31ST ISSUE

AUGUST 30TH - SEPTEMBER 5TH

GST

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SERVICE TAX

CUSTOMS

STATE TAXES

TAX CONNECT

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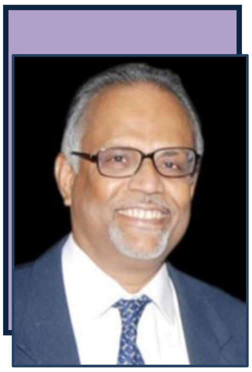
EDITORIAL



Friends,

We have witnessed panic selling in global stock markets this week after 'the great fall of China' saw shares in Shanghai crash 8.5% in just one day. While China's status as a major cog in global economy cannot be doubted, The RBI Governor and FM have both allayed initial fears of a global crisis. With the growth rate at around 7.5% and realistic inflation at 4%, the confidence in India seems to be high this time. **Infact some quarters do even say that the current Chinese crisis offers a renewed opportunity for development and economic growth to India which stands out as a viable investment destination.**

The first 4 months of this year has seen a growth of 37% in Indirect Tax Collections. This indicates that the manufacturing and service sector is performing well and the Indian economy is infact showing signs of strong revival and growth.

In the WB State Taxes field, Like every quarter we had a meeting of the Consultative Committee with the Hon'ble Commissioner of Commercial Taxes (CCT) in West Bengal. While all trade bodies and Chambers did raise their issues, we also acknowledged the good work being done by the Commercial Taxes Dept. in the field of e-governance. **One change which we witnessed in our interaction with the Dept. was that the CCT was reluctant to take up matters which require a paradigm shift in the processes of the department, and said that they would need to wait as GST is on its way. This is a further indicator that Trade & Industry should start preparing itself for GST.**

In some relief to assesses, The Service Tax Division, Chandigarh has clarified that the **transaction involving Pick-up or the home deliveries of the food sold by the restaurant is not liable to Service Tax,** being sale in nature. **However, we feel that similar clarification is needed by the CBEC so that it could be made applicable irrespective of jurisdiction.**

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
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DUE DATE	COMPLIANCES FROM 30TH AUGUST, 2015 TO 5TH SEPTEMBER, 2015	STATUTE
30th Aug'15	ET Payment for July'15	Goa VAT Act
30th Aug'15	VAT Return & Payment for July'15 (Assessee with turnover >= 5 cr. Last FY)	Himachal Pradesh VAT Act
31st Aug'15	VAT/CST/ET Return for Q1 FY 15-16	West Bengal VAT/CST/ET Act
31st August, 2015	Annual Information Return u/s 285BA for F.Y. 2014-15	Income Tax Act
31st August, 2015	Income Tax Return Filing for some Assesses for AY'15-16 (u/s 139)	Income Tax Act

INDEX GUIDE

Union Government creates two verticals for GST implementation

Even after the blockage by the opposition of the crucial legislation, the Union Government has pressed the pedal on the administrative groundwork needed for the goods and services tax (GST) signaling that it is confident of rolling out the ambitious indirect tax reform on time.

Two dedicated verticals are being created by the CBEC to deal with the policy & implementation aspects of the new tax as follows –

1. ***One vertical is for performance management***
2. ***The other vertical is for tax payer services***

These verticals shall ensure that, under the new tax regime, policy formulation and implementation respond urgently to GST requirements, in line with the government's resolve to make it easier for business.

Rates in GST

It is expected that the proposed GST would be having **four rates for different classes of goods and services**, and states would be given flexibility to levy extra taxes within a small band in case of items attracting **standard rate**. The Four rates would be as follows –

1. **Merit Rate -** A lower rate of GST, called the Merit Rate, will apply on certain necessary items and goods of basic importance
2. **Standard rate** – Applicable on most items
3. **NIL rate** - on certain goods on special importance
4. **Special rate** - for precious metals

Credit for central and state taxes paid on inputs can be utilized only for paying the respective taxes on the output. Cross-utilization of central and state taxes is, however, allowed for paying any tax on inter-state supply, the IGST, sources said.

Draft GST Legislation

Despite its legislative setback the government is working with an April 1, 2016 target for implementation of GST.

Three draft legislations are being prepared by different committees comprising senior officers of the CBEC, department of revenue and finance as well as taxation department officials of state governments

The three legislations - Central GST (CGST), State GST (SGST) and integrated GST (iGST) - can be moved for passage in Parliament only after the constitutional amendment Bill on GST becomes an Act.

Transition to GST - Works Contract Services

Date of completion of a given service is an important coordinate to determine the point of taxation of service. In case of standalone services, it is comparatively simple to ascertain the date of completion of such service. However, in case of services continuing for a longer period of time like works contract services, determination of date of completion of service may be done based on a criteria similar to the one in the Point of Taxation Rules, 2011, under the Service Tax Law.

Under GST - where though an assessee may have point of completion of service post the date of implementation of GST, he should have an option to raise the invoice for his service by apportioning the consideration for the part of service completed upto last date of pre-GST regime.

