

# Bimal Jain

FCA, FCS, LLB, B.Com (Hons)

Dear Professional Colleague,

## **Increase in limitation period for issuing SCN – Is this “Ease of doing business”**

Amongst the flurry of changes brought in by the Union Budget 2016 seeking to reform the Country’s taxation system and thereby improve ease of doing business, changes made in respect of extension of period within, which the Department can issue a Show Cause Notice (“SCN”) in non-fraud cases, seems detrimental towards ease of doing business.

Before deliberating on the changes made and their likely impact, it is imperative to have a look at the current provisions providing limitation of the time period for issuing SCN under the Service tax, Central Excise and the Customs in non-fraud cases (where duty/tax has not been levied or paid or which has been short-levied or short-paid or erroneously refunded for reasons other than fraud, collusion, wilful mis-statement, suppression of facts, contravention of provisions with intent to evade payment of duty/tax) viz-a-viz proposed time period:

Limitation period at present			Proposed time period
Particulars	Relevant provision	Time period	
Under Service Tax	Section 73 of the Finance Act, 1994 (“the Finance Act”)	18 months (w.e.f May 28, 2012, earlier it was 12 months)	30 months
Under Central Excise	Section 11A of the Central Excise Act, 1944 (“the Excise Act”)	One Year	Two Years
Under Customs	Section 28 of the Customs Act, 1962 (“the Customs Act”)	One Year	Two Years

The Finance Bill, 2016 has proposed to increase normal period for issuing SCN in non-fraud cases to 30 months in Service tax [Clause 149] and 2 years in Excise [Clause 140] and Customs [Clause 117], which can have wide ramifications for the taxpayers, on one hand, and will add further to the heaps of pending litigations on other hand.

However, in cases involving fraud, collusion, wilful mis-statement, suppression of facts, contravention of provisions with intention to evade payment of duty/ taxes, time limit continue to be 5 years, which has not been changed.

## **Era of automation & increased number of Commissionerates – No requirement of extended time period for issuing SCN**

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In this era of automation and technology, when there is compulsory e-filing of returns, extension of time period for issuing SCN does not seem to be prudent. With the e-filing of Returns, the Department can immediately scrutinize the same and seek clarification from tax payers wherever required.

Further, recently, there has been revamp in the Service Tax Commissionerates and also more positions and number of Commissioners, Principal Commissioners etc. have been created, in view of which, such extended time period for issuing SCNs in non –fraud cases seems unwarranted.

## **Time limit needs to be strengthen for adjudication of cases rather than liberty of extended time for issuing SCNs**

Considering the high numbers of cases pending adjudication under the Indirect taxes for long time, it would have been a laudable initiative, had the Finance Bill, 2016, fixed strict time limits for adjudication of cases. Ironically, the Government had rather extended time period for the Department for their inefficiency towards ease of doing of business.

## **Time limit restraining an assessee to avail eligible Cenvat credit on Inputs/Input services should be extended rather than extension of the time period for issuance of SCN - Non fraud cases**

It would not be out of place to mention here that effective from September 1, 2014, the liberty in respect of availment of Cenvat credit has been withdrawn. The Central Board of Excise and Customs (“the CBEC” or “the Board”) vide Notification No. 21/2014-CE (NT) dated July 11, 2014 (Applicable w.e.f September 1, 2014), amended Rule 4(1) [for Inputs] and Rule 4(7) [for Input services] of the Cenvat Credit Rules, 2004 in order to fix a time limit of 6 months from the date of issue of any of the documents specified in Rule 9(1) thereof, for availment of the Cenvat credit. Thereafter, the stated time limit for availment of Cenvat credit was extended from 6 months to 1 year in the Union Budget, 2015 vide Notification No. 6/2015-CE (NT) dated March 1, 2015, w.e.f March 1, 2015.

When the Trade were pinning hopes for getting some relaxation in time period for availment of Cenvat credit on Inputs/ Input Services, getting extended to 2 years at least, the Union Budget, 2016 rather choose to extend the normal period for issuing SCN.

