58TH ISSUE

6 MAR 2016 - 12 MAR 2016

TAX CONNECT

GST

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STATE TAXES

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EDITORIAL

Friends

Under WB VAT, The date for online reconciliation of Purchase sale mismatch for FY 14-15 has been extended till 21st March 2016. This comes as a welcome move.

Orders have been passed by The CCT u/s 102 of The WB VAT Act and clarity regarding the taxability of the following items have been provided –

1. **Rolled Oats** – in the matter of M/s Glaxosmithkline Consumer Healthcare Ltd.

2. **Corn flour (Maize Flour)** – in the matter of M/s Dabur India Ltd.

While the various initiatives taken by the Commercial Taxes dept. are laudable, however there are two points of concern which are raised by various Industries and Trades –

1. The use of pre deposit of 15% for filing of appeals in some cases as a revenue enhancing tool is creating hardship to genuine assesses.

2. The denial of CST forms by some charges on filmsy grounds is certainly leading to undesired litigation.

We have raised these issues in various forums and would urge the Hon'ble CCT to look into these issues.

In Central Excise, The CBEC vide N No. 19/2016-Central Excise(NT), dated 01.03.2016 has provided that if two or more premises of the same factory are located in a close area, these premises are within the jurisdiction of a Central Excise Range and subject to certain conditions, the CCE may be prescribed, allow single registration.

Further, the CBEC vide Circular No. 1017/5/2016-CXdated 29.02.2016 has also clarified that benefit extending the facility of providing Certificate as proof of payment of Central Excise duty to Small Scale Industry shall be extended to the entire industry as a matter of trade facilitation.

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 6th March, 2016 to 12th March, 2016	STATUTE
7th March, 2016	Deposit of WCT of previous month	Assam VAT Act Tripura VAT Act Manipur VAT Act
	TDS/TCS deposit of previous month	Income Tax Act
10th March, 2016	Deposit of VAT of previous month	Chattisgarh VAT Act Madhya Pradesh VAT Act
	Deposit of WCT of previous month	Chattisgarh VAT Act Madhya Pradesh VAT Act West Bengal VAT Act Nagaland VAT Act Meghalaya VAT Act Mizoram VAT Act Arunachal Pradesh VAT Act
	Issuance of WCT certificate	Madhya Pradesh VAT Act
	Deposit of Ptax of previous month	Andhra Pradesh VAT Act Madhya Pradesh VAT Act
	Deposit of Entry tax of previous month	Chattisgarh VAT Act Madhya Pradesh VAT Act

REPORT OF SUB COMMITTEE - II ON MODEL GST ACT, 2016 – RETURNS: CLAIM OF INPUT TAX CREDIT (BY THE RECIPIENT) AND REDUCTION IN TAX LIABILITY ON ACCOUNT OF CREDIT NOTES (BY THE SUPPLIER)

The provisions relating to claim of input tax credit (by the recipient) and reduction in tax liability on account of credit notes (by the supplier) covered in CHAPTER IX of the model GST Act can be summarized as follows:

Claim of input tax credit (ITC) by the recipient of supplies

- The ITC may be claimed in the return and shall be provisionally allowed and credited to the ITC ledger of the taxable person.
- **The claim shall be verified** and excess credit, if any shall be reduced in the ITC ledger.
- **The claim shall be matched with the details declared by the supplier in his return.** The claim in respect of imported goods imported shall be matched with the additional duty of customs paid under section 3 of the Customs Tariff Act, 1975 (51 of 1975) on such goods.
- After matching, the acceptance shall be communicated to the taxable person claiming the input tax credit and the discrepancy shall be notified to both such taxable persons.
- If the supplier does not rectify the discrepancy communicated, the ITC allowed provisionally shall stand reduced in the ITC ledger of the recipient who shall then pay the reduction amount along with applicable interest.
- The ITC reversed can be reclaimed by the recipient if the supplier furnishes the details of the invoice/debit note in his return, else, the ITC so reclaimed shall stand reversed and the taxable person shall be liable to pay the tax and penal interest.
- After successful reclaim, the interest paid shall be refunded by crediting the cash ledger of the such taxable person
- No reclaim shall be allowed after the due date for filing of the return for September month following the end of the financial year or the date of filing of relevant annual return, whichever is earlier.

