ASC Times

All India Taxes Weekly Reference

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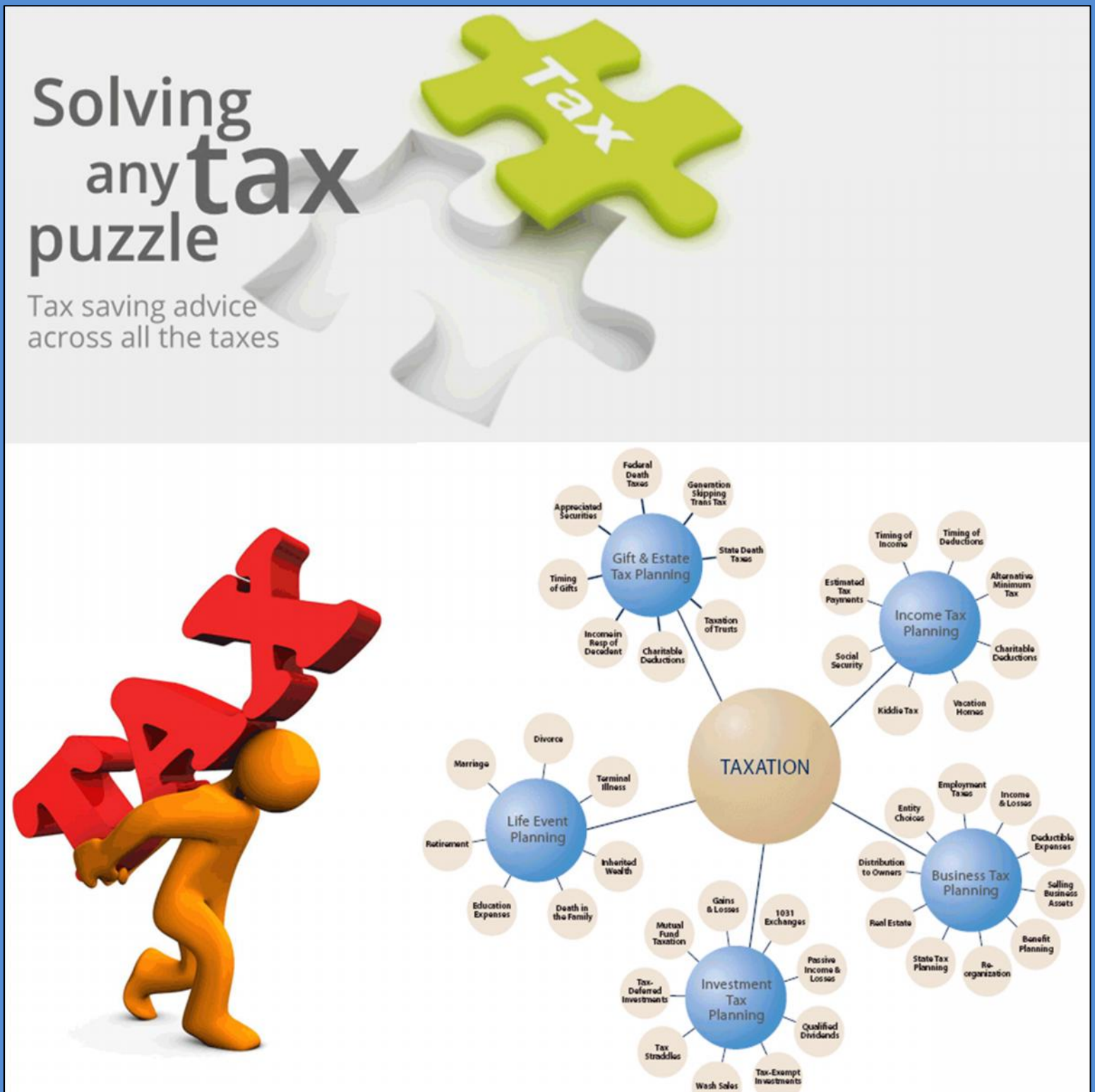

TAXCALENDER

21-04-17	Monthly Payment of D-VAT and CST	VAT and CST Payment for the month of March, 2017
	Monthly Payment	ESIC Payment for March, 2017
	Monthly Payment and Return	MVAT Monthly Payment & Return for March, 2017
	Quarterly Payment and Return	MVAT Quarterly Payment & Return for January to March,2017
25-04-17	Quarterly Return	Filing of returns in electronic form for quarterly Dealers of D VAT
	Form: ST 3- Provision: Rule 7	Half Yearly Service Tax return
28-04-17	Quarterly Return Form: DVAT–16 Provision: Rule- 28	Filing of returns in electronic form for all dealers including composition dealers, irrespective of turnover
	Form: DVAT – 48 - Provision: Rule-59(4)	Quarterly Filing of WCT-TDS Return for the quarter in which tax has been deducted
	Form: DVAT – 23 - Provision: Rule 35	Filing of Refund claim by organizations
30-04-17	Form: ER - 5 - Provision: Rule 9A(1)	Yearly - Declaration of Principal Inputs - Declarations under central excise to be filed by a unit paying total duty (Cenvat Credit + Cash) of more than 1 crore per annum
	Form: ITNS – 281 - Provision: Rule 30(2)	Monthly payment of TDS for the Month of March, 2017 on all types of payments
	Form: ER - 7 - Provision: Rule 12(2A)	Declarations under central excise to declare annual production capacity of factory.

COUNTRY WIDE HOLIDAYS FOR THE WEEK

Date	Region	Festival/Occasion
21 April	Tripura Only	Garia Puja
28 April	Haryana, Himachal Pradesh and Gujrat	Parshuram jayanti
29 April	Karnataka	Basava Jayanti
29 April	Punjab	Lord Parshuram Jayanti

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From the CEO's Desk

Dear Reader,

Our economy is in a phase of transition, especially in the backdrop of various regulatory changes that have taken place and several initiatives and schemes of the Government that are launched and under implementation today. Whether it be the anti-black money drive through the income declaration and demonetization schemes or the implementation of the biggest tax reform in the form of GST or the transition to financial reporting practices to the Ind AS converged with IFRS, or even the new Insolvency and Bankruptcy law, we as professionals have found ourselves engaged on ensuring a smooth transition by addressing and complying with various issues arising in this phase.

