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EDITORIAL

Friends,

Finance Minister Arun Jaitley has said that **GST regime will be rolled out from April 2017. Its implementation is bounded by a calendar deadline as the Constitutional Amendment provides that the existing indirect tax regime can continue only till September 16, 2017.**

For implementation, the Goods and Services Tax Network (GSTN) is in the process of finalising GST Suvidha Providers (GSPs) on the basis of their technical capabilities. GSPs will offer support and services to help tax payers and businesses in compliance.

Further, the revised GST Model Law in November has brought in many changes in the existing law and has also introduced some new concepts. We will discuss the key changes in detail in this issue and in upcoming issues of our bulletin.

We are also organizing a full day GST workshop on 20th January, 2017 in Kolkata. In the workshop we will mainly do a complete study of the Revised Model GST Law (November 2016) section wise and discuss the changes from the draft law in June 2016.

Now coming to the present taxes,

In Service Tax, it has been held that cancellation charges retained by the assessee on cancellation of Business Exhibitions services does not attract service tax.

In Central Excise, it has been held that for sale at the factory gate, so long as there is a genuine ex-factory price there can be no question of taking into account the depot price for arriving at the assessable value.

In Customs, CVD exemption has been provided on gold coins having gold content not below 99.5 , and on gold findings

Further, there has been reduction in import duty on wheat from 10 to nil

In Income Tax, a clarification has been provided on holding period of a capital asset, declared under The Income Declaration Scheme, 2016

Further, Chandigarh Building And Other Construction Workers Welfare Board, Maharashtra Electricity Regulatory Commission, Bureau Of Indian Standards (BIS) has been notified u/s 10(46) for specified income

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

Truly Yours

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SYNOPSIS

GOODS & SERVICE TAX (GST)

REVISED DRAFT MODEL GST LAW (NOVEMBER 2016): SOME NEW CONCEPTS & DEFINITIONS IN SUPPLY

The revised GST Model Law in November has brought in many changes in the existing law and has also introduced some new concepts. We will discuss some of the key changes in the definitions with respect to supply in this issue and other key changes in the further issues of our bulletin.

- **Composite supply:** The definition of Composite supply has been dramatically changed in the Revised November 2016 Law by bringing in the concept of "principal supply".

  As per the new law Sec 2(27): "composite supply" means a supply made by a taxable person to a recipient comprising two or more supplies of goods or services, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a **principal supply;**

  Illustration: Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is the principal supply.

  Further, the definition of Supply (Section 3) has been simultaneously amended to state that the tax liability on a composite supply shall be determined whereby a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply.

- **Principal supply Sec 2(78): As per the new law**: "principal supply" means the supply of goods or services which has the predominant element of a composite supply and all other supplies in that composite supply should be ancillary to such principal supply and shall be just a means for better enjoyment of the principal supply.

- **Exempt Supply: As per the new law Sec 2(44): "**exempt supply" means supply of any goods and/or services which are not taxable under this Act and includes such supply of goods and/or services which attract nil rate of tax or which may be exempt from tax under section 11 ;

  An important change has been made in the Revised November 2016 Law wherein **even Zero Rated Supplies would be covered under exempt supply.** Generally ITC is not available for the exempt supplies but are available for zero rated supplies.

  Exports and supplies to SEZ would also fall under exempt supply vide this definition. However, ITC would be available on them vide Sec 16 of IGST Law.

- **Intra-State supply of goods and services:** The intra-State supply of goods and services not defined earlier, have been defined in the new law as follows:

  As per the new law Sec 2(57): "intra-State supply of goods" means the supply of goods in the course of intra-State trade or commerce in terms of sub-section (1) of section 4 of IGST

  As per the new law Sec 2(58): "intra-State supply of services " means the supply of services in the course of intra-State trade or commerce in terms of sub-section (2) of section 4 of IGST Act, 2016.

- **Mixed supply As per the new law Sec 2(66)** : "mixed supply" means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply;

  - Whatever is not a composite supply but consists of two or more individual supplies of goods or services, or any combination thereof shall be construed as mixed supply

GOODS & SERVICE TAX (GST) contd..

