

Between Fine Lines

July 2013

Vol 2 Issue 9

INSIDE THIS ISSUE:

Main Highlights	1
Latest in Income Tax	2
Latest in VAT	3
Latest in Service Tax	4
Latest in Custom Duty	5
Latest in Corporate law	6
Tax Compliance in July	7

THIS MONTHS' MAJOR

MAIN CASE

Levy of Service Tax on AC Bar Restaurants and Hotels providing short term accommodation is Unconstitutional

The Hon'ble Kerala High Court has held that the levy of Service Tax on AC Bar Restaurants and Hotels providing short term accommodation as Unconstitutional and beyond the Legislative Competence of the Parliament.

Section 65 (105) (zzzzv) of Chapter V of the Finance Act, 1994 ("the Finance Act") pertaining to AC Bar Restaurants as under:

"Any Service Provided or to be provided to any person, by a restaurant, by whatever name called, having the facility of air-conditioning in any part of the establishment, at any time during the financial year, which has licence to serve alcoholic beverages, in relation to serving of food or beverage, including alcoholic beverages or both, in its premises;"

Section 65 (105) (zzzzw) of the Finance Act pertaining to Short term accommodation service as under:

"Any Service provided or to be provided to any person by a hotel, inn, guest house, club or campsite, by whatever name called, for providing of accommodation for a continuous period of less than three months;"

The constitutional validity of the aforesaid amendment as made by the Finance Act, 2011 was challenged before the Hon'ble Kerala High Court by "**the Kerala Classified Hotels and Resorts Association**" vide **WP(C) 14045 of 2011** and other Hotels and Restaurants condenting that the aforesaid levy by the Central Government deviates from the subject matter falling under Entry 54 (Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of entry 92A of List I) and Entry 62 (Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling) respectively of the List II (State List) of the Seventh Schedule of the Constitution and therefore beyond the legislative competence of the Parliament.

The matter was finally heard by the Honourable Kerala High Court and has pronounced the judgment on July 3, 2013 allowing the writ petitions and held:

- It is declared that Sub Clause (zzzzv) and (zzzzw) to Clause 105 of section 65 of the Finance Act 1994 as amended by the Finance Act 2011 is beyond the legislative competence of the Parliament as the clauses are covered by Entry 54 and Entry 62 respectively of List II of Seventh Schedule.
- That, if any payments have been made by the petitioners on the basis of the impugned clauses, they are entitled to seek refund of the same.



INCOME TAX CASES

- **Sanjay Ghai Vs Assistant Commissioner of Income Tax And Others [2013] 352 ITR 468 (Delhi)**

The assessee was a director of the company which is assessed at Delhi and assessee himself was assessed at Dehradun. The assessee was entitled to a tax refund in respect of Assessment Years 1999-2000 and 2003-04. Assessee was intimated that Assistant Commissioner at New Delhi had computed outstanding tax of the company and by order directed that refund payable to assessee was to be set off against the tax liability of the company in accordance with provisions of section 179(1) of the income tax act. The commissioner further enhanced dues of company and assessee under section 234A, 234B and penalty u/s 271(1)(b)(c). The assessee filed a petition. The court believed that the act consciously used different words to create constructive liability on third parties in case of default and treatment of the same subject matter by using different terms is expansive in some cases and restrictive in others. The court held that assessee could not be held liable for anything more than the tax as defined under section 2(43). The commissioner was consequently asked to determine liability and impugned orders were quashed.

- **Commissioner of Income Tax Vs Khader Khan Son [2013] 352 ITR 4801 (SC)**

A survey was conducted in the premises of the assessee firm. One of the partners in his statement offered an additional income of Rs. 20 lakhs for Assessment Year 2001-02 and Rs.30 lakhs for the Assessment Year 2002-03 but statement was retracted by assessee stating that the partner from whom the statement was recorded during the survey operation under section 133A of the Income Tax Act 1961, was new to management and agreed to an ad hoc addition. The Assessing Officer based on admissions made by assessee recomputed the assessment. The order was set aside by Commissioner (Appeals) and this order was upheld by Tribunal. The Hon'ble High Court in view of scope and materials collected held that the action under section 133(a) would not have evidentiary value and that it could not be said that the disclosed income was assessable as lawful income of the assessee. On appeal to the Supreme Court, the court dismissed appeal in view of concurrent findings.

