A2Z TAXCORP LLP
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Indirect Tax and Other Laws Communique
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This bulletin brings to you the highlights of recent updates and important judgments in the field of indirect taxation along with key inputs from other fields to keep you abreast of all the latest happenings.

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SERVICE TAX

RECENT CASE LAWS

- **Refund admissible even when services were not notified on the date of export but were duly notified on the date of claiming refund**

Fazlani Exports Pvt. Ltd. Vs. Commissioner of Service Tax, Mumbai-I [2015-TIOL-1088-CESTAT-MUM]

In the instant case, Fazlani Exports Pvt. Ltd. ("**the Appellant**") was engaged in export of goods outside India for which it has availed various services viz. Terminal Handling Service, GTA services etc. Accordingly, the Appellant filed several refund claims under Notification No. 17/2009-ST dated July 7, 2009 read with Notification No. 41/2007-ST dated October 6, 2007 as amended, towards Service tax paid on such services but the same was rejected by the Department on many grounds including denial on the ground that certain services were not notified on the date of export and were notified later.

The Hon'ble CESTAT, Mumbai relying upon the decision in the case of ***East India-Minerals Ltd. [2012 (27) STR 18]*** and ***WNS Global Services P. Ltd. [2008 (10) STR 273]*** held that the stated issue is no longer *res integra*, and since on the date of refund claim, the services were duly notified, irrespective of the period of export, refund is admissible.

- **Penalty cannot be levied when the entire amount of tax and Interest thereon was paid before issuance of SCN**

Bellary City Cable Vs. Commissioner of Central Excise Customs & Service Tax, Belgaum [2015 (6) TMI 269 - CESTAT BANGALORE]

In the instant case, Bellary City Cable ("**the Appellant**") was a provider of a Multi System Operator Service and Advertising Agency Service ("**Impugned Services**") and these services were brought under purview of Service tax w.e.f. September 10, 2004. The Appellant was not paying Service tax due to unawareness of levy of Service tax on Impugned Services. However, before issue of SCN, the entire amount of tax was paid and before issue of Adjudication Order, interest was also paid. But, the Department levied Penalty under Section 76, 77 and 78 of Finance Act.

The Hon'ble CESTAT Bangalore relying upon the decision in the case of ***CCE Vs. Muniruddin [2013(31) STR 136 (All.)]*** held that even ignorance of law can be one of the reasons for invoking erstwhile Section 80 of the Finance Act. Accordingly, penalties imposed under various Sections of the Finance Act were waived.

- **Cenvat credit cannot be denied merely for not applying for Centralised Registration in proper format**

Ketan Motors Ltd. Vs. Commissioner of Central Excise, Nagpur [2015-TIOL-1087-CESTAT-MUM]

The Ketan Motors Ltd. (“**the Appellant**”) had a centralized accounting office in Nagpur with branch offices at Chandrapur and Amravati. The services received and the Cenvat credit availed thereon was reflected in Nagpur centralized accounting system. The Appellant had applied for Centralized Registration through a letter in which it was stated that “*they may be given permission to have only one registered place in terms of rule 3(a) of Service Tax Rules*” and letter bears the stamp of the receipt by the Department.

The Department objected availment of Cenvat credit of Rs. 1,27,958/- (along with imposition of penalty) on documents pertaining to unregistered premises of the Appellant at Chadrapur and Amravati by alleging that the Appellant did not apply for Centralised Registration in proper format.

The Hon’ble CESTAT, Mumbai held that there is no dispute that the Appellant vide application dated December 16, 2004 has applied for Centralized Registration and the letter bears the stamp of the receipt by the Department. This request can be considered as an application for Centralized Registration, which was granted subsequently by the Department. Thus, Cenvat Credit should not be disallowed.

