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EDITORIAL

Friends,

In a recently published article, The Chief Economic Advisor Mr Arvind Subramanian has criticized the proposal to impose a 1% levy over the GST. "Think of a good going from Gujarat to Tamil Nadu, crossing four states. The good would embody an additional tax of about 4-5 %, because it is 1% levy in every state. That might make it easier to import into Tamil Nadu from Bangkok!!" he said,

This has opened up our eyes on what GST has in store for Industry. While the benefits of GST and its impact on the GDP of the country is evident, yet the inflationary effect it would have is a matter of concern for trade & industry. It is expected that the first draft of the legislation would be out in June.

It is imperative that Trade & Industry should start preparing for GST. One would not have forgotten as yet that Industry had only around 15 days to prepare for VAT!!

In fact, a two-fold strategy may be adopted by Trade & Industry in Indirect Taxes as of now –

1. Due to the highly litigative nature of Indirect Taxes, Industry should try to prevent litigation and the consequent penalties.
2. Start preparing for GST, especially in as far as the Information Technology Systems are concerned.

Like every year, we are conducting a 1 day workshop on Indirect Taxes where we would discuss the above issues in detail.

By 5th June, we, in The Bengal Chamber of Commerce are making representations to The Finance Ministry regarding various issues on GST. Please do mail to us any issues regarding GST from your Trade & Industry. We shall include the same in our representation also.

On a different note, professionals are now being hauled up by courts for a variety of reasons including seeking adjournments on filmsy grounds, under preparation for proceedings, using forceful language, etc. Friends, in this era of change, it is more important than ever that we as professionals technically equip and update ourselves thoroughly and within the timelines so that our profession retains the gravity it has always done.

May we reiterate that we remain available for a discussion over mail or over a telecon!

DUE DATE	COMPLIANCES
06-June-15	**Online Payment** of Service Tax for the month of May.,2015
07-June-15	Payment of TDS/TCS
07-June-15	Submission of Form No. 15G, 15H and 27C received in May. to IT Commissioner
10-June-15	ER1, ER2, ER6 Return for May,2015
10-June-15	West Bengal Sales Tax TDS Payment for the month of May.,2015
15-June-15	Provident Fund e-Payment for May,2015 (Cheque to be cleared by 20th)
15-June-15	Payment of Advance Tax: Companies- 15%.
21-June-15	West Bengal VAT/CST/ Entry Tax/ Professional Tax Payment for May, 2015
21-June-15	Payment of ESI for the month of May.,2015
25-June-15	West Bengal Sales Tax TDS Certificate Issue for the month of May, 2015
30-June-15	Return by Banks for interest upto Rs.10000 for March Quarter (Form No. 26QAA).
30-June-15	**Extended Due Date to file WB PT Return for 2014-15**

Truly Yours

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

VivekJalan
***FCA, CIDT(ICAI),* B.Com**

SEMINAR ON GOODS & SERVICE TAX

10.30 a.m. onwards, 18th June, 2015
The Bengal Chamber of Commerce and Industry
Royal Exchange, 6,Netaji Subhas Road, Kolkata 700001

The Indirect Taxes Committee of The Bengal Chamber of Commerce and Industry is organizing a Seminar on Goods and Service Tax from 10.30 a.m. on 18th June, 2015 in the Chamber.

The Seminar will cover critical issues of Service Tax like **Preparedness for GST, New Amendments under the Finance Act, 2015, CENVAT Credit / Reverse Charge, Service Tax on Real Estate Transactions, and Works Contract Service.** The programme schedule with names of speakers is enclosed for your kind reference.

We do hope that the programme will be relevant to you. You may please also nominate suitable representatives to attend the programme. For the purposes of registration, please email the enclosed Ready Reply Form, suitably filled in, to sarbani@bengalchamber.com

The participation fees (inclusive of taxes) are Rs 3500/- for members of The Bengal Chamber; Rs 4000/- for the non-members. A discount of 10% is applicable for a group registration on 4 or more participants registering from the same organization. An early bird discount of 10% is also available for registrations before 31st May 2015.

Following is the Tentative Programme:

TIMING	EVENT	CONDUCTED BY
10.30 a.m. – 11.00 a.m.	**Registration**	
11.00 a.m. – 11.05 a.m.	**Welcome Address**	**The Bengal Chamber of Commerce & Industry**
11.05 a.m. – 11.15 a.m.	**Keynote Address**	**Shri Partha Roy Choudhury, Commissioner of Service Tax, Kolkata**
11.15 a.m. – 11.30 a.m.	**Inaugural Address**	**Dr. Gautam Ray, Chief Commissioner of Customs, Central Excise and Service Tax, Kolkata**
11.30 a.m. – 11.45 a.m.	**Special Address**	**Shri Satish Chandra, Member Secretary, Empowered Committee of State Finance, Ministers & Director GSTN**
11.45 a.m. – 11.50 a.m.	**Vote of Thanks**	**The Bengal Chamber of Commerce & Industry**
11.50 a.m. – 12.00 p.m.	**Tea Break**	
12.00 p.m. – 12.45 p.m.	**Technical Session I: Preparedness for GST**	**Mr. T B Chatterjee, Chairperson, Indirect Taxes Committee The Bengal Chamber of Commerce and Industry & Chief Corporate Officer, Legal and Corporate Affairs, DIC India Ltd**
12.45 a.m. – 1.30 p.m.	**Technical Session II: New Amendments under the Finance Act, 2015**	**Mr. P K Saha Partner - Tax & Regulatory Services, Price Waterhouse & Co. LLP**
1.30 p.m. – 2.00 p.m.	**Lunch**	
2.00 p.m. – 2.40 p.m.	**Technical Session III: Cenvat Credit / Reverse Charge**	**MR. M S Mani, Senior Director, Deloitte Touche Tohmatsu India Private Limited**
2.40 p.m. – 3.20 p.m.	**Technical Session IV: Preventing Litigation, Handling SCN, Penalties and Prosecution in Service Tax**	**Mr. Vivek Jalan, FCA JAV & Associates, Chartered Accountants**
3.20 p.m. – 4.00 p.m.	**Technical Session V: Service Tax on Real Estate Transactions**	**Mr. Arun Agarwal-FCA K N Jain & Co**
4.00 p.m. – 4.40 p.m.	**Technical Session VI: Works Contract Service**	**Mr Sushil Kumar Goyal Agrawal Singhania & Co**

SERVICE TAX

NOTIFICATIONS & CIRCULARS

MEGA EXEMPTION

The **MOF vide Notification 12/2015 dated 30th April 2015** has made amendments to Notification No.25/2012 dated 20th June 2012. The following are the amendments:

1.) Service Tax on services of Life Insurance business provided under:
   a) Pradhan Mantri Jeevan Jyoti Bima Yojana (PMJJBY)
   b) Pradhan Mantri Jan DhanYojana (PMJDY)
   c) Pradhan Mantri Suraksha Bima Yojana (PMSBY)

have been exempted.

2.) Service tax on services by way of collection of contribution under Atal Pension Yojana (APY) has been exempted.

OUR COMMENTS: The above mentioned services are now covered by the List of services under Mega Exemption and hence service tax on all such services shall be exempted.

The **MOF** vide **Notification No 17/2015-ST dated 19th May 2015** hereby exempts taxable services provided under the Power System Development Fund Scheme of the Ministry of Power from the whole of the service tax leviable thereon by way of:

A) re-gasification of Liquefied Natural Gas imported by the Gas Authority of India Limited (GAIL);
B) transportation of the incremental Re-gasified Liquefied Natural Gas (RLNG) (e-bid RLNG) to the power generating companies or plants as specified in the Annexure-I and Annexure -II to this notification

subject to the conditions mentioned therein.

Please refer the annexures attached and the conditions mentioned in the notification for further information.

OUR COMMENTS: Provided that the exemption shall not be available if such Re-gasified Liquefied Natural Gas (RLNG) and Liquefied Natural Gas (LNG), is used for generation of electrical energy by captive generating plant as defined in section 2(8) of the Electricity Act, 2003 (36 of 2003). Provided further that nothing contained in this notification shall apply on or after the 1st day of April, 2017.

FURTHER UPDATES

Vide **Notifications 13/2015-ST, 14/2015-ST, 15/2015-ST and 16/2015-ST dated 19th May 2015,** the **Central Govt.** has made several changes which shall be applicable from **1st June, 2015**, which mainly relate to **'Rate of Tax'** and **'Services'**. The same are listed as under:

1. Service Tax rate will be 14%.

Consequential impact shall also effect the composite rate of tax payable in case of:
   a) Air Travel Agent Services
   b) Services of an Insurer
   c) Money Changing Services
   d) Lottery Distributor / Selling Agent Services

2. No more Education Cess and Secondary & Higher Education Cess will be applicable.

3. ‘Admission to entertainment events or access to amusement facility’ are out of Service Tax net by virtue of the negative list entry [Section 66D(j)]. This entry will be omitted from the negative list and such services shall be taxable.

   However, the following exemptions will be applicable vide entry 47 of Mega Exemption Notification No. 25/2012-ST (as amended):

   Services by way of right to admission to:

   (i) exhibition of cinematographic film, circus, dance or theatrical performances including drama or ballet,
   (ii) recognized sporting events;
   (iii) award function, concert, pageant, musical performance or any sporting event other than a recognized sporting event, where the consideration for admission is not more than Rs.500 per person.

4. Service tax will be levied on contract manufacturing/job work for production of potable liquor. Further, intermediate process for production of alcoholic liquor for human consumption shall also be taxable.

5. Although betting, gambling and lottery will continue to be covered by the negative list entry [Section 66D(i)]; Services provided by a lottery distributor or selling agent in relation to promotion, marketing, organising, selling of lottery or facilitating in organizing lottery of any kind will be taxable.

Other Changes

1.) Services by foreman of a chit fund are taxable with effect from 14.05.2015.

2.) Date of applicability of Service Tax on 'any service' instead of only 'support services' provided by the Government to a business entity is kept in abeyance.

Date of applicability and extent of Swachh Bharat Cess is not yet notified.

