24TH
ISSUE

JULY 12TH - JULY 18TH

GST

CENTRAL EXCISE

SERVICE TAX

CUSTOMS

STATE TAXES

TAX CONNECT

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EDITORIAL

Friends,

We thank you for the overwhelming response for our Workshop on Indirect & Direct Taxes to be held on 7th August. The limited seats are fast filing up. The details of the program are penned in the next page. Do feel free to contact us in this regard.

Three important Bills — on real estate, GST and land acquisition — have to be passed in the monsoon session of the parliament. All eyes are now on the upcoming monsoon session to see if the Modi Government can achieve the uphill task of getting these bills passed by the Rajya Sabha. If the House did not pass the bill on GST, then may be it will miss the 1st April, 2016 deadline.

The following important circulars and notifications have come up in this week -

In Service Tax, The **CBEC vide Circular No. 185/4/2015-Service Tax dated 30th June, 2015** has issued guidelines for detailed manual scrutiny of service tax returns in respect of such assessees whose total tax paid (Cash + CENVAT) for the FY 2014-15 is below Rs. 50 Lakhs. The Scrutiny Officer is required to reconcile information furnished in various Service Tax and Income Tax return forms and any available third party information. Thus, the dept. is now going great guns to implement the 360 degree mechanism of scrutiny as envisaged by the ex-finance Minister Mr.P Chidambram.

The **CBEC vide Notification No. 18/2015-Central Excise [N.T.] dated 6th July, 2015** has also specified conditions, safeguards and procedures for issue of invoices, preserving records in electronic form and authentication of records and invoices by digital signatures.

The **WB Dept of Commercial Taxes Dept vide Circular No. 12/2015 dated 7th July, 2015** has facilitated an alternative arrangement for furnishing paper copy of returns or the relevant online acknowledgement.

Further, as per **Circular No. 11/2015 dated 27th May, 2015**, from April, 2015 onwards, all pre-assessment as well as post assessment refunds under VAT will be made through ECS/NEFT for the direct credit to the dealer's bank accounts.

The details of the above circulars & notification are covered in this bulletin.

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 12TH JULY, 2015 TO 18TH JULY, 2015	STATUTE
14th July, 2015	Deposit of Tax [Quarterly Return]	Rajasthan VAT Act, 2003
15th July, 2015	Deposit of Tax [Quarterly Return]	Bihar VAT Act, 2005 & Sikkim VAT Act, 2005
15th July, 2015	Provident Fund e-Payment for June, 2015 (Cheque to be cleared by 20th July, 2015)	
15th July, 2015	Income Tax TDS Return- 24Q, 26Q, 27Q & 27EQ for Non-govt. deductors and TCS Return for all deductors	Income Tax Act, 1961

INDEX GUIDE

WORKSHOP ON INDIRECT TAX AND DIRECT TAX

[GST, SERVICE TAX, VAT, FTP & INCOME TAX]

01.30 p.m. onwards, 7th August, 2015
The Bengal Chamber of Commerce and Industry
Williamson Magor Hall
Royal Exchange, 6, Netaji Subhas Road, Kolkata 700001

"TAX CONNECT" is organizing a Workshop on Indirect Tax & Direct Tax in the Bengal Chamber of Commerce and Industry from 01.30 p.m. onwards on 7th August, 2015.

The Workshop will cover important topics/issues of **Goods & Service Tax [GST], Service Tax, Value Added Tax [VAT], Foreign Trade Policy [FTP] AND Income Tax**. The programme schedule with names of speakers is enclosed for your kind reference.

We do hope that the programme will be relevant to you. You may please also nominate suitable representatives to attend the programme. For the purposes of registration, please email the enclosed Ready Reply Form, suitably filled in, to **p5.javaa@gmail.com**.

The overheads per participant are Rs.500/-.

