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# *Indirect Tax and Other Laws Communique 29th April, 2015*

***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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## Central Excise

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## SERVICE TAX

## RECENT CASE LAWS

➢ **No Recovery of Service tax under Section 87 of the Finance Act without issuance of SCN under Section 73 thereof**

***Exman Security Services Pvt. Ltd. Vs. The Union of India and Others [2015 (4) TMI 396 - JHARKHAND HIGH COURT]***

A raid under Section 82 of the Finance Act was carried out in the premises of the Exman Security Services Pvt. Ltd. ("**the Petitioner**") on March 25, 2014. Statement under Section 14 of the Excise Act was recorded of the Managing Director of the Petitioner wherein it was submitted that Service tax liability of the Petitioner exist but amount calculation will be provided later. Thereafter, Petitioner *vide* letter dated April 23, 2014 provided calculation for Service tax liability of Rs. 4,45,97,399/- ("**Impugned amount**"), which was further disputed *vide* letter dated November 13, 2014 admitting the liability of Rs. 3.05 crores approximately, upon exact calculation.

Based on the letter dated April 23, 2014, the Revenue issued Recovery Notice under Section 87 of the Finance Act for Impugned amount and confirm the demand *vide* order dated August 11, 2014 ("**Recovery Order**"). Later, pursuant to Section 73(1) of the Finance Act, the Revenue issued demand-cum-SCN dated October 17, 2014 of Rs. 6,58,90,037/-, for the period 2009-10 to 2013-14. Albeit, the Petitioner submitted the reply but the Revenue has not decided the matter raised in the SCN.

Therefore, the Petitioner filed a writ Petition before the Hon'ble Jharkhand High Court challenging the Recovery Order dated August 11, 2014.

The Hon'ble Jharkhand High Court allowed the writ petition in favour of the Petitioner and held that no recovery of Service tax under Section 87 of the Finance Act without issuance of SCN under Section 73 thereof with the following observations:

- Small error committed by the Petitioner in writing cannot be encashed by the Revenue, specially when the Petitioner is handicapped as several registers having details of the accounts were seized during the raid;

- Calculation mistake may occur in the absence of documents. Further, mistake was corrected by the Petitioner and the Revenue was informed. Hence, burden of proof cannot be shifted and the Revenue cannot issue SCN under Section 87 of the Finance Act;

- Burden of proof that liability exist is on Revenue;

- Both SCN under Section 87 of the Finance Act and Section 73(1) cannot be issued together;

- SCN dated October 17, 2014 raised demand amounting to Rs. 6,58,90,037/- which includes Impugned amount;

- Rs. 3.21 crore was deposited by the Petitioner towards the liability reveals that he is bonafide;

- Reliance was placed in case of ***Technomaint Contractors Pvt. Ltd Vs. Union of India [(2014) 69 VST 247 (Guj)]***, wherein the Hon'ble Gujarat High Court held that Notice under Section 87 of the Finance Act cannot be given by the Revenue, unless, there is determination of the amount, after issuance of the notice under Section 73 (1) or under Section 73A(1) thereof;

- Reliance was placed in case of ***R.V. Man Power Solution Vs. Commr. of Cus. and Central Excise [(2014) 69 VST 528 (Uttarakhand)]***, wherein the Hon'ble High Court of Uttarakhand held that "*any amount payable*" in Section 87 of the Finance Act means that amount adjudged after hearing the SCN and Section 87 thereof is one of the methods of recovery of the amount due and payable after adjudication is done;

- Directed to adjudicated the SCN as early as possible and practicable;

**Our Comments:**

Here, it would not be out of place to mention that *vide* Union Budget 2015, Section 73 of the Finance Act has been amended to insert a new sub-section (1B) to provide that the Service tax amount self-assessed and declared in the return but not paid (either in part or full) shall be recovered under Section 87 thereof, without Service of any notice under Section 73(1) thereof.

Further, Rule 6(6A) of the Service Tax Rules, which provides for recovery of Service tax self-assessed under Section 70(1) of the Finance Act but not paid, either in full or part, the same shall be recoverable along with interest in the manner prescribed under Section 87 thereof is being omitted consequent to the amendment in Section 73 for enabling such recovery.

In the light of the above amendments brought in by Union Budget 2015, with effect from the date on which the Finance Bill, 2015, receives the assent of the President, recovery proceedings under Section 87 of the Finance Act can be initiated even without issuance of SCN under Section 73 thereof.

➢ **No Mandatory Pre-deposit for pursuing the Appellate remedy before the CESTAT as right of appeal for any case instituted prior to August 6, 2014 and such case is governed by the law prevailing at the date of institution of the suit or proceeding**

***Muthoot Finance Ltd. Vs. Union of India And Others [2015 (3) TMI 634 - KERALA HIGH COURT]***

Issue involved in this case was whether

the Muthoot Finance Ltd. **("the Petitioner")** would have to deposit the amount of 7.5% of the tax confirmed, as a condition for pursuing the Appellate remedy before the Hon'ble Tribunal.