COURT DECISIONS

SUPREME COURT DECISION

M/S. COAL HANDLERS PRIVATE LIMITED V/S COMMISSIONER OF CENTRAL EXCISE, RANGE KOLKATA – I

BRIEF: The assessee is providing certain services as Agent to M/s. Gujarat Ambuja Cements Limited and M/s. Ambuja Cements Eastern Limited. Under this Agency agreement, the appellant was required to undertake the following activities:

1. **following up the allotment of coal rakes by the Railways;**
2. **expediting and supervising the loading and labelling of rail wagons;**
3. **drawing the samples of coal loaded on the wagons;**
4. **complying with the formalities relating to payments for freight to the Railways; and**
5. **dispatching of rail receipts to Ambuja companies**

The issue that arose for consideration was as to whether aforesaid services were liable to service tax under the provisions of the Act under the category C&F Agent.

OUR COMMENTS: In the above case, the **Hon'ble Supreme Court** held that in order to qualify as a C&F Agent, such a person is to be found to be engaged in providing any service connected with 'clearing and forwarding operations'. There was no role of the appellant in getting the coal cleared from the collieries/ supplier of the coal and the movement of the coal was under the contract of sale between the coal company and Ambuja Companies. The primary job of the appellant is to see whether the material required by the Ambuja companies is loaded as per their schedule and to dispatch the coal to the factories. The appellant need not even be instructed as to the destination of the delivery which is already fixed as per the contract. Hence, the services rendered by the appellant would not qualify as C&F Agent within the meaning of Section 65(25) of the Act. **[Decided in favour of assessee]**

HIGH COURT DECISIONS

M/S. SREE ANNAPOORNA HOSPITALITY SERVICES PVT. LTD V/S THE COMMISSIONER OF CUSTOMS CENTRAL EXCISE AND SERVICE TAX (Madras HC)

BRIEF: The assessee is providing services of out-door catering services to various customers including institutional customers such as M/s. Lakshmi Machine Works Ltd., M/s. Hindustan Photo Films, ,etc. on mutually agreed terms. In the course of their business, the Audit Team of the Dept. sent them a letter dated 03.04.2013 with regard to split up cost of materials and services. Further, a SCN dated 20.09.2013 was issued to the assessee proposing the differential service tax on Out Door Catering Services for the period from 01.04.2008 to 31.03.2012 under proviso to sub-section (1) of Section 73 of Finance Act, 1994. The assessee sent their reply dated 16.12.2013 to the SCN and also attended personal hearing held on 21.04.2014 and opted Notifications as regards sale of ingredients. However, the adjudicating authority held that the assessee is not eligible for the benefit of Notification No.12/2003-ST and impugned order dated 26.12.2014 has been passed. Aggrieved by the same, the present writ petition is filed.

OUR COMMENTS: In the above case**, the Hon'ble Madras High Court** held that whether the assessee was eligible for the benefit of Notification No.12/2003-ST was a disputed question of fact and the same could be raised before the CESTAT as the assessee had the remedy of filing the appeal against the order. However, there was no violation of the principles of natural justice and the order had been passed following the procedure stipulated in Finance Act 1994. Hence, the petitioner was bound to pay 7.5% of the service tax demand at the time of filing the appeal before the CESTAT, and it could not be reduced by the Court.**[Decided against assessee]**

M/S. DREAM CASTLE V/S COMMISSIONER OF CENTRAL EXCISE (Madras HC)

BRIEF: The assessee is a proprietary concern engaged in the business of real estate consultancy and agency. It is registered under the relevant service tax regulations and pays service tax on the services rendered by it. Its proprietor is a partner in M/s. RJK Investments, a firm, which entered into an agreement with M/s. DLF Home Development Ltd., a company for arranging the purchase of a large tract of land in Tamil Nadu. The petitioner was authorized as partner of the firm to collect the monies

from DLF and to disburse the same to the land owners, the agents or RJK Investments itself. According to the petitioner, the respondent has held that the entire amount received by the petitioner, even though it was disbursed to third parties and the petitioner has acted as a mere agent for payment of funds to the identified parties, is liable to service tax.

OUR COMMENTS: In the above case, the **Hon'ble Madras High Court** held that on verification of the invoices, it was clear that the assessee had received commission from the nominees of DLF. The assessee had wilfully suppressed important facts of the case (adopting a double set of invoice system to mislead the government). Thus, there was a malafide intention to evade payment of service tax. Hence, the assessee was liable to pay the entire amount of service tax along with interest and, penalty u/s 77 and 78. **[Decided against assessee]**

THE COMMISSIONER OF CENTRAL EXCISE SERVICE TAX & CUSTOMS, BANGALORE (ADJUDICATION), THE COMMISSIONER OF SERVICE TAX V/S M/S. PNB METLIFE INDIA INSURANCE CO. LTD. (Karnataka HC)

BRIEF: The assessee is engaged in, and licensed to carry on Life Insurance business. It had procured reinsurance service from overseas Insurance companies and had availed CENVAT credit of Service Tax paid on such re-insurance services received by it. However, the Cenvat Credit was disallowed holding that re-insurance takes place only after the insurance business is affected. Thus, a demand of service tax and interest along with penalty u/s 78 was ordered.

OUR COMMENTS: In the above case, the **Hon'ble Karnataka High Court** held that the process of issuance of an Insurance Policy by the Insurer and subsequent procurement of re-insurance policy from another company is an integral part of the total process. The re-insurance is a statutory obligation and it has a direct nexus with the output service. if the entire Service Tax which is collected by the Insurer, while selling its insurance policies, has to be deposited without being given the credit of the tax which is paid by it while procuring a policy of reinsurance as the same would amount to double taxation. **[Decided against Revenue]**

THE COMMISSIONER OF CENTRAL EXCISE, CENTRAL EXCISE COMMISSIONERATE V/S M/S. JOE TRANSPORT, CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL (Madras HC)

BRIEF: The following substantial questions of law need proper consideration:

1.) **When there is wilful suppression of facts with intent to evade service tax, can penalty u/s 78 already imposed be set aside by the CESTAT?**
2.) **Whether there is always a need to impose penalty u/s 78 where the demand of service tax is held to be sustainable for extended period in terms of proviso to Section 73 (1) of the Act?**

OUR COMMENTS: In the above case, the **Hon'ble Madras High Court** held that even when penalty u/s 76 was imposed, penalty u/s 78 was also imposable in contrary to the decision passed by the CESTAT. The imposition of penalty is mandatory and is not at the discretion of the authority. Hence, the Hon'ble CESTAT had arrived at an erroneous conclusion by setting aside the penalty and the penalty was lawfully maintainable. Following the decision of **Dhandayuthapani Canteen Vs CESTAT (Madras HC-2015)**. **[Decided in favour of Revenue]**

GAYATRI LAND LOSSERS MAJOOR SAHAKARI MANDLI LTD & 1 V/S UNION OF INDIA & 3(Gujarat HC)

BRIEF: The petitioner is a Society of the Members- Land Loosers Farmers who have belatedly filed the appeal. The Tribunal rejected the delay condonation application by impugned order by observing that the petitioner has not given any justifiable reason for filing the appeal belatedly.

OUR COMMENTS: In the above case, the **Hon'ble Gujarat High Court** held that it was true that the appellant ought to have and/or could have submitted elaborate reasons to justify the reason for filing the appeal belatedly. However, considering the fact that the petitioner original appellant is a Society of the Members- Land Loosers Farmers and as such, there do not appear to be any mala fide intention in not filing the appeal within the period of limitation and/or filing the appeal belatedly.
The Registry has also been directed to pay/return the amount of Rs.20,000 earlier deposited by the petitioner. **[Delay condoned-Decided in favour of assessee]**

Same Decision was passed by the Gujarat High Court in the case of LUVARA LAND LOOSERS SAHAKARI MANDALI LTD & 1 V/S UNION OF INDIA & 3.

THE COMMISSIONER OF SERVICE TAX V/S M/S TANDUS FLOORING INDIA PVT LTD (Karnataka HC)

BRIEF: The respondent M/s. Tandus Flooring India Pvt. Ltd., is a wholly owned Indian subsidiary of M/s. Tandus Flooring Asia Pte Ltd., Singapore, which is a leading manufacturer of floor covering products. The respondent-Company was set up with the objective of strengthening and enhancing sales of its products to the Indian customers. It is to provide marketing and sales support for the distribution of floor covering or carpet manufactured

outside India and sold to the customers in India by M/s. Tandus Flooring U.S. located in USA and M/s. Tandus Flooring China, located in China. Here two questions need to be answered:

1. **What would be the place of provision of the marketing and support services provided by Tandus India to Tandus US and Tandus China in terms of the Place of Provision of Service Rules 2012?**
2. **Whether the marketing and support services provided by Tandus India to Tandus US and Tandus China would qualify as export of taxable services under Rule 6A of the Service Tax Rules, 1994?**

OUR COMMENTS: In the above case, the **Hon'ble Karnataka High Court** states that AAR had earlier held that service is not taxable in India. Accordingly no interference is called for with the order of the Authority which is impugned in this writ petition. All relevant material and circulars were placed before the Authority and the questions raised were answered in favour of the assessee on merits and also on the basis of the concession given by the Commissioner that the case of the respondent-Company was covered by the Circular of the Department dated 24.02.2009. The Commissioner cannot be permitted to now turn around and challenge the said order which was passed by the Authority on the basis of his own statement. Even on merits, what is being canvassed before this Court in the writ petition is something which was not raised before the Authority. **[Decided against Revenue]**

M/S. SUNDARAM INDUSTRIES LTD. (RUBBER FACTORY) V/S THE DEPARTMENT OF CENTRAL EXCISE(Madras HC)

BRIEF: This Writ Petition has been filed challenging the impugned communication dated 01.04.2015 issued by the respondent and consequential direction to the respondent to refund the sum of Rs.15,00,000.00 (Rupees Fifteen Lakhs only) towards the payments wrongly made by the petitioner in Assessee Code AABCS5320JXM001 or in the alternative to allow credit of the payment in Assessee Code AABCS5320JXM001 or in the alternative to allow credit of the payment in favour of the petitioner.