SERVICE TAX

NOTIFICATIONS & CIRCULARS

EXEMPTION OF SALE OF FOODS BY WAY OF PICK-UP OR HOME DELIVERIES FROM LEVY OF SERVICE TAX

OUR COMMENTS: The Central Excise & Service Tax Division, Chandigarh vide **Circular No. ST-20/STD/Misc./Sevottam/62/12** dated 13th August, 2015 issued to **M/S Apex Restaurants Pvt. Ltd** of Chandigarh, has clarified levy of service tax on sale of food way of pickup or home deliveries as follows-

*" It is clarified that in case of the **transaction involving Pick-up or the home deliveries of the food sold by the restaurant**, the **dominant nature of the transaction is that of sale and not service** as the food is not served at the restaurant and further, no other element of service which is offered at the restaurants, be it ambience, live entertainment, if any, air conditioning or personalized hospitality is offered. The service tax can be levied if there's an element of 'service' involved which would typically the case where food is served in restaurant.*

*The above transaction is **not liable to Service Tax**, being sale in nature, **only if, no amount is charged for such free delivery of food**."*

COURT DECISIONS

THE SATHYAMANGALAM AGRICULTURAL PRODUCERS COOP. MARKETING SOCIETY LTD AND OTHER VS THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, SOUTH ZONAL, THE COMMISSIONER OF CENTRAL EXCISE [MADRAS HIGH COURT]

BRIEF: Auction conducted by agricultural producers cooperative societies of the agricultural produce harvested by their own members is not a service rendered by them as such societies are established for enabling the farmers to market their agricultural produce to reduce exploitations by middle men, & any levy upon them is likely to offset the benefits conferred upon the farmers by legislation.

OUR COMMENTS: In the above case, the **Hon'ble Madras High Court held that** the affidavits filed by the appellants in support of the applications for condonation of delay shows that delay in filing appeals had been explained with genuine reasons. Generally, elections to cooperative societies become a huge and acrimonious affair in the State of Tamil Nadu & when elections are held, they become subject matter of challenge before courts & appointment of special officer is done in many cases. Hence, cause of cooperative societies actually becomes nobody's child. Thus, tribunal should have taken a pragmatic view. Further, Appellants appear to have a good case on merits also. These societies are established for enabling the farmers to market their agricultural produce so that they are not exploited by middle men. Eventually, any levy made upon these societies will offset the benefits conferred upon the farmers by legislation. Further, the auction conducted by them of the agricultural produce, harvested by their own members, may not really be a service rendered by them. Thus, tribunal should have taken a practical view in this regard. Hence, the appeals are allowed, the common order of the Tribunal is set aside and the matter remitted back to the Tribunal to be disposed off within 3 months. **[Decided in favour of assessee]**

M/S THE AGRICULTURE PRODUCE MARKET COMMITTEE VS COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX AHMEDABAD-III [CESTAT AHMEDABAD]

BRIEF: Service by Agriculture Produce Marketing Committees (APMC) for a separate charge (other than market fee) to either licensees or farmers or any other persons, is liable to service tax, as clarified by CBEC with respect to Circular No. 157/8/2012-ST dated 27th April, 2012, but it is yet to be finalized for dispute being pending with the Apex Court & hence, penalty u/s 77 & 78 would not apply on the grounds of interpretation of law.

OUR COMMENTS: In the above case, the **Hon'ble CESTAT Ahmedabad** held that, based on available facts, when clarification was issued by CBEC for Circular No. 157/8/2012-ST dated 27th April, 2012, that service by Agriculture Produce Marketing Committees (APMC) for a separate charge (other than market fee) to either licensees or farmers or any other persons (renting of immovable properties as in current case) would be liable to service tax, such clarification was under dispute & has not reached finality as appeal is pending before the **Hon'ble Apex Court** in the **Case of Home Sales Retail India Ltd.** The contention of the appellant that, if this was a question of interpretation of law for setting aside penalties u/s 76 & 77, same would apply for Penalty u/s 78, was correct in this regard because the 1st appellate authority had recorded the impugned order as an issue involving question of interpretation of provision of law. Due to such issue being involved & in view of above observations, Penalty u/s 77 & 78 are set aside invoking provisions of section 80. The appeal is allowed. (**Decided in favour of assessee**)

M/S VODAFONE SOUTH LTD VS COMMISSIONER OF SERVICE TAX, BANGALORE [CESTAT BANGALORE]

BRIEF: Assessee who provides cellular phone services after receiving input services from SIM card distributors for sale or distribution of SIM cards will be eligible for CENVAT credit for such input service as such telecom service, can only be provided after SIM card becomes available & SIM cards are used to provide the cellular phone services .

