INDIRECT TAX EXPRESS

Fortnightly e-newsletter from m/s DAVA& Associates, Chartered Accountants

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FROM THE EDITORIAL TEAM

New Amnesty Schemes Under West Bengal VAT for Registration and Settlement of Dispute

1. Amnesty Scheme for registration to Un-registered Dealers under WB-VAT - In the West Bengal Finance Act, 2015, the State Legislature has given opportunity by an Amnesty Scheme to the dealers who incurred liability to pay tax under the Act but failed to get them registered within the prescribed time through Section 24A. Salient features of this scheme are as follows:

a) Application can be filed from 01.04.2015 to 31.07.2015.
b) Dealers have to pay only a token amount of sum @ 2% on their declared taxable turnover of sales and/or taxable contractual transfer price from the date of incurring liability to pay tax and up to the date prior to the date of filing application for registration under this section.
c) There will not be any penalty for remaining unregistered.
d) The dealer will not be prosecuted for interest or penalty on such unpaid tax of the previous years.
e) Dealers can file an application online for which a separate link has been provided in the website of the Directorate of Commercial Taxes.
f) This scheme is not available to any dealer:
- Who has been issued any notice under Section 66 for determination of his liability to pay tax under any of the provisions of the West Bengal Value Added Tax Act, 2003, or
- If any accounts, registers or documents, including those in the form of electronic records have been seized from him under section 67 of the Act.

g) Procedure/Steps of applying under Amnesty Scheme u/s 24A of WBVAT Act, 2003:

Step 1: Prepare the form of Declaration for Amnesty Scheme under Rule 6A of the WBVAT Rules, 2005.
Step 2: Pay the tax as computed as per the Declaration online through GRIPS.
Step 3: Apply New Registration under Section 24A of the WBVAT Act, 2003.
Step 4: Completely fill up and sign the 'Declaration' downloaded in Step-1.
Step 5: Submit the signed Declaration (step-4), copy of challan (step-3) and signed printed copy of Application for New Registration (step-2) to the respective Registering Authority for disposal.

2. Scheme for Settlement of Disputes - The State Legislature has given an opportunity to dealers for settlement of dispute related to tax, penalty or interest arising out of an assessment under various acts of West Bengal by amending West Bengal Sales Tax (Settlement of Dispute) Act, 1999. Silent feature of this scheme are as follows:-

a) Scheme is applicable to dealers who have disputed liability in respect of any period ending on or before 31st March, 2010, for which an application for appeal or revision has been filed on or before 31st January, 2015 and which has not been finally heard and is still pending.
b) Application can be filed before the appropriate Senior Joint Commissioner in Form 1 of

Inside this issue:

GST NEWS

- With the GST Bill set to come up in the monsoon session of parliament next month, Congress has set up a high-level committee to take an "informed position" on the matter. The committee had its first meeting on 11th June.
- The Rajya Sabha select committee discussing the bill on GST will meet on 16th June to hear the concerns of industry and some states, about a proposal for an additional 1% levy on the supply of goods.The proposed tax over and above the GST is a cause of concern because it is expected to have a cascading effect as goods move from state to state and because companies cannot claim input tax credit on it.

IDT NEWS

- Indirect tax collections during the first two months (April-May) of the current financial year 2015-16 increased to Rs. 96,128 crore, from Rs. 69,069 crore during the same period in 2014-15, registering a 39.2% increase.
- Central Excise collections during April to May'2015showed a smart rise of 88% and Service Tax collections during this period are up by 17.6%.

the West Bengal Sales Tax (Settlement of Dispute) Rules, 1999.

c) Last date of filing application is 31.07.2015.

d) The amount of arrear interest related to arrear tax in dispute and penalty in dispute, if any, will be waived fully.

e) The dispute can be settled upon payment of a fraction of disputed tax as shown below:

Dispute related to:	Amount to be paid for settlement:
Arrear tax for non -furnishing/ non - production of statutory Certificates/Declarations	100 % of remaining balance amount of arrear tax in dispute after adjusting Certificates/Declarations in possession of applicant, or the amount already paid towards such arrear whichever is higher.
Arrear tax for disallowance of any claim of input tax credit	15 % of arrear tax in dispute or the amount already paid towards such arrear, whichever is higher.
Any other arrear tax not covered by serial Nos. 1 and 2 above	55 % of arrear tax in dispute or the amount already paid towards such arrear, whichever is higher.
Any arrear interest related to arrear tax in dispute	Nil
Any arrear penalty related to assessment for the eligible period	Nil

f) Any application pending before the West Bengal Taxation Tribunal, High Court or Supreme Court can also be settled provided leave is sought from the Tribunal or respective Court.

g) Following are the procedure/Steps for settlement of dispute:

Step 1: Prepare the Application in Form-1 for Settlement of dispute

Step 2: Payment for Settlement as computed as per the Form (Select payment type as SOD)

Step 3: Submit the application for SOD in duplicate to the Senior Joint Commissioner of the respective Circle or Additional Commissioner / Corporate Division.

