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By

SBS and Company LLP
Chartered Accountants

JOINT PROGRAMME BY SBS & APOLLO HOSPITALS ON INTERNAL FINANCIAL CONTROLS

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TRANSFER PRICING - HIGH COURT JUDGMENTS

Contributed by CA Suresh Babu S

In this bulletin, we bring to our readers, certain important and significant judicial precedents pronounced by various high courts which would determine the future course of Transfer Pricing litigation. We wish the readers shall be benefited from the following judgments.

1. Pr CIT v Ameriprise India (P)Ltd –Delhi High Court

The Court upheld Tribunal's order considering foreign exchange gain/loss arising out of revenue transactions(i.e. ITES services) as an item of operating revenue/cost.

2. Toluna India Pvt Ltd – Delhi High Court

HC upholds ITAT's exclusion of 4 comparables viz. Infosys Technologies Ltd, KALS Information Systems Ltd, Tata Elxsi Ltd and Wipro Ltd for assessee providing software development and marketing support services to AE for AY 2008-09 and 2009-10; Notes that ITAT, while directing AO to exclude these comparables, had followed order passed in assessee's own case for AY 2007-08 and such order did not appear to have been challenged by Revenue; On merits, HC holds that *"given the scale of operations of the above entities, their exclusion from the list of comparables for the purposes of determination of ALP appears justified"*; Accordingly, HC holds that no substantial question of law arises and dismisses Revenue's appeal.

3. Yum Restaurants(India) Pvt Ltd v ITO – Delhi High Court

The Court held that the TPO was incorrect in presuming the existence of an international transaction between the assessee and its AEs, on the basis that the assessee allegedly made a contribution towards AMP expenditure to its wholly owned Indian subsidiary on behalf of its AEs and the fact that the assessee had incurred a loss in the relevant segment and therefore concluding that it was not adequately compensated by the AEs for the creation of marketing intangibles. The Court held that there would be a need for a detailed examination of the operating agreement between the assessee, its Indian subsidiary and the AEs to ascertain if any part of the AMP expenses was for the purpose of creating marketing intangibles for the AE of the assessee and only after an international transaction between the assessee and its AE in relation to AMP expenses was shown to exist, could the question of determining ALP of such international transactions arise.

4. CIT v Thyssen Krupp IndustriesIndia (P)Ltd – Bombay High Court

The Court held that where a substantial part of revenue of a comparable company in execution of turnkey projects arose out of executing projects of public sector undertakings, it could not be considered to be comparable to assessee-company providing turnkey services to its AE as contracts between Public Sector undertakings were not driven by profit motive alone but other consideration also weigh in such as discharge of social obligations etc.

5. CIT v Goldstar Jewellery Design Pvt Ltd – Bombay High Court

The Court held that the TPO was unjustified in applying the base of capital employed under the TNMM method without segregating the capital employed in respect of AE and Non-AE transactions. Further, it held that where the assessee entered into both international as well as domestic transactions, the Tribunal was justified in restricting the adjustment only to international transactions.

6. CIT v ITC Infotech India Ltd – Calcutta High Court

The Court held that where in respect of marketing and administrative services provided to third party customers, the assessee adopted a revenue sharing model whereby it kept 75 percent of the revenue and paid 25 percent to its subsidiaries who provided support services for transactions where the customers directly contracted with either the assessee or its subsidiaries, the TPO was incorrect in determining the remuneration to subsidiaries at 15 percent, where the customers directly contracted with the assessee, since there was no difference in the functions performed by either the assessee or its subsidiaries as compared to cases where customers directly contracted with the subsidiaries.

7. Honda Cars India Ltd v DCIT – Delhi High Court

The Court held that where the Petitioner was not a foreign company and the TPO did not propose any variation to income returned by petitioner, neither of two conditions of section 144C of the Act were satisfied and therefore the petitioner was not an 'eligible assessee'. Consequently, the Assessing Officer was not competent to pass draft assessment order under section 144C(1) of the Act and therefore the said draft assessment order was quashed.

8. International Air Transport Association – Bombay High Court

The Court set aside the final assessment order passed under section 143(3) of the Act without passing a draft assessment order as mandated by Section 144C(1) of the Act which applied to the assessee. It observed that the DRP did not entertain the assessee's objections absent the draft assessment order and therefore the rights made available to the assessee under section 144C of the Act were rendered futile by directly passing final order under section 143(3) of the Act.

Concluding Remarks:

Irrespective of the fact that most of the issues in Transfer Pricing are attaining finality through the judgements of the Tribunals, there are still certain conflicting views on various issues which are being cleared by the High Courts. However, the Tribunals and the Transfer Pricing Officers have been following their respective views stating that some of these High Court Judgements are not Jurisdictional High Courts pronouncements.

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FEMA

START UP INDIA - FEMA & OTHER PROVISIONS

Contributed by CA Murali Krishna G

To foster entrepreneurship and promoting innovation, the "Startup India" initiative was launched by the Prime Minister of India, Shri Narendra Modi on January 16, 2016 at Vigyan Bhavan, New Delhi. As part of the event, a Startup India Action Plan was released. Subsequently many steps were taken by various ministries/ regulators in this direction to implement the plan. The Action Plan proposes a 19-point action list which will enable setting up of incubation centres, easier patent filing, tax exemption on profits, setting up a Rs.10,000 crore corpus fund, ease of setting-up of business, a faster exit mechanism, among others.

The initiative of the Government of India is to build a strong eco-system for nurturing innovation in order to accelerate economic growth and generate employment opportunities.

In this article the author has made an attempt to summarise the concept, benefits under various laws and way forward for the Start Up entities in India

1.1 Legal Framework:

The DIPP[1] has issued Notification[2] to define the concept of Startup entities. The criteria fixed by this notification (including its amendments from time to time) are adopted by all the government department(s)/ regulator(s) etc., for various purposes.

1.2 Criteria for Startup entities

An entity[3] shall be considered as a 'startup'-

a) Up to five years from the date of its incorporation/registration,
b) If its turnover[4] for any of the financial years has not exceeded Rupees 25 crore , and
c) It is working towards innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property;[6]

Provided that any such entity formed by splitting up or reconstruction of a business already in existence shall not be considered a 'startup';

[1] Department of Industrial Policy and Promotion, Union Government of India
[2] Notification No. GSR 180(E), dated 17th February, 2016
[3] Private limited company (as defined in the Companies Act, 2013), or a registered partnership firm (registered under section 59 of the Partnership Act, 1932) or a limited liability partnership (under the Limited Liability Partnership Act, 2002)
[4] Turnover is as defined under the Companies Act, 2013
[5] 1 Crore = 10 Million
[6] a. A new product or service or process, or b. A significantly improved existing product or service or process, that will create or add value for customers or workflow.

Provided further that in order to obtain tax benefits a startup so identified under the above definition shall be required to obtain a certificate of an eligible business from the Inter-Ministerial Board of Certification ("IMB) [7]

Present IMB consists of:

a) Shri Shailendra Singh, Joint Secretary, DIPP
b) Dr. Alka Sharma, Director/Scientist 'F', Department of Biotechnology, an
c)Shri H.K. Mittal, Head, Innovation/Entrepreneurship& National Science& Technology Entrepreneurship Development Board, Department of Science & Technology

1.3 The process of recognition as a 'startup'

Through mobile app/portal of the DIPP [8]. Startups will be required to submit a simple application with any of following documents:

a) a recommendation (with regard to innovative nature of business), in a format specified by DIPP, from any Incubator established in a postgraduate college in India; or
b) a letter of support by any incubator which is funded (in relation to the project) from Government of India or any State Government as part of any specified scheme to promote innovation; or
c) a recommendation (with regard to innovative nature of business), in a format specified by Department of Industrial Policy and Promotion, from any Incubator recognized by Government of India; or
d) a letter of funding of not less than 20 per cent in equity by any Incubation Fund/Angel Fund/Private Equity Fund/Accelerator/Angel Network duly registered with SEBI that endorses innovative nature of the business. Department of Industrial Policy and Promotion may include any such fund in a negative list for such reasons as it may deem fit; or
e) a letter of funding by Government of India or any State Government as part of any specified scheme to promote innovation; or
f) a patent filed and published in the Journal by the Indian Patent Office in areas affiliated with the nature of business being promoted.

1.4 Penalty in case of false information:

If on subsequent verification, such recognition is found to be obtained without uploading the document or uploading any other document or a forged document, the concerned applicant shall be liable to a fine which shall be fifty per cent of paid up capital of the startup but shall not be less than Rupees 25,000.

[7] Inter- Ministerial Board was constituted vide Notification No. GSR 439(E), dated 22nd April, 2016
[8] http://startupindia.gov.in

Benefits/ supportive measures taken under various laws:

2.1 Foreign Exchange Management Act, 1999 ("FEMA")

A. Opening of FC/EEFC Account

I. RBI[9] has permitted Indian Startups:

1. having an overseas subsidiary, to open a foreign currency account with a bank outside India for the purpose of crediting to the account the foreign exchange earnings out of exports/sales made by the said startup or its overseas subsidiary. The balances held in such accounts, to the extent they represent exports from India, shall be repatriated to India within the period prescribed for realization of exports
2. to open EEFC[10] account maintained in India with the Authorised Dealers for crediting the payments received in foreign exchange arising out of sales/ export made by the startup or its overseas subsidiaries

II. RBI has expressed to carry slew of following measures to support the Startup initiatives of GOI

1. Enabling start-up enterprises, irrespective of the sector in which they are engaged, to receive foreign venture capital investment and also explicitly enabling transfer of shares from Foreign Venture Capital Investors to other residents or non-residents;
2. Permitting, in case of transfer of ownership of a start-up enterprises, receipt of the consideration amount on a deferred basis as also enabling escrow arrangement or indemnity arrangement up to a period of 18 months;
3. Enabling online submission of A2 forms for outward remittances on the basis of the form alone or with document(s) upload/submission, depending on the nature of remittance; and
4. Simplifying the process for dealing with delayed reporting of FDI related transaction by building a penalty structure into the regulations itself.
5. Issue of shares without cash payment through sweat equity or against any legitimate payment owed by the company remittance of which does not require any permission under FEMA

2.2 Income Tax Laws:

I. Insertion of new section 54EE for exempting Capital Gain on long term capital asset and invested in eligible units of AIF

1. A new section has been inserted to permit the exemption of long term capital gain arising out of transfer of capital asset if the investment is made in specified units of Alternative Investment Funds (AIF) on or after 1st April, 2016, within 6 months of transfer of capital asset.
2. The exemption is restricted on proportion basis of investment Vs Sale proceeds received
3. The maximum amount that can be invested is restricted to Rs. 50 Lakhs
4. The benefits is restricted for investment made upto 31/03/2019

[9] AP (DIR Series) Circular No. 77 [(2/10(R)], dated 23rd June, 2016
[10] Exchange Earners Foreign Currency

II. Insertion of new sub-section 5 under section 54GB

1. A new sub-section has been inserted to permit exemption of long-term capital gain arising out of transfer of capital asset if the investment is made in specified units of Alternative Investment Funds (AIF) on or after 1st April, 2016, within 6 months of transfer of capital asset.
2. In both the cases the word "Specified Units" means investment into equity shares of eligible startup unit as defined herein above.

