**30TH ISSUE**

**AUGUST 23RD - AUGUST 29TH**

**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,**

**PM Modi visited the UAE** this week at the invitation of His Highness Crown Prince Mohamed Bin Zayed Al Nahyan. The visit of an Indian PM to UAE after 34 years marks the beginning of a new and comprehensive strategic partnership between India and UAE.

In this historic visit, various issues were discussed and agreed upon between both the leaders like terrorism, Black money, cyber security, etc. However what stands out was the agreement to encourage the investment institutions of UAE to raise their investments in India, including through the establishment of **UAE-India Infrastructure Investment Fund**, with the aim of reaching a target of USD 75 billion and also to facilitate participation of Indian companies in infrastructure development in UAE. **A summary of agreements between the two leaders is provided on the next page in this bulletin.**

**On the GST front**, we keep waiting if the monsoon session will be reconvened or not. It may be noted that the Centre has kept its option open of reconvening the session with the Cabinet Committee on Parliamentary Affairs deciding not to immediately prorogue the Houses after they were adjourned sine die. The option of calling a Special session is also available with the Govt. **However, any such decision will need to have the Opposition, particularly the Congress, on board and will need to factor in the Bihar State polls expected in end-October.**

Just a reminder to all dealers registered with WB commercial Taxes, who have received a Demand Payable in orders for 2012-13 passed until 30th June 2015, **as per Second Proviso to Section 84(1) of WB VAT Act, 2003, now dealers will have to pay 15% of Disputed Tax in addition to admitted tax, interest, etc for filing of an appeal.**

**Just to reiterate that we remain available over a telecon or e-mail 24X7.**

**Truly Yours**


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

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



| DUE DATE | COMPLIANCES FROM 23RD AUGUST, 2015 TO 29TH AUGUST, 2015 | STATUTE |
|---|---|---|
| 25th August,2015 | VAT Payment for July, 2015 | Kerala VAT Act |
| 25th August, 2015 | VAT Return for July, 2015 | Kerala VAT Act |
| 25th August, 2015 | PF Return filing for July,2015 (including pension & insurance scheme forms) | Provident Fund Act (Including EDLI) |
| 28th August, 2015 | VAT Payment for July, 2015 (for assessee having annual turnover more than Rs 1 crore) | Arunachal Pradesh VAT Act |
| 28th August, 2015 | VAT Return for July, 2015 (for assessee having annual turnover more than Rs 1 crore) | Arunachal Pradesh VAT Act |

# INDEX GUIDE

# GST & PM's UAE AGREEMENTS

## Fate of GST Bill

The Central Government tried to give a final push to the GST Bill in the Rajya Sabha on the last day of the Monsoon session but Monsoon session of the Parliament has ended without a scrap of work being done as all appeals by the Central Government to let the Government function were drowned amidst the voices of the relentless Congress. The Rajya Sabha adjourned sine die and the Centre's most important reform Bill remained in the Upper House without it being passed. The fate of the GST Constitutional Amendment Bill now hangs amidst the following Options –

**1. Joint session**

The Joint session is a law-enacting instrument used rarely. Last time it was used by the Vajpayee-led NDA Government in 2002 to get the contentious POTA passed.

The President is empowered under Article 108 of the Constitution of India to summon a Joint session of the Parliament on the advice of the Government "for the purpose of deliberating and voting on the Bill". There are, however, three caveats:

a. If a Bill passed by one House but rejected by the other; or
b. If disagreement between the two Houses on amendments to the Bill; or
c. When more than six months have lapsed after the date of receipt of the Bill by the other house without passing it.

Thus calling a Joint Session is not an option.

**2. Extending the session after break or calling a Special Session or Advancing Winter session**

Either of these options is only available if the Govt manages to reach out to the Opposition, particularly the Congress, especially after attacks on it by the BJP Cabinet Ministers.

## Summary of Agreements during PM Modi's visit to UAE

1. Both governments will continue to nurture people to people relations and **ensure the welfare of their citizens, especially the workers,** in each other's country.

2. **Target to increase trade by 60% in the next five years between the two countries.**

3. **Tap India's expertise in Small and Medium Enterprises** to create a vibrant industrial base in UAE, which could also be of benefit to Indian enterprises.

4. **Encourage the investment institutions of UAE to raise their investments in India**, including through the establishment of UAE-India Infrastructure Investment Fund, with the aim of reaching a target investment of USD 75 billion, especially in railways, ports, roads, airports and industrial corridors and parks.

