A2Z TAXCORP LLP
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Indirect Tax and Other Laws Communique
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This bulletin brings to you the highlights of recent updates and important judgments in the field of indirect taxation along with key inputs from other fields to keep you abreast of all the latest happenings.

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SERVICE TAX

RECENT CASE LAWS

- **Refund of Service tax on services not provided cannot be denied on ground that same was not shown as 'receivable' in Balance Sheet**

Radico Khaitan Ltd. Vs. Commissioner of Service Tax, Delhi [(2014) 48 taxmann.com 340 (New Delhi - CESTAT)]

Radico Khaitan Ltd. (**"the Appellant"**) entered into an agreement with Diageo Radico Distrilleries Pvt. Ltd. (**"DRDPL"**) for providing certain taxable services for which the consideration was paid in advance. Accordingly, due Service tax was deposited by the Appellant. Later on DRDPL terminated the said service agreement with the Appellant and the services were not provided by the Appellant. Upon termination of the agreement, the Appellant returned the consideration along with Service tax received to DRDPL and accordingly filed claim for refund of Service tax so deposited along with all vouchers, ledger accounts and CA certificate certifying that advances received from DRDPL stands refunded. However, the Commissioner (Appeals) rejected the refund claim by observing that refund was not shown as receivable in balance sheet and payment between the Appellant and DRDPL was only through book adjustment.

The Hon'ble CESTAT, Delhi observed that it was undisputed that:

(a) Service tax was deposited by the Appellant in advance;

(b) Services were actually not provided on account of cancellation of agreement; and

(c) Entire consideration along with Service tax was refunded to customer.

Consequently, the Appellant was not required to pay any Service tax in respect of services, which were not provided. Hence, denial of refund on sole technical ground that same was not shown in balance sheet as receivable from revenue cannot be held to be just and fair. Hence, refund was allowed.

- **Service tax on GTA services can be demanded either from specified consignor or consignee, who is liable to pay freight to GTA service provider**

Essar Logistics Ltd. Vs. Commissioner of Central Excise, Surat [(2014) 48 taxmann.com 73 (Ahmedabad - CESTAT)]

Essar Logistics Ltd. (**"the Appellant"**), a Goods Transport Agency (**"GTA"**) service provider, was engaged by Essar Oil Ltd. (**"EOL"**) for transportation of their final products from refinery to depots of EOL itself, as well as to various terminals hired by the EOL. In the case of transfer of final products to depots of EOL, Service tax leviable was being paid by EOL itself hence it was not in dispute. In the case of transportation of final products from refinery of EOL to their franchisees and other depots of the EOL, the Appellant was charging freight from said consignee, on basis of lorry receipts and Service tax thereon was neither paid by EOL nor by the Appellant.

The Department contended that the Appellant is responsible to pay Service tax in respect of the services rendered by transportation of goods from EOL to their franchisees. It was argued that when the consignee is not covered under the entity as specified under the Rule 2(1)(d)(v)of the Service Tax Rules, 1994 (**"the Service Tax Rules"**), and the consignor also does not pay the freight, the Appellant, being GTA service provider, is liable to discharge the Service tax on the freight collected by them from the consignee though it may be mentioned on the consignment note that consignee is liable to pay Service tax.

The Hon'ble CESTAT, Ahmedabad, held that as per Rule 2(1)(d)(v) of the Service Tax Rules, if consignor or consignee is one of the specified entities, then person liable to pay Service tax would be person liable to pay freight. Since consignor i.e. EOL was a factory as per Factories Act and a company under Companies Act, GTA service provider i.e., the Appellant was not liable to Service tax. It was further held that the clarification of the Board vide Circular No. 341/18/2004-TRU, dated 17-12-2004 cannot go beyond the statutory provisions, which clearly mandate that Service tax liability has to be discharged either by consignor or consignee, if he falls under the specified category under Rule 2(1)(d)(v) of the Service Tax Rules.

