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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THIRD REPORT OF TAX ADMINISTRATION REFORM COMMISSION (TARC)

The Government had constituted Tax Administration Reform Commission (**"the TARC"**) headed by Dr. Parthasarathi Shome, on August, 2013, to suggest core reforms to the tax administration set-up in the Country. The TARC has now submitted its Third Report dated December 2, 2014 called the "Third Report of the Tax Administration Reform Commission". The said Report makes several critical and far-reaching suggestions which are intended to radically change the working of the Income tax and other Revenue Departments.

The Third Report focuses on impact assessment on tax payers' compliance cost of new policy and administrative measures of the tax Department, States need for reform in this area and action to be taken on immediate basis. The Report also highlights measures for deepening and widening the tax/ taxpayer base and recommending a system to enforce better tax compliance.

Some of the key recommendations of the TARC are as under:

- Improvement in basic approach to compliance verification - Currently, the focus appears to be primarily to find fault in assessments. This approach overlooks two important outcomes that the process can lead to namely, compliance improvement and compliance measurement. The process, therefore, needs to be made far more collaborative and transparent. It should be a part of the auditor's task to provide help and suggestions to taxpayers to improve compliance, which is the common practice internationally;
- An open discussion about the issues arising in audit, and taking on board the views of taxpayers on those issues before taking a final position should be encouraged as an integral part of the process.
- As part of this process, when the Commissioners finalise the audit points in audit committee meetings, they should be required to give an opportunity to the taxpayers being audited before they take a final view on the audit points;
- As part of the quality management of audit, the DG (Audit) should independently seek feedback from the taxpayers being audited on their experience during the audit and their perception of how the audit parties conducted the audit;
- The performance evaluation of audit also needs to be made more broad-based.

In its Third Report, the TARC has noted the following with concern:

- In practice, in large number of cases, penal provisions are being applied to what are essentially tax disputes. This is true of both the Departments, and is particularly true in the case of Service tax. Investigations are conducted and Show Cause Notices are issued by Service tax field authorities and the DGCEI alleging deliberate violation of legal provisions where the provisions lend themselves to different interpretations and there is no evidence of intentional tax evasion;

- In practice, when any new information is accessed by the authorities, which according to them indicates a violation, it is taken as wilful suppression of fact with intent to evade payment of duty and notices invoking severe penalties and the extended period of demand are issued even though there is no evidence to show deliberate concealment of information or to indicate mala fide intent;

- Some of the notices on the Service tax side also reflect a superficial or misconceived understanding of the nature of business practices in the service industry and fail even to identify the service, the service provider and the service recipient;

- A large number of disputes are generated because taxpayers feel compelled to contest the imposition of penalties as well as unjustified invocation of the extended period of limitation, rather than voluntarily comply within the framework of law. The Departments' success rate in litigation is woefully low;

- Such a situation leads to loss of credibility for the Departments. The enforcement wings should not be frittering away their resources on cases that can best be left to the compliance verification function and resolved through normal dispute management mechanisms.

- The administration needs to prize quality over quantity if deterrence is to play an effective role in its management of compliance. Therefore, far more attention needs to be paid to selecting the right cases and investigating them with thoroughness and competence.

To view the complete report, please click on following link:

http://finmin.nic.in/the_ministry/dept_revenue/tarc_report.asp

SERVICE TAX

RECENT CASE LAWS

➢ **If there was no malafide for the purpose of penalty, there cannot be any malafide for the purpose of limitation also**

Internet Computer Centre Vs. CCE, Lucknow [2014 (12) TMI 663 - CESTAT NEW DELHI]

In the instant case, Internet Computer Centre (**"the Appellant"**) availed the benefit of Small Scale Exemption under erstwhile Notification No. 6/2005-ST dated March 1, 2005 (**"SSI Notification"**) which was denied by the Lower Authorities on the ground that the services rendered by the Appellant are branded services and the same is excluded from the applicability of the SSI Notification. Therefore, the Lower Authorities confirmed the demand of Service tax of Rs. 98,064/- and imposed penalty of Rs. 50,000/- under Section 76 of the Finance Act, 1994 (**"the Finance Act"**) on the Appellant by invoking extended period of limitation.

On appeal being filed to the Commissioner (Appeals), the Commissioner (Appeals) set aside the penalty imposed upon the Appellant on the ground that the Appellant was under the bonafide belief that they are entitled to the benefit of the SSI Notification and that on being pointed out by the Department, the Appellant paid the due tax and interest before issuance of Show Cause Notice. Thus, there was no malafide intent on the part of the Appellant and penal action is not justifiable. However, the demand of Service tax was confirmed against the Appellant.

