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Vol. I, No. 5

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President's C<u>ommuniqué</u>

Dear Members,

It gives me immense pleasure to communicate with you through this News Bulletin.

On 12th August, Dr. Bharat D. Vasani Inaugural Study Circle Meeting was inaugurated by the worthy hands of Shri Mohanbhai Patel (Ex Sheriff of Mumbai). I am very thankful to Shri Mohanbhai Patel for accepting our invitation to inaugurate our first Study Circle Meeting despite his busy Schedule. The topic selected was VAT on Builders and Developers in view of recent Bombay High Court Judgment and speaker was CA Sujata Rangnekar. The lecture became very interactive because before our meeting only Hon'ble Commissioner of Sales Tax came out with a circular 14T stating as Grant of Registration and Administrative Relief to Developers. While going through the entire circular only, one will come to know exactly really is there any administrative relief given. Even I would like to inform all the members that Supreme Court has admitted SLP in MCHI Case and will be taken up for hearing along with L & T case.

I am happy to inform you that from this month we are starting two new columns i.e judgments on Direct Taxes and Service Tax. I am very much thankful to our new and young members CA Dharmen Shah and CA Sunny Kachalia for compiling the judgments for us and taking keen interest in the activity of the Chamber.

I am thankful to our past president Shri Ashwinbhai Tanna who have made two representations to Hon'ble Commissioner of Sales Tax, namely for filing Revised J1 and J2 for non audit dealers in case they are revising their returns due to some genuine reasons and Second representation requesting to clarify regarding VAT on Service Tax.

Our Second Study Circle Meeting is scheduled on 26th August, 2012, on the topic "Intricate issues in Revised Schedule VI". I request all members to take active part in various activities of our Chamber and help us to make every event very successful.

Lastly I wish all the Members of Malad Chamber Family

A Very Happy Independence Day. Id Mubarak to all. Jai Hind Jai Maharashtra.

With warm regards Sachin Gandhi

President

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August, 2012

SALES TAX UPDATE

By CA Nitin D. Kenia & CA Bharat K. Gosar

Trade Circulars issued by the Commissioner under the M.V.A.T Act, 2002

• No. 11T of 2012 dated 17th July, 2012

In order to get refund of sales tax through Electronic Clearance Service ('ECS'), the Commissioner has asked the dealers to submit electronically a MANDATE FORM'. Dealer may download the mandate form from mahavat website (<u>www.mahavat.gov.in</u>), fill it and upload it. After getting the acknowledgment of uploaded mandate form, the dealer is required to print it and submit duly signed hard copy along with blank cancelled cheque or first page of pass book.

• No. 12T of 2012 dated 1st August, 2012

Uptill date, the officers of the return branch were passing ex parte orders for non filing of return for any particular period under VAT Act. Thereafter, the dealers were required to upload the returns and apply in Form 304 to cancel the ex parte order. After receiving application in Form 304, the concerned officer was required to cancel the ex parte order so passed.

With effect from 1st August, 2012, new procedure has been prescribed. It has been announced that such ex parte orders will be passed only through MAHAVIKAS system. After getting ex parte order, if the dealer upload the return, then MAHAVIKAS system will automatically cancel the ex parte order and inform the dealer.

• No. 13T of 2012 dated 6th August, 2012

In this Circular, the Commissioner has explained the amendments carried out under different Acts administered by the Sales Tax department through budget. The Circular has explained each and every amendment carried out through budget. Readers are requested to go through the Circular.

• No. 14T of 2012 dated 6th August, 2012

Vide this Circular, the Commissioner has announced grant of administrative relief to builders and developers. If the builders and developers are not registered under the VAT Act, then they were required to apply for VAT TIN on or before 16th August, 2012. Further, they are also required to pay all taxes from 20th June, 2006 (i.e. the day from which builders are liable to pay sales tax) till date and upload all the returns on quarterly basis with late fees of ₹ 5,000 per return on or before 31st August, 2012. Further, they are required to apply for administrative relief to the Joint Commissioner (Registration Branch) on or before 31st August, 2012. On doing this, the date of effect of VAT TIN will be preponded to 20th June, 2006 and they will be able to claim the benefit of set off from 20th June, 2006 onwards. Further, they will be able to claim the benefit of Notification dated 9th July, 2010 and may discharge their tax liability on sale of under constructed flats @ 1% from 1st April, 2010 onwards. Readers are required to go through the Circular for further details.

