53RD ISSUE

31 JAN 2016 - 6 FEB 2016

TAX CONNECT

GST

SERVICE TAX | CENTRAL EXCISE

CUSTOMS | INCOME TAX

STATE TAXES

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EDITORIAL

Friends,

All the uncertainty w.r.t. extension of date of filing of WB VAT, CST & ET returns have been finally put to rest yesterday. The last date of extension of Thee WB VAT, CST & ET returns has been extended by 1 week. However the CCT has given all indications that henceforth the extension of due dates shall be an exception rather than a rule!

Further, The Government has recently launched **The Start up India Scheme** which aims to promote entrepreneurship. Just to provide you the glimpses of the Scheme –

Eligibility Criteria –

1. Entity should be incorporated or registered in India for less than 5 years having a annual turnover not exceeding INR 25 crore in any preceding financial year
2. Such entity should not be formed by splitting up, or reconstruction, of a business in existence.
3. Private limited companies formed under the Companies Act, 2013, Registered Partnership firm and Limited Liability Partnership are only eligible to take the benefit of this scheme
4. A startup shall be eligible for tax benefits only after it has obtained certification from the Inter-Ministerial Board, setup for such purpose;

Compliance based on self certification

1. Self certification of laws
2. No labour law inspection for 3 years
3. Startup which fall under "white category" would able to self certify with environment law.

Legal Support and Fast-tracking Patent Examination

1. The scheme of Startup Intellectual Property Protection (SIPP) shall facilitate filing of Patents, trade mark and design by innovative Startup
2. Application for patent registration and disposal of Startup shall be fast tracked
3. Government shall bear the facilitation cost and 80% rebate shall be provided to the Startups.

Funding

1. To provide funding support to Startups, Government will set up a fund with initial corpus of INR 2,500 crore and total of INR 10,000 crore
2. Fund will be provided indirectly through Venture capital registered under SEBI.

Tax Exemptions

1. Exemptions on capital gains shall be given to individuals if they have invested such capital gain
2. Profits of startup are exempted from income-tax for a period of 3 years.
3. if Startup receive any consideration for issue of shares which exceeds the Fair Market Value (FMV) of such shares, such excess consideration is exempted in the hands of recipient.

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

Truly Yours

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

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

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Workshop on VAT & Services Tax in Works Contract
10.00 a.m. onwards, 19th February, 2016
The Park Kolkata
17, Park Street, Kolkata 700 016

The Indirect Taxes Committee of The Bengal Chamber of Commerce and Industry is organizing a Workshop on VAT & Services Tax in Works Contract from 10.00 a.m. onwards, on 19th February, 2016 at The Park Kolkata.

The workshop will broadly deliberate on the following:

- **Works Contract under Service Tax**
- **Real Estate / Construction Industry under Service Tax**
- **Works Contract under WB VAT Act**
- **Comparative Study of Works Contract under various States**
- **GST on Real Estate / Construction**
- **Issues including various Judgments of Courts on Works Contract under VAT & CST**

Eminent tax experts who shall be addressing and interacting with the participants on the above include:

Mr. T B Chatterjee, Chairperson, Indirect Taxes Committee, The Bengal Chamber of Commerce and Industry & Chief Corporate Officer, Legal and Corporate Affairs, DIC India Ltd
Mr. Pulak Saha, Co-Chairperson, Indirect Taxes Committee, The Bengal Chamber of Commerce and Industry & Partner - Tax & Regulatory Services, Price Waterhouse & Co. LLP
Mr. Vivek Jalan, FCA, JAV & Associates, Chartered Accountants
Mr. Avisekh Jaiswal, Sr. Manager – Indirect Tax, Ernst & Young LLP
Mr. M S Mani, Senior Director, Deloitte Touche Tohmatsu India Private Limited
Mr Khalid Anwar, Jt Commissioner, Commercial Taxes, Government of West Bengal

We do hope that the programme will be relevant to you. You may please also nominate suitable representatives to attend the programme. For the purposes of registration, please email the enclosed Ready Reply Form, suitably filled in, to sarbani@bengalchamber.com.

The participation fee (inclusive of taxes) is Rs 4500/-. **A discount of 10% is applicable for a group registration on 4 or more participants registering from the same organization.** ***An early bird discount of 10% is also available for registrations before 5th February, 2016.***

Looking forward to receiving your kind confirmation.

