51ST ISSUE

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TAX CONNECT

GST	
SERVICE TAX	CENTRAL EXCISE
CUSTOMS	INCOME TAX
	STATE TAXES

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EDITORIAL

Friends,

In GST, the Goods & Service Tax Network (GSTN) has released a publication on GST Eco Systems and GST Service Providers (GSP). As we all know that GSTN shall work in GST almost in the same way as NSDL is working in Income tax. This documents provides a good understanding on the Application Programme Interface (API) systems & the Eco Systems which GSTN will work with. **Further it is also provides an opportunity to become enrolled as GSPs**. **Present Accounting & Accounting software concerns should seize this opportunity to be a part of the biggest Tax reform in the country. Also this can be a good opportunity for start ups.**

In Excise & Service Tax, a step towards expediting refunds has been taken by the CBEC by issuing General Guidelines w.r.t. e-payment of refund/rebate vide Circular No. 1013/1/2016-CX dated 12thJan,2016. **While this is a positive step, yet the greater area of concern is the attitude & pace of the sanctioning of refunds and the related harassments and costs thereto. While Income Tax has to a great extent eased the process, in Indirect Tax refunds still remains an area of concern.**

A brief of the prescribed procedure for e-payment of refund/rebate is as follows -

I . E.PAYMENT THROUGH AUTHORIZED BANKS

a. The Commissioner after obtaining concurrence from authorized banks shall authorize the refund sanctioning authorities to make e-payment of refund/rebate.

b. **The banks may charge the refund applicant claimant fee** for remitting the refund amount through RTGS/NEFT and the claimant would get only the net amount.

II. PROCEDURE FOR E-PAYMENT

Detailed procedure to be followed by the claimant and the refund sanctioning authority for e-payment have been laid down in the circular in prescribed format.

III. PROCEDURE FOR RECONCILIATION

Detailed procedure to be followed by the banks and the refund sanctioning authority for reconciliation of payment made through RTGS/NEFT to the claimant have been laid down in the circular along with the prescribed format.

In PF, the 5 day grace period in respect of payment of provident fund contribution by employers has been removed. The Employee Provident Fund Organization (EPFO) brought out a circular to this effect which shall come into force from February 2016. The reason behind this decision was due to ease in calculations and deposition of challan online which has reduced the entire process.

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
20th January, 2016	Deposit of VAT of previous month	Andhra Pradesh VAT Act, Chandigarh VAT Act Karnataka VAT Act, Punjab VAT Act (if payment by cheque) Tamil Nadu VAT Act, Uttar Pradesh VAT Act Uttarakhand VAT Act, Manipur VAT Act Goa VAT Act (if Tax> or = Rs. 1 lac)
	Filing of monthly/quarterly VAT return	Andhra Pradesh VAT Act (Monthly) Karnataka VAT Act (Monthly) Tamil Nadu VAT Act(Monthly) Uttar Pradesh VAT Act (Monthly) Uttarakhand VAT Act (Quarterly), Punjab VAT Act (Monthly, if payment is through cheque) Manipur VAT Act (Monthly, if Turnover in PY is > Rs. 40 lacs) Manipur VAT Act (Quarterly, if Turnover in PY is < Rs 40 lacs)
	Deposit of P Tax of previous month	Karnataka VAT Act, West Bengal VAT Act
	Deposit of Entry tax of previous month	Andhra Pradesh VAT Act, Karnataka VAT Act Uttar Pradesh VAT Act, Uttarakhand VAT Act
	Deposit of WCT of previous month	Andhra Pradesh VAT Act, Karnataka VAT Act Tamil Nadu VAT Act, Uttar Pradesh VAT Act Uttarakhand VAT Act, Goa VAT Act (if Tax> or = Rs. 1 lac)
	Filing of monthly/quarterly WCT return	Karnataka VAT Act (Monthly) Uttarakhand VAT Act (Quarterly)
	Issuance of WCT certificate	Uttar Pradesh VAT Act Manipur VAT Act
21st January, 2016	Deposit of VAT of previous month	Assam VAT Act, Delhi VAT Act, Maharashtra VAT Act, Odisha VAT Act, Nagaland VAT Act Meghalaya VAT Act
	Filing of monthly/quarterly VAT return	Assam VAT Act (Monthly), Maharashtra VAT Act (Monthly), Odisha VAT Act (Monthly), Meghalaya VAT Act (Monthly)
	Deposit of WCT of previous month	Maharashtra VAT Act
	Deposit of Entry tax of previous month	Odisha VAT Act, West Bengal VAT Act
	Deposit of Ptax of previous month	Odisha VAT Act
22nd January, 2016	ESI deposit of previous month	ESI Act
	Deposit of VAT of previous month	Gujarat VAT Act
	Deposit of WCT of previous month	Gujarat VAT Act
	Issuance of WCT certificate	Delhi VAT Act
	Deposit of Entry tax of previous month	Gujarat VAT Act

