60TH ISSUE

20 MAR 2016 - 26 MAR 2016

TAX CONNECT

GST

SERVICE TAX | CENTRAL EXCISE

CUSTOMS | INCOME TAX

STATE TAXES

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EDITORIAL

Friends

We had a very interactive meeting with the Chief Commissioner of Service Tax, Mr Panda, on ease of doing business. The Ld Chief Commissioner was very receptive and approachable. He even has agreed to personally help in certain matters. He cited a case when there was a technical issue with granting of registration of a person and he himself got involved to solve the issue within minutes.

While he accepted that there were constraints within which the department has to work, yet he also urged assesses to also meet compliance norms in true spirit.

The following are the broad issues which were highlighted and taken up by The CCST –

1. Activating the PR/ Help Desk Section for resolving day to day queries of assesses. in the same manner like Commercial Taxes Dept. **We feel that this will be the game changer in ease of doing business.**
2. Non-processing of surrender of Service Tax registration for small dealers.
3. The EC & SHEC CENVAT availed before 1st March 2015 is still lying the books unutilized. An enabling provision must be issued to utilize the same against other duties and taxes.'
4. Appeal process under the Dept more meaningful and accountable. At present justice is provided only at the Tribunal level.
5. Simultaneous handling of the same case by the Audit Wing and the anti evasion wing; sometimes even the DGCEI.

The Hon'ble CCST has assured us that he would look into the matter. He even commented that foremost, over the last 6-8 months he has tried to bring a difference in the attitude of his officers.

In Income Tax, we are all aware that in last March 2015, the Dept in Kolkata had come down severely. There is yet another news for **assesses in Kolkata –**

Systems Directorate has now uploaded details of information in respect of individual assessees who have made transactions in penny stocks. The said instruction is in the context of investigation conducted by Kolkata Investigation Directorate in respect of large number of penny stock companies, whose share prices were artificially raised on the Stock Exchanges in order to book bogus claims of Long Term Capital Gains or Short Term Capital Loss by various beneficiaries. Extensive investigation, including search and seizure/survey action on entry providers, riggers, beneficiaries etc. was conducted by the Investigation Directorate in such cases.

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

Truly Yours

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FCA, CIDT (ICAI), B. Com

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COMPLIANCE CALENDAR

Due date	COMPLIANCES FROM 20th March, 2016 to 26th March, 2016	STATUTE
20th March, 2016	Deposit of VAT of previous month	Andhra Pradesh VAT Act, Karnataka VAT Act, Tamil Nadu VAT Act, Chandigarh VAT Act Punjab VAT Act (if payment by cheque) 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) Punjab VAT Act (Monthly, if payment is through cheque) Manipur VAT Act (Monthly, if PY turnover 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 (Tax >/= Rs. 1 lac)
	Filing of monthly/quarterly WCT return	Karnataka VAT Act (Monthly)
	Issuance of WCT certificate	Uttar Pradesh VAT Act , Manipur VAT Act
21st March, 2016	Deposit of VAT of previous month	Delhi VAT Act, Maharashtra VAT Act, Odisha VAT Act, West Bengal VAT Act Assam 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
	ESI deposit of previous month	ESI Act
22nd March, 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 March, 2016	Filing of monthly/quarterly VAT return	Jharkhand VAT Act (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: TAX DEDUCTED AT SOURCE

The provisions relating to tax deducted at source covered in CHAPTER X of the model GST Act can be summarized as follows:

Tax deduction at source

- The Central or a State Government may mandate any of its department/Local authority/Governmental agencies, or notify entities to **deduct tax @1%** from the payment made or credited to the supplier of taxable goods and/or services**, where the total value of supply exceeds Rs. 10 lacs.**

- The amount deducted shall be **paid to the credit of the appropriate Government within 10th of next month.**

- **The deductor shall furnish a certificate to the deductee (within five days of crediting the amount so deducted to the appropriate Government)** mentioning the contract value, rate of deduction, amount deducted, amount paid to the appropriate Government, else, the deductor shall be liable to pay **a late fee of Rs. 100/day (to the maximum of Rs. 5,000).**

- The deductee shall claim credit of the tax deducted and reflected in the return of the deductor.

