



# ASC Times

All India Taxes Weekly Reference

Vol : June 26-July 02, 2017

Solving  
any **tax**  
puzzle

Tax saving advice  
across all the taxes



## TAXCALENDER

28-04-2017	Quarterly Return Form: DVAT-16 Provision: Rule-28	Filing of returns in electronic form for all dealers including composition dealers, irrespective of turnover
	Form: DVAT - 48 - Provision: Rule-59(4)	Quarterly Filing of WCT-TDS Return for the quarter in which tax has been deducted
	Form: DVAT - 23 - Provision: Rule 35	Filing of Refund claim by organizations
30-06-2017	Income Tax	Last day for filing SFT"statement of financial transaction"
	Income Tax	Last day for filing Return of Equalisation levy in form 1.
	Income Tax	Particulars to be furnished by a contractor responsible for paying any sum to such sub-contractor shall be in Form No. 15J.
	VAT	Quarterly Reconciliation Return for transaction under CST Act - within 3 months from the end of each quarter

## COUNTRY WIDE HOLIDAYS FOR THE WEEK

Date	Region	Festival/Occasion
26-06-2017	Many States	Idul Fitr
01-07-2017	Tripura Only	Karachi Puja

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## From the CEO's Desk



Dear Reader,

The government on Tuesday reiterated its commitment to roll out the Goods and Services Tax (GST) from July 1, despite reservations among industry players, tax experts, and even some State governments about shortage of time to prepare for the new tax regime.

“The Government of India has emphasized that Goods and Services Tax (GST) is scheduled to roll-out on July 1, 2017,” the Ministry of Finance said in a statement.

“The Central Board of Excise and Customs [CBEC] in coordination with the State governments have increased their outreach programmes with regard to GST so as to reach the last trader. The GST formations are being notified shortly. The window for migration to GST Network [GSTN] has re-opened to assist the remaining taxpayers. The preparations are in full swing for a smooth implementation of the landmark tax reform from July 1, 2017,” the statement said.

Revenue Secretary Hasmukh Adhia tweeted on Tuesday, “The rumors about GST implementation being delayed are false. Please do not be misled by it.”

West Bengal Finance Minister Amit Mitra has said the lack of preparation among all stakeholders will

mean that a July 1 rollout of the new tax regime will come with serious problems.

While industry players are complaining that the GST rules have either been finalized too late, or in some cases still not been finalized, several GST Suvidha Providers have voiced their concern over their level of preparedness and that of the GSTN, the IT backbone of the GST.

Alok Kumar Agarwal

CEO

ASC Group.

# CENTRAL TAXES

## SERVICE TAX

### NOTIFICATION / CIRCULAR

### COURT DECISIONS

#### M/s. Fraser and Ross Deloitte Centre, Anchorage-II Versus Commissioner of Service Tax-I CESTAT BANGALORE

**BRIEF:** CENVAT credit - input services - AMC, courier, security, rent and office management services in connection with Chartered Accountant services - Department is of the view that M/s. DHS neither a provider of services such as courier, renting, office management, etc., (they are Chartered Accountants) nor are they registered as input service distributors according to service tax law. Hence, such CENVAT credit availed by the appellant is wrong

**OUR TAKE:** The Appellant Authority held that it is an admitted fact that the appellant have paid the service tax to DHS who in turn has paid the same to the service provider and it is also an admitted fact that the input services have suffered service tax and CENVAT credit can be taken by the appellant and the registration is not a mandatory requirement for claiming CENVAT credit. There is no suppression on the part of the appellant, as the appellants have been filing ST-3 returns for the entire impugned period, which has been admitted by both the authorities and they have disclosed all the facts in the ST-3 returns and therefore, the department is barred from going back and holding that the availment of CENVAT credit by the appellant as incorrect or illegal. **Appeal allowed - decided in favor of appellant.**

#### The Commissioner of Central Excise and Service Tax Versus M/s. 99 Games Online Pvt. Ltd. CESTAT BANGALORE

**BRIEF:** CENVAT credit - denial on the ground that appellant were not registered - time limitation

**OUR TAKE:** The Appellant Authority held that with regard to the availment of CENVAT credit without registration, the issue is squarely covered in favor of the assessee in the case of mPortal India Wireless Solutions Pvt. Ltd. [2011 (9) TMI 450 - KARNATAKA HIGH COURT], where it was held that Registration not compulsory for refund. CENVAT credit with regard to other input services, It was held that the learned

Commissioner (A) has rightly held that Rule 5 of Taxation of Services (Provided from outside India and received in India) Rules, 2006 does not restrict the availment of other input services which have contributed in the provisions of their other output services. With regards to extended period of limitation it was held that the demand is hit by limitation for the period October 2008 to September 2010 because the assessee has not concealed any information from the Department and the Department has failed to bring in any evidence on record to prove that assessee indulged in fraud, suppression of facts, collusion or willful mis-statement with an intend to evade payment of duty - demand set aside. **Appeal dismissed - decided against Revenue.**