5. Facilitate participation of Indian companies in infrastructure development in UAE

6. **Promote strategic partnership in the energy sector** including through UAE's participation in India in the development of petroleum sectors.

7. **Cooperate in manufacture of defense equipment in India**

8. Denounce and oppose terrorism in all forms and manifestations. Enhance cooperation in counter-terrorism operations, intelligence sharing and capacity building.

9. Work together to control, regulate and share information on flow of funds

10. Promote cooperation in cyber security

11. National Security Advisors of Both Countries and their teams to meet every 6 months.

12. **Prime Minister thanked UAE for its support for India's candidature for permanent membership of a reformed United Nations Security Council.**

# SERVICE TAX

## COURT DECISIONS

### COMMISSIONER OF CENTRAL EXCISE, NASHIK VS RAYMOND LTD [CESTAT MUMBAI]

**BRIEF: Refund claim for payment of service tax as service recipient without passing on the tax incidence to the customer, cannot be denied, without proper evidence, if such payment is certified by a CA after proper checking of records & such will also not amount to unjust enrichment.**

**OUR COMMENTS**: In the above case, the **Hon'ble CESTAT Mumbai held that** the judgment of first appellant authority of allowing the appeal of assessee holding that they have passed the hurdle of unjust enrichment is correct. The revenue has not cited any evidence that assessee has passed on the burden of service tax to the customer through increase of price of goods/services. Further, the revenue also contradicted the certificate of the chartered accountants (CA) stating that the assessee did not pass on the Service Tax burden to any third person, but had borne by assessee only, without any valid reason or evidence, & no further clarification was sought from the assessee or their CA. The ground of appeal that what documents were checked by the CA was unclear was a feeble attempt by the revenue, since a CA is an expert & as evident from the certificate, the CA had verified the record & concluded the above. Therefore, referring decision of this bench in the case of **Pauls Engineering Industries Pvt. Ltd., (supra)** , where it was held that, since refund of the service tax was concerned & such was subsequently paid by assessee, due to retrospective amendment regarding service tax liability as service recipient of services GTA, it is covered in favour of respondent. In view of foregoing & the above circumstances, it was held that there is no infirmity in the impugned order & appeal is disposed on merit. **[Decided against the revenue]**

### IDEAL ROAD BUILDERS PVT LTD VS COMMISSIONER OF SERVICE TAX, MUMBAI [ CESTAT MUMBAI ]

**BRIEF: Collection of toll by any assessee on behalf of NHAI does not amount to rendering of service incidental or auxiliary on behalf of NHAI & therefore, not liable for service tax.**

**OUR COMMENTS**: In the above case, the **Hon'ble CESTAT Mumbai** held that the argument of the revenue, that assessee is an agent or representative of NHAI & provides services on behalf of NHAI & hence, liable to service tax under 'Business Auxiliary Services', needed to be discarded because NHAI does not provide any service to any users of national highway, but maintains & develops the Highway & is a statutory body. The appellant assessee was not promoting or marketing or selling goods neither produced by a client nor is he promoting or marketing services provided by the client i.e. NHAI. Further, the agreement between the assessee & NHAI did not indicate anywhere that assessee was appointed as an agent/ representative. Rather, such agreement talked about collection of amounts as "fee" to be known as "toll". Hence, the assessee was not rendering Business Auxiliary Services on behalf of NHAI, as collection of toll by assessee did not amount to aforesaid service. So, the assessee was not liable to service tax & registration for the same. (**Decided in favour of assessee**)

### VIDARBHA IRON & STEEL CO LTD VS COMMISSIONER OF CENTRAL EXCISE, NAGPUR [CESTAT MUMBAI]

**BRIEF: If an assessee (company) receives only actual dues for employees' salary & government dues from another company under lease & license agreement, as per the arrangement of compromise scheme approved by the High Court & if any record does not show that assessee supplies manpower, then such assessee is not liable to service tax as such service does not amount to manpower supply service.**