OUR COMMENTS: In the above case, the **Hon'ble CESTAT Bangalore** held that the contention of revenue that there does not remain a nexus between service provided by the SIM card distributors to the appellant, is not appropriate. The Hon'ble CESTAT referred to the view of the Supreme court in this regard that SIM cards are part of services & it being the fact that service provider can provide the cellular phone service & receiver can avail the same, only when SIM cards are available. Here, it is to be considered that whether service rendered by the service provider to the appellant is having nexus with output service and has been used for output service or not. It cannot be the case of anyone that SIM cards sold or distributed by distributors or services has not been used to provide output service i.e. Telecom Service. Thus the decision in the **case Cadila Healthcare Ltd. (2013 (1) TMI 304 GUJARAT HIGH COURT)** may not apply here, as the facts of the case are not comparable. The CESTAT finds that input service from distributors were used in providing telecom services. Hence, the issue as to whether the appellant is eligible for Cenvat credit on input service provided by the distributors of SIM cards is held as admissible in favour of the appellant. [**Decided in favour of assessee]**

CENTRAL EXCISE

COURT DECISIONS

SUMAN PLYWOOD PVT LTD VS COMMISSIONER OF CENTRAL EXCISE AHMEDABAD-II [GUJARAT HIGH COURT]

BRIEF: The benefit of SSI Exemption shall be denied to an assessee if the assessee is found to have a dummy unit for availing such exemption.

OUR COMMENTS: In the above case, the **Hon'ble Gujarat High Court** held that both the adjudicating authority in order-in-original and the Tribunal had extensively dealt with the issues on the basis of entire gamut of facts presented before them. During inspection of assessee's premises, a dummy firm was found in the name of M/s Krishna Industries, which had only 1 shed & 2 machineries in non-working conditions, as examined in presence of Paanch-witnesses. Further, electric connections & materials or finished goods were also not located in the above stated place & there was nothing to indicate that the labourers were engaged in carrying out the job work. It seemed that the facility was created only to avail SSI exemption. As claimed by one partner, finished goods were being sent from Suman Plywood Pvt Ltd directly. The benefit of SSI exemption was claimed by a letter with a declaration explaining process of plywood. But on noticing that partners were not signatories, these documents were held to be in the realm of ambiguity. Since, the tribunal found many unanswered questions & the actions did not appeal to the reasoned mind, Tribunal had confirmed the view of the original adjudicating authority and set aside the reasonings of the Commissioner (Appeals). Hence, at the cost of reiteration, it is held that no illegality is found in such conclusion nor is there any perversity made out from the record, giving rise to any question of law. The appeal merits no consideration & therefore, is dismissed. **[Decided against the Assessee]**

JAI BALAJI INDUSTRIES LTD. VS CCE, RAIPUR [CESTAT NEW DELHI]

BRIEF: If an item is covered under any heading/sub heading of the tariff, it does not become excisable unless it is proved to have an existing market to trade & burden to prove such marketability remains on the department, & not on the assessee.

OUR COMMENTS: In the above case, the **Hon'ble CESTAT New Delhi held** that there was no dispute that fly ash did not contain metal or metal oxide. The **hon'ble CESTAT** also referred to the case of **Shaw Wallace Gelatines Ltd. [2001 (3) TMI 379 CEGAT, NEW DELHI]** where it was held that coal ash obtained from burning of coal as fuel for producing steam, was not an excisable product and not leviable to duty under **heading 26.21 of Central Excise Tariff.** The same view was also taken by the **Apex Court** in the case of **Union of India vs. Ahmedabad Electricity Co.Ltd. (2003 (10) TMI 47 SUPREME COURT OF INDIA)**. The settled law is that just because an item is covered by some heading/sub heading of the tariff, it would not become excisable unless there is evidence to show that such is marketable for being worthwhile to trade in that product & market for that product exists. Also, the burden to prove such marketability remains on the department, which the department was not able to prove with tangible evidence. Further, appellant was not selling the fly ash & offered the same for free to any person who was ready to lift the same. Thus, the appellant had made a strong prima facie case in their favour, in view of above, the requirement of predeposit of duty demand, interest and penalty is waived for hearing of the appeal and recovery thereof is stayed. [**Decided in favour of Assessee**]

CCE & ST, RAIPUR VS M/S JAYASWAL NECO INDUSTRIES LTD [CESTAT NEW DELHI]

BRIEF: Sales tax/VAT collected by an assessee but retained and not paid to the Government is not includible in the assessable value provided such assessee is covered by Circular No.378/11/98CX dated 12.3.98 and No.671/62/2000CX dated 9.10.2002 & has acted as above under bona fide belief .

