INDIRECT TAX EXPRESS

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

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FROM THE EDITORIAL TEAM

Business Processes for Returns under GST

The 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. The basic features of business process for GST on returns emerging from this report are as follows:-

Method, Types & Frequency of Returns:-

- There will be common e-return for CGST, SGST, IGST and Additional Tax.
- Every registered person is required to file a return for the prescribed tax period (including nil return).
- No returns will be required to be filed by Government entities / PSUs , etc. not dealing in GST supplies or persons exclusively dealing in exempted / Nil rated / non–GST goods or services.
- Casual/Non-Resident Taxpayers will be required to file returns only for the period for which they have obtained registration within a period of seven days after the date of expiry of registration.
- The filing may be done either directly or by using Applications developed by accounting companies / IT companies which will interact with GST System using APIs or through Facilitation Center (FC)
- The periodicity of return for different categories of taxpayers is as follows:

Sl. No.	Return	Description	To be filed by
1	GSTR-1	Outward supplies made by taxpayer (other than compounding taxpayer and ISD)	10th of the next month
2	GSTR-2	Inward supplies received by a taxpayer (other than a compounding taxpayer and ISD	15th of the next month
3	GSTR-3	Monthly return (other than compounding taxpayer and ISD)	20thof the next month
4	GSTR-4	Quarterly return for compounding Taxpayer	18th of the month next to quarter
5	GSTR-5	Periodic return by Non-Resident Foreign Taxpayer	Last day of registration
6	GSTR-6	Return for Input Service Distributor (ISD)	15th of the next month
7	GSTR-7	Return for Tax Deducted at Source	10th of the next month
8	GSTR-8	Annual Return	By 31st December of next FY

Steps for Return Filing:-

- The taxpayer will upload the final GSTR-1 return form either directly through data entry at the GST Common Portal or by uploading the file containing the said GSTR- 1 return form through Apps within due date.
- GST Common Portal (GSTN) will auto-draft the provisional GSTR-2 of taxpayer based on the supply invoice details reported by the counter-party taxpayer (supplier) on a near real-time basis.

Inside this issue:

GST NEWS

- Chief Economic Advisor, Arvind Subramaniam, said on 27.12.2015 that- “Constitutionally petrol and other petroleum products will be within the GST system. But it would be out of the GST dispensation after its implementation for some time.” *Source: www.moneycontrol.com*

- Outlining priorities for the New Year, finance minister Arun Jaitley also said on 27.12.2015 that passage of the controversial GST Bill and ease of doing business with India will be the top priorities of the Narendra Modi government in 2016. *Source: timesofindia.indiatimes.com*

IDT NEWS

To meet higher expenditure requirement for the next financial year, mainly on account of the seventh pay commission's recommendations and the implementation of the one-rank-one-pay pension plan, the Centre could raise the service tax rate by up to two percentage points in the coming Union Budget.

Source: www.businessstandard.com

- Purchasing taxpayer will accept / reject/ modify such auto-drafted provisional GSTR-2
- Taxpayers will have the option to do reconciliation of inward supplies with counterparty taxpayers (suppliers) during the next 7 days by following up with their counterparty taxpayers for any missing supply invoices in the GSTR-1.
- After finalizing their GSTR-1and GSTR-2 by using online facility at Common Portal or using GSTN compliant off-line facility in their accounting applications, taxpayers will pay the amount as shown in the draft GSTR-3 return by debiting the ITC ledger and cash ledger and mention the debit entry No. in the GSTR-3 return and would submit the same.

Revision of Returns:- There would be no revision of returns. All unreported invoices of previous tax period would be reflected in the return for the month in which they are proposed to be included. The interest, if applicable will be auto populated.

Non-filing, late-filing and short-filing of return

- In case of failure by the taxpayer to submit periodic returns, a defaulter list will be generated by the IT system by comparing the return filers with the registrants database and send the notice to all non-filers.
- E-Return will be allowed to be uploaded even in case of short payment for the limited purpose of having the information about self-assessed tax liability even though not paid. The invoice matching and inter-governmental fund settlement would, however, take place only after the full tax has been paid.

