



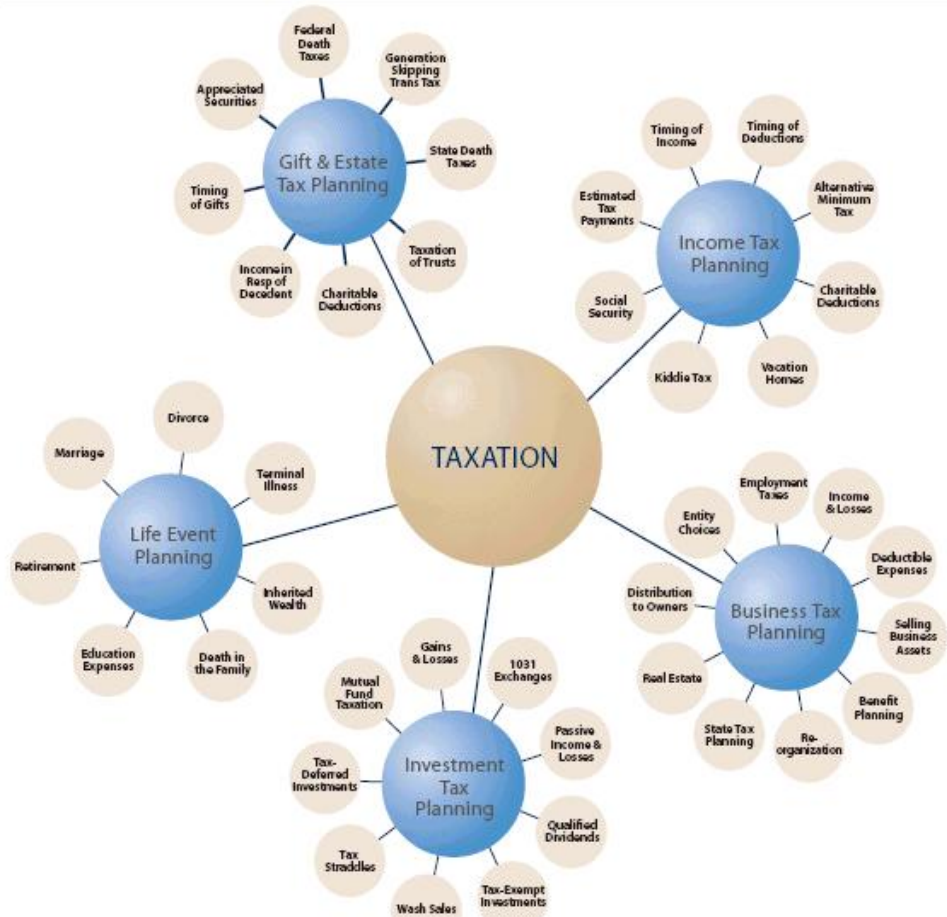
ASC Times

All India Taxes Weekly Reference

Vol: Feb 07–Feb 12, 2017

Solving
any **tax**
puzzle

Tax saving advice
across all the taxes



**TAXCALENDER**

Due Date	Description	Law
07 Feb	Deposit of TDS	Orissa VAT, Tripura VAT, Mizoram VAT.
	Deposit of TDS/TCS	Income Tax Law
	Issue of TDS Certificate	OrissaVAT
	Issue of TDS Certificate	Income Tax Law
10 Feb	Deposit of Tax	Chhattisgarh VAT, Kerala VAT, Madhya Pradesh VAT.
	Deposit of TDS	Chhattisgarh VAT, Madhya Pradesh VAT, Mizoram VAT, Nagaland VAT
	Return Filing	Karnataka VAT, Kerala VAT. Central Excise Law.
	Deposit of TDS	Delhi VAT
	Return Filing	Tamil Nadu VAT

COUNTRY WIDE HOLIDAYS FOR THE WEEK

Date	Occasion/Festival	Region
NA	NA	NA

INDEX GUIDE

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From the CEO's Desk



Dear Reader,

Finance Minister Arun Jaitley presented the Union Budget 2017-2018 in Lok Sabha on Wednesday. This is the fourth budget by the Narendra Modi government. Jaitley said the demonetisation move by Prime Minister Narendra Modi on November 8, 2016 will not have a lasting impact on the economy. Jaitley also announced that the budget allocation for welfare of women and children under various ministries will be increased to Rs 1,84,632 crore.

Jaitley also said he took immense pride in presenting a joint budget, including the Railway Budget. Railways will focus on passenger safety, capital works and cleanliness, among other issues, Jaitley said. Following the presentation of the Union budget, both Houses of Parliament will adjourn for the day.