#### Merck Specialities Pvt. Ltd. Versus Commissioner of Central Excise, Service Tax And Customs Bangalore CESTAT BANGALORE

**BRIEF:** Distribution of CENVAT credit - Input service - technical consultancy fee - denial on account of nexus - Rule 7 of Cenvat Credit Rules

**OUR TAKE:** The Appellant Authority held that the issue involved in the present case is squarely covered in favour of the appellant by the judgments in the case of Commissioner of Central Excise, Bangalore-I Commissioner ate Versus Ecof Industries (P.) Ltd. [2011 (4) TMI 560 - KARNATAKA HIGH COURT], where it was held that The finding recorded by the Appellate Authority that the assessee is entitled to take credit only in the unit where the product is manufactured is therefore not the mandate of Rule 7 of the Cenvat Credit Rules - **appeal allowed - decided in favor of appellant.**

#### CCE, Hyderabad-IV Versus Inside view Technologies India P. Ltd. CESTAT HYDERABAD

**BRIEF:** Refund claim - various input services - air travel services - Business Support services - Insurance Auxiliary services - Interior Designing consultancy services - Management, maintenance of repair services - Online data Retrieval and Access services - renting of immovable property services - rejection on the ground that the services cannot be considered as input services as per the definition of Rule 2 (I) of CCR 2004

**OUR TAKE:** The Appellant Authority held that there is no dispute as to the fact that the respondent is engaged in export of services for which he is availing the benefit of services provided by service provider and availed CENVAT credit of the service tax paid by such service provider - When

all the conditions of the Notification No. 27/2012-CE (NT) dated 18.06.2012 are satisfied, there appears to be no scope for disallowing CENVAT credit on selected services and holding its refund ineligible - refund allowed - **appeal dismissed - decided against Revenue.**

**M/s. Pala Marketing Co-operative Society Ltd Versus Commissioner of Central Excise, Customs and Service Tax CESTAT BANGALORE**

**BRIEF: Business Auxiliary Services - Joint venture - sharing of consideration**

**OUR TAKE:** The Appellant Authority held that the appellants are not at all liable to pay service tax because as per the agreement between the appellant and their co-venture GIT, the service has already been taxed and the service tax has already been paid by the co-venture and it would amount to taxing the same transaction more than once under the different categories which is not the spirit of law - demand set aside - **appeal allowed - decided in favor of appellant.**

**M/s. Munjal Showa Limited Versus Commissioner of Central Excise & ST, Delhi (Gurgaon) And Vice-Versa CESTAT CHANDIGARH**

**BRIEF: Valuation - royalty - includibility - Revenue is of the view that the said transfer of technical know-how is covered under Intellectual Property Right services - reverse charge mechanism - whether the royalty paid by the appellant-assessee under Industrial Property Right agreement is liable to service tax under Intellectual Property Rights service or not?**

**OUR TAKE:** The Appellant Authority held that to tax under service tax, under Intellectual Property Rights, such rights should be registered with Trademark/ Patent authorities. It is a fact on record that such trade mark is not registered in India - services received by the appellant-assessee are not covered under IPR service, under Section 65 (105) (zr) of the Finance Act, 1994. Therefore, no service tax is payable by the appellant-assessee. Levy of service tax - IPR service - Held that: - the agreement is dated 11.03.2002 whereas the levy of tax under IPR service has come into force on 10.09.2004. As the agreement is executed on 11.03.2002, prior to introduction of IPR Service, the demand of service tax is not sustainable. **Appeal allowed - decided in favor of assessee.**

**Nokia Siemens Network Pvt. Ltd. Versus CCE, Delhi CESTAT CHANDIGARH**

**BRIEF: Wrong availment/utilization of Cenvat Credit - duty paying invoices - invoices were not in the name of their registered premises at Gurgaon - whether the Cenvat Credit**

**taken in respect of invoices of unregistered premises of an assessee can be allowed or not?**

**OUR TAKE:** The Appellant Authority held that the issue is no longer res integra and has been held in the many judgments of this Tribunal in favour of the assessee on the ground that it is remediable defect - reliance placed in the case of M/s. All spheres Entertainment Pvt. Ltd. Versus CCE, Meerut [2015 (8) TMI 953 - CESTAT NEW DELHI], where it was held that In the absence of any such dispute regarding availment of services and their utilization for payment of service tax or proper accounting of the same, the denial of Cenvat Credit of service tax paid by Nainital office of the appellant on the sole ground that the invoices issued are in the name of the appellants unregistered office at Delhi is unjustified. **Appeal allowed - decided in favor of appellant.**

**M/s. Tata Hitachi Construction Machinery Co. Ltd. Versus Commissioner of Central Excise, Jamshedpur And Commissioner of Central Excise & Service Tax, Jamshedpur Versus M/s. Telco Construction Equipment Company Ltd. CESTAT KOLKATA**

