

INDIRECT TAXES UPDATE – 152

CUSTOMS

Prevention of use of non-genuine transferable duty credit scrips or DFIA (Duty Free Import Authorizations)

In order to maintain a balance between common prudence, trade facilitation and enforcement and to curb the use of non-genuine transferable duty credit scrips or duty free import authorizations by unscrupulous persons, CBEC vide [Circular No. 12/2016-CUS, dated March 28, 2016](#) has given the following instructions which govern usage of such scrips and authorizations:

Pre-registration Stage

- The issuing authority specifies a port/ Custom House where the freely transferable varieties of reward are to be registered on presentation of the scrip/ DFIA along with their annexure/condition sheet which involves ruling out the existence of any alerts that could cause delay in such use.
- Field formations are to verify the genuineness of the duty credit scrips/ DFIA from the issuing authority through fast and reliable means. This verification is not to be done by Custom Houses when scrip/DFIA is simultaneously received online through electronic transmission from DGFT.
- Where export of goods under specific shipping bills/ bills of export (not filed electronically) shown in annexure/ condition sheet then the backing shipping bills needs to be verified for genuineness. However, if the shipping bills were filed electronically but scrip was not received simultaneously then such verification will be restricted to not more than 5% randomly selected scrips with only online verification being carried out of EDI Shipping Bills.
- In certain situations pertaining to reward scrips the Custom Houses are not required to verify genuineness of the scrip and/or its backing shipping bills (if any). Such situations require only check of absence of alert before registration. Registration, in such cases, should be ensured within 3 hours of presentation of reward scrip. In other cases of registration of reward scrips, a norm of registration within one day, excluding time taken if any at end of the Issuing Authority, should be adopted by Custom Houses.
- Reward duty scrips for exports registered with DC, SEZ with physical release advice, prior verification of genuineness to continue until integration with Customs EDI is complete.
- Verifications of reward duty credit scrips leading to non-acceptance and/or undertaking

of detailed/complete checks before registration should be conducted by field formations only when there is alert or intelligence suggesting misuse or requirement of an investigation only after recording the reasons in writing for the specific individual cases.

- Checks prescribed in *Circular No. 10/2013-Cus* are to continue in respect of remission duty scrip against post export EPCG duty credit scheme
- For transferable DFIA, prior to registration, it is to be verified that the details of exports given along with the DFIA matches the record of exports and is genuine.

Clearance stage

- The scrip/authorization shall be presented before the proper officer at the time of clearance for debit. This is for preventing non-genuine usage for example, arising from difference between scrip/DFIA particulars *vis a vis* particulars shown on bill of entry, or from scrip of one scheme getting used for clearance under another scheme, etc. The absence of dematerialized system for recording issuance and transfer of scrips/DFIA also necessitates presentation of the scrip for ensuring that use is by a genuine transferee holder-importer.

[\[Circular No. 12/2016-CUS, dated March 28, 2016\]](#)

SERVICE TAX

Point of Taxation in case of change in the liability or extent of liability under Reverse Charge to be Date of Invoice

CBEC vide [Notification No. 21/2016-Service Tax, Dated: March 30, 2016](#) has inserted a proviso in Rule 7 of Point of Taxation Rules, 2011 to provide that where there is a change in provisions relating to the services taxed under reverse charge/ partial reverse charge (service taken out of reverse charge application or change in % payable by recipient under reverse charge) but the service has already been provided, invoice has been issued and the payment has not been received, then in such cases the *point of taxation would be the date of issuance of invoice*.

Comment: As Rule 7 applies on the basis of payment, a proviso is being inserted to make any 'change' (in person liable and extent of liability) to become applicable from the date of invoice and not the date of payment. By this amendment, the 'change' does not apply based on actual payment and the law prior to such change will continue to apply where the service is already performed and the invoice has also been issued. This amendment is laudable.

[\[Notification No. 21/2016-Service Tax, Dated: March 30, 2016\]](#)

VALUE ADDED TAX

DELHI VAT

VAT deduction at source in respect of works contract- advisory to Govt. deptt.

All the government departments have been advised to deduct tax at the source and deposit the same with the Trade & Taxes Department. This Circular has been issued considering the fact that some of the Government Departments are carrying out works contract activities by assigning various departmental contracts to the contractors without deducting any tax at source. Further, failure to deduct and remit would tantamount to non-compliance of the law attracting penal provisions.

It may be noted that presently tax is deducted at the rate of 4% in case of registered dealer and 6% in case the contractor is unregistered. The same is to be deposited within 15 days following the month in which such deduction is made.

[\[Circular No. F.3\(654\)/Policy/VAT/2016/1800-1802 dated 28th March, 2016\]](#)

Comments: This circular has been issued to advise the government departments for deducting tax at source in case of execution of works contracts assigned by them. This is because currently contracts are being assigned without deduction of tax at source in terms of the provisions of Section 36A of the DVAT Act, 2004.

Delhi 2016-17 Budget Highlights

Following are the proposals made in the Budget 2016-17:

- A Scheme called 'Bill Banwao Inaam Pao' has been proposed in the bill. Under this scheme, consumers effecting purchases can send the snapshot of retail bill / invoice to the Department through a mobile application for verification of sale / purchase transactions and compliance. Further, 1% of the entries will be shortlisted for granting awards and prize money thereby incentivizing the participation of consumers.
- A unique Reward scheme has also been proposed to acknowledge and encourage market associations and trade associations. Such associations will get 10% of the revenue generated over and above the target set for the year. Besides this, top 10 performing market association will get cash reward of Rs.5 lakh each. The award money will be utilized for overall improvement of the market and maintenance of public conveniences, beautification, repairs, etc.

