



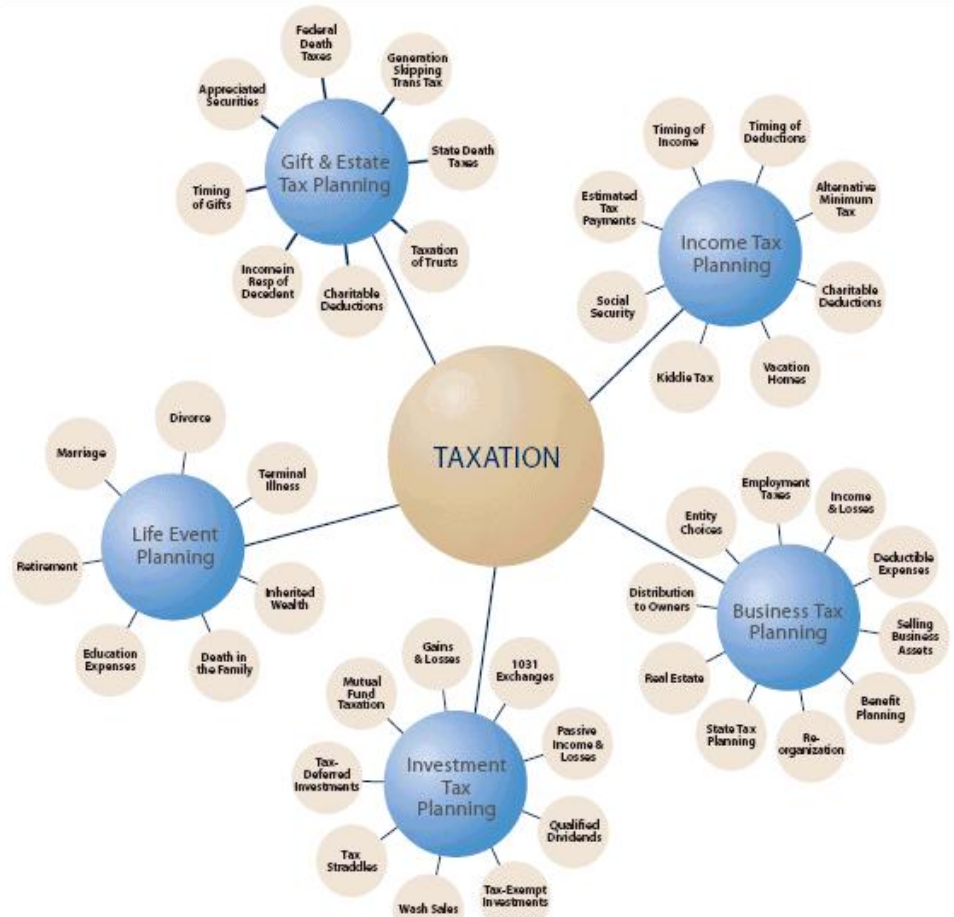
ASC Times

All India Taxes Weekly Reference

Vol: Feb 20 –Feb 26, 2017

Solving any tax puzzle

Tax saving advice across all the taxes



**TAXCALENDER**

Due Date	Description	Law
21 Feb	Deposit of Tax	Assam VAT, Delhi VAT, Maharashtra VAT, Meghalaya VAT, Orissa VAT
	Deposit of TDS	Maharashtra VAT
	Issue of TDS Certificate	Maharashtra VAT
	Return Filing	Assam VAT, Assam VAT, Maharashtra VAT, Meghalaya VAT, Meghalaya VAT, Orissa VAT, Orissa VAT
25 Feb	Deposit of Tax	Rajasthan VAT, Uttarakhand VAT
	Deposit of TDS	Mizoram VAT
	Issue of TDS Certificate	Mizoram VAT
	Return Filing	Jharkhand VAT.

COUNTRY WIDE HOLIDAYS FOR THE WEEK

Date	Occasion/Festival	Region
NA	NA	NA

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From the CEO's Desk



be merged under GST. The excise on liquor will continue, along with VAT, even after GST rollout.

