



# ASC Times

All India Taxes Weekly Reference

Vol: Dec 12–Dec 18, 2016

Solving  
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puzzle

Tax saving advice  
across all the taxes



## TAXCALENDER

Due Date	Description	Law
12 Dec	Deposit of Tax	Gujarat VAT
13 Dec	Return Filing	Nagaland VAT
14 Dec	Deposit of Tax	Rajasthan VAT
15 Dec	Deposit of Tax	Bihar VAT, Jharkhand VAT, Sikkim VAT.
	Deposit of TDS	Delhi VAT, Haryana VAT, Himachal Pradesh VAT, Jharkhand VAT, Punjab & Chandigarh VAT
	Issue of TDS Certificate	Andhra Pradesh VAT, Bihar VAT, Himachal Pradesh VAT, Jharkhand VAT, Nagaland VAT, Punjab & Chandigarh VAT, Telangana VAT
	Return Filing	Karnataka VAT, Madhya Pradesh VAT
	Advance Income Tax	Income Tax Law
	Deposit of TDS	Delhi VAT
	Return Filing	Tamil Nadu VAT

## COUNTRY WIDE HOLIDAYS FOR THE WEEK

Date	Occasion/Festival	Region
12Dec 2016	Id-E-Milad	Andhra Pradesh, Jammu & Kashmir, Jharkhand, Karnataka, Kerala, Maharashtra, Tamil Nadu
13 Dec 2016	Id-E-Milad	Chhattisgarh, Dadar & Nagar Haveli, Daman & Diu, Delhi, Gujarat, Madhya Pradesh, Manipur, Uttar Pradesh

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## From the CEO's Desk



Dear Reader,

With indicators revealing a difficult end to Prime Minister Narendra Modi's unprecedented cash clampdown, he's turning to time-tested methods to cushion India's economy. Lawmakers last week cleared about Rs 600 billion (\$9 billion) in additional spending for the year through March, which includes a 10 per cent increase in a rural jobs program Modi once mocked. Recent growth has been slower than estimated and data are expected to show that inflation slumped below the central bank's target as government's move dents demand. Public spending is needed because the cash ban will hit private investment. The employment guarantee program to some extent will help ease the rural crisis that the country is heading toward.

Government committee lists digital measures to cut cash usage. You could be charged for cash usage if the government accepts the recommendation of a panel set up to suggest ways to encourage digital payments but then you will also be able to pay equally easily using your mobile and Aadhar-based systems. A committee, headed by former finance secretary Ratan Watal, has suggested a 30-90 days' timeline for implementing a number of measures that it hopes can cut in half India's cash usage from 12% of GDP in three years.

The committee has pitched for greater use of Aadhar and mobile numbers for making digital payments as easy as cash. "Mobile number and Aadhaar-based fully inter-operable payments should be prioritized," the committee has suggested while calling for inter-operable payments between bank and non-banks as well as within non-banks. To give the entire digital payments effort a focused boost, in its most significant recommendation it has proposed to make regulation of payments independent from the function of central banking.

The Board for Regulation and Supervision of Payment and Settlement Systems (BPSS) can be given an independent statutory status within the overall structure of the RBI and called Payments Regulatory Board, the committee has suggested. The BPSS currently functions as a sub-committee of the Central Board of RBI.

The committee has called for amendments to the Payments and Settlement Systems Act, 2007 to provide for this board apart from giving an explicit mandate for competition and innovation, open access and interoperability, consumer protection, regulations on systemic risks and data protection. It has suggested encouragement to digital payments within the government, a suggestion that has already rolled out with government prescribing thresholds and waiving charges. A 'DIPAYAN' fund is proposed from savings generated from cashless transactions to expand digital payments along with a ranking of states, government departments, districts and panchayats to encourage digital payments.

Operations of payment systems like Real Time Gross Settlement (RTGS) and National Electronic Fund Transfer (NEFT) could be outsourced after a cost benefit analysis. These payment systems should be upgraded to 24x7 in due course of time, the committee has suggested.

Alok Kumar Agarwal

CEO

ASC Group.

# CENTRAL TAXES

## SERVICE TAX

### NOTIFICATION / CIRCULAR

**The Govt. vides Notification No.52/2016 dated 08<sup>th</sup> Dec 2016;** amend exemption notification No. 25/2012-ST dated 20<sup>th</sup> June 2012 so as to exempt services by an acquiring bank, to any person in relation to settlement of an amount up to two thousand rupees in a single transaction transacted through credit card, debit card, charge card or other payment card service.