The 2017 Union Budget, was broadly focused on 10 themes — the farming sector, the rural population, the youth, the poor and underprivileged health care, infrastructure, the financial sector for stronger institutions, speedy accountability, public services, prudent fiscal management and tax administration for the honest.

Further on demonetisation Arun Jaitley pointed out that:

- Demonetisation is expected to have a transient impact on the economy.
- It will have a great impact on the economy and lives of people.
- Demonetisation is a bold and decisive measure that will lead to higher GDP growth.
- The effects of demonetisation will not spill over to the next fiscal.

On Personal income tax:

- Existing rate of tax for individuals between Rs. 2.5- Rs 5 lakh is reduced to 5% from 10%.
- All other categories of tax payers in subsequent brackets will get a benefit of Rs 12,500.
- Simple one page return for people with an annual income of Rs. 5 lakh other than business income.
- People filing, I-T returns for the first time will not come under any government scrutiny.
- Ten % surcharge on individual income above Rs. 50 lakh and up to Rs 1 crore to make up for Rs 15,000 crore loss due to cut in personal I-T rate. 15 surcharge on individual income above Rs. 1 crore to remain.

On Financial sector:

- FDI policy reforms - more than 90% of FDI inflows are now automated.
- Shares of Railway PSE like IRCTC will be listed on stock exchanges.
- Bill on resolution of financial firms will be introduced in this session of Parliament.
- Foreign Investment Promotion Board will be abolished.
- Revised mechanism to ensure time-bound listing of CPSEs.
- Computer emergency response team for financial sector will be formed.
- Pradhan Mantri Mudra Yojana lending target fixed at Rs 2.44 lakh crore for 2017-18.
- Digital India - BHIM app will unleash mobile phone revolution. The government will introduce two schemes to promote BHIM App - referral bonus for the users and cash back for the traders.
- Negotiable Instruments Act might be amended.
- Head post office as the central office for rendering passport service.

Above mentioned are the few sectors covered under Budget 2017, for detailed analysis kindly reach out to www.ascgroup.in.

Alok Kumar Agarwal

CEO

ASC Group.

CENTRAL TAXES

SERVICE TAX

NOTIFICATION / CIRCULAR

The Govt. vides Notification No. 05/2017 dated 30th Jan 2017; amends notification No. 25/2012-ST dated 20th June 2012 so as to withdraw the exemption from service tax for online information and database access or retrieval services provided by a person located in non-taxable territory to an entity in India registered under section 12AA of the Income Tax Act, 1961 (43 of 1961).

The Govt. vides Notification No. 06/2017 dated 30th Jan 2017; amends Service Tax Rules, 1994 so that in case of online information and database access or retrieval services provided or agreed to be provided by any person located in a non-taxable territory and received by non-assesse online recipient, the service tax payable for the month of December, 2016 and January, 2017, shall be paid to the credit of the Central Government by the 6th day of March, 2017.

The Govt. vides Notification No. 07/2017 dated 02th Feb 2017; amend notification No. 25/2012-Service Tax, dated 20th June 2012, so as to amend certain existing entries granting exemption on specified services and inserting new entries for granting exemption from service tax on specified services.

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

The Govt. vides Circular No. 203/01/2017 File No. 137/22/2012-Service Tax (Pt. II) dated 02th Feb 2017; describes Minor head code of Refund.

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

COURT DECISIONS

M/s ICRA Ltd. Versus Commissioner of Central Excise, Chennai [CESTAT CHENNAI]

BRIEF: Levy of tax - advisory services - taxable under the head 'management consultancy service' - neither the original authority nor the first appellate authority have examined the nature of services actually provided to the client - demand set aside.

OUR TAKE: The hon'ble **CESTAT CHENNAI** held that what we can confidently assert is that neither the original authority nor the first appellate authority have examined the nature of services actually provided to the client. In the normal course, such a peremptory examination of the activity classification of the activity would warrant remanding the matter for considering the dispute afresh for remedying the lack - demand of tax with interest set aside. **[Appeal disposed off]**

COMMISSIONER OF CUSTOMS, CENTRAL EXCISE & SERVICE TAX, ALLAHABAD VERSUS LUXMI CHAURASIA, PRADEEP CHAURASIA, JANKI CHAURASIA, VAISNO CHAURASIA, SEEMA DEVI CHAURASIA, MEENA DEVI CHAURASIA, SHRI OM PRAKASH AND SHRI KAILASHNATH CHAURASIA. [CESTAT ALLAHABAD]

BRIEF: Definition of AOP - immovable property given on rent by 8 joint co-owners (respondents) - whether these 8 co-owners can be said to be AOP, and whether each co-owner has to be denied exemption or not? - Exemption to each individuals allowed.

