A2Z TAXCORP LLP
NEW DELHI, INDIA

Indirect Tax and Other Laws Communique
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This bulletin brings to you the highlights of recent updates and important judgmentsin the field of indirect taxation along with key inputs from other fields to keep you abreast of all the latest happenings.

CONTENTS

SERVICE TAX

RECENT CASE LAWS

- **Cenvat credit on inputs/ input services received by an output service provider prior to obtaining Service tax registration is admissible**

Actis Advisers Pvt. Ltd. Vs. CST. -Delhi-IV [(2014) 9 TMI 182 - CESTAT New Delhi]

Actis Advisers Pvt. Ltd. (**"the Appellant"**) is engaged in providing 'Management Consultancy Services' (**"output service"**) mainly to their overseas clients. Earlier, the Appellant's Bombay branch had Service tax registration and subsequently when the Delhi branch started operating, they obtained Centralised registration. For some period, there was no separate registration till the Centralized registration was obtained in respect of Delhi branch.

The Appellant availed Cenvat credit in respect of various input services used for providing their output service. Since they could not utilize the accumulated Cenvat Credit in respect of input services for payment of Service tax on their domestic transactions, in accordance with the Provisions of Rule 5 of the Cenvat Credit Rules, 2004 read with Notification No. 5/2006-CE (NT) dated March 14, 2006, they filed claims for cash refund of Rs. 32,54,141/- of the accumulated Cenvat Credit for October, 2009 to December, 2009 quarter and another refund claim for an amount of Rs. 12,20,506/- for January, 2010 to March, 2010 quarter.

The Jurisdictional Assistant Commissioner by two separate orders sanctioned refund of Rs. 11,89,402/- out of claimed amount of Rs. 12,20,506/- and sanctioned refund of Rs. 32,54,077/- out of the claimed amount of Rs. 32,54,141/-. However, in both the cases the Assistant Commissioner ordered adjustment of interest on wrongly availed Cenvat credit which was to be adjusted against the refund claims. The interest was charged on the ground that certain amount of Cenvat credit has been taken on the basis of the service provider's invoices, while during that period the Appellant did not have Service tax registration and that they became eligible for Cenvat credit on the basis of those invoice only on the date the Delhi office of the Appellant obtained Centralized registration. The Department alleged that unless an assessee has Service tax or Central Excise registration, he would not be eligible for Cenvat credit in respect of input services or inputs received during the relevant period.

On appeals being filed to Commissioner (Appeals), the same were dismissed. Against the orders of Commissioner (Appeals), the Appellant preferred an appeal to the Hon'ble CESTAT, Delhi. The Appellant relied upon the decision in the case of **C. Metric Solution Pvt. Ltd. Vs. CCE,**

Ahmadabad [2012(28) STR-460 (Tri.Ahmd.)](**"The Metric Solution case"**) and **Well Known Polyesters Ltd. Vs. CCE [2012(25) STR-411 (Tri. Ahmd.)]** and pleaded that when there is no dispute about receipt of the input services in respect of which Cenvat credit has been taken, then Cenvat Credit cannot be denied merely because the Appellant had not taken Centralized Registration at Delhi for the period when the service were received.

The Hon'ble CESTAT, Delhi also relied upon the decision in the Metric Solution case and held that Cenvat credit in respect of inputs/ input services received by an output service provider during the period prior to his obtaining Service tax registration is admissible and denial of Cenvat Credit on this ground is not correct.

