46TH ISSUE

13 DEC - 19 DEC

TAX CONNECT

GST

SERVICE TAX | CENTRAL EXCISE

CUSTOMS | INCOME TAX

STATE TAXES

JAV & ASSOCIATES

Chartered Accountants

Head Office:
1, Old Court House Corner
“Tobacco House” 1st Floor
Room No.-13 (North)
Kolkata-70001
West Bengal

Branch Office:
Quarter no. 3/174
Gujarat Refinery Township
Jawaharnagar
Vadodara-391320
Gujarat

Contact:
+919331042424; +91931594980;
+918697575185; +913322625203

Email:
tb.chatterjee@dic.co.in;
tb.chatterjee@yahoo.co.in;
cavivekjalan@gmail.com;
vivek.jalan@icai.org

EDITORIAL

Friends,

The bad news is that GST Constitution Amendment Bill is crawling at snail's pace with one after another political hurdle blocking its way. Now it is the National Herald case.

The good news is that except for Congress, there is now a political consensus on GST. Even Congress now principally agrees with GST!

The Committee headed by Chief Economic Adviser Mr. Arvind Subramanian has recommended the one per cent tax proposed to be levied on GST on inter-state trade of goods to help manufacturing states be done away with. The committee also recommended the main or standard GST rate be in the range of 16.9-18.9 per cent. It prefers it to be between 16.9 per cent and 17.7 per cent. The standard rate will apply to most goods and services in the new indirect tax regime. These rates were calculated by excluding real estate, electricity, alcohol and petroleum products. These were two of the major demands of the Congress and the recommendation could help the government break the GST gridlock in Parliament.

Other key recommendations by the Committee were as follows –

- 16.9-18.9% is the standard rate, to be applicable on most goods and services
- 12% to be the lower rate
- 40% to be the highest rate, to be imposed on demerit goods such as alcohol
- 15-15.5% to be the revenue-neutral rate
- 2%-6% to be rate on precious metals

Starting this issue we shall provide a small write up on various areas as per the New Draft GST Law published recently. In this issue we have dealt with Classes of officers under the CGST & SGST Act.

In Income Tax, TDS rates for "Salaries" for the financial year 2015-16 have been released.

Further it has been a common problem of Income Tax Notices being delivered to different addresses. Addressing this issue, the CBDT has issued new Rule 127 and specified addresses to which notice, summons requisition, order and other communication may be delivered / transmitted by post or electronically and prescribed that communication shall not be delivered to any other address.

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

Truly Yours

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

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

INDEX

COMPLIANCE CALENDAR

DUE DATE	COMPLIANCES From 13th December, 2015 to 19th December, 2015	STATUTE
15th December, 2015	Deposit of Advance Tax	Income Tax Act
15th December, 2015	Deposit of PF	EPF Act
15th December, 2015	Return of WCT	Punjab VAT Act
15th December, 2015	Deposit of WCT	Bihar VAT Act Chandigarh VAT Act Delhi VAT Act Haryana VAT Act Jharkhand VAT Act Punjab VAT Act Rajasthan VAT Act HP VAT Act
15th December, 2015	Issuance of WCT certificate	Haryana VAT Act Jharkhand VAT Act HP VAT Act
15th December, 2015	Deposit of VAT	Bihar VAT Act Haryana- if liability is > 1 lac VAT Act Kerala VAT Act Sikkim VAT Act Jharkhand VAT Act
15th December, 2015	Filing of Monthly/Quarterly Return	Kerala VAT Act
15th December, 2015	Deposit of Ptax	Gujarat VAT Act Sikkimm VAT Act
15th December, 2015	Deposit of Entry Tax	Bihar VAT Act Arunachal Pradesh VAT Act

REPORT OF SUB COMMITTEE - II ON MODEL GST ACT, 2016 - ADMINISTRATION

The following will be the classes of officers in GST regime:

Classes of officers under the CGST Act

a. Principal Chief Commissioners of CGST or Principal Directors General of CGST,
b. Chief Commissioners of CGST or Directors General of CGST,
c. Principal Commissioners of CGST or Principal Additional Directors General of CGST,
d. Commissioners of CGST or Additional Directors General of CGST,
e. Commissioner of CGST(Appeals)
f. Additional Commissioners of CGST or Additional Directors of CGST,
g. Joint Commissioners of CGST or Joint Directors of CGST,
h. Deputy Commissioners of CGST or Deputy Directors of CGST,
i. Assistant Commissioners of CGST or Assistant Directors of CGST, and
j. such other class of officers as may be appointed for the purposes of this Act.