Being aggrieved, the Appellant filed an appeal before the Hon'ble CESTAT, Delhi on the ground of limitation.

The Hon'ble CESTAT, Delhi held that if there was no malafide for the purpose of penalty, there cannot be any malafide for the purpose of limitation also. Accordingly, the matter was decided in favour of the Appellant and the demand being barred by limitation was set aside.

- **Malafide cannot be attributed to the Assessee on detection of short payment by the Department prior to filing of ST-3**

Pectjem Classes Vs. Commissioner of Central Excise, Kanpur [2014 (12) TMI 590 - CESTAT NEW DELHI]

Pectjem Classes (**"the Appellant"**) is a service provider under the category of Commercial Training and Coaching services. Their premises was visited by the officers on October 14, 2008 and from the records maintained by the Appellant, it was found that for the period May 2008 to September 2008, they have deposited less Service tax to the tune of Rs. 2,96,480/-.

Thus, proceedings were initiated against the Appellant for recovery of Service tax along with interest and imposition of penalties under various Sections of the Finance Act, 1994 (**"the Finance Act"**). Being aggrieved, the Appellant preferred an appeal before the Hon'ble CESTAT, Delhi contesting the amount of penalties.

The Appellant contended that the period involved is from May 2008 to September 2008 and the ST-3 for the said period was yet to be filed by October 25, 2008. Inasmuch as ST-3 return was yet to be filed, the Appellant would have reconciled the entire figures at the time of filing of return and would have deposited the Service tax accordingly. Hence, the Appellant prayed for setting aside the penalties.

The Hon'ble CESTAT, Delhi held that detection of short payment by the officers prior to filing of ST-3 is a premature detection. The Appellant has given a plausible explanation of short payment by submitting that inasmuch as entries were not made in the computers and the data was yet to be entered, there was no mala fide on their part not to pay Service tax. It was further held when that the entire case of the Revenue is based upon the scrutiny of the statutory records maintained by the Appellant, the Appellant was not in a position to evade any Service tax. Hence, the penalties imposed upon the Appellant were set aside while the demand of Service tax was confirmed along with interest.

CENTRAL EXCISE

NOTIFICATIONS/CIRCULARS

- **Cadre Review - New Commissionerates - CESTAT Appeal Forms amended**

Consequent to Cadre Restructuring, certain new Commissionerates have been created and the Central Board of Excise and Customs (**"the Board"**) has received references from the field formations requesting for assigning/ creating alpha-numeric codes for new Commissionerates.

Accordingly, the Board vide **Circular No. 991/15/2014-CX dated December 17, 2014,** has amended/ revised the forms for filing an appeal before the Hon'ble CESTAT and thereby has issued revised alpha-numeric codes for all Commissionerates.

Further, references were also received from field formations regarding difficulties being faced in accommodating order number in given three boxes in cases where the Adjudicating Authority/ Commissioner (Appeals) has passed a common order disposing of multiple cases or appeals involving more than one party and wherein range of order number has to be assigned to such orders viz. order no 12-15 or 12 to 15.

In such cases, the Board now directs that Adjudicating Authority/Commissioner (Appeals) may pass individual orders in each case and assign single number only viz. Order No. 999 etc. In Commissionerates where more than 999 orders are being passed, the number of boxes (meant for order number) have been increased from three to four to accommodate an order number exceeding 999. Accordingly the total number of boxes given for alpha numeric code is increased from 21 to 22.

RECENT CASE LAWS

- **Where the goods were not intended for retail sale, the provision of valuation under Section 4A of the Central Excise Act, 1944 would not be applied at all**

Wyeth Ltd. Vs. CCE, Nasik [2014 -TIOL-2530-CESTAT-MUM]

Wyeth Ltd. (**"the Appellant"**) was engaged in manufacturing of toothpaste which is notified under Section 4A of the Central Excise Act, 1944 (**"Excise Act"**).

The Appellant manufactured Aquafresh brand of toothpaste on job-work basis for Glaxo Smith Kline Asia Pvt. Ltd. (**"Smith Kline"**). The Appellant cleared a consignment of toothpaste which was intended for resale under Section 4A of the Excise Act. However another consignment of toothpaste which were given as free samples by Smith Kline along with the Horlicks manufactured and sold by them were cleared on Cost Construction basis in terms of the Hon'ble Apex Court judgment in the case of Ujagar Print case.

The Department contended that since the toothpaste is notified under Section 4A of the Excise Act, it should have been cleared as such.

Accordingly, Show Cause Notice was issued and demands were confirmed by the Department. Being aggrieved, the Appellant preferred an appeal before the Hon'ble CESTAT, Mumbai.

