

Between Fine Lines

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Tax Compliance in
May 7

THIS MONTHS' MAJOR

MAIN UPDATES

VAT

- Vide **Circular No 2 of 2014-2015 dated 23rd April, 2014**, The Department of Trade and Taxes has provide the facility to all the dealers to sign all the applications/ returns etc. digitally and submit the same online through the website of Department of Trade and Taxes using their unique id and password. Further in case where application is signed digitally, there will be no need to submit the hard copy of the same. The above notifications come into force with immediate effect. However, certain technical problems are being removed.
- Vide **Order No F.6(7)/DVAT/L&J/2013-14/489 dated 13th May, 2014**, The Commissioner of Department of Trade and Taxes has delegate his powers to the VATO (System) to sign all orders and notices etc. to be issued to the dealers electronically, if such orders/ notices are generated in bulk through system software. The above order comes into force with immediate effect.

Custom Duty

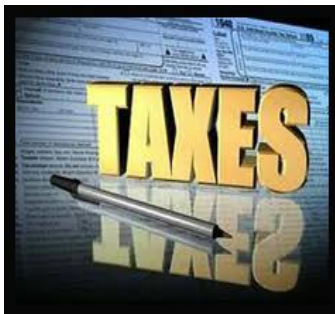
- Vide **Notification No. 19/2014-Customs (ADD) dated 09/05/2014**, the authority has initiated Mid-term review of anti-dumping duty imposed on imports of glass fibre and articles thereof originating in or exported from China PR.
- Vide **Notification No.20/2014-Customs (ADD) dated 12/05/2014**, the authority seeks to extend the levy of anti-dumping duty on "Cold Rolled Flat Products of Stainless Steel", originating in, or exported from, the People's Republic of China, Korea RP, European Union, South Africa, Taiwan, Thailand and USA for a further period of one year..

Income Tax

- CBDT has released ITR-2 Online and offline Utility for A.Y. 2014-15 on its website <https://incometaxindiaefiling.gov.in/>. CBDT has already released online and offline utility for e-Filing of ITR 1 (SAHAJ) & ITR 4S (SUGAM) for AY 2014-15.

MAIN CASE

- In the case of **Indian Hotels & Restaurant Association v UOI [[2014] 44 taxmann.com 455 (Bombay)]**, the petitioner challenged the validity of levy of Service Tax on Restaurant Services before hon'ble Bombay High Court. The Hon'ble Court upheld the levy observing that the tax on sale of goods involved in the said service can be levied, does not mean that the service tax cannot be levied on the service aspect of catering. With respect, this means that when a restaurant renders to any person a service, the tax on sale of goods involved in the said service can be levied. That does not mean that a service tax cannot be levied on the act of serving food at a restaurant. Accordingly, it held that there could be a sale during the course of rendering of service at a restaurant and therefore, a sales tax could be imposed by the State Legislature. So long as there is no prohibition against imposition of service tax on the services rendered, then it must be held that the Parliament is competent to impose a service tax in question.



INCOME TAX CASES

- **Oxford University Press., In re** [[2014] 45 taxmann.com 282 (AAR - New Delhi)]

Payment for promotion of books and promote branch image in Srilanka to the resident of such Country shall be non taxable in India as per the provisions of DTAA and reimbursements also made thereof are not exigible to India Income Tax.

- **B. Sivasubramanian v. ITO** [[2014] 45 taxmann.com 74 (Chennai - Trib.)]

The assessee constructed the House and claimed deduction under Section 54F. However, AO found that no permission from municipal authorities was obtained for such house and denied such exemption. It was held by Hon'ble Tribunal that the provisions of section 54F mandates the construction of a residential house, within the period specified, however, there is no condition that the building plan of the residential house constructed should be approved by the Municipal Corporation or any other competent authority.

- **Director of Income-tax (International Taxation)-I v. Wizcraft International Entertainment (P.) Ltd.** [[2014] 45 taxmann.com 24 (Bombay)]

The assessee, an event management company, engaged the services of a non-resident agent to bring the foreign Artists to India. The assessee paid remuneration to the Artists and commission to the agent. It deducted tax on the amounts paid to the Artists but did not deduct tax on the commission paid to the agents. It was held that the sum paid to agent could not be deemed to have arisen from the personal activities in a contracting State in status of entertainer or athlete. The commission paid to the agent was not hit by Article 18(2) of India-UK DTAA, and, therefore, income arising to agent couldn't be said to be taxable in India.