Alok Kumar Agarwal

CEO

ASC Group.

Dear Reader,

About 1.85 lakh dealers out of the 3.53 lakh registered with the VAT department have enrolled on the GST portal from December 16 till date. The Delhi government is now preparing to bring out an advertisement to announce extension of the deadline for enrolment till March 15. The earlier deadline was December 31.

The state government is clear that those who do not register by the extended deadline will not be considered for any of the tax payment related benefits given to dealers by the VAT department from thereon.

During enrolment, the VAT department found that in around 50,000 cases dealers could not complete their applications as their PAN card details did not match the ones registered with them. "For instance, the PAN may have the company name written in abbreviation and the VAT data has the full name. This difference appears as a mismatch and the dealers have been asked to get this rectified," said VAT commissioner H Rajesh Prasad.

The dealers who choose not to get enrolled on the GST portal will come under the scanner of the VAT department which plans to begin the exercise of pruning the list of registered dealers for weeding out any possibility of bogus dealers or those whose registration may have been cancelled.

Before this process started on December 16, a workshop to help dealers in migrating to GST was held at the Delhi Secretariat. Deputy CM Manish Sisodia and senior VAT department officials were present.

The GST portal seeks to empower the dealers with a complete online experience with no manual interface. From uploading of bills and filing of returns to tax payment, the entire process will be online. Once GST comes into effect, VAT will cease to exist except in the case of liquor and five petroleum products, including diesel and petrol. Luxury tax and entertainment tax will

CENTRAL TAXES

SERVICE TAX

NOTIFICATION / CIRCULAR

The Govt. vides Circular No. 204/02/2017-ST dated 16th Feb 2017; applicability of service tax on the services by way of transportation of goods by a vessel from a place outside India to the customs station in India w.r.t. goods intended for transshipment to any country outside India.

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

COURT DECISIONS

SHRI ARUN KUMAR SURANA VERSUS C.S.T. DELHI [CESTAT NEW DELHI]

BRIEF: Business Auxiliary Services - multi level marketing services - the service tax is not leviable on the commission earned by the distributor on the basis of the volume of the purchases made by the group of second level of distributors appointed by M/s. Forever Living Imports (India) Pvt. Ltd. on being sponsored by the distributor.

OUR TAKE: The hon'ble CESTAT NEW DELHI held that service tax will be chargeable on the commission received by the distributor on the products purchased by his sales group. However, the service tax is not leviable on the commission earned by the distributor on the basis of the volume of the purchases made by the group of second level of distributors appointed by M/s. Forever Living Imports (India) Pvt. Ltd. on being sponsored by the distributor. **[Appeal partly allowed - part matter on remand]**

M/S. NOKIA INDIA PVT. LTD. VERSUS C.S.T. DELHI [CESTAT NEW DELHI]

BRIEF: As per sub section 73 of Section 3 the FA, 1994 in case of non-levy or short levy of service tax, if the same is paid either by the appellants themselves or as ascertained by the central excise officers before the service and notice to him, no notice is required to be served - No penalty.

OUR TAKE: The Hon'ble CESTAT NEW DELHI held that as per sub section 73 of Section 3 the FA, 1994 in case of non-levy or short levy of service tax, if the same is paid either by the appellants themselves or as ascertained by the central excise officers before the service and notice to him, no notice is required to be served - CBEC vide its letter no. 137/167/2006-CX-4 dated 03.10.2007 has clarified that if tax and interest is paid before SCN, all proceedings (which includes proceedings under Section 78 & 77 of the Act) under the Act are concluded. **[Decided in favour of appellant]**

M/s. HEG Ltd. Versus C.C.E. Bhopal [CESTAT NEW DELHI]

BRIEF: Commission paid to foreign based agents - there has been a bonafide mistake on the part of the appellant to treat the taxable services as exempted services - penalty u/s 78 cannot be imposed.

