

TAX CONNECT

GST	
SERVICE TAX	CENTRAL EXCISE
CUSTOMS	INCOME TAX
	STATE TAXES

One More Tax
?



Goods Service Tax

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EDITORIAL



Friends,

Last year's words belong to last year's language;
And next year's words await another voice;
And to make an end is to make a beginning!!

We Wish You A Very Happy New Year with a hope that this year is a year of new beginnings for all.

On the Professional Front, **In West Bengal VAT**, a Draft Amendment has come up for suggestions –

To promote clean energy the VAT Rate on Solar Devices and machines has been reduced from 5% to 0% with the following items now being removed from Sch. C & inserted in Schedule A.

(i) Solar Thermal Device, Solar photovoltaic device and a combination of Solar Thermal Device and Solar photovoltaic device and spare parts of all such devices

(ii) solar fans, solar lights, solar pumps and solar lanterns, which run on electricity generated by photovoltaic devices.

This is an appreciable step by the State Govt.

In Income Tax CBDT, vide Instruction No. 20/2015 has clarified the following issues regarding the extent of enquiry in scrutiny cases selected through CASS (which was dealt with in earlier Inst. No. 7/2014 as follows-

1. It directs AO to confine the questionnaire only to the specific issues pertaining to AIR/CIB/26AS data after giving reason for selection of the case for scrutiny to the assessee.

2. It lays down the procedure for handling 'Limited Scrutiny' and 'Complete Scrutiny' cases in relation to cases selected through CASS-2015.

3. During the course of assessment proceedings in 'Limited Scrutiny' cases, if 'potential escapement of income' found exceeding Rs 5 lakhs (Rs 10 lakhs for metro charges) requiring substantial verification of other issues, the case may be taken up for 'Complete Scrutiny', subject to written approval of Pr. CIT/CIT

4. In cases where AO proposes to make additions or disallowances, he is directed-

- a. To give fair opportunity of hearing to the assessee.
- b. To issue show-cause notice duly indicating reasons for proposed additions/disallowances along with necessary evidences/reasons forming its basis and
- c. To consider assessee's submissions in response to the show-cause notice before passing the final order.

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, CDT (ICAI), B. Com

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COMPLIANCE CALENDAR

Due date	COMPLIANCES FROM 3rd January, 2016 to 9th January, 2016	STATUTE
5th January, 2016	Service Tax deposit of previous month (Company/ Society)- if an entity makes online payment, due date is 6th instead of 5th.	Finance Act
	Service Tax deposit of 3rd quarter (Individual/ Partnership firm), if an entity makes online payment, due date is 6th instead of 5th.	Finance Act
7th January, 2016	Deposit of WCT	Kerala VAT Act
	TDS/TCS deposit of previous month	Income Tax Act
	Deposit of WCT	Assam VAT Act Tripura VAT Act Manipur VAT Act

**THIS SPACE HAS BEEN
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GOODS & SERVICE TAX (GST)

REPORT OF SUB COMMITTEE - II ON MODEL GST ACT, 2016 – LEVY & COLLECTION OF TAX: PLACE OF SUPPLY OF GOODS & SERVICES

The provisions related to place of supply of goods and services are laid down in CHAPTER III of the Act and can be summarized as follows:

Place of supply of goods

- Supply involves movement of goods - the place of supply shall be the place of delivery.
- Supply does not involve movement of goods - the place of supply shall be the location of goods at the time of the delivery.
- Goods assembled or installed at site - the place of supply shall be the place of such installation or assembly.
- Goods supplied on board a conveyance, such as a vessel, an aircraft, a train or a motor vehicle - the place of supply shall be the location at which such goods are taken on board.

Place of supply of services

- The place of supply of services made to a registered person shall be the location of the service receiver.
- The place of supply of all services made to other than a registered person shall be the location of the service provider.

Exceptions:

The place of supply in relation to

- **Services of an immovable property** shall be the location of the immovable property.
- **Restaurant and catering services, beauty treatment, health services etc.** shall be the location where the services are actually performed.
- **Services provided in relation to admission or organization of an event** shall be the place where the event is actually held.
- **Services by way of transportation of goods, including by mail or courier to,**

(a) a registered person, shall be the location of such service receiver;

(b) a person other than a registered person, shall be the location at which such goods are handed over for their transportation.

