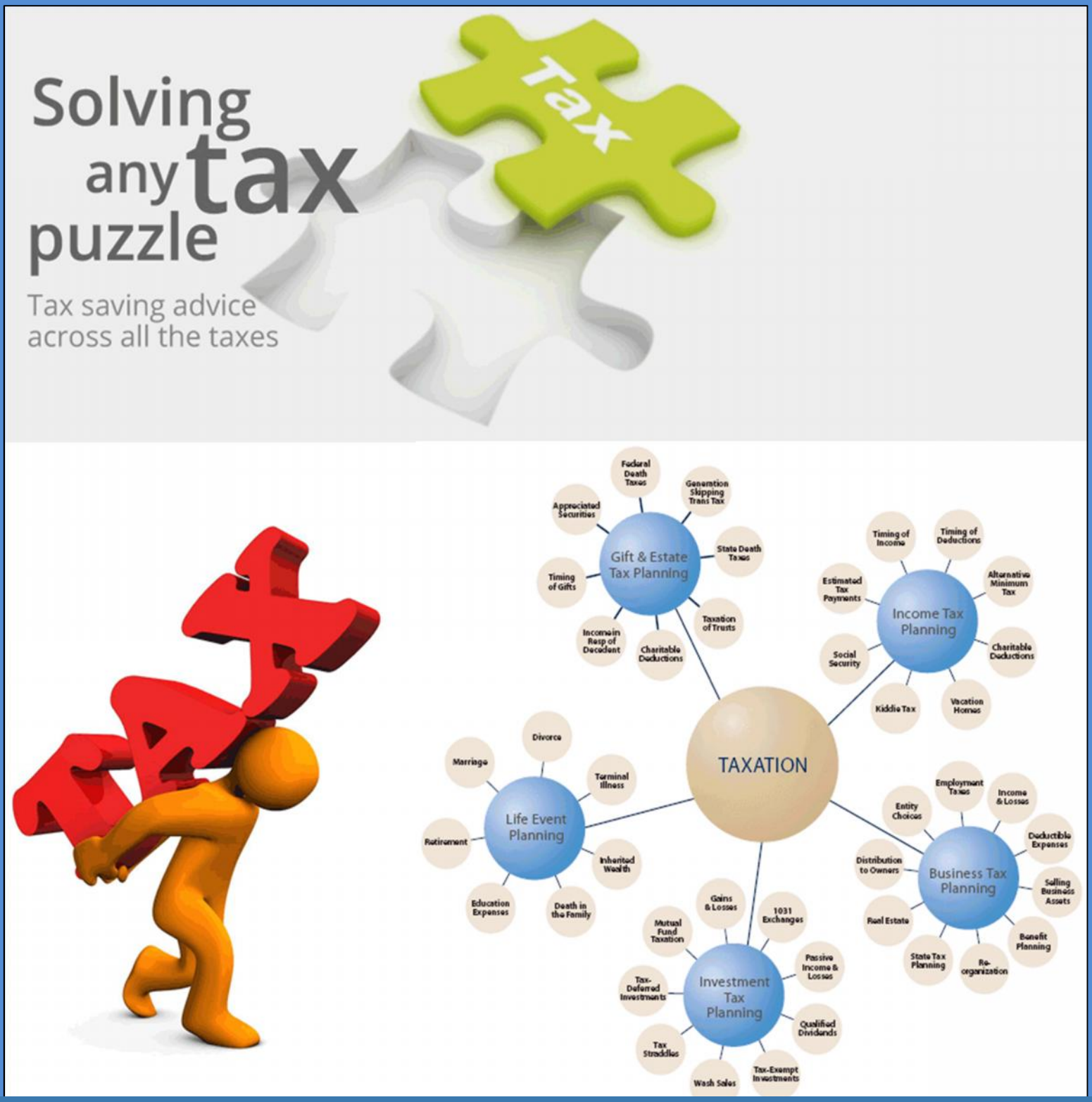
ASC Times

All India Taxes Weekly Reference

Vol :April 10 –April 16, 2017



TAXCALENDER

10-04-17	Filing of Return	Kerala VAT.
		Central Excise Law.
	Deposit of Tax	Kerala VAT
	Deposit of TDS	Chhattisgarh VAT, DELHI VAT Madhya Pradesh VAT, Mizoram VAT, Nagaland VAT
15-04-17	Filing of Return	Karnataka VAT, Madhya Pradesh VAT.
		Income Tax Law TDS Return
		Return of Employees qualifying for membership to the EPF for the first time during previous month.
	Deposit of Tax	Bihar VAT, Haryana VAT, Jharkhand VAT, Karnataka VAT, Sikkim VAT
	Deposit of TDS	Bihar VAT, Delhi VAT, Haryana VAT, Himachal Pradesh VAT, Jharkhand VAT, Punjab & Chandigarh VAT
	Issue of TDS Certificate	Andhra Pradesh VAT, Bihar VAT, Himachal Pradesh VAT, Jharkhand VAT, Nagaland VAT, Punjab & Chandigarh VAT, Telangana VAT.