It was held by the Hon'ble High Court of Kerala that:

> *"the institution of a suit carries with it an implication that all rights of appeal then in force are preserved to the parties thereto till the rest of the career of the suit and, further, that the right of appeal that is vested is to be governed by the law prevailing at the date of institution of the suit or proceeding, and not by the law that prevails at the date of its decision or at the date of filing of the appeal……… ……..the petitioner, in whose case also the lis commenced in 2012, would not be required to deposit the amount of 7.5%, as required pursuant to the 2014 amendment, and in that respect, he would have an efficacious alternate remedy before the Tribunal where he can file an appeal, together with an application for waiver of pre-deposit and stay of recovery of the amounts confirmed against him. …………………. if the petitioner prefers a duly constituted appeal under the provisions of the Finance Act, 1994, as they stood prior to 6.08.2014, then the Appellate Tribunal shall number the Appeal, and consider the application filed by the petitioner for waiver of pre-deposit and stay of recovery of the amounts confirmed against him by … order, on merits, and thereafter, proceed to hear the appeal itself in due course. The petitioner shall file the appeal, together with the application for waiver of pre-deposit and stay, before the Appellate Tribunal on or before 31.03.2015. I record …… that, till 31.03.2015, no steps for recovery of the amounts no steps for recovery of the amounts confirmed against the petitioner by Ext.P8 order will be either initiated or pursued by the respondents.*
>
> *The writ petition is disposed as above"*.

**<u>Our Comments:</u>**

The above judgment is providing relief for not making mandatory pre-deposit in terms of Section 35F of the Excise Act (Reproduced here in below) for any case instituted and lis commenced prior to August 6, 2014.The relevant extract of Section 35F of the Excise Act (with effect from August 6, 2014) is reproduced as under:

> *"35F. The Tribunal or the Commissioner (Appeals), as the case may be, shall not entertain any appeal—*
>
> *(i) under sub-section (1) of section 35, unless the appellant has deposited seven and a half per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute-in pursuance of a decision or an order passed by an officer of Central Excise lower in rank*

*than the Commissioner of Central Excise;*

*(ii) against the decision or order referred to in clause (a) of sub-section (1) of section 35B, unless the appellant has deposited seven and a half per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against;*

*(iii) against the decision or order referred to in clause (b) of sub-section (1) of section 35B, unless the appellant has deposited ten per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against:*

*Provided that the amount required to be deposited under this section shall not exceed rupees ten crores:*

*Provided further that the provisions of this section shall not apply to the stay applications and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014."*

- **Service Provider and Service Receiver must act in harmony for filling Refund claim of Service tax paid on non-taxable Service**

***Srinivasa Enterprises Vs. Office of the Joint Commissioner of Commercial Taxes, Bangalore [2015] 56 taxmann.com 143 (Karnataka)***

Facts of the case are that, Srinivasa Enterprises **("the Petitioner" or "the Assessee")** rented out its property to State VAT Department and collected Service tax thereon and paid same to Service Tax Department. Later on, the Assessee and State VAT Department came to know that renting of immovable property to State Government (VAT Department) was not taxable. Therefore, VAT Department issued letter to the Assessee deducting wrong payment of Service tax from out of rent payable to Assessee and advising Assessee to file refund claim. Assessee argued that Service recipient viz. VAT Department should file refund claim for Service tax wrongly paid by it. While, VAT Department submitted that since Service tax was paid by the Assessee, refund claim should be filed by the Assessee and it would co-operate with the Assessee.

The Hon'ble Karnataka High Court held that both the Assessee and VAT Department shall make appropriate representation addressed to Service Tax Department and Service tax would be refunded, if it is found to have been wrongly paid.

## CENTRAL EXCISE

## RECENT CASE LAWS

- **No Penalty on wrongful availment of Cenvat Credit in absence of intention to evade duty**

***Commissioner of Central Excise, Bangalore Vs. Flextronics Technologies (India) (P.) Ltd. [(2015) 56 taxmann.com 26 (Karnataka)]***

Issue involved in the instant case was, whether penalty under Rule 15(2) of the Credit Rules/ Rule 13 of the Credit Rules, 2002 and Section 11AC of the Excise Act is leviable, when the Department denied the irregular Cenvat credit taken by Flextronics Technologies (India) (P.) Ltd. (“**the Respondent” or “the Assessee”)** after audit was conducted at their premises.

Whereas the Respondent argued that ineligible credit was not utilized and there was no intention to evade.

The Hon’ble Tribunal set aside the penalty imposed and held that there was no intention on the part of the Respondent to evade payment of duty. Being aggrieved, the Department preferred an appeal before the Hon’ble High Court of Karnataka.

The Hon’ble Karnataka High Court upheld the order of the Hon’ble Tribunal with the observation that as apparent from the record the Respondent had availed the wrong credit in their account but has not utilized the same and after being pointed out by the Department; the same was reversed by the Respondent.

