TAX CONNECT

ELEVENTH ISSUE OCTOBER 2014

Friends

Greetings for the festive season ahead!

Continuous effort is the key to unlocking our unknown potential. Hence we toil and reach the horizon each day to come back the next day and again strive for excellence.

All assesses would have received an e-mail from ACES for half year Service Tax return filing. **However, Service Tax Return (ST-3) for the period from April-14 to September-14 is not available until now on ACES.** Hence we keep waiting for the same in anticipation.

The Finance Act (No.2), 2014 had caused hardship to Service Tax Assessees by prescribing mandatory pre-deposit of 7.5% in first appeal and 10% in second stage appeal. **Various queries remained unanswered in this regard. Some of them have been clarified by Circular No. 984/08/2014-CX dated 16th September, 2014.**

In the West Bengal Commercial Taxes area, the department has introduced a new process for issuing E-I. E-II & H Forms based completely on online system for all dealers. Further Trade Circular No. 16/2014 dated 24th September, 2014, has been issued to give a synopsis of all important changes made in W.B VAT Act, 2003 and W.B. VAT Rules, 2005. **While changing processes are baby initiatives, the major challenge lies in CHANGING THE ATTITUDE OF PEOPLE WHO IMPLEMENT THESE CHANGES.**

In the Income Tax arena, we all know that the CBDT has extended the due date of furnishing the return of income and tax audit report to 30th November,2014 in specified cases. **Further with the CBDT clipping the AO's power to make fishing enquiries in CASS cases, assesses now get a little relief from the "Officer Raj".**

Before signing off, may we reiterate that we shall be available for your queries on any issue 24x7 on our mail id or over a **telecon.**

DUE DATE	COMPLIANCES
06-Oct-14	**Online Payment** of Service Tax for the month of Sept, 2014. (Mandatory as per Finance Budget, 2014)
07-Oct-14	Payment of TDS/TCS
10-Oct -14	West Bengal Sales Tax TDS Payment
10-Oct-14	ER1, ER2, ER6 Return for Sept, 2014
15-Oct -14	Provident Fund e-Payment for Sept, 2014
15-Oct -14	TDS Return for the quarter Jul-Sept, 2014
15-Oct -14	Filing of dealer return for excise dealers for quarter ended Jul-Sept, 2014
21-Oct -14	Payment of ESI for the month of Sept, 2014
25-Oct -14	West Bengal Sales Tax TDS Certificate Issue for the month of Sept, 2014
25-Oct -14	**Service Tax Return for the period Apr-Sept, 2014**
31-Oct -14	West Bengal VAT/CST/ Entry Tax/ Professional Tax Payment for the month of Sept, 2014
31-Oct -14	**West Bengal VAT/CST/ Entry Tax/ Professional Tax Return for the quarter ending Sept, 2014**
31-Oct -14	TDS returns for Sept Quarter for Govt. deductors Return No. 24Q, 26Q, 27EQ & 27Q
30-Nov-2014	**TAX AUDIT REPORT UNDER INCOME TAX**
30-Nov-2014	**EXTENDED DATE OF ITR FILING FOR ASSESSEES WHO ARE REQUIRED TO FURNISH TAX AUDIT REPORT**

Truly Yours

Timir Baran Chatterjee
M.Com, FCS, MBA (International Business)-IIFT, ACMA

Vivek Jalan
***FCA, CIDT (ICAI),* B.Com**

1 Old Court House Corner
"Tobacco House"
1st Floor; Room No.13 (North)
Kolkata – 700001

Contact: +9331042424; +919831594980; +913322625203
e-mail: tb.chatterjee@dic.co.in; tb.chatterjee@yahoo.co.in
cavivekjalan@gmail.com; vivek.jalan@icai.org

SERVICE TAX

NOTIFICATIONS & CIRCULARS

CLARIFICATION ON MANDATORY FIXED PRE-DEPOSIT FOR FILING APPEALS UNDER SERVICE TAX, CENTRAL EXCISE AND CUSTOMS

The Finance Act (No.2), 2014 has prescribed **mandatory pre-deposit of 7.5% in first appeal and 10% in second stage appeal.** With a view to implement the provision smoothly, the following clarifications are issued vide **Circular No. 984/08/2014-CX dated 16th September, 2014:**

- It is confirmed by the circular that in case of Second stage appeal, 10% pre-deposit has to be made on the amount of duty demanded or penalty imposed by the Commissioner (Appeals). Therefore, it is in addition to 7.5% of pre-deposit already made in first stage appeal or differential not specifically answered.