COUNTRY WIDE HOLIDAYS FOR THE WEEK

Date	Occasion/Festival	Region
13th Thu	All States except Bihar, Jharkhand, Tripura, Manipur, Meghalaya, Delhi, Nagaland, Mizoram, Arunachal Pradesh, Madhya Pradesh and Chhattisgarh, Tripura,	Vaisakhi/Dr. B.R. Ambedkar's Birthday/Maha Vishubha/Tamil's New Year Biju Festival Cheiraoba Manipur
15th Sat	Bengal/ Assam	Vaisakhadi (Bengal)/ Bahag Bihu (Assam)

INDEX GUIDE

From the CEO's Desk

Dear Reader,

With clear-cut passage of GST regime, The Central Board of Excise and Customs (CBEC) will be reorganized for the implementation of the Goods and Services Tax (GST) regime and will be renamed the Central Board of Indirect Taxes and Customs (CBIC) following Parliamentary approval. Reorganization of the field formations of CBEC for the implementation of GST has been approved by Finance Minister Arun Jaitley. The existing formations of Central Excise and Service Tax under the CBEC have been re-organized to implement and enforce the provisions of the proposed GST Laws.

CBEC is being renamed as the Central Board of Indirect Taxes and Customs (CBIC), after getting legislative approval. The proposed CBIC shall, inter alia, supervise the work of all its field formations and directorates and assist the government in policy making in relation to GST, continuing Central Excise levy and Customs functions as per the statement released.

CBIC will have 21 zones, 101 GST taxpayer services commission rates comprising 15 sub-commission rates, 768 divisions, 3969 ranges, 49 audit commission rates and 50 appeals commission rates. This will ensure rendering of taxpayer services to all the taxpayers through an indirect tax administration structure, having pan-India presence.

For a robust IT network, the directorate general of systems under CBEC is being strengthened. The directorate general taxpayer services are being expanded for greater outreach for facilitating smooth transition for the taxpayers to the GST environment.

The existing training establishment will be renamed as National Academy of Customs, Indirect Taxes and Narcotics and will have an all-India presence, to enable capacity building to the employees of the indirect tax administration of the Centre as well as of the state governments and to members of trade and industry.

Alok Kumar Agarwal

CEO

ASC Group.

CENTRAL TAXES

SERVICE TAX

COURT DECISIONS

M/S. P.K. GHOSH & SONS VERSUS COMMISSIONER OF SERVICE TAX, KOLKATA [CESTAT KOLKATA]

BRIEF: Valuation- reimbursable expenses to be included in gross value of Services or not?

OUR TAKE: The hon'ble **CESTAT KOLKATA** that for the purpose of calculating the service tax, gross value of service has to be taken in to account. This includes the consideration received before, during or after the service. The costs of expenditure or the amount reimbursed to the clients are not allowed to be deducted or excluded except in the case of pure agent - Admittedly, appellants are no pure agents nor did they produce any evidence for fulfillment of conditions necessary for being a pure agent. Section 67 is clear and unambiguous that all the expenses incurred in relation to rendition of service have to be included in the gross taxable value.

M/S MEDALLION CONSULTING PRIVATE LIMITED VERSUS CST [CESTAT NEW DELHI]

BRIEF: Refund claim - unutilized CENVAT credit - N/N. 5/2006-CE (NT) dated 14/03/2006 - rejection on the ground that the appellants provided "market research agency service" in terms of Section 65 (105) (y) and not BAS, as claimed by them - further, rejection also on the ground that the services are rendered in India and they cannot be considered as exported in terms of Export of Services Rules, 2005.

OUR TAKE: The hon'ble **CESTAT NEW DELHI** held that the work carried out by the appellant will fall under the category of market research agency. The claim of the appellant that they are engaged in procuring services for the foreign client and, as such, should be considered as rendering BAS is not factually or legally sustainable. Collection of such data from various target persons cannot be considered as procurement of services which are inputs for the clients - classification of the service under "market research agency" is correct - refund rightly rejected. **[Decided in favour of Revenue]**

M/S. LOUIS DREYFUS COMMODITIES INDIA PVT. LIMITED VERSUS COMMISSIONER OF CENTRAL EXCISE & S.T[CESTAT NEW DELHI]

BRIEF: been performed outside India - whether or not the services have been 'used' outside India?

OUR TAKE: The hon'ble **CESTAT DELHI** held that the issue is no longer res-integra and it has been settled in several decisions of the Tribunal in the case of Target Sourcing Service India Pvt. Limited Versus Commissioner of Central Excise & S.T. Delhi-II [2017 (3) TMI 21 - CESTAT NEW DELHI], where the decision in the case of Gap International Sourcing (India) Pvt. Limited vs. CST, Delhi [2014 (3) TMI 696 - CESTAT NEW DELHI], followed as the issue was similar where the Tribunal has gone on to decide that the services rendered to principal in USA, who had paid for the services in foreign exchange, has to be considered as export of service.**[Decided in favour of appellant]**.

COMMISSIONER OF CENTRAL EXCISE, KANPUR VERSUS M/S KESHAV TRANSFORMERS-[CESTAT ALLAHABAD]

BRIEF: Valuation - Works contract - utilisation of materials in the repair and maintenance and have paid Sales Tax on the material portion - whether the Commissioner (Appeals) have rightly allowed the appeal of the respondent-assessee and set aside the demand of Service Tax Rs. 22,31,227/- along with interest and further equal amount of penalty u/s 78 and also penalty u/s 76 and 77?

