ASC Times

All India Taxes Weekly Reference

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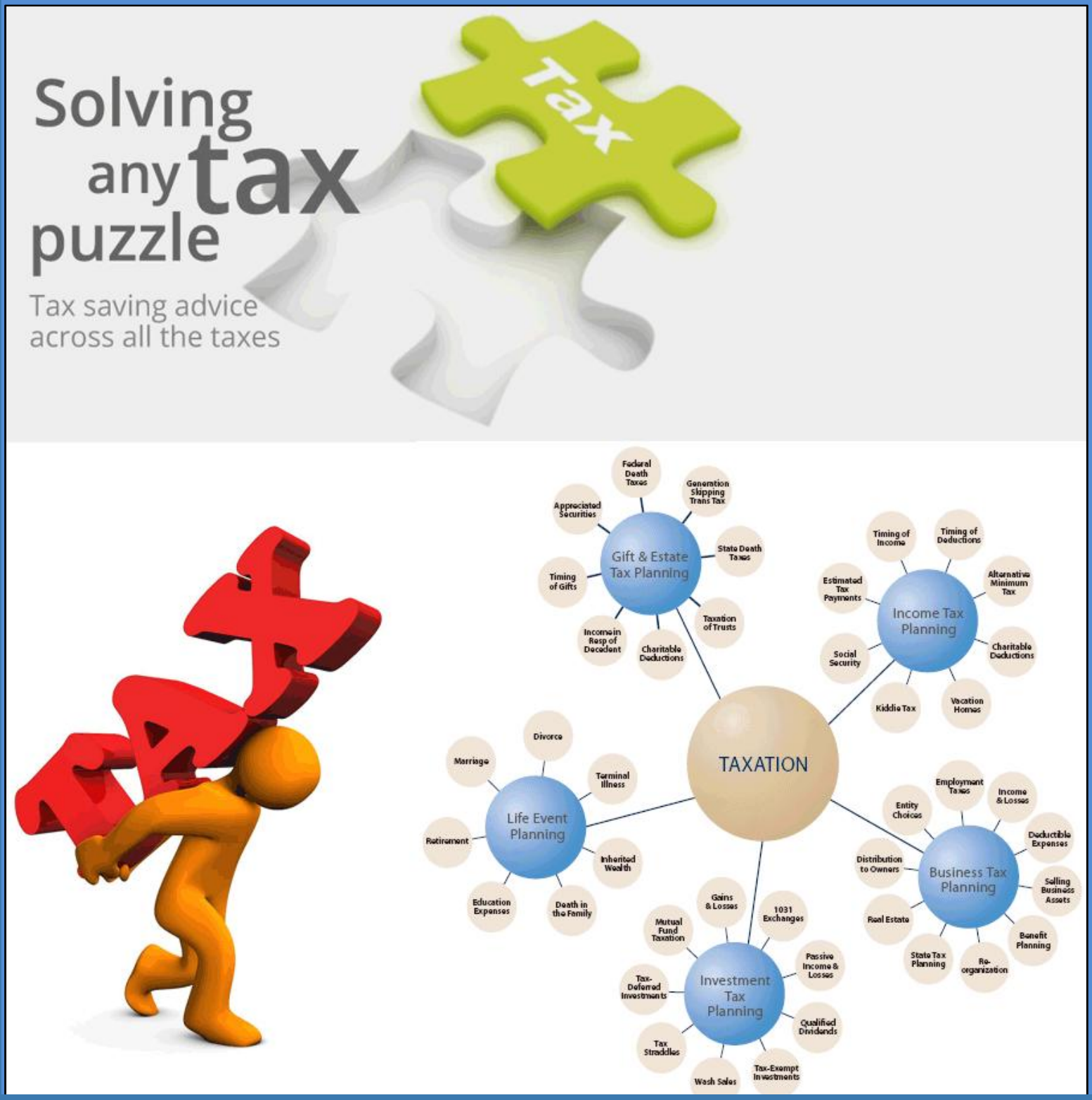