OUR TAKE: The hon'ble CESTAT NEW DELHI held that The department has not provided any evidence to prove any wilful suppression and misstatement with an 'intention to evade' payment of service tax on the part of the appellant. The facts on record indicate that there has been a bonafide mistake on the part of the appellant to treat the taxable services as exempted services - penalty u/s 78 cannot be imposed. **[Decided Partly in favour of appellant]**

THE COMMISSIONER OF CENTRAL EXCISE CUSTOMS & SERVICE TAX VERSUS M/S SUVIDHA ENGINEERS INDIA LTD. [ALLAHABAD HIGH COURT]

BRIEF: Invocation of extended period of imitation - section 73 (1) of the FA, 1994 - department took a view that even prior to the amendment, the assesses was liable to pay tax - When department has all the information on record, extended period of limitation cannot be invoked.

OUR TAKE: The hon'ble ALLAHABAD HIGH COURT held that the assesses through their letter dated 5.9.2005 had submitted month-wise details of all payment received by them against HVAC works for the period from 1.7.2003 to 15.6.2005. Once the details of the value of taxable services were available to the department on 5.9.2005, the tribunal came to the conclusion that there was no reason to invoke the extended period under the proviso to section 73 (1) of the Finance Act, 1994 - extension of limitation and application of the proviso to section 73 (1) of the Finance Act, 1994 set aside. **[Decided in favour of appellant]**

**M/S. MCM SERVICES PVT. LTD. VERSUS CST, DELHI [CESTAT NEW DELHI]**

BRIEF: Sub-contract - denial of exemption available to the construction of dam only on the ground that the dam is part of the Hydroelectric Power Project - there is no justification to give a restrictive meaning to the term “dam” to the effect that the exemption will be available only when it is not part of any bigger project - exemption allowed.

OUR TAKE: The humble **CESTAT NEW DELHI** held that the statutory definition did not define the scope of the term “dam” or its ultimate use. It is common knowledge that in many cases, the dams are for multi-purpose like, irrigation, power generation, flood control, etc. The Exclusion Clause did not put any condition that the dams for particular purpose only will be excluded from tax liability - there is no justification to give a restrictive meaning to the term “dam” to the effect that the exemption will be available only when it is not part of any bigger project. **[Decided in favour of appellant]**

K.K. STEEL ENTERPRISES VERSUS CC, CE & ST, GUNTUR [CESTAT HYDERABAD]

BRIEF: Levy of tax - GTA services - whether tax can be levied when consignment note was not issued? - Appellant has paid the major portion of Service Tax along with interest prior to the issuance of Show Cause Notice - no penalty.

OUR TAKE: The hon’ble **CESTAT HYDERABAD** held that there were decisions interpreting the provisions to hold that Service Tax cannot be demanded whereas some of the decisions held the issue in favour of Department. Taking note of this fact and also taking in to consideration that the appellant has paid the major portion of Service Tax along with interest prior to the issuance of Show Cause Notice Immediately on being pointed out by the Department, the penalties imposed are unwarranted as per provisions contained in sub-Section 3 of Section 73 of Finance Act, 1944. **[Decided in favour of appellant]**

M/S VINTECH SHOPPE PVT. LTD. VERSUS UNION OF INDIA [GUJARAT HIGH COURT]

BRIEF: Recovery of service tax dues - Extension of the period of provisional attachment - extension for a further period of one year - franchise agreement - natural justice - before passing order under section 73C, fullest opportunity have been given to the respective petitioners - order sustained - HC.

OUR TAKE: The hon’ble **GUJARAT HIGH COURT** held that section 73(2) of the Finance Act, 1994 permits the Chief Commissioner to extend the period of provisional attachment. Under the statute, no hearing is provided before passing the order of extension of provisional attachment under section 73(C)(2) of the Finance Act, 1994, like while passing original order of provisional attachment by the Commissioner under section 73(C)(1) of the Finance Act, 1994 - Under the circumstances, on the ground that before passing the impugned orders of extension of provisional attachment by the Chief Commissioner, no opportunity of being heard were given to the respective petitioners, and therefore, the impugned orders of extension of provisional attachment are not required to be quashed and set aside, has no substance and cannot be accepted, more particularly considering the fact that before passing order under section 73(C)(1), fullest opportunity have been given to the respective petitioners and thereafter the orders under section 73(C)(1) have been passed. **[Decided against appellant]**

M/S ICOMM TELE LTD. VERSUS CCE, C & ST, HYDERABAD-II [CESTAT HYDERABAD]

BRIEF: Imposition of penalty u/s 76 of the FA, 1994 - delayed payment of tax - financial difficulty - invocation of section 80 - it is a fit case to waive the penalty.