• No. 15T of 2012 dated 13th August, 2012

Vide this Circular, the Commissioner has allowed the dealers to upload the VAT & CST returns for the period ending on 30th June, 2012 uptill 17th August, 2012 without attracting late fees. However, the dealers uploading returns after 31st July, 2012 will have to pay the fees of ₹ 5,000. Thereafter, they will be able to adjust the fess against the tax liability of subsequent periods.

Notifications issued by the State Government under the M.V.A.T. Act, 2002

• No. VAT.1512/CR-65/Taxation dated 4th July, 2012

Vide Maharashtra Act No. VIII of 2012 dated 25th April, 2012, the State Government had made amendments to Section 7(7), 23 and 26(2) of MVAT Act, 2012.

Vide these amendments, if any dealer does not upload any return under MVAT Act, 2002 or under CST Act, 1956 within the prescribed time limit then in such cases, he will be required to pay compulsorily late filing fees of ₹ 5,000/- first and then only he will be able to upload the said return.

However, the date of effect of these amendments was not specified.

Vide Notification dated 4th July, 2012, the State Government notified 1st August, 2012 to be the date of effect of said amendments.

• No. PFT. 1012/C.R. 29/Taxation-3 dated 14th June, 2012

Vide Maharashtra Act No. XVI of 1975 dated 25th April, 2012, the State Government had made amendment to Section 6 of the Maharashtra Profession Tax Act, 1975.

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Vide this amendment, if any employer does not upload any profession tax return within the prescribed time under the Profession Tax Act, 1975 then in such cases, he will be required to first pay compulsorily late filing fees of ₹ 1,000/- and then only he will be able to upload the said return.

However, the date of effect of this amendment was not specified.

Vide Notification dated 14th June, 2012, the State Government notified 1st August, 2012 to be the date of effect of said amendment

DIRECT TAX UPDATE

By CA Haresh P. Kenia

1. Clarification regarding reopening of completed assessments [207 Taxman (ST.) 129]

The CBDT *vide* letter [F.No.500/111/2009-FTD-1(PT)] dated 29.05.2012 clarifies and directs that in case where assessment proceedings have been completed u/s 143(3) of the Income Tax Act before the 1st day of April, 2012, and no notice for reassessment has been issued prior to that date, then such cases shall not be reopened u/s 147/148 of the Income Tax Act on account of retrospective clarificatory amendments made in the Finance Act, 2012 in section 2(14), section 2(47), section 9 and section 195 of the Income Tax Act. It is also clarified that assessment or any other order which stand validated due to said clarificatory amendments in the Finance Act, 2012 would be enforced.

2. No deduction of TDS in respect of specified payment u/s 197A(1F) [207 Taxman (ST.) 161]

The Central Government hereby notifies that no deduction of tax shall be made u/s 194J i.e. payment by made person (hereinafter referred to as transferee) for acquisition of a software from another person, being resident (hereinafter referred to as transferor) provided the following conditions are satisfied. The notification comes in to effect from 01.07.2012.

Conditions

- i. The software is acquired in a subsequent transfer and the transferor has transferred the software without any modification.
- ii. Tax has been deducted
 - a. Under section 194J on payment for any previous transfer of such software or
 - b. Under section 195 on payment for any previous transfer of such software from a non-resident and
- iii. The transferee obtains a declaration from the transferor that the tax has been deducted either under sub-clause (a) or (b) of clause (ii) along with the Permanent Account Number of the transferor.

3. CBDT instruction to Subordinate Authorities—Authorization to AO's in certain cases to rectify/ reconcile disputed arrear demand [207 Taxman (ST.) 171]

The CBDT *vide* circular No. 4 of 2012 dated 20.06.2012 issued the certain clarification to avoid the genuine hardship to certain class of cases and authorized the Assessing Officer to make the appropriate correction in respect of disputed arrear demand irrespective of the fact that period of limitation for 4 years u/s 154(7) of the Act has elapsed.

