

# *Adukia & Associates*

*Chartered Accountants*

**Monthly Newsletter - March 2015**



## **Preface**

We are glad to present the first edition of Adukia & Associate's newsletter. This newsletter shall offer you important information on the current developments in the corporate and individual taxation as well as an overview on the most relevant legal topics.

The month of February has been a very special month. Finance Minister Shri. Arun Jaitley on 28th February unveiled a budget that aims to revamp growth, cutting the fiscal deficit and he seeks to boost investment and ensure that ordinary people benefit. With his promising budget, India is aiming double digit growth rate which is achievable soon.

The month of March is very crucial for us. As we are nearing the financial year end, we are more concerned about our targets, achievements, performance evaluations and results. We have many due dates which are to be taken care at the end of this month, a detailed reference of which is provided in this newsletter.

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## BUDGET ANALYSIS



### Direct Tax

- Corporate tax reduced from 30% to 25% over the next four years, starting from next financial year.
- Wealth-tax replaced with additional surcharge of 2 per cent on super rich with a taxable income of over `1 crore annually.
- Domestic transfer pricing threshold limit increased from `5 crore to ` 20 crore.
- Rate of Income-tax on royalty and fees for technical services reduced from 25% to 10% to facilitate technology inflow.
- Yoga to be included within the ambit of charitable purpose under Section 2(15) of the Income-tax Act.
- General Anti Avoidance Rule (GAAR) to be deferred by two years. GAAR to apply to investments made on or after 01.04.2017, when implemented.

### Indirect Tax

#### Excise & Custom

- Increase in basic custom duty:
  - a) Metallurgical coke from 2.5 % to 5%.
  - b) Tariff rate on iron and steel and articles of iron and steel increased from 10% to 15%.
  - c) Tariff rate on commercial vehicle increased from 10 % to 40%.
- Artificial heart exempt from basic custom duty of 5% and CVD.
- Excise duty exemption for captively consumed intermediate compound coming into existence during the manufacture of agarbathi.
- Excise duty on sacks and bags of polymers of ethylene other than for industrial use increased from 12% to 15%.
- Excise duty on footwear with leather uppers and having retail price of more than `1000 per pair reduced to 6%.
- Online central excise and service tax registration to be done in two working days.
- Excise duty on chassis for ambulance reduced from 24% to 12.5%.

## BUDGET ANALYSIS



### Service Tax

- Service Tax rate hiked to 14%, from 12.36%
- Service-tax to be levied on service provided by way of access to amusement facility, entertainment events or concerts, pageants, non recognized sporting events etc.
- Service-tax exemption:
  - a) Services of pre-conditioning, pre-cooling, ripening etc. of fruits and vegetables.
  - b) Life insurance service provided by way of Varishtha Pension Bima Yojana.
  - c) All ambulance services provided to patients.
  - d) Admission to museum, zoo, national park, wild life sanctuary and tiger reserve.
  - e) Transport of goods for export by road from factory to land customs station.
- Service-tax exemption to construction, erection, commissioning or installation of original works pertaining to an airport or port withdrawn.

### Benefits to individual tax-payers

- No change in Basic Tax exemption limit & rate of tax
- Limit of deduction of health insurance premium increased from `15000 to ` 25000, for senior citizens limit increased from `20000 to `30000.
- Senior citizens above the age of 80 years, who are not covered by health insurance, to be allowed deduction of ` 30000 towards medical expenditures.
- Deduction limit of ` 60000 with respect to specified disease of serious nature enhanced to ` 80000 in case of senior citizen.
- Additional deduction of `25000 allowed for differently abled persons.
- Limit on deduction on account of contribution to a pension fund and the new pension scheme increased from ` 1 lakh to `1.5 lakh.
- Additional deduction of ` 50000 for contribution to the new pension scheme u/s 80CCD.
- Transport allowance exemption hiked to Rs 1,600, from Rs 800 per month
- Payments to the beneficiaries including interest payment on deposit in Sukanya Samriddhi scheme to be fully exempt.
- Service-tax exemption on Varishtha Bima Yojana.
- Service Tax exemption extended to certain pre cold storage services in relation to fruits and vegetables so as to incentivise value addition in crucial sector. ¾ Negative List under service-tax is being slightly pruned to widen the tax base.

