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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SC DISCONTINUE PRACTICE OF PRINTING HARD COPIES OF JUDGMENTS

The Hon'ble Supreme Court vide **Circular F. No. 4/SG/2015 dated January 21, 2015** has decided to discontinue the practice of printing and rolling out hard copies of Judgments by the Editorial Branch of the Registry for contingent/miscellaneous requirements with effect from February 1, 2015. Previously eighty copies of Judgments used to be rolled out and printed. The number has been reduced to 14/16/18 depending upon the judgment being announced in civil/criminal or death case.

With effect from February 1, 2015 for purpose of contingent/ miscellaneous requirements, if any, all Branches of the Registry as well as officials posted at the residential offices of the Judges should download the judgments from the official website of the Supreme Court of India and accordingly shall regulate their day-to-day function.

SERVICE TAX

NOTIFICATIONS/CIRCULARS

- **Change in the Jurisdiction of Principal Commissioners of Service Tax and Central Excise**

In exercise of the powers conferred by Rule 3 of the Central Excise Rules, 2002 and Rule 3 of the Service Tax Rules, 1994, the Central Board of Excise and Customs (**"the Board"**) has issued a Notification No. 1/2015-ST dated January 20, 2015 to notify change of Territorial jurisdiction of the Principal Commissioners of Service Tax, Commissioners of Service Tax, Principal Commissioners of Central Excise and Commissioners of Central Excise.

RECENT CASE LAWS

- **Renting of a building for a hotel, is not liable to Service tax under 'Renting of immovable property' services**

Jai Mahal Hotels (P.) Ltd. Vs. Commissioner of Central Excise, Jaipur [(2015) 53 taxmann.com 206 (New Delhi - CESTAT)]

Jai Mahal Hotels (P.) Ltd. (**"the Appellant"**) entered into a joint venture agreement dated August 28, 1985 with Indian Hotels Company Limited (**"IHCL"**) for running hotel business at immovable property owned by the Appellant. The Department contended that the Appellant had provided the taxable service namely 'Renting of immovable property', defined in erstwhile Section 65(90a) read with Section 65(105)(zzzz) of the Finance Act, 1994 (**"the Finance Act"**). Accordingly, demand of Service tax along with interest and penalty was confirmed against the Appellant for the period from June, 2007 to March, 2010.

Being aggrieved, the Appellant filed an appeal before the Hon'ble CESTAT, Delhi arguing that 'hotel buildings' were not

covered under taxable service in view of the exclusion clause under Section 65(105)(zzzz) of the Finance Act and even otherwise, there was no provision of service, as there was a joint venture.

The Hon'ble CESTAT, Delhi after analyzing exclusionary and inclusionary clauses under Explanation I to the erstwhile Section 65(105)(zzzz) of the Finance Act, held that as per Explanation 1(d) to erstwhile Section 65(105)(zzzz) of the Finance Act, 'immovable property' does not include buildings used for purpose of accommodation, including hotels. Hence, buildings used for, or as, hotels do not amount to immovable property.

Therefore, renting of a building for a hotel i.e. buildings used for purpose of accommodation including hotels is covered by exclusion clause and does not fall within ambit of taxable service namely 'Renting of immovable property'.

The alternative argument of the Appellant as regards joint-venture was not discussed and the matter was decided in favour of the Appellant relying upon the provisions under Section 65(105)(zzzz) of the Finance Act.

- **Service Tax on Renting of Immovable property paid with interest – Penalty under Section 76 of the Finance Act, 1994 waived as issue was in dispute and has still not attained finality**

Shri Mahesh Vaktawarmal Rathod Vs. Commissioner Of Central Excise, Pune-III [2015-TIOL-178-CESTAT-MUM]

Shri Mahesh Vaktawarmal Rathod (**"the Appellant"**) rented out their premises to M/s Loot India Pvt. Ltd. Renting of immovable property was brought under the Service tax net under erstwhile Section 65(105)(zzzz) of the Finance Act, 1994 (**"the Finance Act"**) w.e.f. June 1, 2007. The levy was challenged by M/s Retailers Association of India and the matter travelled to the Hon'ble Supreme Court. The Hon'ble Supreme Court vide its Order dated October 14, 2011 stayed the operation of levy (only in respect of Service tax liability from June 1, 2007 to September 30, 2011) subject to certain conditions, such as payment of specified portion of the Service tax to be in installments. In the present case, the Appellant paid the Service tax on December 12, 2012 with interest and also filed the Service tax returns.

However, the Appellant was asked to deposit penalty under Section 76 of the Finance Act, which was upheld by the Ld. Commissioner (Appeals). Being aggrieved, the Appellant filed an appeal before the Hon'ble CESTAT, Mumbai.

The Appellant relying upon the decisions in ***The Agricultural Produce Market Committee Vs. Commissioner or Central Excise, Ahmedabad-III [2014-TIOL-1242-CESTAT-AHMD]*** and ***Commissioner of Service Tax, Bangalore Vs. Motor World [2012-TIOL-418-HC-KAR-ST],*** submitted that since the issue was in dispute upto the level of Supreme Court and the matter has not attained finality, there is reasonable cause for invoking Section 80

of the Finance Act and waiving the penalty under Section 76 thereof. It was further submitted that in view of the decision in the case of ***Vinayaka Securities and Detective Agency Vs. Commissioner of Central Excise [2014-TIOL-1242-HC-KAR-ST]*** (**"Vinayaka Securities"**), the Appellant are entitled to waiver of penalty under Voluntary Compliance Encouragement Scheme (**"the VCES"**) introduced in 2013.

