



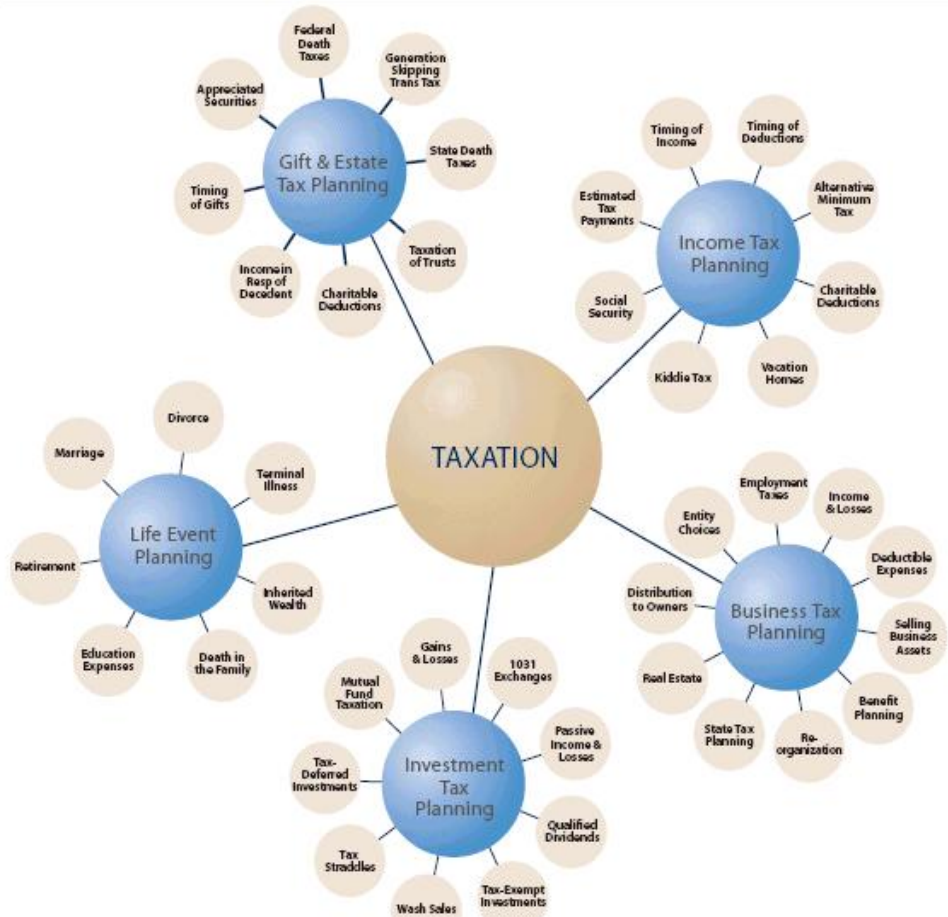
# ASC Times

All India Taxes Weekly Reference

Vol: Dec 26 –Jan 01, 2017

## Solving any tax puzzle

Tax saving advice across all the taxes



## TAXCALENDER

Due Date	Description	Law
30 Dec	Deposit of Tax	Himachal Pradesh VAT, Mizoram VAT, Tripura VAT, Goa VAT, Punjab & Chandigarh VAT
	Return Filing	Assam VAT, Delhi VAT, Maharashtra VAT, Meghalaya VAT, Orissa VAT
	Issue of VAT Audit Certificate	Orissa VAT
	Annual Return	Orissa VAT
31 Dec	Annual Return	West Bengal

## COUNTRY WIDE HOLIDAYS FOR THE WEEK

Date	Occasion/Festival	Region
01 <sup>st</sup> Jan	New Year	All India States

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## From the CEO's Desk



Dear Reader,

The Narendra Modi government's fourth budget is likely to make a sweeping recast of direct taxes focusing on both corporate tax and personal income tax to give a boost to the economy that's struggling in the wake of demonetisation. Finance minister Arun Jaitley will announce the budget on February 1, a month earlier than usual.

