32ND ISSUE

SEPTEMBER 6TH - SEPTEMBER 12TH

GST

CENTRAL EXCISE

SERVICE TAX

CUSTOMS

STATE TAXES

TAX CONNECT

JAV & ASSOCIATES

-Chartered Accountants

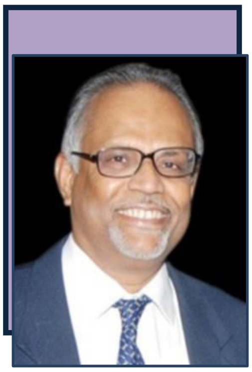
Head Office:
1, Old Court House Corner,
"Tobacco House" 1st Floor,
Room No.-13 (North), Kolkata-700001,
West Bengal

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,

After CBEC, now CBDT has issued guideline for Compulsory manual selection of cases for scrutiny during the Financial Year 2015-2016. So CBEC and CBDT are now working in close co-ordination to ensure that quality of compliances in taxation areas is not compromised. **We have highlighted in our earlier issues also that it is of up teen importance for assesses that reconciliations are prepared between the accounts, Income Tax Returns and Indirect Tax Returns.**

In West Bengal Commercial taxes, **Trade Circular 16/2015** has been issued for introduction of electronic module for Anti-evasion exercise, namely, investigation, search, seizure and penalty proceedings thereof at Checkpost/Range/Central Section/Bureau of Investigation, which are being carried out manually at present. In the new scheme of things persons, including dealers and transporters, would be required to upload the information through the module, before their cases are to be taken up by the appropriate authority for further proceedings upto Final Disposal.

In the last bulletin we had mentioned the increase in Indirect Tax element at 37% in the first 4 months of this FY. One may be surprised at the slow rate of 7.5% economic growth in the first quarter, despite a 37% growth in indirect tax collections. The answer lies in the new methodology of GDP calculation. The new methodology has not only changed the base year from 2004-05 to 2011-12, but also considers GDP at market prices which include indirect taxes and exclude subsidies. Earlier, GDP at factor cost, excluding indirect taxes but including subsidies, was considered. In fact, there is no link of this huge growth in indirect tax mop-up and real GDP growth (adjusted for inflation). On the other hand, nominal GDP growth would reflect these indirect tax numbers. For real GDP, price deflators are not used to arrive at indirect tax collections.

We do hope that we have been able to clear at least some doubts in your minds.

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 6TH SEPTEMBER, 2015 TO 12TH SEPTEMBER, 2015	STATUTE
6th Sep'15	Excise Duty Payment for All Assessee (including SSI units)	Central Excise Act
6th Sep'15	Service Tax Payment for Aug '15 (Company)	Service Tax Rules
7th Sep'15	TDS/TCS Payment for Aug '15	Income Tax Act
7th Sep'15	STDS payment for Aug '15	Assam VAT Act, Odisha VAT Act, Tripura VAT Ordinance, Manipur VAT Act
10th Sep'15	VAT & STDS payment for Aug '15	Chattisgarh VAT Act, Madhya Pradesh VAT Act
10th Sep'15	STDS payment for Aug '15	West Bengal VAT Act, Meghalaya VAT Act, Mizoram VAT Act, Arunachal Pradesh VAT Act

INDEX GUIDE

Carry forward of Cenvat Credit to GST – Transition Phase

There is a need of transitional provisions for utilization of credits for successful implementation of the GST. There are possibilities that the assesses have unutilized credit in their ordinary course of business. So it is required to transfer the unutilized credit from the pre GST regime to GST regime and allowing successful implementation of credit utilization.

Major Areas of Attention for the Business Entities

Current provisions relating to input credit are different in case of Central Excise/ Service Tax and other state taxes, which would be subsuming into the GST regime. The transition provisions need to provide for the manner and entitlement of deduction/ claim of the tax paid on which credit is available under the current provisions.

The government may fully allow or disallow deductions/ refunds/ carry forward of tax paid at the time of procurement of goods which are lying in closing stock on the date of entry into the GST regime; or permit refund on completion of respective assessments by the respective Government Authority.

Transitional Scenario – Analysis

When a **Registered Assessee** in pre-GST regime gets converted into Registered Assessee in GST regime, the credit should be transferred based on the credit amount mentioned in the tax returns /records of the assessee.

When an **Unregistered Assessee** in pre-GST regime gets converted into Registered Assessee in GST regime because of expected lower threshold or discontinuation of a given exemption or for any other reason

Or

When on **Specified goods or services or transactions**, input credit was not eligible in the pre-GST regime, and such credit is considered eligible in the GST regime, and such goods or services are used in taxable supply under GST for any the following reasons:

- *CST paid on goods lying in stock used in taxable supply in GST.*
- *Credit on stock lying with the assessee who was under composition scheme.*
- *Service tax/Excise credit for VAT dealers or vice versa.*
- *Credit for goods lying in stock not available in pre-GST regime because of exempt output, which becomes taxable in GST regime.*
- *Credit ineligible in pre-GST regime becoming eligible in GST regime because of change in the definition of components constituting input credit.*

Then, -

A suitable mechanism must be provided to claim ITC on closing stock and capital goods as well as un-utilized input services. The underlying principle is that these goods and services would be used in the provision of output goods or services chargeable to tax under GST regime.