On the other hand the Department argued that in the matter of Renting of Immovable property, penalty under Section 76 of the Finance Act could be waived under Section 80(2) of the Finance Act subject to the condition that the amount of Service tax along with interest is paid in full within a period of six months on which the Finance Bill, 2012 was passed i.e. before November 26, 2012. Inasmuch as since the tax has been paid only on December 12, 2012 the benefit is not available to the Appellant.

The Hon'ble CESTAT, Mumbai after observing provisions of Section 80(2) of the Finance Act and Circular No. 174/9/2013-ST dated November 25, 2013 (**"the VCES Circular"**) issued in respect of the VCES, held as under:

- It is evident from the VCES Circular, that normally the VCES is not applicable when the tax had already been paid before its introduction but at the same time, the Government has left a window open for taking a lenient view in the issue of penalties in some circumstances under Section 80 of the Finance Act;
- Since, in the instant case, the matter was pending in Courts and has still not attained finality, the Appellant deserves a lenient view following the judgment in the case of Vinayaka Securities.

Therefore, the Hon'ble Tribunal allowed the appeal in favour of the Appellant and waived the penalty imposed under Section 76 of the Finance Act.

➢ **Where Stay application against the Order sanctioning refund claim has been rejected, there is no reason for the Revenue to stop refund**

Madura Coats (P.) Ltd. Vs. Union of India [(2015) 53 taxmann.com 152 (Karnataka)]

During the period from September 10, 2004 to December 31, 2004, Madura Coats (P) Ltd. (**"the Petitioner"**) received certain services from abroad and paid Service tax thereon under reverse charge on January 25, 2005 on insistence of the Department.

Since the services received from abroad were not chargeable to Service tax under reverse charge prior to introduction of Section 66A of the Finance Act, 1994 (**"the Finance Act"**), the Petitioner applied for refund claim on September 26, 2005. The said refund claim was allowed by the Hon'ble Tribunal vide its Order dated June 17, 2009 which became final and binding.

Later, the Petitioner, armed with the order of the Hon'ble Tribunal, made yet another representation for refund of Rs.

15,16,992/-, whereupon the Department by letter dated August 27, 2009, directed the Petitioner to file a refund claim in Form R supported by documents. The Petitioner, by letter dated September 4, 2009, once again requested for the refund supported by documents. The Department by Order dated October 15, 2009, sanctioned the refund and credited it to the Consumer Welfare Fund on the premise of unjust enrichment. Aggrieved by this Order, the Petitioner preferred an appeal to the Commissioner (Appeals), which was allowed by Order dated December 28, 2011.

Thereafter, the Petitioner made several representations requesting for refund but the same were not responded by the Department. Nevertheless, the Department preferred an appeal before the Hon'ble CESTAT together with a Stay application. The Stay application was dismissed by Order dated September 10, 2012 but no refund was sanctioned to the Petitioner by the Department. It was argued by the Department that in the light of pendency of appeal before the Hon'ble CESTAT, the Petitioner must await the decision. Being aggrieved, the Petitioner filed a Petition before the Hon'ble High Court of Karnataka for a Writ of Mandamus directing the Department to effect payment of refund.

The Hon'ble High Court of Karnataka held that there was no reason for the Department not to effect refund. The question as to unjust enrichment is before the Tribunal and all arguments in that regard would be considered by the Tribunal. In the absence of any stay, the Department was directed to refund the amount to the Petitioner with interest at the rate of 12% per annum and not at 6% per annum as prescribed by Section 11BB of the Central Excise Act, 1944, as it is not a case of mere delay in refund.

CENTRAL EXCISE

NOTIFICATIONS/CIRCULARS /INSTRUCTIONS

- **CBEC to curb practice of its officers of issuing Excise/ ST summons in casual manner**

The Central Board of Excise and Customs (**"the Board"**) vide **Instruction F. No. 207/07/2014-CX-6 dated January 20, 2015** has issued an instruction in respect of issuance of summons in the Central Excise and Service tax matters wherein summons have been issued to the officials of the companies to enforce recovery of dues, which are under dispute.

The Board has emphasized that the summons need not to be issued always when a simple letter, politely worded, can also serve the purpose of securing documents relevant to investigation.

The Board has issued the following guidelines regarding summons matters:

1. Summons should be issued by the Superintendents with the prior approval of the officer not below the

rank of Assistant Commissioner with the reasons recorded in writing;

2. Where for operational reasons, it is not possible to obtain such prior written,oral or telephonic permission may be obtained from such officer and the same should be reduced to writing and intimated to the officer at the earliest opportunity;

3. The officer issuing summons should submit a report or should record a brief of the proceedings in the case file and submit the same to the officer who authorised the issue of summons.

4. Senior management officials such as CEO, CFO, General Managers of a large company or a PSU should not generally be issued summons at the first instance unless there are indications of their involvement in the decision making process which led to loss of revenue.

Our Comments: The Board wants strict compliance by the field officers. Non observance of the instructions will be viewed seriously but it is not a new Instruction as there are other instructions also issued around 25 years ago vide **Circular F. No 208/122/89-CX.6 dated October 13, 1989**, which states that:

"Complaints have been received from the trade that in some of the Collectorates summons under Section 14 of the Central Excises and Salt Act, 1944 are being issued to the Managing Directors and other high officers with a view to enforce recovery of dues which are under dispute. Action under this section is to be taken only as a last resort in cases where assessees are not cooperating or investigations are to be completed expeditiously. This section should not be used for harassing the top management for forcing them to pay up demands which are disputed by them. For recovery of demands normal procedure under the law should be followed.

