



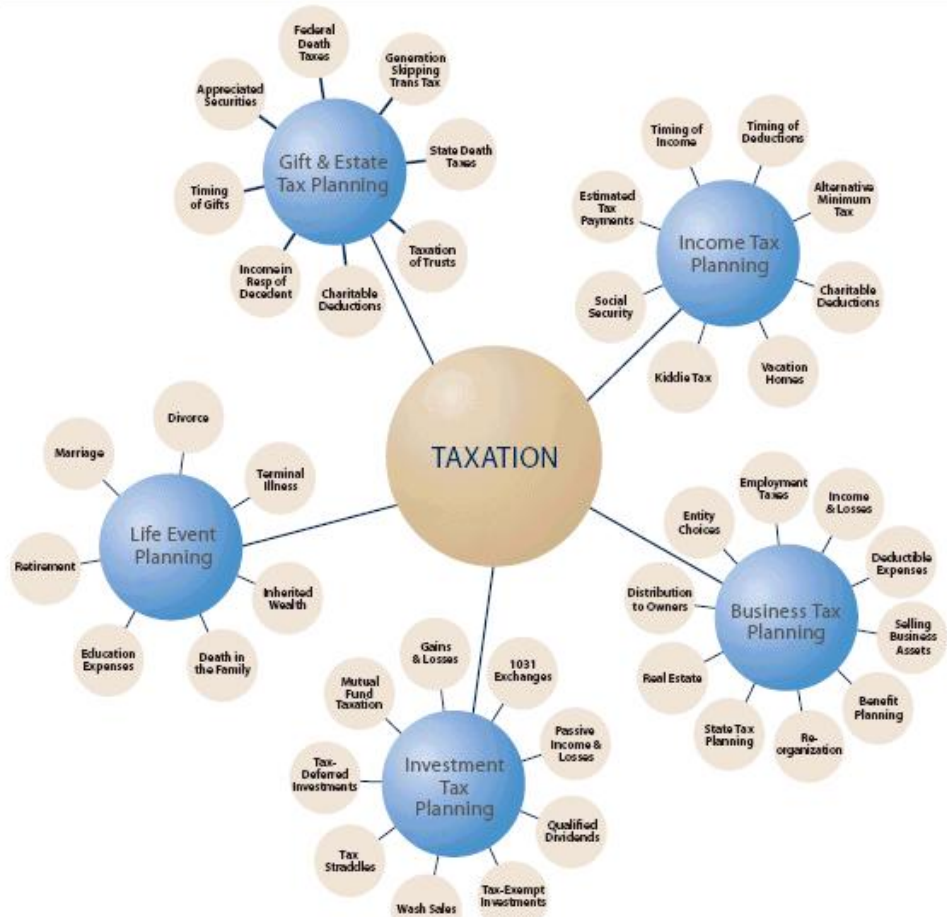
ASC Times

All India Taxes Weekly Reference

Vol: Jan 09 –Jan 15, 2017

Solving
any **tax**
puzzle

Tax saving advice
across all the taxes



TAXCALENDER

Due Date	Description	Law
10 Jan	Deposit of Tax	Kerala VAT
	Deposit of TDS	Chhattisgarh VAT, Madhya Pradesh VAT, Mizoram VAT, Nagaland VAT
	Issue of TDS Certificate	Chhattisgarh VAT
	Return Filing	Kerala VAT.
15 Jan	Deposit of Tax	Bihar VAT, Haryana VAT, Jharkhand VAT, Karnataka VAT, Sikkim VAT
	Deposit of TDS	Bihar VAT, Delhi VAT, Haryana VAT, Himachal Pradesh VAT, Jharkhand VAT, Punjab & Chandigarh VAT
	Issue of TDS Certificate	Andhra Pradesh VAT, Bihar VAT, Himachal Pradesh VAT, Jharkhand VAT, Nagaland VAT, Punjab & Chandigarh VAT, Telangana VAT
	Return Filing	Karnataka VAT, Madhya Pradesh VAT
	TDS Return	Income Tax Law
	Annual Return	Maharashtra Annual Return.
	Deposit of TDS	Delhi VAT
	Return Filing	Tamil Nadu VAT

COUNTRY WIDE HOLIDAYS FOR THE WEEK

Date	Occasion/Festival	Region
13 th Jan 2017	Bhogi	AP, Telangana.
14 th Jan 2017	Pongal	All South Indian States

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From the CEO's Desk



Dear Reader,

Traders body proposed that the government should waive penalties on compliance errors during the first three years of rollout of the goods and services tax (GST) regime. Observing that it would be difficult for anyone to evade taxes under the new framework, CAIT said even the instances of under-invoicing will gradually wane as the tax department will have PAN-based registration and sale-purchase data of traders.