The Hon'ble CESTAT, Mumbai after considering the provisions of the Standards of Weights and Measures Act, 1976 and Packaged Commodity Rules, 1977 and relying upon the decision in the case of ***Geoffery Manners & Co. Ltd. Vs. CCE [2006 (204) ELT 403]*** held that since the toothpaste were supplied as 'free sample' and were not meant for retail sale, the provisions of Standards of Weights and Measures Act, 1976 and Packaged Commodity Rules, 1977 would not apply at all and, therefore, the provisions of Section 4A of the Excise Act would also not apply.

- **Board's Circulars have prospective effect only and not retrospective effect**

Uttam Galva Steels Pvt. Ltd. Vs. CCE Raigad [2014 (12) TMI 619–Government of India]

Uttam Galva Steels Pvt. Ltd. (**"the Appellant"**) was engaged in the manufacturing activity and the final products which were cleared on payment of duty included the products namely 'H.R. Pickled Oils' (**"Pickled Oils"**) and 'HR Pickled and oiled coils' (**"Pickled Coils"**). Pickled Oils and Pickled Coils were cleared for home consumption as well as exported under Rebate claim/ Bond.

The Appellant had filed various Rebate claims during the period of December 2009 to April 2010 involving an amount of Rs. 3,18,72.034/- but inadvertently mentioned the Tariff Classification of Pickled Coils as 72083940 in the Rebate claims which was similar to Tariff Classification of H.R. Coils declared as input in the Appellant's application for Central Excise Registration.

However, the Appellant clarified that the inputs i.e. H. R. Coils received in the factory are subjected to the process of slitting, pickling, oiling and trimming and explained the processes involved in detail. Accordingly, it was contended that the process undertaken by the Appellant amounts to manufacture in terms of Sub Heading Note No. 3 of Chapter 72 of the Central Excise Tariff Act, 1985 which provides that the process of hardening and tempering, in respect of flat rolled products, amounts to 'manufacture'.

The Department took a view that since the Appellant did not reveal that the process of pickling and oiling amounts to hardening and tempering, therefore the process of pickling and oiling carried out by the Appellant does not amount to manufacture.

Thereafter, the Adjudicating Authority rejected the entire Rebate Claim on the ground that process undertaken by the Appellant does not amount to manufacture in terms of ***Circular No. 927/17/2010-CX dated June 24, 2010*** wherein it was clarified that *'mere undertaking the process of oiling and pickling as preparatory steps do not amount to manufacture'*. Later on, the Commissioner (Appeals) also upheld the same.

Being aggrieved, the Appellant filed a Revision Application before the Central Government under Section 35EE of Central Excise Act, 1944, wherein it was held that:

(i) The Apex Court in the case of ***H. M. Bags Manufacturer Vs. Collector of Central Excise [1997(94) ELT 3(S.C.)]*** and various subsequent judgements had stipulated that the Board's circular can have only prospective effect which is evidently the law of the land. Hence, rejection of the Rebate claims on the sole ground that the process does not amounts to manufacture by applying the Board's Circular retrospectively i.e. prior to June 24, 2010 cannot be held sustainable and hence, liable to be set aside.

(ii) In ***Ajinkya Enterprises, Pune***, it has been held that once the duty on final product has been accepted by the Department, the Cenvat credit availed need not be reversed even if the activity does not amount to manufacture.

In view of above findings, the Government set aside the Orders of the Lower Authorities and allowed Revision application.

- **Corrigendum amending conditions for claiming exemption would apply from date of original Exemption Notification**

Polyplex Corp. N Ltd. Vs. Union of India [(2014) 51 taxmann.com 262 (Allahabad)]

Polyplex Corporation Ltd. (**"the Petitioner"**) was engaged in manufacturing and export of polyester film. The polyester films were exported to various countries in terms of Rule 18 of Central Excise Rules, 2002 (**"the Excise Rules"**) for the period December 2004 to March 2005. The Petitioner did not claim any rebate on Inputs under Rule 18 of Excise Rules.

The Petitioner availed benefit of exemption in respect of 'imported raw materials' under Advance License in terms of Notification No. 93/2004-Customs (Tariff) dated September 10, 2004 (**“the Exemption Notification”**).

The Department denied said exemption on the ground that as per condition in Para (v) of the Exemption Notification, exemption is not available if rebate under Rule 18 of the Excise Rules is taken.

The Petitioner argued that as per M.F. (D.R.) Corrigendum F. No. 605/50/2005-DBK, dated May 17, 2005, (**“the Corrigendum”**) the condition (v) was modified and exemption was available if rebate under Rule 18 of the Excise Rules *'in respect of raw materials/ inputs'* was not claimed, which was satisfied by the Petitioner.

