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28th KSCAA Annual Conference inaugurated by Shri. H.S. Mahadeva Prasad, Honorable Minister for Co-operation and Sugar, Government of Karnataka

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President's Communique

Dear Professional Colleagues,

Congratulations to new Office Bearers of Branches of SIRC of ICAI in Karnataka.

On behalf of members of Executive Committee and Members of KSCAA I extend hearty congratulations to all the Branch Chairmen and their team for assuming charge as office bearers for the year 2016-17. I sincerely believe that during their tenure they will enhance the image of the Institute.

We successfully conducted two day mega event, 28th KSCAA Annual Conference on 5th & 6th March 2016 at Jnanajyothi Convention Centre, Central College, Bangalore. I am happy to announce that with all your support, we have successfully conducted the 28th Annual Conference on 5th & 6th March 2016 and was well attended by 666 delegates.

The resource persons shared their knowledge on relevant topics with the delegates, added value and enhanced the soft skills of the participants.

The 28th KSCAA Annual Conference was inaugurated by Shri. H.S. Mahadeva Prasad, Honorable Minister for Co-operation and Sugar. In his inaugural speech, he mentioned about the service and involvement of chartered accountants in preparation of state budget and importance of chartered accountants for society.

After the Inauguration, the two books along with CD, titled Practical Handbook to Audit Report on "What Can Go Wrong?" authored by CA Gururaj Acharya and international Taxation: Practice Concepts authored by Group Dynamics (CA Sachin Kumar B.P and Team), was released. There were 6 technical session spread over for two days. During the evening entertainment session was organized attended by members along with their family.

The second day started with morning session on stress management for professionals by Dr. Chandrashekar and ended with valedictory session.

I sincerely acknowledge the support extended to me by Past Presidents, Members, Friends and Colleagues making this event a grand success.

PROFESSIONAL GRIEVANCES:

I request all members to send in their grievances on the problems faced in their professional practice, which can be taken up by the association at appropriate forums.

Union Budget 2016-17

"The Hon'ble Finance Minister presented the Union Budget for the FY 2016- 17 with positive note on the growth achieved so far. The budget was presented with an optimistic outlook for the years to come. The budget revolves around various reforms planned including in the area of taxation with an intent to rationalize taxes by restricting exemptions in some sectors and providing incentives to promote start-ups and boost manufacturing under the Make In India, Start Up India and Digital India Schemes.

Various proposals include schemes to resolve tax disputes demonstrating the positive intent of the Government towards tax payers."

Before concluding my message I wish to remember the message by Swami Vivekananda "Arise Awake and Stop not till the Goal is reached".

In service of the Profession,

CA. Dileep Kumar T M
President

28th KSCAA Annual Conference

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KSCAA welcomes articles & views from members for publication in the news bulletin / website.

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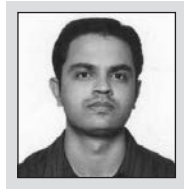
Website: www.kscaa.co.in

KSCAA WELCOMES NEW MEMBERS - FEBRUARY 2016

	Name	*Place*
1	Inamdar Kiran Dattatraya	Bijapur
2	Suraksha Shetty B	Bangalore
3	Vasantha Shanubhogue V	Kundapura
4	Krishna Raya Shanubhoga	Bangalore
5	Akshata V Shanubhogue	Udupi
6	Sai Rathna Durga Prasad Veeraapaneni	Raichur
7	Vanraj Shetty	Bangalore
8	Kartik B. Shetty	Hubli
9	Yoganarasimha N	Bangalore
10	Nanjundaswamy T.C	Mysore
11	Nishith Bhuwalka	Bangalore
12	Shivaswaroop H.P	Bangalore
13	Mallikarjun M.S	Bangalore
14	Ashok Kumar G	Bangalore
15	Maruthi S	Bangalore
16	Mohana A	Bangalore
17	Madhukumar S.P	Bangalore
18	Eshwar K Dharamdas	Bangalore
19	Vellanki Prashanth	Bangalore
20	Sathish Kumar G	Bangalore

	Name	*Place*
21	Chidananda A.B	Bangalore
22	Siddesh Gaddi	Bangalore
23	Timmayya Hegde	Bangalore
24	Vikram Sannuthi	Bangalore
25	Sanathi Rai	Bangalore
26	Sanjay Kumar V	Bangalore
27	Aswina Kumar	Bangalore
28	Prabhod	Bangalore
29	Subramanya	Bangalore
30	Vijaykumar Janadri	Bangalore
31	Santosh Khode	Bangalore
32	Shivaprakash Viraktamath	Bangalore
33	Adithya Bharadwaj S.P.	Bangalore
34	Sarvotham Shetty	Bangalore
35	Ankita Shetty	Bangalore
36	Kaushik A	Bangalore
37	Amaresh E.	Bangalore
38	Vishakh Manchi	Bangalore
39	Anantha Kumar .N	Bangalore
40	Guru Charana H.R.	Bangalore
41	Vishal B. Patil	Bangalore

Removal of Excise Exemptions – Impact on Industry



CA Madhukar N Hiregange and **CA Mahadev.R**

The FM in this budget 2016 re introduced Central Excise duty on branded readymade garments and jewelry (branded or not). In addition to this, there has been increase in rate of duty on mobile accessories, tobacco products with new levy of infrastructure cess on specified motor vehicles. In this article, we look at the implications of excise duty levy on branded garments and jewellery articles.

Excise duty on jewellery

In the year 2005, the Government had levied 2% excise duty on branded jewellery. The collections of excise duty from this sector were meager. The resistance from the parallel sector was quite which might have forced Government to withdraw the excise duty in 2009. Later in 2011, excise duty of 1% was levied on branded precious metal jewellery. From March 2012, the levy was extended to all jewellery whether branded or unbranded. Again the levy was removed subsequently probably for the same reason.

Now, in this budget 2016 the levy has been reintroduced on both branded as well as unbranded jewellery of gold / other precious metals, with an exception of silver jewellery. The levy would be applicable to the silver jewellery only when such jewellery is studded with diamonds, ruby, emerald or sapphire. Other important points in this regard are as follows:

a) Excise duty of 1% [without Cenvat credit] or 12.5% with Cenvat credit is being levied on such articles of jewellery. Levy would be effective from 1st March 2016.

b) The benefit of SSI exemption would be available to manufacturers of jewellery with a higher threshold of exemption upto Rs.6 Crore per annum and eligibility limit of Rs.12 Crore.

c) Registration should be granted within 2 days without physical verification of premises.

d) Option of centralized registration is available when the assessee is operating from multiple units but with centralized accounting / billing system

Excise duty on readymade garments

In the year 2001, the excise duty was first introduced on woven garments. Then in the year 2003, the levy was extended to entire textile industry for a short period of time. However to keep up his election promise Shri P Chidambaram exempted the sector. This was through Notification no.30/2004, the exemption was provided to entire textile industry with condition of non-availment of Cenvat credit. The textile industry with exports opted for either duty drawback or DEPB benefit on textile exports. Vide notification no.29/2004, the textile industry had the option of paying excise duty at concessional rate with Cenvat credit benefit. Almost all opted out of dutiability.

In the year 2011, Shri Pranab Mukherjee reintroduced mandatory standard rate of duty on branded garments with Cenvat credit and abatement of 55% for payment of duty. In 2012, the abatement was increased to 70% as against 55% with increase in rate of duty from 10% to 12%. The succeeding FM Shri.Chidambaram removed the mandatory levy in 2013-14. Till this budget, the optional scheme was being continued.

In this budget 2016, the excise duty levy has also been introduced compulsorily for readymade garments and made up articles of textiles falling under Chapters 61, 62 and 63 (heading Nos. 6301 to 6308) of the Central Excise Tariff except those falling under 6309 and 6310. Other important points in this regard as follows:

a) The levy is attracted only when Retail Sale Price (RSP) is Rs.1000/- and above when garments bear or sold with brand name.

b) The excise duty of 2% (without Cenvat credit) or 12.5% (with Cenvat credit) is levied on. Levy would be effective from 1st March 2016.

c) Goods other than above would continue with optional levy of "Nil (without Cenvat credit) or 6% (with Cenvat credit)" in case of garments / articles of cotton, not

containing any other textile material and "Nil (without Cenvat credit) or 12.5% (with Cenvat credit)" in case of garments / articles of other composition.

d) Abatement of 60% on MRP would be available for payment of excise duty.

As the levy would be new for most of the assessee under these segments, following aspects / implications may need to be understood/ considered to ensure compliance:

1. ***Duty payable on goods manufactured before levy but cleared later***

The Supreme Court in case of *Wallace Flour Mills Vs. CCE 1989 (44) ELT 598 (SC)* has held that the pre-budget stock of excisable goods which were exempted through notification would be liable for excise duty when they are cleared after the date of removal of exemption. Therefore, garment / jewelry manufacturers wherein levy has been introduced should pay duty and clear the goods from 1st March 2016 even though the goods were manufactured prior to this date.