OUR TAKE: The hon'ble **CESTAT ALLAHABAD** held that there is no error in the order & findings of the Commissioner (Appeals). In his findings, it is stated that it is a matter of composite contract wherein the appellant have supplied materials in the repair of Transformers. The appellant have suo-moto paid service tax on the labour component, have paid Excise duty on the manufacture of LV/HV coils, and further have paid Sales Tax on the material component used in the repair of the Transformers. In this view of the matter, the SCN is not tenable - appeal dismissed –**[Decided against Revenue]**

BHARAT OMAN REFINERIES LTD. VERSUS C.C.E. & ST BHOPAL-[CESTAT NEW DELHI]

BRIEF: Whether in case of composite scheme (the transferor of Property in goods)Service Provider is allowed to transfer the input used in providing the said service?

OUR TAKE: The hon'ble **CESTAT NEW DELHI** held that under the CENVAT scheme, the CENVAT credit is passed on by using the invoice documents, which are to be transferred to the buyer of the goods only. Here buyer of the goods is the contractor and not the Appellant M/s Bharat Oman Refineries Ltd. When the buyer M/s Petron Engineering Constructions Ltd., who is the contractor, cannot take CENVAT credit of their input goods, they are not eligible to pass on the CENVAT credit on the said input goods. In other words, the Cenvat credit to which the contractor themselves are not entitled to, the said cenvat credit cannot be transferred to anyone - appeal dismissed. [**Decided against appellant]**

CC, CE & ST, HYDERABAD VERSUS M/S KSK SURYA PHOTOVOLTAIC VENTURES PVT. LTD. AND VICE-VERSA [CESTAT HYDERABAD]

BRIEF: SEZ unit -Whether the assessee is eligible for refund of service tax on services used prior to commencement of commercial production?

OUR TAKE: The hon'ble **CESTAT HYDERABAD** held that appellants have been granted letter of approval for setting up a SEZ unit. It is also not disputed that the services were received for the purpose of SEZ unit. In the judgments of COMMISSIONER OF SERVICE TAX Versus ZYDUS TECHNOLOGIES LTD., GUJARAT HIGH COURT], the issue whether the assessee is eligible for refund of service tax on services used prior to commencement of commercial production has been analysed and held in favour of assessee, the assessee is eligible for refund. The impugned order upholding the demand and interest is set aside - appeal dismissed. **[Decided against Revenue]**

M/S VINAYAKA HOMES VERSUS COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX [CESTAT BANGALORE]

BRIEF: Recovery of service tax - works contract - the case of appellant is that, the Department has wrongly confirmed the demand of service tax on works contract service when they were rendering services of Construction of Residential Complex which is under the provisions of Section 65 (105)(zizz) of the FA, 1994

OURTAKE: The hon'ble **CESTAT BANGALORE** held that the appellants were rendering construction of complex service as they were designing, planning, developing and clearing site on their own land for construction activities for buyers/clients and were not doing any execution of works contract and elements of definition of works contract , therefore, are not found present - paragraph 3 of C.B.E.C. Circular No. 108/2/2009-S.T. dated 29.1.2009 says that the persons who are providing services of construction of residential complex in the form of designing, planning, developing and so on will not be subject to service tax as such services would fall under the exclusion provided under definition of residential complex - demand set aside - appeal allowed. [**Decided in favour of appellant**]

M/S JAY CEE MOTORS VERSUS CCE, LUDHIANA [CESTAT CHANDIGARH]

BRIEF: Penalty u/s 76 and 78 of FA, 1994 - on merits the demand is not sustainable, in that circumstances, the penalty can be imposed on the appellant or not?

OUR TAKE: The hon'ble **CESTAT CHANDIGARH** admittedly on merits held that the demand against the appellant cannot be confirmed in the light of the decision of this Tribunal Seva Automotive Pvt Ltd. [2013 (7) TMI 265 - CESTAT MUMBAI] wherein this Tribunal held that For authorized service stations, the cost of the spare parts and cost of handling of spare parts are not to be included in the value of the services rendered, thus they will not form part of the services rendered - as demand not confirmed, penalty also set aside - appeal allowed. [D**ecided in favour of appellant]**

CENTRAL EXCISE

M/S. ATC AGRO INDUSTRIES LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE [CESTAT KOLKATA]

BRIEF: Area based exemption - N/N. 32/99 dated 08.07.1999 - Revenue's case is that the appellant has wrongfully availed the benefit of the refund of the Central Excise duty under the said notification to the tune of Rs.79,45,526/- only, by willful suppression of the fact - demand of duty with penalty.

OUR TAKE: The **Hon'ble CESTAT KOLKATA** held that in the instant case, the total investment in the subsequent plant is of ₹ 34 lakhs as said above. Earlier parts and machineries were sold for ₹ 20 Lakhs. Thus the fresh investment is minimum for ₹ 14 lakhs only. This is against the spirit of the notification. It is evident that appellant never started a new unit the appellant has used partly old machinery as stated above in the same premises/shed. Nature of the product is not meaningful to get the benefit of the notification. It is the investment in North East States to boost the economy - appeal dismissed.**[Decided against appellant]**

M/S HINDUSTAN INSECTICIDES LTD. VERSUS CCE, DELHI[CESTAT NEW DELHI]

BRIEF: Valuation - subsidy - manufacture of DDT - whether amount of subsidy received by the appellant from the Government of India is to be treated as additional consideration for the sale of the goods manufactured by the appellant and sold to the Ministry Govt. of India?

