 of the Constitution

In Service Tax, in a Landmark Decision in the case of **Suresh Kumar Bansal Vs. Union of India & Ors; Anuj Goyal & Ors Vs. Union of India & Ors 2016-VIL-284-DEL-ST**, The Hon'ble Delhi High Court has held that No service-tax shall be levied on sale of under-construction flats if contract price includes value of land. Further, preferential location charges do not amount to service and cannot be charged to service tax.

This judgment is indeed a game changer for the real estate sector, wherein Service tax is levied on any part of the consideration received prior to completion certificate, as the same is treated as rendering of services. However, undoubtedly the Revenue would take up the matter to the Hon'ble Supreme Court and it would be interesting to see how the matter dwells & get decided by the Hon'ble Apex Court.

Further in Service Tax, In the Budget 2016-17, the levy of Service Tax on all the services rendered by Senior Advocate was kept outside the ambit of Reverse Charge Mechanism and the Senior Advocate were required to pay Service tax on the services rendered by them. However vide Notification No. 32/2016 & Notification No. 33/2016, the effect of the said amendment has been more or less nullified.

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 12th June, 2016 to 18th June, 2016	STATUTE
14th June, 2016	Deposit of VAT of previous month	Rajasthan VAT Act
	Deposit of Entry tax of previous month	Rajasthan Entry Tax Act
15th June, 2016	Deposit of VAT of previous month	Bihar VAT Act Haryana (if Tax> Rs. 1 lac) VAT Act Jharkhand VAT Act Kerala VAT Act Sikkim VAT Act
	Filing of monthly/quarterly VAT return	Kerala VAT Act (Monthly)
	Deposit of WCT of previous month	Bihar VAT Act Chandigarh VAT Act Delhi VAT Act Haryana VAT Act Jharkhand VAT Act Punjab VAT Act Rajasthan VAT Act Himachal Pradesh VAT Act
	Filing of monthly/quarterly WCT return	Punjab VAT Act (Monthly)
	Issuance of monthly/quarterly WCT certificate	Haryana VAT Act (Monthly) Jharkhand VAT Act (Monthly) Himachal Pradesh VAT Act (Monthly)
	PF deposit of previous month	EPF Act
	Deposit of Ptax of previous month	Sikkim Commercial Tax Act Gujarat Commercial Tax Act
	Deposit of Entry tax of previous month	Bihar Entry Tax Act
	Advance income-tax for 1st quarter (Corporate Assessee)	Income-Tax Act

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

The provisions relating to "ADVANCE RULING" covered in CHAPTER XVI of the model GST Act can be summarized as follows:

The Authority for Advance Ruling

The Authority shall comprise one member CGST and one member SGST

Application for Advance Ruling

A person can apply for advance ruling with the prescribed fee on the following questions:

a) classification of any goods or services
b) applicability of a notification having a bearing on the rate of tax;
c) the principles for determining value of the goods;
d) admissibility of input tax credit of tax paid or deemed to have been paid;
e) liability to pay tax on any goods or services
f) whether applicant is required to be registered under the Act;
g) whether any particular thing done by applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

Procedure on receipt of application

- The Authority after examining the application and the records may call for hearing and by order, either admit or reject the application.

- The application shall not be accepted if the question involved is
  - already pending before or decided by any Appellate authority, the Appellate Tribunal or any Court;
  - already pending in any proceedings or already decided by the adjudicating authority or assessing authority.

- The application shall be rejected unless an opportunity has been given to the applicant of being heard.

- A copy of every order shall be sent to the applicant and to the prescribed officers.

- Where an application is admitted, the Authority shall examine further material and hear the applicant as well as the authorized representative of the prescribed officers, then pronounce its advance ruling.

Applicability of advance ruling

The advance ruling pronounced shall be binding only on the applicant and 1on the jurisdictional tax authorities in respect of the applicant.

Advance ruling to be void in certain circumstances

Where the advance ruling has been obtained by the applicant by fraud or suppression of material facts or misrepresentation of facts, the Authority may, by order, declare such ruling to be void ab-initio.

Powers of Authority

- The Authority shall have all the powers of a civil court under the Code of Civil Procedure, 1908 for exercising its powers regarding discovery and inspection, enforcing attendance of any person and examining him on oath, issuing commissions and compelling production of books of account and other records.