Importantly, central excise duty is on removal. Therefore in case of goods which are already in transit or as stock at depots/ retail points as on 1st March 2016, the excise duty is not payable. It maybe a good practice that on invoice for goods manufactured and removed prior to 1st March 2016 there can be a declaration. The declaration – *"the goods under this invoice were removed from factory on… Jan/ Feb 2016"*. This could avoid seizure and litigation. This declaration would be useful for any subsequent movement of goods from the depots and warehouses in case of verification while it is moving.

2. ***SSI exemption eligible***

The jewellery manufacturer would be eligible for SSI exemption on first clearance of dutiable goods upto Rs.6 crore. However, this would be subject to condition that the clearance for the previous financial year does not exceed Rs.12 crore. Since, excise duty is levied from 1st March 2016, proportionate SSI exemption of Rs. 50 lakh has been fixed for March 2016. This exemption should be available only if value of clearances for home consumption from one or more manufacturer from one or more factory or premises of production or manufacture during the financial year 2014-15 did not exceed Rs. 12 crore.

Similarly, in case of readymade garments, exemption would be eligible on first dutiable clearance of dutiable goods upto Rs.1.5 crore. However, this would be subject to condition that the clearance for the previous financial year does not exceed Rs.4 crore. For, March 2016, SSI exemption of Rs. 12.50 lakh has been fixed. This exemption should be available only if value of clearances for home consumption from one or more manufacturer from one or more factory or premises of production or manufacture during the financial year 2014-15 did not exceed Rs.4 crore.

Branded Goods:

It is important to note that the SSI exemption of Rs.150 lakh for garments is eligible only on goods manufactured using own brand name. If the goods are manufactured using other's brand name, the SSI exemption is not eligible as per notification no.8/2003-CE. Even for jewellery, the exemption would not be eligible if goods manufactured under other's brand name. For this purpose, brand name means a name / mark, such as symbol, monogram, label, signature or invented word or writing which is used in relation to such specified goods for the purpose of indicating. Brand name maybe registered or unregistered.

3. ***Registration under Central Excise***

Manufacturers of jewellery articles have the option of the Centralized registration in case of multiple units. For ease of registration, it has been provided that registration should be without physical verification of premises. The garment manufacturers would also have the option of centralized registration after the amendment in the registration no.35/2001-CE NT in this budget. However, the same should be subject to condition that the premises of the same factory are located within a close area in the jurisdiction of a Range Superintendent and the manufacturing processes undertaken are interlinked. The benefit of Centralized registration would not be eligible if such additional units are operating under any of the area based exemption notifications.

An appropriate decision should be made by the manufacturers considering the availability of centralized registration as it could reduce substantial compliance at each unit. Brand owners may also consider the option of asking the job workers to register and discharge the excise duty to reduce the compliance burden.

4. ***Job Worker Registration***

Rule 4(1A) of Central Excise Rules 2002 provides that person who gets the goods falling under Chapter 61 or 62 or 63 produced or manufactured on his account on job work, should pay the duty leviable on such goods as if such

goods have been manufactured by such person. However, the burden can be transferred to job worker as well wherein job worker would be liable to obtain registration and discharge the duties.

The choice whether the job worker is to pay the duty also needs to be made as at times brand name owner may not be in a position to register.

5. ***Cenvat credit on input and input services***

Where excise duty is discharged at concessional rate of 1% or 2% as applicable, manufacturers would not be eligible for Cenvat credit in respect of the inputs, input services as well as capital goods.

Where the option of full duty payment is taken, the credit on closing of stock of inputs and inputs used in finished goods including WIP would be eligible for Cenvat credit. For the purpose, a certificate from the Chartered Accountant is required.

The manufacturers/ brand name owner can make cost benefit analysis between payment of concessional duty without Cenvat and payment of full duty with Cenvat. It is likely that 99% of those liable would go for 2% option.

6. ***Other procedural Compliance***

The manufacturers/ job workers need to obtain registration which could be done after choosing the better option of concessional duty and full rate of duty and also as they reach the exemption limit.

The registered manufacturers should file an initial declaration letter under Rule 22 (2) of Central Excise Rules 2002 with the department with brief details of activity undertaken as well as the method adopted for payment of duty and Cenvat credit as a good practice. The compliance under service tax reverse charge mechanism would also be very important for any assessee today. Subsequent actions like maintenance of proper records, providing appropriate declaration, ensuring capital goods credits, making payments in time and filing accurate returns would be the basic compliance. The large tax payers may institute a regular internal check in house or external to ensure compliances at higher levels and optimization of tax by availing capital goods credits, planning for reverse charge and avoiding interest and penalties.

The registered assessee to make the payments within the due date. The due date would be 6th of every month. In case of assessees who are eligible for SSI exemption, the payment would be on quarterly basis i.e by 6th end of each quarter.

Similarly, the assessee is required to file monthly return in Form ER-1 by 10th of subsequent month. In case of assessee who is eligible for SSI exemption, filing of Form ER-3 by 10th after end of quarter is mandatory. If assessee opts for 1% / 2% duty payment, a quarterly return in form ER-8 within 10 days after quarter should be filed instead of ER-1 or ER-3.

Professional Opportunities for Chartered Accountants

There is some increased opportunity for chartered accountant in indirect tax practice. Introduction of jewellery and garment sectors into excise levy has added to it. Following could be few important areas wherein the professional could be of great value to new assessees now:

a) Registration assistance – Assistance in initial registration which could take about 2 to 5 days. Professional can guide the assessee properly with respect to documentation.

b) Initial handholding – New assessee may not be aware of all compliance requirements at the initial stages. Professional could help assessee in compliance requirements like maintaining books, registers, issue of invoices, filing initial disclosure letters etc.

c) Regular payment assistance - Computation of taxes, credits, interest, liability under reverse charge mechanism are some of the areas where assessee could require assistance.

d) Filing of return – Assistance could be provided in review of collated information with respect to credits, liability etc. Assessee, generally ignore the importance of this.

e) Regular review of compliance – Periodic review of compliance which could be quarterly / half yearly could add great value to assessee in respect of credits, payment compliance, export benefits etc.

Conclusion: It is highly unlikely that the Government would roll back levy of excise duty on garments and jewelry as the objective is to broad basing taxation to tax all products and services. In the next budget we may see an increase in coverage to all garments and the rate being hiked marginally.

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E-Initiatives under the Karnataka VAT Law

CA G.B. Srikanth Acharaya and **CA Annapurna Kabra**

The Commercial Taxes Department is providing almost all services electronically at the doorstep of the dealers. Now, it is amended that the dealers will be enabled to file an appeal electronically against any order or proceedings affecting him under the provisions of the Karnataka Value Added Tax Act. Further, in order to bring in more transparency and accountability, the orders passed by the Appellate Authority will be uploaded on to the computer system and thereafter a copy of such order will be served on the appellant.

I) E-APPEAL

NOTIFICATION:

With reference to N. No. EG1.CR-23/2015-16, Bangalore, dated 20th January, 2016: wherein with reference to sub-section (5) of Section 62 of the Karnataka Value Added Tax Act, 2003 (Karnataka Act 32 of 2004), it is notified with immediate effect that any person objecting to any order or proceedings affecting him passed under provisions of the said Act shall submit an appeal electronically through the website: http://vat.kar.nic.in as per the instructions contained in the user manual hosted onto the said website available under "Reports and Help".

PROCEDURES:

- The Appeal can be filed electronically by the dealer who is aggrieved by the order/proceedings passed by the CTO, ACCT and DCCT and having a CAS order number is enabled to file appeal to the JCCT (Appeal) electronically.
- The online appeal with the content as prescribed in Form VAT 430 along with the scanned copies to be uploaded will be submitted to JCCT (Appeal) of the same jurisdiction of the dealer
- The application will be scrutinized by the office of JCCT for its correctness and completeness and any defect will be intimated to the appellant through the system and will be available in the dealers login. The dealer can view the defects and can rectify the defects and resubmit the application after complying the same.
- The Appeal option enables the dealer to file for new appeal application and to check the status of appeal.
- After dealer login against the appeal module the two options in sub menu is displayed as New Application and check status. In case of New application the CAS order number should be entered. After that the user has to fill all the mandatory fields (APPEAL ENTRY FORM).
- The contact details of the dealer and the authorized representative representing the dealer needs to be entered separately.
- There is an option for applying for issue of stay order by selecting the button of Yes for the question as stay requested. The necessary documents need to be scanned and uploaded along with the application for stay.
- Once the application is submitted it generates an acknowledgement slip with an appeal reference number.
- The user will have an option to check the status of an appeal by placing the cursor on Appeal and click on Check status.
- If the user has adopted or selected the stay requested the Joint Commissioner will update the Statutory Amount that needs to be paid.
- The dealer can make online payment through E-payment. To make E-Payment the dealer has to select the Tax type as Demand Notice. Select the Demand type as Audit Demand , Enter the TIN, Select Demand Notice and enter the CAS Order Number.
- The demand raised for Statutory amount is displayed. The dealer will indicate the payment is being made towards deposit of amount for stay as stay amount. On successful updations the Joint Commissioner (Appeal) may issue the stay order. The subsequent notices, endorsements if any will appear in the login of the dealer.

