



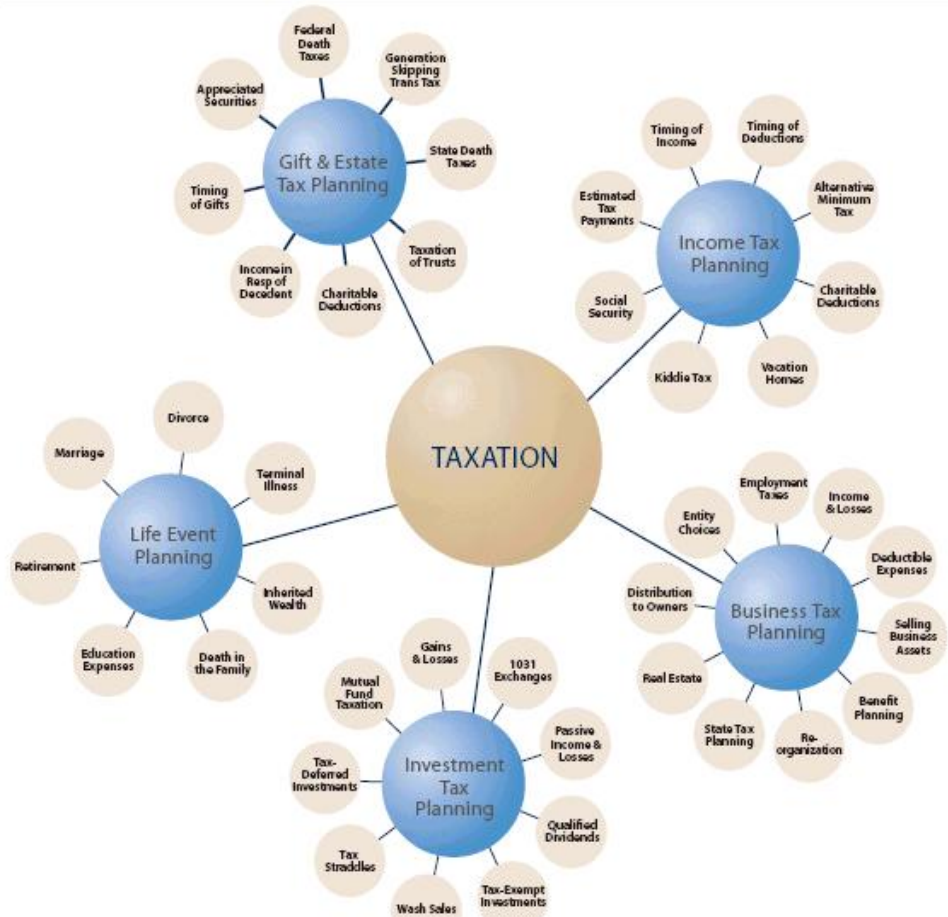
ASC Times

All India Taxes Weekly Reference

Vol: Dec 05– Dec 11, 2016

Solving any tax puzzle

Tax saving advice across all the taxes



TAXCALENDER

Due Date	Description	Law
07 Dec	Deposit of TDS	Orissa VAT, Tripura VAT, Mizoram VAT. Income Tax Law.
	Issue of TDS Certificate	Orissa VAT
09 Dec	Return Filing	Gujarat VAT
10 Dec	Deposit of Tax	Chhattisgarh VAT, Kerala VAT, Madhya Pradesh VAT.
	Deposit of TDS	Chhattisgarh VAT, Madhya Pradesh VAT, Mizoram VAT, Nagaland VAT.
	Return Filing	Karnataka VAT, Kerala VAT Central Excise Law
12 Dec	Deposit of Tax	Gujarat VAT.
13 Dec	Return Filing	Nagaland VAT.

COUNTRY WIDE HOLIDAYS FOR THE WEEK

Date	Occasion/Festival	Region
NA	NA	NA

INDEX GUIDE

TOPIC	PAGE NO.
Service Tax	4-5
Central Excise	6-7
Customs	7-8
Income Tax	9-9
State Taxes	10-11
Other Updates	12-12
Our Contacts	13

From the CEO's Desk



Dear Reader,

Outside of the last meeting of the GST Council on December 1 and 2, state finance ministers were reported to have discussed the effect of demonetisation on their finances with finance minister Arun Jaitley. (The issue could not be discussed at the Council meeting itself because the issue does not fall into its jurisdiction.) The states could well be raising the issue for purely political reasons or to bargain for higher compensation (which can be addressed if the Centre so wishes), but there are concerns about the economic impact of GST implementation so soon after demonetisation. There are various estimates about the extent of the impact of demonetisation on demand and growth, as also about how long these effects will last, but there is general consensus that there will be an immediate adverse effect. Small businesses especially will be most affected by the move and they are also the ones who will have to make more adjustments for the GST regime.