OUR TAKE: The Hon'ble **CESTAT ALLAHABAD** held that I cannot find any ground which establishes that the eight individuals who are respondents can be called "association of persons" through any definition provided by any law, when they have not entered into any agreement to form "association of persons". Even the definition of "person" in Section 3(42) of the General Clauses Act, 1897 states that "person" shall include any company or association or body of individuals. So, since the definition is inclusive, there has to be an association of individuals to become "person" under said Section 3(42) of the General Clauses Act, 1897. **[Decided against Revenue]**

WIPRO LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, PUDUCHERRY [CESTAT CHENNAI]



BRIEF: Interest on delayed payment of tax - There is no whisper in the SCN concerning any ingredient present for invocation of extended period - demand for interest is certainly hit by limitation and will not sustain.

OUR TAKE: The hon'ble CESTAT CHENNAI held although interest liability should have also been discharged by the appellant at that point of time, nonetheless, that is not done. However, neither has the department taken note of the discrepancy immediately and proximate to the payment of such belated tax liability. There is no whisper in the SCN concerning any ingredient present for invocation of extended period - demand for interest is certainly hit by limitation and will not sustain. **[Decided in favour of appellant]**

SHREE GANRAJ COAL TRANSPORT PVT. LTD, KANWAL COAL CARRIERS PVT. LTD AND KUSMUNDA COAL TRANSPORT PVT. LTD VERSUS CCE & ST, RAIPUR [CESTAT NEW DELHI]

BRIEF: Classification of service - loading agreement for loading of coal from coal face into tipper trucks - service is not classifiable under mining service.

OUR TAKE: The hon'ble CESTAT NEW DELHI held that similar issue came for decision by the Tribunal with reference to contract with SECFL by other service providers. In arjuna Carriers Pvt. Limited [2014 (11) TMI 1048 - CESTAT NEW DELHI] the Tribunal held that service is not classifiable under mining service, as held by the Revenue. **[Decided in favour of appellant]**

M/S. CMS (INDIA) OPERATIONS & MAINTENANCE CO. (P) LTD. VERSUS CCE, PUDUCHERRY. [CESTAT CHENNAI]

BRIEF: Bundle of services - Unless the show cause notice exhibits the activity carried out, and the service which has essential character to embrace the cluster of service to its fold, it is difficult to comprehend to classify such services under an appropriate taxing entry - Demand set aside.

OUR TAKE: The humble CESTAT CHENNAI held that when the provision of section 65A of the Finance Act, 1994 is looked into, it deals with the cluster of services to be compressed under one taxing entry having characteristics of that entry to attract all services of the cluster into its fold - Sub-clause (b) under sub-section (1) of section 65A provides classification of cluster of services under a specific taxing entry which gives the essential character of the services. Such an exercise was not carried out by the adjudicating authority and also there is no whisper in the show cause notice in this regard. Such legal infirmity in the show cause notice is incurable at the appellate stage. **[Decided in favour of appellant]**

M/S BMS PROJECTS PRIVATE LIMITED VERSUS COMMISSIONER OF CENTRAL EXCISE, CUSTOMS, SURAT [CESTAT AHMEDABAD]

BRIEF: Services provided to M/s GWSSB, in lying down pipelines for supply of drinking water is not leviable to service tax under the said category of Commercial or Industrial Construction Service.

OUR TAKE: The hon'ble CESTAT AHMEDABAD held that this Tribunal in the cases of Larsen & Toubro Ltd. [2011 (1) TMI 188 - CESTAT, AHMEDABAD], and Dinesh Chandra Agarwal Infracon P. Ltd [2010 (8) TMI 54 - CESTAT, AHMEDABAD], considering the fact of lying down long distance pipelines for transfer drinking water in the State of Gujarat has held that services provided to M/s GWSSB, in lying down pipelines for supply of drinking water is not leviable to service tax under the said category of Commercial or Industrial Construction Service. **[Decided in favour of appellant]**

M/S. PUDUKOTTAI SECURITY SERVICE VERSUS CCE, TIRUCHI [CESTAT CHENNAI]

BRIEF: Appreciating that the services taxes have been paid before issue of show cause notice, there shall be no penalty.

OUR TAKE: The hon'ble CESTAT CHENNAI held that when the show cause notice is read that gives an impression that Revenue has not at all enquired as to what was the service provided by appellant in terms of aforesaid work orders issued by BSNL. It was under mistake of facts - Had there been proper enquiry by Revenue as to the nature of the service provided by appellant, it could have resolved the dispute without issuing a misconceived SCN. **[Decided in favour of appellant]**

COMMISSIONER CENTRAL EXCISE COMMISSIONERATE, CHANDIGARH-I VERSUS M/S IND. SWIFT LANDS LTD. [PUNJAB AND HARYANA HIGH COURT]

BRIEF: Refund - period of limitation - service tax was paid under pressure from the department - In that view of the matter, it cannot be said that the payments were made voluntarily and without protest.