Yours faithfully,

Subhodip Ghosh
Director General Designate

COMPLIANCE CALENDAR

Due date	COMPLIANCES FROM 31st January, 2016 to 6th February, 2016	STATUTE
31st January, 2016	Deposit of VAT of previous month	Mizoram VAT Act Jammu & Kashmir VAT Act
	Filing of monthly/quarterly/annual VAT return	Bihar VAT Act (Quarterly) Haryana VAT Act (Quarterly) Jammu & Kashmir VAT Act (Quarterly) Mizoram VAT Act (Quarterly) Nagaland VAT Act (Quarterly) Sikkim VAT Act (Quarterly) Tripura Vat Act (Monthly/Quarterly) West Bengal VAT Act (Quarterly) Rajasthan VAT Act (Annual)
	VAT Audit	Rajasthan VAT Act Goa VAT Act
	Deposit of WCT of previous month	Jammu & Kashmir VAT Act (Quarterly)
	Filing of monthly/quarterly WCT return	Bihar VAT Act (Monthly) Chandigarh VAT Act (Monthly) Haryana VAT Act (Quarterly) Jammu & Kashmir VAT Act (Quarterly) Tamil Nadu VAT Act (Monthly)
	Issuance of WCT certificate	Assam VAT Act (Monthly) Gujarat VAT Act (Quarterly) Kerala Vat Act (Quarterly) Jammu & Kashmir VAT Act (Quarterly)
	Deposit of P tax of previous month	Maharashtra VAT Act
	Deposit of Entry tax of previous month	Assam VAT Act
5th February, 2016	Deposit of WCT of previous month	Kerala VAT Act
	Service Tax deposit of previous month (Company/ Society)	Finance Act

REPORT OF SUB COMMITTEE - II ON MODEL GST ACT, 2016 – REFUND OF TAX

The provisions of refund of tax in CHAPTER V of the model GST Act can be summarized as follows:

Refund of tax

(1) Refund (of tax and interest) can be claimed by making an application to the proper officer of IGST/CGST/SGST before the expiry of two years from the relevant date. The application shall be accompanied by relevant and sufficient documentary evidence

(2) The proper officer shall issue the order within

(a) **60 days** of application in case of refund arising from export of goods;

(b) **90 days** of application in case of refund arising from export of services;

(c) **45 days** of application in case of refund of unadjusted input tax credit

(d) **60 days** of application in case of refund arising on account of a judgement, decree, order or direction of the Appellate Authority or Tribunal or any Court; and

(e) **90 days** of application for refund in any other case.

The refundable amount shall be credited to the Fund, except in the following cases where it will be paid to the applicant:

- Refund where goods and/or services exported out of India or on inputs used in the goods and/or services which are exported out of India
- Refund of unadjusted input tax credit
- Refund where assessee has not passed on the incidence of tax and interest to any other person
- Refund to such other class of applicants as the Central or a State Government may, specify.

For the purposes here

"Refund" includes refund of tax on goods and/or services exported out of India or on inputs used in the goods and/or services which are exported out of India, or refund of unadjusted input tax credit

"Relevant date" means –

(a) in the case of goods and/or services exported out of India, the date on which the related return is filed;

(b) for goods returned for being remade, refined, reconditioned etc., the date of entry into the place of business

(c) for provisionally paid tax, the date of adjustment of tax after the final assessment

(d) refund as a consequence of judgment, decree, order or direction of Appellate Authority, Appellate Tribunal or any Court, the date of communication of such judgment, decree, order or direction;

(e) refund of unadjusted input tax credit - the end of the financial year in which such claim for refund arises; and

(f) in any other case, the date of payment of tax.

SERVICE TAX

COURT DECISIONS

WONDER CARS PVT. LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, PUNE I [CESTAT MUMBAI]

BRIEF: Provision of additional services to the purchaser of Cars like collection of Smart Card Fees, Vehicle Registration Fees and other extra charges cannot be categorised as "Business Support Services" and made liable to service tax.

OUR COMMENTS: The assessee is an authorized dealer of Maruti Cars. The assessee also receives an amount from its customers against Smart Card Fees, Vehicle Registration Fees and other extra charges. By extending these services, he seeked to build a strong supportive relationship with present and prospective customers.

A per Revenue, these extra charges collected by the assessee are taxable under the category of Business Support Services.