It is highly creditable that India is now one step more close to the likely roll-out of GST from 1st July with the Union Cabinet recently clearing the four supporting GST legislations, i.e. Compensation Law, Central-GST (CGST), Integrated-GST (IGST) and Union Territory GST (UTGST), paving the way for their introduction as Money Bill in the Parliament. A long proponent of this mega tax reform, we are very much alive to our role.

Earlier, these bills were passed in rajya sabha on April 6, 2017 and by lok sabha on March 29, 2017. Recently, with presidential nod the much awaited indirect tax reform i.e. GST further moves closer for the roll out of one nation one tax regime from July 1, 2017.

Now, the state government needs to pass the state GST bill in their respective assembly to switch on to the GST regime, which will be more or less replica of The CGST and UGST Bills. Further in series of Steps, the GST rates are to be discussed by the GST Council headed by the Hon'ble Finance Minister, Mr. Arun Jaitley on May 18-19 and moreover, decisions regarding bringing of real estate within the ambit of GST or inclusion of petroleum products and alcohol in the GST, will be taken up, one by one, in the foreseeable future

The implementation of GST will bring huge long-term benefits to country in terms of curbing black money, bringing transparency, accountability and efficiency in tax administration and reducing the arbitrage opportunities available to tax avoidance and evasion. But the Model GST Law as it stands today awaiting the finalization of rules to get a clear solution to the main points. It is expected that Govt. will soon come out with much awaited GST considering the suggestions that will be provided by Trade & Industry for suitable modification in final GST Model Law. While Govt's interface is getting ready, it is time for business to restructure their business policies, reschedule their working capital requirements at the verge of new proposed GST law.

Alok Kumar Agarwal

CEO

ASC Group.

CENTRAL TAXES

SERVICE TAX

NOTIFICATION / CIRCULAR

NOTIFICATION No. 15/2017-Service Tax New Delhi, 13th April, 2017: Seeks to Amend Notification No. 30/2012-Service Tax, dated the 20th June, 2012 - 15/2017 - Dated 13-4-2017. This notification is in respect of services provided or agreed to be provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India, **person liable for paying service tax** other than the service provider shall be the importer as defined under clause (26) of section 2 of the Customs Act, 1962 (52 of 1962) of such goods". This shall come into force on 23rd April, 2017.

NOTIFICATION No. 13/2017-Service Tax New Delhi, the 13th April, 2017.the Service Tax (Third Amendment) Rules, 2017 will be applicable from 23rd April, 2017.

COURT DECISIONS

Commissioner of C. Ex., Nagpur-II Versus Galaxy Construction Pvt. Ltd., BOMBAY HIGH COURT

BRIEF: Levy of penalty - assessee had discharged the entire liability of payment of service tax and interest thereon before the issuance of show cause notice.

OUR TAKE: The hon'ble BOMBAY HIGH COURT held that when an assessee had paid the service tax in full together with interest, the proceedings against the assessee would be concluded including the proceedings under Section 73(3) of the Finance Act, 1994. **[Decided in favour of assessee].**

Commissioner of C. Ex., Jaipur-I Versus Mangalam Cement Ltd CESTAT NEW DELHI

BRIEF: Cenvat credit - Inputs, capital goods and input services in terms of CCR, 2004 - classification of the service should be under "supply of tangible goods".

OUR TAKE: The hon'bleBOMBAY HIGH COURT held that plea taken by the Revenue is entirely on different ground not agitated before the lower authority. Further, it is well settled position of law that the credit availed by an assessee cannot be denied or varied on the ground that the classification of service should have been made in a different category by the provider of service. Variation in the classification or consequent rate of payment of Service Tax is not possible at the end of the recipient of service. There is nothing on record to state that the category of service or payment of Service Tax has been varied during the material time by the provider of service. **[Appeal dismissed - Decided against the Revenue.]**

M/s India Tube Mills & Metal Industries Versus Commissioner of Central Excise, Mumbai, CESTAT MUMBAI

BRIEF: Valuation - includibility - bought out items and other manufacturing activity carried out at the site - The department's contention is that all the bought out items and other activity carried out at the site should be added in the assessable value of the manufactured goods - execution of the composite project for manufacture and supply of LPG Bullets and erection and installation of the same at the site.

OUR TAKE: The hon'ble CESTAT MUMBAIheld that all these elements such as bought out items are undisputedly supplied from the supplier to the site. It is not taking part in the manufacture of LPG Bullets but are used only for erection and installation of LPG Bullets at site. The said activity of erection and installation, is not amount to manufacture - if at all any activity by any imagination is amount to manufacture, by virtue of immovability of LPG Bullets, the activities at site cannot be charged to excise duty - demand set aside.**[Decided in favour of assessee.]**

Pace Setter Business Solutions Pvt. Ltd. Versus The Union of India & OR's, BOMBAY HIGH COURT

BRIEF: Rejection of VCES - Valuation - inclusion of reimbursement of their expenses in the value of taxable services - Since the petitioners throughout held the view that they are not liable to pay service tax but noticing that there was a Voluntary Compliance Encouragement Scheme of 2013 traceable to paragraph 104 to 114 of the Finance Act, 2013 with effect from 10th May, 2013 and the Service Tax Voluntary Compliance Encouragement Rules, 2013

were also introduced, they filed an application in the prescribed form.

OUR TAKE: The hon'bleBOMBAY HIGH COURT held that the payment which has been made and for a past audit objection, for an earlier period cannot be utilized to reject the application as is now made by the present writ petitioner. The application invoking VCES has to be considered and if at all rejected, it must be on the touchstone of the paragraphs of the VCES, 2013 and the wording thereof. The scheme itself cannot be defeated by holding that on the earlier occasion parties like the petitioners have accepted their liability. The authorities need not be so anxious to protect the government revenue and reject the applications, as are made in the present case by closing the files instantaneously. They have to apply their mind. They must consider the application in accordance with the paragraphs of the scheme. **[Matter restored before the authorities.]**

Commissioner of S.T Noida Versus Atrenta India Pvt. Ltd., ALLAHABAD HIGH COURT

BRIEF: Refund of cenvat credit for the period prior to registration of Assessee - Held that:- We do not find anything in the aforesaid rules which require registration as a condition or eligibility to claim refund. Even Form-A nowhere suggests that any such condition must be observed?