- Payment made during the course of investigation prior to the date on which appeal is filed, shall also be considered as pre-deposit to the extent of 7.5% or 10% as the case may be.

- No Recovery proceedings of amounts shall be initiated during the pendency of appeals. Recovery of amounts can be initiated only when an order is passed by the appellate authority in favour of Revenue.

- Refund of pre-deposit shall be made along with interest within 15 days from the date on which the person having made pre-deposit, makes an application seeking refund along with self attested copy of the order granting relief to the assessee.

COURT DECISIONS

NO DENIAL OF CENVAT CREDIT FOR TAX PAID ON RE-INSURANCE SERVICE

In the case **of PNB Metlife India Insurance Company Ltd. vs. Commissioner of Central Excise, Service Tax and Customs,** the Hon'ble CESTAT, Bangalore held that reinsurance is a statutory obligation and the reinsurance is coterminous with the insurance policy. The percentage of insurance to be reinsured is directly connected to the premium collected from the persons who are insured with insurer and it is basically transfer of a portion of the risk and therefore it can be definitely said that the reinsurer is providing the service to the insurance company when he accepts to reinsure a portion of the insurance undertaken by the insurer. Accordingly, the impugned order is set aside and the appeal is allowed with consequential relief if any to the appellants.

SERVICE TAX ON IMPORT OF PROGRAMME PRODUCER'S SERVICE

In the case of **Board of Control for Cricket in India (BCCI) vs. Commissioner of Service Tax, Mumbai-I,** the Hon'ble CESTAT, Mumbai held that where there is **import of programme producer's service** in a way that the non-residents are required to produce audio-visual coverage of the cricket matches conducted by BCCI and digitalized images of the coverage are uploaded for broadcasting for the viewers of the cricket match all over the world, the service so received by the appellant, i.e., BCCI shall be **liable to Service Tax.**

NO DENIAL OF CENVAT CREDIT ON INPUTS/INPUT SERVICES RECEIVED PRIOR TO SERVICE TAX REGISTRATION

In the case of **Actis Advisers Pvt. Ltd. vs. CST, Delhi,** the Hon'ble CESTAT, Delhi 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.

NO DENIAL OF CENVAT CREDIT IF PAID WRONGLY UNDER REVERSE CHARGE MECHANISM

In the case of **Bajaj Allianz General Insurance Co. Ltd. vs. Commissioner of Central Excise, Pune-III,** the Hon'ble CESTAT, Mumbai held that the CENVAT Credit of the Service Tax if paid wrongly under reverse charge, the same cannot be denied. It is nothing but the refund of the erroneously paid Service Tax.

REIMBURSEMENT EXPENSES NOT INCLUDIBLE IN ASSESSABLE VALUE OF SERVICES WHEN BILLS ARE IN THE NAME OF SERVICE RECEPIENT

In the case of **Venkatesh Merchantiles (P) Ltd. vs. Commissioner of Central Excise & Service Tax, Bhopal,** the Hon'ble CESTAT, Delhi held that where the payments against the bills were made by the appellant acting as a pure agent on behalf of the principal, those expenses would not be included in the assessable value. It is 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.