- **Passenger transportation service** shall be place where the passenger embarks on the conveyance for a continuous journey.
- **Services on board a conveyance** such as vessel, aircraft, train or motor vehicle, shall be the location of the first scheduled point of departure
- **Telecommunication services-**
 - a) by way of fixed telecommunication line shall be the location of installation
 - b) in case of mobile connection and internet services provided on post-paid basis -- location of billing address of the service receiver
 - c) in cases where mobile connection for telecommunication and internet service are provided on pre-payment - location where such pre-payment is received or such vouchers are sold:
- **Banking and other financial services** including stock broking services to any person - location of the service receiver on the records of the service provider
- **Insurance services**
 - a) to a registered person - the location of the service receiver;
 - b) to other than a registered person - the location of the service receiver on the records of the service provider
 - c) General insurance services related to an immovable property- the location of the property.
- **Advertisement services** to the Central Government, a State Government, a statutory body or a local authority meant for identifiable States - location in each of such States

SERVICE TAX

COURT DECISIONS

THERMAX INSTRUMENTATION LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, PUNE [CESTAT MUMBAI]

BRIEF: Advances received from customers against contracts are not liable to service tax until invoices are raised against the contract.

OUR COMMENTS: In the above case, the assessee is engaged in providing erection, commissioning and installation services. The customers pay 10% advance to the assessee against bank guarantee of an equal amount. The invoice is raised to the customers in progressive manner as per work completed and the advance is reduced in proportion to the work completed as per the invoice. Accordingly, service tax is paid on accrual basis on the invoice value.

However, a show cause notice was issued by the department demanding service tax on the advance received by the assessee against the contract with the customers.

The Hon'ble CESTAT held that the advance received is shown as current liability and not as income towards sale/provision of service in the books of the assessee. Also, it is proportionately transferred to sales in the books as and when the invoices are raised on the customers. Therefore, advance here is more in the nature of a deposit advance is like earnest money for which a Bank Guarantee is given by the assessee. Hence, service tax is not required to be paid on the advances.

Accordingly, the impugned order was set aside set aside .

[Decided in favour of assessee]

M/S SHRI SAI CATERERS VERSUS COMMISSIONER OF CENTRAL EXCISE, NAGPUR [CESTAT MUMBAI]

BRIEF: Service Tax law, no where states that if two distinct activities are undertaken or provided in a single agreement, they cannot not be taxed under the same service category.

OUR COMMENTS: In the above case, the assessee is engaged in providing outdoor catering services. He was been awarded an entire contract of catering services alongwith maintenance of guest house which includes the cleaning and housekeeping services.

The Revenue had contended that the assessee is not liable for abatement of 50% (under Outdoor Catering Services) of the entire gross amount charged by him against the contract i.e. under the Annual Maintenance Contract for Guest House.

The Hon'ble CESTAT held that that the Service Tax law, no where states that if two distinct activities are undertaken or provided in a single agreement, they should not be taxed under the same service category.

Accordingly, the contention of the Revenue was rejected.

[Decided in favour of assessee]

**THIS SPACE HAS BEEN
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VACANT**

CENTRAL EXCISE

COURT DECISIONS

M/S MEGHA ENGINEERING & INFRASTRUCTURE LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, CUSTOMS AND SERVICE TAX HYDERABADII [CESTAT BANGALORE]

BRIEF: The assessee cannot be denied cenvat credit to manufacturing activity on the ground that he is availing the benefit of composition scheme under works contract to pay service tax.

OUR COMMENTS: In the above case, the assessee is engaged in the manufacture of MS Pipes. They are availing CENVAT credit of duty paid on MS Plates and other inputs procured by them for use in the manufacture of MS Pipes for payment of excise duty while clearance of pipes.

The assessee is also engaged in providing services of laying down of pipelines for irrigation, lift irrigation schemes, drinking water supply schemes for various State, Central and Govt undertakings and commercial undertakings. For the purpose of providing the said services, the assessee was procuring pipes from their manufacturing unit and for payment of service tax on the said services, they opted for composition schemes.

