



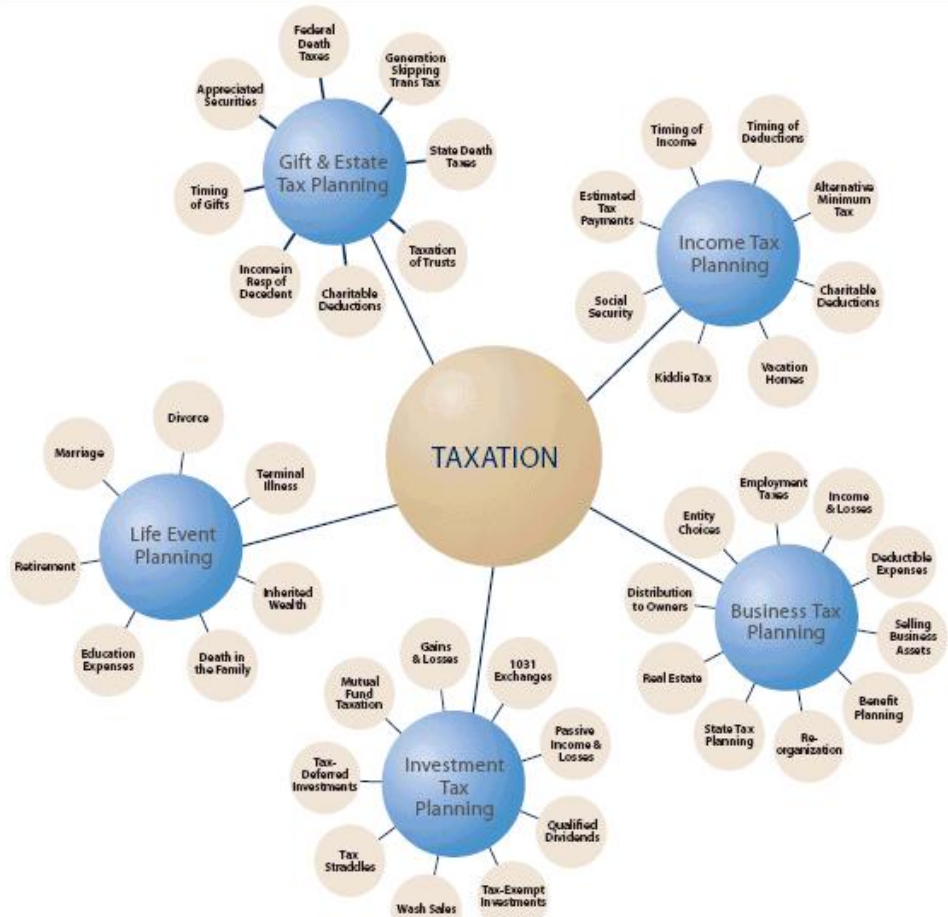
ASC Times

All India Taxes Weekly Reference

Vol: Dec 19 –Dec 25, 2016

Solving any tax puzzle

Tax saving advice across all the taxes



TAXCALENDER

Due Date	Description	Law
20 Dec	Deposit of Tax	Andhra Pradesh VAT, Goa VAT, Karnataka VAT, Manipur VAT, Punjab & Chandigarh VAT, Tamil Nadu VAT, Telangana VAT, Uttarakhand VAT
	Deposit of TDS	Andhra Pradesh VAT, Tamil Nadu VAT, Telangana VAT
	Issue of TDS Certificate	Chhattisgarh VAT, Madhya Pradesh VAT
	Return Filing	Andhra Pradesh VAT, Karnataka VAT, Manipur VAT, Punjab & Chandigarh VAT, Tamil Nadu VAT, Telangana VAT
21 Dec	Deposit of Tax	Assam VAT, Delhi VAT, Maharashtra VAT, Meghalaya VAT, Orissa VAT
	Deposit of TDS	Maharashtra VAT
	Issue of TDS Certificate	Maharashtra VAT
	Return Filing	Assam VAT, Maharashtra VAT, Meghalaya VAT, Orissa VAT
25 Dec	Deposit of Tax	Rajasthan VAT, Uttarakhand VAT
	Issue of TDS Certificate	Mizoram VAT
	Return Filing	Jharkhand VAT

COUNTRY WIDE HOLIDAYS FOR THE WEEK

Date	Occasion/Festival	Region
25 th Dec 2016	Christmas	All India States

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From the CEO's Desk



instead prefer foreign currency due to the steep drop in supply of local currency notes.