OUR COMMENTS: In the above case, the **Hon'ble Madras High Court** held that while making e-payment, the petitioner company has wrongly mentioned its assessee code as AABCS5320JXM001 instead of AABCS5320HXM001 wherein one letter viz., "J" has been wrongly mentioned instead of "H". Therefore, the department has given credit of the said amount from the company which has the assessee code as AABCS5320JXM001 which is not in existence as of now. Apart from that, admittedly, the petitioner has made the payment twice. In view of the above said position, the petitioner is entitled to get refund of the payment wrongly made on 06.11.2014. **[Decided in favour of assessee]**

AJAY KUMAR GUPTA V/S CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL AND ANOTHER (Punjab & Haryana HC)

BRIEF: The appellant provides liaisoning and consultancy services. He had raised three invoices dated 29.03.2008 with service tax element of Rs.6,52,207/-. He deposited the service tax on 15.11.2008 and was issued SCN on 24.06.2009 that he had deposited the service tax late and not deposited the interest due. Accordingly penal provisions u/s 76 & 78 were also invoked.

OUR COMMENTS: In the above case, the **Hon'ble Punjab & Haryana High Court** held that the taxability of the abovementioned service came in the gamut of service tax only from 01.09.2009. Once the service tax was not leviable under Section 68 at that point of time, the penalty u/s 76 could not be levied. The liability was only to deposit the tax under Section 73A(2), which has been done on 15.11.2008, after delay, but due to the service not being taxable at the relevant time when the invoices were raised, penalty u/s 78 could not be invoked. Therefore, there is no suppression of facts.**[Decided in favour of assessee]**

CESTAT DECISIONS

ALARSIN V/S COMMISSIONER OF CENTRAL EXCISE, MUMBAI-I(CESTAT Mumbai)

BRIEF: The appellant has two units, one is at Udhna in Gujarat and one in Mumbai. Gujarat Marketing Agency has provided the services of Business Auxiliary Services for the products manufactured in Gujarat as well as in Mumbai. It is also undisputed that the goods were being manufactured and cleared from Udhana, Gujarat as well as Mumbai. It is the case of the Revenue that service tax paid on the services rendered for the marketing of the produced goods in Gujarat needs to be denied proportionately. Both the lower authorities recorded their findings that the appellant could not have utilized CENVAT credit at Mumbai for the products manufactured and cleared from Gujarat. The lower authorities have also held that marketing services are not interconnected with the manufacturing of the goods.

OUR COMMENTS: In the above case, the **Hon'ble CESTAT Mumbai** held that CENVAT Credit availed on the service tax paid by the service provider is not in dispute and the services were rendered to the appellant. When there was no dispute as regards the services received by the appellant for the activity and service tax liability having been discharged by the service provider, omission to take registration as an Input Service Distributor was to be considered as procedure irregularity. Hence the impugned order was set aside. Following the decision in the cases of **Mangalore Refinery and Petrochemicals (CESTAT**

Bangalore) and Market Creators Ltd. (CESTAT Ahmedabad) [Decided in favour of assessee]

INDIAN OXALATE LTD V/S COMMISSIONER OF CENTRAL EXCISE, KOLHAPUR (CESTAT Mumbai)

BRIEF: The appellant availed taxable services for supply of their goods to the consignee. They paid the freight to the transporter and took the reimbursement of transportation expenses from the consignee. The demand of service tax was confirmed by the adjudicating authority on the ground that as per Rule 2(1)(d)(v) of the Service Tax Rules, 1994, the service tax is liable to be paid by the consignor or the consignee who pays or liable to pay the freight. In the present case, admittedly the freight was paid by the appellant though subsequently they have taken the reimbursement from the consignee. The appellant preferred an appeal before the Commissioner (Appeals) who upheld the demand of service tax and penalties u/ss 77 & 78 of the Finance Act.

OUR COMMENTS: In the above case**,** the **Hon'ble CESTAT Mumbai** held that it was an undisputed fact that the GTA services were provided by the transporter for transportation of the goods to the appellant through its consignee. For the said GTA services it was the appellant who has paid the freight to the transporter. It was held that if the person is covered under the category (a) to (g) of clause (v) of Rule 2(1)(d) and if that person pays the freight towards the GTA services, then it is he who is liable to discharge the service tax. Following the decision of **Essar Logistics [CESTAT Ahmedabad-2014]**. **[Decided against assessee]**

JANATA SAHAKARI BANK LTD V/S COMMISSIONER OF CENTRAL EXCISE, PUNE-III(CESTAT Mumbai)

BRIEF: The appellant is engaged in providing services under the category of Banking and other Financial Services. During scrutiny it was observed that appellant had received commission amounting to Rs.8,35,348/- during the period April 2004 to September 2007 for disbursement of Govt. teachers salary. Revenue authorities entertained a belief that the said commission which is received by the appellant was covered under the category of Business Auxiliary Services. A SCN was issued demanding service tax and interest along with penalties.

OUR COMMENTS: In the above case, the **Hon'ble CESTAT Mumbai** held that amount received from the Govt. Maharashtra through Zilha Parishad as service charges for disbursement of salaries of Govt. teachers cannot be considered as commission received though it may be entered in the records of the appellant as commission received. This means that amount received as a consideration for disbursement of salaries to the Govt. teachers on direction of Zillha Parishad can never be an activity covered under the definition of Business Auxiliary Service and more so it cannot be termed as an amount received by the appellant as commission agent.**[Decided in favour of assessee]**

CENTRAL EXCISE

NOTIFICATIONS & CIRCULARS

AMENDMENT TO CENVAT CREDIT RULES

The MOF vide **Notification No. 12/2015-Central Excise (N.T.) dated 30th April 2015 has made amendments to the** CENVAT Credit Rules, 2004, namely:-
Rule 3(7)(b) of the CCR, 2004 has been amended so as to allow utilisation of credit of Education Cess and Secondary & Higher Education Cess for payment of basic excise duty in the following situations:

1.) Education Cess and Secondary & Higher Education Cess on inputs or capital goods received in the factory of manufacture of final product on or after the 1st day of March, 2015;
2.) Balance 50% Education Cess and Secondary & Higher Education Cess on capital goods received in the factory of manufacture of final product in the financial year 2014-15; and
3.) Education Cess and Secondary & Higher Education Cess on input services received by the manufacturer of final product on or after the 1st day of March, 2015.

OUR COMMENTS: Henceforth, the EC and SHEC on inputs and capital goods received in the factory of manufacture can be utilized for the payment of basic excise duty.

WITHDRAWAL OF EXCISE DUTY EXEMPTION

The **MOF** vide **Notification No. 23/2015 - Central Excise dated 30th April 2015 has made the following amendments:**
1.) Excise duty exemption presently available to Ordnance Factories is being withdrawn.
2.) Excise duty exemption presently available to Defence PSUs is being withdrawn.

The amendment shall however be effective from **1st June 2015.**

Also, vide **Notification No. 24/2015-Central Excise dated 30th April 2015**:
1.) Excise duty exemption on finishing agents, dye carriers to accelerate the dyeing or fixing of dye-stuffs, printing paste and other products and preparations of any kind

used in the same factory for the manufacture of textiles and textile articles has been withdrawn.

2.) The concessional excise duty (and hence, CVD) of 6% on Hard disk, CD ROM drive, DVD drive or writer, Combo drive, flash memory, microprocessors has been restricted only to actual users for manufacture of computer (PCs/desktops) falling under heading **8471. S.No.255/2012-Central Excise, dated 17.03.2012.**

OUR COMMENTS: Accordingly as per the respective notifications the exemption earlier available shall stand withdrawn.

FURTHER AMENDMENTS

The MOF **vide Notification 13/2015 dated 30th April 2015 and Notification No.25/2015 dated 30th April 2015** has made the following amendments:
The speed range for 'jarda scented tobacco' has been divided into two ranges (as in case of chewing tobacco),

(a) first upto 300 pouches per minute; and
(b) second from 301 onwards, and the deemed capacity and duty payable have been notified accordingly.

OUR COMMENTS: Please refer the notifications for more information.

CLARIFICATION REGARDING CENVAT CREDIT IN TRANSIT SALE THROUGH DEALER

The **CBEC** vide **Circular No. 1003/10/2015-CX dated 5th May 2015** has made the following clarifications:

4.) Where a registered dealer negotiates sale of an entire consignment from a manufacturer or a registered importer and orders direct transport of goods to the consignee, credit can be availed by the consignee on the basis of invoice issued by the manufacturer or the registered importer. In such cases no CENVATABLE invoice shall be issued by the registered dealer in favour of the consignee though commercial invoice can be issued. Where a registered dealer negotiates sale of goods from the total stock ordered on a manufacturer or an importer to multiple buyers and orders direct transportation of goods to the consignees and the manufacturer or the importer is willing to issue individual invoices for each sale in favour of the consignees for such individual sale, the same procedure shall apply.

5.) Where an un-registered dealer negotiates sale of an entire consignment from a manufacturer or a registered importer and orders direct transport of goods to the consignee, credit can be availed by the consignee on the basis of invoice issued by the manufacturer or the registered importer.

6.) Where goods are sold by the registered importer to an end-user (say a manufacturer) who would avail credit on the basis of importer's invoice and the goods are transported directly from the port or warehouse at the port to the buyer's premises, the amendment prescribes that for such movement the factum of such direct transport to the buyer's premises needs to be recorded in the invoice.

7.) Where a registered dealer negotiates sale by splitting a consignment procured from a manufacturer or a registered importer and issues CENVATABLE invoices for each of the sale, it would now be possible for the dealer to order direct transport of the consignments as per the individual sales to the consignee without bringing the goods to his godown. This would save time and transportation cost for the dealer adding to ease of doing business.

OUR COMMENTS: These provisions will improve the ease of doing business by providing an additional facility to the registered dealer or importer for direct dispatch of goods from the manufacturer to the consignee, when he is issuing CENVATABLE invoice. Here, the consignee avails Cenvat Credit on the basis of the CENVATABLE invoice issued by the registered dealer or the registered importer. This procedure removes the need for the goods to be brought to the premises of the registered importer or the registered dealer for subsequent transport of the goods to the consignee.

COURT DECISIONS

SUPREME COURT DECISIONS

COMMISSIONER OF CENTRAL EXCISE AND CUSTOMS V/S M/S KRAPS CHEM PVT LTD AND ANOTHER

BRIEF: The respondent was engaged in the manufacture of Guar Dal Powder. According to the respondent the aforesaid product is a product of milling industry and therefore classifiable under Chapter Heading 11.01. If the product falls in the aforesaid category it attracts nil duty. On the other hand, view which is taken by the Revenue is that after the aforesaid process of converting Gaur Dal into powder is undertaken it becomes 'Gum' and therefore it needs to be classified under Chapter Heading 1301.10. A SCN was issued which has resulted in demanding excise duty in the sum of Rs.92,53,196/- along with penalty and interest.