- **Reimbursement expenses aren't includible in assessable value of services when bills are in the name of service recipient**

Venkatesh Merchantiles (P.) Ltd. Vs. Commissioner of Central Excise & Service Tax, Bhopal [(2014) 47 taxmann.com 129 (New Delhi – CESTAT)]

Venkatesh Merchantiles (P.) Ltd (**"the Appellant"**) are engaged in providing taxable services of Clearing and Forwarding Agent (**"C&F Agent services"**) taxable under Section 65(105)(j) of the Finance Act, 1994 (**"the Finance Act"**)read with Section 65(25) thereof. For providing C&F Agent services, the Appellant have entered into an agreement with various cement Companies (**"the clients"**). In terms of the agreement, the Appellant was responsible for maintaining godowns at the cost of the clients for the storage of the goods and unloading the cements at railway station/godown and its transportation to various dealers, stockiest as per the directions of the clients. The Appellant was receiving per metric ton amount for these services along with reimbursement of expenses for arrangement of transport, loading and unloading of cement at rack point (railway station) and at godown and payment of godown rent.

The Department alleged for inclusion of amounts being reimbursed in the assessable value and adjudicated that the activity of arranging loading and unloading of goods at the Rake point as well as at the godown, arranging transportation of goods to dealer/stockiest, and paying godown rent is an integral part of the service provided by the Appellant to their customers and hence, the expenses incurred on these activities reimbursed to the Appellant by their clients would be includible in the assessable value in terms of Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006 (**"the Valuation Rules"**). The Department relied on the decision in the case of ***Sri Bhagavathy Traders Vs. CCE [(2011) 33 STT 1]*** wherein it was held that expenses incurred by the C&F Agent which were reimbursed to them by their principals would be includible in the assessable value unless their clients were under legal obligation to reimburse those expenses in terms of agreement.

The Appellant pleaded that the godown rent, charges for arranging loading and unloading of the goods, etc., were being reimbursed by their principals on actual basis and the Appellant acted only as pure agent. Further, bills were also in name of principal or not in name of the Appellant. Hence, these charges cannot be treated as the amount received for the services provided and were excludible from value under Rule 5(2) of the Valuation Rules. Even otherwise, Rule 5(1) of the Valuation Rules cannot be relied upon to tax reimbursements in view of judgment in the case of ***Intercontinental Consultants & Technocrats (P.) Ltd. Vs. Union of* India [(2012) 38 STT 75]** (**"the Intercontinental case"**) holding said Rule 5(1) as ultra vires.

The jurisdictional Addl. Commissioner rejected the contentions of the Appellant and confirmed Service tax demand of Rs. 9,67,244 /- against the Appellant along with interest and penalty. On appeal being filed to the Commissioner (Appeals), the same was dismissed. Being aggrieved, the Appellant preferred an appeal before the Hon'ble CESTAT, Delhi.

The Hon'ble CESTAT, Delhi held that in terms of agreement, principals were required to maintain godown and hence, principals were liable to pay godown rent and the Appellant acted only as their agent. Similarly, bills of labour contractors for arranging loading and unloading and bills of transporters were in name of principals and not in name of assessee. Hence, payment against these bills was made by the Appellant acting as pure agent on behalf of principal. Therefore, these expenses would not be includible in assessable value.

It was further held by the Hon'ble Tribunal that Rule 5 of the Valuation Rules on the basis of which the Department sought to tax reimbursements has been struck down by Delhi High Court as ultra vires to provisions of Section 67 of the Finance Act in its judgment in the Intercontinental case. Hence, reimbursement expenses cannot be includible in assessable value of taxable services provided by the Appellant.

- **Input service credit is available to service receiver even when service provider had deposited the Service tax belatedly**

General Manager, BSNL Vs. Commissioner of Central Excise, Lucknow [(2014) 48 taxmann.com 35 (New Delhi - CESTAT)]

General Manager, BSNL (**"the Appellant"**) took credit of Service tax based upon invoices issued by service provider on March 7, 2007. The credit was availed on March 31, 2007 only after making payment to the service provider. The Department argued that the credit was availed in the month of March, 2007 whereas the service provider has deposited the Service tax only in April and May, 2007. Therefore, the same was denied.

The Appellant filed an appeal to the Commissioner (Appeals) wherein also the credit was denied by holding that:

- The Appellant availed Cenvat credit on March 31, 2007 whereas, as per information provided by the Range Officer Mathura to the Audit, the Service tax amount was deposited by the concerned service providers only on April 13, 2007 and May 7, 2007. Thus, the Appellant had taken Cenvat credit of Service tax before the tax was deposited by the service providers. Hence, Credit taken before deposit of tax is not admissible.

