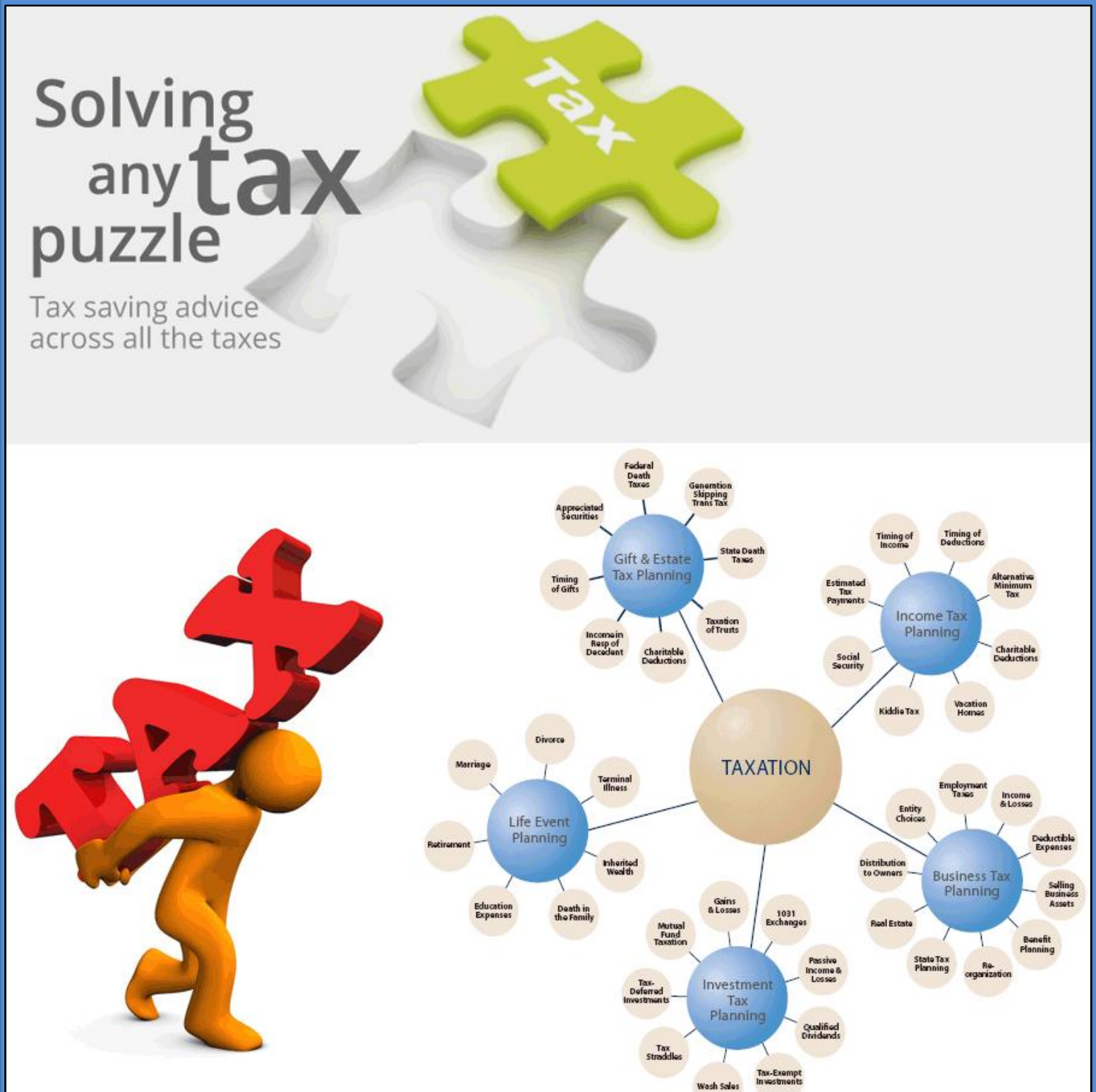
ASC Times

All India Taxes Weekly Reference

Vol: Jan 23 –Jan 29, 2017



TAXCALENDER

Due Date	Description	Law
25 Jan	Deposit of Tax	Rajasthan VAT
	Deposit of TDS	Mizoram VAT
	Issue of TDS Certificate	Income Tax Law
	Return Filing	Andhra Pradesh VAT, Karnataka VAT, Manipur VAT, Punjab & Chandigarh VAT, Tamil Nadu VAT, Telangana VAT
28 Jan	Deposit of Tax	Arunachal PradeshVAT
	Return Filing	Arunachal Pradesh VAT, Delhi VAT
29 Jan	Return Filing	Gujarat VAT.