OUR COMMENTS: In the above case, the **Hon'ble CESTAT New Delhi** held that during the disputed period, the appellant was liable to pay duty on the assessable value including VAT collected from their customers & retained by them & there was short payment of duty as VAT amount was not included in assessable value. But duty demand for 2006-07 issued on 28.04.2011 by invoking extended period of five years under proviso to Section 11 A(1), would survive only if it could be proved that appellant did not act under bona fide belief or committed fraud or willful misstatement or suppression of facts to evade duty payment. However, during the disputed period, Boards **Circular No.378/11/98CX Dated 12.3.98** and **No.671/62/2000CX dated 9.10.2002** were in favour of the appellant because as per them, sales tax/VAT collected by an assessee but retained and not paid to the Government is not includible in the assessable value. In view of boards' circulars & tribunals judgments in the case of **Super Synotex (India) Ltd. (supra)** in favour of appellant, the appellant had acted under bona fide belief that VAT amount collected from customers & retained by them was not includible in assessable value & hence, pursuant to Apex Court judgment in the case of **CCE, Vs. Continental Foundation Joint Venture (supra)**, the longer limitation period would not be available and as such, the duty demand would have to be held as time barred & there would be no question of penalty u/s 11AC. Appeal by revenue is dismissed. [**Decided against revenue]**

CUSTOMS

NOTIFICATIONS & CIRCULARS

FIXATION OF TARIFF VALUE OF EDIBLE OIL, BRASS, POPPY SEED, ARECA NUT GOLD & SILVER

OUR COMMENTS: The CBEC (Dept. of Revenue), Ministry of Finance, Government of India vide Notification No. **75/2015-Customs (N.T.) dated 14th August, 2015** has amended the **Notification No. 36/2001-Customs (N.T)** dated 3rd August, 2001 as follows:

In the said notification, for Table-1, 2 & 3, the following tables shall be substituted namely:

TABLE-1

Sl No	Chapter/ heading/ subheading/ tariff item	Description of goods	Tariff value US $ (Per Metric Tonne)
(1)	(2)	(3)	(4)
1	1511 10 00	Crude Palm Oil	**593**
2	1511 90 10	RBD Palm Oil	**624**
3	1511 90 90	Others - Palm Oil	**609**
4	1511 10 00	Crude Palmolein	**626**
5	1511 90 20	RBD Palmolein	**629**
6	1511 90 90	Others- Palmolein	**628**
7	1507 10 00	Crude Soya bean Oil	**700**
8	7404 00 22	Brass Scrap (all grades)	**3336**
9	1207 91 00	Poppy seeds	**2188**

TABLE-2

Sl. No	Chapter/ heading/ subheading/ tariff item	Description of goods	Tariff value (US $)
(1)	(2)	(3)	(4)
1	71 or 98	Gold, in any form, in respect of which the benefit of entries at serial number 321 and 323 of the Notification No. 12/2012 Customs dated 17.03.2012 is availed	**363 per 10 grams**
2	71 or 98	Silver, in any form, in respect of which the benefit of entries at serial number 322 and 324 of the Notification No. 12/2012 Customs dated 17.03.2012 is availed	**499 per kilogram**

TABLE-3

Sl No	Chapter/ heading/ subheading/ tariff item	Description of Goods	Tariff value (US $ Per Metric Tons)
(1)	(2)	(3)	(4)
1	080280	Areca nuts	**2452"**

AMENDMENT IN CUSTOMS BAGGAGE DECLARATION REGULATIONS, 2013

OUR COMMENTS: The CBEC (Dept. of Revenue), Ministry of Finance vide **Notification No. 76/2015-Customs (N.T.)** dated **18th August, 2015** has amended the Customs Baggage Declaration Regulations, 2013. These rules may be called the Customs Baggage Declaration (Amendment) Regulations, 2015 & shall be effective from the date of publication in official gazette. The amendments are as follows :

In the Customs Baggage Declaration Regulations, 2013, in Form 1-

(i) In sl. no. 10-

- in item (vii), for the letters and figures "**Rs.10,000**", the letters and figures "**Rs.25,000**" shall be substituted;
- after item (ix), the following item shall be inserted, namely-

"(x). Flat Panel (LCD/LED/Plasma) Television Yes/No".

(ii) under the heading "**IMPORTANT INFORMATION**", under subheading "**Customs Duty Free Allowance**", in the Table, in third column relating to "**Duty Free Allowance**"-

- for the letters and figure **"Rs.35,000"**, the letters and figure **"Rs.45,000"** shall be substituted.
- for the figures **"200,#50 and 250"**, the figure **"100,#25 and 125'** shall respectively be substituted.

RATE OF EXCHANGE OF CONVERSION OF FOREIGN CURRENCY W.E.F. 21ST AUGUST, 2015

The CBEC (Dept. of Revenue), Ministry of Finance, Government of India vide Notification No. **81/2015-Customs (N.T.) dated 20th August, 2015** in supersession of **Notification No. 73/2015-CUSTOMS (N.T.) dated 6th August, 2015** has declared that the rate of exchange of conversion of the foreign currencies specified in column (2) of each of Schedule I and Schedule II annexed hereto, into Indian currency or vice versa shall, w.e.f. 21st August, 2015, be the rate mentioned against it in the corresponding entry in column (3) thereof, for the purpose of the said section, relating to imported and export goods.