III. Exemption of tax on difference between the allotment price and FMV under section 56 (2) (viib) of the Act

1. A new explanation has been added under section 56 (2) (viib) of Act, to exempt the difference between Issue price and Fair Market Value, from being considered as taxable income under Other Sources. Due to this amendment the Startup entity can issue shares to residents at premium than the Fair Market Value, without any tax burden[11]

IV. Exemption of tax on Profits of the entity for 3 years u/s 80-IAC of the Act

1. A new section has been added after section 80-IAB of Act, to exempt the tax on 100% profits of Startup entity
2. The benefit is applicable for profits earned from the fiscal year 2016-17
3. The maximum period of tax benefit is given for 3 consecutive financial years out of 5 years of incorporation/ registration of startup entity. The entity has option to choose the beginning period of exemption
4. Exemption is subject to non- distribution of dividend by the Startup.
5. The startup entity shall fulfill the eligibility criteria listed by DIPP, and should have been incorporated between 01-04-2016 and 31-03-2019
6. However the startup entity has to pay MAT/AMT[12] under section 115JB/115JC, as the case may be, of the Act.

6. Further, existing capital gains exemption for investment in newly formed manufacturing Micro, Small and Medium Enterprises (MSMEs) by individuals shall be extended to all Startups.

7. For Startups, investment in computer or computer software (used in core business activity) to qualify as purchase of "new assets".

[11]Notification No.45/2016 [F.NO.173/103/2016-ITA-I], Dated 14-6-2016
[12]MAT – Minimum Alternative Tax; AMT – Alternative Minimum Tax

2.3 Labour laws:

The Union Government has simplified the legal compliance under various labour laws, as detailed below:

A. Engaging Apprentices[13]

The entity is permitted to recruit apprentices in a band of 2.5% - 10% of total strength (including contractual workers). The Startup entity is eased from inspection based on the following criteria:

Period	Particulars of Inspection
1st Year	Inspection is completely dispensed with based on the self-certification
2nd - 5th Year	Inspection only when very credible and verifiable complaint of violation has been filed in writing and the approval has been obtained from concerned Apprenticeship Adviser
6th Year onwards	As per Apprentices Act, 1961

B. Relaxation under various other Labour Laws

Sl. No.	Name of the Law	Referred as	Implementing Agency (Central / State)
1	The Industrial Disputes Act, 1947	ID Act	Central and State
2	The Trade Unions Act, 1926	TU Act	
3	The Building and Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996	BOCW Act	
4	The Industrial Employment (Standing Orders) Act, 1946	SO Act	
5	The Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979	ISMW Act	
6	The Payment of Gratuity Act, 1972	Gratuity Act	
7	The Contract Labour (Regulation and Abolition) Act, 1970	CLRO Act	
8	The Employees' Provident Fund and Miscellaneous Provisions Act, 1952	EPF Act	Central
9	The Employees' State Insurance Act, 1948	ESI Act	

[13] Ministry of Skill Development and Entrepreneurship, UOI letter no. DO MSDE-6(1)/2016-AP, dated 15-01-2016

The Startup entity is eased from inspection based on the following criteria:

Period	Particulars of Inspection of state level authority
1st Year	Inspection under BOCW, ISMW Act, Gratuity Act, CLRO, is completely dispensed with based on the online self-certification
2nd - 3rd Year	Inspection under the aforesaid laws, only when very credible and verifiable complaint of violation has been filed in writing and the approval has been obtained from at least one level senior to the inspecting officer
4th Year onwards	As per respective law

Compliance pertaining to 6 labour and 3 environmental laws will be allowed to be self-certified through the Startup mobile app.

Startups classified as White Category as defined by the Central Pollution Control Board will be allowed self- certification under environmental laws, with only random checks proposed.

2.4 Fast Track exit under Insolvency and Bankruptcy Code, 2016[14]

As per Section 55 to 58, the startup entity is eligible for fast track corporation insolvency resolution process and the exit process may be completed within 90 days of commencement date of process unless otherwise sought for extension by the entity etc.

2.5 Government Support for establishing Incubation Centres

1. AIM/ATL, NITI Aayog

As per the Atal Innovation Mission/ Atal Tinkering Labs, NITI Aayog, Government of India, the Central Government has issued guidelines in May, 2016 for extending the support for establishing incubation centres/ tinkering labs at various places in India

2. NIDHI, NSTEDB

As per the NIDHI, NSTEDB, Government of India, the Central Government has issued guidelines in April, 2016 for extending the support for 20 student start up entities with a maximum amount of Rs. 10.00 Lakhs each, which will be given as ignition grant/award, subject to the conditions stated therein.

[14]Insolvency and Bankruptcy Code, 2016 (Act No. 31 of 2016), dated 28th May, 2016

2.6 Establishment of Fund of Funds with a corpus of Rs.10,000 crore

Government to set up a Fund with an initial corpus of Rs.2,500 crore and a total corpus of Rs.10,000 crore over a period of 4 years.

Such Fund will not invest into Startups directly, but shall participate in the capital of SEBI registered Venture Funds.

The Venture Fund may obtain up to a maximum of 50% of the fund size from the Fund of Funds, provided it has already raised the balance 50% of the stated fund size. Such Fund will be managed by a Board with private professionals drawn from industry bodies, academia, and successful Startups.

2.7 Relaxation of norms for procurement from Startup entities

Ministry of Micro, Small and Medium Enterprises has issued a policy circular No. 1(2)(1)/2016-MA, dated 10th March, 2016 to all central ministries, central PSUs, departments etc., to convey that in case of procurement of goods on prior experience basis is relaxed in case of procurement of goods from startup entities subject to certain conditions stated therein.

Conclusion:

By initiating so many measures, the Union Government expects that the India becomes major player for home grown start ups and the mission of Make-in India, skill india etc., can be achieved. The Action Plan has certainly addressed key concerns, like simplifying the process to obtain certain regulatory registrations and approvals by rolling out the proposed Mobile App and Portal, enabling faster exits from a regulatory perspective, providing funding support and credit guarantee for Startups, and permitting certain specified tax benefits.

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AUDIT

REAL ESTATE INVESTMENT TRUST (REIT) – An Overview

Contributed by CA Sandeep Das

Background

REITs originated in the United States to give investors an opportunity to invest in income-generating real estate assets. After its introduction in the States, several countries such as Singapore, Australia and Hong Kong have implemented REITs.

REITs are similar to mutual funds. While mutual funds provide for an opportunity to invest in equity stocks, REITs allow one to invest in income-generating real estate assets. REITs raise funds from a large number of investors and directly invest that sum in income-generating real estate properties (which could be offices, residential apartments, shopping centers, hotels and warehouses).

The trusts are listed in stock exchanges so that investors can buy units in the trust. REITs are structured as trusts. Thus, the assets of an REIT are held by an independent trustee on behalf of unit holders.

Significance of REIT in Indian context

REITs, as a concept, have been on the horizon for a while now. India's regulations in 2014 for the sector have not been able to attract investor interest. REITs obtained exemption from dividend distribution tax in the Budget, a step towards making them attractive for the investors. A report by real estate consultancy firm estimates that Indian commercial real estate (like office, retail assets) offers investment opportunities for REITs worth $43 billion – $54 billion (Rs. 2.88 lakh crore – Rs. 3.60 lakh crore) across top cities.

REIT's Investment Objective

The investment objective of REITs is to provide unit holders with dividends, usually generated from rental income and capital gains from the profitable sale of real estate assets. Typically, the trust distributes 90 per cent of its income among its investors by issuing dividends.

Characteristics of REIT Structure

Typically, money is raised from unit holders through an Initial Public Offer (IPO) and used by the company to purchase a pool of real estate properties. These properties are leased out to tenants and the income generated via rent flows back to unit holders (investors) in return as income distributions (dividends).
Real Estate Investment Trust and infrastructure investment trust invites tax regimes have been introduced to allow these infrastructures to be set up in accordance with SEBI regulations. The investment model for REIT's and allows business trusts to raise capital through an issue of listed units and to raise debts from residents and nonresident investors.

REIT STRUCTURE		
Sponsor	***Trustee***	***Management***
1. Setup REIT and appoint the Trustee 2. Hold minimum required percentage of total unit of REIT	1. Hold REIT assets in the name of REIT for the benefit of Unit Holders 2. Oversee activities of Management and ensure that Management undertakes reporting and disclosures as per the regulations 3. Ensure Management makes timely payment of dividend to unit holders. 4. Ensuring compliance with applicable laws and protecting the rights of unit holders as well.	1. Identify and recommend investment opportunities 2. Manage Investments 3. Undertake Lease Management 4. Ensuring reporting and disclosures to stakeholders.

Significance of Investing in REITs, Tax and Other Issues

Investors can buy and sell units of REIT on the stock exchange as and when required, making investment easier to liquidate compared to physical property transaction. Investors who are averse to investing in physical purchase of property due to the risks involved, REIT is an alternative.
REIT could provide an opportunity for investors who, otherwise, do not get the opportunity to invest in commercial real estate because of high capital values. The minimum required to be put into an REIT is Rs2 lakh.90 per cent of the profit generated needs to be distributed as dividend in REIT, it could provide a stable income for unit holders.