NO LEVY OF SERVICE TAX ON BILL DISCOUNTING FACILITY

In the case of **M/s UCO Bank, Kolkata vs. Commissioner of Service Tax, Kolkata,** the Hon'ble CESTAT, Kolkata held that **collection of interest against bill discounting facility is an activity which is exempt from service tax.**

REFUND OF SERVIC ETAX PAID ON TERMINAL HANDLING SERVICE

In the case of **CCE, Belapur vs. Pratap Re-Rolling Pvt. Ltd.,** the Hon'ble CESTAT, Mumbai held that **refund of service tax paid on Terminal Handling Charges besides Business Auxilliary Services would be available when received in or in relation to the export of goods.**

CENTRAL EXCISE

COURT DECISIONS

INPUTS USED IN ANY ACTIVITY WHICH IS TREATED AS HAVING NEXUS WITH MANUFACTURE OF FINAL PRODUCT-ELIGIBLE FOR CENVAT CREDIT

In the case of **Chettinadu Cement Corporation Limited vs. Commissioner of Central Excise & Service Tax, LTU, Chennai,** the Hon'ble CESTAT, Chennai held that **any activity** without which the manufacture of final product, though theoretically possible, is not commercially feasible, would have to be treated as **having nexus with the manufacture of final product and the inputs used in such activity would be eligible for CENVAT Credit.**

WEIGH BRIDGE USED OUTSIDE THE FACTORY- ELIGIBLE FOR CAPITAL GOODS CREDIT

In the case of **Triveni Engg. & Inds. Ltd. vs. Commissioner of Central Excise, Meerut-II,** the Hon'ble CESTAT, New Delhi held that the **weigh bridge** (not disputed to be capital goods) **purchased and came to the factory of the appellant and used outside the factory for weighing goods shall be entitle the appellant to capital goods credit.**

NO DENIAL OF CENVAT CREDIT TO PRINCIPAL MANUFACTURES

In the case of **M/s Thermax Ltd. vs. CCE Vadodara-I,** the Hon'ble CESTAT, Ahmedabad held that the **CENVAT Credit of duty, if any, paid on the intermediate products by the job workers, cannot be denied to the principal manufactures.**

CUSTOMS

LEVY OF PROVISIONAL SAFEGUARD DUTY ON IMPORTS OF SATURATED FATTY ALCOHOLS

The Ministry of Finance vide **Notification No. 03/2014-Customs (SG) dated 28th August, 2014** hereby **imposes on Saturated Fatty Alcohols falling under sub-heading 2905 17 or 3823 70 of the First Schedule to the Customs Tariff Act, 1975, when imported into India, a provisional safeguard duty at the rate of 20% ad valorem.** This notification shall not apply to imports of the said goods from countries notified as developing countries under Section 8B(6)(a) of the Customs Tariff Act, other than Malaysia, Thailand and Indonesia.

The safeguard duty imposed under this notification shall be effective for a period of 200 days (unless revoked, superseded or amended earlier) from the date of publication of this notification in the Official Gazette.

LEVY OF PROVISIONAL ANTI-DUMPING DUTY ON IMPORTS OF ELECTRICAL INSULATORS OF GLASS OR CERAMICS/PORCELIN

The Ministry of Finance vide **Notification No. 40/2014-Customs(ADD) dated 16th September, 2014** hereby **imposes provisional anti-dumping duty on electrical insulators of glass or ceramics/porcelin, whether assembled or unassembled originating in or exported from the Peoples Republic of China for a period not exceeding 6 months.** The notification shall be effective (unless revoked, superceded or amended earlier) from the date of publication of this notification in the Official Gazette and shall be paid in Indian currency.

EXTENSION ON LEVY OF DEFINITIVE ANTI-DUMPING DUTY ON IMPORTS OF SULPHUR BLACK

The Ministry of Finance vide **Notification No. 41/2014-Customs(ADD) dated 18th September, 2014** hereby **extended the period of imposition of anti-dumping duty on sulphur black, originating in or exported from the Peoples Republic of China for a period of 5 years.** The notification shall be effective (unless revoked, superceded or amended earlier) from the date of publication of this notification in the Official Gazette and shall be paid in Indian currency.