Further, to attract penalty under Section 11AC of the Excise Act, the Revenue has to prove that the Assessee has availed Cenvat credit wrongly by reason of fraud or collusion or any wilful misstatement or suppression of facts, which is not forthcoming in the instant case. Hence, the Hon’ble Tribunal has rightly held that there was no intention on the part of the Respondent to evade payment of duty and the Respondent had not utilized the amount credited.

- **Coating an uncoated paper and writing paper does not amount to manufacture, as no distinct article with different character or use has emerged**

***Commissioner of Central Excise, Jaipur Vs. Pitamber Coated Paper Ltd. [2015 (4) TMI 567 - SUPREME COURT]***

Pitamber Coated Paper Ltd. **(“the Respondent”)** is engaged in the manufacture of coated and uncoated paper falling under Chapter 48 of the Schedule to the Excise Tariff Act. The Respondent clear coated paper (“**Final Product**”) at nil rate of duty in terms of Notification No.3/2001-CE dated March 1, 2001 as amended. Further, uncoated paper and paper board manufactured by the Respondent are captively consumed for the manufacture of Final Product. The Revenue contended that, since the Final Product is nil rated, the Respondent is not eligible for exemption under Notification No.67/95-CE dated March 16, 1995 (“**Exemption Notification**”). Accordingly, Show Cause Notices were issued and the Hon’ble Commissioner confirmed the Excise duty demand along with penalty. Being aggrieved, the Respondent preferred an appeal before the Hon'ble Tribunal.

The Hon'ble Tribunal relying upon the judgment in case of ***CCE Vs. Shree Vindhya Paper Mills*** set aside the order passed by the Hon'ble Commissioner and found that on coating uncoated paper, an article with different name commercially may have emerged but it is not a distinct article with different character or use and therefore no manufacturing process was involved when uncoated printing and writing paper is coated. Reason being, the uncoated paper emerges at one stage of the manufacturing process of coated paper.

Further, the Exemption Notification grants exemption from payment of duty on paper and paper board articles made therefrom upto clearance of 3500 Mts. When the same is manufactured from the stage of pulp and using non-conventional raw material. The objective is apparently to promote use of non-conventional raw material in making paper, paperboard and articles of paper and paperboard.

Being, aggrieved, the Revenue preferred an appeal before the Hon'ble Supreme Court.

The Hon'ble Supreme Court upheld the order of the Hon'ble Tribunal and observed that the conclusion of the

Hon'ble Tribunal is legally sustainable and there is no error in the view taken by the Hon'ble Tribunal.

- **Sales tax portion collected but not paid to State Government on account of incentive scheme will form part of the transaction value of excisable goods after July 1,2000**

***Commissioner of Central Excise, Jaipur Vs. Shree Rajasthan Syntex Ltd. & Others [2015 (4) TMI 350 - SUPREME COURT]***

Shree Rajasthan Syntex Ltd. & Others **("the Respondent")** is engaged in the manufacture of yarn and waste of the man-made fiber and availing Sales tax exemption under the Sales Tax Incentive Scheme of 1989 ("**the Scheme**") on the yarn and waste, as issued by the State of Rajasthan. In terms of the Scheme, the Respondent pay only 25% of the Sales tax collected to the State Government. The Revenue issued a SCN alleging that for the period November 1996 to July, 2001, the Excise Duty was payable on 75% of the amount of Sales tax collected but not paid to State Government and the Commissioner confirmed the demand along with penalty. Even, penalty was levied on the individual officers of the Respondent.

Being aggrieved, the Respondent preferred an appeal before the Hon'ble CEGAT, who set aside the order of the Hon'ble Commissioner. Aggrieved by the order of the Hon'ble CEGAT, the Revenue preferred an appeal before the Hon'ble Supreme Court.

The Hon'ble Supreme Court relying on the decision in case of ***Commissioner of***

***Central Excise, Jaipur II Vs. Super Syncotex (India Ltd.)[2014 301 ELT 273 (S.C.)]***, held that after July 1, 2000, Sales tax portion collected but not paid to State Government on account of incentive scheme will form part of the transaction value of excisable goods and observed that:

- The Valuation of the Excisable goods has to be in terms of Section 4 of the Excise Act which was amended with effect from July 1, 2000.
- Prior to July 1, 2000, the Assessee would be entitled to claim deductions towards both Sales tax amount paid and retained from the Assessable value, which in the instant case is 75% of the Sales tax amount. Accordingly, the Respondent will not be liable to pay any Excise duty on the Sales tax amount which was retained under the Incentive Scheme
- On and from July 1, 2000, the transaction value shall include the Sales tax amount retained by the Assessee i.e., 75% of the Sales tax amount in the present case.
- Extended period of limitation is applicable in the present case
- Order of the Commissioner is confirmed except the penalty is set aside as interpretation of law exist in the instant case.

