Summary of Notifications, Circulars from 16th December2014 to 15th January 2015

EXCISE

1. **Inclusion of cases filed with Settlement Commission in the "Call-Book"**

CBEC vide Circular No. 992/16/2014-CX., Dated: December 26, 2014 has clarified that:

i) Cases admitted by the Settlement Commission may be transferred to the Call-book,
ii) Where there are multiple noticees, the case can be transferred only in respect of those noticees who have made application in the Settlement Commission, and whose case has been admitted by Settlement Commission,
iii) Cases shall be taken out of the Call-Book after Settlement Order has been issued or where the case has been reverted back for adjudication.

It may be noted that a "Call Book" contains the cases which have reached a stage when no action can or need be taken to expedite its disposal for at least 6 months with the approval of the Commissioner/ Commissioner (Judicial) / DG etc.

[Circular No. 992/16/2014-CX, Dated: December 26, 2014]

2. **Monetary limit for filing appeal in the Tribunal/Courts**

Instruction F.No.390/Misc./163/2010-JC dated 17.8.2011 dealt with reduction of Government litigation by providing monetary limits of Rs. 5 lakhs/ Rs 10 lakhs/ Rs 25 lakhs for filing appeals by the Department before CESTAT/High Courts and Supreme Court respectively.

CBEC vide *Instruction F. No. 390/Misc/163/2010-JC Dated: December 26, 2014* has clarified that monetary limits would also be applicable to cases of recurring nature and no appeal can be filed except for the cases where the constitutional validity of the provisions of an Act or Rule is under challenge or Notification/ Instruction/ Order or Circular has been held illegal or ultra vires.

Further it has been clarified that the term "case" needs to be interpreted in the context of National Litigation Policy which aims at reduction of litigation. In respect of a composite order which disposes of more than one appeal/SCN and the Department contemplates filing of appeal, every appeal would be a "case" and should be subjected to the threshold limit prescribed.

[Instruction F. No. 390/Misc/163/2010-JC Dated: December 26, 2014]

3. Clarifications regarding Mandatory pre-deposit of duty or penalty for filing appeal

Section 35FF of the Central Excise Act, 1944 and Section 129EE of the Customs Act, 1962 prescribe mandatory pre-deposit as a percentage of the duty demanded where duty demanded is in dispute or where duty demanded and penalty levied are in dispute.

In this regard, CBEC vide Circular No. 993/17/2014-CX., Dated: January 05, 2015 has provided the following:

i. In order to maintain uniformity in the database and to facilitate seamless verification of the deposits at the time of processing the refund claims, the Commissionerates are required to maintain a database of the record of deposits made. Following pro forma has been prescribed to maintain the separate database (e-register preferably) in respect of appeals before CESTAT and Commissioner (Appeals):

Sl. No.	**Name of the Appellant/ Party**	**Details of duty paying document viz Challan etc.**	**Amount of pre-deposit paid**	**Order No and date of the order of Commissioner(A)/ Tribunal**

ii. In order to facilitate processing of the refund claims quickly, the Tribunal Registry (where appeal memo is received)/ Commissioner (Appeals) must send a copy of the appeal memo to the Commissionerate concerned immediately after receipt in lines with Rule 17 of the CESTAT (procedure) Rules, 1982.

iii. The amended provisions regarding filing of appeal along with stipulated percentage of pre-deposit shall apply to all appeals filed on or after 6th August, 2014.

iv. Drawback, like rebate in Central Excise, is refund of duty suffered on the export goods. Mandatory pre-deposit would be payable in cases of demand of drawback as the new section 129E would apply to such cases.

v. Mandatory pre-deposit would be required to be paid in cases of drawback, rebate and baggage at the first stage appeal before Commissioner (Appeals). However, no pre-deposit would be payable in such cases where the appeal is filed before the Joint Secretary (Revision Application) because the ambit of the Section 129E of the Customs Act, 1962 does not extend to appeals under section 129DD in the legislation.

[Circular No. 993/17/2014-CX., Dated: January 05, 2015]

CUSTOMS

4. Bank Guarantee norms for Advance License/ EPCG Scheme revised

Circular No. 58/2004 - Cus, Dated: October 21, 2004 defines conditions for permitting the clearance of imported goods under Advance License/EPCG Schemes by taking a bank guarantee/ cash security. One condition for admissibility of the Nil or 15% or 25% BG is that the license holder should not have been penalized during the previous three financial years otherwise the exemption (Nil or 15% or 25%) from BG becomes inadmissible and 100% BG becomes applicable.

It has been noted that as per the above mentioned condition exemption from 100% BG becomes inadmissible even if there is absence of risk to revenue. In this regard, CBEC vide *Circular No. 15/2014-Cus., Dated: December 18, 2014* has clarified that in case the license holder has been penalized and the jurisdictional Commissioner of Customs is satisfied, for reasons recorded in the file, that 100% BG is not justified on account of absence of risk to revenue, the exemption of BG can be availed.

[Circular No. 15/2014-Cus, Dated: December 18, 2014]

5. Requirements for availing Deemed Export Benefits by EOU/EHTP/STP/BTP units

Circular No. 19/2007 - Cus, Dated: May 03, 2007 provides that, for self-bonding/warehousing of imported/indigenous goods, the unit shall, within one working day of arrival of goods, send original copy of ARE-3 to the Superintendent-in-charge of his unit, duplicate copy of ARE-3 to the consignor and retain triplicate copy of ARE-3 for his record. The Superintendent-in-charge shall countersign the original copy of ARE-3 received by him within one working day and send it to Superintendent-in-charge of the consignor.