OUR TAKE: Moreover, if refund is otherwise admissible to a party by a Tax Department, interpretation to the Statute which justify refund to the party must be given for the reason that State or Tax Department cannot be expected to retain Revenue which legally is refundable to the party. It should not be allowed to be retained when legally Revenue is not entitled to such money., Moreover, in Formica India Division v. Collector of Central Excise - [1995 (3) TMI 98 - SUPREME COURT OF INDIA] Court has also observed that refund should not be denied on technical grounds. **[Decided against the Revenue.]**

CCE, Jaipur Versus M/s Yadav Fabricator and Contractor And Vice-Versa, CESTAT NEW DELHI

BRIEF: Construction and commissioning of petrol pumps for oil companies - denial of abatement - eligibility for abatement of 67% in the taxable value for services rendered under "commercial or industrial construction service" - Held that:- Admittedly, all the contracts executed by the appellant/assessee are in the nature of indivisible works contract. They were registered with the State VAT Authorities under the said category?

OUR TAKE: The Hon'ble Supreme Court in Larsen & Toubro Ltd. (2015 (8) TMI 749 - SUPREME COURT) held that such works contracts are liable to service tax only w.e.f. 01/06/2007. Accordingly, following the ratio of the Hon'ble Supreme Court in Larsen & Toubro Ltd. (2015 (8) TMI 749 - SUPREME COURT), we find that there is no merit in the appeal filed by the Revenue regarding re-classification of the service or for denial of abatement to the appellant/assessee. **[Decided in favour of assessee.]**

M/s Schenck Rotec India Ltd. Versus Commissioner of Customs, Central Excise & Service Tax, CESTAT ALLAHABAD

BRIEF: Refund - deposit of service tax with interest on the instruction of revenue - Subsequently, CBEC clarified vide Board Circular No. 111/05/2009 ST dated 24/02/2009, wherein inter-alia clarified that service as provided by the appellant, was covered under Export of Service Rules, 2005 and the same was not a taxable service.

OUR TAKE: The hon'bleCESTAT ALLAHABAD held that the amount paid towards tax no longer remained tax in view of the CBEC Board Circular No. 111/05/2009 ST dated 24/02/2009 - the amount of interest as initially paid, also partook the nature of Revenue deposit, upon clarification of the law - Adjudicating Authority directed to grant refund of the said amount of ₹10,24,535/- with interest from 3 months ended from the date of refund application dated 30/07/2009. **[Decided in favour of assessee].**

CENTRAL EXCISE

NOTIFICATION / CIRCULAR

NOTIFICATION No. 10/2017-Central Excise (N.T.)New Delhi, the 13th April, 2017. Central Government made the following amendments in the CENVAT Credit Rules, 2004:These rules may be called the CENVAT Credit (Second Amendment) Rules, 2017 and shall come into force on 23 April, 2017.

Case laws

M/s K.K. Spun Pipes Versus CCE, Delhi CESTAT CHANDIGARH

BRIEF: CENVAT credit - fake invoices - it is alleged that the appellant has not received the goods physically and have received only the invoices on the strength of the appellant taken the cenvat credit.

OUR TAKE: The hon'ble CESTAT Chandigarh held that the invoices issued by the dealer shows the address of the Manufacturer supplier who has not been investigated at all. Moreover, the transporter vehicle number is also mentioned on the invoices but either transporter is found non-existence or transporter did not come forward for verifying the facts. The Revenue has not made any effort to find out the transporter and to ascertain the true facts whether the goods have been transported to the appellant or not. In the absence of any corroborative evidence in support of the statement made by the supplier (dealer), the cenvat credit cannot be denied to the appellant in the light of the decision in the case M/s ANG Metal Recycling Pvt. Ltd. [2016 (6) TMI 271 - CESTAT CHANDIGARH] - as no corroborative evidence produced by the Revenue, therefore, the cenvat credit cannot be denied to the appellant - appeal allowed.[**decided in favour of assessee]**

Shri R. Palanisamy, M/s. Raja Rajeswari Spinning Mills (P) Ltd., Shri M. Ramamurthy & Shri P. Dhandapani Versus CCE, Madurai, CESTAT CHENNAI

BRIEF: Clandestine removal - Preponderance of probability is in favour of Revenue when appellants failed to come out with clean hands. Although appellant tried that investigation should be in dark to unearth the offence committed they failed since self-speaking evidence came up in the course of investigation.

OUR TAKE: The hon'ble CESTAT CHENNAI held that preponderance of probability is in favour of Revenue when appellants failed to come out with clean hands. Although appellant tried that investigation should be in dark to unearth the offence committed, they failed since self-speaking evidence came up in the course of investigation. The evidences gathered by investigation were so cogent and those could not be scrapped or rebutted by the appellant. The duty liability of ₹ 49,24,207/- evaded through such subterfuge by the appellants and demanded by the original authority under proviso to Section 11 (A) (1) of CEA, 1944, along with interest thereon, which demand been upheld by the Commissioner (Appeals) in the impugned order, does not call for any interference. For the same reasons, equal penalty imposed on the appellants under Section 11 AC ibid is also justified and appeal on this count also can not succeed. **[Decided in favour of Revenue].**

CRI Pumps Pvt. Ltd. Versus CCE & ST, Coimbatore, CESTAT CHENNAI

BRIEF: CENVAT credit - whether appellant not manufacturing the exempted goods, the scrap and waste generated in the course of such manufacture shall render the appellant liable to a percentage levy u/r 6 (2) of the CCR, 2004?