Short-term capital gain tax is applicable for unit holders at the rate of 15 per cent. While interest is tax-exempt for REITs, it is taxable for unit holders. The registration charges for every purchase and sale of property is still applicable therefore such factors can impact the profitability and attractiveness of REITs in India.

Potential Investment Risks

REITs units are listed on, and are subject to the vagaries of the stock exchanges, resulting in negative or lower returns than expected. As in mutual funds, retail investors in REITs have no control over investments and exits being made by the trust. Investing in REITs can be a passive, income-producing alternative to buying property directly. Strongly consider publicly-traded REITs over non-traded REITs. It's essential to pay attention to interest rates.

REIT Enterprise Risk Management Framework

Five-step risk management process comprising Risk identification, Risk assessment, Formulation of risk mitigating measures, Communication and Implementation, as well as Monitoring and review.

The risk assessment takes into account both the impact and likelihood of occurrence and covers the investment, financial, operational and reputational aspects of REIT's business. Tools such as a risk rating matrix, key risk indicators and risk register assist the Management in its risk management process.

The Board is responsible for governing risks and ensuring that the Management maintains a sound risk management system and internal controls to safeguard Unitholders' interests and Company's REIT's assets. Assisted by the Audit and Risk Committee (ARC), the Board shall provide valuable advice to management in formulating various risk policies and guidelines.

The Board and Management shall meet on a quarterly basis or more frequently, when necessary, to review Company's REIT's financial performance, assess its current and future operating, financial and investment risks, as well as respond to feedback from the compliance Management and auditors.

Operational Risk

All operations are aligned with Company's REIT's strategies to ensure income sustainability and maximize distributable income growth. Measures include prompt lease renewals to reduce rental voids, monitoring of rental payments to minimize rental arrears and bad debts, as well as controlling property expenses to maximize net property income.

Standard operating procedures are reviewed regularly and good industry practices are incorporated into daily operations.

Business continuity plans are reviewed and improved periodically to minimize operational disruptions. These plans are tested regularly to ensure the responses developed are feasible and effective. Regular external audits are conducted to ensure that safety standards and procedures are implemented and up-to-date

For assets that are co-owned, the Management works closely with the property Management and co-owners to optimize asset performance and control property expenses. The Management and co-owners also jointly assess and approve all new, renewal, review and restructured leases, as well as capital expenditures.

Financing Risk

Liquidity and financing risks shall be managed in accordance with established guidelines and policies. The Management shall closely monitor its cash flow, debt maturity profile, gearing and liquidity positions. The Management diversifies its funding sources and lengthens the tenure of borrowings to ensure a well-staggered debt maturity profile.

Borrowings are refinanced early to reduce refinancing risk and lengthen the overall debt maturity.

The Managementshall maintain a robust cash flow position and ensures that there are sufficient working capital lines to meet its financial obligations.

Credit Risk

Tenants' credit worthiness is assessed prior to signing of lease agreements. They are also required to place security deposits upon confirmation of their leases.

Systematic rental collection procedures are implemented to ensure regular collection of rents, thereby preventing potential rental arrears.

Investment Risk

Comprehensive due diligence procedures to assess and evaluate potential investment risks are conducted prior to any transaction.

All investment proposals are evaluated objectively based on the investment criteria, as well as the target asset's specifications, location, expected returns, yield accretion, growth potential and performance sustainability, taking into account the prevailing economic climate and market conditions.

Compliance Risk

The Investment Manager shall update with the changes in legislations and regulations, as well as new developments in its operating environment.

Organisations shall undergo periodic internal and external audits to ensure that it adhere to relevant policies and processes.

The Investment Manager shall ensure organisation complies with applicable laws and regulations, including the Listing Rules.

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DIRECT TAX

THE DIRECT TAX DISPUTE RESOLUTION SCHEME 2016 (DDRS-2016)

Contributed by CA Ramprasad

Source:

Chapter X of Finance Act, 2016 provides for the scheme. The Scheme come into force on 1st July, 2016. The declaration may make declaration on or before 31st December, 2016.

The declarant (as defined in the scheme) has to file a declaration in relation to ***'tax arrear'*** or '***specified tax'*** in respect of which appeal is pending.

Tax Arrear means the amount of tax, interest or penalty determined under the Income Tax Act or Wealth Tax Act in respect of which appeal is pending before CIT(A) or CIT(W) as on the 29th February, 2016.

Specified Tax means tax determined in consequence of or is validated by an amendment made with retrospective effect in Income Tax Act, 1961 or Wealth Tax Act,1957 and relates to a period prior to the date on which the Act amending the Income Tax Act or Wealth Tax Act, as the case may be, received the assent of the President.

Salient Features of the Scheme:

Declaration is to be filed before the Designated Authority in Form 1 and shall be signed by the declarant or any person competent to verify the return of income on his behalf in accordance with the provisions of section 140 of the Income Tax Act, 1961. Form 2 has to be filed along with Form 1 stating that the declarant has agreed to waive his/her rights towards appeals and other related matter on opting to this scheme.

As per section 204(1) of Chapter X of the Finance Act, 2016 the designated authority shall within a period of 60 days from the date of receipt of declaration determine the amount payable by the declarant in accordance with the provisions of the schemevide Form 3.

The declarant shall pay sum determined by the designated authority within in 30 days of date of receipt of the certificate and intimate the fact of such payment to the designated authority along with the proofvide Form 4.

On verification of the payment challan and other related documents, the authorities shall issue an order vide Form 5, if disclosed amount is 'tax arrear'and Form 6, if disclosed amount is 'specified tax'. Such order shall be the order of full and final settlement of tax amounts and shall guard the declarant from all other prosecutions and related issues.

Every order passed under section 204(1) determining the sum payable under the scheme shall be conclusive as to the matters stated there in and no matter covered by such order shall be re- opened in any proceeding under the Income Tax Act or Wealth Tax Act or under any law for the time being in force or as the case may be under any agreement, whether for protection of investment or otherwise, entered in to by India with any other country or territory outside India.

Immunity (benefit):

In case of ***Tax Arrear-***

a. If disputed tax up to Rs 10 Lakh– Immunity from100% penalty;
b. If disputed tax exceeds Rs10Lakh–Immunity to the extent of 75% of minimum penalty;
c. If appeal pending related penalty– Immunity to the extent of 75% of minimum penalty.

In case of ***Specified Tax-***

a. 100% Immunity form payment of interest and penalty.

Note:

Disputed Tax means tax determined under the Income Tax Act or Wealth Tax Act which is disputed by the assessee or the declarant.

Immunity from instituting any proceedings in respect of any offence under the Income Tax Act or Wealth Tax Act as the case may be.

Any amount paid in pursuance to declaration shall not be refundable under any circumstances.

Non- applicability of Scheme:

Section 205 of the Finance Act, 2016 provides that the scheme shall not be applicable in the cases relating to:

a. Assessment made pursuant to search;
b. Assessment made pursuant to survey conducted by the department;
c. Assessment in respect of which prosecution proceedings have been instituted on or before the date of filing the declaration;
d. Tax liability relating to undisclosed income from a source located outside India or undisclosed asset located outside India;
e. Assessment or reassessment made on the basis of information received by the Government of India under the agreement for exchange of information with any other country;
f. In the case of a person in respect of whom an order of detention has been passed under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 and the order has not been revoked or set aside by the competent Court;
g. In case of a person in respect of whom prosecution has been instituted on or before filing of declaration or such person has been convicted of any offence punishable under the provisions of Indian Penal Code, The Unlawful Activities (Prevention) Act, 1967, The Narcotic Drugs and Psychotropic Substances Act, 1985, The Prevention of Corruption Act, 1988 or for enforcement of any civil liability;
h. In case of a person notified u/s. 3 of The Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992.

Withdrawal of Litigation:

In accordance with Section 200(2) of the Act, where a declaration has been filed in respect of tax arrears appeal pending before CIT(A) or CWT(A), as the case may be, relating to disputed income or disputed wealth shall be deemed to have been withdrawn.

In a case relating to specified tax, the assessee is required to firstly withdraw such appeal or writ pending before any appellate authority or the court and has to furnish proof of such withdrawal along with the declaration to be filed. In a case where the assessee has initiated any proceedings for arbitration, conciliation or mediation or has given any notice thereof under any law, he has to withdraw such proceedings or notice or claim, and proof of such withdrawal has to be submitted along with the declaration to be made. The assessee has also to make a declaration waiving his right to seek or pursue any remedy or any claim in relation to the specified tax which may be available to him under any law for the time being in force.

It has also been provided in sub-section (6) of Section 200 that no Appellate Authority or Arbitrator, conciliator or mediator shall proceed to decide any issue relating to specified tax mentioned in the declaration and in respect of which an order has been passed by the Designated Authority or the sum payable under the scheme has been determined.

Effect of False Declaration:

Section 200(5) of the Act, provides that where any material particular furnished in the declaration is found to be false or the declarant violates any of the conditions of the scheme or the declarant acts in a manner which is not in accordance with the undertaking given by him under sub-section (4) of Section 200, it shall be presumed that as if the declaration was never made under the scheme and all the consequences under the Income-tax Act or Wealth-tax Act, as the case may be, will follow and appeal or other proceedings shall be deemed to have been revived.

Forms:

Form	*Remarks*
1	Form of Declaration
2	Undertaking for waiving of all rights, remedies etc.,
3	Certification of Intimation of amount of tax arrear or specified tax by the designated authority
4	Intimation of Payment of amount specified in Form 3
5	Order of full and final settlement of Tax Arrear
6	Order of full and final settlement of Specified Tax

This article is contributed by CA Ram Prasad, Partner of SBS and Company LLP, Chartered Accountants. The author can be reached at caram@sbsandco.com

INDIRECT TAX

EXCISE DUTY ON JEWELLERY— THE RECENT COMPLIANCE AND PROCEDURAL MECHANISM

Contributed by CA Manindar K

Introduction:

The Finance Budget, 2016 introduced excise duty levy on manufacture of both branded and unbranded Jewellery with effect from 01.03.2016 by withdrawing exemption conferred under entry 199 of Notification 12/2012-CE dated 17.03.2012. The Jewellery sector across India went onto indefinite strike as the duty levy would affect their ease of doing business on the concerns that this levy lead into a clumsy procedural and compliance issues and also lamented about the frequent pesters from the officials of Central Excise Department.