CENTRAL EXCISE

NOTIFICATIONS/CIRCULARS

- **Facility of Centralized Registration to manufacturers of aluminium roofing panel**

The CBEC vide **Notification No. 17/2015-Central Excise (N.T.) dated June 8, 2015** has exempted the requirement of registration of different manufacturing unit of a manufacturer engaged in the manufacture of aluminium roofing panels, falling under Tariff item 7610 90 10 of the First Schedule to the Excise Tariff Act, subject to the following conditions:

- Such roofing panels are consumed at the site of manufacture for execution of the project,
- Manufacturer of such goods has a centralised billing or accounting system, and
- Manufacturer opts for registering only the premises or office from where such centralised billing or accounting is done.

- **Exemption from Excise duty for goods required for the National AIDS Control Programme funded by Global Fund to fight AIDS, TB and Malaria (GFATM)**

The Central Government vide **Notification No. 33/2015-Central Excise dated June 10, 2015** has exempted the “Anti-Retroviral Drugs (ARV Drugs), Diagnostics and Equipments” from the whole of the duty of Excise leviable thereon, subject to the condition that the manufacturer produces at the time of clearance of the said goods, before the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise having jurisdiction, a certificate from an officer not below the rank of Deputy Secretary to the Government of India in the Ministry of Health and Family Welfare to the effect that the said goods are required for the National AIDS Control Programme funded by Global Fund to fight AIDS, TB and Malaria(GFATM). This Exemption will be available to manufacturer till March 31, 2016.

RECENT CASE LAWS

- **Cost of boxes/containers and wooden packing are includable in value only when it is done to put goods in marketable condition and not when it is meant for safe transportation for sale at factory gate**

Commissioner of Central Excise, Chennai Vs. Addisons Paints & Chemicals Ltd. [2015 (57) taxman.com 296 – (SC)]

In the instant case, Addisons Paints & Chemical Ltd. (**"the Respondent"**) was manufacturing paints and varnishes falling under Chapter 32 of the Excise Tariff Act. The final products manufactured were packed in tins and plastic containers which were then put in carton boxes for the purpose of transportation and then sold to the wholesale dealers. The Respondent filed a refund claim, claiming that the duty paid on the cost of cartons cannot be included in the assessable value of the final products. However, the same after being initially rejected by the Department was later on allowed by the Hon'ble Tribunal.

The Hon'ble Supreme Court held that the stated issue depends upon the test as to whether packing is done in order to put the goods in marketable condition and whether the goods are capable of reaching the market without the type of packaging concerned. Packing is includible in value only if it is done in order to put goods in marketable condition and not when goods are capable of reaching market without said packing.

If goods are generally sold in wholesale market at 'factory gate', use of cartons for transportation 'from factory gate' for sale to individual customers or as stock transfers cannot be included in value. Similarly, since wooden packing is not a requirement for sale at 'factory gate', same cannot be included in value.

- **Debit Note containing all the particulars specified in Rule 9(2) of the Credit Rules is a valid document for availing Cenvat credit**

Mahanagar Gas Ltd. Vs. Commissioner of Central Excise, Mumbai-II [2015-TIOL-1069-CESTAT-MUM]

In the instant case, Mahanagar Gas Ltd. (**"the Appellant"**) availed Cenvat credit on the strength of debit note issued by the service provider. The Department denied the Cenvat credit on the ground that debit note is not a prescribed document in terms of Rule 9(1) of the Credit Rules or Rule 4Aof the Service Tax Rules.

The Hon'ble CESTAT, Mumbai held that the debit note containing all the details as required under Rule 9(2) of the Credit Rules is at par with the documents prescribed under Rule 9(1) thereof. Therefore, it is valid documents for the purpose of taking Cenvat credit.

CUSTOMS

NOTIFICATIONS/CIRCULARS

- **Change in Turnover Limit of domestic procurement and import of goods for Fast Track Clearance by EOUs as per Handbook of Procedures 2015-2020 ("HBP")**

The CBEC vide **Circular No. 19/2015-Cus dated June 9, 2015**, has revised the turnover limit for domestic procurement and import of goods from Rs. 15 crores and above to Rs. 10 crores and above in the preceding year for Fast Track Clearance as per HBP, 2015-2020. Accordingly, the Para 7 of **Circular No. 17/2006-Cus dated June 1, 2006** regarding the Fast Track Scheme for EOUs for import of goods without payment of duty on the basis of pre-authenticated procurement certificate and opening Para of **Circular No. 19/2007-Cus dated June 3, 2007** shall be taken as modified to the above extent.