COUNTRY WIDE HOLIDAYS FOR THE WEEK

Date	Occasion/Festival	Region
26th Jan 2017	Republic Day	All India

INDEX GUIDE

From the CEO's Desk

Dear Reader,

One of the CA has highlighted the issue of needless wrangling over dual control, with the knotty issue of dual control having been somehow sorted out, July 1 is the next moving goalpost for GST to make its arangetram in India. The Government has the comfort of knowing that even if the July target is missed, they still have a final target date of September to make GST a reality. The dual control dilemma was resolved by setting a threshold level and agreeing to share control on pre-determined percentages. GST taxpayers with a turnover of up to ₹1.5 crore would be assessed by the Centre and States in the ratio of 90:10. In case of taxpayers whose turnover is more than ₹1.5 crore, control would be shared equally. It appears that the percentages have been arrived at only for the purpose of arriving at some sort of a formula. At the ground level, this is going to create multiple challenges.

Control factor

The first challenge is in the use of the word 'control' . The word suggests that both the Centre and States would lose something big if they do not have it. It would appear that control for GST purposes means managing assessments, collecting tax payments, issue of notices, scrutiny, audit and other administrative compliances that the law envisages. The need for this arises because GST subsumes the major indirect taxes of central excise, service tax and VAT. It would have been ideal if the VAT Department handled SGST assessments and the Central Excise and Service tax departments handled the CGST piece. However, the need to enter into each other's territory has arisen because the Centre and the States will share a piece of all the taxes. Hence, both will need to ensure that they are able to watch over their wards. A watch over taxpayers would be needed to compute the exact loss. If statistics are to be believed, they show that a significant majority of VAT and Service taxpayers are below the ₹1.5 crore thresholds.

There are a bunch of issues that arise from the percentage formula that has been worked out. How will the 10 per cent or 50 per cent be chosen? It is clear that there would be some parameters such as turnover and taxes paid. Would the entire population of taxpayers in the 10 per cent and 50 per cent be chosen or only a sub-set of them? Would both the Governments trespass on each other's areas? Would control between the Centre and States be rotated? Although the model GST law has provisions for appeals, taxpayers would expect a forum to escalate cases. All indirect taxpayers have got used to their present set of officers and appellate authorities. Bringing in a fresh set of officers is only going to increase their compliance costs and levels of discomfort.

Use compliance rating

The necessity to arrive at a formula for dual control now needs to be questioned. For everyone, GST is a new levy and no one knows how it will pan out when CGST, SGST and IGST invoices are generated. The Government should think of continuing the current system at least for a couple of years. Section 138 of the Model GST Law has a provision for compliance rating of taxpayers. The Centre can choose cases for dual control on a random basis or where there has been a drop in the compliance rating that would invariably have happened because of not following the law. Once all officers know the nuts of bolts of GST, it wouldn't matter by whom and in what manner the assessments are done.

Alok Kumar Agarwal

CEO

ASC Group.

CENTRAL TAXES

SERVICE TAX

NOTIFICATION / CIRCULAR

The Govt. vides Notification No.01/2017 dated 12th Jan 2017; amended notification No. 25/2012-ST dated 20th Jan 2012 so as to (I)withdraw the exemption from service tax for services provided or agreed to be provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India; (ii)exempt services provided by a business facilitator or a business correspondent to a banking company with respect to accounts in its rural area branch.

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

COURT DECISIONS

TRIUMPH INTERNATIONAL FINANCE INDIA LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE MUMBAI -I [CESTAT MUMBAI]

BRIEF: Classification of services - amounts received as commission by the appellant for underwriting services rendered classifiable under the head Underwriting Services and is taxable.

OUR TAKE: The hon'ble **CESTAT MUMBAI**held that the activity of 'Underwriting' is now settled by the, Tribunal against the appellant in the case Jubilant Life Sciences Ltd v. Commissioner of Central Excise, Noida [2013 (5) TMI 393 - CESTAT NEW DELHI] as taxable - services classifiable under the head Underwriting Services and is taxable.**[Decided against assessee]**

M/S. BHARAT HOTELS LTD. VERSUS C.S.T. DELHI. [CESTAT NEW DELHI]

BRIEF: Credit availed on services specified u/r 6(5) of CCR on the ground the service provider has wrongly classified the services - the classification and categorization of service cannot be changed at the end of the recipient.

OUR TAKE: The Hon'ble **CESTAT NEW DELHI** held that the service tax for the input service has been discharged by the provider under the 'cleaning service' which is not the listed service - the recipient of service is taking credit on such tax paid to the Government and it is not open to the recipient to reclassify the service when the tax has been paid already under a particular category by the provider of service. Neither the appellant nor the officers in the jurisdiction of the appellant have legal sanction to revise classification of service received, even if the said classification is thought to be made incorrectly by the provider of service - the invoices issued by the provider of service indicate that service tax registration under 'cleaning service' though the description of service in the body of the invoice is indicated as 'marble maintenance' - the classification and categorization of service cannot be changed at the end of the recipient - appeal dismissed.**[Decided against appellant]**

M/S MOTHERSON AUTO LTD. VERSUS C.C.,C.E. & S.T., NOIDA [CESTAT ALLAHABAD]

BRIEF: Place of provision of service - the service received by the employee of the assesses at New York, cannot be said to be service rendered from America or outside India and received by the assesses in India.