- These supplies should be made in conjunction with each other
- Each of the items of a mixed supply can be supplied separately and should not be dependent on any other.
- These supplies should be made by a taxable person
- Such supply should be made for a single price
- An Illustration has been suitably inserted in the definition

Illustration: A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drink and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately.

Just like composite supply, this definition of mixed supply also may pave the way for some disputes as separate classification of components may not be practically possible in all cases.

Further, the definition of Supply (Section 3) has been simultaneously amended to state that the tax liability on a mixed supply shall be determined at the rate of Tax on the component which lies in the highest tax bracket.

- **Value of taxable supply:** Important changes are made as to the amounts to be included in value of taxable supply.

  As per the new law, the following amounts need not be added to value of taxable supply, as they do not find place in revised draft, which were intended to be difficult points to be dealt with in the earlier draft.

(a) the value, apportioned as appropriate, of such goods and/or services as are supplied directly or indirectly by the recipient of the supply free of charge or at reduced cost for use in connection with the supply of goods and/or services being valued, to the extent that such value has not been included in the price actually paid or payable;

(b) royalties and licence fees related to the supply of goods and/or services being valued that the recipient of supply must pay, either directly or indirectly, as a condition of the said supply, to the extent that such royalties and fees are not included in the price actually paid or payable;

(g) any reimbursable expenditure or cost incurred by or on behalf of the supplier and charged in relation to the supply of goods and/or services;

No tax on the reimbursable expenditure on cost incurred by or on behalf of the supplier, as this cannot be included in the value of taxable supply. This is in line with various judgements in the service tax arena.

The amendment is business-friendly, as goods supplied free of cost is a very common trade practice in many businesses. Similarly goods supplied at reduced cost as per the practice are liable for tax on the consideration received.

Other key changes in the revised law shall be discussed in the upcoming issues of our bulletin.

TAX CALENDAR

DUE DATE	COMPLIANCES FROM 11th Dec, 2016 to 17th Dec, 2016	STATUTE
14th Dec, 2016	Deposit of VAT of previous month (VAT Act)	Rajasthan
	Deposit of Entry tax of previous month (Entry Tax Act)	Rajasthan
15th Dec, 2016	Deposit of VAT of previous month (VAT Act)	Bihar Haryana (if Tax> Rs. 1 lac) Jharkhand Kerala Sikkim
	Filing of VAT return (VAT Act)	Kerala
	Deposit of WCT of previous month (VAT Act)	Bihar Chandigarh Delhi Haryana Jharkhand Punjab Rajasthan Himachal Pradesh
	Filing of WCT return (VAT Act)	Punjab
	Issuance of WCT certificate (VAT Act)	Haryana, Jharkhand, Himachal Pradesh
	PF deposit of previous month (EPF Act)	All India
	Deposit of Ptax of previous month (Commercial Tax Act)	Sikkim Gujarat
	Deposit of Entry tax of previous month (Entry Tax Act)	Bihar
	Advance income-tax for 3rd quarter (Income-Tax Act)	All India

COURT DECISIONS

M/S. JAIPUR JEWELLERY SHOW VERSUS C.C.E. & S.T. JAIPUR [CESTAT NEW DELHI]

<u>BRIEF:</u> Cancellation charges retained by the assessee on cancellation of Business Exhibitions services does not attract service tax.

<u>OUR COMMENTS</u>: In the above case, the assessee is engaged in providing business auxiliary services, business exhibition services and business support services and is discharging service tax liability.

For providing the Business Exhibition Services, the assessee is arranging for the booths, which are being booked by its customers. Some of the customers, after booking the booths, proceed for cancellation of the same. For cancelling, the booking amount is being refunded to the customers after deducting certain cancellation charges.

The Revenue is of the view that since the booths were pre booked by the customers and were subsequently cancelled, the cancellation charges retained by the assessee are liable to service tax under business exhibition services.

The assessee is of the contention that such charges have no nexus with the services provided by them under business exhibition services as ultimately no service was provided to such customers.

The Hon'ble CESTAT noted that the cancellation charges were retained by the assessee from the initial amounts given to them for booking a booth, when the same is subsequently cancelled by the customer and the amount is refunded to them.

The situation is that no booths are ultimately rented out by the assessee to their customers. And, the cancellation charges are for putting the assessee into inconvenience by initially booking the booths and subsequently cancelled.