Image Credit: flickr.com/photos/86530412@N02/8265147917

INCOME TAX UPDATES

- **Notification No. 26/2014 [F.NO.142/15/2013-TPL]/SO 2045(E) dated 16/05/2014**, the Central Board of Direct Taxes amend the Income-tax Rules, 1962 by substituting Form 49A & Form 49AA of Appendix II with the new forms.
- CBDT has released ITR-2 Online and offline Utility for A.Y. 2014-15 on its website <https://incometaxindiaefiling.gov.in/>. CBDT has already released online and offline utility for e-Filing of ITR 1 (SAHAJ) & ITR 4S (SUGAM) for AY 2014-15.
- Vide **Notification No. 24/2014 dated 01/04/2014**, rule 12 of Income Tax Rules, 1962 has been amended and provided that notice under clause (a) of sub-section (2) of section 11 of the Act, shall be furnished electronically in form No. 10 w.e.f. Assessment year 2014-15. Thus, from FY 2014-15, all trusts wanting to accumulate their income for future application would be require to furnish the Notice electronically.
- CBDT has vide **Notification No. 24/2014 dated 01/04/2014** amended rule 12 of Income Tax Rules 1962 requiring all political parties to file their income tax return electronically under Digital Signature wef AY 2014-015. All Partnership firms shall now be required to file return electronically.



VAT UPDATES

- Vide **Order No F.6(7)/DVAT/L&J/2013-14/489 dated 13th May, 2014**, The Commissioner of Department of Trade and Taxes has delegate his powers to the VATO (System) to sign all orders and notices etc. to be issued to the dealers electronically, if such orders/ notices are generated in bulk through system software. The above order comes into force with immediate effect.
- Vide **Order No F.6(7)/DVAT/L&J/2013-14/49 dated 30th April, 2014**, The Commissioner of Department of Trade and Taxes has delegate his powers to all the VATO's to hear the objection of a person who is dis-satisfied with an assessment made under this Act and any other order or decision made under this Act. The above order comes into force w.e.f. 12th November, 2013.
- Vide **Circular No 2 of 2014-2015 dated 23rd April, 2014**, The Department of Trade and Taxes has provide the facility to all the dealers to sign all the applications/ returns etc. digitally and submit the same online through the website of Department of Trade and Taxes using their unique id and password. Further in case where application is signed digitally, there will be no need to submit the hard copy of the same. The above notifications come into force with immediate effect.



IMPORTANT CASES OF VAT

- **Nathu Ram Ramesh Kumar v. Commissioner of Delhi Value Added Tax (2014) 70 VST 1 (SC):**
Under this case, survey has been conducted at the dealer premises on 9th & 10th March, 2000 by the officers of Commissioner of Sales Tax, Delhi and found that total cash inflow on those days was Rs. 2,13,974 and Rs. 1,98,009 respectively which were in discrepancy with books of accounts maintained by the dealer. Accordingly at the time of assessment for the year 1999-2000, after giving an opportunity of being heard calculated the average receipts per day on the basis of the gross receipt of sale effected on those two days and came to the conclusion that the sale proceeds of the dealer for the relevant year were Rs. 7,51,86,350. Further penalty was also imposed for incorrect maintenance of books of accounts. For assessment year 2001-01 on similar ground the assessing officer calculated gross sales adding 10% to the figure of 1999-2000 which he considered to be normal growth of business in normal circumstances. The appeals filed by the dealer were dismissed by the Commissioner and Tribunal. On the ground that no question of law was involved, the High Court also dismissed the reference application filed by the dealer. On further appeal to Apex Court, Hon'ble Supreme Court held that that the assessing officer did not jump to a conclusion without rhyme or reason. The assessing officer had called upon the dealer to explain the difference but the dealer could not or did not give sufficient explanation. In the circumstances, the assessing officer had rightly come to the conclusion that the books of accounts maintained by the dealer did not show correct sales and therefore the conclusion arrived at could not be incorrect. Further once it was found that with some oblique motive, effort was made to shower lower sale proceed than the actual, the orders imposing penalty could not be questioned. Therefore no interference could be made even with quantum of penalty.
- **Super Traders v. Additional Commissioner of Commercial Tax [2014] 44 taxmann.com 265 (Madhya Pradesh):**
In this case, the Assessee was carrying on the business of sale and purchase of cement. The Assessing Authority passed assessment on the Assessee and disallowed certain amount with regard to transportation and freight charges. He also disallowed certain amount with regard to payment made through credit note and further levied tax on these amounts. Penalty under section 64(1) was also imposed upon the Assessee on the ground of concealment of above amounts. It was held that the from the documents and material available on record, it is clear that in the matter of concealment of freight and transportation charges, in fact the amount was included in the bill for purchase of cement and the Assessing Authority has bifurcated the amount and did not permit addition of the transportation and freight charges in the cost price of product purchased, i.e., cement. Therefore, the Assessee erroneously included the transportation and freight charges in the purchase price, as it was included in the bill by the manufacturer of cement. Therefore, the imposition of penalty on concealment of transportation and freight charges was not correct. As far as claiming benefit of transaction made through credit note is concerned, it was held that discount through credit note issued even subsequent to sale without there mention in sale vouchers is permissible. This is held to be an established trade practice and if the Assessee had also claimed rebate or discount on credit note, this will also not amount to concealment or suppression of income subjected to penalty. Therefore, the penalty imposed on the payment made through credit note was unsustainable.

