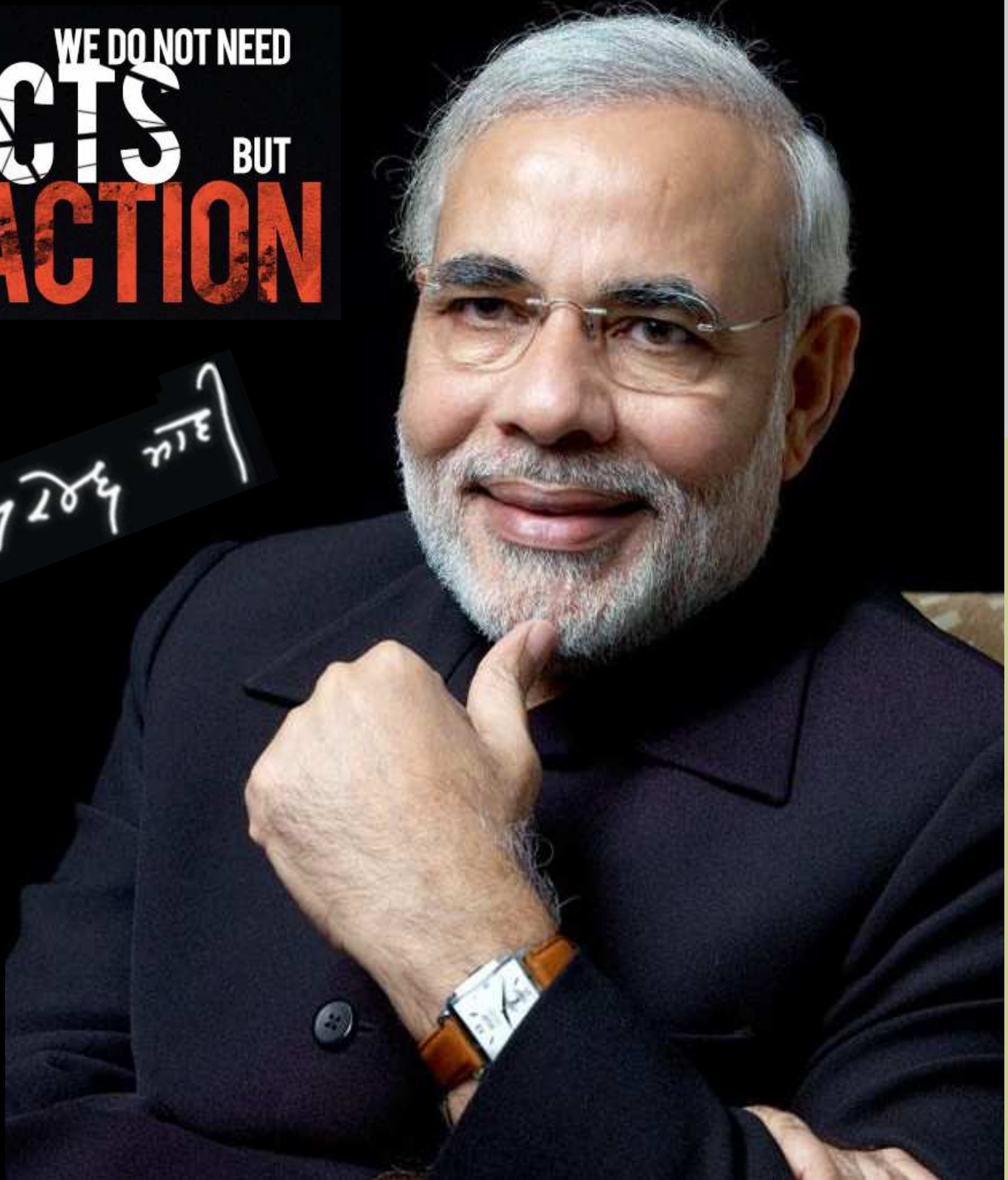


CONNECTION

LALIT BAJAJ & ASSOCIATES

WE DO NOT NEED
ACTS BUT
ACTION

०१२०१५ २३९



Communiqué

Just to Remind You

- Sept 15 - Payment of Advance Tax (Companies 45% & Others 30%)
- Sept 21 - Submission of MVAT Return for August
- Sept 30 - Filing of I.T. Returns by Individuals, HUFs, Firms, AOP, BOI, Companies, Trusts, Political Party, Etc. (Audit Applicable)
- Sept 30 - Filing of MAT Audit Report

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Hello to all my colleagues in profession and partners, It's a great opportunity to talk to each one of you through this document on latest updates and some analysis.