OUR COMMENTS: In the above case the **Hon'ble Supreme Court** held that such an issue was left open to be decided by the CESTAT in the case of Hindustan Gum and Chemicals Ltd. Similarly, since there is conflict of opinion by the two coordinate Benches in the judgements mentioned in relevance to this case, the only course of action open was to refer the matter to the larger Bench to resolve this conflict. Hence, the impugned order was set aside and the matter was remitted back to the CESTAT and directed to be heard by the Larger Bench. **[**Following decision of **Commissioner of Central Excise, Ahmedabad v. Hindustan Gum & Chemicals Ltd. (2011-Supreme Court) larger Bench of the Tribunal to decide the matter within six months.]**

M/S PHAARMASIA LTD. V/S COMMISSIONER OF CENTRAL EXCISE, HYDERABAD

BRIEF: The appellant had been doing the job work for M/s. Procter & Gamble Hygiene & Healthcare Limited. Raw material for this purpose was to be supplied by P&G. The appellant had been filing price declarations under Rule 173C of the Central Excise Rules for the said goods declaring the assessable value based on cost of raw materials supplied by P&G along with processing/conversion charges received from P&G. At the end of each accounting year on finalisation of cost sheet for each of the products by P&G, the appellant was adopting the revised prices as calculated from cost sheet and discharging its duty liability accordingly. The Dept. undertook the scrutiny of cost sheet and noticed that the appellant was not taking into consideration the "other works overhead" element in arriving at the assessable value though according to the Dept. it formed part of the costing element of 'conversion cost' shown in the costing report. Thus a SCN was issued.

OUR COMMENTS: In the above case, the **Hon'ble Supreme Court** held that the assessee not contesting the Dept.'s order that the 'other works overhead' should have been calculated in the cost is no cause to not invoke the extended period of limitation. It is the appellant which had worked out the final costing and it is the chartered accountant of the appellant which had prepared the said costing and submitted to the Department. Since, the element of other work over head was not made known to the department, the assessee is accused of suppressing the facts with intent to evade payment of duty. Hence, the assessee cannot plead innocence and the invoking of proviso to section 11A (1) is justified. **[Decided against assessee]**

COMMISSIONER OF CENTRAL EXCISE, JAIPUR V/S M/S. JVS FOODS PVT LTD

BRIEF: The respondent herein is a 100% Export Oriented Unit and is engaged in the manufacture of nutritious food (product) falling under subheading1901.10 of the Central Excise Tariff Act, 1985. During the period from 13.3.2000 to 17.4.2001 it had supplied the aforesaid product to the Govt. of Rajasthan under the World Food Programme project. In terms of paras 9.10 and 9.26 of the Exim Policy when the aforesaid food products are supplied to the weaker sections of the society free of cost, there is no excise duty payable thereon subject to the production of certificates from the concerned authorities. The appellant authorities, however, issued SCN demanding excise duty on the ground that certificates that were required in this behalf could not be produced.

OUR COMMENTS: In the above case the **Hon'ble Supreme Court** held that the required certificates were duly produced and the Tribunal had taken note of and discussed those certificates in the impugned order. On the basis of this, it is clear that assessee had in fact distributed the goods free of cost to the economically weaker sections of the society. Thus, there is no liability to pay excise duty on the part of the assessee. **[Decided against Revenue]**

M/S PHAARMASIA LTD. V/S COMMISSIONER OF CENTRAL EXCISE, HYDERABAD

BRIEF: The appellant had been doing the job work for M/s. Procter & Gamble Hygiene & Healthcare Limited. Raw material for this purpose was to be supplied by P&G. The appellant had been filing price declarations under Rule 173C of the Central Excise Rules for the said goods declaring the assessable value based on cost of raw materials supplied by P&G along with processing/conversion charges received from P&G. At the end of each accounting year on finalisation of cost sheet for each of the products by P&G, the appellant was adopting the revised prices as calculated from cost sheet and discharging its duty liability accordingly. The Dept. undertook the scrutiny of cost sheet and noticed that the appellant was not taking into consideration the "other works overhead" element in arriving at the assessable value though according to the Dept. it formed part of the costing element of 'conversion cost' shown in the costing report. Thus a SCN was issued.

OUR COMMENTS: In the above case, the **Hon'ble Supreme Court** held that the assessee not contesting the Dept.'s order that the 'other works overhead' should have been calculated in the cost is no cause to not invoke the extended period of limitation. It is the appellant which had worked out the final costing and it is the chartered accountant of the appellant which had prepared the said costing and submitted to the Department. Since, the element of other work over head was not made known to the department, the assessee is accused of suppressing the facts with intent to evade payment of duty. Hence, the assessee cannot plead innocence and the invoking of proviso to section 11A(1) is justified.**[Decided against assessee]**

COMMMISSIONER OF CENTRAL EXCISE, TRICHY V/S M/S. NEYCER INDIA LTD

BRIEF: The Revenue wanted to add the value of Handle assembly, Ball valve assembly, over flow assembly, Syphon assembly, etc. while arriving at the valuation of the flushing cisterns manufactured by the respondent.

OUR COMMENTS: In the above case the **Hon'ble Supreme Court** held that it was an admitted position that the aforesaid fittings were not manufactured by the assessee. It was also an admitted position that the assessee supplied the same to those buyers only who asked for them and in such a situation the assessee bought the aforesaid components from the market and supplied to the buyers at their option. Thus, the **Hon'ble Supreme Court seconded** the decision of the **CESTAT** where the Revenue's appeal to add the value of the aforesaid components was declined. **[Decided against Revenue]**

COMMNR. OF CENTRAL EXCISE, JAIPUR V/S M/S. NATIONAL ENGG. INDUSTRIES

BRIEF: The assessee is engaged in the manufacture of Ball and Taper-Rollers Bearings falling under Chapter Heading no.84.82 of the Schedule to the Central Excise Tariff Act, 1985. It had availed sales tax benefits in the sense that the sales tax was paid at concessional rates under the sales tax incentive scheme which was floated by the State of Rajasthan. The question arose as to whether the benefit of sales tax which was availed by the respondent would be included while fixing the value of the product for the purpose of payment of excise duty.
In these appeals the period involved is from Ist April 1998 to 31st March, 2002.

OUR COMMENTS: In the above case the **Hon'ble Supreme Court** held that assessee would be entitled to claim deductions towards sales tax from the assessable value of the sales tax which is retained by the assessee. This position had changed after the amendment in Section 4 w.e.f. 1.7.2000 after which in arriving 'transaction value' the said sales tax benefit which was retained by the assessee, would be included while fixing the 'transaction value'.
Thus, for the period up to 1.7.2000 case has to be decided in favour of the assessee and for the period from 1.7.2000 the benefit availed under the sales tax has to be included while arriving at the transaction value. Following the decision of the **Hon'ble Supreme Court** in the case of **Commissioner of Central Excise, Jaipur-II vs Super Synotex India Limited (2014).[Decided against Revenue]**

COMMNR. OF CENTRAL EXCISE, PUNE-II V/S M/S. PETHE BRAKE MOTORS PVT. LTD

BRIEF: The assessee is an SSI unit. However, it was denied exemption from excise duty admissible under Notification No.1/93CE dated 28.2.1993 on the ground that it was using branded name of another person and therefore in terms of para 4 of the said Notification, assessee was not entitled to the exemption.

OUR COMMENTS: In the above case the **Hon'ble Supreme Court** held that finding of fact is recorded by the Tribunal in the impugned judgment that the assessee was not using the brand name of another person and that the name used was the surname of the Director of the assessee, viz., **'PETHE'.** This finding of fact clearly means that the case does not fall within the mischief of para 4 of the aforesaid Notification No.1/93.**[Decided against Revenue]**

M/S. SERVO-MED INDUSTRIES PVT. LTD. V/S COMMISSIONER OF CENTRAL EXCISE, MUMBAI

BRIEF: The assessee purchased syringes and needles in bulk from the open market. They would then sterilize the syringes and the needles and put one syringe and one needle in an unassembled form in a printed plastic pouch. They were then sold to an industrial customer, bearing the brand name of the purchaser. By an SCN the Dept. ordered the assessee to pay excise duty as a new product had come into existence with the process of sterilization being an integral and inextricable part of the manufacturing process to make the product marketable.

OUR COMMENTS: In the above case the **Hon'ble Supreme Court** has made a distinction between manufacture and marketability.
Excise duty is levied on the manufacture of excisable goods. "Excisable goods" are those goods which are capable of being sold in the market. On the other hand, manufacture is distinct from saleability. Manufacture takes place on the application of one or more processes. Each process may lead to a change in the goods, but every change does not amount to manufacture. There must be a transformation by which an article which has a distinctive name, character or use must emerge.
It was held that sterilization does not lead to any value addition in the said product. Neither the character nor the end use of the syringe and needle has changed post-sterilization. The syringe and needle retains its essential character as such even after sterilization. **[Decided in favour of assessee]**

CROMPTON GREAVES LTD. V/S COMMNR. OF CENTRAL EXCISE, AURANGABAD

BRIEF: The appellant herein manufactures Vacuum Interrupter Tube (VIT) which is used in the production of Vacuum Circuit Breakers. It pays central excise duty for the goods cleared for its Nasik unit. The Revenue found

that the price shown for various models of VIT cleared for captive consumption of the appellant's own unit at Nasik is much lesser than the price at which the appellant had been selling such products to the other parties. Thus, a SCN was issued for the period 1996-2000 demanding differential duty of Rs.94.48 lacs.