OUR TAKE: The hon'ble **CESTAT ALLAHABAD** held that under the provisions of Taxation of Service (provided from outside India and Received in India) Rules, 2006 read with Circular F.No.B1/4/2006-TRU, dated 19.04.2006, wherein Para 4.2.8, it have been clarified that "specified taxable services, which involve physical performance, fall under Rule 3(ii) of the said Rules and the same are treated as services provided from outside India and received in India, if such services are partly or wholly performed in India - the service received by the employee of the assesses at New York, cannot be said to be service rendered from America or outside India and received by the assesses in India. **[Decided in favour of appellant]**

XILINX INDIA TECH. SERVICES PVT. LTD. VERSUS C.C., C.E. & S.T., HYDERABAD-IV[CESTAT HYDERABAD]

BRIEF: CENVAT credit - duty paying document - CSR is a summary of AWBs, i.e., invoices raised by the airlines - whether availment of credit on the document called Cargo Sales Report (CSR) is in order or otherwise? - CSR is a valid document - credit allowed.

OUR TAKE: The hon'ble **CESTAT HYDERABAD** held that I am of the opinion that the disputed input services, disallowed by the lower authorities, will merit consideration as input services for the purposes of Rule 2(l) of the Cenvat Credit

Rules, 2004, as amended w.e.f. 1-4-2011 and that these services have clear nexus with the output service provided by the appellant and are very much used by them to provide the output service - refund allowed. **[Decided in favour of appellant]**

COMMISSIONER OF C. EX., JAIPUR-I VERSUS TAHAL CONSULTING ENGINEERS LTD. [CESTAT NEW DELHI]

BRIEF: Demand of service tax on the basis of income-tax return filed by respondents at Jaipur - Departmental authority at Jaipur have no jurisdiction to proceed against the respondent for demanding Service Tax without any evidence of taxable service being provided within their jurisdiction.

OUR TAKE: The humble **CESTAT NEW DELHI** held that income-tax return cannot be the basis for demanding Service Tax respondent have rendered services outside the jurisdiction of Rajasthan and have discharged the Service Tax in Chandigarh and Lucknow - Held that: - Departmental authority at Jaipur have no jurisdiction to proceed against the respondent for demanding Service Tax without any evidence of taxable service being provided within their jurisdiction.**[Decided against appellant]**

M/S. D.A.S. INNOVATORS PVT. LTD. VERSUS CST, SERVICE TAX, NEW DELHI [CESTAT NEW DELHI]

BRIEF: Classification of service - Interior Decorator s Service in terms of statutory definition deals more with advice, consultancy and technical assistance and not on execution of elaborate civil fabrication/construction work.

OUR TAKE: The hon'ble **CESTAT NEW DELHI** held that the appellants were engaged in various civil works involving supply of materials with reference to preparing the building premises in a particular manner. The work involved are wood frame bevelling, partition, lamination, fabrication, door, fixings, plumbing, sanitary work, ceramic work and many such activities. We could not find any indication regarding advice, consultancy, etc. with reference to planning, design or beautification of space. We note that Interior Decorator s Service in terms of statutory definition deals more with advice, consultancy and technical assistance and not on execution of elaborate civil fabrication/construction work. We find that all the contracts in dispute required to be examined by the Original Authority for a fresh decision. **[Appeal allowed by way of remand]**

M/S JAIPURIA INFRASTRUCTURE DEVELOPERS PVT. LTD., M/S ANSAL HOUSING & CONSTRUCTION LTD. VERSUS CST, NEW DELHI[CESTAT NEW DELHI]

BRIEF: If the allot tee approaches for restoring the allotment, restoration charges are levied - such charges are in the nature of a penalty imposed on the allottee to cover damages caused by his default in payment - such charges cannot be considered as a service charge liable for levy of service tax.

OUR TAKE: The hon'ble **CESTAT NEW DELHI** held that the administration charge has been recovered by the appellant from all original allottees of flats to cover expenses in connection with registration etc. It is fairly obvious that such charges are not covered within the definition of Real Estate Agent, in as much as it has been collected by the appellant directly from the allot tees. In such a transaction there are only two parties - the buyer and seller (appellant) of the flat. Since no service has been rendered, the demand for service tax is not sustainable. **[Appeal allowed by way of remand]**

AXIS BANK LIMITED VERSUS COMMISSIONER OF SERVICE TAX, MUMBAI – I [CESTAT MUMBAI]

BRIEF: Deputation of employees - reimbursements of salaries and wages paid to their employees deputed to do the work of the sister concern - Not taxable under the category of Support Services of Business or Commerce.