**BRIEF: CENVAT credit - input service - Outdoor Catering Services - extended period of limitation - penalty**

**OUR TAKE:** The Appellant Authority held that as per inclusive definition of input service [Rule 2(l)] all activities relating to business are input services. The definition does not say activities relating to business pertaining to manufacture or provision of output services. Thus all input services used in activities relating to business are input services. The appellant assessee is availing outdoor catering services in the canteen as per obligations under Factories Act, 1948. Failure to do so would entail penal consequences under Section 46 of the Factories Act, 1948. Therefore, under the scheme of the Cenvat Credit Rules, 2004, Service Tax paid on all those services which the appellant assessee has utilised directly or indirectly, in or in relation to manufacture of the final products is entitled to claim the credit. **Appeal allowed - decided in favor of assessee.**

**M/s Horizon Group Versus CCE, Chandigarh-II CESTAT CHANDIGARH**

**BRIEF: Event Management Service - non-payment of tax - appellant submits that during the impugned period, the service tax is payable on receipt basis not on the basis of invoices issued by the appellant and on the basis of the demand, the invoices issued by the appellant**

**OUR TAKE:** The Appellant Authority held that during the impugned period, the service tax was payable on receipt basis and in this case demand has been confirmed on the



basis of invoices issued by the appellant - It is not the case of the Revenue that the invoices have been issued and not recorded in the records and received the amount of service provider without showing in the books of accounts - **appeal allowed - decided in favor of appellant.**

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## CENTRAL EXCISE

### NOTIFICATION / CIRCULAR

#### Case laws

**Commissioner of Central Excise, Puducherry Versus M/s. M.R. Krishnamoorthy Co-operative Sugar Mills Ltd. CESTAT CHENNAI**

**BRIEF: Manufacture - whether the fabrication and erection of steel structural by M/s. Saba Engineering Pvt. Ltd. at the site of the respondent amounts to manufacture or not?**

**OUR TAKE:** The Appellant Authority held that the issue was a contentious issue during the relevant period which travelled upto the Larger Bench of the Tribunal and the Larger Bench in the case of Mahindra & Mahindra Ltd. Vs. Commissioner of Central Excise, Aurangabad & Ors. [2005 (11) TMI 103 - CESTAT, NEW DELHI], where it was held that The immovable iron and steel structures not being goods will not fall under Heading 73.08 of the Excise Tariff. The structurals after fabrication become immovable property and not capable of being shifted - The Larger Bench in the above decision has observed that when the structural are fixed to the earth they are not excisable. **Appeal dismissed - decided against Revenue.**

**Merck Specialities Pvt. Ltd. Versus Commissioner of Central Excise, Service Tax And Customs Bangalore CESTAT BANGALORE**

**BRIEF: Distribution of CENVAT credit - Input service - technical consultancy fee - denial on account of nexus - Rule 7 of Cenvat Credit Rules**

**OUR TAKE:** The Appellant Authority held that the issue involved in the present case is squarely covered in favour of the appellant by the judgments in the case of Commissioner of Central Excise, Bangalore-I Commissionerate Versus Ecof Industries (P.) Ltd. [2011 (4) TMI 560 - KARNATAKA HIGH COURT], where it was held that The finding recorded by the Appellate Authority that the assessee is entitled to take credit only in the unit where the product is manufactured is therefore not the mandate of Rule 7 of the Cenvat Credit Rules - **appeal allowed - decided in favor of appellant.**

**M/s Commercial Engineers & Body Builders Co. Ltd. Versus CCE & ST, Bhopal CESTAT NEW DELHI**

**BRIEF: Classification of goods - body building for motor vehicles on chassis falling under CETH 8706 - N/N. 6/2006-CE and 12/2012-CE - Revenue entertained a view that the appellants are engaged only in building or fabricating**

**bodies on the chassis and they do not manufacture motor vehicle but only bodies of motor vehicle - whether such goods cleared by the appellant are classifiable under Heading 8704 as "motor vehicles for transport of goods" or under Heading 8707 as "bodies (including caps) for the motor vehicle of Headings 8701 to 8705"?**

**OUR TAKE:** The Appellant Authority held that the appellants were building bodies on the chassis classified under Heading 8706. Such activity is deemed to be manufacture of a motor vehicle in terms of the above chapter note. A plain reading of the chapter note along with the relevant tariff headings makes it clear that the product cleared by the appellant after body building activity is a "manufactured" motor vehicle. Considering the nature of motor vehicle, which is for transport of goods, the same has to be classified under Heading 8704 - the claim of refund under Rule 5 of CCR, 2004 in Automobile Corporation of Goa Ltd. vs. CCE, Goa [2011 (9) TMI 399 - CESTAT, MUMBAI] held that the independent body builders are manufacturers of body on their own account and, hence, are to be considered as manufacturers of motor vehicle. **Appeal allowed - decided in favor of appellant.**