OUR COMMENTS: In the above case, the **Hon'ble Supreme Court** held that for the period under review the clearances have been made at arm's length prices. Even though the Nasik Unit was to be treated as a related party, the clearances have been made on the basis of sale made to another party (Beicco Lawrie)during the years 1997-2000. The prices cannot be fixed on a ground that one unit of the product was sold at a much higher price to another party (Ovac Switchgear). The prices at which sales were made to Beicco Lawrie were the most comparable prices and the plea of the appellant should have been accepted. **[Decided in favour of assessee]**

THE UNION OF INDIA & OTHERS V/S M/S. ASAHI INDIA SAFETY GLASS LTD

BRIEF: The respondent herein is engaged in the manufacture of Toughened (Tempered) and Laminated Safety Glass for Automobiles. For the manufacture of the glass of aforesaid nature, the respondent has been supplying float glass which is the main raw material of the respondent's product. The assessee also avails modvat credit of duty paid on the aforesaid raw material, under Rule 57A of the Central Excise Rules, 1944. SCNs were issued alleging that respondent had availed Modvat credit of inputs that were inherently defective and were neither used nor usable 'in or in relation to the manufacture of the final products'. The Settlement Commission after going through the issue directed the assessee to pay Rs. 3,47,38,325/- in settlement of the SCN. The assessee filed a writ petition questioning that the order of the Settlement Commission was erroneous. The High Court accepted the plea of the assessee and remanded the case back to the Settlement Commission. The Dept. is in appeal against the order that once the Settlement Commission had passed the orders under Section 32E, the High Court could not interfere in the decision.

OUR COMMENTS: In the above case the **Hon'ble Supreme Court** held that High Court had not interfered with the facts which were recorded by the Settlement Commission. The High Court had only stated the correct legal position where the Settlement Commission had gone wrong in law. The High Court had simply applied the **correct principle of law** on the admitted facts. Such remand of case by the High Court was permitted in **Jyotendrasinghji vs. S.I. Tripathi and Others(Supreme Court- 1993)** which was also concerning the **powers of the Settlement Commission** u/s 245(D)(4) of the Income Tax Act. The **principle of law remains the same** and can be applied in **case of orders passed by the Settlement Commission under the Central Excise as well**. **[Decided against Revenue]**

CESTAT DECISIONS

COMMISSIONER OF CENTRAL EXCISE & ST., SURAT V/S M/S. ENZAL CHEMICALS (INDIA) LIMITED(CESTAT Ahmedabad)

BRIEF: The respondent were engaged in the manufacture of Chemicals classifiable under Chapter 28 and 29 of the First Schedule of Central Excise Tariff Act, 1985. They used common inputs in the manufacture of both, excisable and exempted final products, but the inputs namely Diethyl Carbanyl Chloride were used exclusively in the manufacture of exempted final product. A SCN was issued proposing to deny credit of Rs.29,26,632/- alongwith interest and penalty on the inputs Diethyl Carbanyl Chloride used exclusively for the manufacture of finished goods i.e. Diethyl Carbamazine Citrate (DECC), during the period from September 2001 to August 2004, as per the provisions of Rule 6 of the CENVAT Credit Rules 2001, 2002/2004. The Adjudicating authority confirmed the demand of Rs.29,26,632/- alongwith interest and appropriated an amount of Rs.8 Lakh, as deposited during the investigation. He has also imposed penalty of equal amount of duty.

OUR COMMENTS: In the above case the **Hon'ble CESTAT Ahmedabad** held that CENVAT credit was not permissible on inputs exclusively used in the manufacture of exempted goods. However, the respondent is given an opportunity to place their submission. Following decision of **Ratnamani Metals & Tubes Limited (CESTAT Ahmedabad).[Decided in favour of Revenue]**

M/S GALLANT ISPAT LTD V/S COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX, ALLAHABAD (CESTAT New Delhi)

BRIEF: The appellant is a manufacturer of MS ingots, steel bars etc. The appellant procured welding electrodes on which CENVAT credit sought to be denied on the premise that these welding electrodes are neither inputs nor capital goods. Therefore, they are not entitled to take CENVAT credit. In reply to the SCN, the appellant submitted that the welding electrodes were used to remove runners and risers from the ingots and sometimes for cutting of steel bars and billets etc. The adjudicating authority also observed in his order that welding electrodes have been used in fabrication /manufacture of capital goods of plant and machinery but the Commissioner (Appeals) gave a finding that Dept. has alleged that during visit to unit the inputs under reference have been found as used for laying the foundation and in

making structures in support of capital goods and on such fabrication which is attached or embedded on earth are neither in nature. Thereafter the CENVAT credit on welding electrodes was denied.

OUR COMMENTS: In the above case, the **Hon'ble CESTAT New Delhi** held that in reply to the SCN, the appellant has explained their usage which was used in the manufacturing of their final product by removing the runners and risers from the ingots. But these contentions have not been controverted by the Revenue neither in the adjudication order nor in the order of Commissioner (Appeals) to deny CENVAT credit. Also, held that if welding electrodes have been used for repair and maintenance of plant and machinery, CENVAT credit is available. Therefore, appellant is entitled to take CENVAT credit on welding electrodes which have been used in repair and maintenance of their final product.**[Decided in favour of assessee]**

CUSTOMS

NOTIFICATIONS & CIRCULARS

CHANGE IN RATE OF DUTY

The MOF vide **Notification No. 28/2015 dated 30th April 2015** has made the following amendments:

1.) Basic Customs Duty on raw and refined / white sugar increased from 25% to 40%;
2.) Basic Customs Duty on Colemanite and other Boron ores has been reduced from 2.5% to Nil;
3.) Basic Customs Duty on natural rubber (NR) increased from 20% or Rs. 30 per kg., whichever is lower, to 25% or Rs. 30 per kg., whichever is lower;
4.) Basic Customs Duty on raw silk (not thrown) reduced from 15% to 10%;
5.) All Digital Still Image Video Cameras (DSC) falling under tariff item 8525 80 20 and their parts exempted from Basic Customs Duty; &
6.) Export duty on iron ore fines (below 58% Fe content) reduced from 30% to 10%.

OUR COMMENTS: The notification is self-explanatory.

EXEMPTION WITHDRAWN

The **MOF vide Notification No. 29/2015 dated 30th April 2015** has withdrawn the exemption from additional duty of customs levied under section 3 of the Customs Tariff Act (both CVD and SAD) in respect of certain entries of **notification No.39/96-Customs, dated 23.07.1996**. However, exemption from Basic Customs Duty in respect of these entries would continue. Further, exemption from Basic Customs Duty, CVD and SAD in respect of direct imports by the Government of India and the State Governments would continue.

The amendment shall however be effective from **1st June 2015.**

OUR COMMENTS: Please refer the notification for more information.

The **CBEC** vide **Notification No. 46/2015 Customs (N.T.) dated 18th May 2015** has made amendments in the **DECLARATION** Part of the **Shipping Bill (Electronic Declaration) Regulations, 2011**, in the **Annexure**.

OUR COMMENTS: Readers are requested to go through the amendments made.

SIMPLIFICATION OF TRANSIT PROCEDURE

Also, vide **Circular No. 16/2015Customs dated 19th May 2015** the **CBEC** has simplified the transit procedure for relief supplies destined to Nepal supplied by foreign governments and multilateral relief agencies such as UNWFP, Red Cross etc.
Nothing contained in these guidelines shall preclude the customs from examining the goods where there is reason to believe that the goods are not as per Customs Transit Declaration or are in violation of any law for the time being in force.

OUR COMMENTS: The aforesaid simplified procedure for transit of cargo of relief supplies shall be applicable for a period of six months from the issue of this circular and may be extended for a further period as bilaterally agreed between Government of India and Government of Nepal.
Readers are requested to go through the procedure and the guidelines issued with respect to such transit procedure.

COURT DECISIONS

SUPREME COURT DECISIONS

MAKHAN SINGH V/S STATE OF HARYANA

BRIEF: The appeal relates to the order passed by the Hon'ble Punjab & Haryana High Court whereby the High Court affirmed the conviction of the appellant under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act') and also the sentence of imprisonment of ten years along with a fine of Rs. 1 ,00,000 /- imposed on the appellant.

OUR COMMENTS: In the above case the **Hon'ble Supreme Court** held that it is a well-settled principle of the criminal jurisprudence that more stringent the punishment, the more heavy is the burden upon the prosecution to prove the offence. In the absence of independent evidences, mere compliance with Section 50 of the NDPS Act by itself would not be sufficient to establish the guilt of the appellant. In cases of NDPS Act the punishment is severe, therefore strict proof is required for proving the search, seizure and the recovery. Since the independent witnesses did not support the prosecution case the conviction of the appellant under Section 15 of the NDPS Act cannot be sustained. **[Decided in favour of assessee]**

M/S. SECURE METERS LTD. V/S COMMISSIONER OF CUSTOMS, NEW DELHI

BRIEF: The appellant is engaged in the manufacture of electricity meters. The appellant had imported a consignment consisting of LCD Modules (Printed Circuit Boards) and Liquid Crystal Display (LCD) from Hong Kong. The dispute relates to classification of LCDs. The appellant sought clearance of LCDs under Chapter Heading 9013.80 and claimed assessment at Nil rate (basic duty), 16% additional duty and 4% SAD. As per the appellant, since the LCDs were classifiable under Chapter Heading 9013.80, in view of Notification No. 16/2000 it attracted Nil rate of BCD. However, custom authorities state that the goods were not simple liquid crystal. On the contrary, these were LCD Modules and Elastomeric LCD Displays and were part of Energy Meter. The relevant invoices also described the goods as "electronic part for energy meter".

OUR COMMENTS: In the above case the **Hon'ble Supreme Court** held that LCDs are specifically provided in tariff item 9013. However, such LCDs should not constitute 'articles' provided more specifically in other headings. Merely because these LCDs are to be used as parts in the said electricity supply meters, it cannot be said to fall under the Chapter Heading 9028. Entry 9028 does not pertain to LCDs but gas, liquid, etc. and includes electricity supply meters as well. Note 2(a) of Chapter 90 stipulates that parts and accessories which are goods included in the heading of the said chapter are to be classified in their respective headings. Hence, going by a plain reading it is clear that LCDs, which are goods and are used as parts in the final product mentioned in Chapter 90, namely, electricity supply meters, are to be classified in its respective heading which is specifically provided, is 9013. **[Decided in favour of assessee]**

COMMISSIONER OF CUSTOMS (IMPORT), RAIGAD V/S M/S. FINACORD CHEMICALS (P) LTD & OTHERS

BRIEF: The respondents herein imported containers of alcohol under the description "Undenatured Ethyl Alcohol' from an intermediary. The Dept. claims that these imports were under invoiced. Thus a SCN was issued demanding duty and penalty, alleging that the correct transaction value was much higher and that the goods were imported against invalid licenses.