# DIRECT TAX UPDATES



## CSR and Tax treatment of CSR expenditure under Income Tax Act, 1961

The term Corporate Social Responsibility is the most discussing term in India recently with the introduction of Companies Act, 2013. Schedule VII of the Companies Act 2013, listed out the following as CSR activities;

- i) Eradicating hunger, poverty and malnutrition, promoting preventive health care, and sanitation and making available safe drinking water;
- ii) Promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly and the differently abled and livelihood enhancement projects;
- iii) Promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups;
- iv) Ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agroforestry, conservation of natural resources and maintaining quality of soil, air and water;
- v) Protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional arts and handicrafts;
- vi) Measures for the benefit of armed forces veterans, war widows and their dependence;
- vii) Training to promote rural sports, nationally recognized sports, Paralympic sports and Olympic sports;
- viii) Contribution to the Prime Ministers National Relief Fund or any other fund set up by the Central Government for socio-economic development and relief and welfare of scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women;
- ix) Contributions or funds provided to technology incubators located within academic institutions which are approved by the Central Government;
- x) Rural development projects

The activities enumerated in Schedule VII are broad based and are intended to cover a wide range of activities. The CSR activities should be undertaken by a company as a project/programme in accordance with its approved CSR policy. One off events such as marathons/awards/ charitable contributions/ advertisement/ sponsorship of TV Programmes etc. would not qualify as an expenditure on the CSR activities.

### Types of Expenditure considered as expenditure on the CSR activities

1. Salaries paid to regular CSR staff and volunteers (in proportion to time spent on CSR activities)
2. Expenditure incurred by the foreign holding company for CSR activities in India will qualify as CSR expenditure of the Indian subsidiary if:
  - a. The CSR expenditure is routed through the Indian subsidiary
  - b. The Indian subsidiary is covered under CSR provisions of the Act

# DIRECT TAX UPDATES



3. Contributions to corpus of a trust/society/company with charitable objects etc. will qualify as CSR expenditure if either of the following is fulfilled
  - a. Such entities are created exclusively for undertaking CSR activities
  - b. The corpus is created exclusively for a purpose directly relatable to a subject covered in Schedule VII of the Act

## **Types of Expenditure not considered as expenditure on the CSR activities**

Expenses incurred by companies for fulfillment of any Act/Statute or Regulations would not be considered as CSR expenditure.

## **Income Tax sections wherein companies can claim the expenditure deduction relate to CSR activities as per Schedule VII of Companies Act, 2013**

1. Section 80G – Donations made directly or to registered NGO or to Prime Minister National Relief fund or for promoting family planning etc. 100% or 50% in some cases of such donations are admissible as deduction under sec 80G of the Income Tax Act. Donation in kind is not eligible for deduction as CSR expenditure.
2. Section 35AC – Expenditure incurred on project or scheme for promoting the social and economic welfare or upliftment of the public as approved by the national committee set up for this purpose. 100% of such expenditure is admissible as CSR expenses .But the activity of association whom the donation made should be stated under Schedule VII of Companies Act
3. Section 35CCD - Expenditure on skill development project as notified by the board is eligible with weighted deduction of 1.5 times of such expenses

A properly implemented CSR concept can bring along a variety of competitive advantages, such as enhanced access to capital and markets, increased sales and profits, operational cost savings, improved productivity and quality, efficient human resource base, improved brand image and reputation, enhanced customer loyalty, better decision making and risk management processes.

# INDIRECT TAX UPDATES



## Service Tax on Banking and Financial Services

Services provided by a banking and financial services company are subject to Service Tax in many ways. W.e.f.1.07.2012, all services, other than services specified in the negative list, provided or agreed to be provided in the taxable territory by a person to another would be taxed under section 66B.

Mega exemption notification no. 25/2012-ST, dated 20th June, 2012, "banking company" has the meaning assigned to it in clause (a) of section 45A of the Reserve Bank of India Act, 1934.

As per notification no - 26/2012, Service Tax, 20th June, 2012 - "chit" means a transaction whether called chit, chit fund, chitty, kuri, or by whatever name by or under which a person enters into an agreement with a specified number of persons that every one of them shall subscribe a certain sum of money (or a certain quantity of grain instead) by way of periodical installments over a definite period and that each subscriber shall, in his turn, as determined by lot or by auction or by tender or in such other manner as may be specified in the chit agreement, be entitled to a prize amount.