If any instance of issue of summons to Managing Directors and other Directors without justification is noticed, a serious view will be taken by the Board. Collectors will be held personally responsible for enforcing these instructions in their charges."

Even 8 years ago vide **F. No. 137/39/2007-CX.4 dated February 26, 2007**, the Board issued some instructions on summons and firmly declared, Non-observance of these instructions would be viewed seriously.

Let's pray these instructions are religiously followed by the Revenue Officers.

RECENT CASE LAWS

- **Cenvat credit cannot be denied by holding that the activity is not 'manufacture' when the Department had accepted the Excise duty liability on final products**

Foam Techniques MFG (I) Pvt. Ltd. Vs. CCE, THANE-I [2015-TIOL-156-CESTAT-MUM]

Foam Techniques MFG (I) Pvt. Ltd.(**"the Appellant"**) was engaged in the business

of manufacture of P.U. foam sheets and availing the benefit of Cenvat credit. The Appellant had procured blocks of P.U. foam covered under Chapter Heading No. 3920 or 3921 and cut them into different sizes &shapes and the final product P.U. foam sheet covered under Chapter Heading 3926 was cleared to the customer after the payment of Excise duty (**"the activity"**).

The Department had taken a view that the activity undertaken by the Appellant does not amount to 'manufacture' and hence the availment of Cenvat credit on P.U. foam blocks was irregular. Later the Adjudicating Authority and the Commissioner (Appeals) confirmed the demand for recovery of the Cenvat credit irregularly availed along with imposition of interest and penalty.

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

The Hon'ble CESTAT, Mumbai relied upon the following case laws:

- ***CCE Surat-III Vs. Creative Enterprises [2009 (235) ELT 0785 (Guj.)]*** **further, upheld by the Hon'ble Supreme Court** ***[2009 (243) ELT A 120 (SC)]***
- **CCE, Pune-III Vs. Ajinkya Enterprises [*2013 (294) ELT 0203 (Bom.)]***

and held the following:

- Neither the Adjudication Authority nor the Appellate Authority had disputed the classification of goods during the whole process. It shows that the original inputs i.e. P.U. foam block were converted into P.U. foam sheet, indicating that the original inputs, P.U. foam block, has undergone change and is now a product other than the inputs which were procured by the Appellant;
- Since the Appellant had discharged his duty liability on the final products which they had considered as manufactured product and the Department had also accepted the same, the Appellant is rightfully entitled to avail credit.

Therefore, the Hon'ble Tribunal allowed the Cenvat credit availed by the Appellant.

➢ **Cenvat credit on Input services is available to job worker clearing the intermediate goods without payment of Excise duty in terms of Notification No. 214/86-CE dated March 25, 1986**

JBF Industries Vs. Commissioner of Central Excise & Service Tax, Vapi [(2014) 52 taxmann.com 432 (Ahmedabad - CESTAT)]

JBF Industries (**"the Appellant"**) was engaged in the manufacture of Polyester Chips, Lump Waste, and Polymer Waste falling under Chapter 39 of the Central Excise Tariff Act, 1985 and was availing Cenvat Credit on Inputs, Capital goods and Input services in terms of the Cenvat Credit Rules, 2004 (**"Credit Rules"**). The Appellant along with manufacturing activity was also doing job work activity on the raw materials received from their

own factory, located at Silvasa. In respect of job work activity, the Appellant was availing the benefit of the Notification No. 214/86-CE dated March 25, 1986 (**"Notification No. 214/86"**) and cleared the intermediates goods, without payment of Excise duty.

The Department took a view that the Cenvat credit of Service tax paid on Input services, used by the Appellant in the manufacture of goods on job work basis, exempted under Notification No. 214/86 was not admissible to the Appellant in terms of the provisions of Rule 6(1) of the Credit Rules.

Further, the Department also took a view that the Appellant had rendered Business Auxiliary Service to his own factory which was exempted under Notification No. 8/2005-ST dated March 1, 2005 and in terms of the Credit Rules, Cenvat credit on Input services used for provisioning of exempted Business Auxiliary Service was not admissible to the Appellant.

Accordingly, the Department confirmed the demand of wrongly availed Cenvat credit in respect of job work done, which was further upheld by the Adjudicating Authority. Being aggrieved, the Appellant preferred an appeal before the Hon'ble CESTAT, Ahmadabad.

The Hon'ble CESTAT, Ahmadabad relied upon the following case laws:

- ***Sterlite Industries (I) Ltd. Vs. CCE [Order No. A/1787/2004-WZB/C-I, dated 17-12-2004]***
- ***Jindal Polymers Vs. CCE [(2001) taxmann.com 1302 (CEGAT - New Delhi)]***
- ***Bajaj Tempo Ltd Vs. Collector of Central Excise [(1993) taxmann.com 475 (Mum. - CEGAT)]***
- ***Polycab Industries Vs. CCE [(2011) 33 STT 268/14 taxmann.com 175 (Ahd. - CESTAT) ("Polycab Industries")***
- ***Laakoonaa Reactions Vs. CCE [(2010) 3 taxmann.com 400 (Ahd.–CESTAT)] ("Laakoonaa Reactions")***
- ***Polyfab Industries Vs. CCE&C [Final Order No. A/302/WBZ/AHD/2009 dated January 22, 2009]***

And held that Rule 6(1) of the Credit Rules cannot be invoked for denying Cenvat credit on input services availed by the Appellant for manufacturing of job work goods cleared under Notification No. 214/86.