Transfer of credits

For Input Services: The assessee registered in the pre-GST regime would be collating the credit on input services in his tax returns. So, under GST regime, the assessee must be allowed to carry forward this transitional credit. The unregistered assessee under pre-GST having ineligible credits of input services must be allowed to identify the utilized credit of such input services and carry forward the same to GST regime.

However, prescribing a manner of ascertaining the utilized part of services would be a challenge to lawmakers.

For Inputs: The **assessee, registered** in the pre-GST regime may be allowed to carry forward the tax paid for inputs, provided, the said amount was rightly availed and carried forward in the returns subject to fulfillment of certain conditions such as transitional credit to be provided only in respect of goods that have suffered appropriate tax and appropriate records were maintained.

The **assessee, unregistered** in the pre-GST regime but to be registered in GST regime may be allowed credit of tax paid and which would be used for taxable supply in GST regime by an appropriate mechanism and to be supported by purchase invoices, appropriate stock records and certification by a CA.

For Capital Goods: For the assessee, registered in the pre-GST regime must be allowed to carry forward the tax paid as has been availed and carried forward in the returns, and also the deferred credit lying in the books of accounts subject to fulfillment of various conditions Appropriate mechanism must be used for identification of such capital goods and transfer of the respective credit.

SERVICE TAX

COURT DECISIONS

AKME PROJECTS LTD. VS COMMISSIONER OF SERVICE TAX, BANGALORE [CESTAT BANGALORE]

BRIEF: Price list showing 'Service Charges' cannot be a ground to raise demand of service tax if no specific percentage has been charged as Service Tax & if it is not shown as a cost element.

OUR COMMENTS: In the above case, the **Hon'ble CESTAT Bangalore held that** the impugned order by the Commissioner (Appeals) of upholding the demand for Service Tax was not at all sustainable. As observed by the original authority, in many cases words used were 'service charges' and not service tax. The original authority after examining the relevant documents had concluded that the appellants had not charged service tax and collected the same. It was further noted that indemnity letters were obtained by the appellants from purchasers of the flats undertaking to reimburse the service tax to them in case it comes possible. There being no clarity of law, based on the above the original authority had dropped the demand. The commissioner (Appeals) while upholding the demand had only taken the ground that the association of the flat owners had forwarded several copies of price list wherein the service tax element had been shown. Unlike original authority there is no detailed discussion at all in the order of the Commissioner (Appeals) except for the observation that in the price list service tax has been shown. But, as found from documents submitted by appellant, no receipt or bill was issued showing service tax as a cost element & no specific percentage was charged. Hence, the original adjudicating authority had reached the correct conclusion in the facts and circumstances of the case. The impugned order was set aside & appeal was allowed with consequential relief. **[Decided in favour of assessee]**

COMMISSIONER OF CENTRAL EXCISE, NASHIK VS M/S BHAGWATI STEEL CAST LTD [CESTAT MUMBAI]

BRIEF: If proper inquiry is not being conducted or proceedings are being decided ex-parte by the department, the Commissioner (Appeals) can decide to remand the proceedings back to the adjudicating authority u/s 85 [clothe] (4) of Finance Act, 1994 , and there is no limitation on his powers to do so.

OUR COMMENTS: In the above case, the **Hon'ble CESTAT Mumbai** held that the commissioner (Appeals) has the power to remand the proceedings back to the adjudicating authority u/s 85 [clothe] (4) of Finance Act, 1994, as was held in the ruling of **Hon'ble High Court** of Gujarat in the case of **Commissioner of Service Tax Vs. Associated Hotels Ltd**. In absence of proper inquiry being conducted or the proceedings being decided ex-parte, in every case the commissioner (Appeals) would not be required to convert himself to the adjudicating authority and to conduct the entire inquiry for proper adjudication of the issues, as the Commissioner (Appeals) can decide to remand the proceedings, and there is no limitation on his powers to do so. Further, the contention of revenue that, pursuant to ruling of apex court in the case **of M/s MIL India Ltd. Vs. Commissioner of Central Excise, Noida 2007 (210) ELT 188 (SC)** , of taking away of power of remand by Commissioner (A), such rule shall be applicable here also, was not correct as the Hon'ble High Court had observed that on Service Tax matters such ruling was not applicable as Section 85(5) of the Act starts with words ***"subject to the provisions of this chapter"*** . Hence, following the above ruling of Hon'ble High Court the appeal of revenue is dismissed. (**Decided against Revenue**)

MOTILAL NEHRU NATIONAL INSTITUTE OF TECHNOLOGY VS C.C.EX. & S.TAX, ALLAHABAD [CESTAT ALLAHABAD]

BRIEF: When placement facilities are provided to students, the placement charges are collected only from the students & not from any employer or prospective employer. Thus, such service does not amount to Manpower recruitment or

supply agency service, as such is provided to client who is an employer.

