TAX CONNECT

THIRD ISSUE FEBRUARY 2014

Friends,

As we enter into the Budget Months, we are pleased to present before you this monthly bulletin. With Central Elections scheduled in May, there should only be an Interim Union Budget. The Final Union Budget will be presented by the New Government. The State Budget should however be a final one.

Further, the month of January has witnessed a number of important clarifications, notifications and decisions which shall be useful for us. Just to discuss a few –

The State Government has once again provided an **extension of 15 days for filing returns for the quarter ending 31.12.2013 under VAT, CST, WBST, Entry Tax & P. Tax Acts.**

Finally the CBDT has issued a clarification on TDS on the Service Tax component in payments made to residents. **If Service Tax has been indicated separately on the invoice, then TDS is applicable on the amount without including such service tax component.**

The procedure for PAN allotment process will undergo a change from 3rd Feb. Every PAN applicant has to submit self attested copies and also **produce original documents for verification** at the counter of PAN Facilitation Centres.

It has been clarified that **CENVAT Credit of the Service Tax paid under VCES can be availed only after payment of tax dues in full and receipt VCES-3**

The Central Government has revised All Industry Drawback Rates of various products which has come into effect from 25th Jan.

Finally, just to remind that we shall be available for your queries on any issue 24x7 on our mail id or over a telecon.

Due Date	Compliance
5-Feb-14	Service Tax & Excise Duty Payment for all other units except SSI units. **(6-Feb,2014: Online Payment)**
7-Feb-14	Income Tax TDS Payment
10-Feb-14	Sales Tax TDS Payment
10-Feb-14	ER1, ER2 & ER6 Return
15-Feb-14	**Extended due date of filing VAT, CST, WBST, Entry Tax & P. Tax Return for the quarter ending 31.12.2013**
15-Feb-14	Excise Duty Payment for SSI units. **(16-Feb,2014: Online Payment)**
15-Feb-14	Provident Fund Payment
21-Feb-14	VAT/CST/ Entry Tax Payment
25-Feb-14	Provident Fund Return
25-Feb-14	Sales Tax TDS Certificate Issue
28-Feb-14	ESI Tax Payment

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SERVICE TAX

CLARIFICATION ON LEVY OF SERVICE TAX ON SERVICES PROVIDED BY RESIDENT WELFARE ASSOCIATION

CBEC has issued a **Circular No. 175/01/2014- ST dated 10.1.2014, giving clarification on certain doubts regarding the scope of the present exemption extended to RWAs under the negative list approach** as below:

1. Services provided by an unincorporated body or a non-profit entity registered under any law for the time being in force such as RWA(s), to its own members are exempt from Service Tax subject to ceiling of contribution of Rs.5,000 Per member.
2. If the contribution exceeds the above mentioned limit, then the whole contribution would be taxable.
3. RWA(s) can take benefit of threshold exemption (10 lacs) as per Notification No. 33/2012-ST.
4. If RWA pays for electricity or water bills issued by 3rd parties, then the same can be excluded from value of service if RWA is acting in the capacity of a pure-agent for its members.
5. RWA may avail CENVAT Credit and use the same for payment of service tax as per CENVAT Credit Rules, 2004.

CLARIFICATION REGARDING ISSUE OF DISCHARGE CERTIFICATE UNDER VCES AND AVIALMENT OF CENVAT CREDIT

CBEC vide Circular No. 176/2/2014-ST dated 20.01.2014 clarified CENVAT Credit of the service tax paid under VCES can be availed only after payment of tax dues in full and receipt of Acknowledgement of Discharge in Form VCES-3.

In terms of Rule 7 of the Service Tax VCES Rules 2013, it would be in the interest of VCES declarants to **make payment of the entire service tax dues at the earliest** and **obtain the discharge certificate within 7 days of furnishing the details of payment.** Further, it is clarified vide Circular No. 170/5/2013-ST dated 08.08.2013 that eligibility of CENVAT credit would be governed by the CENVAT Credit Rules, 2004.