On the contrary, the Department argued that the Corrigendum have prospective effect. The same was upheld by the Commissioner (Appeals). Being aggrieved, the Petitioner preferred Revision application to the Central Government which was also rejected vide order dated August 24, 2009.

Being aggrieved, the Petitioner filed a petition before the Hon’ble High Court of Allahabad. The Hon’ble High Court of Allahabad relied upon the following case laws:

- ***Commissioner, Sales Tax Vs. Dunlop India Ltd. [(1994) 92 STC 571 (AR)]***
- ***State of Rajasthan Vs. J.K. Udaipur Udyog Ltd. [(2004) 7 SCC 673]***
- ***Jugilant Organosys Ltd. Vs. Asstt. CCE [2012(276) ELT 335 (Kar.)]***
- ***Tata Iron & Steel Co. Vs. State of Jharkhand [(2005) 4 SCC 272]***
- ***CCE Vs. Mahaan Dairies [(2004) 11 SCC 798]***

and held that the Corrigendum is issued for the correction of error or omissions in the original document, which relates back to the date of initial authoring for the reason that correction means whatever written was not correct or there was some mistake which need be corrected. The Authorities have committed a manifest error of law. Accordingly, the Rebate claims were allowed to the Petitioner.

CUSTOMS

NOTIFICATIONS/CIRCULARS

➢ **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 **Notification No. 116/2014-Customs-NT dated December 18, 2014** has revised Rate of Exchange (**“ROE”**) applicable with effect from December 19, 2014 to determine the Assessable Value in respect of imported and exported goods.

➢ **Rate of exchange of conversion of Japanese currency for valuation of exported and imported goods**

In the exercise of the power conferred under Section 14 of Customs Act, 1962, the Central Board of Excise and Customs vide **Notification No. 115/2014-Customs-NT dated December 17, 2014** has determined the Rate of Exchange (**"ROE"**) for conversion of Japanese currency into Indian currency or vice versa to determine the Assessable Value in respect of imported and exported goods, effective from December 18, 2014.

- **Revision in Tariff value of specified imported goods**

In exercise of the powers conferred under Section 14 of the Customs Act, 1962, the Central Board of Excise and Customs vide **Notification No. 114/2014-Customs-NT dated December 15, 2014** has revised tariff value in respect of imported goods such Palm Oil, RBD Oil, Soya bean Oil, Gold and Silver etc. applicable with effect from December 15, 2014.

- **Re-warehousing of goods imported and/or procured indigenously by EOU/EHTP/STP/BTP units**

In order to remove the difficulties faced by the units (under the self-bonding/ warehousing procedure specified in Circular No. 19/2007-Customs dated May 3, 2007) in obtaining deemed export benefit as the ARE-3 is not certified by the Central Excise Authorities, the Central Board of Excise and Customs (**"the Board"**) vide **Circular No. 16/2014-Customs dated December 18, 2014**, has provided that the Superintendent – in-charge of the unit shall make two legible photocopies of the original copy of ARE-3 (that bears his counter signature) and attest each of them as true copies with his dated signature.

One attested copy shall be kept in the Range office for records and the other one shall be handed over (against dated acknowledgement) to the unit for use while applying deemed export benefits.

RECENT CASE LAWS

- **Classification of goods precedes over the determination of rate of duty or any exemption applicable to the goods**

LM Wind Power Blades (India) Private Ltd. Vs. Commissioner of Customs, Tuticorin [2014 (12) TMI 576 - CESTAT CHENNAI]

LM Wind Power Blades (India) Private Ltd (**"the Appellant"**) is a manufacturer of Rotor Blades and had filed Bills of Entry for import of goods used for manufacture of Rotor Blades (**"impugned goods"**). The Appellant imported impugned goods and claimed exemption from Countervailing duty (**"CVD"**) under Sl. No. 237A of Notification No. 6/2002-Central Excise dated March 1, 2002 as amended by Notification No. 29/2005-Central Excise dated May 31, 2005 (**"the Exemption Notification"**).

The Revenue alleged that the exemption availed was wrong as the impugned goods were not classifiable under Chapter heading specified in the Exemption Notification. Therefore, proceedings were initiated against the Appellant demanding differential Customs duty of Rs. 1,48,92,523/-. The Adjudicating Authority as well as the Commissioner (Appeals) confirmed the demand reclassifying the impugned goods and denied the CVD exemption. Being aggrieved, the Appellant preferred an appeal before the Hon'ble CESTAT, Chennai.