OUR COMMENTS: In the above case the **Hon'ble Supreme Court** held that the invoices were produced showing the purchase price of the goods and the authenticity of the invoices were not doubted by the Dept. These would form the primary evidence in support of the contention of the respondents. Thus there was no flaw on the part of the respondents. Accordingly, the Supreme Court seconded the decision of the CESTAT. **[Decided against Revenue]**

COMMNR. OF CUSTOMS (GENERAL) MUMBAI V/S M/S RELIANCE INDUSTRIES LTD

BRIEF: The following issues need to be answered:

1. **Whether concessional rate of duty applicable to Project imports will be available to import of PTA Plant and Paraxylene Plant and goods imported under OGL?**
2. **Whether know how fee of US $ 24.60 million or any part thereof is required to be included in the assessable value of the imported equipments?**

OUR COMMENTS: In the above case the **Hon'ble Supreme Court** held that the benefit of project import regulations is available to PTA plant and Paraxylene Plant and goods imported under OGL. However, for want of adequate material the question of includibility of know-how fees in the assessable value of imports is remitted to the Commissioner for revaluation. **[Decided against Revenue]**

CESTAT DECISIONS

SINGH INTERNATIONAL V/S COMMISSIONER OF CUSTOMS (GENERAL), MUMBAI, POLYGLASS ACRYLIC MFG CO. PVT LTD V/S COMMISSIONER OF CUSTOMS (IMPORT), MUMBAI(CESTAT Mumbai)

BRIEF:The appellants filed the claim of refund at ICD, Dadri within a period of one year from the date of payment of SAD. However, the goods were imported at CFS, Mulund and the SAD was paid there. By the time the refund claims were forwarded by Customs authorities at Dadri to the authorities at Mulund, a period of over one year had lapsed from the time of payment of duty to the time of receipt of refund claims at CFS, Mulund.

OUR COMMENTS: In the above case the **Hon'ble CESTAT Mumbai** held that notification does not requires the claim to be filed with the jurisdictional customs officer, who, in this case, was the proper officer at CFS, Mulund. By mistake, their consultant filed these claims in question at Dadri. There is no dispute on the fact that the claims were filed within the stipulated time limit of one year but with ICD Dadri. There is also no dispute on the fact that the claims were received subsequently in CFS Mulund. Since the original application for refund was filed within time, though before wrong authority, it cannot be said that the said application was barred by limitation. Following decision of **Commissioner of Central Excise vs. AIA Engineering Ltd. (Gujarat HC-2010)** [**Decided in favour of assessee**]

M/S. CAN-PACK INDIA PVT. LTD. V/S COMMISSIONER OF CUSTOMS (IMPORT), NHAVASHEVA (CESTAT Mumbai)

BRIEF: The appellant applied for refund of 4% SAD upon sale of goods imported under six Bills of Entry. On investigation of the claim, a deficiency memo was issued to the appellant to produce original Bills of Entry and TR-6 Challans etc. In reply to which, the appellant stated that they had already submitted the original documents along with partial claim. The refund claim filed by the appellant was rejected as not admissible and not maintainable on the ground of partial claim, as per Sl. No. 11 of Public Notice 74/2008-Cus dated 17.10.2008 read with Circular No. 16/2008-Cus dated 13.10.2008. The appellant has thus filed the appeal.

OUR COMMENTS: In the above case the **Hon'ble CESTAT Mumbai** held that a circular cannot take away the effect of Notifications statutorily issued. Refund claim of SAD is within the provisions of Section 3(5) of Customs Tariff Act read with Notification No. 102/2007. Following the ruling of the **Hon'ble Supreme Court in M/s. Sandur Micro Circuits Ltd. (2008)** that CBEC circular cannot curtail the scope of benefit available under the Notification. **[Decided in favour of assessee]**

M/S MILLIARD LOGISTICS PVT LTD V/SCOMMISSIONER OF CUSTOMS (GENERAL) , MUMBAI (CESTAT Mumbai)

BRIEF: The appellant a Customs Broker/CHA filed BOE No. 3609751 dated 22.10.2013 on behalf of the importer M/s R.N. Trading for clearance of assorted soft drinks, chocolates, baked beans, vinegar, etc. The BOE was registered on 8.11.2013 and was presented for examination on 11.11.2013 by the employee of the appellant along with NOC from 'Food Safety & Standard Authority of India'. The Customs Authorities found that the NOCs produced were forged or bogus and thus seized the goods. The appellant CHA was prohibited for the alleged occurrence.

OUR COMMENTS: In the above case, the **Hon'ble CESTAT Mumbai** held that there was no finding as to the involvement of either staff or the management of the CHA firm in the whole episode of submission of improper NOC. Due to the impugned order the appellant was suffering both financially and loss of goodwill and loss of livelihood for the management and its employees. The CHA is nowhere associated in the forgery done by the importer. There isn't any alleged loss of the Revenue nor there are any reasons requiring prohibition of the appellant Customs Broker for carrying on his business. Hence, the Customs Broker would be entitled to carry on their work as Customs Broker with immediate effect. **[Decided in favour of assessee]**

BENUDHAR SAMAL V/S COMMISSIONER OF CUSTOMS (EXPORT), NHAVA SHEVA(CESTAT Mumbai)

BRIEF: It is seen that the appeal have been dismissed on the ground of limitation. The Ld. Appellate Commissioner have observed that the appeal have been filed after 63 days which is more than 60 days, being the prescribed period of limitation and accordingly dismissed the appeal in the absence of any condonation application filed by the appellant.

OUR COMMENTS: In the above case the **Hon'ble CESTAT Mumbai** held that in terms of the provisions of the General Clause Act, 1877 (Section 10) and Indian Limitation Act, 1963 (Section 4) which provide that when the compliance date falls on holidays, then the assessee can make compliance on the following working day. Under the facts and circumstances of the case, the 60th and 61st day were both holidays and non-working days of the Dept. and the compliance has been made on following working day by filing the appeal, which is deemed to be filed on the 60th day. Therefore, in the interest of justice, the impugned order is set aside and the matter was remanded back. **[Decided in favour of assessee]**

MR SAEED AHMED MOHAMMED ALI WADWAN V/S COMMISSIONER OF CUSTOMS (CSI AIRPORT), MUMBAI (CESTAT Mumbai)

BRIEF: The issue involved in the present case is confiscation of Indian Currency from the appellant, who is a passenger. In the impugned order, the ld. Commissioner (Appeals) allowed the redemption of currency on a fine of Rs. 80,000/-.

OUR COMMENTS: In the above case the **CESTAT Mumbai** held that the present case involves the attempt of export of Indian currency as baggage. From clause (a) of first proviso to Section 129A, it is clear that in case of any goods of import and export as baggage, the appeal does not lie before this appellate Tribunal. However, the appellant was supposed to file Revision Application before the Revisionary Authority of Government of India under Section 129DD of Customs Act, 1962. Thus, the appeal was north maintainable BEFORE THE Tribunal. **[Decided against assessee]**

INCOME TAX

NOTIFICATIONS, CIRCULARS & INSTRUCTIONS

The **CBDT vide Notification No. 43/2015 dated 24th April 2015** hereby notifies that the organization **Pandit Deendayal**

Petroleum University Raisan Gandhi Nagar Gujarat, (PAN-AABTP3856A) has been approved by the Central Government for the purpose of **section 35(1)(ii) of the Income-tax Act, 1961** read with **Rules 5C and 5E of the Income Tax rules 1962**from Assessment year 2014-2015 and onwards in the category of "University College and other Institution", for the Departments/schools engaged in research activities subject to the following conditions, namely:-

i) The sums paid to the approved organization shall be utilized for scientific research;

ii) The approved organization shall carry out scientific research through its faculty members or its enrolled students;

iii) The approved organization shall maintain separate books of accounts in respect of the sums received by it for scientific research, and get the books audited.

iv) The approved organization shall maintain a separate statement of donations received and amounts applied for scientific research in respect of concerned Departments and a copy of such statement duly certified by the auditor shall accompany audit report.

OUR COMMENTS: The Central Government shall withdraw the approval if the approved organization fails to maintain separate books of accounts, fails to furnish its audit report, fails to furnish its statement of the donations received and sums applied for scientific research, ceases to carry on its research activities or its research activities are not found to be genuine; or ceases to conform to and comply with the provisions of section 35(1)(ii) of the Income-tax Act, 1961 read with Rules 5C and 5E of the Income Tax rules 1962.

SCHEME FOR SECTION 80-IA

The **CBDT vide Notification No. 44/2015 dated 8th May 2015** hereby notifies the undertaking named **"Dosti Pinnacle" of M/s Dosti Corporation (Pinnacle)** placed at **Plot No.E-7, MIDC, Road No.22, Wagle Industrial Area, Panchpakhdi, Thane (West), Maharashtra** for the purposes of **clause (iii) of 80IA (4)** subject to the terms and conditions mentioned in the annexure to the notification.

OUR COMMENTS: The notification is self-explanatory. Readers are requested t6o go through the same for further information.

IMPOSITION OF MINIMUM ALTERNATE TAX (MAT) ON FOREIGN COMPANIES PARTICULARLY FIIs

The **CBDT vide Circular dated 11th May 2015 hereby informs that the** Finance Minister has announced constitution of a Committee headed by Justice A.P. Shah to look into inter alia, the issue of MAT on FIIs. The Committee is expected to give its report on this issue expeditiously.

In the light of FM's announcement, no coercive action be taken for recovery of demand already raised by invoking provisions of MAT in the cases for foreign companies. Issue of fresh notices for reopening of cases and also completion of assessment should also be put on hold unless the case is getting barred by limitation.

OUR COMMENTS: For matters involving **Minimum Alternate Tax on FIIs**, it is made clear that no issue of fresh notices shall be made for reopening of cases or for completion of assessments until and unless the case is getting time barred by such limitation.

PROCEDURE FOR RESPONSE TO ARREAR DEMAND BY TAXPAYER AND VERIFICATION AND CORRECTION DEMAND BY AOs

The **CBDT vide Circular No. 08/2015 dated 14th May 2015** hereby prescribes the Operating Procedure for Verification and Correction of Demand available or uploaded by AOs in CPC Demand Portal. Taxpayers can provide online responses to such demands on the e-filing website ***www.incometaxidiaefiling.gov.in***

OUR COMMENTS: The detailed procedure for filing a response to the Outstanding Tax Demand is substantiated. Taxpayer must select the appropriate option and provide suitable reasons for the same. Taxpayers can avail this facility by going through the detailed procedure as stated in the circular.