**OUR COMMENTS**: In the above case, the **Hon'ble CESTAT Mumbai** held that the stand of the adjudicating authority that amount received by the appellant towards salary of the employees and other government dues under compromise scheme from Ferro Alloys Corporation Ltd (FACOR) were liable to service tax under the category of manpower recruitment and supply agency service was incorrect, because as per clause 9 of leave & license agreement between the assessee & FACOR, employees were on the muster roll of the appellant assessee & salaries to them to be paid by appellant on receipt from FACOR. So, undisputedly appellant received only actual dues towards employees. Further, it was an arrangement approved by Hon'ble High Court to continue services of the employees by FACOR [ in the event of wind up of appellant assessee's business] for not to deprive the employees of their job and lively hood. There was also no record to show that appellant was providing manpower supply service to FACOR. The Hon'ble CESTAT also referred to **judgment of Hon'ble Gujarat High Court** in case of **Arvind Mills (supra)** where it was held that as per definition,'manpower supply agency means *any commercial concern engaged in providing any services directly or indirectly in any manner for recruitment or supply of manpower temporarily or otherwise to a client.* So, the assessee under aforesaid scheme cannot be said to be a manpower supply agency & amount received as above cannot be considered to be for the manpower supply service. Thus, pursuant to authoritative judgments the impugned order is set aside & appeal is allowed.**[Decided in favour of assessee]**

## NATIONAL AVIATION CO. OF INDIA LTD VS COMMISSIONER OF SERVICE TAX , MUMBAI [CESTAT MUMBAI]

**BRIEF: If the assessee upon intimation by revenue submits all required information, but the department fails to follow up or initiate any positive action after making claim of suppression of fact by the assessee, demands by the department on the assessee will not be entertained.**

**OUR COMMENTS**: In the above case, the **Hon'ble CESTAT Mumbai** held that the contention of assessee service tax liability may not arise on an amount received as advance for the journeys to be conducted after 01/05/2006, is not correct, as board's circular no 334/3/2010TRU dated 01/07/2010, relied by assessee is not for the relevant period in hand; and the said circular was specifically in respect of notification No. 36/2010-ST, while the issue pertains to new services made taxable from 01/05/2006. Further, as per settled law, service tax is liable on advance receipts. But it is seen from the letter received by the appellant from the office of Assistant Commissioner, details of service tax as called for were given by assessee. So, details not asked for could not have been provided by assessee. It is also the industry practice of receipt of the payments prior to the date of journey recorded in accounts. Though revenue claimed that appellant assessee had suppressed details, the revenue did not ask for the same. Further, after communication dated 06/08/2006 referred by the adjudicating authority, it was in the knowledge of revenue about issuance of a clarification, but they failed to follow up seeking details of tax demand from assessee. Thus, in absence of any positive action regarding suppression of details, the tax liability worked out by invoking extended is incorrect. The demands raised on assessee are blatantly hit by limitation & hence, the impugned order is set aside on the question of limitation. As the demands are set aside, interest and penalties are also set aside. [**Decided in favour of assessee]**

# CENTRAL EXCISE

## COURT DECISIONS

### CEAT LIMITED VS COMMISSIONER OF C. EX. & CUS. NASHIK [BOMBAY HIGH COURT]

**BRIEF: As a last fact finding authority, it is the duty of CESTAT to consider the backdrop for any refund claim, relevant arguments & supporting documents & other factual findings & to determine the applicability principle of unjust enrichment, if such was previously being hold as the ground to reject such claim.**

**OUR COMMENTS:** In the above case, the **Hon'ble Bombay High Court** held that it was the duty of the CESTAT as a last fact finding authority to consider the backdrop in which refund claim by assessee was made, supporting documents thereof, arguments canvassed on facts before the Assistant Commissioner & commissioner (Appeals) & relevant factual findings in their orders. The tribunal clearly failed to perform such duty as none of the aforementioned was referred, leave alone considered. Given that the principle of unjust enrichment was attracted and when the final assessment is made, still, Tribunal had to determine the applicability of that principle on facts. The failure of tribunal to perform such duty & mandated by law itself being a substantial question, could be safely termed as one of law & arising from tribunal's order. Based on above circumstances, the order of tribunal is quashed & set aside & the matter is remanded back. [**Decided in favour of assessee]**

### COMMISSIONER OF CENTRAL EXCISE, LUDHIANA VS M/S NEXO PRODUCTS (INDIA) [PUNJAB & HARYANA HIGH COURT]

**BRIEF: If the department raises demand over an assessee regarding clandestine removal of goods & sale of goods on cash basis without paying excise duty & fails to undertake necessary action by undertaki8ng physical stock verification & to produce appropriate evidences regarding same, such demand shall not be entertained.**