II) <u>E- SPECIAL ACCOUNTING SCHEME:</u>

- Earlier there was no time limit is prescribed under the VAT Act for granting permission for availing the

Special accounting scheme. Therefore it is amended to bring the same under Sakala prescribing one-month time limit for the convenience of the dealers opting for such scheme.

- Section 16 (read with rule 134) of KVAT Act 2003 provides that, where a dealer liable to pay tax under section 4 is unable to identify each individual sale, its value or the rate of tax (or is unable to issue a tax invoice as specified in section 29 for each individual sale) he may apply to the prescribed authority to pay net tax under section 10 under a special method to be mutually agreed by such authority in such manner as may be prescribed.
- Now the Commercial Tax Department is facilitating the above service i.e., "Granting permission for Special Accounting Scheme" through online to the dealers.

PROCEDURE

- After dealers login the option of Special Accounting System three options will be opened as new entry , Check status and Print approvals
- After selecting new entry the dealer has to fill the details as whether the retailer is selling the goods directly to the consumer and whether the method of calculation of tax payable is based on purchase, based on sales and any other.
- The dealer has to enter all the necessary particulars in the application and necessary documents shall be scanned and uploaded.
- After entering all the details and uploading the documents click on "submit". Once it is submitted, viewed by the officers of LVO/VSO from their login and after due verification, the said application will be forwarded to the Joint Commissioner of Commercial Taxes of concerned division with their remarks.
- The Joint Commissioner of Commercial Taxes of the Divisional VAT Office will examine the application submitted by the dealer and remarks of the LVO/VSO, if all the particulars are found to be correct and acceptable, the Joint Commissioner of Commercial Taxes will accept the application and pass the necessary orders for granting permission for Special Accounting Scheme.
- If required the dealer may get the signature of the concerned Joint Commissioner of Commercial Taxes.
- In case of incomplete application or any mistakes in the application, the Joint Commissioner of Commercial Taxes of concerned DVO will issue an endorsement to the dealer by providing an opportunity to re-submit the application online after necessary corrections.
- The re-submitted application by the dealer will be examined once again by the concerned Joint Commissioner and the same may be Accepted/Rejected

III) E-TDS (TAX DEDUCTED AT SOURCE)

- The scope of Tax Deduction at Source (hereinafter referred to as 'TDS') has been limited under the provisions of the Karnataka Value Added Tax Act, 2003, to scope of 'work' in relation to Works contractors (as specified in section 9-A) and for industrial canteen run through a dealer(Section 18).
- TDS Authority needs to collect the username and password from the concerned Local VAT officer (LVO) or VAT Sub officer (VSO) for an account in VAT e-filing system. After processing, the jurisdictional LVO/VSO will provide the Username and Password. It is important to maintain the Username and Password securely and confidentially so as to avoid the misuse of the same
- In VAT e-Filing system page, enter your Username and Password in the Dealer Login section and click the Login button. The main page of the e-Filing System will be displayed.
- When you login for the first time into the system successfully using the Username and Password given by the department, you will be displayed with the screen to enter the contact details and if required by the department it will be used for communication and after entering the details the secured username and password so that it should not be misused by others.
- E-TDS is an electronic process set by CTD to file the monthly statement in Form VAT 125 and pay the said amount deducted at source by the Tax deducting authority. Using this option, the TDS Authority can enter the Bill Payment Details, TDS effected, Remitted Details, Generate VAT 125, Generate VAT 156 in their respective sections.
- The Main Menu page of TDS should be displayed. A page containing the Bill Payment Details of TDS will be displayed.
- In Bill Payment Details page of TDS enter the YEAR in textbox and select the month for which you have to file

the statement in Form VAT 125 for payment of amount relating to TDS amount.

- Enter the 11 digit TIN of the contractor for which bills are submitted for payment, system will validate the TIN and the name of the contractor will be populated.
- Enter the TDS Bill Details with Bill No with Bill Date, Amount Paid to the contractor, Tax Amount and Tax Deducted and click on Save. Click on Add New Bill to enter another bill, if necessary for same TIN. For New TIN you are required to click on Add New TIN. You can Add, Update and Delete for any bill details.
- In the page of Bill Remittance details, enter the YEAR in textbox and select the period for which you have to file the statement of monthly return in Form VAT 125. Select Payment Mode with respective details such as bank name, MICR code, amount etc.. It may be noted that the amount may be equal to or greater than the Total Tax Deducted Amount by Rs. 100/- only.
- In the Bill Remittance Details page of TDS, enter the YEAR in textbox and select the Period for which you have to file the monthly statement in Form VAT 125. The system will populate and display the Total no of Bills Entered, Total amount Paid, Total Tax Amount and Total Tax Deducted. When you click on view bill link, It will display all bill details of respective of TIN. In the generate Form VAT 125 page of TDS, enter the YEAR in textbox and select the Period for which you are required to file the monthly statement in Form VAT 125. In the Generate VAT 125 page of TDS, all bill details of respective dealers (TINs) and remittance details of respected of payment modes is displayed to the TDS authorities. Upon clicking on Submit button, it will Generate monthly statement in Form VAT 125.
- In the summary of Generate Form VAT 125, click the Submit button. The Form VAT 125 with the serial number will be displayed. The return so generated will be deemed to have been acknowledged if the mode of the payment is e- payment.
- In respect of other modes of payments like Cheque/DD/ Challan/Book adjustment etc. the statement in form VAT 125 will be acknowledged only after physical submission of Cheque/DD/ Challan or proof of book adjustment to the jurisdictional LVO/VSO. After officer giving Acknowledge to Form VAT 125, In the Generate VAT 156 page of TDS, all bill details respective of TIN and all Remittance details respected of pay modes are display for Dealers
- It may be noted that if the physical submission of Cheque/DD/ Challan or proof of book adjustment is not done, statement in Form VAT 125 will not be treated as submitted. Further only after submission of such Cheque/DD/ Challan or proof of book adjustment, the tax deducting authority would be able to issue the TDS certificate to the respective dealers from whom the TDS is carried out.
- In the Generate Form VAT 156 page of TDS, enter the YEAR in textbox and select the Period for which you have to generate the TDS certificate in Form VAT-156 to be issued to the dealer. Enter the 11 digit TIN for which TDS certificate is required to be issued to the dealer. Upon clicking on Generate Form VAT 156 button, It will Generate VAT 156 Form. Form VAT 156 with the serial number will be displayed in the website accordingly.

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Union Budget Highlights - 2016 - Customs & Central Excise

CA C.R. Raghavendra, *B.Com, FCA, LLB, Advocate* and
CA J.S. Bhanu Murthy, *B.Com, FCA, LLB, Advocate*

I. Customs:

Amendments proposed to provisions of Customs Act, 1962 and rules issued thereunder:

a) Deferred payment facility: Provisions of Section 47 is proposed to be amended to provide differed payment facility to certain class of importers and exporters. Provisions of Section 156 which deals with rule making power of the CBEC has also been proposed to be amended to provide for making rules in connection with deferred payment facility

b) Warehousing provisions: Apart from public and private warehouses, proposal to set up new type and operate of warehouses, which would be under the control and supervision of the departmental officials.

Further, provisions and procedures relating execution of bond for warehousing of goods, removal of imported goods for the purpose of warehousing, clearance of goods from warehouse to home consumption or transfer to other warehouse has been proposed to be amended.

Section 73A is proposed to provide that person who has been granted a license for warehousing shall be responsible custody of warehoused goods. The section also prescribes responsibilities and liabilities of warehouse keepers.

c) Transit of goods without payment of duty: Proposal to amend provisions of Section 53 so as to enable the proper officer to allow transit of certain goods and conveyance without payment of duty, subject to the conditions specified by the Board by regulations.

d) Baggage Rules: New set of Baggage rules have been prescribed and also Customs Baggage Declaration Regulations, 2013 is being amended so as to prescribe filing of Customs declaration only for those passengers who carry dutiable or prohibited goods.

e) New Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2016 has been notified which would be effective from 1.4.2016

II. Central Excise

A. Articles brought under Excise net

a) Readymade Garments:

Excise duty of 2% (without CENVAT credit) or 12.5% (with CENVAT credit) is being levied on readymade garments and made up articles of textiles falling under Chapters 61, 62 and 63 (heading Nos. 6301 to 6308) of the Central Excise Tariff except those falling under 6309 and 6310.