INCOME TAX UPDATES



- Vide **Notification No. 47 dated 26/6/2013**, New rule shall be inserted after rule 21AB of the Income Tax Rules, 1962, namely "Rule 21AC - Furnishing of authorization and maintenance of documents etc. for the purposes of section 94A". Section 94A of the Income Tax Act, 1961 refers to "Special measures in respect of transactions with persons located in notified jurisdictional area".
- Vide **Notification No. 51 dated 4/7/2013**, New rule shall be inserted after rule 6DDB in the Income Tax Rules, 1962 namely "Rule 6DDC - Conditions that a recognized association is required to fulfill to be notified as a recognized association for the purposes of clause (e) of the proviso to clause (5) of section 43".
- From the Financial Year 2013-14, **Section 194I (Rent Payment)** has now been bifurcated into two sections as under:
 - 194I(a) - Rent for Plant & Machinery – Percentage of TDS deduction is 2%
 - 194I(b) - Rent for land, building & furniture – Percentage of TDS deduction is 10%.
- Vide **Instruction No. 6/2013 [F No. 312/53/2013-OT] dated 10/07/2013**, the Central Board of Direct Taxes fixes the limit for adjustment of refunds against the past arrears in the cases where Section 245 "Set off of refunds against tax remaining payable" is not followed.

VAT UPDATES

- Vide **Notification No 371-382 dated 05th July, 2013**, The Department of Trade and Taxes has extended the due date for online filling of dealer profile in Form DP - 1 as per following schedule : -

<u>Class of dealer</u>	<u>Due date</u>
GTO greater than or equal to Rs 50 Lakhs in 2012-2013.	07 th August, 2013
GTO greater than or equal to Rs 25 Lakhs but less than Rs 50 Lakhs in 2012-2013.	14 th August, 2013
GTO less than Rs 25 Lakhs in 2012-2013.	21 st August, 2013

- Vide **Notification No 383-396 dated 05th July, 2013**, The Department of Trade and Taxes has notified the following banks as appropriate Government Treasuries for deposit of all dues under DVAT Act:-

Axis Bank	HDFC Bank	Oriental Bank of Commerce	Union Bank of India
Bank of Baroda	ICICI Bank	Punjab National Bank	UCO Bank
Bank of India	IDBI Bank	Punjab & Sind Bank	Maharashtra Bank
Canara Bank	Indian Bank	State Bank of India	Dena Bank
Central Bank of India	Indian Overseas Bank	Vijaya Bank	Allahabad Bank (Notfn No
Corporation Bank	Kotak Mahindra Bank	Syndicate Bank	424-437 dated 11-07-2013)

Further all registered dealers and TAN holders will make their payment online. However unregistered dealers and TAN Holders who are the Ministries/Department/Public Undertakings/Autonomous Bodies/Local Bodies/Corporations of the Central Government, Union Territories or State Government can make payment physically in Punjab and Sind Bank located at Vyapar Bhawan. This notification will come into force w.e.f. 1st August, 2013.

- DVAT (Second Amendment) Rules, 2013:- (Major highlights)**

1. In addition to prominently display of Registration Certificate at principal place and certificate copy at all other branches in Delhi, every dealer will also required display his TIN and Ward number outside the main entrance of all business places in Delhi.

2. Return shall be filled electronically on Departmental Website and thereafter Return Verification Form in Form DVAT 56 shall be submitted in duplicate within 25 days from the end of the tax period. Form DVAT 56 shall be accompanied by proof of payment of tax, interest or any other sum in Form DVAT 20, copy of TDS Certificate and other documents as specified in Form DVAT 56 or Return.



3. Every person holding TAN shall be required to file a quarterly return in Form DVAT 48 within 28 days from the end of quarter.

4. Insertion of Form DVAT-45A for making application of cancellation/amendment in particulars of TAN

5. **Amendments in Form DVAT-16 such as**

- Requirement to provide Commodity-wise turnover and tax contribution details
- Separate fields for sale/purchase of petrol/diesel by oil marketing companies
- Separate fields for sale/purchase within Delhi against Form-H
- Requirement to furnish Adjustments to Output/Input Tax tax-rate wise
- Addition of Annexure-1A (for works contract dealers), Annexure-1B (for right to use dealers), Annexure-1C (for dealers making sale against Form-H), Annexure-2E (for refund claims)

IMPORTANT UPDATE OF SERVICE TAX

- **Notification No. 12/2013-Service Tax dated 01/07/2013**, The Central Government exempts the services on which service tax is leviable under section 66B of the Finance Act, 1994 received by a unit located in a Special Economic Zone or Developer of SEZ and used for the authorized operation from the whole of the service tax, education cess, and secondary and higher education cess leviable thereon. The exemption shall be provided by way of refund of service tax paid on the specified services received by the SEZ Unit or the Developer and used for the authorized operations, subject to the certain conditions and procedure specified in the notification.

