74TH ISSUE

26 JUN 2016 - 2 JUL 2016

TAX CONNECT

GST	
SERVICE TAX	CENTRAL EXCISE
CUSTOMS	INCOME TAX
	STATE TAXES

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WORKSHOP ON GST

TAX CONNECT IS ORGANISING A

SEMINAR ON GOODS AND SERVICES TAX WITH MODULE 1

from 1.30 p.m. onwards, on 5th August, 2016, at Bharatiya Bhasha Parishad

THE SEMINAR WILL BROADLY DELIBRATE ON THE FOLLOWING TOPICS UNDER GST

- Registration, Return, Payments, Refunds Under GST,
- Planning for GST - Logistics, Contracts, Stock, Credit, Model GST Law 2016, etc

EMINENT EXPERTS WHO SHALL BE ADDRESSING AND INTERACTING WITH THE PARTICIPANTS ON THE ABOVE INCLUDE:-

Sri. S. K. Panda, IRS, Chief Commissoner of Service Tax, Chief Guest

Mr. T. B. Chatterjee, Chairperson, Indirect Taxes Committee, The Bengal Chamber of Commerce and Industry & Chief Corporate Officer, Legal and Corporate Affair, DIC India Ltd

Mr. Vivek Jalan, FCA, CIDT (ICAI), Member, Indirect Taxes Committee, The Bengal Chamber of Commerce and Industry

Sri. Khalid Anwar, Joint Commissioner, West Bengal Commercial Taxes*

The Overhead per participants Is Rs 1500/- (inclusive of taxes). 10% discount for early bird Registration till 30th June 2016. 15% discount for a group of more than 3 registration.

For more information & nominations please contact

Mr. Gaurav Pandit (M: 8017387083 / Email: p3.javaa@gmail.com)

YET TO BE CONFIRMED*

Friends

This has been a week of hectic activity, not only in Taxation but also in Internal and International Environment. The tremendous hype about the announcement of RBI Governor Mr Raghuram Rajan was followed by the referendum of Great Britain against staying as a part of The European Union. **We are sure all have been updated about other developments and their foreseeable economic impact on India, hence we are restricting ourselves to the changes in taxation this week.**

About GST, the news is that The Central and State Departments of Indirect Taxes are firing on all cylinders to get GST ready. Hence Trade & Industry should now take the cue and start its GST Readiness.

In WB Commercial Taxes, the Hon'ble Finance Minister presented the State Budget 2016-17 before The Assembly. The Broad Reforms in Finance and Tax administration are as below –

1. Tax exemption limit of profession tax for low salaried class and wage earners is proposed to be raised to Rs 10,000 per month from The current Rs.8500/-
2. The monetary limit for filing appeal by the State is raised to Rs. 1 lakh.
3. Simplified benefit of Tax Deduction at Source (TDS) by completely dispensing with the requirement of submission of paper TDS certificate. The certificate will now be made available online for downloading by the tax payers.
4. Relief from payment of cess to tea gardens in the State - Exemption from payment of rural employment and education cess be further extended for one more year upto 31st March, 2017.
5. Reduction in time limit for disposal of appeal cases : The time limit for disposal of appeal cases in WB VAT is reduced 1 year to 6 months.
6. Extending Industrial Promotion Assistance Scheme for a further period of 3 years.
7. The Settlement Commission to settle outstanding VAT/Sales Tax liabilities for the past period is proposed to be abolished with effect from 1st July, 2016.

In Service Tax, The Central Government vide Notification No. 35/2016 - ST dated June 23, 2016 has exempted taxable services for which the invoice for the service has been issued on or before the 31st May, 2016, from the whole of Krishi Kalyan Cess provided that provision of service has been completed on or before the 31st May, 2016.

This Notification provides an answer to long awaited question of KKC being payable on services provided and invoices issued prior to 1st June 2016 and payment received after the said date. Now if only payment is received after 31st May 2016, KKC will not be required to be paid on that account.