The recast is likely to speed up progress to a corporate tax rate of 25%, already a stated objective of the government, and offer substantial reliefs for small taxpayers who have backed demonetisation. The dividend taxation framework is likely to see more changes to make it more onerous for those receiving the bulk of their income in this form to make the regime more equitable. "The focus this year is on direct taxes," said a senior government official involved in the deliberations. With the goods and services tax (GST) to come from next financial year, there isn't much to be done on the indirect taxes side. The customs duty structure could see some changes.

In his budget for FY16, Jaitley announced the government's intention to lower corporate tax to 25% over four years, while phasing out exemptions. A beginning was made last year with companies up to Rs 5 crore turnover levied tax at 29%. New manufacturing companies set up after March 1, 2016, were offered an option of 25% tax plus surcharge. A bigger cut is likely for small and medium companies that have faced the brunt of demonetisation.

People who pay income tax are likely to be the big gainers, having faced hardship due to demonetisation while also likely getting lower salary increases and even facing the threat of job loss. While personal tax rates may remain the same, there could be a sharp increase in the exemption limit of Rs 2.5 lakh and wider tax slabs with more people falling in the lower ones.

The highest tax rate of 30% at present kicks in at Rs 10 lakh annual income. Kapadia also expects reporting of high-value cash withdrawals by banks to tax authorities along with the existing requirements for cash deposits and stricter enforcement of penalty in respect of improper disclosures in line with demonetisation exercise.

Alok Kumar Agarwal

CEO

ASC Group.

# CENTRAL TAXES

## SERVICE TAX

### NOTIFICATION / CIRCULAR

**The Govt. vides Notification No.53 dated 19<sup>th</sup> Dec 2016;** amends service Tax Rules, 1994 so as to allow a person located in non-taxable territory providing online information and database access or retrieval services to a non-assessee online recipient to issue online invoices not authenticated by means of a digital signature for a period up to 31<sup>st</sup> January, 2017.

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

### COURT DECISIONS

**M/S. HAZARIBAGH MINING & ENGINEERS PVT. LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, CUSTOMS & SERVICE TAX, BBSR-[CESTAT, KOLKATA]**

**BRIEF:** Nature of various activities provided in the mines of the service recipient - activities undertaken by the appellant under a composite contract will amount to providing 'Mining Services' which were made chargeable to Service Tax only with effect from 18.06. 2002.

**OUR TAKE:** The hon'ble **CESTAT, KOLKATA** held that Service Tax as 'Site formation Service' could be levied if there is a 'Service Contract Simplicator to that effect. However, once the contract is a composite contract for the entire activities from Site formation to segregation of Ores then the same has to be charged as a separate service (Mining Services), which was made chargeable to Service Tax w.e.f. 18.06.2007 only. Such operations under a composite contract cannot be treated as 'Site formation' or 'Cargo Handling Service' before 18.06.2007. **[Decided in favour of appellant].**

**M/S. NATIONAL INSURANCE COMPANY LTD. VERSUS COMMISSIONER OF SERVICE TAX, KOLKATA. [CESTAT KOLKATA]**

**BRIEF:** General Insurance Service - service provided by the appellant as co-insurer along with lead insurer to the Insured, whether attracts service tax or not? - Demand set aside.

**OUR TAKE:** The Hon'ble **CESTAT KOLKATA** held that circular has been issued by the Ld. Commissioner of Service Tax-I, Mumbai vide F.No.ST/HQ/EA2000/GR.01/TATA/23/2011/2308 dated 10.09.2013 wherein the service of co-insurance has been accepted and clarified that the said business is different from the insurance. **[Appeal is allowed]**

**CCE, Bhopal Versus Amar Construction Co [CESTAT NEW DELHI]**

**BRIEF:** Construction activity of commercial portion of ISBT - When the construction of ISBT is not a taxable service, there cannot be any bifurcation of that activity for service tax.

**OUR TAKE:** The hon'ble **CESTAT NEW DELHI** held that in terms of Section 65(25b) of Finance Act, 1994, the taxable service does not include such service provided in respect of the roads, airports, railways, transport terminals, bridges, tunnels and dams. Admittedly, ISBT is transport terminal which is clearly excluded from the definition of "Commercial or Industrial Construction Service" for service tax purposes. When the construction of ISBT is not a taxable service, there cannot be any bifurcation of that activity for service tax. **[Decided in favour of appellant]**

**M/S. PATEL AIR FREIGHT VERSUS C.S.T., DELHI [CESTAT NEW DELHI]**

**BRIEF:** The appellant cannot be blamed for entertaining a bona fide belief that the activity undertaken by them and the commission received from airlines not be liable to payment of service tax.