The Hon'ble CESTAT held that the definition of Business Support Services as per section 65(104c) of the Finance Act covers "customer relationship management services". However, the definition talks about an entity rendering customer relationship management services and not the customer relationship services rendered by the assessee himself as an aid to his primary business activity.

Hence, the extra charges collected by the assessee is not liable to service tax, accordingly, the impugned order was set aside.

[Decided in favor of assessee]

M/S TANYA AUTOMOBILES PVT LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX, MEERUTI [CESTAT ALLAHABAD]

BRIEF: If there is documentary proof specifically indicating the value of the goods supplied/sold during repairs, the demand of Service Tax for the cost of the goods supplied is not sustainable.

OUR COMMENTS: The assessee is an authorized service station of motor vehicles.

The department issued a show cause notice against the assessee alleging that he was paying Service Tax on the labour charges only and not on value of spare parts and lubricants used in the course of servicing of the motor vehicles.

The Hon'ble CESTAT observed that where the party is liable to pay Service Tax on the entire invoices/bills, then by virtue of Notification No. 12/03, service tax exemption is available to the extent of value of the goods and materials sold by the service provider to the service recipient provided a documentary proof of such sale exists and no credit of Central Excise duty paid on consumables and spares has been taken.

In the above case, though no separate invoice was issued for the sale of spares and consumables, the assessee is showing their value separately in the invoice and also paying VAT/Sales Tax on the same i.e. there is a documentary proof specifically indicating value of the goods.

Hence, no service tax liability arises on the value of the spare parts and lubricants used in the course of servicing.

Accordingly, the impugned order was set aside.

[Decided in favor of assessee]

THIS SPACE HAS BEEN INTENTIONALLY KEPT VACANT

CENTRAL EXCISE

NOTIFICATIONS/CIRCULARS

INSERTION OF A SUNSET CLAUSE OF 31.03.2016 AND DENIAL OF EXEMPTION TO SPECIFIED GOODS AS PER NOTIFICATIONS NO.56/2002-CE & NO.57/2002-CE DATED 14.11.2002

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 3/2016-Central Excise dated 22.01.2016 has amended Notification No. 56/2012-CE and 57/2002-CE both dated 14.11.2012** and inserted a sunset clause of 31.03.2016 and denied exemption to goods on which certain specified processes have been undertaken

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

COURT DECISIONS

COMMISSIONER OF CENTRAL EXCISE, BHOPAL VERSUS M/S INOX AIR PRODUCTS [CESTAT NEW DELHI]

BRIEF: The packing of the gases into cylinders is not necessary for making the gas marketable - these charges would not be includible in the assessable value.

OUR COMMENTS: In the above case, the assessee is engaged in the manufacture of Oxygen Gas and Medicinal gas. He collected charges towards cylinder hire charges/cylinder repair charges and cylinder testing charges from the buyers which were not included in the transaction value.

The Revenue issued a show cause notice taking the view that as per definition of 'transaction value', the assessee is bound to pay duty on cylinder hire charges, repair charges and testing charges collected from buyers.

The Hon'ble CESTAT held that that the substantial quantity of gases, in question, were marketable and being supplied in tankers as well as through pipe line and also in the cylinders brought by the customers and as such, the packing of the gases into cylinders is not necessary for making the gas marketable.

Accordingly, the above charges are not includible in the transaction value.

[Decided against Revenue]

M/S INDICA CHEMICAL INDUSTRIES PVT LTD VERSUS COMMISSIONER OF CENTRAL EXCISE, MEERUT-I [CESTAT NEW DELHI]

BRIEF: When the goods are delivered ex-factory and the place of removal is factory gate, the freight element has no bearing on the valuation of the product.

OUR COMMENTS: In the above case, the assessee is engaged in the manufacture of expanded perlite ore liable to Central Excise duty. The terms of delivery are ex-factory.

The revenue contends that there are two points of dispute regarding the freight element in this case. The first issue is that assessee does not include freight (collected separately from the buyers) in the invoice i.e. in the assessable value. The second issue is that amount collected in excess of actual freight from the buyers shall also be added in the assessable value.

On the first issue, **the Hon'ble CESTAT** held that in case of ex-factory transaction, the arrangement for delivery of goods to the buyer after their clearance from the factory has nothing to do with the assessable value of the goods unless it is established that place of removal for valuation purpose is the delivery point at the buyer's premises.

The second issue also lies unsustainable on the same ground that when the goods are delivered ex-factory and the place of removal is factory gate, the freight element has no bearing on the valuation of the product.

