



**Advocates**

# NEWSLETTER

**Mohit Malik and Associates**

VAT, Income Tax and Service Tax

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**Dear Friend & Valued Reader,**

**Greetings of festive season!**

New Years is the perfect occasion to celebrate love, friendships and all the good things in life. Let's take the time to appreciate what this year has given us and what the new one is about to bring! Happy New Years!

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I am sure you enjoyed reading our 1<sup>st</sup> Newsletter. At the outset, I would like to convey my heartfelt thanks to the readers for sending their valuable inputs which has been taken into consideration. We look forward to your continuous support by way of your inputs which will definitely give us an opportunity to improve upon the future issues of our Newsletter.

The introduction of the Constitution Amendment Bill in Parliament's winter session to clear the way for the Goods and Services Tax (GST) is great beginning. We will keep you updated about GST in our future Newsletters also.

As you know it's our second Newsletter only, and I will update you with latest notifications, amendments and also relevant judgments pronounced during the previous quarter.

I look forward to your critical views, thoughts and comments on this issue of Newsletter and how we can continue to serve you in a more effective and meaningful way. Your encouragement by way of yours views/comments will definitely give us a new impetus.

**With warm regards – Mohit Malik, Editor**

## **Important Information – Sales Tax office is Shifting very soon**

The first and foremost news is that the Excise & Taxation Department, Gurgaon will be shifting its office premises to Plot No. 10, Sector 34, Infocity, Near Orient Craft Co., Gurgaon very soon from its present address Krishi Vigyan Kendra, Near Mini Secretariat, Gurgaon

## **Goods and Service Tax –**

After a long wait, it looks now that time for Goods and Services Tax (GST) has almost arrived. A confident Finance Minister, Shri Arun Jaitley, has presented the Constitution Amendment Bill, 2014 in the Lok Sabha on 18<sup>th</sup> December, 2014. This Bill makes enabling provisions for the introduction of GST.

It seems that GST will see light of the day with the start of financial year 2016-17.

As per the Statement of Objects and Reasons appended to the Bill, the object to have common national market and avoid cascading effect of taxes. The Bill has to be passed by the both Houses of Parliament with two-third majority and after that it has to be ratified by at least fifteen State Legislatures. After that Union and States have to pass GST Acts, make Rules and issue notifications, etc.

Hence, it is still a long journey, although preparations are going on in full speed.

The highlights of the Constitution (Amendment) Bill, 2014 are given below.

### **WHAT IS GOODS AND SERVICE TAX?**

Goods and Services Tax means a tax on supply of goods or services, or both, except taxes on supply of alcoholic liquor for human consumption (proposed Article 366(12A) of Constitution of India).

Please note that the word used is 'supply' and not 'sale'. Thus, stock transfers, branch transfers, will also get covered under the net of GST.

'Services' means anything other than goods {proposed Article 366(26A) of Constitution of India}.

Definition of 'service' is risky. As it is presently worded. It can cover even immovable property. It is doubtful if that is the intention.

### **GST IS CONSUMPTION BASED TAX**

GST is consumption based tax, i.e. tax will be payable in the State in which goods and services are to be consumed.

### **DUAL GST**

As was envisaged, there will be dual GST – State GST (SGST) and Central GST (CGST).

CGST rates will be common throughout the country. However, SGST rates will be decided by each State and will vary from State to State. Concept of "declared goods" will be abolished.

## **Expected Rates of GST**

The rates of GST are not yet notified as these rates being discussed. The ideal rate of GST could be approx. 10% for goods and around 8% for services [if rates are kept on higher side than it is likely to be counter-productive].

As per the information available, there will be 4 to 5 different rates to be imposed by the Union Government.

IGST will also be imposed on imports. The IGST rate which is expected to be double than the CGST rate. It is assumed to be equal to SGST plus the CGST rate. However, IGST rate will be same all over India and will not vary from one state to the other.