- The Appellant had taken input credit on the basis of invoices raised by the service providers which do not contain address or Service tax amount or Service tax registration number as required under Rule 4A of Service Tax Rules, 1994 and as such these were not proper documents in term of Rule 9(1) of Cenvat Credit Rules, 2004 (**"the Credit Rules"**);

Being aggrieved, the Appellant preferred an appeal before the Hon'ble CESTAT, Delhi.

It was held by the Hon'ble CESTAT, Delhi, that for the purpose of availing Cenvat credit, there is no requirement that the Service tax should have been deposited by the service provider before the availment of the credit. In terms of Rule 4(7) of the Credit Rules, the Cenvat credit in respect of input service shall be allowed, on or after the day on which payment is made of the value of input service and the Service tax paid or payable as is indicated in the invoice.

It was further held by the Hon'ble Tribunal that if the service provider has not deposited the Service tax with the Department on due date, then the Revenue's remedy lies at the end of the service provider for recovery of the Service tax along with interest. Thus, the Appellant's availment of Cenvat credit was held to be in order.

CENTRAL EXCISE

RECENT CASE LAWS

- **Amalgamated Company would be eligible to avail the Cenvat Credit lying in the books of Amalgamating Company when all the facts were intimated to the Department, even though it isn't in the prescribed form**

IPF Vikram India Ltd. Vs. Commissioner of Central Excise, Ludhiana [(2014) 47 taxmann.com 362 (New Delhi - CESTAT)]

Amar Polyfab P. Ltd. (**"the Amalgamating Company or the Appellant"**) merged with Indra Polyfab Pvt. Ltd. (**"the Amalgamated Company"**) by the Order of the Hon'ble Punjab and Haryana High Court. The

Amalgamating company had unutilized Cenvat Credit Rs. 6,35,398/- at the time of merger. Such amalgamation was intimated to the Superintendent of Central Excise vide letter dated August 10, 1994 requesting for sanction, approval and amendment of the original registration certificate. The same was effected by the letter dated October 12, 1994.

Further, on October 14, 1994, the Appellant wrote another letter to the Assistant Collector, Central Excise requesting them that Modvat declaration, classification list price declarations and other documents filed by the Amalgamating Company before the merger, may be treated as that of the Amalgamated Company w.e.f. October 12, 1994.

The Appellant, however, did not file declaration under erstwhile Rule 57H of Central Excise Valuation Rules, 1975 (**"the Valuation Rules"**).The Amalgamated Company subsequent to the merger utilized the aforesaid Modvat credit to the tune of Rs. 6,35,398/- against the Central Excise duty payable by them for their finished goods.

The Department contended that the Amalgamated Company wasn't eligible to suo moto utilise the Cenvat credit of the Amalgamating Company in absence of declaration under Rule 57H and approval by the competent authority.

The Appellant contested the show cause notice and argued that failure to file declaration under Rule 57H and seeking approval for utilization was only a technical lapse for demand raised and show cause notice was not sustainable.

The Adjudicating Authority confirmed the demand of Rs. 6,35,398/- and also imposed penalty of Rs. 5 lakhs on the Appellant.

Further, the first Appellate Authority upheld the order of the demand of Rs. 6,35,398/- but penalty was reduced to Rs. 1 lakh.

The Appellant filed an appeal before the Hon'ble CESTAT, New Delhi.

The Hon'ble CESTAT after considering the facts and circumstances of the case noted that this is the case of technical lapse. The Appellant had promptly intimated to the Department about merger and also obtained the amended registration certificate and further provided the relevant information to the Department vide letter dated October 14, 1994. Though above noted information wasn't in the prescribed Form under Rule 57H but the Appellant supplied all necessary information to the Department.