Taking into consideration, the trepidations of the sector, Central Government has constituted a Committee to interact with the sector to address the procedural and compliance issues. The said committee has submitted their report on 23.06.2016. Vide press release of Finance Ministry dated 13.07.2016, stated that Central Government has accepted all the recommendations of the Committee. Accordingly, they are given legal effect by way of various Notifications and also through Circulars. Let us have a look at the various aspects of the recently notified compliance and procedural mechanism.

Leviability of excise duty:

Excise duty is applicable on articles of jewellery and parts of articles of jewellery made of precious metals. However, articles of silver jewellery which are not studded with any diamond, emerald, ruby, sapphire i.e. plain silver jewellery are continued to be exempt. This implies that excise duty is applicable on silver jeweller studded with precious stones namely diamond, emerald, ruby, and sapphire. The excise duty is leviable at the rate of 12.5%. Alternatively, excise duty can also be paid at the rate of 1% of the value on the condition that CENVAT Credit should not be availed for inputs and capital goods.

Partial exemption for manufacture of jewellery out of jewellery or precious stones supplied by retail customer:

In case of any jewellery manufactured by a manufacturer out of jewellery or precious stones supplied by retail customers, exemption is available to the extent of the value of these items supplied by retail customers. This implies that manufacturer is required to pay excise duty on a value that is equal to the value of additional materials used by principal manufacturer or manufacturer and the labour charges charged from the retail customer.

It is important to note that this exemption is available only in case of any jewellery or precious stones supplied by retail consumer. If the retail consumer supplies any precious metals (Gold/Platinum supplied in the form of coins, biscuits) for manufacture of jewellery, the benefit of exemption is not applicable. In such cases, even the fair value of such precious metals supplied is required to be included in the value of jewellery.

Valuation of Jewellery manufactured:

Excise duty payable on Jewellery manufactured shall be on tariff value basis by principle manufacturer (in case jewellery is manufactured by job worker) or manufacturer as the case may be. Accordingly, it is notified that the value of excisable goods manufactured shall be the value at which they are sold for the first timefrom the registered premises or from the centrally registered premises or branches of such centrally registered premises

In case where the retail customer supplies precious metal for manufacture of jewellery, as discussed above, the value for the purpose of payment of excise duty shall be the cost of additional materials used, labour charges charged by principle manufacturer or manufacturer and the value of such metal supplied by retail customer.

Exemption is withdrawn for Handicrafts made of precious metals:

By virtue of exemption Notification No. 17/2011-CE dated 01.03.2011; exemption is available for all kinds of handicrafts including those made of precious metals. This notification is now amended with effect from 26.07.2016 to with draw exemption for handicrafts made of precious metals viz. gold, silver and platinum. Thus excise duty is applicable even on handicrafts made of precious metals.

Closing stock as on 29.02.2016:

Confusion prevailed over the applicability of excise duty on closing stock as on 29.02.2016 which are lying in stock at different places viz. Job workers' premises, workshop or showroom of the principle manufacturer or manufacturer etc. In this regard, it was clarified as follows;

a) No excise duty is applicable on jewellery articles which are received from the premises of job workers or any other premises where the manufacture is undertaken and lying in stock as on 29.02.2016 at different premises including branches of principle manufacturer.
b) No excise duty is payable on jewellery articles sent on approval to potential customers as on 29.02.2016.
c) Excise duty is required to be payable on articles of jewellery lying in stock as on 29.02.2016 with the job worker or any other premises where articles of jewellery were manufactured (including finished articles of jewellery as well as work-in-progress) and are received by principle manufacturer or manufacturer on or after 01.03.2016 to the point of first sale (e.g. showroom)

It is also clarified that no stock declaration is required to be filed by a jeweller for this purpose with the jurisdictional Central Excise Authorities.

Articles of Jewellery (Collection of Duty) Rules, 2016:

In terms of these rules, Central Government has laid down various provisions relating to date for determination of applicable rate of duty, person responsible to pay duty, determination of due date for payment of excise duty, records to be maintained etc. These provisions are broadly summarised as follows;

a) **Person liable to pay excise duty:** In terms of the rules, the responsibility to pay excise duty is on manufacturer where the jewellery is manufactured on his own account and in case where the jewellery is manufactured by principle manufacturer on job work basis through job worker, then the principle manufacturer is responsible to pay excise duty.

b) **Date for determination of duty:** The rate of duty applicable shall be the rate in force on the date when such articles are sold for the first time by manufacturer or principle manufacturer as the case may be from his registered premises or centrally registered premises or branches of such centrally registered premises

c) **Manner of payment of duty:** Excise duty shall be paid by 5th/6th of the month following the month in which first sale is undertaken by principle manufacturer or manufacturer as the case may be. Where the assesse (principle manufacturer or manufacturer) is eligible to claim SSI exemption i.e. turnover for the previous financial year is less than fifteen crores, then assesse can pay duty on quarterly basis i.e. by 5th/6th of the month following the quarter in which first sale is undertaken. However, in case of March month or quarter ending with March month, the due date for excise duty payment is 31st March itself.

d) **31st July is the due date for payment of duty for the months of March, April, May and June of 2016:** As stated, excise duty is applicable for manufacture of jewellery with effect from 01.03.2016. Considering the concerns expressed by Jewellery sector and the fact that Committee has been constituted for dealing with procedural and compliance issues, Central Government has deferred the due date for payment of excise duty for the months of March, April and May months till 30th June vide Circular 1026/14/2016-CX, dated23.04.2016. It is now provided under these rules, that the due date for payment of excise duty for the above referred months including the month of June, 2016 is 31st July, 2016.

e) **Daily Stock Account to be maintained by Manufacturer or Principle Manufacturer:** Every such assesse is required to maintain separate records for receipt and sale of manufactured and traded articles including their description on a daily basis. These records are required to be maintained on weight and cartage basis.

The records and documents to be maintained for manufactured articles includes records and documents showing receipts of articles manufactured or received back from job worker's premises, quantity of manufactured articles sold on first sale basis within India and for export to outside India. Such records and documents shall be maintained for a period of five years.

Similarly, in case of traded articles, the records and documents to be maintained includes records showing the value and quantity of their traded stock at the time of purchase and sale. Such records and documents shall be maintained for a period of five years.

f) **Articles to be removed on invoice basis:** Excisable articles of jewellery sold on first sale basis by principle manufacturer or manufacturer shall be removed only under the cover of an invoice called 'First Sale Invoice'. The said invoice should contain the details viz. registration number, name of the consignee, description of articles, classification and date of removal by sale. The first sale invoice shall show the value of traded articles if any separately from the value of manufactured articles. The invoice shall be prepared in duplicate; original copy shall be marked to the buyer and duplicate copy for assesse records.

g) **Job worker need not maintain any documents and records:** As discussed above, the job worker is relieved from the responsibility of collecting and paying excise duty for the articles manufactured by them on job work basis. He is also relieved from the responsibility of maintaining any documents or records with respect to the jewellery manufactured by him on job work basis.

h) **Principle Manufacturer responsible to maintain documents and records for job work:** The principle manufacturer is under obligation to maintain all the documents and records as required with respect to the job works given by them. He is required to supply to job worker any inputs or articles for job work on the basis of a challan, issue voucher or any other document containing details viz. registration number, description & quantity of inputs or articles, name of the person carrying the inputs or articles along with his signature and proof of identity and date of supply of inputs or articles. The principle manufacturer shall also be required to maintain appropriate documents and records for the inputs or articles if any received back from the premises of job worker.

i) **Duty payable even in case the articles of jewellery are lost, destroyed or found short:** It has been expressly clarified that in case where the articles of jewellery are lost, destroyed or found short at any time before their first sale, the principle manufacturer or manufacturer shall be liable to pay duty of excise as if such goods are sold. In such cases, the value of these articles, where they are manufactured on job work basis shall be equal to the cost of raw materials plus job work charges paid by the principle manufacturer. In case of direct manufacture, then the value shall equal to cost of raw materials plus the making charges charged by manufacturer for similar articles.

j) **Inputs, semi-finished or finished articles can be removed for certain purposes without payment of duty:** A manufacturer or principle manufacturer is permitted to remove any inputs, semi-finished articles or finished articles for further processing, testing, repair, re-conditioning, hallmarking, display in exhibitions or for any other purpose including as samples to any other premises. No excise duty is required to be paid for removal of articles for any purpose stated above other than on account of first sale. In such cases, the removal shall be undertaken on the basis of a challans, issue voucher or any other document as referred for the purpose of removing inputs or other articles to job worker.

k) **Sales return of duty paid stocks:** Sometimes, the jewellery articles sold on first sale basis may have been returned by customers while the excise duty charged would have been paid to the Central Government. In such cases, the jewellery articles returned by customers can be accounted as trading stock and can be sold subsequently to other customers without charging any excise duty.

l) **Optional Scheme for stock maintenance:** As discussed above, the principle manufacturer or manufacturer is required to maintain separate physical stocks and stock records are also required to be maintained separately for manufactured and traded articles of jewellery. Excise duty is required to be paid on all first sales made out of manufacturing stock. No excise duty is required to be paid on all sales made out of trading stock. In case where assesse finds it difficult to maintain details of sales whether made out of manufacturing stock or out of trading stock, he is entitled to optional scheme where he is required to maintain details of stock separately for traded and manufactured articles. There is no need to ascertain the exact quantity of sales made out of manufactured stock and traded stock. In such cases, the sales are deemed to have been taken place in the following sequential manner;

a. Out of opening stock of manufactured goods of a particular month
b. Out of opening stock of traded goods of a particular month
c. Out of quantity of stock manufactured during the month
d. Out of quantity of stock purchased during the month

This is an optional scheme which shall be exercised by written declaration to excise authorities by 28th February of previous financial year. This option once exercised shall not be withdrawn for the whole of financial year. It is clarified that with respect to March, 2016 and for the FY 2016-17, this optional scheme shall be exercised on or before 31st July, 2016.