As per Place of provisions of rule, 2012, "non-banking financial company" means-

- (i) a financial institution which is a company; or
- (ii) a non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner; or
- (iii) such other non-banking institution or class of such institutions, as the Reserve Bank of India may, with the previous approval of the Central Government and by notification in the Official Gazette specify.

## Negative List of Services relevant for banks

Negative list has been defined under clause 34 of section 65B and such services are specified in section 66D of the Finance Act, 1994, as introduced by the Finance Act, 2012. Negative list of services would mean the services specified in section 66D which specifies seventeen broad categories of services. Negative list of services applicable to a banking company are services by way of;

- i. extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount;
- ii. inter se sale or purchase of foreign currency amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers.

As per section 66D(b) negative list of services, services provided by Reserve Bank of India would be exempt from service tax.



# INDIRECT TAX UPDATES



Examples on the above negative services are:

- Fixed deposits or saving deposits or any other such deposits in a bank or a financial institution for which return is received by way of interest.
- Providing a loan or overdraft facility or a credit limit facility in consideration for payment of interest.
- Mortgages or loans with a collateral security to the extent that the consideration for advancing such loans or advances are represented by way of interest.
- Corporate deposits to the extent that the consideration for advancing such loans or advances are represented by way of interest or discount.

The negative list entry covers any such service wherein moneys due are allowed to be used or retained on payment of interest or on a discount. The words used are 'deposits, loans or advances and have to be taken in the generic sense. They would cover any facility by which an amount of money is lent or allowed to be used or retained on payment of what is commonly called the time value of money which could be in the form of an interest or a discount. This entry would not cover investments by way of equity or any other manner where the investor is entitled to a share of profit.

Further, as per entry no. 29 of mega exemption notification 25/2012-ST, dated 20th June, 2012, services provided by a business facilitator or a business correspondent to banking company or an insurance company, in a rural area would be exempt from service tax. ("Business facilitator or business correspondent" means an intermediary appointed under the business facilitator model or the business correspondent model by a banking company or an insurance company under the guidelines issued by Reserve Bank of India)

Particulars	Income/ Expenses	Taxability/RCM/ Cenvat Credit	Service Tax to be deposited by
Interest Received	Income	Non-Taxable	-
Discount	Income	Non-Taxable	-
Commission on Pay Order / Demand Draft / LC etc.	Income	Taxable	Bank
Commission from specified business other than banking business (Insurance, Mutual Fund etc.)	Income	Taxable	Service Receiver
Foreign Exchange Commission	Income	Taxable	Bank
Charges on non-maintaining minimum balance in account	Income	Taxable	Bank
Subsidies	Income	Non-Taxable	-
Profit from sale of / dealing with non-banking assets	Income	Non-Taxable	-
Locker's rent	Income	Taxable	Bank
Income on card business	Income	Taxable	Bank

# INDIRECT TAX UPDATES



ATM charges	Income	Taxable	Bank
Loan processing charges	Income	Taxable	Bank
Commission received on Bank Guarantee (BG)/ Letter of Credit (LC)	Income	Taxable	Bank
Charges for making Demand Draft (DD) / Payment Order (PO)	Income	Taxable	Bank
Handling charges	Income	Taxable	Bank
Interest on late payment of Installment	Income	Non-Taxable	-
Charges for issuance of cheque book	Income	Taxable	Bank
Renting of immovable property	Income	Taxable	Bank
Directors sitting fees	Expenses	Cenvatable / under RCM	Bank
Members fee	Expenses	Cenvatable	-
Rent, taxes, insurance and lighting expenses	Expenses	Cenvatable	-
Security Expenses	Expenses	Cenvatable	-
Law charges	Expenses	Cenvatable / under RCM	Bank
Postage and Telegram Expenses	Expenses	Cenvatable	-
Telephone charges	Expenses	Cenvatable	-
Auditor's fees	Expenses	Cenvatable	-
Repair and maintenance of premises / ATM machines	Expenses	Cenvatable	-
Revenue Stamps	Expenses	-	-
Sweeping and cleaning charges	Expenses	-	-
Loss from sale of or dealing with non-banking assets	Expenses	Cenvatable	-
Advertisement	Expenses	Cenvatable	-
Recovery Agent fees / commission	Expenses	Cenvatable / under RCM	Bank



# COMPANIES ACT UPDATES

## Secretarial Audit under Companies Act, 2013



'Secretarial Audit' has introduced by recently enacted Companies Act, 2013. It is compliance audit, by independent practicing company secretary. The purpose is to detect the non-compliances by companies under Companies Act 2013 and other allied Laws as applicable to the companies.