No service stand provided by the assessee to their customers and for which purpose no consideration was ever received by them,

Therefore, the cancellation charges recovered by the assessee cannot be held to be the consideration for providing business exhibition services and are thus not liable to service tax.

The impugned order was accordingly set aside.

[Decided in favor of assessee]

COURT DECISIONS

M/S BAKELITE HYLAM LTD. VERSUS THE COMMISSIONER. C&C. E, HYDERABAD-II- (VICE-VERSA) [CESTAT HYDERABAD]

BRIEF: For sale at the factory gate, so long as there is a genuine ex-factory price there can be no question of taking into account the depot price for arriving at the assessable value.

OUR COMMENTS: In the above case, the assessee offers goods for sale at the factory gate to independent buyers, which include various Public Sector Undertakings. At the request of some of the buyers, the goods are also sold at the Company's Depots as a special service to the said buyers.

The assessee also cleared a portion of the goods on stock transfer basis and sold the same from the depot on payment of appropriate duty.

Till the amendment of Rule 173C, the assessee was discharging duty on the ex-factory price, which was the normal price. Later the assessee started filing a declaration along with requisite documents, as per the amended Rule 173 C and claimed assessment on the basis of the ex-factory price.

The assessee also clearly showed that both factory gate and depot sales existed.

However, the revenue issued show cause notices on the ground that for the entire period only the depot price and not the factory price will form the basis for determination of assessable value and deductions claimed from the depot price cannot be allowed.

The Hon'ble CESTAT held that the factory gate sale prices or ex-factory price are the genuine price and they can be the basis for the assessment of the goods cleared from the depot.

Ref: The Hon'ble Supreme Court, in Indian Oxygen case [1988 (7) TMI 58 - SUPREME COURT OF INDIA] held that so long as there is a genuine ex-factory price there can be no question of taking into account the depot price for arriving at the assessable value are on all fours with the facts of this case.

In case, a genuine ex-factory price is not available, then the value shall be determined by granting deductions from the depot prices available after giving an opportunity to the assessees and applying the law on the subject of eligibility of various discounts.

The genuineness of the factory gate price is not dependent on the percentage of factory gate sales in relation to total sales.

Where goods are partly sold from the depots and partly from factory the ex-party price should become basis for the value under Section 4 of Central Excises and Salt Act, 1944, even for the goods sold from the depots, provided the ex-factory price is ascertainable and the relative quantum of goods sold ex-factory immaterial.

The appeal was accordingly decided in favour of the assessee.

[Decided in favour of the assessee]

CUSTOMS

NOTIFICATIONS/CIRCULARS

CVD EXEMPTION ON GOLD COINS HAVING GOLD CONTENT NOT BELOW 99.5 , AND GOLD FINDINGS

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 59/2016-Customs dated 01.12.2016** has amended Notification No. 12/2012-Customs, dated the 17th March, 2012 and withdrawn CVD exemption on gold coins having gold content not below 99.5 , and gold findings.

REDUCTION IN IMPORT DUTY ON WHEAT FROM 10 TO NIL

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 60/2016-Customs dated 08.12.2016** has amended Notification No. 12/2012-Customs, dated the 17th March, 2012 and has reduced the import duty on wheat from 10 to Nil without an end date.

COURT DECISIONS

PRINCIPAL COMMISSIONER OF CUSTOMS VERSUS RISO INDIA PVT. LTD. [HIGH COURT DELHI]

BRIEF: The assessee is entitled for interest on SAD refund on the occasion of delay in processing the refund claim.

OUR COMMENTS: As per **Section 27A** of the Customs Act if any duty is ordered to be refunded u/s 27(2) and such refund is not made within three months from the date of receipt of the application u/s 27(1) **"there shall be paid to that applicant interest at such rate, not below 5% and not exceeding 30% per annum as is for the time being fixed by the Central Government, by notification in the Official Gazette, on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty"**.

From **Section 3(8) of the CTA and Sections 27 and 27A** of the Act it becomes clear that refunds and interest on delayed refunds, would equally apply to refund of SAD **u/s 3** of the CTA.