“GST will be a complex structure of taxes and we have asked the tax department to exempt traders from penalties in the transition period of first three years,” o educates traders about the new indirect tax set-up, the Confederation of All India Traders (CAIT) has entered into an MoU with Tally Solutions to train them on GST compliance and adoption.

The government plans to roll out GST from April 1 next year. The GST will subsume excise, service tax and other local levies.

Khandelwal said the next meeting of the GST Council, to be chaired by Finance Minister Arun Jaitley, later this month will decide on tax rates, products and compliance and after that, CAIT will prepare the working module for traders. A standard GST rate of 18% would be “justified”, and at that rate, the investment cost of traders will be less, he told reporters here.

Asked about the fate of traders who do not give bills at present, Khandelwal said the GST design does not have this option. “We have to give sales details to the tax department and hence, there will be no scope of under-invoicing as over a period of time, all data will go to the tax department,” he said.

CAIT National President B C Bhatia said that since GST registration is PAN based, so the government will get to know how many traders have not registered from its own database. “The purchase ledger of traders is with the

government. So, by under-reporting of sales, if stocks start piling up, the tax department will ask why are you purchasing. With so much data, it will become difficult to evade taxes,” Bhatia reasoned. He said last-mile disposal by an importer will come under the tax lens through Integrated GST and hence, under-billing will become difficult.

Alok Kumar Agarwal

CEO

ASC Group.

CENTRAL TAXES

SERVICE TAX

COURT DECISIONS

M/S PPD PHARMACEUTICAL DEVELOPMENT (I) PVT. LTD. VERSUS COMMISSIONER OF SERVICE TAX, MUMBAI- (VICE-VERSA)[CESTAT MUMBAI]

BRIEF: Rejection of refund claim - CENVAT Credit - export of services under Business Auxiliary Services in respect of the goods located in India - since recipient of services is situated outside India, refund allowed.

OUR TAKE: The hon'ble CESTAT MUMBAI held that the issue is no more res integra, Hon'ble High Court of Bombay in the case of Commissioner of Service Tax, Mumbai-II Vs. SGS India Pvt. Ltd. [2014 (5) TMI 105 - BOMBAY HIGH COURT], has held that if services were rendered to such foreign clients located abroad, then, the act can be termed as 'export of service' - Service Tax is a value added tax which in turn is destination based consumption tax in the sense that it taxes non-commercial activities and is not a charge on the business, but on the consumer, then, it is leviable only on services provided within the country'. [Decided against revenue]

SMT. REKHA KOTHARI VERSUS CCE, JAIPUR. [CESTAT NEW DELHI]

BRIEF: Service tax is not leviable on the commission earned by the distributor on the basis of the volume of the purchases made by the group of second level of distributors appointed by FSL on being sponsored by the distributor.

OUR TAKE: The Hon'ble CESTAT NEW DELHI held reliance placed on the decision of the case of Surendra Singh Rathore [2013 (8) TMI 149 - CESTAT NEW DELHI], where the demand of service tax under Business Auxiliary Service stands confirmed and it is held that service tax will be chargeable on the commission received by the distributor (such as the appellant) on the products purchased by his sales group. However, it has been held that the service tax is not leviable on the commission earned by the distributor on the basis of the volume of the purchases made by the group of second level of distributors appointed by FSL on being sponsored by the distributor. [Appeal disposed Of]

M/S GYAN ENGINEERING

WORKS VERSUS CCE, JAIPUR [CESTAT NEW DELHI]

BRIEF: Demand of service tax is to be excluded wherever such fabrication activity amounts to manufacture, leading to a structure classifiable under Section 73.08 of the Central Excise Tariff.

OUR TAKE: The hon'ble CESTAT NEW DELHI held that the definition of the service of erection, commissioning or installation has undergone repeated changes during the disputed period. Before finalizing the classification of the activity carried out and crystallizing the demand of service tax, we are of the view that the activities covered in each work/job order needs to be examined with reference to the entry as it stood at the relevant time. The activity of erection was not part of the statute for the period 01/7/2003 to 09/9/2004. The scope of the entry during the period 10/9/2004 to 15/6/2005 was also limited. [Appeal allowed by way of remand]

FUTURE LINK INDIA VERSUS THE COMMISSIONER OF CENTRAL EXCISE, DELHI- III [DELHI HIGH COURT]

BRIEF: Levy of Penalty u/s 78 of the Finance Act, 1994 - The assessee/appellant has the option to deposit the balance service tax together with accumulated interest and penalty of 25% of the entire tax due, within the period indicated in the third proviso to Section 78(1).