The Hon'ble CESTAT relied upon the finding of the Hon'ble Madras High Court in the case of ***Chemicals & Plastics India Ltd. [*****1993 (68) ELT 728 (Mad.)]** and held that the Appellant can't be penalized for the technical lapse. Accordingly, the demand of Rs. 6,35,398/- as well as penalty were set aside.

- **Once the adjudication order to pay duty is set aside, sums paid in pursuance of the said order, would be automatically refundable**

Commissioner of Central Excise, Bangalore-III Vs. Multiplex Fertilizers (P.) Ltd. [(2014) 47 taxmann.com 359 (High Court of Karnataka)]

Multiplex Fertilizers Pvt. Ltd. (**"the Respondent"**) filed an application for refund of the amount paid in pursuance of the order of the Adjudicating Authority (**"AA"**) which was set aside by the Tribunal holding that the Respondent wasn't liable to pay duty (**"the Main Order"**).

The AA denied the refund claim on the basis of unjust enrichment.

Being aggrieved, the Respondent challenged the order of the AA denying the refund claim, before the Commissioner (Appeals) who allowed the appeal and directed the refund. Further it was challenged before the Tribunal which was also dismissed (**"the Refund Order"**).

Further, the Department filed an appeal before the Hon'ble High Court against the Refund Order of the Tribunal to grant the refund to the Respondent on the premise that since the AA was yet to adjudicate the refund claim, the amount shall not be refunded.

The Hon'ble High Court held that once order to pay duty was set aside, the refund is automatic. Refusal of refund on the basis that the exigibility of tax is yet to be adjudicated was not a valid reason. Accordingly, once the Commissioner (Appeals) held that there was no unjust enrichment, the Respondent would be entitled to get back duty, interest, penalty paid in pursuance of an earlier order of the AA.

- **An assessee is entitled to refund of unutilized credit balance lying in his account on closure of his unit in absence of any bar**

Shalu Synthetics (P.) Ltd. Vs. Commissioner of Central Excise & Service Tax, Vapi [(2014) 47 taxmann.com 357 CESTAT, Ahmedabad]

In the instant case, Shalu Synthetics (P.) Ltd. (**"the Appellant"**) closed their manufacturing activities and submitted refund claim of Rs. 10,63,985/- which was the balance of unutilized Cenvat credit lying in their accounts in terms of Rule 5 of the Cenvat Credit Rules, 2004 (**"the Credit Rules"**) and under the provisions of Section 11B of Central Excise Act, 1944 (**"the Excise Act"**), which was rejected by the Adjudicating authority. The Appellant preferred an appeal before the

Commissioner (Appeals) against the order. The Commissioner (Appeals) upheld the orders of the Adjudicating authority on the ground that provisions of refund of Cenvat credit lying unutilized on account of closure of unit have probably not been made as there was no need for doing so as the duty paid on inputs used in the manufacturing of goods cleared on payment of duty stands included in the price of goods manufactured and is recovered by the manufacturers on the sale of such goods. Therefore, refund of such unutilized Cenvat credit shall be subject to unjust enrichment. The Appellant filed an appeal before the Hon'ble Ahmedabad Tribunal.

The Appellant submitted that the Appellant had accumulated credit and surrendered Central Excise registration at the time of closure of the factory. Accordingly, the refund shall be granted to the Appellant which has also been settled by various judicial pronouncements.

The Hon'ble Tribunal observed that there is no dispute as to the fact that amount lying in balance in the Cenvat credit account of the Appellant. Further, it was noted that refund of the unutilized Cenvat credit does not fall under any of the rules and that there are no express or implicit provisions in the Excise Act and the Credit Rules for grant of refund of Cenvat Credit balance lying unutilized at the time of closure of the unit.

