50TH ISSUE

10 JAN 2016 - 16 JAN 2016

# TAX CONNECT

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| GST | |
| SERVICE TAX | CENTRAL EXCISE |
| CUSTOMS | INCOME TAX |
| | STATE TAXES |


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# EDITORIAL

**Friends,**

**In the New Year 2016 a New face of West Bengal is also on the showcase to the World.** The business summit being held in Kolkata has been a hit till now. Industrialists from all parts of the globe are committing to invest in the state.

Whether commitments will actually lead to investments will depend on whether the promises by the Ministers will be delivered on ground! Of all other things we feel that it depends on whether land is made available and the attitude of the Government and its departments is pro-industry.

**In GST**, still the uncertainty exists whether the same will be passed in the budget session also. The ruling party is banking a lot on the change in numbers in upper house in March but whether the same shall be sufficient to get the bill passed is to be seen.

**Under the compliance window provided by Ministry of Finance under Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015**, a total of 644 declarations have been made involving amount of Rs. 4,164 crores. The amount of tax and penalty recovered against the same upto 31st December, 2015 amounts to Rs. 2,428 crores.

**The Union Finance Minister, Shri Arun Jaitley** said that due to policy measures undertaken by present Government including enhanced public investment, kick starting stalled projects, open auction of natural resources like coal and spectrum, greater fiscal federalism, Indian economy has achieved robust growth in the first half of the financial year 2015-16 despite volatility and uncertainty in global economy. This presents better growth prospects for the next financial 2016-17 as well.

In **Central Excise,** Rule 9 has been amended in Cenvat Credit Rules, 2004. Now cenvat credit will be available not only against certificate issued by an appraiser of customs in respect of goods imported through a Foreign Post Office but also through an Authorized Courier, registered with the Principal Commissioner of Customs or the Commissioner of Customs in-charge of the customs airport.

In a very important case, **CESTAT Allahabad** has provided judgement that just because, the freight amount was not mentioned separately in the excise invoice, but separately in a commercial invoice, it cannot be included in the transaction value for imposing the excise duty.

In **Income Tax,** CBDT has come up with rules (Rule 114B, 114C, 114D & 114E) with regard to quoting of permanent account number in all documents in respect to specified transactions. The rules have been discussed further in this issue.

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

**Truly Yours**

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# INDEX

# COMPLIANCE CALENDAR

| Due date | COMPLIANCES FROM 10th January, 2016 to 16th January, 2016 | STATUTE |
|---|---|---|
| 10th January, 2016 | Deposit of WCT of previous month | Chattisgarh VAT Act<br>Madhya Pradesh VAT Act<br>West Bengal VAT Act<br>Nagaland VAT Act<br>Meghalaya VAT Act<br>Mizoram VAT Act<br>Arunachal Pradesh VAT Act |
| | Issuance of monthly/quarterly WCT certificate | Madhya Pradesh VAT Act (Monthly) |
| | Deposit of Ptax of previous month | Andhra Pradesh VAT Act<br>Madhya Pradesh VAT Act |
| | Deposit of Entry tax of previous month | Chattisgarh VAT Act<br>Madhya Pradesh VAT Act |
| 14th January, 2016 | Deposit of VAT of previous month | Rajasthan VAT Act |
| | Filing of monthly/quarterly WCT return | Odisha VAT Act (Quarterly) |
| | Deposit of Entry tax of previous month | Rajasthan VAT Act |
| 15th January, 2016 | Filing of TDS/TCS return for 3rd quarter | Income Tax Act |
| | Deposit of VAT of previous month | Bihar VAT Act<br>Haryana (if Tax> Rs. 1 lac) VAT Act<br>Jharkhand VAT Act<br>Kerala VAT Act<br>Sikkim VAT Act |
| | Filing of monthly/quarterly VAT return | Kerala VAT Act (Monthly) |
| | VAT Audit | Maharashtra VAT Act |
| | Deposit of WCT of previous month | Bihar VAT Act<br>Chandigarh VAT Act<br>Delhi VAT Act<br>Haryana VAT Act<br>Jharkhand VAT Act<br>Punjab VAT Act<br>Rajasthan VAT Act<br>Himachal Pradesh VAT Act |
| | Filing of monthly/quarterly WCT return | Kerala VAT Act (Quarterly)<br>Punjab VAT Act (Monthly) |
| | Issuance of monthly/quarterly WCT certificate | Haryana VAT Act (Monthly)<br>Punjab VAT Act (Quarterly)<br>Jharkhand VAT Act (Monthly)<br>Himachal Pradesh VAT Act (Monthly)<br>Goa VAT Act (Quarterly) |
| | PF deposit of previous month | EPF Act |
| | Deposit of Ptax of previous month | Sikkim VAT Act<br>Gujarat VAT Act |
| | Deposit of Entry tax of previous month | Bihar VAT Act |