- The Authority shall be deemed to be a civil court for the purposes of section 195, but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973, and every proceeding before the Authority shall be deemed to be a judicial proceeding within sections 193 and 228, and for section 196, of the Indian Penal Code

SERVICE TAX

NOTIFICATIONS/CIRCULARS

LEGAL SERVICES BY SENIOR ADVOCATES TO INDIVIDUALS AND BUSINESS ENTITY WITH TURNOVER UP TO RS 10 LACS EXEMPTED, TAX IS TO BE PAID BY THE RECIPIENT OF SERVICE

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

vide **Notification No. 32/2016 – Service Tax dated 06.06.2016** has amended **Notification No. 25/2012-Service Tax, dated 20.06.2012** and exempted legal services provided by senior advocates to individuals and business entity with a turnover up to Rs. 10 lacs in the preceding financial year from service tax.

vide **Notification No. 33/2016 – Service Tax dated 06.06.2016** has amended **Service Tax Rules, 1994** and clarified that tax is to be paid by the recipient of service and if the senior advocate is engaged by another lawyer, the Service Tax is to be paid by the litigant.

vide **Notification No. 34/2016 – Service Tax dated 06.06.2016** has amended **Notification No. 30/2012-Service Tax, dated 20.06.2012** and has prescribed extent of payment of service tax by a business entity as a recipient of services provided by senior advocates.

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

CASE LAW

MEGA CABS PRIVATE LIMITED VERSUS UNION OF INDIA [DELHI HIGH COURT]

BRIEF: Service Tax audit cannot be conducted by the Service Tax Department or CAG

OUR COMMENTS: In the above case, the Additional Commissioner (Audit) issued a letter to the assessee seeking information for conducting audit of the records under Rule 5A of ST Rules, 1994.

The assessee contended that although **Rule 5A(2)** permits any officer of the Department or an audit party deputy by the Commissioner or the CAG to ask for production of books of accounts**, Section 72A of the Finance Act** only contemplates a special audit to be done by a Assessee on direction of the Commissioner, Cost Accountant or a Chartered Accountant.

Also, it was held in various cases that subordinate legislation must conform to the provisions of the statute and must be within the scope of the rule making power of the authority.

The Hon'ble High Court held that

- **Rule 5A(2)** of the Service Tax Rules,, to the extent it authorises the officers of the Service Tax Department, the audit party deputed by a Commissioner or the CAG to seek production of the documents as ultra vires the Finance Act and, therefore, struck it down to that extent;

- **Circular No. 181/7/2014-ST dated December 10, 2014** which provides for scrutiny of records by the said officers to be ultra vires the Finance Act and was struck down

- **CBEC circular dated 27.02.2015 which** contemplated the Department's officers themselves undertaking the audit., as ultra vires the Finance Act, as they do not have any statutory backing and cannot be relied upon by the Department to legally justify the audit undertaken by officers of the Service Tax Department.

The impugned Letter addressed to the assessee was accordingly quashed

[Decided in favour of assessee]

CENTRAL EXCISE

CASE LAWS

M/S. SUMETCO ALLOYS PVT. LTD. VERSUS CCE, JAIPUR [CESTAT NEW DELHI]

BRIEF: Amount paid during investigation cannot be considered as payment of duty, hence, the provisions of section 11B and the time limit prescribed therein will have no application for refunding such amount.

OUR COMMENTS: In the above case, the assessee paid an amount during the course of investigation conducted by the preventive wing. Later, the assessee filed claim application before the appropriate authority in a plain letter-form without mentioning any statutory provisions therein. The authorities assumed that the claim has been filed under section 11B and rejected the claim being time barred as per the time limit prescribed under the section.

The Hon'ble CESTAT held that if the duty is paid with regard to the removal of excisable goods from the factory, then the provisions of section 11B of the Act will have the application, however, in the given case the amount paid is not attributable to clearance of finished product from the factory. The amount is a mere deposit, hence, for claiming refund of such amount, the provisions of section 11B will have no application. The impugned order dismissing the appeal was set aside.

