

Between Fine Lines

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THIS MONTHS' MAJOR

MAIN HIGHLIGHTS

⇒ **Income Tax**

- **Notification No. 40 dated 6/6/2013:** The Cost Inflation Index for the financial year 2013-14 is **939**.

⇒ **Delhi VAT**

- Vide **Circular No 4 dated 30th May 2013**, The Department of Trade & Taxes has clarified that all the registered dealers are required to file Form DP – 1 online using their Login-id and password on or before 30th June, 2013 irrespective whether the dealer has submitted DVAT 52 or not. Further dealer is also required to submit hard copy of acknowledgment of Form DP – 1 generated after online submission of Form DP-1 in their respective wards. In addition to above, the acknowledgment number so generated is also required to be filled while furnishing online return for the period ending 30th June, 2013.

- Vide **Notification No 231-241 dated 28th May 2013**, The Department of Trade & Taxes has notified Form DP-1 which is required to be filled by every dealer who is registered under the Act as on 31st March, 2013. Further information in Form DP - 1 is required to be submitted online using Login-id and password of the dealer on or before 30th June, 2013.

⇒ **Custom Duty**

- **Notification No. 31/2013-Customs dated 5/6/2013**, The Central Government makes an amendment in the Notification No. 12/2012-Customs dated 17/3/2012 by increasing the rate of Customs duty on import of gold from 6% to 8% which will be effective from 05.06.2013.

- **Notification No. 57/2013-CUSTOMS (N. T.) dated 31/5/2013**, The Central Board of Excise & Customs makes an amendment in the Notification No. 36/2001-Customs (N.T.) dated 3/8/2001 by substituting TABLE-1 and TABLE-2 with the new tables giving description of goods and their respective Tariff value US \$ (Per Metric Tonne).

MAIN CASE

- **Simta Clear Coat Pvt. Ltd v. Special Commissioner and Commissioner of Commercial Taxes, Chepauk, Chennai and Anothers [2013] 60 VST 95 (Mad) :-**

On writ petition filed by the dealer challenging order passed by the Special Commissioner and Commissioner of Commercial Taxes clarifying that 'textile machine clearer roller cleaner' was taxable at 12% under entry 20 in Part D of First Schedule of Tamil Nadu General Sales Tax Act, 1959. It was held that "textile machine clearer roller cleaner" was not capable of being used by itself nor they can be classified as goods which can be utilized in any type of machinery or sold as general goods. Further the purpose and use of goods in textile industries had also been clearly explained by the petitioner. Therefore it fell under entry 81 of First Schedule as part of textile machinery.



INCOME TAX CASES

- In the case of **Commissioner of Income tax v. Sadhna Gupta [2013] 352 ITR 595 (Delhi)**, the assessee had disclosed that he had bought in two properties in civil lines, New Delhi and the purchase consideration as sale deeds were Rs. 59,50,000. The same appeared to be too low to Assessing Officer and he referred the matter to District Valuation Officer (DVO). The DVO submitted his opinion and indicated that fair market value ought to be Rs. 3,41,33,000 and a difference of Rs. 2,81,83,000 was added by assessing Officer in income of assessee. Assessee filed appeal with CIT (Appeals) who deleted the said addition as until there is some other evidence to indicate extra consideration had flown in the transaction of purchase of property, the report of DVO alone cannot form basis of any addition on the part of revenue. Then, Revenue filed appeal with ITAT who confirmed the decision of CIT (Appeal). Then Revenue filed appeal with Delhi High Court. Delhi high court confirmed the decision of ITAT stating that primary burden of proof with regard to concealment of income was with revenue and therefore no addition could be made.
- In the case of **Commissioner of Income Tax v. Shri Ram Honda Power Equipment Ltd. [2013] 352 ITR 481 (SC)**, The Delhi High Court dismissed the department's appeal against the order of the tribunal holding that amount lying credited in the modvat account at the end of accounting year was expenditure allowable under section 37 read with section 43B of the Income tax act, 1961. However, department filed an appeal to Supreme Court. The Supreme court affirmed the decision of the high court that the assessee followed the net method of valuation of closing stock. The authorities were right in coming to conclusion that modvat credit was excise duty paid.