It was further held that the job work activity of the Appellant is amounting to manufacture and is cannot be treated as service. The Appellant cannot be a manufacturer and a service provider at the same time in relation to a particular activity. It is settled proposition in the Central Excise matters that a job worker is a 'manufacturer'.

Accordingly, the Hon'ble Tribunal set aside the order of the Adjudicating Authority and allowed the Cenvat credit availed by the Appellant in relation to job work activities.

- **On mere pendency of the proceedings before the Higher Authority, the Department cannot deny the refund and interest on delayed refund to the Assessee**

National Leather Cloth Mfg. Co. Vs. The Union of India & Others [2015 (1) TMI 944 - BOMBAY HIGH COURT]

National Leather Cloth Mfg. Co. (**"the Petitioner"**) was engaged in the manufacture of Excisable goods falling under Chapter 39, 56 and 59 of the First Schedule to the Central Excise Tariff Act, 1985. During the period January 1995 to March 1997, the Petitioner had utilized the Cenvat credit for Duty to be paid under the Additional Duties of Excise (Textile and Textile Articles) Act, 1978 of Rs. 41,01,467/- on Inputs.

The Department had taken a view that the Cenvat credit was wrongly utilized. The Petitioners deposited the above sum during the month of April and May 1997.

A Show Cause Notice was issued to the Petitioner which was adjudicated by the Commissioner of Central Excise, Mumbai and confirmed the demand of Rs. 41,01,467/- and imposed equal penalty.

Later, the Hon'ble Tribunal quashed and set aside the Order on March 12, 2004 on the ground of limitation and also set aside the penalty. Subsequently, the Petitioner filed refund application in terms of the order of the Hon'ble Tribunal but the same was rejected by the Deputy Commissioner of Central Excise on August 31, 2004. The matter again travelled to the Hon'ble Tribunal and on November 14, 2013, the Hon'ble Tribunal passed an Order and set aside the Commissioner (Appeals) Order dated May 26, 2005 and directed the authority to implement the Order of the Tribunal within 90 days of receipt.

Accordingly, refund was granted to the Petitioner of an amount Rs. 41,01,467/-, however, no interest was granted on refund amount.

The Petitioners approached to the ld. Commissioner (Appeals) who passed an Order dated August 12, 2014 and directed to pay the interest at the rate of 6% to the Petitioners from May 4, 2004 till the actual date of payment of refund of Rs.41,01,467/-.

The Petitioner was aggrieved and dissatisfied with the fact that despite such Order, the interest amount has not been paid by the Department. Being aggrieved, the petitioner filed an appeal before the Hon'ble High Court of Bombay.

The Hon'ble High Court of Bombay noted that the Department had preferred an appeal to this Court against the Order of sanctioning of refund passed by the Hon'ble Tribunal dated November 14, 2013 and further the Department had preferred another appeal to the Hon'ble Tribunal against the order of ld. Commissioner (Appeals) passed on August 12, 2014 for payment of interest on refund.

Accordingly, the Hon'ble High Court held that the law provides that in the event, amount is not paid within a specified time, then, the Department will have to pay interest, unless and until, the Department had received any preventive or prohibitory order and direction. Mere pendency of the proceeding before the Tribunal and the Court in the given facts and circumstances, would not enable the Department to deny the claim of interest.

The Department cannot refuse to release the interest to the Petitioners.

CUSTOMS

NOTIFICATIONS/CIRCULARS

➢ **Simplification of the procedure for re-export of imported goods under bonafide mistake**

As per Circular No. 100/2003–Customs dated November 11, 2003 (**"the Circular No. 100/2003"**) permission for re-export of goods that are shipped contrary to instruction of the importer has to be granted by the Commissioner of Customs.

Now, in order to simplify the procedure of re-export of imported goods, the Central Board of Excise and Customs (**"the Board"**) vide Circular No. **04/2015-Customs dated January 20, 2015** has provided the following clarifications:

- In order to simplify the procedure of re-export of imported goods, the Board has decided to delegate the powers to permit re-export to the Customs Officers in accordance with their powers of adjudication as the current procedure for allowing re-export of good is a time consuming and causes hardship to importer/airlines/consol agents;
- Furthermore, the permission for re-export may be granted on merit by the officer concerned as per the adjudication powers under Section 122 of the Customs Act, 1962;
- The Circular No. 100/2003 stands modified to the above extent.

➢ **Revision in Rate of Exchange of "Swiss Franc" for valuation of exported and imported goods**

In the exercise of the power conferred under Section 14 of the Customs Act, 1962, the Central Government vide **Notification No. 011/2015-Customs (NT) dated January 19, 2015** has revised the Rate of Exchange (**"ROE"**) of **"Swiss Franc"** applicable with effect from January 20, 2015 to determine the Assessable Value in respect of imported and exported goods.

RECENT CASE LAWS

➢ **Limitation period of 1 year in respect of SAD refund claim arising out of the Order of the Court will be computed from the date of the Order and not from the date of payment of Customs duty**

Dev International Vs. Commissioner of Customs (Import), Mumbai [2015-TIOL-155-CESTAT-MUM]

Dev International (**"the Appellant"**) imported certain goods (**"impugned goods"**) and filed two Bills of Entry, both dated July 17,2008 wherein 4% SAD, amounting to Rs.1,11,556.90 was paid. The impugned goods were detained by Central Intelligence Unit (**"CIU"**) for investigation. The Appellant approached the Hon'ble High Court of Bombay, which directed release of the impugned goods on provisional basis vide order dated March 17, 2010 and the same were released against P.D. Bond vide letter dated March 19,2010 issued by the Assistant Commissioner of Customs, CIU.