IMPORTANT CASES OF SERVICE TAX

- In the case of **Mahesh Sunny Enterprises (P.) Ltd. v. Commissioner, Service Tax Commissionerate, New Delhi [2014] 43 taxmann.com 80 (Delhi)**, it was held that Parking Services provided at airport or at any other place are not liable to service tax before or after 1-6-2007 under 'Airport Services' and/or 'Renting of Immovable Property Services'. Thus, a concession made by assessee on an erroneous understanding of law, at any rate, without sanction of law to collect amounts demanded, cannot validate demands.



- In the case of **Brindawan Beverages (P.) Ltd. v. Commissioner of Central Excise, Meerut [2014] 43 taxmann.com 166 (Allahabad)**, it was held that Where imported capital goods had been initially used for exempted goods only and later (after receipt of notice denying said credit), said goods were used for dutiable products as well, issue regarding availability of credit was remanded back to Tribunal.

- In the case of **ZTE Corpn. v. Commissioner of Customs (Import & general) [2014] 43 taxmann.com 85 (Delhi)**, it was held that where importer had abandoned goods owing to increase/levy of anti-dumping duty and there was no allegation of misdeclaration/undervaluation, goods were allowed to be re-exported back to foreign exporter.

- In the case of **Albert & Company (P.) Ltd. v. Commissioner of Service Tax [2014] 44 taxmann.com 74 (Madras)**, it was held that Appellate Tribunal does not have power or authority to extend period of limitation prescribed by statute, for entertaining appeal before Commissioner (Appeals).
- In the case of **State of Gujarat v. Kay Kay Equipments [2014] 44 taxmann.com 81 (Gujarat)**, Assessee had undertaken a contract for preparing and installing metal crash barriers. It paid tax at rate of 2 per cent contending that it had undertaken works contract for supply and fixing of metal tri beam crash barriers, which were in nature of iron railing fitted on both sides of road for prevention of accidents. Commissioner rejected assessee's contention and levied tax at rate of 12 per cent. It was held that since rate of duty of 2 per cent was extendable to constructions like buildings, bridges or roads, assessee was liable to pay tax at rate of 2 per cent.
- In the case of **Volkswagen India (Pvt.) Ltd. v. Commissioner of C. Ex., Pune-I 2014 (34) S.T.R. 135 (Tri.-Mumbai)**, the appellant filed an appeal challenging the levy of service tax on reverse charge basis in respect of certain Global employees who were previously working with foreign/holding company. It was held that global employees working under the appellant are working as their employees and having employee-employer relationship. There is no supply of manpower service rendered to the appellant by the foreign/holding company. The method of disbursement of salary cannot determine the nature of transaction.
- In the case of **Kandrameshbabu Naidu v. Superintendent (AE) Service Tax, Mumbai-II [2014] 43 taxmann.com 448 (Bombay)**, assessee-director was arrested on 22-1-2014 under section 89(1)(d)(ii), read with sections 90 and 91 for non-payment of service tax of Rs. 2.44 crores by his company despite having collected same from customers. Assessee argued that (a) said offence had become cognizable vide Finance Act, 2013 only on 10-5-2013; (b) amended provisions could not be applied retrospectively for dues pertaining to prior period; and (c) dues for period on or after 10-5-2013 were only Rs. 5 lakhs i.e., not exceeding Rs. 50 lakhs, therefore, assessee was to be granted bail. On the other hand, Department argued that (a) in balance sheet dated 31-3-2013, liability to pay tax was admitted; (b) non-payment of outstanding dues was a continuing offence; therefore, amended provisions were applicable. It was held that it being a continuing offence, entire outstanding/arrears as on 10-5-2013 was to be taken into consideration while calculating limit of Rs. 50 lakhs under section 89(1)(d)(ii). Since, as on 10-5-2013, there was huge outstanding beyond Rs. 50 Lakhs and said amount continued to be outstanding even at time of arrest, assessee could not be granted bail, more so, when investigation was still ongoing and assessee's payment plan was not agreed to by department.