TAXCALENDER

Due Date	Description	Law
30 Jan 2017	Deposit of Tax	Andhra Pradesh VAT, Chhattisgarh VAT, Himachal Pradesh VAT, Madhya Pradesh VAT, Maharashtra VAT, Mizoram VAT, Punjab & Chandigarh VAT, Telangana VAT
	Issue of TDS Certificate	Income Tax Law
	Return Filing	Andhra Pradesh VAT, Chhattisgarh VAT, Gujarat VAT, Himachal Pradesh VAT, Madhya Pradesh VAT, Punjab & Chandigarh VAT, Telangana VAT
31 Jan 2017	Annual Return	Rajasthan VAT, Uttar Pradesh VAT
	Deposit of Tax	Goa VAT, Jammu & Kashmir VAT, Tripura VAT
	Issue of TDS Certificate	Kerala VAT
	Return Filing	Bihar VAT, Goa VAT, Haryana VAT, Jammu & Kashmir VAT, Madhya Pradesh VAT, Mizoram VAT, Nagaland VAT, Sikkim VAT, Tamil Nadu VAT, Tripura VAT
05 Feb 2017	Deposit of Tax	Kerala VAT, Rajasthan VAT
	Issue of TDS Certificate	Tamil Nadu VAT

COUNTRY WIDE HOLIDAYS FOR THE WEEK

Date	Occasion/Festival	Region
NA	NA	NA

INDEX GUIDE

From the CEO's Desk

Dear Reader,

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

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

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

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

Also, it will cluster non-PAN demonetised data using a common name, address, mobile number, e-mail and bank branch.Also, it will cluster non-PAN demonetised data using a common name, address, mobile number, e-mail and bank branch. Taxpayer segmentation on the basis of taxpayers' status, type of ITR form used, nature of business, taxpayer segment, the age of the individual and compliance history will also have to be prepared.

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

Alok Kumar Agarwal

CEO

ASC Group.

CENTRAL TAXES

SERVICE TAX

COURT DECISIONS

M/S PHOENIX IT SOLUTIONS LTD. VERSUS CCE. C & ST, VISAKHAPATNAM-I (VICE-VERSA) [CESTAT HYDERABAD]

BRIEF: The activity of software maintenance provided, which is subject matter of the dispute in this appeal, has become taxable only with effect from 01.06.2007.

OUR TAKE: The hon'ble **CESTAT HYDERABAD**held that reliance placed in the case of Phoenix IT Solutions Ltd. Versus Commissioner of Central Excise, Visakhapatnam [2011 (1) TMI 642 - CESTAT, BANGALORE], where it was held that maintenance of software became taxable only from 1-6-2007 - the activity of software maintenance provided by the appellant, which is subject matter of the dispute in this appeal, has become taxable only with effect from 01.06.2007. This being the case as the period of dispute is prior to this date, the impugned order will not sustain.**[Appeal Allowed]**

(GMTD) BHARAT SANCHAR NIGAM LTD. VERSUS CCE, BHOPAL. [CESTAT NEW DELHI]

BRIEF: Telecom service - the rate of tax was enhanced with due announcements by the Government and the appellant as one of the regular and large tax payers under the category of telephone services, is expected to discharge correct tax liability after the enhancement.

OUR TAKE: The Hon'ble **CESTAT NEW DELHI** held that the appellants could not categorically establish the dates of receipt of various taxable considerations during the impugned period to support their claim that some of these considerations were pertaining to the period when lesser rate of tax was applicable. The impugned order also notes that the appellant did not produce the records for post-paid SIM, details of bill collection and sale of pre-paid SIM before the authorities. We note that the rate of tax was enhanced with due announcements by the Government and the appellant as one of the regular and large tax payers under the category of telephone services, is expected to discharge correct tax liability after the enhancement - The service tax as per the statutory rate should have been discharged by the appellant.**[Decided against appellant]**

M/S VODAFONE MOBILE SERVICES LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, MEERUT [CESTAT ALLAHABAD]

BRIEF: CENVAT credit - services provided on Roaming to subscribers of foreign telecom network during their visit to India as leviable to Service tax - the contention that the said services were exempted and that is why 80% of the Service tax credit availed was inadmissible to the appellant is not sustainable.