OUR TAKE: The hon'ble **CESTAT MUMBAI** held that There is nothing on record to state that the appellant had received any further amount for deputing the employees to sister-concern - similar issue was decided by the Tribunal in the case of Arvind Mills Ltd v. Commissioner of Service Tax, Ahmadabad [2013 (10) TMI 821 - CESTAT AHMEDABAD] holding that the reimbursements of salaries and wages received for the deputation of employees will not be taxable - appeal allowed - decided in favour of appellant.**[Decided in favour of appellant]**

COMMISSIONER OF CUSTOMS AND CENTRAL EXCISE VERSUS M/S INTERNATIONAL TOBACCO CO. LTD. [ALLAHABAD HIGH COURT]

BRIEF: CENVAT credit - Whether bills of entry in the name of M/s Godfrey Phillips India Ltd. and not bearing the endorsement of proper office of Customs are valid documents under Rule 9 of the CENVAT Credit Rules, 2004 - once goods and received accounted for, credit cannot be denied.

OUR TAKE: The hon'ble **ALLAHABAD HIGH COURT** held that there was no dispute about the duty paid nature of the capital goods and receipt of same by the assessee and used also for its own internal purposes. No violation of Rule 9 ibid has been recorded. **[Decided in favour of appellant]**

CENTRAL EXCISE

COURT DECISIONS

THE COMMISSIONER OF CENTRAL EXCISE, BANGALORE VERSUS M/S. SIDDHARTHA ENTERPRISES[CESTAT BANGALORE]

BRIEF: CENVAT credit - input services - sales commission - the sale and manufacture are directly interrelated and the commission paid on sales needs to be taken as services related to sales promotion - CENVAT credit allowed.

OUR TAKE: The hon'ble **CESTAT BANGALORE** held that sales commission becomes part of sales promotion which gets squarely covered under Rule 2(l) of Cenvat Credit Rules, 2004 and the appellants are eligible to take credit of service tax - the Hon'ble High Court of P & H in the case of Ambika Overseas [2011 (7) TMI 980 - PUNJAB & HARYANA HIGH COURT] have clearly held that the sale and manufacture are directly interrelated and the commission paid on sales needs to be taken as services related to sales promotion. **[Decided in favour of assesses]**

CCE, DELHI VERSUS M/S SHAKTI ZARDA FACTORY (INDIA) PVT. LTD. [CESTAT NEW DELHI]

BRIEF: Valuation - Transaction value u/s 4 or MRP based value - when chewing tobacco pouches containing less than 10 gms. Of net weight were put together (12 to 52 numbers) in the polythene bag whether to consider such polythene bag as a multi piece pack or a wholesale pack? - The impugned goods cannot be subjected to as MRP based assessment u/s 4A.

OUR TAKE: The hon'ble **CESTAT NEW DELHI** held that there are two legal requirements for a commodity to be taxed under MRP based assessment the first one is requirements under SWM Act and rules made the reunder and the second one is notification under Section 4A of the Central Excise Act, 1944.**[Decided against Revenue]**

M/S. SHINAG ALLIED INDUSTRIES VERSUS THE COMMISSIONER OF CENTRAL EXCISE, BANGALORE [CESTAT BANGALORE]

BRIEF: CENVAT credit - sales commission - there need not be manufacture unless there is sale of product. Hence, the commission paid on sales becomes part of sales promotion resulting in increased manufacturing activity - sale and manufacture are directly interrelated - credit allowed.

OUR TAKE: The hon'ble **CESTAT BANGALORE** held that the sales commission is directly attributable to sales of the products. Any activity which amounts to sale of the products is deemed to be sales promotion activity in the normal trade parlance. The commission is paid on sales of the products/services with an intention to boost the sale of the company. In view of the same, the sales commission has a direct nexus with the sales which in turn is related to the manufacture of the products. It is to be understood that there need not be manufacture unless there is sale of product. Hence, the commission paid on sales becomes part of sales promotion resulting in increased manufacturing activity **[Decided in favour of appellant]**

M/S. BHILAI ENGINEERING CORPORATION LTD. VERSUS C.C.E. RAIPUR. [CESTAT NEW DELHI]

BRIEF: Whether Cenvat credit can be permitted, when CVD is paid using the DEPB? - It cannot be alleged that the appellant indulged in suppression of facts with deliberate intent to avail ineligible Cenvat credit - Demand invoking extended period of limitation not valid.

OUR TAKE: The hon'ble **CESTAT NEW DELHI** held that the issue was very much disputed by different benches of the Tribunal and held differently - the dispute has been going on for fairly a long time, which came to be decided against the assesses only by the decision of the larger bench, it is concluded that the issue was disputed. Under the circumstances, it cannot be alleged that the appellant indulged in suppression of facts with deliberate intent to avail ineligible Cenvat credit. Consequently, the Show Cause Notice dated 31.1.2008, which has been issued covering the period March, 2003 to December, 2005 is to be held as time barred. In this view of the matter, no part of the demand will survive. **[Decided in favour of appellant]**

M/S SURYA ROSHNI LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, MEERUT-II. [CESTAT ALLAHABAD]

BRIEF: CENVAT credit on Capital goods - capital goods were used for the manufacture of excisable goods on which duty was paid - subsequently assessee opted for exemption - eligibility of Cenvat credit is to be determined with reference to the Dutiability of the final product on the date of receipt of capital goods.

