22nd
ISSUE

June 28th - July 4th

GST

CENTRAL EXCISE

SERVICE TAX

CUSTOMS

STATE TAXES

TAX CONNECT

JAV & ASSOCIATES

-Chartered Accountants

Head Office:
1, Old Court House Corner,
"Tobacco House" 1st Floor,
Room No.-13 (North), Kolkata-700001,
West Bengal

Branch Office:
Quarter No.-3/174, Gujarat Refinery Township
Jawaharnagar, Vadodara-391320,
Gujarat

Contact: +919331042424; +919831594980; +918697575185; +913322625203

e-mail: tb.chatterjee@dic.co.in; tb.chatterjee@yahoo.co.in; cavivekjalan@gmail.com; vivek.jalan@icai.org

EDITORIAL

Friends,

The Select Committee of Rajya Sabha on GST, as a part of its countrywide tour, was in Kolkata on 24th June 2015 to gather the views of State governments and experts in the region.

We as part of The Bengal Chamber of Commerce were privileged to attend the Meeting of on 24.06.2015 at The Park Hotel, Kolkata. **We presented our views before the Committee, which included Parliamentarians like Shri Mani Shankar Aiyar ; Shri Derek O Brien; Shri Bhupender Yadav, Chairman, Select Committee on GST ; Shri K C Tyagi ; Shri D Raja and others.**

The focus was on the introduction and implementation of GST. Our Article on GST on the next Page presents the Chamber's Memorandum on GST. Among other issues, we emphasized strongly that Trade & Industries are to be given at least 6 months (from the date of passing legislation) time for proper implementation of GST.

In Service Tax, The Kolkata CESTAT has continued to hold its view that it is barred from entertaining any appeal unless pre-deposit norm is complied with accordingly the appeals are dismissed. Even for appeals filed before 6.8.2014 it is a task to get away with pre deposit in a stay hearing.

In Income Tax, the Govt. is bent on sending a stern message to evaders. As per sources, a strategy has been evolved at a recently-concluded national conference of I-T brass where it was decided to go after the evaders with full vigour. In this regard it may also be noted that from early next month, those with undisclosed income and assets abroad are likely to get a window to declare these without facing prosecution.

In WB VAT, just to remind you again that Settlement of Disputes Scheme (SOD), whereby pending disputes in Commercial Taxes dispute can be settled upon payment of a fraction of disputed tax is available only till **31st July 2015.**

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

Truly Yours

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

Vivek Jalan
FCA, CIDT (ICAI), B. Com

DUE DATE	COMPLIANCES from 28/06/2015 to 04/07/2015
28-June-15	WCT Return for Delhi
30-June-15	VAT/CST/WCT/ET Payment for the month of May for Mizoram, Himachal Pradesh, Jammu & Kashmir, Arunachal Pradesh
30-June-15	Extended Due Date to file WB PT Return for 2014-15

Index Guide

Memorandum of Meeting of Selected Committee on GST

1. 1% non-cenvatable Tax on Interstate supply of goods will have a high cascading impact. In fact many times goods are transferred from one state to other multiple times. In such a case the impact will be 2-4% for such transfer.

2. The concept of Way Bill and Octroi check post to be withdrawn. At present goods are detained at the check post and incur demurrages and take long time for clearance.

3. At present there are many restrictions for availing Cenvat Credit/Input tax credit. For example tax on inputs used directly in the process of manufacture is allowed as credit. However there are many inputs including services which are used for business and may not have a direct link with the manufacture. For example tax on Furniture & Fixtures, Electrical equipments, Motor Vehicles, R&D equipments etc is not allowed as input tax credit Under GST, input tax credit on goods/services used for the purpose of business should be available as credit.

4. Electricity Duty paid by the Industry is to be covered within the ambit of GST.

5. Purchase Tax/Entry Tax/Octroi are to be allowed as Input Tax Credit.

6. Industries are to be given at least 6 months (from the date of passing legislation) time for proper implementation of GST.

7. The input tax paid by the Exporters is to be refunded automatically.

8. The threshold limit for applicability of GST may be fixed at Rs. 50 lacs.

9. Tax Rate on Goods and Services is to be same to avoid disputes

10. Merchant Exporter to be allowed in procuring goods without payment of GST.

11. Tax on interstate supply of goods from one state to other of the same company may be exempted from the purview of GST.