OUR TAKE: The hon'ble DELHI HIGH COURT held that in any event there is no material pointing to deliberate inaction - where the appellant claims not to have been aware of its liability before its registration, in 2009. However, at the same time, having regard to the phraseology of Sections 76 and 77 of the Finance Act, this court is unable to disturb the findings of the authorities below on this aspect. [Decided partly in favour of appellant]

M/S SHREE ANAND VENKATESHWARA ASSOCIATES VERSUS CCE, PUNE-I [CESTAT MUMBAI]

BRIEF: Waiver of penalty imposed u/s 77 & 78 of the FA, 1994 - Construction of Residential Complex Services - as the data of taxable value was correctly declared by the appellant in the books of account - waiver of penalty justified.

OUR TAKE: The humble CESTAT MUMBAI held that from Section 73(3) of the Finance Act, 1994, it is clear that, if the

assessee pays the Service Tax along with interest, no show-cause notice should be issued, when show-cause notice itself is not warranted, no adjudication is also required and therefore there is no question of imposition of any penalty - Taking into consideration the conduct of the appellant regarding immediate payment of Service Tax along with interest as well as the circumstances that the matter was under litigation in the court of law, the appellant has been able to show the reasonable cause for non-payment of Service Tax in time. **[Decided in favour of appellant]**

M/S ABC CLASSES VERSUS COMMISSIONER OF CENTRAL EXCISE, ALLAHABAD [CESTAT ALLAHABAD]

BRIEF: Commercial coaching services - Discrepancy in Fee receipts - There is no proper basis adopted by the revenue for rejecting the books of account and the service tax Returns filed, and resorting to best judgment assessment - Demand of service tax set aside.

OUR TAKE: The hon'ble **CESTAT ALLAHABAD** held that there is no proper basis adopted by the revenue for rejecting the books of account and the Returns filed, and resorting to best judgment assessment - no discrepancy has been found out by the Revenue during investigation and or at the time of adjudication in the Books of Accounts and records maintained by the appellant, in the ordinary course of business - The approximate figures, as found in the statements, cannot form basis of rejection of the Books of Accounts and estimation of turnover by way of wild guess work. **[Decided in favour of appellant]**

M/S. SHRINATH CONSTRUCTIONS NASHIK VERSUS COMMISSIONER OF CENTRAL EXCISE & CUSTOMS, NASHIK [CESTAT MUMBAI]

BRIEF: Waiver of penalty u/s 78 of FA, 1994 - invocation of section 80 - the appellant has been able to show the reasonable cause for non-payment of service tax on the element of cost of free supplied goods - penalty waived.

OUR TAKE: The hon'ble **CESTAT MUMBAI** held that On the dispute that whether the cost of free supplies goods should be included or otherwise the Larger Bench of this Tribunal in *Bhayana Builders (P) Ltd.* [2013 (9) TMI 294 - CESTAT NEW DELHI (LB)] held that the same is not includible in the gross value of the construction service. Therefore the issue involved in the present case was not free from doubt. The appellant, immediately, on pointing out by the department, paid the service tax and the interest thereupon even before issuance of the show cause notice - the appellant has been able to show the reasonable cause for non-payment of service tax on the element of cost of free supplied goods **[Decided in favour of appellant]**

M/S BMD PVT. LTD. VERSUS CCE, JAIPUR- I [CESTAT NEW DELHI]

BRIEF: Classification of services - the consultant has carried out market research activity in Europe and for this reason no service tax will be liable to be paid on reverse charge basis.

OUR TAKE: The hon'ble **CESTAT NEW DELHI** held that the nature of the activity undertaken by M/s Gamma for the appellant is to be inferred from the product of such activity available in the form of the report. Such report is titled Market Research. A perusal of the report clearly indicates that the consultant has undertaken research in different parts of Europe with reference to the technical textile business. They have considered the various types of products, their manufacturers, production processes and even the turnover. This activity undertaken is clearly in the nature of market research. **[Decided in favour of appellant]**

M/S. BHARAT SANCHAR NIGAM LTD. VERSUS C.C.E. INDORE [CESTAT NEW DELHI]

BRIEF: CENVAT credit - appellant is entitled to avail Cenvat credit on these cables either as capital goods or input as per Cenvat credit rules 2004.

OUR TAKE: The hon'ble **CESTAT NEW DELHI** held that the cable has been procured by the appellant and used in providing output service. Therefore, appellant is entitled to avail cenvat credit on these cables either as capital goods or input as per cenvat credit rules 2004. **[Appeal allowed by way of remand]**

CENTRAL EXCISE

NOTIFICATION / CIRCULAR

The Govt. vides Notification No.276/104/2016-CX.8A (PT) dated 03rd Jan 2017; inclusion of Show Cause Notice issued in relation to sub-section (11) of Section 28 of the Customs Act, 1962 on the competency of officers of DGDR, DGCEI and Customs (Prev.) in the Call Book.

