TAX CONNECT

FOURTEENTH ISSUE JANUARY 2015

Friends

A little more persistence, a little more effort, for what has started in 2014 would turn to glorious success in 2015… We wish you a Happy New Year 2015!

December 2014 has seen a giant leap towards GST, the long awaited reform in the country. On 19th December 2014, the Finance Minister introduced The Constitution (122nd Amendment) Bill 2014 on 'GST' in the Parliament. With this the **Countdown to GST has begun!**

To constantly bring you updates and analysis on the most important Indirect Tax Reform in the Country we have started a GST Series as a supplement to our "Tax Connect". You would have received our "GST SERIES 1" by now.

Further, in the West Bengal VAT Arena, dealers the date of VAT Audit and self declaration has been extended to 31st March 2015. An unasked for new year gift from Directorate of Commercial Taxes!

The Service tax department though is in no mood to relent. The CBEC vide Notification No. 23/2014-Service Tax dated 5th December, 2014 and Circular No. 181/7/2014-Service Tax dated 10th December, 2014. Vide these two issues it has clarified and notified about the powers of the department to verify (read "*audit*") the assesses u/r 5A(2) of the Service Tax Rules, 1994. However, only time will tell if the judiciary would consider such amendment/explanations to suffice this much disputed issue.

Further, moving fast to build up a 360 degree mechanism to identify tax evaders and to ensure that taxpayers discharge their tax liability properly, the CBEC has now identified various sources like RBI, CBDT, TRAI, State VAT Depts, etc. ***It is therefore important for businesses to adapt to the dynamic environment in Indirect Taxes all around. Further it is all the more important now to not only reconcile all our returns with the books, but also reconcile all our returns with each other!***

Before signing off, may we reiterate that we shall be available 24x7 on our mail id or over a telecon.

DUE DATE	COMPLIANCES
06-Jan-15	**Online Payment** of Service Tax for the month of Dec.,2014 (Mandatory as per Finance Budget, 2014)
07-Jan-15	Payment of TDS/TCS
07-Jan-15	Submission of Form No. 15G, 15H and 27C received in Dec. to IT Commissioner
10-Jan-15	West Bengal Sales Tax TDS Payment for the month of Dec.,2014
10-Jan-15	ER1, ER2, ER6 Return for Dec.,2014
15-Jan-15	TDS returns for Dec Quarter for Non-Govt. deductors Return No. 24Q, 26Q, 27EQ & 27Q and & TCS Returns for All Deductors
15-Jan-15	Provident Fund e-Payment forDec.,2014
21-Jan-15	West Bengal VAT/CST/ Entry Tax/ Professional Tax Payment for the month of Dec., 2014
21-Jan-15	Payment of ESI for the month of Dec.,2014
25-Jan-15	West Bengal Sales Tax TDS Certificate Issue for the month of Dec.,2014
30-Jan-15	Issue of TDS/TCS certificate for quarter ended Dec.in Form 16A/ 27D
31-Jan-15	TDS returns for Dec Quarter for Govt. deductors Return No. 24Q, 26Q, 27EQ & 27Q
31-Jan-15	Returns by banks for interest upto Rs.5000 for Dec quarter in Form No.26QAA
31-Jan-15	West Bengal VAT/CST/ Entry Tax Return for the quarter ending Dec, 2014
31-Mar-15	**EXTENDED DUE DATE OF VAT AUDIT OF WEST BENGAL VAT**

Truly Yours

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CENTRAL TAXES

SERVICE TAX

NOTIFICATIONS, CIRCULARS & INSTRUCTIONS

AMENDMENT IN RULE 5A(2) OF SERVICE TAX RULES, 1994 (POWER OF MAKING DEMAND OF FINANCIAL RECORDS FROM ASSESSEE/ CONDUCTING AUDIT)

The CBEC vide **Notification No. 23/2014-Service Tax dated 5th December, 2014** has made the following changes vide amendment in Rule 5A(2) of the Service Tax Rules, 1994:

1. To empower the Chartered Accountants and Cost Accountant or any other officer as appointed by the Commissioner, for conducting service tax audits.
2. Cost audit report may be required to be furnished
3. Time Limit for submission of documents would be as specified in the notice vis-à-vis the earlier limit of 15 days.