Claim of the reduction of tax liability on account of credit note issued by the supplier

- **The reduction of tax liability claimed by the supplier on account of credit note shall be verified** and if there is any duplication of claims, the tax liability of the supplier shall be enhanced to the extent of such duplicate claim.
- **The reduction of tax liability shall also be matched with the reduction in ITC claimed by the recipient in his return**
- After matching, the acceptance shall be communicated to the supplier and the discrepancy shall be notified to both such taxable persons.
- If the recipient does not rectify the discrepancy, the tax liability of the supplier shall be enhanced to the extent of the discrepancy who shall then pay the enhancement amount along with applicable interest.
- The reduction in tax liability reversed can be reclaimed by the supplier if the recipient furnishes the details of the credit note in his return, else, the reduction in tax liability so reclaimed shall stand reversed and the taxable person shall be liable to pay the tax and penal interest.
- After successful reclaim, the interest paid shall be refunded by crediting the cash ledger of the such taxable person
- No reclaim shall be allowed after the due date for filing of the return for September month following the end of the financial year or the date of filing of relevant annual return, whichever is earlier.

SERVICE TAX

COURT DECISIONS

LION SECURITIES SERVICES VERSUS COMMISSIONER OF SERVICE TAX BANGALORE-SERVICE TAX [CESTAT BANGALORE]

BRIEF: If the show-cause notice did not specify the amount of tax payable, the adjudicating authority cannot demand for any amount or appropriate any amount.

OUR COMMENTS: In the above case, a show cause notice was issued on the assessee stating that October 2003 onwards, the assessee has not filed the returns at all.

The adjudicating authority later demanded service tax payable by the assessee.

The assessee contended that since the show-cause notice speaks of only non-filing of return and does not specify any amount, the authority cannot demand any amount to be paid by the assessee.

The Hon'ble CESTAT held that according to provisions of Section 73(1) of Finance Act, 1994, whenever any service tax has not been paid or short paid, a notice has to be issued requiring the assessee to show-cause as to why he should not pay the amount specified in the notice.

In the present case, it is clear from the show-cause notice that it speaks of non-filing of return from October 2003 and does not specify any amount to be paid by the assessee. - It is a statutory requirement that amount to be paid has to be indicated in the show-cause notice and in the adjudication proceedings, the adjudicating authority is required to determine the amount payable.

Accordingly, the demand was set aside.

[Decided in favor of assessee]

CITIBANK N.A. VERSUS COMMISSIONER OF SERVICE TAX, CHENNAI [CESTAT CHENNAI]

BRIEF: The "mark up" charges accruing to the issuing bank when card holder uses credit card to pay in foreign exchange abroad is not liable to service tax under credit card services (under Banking & Other Financial Services).

OUR COMMENTS: In the above case, the assessee is engaged in providing banking service registered with service tax for discharging service tax on their banking operations and also credit card/debit card services.

The Revenue issued show cause notice demanding service tax payable on the Currency Conversion Charges (mark up) in respect of Credit Card Services and Debit Card Services.

The Hon'ble CESTAT held that the mark-up is a part of the exchange rate that is applied for arriving at the cost of goods or services purchased by the card holder and hence is a part of the cost of goods / services purchased which are recoverable from the user and is not a consideration for the services of providing credit to the user.

Even if it is considered as service, he submits that entire activity was rendered outside India, where card holder used credit card. The services were consumed abroad since cardholder enable to make a transaction in foreign currency abroad and services were rendered outside India and hence not taxable which is outside the scope of levy itself.

Accordingly, the demand was set aside.