12. GST Rate may be kept in the range of 16-18%.

13. There should be a one consolidated Return which will take care of CGST, SGST and IGST.

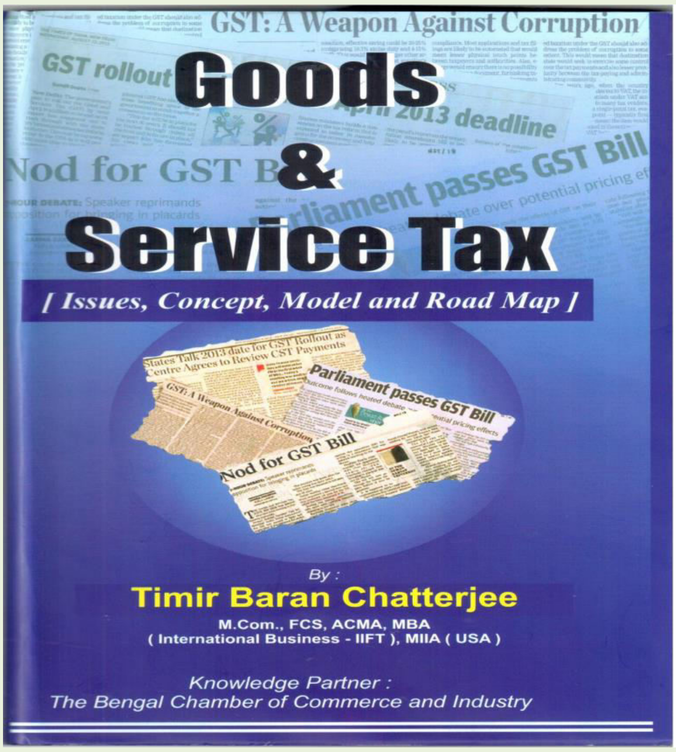
14. The Act and Rules with regard to SGST, CGST and IGST for all states to be uniform.

15. Education, Health, Residential real estate and Agricultural products to be kept outside the ambit of GST.

16. Entertainment Tax, Luxury Tax, Amusement tax are to be subsumed within state GST.

17. There are cases where inputs (Naptha) are taxable under GST whereas the output (Motor spirit commonly known as Petrol) is outside the purview of GST. In such cases suitable arrangement to be made for refund of input tax credit.

18. The concept of Works Contract Tax is to be discontinued.



SERVICE TAX

COURT DECISIONS

GOPALA BUILDERS V/S DIRECTORATE GENERAL OF CENTRAL EXCISE INTELLIGENCE AND 1 (Gujarat HC)

BRIEF: Demand and Recovery of Taxes Not Permissible Before Adjudication.

OUR COMMENTS: In the above case, the grievance of the petitioner is that without adjudicating the actual amount of service tax to be paid by the petitioner, on an assumed basis service tax has been demanded by the respondents. However, the Revenue states that the demand has been made as per the papers submitted by the petitioner.

The **Hon'ble Gujarat High Court** held that if the demand was based on the papers submitted by the petitioner, then they should have adjudicated upon the matter and fixed the liability of service tax to be paid by the petitioner. Such recovery of tax on the basis of show cause notices without any proper adjudication is not permissible in law. Following the decision of the **Hon'ble Gujarat High Court** in the case of **Technomaint Contractors Limited v. Union of India (2014)**. **[Decided in favour of assessee]**

M/S. BOOTLEGGERS ISLAND REPRESENTED BY ITS PROPRIETOR MR. RAJESH BAJAJ V/S CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, THE COMMISSIONER OF SERVICE TAX (Madras HC)

BRIEF:

1. **Ground Of Financial Hardship Can Be Raised Only For Belated Payment Of Service Tax And Is Not A Ground For Non-Levy Of Penalty.**
2. **Penalty u/s 76 & 77 is imposable even though tax is paid before issuance of SCN**

OUR COMMENTS: In the above case, the assessee had not filed ST-3 returns for the periods July, 2001 to September, 2001 and October, 2001 to March, 2002. Hence a notice was issued directing the assessee to file returns, following which the assessee filed returns and paid belatedly service tax upto December, 2001. The assessee had also not paid service tax from January, 2002 to March 2002, October, 2002 to December, 2002 and January, 2003 to March, 2003 and for the belated service tax payment also the assessee had not paid any interest. Hence a SCN was issued demanding service tax with interest and penalty.