OUR TAKE: The hon'ble **CESTAT ALLAHABAD** held that the capital goods were capable of being used even before installing the entire range of capital goods. It is undisputed fact that the capital goods were received when the appellant was paying Central Excise duty on the clearances and that the capital goods were used for the manufacture of excisable goods on which duty was paid. The appellant

opted to avail the benefit of said N/N. 50/2003-CE w.e.f. 02/01/2006. Before 02/01/2006, the said capital goods were used for manufacture of dutiable goods.**[Decided in favour of appellant]**

M/S STEEL & METAL TUBES (I) LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, MEERUT-II [CESTAT ALLAHABAD]

BRIEF: Valuation - the goods were partly sold at factory gate and duty was paid. Remaining goods were transferred to the Depot. Therefore, Rule 7 of Central Excise (Valuation) Rules, 2000, is not applicable in the instant case.

OUR TAKE: The hon'ble **CESTAT ALLAHABAD** held that the ratio laid down by the Tribunal in the case of Bharat Petroleum Corporation Ltd. Versus Commissioner of Central excise, [2009 (9) TMI 845 - CESTAT CHENNAI] is squarely applicable in the instant case as facts and circumstances are identical. Accordingly, when the goods are not sold at the factory gate but removed exclusively to a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold, the rule 7 is applicable. **[Appeal allowed by way of remand]**

CUSTOM

NOTIFICATION / CIRCULAR

The Govt. vides Notification No.01/2017dated 20th Jan 2017; amended notification no. 153/93-Customs (N.T.) dated 13thAug 1993 relating to AIR of duty drawback.

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

The Govt. vides Notification No.03/2017dated 19th Jan 2017; notifies to extend the levy of anti-dumping duty, imposed on Saccharine originating in or exported from China PR under notification No. 07/2012-Customs (ADD), dated the 13th Jan 2012, for a further period of one year.

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

The Govt. vides Notification No.03/2017dated 19th Jan 2017; notifies to extend the levy of anti-dumping duty, imposed on Saccharine originating in or exported from China PR under notification No. 07/2012-Customs (ADD), dated the 13th Jan 2012, for a further period of one year.

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

The Govt. vides Notification No.04/2017dated 19th Jan 2017; the levy of anti-dumping duty, imposed on Nylon Filament yarn originating in or exported from China PR, Chinese Taipei, Malaysia, Indonesia, Thailand and Korea R.P under notification No. 03/2012-Customs (ADD), dated the 13th Jan 2012, for a further period of one year i.e. up to and inclusive of the 12th Jan 2018.

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

COURT DECISIONS

M/S. RITHI LIGHTNIN MIXERS PVT. LTD. VERSUS COMMISSIONER OF CUSTOMS, NCH, MUMBAI [CESTAT MUMBAI]

BRIEF: Valuation - rejection of transaction value - The original adjudicating authority has only recorded that the pricing of the imported goods made are as per price list supplied by the supplier of the collaborator. This is not sufficient to discharge the liability in tennis of the Customs Valuation Rules, 1988.

OUR TAKE: The hon'ble **CESTAT NEW DELHI** held that Order-in-Original clearly records that appellant and the foreign collaborator are related in terms of Rule 2(2) of the Customs Valuation Rules, 1988. If that was so, it was incumbent on the adjudicating authority to give finding in terms of Rule 4(3) (a) and (b) of the Customs Valuation Rules, 1988. We find no such in the order of the original adjudicating authority either in terms of Rule 4(3) (a) or (b) of the Customs Valuation Rules, 1988. The original adjudicating authority has only recorded that the pricing of the imported goods made are as per price list supplied by the supplier of the collaborator. This is not sufficient to discharge the liability in tennis of the Customs Valuation Rules, 1988.**[Appeal allowed by way of remand]**

GODREJ INDUSTRIES LTD. VERSUS COMMISSIONER OF CUSTOMS, MUMBAI.[CESTAT MUMBAI]

BRIEF: Raw grade palm oil would mean it is crude oil and merits classification under 15111000 and not under 15119090, as crude palm oil which is imported and declared as such.

OUR TAKE: The hon'ble **CESTAT MUMBAI** held that raw grade palm oil would mean it is crude oil and merits classification under 15111000 and not under 15119090, as crude palm oil which is imported and declared as such.[**Decided in favour of appellant]**

M/S. CMS INFO SYSTEMS LIMITED VERSUS THE UNION OF INDIA & OTHERS [BOMBAY HIGH COURT]

BRIEF: Period of limitation for filing refund claim of SAD - Notification No.102/2007 Cus - the original exemption notification neither stipulated a time period, it was included subsequently - The power to consider that refund claim and grant it, if permissible, is traceable to Section 27 of the Customs Act, 1962 - Period of limitation was always applicable.