OUR TAKE: The hon'ble PUNJAB AND HARYANA HIGH COURT held the assessee contended that it was not liable to pay the tax, sought a clarification and protested about it being required to pay the amount under pressure from the Department indicates that the assessee made the payments under protest. The nature of the contents of the letter further establishes the same. The assessee referred to the provisions of law, analysed the same and expressly contended that it was not liable to service tax. **[Decided in favour of appellant]**

CENTRAL EXCISE

NOTIFICATION / CIRCULAR

The Govt. vides Notification No. 03/2017 dated 2th Feb 2017; amends Notification No. 6/2005-Central Excise dated 1st March 2003 so as to carry out budgetary changes.

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

The Govt. vides Notification No. 04/2017 dated 2th Feb 2017; amends Notification No. 42/2008-Central Excise dated 1st July 2008 so as to carry out budgetary changes.

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

The Govt. vides Notification No. 05/2017 dated 2th Feb 2017; seeks to prescribe 6% concessional excise/CV duty on all items of machinery required for (a) initial setting up of fuel cell based system for generation of power or for demonstration purposes and (b) for balance of systems operating on biogas or bio-methane or by-product hydrogen.

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

The Govt. vides Notification No. 06/2017 dated 2th Feb 2017; seeks to amend Notification No. 12/2012-Central Excise dated 17th March 2008 so as to carry out budgetary changes.

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

The Govt. vides Notification No. 07/2017 dated 2th Feb 2017; amends Notification No. 16/2010-Central Excise dated 27th Feb 2010 so as to carry out budgetary changes.

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

The Govt. vides Notification No. 02/2017 dated 2th Feb 2017; amends Notification No. 30/2008-Central Excise dated 1st July 2008.

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

The Govt. vides Notification No. 03/2017 dated 2th Feb 2017; amends Notification No. 11/2010-Central Excise (N.T) dated 27th Feb 2010.

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

The Govt. vides Notification No. 04/2017 dated 2th Feb 2017; amended CENVAT Credit Rules, 2004.

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

The Govt. vides Notification No. 05/2017 dated 2th Feb 2017; amend Central Excise Rules, 2002.

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

COURT DECISIONS

M/S. DEW-POND ENGINEERS (P) LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, MUMBAI-III[CESTAT MUMBAI]

BRIEF: Re-credit of duty from Cenvat account - the duty was paid twice on the same clearances however the duty passed on is only one time duty paid on the clearances, therefore the unjust enrichment does not apply.

OUR TAKE: The hon'ble CESTAT MUMBAI held that the appellant have not taken suo moto credit on their own but they made number of request by writing letter to the department regarding re-credit of amount in the Cenvat account but the department instead of deciding the re-credit they have issued show cause notice and denied the re-credit which is absolutely illegal and incorrect. **[Decided in favour of appellant]**

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

BRIEF: Remission of duty u/r 21 of CER - damage of goods due to flood and rains - destruction and disposal of goods without verification/inspection cannot be condoned.

OUR TAKE: The hon'ble **CESTAT MUMBAI** held that the appellant had suffered damage on 26/07/2007 and made up their mind for seeking remission on 03/08/2005. Thereafter they submitted their application for remission on 15/12/2005, almost 41/2 months after they making up their mind. Revenue was in correspondence with the appellant, thereafter seeking the survey report and actual details of the goods, however, the appellant failed to submit the same. The appellant claimed that the goods have been cleared along with scraps. I find that remission cannot be granted without actual ascertainment of the damage and verification to the satisfaction of the Revenue. **[Decided against appellant]**

GODREJ & BOYCE MANUFACTURING CO. LTD. VERSUS UNION OF INDIA & ORS [BOMBAY HIGH COURT]

BRIEF: Classification of parts of manufactured motor - stators and rotors - on the date on which the earlier circular was in force, the SCN could not have been issued nor the demand raised - HC.

OUR TAKE: The hon'ble **BOMBAY HIGH COURT** held that Once there is a clear instruction that the practice followed in the light of the earlier clarification of the Board may be changed only prospectively, we have no doubt in our minds that on the date on which the earlier circular was in force, the SCN could not have been issued nor the demand raised. **[Decided in favour of appellant]**

M/S. APOTEX RESEARCH PVT. LIMITED VERSUS COMMISSIONER OF CENTRAL EXCISE, CUSTOMS AND SERVICE TAX. [CESTAT BANGALORE]

BRIEF: 100% EOU - Refund claim - Rule 5 of CCR, 2004 - rejection of refund claims merely on the ground of nexus with the manufacture of the product is not legally tenable.