REPORT OF SUB COMMITTEE - II ON MODEL GST ACT, 2016 – MANNER OF TAKING INPUT TAX CREDIT AND ITS UTILIZATION

CHAPTER IV of the model GST Act deals with the manner of input tax credit (ITC) and utilization thereof:

(1) Every taxable person shall be entitled to take credit of input tax for payment of output tax to the appropriate Government.

(2) Where the goods and/or services are used by the taxable person:

- **for both business and other purposes:** ITC shall be restricted tax to tax attributable to business purpose.
- **for effecting both taxable supplies and non-taxable supplies** (including exempt supplies but excluding zero-rated supplies): ITC shall be restricted tax to tax attributable to the taxable supplies including zero-rated supplies.

(3) **<u>Utilization of ITC</u>**

- ITC on account of IGST shall first be utilized for payment of IGST, then SGST and finally CGST
- ITC on account of CGST shall first be utilized towards payment of CGST and then IGST.
- ITC on account of SGST shall first be utilized towards payment of SGST and then IGST.
- **ITC on account of CGST shall not be utilized towards payment of SGST and vice versa**

(4) **Unadjusted credit** at the end of the year can be carried forward or claimed as refund as per section 22 of the Act. Where any refund is due to a taxable person who has defaulted in furnishing any return or who is required to pay any tax or penalty not been stayed by any Court, Tribunal or Appellate Authority, the proper officer may withhold refund payment or deduct tax due from the refund due.

(5) No ITC shall be available unless the taxable person is in **possession of a tax invoice** issued by a supplier registered under this Act or the IGST Act and **the tax charged has been paid to the appropriate Government.**

(6) On sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provision for transfer of liabilities, the taxable person shall be allowed to transfer the input tax credit that remains unadjusted in its books of accounts to such transferred, sold, merged, demerged, leased or amalgamated business in the manner prescribed.

(7) **ITC shall not be available in respect of the following:**

(a) motor vehicles, except when they are supplied in the usual course of business or are used for transportation of passenger, goods or imparting training on motor driving skills

(b) HSD oil, petrol, aviation turbine fuel, petroleum crude oil and aviation gasoline

(c) goods or services provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits to employees, when such goods and/or services are used primarily for personal use or consumption of any employee

(d) goods and/or services acquired by the principal in the execution of works contract when such contract results in construction of immovable property, other than plant and machinery

(e) goods acquired by a principal, the property in which is not transferred (whether as goods or in some other form) to any other person, which are used in the construction of immovable property, other than plant and machinery

(f) goods and/or services on which tax has been paid under section 8 of the Act

(g) goods and/or services consumed for personal purpose.

SERVICE TAX

COURT DECISIONS

GAIL INDIA LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX, LTU, NEW DELHIE [CESTAT NEW DELHI]

BRIEF: If a person is discharging service tax liability from his registered premises, the benefit of cenvat credit on the service tax paid by the service provider cannot be denied, only on the ground that the invoices are in the name of branch offices which were not separately registered.

OUR COMMENTS: The assessee is in the business of natural gas to industrial and other consumers. One of its unit was providing the taxable output service of supply of goods through pipeline to local consumers and others from piplelines at various other destinations. It also had various compressor stations supplying output service of conveyance of gas. It took cenvat credit on the basis of invoices raised by one of its compressor stations which was not registered separately.

The Department issued a show cause notice proposing denial of cenvat credit along with interest and penalties.

The Hon'ble CESTAT held that if a person is discharging service tax liability from his registered premises, the benefit of cenvat credit on the service tax paid by the service provider cannot be denied, only on the ground that the invoices are in the name of branch offices which were not separately registered.

Accordingly, the impugned order was unsustainable and quashed.

[Decided in favor of assessee]

CST, CHENNAI - I VERSUS M/S. J.M. BAXI & CO. [CESTAT CHENNAI]

BRIEF: Courtesy services or assistance rendered by the service provider to the service receiver beyond the scope of the contractual obligations shall not be included in the taxable value of services.

