INDIRECT TAX EXPRESS

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

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FROM THE EDITORIAL TEAM

Business Processes for Registration Under GST

The Constitution (122nd Amendment) Bill, 2014, has been introduced in the Parliament for facilitating the introduction of GST in the country. Simultaneously, committees comprising of officers from the Central Government, as well as the State Governments, have been constituted for the drafting of Model CGST, SGST and IGST laws, and GST business processes of registration, refunds, returns and payments. Accordingly, the draft business processes on GST registration, GST refunds and GST payments have been published. The basic features of business process for GST on registration emerging from this report are as follows:-

Structure:-

- Compulsory registration is required for:-
  - Persons registered to pay existing taxes that will be subsumed under GST
  - Person having all India gross annual turnover (including export and exempt supplies) exceeding the threshold limit.
  - A person who carries out any inter-state supply.
  - Casual and non-resident suppliers
  - voluntary registration below threshold.
- Types of Registration would be:-
  - Resident Supplier/Dealer
  - Non-Resident Dealer (registered in a state and undertakes interstate supply in another state where he is not registered as resident supplier)
  - Casual Dealer (to conduct business in a particular State for a limited period)
  - Compounding Dealer (opting to pay tax at a specified percentage of the turnover, without entering the credit chain)
- For each State, the taxable person will have to take a separate registration, even though the taxable person may be supplying goods or services or both from more than one State as a single legal entity.
- Multiple registrations within one State to business verticals of a taxable person may also be permitted, subject to all the verticals being on the same scheme of tax treatment.
- Each taxpayer will be allotted a State wise PAN-based 15-digit Goods and Services Taxpayer Identification Number (GSTIN).

Registration Process for New Applicant:-

- New applicant can apply for registration directly through "GST Common Portal" or with assistance of Tax Return Preparer.
- Multiple applications can be filed at one go where a taxable person seeks registration in more than one State or for more than one business vertical located in a single / multiple State(s).
- Scanned copies of documents are required to be filed for Constitution of Business, Principal Place of Business, Bank Accounts, Authorised Signatory, Photograph.
- The GST common portal shall carry out preliminary verification / validation. Taxpayers may opt to sign the application using valid digital signatures, in the absence of which, they would have to send a signed copy of the summary extract of the submitted application form to a central processing center.
- The application form will be passed on by GST portal to the IT system of the concerned State/ Central tax authorities for onward submission to appropriate jurisdictional officer.

Inside this issue:

GST NEWS

- Union Minister for Parliamentary Affairs M Venkaiah Naidu said on 29th November, 15 that the GST Bill will be rolled out in the next financial year.
- The Central government has indicated that it may agree to the 18 percent limit on Goods and Services Tax (GST). The government is also likely to agree to waive off 1 percent levy for manufacturing states. However, the government is unlikely to accept a demand by the Congress to change the composition and state quota in the GST council. *(Source: www.moneycontrol.com)*

IDT NEWS

The Modi government has announced a slew of tax sops to spur shipbuilding in the country as part of measures aimed at boosting the Make in India programme. This includes exemption of all raw material parts used in the manufacture of ships, vessels, tugs and pusher crafts and the like from customs and central excise duties.

The raw material used for manufacturing of ships or vessels in Export Oriented Units (EOUs) too will be eligible for this incentive.

- jurisdictional officers who shall examine the uploaded documents and if they are in order, State and the Central authorities shall approve the application and communicate the approval to the common portal within 3 common working days which shall then automatically generate the Registration Certificate.
- After processing, the applicant shall be informed if the registration is granted or refused through an e-mail or SMS. Applicant can download the Registration Certificate from the GST common portal.

Migration Process of Existing Registrants:-

- All existing registered persons, whether with the Centre or State under any of the tax statues being subsumed in GST, would be allotted a (GSTIN) on voluntary basis. A system shall be designed to migrate cleaned and verified data from the existing database to the GST Common Portal and a GSTIN shall be generated.
- For Taxpayers Registered under State VAT/Excise, GSTIN will be generated by NSDL in case of all VAT TINs where PAN has been validated. Along with a password, the GSTIN will be sent to respective State Tax Authorities.
- In case of Service Tax, since the taxpayers are not registered under a State, taxpayers will be required to intimate the State(s) where they would like to get themselves registered in. GST portal will generate the GSTIN and communicate to Service Tax, which will be communicated to the taxpayer asking him/her to provide remaining data at GST Portal.

Amendment in registration:- Some fields may be amended by the taxpayer himself on self-service basis; whereas for other fields, amendment will have to be approved by the authorities on submission of relevant documents.