**OUR TAKE:** The hon'ble **CESTAT NEW DELHI** held that during the said period, the definition of BAS underwent significant change with effect from 10.09.2004. The subject matter of levy of service tax on airline agent was the subject matter of lot of litigations - Suffice to say that the appellant cannot be blamed for entertaining a bona fide belief that the activity undertaken by them and the commission received by them may not be liable to payment of service tax. **[Appeal allowed by way of remand].**

**LARSEN & TOUBRO GRAHAK SAHAKARI SAUSTHAN MARYADIT VERSUS COMMISSIONER OF SERVICE TAX, MUMBAI -II [CESTAT MUMBAI]**

**BRIEF:** Nature of activity - outdoor catering service being provided by the cooperative society - operation of the activity from a premise other than its own - some portion

**of the cost is met by the employer and remaining by the employees directly - service tax liability confirmed.**

**OUR TAKE:** The humble **CESTAT MUMBAI** held that the appellant has been rendering the service for long and also happens to be a co-operative society which could not have been unaware of the legal provisions of taxation. It cannot also claim to have lacked knowledge inasmuch as M/s Larsen & Toubro is also one of the members of the society - period of limitation invoked. **[Decided against appellant]**

#### **COMMISSIONER OF SERVICE TAX, MUMBAI - II VERSUS BENZY TRAVELS (VICE-VERSA) [CESTAT MUMBAI]**

**BRIEF:** Scope of tour operator's service - assessee is entitled to exemption of tax on collections generated from use of 'tourist buses' for passengers other than tour etc.

**OUR TAKE:** The hon'ble **CESTAT MUMBAI** held that the intent to accord parity to public and private point-to-point operations was embodied in exemption notification no. 20/2009-ST. On reference from operators, the distinction between 'tourist vehicles' and 'contract carriages' performing the same activity as state-run undertakings was eliminated by a corrigendum circular. Consequently, we find no difficulty in holding that, for the purpose of exclusion from tax, vehicles used by service providers is also to be so construed - appellant-assessee is entitled to exemption of tax on collections generated from use of 'tourist buses' for passengers other than tour etc. **[Decided partly in favour of appellant]**

#### **M/S EMIRATES TECHNOLOGIES PVT. LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX, MEERUT [CESTAT ALLAHABAD]**

**BRIEF:** : Denial of CENVAT credit - providing renting of immovable property services - professional charges paid claimed as input services - assessee file to prove nexus - credit denied

**OUR TAKE:** The hon'ble **CESTAT ALLAHABAD** held that the service relates to professional services for market-research. Without recording any finding that the appellant has no rental income from Gurgaon and or have not made any investment either prior to obtaining the report or after the obtaining of report for earning rental income from the tenants. Accordingly, I hold that the said expenditure is not with respect to earning of Revenue or providing of output service and as such, I hold the same is inadmissible. **[Appeal allowed in part by way of remand]**

#### **M/S SME CONSULTING PVT. LTD. VERSUS CCE & ST, JAIPUR - I [CESTAT NEW DELHI]**

**BRIEF:** Classification of services - activity of Data Processing - The activity of the appellant falls under the category of BAS as it is not alleged in the show cause notice to demand the service tax under the category of BAS the demand of service tax cannot be confirmed.

**OUR TAKE:** The hon'ble **CESTAT NEW DELHI** held that we find that the show because notice was issued to demand the service tax under the category of Management Consultancy service, therefore, the scope of the show cause notice on this point. In the impugned order, the learned Commissioner (Appeals) opined beyond the scope of show cause notice. The activity of the appellant falls under the category of BAS as it is not alleged in the show cause notice to demand the service tax under the category of BAS the demand of service tax cannot be confirmed against the appellant under the said category. **[Decided in favour of appellant].**

#### **M/S. AT & CO. VERSUS C.S.T. DELHI [CESTAT NEW DELHI]**

**BRIEF:** Classification of service - examination of the garments at various stages - When the outcome of the examination / inspection carried out does not result into some certification, the subject services cannot be covered by the services under the category of "technical inspection and certification".