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 26th June, 2016 to 02nd July, 2016	STATUTE
28th June	Deposit of VAT of previous month	Arunachal Pradesh VAT Act
	Filing of monthly/quarterly VAT return	Arunachal Pradesh (Monthly, if turnover>Rs. 1 crore)
30th June	Deposit of VAT of previous month	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) Tripura Vat Act (Monthly/Quarterly) Bihar VAT Act (Monthly) Punjab VAT Act (if payment otherwise than by cheque) Odisha VAT Act (Annual), Gujarat VAT Act (Annual – if annual turnover< RS 1 crore)
	VAT Audit	Karnataka VAT Act, Sikkim VAT Act (If Gross Turn > 30 lacs), Tripura VAT Act (If Gross Turn > 40 lacs), Manipur VAT Act (If Gross Turn > 60 lacs), Meghalaya VAT Act (If Gross Turn > 40 lacs), Mizoram VAT Act (If Gross Turn > 30 lacs), Arunachal Pradesh VAT Act (If Gross Turn > 50 lacs), Nagaland VAT Act (If Gross Turn > 40 lacs)
	Deposit of WCT of previous month	Goa VAT Act (Monthly, if Tax< Rs. 1 lac)
	Filing of monthly/quarterly WCT return	Rajasthan VAT Act (Monthly), Bihar VAT Act (Monthly) Chandigarh VAT Act (Monthly), Maharashtra VAT Act (Annually) Tamil Nadu VAT Act (Monthly)
	Deposit of Entry tax of previous month	Maharashtra Entry Tax Act (For unregistered dealers) Goa Entry Tax Act, Assam Entry Tax Act
	Issuance of WCT certificate	Assam VAT Act (Monthly)
	Deposit of P tax of previous month	Maharashtra Commercial Tax Act

MODEL GST LAW 2016: TRANSITIONAl PROVISIONS

The Central Government (or the State Government) may appoint officers, issue orders or make rules for smooth transition to GST.

Migration of existing taxpayers to GST

- On the appointed day, every person registered under any of the earlier laws shall be issued a certificate of registration on a provisional basis which shall be valid for a period of six months from the date of its issue.
- Every person with provisional registration shall be required to furnish the required information within the specified 6 months after which the certificate of registration shall be granted on a final basis, else it may be cancelled.

Amount of CENVAT credit carried forward in a return to be allowed as input tax credit

CGST Law

- A registered taxable person shall be entitled to take credit of the amount of cenvat credit carried forward in a return, furnished under the earlier law in respect of the period ending with the day immediately preceding the appointed day.
- The credit amount may be recovered if it is found to be recoverable as a result of any proceeding instituted against such person under the earlier law.

SGST Law

- A registered taxable person shall be entitled to take credit of the VAT amount carried forward in a return, furnished under the earlier law in respect of the period ending with the day immediately preceding the appointed day.
- The credit amount may be recovered if it is found to be recoverable as a result of any proceeding instituted, whether before or after the appointed day, against such person under the earlier law.

Unavailed cenvat credit on capital goods, not carried forward in a return, to be allowed in certain situations

CGST Law

- A registered taxable person shall be entitled to take credit of the unavailed cenvat credit on capital goods, not carried forward in a return, furnished under the earlier law for the period ending with the day immediately preceding the appointed day.
- The credit amount may be recovered if it is found to be recoverable as a result of any proceeding instituted against such person under the earlier law.

SGST Law

- A registered taxable person shall be entitled to take credit of the unavailed input tax credit on capital goods, not carried forward in a return, furnished under the earlier law for the period ending with the day immediately preceding the appointed day.
- The credit amount may be recovered if it is found to be recoverable as a result of any proceeding instituted against such person under the earlier law.

Other transitional provisions will be covered in the upcoming issues.

SERVICE TAX

CASE LAWS

M/S LUFTHANSA GERMAN AIRLINES VERSUS CST, DELHI [CESTAT NEW DELHI]

BRIEF: The airport taxes and the passenger service fees collected by the airlines on behalf of the airports are not includable in the assessable value for the purpose of service tax.

OUR COMMENTS: In the above case, the assessee is engaged in providing transport of passengers services by Air embarking in India for International Journey. They are registered with the Service Tax Department for payment of service tax. The air tickets issued by the assessee to the customers reflect the passenger service fee and the airport tax which was collected by the assessee on behalf of the Government Authorities and subsequently paid to them.

The Department held that the airport tax and passenger service fee shall be included in the assessable value of the services being provided by the assessee and accordingly raised demand alongwith interest and penalties.

