



Indirect tax Digest – May 9, 2016

“Sanskrit word ‘Akshaya’ means one that never diminishes. May this day of Akshaya Tertiya bring you good luck and success which never diminishes.”

Particulars	Notification/Circular/Citation
SERVICE TAX	
<ul style="list-style-type: none"> If the services provided outside India and the consideration is actually received in the convertible foreign exchange, benefit of export of services cannot be denied even if the contract contains the amount of consideration in Indian currency. 	<p><u>Commissioner of Service Tax Vs. Balaji Telefilms Ltd. [(2016) 68 taxmann.com 301 (Mumbai - CESTAT)]</u></p>
<ul style="list-style-type: none"> Claim of refund cannot be denied by applying the principle of unjust enrichment just because the amount of tax has been shown as written off in the Profit & Loss account as expenditure unless it is proved by the Department that the burden of tax has been passed on to others. 	<p><u>Balaji Pressure Vessels Ltd. Vs. Commissioner of Central Excise [(2016) 68 taxmann.com 315 (Hyderabad-CESTAT)]</u></p>
<ul style="list-style-type: none"> SEZ turnover should also be included in the export turnover in the numerator and also, in the total turnover in the denominator, while computing the refund of unutilized Cenvat credit Inputs and Input Services pertaining to export of services. 	<p><u>Cognizant Technology Solutions Vs. Commissioner of Central Excise & Service Tax (LTU), Chennai [(2016) 68 taxmann.com 302 (Chennai - CESTAT)]</u></p>
<ul style="list-style-type: none"> If the assessee pays the amount of tax along with interest before issuance of show cause notice and the matter does not involve fraud, suppression etc., then the Department cannot issue show cause notice to the assessee in terms of Section 73(3) of the Finance Act, 1994. 	<p><u>K.R.S. Enterprises (P.) Ltd. Vs. Commissioner of Service Tax, Bangalore [(2016) 68 taxmann.com 279 (Bangalore - CESTAT)]</u></p>
CENTRAL EXCISE	
<ul style="list-style-type: none"> If the Partnership firm has been penalised by the Department, then partners of the firm cannot be penalised by imposing separate penalty on them. 	<p><u>Sharp Engineers Vs. Commissioner of Central Excise, Ahmedabad [(2016) 68 taxmann.com 362 (Ahmedabad -</u></p>

	<u>CESTAT]]</u>
<ul style="list-style-type: none"> When the assessee is showing the availment of Cenvat credit in the statutory records like in register RG23A (Part II), TR-6 challan and ER-1 return, then it cannot be alleged by the Department that the assessee has suppressed facts from the Department, hence the extended period for issuance of show cause notice cannot be invoked. 	<u>R.R. Paints (P.) Ltd. Vs. Commissioner of Central Excise, Mumbai-III [(2016) 68 taxmann.com 361 (Mumbai - CESTAT)]</u>
<ul style="list-style-type: none"> When the assessee has reversed the Cenvat credit after removal of exempted goods and comply with the conditions given in the Rule 6(3)(ii), read with Rule 6(3A) of the Cenvat Credit Rule, 2004 (“the Credit Rules”), then, the Department cannot insist the assessee to follow the particular option of Rule 6 given in the Credit Rules for calculating reversal of Cenvat credit and further, demand under Rule 6(3) of the Credit Rules for an amount equal to a percentage of exempted goods. 	<u>Mahindra & Mahindra Ltd. Vs. Commissioner of Central Excise, Jaipur- [(2016) 68 taxmann.com 252 (New Delhi - CESTAT)]</u>
<ul style="list-style-type: none"> The Hon’ble Punjab & Haryana High Court set aside the ex-parte order passed by the Tribunal in favour of revenue, since the assessee did not receive the notice for hearing, further the condonation for delay in filing application for recalling the ex-parte order is also allowed. 	<u>Mittal Construction Co. Vs. Commissioner of Central Excise, Ludhiana [(2016) 68 taxmann.com 251 (Punjab & Haryana)]</u>
<ul style="list-style-type: none"> Amendments made in Notification No. 1/2011-CE dated March 1, 2011 which prescribes the effective rate of duty at the rate of 2% without Cenvat credit and Notification No. 2/2011-CE dated March 1, 2011 which gives option to pay at 6% on certain goods with Cenvat credit: Specific entries relating to Wireless data modem cards with PCMCIA or USB or PCI has been omitted from the list of specified goods under both the Notifications. 	<u>Notification No.20/2016 – Central Excise dated May 5, 2016</u> <u>Notification No.21/2016 – Central Excise dated May 5, 2016</u>
<ul style="list-style-type: none"> Amendment made in Notification No. 12/2012-CE dated March 17, 2012 which prescribes the effective rate of Excise duty on goods falling under Chapter 1 to 96:- Amendment made in the existing entries and new entries inserted relating to goods like Populated printed circuit board of- Lithium-ion battery other than battery for mobile handset, Broadband Modem, Router, Set-top box for gaining access to internet, Digital Video Recorder (DVR)/Network Video Recorder, (NVR), CCTV Camera/IP 	<u>Notification No.22/2016 – Central Excise dated May 5, 2016</u>