OUR TAKE: - The hon'ble CESTAT CHANNAI held that Law is very clear that the rule has application where an assessee manufactures both dutiable final product as well as exempted final product. But in the present batch of appeals, appellant has not at all manufactured any exempted final product - What that was the outcome in the course of manufacture of dutiable final product was scrap. Therefore, applying the first principle of law, scrap generated not being exempted goods manufactured, that is totally ruled out from scope of application of Rule 6 (2) of CCR, 2004. When the appellant succeeds on the first principle of law, there is no need to make any further enquiry. [**decided in favour of appellant.]**

Seshasayee Paper and Boards Ltd. Versus Commissioner of Central Excise, Salem, CESTAT CHENNAI

BRIEF: Filter Cake emanated from the affluent plant excitability/marketability - the contention of appellant being on two counts i.e. there was no intention to manufacture Filter Cake and the goods itself is found to be sludge by the Appellate Commissioner, the goods not meeting the twin test

OUR TAKE: The hon'bleCESTAT CHENNAI held that the Explanation added to Section 2(d) of CEA, 1944 incorporated w.e.f 10.05.2008 shall operate from that date without brining Revenue's case into its fold for levy prior to that date. Revenue thereby failed to discharge its burden of

proof demonstrating that the Filter Cake came out as a product itself intended to be manufactured and traded in market under common parlance - goods therefore not excisable. **[Decided in favour of assessee.]**

Bachmann's. Versus C.C.E. Delhi, CESTAT CHANDIGARH

BRIEF: Valuation - technical know-how fee - royalty fee - M/s Bharat Apex Industries prepares the drawings as per specification of customers and due to lack of manufacturing facilities place orders on their vendors including the Appellant for manufacture and supply of heat exchanger - whether the additional consideration would form part of assessable value?

OUR TAKE: The hon'bleCESTAT CHENNAI held that the issue of inclusion of the value of cost of design and drawings in the assessable value is no longer res integra. In the Apex Court Judgment of Mysore Kirloskar Ltd. Vs. Commissioner of Central Excise, Belgaum [2002 (1) TMI 117 - CEGAT, BANGALORE], the Hon be Supreme Court has held that the design and drawings were not includible in the assessable value. The agreement is not merely for design and drawings but a complete contract for technical know-how, royalty, training, sales assistance, supplies and even accounting audit of M/s Bharat Apex Industries Ltd. by public accountant selected by the licensor - inclusion of consideration for design and drawings in the price of goods is proper and correct - demand with interest sustained. The penalty is reduced to ₹ 1,80,000/- on the basis of pro-rata value of the technical know-how and drawing and designs. Appeal disposed off **[Decided partly in favour of assessee.]**

M/s Bharat Petroleum Corporation Ltd. Versus CCE, Rohtak,CESTAT CHANDIGARH

BRIEF: Manufacture – whether preparing branded MS and branded HSD by blending ordinary MS and HSD with MFA amounts to manufacture and whether the branded MS and branded HSD would be liable to duty once again under sub-headings 2710.11 and 2710.19 respectively?

OUR TAKE: The hon'bleCESTAT CHANDIGARHheld that the identical issue came up before this Tribunal in the appellant's own case HINDUSTAN PETROLEUM CORPN. LTD. Versus COMMR. OF C. EX, DELHI & ROHTAK [2008 (9) TMI 154 - CESTAT, NEW DELHI], where it was held that blending of MS/HSD with MFA to make branded MS/HSD which sell at a premium only improves the quality of the product, and this process, would not amount to manufacture - demand set aside - appeal allowed**[Decided in favour of assessee.]**

Commissioner of Central Excise, Nagpur Versus Diffusion Engineers Ltd, CESTAT MUMBAI

BRIEF: Refund claim - duty paid under protest - time limitation -

OUR TAKE: The hon'bleCESTAT MUMBAI held that whatever duty was paid under protest for any reason the period of limitation of one year for filing refund provided under Section 11B does not apply. The section does not stipulate any other period in case of duty paid under protest therefore revenue cannot create a particular period in case where duty is paid under protest - identical issue decided in the case of MADURA COATS PVT. LTD. Versus COMMISSIONER OF CENTRAL EXCISE, MADURAI [2010 (8) TMI 502-CESTAT, CHENNAI], where even though the Commissioner (Appeals) dropped demand vide order dated 12-5-1998 refund claim was filed on 26-3-2002. Tribunal finally decided Revenue's appeal on 30-5-2003 therefore only because of the Ld. Commissioner(Appeals) had dropped the demand, the assessee filed refund even after four years of dropping of the demand, refund was held not to be time bar - The identical facts is involved in the present case also therefore ratio of the above judgment squarely applicable in the present case - refund filed by the respondent is not time bar therefore they are legally entitle for the refund - appeal dismissed **[decided against Revenue.]**

M/s. Tata Yazaki Auto comp Ltd Versus Commissioner of Central Excise, Pune-III,CESTAT MUMBAI

BRIEF: CENVAT credit - whether the Cenvat Credit in respect of input service viz. (i) housekeeping and gardening (ii) Nurses & Ayaa Services engaged in crèche used by the appellant company is admissible or otherwise?

OUR TAKE: The hon'ble CESTAT MUMBAI held that all the services such as gardening, house-keeping, maintaining crèche for which nurses and ayaas are required are mandatory. It is statutory requirement to run factory therefore it is used for running factory, hence it is used in or in relation to the manufacture of final product therefore credit is admissible - credit allowed - appeal allowed **[decided in favour of assessee.]**

CUSTOM

NOTIFICATION / CIRCULAR

Notification No. 36/2017 - Customs (N.T.) New Delhi dated the 11th April, 2017. In the Levy of Fees (Customs Documents) Regulations, 1970, in regulation 3, the following table have been substituted with a new one which is self-explanatory.

Notification No. 35/2017 – Customs (N.T.) New Delhi, dated the 11th April, 2017 Certain amendments are made in an existing notification i.e. notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 40/2012-Customs (N.T.), dated the 2nd May, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), vide number S.O. 993 (E), dated the 2nd May, 2012.

Notification No. 12/2017-Customs (ADD) New Delhi, the 11th April, 2017: Seeks to levy anti-dumping duty on the imports of a Linear Alkyl Benzene originating in or exported from Iran, Qatar and People as Republic of China for a period of five years (unless revoked, superseded or amended earlier). - 12/2017-Customs - Dated 11-4-2017 - Anti Dumping Duty.