Alok Kumar Agarwal

CEO

ASC Group.

Dear Reader,

Within a month of demonetisation of high value currency notes in India, Pakistan's senate passed a resolution on Monday seeking withdrawal of Rs 5,000 notes from circulation to halt money laundering.

Pakistan is ranked 117th on the list of corrupt nations out of 175, according to the 2015 Corruption Perceptions Index reported by Transparency International. Corruption rank in Pakistan averaged 107.90 from 1995 until 2015, reaching an all-time high of 144.00 in 2005.

Senator Usman Saifullah of opposition Pakistan People's Party (PPP) tabled the resolution, arguing that the Rs 5,000 note was being used in illegal transactions and should be withdrawn.

The move was strongly opposed by the ruling Pakistan Muslim League-Nawaz (PML-N) government. However, since the PPP has a majority in the upper house of parliament, the resolution was endorsed.

A member of Pakistan People's Party said that the government must withdraw the highest denomination currency note "in order to reduce illicit money flow, encourage the use of bank accounts and reduce the size of undocumented economy".

Opposing the resolution, law minister Zahid Hamid said that the move would have repercussions on the economy and the masses in general, as is happening in neighbouring India. He also said that withdrawal of the notes would create crises in the market and people would resort to foreign currencies in absence of Rs 5,000 notes.

Hamid said that around 3.43 trillion Rs 5,000 banknotes were in circulation in Pakistan -around 30% of the total currency in flow in Pakistan now. Such a huge number of currency notes cannot be pulled from circulation without causing a monetary crisis. If such steps are taken, people will lose confidence in the Pakistani rupee and will

CENTRAL TAXES

SERVICE TAX

COURT DECISIONS

RATEGAIN TRAVEL TECHNOLOGIES (P) LTD. VERSUS UNION OF INDIA DELHI HIGH COURT]

BRIEF: Validity of SCN - so long as material is relevant, how it is sourced is immaterial and the courts would examine it provided it fulfils the test of relevance.

OUR TAKE: The hon'ble DELHI HIGH COURT held that so long as material is relevant, how it is sourced is immaterial and the courts would examine it provided it fulfils the test of relevance - the argument that the materials on the basis of which the impugned show-cause notice was issued could not have been used is rejected. [Written petition dismissed].

M/S. CUMINS TECHNOLOGIES INDIA PVT. LTD. VERSUS C.C.E. & S.T., BHOPAL. [CESTAT NEW DELHI]

BRIEF: SEZ - rejection of refund claim - refund of CENVAT credit availed on rent-a-cab service - wrong mention of the name of place i.e. Bombay will not take away the benefit of refund.

OUR TAKE: The Hon'ble CESTAT NEW DELHI held that since the refund application in terms of Notification No.40/2012-ST dated 26.02.2012 was filed by the appellant on 17th Jan., 2014, immediately upon obtaining the permission from the Development Commissioner, in my view, such delay should have been condoned by the service tax authorities. Clause (e) contained in the Notification dated 20.06.2012 clearly provides that the Assistant Commissioner or the Dy. Commissioner of Central Excise shall permit the applicant to file the application even beyond the period of limitation. Since due to the genuine and practical difficulties, the appellant was not in a position to obtain the permission from the Development Commissioner, it has applied for extension of time period for filing the refund application before the service tax authorities. [Decided in favour of appellant]

M/S ZAPAK DIGITAL ENTERTAINMENT LTD. VERSUS COMMISSIONER OF SERVICE TAX, MUMBAI-II [CESTAT, MUMBAI]

BRIEF: Cenvat Credit - duty paying documents - The instant case is not a case of endorsed invoice. A perusal of invoice clearly shows that the appellant's name mentioning as an advertiser and therefore it is an invoice issued in the name of the appellant - Credit allowed.

OUR TAKE: The hon'ble CESTAT MUMBAI held that in the instant case, the agency being an advertising agency has engaged the broadcaster for the purpose of advertisement. A perusal of the invoices clearly shows that the agency has merely acted as a conduit for transfer of money from the appellant to the broadcaster. The invoices of the broadcaster clearly show the name of advertiser as M/s Zapak Digital Entertainment Ltd. (the appellant). Name of the advertising agency is mentioned and is an agent in the said invoice. In the said circumstances, there is no doubt that the invoices of the broadcaster is issued in the name of Zapak Digital Entertainment Ltd. and not in the name of Mudra Radar as alleged in the notice. [Decided in favour of appellant]

MANDHANA EXPORTS VERSUS COMMISSIONER OF CENTRAL EXCISE, KOLHAPUR [CESTAT MUMBAI]

BRIEF: Valuation - renting of immovable property service - The other amounts are paid a reimbursement for common additional services. These services can no stretch of imagination of renting of immovable property services.