Excise levy would get attracted only where the Retail Sale Price (RSP) of such readymade garment is Rs.1000 or above and they bear or are sold under a brand name. For the purpose of payment of excise duty, Tariff value would be 60% of RSP.

b) Jewellery:

Branded articles of Jewellery [excluding silver jewellery, other than studded with diamonds/other precious stones] is brought under excise net with duty of 1% (without CENVAT credit) or 12.5% (with CENVAT credit). SSI exemption Notification has been amended to provide for a higher threshold exemption upto Rs. 6 crores in a year and eligibility limit of Rs.12 crores during the previous financial year. Further, following procedural amendments were carried:

- ✓ Quarterly payment facility to Jewellery units having value of home clearances upto 12 crores
- ✓ Jewellary units having value of home clearances upto 12 crores could avail 100% credit of duty paid on capital goods in the year of receipt
- ✓ Optional centralized central excise registration for jewellery manufacturers with centralized billing or accounting system.
- ✓ Exemption from physical verification unit / premises engaged in manufacture of jewellery for registration.

B. New levy

A new cess termed as 'Infrastructure Cess' to fund the infrastructure projects has been introduced. Through, declaration under the Provisional Collection of Taxes Act, 1931, the said cess would be applicable w.e.f. 1.3.2016. The summary of the said levy is detailed below:

- ➢ This new cess is on the goods covered under chapter 8703- which covers cars and other motor vehicles suitable to carry not more than ten passengers.

- This being a cess in the nature of excise duty, the same is to be paid in addition to the duty of excise to be computed on the value of the goods.
- The Finance though proposes that the rate of cess would be at 4%, the effective rates are as below:

Nature of Goods	Rate of cess
Vehicles cleared as ambulances, electric vehicles, hybrid vehicles, Three wheeled motor vehicles, cars for physically handicapped	Exempted
If vehicles cleared for registration as taxis or for use as ambulance	NIL – but refund mode to be adopted [first pay at applicable rates and then claim refund]
Smaller Petrol, LPG and CNG vehicles -upto 1200 CC	1%
Smaller Diesel Vehicles - upto 1500 CC	2.5%
Other Vehicles	4%

- Provisions of Central Excise Act, 1944 and the rules made thereunder as far as may be, apply in relation to the levy and collection of 'Infrastructure Cess.
- Rule 3(4) of Cenvat Credit Rules, 2004 has been amended to provide that Cenvat credit shall not be utilized for payment of infrastructure cess.

C. Other amendments relating to Central Excise:

a. Relevant date and manner of computation of Interest in case of provisional assessment: Explanation has been inserted in Rule 7 (4) of Central Excise Rules, 2002 provide that in case where there on account of finalization of a provision assessment, the additional duty to be remitted, then in such cases, the interest shall be computed from the date of clearance of the goods till the date of payment of such additional duty. In case where any duty has been paid in between (from the date of clearance till the date of finalization), the same shall be given effect for computation of interest.

b. Invoicing: Requirement self attestation of duplicate copy of invoice meant for transporter is not required.

c. Returns:

i. Annual Return: Annual Return shall have to be filed in the place of Annual Financial Information Statement" or "Annual Installed Capacity Statement. Effective date of from which the returns shall be filed and also the format is yet to be notified

ii. Revision of returns: Monthly / quarterly by returns filed by assessees including EOUs could be revised within the end of the calendar month in which the original return is filed. Annual returns could be revised within in one month from the date of filing of such return.

d. Personal penalty : Where the proceedings has been concluded by the main assessee by remitting duty, interest and reduced penalty as required under Section 11AC, all proceedings in respect of penalty against other persons, if any, in the said proceedings shall also be deemed to be concluded.

e. Single registration of two or more premises : Commissioner of Central Excise may subject to other conditions and limitations may grant single registration for two or more premises of the same factory, in case the following conditions are complied:

i. two or more premises of the same factory are located within a close area in the jurisdiction of a Range Superintendent,

ii. the manufacturing process undertaken in such premises are interlinked, and

iii. the units are not operating under any of the area based exemption notifications;

iv. the assessee shall maintain proper accountal of the movement of goods from one premise to other

f. Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2016: New set of Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable and Other Goods) has been prescribed in place of earlier rules, so as to simplify the procedures, including allowing duty exemptions to importer/manufacturer based on self-declaration instead of obtaining permissions from the Central Excise authorities.

g. Rebate on Export of goods: Notification No. 19/2004-C.E. (N.T.), dated 6.9.2004 is amended to provide that the Indian market price of goods exported on which rebate is claimed shall not be less than the rebate claimed. Further, the said notification is also amended to make it clear that limitation for claiming refund under Section 11B is also applicable to rebate claims.

III. Amendments to Cenvat Credit scheme

a. Capital goods: Railway Wagons, Equipment or appliance used in an office of a factory and equipments outside the factory used for pumping of water would also qualify as Capital goods

b. Inputs: Goods used outside the factory for pumping of water and capital goods of value upto Rs.10,000/- per piece could be treated as inputs

c. **Exempted services:** Services of transportation of goods by a vessel from customs station of clearance in India to a place outside India, would not be termed as exempted services. The said services would not be chargeable to service tax the place of provision of services shall be outside India in terms of Rule 10 of Place of Provision of Service Rules, 2012. This amendment shall be read with the proposal to amend the negative list wherein the inward transpiration of goods through vessel upto customs station is brought under tax net.

Therefore, Export of Service in terms of Rule 6A of Service Tax Rules, 1994 and transportation of goods by vessel to a place outside India would get excluded from ambit of exempted services and would then be entitled for cenvat credit.

d. **Restriction on utilization of Cenvat**: Cenvat shall not be utilised for payment of infrastructure cess

e. **Availment of Cenvat Credit on capital goods by SSI/ Jewellary units:** Jewellery units having clearance for home consumption not exceeding Rs. 12Crores and units other than jewellary units having value of goods cleared for home consumption not exceeding RS. 4crores could avail credit of duty on capital goods to the extent of 100% in the year of receipt of such capital goods.

f. **Credit on jigs, fixtures, moulds, dies or tools used by job worker or other manufacturer:** Where these goods are used by job worker or other manufacture for manufacturing goods on behalf of main manufacturer, the credit would be eligible to the main manufacturer whether these goods are directly sent by the vendor to such job worker or are brought to the factory of main manufacturer and then cleared.

g. **Validity of permission to remove goods directly from job worker's premises:** Validity of permissions for remove goods directly from job worker's premises would now be extended to 3 years from 1 year.

h. **Conditions for availment of credit of service tax on assignment of right to use on certain natural resources:** Service Tax paid on the charges payable for the assignment of the right to use by Government or by any other person shall be availed proportionately over the period for which such assignment has been granted.

Where such right has been transferred to another person, then balance service tax credit as on the date of such transfer could be availed in full subject to maximum of Service tax payable on the consideration for such transfer. CENVAT credit of annual or monthly user charges payable in respect of any service by way of assignment of right to use natural resources shall be allowed in the same financial year in which they are paid.

It appears that this amendment is made consequent to changes in declared services appearing in Sec.66E making these activities liable to service tax.

i. **Obligation of a manufacturer or producer of final products and a [provider of output service [Rule 6]**

Rule 6 which deals with a situation where the manufacture or service provider having exempted clearances or provision of exempted services along with taxable clearances or services, has been revamped.

The new provisions which are effective from 1.4.2016 are as below:

(i) The said provisions shall not be applicable to clearance of goods without payment of duty by job-worker of jewellery unit, in terms of Rule 12AA of Central Excise Rules, 2002

(ii) Exempted goods shall include non excisable goods cleared for consideration from factory. Value of such goods shall be invoice value or where such invoice value is not available, then such reasonable value as determined in terms of principles of valuation contained Central Excise Act,

(iii) Exempted services include an activity which is not a service in terms of Section 65B(44) of Finance Act, 1994. Value of such service shall be invoice value or the value determined in terms provisions relating valuation of services, where invoice value is not available.

(iv) Where the manufacturer or service provider has only exempted clearances or provision of only exempted service, no credit of inputs or input services shall be availed.

(v) Manufacturer or service provider having taxable as well as exempted clearances or providing taxable as well as exempted services, shall follow the procedure detailed below: then following options are available:

a. Options available to the assessee

i. To pay 6% of value of exempted goods and 7% of value of exempted services subject to maximum of total credit available at the end of the period to which the credit relates. OR

ii. To pay an amount as determined in terms of the provisions of Sub-rule (3A).

b. If any duty of excise is paid on the exempted goods, the same shall be reduced from the amount payable as 6% of exempted goods or 7% of value of exempted services.

c. If any part of the value of a taxable service has been exempted on the condition that no CENVAT credit of

inputs and input services, used for providing such taxable service, shall be taken then the amount specified in clause (i) shall be 7% of the value so exempted. However, these persons can also avail the option under sub rule (3A).

d. In case of transportation of goods or passengers by rail, the amount required to be paid under clause (i) shall be an amount equal to 2% of value of the exempted services or the option under sub rule (3A).

e. Any of the above two options availed shall be availed for all exempted goods or all exempted services and such option shall not be withdrawn during the remaining part of the financial year.

f. No CENVAT credit shall be taken on the duty or tax paid on any goods and services that are not inputs or input services.