Large firms will also be affected by a drop in demand but they are, she says, more or less GST-ready; the small firms are not. But can the government wait for the economy to settle down before moving into the final stage of GST? That seems unlikely. For one, the Modi government's prestige is at stake – this is one of the big bang reforms it can claim credit for. Besides, the initial one or two years of GST will be a bit painful but things will look up after and Modi may want the high to come closer to the 2019 election. More importantly, there is also a constitutional timer ticking – Jaitley has pointed out that GST cannot be delayed beyond September 2017. The constitutional amendment ushering in GST says the prevailing indirect tax regime can continue for just a year after the Act was notified. Since it was notified in September, the current tax regime will have to end in September 2017.

The supporting legislations have not been passed and businesses will need to understand the implications and

prepare for the new regime. As things stand, even the GST Council has not cleared the draft of these legislations. The last meeting of the Council got deadlocked over the sharing of administrative powers. In September, there was consensus at a Council meeting on states having jurisdiction over transactions below Rs 1.5 crore, the centre and the states having dual control over transactions above that threshold and the centre having exclusive jurisdiction over service tax. This writer had pointed out then that working out the mechanics of this may not be easy.

Some states have raised objections to the exclusive jurisdiction of the Centre over service tax. For states, especially small ones, some services may yield large revenues. For the Centre, however, collections from these may not amount to very much and these may slip under the GST radar. Another problematic issue is that of dual control in the case of the integrated GST (IGST, which is levied on inter-state movement of goods). All these concerns are genuine ones for which solutions need to be found.

Jaitley has said he has his fingers crossed about progress being made in the next meeting of the GST Council on December 11 and 12. Everyone will be on edge till then.

Alok Kumar Agarwal

CEO

ASC Group.

CENTRAL TAXES

BRIEF: Whether the printing service provided by the appellant to M/s. HDFC Bank Ltd during the period July,

SERVICE TAX

NOTIFICATION / CIRCULAR

The Govt. vides Notification No.51/2016 dated 30th Nov 2016; amends Place of Provision of Services Rules, 2012 so as to exclude 'online information and database access or retrieval services' from the definition of 'telecommunication services'.

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

COURT DECISIONS

CST, NEW DELHI VERSUS M/S ALANKIT ASSIGNMENT LTD [CESTAT NEW DELHI]

BRIEF: Extended period of limitation - The initial burden of proving that the situations visualized by proviso to Section 73 (1) has, thus, not been discharged. It is, therefore, unjust and unreasonable to invoke the extended period of limitation.

OUR TAKE: The hon'ble CESTAT NEW DELHI held for invoking extended period of limitation mere failure on the part of the assessee to pay the tax or file the prescribed Returns is not sufficient. It has to be proved that the assessee was aware that he is liable of pay service tax and he deliberately evaded to pay the tax or the facts required to be disclosed to the revenue authorities were not deliberately and consciously disclosed to the revenue authorities. In the present proceedings only a few allegations have been made without adducing the evidence to support the allegations. The initial burden of proving that the situations visualized by proviso to Section 73 (1) has, thus, not been discharged. It is, therefore, unjust and unreasonable to invoke the extended period of limitation. [Decided against Revenue]

M/S. ATLAS DOCUMENTARY FACILITATORS COMPANY PVT. LTD. VERSUS COMMISSIONER OF SERVICE TAX, MUMBAI-I [CESTAT MUMBAI]

2003

To March, 2004 falls under the category of Business Auxiliary Services? It may fall under the BSS category but cannot be taxed as BAS.

OUR TAKE: The Hon'ble CESTAT MUMBAI held that the Business Support Service became taxable w.e.f. 1-5-2006 therefore the appellant's services being similar, more appropriately classifiable as Business Support Service and the same was not taxable during the period involved in the present case - demand of service tax on the printing service provided by the appellant is not taxable. Therefore demand of service tax and consequential penalty and interest are set aside. [Decided in favour of appellant]

BNY MELLON INTERNATIONAL OPERATIONS (I) PVT. LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, PUNE-III [CESTAT MUMBAI]

BRIEF: Refund claim - certificates for a produced of foreign inward remittances, though in Indian rupees, Cenvat credit cannot be denied as it is a certificate of foreign inward remittances.