NOTIFICATIONS & CIRCULARS

- CBEC, vide **Notification No. 17/2015 - Central Excise (N.T.)** dated **08.06.2015**, exempts every manufacturing unit engaged in the manufacture of Aluminium roofing panels from sub-rule (2) of rule 9 of the Central Excise Rules, 2002,subject to the some conditions given therein.
- Central Government vide **Notification Nos. 25-26/2015-Cus (ADD)** dated **01.06.2015** has continued anti-dumping duty on "Poly Vinyl Chloride Paste Resin".
- Central Government vide **Notification No. 27/2015-Cus (ADD)** dated **01.06.2015** has imposed anti-dumping duty on Acrylic Fibre.
- Central Government vide **Notification No. 28/2015-Cus (ADD)** dated **05.06.2015** has imposed anti-dumping duty on Hot Rolled Flat Products of Stainless Steel.
- Central Government, vide **Notification No. 29/2015-Customs (ADD)** dated **10.06.2015** has imposed an anti-dumping duty on import of Vitamin E.
- The Central Government, vide **Notification No. 32/2015-CE** dated **04.06.2015**, has amended notification No. 12/2012-CE to give exemption to ethanol produced for supply to the public sector oil marketing companies.
- The Central Government vide **notification No. 33/2015-CE** dated **10.06.2015** has granted exemption to certain anti-retroviral drugs and certain diagnostics and equipments, are required for the National AIDS Control Programme funded by GFATM.
- The Central Government vide **notification No. 36/2015-Cus** dated **04.06.2015** has amended some conditions for giving exemption to specified goods locally produced in border districts.

QUIZ!!!

1. Fill in the Blanks: "If the amount of duty drawback claimed under Section 76 of The Customs Act, 1962 is less than ___________, the same shall not be refunded"

2. What shall be the place of provision of services in relation to an event as per Place of Provision of Service Rules 2012?

3. Which form of return is required to be filed by Export Oriented Units under Central Excise?

(Please mail your replies with your name and mail id to **davaidtexpress@gmail.com)**

(The first 3 correct answers will be published in the next issue with name & mail id of the sender.)

ANSWER TO LAST FORTNIGHT'S QUIZ

Reply to Q1- **10% of service tax amount**
Reply to Q2– **B1 bond**
Reply to Q3– **70%**

Reply given by:

1. Manish Sachdeva, manish619sachdeva@yahoo.in
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CASE UPDATES

1. **Roshan R. Jaiswal vs. Commissioner of Central Excise, Nagpur [2015(38) S.T.R. 772 (Tri. – Mumbai)]**

Issue: - Whether refund of pre-deposit can be denied on account of mismatch of tax and interest amounts even if the decision is held in the favour of the assesse that no service tax is payable and/or exigible?

Decision-The Hon'ble Mumbai CESTAT held that the amount paid by the appellant as pre-deposit, whether by way of tax or interest, has assumed the character of deposit when it was held in its favour that no service tax is payable and/or exigible. Thus, the adjudicating authority has erred in rejecting the refund claim on the ground of mismatch and hence the appeal is allowed, the impugned order is set aside and the adjudicating authority is directed to issue the applicable amount of refund.

2. **Premier Pest Control Pvt Ltd. vs. Commissioner of Central Excise, Delhi-I [2015(38) S.T.R. 870 (Tri.-Del.)]**

Issue: - Whether the services by a sub-contractor to the main contractor would necessarily fall under the same classification applicable to service provided by main contractor?

Decision- Referring to Para 2.4.3 of the CBEC Circular 96/7/2007-ST dated 23.8.2007 on which the decision of the lower authorities is predominantly based; the Hon'ble Delhi CESTAT held that Board's circular also nowhere states that all the services provided by a sub-contractor to the main contractor would necessarily fall under the same classification which is applicable to the service rendered by the main contractor. The Hon'ble Delhi CESTAT further held that the classification of a service is to be determined with respect to the nature thereof vis-à-vis the definitions of various services given in Section 65 read with Section 65A of the Finance Act, 1994 . The classification of service does not alter based on to whom it is rendered.