Quarterly Return: In case of assesses engaged in manufacture of only articles of jewellery falling under chapter 7113; paying excise duty at the rate of one per cent without the benefit of CENVAT credit on inputs and capital goods and is not engaged in manufacture of any other types of excisable goods, a simple return in Form ER-8 shall be filed once per quarter by 10th of the month immediately following the quarter. It is also clarified that for the quarters ending March, 2016 and June, 2016, the return shall be filed by 10th August, 2016.

Relief from filing Annual Return: Assesses engaged in manufacture of articles of Jewellery falling under chapter 7113 are exempt from the requirement of filing annual return.

Registration: As stated above, job worker is completely relieved from Central Excise requirements. Thus, there is no need for them to register under Central Excise. Manufacturer and Principle Manufacturer are required to obtain registration. They can register each of their business premises separately under central excise or they can obtain Centralised registration for all their business premises by registering their business premises where centralised billing or accounting system is maintained with respect to manufacturing and sales undertaken through their other business premises.

It is clarified that there is no need to submit ground plan of the manufacturing premises in order to obtain registration. No physical inspection of the premises will be conducted by officials of Central Excise Department in order to grant registration. It is also clarified that the existing manufacturers are required to obtain registration under Central Excise by 31st July, 2016.

Small Scale Industrial (SSI) Exemption:

The general exemption namely SSI exemption is applicable to articles of jewellery also. It is originally notified as on 01.03.2016 that exemption is available in the current financial year on value of first clearances up to six crores of rupees provided the turnover in the preceding financial year does not exceed twelve crores of rupees. For the month of March 2016, it is specified that this exemption is available for clearances up to a value of Rs. 50 lakhs.

This SSI exemption benefit is now enhanced. Accordingly, exemption is applicable for first clearances up to a value of ten crores provided the turnover in the preceding financial year does not exceed fifteen crores of rupees. It is also clarified that for the month of March 2016, exemption is available for clearances up to a value of Rs. 85 lakhs. For the purpose of this exemption benefit, the turnovers of all branches/premises of manufacturer or principle manufacturer as the case may be shall be clubbed.

Clarification on audit proceedings:

With respect initiation of audit proceedings on the assesses by Central Excise Department officials, the following are the assurances given by the Central Government;

a. No audit shall be conducted for the first two year period on assesses whose excise duty payments (cash plus credit) are less than one crore rupees.
b. In case assesses paying excise duty less than 50 lakh rupees, audit will be conducted after the expiry of two year period on 5% of the total number such assesses.
c. In case of assesses paying excise duty of 50 lakhs or more, audit will be conducted after the expiry of two year period with a frequency of one audit in every five years.
d. In case of assesses paying excise duty between one crore to three crores, audit will conducted once in every two years.
e. In case of assesses paying excise duty of three crores and above, audit will be conducted every year.
f. It is also clarified that audit conducted on assesses will only be in the form of desk review by the officers without physically inspecting the premises of assesses.
g. Irrespective of duty involved, it is provided that show cause notice shall be issued and adjudicated only by the officers of the rank of Commissioners. It is also provided that summons will be issued only with the approval of Commissioner.

Conclusion:

In view of the above discussion, the efforts were made to envisage fairly simple and easy to comply mechanism for Jewellery sector when compared to the regular procedures under Central Excise Law as applicable to all types of assesses. These would include collection of duty only upon first point of sale basis, enhanced SSI exemption limit, simple return, optional stock maintenance scheme etc. It is also assured through clarificatory circulars that there is no need to worry about 'inspector raj' of the Excise Department. It is expressly provided that there are no physical visits by officers either for registration or for the purpose of conducting audits. Let's hope all these would ensure smooth transition by Jewellery sector towards excise duty levy.

This article is contributed by CA Manindar K, Partner of SBS and Company LLP, Chartered Accountants. The author can be reached at manindar@sbsandco.com

COMPANIES ACT, 2013

COMPANIES AMENDMENT BILL-2016-part-3

Contributed by CS D V K Phanindra

Sl. No.	Section(s) under the CA, 2013, amended	Clause No. in the Amendment Bill	Proposed amendment relating to	Remarks/Comments/Penalty
45	Section 152 – Appointment of Directors	46	Amendment of sub-section (3) and (4) of section 152 of the Act to provide any other identification number, as may be prescribed, to be recognised as Director Identification Number, and a person may hold such identification number in place of DIN.	**Welcome amendment, allowing to have a prescribed Identification number as DIN, and a separate DIN need not be obtained.**
46	Section 153 – Application for Allotment of DIN	47	Insertion of a proviso to section 153 of the Act, enabling the Central Government to recognise any other identification number to be treated as DIN, and any person possessing such Identification Number need not obtain a DIN under the section.	**Welcome amendment, allowing to have a prescribed Identification number as DIN, thereby removing the requirement for applying a separate DIN.**
47	Section 160 – Right of Persons Other than Retiring Directors to Stand for Directorship	48	Insertion of a proviso to sub-section (1) of Section 160 of the Act of the Act,exempting the requirement as to deposit of Rs.1,00,000/-, in connection with appointment of independent directors or directors nominated by nomination and remuneration committee. Vide exemption notification Dt:05.06.2015, the provisions of Section 160 are not applicable to Private Companies.	**Welcome amendment, exempting the requirement of deposit of money in respect of independent directors or directors nominated by nomination and remuneration committee.**

Sl. No.	Section(s) under the CA, 2013, amended	Clause No. in the Amendment Bill	Proposed amendment relating to	Remarks/Comments/Penalty
48	Section 161 - Appointment of Additional Director, Alternate Director and Nominee Director	49	Amendment of sub-section (2) of Section 161 of the Act, restricting an existing Director in the Company, from being appointed as an Alternate director for other Director. Amendment of Sub-section (4) of Section 161 of the Act, to delete the word "In case of a Public Company", thereby allowing the Board of all companies to fill casual vacancy and obtain approval for the said appointment, in the immediate next annual generalmeeting.	**Amendment to remove ambiguity.** **Welcome Amendment, and ease of operations.**
49	Section 164 – Disqualifications for appointment of Director	50	Insertion of a proviso to sub-section (2) of section 164 of the Act to provide for non-applicability of disqualification provisions, for period of 6 months from the date of appointment, to a director, who is appointed, as a director in a company, which is in default of non-filing of financial statements or annual return or failure to repay the deposit. Substitution of a new proviso in place of the existing proviso to provide that the clauses (d), (e) and (g) of sub-section (3) of section 164 of the Act, shall continue to apply even if appeal or petition is filed.	**Welcome amendment providing relief to the directors who get appointed as Director in Company under defaulting status.**
50	Section 165 – Number of Directorships	51	Insertion of an Explanation to sub-section (1) of Section 165 of the Act, to exclude the directorship in dormant companies from the limit of directorships of 20 Companies.	**Welcome amendment.**

Sl. No.	Section(s) under the CA, 2013, amended	Clause No. in the Amendment Bill	Proposed amendment relating to	Remarks/Comments/Penalty
51	Section 167– Vacation of office of Director	52	Insertion of a proviso to Clause (a) of sub-section (1) of section 167 of the Act, to provide that in case a director incurs any of disqualifications under section 164 (2), he shall vacate office incompanies other than the company which is in default. Substitution of the proviso to Clause (f) of sub-section (1) of section 167 of the Act to provide the time frame/criteria from which vacation of office of director shall take place, in case of orders referred to in clauses (e) and (f)	**Amendment to remove ambiguity.** **Welcome amendment, providing relief in cases where appeal is made against the order.**
52	Section 168 – Resignation of Director	53	Amendment of proviso to Sub-section (1) of Section 168 of the Act, thereby making the requirement of filing of Resignation letter by the Director with the Registrar of Companies, optional.	**Welcome amendment, thereby making the filing of form optional on the part of the Resigning Director.**
53	Section – 173 – Meetings of the Board	54	Insertion of a proviso to sub-section (2) of Section 173 of the Act to allow participation of directors on certain items at Board meetings through video conferencing or other audio visual means if there is requisite quorum is present at the meeting through physical presence of directors.	**Welcome amendment, thereby enabling the directors who cannot be present physically to participate in the meeting and be part of the decision making.**
54	Section 177– Audit Committee	55	Amendment to Sub-section (1) of Section 177 of the Act, to replace the words "Every Listed Company" with words "Every Listed Public Company", thereby making the applicability of the Section only to listed public companies and other companies as prescribed under the rules.	**Welcome Amendment to remove ambiguity and ease of operations.**

Sl. No.	Section(s) under the CA, 2013, amended	Clause No. in the Amendment Bill	Proposed amendment relating to	Remarks/Comments/Penalty
			Insertion of new provisos in clause (iv) of sub-section (4) of Section 177 of the Act, relating to authorities/powers to the Audit committees, such as (i) ratification of transactions entered in to by the Directors with the company, neither without approval of the Audit Committee and involving amount not exceeding Rs.1 Crore rupees, not the said transaction is ratified by the Audit Committee, within 3 months of transaction, (ii) consequences of non-ratification and (iii) exemption from obtaining approval of audit committee for to related party transactions between holding compan yand its wholly owned subsidiary, other than those covered under Section 188	
55	Section 178 - Nomination and Remuneration Committee and Stakeholders Relationship Committee	56	Amendment to Sub-section (1) of Section 178 of the Act, to replace the words "Every Listed Company" with words "Every Listed Public Company", thereby making the applicability of the Section only to listed public companies and other companies as prescribed under the rules. Amendment of Sub-section (2) of Section 178 of the Act, that instead of the Committee carrying out evaluation of every director's performance, the Committee will specify methodology for effective evaluation of performance of Board and committees and individual directors, and the said performance evaluation to be carried out either by the Board, Nomination and Remuneration Committee or an Independent external agency.	**Welcome Amendment to remove ambiguity and ease of operations.** **Welcome Amendment for ease of operations.**