- **Imposition of definitive anti-dumping duty on imports of Vitamin E (in all form except natural form), originating in or exported from the People's Republic of China**

The Central Government vide **Notification No. 29/2015-Customs (ADD) dated June 10, 2015** has imposed the definitive Anti-Dumping Duty on imports of 'Vitamin E (in all form except natural form)' originating in or exported from the People's Republic of China for a period of five years from the date of publication of this notification i.e. June 10,2015.

- **Exemption from Customs duty for goods required for the National AIDS Control Programme funded by Global Fund to fight AIDS, TB and Malaria (GFATM)**

The Central Government vide **Notification No. 37/2015-Customs dated June 10, 2015** has exempted the "Anti-Retroviral Drugs (ARV Drugs), Diagnostics and Equipments" from the whole of the duty of Customs and from the whole of the additional duty leviable thereon subject to the similar condition as prescribed in Central Excise Notification No. 33/2015-Central Excise dated June 10, 2015.

VALUE ADDED TAX

NOTIFICATIONS/CIRCULARS

- **Instructions Regarding Processing of Refund under DVAT**

The Government of National Capital Territory vide **Circular No. 12 of 2015-16 dated June 10, 2015,("the Circular")** has issued general guidelines and instructions regarding processing of Refund claims to be passed by the Department as per the DVAT Act, 2004 and the DVAT Rules, 2005. As per the Circular,

- The claim for the refund is made by the dealer in the return filed by the dealer and hence the return itself becomes the application for refund;

- The refund shall be made within a period of 60 days from the date of application (except some prescribed circumstances for seeking more information by VATO);
- Either the refund should be disbursed within two months of filing of application/return or the Notice under Section 59(2) for seeking more information is to be issued within the prescribed time.

RECENT CASE LAWS

➢ **Taxability on account of transfer of right to use of goods would arise only where the effective control and possession of the goods are transferred**

Hari Durga Travels Versus Commissioner of Trade & Taxes, Delhi [2015 (5) TMI 461 – Delhi High Court]

In the instant case, Hari Durga Travels (**"the Appellant"**) entered into an Agreement with Delhi Transport Corporation (**"DTC"**) in January, 2005 for providing buses on rental basis as per the terms and conditions mutually agreed.

The Appellant was obligated to keep the bus in neat, clean and presentable condition and for purposes of upkeep, make the necessary arrangements with service centres/dealers/repair shops, etc. on the routes. Further the Appellant was not entitled to "withdraw the bus from operation without prior written consent" of DTC nor can it use these vehicles "for any other purpose at any time", nor "transfer or otherwise alienate (except with prior written permission of DTC) vehicles" during the period of Agreement.

The Assessing Authority treating the aforesaid transaction as Deemed sale on account of transfer of right to use the goods under the provisions of the DVAT Act.

The Hon'ble High Court of Delhi relying upon the following case laws:

- ***Bharat Sanchar Nigam Limited [2006 (3) TMI 1 – SC]***
- ***Rashtriya Ispat Nigam Limited [2002 (3) TMI 705 – SC]***
- ***International Travel House [2009 (9) TMI 879 - DELHI HIGH COURT]***

held that the various terms of the Agreement make it vividly clear that the possession has always remained with the Appellant itself. Undoubtedly, it is the obligation of the Appellant to make the vehicles available, with their respective drivers, for being deployed on routes, and as per schedule, specified by DTC. However, the registration certificate and the permits continue to be in the control and possession of the Appellant who continued to be responsible for all repairs etc. Thus, the transaction has been wrongly treated as "Deemed sale of goods" by the lower authorities.