INCOME TAX

NOTIFICATIONS, CIRCULARS & INSTRUCTIONS

CBDT CLIPS AO'S POWER TO MAKE FISHING ENQUIRY IN CASS CASES

The CBDT vide **Instruction No. 7 of 2014 dated 26th September, 2014** pointed out that **in cases selected for scrutiny under Computer Aided Scrutiny Selection ('CASS'), some AOs routinely call for information which is not relevant for enquiry into the issues to be considered.** This has been causing undue harassment to the taxpayers and has also drawn adverse criticism from several quarters. **The CBDT has directed that cases selected for scrutiny during the Financial Year 2014-2015 under CASS, on the basis of either AIR data or CIB information or for non-reconciliation with 26AS data the scope of enquiry should be limited to verification of these particular aspects only.** The Assessing Officer shall confine the questionnaire or subsequent enquiry or verification only to the specific point(s) on the basis of which the particular return has been selected for the scrutiny.

CBDT EXTENDS INCOME TAX RETURN DUE DATE TO 30TH NOVEMBER, 2014 FOR THE A.Y. 2014-2015 IN SPECIFIED CASES

The CBDT vide **Order-Instruction F. No. 153/53/2014-TPL (Pt.I) dated 26th September, 2014 extended the due date of filing Income Tax Return for the A.Y.2014-2015 to 30th November, 2014 in specified cases.** There shall be no extension of the due date for the purposes of charging of interest under section 234A of the Act for late filing of return of income and the assessees shall remain liable for payment of interest as per the provisions of section 234A of the Act. It is also clarified that for an assessee (other than working partner of a firm which is required to obtain and furnish Tax Audit Report), who is required to file its return of income by 30th September, 2014 but not required to obtain and furnish Tax Audit Report u/s 44AB, the due date for furnishing of return of income for A.Y. 2014-2015 remains as 30th September, 2014.

HIGH COURT DECISIONS

1. With reference to **Section 68** of the Income Tax Act, 1961, **purchases** supported by bills, entries in the books of accounts, payment by cheque and quantitative details **cannot be treated as "bogus" only on the ground that the suppliers are not traceable.** *[CIT vs. Nangalia Fabrics Pvt. Ltd. (Gujarat High Court)]*

2. **Unnecessary remand by the ITAT causes prejudice and amounts to a failure to exercise jurisdiction.** *[Coca-Cola India Private Limited vs. ITAT (Bombay High Court)]*

3. **To check the correctness of the notice for re-opening the assessment u/s 148, the Court has to refer to the reasons recorded by the AO.** *[CIT vs. Samraj Krishna Choudhary (Allahabad High Court)]*

ITAT DECISIONS

1. With reference to **Section 145** of the Income Tax Act, 1961, even **if assessee is following mercantile system, income cannot be assessed, "on real income" theory, if its collection/receipt is not certain.** *[Maruti Securities Ltd. vs. ACIT (ITAT Hyderabad)]*

2. With reference to **Section 143(2)(ii)** of the Income Tax Act, 1991, **where the case is selected for scrutiny under Computer Assisted Scrutiny System (CASS), it does not mean that Section 143(2) notice and assessment order are void for non-applicability of mind by AO.** *[U.P. State Industrial Development Corp. (UPSIDC) vs. DCIT (ITAT Lucknow)]*

3. Where the **AO passes a revised assessment order even after knowing that the revision order passed by the CIT u/s 263 has been set aside by the Tribunal, his/her action could be treated as "assault on rule of law" and amounts to "contempt of court".** *[DCIT vs. SAP Labs India Pvt. Ltd. (ITAT Bangalore)]*

4. **Where the AO files appeals u/s 253 in disregard and with willful disobedience to the law laid down, it constitutes gross abuse of power and deserves to be punished for contempt of court and by award of exemplary costs.** *[ACIT vs. M/s Veena Developers (ITAT Mumbai)]*

5. **The information received by the Assessing officer from his investigation Wing, at best, be regarded as a prima-facie material, but could not be construed as conclusive** for use against the assessee to fasten any tax liability, because the same was required to be corroborated by credible and independent evidence. *[DCIT vs. Heminder Kumari (ITAT Delhi)]*

