TAX CONNECT
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TAX CONNECT

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EDITORIAL

Friends,

Finance Bill, 2017 has been passed by Lok Sabha on 22 March 2017.

Further, Union Cabinet has approved the four supplementary GST legislations which now will be introduced in Parliament in the ongoing budget session, as notified by **Finance Minister, Arun Jaitley.**

He further added that there will be a **fifth legislation,** wherein **amendment in the Customs and Excise Act,** relating to abolition of cesses and surcharges on various goods and services have been proposed.

Also, a new facility is provided on the website of Goods and Service Tax regarding the registration status of all those taxpayers who have enrolled for GST under VAT/ Excise or Service Tax regime.

The Government is now emphasizing on the urgency to pass the GST laws as the GST Constitutional Amendment Bill does not provide for extension of the deadline of September 15, 2017 beyond which the government's legal entitlement for collection of taxes will end.

Now coming to the present taxes,

In Service Tax & Central Excise, the Government has invested the powers of The Chief Commissioner to all Principal Commissioners who have been given additional charge of a Chief Commissioner vide CBEC Order dated the 30th December, 2016, in the specified jurisdictions.

In Customs, the Government has decided to extended the RoSL on garment exports to exports of made-up articles covered under Chapter 63 of the AIR Drawback schedule in lines of ROSL for garments

Further, the exporters have been advised to provide correct Bank account details, IFSC code, etc. in respect of IECsf or smooth disbursal of Duty Drawback and Rebate of State Levies (RoSL) amount.

In Central Excise, a clarification has been issued on the classification of 'Saree' under CETA.

In Income Tax, 25 questions have been answered vide a clarification on Income Computation And Disclosure Standards (ICDS) notified u/s 145(2).

The above notifications/circulars 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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SYNOPSIS

GOODS & SERVICE TAX (GST)

AMENDMENT IN THE CUSTOMS AND EXCISE ACT, RELATING TO ABOLITION OF CESSES AND SURCHARGES ON VARIOUS GOODS AND SERVICES

- **Prime Minister Shri Narendra Modi** has approved the proposal with respect to amendment in the Customs and Excise Act for abolition of cesses and surcharges on various goods and services.

- It also approved repeal of the Central Excise Tariff Act, 1985 and amendment or repeal of the provisions relating to Acts under which cesses are levied.

- It is expected to abolish 16 cesses and surcharges on union excise and service tax for lying down the path for rolling out GST from July.

- Cesses to be abolished include Krishi Kalyan and Swachh Bharat. The government would have to find resources from the budget to make up for this loss. It is expected that some of the resources would come from higher GST mop-up as more entities would enter the tax net.

i. Amendment to the Customs Act, 1962;
ii. Amendments to the Customs Tariff Act, 1975;
iii. Amendment to the Central Excise Act, 1944;
iv. Repeal of the Central Excise Tariff Act, 1985; and
v. Amendment or repeal of the provisions relating to Acts under which cesses are levied.

Benefits:

- **Sections 108A and 108B introduced in the Customs Act, 1962**

  The above sections provide for furnishing of information relating to import/export of goods by specified persons so that cases of under/over-valuation in imports and exports can be analysed and detected.

  Further, misuse of export promotion schemes including the Drawback Scheme and violations of the provisions of the Customs Act and various other custom laws can be detected.

- **Amendments/rescindment of various provisions**

  Repeal of various provisions which will become irrelevant upon roll out of GST will result in cleansing of the Statute Book and reduce multiplicity of taxes.

TAX CALENDAR

Due date	COMPLIANCES FROM 26th Mar, 2017 to 1st Apr, 2017	State/Region
28th Mar, 2017	Deposit of VAT of previous month (VAT Act)	Arunachal Pradesh
	Filing of monthly/quarterly VAT return (VAT Act)	Arunachal Pradesh (Monthly, if turnover>Rs. 1 crore)
30th Mar, 2017	Deposit of VAT of previous month (VAT Act)	Tripura, Himachal Pradesh Punjab (if payment otherwise than by cheque) Goa (if Tax < Rs. 1 lac), Mizoram
	Filing of monthly/quarterly/annual VAT return (VAT Act)	Himachal Pradesh , Punjab (if payment otherwise than by cheque)
	Deposit of WCT of previous month (VAT Act)	Goa (Monthly, if Tax< Rs. 1 lac)
	Filing of monthly/quarterly WCT return(VAT Act)	Rajasthan,
	Deposit of Entry tax of previous month (Entry Tax Act)	Maharashtra (For unregistered dealers), Goa
	Issuance of WCT certificate (VAT Act)	Orissa
31st Mar, 2017	Deposit of P tax of previous month (Commercial Tax Act)	Maharashtra
	Deposit of Entry tax of previous month (Entry Tax Act)	Assam
	Filing of monthly/quarterly WCT return(VAT Act)	Bihar, Chandigarh, Tamil Nadu
	Filing of monthly/quarterly/annual VAT return (VAT Act)	Bihar, Gujarat, Jharkhand (Annual), Uttarakhand, Tripura,
	Deposit of VAT of previous month (VAT Act)	Mizoram, Jammu & Kashmir
	Filling of belated or revised income-tax return in some cases (Income Tax Act)	All India
	Service Tax deposit of March month (Company/ Society) (Finance Act)	All India
	Service Tax deposit of 4th quarter (Individual/ Partnership firm)(Finance Act)	All India