The revenue contended that as per Rule 3 of the Works Contract Rules, 2007, the provider of taxable service shall not take CENVAT credit of duties paid on any inputs, used in or in relation to the said works contract. Hence, the assessee is wrongly availing cenvat credit of the duty paid on the inputs used in the manufacture of pipes.

The Hon'ble CESTAT held that the assessee is doing two activities, one for the manufacture of pipes and the other providing services under the works contract. As a manufacturer of pipes, they are entitled to avail the CENVAT credit of duty paid on the inputs as long as the said pipes were being cleared by them on payment of duty. As a service provider, they have not taken any credit of duty paid on the pipes used for providing such services. So there is no contravention of any provision of law. Both the roles of the assessee are separately defined roles and are covered by different laws i.e. one by the excise law and the other by the service tax law. There is no prohibition under the law for one person to be a manufacturer as also a service provider. The activity of providing service starts from procurement of pipes, where the activity of manufacture of pipes ends. As such Hence, there is no valid reasons to deny the CENVAT

credit of duty paid on the inputs used in the manufacture of pipes

Accordingly, the impugned order was set aside.

[Decided in favour of the assessee]

CCE, CHENNAI VERSUS M/S. SUPREME PETROCHEM, LTD. [CESTAT CHENNAI]

BRIEF: The new entity formed after amalgamation is entitled to Cenvat credit lying unutilized in the accounts of the amalgamating company.

OUR COMMENTS: In the above case, the assessee has amalgamated with another entity and availed benefit of the unutilized cenvat credit lying in the books of the another entity.

The Revenue denied the cenvat credit on the grounds that when a manufacturer shifts his factory to another site or the factory is transferred on account of change in the ownership or on account of sale, merger, amalgamation, lease or transfer of the factory to a joint venture then he shall be allowed to transfer the Cenvat Credit lying unutilized in his accounts to such transferred, sold, merged, leased or amalgamated factory to the extent contained in lying in stock and/or (ii) in process and (iii) contained in the final products lying in stock is only liable to be transferred and any credit excess of this amount would lapse.

The Hon'ble CESTAT held that that there is no provision under Rule 10(3) of CCR, 2004, that the transfer of credit would be restricted to the credit attributable to the physical stock of inputs lying as such or in process with the transferee factory which is transferred to the transferee factory. The only restriction is that whatever stock of inputs is lying with the transferee factory should also be transferred to the transferee factory.

Also, it is not the case of transfer of capital goods and inputs from one company to another, but of amalgamation. Hence, the new entity is entitled to Cenvat credit which was lying unutilized in the accounts of the amalgamating company.

[Decided against Revenue]

CUSTOMS

NOTIFICATIONS & CIRCULARS

INSTRUCTION REGARDING ISSUANCE OF LOOK OUT CIRCULARS (LOC)

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India vide **Instruction No. F. No. 394/193/2015Cus (AS) dated 16.12.2015** has directed:

to route their requests for issuance of LOC, if necessary, through DRI (Hqrs) in cases relating to contravention of the provisions of Customs Act, 1962 and through DGCEI in cognizable offences under the Central Excise Act, 1944 and the Finance Act, 1994 (Sections relating to Service Tax).

However, the practice of opening LOC in a particular Airport for short duration may continue, as in such cases LOC is required to be opened immediately on specific information / inputs.

DRI and DGCEI shall maintain a database that can be updated on real time basis whenever such requests are received and circulars are issued thereon.