Annual Return:- All the normal taxpayers would be required to submit Annual Return. This return to be filed annually is intended to provide 360 degree view about the activities of the taxpayer. This statement would provide a reconciliation of the returns with the audited financial statements of the taxpayer.

NOTIFICATIONS & CIRCULARS

- Central Government, vide **Notification Nos. 27/2015-ST & 26/2015-CE (N.T.)** both dated **18.12.2015**, has extended the due date for depositing service tax and excise duty payable by the assessees in the Union Territory of Puducherry (except Mahe &Yanam) for the month of November’2015, to 20.12.2015 and due date of filing excise return for the month of November’2015 to 31st December’2015.

- Central Government, vide **Notification No. 46/2015-CE,** dated **16.12.2015** increased the Basic Excise Duty rates on Petrol and Diesel (both unbranded and branded) w.e.f 17.12.2015.

- Central Government, vide **Notification No 143/2015- Customs (N.T.)** dated **15.12.2015,** notified 'Fireworks' under Section 110 (1A) of Customs Act, 1962 for disposal of seized goods.

- CBEC vide **Notification No. 145/2015-Customs (N.T.)** dated **18.12.2015** included Powarkheda, District Hoshangabad in the state of Madhya Pradesh as Inland Container Depots for unloading of imported goods and loading of export goods.

- CBEC vide **Notification No. 146/2015-Customs (N.T.)** dated **23.12.2015** appointed the Principal Commissioner of Customs (Import), Inland Container Depot, Tughlakabad to act as a Common Adjudicating Authority for certain show cause notices.

QUIZ!!!

1. State whether true or false: ‘Service of collecting or providing news by Press Trust of India is exempt under service tax’.

2. What is the amount of general penalty prescribed for contravening the provisions of Cenvat Credit Rules, 2004?

3. What is the method of valuation in case of captive consumption of goods as per Central Excise Valuation Rules, 2005?

(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- **01.04.2015**
Reply to Q2–**Yes**
Reply to Q3– **Rs. 2 crores**

Reply given by:

1. Manish Sachdeva, manish619sachdeva@yahoo.in
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CASE UPDATES

1. **<u>Mangalore Refinery & Petrochemicals Ltd Vs C.C.E & S.T., Mangalore [2015 (40) S.T.R 1093 (Tri-Bang.)]</u>**

Issue: - Whether penalty can be imposed on public sector undertaking for mala fide intent to avail Cenvat Credit?

Decision-The Hon'ble CESTAT held that the entire Cenvat credit was availed by the appellant by reflecting the same in the statutory records as also in the monthly returns filed by them. Otherwise also, the appellant is a public sector undertaking and there can be no mala fide intend on their part to avail the irregular and non-available credit. There being no positive on the part of the assese to show that there was any suppression or misstatement with any mala fide intend, the demand is barred by limitation and therefore, penalty imposed upon the appellant is also set aside.

2. **<u>Vishal Pipes Ltd Vs Commissioner of Central Excise, Noida [2015 (40) S. T. R. 1091 (Tri. Del)]</u>**

Issue: - Whether telephone installed at residence in individual name of Managing Director and Directors can be considered as input service for the purpose of availing Cenvat credit?

Decision- The Hon'ble Delhi CESTAT held that even if telephones are installed at residence of Managing Director and Directors of the appellant company and are in individual name, the facts remain that it is appellant company which benefits and as such, this service has to be treated as service in relation to the business of the appellant company. In view of this, the impugned order disallowing the Cenvat credit in respect of the telephone installed at the residence of the Managing Director and the director of the appellant company is not sustainable.

3. **<u>Commissioner Of Central Excise, Mumbai-IV Vs Fitrite Packers [2015 (324) E.L.T. 625 (S.C.)]</u>**

Issue: - Whether process of printing on duty-paid paper as per design and specifications of customers with logo and name of products in colorful form amounts to manufacture?