Thereafter, the Appellant sold impugned goods and filed refund claim on September 15, 2010 in terms of the Notification No. 102/2007-Customs dated September 14, 2007 ("**the Notification**") in respect of 4% SAD.

Relying on the Circular No. 06/2008-Customs dated April 28, 2008, the refund claim filed by the Appellant was rejected as the same was filed after 1 year from the date of payment of Customs duty. Later the Commissioner (Appeals) also upheld the rejection of the refund claim.

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

The Hon'ble CESTAT, Mumbai held the following:

- In the instant case, Bills of Entry were filed on July 17, 2008 and Customs duty was paid on July 18, 2008. At that time there was no time-limit provided in the Notification and the same was inserted vide Notification No. 93/2008-Customs dated August 1, 2008 (**"the Notification 93"**);

- The Hon'ble High Court of Delhi in case of ***Sony India Pvt. Ltd. [2014-TIOL-532-HC-DEL-CUS],*** has held that the amendment by the Notification 93 cannot be made applicable retrospectively;

- In the present case, it is beyond the control of the Appellant to file the refund claim within 1 year from the date of payment for the reason that the impugned goods were detained by the CIU and released after direction of the Hon'ble High Court on March 17, 2010. It is also a settled legal position that, wherever any relief arises out of the order of the Court, the period of litigation is excluded for the purpose of computation of limitation;

- In terms of Section 27(1B)(b) of the Customs Act, 1962, the Customs duty becomes refundable as a consequence of any judgment by Court, 1 (One) year shall be computed from the date of such judgment.

Therefore, the Hon'ble Tribunal decided the matter in favour of the Appellant and held that since the refund claim which arises only after the Order by the Hon'ble High Court and was filed within one year from the date of the Order of the Hon'ble High Court, the same was filed within time.

VALUE ADDED TAX

RECENT CASE LAWS

- **Providing men and materials for laying concrete mixture is to be treated as 'Works Contract' and not as 'Sale'**

Thirumalai Ready Mix Concrete Vs. State of Puducherry [(2015) 53 taxmann.com 90 (Madras)]

Thirumalai Ready Mix Concrete (**"the Appellant"**) is a manufacturer of ready mix cement concrete and also provides men and materials to lay concrete mixture on area specified by purchaser. For the Assessment Year 2003-04, the Appellant claimed exemption treating the transaction as a Works contract under Notification G. O. Ms. No. 50/90/F6, dated December 10, 1990.

The assessment made was revised by the Department stating that supply and pumping of ready mix concrete was not Works contract and entire turnover was liable to assessed to tax at 3 per cent.

The Appellant contended that the transaction is a Works contract and produced the copies of the Agreement executed between the dealer and the purchaser (**"the Agreement"**). However, the Assessing Officer rejected the contention of the Appellant by taking the view that the Appellant could not produce the invoice copy showing price of the material and labour charges separately and completed the assessment by treating the transaction as 'Sale'. Thereafter, the Assistant Commissioner also agreed with the view of the Assessing Officer and rejected the appeal filed by the Appellant.

On appeal being filed to the Hon'ble Sales Tax Appellate Tribunal, Puducherry, the Hon'ble Tribunal relying upon the decisions of the Apex Court in ***Builders Association of India Vs. Union of India [(1989) 73 STC 370 (SC)***] and ***Gannon Dunkerly & Co. Vs. State of Rajasthan [(1993) 88 STC 204 (SC)]***, after scrutiny of invoices and in view of the Agreement came to the conclusion that since the Agreement did not use the word 'Works contract', the transaction is to be treated as 'Sale'. Being aggrieved, the Appellant preferred an appeal before the Hon'ble High Court of Madras.

The Hon'ble Madras High Court in view of the nature of the work executed, the Agreement and the responsibility cast upon the Appellant on the quality, held the following:

- In terms of the Agreement, the nature of works entrusted to the Appellant is not restricted to supply of ready mix concrete mixture only. The Appellant was to provide men and materials in laying concrete mixture on the area specified by the purchaser.
- The supply had to be done through staff of the Appellant and that the Appellant was responsible for quality of the concrete and the laying also.
- In the event of any leakage arising

there from in future, the responsibility was cast upon the Appellant to compensate the same.

- The Tribunal's view that on the mere absence of the word 'Works contract' in the Agreement, the transactions have to be treated as 'Sale' is not justifiable ground.

Therefore, the Hon'ble High Court allowed the appeal in favour of the Appellant and held that the present transaction is a composite Works contract involving men and labour.

➢ **Assessee had to pay Central Sales Tax as Sale wasn't a High Seas Sale since bill of entry included his name as Importer instead of buyer's name**

Vellanki Frame Works Vs. Commercial Tax Officer, Visakhapatnam [(2015) 53 taxmann.com 382 (Andhra Pradesh)]

Vellanki Frame Works (**"the Petitioner"**) was carrying on business in the State of Andhra Pradesh. The Petitioner vide a quadri-partite Agreement between Indus Tropics Ltd. (**"Indus"**), the Petitioner, M/s. Radha Industries, Lucknow, U.P. (**"the Purchaser"** or **"Radha"**) and M/s. World Best Trading Co. (L.L.C.), Dubai (U.A.E) (**"the WBT"**), sold the goods to Radha(**"impugned sale"**). Pursuant to the quadri-partite Agreement dated January 21, 2005 and another High Sea Agreement dated December 12, 2005, Indus purchased the goods and sold them to the Petitioner, who purchased the same from Indus as the agent of Radha, and transferred the documents on high seas sale basis in favour of Radha. In turn, Radha agreed to pay the Petitioner, commission of 2% plus bank charges while the Petitioner paid the entire amount to Indus without retaining a penny as commission.