OUR TAKE: The hon'ble CESTAT MUMBAI held that there is no dispute as to the exports undertaken by the appellant. In our considered view, when there is no dispute as to the exports of the services rendered by the appellant, and no dispute as to the availment of the Cenvat credit or eligibility thereof, the only reason for denying Cenvat credit that the amounts are not received in convertible foreign currency seems to be irrational way of denying the legitimate refund to an assessee. [Decided in favour of appellant]

M/S GUJARAT STATE FERTILIZERS & CHEMICALS LTD. & ANOTHER VERSUS COMMISSIONER OF CENTRAL EXCISE [SUPREME COURT]

BRIEF: Nature of activity - Sharing of expenditure under joint venture agreement - By no stretch of imagination, it can be treated as common 'service' provided by GSFC to GACL for which it is charging GACL - the question of service tax does not arise.

OUR TAKE: The hon'ble SUPREME COURT held that handling portion and maintenance including incineration facilities is in the nature of joint venture between two of them and the parties have simply agreed to share the expenditure. The payment which is made by GACL to GSFC is the share of GACL which is payable to GSFC. By no stretch of imagination,

it can be treated as common 'service' provided by GSFC to GACL for which it is charging GACL - the question of service tax does not arise. In view thereof, it is not necessary to go into the question as to whether receiving of HCN through the said common pipeline in the tank which is setup by the GFSC and GACL amounts to 'storage' or not and we leave the said question open. **[Decided against Revenue]**

COMMISSIONER OF CENTRAL EXCISE, CUSTOMS, & SERVICE TAX, RAIGAD VERSUS M/S. PUNJAB STATE CONTAINER & WAREHOUSING CORPORATION [CESTAT MUMBAI]

BRIEF: Levy of tax - amount recovered from sale proceed of auction of unclaimed cargo - The activity is of sale of abandoned goods and the proceed of sale of goods does not attract any service tax.

OUR TAKE: The humble **CESTAT MUMBAI** held that the appellant is selling the goods in open auction and receiving the sale proceed out of such auction, in this process no service recipient is existing. It is the foremost principle for levying service tax is that for provision of any service, provider and service recipient should exist then only the transaction of service can be completed by providing service of service provider and receiving the service by service recipient - In the present case, the service recipient does not exist. The activity is of sale of abandoned goods and the proceed of sale of goods does not attract any service tax. **[Decided against appellant]**

SAI CONSTRUCTION PVT LTD VERSUS COMMISSIONER OF CENTRAL EXCISE, PUNE-II [CESTAT MUMBAI]

BRIEF: The availment of credit is derived from rule 3 of CENVAT Credit Rules, 2004 and, as the taxes have been paid on common services used for property that is not in use by the appellant as recipient of service, availment of CENVAT credit is within the scope of the Rules.

OUR TAKE: The hon'ble **CESTAT MUMBAI** held that the availment of credit is derived from rule 3 of CENVAT Credit Rules, 2004 and, as the taxes have been paid on common services used for property that is not in use by the appellant as recipient of service, availment of CENVAT credit is within the scope of the Rules. **[Decided in favour of appellant]**

M/S. ODYSSEY ORGANICS P. LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, RAIGAD [CESTAT MUMBAI]

BRIEF: The activity of treatment of effluent waste cannot be considered as processing of the goods by any stretch of imagination - Demand under the category of Business Auxiliary Services set aside.

OUR TAKE: The hon'ble **CESTAT MUMBAI** held that it is also to be noted and is a common knowledge that disposal of waste water in the common effluent treatment plant of Maharashtra pollution control board, needs to adhere specifications acceptable for such disposal, which are achieved by the treatment undertaken by the appellant. We notice that treatment of effluent waste cannot be considered as processing of the goods by any stretch of imagination, and we also note that the show cause notice does not invoke specific clause of the definition of Business Auxiliary Services for levy of tax - Impugned order is set aside. **[The appeal is allowed]**

NOKIA INDIA PRIVATE LTD. VERSUS COMMISSIONER OF SERVICE TAX [CESTAT CHENNAI]

BRIEF: Refund - SEZ unit - services consumed wholly by the appellant within SEZ within which it is situated - rent-a-cab services - outdoor catering services - refund allowed.

OUR TAKE: The hon'ble **CESTAT CHENNAI** held that Doubtless, the Notification No.9/2009-ST as amended by Notification No.15/2009-ST provided for ab-initio exemption from discharge of service tax liability by an SEZ unit in respect of authorized services consumed fully within the SEZ. This however, in my view, cannot disentitle such a unit of refund of the service tax liability discharged even when all such services have been consumed fully within the SEZ. It is further seen that list of specified services have been issued by Development Commissioner for authorized operations by the unit within MEPZ/SEZ in which disputed services viz. Rent-a-cab services, and Outdoor catering services are listed out at Sl.No.20 & 25 respectively. Thus, I find that the conditionality's in para (I) of Notification No.9/2009-ST, as amended, are satisfied. **[Appeal Allowed]**