OUR TAKE: The hon'ble **BOMBAY HIGH COURT** held the power to refund is to be found in section 27 of the Customs Act, 1962, and that was always there. The amendment to the notification introducing a limitation for seeking refund apart, section 27 with its condition of a limitation period was throughout on the statute book. That is the only provision enabling granting refund of any duty is undisputed. The notification granting exemption and under consideration in the case, enables claiming a refund of duty (SAD) but the power to grant it is in the substantive law.**[Decided against petitioner]**

M/S. KONKAN SYNTHETICS FIBRES VERSUS COMMISSIONER OF CUSTOMS (IMPORT) , NCH, MUMBAI [CESTAT MUMBAI]

BRIEF: Jurisdiction - power to issue show cause notice (SCN) - DRI officials have been appointed as customs officers by in exercise of the powers conferred u/s 4(1) - the officials empowered to issue SCN.

OUR TAKE: The hon'ble **CESTAT MUMBAI** held that the appellant right from filing of bill of entry have protested the denial of exemption notification and accordingly paid the duty under protest. However, the assessing authority has not passed any speaking order in connection with assessment of bill of entry - once the appellant has protested the matter the assessing officer is duty bound to pass a speaking order on the merit of the issue therefore before deciding the refund claim the assessing officer was supposed to pass a speaking order on the assessment of bill of entry - Since no speaking order was passed the matter of refund in the present case cannot be concluded. The adjudicating authority must pass a speaking order thereafter process the refund application of the appellant.**[Appeal allowed by way of refund]**

COMMISSIONER OF CUSTOMS, NHAVA SHEVA AND M/S. VISHWA VISHAL ENGG. LTD..[CESTAT MUMBAI]

BRIEF: Classification of imported item - Fused Silica cannot be considered as Glass microsphere or for that purpose, as glass beads to be classified under chapter 7018 - the classification declared by chapter heading 2505 1019 is correct.

OUR TAKE: The hon'ble **CESTAT MUMBAI** held that It can be seen from the customs tariff heading is in respect of Glass

microsphere not exceeding 1mm in diameter which would be small. In the case in hand, there is nothing on record that the goods imported 'Fused Silica' are exceeding 1mm in diameter. Further, we find that by any stretch of imagination, 'Fused Silica' cannot be considered as Glass microsphere or for that purpose, as glass beads to be classified under chapter 7018 - the classification declared by chapter heading 2505 1019 is correct.**[Decided against Revenue.]**

INCOME TAX

COURT DECISIONS

COMMISSIONER OF INCOME TAX (EXEMPTION) LUCKNOW VERSUS M/S MAHARISHI INSTITUTE OF CREATIVE INTELLIGENCE U.P. [ALLAHABAD HIGH COURT]

BRIEF: Exemption u/s 11 - until and unless registration is granted no exemption can be claimed only on the basis that application has been submitted for registration.

OUR TAKE: The hon'ble **ALLAHABAD HIGH COURT** held that As under amended provision, as is applicable in relevant assessment year, not only making of application for registration of trust is necessary but even registration of trust as such is a condition provided in statute.**[Decided in favour of revenue]**

HERO'S EDUCATION AND WELFARE SOCIETY VERSUS ACIT, 3 (1) , BHOPAL [ITAT INDORE]

BRIEF: AO has correctly rejected and held that the assessee is not eligible to exemption u/s 11 as its registration has been ceased to exist for the assessment year under consideration for non-compliance of the terms and conditions stipulated while granting certificate u/s 12AA by the CIT.

OUR TAKE: The hon'ble **ITAT INDORE** held that The exemption u/s 10(23C)(iiiad) of the Act is available to an institution, which is solely exists for educational purposes. Therefore, the phrase used as "solely" means that not for the purposes of profit. Therefore, plain reading of the said Section means that an educational institution, which is engaged solely for the purpose of imparting education is solely for the purpose of imparting education is qualifies for the exemption u/s 10(23C)(iiiad).**[Decided in favour of assessee]**

M/S. MATESHWARI ENTERPRISES VERSUS INCOME TAX OFFICER, WARD – 2, PANVEL (IMPORT) [ITAT PUNE]

BRIEF: Levy of penalty u/s. 271(1)(c) – AOhas issued notice in without striking of irrelevant clause in the standard proforma (printed form). Since, the notice issued u/s. 274 is vague, the same is invalid and the subsequent proceeding arising there from are thus vitiated.

OUR TAKE: The hon'ble **ITAT PUNE** held that a perusal of the assessment order shows that while recording satisfaction for initiating penalty proceedings u/s. 271(1)(c), the Assessing Officer in paragraph 4 of the order has stated that the penalty proceedings are initiated u/s. 271(1)(c) for filing wrong particulars of income and in concluding paragraph of the assessment order he has stated that show cause notice u/s. 274 r.w.s. 271(1)(c) to be issued for concealment of income/furnishing inaccurate particulars of income.

MBDR BUILDERS AND DEVELOPERS PVT. LTD. VERSUS THE ASSISTANT COMMISSIONER OF INCOME-TAX, & ANOTHER [DELHI HIGH COURT]

BRIEF: Notice issued u/s 147 in respect of an entity which ceases to exist by virtue of amalgamation order under section 394 of the Companies Act - would be illegal and unsustainable.