- **Service Tax already deposited cannot be demanded again from a person who has taken over the business**

Essar Projects Ltd. Vs. CCE & ST., Rajkot [2014 (9) TMI 462-CESTAT Ahmedabad]

In the instant case, Essar Projects Ltd. (**"Essar"**) sold the entire business pertaining to their 'Construction Division' to Essar Construction (I) Ltd. (**"the New Company"**), w.e.f. June 30, 2006 as per 'Business Transfer Agreement'. The Department contended that amount received by the New Company on account of the services rendered post June 30, 2006, though the entire Service tax liability pertaining to these services had already been discharged by Essar, the New Company is liable to pay Service tax on same. The Department issued Show Cause Notice to the New Company and the demand was confirmed by the Adjudicating authority.

On appeal to the Hon'ble CESTAT-Ahmedabad, the Hon'ble CESTAT relied on the earlier audit report of the Revenue that the entire Service tax liability had already been discharged by Essar. Accordingly, it was held that Service tax liability which has already been discharged cannot be again recovered from the New Company, which has taken-over the business from a particular day. This would amount to double taxation on the same service which is not contemplated in law.

CENTRAL EXCISE

NOTIFICATION /CIRCULARS

- **Amount retained under Sales Tax Incentive Scheme would be part of the Assessable Value**

The Central Board of Excise and Customs has issued an instruction F. No. 6/8/2014-CX.1 dated September 17, 2014 in terms of the judgment of the Apex Court in case of **Super Synotex India Ltd. [2014-TIOL-19-SC-CX]** on the issue of abatement of Sales Tax under an abatement scheme where the Assese has been allowed to retain 75% of the Sales Tax collected from the buyer and was required to deposit only the remaining 25% with the State Government.

The Apex Court has held that the Assessable Value of the excisable goods would include the Sales Tax amount retained by the Assessee under Sales Tax Incentive Scheme.

Our Comments: It is going to be tough task to calculate excise duty and sales tax in the instant case as Sales tax is calculated normally on the value plus excise duty. Now, the assessee need to add up sales tax to the value to calculate the excise duty, which will go up and when excise duty goes up, Sales Tax goes up, part of which should again be added to the value, then the value goes up, excise duty goes up and sales tax goes up…… - and so, it will go perennially.

- **Clarifications on mandatory pre-deposit for filing appeals under Service tax, Excise and Customs**

The Finance Act (No.2), 2014 (**"the Finance Act"**) has substituted new Section 35F of the Central Excise Act, 1944 (**"the Excise Act"**) which is also applicable for Service Tax vide Section 83 of the Finance Act, 1994 and Section 129E of the Customs Act, 1962 (**"the Customs Act"**) to prescribe mandatory pre-deposit of 7.5% or 10% for first stage or second stage appeal, of duty demanded where duty demanded is in dispute or where duty demanded and penalty levied are in dispute and where penalty alone is in dispute, the pre-deposit shall be calculated on the penalty imposed. The said amendments have become applicable for the appeals to be filed after August 6, 2014 and all pending appeals/stay applications filed prior to August 6, 2014 shall be governed by the erstwhile provisions.

The Central Board of Excise & Customs (**"the CBEC"**) has issued Circular no. 984/08/2014-CX dated September 16, 2014 (**"the Circular"**) providing clarifications on various doubts / issues raised by trade bodies, industry associations and field formations etc., on implementation of new provisions pertaining to amendments made in appeal provisions in Customs, Central Excise and Service Tax are as under:

1. **Quantum of pre-deposit in terms of Section 35F of the Excise Act and Section 129E of the Customs Act**

Issue: There is confusion/ doubt if an appellant has already deposited 7.5% in first stage of appeal then, the Appellant is required to deposit another 10% in second stage of appeal or differential 2.5% only.

The CBEC has clarified that in the event of appeal against the order of Commissioner (Appeals) before the Tribunal, 10% pre-deposit has to be paid on the amount of duty demanded or penalty imposed by the Commissioner (Appeals). However, this amount need not be the same as the amount of duty demanded or penalty imposed in the Order-in-Original in the said case.

Further, it has been clarified that in a case, where penalty alone is in dispute and penalties have been imposed under different provisions of the Act, the pre-deposit would be calculated based on the aggregate of all penalties imposed in the order against which appeal is proposed to be filed.