COURT DECISIONS

SUPREME COURT DECISIONS

M/S CHENNAI PROPERTIES & INVESTMENTS LTD V/S THE COMMISSIONER OF INCOME TAX

BRIEF: The assessee is a company incorporated under the Indian Companies Act. Its main objective, as stated in the Memorandum of Association, is to acquire the properties in the city of Madras (now Chennai) and to let out those properties. The assessee had rented out such properties and the rental income received therefrom was shown as income from business in the return filed by the assessee. The assessing officer, however, refuse to tax the same as business income. According to the assessing officer, since the income was received from letting out of the properties, it was in the nature of rental income. He, thus, held that it would be treated as income from house property and taxed the same accordingly under that Head.

OUR COMMENTS: In the above case, the **Hon'ble Supreme Court** held that where there is a letting out of premises and collection of rents the assessment on property basis may be correct but not so, where the letting or sub-letting is part of a trading operation. As per the objects clause of the company, the main objective is holding the properties and earning income by letting out the properties. The diving line in the case of a company is its professed objects and the manner of its activities and the nature of its dealings with its property. Following the decision of **'Karanpura Development Co. Ltd. v. Commissioner of Income Tax, West Bengal (Supreme Court) [Decided in favour of assessee]**

COMMISSIONER OF INCOME TAX V/S M/S VEENA DEVELOPERS

BRIEF: Several SLPs had been filed by the Revenue against the judgments rendered by various High Courts deciding identical issue which pertains to the deduction u/s 80IB(10) of the Income Tax Act, as applicable prior to 01.04.2005. All the assessees had undertaken construction projects which were approved by the municipal authorities/ local authorities as housing projects. On that basis, they claimed deduction u/s 80IB(10) of the Act. This was well within the provisions of Section 80IB prior to 01.04.2005.

OUR COMMENTS: In the above case, the Hon'ble Supreme Court held that commercial user is permitted in the residential units and that too as per Development Control Regulations. However such commercial use is permitted to the professionals like Doctors, Chartered Accountants, Advocates, etc. Thus, the project is predominantly housing/ residential project but the commercial activity in the residential units was permitted. Hence, all SLPs were disposed. **[Decided in favour of assessee]**

COMMISSIONER OF INCOME TAX, KERALA V/S M/S. TRAVANCORE SUGARS & CHEMICALS LTD

BRIEF: The main issue here is whether the outstanding vend fee payable to the Government of Kerala as on the last day of the accounting year shall be disallowed u/s 43 B of the Income Tax Act? ["Vend Fees" is a fee payable to the Govt. of Kerala by the sugar mills which would later on be used for the repairs and replacement of old machinery and equipment in these mills)

OUR COMMENTS: In the above case, the **Hon'ble Supreme Court** held that even if the vend fee that is payable by the respondent to the State does not directly fall within the expression 'fee' contained in Section 43B(a), it would be a 'fee' by 'whatever name called', even though it is a 'privilege'. Section 43B clearly states that any sum that is payable whether it is called tax, duty, cess or fee or called by some other name becomes a deduction allowable under the said Section provided that in the previous year, relevant to the assessment year, such sum should be actually paid by the assessee. Thus, the same would be allowable to the assessee on payment basis. However, when the respondent has actually paid the aforesaid fee in a previous year relevant to some other assessment year, he will be entitled to claim the benefit of Section 43B for that particular assessment year in accordance with law. **[Decided in favour of Revenue]**

HIGH COURT DECISIONS

BHUPESH KUMAR SIKSHAN EVAM VIKAS SANSTHAN V/S DIRECTOR GENERAL OF INCOME TAX (INV.)(Patna HC)

BRIEF: The petitioner claims to be running educational institution in the nature of a school. A search was made u/s 132 in the school premises and certain incriminating documents were seized. Admittedly, the petitioner itself approached the settlement commission and voluntarily disclosed unaccounted income of ₹ 4.00 crores over and above the income shown in the returns of Shri Bhupesh Kumar. The disclosure pertains to the assessment years 2005-06 to 2010-11. Being a society, the petitioner subsequently filed an application for exemption under Section 10 (23C) (iv) of the Income Tax Act. The petitioner was directed to submit documents including the audited books of accounts for the financial year 2009-10 but it was not done so. The application was thus rejected.

OUR COMMENTS: In the above case, the **Hon'ble Patna High Court** held that the application itself was filed without the audited accounts. The petitioner not only failed to supply initially the audited accounts and balance-sheet for the financial year which pertained to the said assessment year but despite opportunities granted, the same was not produced nor the books of account were shown and thus rejection of the claim on the said ground cannot be said to be contrary to law. If the society has been generating huge profits year after year, it cannot be said to be existing solely for educational purposes.**[Decided against assessee]**

THE COMMISSIONER OF INCOME-TAX, BANGALORE AND THE INCOME-TAX OFFICER, WARED-12(1), BANGALORE V/S M/S. MAGUS CUSTOMERS DIALOG PVT. LTD. (Karnataka HC)

BRIEF: The substantial questions of law that is raised in this appeal are as under:

1. **Whether the appellate authorities were correct in holding that in view of the provisions of section 43B of the Act deduction in respect of the employees' contributions made to PF and ESI belatedly was an allowable deduction?**

2. **Whether the appellate authorities were correct in applying section 43B of the Act which was applicable to the employer's contribution and failing to apply section 36(1)(va) and section 2(24)(x) of the Act under which the employees' contribution would become the income of the assessee at the end of the year if the same is not deposited within the stipulated time ?"**

OUR COMMENTS: In the above case, the **Hon'ble Karnataka High Court** held that payment of contribution by the employer to the fund under the scheme means both employer's contribution and employee's contribution. Irrespective of whether he deducts the employee's contribution from the salary or not, in law, he is liable to pay the said amount. Therefore, section 2(24)(x) of the Act makes it clear that the employee's contribution which the employer deducts from his salary before it is paid into the fund, is treated as the income of the employer, and the employer by contributing can get the deduction.
Even though such contributions are not paid within the time prescribed under the relevant act, if those contributions are paid before the due date prescribed u/s 139(1) of the Act, the employer shall be entitled to the deductions as provided u/s 36(1) of the Act. **[Decided against Revenue]**

THE COMMISSIONER OF INCOME-TAX V/S ALCATEL LUCENT CANADA (Delhi HC)

BRIEF: The Revenue claims that income from supply of software embedded in the hardware equipment or otherwise to customers in India amounts to royalty under Section 9(1)(vi) of the Income Tax Act and under Article 13(3) of the Double Taxation Avoidance Agreement (DTAA).

OUR COMMENTS: In the above case, the **Hon'ble Delhi High Court** held that what was sold by the assessee to the Indian customers was a GSM which consisted both of the hardware as well as the software. The software supply that was loaded on the hardware did not have any independent existence, was an integral part of the GSM mobile telephone system and is used by the cellular operator for providing the cellular services to its customers. The Revenue could not assess the same under two different articles. Following the decision of the Supreme court in the case of TATA Consultancy Services Vs. State of Andhra Pradesh where it was held that software which is incorporated on a media would be goods and, therefore, liable to sales tax. **[Decided in favour of assessee]**

VARINDER KUMAR SOOD V/S COMMISSIONER OF INCOME TAX-II JALANDHAR (Punjab & Haryana Court)

BRIEF: The assessee opened a Joint Bank A/C with Lakhbir Singh and had given his own PAN Number. There is no relationship between the assessee, who is an ayurvedic doctor and Lakhbir Singh, who was just an agriculturist.
A sum of Rs 8.75 lacs had been deposited into the Joint A/c. The assessee stated that the amount had been withdrawn from another bank account of his and that the source of such amount was clear. However, since there didn't exist any relationship between the two, the amount has been added to the assessee's income.

OUR COMMENTS: In the above case, the **Hon'ble Punjab & Haryana High Court** held that even if the source was clear there does not exist any reason for the assessee opening the Joint A/c with the agriculturist. It was also found that Lakhbir Singh was entitled to operate the account. There is no reason whatsoever to have authorized Lakhbir to operate the account when there was no relationship between the two. **[Decided against assessee]**

COMMISSIONER OF INCOME-TAX, BANGALORE V/S SAINT GOBAIN CRYSTALS & DETECTORS INDIA (P.) LTD. (Karnataka HC)

BRIEF: The assessee is in the business of assembling of instruments and apparatus for measuring and detecting ionizing radiators. The assessee claimed deduction under Section 10B of the Income Tax Act, 1961. The Assessing Authority was of the view that the assessee has not manufactured or produced articles or things as required under Section 10B(1) of the Act but only is engaged in assembling of items as per 3CD audit report and therefore the claim of the assessee for deduction, was negated.

OUR COMMENTS: In the above case, the **Hon'ble Karnataka High Court** held that the finished product which is sold by the assessee is different from the material which is procured for making such a finished product. A series of processes are carried out and a new product is arrived. A new commodity with a different name, character and use comes into existence which means that assessee was entitled to the benefit of Section 80(IA) of the Act. **[Decided against Revenue]**

ITAT DECISIONS

INDO INDUSTRIES LTD. V/S INCOME-TAX OFFICER, 2 (2) (2) (1) , MUMBAI (ITAT Mumbai)

BRIEF: The assessee is engaged in exporting cotton yarn and trading in various types of fabrics in domestic markets. During the year under consideration assessee has made foreign remittance of ₹ 92.14.509/- by way of commission payment to foreign agents without deducting TDS on the same. Assessee was asked to show cause as to why TDS as per provisions of Section 195 of the IT Act was not deducted on such commission payment to foreign agents. Later on, the remittance made was disallowed.

OUR COMMENTS: In the above case, the **Hon'ble ITAT Mumbai** held that the non-resident brokers have not rendered any services in India, therefore, commission income neither accrued nor arose in India as decided by **Hon'ble Delhi High Court in the case of CIT v. Eon Technology (P.) Ltd. [2011]**. Merely because payments have been made from India, the same cannot be made liable to be taxed in India as payment was made to non-resident for the services rendered outside India as was held in the case of **Dr. Reddy's Laboratory v. ITO [ITAT Hyderabad-1995].[Decided in favour of assessee]**

Mundra Woolen Mills (P) Ltd vs ACIT (ITAT Jaipur)

BRIEF: The most important question is propriety of sending intimidating complaints when their appeal i.e. a judicial matter is heard on merits and is pending for orders. A litigant or his representative cannot directly or indirectly; by overt or covert means attempt to influence the process of judicial decision making by shooting intimidating and derogatory letters or to pressurize the judicial officers while deciding a heard appeal.