OUR TAKE: The hon'ble **DELHI HIGH COURT** held that the date of its amalgamation was in fact earlier. Apparently, the respondent-revenue was aware of this and despite that it proceeded to issue the impugned notice. The judgment in Spice Entertainment (2011 (8) TMI 544 - DELHI HIGH COURT) and Dimension Apparels (P) Limited (2014 (11) TMI 181 - DELHI HIGH COURT), though rendered after the final assessment was completed, are clear that such notice and proceedings emanating from it are unsustainable.**[Decided in favour of assessee]**

INCOME TAX OFFICER-13-3 (3), MUMBAI VERSUS M/S. VAMAN INTERNATIONAL P. LTD. [ITAT MUMBAI]

BRIEF: Addition u/s 69C - bogus purchases - AO cannot make the addition under section 69C of the Act by merely relying on information obtained from the Sales Tax Department, the statement/affidavit of third parties.

OUR TAKE: The hon'ble **ITAT MUMBAI** held that AO has not brought on record any material evidence to conclusively prove that the said purchases are bogus. Mere reliance by the AO on information obtained from the Sales Tax Department or the sworn statement of two parties before the Sales Tax Department, without affording the assessee any opportunity to cross examine those witnesses in this regard or the fact

that these parties did not respond to notice under section 133(6) of the Act, would not in itself suffice to treat the purchases as bogus and make the addition. If the AO doubted the genuineness of this said purchases, it was incumbent upon him to cause further inquiries in the matter to ascertain the genuineness or otherwise of the transactions.**[Decided in favour of the assesses]**

STATE TAXES

ALL INDIA VAT

MADHYA PRADESH

The Govt. vides Notification No. F-A-3-76-2014-1-V-(1) dated 18th Jan 2017, erection of temporary check post and barrier.

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

The Govt. vides Notification No. F A 3-52-2016-1-V(2) dated 18th Jan 2017, exemption to P.O.S. Machine, In Schedule-I, to the said Act, after serial number 94 and entries relating thereto, the following serial number and entries relating thereto shall be inserted, namely "95 P.O.S. Machine.".

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

DAMAN & DIU

The Govt. vides Circular No. DMN/VAT/AUDIT /153/2016-17/430 dated 18th Jan 2017, extension in last date for submission of Audit report in Form DVAT-43 for the year 2015-16 latest by 31st January 2017.

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

COURT DECISIONS

THE COMMISSIONER OF SALES TAX VE0RSUS 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

COMPANY LAW

COURT DECISIONS

RAJ SHEKHAR AGRAWAL AND ANR. VERSUS UNION OF INDIA AND ANR[DELHI HIGH COURT]

BRIEF: The question, whether the petitioners can be said to be Directors of the subject company is doubtful and without the petitioners / applicants having a clear right to act as Directors and which is being opposed, the question of the petitioners / applicants incurring any disqualification or liability under Section 162 of the Act also, would not arise.

OUR TAKE: The hon'ble **DELHI HIGH COURT** held that the question, whether the petitioners can be said to be Directors of the subject company is doubtful and without the petitioners / applicants having a clear right to act as Directors and which is being opposed, the question of the petitioners / applicants incurring any disqualification or liability under Section 162 of the Act also, would not arise. The application is thus dismissed with liberty to the petitioners / applicants to apply to the CLB for the same reliefs.

FEMA

COURT DECISIONS

BIPINCHANDRA G. CHOCKSHI AND 1 VERSUS STATE OF GUJARAT AND 2(GUJARAT HIGH COURT)

BRIEF: Detaining authority is under obligation to comply with the requirements by formulating grounds for detention

OUR TAKE: The hon'ble **GUJARAT HIGH COURT** held that the petition is allowed resulting into quashing and setting-aside the impugned order of detention dated 11.6.1976 at Annexure 'A' to the petition and declaration under Section 12A of the COFEPOSA, 1974 at Annexure 'B' dated 11.6.1976 and quash and set-aside three notices under Section 6 of SAFEMA, 1976, Annexure 'D' Collectively dated 28.4.1977, 20.1.1997 and 23.3.1977.

SAJAL DUTTA VERSUS RESERVE BANK OF INDIA & OTHERS(CALCUTTA HIGH COURT)

BRIEF: Both the company and its principal shareholders had an interest in the grant of the licence or revocation of it, by the Reserve Bank of India.

OUR TAKE: The hon'ble **CALCUTTA HIGH COURT** held that the importation was made more than 20 years ago. These capital goods have spent their life. Their value, now after depreciation is nil. At the time of their importation their declared value was ₹ 3, 05, 53,290/-. Against this value, shares were allotted to Kamal. Even if Sajal now succeeds, the equipment's cannot be returned to Kamal. The monetary value has to be refunded with interest from the other assets of the Company. That is plainly not permissible or feasible. W

ALLIED LAWS

COURT DECISIONS

JIJU LUKOSE VERSUS STATE OF KERALA [KERALA HIGH COURT]

BRIEF: Right to receive copy of the FIR even before the stage of proceedings under Section 207 of the Cr.P.C - Accused is entitled for copy of the FIR.