Classes of officers under the State Goods and Services Tax Act

a. Commissioner of SGST,
b. Special Commissioners of SGST,
c. Additional Commissioners of SGST,
d. Joint Commissioners of SGST,
e. Deputy Commissioners of SGST,
f. Assistant Commissioners of SGST, and
g. such other class of officers and persons as may be appointed for the purposes of this Act. [List is indicative]

The Commissioner shall have jurisdiction over the whole of the State and all other officers shall have jurisdiction over the whole of the State or over such areas as the Commissioner may specify.

Appointmnet of Officers

The Board may appoint such persons as it may think fit to be officers under the CGST Act. The Board may authorize a Principal Chief Commissioner/Chief Commissioner of CGST or a Principal Commissioner/Commissioner of CGST or an Additional/Joint or Deputy/Assistant Commissioner of CGST to appoint officers of CGST below the rank of Assistant Commissioner of CGST.

Powers of officers

An officer of the CGST may exercise the powers and discharge the duties conferred or imposed on him or on any other officer subordinate to him.

A Commissioner (Appeals) shall not exercise the powers and discharge the duties conferred or imposed on an officer of Central Goods and Services Tax other than those specified in this Act.

THIS SPACE HAS BEEN INTENTIONALLY KEPT VACANT

SERVICE TAX

NOTIFICATIONS & CIRCULARS

EXTENSION IN DATE FOR PAYMENT OF SERVICE TAX FOR THE MONTH OF NOV '15 IN THE STATE OF TAMIL NADU

OUR COMMENTS: The CBEC, Department of Revenue, Ministry of Finance, Government of India vide **Notification No. 26/2015 – Service Tax dated 9th December, 2015** has provided also that in the case of an assessee in the State of Tamil Nadu, the service tax payable for the month of November, 2015, shall be paid to the credit of the Central Government by the 20th day of December, 2015.

COURT DECISIONS

APOTEX RESEARCH (P) TD. VERSUS COMMISSIONER OF CUSTOMS AND SERVICE TAX, BANGALORE [CESTAT BANGALORE]

BRIEF: There is no time limit prescribed in the law for issue of show-cause notice to reject a refund claim nor to sanction a refund claim. Hence, the original adjudicating authority can issue a fresh show-cause notice and consider the refund claim.

OUR COMMENTS: In the above case, the assessee's refund claim was rejected without issue of show-cause notice on the grounds that without issuing a showcause notice there cannot be any question of re-adjudication at any stage and nor a fresh show-cause notice can be issued. It was submitted as an incurable defect.

The Hon'ble CESTAT held that there is no time limit prescribed in the law for issue of show-cause notice to reject a refund claim nor to sanction a refund claim. In such absence under the law, even at this stage, the original adjudicating authority can issue a fresh show-cause notice and consider the refund claim.

Accordingly, the impugned order was set aside and the matter was remanded to the original adjudicating authority for considering the refund claim.

[Decided in favour of assessee]

DEEPAK & CO. VERSUS C.C.E., NEW DELHI [CESTAT NEW DELHI]

BRIEF: Demand on a class of taxable service which was not alleged in the show cause notice cannot be sustained.

OUR COMMENTS: In the above case, the assessee under an agreement was licensed to provide certain specified services on trains, i.e. supply of bed rolls to passengers, cleaning of coaches/toilets and the like services to the Indian Railway Catering and Tourism Corporation td. (IRCTC) against a consideration.

The Department issued a show cause notice by classifying the services provided as "support services of business or commerce".

The lower appellate authority analyzed the nature of the services and concluded that the appellant had provided "business auxiliary service" and confirmed the demand assessed by the Department

However, the Hon'ble CESTAT held that the demand was confirmed by the impugned order on a class of taxable service which was not alleged in the show cause notice, the demand cannot be sustained.

Accordingly, the impugned order was quashed the appeal was allowed.