NOTIFICATIONS/CIRCULARS

POWERS OF CHIEF COMMISSIONER INVESTED TO OTHER CENTRAL EXCISE OFFICERS

OUR COMMENTS: The CBEC (Dept. of Revenue), Ministry of Finance, Government of India vide **Notification No. 11/2017-Service Tax dated 23.03.2017** has invested the powers of The Chief Commissioner to all Principal Commissioners who have been given additional charge of a Chief Commissioner vide **Office Order** of the Central Board of Excise and Customs **No. 151/2016 dated the 30th December, 2016**, in the jurisdiction specified in **Notification No. 20/2014-Service Tax, dated the 16th September, 2014.**

COURT DECISIONS

COMMISSIONER OF SERVICE TAX MUMBAI-II VERSUS QUICK BUILDERS SHREE SAIBABA CONSTRUCTION PVT. LTD. [CESTAT MUMBAI]

Brief: Refund is allowed for service tax not shown in the clients ledger account and accounted as an expenses in profit and loss account being billing has been made inclusive of service tax though not shown separately.

OUR COMMENTS: In the above case, the assessees are in the business of developing apartment complexes and selling the units, had been paying tax on such transactions. They claimed refund of service tax paid vide clarification communicated in F. No. 332/35/2005-TRU dated 1st August 2006.

The Department rejected the claim on the grounds that the circular had been misinterpreted as the taxability vested on the transaction between builder and contractor as well as the builder and buyer.

The presumption of tax collection from the buyers operated to invoke the doctrine of 'unjust enrichment' u/s 11B of Central Excise Act, 1944 made applicable to service tax in accordance with section 83 of Finance Act, 1994.

The Hon'ble CESTAT noted the following:

Once the liability to pay service tax is fixed upon the assessee, they cannot disclaim the same on the basis that the same has not been shown separately in their bills/invoices raised. And when the assessee has already and validly paid the service tax, it is deemed that they have passed on the duty incidence irrespective of whether it has been shown in the bills or not.

Rule 4(A)(1)(iv) of Service Tax Rules, 1994 has provided for separately mentioning of such tax amount in the invoice. Since the assessee had not shown the tax amount separately in the invoice, the accounting treatment and record maintenance would not reflect the same.

When the assessee was paying ST, it is presumed that it is part of sale value/advance received by him. The **Hon'ble Supreme Court in the case of MAFATLAS INDUSTRIES LTD. AHMEDABAD VS. UNION OF INDIA (1997) (89) ELT 247 (SC)** has pointed out that "just because duty is not separately shown in the invoice Price, it does not follow that the manufacturer is not passing on the duty', nor it follows their from that the manufacturer is absorbing the duty himself…"

Hence, refund is allowed for service tax not shown in the clients ledger account and accounted as an expenses in profit and loss account being billing has been made inclusive of service tax though not shown separately.

[Decided against Revenue]

CENTRAL EXCISE

NOTIFICATIONS/CIRCULARS

CLASSIFICATION OF 'SAREE' UNDER CETA

OUR COMMENTS: The members of the trade have requested clarification regarding classification of 'Saree' which has undergone further processing such as embroidery, stitching of lace and tikki etc. and stitched with two or more kinds of fabrics is classifiable as 'Saree' under Chapter 54 or as made-ups under Chapter 63 of the Central Excise Tariff Act, 1985.