OUR TAKE: The **Hon'ble CESTAT NEW DELHI** held that subsidy received by the appellant certainly is in the nature of reimbursement for the supply of DDT made by the appellant to the Ministry of Health & Family Welfare, Government of India - Rule 6 makes the position further clear that the value of the goods (DDT) shall be deemed to be the aggregate of the subsidized price and the reimbursement or subsidy money (differential price/subsidy being received from the Ministry by the appellant). This aggregate is the actual value on which Central Excise duty is chargeable as this is the consideration which is flowing directly or indirectly to the appellant. The Explanation to Section 4(1) of Central Excise Act, 1944 given earlier makes it clear that in case of reimbursement/subsidy / money received from the Ministry, Govt. of India the same will be deemed to include the duty of such goods. Therefore, the reimbursement/subsidy amount received by the appellant, M/s Hindustan Insecticides Ltd., the manufacturer of subject goods includes the Central Excise duty component also, which is payable to the National Exchequer under the appropriate head of Central Excise Duty.

M/S DHARAMPAL SATYPAL LTD. VERSUS COMMR. OF CENTRAL EXCISE [GUHATI HIGH COURT]

BRIEF: CENVAT credit - it was alleged that the appellant paid Education Cess wrongly by utilizing cenvat credit on inputs and capital goods. Whether demand is sustainable or not?

OUR TAKE: The **Hon'ble GUWAHATI HIGH COURT** held that in the case of Union of India Vs. Kamakhya Cosmetics & Pharmaceuticals Pvt. Ltd. [2012 (7) TMI 902 - GAUHATI HIGH COURT] on the identical issue, dismissed the appeal filed by the Revenue. In that case, the issue involved is that whether the assessee is entitled to utilize CENVAT Credit of Basic Excise duty for payment of Education Cess and it was held that there was no bar to utilize Cenvat credit of Basic Excise Duty for payment of Education Cess - demand set aside - appeal allowed –[**Decided in favour of appellant]**

KAMAKSHI TRADEXIM (INDIA) PVT. LTD. AND 1 Versus UNION OF INDIA[GUJARAT HIGH COURT]

BRIEF: Entitlement of interest - the date from which the petitioners would be entitled to interest on delayed payment of rebate - whether the liability of the revenue to pay interest under section 11BB of the Act commences from the date of expiry of three months from the date of receipt of application for refund or on the expiry of the period from the date on which the order of refund is made

OUR TAKE: The **Hon'ble GUJRAT HIGH COURT** held that the issue is no longer res integra and stands decided by the Supreme Court in the case of Ranbaxy Laboratories Ltd. v. Union of India [2011 (10) TMI 16 - Supreme Court of India] wherein, the court has held that liability of the revenue to pay interest u/s 11BB of the Act commences from the date of expiry of three months from the date of receipt of application for refund u/s 11B(1) of the Act and not on the expiry of the said period from the date on which order of refund is made. The respondent authorities are, therefore, not justified in refusing to grant interest on the rebate claims made by the petitioners in accordance with law laid down by the Supreme Court in Ranbaxy Laboratories Ltd. v. Union of India and hence, the petitions deserve to be allowed in terms of the relief prayed for by the petitioners. [**Decided in favour of petitioner]**

M/S VIMLACHAL PRINT & PACK PVT LTD, SHRI RASHMINBHAI SHAH VERSUS C.C.E. – AHMEDABAD [CESTAT AHMEDABAD]

BRIEF: Valuation - raw material charges - cylinder charges - amount recovered by way of debit notes - inclusion of raw material charges and cylinder charges in the assessable value - appellant's case is that they were required under law to add only that proportion of the cylinder cost, as was attributable to the actual production, and not the total cost of the cylinders.

OUR TAKE: The hon'ble **CESTAT AHMEDABAD** held that there is no denying of this fact that this extra amount has been recovered from the buyer and the same is in respect of the goods manufactured and supplied by the appellant - the amount recovered from the buyer by the appellant is in the nature of liquidated damages. Thus, the decisions of the Tribunal in the case of Inox Air Products Ltd.[2000 (12) TMI 184 - CEGAT, MUMBAI] is squarely applicable to the instant case - demand is set-aside. [**Decided in favour of appellant]**

NAGPUR POWER INDUSTRIES LTD. VERSUS COMMISSIONER OF C. EX., NAGPUR [CESTAT MUMBAI]

BRIEF: Whether the appellant during the relevant period, being a 100% Export Oriented Unit could have cleared items like scrap into DTA without obtaining permission and without payment of appropriate duty payable thereon?