**OUR TAKE:** Readers are requested to read the said notification. It is self-explanatory.

**The Govt. vides Instruction File No.137.155.2012 /2016 dated 09<sup>th</sup> Dec 2016;** notify Digital mode of payment while making financial transactions-past assessments.

**OUR TAKE:** Readers are requested to read the said instruction. It is self-explanatory.

### COURT DECISIONS

#### PRINCIPAL COMMISSIONER OF CENTRAL EXCISE, PUNE-I ADVINUS THERAPEUTICS LTD [CESTAT MUMBAI]

**BRIEF:** Refund - CENVAT credit - 100% EOU - export - the provisions of rule 4(1) are not attracted and, in terms of rule 6A of Service Tax Rules, 1994, the definition of export of services is applicable thus entitling the appellant to eligibility under rule 5 of CENVAT Credit Rules, 2004.

**OUR TAKE:** The hon'ble CESTAT MUMBAI held that the specific word or phrase in rule 4(1) of Place of provision of Services Rules, 2012 that the taxability is to be determined but from the mischief effect intended to be plugged. It is obviously not intended to tax any activity rendered on goods as to alter its form because that would be covered by excise on manufacture or be afforded privileges available to merchandise trade. **[Decided in favour of Assessed].**

#### COMMISSIONER OF CENTRAL EXCISE, RAIPUR VERSUS M/S. SHUBH PROJECTS & CONSTRUCTIONS P LTD. [CESTAT NEW DELHI]

**BRIEF:** If the complex is constructed by a person directly engaging any other person for design or planning or layout and such complex is intended for personal use as per the definition, service tax is not attracted. Personal use has been defined as permitting the complex for use as residence by another person on rent or without consideration.

**OUR TAKE:** The Hon'ble CESTAT NEW DELHI held that it was held that from the definition it is quite clear that if the complex is constructed by a person directly engaging any other person for design or planning or layout and such complex is intended for personal use as per the definition, service tax is not attracted. **[Decided against appellant]**

#### M/S JETLITE (INDIA) LTD VERSUS C.S.T. -DELHI [CESTAT NEW DELHI]

**BRIEF:** The incidental service of 'transportation of excess baggage by air' cannot be charged service tax under the category of service of 'transportation of goods by air' as defined under Section 65 (105) (zzn) of the Finance Act, 1994.

**OUR TAKE:** The hon'ble CESTAT NEW DELHI held that the excess baggage charges collected by the appellants are an integral part of the main service namely transportation of passengers by air. Therefore, the demand of service tax is set aside. **[Decided in favour of appellant]**

#### M/S CONSORTIUM SECURITIES LTD. VERSUS CST, NEW DELHI [CESTAT NEW DELHI]

**BRIEF:** It is fairly well settled that when a new service is introduced from a particular date, the same activity cannot be charged to service tax prior to that date. The only exception could be if the new service is carved out of an existing service.

**OUR TAKE:** The hon'ble CESTAT NEW DELHI held that delayed payment charges received by the stock brokers are not includible in taxable value as the same are not the charges for providing taxable services. Such charges are on account of delay in making payments by the service recipient to the service provider and are in the nature of a penal charge for not making the payment within stipulated time. Such amounts are not includible in the taxable value for charging Service Tax. **[Decided in favour of appellant].**

#### M/S BHORUKA ALUMINIUM LIMITED. VERSUS THE COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX, MYSORE [CESTAT BANGALORE]

**BRIEF:** Imposition of penalty - Except mere allegation of suppression, the Department did not bring any material on record to prove that there was suppression and concealment of facts to evade payment of tax - No penalty.

**OUR TAKE:** The humble **CESTAT BANGALORE** held that mere allegation of suppression, the Department did not bring any material on record to prove that there was suppression and concealment of facts to evade payment of tax. Consequently, in my opinion, the imposition of penalty under Section 78 of the Act is not justified and bad in law. **[Decided in favour of appellant]**

**HDFC STANDARD LIFE INSURANCE CO. LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE MUMBAI-II [CESTAT MUMBAI]**

**BRIEF:** Demand of the amount payable under reverse charge method recovered from the service provider - insurance auxiliary service - To the extent that the contributor has not ventured to avail credit of such contributions, there is no detriment to public revenue - demand u/s 73A set aside.