**Our Comments:** Valuation of Excisable goods for purpose of charging of Excise duty under Section 4 of the Excise Act was substituted *vide* 45/2000-CE (NT) dated June 30, 2000 with effect from July 1, 2000, which *interalia* provide definition of transaction value as:

> *"(d) transaction value means the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of, the assessee, by reason of, or in connection with the sale, whether payable at the time of the sale or at any other time, including, but not limited to, any amount charged for, or to make provision for, advertising or publicity, marketing and selling organization expenses, storage, outward handling, servicing, warranty, commission or any other matter but does not include the amount of duty of excise, sales tax and other taxes, if any,* ***actually paid or actually payable*** *on such goods;*

The phrase "*actually paid or actually payable*" clarifies that Sales tax will be allowed as deduction when actually paid or payable.

## CUSTOMS

## NOTIFICATIONS/CIRCULARS

- **Extension of Anti-Dumping Duty on Barium Carbonate originating in, or exported from, People's Republic of China**

The Central Government *vide* ***Notification No. 15/2015-Customs (ADD) dated April 22, 2015*** has amended Notification No. 6/2011-Customs, dated February 7, 2011, which imposes anti - dumping duty on Barium Carbonate, falling under Tariff Item 2836 60 00 of the First Schedule to the Customs Tariff Act, originating in, or exported from, People s Republic of China. The amendment results in imposition of aforesaid Anti Dumping Duty from the date of imposition of the provisional anti-dumping duty i.e., March 23, 2010 till March 22, 2016, unless revoked earlier.

- **Extension of Anti-Dumping Duty on Acetone originating in, or exported from, Japan and Thailand**

The Central Government *vide* ***Notification No. 16/2015-Customs (ADD) dated April 22, 2015*** has amended Notification No. 36/2011-Customs, dated April 18, 2011, which imposes anti-dumping duty on Acetone, falling under Tariff Item 2914 11 00 of the First Schedule to the Customs Tariff Act, originating in, or exported from, Japan and Thailand. The amendment results in imposition of aforesaid Anti-Dumping Duty from the date of imposition of the provisional anti-dumping duty i.e., April 9, 2010 till April 8, 2016, unless revoked earlier.

## RECENT CASE LAWS

- **Refund amount must be shown as receivable to satisfy the Bar of Unjust Enrichment**

***Ispat Industries Ltd. Vs. Commissioner of Customs (Prev), Mumbai [2015-TIOL-614-CESTAT-MUM]***

Ispat Industries Ltd. **(“the Appellant”)** is an importer of bulk quantity of iron ore pellets, coke and other raw material through the Dharamtar port. Due to inadequate draft at times, the mother vessel is unable to reach the jetty and has to discharge cargo at Bombay Floating Light, from where daughter vessel carried the cargo upto the jetty at Dharamtar. Therefore, an issue crop up that whether the expenses incurred for carrying the goods discharged at Bombay Floating Light to Dharamtar jetty through barge/daughter vessel (“**Barge charges**”) were includible in the assessable value for the purpose of calculating Customs duty, being cost of transportation.

The Hon’ble Tribunal held that Barge charges are not includible in the assessable value of the imported goods. Being aggrieved the Revenue preferred an appeal before the Hon'ble Apex Court. Apposite to mention that, during the pendency of the appeal, the Appellant was compelled to pay duty on Barge charges and the Appellant paid the same under protest.

The Hon’ble Supreme Court held that the Barge charges were not includible in the assessable value of imported goods and the amount collected by Revenue as Barge charges needs to be refunded along with interest.

Being aggrieved, the Revenue filed a review petition which was dismissed and also filed a curative petition which was also dismissed.

Based on the Hon'ble Apex Court decision, the Appellant filed refund claim of the amounts paid towards Customs duty on barge and stevedoring charges which was sought to be denied by issuance of the SCN. The Appellant in reply to the SCN *interalia* submits that as the refund claim pertains to the period from 1994-95 to 2005-06 therefore, the provisions of bar of unjust enrichment are not applicable for the period prior to July 13, 2006. The Asst. Commissioner sanctioned the refund claims along with interest ("**Order 1**"). Order 1 was reviewed and an appeal was filed before the Commissioner (Appeals) on the various grounds apart from the issue of unjust enrichment. The Hon'ble Commissioner (A) allowed the appeal in favour of the Revenue. Being aggrieved the Appellant preferred an appeal before the Hon'ble Tribunal.

The Hon'ble CESTAT, Mumbai allowed the appeal by Majority Order being passed in favour of the Revenue. The Hon'ble Tribunal held that refund amount must be shown as receivable to satisfy the Bar of Unjust Enrichment .

- **Exemption from CVD cannot be denied on not fulfilling the condition that Cenvat Credit not taken, when the Credit itself was not admissible**

***SRF Ltd. Vs. Commissioner Of Customs, Chennai [2015-TIOL-74-SC-CUS]***

SRF Ltd. ("**the Appellant**") imported Nylon Filament Yarn of 210 deniers falling under Chapter 54 of the Customs Tariff Act, 1975 and claimed nil rate of additional duty of Customs/ Countervailing Duty ("**CVD**") by virtue of Serial No. 122 of Notification No. 6/2002-CE dated March 1, 2002 ("**the Notification**"). The Deputy Commissioner of Customs denied the benefit of the Notification on the account of non fulfillment of that condition that, no Cenvat credit under Rule 3 or Rule 11 of the Credit Rules, 2002 has been taken in respect of the inputs or capital goods used in the manufacture of Nylon Filament Yarn or polypropylene multifilament yarn of 210 deniers with tolerance of 6 per cent.