Circular No. 14/2017- Customs New Delhi, the 11th April, 2017: Delayed, incomplete or incorrect filing of Import Manifest or Import Report - Regarding - Dated 11-4-2017– Customs. The quantum of fee has been revised upwards so as to calibrate it to the realistic levels and also to discourage the tendency to file amendments. **A flat fee of ₹ 1000/- has been provided for amendment of IGMs.**

Notification No. 13/2017-Customs (ADD) New Delhi, the 11th April, 2017. Seeks to levy definitive anti-dumping duty on import of Flexible Slab stock Polyol originating in or exported from Thailand for a period of five years (unless revoked, superseded or amended earlier). - 13/2017-Customs - Dated 11-4-2017.

Notification No. 34/2017 - Customs (N.T.) New Delhi, dated the 10th April, 2017. Central Board of Excise and Customs hereby appoints officers mentioned in column **(6)** to act as a Common Adjudicating Authority to exercise powers and discharge duties conferred or imposed on officers**.**

Notification No. 02/2015-2020 New Delhi, Dated: 13 April, 2017.TRQ for Raw Sugar: Amendment in import policy of raw sugar classified under Exim Code 170114 of Chapter 17 of ITC (HS), 2017–Schedule–1 (Import Policy).

Case laws

M/s Warburg Pin cuss India Pvt. Ltd. Versus Commissioner of Customs (Imports) , Mumbai CESTAT MUMBAI

BRIEF: Prohibited goods - import of old and used furniture, not more than 10 years old - confiscation on the ground that import of the goods more than 10 years old was not permitted - the appellants are service provider

OUR TAKE: The hon'ble CESTAT Mumbai held that the term plant would include whatever apparatus is used by a businessman for carrying out his business. The appellants are in business of providing service on financial market like identical in security and funds. In terms of the definition of capital goods provided in the EXIM Policy, it can be seen that the capital goods include any plant required for rendering services - In the instant case, the nature of services provided by the appellant is such that even furniture would fall under the category of capital goods used for providing services. In these circumstances, the defence of the appellant that import policy allows import of second hand capital goods has merit - appeal allowed **[Decided in favour of appellant].**

Century Enka Limited Versus Commissioner of Customs (Import) , Nhava Sheva CESTAT MUMBAI

BRIEF: Classification of the technical documents which were imported by the appellants for the use in setting up spin drawing winding machine - It is the case of the appellants that the said drawings are correctly classifiable under chapter heading number 4911 1090 while it is the case of the revenue that the drawings are correctly classifiable under chapter heading number 8445 40.

OUR TAKE- The hon'bleCESTAT MUMBAI held that the value of the documents were already considered and included by the revenue for levy and discharge of Customs duty. These documents were only drawing required for assembly of the machine, the same cannot be by any stretch of imagination considered as parts/ components of the machine and merit classification under 8445 - the impugned order classifying the technical documents under chapter 84 is unsustainable. **[Decided in favour of appellant]**

Hindustan Coca Cola Beverages Pvt. Ltd. Versus Commissioner of Customs (Import) ACC, Mumbai, CESTAT MUMBAI

BRIEF: Classification of imported goods - empty bottle Inspector Morella number Lynott Tronic 735M 2 - whether the machinery imported by the appellants merits

classification under Customs tariff heading number 8422 or 9031?

OUR TAKE: Classification of empty bottle Inspector Morella number Lynott Tronic 735M 2 - forming of the PET bottle - The machines imported by the appellant being used in conjunction with form fill and seal machine merits classification under CTH 84 2230 00 and eligible for benefit of N/N. 21/2002 **[decided in favour of appellant]**

Clarion Power Corporation Ltd. Versus Commissioner of Customs, Tuticorin CESTAT CHENNAI

BRIEF: Project import - Exemption from ADD - N/N. 6/2002-CE dt.1.3.2002 - denial on the ground that the device as a whole was not imported - Revenue's objection was that since N/N. 21/2002-Cus. dt. 1.3.2002 was issued for power generation projects under Project Import Registration, simultaneous benefit shall not be allowed under N/N. 6/2002-CE dt.1.3.2002 - whether the Additional Duty of Customs is exempt on Turbine imported through Tuticorin Port in terms of N/N. 6/2002-CE dt. 1.3.2002 while Customs duty exemption under N/N. 21/2002-Cus. dt. 1.3.2002 was granted to the appellant under project import registration?

OUR TAKE: The hon'ble CESTAT CHENNAIheld that the exemption is granted at public cost subject to certain conditions, stipulation as well as limitations which cannot be very casually to be applied to interpret the intention of an exemption notification. That requires very strictly interpretation so that exchequer does not suffer by virtue of exemption granted liberally. Law is well settled that if by a prima facie consideration, of exemption is grantable, then liberal approach is permissible. But that is not the case here. Prima facie, Turbine does not produce energy without being integrally connected to other energy producing devices. Therefore any grant of exemption benefit of additional duty of customs to turbine shall defeat purpose of the law and shall cause loss to the public revenue. Accordingly, appellant not being entitled to the grant of exemption under N/N. 6/2002-CE, appeal is dismissed. **[Decided against appellant.]**

Somani CotsynthLtd, Purshottam Somani, Radhyshyam SomaniVersus Commissioner of Customs (Export)CESTAT MUMBAI

BRIEF: Valuation - attempt to export sub-standard fabric which were claimed to be processed man-made fabric - It was alleged in the SCN that the goods were highly overvalued, that the quantity was mis-declared in the export documents and that the intent had been to claim undue credit under the DEPB scheme - invocation of section 113 (d) of CA, 1962 justified or not? -

OUR TAKE: The **hon'ble CESTAT MUMBAI** held that there is ample evidence that the quantity stated to have been exported is a misrepresentation. Investigations have also revealed that ARE-1s submitted to the customs authorities were not authentic. An attempt has been made to portray the agent as the villain of the piece; this fails to impress as there is no conceivable motive for the agent to indulge in such misdemeanour when the appellant-exporter, admittedly, would derive the benefit of higher credit entitlement. The submission of the ARE-1s could well have lulled the customs authorities at load port into accepting the declarations on the shipping bills without a detailed scrutiny. We are conscious that this inference may well be of speculative nature but, in the circumstances, is not a factor that is easily disregarded - A re-determination for the purpose of establishing eligibility of export incentive does not stand on the same footing as an assessment which is a statutory pre-requisite for levy of duties. Therefore, the findings of the adjudicating authority are not in any way compromised. The appellants have not been able to furnish adequate justification for their appeal to sustain - appeal dismissed**. [Decided against appellant.]**

Shri Sumit Jalan, Shri Amit Jalan Versus Commissioner of Customs (Export), CESTAT MUMBAI

BRIEF: Export of prohibited goods - infringed copyright books - confiscation u/s 113 (d) of CA.