The Hon'ble CESTAT upheld the Tribunal decision in the case of **M/s Continental Airlines Inc. vs. CST, New Delhi reported as 2015-TIOL -1481-CESTAT- DEL** where it was decided that the airport taxes as also the passenger service fees collected by the airlines on behalf of the airports and paid to them are not includable in the assessable value for the purpose of levy of service tax.

The impugned order was accordingly set aside.

Decided in favour of assessee]

M/S JANATA SAHAKARI BANK LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, PUNE[CESTAT MUMBAI]

BRIEF: Commission received from the Government for disbursement of government teachers salary, cannot be charged to Service Tax.

OUR COMMENTS: In the above case, the assessee is providing service of Commission Agent for disbursement of salary of Government teachers.

The Department contended that the commission received towards disbursement of salary of Government teachers, falls under the provision of "Business Auxiliary Services" accordingly, a demand of Service Tax on such commission was confirmed.

The Finance Act, 2005 has inserted an explanation below Section 65(19) and has clarified that Commission agent means any person who acts on behalf of another person and causes sale or purchase of goods, or provision or receipt of service for a consideration and includes any person while acting on behalf of another person -

(a) deals with goods or services or documents of title to such goods or services or

(b) collects payment of sale price of such goods or services; or

(c) Guarantees for collection or payment for such goods or services; or

(d) undertakes any activities relating to such sale or purchase of such goods or service."

The Hon'ble CESTAT held that from the above definition it is clear that the commission agent is defined as a person who while acting on behalf of other person undertakes the activity as mentioned herein above para (a) to (d). In the given case, none of the above activities are carried on by assessee.

Accordingly, the service charge received by the assessee is not chargeable to service tax.

[Decided in favour of assessee]

CENTRAL EXCISE

CASE LAW

JOSHI TECHNOLOGIES INTERNATIONAL, INC-INDIA PROJECTS VERSUS UNION OF INDIA AND 1 [GUJARAT HIGH GOURT]

BRIEF: **Refund is allowed for Education Cess and Secondary and Higher Secondary Education Cess inadvertently paid on Oil cess.**

OUR COMMENTS: In the above case, the assessee is a Company is engaged in the extraction of crude oil falling under Chapter Heading 27090000 of the Central Excise Tariff Act, 1985. He is paying cess on the clearance of petroleum / crude oil under the provisions of section 15 of the Oil Industry (Development) Act, 1974 (hereinafter referred to as "the OID Act"). He also paid Primary Education Cess and Secondary and Higher Secondary Education Cess on Crude Oil Cess.

Assessee's contention

- The CBDT issued a circular dated 07.01.2014 clarifying that the Education Cess and Secondary and Higher Secondary Education Cess are not to be calculated on cesses which are levied under the Acts administered by Department/Ministries other than Ministry of Finance (Department of Revenue).

- The Crude Oil Cess is **levied by the Ministry of Petroleum and Natural Gas** and collected by the Department of Revenue, Ministry of Finance.

On view of the above the assessee filed for refund of the Primary Education Cess and Secondary and Higher Secondary Education Cess on Crude Oil Cess.

Department's contention

The adjudicating authority held that the Oil Cess is in the nature of excise duty **because the machinery provisions of the Central Excise Act, 1944 and the rules thereunder for collection and refund have been incorporated in the OID Act.**

Observations of the Court

- Merely because machinery provisions of Central have been incorporated in the OID Act, , it cannot be inferred that the Oil Cess imposed under the provisions of the OID Act assumes the character of central excise duty.

- Cess is levied on excise duty, hence the basic requirement of levy of such cesses is not satisfied being Crude Oil cess is not excise duty.

- For collection of cess, 2 more conditions are required to be met
  - Excise duty **shall be levied** by Central Government in the Ministry of Finance (Department of Revenue)
  - Excise duty **shall be collected** by Central Government in the Ministry of Finance (Department of Revenue)
  -

In the given case, the second condition is met, however, the first condition is not met as the crude oil cess is levied by the Ministry of Petroleum and Natural Gas

Decision of the Court

Crude Oil Cess is not excise duty and consequently, the Education Cess and Secondary and Higher Secondary Education Cess computed thereon, also does not bear the character of a duty of excise, but is merely an amount paid under a mistake of law.