OUR TAKE: The hon'ble **CESTAT BANGALORE** held that the impugned orders are not sustainable in law and the rejection of refund claims merely on the ground of nexus with the manufacture of the product is not legally tenable - impugned orders set aside and appeals allowed subject to verification by the adjudicating authority. **[Appeal allowed by way of remand]**

MERSEN INDIA PVT. LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, CHENNAI-II. [CESTAT CHENNAI]

BRIEF: Reversal of Cenvat Credit - Write off of certain slow and non-moving stock of raw materials and finished goods Only after 1.3.2011, payment has been required in respect of both partial write off or full write off.

OUR TAKE: The hon'ble **CESTAT CHENNAI** held that it is not disputed that period of dispute is prior to 1.3.2011. It is also seen that balance sheet entries clearly indicate provision has been made for slow moving items, doubtful items and not as items fully written off. This being the case, the entry in question will have to be considered as partial write off only and not as an entry for full write off. For the period prior to 1.3.2011, provision has been made for payment of equal amount of Cenvat credit of value of inputs or capital goods only pertaining to those which were written off fully. Only after 1.3.2011, payment has been required in respect of both partial write off or full write off. **[Decided partially in favour of assessee]**

KITCHEN APPLIANCES INDIA LTD., CANBARA INDUSTRIES, SHRI PHILIP MATHEW, VIDEOCON APPLIANCES LTD VERSUS C.C.E. & S. TAX, VAPI [CESTAT AHMEDABAD]

BRIEF: Valuation - MRP based valuation - inclusion of value of accessories of Kenstar Food Processors cleared separately in separate packages to the purchasers - revenue directed to take opinion from the Metrology Department regarding requirement of affixing MRP on the retail package.

OUR TAKE: The hon'ble **CESTAT AHMEDABAD** held that On a plain reading of the aforesaid provision it reveals that Section 4A would be applicable to manufactured goods chargeable to ad valorem rate of duty and the main condition necessary for attracting the said provision is that the goods specified thereunder, is required under the provisions of Standards of Weights and Measurement Act, 1976 or Rules made there under to declare on the package thereof, the retail sale price of such goods - We are of the view that the requirement of affixing MRP on the retail package of Kenstar Food Processors Accessories be referred to Metrology Department seeking their opinion as to whether the appellants are required to affix MRP on the package containing Kenstar Foods Processors Accessories when the Kenstar Food Processors and the Accessories are cleared in separate packages.

CUSTOM

NOTIFICATION / CIRCULAR

The Govt. vides Notification No. 03/2017 dated 2nd Feb 2017; amends Notification No. 27/2011-Customs dated 1st March 2011.

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

The Govt. vides Notification No. 04/2017 dated 2nd Feb 2017; amends Notification No. 21/2012-Customs, dated the 17th March 2011 so as to specify the rate of additional duty of customs leviable under sub-section 3(5) of Customs Tariff Act, 1975 for items specified therein.

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

The Govt. vides Notification No. 05/2017 dated 2nd Feb 2017; notify to reduce Basic Customs Duty from 10/7.5 % to 5% on all items of machinery required for (a) initial setting up of fuel cell based system for generation of power or for demonstration purposes and (b) for balance of systems operating on biogas or bio-methane or by-product hydrogen.

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

The Govt. vides Notification No. 06/2017 dated 2nd Feb 2017; amends Notification No. 12/2012-Customs dated the 17.3.2012 so as to carry out budgetary changes. Details are contained in Joint Secretary (TRU – I) DO letter dated 31st Jan 2017.

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

The Govt. vides Notification No. 04/2017 dated 30th Jan 2017; the Director General, Revenue Intelligence, hereby appoints officers mentioned in column (5) of the Table below to act as a common adjudicating authority to exercise the powers and discharge the duties conferred or imposed on officers mentioned in column (4) of the said Table in respect

of notices mentioned in column (2) of the said Table for the purpose of adjudication of show cause notices mentioned in column (3) of the said Table.

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

The Govt. vides Notification No. 08/2017 dated 31st Jan 2017; tariff value Notification in respect of Fixation of tariff Value of Edible Oils, Brass Scrap, Poppy Seeds, Areca Nut, Gold and Silver.

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

The Govt. vides Notification No. 05/2017 dated 31st Jan 2017; the Director General, Revenue Intelligence, hereby appoints officers mentioned in column (5) of the Table below to act as a common adjudicating authority to exercise the powers and discharge the duties conferred or imposed on officers mentioned in column (4) of the said Table in respect of notices mentioned in column (2) of the said Table for the purpose of adjudication of show cause notices mentioned in column (3) of the Table.

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

The Govt. vides Notification No. 09/2017 dated 2nd Feb 2017; rate of exchange of conversion of the foreign currency with effect from 3rd February, 2017.