(vi) Manner of determination of amount attributable to exempted goods or exempted services [Rule 6(3A)]:

a. From the total credit segregate credit exclusively attributable to exempted goods or exempted services

b. From balance credit segregate credit attributable exclusively to dutiable goods or taxable services.

c. Balance Cenvat Credit remaining after (a) and (b) above, shall be apportioned between exempted goods / services and dutiable goods / taxable services based on the Turnovers of taxable and exempted goods / services of previous year. If no final products were manufactured or services were provided in the previous year, 50% is deemed as ineligible credit and has to be reversed on monthly basis.

d. This procedure shall be adopted on monthly basis and reverse the credit attributable to exempted clearances within due date for payment of taxes. If such payment is not made, the same shall be liable to be paid with interest of 15% PA till date of payment

e. The above procedure shall be repeated annually after the end of financial year based on the turnovers of the said Financial Year. Based on revised computation, excess credit reversed may be taken back as credit and if short reversed, the same shall be paid within 30th June of succeeding Financial Year. If such payment is not made, the same shall be paid with interest of 15% PA till date of payment.

f. Payment or adjustment shall be intimated to jurisdictional authority within 15 days of such payment or adjustment.

(vii) Manufacture / Service provider shall intimate in writing to the department the following information:

(a) name, address and registration number of the manufacturer of goods or provider of output service;

(b) date from which the option under this clause is exercised or proposed to be exercised;

(c) description of inputs and input services used exclusively in or in relation to the manufacture of exempted goods removed or for provision of exempted services and description of such exempted goods removed and such exempted services provided;

(d) description of inputs and input services used exclusively in or in relation to the manufacture of non-exempted goods removed or for the provision of non-exempted services and description of such non-exempted goods removed and non-exempted services provided ;

(e) CENVAT credit of inputs and input services lying in balance as on the date of exercising the option under this condition;

(viii) Particulars that shall be submitted to department after the end of Financial year is as follows:

(a) details of credit attributed towards eligible credit, ineligible credit, eligible common credit and ineligible common credit, month-wise, for the whole financial year, determined as per the provisions of clause (b);

(b) CENVAT credit annually attributed to eligible credit, ineligible credit, eligible common credit and ineligible common credit for the whole of financial year, determined as per the provisions of clause (c);

(c) amount determined and paid as per the provisions of clause (d), if any, with the date of payment of the amount;

(d) interest payable and paid, if any, determined as per the provisions of clause (e); and

(e) credit determined and taken as per the provisions of clause (f), if any, with the date of taking the credit.

(ix) For Banking Company or NBFC or Financial institution, they can follow the above provisions or in lieu of the above provisions, they may reverse 50% of total credit in availed in a specified period.

(x) For the Financial year 2015-16, the assessee who were following erstwhile provisions of Rule 6(3A), shall compute and pay / adjust credit as per the said provisions only.

(xi) Where an assessee does not follow any of the options, then the adjudicating authority may give option to such assessee to pay the amounts in terms of Rule 6(3A) along with interest of 15% PA till the date of payment

(xii) Valuation of exempted goods or exempted services in terms of Rule 6(3D) remains un changed

(xiii) Credit on Capital goods : [Rule 6(4)]

CENVAT credit on capital goods used exclusively in the manufacture of exempted goods or in providing

exempted services shall not be allowed for a period of two years from the date of commencement of the commercial production or provision of services, as the case may be, other than the final products or output services which are exempt on account of value of clearance or value of services (SSI benefit).

However, where capital goods are received after the date of commencement of commercial production or provision of services, as the case may be, the period of two years shall be computed from the date of installation of such capital goods.

(xiv) Services by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India, shall not be treated as exempted services for the purpose of this rule

j. Manner of distribution of credit by input service distributor (ISD) [Rule 7]

i. The credit distributed shall not exceed the amount of service tax credit availed by ISD;

ii. The credit shall be distributed in following manner:

Credit is attributable to	Manner of distribution
Only one unit	Distribute entirely to such unit
More than one unit but not to all units	Distribute to such units to which the credit is attributable. Distribution shall be based on the value of turnover of such units during the relevant period
Credit is attributable to all units	Distribute to all units on pro rata basis based on the value of turnover of said period.

iii. In terms of the amendment, ISD could also distribute the credit to outsourced manufacturing unit. Such unit shall maintain separate account for input service credit received from each of the input service distributors and shall use it only for payment of duty on goods manufactured for the input service distributor concerned;

iv. Credit of service tax paid on input services, available with the input service distributor, as on the 31st of March, 2016, shall not be transferred to any outsourced manufacturing unit and such credit shall be distributed amongst the units excluding the outsourced manufacturing units.

v. Other changes

a) provisions of rule 6 shall apply to the units to whom credit is distributed and not to ISD

b) total turnover for distribution of credit shall be determined in the same manner as determined under rule 5.

c) Turnover of an outsourced manufacturing unit shall be the turnover of goods manufactured by such outsourced manufacturing unit for the input service distributor

d) relevant period' shall be, -

(a) if the assessee has turnover in the preceding financial year' then such turnover; or

(b) if the assessee does not have turn over for some or all the units in the preceding financial year, the last quarter for which details of turnover of all the units are available, previous to the month or quarter for which credit is to be distributed.

e) Outsourced manufacturing unit means a job-worker who is liable to pay duty on the value determined under rule 10A of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 on the goods manufactured for the input service distributor or a manufacturer who manufactures goods, for the input service distributor under a contract, bearing the brand name of such input service distributor and is liable to pay duty on the value determined under section 4A of the Excise Act.

k. Distribution of Credit by Warehouse [Rule 7B]

A manufacturer having one or more factory, could procure and store the inputs in warehouse and pass on the credit to factories as when the inputs are cleared to such factories. Factories could avail credit on the basis of invoice of the warehouse.

The provisions and procedures as applicable to a first stage dealer or a second stage dealer, shall, mutatis mutandis, apply to such warehouse of the manufacturer.

l. Documents and accounts [Rule 9] : Rule 9 has been amended to provide for allowing invoice issued by a service provider towards reversal of credit on goods cleared as such as a valid document for the purpose of availment of credit.

m. Annual return [Rule 9A]: Annual return of Cenvat shall be submitted by assessees (both manufacturer as well as service provider) within 30th of November next of next financial year.

The provisions of Rule 12 of the Central Excise Rules, 2002, in so far as they relate to annual return shall, mutatis-mutandis, apply to the annual return required to be filed under this rule

n. Interest on wrongly utilisation of Credit [Rule 14]: Sub rule 2 of rule 14 prescribing FIFO method deemed utilization of credit for calculating interest is done away with. Therefore, interest would be payable only if the credit is actually utilized.

o. Time limit for filing claims for refund of Cenvat Credit under Rule 5 of CCR, 2004

(i) in case of manufacturer, within 1 year from date of export of goods

(ii) in case of service provider, before the expiry of one year from the date of –

(a) receipt of payment in convertible foreign exchange, where provision of service had been completed prior to receipt of such payment; or

(b) issue of invoice, where payment for the service had been received in advance prior to the date of issue of the invoice.

IV. Other important amendments [applicable both to Customs as well as Excise]

a) Demand and Interest:

i. Proposal to increase the time limit to issue show cause notice from 1 year to 2 years has been proposed

ii. Interest rate for delayed payment of duty charged has been reduced from 18% to 15%

b) Administrative:

i. Proposal to do away of publishing the notification in Official Gezzete.

ii. Section 37B of the Central Excise Act, 1944 is proposed to be amended to provide power to CBEC to give instructions to its officers in order to implement the provisions of the Act. Hitherto such instructions could be issued for the purpose of uniformity in the classification of excisable goods or with respect to levy of duties of excise on such goods.

c) Indirect Tax Dispute Resolution Scheme, 2016

Applicability: (indirect tax dispute)	To cases pending before Commissioner(Appeals) as on 1.3.2016
Who can apply	Cases other than following (a) the impugned order is in respect of search and seizure proceeding; or (b) prosecution for any offence punishable under the Act has been instituted before the 1st day of June, 2016; or (c) the impugned order is in respect of narcotic drugs or other prohibited goods; or (d) impugned order is in respect of any offence punishable under the Indian Penal Code, the Narcotic Drugs and Psychotropic Substances Act, 1985 or the Prevention of Corruption Act, 1988; or
	(e) any detention order has been passed under the Conservation of Foreign Exchange and Prevention of Smuggling Act, 1974.
Procedure and Time Lines	➢ This scheme would come into force from 1.6.2016 ➢ Declaration to the designated authority shall be made on or before the 31st day of December, 2016 ➢ Designated authority shall acknowledge the declaration ➢ Declarant shall pay the tax due along with the interest thereon at the rate as provided in the Act and penalty equivalent to 25% of the penalty imposed in the impugned order, within 15 days of the receipt of acknowledgement. ➢ Intimate such payment to the designated authority within 7 days of the payment. ➢ On receipt the proof of payment of dues, the designated authority shall pass an order of discharge of dues referred to in sub-section (3) in such form as may be prescribed.
Immunity	➢ The appeal pending before the Commissioner (Appeals) shall stand disposed of and the declarant shall get immunity from all proceedings under the Act, in respect of the indirect tax dispute for which the declaration has been made under this Scheme ➢ Declaration shall be conclusive upon issue of order. No matter relating to the impugned order shall be reopened thereafter in any proceedings under the Act before any authority or court and
Other aspects	The Order issued under this scheme shall not be deemed to be an order on merits and has no binding effect. It is clarified that nothing contained in this Scheme shall be construed as conferring any benefit, concession or immunity on the declarant other than the benefit, concession or immunity granted under the Act.

