TAX CONNECT
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TAX CONNECT

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EDITORIAL

Friends,

The Commercial Tax Department of **West Bengal** has **issued Trade circular** no 6/2016 dated 26th Oct 2016 **to all existing dealers/taxpayers to update their email ID and mobile Number**. **Last day** of submission of information for is **10th November 2016**. If such mobile no. and email ID are not furnished on or before GSTN goes Live on 8th Nov 2016, GST Registration Number i.e. GSTIN will not be generated. Dealers may be unable to upload their tax returns and apply for statutory forms under the existing Acts.

Further, rate structure and mode of generation of compensation fund has been discussed on 1st day of **4th GST Council meeting held on 3rd November, 2016 in which 4- rate structure at 5%, 12%, 18% and 28% has been decided.**

- Several items constituting 50% of CPI basket like food grains shall be taxed at 0%.
- Mass consumption items shall be taxed at 5%
- Standard rates shall be 12% & 18%
- White goods: 28%
- Services may be taxed at 18%

By and large, rate of most of the goods under GST shall be less than the combined effect of the existing indirect taxes.

Final list of items will come out in the next meeting along with list of goods and rate of tax. Cross empowerment /dual control issues were not discussed.

The next Council meeting has been scheduled on 20th November, 2016.

Now for the present taxes,

In Service tax, it has been held that Balance sheet of company is a publically available document and therefore, data stated in the balance sheet can never be said "suppressed" from the department.

In Income tax, Benami Transaction (Prohibition) Amendment Act, 2016 and Prohibition Of Benami Property Transactions Rules, 2016 has been issued effective From 01.11.2016.

In Customs, All Industry Rates Drawback has been issued effective from 15.11.2016. Also, Customs, Central Excise Duties And Service Tax Drawback (Amendment) Rules, 2016 have been issued.

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

Truly Yours

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SYNOPSIS

GOODS & SERVICE TAX (GST)

FAQ BY GSTN ON ENROLMENT OF THE EXISTING TAXPAYER ON THE GST SYSTEM PORTAL

Some of the key queries on enrolment for GST have been answered as follows by GSTN:

- Existing taxpayer is an entity currently registered under any of the following Acts , Central Excise, Service Tax , State Sales Tax / VAT (except exclusive liquor dealers if registered under VAT), Entry Tax, Luxury Tax, Entertainment Tax (except levied by the local bodies)
- The enrolment process is common for all taxpayers registered under Centre /State/UT tax Acts .
- The data available with various tax authorities is incomplete and therefore fresh GST enrolment has been planned.
- No paper based enrolment will be allowed.
- The taxpayers registered under State VAT and Central Excise can start enrolling from October, 2016 For others separate intimation will be sent.
- No fee/charge levied for the enrolment of a taxpayer with GST System Portal.
- There will be common registration, common return and common Challan for Central and State GST.
- For the first time login, one need to provide username and password received from the State VAT/Centre Tax Department.
- The following information/documents are mandatory for enrolment:

  Email Address and mobile Number of the primary Authorized Signatory, Bank Account Number, Bank IFSC, Proof of Constitution of Business and Appointment of Authorized Signatory, Photograph of Promoters/ Partners/Karta of HUF and Authorized Signatory, opening page of Bank Passbook/Statement containing Bank Account Number, Address of Branch and Account holder and few transaction details.
- Tax professionals will be given separate user ID and password from GST system.
- One cannot make changes to Legal Name, State name and PAN appearing in the enrolment application. These details have been migrated from existing tax systems of State or Center
- Aadhaar is not mandatory, however, for submission of application, DSC or Aadhaar based E-Signing shall be required.
- One can add maximum of 10 Bank accounts while enrolling with GST System Portal.
- DSC is mandatory for enrolment by Companies, Foreign Companies, Limited Liability Partnership (LLPs) and Foreign Limited Liability Partnership (FLLPs).
- Application Reference Number (ARN) will be generated after submission of application which can be used to track the status.
- Provisional Registration Certificate shall be available on the dashboard on the appointed date.
- The final Registration Certificate will be provided to you after verification of documents within 6 months after appointed date.
- One PAN allows one GST Registration in a state.
- An existing Input Service Distributor (ISD) Taxpayer is required to apply afresh for registration.