The Hon'ble CESTAT relied on the judicial pronouncements of ***Union of India v. Slovak India Trading Co. (P.) Ltd. [2006 (201) ELT 559 (Kar.)]*** and ***CCE v. Jain Vanguard Polybutylene Ltd. [Central Excise Appeal No. 450 of 2010, dated 28-6-2010]***wherein it was held that refund of unutilized Cenvat credit shall be allowed to the assessee in the absence of any bar in the Credit Rules or the Excise Act.

Accordingly, the contention of the Revenue was rejected and case was decided in the favour of the Appellant.

CUSTOMS

NOTIFICATIONS/CIRCULARS

- **Appointment of a Place as Inland Container Depots**

The Central Board of Excise and Customs has amended the Notification No. 12/97-Customs (N.T.), dated April 2, 1997, issued in respect of appointment of a place as Inland Container Depot commonly known as ICD.

Item (xi) has been inserted vide Notification No 74/2014-Customs (N.T.) dated September 2, 2014, against serial number 4 which has declared the **"Village Mithirohar, Gandhidham"** as Inland Container Depot for the purpose of **"Unloading of imported goods and loading**

of export goods".

- **[Revision in Rate of Exchange for valuation of exported or imported goods]**

In exercise of the powers conferred under Section 14 of the Customs Act, 1962, the Central Board of Excise and Customs vide the **Notification No. 75/2014-Customs (N.T.) dated September 4, 2014** has revised Rate of Exchanges applicable with effect from September 5, 2014 to determine the Assessable value in respect of imported and exported goods.

RECENT CASE LAWS

- **[A manufacturer/ exporter is not barred from seeking determination of Brand Rate of drawback merely because he had applied for and granted drawback as per the All Industry Rate of drawback]**

Alfa Laval (India) Ltd. Vs. The Union of India & Others [(2014) 9 TMI 145- Bombay High Court]

In the instant case, Alfa Laval (India) Ltd. (**"the Petitioner"**) is engaged in manufacturing and export of dutiable excisable goods. The Petitioner imports various inputs on payment of Customs duties and also procures inputs from indigenous sources on payment of applicable duties. The finished goods are either cleared in the domestic market or exported out of India. The exports out of India are made under claim for duty drawback available under Section 75 of the Customs Act, 1962 (**"the Customs Act"**) read with the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 (**"the Drawback Rules"**). At the time of export of the finished goods, the Petitioner files the shipping bill under claim of drawback which is claimed in terms of Rule 3 of the Drawback Rules. Thereafter, within the time specified in Rule 7 of the Drawback Rules, the Petitioner makes an application for determination of drawback under Rule 7. This had been a long term practice of the Petitioner.

However, during May 2011 and 2012, the Department rejected the applications filed by the Petitioner under Rule 7 of the Drawback Rules on the ground that the Petitioner had already claimed drawback at the All Industry Rate under Rule 3 and hence the Petitioner was not entitled to make applications under Rule 7 seeking determination of the Brand Rate of drawback for the very same exports. The Department relied on the Circular F. No. 606/04/2011-DBK dated December 30, 2011 (**"the Circular"**).

The Petitioner filed a writ petition before the Hon'ble Bombay High Court seeking quashing of the Circular to the extent that it purports to clarify that an exporter cannot claim the Brand Rate of drawback under Rule 7 of the Drawback Rules after having availed of the All Industry Rate of drawback under Rule 3.

The Hon'ble High Court observed that there is no prohibition in the Drawback Rules which debars an exporter from seeking determination of the Brand Rate of drawback under Rule 7, merely because at the time of export, he had already claimed the All Industry Rate of drawback under Rule 3. Further, it was observed that application of determination of Brand Rate of Drawback under Rule 7 can be made only when the amount or rate of drawback determined under Rule 3 is less than 4/5th of the duties or taxes paid on the inputs/input services used in the production or manufacture of the exported goods. Therefore, it was imperative that application under Rule 3 has to be made before application under Rule 7.

Furthermore, the Hon'ble High Court held that the Circular cannot override the Drawback Rules and para (d) of the Circular which seeks to impose restriction of filing of Drawback application under Rule 3 and 7 of the Drawback Rules has to be struck down.