3. **Hindustan Spinning & Weaving Mills Ltd. vs. Commr. Of C. Ex., Mumbai [2015 (318) E.L.T. 374 (S.C.)]**

Issue: - Whether an assessee is entitled to adjust cost incurred in sale of same product in open market as that cannot be included in cost in respect of yarn to be captively consumed?

Decision- The Hon'ble Supreme Court held that from the process explained by the appellant itself it is clear that up to the stage (iv), the process is common in respect of the production of the yarn whether it is to be consumed by the appellant itself or it is to be sold in the market. It is, thereafter, when it comes to process mentioned at serial nos. (v) and (vi), the same is necessitated for the purpose of sale in the open market and therefore costs incurred while undertaking these processes has to be excluded in arriving at the value at which excise duty is payable for the yarn domestically consumed. Since this benefit is wrongly denied to the appellant by all the authorities below, for this purpose the Hon'ble Supreme Court remanded the case back to the adjudicating authority.

4. **Hotline CPT Ltd. Vs Commissioner of Central Excise, Indore [2015 (318) E.L.T. 141 (Tri. - Del.)]**

Issue: - Whether cenvat credit of inputs used in re-making of defective colour picture tubes after using salvaged parts and fresh parts can be used for payment of duty on its clearance?

Decision- The Hon'ble New Delhi CESTAT relying on the judgement of *Maruti Udyog Ltd.* v. *CCE, Delhi-III* and *CCE, Ahmedabad* v. *Tudor (I) Ltd.* held that re-making of defected colour picture tubes and clearance thereof on payment of duty after using salvaged parts and fresh parts amounts to manufacture. Under the provisions of Rule 16 of the Central Excise Rules, 2002, when duty paid goods are returned to the factory of manufacture, for being repaired, re-made, refined, re-conditioned, etc., the manufacturer take the Cenvat credit of the duty originally paid and thereafter in terms of provisions of sub-rule (2), at the time of clearance of the repaired/re-made goods, if the process undertaken does not amount to manufacture, he is required to pay the duty amount equal to the Cenvat credit taken, but if the process amounts to manufacture, he is required to pay the duty chargeable on the goods at the rate applicable on the date of removal and on the value determined under the provisions of Section 3(2), Section 4 or Section 4A, as the case may be. There is no provision in Rule 16 of the Central Excise Rules, 2002 that Cenvat credit in respect of the inputs used in the process of repairing/refining would not be available. Therefore, appellant has correctly availed the Cenvat credit on input and the same cannot be denied.

FREQUENTLY ASKED QUESTIONS

"The only true wisdom is in knowing you know nothing"

-Socrates

Query 1: M/s. ABC Ltd. is a company in India which has received services of a lawyer practicing in United States. Whether service tax will be applicable on such import of service?

Reply by e-newsletter team: Whether a service has been received in taxable territory will be determined on the basis of Place of Provisions of Services Rules, 2012 (effective from 1.7.2012). Since professional services of a lawyer is not covered by a specific rule, by virtue of Rule 14 of POPS Rules, the default Rule 3 will be applicable for determining the place of provision of service. Rule 3 says that the place of provision of a service shall be the location of the recipient of service. In this case therefore, the place of provision is India, i.e taxable territory. Hence service recipient, M/s. ABC Ltd will be liable to pay service tax under Reverse Charge Mechanism.

Query 2: M/s. XYZ Ltd. is a company engaged in manufacture of fabrics and readymade garments and has deputed some of its employees to its subsidiaries for a limited period. Whether such deputation will be taxable under service tax?

Reply by e-newsletter team: As per Rule 2(g) of Service Tax Rules, 1994 (inserted w.e.f. 1.7.2012), Manpower Supply Service means supply of manpower, temporarily or otherwise, to another person to work under his superintendence or control. If an organisation makes available their staff to other entities and the deputed staff is working under the supervision and control of those entities, it would be covered under the said definition. Similar view was taken by CBEC in its instruction (F. No. 137/35/2011-ST dated 13.7.2011) in respect of employees sent on deputation by ONGC to DGHC. Thus, XYZ Ltd. shall be liable to pay service tax on deputation charges if the control and supervision of the employees deputed by it is also transferred to its subsidiary.

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