➢ **Segregation of value of goods and services is not permissible where the**

Works contract is a composite contract and the assessee is availing the composition scheme for payment of KVAT liability

Suzlon Infrastructure Ltd. Vs. State of Karnataka [(2015) 57 taxmann.com 317 (Karnataka)]

Suzlon Infrastructure Limited (**"the Petitioner"**) is a registered dealer under the provisions of the Karnataka Value Added Tax Act, 2003 (**"the KVAT Act"**), carrying out an activity of laying down civil foundations, installation of electrical components for wind turbine generator (**"WTG"**). The Petitioner opted Composition Scheme in terms of Section 15 of the KVAT Act.

A customer of the Petitioner after purchasing WTGs from a manufacturer placed work orders for following four varieties of activities to be undertaken for the installation, erection and commissioning of the WTGs at a particular place:

a. laying down of civil foundation,

b. supply and installation of electrical line,

c. supply of electrical items, and

d. erection and commissioning of WTGs supplied by customer.

In respect of Contract (a) to (c), the Petitioner had discharged his tax liabilities under Composition Scheme however in respect of Contract (d), the Petitioner claimed that having discharged the Service tax liability on same, was not liable to pay the Composition tax in terms of Section 15(1)(b) of the KVAT Act.

The Assessing Authority levied Composition tax after considering all the four contracts as an integrated single composite contract.

The Hon'ble Court of Karnataka held that:

- In terms of Composition Scheme, tax would be paid on total consideration of Works contract;
- The Petitioner has segregated the activities as per the work orders executed against the offer for erection and installation of WTGs.
- The entire contract should be perused as a whole. All the segregated activities are related to the very same project with the very same customer involving transfer of goods and labour.

Hence segregation of Composite contract is not permissible under Section 15(1)(b) of the KVAT Act.

➢ Revisional authority can set aside the Assessment order but cannot proceed to pass fresh Assessment Order, which can only be passed by the Assessing Officer

Solidus Hi Tech Products (P) Ltd. Vs. State of Karnataka [(2015) 57 taxmann.com 203 (Karnataka)]

Solidus Hi Tech Products Pvt. Ltd. (**"the Petitioner"**) filed the VAT Return for the years 2006-07, 2007-08 and 2008-09 in which the tax paid by the Petitioner at the rate of 4% on the sales of parts of UPS.

The aforesaid return had been deemed to have been accepted.

In terms of Section 39(1) of the KVAT Act the matter was opened for reassessment proceeding by the Deputy Commissioner and vide an order dated April 5, 2010, confirmed that the Return was in order.

Further the matter was taken up by the Revisional Authority and in terms of Section 63A of the KVAT Act,Notice was issued to the Petitioner on December 16, 2013 and the Revisional Authority vide an Order dated November 12, 2014 set aside the order of Deputy Commissioner and further proceeded to pass Reassessment Order under Section 63A of the KVAT Act.

The Hon'ble High Court of Karnataka held that the Revisional Authority can cancel and set aside the Assessment order and direct the Assessing officer to pass fresh Assessment Order but could not proceed to pass an Assessment Order. Thus, theRevisional Authority has clearly exceeded its jurisdiction in proceeding to reassess the case and to that extent, the Order passed by the Revisional Authority is wholly unjustified in law and liable to be quashed.

FOREIGN TRADE POLICY

NOTIFICATIONS/ CIRCULARS

- **Amendment in Import policy of Areca Nut - CIF value increased**

The Central Government vide **Notification No. 10/2015 dated June 8, 2015** has amended the Import Policy of Areca Nut under ITC (HS) code 0802 80 10, 0802 80 20, 0802 80 30 and 0802 80 90 of Chapter 8 of ITC (HS) 2012 – Schedule -1 (Import Policy) and revised Cost Insurance and Freight (CIF) value from the present 'Rs.110/- and above per Kilogram' to 'Rs. 162/- and above per Kilogram'. The CIF value is required for claiming the exemption from Customs duty on import of said goods.

- **Preferential Treatment for Status Holders**

The DGFT vide **Trade Notice No.04/2015dated June 8, 2015**, has provided certain privileges and preferential treatment for the Status Holders who would be entitled to preferential treatment and priority in handling of their consignments by the concerned agencies.