[Decided in favor of assessee]

CENTRAL EXCISE

NOTIFICATIONS/CIRCULARS

REGISTRATION OF TWO OR MORE PREMISES AS ONE REGISTRANT IN CENTRAL EXCISE

OUR COMMENTS: The CBEC, Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 19/2016-Central Excise(NT), dated 01.03.2016** has **amended Notification No. 3/2001-Central Excise (NT), dated 26.06.2001** to provide that if two or more premises of the same factory are located in a close area, these premises are within the jurisdiction of a Central Excise Range and the process undertaken there are interlinked and the units are not operating under any of the area based exemption notifications, the Commissioner of Central Excise, may, subject to proper accountal of the movement of goods from one premise to other and such other conditions and limitations, as may be prescribed, allow single registration.

FACILITY OF PROVIDING CERTIFICATE AS PROOF OF PAYMENT OF CENTRAL EXCISE DUTY EXTENDED TO THE ENTIRE INDUSTRY

OUR COMMENTS: The CBEC, Dept. of Revenue, Ministry of Finance, Government of India vide **Circular No. 1017/5/2016-CXdated 29.02.2016** has decided that benefit of Circular No.620/11/2002-CX dated 20.02.2002 (issued for extending the facility of providing Certificate as proof of payment of Central Excise duty to Small Scale Industry) shall be extended to the entire industry as a matter of trade facilitation.

This circular shall come into force from 01.03.2016.

CENTRAL EXCISE CASES OLDER THAN 15 YEARS INVOLVING DUTY LESS THAN RUPEES FIVE LAKHS: WITHDRAWAL FROM PROSECUTION

OUR COMMENTS: The CBEC, Dept. of Revenue, Ministry of Finance, Government of India vide **Circular No. 1018/6/2016-CX dated 29.02.2016** has decided to recommend filling of application before the Hon'ble Court to withdraw from prosecution of the cases where evasion of Central Excise duty is less than Rs. 5 lakhs and prosecution is pending for more than 15 years.

Chief Commissioner shall give direction to the Central Excise Officer in the concerned Commissionerate to request the Public Prosecutor to file an application requesting the Court to allow withdrawal from prosecution in accordance with law.

Application should also be moved for cases, where the prosecution, against the main noticee is proposed to be withdrawn, as the grounds for withdrawal of prosecution would apply equally to the co noticees.

On examination of specific cases, if there are more grounds available for discontinuation of prosecution proceedings, the same may be incorporated in the application before writing to the Public Prosecutor to file the application.

On the other hand, if there are valid grounds available for continuation of the prosecutions proceedings, the same should be examined by the Chief Commissioner and where it is proposed to continue with prosecution, it should be brought to the notice of the Central Excise wing in the Board with necessary justification.

This shall come into force from 1st of March, 2016.

CHANGE IN RATE OF INTEREST ON GOODS WAREHOUSED FOR EXPORT, WHEN CLEARED TO DTA FROM 24% P.A. TO 15% P.A.

OUR COMMENTS: The CBEC, Dept. of Revenue, Ministry of Finance, Government of India vide **Circular No. 1019/7/2016-CX dated 29.02.2016** has amended **Circular No. 581/18/2001-CX, dated 29.06.2001.**

In Paragraph 10.3 in the said circular, the interest on goods, warehoused for export, when diverted for home-consumption has been amended from 24% p.a. to 15% p.a.

This circular shall come into force on 1.4.2016.

CUSTOMS

NOTIFICATIONS/CIRCULARS

MORE INLAND CONTAINER DEPOTS IN HARYANA FOR LOADING AND UNLOADING OF GOODS

OUR COMMENTS: The CBEC, Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. Notification No. 27 /2016-Customs (N.T.), dated 18.02.2016** has **amended Notification No. 12/97-CUSTOMS (N.T.), dated the 2nd April, 1997,** and appointed Village Jattipur, near Samalkha, Panipat as Inland Container Depots for loading and unloading of goods in Haryana.