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

COURT DECISIONS

COMMISSIONER OF CENTRAL EXCISE, MUMBAI-I VERSUS M/S. FOUR CIRCLE CLOTHING CO [CESTAT MUMBAI]

BRIEF: SSI Exemption - whether after assignment agreement in respect of brand name, it can be inferred that the respondent is using the brand name of another person and accordingly not entitled for the S.S.I. exemption Notification No. 8/2001-CE - Held No - Benefit of exemption allowed.

OUR TAKE: The hon'ble CESTAT MUMBAI held as regard assignment agreement, there is no dispute in the facts of legal assignment of the brand in favour of the respondent vide agreement. Therefore, agreement stands legal and in force. Ld. Commissioner (Appeals) held the admissibility of exemption notification relying on the judgment of Collector of C.Ex., Ahmedabad vs Vismara Trading & Invest P. Ltd. [2003-SUPREME COURT OF INDIA], wherein under identical set of facts, the S.S.I. exemption Notification was allowed despite the fact that the assignment was not registered. We find that the said judgment is squarely applicable in the present case. Therefore, here is no infirmity in the order of Ld. Commissioner (Appeals) in as much as the S.S.I. exemption was extended to the respondent based on assignment agreement. **[Decided against the revenue]**

M/S JAYASWAL NECO INDUSTRIES LIMITED VERSUS CCE, RAIPUR. [CESTAT NEW DELHI]

BRIEF: Cenvat credit - railway tracks are embedded to earth - the structural items used in the fabrication of support structures would fall within the ambit of Capital Goods as contemplated under Rule 2(a) of the Cenvat Credit Rules, hence will be entitled to the Cenvat Credit.

OUR TAKE: The hon'ble CESTAT NEW DELHI held that the eligibility of manufacturer for availing credit on various steel items like in the present case has been a subject matter of decision by the Tribunal and Hon'ble High Courts and Hon'ble Supreme Court. In the appellant's own case the Hon'ble Supreme Court (2015 (4) TMI 569 - SUPREME COURT) held that railway track and equipment's used for handling raw material are eligible for credit. Admittedly, railway tracks are embedded to earth and are not regularly moved from place to place. **[Decided in favour of assessee]**

CCE, CHANDIGARH-I VERSUS. NATIONAL CONDUIT PIPES, NATIONAL CONDUIT PIPES, VIVEK STEEL TUBES, R.M. STEELS (P) LTD., G.C. SPINTEX, R.S. STEELS, NATIONAL STEEL PIPES, R.K. INDUSTRIES, RAMESH KUMAR, SHAM LAL, BIMAL KUMAR, HARISH SHARMA VINOD SHARMA, SANJAY BABBAR, YOGESH KUMAR, THE TRUCK OPERATIONS UNION AND JANTA ROAD CARRIERS (CESTAT CHANDIGARH)

BRIEF: SSI Exemption - dummy units - There is no financial flow back and there is no mutuality of interest between the units. Therefore, not all the four units can be clubbed together.

OUR TAKE: The hon'ble CESTAT CHANDIGARH held the facts are similar to the facts in the case of Nova Industries Pvt.Ltd. and on the analysis of that decision, it is held that all the units are having separate machinery, separate registration number and dealing separately. There is no financial flow back and there is no mutuality of interest between the units. Therefore, all the four units cannot be clubbed together and the same has been confirmed by the adjudicating authority in the impugned order giving detailed findings on the issue after her personal inspection of the units. In the circumstances, it can be held that all the units cannot be clubbed together and the respondents are entitled to the benefit of SSI exemption from time to time - issue answered in favour of respondent. **[Decided in favour of appellant]**

M/S WELSPUN CORPORATION LIMITED AND M/S WELSPUN PROJECT LIMITED VERSUS CCE, CHANDIGARH-II. [CESTAT CHANDIGARH]

BRIEF: WCL availed CENVAT credit on the inputs for manufacturing of their final product before production of exemption certificate by M/s GMADA, the appellant has rightly availed CENVAT credit on inputs.

OUR TAKE: The hon'ble CESTAT NEW DELHI held that the Revenue has failed to appreciate the fact that inputs are available for credit at the time of start of manufacture of the goods. There is a great difference between manufacture and their clearance. In this case manufacturing process started much earlier before the date when the exemption certificate was obtained by M/s GMADA. Prior to obtaining the exemption certificate, the character of final manufactured



goods was dutiable, in that circumstances, the CENVAT credit availed by the appellant is in accordance of law.