The Hon'ble CESTAT, Chennai held as under:

- As per the rules of interpretation, first imported goods are to be correctly classified as per the description provided in the Schedule to the Customs Tariff Act, 1975 (**"the Customs Tariff Act"**);
- The classification of goods precedes over the determination of rate of duty or any exemption applicable to the said goods. Only after classifying the goods into correct chapter headings, under respective chapter of Customs Tariff Act or Central Excise Tariff Act, 1985 (**"CETA"**), the question of extending of Notification benefit or rate of duty to be finalised and not vice versa;
- The Hon'ble Supreme Court in case of ***Appraiser Madras Customs Vs. Tamil Nadu Newsprint Papers Ltd.*** has held that while interpreting Notification it has to be strictly interpreted in the language in which it was described;
- In terms of the Exemption Notification, the exemption benefit is extended to the Excisable goods of the description specified in table read with concerned list appended and falling within chapter, heading number or sub heading number of the First Schedule to the CETA. Hence, both the criteria, impugned goods confirm description and fall under heading or sub heading of the first Schedule of the CETA are to satisfied to avail exemption.

Hence, the Hon'ble Tribunal held that the Adjudicating Authority has rightly classified the impugned goods and denied CVD exemption to the Appellant.

- **When goods are fully exempted from Customs duty or are cleared without payment of Customs duty under specified procedure, Education cess under the Customs would not be levied**

Commissioner of Customs, Tuticorin Vs. DCW Limited [2014 (12) TMI 728 - Madras High Court]

DCW Limited (**"the Assessee"**) was covered by Notification No. 96/2004-Customs dated September 17, 2004 passed in exercise of powers under Section 25(1) of the Customs Act, 1962 granting exemption of Basic Customs Duty subject to debit of the DEPB Licence. The Department sought to collect Education Cess on Basic Customs Duty which was debited in the DEPB Licence.

Later on, the Hon'ble Tribunal relying on the decision in case of ***Commissioner of Customs, Mumbai Vs. Reliance Industries Limited [2005 (188) E.L.T. 449],*** upheld the contention of the Assessee that

Education Cess under Section 84 of the Finance Act, 2004 was not to be levied on the exempted items. Hence, the question of levy of Education Cess as per the Finance Act, 2004 does not arise. Being aggrieved by the order of the Hon'ble Tribunal, the Department preferred an appeal before the Hon'ble High Court of Madras.

The Hon'ble High Court of Madras relying on clarification made by the Ministry of Finance in D.O.F. No. 334/3/2004-TRU dated July 8, 2004 and subsequent Circular No. 5/2005-Customs dated January 31, 2005, held that since Education Cess has to be calculated at the percentage on the duty liability, when the goods are fully exempted from Customs duty or are chargeable to Nil duty or are cleared without payment of duty under specified procedure such as clearance under bond, the question of Education Cess to be levied does not arise.

FOREIGN EXCHANGE MANAGEMENT ACT

NOTIFICATIONS /CIRCULARS

- **Exemption from Foreign Exchange Management (Deposit) Regulations, 2000**

The Reserve Bank of India (**"the RBI"**) vide **A.P. (DIR Series) Circular No. 51 dated December 17, 2014** has extended the exemption laid down in Foreign Exchange Management (Deposit) Regulations, 2000, issued vide Notification No. FEMA 5/2000-RB dated May 3, 2000 (as amended), in respect of the deposits held in accounts maintained with an Authorised Dealer by any Multilateral Organization of which India is a member nation, and its subsidiary/ affiliate bodies in India, and it's or their officials in India.

- **Rupee Drawing Arrangement: Delegation of work to Regional Offices - Submission of Statements/ Returns**

In continuation of A.P. (DIR Series) Circular No. 7 dated July 18, 2014 the Reserve Bank of India (**"the RBI"**) vide **A.P. (DIR Series) Circular No. 50 dated December 16, 2014**, has provided clarification on delegation of work to Regional Offices towards Submission of Statements/ Returns of Rupee Drawing Arrangement (**"RDA"**).

In order to avoid the delay in submission of the correspondence/ statements to the Central Office, the RBI has directed Authorized Dealer Category I banks to make all their correspondence with the RBI including submission of prescribed statements to the Regional Office of the Foreign Exchange Department of the RBI, under whose jurisdiction their registered offices function.

- **Money Transfer Service Scheme: Delegation of work to Regional Offices - Submission of Statements / Returns**

In continuation of A.P. (DIR Series) Circular No. 8 dated July 18, 2014, the Reserve Bank of India (**"the RBI"**) vide **A.P. (DIR Series) Circular No. 49 dated December**

16, 2014, has provided clarification on delegation of work to Regional Offices towards Submission of Statements/ Returns of Money Transfer Service Scheme**.**

In order to avoid delay in scrutiny/ processing, the RBI has directed all Authorised Persons who are Indian agents under Money Transfer Services Scheme to make all their correspondence with the RBI including submission of prescribed statements to the Regional Office of the Foreign Exchange Department of the RBI, under whose jurisdiction their registered offices function.