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

COURT DECISIONS

ANIL SHARMA AND 1 Versus UNION OF INDIA AND 3.[GUJARAT HIGH COURT]

BRIEF: Conversion of shipping bill from duty drawback scheme to Advance Authorization Scheme - export of white refined sugar / raw sugar - conversion of shipping bill from one scheme to another scheme beyond three months from the date of Let Export Order (LEO) - since goods are not available for verification, conversion denied.

OUR TAKE: The hon'ble **GUJARAT HIGH COURT** held that the case on behalf of the petitioner that subsequently when they requested to amend the bill of entry, the case would fall under Section 149 of the Custom Act, which does not provide any limitation to make application to amend the shipping bill and therefore, the authorities are not justified in rejecting the application on the ground that the same is not within the period of three months, relying upon board Circular No. 36 of 2010. **[Petition dismissed]**

MEAGLE IMPEX, JIBRAN OVERSEAS, SHAHIL ENTERPRISE, SS TYREWALA, MOHD IQBAL MOHD ASHQUIN, TAVAKKAL EXPORTS, GULAM DASTGIR KALUBHAI SHAIKH, KADRI ENTERPRISE, GULAM DASTGIR KALUBHAI SHAIKH, UNIVERSAL TRADING, GK EXPORTS, SS TRADING, MOHD SHAFIQ, MOHD ASIF, GLASS WORLD, SHAHIL ENTERPRISE, AL NOOR EXPORTS & IMPORTS, UNIVERSAL TRADING, MILLENIUM OVERSEAS, UNITED TYRES, TEJARAT CORPORATION, MESSRS TEJARAT CORPORATION, UNIVERSAL TRADING CO, NADIYA ENTERPRISE, KADRI ENTERPRISE VERSUS C.C. -KANDLA [CESTAT AHMEDABAD]

BRIEF: Classification - valuation - import of old and used tyres - classified under CTH 40122090 or CTH 40122010? - Importer cannot be forced to do repairs or retreading on the same - right classification would be under CTH No. 40122090.

OUR TAKE: The hon'ble **CESTAT AHMEDABAD** held that we are not concerned that after the clearance, the importers would make repairs on the tyres or get them re-treaded. We cannot force the importers to do repairs or retreading on the same; therefore, the right classification for the remaining category of tyres, which cannot be used as such on the vehicles/auto vehicles considering their current condition, would be under CTH No. 40122090, which is in the category of Other - there is no requirement of any import license for their import. The Customs (Revenue), therefore, cannot have Import Policy Objection for their clearance for home consumption. **[Appeal allowed by way of remand]**

COMMISSIONER OF CUSTOMS CHENNAI-IV VERSUS RUMANA LEATHER COMPANY [CESTAT CHENNAI]

BRIEF: Confiscation of goods - export of finished leather - one of the export consignments not meeting the requisite standards cannot be attributed to intentional or obvious reasons on the part of the exporter. It could have very well been due to mistake or some negligence on their part - This being the case, there is cause for reduction in redemption fine and penalty

OUR TAKE: The hon'ble **CESTAT CHENNAI** held that When the Bill of Entry is looked into that shows that the goods imported were lifesaving equipment namely intravenous cannulae and tubing for long time use - Disposable Solution Infusion sets. But Entry 42 (Part - B) deals with only disposable and non-disposable cannulae - The lifesaving equipment that was imported is totally out of scope of Entry 42 of Part B to the notification for the reason that there was no set of equipment intended to enjoy the exemption. It was only disposable and non-disposable cannulae that was the subject matter of exemption - "sets of the intravenous cannulae and tubing" are not meant for exemption. **[Decided against appellant]**

M/S. BHARATI SURGICAL CO. VERSUS COMMISSIONER OF CUSTOMS, CHENNAI [CESTAT CHENNAI]

BRIEF: Claiming benefit of exemption on import of Disposable Solution Infusion sets - Exemption under N/N. 208/1981-Cus. - It was only disposable and non-disposable cannulae that was the subject matter of exemption - "sets of the intravenous cannulae and tubing" are not meant for exemption.

OUR TAKE: The hon'ble **CESTAT HYDERABAD** held that the exemption can only be claimed by an importer, who has been granted necessary permission to import the said goods by Interministerial Standing Committee for 100% EOCJ, ETC. - on merits, the appellant does not have a case. **[Decided in favour of appellant]**

M/S SHARON SOLUTIONS (INDIA) PVT LTD VERSUS COMMISSIONER OF CUSTOMS (AIRPORT & AIR CARGO) , CHENNAI.[CESTAT CHENNAI]

BRIEF: Classification - whether the imported goods are SIM modules or integrated chip modules? - The SIM imported in reel is a 'card' classifiable under heading 8523 as a 'smart card' fulfilling all the essential ingredients of a 'smart card' - benefit of exemption notification allowed.