6. **The payments made by the assessee to non-residents on account of translation services do not attract the provisions of Section 194J.** The disallowance made under Section 40(a)(i) is thus deleted. *[M/s Cosmic Global Ltd. vs. ACIT (ITAT Chennai)]*

VAT

CREATION OF ITC INVESTIGATION UNIT

The Commissioner of West Bengal Sales Tax vide **Trade Circular No. 14/2014 dated 27th August, 2014** declared to constitute a dedicated **'ITC INVESTIGATION UNIT'** to enquire into and investigate instances of significant tax evasion through false and exaggerated claims of input tax credit under the West Bengal Value Added Tax Act, 2003, by means of bogus circular trading, or fictitious transactions involving fake tax invoices, or tax invoices issued without any corresponding transfer of property in goods, cases of issue of tax invoices in contravention of the provisions of the said Act, or the like, and to take appropriate actions as may be deemed necessary for the purposes of the said Act. The Unit shall presently be headed by a Joint Commissioner of Sales Tax and shall have other Officials as felt necessary to discharge its functions. **The Unit came into force w.e.f. 1st September, 2014.**

CHANGE IN THE PROCEDURE FOR ISSUANCE OF CENTRAL DECLARATION FORMS E-I, E-II & H

The Directorate of Commercial Taxes, West Bengal vide **Trade Circular No. 15/2014 dated 5th September, 2014** informs that the Directorate has **introduced a new process for issuing E-I. E-II & H Forms based completely on online system for all dealers, whether selected or not selected by the Commissioner earlier for the online application.** Dealer will have facilities of online application, online disposal and online generation of forms.

Procedure:

- Applicant dealer should download a blank JAR file for filling up his requirement through a link provided in the web site having user login.
- On successful upload by the applicant, system generates an Acknowledgement No. and shows an Acknowledgement Slip confirming the upload, which the applicant should print and submit the signed copy physically before Assessing Officer at the time of hearing.
- The dealer should appear on call and the Charge receives the application through IMPACT using Acknowledgement No., which makes the application ready for disposal.
- The AO, after checking the applicant's books of accounts and/or other available documents physically, through a separate link in IMPACT disposes the application by either granting or rejecting the application, either fully or partially.
- Once the application is granted, the applicant dealer should log in the given web link to generate dematerialised forms as allowed by the Officer.

The manual application for Form E-I, E-II & H at Charge is stopped from now on except in cases where both the purchaser and seller are dealers in West Bengal.

CHANGES MADE IN W.B. VAT ACT, 2003 AND W.B.VAT RULES, 2005

The Directorate of Commercial Taxes, West Bengal vide **Trade Circular No. 16/2014 dated 24th September, 2014** specified the **important changes made in W.B VAT Act, 2003 and W.B. VAT Rules, 2005** that may come to the aid of the dealers as well as of the officers of the Directorate for better understanding. Unless otherwise mentioned in the respective bullets, amended provisions have come into force **w.e.f. 1st July, 2014.**

CHANGES EFFECTED IN W.B.VAT ACT, 2003:

- Definition of **"capital goods"** has been **amended to include second hand plant and machinery** as capital goods, in turn, entitled manufacturers to avail input tax credit on purchase of the same.
- Ambit of **West Bengal Sales Tax Appellate and Revisional Board (WBSTAR) expanded u/s 7(1)** to **constitute different benches of it in different districts of the State** for discharging the functions as referred to in section 87.
- With the omission of 1st and 2nd provisos to Section 24(1), **a dealer having no transaction of sale or contractual transfer price (CTP) can apply for voluntary registration** if he intends to do so.
- **Security u/s 24(2B) not exceeding Rs. 1,00,000 is not required to be furnished by the dealer** who

applies for registration, having liability to pay tax u/s 10, 11 or 14 and carrying on the business from table space, etc.