OUR TAKE: The hon’ble **CESTAT HYDERABAD** held that with effect from 01.04.2011 the appellant has been discharging the service tax liability on accrual basis and before that it was on receipt basis - it is a fit case to invoke Section 80 and grant the waiver of penalty imposed u/s 76 of FA, 1994, looking at the financial difficulty of appellant - penalty set aside. **[Decided in favour of appellant]**

CENTRAL EXCISE

NOTIFICATION / CIRCULAR

The Govt. vides Circular No. 206/01/2017-CX 6 dated 16th Feb 2017; Periodicity of CAS-4 certificates.

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

COURT DECISIONS

M/S. NGA STEELS (P) LTD. VERSUS THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, THE COMMISSIONER OF CENTRAL EXCISE[MADRAS HIGH COURT]

BRIEF: Clandestine removal - mere payment of duty before issuance of show cause notice would not preclude the Department, from levying redemption fine, once the factum of evasion of duty is made out, be it mala fide or not - Levy of redemption fine confirmed – HC.

OUR TAKE: The hon'ble **MADRAS HIGH COURT** held that the appellant cannot wriggle out from under in the guise of trying to assert that there was no intention to evade duty. Though confiscation of the material was not made at the premises of M/s. Sri Krishna Alloys, but made at the premises of the appellant, the appellant being a person holding safe custody of the materials, without there being any valid invoice for receipt of the same as raw material, if wishes to retain the confiscated materials, could redeem the same on payment of fine, as has been ordered.[**Decided against appellant**]

M/S HERO HONDA MOTORS LIMITED VERSUS CCE, MEERUT-I – (VICE-VERSA). [CESTAT NEWDELHI]

BRIEF:Area based exemption - whether the appellant is liable to pay NCCD, Education Cess and Secondary Higher Education Cess in spite of the exemption N/N. 50/2003? - Held Yes - Further they cannot avail cenvat credit facility.

OUR TAKE: The hon'ble **CESTAT NEWDELHI** held that NCCD, Education Cess, Secondary Higher Education Cess which are levied under separate statutory enactments cannot be granted exemption under the notification. - Appellant will not be entitled to exemption for the above three types of duties in spite of enjoying the benefit of exemption under Notification No. 50/2003.[**Decided in favour of revenue**]

M/S. HINDALCO INDUSTRIES LTD. VERSUS CCE, ALLAHABAD [CESTAT NEW DELHI]

BRIEF: CENVAT credit - captive consumption - The main ground for denial is that the power plant does not belong to appellant (Hindalco) and services availed by subsidiary company (Renusagar Power Plant) cannot be given credit to appellant - once the units are merged / amalgamated, credit is to be allowed.

OUR TAKE: The hon'ble **CESTAT NEW DELHI** held that the Hon'ble Delhi High Court approved the scheme of amalgamation which resulted in the merger of Hindalco Industries Limited and Renusagar Power Company Limited. As such there can be no dispute about the fact that power plant at Renusagar belonging to the appellant. Hence, the basis of Member (Technical) finding that the power plant belongs to subsidiary unit is factually incorrect. Hence, the reasoning followed is untenable.[**Decided in favour of appellant**]

M/S. SWAN MILLS LTD., VERSUS COMMISSIONER OF CENTRAL EXCISE MUMBAI-I [BOMBAY HIGH COURT]

BRIEF: Refund claim - excess duty paid - rejection on the ground of unjust enrichment - We are unhappy at the manner in which the Tribunal has dealt with the Appeals - the Tribunal committed serious errors of law apparent on the face of the record. The Tribunal did not elaborate as to how, in this case, the question of limitation can be said to be a pure legal issue– HC.