UPDATES ON CUSTOM DUTY

- **Notification No. 38/2014-CUSTOMS (N.T.) dated 01/05/2014**, 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 02nd May, 2014. Some of the important rates are mentioned here and remaining rates can be checked from the notification.

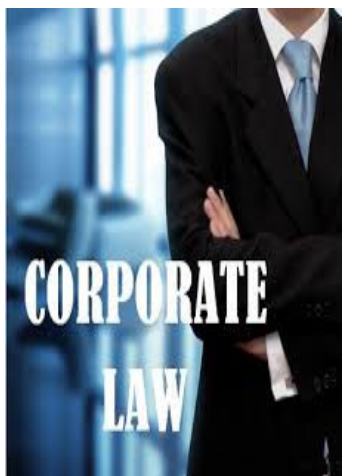
S.No.	Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to In-	
(1)	(2)	(3)	
		(a)	(b)
		(For Imported Goods)	(For Export Goods)
1.	Australian Dollar	56.75	55.35
2.	Canadian Dollar	55.70	54.40
3.	Danish Kroner	11.35	11.00
4.	EURO	84.30	82.30
5.	Hong Kong Dollar	7.85	7.70

- Vide **Notification No.20/2014-Customs (ADD) dated 12/05/2014**, the authority seeks to extend the levy of anti-dumping duty on “Cold Rolled Flat Products of Stainless Steel” falling under the heading 7219 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), originating in, or exported from, the People’s Republic of China, Korea RP, European Union, South Africa, Taiwan (Chinese Taipei), Thailand and United States of America (USA) for a further period of one year.
- Vide **Notification No. 19/2014-Customs (ADD) dated 09/05/2014**, the authority has initiated Mid-term review of anti-dumping duty imposed on imports of glass fibre and articles thereof originating in or exported from China PR.
- Vide **Notification No. 18/2014-Customs(ADD) dated 09/05/2014**, the authority seeks to extend the validity of anti-dumping duty on “All Fully Drawn or Fully Oriented Yarn/Spin Draw Yarn/Flat Yarn of Polyester (non-textured and non – POY)”, falling under Chapter 54 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), originating in, or exported from, the People’s Republic of China, Thailand and Vietnam for a further period of one year i.e. upto and inclusive of 25.03.2015.
- Vide **Notification No. 17/2014-Customs(ADD) dated 09/05/2014**, the authority seeks to extend the validity of anti-dumping duty on “Flax Fabric”, falling under Chapter 53 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), originating in, or exported from, the People’s Republic of China and Hong Kong for a further period of one year i.e. upto and inclusive of 25.03.2015.
- Vide **Notification No. 16/2014-Customs(ADD) dated 09/05/2014**, the authority seeks to extend the validity of anti-dumping duty on “Vitamin –E all forms excluding natural forms”, falling under Chapter 29 or 23 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), originating in, or exported from, the People’s Republic of China for a further period of one year i.e. upto and inclusive of 26.03.2015.

IMPORTANT UPDATES OF CORPORATE LAW



- Vide **A.P. (DIR SERIES 2013-14) CIRCULAR NO. 131 dated 19-5-2014**, it has been decided to notify a Limited Liability Partnership (LLP), registered under the Limited Liability Partnership Act, 2008 (6 of 2009), as an "Indian Party" under clause (k) of Regulation 2 of the Notification ibid. Accordingly, an LLP, may henceforth undertake financial commitment to / on behalf of a JV / WOS abroad in terms of the extant FEMA provisions under Regulation 6 (and regulation 7, if applicable).
- Vide **CIRCULAR DBOD.NO.BP.BC.111/21.04.157/2013-14 dated 12-5-2014**, it has been decided that if foreign branches/subsidiaries of Indian banks propose to offer structured financial and derivative products that are not specifically permitted by the Reserve Bank in the domestic market, they may do so only at the established financial centers outside India like New York, London, Singapore, Hong Kong, Frankfurt, Dubai, etc.
- **GENERAL CIRCULAR NO. 11/2014 [MCA21/72/2014-E-GOV.CELL] dated 12-5-2014**, Services for incorporation of companies were not available on the MCA21 portal to stakeholders from 1st April, 2014 to 28th April, 2014 because of the deployment requirements for new E-forms. Therefore, many stakeholders who had reserved names for the purpose of Company incorporation with 60 days prescribed validity expiring during the above mentioned period could not avail the facility. In view of this, the validity of reservation of all such names with due date of expiry between 1st April, 2014 to 28th April, 2014 is hereby extended upto 31st May, 2014. All applicants whose cases fall in the above mentioned category may be advised to file relevant E-forms for incorporating companies under the Companies Act, 2013 well before the extended validity period.
- Vide **CIRCULAR DBOD. DIR.BC.NO. 110 /13.03.00/2013-14 dated 7-5-2014**, It was held that the banks will not be permitted to charge foreclosure charges/ pre-payment penalties on all floating rate term loans sanctioned to individual borrowers.