The notification also provides the following forms:

FORM A-1: Declaration by the SEZ Unit or Developer for availing ab initio exemption under notification No.12/2013 - Service Tax dated 1st July, 2013

FORM A-2: Authorization for procurement of services by a SEZ Unit/Developer for authorized operations under notification No.12/2013- Service Tax dated 1st July, 2013

FORM A-3: Quarterly return to be furnished by the SEZ Unit/Developer furnishing the details of services procured without payment of service tax in terms of the notification No. 12/2013-Service Tax dated 1st July, 2013

FORM A-4: Application for claiming refund of service tax paid on specified services used for authorized operations in SEZ under notification No.12/2013- Service Tax dated 1st July, 2013

IMPORTANT CASES OF SERVICE TAX

- In the case of **Commissioner of Central Excise, Mumbai v. Seva Automobiles Pvt. Ltd. [2013-TIOL-1023-CESTAT-MUM]**, the assessee is registered as an 'authorized service station' and discharging service tax liability on their activities. The assessee also sells spare parts of automobiles. The spare parts were received from the manufacturers and the assessee charges handling charges for handling of these spare parts at their service stations. The revenue sought that handling of these spare parts should form part of taxable value of services rendered by the assessee. But the lower appellate authority held that in the case of authorized service station, the cost of the spare parts are not to be included in the value of services rendered as per section 67 of the Finance Act, 1994. Since the cost of spare parts itself is not includible; therefore, handling charges incurred in respect of such spare parts also will not form part of the taxable value of services rendered.
- In the case of **Blue Precision Ltd. v. Commissioner of Central Excise, Delhi-IV[2013] 29 taxmann.com 209 (New Delhi - CESTAT)**, Assessee was engaged in clearing, buffing, electroplating and baking of tiles and exporting such tile, claimed CENVAT Credit of inputs used in such processes carried out on tiles and sought refund of such credit under rule 5. The Department held that since processes carried out did not amount to manufacture, hence, assessee could not be allowed credit under CENVAT Credit Rules, 2004. Therefore, the department had rightly denied refund. Even if assessee was eligible for rebate of duty paid on such inputs under rule 18 of Central Excise Rules, 2002, but, since such claim was time-barred, hence, credit could not allowed in lieu of such time-barred claim.
- In the case of **Commissioner of Central Excise v. A.I.A. Engineering (India) Ltd. [2013] 30 taxmann.com 64 (Gujarat)**, Assessee was engaged in manufacture of goods by himself and also on job-work basis utilizing common input on which credit had been taken. He claimed exemption in respect of job-work. Department sought reversal of credit taken on input used in goods manufacture on job-work basis which were cleared without payment of duty. It was held that Job-worker is entitled to credit of duty paid on inputs used in manufacturing of intermediate products cleared without payment of duty to principal manufacturer, if such principal is clearing final product after payment of duty.
- In the case of **Nitudevi Sharad Kothari v. Commissioner of Central Excise, Nagpur [2013] 31 taxmann.com 218 (Mumbai - CESTAT)**, Assessee purchased a flat and paid service tax to builder. Later, he filed a refund claim for such service tax paid, which was rejected being barred by limitation. It was held that refund claim ought to be filed within 1 year from payment of service tax. Since refund claim was filed after a lapse of 1 year from date of payment of tax, rejection of refund claim on account of time bar was sustainable.