**The Commissioner of Central Excise Versus M/s. Featherlite Products Pvt. Ltd. MADRAS HIGH COURT**

**BRIEF: Utilisation of CENVAT credit - Whether in the facts and circumstances of the case, the Tribunal was right in coming to the conclusion that the respondent/ Assessee was entitled to avail of, un-utilized cenvat credit in terms of Rule 10 of the CCR, 2004?**

**OUR TAKE:** The Hon'ble High Court held that A mere perusal of sub-Rule (1) would show that transfer of cenvat credit is available to a manufacturer in several situations: First, when the manufacturer of final products, "shifts" his factory to another site. Second, when, the factory is transferred on account of : "change in ownership" or on account of sale, merger, amalgamation, lease or transfer of factory to a joint venture, with specific provision for transfer of liabilities of such factory - It is, in these situations, the manufacturer is allowed transfer of cenvat credit lying un-utilized in his accounts, to such, transferred, sold, merged, leased or amalgamated factory. **Appeal dismissed - decided against Revenue.**

**Commissioner of Central Excise, Chennai Versus Blue Star Ltd. CESTAT CHENNAI**

**BRIEF: Valuation - includibility - whether the ducting which is a sub system of a central air conditioning system is liable to central excise duty?**

**OUR TAKE:** The Appellant Authority held that the ducts are prepared and assembled to facilitate carrying cool air from

the air handling apparatus. Such ducts become a part of the complete central air conditioning plant which is an immovable property - reliance placed in the case of SUVIDHA ENGINEERS (INDIA) LTD. Versus COMMISSIONER OF C. EX., DELHI [2004 (3) TMI 307 - CESTAT, NEW DELHI], where it was held that erection of ducts etc. at site could not be considered "excisable goods" - **appeal rejected - decided against Revenue.**

**Commissioner of Central Excise & ST, Ludhiana Versus M/s. Basant Presses (India) CESTAT CHANDIGARH**

**BRIEF: SSI exemption - use of brand name of others - N/N. 8/2003-CE dated 01.03.2003 - Revenue was of the view that trade mark Basant is owned by M/s. Basant Mechanical Works, Ludhiana and the respondent is not entitled to use the brand name of other firm if they are availing benefit of SSI N/N. 8/2003-CE dated 01.03.2003**

**OUR TAKE:** The Appellant Authority held that the respondent is a proprietary ship concern, who is using the brand name of a partnership concern, where the proprietor of the respondent firm is a partner - the fact of this case are identical to the facts in the case of Elex Industries [2003 (9) TMI 418 - CESTAT, NEW DELHI], wherein this Tribunal has held that if the person who is using the brand name of another firm where he is a Director, Partner or Proprietor then it cannot be said that the assessee is using the brand name of other person - benefit allowed - **appeal dismissed - decided against Revenue.**

**M/s. Venus Home Appliances Pvt. Ltd. Versus CCE & ST, Tirunelveli CESTAT CHENNAI**

**BRIEF: Goods destroyed by fire - demand of duty on the finished goods destroyed in the fire, and in respect of which the appellants had received the insurance compensation - remission of duty**

**OUR TAKE:** The Appellant Authority held that In the absence of any dispute that there was damage and loss of the finished products or in the absence of any dispute of the fact that the appellants have paid back the CENVAT credit availed on the inputs and have paid duty in respect of salvaged waste and scrap, confirmation of demand of duty on the lost final products cannot be upheld. Filing of a remission application is only a procedural aspect and the prayer to remit the duty can be made by an assessee even while defending himself in the demand proceedings. Extended period of limitation - Held that: - the entire facts were in the knowledge of the Revenue. The reasoning of Commissioner (Appeals) that the appellant had not given the estimate of the goods lost in the fire cannot be equated with any suppression or mis-statement with malafide intention so as

to justifiably invoke the larger period of limitation - demand beyond normal period not sustainable. **Appeal allowed - decided in favor of appellant.**

#### **M/s. Ajinomoto India Pvt. Ltd. Versus CCE, Chennai CESTAT CHENNAI**

**BRIEF:** SSI exemption - use of brand name of others - Revenue was of the view that trademark AJI-NO-MOTO is exclusive property of M/s. AJI-NO-MOTO Co. Inc. Japan, and as appellant used the said trade name, they are not eligible for exemption - whether as per the Trademark License Agreement, the appellants have become the owner of the trademark?

**OUR TAKE:** The Appellant Authority held that the appellants have been given license to use the trademark on payment of royalty which is fixed at 1% of the net sale of the product cleared bearing the trademark and sold by the appellant. This clearly indicates that the appellants have obtained the right over the trademark and therefore the allegation that they are clearing the goods in the name of another person will not sustain - **demand set aside - appeal allowed - decided in favor of appellant.**

#### **International Paper APPM Ltd. Versus CCE & ST, Visakhapatnam CESTAT HYDERABAD**

**BRIEF:** Applicability of provision of Rule 16B and 16C of CER, 2002 - permission to clear the goods under provisions of Rule 16B without payment of duty to their sister concern