OUR TAKE: The hon'ble CESTAT MUMBAI held that there is a prohibition for the sale and trading of the infringed copyright books and also a prohibition on import into India. However, there is no prohibition provided in respect of export of the same goods. Therefore, the export of infringed copyright books has not been prohibited either under the Customs Law or under the Indian Copyright Act. Therefore, in the absence of any prohibition on the export of the said goods, the goods are not liable for confiscation. Consequently, the appellants are not liable for any penalty - appeal allowed **[decided in favour of appellant.]**

Hotel Leela Venture Ltd. Versus Commissioner of Customs (Imports),CESTAT MUMBAI

BRIEF: Classification of imported goods - Diakin Air Heat Pumps - importer claimed assessment under heading 8418.69 of the Customs Tariff read with N/N. 30/88 as amended - Revenue claimed the goods to to be air conditioning machines and not heat pumps as declared, classified under heading 8514 - the confiscation which related to licence issued by the licensing authority after the clearance of the imported goods - fine - penalty

OUR TAKE: Once the licence was validly issued and the same is in force the goods covered under the said licence is not liable for confiscation for want of licence. The Customs authority cannot raise any question on the valid licence issued by a licensing authority. Import without licence is a contravention to the terms of the foreign trade policy. If a licensing authority under foreign trade department issues a licence, then customs has no authority to raise any objection. If it is permissible to issue a licence at a later date after the import of the goods, the custom authorities cannot take any action holding that the goods are prohibited for want of licence - the confiscation held u/s 111 (d) of the CA is not correct and legal. Since the goods were not liable for confiscation u/s 111 (d) the redemption fine and penalty imposed by the adjudicating authority is on very higher side, which is required to be reduced - The redemption fine reduced from ₹ 30 lakhs to ₹ 15 lakhs - Penalty is reduced from ₹ 5 lakhs to ₹ 2 lakhs. Appeal allowed**[Decided partly in favour of appellant].**

Indian Acrylics Ltd Versus C.C. (Preventive)Amritsar CESTAT CHANDIGARH

BRIEF: Amendment in shipping bill - DFIA scheme to DEPB(Duty Entitlement Pass Book) scheme - rejection of application for amendment of shipping bill on the ground that there was no dispute with the DGFT and hence the request does not get covered under the Board Circular No. 4/2004-Cus. Dated16.01.2004

OUR TAKE: The hon'bleCESTAT CHANDIGARH held that the Circular of 2010 is not applicable in the present case as it has been made clear in Para 6 of the said circular. The Circular of 2004 is applicable in the present case. It is undisputed that the shipping bills have been filed between 26.10.2006 and 12.12.2006 and the request for amendment was made on 15.09.2007. Hence, the Commissioner correctly relied upon the Circular of 2004 and rejected the request for non-fulfilment of condition of that circular. Not only there was no dispute leading to denial of benefit, but the request for conversion has not also been filed within the one month of such denial - there is no infirmity in the order of Commissioner and the same is sustained - appeal dismissed– **[decided against appellant.]**

INCOME TAX

NOTIFICATION / CIRCULAR

Circular No 13/2017 New Delhi, dated 11.04.2017. It is hereby clarified that salary accrued to a non-resident seafarer for services rendered outside India on a foreign ship shall not be included in the total income merely because that said salary has been credited in the NRE account maintained with an Indian bank by the seafarer.

Case laws

ASSTT. COMMISSIONER OF INCOME TAX, CIRCLE 23 (1) , NEW DELHI Versus PRAVEEN MALHOTRA[ITAT DELHI]

BRIEF: Eligible for deduction u/s. 80IA - whether computing provisions of sub-section (5) of Section 80IA would apply to the years earlier than A.Y. 2009-10 or not?

OUR TAKE: It is held by hon'ble ITAT DELHI that the "initial assessment year" in the case of the assessee in A.Y. 2009-10, when the claim of deduction u/s. 80IA was made for the first time, and the current A.Y. 2010-11 is the second year of the assesses claim u/s.80IA. Therefore, we are of the considered opinion the assessee is eligible for deduction u/s. 80IA as claimed, therefore, the Ld. CIT(A) has deleted the addition which does not need any interference on our part. **[Decided in favour of assessee]**

Mr. Lemes E. D' Souza, ALK Bricks Factory Versus ITO – Ward 21 (3) (3) , Mumbai[ITAT MUMBAI]

BRIEF: Allow ability of exemption u/s 54EC

OUR TAKE: In this case, the assessee admittedly received payments after execution of the agreement on 06-08-2008, which were received over a period of time from 07-08-2008 to 15-11-2008 and investments of ₹ 43,51,000/- were made in NHAI/REC Bonds on 26-03-2009 which is within six months if reckoned from the date of receipt of last instalment of sale consideration by the assessee on 15-11- 2008 and also is within six months from the receipt of second instalment of ₹ 35,00,000/- on 26-09-2008.

It is also admitted and undisputed that first instalment of Rs.19,92,750/- received by the assessee on 07-08-2008 was utilized by assessee for paying architect fee and payment of share of his brother in TDR. Considering the factual matrix of the case as discussed above, we are of the considered view that the assessee is eligible for exemption u/s 54EC of the Act and addition of Rs.24,85,420/- made by the AO and as

confirmed by learned CIT(A) is not sustainable.**[Decided in favour of assessee]**

The DCIT – 4 (1) , Mumbai Versus M/s Ashik Wollen Mills Ltd.[ITAT MUMBAI]

BRIEF: Allowing business expenses u/s 37 - suspension of manufacturing due to action under section 13(2) of SARFESI Act, 2002 by secured lenders against the assessee company.