Decision- The Hon'ble Supreme Court held that GI paper was meant for wrapping and this end use remained the same even after printing. However, whereas blank paper could be used as wrapper for any kind of product, after the printing of logo and name of the specific product of Parle thereupon, the end use was now confined to only that particular and specific product of the said particular company/customer. The printing, therefore, is not merely a value addition but has now been transformed from general wrapping paper to special wrapping paper. In that sense, end use has positively been changed as a result of printing process undertaken by the assessee. We are, therefore, of the opinion that the process of aforesaid particular kind of printing has resulted into a product, i.e., paper with distinct character and use of its own which it did not bear earlier. Thus, the 'test of no commercial use without further process' would be applied as in the case of *Servo-Med Industries*. Hence, process of printing on duty-paid paper as per design and specifications of customers with logo and name of products in colorful form amounts to manufacture.

4. **<u>Purolator India Ltd. Vs Commissioner Of Central Excise, Delhi-III [2015 (323) E.L.T. 227 (S.C.)]</u>**

Issue: - Whether cash and volume discount are allowable as deduction when the same was stipulated in the sale agreement between the assessee and its buyers and known at, or prior to, clearance of goods?

Decision- The Hon'ble Supreme Court held "transaction value" as defined in sub-clause (3)(d) of Section 4 has to be read along with the expression "for delivery at the time and place of removal". It is clear, therefore, that what is paramount is that the value of the excisable goods even on the basis of "transaction value" has only to be at the time of removal, that is, the time of clearance of the goods from the appellant's factory or depot as the case may be. The expression "actually paid or payable for the goods, when sold" only means that whatever is agreed to as the price for the goods forms the basis of value, whether such price has been paid, has been paid in part, or has not been paid at all. The basis of "transaction value" is therefore the agreed contractual price. Further, the expression "when sold" is not meant to indicate the time at which such goods are sold, but is meant to indicate that goods are the subject matter of an agreement of sale. Therefore, as cash discount is something which is "known" at or prior to the clearance of the goods, being contained in the agreement of sale between the assessee and its buyers, and must therefore be deducted from the sale price in order to arrive at the value of excisable goods "at the time of removal".

FREQUENTLY ASKED QUESTIONS

"Year's end is neither an end nor a beginning but a going on, with all the wisdom that experience can instill in us."
- *Hal Borland*

Team Indirect Tax Express wishes all its readers a very Happy New Year!!

Query 1: M/s XYZ Pvt Ltd supplied cranes on hire to M/s ABC Pvt Ltd. These cranes will be used for construction of dams by M/s ABC Pvt Ltd. under the initiative of Central Government which is exempt under Mega Exemption Notification 25/2012-ST dated 20.06.2012. Whether exemption will also be applicable for supply of crane on hire, used for providing exempt service?

Reply by e-newsletter team: The serial no. 12 of Mega Exemption Notification No. 25/2012-ST dated 20.06.2012 provides exemption to services provided to government for construction of canal, dam or other irrigation works. However, as per section 66F(1) of The Finance Act, 1994, "*Unless otherwise specified, reference to a service (herein referred to as main service) shall not include reference to a service which is used for providing main service.* For example, Service provided by RBI is exempt. This does not mean that any agency services provided by other banks to RBI are also exempt. Therefore, hiring of crane for construction of dam shall be taxable, even if it is used in providing exempt service.

Query 2: M/s ABC Pvt Ltd has been subjected to audit upto FY 2013-14. Whether it can be selected for detailed manual scrutiny of ST-3 for FY 2014-15?

Reply by e-newsletter team: As per para 4.3.6 of revised guidelines issued by CBEC in relation to Detailed Manual Scrutiny of Service Tax Returns Vide Circular No. 185/04/2015-ST dated 30.06.2015, "*the assessee who have been selected for audit or have been audited recently (in the past three year) should not be taken for detailed scrutiny. However, the Chief Commissioner may direct detailed manual scrutiny of an assessee's return who has paid service tax (cash + cenvat) more than Rs. 50 lakh in certain specific cases. In no event should an assessee be subjected to both audit and detailed manual scrutiny"*. Therefore, if M/s ABC Pvt Ltd has been subjected to audit for FY 2013-14, it cannot be selected for detailed manual scrutiny of ST-3 for FY 2014-15.

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