- Every deductor shall obtain a registration within the time specified and in the manner prescribed.

- Every deductor shall obtain furnish a return within the time specified and in the manner prescribed, else he shall be liable to pay a late fee of Rs. 100/day (to the maximum of Rs. 5,000).

- If any deductor fails to pay the amount deducted to the credit of the appropriate Government, he shall be liable to pay interest in addition to the amount of tax deducted u/s 21 of the Act.

- Recovery of the amount in default shall me made as per the provisions in section 20 of this Act.

- Refund to the deductor on account of excess or erroneous deduction shall be made in accordance with the provisions of section 22 of this Act.

THIS SPACE HAS BEEN INTENTIONALLY KEPT VACANT

SERVICE TAX

COURT DECISIONS

COMMISSIONER OF SERVICE-TAX VERSUS TAVANT TECHNOLOGIES INDIA PVT LTD [KARNATAKA HIGH COURT]

BRIEF: There is no statutory provision which prescribes that registration is mandatory and that if such a registration is not made the assessee is not entitled to the benefit of refund i.e. a refund claim cannot be denied on the ground which is not existence in law.

OUR COMMENTS: In the above case, the Revenue was not been able to show that there was any liability on the part of the assessee to pay service tax which was required to be adjusted against cenvat credit or that the assessee was not entitled to the refund.

The Revenue was also not able to show any provision under Rule 5 of Cenvat Credit Rules, which provides for condition precedent for registration of the service provider.

The Hon'ble High Court in reference to the decision in case of **M/s. mPortal India Wireless Solutions Private Limited [2011 (9) TMI 450 - KARNATAKA HIGH COURT]** held that in the absence of a statutory provision which prescribes that registration is mandatory and that if such a registration is not made the assessee is not entitled to the benefit of refund, the Revenue committed a serious error in rejecting the claim for refund on the ground which is not existence in law.

Accordingly, the finding of the Revenue was set aside."

[Decided against Revenue]

COMMR. OF C.E. CUSTOMS & SER TAX VERSUS M/S FEDERAL BANK LIMITED [SUPREME COURT]

BRIEF: The authorities cannot levy service tax on an activity which is excluded from levy of service tax, by indirect method of charging the same service under any other general charging heads, such as business auxiliary service.

OUR COMMENTS: In the above case, the assessee Bank provided services such as collection of telephone bills, collection of insurance premium on behalf of the client companies. Section 65(12) covers all charging services rendered by the Banks wherein such cash management services stood excluded from the purview of service tax at the hands of the Bank until 31.05.2007.

A Circular was issued by the Central Board of Excise and Customs (CBEC) dated 01.06.2007 wherein the Board clarified that cash management services will be leviable to service tax. Cash management services includes services of collection of receivables, execution of payment, management of liquidity and providing customized Management Information System (MIS) reports, provided by banks to clients such as corporate clients."

However, the Revenue wrongly took the aid of general charging head "Business auxiliary service" and demanded service tax on the cash management services rendered by the bank before the issuance of the Board circular.

The Hon'ble Supreme Court held that when cash management services stood excluded from the purview of service tax at the hands of the Bank until 31.05.2007, the authorities cannot levy service tax on an activity which is essentially cash management service, by taking aid of other general charging heads, such as business auxiliary service.

Accordingly, the demand of the Revenue was set aside."

[Decided against Revenue]

CENTRAL EXCISE

NOTIFICATIONS/CIRCULARS

CENTRAL EXCISE (REMOVAL OF GOODS AT CONCESSIONAL RATE OF DUTY FOR MANUFACTURE OF EXCISABLE AND OTHER GOODS) RULES, 2016 TO BE EFFECTIVE FROM 16.03.2016

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 22/2016-Central Excise (N.T.) dated 15.03.2016** has amended **Notification No.20/2016-Central Excise (N.T.), dated 01.03.2016 and** notified 16.03.2016 as the effective date for Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable and Other Goods) Rules, 2016.

