INDIRECT TAX EXPRESS

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

June, 2015
Volume 13, Issue 2

FROM THE EDITORIAL TEAM

GST – THE NEXT LOGICAL STEP

By passing of Constitutional (122nd Amendment) Bill, 2014 on Goods and Services Tax (GST) with 2/3rd majority in Lok Sabha on 06.05.2015, India moved a step forward to introduce the most awaited dual system of Goods and Services Tax (GST). However, proposed constitutional amendment bill on Goods and Service Tax (GST) was referred to a Select Committee of Parliamentarians, raising doubts over the roll out of the new indirect tax regime from April 1, 2016, as scheduled. The 21-member panel will give its report by the last day of the first week of the Monsoon Session after which it will be considered in Rajya Sabha.

Recently, On 17th June 2015, Finance Minister, Arun Jaitley has announced the setting up of two committees to deal with important issues regarding the tax reform to maintain its commitment to the rollout for GST in April' 2016.

Earlier, a sub-committee comprising central and state government officials had recommended revenue neutral rate (RNR) to be 27%. The state GST (SGST) component is proposed to be 13.91%, the central GST component is proposed at 12.77%. RNR is a rate at which there will be no revenue loss to the state after the adoption of GST. However, the finance ministry has assured that rate of GST will be much lower than the speculated 27 per cent.

Salient Feature of Proposed GST:

a) The GST shall have 3 components:

- SGST – State GST, collected by the State Govt for supply of goods/services within the state.
- CGST – Central GST, collected by the Central Govt for supply of goods/services within the state.
- IGST – Integrated GST, collected by the Central Govt on all inter-state supply of Goods/ Services.

b) An additional tax on supply of goods, not exceeding 1% in the course of inter-State trade or commerce to be levied by the Central Government for a period of 2 years and assigned to the States from where the supply originates. It is in doubt whether credit of such duty would be allowed or not.

c) It is expected that Central GST, State GST and IGST paid on purchases will be allowed to be taken as input tax credit and utilized first against respective output liability i.e. Central GST, State GST & IGST. However, balance credit of CGST, SGST and IGST can be utilised for payment of output liability of IGST.

d) GST will subsume of various Central indirect taxes such as Central Excise Duty, Additional Excise Duties, Excise Duty levied under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, Service Tax, CVD, SAD and Central Surcharges and Cesses and State level taxes such as State VAT/Sales Tax, Entertainment Tax (other than the tax levied by the local bodies), Central Sales Tax, Octroi and Entry tax, Purchase Tax, Luxury tax, Taxes on lottery, betting and gambling; and State cesses and surcharges in so far as they relate to supply of goods and services.

e) All goods and services, except alcoholic liquor for human consumption, will be covered for the levy of goods and services tax. However, this shall be subject to some exemption. The

Inside this issue:

GST NEWS

- Business Standard reported that the Haryana Government has pitched for allowing imposition of 1% additional tax on goods and services under GST regime, saying it fears loss of revenue for being a manufacturing state

- Business Standard also reported that Liquor companies have asked the select committee; reviewing the constitution amendment Bill on the goods and services tax (GST), to accord alcohol the same status as petroleum. The Bill says petroleum can be brought under the GST, should the proposed GST Council agree. Since there is no such scope for liquor, bringing it into the GST will need another constitutional amendment with 2/3rd majority in Parliament and ratification by states.

IDT NEWS

The Economic Times reported that the Central Board of Excise and Customs (CBEC) has asked its officials to encourage assessees facing notices to get tax disputes expeditiously resolved through the Settlement Commission mechanism.

The directions issued by the revenue department to Chief Commissioners and Director Generals dealing with indirect taxes are aimed at encouraging voluntary compliance and greater use of the Settlement Commission. The Settlement Commission scheme, it said, has not yielded desired results even after more than 15 years of operation.

scope of goods shall remain same while services shall mean "anything other than goods".

f) The petroleum and petroleum products, shall not be subject to the levy of GST till a date notified on the recommendation of the Goods and Services Tax Council. The concept of 'declared goods of special importance' under the constitution will be dispensed with.

g) States shall be compensated for loss of revenue(after accounting for additional revenue in the form of SGST on services and 1% additional tax for first 2 years) arising on account of implementation of the GST for a period upto 5 years.

These active developments in recent times indicate the government's readiness to implement GST in India from 1 April 2016. Since the introduction of GST is only a few months away, it would be prudent for businesses to be prepared to enter into a new era of indirect taxes. However, there are still some concerns over the structure of GST.