FOREIGN TRADE POLICY

NOTIFICATIONS/CIRCULARS

- **Deferment of implementation of the procedure for export of certified organic products**

The Director of foreign trade (**"the DGFT"**) vide Public Notice No. 73 (RE-2013)/2009-2014 dated November 18, 2014 (**"the Notice"**) had laid down the procedure of export of certified organic products which was effective from November 18, 2014 duly amended by the Public Notice No. 77 (RE-2013)/2009-2014 dated December 1, 2014.

However, DGFT vide **Public Notice No. 78 (RE-2013)/2009-2014 dated December 18, 2014** has again deferred the implementation of the procedure laid down in Notice till further Notification in this regard.

VALUE ADDED TAX

NOTIFICATIONS/CIRCULARS

Delhi Value Added Tax

- **Constituting State Bank of Bikaner and Jaipur located in the National Capital Territory of Delhi as Appropriate Government Treasury**

The Government of National Capital Territory vide **Notification No. F.7 (400)/Policy/VAT/2011/PF/600612 dated December 17, 2014** has constituted State Bank of Bikaner and Jaipur located in the National Capital Territory of Delhi as '**Appropriate Government Treasury**' for collection of tax, interest, penalty or any other amount due under the Delhi Value Added Tax Act, 2004 or Central Sales Tax Act, 1956. The Appropriate Government Treasury with immediate effect shall collect said Amount from dealers registered or liable to be registered under the Act, casual traders, contractees (TAN holders) and any other person in e-payment mode only, in addition to the already notified Banks.

- **Online Filing/ Updating of DVAT registration information in Form DP-1**

The Government of National Capital Territory vide **Notification No. F.3(352)/Policy/VAT/2013/585-596 dated December 15, 2014,** has directed all the Dealers who have not filed the registration information in Form DP-1 till date, to file information online in Form DP-1. Further, the Dealers who have already filed the information can update the information through edit facility and attach scanned copy of the signature sheet after getting it duly signed. Furthermore, particulars so filed/updated shall be treated as request for amendment in the registration particulars as par the Application in Form DVAT-07/ Form 11.

The Notification also directs the Dealers to submit the documents and other supporting legal documents in the ward concerned who have changed the constitution of their business.

The filing/ updating process shall commence from December 15, 2014 and shall continue up to March 31, 2015.

RECENT CASE LAWS

- **Dyes and chemicals used in execution of works contract of dyeing involves transfer of property and are exigible to Sale tax**

State of Tamil Nadu Vs. A. Vairavel [(2014) 52 taxmann.com 148 (Madras)]

In the instant case, A. Vairavel (**"the Assessee"**) used dyes and chemicals in execution of works contract of dyeing. The Department argued that the said transaction involves transfer of property involved in the use of dyes and chemicals used in works contract of dyeing and hence assessable under Section 3B of the of the Tamil Nadu General Sales Tax Act, 1959 (**"the Sales Tax Act"**).

Later on, the Hon'ble Tamil Nadu Sales Tax Appellate Tribunal held that there is no transfer of property involved in the use of dyes and chemicals used in works contract of dyeing and hence not assessable under Section 3B of the Sales Tax Act. It was further held that the activity in which the transfer of property in goods is too insignificant will not attract the provisions of the Sales Tax Act.

Being aggrieved, the Department filed an Appeal before the Hon'ble High Court of Madras against the order of the Hon'ble Tamil Nadu Sales Tax Appellate Tribunal.

The Hon'ble High Court of Madras relied on the decision of the Hon'ble Supreme Court in case of ***Rainbow Colour Lab Vs. State of Madhya Pradesh [(2000) 118 STC 9 (SC)]***, wherein it was held that the transfer of goods involved in works contract, viz., the purchase of dyes and chemicals outside the State would amount to 'sale' and is assessable under Section 3B of the Sales Tax Act.

Accordingly, the matter was decided in favour of the Revenue.

NEWS FLASH

- **GST: FM Arun Jaitley introduces 'biggest tax reform' Bill**

Calling it the "biggest tax reform since

1947", Finance Minister Arun Jaitley introduced the Constitution (122nd Amendment) Bill, 2014, in the Lok Sabha to facilitate the introduction of proposed Goods and Services Tax (GST).