C.C.E. INDORE VERSUS M/S. ARVIND SINGH LAL SINGH [CESTAT NEW DELHI]

BRIEF: Classification of taxable service - the activities of loading, unloading of cargo from the local warehouse to the trucks as also at the premises of dealers or godown - not falling under the cargo handling service category

OUR TAKE: The hon'ble **CESTAT NEW DELHI** held that assessee is transporting fertilizers, as per the direction of the various suppliers, from the railway platform to the premises of dealer or godown. No doubt they also undertake the activities of loading, unloading of cargo from the local warehouse to the trucks as also at the premises of dealers or godown. Clearly these activities cannot be covered under the definition of cargo handling services as given above. **[Decided in favour of the assessee]**

CENTRAL EXCISE

NOTIFICATION / CIRCULAR

The Govt. vides Notification No.35/2016 dated 28th Nov 2016; exempt Point of Sale (POS) devices and goods required for its manufacture from central excise duty till 31st March, 2017.

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

The Govt. vides Notification No.36/2016 dated 01st Dec 2016; amends notification No. 12/2012-Central Excise dated 17th March, 2012, in respect to the excise duty exemption on branded gold coins of purity 99.5% and above.

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

COURT DECISIONS

M/S ARDEE BOARD PVT. LTD. VERSUS CCE, RAIPUR [CESTAT NEW DELHI]

BRIEF: An exemption from duty, if otherwise available on fulfilment of all conditions cannot be denied on the ground that another exemption was wrongly availed by the appellant.

OUR TAKE: The hon'ble CESTAT NEW DELHI held that it was observed by the lower Authorities that the ER-1 return was not complete. It is not recorded which aspect of the return is incomplete. It is sufficient to note here that the appellants indicated description of the product, clearances without payment of duty and notification number for such clearances. In such situation, allegation of fraud, suppression etc. cannot be sustained against the appellant for confirmed demand for extended period. [Appeal Disposed Of]

M/S CROMPTON GREAVES LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, NASHIK. [CESTAT MUMBAI]

BRIEF: Classification of manufactured item - Advanced Variable Speed (AVS) Drive Controller - these goods are not meant for electric control or the distribution of electricity and therefore these do not qualify to be classified under heading 8537 claimed by the revenue.

OUR TAKE: The hon'ble CESTAT MUMBAI held that the distinguishing feature between Heading 8537 and 9032 is that 8537 is meant for equipment meant for electric control for distribution of electricity. The heading 90.32 covers automatic regulating or controlling instruments and apparatus like, Thermostats and pressure switches etc. It is seen from the tariff description and connected explanatory notes that if the device is meant for electric control or the distribution of electricity does it qualify to be classified under heading 8537. [Decided in favour of assessee]

M/S SMV BEVERAGES PVT. LTD., CHHOTELAL NARAYANDAS VERSUS COMMISSIONER OF CENTRAL EXCISE, NAGPUR [CESTAT MUMBAI]

BRIEF: Cenvat Credit - supplementary invoice, issued by the registered dealer, on which credit was availed by the main appellant are not the document on which such Credit can be availed.

OUR TAKE: The hon'ble CESTAT MUMBAI held The Rule 7(1)(b) of Cenvat Credit Rules, 2002 for the period in question indicate that the supplementary invoices issued by the manufacturer or importer of inputs is to be considered as a document for availment of CENVAT Credit. On reading of the said rule, I find that the additional amount of duty is being raised on the supplementary invoices should be clearly additional duty become payable and should not be the duty which is recoverable from the manufacturer or importer of inputs by invoking the extended period of time - In the case in hand, I find that the supplementary invoices are issued by the registered dealer indicating the payment of AED done by the sugar factory. Undisputedly, sugar factory has issued earlier invoices for the clearance of sugar for the period prior to 1.3.2003. [Appeal disposed off]

M/S. RAMDEV BLOCKS VERSUS COMMISSIONER CENTRAL EXCISE, THANE-II. [CESTAT MUMBAI]

BRIEF: Benefit of exemption notification - classification - Solid/Hollow Cement Concrete Blocks - product represent to description used for the marketing of the goods should be accepted and need not to go to the IS specification particularly for the reason that the entry provided in the exemption notification does not carry any IS specifications.

OUR TAKE: The hon'ble CESTAT MUMBAI held that the goods entitle for the exemption is lightweight (solid and hollow) concrete building blocks. However, no specification either as per the Indian standard or otherwise was provided alongwith aforesaid entry in the notification. Further, held that irrespective of any ingredient the classification of the goods has to be preferred as per the name of product known in the market. [Decided in favour of assessee]

M/S RELIANCE INDUSTRIES LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, MUMBAI-I. [CESTAT MUMBAI]**CUSTOM****NOTIFICATION / CIRCULAR**

BRIEF: Both the inputs i.e. Ceramic Balls and Ethyl Alcohol are used in the manufacturing of final product of the appellant. Therefore the appellant is entitled for the MODVAT credit on the said items.