**OUR TAKE:** The hon'ble **CESTAT MUMBAI** held that the appellant has paid the tax on commission paid to agents on 'reverse charge' basis and appellant is, under CENVAT Credit Rules, 2004, entitled to take credit of such tax paid. Contribution, partial or entire, to the tax liability in an agreement with the provider of the service is not forbidden by law. To the extent that the contributor has not ventured to avail credit of such contributions, there is no detriment to public revenue. And to the extent that the appellant has not deprived the provider of the service of any amount in excess of the tax deposited by the appellant, there can be no substance to the allegation that appellant has contravened section 73A of Finance Act, 1994. **[Decided in favour of appellant]**

**M/S INSTITUTE OF CHARTERED FINANCIAL ANALYSTS OF INDIA VERSUS CCE, JAIPUR [CESTAT NEW DELHI]**

**BRIEF:** Enhancement of penalty - if the adjudication order has been challenged before the learned Commissioner (Appeals), the learned Commissioner of Service Tax seized his power to review the adjudication order.

**OUR TAKE:** The hon'ble **CESTAT NEW DELHI** held that As per Section 84 (4) of the Finance Act, 1994 no order under this Section shall be passed by the Commissioner of Service Tax in respect of any issue if an appeal against such issue is pending before the Commissioner of Service Tax (Appeals) . On plain reading of the above said provisions it is clear that if the adjudication order has been challenged before the

learned Commissioner (Appeals), the learned Commissioner of Service Tax seized his power to review the adjudication order. As appellant has challenged the liveability of penalty itself, therefore, question of enhancement of penalty does not arise - the Commissioner of Service Tax ceased to have this power to review the adjudication order under Section 84 of the Finance Act, 1994. **[Decided in favour of appellant]**

**M/S GUJARAT STATE ROAD TRANSPORT CORPORATION VERSUS COMMISSIONER (APPEALS) , SERVICE TAX, AHMEDABAD [CESTAT AHMEDABAD]**

**BRIEF:** Levy of penalty u/s 76 and 78 of the Finance Act, 1994 - taxability of Sale of Space or Time for Advertisement - it is a case of bonafide mistake - no penalty.

**OUR TAKE:** The hon'ble **CESTAT AHMEDABAD** held that this argument even though advanced before the authorities below, but not considered. I find that undisputedly, the appellant is a public sector undertaking and also the amount of Service Tax due for the period of 01.5.2006 to 30.6.2007 has been paid by them after realization of the fact that the service rendered by them become leviable to service tax w.e.f 01.05.2005 **[Decided in favour of appellant]**.

**M/S HARSCO (INDIA) SERVICES PVT LTD. VERSUS THE COMMISSIONER., C.C. E&ST, HYDERABAD-IV[CESTAT HYDERABAD]**

**BRIEF:** 100% EOU - refund claim for un-utilised CENVAT credit - back office operations - product support services - refund allowed.

**OUR TAKE:** The hon'ble **CESTAT NEW DELHI** held that reliance placed on the decision of the case of M/s Reliance Industries Ltd [2016 (8) TMI 123 - CESTAT MUMBAI] where it was held that all these services are eligible for credit. Therefore, the rejection of refund on the ground that the input services do not have nexus with the output service, is not legal or proper. **[Decided in favour of the assessee]**



## CENTRAL EXCISE

### COURT DECISIONS

**M/S GODFREY PHILLIPS INDIA LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, MUMBAI-I [CESTAT MUMBAI]**

**BRIEF:** Cenvat Credit - common inputs and input services - Rule 6(3) - The formula prescribed for the period after 1.4.2011 does not provide reasonable estimate of the credit attributable to the exempted and dutiable activities.

**OUR TAKE:** The hon'ble CESTAT MUMBAI held that benefit of Rule 6(5) of Cenvat Credit Rules, 2004 cannot be extended in respect of trading activities. The said credit needs to be reversed in proportion to the trading turnover and the total turnover. [Decided against the assesses]

**UNIVERSAL STARCH CHEM ALLIED LTD VERSUS COMMISSIONER OF CENTRAL EXCISE & CUSTOMS, NASHIK. [CESTAT MUMBAI]**

**BRIEF:** Valuation - job work - inter-connected undertakings - rule 8 of Central Excise Valuation Rules 2000 - the valuation done by the appellant i.e. cost of raw material + job charges including profit of the job-worker is correct.

**OUR TAKE:** The hon'ble CESTAT MUMBAI held that Rule 8 does not exist in the transaction of the present case. Therefore the valuation done by the appellant i.e. cost of raw material + job charges including profit of the job-worker is correct. [Decided in favour of assessed]

**M/S ULTRATECH CEMENT LTD. VERSUS THE COMMISSIONER. C.C. E&ST, HYDERABAD-IV [CESTAT HYDERABAD]**

**BRIEF:** CENVAT credit - The service tax paid on reimbursable part of the consideration paid towards manpower supply services is denied for the reason that such contributions are for the personal use of the employee - the mandatory statutory contribution to PF and ESI is not for personal use.