AUDIT OF THE SERVICE TAX ASSESSEES BY THE OFFICERS OF SERVICE TAX AND CENTRAL EXCISE COMMISSIONERATES

Complimenting the above notification, within 5 days the CBEC vide **Circular No. 181/7/2014-Service Tax dated 10th December, 2014** also clarified as follows –

1. The Central Government has inserted/amended new rule 5(A)(2) in Service Tax Rules in exercise of powers vested vide Section 94(2)(k) of The Finance Act, 1994, inserted in this budget.
2. The expression "verified" used in section 94(2)(k) of the said Act is of wide import and would include within its scope, audit by the departmental officers.
3. The judgment by the Hon'ble High Court of Delhi in M/s Travelite (India), where it had quashed rule 5A(2) now be distinguished as a clear statutory backing.

In a nutshell, it has clarified about the powers of the department to verify (read "*audit*") the assesses u/r 5A(2) of the Service Tax Rules, 1994.

COURT DECISIONS

SUPREME COURT DECISIONS

SUPREME COURT STAYS THE JUDGMENT OF THE DELHI HC WHEREIN RULE 5A(2) OF THE SERVICE TAX RULES WAS HELD AS ULTRA VIRES THE CONSTITUTION AND WAS QUASHED

In the case of **Travelite (India) Ltd. v. Union of India, the Hon'ble Supreme Court** held that rule 5A(2) of the Service Tax Rules has now been amended by CBEC and the new Rule 5(A)(2) now has appropriate backing of the statute "the Finance Act, 1994" to provide for audit of records of service tax assessee's by departmental officers as well as CA/CWA nominated u/s 72A of the Finance Act, 1994. Thus, the Hon'ble Supreme Court stayed the judgement of the Delhi High Court wherein it was held Rule 5A(2) of the Service Tax Rules as ultra vires the Constitution and was quashed as because there was no statutory backing of the said Rule as regards service tax audit of assesses by departmental officers.

RECOVERY OF COST OF BANK GUARANTEE FURNISHED BY THE RESPONDENT NO.5

In the case of **Delhi International Airport Pvt. Ltd. Versus UOI And Others, the Hon'ble Supreme Court** held that the appellant was fully aware and had consented to the arrangements as recorded in the award dated 30.03.2011 in its favour. It was also not open for the appellant to seek that Respondent No.5 deposit the entire amount of service tax as the same was contrary to the consent award dated 30.03.2011. Despite having such Consent Award in its favour, the appellant insisted on Respondent No.5 securing it by a bank guarantee and as such it is the appellant who must bear the cost for the bank guarantee furnished by Respondent No.5. Thus, affirming the view taken by the High Court.

HIGH COURT DECISIONS

ASSESSEE NOT LIABLE TO PAY INTEREST AND PENALTY U/S 76 WHERE HE IS NOT LIABLE TO PAY SERVICE TAX

In the case of **Commissioner Of C. EX., Tirunelveli vs Sundaram Textiles Ltd., the Hon'ble Madras High Court** held that as per the amendment made to Service tax Rules

1994, service tax is not required to be paid for a period prior to 16-08-2002. Since the assessee is not liable to pay service tax, he is also not liable to pay any penalty or interest.

PAYMENT OF SERVICE TAX BY UTILIZATION OF CENVAT CREDIT IN CASE OF GOODS TRANSPORT AGENCY SERVICES

In the case of Commissioner Of Central Excise & Customs vs Banco Aluminium Ltd., the Hon'ble Gujarat High Court held that service tax on input service can be paid by way of utilization of CENVAT CREDIT as instructions of the Board dated 3-10-2005, which has clarified Section 68(2) were not relevant for the purpose of this Appeal and no substantial question of law arose in this matter.

ASSESSEE LIABLE TO INTEREST AND PENALTY WHERE THERE ARE NO DOCUMENTS SUPPORTING THE ASSESSEE'S CLAIM OF PAYMENT OF SERVICE TAX

In the case of **Federal Mogul Goetze (India) Ltd. vs Union Of India., the Hon'ble Punjab & Haryana High Court** held that there is no document supporting the claim of duty paid by the petitioner's corporate office, transporter or vendor and therefore the petitioner is liable to interest and penalty.

IN THE ABSENCE OF ANY MATERIAL TO PROVE THE FINANCIAL HARDSHIP, THERE IS NO REASON TO MODIFY THE ORDER

In the case of **M/s. Shrivari Enterprises Versus The Commissioner of Service Tax. , the Hon'ble Madras High Court** held that the appellant has not filed any particulars to substantiate the plea of financial hardship in the application filed for pre-deposit before the Tribunal. Hence the plea of financial hardship without any relevant particulars was not entertained and the appeal was dismissed.

POWER OF APPELLATE AUTHORITY TO CONDONE DELAY BEYOND PERIOD OF 90DAYS

In the case of **M/s. Agrawal Construction vs Commissioner of Central Excise & Service Tax, the Hon'ble Bombay High Court** held that if the appellate authority is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the said period of two months, then it has the power to allow filing of appeal within a further period of one month. However there is enabling provision for the appellate authority to either entertain the appeal or condone the delay if the delay is beyond the said outer limit of three months.