OUR TAKE: The hon'ble **CESTAT ALLAHABAD** held that in view of the transitional provisions provided in Rule 11 of Cenvat Credit Rules, 2004, Cenvat credit on input services received prior to 10/09/2004 were admissible to the appellant.. **[Decided partly in favour of appellant]**

C.C.E. & S. TAX, VADODARA VERSUS BLUE STAR LTD. [CESTAT AHMEDABAD]

BRIEF: Works contract - installation and commissioning charges - service charges/commission for installation was neither separately computed nor mentioned on the body of invoices, whereas they were paying service tax on certain percentage of contracted value - whether demand of tax on these charges and levy of penalty justified? - Held no.

OUR TAKE: The hon'ble **CESTAT AHMEDABAD** held that it has been alleged that even though the Respondent had rendered Works Contract service and received consolidated charges towards such supply and service, they failed to discharge the service tax on the service component of the charges by vivisecting the works contract into supply and service. Thus, the aforesaid decision is squarely applicable to the facts of the present case - demand set aside. **[Decided against Revenue]**

SAFETY RETREADING COMPANY (P) LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, SALEM, M/S TYRESOLES INDIA PRIVATE LMITED VERSUS THE COMMISSIONER OF CENTRAL EXCISE, GOA AND M/S LAXMI TYRES VERSUS COMMISSIONER OF CENTRAL EXCISE, PUNE. [SUPREME COURT]

BRIEF: Valuation u/s 67 - works contract for retreading of tyres - assessee is liable to pay service tax only on the service component which has been quantified at 30% - Decision of larger bench of CESTAT set aside.

OUR TAKE: The humble **SUPREME COURT** held that Section 67 of the aforesaid Act deals with valuation of taxable services and specifically mentions that the same does not

include the cost of parts or other material, if any, sold to the customer during the course of providing maintenance or repair service.**[Decided in favour of appellant]**

M/S. SPICE COMMUNICATIONS LIMITED VERSUS COMMISSIONER OF CENTRAL EXCISE, SERVICE TAX AND CUSTOMS (APPEALS-II) [CESTAT BANGALORE]

BRIEF: CENVAT credit on prefabricated shelters while providing telephone services - the appellant has bona fide reasons to believe that he is entitled to the CENVAT credit and he has disclosed the same in his ST-3 returns - entire demand is time barred.

OUR TAKE: The hon'ble **CESTAT BANGALORE** held that the instant issue has been subject matter of various litigation before various judicial forum and till today the matter is pending before the Hon'ble apex court for final determination - the appellant has bona fide reasons to believe that he is entitled to the CENVAT credit and he has disclosed the same in his ST-3 returns. **[Decided in favour of assessee]**

COMMISSIONER OF SERVICE TAX VERSUS NVIDIA GRAPHICS PVT LTD [CESTAT BANGALORE]

BRIEF: Rejection of refund claim - export of information technology software services - input services - The Company only insures risk and lives of employees and his health, which falls in the definition of input service - refund allowed.

OUR TAKE: The hon'ble **CESTAT BANGALORE** held that insurance services are connected with the business and in the absence of such insurance, companies properties would be at risk from natural event which are beyond the control of the respondent-assesses. The company only insures risk and lives of employees and his health, which falls in the definition of input service - refund allowed - appeal dismissed. **[Decided in favour of assessee]**

M/S. RAJ RETREADING COMPANY VERSUS CCE, JAIPUR-II [CESTAT NEW DELHI]

BRIEF: Exemption under N/N. 12/03-ST dated 20.01.2003 - retreading the tyres - The first Appellate Authority reversed to the decision (of original authority who has allowed the exemption) in his ex parte proceedings wrongly - Demand set aside.

OUR TAKE: The hon'ble **CESTAT NEW DELHI**held that the Original Authority had examined the documents submitted by the appellant and categorically recorded that the material cost shown in the invoice as verified by him is to be excluded from the taxable value in terms of the N/N.12/03-ST.**[Decided in favour of appellant**

CENTRAL EXCISE

COURT DECISIONS

CCE, CHANDIGARH VERSUS M/S SHREE AMBICA ALLOYS AND VICE-VERSA[CESTAT CHANDIGARH]

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 CHANDIGARH** held that in the absence of any corroborative evidence to show that the respondents have not received the goods, it cannot be alleged against the respondents that they have received the invoices and not the goods merely on the ground that there was not storage facility specifically when the landlord made a statement that the go down was let out to the dealer - in the absence of any investigation at the end of manufacturer/supplier or the transporter, the Cenvat credit cannot be denied to the respondents. **[Decided against Revenue]**

M/S HH INTERIOR AND AUTO COMPONENTS LTD., SHRI. PARVESH SONI, SHRI. RAJEEV KUMAR RAI VERSUS CCE, DELHI-IV, FARIDABAD. [CESTAT CHANDIGARH]

BRIEF:Valuation - related party transactions - Rule 9 is applicable when all the productions made by the appellant is cleared to their sister unit or related person which is not the case here as appellants are clearing the goods to independent buyers as well as related person.