### Applicability of Secretarial Audit

Secretarial Audit is mandatory for the following class of companies:

- Every listed Company
- Every public company having a paid-up share capital of Fifty Crore Rupees or more
- Every public company having a turnover of 250 Crore rupees or more.

The above class of companies is required to obtain "Secretarial Audit Report" from Independent Practicing Company Secretaries. Only a practicing CS can be appointed as auditor for this purpose.

### Scope of Secretarial Audit

A secretarial auditor needs to check compliances by the company under the following laws and rules:

1. The Companies Act, 2013
2. The Securities Contracts (Regulation) Act, 1956
3. The Depositories Act, 1996
4. The Foreign Exchange Management Act, 1999 and the rules and regulations made there-under to the extent of Foreign Direct Investment, Overseas Direct Investment and External Commercial Borrowings.
5. The Securities and Exchange Board of India Act, 1992
6. The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.
7. The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992.
8. The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009.
9. The Securities and Exchange Board of India (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999.
10. The Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008.
11. The Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993.
12. The Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009.
13. The Securities and Exchange Board of India (Buyback of Securities) Regulations, 1998.
14. Secretarial Standards issued by The Institute of Company Secretaries of India.

# COMPANIES ACT UPDATES



15. The Listing Agreements entered into by the Company with Stock Exchange.
16. Constitution of Board of Directors – Executive / Non-Executive, Independent Director / Women Director, etc. Adequate Notice to directors for Board Meetings.
17. Any specific events or actions having a major bearing on the operations of the company like Merger / Amalgamation / reconstruction, Foreign technical collaboration, Public / Right / Preferential Issue of shares / Debentures / sweat equity/Redemption / buy-back of securities.
18. Other laws as may be applicable specifically to the company.

## **Duties of Secretarial Auditor**

If during the conduct of the audit, Practicing Company Secretary gathers sufficient reasons to believe that fraud is committed against the company by the officers or the employees of the company then he shall report to the Central Government immediately, but not later than 60 days of his knowledge, with a copy to the Board seeking their reply within 45 days in Form ADT – 4

Board need to reply in writing to explain the steps taken against the fraud occurred. The Auditor to forward his report and reply of the Board with his Comments to the Central Government within 15 days of reply received by the Board.

## **Punishment for Default**

Section 204(4) of the Companies Act, 2013, provides that if a company or any officer of the company or the company secretary in practice, contravenes the provisions of section 204 of the Act, the company, every officer of the company or the company secretary in practice, who is in default, shall be punishable with fine which shall not be less than 1 lakh rupees but which may extend to 5 lakh rupees.

Section 143(15) of the Companies Act, 2013, if a secretarial auditor, has reason to believe that an offense involving fraud is being or has been committed against the company by officers or employees of the company, he shall immediately report the matter to the Central Government within such time and in such manner as may be prescribed. Failure to do so shall attract a fine which shall not be less than 1 lakh rupees but which may extend to 25 lakh rupees.

# NOTIFICATIONS



## Income Tax:

SECTION 80C OF THE INCOME-TAX ACT, 1961 - DEDUCTIONS - IN RESPECT OF INSURANCE PREMIUM, ETC. - NOTIFIED PLAN UNDER SECTION 80C(2)(viii)

NOTIFICATION NO. 9/2015 [F.NO.178/3/2015-ITA-I]/SO 210(E), DATED 21-1-2015

In exercise of the powers conferred by clause (viii) of sub-section (2) of section 80C of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby specifies the 'Sukanya Samriddhi Account' for the purposes of the said clause.

## RBI / FEMA:

RBI/2014-2015/476 DNBR(PD)CC.No. 01/SCRC/26.03.001/2014-2015

1. In terms of Section 3(6) of the SARFAESI Act, 2002, every Securitisation Company / Reconstruction Company (SC / RC) is required to obtain prior approval of the Reserve Bank for any substantial change in its management. For the purpose of this section, the expression “substantial change in management” means the change in the management by way of transfer of shares or amalgamation or transfer of the business of the company. Hence, one of the terms and conditions stipulated to the SC/RCs, while granting them the Certificate of Registration, states that prior approval of Reserve Bank will have to be taken by the SC/RCs for any change in their shareholding pattern.
2. In order to smoothen the functioning of SC/RC companies, it has been decided that, henceforth only the following changes in the share holding pattern of the SC/RC will require Reserve Bank’s prior approval:
  - a. any transfer of shares by which the transferee becomes a sponsor.
  - b. any transfer of shares by which the transferor ceases to be a sponsor.
  - c. an aggregate transfer of ten percent or more of the total paid up share capital of the SC/RC by a sponsor during the period of five years commencing from the date of certificate of registration.
3. All other terms and conditions as stipulated to the SC/RC, while granting them the Certificate of Registration, will continue to apply.
4. SCs/RCs may note the above instructions for meticulous compliance.