OUR TAKE: The hon'ble **BOMBAY HIGH COURT** held that the Tribunal concluded that the doctrine of unjust enrichment can be invoked but that aspect was not elaborated further. Midway the Tribunal holds that there is substance in the Department's objection on the point of limitation and therefore concentrated its entire attention towards that point. In dealing with that also, in subparas (ii) to (d) of para 5, the Tribunal committed serious errors of law apparent on the face of the record. The Tribunal did not elaborate as to how, in this case, the question of limitation can be said to be a pure legal issue.[**Decided against appellant**]

CHENNAI PETROLEUM CORPORATION LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, TIRUCHIRAPALLI. [CESTAT MUMBAI]

BRIEF: Levy of duty - Kerosene meant for PDS - delay in issuing exemption notification - when the policy in vogue was known and the same also conveyed through a subsequent notification that shall be read as clarificatory and shall have retrospective effect.

OUR TAKE: The hon'ble **CESTAT MUMBAI** held that Law is well settled that a curative notification which seeks to mitigate the hardships is always read in a manner to advance public welfare and construed liberally as well as retrospectively. The Notification dt.1.3.2005 having conveyed the policy of the Government to exempt PDS kerosene from levy of excise duty, as that was the intention conveyed through the above circular, there shall not be confusion to levy excise duty on PDS kerosene because issuance of notification was delayed by nearly 6 months - such notification shall have retrospective effect. **[Decided partially in favour of assesses]**

M/S MADHYA PRADESH POWER TRANSMISSION COMPANY LIMITED, THE EXECUTIVE ENGINEER VERSUS CCE, BHOPAL [CESTAT NEW DELHI]

BRIEF: Manufacture - production of goods like tower parts, structures, GT Line, V cross arms, HT/LT line materials - The process of fabrication of columns, purlines etc. by cutting, drilling, punching and welding does not amount to manufacture.

OUR TAKE: The hon'ble **CESTAT NEW DELHI** held that the appellant is undertaking the process of cutting of channels, plates and angles and subjecting them to hole with the purpose of putting the same to use. **[Decided in favour of appellant]**

CUSTOM

NOTIFICATION / CIRCULAR

The Govt. vides Notification No. 12/2017 dated 16th Feb 2017; rate of exchange of conversion of the foreign currency with effect from 17th February, 2017.

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

The Govt. vides Notification No. 07/2017 dated 17th Feb 2017; seeks to levy definitive anti-dumping duty on Seamless tubes, pipes and hollow profiles of iron, alloy or non-alloy steel (other than cast iron and stainless steel), whether hot finished or cold drawn or cold rolled of an external diameter not exceeding 355.6 mm or 14" OD originating in, or exported from the People's Republic of China.

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

The Govt. vides Circular No. 04/2017 F.No.450/II/2003-CusIV dated 16th Feb 2017; Expansion of 24x7 Customs clearance and clarification of levy of MOT charges in CFSs attached to 24x7 ports.

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

COURT DECISIONS

OM SIDDH VINAYAK IMPEX PVT. LTD. AND 1 Versus UNION OF INDIA AND 2. [GUJARAT HIGH COURT]

BRIEF: SEZ units - Worn and used clothing - withdrawal of the exemption - public interest - entitlement of selling of un-mutilated worn clothing being export surplus and export rejects in DTA on payment of applicable duties - The authority has bye-passed the mandatory provisions and issued the impugned instructions against the prescribed law which was beyond their jurisdiction – HC.

OUR TAKE: The hon'ble **GUJARAT HIGH COURT** held that Even in the policy dated 17.9.2013, the respondents have provided that the petitioners will be allowed to sell un-mutilated worn clothes, being export surplus and export

rejects on payment of applicable duty to the extent of 15% of FOB value of their exports. The unilateral withdrawal of 15% from retrospective effect may not be justified. This industry is providing large employment to unskilled workers in the local area and phasing them out will result in loss of employment of about 12,000 workers. One of the key motive of establishment of SEZ is to generate maximum employment, which would be defeated if their LOAs are not renewed it. **[Decided in favour of Appellant]**

C.C. - NEW DELHI VERSUS ORIENT CLOTHING COMPANY PVT. LTD. [CESTAT NEW DELHI]

BRIEF: Classification wrap Knitted Fabric - 'lace' falling under CTH 58042990 or as 'Fabric' - imported goods are for use as a decoration on readymade Garments - benefit of exemption allowed as 'lace'.