OUR TAKE: The hon'ble CESTAT MUMBAI held that on perusal of rent agreement, it is found that 9,500/- per month is paid for the purpose of renting of the premises. The other amounts are paid a reimbursement for common additional services. These services can no stretch of imagination of renting of immovable property services and therefore, demand under the said head cannot be confirmed. The impugned order is set aside - appeal allowed . [Decided in favour of appellant].

M/S. SATYAM SYNTCOTEX PVT. LTD., M/S. GENTLEMEN SUITINGS PVT. LTD., M/S. ANUVRAT TEXTILES PVT. LTD., M/S. PRESTIGE SUITINGS PVT. LTD., M/S. NUTECH GLOBAL LTD., M/S. VIJAYDEEP SILK MILLS PVT. LTD., M/S. BASUKI SYNTHETICS, M/S. RAGHAV SULZCON PVT. LTD., M/S. SNEH SILK MILLS PVT. LTD. VERSUS C.C.E. JAIPUR [CESTAT NEW DELHI]

BRIEF: Just because the Nepalese suppliers had billed the appellants separately for transportation from Nepal border to factory premises alongwith other expenses, they do not become the agents of the appellants - appellants cannot be treated as recipients of GTA services.

OUR TAKE: The humble **CESTAT NEW DELHI** held that similar issue decided in many case and thus the issue id no more res integra - reliance placed on the decision of the case of Chairman Silk Mills Pvt. Ltd. Vs. CCE Jaipur [2016 (8) TMI 946 - CESTAT NEW DELHI], where it was held that the contract of appellant with the Nepalese suppliers is for supply of yarn and not for providing any particular service. Transport of goods is an activity incidental to the supply of goods for which Nepalese suppliers has engaged transporters. Nepalese suppliers had not acted as the agents of the appellants for arranging transportation from Nepal border to the factory premises of the appellants. Just because the Nepalese suppliers had billed the appellants separately for transportation from Nepal border to factory premises alongwith other expenses, they do not become the agents of the appellants. **[Decided in favour of appellant]**

M/S. INVESCO (HYDERABAD) PVT. LTD. VERSUS THE COMMISSIONER OF C, CE & ST, HYDERABAD-IV [CESTAT HYDERABAD]

BRIEF: Rejection of refund claim - in the Show Cause Notice there is no allegation raised that the refund claims are filed beyond time limit - The rejection of refund claim on time bar is unjustifiable.

OUR TAKE: The hon'ble **CESTAT HYDERABAD** held that It has to be noted that in the Show Cause Notice there is no allegation raised that the refund claims are filed beyond time limit. Be that as it may, the original authority has given a clear cut finding in para 11 of Order-in-Original dated 28.02.2012 that the refund claims are filed within the time limit. This being so, the observation of Commissioner (Appeals) that refund claim is filed beyond the time limit is definitely unwarranted and unjustified. In view thereof, I find merits in the arguments raised by the appellants. The rejection of refund claim on time bar is unjustifiable. **[Decided in favour of appellant]**

M/S BAJRANG INFOTECH SYSTEMS PVT. LTD. VERSUS CC, CE & ST, HYDERABAD-II [CESTAT HYDERABAD]

BRIEF: Business auxiliary services - preparation of ID cards for fresh and renewed bus passes - the activity carried out by the appellant is definitely in the nature of IT services and hence will have to be necessarily excluded from quantification under category of BAS.

OUR TAKE: The hon'ble **CESTAT HYDERABAD** held that Para 16 of the agreement mandates that the software should not be utilized, sold or handled by any other individual, outsider agency etc. except APSRTC during the period of contract. From a perusal of these aspects, it clearly shows that the appellant is very much in the activity of developing and

maintenance of computer software for APSRTC. This being so, their activity clearly falls within the ambit of Explanation to definition of BAS under Section 65(19) as it existed during the period of dispute. **[Decided in favour of appellant]**

M/S. ORIENT EXPRESS CO. LTD. VERSUS C.C.E. & S. T., BHOPAL [CESTAT NEW DELHI]

BRIEF: Renting of Immovable Property service - There is no liability of service tax in respect of property of 'Hotel Chandela' leased out for running, operating, etc. to IHCL Tri.