**OUR TAKE:** The hon'ble **CESTAT NEW DELHI** held that here the appellant is randomly examining the garments at various stages like fabric stage, stitching stage and packing stage, but they are not giving any kind of certification with respect to pre-determined standards / characteristics or parameters. When the outcome of the examination / inspection carried out does not result into some certification, the subject services cannot be covered by the services under the category of "technical inspection and certification". **[Decided against revenue]**



## CENTRAL EXCISE

### COURT DECISIONS

#### COMMISSIONER OF CENTRAL EXCISE, KOLKATA-III VERSUS THE SUPERINTENDING ENGINEERS [CESTAT, KOLKATA]

**BRIEF:** Refund claim - the manufacturer did not claim exemption, whereas the appellant, the customer claims refund on the basis of exemption notification - Where the exemption was conditional one, buyer cannot claim refund on the pretext of exemption.

**OUR TAKE:** The hon'ble CESTAT, KOLKATA held that It is observed that similar issue was decided by CESTAT Delhi in the case of Inalsa Appliances Ltd. v. Commissioner of C.Ex., Delhi-IV, Faridabad [2004 (6) TMI 463 - CESTAT, NEW DELHI] - In the case juicers were manufactured by M/s. AAR Plastics and received by Appellant M/s. Inalsa Appliances Ltd. Refund claim in the relied upon case was also filed by M/s Inalsa Appliances Ltd. when the manufacturer did not challenge the assessments and it was held in the case that In absence of any excess payment of duty, the question of the appellants filing a refund claim does not arise. **[Decided in favour of revenue]**

#### SHIVA KASHI METALS & FERRO ALLOYS, SHRI AJODHYA GUPTA VERSUS COMMISSIONER OF CENTRAL EXCISE, CUSTOMS & SERVICE TAX, BBSR [CESTAT KOLKATA]

**BRIEF:** Manufacture - crushing, grinding, gravity separation of High Carbon Ferro Chrome (HCFC) Slag by jigging in water - whether activities carried out by the main Appellant amounts to manufacture? - Held Yes.

**OUR TAKE:** The hon'ble CESTAT KOLKATA held that the main point here is that the raw material namely HCFC Slag is classifiable under different Chapter and whereas HCFC, which is the outcome product of the assessee Appellant is in different Chapter Heading of Central Excise Tariff. The issue is whether by the processes undertaken by the assessee, a new identifiable, marketable product comes into existence - When the HCFC Slag is an altogether different product, which is subjected to different processes like crushing, grinding, watering etc. and resultant product is only HCFC, which has got separate existence in relation to its raw material namely HCF) and is an identifiable product, having independent marketability, then the yardstick of definition of manufacturing given in Section 2(f) of the Central Excise Act, 1944 is satisfied. **[Appeal allowed by way of remand]**

#### M/S. NESTLE INDIA LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, GOA [CESTAT MUMBAI]

**BRIEF:** Valuation - transaction value or MRP based value - Sales Promotion Scheme - pack of Maggie Noodles supplied along with Sundrop Oil freely, each pack of the product bear the word Free Not for Sale and also did not bear MRP - to be valued u/s 4 and not Section 4A.

**OUR TAKE:** The hon'ble CESTAT MUMBAI held that the identical issue has been decided in the case of Jayanti Food Processing (P) Ltd. Vs. Commissioner of C. Ex., Rajasthan [2007 (8) TMI 3 - Supreme Court], where it has held that the sale of goods to the buyer who used the goods not for retail sale but for free distribution under Sales Promotion Scheme, the value of the goods shall be governed under Section 4 and not Section 4A of the Central Excise Act. **[Decided in favour of appellant]**

#### RAJ FINOXIDES PVT. LTD., SAMBHU NATH SHAW VERSUS COMMISSIONER OF CENTRAL EXCISE, KOLKATA. [CESTAT KOLKATA]

**BRIEF:** Clandestine removal - Job work - input output norms of 1 kg of lead for every 1.07 kg of waste & scrap cannot be made applicable to all categories of waste & scrap and can be made applicable only to standards waste & scrap where metal content in the waste and scrap is 97% or more.