Following is the Tentative Programme:

TIMING	EVENT	CONDUCTED BY
01.30 p.m. – 02.00 p.m.	**Registration**	
02.00 p.m. – 02.15 p.m.	**Welcome & Keynote Address**	**TAX CONNECT**
02.15 p.m. – 02.55 p.m.	**Technical Session I:** **Goods & Service Tax [GST]**	**Mr. T B Chatterjee,** Chairperson, Indirect Taxes Committee The Bengal Chamber of Commerce and Industry & Chief Corporate Officer, Legal and Corporate Affairs, DIC India Ltd
03.00 P.m. – 03.40 p.m.	**Technical Session II:** **Service Tax**	**Mr. Vivek Jalan,** FCA, CIDT [ICAI], Member, Indirect Taxes Committee, The Bengal Chamber of Commerce and Industry JAV & Associates, Chartered Accountants
03.45 p.m. – 04.25 p.m.	**Technical Session III:** **Value Added Tax [VAT]**	**Sri Khalid Anwar** Additional Commissioner, West Bengal Commercial Taxes
04.30 p.m. – 05.10 p.m.	**Technical Session IV:** **Income Tax Returns**	**Mr. Sanjay Bhattacharya, FCA**
05.15 p.m. – 05.55 p.m.	**Technical Session V:** **Foreign Trade Policy [FTP]**	**Mr. T B Chatterjee,** Chairperson, Indirect Taxes Committee The Bengal Chamber of Commerce and Industry & Chief Corporate Officer, Legal and Corporate Affairs, DIC India Ltd

Tea/Coffee

GOODS & SERVICE TAX

MONSOON SESSION COULD DERAIL GST BILL

If the Rajya Sabha did not pass the GST Bill, the Constitutional Amendment Bill would not clear the April 2016 deadline. Three important Bills — on real estate Bill, GST and land acquisition — have to be passed in the monsoon session. However, the chances of this happening look bleak in the Rajya Sabha.

- Competitive politics over Bihar – where an election is due in October-November – is likely to dominate the Monsoon session of Parliament.
- The All India Anna Dravida Munnetra Kazhagam (AIADMK) is opposed to the bill in principle.
- The Congress which has 12 state governments out of 29 has reservations about the bill in its present form whereas the BJP has just eight state governments.

PROPOSED GST COUNCIL

Function	To take a call on rates, exemption list and theshold limits
Chairman	Union Finance Minister: Chairman
Members	• Union Minister of state of finance. • State Finance Ministers or Taxation Ministers or any Minister nominated by each state government.
Voting Rights	• **Centre**: 1/3rd of total votes cast. • **States**: 2/3rd of total votes cast. • Each state, big or small, will have equal vote.

RAJYA SABHA NOD FOR GST BILL UPHILL TASK FOR GOVERNMENT

The Narendra Modi government's intention to get the Constitution amended for rolling out a unified GST from 1st April, 2016 looks unlikely to fructify in the coming monsoon session of Parliament considering the changes the opposition, especially the Congress, wants in the Amendment Bill.

With the political atmosphere vitiated by the Lalit Modi controversy and the Vyapam admission test scam in BJP-ruled Madhya Pradesh, the Parliament session could prove to be stormy, upsetting the government's legislative agenda.

Further, the Congress was likely to insist on crucial changes, which are either difficult to be incorporated or are set to be opposed by state governments, in the (GST) Constitution (122nd Amendment) Bill. These include prescribing a cap (18%) on the combined GST rate (for the Centre and states) within the Constitution itself which would make any subsequent change in the tax rate administratively difficult, and dropping the provision for the 1% extra tax that exporting states can levy in the first two years of the GST regime.

GST CRUCIAL FOR DEVELOPMENT: FM ARUN JAITLEY

The Finance Minster Arun Jaitley was hopeful that no political party will take anti-growth and anti-development stand to block the crucial bills, which he termed as "extremely necessary".

The bills to amend the Land Acquisition Act and bring in a uniform pan-India Goods and Services Tax are very crucial for development and hoped no political party takes anti-growth and anti-development position.

There is a lot of importance of these Bills to the country's economy. The government is hopeful that no political party will adopt a negative approach on the issue of development of the country.

Finance Minister Arun Jaitley brushed aside concerns of Parliament's coming monsoon session being disrupted over the Vyapam scandal, Lalit Modi controversy and the latest Socio Economic Caste Census (SECC).