REVISION IN EXEMPTION REGARDING SPONSORSHIP SERVICES FOR SPORTING EVENTS

CBEC vide **Notification No. 01/2014 dated 10.01.2014** made **an amendment in the Mega-Exemption List in Entry No. 11 which relates to sponsorship services for sporting events.** As per the said Notification, the words **"district, State or zone",** has been **substituted by** the words **"district, State, zone or Country".**

Thus, services by way of sponsorship of sporting events organised by a national sports federation, or its affiliated federations are exempt if participating teams or individuals represent any district, state, zone or **country.**

CESTAT DECISIONS

1. **3rd January, 2014: Advice of Transfer Debit-** If, considering a commercial practice which was necessary for efficient procuring of an equipment, there is a procedural lapse and the assessee has not fully complied with provisions of CCR 2004 read with Central Excise Rules, 2002 strictly, CENVAT credit cannot be denied if the **below mentioned two conditions are satisfied**, namely,

   - **There is an existence of original invoice and its genuineness is not disputed by Revenue, and**
   - **The duty involved has been paid and there is no dispute that the equipment in question has been used at the sites where credits were taken.**

   Thus, **Cenvat credit is allowed and consequently there is no question of imposing any penalty.**

   [2014-VIL-01-CESTAT-CHE-ST]

2. **3rd January, 2014:** The **Department can issue show-cause notice (SCN) for the recovery of the amount of service tax and interest short paid.** No penalty can be imposed under Section 76.

   [2014-VIL-15-CESTAT-CHE-ST]

3. **17th January, 2013:** CENVAT Credit with respect to outward courier services, air travel charges and CHA services in relation to export of goods is admissible.

It has been correctly held by Commissioner (Appeals) that in the case of FOB contract basis, the place of removal will be a port of export and CENVAT Credit will be admissible thereupon.

[2014-VIL-07-CESTAT-AHM-ST]

4. **17th January, 2014: Demand for interest-** If the appellant did not owe any money to the government in view of the retrospective amount as per section 97 of Finance Act, 1994, the demand for interest cannot be sustained. **When the demand for main amount itself is not sustainable, demand for interest cannot be sustained for the reason that appellant had paid amount which was not legally due.** Appellant should get relief at least in respect of the interest amount not yet paid.

[2014-VIL-11-CESTAT-CHE-ST]

HIGH COURT DECISIONS

1. **30th January, 2014**: Allahabad High Court gives **clean chit to EA 2000 audit of service tax assesses.** The audit would be performed by Chartered Accountants and not Departmental Officers. The officers are only empowered to collect documents for audit purpose. The manner for conducting the audit is as per the accounting standard provided by the Institute of Chartered Accountant of India. The audit report will be made available to the assessee, as per law. *[M/s. ACL Education Centre Pvt Ltd & Others Vs. Union Of India (2014-TIOL-120-HC-ALL-ST)]*

FOREIGN TRADE POLICY

AMENDMENT IN THE PROCEDURE FOR ISSUE OF REGISTRATION CERTIFICATES FOR EXPORT OF VARIOUS COMMODITIES

The Central Government vide **Notification No. 63(RE-2013)/2009-14 dated 03.01.2014** clarifies that there shall be **no requirement of submission of hard copies of the documents** (viz. printout of online application, Letter of Credit [L/C] or Foreign Inward Remittance Certificate [FIRC] or proof of Advance Payment, as applicable and export contract) **in electronic filing for obtaining Registration Certificates for export.** There shall be no other change in either the policy or conditions for export of cotton, cotton yarn, non-basmati rice, wheat & Sugar notified earlier through respective Notifications, Public Notices, Policy Circulars etc.

RELAXATION IN TIME LIMIT FOR SUBMISSION OF INSTALLATION CERTIFICATE

As per the current practice, an authorization holder is required to produce a certificate confirming installation of Capital Goods at factory/premises to the concerned RA within six months from date of completion of import. At this instant, **DGFT has taken a step to amend the on-going practice by empowering regional authorities to extend the time limit for installation of capital goods up to a period of 18 months from the date of completion of import.** *(Public Notice No. 48/2009-2014 (RE- 2013) dated 10.01.2014)*

CUSTOMS

EXEMPTION FOR GOODS IMPORTED UNDER ADVANCE AUTHORISATION

Vide **Notification No. 01/2014- Customs dated 17.01.2014, Government has exempted materials imported into India against an Advance Authorization issued** in terms of paragraph 4.1.3 of the Foreign Trade Policy **meant for export of a prohibited item** in terms of paragraph 4.4.1 (b) of the Handbook of Procedures Volume 1 from the whole of the duty of customs and from the whole of the additional duty, safeguard duty and anti-dumping duty leviable thereon, subject to certain conditions.