Accordingly, it was held that the manufacturer or exporter is not barred from seeking a determination of the Brand Rate of drawback under Rule 7 merely because, at the time of export, the Petitioner had applied for and granted drawback at All Industry Rate as determined under Rule 3.

- **Date of refund filed even though with the wrong authority, has to be treated as the relevant date for submission of the refund application**

Rathi Steel and Power Ltd. Vs. Commissioner of Central Excise, Ghaziabad [(2014)9 TMI 61-CESTAT New Delhi]

In the instant case, the goods imported by Rathi Steel and Power Ltd. (**"the Appellant"**) were confiscated. Proceedings were initiated against the Appellant with imposition of redemption fine and penalties. However, on appeal the Commissioner (Appeals) set aside the redemption fine and penalty vide his order dated May 30, 2011. Therefore, the Appellant became entitled to refund of fine and penalty deposited by them.

Accordingly, the Appellant filed refund application on January 9, 2012 with the Deputy Commissioner, Central Excise Division-IV, Ghaziabad. However, the said authority was not the concerned authority for filing of refund claim. Therefore, the concerned officer returned the said claim under the cover of his letter dated April 12, 2012 with the direction to file the same at ICD, Loni. The Appellant accordingly filed a refund claim with the concerned Deputy Commissioner (Customs), ICD, Loni on June 8, 2012.

The lower authorities rejected the refund claim on the point of time bar by observing that the order of Commissioner (Appeals) was passed on May 30, 2011but the refund applications was filed on June 8, 2012 i.e.

beyond the period of one year. The Appellant filed an appeal before the Hon’ble Delhi CESTAT.

The Hon’ble CESTAT held that the Deputy Commissioner of Central Excise, Ghaziabad should not have kept the refund claim with him for 3 months if he knew that he was not the proper officer. It was further held that it is not possible for an assessee to find out as to who is the proper officer in the Revenue to deal with their refund claims. Accordingly, the date of refund application filed with the Deputy Commissioner of Central Excise, Ghaziabad, has to be taken as date of filing the refund application even though it was filed belated with the concerned Deputy Commissioner (Customs), ICD, Loni on June 8, 2012.

The Hon’ble CESTAT relied on the case of ***CCE Ahmedabad Vs. AIA Engineering Ltd. [2009 (248) ELT 826 (Tri.-Ahmd.)]***upheld by the Hon’ble High Court of Gujarat in***CCE Vs. AIA Engineering Ltd. [2011 (21) STR 367 (Guj.)]*** wherein it was held that the refund filed with the Department, though with the wrong authority has to be treated as having been filed on the first date. Accordingly, the case was decided in the favour of the Appellant and the contention of the Revenue was rejected.

- **Recovery proceedings against assets of another unit of Group Companies is not permissible in absence of evidence that entire import was at instance of Group Companies**

Surlux Diagnostic Ltd. & Others Vs. Assistant Commissioner of Customs & Another [2014-TIOL-1490-HC-MUM-CUS]

In the instant case, Surlux Diagnostic Ltd. (**“the Petitioner”**) has filed a writ petition before the Hon’ble Bombay High Court requesting to direct the Assistant Commissioner of Customs to withdraw the letter dated May 29, 2013 which prohibited the Petitioner from transfer of property rights in the flat owned by the Petitioner in the Building of a Co-operative Society.

The Department contended that there are some dues adjudged against Surlux Medicare, which is one of the Units of the Petitioner. Since, the Petitioner and Surlux Medicare are under common management called Surlux Group of Companies and there is inter-connection among different units, the Group Companies have together defaulted in payment of the Government dues.