With the Government under the heroic Leadership of Shri Narendra Modi, Prime Minister of India, thriving to achieve many milestones in making India Super power in all respects, a lot is expected from us professionals. We have in the past and we are in future committed to provide and take initiative in designing & implementing the financial and economic goals of government.

Companies Act has become a matter of discussion on all the forums. The new enactment needs a sincere thought by the ministry based on the representations given by our apex body.

A lot of reliance is placed on us chartered accountants and we are made to report on probably all the provisions or enactments brought in to curb loopholes available in tax laws whether it is Direct or Indirect Tax Laws. It proves that for implementation of economic and taxation policies, we are the only body to do that. But at the same time, the feel of compulsion given by strict penal provisions and liabilities on us brings into picture some different thought process. With the new government at helm and a proactive approach with partners in nation building, I am sure things will be placed in line.

New dimension in partnering with Japan will surely bring sentimental and material changes must in International scenario. Not only this, the money supposed to come in to support infrastructure and various sectors, will give a larger economic boost to our economy. The idea is, are we professionals ready to cater to needs of society, governance, investors, etc in the changing economic scenario.

Connection is an initiative to share some information felt relevant. I believe it is in right direction and will be glad to get some suggestions or information to make it more appropriate.

I on behalf of all our readers and my team convey our Heartfelt Birthday wishes to our beloved Prime Minister, Shri Narendra Modi for his birth day 17th September, 1950.

Few words of Shri Narendra modi, 'I did not get an opportunity to die for the country, but I have got an opportunity to live for the country', with this spirit we all can play a role in nation building.

I wish you all Happy Ganesh Festival and an early Happy Navratri.

It is a great feeling sharing my views and am always available for the cause of the profession.

*Do not limit your challenges,
But always challenge your limits.
Born with personality is an accident,
But living as a personality is an Achievement.*

Best Wishes

CA. Lalit Bajaj

Selection of Cases for Scrutiny during FY 2014-15

Instruction No. 6/2014 Dated-2nd of September, 2014

In supersession of earlier Instructions on the above subject, the CBDT hereby lays down the following procedure and criteria for manual selection of returns/cases for scrutiny during the Financial-year 2014-2015:-

- Cases involving addition in an earlier assessment year in excess of Rs. 10 lakhs on a substantial and recurring question of law or fact which is confirmed in appeal or is pending before an appellate authority.
- Cases involving addition in an earlier assessment year on the issue of transfer pricing in excess of Rs. 10 crore or more on a substantial and recurring question of law or fact which is confirmed in appeal or is pending before an appellate authority.
- All assessments pertaining to Survey under section 133A of the Act excluding the cases where there are no impounded books of accounts/documents and returned income excluding any disclosure made during the Survey is not less than returned income of preceding assessment year. However, where assessee retracts the disclosure made during the Survey will not be covered by this exclusion.
- Assessments in search and seizure cases to be made under section 158B, 158BC, 158BD, 153A & 153C read with section 143(3) of the Act and also for the returns filed for the assessment year relevant to the previous year in which authorization for search and seizure was executed u/s 132 or 132A of the Act.
- Returns filed in response to notice under section 148 of the Act.
- Cases where registration u/s 12AA of the IT Act has not been granted or has been cancelled by the CIT/DIT concerned, yet the assessee has been found to be claiming tax-exemption under section 11 of the Act. However, where such order's of the CIT/DIT have been reversed/set-aside in appellate proceedings, those cases will not be selected under this clause.
- Cases where order denying the approval u/s 10 (23C) of the Act or withdrawing the approval already granted has been passed by the Competent Authority, yet the assessee has been found claiming tax-exemption under the aforesaid provision of the Act.
- Cases in respect of which specific and verifiable information pointing out tax evasion is given by Government Departments/Authorities. The Assessing Officer shall record reasons and take prior approval' from jurisdictional Pr. CCIT/CCIT / Pr. DGIT/DGIT concerned before selecting such a case for scrutiny.

