



# ASC Times

All India Taxes Weekly Reference

Vol: Feb 13 –Feb 19, 2017

Solving  
any **tax**  
puzzle

Tax saving advice  
across all the taxes



## TAXCALENDER

Due Date	Description	Law
15 Feb	Deposit of Tax	Bihar VAT, Haryana VAT, Jharkhand 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
	Return Filing	Karnataka VAT, Madhya Pradesh 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	5-6
Customs	6-7
Income Tax	8-8
State Taxes	9-9
Other Updates	10-10
Our Contacts	11

## From the CEO's Desk



Dear Reader,

To plug tax loopholes, the I-T department will use Big Data analytics to track down evaders by collecting information such as common address, mobile number and e-mail to establish the relationship between their multiple PANs. The department, with support from private firms, will analyse the voluminous data available post demonetisation for checking relationships between PAN holders.

The Managed Service Provider (MSP), which the I-T department plans to hire, will design and operationalise analytical solution that will help to collate data, matching it and identifying relationships as well as clustering of PAN and non-PAN data. The analytical solution would help the department gather data received from banks, post offices and other sources for linking of information and identification of duplicate details.

It will also identify records with errors or other defects for resubmission. "The data quality errors and defects will be communicated to the reporting person or entities, say, banks or post offices for correction and improving data quality. The data integration and matching of the PAN based demonetisation information with that of I-T databases such as tax returns, TDS, third-party reporting, tax payments, would be used to build a comprehensive profile for the taxpayer.

It will help identify the link between PAN holders on the basis of relationships (business association, asset and transactional association) available in various databases, the official said, adding that the analytics will do clustering of PAN-linked demonetised data using identified relationships as well as common address, mobile number, e-mail and bank branch.

Also, it will cluster non-PAN demonetised data using a common name, address, mobile number, e-mail and bank branch. Also, it will cluster non-PAN demonetised data using a common name, address, mobile number, e-mail

and bank branch. Taxpayer segmentation on the basis of taxpayers' status, type of ITR form used, nature of business, taxpayer segment, the age of the individual and compliance history will also have to be prepared.

It will prioritise demonetisation data based on taxpayer segment, relationships, clusters, rules and risk matrix. "Different types of interventions (send e-mail, SMS, outbound call, letter, notice, verification, investigation) can be selected for taxpayer priority and segment,

Alok Kumar Agarwal

CEO

ASC Group.

# CENTRAL TAXES

## SERVICE TAX

### COURT DECISIONS

#### **M/S. PJR PROJECT CONSTRUCTIONS PVT. LTD., VERSUS CCE, C & ST, VISAKHAPATNAM [CESTAT HYDERABAD]**

**BRIEF:** Levy of penalty for late filing of return - It is not disputed that appellant had filed returns along with the late fee and also paid the service tax along with interest - penalty under sub Section (2) of Section 77 is unwarranted.

**OUR TAKE:** The hon'ble CESTAT HYDERABAD held that from the Transitory Provision it is clear that no penalty can be imposed u/s 76 because the SCN in this case is issued prior to the amendment - the penalty u/s 76 is unjustified and the same requires to be set aside. **[Decided in favour of appellant]**

#### **M/S. ITC LTD., VERSUS CCE, C & ST, HYDERABAD-I[CESTAT HYDERABAD]**

**BRIEF:** CENVAT credit - input services - Labour charges for drinking water and cleaning at Lorry Yard - Maintenance of cycle stand - erection of Cycle shed - Insulation works at recreational club - credit eligible on these services.

**OUR TAKE:** The Hon'ble CESTAT HYDERABAD held that In the case of M/s. Coca Cola India Pvt. Ltd., [2009 (8) TMI 50 - BOMBAY HIGH COURT], the Honourable High Court had occasion to discuss the eligibility of credit on various input services. The subject services fall within the definition of input services and the Ld. Counsel has also explained the purpose for which the services were availed - credit eligible on these services. **[Decided in favour of appellant]**

#### **M/S. BHARAT SANCHAR NIGAM LTD., VERSUS CCE, C & ST, HYDERABAD-III[CESTAT HYDERABAD]**

**BRIEF:** CENVAT Credit - inputs - angles, channels and beams etc., used to erect the towers and pre-fabricated buildings on which transmission equipment's were installed - assesses will not be eligible to avail the Cenvat credit.