The Petitioner submitted that the Order in Original dated May 31, 2000 is not passed against the Petitioner but against Surlux Medicare. Further, the Petitioner contended that these are two distinct corporate entities having independent legal existence. Furthermore, the Petitioner contended that unless and until it is demonstrated that the Petitioner has defaulted in payment of Customs duty, the property/flat cannot be attached and sold during the course of recovery proceedings. The high court held that there was no evidence on record to show that the entire import was made at the instance of the group companies. Therefore, the petitioner cannot be barred from transferring the rights in property unless the revenue provides sufficient evidence that the entire import was at the instance of the group companies and the petitioner was involved in it.

VALUE ADDED TAX

NOTIFICATIONS/CIRCULARS

Objection Hearing Authority may impose a pre-condition to deposit disputed tax amount for the period after October 1, 2011

The third proviso to section 74 (1) of Delhi Value Added Tax Act, 2004 (**"DVAT Act"**) was inserted w.e.f. October 1, 2011 vide Notification No. No.3 (15) Fin. (Rev-I) /2011-12/ssf/113 dated September 30, 2011 which empowered the Commissioner to impose a pre-condition on the dealer to deposit a certain amount out of total amount under dispute, before such objection is to be entertained. However, an opportunity of being heard to be given to the dealer before the issuance of direction to deposit the disputed tax amount is given.

Now, the Department of Trade and Taxes vide Circular No. 10 of 2014-15 dated September 3, 2014 has clarified that the pre-condition to deposit disputed amount would be applicable for the period after the amendment i.e. tax period after October 1, 2011.

COMPANY LAW

NOTIFICATIONS/CIRCULARS

MCA issues Seventh Order for removal of difficulties which relates to appointment of auditors in Partly Government Companies

The Ministry of Corporate Affairs has come out with the Companies (Removal of Difficulties) Seventh Order, 2014 dated September 4, 2014 in order to remove difficulties relating to appointment of auditors in partly Government Companies.

Section 139(5) and 139(7) of the Companies Act, 2013 (**"the Companies Act"**) provide for power of the Comptroller and Auditor-General of India to appoint an auditor duly qualified to be appointed as an auditor in a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments.

Whereas Section 143(5) of the Companies Act which provides for power of the Comptroller and Auditor-General of India to conduct supplementary audit does not specifically cover Companies owned or controlled, directly or indirectly, by the

Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments.

Thus, in order to remove difficulties arising in implementation of Section 143(5) of the Companies Act for Companies referred in Section 139(5) and 139(7) thereof, in Section 143(5) of the Companies Act, following shall be substituted for the portion beginning with the words “In the case of a Government company” and ending with the words "required to be audited and":

"In the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, the Comptroller and Auditor-General of India shall appoint the auditor under sub-section (5) or sub-section (7) of section 139 and direct such auditor the manner in which the accounts of the company are required to be audited and”.

NEWS FLASH

- **Low threshold limit will not be business-friendly**

The threshold limit of Rs. 10 lacs for imposition of Goods & Services Tax (GST) proposed by States is ‘too low’ for creating a business-friendly tax administration, according to the Finance Ministry. The Empowered Committee on State Finance Ministers, in its meeting, agreed on setting a Rs 10-lakh threshold limit for general category States and Rs 5 lakh for special category and North Eastern States. Earlier, the proposed limit was Rs 25 lakh.

GST aims to subsume Central indirect taxes, such as excise duty and service tax, into a central GST (CGST) and various States levies, such as value-added tax and Central sales tax into State GST (SGST).

- **Government determined to push tax, financial sector reforms: PM Narendra Modi**

Prime Minister Narendra Modi expressed his government's determination to push tax and financial sector reforms to improve business environment. Further he is determined to improve the business environment in India, including through tax, administrative and financial regulations, in order to boost investment," said a joint statement issued after his meeting with Japanese Prime Minister Shinzo Abe.

Last week in Delhi, India's Finance Minister Arun Jaitley had said the government would soon roll out disinvestment plan, push Goods and Services Tax (GST) and try to get the insurance bill through in the ensuing Winter Session of Parliament.