OUR TAKE: The hon'ble CESTAT MUMBAI held that Ceramic Balls are used for de-sulphurication of feed stock Ethylene viz: to purify the basic raw material. In our view, this process is vital process for further manufacturing of final products. Ethylene without purification cannot be used in the manufacture of final product. Therefore the use of Ceramic Balls for processing of raw material for the manufacture of final products. The processing of manufacture start from of the raw material stage up to the manufacture of final product. It is used for conversion of non-purified Ethylene to purified form. Therefore the Ceramic Balls are used in the manufacturing process - The very same issue has been decided by this Tribunal in favour of the appellant as per the Tribunal decision in the case of Reliance Industries Ltd. [2000 (1) TMI 85 - CEGAT, MUMBAI], where the credit was allowed. **[Decided in favour of appellant]**

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

BRIEF: Manufacture - assembling of semi-finished Auto Parts - the appellant has rightly availed the CENVAT credit in respect of semi-finished bought out components - credit allowed.

OUR TAKE: The hon'ble CESTAT MUMBAI held that from the plain reading of the Rule 16 it can be seen that if the assessee receive duty paid goods in his factory and carries out the various processes they can avail the CENVAT credit on said duty paid goods. The condition is that assessee is required to pay duty on reissue of bought out goods equivalent to the CENVAT credit availed, if the process does not amount to manufacture and if the process is amount to manufacture then the duty as per Section 4 is required to be paid i.e. on the transaction value. **[Decided in favour of appellant]**

The Govt. vides Notification No.142/2016 dated 29th Nov 2016; amends Courier Imports and Exports (Clearance) Courier Imports and Exports (Clearance).

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

The Govt. vides Notification No.141/2016 dated 29th Nov 2016; amends Courier Imports and Exports (Clearance) Courier Imports and Exports (Clearance).

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

The Govt. vides Notification No.144/2016 dated 30th Nov 2016; notifies 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

The Govt. vides Notification No.145/2016 dated 01st Dec 2016; notifies Rate of exchange of conversion of the foreign currency with effect from 2nd December, 2016

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

The Govt. vides Notification No.59 dated 01st Dec 2016; amend notification No. 12/2012-Customs dated 17th March, 2012, so as to withdraw CVD exemption on gold coins having gold content not below 99.5%, and gold findings.

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

COURT DECISIONS**NARANG INTERNATIONAL HOTELS PVT LTD, RAMESH NARANG VERSUS COMMISSIONER OF CUSTOMS (EXPORT) , NCH, NHAVA SHEVA [CESTAT MUMBAI]**

BRIEF: Import of two Bentley cars under EPCG scheme - the usage for purposes other than earning of foreign exchange is not a breach of the conditions of the scheme or of the corresponding exemption notification.

OUR TAKE: The hon'ble CESTAT MUMBAI held that the scheme is limited to import of capital goods and, consequently, does not impose any condition of exclusive use for the purpose assigned in the import authorization - whether the holder be a manufacturer of goods or supplier of services. Such condition is not envisaged because it is not in public interest that capital goods utilized sub-optimally for solely for earning foreign exchange. Therefore, usage for purposes other than earning of foreign exchange is not a breach of the conditions of the scheme or of the corresponding exemption notification. **[Decided against appellant]**

CC (AIRPORT-CARGO) , CHENNAI VERSUS M/S VISHAL SURGICAL EQUIPMENT CO. PVT. LTD. [CESTAT CHENNAI]

BRIEF: Benefit of Exemption Notification No. 17/2001-Cus - whether "Cardiac Catheters" includes "Stents" or not? - it should not be misconceived that stent is to be understood as catheters.

OUR TAKE: The hon'ble CESTAT CHENNAI held that it should not be misconceived that stent is to be understood as catheters - In absence of any logical reason, the decision stated by the respondent does not have the character of precedent. Therefore, that shall not govern our decision today for which we accept the submission of Revenue and allow its appeal - benefit of notification denied. **[Decided in favour of appellant]**

M/S. MALANA POWER CO. LTD. VERSUS DIRECTOR GENERAL OF FOREIGN TRADE (POLICY) & ORS [DELHI HIGH COURT]

BRIEF: Denial of the benefit of refund of terminal excise duty in relation to capital goods supplied to power projects - since there was a justification and even a strong public interest element in the denial of terminal excise duty benefits, the question of its being arbitrary does not arise.