### **In the nutshell:**

Though, the Union Budget 2016 has on one hand, attempted to reduce the pendency of cases by introducing Dispute Resolution Scheme, 2016 at the Commissioner (Appeals) level, but relaxation in time limit for issuing SCNs in non-fraud cases is likely to go detrimental to ease of doing business initiative, giving unwanted contradictory message of lethargic system to the budding start up entrepreneurs and outside World.

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## Union Budget 2016 - Video presentation by Bimal Jain on Service Tax & Excise

As an endeavour to summarise all the important changes in the arena of Service tax for easy digest, Mr. Bimal Jain has recorded a video titled “**Union Budget 2016: Changes in Indirect Tax - Service Tax & Excise**”, discussing the flurry of changes proposed by the Union Budget 2016-17 and their likely impact. You may watch the video presentation by clicking the following link.

<https://www.youtube.com/watch?v=n8EZYleZbzU>



### Suggestions on Indirect Tax Proposals:

Continuing with our initiative, we invite your suggestions on the indirect tax proposals of the Finance Bill, 2016 for consideration and inclusion of the same in the Post Budget Memorandum to be submitted to the Ministry of Finance. We request you to submit your valuable suggestions at [service@a2ztaxcorp.com](mailto:service@a2ztaxcorp.com).

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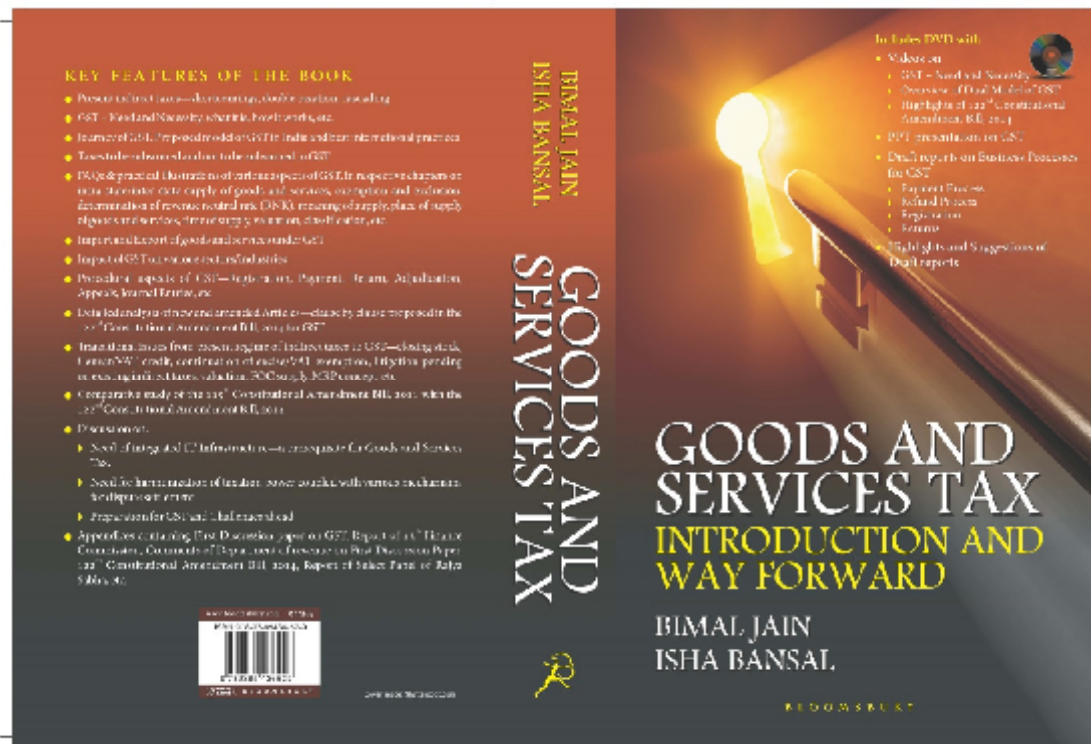
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Thanks & Best Regards,

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