The Board has been appraised that in certain cases the assessee has disputed the figures of arrear demand shown as outstanding against them in the records of Assessing Officer. The Assessing Officer has shown their inability to correct or rectify the same on the ground of period of limitation of 4 years u/s 154(7) of the Income Tax Act. In addition to this, the Assessing Officer has uploaded such arrear demand on the Financial Accounting System (FAS) portal of Centralized Processing Centre (CPC), Bengaluru which has resulted into adjustment of refunds against the arrear demand.

Such adjustment has been disputed by the assessee either on the ground that it has been already paid or eliminated in appeals. Such arrear of demand has also not rectified due to aforesaid period of limitation.

In view of the above CBDT has issued the following clarification-

a) In the category of cases where based on the figure of arrear demand uploaded by the Assessing Officer but disputed by the assessee, the Centralized Processing Centre (CPC), Bengaluru has already adjusted any refund arising out of processing of return, the jurisdictional Assessing Officer shall verify

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the claim of the assessee on merits. After due verification of any such claim on merits, the Assessing Officer shall issue refund of the excess amount, if any, so adjusted by CPC due to inaccurate figures of arrear demand uploaded by the Assessing Officer. The Assessing Officer, in appropriate cases, will also upload amended figure of arrear demand on Financial Accounting System (FAS) portal of Centralized Processing Centre (CPC), Bengaluru wherever there is balance outstanding arrear demand still remaining after aforesaid correction/ reconciliation.

b) In other cases, where the assessee disputes and requests for correction of the figures of arrear demand, whether uploaded on CPC or not uploaded and still lying in the records of the Assessing Officer, the jurisdictional Assessing Officer shall verify the claim of the assessee on merits and after due verification of such claim, will make suitable correction in the figure of arrear demand in his records and upload the correct figure of arrear demand on CPC portal.

It has been specifically clarified that these instructions will apply only to cases where the figures of arrear demand is to be reconciled/ corrected— whether such arrear demand has been uploaded by the Assessing Officer on to Financial Accounting System (FAS) of CPC or it is still in the records of the Assessing Officer.

4. DTAA between India and Nepal [207 Taxman (ST.) 173]

The Central Government *vide* Notification No.- 20/2012 [F. No. 503/03/2005-FTD-II] dated 12.06.2012 notifies the agreement between the Government of the Republic of India and the Government of Nepal for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income. The agreement shall be given effect to in the Union of India with effect from 01.04.2013.

5. DTAA between India and Norway [207 Taxman (ST.) 194]

The Central Government *vide* notification No. 24/2012 [F. No. 505/3A/81-FTD-I] dated 19.06.2012 directs that all the provisions relating to agreement between government of Republic of India and the government of the Kingdom of Norway for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital.

6. Press release regarding mandatory e-filing of Income Tax Returns [208 Taxman (ST.) 1]

The CBDT *vide* press release No. 402/92/2006-MC dated 02.07.2012 clarified that the following entities does not mandatorily required to e-file their return of income for the Assessment Year 2012-13 with digital signature and such tax payer can also transmit the data in the return electronically and thereafter submit the verification of income in Form ITR-V. Such person can e-file return of income without digital signature.

The entities are as under-

- a) An individual or HUF whose total income is exceeding ₹ 10 lakhs.
- b) An individual or HUF being a resident, having asset (including financial interest in any entity) located outside India or signing authority in any account located outside India and required to furnish the return in Form ITR-2 or ITR-3 or ITR-4.

7. Draft guidelines regarding implementation of General Anti Avoidance Rules (GAAR) [208 Taxman (ST.) 3]

The CBDT *vide* press release dated 28.06.2012 issued the draft guidelines regarding implementation of General Anti Avoidance Rules in terms of section 101 of the Income Tax Act. The details of the guidelines are available in above magazine.