REDUCTION OF GOVERNMENT LITIGATION PROVIDING MONETARY LIMITS FOR FILING APPEALS BY THE DEPARTMENT BEFORE CESTAT/HIGH COURTS AND SUPREME COURT

OUR COMMENTS: The CBEC (Dept. of Revenue), Ministry of Finance, Government of India vide **Instruction No. F. No. 390/Misc./163/2010JC dated 17.12.2015** has fixed the following monetary limits below which appeal shall not be filed in the Tribunal, High Court and the Supreme Court:

S.No.	Appellate Forum	Monetary limits (in Rs.)
1	CESTAT	10 lacs
2	High Courts	15 lacs
3	Supreme Court	25 lacs

WITHDRAWAL OF CASES PENDING BEFORE HC/CESTAT ON THE BASIS OF EARLIER SUPREME COURT'S DECISION ON THE IDENTICAL MATTERS

OUR COMMENTS: The CBEC (Dept. of Revenue), Ministry of Finance, Government of India vide **Instruction No. F. No.390/Misc./67/2014JC dated 18.12.2015** has decided that the Committee of Principal Chief Commissioners/ Chief Commissioners of Customs, CE or Service Tax (constituted under Section 129D of the Customs Act, Section 35E of the Central Excise Act, and Section 86(2) of the Finance Act, 1994) shall, henceforth also call for and examine all appeals filed in the respective High Courts and CESTAT benches falling in their jurisdiction.

Whenever such appeals are covered by a Supreme Court decision, which has been accepted by the Department, the committee shall by order direct such Commissioner or any other Commissioner to apply in the Appellate Tribunal/ High Court for withdrawal of such appeals.

This is however, subject to certain conditions.

The instruction is self-explanatory. The readers may refer the said instruction.

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INCOME TAX

NOTIFICATIONS & CIRCULARS

AGREEMENT FOR AVOIDANCE OF DOUBLE TAXATION AND PREVENTION OF FISCAL EVASION WITH FOREIGN COUNTRIES – MACEDONIA EFFECTIVE FROM 01.04.2015

OUR COMMENTS: The Department of Revenue, Ministry of Finance, Government of India vide **Notification No. 94/2015 dated 21.12.2015** has directed that all the provisions of the Agreement between the Government of the Republic of India and the Government of the Republic of Macedonia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income shall be given effect to in the Union of India from the 01.04.201

DRAFT GUIDING PRINCIPLES FOR DETERMINATION OF PLACE OF EFFECTIVE MANAGEMENT (POEM) OF A COMPANY

OUR COMMENTS: The CBDT, Department of Revenue, Ministry of Finance, Government of India vide **Circular F. No. 142/11/2015-TPL dated 23.12.2015** issued draft guiding principles for determination of Place of Effective Management (POEM) of a Company for the benefit of the taxpayers as well as the tax administration. The circular is self-explanatory. The readers may refer the circular for details.

ASSISTANT COMMISSIONER OF INCOME TAX VERSUS MRS. PRIYABEN AMALBHAI KOTHARI [ITAT AHMEDABAD]

BRIEF: If the assessee has consistently treated the shares investment account as long-term investment then he is entitled to claim deduction under section 10(38) of the Act for long-term capital gains i.e. the surplus will not be treated as business income.

OUR COMMENTS: In the above case, the assessee filed its return of income where he claimed deduction under section 10(38) for long-term capital gain from sale of equity shares of four companies which were held for more than one year. His case was selected for scrutiny under section 143(2).

The deduction claimed by assessee under section 10(38) was denied by the Department on the grounds that the assessee was showing the investment in shares under the

head "stock-in-trade" (closing stock of shares) and not under the head "investment".

The Hon'ble ITAT held that if the Assessing Officer is satisfied that the assessee has consistently **treated (irrespective presentation in books of accounts)** the shares investment account as her investment for long-term purposes and has not shifted the stock in investment account to shares trading stock account or share derivatives account or vice versa then the Assessing Officer will accept the claim of the assessee of claiming deduction under section 10(38) of the Act for long-term capital gains from sale of equity shares and if contrary results are discovered by the Assessing Officer from the records made available by the assessee then such total income from the transaction of purchase/sale of shares shall be treated as business income

[Decided in favour of assessee]

THE COMMISSIONER OF INCOME TAX (TDS) , CHANDIGARH VERSUS M/S IVY HEALTH LIFE SCIENCES PVT. LIMITED, MOHALI, PUNJAB [PUNJAB & HARYANA HIGH COURT]

BRIEF: In the hospital, there does not exist an employer/employee relationship between the professional doctors and the hospital.