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

**The provisions related to <u>value</u> of supply of goods and services are laid down in CHAPTER III of the Act and can be summarized as follows:**

**<u>Value of supply of goods</u>**

The value of a supply of goods/services shall be the transaction value i.e. **<u>the price actually paid or payable where the concerned parties are not related and the price is the sole consideration for the supply.</u>**

**Transaction value shall include:**

a) any amount to be paid by the supplier, however incurred by the recipient

b) value of goods/services supplied by the recipient free of charge or at reduced cost for use in connection with the supply of goods/services being valued

c) royalties and licence fees that the recipient of supply must pay, either directly or indirectly

d) any taxes, duties, fees and charges levied under any Statute other than the SGST Act or the CGST Act or the IGST Act

e) incidental expenses such as commission, packing, charged by the supplier at the time of/before delivery of the goods or provision of the services

f) subsidies linked to the supply

g) discount or incentive allowed after the supply

**Transaction value shall not include:**

a) discount allowed before/at the time of supply in the course of normal trade practice and has been duly recorded in the invoice

In the following cases transaction value shall be determined as may be prescribed in the rules.

i. Where the consideration wholly or partly is not money

ii. Where the transaction is between related parties

iii. Where the transaction value declared by the supplier is doubtful (backed by the reason)

iv. Transactions in the nature of pure agent, money changer, insurer, air travel agent and distributor or selling agent of lottery

v. Transactions notified by the Central or a State Government

**Supply by a taxable person to any person other than a taxable person shall be deemed to be the retail sale price less the tax leviable under this Act on such good.**

The **"retail sale price"** here means the maximum price at which the goods in packaged form may be sold to the ultimate consumer and includes all taxes, local or otherwise, freight, transport charges, commission payable to dealers, and all charges towards advertisement, delivery, packing, forwarding and the like and the price is the sole consideration for such sale

In case of more than one retail sale price on package, the highest one shall be taken

In case the retail sale price, declared on the package is altered at the time of supply, such altered retail sale price shall be taken

# SERVICE TAX

## COURT DECISIONS

### BHARATH AUTO CARS PVT LTD VERSUS COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX MANGALORE [CESTAT BANGALORE]

**BRIEF: An assessee is not required to submit written protest for refund against each payment of service tax for the subject services not liable for payment of service tax.**

**OUR COMMENTS**: In the above case, the assessee is providing subject services namely free services for the automobiles sold under warranty. The warranty charges are taken from the customers at the time of sale/purchase of the vehicles and the amount of sales tax/VAT is paid under written protest for refund. Later, the refund is sanctioned by the Department.

However, refund was not sanctioned by the Department for a particular period on the ground that that assessee did not make payment of service tax for the said period under protest. Accordingly, the refund claim filed after the expiry of one year from the relevant date is time barred under provisions of Section 11 B of the Central Excise Act 1944.

**The Hon'ble CESTAT** held that here was a continuing deemed protest by the assessee for the service tax paid for the subject services.

The Department has already paid the refund amount for the same services for the earlier periods as the service tax was not chargeable. It is not understood that why the Department is insisting on separate written protest for each payment against the said services which were not liable for payment of service tax.

Hence, the assessee is entitled to this refund of this amount of service tax.

**[Decided in favor of assessee]**

### AMR INDIA LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, CUSTOMS AND SERVICE TAX HYDERABAD-II [CESTAT BANGALORE]

**BRIEF: in the nature of a prize money for a good performance are not linked to the value of the services, hence cannot be included in the value of the services for the purpose of levy of tax.**

**OUR COMMENTS**: In the above case, the assessee is a registered service provider of site formation and clearance and excavation services. One of his service recipient provided specific quantities of explosives and diesel oils for rendering the above work. Further, penalty or bonus/incentive was agreed between the parties depending on the quantities of explosives and diesel oils used by the assessee in the provision of services.

The Department issued show cause notice on the grounds that bonus received by the assessee in the shape of incentive for optimum use of explosives and diesel oil should also form part of the assessable value of the services.

**The Hon'ble CESTAT** held that the bonus paid to the assessee was dependent upon the conservative and efficient use of diesel and explosives. It is to encourage the service provider to use the oil and explosives in a conservative manner. It was an incentive and appreciation of assessee's performance in utilizing less quantum of oil and explosives.

Also, the said incentive was not even known at the time of performance of the service and was calculated subsequent to the completion of the service.