<u>**OUR COMMENTS**</u>: In the above case, the **Hon'ble CESTAT Allahabad** held that as per Section 65 (68) & **Section 65(105)(k), Manpower recruitment or supply agency service** is defined as any service towards recruitment or supply or manpower, temporarily or otherwise to a client. The recipient of this service i.e. the client receives services in the nature of recruitment of supply of manpower, temporarily or otherwise. & hence, client must be an employer or prospective employer and the consideration for this service must flow from such employer to the provider of the service. The placement facilitation provided by educational institutions where the placement charges are collected from students and not from an employer or a prospective employer, does not come under the purview of taxable service as per the definition of the Act as above. Hence, the conclusions of the primary or lower appellate authorities are fundamentally misconceived & invalid and are accordingly quashed. The appeal is allowed. [**Decided in favour of assessee]**

<u>C.S.T. – SERVICE TAX – DELHI VS ISHIDA INDIA PVT. LTD. [CESTAT DELHI]</u>

<u>**BRIEF:**</u> **For a service to be an Export Service, the location of service receiver is the relevant factor, not the place of performance and the benefit of the service should accrue outside India.**

<u>**OUR COMMENTS**</u>: In the above case, the **Hon'ble CESTAT Delhi** held that the arguments by the appellants that products being used in India are not Export Service as per Rule 3(2)(a) of the Export Service Rules, 2005, could not be agreed upon. It was found that the respondents procured orders from Indian Customers for their holding company in Japan & as per such orders products were supplied to Indian Customers. The respondents get commission for such procurement of orders. Thus, such service by respondents of procuring purchase orders or marketing was definitely utilized by the company in Japan. It was also not in dispute that the respondents received the commission in convertible foreign exchange. It has further been sufficiently clarified in the CBEC circular No.111/5/2009-ST dated 24.02.2009 that 'the ***relevant factor is the location of the service receiver and not the place of performance. In this context, the phrase used outside India is to be interpreted to mean that the benefit of the service should accrue outside India.'*** There would not have been any supply or use of goods in India at all, if respondents did not canvass the purchase orders and send it to their client Company in Japan. So, merely because of the use of goods in India could not mean that there was no export of output service. Here, the company in Japan effectively used the service of respondent of procuring purchase orders & so, it could be only concluded that Services were exported. Hence, in view of above, the Commissioner (Appeals) has rightly allowed the refund claim of the respondents for excess service tax paid on export services. The appeal of the revenue is dismissed. [**Decided against Revenue**]

CENTRAL EXCISE

COURT DECISIONS

THE COMMISSIONER OF CENTRAL EXCISE, CHENNAI IV COMMISSIONERATE, CHENNAI VS CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI AND OTHERS [MADRAS HIGH COURT]

BRIEF: Job-worked goods cleared by assessee to principal manufacturer during a particular period, without duty payment shall not be treated as goods exempted from duty of excise or chargeable to 'nil' rate of duty & accordingly, CENVAT credit on inputs used for such manufacture of afore said goods cannot be denied.

OUR COMMENTS: In the above case, the **Hon'ble Madras High Court** held that the objection by the revenue that as inputs were used to manufacture final products which were cleared without duty payment, no CENVAT credit of duty payment on such inputs will be available is not correct. The assessee manufactured forgings on job work basis & supplied the same to principal manufacturers without paying duty. The assessee also manufactured similar goods & paid the duty on them & cleared the goods for independent buyers & utilized CENVAT credits on inputs & capital goods used to manufacture job-worked goods in such duty payments, which the revenue objected. On order of recovery of such credit by the adjudicating authority & upholding of that order by the commissioner (appeals), appeal was filed before the tribunal. Such appeal was allowed by the tribunal on the ground that job-worked goods cleared by assessee to principal manufacturer during disputed periods, without duty payment were not to be treated as goods exempted from duty of excise or chargeable to 'nil' rate of duty so as to attract the bar created under Rule 6(1) of the CENVAT Credit Rules, 2004 (pursuant to judgment in **CCE Chennai V. Ucal Machine Tools Ltd ,2006-TIOL-76-Cestat-Mad**). The Hon'ble court held that both the sides had fairly conceded before the court that issue involved were decided by this court reported in [**2014 (9) TMI 444-Madras High Court] (Commissioner Vs Hwashin Automotive India Pvt. Ltd**.), herein by following the unreported decision, similar question raised by the Revenue was answered against the Revenue. Following the aforesaid decision of this court, above civil miscellaneous appeals were dismissed. [**Decided against Revenue]**

M/S G.S. ALLOY CASTINGS LTD UNIT-II VS COMMISSIONER OF CENTRAL EXCISE, GUNTUR [CESTAT BANGALORE]

BRIEF: Without producing sufficient & corroborated evidences & statements, demand cannot be imposed on assessee by the revenue.