CESTAT DECISIONS

RELEVANT DATE OF FILING OF REFUND CLAIM

In the case of **Commissioner Of Central Excise, Pune-Iii Versus M/S Meadwestvaco India Pvt Ltd, the Hon'ble CESTAT, Mumbai** held that the relevant date for calculation of limitation period in respect of filing refund claims relating to service tax is the date of payment of service tax and not the date of export.

WELDING OF THE SECTION OF RAILS CONSIDERED A PART OF THE MANUFACTURING PROCESS

In the case of **Harshad Thermic Industries (P) Ltd. vs Commissioner of Central Excise & Customs, Raipur, the Hon'ble CESTAT, New Delhi** held that the process undertaken by the Appellant is part of the process of laying down of tracks and making them fit for traffic movement as before undertaking the thermite welding process, the rails have to be precisely aligned. Therefore, the activity of the appellant does not result in any deliverable goods to the railway and it cannot be said to be the production or processing of goods not amounting to manufacture.

NON FILING OF RETURNS AND NON-PAYMENT OF SERVICE TAX ATTRACTS PENALTY U/S 77 & 78 OF THE FINANCE ACT, 1994

In the case of **Ketan Engineering Services Pvt. Ltd. vs Commr. Of C. EX. & ST., Surat, the Hon'ble CESTAT, Ahmedabad** held that appellant was a registered unit and was well aware of their liability to pay service tax that was recovered from the service recipients. Non filing of returns and non-payment of service tax, in spite of collecting the same from the customers makes the appellant liable to penalty under Section 78 of the Finance Act, 1994.

SERVICE TAX NOT LEVIABLE WHERE AN ACTIVITY AMOUNTS TO MANUFACTURE

In the case of **M/s. Jayakrishna Flour Mills (P) Ltd. vs CCE, Madurai , the Hon'ble CESTAT, Chennai** held that Grinding of wheat into wheat products such as maida, atta, suji and bran for various parties amounts to manufacture under Sec 2(f) of the Central Excise Act 1944. Since the activity amounts to manufacture, no service tax is leviable.

PROCESSING OF TEXTILE MATERIALS ELIGIBLE FOR EXEMPTION UNDER NOTIFICATION NO.14/2004-ST DATED 10.9.2004

In the case of **M/s. KG. Denim Ltd. vs CCE, Salem, the Hon'ble CESTAT, Chennai** held that where appellant paid the charges for textile processing as scrutinized from the records of the appellants, they are eligible for exemption benefit under Notification No. 14/2004-ST dated 10.9.2004, as amended.

LEVY OF PENALTY U/S 78 WHERE SERVICE TAX WITH INTEREST WAS PAID BEFORE ISSUANCE OF SCN IN CASE OF SMALL TIME SERVICE PROVIDER

In the case of **Neev Sai Developers vs Commissioner Of Central Excise, Pune-I, Hon'ble CESTAT Mumbai** held that the appellant is small time service provider and has paid service tax liability along with interest prior to the issue of show cause notice. Therefore the provisions of Section 73(3) and 80 could have been invoked and penalty should have been waived by the adjudicating/appellate authorities.

CLEANING SERVICES OF TOILETS AND COACHES IN TRAINS NOT CONSIDERED AS BUSINESS SUPPORT SERVICE

In the case of **M/s. Foodworld Railways and Institutional Caterers vs CST., Delhi, the Hon'ble CESTAT New Delhi** held that cleaning of railway coaches and toilets and supply of bed-rolls to the passengers of AC and other coaches are not covered by Business Support Service or Business Auxiliary Service. Therefore the appellant is not liable to pay service tax.

ASSESSEE LIABLE TO WHOLE AMOUNT OF REFUND WHERE THE ASSESSEE IS NOT LIABLE TO PAY ANY TAX OR INTEREST

In the case of **Roshan R Jaiswal vs Commissioner Of Central Excise, Nagpur, the Hon'ble CESTAT Mumbai** held that where assessee is not liable to pay any service tax, then any amount deposited by the assessee whether by way of tax or interest takes the character of deposit. Hence there cannot be denial of the refund.