Camera etc.	
<ul style="list-style-type: none"> Amendments made in below mentioned Export/ Rebate Notifications by including the reference of Infrastructure Cess, as levied w.e.f March 1, 2016, under the meaning of the term 'Duty' prescribed therein: <ul style="list-style-type: none"> a) Notification No.42/2001-CE(NT) dated June 26, 2001 b) Notification No.43/2001-CE(NT) dated June 26, 2001 c) Notification No.19/2004-CE(NT) dated September 6, 2004 d) Notification No. 21/2004-CE(NT) dated September 6, 2004 	<u>Notification No. 26/2016 – Central Excise (N.T) dated May 5, 2016</u>
<ul style="list-style-type: none"> "Routers" with an abatement rate of 20% on retail sale price specified by amendment made in the Notification No. 49/2008-CE (N.T.) dated December 24, 2008. 	<u>Notification No. 25/2016 –Central Excise (N.T) dated May 5, 2016</u>
CUSTOMS	
<ul style="list-style-type: none"> Even if assessee paid the amount under protest, but not appealed against the adjudication of demand by the assessing authority regarding the said amount, then demand will continue to be in force and the assessee cannot claim refund of the said amount. 	<u>Vijal Marine Services Vs. Commissioner of Customs & Central Excise [(2016) 68 taxmann.com 254 (Bombay)]</u>
<ul style="list-style-type: none"> If the assessee has deposited the full amount of Customs duty, interest and 25% of the penalty within thirty days from the issuance of notice, as per provisions of Section 28 (1A) of the Customs Act, 1962 ("the Customs Act")no further adjudication can be made requiring confiscation of the seized goods or imposing penalties on co-noticee. Thus, the impugned order has no leg to stand and the same accordingly set aside. 	<u>Orbit Jewellers, Omkar Jewellers, Bharat Jamnadas Jagda, Sh. Mahesh Kumar Mool Chand Kothari And C.C., Air Cargo (Exports) , New Delhi Vs. C.C., Air Cargo (Exports) , New Delhi, Omkar Jewellers, Orbit Gold, Mahesh Kumar Mool Chand Kothari And Komal Jain, Director [2016 (5) TMI 80 - CESTAT NEW DELHI]</u>
<ul style="list-style-type: none"> Assessee can waive the Show Cause Notice under Section 124(a) of the Customs Act, however the Department has to pass an adjudication order within reasonable period i.e. 6 months.If the said order has not been passed within reasonable period then: <ul style="list-style-type: none"> a) There is immediate unconditional release of goods in favour of assessee from whom goods have been seized and after such release, it is still open to 	<u>Shiv Shakti Trading Company Vs. Commissioner of Customs (Preventive) [(2016) 68 taxmann.com 210 (Delhi)]</u>