SERVICE TAX

NOTIFICATIONS & CIRCULARS

GUIDELINES REGARDING DETAILED SCRUTINY OF SERVICE TAX RETURNS [ST-3] W.E.F. 1ST AUGUST, 2015

OUR COMMENTS: The CBEC vide **Circular No. 185/4/2015-Service Tax dated 30th June, 2015** has issued **guidelines for detailed manual scrutiny of service tax returns in respect of such assessees whose total tax paid (Cash + CENVAT) for the FY 2014-15 is below Rs. 50 Lakhs.** Each Commissionerate has to select equal number of assessees for carrying out returns scrutiny from three tax paid bands: Rs. 0 to Rs. 10 lakhs, Rs 10-25 lakhs and Rs 25- 50 lakhs for the FY 2014-15. Detailed formats for reconciliation of data and report has also been provided in the aforesaid circular. **Thus, it now becomes imperative for all the assessees, no matter what is the volume of tax paid, to ensure proper returns are filed that is matched with accounts and reconciliations thereof are also prepared. Moreover, all the officers should maintain strict confidentiality regarding the Risk Score data including the original score, further selection by the Commissionerate, etc. Under no circumstances it is to be shared with the assessee or any other authority since this is information available in a fiduciary relationship, pertaining to a third party, and which may entail further investigation.**

CONDITIONS, SAFEGUARDS AND PROCEDURES FOR ISSUE OF INVOICES, PRESERVING RECORDS IN ELECTRONIC FORM AND AUTHENTICATION OF RECORDS & INVOICES BY DIGITAL SIGNATURES

OUR COMMENTS: The CBEC vide **Notification No. 18/2015-Central Excise [N.T.] dated 6th July, 2015** hereby specifies the following conditions, safeguards and procedures for issue of invoices, preserving records in electronic form and authentication of records and invoices by digital signatures:

- Every assessee proposing to use digital signature shall use Class 2 or Class 3 Digital Signature Certificate duly issued by the Certifying Authority in India.
- Every assessee proposing to use digital signatures shall intimate name, e-mail id, office address and designation of the person authorized to use the digital signature certificate, name of the Certifying Authority, date of issue of digital certificate and validity of the digital signature with a copy of the certificate issued by the Certifying Authority along with the complete address of the said authority to the jurisdictional DC/AC of Central Excise, at least 15 days in advance, provided that in case of any change in the details submitted to the jurisdictional DC/AC, complete details shall be submitted afresh within 15 days of such change.
- Every assessee already using digital signature shall intimate to the jurisdictional DC/AC of Central Excise the above details within 15 days of issue of the said notification.
- Every assessee who opts to maintain records in electronic form and who has more than one factory or service tax registration shall maintain separate electronic records for each factory or each service tax registration.
- Every assessee who opts to maintain records in electronic form, shall on request by a Central Excise Officer, produce the specified records in electronic form and invoices through e-mail or on a specified storage device in an electronically readable format for verification of the authenticity of the document and the request for such records and invoices shall be specified in the letter or e-mail by the Central Excise Officer.
- A Central Excise Officer, during an enquiry, investigation or audit may direct an assessee to furnish printouts of the records in electronic form and invoices and may resume printouts of such records and invoices after verifying the correctness of the same in electronic format; and after the print outs of such records in electronic form have been signed by the assessee or any other person authorized by the assessee in this regard, if so requested by such Central Excise Officer.
- Every assessee who opts to maintain records in electronic form shall ensure that appropriate backup of records in electronic form is maintained and preserved for a period of 5 years immediately after the financial year to which such records pertain.

COURT DECISIONS

M/S. BANAS STEEL INDUSTRIES VS. COMMISSIONER OF SERVICE TAX (CESTAT AHMEDABAD)

BRIEF: No penalty imposable when the assessee pays the entire amount of tax along with interest as soon as pointed out by Department.

OUR COMMENTS: In the above case, the **Hon'ble CESTAT Ahmedabad** held that appellant is not contesting the issue of payment of duty and interest thereon even though according to the appellant they have an arguable case on merits. The contention of the appellant is that the entire amount of tax along with interest was paid as soon as pointed out, therefore, no penalty is imposable as there is no fraud, collusion or suppression with intention to evade payment of duty on the part of the appellant. Appellant is a small time contractor and did not collect the service tax payable from its service recipients. The service tax was paid by the appellant, along with interest, by backward calculation from the total receipts of the contracted price. **[Decided in favour of assessee]**

CCE, LUCKNOW VS. M/S DISTRIBUTORS INDIA [CESTAT NEW DELHI]

BRIEF: Warehouse charges and other reimbursables are excludible from the assessable value of Clearing & Forwarding Agent Service.