IMPORTANT CASES

- In the **Scheme of amalgamation of Wadala Commodities Limited with Godrej Industries Limited (Bombay High Court), COMPANY SUMMONS FOR DIRECTION NO. 256 OF 2014, DATED : 8th May 2014**, Hon'ble High Court held that the concepts of electronic voting and postal ballots cannot replace requirement of holding a general meeting. The provision of the two facilities cannot override the requirement of a meeting. It was held that on a prima-facie view that the elimination of all shareholder participation at an actual meeting is anathema to some of the most vital of shareholders' rights. It was held that till final orders, no company should insist upon such a postal-ballot-only meeting to the exclusion of an actual meeting.

TAX COMPLIANCE IN MAY 2014

5 th May 2014:	Deposit service tax monthly for the month of April in case of assesseees other than individual, proprietary concern, partnership firms.
6 th May 2014:	Deposit service for the month of April by corporate assesseees making e-payment.
7 th May 2014:	Deliver a copy of form 15G/15H/27C to CCIT or CIT for declarations received in the month of April. Deposit TDS/TCS in challan no. ITNS 281 for deductions/collections made in the month of April.
9 th May 2014:	File DVAT/CST returns DVAT 16 / Form 1 in electronic form for the quarter ending March for all registered dealers. File annexures IA, IB, IC (if applicable), 2A, 2B, 2C, 2D & 2E (if applicable) electronically. Composition dealers u/s 16 DVAT Act file return in DVAT 17 in electronic form for quarter ending March. File annexures 2A & 2B electronically. Online filing of TDS (VAT) quarterly return by contractee in form DVAT 48 for the quarter ending March. Furnish hard copy of acknowledgement in Form DVAT 56/ Form DVAT 48 of 4th. Quarter return of 2013-14 filed online. Dealers filing returns through digital signature need not file hard copy of return/Form DVAT 56.
12 th May 2014:	Furnish advance information in Return Form BE-2 u/s 27 DVAT Act for Programmes/Functions organized in Banquet Halls, Farm Houses, Marriage/Party Halls, Hotels, Open Ground etc. where food &/or liquor items supplied/provided & cost of booking > ` 1 lakh per function by the owner/lessee/custodian of the venue for 2nd fortnight of May.
15 th May 2014:	Deposit TDS (VAT) in challan no. DVAT-20 for deductions made in the month of April. The dealer/contractees to present challan having unique ID printed from department's website. 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 March including office of the govt. E-TDS/TCS returns compulsory for all corporate assesseees and for persons whose A/c's audited u/s 44 AB of I.T. Act.
21 st May 2014:	Deposit VAT/CST for the month of April. by all dealers in DVAT 20/Central Sales Tax Challan.
22 nd May 2014:	Issue Certificate for TDS to the contractor, electronically in form DVAT-43 for deductions in the month of April, generated from departmental website with unique ID no.
27 th May 2014:	Furnish advance information in Return Form BE-2 u/s 27 DVAT Act for Programmes/Functions organized in Banquet Halls, Farm Houses, Marriage/Party Halls, Hotels, Open Ground etc. where food &/or liquor items supplied/provided & cost of booking > ` 1 lakh per function by the owner/lessee/custodian of the venue for 1st fortnight of June.
30 th May 2014:	Issue TDS/TCS certificates in Form No. 16A/27D for credits/payments made in the quarter ending Mar. All deductors including office of govt. compulsorily download form 16A from TIN website (TRACES) portal.
31 st May 2014:	Issue TDS certificates to employees in Form No. 16 for the salary paid & tax deducted in the F.Y. 2013-14. Compulsorily to download Part A of Form No.16 from TIN website (TRACES) portal. Part B annexure of Form No. 16 to be issued manually.

+Note:

Income Tax.	E-payment is compulsory for all corporate assesseees 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 registered dealers from portal of 22 designated banks. Notified Banks to accept cash or cheque for physical /offline payment. The dealer to present challan having unique ID printed from department's website.
Service Tax	E-payment is compulsory for all assesseees whose liability of Service Tax was more than Rs. 10 Lakhs during the proceeding financial year.

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