56TH ISSUE

21 FEB 2016 – 27 FEB 2016

TAX CONNECT

GST	
SERVICE TAX	CENTRAL EXCISE
CUSTOMS	INCOME TAX
	STATE TAXES

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EDITORIAL

Friends

We are glad to introduce to you our book, **Comprehensive Technical guide on Issues in Works Contract under Service Tax & VAT.** We have also incorporated a section on what GST expectedly holds for Trade & Industry as far as Taxation on Works Contract is concerned. This book is divided into Seven Parts covering several broad areas. Each area has the provisions directly from the Statue in the beginning and detailed discussions on the provisions in the form of questions and answers thereafter. Since Litigations on the subject have been manifold, we have also tried to cover judicial pronouncements extensively.

It is a sense of déjà vu as one remembers the ex-FM Mr. P Chidambaram speaking at events of Chambers throughout the country back in 2013 where he said that now the Govt. has a 360 degrees mechanism to track non-compliers and it shall take data from all sources available. To take this mechanism further, **now in Indirect Taxes also, the CBEC has asked for AIR (Annual Information Return)** from the RBI & Electricity Companies in the same lines as CBDT. Hence now the CBEC has also started collecting data from various other sources for ensuring better tracking of tax compliances. The information seeked **vide N No 1/2016-ST** is as follows –

1. **From RBI** - Details of foreign remittances for the receipt of services declared under various purpose codes, for such entities whose value of remittances aggregates to more than Rs. 50 Lakhs in a financial year to which the return pertains.
2. **From Electricity Board** - Electricity consumed by such manufacturers, using an induction furnace or rolling mill to manufacture certain goods whose aggregate value of clearances exceeds Rs. 150 lakh in the financial year to which the return pertains, as identified and intimated to him by the Principal Chief Commissioner or the Chief Commissioner of Central Excise and Service Tax in-charge of the Central Excise or Service Tax Zone, by the 30th June of the subsequent financial year.

The Notification shall take effect from 1.4.2016.

In Income Tax, the CBDT has come out with Circular No. 1/2016 & Instruction No. 1/2016. The brief details are as follows –

1. **Instruction No. 01/2016** - Following the prescribed time-limit in passing order under sub-section (8) of section 154 of Income-tax Act,
2. **Circular 1/2016** - Clarification of the term 'initial assessment year' in section 80IA (5) of the Income-tax Act, 1961

Both the above are discussed in this bulletin.

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

Truly Yours

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COMPLIANCE CALENDAR

Due date	COMPLIANCES FROM 21st February, 2016 to 27th February, 2016	STATUTE
21st February, 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 West Bengal 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
	ESI deposit of previous month	ESI Act
22nd February, 2016	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
25th February, 2016	Filing of monthly/quarterly VAT return	Jharkhand (Monthly)
	Issuance of WCT certificate	West Bengal VAT Act (Monthly) Mizoram VAT Act (Monthly
	Deposit of Entry tax of previous month	Maharashtra VAT Act (if registered dealer)

REPORT OF SUB COMMITTEE - II ON MODEL GST ACT, 2016 – ACCOUNTS & RECORDS

The provisions for Accounts & Records covered in CHAPTER VIII of the model GST Act can be summarized as follows:

Tax invoice

- Supply of taxable goods and/or services shall require issue of tax invoice showing the tax amount forming part of the price separately

- Supply of non-taxable goods and/or services or foods under compounded levy scheme under Section 8 of the Act shall not require issue of tax invoice but a bill of supply only

Credit and debit notes

- If the taxable value and/or tax charged in the tax invoice

  - **exceeds** the taxable value and/or tax payable in respect of such supply, the supplier may issue a credit note to the recipient **before 30th September** following the end of the financial year in which such supply was made, or the date of filing of the annual return, whichever is earlier.

  - **is less** than the taxable value and/or tax payable in respect of such supply, the supplier may issue a debit note to the recipient before **30th November** following the end of the financial year in which such supply was made, or the date of filing of the annual return, whichever is earlier.

- Both the supplier and recipient shall declare the details of such credit or debit note in the return for the month not later than September or November following the end of financial year in which such supply was made, or the date of filing of the relevant annual return, whichever is earlier.

Accounts and other records

- A registered taxable person shall keep and maintain at his principal place of business, a true and correct account of
  - production of goods,
  - inward or outward supply of goods and/or services
  - stock of goods
  - input tax credit availed,
  - output tax payable and paid

- In case of more than one place of business as specified in the certificate of registration, the accounts relating to each place of business shall be kept at such places of business concerned.

- A class of taxable persons may be notified to maintain additional accounts or documents

- In case the turnover exceeds the prescribed limit, one shall get his accounts audited by a chartered accountant or a cost accountant and shall submit to a copy of the audited accounts and the reconciliation statement under sub-section (2) of section 43.