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Excise Duty on Gold and Diamond Jewellery

CA R S Pavan Kumar

The Union Government has introduced Excise Duty on Manufacture of Jewellery with effect from March 01, 2016. At the outset, the while the levy seems to be applicable only to the manufacturers of jewellery. However, upon analysis of the various provisions under the Central Excise, it seems that the traders who are getting the jewellery manufactured on job work basis are also brought into the Central Excise ambit.

The levy of Central Excise and the option provided for payment of Excise Duty at the rate of 1% will pave way for the entire jewellery sector to restructure their model of operations as they have never been used to operate under the Central Excise regime. An analysis of the amendments carried out and their possible effects on the industry has been provided below.

Current Scenario

As stated earlier, the manufacturers of jewellery were under no requirement to discharge Excise Duty on manufacture of jewellery. Till February 29, 2016, jewellery articles attracted **'Nil'** rate of Excise Duty by virtue of Exemption Notification No. 12/2012-Central Excise, dated March 17, 2012. The exemption provided under the said Notification was subject to the condition that the manufacturer of jewellery does not avail CENVAT Credit of inputs and inputs services used for the purpose of manufacturing the jewellery.

Levy of Excise Duty

The Union Government has proposed to levy Excise Duty on manufacture of Jewellery with effect from March 01, 2016. The manufacturers have been given an option to discharge duty at the rate of 1% or 12.5%.

The option to discharge duty at the rate of 1% is subject to the condition that the jewellery is manufactured using the inputs and capital goods on which the duty of Excise or Countervailing Duty ("CVD"), as applicable has been paid by the manufacturer and CENVAT Credit of taxes paid on such inputs and capital goods has not been availed by such manufacturer. Further, it is to be observed that the manufacturer availing option to remit duty at the rate of 1%wouldstill be eligible to take CENVAT Credit of input services used in the course of manufacture. The CENVAT Credit of input services could be set off against the duty liable to be paid on the manufacture of jewellery.

Further, a manufacturer availing CENVAT Credit of taxes paid on inputs and capital goods used in the course of manufacture would be required to discharge duty at the rate of 12.5%.

Increase of the Exemption Limit

With a view to protect the interests of the small scale manufacturers, the Union Government has increased exemption limit based on the value of clearances (in case of jewellery manufacturers) from the existing Rs.1.5cr to Rs.6cr subject to the condition that the value of clearances in the previous Financial Year was not more than Rs.12cr.

By virtue of the above amendment, a manufacturer having turnover upto Rs.12cr in the previous financial year would not be required to discharge Excise Duty on the first clearances upto Rs.6cr in the current financial year. (Example: A manufacturer having turnover of less than Rs.12cr in the FY 2015-16, would not be required to discharge Excise Duty on first clearances upto Rs.6crin the FY 2016-17).

For the month of March 2016, the threshold limit for the purpose of claiming the exemption would be Rs.50lakh provided the value of clearances in the Financial Year 2014-15 had not exceeded Rs.12cr.

Inventory as on February 29, 2016

Since the duty of Excise is levied on removal of goods from the factory, Excise Duty would be required to be discharged on jewellery cleared on or after March 01, 2016, even though the goods were manufactured on or before February 29, 2016.

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Budget Amendments – Central Excise Rules, 2002

CA Kuber V. Hundekar

This article highlights the budget amendments under Central Excise Rules, 2002.

Additional duty ascertained upon finalisation of provisional assessment - Interest to be paid from the due date till the date of payment (Rule 7): Central Excise Rules provides for payment of duty on provisional basis in the event the assessee is unable to determine the value of excisable goods or rate of duty applicable thereto. The payment of duty on provisional basis is subject to satisfaction of certain conditions specified therein viz., order of the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise as the case may be; and execution of bond in Form B-2. The additional duty liability arising on finalisation of such provisional assessment should be remitted along with interest in terms of Rule 7(4). The provision relating to payment of such interest is substituted along with the explanation to provide that the interest is liable to be paid from the due date within which such duty was ought to have been paid till the date of payment of excise duty.

The erst while provision provided for levy of interest from first day of the month succeeding the month for which such amount is determined till the date of payment thereof. This had led to constant litigation as regards the date from which interest is payable. In the case of Ceat Limited vs. CCE & C Nashik (317 ELT 192),the Bombay High Court held that, interest is liable to be paid from the first day starting the succeeding month in which such amount is determined till the date of payment thereof. Since the assessee had remitted duty prior to finalisation of provisional assessment it was held that, no interest is payable under Rule 7(4). However, the judgment in the case of Ceat Limited is dissented by the Honourable High Court of Allahabad in the case of Bharat Heavy Electricals Ltd., vs. CC & CE (323 ELT 417) wherein it is held that interest is payable from the date within which such duty was ought to have been paid (due date) till the date of actual payment.

The substituted Rule 7(4) provides that the interest on finalisation of provisional assessment is liable to be paid from the due date i.e, from the period starting first day after the due date till the date of actual payment irrespective of whether such differential duty is paid before or after issue of order for final assessment. Further, the explanation inserted thereto provides an illustration for ascertaining the liability of interest. This amendment, with effect from 01.03.2016, has bought clarity on the issue thereby avoiding ambiguity leading to litigations.

Quarterly remittance of duty extended to small scale jewellery manufacturers (Rule 8): With effect from 01.03.2016 excise duty is introduced on articles of jewellery other than articles of silver jewellery but inclusive of articles of silver jewellery studded with diamonds or other precious stones. To extend Small Scale Industries (SSI)exemption to an assessee engaged in manufacture of articles of jewellery, the notification (No. 08/2003 dated 01.03.2003) providing exemption SSI is amended. Consequently, by way of inserting explanation to Rule 8(1), the option to pay duty on quarterly basis is extended to the assessees engaged in manufactureof jewellery. In terms of such explanation the jewellery manufacturer shall be eligible to pay duty on quarterly basis provided his aggregate value of clearances for home consumption during the preceding financial year does not exceed rupees twelve crores. It is relevant to note here that, the eligible assessee for the purpose of SSI exemption should be a manufacturer of jewellery other than articles of silver jewellery but inclusive of articles of silver jewellery studded with diamonds or other precious stones. This amendment shall be effective from 01.04.2016.

Invoice required for transportation of goods can be digitally signed (Rule 11): The option to raise digitally signed invoice was extended to manufacturer, first stage dealers, second stage dealers and importers by amending Rule 11 vide Finance Act, 2015. Further, the option was given to preserve and maintain the documents and records in electronic form, subject to condition that each page is authenticated with digital signature. It was also provided that for the purpose

of transportation, the assessee has to self-attest the duplicate copy of digitally signed invoice. By virtue of amendment to Rule 11, with effect from 01.04.2016, the transporter copy of the invoice can now be digitally signed and need not be manually attested. In this regard, digitally signed would mean affixation of the digital signature as prescribed under the Information Technology Act, 2000.

Introduction of annual returnin lieu of 'Annual Financial Information Statement' and 'Annual Installed Capacity Statement'(Rule 12): The assessees registered under central excise and who has paid excise duty exceeding rupees one crore was liable to file 'Annual Financial Information Statement' in Form ER-4 within 30th November of the succeeding year. Further, assessees were also liable to file 'Annual Installed Capacity Statement' declaring the annual production capacity of the factory for the financial year by 30th April of the succeeding financial year. With effect from 01.04.2016, the assessees, instead of 'Annual Financial Information Statement' and 'Annual Installed Capacity Statement'are required to file 'Annual Return' within 30th November. The format of annual return is yet to be prescribed.

Similar amendments have been effected in CENVAT Credit Rules, 2004 and requirement for filing ER-5 (information relating to principal units) and ER-6 (monthly consumption details) is done away with. Consequent to such amendmentsmanufacturer and EOU is required to file monthly return and annual return only.