CENTRAL EXCISE

NOTIFICATIONS, CIRCULARS & INSTRUCTIONS

AMENDMENTS IN THE NOTIFICATION NO.12/2012-CENTRAL EXCISE, DATED THE 17TH MARCH, 2012

The Ministry of Finance vide **Notification No.24/2014–Central Excise dated 2nd December, 2014** hereby makes the following amendments to **Notification No.12/2012 dated 17th March, 2012** in the table namely:

i) in serial number 70,-
   - (a) against item (i) of column (3), for the entry in column (4), the entry " 4.95 per litre" shall be substituted
   - (b) against item (ii) of column (3), for the entry in column (4), the entry " 6.10 per litre" shall be substituted

ii) in serial number 71,-
   - (a) against item (i) of column (3), for the entry in column (4), the entry " 3.96 per litre" shall be substituted
   - (b) against item (ii) of column (3), for the entry in column (4), the entry " 6.25 per litre" shall be substituted.

EXEMPTION TO ALL GOODS FALLING UNDER THE FIRST SCHEDULE TO THE CENTRAL EXCISE TARIFF ACT, 1985 (5 OF 1986) FROM EXCISE DUTY FOR REHABILITATION OF PEOPLE IN JAMMU AND KASHMIR

The Ministry of Finance vide **Notification No.25/2014–Central Excise dated 11th December, 2014** hereby exempts all goods falling under the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) donated or purchased out of cash donations, for the relief and rehabilitation of the people affected by the floods in the State of Jammu and Kashmir from the duty of excise leviable thereon under the Central Excise Act, 1944, subject to the following conditions, namely:-

i) that it is certified by the manufacturer of such goods on the relevant clearance documents that the goods are intended to be donated for the relief and rehabilitation of the people affected by the floods in the said State free of cost;

ii) that the goods are sent directly from the factory of the manufacturer or warehouse to the Central Government, the Government of Jammu and Kashmir; or as the case may be, the relief agencies of the Central Government, the Government of Jammu and Kashmir including the relief agencies duly approved by the Central Government or the Government of Jammu and Kashmir; and

iii) that the manufacturer produces before the jurisdictional Deputy Commissioner or the Assistant Commissioner of Central Excise, as the case may be, within six months from the date of removal of the goods or within such extended period as the said officer may allow, a certificate from the District Magistrate of the affected area in the State of Jammu and Kashmir that the said goods have been donated for use for the aforesaid purpose.

This notification shall remain in force upto and inclusive of the 31st March, 2015.

EXEMPTION TO SEZ FOR THE PROCEDURE OF SERVICE TAX REFUND

The Ministry of Finance vide **Order-Instruction-Central Excise F. No. B1/6/2013-TRU dated 25th November 2014** hereby amends the procedure prescribed under Notification No. 12/2013 for proper accounting and monitoring of benefit availed by SEZ Unit and developer. It also provides that SEZ units and developer may, if they so desire, route their application for issuance of authorization by department through the specified officer of SEZ instead of submitting directly to the department.

COURT DECISIONS

HIGH COURT DECISIONS

CONSTRUCTIONS SERVICES PROVIDED BY THE APPELLANT TO THE SEZ UNITS

In the case **Commissioner vs Sobha Developers Ltd., the Hon'ble Karnataka High Court** held that in the light of the amendment of Rule 6 of CENVAT Credit Rules, 2004 and Validation Provisions in terms of the Finance Act, 2012, the construction services provided by the appellant to the SEZ units are eligible for CENVAT Credit.

LEVY OF NCCD WHILE ALLOWING AREA BASED EXEMPTION UNDER NOTIFICATION NO.50/2003

In the case of **M/s. Bajrang Petro Chemicals (P) Ltd. vs The Commissioner of Central Excise, the Hon'ble Allahabad High Court** held that since the appellant had admitted the shortage of finished goods at the time of stock checking and was unable to give any suitable explanation, it is implied that the goods found short have been removed without payment of the duty. Hence, appellant is liable to penalty as per provisions of Section 11AC and as per Rule 26.

FAILURE TO SHOW EVIDENCE THAT THE JOB WORKED GOODS WERE USED FOR DUTY PAID MANUFACTURED GOODS

In the case of **Shree Narain Metal Rolling Mills, Jagadhri vs CCE., Panchkula, the Hon'ble Punjab & Haryana High Court** held that in the absence of any evidence to show that the job worked goods were used in manufactured duty paid goods, the assessee cannot be extended the benefit of circular dated 25-3-1986.

CESTAT DECISIONS

DUTY PAID THROUGH CENVAT CREDIT ACCOUNT LATER ON PAID FROM PLA ALONG WITH INTEREST IS ENTITLED TO CENVAT CREDIT OF DUTY PAID THROUGH THE CENVAT CREDIT ACCOUNT

In the case of **Commissioner Of Central Excise & Customs, Raigad vs M/S Lime Chemicals Ltd, the Hon'ble CESTAT Mumbai** held that since the respondent has made the payment of duty through PLA along with interest which was earlier paid through CENVAT Credit account, it is entitled to avail CENVAT Credit of duty paid through CENVAT Credit account.