<p>the Department to proceed under Section 124 of the Customs Act and complete the proceeding for which there is no specified time limit;</p> <p>b) Assessee can avail provisional release of goods under Section 110A of the Customs Act and the Department may issue notice under Section 110 of the Act.</p>	
<ul style="list-style-type: none"> The special CVD paid by the assessee using the balance lying in the DEPB scrips, the said duty is refundable in cash and the Circulars No. 6/2008 dated April 28, 2008, 10/2012 dated December 29, 2012 and 18/2013 dated April 29, 2013 issued by the CBEC could not impose additional restriction in relation to refund, which are not given in the exemption Notification No. 102/2007-Customs dated September 14, 2007, hence these circulars are contrary to the said notification and void. 	<p><u><i>Allen Diesels India (P.) Ltd. Vs. Union of India [(2016) 66 taxmann.com 253 (Delhi)]</i></u></p>
<ul style="list-style-type: none"> Vessels carrying exclusively coastal goods has been exempted from various provisions of Customs Act, 1962: <ul style="list-style-type: none"> a) Section 92 (Entry of Coastal Goods); b) Section 93 (Custom goods not to be loaded until bill relating thereto is passed, etc.); c) Section 94 (Clearance of coastal goods at destination); d) Section 95 (Master of a coastal vessel to carry an advice book) etc. 	<p><u><i>Notification No. 56/2016-Customs (N.T.) dated April 27, 2016</i></u></p>
<ul style="list-style-type: none"> The provisions of Section 30 (Delivery of import manifest or import report) and Section 41 (Delivery of export manifest or export report) of the Customs Act is applicable to vessels carrying exclusively Coastal goods operating from those berth which are used by vessels carrying imported goods/exported goods. 	<p><u><i>Notification No. 57/2016 - Customs (N.T.) dated April 27, 2016</i></u></p>
<ul style="list-style-type: none"> Anti-Dumping duty on import of Measuring Tapes which is originating in or exported from Chinese Taipei, Malaysia, Thailand and Vietnam has been imposed for a period of 5 years w.e.f May 2, 2016. 	<p><u><i>Notification No.16/2016-Customs (ADD) dated May 2, 2016</i></u></p>
<ul style="list-style-type: none"> Amendment made in Notification No. 12/2012-Customs dated March 17, 2012 which prescribe the rate of 	<p><u><i>Notification No. 30/2016-Customs (N.T.) dated May 5, 2016</i></u></p>

<p>Customs duty on import of certain goods:-</p> <p>Amending the existing entries and also by inserting new entries relating to goods like Preform of silica for use in the manufacture of telecommunication grade optical fibres or optical fibre cables, Charger or adapter, battery, wired headsets for use in manufacture of mobile handsets including cellular phones etc.</p>	
<ul style="list-style-type: none"> The mobile phone parts like charger or adapter, battery, wired headsets and speakers of mobile handsets including cellular phones, has been exempted from whole of the duty of Customs including additional Customs duty (SAD) when imported into India subject to certain conditions given in the Notifications. 	<p><u>Notification No. 31/2016-Customs (N.T.) dated May 5, 2016</u></p> <p><u>Notification No. 32/2016-Customs (N.T.) dated May 5, 2016</u></p>
<p>Foreign Trade Policy-[2015-2020]</p>	
<ul style="list-style-type: none"> Amendment made in Para 3.20(b) of Foreign Trade Policy 2015-2020, relating to criteria for recognition as Status Holder (except Gems and Jewellery sectors) with effect from April 1, 2016. Earlier the applicant had to achieve export performance during current and previous two financial years, which is now increased to current and previous three financial years. Form ANF 3C (Application for on line filing of grant of Status Certificate of Appendices and Aayat Niryat Form of <u>FTP 2015-20</u>) is notified to include the current and previous three years to give effect to the above amendment. 	<p><u>Notification No.04/2015-2020 dated April 29, 2016</u></p> <p><u>Public Notice No. 05/2015-2020 dated May 3, 2016</u></p>
<ul style="list-style-type: none"> A new Appendix 5D has been notified containing list of services, payments for which even if received in Rupee terms can be counted towards discharge of Export obligation under EPCG scheme. <p>Further Appendix 3E shall not be applicable for EPCG scheme, which relates to list of services where payment has been received in Indian rupees, treated as receipt in Deemed Foreign Exchange as per guidelines of Reserve Bank of India.</p>	<p><u>Public Notice No. 04/2015-2020 dated May 3, 2016</u></p>
<ul style="list-style-type: none"> Addition of markets in 2787 lines made in Table 2 [containing ITS (HS) code wise list of products with reward rates under Merchandise Exports from Indian Scheme (MEIS)] of Appendix 3B. 	<p><u>Public Notice No. 06/2015-2020 dated May 4, 2016</u></p>

