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TAX CONNECT

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INCOME TAX

CUSTOMS

CENTRAL EXCISE

SERVICE TAX

STATE TAXES

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EDITORIAL

Friends,

Last week, the Centre proposed to impose an additional levy in the form of cess over and above Goods and Service Tax on the luxury and demerit goods like big cars, aerated beverages, tobacco products.

This left the third meeting of GST Council on 19 October with undecided tax rate structure. The Cess is proposed as a means to finance the compensation it will have to pay to the States. The Council has decided to meet again in the first week of November where the tax structure is expected to be finalized after consensus is reached on funding the compensation.

On the other hand, the Assam Government has already started with the process of collection of data in order to facilitate communication of GST registration number to the existing registered entities. The same has been done vide CIRCULAR No. 9/2016 on 13 October 2016 wherein detailed steps have been provided to be followed by a taxpayer for furnishing their details.

Now, an update about the present taxes -

In Central Excise, it was held by Hon'ble CESTAT of Mumbai that cenvat credit cannot be denied to the assessee merely, on the ground that the dealer was non-existent at the time of investigation.

In Customs, three additional stations/routes have been specified for import and export of goods by land or inland water ways.

Also, foreign currency exchange rates have been revised.

In Income-Tax, the Government has specified that electronic mode is a valid mode of communication for issuance of Form-2 under IDS.

Further, it has been clarified that assessee cannot file declaration under IDS for search and seizure conducted after 01.06.2016 but before making of declaration

In Service Tax, it has been held by CESTAT New Delhi that if there is mutuality of interest between the Association and its Members, then any service to members by the Association is not a taxable service as foundational facts of existence of two legal entities (Service provider and service recipient) in such transaction is missing.

The abovementioned notifications/circular and case laws have been detailed further in the bulletin.

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

Truly Yours

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SYNOPSIS

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GST IMPACT ON HOTELS AND RESTAURANTS

- In the current tax regime multiple taxes in the form of Service tax, VAT and luxury tax are levied on hospitality and restaurant industry.

- In restaurants, the taxes and service charges (generally 10%) covers about one-third of our bill amount. There is double taxation in the form of VAT and Service Tax being levied on the same transaction.

- Most of the restaurants also charges service charges which is generally 10% of the bill amount.

- For example:

Food bill	4000
Service charge 10%	400
Taxable value for service Tax (40%)	2400
Service Tax @14%	336
Swacch Bharat cess @ 0.5%	12
KKC @0.5%	12
VAT (12.5%-14.5%)	580
Total taxes and charges	1340
Effective tax rate	34%

- The effective tax rate is even higher if there is alcohol consumption which is subject to higher VAT rates.

- In hotels, rooms with tariff above Rs 1,000 attracts service tax at 60% of room tariff (8.7%) and luxury tax (8-12%).

- GST which is expected to get capped at 18%-20% shall have neutral impact on the hotel sector as presently service tax payable by hotels is around 8.7% and luxury tax at around 8-12% (depending on the state and type of service). Restaurants have to pay service tax at around 5.6% and VAT at around 12%-14.5%.

However, under GST regime, the uniformity of tax rates, better utilization of input credit, reduction in double taxation, and benefits to end user in terms of lower prices shall give a significant boost to the hospitality and tourism industry. For global competence, the tax rate must be maintained under 10% else, the industry shall continue to suffer due to high taxation.

TAX CALENDAR

Due date	COMPLIANCES FROM 23rd Oct , 2016 to 29th Oct, 2016	STATUTE
25th Oct, 2016	Filing of monthly/quarterly VAT return	Delhi (Quarterly, if filed online) Jharkhand (Monthly)
	Issuance of WCT certificate	West Bengal VAT Act (Monthly) Mizoram VAT Act (Monthly)
28th Oct, 2016	Deposit of VAT of previous month	Arunachal Pradesh VAT Act
	Filing of monthly/quarterly/annual VAT return	Arunachal Pradesh (Monthly, if annual turnover>Rs. 1 crore), Arunachal Pradesh (Quarterly, if annual turnover<Rs. 1 crore) Delhi (Quarterly, if filed manually)
	Filing of monthly/quarterly WCT return	Delhi VAT Act (Quarterly)

COURT DECISIONS

M/S. INDIAN PORTS ASSOCIATION VERSUS COMMISSIONER OF SERVICE TAX NEW DELHI [CESTAT NEW DELHI]

BRIEF: If there is mutuality of interest between the Association and its Members, then any service to members by the Association is not a taxable service as foundational facts of existence of two legal entities (Service provider and service recipient) in such transaction is missing.