INCOME TAX UPDATES



- **Notification No. 39 dated 31/5/2013**, The Central Board of Direct Taxes makes certain rules to amend the Income-tax Rules, 1962, through which any sum deducted under section 194-IA shall be paid to the credit of the Central Government within a period of seven days from the end of the month in which the deduction is made and shall be accompanied by a challan-cum-statement in Form No.26QB. Every person responsible for deduction of tax under section 194-IA shall furnish the certificate of deduction of tax at source in Form No.16B to the payee within fifteen days from the due date for furnishing the challan-cum-statement in Form No.26QB under rule 31A.
- **Notification No. 40 dated 6/6/2013**: The Cost Inflation Index for the financial year 2013-14 is **939**.
- **Notification No. 41 dated 10/6/2013**, The Central Board of Direct Taxes makes certain rules called the Income-tax (Sixth Amendment) Rules, 2013 which shall come into force with effect from 1/4/ 2013. In rule 10A which deals with "Meaning of expressions used in computation of arm's length price", for the figures and letter "10B", the figures and letters "10AB" shall be substituted and the clause (a) shall be renumbered as clause (ab) and before the clause as so renumbered.
- **Notification No. 42 dated 11/6/2013**, The Central Board of Direct Taxes makes certain rules called the Income-tax (Seventh Amendment) Rules, 2013 to amend the Income-tax Rules, 1962. In rule 12 which deals with "Return of income and return of fringe benefits", New ITR Forms 2, 3, 4, 5, 6 and 7 for assessment year 2013-14 has been notified.

VAT UPDATES

- Vide **Circular No 4 dated 30th May 2013**, The Department of Trade & Taxes has clarified that all the registered dealers are required to file Form DP – 1 online using their Login-id and password on or before 30th June, 2013 irrespective whether the dealer has submitted DVAT 52 or not. Further dealer is also required to submit hard copy of acknowledgment of Form DP – 1 generated after online submission of Form DP-1 in their respective wards. In addition to above, the acknowledgment number so generated is also required to be filled while furnishing online return for the period ending 30th June, 2013.
- Vide **Notification No 242-252 dated 29th May 2013**, The Department of Trade & Taxes has notified that all the Scheduled Banks engaged in the business of Silver, Gold, Repossessed Vehicles, whether registered or not with the Department are required to furnish quarterly return in Form Bank-1 within 28 days of the end of each quarter commencing from quarter ending 30th June, 2013. However for the period 2012-13, consolidated data is required to be submitted in Form Bank-1 by 15th June, 2013.
- Vide **Notification No 231-241 dated 28th May 2013**, The Department of Trade & Taxes has notified Form DP-1 which is required to be filled by every dealer who is registered under the Act as on 31st March, 2013. Further information in Form DP - 1 is required to be submitted online using Login-id and password of the dealer on or before 30th June, 2013.
- Vide **Notification No 163 dated 11th June 2013**, the Department of Trade & Taxes has clarified that Sunglasses are not covered by entry no 115 of Schedule III of DVAT Act, 2004 and hence taxable at 12.50%

IMPORTANT CASES FOR THIS MONTH

- **Kone Elevator India Pvt. Ltd. v Commercial Tax officer, Mandaveli Assessment Circle, Chennai and others [2013] 60 VST 336(Mad):-**

Under this case, the petitioner, a dealer in lifts and lift components, had 27 branches all over India and all of them registered under VAT in their respective states. The product of the dealer could not be manufactured as finished product straightway and needs erection at the customer site. Further branches are paying applicable taxes under works contract in their respective states. The Department took the view that parts and accessories were move directly to the customers and hence it was a case of interstate sale as against claim of dealer that it was a case of stock transfer within the meaning of section 6A of the Central Sales Tax Act, 1956.