[Decided in favour of appellant]

M/S KANORIA CHEMICALS & INDUSTRIES LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, ALLAHABAD. [CESTAT ALLABHAD]

BRIEF: Exemption Notification No.108/95-CE dated 28.08.1995 - goods not supplied directly to UNICEF but were supplied to project assisted and Financed by UNICEF - benefit of exemption allowed

OUR TAKE: The hon'bleCESTAT ALLABHAD held the said notification as amended by notification No.40/99 dated 02/11/99 at clause (b) (i) provides that the goods supplied to organizations appearing in the annexure for the projects that is approved by Government of India and finance by such organizations and certified by such organization that the said goods are intended for such use, then such goods are exempted from the whole of duty of Central Excise. We find that various certificates and purchase orders and instruction of UNICEF to deliver the goods at various places and certificate issued by Procurement Officers of UNICEF which were produced before the first appellate authority were sufficient proof to establish the eligibility of appellant to the benefit of the said notification No. 108/95. – **[Decided in favour of appellant]**

M/S. MONNET ISPAT & ENERGY LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, RAI. [CESTAT NEW DELHI]

BRIEF: Eligibility for CENVAT credit - iron and steel items used for fabrication of components / accessories of various machinery like rotary klin, rotary cooler, conveyor systems, raw material preparation plant, power plant and pollution control equipment. Credit allowed

OUR TAKE: The hon'bleCESTAT NEW DELHI held that that the allegation in the show cause notice that steel items used by the appellant are neither components nor spares nor accessories is not sustainable. Applying the principle of "user test" laid down by the Hon'ble Supreme Court in Jawaharlal Mills case (SUPREME COURT OF INDIA) the angles, beams and channels used in the making and fabrication of these capital goods are found eligible for Cenvat credit. **[Decided in favour of assessee]**

CUSTOM

NOTIFICATION / CIRCULAR

The Govt. vides Notification No.01 dated 05th Jan 2017; new Exchange rate notification.

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

The Govt. vides Notification No.02 dated 06th Jan 2017; amends Notification 63/94 dated 21st November 1994 - Regarding Land Customs Stations.

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

The Govt. vides Circular No.01 dated 04th Jan 2017; extending the Single Window Interface for Facilitation of Trade (SWIFT) to Exports.

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

COURT DECISIONS

MODIPON FIBRES CO. VERSUS COMMISSIONER OF CUSTOMS MUMBAI [CESTAT MUMBAI]

BRIEF: Valuation - rejection on the ground that the Chartered Engineer's certificate issued in the country of export was not acceptable owing to discrepancy with the year of manufacture on the plate affixed to the engine - ground of rejection not valid - demand set aside.

OUR TAKE: The hon'ble CESTAT MUMBAI held that the pre-shipment inspection report issued by Bureau Veritas was examined, and it clearly states that the original manufacturing date of the engine is 10th October 1994 and that of the alternator is 17th October 1995 with the common base plate having been manufactured on the 2nd of April 1996. While Revenue has no issue in accepting the

original manufacturing date of the alternator, they do not accord the same credibility to the manufacturing date of the engine as certified in the certificate. Undoubtedly, both the lower authorities are of the view that the certificate does not reflect the date on the plates affixed to the engine. Even if that were an acceptable proposition, the enhancement of value should have been in accordance with the provisions in the Customs Valuation Rules and not by placing reliance on an expert appraiser as has been done by the original authority. **[Decided in favour of appellant]**

COMMISSIONER OF CUSTOMS (G), MUMBAI VERSUS M/S. JAIGURUDEV IMPEX P. LTD. [CESTAT MUMBAI]

BRIEF: Valuation of imported goods - Unless there is substantial difference between the declared price and the value determined after market enquiry, loading must be avoided and the transaction value can be accepted.

OUR TAKE: The hon'ble CESTAT MUMBAI held that the goods imported by VIP Industries is not from the same supplier and the quantity by VIP Industries is far less and in kgs. While the goods imported by the respondent are huge for trading purposes - adjudicating authority has held that there is marginal difference between the declared price and the value proposed to be loaded, that the transportation, handling, charges and margin of profit are not based on any standard formula and a slight difference in these charges would substantiate the declared price Unless there is substantial difference between the declared price and the value determined after market enquiry loading must be avoided and the transaction value can be accepted. **[Appeal Dismissed]**

M/S. ION EXCHANGE (INDIA) LTD. VERSUS COMMISSIONER OF CUSTOMS (ADJUDICATION), MUMBAI [CESTAT MUMBAI]

BRIEF: When the bond does not contain the terms of payment of interest, recovery of interest cannot be made, despite there is a condition of executing the bond not only for the duty but also for the interest, in terms of notification.