**OUR TAKE:** The hon'ble CESTAT, KOLKATA held that the issue is no more res-integra and is decided in the case of Wyeth Laboratories Ltd. Vs CCE Bombay [2000 (7) TMI 109 - CEGAT, NEW DELHI], where it was held that there is no question of holding scrap as final product and disallowing the benefit of clearance of scrap for converting into ingots, under Rule 4(5)(a) - no duty liability is attracted when goods are processed by the appellant under Rule-4(5)(a) of Cenvat Credit Rules 2004. Annexure-II challans prepared by M/s EIL contain the description of inputs, its quantity, etc and Part-II of this challan filled in by the appellant also contained the quantity of finished goods sent back to M/s EIL. In view of the above appellant is not required to discharge Central Excise duty on the finished goods processed as job worker under Rule-4 (5) (a) of the Cenvat Credit Rules 2004. **[Decided in favour of assessee]**

#### M/S. EMKAY INVESTMENTS PVT. LTD. VERSUS COMM. OF CENTRAL EXCISE, KOLKATA. [CESTAT KOLKATA]

**BRIEF:** SSI exemption - the duty evasion is pre-planned, to evade duty by using others brand was planned by the appellant assessee. It is corollary that during the same period they also had the intention to evade payment of duty by way of under-valuation and surreptitious removal - demand confirmed.

**OUR TAKE:** The hon'ble **CESTAT KOLKATA** held that appears that the duty evasion is pre-planned, to evade duty by using others brand was planned by the appellant assessee. It is corollary that during the same period they also had the intention to evade payment of duty by way of under-valuation and surreptitious removal. The very act of resorting to usage of brand name of another established manufacturer in itself proves the mala fide intention of the assessee - also the opportunity of cross examination as sought by appellant, was provided, but appellant failed to appear. **[Decided against appellant]**

**RANBAXY LABORATORIES LTD. VERSUS C.C.E., DELHI [CESTAT NEW DELHI]**

**BRIEF:** Manufacture - Chargeability of excise duty - manufacture of Pepfiz Effervescent Tablets (Pepfiz) using, among other things, absolute alcohol/ethanol - the usage of alcohol in the manufacturing activity of the impugned goods by itself is found to be sufficient - no excise duty liability.

**OUR TAKE:** The hon'ble **CESTAT NEW DELHI** held in order to attract duty under the 1955 Act all that is required is that a medicinal preparation should contain alcohol. Alcohol may be part of the preparation either because it is directly added to the solution or it came to be included in it because one of the components of that preparation contained alcohol. **[Decided in favour of appellant]**

**COMMISSIONER OF CUSTOMS, PATNA VERSUS M/S. M.S. METALS. [CESTAT KOLKATA]**

**BRIEF:** Refund claim - SAD - importer appointed a new Chartered Accountant, who becomes their regular Chartered Accountant and cannot be considered as a onetime independent Chartered Accountant giving a certificate.

**OUR TAKE:** The hon'ble **CESTAT KOLKATA** held that adjudicating authority while sanctioning the refund claim found all the conditions of Notification No.102/2007-Cus dated 14.09.2007 as fulfilled - It is observed from the relevant para of CBEC Circular dated 13.10.2008 that the same does not use the words regular Chartered Accountant, but only clarifies that certificate given by any other independent Chartered Accountant would not be acceptable for the purpose of 4% SAD refunds - Respondent accordingly appointed a new Chartered Accountant, who becomes their regular Chartered Accountant and cannot be considered as a onetime independent Chartered Accountant giving a certificate. **[Decided in favour of the assessee]**

## CUSTOM

### NOTIFICATION / CIRCULAR

**The Govt. vides Notification No.55/2016 dated 21<sup>st</sup> Dec 2016;** seeks to rescind notification No.34/2012-Customs (ADD) dated 03.07.2012. This notification has been issued since the time limit of three months for issuing the notification is ending shortly.

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

**The Govt. vides Notification No.56/2016 dated 21<sup>st</sup> Dec 2016;** seeks to rescind notification No.08/2013-Customs (ADD) dated 18.04.2013. This notification has been issued since the time limit of three months for issuing the notification is ending shortly.