[Decided in favour of assessee]

RAKO MERCANTILE TRADERS VERSUS COMMISSIONER OF CENTRAL EXCISE, LUCKNOW [CESTAT ALLAHABAD]

BRIEF: Just because, the freight amount was not mentioned separately in the excise invoice, but separately in a commercial invoice, it cannot be included in the transaction value for imposing the excise duty.

OUR COMMENTS: The assessee is a manufacturer of paints and varnishes who supplied goods to Railways only. He collected freight charges from different buyers without incorporating them in the invoices. He use to put seal on each container of the goods and use to issue GR in the name of railways.

The Revenue contended that the freight charges though not presented in invoice, was recovered separately, therefore, are includable for arriving at the assessable value in terms of Section 4 of the Central Excise Act, 1944 read with Rule 5 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000.

The Hon'ble CESTAT held that as per Rule 5,

"the value of excisable goods shall be deemed to be the transaction value, excluding the cost of transportation from the place of removal up to the place of delivery of such excisable goods provided the cost of transportation is charged to the buyer in addition to the price for the goods and shown separately in the invoice for such excisable goods."

The assessee, though has not shown the freight separately in the invoice, but has presented the contract/purchase order with the railways which indicates freight charges as 3/- per liter.

Also, for each consignment there is a corresponding GR which indicates the freight amount. Further, a separate commercial invoice is raised for freight corresponding to the purchase order. This commercial invoice indicates the value and freight amount separately.

Only because the freight amount was not indicated separately in the excise invoice, is not sufficient ground to deny the substantive benefit. The law does not require charging of duty on freight for technical lapse of not indicating the freight charges separately on the excise invoice.

[Decided in favour of the assessee]

CUSTOMS

NOTIFICATIONS/CIRCULARS

EXEMPTION ON EXPORT OF CHROMIUM ORES AND CONCENTRATES, ALL SORTS WITHDRAWN

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 35/2016-Customs dated 26.05.2016 has amended Notification No. 27/2011-Customs dated 1st March, 2011,** and has withdrawn exemption on export of chromium ores and concentrates, all sorts.

AMENDMENTS IN VARIOUS OTHER NOTIFICATIONS

OUR COMMENTS: The Dept. of Revenue), Ministry of Finance, Government of India vide **Notification No. 36/2016-Customs dated 01.06.2016** has

-substituted the words **"Tamil Nadu and Melapakkam Village (Arakkonam Taluk, Vellore District)"** with **"Tamil Nadu, Melapakkam Village (Arakkonam Taluk, Vellore District), Hosur (Tamil Nadu) and Nattakkam Village (Kottayam Taluk and District)"** in the

Notifications 91 to 104, 112/2009-Customs issued in September, 2009,

and

- substituted the word **"Hyderabad" with "Hosur (Tamil Nadu), Hyderabad" and the word "Patli (Gurgaon)" with "Nattakkam Village (Kottayam Taluk and District), Patli (Gurgaon)"** in the following Notifications**:**

5/2013-Customs, dated the 18th February, 2013,

6/2013-Customs, dated the 18th February, 2013

22/2013-Customs, dated the 18th April, 2013

23/2013-Customs, dated the 18th April, 2013

16/2015-Customs, dated the 1st April, 2015

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REQUIREMENT OF SOLVENCY CERTIFICATE FOR THE PURPOSES OF PRIVATE WAREHOUSE LICENSING REGULATIONS 2016

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India vide **Circular No. 24 /2016 - Customs dated 02.06.2016** has decided that for the purposes of uniformity, the Principal Commissioners / Commissioners of Customs shall require that the importer furnish a solvency certificate from a scheduled bank equivalent to the amount of duty involved on the goods proposed to be stored in the private bonded warehouse at any point of time.

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

MANNER OF PAYMENT OF INTEREST ON WAREHOUSED GOODS

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India vide **Circular No. 23 /2016 - Customs dated 01.06.2016** has decided that henceforth there would be no requirement of payment of interest prior to allowing extensions of warehousing period nor would there be any need to issue a demand for payment of interest. Interest, if any, shall be paid at the time of ex-bonding of the goods from the warehouse.