**OUR TAKE:** The Appellant Authority held that If there is no dispute that conversion of reels to reems is amounting to manufacture, then transfer or clearance of reels by the appellant to their own sister concern is not clearance of finished excisable goods and the rule 16B would be directly applicable. The provision of rule 16-B of Central Excise Rules are in the nature of facilitation for movement of further activity, which should not be denied for technicalities - The provision of rule 16-B of Central Excise Rules are in the nature of facilitation for movement of further activity, which should not be denied for technicalities - **appeal allowed - decided in favor of appellant.**

## CUSTOMS

### NOTIFICATION / CIRCULAR

**Notification No. 10/2015-2020 new Dated: 22-6-2017**

Prohibition on import of milk and milk products from China

**Notification No. 31/2017 ADD new Dated: 22-6-2017**

Seeks to impose anti-dumping duty on imports of sewing machine needles originating in or exported from China PR

**Notification No. 55/2017 Cus (NT) new Dated: 21-6-2017**

India-Malaysia Comprehensive Economic Cooperation Agreement (Bilateral Safeguard Measures) Rules, 2017

### Case laws

#### **M/s. Venus Home Appliances Pvt. Ltd. Versus CCE & ST, Tirunelveli CESTAT CHENNAI**

**BRIEF:** Goods destroyed by fire - demand of duty on the finished goods destroyed in the fire, and in respect of which the appellants had received the insurance compensation - remission of duty

**OUR TAKE:** The Appellant Authority held that In the absence of any dispute that there was damage and loss of the finished products or in the absence of any dispute of the fact that the appellants have paid back the CENVAT credit availed on the inputs and have paid duty in respect of salvaged waste and scrap, confirmation of demand of duty on the lost final products cannot be upheld. Filing of a remission application is only a procedural aspect and the prayer to remit the duty can be made by an assessee even while defending himself in the demand proceedings. Extended period of limitation - Held that: - the entire facts were in the knowledge of the Revenue. The reasoning of Commissioner (Appeals) that the appellant had not given the estimate of the goods lost in the fire cannot be equated with any suppression or mis-statement with malafide intention so as to justifiably invoke the larger period of limitation - demand beyond normal period not sustainable. **Appeal allowed - decided in favor of appellant.**

#### **Commissioner of Customs Hyderabad Versus M/s. Sree Krishna Enterprises CESTAT HYDERABAD**

**BRIEF:** Refund of SAD - rejection on the ground that refund claims were filed after the expiry of one year as stipulated in N/N. 102/2007-Cus as amended by N/N. 93/2008-Cus dt. 01/08/2008

**OUR TAKE:** The Appellant Authority held that The clauses of N/N. 93/2008, specifically states that the importer shall file a claim for refund of the said additional duty of customs paid



on the imported goods with the jurisdictional customs officer before the expiry of one year from the date of payment of the said additional duty of customs - the respondent had filed refund claims on 26/03/2014 while the duties were paid in respect of one Bill of Entry on 26/03/2013 and in respect of another on 21/03/2013 - refund rejected. The provisions of the General Clause Act, 1897 does indicate that the day on which the duty has been paid has to be excluded for arriving at the period of one year for filing of the refund claims - in this case, the date of payment of duty i.e. 26/03/2013 has to be excluded for computing the period of one year as per the N/N. 93/2008 **Appeal allowed - decided partly in favor of appellant.**

#### **Shiv Associates Versus Commissioner of Customs (Seaport-Imports) CESTAT CHENNAI**

**BRIEF: Valuation of imported goods - used offset printing machines along with standard accessories - enhancement of value of the imported goods in terms of local Chartered Engineer opinion**

**OUR TAKE:** The Appellant Authority held that local Chartered Engineer was not in possession of any additional information to decide the valuation. Virtually, he has not given any reference to the technical manual or information based on which value of the machines have been reassessed. In fact, the local Chartered Engineer has indicated the year of manufacture as 1984 as against 1975 by the Chartered Engineer at load port. Admittedly, the imported goods are more than 10 years old in terms of Import Trade Control Regulations in EXIM 2002-07 read with para 3.3 of the Handbook of Procedures of Vol-I. The importers have violated the provisions of Foreign Trade (Development and Regulation) Act, 1992. The goods are therefore liable for confiscation under Section 111 (d) of the Customs Act, 1962 - redemption fine reduced to ₹ 1,00,000/- - penalty u/s 112 (a) reduced to ₹ 50,000/-. **Appeal allowed - decided partly in favor of appellant.**

#### **Mach Aero Components Pvt. Ltd. Versus Commissioner of Customs and Service Tax, Bangalore CESTAT BANGALORE**

**BRIEF: Refund of CENVAT credit - royalty - Scientific and Technical Consultancy Services - rejection on the ground that the appellants have not furnished any evidence to show that credit has been availed on the input service and the consultancy service received is not related to the appellants business of manufacture of goods**