Being aggrieved, the Appellant preferred an appeal before the Hon'ble Commissioner (Appeals) who confirmed the order of the Deputy Commissioner of Customs.

Thereafter, the Appellant preferred appeal before CEGAT who had also, affirmed the order of the Authorities below. Hence, the Appellant preferred an appeal before the Hon'ble Supreme Court.

The Hon'ble Supreme Court took reliance on the decision in case of ***AIDEK Tourism Services Private Limited Vs. Commissioner of Customs, New Delhi***

***[2015-TIOL-23-SC-CUS]*** *read with* ***Thermax Private Limited Vs. Collector of Customs (Bombay), New Customs House [2002-TIOL-683-SC-CUS-LB],*** wherein it was held that:

*"15. The ratio of the aforesaid judgment in Thermax Private Limited (supra) was relied upon by this Court in Hyderabad Industries Ltd. (supra) while interpreting Section 3(1) of the Tariff Act itself; albeit in somewhat different context. However, the manner in which the issue was dealt with lends support to the case of the assessee herein. In that case, the court noted that Section 3(1) of the Tariff Act provides for levy of an additional duty. The duty is, in other words, in addition to the customs duty leviable under Section 12 of the Customs Act read with Section 2 of the Tariff Act. The explanation to Section 3 has two limbs. The first limb clarifies that the duty chargeable under Section 3(1) would be the excise duty for the time being leviable on a like article if produced or manufactured in India.*

*The condition precedent for levy of additional duty thus contemplated by the explanation deals with the situation where 'a like article is not so produced or manufactured'. The use of the word 'so' implies that the production or manufacture referred to in the second limb is relatable to the use of that expression in the first limb which is of a like article being produced or manufactured in India.*

*The words 'if produced or manufactured in India' do not mean that the like article should be actually produced or manufactured in India. As per the explanation if an imported article is one which has been manufactured or produced, then it must be presumed, for the purpose of Section 3(1), that such an article can likewise be manufactured or produced in India. For the purpose of attracting additional duty under Section 3 on the import of a manufactured or produced article the actual manufacture or production of a like article in India is not necessary. For quantification of additional duty in such a case, it has to be imagined that the article imported had been manufactured or produced in India and then to see what amount of excise duty was leviable thereon"*

Hence, based on the aforesaid judgment and facts of the instant case, the Hon'ble Supreme Court allowed the appeal in favour of the Appellant and held that the Appellant is entitled to exemption from payment of CVD in terms of the Notification.

## VALUE ADDED TAX

## RECENT CASE LAWS

- **Unless substantiated that freight charges was reimbursed, the freight is part of the turnover and Sales tax is leviable on freight charges**

***Indian Oil Corporation Ltd**. **Vs. Asst. Commissioner Of Commercial Tax Special Circle, Rajasthan, Jaipur [2015-TIOL-900-HC-RAJ-CT]***

Indian Oil Corporation Ltd. ("**the Petitioner**") is a Public Sector Undertaking of the Union of India. During the Assessment Year 1999-2000, 2006-07, 2007-08, 2008-09 and 2009-10 ("**Impugned period**"), the Petitioner has sold diesel to the Railways. The diesel was delivered by Road through containers by the Petitioner to the Railways at the delivery point. The Revenue alleged that such freight charges by road, should be included as part of the sales turnover and therefore confirm the Sales tax demand.

Being aggrieved the Petitioner preferred an appeal before the Deputy Commissioner (Appeals) who upheld the order of the Assessing officer with the observation that under Section 2(36) of the Rajasthan Sales Tax Act, the Petitioner was unable to satisfy that the freight charges were separately reimbursed, the freight was part of the bill amount.

Being aggrieved, the Petitioner preferred an appeal before the Hon'ble Rajasthan Tax Board ("**the Board**").

The Board held that lack of evidence exist to proof that freight charged separately was reimbursed, hence freight charges forms part of sales turnover and is exigible to Sales tax, *interalia* observed that:

- In terms of the Agreement entered into between the Petitioner and the Railways ("**the Agreement**"), the sale price of the Diesel consideration will be ex-depot price plus delivery charges / octroi / local levies / Surcharges, Transportation charges at actual Sales Tax and any other levy as applicable from time to time. Further, the Petitioner shall be responsible & liable for any shortage, damages or deterioration to the consignment in transit if the same is to be carried in their own or contractor's truck's/tank lorries to the destination station. Therefore, sale price of the petroleum products includes the actual delivery charges, freight and the transit risk of the goods is upon the Petitioner. Hence, the amount received by the Petitioner from the purchasers towards delivery charges and freight falls within the definition of Sec. 2(36) of the Act.

- The Petitioner was unable to submit evidence to proof that the freight charges are being borne separately by the Railways.