Further the requirement of submission of security for availing the benefit under the said notification is being done away with.

VALUATION OF IMPORTED SET TOP BOXES UNDER SECTION 4 OF THE CENTRAL EXCISE ACT, 1944

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. Circular No. 1020/8/2016-CX dated 11.03.2016** has clarified that the judgement of Hon'ble Tribunal in case of M/s Bharti Telemedia Ltd (supra), may be followed for assessment of CVD on imported STBs, where the circumstances are identical.

The Hon'ble Tribunal in case of M/s Bharti Telemedia Ltd. Vs Commissioner of Customs (Import), Nhava Sheva reported as [2016 (331) E.L.T. 138 (Tri.-Mumbai)] or [2015-TIOL-1863-CESTAT-MUM] has held that one of the conditions to be met for CVD to be levied on Retail Sale Price is that under the Legal Metrology Act, there should be requirement to declare on the package, the retail sale price (RSP) of the goods.

COURT DECISIONS

M/S. MAYAR INDIA LTD., C.C.E., DELHI-II VERSUS C.C.E., DELHI-II, M/S. MAYAR INDIA LTD. [CESTAT NEW DELHI]

BRIEF: The mention of the house name/ brand-name shall not mean that the products are not sold in the name specified in Ayurvedic text and hence, not disentitle the assessee from claiming the exemption available to Ayurvedic medicaments. Also, there is distinction between house mark and product mark. A monograph which only identifies the manufacturer would not make the medicine patent or proprietary.

OUR COMMENTS: In the above case, the assessees are engaged in the manufacture of various Ayurvedic medicines like Neem, Boswellia, Serrata, Ashwagandha, Gymnema, etc. They classified these items under tariff heading 3003.31 and claimed full exemption available to Ayurvedic medicaments.

The Revenue contended that these products are classifiable under tariff heading 3003.39 and liable to duty as "Patent or Proprietary Medicament". The claim was made on the grounds that these products carried house name/ brand-name and hence appeared to have been sold as "Patent or Proprietary Medicament" and not ayurvedic medicines.

The Hon'ble CESTAT noted that the goods in question are manufactured in accordance with the formulae of the authoritative text and name as mentioned in the text are mentioned in the packing of the product. The mention of the house name/ brand-name cannot lead to the conclusion that these products are not sold in the name specified in Ayurvedic text.

A reference was made to the decision **in Zandu Pharmaceuticals (2004 (8) TMI 133 - CESTAT, MUMBAI)** where the Tribunal held that the word "Zandu" appearing on the label of Ayurvedic medicines will not disentitle the assessee from claiming the exemption available to Ayurvedic medicaments.

The Hon'ble Supreme Court in Astra Pharmaceuticals Pvt. Ltd. (1994 (12) TMI 77 - SUPREME COURT OF INDIA) held that there is distinction between house mark and product mark. A monograph which only identifies the manufacturer would not make the medicine patent or proprietary.

Further, C.B.E.C. issued clarification (dated 29.03.1994) that Chavanprash is prepared as per Ayurvedic Text Books and sold as Chavanaprash but the manufacturer's name or mark, logo, symbol etc. is also prominently displayed, in such situation also full exemption shall be available as available to Ayurvedic medicines.

Accordingly, it was held that the assessee is right in claiming exemption available to Ayurvedic medicaments.

[Decided in favor of assessee]

CUSTOMS

NOTIFICATIONS/CIRCULARS

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

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 38/2016-Customs (N.T.) dated 15.03.2016** 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.

CUSTOMS (IMPORT OF GOODS AT CONCESSIONAL RATE OF DUTY FOR MANUFACTURE OF EXCISABLE GOODS) RULES, 2016] TO BE EFFECTIVE FROM 16.03.2016

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 39/2016-Customs (N.T.) dated 15.03.2016** has amended **Notification No.32/2016-Cus (N.T.), dated 01.03.2016 and** notified 16.03.2016 as the effective date for Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2016].