Hence, the machinery provisions under the Central Excise Act, 1944 would not apply to refund of such amount.

The Hon'ble High Court held that the refund shall be granted to the assessee.

[Decided in favour of assessee]

CUSTOMS

NOTIFICATIONS/CIRCULARS

EXPORT DUTY OF 20% ON RAW SUGAR, WHITE OR REFINED SUGAR

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 37/2016-Customs dated 16.06.2016 has amended Notification No. 27/2011-Customs, dated the 1st March, 2011, and has removed raw sugar, white or refined sugar from the table therein**. Now export duty of 20% is applicable on the said items.

BCD OF 25% ON WHEAT EXTENDED BEYOND 30.06.2016

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 38/2016-Customs dated 17.06.2016 has amended Notification No. 12/2012-Customs, dated 17.03.2012 and** has extended the BCD of 25% on wheat beyond 30.06.2016.

REPUBLIC OF TOGO AND REPUBLIC OF CHAD MADE ELIGIBLE FOR PREFERENTIAL TARIFF

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 39/2016-Customs dated 21.06.2016 has amended Notification No. 96/2008-Customs, dated 13.08.2008 and** has included the following countries in the list of countries eligible for preferential tariff under the said notification:

-Republic of Togo and

-Republic of Chad

AMENDMENT TO NOTIFICATION NO. 61/94-CUSTOMS (N.T.) DATED 21.11.1994

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 40/2016-Customs dated 21.06.2016 has amended Notification No. 53/2011-Customs, dated 01.07.2011 and** has provided deeper tariff concessions for specified goods imported from Malaysia under the India-Malaysia Comprehensive Economic Cooperation Agreement (IMCECA) w.e.f. 30.06.2016.

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

APPOINTMENT OF COMMON ADJUDICATING AUTHORITY

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 81/2016-Customs (N.T.) dated 06.06.2016 and Notification No. 82/2016-Customs (N.T.) dated 07.06.2016 has** appointed common adjudicating authority to exercise powers and discharge duties conferred or imposed on specified officers in respect to specified notices.

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

INCOME TAX

NOTIFICATIONS & CIRCULARS

CLARIFICATION ON HIGHER THRESHOLD FOR NON-AUDIT OF ACCOUNTS TO ASSESSEES OPTING FOR PRESUMPTIVE TAXATION SCHEME UNDER SECTION 44AD

OUR COMMENTS: Under Section 44AB of the Income-tax Act, every person carrying on business shall get his accounts audited if his total sales, turnover or gross receipts exceed one crore rupees. However, if an eligible person opts for presumptive taxation scheme as per section 44AD(1) of the Act, he shall not be required to get his accounts audited if the total turnover or gross receipts of the relevant previous year does not exceed two crore rupees.

The CBDT, Department of Revenue, Ministry of Finance, Government of India vide **Circular dated 20.06.2016** has clarified that the higher threshold for non-audit of accounts has been given only to assessees opting for presumptive taxation scheme under section 44AD.

EXEMPTION ON INVESTMENTS ABOVE FAIR MARKET VALUE

OUR COMMENTS: The CBDT, Department of Revenue, Ministry of Finance, Government of India vide **Notification No. 45/2016 dated 14.06.2016** has notified the 'classes of persons' as being the 'person' defined under sub-section (31) of section 2 of the Act, being resident, who make any consideration exceeding the face value for issues of shares of a 'startup' company.

"startup" shall mean a company in which the public are not substantially interested and which fulfills the conditions specified in the notification of the Government of India, Ministry of Commerce and Industry, Department of Industrial Policy and Promotion, number G.S.R.180(E), dated the 17th, February, 2016, published in the Gazette of India, Extraordinary, part 11, section 3, sub-section (i), dated the 18th February, 2016.

NO DEDUCTION OF TAX UNDER CHAPTER XVII ON PAYMENTS TO SECURITISATION TRUST

OUR COMMENTS The CBDT, Department of Revenue, Ministry of Finance, Government of India vide **Notification No. 46/2016 dated 17.06.2016** has notified that no deduction of tax under Chapter XVII shall be made on the payments of the nature specified in clause (23DA) of section 10 received by any securitisation trust as defined in clause (d) of the Explanation to section 115TC.