- Reliance is placed in case of ***Hindustan Sugar Mills Ltd. Vs. State of Raj. & ors. [(1979) 43 STC 13(SC)],*** wherein it was observed that freight charges will not form part of sales turnover only if the cost of freight is separately charged. Further, where the cost of freight is part of the price but the dealer chooses to split up the price and claim the amount of freight as a separate item in the invoice, then the same will form part of Sale price.

- Reliance was also placed in case of ***India Meters Limited Vs. State of Tamil Nadu [2010-TIOL-69-SC-CT],*** wherein the it was held that when transfer of the property or the goods is at the place of the buyer to which the seller is under obligation to transport the goods, the freight and insurance charges form part of the sale price.

Being aggrieved, the Appellant preferred appeal before the Hon'ble Rajasthan High Court who upheld the order of the Board and decided against the Appellant.

## FOREIGN TRADE POLICY

### NOTIFICATIONS/ CIRCULARS/TRADE NOTICE

- **Export Policy of Sugar Amended**

In exercise of the powers conferred by Section 5 of the Foreign Trade (Development & Regulation) Act, 1992 read with Para 1.02 of the Foreign Trade Policy, 2015-2020, the Central Government *vide* **Notification No 3 /2015-2020 dated April 20,2015** amend Schedule 2 of ITC(HS) Classification of Export and Import Items in Chapter 17.

Thereby, Export of Preferential Quota sugar to EU and USA has been moved from "STE" to "Free" regime subject to the conditions indicated in Nature of Restrictions.

- **Prescribed visiting hours for non officials/ Members of trade for meetings with officials at DGFT Headquarters**

Ministry of Commerce & Industry *vide* ***Trade Notice No. 1/2015 dated April 20, 2015*** in order to streamline the procedure for interaction has prescribed visiting hours between 3 P.M. - 5 P.M. each working day for meetings of officials at DGFT Headquarters with non officials/ Members of Trade.

Fixation of prior appointment and knowing the specific issues proposed to be discussed in advance would enable the officers working in DGFT Headquarters to prepare beforehand for the meeting and also inform the prospective visitors of their pre-occupation (if any) enabling alternative appointment. Hence, save time of the visitors who otherwise have to waste their time waiting for a particular officer when such an officer may be pre-occupied elsewhere or be on tour or on leave.

## FOREIGN EXCHANGE MANAGEMENT ACT

### NOTIFICATIONS/ CIRCULARS /PRESS NOTE

- **Policy on foreign investment in the Pension Sector - addition of paragraph**

## 6.2.17.9 of 'Consolidated FDI Policy Circular of 2014'

Ministry of Commerce & Industry *vide* ***Press Note No. 4 (2015 Series) dated April 24,2015*** announced that in pursuance of enactment of Insurance Regulatory & Development Authority Act, 2013 Government subject to certain conditions permit Foreign Direct Investment in the Pension Sector with the upper cap of 49%, of which 26% is under Automatic route and rest is under Government route.

# NEWS FLASH

- **Only a part of service may be taxed under GST regime**

A feared surge in service tax when the GST is rolled out may be mitigated to some extent. Worried about a potential backlash, both the Centre and the States want to rein in any such increase, perhaps by taxing only a part of the service.

Service tax will be subsumed into GST. "If we raise it suddenly, there will be backlash — we are aware of that problem. The States are also aware of that problem," a State Finance Minister said, adding that a decision on this will be made by the proposed GST Council that will oversee the levy's operation.

In the last round of discussions involving the Centre and the States, the GST rate- or the revenue neutral rate-was pegged at 25-26 per cent. That's a rise of more than 10 percentage points in the service tax rate, which was increased to 14 per cent in the February budget from 12.36 per cent as part of a plan to gradually raise the tax level. The revenue neutral rate is that at which there is no loss of tax revenue to either the States or the Centre.

Service tax is fastest growing among all Central levies. Its share in gross tax revenue has risen to more than 14 per cent from less than 8 per cent in 2006-07. There is no similar worry about a possible spike when it comes to goods as excise and value added tax (VAT) will add up to a levy that's close to the GST rate. In fact, tax on many goods could decline.

One way of keeping tax low is to provide an abatement, which means only a percentage of the entire amount is taxed. Abatement usually works on the principle that it compensates for levies already paid and the mechanism helps avoid cascading of tax, or tax on tax. For instance, in the case of the railways, service tax is levied on 40 per cent of the value of the ticket.

The Government also feels the GST rate could be lower than what was estimated earlier for two reasons. One, tobacco and alcohol have been kept out of GST. This means that the states will continue to get VAT while the Centre gets excise on the two items.

Apart from this, an additional 1 per cent tax on the supply of goods will be valid for two years. The two together will mean that the revenue neutral rate will be lower than what was calculated earlier. "The rate has to be reworked," the official said.

- **PM Narendra Modi to inaugurate global exhibition on services on April 23**

In an effort to give a thrust to services exports, India is organising a global exhibition on services that will see participation from sixty countries including Pakistan, Australia, US, Russia and Germany in New Delhi.