OUR TAKE: The hon'ble **CESTAT NEW DELHI**held that Rule 9 is applicable when all the productions made by the appellant is cleared to their sister unit or related person which is not the case here as appellants are clearing the goods to independent buyers as well as related person. Therefore, the Provisions of Rule 9 are not applicable to the facts of this case - appeal allowed.**[Decided in favour of assessee]**

M/S JCB INDIA LTD. VERSUS CCE, DELHI[CESTAT CHANDIGARH]

BRIEF: Benefit of Exemption N/N. 108/95-CE - Merely, on the ground that the goods have been supplied to the contractor directly who has executed the project in question and after the implementation of the products the

machine shall remain with the property of the contractor cannot be reasons to deny the benefit of notification.

OUR TAKE: The hon'ble **CESTAT CHANDIGARH** held that the issue before the Adjudicating Authority was that the goods after completion of the projects remained with contractors but the Adjudicating Authority has held that the goods were not supplied to the projects, therefore, we hold that the adjudication authority has gone beyond the show cause notice - reliance placed in the case of Caprihans India Ltd. [2015 (11) TMI 1170 - SUPREME COURT], where it was held that where the impugned order is beyond the allegation in the SCN, the same is to be set aside - impugned order not sustainable. [**Decided in favour of appellant]**

M/S. ITI LTD VERSUS COMMISSIONER OF CENTRAL EXCISE, CUSTOMS AND SERVICE TAX (APPEALS-II), COCHIN. [CESTAT, BANGALORE]

BRIEF: The amount of refund cannot be adjusted against arrears of revenue when the matter in dispute has not attained finality.

OUR TAKE: The hon'ble **CESTAT, BANGALORE** held that reliance placed in the case of Vira Scooters vs. CCE, Ludhiana [2010 (4) TMI 564 - CESTAT NEW DELHI], where it was held that the department cannot take coercive action when the appeal is pending before the higher judicial forum. **[Decided in favour of appellant]**

M/S K.C. SONI & SONS STEELS (P) LTD. VERSUS C.C.E., CHANDIGARH AND SH. RAKESH SONI, DIRECTOR OF M/S K.C. SONI & SONS STEELS (P) LTD. VERSUS C.C.E., CHANDIGARH. [CESTAT CHANDIGARH]

BRIEF: : Shortage of stock - Clandestine removal - retraction has not been addressed to the investigation officer who recorded the statement - weighment exercise was done in the presence of the Director, with his active assistance - demand confirmed.

OUR TAKE: The hon'ble **CESTAT CHANDIGARH** held the appellants have referred to the retraction made by him on 27.09.2011. From the said retraction, it is seen that the retraction has been filed before the Commissioner of Central Excise, Chandigarh. Further, the appellants have not alleged that there was any kind of coercion or force or pressure or duress while recording the statement. Without giving any reason, they simply said that the statement was not voluntary. I find that in the absence of any allegation or evidence of force or coercion, or pressure or duress, the retraction carries no weight and is an afterthought particularly since they are admitting that they were actively associated with the officers in the entire verification exercise. I also find that the retraction has not been addressed to the investigation officer who recorded the statement.**[Decided against Appellant]**

CCE, CHANDIGARH VERSUS M/S. MAX POWER INFOSYSTEM AND VICE-VERSA [CESTAT CHANDIGARH]

BRIEF: At the time opting area based exemption of N/N. 50/2003-CE, the appellants are not required to reverse the credit in their Cenvat credit account lying unutilized. - Assessee is entitled for refund claim of the amount paid by the assessee on account of reversal of credit in cash.