- From 1st October, 2014, under newly introduced Section 40A, where a dealer has made sales of goods to the Government or to a local authority under some contract, D.D.O. of the Government or local authority shall deduct:
    - **5%** towards tax while making payment to an **unregistered dealer or registered dealer who cannot furnish return filing certificate.**
    - **3%** towards tax while making payment to **registered dealer who can furnish return filing certificate.**

- With the introduction of Section 43AB, the **Commissioner is empowered to call for audit of accounts, records and documents of a dealer who is believed to be engaged in an activity detrimental to the State revenue.** The audit will be conducted by a special team of selected tax practitioners nominated by the Commissioner.

- **Quarter-wise summary assessment u/s 47AA for quarter ended 30th September, 2011 onwards is being made now and automatically revoked or reopened as per the law.** In addition, as per amended Section 47AA(2), the Commissioner has been vested with the power to approve assessment u/s 46(1) if not already selected for audit u/s 43 or special audit u/s 43A. Dealer will naturally be assessed u/s 46(1)(b). This provision is applicable w.e.f. 1st April, 2011.

- The limitation of assessment of dealers of Darjeeling, Kursheong and Kalimpong subdivisions of Darjeeling District for the period from 1st April, 2008 to 30th June, 2011 has been further extended upto 31st December, 2014.

- **A dealer whose CST sales to registered dealers of other States exceeds 50% of total sales in a quarter and thereby ITC is found excess in a quarter, is eligible for pre-assessment refund.**

- **<u>Change in functioning of Appellate and Revisional Board:</u>**
    - The 1st and 2nd provisos to Section 87(1) have been omitted as a result of which there will be no dismissal of an application for revision filed on or after 1st July, 2014 for default and no restoration thereafter.
    - Any appeal/revision order confirming the assessment order that contains the adverse findings arising out of seizure or audit or special audit in relation to an applicant dealer where any revision case relating to earlier period is already pending for disposal before the Board may be revised by the Board only if the applicant dealer pays 5 % of the disputed amount or Rs. 1,00,000, provided the revision petition is filed on or after 1st April, 2014.
    - With the insertion of Section 87(1A), the Board is vested with the power to confirm, reduce, enhance or annul a final appellate or revision order in any case filed before it on or after 1st July, 2014.
    - A dealer can produce additional evidence and the Board can accept such additional evidence only when certain conditions enumerated in Section 87(1B), inserted w.e.f. 1st July, 2014, are fulfilled.

- A second proviso to section 87A has been inserted so that the revision case which was supposed to have been transferred to Fast Track Revisional Authority on 1st October, 2011 by the Board but was not actually transferred within 30th September, 2012, shall be disposed of by the Board itself within 31st December, 2014.

- **<u>Changes effected in rates of tax of some commodities:</u>**
    - Human hair has been exempted from VAT.
    - **<u>Rates of tax of the following commodities has been reduced from 14.5 % to 5 %:</u>**
        - Gas stove including LPG stove the MRP of which does not exceed Rs. 1,000;
        - Hair bands and hair clips; and
        - Sanitary napkins the MRP of which does not exceed Rs. 25.

CHANGES EFFECTED IN W.B.VAT RULES, 2005:

- **Definition of "website" has been inserted under Rule 2(q),** means the website of the Directorate, i.e., **<u>www.wbcomtax.gov.in</u>**, or any other website as may be specified in writing by the Commissioner.

- Following electronic verification introduced w.e.f. 1st August, 2014 by amending rules 6 and 6B, **where the application for registration is found in order, the registering authority shall issue registration without any manual enquiry.**

- e-Amendment of Registration Certificate (RC) has been introduced w.e.f. 14th March, 2014. Further, as per amended Rule 207, **no court fee and stamp or challan is required to be furnished along with an application for amendment of RC w.e.f. 1st July, 2014.**

- **Rule 30(2) is amended to bifurcate repairing etc. of motor vehicles etc. and unspecified works contracts w.e.f. the return period commencing from 1st October, 2014 onwards.**