UPDATES ON CUSTOM DUTY

- **Notification No. 17/2013-Cus.,(ADD) dated 05/07/2013**, The Central Government makes an amendment in the Notification No. 92/2011-Customs dated 20/09/2011 by extending anti-dumping duty on rubber chemical PX-13 (6PPD) upto one more year and for this purpose, in paragraph 2, for the words and figures "4th May, 2013", the words and figures "4th May, 2014" shall be substituted.
- **Notification No. 16/2013-Cus.,(ADD) dated 05/07/2013**, Vide this notification CBEC continues Anti-Dumping Duty on rubber chemicals. For this purpose, the Central Government makes an amendment in the Notification No. 133/2008 -Customs dated 12/12/2008 by inserting new paragraph after paragraph 2 namely "3. Notwithstanding anything contained hereinabove, this notification shall remain in force upto and inclusive of the 4th day of May, 2014, unless revoked earlier".
- **Notification No. 15/2013-Customs (ADD) dated 03/07/2013**, imposes anti-dumping duty on imports of 'Poly Vinyl Chloride Resin, originating in, or exported from, European Union.
- **Notification No. 14/2013-Customs (ADD) dated 03/07/2013**, imposes anti-dumping duty on imports of 'Acetone', exported from M/s Chang Chun Plastics Co Ltd, Chinese Taipei.
- **Notification No. 34/2013-Customs dated 08/07/2013**, The Central Government makes an amendment in the Notification No. 12/2012-Customs, dated 17/03/2012 by increasing the import duty on Sugar to **15%**.
- **Circular No. 25 /2013-Customs dated 01/07/2013**, Vide this circular it has been clarified that re-import of pets as baggage is allowed, subject to establishment of identity of pets by Customs authorities, production of the required health certificate from the country of export and examination of said pets by the concerned Quarantine Officer at this end.
- **Notification No. 71/2013-CUSTOMS (N.T.) dated 10/07/2013**, The Central Government makes an amendment in the Notification No. 92/2012- Customs (N.T.), dated 04/10/2012 by substituting new entry for tariff item 711302 and entries relating thereto:-

"711302	Articles of jewellery and parts thereof, made of silver	Kg	Rs. 1795.5 per kg of net silver content (.999 purity) in the jewellery	Rs. 1795.5 per kg of net silver content (.999 purity) in the jewellery".
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- **Notification No. 70/2013-Customs (N.T.) Dated 04/07/2013**, The Central Board of Excise and Customs determines that the rate of exchange of conversion of foreign currency into Indian currency or *vice a versa* shall be the rate mentioned against it in column (3) of the notification, relating to imported and export goods which shall be applicable with effect from 5th July, 2013. Some of the important rates are mentioned here and remaining rates can be checked 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	55.35	54.00
5.	EURO	78.80	76.90
8.	Kuwait Dinar	216.35	203.70
12.	Singapore Dollar	47.70	46.55
18.	US Dollar	60.50	59.50

CORPORATE LAW UPDATES

- Vide **A.P. (DIR Series) Circular No. 11 RBI/2013-14/134 dated 11/07/2013**, it has been decided that all-in-cost ceiling as specified in A.P. (DIR Series) Circular No. 99 dated 30/03/2012 will continue to be applicable till September 30, 2013.
- Vide **A.P. (DIR Series) Circular No. 10 RBI/2013-14/133 dated 11/07/2013**, it has been decided that instructions contained in A.P. (DIR Series) Circular No. 112 dated 20/04/2012 relating to External Commercial Borrowings will continue to be applicable till September 30, 2013.
- Vide **A.P. (DIR Series) Circular No. 9 RBI/2013-14/132 dated 11/07/2013**, it has been decided that all-in-cost ceiling as specified under paragraph 4 of A.P. (DIR Series) Circular No.28 dated September 11, 2012 will continue to be applicable till September 30, 2013. It has also been decided that for availment of trade credit, the period of trade credit should be linked to the operating cycle and trade transaction.
- Vide **A.P. (DIR Series) Circular No. 8 RBI/2013-14/131 dated 11/07/2013**, it has been decided to grant general permission to a bank in India, being licensed by the Reserve Bank under the provisions of the Banking Regulation Act, 1949, to acquire the shares of SWIFT (Society for Worldwide Interbank Financial Telecommunication) as per the by-laws of SWIFT, provided the bank has been permitted by the Reserve Bank for admission to the 'SWIFT User's Group in India' as member.
- Vide **A.P. (DIR Series) Circular No. 7 RBI/2013-14/127 dated 08/07/2013**, it has been decided that Authorized Dealers Category – I banks should not carry out any proprietary trading in the currency futures / exchange traded currency options markets. In other words, any transaction by the Authorized Dealer Category – I banks in these markets will have to be necessarily on behalf of their clients.
- Vide **A.P. (DIR Series) Circular No. 5 RBI/2013-14/125 dated 08/07/2013**, it has been informed that the Rupee value of the Special Currency Basket has been fixed at Rs. 80.972091 with effect from June 25, 2013.
- Vide **A.P. (DIR Series) Circular No. 02 RBI/2013-14/119 dated 04/07/2013**, it has been stated that in the case of contracted exposure, Authorized Dealer (AD) Category I banks must obtain "Quarterly certificates from the statutory auditors of the users, that the contracts outstanding at any point of time with all AD Category I banks during the quarter did not exceed the value of the underlying exposures" .
- Vide **A.P. (DIR Series) Circular No. 4 RBI/2013-14/124 dated 08/07/2013**, it has been informed that Export-Import Bank of India (Exim Bank) has concluded an Agreement with the Government of Seychelles, for making available to the latter, a Line of Credit (LOC) of USD 10 million (USD Ten million) for financing eligible goods, services, machinery and equipment including consultancy services from India for the purpose of import of goods and services for specific projects funded by Development Bank of Seychelles in Seychelles. The Credit Agreement under the LOC is effective from June 10, 2013.