Comments: The above schemes have been proposed to bring transparency in the market by cutting tax evasion practices on the part of dealers supplying the goods by awarding dealers / customers with incentives and by providing a self-assessment procedure for purchasers. A new scheme also has been introduced to reward market and trade associations who strive to surpass the targets set and simultaneously help in improvement and maintenance of public conveniences, beautification, etc.

MADHYA PRADESH VAT

Amendments proposed in Madhya Pradesh VAT Act, 2002

Following amendments have been proposed to the Madhya Pradesh VAT Act, 2002 by Madhya Pradesh Bill No. 5 of 2016:

Section 9 (Levy of Tax) - Revision in Scheduled -II

A new proviso has been inserted empowering the State Government for fixing the minimum amount of tax on the basis of weight, volume measurement or unit, in respect of goods specified in Part IIIA of Schedule II which are Diesel, petrol, natural gas, tendu leaves, timber, liquor, cigars, cigarettes, pan masala, telephone, etc.

Section 18 (Returns) - Rate of interest has been increased

The maximum rate of interest has been enhanced from 1.5% pm to 2% pm on the differential amount of tax between tax paid in returns & tax as per the accounts. Interest is to be paid from the date the tax so payable had become due to the date of its payment or to the date of order of assessment, whichever is earlier.

Section 26 (Deduction and payment of tax in certain cases)- VAT deduction at source

Tax at source is required to be deducted by department of Central / State Government, PSUs, Municipality & Municipal Corporations, Authority Constituted under any law for the time being in force or Public Limited Company on payment made to any dealer for supplying goods in pursuance to a contract between such dealer and the person making such purchases. Further, State Government by notification may exempt any person or class of persons from the above provision.

The rate of tax deducted at source has been increased from 2% to 3% for a works contract of value exceeding Rs. 3 lakhs involving sale of goods in respect of a contractor who has opted for payment of taxes under the composition scheme. However, the rate of tax deduction at 2% shall continue in case of a contractor opting to pay taxes under the regular scheme.

The following persons will mandatorily deduct tax while awarding a works contract-

- Authority constituted under a law relating to local authority including a Gram Panchayat, a Janapad Panchayat and a Zilla Panchayat (instead of Municipality and Municipal Corporation)

- All recognized Dental colleges and hospitals associated to such dental colleges,
- All recognized Medical colleges and hospitals associated to such Medical colleges,
- All recognized universities.

A new **Section 28A (Provisional attachment to protect revenue in certain cases)** has been inserted as specified below:

- If during the course of an inquiry where tax evasion is suspected, and the Commissioner is of view that it is necessary to protect the interest of the revenue then he may by an order in writing provisionally attach any money by specifying the amount. Such order may be revoked if the dealer furnishes a bank guarantee. Further, the dealer shall be personally liable to pay the amount so attached until the order has not been revoked or has not ceased to have effect.
- Provisional attachment shall cease after the expiry of 1 year from the date of service of the order. However, the Commissioner may extend the period after taking into consideration of the fact that the total period of extension shall not in any case exceed 2 years.
- Commissioner may confirm, modify or revoke the order after giving a reasonable opportunity of being heard to the dealer for the application made within 15 days of the date of service of the order or the order extending the period. An appeal against above order passed shall lie with the Appellate Board.

Section 34 (Power to set aside an ex parte order)

The decision regarding setting aside an ex-parte order shall be taken within 60 days from the date of filing an application made by the dealer to the assessing authority for setting aside the order and reopening the case.

[Madhya Pradesh Bill No. 5 of 2016]

HIMACHAL PRADESH VAT

Electronic Declaration of tax invoices/ bills/ cash memos for intra-State movement of goods - Amendment in Rule 61B of Himachal Pradesh Value Added Tax Rules, 2005

Himachal Pradesh Government vide *Notification No. EXN-F(10)-7/2011- Vol I dated 28th March, 2016* has made it mandatory for e-declaration in Form VAT-XXVI by dealers before dispatching taxable goods of value aggregating Rs. 30,000/- or more in the course of inter-state transactions. Further, this e-declaration shall also be furnished by a single registered dealer who dispatches goods in a single vehicle to multiple purchasers valuing more than Rs 30,000/- within the State of Himachal Pradesh.

The class of dealer or the goods on which this notification would be applicable will be notified by the State Government.

[Notification No. EXN-F(10)-7/2011- Vol I dated 28th March, 2016]

Comments: This Notification is issued in favor of small dealers who were required to file e-declaration even for dispatching goods of small amounts. This notification has also been issued to track movement of goods during their inter-State movement and intra-State movement in the case of multiple customers. Most States in India have such provisions in their Statutes relating to movement of goods.

NAGALAND VAT:

Compulsory filing of e-return w.e.f. 01.04.2016

Nagaland Government has provided for mandatory e-filing of VAT return through "Tax Soft" for all the registered dealers i.e. only e-returns will be accepted w.e.f. 01.04.2016.

[[Notification NO.CT/LEG/CR/128/2006 dated 29th March, 2016](#)]

Comments: This Notification has been issued to make the system online, efficient & more effective, thereby reducing paper work & cost of managing the same.

Source: www.cbec.gov.in / Respective State Commercial Taxes Website

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