Period of retention of accounts

- The accounts and records shall be maintained until the expiry of 60 months from the date of filing of Annual Return for the year pertaining to such accounts and records

- If an appeal or any other proceeding is pending before Appellate Authority or Tribunal or Court, the related records shall be maintained for a period of 1 year after final disposal of such proceeding or as may be specified.

SERVICE TAX

NOTIFICATIONS/CIRCULARS

SERVICE TAX AND CENTRAL EXCISE (FURNISHING OF ANNUAL INFORMATION RETURN) RULES, 2016

OUR COMMENTS: The CBEC, Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 4/2016-Service Tax dated 15.02.2016** has made "**Service Tax and Central Excise (Furnishing of Annual Information Return) Rules, 2016" to be effective from 01.04.2016.**

As per the rules, the information return required to be furnished under sub-section (1) of section 15A of Central Excise Act, 1944 shall be **furnished annually** for specified transactions **before 31st December** of the financial year following the financial year to which the return pertains in **Form AIRF** by the following persons :

- An officer of the Reserve Bank of India constituted u/s 3 of the Reserve Bank of India Act, 1934, who is duly authorised by the Reserve Bank of India

- An officer of a State Electricity Board or an electricity distribution or transmission licensee under the Electricity Act 2003, or any other entrusted entity entrusted.

COURT DECISIONS

NIRLON LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, MUMBAI [CESTAT MUMBAI]

BRIEF: Input services utilised for construction of immovable property for the purpose of renting as output services are eligible for cenvat credit.

OUR COMMENTS: In the above case, the assessee has availed CENVAT credit of the service tax paid on the input services, goods for discharging service tax liability under the category of "Renting of Immovable Property Services".
The Revenue contended that the assessee could not avail CENVAT credit on such input services and the goods and issued a show-cause notice by invoking extended period for the demand of ineligible CENVAT credit along with interest and penalties. **The Revenue here relied on the clarifications of CBEC by Circular No.96/7/2007-ST dated 23.08.2007 (further amended by Circular No. 98/1/2008) according to which input credit of service tax can be taken only if the output is a 'service' liable to service tax or a 'goods' liable to excise duty. Since immovable property is neither 'service' or 'goods' as referred to above, input credit cannot be taken.**

The assessee's contention is that **as per the provision of Rule 2(l) Cenvat Credit Rules, 2004,** CENVAT credit in respect of setting up of premises for providing taxable goods/services is allowed. The given circular is somewhat contrary to the provisions of Cenvat Credit Rules, 2004.

The service providers of the concerned input services (Electrical Work, Plumbing & Fire Fighting Work, Road Work, Gardening, Sewerage Treatment Plant, Drainage Work, Air Conditioning Work, Supply of Diesel Generator Set, Erection & Installation of Elevators and Civil Work by Contractors) have discharged the service tax under "Works Contract Service" and various other services. Also, the immovable property constructed was intended for renting out as output service, hence cenvat credit should be allowed.

Further, the issue is also well settled by the Tribunal in the case of Navaratna S.G. Highway - 2012 (28) STR 166 (T) which was upheld by the Hon'ble High Court of Andhra Pradesh. Also, the Hon'ble High Court of Gujarat in the case of Mundra Ports & Special Economic Zone Ltd. - 2015 (39) STR 726 (Guj) has held that CENVAT credit of duty paid on cement and steel used in construction of new jetties and other commercial buildings are entitled for input credit.

The Hon'ble CESTAT held that given the ratio of the higher judicial forum and the facts of the case the impugned order is unsustainable and cenvat credit should be allowed.

[Decided in favor of assessee]

CENTRAL EXCISE

NOTIFICATIONS/CIRCULARS

NOTIFICATION UNDER SECTION 11C OF THE CENTRAL EXCISE ACT ON DI-CALCIUM PHOSPHATE (ANIMAL FEED GRADE) OF ROCK PHOSPHATE ORIGIN FALLING UNDER HEADING 2835

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 4/2016-Central Excise (N.T.) dated 12.02.2016** has directed that the whole of excise duty payable under section 3 of the Central Excise Act, 1944 on Di-Calcium Phosphate (animal feed grade) of rock phosphate origin falling under heading 2835 of the First Schedule to the Central Excise Tariff Act, 1985, shall not be required to be paid in respect of the goods on which the duty was not levied during the period 01.02.2008 to 01.02.2014 in accordance with the said practice.