**OUR TAKE:** The Appellant Authority held that the appellants have made a full disclosure of the cenvat credit availed and the same has been shown in ST-3 Returns. Since the appellant is into an export of manufactured goods, therefore

he has shown the cenvat credit in ST-3 Returns and not disclosed the credit in ER-2 Return which is only a procedural requirement and does not disentitle him for the refund - the said service falls in the definition of input service under Rule 2(l) of Cenvat Credit Rules as the same is related to the business of the appellant - **refund allowed - appeal allowed - decided in favor of appellant.**

#### **CC (Port- Export) , Chennai Versus Shri P. Illangovan, Shri V. Sridharan CESTAT CHENNAI**

**BRIEF: Penalty on partner and employee of CHA - Export of prohibited goods - invocation of section 114 (i), 114AA, 117 of the CA, 1962**

**OUR TAKE:** The Appellant Authority held that Tribunal in the case of Syndicate Shipping Services Pvt. Ltd. Vs. CC, Chennai [2003 (3) TMI 158 - CEGAT, CHENNAI] has held, in identical circumstances, that the CHA cannot be penalized under the Customs Act, in the absence of any positive evidence on record to show any malafide intention on his part or to establish him as an abettor. Mere failure in carrying out duties in accordance with law cannot be held to be a sufficient ground for imposition of penalty upon him - **appeal rejected - decided against Revenue.**

#### **M/s. Roochees Time Pvt. Ltd. & Others Versus. C.C.E. Jaipur CESTAT NEW DELHI**

**BRIEF: Whether, before finalization of Bill of Entry, which was provisionally assessed under Section 18 ibid, can the Department proceed against the importer to confirm the differential duty demand and for imposition of penalty?**

**OUR TAKE:** The Appellant Authority held that Section 28 of the Act contemplates issuance of SCN for recovery of duties which were not levied or short levied. For issuance of SCN under such statutory provision, the duty liability is required to be ascertained by the proper officer - In the present case, since the assessment is provisional and the proper duty liability has not been quantified/ ascertained as per the provisions of Section 18 ibid, there is no question of short levy or non-levy of duty - the proceedings initiated u/s 28, which culminated in the impugned order dated 17.12.2013, will not be sustainable. Hon'ble Supreme Court in the case of ITC Ltd. [2006 (10) TMI 149 - SUPREME COURT OF INDIA] held that proceedings under Section 11 A of the CEA, 1944 (perimateria with Section 28 ibid) cannot be initiated without completing the assessment proceedings - Since the present proceedings were initiated u/s 28 ibid before finalization of the assessment, the same is not maintainable. **Appeal allowed - decided in favor of appellant.**

# INCOME TAX

## NOTIFICATION / CIRCULAR

### Case laws

#### **M/s Akash Enterprises Versus Income Tax Officer, Ward-4 (1), Thane, And Vice-Versa ITAT MUMBAI**

**BRIEF: Disallowance of deduction u/s 80IB(10)- period of completion of project**

**OUR TAKE:** The Appellant Authority held that the project was completed within the stipulated period, applied within time by the assessee and if there is a delay in issuing the same by the competent authority, the assessee cannot be penalized. Even in the assessment order/impugned order, there is no mention that the project was not completed. The assessee cannot be expected to fulfil the conditions which are beyond his control. The assessee applied for completion certificate on 03/10/2007, addressed to the Executive Engineer (CIDCO) (VVSR) for the concerned project, it can be inferred that the assessee completed the project within time, against the sanction plan, therefore, we direct the Assessing Officer to grant the claimed deduction to the assessee. - **Decided in favour of assessee.**

#### **M/s Shree Sachdhanand Developers Versus Addl. Commissioner of Income Tax-Range-3, Thane ITAT MUMBAI**

**BRIEF: Unexplained cash credit u/s 68 - proof of creditworthiness of the creditors and genuineness of the lenders**

**OUR TAKE:** The Appellant Authority held that AO examined six persons only and accordingly made addition by forming the opinion that the loans taken by the assessee were non-genuine and bogus. It is also undisputed fact that the AO has allowed interest on these borrowings amounting to ₹ 7,78,282/- during the year. While making the addition of money borrowed from these parties as being bogus and non-genuine. Similar deduction in respect of interest on these unsecured loans was also allowed in the subsequent years. Now it is very strange that how the AO has accepted the transaction in part by allowing the interest on these loans while making the addition for the amount of loans by treating the same as non-genuine and bogus under section 68 of the Act. Moreover, these loans were repaid by account payee cheques in the subsequent years and no more outstanding in the books of account of the assessee. The identity of the creditors have not been doubted whereas the creditworthiness of the creditors and genuineness of the lenders seems to be doubted which becomes meaningless and absurd in the present case as the AO has allowed

interest on the borrowed funds in the current years and also in the subsequent years and therefore the order of the Id.CIT(A) confirming the addition u/s 68 in respect of 31 creditors is not correct and cannot be sustained. - **Decided in favour of assessee.**