On petition it was held that if a dealer wants to claim the benefit of exemption of stock transfer, he should furnish declaration under Form F. Further Rule 12(7) of Central Sales Tax Act provides that assessee can file statutory declaration up to the time of final assessment and even if there is any delay, it is very well open for assessing authority to condone the delay and accept the declaration. Further clarification has been provided by the Special Commissioner and Commissioner of Commercial Taxes to one of lift companies, stating that movement of components and parts of lifts fabricated in Tamil Nadu and dispatched to other State, was not taxable in Tamil Nadu under the Act provided they obtained Form F. Accordingly petition has been disposed of with the direction to the petitioner to make their objections before the first respondent in respect of notice issued to them for disallowing claim of exemption.

- **Sharvshri Sita Ram Anirudh Kumar v. Commissioner, Tarde Tax, Uttarakhand, Dehradun [2013] 60 VST 111 (Uttarakhand):-**

Under this case the petitioner importing goods from outside state, obtained prescribed form of declaration but failed to produce a copy of form at the first check post as required under section 28A of UP Trade Tax Act, 1948. However petitioner produced the same, the moment he came to know about the same. However assessing authority imposed Penalty for infraction of provisions of Section 28A which was confirmed by the appellate authority and tribunal. However on further appeal it was held that there was no question of assessing authority being satisfied that assessee imported goods in contravention of provisions of Section 28A if the Act. Therefore the orders of lower authorities were set aside.



IMPORTANT CASES OF SERVICE TAX FOR THIS MONTH

- In the case of **Wipro Ltd. v. Union of India [2013] 39 STT 639/32 taxmann 113 (Delhi)**, the assessee is an exporter of IT-enabled services, claimed rebate of input services used for providing exported services. Department denied rebate holding that declaration specified in para 3.1 of Notification No. 12/2005-ST specifying 'description, value and amount of tax on input services required' was not filed prior to date of export. Assessee had filed such declaration after date of export. It was held that in case of assessee's services provided in call centre or BPO centre, every phone call is an export of taxable service, while input services are received only at regular intervals depending upon arrangement with service-providers. It is impossible to anticipate date of export. Further, such service-exporter cannot specify amount of service tax/cess payable on input services "actually required" to be used in providing exported service. An estimate of input services cannot be provided as para 3.1 of Notification No. 12/2005-ST uses expression "actually required" which can be known only when bill for input-services is received. Hence, it is impossible for an assessee to comply with requirement of filing of declaration of input services actually required 'prior to date of export'. Thus, filing of declaration after date of export was a sufficient compliance. Therefore, assessee was eligible for rebate.
- In the case of **Shail Shikhar Associates v. Commissioner of Central Excise [2013] 39 STT 630/32 taxmann 269 (New Delhi-CESTAT) (TM)**, assessee had leased a ropeway installed by Municipal Board and was engaged in operating it to entertain tourists by carrying tourists from road to hills and back. Department sought levy of service tax under Tour Operator's services. It was held that as per section 65(115), any person engaged in business, planning, scheduling, organizing or arranging tours by any mode of transport shall be 'Tour Operator' but according to terms of deed of licence with Municipal Board, assessee was to transport tourists who choose to use ropeway for their journey and came on their own volition without any planning, scheduling, organizing or arranging tour by assessee-licence and avails facility of ropeway during specified hours on payment of prescribed fees. Therefore, assessee cannot be said to be a 'tour operator' and his services were not liable to service tax.

TAX TRIVIA

Last month's Answers

⇒ Whether the services provided by Dentist are taxable ?

Ans: No, the services provided by Dentist are not taxable (Cl.(2) of Not. No. 25/2012).

⇒ What is the form for Notice of Audit of Business Affairs under DVAT Act, 2004?

Ans: Form 37 for notice of Audit of Business Affairs under DVAT Act, 2004 (Rule 46) (Section 58)

⇒ What is the time period for making amendment in registration under DVAT Act, 2004?

Ans: The time period for making amendment in registration is within one month of change.

⇒ Which section deals with the payment of interest under the Finance Act, 1994?

Ans: Section 75 deals with the payment of interest under the Finance Act, 1994.

This month's Trivia

⇒ What is the time limit for passing the rectification order under the Finance Act, 1994?