Therefore, it can be concluded that this incentive is more in the nature of a prize money for a good performance by the assessee and are in no way linked to the value of the services, hence, should not be included in the assessable value.

**[Decided in favor of assessee]**

# CENTRAL EXCISE

## NOTIFICATIONS/CIRCULARS

### INCREASE IN THE BASIC EXCISE DUTY RATES ON PETROL AND DIESEL TO RS. 8.91/LIT AND RS. 10.19/LIT RESPECTIVELY

**OUR COMMENTS**: The Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 1/2016-Central Excise dated 01.01.2016 has amended Notification No. 12/2012 dated 17.03.2012** and increased the basic excise duty on petrol and diesel as follows:

-Petrol (unbranded) to Rs. 7.73/lit
-Petrol (branded) to Rs. 8.91/lit

-Diesel (unbranded) to Rs. 7.83/lit
-Diesel (branded) Rs. 10.19/lit.

This notification shall come into force with effect from the 2nd day of January, 2016.

### AMENDMENT IN RULE 9 OF CENVAT CREDIT RULES, 2004

**OUR COMMENTS**: The Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 27/2015-Central Excise (N.T.) dated 31.12.2015 has amended Rule 9 of the Cenvat Credit Rules, 2004:**

In rule 9, in sub-rule (1), in clause (d), after the words " Foreign Post Office", the words "or, as the case may be, an Authorized Courier, registered with the Principal Commissioner of Customs or the Commissioner of Customs in-charge of the customs airport," shall be inserted.

## COURT DECISIONS

### RAKO MERCANTILE TRADERS VERSUS COMMISSIONER OF CENTRAL EXCISE, LUCKNOW [CESTAT ALLAHABAD]

**BRIEF: Just because, the freight amount was not mentioned separately in the excise invoice, but separately in a commercial invoice, it cannot be included in the transaction value for imposing the excise duty.**

**OUR COMMENTS**: The assessee is a manufacturer of paints and varnishes who supplied goods to Railways only. He collected freight charges from different buyers without incorporating them in the invoices. He use to put seal on each container of the goods and use to issue GR in the name of railways.

The Revenue contended that the freight charges though not presented in invoice, was recovered separately, therefore, are includable for arriving at the assessable value in terms of Section 4 of the Central Excise Act, 1944 read with Rule 5 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000.

**The Hon'ble CESTAT** held that as per Rule 5,

"the value of excisable goods shall be deemed to be the transaction value, excluding the cost of transportation from the place of removal up to the place of delivery of such excisable goods provided the cost of transportation is charged to the buyer in addition to the price for the goods and shown separately in the invoice for such excisable goods."

The assessee, though has not shown the freight separately in the invoice, but has presented the contract/purchase order with the railways which indicates freight charges as 3/- per liter.

Also, for each consignment there is a corresponding GR which indicates the freight amount. Further, a separate commercial invoice is raised for freight corresponding to the purchase order. This commercial invoice indicates the value and freight amount separately.

Only because the freight amount was not indicated separately in the excise invoice, is not sufficient ground to deny the substantive benefit. The law does not require charging of duty on freight for technical lapse of not indicating the freight charges separately on the excise invoice.

**[Decided in favour of the assessee]**

# CUSTOMS

## NOTIFICATIONS & CICULARS

### SPECIFICATION OF ‘CRUDE’, IMPORTED AND STORED IN UNDERGROUND ROCK CAVERNS: NO INTEREST SHALL BE CHARGED UNDER SECTION 61.

**OUR COMMENTS**: The CBEC (Dept. of Revenue), Ministry of Finance, Government of India vide **Notification No. 147/2015-Customs (N.T.) dated 23.12.2015** has specified the class of goods, namely ‘crude’, imported and stored in underground rock caverns, in respect of which no interest shall be charged under the said section 61.

### AMENDMENT IN PRINCIPAL NOTIFICATION NO. 12/97-CUSTOMS(N.T.) DATED 02.04.1997

**OUR COMMENTS**: The CBEC (Dept. of Revenue), Ministry of Finance, Government of India vide **Notification No. 148/2015-Customs (N.T.) dated 29.12.2015** has amended **Notification No.12/97-Customs (N.T.), dated 02.04.1997** as follows:

In the Table to the said notification, after serial number 14 and the entries relating thereto, the following serial number and entries shall be inserted namely:-

| (1) | (2) | (3) | (4) |
|---|---|---|---|
| “15 | Uttarakhand | (i) Pantnagar, District Udham Singh Nagar. | Unloading of imported goods and loading of export goods”. |

### FIXATION OF T V OF EDIBLE OIL, BRASS, POPPY SEED, ARECA NUT, GOLD AND SLIVER

**OUR COMMENTS**: The CBEC (Dept. of Revenue), Ministry of Finance, Government of India vide **Notification No. 150/2015-Customs (N.T.) dated 31.12.2015** has amended **Notification No.36/2001-Customs, dated 03.08.2001** and fixed tariff value of edible oil, brass, poppy seed, areca nut, gold and silver by substituting tables, TABLE – 1, TABLE – 2 and TABLE – 3.