**OUR TAKE:** The hon'ble CESTAT HYDERABAD held that the matter is already been decided against the appellant by Hon'ble High Court of Bombay in the case of Bharti Airtel Ltd., Vs CCE, Pune-III [2014 (9) TMI 38 - BOMBAY HIGH COURT],

where on similar inputs, it was held that the subject items are neither capital goods u/r 2(a) nor inputs u/r 2(k) of the Credit Rules - the appellant-assesses will not be eligible to avail the Cenvat credit on angles, channels and beams etc. used to erect the impugned towers. **[Decided Partly in favour of appellant]**

#### **M/S. RAJA CHARITY TRUST VERSUS CCE & ST, TIRUNELVELI AND VICE-VERSA[CESTAT CHENNAI]**

**BRIEF:** Charitable institution - Business Auxiliary services - commission agency - The appellant was not a commercial concern before 30.04.2006 under the law - demand set aside.

**OUR TAKE:** The hon'ble CESTAT CHENNAI held that the intention of the taxing entry as appeared in law prior to 30.04.2006 and as suggested by the Id. Counsel was that commercial concerns were brought to the ambit of tax under the taxing entry BAS. Appellant came to existence in terms of a trust deed as charitable institution without being a commercial concern. It is noticed that when law was amended bringing any person including a commercial concern to the ambit of tax w.e.f. 01.05.2006, appellant has paid service tax from 01.05.2006. **[Decided in favour of appellant]**

#### **D.H. JADHAV VERSUS COMMISSIONER OF CENTRAL EXCISE, KOLHAPUR[CESTAT MUMBAI]**

**BRIEF:** Rejection of VCES declaration - clerical error - the appellant had failed to consider the amount of APMC contract in VCES declaration, no benefit in respect of said duty and penalty can be granted to the appellant.

**OUR TAKE:** The humble CESTAT MUMBAI held that it was not intended to file a wrong declaration but it was a typographical error - the appellant has fulfilled his actual tax liability at the time of filing the declaration and the enclosures contained correct amount disclosed, one typographical error cannot dis-entitled the appellant from the benefit of the scheme in so far as the amount declared therein dues concerned. **[Decided partly in favour of appellant]**

#### **JSW STEEL (SALAV) LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, RAIGAD [CESTAT MUMBAI]**

**BRIEF:** CENVAT credit - all these insurance policies which have been taken by appellant are connected with the activity of the appellant i.e. manufacturing of Hot Iron and Sponge Iron - credit allowed.

## CENTRAL EXCISE

### COURT DECISIONS

#### CHAKRADHAR CHEMICALS PVT. LTD. VERSUS C.C.E. MEERUT-I (VICE-VERSA)[CESTAT ALLAHABAD]

**BRIEF:** Zinc Sulphate, Ferrous Sulphate and Magnesium Sulphate and Micro Nutrients manufactured by M/s. Chakradhar Chemicals are fertilizer - benefit of exemption allowed.

**OUR TAKE:** The hon'ble CESTAT MUMBAI held that if they are fertilizers then as provided in above stated notifications, they are eligible to procure Sulphuric Acid without payment of duty. In that event above stated 07 show cause notices become unsustainable. Now we have already gone through The Fertilizer (Control) Order and we also noticed that the goods manufactured by M/s. Chakradhar Chemicals are included as Micro Nutrients in Part A of Schedule I to The Fertilizer (Control) Order dated 25.09.1985 issued by Government of India. The said Order at Clause h has defined fertilizer means substance used as a fertilizer of the soil and specified in Part of Schedule I. Since the goods manufactured by M/s. Chakradhar Chemicals are specified in Part A of Schedule I they are fertilizer. **[Decided in favour of appellant]**

#### MAHINDRA & MAHINDRA LTD., VERSUS COMMISSIONER OF CENTRAL EXCISE, MUMBAI-V. [CESTAT MUMBAI]

**BRIEF:** Refund claim - amount paid during investigation - section 11B of Central Excise Act, 1944 - denial of the claim as barred by limitation owing to payment having been made about nineteen months before applying for refund - Tax administrators must be responsible and responsive - claim reinstated.