OUR TAKE: The hon'ble **CESTAT MUMBAI** held that if the claim of the appellant that old machineries which were dismantled and cleared as scrap, were those machineries on which credit as capital goods were not utilised, nothing survives which could enable the department to demand Central Excise duty. It is a fact that the said scrap was cleared after the appellant being granted status of EOU. since the scrap which has been cleared are in the form of old and used drums and claimed to have been received prior to appellant getting the status of EOU, in the facts of this case, demand of duty on the appellant seems to unwarranted - appeal allowed –[**Decided in favour of appellant]**

C.M. DESHPANDE VERSUS COMMISSIONER OF CENTRAL EXCISE, MUMBAI [CESTAT MUMBAI]

BRIEF: Manufacture - Job-work - captive consumption - Demand of duty - the case of appellant is that by any stretch of imagination, the main appellant cannot be considered as a manufacturer of this item.

OUR TAKE: The hon'ble **CESTAT MUMBAI** held that the appellant had supplied mild steel to the job workers. The job workers have fabricated the reacting vessels and the distillation pots for the appellant, hence, the job worker becomes manufacturer in the absence of any procedure adopted by the appellant for accepting the duty liability on him as provided under N/N. 214/86-C.E - Further, even if the appellant is considered as a manufacturer of these items like reacting pots and distillation pots, no duty liability arises as it is undisputed that the appellant has installed these reacting pots and distillation pots in its factory premises and used the same for manufacturing of the chemicals on which duty liability has been discharged - demand set aside - appeal allowed –[**Decided in favour of appellant]**

M/S SAURAV CHEMICALS LTD. VERSUS CCE [CESTAT CHANDIGARH]

BRIEF: CENVAT credit - manufacture of Homatropine Methyl Bromide (HMB) - denial on the ground that as goods manufactured by the appellant are exempt under N/N. 4/2006 dt. 01.03.2006, therefore, appellant is not required to pay duty, consequently, the appellant is not entitle to avail Cenvat Credit on inputs used in manufacture of final exempted goods.

OUR TAKE: The appellant cannot be denied Cenvat Credit as final goods which are exempt has been cleared by the appellant on payment of duty. The said payment of duty shall amount to reversal of Cenvat Credit on inputs. Therefore, appellant is entitle for input which has been used in manufacturing of final goods cleared on N/N. 4/2006 ibid on payment of duty - credit allowed - appeal allowed – **[Decided in favour of assessee]**

COMMISSIONER OF C. EX., BELGAUM VERSUS BELLARY STEELS & ALLOYS LTD [CESTAT BANGALORE]

BRIEF: Imposition of equal penalty on account of availment of illegal CENVAT credit - Section 11AC of CEA, whether tenable under law?

OUR TAKE: The hon'ble **CESTAT BANGAORE** heldthat revenue never invoked the provisions of Section 11AC of CEA, 1944 in the SCN dated 3-5-2002 issued to the respondent viz., M/s. Bellary Steels and Alloys Ltd. In the SCN, Revenue invoked Rules 25 and 27 of CER, 2002 along with Rule 13 of CCR, 2002 for imposing the penalty on the respondent - when Section 11AC of CEA, 1944 has never been invoked by the Revenue in the SCN, the plea by the Revenue for imposing equivalent penalty is not legally tenable and cannot be accepted - appeal dismissed – **[Decided against Revenue]**

M/S SPEEDWAYS RUBBER FACTORY VERSUS CCE [CESTAT CHANDIGARH]

BRIEF: SSI exemption - Valuation - N/N. 9/2002-CE or 9/2003-CE - The contention of the Revenue is that value of goods cleared to M/s Director Transport, UT, Chandigarh and M/s Chief General Manager, DTC, New Delhi, are to be included for determining aggregate value of ₹ 1 Crore and duty to be discharged @ 16% after crossing the value of clearance of ₹ 1 crore.

OUR TAKE: The hon'ble **CESTAT CHANDIGARH** held that the explanation defines the brand and trade name which says that the brand name and trade name or a mark, such as symbol, monogram, label, signature or invented word or writing which is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified goods and some period using such name or mark - the appellant has put mark of M/s Director Transport, UT, Chandigarh and M/s Chief General Manager, DTC, New Delhi i.e. CTU/DTC, therefore, its brand name of another person which is not includable in the clearance under Notification No. 9/2002 for computing total clearance. **[Decided in favour of appellant]**

M/S LEAR AUTOMOTIVE (I) PVT. LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE [CESTAT MUMBAI]

BRIEF: CENVAT credit - inputs written off - appellant claim that as per sub-rule (5B) of Rule 3 of the CCR, 2004, the credit is required to be reversed only in case where the CENVAT Credit in respect of inputs has been taken as written off and shown in the Books of Account, but if the inputs were subsequently used in the manufacture then the credit is admissible - whether the CENVAT Credit in respect of inputs and its value shown in the Books of Account as written off is required to be reversed or otherwise?