**OUR COMMENTS**: In the above case, the **Hon'ble Supreme Court** held that the contention of revenue that the assessee had made cash sales of nuts & bolts without payment of excise duty, by clandestine removal of goods & such is liable for penal action, is incorrect. The assessee (manufacturer) had taken specific defence that no effort was made by revenue to segregate the nuts & bolts into various sizes & to find the alleged shortage by comparing the same with recorded balance. Further, huge stock of 91lacs pieces of various sizes of nuts & bolts. Thus, if they were all mixed together, it was impossible for the department to reach a conclusive factual finding that there was shortage of 14, 25,900 pieces of particular size. Undertaking of such an exercise by the department was not possible within such a short period due to the large number of inventory at the site. No relevant record was presented to show that to manufacture such large amount of 14,25,900 pieces, there was material which was consumed . Further, no relevant record had been showing that electricity had been consumed or labour had been utilized to manufacture the said quantity. There was no evidence regarding purchase of material from vendors or sale to consumers. Hence, in absence of any corroborative evidence, levy of demand was arbitrary & has been rightly set aside by commissioner (Appeals) & upheld by tribunal. The appeal is accordingly dismissed**. [Decided in favour of Assessee]**

### THE COMMISSIONER OF CENTRAL EXCISE VS CUSTOMS, EXCISE, AND SERVICE TAX APPELLATE TRIBUNAL, M/S DEVI SILICATES PVT LTD [MADRAS HIGH COURT]

**BRIEF: Merely because the case of an assessee is not appealed against, the tribunal cannot hold that all other appeals connected to the role of such assessee cannot be maintained.**

**OUR COMMENTS**: In the above case, the **Hon'ble Madras High Court held** that the judgment of tribunal in favour of the assessee regarding clubbing of clearances on technical grounds was not correct. The department on the basis of perusal of records of various group companies had issued show cause notice against the companies & proprietary concerns. It was a case of wrong availment of benefits of notification of SSI Exemption, since there was deliberate Fragmentation of manufacturing activities. The adjudicating authority failed to consider that & as per department, such benefit under the notification should be denied by clubbing the clearances of all units & proprietary concerns. However, department can always sustain its allegations, de hors the statement of M.S.Jain, if there are other materials to support its case. It does not & would not dilute the department's case, merely because case of M.S.Jain has not been appealed against. Thus tribunal clearly erred in holding that merely because no appeal has been filed against M.S. Jain; all the other appeals cannot be maintained. The matter is remanded to the Tribunal for considering the issue on merits. [**Decided in favour of Revenue**]

# CUSTOMS

## NOTIFICATIONS & CIRCULARS

### AMENDMENT IN NOTIFICATION NO. 12/2012-CUSTOMS DATED 17TH MARCH, 2012-BASIC CUSTOMS DUTY OF 10% ON WHEAT IMPOSED TILL 31.03.2016

**OUR COMMENTS:** The Ministry of Finance (Dept. of Revenue), Government of India vide Notification No. **44/2015-Customs dated 7th August, 2015** has amended the Notification No. 12/2012-Customs dated 17th March, 2012 as follows:

**In the said notification-**

**a)** in the Table, against **S. No.34** for the entry in **column (4)**, the entry "**10%**" shall be substituted;

**b)** after the Table, in the proviso, after **clause (**ab), the following clause shall be inserted, namely:-

***"(ac) the goods specified against serial number 34 of the said Table on or after the 1st day of April, 2016".***

### AMENDMENT IN NOTIFICATION NO. 62/94-CUSTOMS (N.T.) DATED 21ST NOVEMBER, 1994

**OUR COMMENTS:** The Ministry of Finance (Dept. of Revenue), Government of India vide **Notification No. 74/2015-Customs (N.T.)** dated **11th August, 2015** has amended Notification No **62/94-Customs (N.T.) dated 21st November, 1994** in the following manner:

In the said notification, in the TABLE, the entries against serial number 8 relating to State of Maharashtra, in columns (3) and (4) , after item number (16) and the entries relating thereto , the following item number and entries shall be inserted, namely:

| (1) | (2) | (3) | (4) |
|---|---|---|---|
| | | "(17) Umroli | (a)Loading of Bauxite Ore for Export |

## COURT DECISIONS

### PRATIBHA INDUSTRIES LTD VS COMMISSIONER [SUPREME COURT ]

**BRIEF: An importer of Ductile Pipes is not eligible to avail the exemption from basic excise and additional duty falling under heading 9801 for drinking water supply project for human & animal consumption, as "Ductile Pipes" are not classifiable under heading 98.01 of Customs Tariff.**