Sl. No.	Section(s) under the CA, 2013, amended	Clause No. in the Amendment Bill	Proposed amendment relating to	Remarks/Comments/Penalty
			Insertion of Proviso to Clause (c)of Sub-section (4) of Section 178, to provide that the policy framed by the Nomination and Remuneration Committee, relating to criteria for determining qualifications, positive attributes and independence of a director and recommend to the Board a policy, relating to the remuneration for the directors, key managerial personnel and other employees, shall be placed on the website of the Company, if any, and the salient features policy and changes therein, if any, along with the web address of the policy, if any, shall be disclosed in the Board's report. Amendment of proviso to Sub-section (8) of Section 178 for substituting the words “inability to resolve or consider any grievance" in place of "non-consideration of resolution of any grievance".	**Disclosure requirement included.** **Amendment to remove error in wording**
56	Section 180 - Restrictions on Powers of Board.	57	Amendment to item (c) of sub-section (1) of Section 180 of the Act, to substitute for the words **"paid-up share capital, free reserves and securities premium",** in place of **"paid-up share capital and free reserves",** i.e., to include **securities premium,** thereby making the requirement of obtaining consent from the members of the company, only for the cases, where the proposed borrowings, will be in excess of its paid-up share capital, free reserves and securities premium. Note: This section is does not apply to a Private Company, by virtue of the exemption notification Dt:05.06.2015.	**Amendment to maintain uniformity**

Sl. No.	Section(s) under the CA, 2013, amended	Clause No. in the Amendment Bill	Proposed amendment relating to	Remarks/Comments/Penalty
57	Section 184 – Disclosure of Interest by Director	58	Amendment to Sub-section (4) of Section 184 of the Act, to remove the minimum fine of Rs.50,000/-, for contravention by the Director of the provisions i.e., failure to disclose his interest in general and/or in particular with reference to a contract Amendment to Clause (b) of sub-section(5) of Section 184 of the Act, to provide for non-applicability of the provisions of this section, relating to the transactions between Companies and body Corporates, where any of the directors of the one company or body corporate or two or more of them together holds or hold not more than two per cent. of the paid-up share capital in the other company or the body corporate, which was inadvertently left out.	**Since there is no minimum fine slab, the penalty levied can be upto Rs.1 Lakh.** **Amendment to remove ambiguity**
58	Section 185 - Loan to Directors, etc	59	Amendment to substitute the existing Section 185 of the Act, with **a new section** with following provisions: ➔ Sub-section (1): To prohibit giving loans, advances, etc., to directors of the company or its holding company or any partner of such director or any firm in which such director or relative is a partner. ➔ Sub-section (2): It allows a company to give loan or guarantee or provide security to **any person in whom any of the director is interested** subject to passing of special resolution by the company and utilisation of loans by the borrowing company for its principal business activities.	**VERY MUCH REQUIRED AMENDMENT Welcome substitution /Amendment to provide for relief to group companies/Companies with common directors to provide loans/guarantees after compliance of the provisions.**

Sl. No.	Section(s) under the CA, 2013, amended	Clause No. in the Amendment Bill	Proposed amendment relating to	Remarks/Comments/Penalty
			It provides for an explanation for term **any person in whom any of the director is interested.** ➔ Sub-section (3): Provides for certain situations to which the provisions of Sub-section (1) & (2)are not applicable. ➔ Sub-section (4): Penalties for non-compliance. (penalties remain the same as in the old Section)	
59	Section 186 - Loan and Investment by Company	60	Omission of Sub-section(1) of Section 186 of the Act, relating to the restriction on layers of investment companies i.e.,2 Layers. Thereby investment can be done through more than two layers of investment companies. Insertion of an explanation to Sub-section (2), that for the purpose of the sub-section, the word **"person"**does not include **any individual who is in the employment of the company.** Amendment to substitute the existing sub-section (3) of Section 186 of the Act, with a new sub-section, to include aggregate of loan and investments so far made and guarantees, securities so far provided to all other bodies corporate along with the investment, loan, guarantee or security proposed to be made or given by the Board for the purpose of calculating the limits of loans and investments. Requirement of prior Special resolution for investment/loans/securities beyond the limits.	**Welcome Amendment to provide ease of operations.** **Welcome Amendment to provide ease of operations.**

Sl. No.	Section(s) under the CA, 2013, amended	Clause No. in the Amendment Bill	Proposed amendment relating to	Remarks/Comments/Penalty
			Inclusion of a proviso to sub-section (3), to exempt the requirement of passing a special resolution at general meeting, in cases where a loan or guarantee is given or where a security has been provided by a company to its wholly owned subsidiary companyor a joint venture company, or acquisition is made by a holding company of the securities of its wholly owned subsidiary company. A further proviso provides for the disclosure of the said details in the Financial statement of the Company Amendment to substitute the existing sub-section (11) of Section 186 of the Actto rephrase the provisions. Amendment of Clause (a) of the explanation provided to the section, relating to "investment company", to include clarification to the existing explanation to provide for criteria/cases, as to when the company will be deemed to be a company principally engaged in the business of acquisition of shares, debentures or other securities.	**Welcome Amendment to provide ease of operations.** **Amendment to provide for clarity.**
60	Section 188 – Related Party Transactions	61	Insertion of a new proviso (3rd one) after the existing second proviso to sub-section (1) of Section 188, to provide that the provisions of 2nd proviso to Section 188(1) shall not apply to a company in which 90 % or more members in numbers are relatives of promoters or related parties.	**Welcome Amendment to provide ease of operations.**

Sl. No.	Section(s) under the CA, 2013, amended	Clause No. in the Amendment Bill	Proposed amendment relating to	Remarks/Comments/Penalty
			Amendment of Sub-section (3) of Section 188 of the Act, to provide that any transaction entered into by a director or any other employee, without obtaining the consent of the Board or approval by are solution in the general meeting under sub-section (1) and if it is not ratified by the Board or, as the case may be, by the shareholders at a meeting within three months **shall be voidable at the option of the Board or shareholders, as the case may be**	**Amendment to provide for clarity.**
61	Section 194 - Prohibition on Forward Dealings in Securities of Company by Director or key Managerial Personnel	62	Amendment to Omit Section 194 of the Act relating to prohibition on forward dealings in securities of company by director or key managerial personnel	**Amendment proposed to be made, since the same is covered under other enactment, and the Companies Act, cannot have a control over the same.**
62	Section 195 - Prohibition on Insider Trading of Securities	63	Amendment to Omit Section 195 of the Act which provides for prohibition on Insider Trading of Securities.	**Amendment proposed to be made, since the same is covered under other enactment, and the Companies Act, cannot have a control over the same.**

This article is contributed by CS D V K Phanindra. The author can be reached at phanindra@sbsandco.com

FEMA

FEMA UPDATES

Contributed by CA Murali Krishna G

AUGUST '16

1. Holding of FCA by Insurance Companies and Start Ups

RBI vide Notification No. FEMA 10 (R)/ (1)/2016-RB dated June 01, 2016has amended FEM (Foreign Currency Accounts by a person resident in India) (Amendment) Regulations, 2016, whereby RBI has permitted Insurance Companies and StartUp Companies to open and hold Foreign Currency Accounts with banks outside India.

For more details plese refer the notification

2. DIPP Consolidated FDI Policy of 2016

DIPP has issued Consolidated FDI Policy Circular of 2016, vide its file no. D/o IPP F. No. 5(1)/2016-FC-1, dated 07/06/2016 to consolidate and update the extant FDI regulations.

For details plese refer the circular

3. External Commercial Borrowings (ECB) – Approval Route cases:

RBI vide A.P. (DIR Series) Circular No. 80 dated June 30, 2016has amended the guidelines for processing the matters pertaining to ECB under approval route. It is stated that with a view to rationalizing and expediting the process of giving approval, it has been decided that ECB proposals received in the Reserve Bank above a certain threshold limit (refixed from time to time) be placed before the Empowered Committee. The Reserve Bank will take a final decision in the cases taking into account the recommendation of the Empowered Committee. All other aspects of the ECB policy shall remain unchanged.

4. Settlement System under Asian Clearing Union (ACU):

RBI vide A.P. (DIR Series) Circular No. 81 dated June 30, 2016has invited the attention of AD Category-I, giving participants in ACU mechanism the option to settle their transactions either in 'ACU Dollar' or in 'ACU Euro'. The 'ACU Dollar' and 'ACU Euro' is equivalent in value to one US Dollar and one Euro, respectively.
As the payment channel for processing 'ACU Euro' transactions is under review, it has become necessary to temporarily suspend operations in 'ACU Euro' with effect from July 01, 2016. Accordingly, all eligible current account transactions including trade transactions in 'Euro' are permitted to be settled outside the ACU mechanism until further notice.

5. Discontinuation of Reporting of Bank Guarantee on behalf of service importers

RBI vide A.P. (DIR Series) Circular No. 01 dated July 07, 2016has invited the attention of AD Category-I, on 'Other Remittance Facilities' in terms of which, AD Category-I banks were permitted to issue guarantees in favour of a non-resident service provider on behalf of their resident customers importing services, subject to the conditions laid therein. AD Category-I banks were also advised to report to the Chief General Manager-in- Charge, Foreign Exchange Department, Foreign Investments Division (EPD), Reserve Bank of India, Central Office, Mumbai-400001 details about invocation of bank guarantee for service imports.

On a review of the reporting requirements and to reduce the burden of compliance, AD Category I banks are advised to discontinue submission of such reports with immediate effect. They may, however, maintain records of such invocations and furnish the required details to RBI whenever sought.