OUR TAKE: The hon'ble **CESTAT MUMBAI** held that once, the Tribunal decided the issue against them, it is more reason for the appellant to inform to the Department if they continue the practice of showing the written off quantity in the Balance sheet and not reversing the CENVAT Credit thereon. As per this conduct of the appellant, it is clear case of suppression of facts, therefore, extended period was rightly invoked by the Department - extended period invoked. [**Decided against assessee]**

CUSTOM

NOTIFICATION / CIRCULAR

The Govt. vides Notification No. 33/2017 - customs (N.T.) New Delhi, dated the 6th April, 2017; guidelines for rate of exchange of conversion of the foreign currency with effect from 7th April, 2017

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

The Govt. vides Notification No.12/2017-CUSTOMS New Delhi, the 5thApril, 2017; seeks to amend Notification No.12/2012-Customs, dated the 17th March, 2012, so as to allow duty free import of raw sugar upto a quantity of 5 lakh MT under Tariff Rate Quota (TRQ) upto and inclusive of 12th June 2017 - 12/2017 - Dated 5-4-2017 - Customs –Tariff

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

The Govt. vides Notification No.1 1/2017-CUSTOMS[ADD] New Delhi, dated 3thApril, 2017; made amendment in Notification No. 01/2017-Customs (ADD), dated the 5th of January, 2017 - 11/2017 - Dated 3-4-2017 - Anti Dumping Duty

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

---

The Govt. vides Notification No.01/ 2015-2020NEW DELHI, dated 5th April, 2017; made amendment in import policy of raw sugar classified under Exim Code 170114 of Chapter 17 of ITC (HS), 2011-Schedule-I (Import Policy).

OUR TAKE: Import of items under Exim Code 170114 is "Free". However, import up to 5 Lakh MT o raw sugar is subject to Tariff Rate Quota Scheme (duty free) as per conditions laid down. Readers are requested to read the said notification for further explanation.

The Govt. vides Trade Notice dated 7-4-2017 – DGFT-NO.01/93/180/36/AM-17/PC-2 (B); clarified that for

introducing online applications, its processing and subsequent issuance of certificate, EPCs need not seek any permission from DGFT.

OUR TAKE: As a matter of keeping pace with the Government's campaign for "Digital India", DGFT urges all EPCs to adopt the online mechanism for issuance of Certificates- to the extent that general format as prescribed in ANF - 2R of the Appendices and Aayat Niryat Forms of FTP (2015-20), is followed. Readers are requested to read the said Notice for further explanation.

COURT DECISIONS

M/S. THYSSENKRUPP ELEVATOR (INDIA) PVT. LTD. VERSUS THE ASSTT. COMMISSIONER OF CUSTOMS (IMPORT & GENERAL)[]

BRIEF: Valuation - goods imported from related foreign supplier- whether consultancy charges to be included in invoice value for import of goods which has nothing to do with the imported goods?

OUR TAKE: The hon'ble **IMPORT & GENERAL** held that since condition of Rule 10(1)(C) of the Valuation Rules is clearly not satisfied, we find absolutely no justification for such loading of invoice value by the royalty amount. The consultancy charges are not to be included to the invoice values for import of the goods as product consultancy charge which has got nothing to do with the imported goods. [**Decided in favour of appellant]**

M.P. AGRO INDUSTRIES LTD. VERSUS COMMISSIONER OF CUSTOM[CESTAT MUMBAI]

BRIEF: Classification of imported oil - whether importation is furnace oil or waste oil?

OUR TAKE: The hon'ble **CESTAT MUMBAI** held that the fact that the entire issue is misunderstanding on merits as well as on procedures. In view of the same, interest of justice will be met if the penalty is reduced from ₹ 10,00,000/- to ₹ 3,00,000/-. [**Decided partly in favour of appellant with reduction of penalty]**

COMMISSIONER OF CUSTOMS (IMPORT) VERSUS KALYANI LAMMERZ LTD.[CESTAT MUMBAI]

BRIEF: Valuation - fees for engineering services -which are related to post-importation activities- whether liable to be included in the assessable value?

OUR TAKE: The hon'ble **CESTAT MUMBAI** held that there is no evidence to support the contention that the said amount of DM6,00,000 was in the nature of technical know-how fee linked to the sale of the said items covered under the bill of entry - fee for technical services which are related to post-importation activities are not liable to be included in the assessable value even if connected with the goods under import - demand related to the technical services agreement set aside - appeal dismissed – **[Decided against Revenue]**

DOHLER INDIA PVT. LIMITED VERSUS COMMISSIONER OF CUSTOMS[CESTAT MUMBAI]

BRIEF: Valuation - 'apple juice concentrate' - documentary evidence of contemporaneous import not furnished.

OUR TAKE: The hon'ble **CESTAT MUMBAI** held that the documentary evidence of contemporaneous/coexisting import not furnished - there is a gross contravention of the principles of natural justice as the appellant were denied access to the document of contemporaneous import.

BORDER TRADE & CHAMBER OF COMMERCE, MOREH TOWN VERSUS UNION OF INDIA AND OTHERS[MEGHALAYA HIGH COURT]

BRIEF: Effective date of amending notification - import of Areca Nuts/Betel Nuts - Whether the amendment notification dated 27.01.2017 is prospective in operation or could have any retrospective operation?