<p>Earlier these 2787 lines required submission of proof of landing as reward was not available for all markets, hence after making addition in the said table, Landing Certificate shall not be required under MEIS on these markets also.</p>	
<ul style="list-style-type: none"> Appendix 3E has been notified containing list of services where payment received in Indian Rupees, can be treated as receipt in Deemed Foreign Exchange as per guidelines of Reserve Bank of India in terms of Para 3.08(c) of FTP 2015-20. 	<p><u>Public Notice No. 07/2015-2020 dated May 4, 2016</u></p>
<ul style="list-style-type: none"> Revised format notified for ANF 5A (application for issue of EPCG authorisation), ANF 5B (application for redemption of EPCG authorisation), ANF 5C (application for clubbing of EPCG authorisation) and Appendix 5C (format of certificate of CA/Cost Accountant/ CS for redemption of EPCG authorisation) as contained in Appendices and Aayat Niryat forms of FTP-2015-20. 	<p><u>Public Notice No. 08/2015-2020 dated May 6, 2016</u></p>

CENVAT CREDIT

<ul style="list-style-type: none"> Changes in Cenvat Credit Rules, 2004: <ol style="list-style-type: none"> Rule 6(3)(i) of the Credit Rules has been amended to restrict the reversal of 6% on exempted goods and 7% on exempted services to a maximum of the sum total of opening balance of the credit of input and input services available at the beginning of the period to which the payment relates and the credit of input and input services taken during that period. In Rule 7B(1) of the Credit Rules, for the words and figures "invoices, issued in terms of the provisions of the Central Excise Rules, 2002," the words and figure "documents specified under Rule 9," has been substituted. The Cenvat credit of Service tax paid in a financial year, on the one time charges payable in full upfront or in instalments, for the service of assignment of the right to use any natural resource by the Government, Local authority, or any other person, shall be evenly spread over a period of three years, which was earlier over the period of right to use. Further, in case of further assignment of such rights to another person against consideration, then the balanced Cenvat credit shall be allowed in the same financial year maximum upto the Service tax payable on the consideration charged by him for further assignment. [Notification no. 24/2016-C.E.(N.T.) dated April 13, 2016.]
--

VAT

<ul style="list-style-type: none"> Additional Commissioner of Delhi VAT has no power to reject the application submitted by the assessee to seek the immunity under Amnesty Scheme ("the Scheme"), 	<p><u>Jaycon Infrastructure Ltd. Vs. Commissioner of Trade & Taxes, Delhi</u></p>
---	---