OUR COMMENTS: In the above case, the **Hon'ble CESTAT Bangalore** held that revenue's case was only based on the statements of Authorized representatives of **M/s Usha Enterprises** and **M/s Sree 66Tirumala Steel Rolling Mills Pvt. Ltd**, which were not tested for their correctness by cross examination & there was no recorded evidence showing that appellant had not actually received the inputs. Though there was no inculpatory statement of the present appellant, the appellant's representative clarified that they had received the inputs. The evidences collected by revenue were only third party statements, whereas, in cases of clandestine allegation, the revenue is required to establish the same by producing sufficient, tangible and positive evidence. But the uncorroborated statements of third party cannot be adopted as an evidence, as without corroboration from an independent source such statements , though of some value, but could not be solely relied upon to hold against assessee. Further, Revenue was being silent as to if appellant had not received the materials, how did they manufacture final product because it's not possible to produce without inputs. It was also not revenue's case of procurement of raw material from an alternative source. As the appellants have reflected the raw material in the CENVAT credit Account & shown utilization of the same, the duty of revenue was to prove that such inputs were not the one covered by invoice in question & was procured by assessee from an outside source. Hence, there being neither any allegation nor any evidence to reflect upon aforesaid procurement, there was no merit in revenue's stand & so, the impugned order was set aside & appeal was allowed.**[Decided in favour of Assessee]**

M/S GUJARAT STATE FERTILIZERS & CHEMICALS LTD VS COMMISSIONER, CENTRAL EXCISE & SERVICE TAX, VADODARA-I [CESTAT AHMEDABAD]

BRIEF: The date for demanding interest will have to be mutatis mutandis, one year from the date of payment of interest made under Section 11A of the Act to calculate the exact interest from clearance date to differential duty payment date. Further, for supplies to sister concerns, differential duty and interest cannot be demanded **on revenue neutrality & when such demand does not sustain on revenue neutrality interest cannot be demanded on voluntary payment of differential duty.**

OUR COMMENTS: In the above case, the **Hon'ble CESTAT Ahmedbad held** that the argument of the appellant that 1 year period should be calculated from the clearance date is not correct as no return of interest payment is required to be filed by appellant as per Explanation1(b)(i) & (ii) of Sec 11A of the Act. The relevant date for demanding interest will have to be mutatis mutandis 1 year from the date of interest payment u/s 11A as only on the date of duty payment the exact interest from clearance date to differential duty payment date, can be calculated for issuing a quantified demand for Interest. Thus, demand for interest was issued within 1 year & was not time-barred. Regarding non-payment of interest on account of revenue neutrality, the Hon'ble CESTAT referred to the judgment of Jurisdictional Gujarat High Court in CCE & C, Vadodara-II Vs Indeos ABS Ltd (2010 (3) TMI 656, where it was held that in case of supply to sister concerns, demand cannot be upheld on revenue neutrality i.e. both differential duty & interest cannot be demanded. Further, in case of CCE Pune II Vs Siddheshwar Textile Mills Pvt.Ltd., Bombay High Court held that when duty demand itself is not sustainable on Revenue Neutrality, it will not be correct to demand interest on differential duty voluntarily paid by the Appellant. In view of the above the appeal of appellant that interest cannot be demanded is allowed. [**Decided in favour of Assessee**]

MAHINDRA & MAHINDRA LTD. VS COMMISSIONER OF CENTRAL EXCISE, NAGPUR [CESTAT MUMBAI]

BRIEF: Reversal of credit on inputs used in exempted tractors on a later date does not disentitle the assessee from availing the exemption of tractors under Notification No.23/2004-CE dated 9.7.2004 & the assessee can switch over to procedure under rule 6(2) of reversal of actual credit from rule 6(3)(b) i.e. proportionate reversal as there is no restriction in this regard.

OUR COMMENTS: In the above case, the **Hon'ble CESTAT Mumbai** held that there is nothing in CENVAT credit rules or any other provision that, only after reversing the credit of inputs available in its stores, work in progress and in the finished goods on that date, the manufacturer can switch over to Rule 6(2). In absence of any such prohibition, revenue's contention that appellant needed to pay an amount under Rule 6(3)(b) till 24.09.2004 i.e. the date of reversal of credit attributable to inputs in its stores, work in progress and on the finished goods as on 31.8.2004, could not be appreciated. The appellant stopped taking credits on inputs used in hydraulic system (used in exempted goods) & reversed credit on inputs for hydraulic system (if used in exempted tractors) from 1.9.2004. For inputs in stores, work-in-progress or final product available, on which credit was taken earlier, same was reversed & from 1.9.2004, no credit on inputs was taken without payment of duty. The objection by revenue for delay in reversal of CENVAT credit was also not sustainable pursuant to **Supreme Court's judgment** in the case of **Sonalac Paints and Coatings Ltd**. (supra) that reversal of credit at a later date will not disentitle the Assessee from availing the exemption. Further, appellant did not reverse the credit on inputs on proportional basis as per Rule 6(3), but switched over to Rule 6(2) w.e.f. 1.9.2004 and reversed actual credit on its stores, work in progress and finished products as on 31.8.2004, & thus submissions by both sides were irrelevant to the case. So, Appeal by appellant was allowed. [**Decided in favour of Assessee]**