TAX CALENDAR

Due date	COMPLIANCES FROM 6th Nov, 2016 to 12th Nov, 2016	STATUTE
7th Nov, 2016	Deposit of WCT of previous month (VAT Act)	Tripura Orissa
	Issuance of WCT certificate (VAT Act)	Arunachal Pradesh
	TDS/TCS deposit of previous month (Income Tax Act)	All India
10th Nov, 2016	Deposit of VAT of previous month (VAT Act)	Chhattisgarh
	Deposit of WCT of previous month (VAT Act)	Chhattisgarh Madhya Pradesh Assam West Bengal Nagaland Meghalaya Mizoram Arunachal Pradesh Manipur
	Filing of WCT return (VAT Act)	Kerala
	Issuance of WCT certificate (VAT Act)	Madhya Pradesh, Karnataka, Kerala, Manipur
	Deposit of Ptax of previous month (Commercial Tax Act)	Andhra Pradesh Madhya Pradesh
	Deposit of Entry tax of previous month (Entry Tax Act)	Chhattisgarh Madhya Pradesh

COURT DECISIONS

COMMISSIONER OF CENTRAL EXCISE JAIPUR VERSUS M/S. APEX CONSTRUCTION CO. [CESTAT NEW DELHI]

BRIEF: Balance sheet of company is a publically available document and therefore, data stated in the balance sheet can never be said "suppressed" from the department.

OUR COMMENTS: In the above case, the assessee was providing construction and complex services under various contracts.

A show cause notice was issued to the assessee with a view that such services fall under the category of 'construction of residential complex' services requiring the assessee to discharge service tax liability with the allegation that data stated in the balance sheet was suppressed from the department.

The assessee contested that they were engaged in the construction of individual residential units, which cannot be considered to be a residential complex, which is required to comprise more than 12 units to attract liability.

Ref: Macro Marble reported as 2008 (12) STR 603 (Tri-Chennai). The demand was also contested on the point of limitation.

The original adjudicating authority confirmed the demand along with interest and penalty.

The appellate authority set aside the demand on the issue of limitation by observing that the assessee were not liable to pay service tax on 'construction of residential complex' services as many other identical contractors engaged in identical services were not paying any Service tax.

It was also observed that the demand has been raised on the basis of information available in the balance sheet, which is a public document and as such, no allegation of suppression can be held assessable against the assessee.

The Hon'ble CESTAT held that balance sheet of company is a publically available document and therefore, the allegation that data stated in the balance sheet was suppressed from the department is not viable allegation.

The extended period would be available to the Revenue where the assessee suppressed or mis-stated any information, with an intent to evade payment of duty.

In the present case, there is no such evidence on record that the entire facts along with remuneration received being a part of the balance sheet which is a public document, no allegation of suppression can be made against the assessee.

The appeal of the Revenue was accordingly rejected.

[Decided against Revenue].

CENTRAL EXCISE

COURT DECISIONS

CEAT LIMITED VS COMMISSIONER OF C. EX. & CUS. NASHIK [BOMBAY HIGH COURT]

BRIEF: As a last fact finding authority, it is the duty of CESTAT to consider the backdrop for any refund claim, relevant arguments & supporting documents & other factual findings & to determine the applicability principle of unjust enrichment, if such was previously being hold as the ground to reject such claim.

OUR COMMENTS: In the above case, **the Hon'ble Bombay High Court** held that it was the duty of the CESTAT as a last fact finding authority to consider the backdrop in which refund claim by assessee was made, supporting documents thereof, arguments canvassed on facts before the Assistant Commissioner & commissioner (Appeals) & relevant factual findings in their orders.

The tribunal clearly failed to perform such duty as none of the aforementioned was referred, leave alone considered. Given that the principle of unjust enrichment was attracted and when the final assessment is made, still, Tribunal had to determine the applicability of that principle on facts. The failure of tribunal to perform such duty & mandated by law itself being a substantial question, could be safely termed as one of law & arising from Tribunal's order.

Thus, the order of tribunal was set aside & the matter is remanded back.

[Decided in favour of assessee]

COMMISSIONER OF CENTRAL EXCISE, LUDHIANA VS M/S NEXO PRODUCTS (INDIA) [PUNJAB & HARYANA HIGH COURT]

BRIEF: If the department raises demand regarding clandestine removal of goods & sale of goods on cash basis without paying excise duty & fails to undertake necessary action by undertaking physical stock verification & to produce appropriate evidences regarding same, such demand shall not be entertained.

OUR COMMENTS: In the above case, **the Hon'ble Supreme Court,** held that the contention of revenue that the assessee had made cash sales without payment of excise duty, by clandestine removal of goods & such is liable for penal action, is incorrect.