#### **Shri Harish Pesswani Versus ITO-3 (2) –Bhopal ITAT INDORE**

**BRIEF: Addition on unexplained cash deposit - source of cash - peak theory applicability**

**OUR TAKE:** The Appellant Authority held that there are four bank accounts of the assessee viz : two are with BOB at Vidhisha , one is BOB Habibganj, and other one is with Axis Bank. It is noticed that the assessee has made withdrawal of cash from one bank account and same is claimed to have been deposited with other bank account in cash. The assessee has filed cash flow statement in respect by merging all four accounts therein which explains the cash deposits. The peak amount as per cash flow statement comes to NIL. However, if we considered the individual bank account and cash deposit therein , then there would be some amount on account of peak, therefore, in such a case where no books of accounts are maintained the peak theory is best method to assess the actual income earned from such transactions. We find it appropriate to send this issue back to the file of the AO to examine the cash flow statement in the light of explanation as offered in respect of each and every entry and peak theory. The will calculate the peaks of each bank accounts separately.

**Addition as investment in property –** It was held that the assessee had withdrawn a sum of ₹ 1,50,000 as reflected as Paper Book Page No. 42 of cash flow statement. Out of this an amount of ₹ 35,000 was paid in cash on ₹ 49000 was paid in cash on towards purchase of property. Thus, the source of cash payment of ₹ 84,000 is explained. Hence, addition of ₹ 84,000 is deleted. **This grounds of appeal is allowed.**

#### **Shri V. Ramu Versus The Income Tax Officer, Ward – 1 (2) , Pudukottai ITAT CHENNAI**

**BRIEF: Non granting of interest on the tax deducted at source u/s 244A(a) - assessee contented in the proceedings U/s.154 interest should be granted right from first April 2004 till the date of passing the order - whether no claim of exemption U/s.10(10C) in the original return of income?**

**OUR TAKE:** The Appellant Authority held that as in the case of Tata Chemical Limited 2014 [2014 (3) TMI 610 - SUPREME COURT] held that. "Refund due and payable to the assessee is debt-owed and payable by the Revenue. The Government, there being no express statutory provision for payment of interest on the refund of excess amount/tax collected by the Revenue, cannot shrug off its apparent obligation to

reimburse the deductors lawful monies with the accrued interest for the period of undue retention of such monies. The State having received the money without right, and having retained and used it, is bound to make the party good, just as an individual would be under like circumstances. The obligation to refund money received and retained without right implies and carries with it the right to interest." In View of the above it is settled that if a resident deductor is entitled for the refund of tax deposited under Section 195, then it has to be refunded with interest under section 244A of the Act. from the date of payment of such tax.

#### **B.A. Mohota Textiles Traders Pvt. Ltd. Versus The Deputy Commissioner of Income-tax, Special Range-2, The Commissioner of Income-tax BOMBAY HIGH COURT**

**BRIEF: Capital gains tax - eligible transfer - transaction of transfer of shares by the assessee company in pursuance of family arrangement - assessee/company has a corporate veil**

**OUR TAKE:** The Hon'ble High Court held that in the present case, we are not concerned with the members of Mohota family who were parties to the family settlement, but with transfer of share done by the Company incorporated under the Companies Act having separate/independent corporate existence, perpetual succession and common seal. This Company is independent and distinct from its members. The rationale for Section 47(v) of the Act in excluding a transfer of the entire share capital of a subsidiary to its holding company which owns 100% of its shares from being considered a transfer. In the present facts, we are not concerned with transfer between holding and subsidiary companies. It is not the case of the appellant that Section 47 of the Act is applicable. Further, lifting of corporate veil at the instance of the assessee would mean that it is denying its corporate existence. This, after taking advantage of the separate existence of a Company under the Act. Therefore, after having incorporated the Limited Company and given it separate existence from its share holders, it is not open to the Company to urge "Please ignore my separate existence and look at the persons behind me." If that be so, the Appellant/Company must opt for voluntarily winding up and then the shares being allotted to the individual members on liquidation would be governed by the family arrangement/settlement. Thus the Tribunal was correct in holding that the transaction of transfer of shares by the independent corporate entity was assessable to capital gain tax. - **Decided in favour of the respondent/revenue and against the appellant/assessee.**

#### **Principal Commissioner of Income Tax, Cental Versus Income Tax Settlement Commission & 1 GUJRAT HIGH COURT**

**BRIEF: Validity of order passed by the Settlement Commission u/s 245D - additional disclosure of income**

**OUR TAKE:** The Hon'ble High Court held that It is true that before the Settlement Commission, the assessee indicated that the additional disclosure of ₹ 50 lakhs each may be accounted for the assessment year 2014-15. However, we cannot lose sight of the fact that such disclosures were, as noted above, in the spirit of settlement and to put an end to the controversy. The assessee therefore cannot be pinned down to the effect of such disclosures in the year 2014-15 alone. We cannot fragment a larger picture and telescope the additional disclosures for a particular year and taking into account the comparable figures for that year decide whether such disclosures would shake the initial disclosures as to apply the ratio laid down by the Supreme Court in case of Ajmera Housing (2010 (8) TMI 35 - SUPREME COURT OF INDIA ) and to hold that the initial disclosures themselves were untrue projecting the additional disclosures for all years the assessee had sought settlement, we find the Commission committed no error in accepting them and in proceeding to pass final order on such settlement applications.