**OUR TAKE:** The hon'ble CESTAT MUMBAI held that: - the bar of limitation prescribed in section 11B can be enforced, in equity, only with reference to date of order granting relief. Accordingly, the impugned order has erred in upholding the rejection of the claim as barred by limitation of time. **[Decided in favour of appellant]**

#### M/S SPACETECH CRYO EQUIPMENTS PVT. LTD., M/S SPACETECH EQUIPMENTS & STRUCTURALS PVT. LTD., GANESH CHANDRA GHOSH VERSUS COMMISSIONER OF CENTRAL EXCISE, THANE[CESTAT MUMBAI]

**BRIEF:** Valuation - fabrication and mounting of LPG tanker on the chassis - in terms of the notification, the value of running gear is not includible in the value of motor vehicle for the reason that the running gear is part of chassis.

**OUR TAKE:** The hon'ble CESTAT MUMBAI held that all these insurance policies which have been taken by appellant are connected with the activity of the appellant i.e. manufacturing of Hot Iron and Sponge Iron on which appellant discharges Central Excise duty as applicable - reliance placed in the case of Commissioner of Central Excise, Bangalore-III, Commissioner ate Versus Stanzen Toyotetsu India (P.) Ltd. [2011 (4) TMI 201 - KARNATAKA HIGH COURT] - credit allowed. **[Decided in favour of appellant]**

#### M/S PATWARDHAN INFRASTRUCTURE PVT. LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, NAGPUR [CESTAT MUMBAI]

**BRIEF:** CENVAT credit - denial on the ground that the appellant should not have taken service tax credit at Nagpur for the services received in Pune. - In the absence of any nexus, credit was rightly denied.

**OUR TAKE:** The hon'ble CESTAT MUMBAI held that the appellants have failed to establish nexus and clearly communicated the nature of services provided by them and why there is no nexus between the services provided by them and the services received by them. Even in grounds of appeal there is no clarity. In view of the above, I am unable to hold that there is any nexus between the input service and the services provided by the appellant. Accordingly, the credit of input is not available to the appellant. **[Decided against appellant]**

#### KANSAI NEROLAC PAINTS LTD. VERSUS COMMISSIONER OF CUSTOMS, MUMBAI [CESTAT MUMBAI]

**BRIEF:** Renting of machinery - Computer Colour Display Machines along with software for matching of shades - the amount received by appellant in the case in hand would not be covered for taxing under Banking and other Financial Services.

**OUR TAKE:** The hon'ble CESTAT MUMBAI held that Applying the definition of Banking and other Financial Services and the definition of other taxable service, it is found that the amount received by appellant in the case in hand would not be covered for taxing under Banking and other Financial Services. **[Decided in favour of appellant]**

## CUSTOM

### NOTIFICATION / CIRCULAR

**OUR TAKE:** The hon'ble **CESTAT MUMBAI** held that the identical issue has been considered by this Tribunal in the appellant's own case Ganesh Chandra Ghosh [2012 (5) TMI 381 - CESTAT, MUMBAI] where it was held that the value of running gear should not be included in the assessable value of the motor vehicle, in terms of N/N. 4/97-CE - the value of running gear is not includible in the value of motor vehicle for the reason that the running gear is part of chassis. **[Decided in favour of appellant]**

#### M/S. MESSUNG SYSTEMS. VERSUS CCE, PUNE-I [CESTAT MUMBAI]

**BRIEF:** Levy of penalty for Double availment of Cenvat credit - wilfully suppression of fact with intent to evade duty - onus of taking credit correctly has been put on the appellant and this self-assessment memorandum requires them to take the credit correctly and as per law. - Levy of penalty confirmed.