SCHEDULE-I

Sl. No	Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
(1)	(2)	(3)	
		(a)	(b)
		(For imported goods)	(For Export Goods)
1	Australian Dollar	48.65	47.25
2	Bahrain Dinar	177.80	168.05
3	Canadian Dollar	50.25	49.20
4	Danish Kroner	9.85	9.60
5	EURO	73.45	71.65
6	Hong Kong Dollar	8.50	8.35
7	Kuwait Dinar	221.95	209.55
8	New Zealand Dollar	43.70	42.55
9	Norwegian Kroner	7.95	7.75
10	Pound Sterling	103.35	101.10
11	Singapore Dollar	47.05	45.95
12	South African Rand	5.20	4.90
13	Saudi Arabian Riyal	17.90	16.90
14	Swedish Kroner	7.75	7.55
15	Swiss Franc	68.30	66.70
16	UAE Dirham	18.25	17.25
17	US Dollar	65.75	64.70

SCHEDULE-II

Sl. No	Foreign Currency	Rate of exchange of 100 units of foreign currency equivalent to Indian rupees	
(1)	(2)	(3)	
		(a)	(b)
		(For imported goods)	(For Export Goods)
1	Japanese Yen	53.20	52.05
2	Kenya Shilling	65.00	61.30

COURT DECISIONS

PROVENANCE FOOD PVT. LTD. VS UNION OF INDIA [BOMBAY HIGH COURT]

BRIEF: In cases of natural calamities, where it is beyond the Customs Manual or the terms & conditions of the Bond, the commissioner should decide the appeal & if not, the Tribunal should guide the lower authorities. Further, any conditions imposed by the tribunal on the assessee for prosecuting appeal should be reasonable & not excessive and having a bearing on the nature of reliefs that the appellant assessee claimed and to which it is held disentitled.

OUR COMMENTS: In the above case, the **Hon'ble Bombay High Court** held that the tribunal was not justified in imposing a condition of Rs 20 Lacs on the appellant assessee. The reproduction of commissioner's findings show that there was no conclusion reached stating the violation of assessee of any comprehensive policy or any provisions in Customs Manual. Even if it was not averred, whether remission as claimed in terms of Section 23 of the Customs Act, 1962 could be denied was question. That itself being the issue & the appellant having made out an arguable case, no basis is found for insistence by tribunal on appellant to deposit Rs 20 lacs as a precondition for hearing of the appeal on merits and stay of recovery. The assessee not being faulted for not taking a comprehensive insurance, such conditions as are imposed upon the assessee for prosecution of the appeal would make the remedy illusory. The imposed conditions should be reasonable & not excessive and should have a bearing on the nature of reliefs that the appellant assessee claimed and to which it is held disentitled. In matters arising out of natural calamities, where customs manual or the terms and conditions of the bond does not guide, the Customs Commissioner should decide the appeal & if not, only the tribunal could guide the lower authorities in this regard. Hence, initial order of the Tribunal in that regard is therefore, quashed and set aside. All consequential orders also are quashed and set aside. The appeal is restored to the file of the Tribunal for being heard in accordance with law. The appeal is allowed. **[Decided in favour of assessee]**

INCOME TAX

NOTIFICATIONS

Notification of Telangana state electricity regulatory commission for exemption u/s 10(46) of Income Tax Act

The CBDT, Dept of Revenue (Ministry of Finance) vide **Notification No. 65/2015** dated **13th August, 2015** has notified **"Telangana State Electricity Regulatory Commission",** constituted by the Government of Telangana, for the purposes of **sec 10(46) of Income Tax Act, 1961, w.e.f. F.Y. 2014-15 till 2018-19** in respect of the following specified income arising to the said Commission, namely:

- Fees received under the Electricity Act, 2003 (36 of 2003),
- Grants & loans received from Government of Telangana,
- Interest on Bank Deposits

Further, the notification is subject to conditions that the above mentioned commission-

- Shall not engage in commercial activity,
- Files return of income as per provision **u/s 139(4C)(g)** of the Act,
- Its activities & nature of the specified income remain unchanged throughout the financial years.

EXCLUSION OF INCOME BY WAY OF ROYALTY OR FEES FOR TECHNICAL SERVICES ARISING TO M/S ROSOBORONEXPORT, THE FEDERAL STATE UNITARY ENTERPRISE SITUATED AT RUSSIA

The CBDT, Dept of Revenue (Ministry of Finance) vide **Notification No. 66/2015** dated **13th August, 2015** has specified that **any income arising to M/S Rosoboronexport, the Federal State Unitary Enterprise** (having its registered office at 107076, Moscow, Stromynka Street, 27/3, Russia) by way of **Royalty or Fees for Technical Services received** pursuant to the agreement vide Contract No. P/235611233623, dated the 24th January, 2007 (*for the production of RD33 Series 3 engines, its aggregates, KSA2, Aircraft Gear Box and GTDF 117. Gas Turbine engine power unit [Turbine starter]*) between M/s Rosoboronexport, Russia and Hindustan Aeronautics Limited, India in conformity with the agreement entered between Government of the Republic of India and the Government of the Russian Federation, **shall not be included in computing the total income of said company under the said Act, to an extent of Rs 103.50 Crore**.

