83RD ISSUE

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TAX CONNECT

GST	
SERVICE TAX	CENTRAL EXCISE
CUSTOMS	INCOME TAX
	STATE TAXES

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EDITORIAL

Friends,

Nagaland has become the 9th State to pass the GST Bill in its State's Legislature. Hence now only 6 states more are required to pass the bill before it goes for presidential ascent.

As we have already said in the past that GST is not just a change in tax, it is expected to have a far reaching impact on each facet of business operations in the country such as pricing of products and services, supply chain optimization, IT, accounting and tax compliance systems. It will impact the tax structure, tax incidence, tax computation, tax payment, compliance, credit utilization and reporting, leading to a complete overhaul of the current indirect tax system. If proper GST structure is established, it is estimated that the corporates can reduce their material cost by 2-5 % and logistic cost by 10-15%.

Hence to reap the benefits, it could be a good idea to start GST Implementation from now!

The CBEC, for the purpose of Service Tax, Central Excise and Customs, has invested all Principal Commissioners who have been given additional charge of a Chief Commissioner vide Office Orders of the Central Board of Excise and Customs No. 79/2016 dated the 14th July, 2016 and 86/2016 dated the 26th July, 2016 respectively with the powers of Chief Commissioner.

In Customs, Customs (Provisional Duty Assessment) Regulations, 201l has been cancelled**.**

In Service Tax, it has been brought to notice that the services of construction of tubewells provided to the government, a local authority or a governmental authority are exempted from service tax under notification 25/2012-Service Tax dated 20-6-2012.

In Income-Tax, the CBDT has inserted Rule 37CB and has specified that provisions of sub-section (1D) of section 206C (collection of TCS) shall not apply to Government, Embassies, Consulates, High Commissions, Legation or Commission and trade representation, of a foreign State and institutions notified under United Nations (Privileges and Immunities) Act, 1947

In Delhi, the Department has **withdrawn the mandatory requirement of filing returns in form DVAT 16 or in form 17 with digital signatures** vide Notification No. F.3(643)/Policy/VAT/2016/658-68 dated 24.08.2016

The referred notifications/circulars/case laws have been discussed in detail further in the bulletin.

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

Truly Yours

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Vivek Jalan

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INDEX

COMPLIANCE CALENDAR

Due date	COMPLIANCES FROM 28th August, 2016 to 03rd September, 2016	STATUTE
28th August, 2016	Deposit of VAT of previous month (VAT Act)	Arunachal Pradesh
	Filing of VAT return (VAT Act)	Arunachal Pradesh (Monthly, if turnover>Rs. 1 crore)
30th August, 2016	Deposit of VAT of previous month (VAT Act)	Punjab (if payment otherwise than by cheque) Tripura Himachal Pradesh Goa (if Tax < Rs. 1 lac)
	Filing of VAT return (VAT Act)	Punjab (if payment otherwise than by cheque) Himachal Pradesh (Monthly, if PY turnover is>Rs 5 cr)
	Deposit of WCT of previous month (VAT Act)	Goa (Monthly, if Tax< Rs. 1 lac))
	Filing of WCT return (VAT Act)	Rajasthan (Monthly)
	Deposit of Entry tax of previous month (Entry Tax Act)	Goa
31st August, 2016	Deposit of VAT of previous month (VAT Act)	Mizoram, Jammu & Kashmir
	Filing of VAT return (VAT Act)	Tripura (Monthly/Quarterly) Assam (Annual, for non-audit)
	Filing of WCT return (VAT Act)	Bihar (Monthly) Chandigarh (Monthly) Tamil Nadu (Monthly)
	Issuance of WCT certificate (VAT Act)	Assam (Monthly)
	Deposit of Ptax of previous month (Commercial Tax Act)	Maharashtra
	Deposit of Entry tax of previous month (Entry Tax Act)	Assam

"CASUAL TAXABLE PERSON" AND "NON-RESIDENT TAXABLE PERSON" UNDER GST LAW

- "casual taxable person" means a person who occasionally undertakes transactions involving supply of goods and/or services in the course or furtherance of business whether as principal, agent or in any other capacity, in a taxable territory where he has no fixed place of business.

  Under the prevailing central laws, casual taxable person is not provided for.

- "non-resident taxable person" means a taxable person who occasionally undertakes transactions involving supply of goods and/or services whether as principal or agent or in any other capacity but who has no fixed place of business in India.