Furthermore, in case of any short payment or non-payment of the amount stipulated under Section 35F of the Excise Act or Section 129E of the Customs Act, the appeal filed is liable for rejection.

2. **Payment made during investigation**

The CBEC has clarified that payment made during the course of investigation or audit, prior to the date on which appeal is filed, to the extent of 7.5% or 10%, subject to the limit of Rs 10 crores, can be considered to be pre-deposit made towards fulfillment of stipulation under Section 35F of the Excise Act or Section 129E of the Customs Act.

However, amounts paid over and above the amounts stipulated under Section 35F of the Excise Act or Section 129E of the Customs Act shall not be treated as deposit under the said sections. Further, the date of filing of appeal shall be deemed to be the date of deposit made in terms of the said sections.

Important to note: It means that No Interest benefit as granted under Section 35FF of the Excise Act or Section 129EE of the Customs Act on any excess payment made beyond 7.5% or 10% of duty or penalty.

3. **Refund of pre-deposit:**

In case appeal is decided in favour of the assessee, he shall be entitled to refund of amount deposited along with the interest at the prescribed rate (recently notified @ 6% PA) from the date of making the deposit to the date of refund in terms of Section 35FF of the Excise Act or Section 129EE of the Customs Act.

Further, the refund of pre-deposit made by the assessee should not be withheld on the ground that Department is proposing to file an appeal or has filed an appeal against the order granting relief to the assessee. The concerned Jurisdictional Commissioner should ensure that refund of pre-deposit made for hearing the appeal should be refunded within the stipulated time of 15 days of the receipt of the letter of the assessee seeking refund.

A simple letter from the person who has made such deposit, requesting for return of the said amount, along with a self-attested Xerox copy of the order in appeal or the CESTAT order consequent to which the deposit becomes returnable and attested Xerox copy of the document evidencing payment of such deposit, addressed to Jurisdictional Assistant/ Deputy Commissioner of Central Excise and Service Tax or the Assistant/Deputy Commissioner of Customs, as the case may be, would suffice for refund of the amount deposited along with interest at the rate specified. Record of deposits made under Section 35F of the Excise Act or section 129E of the Customs Act should be maintained by the Commissionerate so as to facilitate seamless verification of the deposits at the time of processing the refund claims made in case of favourable order from the Appellate Authority.

It has been further clarified that if the Department contemplates appeal against the order of the Commissioner (A) or the order of CESTAT, which is in favour of the appellant, refund along with interest would still be payable unless such order is stayed by a competent Appellate Authority.

In the event of a remand, refund of the pre-deposit shall be payable along with interest.

4. <u>Recovery of the Amounts during the Pendency of Appeal:</u>

It is clarified that <u>no coercive measures for the recovery of balance amount</u> i.e., the amount in excess of 7.5% or 10% deposited in terms of Section 35F of the Excise Act or Section 129E of the Customs Act shall be taken during the pendency of appeal where the assessee shows to the jurisdictional authorities:

(i) Proof of payment of stipulated amount as pre-deposit of 7.5% / 10%, subject to a limit of Rs.10 crores , as the case may be; and

(ii) Copy of appeal memo filed with the appellate authority.

It has been further provided that recovery action, if any, can be initiated only after the disposal of the case by the Commissioner (Appeals)/ Tribunal in favour of the Department unless the order of the Tribunal is stayed by the High Court/Supreme court.

The recovery, in such cases, would include the interest, at the specified rate, from the date duty became payable, till the date of payment.

5. **Other clarifications on Procedure and manner of making pre-deposits:**

The Circular has also clarified on procedure and manner of making the pre-deposit while filing the appeal by the assessee.

Further, in this regard, the CESTAT has issued a Circular No. F. No. 15/ CESTAT/ general/ 2013-14 dated August 28, 2014 which clarified as follows:

- Pre-deposit of the amount of Service tax or Excise Duty or Customs duty can also be made through reversal of CENVAT Credit apart from payment made in cash but Pre-deposit of the penalty amount has to be made in Cash.