Concerns & Issues over GST:

a) Rate of GST - if the GST rate is anywhere near the RNR of 27%, it will make a deep dent in the common man's pockets and will induce inflationary trends in the Indian economy.

b) Inclusion of taxes under GST - the basic purpose of GST will be defeated if some items are kept out of the ambit of GST. Separate administration for taxation of Alcoholic liquor, which has been currently kept out of the ambit of GST, will have to be maintained.

c) Procedural compliances – It is likely that all assessees will have to file different returns for CGST and SGST and have to face two separate assessing authorities for SGST and CGST. In short, compliances for a small assessee will increase. Unless all the procedural compliances are centralised, there will be little relief for small assessees in form of increased burden of procedural compliances.

d) Credit of Additional 1% tax – it is unclear whether the credit of the proposed 1% additional tax for helping the manufacturing states, would be allowed. If not, it will lead to a cascading effect and defeat the purpose of GST.

NOTIFICATIONS & CIRCULARS

- Central Government, vide **Notification No. 38/ 2015 – Cus** dated **15.06.2015,** had amended notification no. 24/2015 – Cus dated 08.04.2015 to extend benefit of exemption to goods imported against a Duty Credit Scrip issued under MEIS from Customs duty and CVD to following items as specified in Appendix 3B of Appendices and Aayat Niryat Forms of Foreign Trade Policy 2015-2020:
  - Items, which are restricted for export under Schedule-2 of Export Policy in ITC (HS),
  - Sugar of all types and all forms,
  - Export of milk and milk products,
  - Export of Meat and Meat Products

- CBEC, vide **Notification No.61/2015-Cus(N.T.)** dated **15.06.2015,** has amended notification no. 36/2001-Cus(N.T.) dated 03.08.2001 to revise tariff value for import of certain goods.

- CBEC, vide **Notification No 62/2015–Cus(N.T.)** dated **17.06.2015**, has made amendments in the Courier Imports and Exports (Clearance) Amendment Regulations, 1998.

- Central Government, vide **Notification No. 39/2015-Cus** dated **16.06.2015,** has amended notification no. 12/2012-Customs dated 17.03.2012 to raise basic customs duty on import of certain iron & steel products by 2.5%.

QUIZ!!!

1. As per Central Excise Act, 1944, for what amount of duty or penalty, The Customs, Excise, Service Tax Appellate Tribunal (CESTAT) can refuse to admit an appeal?

2. As per Baggage Rules 1998, what is the maximum amount of General Free Allowance of Bonafide Baggage, allowed to an Indian resident or a foreigner residing in India of and above 10 years of age returning from any country other than Nepal, Bhutan, Myanmar or China after staying abroad of more than three days?

3. Fill in the blank - Section 11BB of the Central Excise Act, 1944 provides for the payment of interest @ 6% per annum on refund of duty which is not paid to the applicant within _____ months.

(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- **Rs. 50/-**
Reply to Q2– **Location of event**
Reply to Q3– **ER-2**

Reply given by:

1. Manish Sachdeva, manish619sachdeva@yahoo.in
2. Ankit Khandelwal, ankitkw@gmail.com
3. Siksha Agarwal, siksha.agarwal27@gmail.com

CASE UPDATES

1. **Cummins Research & Techno India Ltd. vs. Commissioner of Central Excise, Pune – III [2015 (38) S.T.R. 1137 (Tri. – Mumbai)]**

Issue: - Whether refund claim can be rejected on the basis that the date of input service invoices was of a period prior to the date of export?

Decision- The Hon'ble Mumbai CESTAT held that there is no dispute regarding the relevant input services being used in providing the taxable services which are exported by correctly following the procedure laid down in Notification No. 12/2005. The fact that the date of input service invoices need not be of the same date or of around the same date as the date of export is a very natural and normal phenomena. When the whole process of receiving input service and providing output service is a continuous ongoing process, it is quite natural that there will be time lag. Further, relying on the Board's Circular No. 120/01/2010-ST, the rebate claim was allowed as valid in law.

2. **Piramal Healthcare Ltd. vs. Commissioner of C. Ex. & S.T, Indore [2015 (38) S.T.R. 1162 (Tri. – Del.)]**

Issue: - Whether it is justified to impose penalty under Section 76 of Finance Act, 1994 on account of delay in payment of service tax under reverse charge mechanism?

Decision- The Hon'ble Delhi CESTAT observed that the appellant was required to pay service tax under reverse charge mechanism and after payment; same would have been available to them as Cenvat credit. It went on to hold that by not paying the service tax in time, appellant has already suffered interest and have not taken credit of the service tax paid. Therefore, it is a situation of revenue neutrality and penalty under Section 76 of the Finance Act, 1994 is dropped.