8. Amendment in Rule 12 and substitution of Forms ITR-5 and ITR-6 [208 Taxman (ST.) 20]

The CBDT *vide* notification 25/2012 [F. No. 142/31/2011-TPL]/S.O. 1453(E) dated 02.07.2012 gives Income Tax (Seventh Schedule) Rules, 2012. It amends Rule 12 and substitute forms ITR-5 and ITR-6. It also makes an amendment in proviso to clause (a) and clause (ca) to sub-rule (1) of Rule 12 in order to clarify that the amendment relating to disclosure of assets (including financial interest in any entity) located outside India and signing authority located outside India applies to resident other than not ordinarily resident in India within the meaning of section 6(6) of the Income Tax Act. The proviso to clause (a) and clause (ca) deals with the Sahaj (ITR-1) and Sugam (ITR-4S) repectively. The similar amendment is also made in proviso (aa) of sub-rule (3) of Rule 12 of Income Tax Rules. The proviso (aa) deals with the requirement of compulsory e-filing of return either with digital signature or transmitting data electronically and submitting the verification Form in ITR-V.

RECENT JUDGEMENT UNDER SERVICE TAX

1. Collection of toll on behalf — Whether liable to Service Tax

Facts: The appellant M/s Ideal Road Builders Pvt. Ltd. was engaged in the business of toll collection on behalf of NHAI. They entered into a contract with NHAI wherein they collected the toll for the specified national highway. They also entered into a toll rights contract under which they paid a fixed monthly sum to NHAI on account of toll and collected the toll From the users of the roads and retained the entire amount with them.

Issue: The department was of the view that the services rendered by Ideal Road Builders to NHAI would come under the category of 'Business Auxiliary Services' and they were liable to pay service tax under that category.

Contention: It was argued that NHAI is a statutory body performing a statutory function and it cannot be said that NHAI is doing business and consequently the appellant could not said to have rendered 'Business Auxiliary Service'

Held that:

- Collection of toll is for defraying the expenses of NHAI and the proceeds of toll do not go into the Consolidated Fund of India. Therefore, it is not a statutory levy and NHAI was not performing a statutory function. Thus, the activity carried out by NHAI is a business Activity.
- Merely because the mode of payment for services rendered is different, it does not alter the nature of service rendered.
- The activity undertaken by NHAI is a business activity and the services rendered by the appellant to NHAI appear to be classifiable under "Business Auxiliary Services".

Ideal Road Builders Pvt. Ltd vs. Commissioner of Customs 2012 (27) S.T.R. 57 (Tri. – Mumbai)

2. No service tax on charges for goods sold on High Sea Sales basis

Facts: M/s. Indian oil Corporation Ltd. (IOCL) is having an agreement of sale with M/s. Zuari Industries Ltd. (ZIL) for sale of Naphtha and Furnace Oil on High Seas Sale basis. In pursuance of the agreement entered into, IOCL imported the goods and sold the same on High Seas basis. In the agreement of sale there is a bifurcation given to arrive at the value of goods and as per the agreement the applicant has charged additional handling charges and facilitation charges.

Issue: The department is of the view that the additional handling charges and facilitation charges are the services rendered by the applicant during the sale of goods on High Seas Sale basis and therefore these services are liable to Service Tax under the category of 'Business Auxiliary Services'.

Held that: It was held that there is an agreement for sale of goods imported by the applicant on High Sea sales basis to M/s ZIL. The additional handling and facilitation charges are included in the total assessable vale and hence the same is not liable to service tax.

Indian Oil Corporation Ltd. Vs. Commissioner of Central Excise, Goa 2012 (27) S.T.R. 23 (Tri. Mumbai)

DIRECT TAX JUDICIAL JUDGEMENTS

CA Dharmen Shah

Tata International Ltd. vs. DCIT, Mumbai (ITAT) dated 29.06.2012

Where AO furnished only gist of reasons recorded by him for issuing notice under section 148, orders on reassessment liable to be rejected

Facts of Case

The reason provided by A.O. to the assessee is for his defence and objection against the reopening of the assessment. As per the rule of natural Justice, the Assessee is entitled to know the reasons on the basis of which the assessing Officer has formed an opinion that the income assessable to tax has escaped assessment.

The gist of reasons furnished to assessee cannot be treated as reasons actually recorded by the Assessing Officer as per section 148(2).

In the instant case, the Assessing Officer failed to furnish the reasons recorded for reopening of the assessment prior to the completion of assessment, then the reassessment order passed without supply of reasons, is liable to be rejected.