Cancellation/ Surrender of registration:- registration can be either surrendered by the registrant or cancelled by the tax authorities in case of closure of business, gross annual turnover falling below threshold for registration, transfer of business, amalgamation, non-commencement of business etc. the system will send an acknowledgment by SMS and e-Mail to the applicant regarding his surrender of registration and he will be deemed to be unregistered from the date of such acknowledgement.

NOTIFICATIONS & CIRCULARS

- CBEC, vide **Circular No. 188/7/2015-ST** dated **16.11.2015**, notified the accounting code for payment of Swachh Bharat Cess, which has been brought into effect from 15th November, 2015.
- CBEC, vide **Circular No.189/8/2015-Service Tax** dated **26.11.2015,** provided clarification regarding leviability of service tax in respect of Seed Testing with effect from 01.07.2012
- Central Government, vide **Notification No. 44/2015-Central Excise** dated **24.11.2015**, has amended the notification no. 12/2012-CE dated 17.03.2012 to revise certain entries of specified goods of Chapters 1 to 98.
- Central Government, vide **Notification No. 45/2015-Central Excise** dated **24.11.2015**, enabled EOUs to become eligible for duty exemption on raw materials/parts consumed in manufacture of certain specified ships/vessels and cleared to DTA, even if such ships/vessels are exempt from basic customs duty and central excise/CV duty.
- Central Government, vide **Notification No. 54/2015-Customs (ADD)** dated **18.11.2015,** has re-imposed anti-dumping duty on imports of Carbon Black used in rubber applications, originating in or exported from Peoples Republic of China, Russia and Thailand, at rates as specified for a period of 5 years.
- Central Government, vide **Notification No. 110/2015 - Customs (N.T.)** dated **16.11.2015,** has revised the rates of drawback of custom duty subject to certain notes and conditions.

QUIZ!!!

1. Which Indian state enjoys full exemption from Clean Energy Cess on production of coal?

2. Which form is used for providing WBVAT Audit Report under section 30E of the West Bengal Value Added Tax Act, 2003?

3. State whether true or false – 'Export of Service is an exempted service for the purpose of Cenvat Credit Rules, 2004'.

(Please mail your replies with your name and mail id to **davaidtexpress@gmail.com)**
(The first 3 correct answers will be published in the next issue with name & mail id of the sender.)

ANSWER TO LAST FORTNIGHT'S QUIZ

Reply to Q1- **Equal to or more than Rs. 1 crore**
Reply to Q2– **False**
Reply to Q3– **Renting of motor vehicle services, motor vehicle insurance & repair related services**

Reply given by:

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CASE UPDATES

1. **Bajaj Auto Ltd. vs. Commissioner Of C. Ex. & Cus., Aurangabad [2015 (322) E.L.T. 419 (S.C.)]**

Issue: - Whether aluminum dross and ash emerging as by-products during the die-casting of aluminum parts are liable to central excise duty?

Decision- In order to make a particular product excisable to duty, twin conditions are to be satisfied, viz., (1) that the product has come into existence by process which amounts to manufacture within the meaning of Section 2(f) of the Central Excise Act and (2) such product is marketable. Thus, relying on the case of *Union of India and Others v. Indian Aluminium Co. Ltd. and Another' [1995 Supp (2) SCC 465 = 1995 (77) E.L.T. 268 (S.C.)]*, the Hon'ble Supreme Court held that during the manufacture of die-casting of aluminum parts, dross and ash emerge as by-products and, therefore, insofar as these by-products are concerned, no manufacturing process is involved and on that basis, it has held that no excise duty shall be payable thereupon.

2. **The Design Consortium vs. Commissioner of Central Excise, Delhi-II [2015 (40) S.T.R. 734 (Tri. – Del.)]**

Issue: - Whether limitation for filing of refund claim of excise duty is to be calculated from the date of electronically filing or from the date of physically submission of documents, as per Central Excise Act 1944?

Decision- Relying on the cases of *M/s. NCS Pearson India Private Ltd. vs. C.C. & C.E. & S.T., Noida[2014 (313) E.L.T. 639 (Tribunal)]* and *Angiplast Pvt. Ltd. vs. CCE, Ahmedabad[2010 (19) S.T.R. 838 (Tri. – Ahmd.)]*, the Hon'ble Delhi CESTAT held that the initial date of filing the refund claim electronically was relevant for the purpose of deciding whether the claim was filed within time, and with reference to that date the impugned amount rejected is not barred by time. It is a fact that the Trade Notice dated 17.9.2009 and the FAQs issued by the Commissioner of Service Tax, New Delhi and DGST respectively clearly mentions that the assesses could file refund claims online. The application also contains all the details including the amount of refund claimed and the details of challans under which the service tax was deposited and even the grounds for refund.