**OUR TAKE:** The hon'ble **CESTAT MUMBAI** held that The fact that the Cenvat Credit has been taken over a period of 6 months shows that they continued filing wrong declarations suppressing the facts and misde claration the fact of wrongly availing the Cenvat Credit in their ER-I declarations - reliance placed in the case of M/s Mahindra Sona ltd. Vs. CCE, Nashik [2016 (4) TMI 1149 - CESTAT MUMBAI], where it was held that the onus of taking credit correctly has been put on the appellant and this self-assessment memorandum requires them to take the credit correctly and as per law.**[Decided against appellant]**

#### UNIVERSAL DRINKS PVT LTD VERSUS COMMISSIONER OF CENTRAL EXCISE. [CESTAT MUMBAI]

**BRIEF:** Whether an adjudication order can, in the manner natural to protozoa, split into two? - The Commissioner who issued the order in 2005 was well aware of the existence of the order of 2002 and that it had, by lack of any appeal thereto, attained finality. Another order re-determining the value of the goods covered in the earlier order is, therefore, without sanction of law.

**OUR TAKE:** The hon'ble **CESTAT MUMBAI** held that The Commissioner who issued the order in 2005 was well aware of the existence of the order of 2002 and that it had, by lack of any appeal thereto, attained finality. Another order re-determining the value of the goods covered in the earlier order is, therefore, without sanction of law.**[Decided partially in favour of assesses]**

**The Govt. vides Notification No. 10/2017 dated 8<sup>th</sup> Feb 2017;** empowering the Principal Commissioner with the powers of Chief Commissioner.

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

---

**The Govt. vides Notification No. 05/2017 dated 7<sup>th</sup> Feb 2017;** seeks to extend the levy of anti-dumping duty, imposed on Hot Rolled products of alloy or non-alloy steel originating in or exported from China PR, Japan, Korea RP, Russia, Brazil and Indonesia, vide notification No. 44/2016-Customs (ADD), dated the 08.08.2016, for a further period of two months.

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

---

**The Govt. vides Notification No. 06/2017 dated 7<sup>th</sup> Feb 2017;** seeks to extend the levy of anti-dumping duty, imposed on Cold Rolled Flat Products of alloy or non-alloy steel originating in or exported from China PR, Japan, Korea RP and Ukraine vide notification No. 45/2016-Customs (ADD), dated the 17.08.2016, for a further period of two months.

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

---

**The Govt. vides Circular No. 591/04/2016-Cus (AS) dated 8<sup>th</sup> Feb 2017;** regarding passing of order under Section 110 of the Customs Act, 1962.

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

---

**COURT DECISIONS****COMMISSIONER OF CUSTOMS (PREVENTIVE) Versus L.D. TEXTILES INDUSTRIES LTD. [GUJARAT HIGH COURT]**

**BRIEF:** Non-fulfilment of export obligation - Diversion of imported polyester staple fibres under DEEC scheme - the import duty has to be paid inevitably by the importer. Confiscation or fine in lieu thereof is an infliction on the offender or circle of offenders.

**OUR TAKE:** The hon'ble GUJARAT HIGH COURT held that the liability to pay duty has nothing to do with confiscation of the goods under Section 111 and/or under Section 125 of the Act. Under the circumstances, the learned Tribunal has materially erred in setting aside the demand for duty on the goods solely on the ground that they were seized after the customs clearance and absolutely confiscated under Section 111 [m] of the Customs Act. **[Decided in favour of Appellant-Revenue]**

**MR. MUKUL AMRATLAL SONAWALA, M/S. WIND WORLD (INDIA) LTD., [FORMERLY KNOWN AS ENERCON (INDIA) LTD.] VERSUS COMMISSIONER OF CUSTOMS (IMPORT) , NHAVA SHEVA [CESTAT MUMBAI]**

**BRIEF:** Non-production of Homologation certificate of the imported cars - since the car is used by the company in India and there is no commercial consideration attached or involved in the matter, the imposition of fine and penalty has to be minimal.