OUR TAKE: The hon'ble CESTAT MUMBAI held that the identical issue has been decided by the Hon'ble Apex Court in case of JayaswalNeco Ltd [2015 (8) TMI 243 - SUPREME COURT] wherein Hon'ble Apex Court held that when the bond does not contain the terms of payment of interest, recovery of interest cannot be made, despite there is a condition of executing the bond not only for the duty but also for the interest, in terms of notification - demand of interest set

aside - the confirmation of demand and appropriation of amount of duty paid by the appellant are maintained'. **[Decided in favour of assessee]**

SHRI NARESH KUMAR, SHRI KIRIT M. UDANI, M/S. AUTO HARDWARE ENTERPRISES VERSUS COMMISSIONER OF CUSTOMS (P), MUMBAI [CESTAT MUMBAI]

BRIEF: : Valuation of imported goods - spares and components of Car audio systems - Since the appellant has already accepted the enhancement of the value in the first assessment after examination, there is no reason to further enhance the value.

OUR TAKE: The hon'ble CESTAT MUMBAI held that the entire case of the revenue is built upon the enhancement of the value based upon the price list received from Kenwood Corporation, Sony India Ltd. and Pioneer. There is nothing on record to show that the consignments which are imported were procured by the appellant directly from the manufacturers. It is also seen from the records that the main appellant has been taking a consistent plea that these are stock lot purchased from a trader and they were outdated models, he has also been taking a consistent view that the supplier who had exported the consignment to him had collected all these items from different places and then collated and despatched at a value which is the transaction value. **[Decided in favour assessee]**

ROYLE EXTRUSION SYSTEMS LTD. VERSUS COMMISSIONER OF CUSTOMS, MUMBAI AND VICE-VERSA. [CESTAT MUMBAI]

BRIEF: Valuation - rule 9 relates to the supply of engineering, development, art work, design work and plans and sketches, etc. by the buyer to the supplier. In the instant case, it is the supplier who has sent the technical know-how to the buyers. Thus, Rule 9(1) (b) (IV) has been wrongly invoked.

OUR TAKE: The hon'ble CESTAT MUMBAI held that after examining the third-party imports to different countries, the transaction value was accepted. It is seen that in the appeal before the Commissioner (Appeals), the Revenue as well as Royal Extrusion Systems Ltd. have not challenged this issue. In view of that it is not open to either party to challenge that Royal Extrusion Systems Ltd. and foreign collaborator are related and that relationship has affected the import price in terms of Rule 4 (3) of the Customs Valuation Rules. **[Appeal disposed of]**

INCOME TAX

COURT DECISIONS

MANAWAT PLASTICS PVT. LTD. VERSUS THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, THE COMMISSIONER CUSTOMS, CENTRAL EXCISE & SERVICE TAX [BOMBAY HIGH COURT]

BRIEF: Conversion of Shipping Bill under DEEC Scheme to Drawback Scheme to avail export benefit. No question of law regarding the permissibility of conversion of advance licenses into a drawback facility in present facts has been specifically raised.

OUR TAKE: The hon'ble BOMBAY HIGH COURT held that the Appellant ought to have raised a specific question of law on such facts. No question of law regarding the permissibility of conversion of advance licenses into a drawback facility in present facts has been specifically raised. Appellants have failed to raise any substantial question of law in this Appeal. Appeal dismissed. [Decided against the appellant]

COMMISSIONER VERSUS SUNRISE ENTERPRISE [SUPREME COURT]

BRIEF: Retrospective Imposition of ADD. The final anti-dumping notification has no applicability to the bills of entry presented prior to the said date. Decision of tribunal affirmed.

OUR TAKE: The hon'ble SUPREME COURT held that the final anti-dumping notification has no applicability to the bills of entry presented prior to the said date. Inasmuch as the applicant has already been assessed to zero anti-dumping duty, the further demand of anti-dumping duty in terms of the subsequent notification is not called for. Apex Court dismissed the revenue appeal as devoid of any merit.

M/S AMRITLAKSHMI MACHINES WORK, MR. N.K. BRAMCHARI, MANAGING PARTNER, M/S. AMRITLAKSHMI MACHINE WORKS VERSUS COMMISSIONER OF CUSTOMS (IMPORT) [BOMBAY HIGH COURT]

BRIEF: Levy of simultaneous penalties on both the Partner and Partnership firm in adjudication proceedings under the Customs Act. Penalty for abetting, simultaneous penalties can be imposed on the firm and the partners under the Act and more particularly under Section 112(a) of the Act.

OUR TAKE: The hon'ble BOMBAY HIGH COURT held that as the Act itself stipulates, the same would be subject to the

parties proving that the contravention has taken place without their knowledge or despite exercise of all due diligence to prevent such contravention.