OUR COMMENTS: In the above case, the assessee is a Society (registered under Society Registration Act, 1860) formed to represent major ports in India before various forums. It received membership fees from 13 major ports in India. The objective of the Society is to render any service to its members including service in connection with management of ports.

The revenue issued a show cause notice to the assessee and demanded service tax along with interest and penalty, on the membership fees received by the society. As per the Revenue, the service rendered by the Society to its member is liable to service tax under the category of club or association service falling under section 65(25)(m) read with 65 (105) (zzze) of the Finance Act, 1994.

The assessee contended that the service provided by them are not taxable under the category of club or association, but are in the nature of public service. The Society is founded on the principle of mutual benefit of its members. The primary requirement for levying service tax of having separate service provider and service recipient is not satisfied in this case.

The Hon'ble CESTAT found that as per Memorandum of Association of the Society, its membership is open to all major ports in India and its objectives includes carrying out various activities to help the members. There is mutuality of interest between the Association and its Members.

If there is mutuality of interest between the Association and its Members, then any service to members by the Association is not a taxable service as existence of two legal entities (Service provider and service recipient) in such transaction is missing.

Accordingly, in view of the mutuality and in view of the activities of the club, it was held that if club provides any service to its members in any form including as mandap keeper, then it is not a taxable service.

The demand therefore was set aside.

Ref: Ranchi Club Ltde vs Chief Commissioner of Central Excise [Jharkhand High Court]

Similar views have been taken by the Hon'ble High Court of Gujarat in the case of CCE Surat vs. Surat Tennis Club and in the case of Sports Club of Gujarat Ltda vs. Union of India [2013 (31) STR 645 (Guj)].

[Decided in favor of assessee].

COURT DECISIONS

GHODAWAT FOODS (I) LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE [CESTAT MUMBAI]

BRIEF: The activity of packing refined edible oil received in tankers into small containers cannot be treated as manufacturing activity.

OUR COMMENTS: In the above case, the assessee is engaged in the activity of repacking of refined edible oil in retail packs from tankers and labeling with brand name.

The Revenue demanded excise duty from assessee treating his activity as manufacturing.

The Hon'ble CESTAT held that labelling or re-labelling of containers and re-packing from bulk to retail packs or the adoption of any other treatment to render the product marketable to the consumer, shall amount to manufacture.

However, in the given case, the assessee was receiving the edible oil in tankers which is not bulk pack.

Hence, the activity of packing refined edible oil received in tankers into small containers cannot be treated as manufacturing activity in terms of Note 4 of Chapter 15 of Central Excise Tariff Act, 1985.

The demand therefore was set aside.

[Decided in favor of assessee]

SAWHNEY EXPORTS, VICTOR DROP FORGINGS PVT. LTD. VERSUS C.C.E., CHANDIGARH-I, C.C.E., LUDHIANA [CESTAT MUMBAI]

BRIEF: The cenvat credit cannot be denied to the assessee merely, on the ground that at the time of investigation, the dealer was non-existent.

OUR COMMENTS: In the above case, the assessee is engaged in the manufacture of Iron & Steel Product. He availed the cenvat credit on the inputs received from one of the dealer. An investigation was conducted against the dealer who found to be non-existent at the time of investigation. Also, the dealer was not having storage capacity during that time.

On the basis of investigation, show cause notices was issued to the assessee alleging that he is engaged only in paper transaction with the dealer without receiving the goods and availing the cenvat credit on inputs and then the cenvat credit was denied.