RECENT CASE LAWS

- **Duty paid by one unit should be allowed as Cenvat credit to the another unit**

Commissioner of Central Excise, Pune-II Vs. Mishal Zinc Industries Pvt. Ltd. and Indo Deutsh Metallo Chemique Ltd. [2014-TIOL-1725-CESTAT-MUM]

The Respondents are manufacturer of White Zinc Oxide and having two units (a) Mishal Zinc Industries Pvt. Ltd (**"the Unit 1"**) and (b) Indo Deutsch Metallo Chimique Ltd (**"the Unit 2"**) [**"the Respondents"**]. Till August 1998, the Unit 2 used to do certain processes and cleared the goods to the Unit 1 on payment of Central Excise duty. The Unit 1 took the CENVAT credit of duty paid and carried out further processes and cleared the same on payment of duty.

The Department *vide* letter dated July 20, 1998 pointed out to the Respondents that two units cannot be treated as separate identities for the purpose of Central Excise Law as well as the Cost Accountant's reports. Therefore, the transactions between two units are to be considered as two wings of the same factory. On the basis of this letter, the Respondents claimed the benefit of Notification No. 67/95 dated March 16, 1995 (**"the Notification"**) for clearances between two units and cleared the goods without payment of duty.

The Department issued show cause notice (**"the SCN"**) on the premise that Respondents are registered as two separate legal entities with Companies Act, Income Tax Department, Sales Tax and Factories Act and alleged that the Respondents were not eligible to get benefit of the Notification. Hence, Duty was demanded on clearances between two units along with interest and penalty on.

The Adjudicating Authority (**"the AA"**) held that the Unit 1 and the Unit 2 were two separate units and were not entitled to avail the benefit of Notification and confirmed the demand of duty along with interest but dropped the penalties. It was further held that, duty paid by one unit on clearance of goods to another unit; it is available as Cenvat Credit to the other unit.

The said order was challenged by the Department before the Commissioner (Appeals) on the premise that the AA has no power to hold that on payment of duty by one unit to the other unit, it is available as Cenvat credit to other unit since it was not alleged in the SCN.

The Commissioner (Appeals) confirmed the order of the AA.

Being aggrieved, the Department preferred an appeal to the Hon'ble CESTAT of Mumbai and argued that the lower authorities had gone beyond the allegation levied in the SCN and therefore the order is required to be set aside.

The Hon'ble CESTAT observed that the Respondents have replied to the SCN and prayed if it is held that they are treated as two separate units and are denied the benefit of Notification, in that case, if duty is paid by one unit, then the same should be allowed as CENVAT Credit to the another unit.

The Hon'ble CESTAT held that there is no infirmity in Order in Original passed by the AA.

- **Demand of duty on clandestine removal of excisable goods cannot be confirmed solely on the basis of presumptions and assumptions**

Continental Cement Company and the Directors of the Company Vs. Union of India & Others [2014-TIOL-1527-HC-ALL-CX]

Continental Cement Company and the Directors of the Company (**"the Appellants"**) were manufacturers of ordinary Portland cement which was subject to Excise Duty under Central Excise Act, 1944.

The Department received an anonymous complainant indicating therein that during the period February 9, 1993 to September 27, 1995 about 3839.350 MT ordinary Portland cement was illegally sold which involved Excise Duty amounting to Rs.7,20,154/-, by using parallel documents like GP1s, invoices, challans , Bills, cash memo and GRs, etc.

The Department issued the Show Cause Notices and confirmed the demand of Excise Duty, which was set aside by the Commissioner (Appeals). However, the demand was restored by the Hon'ble Tribunal on appeal by the Department.

The Appellants preferred an appeal to the Hon'ble Allahabad High Court.

The Hon'ble Allahabad High Court noted the anonymous complaints were made on the basis of forged documents which were prepared by a Director who was removed from the Board of Directors. Therefore, the Hon'ble High Court held that there was no clinching evidence furnished by the Department in nature of purchase of raw materials, use of electricity, sale of final products, clandestine removals, the mode and flow back of funds, etc. Accordingly, it was held that demands cannot be confirmed solely on the basis of presumptions and assumptions. It was further held that clandestine removal is a serious charge against the Appellants, which was required to be discharged by the Revenue by production of sufficient and tangible evidence.