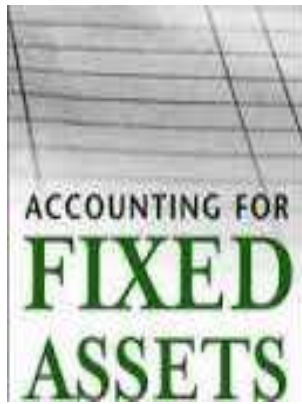
cases shall be separately intimated in due course by the DGIT(Systems) to the jurisdictional authorities concerned.

It is reiterated that the targets for completion of scrutiny assessments and strategy of framing quality assessments as contained in Central Action Plan document for Financial-Year 2014-2015 has to be complied with and it must be ensured that all scrutiny assessment orders including the cases selected under the manual criterion are completed through the AST system software only. Further, in order to ensure the quality of assessments being framed, Pr. CCsIT/CCsIT/Pr. DsGIT/DsGIT should evolve a suitable monitoring mechanism and by 30th April, 2015, such authorities shall send a report to the respective Zonal Member with a copy to Member (IT) containing details of at **least 50 quality assessment orders from their respective charges**. In this regard, IT Authorities concerned must ensure that cases selected for publication in 'Let us Share' are picked up only from the quality assessments as reported.



Computer Aided Scrutiny Selection (CASS): Cases are also being selected under CASS on the basis of broad based selection filters. List of such

Clarification on AS 10 - Capitalization of Cost



Government has received a number of representations seeking clarification on capitalization of costs in cases of Competitive Bid Power Projects. The clarifications sought were with regard to capitalization of Borrowing Costs incurred during extended delay in commercial production for reasons beyond the developer's control, and whether capitalization of power plant should be unit-wise or project-wise. The matter has been examined in consultation with the Accounting Standards Board (ASB) of The Institute of Chartered Accountants of India (ICAI).

Accounting Standard AS-10 and AS-16 prescribe the principles of capitalization of various costs based on the underlying concept that only such expenditure should be capitalized as form a part of the cost of fixed assets which increase the worth of the assets. Cost incurred during the extended delay in commencement of commercial production after the plant is otherwise ready does not increase the worth of fixed assets. Such costs cannot, therefore, be capitalized.

Accounting Standard AS-16, inter alia provides guidance with regard to part capitalization where some units of a project are complete. In case one of the units of the project

is ready for commercial production and is capable of being used while construction continues for other units, costs should be capitalized in relation to that part once the part is ready for commercial production.

It is further clarified that AS 10 and AS 16 are applicable irrespective of whether the power projects are 'Cost Plus projects' or 'Competitive Bid projects'.

MCA abolishes concept of Useful Life of Asset

In exercise of the powers conferred by sub-section (1) of section 467 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following amendments further to amend Schedule II of the said Act with effect from the date of publication of this notification in the Official Gazette, namely:—

1. In Schedule II of the Companies Act, 2013,
 - in Part 'A', in paragraph 3, for sub-paragraph (i), the following sub-paragraph shall be substituted, namely:—

"(i) The useful life of an asset shall not ordinarily be different from the useful life specified in Part C and the residual value of an asset shall not be more than five per cent of the original cost of the asset:

Provided that where a company adopts a useful life different from what is specified in Part C or uses a residual value different from the limit specified above, the financial statements shall disclose such difference and provide justification in this behalf duly supported by technical advice";

- after Part 'C' under the heading Notes,—

(i) for paragraph 4 the following paragraph shall be substituted namely:—

"4(a) Useful life specified in Part C of the Schedule is for whole of the asset and where cost of a part of the asset is significant to total cost of the asset and useful life of that part is different from the useful life of the remaining asset, useful life of that

significant part shall be determined separately.