COURT DECISIONS

COMMISSIONER OF CENTRAL EXCISE VERSUS DASHION LTD [GUJARAT HIGH COURT]

BRIEF: The provisions of Rule 3 requires registration of input service distributors and require any provider of taxable service exceeding certain limit to make an application for registration within the time prescribed. However, nothing in the said Rules of 2005 or in the Rules of 2004 dis-entitle an input service distributor from availing Cenvat credit until such registration was applied and granted.

OUR COMMENTS: In the above case, the assessee is engaged in the manufacture of water treatment plant and other connected items and was availing benefit of Cenvat credit on the duty paid on inputs, capital goods and input services as permissible under Cenvat Credit Rules, 2004. The assessee had five manufacturing units and had its registered office at Vatva, Ahmedabad. The assessee was also providing several taxable services such as erection and commissioning, repairing and maintenance of water treatment plant, etc.

The Department objected the availing of cenvat credit on the grounds that the assessee had not registered itself under the Service Tax (Registration of Special Category of Persons), Rules 2005.

The Hon'ble High Court held that the omission to take registration as an Input Service Distributor can be considered as procedural irregularity and has to be considered sympathetically.

The Government had framed Rules of 2005 wherein the provisions of Rule 3 requires registration of input service distributors and require any provider of taxable service exceeding certain limit to make an application for registration within the time prescribed.

However, nothing in the said Rules of 2005 or in the Rules of 2004 dis-entitle an input service distributor from availing Cenvat credit until such registration was applied and granted.

Further, the assessee had maintained full records and made available for the Revenue to verify the correctness.

Also, the assessee has not got any extra benefit by doing this and no loss has occurred to the Revenue.

Hence, non-registration should only be treated as procedural lapse and cenvat credit should be allowed.

[Decided in favour of assessee]

THIS SPACE HAS BEEN INTENTIONALLY KEPT VACANT

CUSTOMS

NOTIFICATIONS & CIRCULARS

EXEMPTION OF BASIC CUSTOMS DUTY AND ADDITIONAL DUTY ON IMPORT OF SPECIFIED GOODS FOR DISPLAY OR USE AT SPECIIFIED EVENTS

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 8/2016 – Customs dated 05.02.2016** has exempted certain goods from basic excise duty and additional duty when imported into India for display or use at specified events.

The goods and events are specified in Schedule I and Schedule II of the notification.

COMMISSIONER OF CUSTOMS, CUSTOM HOUSE, TUTICORIN, TO ACT AS A COMMON ADJUDICATING AUTHORITY TO EXERCISE POWERS AND DUTIES OF THE COMMISSIONER OF CUSTOMS, AIR CARGO COMPLEX, CHENNAI

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 21/2016-Customs (N.T.) dated 08.02.2016** has appointed Commissioner of Customs, Custom House, Tuticorin (in addition to the appointment made vide Notification No.35/2007-Customs (N.T) dated 26.04.2007), to act as a common adjudicating authority to exercise the powers and discharge the duties conferred or imposed on the Commissioner of Customs, Air Cargo Complex, Chennai.

REVISION IN ALL INDUSTRY RATES (AIR) OF DUTY DRAWBACK OF VARIOUS ITEMS

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 22/2016-Customs (N.T.) dated 08.02.2016** has amended **Notification No. 110/2015 – Customs (N.T.)** dated **16.11.2015** and revised All Industry Rates (AIR) of Duty Drawback of various items including rice, Mats/carpets of furskin/'hair on' leatheror of furskin/'hair on' leatherin combination with other materials etc.

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. 23/2016-Customs (N.T.) dated 09.02.2016 and 25/2016-Customs (N.T.) dated 15.02.2016** 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.

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. 24/2016-Customs (N.T.) dated 12.02.2016 & in supersession of Notification No. 18/2016-Customs (N.T.) dated 04.02.2016** 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. **13.02.2016** 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-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	61.25	59.90

INCOME TAX

NOTIFICATIONS & CIRCULARS

CLARIFICATION OF THE TERM 'INITIAL ASSESSMENT YEAR' IN SECTION 80IA (5) OF THE INCOME-TAX ACT, 1961

OUR COMMENTS: The CBDT, Dept. of Revenue, Ministry of Finance, Government of India vide **Circular No. 1/2016-Customs (N.T.) dated 15.02.2016** has issued clarification of the term 'initial assessment year' in section 80IA (5) of the Income-tax Act, 1961.

Under the above sub-section, some Assessing Officers are interpreting the term 'initial assessment year' as the year in which the eligible business/ manufacturing activity had commenced and are considering such first year of commencement/operation etc. itself as the first year for granting deduction.

They are completely ignoring the clear mandate provided under sub-section (2) which allows a choice to the assessee for deciding the year from which it desires to claim deduction out of the applicable slab of fifteen (or twenty) years.

The Assessing Officers are, therefore, directed to allow deduction u/s 80IA in accordance with this clarification.