⇒ What is the due date for filing of an appeal before Appellate Tribunal under DVAT Act, 2004?

⇒ What is the amount of penalty for the issuance of tax invoice by a person who is not authorized to do so under DVAT Act, 2004?

⇒ Whether the services of printing of books are taxable under the Finance Act, 1994?



TAX COMPLIANCE DURING JUNE 2013

5 th June 2013	Deposit service tax monthly in challan GAR-7 for the month of May in case of assesses other than individual, proprietary concern, partnership firms
6 th June 2013	Deposit service tax in challan GAR-7 for the month of May by corporate assesses making e-payment
7 th June 2013	Deliver a copy of form 15G/15H/27C to CCIT or CIT for declarations received in the month of May
7 th June 2013	Deposit TDS/TCS for deductions/collections made in the month of May
10 th June 2013	Furnish in form DVAT 51 quarterly return statement of exports/inter-state sales/branch transfer etc. for all the quarters of Financial Year 2011-12 Submit Online in form CD-I Central declaration forms received against stock transfer or Central Sales made on concessional rates, Central declaration forms missing and tax deposited on account of missing forms for all quarters of 2011-12. Last date of submission online same as submission of reconciliation return in form DVAT-51 for quarter
15 th June 2013	Deposit TDS (DVAT) for deductions made in the month of May
15 th June 2013	Deposit 1 st installment of advance income tax for Assessment Year 2014-15 in case of companies & not less than 15% of such advance tax
21 st June 2013	Deposit VAT/CST for the month of May by all dealers
22 nd June 2013	Issue Certificate for TDS in form DVAT-43 for deductions in the month of May in duplicate to the contractor
30 th June 2013	Furnish return in respect of securities transaction tax (STT) for the financial year 2012-2013
30 th June 2013	Submit quarterly return of non-deduction of tax at source by a banking company from interest on time deposit in Form 26- QAA for quarter ending March
30 th June 2013	Assesses to take adjustment under Rule 6 (3) (ii) of Cenvat Credit Rules, 2004 of proportionate reversal of Cenvat credit.
30 th June 2013	All dealers to submit online, Tax Ratewise details of stock held on 31 st March 2013 in form Stock-1
30 th June 2013	All dealers to furnish information online using Form DP-I Last date for submission of DVAT-51 for the period January to March, 2013



+Note:

Income Tax.	E-payment is compulsory for all corporate assesses and for persons whose accounts audited u/s 44 AB of Income Tax Act. All deductors need to download form 16A from TIN of NSDL which is issued to deductees whose TDS has been deducted.
DVAT	E-payment of DVAT, TDS under DVAT and CST is compulsory for all dealers Now e-tax payment compulsory for all contractees (TAN holders) from portal of 22 designated banks. Notified banks may accept cash/cheque and deposit tax online from their dummy account. P&S Bank Vyapar Bhawan authorized for acceptance of cheques from contractees (TAN holders) being Govt. /PU's/Autonomous Bodies etc & thereby exempted from compulsion of e-tax payment.
Service Tax	E-payment is compulsory for all assesses whose liability of Service Tax was more than Rs. 10 Lakhs during the proceeding financial year.

UPDATES ON CUSTOM DUTY

- **Notification No. 60/2013-Customs (N.T.) dated 12/6/2013**, The Central Board of Excise & Customs (CBEC) makes an amendment in the Notification No. 59/2013-CUSTOMS (N.T.) dated 6/6/2013, which provides the rate of exchange of conversion of foreign currency which is applicable for service tax, custom duty as well as for excise duty. Some of the rates are shown below and others can be referred from the notification.