**OUR COMMENTS:** In the above case, the **Hon'ble Supreme Court** had held that the Tribunal was right in holding that "Ductile pipes" were not classifiable under heading 98.01 of Customs Tariff & thus, the appellant (importer) was not eligible for exemption under Notification No. 21 /2002-Cus., which grants complete exemption from payment of basic excise and additional duty falling under heading 9801 required for drinking water supply project for supply of water for human & animal consumption. Hence the appeal is devoid of any merits & is dismissed. **[Decided against assessee]**

### M/S FOODS, FATS AND FERTILISERS LTD VS THE DEPUTY COMMISSIONER OF CUSTOMS [MADRAS HIGH COURT ]

**BRIEF: Notification dated 3rd August, 2001 is effective from 6th August, 2001 (when it was published in gazette) & is not applicable to any import or export made by an assessee before 6th August, 2001.**

**OUR COMMENTS:** In the above case, the Deputy Commissioner had assessed the goods imported on 03-08-2001 & 04-08-2001 by the petitioner based on declared value. But after notification was issued fixing value of RBD Palmolein Edible Oil at US$ 372 per MT, petitioner was charged differential duty calculated as the notification. The **Hon'ble Madras High Court** held that such valuation of goods with retrospective after issuance of notification is not correct. The hon'ble court referred to the case of **Param Industries Ltd. Vs Union Of India [2002 (9) TMI 115- HIGH COURT OF KARNATAKA]** where the same notification was discussed & it was observed that there were no record to show the exact date of publishing of notification in the gazette. Annexure-R1 only reveals that notification was forwarded to Manager, Government of India, Press to publish it in the official gazette, but there is no further record to show that pursuant to said letter the notification was published on 03-08-2001 itself. On perusal, it was found in Annexure-R1, the date of 06-08-2001 had been overwritten as 03-08-2001 & such was not attested or explained in affidavit in the letter sent to the Govt. of India, Press. Pursuant to above, it was decided that Notification dated 03-08-2001 was notified to the public by publishing in the gazette only on 06-08-2001. So, duty is payable only from such date of notification in the gazette i.e. 06-08-2001. Hence, the impugned demand was set aside & writ petition was allowed & was entitled to refund of duty paid. **[Decided in favour of assessee]**

# INCOME TAX

## NOTIFICATIONS

### AGREEMENT BETWEEN INDIA & REPUBLIC OF SAN MARINO

The Department of Revenue (Ministry Of Finance), Government of India vide **Notification No. 63/2015** dated **12th August, 2015** has held that all provisions of the agreement between the Government of the Republic of **India** and the Government of the **Republic of San Marino** on the **exchange of information with respect to taxes** shall be **effective from the 29th day of August, 2014**.

**Concerned readers may refer to the aforesaid notification for details regarding the above stated agreement.**

### AGREEMENT BETWEEN INDIA & REPUBLIC OF SAN MARINO

The CBDT vide **Notification No. 64/2015** dated **13th August, 2015** has hereby notified for the purpose of **Section 10(46) of The Income Tax Act**, **"Karnataka State Rural Livelihood Promotion Society",** a body constituted by the Government of Karnataka in respect of the following specified income arising to the said body, namely:-

a) receipt of grants from the Government of India
b) receipt of grants from the Government of Karnataka
c) Interest earned on bank deposits

The above notification shall be subject to conditions that, the above mentioned society-

1) Shall not engage in any commercial activity
2) Its activities and the nature of the specified income remain unchanged throughout the financial years, &
3) Files return of income as per section 139(4C)(g) of the Income tax Act, 1961.

The notification shall be applicable for F.Y. 2013-14 to 2017-18.

## COURT DECISIONS

### COMMISSIONER OF INCOME-TAX VS SRINIVASA HATCHERIES (P) LTD [ANDHRA PRADESH HIGH COURT]

**Brief: If the Income Tax Officer chooses one view, where two views of a particular aspect are possible, the Commissioner cannot reopen the matter on the ground that another view is possible. Further, if the order by the assessing authority is not patently illegal, the power to reopen cannot be exercised.**