CUSTOMS

NOTIFICATIONS & CIRCULARS

AMENDMENT IN RATE OF EXCHANGE OF CONVERSION OF FOREIGN CURRENCY W.E.F. 26TH AUGUST, 2015

OUR COMMENTS: The CBEC (Dept. of Revenue), Ministry of Finance, Government of India vide Notification No. **82/2015-Customs (N.T.) dated 25th August, 2015** has amended the **Notification No. 81/2015-Customs (N.T.) dated 20th August, 2015 as follows:-**

In the SCHEDULE-I of the said Notification, for Serial Nos. 4, 5 and 15 and the entries relating thereto, the following shall be substituted, namely:

S. 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)
4.	Danish Kroner	10.40	10.15
5.	EURO	77.60	75.75
15.	Swiss Franc	71.90	70.20

In the SCHEDULE-II of the said Notification, for Serial No. 1 and the entries relating thereto, the following shall be substituted, namely:

S. No	Foreign Currency	Rate of exchange of hundred unit of foreign currency equivalent to Indian rupees	
(1)	(2)	(3)	
		(a)	(b)
		(For Imported Goods)	(For Export Goods)
1.	Japanese Yen	56.05	54.80

AMENDMENT 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. **83/2015-Customs (N.T.) dated 31st August, 2015** has further 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	**532**
2	1511 90 10	RBD Palm Oil	**571**
3	1511 90 90	Others - Palm Oil	**552**
4	1511 10 00	Crude Palmolein	**593**
5	1511 90 20	RBD Palmolein	**596**
6	1511 90 90	Others- Palmolein	**595**
7	1507 10 00	Crude Soya bean Oil	**704**
8	7404 00 22	Brass Scrap (all grades)	**3179**
9	1207 91 00	Poppy seeds	**2464**

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	**369 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	**471 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"**

THE COMMISSIONER OF CUSTOMS AIR PORT AND AIR CARGO COMPLEX, BANGALORE VS M/S PFIZER PRODUCTS INDIA PVT. LTD. [KARNATAKA HIGH COURT]

BRIEF: U/s 27-A of the Act Interest on refund shall be payable to an assessee by the revenue on non-payment of such amount from 3 months after date of application of refund at rates ranging from 5% to 30% p.a. (as notified by the Government) & such payment cannot be delayed on grounds of pendency of appeals.

OUR COMMENTS: In the above case, the **Hon'ble Karnataka High Court** held that Section 27-A clearly states that Interest would be payable if the amount is not refunded within 3 months from the date of the application) & liability to pay such amount would arise after the order of refund of the amount is finalized but such liability would be from 3 months after the date of application & not from date of the order of the Tribunal or the Court, which may be passed in appeal. The Hon'ble high court also referred to the decision of Supreme court in the case of **Ranbaxy Laboratories Ltd. [2011 (10) TMI 16-Supreme Court of India],** where it was held that interest has to be paid from 3 months after date of application filed by respondent & such liability would arise from 3 months after date of application till the date of actual payment. Here, the appellant (revenue) had misinterpreted the law & deprived the assessee from claim of interest, even after the refund order was made up to Supreme Court. Merely because of pendency of appeal, with no stay order being granted, the revenue without any valid reason had further delayed payment of interest for a period of over 15 months from the date of the order of the Tribunal dated 21.05.2014, which was not understandable. Hence, due to initial rejection of refund for over 12 years, and refusing to pay the interest even after Tribunal's order, and dragging the matter up to the High Court & there being no substantial question of law, the appeal was dismissed directing the revenue to pay interest from 24.03.1999 till actual date of payment. **[Decided against Revenue]**

INCOME TAX

NOTIFICATIONS

AMENDMENT IN INCOME TAX RULES, 1962

The CBDT, Dept of Revenue (Ministry of Finance) vide **Notification No. 70/2015** dated **17th August, 2015** has amended the **Income Tax Rules, 1962** by making a new rule, called **the Income tax (Twelfth Amendment) Rules**, 2015. Such rule shall **come into force with retrospective effect** from the **1st day of April, 2015**.

Concerned readers are advised to refer to the said notification for details as after Rule 125, "Rule 126- Computation of period of stay in India in certain cases" has been introduced.

