TAX CONNECT

EIGHTH ISSUE JULY 2014

Friends,

Horas Volat! We have now ended Q1 of FY 2014-15. As we step into Q2, we are again looking to a month of compliances for Q1 like returns of TDS, VAT, Entry Tax, P. Tax, etc. In a meeting with the CCT, he had remarked that he himself is monitoring the speed of the department's website. **So, contrary to our past experiences, the due dates for returns of State Taxes may not be extended beyond 31st July this time.**

The scheme of enrollment in P. Tax upon payment of `1,000 to `2,000 with no penalty and no interest u/s 5C, which was passed in the Finance Bill, is likely to take effect from 1st July. Assessees who had missed last year's Amnesty Scheme in P. Tax may take the benefit.

You may keep 10th July blocked as India waits with heightened expectations for the Union Budget to be announced by the new government headed by Narendra Modi who is considered to be bent on bringing in rapid development in the country.

Further, the Service Tax Department has issued notices to several assessees for conducting Service Tax Audit. It is important to handle the audit in a professional manner so that the issues are sorted out on spot. It is important on the part of the businesses that all steps are taken to avoid receiving a show cause notice. We have tried to jot out our experiences and suggestions in the "ARTICLE" Section to provide an insight in the matter.

Before signing off, we cannot miss an important judgment was passed in **CIT vs. J.L. Morrison (India) Ltd., where the Calcutta High Court** held with reference to **Section 263 of the Income Tax Act, 1961,** that the CIT can revise an assessment only if he can show unmistakably that the order of the AO is unsustainable. Fact that the AO has passed a non-speaking order does not mean that he has not applied his mind.

For your queries on any issue, we shall be available 24x7 on our mail id or over a telecon.

DUE DATE	COMPLIANCE
05-Jul-14	Payment of Service Tax & Excise Duty for the month/quarter ended June, 2014. **(06-Jul-14: Online Payment)**
07-Jul-14	Payment of TDS/TCS
10-Jul-14	West Bengal Sales Tax TDS Payment
10-Jul-14	ER1, ER2, ER6 Return for June, 2014
15-Jul-14	Provident Fund e-Payment for June, 2014 (Cheque to be cleared by 20-Jul-14)
15-Jul-14	Income Tax TDS Return- 24Q, 26Q, 27Q & 27EQ for Non-govt. deductors and TCS Return for all deductors
20-Jul-14	ER3 Return for the quarter ended June, 2014
21-Jul-14	Payment of ESI for the month of June, 2014
25-Jul-14	West Bengal Sales Tax TDS Certificate Issue
25-Jul-14	Provident Fund Return
30-Jul-14	Issue of Quarterly TDS/TCS Certificate for ended June, 2014 (Form 16A/27D)
31-Jul-14	**West Bengal VAT/CST/ Entry Tax/ Professional Tax Payment for June, 2014 and Return for April-June, 2014**
31-Jul-14	**Filing of ITR-1,2,3,4,5 & 7 and Wealth Tax Return (without audit)**
31-Jul-14	Annual Professional Tax Payment
31-Jul-14	Income Tax TDS Return- 24Q, 26Q, 27Q & 27EQ for Govt. deductors

Truly Yours

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SERVICE TAX

COURT AND TRIBUNAL DECISIONS

GARDEN MAINTENANCE SERVICE IS AN INPUT SERVICE FOR THE MANUFACTURER

In the case of **M/s Mukand Ltd. vs. CCE, Mumbai-III**, the CESTAT Mumbai held that **Garden Maintenance Service is an input service** if the same has been availed by the manufacturer of excisable goods in the course of their business activity.