OUR TAKE: The hon'ble **MEGHALAYA HIGH COURT** held that the notification dated 27.01.2017 is specifically that of an amendment of Appendix-I to the principal notification dated 13.08.2008 and thereby, the entry at serial number 14 has been substituted. There is not a whisper or even a remotest suggestion in any manner in the said notification that the same would be applicable from any date anterior to the date of issuance i.e., 27.01.2017. Therefore, it remains beyond the pale of doubt that its operation would be governed by Clause (a) of Sub-section (4) of Section 25; and, accordingly, it has come into force on the date of issuance and not before. Petition allowed. **[Decided in favour of petitioner]**

INCOME TAX

NOTIFICATION / CIRCULAR

The CBEC vides Notification No. 4/2017 [DGIT(S)/DIT(S)-3/AST/PAPERLESS ASSESSMENT PROCEEDINGS/96/2015-16], dated 3-4-2017; introduced e-proceeding for communication between income-tax department and assessee

---

The CBEC vides Notification No. GSR 331(E) [NO.27/2017 (F.NO.370142/32/2017-TPL)], DATED 5-4-2017; hereby makes the following rules further to amend the Income-tax Rules, 1962, namely:- these rules may be called the Income-tax (Seventh Amendment) Rules, 2017 and will come in force from 31st March, 2017.

The CBEC vides Notification No. SO 1057(E) [NO.28/2017 (F.NO.370142/10/2017-TPL)], dated 5-4-2017 ; hereby deposits - mode of undertaking transactions - notified provisions of section 269ST which shall not apply to receipt by any person from an entity referred to in proviso (i)(b) of section 269ST.

COURT DECISIONS

COMMISSIONER OF INCOME TAX, GUJARAT VERSUS SARANGPUR COTTON MFG. COMPANY LTD.[SUPREME COURT]

BRIEF: Whether the assessee is entitled to deduction on account of revenue expenditure incurred on machineries replaced?

OUR TAKE: The hon'ble **SUPREME COURT** held that when each of the Department/Division perform different functions, repair/substitution of an old machine will not come within the definition of the word "current repairs" and deduction cannot be claimed there under. Respondent is not entitled for any deduction under the head "current repairs" as claimed and allowed by the two authorities. **[Decided against assessee]**

SYNTHES MEDICAL PVT. LTD., C/O- JURIS CONSULTANT VERSUS DCIT, CIRCLE-7 (1)[ITAT DELHI]

BRIEF: Capital expenditure or revenue expenditure - purchase of 'loaner' and 'demo' sets - AO treated them as capital asset against claim of the assessee as same were part of 'inventory'

OUR TAKE: The hon'ble **ITAT DELHI** held that Capital expenditure or revenue expenditure - The loaner sets have been found to have average life of 36 months. In such circumstances merely because the assessee has amortized the expenditure it does not warrant the conclusion that such expenditure is capital expenditure. - Tri - Income Tax

MRS. MEENA VASWANI VERSUS ACIT – 26 (1)[ITAT MUMBAI]

BRIEF: Whether House Rent Allowance (HRA) exemption u/s 10(13A) is allowable to a married daughterin respect of mother's house.

OUR TAKE: The hon'ble **ITAT MUMBAI** held that the whole arrangement of rent payment by the assessee to her mother is a sham transaction which was undertaken by the assessee with the sole intention to reduce tax liability and hence in our considered view, exemption u/s 10(13A) of the Act cannot be allowed to the assessee as the payments towards rent are not genuine payment.**[Decided against assessee]**

ARUN KUMAR CHOUDHURY VERSUS ITO, WARD-1 [ITAT CUTTACK]

BRIEF: Liability to pay tax - Taxable in the hands of partner or Partnership Firm - Interest Income and income from contract business as technical entrepreneur license holder - Arrangement of pooling turnover and business between the firm and its partner Karta - double taxation

OUR TAKE: The hon'ble **ITAT CUTTACK** held that since the contract receipts of ₹ 12,93,062/- has been received by the assessee for the contract works executed by him and no accounts have been submitted for the same, the Assessing Officer is justified in estimating income of ₹ 38,365/- @ 8% which is reasonable. [**Decided against assessee]**

MUMBAI VERSUS M/S. UNITY PRATIBHA CONSORTIUM[ITAT MUMBAI]

BRIEF: Disallowance of deduction claimed u/s.80-IA - BOT/BOOT requirement for getting benefit of deduction

OUR TAKE: The hon'ble **ITAT MUMBAI** held that deduction could not be denied under section 80-IA of the Act on the ground that the concept of BOT/BOOT was the main requirement for getting benefit of deduction under section 80-IA of the Act. **[Decided against revenue]**

STATE TAXES

ALL INDIA VAT

DELHI

The Govt. issued guidelines relating to downloading of statutory forms - dated 3-4-2017, the online permission for downloading the statutory form(s) may be granted.

OUR TAKE: The concerned Ward In charge may grant permission through the link available to them at the front end, to such blocked dealers who apply online and whose credentials are duly verified by the Ward In charge / officer concerned.

COURT DECISIONS

M/S RELIANCE RETAIL LTD VS STATE OF PUNJAB: 05.04.2017 –[PUNJAB HIGH COURT]

BRIEF: The time limit of 90 days for claiming back the Input Tax Credit reversed for the goods which have been sent on job work – whether period of 90 days prescribed in Rule 20 is directory or mandatory

OUR TAKE: The hon'ble **PUNJAB HIGH COURT** held that the challenge to Rule 20 insofar as it prescribes the time limit of 90 days is rejected. It is, however, held that the same is directory and not mandatory - The petition is disposed of by quashing the impugned order and remanding the matter to the Tribunal for determination of the appeal afresh.**[Decided in favour of assessee]**

M/S ROYAL COURT VS THE STATE OF MAHARASHTRA: 30.01.2017 –[MAHARASHTRATRIBUNAL]

BRIEF: Composition Scheme - levy of sales tax on component of service tax which is collected in the sales bill separately.