- **If implemented, GST can contribute 2% to GDP growth: Adi Godrej**

The business tycoon Adi Godrej has said that the GDP growth would acceralated with more pace if GST is implemented in coming future. He further added that GST can contribute 2 percent to GDP growth. On the government's performance he said that the sentiment has improved tremendously, since people believe this government will be able to deliver administrative efficiency.

Most of Indian corporates have taken decision for further investment for growth to be able to meet the demand for their products. So overall, things are on a good path.

- **Insurance cos under service tax net for flouting rules**

The insurance sector may soon come under the purview of service tax, after a FY12-13 CAG report pointed towards irregularities, wherein many insurance companies are said to have flouted tax rules. According to the audit, many insurance companies wrongfully availed the central value-added tax (Cenvat) scheme to avoid taxes on certain services like administrative and in case of life companies that give endowment policies. The service tax department has now taken cognizance of this and will be sending show-cause notices to many big private and public insurance companies.

- **Delhi government cancels the registration of 32 firms**

The Trade and Taxes Department of Delhi government today cancelled registrations of 32 firms for alleged wrongdoings in filing of Value Added Tax returns. The officials said that these firms were found bogus and have not make the compliance required under the Delhi Value Added Tax Act, 2004.

The total turnover of these firms was estimated to be Rs. 644 crores for the year 2013-14.

- **PM Modi to meet Finance Ministry officials to review GST status**

The Hon'ble Prime Minister Narendra Modi will be meeting Finance Ministry officials this month in order to review the status on the goods and services taxes (GST) reform. The purpose of meeting shall be the listing of states demands on Constitutional Bill and a discussion over the status of negotiations. Since states are demanding the compensation mechanism in the constitution bill and also want petroleum to come out of ambit of GST.

The source shown that centre may keep petroleum out of GST but may not include it as constitutional amendment.

Government plans new return to plug excise, service tax evasion

The Government plans to introduce a new annual tax return which will include information from income tax audit report, TDS, income tax returns and cost audit report, with a view to draw the information from various sources to get rid of evasion of excise and service tax. However the new return will not increase the burden on the assessee.

As CBEC is concentrating on trapping the evaders, there have been instances that the some company is providing different information to different agencies. So by linking other sources CBEC will be able to crack down the tax evaders.

Kshamavani (क्षमावाणी) or "Forgiveness Day – 8th September, 2014"

On the day of UNIVERSAL FORGIVENESS, I sincerely apologize with humble heart and folded hands for all my deeds, words, or imperceptibly which might have hurt you. Please forgive and forget. UTTAM KSHAMA-Michchhami Dukkadam.

Kshamavani (क्षमावाणी) or "Forgiveness Day" is a day of forgiving and seeking forgiveness for the followers of Jainism. On this sacred day, every member of the Jain community approaches everyone, irrespective of religion, and begs for forgiveness for all their faults or mistakes, committed either knowingly or unknowingly. Thus relieved of the heavy burden hanging over their head of the sins of yesteryears, they start life afresh, living in peaceful co-existence with others. Indeed, this day is not merely a traditional ritual, but a first step on their path to liberation or salvation, the final goal of every man's life, according to the teachings of Jainism.

The Lord Mahavira said we should forgive our own soul first. To forgive others is a practical application of this supreme forgiveness. It is the path of spiritual purification. "The one whom you hurt or kill is you. All souls are equal and similar and have the same nature and qualities". Ahimsa Paramo Dharma. Anger begets more anger and forgiveness and love beget more forgiveness and love. Forgiveness benefits both the forgiver and the forgiven.

Forgiveness is the other name of non-violence (Ahimsa) which shows the right path of **'Live and Let Live'** to one and all. Forgiveness teaches us Ahimsa (non-violence) and through ahimsa we should learn to practice forbearance.

ABOUT US

A2Z TAXCORP LLP having professionals from Multi disciplines which provides services under the Indirect& Direct Tax Laws, DGFT, Foreign Trade Policy, SEZ, EOU, Export – Import Laws, Free Trade Policy, Accounting, Auditing, Law, Company Laws, etc.

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