<p>since only the Commissioner is authorised to reject the application as per clause 8 of the Scheme, even though the Additional commissioner is authorised to act on behalf of Commissioner under DVAT Act, 2004 (“the DVAT Act”) and DVAT Rules, 2005 (“the DVAT Rules”).</p>	<p>[(2016) 68 taxmann.com 385 (Delhi)]</p>
<ul style="list-style-type: none"> The benefit of exemption from CST on inter-state sale given under Notification No. SO 89/CA.74/56/S.8/95 dated September 4, 1995 issued by the Haryana Government, will be allowed even to the dealers who purchase goods from the units eligible for exemption under the said Notification and subsequently made inter-state sale, then, in such cases, CST will be exempt on the said goods also. 	<p>CASIO India Co. (P.) Ltd. Vs. State of Haryana [(2016) 68 taxmann.com 304 (SC)]</p>
<ul style="list-style-type: none"> The application for seeking waiver of pre-deposit of assessed tax cannot be rejected by the first appellate authority, the reliance is placed on judgment made in the case of Nestle India Ltd. Vs. Dy.CCT [(2015) 59 taxmann.com 109] 	<p>Laxmi Group of Agencies Vs. Deputy Commissioner of Commercial Tax [(2016) 68 taxmann.com 271 (Gujarat)]</p>
<ul style="list-style-type: none"> Due date of filling returns by all firms/ companies engaged in business of courier activities and having their offices functioning within the NCT of Delhi in Form CR-II for the Financial Year 2015-16 extended upto May 16, 2016. 	<p>Notification No.F.3(628)/Policy/VAT/2016/113-125 dated April 28, 2016</p>
<ul style="list-style-type: none"> The registered dealers under DVAT, who have opted to pay composition tax @5% under a new composition Scheme, are not required to pay tax on opening stock, if such assessee w.e.f April 1, 2016 intend to shift from composition scheme under Section 16(1) of the DVAT Act to new composition scheme given by stated notification in exercise of powers conferred under Section 16(12) of the DVAT Act. <p>Further the registered dealers who intend to shift to new composite scheme are not eligible for claiming input tax credit on closing stock held by them on March 31, 2016.</p>	<p>Circular No: 1 of 2016-17 dated April 28, 2016</p>
<ul style="list-style-type: none"> The due date of filling fourth quarter return in Form DVAT-16 (Delhi Value Added Tax return), DVAT-17 (Composition Tax Return Form) and DVAT-48 (Form of quarterly return by Contractee) for the Financial Year 2015-16 is May 16, 2016. 	<p>Circular No. 02 of 2016-17 dated April 28, 2016</p>

Further, the dealers filling returns through digital signature need not file hard copy of return/ Form DVAT-56 (Return Verification Form).

- DVAT returns is to be furnished with digital signatures in Form DVAT 16 or Form DVAT 17 for the tax period commencing from April 1, 2016

[Notification No.F3\(643\)/Policy/VAT/2016/157-169 dated May 3, 2016](#)

GST CORNER

- [Experts worry about price rise post GST](#)
- [RSS does not want government to pass GST bill: Congress](#)
- [GST important reform that could further strengthen India's economy: 2016 ESCAP survey](#)
- [Kerala will gain from GST, says official](#)
- [Venkaiah Naidu seeks support for passage of Bills](#)
- [More Collateral Damage for GST Bill, Will Miss another Deadline](#)
- [GST, land reforms key to boost India's economic growth: IMF](#)
- [GST to help reorient states towards export promotion: Parliamentary panel](#)
- [Chopper deal debate: Bankruptcy, GST bills immediate casualty in Rajya Sabha](#)
- [As BJP, Congress Wage War on Augusta, Arun Jaitley Talks of Peace On GST](#)

Important Video Presentations For Easy Digests

- **Reverse Charge - POT & Applicability of KrishiKalyan Cess**

Amended rule 7 of Point of Taxation Rules, 2011 ("the POTR") provide for Point of Taxation where there is change in the liability or extent of liability of Service tax to be paid by Service Receiver under Reverse Charge because of changes in abatement rate, composition rate, change in rate of Service tax, applicability of any new levy like KrishiKalyan Cess w.e.f June 1, 2016 etc.