- **The Cenvat Credit on plastic crates were used for safe transportation of finished goods is allowable even it is not being used in or in relation to the manufacture of final products**

CCE, Noida Vs. Denso India Ltd. & Another [2014 (9) TMI 635 – Allahabad High Court]

Denso India Ltd. & Another (**"the Respondent"**) was engaged in the manufacture of Auto Electric Parts falling under Chapter 85 of Central Excise Tariff Act, 1985 (**"the Excise Tariff Act"**). The Respondent had availed Cenvat credit on plastic crates used for the packing material of the final products.

The Adjudicating Officer refused to allow the claim of the Respondent by observing that plastic crates are not being used in or in relation to the manufacture of final products and hence not entitled for Cenvat credit.

However, both the Appellate Authorities allowed the claim of Cenvat Credit of Rs. 4,96,015/-. The revenue filed an appeal before the Hon'ble Allahabad High Court.

The Hon'ble Allahabad High Court held that plastic crates were being used for the safe transportation of the finished goods from the place of the manufacture to the place of consignee and the cost of plastic crates is included on pro-rata basis in the assessable value of the finished excisable goods on which duty was being discharged. Further, it was observed that the Department had also allowed Cenvat Credit of packing material in earlier Assessment year to the Respondent. Therefore, the order passed by the Appellate authority was upheld.

CUSTOMS

NOTIFICATION / CIRCULARS

- **Imposition of Anti-Dumping Duty on Sulphur Black**

The Central Government has imposed Anti-Dumping Duty (**"ADD"**) on Sulphur Black falling under Heading 3204 of the First Schedule to the Customs Tariff Act, 1975 imported into India from the People's Republic of China or originating in People's

Republic of China vide the **Notification No. 41/2014-Customs -(ADD) dated September 18, 2014** (**"the Notification"**).

The ADD imposed under the Notification shall be effective for a period of five years (unless revoked, superseded or amended earlier) from the date of publication of the Notification in the Official Gazette and shall be paid in cash.

- **Imposition of Anti-Dumping Duty on 'electrical insulators of glass or ceramics / porcelain, whether assembled or unassembled'**

The Central Government has imposed Anti-Dumping Duty on electrical insulators of glass or ceramics/ porcelain, whether assembled or unassembled and imported into India from the People's Republic of China or originating in People's Republic of China vide the **Notification No. 40/2014-Customs - (ADD) dated September 16, 2014 ("the Notification").**

The Anti-Dumping Duty imposed by the Notification will be effective for the period of maximum six months from the date of its publication in the Gazette of India and would be paid in cash only.

- **Revision in Rate of Exchange for valuation of exported and 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. **87/ 2014-Customs (Non- Tariff) dated September 18, 2014** has revised Rate of Exchange (**"ROE"**) applicable with effect from September 19, 2014 to determine the Assessable Value in respect of imported and exported goods.

- **Fixation of the Tariff Value of specified items**

The Central Board of Excise and Customs in exercise of the powers conferred under Section 14(2) of the Customs Act, 1962 has amended the tariff value of certain Items viz Gold, Silver, Palm Oil etc. vide the **Notification No. 76/2014-Customs(Non-Tariff) dated September 15, 2014.**

- **Amendment in Notification No 12/2012-Customs (Tariff)**

The Central Government made an amendment in the Notification No. 12/2012- Customs (Tariff) dated March 17, 2012 vide the **Notification No.28/2014-Customs (Tariff) dated September 18, 2014** as under:

- Under Sl. No. 282, the importer of goods has been allowed duty free import of sample fabric of total length upto 1000 meter during one financial year.
- Under Sl. No. 104D, exemption in respect of Rice Bran oil etc., has been extended till April 1, 2015.