The CBEC (Dept. of Revenue), Ministry of Finance, Government of India vide **F. No. 116/31/2016-CX.3 dated 15.03.2017** has clarified that "Saree" which has undergone further processing such as embroidery, stitching of lace and tikki etc. and stitched with two or more kinds of fabrics will be classifiable as "Saree" under Chapter 50, 52 and 54 of the Central Excise Tariff Act, 1985 depending upon the material of the fabrics, and not as made-ups under Chapter 63 of the said Act. Each case may be decided on the basis of facts of the case and where further processing of "Saree" does not change the essential characteristics of the fabric as that of "Saree", it should continue to be classified as "Saree".

POWERS OF CHIEF COMMISSIONER INVESTED TO OTHER CENTRAL EXCISE OFFICERS

OUR COMMENTS: The CBEC (Dept. of Revenue), Ministry of Finance, Government of India vide **Notification No. 07 /2017-Central Excise (N.T.) dated 23.03.2017** has invested the powers of The Chief Commissioner to all Principal Commissioners who have been given additional charge of a Chief Commissioner vide **Office Order** of the Central Board of Excise and Customs **No. 151/2016 dated the 30th December, 2016**, in the jurisdiction specified in **Notification No. 27/2014-Central Excise, dated the 16th September, 2014.**

COURT DECISIONS

M/S. HEINZ INDIA PRIVATE LIMITED VERSUS COMMISSIONER OF CENTRAL EXCISE, LUCKNOW [CESTAT ALLAHABAD]

Brief: Refund denied on the grounds of unjust enrichment considering that writing off the excess duty paid to the profits in the relevant accounting year does not amount to passing of duty to a third party, is allowed.

OUR COMMENTS: In the above case, the assessee is a Multinational Private Company engaged in the manufacture of Complan & Glucon-D falling under Sub-heading 2106.90.99 & 1702.30.20 of Central Excise Tariff Act, 1985 among other products which are sold at MRP. It transferred the finished goods to its Depot subjected to Provisional Assessment which resulted in refund claim.

The Department allowed the refund but the amount was credited to Consumer Welfare Fund holding that the appellant does not satisfy the requirement of unjust enrichment. As the prices of the goods are not based on cost data but at factory gate sale. Hence, the refund claim was rejected.

The Hon'ble CESTAT noted the following:

It is a fact that the assessee has paid excess duty.

Further, they have charged the duty excess paid to the profits in the relevant accounting year.

Also, the courts below have considered the first transfer from the factory to the Depot by way of sale which is a mistake apparent on the record. And the writing off the excess duty paid to the profits in the relevant accounting year was wrongly considered that it does not amount to passing of duty to a third party . The presumption drawn by the Revenue has got no legs to stand. Accordingly, the refund was allowed

[Decided in favour of assessee]

CUSTOMS

NOTIFICATIONS/CIRCULARS

CLASSIFICATION OF LEGGINGS

OUR COMMENTS: The CBEC (Dept. of Revenue), Ministry of Finance, Government of India vide **Instruction no. 4-Cus dated 21.03.2017 has clarified that** leggings (knitted or crocheted) shall be classified under CTH 6115.

Leggings and tights are used interchangeably in the trade parlance and there is insignificant difference between the two. As trade parlance is the major factor in deciding the classification in absence of other reliable factors, the classification of leggings with tights is most logical.

Ref: CESTAT in the case of Commissioners of Customs, Tuticorin Vs. Go Fashions (I) Pvt. Ltd had held the leggings akin to tights and accordingly classified them under CTH 6115.

EXPORTERS SHALL PROVIDE CORRECT BANK ACCOUNT DETAILS, IFSC CODE, ETC.

OUR COMMENTS: The CBEC (Dept. of Revenue), Ministry of Finance, Government of India vide **Instructions no. 3/2017-Customs dated 16.03.2017** has advised the exporters to provide correct Bank account details, IFSC code, etc. in respect of IECs for smooth disbursal of Duty Drawback and Rebate of State Levies (RoSL) amount.

The exporters had earlier been advised by the Systems Directorate to ensure correct account details vide their advisory/ ticker on the ICEGATE website. However, it is found that these details in respect of numerous exporters are still not rectified, leading to rejection of claims of Duty Drawback and scrolls of RoSL amount.

REBATE OF STATE LEVIES (ROSL) ON EXPORT OF MADE-UP ARTICLES.

OUR COMMENTS: The Government decided to extended the RoSL on garment exports to exports of made-up articles covered under Chapter 63 of the AIR Drawback schedule. This is in lines of ROSL for garments, details of which are available in **Circular no. 43/2016-Cus dated 31.08.2016.**

In pursuance of this decision, **Notification No. 12015/47/2016-IT dated 03.01.2017** was issued for the Scheme for ROSL on export of made-up articles. Further, **Notification No.12015/47/2016-IT dated 15.03.2017** notified the rates of rebate in Schedule 3.