**OUR TAKE:** The hon'ble CESTAT MUMBAI held that the cars which are imported herein being similar as is imported in the case of Fulford India; respectfully following the ratio in the case of Fulford India, it is held that redemption fine which is imposed on all these appeals should be 10% of the value of the car and penalty should be 5% of the value of the car. **[Decided partly in favour of appellant]**

**COMMISSIONER OF CUSTOMS & CENTRAL EXCISE, GOA VERSUS BRIGHT IMPEX [CESTAT MUMBAI]**

**BRIEF:** Imposition of penalty u/s 114A of Customs Act, 1962 - failure to specify the name of the firm or individual on whom the penalty u/s 114A of CA, 1962 was fastened - There is no requirement for a specific mention of the importer to validate the penalty under section 114A of Customs Act, 1962.

**OUR TAKE:** The hon'ble CESTAT MUMBAI held that penalty u/s 114A is liable to be imposed on the person liable to pay

duty as determined in proceedings under section 28 - The importer in the present matter has been identified in the impugned order as 'noticee' and has been fastened with differential duty on the enhanced value. Doubtlessly, it is the same entity that is liable to be penalised. There is no requirement for a specific mention of the importer to validate the penalty under section 114A of Customs Act, 1962. The order is not invalidated on that count - imposition of penalty justified. **[Decided against revenue]**

**WOCKHARDT LTD., ZULASH CLEARING & SHIPPING AGENCY, ANIL SHARMA VERSUS COMMISSIONER OF CUSTOMS (EXPORT) MUMBAI [CESTAT MUMBAI]**

**BRIEF:** EPCG Scheme - import of Magnetic Mixers/agitators with mixing head, drive unit and accessories in SKD position - there was no bar on importing the individual components in different bill of entries so long as the total number of sets imported is within the limit prescribed in the EPCG licence.

**OUR TAKE:** The hon'ble CESTAT MUMBAI held that the three components have always been imported in sets and are assembled on the vessel independently. There is no bar on importing the sets as individual components and therefore the argument of the Revenue that components have been imported and the same are not covered by EPCG Licence does not hold any weight. From the table in first para of this order, it is seen that the quantity imported has always been within the limit prescribed in the EPCG Licence and therefore Notification No.49/2000 dt. 27.4.2000 cannot be denied to the appellants. **[Decided in favour of appellant]**

**M/S. ALM ENTERPRISES VERSUS THE COMMISSIONER OF CUSTOMS (IMPORTS) , THE ADDITIONAL COMMISSIONER OF CUSTOMS (GR. 2) [MADRAS HIGH COURT]**

**BRIEF:** Import of cosmetics - Loomy Tunes Room Air Fresheners - The Commissioner of Customs has no power to waive the conditions subject to which such cosmetic products can be imported as he is not the Competent Authority but someone else.

**OUR TAKE:** The hon'ble MADRAS HIGH COURT held that no cosmetic, shall be imported into India unless that product is registered under the rules by the licensing authority. Such application shall be made for Registration of cosmetics intended to be imported into India in Form 42 by every importer and shall be accompanied by a fee of 250/- US dollars or its equivalent to Indian rupees for each brand of cosmetics. Under Rule 129(C), the licensing authority was required to issue a Registration Certificate in Form 43 subject

to the conditions contained therein. There is no material available on record to vouch for any such Registration Certificate in Form 43 has been obtained by or on behalf of the importer. **[Decided against appellant]**

## INCOME TAX

### COURT DECISIONS

#### ASSISTANT COMMISSIONER OF INCOME-TAX VERSUS BIHAR INDUSTRIAL AREA DEVELOPMENT AUTHORITY [PATNA HIGH COURT]

**BRIEF:** Incentive subsidy - It was meant for entrepreneurs and industrialists who had established their units and made certain capital outlay and the assessee was merely required to ensure distribution of subsidies to the industrialists and thus it could not be treated as funds in hand of the assessee as taxable.

**OUR TAKE:** The hon'ble PATNA HIGH COURT held that it has been rightly pointed out by the High Court that once it has been found at the level of Tribunal that the interest was income derived out of funds received from the State Government and thus the interest was not taxable as having the same character, that would be a question of fact. We are in respectful agreement with the view expressed by the Karnataka High Court and thus no substantial question of law arises on the said issue. Income. The importance of the observation is this.