OUR COMMENTS: In the above case, the **Hon'ble CESTAT New Delhi** held that in the case of **Nandini Warehousing Corporation vs. CCE, Belgaum [CESTAT Bangalore],** it was held that godown rent, establishment expenses, incentives, STD call charges, are excludible from the assessable value of C&F agent service. Reimbursable expenses received by the assessee need not be added to the taxable value relating to clearing and forwarding agents service and that the receipt is for reimbursing expenditure incurred for the purpose and the mere act of reimbursement per se would not justify the contention of Revenue that the same was having the character of the remuneration or commission for the purpose of Rule 6(8) of Service Tax Rules, 1994. The judgement is given following the decision of the **Hon'ble Madras High Court in the case of CCE, Chennai vs. Sangamitra Services Agency. [Decided in favour of assessee]**

RELIANCE INDUSTRIES LIMITED VS. COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX [LTU], MUMBAI [CESTAT MUMBAI]

BRIEF: The assessee is entitled to avail CENVAT Credit for the insurance premium paid to insurance companies in respect of group insurance.

OUR COMMENTS: In the above case, the **Hon'ble CESTAT Mumbai** held that following the ruling of the **Hon'ble Karnataka High Court in the case of Millipore India Limited** wherein the Hon'ble High Court accepted that all factors have to be taken into consideration while fixing the cost of final products, the appellant is entitled to avail, CENVAT credit for the insurance premium paid in respect of group insurance/insurance of employees including retired employees/mediclaim which are covered under the definition of 'input services' and have a nexus, provided that it is not disputed in the facts of the case that the premium so paid has formed part of the cost of excisable goods on which Excise Duty has been paid on removal. **[Decided in favour of assessee]**

CENTRAL EXCISE

COURT DECISIONS

M/S SHYAM STEEL INDUSTRIES & ANOTHER VS. DEPUTY COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX, DURGAPUR DIV-I & OTHERS [CALCUTTA HIGH COURT]

BRIEF: No legitimate ground exists for the department to disallow the assessee to pay excise duty on provisional basis on the concerned goods since the actual transaction value cannot be determined at the time of removal of the goods from the factory.

OUR COMMENTS: In the above case, the **Hon'ble Calcutta High Court** held that value of the goods cannot be determined at the time of removal of such goods from the factory. This is for the reason that the normal transaction value is not available for such removals at that time as the assessee at that time cannot determine the quantity of discount being extended to the buyers. Discount of any type made known prior to the clearance of the goods but quantified subsequently and passed on to the customers is an admissible deduction from the transaction value and as such the assessment for such transactions may be made on a provisional basis. No legitimate ground exists for the department to disallow the petitioner company to pay excise duty on provisional basis on the concerned goods as per Rule 7 of the Central Excise Rules, 2002 since the actual transaction value cannot be determined at the time of removal of the goods from the factory. **[Decided in favour of assessee]**

THE COMMISSIONER OF CENTRAL EXCISE VS. CESTAT, M/S. DALMIA CEMENTS [BHARAT] LIMITED [MADRAS HIGH COURT]

BRIEF: No reversal of CENVAT Credit on leasing out of power plants with ancillary equipments without removing the capital goods since there is no removal of goods under cover of invoice.

OUR COMMENTS: In the above case the **Hon'ble Madras High Court** held that Rule 3(5) of the Cenvat Credit Rules, 2004 only speaks about the removal of goods under cover of invoice referred to in Rule 9 on inputs or capital goods on which Cenvat Credit has been taken and if such goods are removed as such from the factory or premises of the provider of output service, the manufacturer of the final products or provider of output service, shall be liable to pay an amount equal to the credit availed in respect of such inputs or capital goods. In the above case, as no invoice has been issued for removal of the goods from the factory premises and, therefore, the said rule is not applicable to the case of the assessee. **[Decided in favour of assessee]**

COMMISSIONER OF CENTRAL EXCISE VS. M/S. ADVANCE DETERGENTS LIMITED, CESTAT [MADRAS HIGH COURT]

BRIEF: Department shall not deny the credit of specified duty whether or not such waste or refuse is exempt from whole of the duty of excise leviable thereon or chargeable to nil rate of duty.