Now, The CBEC (Dept. of Revenue), Ministry of Finance, Government of India vide **Circular No. 8/2017 - Customs dated 20.03.2017** provides the guideline framework for implementation of this scheme.

The scheme is meant for exports of made-up articles falling under Chapters 63 of the Schedule of All Industry Rates of Drawback excluding tariff items 6308, 6309 and 6310 and goods in tariff item 9404 that are excluded from drawback tariff item 6304. It is applicable to exports with Let Export Order dates from 23.03.2017 onwards.

The rate of rebate are provided as the general rates of rebate (**Schedule 3)** and are not divisible into any component tax or input.. The rebate is not applicable on exports made under Advance Authorization Scheme with claim of duty drawback under Rule 6 of the Drawback Rules. The definition of export in ROSL scheme does not cover movement of goods from DTA to SEZ units.

The claim cum declaration of eligibility has to be made by exporter on drawback exports at item-level. The scheme codes 60- Drawback & ROSL and 61- EPCG, Drawback & ROSL are applicable for ROSL for madeups also For EDI shipping bill this shall be the only means to make the claim.

The amount of rebate is calculated using the FOB value and the rates and caps of rebate specified in ROSL scheme.

The guidelines for ROSL for garments **in Circular No. 43/2016-Cus dated 31.08.2016** and the arrangements by Directorate of Systems and Pr. CCA CBEC in respect of RoSL for garments shall apply mutatis mutandis to RoSL for made ups.

INCOME TAXES

NOTIFICATIONS/CIRCULARS

PROCEDURE OF PAN APPLICATION FOR INCORPORATING COMPANY ELECTRONICALLY (SPICe)

OUR COMMENTS: As per Rule 114(1) of Income Tax Rules, 1962 notified on 9.2.2017, an applicant may apply for allotment of PAN through a common application form notified by the Central Government in the Official Gazette, and the Principal Director General of Income Tax(Systems) or Director General of Income-tax(Systems) shall specify the classes of persons, forms and format along with procedure for safe and secure transmission of such forms and formats in relation to furnishing of PAN.

Now, The Directorate of Income-tax(Systems), CBDT, Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 2 of 2017 dated 09.03.2017** laid down the classes of persons, forms, format and procedure for PAN as below:-.

Classes of persons to which SPICe form will apply

Newly incorporated Company

Applicable form

Simplified Proforma for Incorporating Company Electronically (SPICe) (Form No. INC-32) of Ministry of Corporate Affairs(MCA) notified vide notification G.S.R. No. 70(E) dated 25.1.2017.

Procedure

Application for allotment of PAN shall be filed in SPICe (INC-32) form using Digital Signature of the applicant. After generation of Corporate Identity Number (CIN), MCA will forward data in form 49A to prescribed Income Tax Authority through digital signature. Class 2/Class 3, of MCA.

Format

xml

JURISDICTION OF INCOME-TAX AUTHORITIES U/S 120(1) AND (2) OF THE INCOME-TAX ACT

OUR COMMENTS: The CBDT, Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 16/2017 dated 22.03.2017** has amended the Notification No. S.O.2483(E), dated the 30th September, 2009 and changed the jurisdiction of Commissioner of Income-tax, Centralised Processing Centre headquartered in Bengaluru, Karnataka to all the cases where the return of income has been furnished in –(i) electronic form, and
(ii) paper form.

CLARIFICATIONS ON INCOME COMPUTATION AND DISCLOSURE STANDARDS (ICDS) NOTIFIED UNDER SECTION 145(2)

OUR COMMENTS: The Income Computation and Disclosure Standards (ICDS) was notified under section 145(2) of the Income-tax Act, 1961 **vide Notification No.S.O. 892(E) dated 31st March, 2015** with effect from assessment year 2016-17.

Further vide **Notification no 87. dated 29th September, 2016** Central Government notified amended ICDS with effect from the assessment year 2017-18.

Now further clarifications have been issued by The CBDT, Dept. of Revenue, Ministry of Finance, Government of India vide **Circular No. 10/2017 dated 23.03.2017. The clarifications have been provided over 25 questions.**

The readers may refer the aforesaid circular for details.

STATE TAXES

ANDHRA PRADESH

INSTRUCTIONS FOR EASE OF DOING BUSINESS

OUR COMMENTS: The Office Of The Commissioner Of Commercial Taxes, Government of Andhra Pradesh vide **Circular CCT's Ref.No.CCW /CS(1)/128/2015 dated 17.03.2017** has issued varios instructions for Ease of Doing business in continuation of the circular CCT's Ref. No.CCW/CS(1)/128/2015, dated 8.2.2016.