- A non-resident taxable person may be granted registration on the basis of any other prescribed document in the absence of PAN.

- A "casual taxable person" and a "non-resident taxable person is listed in Schedule III and accordingly required to obtain registration under Section 19 of the GST Act irrespective of the threshold limit as specified in sub section 1 & 2 of section 19.

- The certificate of registration shall be valid for 90 days from the date of registration. This period may however be extended by a proper officer by a period not exceeding 90 days.

- Such dealers shall be required to make payment in advance separately for SGST and CGST.

- At the time of registration, such persons are required to pay advance tax equivalent to the estimated tax liability for the period for which the registration is sought.

  In case of extension of time, advance tax equivalent to the estimated tax liability for the extension period is required to be deposited.

- The amount deposited shall be credited to the electronic cash ledger of such person and shall be utilized in the manner provided under section 35.

- The concept of registration of non-resident taxable person and casual taxable person is new which has led to extra burden. Also, as specified, such assessees shall pay advance tax which may affect the cash flow and block the working capital of the assessee.

- Casual taxable persons and non-resident taxable persons shall not be required to furnish an annual return (GSTR – 8).

SERVICE TAX

NOTIFICATIONS/CIRCULARS

POWERS OF CHIEF COMMISSIONER PROVIDED TO PRINCIPAL COMMISSIONER WHO HAVE BEEN GIVEN THE ADDITIONAL CHARGE VIDE OFFICE ORDERS NO. 79/2016 DATED 14.07.2016 AND 86/2016 DATED 26.07.2016

OUR COMMENTS: The CBEC (Dept. of Revenue), Ministry of Finance, Government of India vide **Notification No. 37/2016-Service Tax dated 18.08.2016** has invested all Principal Commissioners who have been given additional charge of a Chief Commissioner vide Office Orders of the Central Board of Excise and Customs No. 79/2016 dated the 14th July, 2016 and 86/2016 dated the 26th July, 2016 respectively with the powers of Chief Commissioner.

SERVICES OF CONSTRUCTION OF TUBEWELLS PROVIDED TO THE GOVERNMENT, A LOCAL AUTHORITY OR A GOVERNMENTAL AUTHORITY ARE EXEMPTED FROM SERVICE TAX UNDER NOTIFICATION 25/2012-SERVICE TAX DATED 20-6-2012

OUR COMMENTS: In some cases, services of construction of tube wells for the Government have been considered to be liable to pay service tax.

Therefore, the Service Tax Wing, CBEC (Dept. of Revenue), Ministry of Finance, Government of India vide **Circular No 199/09/2016-Service Tax dated 22.08.2016** has brought to notice that such services are exempt under notification 25/2012-Service Tax dated 20-6-2012 as follows:

-vide Serial No. 12 (e)
"Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal".

-vide Serial No. 25(a)
-In the period 1-7-2012 to 10-7-2014

"Services provided to Government, a local authority or a governmental authority by way of carrying out any activity in relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy, solid waste management or slum improvement and up-gradation".

-In the period 11-7-2014 onwards

"Services provided to Government, a local authority or a governmental authority by way of water supply, public health, sanitation conservancy, solid waste management or slum improvement and up-gradation".

From the above description, it is clear that following services provided to the Government, a local authority or a governmental authority are exempted:

(a) construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of pipeline, conduit or plant for (i) water supply (ii) water treatment, and

(b) water supply - it will involve providing users, access to a source of water. The source may be natural or artificial like tanks, wells, tube wells etc.

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CENTRAL EXCISE

NOTIFICATIONS/CIRCULARS

POWERS OF CHIEF COMMISSIONER PROVIDED TO PRINCIPAL COMMISSIONER WHO HAVE BEEN GIVEN THE ADDITIONAL CHARGE VIDE OFFICE ORDERS NO. 79/2016 DATED 14.07.2016 AND 86/2016 DATED 26.07.2016

OUR COMMENTS: The CBEC (Dept. of Revenue), Ministry of Finance, Government of India vide **Notification No. 43/2016-Central Excise (N.T.) dated 18.08.2016** has invested all Principal Commissioners who have been given additional charge of a Chief Commissioner vide Office Orders of the Central Board of Excise and Customs No. 79/2016 dated the 14th July, 2016 and 86/2016 dated the 26th July, 2016 respectively with the powers of Chief Commissioner.