**OUR TAKE:** The hon'ble CESTAT HYDERABAD held that the first part of definition of input service states,- input service means "any service - used by a manufacturer, whether directly or indirectly in or in relation to the manufacture of final products and clearance of final products up to the place of removal" . Therefore, any services used directly or indirectly in or in relation to the manufacture of final products would fall within the definition of input services. [Decided in favour of appellant]

**M/S THE INDIA CEMENTS LTD., VERSUS CCE, C & ST, HYDERABAD-III. [CESTAT HYDERABAD]**

**BRIEF:** Remission of duty on loss of goods - cement and cement clinkers - it can be safely concluded that the shortage is due to transit loss - demand set aside.

**OUR TAKE:** The hon'ble CESTAT HYDERABAD held that there is a chance of shortage due to transit loss in the case of cement clinker. Therefore, I do agree with the contention put forward by the appellant that the shortage was due to transit loss/natural causes - demand not sustainable. [Decided in favour of assessee]

**M/S. AVTEC LTD., GENERAL MOTORS INDIA PVT. LTD. VERSUS C.C.E. INDORE. [CESTAT NEW DELHI]**

**BRIEF:** Valuation - job work - The main appellant (Avtec) are liable to pay differential duty due to revised valuation of FOC materials supplied by GMI.

**OUR TAKE:** The hon'ble CESTAT NEW DELHI held that that the question of fraud, suppression etc. cannot be invoked against Avtec. GMI on realizing that certain components of value like customs duty, freight etc. we're not added while arriving at the value for FOC materials have done the same on their own and paid the differential duty. [Decided in favour of appellant]

**M/S. DEVI IRON AND POWER LTD. VERSUS C.C.E. RAIPUR [CESTAT NEW DELHI]**

**BRIEF:** Levy of duty - fly ash bricks - various sales invoice of the impugned goods clearly mentions them as 'fly ash bricks'. Admittedly in the common trade parlance the product cleared by the appellant are nothing but fly ash bricks - demand of duty confirmed.

**OUR TAKE:** The hon'ble CESTAT NEW DELHI held that we note that admittedly the bricks cleared by the appellant contained more than 48% of fly ash by weight. The appellants in various communications to the jurisdictional officer categorically admitted that in general and common language they call ESP dust as 'fly ash'. The percentage of content of such fly ash which is manufactured and cleared by them has also been provided by the appellants only. There various sales invoice of the impugned goods clearly mention them as 'fly ash bricks'. Admittedly in the common trade parlance the product cleared by the appellant are nothing but fly ash bricks. [Decided in favour of appellant]

## CUSTOM

### NOTIFICATION / CIRCULAR

The Govt. vides Notification No.60/2016 dated 08<sup>th</sup>Dec 2016; amends amend notification No.12/2012-Customs dated the 17th March, 2012, so as to reduce import duty on wheat from 10% to Nil without an end date.

**OUR TAKE:** Readers are requested to read the said Notification. It is self-explanatory.

### COURT DECISIONS

#### M/S. OSWAL INDUSTRIES LTD. VERSUS COMMISSIONER OF CUSTOMS (I), MUMBAI AND VICE-VERSA [CESTAT MUMBAI]

**BRIEF:** Valuation - If the product has been found to be classifiable under heading 7219/ 7220 the contemporaneous data of imports of heading 7208 cannot be used to re-determine the transaction value under Rule 4.

**OUR TAKE:** The hon'ble CESTAT MUMBAI held that the material recovered in palletised form with neatly machined edges can only be treated as SS sheets of prime/serviceable quality. The notice seeks to classify the material under heading 7208 while the impugned order classifies it under heading 7219/7220 depending on the width.[Decided against revenue]

#### M/S CASIO INDIA CO. PVT. LIMITED VERSUS CC, NEW DELHI.[CESTAT NEW DELHI]

**BRIEF:** Import of Data Projector - item in question is to be classified under Chapter Heading 85286100 for which the benefit of Notification No. 24/2005-CUS under its entry No. 17 is admissible.