OUR TAKE: The hon'ble **KERALA HIGH COURT** held that It is in the domain of authorities as to which category of the FIRs are to be put on website for information to the public in general. But there has to be a decision and appropriate categorization or norms for taking a decision as to in which case FIR be uploaded and in which it is not be uploaded. The State can come with any such decision which may balance right of information available to the public in general and interest of the State. We are thus of the opinion that petitioner has made out a case for issuing directions to the State to consider all aspects of the matter and take appropriate decision regarding uploading of the FIR in the police website with all details regarding its operation and mechanism.

M/s ANAND NIKETAN EDUCATION TRUST VERSYS HUDCO, AHMEDABAD REGIONAL OFFICE [GUJARAT HIGH COURT]

BRIEF: In the matters involving commercial dispute, rule of alternative remedy is adhered to and applied steadfast.

OUR TAKE: The hon'ble **GUJARAT HIGH COURT** held that Stage obtained in the process of auction by the respondent under the SARFAESI Act is a post-13(4) stage. The petitioner therefore has an alternative statutory remedy of filing an appeal under Section 17 of the Act before the Debts Recovery Tribunal. It is trite that in the matters involving commercial dispute, rule of alternative remedy is adhered to and applied steadfast. Present petition is not entertained.

The petitioner is at liberty to approach the Debts Recovery Tribunal in accordance with law.

GST ALERTS

SECTION 16 : ZERO RATED SUPPLY

A new Chapter VIII has been introduced in the IGST Act wherein the concept of zero rated supply has been framed. The provisions contained in the section 16 are discussed as follows: -

Zero rated supply means any of the following taxable supply of goods and/or services, namely-

a. Export of goods and/or services; or
b. Supply of goods and/or services to a SEZ developer or an SEZ unit.

It is also provided that the credit of input tax may be availed for making zero rated supplies notwithstanding that such supply may be an exempt supply.

It is further provided that a registered taxable person exporting goods or services shall be eligible to claim refund under one of the following two options: -

a) A registered taxable person may export goods or services under bond, subject to such conditions, safeguards and procedure as may be prescribed without payment of IGST and claim refund of unutilized input tax credit in accordance with provisions of section 48 of the CGST Act.

b) A registered taxable person may export goods or services subject to such conditions, safeguards and procedure as may be prescribed with payment of IGST and claim refund of IGST paid on goods and services exported in accordance with provisions of section 48 of the CGST Act.

Lastly, it is provided that the SEZ developer or SEZ unit receiving zero rated supply shall be entitled to claim refund of IGST paid by registered taxable person on such supply.

On studying the above provisions, following implications may be drawn: -

- The meaning of zero rated supply is very restricted and limited to normal exports and supply to SEZ or SEZ developer. The supplies made to EOUs, EHTP, STP etc are not covered under the concept of zero rated supply.
- The input tax credit is available for zero rated supplies. This means that export without payment of duty and supply to SEZ will be considered as zero rated supply and credit will be available. Consequently, there will not be requirement to reverse credit even when the supplies are made without payment of duty in cases of exports and supply made to SEZ.

- As EOU are not covered under zero rated supplies, the refund of unutilised Cenvat credit will not be admissible to the supplies made to EOU. It was concluded by various judicial pronouncements like NBM Industries Case wherein supply to EOU was treated at par with physical export and benefit of refund of accumulated credit was extended. However, there amendment was made vide Budget, 2015 wherein definition of export was given for the purpose of refund of accumulated cenvat credit which stated that export means taking out of India to a place outside India. Consequently, refund of accumulated credit is not admissible to EOU but is available for clearances made to SEZ because the provisions of SEZ Act have overriding effect and supplies to SEZ are to be considered as export. It appears that the present policy is carried forward in the GST regime too.

- It appears that the concept of 'deemed exports' will also be introduced in GST laws. This is evident from the definition of 'deemed exports' given under section 2(37) of the GST Act, 2016. It states that deemed exports as notified by the Central/State Government on the recommendation of the Council, refer to those transactions in which the goods supplied do not leave India and payment for such supplies is received either in Indian rupees or in convertible foreign exchange. At present, as per DGFT Laws, supplies to EOU is considered as deemed export and it may be possible that it is specified as deemed exports in GST Law also if the same is recommended by the Council. It is also pertinent to mention that refund under section 48 of the CGST Act includes refund of tax on supply of goods regarded as deemed exports. Consequently, it may be possible that supplies to EOU are made on payment of tax but refund of the said tax is admissible to the supplier. This is departure from the present provision under Central Excise Laws wherein clearances to EOU are made without payment of excise duty. We can say that exemption for supplies to EOU will be through refund mechanism. Similarly, for SEZ, exemption by way of refund mechanism has been prescribed in GST regime.

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