COMPULSORY MANUAL SELECTION OF CASES FOR SCRUTINY DURING F.Y. 2015-16

The Dept of Revenue (CBDT), Ministry of Finance vide **Circular/instruction No. 08/2015** dated **31st August, 2015** has laid down the procedures & criteria for manual selection of returns/cases for scrutiny during the F.Y. 2015-16. They are as follows:

CRITERIA:

i) *Cases involving addition in an earlier assessment year in excess of Rs 10 lakhs on a substantial and recurring question of law or fact, either confirmed in appeal or pending before an appellate authority.*

ii) *Cases involving addition in an earlier assessment year for transfer pricing in excess of Rs 10 Cr. or more on a substantial and recurring question of law or fact, either confirmed in appeal or pending before an appellate authority.*

iii) *All assessments regarding Survey u/s 133A, excluding those cases, where Books of Accounts etc. were not impounded & returned income (excluding any disclosures made in survey), is not less than returned income of preceding assessment year. However, where assessee retracts the disclosure made during the Survey, such cases will not be covered by this exclusion.*

iv) *Assessments in Search & Seizure cases to be made u/s 158B, 158BC, 158BD, 153A & 153C [r/w Sec 143(3)] & also for the assessment year of the previous year in which authorization for search and seizure was executed u/s 132/132A.*

v) *Returns filed in response to Notice u/s 148.*

vi) *Cases where registration u/s 12AA has not been granted or cancelled by the Concerned CIT/DIT, yet assessee has been claiming tax-exemption u/s 11.[Cases where such orders of CIT/DIT have been revised/set aside in appellate proceedings, will not be selected under this clause].*

vii) *Cases where approval already granted u/s 10(23C)/ /35(1)(ii)/35(1)(iii)/10(46), has been withdrawn by the Competent Authority, yet the assessee has been found claiming tax-exemption/ benefit under the aforesaid provisions.*

viii) *Cases for which specific and verifiable information pointing out tax evasion is given by Government Departments/Authorities. The Assessing Officer shall record reasons and take prior approval from jurisdictional Pr. CCIT/CCIT/Pr. DGIT/DGIT concerned before selecting such a case for scrutiny.*

COMPUTER AIDED SCRUTINY SELECTION (CAAS):

Cases are also selected under CASS based on broad selection filters. List of such cases shall be separately intimated in due course by the Pr. DGIT (Systems) to the jurisdictional authorities concerned.

Targets for completing scrutiny assessments & strategy for framing quality assessments as contained in Central Action Plan document for FY 2015-16, is to be complied with and it must be ensured that all scrutiny assessment orders including the cases selected under the manual criterion are completed through the AST system software only. To ensure framing of quality assessments, Pr. CCsIT/CCsIT/Pr. DsGIT/DsGIT should evolve a suitable monitoring mechanism and they shall send a report to the respective Zonal Member by 30th April, 2016, with a copy to Member (IT) containing details of at least 50 quality assessment orders from their respective charges. In this regard, IT Authorities concerned must ensure that cases selected for publication in 'Let us Share' are picked up only from the quality assessments as reported.

COURT DECISIONS

M/S NAVAYUGA QUAZIGUND EXPRESSWAY (P) LTD VS DY COMMISSIONER OF INCOME TAX, CIRCLE 15(1) HYDERABAD. [ITAT HYDERABAD]

Brief: For calculation of Interest u/s 201(1A)(ii), a term of 30 days is to be taken as month instead of British Calendar Month u/s 3(35) of General Clauses Act.

OUR COMMENTS: In the above case, the **ITAT Hyderabad** held that in this case, Sec 201(1A)(ii) [r/w 119A(b)] will apply providing that where interest is to be calculated for a month or part thereof, fraction of a month shall be deemed to be a full month & interests shall be so calculated. Also, in the case of **CIT Vs Arvind Mills Ltd**, the **Hon'ble Gujarat High Court** had held that pursuant to Sec 244A(1), Sec 201(1A)(ii) [r/w 119A(b)], it was clear that the term 'month' means term of 30 days & not British calendar month u/s 3(35) of General Clauses Act, as it cannot be adopted for above mentioned sections for such definition would lead to anomalous situation. The above decision is squarely applicable to present case & thus, the AO is directed to recompute such interest u/s 201(1A) taking 30 days as a month instead of British Calendar Month. Appeal of assessee is allowed. **(Decided in favour of Assessee)**

BIHAR

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

OUR COMMENTS: **The Commercial Tax Department, Government of Bihar** vide **Notification No. S.O.199 dated 27th August** has amended the **Bihar Value Added Tax Act, 2005** by inserting the following entry **after S.N. 136 of Schedule V (of section 17)** of the **Bihar Value Added Tax Act, 2005** w.e.f. date of its issuance:

- **"137. Borlaug Institute for South Asia (BISA)"**

CHANDIGARH

AMENDMENT IN CENTRAL SALES TAX (PUNJAB) RULES, 1957

OUR COMMENTS: The Excise & Taxation Department, Chandigarh Administration **vide Notification No 2576 dated 28th August, 2015, has** amended the **Central Sales Tax (Punjab) Rules, 1957 by introducing new rules.** These rules may be called **the Central Sales Tax (Punjab) (First Amendment) Rules, 2015** as applicable to Union Territory, Chandigarh & shall come into force with immediate effect.