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

### COURT DECISIONS

**M/S. SAI SHAKTI ENTERPRISES VERSUS THE COMMISSIONER OF CUSTOMS (IMPORT), NHAVA SHEVA [CESTAT, KOLKATA]**

**BRIEF:** Enhancement of value of imports - Every second-hand good varies from each other depending upon the duration of use, manner of use and condition of the machine therefore price of one second hand goods cannot be applied to other second hand goods without ascertaining the physical parameter of both the machine.

**OUR TAKE:** The hon'ble **CESTAT, KOLKATA** held that the price suggested by the DRI should not have been applied for enhancement of the impugned goods. Moreover, goods imported is a second-hand photocopier. Every second-hand good varies from each other depending upon the duration of use, manner of use and condition of the machine therefore price of one second hand goods cannot be applied to other second hand goods without ascertaining the physical parameter of both the machine - enhancement of the value is arbitrary and without any basis hence the same is not sustainable. **[Decided in favour of appellant]**

**MERICO ENTERPRISES AND OTHERS VERSUS COMMISSIONER OF CENTRAL EXCISE & CUSTOMS, GOA [CESTAT MUMBAI]**

**BRIEF:** Mis-declaration of value of imported goods - Since the appellants deliberately suppressed the value by mis-declaring, the goods were liable for confiscation.

**OUR TAKE:** The hon'ble CESTAT MUMBAI held that the Custom Officer has rightly rejected the price of speakers imported by the appellant as declared in the Bill of Entry, applying Rule 10A of the Valuation Rules. We are also satisfied that in such an eventuality, the prices which are fixed is based on concurrent findings of facts. [Appeal Dismissed]

**SHYAM FERRO ALLOYS LTD. VERSUS COMMISSIONER OF CUSTOMS (PORT), KOLKATA [CESTAT, KOLKATA]**

**BRIEF:** Classification - Broken Copper Cathode - Even if imported goods are not considered as 'Sections of Cathodes' then also the imported goods could be classified as '-Other' under CTH 7403 19 00 so long as the imported goods satisfy the criteria of 'Refined Copper'.

**OUR TAKE:** The hon'ble CESTAT, KOLKATA held that there is a definition of 'Refined Copper' and a definition for 'Waste & Scrap'. Nowhere in the Customs Tariff or HSN will explanatory notes it is specified that notes for waste and scrap get precedence over chapter note on 'Refined Copper'. [Decided in favour of assessee]

**KAY BEE & CO. & 71 OTHERS VERSUS COMMISSIONER OF CUSTOMS (IMPORT), MUMBAI [CESTAT MUMBAI]**

**BRIEF:** Valuation of imported goods - Pistachio - Rule 8 of Customs Valuation Rules, 1988 - the comparison with the price of the different goods of different period cannot be held correct.

**OUR TAKE:** The hon'ble CESTAT MUMBAI held that the fact that the price of US\$ 4.8 per kg is of the Pistachio crop of Nov - Dec, 1999, whereas the appellant's import of Pistachio is from the crop of 1998 at US\$ 3.6 per kg. which is vital fact which should have been considered by the lower authorities - in case of agriculture produce, quality of the goods varies from one of the crop to another particularly edible agriculture produce by lapse of time the product get deteriorated and obviously, the price of old stock of agriculture produce will not be equal to the fresh stock of agriculture produce - the comparison with the price of the different goods of different period cannot be held correct. [Decided in favour assessee]

## INCOME TAX

### COURT DECISIONS

**LIBERTY MARINE SYNDICATE PRIVATE LTD. AND OTHERS VERSUS PRINCIPAL COMMISSIONER OF INCOME-TAX, CUTTACK AND OTHERS. [ORISSA HIGH COURT]**

**BRIEF:** Assessment u/s 153A - assessee has not challenged the authority of the jurisdiction fairly for a period of more than two years and it is only after the notice U/s.153-A issued, this writ petition has been filed - petition dismissed.

**OUR TAKE:** The hon'ble ORISSA HIGH COURT held that notice U/s.153-A has been issued to the petitioner with a direction to satisfy the authority, moreover, the search and seizure was conducted on 11.09.2014, well within the knowledge of the petitioner – assessee, but he has not challenged the authority of the jurisdiction under the Act fairly for a period of more than two years'.