#### RAJESH KUMAR AGGARWAL VERSUS COMMISSIONER OF INCOME TAX DELHI-VIII & ANOTHER [DELHI HIGH COURT]

**BRIEF:** Revision u/s 264 - whether benefit of Section 54F could be granted when it was originally not claimed during the assessment proceedings - there is no bar in the grant of the relief despite the assessee apparently having missed the bus and having committed the mistake.

**OUR TAKE:** The hon'ble DELHI HIGH COURT held that where too the question was whether in the absence of the assessee's claiming relief under Section 54F either in the original return or even in the revised return, it could be granted in revision. The Court unequivocally held that it could be granted.

#### DR. REDDY'S RESEARCH FOUNDATION VERSUS ASSISTANT COMMISSIONER OF INCOME-TAX [ITAT HYDERABAD]

**BRIEF:** Nature of contribution to another institution - nothing was brought on record to highlight, how the assessee has got the benefit either in this year or in the future or any benefit to the overall benefit to the organisation as a whole. There has to be some benefit directly or indirectly to the organisation - Cannot be allowed as expenditure u/s 37(1).

**OUR TAKE:** The hon'ble ITAT HYDERABAD held that We find from the record that while filing the return of income, the assessee has not claimed deduction under section 35(1)(ii) in the return of income, in which the columns were left blank. Only in the memo of computation (refer page 42), the assessee mentioned that it has claimed deduction under section 35 at 100 per cent. On weighted deduction. Only during the assessment proceedings, the assessee made submission before the Assessing Officer to treat the above contribution as deduction under section 37. **[Decided against revenue]**

#### MRS. NEELAM SANJAY ARYA VERSUS ITO, WD-8 (3) , AHMEDABAD [ITAT AHMEDABAD]

**BRIEF:** Determination of Annual Value u/s. 23(l) (a) - Assessee has rightly assigned "NIL" Annual Let Table Value of the impugned 16 shops which were ready to be let out during the year but remained vacant throughout the year.

**OUR TAKE:** The hon'ble ITAT AHMEDABAD held that Assessee has rightly assigned "NIL" Annual Let table Value of the impugned 16 shops which were ready to be let out during the year but remained vacant throughout the year and the same was duly covered under the provisions of section 23(1)(c) of the Act. We accordingly set aside the order of Id. CIT (A), delete the impugned addition and allow the appeal of assessee. See case of Vikas Keshav Garud vs. ITO [2016 (7) TMI 942 - ITAT PUNE].

#### BHUPINDER SINGH VERSUS INCOME-TAX OFFICER, WARD-33 (4) , NEW DELHI [ITAT DELHI]

**BRIEF:** Revision u/s 26 - The order was also prejudicial to the interest of Revenue because in the absence of assessee succeeding to establish the nexus between cash deposits and business receipts, entire deposits were to be added - Revision upheld.

**OUR TAKE:** The hon'ble ITAT DELHI held that Since AO has referred to only para 3 of the reply, therefore, it is evident that he has only considered the discrepancy regarding gross receipts but did not carry out any inquiry in regard to the nexus between business receipts and cash deposits which



was the specific direction of the Tribunal. Whether there was application of mind or not is to be examined having regard to the fact that how a person abreast of the nuisances of law would proceed in the given circumstances. This is a case of not only inadequate enquiry but complete lack of enquiry.

# STATE TAXES

## ALL INDIA VAT

### HARYANA

**The Govt. vides Notification NO. 3/ST-1 / H.A.6 / 2003 / S.60/2017 dated 8<sup>th</sup> Feb 2017**, Haryana Value Added Tax (Amendment) Rules, 2017 - amendment in Rule 3 to provide for new Tax Ranges.

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

### HIMACHAL PRADESH

**The Govt. vides Notification NO. EXN-F (10)-6/2013-LOOSE dated 6<sup>th</sup> Feb 2017**, Himachal Pradesh Passengers and Goods Taxation Act, 1955 - Amendments in Schedule-II regarding Lime Stone & Fly ash.

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

### JAMMU & KASHMIR

**The Govt. vides Notification NO. 03 / READER / NOTIFI /III/1923-35 dated 9<sup>th</sup> Feb 2017**, guidelines for implementation of Amnesty Scheme under Notification SRO 30 dated 01.02.2017.