[Decided in favour of assessee]

CENTRAL EXCISE

NOTIFICATIONS & CIRCULARS

AMENDMENT IN NOTIFICATION NO. 27/2014 – CENTRAL EXCISE (N.T.) DATED 16.09.2014

OUR COMMENTS: The CBEC, Department of Revenue, Ministry of Finance, Government of India vide **Notification No. 24/2015 – Central Excise (N.T.) dated 7th December, 2015** has amended **Notification No. 27/2014 – Central Excise (N.T.) dated 16.09.2014**.

The notification is self-explanatory. The readers may refer the notification for details.

EXTENSION IN DATE FOR PAYMENT OF CENTRAL EXCISE DUTY FOR THE MONTH OF NOV '15 IN THE STATE OF TAMIL NADU

OUR COMMENTS: The CBEC, Department of Revenue, Ministry of Finance, Government of India vide **Notification No. 25/2015 – Central Excise (N.T.) dated 9th December, 2015** has provided also that:

In the case of an assessee in the State of Tamil Nadu, the central excise duty payable for the month of November, 2015, shall be paid to the credit of the Central Government by the **20th day of December, 2015**.

SUSPENSION OF BENEFITS UNDER NORTH EAST INDUSTRIAL AND INVESTMENT PROMOTION POLICY (NEIIPP), 2007 BY DIPP AND ITS BEARING ON CENTRAL EXCISE DUTY EXEMPTION

OUR COMMENTS: The Department of Revenue, Ministry of Finance, Government of India vide **Circular No.1012/19/2015-CX dated 2nd December, 2015** has clarified that new units or units undertaking substantial expansion after 01.12.2014 and upto the cut-off date of 31.03.2017 shall continue to he eligible for excise duty exemption under notification No.20/2007-Central Excise dated 25.04.2007 subject to the conditions specified there under.

COURT DECISIONS

COMMISSIONER OF C. EX., DEIHI-III VERSUS DELPHI AUT OMOTIVE SYSTEMS PVT. LTD. [CESTAT NEW DELHI]

BRIEF: As on date, there is no provision in law requiring prior permission or previous approval of the authority to transfer the credit while the input and capital goods moved.

OUR COMMENTS: In the above case, the dispute between the parties is whether the Cenvat credit lying in the records of transferor situated in Gurgaon is admissible to transferee stationed at Noida.

The Hon'ble CESTAT held that at this point of time, there is no provision in law which requires prior permission or previous approval of the authority to transfer the credit while the input and capital goods moved.

As long as the the credit meant for transfer was genuine and verifiable from records and as long as the assessee is eligible for the credit, the denial of permission to transfer the Cenvat credit is unjustified.

Accordingly the appeal of M/s. Delphi Automotive Systems Pvt. td. was allowed.

[Decided against Revenue]

THIS SPACE HAS BEEN INTENTIONALLY KEPT VACANT

CUSTOMS

COURT DECISIONS

AMENDMENT IN NOTIFICATION NO. 60/2015-CUS (N.T.), DATED 4TH JUNE, 2015

OUR COMMENTS: The Department of Revenue, Ministry of Finance, Government of India vide **Notification No. 133/2015 – Customs (N.T.) dated 30th November, 2015** has amended **Notification No. 60/2015 – Customs (N.T.) dated 04.06.2015**.

In the said notification:

(i) for the words, Principal Director General, Directorate General of Revenue Intelligence", the words "Principal Director General or the Director General, Directorate General of Revenue Intelligence", shall be substituted

(ii) for the words, Commissioner of Customs the words "Principal Commissioner or Commissioner or Additional Commissioner or Joint Commissioner or Deputy Commissioner or Assistant Commissioner of Customs" shall be substituted.

AMENDMENT IN NOTIFICATION NO. 83/2004 DATED 30.06.2004

OUR COMMENTS: The Department of Revenue, Ministry of Finance, Government of India vide **Notification No. 134/2015 – Customs (N.T.) dated 30th November, 2015** has amended **Notification No. 83/2004 – Customs (N.T.) dated 30.06.2004**.

In the said notification, for the Sl. No. (1) and the entries relating thereto, the following shall be substituted, namely:

"(1) the Principal Director General of Revenue Intelligence, New Delhi or Director General of Revenue Intelligence to be the Principal Chief Commissioner of Customs or Chief Commissioner of Customs, who shall have jurisdiction over the whole of India".