CENVAT CREDIT OF TRANSFERRED UNIT CANNOT BE DENIED WHEN ALL ASSETS & LIABILITIES TRANSFERRED TO ASSESSEE

In the case of **Commissioner Of Central Excise, Belapur Vs Kapoor Glass (I) Pvt Ltd, the Hon'ble CESTAT Mumbai** held that the appellant has cleared the goods from the factory and in the lorry receipts the consignee is shown as buyer and the freight is "to pay basis". The appellant recovered the cost of insurance as they insured the goods, but this does not mean that the place of removal is the customer's premises. Thus, the insurance amount cannot be included for determination of assessable value.

CENVAT CREDIT ON THE BASIS OF RECONSTITUTED BILL OF ENTRY

In the case of **Commissioner Of Central Excise, Nagpur vs ACC Ltd, the Hon'ble CESTAT Mumbai** held that where it is clear that the Customs authorities have confirmed payment of duty by the appellant at the time of import of the capital goods and, it is also not in dispute that the appellant had received the capital goods and installed and used the same in the manufacture of dutiable final products, the appellant is rightly entitled for the credit.

TAX PAID ON INPUT/INPUT SERVICES USED IN THE MANUFACTURE OF GOODS SUPPLIED TO SEZ DEVELOPERS

In the case of **Ispat Industries vs Commissioner Of Central Excise, Nagpur, the Hon'ble CESTAT Mumbai** held that tax paid on input/input services used in the manufacture of goods supplied to SEZ developers even prior to 31/12/2008 when the Rules were specifically amended, would be eligible to CENVAT Credit.

CUSTOMS

NOTIFICATIONS & CIRCULARS

EXEMPTION TO ALL GOODS FALLING UNDER THE FIRST SCHEDULE TO THE CUSTOMS TARIFF ACT, 1975 (51 OF 1975) WHEN IMPORTED INTO INDIA AND INTENDED FOR REHABILITATION OF PEOPLE IN JAMMU AND KASHMIR

The Ministry of Finance vide **Notification No.33/2014–Customs dated 11th December, 2014** hereby exempts all goods falling under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) when imported into India and intended for donation for the relief and rehabilitation of the people affected by the floods in the State of Jammu and Kashmir from –

a) the whole of the duty of customs leviable thereon under the First Schedule to the said Customs Tariff Act; and
b) the whole of additional duty of customs leviable thereon under the section 3 of the said Customs Tariff Act subject to the following conditions, namely:-
   (i) that it is certified by the importer on the relevant clearance documents that the goods are intended to be donated for the relief and rehabilitation of the

people affected by the floods in the said State free of cost;

(ii) that the said imported goods are sent to the Central Government, the Government of Jammu and Kashmir; or as the case may be, the relief agencies of the Central Government, the Government of Jammu and Kashmir including the relief agencies duly approved by the Central Government or the Government of Jammu and Kashmir for the purpose; and

(iii) that the importer produces before the Deputy Commissioner or the Assistant Commissioner of Customs, as the case may be, within six months from the date of importation of the said goods or within such extended period as the said officer may allow, a certificate from the District Magistrate of the affected area in the State of Jammu and Kashmir that the said goods have been donated for use for the aforesaid purpose.

This notification shall remain in force upto and inclusive of the 31st March, 2015.

COURT DECISIONS

SUPREME COURT DECISIONS

APPLICATION FOR WITHDRAWAL OF PETITION WHERE IT IS A PREMATURE PETITION

In the case of **Kirit Shrimankar Versus Union of India And Others, the Hon'ble Supreme Court** held that petitioners have expressed their desire to withdraw these writ petitions realizing the remote possibility of getting any relief in these writ petitions having regard to the premature stage at which this Court was approached by filing of these writ petitions. It is also clarified that whatever impediments are caused in pursuing the proceedings by the respondents pursuant to the issuance of the summons under Section 108 of the Customs Act or Section 14 of the Central Excise Act, during the period when the interim order was in operation can always be excluded for availing the statutory period available under the respective provisions of law.

CONDUCT OF ACCUSED AGAINST THE DECISION OF HIGH COURT

In the case of **R. Sreekumar Versus CESTAT, the Hon'ble Supreme Court** dismissed the appeal filed by the assessee against the decision of High Court wherein Court held that Commissioner was justified in opining that retraction was an afterthought and he did not make use of the earliest opportunity to do so when he was produced before the Magistrate concerned.