- **Exemption to the Airborne Early Warning and Control System Programme of Ministry of Defence**

A new entry 31A *"Airborne Early Warning and Control (AEW&C) System Programme of Ministry of Defence"* has been inserted in the Notification No. 39/1996-Customs (Tariff) dated July 23, 1996 vide the Notification **No. 27/2014-Customs-Tariff dated September 18, 2014 ("the Notification")**. The Notification grants exemption in respect of Basic Customs Duty mentioned in the First Schedule to the Customs Tariff Act, 1975 and Additional Duty of Customs leviable under Section 3 of Customs Tariff Act, 1975 to **Airborne Early Warning and Control System Programme of Ministry of Defence** specified in column (2) of the Table subject to the condition mentioned in column (3) of the Table as annexed to the Notification.

RECENT CASE LAWS

- **The Department cannot initiate proceedings when the assessee had time to fulfil statutory obligations**

Bharat Enterprises Vs. The Commissioner of Customs (Seaport-Export) [2014 (9) TMI 579- Madras High Court]

In the instant case, Bharat Enterprises (**"the Petitioner"**) filed a writ petition before the Hon'ble Madras High Court challenging the Order passed by the Revenue wherein it was alleged that the Petitioner had not fulfilled the export obligations as were required under the license issued to the Petitioner within the stipulated period of 8 years. Therefore, the Petitioner was directed to pay duty amount of Rs. 5,11,350/-under the Customs Act, 1962 (**"the Customs Act"**).

The Hon'ble Madras High Court observed that the Petitioner was granted a time period of 8 years to fulfil the export obligations. However, the Department had initiated the proceedings before the expiry of stipulated period of 8 years. Therefore, the Hon'ble High Court held that initiation of proceedings in such a case was completely arbitrary and faulty. It was further held that proceedings should only have been initiated if the Petitioner had not fulfilled the export obligations as per the license conditions and commencement of proceedings before the end of stipulated time period would lead to failure of substantial justice. Accordingly, the demand raised against the Petitioner was set aside.

- **Department is legally obligated to preserve the seized goods seized and return in the same condition to the assessee or pay equivalent compensation**

Ashupatinath Dhandania Vs. Union of India [2014 (9) TMI 578- Calcutta High Court]

In the instant case, Ashupatinath Dhandania (**"the Petitioner"**) has filed a writ petition before the Calcutta High Court complaining about the in action on the part of the authorities for not releasing the goods confiscated by the Revenue.

The goods of the Petitioner were seized by the authorities. However, on appeal the Petitioner succeeded and the order relating to seizure of the goods was set aside. The Petitioner approached the Department for return of the seized goods. The authorities did not release the seized goods.

The Hon'ble Calcutta High Court has held that action of the authority concerned was not justified in withholding the seized goods since the order relating to the seizure of goods was set aside. The Hon'ble High Court relied on the case of ***State of Gujarat Vs. M.M. Hazi Hasan [AIR 1967 SC 1885]*** and ordered the Revenue to hand over the exact quantity of the goods seized to the Petitioner as shown in the seizure list or pay equivalent money for the quantity of the seized goods at the present market rate to the Petitioner.

- **No redemption fine can be imposed on goods which were exported without furnishing bond**

General Export Enterprises Vs. Commissioner of Customs, Nhava Sheva [2014-TIOL-1752-CESTAT-MUM]

In the instant case, General Export Enterprises (**"the Appellant"**) had exported consignment of manmade fabrics. During the course of the investigation, the gram per square meter (**"GSM"**) values declared by the Appellant were found to be mis-declared but the goods were allowed to be exported without executing any bond. On adjudicating, it was held that there was a misdeclaration of the goods in question. Therefore, the goods were liable for confiscation and redemption fine of Rs. 8,00,000/- was imposed on the Appellant. The said order was challenged by the Appellant before the Hon'ble Mumbai Tribunal.