INCOME TAX

NOTIFICATIONS & CIRCULARS

ADDITIONAL BODIES NOTIFIED FOR SECTION 10(46) OF THE INCOME-TAX ACT, 1961

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

vide **Notification No. 40/2016 dated 02.06.2016** has notified "Pollution Control Board, Assam" a body constituted by the Government of Assam in respect of the specified income arising to that Board.

vide **Notification No. 41/2016 dated 02.06.2016** has notified "Uttar Pradesh State AIDS Control Society" a body constituted by the Government of Uttar Pradesh in respect of the specified income arising to that Society

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

COST INFLATION INDEX FOR FINANCIAL YEAR NOTIFIED AS 1125

OUR COMMENTS: The CBDT, Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 42/2016 dated 02.06.2016** has amended **Notification No. S.O. 709(E), dated the 20th August, 1998 and has** notified Cost Inflation Index for Financial Year 2016-17 as 1125.

The Cost of Inflation Index is mainly used to compute Long term capital gain. The cost of acquisition/improvement will be indexed with reference to the above rate.

INCOME–TAX (14TH AMENDMENT) RULES, 2016

OUR COMMENTS: The CBDT, Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 43/2016 dated 02.06.2016** has made Income–tax (14th Amendment) Rules, 2016 and has amended the method for determining the amount of expenditure in relation to income not includible in the total income.

As per the amended rules, the expenditure in relation to income not includible in the total income shall be aggregate of the following:

(i) the amount of expenditure directly relating to income which does not form part of total income; and

(ii) an amount equal to one per cent of the annual average of the monthly averages of the opening and closing balances of the value of investment, income from which does not or shall not form part of total income:

Provided that the amount referred to in clause (i) and clause (ii) shall not exceed the total expenditure claimed by the assessee.";

COURT DECISIONS

COMMISSIONER OF INCOME TAX, CHANDIGARH-II VERSUS M/S PUNJAB STATE CIVIL SUPPLIES CORPORATION LTD, CHANDIGARH [PUNJAB & HARYANA HIGH COURT]

BRIEF:The unrealized rent cannot be taxable in the hands of the assessee under the head "income from house property" when it is not realizable.

OUR COMMENTS: In the above case, the assessee filed its income declaring a loss. The assessee had not declared the income of rent of a building as it was not realized by the assessee.

The assessment was framed by the Assessing Officer.

The Hon'ble High Court held that **as per the Explanation to Section 23 of the Act**, the amount of rent which the owner cannot realize is not to be included in clause (b) or clause (c) of sub-section (1) of Section 23 of the Act for determining the amount of actual rent received or receivable by the owner.

Also, **as per Section 25AA** of the Act, the unrealized rent could not be taxed in the year in question but would fall for taxation in the year it is so realized even if the assessee may not be owner of the property in that previous year.

Accordingly, the appeal of the Department was dismissed.

[Decided against Revenue]

CHHATTISGARH

ABOLISHING CHECKPOSTS AND EMPLOYING MOBILE SQUADS

OUR COMMENTS: The Commercial Taxes Department, Government of Chhattisgarh vide **notification No. F-10/ 23 /2011/CT/V (23B) dated 03.06.2016 has** notified that the state has abolished checkpost and has employed mobile squads to check the vehicle at the loading and unloading destinations vide (CG Value Added Sales Tax (Amendment) Act 2005, Section 61 & 62).

DELHI

REQUIREMENT OF ITEM-WISE DETAILS IN FORMS ANNEXURE-2A, ANNEXURE-2B, DVAT-30 AND DVAT-31 MANDATORY FROM 1.04.2016

OUR COMMENTS: The Department Of Trade And Taxes, Government Of National Capital Territory Of Delhi vide **CIRCULAR NO. 09 of 2016-17 dated 06.06.2016** has decided that furnishing item-wise details in the DVAT Returns as well as in Forms DVAT-30 and DVAT-31 shall be mandatorily required from the tax period commencing from 1st April, 2016.

For the tax period 1st January, 2016 to 31st March, 2016 specifying the item details shall be optional, as the dealers are facing practical problems in the softwares being used by them which do not provide for such details and upgrading of software will require sometime.

GOA

REDUCTION IN TAX RATE OF MOTOR SPIRIT FROM 20% TO 15%

OUR COMMENTS: The Revenue & Control Division, Department Of Finance, Government of Goa vide **Notification No. 4/5/2005-Fin(R&C)(136) dated 01.06.2016** has reduced the tax rate on motor spirit from 20% to 15% w.e.f. 02.06.2016.