**OUR COMMENTS:** In the above case, commissioner of Income Tax (Appeals) had appealed u/s 260A that though the cost of each cage was less than Rs 5000/-, they can be put to proper use only when they are attached to each other, & hence, 100% depreciation is not allowable, which the Tribunal had allowed earlier. The **Hon'ble Andhra Pradesh High Court** held that the contention of the appellant to consider the decision by tribunal to allow such depreciation on cages to carry birds produced in hatchery, to be inappropriate, is not correct. The tribunal, on appeal by assessee, had discussed the matter referring to relevant precedents & had noted the principle governing the exercise of power in a revision, which states, that, where the Assessing Officer chooses one of the two views of a particular aspect that are possible, commissioner cannot reopen the matter on ground of another view. Further, power to revise is exercisable where order of assessing authority is patently illegal. But, none of the grounds exist in the instant case. Revenue could not demonstrate how the order of Tribunal is erroneous. At any rate, whether a particular unit can be used independently or in tandem with similar units is a pure question of fact & the same cannot be dealt with the above appeal. The appeal is accordingly dismissed. [**Decided in favour of assessee]**

### COMMISSIONER OF INCOME TAX-II, MUMBAI VS SRI ADHIKARI BROS [BOMBAY HIGH COURT]

**BRIEF: If new & important evidence is not available at the time of first hearing of case or there remains some significant mistake on face of record, then only review is permissible.**

**OUR COMMENTS:** In the above case, the **Hon'ble Bombay High Court** held, that revenue's submission that assessee was not entitled to the benefit of Section 35D (2) (c) (IV) of the Act as same was available only where expenditure is related to public issue and this was a Private placement was recorded in para. 3 of the order dated 15th June, 2012 & also was considered in para 7 of above order holding that it was a matter of opinion depending upon the exact nature of the issue. The issue was agitated by revenue at the hearing of the appeal & it being debatable, was outside the scope of rectification u/s 154. Review is permissible if new & important evidence was not available at the time of first hearing of matter or if there is some glaring error apparent on face of the record. In this case, it was neither. The contentions made as above in support of the review were opposed to the statement of facts mentioned by the Commissioner in the appeal memo filed against Tribunal's order dated 21st May, 2010 which led to order of this court dated 15th June, 2012. The review application was filed in a casual manner without examining the case of revenue in the memo of appeal. Revenue's approach in the review petitions was also not clear as in the appeal & review petition, different advocates were engaged. Revenue also reargued the appeal for undue time in the review which was not permissible. Hence, both the review petitions are dismissed & cost of Rs 5000/- is imposed on the CIT, who authorized filing of such petitions payable to Legal Services Authority, Mumbai within 4 weeks. [**Decided against revenue**]

## ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE-II, TRICHY VS M/S INTEX [ITAT CHENNAI]

**Brief: Assessee falling u/s 80IA of the Act can select the initial assessment year for claiming benefit of such section. Further, Income from the sale of excess Carbon Credits is a capital receipt, & cannot be considered as business income.**

**OUR COMMENTS:** In the above case, the **Hon'ble ITAT Chennai** held that the assessee's business undertaking is wind mill power generation/hosiery goods, etc., and it has claimed the benefit of deduction u/s 80IA of the Act for Assessment Year 2010-11 & for subsequent years as well. Having already exercised its option & its losses being already set off against other income, assessee falls within the parameters of Section 80IA as after amendment to such section, there is an option to select initial assessment year for claiming such deduction. Pursuant to the decision as in the case of Velayudhaswamy **Spinning Mills (2010 (3) TMI 860 Madras High Court)**, there is no good reason to interfere with the findings & thus order of CIT (Appeals) in this regard is upheld.

Regarding **Sale of Carbon credit**, the **Hon'ble ITAT** held that the Commissioner of Income Tax (Appeals) was correct in treating such sale as Capital Nature. Referring to the decision by this tribunal in **Prabhu Spinning Mills (P) Ltd. and Sivaraj Spinning Mills (P) Ltd. case [2015 (8) TMI 110 ITAT CHENNAI]** following the decision of **CIT v. My Home Power Ltd. [2014 (6) TMI 82 ANDHRA PRADESH HIGH COURT]**, where it was held that '*Carbon Credit is not an offshoot of business but an offshoot of environmental concerns as no asset is generated in the course of business, but generated due to environmental concerns*.' Such credit is not even directly linked with power generation. Hence, income from the sale of excess Carbon Credits is a capital receipt, & it cannot be Business receipt or income. Thus, appeal of revenue is dismissed. [**Decided against revenue**]