REVISION OF ALL INDUSTRY DRAWBACK RATES & ADDITION OF NEW TARIFF ITEMS

Vide **Notification No. 05/2014 - Customs (N.T) dated 21.01. 2014,** the Central Government has **revised All Industry Drawback Rates of various products like Leather Articles, Paper/Paperboard, Carpets/Other Textile Covers, Toys/Games which will come into effect from the weekend i.e. 25.01.2014.**

Further, the Central Government inserts New Tariff Items under 4 Chapters.

cENTRAL EXCISE

ISSUES CLARIFIED IN RELATION TO VALUATION OF GOODS VIS-À-VIS FIAT'S CASE

CBEC has issued **Circular No. 979/03/2014-CX dated 15.01.2014** to give clarification on the implementation of decision of Hon'ble Supreme Court in the case of Fiat India Ltd. dated 29.08.2012.

1. **Whether transaction value be rejected in all the cases where transaction value is lower than the manufacturing cost & profit?**
   Transaction value cannot be rejected merely on sale of goods below the manufacturing cost and profit. The judgment of Hon'ble Apex Court held that a manufacture may sell goods at a price lower than the cost of manufacture and profit and yet declared value can be considered as transaction value:
   - When the company want to switch over its business.
   - Where a manufacturer has goods which could not be sold within a reasonable time.

2. **Identification of Cases where ratio of the judgment would apply?**
   - It has been clarified that due care may be taken at the level of the Commissioner to see whether the case at hand is similar to the facts and circumstances of the FIAT case.
   - Only where a decision to investigate a case has been taken at the level of the Commissioner and it is considered necessary in the interest of investigation, steps such as ordering Cost Audit of the Unit or summoning of the Costing data should be undertaken.
   - It has been further clarified that **calculation of manufacturing cost may be carried out using CAS-4 standards duly certified by a Chartered or Cost Accountant.**

3. **Whether the judgment can be applied to the period prior to the date of judgment (i.e. 29-Aug-2012), invoking the extended period of limitation?**

   For the period prior to the date of judgment, only normal period of limitation shall apply.

   However, after 29-Aug-2012, if the sale is made in circumstances similar to the case of M/S Fiat, then extended period of limitation may apply considering willful misstatement of the assessable value.

CLARIFICATION ON LEVY OF THE EDUCATION CESS AND THE SECONDARY EDUCATION CESS ON OTHER CESSES

CBEC has issued **Circular No. 978/2/2014-CX dated 07.01.2014** giving clarification that the Education Cess chargeable under Section 93(1) of the Finance (No.2) Act, 2004 and the Secondary and Higher Education Cess chargeable under Section 138(1) of the Finance Act, 2007 are not to be calculated on cesses which are levied under Acts administered by Department/Ministries other than Ministry of Finance (Department of Revenue) but are only collected by the Department of Revenue in terms of those Acts.

CLARIFICATION WITH RESPECT TO THE COMPOUNDED LEVY SCHEME APPLICABLE FOR SMOKELESS TOBACCO PRODUCTS

CBEC has issued **Circular No. 978/2/2014-CX dated 07.01.2014** giving clarification that **the duty payable** under Notification No.42/2008-CE dated 01.07.2008 and Notification No.16/2010-CE, dated 27.02.2010 **may be determined based on deemed production with respect to the number of operating packing machines in the factory during the month and the Retail Sale Price printed on the pouches and not on the basis of actual production by a unit.**

SLUDGE EMERGING FROM EFFLUENT TREATMENT PLANT- NOT A MANUFACTURING PRODUCT

1. 6th January, 2014: Sludge emerging from effluent treatment plant in the nature of waste cannot be considered a manufactured product in view of various decisions of the Hon'ble Apex Court in the similar matters. Further there cannot be a demand to reverse any CENVAT Credit for the reason that a part of the input is covered in the waste that arises.

[2014-VIL-13-CESTAT-CHE-CE]

CENVAT CREDIT RULES, 2004

AMENDMENT TO CENVAT CREDIT RULES, 2004

CBEC has issued **Notification No. 1/2014-CX dated 08.01.2014** giving clarification that **the CENVAT credit on input services used in or in relation to the manufacture or production of said remitted goods is required to be reversed.**

Further, an explanation has been inserted after Sub-rule 5(C) of Rule 3 of CENVAT Credit Rules, 2004 which clarify that the amount payable under sub-rules (5), (5A), (5B) and (5C), unless specified otherwise, shall be paid by the manufacturer of goods or the provider of output service by debiting the CENVAT credit or otherwise on or before the 5th day of the following month except for the month of March, where such payment shall be made on or before the 31st day of the month of March.