MAHARASHTRA

07.06.2016 TO BE THE EFFECTIVE DATE FOR AMENDMENT TO THE MAHARASHTRA MOTOR VEHICLES TAX ACT AND AMENDMENT TO THE MAHARASHTRA PURCHASE TAX ON SUGARCANE ACT, 1962

COMMENTS: The Home Department, Government of Maharashtra vide **Notification No. MVR. 1015/CR-522/TR-2 dated 03.06.2016** has appointed the 7th June 2016 as the effective date for Amendment to the Maharashtra Motor Vehicles Tax Act and Amendment to the Maharashtra Purchase Tax on Sugarcane Act, 1962.

UTTARAKHAND

DUE DATE OF FILING OF FOURTH QUATERLY RETURN OF ASSESSMENT YEAR 2015-16 EXTENDED TO 30/06/2016

OUR COMMENTS: The VITTA ANUBHAG-8, Government of Uttarakhand vide **Notification No. 480/2016/19(120)/XXVII(8)/2012 dated 01.06.2016 has** declared that the fourth periodical return for the quarter ending March, 31 related to the assessment year 2015-16 may be filed by a dealer liable to tax or a person responsible for deduction at source upto 30 June, 2016 without any late fee, provided that the payment of tax/ composition money or TDS shall be made within the time as prescribed in rule 11. .

BOOK ON GOODS AND SERVICE TAX (CONCEPT, ISSUES, MODEL AND ROAD MAP)

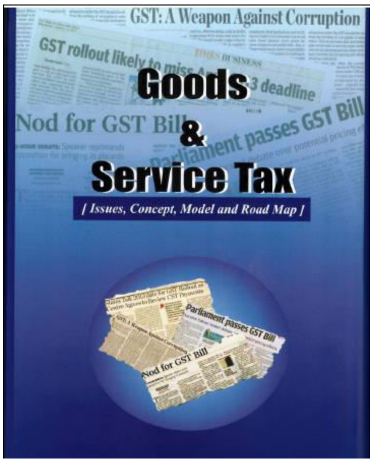
AVAILABLE IN ALL LEADING LEGAL BOOK SHOPS INCLUDING TAX N LAW

There will be significant changes in Indirect Tax system in India with the implementation of GST effective from1st April'2016. The concept of GST being a destination based tax is totally new in India. At present we follow origin based tax . We have to unlearn most of the present tax system and to relearn the new GST structure for effective implementation. ERP system will undergo major changes.

On a rough estimate the corporates are expected to reduce its material cost by minimum 1% and logistic cost by 10-15% provided proper GST structure is established. It means lot of money provided the benefits are not passed on to the customers. It is expected that the country's GDP will increase by 2% on implementation of GST.

In the background of the above, we are pleased to inform you that we have launched a book on ' **GOODS AND SERVICE TAX (CONCEPT, ISSUES, MODEL AND ROAD MAP)** on All India basis.

We solicit your blessings and good wishes in the whole endeavour.



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BOOK EXCLUSIVELY ON WORKS CONTRACT (SERVICE TAX AND VAT)

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Works Contract has been one of the most complex and litigation prone areas in Indirect Taxes. However with good understanding of all the provisions under Service Tax & VAT which hit Works Contracts & proper planning, Trade & Industry can not only avoid litigation but can also save around 5% - 10% on indirect taxes which by no means is an ordinary saving in the competitive market. For Trade & Industry, the problems on the subject have been many. Over the last few years we have received queries and replied to the issues at various forums.

Vide this publication, we have made an attempt to cover in detail all issues related to **Service Tax:** Valuation, Point of Taxation, Place of Taxation, Abatement, Reverse Charge, Input Tax Credit Mechanism & **VAT**: Contractual Transfer Price, Modes of Valuation, WIP, STDS as well as **GST** . We have also focused on the issues faced by various sectors on account of Works Contract.

This book is divided into Seven Parts covering several broad areas. Each area has the provisions directly from the Statue in the beginning and detailed discussions on the provisions in the form of questions and answers thereafter. Since litigations on the subject have been manifold, we have also covered judicial pronouncements extensively.

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