OUR COMMENTS: In the above case, the assessee is registered in the category of steamer agent and pays service tax on the service charges collected from their customers (shipping lines) accordingly. It also incurs additional expenditure towards arranging drinking water, garbage clearance, transport for crew etc. The shipping line reimburses these expenses to the assessee and the same does not form part of the service charges. The charges for providing steamer agent services are collected separately and service tax is being paid on the said amount.

The Department contended that sum reimbursed by the shipping lines against additional expenditure incurred by the asessee should be included in the value of taxable services.

The Hon'ble CESTAT held that the additional expenditure incurred by the assessee are only courtesy services or assistance rendered to shipping lines, beyond the scope of any contractual obligations. The assesee is the ship's conduit in the port of call for contracted steamer agency service. There can arise requests for assistance for the ship or her officers, on issues not related to ship's husbandry or booking etc. of cargo. And, because of ongoing relationship with the shipping line, the steamer agents extend such assistance.

Therefore, the value reimbursed thereof is not required to be added to the value of taxable services and hence no tax liability will arise on such value.

[Decided in favor of assessee]

CENTRAL EXCISE

NOTIFICATIONS/CIRCULARS

GENERAL GUIDELINES FOR IMPLEMENTATION OF E-PAYMENT OF REFUND/ REBATE

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India vide **Circular No. 1013/1/2016-CX dated 12.01.2016** has prescribed guidelines for implementation of e-payment of refund/ rebate in order to speed up the transfer of the fund directly to the beneficiary's bank account after sanction of the refund/rebate claim and thereby promote ease of doing business.

This circular is self-explanatory. The readers may refer the said circular.

COURT DECISIONS

AQUARIUS TECHNOLOGIES PVT. LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, PUNE [CESTAT MUMBAI]

BRIEF: Charges towards training provided to the customer's staff is not includable in the assessable value.

OUR COMMENTS: The assessee is an SSI unit engaged in the manufacture and sale of machines, mechanical appliances and parts thereof. The customer of the assessee is at liberty to get their staff trained from the assessee or not. Thus, these charges are not recovered from every customer. The charges on account of training are separately shown in the invoices wherever charged and recovered.

The Department's contention is that these training charges should be included in the assessable value for the purpose of imposition of excise duty.

The Hon'ble CESTAT held as per the **concept of transaction value, any charges in connection with the manufacture, marketing, selling of excisable goods shall form part of the assessable value.**

In this case, training provided to the customer's staff has no nexus with the activity of manufacturing, sale or marketing of the product and it does not enrich the value of their products.

Therefore, training charges are not includable in the assessable value.

[Decided in favour of the assessee]

M/S SARADA PAPERS LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, NASHIK [CESTAT MUMBAI]

BRIEF: Cash discounts for prompt payment of price of goods on delivery, are admissible in arriving at the assessable value if they are available to all buyers.

OUR COMMENTS: In the above case, the assessee gives his customers discount for prompt payment i.e. they charge a lesser price for cash sale, but higher price for credit sale.

The Revenue puts up a case that the assessee has not passed the cash discount to the customers but deducted the quantum of cash discount from the assessable value at the time of clearance. It contended that cash discount which is not passed on to the customers is to be included in the assessable value.

The Hon'ble CESTAT referred to the Central Board of Excise and Customs Bulletin for the period January-March, 1975 in which the Board laid down:-

"Cash Discounts

That is, discounts for prompt payment of price of goods on delivery, are admissible in arriving at the assessable value if they are available to all buyers. This aspect has been dealt with in detail under the heading "price".

"...Some assessee may give to all his buyers cash discount, that is a discount for prompt payment. In other words, they charge a somewhat lesser price where there is cash payment, but charge a higher price (i.e. without deduction of the cash discount) if the payment is not made in cash. In such cases, the cash discount, if allowed, will be admissible on the principle that only the net price obtained after deduction of the cash discount is the price of the goods."

Accordingly, Cash discounts for prompt payment of price of goods on delivery, are admissible in arriving at the assessable value if they are available to all buyers.

[Decided in favour of the assessee]

CUSTOMS

NOTIFICATIONS & CIRCULARS

DEEPER TARIFF CONCESSIONS IN RESPECT OF SPECIFIED GOODS IMPORTED FROM KOREA RP UNDER THE INDIA-KOREA COMPREHENSIVE ECONOMIC PARTNERSHIP AGREEMENT (CEPA) W.E.F. 01.01.2016

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 60/2015 – Customs dated 30.12.2015** has amended N**otification No. 152/2009-Customs dated 31.12.2009** and provided deeper tariff concessions in respect of specified goods imported from Korea RP under the India-Korea Comprehensive Economic Partnership Agreement (CEPA) w.e.f. 01.01.2016.