The **Hon'ble Madras High Court** held that the assessee had recovered the service tax from the clients but failed to pay it. Besides being an act of evasion of tax, it was also an offence of collecting tax from the clients but not paying it to the Govt. Thus, the benefit of Section 80 cannot be extended as there is no bonafide justification by the assessee for not imposing the penalties. Hence, the penalty can be levied even in cases where tax is paid before issuance of SCN. **[Decided against assessee]**

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

BRIEF: It is a case of vagueness of SCN where there is neither clarity regarding the classification/category of services nor a clear mention for which the service tax has been demanded.

OUR COMMENTS: In the above case, SCNs were issued to the assessee stating that the activities undertaken by the assessee come within the purview of service tax. The SCNs were however not clear regarding the demands made and with reference to which service of the assessee.

The **Hon'ble Madras High Court** held that the SCNs were bereft of details and were ambiguous. They are considered vague on the very foundation where there is no clear mention as to the classification of works that attracts service tax. Hence, the matter was remanded back. **[Decided in favour of assessee]**

M/S. VISRANTHI BUILDERS V/S CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, THE COMMISSIONER OF CENTRAL EXCISE (Madras HC)

BRIEF: The main question for consideration that arises is whether Sections 76 and 80 of the Finance Act, 1994 as amended, warrant levy of penalty equal to amount of Service Tax by way of mandatory condition or any discretion is left with the authorities for imposing such penalty.

OUR COMMENTS: In the above case, the **Hon'ble Madras High Court** held that where it is a case of malafide intention to evade payment of Service Tax, there is a mandatory imposition of penalty. Once there is a suppression of facts or a case of tax evasion, penalty is automatically attracted following the decision of the **Hon'ble Supreme Court** in the case of **Union of India Vs. Dharmendra Textile Processors (2008).** This penalty is irrespective of the fact that the service tax was paid before the issue of SCN. **[Decided against assessee]**

CENTRAL EXCISE

COURT DECISIONS

SUBHASCHANDRA BALCHANDRA BADJATE V/S THE DIRECTOR GENERAL, CENTRAL EXCISE (INTELLIGENCE) AND OTHERS (Bombay HC)

BRIEF: Evasion of Duty is a cognizable and non-bailable offence. There is also power entitling the Excise Officer not below the rank of Inspector to arrest persons like the present petitioner involved in such offence and to issue summons as well.

OUR COMMENTS: In the above case, the petitioner is a major shareholder of a company which was involved in clandestine removal of goods. There were unaccounted information, cash and incriminating material which were recovered from the premises of the petitioner. When summons were served to the petitioner, he failed to appear before the empowered officer.

The **Hon'ble Bombay High Court** held that such an offence was a cognizable and a non-bailable offence. The goods removed without the payment for excise duty can be referred to as **"smuggled goods".** In such cases, competent officer has the power under section 21 of the Act which is similar to the power of the officer in charge of a police station; i.e., **POWER TO ARREST**. The sons of the petitioner, being the directors of the company were refused bail. The petitioner was granted bail due to his old age though. **[Decided against assessee]**

IDEAL PAINTS PVT. LTD. V/S COMMISSIONER OF C. EX. (APPEALS) , PUNE-III (Bombay HC)

BRIEF: The substantial question of law is that the Tribunal proceeded in absence of the appellant and the Advocate. Whether the CESTAT could do so?

OUR COMMENTS: In the above case the **Hon'ble Bombay High Court** held that the CESTAT was not justified while disposing of the Appeal and imposing a condition of payment of the entire amount of duty while remanding the matter to the lower Appellate Authority. Since, the matter was remanded back no condition could have been imposed. Where there are allegations of evasion of duty, the CESTAT cannot pass an order in the absence of the appellant and the Advocate. **[Decided in favour of assessee]**

M/S ASR MULTIMETALS PVT. LTD V/S CCE RAJKOT (CESTAT Ahmedabad)

BRIEF: The issue involved herein is regarding utilization of credit of Basic Excise Duty for discharge of Education Cess.