OUR TAKE: The hon'ble **CESTAT NEW DELHI** held that Explanation 1 to Section 65(105) (zzzz) of the Act makes it very clear that buildings used for residential purposes and accommodation including hotels cannot be covered under the wordings "immovable property". In the present case, there is no dispute on the fact that the entire property/space named as 'Hotel Chandela' is used as hotel only; when it is so, Revenue's stand that the service tax is liable for the renting of subject property is not correct and is untenable in the eyes of law. **[Decided in favour of appellant].**

CST, DELHI VERSUS M/S INDO ARYA LOGISTICS [CESTAT NEW DELHI]

BRIEF:: C&F agent service - inclusion of reimbursement of expenses - the service tax stands demanded on the total amount paid to the assessee by the principal. Clearly, there is no prescription to include reimbursable expenses in the total value of taxable service.

OUR TAKE: The hon'ble **CESTAT NEW DELHI** held that the normal activity of C&F agent is limited to arranging for despatch of the goods of the principal by engaging transport. However, the cost of transportation need not be borne by him. In the present case, the costs of transportation, when incurred by the assessee, have been reimbursed by principal. The value of taxable service in relation to clearing and forwarding operations is the gross amount charged for such services under Section 67. This has to be taken to mean the amount charged for providing the service. In the present case the service tax stands demanded on the total amount paid to the assessee by the principal. **[Decided against revenue]**

CENTRAL EXCISE

NOTIFICATION / CIRCULAR

The Govt. vides Circular No. 1051 dated 15th Dec 2016; Export warehousing - Extension of facility in Ahmedabad District of Gujarat.

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

COURT DECISIONS

M/S. VETAL TEXTILES & ELECTRONICS PVT. LTD. VERSUS CCE, COIMBATORE [CESTAT CHENNAI]

BRIEF: Classification of goods - grain cleaning and drying machine - the goods manufactured by the appellant serves no useful purpose of entry 84.19 rather it serves useful purpose of the entry 84.37 being specifically used in the milling entry.

OUR TAKE: The hon'ble CESTAT CHENNAI held that when the tariff entry is looked into, Revenue has not discharged its burden of proof to show the very purpose that the machinery serves. Various purpose are listed in the entry and treatment of materials by the processes involved as stated in the entry. The term 'drying' also appears in that entry but that cannot be read in isolation. Intention of the entry is to cover a machine or plant or laboratory equipment, which is basically meant for the treatment of the materials. But the goods manufactured by the appellant serves no useful purpose of entry 84.19 rather it serves useful purpose of the entry 84.37 being specifically used in the milling entry - No technical test of the goods has been done by the Revenue to show that the impugned goods cannot be used by milling industry. **[Decided in favour of appellant]**

M/S TEREX EQUIPMENTS P LTD VERSUS COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX, NOIDA [CESTAT ALLAHABAD]

BRIEF: CENVAT credit - credit of service tax on warranty provided by their dealers - repair and maintenance of transformers during warranty period is an activity of relating to sale of goods - credit allowed.

OUR TAKE: The hon'ble CESTAT ALLAHABAD held that issue has been settled by this Tribunal in the case of

Commissioner of Central Excise, Vodadara II Vs. Danke Products [2009 (7) TMI 137 - CESTAT, AHMEDABAD] wherein it has been held that repair and maintenance of transformers during warranty period is an activity of relating to sale of goods. Therefore, relying on the decision of the Tribunal in the case of Danke Products, I hold that the appellant is entitled for input service credit on repair charges paid to the dealers by the appellant as the same is an activity relating to sale of goods by the appellant. **[Decided in favour of assessee]**

M/S. SHEELA RANI TEXTILES LTD. VERSUS CCE, MADURAI [CESTAT CHENNAI]

BRIEF: Valuation - the financial assistance given by the principal manufacturer to the job worker appellant was given for capital expenditure to upgrade/renovate the machinery. Therefore, the notional interest on the deposit has been rightly computed by the authority and added to the assessable value.