NO DEDUCTION OF TAX AT SOURCE FOR SPECIFIED PAYMENTS U/S 197A

OUR COMMENTS: The CBDT, Department of Revenue, Ministry of Finance, Government of India vide **Notification No. 47/2016 dated 17.06.2016** has notified that no deduction of tax under Chapter XVII shall be made on the specified payments, if the payment is made by a person:

- to a bank listed in the Second Schedule to the Reserve Bank of India Act, 1934, excluding a foreign bank, or

- to any payment systems company authorised by the Reserve Bank of India under Section 4(2) of the Payment and Settlement Systems Act, 2007

The specified payments are:

i. bank guarantee commission;
ii. cash management service charges;
iii. depository charges on maintenance of DEMAT accounts;
iv. charges for warehousing services for commodities;
v. underwriting service charges;
vi. clearing charges (MICR charges) including interchange fee or any other similar charges charged at the time of settlement or for clearing activities under the Payment and Settlement Systems Act, 2007;
vii. credit card or debit card commission for transaction between merchant establishment and acquirer bank.

ORISSA

EXTENSION IN DATE FOR E-PAYMENT & FILLING OF RETURN FOR MARCH, 2016 AND QUARTER ENDING MARCH, 2016 TO 26.04.2016

OUR COMMENTS: The Finance Department, Government Of Odisha vide **Notification [No 17287-FIN-CT1-TAX-0014-2016 dated 16.06.2016** has extended the last date of filing of return for the tax period of March' 2016 and the quarter ending March' 2016 to 26th April, 2016.

This notification shall be effective from 21st April, 2016.

RAJASTHAN

AMENDMENT OF RULE 12, 14 & FORM VAT-01

OUR COMMENTS: The Finance Department, Government Of Rajasthan vide **Notification [No.F.12(79)FD/TAX/2014-27 dated 20.06.2016** has amended Rules 12, 14 and Form VAT-01 under the Rajasthan Value Added Tax Rules, 2006.

The amendment primarily relates to Unique Aadhaar ID number.

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

TAMIL NADU

EXEMPTION FROM PAYMENT OF TAX ON THE SALE OF COPRA

OUR COMMENTS: The Commercial Taxes And Registration (B2) Department, Government of Tamil Nadu vide **G.O.(Ms)No. 98 dated 15.06.2016** has provided an exemption of the tax payable on the sale of copra procured under Price Support Scheme by the Tamil Nadu Co-operative Marketing Federation Limited (TANFED) and Primary Co-operative Societies for National Agricultural Co-operative Marketing Federation Limited (NAFED).

The exemption shall be effective from 15th June 2016 upto 14th December 2016.

LAST DATE FOR ISSUING MANUAL "C" AND "F" FORMS EXTENDED TO 31.07.2016

OUR COMMENTS: The Commercial Taxes Department, Government of Tamil Nadu vide **Circular No.6/2016 dated 13.06.2016** has extended the last date for issuance of manual "C" and "F" forms for the inter-state transactions already reported and property accounted for from 31.03.2016 to 31.07.2016.

WEST BENGAL

EXEMPTION IN CASE OF SALE OF AIRCRAFT FUEL EXTENDED UPTO 31ST MARCH, 2018

OUR COMMENTS: The Finance Department, Government of West Bengal vide **Notification No. 798-F.T. dated 03.06.2016** has amended **notification No. 1067-F.T. dated the 6th August, 2013,** and extended the exemption on sale of aircraft fuel for the period 03.06.2016 to 31.03.2018.

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

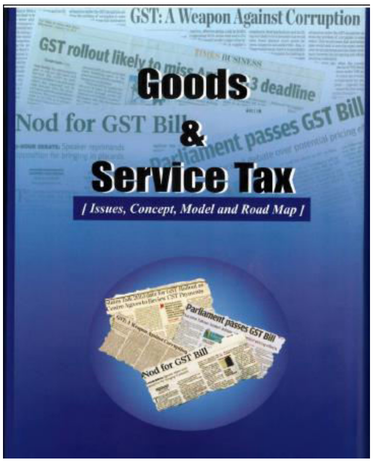
AVAILABLE IN ALL LEADING LEGAL BOOK SHOPS INCLUDING TAX N LAW

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)

AVAILABLE IN ALL LEADING LEGAL BOOK SHOPS INCLUDING BOOK CORPORATION

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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