**HAIDER ABBAS VERSUS INCOME TAX OFFICER-20 (1) (3), MUMBAI [ITAT MUMBAI]**

**BRIEF:** Penalty u/s 271(1) (c) - unexplained cash deposits - the explanation offered by the assessee is not bonafide and the said explanation was rightly rejected by the authorities below.

**OUR TAKE:** The hon'ble ITAT MUMBAI held that The assessee could not come forward before the authorities below to explain the source of cash deposit of balance amount of 9,18,775/- and why the same has not incorporated in the return of income filed with the Revenue. [Decided against assessee]

**G. SHOES EXPORTS VERSUS ASST. CIT-25 (1), MUMBAI AND VICA-VERSA. [ITAT MUMBAI]**

**BRIEF:** Foreign travel expenditure of wife of partner in the assessee- firm - it proper to restrict its allowance to 50%, so that the assessee gets part relief.

**OUR TAKE:** The hon'ble ITAT MUMBAI held that the trial production should lead to the removal of operational glitches or defects, even as explained by the assessee itself per its submissions before the Revenue authorities – finding reproduction in their orders, leading to regularizing its authorization, and of which the assessee ought to have adequate evidence in the regular course.



**M/S. DIVAKAR SOLAR SYSTEM LTD. VERSUS DEPUTY COMMISSIONER OF INCOME-TAX. [ITAT KOLKATA]**

**BRIEF:** Disallowance made u/s 40A (2) towards salary and professional fees paid to the relative of a director of the company - assessee had duly provided the complete details of nature of services rendered - no disallowance

**OUR TAKE:** The hon'ble ITAT KOLKATA held that the onus is on the Id. AO to bring the fair market value of the goods purchased by bringing in comparable cases; onus is on the Id. AO to bring on record that the payment for purchases has resulted in some benefit derived by the other person to whom the payment has been made. Only in such cases, he could disallow to the extent that such payment is found to be excessive or unreasonable in his opinion. In the instant case, the Id. AO had not brought any comparable cases on record to disprove the purchases made from holding company by the assessee. **[Decided in favour of assessee]**

**MAA SARASWATI EDUCATIONAL SOCIETY VERSUS COMMISSIONER OF INCOME-TAX [ITAT DELHI]**

**BRIEF:** Grant of registration u/s. 12A and 80G refused - non-charitable purpose - assessee incurred advertisement expenditure for procuring more admission of the students with sole motive of earning profit, is wrong

**OUR TAKE:** The hon'ble ITAT DELHI held that It appears that the conclusion reached by the CIT that the assessee trust is profit oriented entity and not the charitable institute, is based only on the ground that the assessee would charge hefty fees from the students. The Id. CIT has failed to throw any light on the aims and objects of the society and to examine whether the activities of the society are to achieve the aims and objects as per its memorandum. Simply because the appellant will charge fee from the students, in our opinion, it does not go to suggest refusal of registration to the assessee society.

**M/s. Apeejay Tea Ltd. (Merged with Apeejay Surrendra Corporate Service Ltd.) Versus D.C.I.T. Central Circle-III, Kolkata. [ITAT KOLKATA]**

**BRIEF:** Interest subsidy - Composite income - growing and manufacturing of tea - there is no reason why this income should not be considered as part of the composite income before apportionment between income from agriculture and income from non-agricultural income.

**OUR TAKE:** The hon'ble ITAT KOLKATA held that the tests to be applied while computing composite income under Rule 8, is to see whether the receipts fall within the ambit of receipts under Sec.28 to 44 of the Act. We therefore hold that income set out in Ground No. 1 & 3 have to be included as part of the composite income. **[Decided in favour of assessee]**

# STATE TAXES

## ALL INDIA VAT

### GOA

The Govt. vides Notification NO. 4/5/2005-FIN(R&C) (143) dated 23<sup>rd</sup> Dec 2016, amends Schedule C - Reduction in rate of tax on Motor spirit which is commonly known as petrol including ethanol blended petrol.

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

### GUJRAT

The Govt. vides Notification NO. (GHN-72) VAT-2016-S.5 (2) (52)-TH dated 19<sup>th</sup> Dec 2016, Exemption to POS Machine.