However, the Department denied interest to the Respondent by resorting the para 4.3 of the CBEC's Circular No.6/2008. Circular No.6/2008 to the extent it denies SAD refund, in terms of Notification No. 102/2007, interest on such refund in terms of Section 27A of the Act, is inconsistent with and ultra vires Section 27A of the Act.

Hence, **the Hon'ble High Court** held that the action of the Department was incorrect and no error was committed by CESTAT in ordering interest on the amount of SAD refunded, in terms of Section 27A of the Act.

[**Decided in favour of the assessee]**

INCOME TAX

NOTIFICATIONS & CIRCULARS

PEROD OF HOLDING OF A CAPITAL ASSET, DECLARED UNDER THE INCOME DECLARATION SCHEME, 2016

OUR COMMENTS: The CBDT, Department of Revenue, Ministry of Finance, Government of India vide **Notification No. 108/2016 dated 29.11.2016** has inserted a sub-rule in rule 8AA and provided that if an immovable property is declared under the Income Declaration Scheme, 2016, its period of holding shall be reckoned from the date on which such property is acquired if the date of acquisition is evidenced by a deed registered with any authority of a State Government;

and

for any other capital asset, the period of holding shall be reckoned from the 1st day of June, 2016.

EXEMPTION U/S 35AC PROVIDED TO VARIOUS SCHEMES AND PROJECTS OF NAVJEEVAN CHARITABLE TRUST WITHDRAWN

OUR COMMENTS: The Department of Revenue, Ministry of Finance, Government of India vide **Notification No. 67/2016 dated 30.11.2016** has withdrawn exemption u/s 35AC provided to various schemes and projects of Navjeevan Charitable Trust, 08, Jolly Bhavan No.1,10, New Marine lines,Mumbai – 400 020.

The readers may refer the notification for details.

CHANDIGARH BUILDING AND OTHER CONSTRUCTION WORKERS WELFARE BOARD, MAHARASHTRA ELECTRICITY REGULATORY COMMISSION, BUREAU OF INDIAN STANDARDS (BIS) NOTIFIED U/S 10(46) FOR SPECIFIED I NCOME

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

vide **NOTIFICATION No. 109/2016 dated 01.12.2016** has notified Chandigarh Building and Other Construction Workers Welfare Board, u/s 10(46) in respect of the specified income arising to that Board

vide **NOTIFICATION No. 110/2016 dated 01.12.2016** has notified Maharashtra Electricity Regulatory Commission, u/s 10(46) in respect of the specified income

vide **NOTIFICATION No. 111/2016 dated 01.12.2016** has notified Bureau of Indian Standards (BIS), u/s 10(46) in respect of the specified income

subject to the following conditions:

(a) They shall not engage in any commercial activity;
(b) Activities and the nature of the specified income remain unchanged throughout the financial years; and
(c) They shall file return as per Section 139(4C)(g) of the Income-tax Act, 1961.

PROCEDURE FOR THE PURPOSES OF FURNISHING AND VERIFICATION OF FORM 26A FOR REMOVING OF DEFAULT OF SHORT DEDUCTION AND/OR NON DEDUCTION OF TAX AT SOURCE

OUR COMMENTS: The Directorate of Income-tax (Systems), CBDT, Ministry of Finance, Government of India vide **Notification No. 11/2016 dated 02.12.2016** has authorizes the persons mentioned at Col. No. 1 to receive Form 26A to be filed in the mode specified at Col. No. 2 for the specified assessment years (in Col. No. 3) and pertinent to defaults mentioned at Col. No. 4:

A.O.	Mode	AY	Default u/s
Field Assessing Officer(TDS)	Paper	Up to & including 2016-17	201(1) and/or 40(a)(ia)
CPC-TDS	Electronic (from 15.01.2017)	Up to & including 2016-17	200A
CPC-TDS	Electronic (from 15.01.2017)	Up to & including 2017-18	200A;201(1) and/or 40(a)(ia)

The AO should ensure that interest on non-deduction of the whole or any part of the tax or failure in payment after deduction shall be paid before furnishing the statement.

For the procedure for electronic filing of Form 26A, the readers may refer the notification.