Further the requirement of submission of security for availing the benefit under the said notification is being done away with.

RESTRICTION ON MERCHANT SHIP TO CARRY INDIAN CURRENCY NOTES OF RS. 100/-DENOMINATION FOR DISBURSEMENT OF WAGES ETC. ON BOARD OF FOREIGN GOING VESSEL HAS BEEN WITHDRAWN

OUR COMMENTS: The CBEC, Dept. of Revenue, Ministry of Finance, Government of India vide **Circular No. 7/2016-Cus dated 07.03.2016** has decided to withdraw the restriction on denomination of Indian currency imposed vide earlier **Circular No. 51/1999 dated 12.08.1999.**

The restriction on merchant ship has been withdrwanin light of the revised RBI guidelines which does not prescribe any restriction on denomination of Indian currency, carried by an Indian traveller or Captain of a Ship.

DOMESTIC PASSENGERS BOARDING INTERNATIONAL FLIGHTS IN THE DOMESTIC LEG ARE NOT REQUIRED TO FILE THE CUSTOMS BAGGAGE DECLARATION FORM ANYMORE

OUR COMMENTS: The CBEC, Dept. of Revenue, Ministry of Finance, Government of India vide **Circular No. 8/2016-Customs dated 08.03.2016** has decided that the domestic passengers who board international flights in the domestic leg are not required to file the Customs Baggage declaration form.

CLARIFICATION ON CLASSIFICATION OF 'WIRELESS MICROPHONE SETS/SYSTEMS CONSISTING OF ONE OR MORE WIRELESS MICROPHONES AND A WIRELESS RECEIVER

OUR COMMENTS: The CBEC, Dept. of Revenue, Ministry of Finance, Government of India vide **Circular No. 9/2016-Customs dated 11.03.2016** has clarified that in consequent to deletion of tariff line 8525 50 50 in Finance Bill 2016, all microphones including Wireless microphone sets/systems consisting of one or more wireless microphones and a wireless receiver are classifiable under tariff item 8518 10 00.

INCOME TAX

NOTIFICATIONS & CIRCULARS

MONETARY LIMIT OF RS 10 LAKHS FOR FILING APPEALS BEFORE THE ITAT APPLICABLE ON CROSS OBJECTIONS ALSO

OUR COMMENTS: The CBDT, Dept. of Revenue, Ministry of Finance, Government of India **vide Circular F.NO.279/MISC./M-142/2007-ITJ (PART) dated 08.03.2016** has clarified that the monetary limit of Rs. 10 lakhs for filing appeals before the ITAT would apply equally to cross objections under section 253(4) of the Act.

Henceforth, cross objections below this monetary limit, already filed, should be pursued for dismissal as withdrawn/not pressed and further cross objections below the monetary limit may not be considered.

Similarly, references to High Courts below the monetary limit of Rs. 20 lakhs should be pursued for dismissal as withdrawn/not pressed.

VERIFICATION OF GENUINENESS OF AGRICULTURAL INCOME SHOWN IN INCOME TAX RETURN BY ASSESSEES FOR ASSESSMENT YEARS 2011-12 TO 2013-14

OUR COMMENTS: The CBDT, Dept. of Revenue, Ministry of Finance, Government of India vide **Circular No. F.NO.DGIT(S) /DIT(S)-3/ AST/ PIL, MATTER/ AGRICULTURAL INCOME /97 /2015-16 dated 10.03.2016** has directed assessing officers to verify genuineness of agricultural income of more tha Rs. 1 crore shown in Income Tax Return by assessees for Assessment Years 2011-12 to 2013-14.

The circular has been issued for concerns raised that assessees may be engaged in routing their unaccounted/illegal money in the garb of agricultural income thereby not only claiming exemptions on such income but also engaged in the money laundering activities.

Since agricultural income is only used for rate purposes, taxpayers may have inadvertenlly made data entry errors while filling up the fields for agricultural income.