OUR TAKE: The hon'ble**CESTAT CHANDIGARH**held that the similar issue decided in the case of Gokaldas Intimate Wear [2011 (4) TMI 1123 - KARNATAKA HIGH COURT], where it was held that till 1-3-2007, the assessee was entitled to benefit, of the Cenvat credit in respect of inputs contained in the work in progress and semi-finished products - at the time opting area based exemption of N/N. 50/2003-CE dated 10.6.2003, the appellants are not required to reverse the credit in their Cenvat credit account lying unutilized.**[Decided against Revenue]**

CUSTOM

NOTIFICATION / CIRCULAR

The Govt. vides Notification No. 02/2017 dated 27th Jan 2017; amended Notification No. 96/2008-Customs, dated 13th Aug 2008.

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

The Govt. vides Notification No. 06/2017 dated 23rd Jan 2017; regarding grant of Presidential Award of Appreciation Certificate to the officers of the Customs & Central Excise on the eve of Republic Day, 2017.

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

The Govt. vides Notification No. 07/2017 dated 24th Jan 2017; Seeks to notify the India-Japan Comprehensive Economic Partnership Agreement (Bilateral Safeguard Measures) Rules, 2017.

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

COURT DECISIONS

COMMISSIONER OF CENTRAL EXCISE AND CUSTOMS VERSUS KAY BEE TAX SPIN LTD.[GUJARAT HIGH COURT]

BRIEF: 100% EOU - diverted goods are not available for confiscation - The Unit clandestinely and illicitly diverted the goods to the open market, the goods which otherwise were liable to be confiscated, in lieu of confiscation, redemption fine was imposable.

OUR TAKE: The hon'ble **GUJARAT HIGH COURT** held that the respondent-Unit was permitted to deposit the goods in a bonded warehouse without making payment of the Customs duty, on certain terms and conditions and one of the condition was that the finished product was required to be exported, meaning thereby the goods which were permitted to be imported and thereafter deposited in a warehouse without payment of customs duty, were not required to be sold in the open market in India. Thus, once the confiscation of such goods was authorized, Section 125 of the Customs Act shall be applicable.**[Appeal allowed by way of remand]**

M/S HINDUSTAN PETROLEUM CORPN. LTD VERSUS THE COMMISSIONER C. CE&ST, VISAKHAPATNAM-I.[CESTAT HYDERABAD]

BRIEF: Imported crude oil - Whether the appellant is required to pay the National Calamity Contingent duty (NCCD) and cess thereon even though they have utilised advance licence for the import? - Held Yes.

OUR TAKE: The hon'ble **CESTAT HYDERABAD**heldthat the matter is fully settled by the Hon'ble Apex court in the case Mangalore Refinery & Petrochemicals Ltd vs. CCE, Mangalore [2015 (9) TMI 245 - SUPREME COURT], wherein it has been unequivocally held that the quantity of crude oil actually received in to a shore tank in a port in India should alone be the basis for payment of custom duty - demand set aside.[**Decided partly 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 SOFTWARE TECHNOLOGY PARKS OF INDIA VERSUS CCE, C & ST, HYDERABAD-II [CESTAT HYDERABAD]

BRIEF: STPI - Benefit of N/N. 52/03-CUS - import of Data Comp equipment's - 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.

OUR TAKE: The hon'ble **CESTAT HYDERABAD** held that the benefit herein is for the goods and not for the importer - the importer alone is entitled to such benefit and further, such importer should have been authorized by the Development Commissioner to establish the unit for the purposes specified in clauses (a) to (e) of the relevant paragraph of the notification - in the General Exemption No. 66, clause (a)(ii) of the notification exempts manufacture or development of software etc., for export by a STP unit or a unit in Software Technology Park Complex under the export-oriented scheme and not by a software technology park perse - 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 VINDHYA TELELINKS LTD. VERSUS COMMISSIONER OF CUSTOMS (IMPORT) , MUMBAI.[CESTAT MUMBAI]

BRIEF: Demand of duty - period of limitation - the "service of notice to CHA" cannot be equated to the "service of notice to the appellant".