## ANDHRA PRADESH

### ALLOWANCE OF TIME TO ADD COMMODITIES (NOT FIGURED IN CST REGISTRATIONS) BY THE DEALERS

**OUR COMMENTS: The Office of the Commissioner of Commercial Taxes, Andhra Pradesh, vide Circular No. CCW/152/2015 dated 6th August, 2015** has directed all Deputy Commissioners (CT) to issue such instructions to dealers regarding e-waybills & e- C forms for compliance of following instructions w.e.f. 15th August, 2015 :-

- CST e-waybills will be allowed to be generated by dealers, only if they have registered the commodity.
- Dealer must register sensitive commodities to generate e-way bills & manual way bills for them.
- A Dealer can register 3 sensitive commodities.
- All dealers are to complete the aforesaid registration by 14th August, 2015; otherwise they would not be able to generate CST & VAT e-waybills.

## CHATTISGARH

### AMENDMENT IN NOTIFICATION NO. A-5-14-97-ST-V (78), DATED 29TH SEPTEMBER, 1997

**OUR COMMENTS:** The Commercial Tax Department, Government of Chhattisgarh **vide Notification No. F-10-30/2015/CT/V(56) dated 12th August, 2015, has** amended the **Notification No. A-5-14-97-ST-V (78), dated 29th September, 1997, w.e.f. 3rd September, 2003 namely-**

**'In schedule of said notification –**

1. *In point (ii) of column (3) of serial number 4, after the words "**Solvent**", the words and punctuation "**Solvent, but excluding hexane**" Shall be substituted.*
2. *In column (3) of serial number 15, for the word "**Solvent**", the words and punctuation "**Solvent, but excluding hexane**" shall be substituted.*

## DAMAN & DIU

### RULES FOR GRANTING OF REGISTRATION CERTIFICATE

**OUR COMMENTS:** The **Department Of Value Added Tax, Administration of Daman & Diu vide Circular No. DMN/VAT/VATsoft/2013-14/254 dated 12th August, 2015** has declared the following rules for granting registration under **Daman & Diu VAT Rules, 2005:**

- The registration certificate is to be given within 30 days under Rule 12 of the aforesaid rules. All goods except Petroleum Products, Chemicals & Acids shall be categorized as non-sensitive goods & registration certificate for such goods shall be granted in 1 day on completion of all formalities.
- Field inspection shall be carried out post-registration & all related documents are to be obtained at that time by VAT inspector within 3 weeks. The registration procedure for sensitive goods shall be as per Daman & Diu Rules.
- If any fact related to registration is found incorrect, such registration (TIN) shall be cancelled forthwith.

## DELHI

### FURTHER EXTENSION OF PERIOD FOR FILING OF ONLINE RETURN FOR 1ST QUARTER OF 2015-16

**OUR COMMENTS: The Department of Trade & Taxes (Policy Branch), Government of National Capital Territory Of Delhi,** vide **Circular No. 18 of 2015-16 dated 7th August in part-modification of Circular No. 17 dated 4th August, 2015,** has further extended the Last date of filing of online/hardcopy of 1st quarter return for the year 2015-16, in Form DVAT-16, DVAT-17 & DVAT-48 with required annexures/ enclosures to **17th August, 2015**. However, tax due shall be paid in the usual manner u/s 3(4) of Delhi VAT Act, 2004. Dealers filing returns through digital signature are not required to file hard copy of return/Form DVAT-56.

### AMENDMENT OF DELHI VALUE ADDED TAX RULES, 2005

**OUR COMMENTS:** The Finance (Revenue-1) Department, Government of National Capital Territory of Delhi vide **Notification No F.3 (12)/Fin (Rev-1)/2015-2016/dsvi/650** dated **12th August, 2015** has **amended the Delhi Value Added Tax Rules, 2005** by introduction of new rule. These rules may be called the **Delhi Value Added Tax (Amendment) Rules, 2015** & the rule shall come into force w.e.f. on the date of their publication in the Delhi Gazette.

**Concerned readers are advised to refer to the details of the afore said notification as significant changes have taken place.**

## JAMMU & KASHMIR

### AMENDMENT IN REGISTRATION CERTIFICATE IN RESPECT OF SPARE PARTS & ACCESSORIES

**OUR COMMENTS:** The Department of Commercial Taxes, Government of Jammu & Kashmir **vide Circular No. 3/Reader/Notifi/II/1065-67 of 2015 dated 10th August, 2015 has** instructed all assessing authorities to carry out registration certificate amendment in respect of **spare parts and accessories** based only on industrial **unit holder's self certification**. However, if the certification is found to be wrong, such industrial unit shall be liable to penalty as per the relevant Act & rules made thereunder and amendment thereof shall be treated as **null & void ab initio**.