The Petitioner claimed that impugned sale was effected by transfer of documents of title before the goods had crossed the Customs frontiers of India and hence declared impugned sale as a sale in the course of import/ high sea sales and claimed exemption under Section 5(2) of the Central Sales Tax Act, 1956 (**"the CST Act"**) on the turnover of Rs. 1,14,86,342/- and Rs. 4,05,09,427/- respectively.

The Department vide assessment orders dated January 20, 2010 and May 18, 2010 for the assessment years 2005-06 and 2006-07, denied the benefit of aforesaid exemption, treating the transaction as an inter-state sale falling under Section 3(a) of the CST Act. Being aggrieved, the Petitioner filed two Writ Petitions before the Hon'ble High Court of Andhra Pradesh.

The Hon'ble High Court of Andhra Pradesh held the following:

- For a sale to be one in the course of import it has to be either one which has occasioned the import or has been affected by a transfer of documents of title to the goods before the goods have crossed the Customs frontiers of India;

- Crossing the Customs frontiers means crossing the limits of the area of the Customs station in which the imported goods or exported goods are ordinarily kept before clearance by Customs Authorities in terms of Section 2(ab) of the CST Act read with Section 2(12) and (13) of the Customs Act, 1962 (**"the Customs Act"**);

- In terms of Section 2(23) of the Customs Act, import means bringing into India from a place outside India. Further, in terms of Section 2(26) of the Customs Act, importer also include any owner or any person who holds himself out to be the importer;

- The person who holds himself out to be the importer of the goods must furnish proof of being the importer before the goods are cleared for home consumption. Since, the name of the Petitioner has been reflected in the bill of entry for ex-bond (home consumption) and not that of Radha, so the Petitioner is an importer in the instant case;

- Further, in terms of Section 2(25) of the Customs Act, imported goods means, any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption. In the instance case, impugned sale was made after the goods were cleared for home consumption, hence liable to Central Sales tax;

- Furthermore, to regulate and control on imports, the Customs Act enjoins certain liabilities on the carriers as they are required to bring in the imported cargo into the country for unloading only after furnishing detailed information to Customs in Import General Manifest (**"IGM"**). IGM *interalia* reflect the name of the importer. Hence, impugned sale is not a high seas sale;

- Either the clearing house agent or the importer can clear the imported goods for home consumption. As evident from the bill of entry, the goods were imported in the name of the Petitioner and cleared with the assistance of the customs house agent. Hence, the goods were not cleared by Radha imply that the goods were imported by the Petitioner on high seas sale but subsequent impugned sale to Radha could only have been effected after the goods had been cleared for home consumption.

- As the bill of entry records the Petitioner's name as the importer and it was he who was assessed to Customs duty and not Radha, make it ample clear that impugned sale is not a high seas sale. Impugned sale could only have been effected after the Petitioner was assessed to Customs duty and he had cleared the goods for home consumption.

Thus, the Hon'ble High Court rejected the contention of the Petitioner and held that the sale made by the Petitioner to Radha was not in course of import/ high sea

sales but was an inter-state sale, liable to Central Sales tax.

FOREIGN EXCHANGE MANAGEMENT ACT

NOTIFICATIONS/CIRCULARS

➢ **Review of Policy Framework for Overseas Direct Investments by proprietorship concern / unregistered partnership firm in India**

The Reserve Bank of India (**"RBI"**) vide **A.P. (DIR Series) Circular No. 59 dated January 22, 2015** has reviewed the policy framework for Overseas Direct Investments (**"ODI"**) by a Proprietorship and Unregistered Partnership firm in India (**"Establishments"**).

Accordingly, henceforth, the following revised terms and conditions are required to be complied with for considering the proposal of ODI, by the Establishments, by the RBI under the approval route:

- Such Establishments are classified as 'Status Holder' as per the Foreign Trade Policy issued by the Ministry of Commerce and Industry, Government of India from time to time;
- The export outstanding of such Establishments should not exceed 10% of the average export realisation of the preceding three years and a consistently high export performance;
- The Authorised Dealer bank is satisfied that the Establishments is Know Your Customer (**"KYC"**) compliant, engaged in the proposed business and has turnover as indicated;
- Establishment has not come under the adverse notice of any Government agency like the Directorate of Enforcement, Central Bureau of Investigation, Income Tax Department, etc.
- The amount of proposed investment outside India does not exceed 10 per cent of the average of last three years export realisation or 200 per cent of the net owned funds of the Establishments, whichever is lower.

➢ **Foreign Direct Investment (FDI) in India – Review of FDI policy – Sector Specific conditions - Construction Development**

The Reserve Bank of India (**"RBI"**) vide **A.P. (DIR Series) Circular No. 60 dated January 22, 2015** has invited the attention of Authorised Dealer Category - I (**"AD Category-I"**) to Annexure B of Schedule 1 to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 notified vide Notification No. FEMA 20/2000-RB dated May 3, 2000.

In terms of Schedule 1 to the Notification ibid, 100% Foreign Direct Investment (**"FDI"**) is permitted under Automatic route in Construction Development Sector subject to conditions.