AMENDMENT IN NOTIFICATION NO. 36/2001 – CUSTOMS (N.T.) DATED 03.08.2001

OUR COMMENTS: The CBEC, Department of Revenue, Ministry of Finance, Government of India vide **Notification No. 135/2015 – Customs (N.T.) dated 30th November, 2015** has amended **Notification No. 36/2001 – Customs (N.T.) dated 03.08.2001**.

In the said notification, the tables TABLE-1, TABLE-2, and TABLE-3 have been substituted

The notification is self-explanatory. The readers may refer the notification for details.

M/S GAZAL OVERSEAS, M/S MAYANK ENTERPRISES, M/S ANAND ASSOCIATES VERSUS COMMISSIONER OF CUSTOMS, NEW DELHI [CESTAT NEW DELHI]

BRIEF: SAD refund is admissible even if the appropriate sales tax/ VAT is less than SAD or the sales tax / VAT is NIL.

OUR COMMENTS: In the above case, the assessee was denied the refund of 4% of additional duty of customs (SAD) on the ground that he did not pay any sales tax/ VAT on the goods, namely footwear.

The assessee contended that they imported footwear and paid sales tax/ VAT at the appropriate rate which was Nil in the case of the said goods and therefore they were entitled for refund of SAD.

The Hon'ble CESTAT held that the requirement of the **Notification No. 102/2007 dated 14.09.2007** is the payment of appropriate sales tax/ VAT regardless of the rate thereof. And it is clear from the clarification of CBEC in **Circular No. 06/2008 dated 28.04.2008** that even if VAT/Sales tax was less than 4% or the sales tax/VAT was Nil, the assessee can claim SAD refund @ 4% so long as VAT/sales tax was paid. So if the rate is NIL the appropriate sales tax/ VAT paid will also be Nil.

Accordingly, the SAD refund should be allowed to the assessee.

[Decided in favour of assessee]

INCOME TAX

NOTIFICATIONS & CIRCULARS

RELEASE OF TDS RATES FOR "SALARIES" DURING THE FINANCIAL YEAR 2015-16

OUR COMMENTS: The CBDT, Department of Revenue, Ministry of Fiance, Government of India vide **Circular No. 20/2015 dated 2nd December, 2015** has released the rates of deduction of income-tax from the payment of income chargeable under the head "Salaries" during the financial year 2015-16 and explained certain related provisions of the Act and Income-tax Rules, 1962.

The circular is self-explanatory. The readers may refer the circular for details.

AGREEMENT BETWEEN THE GOVERNMENT OF INDIA AND THAILAND FOR THE AVOIDANCE OF DOUBLE TAXATION AND PREVENTION OF FISCAL EVASION SIGNED ON THE 29TH DAY OF JUNE, 2015 SHALL BE GIVEN EFFECT TO IN THE UNION OF INDIA

OUR COMMENTS: The Department of Revenue, Ministry of Finance, Government of India vide **Notification No. 88/2015 dated 2nd December, 2015** has notified that all the provisions of the Agreement between the Government of the Republic of India and the Government of the Kingdom of Thailand for the avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income signed in Thailand on the 29th day of June, 2015 shall be given effect to in the Union of India.

The notification is self-explanatory. The readers may refer the notification for details.

NEW RULE 127 IN INCOME TAX RULES, 1962 FOR THE PURPOSE OF SEC 282(1)

OUR COMMENTS: The CBDT, Department of Revenue, Ministry of Fiance, Government of India vide **Notification No. 89/2015 dated 2nd December, 2015** has issued new Rule 127 and specified addresses to which notice, summons requisition, order and other communication may be delivered/transmitted by post or electronically and prescribed that communication shall not be delivered to any other address where assessee specifies correspondence address in writing, Pr. DGIT (Systems) or DGIT (Systems) to specify the procedure, formats and standards for ensuring secure transmission of electronic communication and shall also be responsible for formulating and implementing appropriate security, archival and retrieval policies in relation to such communication.

The notification is self-explanatory. The readers may refer the notification for details.

COURT DECISIONS

ACIT-1 (1) , MUMBAI VERSUS M/S / BENNETT COLEMAN AND CO. LTD. [ITAT MUMBAI]

BRIEF: Just because a particular expenditure may result in an enduring benefit would not make such an expenditure of capital nature and real intent and purpose of the expenditure has to be seen.