## RAJASTHAN

### CANCELLATION OF DEALERS' REGISTRATION ON FAILURE IN CORRECT UPDATION OF PAN DATA & RETURN FILING FOR THE YEAR 2014-15

**OUR COMMENTS:** The Commercial Tax Department, Government of Rajasthan vide **Circular No. 11/2015-16 dated 13th August, 2015** has held that registration of dealers, who have not updated their PAN data & dealers profile (for migration to GST regime) correctly & not filed returns for the year 2014-15, shall be cancelled. In this regard, the following instructions are further issued:-

1) The assessing authorities shall identify the dealers by 20th August, 2015, who have:
a) **Not updated their PAN details correctly**, on the Department's website;
b) **Not submitted the annual return for the year 2014-15** in case such dealers have **exercised option u/s 3(2) or u/s 5 of the RVAT Act, 2003**, *except for the dealers who are required to get their accounts audited under section 44AB of the Income Tax Act, 1961 (Central Act No.43 of 1961)*; &
(c) **Not submitted all quarterly return for the year 2014-15,** in case of **all other dealers**.

2) Show cause Notice shall be issued to such dealers via e-mail & also will be published in the newspaper by 19th August, 2015, that they had not complied with aforesaid directions u/s 91(2) of RVAT Act, 2003, therefore, why not their registration be cancelled. Opportunity of being heard should be given for 26th to 27th of August, 2015.

3) Registration of Dealers, not complying to the terms of the above notice as issued on 5th August, 2015 shall be cancelled.

All concerned authorities shall strictly comply with these directions & Deputy Commissioner (Adm.) shall monitor the campaign send the requisite information via email to the undersigned as well as to ACCT (Tax) and ACCT (MEA) on fortnightly basis starting from 5th September, 2015 in the format given by aforesaid circular.

### EXTENSION OF DATE OF QUARTERLY RETURN SUBMISSION FOR Q1 OF 2015-16

**OUR COMMENTS :** The Commercial Taxes Department, Government of Rajasthan vide **Notification No. F.26 (315) ACCT/MEA/2014/Part/Tax/6465** dated **14th August, 2015** has extended the date of quarterly return submission in Form VAT10 for **1st Quarter of 2015-16** (to be furnished by the class of dealers covered under rule 19(5)(b) of Rajasthan VAT Rules, 2006) up to **21st August, 2015.**

## TAMILNADU

### INSERTION OF SECTION 19(20) FOR REVERSAL OF EXCESS INPUT TAX CREDIT

**OUR COMMENTS:** The Office of The Principal Secretary/ Commissioner of Commercial Taxes, Government of Tamil Nadu vide **Circular No. 29/2015 dated 11th August, 2015** has held that the **Circular No. 1/2009 dated 30th November, 2009** considering Discount Received as value addition & subject to tax at appropriate tax rates applicable to the goods, was issued before insertion of section 19(20) & has been withdrawn, for such discount being not a transfer of property. Section 19(20) has nothing to do with levy of tax on the discount which has to be dealt with independently as per the provisions of the act and circumstances of each case.

- To reverse the effect of undue enrichment of ITC, section 19(20) should be given effect by correlating the sale price of goods with the corresponding purchase price. If sale price is lesser than purchase price, then amount of ITC in excess of output tax should be reversed.
- If required, assessing authorities can verify a sample of sale invoices and corresponding purchase invoices for certain period as per size of business. If that reveals that dealer has sold goods lesser than purchase value, a thorough scrutiny for the whole year shall be done & based on that ITC reversal & tax payable be determined as per provisions of TNVAT Act.
- Form WW with Trading A/C, Profit & Loss A/C & Balance Sheet with schedules duly audited & certified by chartered accountants filed for the given period may be called for to identify the quantum of excess ITC.

- Provisions of section 19(20) will extend only to reversal of excess ITC. To tackle tax evasion, invoking of such section is not sufficient. In cases of sales price abnormally falling below prevailing market price, section 24 of the Act is to be invoked by assessing authorities taking into account concrete evidence available to such effect.
- The aforesaid instructions may be scrupulously followed in addition to the circulars/ instructions issued in earlier instances on return scrutiny; quoting of these instructions in the notices and orders should be strictly avoided.