M/S S. NARENDRA VERSUS COMMISSIONER OF CUSTOMS, MUMBAI [CESTAT MUMBAI]

BRIEF: Claim of exemption. Benefit of Notification No. 159/86-Cus, after examination of machine and visit to factory premises it was found that the said machine is "Laser system for diamond processing (sawing, kerfing and drilling) based on CNC. - Benefit of exemption allowed

OUR TAKE: The hon'ble GUJRAT HIGH COURT held that the expression sawing machines had been used without any qualification. There is no dispute that the goods were imported for the purposes as specified in the notification. Other condition subject to which the benefit of concessional rate of duty was available and had also been fulfilled. The notification covers the machine imported by the appellants. Appellant succeeds on both counts. The appeal is allowed. [Decided in favour of assessee]

M/S SANCTUM WORKWEAR PVT. LTD. VERSUS COMMISSIONER OF CUSTOMS (EXPORT) NHAVA SHEVA [CESTAT MUMBAI]

BRIEF: Duty drawback. Mis-declared the goods in the Shipping Bill to claim higher drawback. The claim of drawback separately on Jackets & Pants is an error but malafide intention cannot be ascribed to invoke penalty.

OUR TAKE: The hon'ble CESTAT MUMBAI held there is no mis-declaration of description of goods in the Shipping Bill. Neither is there any mis-declaration of value. The claim of drawback separately on Jackets & Pants is an error but malafide intention cannot be ascribed to invoke penalty. Section 113(i) can be invoked when there is mis-declaration of description or value. In this case, it is not so. [Decided in favour of assessee]

MUMBAI VERSUS UNICHEM LABORATORIES LTD. [ITAT MUMBAI]

BRIEF: TDS u/s 194H - no tax was required to be deducted at source on this discount to MRP given by the assessee company to the distributors at the time of sale of drugs-medicine to the distributors.

OUR TAKE: The hon'ble ITAT MUMBAI held that no tax was deductible at source on payment of Directors sitting fee paid by the assessee company to its Directors u/s 194J of the Act

and the assessee company could not be held as 'assessee in default' u/s 201(1) and 201(1A) of the Act. **[Decided in favour of assessee]**

MAHAVIR INDUCTOMENT PVT. LTD. VERSUS ASST. CIT, (OSD) -1, RANGE-4, AHMEDABAD AND VICA-VERSA [ITAT AHMEDABAD]

BRIEF: Disallowance out of interest expenses @ 3% u/s 40A(2)(b). It was observed that as Assessee Company and parent company both were taxed at marginal rate and therefore it cannot be said that service charges paid to parent company are unreasonable so as to evade tax.

OUR TAKE: The hon'ble ITAT AHMEDABAD held that the assessee company is not a shareholder in Mahavir Rolling Mills Pvt. Ltd., therefore, no addition could be made u/s 2(22) (e) of the Act, as deemed dividend and accordingly, we find no reason to interfere with the order of Id. CIT(A). We uphold the same. **[Decided in favour of assessee]**

DY. COMMISSIONER OF INCOME TAX-5 (2) , MUMBAI VERSUS M/S M. SURESH COMPANY PVT. LTD. [ITAT MUMBAI]

BRIEF: Penalty u/s 271(1)(c), assessee did not establish the nexus between the borrowed funds and the investment so made with a clear intention to conceal the income by furnishing inaccurate particulars of such income, therefore, in our view, penalty was rightly imposed.

OUR TAKE: The hon'ble ITAT MUMBAI held that the totality of facts clearly indicates that the assessee did not establish the nexus between the borrowed funds and the investment so made with a clear intention to conceal the income by furnishing inaccurate particulars of such income, therefore, in our view, penalty was rightly imposed by the Assessing Officer. The stand of the Revenue is further fortified by the fact that even the assessee did not file appeal against the disallowance of huge interest expenditure while deciding the quantum addition and accepted the same. **[Decided against assessee]**

KANTI AUTO FABRICATION PVT LTD VERSUS ASSISTANT COMMISSIONER OF INCOME TAX [GUJARAT HIGH COURT]

BRIEF: Reopening of assessment. Mere accounting entry or even if there was some defect in indicating such amount in the accounts presented by the assessee, as long as income chargeable to tax had not escaped assessment, reopening of the assessment would not be permissible.

OUR TAKE: The hon'ble GUJARAT HIGH COURT held that mere accounting entry or even if there were some defect in indicating such amount in the accounts presented by the assessee, as long as income chargeable to tax had not

escaped assessment, reopening of the assessment would not be permissible. **Decided in favour of the assessee]**

STATE TAXES

ALL INDIA VAT

GOA

The Govt. vides Notification NO. 4/5/2005-FIN(R&C)(144) dated 02nd Jan 2017, amendment in Schedule 'C' - Reduction in rate of tax on Motor spirit which is commonly known as petrol including ethanol blended petrol. In Schedule 'C' appended to the said Act, against entry at serial number (8), in clause (a), in column (3), for the figures "9%", the figures "7%" shall be substituted.