LEVY OF SAD U/S 3(5)

In the case of **Union of India vs Gujarat Ambuja Exports Ltd., the Hon'ble Supreme Court** held that any goods when imported under DEPB scheme and the customs duty or additional duty is not fully exempt, the entire amount of SAD and would have to be paid by the importer.

INCOME TAX

NOTIFICATIONS, CIRCULARS & INSTRUCTIONS

KARNATAKA ELECTRICITY REGULATORY COMMISSION NOTIFIED FOR THE PURPOSE OF CLAUSE 46 OF SECTION 10 OF INCOME TAX ACT, 1961

The CBDT vide **Notification No. 78/2014 dated the 12th December, 2014** states :

In exercise of the powers conferred by **clause (46) of section 10 of the Income-tax Act, 1961 (43 of 1961),** the Central Government hereby notifies for the purposes of the said clause, "**Karnataka Electricity Regulatory Commission**, a Commission constituted by the Government of Karnataka in respect of the following specified income arising to that Commission, namely:-

(a) amount received in the form of grants and loans from the Government of Karnataka;
(b) statutory fees;
(c) interest earned from investment

- This notification shall be applicable for the financial years 2014-2015 to 2018-2019.

- The notification shall be subject to the conditions that Karnataka Electricity Regulatory Commission:-
  (a) shall not engage in any commercial activity;
  (b) its activities and the nature of the specified income remain unchanged throughout the financial year; and
  (c) it files return of income in accordance with the provision of clause (g) of sub-section (4C) section 139 of the said Act.

PERCENTAGE OF GOVERNMENT GRANT FOR CONSIDERING UNIVERSITY, HOSPITAL ETC. AS SUBSTANTIALLY FINANCED BY THE GOVERNMENT FOR THE PURPOSES OF CLAUSE (23C) OF SECTION 10.

The CBDT vide **Notification No. 79/2014 dated the 12th December, 2014** states :

In exercise of the powers conferred by section 295 read with sub-clauses (iiiab) and (iiiac) of clause (23C) of section 10 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely:-

1. (1) These rules may be called the Income-tax (13th Amendment) Rules, 2014.
   (2) They shall come into force from the date of their publication in the Official Gazette.

2. In the Income-tax Rules, 1962, after rule 2BBA the following rule shall be inserted, namely:-

" **2BBB**. Percentage of Government Grant for considering university, hospital etc. as substantially financed by the Government for the purposes of clause (23C) of section 10.

For the purposes of sub-clauses (iiiab) and (iiiac) of clause (23C)of section 10, any university or other educational institution, hospital or other institution referred therein, shall be considered as being substantially financed by the Government for any previous year, if the Government grant to such university or other educational institution, hospital or other institution exceeds fifty percent. of the total receipts including any voluntary contributions, of such university or other educational institution, hospital or other institution, as the case may be, during the relevant previous year."

INCOME TAX DEDUCTION FROM SALARIES DURING THE FINANCIAL YEAR 2014-15 UNDER SECTION 192 OF THE INCOME-TAX ACT, 1961

The CBDT vide **Circular No-17/2014 dated the 10th December, 2014** intimates the rates of deduction of income-tax from the payment of income under the head "Salaries" during the financial year 2014-15 and explains certain related provisions of the Act and Income-tax Rules, 1962.

COURT DECISIONS

HIGH COURT DECISIONS

1. Since the assessee had received the loans through cheque and the creditors have confirmed their identity, the genuineness and creditworthiness of the transactions is thus proved by the assessee. Therefore, the assessee has complied with the provisions of section 68 and does not fall within the purview of section 69 of the Income Tax Act. *[CIT vs M/s. Mark Hospitals (P) Ltd.(Madras High Court)]*

2. Where the shares are held as long term investments, it cannot be treated as stock in trade for the assessee company. Thus it is entitled to long term capital gains and does not fall under the head income from business. Hence entitled for relief u/s 10(38). *[CIT vs M/s. Stargate Investments Pvt. Ltd.(Madras High Court)]*

3. Where the assessee is not covered by the provisions of gross receipts mentioned in section 44AD, his profits cannot be estimated as per the provisions of the said section. Thus, there may be a fall in the profit rate. Hence, the assessee is rightly entitled to claim depreciation irrespective of the gross receipts. *[CIT, Patiala vs Harbhajan Singh and Co. Sangrur.(Punjab & Haryana High Court)]*

4. Once the assessee answers the description of an industrial undertaking, it is immaterial whether it is manufacturing, or producing or processing. Hence, it becomes entitled to claim exemption u/s 80HH of the Act. *[CIT vs M/s. Shree Processors Pvt. Ltd. (Andhra Pradesh High Court)]*