AMENDMENT IN NOTIFICATION NO.22/2003-CENTRAL EXCISE DATED 31.3.2003

OUR COMMENTS: The CBEC, Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 31/2016-Central Excise dated 24.08.2016** has further amended Notification No.22/2003-Central Excise dated 31.3.2003 by substituting the words "premises of the unit" with words "bonded premises".

COURT DECISIONS

M/S. J.K. CEMENT WORKS VERSUS C.C.E. JAIPUR-II [CESTAT NEW DELHI]

BRIEF: The activity of repair and maintenance of plant and machinery is an activity which has direct nexus with manufacture of final products and the goods used in this activity would be eligible for Cenvat Credit.

OUR COMMENTS: In the above case, the issue is whether the assessee is entitled to avail Cenvat Credit on duty paid on various items like lining plates, HRCS lifters, coolers, etc. used in the Clinker and Hammer, etc., which are used by the assessee for replacement, repair and maintenance of their Clinker and other machines.

The Hon'ble CESTAT found that the above issue is no more res integra and stands decided by various High Courts.

It was held that:

"Repairs and maintenance of plant and machinery is an activity without which smooth manufacturing is not possible. Commercially, manufacturing activity is not possible with malfunctioning machines, and leaking tanks, pipes and tubes. Therefore, the activity of repair and maintenance of plant and machinery is an activity which has direct nexus with manufacture of final products and the goods used in this activity would be eligible for Cenvat Credit. For eligibility of an input for Cenvat Credit what is relevant is whether the activity in which that input is used has nexus with the manufacture of final product and the nexus has to be determined on the basis of criteria as to whether that activity is commercially essential for manufacture of the final products."

The following cases of the Tribunal may be referred:

Panipat Co-operative Sugar Mills Ltd. Vs. CCE Rohtak-2013 (293) ELT 66 (Tri-Del)

Metrochem Industries Ltd. Vs. CCE Vadodara-2013 (292) ELT 578 (Tri-Amd).

Accordingly, the assessee is entitled to take cenvat credit in the given case.

[Decided in favour of assessee]

CUSTOMS

NOTIFICATIONS/CIRCULARS

POWERS OF CHIEF COMMISSIONER PROVIDED TO PRINCIPAL COMMISSIONER WHO HAVE BEEN GIVEN THE ADDITIONAL CHARGE VIDE OFFICE ORDERS NO. 79/2016 DATED 14.07.2016 AND 86/2016 DATED 26.07.2016

OUR COMMENTS: The CBEC (Dept. of Revenue), Ministry of Finance, Government of India vide **Notification No. 111/2016-Customs (N.T.) dated 18.08.2016** has invested all Principal Commissioners who have been given additional charge of a Chief Commissioner vide Office Orders of the Central Board of Excise and Customs No. 79/2016 dated the 14th July, 2016 and 86/2016 dated the 26th July, 2016 respectively with the powers of Chief Commissioner.

CANCELLATION OF CUSTOMS (PROVISIONAL DUTY ASSESSMENT) REGULATIONS, 2011 AND GUIDELINES REGARDING PROVISIONAL ASSESSMENT UNDER SECTION 18 OF THE CUSTOMS ACT, 1962

OUR COMMENTS: The CBEC (Dept. of Revenue), Ministry of Finance, Government of India vide **Notification No. 113/2016-Customs (N.T.) dated 18.08.2016** has rescinded the Notification No. 81/2011-Customs (N.T.) dated the 25th November, 2011 which notified the Customs (Provisional Duty Assessment) Regulations, 2011.

As per clarification provided **vide Circular No. 38/ 2016-Customs dated 22.08.2016,** the cancellation has been done as section 18 of the Customs Act, 1962, itself lays down the procedure to be followed in the case of provisional assessment.

The only issue which is required to be addressed is regarding the amount of security since section 18 requires the same to be obtained as "deemed fit" by the proper officer.

To address the above issue and for uniformity of practice, transparency and predictability for the tax payer, the Board has provided guidelines to be followed by all Customs stations while assessing goods provisionally.

The readers may refer the circular for the details.

EXEMPTION FOR IMPORT OF FABRICS UNDER SPECIAL ADVANCE AUTHORIZATION SCHEME FOR MANUFACTURE AND EXPORT OF GARMENTS

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 45/2016-Customs dated 13.08.201** has exempted fabrics (including interlining) imported into India against a valid Special Advance Authorisation issued in terms of Foreign Trade Policy from the custom duty specified in the First Schedule and from the additional duty, safeguard duty and anti-dumping duty under sections 3, 8B and 9A of the Customs Tariff Act, subject to specified conditions.