OUR COMMENTS: In the above case the **Hon'ble CESTAT Ahmedabad** held that the Hon'ble Gujarat High Court in the case of Madura Industries Textiles had upheld the order of the Tribunal, wherein this view was taken. Since, the issue attained finality by the judgment of Hon'ble High Court of Gujarat, the appeal of the assessee was allowed. **[Decided in favour of assessee]**

COMMISSIONER OF CENTRAL EXCISE, MUMBAI-I V/S M/S. HINDUSTAN LEVER LTD (CESTAT Mumbai)

BRIEF: The issue involved is:

1. **Whether transfer of CENVAT Credit is allowed on sale of manufacturing unit along with raw materials and semi finished goods?**
2. **Whether duty demand in respect of inputs and semi finished goods transferred to the buyers of the unit is sustainable?**

OUR COMMENTS: In the above case the **Hon'ble CESTAT Mumbai** held that though the manufacturing unit was sold by the appellant to M/s. Bon Ltd. but sale is on as where is basis. The inputs in question were not removed from the factory. Therefore, in absence of removal of input from the factory duty demand is not sustainable.
Also, since the purchaser of the manufacturing unit was engaged in the manufacture and was assessed under Central Excise, it is not even a case of removal of goods without payment of duty. Thus, the transfer of CENVAT Credit is permissible. **[Decided against Revenue]**

M/S. SABIC INNOVATIVE PLASTICS INDIA PVT. LIMITED V/S COMMISSIONER OF CENTRAL EXCISE & S.T., VADODARA (CESTAT Ahmedabad)

BRIEF: Where the assessee has erroneously taken 100% CENVAT Credit on capital goods but hasn't utilized it for the payment of excise duty, demand of interest and penalty is not sustainable.

OUR COMMENTS: In the above case, the appellant had erroneously taken CENVAT credit @ 100% on the capital goods in the same financial year whereas only 50% was allowed. It however reversed the same without utilizing it for the payment of excise duty.
The **Hon'ble CESTAT Ahmedabad** held that the demand of interest and penalty as per the provisions of Rule 15 of the Cenvat Credit Rules, 2004 were not sustainable as the appellant had not utilized the credit. **[Decided in favour of assessee]**

CUSTOMS

NOTIFICATIONS & CIRCULARS

EXAMINATION / INSPECTION OF IMPORTED GOODS WITHOUT DELIVERY ORDER

The **Govt. of India vide Public Notice 25/2015 dated 22nd June 2015** has decided that the CFS shall present the goods for examination inspection by the Customs without insistence on Delivery Order. However the Docks/CFSs shall release the cargo only after production of Delivery Order.

OUR COMMENTS: If such procedure is adhered to, then it would not only reduce the cost incurred by the importers but also considerably reduce the time consumed during clearance of cargo. This facility will be effective from 22nd June 2015.

COURT DECISIONS

M/S SUDERSAN IMPEX V/S THE COMMISSIONER OF CUSTOMS (EXPORTS) AND OTHERS (Madras HC)

BRIEF: The main point of consideration is whether denial of refund claim of SAD for non-fulfilment of the conditions against paragraph 2(e)(ii) of the Notification No.102/2007-Customs dated 14.9.2007 is justified.

OUR COMMENTS: In the above case, the third respondent without taking into consideration the relevant documents submitted by the appellant rejected the refund claims for non-fulfilment of the conditions against paragraph 2(e)(ii) of the Notification No.102/2007-Customs dated 14.9.2007 as amended. The second respondent, Commissioner of Customs (Appeals), however allowed the appeals and the same was also acknowledged by the third respondent on 18.7.2014 but the application for refund of SAD amount has not been taken up by the third respondent.
The **Hon'ble Madras High Court** has therefore ordered to refund the SAD amount. **[Decided in favour of assessee]**

M/S. M.Z. HANDICRAFTS AND ANOTHER V/S U.O.I. AND 4 OTHERS (Allahabad HC)

BRIEF: U/s 110 of the Customs Act, Senior Intelligence Officer does not have the power to stop withdrawal from the bank account of the petitioners because an investigation was being carried out by the office.

OUR COMMENTS: In the above case, an action has been taken by the Directorate of Revenue Intelligence u/s 110.

The said section deals with the Seizure of 'goods', 'documents' or 'things'. However, the bank account of the assessee has also been freezed.

The **Hon'ble Allahabad High Court** held that power under section 110 of the Act could not be exercised to freeze the bank account of the assessee. Bank Account is not covered under 'goods', 'documents' or 'things' as per section 110. Hence, the officer should withdraw his order and the assessee should be granted permission to operate his bank account. **[Decided in favour of assessee]**

M/S INDIAN OIL CORPORATION LTD V/S COMMISSIONER OF CUSTOMS, TRICHY (CESTAT Chennai)

BRIEF: The main point of consideration is whether the refund arising out of finalization of provisional assessment on the imports of the appellants which was sanctioned and credited to the Consumer Welfare Fund on the ground of unjust enrichment is applicable or not.