The assessee (manufacturer) had taken specific defence that no effort was made by revenue to segregate into various sizes & to find the alleged shortage by comparing the same with recorded balance without which it was impossible for the department to reach a conclusive factual finding that there was shortage of specified pieces of particular size.

Further, no relevant record had been showing that electricity had been consumed or labour had been utilized to manufacture the said quantity. There was no evidence regarding purchase of material from vendors or sale to consumers. Hence, in absence of any corroborative evidence, levy of demand was arbitrary & has been rightly set aside by commissioner (Appeals) & upheld by tribunal.

The appeal is accordingly dismissed

[Decided in favour of Assessee]

CUSTOMS

NOTIFICATIONS/CIRCULARS

ALL INDUSTRY RATES DRAWBACK EFFECTIVE FROM 15.11.2016

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 131/2016-Customs (N.T.) dated 31.10.2016** has suppressed **notification No.110/2015-CUSTOMS (N.T.), dated the 16th November, 2015** and has determined the rates of drawback as per the Schedule annexed to the notification subject specified conditions.

The rules take into account relevant broad average parameters including, inter alia, prevailing prices of inputs, input output norms, share of imports in input consumption, the rates of central excise and customs duties, incidence of service tax paid on taxable services which are used as input services in the manufacturing or processing of export goods, incidence of duty on HSD/furnace oil, value of export goods, etc.

The readers may refer the notification for details.

CUSTOMS, CENTRAL EXCISE DUTIES AND SERVICE TAX DRAWBACK (AMENDMENT) RULES, 2016

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 132/2016-Customs (N.T.) dated 31.10.2016** has issued Customs, Central Excise Duties and Service Tax Drawback (Amendment) Rules, 2016 which shall come into force on 15th November, 2016.

The readers may refer the notification for the rules.

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. 133/2016-Customs (N.T.) dated 31.10.2016** has amended **Notification No.36/2001-Customs, dated 03.08.2001** and fixed tariff value of edible oil, brass, poppy seed, areca nut, gold and silver by substituting tables, TABLE – 1, TABLE – 2 and TABLE – 3.

DEFERRED PAYMENT OF IMPORT DUTY RULES, 2016

OUR COMMENTS: The CBEC (Dept. of Revenue), Ministry of Finance, Government of India vide **Notification No. 134/2016-Customs (N.T.) dated 02.11.2016** has issued Deferred Payment of Import Duty Rules, 2016 which shall come into force on 16th November, 2016.

The readers may refer the notification for the rules.

Further, vide **Notification No. 135/2016-Customs (N.T.) dated 02.11.2016,** the Central Government permits the following class of importers to make deferred payment of import duty:

(i) Importers certified under Authorized Economic Operator programme as AEO (Tier-Two) and AEO (Tier-Three)

AEO here means Authorized Economic Operator certified by the Directorate General of Performance Management under the Central Board of Excise and Customs.

INCOME TAX

NOTIFICATIONS & CIRCULARS

ADJUDICATING AUTHORITY AND APPELLATE TRIBUNAL NOTIFIED FOR THE PROHIBITION OF BENAMI PROPERTY TRANSACTIONS ACT, 1988

OUR COMMENTS: The Department of Revenue, Ministry of Finance, Government of India vide **Notification No. 97/2016 dated 25.10.2016** has notified that w.e.f. the 1st day of November, 2016, the Adjudicating Authority appointed u/s 6(1) of the Prevention of Money-Laundering Act, 2002and the Appellate Tribunal established u/s 25 of that Act shall discharge the functions of the Adjudicating Authority and Appellate Tribunal, respectively, under the Prohibition of Benami Property Transactions Act, 1988 until the Adjudicating Authorities are appointed and the Appellate Tribunal is established under the Prohibition of Benami Property Transactions Act.

BENAMI TRANSACTION (PROHIBITION) AMENDMENT ACT, 2016 EFFECTIVE FROM 01.11.2016

OUR COMMENTS: The Department of Revenue, Ministry of Finance, Government of Indi vide **Notification No. 98/2016 dated 25.10.2016** has appointed the 1st day of November, 2016 as the date on which provisions of the Benami Transaction (Prohibition) Amendment Act, 2016 shall come into force.

PROHIBITION OF BENAMI PROPERTY TRANSACTIONS RULES, 2016 EFFECTIVE FROM 01.11.2016

OUR COMMENTS: The Department of Revenue, Ministry of Finance, Government of Indi vide **Notification No. 99/2016 dated 25.10.2016** has appointed the 1st day of November, 2016 as the date on which Prohibition of Benami Property Transactions Rules, 2016 shall come into force.