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

EXPORT DUTY ON IRON ORE PELLETS REDUCED TO NIL RATE FROM 5%

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 01/2016 – Customs dated 04.01.2016** has reduced the export duty on Iron ore pellets from 5% to Nil rate.

RESCINDING NOTIFICATION NO. 09/95-CUSTOMS DATED 06.03.1995: EXEMPTION TO SPECIFIED GOODS WHEN IMPORTED INTO INDIA FROM THE UNION OF MYANMAR

OUR COMMENTS: The CBEC (Dept. of Revenue), Ministry of Finance, Government of India vide **Notification No. 03/2016-Customs dated 11.01.2016** has rescinded **Notification No. 09/95-Customs dated 06.03.1995** Exemption to specified goods when imported into India from the Union of Myanmar, except as respects things done or omitted to be done before such rescission.

REVISION OF EXCHANGE RATE OF FOREIGN CURRENCIES INTO RUPEE & VICE VERSA

OUR COMMENTS: The CBEC (Dept. of Revenue), Ministry of Finance, Government of India vide **Notification No. 02/2016-Customs (N.T.) dated 07.01.2016 & in supersession of Notification No. 144/2015-Customs (N.T.) dated 17.12.2015** has **revised the exchange rate of foreign currencies** specified in col.(2) of each of **Schedule I** and **Schedule II** annexed hereto, into Indian currency or vice versa, w.e.f. **08.01.2016** to be the rate mentioned against it in the corresponding entry in column (3) thereof, for the purpose of the said section, relating to imported and export goods.

SCHEDULE-I

Sl. No	Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
(1)	(2)	(3)	
		(a)	(b)
		(For Imported Goods)	(For Export Goods)
1.	Australian Dollar	47.70	46.50
2.	Bahrain Dinar	182.95	172.40
3.	Canadian Dollar	48.00	46.95
4.	Danish Kroner	9.85	9.55
5.	EURO	73.35	71.55
6.	Hong Kong Dollar	8.70	8.55
7.	Kuwait Dinar	226.45	213.95
8.	New Zealand Dollar	45.00	43.80
9.	Norwegian Kroner	7.60	7.40
10.	Pound Sterling	98.95	96.80
11.	Singapore Dollar	47.15	46.10
12.	South African Rand (w.e.f 08.01.2016) South African Rand (w.e.f 13.01.2016)	4.30 4.10	4.10 3.85
13.	Saudi Arabian Riyal	18.35	17.35
14.	Swedish Kroner	7.90	7.70
15.	Swiss Franc	67.60	65.90
16.	UAE Dirham	18.75	17.70
17.	US Dollar	67.45	66.40
18.	Chinese Yuan	0.25	10.05

SCHEDULE-II

Sl. No	Foreign Currency	Rate of exchange of 100 units of foreign currency equv. to Indian rupees	
(1)	(2)	(3)	
		(a)	(b)
		(For Imported Goods)	(For Export Goods)
1.	Japanese Yen	57.30	56.05
2.	Kenya Shilling	67.40	63.65

INCOME TAX

NOTIFICATIONS & CIRCULARS

COMMISSIONER OF INCOME TAX-II, CHANDIGARH VERSUS M/S ESSAR COMMVISION LTD. (NOW HFCL INFOTEL LTD.), MOHALI [PUNJAB & HARYANA HIGH COURT]

BRIEF: Interest income on the fixed deposits kept for arranging bank guarantees in the formative/pre-operative period of the business shall not be treated as surplus funds utilized for earning additional interest income and made liable to tax under the head "Income from other sources" but set off against the pre-operative expenses.

OUR COMMENTS: The assessee is engaged in the business of providing telecommunication services. In the pre-operative period it earned interest on the fixed deposit kept to open a letter of credit under the terms of the agreement with the supplier of the machine. It adjusted the interest income against the pre-operative expenses.

The Assessing Officer framed the assessment under Section 143(3) holding that the interest earned on the fixed deposit relating to pre-operative period constitutes income assessable under the head 'Income from other sources' and such income could not be set off against the pre-operative expenses

The Hon'ble High Court held that the activity of depositing money out of the share capital was incidental to the acquisition of the asset and not a case where surplus share capital money was deposited with the bank because it was lying unutilised and idle.

The assessee deposited the money with the bank with a definite purpose of acquiring the machine. There is a direct nexus between the purchase of the machinery and the deposit of money in the -bank. This nexus supports the presumption that the money was deposited not without a purpose but with the object of acquiring a machine from the supplier.