5. Where the assessee is engaged in warehousing, handling and transport business and has business income derived from the same based on the profit and loss account, Object Clauses of the Memorandum of Association and the nature of business activity undertaken, the income so derived shall be taxable under business income and not under the head income from house property. *[CIT-III vs M/s. NDR Warehousing Pvt. Ltd. (Madras High Court)]*

6. Where income chargeable to tax has escaped assessment by reason of failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment for that assessment year, the assessment may be re-opened beyond a period of 4 years of the relevant assessment year irrespective of the provisions of section 147 of Income tax Act, 1961. [*M/s. Devidayal Aluminium Industries Pvt. Ltd. vs Union of India Thru. Prin. Sec. And 2 Others(Allahabad High Court)]*

7. Where deduction in respect of the borrowed funds for the purpose of business is to be allowed three conditions are required to be seen viz-a-viz Capital should be borrowed by the assessee, it must be borrowed for the purpose of business and interest must have been paid. Since the assessee company has fulfilled all the three conditions, the expenditure relatable to such an investment is allowable business expenditure u/s 36(1)(iii). [*Reliance Petro Products Pvt. Ltd. vs ACIT(Gujarat High Court)]*

8. Where the assessee exercised the option in terms of second proviso to Rule 5(1A) of the Income Tax Rules at the time of furnishing of return of income, it will suffice and no separate letter or request or intimation with regard to of exercise of option is required - Since the returns are filed in accordance with Section 139(1) of the Income Tax Act and the form prescribed make a provision for exercising an option in respect of the claim of depreciation, no separate procedure is required. *[The CIT vs Pongalur Pioneer Textiles Pvt. Ltd.(Madras High Court)]*

9. CBDT could not refute admitting belated refund claim filed by an assessee on the ground that assessee was a habitual late filer of return of income and wanted to avoid scrutiny by late filing, especially when there was no malafide intension of assessee behind late filing of return. *[Artist Tree Pvt. Ltd. vs CBDT (Bombay High Court)]*

10. Sec 271(1)(c) penalty is imposed for furnishing inaccurate particulars of income on assessee claiming loss on sale of fixed-asset as 'business loss' in original return of income where the loss was actually capital in nature and holds assessee's claim as totally baseless. "All claims or deductions wrongly made cannot be treated as bona fide and protected by Explanation 1 to section 271(1)(c) of the Act."; Moreover, subsequent act of revising return was not bona-fide or voluntary. [*CIT vs. NG Technologies Ltd(Delhi High Court)*].

ITAT DECISIONS

1. (i) Even in non-pending assessments where no incriminating material is found, AO is not limited to assessing "undisclosed" income, (ii) revenue expenditure on leased premises is not hit by sub-section (1A) to s. 32 or Explanation 1 to s. 32, (iii) Even income voluntarily disclosed in search is liable for 2. 234B/C interest. *[M/s Nandini Delux vs. ACIT (ITAT Bangalore)]*

2. Where assessee has failed to explain the cash credit for receipt of the advance against shop and no evidence can be produced by the assessee, the amount is liable to tax as the amount Is not even repaid. [*Mrs. Rati Anil Virwani Pen House vs. ACIT (ITAT Mumbai)]*

3. Where there is no reason to believe that the commission income should be treated as income from other sources and the assessee discloses the same as business income, the assessee is correct in disclosing the income. [*DCIT, Circle-1, Muzaffarnagar Versus M/s. Rana Castings (P) Ltd., M/s. Doaba Rolling Mill (P) Ltd.(ITAT Delhi)]*

4. Where there is no fault in the details and records filed by the assessee in support of the claim and the assesee has also filed the bank statements of the companies showing the transaction of payment of share premium as well as loans to the assessee, a revision order is not sustainable. *[Elder IT Solutions Pvt. Ltd. vs. CIT (ITAT Mumbai)]*

5. Section 50C of the Income Tax Act Act shows that the income under the head "capital gains" is applicable to the sale of immovable property, and not to "purchase" thereof. Therefore, the provisions of Section 50C(1) of the Act are not applicable to the case of a purchaser. *[Nitco Logistics Pvt. Ltd vs. JCIT (ITAT Amritsar)]*

6. In case of transfer pricing, when a company is functionally similar to that of the assessee company, the same cannot be excluded merely because of its turnover at a higher or lower level. [*Calibrated Healthcare Systems India Pvt. Ltd vs. ACIT (ITAT Delhi)]*