OUR TAKE: The hon'ble **CESTAT MUMBAI** held the service of notice to CHA cannot be considered as service of notice in terms of Section 28 of the Customs Act - the "service of notice to CHA" cannot be equated to the "service of notice to the appellant". Hence we are of the view that no notice has been served on the appellant - demand hit by limitation clause - appeal allowed.**[Decided in favour of appellant]**

INCOME TAX

COURT DECISIONS

AGARWAL YUVA MANDAL (KERALA) Versus UNION OF INDIA AND PRINCIPAL COMMISSIONER OF INCOME TAX, KOCHI [KERALA HIGH COURT]

BRIEF: : Revision u/s 264 - though not as a challenge to Section 143(1) notice, when the petitioner has filed a revised return and has sought for interference by the Commissioner, necessarily the claim has to be considered in accordance with law - HC.

OUR TAKE: The hon'ble **KERALA HIGH COURT** held that A mere intimation does not amount to an order which could be revised under Section 264. In Parekh Brothers (1983 (8) TMI 17 - KERALA High Court), the question which was considered was whether Section 264 can be invoked for the purpose of making a claim of deduction under Section 35B.

BOTAD PEOPLES COOP BANK LTD Versus ASST. COMMISSIONER OF INCOME-TAX, CIRCLE-2 [GUJARAT HIGH COURT]

BRIEF: By claiming the diminution in the value of securities during the year under consideration, the assessee is trying to get the benefit which he did not get u/s. 80P in the earlier years - Additions confirmed - HC.

OUR TAKE: The hon'ble **GUJARAT HIGH COURT** held that We are in complete agreement with the view taken by the learned Tribunal for the diminution in the value of securities for earlier years, the assesses was required to claim the loss in those years, which he did not claim, because in the relevant years, his income was deducted u/s. 80 P of the Act. The learned Tribunal has rightly observed that, by claiming the diminution in the value of securities during the year under consideration, the assessee is trying to get the benefit which he did not get u/s. 80 P of the Act in the earlier years.

SOPAN INFRASTRUCTURE PVT LTD Versus INCOME TAX OFFICE WARD 8 (2) OR HIS SUCCESSOR [GUJARAT HIGH COURT]

BRIEF: : Reopening of assessment - sale of flats - solely on the observations made by another Assessing Officer with respect to the subsequent assessment years i.e., 2007-

2008, the reopening was not permissible for the AY 2005-2006 - HC.

OUR TAKE: The hon'ble **GUJARAT HIGH COURT** held that the assessee had received on-money with respect to the flats sold and in the A.Y 2007-2008 and therefore, the Assessing Officer while issuing the Notice for reopening has presumed and assumed that with respect to the flats sold in AY 2005-2006, the assesses must have received on-money.**[Decided in favour of assesses]**

GAIKWAD ASSOCIATES AND OTHERS VERSUS THE DY. COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE 2 (1) , PUNE [ITAT PUNE]

BRIEF: : Penalty u/s 271(1)(c) - The Statute has provided distinction between concealment of income and furnishing of inaccurate particulars of income, which may be thin line of distinction, but the same has to be kept in mind while recording satisfaction by the Assessing Officer.

OUR TAKE: The hon'ble **ITAT PUNE** held that the Assessing Officer has failed to record satisfaction correctly and consequently, we hold that initiation of penalty proceedings against the assessee are not valid for non-recording of satisfaction by the Assessing Officer while completing assessment proceedings. **[Decided in favour of assessee]**

VILSONS PARTICLE BOARD INDUSTRIES LTD. VERSUS THE INCOME TAX OFFICER (CENTRAL) , KOLHAPUR AND VICE-VERSSA [ITAT PUNE]

BRIEF:Validity of special audit u/s 142(2A) - in the absence of show cause notice given before making the order proposing conduct of special audit, the proceedings are vitiated because of non-compliance to the principles of natural justice - Consequently, the assessment order passed was beyond the period of limitation and hence, the same is invalid and bad in law.

OUR TAKE: The hon'ble **ITAT PUNE** held that the appeal for instant assessment year relates to the year of search, wherein also special audit under section 142(2A) of the Act was proposed to be carried out by the Assessing Officer. However, no notice was given to the assesses at the pre-decisional stage and following the principle laid down in assessee's own case in earlier years, we hold that in the absence of show cause notice given before making the order proposing conduct of special audit under section 142(2A) of the Act and the CIT having approved the said proposal, though after giving opportunity of hearing to the assessee.