The Hon'ble Tribunal asked the Revenue to ascertain the fact whether any bond or undertaking was executed by the Appellant before the goods were exported. This query was not answered by the Department. The Hon'ble Tribunal observed that the goods are not liable for confiscation as the same are not available and also observed that the Appellant has not executed any bond or undertaking before the goods were cleared for export. Consequently, the Hon'ble Tribunal reduced the redemption fine from Rs. 8,00,000/- to Rs. 6,00,000/-. This part of the order was challenged by the Appellant before the Hon'ble High Court, which remanded the matter to the Hon'ble Tribunal to reconsider the issue.

The Larger Bench of the Hon'ble Mumbai Tribunal in the case of ***Shiv Kripa Ispat Pvt. Ltd. vs. Commissioner of Central Excise, Nasik [2009 (235) ELT 623 (Tri-LB)]*** *("Shiv Kripa Ispat Case")* had held that if the goods were allowed to be exported without executing any bond or the goods are not available for confiscation, in that situation redemption fine cannot be imposed. In the instant case, the Revenue had failed to produce the evidence as to whether the subject goods were cleared for export under bond. Therefore, it was concluded that the goods in question were cleared for export without furnishing any bond. Therefore, it was held that although the goods were liable for confiscation; no redemption fine can be imposed in the light of *Shiv Kripa Ispat* Case.

NEWS FLASH

Govt to tweak GST Bill, with petro products in ambit

The Government is planning to reintroduce the Constitution Amendment (115th Amendment) Bill for Goods and Services Tax (GST) in the winter session of Parliament with some significant adjustments. In the reintroduced bill, Petroleum products will come in the ambit of GST but with zero-rate initially. All entry taxes levied by states except octroi will be subsumed in the proposed comprehensive direct tax.

Petroleum products are considered as a major source of revenue for the Centre and states, being the building material for many downstream industries, its inclusion in GST would keep the tax trail (and the facility of input tax credit) intact. Thus, keeping it in the GST ambit will ensure the integrity of GST. Also, till the States agree that all taxes on these products can be collapsed into GST, tax on these products will be outside the GST system.

Narendra Modi takes stock of GST, Bill likely in winter session

Taking one step more towards the implementation of GST, The Hon'ble Prime Minister Narendra Modi took stock of the proposed new indirect tax regime and decided to soon clear the pending CST compensation for revenue loss incurred by States. This step by Prime Minister Boost the Government efforts to introduce the Constitutional Amendment Bill for GST in the next parliament session (Winter Session).

The Government has also decided to make a few amendments in the Constitution Bill, whereby both the Centre and States would be allowed to levy GST on petroleum products. But practically, the States would continue to levy their excise rates, preventing a revenue loss for them.

Sources further said the Centre may also agree to keep petroleum products out of the GST network though it will not be a "constitutional right". States have been demanding that these products should be kept out of GST as including them would impact their revenue.

"Petroleum products may be kept out GST chain but not as constitutional right," the official said, adding "the tax rates are likely to remain same even as India moves to GST regime".

Telagana pins hope on 14th Financial Panel Report

The Telangana government has pinned its hopes on 14th finance commission that arrived in the state. The Telangana Government wants the Centre to exempt excise, petroleum and agriculture produce from the proposed Goods and Service Tax (GST) replacing VAT. The undivided state had loss of Rs 17,595 crore since the introduction of VAT in 2005, but the Centre had compensated only Rs 5,000 crore. Centre still owes Rs 5,126 crore VAT collection of Telangana. The Telangana government said that the Centre still has the arrears and bringing GST will cause adverse impact on state's finances. The Centre is planning to bring central sales tax to zero per cent. If that happens, the Telangana will lose Rs 4,840 crore. All these issues will be taken up with the finance commission.

Service tax on online order for eatables is illegal

Service tax is supposed to be levied on the services provided or to be provided while eating or drinking in a restaurant or hotel. No tax is leviable when eatables are order online. But most of the companies violate the service tax rules "the Service Tax (Determination of Value) Rules, 2006" as they charge 4.94% service tax on every online order of food or beverages. In this regard the letter has been written to the finance minister and requested the FM to order Chief Commissioners and Commissioners of service tax to issue public notices clarifying the rules in the larger public interest and for consumer protection.