OUR TAKE: The expenses like auditor fees , ROC fee and other expenses etc. which are incurred by the assessee company to carry out and meet legal and statutory compliances has to be allowed as the said expenses are incurred for meeting and complying with statutory compliances and obligations as imposed by law, for which we are remitting matter back to the file of the AO for identification of such expenses incurred for audit, ROC fees and other expenses incurred to carry out other statutory compliances , and to allow such expenses after verification. Thus, the appellate order of the ld. CIT(A) is set aside and the assessment order of the A.O. is confirmed.

C.P.L. Tannery Versus ACIT (CPC) , Bangalore ITAT KOLKATA

BRIEF: Determination of total income u/s 143(1) - wrong figure of disallowance under partnership remuneration - mistake committed by the assessee resulted in the error creeping in the assessment order

OUR TAKE: The hon'ble ITAT KOLKATA held that the assessee had genuinely committed a mistake in mentioning the wrong figure of disallowance under partnership remuneration which was duly brought to the notice of the revenue at the time of appellate proceedings. We would like to mention here in this regard that it is well settled that the revenue cannot take undue advantage of the ignorance of the assessee or genuine mistake committed by the assessee and is always duty bound to assess only the real income of the assessee. **[decided in favour of assessee].**

I.T.O., Ward-12 (3) , Kolkata Versus AmrabathiInvestra Pvt. Ltd. ITAT KOLKATA

BRIEF: Share trading loss - business loss OR speculation loss - whether for coming to a conclusion that the principal business of an Assessee is giving of loans and advances, whether the funds deployed would be the relevant criteria?

OUR TAKE: The decision of hon'ble ITAT KOLKATA is in line with the decision in the case of Savi Commercial (2015 (4) TMI 554 - CALCUTTA HIGH COURT) clearly lays down the proposition that volume of loans and advances would be decisive to come to a conclusion that the principal business of a company was granting loans and advances. It is undisputed that the funds deployed in the business of granting loans and advances by the assessee were more over a number of AYs. Thus the conclusion of the CIT(A) that the principal business of the Assessee was giving of loans and advances and therefore the Assessee was outside the mischief of Explanation to Sec.73 of the Act, is just and proper and calls for no interference.**[Decided against revenue]**

D.C.I.T., Circle-11, Kolkata Versus M/s. Nalco Water India Ltd. ITAT KOLKATA

BRIEF: Plant machinery installed at customer's site free of cost, whether depreciable or not?

OUR TAKE: The hon'ble ITAT KOLKATA held that installation of equipment's in the client's premises of assesses equipment's was necessary and part and parcel of nature of business carried on by the assessee. It cannot therefore be said that the equipment's in question had not been used for the purpose of the business of the assessee. The fact that the equipment's were used in the business premises of the clients cannot be the basis to disallow the claim of the assessee for deduction on account of depreciation. The decision of the Hon'ble Supreme Court in the case of ICDS Ltd. vs CIT [2013 (1) TMI 344 - SUPREME COURT] clearly supports the claim of the assessee in this regard. It is clear from the perusal of the order of AO that the AO's objection was that since the equipment's in question had not been installed at the assesses factory premises, it cannot be said that the equipment's were used for the purpose of assesses business. This reason given by the AO for disallowing the claim of the assessee for depreciation cannot be sustained in view of the factual and legal position discussed as above. **[Decided against revenue].**

ACIT, Cir. 12, Ahmedabad Versus Gujarat State Tribal Development Residential Education Institute ITAT AHMEDABAD

BRIEF: Denying benefit under section 10(23)(iiib) -

OUR TAKE: The hon'ble ITAT Ahmedabad held that in the order for the Assessment Year 2006-07, the Tribunal has observed that the assessee is a hundred percent government institution imparting education in tribal regions, as per the directions of the Central Government from whom grants are received. In order to substantiate this claim, the assessee has made reference to a large number of

documents which has been referred by the Tribunal in its order dated 25.11.2011 (extracted supra). The ld. CIT(A) has examined these aspects in the light of this order and observed that the assessee is entitled to exemption provided in section 10(23C) (iiiab). The question before us is what is the material collected by the AO in this assessment to deny this benefit to the assessee. A perusal of the assessment order would indicate that he has not made reference to any circumstances or documents. Similarly, the department has merely filed appeal for the sake of filing, otherwise it has also not placed any document on record which can suggest that the assessee does not fulfil criterion contemplated in section 10(23C)(iiiab)**.[Decided in favour of assessee].**

Pr. Commissioner of Income Tax- 11 Versus Shri Inder Pal Singh Wadhawan DELHI HIGH COURT

BRIEF: Disallowance under Section 40A(3) - AO opined that banker's cheques were not covered in any of the provisions of Rule 6DD of the Income Tax Rules as they were the account payee demand drafts under Section 40A(3)- cancellation of disallowance by ITAT

OUR TAKE: The hon'ble high court is of the opinion that the literal construction of Section 40A(3) sought to be canvassed by the Revenue is narrow and contrary to the provisions of the Negotiable Instruments Act, 1881. A complaint is maintainable under Section 142 in the event a banker's cheque is dishonoured. This Court also notices that the expression used in the Income Tax itself is "a bill of exchange", which is a class of instruments, that cannot be ignored or disallowed by virtue of Section 40A(3) read with Rules 6 DD of the Income Tax Rules. No substantial question of law arises.
Punjab & Sind Bank Vs. Vinkar Sahakari Bank Ltd. & Ors. [2001 (9) TMI 993 - SUPREME COURT OF INDIA] held once the holder, which in this case is the complainant Bank, has elected to treat the instrument as a cheque it cannot but be treated as a cheque**.**

State Level Taxes

ALL INDIA VAT

COURT DECISIONS

M/s. Renukamba (The Blue Star Bar and Restaurant) & Others The State Of Karnataka, KARNATAKA HIGH COURT

BRIEF: Classification of liquor dealers - imposition of different rates of tax on different dealers - violative of Article 14 and 19 of the Constitution.