OUR COMMENTS: In the above case the **Hon'ble Madras High Court** held that Rule 57D makes it clear that credit of duty shall not be denied or varied on the ground that part of the inputs contained in any waste, refuse or by-product arising during the manufacture of the final product, or that the inputs have become waste during the course of manufacture of the final product. It also states that it is of no consequence whether the by-product such as waste, refuse or by-product is exempt from the whole of the duty of excise leviable thereon or chargeable to nil rate of duty or is specified as a final product. Therefore, the provisions of Rule 57D get squarely attracted to the above case and the Department shall not deny the credit of specified duty whether or not such waste or refuse is exempt from whole of the duty of excise leviable thereon or chargeable to nil rate of duty. The judgement is given following the decision of the **Hon'ble Supreme Court in the case of Union of India vs. Hindustan Zinc Ltd.** **[Decided in favour of assessee]**

AURANGABAD ELECTRICALS LIMITED VS. COMMISSIONER OF CENTRAL EXCISE, CUSTOMS AND SERVICE TAX, AURANGABAD [CESTAT MUMBAI]

BRIEF: Removal of remnant to the job worker is not liable to excise duty.

OUR COMMENTS: In the above case the **Hon'ble CESTAT Mumbai** held that the waste and scrap generated are the remnants emerging as a necessary consequence of the manufacturing activity for bringing out the final product. These waste and scrap generated during the process of manufacture instead of being disposed of in the market, is being recycled and re-converted. The appellant further consumed the same captively in the manufacture of excisable final product. Merely because the waste and scrap so generated has been made dutiable when sold, it cannot be said that new excisable product has been manufactured. Removal of remnant by appellant to the job worker is not liable to duty and the adjudicating authority has wrongly confirmed the duty demand and imposed penalties. **[Decided in favour of assessee]**

CUSTOMS

COURT DECISIONS

M/S. JAY AGRO ORGANICS LIMITED VS. COMMISSIONER OF CUSTOMS, AHMEDABAD [CESTAT AHMEDABAD]

BRIEF: No penalty u/s 114A where assessee is availing the benefit of VKGUY and it was holding a bonafide belief that oil is extracted by expelling process and the resultant meal will continue to be classified as expeller variety of oil cake meal.

OUR COMMENTS: In the above case, the **Hon'ble CESTAT Ahmedabad** held that there is no doubt that in the Export Promotion Scheme, viz., VKGUY, oil was extracted by a combination of both by expelling process and by solvent extraction. There was thus a bonafide opinion on the part of the appellant, based on their understanding, that when both the processes of expelling and solvent extraction are used then the resultant meal will continue to be called as expeller variety of oil cake meal. If an incorrect exemption is claimed by the appellant, as a matter of belief then it cannot be considered as a declaration intentionally made to evade customs duty. The ratio of the above law laid down by Hon'ble Apex Court will be applicable to the present facts & circumstances as the appellant was holding a bonafide belief that so long as majority of the oil is extracted by expelling process, the resultant meal will continue to be classified as expeller variety of oil cake meal. In view of the above observations and settled proposition of law, there was no justification for imposing penalty upon the appellant under Section 114AA of the Customs Act, 1962. **[Decided in favour of assessee]**

INCOME TAX

NOTIFICATIONS & CIRCULARS

ENFORCEMENT DATE OF BLACK MONEY [UNDISCLOSED FOREIGN INCOME & ASSETS] AND IMPOSITION OF TAX ACT [REMOVAL OF DIFFICULTIES] ORDER, 2015

OUR COMMENTS: The **CBDT vide Notification No. 56/2015 dated 1st July, 2015** hereby amended Section 1(3) of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (22 of 2015) substituting the **effective date of enforcement of the said Act from "1st day of April, 2016" to "1st day of July, 2015".**

DATES FOR MAKING A DECLARATION IN RESPECT OF AN INDISCLOSED ASSET LOCATED OUTSIDE INDIA AND TO PAY TAX AND PENALTY

OUR COMMENTS: The **CBDT vide Notification No. 57/2015 dated 1st July, 2015** hereby appoints:

- 30th day of September, 2015 as the date on or before which a person may make a declaration in respect of an undisclosed asset located outside India.
- 31st day of December, 2015 as the date on or before which a person shall pay the tax and penalty in respect of the undisclosed asset located outside India so declared.

INTRODUCTION OF BLACK MONEY [UNDISCLOSED FOREIGN INCOME & ASSETS] AND IMPOSITION OF TAX RULES, 2015

OUR COMMENTS: The **CBDT vide Notification No. 58/2015 dated 1st July, 2015** hereby introduced the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Rules, 2015 with the approval of the Central Government.