(b) The requirement under sub-paragraph (a) shall be voluntary in respect of the financial year commencing on or after the 1st April, 2014 and mandatory for financial statements in respect of financial years commencing on or after the 1st April, 2015."

(c) in paragraph 7, in sub-paragraph (b) for the words "shall be recognized", the words "may be recognized" shall be substituted.



**Ministry of
Corporate Affairs**

Get status of Dormant Company under Companies Act, 2013

According to Section 455 of the Companies Act 2013, where a company is formed and registered under this Act **for a future projector to hold an asset or intellectual property and "has no significant accounting transaction"**, such a company or **An Inactive Company** may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.

Let's Discuss some important **TERMS:**

INACTIVE COMPANY: "Inactive Company" means a company which,

- has not been Carrying on Any Business or operation, or
- has not made any Significant Accounting Transaction **During The Last Two Financial Years,**
- has not filed Financial Statements and Annual Returns during the **LAST TWO FINANCIAL YEARS.**

SIGNIFICANT ACCOUNTING TRANSACTION: "Significant Accounting Transaction" means any transaction **other than-**

- Payment of Fees by a company to the Registrar;
- Payments made by it to fulfill the requirements of this Act or any other law;
- Allotment of shares to fulfill the requirements of this Act; and
- Payments for maintenance of its office and records.

Above Mention Transactions

are **excluded from** Significant Accounting Transactions. If a company has made above mention transactions in last two year then also that company will fall under definition of Inactive Company.

FINANCIAL STATEMENT: The term "FINANCIAL STATEMENT" as per section 2(40) mean;

- Balance-Sheet at the end of Financial year;
- Profit & Loss Account or Income or Expenditure account, as may be applicable;
- Cash Flow for the Financial year; and
- Explanatory note attached to any document in sub-clause (i) or (ii) above;

As per Sub- Section 4 Section-455: Where a company Not Filed or Fails to File Financial Statements or Annual Return for TWO (2) Financial Year consecutively, The Registrar of Company (ROC) shall issue a notice to that company and enter the name of such company in register maintain for Dormant Company.

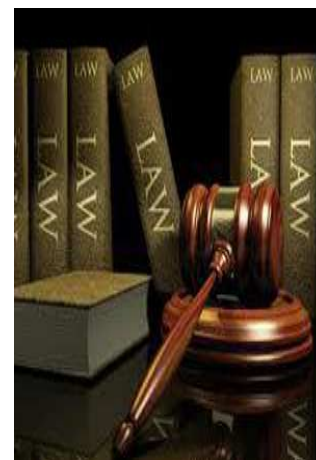
Before applying for Status of Dormant Company following Conditions required to be fulfilled:

- No inspection, inquiry or investigation has been ordered or taken up or carried out against the company;
- The company is neither having any public deposits which are outstanding nor is the company in default in payment thereof or interest

thereon;

- No prosecution has been initiated or pending against the company under any law;
- The company has not defaulted in the payment of workmen's dues;
- The company does not have any outstanding statutory taxes, dues, duties etc. payable to the Central Government or any State Government or local authorities etc.;
- The application has not been made with an objective to deceive the creditors or to defraud any other person;
- The securities of the company are not listed on any stock exchange within or outside India;
- The company is not having any outstanding loan, whether Secured and Unsecured- But if company has any **Outstanding Unsecured Loan** then the company may apply for status of DORMANT **only after obtaining NOC from the lender.** Such NOC required to be attached in the Form which require to file with ROC.
- There is No Dispute in the Management or Ownership of The Company; A certificate in this regard required to be taken from Management. Such Certificate required to be attached in the Form which require to file with ROC.