PRESCRIBED TIME-LIMIT OF 6 MONTHS IN PASSING ORDER UNDER SUB-SECTION (8) OF SECTION 154 OF INCOME-TAX ACT TO BE STRICTLY FOLLOWED

OUR COMMENTS: The CBDT, Dept. of Revenue, Ministry of Finance, Government of India vide **Circular No. 01/2016-Customs (N.T.) dated 15.02.2016** has directed that where an application for amendment is made by with a view to rectify any mistake apparent from record, the income-tax authority shall **strictly pass an order within a period of 6 months** from the end of the month in which such an application is received, by either making the amendment or refusing to allow the claim.

The view taken by the field authorities that since no action was taken within the prescribed time-frame, the application is lapsed and does not require any action, is incorrect.

The supervisory officers are directed to monitor the same and take necessary administrative action in case of non-adherence.

RECTIFICATION ORDER UNDER SECTION 154 TO BE PASSED IN WRITING

OUR COMMENTS: The CBDT, Dept. of Revenue, Ministry of Finance, Government of India vide **Circular No. 02/2016-Customs (N.T.) dated 15.02.2016** has directed that when any rectification order under section 154 of the Income-tax Act, 1961 ('Act') is being passed by the Assessing Officer on AST System, the same shall also be passed in writing by the Income-tax authorities.

Without giving a copy of the order, the concerned taxpayers remain unaware of such orders and consequentially, are unable to pursue the matter further, either in appeal or rectification, if required.

Also, sub-section (4) of section 154 of the Act mandates that rectification order shall be passed in writing by the Income-tax authorities.

THIS SPACE HAS BEEN INTENTIONALLY KEPT VACANT

ANDHRA PRADESH

STREAMLINING OF PROCEDURE OF DETENTION OF GOODS AT CHECK POSTS BY BANNING OF MANUAL SYSTEMS OF PHYSICAL CHECKS AT ICP/BCPS

OUR COMMENTS: The Commercial Taxes Department, Government of Andhra Pradesh vide **Circular No. CCT's Ref.No.Enft.D2/611/2007 dated 06.01.2016** has made provision for officers of ACTO and above working at ICP/BCP to enter the details of goods vehicles detained at the check post where BSNL Intranet or internet connectivity is available.

The officer concerned shall "Generate Detention Order number" in the VATIS-CVT data module and mention this Detention Order number as the reference number on the manually prepared detention order, show cause notice and orders etc. They shall also enter the details of vehicle, consigner, consignee, commodity, value and other details etc in the module.

No notice shall be issued manually without entering the details of goods vehicles in VATIS-CVT data system.

Further, **vide Circular dated 09.02.2016,** the officers have been instructed that the goods and documents detained in Parcel lorries shall not be sent to the assessing authority of the dealer/owner of the goods any more. They have to take action as per the procedure prescribed under section 45 of APVAT Act2005.

DELHI

TIME PERIOD FOR RECTIFICATION/REVSION FOR RETURN IN FORM GE-II

OUR COMMENTS: The Department of Trade & Taxes, Government of National Capital Territory of Delhi vide **No. F.3(619)/Policy/VAT/2016/1437-47 dated 11.02.2016** has directed that the returns in Form GE-II for the first 3 quarters of the FY 2015-16 (i.e. 1st April, 2015 to 30th June, 2015; 1st July, 2015 to 30th September, 2015 and 1st October, 2015 to 31st December, 2015) are required to be filed by 29th February, 2016.

Further any revision in Form GE-II was allowed, up to the end of financial year following the financial year of the quarterly period of the return.

GUJARAT

COMPULSORY E-PAYMENT OF TAX HAS BEEN EXTENDED FROM DECEMBER TO FEBRUARY PERIOD

OUR COMMENTS: The Government of Gujarat vide **Circular No. Guj-Vat-86 /2015-16/javak 179/154 dated 06.02.2016** has extended the compulsory e-payment of tax (local tax above Rs. 10 lakhs or if in any period the tax payable or tax paid is above Rs. 50,000/-) from December-15 to February-16 period.

WEST BENGAL

GUIDELINES AND WORK PROCESSES RELATING TO VAT FOR IMPLEMENTING INTEGRATED TAX MONITORING INTHE CIRCLES AND CHARGES OF THE DIRECTORATE

OUR COMMENTS: The Directorate of Commercial Taxes, Government of West Bengal vide **Circular No. Memo. No. 79CT/PRO dated 29.01.2016** has issued guidelines and work processes relating to VAT for implementing Integrated Tax Monitoring in the Circles and Charges of the Directorate.

For the time being this scheme will be implemented in Circles and Charges situated in Beliaghata, Salt Lake, Behala and Howrah buildings.