**OUR TAKE:** The hon'ble CESTAT NEW DELHI held that the benefit of Notification No. 24/2005-CUS under its entry No. 17 would be available. The subject issue is covered by the CESTAT, Chennai decision in the case of Acer India Pvt. Ltd. vs. CC, Chennai [2009- CESTAT AHMEDABAD], where it was held that - item in question is to be classified under Chapter Heading 85286100 for which the benefit of Notification No. 24/2005-CUS under its entry No. 17 is admissible. [Decided in favour of appellant]

#### M/S. JIMIT DIAMONDS AND OTHERS VERSUS COMMISSIONER OF CUSTOMS (II) , AIRPORT SPECIAL CARGO, MUMBAI [CESTAT MUMBAI]

**BRIEF:** Confiscation of goods and imposition of redemption fine and penalty - The goods are not available for confiscation. The goods have not been seized or released against a provisional bond - concept of redemption fine does not arise.

**OUR TAKE:** The hon'ble CESTAT MUMBAI held that the licences have transferred hands a number of times in open market without endorsement of DGFT before it reached the appellant. The appellants have paid a premium of 3.4% of these licences. There is no allegation on the appellant of being involved in the fraudulent issue of licence. The licences were valid at the time of import of goods.[Decided in favour of assesses]

#### PLASTRULON PROCESSORS LTD. VERSUS COMMISSIONER OF CUSTOMS MUMBAI II [CESTAT MUMBAI]

**BRIEF:** The consequence of non-removal of warehoused goods within the permitted period or the permitted extension is, by virtue of the terms of Section 72, certain. - When the duty is, in fact, demanded is not relevant.

**OUR TAKE:** The hon'ble CESTAT MUMBAI held that respondent company liable to pay the duty along with interest and penalty on the ground that goods have outlived the warehousing period – Held that department contention was not valid and set aside demand, interest and penalty.[Decided partly in favour of appellant]

#### DRISHTI ADVENTURES PVT. LTD. VERSUS COMMISSIONER OF CUSTOMS (I), MUMBAI.[CESTAT MUMBAI]

**BRIEF:** The HSN Explanatory Notes to chapter 8901 specifically excludes the vessels of heading 8903. It would mean that heading 8901 would exclude vessels which are specifically listed in the said heading of 8903 - boat has to be classified under heading 8903 as sports boat.

**OUR TAKE:** The hon'ble CESTAT MUMBAI held that the certificate of registration as issued by the Port officer, Government of Goa, specifically registered these boats as motor boats mars, mercury etc. and relies upon the declaration filed by the manufacturer i.e. Regal Marine Industries, Florida, though the description of the boat has been stated as excursion boats. We find that the adjudicating authority in order-in-original has reproduced the photographs of the boats which are imported. [Decided against appellant]

# INCOME TAX

## COURT DECISIONS

**SHRI NILESH R. GUPTA VERSUS ITO, WARD-1 (3), BHAVNAGAR.[ITAT AHMEDABAD]**

**BRIEF:** Penalty under section 271(1) (c) - There is no concrete positive evidence against the assessee exhibiting unexplained investment, except unregistered sale deed, which does not confer any title.

**OUR TAKE:** The hon'ble ITAT AHMEDABAD held that the explanation of the assessee is that sum of 36,000/- was deposited out of the gifts received on the birth-day of his son. Such gifts were received from relatives. As far as second addition is concerned, it is based on a document which was found during the course of search at the residence of the assessee. This document is unregistered sale deed. An unregistered sale deed does not confer any title.[Decided in favour of assessee]

**M/S. SOBHA INTERIORS PVT. LTD. VERSUS THE DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE 12 (3) , BANGALORE. ITO, WARD 12 (2) , BANGALORE.[ITAT BANGALORE]**

**BRIEF:** Computation of annual value of the property let out to the assessor's sister concern - optional interest on security deposit is to be treated as income from house property.

**OUR TAKE:** The hon'ble ITAT BANGALORE held that interest-free security deposit was also negotiated and as per the revised terms of lease deed, the lessee would pay the appellant an interest-free security deposit of 25 crores. Meaning thereby that on receipt of substantial amount of 25 crore, monthly rent was reduced from 5 lakhs to 25,000 per month. [Decided against assessee]

**M/S. T.M. ABDUL RAHMAN AND SONS VERSUS THE ASSISTANT COMMISSIONER OF INCOME TAX, NON CORPORATE CIRCLE 6, CHENNAI AND M/S. T.M. ABDUL RAHMAN AND SONS VERSUS THE JOINT COMMISSIONER OF INCOME TAX, BUSINESS CIRCLE –XII, CHENNAI. [ITAT CHENNAI]**

**BRIEF:** Disallowance of interest paid to close relatives of the assessee - Interest of 18% paid by the assessee could not be considered as excessive. Application of Sec. 40A (2) was not warranted.