3. **Biochem Pharmaceuticals Ind. Ltd. vs. Commissioner of C. Ex., Vapi [2015 (322) E.L.T. 808 (S.C.)]**

Issue: - Whether valuation of physicians' samples distributed free of cost would be done on cost of production basis or on pro-rata basis of value of same goods sold in market, as per Central Excise Act, 1944?

Decision- The Hon'ble Supreme court held that it is undisputed that the physicians' samples which are given free of cost are clearly comparable with the goods that are manufactured by the assessee and sold in the market, as the two goods are identical. In fact, out of the same lot manufactured, some are distributed as samples. Also, since the goods are not sold, Section 4(1)(a) will not apply to the valuation of free samples and recourse will have to be taken to the Valuation Rules. On adopting the residuary Rule 11 along with the spirit of Rule 8 of such Valuation Rules, the assessable value is to be 11.5% of the 'cost of production or manufacture' of the goods. Thus, it was clearly stated that the samples has to be valued as per the 'cost of production or manufacture of goods', and not on pro rata basis.

4. **Alkyl Amines Chemicals Ltd. vs. Commissioner of C. Ex., Pune-III [2015 (40) S.T.R. 757 (Tri. – Mumbai)]**

Issue: - Whether job work undertaken by the appellant for converting product 'Para Nitro Cumene' into product 'Para Cumidine' would amount to manufacture under Central Excise Act, 1944?

Decision- The Hon'ble Mumbai CESTAT held that the activity of processing in the appellant's factory premises is definitely an activity of manufacture inasmuch as, the finished goods coming into existence after processing are different from the inputs which are put into use. When there is a chemical reaction involved, the finished goods coming after the chemical reaction cannot be said to have been not manufactured. The chemical formula and the properties of the inputs and of the final goods were perused to find a difference between the two which would mean that the finished goods 'Para Cumidine' is arising out of a manufacturing process. Thus, the activity undertaken by the appellant would amount to manufacture even if it is under a job work procedure and service tax will also not be payable under Business Auxiliary service.

FREQUENTLY ASKED QUESTIONS

"If you want to be successful, you must respect one rule- Never Lie To Yourself."

- Paulo Coelho

Query 1: M/s. ABC Ltd. is engaged in providing construction services. A periodical installment as per the contract became due from its customer on 23.11.2015 but the demand letter in respect of this installment was issued to the customer on 10.11.2015 only. Whether Swachh Bharat Cess would be applicable in this case if the payment of such installment is also received on 25.11.2015?

Reply by e-newsletter team: As per proviso (i) to Rule 3(b) of Point of Taxation Rules, in case of continuous supply of service where the provision of the whole or part of the service is determined periodically on the completion of an event in terms of a contract, which requires the receiver of service to make any payment to the service provider, the **date of completion of provision of service shall be the point of taxation**. In this case, therefore, the point of taxation shall be 21.11.2015, i.e. the date on which installment is due as per the contract.

Further, as per Rule 4(b), where taxable service has been provided after the change in effective rate of tax: (i) where the payment for the invoice is also made after the change in effective rate of tax but the invoice has been issued prior to the change in effective rate of tax, the **point of taxation shall be the date of payment**. Thus, in this case, point of taxation shall be the payment date, i.e., 25.11.2015, and Swachh Bharat Cess shall also be applicable.

Query 2: M/s XYZ services is an authorised service centre of product sold by M/s ABC Ltd. M/s ABC Ltd pays Rs. 2500/- as service charge and Rs. 500/- as reimbursement of Travelling & miscellaneous expense to carry out any service or repair during the warranty period of its product. Whether service tax is payable on reimbursement of Travelling & miscellaneous expense?

Reply by e-newsletter team: w.e.f 14.05.2015, definition of Consideration in Clause (a) of the explanation to Section 67 has been amended to include "*Any reimbursable expenditure or cost incurred by the service provider and charged in the course of providing or agreeing to provide a taxable service, except in such circumstances, and subject to such conditions, as may be prescribed"* Therefore, reimbursement of expenditure or cost incurred and charged in the course of provision of service by the service provider other than as pure agent is required to be included for determining taxable value of service. Accordingly service tax shall also be payable on amount paid towards reimbursement of Travelling & miscellaneous expense.

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