OUR TAKE: The hon'ble CESTAT CHENNAI held that it cannot be said that both parties to the contract had no knowledge of emergence of waste while fixing the job charges. It was well within their knowledge. This being one of the material fact value of the scrap generated is necessarily to be added to the assessable value of the job worked goods - On this count appellant fails to succeed. **[Decided in favour of appellant]**

M/S LAFARGE INDIA LIMITED VERSUS CCE & ST, BILASPUR. CESTAT NEW DELHI]

BRIEF: CENVAT credit - the fact of loss of Iron Ore during the process of screening, when screening process is a part of the manufacturing process, cannot result in denial of part amount of Cenvat credit.

OUR TAKE: The hon'ble CESTAT NEW DELHI held that I find that admittedly the service tax stand paid by the washery on the full valued coal received by them. The appellant has taken the credit of the service tax paid by the washery. It is well settled law that the amounts cannot be challenged at the service recipient end and whatever tax has been paid by the service provider, would be available as credit to the service recipient - Otherwise also I find that an identical issue was considered by the Tribunal in the case of M/s Real Ispat & Power Ltd. vs. CCE, Raipur [2016 (4) TMI 327 - CESTAT NEW DELHI], the entire credit was held as admissible, irrespective of the wastage having occurred at the end of the coal washery. **[Decided in favour of assessee]**

M/S HTS AGRO TECH INDUSTRIES VERSUS THE COMMISSIONER C. CE & ST, HYDERABAD-IV. [CESTAT HYDERABAD]

BRIEF: Refund - The goods having been exported, it is immaterial whether the accumulated credit has been shown as receivable/advances and the appellant is eligible for refund of accumulated credit in terms of Rule 5 of Cenvat Credit Rules, 2004.

OUR TAKE: The hon'ble **CESTAT HYDERABAD** held that in the case of Union of India Vs. Sharp Menthol India Ltd [2015 (1) TMI 623 - SUPREME COURT] the Apex Court had occasion to consider the similar issue, which has also been decided in favour of the assessee by dismissing the appeal filed on the part of Revenue. The Hon'ble High Court of Bombay, in the case of UOI Vs. Sharp Menthol India(Ltd) [2011 (4) TMI 27 - BOMBAY HIGH COURT] held that assessee is entitled to the credit of the duty paid on inputs viz. Menthol used in the manufacture of exempted goods i.e. menthol crystal which were exported under bond without payment of duty. Such cases are covered under Rule 6(6) (V) of Central Excise Rules, 2002 and not under Rule 6(1) (6) (4) of Cenvat Credit Rules, 2004. **[Decided in favour of appellant]**

SRI VELMURUGAN SAGO FACTORY, ARULMURUGAN SAGO FACTORY AND SRI BALAMURUGAN SAGO FACTORY VERSUS COMMISSIONER OF CENTRAL EXCISE, SALEM [CESTAT CHENNAI]

BRIEF: When in the first place there was no requirement of issue of SCN itself, penalties will not survive particularly as there was some confusion on the duty rates and the continued eligibility of SSI concessions for these appellants.

OUR TAKE: The hon'ble **CESTAT CHENNAI** held that It is not in dispute that differential duty liability arose on account of increase in duty rates on Tapioca Sago during the period 1.3.2011 to 28.2.2013. It is also not in dispute that in respect of two of the appellants i.e. appellants M/s. Arulmurugan Sago Factory and M/s. Sri Balamurugan Sago Factory (Appellants 2 & 3), entire duty liability along with interest has been discharged before issue of SCN thereon and in respect of appellant No.1 in appeal No.E/40034/2016, almost 98% of such liability has been discharged - This being the case, it would have been most appropriate if the SCNs had not been issued in these cases. Instead, these Appellants perforce have been required to come before this forum for relief. In the circumstances, while there is no two opinion that the differential duty has been discharged by

the appellant on being pointed out, along with interest amounts thereon, issue of SCNs for imposition of penalties under Section 11AC is an overkill. **[Decided in favour of appellant]**

CUSTOM

NOTIFICATION / CIRCULAR

The Govt. vides Notification No.147/2016 dated 15th Dec 2016; notify Rate of exchange of conversion of the foreign currency with effect from 16th December, 2016.

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

The Govt. vides Notification No.148/2016 dated 15th Dec 2016; amends Tariff Notification in respect of Fixation of Tariff Value of Edible Oils, Brass Scrap, Poppy Seeds, Areca Nut, Gold and Silver.

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

COURT DECISIONS

M/S. RELIANCE INFRASTRUCTURE LTD. VERSUS COMMISSIONER OF CUSTOMS, CHENNAI-IV [CESTAT CHENNAI]

BRIEF: EPCG scheme - it is not open to the Customs authorities to initiate action for non-fulfilment of export obligation until the period of export obligation is complete.