If the fabrics are found defective or unfit for use, the same may be re-exported within 6 months or such extended period not exceeding a further period of 6 months.

The readers may refer the notification for the details.

REPUBLIC OF GUINEA-BISSAU INCLUDED IN THE LIST OF COUNTRIES ELIGIBLE FOR PREFERENTIAL TARIFF

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 46/2016-Customs dated 23.08.2016 respectively** has further amended Notification No. 96/2008-Customs dated 13.08.2008 and included Republic of Guinea-Bissau in the list of countries eligible for preferential tariff under the said notification.

INCOME TAX

NOTIFICATIONS & CIRCULARS

SECTION 206C(1D) PROVIDING FOR COLLECTION OF TCS SHALL NOT APPLY ON SPECIFIED BUYERS

OUR COMMENTS: The CBDT, Department of Revenue, Ministry of Finance, Government of India vide **NOTIFICATION No. 75/2016 dated 19.08.2016** has inserted Rule 37CB in the Income Tax Rules, 1962 and has specified the following class or classes of buyers to whom provisions of sub-section (1D) of section 206C (collection of TCS) in relation to sale of any goods (other than bullion or jewellery) or providing any service shall not apply:

(i) Government;

(ii) embassies, Consulates, High Commissions, Legation or Commission and trade representation, of a foreign State;

(iii) institutions notified under United Nations (Privileges and Immunities) Act, 1947".

ADDITONAL BODIES SPECIFIED FOR SECTION 10(46) OF THE INCOME-TAX ACT, 1961

OUR COMMENTS: The CBDT, Department of Revenue, Ministry of Finance, Government of India has specified the following bodies in respect to specified income for the purpose of section 10(46) of the Income-Tax Act:

-notified **National Skill Development Corporation, a body constituted by Central Government,** vide **Notification No. 71/2016 dated 17.08.2016**

-notified **Tamil Nadu Electricity Regulatory Commission, a body constituted by Government of Tamil Nadu,** vide **Notification No. 72/2016 dated 17.08.2016**

-notified **Uttarakhand Environment Protection and Pollution Control Board, a body constituted by Government of Uttarakhand,** vide **Notification No. 73/2016 dated 17.08.2016**

The notifications shall be effective subject to the conditions that the bodies-

(a) shall not engage in any commercial activity;

(b) activities and the nature of the specified income remain unchanged throughout the financial years; and
(c) shall file return as per 139(4C)(g) of the Income-tax Act, 1961.

The readers may refer the notifications for the details.

COURT DECISIONS

1 AND 2. GUJARAT CHEMICAL PORT TERMINAL CO. LTD. VERSUS 1 AND 2. THE ACIT, CIRCLE-1 (1) , BARODA [ITAT AHMEDABAD

BRIEF: The activity of repair and maintenance of plant and machinery is an activity which has direct nexus with manufacture of final products and the goods used in this activity would be eligible for Cenvat Credit.

OUR COMMENTS: In the above case, the assessee is engaged in the business of providing various port related services for import and export of bulk liquid cargos. The assessee had entered into agreement with other PSUs that if those PSUs failed to discharge and evacuate the material to the extent stated in the agreement, then it was required to make payment towards the shortfall of the quantities discharged.

The revenue issued a show cause notice as to why the charges for shortfall in quantities for non-usage by the promoters under the "take or pay agreement shall be included in the assessee's income as it follows mercantile system of accounting.

The Hon'ble ITAT held that It is a fact that assessee is following mercantile system of accounting, but income can be said to accrue only when it becomes due and must be accompanied by corresponding liability of the other party to pay the amount and only then it can be said that for the purpose of income-tax that the income has accrued.

Accordingly, the amount of shortfall in the minimum guaranteed quantity amount cannot be brought to tax.

[Decided in favour of assessee]

STATE TAXES

CHHATTISGARH

WITHDRAWAL OF EXEMPTION TO MOBILE PHONE

OUR COMMENTS The Commercial Taxes Department, Government of Chhattisgarh, vide **Notification No. F-10/34/2016/CT/V (68) dated 22.08.2016** has amended notification No. F-10-17/2016/CT/V (26), dated 31st March, 2016 and withdrawn the exemption which reduced the tax rate on mobile phone to 5%.