Revenue from IGST will be apportioned among the Centre and States by the Parliament basis of recommendations of Goods and Service Tax Council.

Since IGST will be on 'supply of goods', IGST will be payable on stock transfers, branch transfers and even when goods are dispatched inter-State for job-work and return.

## **ABOLITION OF OTHER DUTIES AND TAXES**

- Present excise duty (except of petroleum product),
- service tax,
- duties of excise on medical and toilet preparations,
- State VAT,
- Central Sales Tax,
- octroi,
- Entry Tax,
- Entertainment Tax,
- CVD and Special CVD on imported goods

The above duties and taxes will be subsumed in GST.

Basic custom duty on imports will continue. Stamp duties will also continue.

## **EXEMPTION TO SMALL DEALERS**

It is expected that manufacturers having turnover less than Rs. 150 lacs per annum will be exempt from CGST and IGST (on optional basis).

Dealers with a turnover upto Rs. 10 lacs per annum will be exempt from SGST, CGST and IGST (threshold limit @ Rs. 10 lacs is expected which will subject to final approvals)

## Clarifications of past quarter

- The product 'yakult' which is a product different from 'lassi' in common parlance and does not find mention in any of the schedules appended to the Act and hence liable to VAT as unclassified goods. Clarification dated 17/11/2014 u/s 56(3)
- Items viz. Expand Cellular Polyethylene Sheets, Air Bubble Sheets, Air Bubble Sheet Articles, Expand Cellular Polyethylene Sheets Articles, Air Bubble Sheet reflective Insulation, Expanded Cellular Polyethylene Hoses/Pipes/Roads, does not fall in entry no. 102 of Schedule C of HVAT Act i.e. Industrial Input hence not liable to tax @ 4%. Clarification dated 12/11/2014 u/s 56(3).

## Notification of past quarter

- W.e.f. 26<sup>th</sup> November 2014, rate of tax on diesel increased from 8.8% to 11.5%. Vide notification No. S.O.119/HA 6/2003/S. 59/2014

## Significant Judgments

- Non-payment of tax according to the provision of the Act will certainly amount to failure to make the payment of tax as required under sub-section (3), (4) and (5) of section 14 of the HVAT Act and therefore, the appellant will also be liable to pay the interest as provided under section 14(6) of HVAT Act, 2003. Faridabad Fabricators (P) Ltd. vs. State of Haryana (2014) 49 PHT 9 (HTT).
- Interstate Sales – there can well be an inter State sale between two persons belonging to the same state, if the goods move from one State to another as a result of a contract of sale of the goods are sold while they are in transit by transfer of documents. C & S Electric Limited Vs. Assessing Authority (2014) 49 PHT 212 (HPTT)
- Recovery of tax from director of company – Liability of directors of private company in liquidation to pay the tax – Opportunity of hearing held is essential before proceeding to recovery the arrears of tax from director of company. P.K. Rajgarhiya vs. State of Haryana (2014) 49 PHT 464 (P&H)
- Concept of rejection of the goods and return of goods operate in different field. Limitation of six months does not apply to rejection of goods. The rejection of goods and return of goods are on different footing. The rejection of goods is a unilateral act which does not involve any completed sale of goods and therefore no tax can be charged on mere dispatch of goods. Knorr Bremse India Pvt. Ltd. vs. State of Haryana (2014) 49 PHT 275 (HTT) (FB)
- Writ Petition – Writ against rectification order – not maintainable. Larsen & Turbo Limited vs. State of Punjab (2014) 49 PHT 246 (P&H).
- Material Printed and supplied according to specification of customers by dealer – is work contract. State of Tamil Nadu vs. R. Nallasamy. 342 VST Vol. 72.
- It is settled position of law that beneficial declarations can be produced and accepted later on even at the appellate stage provided the delay was justified. Dow Chemical International Pvt. Ltd. vs. State of Haryana (2014) 49 PHT 117 (HTT).

## MOHIT MALIK

### Chief Editor

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