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

**The Govt. vides Notification S.No. 30 dated 10<sup>th</sup> Feb 2017**, amendment in Schedule C of JKVAT Act, 2005 - Omission of entry "Semi-stitched Garments".

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

### GUJARAT

**The Govt. vides Circular No. 154 dated 6<sup>th</sup> Feb 2017**, compulsory e-payment the date is extended from December to February period.

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

### RAJASTHAN

**The Govt. vides Circular No. 09 dated 08<sup>st</sup> Feb 2017**, regarding submission of Declaration Forms under the Central Sales Tax Act, 1956.

**OUR TAKE:** Readers are requested to read the said Circular. 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

### GST ALERTS

### SUPPLY CHAIN UNDER GST

### SUPPLEMENTARY TAX INVOICE AND REVISED INVOICE IN GST

### SUPPLEMENTARY TAX INVOICE

Supplementary tax invoice has not been defined under Model GST law. Supplementary tax invoice has to be issued by taxable person in case where any deficiency is found in a tax invoice already issued by a taxable person. Dictionary meaning of the term 'supplementary' is 'added to complete or make up a deficiency'. Thus, supplementary tax invoice is to be issued where any deficiency is found in a tax invoice issued already to supplement / remove such deficiency.

### DETAILS REQUIRED TO BE SHOWN

According to Rule 4 of draft GST Invoice Rules, a supplementary tax invoice and / or credit note or debit note shall contain the following particulars:

- a. name, address and GSTIN of the supplier,
- b. nature of the document,
- c. a consecutive serial number containing only alphabets and/or numerals, unique for a financial year,
- d. date of issue of the document,
- e. name, address and GSTIN/ Unique ID Number, if registered, of the recipient,
- f. name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is unregistered,

- g. serial number and date of the corresponding tax invoice or, as the case may be, bill of supply,
- h. taxable value of goods or services, rate of tax and the amount of the tax credited or, as the case may be, debited to the recipient, and
- i. Signature or digital signature of the supplier or his authorized representative.

### INPUT TAX CREDIT

As per section 16(1) of Model GST law, no registered taxable person shall be entitled to the credit of any input tax in respect of any supply of goods and/or services to him unless he is in possession of tax invoice, debit note, supplementary invoice or such other taxpaying document as may be prescribed, issued by a supplier registered under the CGST/SGST or the IGST Act.

However, a taxable person who has received supplies from a supplier who is paying tax under composition levy scheme or supplying non-taxable goods and/or services cannot take input tax credit on the basis of a bill of supply.

### REVISED INVOICE

'Revised invoice' has not been defined under Model GST law. Revised invoice may be issued by taxable person in relation to any invoice already issued by him.

Dictionary meaning of 'revise' is to re-examine or re-issue an already published document or record of rights or to revise or amend any entry or particulars in the finally published record of rights.

### ISSUE OF RIGHT INVOICE

As per proviso to section 23 of the model GST law read with Rule 4 of the draft GST Invoice Rules, a registered taxable person may issue a revised invoice against the invoice already issued by him during the period starting from the effective date of registration till the date of issuance of certificate of registration to him. The revised invoice would enable the recipient to take credit of tax charged in the revised invoice.

The period covered for issuing of revised invoice is the period starting from the effective date of registration till the date of issuance of certificate of registration? Therefore, a registered taxable person cannot issue a revised invoice against the invoice issued by him after the date of issuance of certificate of registration.

## 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  
Office No. 704, 7<sup>th</sup> Floor,  
Sector 30A, Vashi  
Navi Mumbai - 400703  
P: +91 – 2265515507/08  
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:	nitin@ascgroup.in		

### Disclaimer:

*This e-bulletin is for private circulation only. Views expressed herein are of the editorial team. ASC or any of its employees do not accept any liability whatsoever direct or indirect that may arise from the use of the information contained herein. No matter contained herein may be reproduced without prior consent of ASC. While this e-bulletin has been prepared on the basis of published/other publicly available information considered reliable, we do not accept any liability for the accuracy of its contents.*