For detailed discussion please watch at: https://www.youtube.com/watch?v=NU5_2iAMy3g

- **'Any services' provided by Government or Local authority to a Business Entity chargeable to ST under Reverse Charge w.e.f. April 1, 2016**

The words 'support services' have been substituted by the words 'any service' effective from April 1, 2016, thereby, the liability to pay Service tax on any service provided by Government or a Local Authority to Business Entities is on the service recipient under Reverse Charge. Now, the question arises whether the Service tax applicable on every service provided by the Government like Visa,

Driving licence, ROC fees, Death Certificate etc.

For detailed discussion please watch at:<https://www.youtube.com/watch?v=AB0LpVkuoUY>

- **Rate of interest on delayed payment & increase in period of limitation for non-fraud cases under ST, Excise & Customs**

Rate of interest has been changed on the delayed payment, now the question arises whether these changes applicable on the liability relating to past period also. Also, there is change in period of limitation for non-fraud cases under Service Tax, Excise and Customs, now whether the changed limitation period could be applied by the Department while issuing the Show Cause Notice on cases relating to past period.

For detailed discussion please watch at:<https://www.youtube.com/watch?v=pWBMo4v54cc>

- **Changes in Cenvat Credit Rules, 2004 vide Union Budget 2016**

Many important amendments have been made in the Credit Rules like the extent/ availment/ utilization of Cenvat credit and reversal required in terms of Rule 6 of the Credit Rules. Further, the 'exempted services' as defined in Rule 2(e) of the Credit Rules now shall include an activity, which is not a 'service' as defined in Section 65B(44) of the Finance Act, 1994, which again going to opening up a Pandora box for litigation.

For detailed discussion please watch at:<https://www.youtube.com/watch?v=8AfMeePYm-M>

Hope the information will assist you in your Professional endeavours. In case of any query/ information, please do not hesitate to write back to us.

Thanks & Best Regards

Bimal Jain

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

Author of a book on Goods and Services Tax, titled, "GOODS AND SERVICES TAX – INTRODUCTION AND WAY FORWARD" (1st Edition)

A2Z TAXCORP LLP

Tax and Law Practitioners

Delhi:

Flat No. 34B, Ground Floor,

Pocket – 1, MayurVihar Phase-1

Delhi – 110091 (India)

Tel: +91 11 22757595/ 42427056

Allahabad:

B2-3/4-31 Sarojani Apartments

Sarojani Naidu Marg

Allahabad - 211001

Chandigarh:

H. No. 908, Sector 12-A,

Panchkula, Haryana - 134115

Email: bimaljain@hotmail.com

Web: www.a2ztaxcorp.com

LinkedIn: <https://in.linkedin.com/pub/bimal-jain/14/601/4b4>

Face book: facebook.com/bimal.jain.90

Twitter: <https://twitter.com/JainTax>

YouTube: <https://www.youtube.com/channel/UCp0tT5ShjB4KHJRSIPc3t5w>

We can now also be contacted at below mentioned address:

Bengaluru Office: Adarsh Residency, Block F, 4th Floor, (F404) 47th Cross, Jayngar 8 th Block, Bengaluru, Karnataka-560070 Email: bengaluru@a2ztaxcorp.com	Kolkata Office 10 Bow Street, 2 nd Floor, Near Central Metro Station, Besides Calcutta Motor Dealers Association, Kolkata, West Bengal- 700012 Email: kolkata@a2ztaxcorp.com	Dhanbad Office: 2 nd Floor, Shree Laxmi Complex, Dhanbad, Jharkhand- 826001 Email: dhanbad@a2ztaxcorp.com
---	---	--

Disclaimer: *The contents of this document are solely for informational purpose. It does not constitute professional advice or recommendation of firm. Neither the authors nor firm and its affiliates accepts any liabilities for any loss or damage of any kind arising out of any information in this document nor for any actions taken in reliance thereon.*

Readers are advised to consult the professional for understanding applicability of this newsletter in the respective scenarios. While due care has been taken in preparing this document, the existence of mistakes and omissions herein is not ruled out. No part of this document should be distributed or copied (except for personal, non-commercial use) without our written permission.