S.No.	Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
(1)	(2)	(3)	
		(a)	(b)
		(For Imported Goods)	(For Export Goods)
1.	Australian Dollar	55.00	53.65
2.	EURO	78.40	76.45
3.	Hong Kong Dollar	7.35	7.20
4.	Pound Sterling	91.90	89.75
5.	Singapore Dollar	45.65	44.60
6.	South African Rand	5.95	5.55
7.	Saudi Arabian Riyal	15.45	14.60
8.	US Dollar	56.85	55.85

- **Notification No. 58/2013-Customs (N.T.) dated 5/6/2013**, The Central Board of Excise & Customs makes an amendment in the Notification No. 54/2013-CUSTOMS (N.T.) dated 16/5/ 2013 by substituting serial no. 15 and 16 of the table with the new entries namely “Swedish Kroner” and “Swiss France”.
- **Notification No. 57/2013-CUSTOMS (N. T.) dated 31/5/2013**, The Central Board of Excise & Customs makes an amendment in the Notification No. 36/2001-Customs (N.T.) dated 3/8/2001 by substituting TABLE-1 and TABLE-2 with the new tables giving description of goods and their respective Tariff value US \$ (Per Metric Tonne).
- **Notification No. 56/2013-Customs (N.T.) dated 28/5/ 2013**, The Central Government makes an amendment in the Notification No. 61/94 – Customs (N.T.) dated 21/11/1994 by substituting an entry under column (4) in the table, against serial number 15 relating to the state of Tamil nadu, with the new entry namely “Unloading of imported goods and the loading of export goods or any class of such goods”.
- **Notification No. 31/2013-Customs dated 5/6/2013**, The Central Government makes an amendment in the Notification No. 12/2012-Customs dated 17/3/2012 by increasing the rate of Customs duty on import of gold from 6% to 8% which

CORPORATE LAW UPDATES

- Vide **A.P. (DIR Series) Circular No. 109 dated 11/6/2013**, the Authorized Dealers of Category I banks have been permitted to offer the facility to repatriate export related remittances by entering into standing arrangements with Online Payment Gateway Service Providers (OPGSPs) for export of goods and services for value not exceeding USD 3000 per transaction. It has now been decided to increase the value per transaction from USD 3000 to USD 10,000 for export related remittances received through OPGSPS.
- Vide **A.P. (DIR Series) Circular No. 108 dated 11/6/2013**, It has been decided that the units located in SEZs shall realize and repatriate, full value of goods/software/services, to India within a period of twelve months from the date of export. Any extension of time beyond the above stipulated period may be granted by Reserve Bank of India.
- Vide **A.P. (DIR Series) Circular No.107 dated 4/6/2013**, any import of gold on consignment basis by both nominated agencies and banks shall now be permissible only to meet the needs of exporters of gold jewellery.
- Vide **Circular No. 11/2013 Dated 29/5/2013**, It has been decided that all Letters of Credit (LC) to be opened by Nominated Banks / Agencies for import of gold under all categories will be only on 100 per cent cash margin basis. Further, all imports of gold will necessarily have to be on Documents against Payment (DP) basis. Accordingly, gold imports on Documents against Acceptance (DA) basis will not be permitted. These restrictions will however not apply to import of gold to meet the needs of exporters of gold jewellery.

CAN DIRECT DEPOSIT OF CASH IN PAYEE'S ACCOUNT CIRCUMVENT SECTION 40A(3)

In the case of **CIT v. Venkatadhri Constructions [2013] 213 taxmann 180 (Mag.)**, the assessee made certain payment exceeding Rs. 10,000 in respect of the supply of cement which were deposited directly into the account of the supplier. The Assessing Officer granted the relief in respect of those cases where payments were made in cash. However, as regards the payment made by way of advance for purchase of cement and credited to the account of vendor, the assessing authority rejected the authority's plea.

The Hon'ble High Court held that Rule 6DD of the Income-tax Rules specifies the circumstances under which the payment for a sum exceeding Rs. 10,000 may be made otherwise than by a crossed cheque drawn on a bank or by a crossed bank draft. Thus, except on those circumstances narrated under rule 6DD and as given under section 40A(3), unless there are exceptional and unavoidable circumstances, the payment made in excess of Rs. 10,000 by cash would not escape the rigour of section 40A(3).

Thus, the mere circumstances, that the amount had been remitted to the account of the payee, would not be a good ground to accept the case of the assessee that section 40A(3) will not be applied to the case.



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