OUR TAKE: The hon'ble **CESTAT CHENNAI** held that it is not open to the Customs authorities to withdraw the benefit of exemption or to curtail the period within which export obligation is to be fulfilled. **[Appeal allowed by way of remand]**

M/S BAJAJ AUTO LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, PUNE-I [CESTAT MUMBAI]

BRIEF: Unjust enrichment - Since there is no dispute that the amount of refund sought was shown as receivables,



appellant has been able to prove that he has not recovered the same their customer, refund allowed.

OUR TAKE: The hon'ble **CESTAT MUMBAI** held that when the amount is shown as receivables, it is not expensed out in the Balance Sheet, hence will not form a part of the cost of the final product manufactured. **[Decided in favour of appellant]**

M/s. Hindustan Construction Co. Ltd. Versus Commissioner of Customs, Tuticorin [CESTAT CHENNAI]

BRIEF: Import of goods by contractor of nuclear project - without any doubt as to the import of the goods and use thereof in the Nuclear Project as per certificate issued by the Notified Authority not disputed by Revenue, there cannot be denial of benefit of the notification to the appellant.

OUR TAKE: The hon'ble **CESTAT CHENNAI** held that requirement of law is that described goods as specified in List 43 in the notification should be imported for the purpose of setting up of nuclear projects. Such fact is not in dispute. The second condition is that projects should be of 440 MW. That is also not disputed. The last condition is that the requirement of the goods as well as the capacity is to be certified by a specified officer of Govt. of India which is also not disputed. Appellant says that the goods imported was within the knowledge of the nuclear project authority. **[Decided in favour of assessee]**

M/S MAAKRUPA FORWARDERS PVT. LTD. VERSUS COMMISSIONER OF CUSTOMS (G) , MUMBAI [CESTAT MUMBAI]

BRIEF: Revocation of CHA licence - time limitation - inordinate delay in the processes by Revenue - due to the delays, people who are not guilty will continue to suffer the suspension and revocation on account of delays by Revenue due to lack of responsibility.

OUR TAKE: The hon'ble **CESTAT MUMBAI** held that it is obvious that none of the time limit prescribed under the CBLR, 2013 has been followed. In fact there has been an inordinate delay of exceptional nature. The matter has been delayed by almost three years beyond time limit and almost 4 times the prescribed time limit. This is a case of exceptional delay. **[decided in favour of CHA-assessee]**

The Commissioner of Central Excise, Central Revenue Building, Tirunelveli Versus M/s. Transworld Garnet India Pvt. Ltd. [MADRAS HIGH COURT]

BRIEF: Merchant Overtime Fee (MOT) - the services are rendered within the range of such officer and since admittedly these functions were executed during "normal working hours", such levy is impermissible.

OUR TAKE: The hon'ble **MADRAS HIGH COURT** held that the place of working/supervision was at the factory of the respondent which is at Mayapuri. Respondent has pointed out that as per Notification No.14/2002-CE(NT) dated 08.03.2002 includes Mayapuri Indl. Area Ph.-II where the factory of respondent is located, the services were rendered by the officer within his range only. **[Decided against appellant]**

INCOME TAX

COURT DECISIONS

CENTRAL U.P. GAS LIMITED VERSUS DEPUTY COMMISSIONER OF INCOME TAX KANPUR. [ALLAHABAD HIGH COURT]

BRIEF: Whether the compressed natural gas produced by the appellant, having different name, character and use from natural gas can be said to be covered by the phrase manufacture or production? - Held Yes.

OUR TAKE: The hon'ble **ALLAHABAD HIGH COURT** held that compressed natural gas in its compressed form has a distinct identity and character and use. It is settled law of the Apex Court in the case of Income Tax Officer Vs. Arihant Tiles and Marbles P. LTD. reported in (2009 (12) TMI 1 - SUPREME COURT) that when a commodity acquires a distinct name, use and commercial identity, it would acquire the trait of 'manufacture'. **[Decided in favour of assessee]**

ARPAN KUMAR GHOSH VERSUS INCOME TAX OFFICER [ITAT KOLKATA]

BRIEF: If the relevant television set was installed in the office of the assessee as claimed, it was used for the purpose of the business of the assessee and depreciation thereon thus was rightly claimed.