The DGFT has prescribed the shortened time lines for issue of Advance Authorisation and its subsequent amendments to the Status Holders.

Accordingly, Application for Advance Authorization, its Revalidation and Invalidation, submitted by Status Holders (5 and 4 Star category) through electronic mode would be disposed within 1 working day and Application submitted by other Status Holders through electronic mode would be disposed within 2 working days.

FOREIGN EXCHANGE MANAGEMENT ACT

NOTIFICATIONS/CIRCULARS

- **Continuation of External Commercial Borrowings (ECB) for low cost affordable housing projects for FY 2015-16**

The RBI vide **A. P. (DIR Series) Circular No. 108 dated June 11, 2015,**has continued the applicability of the scheme of raising ECB for low cost affordable housing projects for the Financial Year 2015-16 with the same terms and conditions as mentioned in the A.P. (DIR Series) Circular No. 61 dated December 17, 2012 and A.P. (DIR Series) Circular No. 113 dated June 24, 2013 in terms of which ECB can be raised by eligible borrowers, for low cost affordable housing projects, under the approval route.

- **Subscription to chit funds by Non - Resident Indians on non-repatriation basis**

The RBI vide **A. P. (DIR Series) Circular No.107 dated June 11, 2015(“the Circular”)** has amended Notification No. FEMA 1/2000 - RB dated May 3, 2000, in terms of which no person resident outside India was allowed to make investment in India, in any form, in a company or partnership firm or proprietary concern or any entity, whether incorporated or not, which is engaged or proposes to engage “in the business of chit fund”.

Now, it has been decided to permit Non-Resident Indians to subscribe to the chit funds, without limit, on non-repatriation basis subject to the conditions specified therein.

COMPANY LAW

NOTIFICATIONS/CIRCULARS

- **The Companies (Cost Records and Audit) (Amendment) Rules, 2015 – Substitution of Forms CRA-2 and CRA-4**

The Ministry of Corporate Affairs vide **Notification F. No. 1/40/2013-CL-Vdated June 12, 2015,** has made amendment in the Companies (Cost Records and Audit) Rules, 2014, vide the Companies (Cost Records and Audit) (Amendment) Rules, 2015. Consequently, Form CRA-2 for ‘Intimation of appointment of Cost auditor by the Company to Central Government’ and Form CRA-4 for ‘filing of Cost Audit Report with Central Government’ has now been substituted.

- **Extension of time for filing of Notice of appointment of the Cost Auditor for the FY 2015-16 in Form CRA-2 and filing of Cost Audit Report to the Central Government for the FY 2014-15 in Form CRA-4**

The Ministry of Corporate Affairs vide **General Circular No. 8/2015, dated June 12, 2015**, has extended the time limit for filing of Form CRA-2 and CRA-4, due to unavailability of the revised Form CRA-2 and Form CRA-4 on MCA-21 Portal required for filing of notice of appointment of the Cost Auditor for the F.Y. 2015-16 and for filing of Cost Audit Report for the Financial Year 2014-15, to June 30, 2015 and August 31, 2015 respectively.

NEWS FLASH

- **Service tax only in AC restaurants; effective rate 5.6%**

Service tax will not be levied on customers dining in restaurants without air conditioning facility or central heating, the Finance Ministry has clarified. Even the restaurants that have ACs or central heating will levy Service tax only on 40% of the total bill amount, the Ministry said in a statement. In case of air-conditioned or air-heated restaurants, "60% of the value is to be deducted from the total amount charged while applying the rate of Service tax and tax is to be calculated on the balance 40%", it added.

The clarification follows confusion over the levy and some reports of overcharging after the higher Service tax rate of 14% became applicable from June 1. The earlier Service tax rate was 12.36% including the education cess. The effective service tax on eating out in air-conditioned or centrally-heated restaurants will be 5.6% of the food bill compared with 4.94%. Service tax is chargeable on services provided by restaurants, eating joints or messes, which have the facility of air-conditioning or central air heating in any part of the establishment at any time during the year in relation to serving of food or beverages.