"Dormant Company can prove useful when it wishes to stop trading for a specific period of time"



OTHER PROVISIONS:

- A dormant company shall have such Minimum Number of Directors. (A dormant company shall have a minimum number of three directors in case



of a public company, two directors in case of a private company and one director in case of a One Person Company)

- File such documents and pay such annual fee as may be prescribed to the Registrar to retain its dormant status.
- A Dormant Company need not enclose cash flow statements in its annual accounts.
- A Dormant Company is required to convene at

least one meeting of the Board of Directors has been conducted in each half of a calendar year and the gap between the two meetings is not less than ninety days. Section 173 (5)

- A Dormant Company formation can prove useful when an company wishes to stop trading for a specific period of time.



*Hard work never brings fatigue.
It brings satisfaction*



Extension of Due Date for filing Tax Audit Report



In exercise of power conferred by section 119 of the Income-tax Act ('the Act'), the Central Board of Direct Taxes (CBDT) hereby extends the due date for obtaining and furnishing of the report of audit under section 44AB of the Act for Assessment Year 2014-15 in case of assesseees who are not required to furnish report

under section 92E of the Act from 30th day of September, 2014 to 30th November, 2014.

It is further clarified that the tax audit report under section 44AB of the Act filed during the period from 1st April, 2014 to 24th July, 2014 in the pre-revised Forms shall be treated as valid tax audit re-

port furnished under section 44AB of the Act.

Mysteriously the order is silent about the extension of due date for filing returns. As we are all aware audit report needs to be furnished first before filing income tax returns for audit assesseees.

No Restriction on Number of Partners for Firm of CA, CS, CMA



The Council of the Institute has clarified that the earlier restriction of maximum of 20 partners permitted for firms under section 11 of the Companies act, 1956 is no more applicable to the firms as Section 464 of the Companies Act, 2013 has been notified w.e.f 01.04.2014 wherein sub-section (1) provides for a

maximum number of partners permissible for business firms at 100 and sub-section (2) provides that nothing in sub section (1) shall apply to an association or partnership, if it is formed by professionals who are governed by special Acts.

Accordingly, as per proviso to

the said section, Chartered Accountants firms are now allowed to be registered/reconstituted with more than 20 partners w.e.f 01.04.2014 under the Indian Partnership Act as in the case of a firm under the Limited Liability Partnership Act.

EPF Limit Increased w.e.f. 01.09.2014

Vide notification dated 22.08.2014 Ministry of Labour and Employment has increased Employee Provident Fund (EPF) Limit to Rs. 15000 from existing Rs. 6500 w.e.f. 01.09.2014.

G.S.R. 608 (E).—In exercise of the powers conferred by section 5 read with Sub-section (1) of Section 7 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), the Central Government hereby makes the following Scheme, further to amend the Employee

es' Provident Funds Scheme, 1952, namely:-

(1) This Scheme may be called the Employees' Provident Funds (Amendment) Scheme, 2014.

(2) It shall come into force on and from the 1st day of September, 2014.

In the Employees' Provident Funds Scheme, 1952,-

- in paragraph 2, in clause (1), in sub-clause (ii), for the words "six thousand and five hundred rupees", the words "fifteen

thousand rupees" shall be substituted;

- in paragraph 26, in sub-paragraph (6), for the words "six thousand and five hundred rupees" the words "fifteen thousand rupees" shall be substituted;
- in paragraph 26A, in sub-paragraph (2), in the proviso, for the words "six thousand and five hundred rupees", wherever they occur, the words "fifteen thousand rupees" shall be substituted.



CENVAT Credit can not be denied if Service Tax wrongly paid

Bajaj Allianz General Insurance Co. Ltd. Vs. Commissioner of Central Excise, Pune-III [2014-TIOL-1540-CESTAT-MUM]

Bajaj Allianz General Insurance Co. Ltd. (**"the Appellant"**) is engaged in the business of providing General insurance service (**"insurance service"**) throughout India. The head office of the Appellant is located at Pune and is centrally registered with the Service Tax Department for discharge of Service tax liability on insurance service. To promote their business, the Appellant had appointed independent insurance auxiliary agents (**"insurance agents"**) providing services to the Appellant taxable under the category of 'Insurance auxiliary services' under Section 65(105)(zi) of the Finance Act, 1994. Since, in terms of Rule 2(1)(d)(iii) of the Service Tax Rules, 1994, the service receiver was liable to pay Service tax on Insurance auxiliary services, the Appellant was duly discharging its Service tax liability as a receiver of service from the insurance agents.