Revision of returns enabled under Central Excise (Rule 12): The returns (monthly including the annual returns) filed by the assessees under central excise can now be revised provided the return is filed within prescribed due date. The monthly return can be revised within the end of the month in which the original return is filed and the annual return can be revised within a period of one month from the date of filing. It is also, by way of explanation, clarified that the relevant date for the purpose of recovery of duty shall be the date of submission of revised return. This amendment shall be effective from 01.04.2016.

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Excise Duty on Gold and Diamond Jewellery

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For the purpose of claiming the CENVAT Credit of the inputs or inputs contained in goods lying in stock as on February 29, 2016, the manufacturer would be required to keep declaration of finished goods, goods-in-process and inputs in stock as on February 29, 2016. The said declaration would be required to be certified by a Chartered Accountant. However, the said declaration is not required to be filed with the Central Excise Authorities.

Simplification of procedures

Union Government with an intent to facilitate smoother operations for the manufacturers of jewellery has simplified the procedures as applicable under the Central Excise Laws.

The registrations sought by the manufacturers shall be granted within two working days from the date of filing the application. Further, no physical verification of the premises of the manufacturer would be required as per the simplified procedures.

The documents maintained by the manufacturers for the purpose of State VAT Laws or Bureau of Indian Standards would be sufficient for the purpose of Central Excise. Hence, the manufacturers would not be required to maintain separate registers and documents as applicable under the Central Excise Laws.

An option for obtaining Centralised Central Excise Registration for manufacturers of jewellery has also been introduced.

The Circular issued mentioned that since the levy of Excise Duty is on self-assessment basis, the Central Excise officers would not be required to visit the premises of the registered jewellery manufacturers in the normal course.

The operations of Jewellery sector being quite different from the normal manufacture practices, it would be an uphill task for the manufacturers of Jewellery to get equipped with the Central Excise provisions.

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Retrospective Operation of Section 6-A(3) of the Central Sales Tax Act, 1956

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Introduction.

On October 30, 2015, in BASF India Ltd. v .State of Karnataka, 2016 (84) KLJ 7 (Tri.), the Karnataka Appellate Tribunal ("KAT") held that sub-section (3) of Section 6-A of the Central Sales Tax Act, 1956 ("CST Act"), which was inserted vide the Finance Act, 2010, has retrospective operation. Section 6-A(3) of the CST Act empowers the authorities to reopen or revise orders passed under Section 6-A(2), accepting F Forms filed by the assessee and allowing the exemption claimed on the turnover of branch transfers effected by the assessee. In light of a prior judgment of the Supreme Court, which is discussed in detail in this article, such reopening of concluded assessments under Section 6-A(2) was permissible only in certain limited and specified circumstances. The insertion of Section 6-A(3), with effect from April 1, 2010, nullified the effect of the Supreme Court's judgment and expanded the scope of the authorities to reopen/revise assessments that had been concluded under Section 6-A(2). There was no doubt that in respect of tax periods after the insertion of the said provision, the Revenue has the power to reopen or revise concluded assessments under Section 6-A(2). However, according to the KAT's judgment in BASF India, assessments concluded under Section 6-A(2) of the CST Act even in respect of tax periods prior to the coming into force of the Finance Act, 2010, are amenable to be reopened or revised by the authorities. This article briefly sets out the background to the insertion of Section 6-A(3), analyzes the KAT's judgment, and concludes that the KAT was, most likely, right in holding that the said provision is applicable retrospectively.

Section 6-A prior to the 2010 Amendment.

Section 6-A(1) of the CST Act, which was inserted with effect from April 1, 1973, stated that, where any dealer claims that he is not liable to pay tax under the Act on the ground that the movement of goods from one State to another was occasioned by reason of transfer of such goods to any other place of his business, or to his agent or principal, and not by reason of sale, the burden of proving that the that the movement of those goods was so occasioned shall be on the dealer. The provision further states that for the purpose of discharging the aforesaid burden, the dealer shall furnish a declaration in the prescribed form (Form F), along with evidence of dispatch of such goods. The above provision was amended with effect from May 11, 2002, vide the Finance Act, 2002, by inserting the following words: "if the dealer fails to furnish such declaration, then, the movement of such goods shall be deemed for all purposes of this Act, to have been occasioned as a result of sale." Therefore, with effect from May 11, 2002, it was mandatory for dealers to furnish F Forms in support of any claim of exemption, failing which, the turnover of stock transfers would be deemed to have been occasioned as a result of a sale and, thereby, brought to tax.

Section 6-A(2) stated that, if the assessing authority is satisfied, after making such inquiry as he may deem necessary that the particulars contained in the declaration furnished by a dealer are true, then he may pass an order to that effect, and the movement of goods to which the declaration relates shall be deemed to have been occasioned otherwise than as a result of sale. Accordingly, once the assessing authority passed such an order, the turnover of stock transfers covered F Forms were exempt from the levy of tax.

Ashok Leyland Judgments.

In Ashok Leyland v. Union of India, (1997) 105 STC 152 (SC) ("Ashok Leyland – I"), the assessees therein had filed F Forms in support of their claim of exemption on goods that had been stock transferred to their branches. The assessing authority accepted the F Forms filed by the assessees and granted the exemption claimed by them. Thereafter, the Revenue sought to revise the orders granting exemption and levy tax on the turnover of goods claimed by the assessees to be stock transfers on the basis that the same related to interstate sale of goods.

Before the Supreme Court, the assessees,*inter alia*, questioned the jurisdiction of the authorities to reopen assessments that had been concluded under the provisions of Section 6-A(2) of the CST Act. Rejecting the contention of the assessees in this regard, the Supreme Court held that an order of an assessing authority accepting F Formsunder Section 6-A(2) is amenable to the power of reassessment and revision as prescribed

under the relevant sales tax of the State concerned. More specifically, the Supreme Court held that if orders accepting F Forms are sought to be reopened, it can be done so as a part of reassessmentproceedings under the relevant State statute, by virtue of the operation of Section 9(2) of the CST Act. After observing so, the Supreme Court remanded the matters back to the assessing authorities with a direction to decide whether the assessees were right in claiming exemption under Section 6-A(1) of the CST Act.

Thereafter, the matters, once again, reached the Supreme Court, and the appeals were directed to be placed before a three-judge Bench of the Court. The assessees, *inter alia*, submitted that the judgment of the Court in Ashok Leyland – I requires reconsideration, as in the interregnum between the earlier judgment being rendered and the case once again reaching the Supreme Court, Section 6-A(2) had been amended, and the amended provision stated that an order passed by an authority accepting F Forms filed by a dealer was conclusive of the fact that the movement of goods was occasioned otherwise than as a result of sale. In short, the assessees contended that orders passed under Section 6-A(2) attained finality and could not be reopened on any ground whatsoever.

In a judgment dated January 7, 2004, in Ashok Leyland v. State of Tamil Nadu, (2004) 134 STC 473 (SC) ("Ashok Leyland – II"), the Supreme Court partly accepted the contention of the assessee and held, in relevant part, as under:

> *"In the case at hand it has to be determined whether the sale in question is an interstate one. If through the means of a legal fiction it is determined that this is not an interstate sale, then it amounts to a transfer of stock. This finding is made by a statutory authority who has the jurisdiction to do so and there is no provision for appeal. Therefore, the order made by such authority is conclusive in that it cannot be reopened on the basis that there had been a mere error of judgment. It also cannot be re-opened under another statute, for examples, the Sales Tax Act* of the State concerned, when the order had been made under the *Central Act. Section 9(2)* of the Act is subject to the other provisions of the Act which would include Sub-section (2) of *Section 6A* of the Act. "Subject to" is an expression whereby limitation is expressed. The order is conclusive for all purposes. It can only be re-opened on a small set of grounds such as fraud, misrepresentation, collusion etc."

Accordingly, the Court severely curtailed the scope of reopening of an assessment that had been concluded under Section 6-A(2) of the CST Act and further observed as under:

> *"We, therefore, are of the opinion that the observations made by this Court in Ashok Leyland (supra) to the effect that an order passed under Sub-Section (2) of Section 6A* can be subject matter of reopening of a proceeding under *Section 16* of the State Act was not correct.
>
> *However, we may hasten to add that the same would not mean that even wherein such an order has been obtained by commission of fraud, collusion, misrepresentation or suppression of material facts or giving or furnishing false particulars, the order being vitiated in law would not come within the purview of the aforementioned principle.*
>
> *An order of assessment is albeit passed under the State Act. But once it is held that the concerned State Act* as also the *Central Act* is not applicable, as a consequence whereof sales tax would be payable under another *State Act, it is doubtful as to whether the power to reopen the proceedings under the State Act* or the *Central Act* would be attracted. There does not *exist any power in the statute to rectify a mistake. In that view of the matter, mere change in the opinion of the assessing authority or to have a re-look at the matter would not confer any jurisdiction upon him to get the proceedings reopened. Discovery of a new material although may be a ground but that itself may not be a ground for reopening the proceedings unless and until it is found that by reason of such discovery, a jurisdictional error has been committed. In other words, when an order passed in terms of Sub-Section (2) of Section 6A* is found to be illegal or void *ab initio or otherwise voidable, the assessing authority derives jurisdiction to direct reopening of the proceedings and not otherwise."*

In short, the Court held that an order passed under Section 6-A(2) cannot be reopened unless the order is entirely vitiated on account of any fraud, collusion, misrepresentation, or suppression of facts.