This article is contributed by CA Murali Krishna G, Partner of SBS and Company LLP, Chartered Accountants. The author can be reached at gmk@sbsandco.com

INDIRECT TAX

INDIRECT TAX UPDATES

Contributed by Indirect Tax Team

SERVICE TAX

Notifications:

a) Exempts the service tax on taxable services by way of transportation of goods by vessel: Notification no. 36/2016- ST

The service of transportation of goods by vessel from outside India up to the Custom station of India is made taxable w.e.f 01.06.2016. However, such services are exempted in case the invoice is raised on or before 31.05.2016 provided the import manifest or import report has been issued on or before 31.05.2016 and the service provider or recipient shows the Customs certified copy of said document.
http://www.cbec.gov.in/resources//htdocs-servicetax/st-notifications/st-notifications-2016/st36-2016.pdf

b) Exemption of service from levy of Krishi Kalyan cess: Notification no. 35/2016-ST

The Krishi kalyan cess is levied on all taxable service w.e.f 01.06.2016 along with service tax and Swachh Bharat cess. However, if the service is completed and the invoice is also raised by 31.05.2016, then such service will be exempted from payment of krishi kalyan cess even if payment is received at any time on or after 01.06.2016.
http://www.cbec.gov.in/resources//htdocs-servicetax/st-notifications/st-notifications-2016/st35-2016.pdf

c) Service Tax Rules, 1994 rules are amended to specify that business entity is liable to pay tax when service is received from Senior advocate: Notification 32, 33 & 34/2016-ST

Legal services of a senior advocate are exempt when provided to any person other than a business entity and to a business entity with a turnover up to ten lakhs in preceding financial year.

Senior advocate services are brought under reverse charge mechanism. In case of representational services of senior advocates, the client (litigant/petitioner/applicant) is required to pay service tax irrespective of the fact whether services of senior advocate are received directly by client or indirectly through other individual or firm of advocates. In case of other services, the direct service receiver whether it is client or an individual are required to pay service tax.
http://www.cbec.gov.in/resources//htdocs-servicetax/st-notifications/st-notifications-2016/st34-2016.pdf

Circulars:

a) Speedy disbursal of pending refund claims of exporters of services – Rule 5 of CENVAT Credit Rules,2004:
Circular 195/05/2016-ST

Circular 187/6/2015-ST dated 10.11.2015 has prescribed a scheme for speedy disposal of export refund claims filed under Rule 5 of CCR, 2004. The said scheme is applicable forrefund claims filed on or before 31.03.2015 and have not been settled before 10.11.2015. Accordingly, the applicant is eligible for provisional payment of 80% of the claim amount. The said circular requires certificate from statutory auditor, chartered accountant as per the format given in Annexure I.

With the current circular, it is now clarified that in case of companies, the said certificate should be signed by the statutory auditor of the Company as appointed under Companies Act and in case of other entities; the certificate can be signed by any Chartered Accountant. In certain cases, refund claims are rejected for the reason that the certificate issued contains certain qualifications/disclaimers. It is now clarified that the claims should not be rejected for the said qualifications/disclaimers.
http://www.cbec.gov.in/resources//htdocs-servicetax/st-circulars/st-circulars-2015/st-circ-187-2015.pdf

b) CBEC directs officers to strictly comply with legal provisions and administrative instructions while exercising their power to provisionally attach properties towards recovery of service tax dues:
Circular 196/06/2016-ST

This Circular is issued pursuant to the decision of Kunj Power Projects vs UOI - 2015-TIOL-2728-HC-ALL-STwherein the Allahabad High Court stated that the power relating to provisional attachment of property under Rule 3 of The Service Tax (Provisional Attachment of Property) Rules, 2008 should be exercised by officers with utmost care and caution and by providing a reasonable opportunity to the assesse.

In this regard, CBEC vide this Circular clarified that there are adequate safeguards in the law and same have been highlighted in the Circular dated 1-7-2008. The present situation has resulted only on account of non-compliance with respect to both. Chief Commissioners are requested to issue standing orders with respect to the observations of the Hon'ble Allahabad High Court and to also emphasize that non-compliance with legal provisions or administrative instructions will leave officers with no defence in legal proceedings arising out of such non-compliance.
http://www.cbec.gov.in/resources//htdocs-servicetax/st-circulars/st-circulars-2016/st-circ-196-2016.pdf

CENTRAL EXCISE

The changes pertaining to the jewellery industry are covered under a separate article in this month's edition in SBS Wiki. We request the interested readers to kindly make a note of the same.

Notifications:

a) Exemption to handicrafts of Goldsmiths and Silversmiths wares is withdrawn: Notification No. 29/2016-CE, dated 26.07.2016

Notification 17/2011-CE dated 01.03.2011 provides exemption from central excise duty on manufacture of all kinds of handicrafts. This exemption notification is now amended with the present notification to withdraw exemption for handicrafts of Goldsmiths and Silversmiths wares.
http://www.cbec.gov.in/resources//htdocs-cbec/excise/cx-act/notifications/notfns-2016/cx-tarr2016/ce29-2016.pdf

b) Requirement of dual registration viz as importer and dealer is done away: Notification 30/2016- CE(NT) dated 28.06.2016

A separate registration and filing of separate returns under Central Excise was made mandatory for importers engaged in the business of importing goods from outside India and selling in India. If the same person is also involved in selling goods manufactured in India, he is also required to have separate registration as dealer under Central Excise and file separate return. In order to file separate returns, separate set of records are required to be maintained for both the activities. Now the requirement of dual registration has been done away.

Now sub-rule (2) of Rule 9 of Central Excise Rules, 2002 is amended to give effect that if an assessee is registered as an importer, he is not required to register as dealer. Similarly if an assessee is registered as a dealer, then he is not required to register as importer. This would mean that as assesse engaged in trading of both imported and indigenously manufactured goods is now permitted to maintain single set of records and file single return.
http://www.cbec.gov.in/resources//htdocs-cbec/excise/cx-act/notifications/notfns-2016/cx-nt2016/cent30-2016.pdf

c) **Bunker fuels are permitted to store in warehouse without payment of duty: Notification 31/2016-CE(NT) dated 04.07.2016**

In terms of sub-rule (1) of Rule 20 of Central Excise Rules, 2002, Central Government is given power to notify excisable goods which can be removed from Factory of production to a warehouse or from one warehouse to another warehouse without payment of duty. Through this notification, this facility of storing excisable goods without payment of duty in a warehouse is extended to bunker fuels for use in ships or vessels namely IFO 180 CST and IFO 380 CST.
http://www.cbec.gov.in/resources//htdocs-cbec/excise/cx-act/notifications/notfns-2016/cx-nt2016/cent31-2016.pdf

d) **Branded Garment manufacturers are exempt from physical verification of premises for granting registration under Central Excise: Notification No. 32/2016-CE(NT) dated 11.07.2016**

This notification is issued to amend Notification 35/2001-CE(NT) dated 11.07.2016. Accordingly, branded garment manufacturers falling under Chapters 61, 62 or 63 (except laminated jute bags falling under headings or tariff item 6305, 6309 00 00 or 6310) of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) bearing a brand name or sold under a brand name and having a retail sale price (RSP) of one thousand rupees and above, are exempt from the requirement of physical verification of their premises for granting registration under Central Excise.
http://www.cbec.gov.in/resources//htdocs-cbec/excise/cx-act/notifications/notfns-2016/cx-nt2016/cent32-2016.pdf

Circulars:

a) **Manual signatures on digitally signed invoices: Circular 1038/26/2016 - CE**

It is clarified in this circular that the manufacturer or service provider who opts to issue invoices authenticated by digital signature may print a copy of the invoice and manually sign it and forward to customers who are unable to get digitally signed invoices. Such invoices should be authenticated by digital as well as manual signatures and is a valid document for taking CENVAT credit.
http://www.cbec.gov.in/resources//htdocs-cbec/excise/cx-circulars/cx-circulars-2016/circ1038-2016cx.pdf

b) **Recovery of confirmed demands during pendency of stay application: Circular 1035/2016-CE**

This Circular issued to rescind the earlier Circular No. 967/1/2013-CX dated 01.01.2013 relating recovery of confirmed dues during pendency of stay applications. It is now clarified that in case of stay applications pending before Commissioner (Appeals) and CESTAT for the appeals filed for the period prior to 06.08.2014, no recovery of amount shall be made during their pendency.

With respect to recovery proceeding in relation to an order of Hon'ble High Court or Tribunal confirming demand of duty, the Circular has directed that the proceedings may be initiated only after a period of sixty days from the date of order of the Hon'ble Tribunal or Hon'ble High Court, as the case may be, where no stay has been granted by Hon'ble High Court or Hon'ble Supreme Court against the order of Hon'ble Tribunal or Hon'ble High Court, respectively.
http://www.cbec.gov.in/resources//htdocs-cbec/excise/cx-circulars/cx-circulars-2016/circ1035-2016cx.pdf

c) **Clarification of the scope of word 'site' in relation to exemption on manufacture of goods at construction site: Circular 1036/23/2016-CX dated 06.07.2016**

Notification 12/2012-CE dated 17.03.2012 provides exemption vide entry 186 for goods manufactured at the site of construction for use in construction work at such site. It is clarified by way of explanation in the said notification that the expression "site" means any premises made available for the manufacture of goods by way of a specific mention in the contract or agreement for such construction work, provided that the goods manufactured at such premises are solely used in

the said construction work only. The present Circular stated that in case of some field formations, the distance at which goods manufactured and used in the project, has been considered as criteria for examining the eligibility of goods for exemption. The Circular clarified that this is an extraneous criteria not flowing from the language used in the notification, particularly when the expression "site" stands explained in the notification as stated above.

http://www.cbec.gov.in/resources//htdocs-cbec/excise/cx-circulars/cx-circulars-2016/circ1036-2016cx.pdf

LEGAL UPDATE

SERVICE TAX

a) Service Tax audit by departmental officers is ultra vires the Finance Act 1994 due to absence of enabling power in the Act— Mega Cabs Private Limited vs. UOI, [2016] 70 taxmann.com 51 (Delhi)

Facts:

Assessee, being served upon letter intimating the audit to be conducted of assessee by department officials, challenged that the department officials have no power to 'audit' and the subsequent amendments to Section 94 of Finance Act 1994 and Rule 5A of Service Tax rules 1994 so as to enable department officials to proceed with audit as ultra vires the Finance Act 1994.