Amongst other places, the Appellant also appointed insurance agents in Jammu & Kashmir (**"J&K"**) for procuring the policies for the clients/assets located in J&K. Though the said services provided by the insurance agents in J&K were not taxable, the Appellant wrongly discharged the Service tax as a recipient of service and thereafter taken Cenvat credit of the same as input service. During the course of audit, the Department took objection that the Appellant have wrongly availed the Cenvat credit on Service tax paid on Insurance auxiliary services rendered in J&K on the ground that the services are exclusively used in the State of J&K on which no Service tax is liable to be discharged and the Service tax, if at all, paid by the Appellant is not available as Cenvat credit to the Appellant.

Accordingly, the Cenvat credit availed by the Appellant was denied and recovery proceedings were initiated. Being aggrieved, the Appellant preferred an appeal with the Hon'ble CESTAT, Mumbai and

submitted that since the services rendered by the insurance agents in J&K were not taxable, Service tax deposited on the same was refundable to the Appellant and accordingly, they have taken credit of the same. The Appellant also relied on the judgment of Hon'ble Apex Court in the case of **CIT Vs. Mahalakshmi Textile Mills Ltd. [1967 (66) ITR 710 (SC)]** (**"Mahalakshmi Textile"**) and **Nitco Tiles Ltd. Vs. CCE Mumbai [2007 (220) ELT 827 (Tri. Mum)]** (**"Nitco Tiles"**).

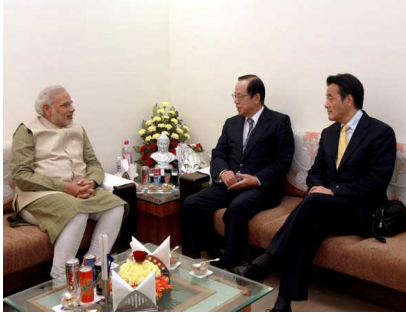
The Hon'ble CESTAT, Mumbai determined the place of provision of the service rendered by the insurance agents located in J&K and held that the Insurance auxiliary services provided by the insurance agents in the State of J&K were not taxable and therefore, the Appellant was not liable to pay Service tax. Further, the Hon'ble Tribunal held that the Cenvat credit taken by the Appellant is nothing but refund of the Service tax paid by them on the services on which they were not required to pay Service tax and the same cannot be denied.

"Cenvat of service tax wrongly paid under reverse charge is nothing but refund of erroneously paid service tax"



Prime Minister Narendra Modi's visit to Japan

Prime Minister Narendra Modi's visit to Japan has provided a clear template to develop future relations between Tokyo and New Delhi.



As Modi and his Japanese counterpart Shinzo Abe agreed during their talks, this relationship has strategic importance for both countries as they seek common goals towards a brighter future.

Three things stood out on Modi's recent five-day tour. The first is economic engagement, second is defence cooperation and the third is technology transfer.

Japan has clearly sent a signal that it considers India a good place to put money and build businesses. Japan will invest \$35 billion over the next five years in India. This is a massive commitment as Japan has only committed about \$10 billion over five years in external investment to any country. The main focus of Japan's investment will be on developing India's creaky infrastructure.

Gujarat and Rajasthan are set to benefit most as 70 per cent of the infrastructure will be developed in these two states. But the project will boost India's manufacturing sector as it will open up many possibilities along the route.

India, however, has not directly addressed Japanese concerns on \$3 billion of retrospective taxes imposed on Japanese firms, including \$2 billion on Mitsubishi. The Indian side faced several inquiries on the issue during Modi's visit and it is

understood that the Japanese want India to ensure that these retrospective taxes are urgently reevaluated.

Modi's visit creates new opportunities for expanding bilateral trade, which is just \$9 billion at present. This is small compared with Indo-Chinese trade worth about \$51 billion. However, a large part of India's Chinese trade is with Japanese-owned firms and this could slowly change as Japanese investment grows in India.