OUR TAKE: The hon'ble CESTAT NEW DELHI held that the test report describes the imported goods as "Wrap Knitted Fabric". The HSN explanatory note also states that 'lace' is a decorative fabric, which is in the form of "wrap Knitted Fabric". There is no dispute that the imported goods are for use as a decoration on readymade Garments. It is also on record that the importer has been importing the very same goods since 2009 and Revenue has not raised any objection to the classification as well as extending the benefit of notification - denial of exemption benefit not justified. **[Decided against Revenue]**

M/S STERLING ORNAMENTS PVT. LTD., M/S MRIGANK SHEKHAR VERSUS C.C. -NEW DELHI [CESTAT NEW DELHI]

BRIEF: Classification under 74072110 as brass ingots, or under 74040022 as brass scrap - Looking to the shapes in which the goods are being cleared, the classification as a brass bar is more appropriate than the classification as brass scrap.

OUR TAKE: The hon'ble CESTAT NEW DELHI held that Looking to the shapes in which the goods are being cleared, the classification as a brass bar is more appropriate than the classification as brass scrap. There is no difference in rate of duty between the two classifications - Since two views are easily possible in the classification of a product, mis-declaration with intend to evade payment of duty cannot be allowed. **[Decided in favour of appellant]**

COMMISSIONER OF CUSTOMS NEW DELHI VERSUS M/S. SICPA INDIA LTD. [CESTAT NEW DELHI]

BRIEF: Valuation - royalty - assesses is paying royalty to their foreign supplier for the manufacturing of goods under their license in India. The same cannot be termed as royalty paid for the imported goods.

OUR TAKE: The hon'ble CESTAT NEW DELHI held that royalty under the said Rule can be included in the assessable value if in case of imported goods, it is the condition of sale. And as per the explanation, royalty would be includable in the case even after the imported goods have undergone the process after importation of said goods - in the present case, the respondent is paying royalty to their foreign supplier for the manufacturing of goods under their license in India. The same cannot be termed as royalty paid for the imported goods. **[Decided against Revenue]**

SHRI SUNIL BHATIA VERSUS CC, NEW DELHI [CESTAT NEW DELHI]

BRIEF: Undervaluation - it is evident that the car was imported by producing the Bill of Entry of under-valuation - the Department has taken the price of the impugned car as was available on the manufacturer - demand of duty with interest and penalty confirmed.

OUR TAKE: The hon'ble CESTAT NEW DELHI held that on the official website of the car manufacturer, the value of the identical model was shown as 32505 British Pound. Thus, it is evident that the car was imported by producing the Bill of Entry of under-valuation - the Department has taken the price of the impugned car as was available on the manufacturer. When it is so, there is no reason to interfere with the impugned order which is hereby sustained - appeal dismissed. **[Decided against assessee]**

INCOME TAX

COURT DECISIONS

SHRI IQBAL ALI KHAN, SECRETARY, M/S PAHAR GUNJ GRAH NIRMAN SAHAKARI SAMITI LTD., SHRI BANWARI LAL VIJAY, PRESIDENT, M/S PAHAR GUNJ GRAH NIRMAN SAHAKARI SAMITI LTD. VERSUS THE DEPUTY COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE 2, NOW ASSISTANT COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE 2, JAIPUR [RAJASTHAN HIGH COURT]

BRIEF: Initiation of proceedings u/s 158BD - unless the basic finding is held to be valid, the consequential order is bad in law - since there was no notice served under section 158 BC the assesses could not have been assessed under section 158BD.

OUR TAKE: The hon'ble RAJASTHAN HIGH COURT held that the Tribunal has to quash and set aside the conclusion arrived at by the CIT (Appeals) holding that the proceedings under Section 158BD is bad in law which is never reversed by the Tribunal.