3. **JCT Ltd. Vs. Commissioner Of C. Ex., Jallandhar [2015 (318) E.L.T. 275 (Tri. - Del.)]**

Issue: - Whether subsequent reversal of Cenvat credit without utilization can amount to non-availing of credit on inputs for the purpose of availing benefit of Exemption Notification No. 30/2004-C.E.?

Decision- The Hon'ble Delhi CESTAT held that since the credit taken was reversed without being utilised on being pointed out by the department, the judgment of Hon'ble Allahabad High Court in the case of *Hello Minerals Water (P) Ltd.* v. *Union of India* which is based on the Apex Court's judgment in the case of *Chandrapur Magnet Wires (P) Ltd.* v. *CC, Nagpur* would be applicable to the facts of this case and the assesse have to be treated as not having taken the Cenvat credit and would be eligible for the exemption benefit. In view of this, the impugned order denying the benefit of exemption Notification No. 30/04-C.E. and confirming the duty demand on this basis against the assesse is not sustainable and the same is set aside.

4. **Indore Steel Casting P. Ltd. Vs Commissioner Of Central Excise, Indore [2015 (317) E.L.T. 556 (Tri. - Del.)]**

Issue: - Whether clearances of different units can be clubbed to determine eligibility to SSI exemption primarily on the basis of the fact that one person is controlling person of all the units?

Decision- The Hon'ble Delhi CESTAT, relying on the case of *CCE, Kanpur* v. *Sharad Industries*, held that if both the units are complete by itself, capable of manufacturing the goods without any help from the other unit, and are independently registered with the sales tax, industries registration, Income-Tax Registration and having separate electricity connection, telephone connection etc., it has to be held that they are independent units. It is well established, as supported by various decisions as also by the Board's Circular that the clearance of private limited companies cannot be clubbed together unless it is established, by lifting the corporate veil that two units are not working as independent unit and there is intertwining financial accommodation and the said two units are legally facade units on paper only. Therefore, the appellant is an independent private limited company engaged in the manufacture of final product from 1973 onwards and its clearance cannot be clubbed with subsequently incorporated limited company after of a period of 8 to 9 years. In such a scenario, the finding of the adjudicating authority that Mrs. Neha Beri Mhase was controlling the affairs of the manufacturing units, in which case their clearance has to be clubbed cannot be appreciated and upheld.

FREQUENTLY ASKED QUESTIONS

"Be brave. Take risks. Nothing can substitute experience."

- Paulo Coelho

Query 1: M/s. ABC Pvt. Ltd. is in business of booking air tickets by using portals of IATA registered agents like Ezeego, Makemytrip etc. Payments of commission are being received by the company after deducting Service Tax @ 12.36%. Further they are also getting this business done through their sub agents and are paying due amount of commission to them after deducting service tax. Whether it is legally correct to treat the service under reverse charge mechanism?

Reply by e-newsletter team: The practice followed by Air Travel agents is erroneous and has no legal backing as the above activities cannot be covered under Reverse Charge Mechanism. Initially, IATA registered agents are service recipients who pays commission to the company for booking tickets from their Portals. Since incidence of tax lies on the service recipient but is payable by the service provider, company should collect service tax from such agents and pay to the credit of Central Government in their own STC code. Further, in case of commission that is being paid to sub agents for service received, company should pay the due amount of service tax along with commission to their sub agents and avail appropriate Cenvat credit of the tax paid.

Query 2: M/s. XYZ Ltd. is paying service tax under Reverse Charge Mechanism. Whether refund of such service tax paid can be claimed if the company is not providing any output service?

Reply by e-newsletter team: The service tax paid by service recipient under Reverse Charge Mechanism can be adjusted only against the output service, if eligible as input service under CENVAT Credit Rules 2004. In case where no output service has been provided by the company, the service tax paid under reverse charge cannot be refunded. So, the entire service tax paid shall have to be treated as cost of receiving the input service.

M/s D A V A & ASSOCIATES
(Chartered Accountants)

'Mercantile Building';
Block-B, Room No.-8; 1st Floor,
9, Lal Bazar Street, Kolkata-700001
Office Ph: (033) 22313940/ 40046893
Mobile: +91 9874355518/9433135518
E-mail id: davakolkata@gmail.com
Web: davaassociates.com
Other offices at: Chandrapur, Delhi & Kolkata

In case of any queries/feedback/suggestions, mail to us on davaidtexpress@gmail.com