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

RAJASTHAN

The Govt. Vides Notification NO. F26 (315) CCT/MEA/2014/2073 dated 02nd Jan 2017, Extension of last date is 31st January 2017 of filing VAT 11 returns for FY 2015-16.

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

MAHARASHTRA

The Govt. vides CIRCULAR 1T dated 02nd Jan 2017, Full/Partial exemption of late fee under Section 20(6) of MVAT Act for late returns.

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

MAHARASHTRA

The Govt. vides CIRCULAR 2T dated 06th Jan 2017, Distribution of Provisional Login-id and Passwords to the existing dealers for enabling them to Log-on the GST Common Portal for GST enrolment.



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

COURT DECISIONS

THE COMMISSIONER OF SALES TAX VEORSUS M/S. VEER RADIOS(BOMBAY HIGH COURT)

BRIEF: Nature of assessment - best judgment assessment or not - the entries in the books of account varying with returns filed are relied upon and then the assessment has been completed. – Cannot be held as best judgment assessment - levy of penalty deleted.

OUR TAKE: The hon'ble BOMBAY HIGH COURT held that it is not best judgment assessment. If the return is filed belatedly and it does not give correct and complete figures, the provisions of Section 33(3) of the said Act can be applied by the department to such return. Levy of penalty confirmed. [Decided in favour of revenue]

COMMISSIONER OF COMMERCIAL TAXES, THIRUVANANTHAPURAM, KERALA VERSUS M/S K.T.C. AUTOMOBILES [SUPREME COURT]

BRIEF: levy of penalty for non-maintenance of complete, true accounts - sale of motor vehicles from another state - According to the Intelligence Officer, the sales were concluded at Kozhikode, and hence the vehicles should have been registered within the State of Kerala. - Mere doubt cannot create any liability - No penalty.

OUR TAKE: The hon'ble SUPREME COURT held that they do not lead to a conclusive inference that the sales under controversy had taken place at Kozhikode, Kerala. To the contrary, in view of propositions of law discussed hereinbefore, the judgment of the High Court gets reinforced and deserves affirmation. [Decided against the revenue]

OTHER UPDATES

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.

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.

GST ALERTS

SUPPLY CHAIN UNDER GST

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

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

1. Procurement from registered vendors: The cascading effect of taxes is going to come down significantly in GST owing to cross sectional credit admissibility. This requires that the vendor must be registered so that the tax paid by him on his procurement is not added to the cost of goods/services and passed on to the company resulting in reduction of cost to that extent.
2. Purchase from unregistered vendor- likelihood of tax on purchases: It is learnt that purchase of goods/services from unregistered dealers could attract the levy of GST in the hand of recipient resulting in increased compliance burden.
3. Purchase from taxable person under composition scheme: There could be a situation where the vendor is registered under composition scheme and not charging GST. On the face of invoice, it could appear that the prices are lower but it may not be necessary considering the fact that tax paid on his procurement become integral part of the cost of his product/service and not passed on the company. Hence, all B2B purchase should be made from vendor registered under normal scheme.
4. Timely registration of vendor during migration to GST: There is provision that all existing registered assessee under VAT, CST, and Excise, Service Tax or other taxes being subsumed in GST would be allowed automatic registration under GST on provisional basis valid for 6 months. Final registration would be granted on furnishing necessary details. But it is always preferable

to insist the vendor to migrate/obtain registration under GST in advance to avoid the following problems:

- A. The vendor master of ERP could be updated timely.
- B. In case the vendor is not allowed to registration owing to deficiency in documentations/any other reasons, the credit taken during the period tax charged by him under provisional registration could be questioned. (Though provision is not clear till date as to what would happen under this circumstances).
- C. There is no need of having reconciliation of records on vendor obtaining normal registration post provisional number.
5. Realignment of source of vendor: The factors determining selection of vendors, in past, were largely driven based on indirect tax impact due to many restriction/non-allow ability of credits. However, these considerations may not be determining factors in GST while making vendor selection. Important criteria under GST for vendor selection could be as follows:
 - a. The cost of product/service being offered.
 - b. The quality of product/services being offered.
 - c. The professionalism of vendor in doing the business
 - d. Compliance level (registration, timely raising of invoices, timely payment of taxes and filing of returns etc.) followed by vendors under GST
 - e. Proximity of source of procurement to the place of its usage in case the product/service is critical to the product/services being supplied by company.
 - f. Cost of transportation

This indicates that the tax consideration may not be dominant after GST. Hence, existing vendors selected based on the tax consideration may require relook in GST.

6. Change in procurement/inventory policy: The policy followed by company may require relook in GST especially the policy followed as to inventory holding viz a viz Just in Time (JIT) Purchase considering the fact that accumulation of stock in large quantity could entail blockages of huge working capital. Most of the businesses would prefer to go for JIT purchase in GST with minimum stock in hand.

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