Amendment to Section 6-A.

The law laid down by the Supreme Court in Ashok Leyland – II was the settled position of law until the Government of India amended Section 6-A vide the Finance Act, 2010. The Finance Act, 2010, effected two changes to Section 6-A. First, Section 6-A(3), which reads as under, was inserted:

> *"Section 6-A(3). Nothing contained in sub-section (2) shall preclude reassessment by the assessing authority on the ground of discovery of new facts or revision by a higher authority on the ground that the findings of the assessing authority are contrary to law, and such reassessment or*

revision may be done in accordance with the provisions of general sales tax law of the State."

Second, Section 6-A(2), was amended by way of a substitution. The substituted provision provided that an order passed under the Section 6-A(2) is subject to the provisions of sub-section (3) of Section 6-A.

As a result of the amendments, an order under Section 6-A(2) accepting F Forms filed by a dealer and holding that the movement of goods was occasioned otherwise than as a result of a sale, was liable to be reassessed on the ground of discovery of new facts, or revised by a higher authority on the ground that the findings of the assessing authority are contrary to law. Accordingly, the amendment had the effect of nullifying the judgment of the Supreme Court in Ashok Leyland – II, and the Revenue authorities were now empowered to reassess or revise orders that accepted F Forms filed by dealers and a held that the movement of goods was occasioned otherwise than as a result of sale.

KAT's Judgment in BASF India.

In BASF India, the assessing authority had reopened concluded assessments for the tax periods July 2006 to March 2007 and July 2007 to March 2008, and passed orders dated 30.07.2015 under Section 39(1) of the Karnataka Value Added Tax Act, 2003 ("KVAT Act") read with Section 9(2) of the CST Act, rejecting the claim of exemption on branch transfers effected by the assessee. The assessee, *inter alia*, contended that such reopening of assessments was not permissible as, during the relevant tax periods, the Supreme Court's judgment in Ashok Leyland – II held the field and Section 6-A(3) had not yet been inserted into the provisions of the CST Act.

Rejecting the assessee's contention in this regard, the KAT held that sub-section (3) of Section 6-A has retrospective operation and would, therefore, apply in respect of tax periods prior to the date of insertion of Section 6-A(3). According to the KAT, "the expression 'shall preclude reassessment' [in Section 6-A(3)] implies that the Assessing Authorities functioning in different states are not prevented from reassessing cases even prior to 1-4-2010 subject to the time limitations prescribed under the general sales tax law which means the law prevailing in the States, and in the instant case, it is the KVAT Act, 2003." The KAT further held that, "it is to be noted that sub-section (2) has been substituted with effect from 1-4-2010," and "the effect of substitution is to be construed as declarative in nature and the said sub-section i.e. Section 6-A(2) is subject to Section 6-A(3) of the Act and the combined reading of both sub-sections makes it clear that the same has retrospective character."

In support of its findings, the KAT relied on the judgments of the Supreme Court in Ahmedabad Manufacturing and Calico Printing Co. Ltd. v. S.C. Mehta, (1963) 48 ITR 154 (SC), and National Agricultural Co-operative Marketing Federation of India Ltd. v. Union of India, (2003) 260 ITR 548 (SC). In Ahmedabad Manufacturing, the Supreme Court had held that Section 35(10) of the Indian Income Tax Act, 1922, had retrospective operation and applies in respect of assessment years prior to insertion of the said provision. In National Agricultural, the Supreme Court had held that the legislative power to amend a law with retrospective effect was subject to the following "judicially recognized limitations": (a) the words used must expressly provide or clearly imply retrospective operation; (b) retrospectivity must be reasonable and not excessively harsh; and (c) an amendment can be given retrospective effect if the legislation is introduced to overcome a judicial decision, provided the amendment removes the statutory basis for the decision and does not merely subvert the judgment.

Applying the ratio of the above judgments, the KAT concluded that the intention behind the amendment to Section 6-A(2) and the insertion of Section 6-A(3) was to overcome the judgment of the Supreme Court in Ashok Leyland – II by removing the statutory basis for the said judgment. Furthermore, according to the KAT, the "substitution" of the wording of Section 6-A(2) implied that the Legislature intended to give retrospective operation to the amended provision as well as Section 6-A(3). Accordingly, the KAT concluded that the first and third prongs of the "judicially recognized limitations" were satisfied. However, the KAT did not examine whether the retrospectivity accorded to the amendment was unreasonable and harsh. Nevertheless, the KAT concluded that Section 6-A(3) has retrospective operation and, therefore, would apply in respect of assessment periods prior to the coming into force of the Finance Act, 2010.

Discussion.

It is a settled position of law that the Legislature can change a law retrospectively by altering the very basis of an earlier judgment. As succinctly put by the Supreme Court in S.T. Sadiq v. State of Kerala, (2015) 4 SCC 400, "the legislature can make a law retrospectively which may alter the law as it stood when a decision was arrived at." Therefore, there is no doubt that the Legislature had the power to overcome the Supreme Court's judgment in Ashok Leyland – II by altering the law as it stood as on the date on which the judgment was rendered. As explained in detail earlier, in Ashok Leyland –II, the

Court interpreted the provisions of Section 6-A(2) to mean that any assessment concluded by accepting F Forms filed by an assessee could not be reopened except in certain specific circumstances. The amendment of Section 6-A(2) and the insertion of Section 6-A(3) entirely altered this position by specifically permitting Revenue authorities to reopen/revise assessments that had been concluded under Section 6-A(2). There is no doubt that the Legislature has the power to change the law retrospectively in order to overcome a judicial decision. The specific question in the case of Section 6-A is whether the Legislature intended the amendment to apply retrospectively.

As explained in National Agricultural as well as several other judgments of the Supreme Court, the words of an amendment must expressly provide or clearly imply retrospective operation. In the case of Section 6-A(2), the words subjecting the said provision to Section 6-A(3) was inserted by way of substitution. The Courts, in a number of judgments, have held thata provision inserted by way of substitution would relate back to and apply with effect from the date the original provision was introduced. SeeGovernment of India v. Indian Tobacco Association, 2005 (187) ELT 162; Hassan Co-operative Milk Producers Societies Union Ltd. v. State of Karnataka, AIR 2014 Kar. 120.Therefore, since the words in Section 6-A(2) were substituted by the Finance Act, 2010, it can be inferred that the Legislature intended the amendment to have retrospective operation. Unfortunately, neither the Statement of Objects and Reasons appended to the Bill nor the Notes on Clauses throw any light on whether the Legislature intended to amend the provisions of Section 6-A(2) and (3) with retrospective effect. In the absence of the same, one would necessarily have to fall back on the substitution of the wording of Section 6-A(2) to imply that retrospective operation of the amendment was the intendment of the Legislature.

The one question that the KAT did not answer was whether the retrospectivity given to the amendment would result in an unreasonable, excessive, and harsh burden being placed on the assessees. Although it can be argued that the application of Section 6-A(3) retrospectively in order to reopen/revise assessments concluded prior to the date of insertion of the said provisionis harsh and unreasonable, in my opinion, the same cannot be said to be so excessive so as to render the retrospective operation of the provision unconstitutional. However, the proposition is yet to be tested, and it is likely that the issue will eventually be resolved only by the High Court or the Supreme Court.

Conclusion.

There is no doubt that after the insertion of Section 6-A(3), authorities under the relevant sales tax/VAT Acts across the country are empowered to reopen/revise orders passed under the provisions of Section 6-A(2), accepting F Forms filed by assessees and allowing exemption on branch transfers effected by them. There is, however, ambiguity as to whether Section 6-A(3) can be applied in respect of tax periods prior to the insertion of Section 6-A(3) vide the Finance Act, 2010, which the KAT, in BASF India, has answered in favour of the Revenue.

Nevertheless, one aspect that is clear is that even when reassessing/revising orders in respect of tax periods prior to April 1, 2010, the authorities are bound to follow the limitation periods prescribed under the relevant sales tax/VAT laws in the respective states. Therefore, when reassessing a dealer in Karnataka under Section 6-A(3), the authorities are bound to follow the provisions of Section 40 of the KVAT Act. Similarly, the revisional powers under Section 63-A of the KVAT Act can only be exercised within the limitation period prescribed under the said provision. Accordingly, even if Section 6-A(3) is held to apply retrospectively, the authorities cannot be said to have *carte blanche* powers to reopen/revise assessments in respect of tax periods prior to April 1, 2010. This should provide sufficient respite to a number of dealers.

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