Eldeco Infrastructure & Properties Ltd. vs. CIT, Delhi Tribunal dated 30th March, 2012

Where consideration declared exceeds the stamp duty value for building, the same will have to be accepted and cannot be substituted by FMV for computation of capital gains.

Facts of Case

Full value of consideration can be substituted by an amount as provided under Stamp duty Act and adopted as a value for computing stamp duty on such property.

The assessee had shown the full value of consideration greater than stamp duty valuation, therefore, section 50C is also not very relevant.

As the full value of consideration given by assessee exceeds stamp duty valuation, the same has to be accepted and cannot be substituted with the fair market value.

Uday Punj_vs. Commissioner of Income-tax, Central-III dated 9th July, 2012

Delhi HC denies tax benefits to promoters under section 10(38)/under section 112 in respect of sale of their equity shares to public through 'offer for sale'

Facts of Case

The Appellant was a promoter of a Company, which came out with an IPO. Along with Public Issue, the Appellant also offered shares held by him in the company to the General Public through the said offer.

Allotment of above referred shares was made to Applicants Demat A/c in public issue after receiving trading approval from stock exchange but one day prior to trading commenced on stock exchange.

Held that, sale of shares by promoters was deemed not to be done through system of stock exchange. Mere non receipt of consideration cannot have effect of postponing the date of transfer of ownership rights. Thus, Exemption u/s 10(38) was denied.

Further, since trading of securities commenced on stock exchange on next day, these securities are termed as Unlisted Securities. Hence, transaction of sale by promoters was deemed to be not eligible for payment of tax at lower rate @ 10% and was liable @20%.

ACIT vs. Uma Beriwala — Delhi Tribunal dated 23rd March, 2012

Unless fair market rent is determined, addition of notional interest on interest-free security deposit as part of annual letting value is not justified.

The Assessing Officer as per provisions of the Act is expected to make any inquiry as to what would be the possible rent that property might fetch.

If A.O. finds that the actual rent received is less than the fair market rent because the assessee has received an abnormally high interest-free security deposit and because of that actual rent received is less than the rent which the property might fetch.

Held that, the notional interest on the interest-free security cannot be considered as a part of ALV.

SERVICE TAX UPDATE

CA Rajkamal Shah

Reverse charge in case of Service by a director to the company

In relation to service provided by directors of the company to the said company, the company would be liable to pay service tax on Reverse charge mechanism from 07.08.2012. The sitting fees and other charges like commission, professional fees which is not a part of employment contract or paid to non-executive directors or other directors (e.g. nominee directors) who are not in the employment of the company is liable to be taxed under the new regime.

Reimbursement of expenditure actually incurred by the director for company's business would not be covered under service tax.

Reverse charge in case of Security services (included in Man power supply)

Security service is now included under man power service from 07.08.2012. Service tax is payable by a business entity registered as body corporate on Reverse charge basis @75% of value of such service, if security service is provided by individual, HUF, AOP, BOI or a partnership firm and on balance of 25% of the value of service tax, the provider of service is liable to pay to government.

"Security service" means services relating to any property, whether movable or immovable, or of any person, in any manner and includes the services of investigation, detection or verification, of any fact or activity.

FORTHCOMING EVENT

SECOND STUDY CIRCLE MEETING

Day & Date	Sunday, 26th August, 2012
Time	10.00 a.m to 12.30 p.m.
Speaker	CA Harish Motiwalla
Subject	Intricate issues in Revised Schedule VI
Venue	SNDT College, Liberty Garden, Malad (West), Mumbai-400 064

THE MALAD CHAMBER OF TAX CONSULTANTS

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Respected Shri Mohanbhai Patel Inaugurating Study Circle Meeting for the year 2012-2013. Also Seen in Picture Speaker Smt Sujata Rangnekar and President Shri Sachin Gandhi

Speaker Smt Sujata Rangnekar Delivering Lecture on The Topic Vat on Builders & Developers In View of Recent Bombay High Court Judgment at the Dr. Bharat D. Vasani Inaugural Study Circle Meeting held on 12th August 2012.



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