OUR TAKE: The hon'ble DELHI HIGH COURT held that it is quite clear that firstly the eligibility called entitlement by the petitioner to the refund and terminal duty as a deemed export benefit was introduced for the first time through an amendment of the Hand Book of Procedures. Thus, the question of its being ultra vires the Act or the Policy would not arise. Secondly, paragraph 10.11 which spelt out the eligibility to receive refund of terminal excise duty itself established the linkage i.e. payment of excise duty as an existing condition and further restricted the quantum to 3%. **[Decided against assessee]**

ARCADIA SHIPPING LTD. VERSUS COMMISSIONER OF CUSTOMS (I) MUMBAI [CESTAT MUMBAI]

BRIEF: Import of vessel 'MT Navdhenu Sana' - smuggled goods - the vessel could not be considered as 'dutyable goods' - if the goods are not dutyable, and there is no prohibition in importing oil tankers to India - No penalty.

OUR TAKE: The hon'ble CESTAT MUMBAI held that We find that in the case of Shipping Corporation of India [2014 (12) TMI 617 - CESTAT MUMBAI] and Samson Maritime Ltd. & anr. v. Commissioner of Customs (Import), Mumbai [2015 (11) TMI 1023 - CESTAT MUMBAI], the issue of duty liability was also considered along with the issue of jurisdiction. So it is here, too, as the appellant has claimed to be a 'foreign-going vessel' which, while on foreign run, was compelled to make landfall at Mumbai owing to emergency. Further, held that the vessel could not be considered as 'dutyable goods' - if the goods are not dutyable, and there is no prohibition in importing oil tankers to India, the provisions of Section 111(f) are not at all attracted **[Decided in favour of appellant]**

M/S KCM APPLIANCES PVT. LTD. VERSUS THE COMMISSIONER OF CUSTOMS. [CESTAT BANGALORE]

BRIEF: Refund claim - whether the rejection of refund claim on the ground that the appellants cannot claim the refund directly without challenging the assessment order is justified? - Held Yes.

OUR TAKE: The hon'ble CESTAT BANGALORE held that the refund cannot be claimed directly without challenging the assessment order - the learned counsel placed reliance on the case of Aman Medical Products Ltd. Vs. Commissioner of Customs, Delhi [2009 (9) TMI 41 - DELHI HIGH COURT] and laid that the question of reassessment by way of challenging the assessed Bill of Entry would arise only in case where there is a lis or dispute between the assessee/importer and the Department, thus, assessments need not to be challenged. **[Decided against appellant]**



INCOME TAX

COURT DECISIONS

M/S SBI LIFE INSURANCE CO. LTD. VERSUS DCIT (TDS) 3 (2) , K.G. MITTAL HOSPITAL, MUMBAI AND M/S SBI LIFE INSURANCE CO. LTD. VERSUS ASST. CIT (TDS) 3 (2) , K.G. MITTAL HOSPITAL, MUMBAI AND VICA-VERSA [ITAT MUMBAI]

BRIEF:TDS u/s 194D - TDS on expenditure incurred on its insurance agents and SBI employees - such expenditure has been incurred on the group as a whole and also the same is not a voluntary act on the part of insurance agents - no TDS liability.

OUR TAKE: The hon'ble ITAT MUMBAI held that as assesses has already deducted tax at source under section 194C, by no stretch of imagination the said payment can be held to be liable for deduction of tax under section 194D, in so far as it was not a payment made to agent for procuring LIC business the expenses incurred cannot be said to be in the nature of incentive or reward to the insurance agents as they had no option to choose a place for the purpose of foreign travel.

MALABAR HILL CLUB LTD. VERSUS DCIT, CIRCLE-5 (2) , MUMBAI AND VICA-VERSA[ITAT MUMBAI]

BRIEF: Penalty u/s. 271(1) (c) - false claim of business expenditure - it is not a case where the explanation given by assesses was bona fide and there was full disclosure of facts - levy of penalty confirmed.

OUR TAKE: The hon'ble ITAT MUMBAI held that it is to be understood that the enduring benefit in the case of repairs and maintenance may spread beyond one financial year, but that itself would not justify the characterisation of expenditure as capital in nature so long as it does not result in creation of any new asset or a benefit. [Decided in favour of assesses]

HOTEL STEELWELL PVT. LTD. (NOW KNOWN AS CAMPION PROPERTIES LTD.) VERSUS D.C.I.T., CIRCLE 12 (1) NEW DELHI. [ITAT DELHI]

BRIEF: Penalty u/s. 271(1) (c) - false claim of business expenditure - it is not a case where the explanation given by assesses was bona fide and there was full disclosure of facts - levy of penalty confirmed.