**OUR TAKE:** The hon'ble ITAT CHENNAI held that features of the machinery show that these were independent and could work on its own and were not something that would work only in conjunction with another machinery. In our opinion, lower authorities were justified in treating the purchase as a

capital expenditure. We do not find any reason to interfere with the orders of the lower authorities. [Decided against assessee]

**MARUDHAMALAI SRI DHANDAPANI SPINNING MILLS VERSUS THE ASSISTANT COMMISSIONER OF INCOME TAX, SALARY CIRCLE, COIMBATORE. [ITAT CHENNAI]**

**BRIEF:** Addition made u/s.40A(3) - cash payment to transporters - If the assessee had paid money to the lorry drivers, as argued by it, vouchers would have been given by the lorry drivers and not by the transport companies - additions confirmed.

**OUR TAKE:** The hon'ble ITAT CHENNAI held that the paramount reason which Sec. 40A (3) of the Act was enacted was to reduce the possibilities of black money transactions as held by Gujarat High Court in the case of Anupam Tele Services (2014 (2) TMI 30 - GUJARAT HIGH COURT). But in the said case payments effected by the concerned assessee to a party which had issued a circular instructing the assessee to deposit cash. The recipient company had also instructed assessee not to make payments by cheque or demand draft.[Decided against assessee]

**SH. COLLECTOR RAM SHARMA VERSUS THE DEPUTY COMMISSIONER OF INCOME-TAX, CIRCLE-6, JAIPUR. [ITAT JAIPUR]**

**BRIEF:** Once the book results are rejected by invoking provisions of section 145(3) of the Act, no separate additions could be made under section 68.

**OUR TAKE:** The hon'ble ITAT JAIPUR held that the assessee has not brought on record any material suggesting that the hire charges were paid on account of non-functioning of the assessee's own machinery.

**SHRI GULAB CHAND RAMCHANDANI VERSUS THE ITO, WARD- 2, BEAWAR. [ITAT JAIPUR]**

**BRIEF:** The assessee had taken the loan less than 20,000/- from his close relatives and family members further the assessee immediately deposited the amount in bank account for making payment to the party. The genuineness of these deposits was never doubted by the AO - No penalty u/s 271D.

**OUR TAKE:** The hon'ble ITAT JAIPUR held that the assessee had taken the loan less than 20,000/- from his close relatives and family members further the assessee immediately deposited the amount in bank account for making payment to the party. [Decided in favour of assessee]



# STATE TAXES

## ALL INDIA VAT

### GOA

**The Govt. vides Notification No. 4/5/2005-FIN(R&C)(142) dated 08<sup>th</sup> Dec 2016**, notifies that In exercise of the powers conferred by sub-section (1) of section 5 of the Goa (Recovery of Arrears of Tax through Settlement) Act, 2009 (Goa Act 17 of 2009) (hereinafter referred to as the “said Act”) and all other powers enabling it in this behalf, the Government of Goa hereby extends the date for making application in Form I under the said Act from 9<sup>th</sup> December, 2016 to 31<sup>st</sup> January, 2017.

**OUR TAKE:** Readers are requested to read the said Notification. It is self-explanatory.

**The Govt. vides Circular No. 02 dated 07<sup>th</sup> Dec 2016**, notify Clarification on appeal for encouraging cashless transactions.

**OUR TAKE:** Readers are requested to read the said Circular. It is self-explanatory.

### HARYANA

**The Govt. vides Circular No. SPL-1/ (P/R) dated 11<sup>th</sup> Dec 2016**, notify Implementation of the Haryana Alternative Tax Compliance Scheme for Contractors, 2016.

**OUR TAKE:** Readers are requested to read the said Circular. It is self-explanatory.

### JHARKHAND

**The Govt. vides Notification No. 91 dated 05<sup>th</sup> Dec 2016**, notifies that in exercise of the powers conferred by Section 23 read with sub section (3) of Section 13 of Jharkhand Value Added Tax Act, 2005 (Jharkhand Act 05, 2006), the Governor of Jharkhand is pleased to make the amendment into the Schedule-II Part F of the Act, with such conditions and restrictions.

**OUR TAKE:** Readers are requested to read the said Notification. It is self-explanatory.

**The Govt. vides Notification No. 93 dated 05<sup>th</sup> Dec 2016**, notifies that sub rule 2 of rule 4A is been deleted.