WEST BENGAL TAXES

VAT

GUJARAT VAT- A LANDMARK DECISION

HC CONCLUDES THAT ISSUANCE OF CREDIT NOTES ON QUARTERLY BASIS BASED ON POLICY PRESCRIBED FORMULA, WOULD TANTAMOUNT TO 'DISCOUNT' AND ONGC NOT LIABLE TO PAY TAX ON ORIGINAL PRICE INDICATED IN PROVISIONAL INVOICES

Credit notes issued by Oil marketing companies such as Indian Oil and Bharat Petroleum towards sale of crude, kerosene and LPG at subsidized rates to ultimate consumers is not liable to sales tax / VAT. Central Govt. empowered to fix ultimate sale price of these products to meet Constitutional obligations and sub-serve needs and welfare of citizens. ONGC acts as a tool for implementation of Govt. policies and, issuance of credit notes goes to reduce ultimate sale price to oil marketing companies, hence non-realisation of amount (equivalent to credit notes) cannot be construed as bad debts. Provisional price, less credit note amount, results in final determined price which alone is realised and would constitute turnover for customs, sales tax / VAT purpose.

DISALLOWANCE OF INPUT TAX CREDIT, REJECTION OF CLAIM FOR SALES RETURN WITHOUT ANY PROPER FINDINGS AND IMPLICATION OF PURCHASE TAX

In the case of LA- France vs Joint Commr., Sales Tax, **the the Hon'ble WBCT Appellate & Revisional Board** held that-
For ITC - the petitioner had produced separate stock registers and the RC Number of the sellers are appearing in the petitioner's purchase evidences. These evidences however do not reflect any apparent discrepancy. Hence, the petitioner's claim of input tax credit was admissible.
For Sales Return - Held that the petitioner had produced credit notes, debit notes and documents of movement of goods and the same appear to be proper. Hence, petitioner's claim for Sales return is allowable.
For Purchase Tax - The petitioner is liable to pay purchase tax on the unregistered purchases but the input tax credit on the same purchases was disallowed. Hence, the petitioner is entitled to get input tax credit of the same amount as that of the purchase tax payable on unregistered purchases.

QUERY & REPLY

QUERY- INDIRECT TAXES

We are a concern having CST purchases. In one instance we have purchased the goods which were found defective. We have the relevant invoices, waybill and the consignment note against this purchase. The requisite amount of entry tax @ 1% on the Invoice Value is also paid. After the goods have entered West Bengal, the utilisation of the waybill has been shown as on the date of entry. Now, the goods are found defective. Further to the above, we also inform you that the Excise and Sales Tax Returns are filed separately. Please advise the procedure regarding the rejection of the goods.

Name and Address Withheld

REPLY

The following procedure may be followed :

For EXCISE

1. Make a rejection note stating clearly the reasons for purchase return.
2. Make an excise invoice under rule 9 with the same figures as your purchase base amt & excise. The invoice should state clearly that it is purchase return & also give details of vendors invoice.
3. Debit your CENVAT register with the excise credit which you had previously taken. Particulars should state that it is reversal u/r 3(5) of CENVAT Credit Rules.
4. Send your invoice, purchaser's invoice & rejection note to the vendor.
5. Store with yourself your invoice, purchaser's invoice & rejection note. Take a credit note from the vendor also.
6. In the return disclose this amount as purchase return & reverse the CENVAT u/r 3(5) of CENVAT Credit Rules.

For ENTRY TAX

Deduction U/r 6(2) can be taken from turnover, i.e. entry tax previously paid will not be lost. (if 6 months have not elapsed)

For VAT/CST

As per section 44(3) of West Bengal Value Added Tax Act,2003 "*in case of goods returned or rejected, a credit note shall be issued by the dealer making the sale to the purchaser, and a debit note will be issued by the purchaser to the dealer making the sale, containing such requisite particulars as may be prescribed*:
Provided that where the goods sold or purchased in a year is returned or rejected in a subsequent year, within a period of six months from the date of sale or purchase, the credit note issued by the seller and the debit note issued by the purchaser shall be adjusted with the turnover of sales or turnover of purchases, as the case may be, in the year in which such goods are returned or rejected."
Thus with regard to the abovementioned procedure in the said section, you may proceed with the return of goods.

QUERY- FOREIGN TRADE POLICY

We are a concern importing raw materials under Advance licence. Ratio of Input / output is derived according to our actual usage. Same item is also allowed under SION. However, quantity allowed as per SION is much more than, our actual ratio. In case, we import under SION, we can get more material duty free. Also, can the excess material so obtained be used for goods for domestic clearance. Please advise, whether same is permissible in law?

Name and Address Withheld

REPLY

The import should be in accordance with the actual consumption. This licence is issued with actual user condition and thus goods can only be imported with regard to the exports. Hence, excess material are not permitted to be imported although there is no one is to one correlation.