The Bill, which is a result of a series of hectic-negotiations with the empowered committee of State Finance Ministers, proposes to include petroleum and octroi in the GST while providing for a five-year compensation for any possible revenue loss arising due to the implementation of the new Indirect Tax Regime.

Though under its ambit, the petroleum products would not be subject to the levy of GST till the GST Council decides. In the interim, both the Centre and States would continue to impose their respective tax on petroleum products.

Further, giving in to the demands of BJP-ruled States like Gujarat and Maharashtra, the Centre has further sweetened the deal for such manufacturing States by allowing them an additional levy of one per cent on supply of goods in Inter-State trade for two years which can be extended further if the GST Council, proposed in the Bill, decides.

Tabling the Bill, Jaitley said that the Centre has ensured that the rights of the States are preserved while "no State is a loser".

- **Tamil Nadu opposes Constitutional Amendment Bill on GST**

The AIADMK-led Tamil Nadu Government has rejected the Union Government's proposal to introduce a Constitutional Amendment Bill on GST and then to evolve a consensus on various aspects of GST, such as actual tax rates and tax bands, through the GST Council.

The Centre should permit the Empowered Committee of State Finance Ministers to try and evolve a broad consensus on the critical issues before enacting the Constitutional Amendment Bill on GST is taken up, Tamil Nadu Chief Minister O Paneerselvam wrote in letter to Prime Minister Narendra Modi.

He also urged against pushing through the Bill in haste as such a move is bound to have serious long term implications for the fiscal autonomy and revenue position of the States.

"The Government of India must ensure that the States' fears are allayed and a true consensus is achieved before such a far-reaching reform is attempted," the Chief Minister said in his letter.

Paneerselvam's opposition follows West Bengal's reservations over proposed Bill. The States have for long been recalcitrant on the GST issue, saying it would lead to revenue loss. Earlier this week, the Central Government reached a compromise of sorts, agreeing to leave petro products out of the Bill for the first few years, and paying out compensation for revenue losses incurred by States.

The Tamil Nadu CM pointed out that manufacturing-intensive like Tamil Nadu stand to lose large amounts of revenue if GST is implemented, as the new tax will be based on the destination principle. He has suggested that States be permitted to retain 4% of CGST part of the IGST on all Inter-State sales without crediting any amount to a compensation fund.

- **Petro tax under GST: Devil is in the details**

A decision on whether to impose a tax on petroleum under the proposed National Goods and Services Tax (GST) will be taken two to three years after the new system is implemented.

The decision would be of the proposed GST Council, if the latter is approved. The Council is proposed to comprise the Union Finance Minister and State Finance Ministers. And, a decision to tax would need approval from 75 per cent of the council vote. The States will have two-third vote in the council, while the remaining one-third will be with the Union Finance Minister. As such, neither the Union Finance Minister alone of all States put together alone would be able to push through any changes in the tax structure of petroleum. The Centre will have to bring over 60 per cent of States with it to approve the proposal.

For these two to three years, petroleum would be within the GST but the Centre and States would be allowed to impose Excise Duty and Value Added Tax (VAT), respectively, said an official. Only alcohol has been kept out of the GST ambit. Tax experts and business representatives said this gave a certain level of certainty. However, clarity is needed on whether all petroleum products, including industrial lubricants and polymers, will also face the same differential treatment — within GST but taxed under the existing arrangement.

If petroleum products are subsumed within a GST, producing States cannot get Central Sales Tax (CST) on Inter-State movement. An integrated GST (IGST), to be levied on Inter-State movement of goods, will give revenue to the consuming State, while CST gives it to the originating State. Assam gets about Rs 1,200 crore from petroleum products annually by way of CST, while Gujarat gets roughly Rs 4,000 crore. Officials said States were against subsuming petroleum products in a GST even if it is zero-rated. The Centre, on the other hand, did not want to exclude it at any cost. The pressure to bring petroleum within GST also came from industry, including the Central Government - owned oil marketing companies.

- **Finance Ministry source: Consensus with States on Goods and Services Tax imminent**

Finance Minister Arun Jaitley reached a consensus with the Empowered Committee (EC) of State Finance Ministers on the proposed Goods and Services Tax (GST) in a meeting. A senior Finance Ministry source told that the details of the agreement are being fine-tuned so as to enable Jaitley to table the Constitutional Amendment Bill in the ongoing session of Parliament.

“The discussions are moving in a positive direction,” Jammu and Kashmir Finance Minister Abdul Rahim Rather, who is the chairman of the Empowered Committee, told reporters after the meeting. Along with Rather, the other Finance Ministers were from Punjab, Haryana, Gujarat, Tamil Nadu, Maharashtra and Karnataka. “This week, I’m trying my best to get an agreement with State Finance Ministers so that we can introduce the discussion on the amendments (on GST Bill) in this session,” Jaitley said.