The decision is given relying upon the decision of Hon'ble Bombay High Court in the case of **Ultra Tech Cement Ltd. [2010 (260) ELT 369 (Bom)].**

REJECTION OF REFUND CLAIM IF MADE WITHOUT CHALLENGING THE ASSESSMEENT ORDER

In the case of **Coromandel Agro Products & Oils Ltd. vs. Commissioner of Central Excise, Guntur [2014 (6) TMI 657],** the CESTAT Bangalore held that on the basis of the statutory provisions of CENVAT Credit Rules, 2004 and Notification No. 35/2004-ST, **the assessee is liable to pay Service Tax in situation where he has not issued consignment note in accordance with the provisions of Rule 4B. The refund claim if any will be rejected.** Another ground on which the **refund claim can also be rejected is on the basis when the refund claim is made without challenging the assessment order.**

SERVICE TAX LIABILITY ON CLEAR IDENTIFICATION OF LOADING AND UNLOADING UNDER CARGO HANDLING SERVICE

In the case of **M/s Jai Jawan Coal Carriers Private Limited vs. CST, New Delhi [2014 (6) TMI 393],** the CESTAT New Delhi held that **where the activity of the loading and its subsequent unloading for its transportation is clearly identified and separate rates are prescribed for the same, the service tax would be chargeable on the amount charged by the assessee for these services under Section 65 (105)(Zr) readwith Section 65 (23) of the Finance Act, 1994 provided the transportation is not treated as GTA service.** It is also held that non-payment of service tax has to be treated on account of bonafide belief of the assessee that their activity was not taxable and accordingly:

- the longer limitation period under proviso to Section 73 (1) of the Finance Act, 1994 would not be available to the Department; and
- the penalty under Section 77 and 78 would have to be waived off.

AVAILMENT OF EXEMPTION UPON SUBSEQUENT REVERSAL OF CENVAT CREDIT

In the case of **M/s Sachdeva Roadlines vs. CST, New Delhi [2014 (6) TMI 628]**, the CESTAT New Delhi relied upon the decision of **Chandrapur Magnet Wires (P) Ltd. (1995 (12) TMI 72 – Supreme Court of India)** where the Apex Court held that when the benefit of an exemption is subject to the condition of non-availment of CENVAT Credit and initially, the assessee has taken the CENVAT Credit but subsequently, before the clearance of the exempted goods or after the clearance of the exempted goods the credit taken was reversed, it would amount to not taking the CENVAT Credit and the benefit of Exemption Notification No. 1/06-ST cannot be denied. The CESTAT New Delhi has also followed the judgement of the Hon'ble Allahabad High Court in the case of **Hello Mineral Water Pvt. Ltd. (2004 (7) TMI 98 – High Court of Judicature at Allahabad).**

NO SERVICE TAX ON TESTING OF SAMPLES RECEIVED FROM JOB WORKERS WHO MANUFACTURE THE GOODS FOR THE ASSESSEE

In the case of **CCE, Ludhiana vs. M/s Nestle India Ltd. [2014 (6) TMI 766],** the CESTAT New Delhi held that **where the testing of the samples received from the job workers and these samples are from the goods which were being manufactured by the job workers for the assessee on job work basis** and there is nothing on record to show that the assessee had charged any amount for testing the samples from the job workers, then **no service tax would be chargeable.** The decision is given agreeing with the findings of the Commissioner (Appeals) that the assessee has tested their own goods and, as such, has not provided any service to the job workers.

NO SERVICE TAX ON TRANSPORTATION OF GOODS BY AN ASSESSEE IN HIS OWN VEHICLE

In the case of **Essar Logistics Ltd. vs. CCE, Surat [2014 (6) TMI 763],** the CESTAT Ahmedabad held that where the **assessee transports the goods in his own vehicle to the**

buyer and the buyer is the person who actually pays the freight , then the assessee has no liability at all to pay service tax. The legislative intent is to tax only the services provided by a Goods Transport Agent to a customer and not the owner.

ADJUSTMENT OF EXCESS PAYMENT OF SERVICE TAX

In the case of **the General Manager, M/s Bharat Sanchar Nigam Limited vs. CCE, Raipur and vice-versa [2014 (6) TMI 768],** the CESTAT New Delhi held that where the service tax has been paid on the estimated bill collection amount and the exact amount of service tax payable is determined only when the accurate figures of collection against the bills are available, then **if during a particular month there is excess payment of tax, it does not mean that the excess paid amount had been recovered from the customers**. When this is the position, **the excess payment against a particular month can be adjusted against short payment during the other months, as there is no unjust enrichment involved.**

CENTRAL EXCISE

AVAILMENT OF CENVAT CREDIT EVEN ON THE GROUND OF INABILITY TO ESTABLISH THE NEXUS BETWEEN THE SERVICES AVAILED AND MANUFACTURING OPERATIONS UNDERTAKEN