## Customs:

**Resident firm specified as class of person for the purpose of Advance Ruling - 27/2015 - Dated 28-2-2015 - Customs - Non Tariff**

G.S.R. (E).- In exercise of the powers conferred by sub-clause (iii) of clause (c) of section 28E of the Customs Act, 1962 (52 of 1962), the Central Government hereby specifies “resident firm” as class of persons for the purposes of the said sub-clause.

# NOTIFICATIONS



## Foreign Trade Policy:

### **Reduction in Minimum Export Price (MEP) on export of edible oils in branded consumer packs of upto 5 Kgs. - 108 (RE 2013)/2009-2014 - Dated 6-2-2015**

S.O.(E) - In exercise of the powers conferred by Section 5 of the Foreign Trade (Development & Regulation) Act, 1992 (No.22 of 1992) read with Para 1.3 of the Foreign Trade Policy, 2009-2014 (as amended from time to time), the Central Government hereby amends with immediate effect Para 4 of Notification No 22(RE-2013)/2009-14 dated 18th June 2013 read with Notification No. 80 (RE-2013)/2009-14 dated 30.04.2014 relating to Sl. No. 92 of Schedule 2 of ITC(HS) Classification of Export & Import Items as under:

“4. Export of edible oils in branded consumer packs of upto 5 Kgs is permitted with a Minimum Export Price of USD 900 per MT”.

### **Effect of this notification:**

MEP on export of edible oils in branded consumer packs of upto 5 Kgs has been reduced to USD 900 per MT. Earlier it was USD 1100 per MT.

# RECENT CASE LAWS



## Income Tax

- **Death of Authorised representative not sufficient cause for delay in Appeal Filing**

Madhu Dadha Vs. ACIT (2009) 317 ITR 458 (Mad)- In the present case, the appeal has been filed after a delay of 558 days. From the contents of the affidavit and submissions of the learned counsel for the assessee, it is clear that the assessee has not explained the delay for such a long period and just took the ground of death of her counsel in January 2007, that too after the expiry of about one year from the last date of filing the appeal. Even the assessee failed to explain the sufficient cause or reason by giving necessary details as to how the delay from January 2007 to the date of filing the appeal has occurred.

From the facts it seems that the assessee was negligent by not taking the necessary step for filing the appeal within the time prescribed by the statute and thereby from the conduct of the assessee, it seems that the assessee takes the condonation of delay provision as granted. It is well settled law that the court helps the vigilant and not indolent. We are therefore of the view that the assessee has not made out sufficient cause for condoning the delay in the present appeal. The cause shown by the assessee is much less than the sufficient cause as to why the appeal was not filed after the expiry of limitation period and even after the expiry of limitation period.

Since the assessee has not given any details as to what step she took for filing the appeal within the limitation period or as early as possible therefore, the explanation for delay of 558 days appears to be too insufficient, unsatisfactory and unreasonable for condoning the inordinate delay. From the affidavit it reflects that averments are quite vague as no dates have been specified as to when the papers were handed for drafting an appeal and on what occasion the enquiries were made for preparation and filing of appeal. Moreover, when the assessee never went for signing the appeal, how it could have been filed as presumed by the assessee. Even the conduct of the assessee before this Tribunal is also not appreciable as various notices were sent to the assessee and first time the assessee appeared on 3.3.2008 when the appeal was heard. We therefore decline to condone the delay of 558 days in filing the present appeal. Accordingly, the prayer for condonation of delay is rejected.