A rise in Japanese investment could also mean more balance in trade. The Indian trade deficit with Japan amounted to \$6 billion in 2013.

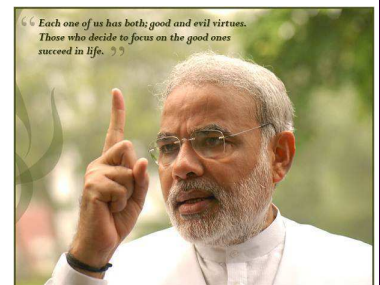
The brief highlights from Prime Minister Narendra Modi's visit are as follows:

- Japan has promised to give \$35 billion to India through public and private funding over the next 5 years for developmental projects, including building of smart cities and cleanup of river Ganges.
- Both sides have signed five pacts covering defence exchanges, cooperation in clean energy, roads and highways, healthcare and women while vowing to take their relationship from strategic partnership to a special strategic partnership.
- Japan has lifted the ban on six Indian entities including Hindustan Aeronautics Limited (HAL) which was imposed in the aftermath of 1998 nuclear tests.
- The two sides agreed to enhance their defence

and strategic cooperation to a new level and also decided to speed up negotiations on a civil nuclear deal that could not be concluded now.

- In Kyoto, a pact was signed under which Modi's Lok Sabha constituency Varanasi will be developed on the pattern of Kyoto 'smart city' with the help of Japan.
- Tokyo will help India in providing financial, technical and operational support to introduce Bullet trains, a project that Modi has been actively pursuing.
- Prime Minister Modi has asked NRIs to visit India at least once a year to boost tourism.
- Both sides have signed a MoU for cooperation in heritage conservation, city modernisation and cooperation in the fields of art, culture and academics.
- Both countries have decided to build a strong, deep and strategic relationship under the India-Japan Cooperation framework.
- India has decided to set up a Special Management Team directly under the PMO to facilitate proposals from Japan.

“Japan has promised to give \$35 billion to India through public and private funding over the next 5 years for developmental projects”



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Changes in Negative List & Service Tax Rules w.e.f. 01.10.2014

Notification No. 18/2014
& 19/2014-Service
Tax dated 25th August' 2014

SERVICES PROVIDED BY RADIO TAXIS:

Earlier, radio taxis were excluded from the purview of service tax by virtue of section 66D(o)(vi) of Finance Act, 1994;

However, in the Finance (No.2) Act, 2014, enacted on 6th August, 2014, the said section was amended & the "radio taxis" got deleted, resulting in levy of service tax thereupon. However, effective date wasn't notified. Now, the same has been notified as 1st October, 2014;

At the same time, abatement of 40% shall be allowed in such cases, as provided in entry no. 9/9A of N/N 26/2012-ST, amended by N/N 08/2014- ST, subject to the condition that no CENVAT is claimed.

Hence, effective rate of service tax shall be 4.944%.

SERVICES BY WAY OF ADVERTISEMENT:

As per the erstwhile provisions contained in section 66D(g) of Finance Act, 1994, sale of space for advertisement, other than radio & television, used to remain excluded from the levy of service tax.

In the Finance (no. 2) Act, 2014, all advertisements, other than in print media, were made subject to service tax, though effective date of applicability of amended provisions, was not defined.

Now, the same has been notified as 1st October, 2014.

DETERMINATION OF RATE OF EXCHANGE:

From 28-May-2012, section 67A was inserted to determine the rate of exchange to be opted for the purpose of determination of value of the taxable service & such rate was construed to be the rates notified by CBEC from time to time, in accordance with section 14 of Customs Act, 1962.

This had led to various practical difficulties in the industry, since they had to separately maintain a track record as per CBEC rates for the purpose of valuing import or export of service, while in financial statements the rates were taken on a different basis (e.g. RBI rates, Bank TT buying/selling rate, etc.)

Now, w.e.f. 1st October, 2014, rule 10 has been inserted in Service Tax Rules, 1994 to consider the rate of exchange as per GAAP on the date when Point of taxation arises in terms of the Point of Taxation Rules, 2011.



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