OUR TAKE: The hon'ble **CESTAT CHENNAI** held that u/r 2(a) of the General Interpretative Rules supra, SIM as imported, is liable to be treated as a finished 'SIM card'. Denial of benefit of exemption notification on the ground that it is not card but a mere precursor to card would create an anomalous situation. SIM embedded in a card with a personalization, imported from abroad would be eligible for the exemption notification. On the other hand, the bulk of the 'SIM cards' sold in the market, also imported and subject to personalization in India for different mobile service providers, would render the goods liable to additional duty. **[Decided in favour of appellant]**

INCOME TAX

COURT DECISIONS

THE PR. COMMISSIONER OF INCOME TAX, PATIALA VERSUS STATE BANK OF PATIALA [PUNJAB AND HARYANA HIGH COURT]

BRIEF: Once it is found that no expenditure was incurred in earning this income, there would be no further expenditure in relation thereto that falls within the ambit of section 14A.

OUR TAKE: The hon'ble PUNJAB AND HARYANA HIGH COURT held that what is disallowed is expenditure incurred to "earn" exempt income. The words "in relation to" in section 14A must be construed accordingly. Thus, the words "in relation to" apply to earning exempt income. The importance of the observation is this. [Decided in favour of assessee]

THE COMMISSIONER OF INCOME TAX, CHENNAI-V, AAYKAR BHAVAN, CHENNAI AND THE INCOME TAX OFFICER, COMPANY WARD-V (4), CHENNAI VERSUS M/S. REGEN INFRASTRUCTURE & SERVICES PVT. LTD., [MADRAS HIGH COURT]

BRIEF: Condonation of delay in filing the Return of Income - When once an authority has been conferred discretion to condone the delay, application seeking condonation of delay of one day cannot be rejected for such reasons as are assigned by the Board in its order dated 05.05.2014.

OUR TAKE: The hon'ble MADRAS HIGH COURT held that in the instant case, there is no dispute or denial of the fact that the Return of Income filed by the Respondent/Assessee for the Assessment Year 2010-11, has been uploaded sometime past 00.00 hours on 15.10.2010. One can take judicial notice of the fact that uploading of Return requires not only an effort but also consumes sometime. If the Assessee has encountered certain hardship or difficulty in uploading his return, as alleged by him due to a technical snags in the website of the Income Tax Department due to the last hour rush of filing of Returns, the delay deserves to be condoned.

ACIT-16 (3), MUMBAI VERSUS M/S S.K. AGE EXPORTS [ITAT MUMBAI]

BRIEF: Export commission paid outside India on service rendered outside India was not liable to deduction of tax at source, consequently no disallowance is warranted.

OUR TAKE: The hon'ble ITAT MUMBAI held that As the AO has already verified the loss and treated it as expenditure, the CIT(A) allowed assessee's ground. We do not find any infirmity in the order of CIT(A) insofar as in the remand report itself the AO has verified assessee's loss so claimed and found the same to be explained. We do not find any infirmity in the order of CIT(A).

INCOME TAX OFFICER, MUMBAI VERSUS SHRI SUNIL GHANSHYAMDAS VERLIANI C/O M/S SUNIL ENTERPRISE [ITAT PUNE]

BRIEF: Even the provision of Section 50C r.w.s. 69 and 69B, i.e. the special provision for full value of consideration in certain cases creates a legal friction for taxing capital gains in the hands of seller and it cannot be extended for taxing difference between apparent consideration and valuation done by stamp valuation authorities as undisclosed investment.

OUR TAKE: The hon'ble ITAT MUMBAI held that What document or evidence is in the possession of the AO to prove that the assessee has paid the difference of value of agreement and stamp duty value in any other form of consideration to the extent of ₹ 1,08,75,400/- for making addition u/s 69B of the Act. We find from the facts of the case as well as the records of the case and else also the arguments of learned Sr. DR that there is no evidence in the possession of Revenue which proves that the assessee has paid over and above the value of agreement in any other form of consideration. [Decided against revenue]

DISHA DEVANG KAPASI VERSUS THE ITO WARD 15 (3) (1), NEW WARD 27 (1) -4, MUMBAI [ITAT MUMBAI]

BRIEF: The claim of the assessee to allow expenses from the income earned by way of commission on providing accommodation entries of transportation is rejected.

OUR TAKE: The hon'ble ITAT MUMBAI held that AO would verify whether the cheques received from the parties were deposited in the bank accounts and cash was withdrawn immediately thereafter and handed over to the parties. If the assessee is able to prove the same before the AO, then the assessee's claim of estimating net commission income on the gross value of the transportation fee at 0.5% + TDS shall be accepted. Also if the assessee is able to prove the above, the AO would accept the net commission income from the gross value of building material supply bills @ 0.75%.