AUTHORIZED ENTITIES TO ISSUE TAX-FREE, SECURED, REDEEMABLE, NON-CONVERTIBLE BONDS DURING THE F.Y. 2015-16

OUR COMMENTS: The **CBDT vide Notification No. 59/2015 dated 1st July, 2015** hereby authorizes the following entities to issue, tax- free, secured, redeemable, non-convertible bonds [having the tenure for 10/15/20 years] during the financial year 2015-16, aggregating to corresponding amounts subject to certain conditions specified in the said Notification:

Sl. No.	Entity	Allocated Amount of Bonds (Rs. in crores)
1	National Highways Authority of India (NHAI)	24000
2	Indian Railways Finance Corporation (IRFC)	6000
3	Housing and Urban Development Corporation (HUDCO)	5000
4	Indian Renewable Energy Development Agency (IREDA)	2000
5	Power Finance Corporation Limited (PFC)	1000
6	Rural Electrification Corporation Limited (REC)	1000
7	NTPC Limited	1000

COURT DECISIONS

P.M.S. DIESELS VS. CIT [P&H HIGH COURT]

BRIEF: With reference to Section 40(a)(ia) of the Income Tax Act, 1961, the argument that Section 40(a)(ia) applies only to amounts which are "payable" and not to amounts that are already "paid" is also not acceptable.

OUR COMMENTS: In the above case, the **Hon'ble Punjab & Haryana High Court** held that argument that the disallowance for want of TDS can be made only for amounts "payable" as of 31st March and not for those already "paid" is not correct. In Liminie dismissal of SLP in Vector Shipping does not mean Supreme Court has confirmed the view of the High Court. However, ITAT will have to consider whether payees have already paid tax.

C.I.T. CENTRAL-II, KOLKATA VS. BALARAMPUR CHINI MILLS LIMITED [CALCUTTA HIGH COURT]

BRIEF: With the omission of the expression "deliberately mens rea" is no longer a prerequisite for imposition of penalty. Penalty u/s 271(1)(c) is a civil liability and the wilfull concealment is not an essential ingredient.

OUR COMMENTS: In the above case, the **Hon'ble Calcutta High Court** held that Section 271(1)(c) originally qualified an act of concealment of income or furnishing of inaccurate particulars with the expression 'deliberately' which was omitted by the Finance Act, 1964 w.e.f. 1st April, 1964 as a result concealment of income or inaccurate particulars need not originally have been furnished deliberately. The use of the expression **'deliberately'** was a pointer to show that **"mens rea"** [means a guilty mind or criminal intent] was a necessary element. With the omission of the expression 'deliberately', **"mens rea"** is no longer a prerequisite for imposition of penalty. It is now a case of strict liability. In the case of **Union of India vs. Dharmendra Textile Processors [Supreme Court],** it was held that **"mens rea"** is not considered to be a necessary ingredient for levy of penalty. It has been held that penalty under Section 271(1)(c) is a civil liability and the wilful concealment is not an essential ingredient. **[Decided against the assessee]**

SPS STEEL & POWER LIMITED VS. ACIT [ITAT KOLKATA]

BRIEF: With reference to Section 271AAA of the Income Tax Act, 1961, no penalty shall be levied on the basis of "dumb" document, i.e., the document which is not speaking one.

OUR COMMENTS: In the above case, the **Hon'ble ITAT Kolkata** held that a charge can be levied on the basis of document only when the document is a speaking one. The document should speak either out of itself or in the company of other material found on investigation and/or in the search. The document should be clear and unambiguous in respect of all the four components of the charge of tax. If it is not so, the document is only a dumb document. No charge can be levied on the basis of a dumb document. A document found during the course of a search must be a speaking one and without any second interpretation, must reflect all the details about the transaction of the assessee in the relevant assessment year.

SOMA TEXTILE & INDUSTRIES LIMITED VS. ACIT [ITAT AHMEDABAD]

BRIEF: Even if the loan to the 100% subsidiary is intended to be a long term investment in the subsidiary and it has a crucial role to play in the assessee's business plans, it cannot be treated as "quasi capital". The ALP of the loan has to be determined on the basis of LIBOR interest.

OUR COMMENTS: In the above case, the **Hon'ble ITAT Ahmedabad** held that the expression **'quasi capital'** is relevant from the point of view of highlighting that a quasi-capital loan or advance is not a routine loan transaction simplicitor. The substantive reward for such a loan transaction is not interest but opportunity to own capital. As a corollary to this position, in the cases of quasi capital loans or advances, the comparison of the quasi capital loans is not with the commercial borrowings but with the loans or advances which are given in the same or similar situations.