ACIT, CIR. 5, AHMEDABAD VERSUS ORACLE GRANITO LTD. [ITAT AHMEDABAD]

BRIEF: Addition u/s 145A - valuation of closing stock - Since CENVAT is not available to the assesses then the enhancing the value of semi-finished and finished goods in the closing are not warranted.

OUR TAKE: The hon'ble ITAT AHMEDABAD held that In the process of manufacturing assesses purchases goods from within the State and outside the State due to which VAT credit is available for VAT paid goods purchased from within the State and Central Sales Tax is paid from outside State goods which are included in the purchases itself. Assesses is also covered under the Excise Act and was enjoying concessional rate of excise duty to be liveable on the goods manufactured. Closing stocks of the assesses constitutes raw material, packing material, consumable stores purchased from within and outside the State, semi-finished and finished goods. All these categories of closing stock out of which some are inclusive of taxes and some are exclusive of taxes and, therefore, assesses is consistently following the system of valuing the opening and closing stocks exclusive of taxes.

ACIT CENTRAL CIRCLE KARNAL VERSUS GALAXY GLOBAL EDUCATIONAL TRUST [ITAT DELHI]

BRIEF: When the same amount has been surrendered and taxed in the hands of donor then the source of the funds which were used for expenditure as to held as explained in the hands of done assesses trust and provisions of section 69C cannot be invoked for making addition on account explained expenditure.

OUR TAKE: The hon'ble ITAT DELHI held that As from notes of accounts forming part of balance sheet as on 31.03.2009 mentions that the assesses trust receive voluntarily contributions and corpus donations represents acquisitions of assets i.e. land building etc. on behalf of the trust by the trustee's. Page 199 of the (APB) further manifest that the assesses trust also received corpus fund from Shri Devi Chand, Vinod Goel, Vijay Goel, Krishnan Goel, Raj Bala, Rajni Goel, Seema Goel, with specific directions as per notes to accounts (Supra), In the notes to accounts it has also been mentioned that the corpus donations which are represented by acquisitions of assets such as land building etc.

M/S. SUCON INDIA LTD. VERSUS ACIT, CIRCLE-II, NEW DELHI [ITAT DELHI]

BRIEF: Denial of claim of set off of loss from derivative u/s 73 - Loss incurred on derivative transaction was not a speculative loss and is allowed to be adjusted against business income.

OUR TAKE: The hon'ble ITAT DELHI held that Loss incurred on derivative transaction was not a speculative loss and is allowed to be adjusted against business income. See Asian Financial Services Ltd. Vs. Commissioner of Income Tax-3, Kolkata [2016 (3) TMI 685 - CALCUTTA HIGH COURT].

The Commissioner Of Income-Tax, Bangalore Versus M/s. India Advantage Fund, M/s. ICICI Emerging Sectors, M/s. ICICI Econet internet & Technology Fund [KARNATAKA HIGH COURT]

BRIEF: Assessment u/s 164(1) - whether the assessee trust cannot be assessed as on AOP? - Once the shares of the beneficiaries are found to be determinable, the income is to be taxed of that respective sharer or the beneficiaries in the hands of the beneficiary and not in the hands of the Trustees which has already been shown in the present case - HC.

OUR TAKE: The hon'ble KARNATAKA HIGH COURT held that the real test is whether shares are determinable even when even or after the Trust is formed or may be in future when the Trust is in existence.

STATE TAXES

ALL INDIA VAT

DELHI

The Govt. vides Circular NO. 23 dated 13th Feb 2017, Filing of online return for 3rd quarter of 2016-17 — extension of period up to 28 February 2017.

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

HIMACHAL PRADESH

The Govt. vides Notification NO. LLR-D (6)-27/2016-LEG dated 14th Feb 2017, Himachal Pradesh Tax on Entry of Goods into Local Area (Second Amendment) Act, 2016 - Amendment of section 3 & 8.

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

KERALA

The Govt. vides Circular No. 02, Ref: S.R.O.No.796/2014 dtd.20-12-2014 dated 14th Feb 2017, tax on natural rubber - Invalidation of notification.