OUR COMMENTS: In the above case, the assessee opted for provisional assessment. This assessment subsequently got finalized for the period February 1999 to August 1999. On finalization of the provisional assessment, the appellants were eligible for refund of excess CVD and BCD paid amounting to Rs.7,75,157/-. However the amount sanctioned was credited to the Consumer Welfare Fund on the ground that the appellants had not crossed the bar of unjust enrichment.

The **Hon'ble CESTAT Chennai has** held that unjust enrichment clause shall not apply for finalization of the provisional assessment for the cases prior to 13.7.2006. It does not have a retrospective effect. The provisional assessment pertains to the year 1999 and refund was sanctioned in the year 2004. Following the decision of the **Hon'ble Supreme Court** in the case of **Bussa Overseas and Property Pvt. Ltd.(2003)** appellants are eligible for refund of CVD and BCD. **[Decided in favour of assessee]**

INCOME TAX

NOTIFICATIONS & CIRCULARS

EXEMPTIONS TO STATUTORY BODY/AUTHORITY/BOARD /COMMISSION/ NOTIFIED BODY OR AUTHORITY

The **CBDT vide Notification No. 47/2015 dated 18th June 2015** hereby provides that the Central Govt. has notified for the purposes of clause (46) of section 10 of the Income-tax **"Punjab State AIDS Control Society", a body constituted by the Government of Punjab** in respect to specified income arising to that body namely:

a) amount received in the form of government grants
b) Interest earned on grants-in-aid from the Govt. of India

This notification shall be deemed to have been applied for the financial years 2011-12, 2012-13, 2013-14, 2014-15 and 2015-16.

Also, vide **Notification No. 48/2015 dated 18th June 2015** the Central Govt. has notified for the purposes of clause (46) of section 10 of the Income-tax **"West Bengal Electricity Regulatory Commission", a Commission constituted under the Electricity Regulatory Commission Act, 1978 (West Bengal Act No. 14 of 1998), of West Bengal** in respect of the following specified income arising to that Commission, namely:-

a) income from the fund maintained in accordance with the provisions of the West Bengal Electricity Regulatory Commission (Manner of application of Fund) Rules, 2006;
b) income from the fees collected in accordance with the provisions of the West Bengal Electricity (fees for application for grant of license) Rules, 2005, notified by the Government of West Bengal.

This notification shall be applicable for the financial years 2011-12 to 2015-16.

However, the above mentioned bodies should file return of income in accordance with the provision of 139 (4C) (g) of the Income Tax Act, should not engage in any commercial activity and the activities and the nature of the specified income derived shall remain unchanged throughout the financial years.

OUR COMMENTS: Section **10(46)** deals with specified income arising to a body or authority or Board or Trust or Commission, established by or under a Central or State Act or by a Central or State Govt with the object of regulating or administering any activity for the benefit of the general public, which would be exempt from tax subject to the condition that the said entity is not engaged in any commercial activity.

INCOME TAX(8TH AMENDMENT) RULES,2015 REGARDING APPLICABILITY OF ITR 1, ITR 2, ITR 2A & ITR 4S

The **CBDT** vide **Notification No. 49/2015 dated 22nd June 2015** has hereby made amendments to amend the Income-tax Rules, 1962 which shall come into effect from 1st April 2015.

OUR COMMENTS: The amendments are regarding the applicability of the various ITR forms namely ITR-1, ITR-2, ITR-2A and ITR-4S to different types of assessees. Most important of them all is that now ITR1 and ITR-4S can be filed where exempted income exceeds Rs 5000/- with salary income or house property.
Readers are requested to go through the respective amendments.

COURT DECISIONS

COMMISSIONER OF INCOME TAX, CENTRAL-I V/S M/S HINDUSTAN ALUMINUM CORPORATION LTD. (Bombay HC)

BRIEF: Extra shift allowance is based on the extra working hours worked by the factory as a whole and not on the basis of any particular plant or machinery.

OUR COMMENTS: In the above case, entitlement to extra shift allowance in terms of circular dated 26 May 1985 of the CBDT is under question.
The **Hon'ble Bombay High Court** relied on the decision of the **Hon'ble Supreme Court** in the case of **South India Viscose Ltd. Vs. CIT** and held that extra shift allowance has to be calculated on the basis of number of days which the factory had actually worked on extra shift and not on the basis of machinery or plant working an extra shift in the factory. **[Decided in favour of assessee]**

COMMISSIONER OF INCOME TAX-7 V/S M/S NICHOLAS PIRAMAL (INDIA) LTD.(Bombay HC)

BRIEF: Whether community development expenditure is allowable as business expenditure?