OUR COMMENTS: In the above case, the assessee is a private limited company and running a hospital. Apart from indoor patients treatment he also runs OPDs. The working days and hours of the doctors in OPD of the hospital are fixed as per a service contract. The company deducts tax under Section 194J of the Act from the payments made to them treating the payments as professional fees instead of salaries. However, the Department contended that there existed an employer and employee relationship between the company and the doctors and that tax should have been deducted under section 192 of the Act and not under Section 194J of the Act.

The Hon'ble High Court held that the professional doctors are not entitled for LTC, concession in medical treatment of relatives, PF, leave encashment and retirement benefits like gratuity. They are required to follow some defined procedure to maintain uniformity in action and some administrative discipline but this does not mean that they have become employees of the hospital. Hence, tax was correctly deducted by the assessee under Section 194J.

[Decided against revenue]

STATE TAXES

DELHI

EXTENSION OF TIME FOR FILING OF RECONCILIATION RETURN FOR 2014-05 TO 15.01.2016

OUR COMMENTS: The Department of Trade & Taxes, Government of National Capital Territory of Delhi vide **Circular No. 32 of 2015-16 dated 15.12.2015** has extended the last date of filing of online return in Form 9 for the year 2014-15 to **15.01.2016**.

The return is to be filed by dealers who have made interstate sale at concessional rates against statutory forms 'C' or stock transferred against 'F' forms or sold the goods against 'H' forms to dealers (other than Delhi) or claimed deduction from taxable turnover against E-I/EII forms or I/J forms etc.

CLARIFICATION ON NOTIFICATION NO. 3(515)/POLICY/VAT/ 2015/330 DATED 26.06.2015

OUR COMMENTS: The Department of Trade & Taxes, Government of National Capital Territory of Delhi vide **Circular No. 33 of 2015-16 dated 29.12.2015** has clarified that only the persons who are providing these eportals/websites to other dealers for passing on the orders from customers to the dealers /other vendors are required to file the returns in terms of Notification dated 26.06.2015. The dealers engaged in e-Commerce or effecting sales of their own products through their own e-portals/websites are not required to file the return as aforesaid.

AMENDMENT IN RULE 7 & 43

OUR COMMENTS: The Finance Revenue-1 Department, Government of National Capital Territory of Delhi vide **Notification No. F.3(25)/Fin(Rev-I)/2015-2016/dsvi/954 dated 18.12.2015** has made amendment in Rule 7 & 43. The notification is self-explanatory. The readers may refer the said notification for details.

HIMACHAL PRADESH

AMENDMENT IN RULE 40-B

OUR COMMENTS: The Excise & Taxation Department, Government of Himachal Pradesh vide **Notification No. EXN-F(10)-7/2011-Vol.I dated 14.12.2015** has amended Rule 40-B namely; In rule 40-B of the Himachal Pradesh Value Added Tax Rules, 2005, after the words and sign "according to such return," the words and sign "except dealers whose electronically filed monthly or quarterly and annual returns as applicable bear their digital signature," shall be inserted.

TAMIL NADU

DATE FOR ISSUE OF MANUAL "C" & "F" FORMS TO DEALERS EXTENDED TO 31.03.2016

OUR COMMENTS: The Office of the principal Secretary/Commercial Taxes, Government of Tamil Nadu vide **Circular No. 45/2015 dated 10.12.2015** has extended the last date for issuing the manual "C" & "F" forms to dealers to 31.03.2016.

UTTARAKHAND

RATE OF TAX SHALL BE 10% ON ENTRY OF GOODS PURCHASED/ORDERED THROUGH ONLINE SHOPPING OR THROUGH E-COMMERCE FOR PERSONAL USE

OUR COMMENTS: The Finance Section - 8, Government of Uttarakhand vide **Notification No.977 & 1035/2015/22(120)/XXVII (8)/2008 dated 10.12.2015** has included goods purchased or ordered through online shopping or E-Commerce in the Schedule of the Uttarakhand Tax on Entry of Goods Into Local Areas Act, 2008 and directed that the tax on entry of such goods into the local area of the State of the Uttarakhand for personal use shall be levied and collected at **10%** of the value of goods.

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