- **Section 10A exemption- Approvals given by Directors of STPI is valid**

Mentor Graphics (Noida) P. Ltd., Vs. DCIT (ITAT Delhi), ITA No. 2423/Del/2010, Dated- 18th February, 2015  
Assessee claimed deduction of Rs. 1.33 crores under Section 10A of the Act. On being called upon to explain about the eligibility of deduction, the assessee stated that it was entitled to deduction in view of fulfillment of all the requisite conditions as prescribed under Section 10A. The Assessing Officer held the assessee to be not qualifying for deduction under this section because the registration was granted by the Software Technology Park of India (STPI) and not the Inter-ministerial Standing Committee (IMSC). He held that the IMSC was entrusted with the obligation to examine the proposals for STP units and there was no provision under which it could delegate this power to Software Technology Park of India. He further held that STPI society has mechanically approved all the units without examining anything except export commitments. Further, there was no evidence that Press Note 5 and Green Card were issued with the concurrence of the Department of Revenue or the CBDT. The learned CIT(A) overturned the assessment order on this point by relying on the order dated 06.06.2008 passed by the Delhi Bench of Tribunal in the case of ACIT Vs. Sanjay Bhalla.

# RECENT CASE LAWS



The only objection taken by the Assessing Officer for refusing deduction under Section 10A is that the registration was granted by the STPI Society and not the Inter-ministerial Standing Committee. We find that this issue is no more res integra in view of the judgment dated 26.2.2013 of the Hon'ble Delhi High Court in CIT Vs. Technovate E Solution Pvt. Ltd., a copy of which has been placed on record by the Id. AR. In this judgment, it has been held that the approvals given by the Directors of Software Technology Parks of India are valid having the authority of the Inter-ministerial Standing Committee. This position was fairly accepted by the Id. DR also. In view of the binding precedent of the Hon'ble jurisdictional High Court, the facts of which are on all fours with those of the assessee company, we are of the considered opinion that no exception can be taken to the view canvassed by the learned CIT(A) on this score. This ground fails.

## Service Tax

### **Assessee not prohibited from paying tax on services exempted under a notification**

Under Service Tax law, the Assessee is not prohibited from paying tax on services exempted under a notification – there is no provision akin to Section 5A(1A) of the Central Excise Act, 1944

M/s Deloitte Haskins And Sells Vs. Commissioner of Central Excise, Thane [2015-TIOL-366-CESTAT-MUM]

M/s Deloitte Haskins and Sells (the Appellant) is a firm providing services of practising Chartered Accountant and Management Consultancy services to clients in India and abroad. The Appellants were operating from the different locations, each with a separate Service tax registration number and the accounting operations were carried out from Worli address (registered unit).

The Department alleged that the services rendered by the Appellant during the period under dispute were exempted under Notification No. 04/2004-ST dated March 31, 2004 (which provides exemption to services provided to SEZ units) [Notification 4/2004] and Notification No. 25/2006 dated July 13, 2006 (which provides exemption to services relating to representation before the statutory authorities) [Notification 25/2006].

Accordingly, the Appellant has wrongly availed Cenvat credit while providing exempted services as well as taxable services in violation of the Cenvat Credit Rules, 2004 (the Credit Rules) as the Appellant did not maintain separate records for the exempted and taxable services in terms of Rule 6(1) of the Credit Rules. Therefore, as per Rule 6(3)(c) of the Credit Rules (as was prevalent during the period under dispute), the Appellant could utilize Cenvat credit only to the extent of 20% of the amount of Service tax payable on their output services. Hence, the Appellant was required to pay Rs. 2,78,23,485/- in terms of Rule 6(3)(c) of the Credit Rules.

It was further alleged that the Appellant has also irregularly availed Cenvat credit of Rs. 5,65,000/- and Rs. 31,25,737/- on the strength of invoices raised on the registered unit at Worli whereas the Cenvat credit was taken in another registered unit at Mafatlal House, Mumbai.



# RECENT CASE LAWS



Being aggrieved, the Appellant filed an appeal before the Hon'ble CESTAT, Mumbai submitting as under:

Notification 25/2006 provides exemption to services relating to representation before the statutory authorities, whereas the Appellant had charged consolidated amount for entire work i.e. drafting, compliance, appearance and sometimes their contract is for entire taxation related issues. Therefore, they chose to pay tax on the entire amount and not to avail exemption;

Notification No. 4/2004 which grants conditional exemption to services provided to SEZ units was not availed because it is beyond control to ensure that the service receiver follows the conditions of the Notification such as maintenance of proper records;

Unlike Section 5(A)(1A) of the Central Excise Act, 1944 (the Excise Act) there is no provision in the Finance Act, 1994 (the Finance Act) requiring that unconditional exemption has to be necessarily availed;

Cenvat credit cannot be denied on procedural grounds.