OUR TAKE: The hon'ble **MAHARASHTRA TRIBUNAL** held that the definition of sales price does not specifically include service tax like specific inclusion of custom duty and central excise duty. The order passed by the First Appellate authority is quashed and set aside. The case is remanded to the First Appellate Authority to recalculate the tax liability excluding the portion of service tax.**[Assessee appeal is allowed]**

OTHER UPDATES

GST ALERTS

A BRIEFING ON COMPENSATION LAW

1. "Transition date" shall mean, in respect of any State, the date on which the State Goods and Services Tax Act of the concerned State comes into force.

2. "Transition period" means a period of five years from the transition date; and "Union Territories Goods and Services Tax Act" means the Union Territories Goods and Services Tax Act, 2017. The compensation under this Act shall be payable to any State during the transition period.

3. For the purpose of calculating the compensation amount payable in any financial Base year during the transition period, the financial year ending 31st March, 2016, shall be taken as the base year.

4. The compensation payable to a State shall be provisionally calculated and released at the end of every two months period, and shall be finally calculated for every financial year after the receipt of final revenue figures, as audited by the Comptroller and Auditor-General of India.

5. Provided that in case any excess amount has been released as compensation to a State in any financial year during the transition period, as per the audited figures of revenue collected, the excess amount so released shall be adjusted against the compensation amount payable to such State in the subsequent financial year.

6. The total compensation payable for any financial year during the transition period to any State shall be calculated in the following manner as certified by the Comptroller and Auditor-General of India:-

a) the total compensation payable in any financial year shall be the difference between the projected revenue for any financial year and the actual revenue collected by a State

b) The projected revenue for any year in a State shall be calculated by applying the projected growth rate (14%) over the base year revenue of that State, Illustration—If the base year revenue for 2015-16 for a concerned State, calculated as per section 5 is one hundred rupees, then the projected revenue for financial year 2018-19 shall be 100 (1+14/100)

c) the actual revenue collected by a State in any financial year during the transition period shall be:

I. the actual revenue from State tax collected by the State, net of refunds given by the said State under Chapters XI and XX of the State Goods and Services Tax Act.

II. the integrated goods and services tax apportioned to that State.

III. any collection of taxes on account of the taxes levied by the respective State under the Acts net of refunds of such taxes.

7. The loss of revenue at the end of every two months period in any year for a State during the transition period shall be calculated, at the end of the said period, in the following manner, namely:-

a. The projected revenue for any year calculated in accordance with section 6 is one hundred rupees, for calculating the projected revenue that could be earned till the end of the period of ten months for the purpose of this sub-section shall be 100x(10/12)=Rs.83.33.)

b. the actual revenue collected by a State till the end of relevant two months period in any financial year during the transition period shall be same as defined above in 6(c)

c. the provisional compensation payable to any State at the end of the relevant two month period in any financial year shall be the difference between the projected revenue till the end of the relevant period in accordance with clause 7(a) and the actual revenue collected by a State in the said period as referred to in clause 7(b), reduced by the provisional compensation paid to a State till the end of the previous two months period in the said financial year during the transition period.

8. Where no compensation is due to be released in any financial year, and in case any excess amount has been released to a State in the previous year, this amount shall be refunded by the State to the Central Government and such amount shall be credited to the Fund in such manner as may be prescribed.

9. the base year revenue for a State shall be the sum of the revenue collected by the State and the local bodies during the base year, on account of the taxes levied by the respective State or Union and net of refunds, with respect to the following taxes, imposed by the respective State or Union, which are subsumed into goods and services tax, namely:-

a. The VAT, purchase tax, tax collected on works contract, or any other tax levied by the concerned State.

b. CST

c. the entry tax, octroi, local body tax or any other tax levied by the concerned State

d. the taxes on luxuries, including taxes on entertainments, amusements, betting and gambling or any other tax levied by the concerned State

e. the taxes on advertisement or any other tax levied by the concerned State

f. the duties of excise on medicinal and toilet preparations levied by the Union but collected and retained by the concerned State Government.

g. any cess or surcharge or fee leviable on above.

h. the amount of revenue foregone on account of exemptions or remission given by the said State Governments to promote industrial investment in the State, with respect to such specific taxes referred to in sub-section (1), shall be included in the total base year revenue of the State

We may be contacted at the following offices:

CORPORATE OFFICE
C-100,Sector-2,
Noida- 201301
Uttar Pradesh
M: +91- 120-4354696/4354697

REGISTERED 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

MUMBAI
Haware Infotech Park,
704, 7th Floor,
Sector 30A,
Navi Mumbai – 400703
P: 022 – 65515507/08
M: +91- 9022131399

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

INTERNATIONAL BRANCH
303,5th Avenue Suite 1007,
New York, NY 10016, U.S.A

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:	niten@ascgroup.in		