The Hon'ble CESTAT held that the cenvat credit cannot be denied to the assessee merely, on the ground that at the time of investigation, the dealer was non-existent. Also, when the goods were procured by the assessee, the dealer was registered with the department.

Therefore, the impugned order denying cenvat credit to the assessee was set aside.

[Decided in favor 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. 127/2016-Customs (N.T.) dated 20.10.2016 & in supersession of Notification No. 124/2016-Customs (N.T.) dated 06.10.2016** 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. **21.10.2016** 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	52.20	50.40
2.	Bahrain Dinar	183.20	170.95
3.	Canadian Dollar	51.60	50.00
4.	Danish Kroner	10.05	9.65
5.	EURO	74.50	72.00
6.	Hong Kong Dollar	8.70	8.50
7.	Kuwait Dinar	227.90	213.25
8.	New Zealand Dollar	49.35	47.45
9.	Norwegian Kroner	8.35	8.05
10.	Pound Sterling	83.45	80.70
11.	Singapore Dollar	48.90	47.30
12.	South African Rand	5.00	4.65
13.	Saudi Arabian Riyal	18.40	17.20
14.	Swedish Kroner	7.70	7.40
15.	Swiss Franc	68.60	66.40
16.	UAE Dirham	18.75	17.60
17.	US Dollar	67.55	65.90
18.	Chinese Yuan	10.05	9.75

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	65.55	63.35
2.	Kenya Shilling	68.05	63.65

THREE ADDITIONAL STATIONS/ROUTES FOR IMPORT AND EXPORT OF GOODS BY LAND OR INLAND WATER WAYS

OUR COMMENTS: The CBEC, Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 125/2016-Customs (N.T.) dated 13.10.2016** has amended **Notification No. 63/94-Customs (NT), dated the 21st November, 1994** and included the following 3 new stations/routes for import and export of goods by land or inland water ways:

- Foreign Post office at Vijayawada;
- Sub - Foreign Post office at Leh;
- Sub - Foreign Post office at Hyderabad

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. 126/2016-Customs (N.T.) dated 14.10.2016 respectively** 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

RECONSTRUCTION OR SPLITTING UP TO BE TREATED AS DEMERGR ON FULFILLMENT OF SPECIFIED CONDITIONS

OUR COMMENTS: The CBDT, Department of Revenue, Ministry of Finance, Government of India **Notification No. 93/2016 dated 14.10.2016** has specified that reconstruction/splitting up of a company which ceased to be a public sector company as a result of transfer of shares by the Central Government, shall be deemed to be a demerger if the following conditions are fulfilled:

(i) reconstruction or splitting up has been made to transfer assets of the demerged company to the resulting company to give effect to the conditions mentioned in the Share Holders' Agreement and Share Purchase Agreement; and

(ii) that the resulting company is a public sector company.

SPECIAL PROVISIONS FOR TAX ON DISTRIBUTED INCOME OF DOMESTIC COMPANY FOR BUY-BACK OF SHARES

OUR COMMENTS: The CBDT, Department of Revenue, Ministry of Finance, Government of India **Notification No. 94/2016 dated 17.10.2016** has made Income-tax (28th Amendment), Rules, 2016.

As per the amendment, PART VII-BA "Special Provisions Relating to Tax on Distributed income of Domestic Company for Buy-Back of Shares" has been inserted in the Income-tax Rules, 1962.

The readers may refer the notification for detailed provisions.

ELECTRONIC MODE TO BE VALID MODE OF COMMUNICATION FOR ISSUANCE OF FORM-2 UNDER IDS

OUR COMMENTS: The CBDT, Department of Revenue, Ministry of Finance, Government of India **Notification Instruction No. 11 of 2016 dated 13.10.2016** has decided that electronic communication of Form-2 on the email address mentioned in Form-1 as per notification No.2/2016 dated 03.02.2016 mutatis mutandis, shall be considered as a valid mode for electronically filed declarations IDS.