Also, an earlier explanation which provide for the recovery of CENVAT Credit taken by the manufacturer of goods or the provider of output services under sub-rules (5), (5A) and (5B) in the manner as provided in rule 14, has been amended. Now if the manufacturer of goods or the provider of output services fails to pay the amount payable **under sub-rules (5), (5A), (5B) and (5C) ,** it shall be recovered, in the manner as provided in rule 14, for recovery of CENVAT credit wrongly taken and utilised.

INCOME TAX

CHANGE IN THE PROCEDURE FOR PAN ALLOTMENT

The procedure for PAN allotment process will undergo a change w.e.f. 03.02.2014.

- Every PAN applicant has to **submit self attested copies of Proof of Identity (POI), Proof of Address (POA) and Date of Birth (DOB) documents** and also **produce original documents** of such POI/POA/DOB documents, **for verification** at the counter of PAN Facilitation Centres.
- The document copies attached with PAN application form, will be verified vis a vis their original documents and returned back to the applicant after verification.

CLARIFICATION ON TDS ON SERVICE TAX COMPONENT COMPRISED IN THE PAYMENTS MADE TO RESIDENTS

The CBDT has issued **Circular No. 1/2014 dated 13.01.2014** giving clarification that whenever in terms of the agreement/contract between the payer and the payee, if the **service tax component comprised in the amount payable to a resident is indicated separately, tax shall be deducted at source under Chapter XVII-B of the Act on the amount paid/payable without including such service tax component.**

HIGH COURT DECISION

1. 30th January, 2014: Mere execution of a development agreement is not a "transfer" if possession as per Section 53A of the Transfer of Property Act is not given. *[CIT vs. Sadia Shaikh (Bombay High Court at Goa)]*

2. 30th January, 2014: The Assessing Officer **cannot exercise coercive measures to recover tax** during the period available for filing an appeal. *[Dishnet Wireless Limited vs. ACIT (Madras High Court)]*

ITAT DECISIONS

1. 31st January, 2014: Penalty u/s 271B: The provision of Section 271B of the Act is an enabling provision empowering the AO to direct payment of penalty for noncompliance with the provisions of Section 44AB read with Section 271B. If the assessee failed to furnish bonafide reasons for not getting the books of accounts audited either before the AO or the FAA, then penalty u/s 271B can be imposed by the AO. *[Anahaita Nalin Shah Versus DCIT 4(1), Mumbai (ITAT Mumbai)]*

W.B. TAXES

EXTENSION IN FILING OF e-RETURN

The last date for submission of e-Return for the quarter ending 31.12.2013 under VAT, CST, WBST, Entry Tax & P. Tax Acts and for submission of Revised Return for quarter ending 30.06.2013 have been extended for 15 days, i.e., upto 15.02.2014. The paper copies thereof have to submitted within 7 days from the last date of submission of online returns. The dealers having turnover less than Rs.1 Crore and filing VAT Return using DSC will get 15 days extra and dealers having turnover more than Rs.1 Crore but less than Rs.5 Crores and filing VAT Return using DSC will get 7 days extra for both e-filing of Returns and submission of paper copies.

MACROECONOMY

1. India's External Debt at End-September 2013

(Rs. in Billions)

External Debts	At end-March 2013	At end-September 2013
Total External Debt Stock	US$ 409.3	US$ 400.3
Long-term debt	US$ 287.78	US$ 305.5
Short-term debt	US$ 96.73	US$ 94.8
Government (Sovereign) External Debt	US$ 81.7	US$ 77.3
Ratio of concessional debt to total external debt	11.4%	11.5%
India's foreign exchange reserves	73%	69.3% to the total external debt stock
Ratio of short-term external debt to foreign exchange reserves	33.1%	34.2%

The **share of US dollar denominated debt continued to be the highest in external debt stock at 60.7 per cent** at end-September 2013, followed by the Indian rupee (20.9 per cent), SDR (7.6 per cent), Japanese yen (5.7 per cent), and euro (3.2 per cent).

2. Government of India's Finances, April-November 2013

- A rise in plan expenditure has pushed the central government's fiscal deficit to 93.9 per cent of the entire year's Budget estimate (BE) at the end of the first eight months of the current financial year. At this point last year, the deficit was 80.4 per cent of the BE.
- The market borrowings stood at Rs. 424187.65 crores which accounts for 84 percent of the budget estimates.
- The revenue deficit stood at Rs 393019 crores in November 2013-14 which is 103.5 per cent of the budget estimates for 2013-14 as against 91.2 percent in November 2012-13.