Jaitley told parliament that States will receive Rs. 11,000 crore this fiscal towards partial compensation of the losses suffered by them for reduction in Central Sales tax (CST). He earlier told parliament that he has already assured States that the Centre would clear their compensation dues of about Rs. 34,000 crore ($5.5 billion) over a three-year period.

While the CST is levied by the Centre on Inter-State movement of goods and collected by States, the issue of compensation arose because the Central Government cut the CST from 4 percent to 2 percent in phases, after State-level VAT was introduced from April 1, 2005. Full implementation of GST could lift India’s gross domestic product (GDP) growth by 0.9-1.7 percentage points, according to a study by the National Council of Applied Economic Research (NCAER).

- **Companies Act needs changes to improve business climate: Arun Jaitley**

The Companies Act needs to be amended to improve the business climate in the country, Corporate Affairs Minister Arun Jaitley said in the Lok Sabha on Tuesday as he pushed a bill in this regard for consideration of the House.

Congress on the hand wanted the bill to be referred to the Standing Committee for closer scrutiny. The 14 proposed amendments include provision to ensure that frauds beyond a certain threshold would need to be mandatorily reported by the auditors to the Government. To address concerns raised by the corporates, the Government has also agreed to relax a number of norms including those pertaining to related party transactions, while resolutions passed by the companies' boards would not be subjected to public inspection.

The amendments are being carried out after consultation with industry chambers and business organizations, Jaitley said while moving the Companies (Amendment) Bill, 2014, for consideration and passage. "Most of them are intended for one purpose, that is, for the ease of doing business," said Jaitley, the Finance Minister.

- **Amendments to Companies Act dilute 2013 law's strictness**

In amendments cleared by the Lok Sabha to soften the Companies Act, only those officials of a firm who're accused of serious crimes such as duping the public or shareholders will have to undergo the process of seeking bail.

Under the present Act, enacted by last year, the need to apply for bail was for variety of charges. Concerned that such penal provisions affect the ease of doing business in India, the Government has sought to limit these provisions to serious offences.

It has inserted a provision of making bail procedures harsh only if fraud is committed, under Section 447 of the Act. Generally, an accused gets bail by applying to a court. The present Act made the process tougher; the public prosecutor first presents his case and the judge needs to be convinced that the accused will not commit any crime while on bail. "It is almost like starting the hearing even before the case starts," complained a senior company professional.

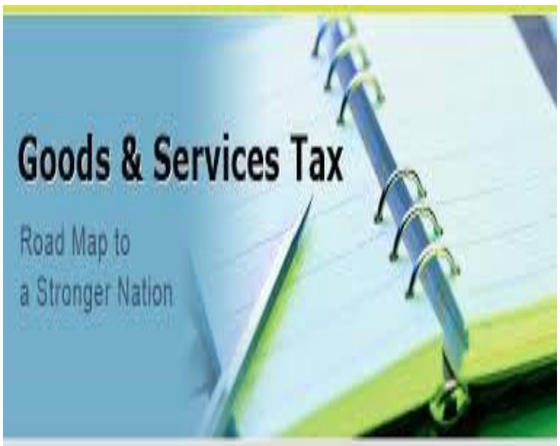
Also under the present Act, there are many provisions which indirectly refer to Section 447 in the case of some violation. This is henceforth sought to be confined to only crimes committed under Section 447. Here, fraud is defined as any irregularity in the company committed with intent to deceive the company or its shareholders or its creditors or any person, whether or not there is any wrongful gain or wrongful loss.

- **Andhra Pradesh VAT amendment bill tabled**

Andhra Pradesh Government tabled the AP Value Added Tax (amendment) Bill 2014 replacing the ordinance it had issued in June this year. The ordinance was tabled by Minister of Health Kamineni Srinivasa Rao, who deputised for Minister for Finance Yanamala Ramakrishnudu.

The Bill is aimed at ensuring the genuineness of the claims for input tax credits by the VAT dealers. The Bill would make it mandatory for the dealers to attach annexures of invoice-wise details of purchases and sales, along with their monthly returns. This will enable the Government to verify the genuineness of input tax credit claims which are arriving in huge quantities, the statement of objects and reasons explained.

In its existing form, the APVAT Act, 2005 doesn’t provide for ensuring the genuineness of the claims which can be verified only at the time of audit, the Minister said. Further, after amendment a new section will be inserted in the APVAT Act, 2005, which requires the transporters to register themselves and submit an electronically generated declaration to simplify the verification procedure for goods vehicles at the check-posts.



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