Double taxation in VAT and service tax under HC scanner

On the basis of public interest litigation (PIL), Division bench of the High Court issued a notice to the Central government, UT administration, Restaurant Owners' Association and tax authorities of Punjab, Haryana, and Chandigarh regarding the charging of VAT and Service Tax. The hoteliers and restaurant owners in these States were charging both Value Added Tax (VAT) and Service Tax on 100% of the bill amount to the customers.

As per norms service tax should be charged on 40% of the bill, while VAT should be levied on 60%. But, the current practices lead to double taxation.

Excise cut on auto to continue

The Government will continue to provide the excise cut benefit to the auto industry beyond December, 2014 and shall be extend to at least March 2015. This step by Government will boost the sales of auto during festive season. The Minister for Heavy Industries Anant Geete said that the industry needs support as it has been very poor selling during the beginning of the fiscal year, thus to provide relief under excise duty will not only increase the industry growth rate but also improve the morale of the auto industry corporate.

The announcement will enable continuation of excise duty on small cars, scooters, motorcycles and commercial vehicles at the current level of 8 per cent from 12 per cent previously.

NMC to attach Merc, Chevy showrooms over octroi evasion

Nagpur Municipal Corporation (NMC) is to attach showrooms of Mumbai-based Auto Hangar (India) Private Ltd, dealers of Mercedes-Benz cars, and city-based Tajshree Auto, dealer of Chevrolet cars due to the pending octroi tax of Rs 56 lacs. Various teams have been organised by the NMC for the recovery of pending tax.

Indirect tax collection growth dips in July

Indirect tax collection in July has slowed down to 4.9% which was 13.5% in the previous year at the same time. The collection rose to Rs 41,890 crore in July from Rs 39,949 crore in the corresponding month last year.

The slowing rate in July was due to a sluggish pace in both Customs Duty and Service Tax collection. The Customs duty collection rise was only 0.2 per cent, from Rs 15,730 crore in July last year to Rs 15,756 crore this year. Central Excise Duty collection rose 7.5 per cent to Rs 14,127 crore this July, from Rs 13,143 crore in the corresponding period a year before.

From September25, exporters-importers to get EDI facility

The Central Excise and Customs Department is going to unveil Electronic Data Interchange (EDI) facility to exporter-importer using Dhannal Inland Container Depot (ICD), Indore from September 25 onwards. It will promote transparency, minimize red-tapism and lead to efficient facilitation of international trade in Indore.

The EDI system will not only enable smooth operations related to exports & imports but will also establish a trade-friendly and cost-effective Customs procedure mechanism. Exporters & Importers of Indore and adjoining areas have been demanding this migration of Customs administration from manual to EDI system for a very long time as it saves time and money in imports as well as ensures timely delivery of export benefits.

Indian Ocean Region Customs meet on trade facilitation opens

A meeting of Customs administration officials from the 19 member-countries of the Indian Ocean Rim Association (IORA) on trade facilitation got under way in Bangalore. This was the second IORA Trade Facilitation Forum. Customs experts from various countries are going to talk on important topics like trade facilitation. The discussions will be for next three days and are significant in the backdrop of the agreement on trade facilitation at the Bali Ministerial Conference of World Trade Organisation in December last. Such forums, will help in bringing together countries in the Indian Ocean region. There was need for the Customs administration to set new standards of excellence and work together for global prosperity. Strong conclusions on enhancing trade and facilitation measures would ultimately lead to poverty alleviation and economic development.

Narendra Modi led government plans to penalise CSR defaulters under Companies Act 2013

Adding more powers to the Companies Act 2013, the newly formed Government is taking keen interest in penalising the companies (defaulters) under the Companies Act 2013 by introducing the penalty clause for companies that miss the target of spending 2% of their profits on Corporate Social Responsibility (CSR) repeatedly. Currently non-compliance of CSR rule does not penalize the companies by the Companies Law, and defaulters can get away with some justification but a responsibility is cast upon the board members.

In case companies repeatedly fail to do so for two or more years, they should be penalized. Also the companies which fail to spend the entire 2% on CSR activities can also transfer the remaining amount to the Prime Minister's relief fund.

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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