In the case of **Reliance Industries Limited vs. CESTAT (LTU), Mumbai [2014 (5) TMI 835],** the CESTAT Mumbai held that **where the costs of various services availed forms part of the assessable value of the goods manufactured and sold by the assessee, there is no reason to deny CENVAT Credit of the duty/taxes paid on the various inputs/input services availed by the assessee for undertaking their business operations.** Further, if the assessee also furnishes Cost Accountant's certificates certifying the above and for any reason, the department does not want to place reliance on these certificates, then under Section 14AA of the Central Excise Act, 1944 they can conduct **special audit** where the credit of duty availed of or utilized is not within the normal limits or such credit has been availed by reason of fraud, collusion or any willful misstatement or suppression of facts. The case is remanded back to the adjudicating authority for denovo consideration.

NO INTEREST CHARGED FOR DELAYED/SHORT/NON-PAYMENT OF ADDITIONAL EXCISE DUTY

In the case of **M/s. Pabhojan Tea Estate vs. The Union of India [2014 (6) TMI 519],** the Gujarat High Court held that so far as levy of additional duty of excise on any excisable goods is concerned

- there is no provision made to levy/ charge interest for its delayed / short / non-payment in the Finance Act,2003.
- **substantive provision** relating to levy/ charging of interest from Central Excise Act is not made applicable to Finance Act, 2003.
- by virtue of Section 157(3), only provisions relating to **penalty, refund and exemption contained in Central Excise Act are made applicable to Finance Act, 2003.**

Further, there is a fundamental distinction between "additional duty of excise" and "excise duty". The former is paid under the Finance Act 2003 whereas the later is paid under the Central Excise Act.

FACTS OF FIRST SHOW CAUSE NOTICE (SCN) NOT TAKEN AS SUPPRESSED IN THE SUBSEQUENT SCN

In the case of **M/s. Swiss Parenterals Pvt. Ltd. vs. Commissioner of Central Excise & Service Tax, Ahmedabad [2014 (6) TMI 720],** the CESTAT Ahmedabad held that **when the first SCN was issued and all the relevant facts were in the knowledge of the authorities, then later on, while issuing the second and third show cause notices the same/similar facts could not be taken as suppression of facts on the part of the assessee** as these facts were already in the knowledge of the authorities.

Further it is also held that **if CENVAT Credit attributable to inputs used in the manufacture of exempted final products is reversed along with interest subsequent to removal of exempted final products, then the assessee cannot be said to have taken credit of inputs used in or in relation to the manufacture of exempted final products,** and they need not pay an amount @ 8% or 10% of the sale price of exempted final products.

CREDIT ALLOWED ON DEFECTIVE GOODS WHICH UNDERGO SUCH PROCESSES AMOUNTING TO MANUFACTURING

In the case of **Commissioner, Central Excise, Meerut-I vs. M/s Bhushan Steel and Strips Ltd.[2014 (6) TMI 757],** the Allahabad High Court held that if **defective goods,** may be final product, have been **subjected to such process which amount to manufacturing** within the definition of manufacturing under Section 2(f) of the Central Excise Act and as a result of such process **a final product is obtained which is subjected to excise duty,** then the **MODVAT Credit under Rule 57-A of the Central Excise Rules, 1944 is admissible,** if other conditions of Rule are fulfilled and claim cannot be denied on the ground that the assessee would have claimed refund of duty paid under Rule 173L of the Central Excise Rules, 1944.

EXTENSION OF EXCISE DUTY CONCESSION FOR AUTO, CAPITAL GOODS AND CONSUMER DURABLE SECTOR

The CBEC vide **Notification No. 06/2014-Central Excise extended the date of Excise Duty concession for Auto, Capital Goods and Consumer Durable Sector for six months till 31st December, 2014.**

CUSTOMS

RE-IMPOSITION OF ANTI-DUMPING DUTY ON IMPORTS OF HOMOPOLYMER OF VINYL CHLORIDE MONOMER

The Central Government vide **Notification No. 27/2014-Customs (ADD) dated 13th June, 2014 re-imposes anti-dumping duty on imports of homopolymer of vinyl chloride monomer (suspension grade)** from the specified countries like Taiwan, China, USA, Japan, Thailand, Indonesia and Malaysia for a further period of five years.