STATE TAXES

ALL INDIA VAT

ASSAM

The Govt. vides Circular No. 03 dated 3rd Feb 2017, online issuance of Delivery Note (Form No. 62).

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

GOA

The Govt. vides Circular NO. CCT/12-2/11-12/5051 dated 30th Jan 2017, extension in the last date is on 17th Feb 2017 for filing of quarterly returns for the quarter ending 31st December, 2016.

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

JAMMU & KASHMIR

The Govt. vides Notification No. 29 dated 1st Feb 2017, amendment in Notification SRO 428 Dated 19.12.2003 read with SROs 148 of 2010 and 374 of 2010 of Entry Tax on Goods Act, 2000.

The Govt. vides Notification No. 30 dated 1st Feb 2017, notification SRO to facilitate voluntary payment of tax arrears payable under JKVAT Act, 2005.

The Govt. vides Notification No. 31 dated 1st Feb 2017, amendment in Schedule A of SRO 91 Dated 16.03.2006 read with SRO 218 Dated 30.06.2006.

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

The Govt. vides Notification No. 32 dated 1st Feb 2017, amendment in Schedule A, C, D-I and D-II of JKVAT Act, 2005.

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

The Govt. vides Notification No. 33 dated 1st Feb 2017, amendment in Schedule B to Notification SRO 117 of 2007 Dated 30.03.2007 of JKGST Act, 1962.

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

The Govt. vides Notification No. 34 dated 1st Feb 2017, amendment in Notification SRO 43 Dated 28.02.2014 of JKGST Act, 1962.

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

The Govt. vides Notification No. 35 dated 1st Feb 2017, supersession of Notification SRO 212 Dated 29.06.2016 of JKVAT Act, 2005.

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

The Govt. vides Notification No. 36 dated 1st Feb 2017, amendment to Notification SRO 24 Dated 31.01.2004 read with SRO 113 and SRO 215 of CST Act, 1956.

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

The Govt. vides Notification No. 37 dated 1st Feb 2017, amendment to Notification SRO 91 Dated 16.03.2006 read with SRO 42, SRO 111 and SRO 211 of JKVAT Act, 2005.

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

MAHARASHTRA

The Govt. vides Circular 4T dated 2nd Feb 2017, go live of Improved functionality of new registration with integrated payment gateways & Functionality of amendment and cancellation of registration certificate.

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

PUDUCHERRY

The Govt. vides Notification G.O. MS. NO. 9 dated 31st Jan 2017, rescinds Notification No. 139/F2/2009 regarding rate of tax of Petrol & Diesel.

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

The Govt. vides Notification G.O. MS. NO. 10 dated 31st Jan 2017, revision in rate of tax on Petrol and Diesel on 1st Feb 2017.

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

RAJASTHAN

The Govt. vides Notification NO.F.12 (94) FD/ TAX/ 2016-71 dated 30th Jan 2017, amendment in RIPS-2003.

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

The Govt. vides Notification NO.F.12 (94) FD/ TAX/ 2016-72 dated 30th Jan 2017, amendment in RIPS-2010.

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

The Govt. vides Notification NO.F.12 (94) FD/ TAX/ 2016-73 dated 30th Jan 2017, amendment in RIPS-2014.

The Govt. vides Notification NO. F26 (315) CCT/MEA/2014/2220 dated 30th Jan 2017, extension of last date of filing annual return in VAT-10/VAT-10A for FY 2015-16 on 28 Feb 2017.

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

The Govt. vides Notification NO. F26 (315) CCT/MEA/2014/2233 dated 30th Jan 2017, extension of last date of filing of annual return in VAT 11 for FY 2015-16 on 28 Feb 2017.

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

WEST BENGAL

The Govt. vides Notification NO. 156–FT dated 31st Jan 2017, amendments in the West Bengal State Tax (Settlement of Dispute) Act, 1999 - Specify 31st March, 2017 as last date for making an application.

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

The Govt. vides Circular MEMO NO. 69CT/ PRO/ 3C/ PRO/2015 dated 31st Jan 2017, extension of the last date of filing WBVAT Return is 13th Feb 2017 and receipt of 14e/15e is 28th Feb 2017 for Q.E. 31/12/2016.

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

The Govt. vides Circular MEMO NO. 70CT/PRO/3C/PRO/2015 dated 31st Jan 2017, extension of the last date of filing electronically of WBST Return form 25E is 13th Feb 2017 and receipts of acknowledgement date is 28th Feb 2017 for Q.E. 31/12/2016.

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

OTHER UPDATES

GST ALERTS

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.

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