Concerned readers are advised to refer to the above notification for details as significant amendments have come in Rule 7.

CHHATTISGARH

AMENDMENT IN NOTIFICATION NO. F-10-17/2015/CT/V(30) DATED 31ST MARCH, 2015

OUR COMMENTS: The **Commercial Tax Department, Government of Chhattisgarh, vide Notification No. No. F-10-34/2015/CT/V (60) dated 1st September, 2015** has amended the **dept's Notification No. F-10-17/2015/CT/V(30), dated 31st March, 2015 w.e.f 1st September, 2015 as follows:**

In the said notification –
In column (3) of each serial numbers 1 and 2 of the Schedule, for the words "**Whole of tax**", the words "**Partly so as to reduce the rate of tax to 1 percent**" shall be substituted.

EXEMPTION TO CLOTH & SUGAR & KHANDSARI

OUR COMMENTS: **The Commercial Tax Department, Government of Chhattisgarh, vide Notification No. F-10-34/2015/CT/V (61) dated 1st September, 2015** has exempted the **class of goods specified in column (2)** of the Schedule below, from payment of tax to the extent specified in column (3), for the period **from 1.9.2015 to 31.3.2016, namely:**

SCHEDULE

S. No	Class of goods	Extent of exemption
(1)	(2)	(3)
1.	All varieties of cloth (excluding hessian cloth)	Whole of tax
2.	Sugar and khandsari (excluding mishri, chironji, elaichi dana and batasha)	Whole of tax

DELHI

EXTENSION IN DATE FOR ONLINE SUBMISSION OF FORM DP-1

OUR COMMENTS: **The Department of Trade & Taxes Government of National Capital Territory of Delhi,** vide **Notification No. F.3(352)Policy/VAT/2013/625-36 dated 31st August, 2015, in partial modification of Notification No.F.3(352)/Policy/VAT/2013/346-357 dated 30th June, 2015** has extended the date of online submission of **Form DP-1** by all the dealers till **30th September, 2015.**

GOA

EXTENSION IN DATE FOR FILING OF VAT/CST RETURNS FOR Q1 OF '15-16

OUR COMMENTS: The Revenue & Control Division, Department of Finance, Government of Goa **vide Order No. 4/5/2005-Fin(R&C)(122) dated 28th August, 2015 has** directed that all the returns to be filed by registered dealers u/s 24 of the Act (other than those opted for composition of tax u/s 7 of the Act), for the **quarter ending 30th June, 2015**, shall be **accepted beyond 28th August, 2015 but up to 28th October, 2015, without payment of penalty**.

GUJARAT

EXEMPTION OF NARROW WOVEN FABRIC AT SL. NO. 100,102,103 & 107

OUR COMMENTS: The Finance Department, Government of Gujarat vide **Notification No. (GHN-28) VAT-2015-S.5 (2) (44)-TH dated 31st August, 2015** has amended the Notification No **(GHN-35) VAT-2006-S.5 (2) (1)-TH, dated the 31st March, 2006** as follows:

In the Schedule appended to the said notification, in the entry at **Sl No. 1**, in **Annexure 11** appended to sub **entry (iii)**, the following entries shall be **deleted**, namely-

Sr.No.	HS Codes	Description
100	58062000	Other Narrow Woven Fabrics Containing By Weight 5% or more of Elastomeric Yarn/ Rubber Thread
102	58063190	Other Narrow Woven Fabrics etc of Cotton
103	58063200	Narrow Woven Fabrics of ManMade Fibres
107	58063990	Other Narrow Woven Fabrics

HARYANA

AMENDMENT IN HARYANA VAT RULES, 2003

OUR COMMENTS: The Excise & Taxation Department, Haryana Government vide **Notification No. 20/ST-1/H.A.6 /2003/S.60/2015 dated 19th August, 2015** has amended the **Haryana Value Added Tax Rules, 2003** by making a new set of rules. These rules may be called **the Haryana Value Added Tax (Second Amendment) Rules, 2015 & these shall come into force w.e.f. date of publication of this notification in the Official Gazette.**

Concerned readers are advised to refer to the aforesaid notification for details as significant changes have taken place in Rule-47 & Rule-51.