NOTIFICATION OF KERALA ABKARI WORKERS WELFARE FUND BOARD FOR EXEMPTION U/S 10(46) OF INCOME TAX ACT

The CBDT, Dept of Revenue (Ministry of Finance) vide **Notification No. 67/2015** dated **13th August, 2015** has notified "**Kerala Abkari Workers Welfare Fund Board**", established by the Government of Kerala, for exemption u/s **10(46) of Income Tax Act, 1961 w.e.f F.Y. 2014-15 till 2018-19,** in respect of the following specified income arising to the said Board, namely:

- Contribution received from employers & employees,
- Interest on Bank Deposits

Further, the notification is subject to conditions that above mentioned board-

- Shall not engage in commercial activity,
- Files return of income as per provision **u/s 139 (4C) (g)** of the Act, &
- Its activities & nature of the specified income remain unchanged throughout the financial years.

COURT DECISIONS

PR. COMMISSIONER OF INCOME TAX-4 VS GOOD TIMES MARKETING PVT LTD [DELHI HIGH COURT]

Brief: If an assessee incurs loss by making good of losses of a client by making payment to such client out of legal liability towards the client, such payment shall be allowed as deduction as business loss.

OUR COMMENTS: In the above case, the **Delhi High Court** held that the disallowance of the business loss of assessee by the revenue on the ground that such would have been written off as Bad Debts, rather than 'Fraud Payment', is not correct. It is noticed that as per Clause 3.5 of the agreement between the Assessee and IHCL (Indian Hotels Company Ltd), titled 'Handling of Financials', stipulates that the membership fee collected by way of cash will be deposited on the same day with the cashier of IHCL. Cheques were collectible in the name of IHCL. Based on above clauses, the explanation given by assessee that some of its employees had sold Diner Club Cards & failed to deposit such collections due to embezzlement of the same by them, appeared to be plausible & should have been accepted by the AO & CIT(A). Since, there was legal liability on assessee to deposit the money collected on sale of Diners Club Cards, with the IHCL, failure by assessee's employees to do so resulted in legal liability on assessee to make good the loss to IHCL. Hence, the money paid by assessee to IHCL for such loss should have been allowed as business loss by the AO & CIT(A). In the circumstances, the decision of ITAT to allow the deduction claimed by the assessee, was justified. The appeal by revenue is dismissed. [**Decided in favour of assessee]**

COMMISSIONER OF INCOME TAX, BANGALORE AND INCOME TAX (TDS) I BANGALORE VS M/S ITC HOTELS LTD (SINCE AMALGAMATED WITH ITC) (M/S WINDSOR MANOR SHERATON & TOWERS) [KARNATAKA HIGH COURT]

BRIEF: If an assessee makes payment without deducting tax at source to a non-resident, who does not have a permanent establishing in India & if such payment is allowed by the department by issuing N.O.C. in earlier years, then demand cannot be initiated against the assessee on grounds of non-deduction of tax at source.

OUR COMMENTS: In the above case, the **Hon'ble Karnataka High Court** held that the revenue itself had given No Objection Certificates consistently for several years, allowing the respondent assessee to make payment to Sheraton International Inc without deducting tax at source. Only after the assessing officer at Delhi gave the decision in the case of **Sheraton [2009 (1) TMI 27 DELHI HIGH COURT]** that payment made to Sheraton would be liable for payment of income tax in India, the proceedings were initiated against the respondent assessee herein. The **Hon'ble Delhi High Court** in the case of **Sheraton International Inc (supra**) had clearly held that income received by Sheraton was not liable to tax & hence, question of deduction of tax at source by assessee does not arise. Further, as the Assessing Officer's order was set aside by the Delhi High Court, the foundation of initiating proceedings against the respondent assessee disappeared and then, proceedings against the respondent assessee could not go on. The tribunal was correct to hold that income of Sheraton of USA in India, was not deduction of TDS u/s 195(r/w sec. 197) of the Act on payment made by assessee as Sheraton did not have a permanent establishing in India as per sec. 9 & thus, provisions of Sec.201 (1) and 201(1A) of the Act was not attracted. The appeals are accordingly dismissed. [**Decided in favour of Assessee**]

BIHAR

AMENDMENT IN BIHAR VAT ACT, 2005 (ACT 27 OF 2005)

OUR COMMENTS: **The Commercial Taxes Department, Government of Bihar** vide **Notification No. Act No. 13, 2015 dated 19th August**, has amended the **Bihar Value Added Tax Act, 2005.** This Act may be called the **Bihar Value Added Tax (Amendment and Validation) Act, 2015** & it shall extend to the whole of state of Bihar. **Section 2, 3 and 12** of this Act shall **come into force at once**, where as **section 4, 5, 6, 7, 8, 9, 10 and 11** shall be deemed to have come in force **w.e.f. the 31st day of March, 2012**.