The extant FDI policy for Construction Development Sector has since been reviewed and with effective from

December 3, 2014, 100% FDI under automatic route shall be permitted in respect of Construction Development Sector subject to the conditions specified in the Press Note 10 (2014 Series) dated December 3, 2014.

- **Depository Receipts Scheme, 2014**

The Reserve Bank of India (**"RBI"**)vide **A.P. (DIR Series) Circular No. 61 dated January 22, 2015** (**"the Circular"**), has issued a new scheme called 'Depository Receipts Scheme, 2014' (**"DR Scheme, 2014"**) for investments under ADR/GDR as notified by the Central Government effective from December 15, 2014 which provides for repeal of extant guidelines for Foreign Currency Convertible Bonds and Ordinary Shares (Through Depositary Receipt Mechanism) Scheme, 1993 except to the extent relating to foreign currency convertible bonds.

The salient features of the DR Scheme, 2014 notified in the Circular are mentioned below:

- The securities in which a Non Resident Indian outside India is allowed to invest under Schedule 1, 2, 2A, 3, 5 and 8 of Notification No. FEMA. 20/2000-RB dated May 3, 2000 shall be eligible securities for issue of Depository Receipts in terms of the DR Scheme 2014;

- A person will be eligible to issue or transfer eligible securities to a foreign depository for the purpose of issuance of depository receipts as provided in DR Scheme 2014;

- The aggregate of eligible securities which may be issued or transferred to foreign depositories, along with eligible securities already held by persons resident outside India, shall not exceed the limit on foreign holding of such eligible securities under the extant FEMA regulations, as amended from time to time; etc.

- **RBI permits carrying of currency notes of denomination Rs. 500/-and/or Rs. 1000/- to Nepal and Bhutan**

The Reserve Bank of India ("**RBI"**) vide **A.P. (DIR Series) Circular No. 63 dated January 22, 2015** has permitted an individual travelling from India to Nepal or Bhutan to carry currency notes of denomination Rs. 500/- and/ or Rs. 1000/- subject to a limit of Rs. 25000/-.

- **Remittance of salary outside India can be made for employees of foreign company or LLP on deputation to a group company in India**

The Reserve Bank of India (**"RBI"**) vide **A.P. (DIR Series) Circular No.62 dated January 22, 2015** has extended the availability of benefit conferred under Regulation 7(8) of Notification No. FEMA 10/2000-RB dated May 3, 2000to an Employee of foreign company or Limited Liability Partnership, who in citizen of Foreign State, and is deputed to a group company in India.

Following Benefits are now available to such Employee:

- To open, hold and maintain a foreign currency account with a bank outside India and receive the whole salary payable for the services rendered to the office/branch/subsidiary/joint venture in India of such foreign company, by credit to such account, provided that income tax chargeable under the Income Tax Act, 1961 is paid on the entire salary as accrued in India.

- To open, hold and maintain a foreign currency account with a bank outside India and remit the whole salary received in India in Indian Rupees, to such account, for the services rendered to such an Indian company, provided that income tax chargeable under the Income Tax Act, 1961 is paid on the entire salary accrued in India.

COMPANY LAW

NOTIFICATIONS/CIRCULARS

➢ **The Companies (Appointment and Qualification of Directors) Amendment Rules, 2015**

The Ministry of Corporate Affairs vide **Notification F. No. 01/9/2013-CL.V (Part-II) dated January 19, 2015** has amended the Companies (Appointment and Qualification of Directors) Rules, 2014 (**"the Rules"**).

After Rule 16 of the Rules, which requires the Director to forward the copy of resignation (**"Form DIR 11"**) within 30 days of his resignation to the Registrar of Companies, following Proviso has been inserted:

*"Provided that in case a company has already filed **Form DIR-12** with the Registrar under Rule 15, a foreign director of such company resigning from his office may authorise in writing a practising chartered accountant or cost accountant in practice or company secretary in practice or any other resident director of the company to sign **Form DIR-11** and file the same on his behalf intimating the reasons for the resignation."*

➢ **The Companies (Corporate Social Responsibility Policy) Amendment Rules, 2015**

The Ministry of Corporate Affairs vide **Notification F. No. 1/18/2013-CL- V-Part dated January 19, 2015** has brought out amendments relating to Corporate Social Responsibility (**"CSR"**) by widening the list of entities through which companies can undertake CSR activities.

Accordingly, companies can now carry on CSR activities through Section 8 company not only which is established in association with its holding or subsidiary or associate company but also with any other company and its group companies. However, participation of the company in establishment of such Section 8 company is essential, which was not the position earlier. Companies may also conduct its CSR activities through unrelated Section 8 companies, provided such company shall have an established track record of 3 years.

NEWS FLASH

- **Finance Minister Arun Jaitley gains Opposition support for Insurance, GST Bills**

The Government's floor managers, led by Finance Minister Arun Jaitley, have reached out to Opposition parties for securing their support for passing bills to replace various ordinances, issued by the Government recently, in the budget session of Parliament that begins on February 23.

According to top Government sources, Jaitley, who is also Leader of the Rajya Sabha, has been busy wooing various political parties, and has been promised support for the insurance ordinance and the GST Bill in the Upper House, where it lacks the numbers "The Opposition, including the Congress, has assured support for the GST Bill, and the ordinance on FDI in Insurance, which anyway went through the select committee earlier," said a senior minister in the Government.

Government managers are working the back channels with the Samajwadi Party, the Bahujan Samaj Party and even to a certain extent with the Left.