3. Sectoral Deployment of Bank Credit, November 2013

Bank Credits	Nov., 2012	Nov., 2013
Non-food bank credit	increased by 17.6%	increased by 14.7%
Credit to agriculture and allied activities	increased by 21.1%	increased by 11%
Credit to industry	increased by 19.4%	increased by 13.7%
Credit to the services sector	increased by 12.7%	increased by 18.1%
Credit to NBFCs	increased by 22.1%	increased by 15.9%
Personal loans	increased by 17.5%	increased by 15.2%

CORPORATE SECTOR

Index of Eight Core Industrial Production

Growth Rate (in %)

Sector	Nov.,2012	Nov.,2013
Coal	**-2.9**	**2.3**
Crude Oil	**0.8**	**1.1**
Natural Gas	**-15.3**	**-11.3**
Refinery Products	**29.8**	**-5.0**
Fertilizers	**5.0**	**0.6**
Steel	**7.8**	**3.9**
Cement	**-0.2**	**4.2**
Electricity	**2.4**	**5.9**
Overall Index	**5.8**	**1.7**

GOVERNMENT OF INDIA AND THE WORLD BANK SIGN AGREEMENT

The Government of India and the World Bank have signed a $160 million credit for the Rajasthan Road Sector Modernization Project to support the government of Rajasthan in improving rural connectivity, enhance road safety and strengthen the road sector management capacity of the state.

QUERY

A landlord has submitted an arrear bill for service tax amount on renting of immovable property for the period from June, 2007 till Feb., 2008 with interest and penalty. As per my understanding, service tax on renting of immovable property was declared ultra-vires in Delhi High Court decision in the matter of Home Solution Retail India Ltd & Others Vs. Union of India & Others dated April 18, 2009.

However, service tax on renting of immovable property made applicable on and from July 2010. Please advise the correct position.

REPLY

'Renting of Immovable Property services' brought under the purview of Service tax with effect from 01/06/2007 with a view to tax the activity of renting of immovable property for use in the course of furtherance of business or commerce.. As per Section 65(105)(zzzz) of Finance Act, 1994 before 01.07.2012, the definition of Taxable service is as follows:

"to any person, by any other person in relation to renting of Immovable Property for use in the course or furtherance of business or commerce."

As per the definition (prior to amendment), the tax is on service of ***'in relation to renting of Immovable Property'***. This creates the ambiguity in the minds of tax payers regarding whether Service Tax is applicable on mere Renting of Immovable Property.

Meanwhile, on 18-04-2009, **the Hon'ble Delhi High Court in the case of M/s Home Solutions Retail India Ltd & Others Vs UOI, 2009(014) STR 433 (Del),** it was held that renting per se cannot be regarded as service. Hence, no service could be levied on the activity of renting per se. However, the acceptability of the said order outside the Territorial Jurisdiction of Hon'ble Delhi High Court was unfavourable.

Further, as per Notification No. 24/2010-ST dated 22.06.2010, there has been an retrospective amendment in the service "Renting of Immovable Property" with effect from 01.06.2007.

After 01.07.2012, Renting of Immovable property is the part of declared services.

Renting of Immovable Property is considered as "Non-Taxable Service" or "Exempted Service" in the following cases:

Non-Taxable Services covered under Negative List:

- Renting of vacant land, with or without a structure + incidental to its use, relating to agriculture.
- Renting of residential dwelling + for use as residence.
- Renting out of any property by Reserve Bank of India.
- Renting out of any property by a Government or a Local Authority to a non-business entity.
- Sale of Space of Immovable Property for advertisement purpose.

Exempted Services covered under Mega-Exemption:

- Renting of precincts of a religious place meant for general public.
- Renting of a hotel, inn, guest house, club, campsite or other commercial places meant for residential or lodging purposes, having declared tariff of a room below rupees one thousand per day or equivalent.
- Renting to an exempt educational institution.

Other Exemption:

- Threshold level exemption up to Rs. 10 lakh. (i.e. Small Service Provider).

OPINION

- The Finance Act, 2010 has amended the definition of the taxable service so as to include the mere renting of immovable properties under the definition of the taxable service neutralizing the judgment of Delhi High Court.

- In the given case, since the rental bills were arrear for the period June, 2007-February, 2008 which is falling under the regime of the service Renting of Immovable Property, the service tax can be charged on the arrear bills with retrospective effect.

- As far as interest & penalty is concerned, the same are only payable by the person providing taxable service. Hence the same cannot be recovered from the service recipient.