Its responsibility of the Deputy commissioners and Commercial Tax officers to ensure the implementation of the above instructions in view of the importance of ease of doing business in the state.

The readers may refer the aforesaid circular for details.

CHHATTISGARH

PARTIAL EXEMPTION TO AVIATION TURBINE FUEL SOLD TO AIRLINE COMPANIES

OUR COMMENTS: The Commercial Taxes Department, Government of Chhattisgarh vide **Notification No. F 10-01/2017/CT/V (11) dated 10.03.2017** has partially exempted Aviation Turbine Fuel and has reduced the rate of tax to 1% when it is sold to the Airline Companies from the Airports Companies from the Airports covered under Regional Connectivity Scheme of the National Civil Aviation Policy-2016.

The partial exemption is for the period of 10 years from 1st April, 2017 or till the date of inclusion under this Act, whichever is earlier.

EXTENSION IN PERIOD OF VARIOUS NOTIFICATIONS

OUR COMMENTS: The Commercial Taxes Department, Government of Chhattisgarh has extended the period of various notifications from 31.03.2017 to 30.06.2017/31.05.2017/31.08.2017, vide the following notifications:

Notification No. F-10-12/2016/CT/V (19) dated 22.03.2017

Notification No. F-10-15/2017/CT/V (19) dated 10.03.2017

Notification No. F-10-16/2017/CT/V (20) dated 10.03.2017

Notification No. F-10-18/2017/CT/V (22) dated 10.03.2017

The readers may refer the aforesaid notifications for details.

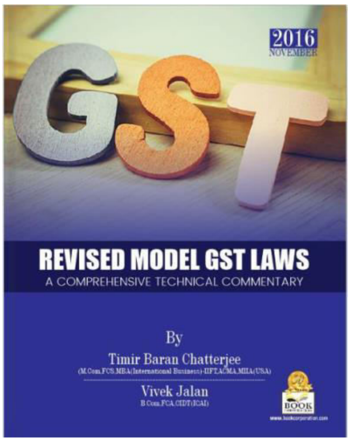
JHARKHAND

EXEMPTION ON PURCHASE OF CHAIRS, TABLES AND BENCHES BY THE GOVERNMENT SCHOOLS OF JHARKHAND

OUR COMMENTS: The Commercial Taxes Department, Government of Jharkhand vide **Notification NO. S.O. 6 of 2017 dated 16.03.2017** has exempted levy and payment of tax payable on the purchase of Chairs, Tables and Benches by the Government Schools of the State of Jharkhand.

This Notification shall be effective from the date of its publication in the Official Gazette till 31st March, 2018 or till the implementation of Goods and Services Tax (GST) in the State of Jharkhand, whichever is earlier.

IN STANDS: REVISED MODEL GST LAWS : A COMPREHENSIVE TECHNICAL COMMENTARY



ABOUT THE BOOK: While the Government is moving at a rapid pace, yet it is still a question whether the Corporates are GST Ready or not. It is high time that the law needs to be analysed and implemented into every facet of the business including sales and marketing, Logistics, procurement, HR, IT and of course Finance and Taxation. The book contains an exhaustive coverage of the Revised Model GST in the form of a Section wise technical commentary. It provides an insight into the following:

1. Brief about the major changes between the Revised law and the earlier law.
2. Revised Model GST Law November 2016
3. Revised Model IGST Law November 2016
4. GST Compensation Law
5. GST Return Rules
6. GST RefundRules
7. GST Registration Rules
8. GST Payment Rules
9. GST Invoice Rules

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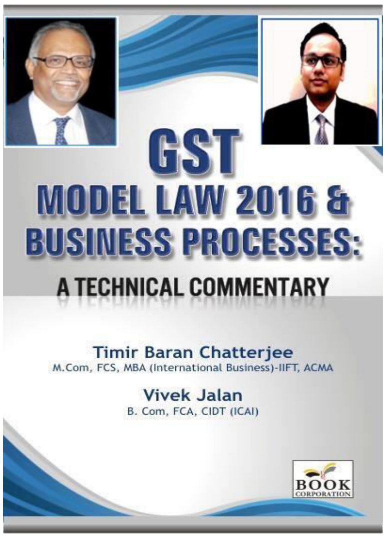
IN STANDS - GST: MODEL LAW 2016 & BUSINESS PROCESSES : A TECHNICAL COMMENTARY



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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