Hence, the freight amount not being shown in the invoice or some additional income has come to the appellant from freight charges cannot be the reason to add extra amounts in the invoice meant for ex-factory delivery of goods.

Accordingly, the impugned order was set aside.

[Decided in favour of assessee]

CUSTOMS

NOTIFICATIONS & CIRCULARS

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL (PROCEDURE FOR APPOINTMENT AS PRESIDENT) RULES, 2016

OUR COMMENTS: The Department of Revenue, Ministry of Finance, Government of India vide **Notification No. G.S.R. 101(E) dated 21.01.2016** has made "Customs, Excise & Service Tax Appellate Tribunal (Procedure for Appointment as President) Rules, 2016" which shall come into force on the date its publication in the Official Gazette.

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

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. 14/2016-Customs (N.T.) dated 21.01.2016 & in supersession of Notification No. 02/2016-Customs (N.T.) dated 07.01.2016** 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. **22.01.2016** 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	46.30
2.	Bahrain Dinar	185.45	174.80
3.	Canadian Dollar	47.35	46.35
4.	Danish Kroner	10.05	9.75
5.	EURO	74.70	72.90
6.	Hong Kong Dollar	8.75	8.60
7.	Kuwait Dinar	229.20	216.60
8.	New Zealand Dollar	44.30	43.10
9.	Norwegian Kroner	7.75	7.55
10.	Pound Sterling	97.30	95.15
11.	Singapore Dollar	47.65	46.70
12.	South African Rand	4.15	3.95
13.	Saudi Arabian Riyal	18.60	17.60
14.	Swedish Kroner	8.00	7.80
15.	Swiss Franc	68.40	66.70
16.	UAE Dirham	19.00	18.00
17.	US Dollar	68.40	67.35
18.	Chinese Yuan	10.45	10.20

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	58.55	57.25
2.	Kenya Shilling	68.20	64.40

GRANT OF PRESIDENTIAL AWARD OF APPRECIATION CERTIFICATE TO THE OFFICERS OF THE CUSTOMS & CENTRAL EXCISE ON THE EVE OF REPUBLIC DAY, 2016

OUR COMMENTS: The Department of Revenue, Ministry of Finance, Government of India vide **Notification No. 15/2016 (N.T.) dated 22.01.2016** has awarded an Appreciation Certificate for Specially distinguished record of service" - to specified officers of Customs & Central Excise Department on the occasion of Republic Day, 2016.

These awards are made under clause (a) (ii) of Para 1 of the Scheme governing the grant of awards to the officers and staff of the Customs & Central Excise Department, Central Bureau of Narcotics, and Directorate of Enforcement, as published in Part I, Section I of the Gazette of India Extraordinary, Notification No.12/139/59-Ad.III (B) dated 5th November, 1962, as amended from time to time.

The names of the officers awarded have been listed in the notification. The readers may refer the said notification.

INCOME TAX

NOTIFICATIONS & CIRCULARS

TWO ADDITIONAL MODES (GIVING BANK DETAILS, DEMAT DETAILS) OF GENERATION OF ELECTRONIC VERIFICATION CODE (EVC) FOR E-ITRS

OUR COMMENTS: The Department of Revenue, Ministry of Finance, Government of India vide **Notification No. 1/2016 dated 19.01.2016** has laid down two additional modes of generation of Electronic Verification Code (EVC) in addition to four modes prescribed under Notification No. 2/2015 dated 13th July 2015.

The two new modes of EVC generation are:

- Generation giving bank details to the efiling website https://incometaxindiaefiling.gov.in

- Generation using Demat details registered with CDSL/ NSDL

The four modes prescribed earlier under Notification No. 2/2015 dated 13th July 2015 are:

- generation through Net- Banking

- generation using Aadhaar OTP

- generation using ATM of a Bank

-generation through E -filing Website sent to the Registered Email ID and Mobile Number of Assessee.

ADVANCE RULINGS (PROCEDURE FOR APPOINTMENT AS CHAIRMAN AND VICE-CHAIRMAN) RULES, 2016

OUR COMMENTS: The Department of Revenue, Ministry of Finance, Government of India vide **Notification No. G.S.R. 100(E) dated 21.01.2016** has made "Authority for Advance Rulings (Procedure for Appointment as Chairman and Vice-Chairman) Rules, 2016" which shall come into force on the date its publication in the Official Gazette.