Held:

The Honourable High Court held that there is no power with service tax authorities to conduct audit. The word 'verify' in section 94(2)(k) empowers verification of records and does not empower 'audit' of records, as audit is an specialized function and cannot be entrusted to any and every officer of department. Moreover, 'records' would mean 'records' required to be kept under rule 5(2);Therefore, rule 5A (2) requiring even furnishing of 'audit reports' exceeds mandate of 'records' Rule 5A (2) requiring submission of records to C&AG is irrational. Therefore, consequent direction of audit of accounts of assessee was also quashed.

b) **Prima facie Service Tax Department officials are not authorised to gain access to any premises of an assessee under Rule 5A(1) and the same is ultra vires Section 82— Magma HDI General Insurance Company Ltd vs. UOI, [2016] 71 taxmann.com 264(Calcutta)**

Facts:

Rule 5A(1) of the Service Tax Rules, 1994 provides that an officer authorised by the Principal Commissioner or Commissioner in this behalf shall have access to any premises registered under these rules for the purpose of carrying out any scrutiny, verification and checks as may be necessary to safeguard the interest of revenue. Vires of this Rule 5A(1) is challenged before the Kolkata High Court on the ground that the same is contrary to Section 82 of the Finance Act, 1994.

Held:

The Kolkata High Court prima facie upheld the view of the Delhi High Court in the case of Mega Cabs Private Limited vs. UOI, [2016] 70 taxmann.com 51 (Delhi) that Rule 5A(2) relating to conduct of audit by Department officials and submission of records is ultra vires section 72A of the Finance Act, 1994. Taking this into consideration, the Kolkata High Court held that if the authorities cannot make any demand of records as envisaged under Rule 5A(2), gaining of access to any premises under sub-rule (1) may not serve any purpose. However, the court enshrined that the Department officials are free to take recourse to Section 82 (power to search any premises) in order to physically verify any premises.

c) **No levy of service tax on composite contract of construction of residential complex along with transfer of undivided share in the land due to absence of machinery provision to determine the service component— Suresh Kumar Bansal v. Union of India, [2016] 70 taxmann.com 55 (Delhi)**

Facts:

The petitioner entered into an agreement with a builder to buy flats in a housing project. The builder charged service tax for constructing such complex and preferential location charges. The petitioner contended that the contract entered is a composite contract including transfer of undivided share of land and there is no specific provision to ascertain the service component from the said agreement. Accordingly, levy is challenged on the ground that it lacks machinery provision to ascertain the value of service component.

Held:

The Court held that the service tax is levied on value of service but such value cannot include the value of land and goods. In this case the consideration charged includes value of service, cost of goods and the sale of immovable property namely land.

Rule 2A of the Service Tax (Determination of Value) Rules, 2006 does not provide the method to determine the value of service in case of composite contract which involves sale of land as well. In the present case, there is no mechanism to ascertain the service portion under service tax.
Held that though, Parliament has the power to levy service tax but neither the Act nor the rule provides the mechanism to segregate the service element from the consideration and hence it is outside the levy of service tax.

d) **In view of SEZ Act, 2005; SEZ unit and DTA of same company are distinct entities/separate persons for charge of service tax. However, if no consideration is charged separately, then no service tax can be charged— CCE vs. Larson and Toubro Ltd, [2016] 71 taxmann.com 241 (Gujarat)**

Facts:

SEZ unit of the company provided various services to DTA units of the same company. Department treated the SEZ unit and the DTA units as separate persons and demanded service tax. The assessee argued that units of same company constituted a single person and hence no service is involved to attract service tax. Department argued that as per rule 19(7) of SEZ Rules, 2006, enterprise operating both as DTA and SEZ unit shall have two distinct identities, with separate books of accounts. Hence, they are separate persons and service tax is leviable.

Held:

Rule 19(7) of SEZ Rules, 2006 recognises that a same legal entity may have two units one in SEZ and another in DTA. It also mandates maintenance of separate books of accounts. It is because of the special concessions in taxation, including duty drawbacks and other exemptions that the SEZ unit has to maintain scrupulously accounts of all imports and procurements from Domestic Tariff Area. It also has to pay customs duty on goods cleared to Domestic Tariff areas as if such goods were imported into India.

In view of statutory scheme noticed in Finance Act, 1994 and SEZ Act, 2005, it was heldthat the contention of the assesse company that unit in SEZ and other units of same legal entity are not two distinct legal persons on the basis of principle of mutuality cannot be accepted. Accordingly held that SEZ unit and other units of same legal entity are treated as separate persons for charge of service tax. However, it was held that service tax cannot be collected in the said case, as no consideration was charged by SEZ unit for services to DTA units.

CENTRAL EXCISE

e) **For the purpose of reversal of CENVAT Credit relating to trading activity for the period prior to 01.04.2011, the CESTAT earlier observations that full sales value of trading business shall be considered for reversal instead of formula which was introduced from 01.04.2011 to encourage trading industry were set aside by High Court. Case remanded to decide the matter afresh— Mercedes Benz India (P) Ltd vs.CCE, [2016] Taxmann.com 332(Bombay)**

Facts:

The appellant is engaged in the business of manufacture of motor vehicles and parts thereof through their dealer network. Appellant is also engaged in the business of importing completely built-up units from their parent company and selling them through their same dealer network. Appellant availed CENVAT Credit of common input services relating to manufacturing activity and import activity for the period from September 2004 to March 2011. Formula method has been prescribed w.e.f. 01.04.2011 which provides that trading turnover being higher of gross margin or ten per cent of the cost of goods sold. According to Department, the formula method cannot be applied for the period prior to 01.04.2011. Accordingly the amount should be reversed on simple pro-rata formula of trading turnover divided by total turnover. The view of Department is upheld by CESTAT and is appealed to High Court in the present case.

Held:

Held that the Appeal should not be entertained for the reason that CESTAT order does not discuss some of the questions raised and with respect to other questions, factual findings are required. Coming to the issue of applicability of formula relating to reversal of CENVAT Credit for the period prior to 01.04.2011, it was held that the CESTAT must firstly refer to the substantive Rule operative prior to 01.04.2011 and then arrive at a conclusion in relation to the Explanation introduced with sub-clauses from01.04.2011. The CESTAT failed in justifying that the Parliament intended to encourage trading of goods rather than manufacturing of the same. The decision of CESTAT set aside and remanded for fresh hearing.

f) **Supply of bought out 'O' ring and 'U' cap seals along with manufactured pneumatic cylinders and valves would not amount to manufacture and hence not excisable— M/s Electropneumatics & Hydraulics India Pvt Ltd vs. CCE, 2016-TIOL-1882-CESTAT-Mum**

Facts:

The Appellant is engaged in manufacturing of pneumatic cylinders and valves. Seal kits are also supplied along with the manufactured goods. Seal kits were a combination of 'O' ring and 'U' cap seals etc which are bought out by the Appellant and supplied along with the manufactured goods as spares. No excise duty is paid on these items for reason that no manufacturing activity is involved. Revenue rejected their plea on the reasoning that the activity of packeting such bought items in fixed number in plastic bags as seal kits is to make them marketable and thus amounts to manufacture. The said view is also upheld by first appellate authority also.

Held:

The CESTAT held that 'O' ring and 'U' cap seals are already marketable when supplied by their manufacturer to the Appellant. Subsequent packeting of pre-determined quantity of the said spares in a plastic bag has not made the products marketable. In the absence of any note in Chapter that packeting of pre-determined quantity would amount to manufacture, this activity cannot be considered as manufacturing activity. Accordingly, the demand is set aside.

This article is contributed by CA Manindar K, Partner of SBS and Company LLP, Chartered Accountants.
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TECHNICAL SESSIONS:

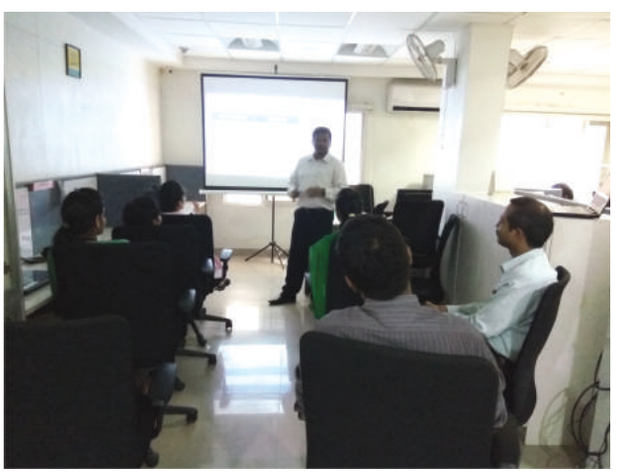
S.No.	Event	Date	Speaker	Venue
1	Companies Amendment Bill 2016 (Part -2)	12/08/2016	CS D V K Phanindra	SBS - Hyd
2	Interpretation of Statues	19/08/2016	CA Harsha Vardhan K	SBS - Hyd
3	Overview of Audit on Hotel Industry	26/08/2016	CA MHS Bhyrav	SBS - Hyd
4	Overview of GST	02/09/2016	CA Harsha Vardhan K / CA Manindar K	SBS - Hyd

Note:

The timings for the above events shall be from 17:30 hrs to 19:30 hrs. We request the recipients of "SBS Wiki" who are interested to attend the above events to send confirmation of your participation two days in advance to make appropriate arrangements. The relevant material will be hosted at slideshare shortly after the session. The link to download is *http://www.slideshare.net/Team-SBS*

Income Tax Assessment Procedures - CA Sai Phani Kumar M

Indian Constitution vis-à-vis Indirect Taxes (Part-2) - CA Manindar K



An overview of E-Commerce Business - CA Sandeep Das

Hyderabad: 6-3-900/6-9, #103 & 104, Veeru Castle, Durganagar Colony, Panjagutta, Hyderabad, Telangana
Kurnool: No. 302, 3rd Floor, V V Complex, 40/838, R.S. Road, Near SBI Main Branch, Kurnool, Andhra Pradesh
Nellore: 16-6-259, 1st Floor, Near Santi Sweets Opp: SBI ATM, Vijayamahal Centre, SPSR Nellore, Andhra Pradesh
Tada: 8-3-425/2, Flat No. 202, 2nd Floor, Bigsun Avenue, Near SRICITY, TADA, SPSR Nellore Dist, Andhra Pradesh
Visakhapatnam: # 39-20-40/6, Flat No.7, Sai Yasoda Apartments, Madhavadhara,Visakhapatnam (Urban),Vizag, Andhra Pradesh
Bengaluru: B104,RIRCO, Santosh Apartments, Wind Tunnel Road, Murugeshpalya, Old Airport Road, Bangalore – 560017, Karnataka.

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