DELHI

WITHDRAWAL OF MANDATORY REQUIREMENT OF FILING RETURNS IN FORM DVAT 16 OR IN FORM 17 WITH DIGITAL SIGNATURES

OUR COMMENTS The Department of Trade And Taxes, Government of National Capital Territory of Delhi, vide **Notification No. F.3(643)/Policy/VAT/2016/658-68 dated 24.08.2016** has withdrawn notifications No.F.3(643)/Policy/VAT/2016/1585-1597 dated 1st March, 2016, and notifications No.F.3(643)/Policy/VAT/2016/419-431 dated 1st July, 2016, regarding mandatory requirement of filing returns in Form DVAT 16/17 with digital signatures.

HARYANA

'MEHANDI LEAVES AND ITS POWDER EXEMPTED FROM TAX

OUR COMMENTS The Excise and Taxation Department, Government of Haryana, vide **Notification No. 18 /H.A. 6/2003/S.59/2016 dated 16.08.2016** has exempted Mehandi leaves and its powder from tax by inserting the same in Schedule B and omitting "Henna" from Schedule C.

KERALA

LAST DATE FOR FILING OPTION FOR PAYMENT OF COMPOUNDED TAX EXTENDED TO 31.08.2016

OUR COMMENTS The Office of the Commissioner of Commercial Taxes, Government of Kerala, vide **No.C1-14373/16/CT dated 19.08.2016** has extended the last date for filing option for payment of compounded tax under section 8 of Kerala Value Added Tax Act, for the year 2016-17 to 31st August, 2016.

MADHYA PRADESH

ENHANCEMENT IN ADDITIONAL TAX ON PETROL

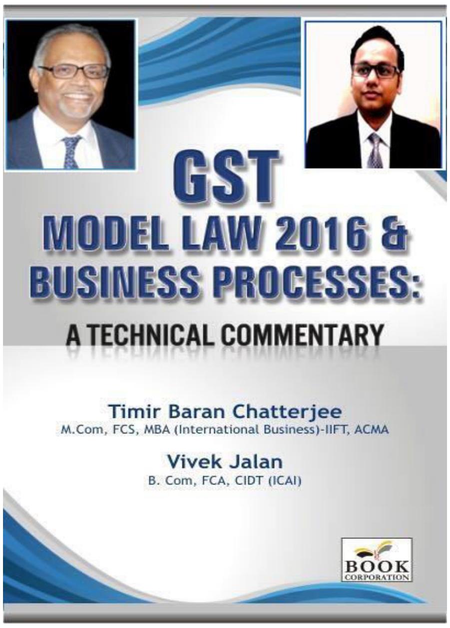
OUR COMMENTS The Commercial Taxes Department, Government of Madhya Pradesh, vide **No. A 3-60-2015-19-FIVE-(39) dated 16.08.2016** has enhanced the additional tax on petrol from Rs. 3/- per liter to Rs. 4/- per liter w.e.f 18th August 2016.

WEST BENGAL

LAST DATE FOR FILING VAT RETURN FOR Q.E. 30/06/2016 EXTENDED TO 05.09.2016

OUR COMMENTS The Directorate of Commercial Taxes, Government of West Bengal vide **Order Memo No. 742CT/PRO/3C/PRO/2015 dated 23.08.2016** has extended the due date of submission of return in Form 14/14D/15 for Q.E. 30.06.2016 from 31.07.2016 to 05.09.2016 and for Form 14e/15e to 20.09.2016.

IN STANDS - GST: MODEL LAW 2016 & BUSINESS PROCESSES : A TECHNICAL COMMENTARY



ABOUT THE BOOK: GST Bill is going to be passed in July 2016 and GST is expected to go live from 1st April 2017! In this backdrop, as our initiative to get GST READY, we have launched this publication. This books provides an insight into the following –

1. Procedural provisions under The Model GST Law 2016
2. Glimpse of the Model GST Law 2016
3. Model GST Law 2016
4. GST Valuation (Determination of The Value of Supply of Goods and Services) Rules, 2016
5. The Integrated Goods and Services Tax Act, 2016
6. GST Registration Process
7. GST Return Process
8. GST Payment Process
9. GST Refund Process
10. Eco system for GST and GST Suvidha Provider

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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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