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

### LIST OF INDIVIDUALS WHO MAY HANDLE THE CUSTOMS WORK EXPANDED

**OUR COMMENTS**: The CBEC (Dept. of Revenue), Ministry of Finance, Government of India vide **Notification No. 01/2016-Customs (N.T.) dated 5.01.2015** has expanded the list of individuals who may handle the customs work, my making the following amendment:

In regulation 5, in clause (f), in sub-clause (ii), **for the letters, ‘CA/MBA/LLB’, the letters ‘CA/MBA/LLB/ACMA/ FCMA’ shall be substituted**.

### DEEPER TARIFF CONCESSIONS IN RESPECT OF SPECIFIED GOODS WHEN IMPORTED FROM ASEAN COUNTRIES UNDER THE INDIA-ASEAN FREE TRADE AGREEMENT

**OUR COMMENTS**: The Dept. of Revenue, Ministry of Finance, Government of India vide **Notification NO. 58/2015 – Customs dated 30.12.2015** has amended **Notification No. 46/2011-Customs dated 01.06.2011** and provide deeper tariff concessions in respect of specified goods when imported from ASEAN countries under the India-ASEAN Free Trade Agreement w.e.f. 01.01.2016.

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

### DEEPER TARIFF CONCESSIONS IN RESPECT OF SPECIFIED GOODS WHEN IMPORTED FROM MALAYSIA UNDER THE INDIA-MALAYSIA COMPREHENSIVE ECONOMIC COOPERATION AGREEMENT (IMCECA)

**OUR COMMENTS**: The Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 59/2015 – Customs dated 30.12.2015** has amended **Notification No. 53/2011-Customs dated 01st July, 2011** and provided deeper tariff concessions in respect of specified goods imported from Malaysia under the India-Malaysia Comprehensive Economic Cooperation Agreement (IMCECA) w.e.f. 01.01.2016.

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

# INCOME TAX

## NOTIFICATIONS & CIRCULARS

### NEW RULES – 114B, 114C, 114D, 114E IN INCOME TAX RULES, 1962

**OUR COMMENTS**: The CBDT, Department of Revenue, Ministry of Finance, Government of India vide **Notification No. 95/2015 dated 30.12.2015** has made the following rules and amended the Income-tax Rules, 1962 as follows:

**Rule 114B – Effective from 1.1.2016**

Transactions in relation to which permanent account number is to be quoted in all documents for the purpose of clause (c) of sub-section (5) of section 139A.

**Rule 114C – Effective from 1.1.2016**

Verification of Permanent Account Number in transactions specified in rule 114B.

**Rule 114D – Effective from 1.1.2016**

Time and manner in which persons referred to in rule 114C shall furnish a statement containing particulars of Form No. 60.

**Rule 114E – Effective from 1.4.2016**

Furnishing of statement of financial transaction

The notifications are self-explanatory. The readers may refer the said notifications.

### TDS UNDER SECTION 194A OF THE ACT ON INTEREST ON FIXED DEPOSIT MADE ON DIRECTION OF COURTS

**OUR COMMENTS**: The CBDT, Department of Revenue, Ministry of Finance, Government of India vide **Circular No. 23/2015 dated 28.12.2015** has clarified that interest on FDRs made in the name of Registrar General of the Court or the depositor of the fund on the directions of the Court, will not be subject to TDS till the matter is decided by the Court.

However, once the Court decides the ownership of the money lying in the fixed deposit, the provisions of section 194A will apply to the recipient of the income.

Accordingly, such issues may not be contested in appeal and pending litigation, if any on the issue before various Courts/Tribunals may be withdrawn/not pressed upon.

### NO PENALTY U/S 271 (1)(C) WHEREIN ADDITIONS/DISALLOWANCES MADE UNDER NORMAL PROVISIONS OF THE INCOME TAX ACT, 1961 BUT TAX LEVIED UNDER MAT PROVISIONS U/S 115JB/115JC, FOR CASES PRIOR TO A.Y. 2016-17

**OUR COMMENTS**: The CBDT, Department of Revenue, Ministry of Finance, Government of India vide **Circular No. 25/2015 dated 31.12.2015** has clarified that prior to 01.04.2016, where the income tax payable on the total income as computed under the normal provisions of the Act is less than the tax payable on the book profits u/s 115JB of the Act, then penalty under 271(1)(c) of the Act, is not attracted with reference to additions /disallowances made under normal provisions.