RENEWAL OF CUSTOMS BROKERS LICENSES UNDER CUSTOMS BROKERS LICENSES REGULATIONS, 2013 (CBLR, 2013)

The CBEC vide **Circular No. 8/2014-Customs dated 13th June, 2014 clarified the requirements for renewal of Customs Brokers Licenses under Custom Broker Licensing Regulations, 2013.** The Board has also prescribed certain supporting documents to be filed for the renewal which are given in the respective Circular.

INCOME TAX

HIGH COURT DECISIONS

1. **With reference to Section 263 of the Income Tax Act, 1961, the CIT can revise an assessment only if he can show unmistakably that the order of the AO is unsustainable. Fact that the AO has passed a non-speaking order does not mean that he has not applied his mind.** *[CIT vs. J.L. Morrison (India) Ltd. (Calcutta High Court)]*

2. **Proviso to Section 2(15) of the Income Tax Act, 1961 which denies exemption to a charitable institution carrying on commercial activities does not apply to institutions carrying out relief to the poor, education or medical relief** even if it incidentally involves the carrying on of the commercial activities. It applies only to those carrying out "advancement of any other object of general public utility". *[DIT (E) vs. Ahmedabad Management Association (Gujarat High Court)]*

3. With reference to Section 50C of the Income Tax Act, 1961, **if the stamp duty valuation is higher than the consideration received, the AO must refer the valuation to the Departmental Valuation Officer** even if there is no request by the assessee. *[Sunil Kumar Agarwal vs. CIT (Calcutta High Court)]*

4. With reference to Section 254 of the Income Tax Act, 1961, **if a legal issue is raised (even for the first time), ITAT has the duty to deal with it and cannot remand it to the lower authorities.** *[Kansai Nerolac Paints Ltd. vs. DCIT (Bombay High Court)]*

5. **Section 14A disallowance cannot be made if the assessee has no tax-free income in the year.** *[CIT vs. Lakhani Marketing (P&H High Court)]*

ITAT DECISIONS

1. **If an amount is made taxable by a retrospective amendment, the payer cannot be held liable to deduct TDS on a payment made earlier and to suffer disallowance u/s 40(a)(ia).** *[Kerala Vision Ltd. vs. ACIT (ITAT Cochin)]*

2. **Assessee cannot be denied credit for TDS on the ground of discrepancy in Form 26AS filed by the deductor.** *[LSG Sky Chef (India) Pvt. Ltd. vs. DCIT (ITAT Mumbai)]*

3. **No disallowance u/s 40(a)(ia) of the Income Tax Act, 1961 for failure to deduct TDS on payment if payee has offered amount to tax.** Second Proviso to Section 40(a)(ia) inserted by Finance Act 2013 w.e.f. 1.4.2013 should be treated as curative and to have retrospective effect from 1.4.2005. *[Rajeev Kumar Agarwal vs. ACIT (ITAT Agra)]*

4. With reference to Section 267 and Explanation 3 to Section 153(3) of the Income Tax Act, 1961, **benefit of extended period of limitation to pass assessment order pursuant to finding/direction of appellate authority is not available if affected party is not heard.** *[Gaurav Luthara vs. ITO (ITAT Agra)]*

5. With reference to Section 271(1)(c) of the Income Tax Act, 1961, **if the assessee has huge carry forward losses and depreciation and filed a nil return suggests that there is no motive or incentive to make a bogus claim in the return.** *[Toscana Lasts Limited vs. ITO (ITAT Delhi)]*

NOTIFICATIONS

ADDITION FOR DEDUCTION U/S 80G

The CBDT vide **Notification No. 29/2014 dated 3rd June, 2014** hereby notifies that **"Sivasuriyaperuman Temple, Suriyanarkoil, Thiruvaidaimarudur Taluk, Thanjavur District, Tamil Nadu", to be a place of public worship of renown throughout the State of Tamil Nadu for the purposes of the Section 80G(2)(b).**

AMENDMENT IN RULE 3 OF THE WEALTH TAX RULES, 1957

The CBDT vide **Notification No. 32/2014 dated 23rd June, 2014** hereby amended the Form of Return of Net Wealth referred to in Section 14 of the Wealth-tax Act, 1957. It states that