IMPORTANT CASES OF CORPORATE LAW

- In the case of **Anand Pratyabhoot vitt Nigam Ltd v. Madhu Bala Sharma (Del)**, The company was under liquidation and the depositor received excess amount. It was held that any claim can be brought by the OL on behalf of the company. The OL is not required to obtain the leave of the court for filing an application under section 446. So the respondent was directed to refund the amount with the interest.
 - In the case of **Komal Manu Sahani v. Pure Drinks Ltd & Anr (Bom)**, The employee's heir occupied the house given to the employee by the company. Employee died during the proceedings. It was held that the proceeding could be continued against the heir by substituting her in the place of the deceased employee.
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TAX COMPLIANCE IN JULY 2013

- 5th July 2013** Deposit service tax quarterly in case of assesses being individual, proprietary concern and partnership firms for the quarter ending June and monthly in case of companies & other than the assesses mentioned above for the month of June
- 6th July 2013** Deposit service tax for the month of June by corporate assesses and for other assesses for quarter ending June making e-payment.
- 7th July 2013** Deliver a copy of form 15G/15H/27C to CCIT or CIT for declarations received in the month of June
Deposit TDS/TCS for deductions/collections made in the month of June.
- 15th July 2013** Deposit TDS (VAT) for deductions made in the month of June
Submit quarterly statement of deduction of tax from salary in form 24-Q, tax deducted from other payments in form 26-Q, from payments made to non residents in form 27-Q & TCS in form 27-EQ for quarter ending June
- 21st July 2013** Deposit VAT/CST for the month of June by all dealers in DVAT 20/Central Sales Tax Challan
- 22nd July 2013** Issue Certificate of TDS deductions in form DVAT-43 for deductions made in the month of June in quadruplicate
- 25th July 2013** File online DVAT/CST returns on DVAT website for the quarter ending June by all registered dealers. File annexures 2A, 2B, 2C & 2D electronically (quarterly).
Composition dealers file DVAT-17 in electronic form for the quarter ending June. File annexures 2A & 2B electronically.
- 28th July 2013** Furnish acknowledgement of online submission of return in Form DVAT 56 alongwith Challan copy and acknowledgment of 2A, 2B, 2C & 2D.
Composition dealers u/s 16 DVAT Act furnish return in DVAT 17 along with tax challan in DVAT- 20 and attach copy of DVAT- 30 for quarter ending June
File TDS (VAT) quarterly return by contractee in form DVAT 48 for the quarter ending June
All scheduled Banks, whether registered or not under DVAT Act having branches in Delhi & engaged in business of silver, gold, repossessed vehicles furnish return in Form Bank-1 u/s 27 DVAT Act
- 30th July 2013** Issue TDS/TCS certificates in Form No. 16A/27D for credits/payments made in the quarter ending June. All deductors compulsory download form 16A from the TIN website (TRACES) portal.
- 31st July 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 June.
Submit return of income and wealth for Assessment Year 2013-14 in case of all assesses (other than those assesses requiring audit of accounts or a working partner of a firm whose accounts require audit). An individual or HUF whose income exceeds ` 5 lacs or having assets located outside India compulsory furnish return electronically

+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.

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