Concerned readers are advised to refer to the aforesaid notification for details as many significant amendments have taken place in the above sections.

DATE OF COMMENCEMENT OF SUPAUL CIRCLE

OUR COMMENTS: **The Commercial Taxes Department, Government of Bihar** vide **Notification No S.O. 197 dated 19-08-2015** has notified the **date of commencement of Supaul circle as 17.08.2015**.

INTRODUCTION OF SETTLEMENT OF DISPUTES ACT

OUR COMMENTS: **The Commercial Taxes Department, Government of Bihar vide Act No. 14, 2015 dated 19th August, 2015** has introduced the **Bihar Settlement of Taxation Disputes Act, 2015**. It shall extend to the whole of the State of Bihar & it shall come into force at once and effective up to three months from its notification date. It shall **apply to all such disputes arising out from the proceedings under the law till the financial year 2010-11**.

Concerned readers are advised to refer to the aforesaid Act for details as many significant procedures have come up regarding settlement of disputes.

CHANDIGARH

AMENDMENT IN SCHEDULE E – REGARDING TAX RATE ON BATTERIES, CELL PHONES & ACCESSORIES

OUR COMMENTS: The Excise & Taxation Department, Chandigarh Administration **vide Notification No E&T-ETO (Ref.)-2015/2289 dated 14th August, 2015, has** amended the **Schedule E of Punjab VAT Act w.e.f. 15th August, 2015, namely :**

In the said **Schedule 'E'**, at **Serial No. 9 & 10** and the entries relating thereto, the following items shall be substituted, namely;

" 9. All kind of Batteries except Cell Phone Battery, Torch Battery, Watch Battery and other Toys related batteries. - 14.30%

"10. Mobile Phones/Cell Phones including all its parts and Accessories such as Head Phones, Data Cable, Mobile Charger, Memory Card, Ear Phone, Audio Device, Mobile Cover, Mobile Battery, Bluetooth and Mobile Holder. - 9.35%

CHHATTISGARH

AMENDMENT OF CHHATTISGARH VAT ACT, 2005

OUR COMMENTS: The **Commercial Taxes Department, Government of Chhattisgarh, vide Notification No. Act No. 29 of 2015 dated 18th August, 2015** has amended the **Chhattisgarh Value Added Tax Act, 2005 (No. 2 of 2005)** by introducing the **Chhattisgarh Value Added Tax (Amendment) Act, 2015 w.e.f its date of publication in Official Gazette.** The amendment has taken place in **Section 21** which is as follows:

"In subsection (3) of Section 21 of the Chhattisgarh Value Added Tax Act, 2005 (No. 2 of 2005), for the word "one", the word "three" shall be substituted."

AMENDMENT OF CHATTISGARH SALES TAX (CENTRAL) RULES, 1957

OUR COMMENTS: **The Commercial Taxes Department, Government of Chhattisgarh, vide Notification No. F-10-32/2015/CT/V (58) dated 22nd August, 2015** has amended the **Chhattisgarh Sales Tax (Central) Rules, 1957** w.e.f the date of publication in the Official Gazette as follows:

In rule 10A of the said rules-

(1) For the existing clause (d), the following shall be substituted, namely:—

"An appeal against an order of assessment shall be filed in Form XIV electronically through the website of the department in the manner provided thereon."

(2) For the existing clause (e), the following shall be substituted, namely:-

"An application for revision against any order passed shall be made in Form XV electronically through the website of the department in the manner provided thereon."

AMENDMENT OF CHHATTISGARH VAT RULES, 2006

OUR COMMENTS: **The Commercial Taxes Department, Government of Chhattisgarh, vide Notification No. F-10-33/2015/CT/V (59) dated 22nd August, 2015** has amended the **Chhattisgarh Value Added Tax Rules, 2006** from the date of publication in the Official Gazette, as follows:

In the said rules:

(1) In rule 57,—

(a) In the existing sub-rule (3), the following shall be substituted, namely –

"An appeal against an order of assessment or against on order imposing penalty, shall be filed in Form 53 electronically through the website of the department in the manner provided thereon."

(b) In the existing sub-rule (4), the following shall be substituted, namely-

"An application for revision shall be made in Form 54 electronically through the website of the department in the manner provided thereon, within six calendar months from the date of communication of the order against which the revision application is to be filed."

(c) In the existing rule 63, clauses (i) and (iii) of sub-rule (1) shall be omitted.