MAYA GUPTA VS. CIT [ITAT DELHI]

BRIEF: With reference to Section 263 of the Income Tax Act, 1961, in a case where there is inadequate inquiry but not lack of inquiry, the CIT must conduct inquiry and verification and record the finding how the assessment order is erroneous. He cannot simply remand the matter to the AO for verification.

OUR COMMENTS: In the above case, the **Hon'ble ITAT Delhi** held that in cases where there is inadequate inquiry but not lack of inquiry, the CIT must give and record a finding that the order/inquiry made is erroneous. This can happen if inquiry and verification is conducted by the CIT and he is able to establish and show the error and mistake made by the AO, making the order unsustainable in law. He cannot simply remand the matter to the AO for verification.

SHRI UMEYA CORPORATION VS. ITO [ITAT AHMEDABAD]

BRIEF: With reference to Section 80-IB(10) of the Income Tax Act, 1961, to be the "developer" of a housing project, the assessee has to undertake the entrepreneurship risk in execution of the project. He need not be the owner of the land.

OUR COMMENTS: In the above case, the **Hon'ble ITAT Ahmedabad** held that in order to answer the question as to whether the condition precedent for deduction under section 80IB has been satisfied inasmuch as whether or not the assessee is engaged in "developing and building housing projects", all that is material is whether assessee is taking the entrepreneurship risk in execution of such project. When profits or losses, as a result of execution of project as such, belong predominantly to the assessee, the assessee is obviously taking the entrepreneurship risk qua the project and is, accordingly, eligible for deduction under section 80IB(10) in respect of the same. The assumption of such an entrepreneurship risk is not dependent on ownership of the land.

PANNA S. KHATAU VS. ITO [ITAT MUMBAI]

BRIEF: With reference to Section 56(2) and Section 68 of the Income Tax Act, 1961, old liabilities, even if treated as genuine in earlier years and even if on capital account, are liable to be assessed as "income" in year of write-back if assessee is unable to provide confirmations and substantiate genuineness of liabilities.

OUR COMMENTS: In the above case, the **Hon'ble ITAT Delhi** held that when an amount, which is stated, claimed and accepted as a payable, is no longer so, the assessee gains to that extent. There is nothing unreal or notional about this gain. It is under these circumstances that the law permits the A.O. to draw an adverse inference of it as representing the assessee's income. Old liabilities, even if treated as genuine in earlier years and even if on capital account, are liable to be assessed as "income" in year of write-back if assessee is unable to provide confirmations and substantiate genuineness of liabilities.

ASSAM

NON-ENTITLEMENT OF INPUT TAX CREDIT IN CERTAIN CASES

OUR COMMENTS: **The Fianace [Taxation] Department, Government of Assam vide Notification No. FTX. 71/2014/93 dated 3rd July, 2015** hereby notifies that

- a registered dealer, who purchases goods specified in the Second, Third and Fifth Schedule manufactured by an industrial unit eligible under the Assam Industries (Tax Exemption) Scheme, 2015, and sells such goods in the course of inter-state trade or commerce or in the course of export out of the territory of India or transfers such goods to other States not amounting to sale, shall not be entitled to input tax credit for the amount of tax shown to have been charged in the corresponding tax Invoice issued by the eligible industrial unit in respect of such sale or transfer.
- the dealer who purchases such goods from an industrial unit eligible under the Assam Industries (Tax Exemption) Scheme, 2015 and all other subsequent sellers who sell such goods to other registered dealers within the State or in course of inter-State trade or commerce or in the course of export out of the territory of India or make inter-State stock transfer not by way of sale shall give a declaration in the tax Invoice to the effect that the goods so sold or transferred by him under the invoice are purchased from an eligible industrial unit.

HIMACHAL PRADESH

AMENDMENT IN RULE 64 OF HPVAT

OUR COMMENTS: **The Excise & Taxation Department, Government of Himachal Pradesh vide Corrigendum No. EXN-F(10)-2/2015-Loose dated 3rd July, 2015** hereby made partial modification in Notification No. **EXN-F(10)-2/2015-Loose dated 3rd June, 2015** substituting sub-rule 2 of Rule 64 except proviso, namely:

For the purpose of Section 21(1), a return shall be deemed to be-

- correct, if its versions conforms to the balance sheet/profit and loss account/trading account filed by the dealer along-with annual return and this version cannot be impeached by any adverse information, to the contrary, available on record till 20th March of the following financial year; and
- complete, in material particulars, if it contains the entire information required to be furnished therein, is correct arithmetically and is accompanied by the statutory forms as prescribed under the Central Sales Tax Act, 1956 or the Himachal Pradesh Value Added Tax Act, 2005 as applicable or prescribed lists, documents and proof of payments of the full amount of tax due according to the returns and is duly signed by the dealer.