TABLE APPENDED TO RULE 30(2) AMENDED

S.No.	Type of Contract	Deduction towards labour, service and other like charges at the rate of	Percentage of balance intra-state CTP after deduction taxable at the rate of	
		%	5%	14.5%
20A	Repair or maintenance or servicing of any motor vehicles including two wheelers like motor cycle, scooter, etc involving transfer of only Schedule C goods.	10	55	35
20B	Repair or maintenance or servicing of any motor vehicles including two wheelers like motor cycle, scooter, etc involving transfer of only Schedule CA goods.	10	0	90
21	All other works contracts not specified elsewhere in the TABLE and involving transfer of declared goods as specified in section 14 of the Central sales Tax Act, 1956(74 of 1956) and other goods specified under Schedule C, Schedule CA, or Schedule D.	20	30	50
22	All other works contracts not specified elsewhere in the TABLE and not involving transfer of declared goods as specified in section 14 of the Central sales Tax Act, 1956(74 of 1956).	20	0	80

- As per amended second proviso to Rule 34(2C) w.e.f. 1st April, 2013, **a reseller, holding R.C. in Form 3, opted to pay fixe amount shall not have to file return** under the VAT Act.

- As per newly inserted Rule 34(5)(k) and Rule 34(5)(l), **dealers who want to adjust TCS with net tax payable** in a period shall have to **fill up Annexure TCS,** while **a manufacturing dealer in West Bengal who also is engaged in resale or other sale** shall have to **fill up Annexure MR** w.e.f. return period commencing on 1st October, 2014.

- As per newly inserted 4th proviso to Rule 34A(3), **digital signature made compulsory for registered dealers filing return in Form 14/14D and having turnover in the previous year in excess of Rs. 2 crores w.e.f. quarter ended 31st December, 2014.**

- Under new Rule 35A, **a registered dealer who is not a return defaulter under the VAT Act and/or under the CST Act may obtain a certificate as a proof of filing return** w.e.f. quarter ended 31st December, 2014.

- As per amended Rule 46XA w.e.f. quarter ended 31st December, 2014, **a contractee can deduct, on account of intra-state works contract**,
  - An amount equal to **3% from a registered dealer who has furnished certificate of return filing.**
  - An amount equal to **5% from a registered dealer who has not furnished certificate of return filing or from an unregistered dealer.**

- As per newly inserted 2nd proviso to Rule 48A(1)(b), **a contractee is not required to furnish the print out of Form 19A in case where payment of tax deducted at source is made through GRIPS.**

- As per newly inserted Rule 49A, w.e.f. quarter ended 31st December, 2014, **TCS to be collected u/s 40A in the following manner:**

- **5%,** where intra-state purchase of taxable goods is from an unregistered dealer or registered dealer who does not furnish return filing certificate.

- **3%,** where intra-state purchase of taxable goods is from registered dealer who furnishes return filing certificate.

Provisions of rule 46, rule 46XB, rule 46XC, rule 47, rule 48, rule 48A and rule 49 shall apply *mutatis mutandis* for TCS.

➢ **The procedure for conducting audit by a special team of tax professionals u/s 43AB has been provided in Rule 54B.** As per this rule:

  - The special audit team shall consist of at least two professionals – a Chartered Accountant or a Cost Accountant, for empanelment and an Advocate who are practising VAT and Sales Tax laws of the State for at least eight years.

  - An eligible and willing professional has to apply online.

  - The Commissioner shall empanel an applicant professional, as he may deem fit. A professional nominated for conducting audit in a year shall not be eligible for nomination in the next year.

  - After completion of audit the special team shall submit its report in Form 88 with additional points, if any.

➢ **For pre-assessment refund, an applicant dealer has to submit the following additional information and documents along with his application which must be digitally signed before CRU:**

  - A copy of receipt obtained from the website of the Directorate upon e-filing of Form C received in respect of inter-State sales effected during the quarter under refund, as refund u/s 61(1)(aa)(ii)(B) is directly linked with collection of Form C in support of claim of refund.

  - An indemnity bond.

  - Any other information or document as may specifically be called for in the website of the Directorate.

  - Furnishing of information in purchase statement is minimised.