OUR COMMENTS: In the above case, the assessee filed the return of income declaring a loss. The return was processed under section 143(1) and subsequently the case was selected for scrutiny under section 143(3). The assessment was done making additions of the website development charges.

The Hon'ble ITAT held that for classifying expenditure as revenue and capital the real intent and purpose of the expenditure is to be seen and whether the same is adding to the fixed capital of the assessee. In this case of expenditure on a website, there is no change in the fixed capital of the assessee. The website may provide an enduring benefit to an assessee, the purpose behind development of a website is not to create an asset but only to provide a means for disseminating the information about the assessee. In the past, the same was achieved by by printing travel brochures and other published materials and pamphlets. Now, with the advancement of technology it is done through internet at a much lower cost, in a much more efficient manner, in a much shorter period of time and covering a much large set of people worldwide.

Hence, the expenditure should be allowed as revenue expenditure.

[Decided in favour of assessee]

CHATTISGARH

REVISION IN RATE OF TAX ON FOREIGN AND INDIAN MADE FOREIGN LIQUOR SOLD THROUGH DEALER HOLDING F.L.-10 LICENSE

OUR COMMENTS: The Commercial Tax Department, Government of Chattisgarh vide **Notification No. F-10-35/2015/CT/V(68) dated 30.11.2015** has revised the tax rate on foreign and Indian made foreign liquor by amending the Chhattisgarh Value Added Tax Act, 2005 as follows:

(1) In column (3) of serial number 7 of Part III of Schedule II, for the figure "7", the figure "8.5" shall be substituted.

MADHYA PRADESH

AMENDMENT IN SCHEDULE-I - REGARDING "NEEMUCH STONES"

OUR COMMENTS: The Commercial Tax Department, Government of Madhya Pradesh vide **Notification No. F-A-3-53-2015-1-V(38) dated 1.12.2015** has amended Madhya Pradesh Vat Act, 2002 as follows:

(1) in Schedule-I, after serial number 66 and entries relating thereto, the following serial number and entries relating thereto shall be inserted, namely:— "66 A. Neemuch Stones".

(2) in Schedule-II, in part-II against serial number 59, in column (2), the words "Neemuch stones" shall be omitted.

PUNJAB

REDUCTION IN RATE OF CST ON PAPER BOARD

OUR COMMENTS: The Department of Excise & Taxation, Government of Punjab vide **Notification No.S.O.56 /C.A.74/1956/S.8/2015 dated 2.12.2015** has directed that the rate of tax payable under sub- section (2) of the said section 8, in respect of the sale of paper board in the course of Inter state trade or commerce, by a dealer having his place of business within the State of Punjab, to any other dealer having his place of business outside the State of Punjab, shall be calculated **@ of one percent of his turn over or any part thereof**, subject to the production of declaration in Form 'C', as specified under the Central Sales Tax (Registration and Turn over) Rules, 1957.

REDUCTION IN TAX RATE ON LED LIGHTS & DRY FRUITS

OUR COMMENTS: The Department of Excise & Taxation, Government of Punjab vide **Notification No.S.O.57/ P.A.8/2005/S.8/2015 dated 2.12.2015** has made the following amendment in Schedules 'B' and 'E' of Punjab Value Added Tax Act, 2005 with immediate effect by dispensing with the condition of previous notice namely-

1. In the said Schedule 'B',-

(i) serial No. 32 and the entries relating thereto shall be omitted; and

(ii) after Serial No 173 and entries relating thereto, the following serial No. and the entries relating thereto shall be added, namely - "174. LED Lights."

2. In the said Schedule 'E', after serial No. 27 and the entries relating thereto, the following serial No. and the entries relating thereto shall be added, namely- "28. Dry Fruits - 4.5 per cent".

UTTARAKHAND

CHANGE IN RATE OF TAX ON DIESEL

OUR COMMENTS: The Finance Section, Government of Uttarakhand vide **Notification No.885/ 2015.146 (120)/ XXVII (8)/2008 dated 5.12.2015** has amended serial no. 3 of Schedule III of the Uttarakhand Value Added Tax Act , 2005:

In the said schedule, the following entry shall be substituted:

SL. No.	Description of goods	Point of Tax	Rate of tax %
1.	Diesel as defined under United Provinces Sales or Motor Spirit, Diesel Oil and Alcohol Taxation Act, 1939	Manufacturer /Importer	21% or Rs. 9/litre whichever is greater