OUR TAKE: The hon'ble ITAT MUMBAI held that no rebuttal has been given by the assesses to these findings of fact,

which go to suggest that the appellant has not made a complete disclosure in terms of Explanation 1 to section 271(1)(c) of the Act. [Decided against assessee]

FORMULA ONE WORLD CHAMPIONSHIP LIMITED, JAIPRAKASH ASSOCIATES LTD. VERSUS COMMISSIONER OF INCOME TAX, INTERNATIONAL TAXATION-3 & ANR. [DELHI HIGH COURT]

BRIEF:TDS u/s 195 - FOWC carried on business in India through a PE, at the circuit, it is held that payments made to FOWC, under the RPC were business income and accordingly chargeable to tax, according to the rates applicable in India at that time..

OUR TAKE: The hon'ble ITAT MUMBAI held that if Jayvee is the event promoter, which owns the title to the circuit in the sense that it owns the land, FOWC is the commercial rights owner of the event, by virtue of the Concorde Agreement. FIA parted with all its rights over each commercial right it possessed to FOWC. The bulk of the revenue earned is through media, television and other related rights. The terms or the basis of those rights is the event.

M/S. BAJAJ INTERNATIONAL P. LTD. VERSUS DCIT, CIRCLE 3 (1) , MUMBAI. [ITAT MUMBAI]

BRIEF: Disallowance of Commission paid in respect of exports to Iraq - Explanation to section 37 of the Act cannot be invoked merely on the basis of an unestablished doubt that expenditure incurred could be for infraction of law.

OUR TAKE: The hon'ble ITAT MUMBAI held that the Volcker Committee Report, cited by Revenue, had discussed about the utilization of money by the recipient of the commission in paying of such commission so received to the Government of Iraq illicitly, which was objected to by the Volcker Committee. From a casual perusal of the details on record and in the orders of the authorities below it has not been proved that the assesses company was involved in illicit payments of commission to the Iraqi Government. [Decided in favour of assesses]

M/S UNICONS INDIA (P) LTD., C/O A.B. MITRA VESUS INCOME TAX OFFICER, WARD-18 (1) , NEW DELHI [ITAT DELHI]

BRIEF: Levy of penalty u/s 271(1)(c) - addition of unexplained sundry creditor - bogus purchases - the non-payment of purchase consideration is a strong circumstance regarding non-genuineness of transactions and stands on its own de hors any other evidence.

OUR TAKE: The hon'ble ITAT MUMBAI held that the non-payment of purchase consideration is a strong circumstance

regarding non-genuineness of transactions and stands on its own de hors any other evidence. **[Decided against assessee]**

STATE TAXES

ALL INDIA VAT

CHHATTISGARH

The Govt. vides Notification NO. F-10-43/2016/CT/V (76) dated 30th Nov 2016, notifies that time limit for of assessment cases for the period of FY 2012-13 has been extended up to 31st Jan 2017.

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

The Govt. vides Notification NO. F-10-44/2016/CT/V (78) dated 30th Nov 2016, exempts from the rules as specified in column (2) of the Schedule below, subject to the restrictions and conditions specified in column (3) of the said Schedule, for the financial year 2015-16 up to 28th Feb 2017, namely: -.

S.No	Rule from which exemption is granted	Restriction and conditions
(1)	(2)	(3)
1.	Part-C of Form-18 prescribed under clause (b) of sub-rule (2) of rule 20 of the Chhattisgarh Value Added Tax Rules, 2006	When the information of Part-C is related with purchase or sale within Chhattisgarh State, of:- (a) Goods specified in Schedule-I of the Act or goods exempted by notification, or (b) Goods specified in S.No.1 and 2 of Part-III of Schedule-II of the Act, or (c) Medicine at maximum retail price.

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

The Govt. vides Notification NO. F-10-44/2016/CT/V (79) dated 30th Nov 2016, notifies that time limit for of for filling form 18 is extended up to 28th feb 2017.

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

GOA

The Govt. vides Notification No. CCT/5-3/2016-17/4276- dated 30th Nov 2016, notifies that In exercise of the powers vested in me vide Section 3 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 in supersession of the Order issued in this regard, I, Dipak M. Bandekar, the Commissioner of Commercial Taxes, hereby nominate the officers mentioned hereto, as designated authorities for carrying out the purposes of the said Act, within the jurisdiction as specified.

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

The Govt. vides Circular No. 1 dated 30th Nov 2016, an appeal is made to the manufacturers, retailers, wholesalers, dealers and other members of the trade, to encourage cashless transactions by making use of other available modes of payment/cash transfers like Point of Sale Machines, QR code recognition and payment devices, Swipe card enabled payment systems etc. A system of transferring money over mobile phone (which need not be smart phone) would also be introduced in the recent future. Banks are also requested to create awareness regarding the ease of doing cashless transactions.