By inserting a new sub-rule (7D), **the Commissioner has been vested with the power to bar a dealer from claiming pre-assessment refund for three years where the Commissioner has reasons to believe that the dealer is engaged in fake transactions of purchase for claiming ITC.**

The above changes shall take effect from the return period commencing from 1st April, 2014 and onwards.

➢ As per amendment in Rule 135 w.e.f. 1st April, 2005, **not only the assessing authority but the auditing authority, appellate authority, revisional authority or any other authority as authorised by Commissioner are empowered to deal with imposition of penalty u/s 96 for concealment of sales etc.**

➢ **WBSAR Board's jurisdiction extended.** A final appellate order passed by an appellate forum constituted by the Commissioner under the first proviso to section 84(1) shall also lie before the Board.

➢ As per amended Rule 195(2), **any dealer who desires to be registered under the WBVAT Act, 2003 shall have to pay a security of Rs. 25,000.** This security shall be kept held for one year only in lieu of two years.

With the omission of Section 24(2B) of the WBVAT Act, 2003, Rule 195(3) becomes redundant. Hence Rule 195(3) has been omitted w.e.f. 1st July, 2014.

➢ As per amended Rule 207, **fees for amendment of R.C., miscellaneous application, application for registration in Form 1CR and amendment under Rule 46XB have been waived off.**

  Fees for application for revision u/s 86, and application for review u/s 88 against an order (other than an order of assessment or an order passed u/s 87 have been raised from Rs. 100 to Rs. 200.

➢ **Commissioner under rule 207A has been vested with the power to specify mode of furnishing information or making application or petition.**

QUERY & REPLY

QUERY: 1

We are importing perfume test strips (which are not for sale) from outside West Bengal. Whether waybill is required to be generated for importing the same. Please suggest.

Name and Address Withheld

REPLY

Legal Content:

As per **Section 73** of the West Bengal VAT Act, 2003, no person shall transport from any railway station, steamer station, airport, port, post office or any check post set up u/s 83 or from any other place any consignment of goods without having the waybill in Form 50 or Form 51. Consignment of goods may be transported after production of such waybill.

As per **Rule 99** of West Bengal VAT Rules, 2005, there is a restriction on transport of any consignment of goods dispatched from any place outside West Bengal. However, no waybill is required for the consignment of following goods:

- Tax free goods included in Schedule A other than raw jute;
- Personal effects;
- Tea being transported by any banking company;
- Where such consignment of goods is of:
  - Printed materials including diary, calendar, brochure, leaflet or pamphlet not meant for sale;
  - Gold, or precious stones including pearls (real, artificial or cultured);
  - Pure silk cloth made in India;
  - Radioisotope or radio-pharmaceutical item;
  - Exposed cinematographic film; and
  - Cotton yarn.
- Where such consignment of goods is consigned by defence group under the Ministry of Defence, Govt. of India.
- Where such consignment of goods is for bond to bond transfer by custom group.

Opinion:

In the given case, perfume test strips do not fall in Schedule A and also not covered in the consignment of goods prescribed in Rule 99(2). Hence, waybill is required to be generated mandatorily for importing the same from outside West Bengal to avoid seizure of perfume test strips and imposition of penalty.

QUERY: 2

A Private Company has two Non-Executive Directors. The Company pays monthly remuneration to its Directors. Whether the Company is liable under reverse charge to pay service tax on the same.

Name and Address Withheld

REPLY

As per the **definition of "service" under Section 65B(44**) of the Finance Act, 1994, employer-employee relationship[does not amount to service.

Further, as per **Serial No. 5A of Notification No. 45/2012-Service Tax dated 7th August, 2012,** the company is fully liable to pay service tax in respect of the services provided or agreed to be provided by a director of a company to the said company.

Hence In the given case,

- **If an employer- employee relationship exists between the company and the director, then no service tax liability will arise as it is not covered under the ambit of the definition of "service".**
- **If there is no employer-employee relationship between the two, then service tax liability will arise and is payable by the said company under reverse charge mechanism.**