OUR TAKE: The hon'ble **ITAT KOLKATA** held that a case of works contract to which provisions of section 194C are clearly applicable and since there was a failure on the part of the assessee to deduct tax at source from the payments in question made towards works contract as required by the provisions of section 194C. It is of the view that the disallowance made by the Assessing Officer under section 40(a) (IA) and confirmed by the Id. CIT (Appeals) is fully sustainable. **[Decided against assessee]**

PRASHANT MOTERS PVT. LTD. VERSUS DY. COMMISSIONER OF INCOME-TAX. [ITAT PATNA]

BRIEF:The lady Directors being well qualified persons and associated with the company since earlier period cannot be disallowed the remuneration of 50%.

OUR TAKE:The hon'ble ITAT PATNA held that if the proposition advanced by the Revenue is accepted then no person can be allowed to be engaged as Directors or otherwise gainfully engaged in more than one concern. The authorities below have totally ignored submissions that these lady Directors have been engaged in the functioning of the company since the inception. **[Decided in favour of assessee]**

RIPE COMPONENT TECHNOLOGIES PVT. LTD. VERSUS ASSTT. COMMISSIONER OF INCOME TAX, CIRCLE- 15 (1), NEW DELHI. [ITAT DELHI]

BRIEF:The work in the case of assessee, are meant to altogether change the use by way of expanding its capacity substantially and changeover of its look. The expenditure is certainly capital in nature on which depreciation can only be allowed.

OUR TAKE:The hon'ble ITAT DELHI held that it is evident from the bills raised by the different vendors, that the work carried out by the assessee was not in the nature of the repair work or refurbishing or renovation of the old premises, but it was in the nature of addition to the premises, which have been taken on the lease for initial period of five years.

ARAVALI INFRAPOWER LTD. VERSUS DEPUTY COMMISSIONER OF INCOME TAX. [DELHI HIGH COURT]

BRIEF:Validity of reopening of assessment - reasons to believe - bogus entries made - Clearly, there was no full disclosure of material facts. - The petitioner is disentitled to relief. - HC.

OUR TAKE:The hon'ble DELHI HIGH COURT held that whilst the assessee, no doubt, replied to the queries (especially question no.10) addressed to it on 21.12.2009, the materials on record clearly show that there was no full disclosure. The requirement in such cases - whether the AO is prima facie not satisfied about the genuineness of the transaction (Section 68), is not merely to establish the genuineness of the identity but also genuineness of the transaction itself and the creditworthiness of the investor. **[Decided against assessee]**

Price Water House & Another, Lovelock & Lewes & Another Versus Commissioner of Income Tax-XIX & Others. [CALCUTTA HIGH COURT]

BRIEF:If the stand of the writ petitioner company is bona fide and indeed if no international transaction is involved, see no reason why the company should shy away from the

proceeding before the TPO and not urge and establish the same in the proceeding before the TPO.

OUR TAKE:The hon'ble ITAT JAIPUR held we are unable to hold that the reference to the TPO is without jurisdiction. Sec. 92CA (1) envisages that where the assessing officer considers it 'necessary or expedient' to do so, he may with the approval of the Commissioner refer the computation of the arm's length price in relation to the concerned international transaction to the TPO. In my opinion, the said section does not contemplate that the assessing officer has to first come to a definite finding that there is an international transaction within the meaning of Sec. 92B before he can exercise his power to refer the matter to the TPO.

STATE TAXES

ALL INDIA VAT

DADAT & NAGAR HAVELI

The Govt. vides Circular No. (VAT)/COMPUT/2009/PF/4576 dated 15th Dec 2016, notifies introduction of e-payment facility through seven banks Dena Bank, State Bank of India, Bank of Baroda, Union Bank of India, Canara Bank, Indian Overseas Bank and IDBI Bank.

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

DAMAN & DIU

The Govt. vides Circular No. DMN/VAT/2016-2017/409 dated 15th Dec 2016, notify that the Daman & Diu Value Added Tax Regulation, 2005 (No.1 of 2005) published in the Gazette of India, Extraordinary, Section-100(2) "Power to collect statistics — Upon such direction being made, the Commissioner or any person or persons authorized by him in this behalf may call upon all dealers or any class of dealers or persons to furnish such information or statements as may be stated therein relating to any matter in respect of which statistics are to be collected and the form in which the persons to whom or, the authorities to which, such information or returns should be furnished, the particulars which they should contain, and the intervals in which such information or returns should be furnished, shall be such as may be prescribed.