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

GUJRAT

The Govt. vides Notification No. (GHN-70)VAT-2016-S.11 (6) (7)-TH dated 28th Nov 2016, notifies that the input tax credit shall be reduced when sold / resold in the course of inter-state trade and commerce or

consigned or dispatched for branch transfer or to agent outside the State in case of natural gas.

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

HARYANA

The Govt. vides Order No. dated 30th Nov 2016, notifies that in exercise of powers conferred upon me under sub-section (3) of Section 54-A of the Haryana Value Added Tax Act, 2003, I, Shyamal Misra, IAS, Excise & Taxation Commissioner, Haryana, do hereby extend the period for filing online annual returns for the year 2015-16 up to 10th Dec 2016.

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

RAJASTHAN

The Govt. vides Notification No. F. 12(6) FD/TAX/2015-60 dated 28th Nov 2016, amends Order no.F.12 (6) FD/Tax/2015-32 dated 08th Aug 2016 - Regarding Cellular and Telecom Operators (RIPS-2014).

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

The Govt. vides Notification No. F.12 (102) FD/TAX/2016-62 dated 30th Nov 2016, amends Schedule-I - Inclusion of entry 'Point of Sale (PoS) Devices including Micro ATM'.

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

The Govt. vides Notification No. F.12(16) FD/TAX/2009-65 dated 02nd Dec 2016, Introduction of Amnesty Scheme-2016.

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 EXPORTS

To promote exports from India, Government has provided various exemptions and incentives to exporters both at the central and state level and provide specific support to some industries and markets where exports would be of special value. Goods and Services Tax (GST) helps the exporter and export incentives will continue to exporters in order to earn foreign currency and to promote business and to strengthen the economy.

GST will Impact Positively for the Same in Following Ways: -

- Exporters will be able to get the refund and rebate of the state taxes (SGST) which is presently not available to them.
- The duty drawback rates may go up because the GST rate would be higher than the present rate of Central Excise. The component of service tax is quite low at present.
- The refund procedures may become simple as all the data of GST is available online
- All export data will be available on GSTN domain. It will be quite transparent and no scope for the tax Department or the exporters to dispute or manipulate it.
- Once the Customs and GST IT infrastructure are integrated, there is a possibility of automatic sanction of export incentive would be possible as it is done nowadays for drawback.
- The refund/rebate on the export of services may be increased substantially and bring at par with the export of goods.
- All other export promotion schemes may be remodelled to remove duplication and help the exporter.
- There will not be any need for physical verification of export documents and the claims as all requisite data will be available on GSTN server.
- There will not be any delay due to bureaucratic hurdle or delay in incentive grants.
- No longer will anyone be able to claim incentives on forged documentation as all export/ import data, mode of payments etc. will be available with the GSTN domain.

All the exports will be treated as zero-rated supply of goods and services and their credit will be available for all the taxable goods used in the manufacturing of the export of goods and services. This will not only simplify the process of getting incentives but also reduce the



cumbersome burden of processes and interaction with the government servants and organization. This will increase the competitiveness of Indian goods and

services in the international market and empower Indian exports.

We may be contacted at the following offices:

CORPORATE OFFICE

73, National Park
Lajpat Nagar IV,
New Delhi - 110024
INDIA
P: +91-11-41729056-57,
41729656/57

GURGAON

605, Sun city Business Tower
Golf Course Road, Sector-54,
Gurgaon,
Haryana - 122002
P: +91-124-4245110/116/117 +91-
124-4245111

NOIDA

C-100, Sector-2,
Noida- 201301
Uttar Pradesh
M: +91- 9811481093

MUMBAI

Plot No 67A, Sector New 50
4th Floor, B- Wing
Navi Mumbai – 400706
Mumbai
M: +91- 9022131399

ASSAM

House No. 76,
Near Godrej Interio,
Forest Gate, P.O. Narangi,
Guwahati – 781026
P: +91-0361-2552302
M: +91-9864857565

SINGAPORE

1 North Bridge Road
#10-09
High Street Centre
Singapore-(179094)

For enquiries related to:

Service	Contact Person	11Service	Contact Person
DVAT:	faiz@ascgroup.in	Service Tax:	nitin@ascgroup.in
HVAT:	deepak@ascgroup.in	Transfer Pricing & PE:	shailendra@ascgroup.in
Excise:	deepak@ascgroup.in	Legal Metrology:	mayank.singhal@ascgroup.in
UPVAT:	jaswant@ascgroup.in	Company Law:	legal@ascgroup.in
Income Tax:	vikash@ascgroup.in	PR/Media	socialmedia@ascgroup.in
Maharashtra VAT:	nitin@ascgroup.in		

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