STATE TAXES

ANDHRA PRADESH

REDUCATION IN TAX RATE OF CELL PHONE BATTERIES AND CELL PHONE BATTERY CHARGERS TO 5% SHALL HAVE PROSPECTIVE EFFECT

OUR COMMENTS: The Revenue (Commercial Taxes-Ii) Department, Government of Andhra Pradesh vide Circular Memo.No.REV-35021/28/2016-CT II-1 dated 30.11.2016 has clarified that rate of tax on cell phone batteries and cell phone battery chargers reduced to 5% by including them under Schedule-IV of the APVAT Act vide notification issued in G.O.Ms.No.307, Revenue (CT-II) Dept., Dt.12-07-2016 shall have only prospective effect. Implementing the notification retrospectively is not feasible as it would result in refund of taxes already collected.

JHARKHAND

TAX RATE OF 5% ON TYRES, TUBES AND THEIR FLAPS USED AS INPUTS IN MANUFACTURING OF MOTOR VEHICLES

OUR COMMENTS: The Commercial Taxes Department, Government of Jharkhand vide **NOTIFICATION No. S.O. 91. dated 05.12.016** has notified that tax rate on Tyres, Tubes and their flaps used as inputs in course of the manufacturing of Motor Vehicles shall be 5% subject to specified conditions.

AMENDMENT IN SCHEDULE – I AND PART-B OF SCHEDULE II

OUR COMMENTS: The Commercial Taxes Department, Government of Jharkhand vide **NOTIFICATION No. S.O. 92 dated 06.12.016** has amended Schedule – I and Part-B of JVAT Schedule II regarding Cell Phone & PoS Machine.

The readers may refer the notification for details.

TAX RATE OF 2% ON PURCHASE OF ELECTRICAL GOODS BY REGISTERED DEALERS FROM INDUSTRIES LOCATED AND REGISTERED IN JHARKHAND FOR USE OR CONSUMPTION IN THE RURAL ELECTRIFICATION PROJECT IN JHARKHAND UNDER DEEN DAYAL UPADHYAYA GRAM JYOTI YOJNA (DDUGJY)

OUR COMMENTS: The Commercial Taxes Department, Government of Jharkhand vide **NOTIFICATION No. S.O. 97. dated 21.11.016** has notified that tax rate on Purchase of Electrical goods by registered dealers from industries located and registered in the State of Jharkhand for use or consumption in the Rural Electrification Project in the State of Jharkhand under Deen Dayal Upadhyaya Gram Jyoti Yojna (DDUGJY) shall be 2% subject to specified conditions.

TELANGANA

GUIDELINES TO ALL TRADERS ON CASHLESS TRANSACTIONS

OUR COMMENTS The Commercial Taxes Department, Government of Telangana, vide **Circular No. CCT's Ref. No. CS(1)/483/2006 dated 08.12.2016 has** issued guidelines to all Traders on Cashless transactions as follows:

1. Dealers to pay taxes through e-Payment gateway on www.tgct.gov.in web site.
2. Dealers to make payment for purchase of goods using either of NEFT/RTGS/Net Banking/EPOS/e-Wallet etc.
3. Requirement of e-POS/Swiping machine may be intimated to the concerned jurisdictional Commercial Tax Officer.
4. Ensure all the sale transactions are made using e-POS / Swiping machines.
5.Encourage customers to pay though e-POS/IMPS/UPI/e-Wallet/ NEFT/RTGS etc..

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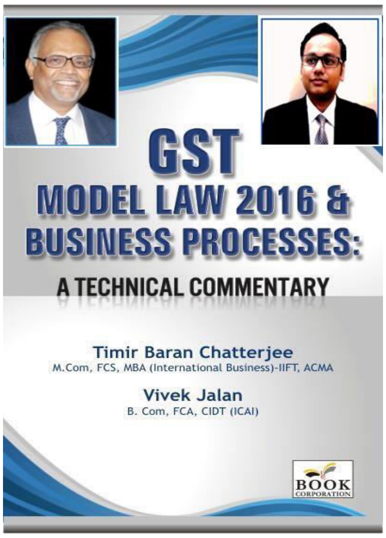
IN STANDS - GST: MODEL LAW 2016 & BUSINESS PROCESSES : A TECHNICAL COMMENTARY



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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