KERALA

EXTENSION IN TIME LIMIT FOR FILING APPLICATION FRO COMPOUNDING FOR THE YEAR 2015-16

OUR COMMENTS: **The Office of the Commissioner of Commercial Taxes, Government of Kerala vide Circular No. 18/2015 dated 30th June, 2015** hereby modifies **Circular No. 13/2015 dated 15th May, 2015** specifying that the last date of filing option for the payment of compounded tax under Section 7 of KGST Act, Section 5A of KTL Act and Section 8 of KVAT Act for the year 2015-16 is further extended upto 31st July, 2015.

TELANGANA

EFFECTIVE DATE OF SECTION 22 OF TELANGANA VAT [AMENDMENT] ACT, 2015

OUR COMMENTS: **The Revenue [Commercial Taxes-II] Department, Government of Telangana vide Notification No. G.O.MS. No. 109 dated 7th July, 2015** hereby appoints the **1st day of May, 2015** as the date on which **Section 22 [Due date of payment of tax]** of the Telangana Value Added Tax [Amendment] Act, 2015 shall come into force.

UTTAR PRADESH

AMENDMENT IN UPVAT SCHEDULE-I AND SCHEDULE-II

OUR COMMENTS: The Government of Uttar Pardesh vide Notification No. KA.NI.-2-905/XI-9(65)/15-U.P.Act-5-2008-Order-(135)-2015 dated 6th July, 2015 hereby made following amendments in the Schedules:

- **In Schedule-I, in Serial No. 13**, the semicolon and words ***"; Solar Energy devices, Solar Energy equipments and parts thereof"*** shall be inserted.
- **In Schedule-Ii, in Part-A, Serial No. 108** shall be substituted, namely:
  "108- Renewable Energy devices and spare parts which are not included in any other Schedule."

WEST BENGAL

DIRECT CREDIT FOR REFUND OF VAT TO DEALER'S BANK ACCOUNT

OUR COMMENTS: The Directorate of Commercial Taxes, Government of West Bengal vide Circular No. 11/2015 dated 27th May, 2015 hereby submits that from April, 2015 onwards, all pre-assessment as well as post assessment refunds under VAT will be made through ECS/NEFT for the direct credit to the dealer's bank accounts. As the State Government has introduced the system of e-Billing module under the Integrated Financial Management System, the dealers are requested to furnish the details of their bank accounts, viz., Name of bank, Branch, Nature of Account, Account Number, and IFSC Code to which the refunds will directly be credited through the e-billing module. The said information about bank accounts should preferably be furnished at the time of assessment/audit itself and may also be uploaded in the dealer's profile in the Directorate's website.

SUBMISSION OF PAPER COPY OF RETURNS

OUR COMMENTS: The Directorate of Commercial Taxes, Government of West Bengal vide Circular No. 12/2015 dated 7th July, 2015 hereby facilitates following alternative arrangements for furnishing paper copy of returns or the relevant online acknowledgement:

- After submitting online, a duly signed complete paper copy of such return or of the printout of the relevant online acknowledgement may be furnished by a dealer to a Facilitation Centre.
- The Facilitation Centre shall issue a receipt in respect of the same.
- The Facilitation Centre shall deliver the same, received by it within the first 15 days of a month, to the offices of the respective appropriate assessing authorities of the dealers concerned within 20th day of the relevant month.
- The paper copy of returns, or the online acknowledgement, received by the Facilitation Centre in the second half of a month shall be handed over within 5 days of the next following month.
- The paper copy of online submitted return or the relevant online acknowledgement, may be furnished to a Facilitation Centre by a dealer even after the relevant prescribed time limit for furnishing such copy of the return, and the date of furnishing to the Facilitation Centre of such duly signed and complete paper copy of online submitted return, or the relevant online acknowledgement, as the case may be, shall be considered as the date on which the dealer has complied with the legal requirement of furnishing the relevant return to the appropriate assessing authority.