- **GST will transform courier industry, says Minister of States for Finance Jayant Sinha**

The proposed GST Bill will be a game changer for India's express and courier industry, Minister of State for Finance Jayant Sinha said, listing GST as one of the "vectors" transforming the country's logistics sector.

"GST will change the supply chain long lines on inter-state borders are going to go away," Sinha said at a conference in the national capital on e-commerce organised by the Express Industry Council of India that also discussed the proposed reform of India's indirect tax regime.

- **Indirect Tax Collection Up 39%, Excise Reflects Manufacturing Uptick- FM Arun Jaitley**

Indirect tax collection has jumped 39.2 per cent in April-May, with Excise showing a smart rise reflecting pick up in manufacturing, Finance Minister Arun Jaitley said. The collection of indirect taxes in all three categories - Customs, Central Excise and Service tax has shown rising trend in the current Financial Year, 2015-16, he said.

"Data for the indirect tax collections for the month of May is now available. In May 2015, collections have increased by 37.3 per cent. Therefore, cumulatively for April and May compared to past year, the increase is by 39.2 per cent," Jaitley told reporters here.

- **Spurt in indirect taxes indicates economic recovery: CEA Arvind Subramanian**

The Finance Ministry said that the spurt in indirect tax collections this fiscal was an indication of economic recovery though there was some need for caution as these were only early indications. "If you look at 12.6% increase in April-May indirect tax revenues, the revenue growth is healthy, and all things taken into effect, it should reflect a kind of underlying recovery in economy," Chief Economic Advisor Arvind Subramanian told reporters here.

Indirect tax collections during the first two months (April-May) of the current financial year increased to Rs 96,128 crore, up 39.2% over the year ago period. After taking-out the impact of these additional measures, indirect tax collections have shown an increase of 12.6% for the two-month period April-May 2015.

Subramanian, however, cautioned saying one should be careful and appropriately cautious because these are only the collection figures of two months.

Customs collections was higher at Rs 29,986 crore, up 19.5%. Service Tax mop up rose to Rs 27,607 crore, up 17.6% annually. Subramanian said the indirect tax revenue number is real money and based on real underlying economic activity. The economy expanded by 7.5% in the January- March quarter.

- **Amfi frames method for MF agents' Service Tax deduction**

In a relief to mutual fund distributors, industry body Amfi has put in place a new computation method that will help in reducing their Service tax payments.

Mutual fund distributors are required to pay Service tax from the commissions earned by them.

"Amfi has framed a computation method of service tax deduction which reduces net service tax payout to Rs 12.28 on every Rs 100 paid as commission to distributors," a member of the industry body said.

"The gross service tax is 14 per cent but the net service tax payout comes down to 12.28 per cent through this method," he added.

In case a distributor is entitled to get Rs 100 and service tax is 14 per cent, then tax will be calculated as net service tax payout = commission payout u2013 commission payout X gross service tax rate/commission payout + service tax.

In other words, the net commission payout works out to Rs 87.72 (Rs 100-Rs 12.28) instead of Rs 86. The service tax on mutual fund distributors came into effect from June 1, 2015.

Glossary	
Finance Act, 1994	**Finance Act**
Service Tax (Determination of Value) Rules, 2006	**Service Tax Valuation Rules**
Service Tax Rules, 1994	**Service Tax Rules**
Place of Provision of Service Rules, 2012	**POP Rules**
Show Cause Notice	**SCN**
Central Excise Act, 1944	**Excise Act**
Central Excise Tariff Act, 1985	**Excise Tariff Act**
Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000	**Excise Valuation Rules**
Customs Act, 1962	**Customs Act**
Customs Tariff Act, 1975	**Customs Tariff Act**
Cenvat Credit Rules, 2004	**Credit Rules**
Delhi Value Added Tax Act, 2004	**DVAT Act**
Delhi Value Added Tax Rules, 2005	**DVAT Rules**
Central Board of Excise and Customs	**CBEC**
Goods and Services Tax	**GST**
Directorate General of Foreign Trade	**DGFT**
Reserve Bank of India	**RBI**

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