DELHI

AUTHORISATION OF ANDHRA BANK & STATE BANK OF TRAVANCORE AS APPROPRIATE GOVT. TREASURY

OUR COMMENTS: **The Department of Trade & Taxes Government of National Capital Territory of Delhi,** vide **Notification No. F.7 (400) / Policy / VAT / 2011 / PF / 565-79 dated 17th August, 2015,** has notified the following Banks, with immediate effect, located in the National Capital Territory of Delhi as Appropriate Government Treasury' for **collection of tax, interest, penalty or any other amount due under the Act or Central Sales Tax Act, 1956 from the dealers registered or liable to be registered under the Act, casual traders, contractees (TAN holders) and any other person in e-payment mode only**, in addition to the already notified banks –

1. **Andhra Bank**
2. **State Bank of Travancore**

The banks shall be authorised subject to the conditions mentioned in **notification No. F.7 (400) / Policy / VAT / 2014 /138798 Dated 28th March, 2014** (in addition to RBI's notifications.

GOA

AMENDMENT IN GOA VALUE ADDED TAX ACT, 2005

OUR COMMENTS: The Department of Finance, Government of Goa **vide Bill No. 26 of 2015 dated 11th August, 2015 has** amended the **Goa Value Added Tax Act, 2005 (Goa Act 9 of 2005).** This Act may be called the **Goa Value Added Tax (Eighth Amendment) Act, 2015 &** it shall come in force at once**.**

Readers are requested to refer to the above bill for details of the Act, as many changes have come in section 29 of the Act & section 1 of Act 12 of 2013.

AMENDMENT IN RULE 23 & 25 OF THE GOA VALUE ADDED TAX RULES, 2005

OUR COMMENTS: The Department of Finance, Government of Goa vide **Notification No. 4/5/2005 Fin (R&C)(121) dated 24th August, 2015** has amended the **Goa Value Added Tax Rules, 2005**. These rules may be called the **Goa Value Added Tax (Tenth Amendment) Rules, 2015** & they shall come into force from the date of their publication in the Official Gazette.

Readers are advised to refer to the aforesaid notification for details as significant amendments have come in Rule-23 & Rule-25.

MADHYA PRADESH

NOTIFICATION REGARDING INDUSTRIAL PROMOTION POLICY

OUR COMMENTS: The Commercial Taxes Department, Government of Madhya Pradesh vide **Notification No. No. F-A-3-31-2015-1-V-(31) dated 26th August, 2015** has notified that notwithstanding anything to the contrary contained in any of the notifications issued in pursuance of the Industrial Promotion Policies prevailing prior to Industrial Promotion Policy, 2014, the **cases received under the said notifications shall be considered by the committees constituted under the Industrial Promotion Policy, 2014**.

ORISSA

EXEMPTION FROM AUDIT OF ACCOUNTS FOR DEALERS (UNIT RUN CANTEENS BY DEFENCE ESTABLISHMENTS)

OUR COMMENTS: The Finance Department, Government of Orissa vide **Notification No. 341/2015 dated 6th August, 2015** has **exempted the dealers (Unit Run Canteens run by Defence Establishments) carrying on business in sale of Goods to Military Personnel or Ex-Service Personnel in CSD Canteens from the liability to get their accounts audited** u/s 65(1) provided that a **certificate annexed to the above notification** (format can referred from the said notification) is **furnished by such dealers** each year **within a period of three months from the date of expiry of that year on which payment of tax is due.**

RAJASTHAN

CHANGE IN RATE OF TAX ON CIGARETTES

OUR COMMENTS: The Finance Department (Tax Division), Government of Rajasthan vide **Notification No. F.12(74) FD/Tax/2014-79 dated 14th August, 2015, in** supersession of Notification No.**F.12 (74) FD / Tax 2014-20** dated 2nd June, 2015 has fixed the amount of tax payable under the Act, as mentioned in column number 3 in respect of goods mentioned in column number 2 of the List given below, namely :

S. No	Item	Rate of tax
1	2	3
1	Other than filter cigarettes, of length not exceeding 60 mm	Rs. 575 per Thousand
2	Other than filter cigarettes, of length exceeding 60 mm but not exceeding 65 mm	Rs. 700 per Thousand
3	Other than filter cigarettes, of length exceeding 65 mm but not exceeding 70 mm	Rs. 1650 per Thousand
4	Filter cigarettes of length (including the length of filter, the length of filter being 11 mm or its actual length whichever is more) not exceeding 60 mm	Rs. 575 per Thousand
5	Filter cigarettes of length (including the length of filter, the length of filter being 11 mm or its actual length whichever is more) of length exceeding 60 mm but not exceeding 65 mm	Rs. 725 per Thousand
6	Filter cigarettes of length (including the length of filter, the length of filter being 11 mm or its actual length whichever is more) exceeding 65 mm but not exceeding 70 mm	Rs. 1250 per Thousand
7	Filter cigarettes of length (including the length of filter, the length of filter being 11 mm or its actual length whichever is more) exceeding 70 mm but not exceeding 75 mm	Rs. 1750 per Thousand
8	Filter cigarettes of length (including the length of filter, the length of filter being 11 mm or its actual length whichever is more) exceeding 75 mm but not exceeding 85 mm	Rs. 2150 per Thousand
9	Others	Rs. 2250 per thousand