**OUR TAKE:** Readers are requested to read the said Notification. It is self-explanatory.

**The Govt. vides Notification No. 94 dated 05<sup>th</sup> Dec 2016**, amends notification S.O 212 dated 31<sup>st</sup> march 2006 regarding transportation of goods.

**OUR TAKE:** Readers are requested to read the said Notification. It is self-explanatory.

**The Govt. vides Notification No. 95 dated 05<sup>th</sup> Dec 2016**, notifies Grant of power to Joint Commissioner of Commercial Taxes (Adm).

**OUR TAKE:** Readers are requested to read the said Notification. It is self-explanatory.

**The Govt. vides Notification No. 92 dated 06<sup>th</sup> Dec 2016**, amends schedule I and Part-B of JVAT Schedule II - Regarding Cell Phone & PoS Machine.

**OUR TAKE:** Readers are requested to read the said Notification. It is self-explanatory.

### MADHYA PRADESH

**The Govt. vides Notification No. F-A-3-01-2014-1-V-(45) dated 08<sup>th</sup> Dec 2016**, notifies that there is establishment of temporary check posts with a view to prevent or check evasion of tax under the Madhya Pradesh Vat Act, 2002 (No. 20 of 2002)

**OUR TAKE:** Readers are requested to read the said Notification. It is self-explanatory.

### TELENGANA

**The Govt. vides Circular No. CS (1)/483/2006 dated 08<sup>th</sup> Dec 2016**, notifies guidelines issued to all traders for cashless transaction.

**OUR TAKE:** Readers are requested to read the said Notification. It is self-explanatory.

**COURT DECISIONS****THE COMMISSIONER OF SALES TAX VEORSUS M/S. VEER RADIOS(BOMBAY HIGH COURT)**

**BRIEF:** Nature of assessment - best judgment assessment or not - the entries in the books of account varying with returns filed are relied upon and then the assessment has been completed. – Cannot be held as best judgment assessment - levy of penalty deleted.

**OUR TAKE:** The hon'ble **BOMBAY HIGH COURT** held that it is not best judgment assessment. If the return is filed belatedly and it does not give correct and complete figures, the provisions of Section 33(3) of the said Act can be applied by the department to such return. Levy of penalty confirmed. [Decided in favour of revenue]

**COMMISSIONER OF COMMERCIAL TAXES, THIRUVANANTHAPURAM, KERALA VERSUS M/S K.T.C. AUTOMOBILES [SUPREME COURT]**

**BRIEF:** levy of penalty for non-maintenance of complete, true accounts - sale of motor vehicles from another state - According to the Intelligence Officer, the sales were concluded at Kozhikode, and hence the vehicles should have been registered within the State of Kerala. - Mere doubt cannot create any liability - No penalty.

**OUR TAKE:** The hon'ble **SUPREME COURT** held that they do not lead to a conclusive inference that the sales under controversy had taken place at Kozhikode, Kerala. To the contrary, in view of propositions of law discussed hereinbefore, the judgment of the High Court gets reinforced and deserves affirmation. [Decided against the revenue]

**OTHER UPDATES****COMPANY LAW****COURT DECISIONS****RAJ SHEKHAR AGRAWAL AND ANR. VERSUS UNION OF INDIA AND ANR[DELHI HIGH COURT]**

**BRIEF:** The question, whether the petitioners can be said to be Directors of the subject company is doubtful and without the petitioners / applicants having a clear right to act as Directors and which is being opposed, the question of the petitioners / applicants incurring any disqualification or liability under Section 162 of the Act also, would not arise.

**OUR TAKE:** The hon'ble **DELHI HIGH COURT** held that the question, whether the petitioners can be said to be Directors of the subject company is doubtful and without the petitioners / applicants having a clear right to act as Directors and which is being opposed, the question of the petitioners / applicants incurring any disqualification or liability under Section 162 of the Act also, would not arise. The application is thus dismissed with liberty to the petitioners / applicants to apply to the CLB for the same reliefs.

**FEMA****COURT DECISIONS****BIPINCHANDRA G. CHOCKSHI AND 1 VERSUS STATE OF GUJARAT AND 2(GUJARAT HIGH COURT)**

**BRIEF:** Detaining authority is under obligation to comply with the requirements by formulating grounds for detention

**OUR TAKE:** The hon'ble **GUJARAT HIGH COURT** held that the petition is allowed resulting into quashing and setting-aside the impugned order of detention dated 11.6.1976 at Annexure 'A' to the petition and declaration under Section 12A of the COFEPOSA, 1974 at Annexure 'B' dated 11.6.1976 and quash and set-aside three notices under Section 6 of SAFEMA, 1976, Annexure 'D' Collectively dated 28.4.1977, 20.1.1997 and 23.3.1977.