- The return in the case of individuals, HUFs and companies shall be verified in the manner specified therein and should be in
  - Form BA in respect of AY 2013-14 and earlier AYs.
  - Form BB in respect of the AY 2014-15 and any other subsequent AYs.
- The return shall be furnished electronically under digital signature for the AY 2014-15 and any other subsequent assessment years, provided the provisions of section 44AB of the Income-tax Act, 1961(43 of 1961) are not applicable to the assessee.
- The return of net wealth required to be furnished in Form BB shall not be accompanied by a statement showing the computation of the tax payable on the basis of the return, or proof of the tax and interest paid, or any document or copy of any account or form of report of valuation by registered valuer required to be attached with the return of net wealth under any provisions of the Act.

NEW PASSWORD FOR OFFICIAL E-MAIL TO ALL USERS

This is to bring to your kind notice that the official e-mail of Income Tax Department has been migrated to an upgraded version requiring better security. For this, a new Password is being reset for the official e-mail at http://mail.incometaxindia.gov.in.

The assessee can send his/her password request from an existing email to webcr@incometaxindia.gov.in mentioning his/her official e-mail id at incometaxindia.gov.in, Name, Designation & City. New password will be sent within 24 hrs.

Help Line Numbers-
0120-2770483, 9711572258, 9891860580

COST INFLATION INDEXATION FOR THE FINANCIAL YEAR 2014-2015

The CBDT vide **Notification No. 31/2014 dated 11th June, 2014** hereby stated that **the Cost Inflation Index for the F.Y. 2014-2015 will be 1024".**

WEST BENGAL TAXES

VAT

PROCEDURE TO BE FOLLOWED IN RESPECT OF UN-RECONCILED DATA OF "SALE/PURCHASE MISMATCH APPLICATION" FOR 2011-2012

The Commissioner of West Bengal Sales Tax vide **Trade Circular No. 09/2014 dated 9th June, 2014** stated the **procedure to be followed in respect of un-reconciled data of "Sales/Purchase Mismatch Application" for 2011-2012.** The list of un-reconciled cases is available on the official website of the Directorate. **The special audit u/s 43A of the West Bengal Value Added Tax Act, 2003 of the following classes of dealers shall be taken up by the assessing officers:**

- purchasing or selling registered dealer or both who did not respond;
- purchasing registered dealer who reduced his purchase;
- selling registered dealer who increased his sales;
- registered dealer for whom the mismatch is not fully reconciled even after reconciliation by both.

In case where an initiation for assessment u/s 46, or audit u/s 43, or special audit u/s 43A on any issue, has already been made against the purchasing registered dealer or the selling registered dealer or both under the West Bengal Value Added Tax Act, 2003 for the period 2011-12, and where the proceeding has not yet been completed, the issue relating to mismatch as per the said list has already been taken up in such proceeding by the concerned officers.