OUR COMMENTS: In the above case, **the Hon'ble ITAT Jaipur** accused the learned FCA and ACA of using highly derogatory, defamatory and contemptuous language. They were also accused to have a clear intent to intimidate judicial officers to desist from passing an unfavorable order.
They did not even file a proper Power of Attorney which is to be given on a Non Judicial stamp paper instead of which a plain printed paper with Rs. 10/- court fee stamp which is not a valid POA was filed for the client, neither did they mention their registration no. on it. Thus, there was violation of ICAI guidelines.
As a result, suitable proceedings were initiated for professional misconduct, misbehaviour, wasting the time of court and unlawfully attempting to interfere in the process of judicial dispensation. A cost of Rs 25000/- on the FCA and Rs 10000/- was imposed on the ACA.

WEST BENGAL VAT

POST ASSESSMENT REFUND

The **Govt. of West Bengal vide Trade Circular No. 05/2015 dated 11th May 2015** it is informed that Post-Assessment Refunds which remain pending till date shall be disposed off within September, 2015. To expedite the disposals, Commercial Tax Directorate has deployed an online application in the Dealers' Profile where the dealers can submit information about post-assessment refund cases pending till date. The required link is ***http://egov.wbcomtax.gov.in/DealerProfile/postAssmentRefund.htm***

After submission of the information, the dealer should take a print out of the acknowledgement and submit it before the respective assessing authority along with the order(s) reference of which is given in the submitted information. The dealer should complete the process latest by 31st May, 2015 to avail the opportunity of getting refund by September, 2015.
Please refer the circular for further information.

GRANT OF REGISTRATION

Also, vide **Trade Circular No. 06/2015dated 13th May 2015**, the Dept. shall grant registration under the WBVAT Act, 2003, WBST Act, 1994, WBTEGLA Act, 2012 and CST Act, 1956 to applicant dealers who produce proof of having filed the **application for issue of trade licence** to the local authority. The licence, when issued, will have to be produced before the appropriate assessing authority.

ADJUSTMENT OF CASH SECURITY PAID AT THE TIME OF REGISTRATION

Also, vide **Trade Circular No. 07/2015 dated 13th May 2015** has stated a procedure for adjustment of **Cash Security Paid by Dealers at the Time of Registration.**
Following is the procedure:

1. Dealer manually applies for adjustment of security at Charge Office;
2. Assessing Authority verifies all necessary documents to his/her satisfaction and issues a Refund Adjustment Order (RAO) to the dealer equal to the amount paid by the dealer as cash security at the time of registration or the amount which remains after forfeiture, if any;
3. Dealer then adjusts the RAO against the amount of tax, interest and late fee payable according to return or successive returns which is or are due immediately after the issue of RAO.

This means that a dealer who has paid any amount as security as prescribed by the West Bengal Value Added Tax Act, 2003 at the time of registration shall be eligible to adjust such amount from the returns for the quarter ending 30.06.2015 (i.e. returns falling due on 01.07.2015).

INTRODUCTION OF AUTOMATIC ALLOTMENT OF YEARLY WAYBILL QUOTA

The Govt. of West Bengal vide **TRADE CIRCULAR NO. 08/2015 dated 13th May 2015** has decided to introduce automatic allotment of yearly waybill quota for each selected dealer in such a way that the waybill limit of each dealer at the end of each financial year, i.e., at 23:59 hours on 31st March of that year, would automatically be set as the starting waybill quota at the beginning of the next financial year, i.e. at 00:00 hours on 1st April.

As a result, the unused waybill keys generated in the previous financial year would become invalid from 1st April of the next year and dealers have to generate fresh keys from new allotment of the new financial year for generating waybills. Hence, to avoid any disruption in imports using waybills, the dealers would be well-advised to generate sufficient number of waybills using the available waybill keys before 1st April of each year. Enhancement of such limit during the year may be done as per prevailing provisions.

CHANGES MADE IN THE WEST BENGAL SALES TAX ACT, 1994 AND THE WEST BENGAL VALUE ADDED TAX ACT, 2003, AND THE RELEVANT RULES

The Govt. of West Bengal vide **TRADE CIRCULAR NO. 09/2015 dated 27th May 2015** has made several changes effecting the procedural matters connected with the changes made in the Finance Act:

A. CHANGES EFFECTED IN THE WEST BENGAL SALES TAX ACT, 1994

1. Tax payable on the basis of weight, volume, measurement or unit on the sale of Schedule IV goods
2. Time-limit for disposal of appeal when an application for settlement of dispute is refused or a certificate of settlement is revoked

B. CHANGES EFFECTED IN THE WEST BENGAL VALUE ADDED TAX ACT, 2003 & THE WEST BENGAL VALUE ADDED TAX RULES, 2005

1. Taxable quantum for compulsory registration raised
2. Dealers making online application for registration under digital signature and paying fee for registration and security through Government Receipt Portal System (GRIPS) are no longer required to furnish hard copy of application for registration provided that the duly signed declarations and documents as per rule 5A(2) are uploaded on the Directorate's website.
3. Determination of turnover of sales for hotels, etc., charging a composite sum
4. Tax payable on the basis of weight, volume, measurement or unit of Schedule D goods
5. Changes regarding input tax credit
6. Amnesty for registration
7. Change regarding submission of Form 88 and Form 88A
8. Rate of interest payable by a dealer has been graded
9. Provision for payment of interest by the Commissioner amended
10. Change in provisions of section 40 regarding Sales Tax Deduction at Source (STDS) as well as Tax Collection at Source (TCS)
11. Adverse findings in assessment / audit to be communicated
12. Change regarding summary assessment under section 47AA
13. Provision for pre-assessment refund amended
14. 15 % of the amount of tax in dispute to be paid along with appeal petition under section 84
15. Disposal of appeal after refusal or revocation of certificate of settlement under the SOD Act
16. Limitation of time for revision by WBST A&R Board
17. Method of selection for Fast Track Revision amended
18. Changes effected in rates of tax of some commodity
19. Issue of notice after modification of demand upon appeal/revision/review

The relevant provisions have been discussed in the circular. Readers are requested to go through the same.

PRADIP NANJEE GALA V/S SALES TAX OFFICER & OTHERS-AN IMPORTANT SUPREME COURT DECISION

BRIEF: The appellant had joined as a partner in the assessee firm. The relevant assessment years are (12.11.1977 to 31.10.1978) and (01.11.1978 to 24.06.1979). The Assessing Authority had carried out the assessments and confirmed the demand for Rs.13,33,091/- under the Act and Rs.85,878/- under the Central Sales Tax Act, 1956 for (12.11.1977 to 31.10.1978); and Rs.28,18,202/- under the Act and Rs.44,577/- under the CST Act for (01.11.1978 to 24.06.1979). The appellant had preferred appeals against the aforesaid assessments before the first appellate authority, which were dismissed.

OUR COMMENTS: In the above case**, the Hon'ble Supreme Court** held that plain reading of Section 45 of the Act would indicate that the legislature has vested the power of remission of tax only with the Commissioner and subjected the exercise of said power in accordance with such circumstances and conditions as prescribed by the State Government under the Bombay Sales Tax Rules, 1959. The Section neither speaks of any power to enter into a settlement for such purposes by the State Minister of Finance nor prescribes exercise of powers by the Commissioner in light of any such settlement. The settlement, if any, reached between the appellant and the State Government for part payment of tax liability by the partner of an assessee firm would not fall anywhere in the Act or the Rules as has been claimed by the appellant since the beginning of the proceedings under the Act. **[Decided against assessee]**

QUERY & REPLY

QUERY

A company is engaged in manufacture of ball pen and gel pen tips and has its units located in DTA and recently commenced SEZ operations. Major import ingredients for the company product are wire and balls which are imported. The wires are being imported to units in SEZ and processed to manufacture blanks. Further these blanks are sold to units in DTA to manufacture tips which are being sold by levying VAT.

1) **Whether SAD would be levied on clearance of goods from SEZ units to DTA units?**
2) **Whether SAD Refunds can be claimed on goods cleared from SEZ units?**
3) **Suggest any better structuring that could be worked out leading to optimum tax/duties benefit arising from SEZ operations?**

Name & address withheld

REPLY

1. As per Customs Notification No. 45/2005 dated 16th May, 2005, SAD exemption is not applicable if goods cleared from SEZ, when sold in DTA, are exempted by the State Government from payment of sales tax or VAT. This is done to avoid double taxation.
However, Circular No. 44/2013-Customs dated 30th December, 2013, has been issued to clarify that no sales tax/ VAT is levied on stock transfer from SEZ unit to DTA unit.

In the present case, the goods are transferred from SEZ to the DTA unit by charging VAT, for further manufacture and the manufactured final products are sold on payment of appropriate VAT. Hence there is adequate protection, as one tax is being paid on the transfer of goods from SEZ to DTA, which clearly is the intention of the circular. Therefore on transactions which have already taken place, there seems to be no need to levy SAD too, on clearance of goods from the SEZ unit to the DTA Unit as this would clearly result in double taxation.

2. Customs Notification No. 102/2007 dated 19th September, 2007 exempts the goods falling within the First Schedule to the Customs Tariff Act, 1975, when imported into India for subsequent sale from the whole of the additional duty of customs leviable thereon under section 3(5) of the said Customs Tariff Act. This exemption is in the form of a refund. However, in the present case, on transactions which have already taken place, on clearance to DTA, since VAT is paid, no SAD is payable as explained above. Hence there is no question of claiming refund under notification no. 102/2007 dated 14 Sept 2007.

3. On the basis of information available, going forward, we would recommend as follows:

a) Not to levy VAT on stock transfer by the SEZ Unit to the DTA Unit.
b) Levy SAD on stock transfer by the SEZ Unit to the DTA Unit.
c) Claim refund of SAD on SAD on stock transfer by the SEZ Unit to the DTA Unit.