**SAJAL DUTTA VERSUS RESERVE BANK OF INDIA & OTHERS  
(CALCUTTA HIGH COURT)**

**BRIEF:** Both the company and its principal shareholders had an interest in the grant of the licence or revocation of it, by the Reserve Bank of India.

**OUR TAKE:** The hon'ble CALCUTTA HIGH COURT held that the importation was made more than 20 years ago. These capital goods have spent their life. Their value, now after depreciation is nil. At the time of their importation their declared value was 3, 05, 53,290/-. Against this value, shares were allotted to Kamal. Even if Sajal now succeeds, the equipment's cannot be returned to Kamal. The monetary value has to be refunded with interest from the other assets of the Company. That is plainly not permissible or feasible. W

**ALLIED LAWS****COURT DECISIONS****JIJU LUKOSE VERSUS STATE OF KERALA [KERALA HIGH COURT]**

**BRIEF:** Right to receive copy of the FIR even before the stage of proceedings under Section 207 of the Cr.P.C - Accused is entitled for copy of the FIR.

**OUR TAKE:** The hon'ble KERALA HIGH COURT held that it is in the domain of authorities as to which category of the FIRs are to be put on website for information to the public in general. But there has to be a decision and appropriate categorization or norms for taking a decision as to in which case FIR be uploaded and in which it is not be uploaded. The State can come with any such decision which may balance right of information available to the public in general and interest of the State. We are thus of the opinion that petitioner has made out a case for issuing directions to the State to consider all aspects of the matter and take appropriate decision regarding uploading of the FIR in the police website with all details regarding its operation and mechanism.

**M/s ANAND NIKETAN EDUCATION TRUST VERSUS HUDCO,  
AHMEDABAD REGIONAL OFFICE [GUJARAT HIGH COURT]**

**BRIEF:** In the matters involving commercial dispute, rule of alternative remedy is adhered to and applied steadfast.

**OUR TAKE:** The hon'ble GUJARAT HIGH COURT held that Stage obtained in the process of auction by the respondent under the SARFAESI Act is a post-13(4) stage. The petitioner therefore has an alternative statutory remedy of filing an appeal under Section 17 of the Act before the Debts Recovery Tribunal. It is trite that in the matters involving

commercial dispute, rule of alternative remedy is adhered to and applied steadfast. Present petition is not entertained. The petitioner is at liberty to approach the Debts Recovery Tribunal in accordance with law.

**GST ALERTS****CENTRAL REGISTRATION UNDER GST CONSIDERATION, E-COMMERCE MAY GET BENEFITED**

Internet business, telecom, and insurance elements may get away from the perplexing essential of partitioned enrolment in every state under the goods and services (GST) administration, with a room or extension for unique arrangements in the draft law. As indicated by government authorities in the GST Council, the request of service providers, including e-commerce players, for a central registration might be met in the GST rules after dialog with states.

An official mentioned that "We have provided for an enabling provision under the draft law to provide certain companies with centralized registration. There is basically a section for a special procedure for certain companies which want to undergo a simplified compliance and registration procedure.

The draft law says e-commerce companies, including Flipkart and Amazon, will be required to enrol in every state under the GST regime, as both centre and state laws accommodate the duty furthermore gather at the source.

**CENTRAL REGISTRATION UNDER GST CONSIDERATION, E-GST IMPACT ON E-COMMERCE SECTOR IN INDIA**

As per the draft law, an e-commerce operator is required to collect tax at source one percent of the net sum gathered for the benefit of the provider. Notwithstanding, it additionally gives an agreement under which they might be exempted from enrolling in various states and to gather assesses at one place.

The arrangement says the central government or a state can be on the proposal of the Council, indicate the class of people who might be exempted from enlisting. It likewise specifies that there might be unique techniques for the recording of return. The draft has given that the provider would likewise be required to enrol under the GST law in that state independent of any exclusion edge restrict. Firms with a yearly turnover of up to Rs 20 lakh are to be excluded from GST.

**GST COUNCIL MEETING DAY 2: THRESHOLD LIMIT AT RS 20 LAKH**

Bipin Sapra of consultancy EY stated into his conversation that, "The states must realize that multiple



registrations for e-commerce or telecom players might be unworkable, as compliance will be cumbersome. Besides, there might be a lack of coordination within

states, viewing the same transaction differently, further complicating it for these providers.”

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