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

The Govt. vides Circular No. 03 dated 14th Feb 2017, Extension of time is 31 March 2017 for filing audit report and statements for the year 2015-16.

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

The Govt. vides Circular No. 04 dated 14th Feb 2017, Non-submission of annual financial statements and closing stock inventory.

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

MADHYA PRADESH

The Govt. vides Notification NO. F-A-3-54-2016-1-V-(5) dated 16th Feb 2017, appointment of Appellate Authority for specified area.

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

RAJASTHAN

The Govt. vides Notification NO. F26 (315) CCT / MEA / 2014/2300 dated 14th Feb 2017, Extension in the date of submission of quarterly return in Form VAT 10, for the third quarter of the year 2016-17 up to 28 February 2017.

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

The Govt. vides Circular No. 10 dated 14th Feb 2017, regarding Compliance of Appeal/Court orders, where order of Assessing Authority has been restored.

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 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]**

OTHER UPDATES

GST ALERTS

SUPPLY CHAIN UNDER GST

Proper procurement planning and vendor management is going to be key during GST regime especially during transition phase and upto sometimes post migration. There after there may be need to have continuous relook at professionalism of vendor base and the need to reconsider alternative source of procurement so that the overall cost of procurement is optimised.

FEW IMPORTANT ASPECTS IN PROCUREMENT PLANNING AND VENDOR MANAGEMENT COULD BE AS FOLLOWS:

1. Procurement from registered vendors: The cascading effect of taxes is going to come down significantly in GST owing to cross sectional credit admissibility. This requires that the vendor must be registered so that the tax paid by him on his procurement is not added to the cost of goods/services and passed on to the company resulting in reduction of cost to that extent.
2. Purchase from unregistered vendor- likelihood of tax on purchases: It is learnt that purchase of goods/services from unregistered dealers could attract the levy of GST in the hand of recipient resulting in increased compliance burden.
3. Purchase from taxable person under composition scheme: There could be a situation where the vendor is registered under composition scheme and not charging GST. On the face of invoice, it could appear that the prices are lower but it may not be necessary considering the fact that tax paid on his procurement become integral part of the cost of his product/service and not passed on the company. Hence, all B2B purchase should be made from vendor registered under normal scheme.
4. Timely registration of vendor during migration to GST: There is provision that all existing registered assessee under VAT, CST, and Excise, Service Tax or other taxes being subsumed in GST would be allowed automatic registration under GST on provisional basis valid for 6 months. Final registration would be granted on furnishing necessary details. But it is always preferable to insist the vendor to migrate/obtain registration under GST in advance to avoid the following problems:
 - A. The vendor master of ERP could be updated timely.
 - B. In case the vendor is not allowed to registration owing to deficiency in documentations/any other reasons, the credit taken during the period tax charged by him under provisional registration could be questioned. (Though provision is not clear till date as to what would happen under this circumstances).
 - C. There is no need of having reconciliation of records on vendor obtaining normal registration post provisional number.
5. Realignment of source of vendor: The factors determining selection of vendors, in past, were largely driven based on indirect tax impact due to many restriction/non-allow ability of credits. However, these considerations may not be determining factors in GST while making vendor selection. Important criteria under GST for vendor selection could be as follows:
 - a) The cost of product/service being offered
 - b) The quality of product/services being offered
 - c) The professionalism of vendor in doing the business
 - d) Compliance level (registration, timely raising of invoices, timely payment of taxes and filing of returns etc.) followed by vendors under GST
 - e) Proximity of source of procurement to the place of its usage in case the product/service is critical to the product/services being supplied by company.
 - f) Cost of transportation

This indicates that the tax consideration may not be dominant after GST. Hence, existing vendors selected based on the tax consideration may require relook in GST.
6. Change in procurement/inventory policy: The policy followed by company may require relook in GST especially the policy followed as to inventory holding viz a viz Just in Time (JIT) Purchase considering the fact that accumulation of stock in large quantity could entail blockages of huge working capital. Most of the businesses would prefer to go for JIT purchase in GST with minimum stock in hand.

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