LAND CUSTOMS STATIONS AND ROUTES FOR IMPORT AND EXPORT OF GOODS BY LAND OR INLAND WATER WAYS

OUR COMMENTS: The CBEC, Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. Notification No. 28 /2016-Customs (N.T.), dated 18.02.2016** has **amended Notification No. No. 63/94-CUSTOMS (NT), dated the 21st November, 1994,** and appointed **"Sikta in West Champaran District, Bihar"** as Land Customs Station for the clearance of all goods or any class of goods imported or exported by land from or to the land frontiers in Nepal,

And

"Road connecting Sikta in West Champaran District, Bihar in India and Bhiswabazar in Nepal".as the routes by which alone all goods or class of goods may pass by land or inland water into or out of India to the land frontiers of Nepal

COURT DECISIONS

COMMISSIONER OF CUS., VISAKHAPATNAM VERSUS TRUWOODS PVT. LTD. [SUPREME COURT]

BRIEF: The assessable value of the goods cannot be enhanced on the basis of documents which do not bear any signatures and are photocopies which are not even attested.

OUR COMMENTS: In the above case, the assessee had imported certain material known as "wood veneers" of various thickness from Singapore. Bill of Entry was filed stating the particular value of the goods as per the invoices raised by the exporter in Singapore.

The Revenue contended that the assessee has not disclosed the correct price and it was a case of under-invoice. Accordingly, it issued four show cause notices alleging under-invoicing and demanding differential duty, etc. Later four adjudication orders-in-original were passed confirming the demand of differential duty.

The Revenue while issuing the notice also produced certain documents purported to have been issued by Italian customs authorities as per which the price of these very goods was shown higher by the manufacturer of these goods through whom the goods were purchased by the exporter in Singapore for sale to the assessee.

The assessee challenged the admissibility of these documents on the ground that they are not authenticated.

The Hon'ble CESTAT held that the documents procured by the Revenue do not bear any signatures and are photocopies which are not even attested and accordingly, the assessable value could not be enhanced on the basis of such documents.

These appeal of the Revenue was accordingly, dismissed.

[Decided against Revenue]

INCOME TAX

NOTIFICATIONS & CIRCULARS

NOTIFICATION OF THE MADHYA PRADESH STATE AIDS CONTROL SOCIETY FOR SECTION 10 CLAUSE 46

OUR COMMENTS: The CBDT, Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 9/2016 dated 25.02.2016** has notified for the purposes of Section 10 clause 46, the Madhya Pradesh State AIDS Control Society a body constituted by the Government of Madhya Pradesh in respect of the specified income (grants-in-aid, interest on such grants) arising to that Society

This notification shall be deemed to apply for the period 01.06.2011 to 31.03.2013 with respect to the FY 2013-14, 2014-15 and 2015-16.

3. The notification shall be effective provided the society does not engage in any commercial activity and the nature of the specified income remain unchanged throughout the financial year it files return of income in accordance with the provision of clause (g) of sub-section (4C) section 139 of the Income-tax Act, 1961.

AMENDMENT IN NOTIFICATION NO. 59/2015 DATED 06.07.2015: AUTHORISED ENTITIES UNDER SECTION 10(15)(IV)(H) TO ISSUE TAX-FREE, SECURED, REDEEMABLE, NON-CONVERTIBLE BONDS

OUR COMMENTS: The CBDT, Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 10/2016 dated 26.02.2016** has amended **Notification No. 59/2015 dated 06.07.2015** issued for authorising entities under Section 10(15)(iv)(h) of the Income Tax Act, 1961 to issue tax-free, secured, redeemable, non-convertible bonds.

As per the amendment, the bond amount allocated to Indian Railway Finance Corporation Limited (IRFC) shall be amended from 6000 crore to
TRANCHE I: 6000 crore and TRANCHE II: 3500 crore.

Also, out of the bond amount to be raised through public issue, 60% shall be earmarked for RII's by NABARD (40% before the amendment) and IRFC (TRANCHE II).

INCOME-TAX (3RD AMENDMENT) RULES, 2016: AMENDMENT IN RULE 45 - FORM OF APPEAL TO COMMISSIONER (APPEALS)

OUR COMMENTS: The CBDT, Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 11/2016 dated 01.03.2016** has amended Rule 45 relating to appeal to Commissioner (Appeals) in Form No. 35.