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

COURT DECISIONS

THE PRINCIPAL COMMISSIONER OF INCOME TAX-6 VERSUS M. TECH INDIA P. LTD. [DELHI HIGH COURT]

BRIEF: If software is acquired with the right to use it, the payment made for the same would amount to royalty, however, if the software is acquired as a product for reselling, the consideration paid cannot be considered as royalty and disallowed under Section 40(a) of the Act for non-deduction of TDS.

OUR COMMENTS: In the above case, the assessee is a Value Added Reseller (VAR) of the software. He purchased certain software from Australia and Malaysia under VAR agreement. Similar purchases made earlier have been allowed as expenditure for the computation of taxable income.

However, in AY 2008-09, the Revenue treated these expenditures as royalty payments and disallowed the same under section 40(a) in the computation of taxable income for non-deduction of TDS.

The Hon'ble High Court held that in the cases where an assessee acquires the right to use a software, the payment so made would amount to royalty. However in cases where the payments are made for purchase of software as a product, the consideration paid cannot be considered to be for use or the right to use the software. Where software is sold as a product it would amount to sale of goods.

It is necessary to make a **distinction between the cases** where consideration is paid to **acquire the right to use a patent or a copyright** and **cases where payment is made to acquire patented or a copyrighted product/material.**

Accordingly, the payments made for acquisition of software for reselling shall be allowed as deduction.

[Decided against revenue]

BIHAR

BIHAR VALUE ADDED TAX RULES, 2005: AMENDMENT IN RULE 14 REGARDING DETERMINATION OF VALUE OF STOCK TRANSFERS OUTSIDE THE STATE AND DELETION OF RULE 17 REGARDING REFUND OF TAX TO FOREIGN DIPLOMATS OR FOREIGN MISSIONS

OUR COMMENTS: The Commercial Tax Department, Government of Bihar vide **Notification No. S.O.12 dated 13.01.2016** has amended Rule 14(2)(b)

The value of stock transfers outside the state shall be arrived as follows:

R2 = [B X I) ÷ P]

Where,

R2 = The reverse credit on account of stock transfers outside the State;

B = The total value of stock transfers outside the State;

I = The input tax paid by the dealer on purchase of inputs, other than those specified in Schedule I, during the month; and

P = The value of goods, other than goods specified in Schedule I of the Act, purchased during the month from within the State.

Earlier the formula was: R2 = [B X 4) ÷ 100]

Also, Rule 17 for Refund of tax to foreign diplomats or foreign missions has been deleted.

GOA

AMENDMENT IN SCHEDULE C - REGARDING PURCHASE OF THE MOTOR CAR BY INDIAN ARMED FORCES

OUR COMMENTS: The Department of Finance, Government of Goa vide **Notification No. 4/5/2005-Fin(R&C)(132) dated 20.01.2016** has amended **Notification No. 4/5/2005-Fin (R&C)(106) dated 13-05-2013** and thereby substituted Schedule 'C' appended to the Goa Value Added Tax Act, 2005 regarding purchase of the Motor Car by Indian Armed Forces.

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

HARYANA

SUBSTITUTION OF SECTION 59A - AMNESTY SCHEME

OUR COMMENTS: The Legislative Department, Government of Haryana vide **Notification No. Leg. 1/2016. dated 13.01.2016** has substituted Section 59A as follows:

"59A Amnesty Scheme - Notwithstanding anything to the contrary contained in this Act and rules framed thereunder, the Government may, by notification in the Official Gazette, notify amnesty scheme covering payment of tax, interest, penalty or any other dues under the Act, for the period prior to the 1st April, 2015, subject to such conditions and restrictions, as may be specified therein, covering tax, rates of tax, period of limitation, interest, penalty or any other dues payable by a class of dealers or classes of dealers or all dealers."

MADHYA PRADESH

EXEMPTION FROM ENTRY TAX UNDER INDUSTRIAL PROMOTION POLICY, 2014

OUR COMMENTS: The Commercial tax Department, Government of Madhya Pradesh vide **Notification No. F A 3-33-2014-1-FIVE(03) dated 14.01.2016 has** fully exempted an industrial unit from payment of entry tax which is eligible to avail of the facility of exemption from payment of entry tax in accordance with the provisions of Promotion Scheme made by the Commerce, Industry and Employment Department under the Industrial Promotion Policy, 2014.