Therefore, such interest income for acquiring a business asset should go to reduce the cost of the asset.

[Decided against revenue]

ASSISTANT. COMMISSIONER OF INCOME TAX VERSUS M/S. SHRI PANCHYATI DHARAMSHALANFOTEL LTD.), [ITAT JAIPUR]

BRIEF: In the case of trust or institution, if the dominant/primary purpose is charitable, another object which by itself may not be charitable, would not prevent the trust or institution from being a valid charity.

OUR COMMENTS: The assessee is a Trust registered under section 12A(a) of the I.T. Act, 1961. It is engaged in the charitable activity of running a Dharamshala and receipt of rent is in the nature of maintenance charges and is incidental to the main activity of trust.

The Assessing Officer noted that the activities of the assessee trust, its charitable purpose is that of advancement of general public utility i.e. commercial activities, hit by first proviso to section 2(15) of the I.T. Act. Therefore, exemption under section 11 & 12 to the assessee is not justified.

The Hon'ble ITAT held the first and second proviso to section 2(15) are attracted only when the activity being carried out by the assessee is in the nature of "trade, commerce or business". And, for any activity to be defined as "business", profit motive may not be the sole criteria but is an important criteria, particularly when it is a case of a trust or society.

In the given case, the assessee is registered under the Societies Registration Act, 1860 and is now governed by the Rajasthan Society Registration Act, 1958. The terms of the society clearly provide that all the moveable and immovable property, in present or in future, shall belong to the society and all the savings of income and expenditure account shall be utilized for the developmental work of the society.

Therefore, it is clear that the dominant motive in this case is not earning profit but to do charity in the form of public service by providing accommodation to the common man at affordable rates. The activities of the assessee cannot be characterized as business activities.

Hence, proviso to section 2(15) is not attracted in this case and the disallowance of exemption u/s 11 & 12 is unjustified.

[Decided against revenue]

ANDHRA PRADESH

ORDER REGARDING PASSING ON THE PURCHASE TAX AMOUNT OF RS.60/- PER M.T. TO THE CANE GROWERS AS INCENTIVE FOR 2014-2015 CRUSHING SEASON

OUR COMMENTS: The Industries & Commerce Department, Government of Andhra Pradesh vide **Order No. G.O.RT No.13 dated 09.01.2016** has ordered to pass on the Purchase Tax amount of Rs.60/- per M.T. to the cane suppliers as Incentive for 2014-2015 crushing season with the involvement of Rs. 30.30 crores.

DELHI

FILING OF FORM GE-I AND GE-II BY GOVERNMENT ENTITY

OUR COMMENTS: The Department of Trade & Taxes, Government of National Capital Territory of Delhi vide **Notification No. F3(619)/Policy/VAT/2016/1291-1304 dated 12.01.2016** has required all Government Entities having their offices functioning within the National Capital Territory of Delhi, to furnish an online quarterly return of purchases made by them for the purpose of consumption or use by, them from the dealers registered under the said Act and having a valid TIN/Registration Number in 'Form GE-I' & 'Form GE-II'.

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

KARNATAKA

SUBMISSION OF STATEMENT IN FORM VAT-125 CONTAINING PARTICULARS OF TAX DEDUCTED DURING PRECEDING MONTH ELECTRONICALLY

OUR COMMENTS: The Office of the Commissioner of Commercial Taxes, Government of Karnataka vide **Notification No.EG1.CR-30/2014-15 dated 06.01.2016** has notified tax deducting authorities to submit a monthly statement in Form VAT-125 to the jurisdictional Local VAT Officer (LVO) or VAT Sub Officer (VSO) with particulars of tax deducted during preceding month electronically w.e.f. December, 2015 and to pay full amount of tax so deducted by it electronically or in any other form as applicable.

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

RAJASTHAN

AMENDMENT IN RAJASTHAN INVESTMENT PROMOTION SCHEME - 2014

OUR COMMENTS: The Finance Department, Government of Rajasthan vide **Order No. F. 12(105)FD/Tax/2014-pt-II-112 dated 11.01.2016** has amended clauses 2, 8.1 & 9.7 in Rajasthan Investment Protection Scheme, 2014.

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

WEST BENGAL

AMENDMENT IN WBVAT SCHEDULE A AND SCHEDULE C REGARDING SOLAR DEVICES

OUR COMMENTS: The Finance Department, Government of West Bengal vide **Notification No. 25 FT. dated 07.01.2016** has made amendments in WBVAT Schedule A and Schedule C regarding solar devices.

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