ARTICLE:
20 POINTS FOR PREPARING FOR DEPARTMENTAL SERVICE TAX AUDIT

1. **Verification of ST-2 to ensure the correctness of Assessee's Addresses, Nature of Registration (centralized or single premises), Taxable Services for which registration is taken as a service provider and as a service receiver, etc.**
2. **Check whether the copy of intimation has been filed under Rule 5(2) of the Service Tax Rules, 1994 in respect of records being maintained. If not filed, it is advised to file the same.**
3. **Verification of reconciliation of figures as per return with books of accounts.**
4. **Assessment of determination of correct category of services and taxability of each revenue stream. Assessee should reconcile all revenue streams of Service Tax with audited P/L A/c (Cr. Side) and Income Tax Returns.**
5. **Vetting of correctness of abatement taken.**
6. **Ensuring compliance of Point of Taxation Rules for determining monthly tax liability. Special mention may be made for Point Of Taxation incase of transactions with "Associated Enterprises" (Related Parties).**
7. **Checking of the agreement/ invoice of vendors to ensure compliance of provisions for reverse charge/ joint charge liability as per Notification No. 30/2012-ST dated 20-06-2012 and other notifications.**
8. **Special emphasis shall be given on calculation of liability under works contract, if any (Both as a Service Receiver and as a Service Provider)**
9. **Review of liability as importer of service.**
10. **Checking correctness of capturing CENVAT Credit data for eligible Cenvat for Capital Goods, Inputs & input services.**
11. **Assessing correctness of CENVAT Credit taken against payment of reverse/joint charge liability.**
12. **Reversal of non eligible CENVAT Credit.**
13. **Check the compliances of Rule 6 of the CENVAT Credit Rules, 2004 in case both taxable and exempted services are provided by the same assessee.**
14. **Maintenance of correct records for ISD including documentation.**
15. **Examine eligibility of exports benefits (as applicable).**
16. **Check the correctness of information extracted from accounts for calculation of service tax liability as service provider and service recipient for payment of monthly service tax liability.**
17. **Thorough scrutiny of periodical return in ST-3 .**
18. **Verification of Financial Statements, Annual Report, Internal Audit Report, Tax Audit Report, Cost Audit Report, etc. for any points related to service tax.**
19. **Check the status of the list of Show Cause Notices issued, if any. Remember to cover the disputed areas.**
20. **Ensure that the Questionnaire provided along with the Reconciliation Data Sheet as provided by the Department in the Notice has been correctly filled.**

After checking the above points, in case it is found that the assessee has short paid the service tax, then the assessee should make the payment of service tax to the Department *suo-motu*.

QUERY & REPLY

QUERY

How is the Service Tax payable by XYZ on different categories of input service received by the association?

Name & Address Withheld

REPLY

Taxable services and the extent of Service tax payable thereon by the person liable to pay Service Tax has been extended vide notification no. 30/2012 Service Tax, Government of India, Ministry of finance, dated 20 June 2012. This notification came into force on the 1st day of July 2012.

According to the circular read with Service Tax Act, Service Tax will become payable by XYZ on the following categories of input services received by the Association subject to clarifications.

1. Rent paid to Indian Church Trustees @ `10,000/- p.m. = `1,20,000/- per year.

Renting of Immovable properties does not fall within the ambit of 30/2012. Hence Service Tax need not be paid on reverse charge basis on the above services. As per normal practice, service tax has to be paid to the service provider and the CENVAT availed in case the service falls under the definition of input services as per CENVAT Credit Rules 2004.

2. Share of Municipal Taxes paid to Landlord @ `10000/- per Quarter = `40,000/-.

Since Rent itself does not fall within the ambit of 30/2012, therefore there is no question of applicability of reverse charge on municipal taxes. Moreover, in case municipal taxes are paid by service receiver on behalf of service provider, and the conditions of payment as a pure agent under Rule 2 of Service Tax Rules are satisfied, then service tax should not be paid at all on municipal taxes paid.

Further to note that a deduction of municipal taxes is available to the landlord also under notification 29/2012.

3. Internal Audit fees payable to ABC & Co. @ `25000/- per quarter.

Service of Accountants does not fall within the ambit of 30/2012. Hence Service Tax need not be paid on reverse charge basis on the above services. As per normal practice, service tax has to be paid to the service provider and the CENVAT availed in case the service falls under the definition of input services as per CENVAT Credit Rules 2004.

4. Renewal fees to IRDA `50000/- per annum.

i. Services provided by IRDA to persons do not fall within the ambit of 30/2012. Hence reverse charge is not applicable on renewal fees paid to IRDA.
ii. Further to claim CENVAT Credit, it is mandatory that IRDA issues an Invoice as per Rule 4A of Service Tax Rules separately mentioning the amount of Service tax on the invoice.

Hence we advise that service tax be paid on services provided to IRDA only on receipt of invoice separately mentioning service tax amount.

6. Fees payable to Advocates / Solicitors.

Under Notification No. 30/2012, Fees payable to Advocates / Solicitors has been brought under the ambit of reverse charge. However, the following 2 points need attention –

i. The service receiver should be a business entity. Business entity has been defined to mean any person ordinarily carrying out any activity relating to industry, commerce or any other business.
ii. Such business entity shall be liable to payment of Service Tax vide reverse charge only if it has a turnover upto `10 Lakhs in the preceding financial year.

Hence reverse charge shall be applicable to XYZ only subject to the above 2 conditions.