OUR TAKE: The hon'ble KARNATAKA HIGH COURTheld that the State Legislature in its economic wisdom of taxation having chosen to provide for levy of tax on liquor sold by certain licence holders, considering the potential for tax collection on the huge value addition while exempting others whose sale price is regulated by the MRP indicated on the label of the container cannot be construed as discriminatory. The classification of dealers based on value addition criteria for the purpose of tax levy and exempting the dealers based on area criteria cannot be held to be discriminatory**. [Decided against the petitioners.]**

M/s Coo lade Beverages Limited Versus The Commissioner of Trade Tax, VAT and Sales Tax

BRIEF: Mismatch of turnover with figures recorded - applicant submits that it was only 734 containers, which had not matched with the figures disclosed in exhibit-3, viz-a-viz sales of M/s Golden Agro Products and at best, sales to that extent alone could be added in the turnover of the assessee. Submission is that the entire quantity mentioned in exhibit-3 could not be relied upon to increase turnover

OUR TAKE: The hon'ble, vat and sales tax it is only to the extent figures had not matched with the figures of sale disclosed by M/s Golder Agro Products, viz-a-viz the details mentioned in exhibit-3 that any addition in turnover of sale could be allowed by the Tribunal. The containers which had already been accounted for in the form of sales figures of M/s Golder Agro Products, could not have been treated to be the sales made by the assessee - such factual issues require consideration by the Tribunal, and it is only to the extent of undisclosed figures shown in exhibit-3 that turnover of sale of assessee could have been enhanced [**appeal allowed by way of remand.]**

M/s. Trans ACNR Solutions Pvt Ltd. Versus The Deputy Commercial Tax Officer, The Assistant Commissioner (CT),MADRAS HIGH COURT

BRIEF: Detention of goods - stock transfer - The first respondent detained the goods on 25.03.2017, on the reason that the goods did not accompany transit pass in Form LL - The first respondent refused to accept the documents produced by the petitioner and informed that the goods will be released only if the petitioner pays the tax and compounding fee, by treating the goods, as though, deemed to have been sold within the state of Tamilnadu for not possessing the transit pass -

OUR TAKE: The hon'ble, MADRAS HIGH COURTPerusal of those documents filed in the typed set of papers would clearly indicate that the petitioner sought to stock transfer the goods from their Bangalore office to their Ernakulum Office. The only mistake committed by the petitioner, which according to the learned counsel for the petitioner, is due to inadvertence, is in not obtaining the transit pass in Form LL at the entry point check post of the state of Tamil Nadu. - goods to be released on payment of composition fee - appeal allowed [**decided in favour of assessee.]**

M/s. Transocean Offshore, International Ventures Limited, (A Company incorporated in Cayman Islands) Versus Union of India, ANDHRA PRADESH HIGH COURT

BRIEF: Whether the contracts entered into by the petitioner with the contractor of ONGC, could be taken to have been either entered into or executed/performed within the State of Andhra Pradesh, so as to confer jurisdiction upon the authorities under the A.P. VAT Act, 2005, to proceed against the petitioner?

OUR TAKE: The hon'ble ANDHRA PRADESH HIGH COURT held that a dealer entrusted with the task of carrying out drilling operations in the west-coast on the Arabian Sea, when subjected to service tax liability by the concerned authorities, cannot be said to have wrongfully deprived the State of its revenue under the A.P. VAT Act, 2005. Therefore, all the reasons contained in the impugned order, assuming jurisdiction on the ground that the agreements should be presumed to have been entered into in the State of Andhra Pradesh, are wholly unsustainable in law and are completely perverse. **[Issue of jurisdiction answered in favour of the writ petitioner].**

GST ALERTS

E-commerce and GST

- As per section 2(41) of Model GST 'electronic commerce' means supply of goods and/or services including digital products over digital or electronic network.
- Section2 (42) of Model GST 'electronic commerce operator' means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.

Mandatory Registration

- As per section 23 of this act read with paragraph 6 of Schedule V of Model GST Law, e-commerce operator who is liable to deduct TCS under section 56 and operator who is liable under section 8(4) are obliged to register themselves under this act irrespective of threshold limit.

Levy and Collection of Tax

- Electronic commerce works as a channel or medium for supply of goods or services from supplier to buyer

- As per section 56 of proposed GST law, E-commerce operators like flip kart, snap deal will have to deduct TCS at the rate of 1% while making payment to the supplier except in case of those supply of services which are notified under section 8(4) of this act. This is to be deposited to the account of Government within 10 day.

Filing of Return [Section 56(3)] for operators

E-commerce companies falling under section 56 will also have to file **return**(called as statement) and contains the following information:

1. Amount of TCS deducted
2. Outward supply of goods or services effected through operator
3. Return of goods or services through operator

- TCS return has to be filed by the operator within 10 days after the end of each month containing above information.
- E-commerce operator's services which are to be notified in section 8(4) of this act will follow the normal provisions of Chapter VIII-Returns of Model GST Law.
- Details of goods or services supplied in the statement will be cross-verified with the corresponding details of outward supply of supplier. If details provided are not tallied then same issue will be communicated to both the parties.

TCS credit to supplier

- The amount shown by the operator in its monthly filed statement will be available as a credit to the supplier who has supplied the goods or services through such operator.
- Credit will be available to the supplier is his electronic cash ledger of the same amount which reflected in the statement filed by operator.

Power of Joint Commissioner to call for information

- Any officer not below the rank of joint commissioner is empowered by section 56 to service notice at any time which can be before, during or after any proceedings to call for the details regarding:
- Supply of goods or service effected through such operator, or
- Stock of goods held by supplier in go downs or warehouses of operator and declared as additional places of business of supplier
- Above information is required to be submitted within 15 working days.
- **Penalty-**Information not furnished within time, penalty of ₹ 25,000/- is payable.

Current Affairs

1. **RBI keeps Repo rate unchanged in the first monetary policy review**: The Reserve Bank of India (RBI) in its first bimonthly monetary policy review of the financial year 2017-18, has kept the key policy rate, the repo rate unchanged, but raised reverse repo rate by 25 bps to 6%, from 5.75%.

2. Consideration of aadhar integration for availing various MCA21 related services.

3. SEBI vide circular SEBI/HO/MRD/DSA/CIR/P/2016/110 dated October 10, 2016 prescribed procedures for removal of names of Exclusively Listed Companies (ELCs) from Dissemination Board of Nationwide Stock Exchanges and last date has been extended twice up to 30-06-2017.

4. Government reduces number of forms and Reports from 36 to 12 to lessen costs and compliance burden of various establishments under labour laws.

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