The BJP Government aims to encourage services sector, running simultaneous with the Make in India campaign to revive manufacturing in the economy. The Commerce and Industry Minister, Shri. Nirmala Sitharaman said "This shows that we are not forgetting about services at the time of Make In India,". He also expressed that while manufacturing is important so is services that have inherently been India's strength. The global exhibition in services (GES) will be an annual event. The first edition will be inaugurated by Prime Minister, Shri. Narendra Modi. It is pitched to serve as a platform for extensive business networking, joint ventures, exchange of ideas, brand visibility and exploration of newer revenue models according to the Government. The three-day exhibition is being jointly organised by the Department of Commerce, services exports promotion council and industry body CII.

With a 3.2 per cent global share, India has a trade surplus in services as against a large deficit in merchandize trade. India's services exports stood at $151 bn in 2014-15. The Commerce Secretary, Shri. Rajeev Kher said that "Services trade helps us in neutralising the imbalance of merchandise trade". Of the 60 countries, 39 will set up their stalls while the rest will get their delegations.

The nine sectors in the exhibition include IT & telecom, tourism, media and entertainment, healthcare, logistics, professional services (including project exports and banking & financial services, education, R & D) and the small & medium enterprises engaged in services.

While IT/ITES has been supporting the services exports, Government wants other sectors to start contributing as well. In the five year foreign trade policy announced early this month, services exports from India scheme was extended to close to 80 sectors in the form of duty credit scrips. About 10 economic Ministers from participating countries, including Australian Trade Minister Andrew Robb, Bangladesh Commerce Minister Tofail Ahmed, Nepal's Commerce Minister Sunil Bahadur Thapa and Irish Minister for Jobs, Enterprise and Innovation Richard Bruton.

- **Finance Minister Arun Jaitley to meet State Finance Ministers on GST roadmap**

Hon'ble Finance Minister, Shri. Arun Jaitley will meet State Finance Ministers to discuss the road map for rolling out Goods and Services Tax (GST) from April 2016. The Government expects the bill to be passed as most States are now on board. The Government has assured States that any revenue loss to them will be adequately compensated.

A new revenue neutral rate, the rate at which both States and Centre do not make a loss when GST is rolled out, also needs to be fixed. It is likely to come below the 26-27 per cent seen earlier because alcohol and tobacco have been kept out.

The Centre will collect excise on these while States will levy VAT and to that extent the revenue neutral rate will be lower.

- **GST Bill in Parliament soon, broad consensus among States: FM Arun Jaitley**

The Government is set to move the GST Constitution Amendment Bill (“**the GST Bill**”), for passage soon even as some States raised issues over compensation, making a determined push toward the much delayed indirect tax reform that it plans to roll out from April 1, 2016.

Hon’ble Finance Minister after a meeting with the members of the Empowered Committee of State Finance Ministers, was "quite optimistic" about the implementation of GST by April 1, 2016 and has expressed that "In view of the near unanimous support of States, that it is going to be a win-win situation for all, we will go ahead with the Constitution amendment in the current session of Parliament". He also expressed that the GST is expected to add 1-2 per cent to the GDP by creating a national market for goods and removing distortions caused by multiple indirect taxes levied by the Centre, States and local bodies.

A constitutional amendment is needed to facilitate GST as States currently do not have powers to tax services while the Centre cannot levy sales tax. GST is a combined levy that will replace most of the indirect taxes levied by the States.

The Constitution will have to be amended also to give concurrent taxing powers to the Centre and the States to make laws for levying goods and services tax on every transaction of supply of goods or services or both.

The Empowered Committee Chairman and Kerala Finance Minister KM Mani said there was broad consensus on the bill. "There is general consensus regarding GST implementation. Most of the States welcome it because there is only advantage in passing the GST bill".

- **GST Bill in current form not acceptable: Tamil Nadu**

Expressing its opposition to the GST Constitution Amendment Bill (“**the GST Bill**”), the Minister for Commercial Taxes and Registration, Tamil Nadu express his concern on the Centre's proposal for resolving issues concerning new indirect tax regime through a GST Council.

Hon'ble Minister expressed that during the meeting(s) of the Empowered Committee of State Finance Ministers wherein Union Finance Minister was also present, Tamil Nadu has always oppose the idea of constitutional status to the GST Council as it would impact the autonomy of states in fiscal matters.

Hon'ble Minister also expressed his concern that petrol and petroleum products should be kept outside the purview of the GST in order to protect the fiscal capacity of the states and enabling provision should be made in the GST legislation to allow states to levy higher taxes on tobacco and tobacco products, similar to what has been permitted to the Centre. Moreover, he also expressed that the methodology and the period of compensation to be provided to the State Government by the Central Government should also be included in the GST Bill.

- **Make compensation mandatory against losses in GST: Haryana Government**

In the meeting of the Empowered Committee of State Finance Ministers with the Hon'ble Finance Minister, the Haryana Finance Minister Capt Abhimanyu, has expressed concern over Clause 19 of the 122nd Constitutional Amendment Bill, 2014 introduced in Parliament for compensation to States for loss of revenue on account of introduction of Goods and Services Tax (GST) whereby the Clause has been worded in a manner that the Centre may not be obliged to pay the compensation because the word 'may' used in this clause is not obligatory and binding on the Central Government to compensate the losses in the GST regime. He insist that the 'may' needs to be substituted with the word 'shall' to make it mandatory for the Central Government to compensate States for the losses in the GST regime.