AMENDMENT IN NOTIFICATION NO. 18/ST-1/H.A.6/2003/S.59/2015 DATED 15TH JULY, 2015

OUR COMMENTS: The Excise & Taxation Department, Haryana Government vide **Notification No. 21/ST-1/H.A. 6 / 2003 / S.59/2015** dated **28th August, 2015** has amended the dept's **Notification No. 18/ST-1/H.A.6 /2003/S.59/2015 dated the 15th July, 2015** as follows-

In the said notification, in the 2nd Para, for the words "**with immediate effect**", the words and figures "**with effect from the midnight of 15th and 16th July, 2015**" shall be substituted.

JAMMU & KASHMIR

AMENDMENT IN SCHEDULE-B OF JAMMU & KASHMIR GENERAL SALES TAX ACT, 1962- ADDITION OF BROADCASTING SERVICES BY DTH OPERATORS

OUR COMMENTS: The Finance Department, Government of Jammu & Kashmir vide **Notification No. SRO 295 dated 2nd September, 2015** has held that in **schedule "B"** to **notification SRO 117 of 2007 dated 30th March, 2007,** the following entry shall be **added after entry 26**:

"27. Broadcasting Services provided by the Direct to Home (DTH) Operators."

AMENDMENT IN SCHEDULE-B OF JAMMU & KASHMIR GENERAL SALES TAX ACT, 1962- ADDITION OF SERVICES BY ROPEWAY OPERATORS

OUR COMMENTS: The Finance Department, Government of Jammu & Kashmir vide **Notification No. SRO 296 dated 2nd September, 2015 has held that in schedule "B" to notification SRO 117 of 2007 30th March, 2007, the following entry shall be added after entry 27:**

"*28. Services provided by ropeway/cable car operators*."

AMENDMENT IN SCHEDULE-B OF JAMMU & KASHMIR GENERAL SALES TAX ACT, 1962- ADDITION OF COMMERCIAL HELICOPTER SERVICES WITHIN THE STATE

OUR COMMENTS: The Finance Department, Government of Jammu & Kashmir vide **Notification No. SRO 297 dated 2nd September, 2015 has held that in schedule "B" to notification SRO 117 of 2007 dated 30th March, 2007** the following entry shall be **added after entry 28:**

"*29. Commercial Helicopter services operating within the State*."

RAJASTHAN

AMENDMENT IN NOTIFICATION NO. F.12(161)FD/TAX/09-1 - EXEMPTION FROM TAX SALE TO OR PURCHASE OF HSD BY INDIAN RAILWAYS

OUR COMMENTS: The Finance Department, Government of Rajasthan vide Notification No **F. 12(161) FD/Tax/09-83 dated 28th August, 2015** has amended **Notification No. F.12 (161) FD/Tax/09-1 dated 2nd June, 2014 w.e.f. 29th August, 2015** as follows:

In the said notification,

i. *for the existing expression "**to which the rate of tax in respect thereof exceeds 14%**", the expression "**to which*** *the rate of tax in respect thereof **exceeds 18%"** shall be substituted, &*

ii. *in condition no. 1, for the existing **expression "which shall not in any case be less than 90% of the total purchase"**, the expression "**which shall not in any case be less than 85% of the total purchase**" shall be substituted.*

AMENDMENT IN NOTIFICATION NO. F.4(33)FD/TAX/87-03 - EXEMPTION FROM TAX ON SALE TO BSF/ITBPF

OUR COMMENTS: The Finance Department, Government of Rajasthan vide **Notification No F.4 (33) FD/Tax/87-Pt-I-85 dated 31st August, 2015** has amended **Notification No. F.4 (33) FD/Tax/87-03 dated 25th may, 2009** as follows:

*In condition No. 3 of the said notification, for the existing expression "**that the sale of such goods shall be made to the members of the force only: and**", the expression "**that the sale of such goods shall be made to the members of BSF and ITBPF only; and**" shall be substituted.*

TELANGANA

SPECIFICATION OF DISCOUNT RATE FOR PRE-PAYMENT OF DEFERRED TAX AS PER RULE 67 OF TELANGANA VAT RULES, 2005

OUR COMMENTS: The Revenue (Commercial Taxes-II) Department, Government of Telangana vide **Notification No. G.O.MS. No. 136 dated 17th August, 2015** has prescribed the rate of discount for calculating and paying the net present value of the deferred taxes by an industrial unit under **Rule 67 (6) of Telangana Value Added Tax Rules, 2005** as **7%** & such rate as given herein is **valid for 1 year** from date of publication of this notification.

UTTARAKHAND

AMENDMENT IN UVAT SCHEDULE-II(B)

OUR COMMENTS: The Finance Section - 8, Government of Uttarakhand vide **Notification No. 98 / 2015 / 24 (120)/ XXVII (8)/2010 dated 10th August, 2015** has amended **Schedule-II(B) of The Uttarakhand Value Added Tax Act, 2005 as follows:**

In **ScheduleII(b)**, for the existing entry at **Sl no. 109**, the following entry shall be substituted;namely-

Sl No	Description of Goods	Rate of tax
109	Sweetmeat, rewari, gajak and namkeen excluding packed branded namkeen	5%