STATE TAXES

ALL INDIA VAT

DELHI

The Govt. vides Circular No. 21 dated 27th Jan 2017, filing of online return for 3rd quarter of 2016-17 has been extended to 13th Feb 2017

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

GOA

The Govt. vides Circular NO. CCT/ELECTIONS/2016-17/4935 dated 22nd Jan 2017, regarding submission of advance details of consignments of electronics, consumer durables and two wheelers.

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

UTTARAKHAND

The Govt. vides Notification NO.62 / 2017 / 146 (120) / XXVII (8)/2008 dated 25th Jan 2017, amends Schedule III - Regarding Aviation Turbine Fuel.

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

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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

ALLIED LAWS

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 thatthe 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.

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 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 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

COMPARATIVE ANALYSIS OF REFUND OF TAX IN REVISED GST LAW

1. Earlier old GST Law, the limitation of two years for filing refund claim was not applicable for amount paid under protest. This provision has been deleted in the revised GST Law thereby meaning that there will be no mechanism for paying tax under protest.

2. A new provision for refund of tax by specialized agency of United Nations Organisation or any Multilateral Financial Institution or Embassy of foreign countries has been inserted which provides that such persons shall be entitled to refund of tax paid by them on inward supplies of goods and or services by making an application before expiry of six months from the last day of the month in which supply was made in prescribed form and manner. If the provision is compared with the present scenario, it is found that presently there is exemption prevalent to provision of services to United Nations Organisation which is comparatively easy than claiming refund.

3. There is change in provision regarding refund of unutilised input tax credit. Earlier, proviso specified that refund of unutilised input tax credit shall be allowed only in cases of exports and in cases of inverted duty structure. Inverted duty structure means situation where rate of tax on input is higher than rate of tax on output. But, in revised GST Law, refund of unutilised input tax credit shall be allowed in cases of exports including zero rated supplies, in case of inverted duty structure but not in case of nil rated of fully exempt supplies. A new proviso has also been inserted to clarify that the refund of unutilised input tax credit shall not be allowed if the supplier of goods or services claims refund of output tax paid under IGST Act, 2016. This implies that the refund of unutilised credit will be allowed only in cases where the export is done under bond. If the export is done under rebate claim, then the refund of unutilised credit will not be allowed.

4. There is also change in provision regarding grant of refund claim on provisional basis. As per old GST Law, provisional refund of 80% of the total amount so claimed was required to be given but as per the revised GST Law, the provisional refund of 90% of the total amount so claimed is required to be given. The increased amount of provisional refund will solve the liquidity constraints of the exporter.

5. The time limit for passing order under earlier GST law was ninety days from the date of receipt of application. Now, under revised GST law, this time limit for passing order has been reduced to sixty days from the date of receipt of application. The reduction in time limit for passing refund order is a welcome step.

6. There is also change in provisions regarding applicability of unjust enrichment. The refund amount shall be given to the claimant if it is proved that the incidence of duty has not been passed on to another person. The concept of unjust enrichment is not applicable in certain situations like refund of tax on goods or services exported, refund of unutilised input tax credit etc. Now, a new clause has been added wherein refund of tax paid on a supply which is not provided, either wholly or partially and for which invoice has not been issued will also be sanctioned to the supplier and the principle of unjust enrichment would not apply in such cases. This provision is also beneficial to the assessee claiming refund of tax paid on supply which is cancelled or partially provided.

7. A new sub-section 13 has been added in section 48 which states that refund of advance tax deposited by casual or non-resident taxable person shall not be allowed unless they have furnished all returns during their period of registration. Hence, refund of advance tax will be admissible only on filing of returns.

8. New clauses have been inserted in the meaning of relevant date as follows: -

   (g) in the case of a person, other than the supplier, the date of receipt of goods or services by such person; and

   (h) in any other case, the date of payment of tax.

   Thus, if a person, other than supplier (this implies that person other than supplier can file the refund claim) files the refund claim then in that case the date of receipt of goods or services will be relevant date for computing time limit of refund claim. Furthermore, the clause (c) of the earlier GST Law specifying the relevant date in case of goods returned for being remade, refined, reconditioned or subjected to any other similar process in any place of business as the date of entry into the place of business for such purpose has been deleted. There was no refund mechanism for return of goods in factory premises for repairing or reconditioning purpose but the old GST Law specifically mentioned relevant date for filing refund claim in such cases. However, it appears that the government realized the redundancy of the provision and has deleted the same.

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