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

### KERALA

The Govt. vides Circular for GST ENROLMENT dated 21<sup>st</sup> Dec 2016, GST Enrolment and Migration Manual.

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

### MAHARASHTRA

The Govt. vides Notification NO. VAT.1514/CR-22/TAXATION-1 dated 22<sup>nd</sup> Dec 2016, Notifies IDFC Bank for the purpose of Bank Guarantee.

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

## RAJASTHAN

The Govt. vides Notification NO. F26 (315) CCT/MEA/2016/1990 dated 19<sup>th</sup> Dec 2016, 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

## 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 VERSYS 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

### GST IMPACT ON TEXTILE INDUSTRY IN INDIA

Textile industries play a very important role in the development of the Indian economy with respect to GDP, Export promotion, employment, etc. It is the one of the oldest manufacturing industry in India. It is the second largest industry after agriculture which provide skilled and unskilled employment. In this sector, 100% FDI is allowed by the Government under the Automatic Route. Textile Industry contributes more than 10% in Total Export. Textile Industry is divided into Two Segment, firstly Unorganized and Secondly Organized. Unorganized sector consists of Handloom, handicraft, small and medium-scale mills and Organized Sector consist of spinning, apparel and garments segment which apply modern machinery and techniques.

Mainly Two types of Indirect Taxes are Central Excise Duties and Service Tax. Service is not levied on Textile since it comes under Goods.

Under current taxation system, textile products are mostly exempted or are taxed at very low rate. State Governments have stop levying Sales Tax after the discontinuation of Additional Excise Duty.

### GST IMPACT ON TEXTILE INDUSTRY IN INDIA

- **Input Tax Credit Breakup:** The textiles industry comprises of both regular and composition taxpayers. Most of the industry are being in Composition Segment. Numerous transactions in the textiles industry flow from the unorganized to the organized sector and vice versa. Where Regular/Registered Taxpayer purchase goods from composition Taxpayers, they are not eligible for Input Tax Credit, thus breaking the Cenvat Credit chain. Input Tax credit paid on the previous transaction is included in the cost of the product making the product costly.
- **Small Business Compliance Cost:** composition scheme Taxpayer is hesitant to join Credit chain as it increases the compliance cost of engaging professional to meet their Tax obligation.
- **All Other Taxes to be Included in GST:** Supply chain of Textile Industry is loaded with input and output across state boundaries to reach the ultimate consumer. Octroi and Entry Tax are the bottlenecks, credit of which are not allowable, thus form the part of the cost. Subsume of octroi, entry tax, entertainment tax, luxury tax, etc. into GST will remove the cascading effect at the distribution stage.

## GST IMPLICATION

After the application of GST, there will be an increase in the effective tax rate to have a negative impact on the textile sector as compared to current taxation.

- As CGST and SGST rates are likely to be higher than the current textile sector rate, this will result in the higher revenue to the Central and State Government and Textile Prices will increase. Services are used in Input, this effect would be nullified as all input tax will be rebated.
- In the current taxation, taxes are being paid on input are being added to cost as the finished product are exempt from Taxes. In GST, Textile Output will be taxed and Input Tax will be rebate whether in the case of export or for domestic use making taxation transparent
- Taxes paid on purchase and installation of capital asset and equipment can be claimed as Cenvat credit. This will lead to up-gradation and expansion of the Textile Industries with latest Improve technologies.
- Compliance cost will be improved and reduced
- Fiscal barriers will be removed with the movement of Textile Input and output taxes from one states to another
- Under GST, all Fibre will be treated in same way. No discrimination between cotton fibre and man-made fibre is there till now in the defined GST Structure.

### RECOMMENDED: MEANING OF SGST, IGST AND CGST

Overall GST will necessarily change the current structure of Textile Industries. GST will result in transparency; the tax burden will shift to the ultimate consumer by claim the credit of taxes paid on input. Still, GST rate is to be determined, it may lead to the higher tax burden on textile units. But the impact on demand will be less or neutral. It will encourage widespread development and growth in Indian Textile sector. The future for the textile industry looks promising, buoyed by both strong domestic consumption as well as export demand.

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