- **Punjab MSMEs seek speedy GST implementation**

The Micro, Small and Medium Enterprises (MSMEs) in Punjab, also considered as growth driver of the State's economy, are pinning all hopes on the Union Budget with their wish list. The industry seeks speedy implementation of Goods Service Tax (GST), higher capital limits for manufacturing and services proposed by MSME ministry, relief in Central excise duty etc.

According to data, Punjab has 160,000 working units up to 2013-14 and it is considered as backbone of the State economy.

The proposal States, similarly for micro enterprises in services sector, the investment limit in plant and machinery should be doubled from Rs 10 lakh to Rs 20 lakh, it should be raised from Rs 2 crore to Rs 5 crore for small enterprises and the limit from Rs 5 crore to Rs 10 crore for medium enterprises. In addition, the proposal also seeks relief in Excise duty as the prices of input have increased manifold leading to hike in unit cost.

- **Double taxation a headache for India's product start-ups**

India's software product start-ups plan to approach the Finance Ministry this week to get the ambiguity cleared in this Union Budget on the pending issue of whether software sold in the country should be classified as a product or service.

Tax officials have been levying both Value-added tax and Service tax on sales of software products in the country, a move that's prompting many companies to shift their registered offices overseas. Today, anything intangible is classified as a service for the purpose of levying a Direct or Indirect tax. Software products, while intangible, are not a service.

Government levy 12.36% Service tax on income of most product software, coupled with a 4-5% VAT, depending on the state. This double taxation, however, doesn't apply to MNC companies which often sell to consumers online.

A senior official with the Department of Revenue, Ministry of Finance said that the Government is looking into the matter. "There are several of legal cases going on in this matter. If software is sold in a CD, it will be counted as a product, but if it's downloaded, there is an ambiguity which is left to the discretion of the tax inspectors," he admitted.

- **Make tax evasion prosecutable offence, SIT recommends Centre**

For the first time, tax evasion may become a prosecutable offence. The Supreme Court has appointed a Special Investigation Team headed by two retired judges which has recommended the Government to make tax evasion a predicate offence under Prevention of Money Laundering Act.

Till now, tax evasion was a compoundable offence. A person caught evading tax could admit to his wrongs and pay penalty to walk free. But if it is made a prosecutable offence, he may face a jail term. The SIT told the apex court that the Central Board of Direct Taxation must take a decision on this recommendation by March 31.

However, SIT suggested that small taxpayers and salaried class be kept out of the purview of prosecution for tax evasion. It suggested that tax evasion of over Rs 50 lakhs should be made a prosecutable offence. SIT also recommended the government to impose a ceiling on holding of cash by individuals. It says no person at any point of time be allowed to possess more than Rs 15 lakh in cash.

- **Budget likely to remove Indirect tax anomalies for boost to 'Make in India'**

Finance Minister Arun Jaitley's full-fledged Budget is likely to propose a fresh round of Indirect tax reforms by removing existing anomalies such as the inverted duty structure. This is being done to boost Prime Minister Narendra Modi's 'Make in India' programme. Power generation machines, telecom equipment, and petroleum products are among the categories affected by the inverted duty structure.

However, a Finance Ministry official admitted that given the tax revenue situation, it would be challenging to remove the inverted duty structure for more sectors. In the last Budget, despite limited fiscal space, Jaitley addressed the problem of inverted duty structure in certain sectors. Expectations are that he will continue to do the same this time also.

Inverted duty structure refers to higher import duty on raw materials or intermediate goods and lower duty on finished products. This discourages domestic value addition. This inversion is not solely because of basic Customs duty,

but in some cases a result of other additional duties.

In its 2013 survey, the industry body FICCI had identified 13 sectors facing the brunt of an inverted duty structure. These included aluminium, capital goods, cement, chemicals, electronics, paper, steel, textiles and tyres.

- **Finance Minister Arun Jaitley to present Union Budget for 2015-16 on February 28**

Finance Minister Arun Jaitley will unveil the Narendra Modi Government's much-anticipated budget for the next fiscal year on February 28. The budget session of Parliament will begin on February 23, the railway budget will be presented on February 26 and the Economic Survey the next day.

The dates were decided at a meeting held by the cabinet committee on parliamentary affairs and recommended to the President. Parliament will have a special sitting on Saturday, usually a holiday, for Jaitley's first full-fledged budget. The first part of the budget session will end on March 20. The second part will commence after a month-long recess on April 20 and the session will conclude on May 8, officials said.

Parliamentary committees will examine demands for grants of various Ministries during the recess. The motion of thanks to the President's address will be debated on February 24 and 25.

The budget session is additionally significant as there will be at least eight ordinances, including those on raising the overseas investment limit in insurance and e-auctioning of coal mines, that will need to be ratified. The Government had to resort to ordinances after its legislative efforts were frustrated by opposition in the Rajya Sabha.



INDIRECT TAX CALANDER FOR THE MONTH OF FEBRUARY 2015

Due Date	Period	EVENT	FORM
Payment of Service Tax			
6th February	January, 2015	Online Payment of Service Tax by All Assessee other than Individual/ Firm	GAR-7
Payment of Excise Duty			
6th February	January, 2015	Monthly Online Payment Excise duty by All Assessee other than Small Scale Industries	GAR-7
Return under the Central Excise Act, 1944			
10th February	January, 2015	Filing of Excise Return (except SSIs and EOUs)	ER–1
10th February	January, 2015	Filing of Excise Return by EOUs	ER-2
10th February	January, 2015	Filing of Excise Return by units paying duty more than Rs. 1 crores (Cenvat + PLA) per annum.	ER-6

ABOUT US

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

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