It has been noted that the units under the said procedure are facing difficulty in obtaining deemed export benefits as the ARE-3 is not certified by the Central Excise authorities. In this regard, CBEC vide *Circular No. 16/2014-Cus., Dated: December 18, 2014* has clarified that the Superintendent – in- charge of the unit shall make two

legible photocopies of the original copy of ARE-3 (that bears his counter signature) and attest each of them as true copies with his dated signature. One attested copy shall be kept in the Range office for records and the other one shall be handed over (against dated acknowledgement) to the unit for use while applying deemed export benefits.

[Circular No. 16/2014-Cus, Dated: December 18, 2014]

6. **Review of Accredited Clients Programme (ACP)**

CBEC had launched Accredited Clients Programme vide Circular No. 42/2005 - Cus, Dated: November 24, 2005 with an objective to grant assured facilitation to importers who have demonstrated capacity and willingness to comply with the Customs laws.

Many ACP clients made a request for restoration of their ACP status which has either been withdrawn or not extended on account of cases of Customs, Central Excise or Service Tax, booked against them in the previous three financial years.

CBEC vide Circular No. 18/2014-Cus., Dated: December 22, 2014 has decided to restore the Accredited Clients Programme status of ACP clients which would take place in the following manner:

i. Restored after 3 months if the entity pays the duty demanded with interest and 25% penalty within 30 days of the Show Cause Notice or if the entity's application is allowed to be proceeded with by the Settlement Commission.

ii. Restored after 6 months if the entity pays the duty demanded with interest.

The above are subject to the following conditions:

Time period within which the case is booked against ACP client	**Period of Exclusion**
3 months or 6 months period	1 year
1 year period	3 Years

The ACP status would not ordinarily be denied to an entity if the Customs/Central Excise duty involved is up to Rs. 50 lakhs and Service Tax involved is Rs. 25 lakhs.

The board has also desired that in order to encourage participation in ACP, the Risk Management Division (RMD) shall suo moto identify importers eligible for the ACP and approach them to enroll in the programme on 6-monthly basis.

[Circular No. 18/2014-Cus, Dated: December 22, 2014]

VAT

Dadra and Nagar Haveli- VAT

7. Mandatory submission of the hard copy of refund application DVAT-21

CircularNo.ADM/AC(VAT)/COMPT/2009/2128 Dated 29th December, 2014 provides that all the registered dealers are required to submit system generated DVAT 21 (Refund application Form), along with all mandatory documents specified in Annexure 1 within 15 working days, after online submission of DVAT 21 to the concerned record keepers of VAT Department.

[Circular No.ADM/AC(VAT)/COMPT/2009/2128 Dated 29th December]

Punjab- VAT

8. Mandatory E-filing of monthly return in form VAT -16

It has been made mandatory for the dealers to file online monthly returns in Form VAT-16 for the Month of January, 2015 to be filed in February, 2015 andonwards.

[Public Notice]

Kerala –VAT

9. Submission of E- generated Form 16 in case of transport of goods from outside the state for own use.

Circular No. 03/2015 No.C2-40031/14/CT Dated 14th January, 2015 provides that Form No. 16 along with the Form No. 8F declarations will have to be e-generated by the person bringing goods from outside the State for own use when the value of single consignment exceeds Rs 20,000. From 1stFebruary, 2015 the check post and the authorities shall accept only electronically generated Form No. 16 through this procedure.

[Circular No. 03/2015 No.C2-40031/14/CT Dated 14th January, 2015]

Madhya Pradesh-VAT

10. Amendment in Madhya Pradesh VAT Act

Following amendments have been made in Madhya Pradesh VAT Actvide *Notification No. 5345-237 Dated 16th September, 2014*

- Proviso to Section 4A (3) has been amended to provide that when an appeal is not disposed of within the period of 365 days from the date of the order, the Appellate Board shall extend the stay for a maximum period of six calendar months at a time, on payment by the dealer of an amount equal to 5 % of the total balance due from the dealer after the order passed in first appeal. This payment of 5 % is applicable for every extension of period of stay by six calendar months or part thereof.

  It may be noted that earlier proviso to Section 4A (3) provided that when an appeal is not disposed of within the period of 365 days from the date of the order, the Appellate Board may extend the period of stay till the decision of appeal.

- Section 14(3) has been amended to provide that the balance of input tax rebate may be carried over for adjustment in the subsequent year and if not carried over, shall be granted by way of refund after assessment of the relevant financial year.

  It may be noted earlier Section 14(3) provided that the balance of input tax rebate shall be carried over for adjustment in the subsequent year and if the input tax rebate is not adjusted after 2 years from the close of relevant financial year, it shall be granted by way of refund.

- New clause (x) has been inserted in Section 14(6) to provide that no input tax rebate shall be allowed to a registered dealer in respect of goods, the bill, invoice or cash memorandum which does not indicate registration certificate number of the purchasing registered dealer.

- The penalty amount applicable under clause (d) of section 18 (4) has now been changed to a sum of rupees fifty per day for first thirty days of default and thereafter a sum of rupees one thousand per day, subject to a maximum of rupees fifty thousand.

- A new sub-section (2) in Section 20has been inserted to provide that notwithstanding anything to the contrary contained in this section or any other provision of this Act, during the course of any proceedings under this Act, if the Commissioner is satisfied that the tax has been evaded or sought to

be evaded or the tax liability has not been disclosed correctly or excess input tax rebate has been claimed by any dealer in respect of any period or periods by not recording or recording in incorrect manner, any transaction of sale or purchase, or that any claim has been incorrectly made, the Commissioner may, after giving such dealer a notice and a reasonable opportunity of being heard, assess the dealer to tax in respect of such transaction or claim. The assessment under this sub-section shall be in addition to the regular assessment in respect of the relevant year and the tax assessed under this section shall not be included in any regular assessment of the relevant year

[*Notification No. 5345-237 Dated 16th September, 2014*]