Moreover, he also suggested the Hon'ble Finance Minister that a new entry may be included in the List II-State List in the 7th Schedule to the Constitution of India which would provide taxation powers to these States, enable the Food Grain producing States to levy tax on food grains and to sustain their contribution to national food grains pool, provide adequate support to farmers and also protect their revenues on a permanent basis without distorting the GST structure.

- **Government tables GST Bill in Lok Sabha amid protests**

Hon'ble Finance Minister, Arun Jaitley while introducing the Goods and Services Tax Bill ("**the GST Bill**") in the Lok Sabha for consideration has exhorted all sections of the House to jointly back the bill by citing how GST could offer a 'win-win' situation for the states in earning more revenues and by showcasing the legislature "as the best example of co-operative federalism on display," Almost the entire Opposition raised technical objections and insisted that the GST bill should be referred to the Standing Committee and staging a walkout in the Lok Sabha.

The GST Bill that requires two-thirds support in both the Houses and with Opposition Parties including Government friendly parties AIADM and BJD are demanding that the Bill should be refer to Standing Committee it would difficult for the Government to pass through the GST Bill in both the Houses, though the Government has exuded confidence in its ability to push the bill through in both Houses.

- **FIEO sees sharp drop in exports, seeks Government support**

The Federation of Indian Export Organisations ("**the FIEO**") has expressed concern for the sharp fall in shipments from India in April and in the coming months. The FIEO has expressed that Government should immediate re-introduction of the interest subvention scheme for exporters, expedite reimbursement of tax refunds and restore export incentives for both merchandise and services to help exporters overcome so as to give boost the exporter's.

The exporter's lobby has given a representation to the Commerce Secretary and the Director General of Foreign Trade, so as to re-classify tax incentive scheme for merchandise trade and to include of 70 more sectors in the scheme for services.

The Government announced tax incentives under the Merchandise Exports from India Scheme and the Services Exports from India Scheme, be a positive move in this regard as this will enable exporters to transfer duty credit scrips with reward rates ranging between 2% and 5%. Moreover, Exporters can use these scrips to offset service tax, excise duty or Customs duty.

- **Firms to file single return for 8 labour laws tomorrow onwards**

Government has launched a scheme under which firms can file a single online common return on Shram Suvidha portal to comply with eight central labour laws, a move which would improve ease of doing business and reduce transaction costs.

Labour Ministry has developed a unified web-portal 'Shram Suvidha Portal', catering to four major Organisations under it -- Office of Chief Labour Commissioner (Central), Directorate General of Mines Safety, Employees' Provident Fund Organization and Employees' State Insurance Corporation.

## INDIRECT TAX CALENDER FOR THE MONTH OF APRIL/ MAY, 2015

| Due Date | Period | EVENT | FORM |
|---|---|---|---|
| **Payment of Service Tax** | | | |
| 6th May | Apr-15 | Online Payment of Service Tax by All Assessee other than Individual/ Firm | GAR-7 |
| **Payment of Excise Duty** | | | |
| 6th May | Apr-15 | Online Payment of Excise duty by All Assessee other than SSI Unit | GAR-7 |
| **Return under the Central Excise Act, 1944** | | | |
| | | | |
| 30th April | April 2014 to March 2015 | All assessee except the manufacturer of Biris and Matches without aid of power and reinforced of cement concrete pipes | ER – 7 |
| 10th May | Apr-15 | Filing of Excise Return (except SSIs and EOUs) | ER–1 |
| 10th May | Apr-15 | Filing of Excise Return by 100% EOUs | ER-2 |
| 10th May | Apr-15 | Filing of detail of receipt and consumption of principal inputs and finished excisable goods by units paying duty more than Rs. 1 crores (Cenvat + PLA) | ER-6 |

| Glossary | |
|---|---|
| Finance Act, 1994 | **Finance Act** |
| Service Tax (Determination of Value) Rules, 2006 | **Service Tax Valuation Rules** |
| Service Tax Rules, 1994 | **Service Tax Rules** |
| Show Cause Notice | **SCN** |
| Central Excise Act, 1944 | **Excise Act** |
| Central Excise Tariff Act, 1985 | **Excise Tariff Act** |
| Central Excise Rules, 2002 | **Excise Rules** |
| Customs Act, 1962 | **Customs Act** |
| Customs Tariff Act, 1975 | **Customs Tariff Act** |
| Cenvat Credit Rules, 2004 | **Credit Rules** |
| Cenvat Credit Rules, 2002 | **Credit Rules, 2002** |
| Central Board of Excise and Customs | **CBEC** |
| Goods and Services Tax | **GST** |
| Ministry of Corporate Affairs | **MCA** |
| Value Added Tax | **VAT** |

## 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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