AUTHORITY UNDER THE PROHIBITION OF BENAMI PROPERTY TRANSACTIONS ACT, 1988

OUR COMMENTS: The CBDT, Department of Revenue, Ministry of Finance, Government of India vide **Notification No. 100/2016 dated 25.10.2016** has directed that w.e.f the 1st day of November, 2016, the specified Income-tax authorities under section 116 of the Income tax Act, 1961 shall exercise the powers and perform the functions of the 'Authority' under the Prohibition of Benami Property Transactions Act, 1988 in respect of the territorial areas specified in the notification.

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

OUR COMMENTS: The CBDT, Department of Revenue, Ministry of Finance, Government of India vide Notification No. 101/2016 dated 17.08.2016 has notified Bihar Electricity Regulatory Commission, a body constituted by the State Government of Bihar, in respect of the specified income arising to that Commission

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.

STATE TAXES

ASSAM

REGISTRATION PROCEDURE FOR VAT, CST AND ENTRY TAX

OUR COMMENTS The Office of the Commissioner of Taxes, Government of Assam, **vide Circular No. 15/2016 dated 01.11.2016** has framed simple procedure has beenfor new dealers to register online under the Assam Value Added Tax (AVAT) Act, 2003; Central Sales Tax Act, 1956; & Assam Entry Tax Act, 2008 in pursuant to the Assam Ease of Doing Business Act, 2016.

The users need to visit www.tax.assam.gov.in. and follow steps detailed in the aforesaid circular.

DELHI

DUE DATE FOR FORM DVAT-16, 17 & 48 FOR Q2 2016-17 EXTENDED TO 14.11.2016

OUR COMMENTS The Department of Trade and Taxes, Government of National Capital Territory Of Delhi, **vide Circular No. 17/2016 dated 28.10.2016** has extend the last date of filing of online/hard copy of second quarter return for the year 2016-17, in Form DVAT-16, DVAT-17 and DVAT-48 along with required annexure/enclosures to 14/11/2016.

MAHARASHTRA

EXEMPTION OF LATE FEE FOR MONTHLY RETURNS FOR THE PERIOD FROM APRIL 2016 TO SEPTEMBER 2016

OUR COMMENTS The Office of the Commissioner of Sales Tax, Government of Maharashtra, vide **Trade Cir. No. 34T of 2016 dated 02.011.2016** has decided that the because of the technical difficulties due to which some of the dealers could not file returns for the periods April 2016 to August 2016 by the due dates as specified in the Trade Circular No 22 T of 2016 Dt. 26th August 2016, the late fee payable by such dealer shall be exempted if such return is filed on or before the 15th November 2016.

ORISSA

NOTIFICATION ON SECTION 17A OF OVAT ACT, 2004

OUR COMMENTS The Finance Department, Government of Odisha, **vide Notification dated 01.11.2016** has exempt the goods sold in course of execution of works contract by the Pani Panchayats to different Divisions under the water Resources Department from payment of tax payable under the provisions of the said Act.

AMENDMENT IN SCHEDULE B

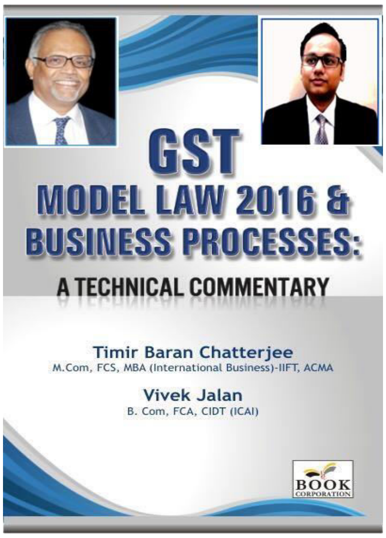
OUR COMMENTS The Finance Department, Government of Odisha, **vide Notification dated 01.11.2016** has included ",E-Rickshaw and Battery Operated Vehicle (BOV)"; and"75B. LPG Cylinder" in Schedule B.

WEST BENGAL

UPDATION OF E-MAIL ADDRESSES AND CONTACT MOBILE NUMBERS BY REGISTERED DEALERS TO OBTAIN GSTIN

OUR COMMENTS: The Directorate of Commercial Taxes, Government of West Bengal, **vide Trade Circular 6/2016 dated 25.10.016** has required all registered dealers, to update their email addresses and mobile contact numbers through 'Dealer Profile' available in West Bengal Commercial Tax website (https://egov.wbcomtax.gov.in/DealerProfile/) within 10th November, 2016. This shall be the first step towards obtaining GSTIN.

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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