OUR COMMENTS: In the above case, the assessee had incurred expenditure for providing street lights on the road which leads to the Respondent's factory, providing ambulance for meeting medical emergencies for residents of the village where its factory is and developing a public garden. These were disallowed on the ground that the same are not incurred wholly and exclusively for the purpose of business.
The **Hon'ble Bombay High Court** held seconded the decision taken by the **ITAT** where it was held that the concept of business would include within its fold the care and concern for the society at large which would result in a goodwill being created in its favour leading to better business. Following the decision of the **Hon'ble Madras High Court** in the case **of Commissioner of Income Tax v/s. Madras Refineries Ltd** where the expenditure incurred on drinking water facilities and aid to the school had been allowed. Hence the expenditure incurred by the assessee is allowable. **[Decided against Revenue]**

COMMISSIONER OF INCOME TAX-4 V/S M/S. PRIME BROKING CO. (I) LTD. (Bombay HC)

BRIEF: Payment made by the assessee is merely a reimbursement of expenses and not rent payment as stated. Hence, TDS not applicable as there is no income element.

OUR COMMENTS: In the above case, the assessee had made reimbursement of expenditure to its holding company for the use of infrastructure. This amount was disallowed under Section 40(a)(ia) of the Act. The rent amount was actually paid by the holding company to the landlord and the assessee had merely reimbursed the same.
The **Hon'ble Bombay High Court** held that there was no income element and therefore no tax at source is deductible. Reliance is placed on the decision of the **Hon'ble Court** in the case of **C.I.T. v/s Siemens Aktiongesellschaft** where in case of reimbursement of expenditure no income arises in the hands of the recipient. **[Decided against Revenue]**

STATE TAXES

GUJARAT

The **Govt. of Gujarat vide Notification No. (GHN-23)VAT-2015-S.41(1)(15)-TH dated 19th June 2015** has hereby made provisions for Remission of tax on Re-gasified Liquid Natural Gas (RLNG) sold to Power plant subject to satisfying the conditions mentioned in the notification.

OUR COMMENTS: Following are the forms that have been issued for this purpose:

1. **SGPP-1**: Application for Certificate of Entitlement
2. **SGPP-2**:Certificate of Entitlement
3. **SGPP-3**:Declaration by specified power plant purchasing RLNG for use in Electricity Generation

Concerned readers are requested to kindly go through the conditions to avail the benefit of such provisions.

ORISSA

The **Govt. of Odisha vide Notification No. 17576-FIN-CT1-TAX-0013-2013 dated 20th June 2015** has hereby made amendments to the Orissa Entry Tax Rules, 1999.

OUR COMMENTS: These rules may be called the Odisha Entry Tax (Amendment) Rules, 2015. Several important amendments are made. Readers are requested to go through the amendments to keep themselves updated.

Also, vide **Notification No. 17764-FIN-CT1-TAX-0055-2012 dated 23rd June 2015** the Govt. hereby exempts the sale of Aviation Turbine Fuel (ATF) to international flights, from payment of tax payable under the Odisha Value Added Tax Act, 2004.

OUR COMMENTS: The exemption is available subject to the condition that the international airlines shall give a certificate to the selling dealer (Oil Company) of Aviation Turbine Fuel (ATF) in the State in the proforma appended to the notification about the detail purchase of Aviation Turbine Fuel (ATF).

RAJASTHAN

The **Govt. of Rajasthan vide Notification No.F.12(121)FD/Tax/2011-43 dated 19th June 2015** hereby exempts M/s. Lafarge India Pvt Ltd from payment of entry tax on the entry of goods, mentioned in the list attached to the notification into local area for setting up of cement plant for manufacturing of cement in the State by the enterprise.

OUR COMMENTS: The list contains goods namely:

1. Air Conditioner & Refrigerator
2. Optical Fiber Cables
3. All type of Electrical & Electronic goods
4. All kind of Telephones & Parts thereof
5. Aluminium Structure steel fabrication pin insulator switch fuse units & isolators
6. Transformers along with spares & accessories
7. Computers & their accessories
8. Generating Sets
9. Steel Structures & Steel Bars including TIM Steel
10. All types of sanitary goods fittings pipings
11. Weigh Bridges
12. Lift & Elevators.