It is further clarified that in cases prior to 01.04.2016, if any adjustment is made in the income computed for the purpose of MAT, then the levy of penalty u/s 271(1)(c) of the Act, will depend on the nature of adjustment.

The above settled position is to he followed in respect of section 115JC of the Act also.

### THE ASSTT. COMMISSIONER OF INCOME-TAX VERSUS M/S TTK LIG LTD. [ITAT CHENNAI]

**BRIEF: Payment of royalty and logo charges are revenue in nature, therefore, has to be allowed while computing the taxable income. Merely because an appeal is said to be pending before the High Court, that cannot be a reason to take a different view.**

**OUR COMMENTS**: In the above case, the assessee has paid logo charges and royalty and claimed the same as revenue expenditure. However, the Assessing Officer treated both the payments as capital in nature and allowed depreciation @ 25%.

**The Hon'ble ITAT** found that the payment of royalty and logo charges are revenue in nature, therefore, has to be allowed while computing the taxable income. Merely because an appeal is said to be pending before the High Court, that cannot be a reason to take a different view.

**[Decided against revenue]**

## ODISHA

### EXEMPTION OF ALL SCHEDULED GOODS BROUGHT INTO THE PROCESSING AREA OF A SPECIAL ECONOMIC ZONES (SEZ) BY A DEVELOPER, CO-DEVELOPER AND UNITS OF A SEZ

**OUR COMMENTS**: The Finance Department, Government of Odisha vide **Notification No. 33077 dated 26.12.2015** has exempted all scheduled goods brought into the processing area of a Special Economic Zones (SEZ) by a Developer, Co-Developer and Units of a SEZ from levy of tax under the said Act subject to certain conditions and restrictions.

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

### EXEMPT THE GOODS (AS GOODS OR ANY OTHER FORM) SOLD IN COURSE OF EXECUTION OF WORKS CONTRACT TO A DEVELOPER, CO-DEVELOPER AND UNITS OF A SPECIAL ECONOMIC ZONE

**OUR COMMENTS**: The Finance Department, Government of Odisha vide **Notification No. 33082 dated 26.12.2015** has exempt the goods (as goods or any other form) sold in course of execution of works contract to a Developer, Co-Developer and Units of a Special Economic Zones for carrying out authorised operations within the processing area of a Special Economic Zones (SEZ) from payment of tax under the provisions of the said Act subject to certain conditions.

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

## PUNJAB

### AMENDMENT IN SCHEDULE "B" & "E" OF THE PUNJAB VALUE ADDED TAX ACT, 2005

**OUR COMMENTS**: The Department Excise & Taxation, Government of Punjab vide **Notification No. No.S.O.60/ P.A.8/ 2005/S.8/2015 dated 14.12.2015** has amended schedules B" & "E" of the Punjab Value Added Tax Act, 2005 as follows:

1. In the said Schedule B,in serial No. 78, after the words "de-oiled cakes", the words "except Sarson and binola Khal" shall be added.
2. In the said Schedule 'E', after serial No. 28 and Entries relating thereto, the following shall be added, namely:

- "29. Sarson and binola Khal 2 per cent".

## TELENGANA

### REDUCTION IN THE TIME LIMIT OF NINETY DAYS PRESCRIBED FOR REFUND OF TAX IN SECTION 38 OF THE SAID ACT, TO SIXTY DAYS

**OUR COMMENTS**: The Office Revenue (Commercial Taxes-II) Department, Government of Telengana vide **G.O.MS.No. 235I dated 10.12.2015** has reduced the time limit of ninety days prescribed for refund of tax in Section 38 of the said Act, to sixty days.

Consequently, the time limit of ninety days appearing in rule 35 (8)(a), (8)(c), (9)(d), (9)(e), and (10)(e) of the TVAT Rules, 2005, shall be read as sixty days.

## TAMIL NADU

### APPOINTMENT OF OFFICERS TO MAKE ASSESSMENT UNDER TAMIL NADU VALUE ADDED TAX ACT, 2006

**OUR COMMENTS**: The Commercial Taxes & Registration Department, Government of Tamil Nadu vide **Notification G.O. (Ms) No. 122 dated 17.12.2015** has authorised officers of the Commercial Taxes Department to make assessment under Tamil Nadu Value Added Tax Act, 2006.

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