The Hon'ble CESTAT, Mumbai held as under:

Cenvat credit cannot be denied for the procedural infraction that the addressee in the invoices was another office of the Appellant and relied upon following judgments: Commissioner Vs. DNH Spinners [2009 (16) STR 418 (Tri.-Ahmd.)], Modern Petrofils Vs. CCE[2010 (20) STR 627 (Tri.Ahmd)].

Thus, the matter was remitted back to the Commissioner for verifying that the Inputs services in respect of such invoices were actually used in the Mafatlal House office and not in the Worli office.;

Revenue has not examined the records in detail to see the nature of actual activities undertaken by the Appellant. Issue of Show Cause Notice without examining and analysing of all the documents does not serve any purpose;

Unlike Section 5(A)(1A) of the Excise Act, there is no provision in the Finance Act requiring that unconditional exemption has to be necessarily availed and relied upon following judgments: – Crown Products Pvt. Ltd. Vs. CCE, Nashik [2012 (28) STR 406 (Tri.-Mum)] and MPS Ltd. Vs. Commissioner of Service Tax, Bangalore [Appeal No. ST/763/2011];

Everyone has a right to waive and to agree to waive the advantage of a law or rule made solely for the benefit and protection of the individual in his private capacity, which may be dispensed with without infringing any public right or public policy. Thus it is clear that under Service tax laws, the Assessee is not prohibited from paying tax on services exempted under a notification.

Thus, the Hon'ble Tribunal decided the matter in favour of the Appellant by holding that the Appellant had not provided exempted and taxable services in terms of Rule 6(2) of the Credit Rules and therefore the restriction of availment of Cenvat credit up to 20% of the value of taxable output services would not apply.

# IMPORTANT DATES



Date	Applicable Law	Compliance Required
5-Mar-15	Central Excise	Payment of Excise Duty for February 2015
5-Mar-15	Service Tax	Payment of Service Tax for February 2015 by Corporates.
6-Mar-15	Central Excise	E-Payment of Excise Duty for February 2015.
6-Mar-15	Service Tax	E-Payment of Service Tax for February 2015.
7-Mar-15	Income Tax	Deposit of TDS/TCS collected during February 2015.
7-Mar-15	Income Tax	Submission of copy of declaration forms received from deductee by the deductor for non deduction of TDS under section 197A before the Chief Commissioner or Commissioner.
10-Mar-15	Central Excise	Monthly returns for Production and removal of Goods and CENVAT Credit for February 2015.
10-Mar-15	Central Excise	Monthly returns of Excisable Goods Manufactured & Receipt of Inputs & Capital Goods by Units in EOU, STP, HTP for February 2015.
10-Mar-15	Central Excise	Monthly returns of Informations relating to Principal Inputs for February 2015 by manufacturer of Specified Goods who paid Duty of Rs. 1 Crore or more during Financial Year 2013-2014 By PLA/CENVAT/Both.
15-Mar-15	EPF	Payment of EPF contribution for February 2015.
15-Mar-15	EPF	Consolidated Statements of Dues and Remittances under EPF and EDLI for February 2015
15-Mar-15	EPF	Monthly returns of Employees who Joined/Left the Organization in February 2015.
15-Mar-15	Income Tax	Advance Income Tax in case of company and non- corporate assesses
20-Mar-15	CST/VAT	Monthly returns and Payment of CST and VAT collected during February 2015
21-Mar-15	ESI	Deposit of ESI contributions and collections for February 2015
31-Mar-15	Income Tax	Due date of filing return in respect of previous year in case of assesseees who have failed to file return on due dates
31-Mar-15	Service Tax	Monthly / Quarterly - Challan for payment of Service Tax for all assesseees for the month of March
31-Mar-15	Central Excise	Payment of Excise Duty for March 2015
31-Mar-15	Wealth Tax	Due date of filing Wealth Tax Return in respect of previous year in case of assesseees who have failed to file return on due dates



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CA A.S. VISALAKSHI

CA SAMBASIVAN RAMESH

CA PANKAJ ADUKIA

CA AMIT BRAHMKHATRI

CA MEENAKSHI GUPTA

CA NIRAJ MAHAJAN

CA RISHABH ADUKIA

CA SHIVA CHAUDHARI

CA SINI THOMAS

CA PRAMOD PATEL

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