The quantity and purchase value amount with respect to the above mentioned goods is mentioned in the list. Readers are requested to go through the same.

Vide **Dealer Circular-03/2015-16 dated 23rd June 2015** it is informed that android based mobile application **'Raj VAT'** for generating Form VAT- 47A and Form VAT-49A of Commercial Taxes Department is now available at Google Play Store.

OUR COMMENTS: Dealers may login using the same credentials and avail the facilities provided.

Vide **Dealer Circular-02/2015-16 dated 23rd June 2015** the Govt. has laid down the procedure for early refund by registered dealer whose turnover of interstate sales in the previous year was 50% of total turnover.

OUR COMMENTS: The online application shall be made in Form VAT 20A and shall be submitted electronically through rajtax web portal by eligible dealer according to the procedure laid down in the circular.

Vide **Circular-06/2015-16 dated 23rd June 2015** the Govt. has clarified that where a registered dealer commonly known as developer/ builder who, as works contractor, undertake the construction of flats, dwellings or buildings or premises and transfer them along with goods (whether as goods or in some other form) and land or interest underlying the land in pursuance of an agreement, has opted for payment in lump sum in lieu of tax under any notification issued in this regard, awards whole or part of the work for which he has opted for payment of lump sum in lieu of tax to a sub-contractor, no tax shall be levied on the turnover of such sub-contract subject to the condition as mentioned in proviso to sub-rule (6) of rule 22A of the RVAT Rules.

It is further clarified that no Tax shall be deducted at source in such circumstances.

OUR COMMENTS: Readers are requested to go through the circular.

Vide **Circular-01/2015-16 dated 23rd June 2015** the Govt. has issued instructions regarding directions for transport checking.

OUR COMMENTS: The officers are hereby directed to ensure that the goods which are found being carried with prescribed and genuine documents as required by the provisions of section 76 should not be detained, although some other goods along with vehicle might have been detained for verification/ examination if they are found not supported by valid documents or the documents are false or forged. It is also emphasized that the procedure as laid down under the rules, for the checking of goods in movement, should strictly be complied with.

Vide **Circular-02/2015-16 dated 23rd June 2015** the Govt. has issued instructions regarding cancellation of registration of the dealers who have failed to file their returns.

OUR COMMENTS: All Assessing Authorities shall issue notices to all such dealers have not filed their returns for the financial years 2012-13 and 2013-14. for cancellation of certificate of registration under the provisions of RVAT Act, 2003. SCNs should be issued to the dealers asking them to file their returns up to 30.07.2015. In case the dealer fails to file the required returns within the stipulated time, cancellation proceedings of registration shall be initiated by the Assessing Authority or the Authority competent to grant registration.

Vide **Circular-03/2015-16 dated 23rd June 2015** the Govt. has directed all Assessing Authorities to accept CST and VAT statutory forms only through "Statutory Forms Details" functionality to capture details of CST and VAT statutory Forms submitted by dealers in support of claim of rebate of tax.

OUR COMMENTS: The details regarding the functionality are provided in the circular.

Vide **Circular-04/2015-16 dated 23rd June 2015** the Govt. has issued instructions regarding maintenance of assessment records.

OUR COMMENTS: All the assessing authorities directed not to maintain the physical records of assessment of the dealers for the year 2013-14 onwards, where no Declaration Forms / Certificates are required to be submitted by the dealer in support of any concessional rate of tax and the dealer is assessed under Section 23 of the Act with nil demand.

Vide **Circular-05/2015-16 dated 23rd June 2015** the Govt. has issued instructions regarding the Audit under section 27 where cases have been assigned to an Auditor posted at headquarter or State Tax Academy of Rajasthan(STAR).

OUR COMMENTS: It is clarified that officer(s) so authorized shall conduct the audit of the dealer(s) for whom they have appointed as auditor. Where during the audit, the returns filed by the dealer are not found to be correct, or avoidance or evasion of tax is detected, such authorized officer shall issue notice and pass appropriate order after approval from Deputy Commissioner (MEA) with particulars as required by the circular. The order shall then be looked into by the Commissioner who shall transfer the file to the assessing authority to initiate recovery proceedings.

ANDHRA PRADESH

The **Govt. of Andhra Pradesh vide Circular-1 CCT's Ref.No. CCW/CS(1)/128/2015 dated 19th June 2015** has issued instructions to the Deputy Commissioners and the Commercial Tax Officers o give wide publicity about the facility of e-Registration available to the business people.