DELHI

The Govt. vides Circular No. JCTT/Policy/2016/751-769 dated 14th Dec 2016, notifies Communication of Provisional Identification Number and Password to dealers for migration to GST.

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

DADAT & NAGAR HAVELI

The Govt. vides Notification No. F.12 (73) FD/TAX/2016-67 dated 16th Dec 2016, notifies the State Government being of the opinion that it is expedient in the public interest so to do, hereby notifies that the class of dealers specified in Schedule.

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

The Govt. vides Notification No. F26 (315) CCT/MEA/2016/1990 dated 19th Dec 2016, notifies extension of last date of filing returns for F.Y. 2015-16.

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.

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

MOF ISSUES REPORT CARD ON GST IMPLEMENTATION; LISTS IMPORTANT DECISIONS TAKEN BY GST

As compared to the time taken in arriving at a consensus on the Constitutional Amendment Bill for GST, the subsequent events after the passing of the Bill indicate that the Government of India and the States have done remarkably well in taking all necessary steps for implementation of GST.

The Report Card below indicates that Government of India lost no time in implementing the GST so far:

As soon as the President's assent was received on the Constitutional Amendment Act for GST on 8th September, 2016, the GST Council was created by the Cabinet within a period of one week along with the Secretariat. Under Article 279A of the Constitution, the GST Council has been entrusted with the power to make recommendations to the Union and the States on various GST related issues, including those relating to goods and services that may be subject of, or exempted from the goods and services tax; the threshold limit of turnover below which goods and services may be exempted from GST and the rates including floor rates with bands of GST. Since notification of the GST Council on 12 September 2016, six meetings of the Council have been held in New Delhi. These meetings were held on 22-23 September, 2016; 30 September, 2016; 18-19 October, 2016; 3-4 November, 2016; 2-3 December, 2016 and 11 December, 2016. During these meetings, number of important decisions have been taken paving way for roll out of GST with effect from 1st April 2017.

Some of the important decisions taken in the last six Meetings of the GST Council are:

- i. The threshold limit for exemption from levy of GST would be Rs.20 lakhs for normal States (Rs.10 lakhs

for the Special Category States enumerated in Article 279A of the Constitution).

- ii. The threshold for availing the Composition scheme would be Rs.50 lakhs. Service providers would be kept out of the Composition scheme.
- iii. To compensate States for 5 years for loss of revenue due to implementation of GST, the base year for the revenue of the State would be 2015-16 and a fixed growth rate of 14% will be applied to it.
- iv. Approval of the Draft GST Rules on Registration; Payment; Return; Refund and Invoice, Debit & Credit Notes with the understanding that minor changes may be permitted with the approval of the Chairperson, if required, due to suggestions from the stakeholders or from the Law Department.
- v. All entities exempted from payment of indirect tax under any existing tax incentive scheme would pay tax in the GST regime and the decision to continue with any incentive scheme shall be with the concerned State or Central Government. In case any State Government or Central Government decides to continue any existing exemption/incentive scheme, it will be administered by way of a reimbursement mechanism.
- vi. Bands of rates of goods under GST shall be 5%, 12%, 18% and 28% and in addition there would be a category of exempt goods. Further, a cess would be levied on certain goods such as luxury cars, aerated drinks, pan masala and tobacco products, over and above the rate of 28% for payment of compensation to the States.

been considered by the Council and remaining Sections will be discussed in the next meeting of the Council scheduled for 22-23 December, 2016.

The discussions in GST Council have been very cordial and all decisions till now have been taken by consensus. Members of the Council are participating in the meetings with a very positive attitude and are working towards the roll-out of GST as per the deadline.

The GST Council in its 1st meeting decided that GST would be rolled-out by 1 April 2017. Accordingly, various timelines had been decided for various aspects of implementation of GST such as recommendation of the Model GST Laws by the GST Council and its passage by the Union Parliament and State Legislatures; the development of front-end Information Technology (IT) modules on the common GST portal and the back-end IT systems; testing and integration of GST front-end and back-end IT systems of all stakeholders; training of both Central and State tax officials; sensitization of the trade, industry and consumers. All efforts are being made to meet the necessary deadlines to ensure that GST is rolled out by 1 April 2017.

At present, agenda items pertaining to 'GST related draft laws' and 'Provisions for cross empowerment to ensure single interface under GST' are under consideration of the GST Council. 99 Sections the Model GST Law have already

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