Hence, the assessing officers may be directed to

(i) Verify whether the taxpayer may have made a data entry error while filling up the return.

(ii) Wherever scrutiny assessment is completed, AO may provide feedback based on assessment records.

(iii) In cases where proceedings u/s 143(3) are pending, assessing officers may be informed to thoroughly verify the claims.

DEMANDS CREATED ON ACCOUNT OF MISMATCH OF CREDIT DUE TO NON-PAYMENT OF TDS AMOUNT BY THE DEDUCTOR SHALL NOT BE ENFORCED ON DEDUCTEE

OUR COMMENTS: The CBDT, Dept. of Revenue, Ministry of Finance, Government of India vide **Circular No. F.NO.275/29/2014-IT(B) dated 11.03.2016** has reiterated the instructions contained in its letter dated 1-6-2015 and directed the assessing officers not to enforce deductee for the demands created on account of mismatch of credit due to non-payment of TDS amount by the deductor.

THIS SPACE HAS BEEN INTENTIONALLY KEPT VACANT

CHATTISGARH

EXEMPTION TO REGISTERED DEALERS FROM CERTAIN PROVISIONS SUBJECT TO FILING OF FORM 18 FOR FY 2013-14 & 2014-15 UPTO 30.04.2016 & 30.06.2016 RESPECTIVELY

OUR COMMENTS: The Commercial Tax Department, Governmant of Chattisgarh vide N**otification No. F-10/08/2016/CT/V (15) dated 08.03.2016** has exempted registered dealers from certain provisions u/s 19, 21, 41 and rule 20(2)(a) provided they file Form-18 for the financial year 2013-14 upto 30.04.2016 and for the financial year 2014-15 upto 30.06.2016.

TIME LIMIT FOR FORM-18 FOR FY 2013-14 & 2014-15 EXTENDED TO 30.04.2016 & 30.06.2016 RESPECTIVELY

OUR COMMENTS: The Commercial Tax Department, Governmant of Chattisgarh vide N**otification No. F-10/08/2016/CT/V (16) dated 08.03.2016** has exempted registered dealers from furnishing statement in Part-C of Form-18 within the stipulated period under rule 20(2)(b) and extended the time limit for the same for the financial year 2013-14 to 30.04.2016 and for the financial year 2014-15 to 30.06.2016.

DELHI

SCRUTINY OF RETURNS

OUR COMMENTS: The Department of Trade & Taxes, Government of National Capital Territory of Delhi, has issued Circular **No. 40 of 2015-16 dated 08.03.2016 in supersession of earlier Circular No. 9 (2005-06) and 8. (2010-11)** and has directed to keep a watch on following classes of dealers' alongwith the advisory to safeguard the revenue:

i. newly registered dealers showing sharp vertical growth in GTO;
ii. dealers downloading statutory forms of huge amount without showing matching sale/stock transfer;
iii. frequent change in trade practice / commodities;
iv. circular trading;
v. dealers stopping return filing within a period of less than an year of registration;
vi. dealers applying for cancellation within a year or so, of registration;
vii. dealers filing 'Nil' GTO return continuously for a period exceeding one year;
viii. return defaulters
ix. frequent refund claimants
x. non-tax payers
xi. continuously carrying forward excess ITC for a period exceeding one year;

Further,

-all dues shall be checked while cancelling dealers,

-un-registered dealers liable for registration shall obtain registration and

-recovery proceeding should be expedited for which no objections have been preferred or stay has been granted.

DAMAN & DIU

CORPORATION BANK, DAMAN BRANCH TO BE DESIGNATED AS AUTHORISED BANK FOR PAYMENTS OF TAXES

OUR COMMENTS: The UT Administration of Daman & Diu vide **Notification No. DMN/ VAT-2015 / 2014-15 / 17/DCVAT2016 dated 08.03.2016** has designated Corporation Bank, Daman branch as authorised bank for payments of taxes, penalty, interest and any other dues payable at Daman and Diu Value Added Tax regulation Daman,2005.