As per the amendment the Form 35 shall be furnished in the following manner, namely:-

(1) in the case of a person who is required to furnish return of income electronically under sub-rule(3) of rule 12

(i) by furnishing the form electronically under digital signature, if the return is furnished under digital signature;

(ii) by furnishing the form electronically through electronic verification code in a case not covered under sub-clause (i);

(2) in a case where the assessee has the option to furnish the return of income in paper form, by furnishing the form electronically in accordance with clause (a) of sub-rule(2) or in paper form.

(3) The form shall be verified by the person authorised to verify the return of income under section 140 of the Act.

(4) Any accompanying document shall be furnished in the same manner as the form.

(5) The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be, shall-

(i) specify the procedure for electronic filing of Form No.35 and documents;

(ii) specify the data structure, standards and manner of generation of electronic verification code, referred to in sub-rule(2), for the purpose of verification of the person furnishing the said form; and

(iii) be responsible for formulating and implementing appropriate security, archival and retrieval of policies in relation to the said form so furnished."

DELHI

LAST DATE OF FILING OF ONLINE RETURN IN FORM 9 EXTENDED TO 31.03.2016

OUR COMMENTS: The Department of Trade & Taxes, Government of National Capital Territory of Delhi vide **Circular No. F.3(619)/Policy/VAT/2016/1437-47 F.3(589)/Policy/VAT/2015/1542-48 dated 29.02.2016** has extended the last date of filing of online return in Form 9 for the year 2014-15, prescribed under Rule 4 of Central Sales Tax (Delhi) Rules, 2005 to 31.03.2016.

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

HIMACHAL PRADESH

AMENDMENT IN RULE 77 & FORM VAT-XXXVII (FORM FOR MEMORANDUM OF APPEAL)

OUR COMMENTS: The Excise & Taxation Department, Government of Himachal Pradesh vide **Notification No. No. EXN-F(10)-3/2014 dated 25.02.2016** has amended the Himachal Pradesh Value Added Tax Rules, 2005, namely:

The following clause shall be substituted in place of R**ule 77(1)(ii)**

"(ii) be in Form VAT-XXXVI when appeal is filed under section 45(1) (a) or (b), and in Form VAT-XXXVII when appeal is filed under section 45(1)(c);".

Also, in Form VAT-XXXVII appended to the said rules, for the words, figures and bracket "under section 30 (c)", the words, figures and brackets "under section 45(1)(c)" shall be substituted.

AMENDMENT OF HPVAT SCHEDULE A & B

OUR COMMENTS: The Excise & Taxation Department, Government of Himachal Pradesh vide **Notification No. No. EXN-F(10)-5/2015 dated 24.02.2016** has made various amendments in SCHEDULES 'A' and 'B' appended to the Himachal Pradesh Value Added Tax Act, 2005.

The amendments are self-explanatory. The readers may refer the aforesaid notification.

UTTARAKHAND

AMENDMENT TO RULE 11, 26C, 29 & 30

OUR COMMENTS: The Government of Uttarakhand vide **Notification No. 181/2016/7(120)/XXVII(8)/2015 dated 29.02.2016** has added a new proviso in Rule 11 of the Uttarakhand Value Added Tax Rules, 2005 (after the existing fourth proviso of sub-rule (1), by which the Commissioner, may by a general order, make it mandatory for the dealers to file a periodical monthly return and to pay due tax, composition money, fee, TDS, interest or any other amount on monthly basis.

Further, vide Notification No. 181/2016/181(120)/ XXVII(8)/ 2008 dated, 29.02.2016, Rule 26C, 29 & 30 have been amended,

Under Rule 26(C) and 29, Commissioner may by notification prescribe the manner in which e-declaration/e-Form-XVI shall be used.

Further, no fee shall be payable for the electronic issuance or generation / downloading of declaration forms for import under Rule 30(3) relating to issue and submission of declaration forms for import.