ELECTRONIC MODE TO BE VALID MODE OF COMMUNICATION FOR ISSUANCE OF FORM-2 UNDER IDS

OUR COMMENTS: The CBDT, Department of Revenue, Ministry of Finance, Government of India **Notification Instruction No. 11 of 2016 dated 13.10.2016** has reiterated that where a search and seizure operation has been conducted on or after 01.06.2016 but before making of declaration under IDS, the assessee cannot file a declaration under IDS in respect of the assessment years for which a notice under section 153A/153C of the Income-tax Act can be issued.

The declaration under the Scheme can be filed only upto A.Y.2016-17.

STATE TAXES

ASSAM

COMMUNICATION OF PROVISIONAL GST REGISTRATION NUMBER (GSTIN)

OUR COMMENTS The Office Of The Commissioner Of Taxes, Government Of Assam, **vide Circular No. 9/2016 dated 13.10.2016** has chalked out a course of actions in order to facilitate communication of GSTIN to the existing registered entities.

-The provisional GSTIN shall be communicated to the existing tax-payers through electronic means i.e. mobile phone and email ID only.

-Hence, all the existing registered tax-payers under the five Acts (VAT, CST, Entry Tax, Luxury Tax and Entertainment Tax) are required to provide their mobile phone No. and email ID to the Commissionerate through system (TIMS) on or before 5th November, 2016 otherwise GSTIN will not be generated and the dealers will be disabled to upload their tax returns and apply for statutory forms under the existing Acts.

-The details shall be furnished via "e-services" on the website http://www.tax.assam.gov.in. The steps have been detailed in the aforesaid circular.

INCREASE IN RATE OF ENTRY TAX ON CERTAIN COMMODITIES

OUR COMMENTS The Finance (Taxation) Department, Government Of Assam, **vide Notification No.FTX.47/2013/Pt/104. dated 15.10.2016** has increased the rate of entry tax for the specified goods.

The goods for which rates have been increased to 10% includes home appliances, Xerox and Fax machines Telephones, mobile phones, Television sets, VCD player, DVD player, type writers, Motor vehicle, Marble, granite Elevator, motor cycles, three wheelers, Alum, Furniture and Fixtures, Tiles, Sanitary ware and bathroom fittings etc.

The goods for which rates have been increased to 4% includes PVC pipes, Cranes, dumpers, road rollers etc.

The readers may refer the notification for the details.

BIHAR

EXEMPTED 'TECHNETIUM 99M GENERATORS' USED IN DIAGNOSIS OF CANCER FROM VAT

OUR COMMENTS: The Commercial Tax Department, Government of Bihar, **vide S.O. 277 dated 07.10.2016**. has amended Rule 19 and substituted Form CH-I and inserted new form Form RT-IA, RT-IIIB for the registered developer, who has opted to pay compounding tax under the provisions of Section-15C of Bihar Value Added Tax Act, 2005 in lieu of tax payable under the Act

The readers may refer the notification for the details.

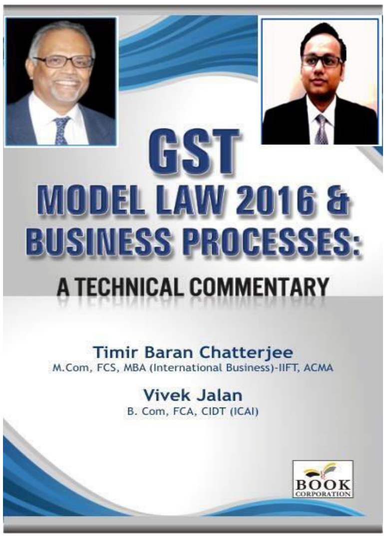
HARYANA

EXEMPTED 'TECHNETIUM 99M GENERATORS' USED IN DIAGNOSIS OF CANCER FROM VAT

OUR COMMENTS: The Excise and Taxation Department, Government of Haryana, issued a **draft amendment vide No. Web. 20/ST-1/H.A. 6/2003/S.59/2016 on 21.09.2016**. The draft amendment has been given effect to vide **Notification No. 21/ST-1/H.A. 6/2003/S.59/2016 dated 17.10.2016** which has exempted 'Technetium 99M Generators' used in diagnosis of Cancer from levy of VAT.

The readers may refer the notification for the details.

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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