OUR COMMENTS: The Govt. has requested all registering authorities to ensure that all the prospective dealers file online applications through e-Registration module in VATIS on Departmental website www.apct.gov.in. All the manual filing of registration applications should stop so that the facility of availing the online registration facility is used and there is an ease of doing business.

Vide **Circular-3 CCT's Ref.No. CCW/CS(1)/ 128 /2015 dated 19th June 2015 the Govt.** has issued instructions regarding the refund u/s 38 of any excess tax paid.

OUR COMMENTS: The Govt. has requested the Deputy Commissioners to ensure that all the claims of Refunds are settled and issued within Sixty (60) days from the date of claim by the dealer.

Vide **Circular-4 CCT's Ref.No. CCW/CS(1)/128/2015 dated 22nd June 2015 the Govt. has stated that** VAT Registration certificates should be issued within 24 hours if the dealers submit all the required documents

OUR COMMENTS: The inspection process of the newly registered dealers should be completed within 72 hours from the date of registration. The Inspection Authorities has to confirm the address proof already submitted at the time of filing of Registration documents. There is no need to submit additional documents at the time of Registration Inspection.

ASSAM

The **Govt. of Assam** vide **Circular No. 7/15 dated 24th June 2015 has issued** instructions to facilitate the inter-State despatch of taxable goods across the Border Check Posts on the strength of **"Tax Clearance Certificate" (Form 63) or "Despatch Note" (Form XI)** and to streamline the process of demanding additional security to secure the tax payable in respect of despatch of taxable commodities to outside the State of Assam.

OUR COMMENTS: The instructions issued are as follows:

1. It is made clear that the power to demand additional security is vested in the Tax Authority granting the Certificate of Registration and not with the Check Post Authority.
2. Based on the requirement of "Tax Clearance Certificate", the Registering Authority shall require the dealer to furnish the full details regarding the goods to be dispatched during a particular period. After this, he calculates the tax liability based on which the question of additional security comes into consideration.
3. Where a “Despatch Note” or a "Tax Clearance Certificate" is produced, the other document may not be required to be produced. This means that either the Despatch Note or the Tax Clearance Certificate would suffice the precision of inter-State despatch of taxable goods.
4. Where more than one "Despatch Note" is applied for, the Registering Authority shall ensure the correctness of all the information required with reference to the goods.
5. However, it should not be interpreted that the Check Post Authority does not have the power to realize tax & penalty when despatch of taxable of goods to outside the State of Assam is not supported by either "Despatch Note" or "Tax Clearance Certificate".

TAMIL NADU

The **Govt. of Tamil Nadu** vide **Circular No. 24/2015 dated 20th June 2015** has issued instructions regarding the manual "C" and "F" forms to be issued to the dealers; the facility of which is extended upto 30/09/2015.

OUR COMMENTS: The notification is self-explanatory.

EXCISE AND TAXATION COMMISSIONER CHANDIGARH AND ANOTHER VERSUS M/S. BHARAT CONSTRUCTION CORPORATION – AN IMPORTANT SUPREME COURT JUDGEMENT

BRIEF: Refund Order cannot be passed by the High Court where the order of the Assessing Authority has already attained finality.

OUR COMMENTS: In the above case, there was TDS of Rs.15,91,662/- as per the returns of the assessee. The assessing authority not being satisfied with the returns filed by the assessee had served several notices to the assessee to which there was no response. Thus, the assessment was completed by the authority and an order was passed dated 26.05.1999. The assessee then applied for a rectification, which the assessing authority rejected on the ground that rectification could be filed only of a clerical or arithmetical mistake. Since, the assessee did not challenge the order, the assessment attained finality. The **Hon’ble Punjab & Haryana High Court** on a writ petition filed by the assessee considered the said application within a reasonable time and stated that the said application could not be rejected and passed the refund order.

In response to this, the **Hon’ble Supreme Court** held that High Court should not have passed the order of refund as the assessment order passed by the assessing authority for the assessment year 1995-96 has attained finality. It is only when a rectification of application is considered and decided by the assessing authority then only the respondent would be entitled for refund of the tax paid.

Corrigendum to “Tax Connect June 21st- 27th”

In the **“STATE TAXES”** section on **“page 8”**, under **“HARYANA”** the stated lines **“The Govt. of Bihar vide Notification.....”** shall be read as **“The Govt. of Haryana vide Notification.....”.**