#### **Takshashila Realties Pvt Ltd Versus Deputy Commissioner of Income Tax Circle4 (1) (2) & 2 GUJRAT HIGH COURT**

**BRIEF: Validity of Special audit u/s 142(2A) - multiplicity of transactions in the account or specialized nature of the business activities of the assessee - introduction of land and revaluation of the same - successions/ conversion of firms to a company, treatment of capital account of partners as loan**

**OUR TAKE:** The Hon'ble High Court held that After giving fullest opportunity to the petitioner and after dealing with the objections raised by the petitioner and thereafter having obtained the approval from the Principal Commissioner who has granted the approval after considering the material on record and thereafter when the Assessing Officer has passed the order of Special Audit considering the specialised nature of the business activities of the assessee and the multiplicity of transactions, it cannot be said that the Assessing Officer has committed any error. Merely because the assessee along with the return of income submitted a Statutory Audit Report and Tax Audit Report, considering section 142(2B) of the IT Act, the order of Special Audit under Section 142(2A) of the IT Act cannot be said to be invalid. Thus considering the scope and ambit of Section 142(2A) of the IT Act, it cannot be said that in the facts and circumstances of the

case, the respondent has committed any error and/or any illegality while passing the order under Section 142(2A) of the IT Act. - **Decided against assessee.**

capital gain account with the bank. See Humayun Suleman Merchant (2016 (9) TMI 70 - **BOMBAY HIGH COURT**) - **Decided against assessee.**

#### **Rama Kapur Versus ACIT, Circle 22 (1) , New Delhi ITAT DELHI**

**BRIEF: Penalty u/s 271(1)(c) - Omission in offering the capital gains to tax**

**OUR TAKE:** The Appellant Authority held that The penalty order is woefully silent on the issue as to how this satisfaction of concealment/furnishing of inaccurate particulars was arrived at. The Ld. CIT (A) has also not examined the issue in detail but has simply confirmed the penalty by relying on the findings of the AO. It is undisputed that the assessee is an old lady who was recently widowed and it was for the very first time that she was filing her return of income without being assisted by her husband. It is equally undisputed that it was not mandatory for her to maintain regular books of accounts. It is equally undisputed that the assessee had accepted the mistake and had provided an explanation which appears plausible but the AO has not recorded a finding that the explanation furnished by the assessee was a false explanation. Thus, the explanation of the assessee, under the circumstances, cannot be said to be not bona fide. A mere omission in offering the capital gains to tax would not ipso facto reflect concealment of income or furnishing of inaccurate particulars of income in terms of Section 271(1)(c) of the Act - **Decided in favour of assessee.**

#### **Shri Ravi Kant HUF, Mohanlal Jain & Co., Versus Income Tax Officer, Ward-23 (4) , Mumbai ITAT MUMBAI**

**BRIEF: Disallowance of exemption u/s 54 - non deposit unutilized amount in the capital gain account before the due date of furnishing of return u/s 139(1)**

**OUR TAKE:** The Appellant Authority held that The assessee shall be entitled for deduction u/s 54 to the extent the amount is invested by the assessee in purchase/construction of the new asset till the date of furnishing of return by the assessee on 31/03/2009, for which the Assessing Officer is directed to allow the deduction in accordance with our aforesaid directions. The assessee shall not be entitled for deduction u/s 54 on the amount, which has been deposited in capital gain account maintained with the bank beyond the due date of furnishing of return of income u/s 139(1) of the Act. As in the instant case assessee has not deposited the unutilized amount in the capital gain account before the due date of furnishing of return u/s 139(1) and hence as per section 54(2), no deduction shall be allowed to the assessee with respect to the deposits of ₹ 60 lakhs made with the

# State Level Taxes

## ALL INDIA VAT

NOTIFICATION / CIRCULAR

Case laws

M/s. Sri Balaji Traders Versus State of Karnataka  
KARNATAKA HIGH COURT

**BRIEF:** Validity of reassessment order - Section 39 of the Act - tax liability having been paid with compounding fee under Sections 79 & 82 of the Act on the basis of assessment proceedings u/s 38

**OUR TAKE:** The Hon'ble High Court held that on the basis of the information and evidence gathered in the course of survey under Section 52 of the Act, the assessing authority has option to proceed under Section 39 of the Act, but it cannot do so once the regular assessment under Section 38 of the Act on the basis of the same evidence and material collected by him during the course of such survey is already made by it. The Revenue has failed to point out any other material on record on the basis of which the assessing authority could be said to have any reason to reject the books of accounts maintained in the ordinary course of business and pass reassessment order on the basis of best judgment. Mere affirmation of the reassessment order passed by the assessing authority under Section 39 of the Act by the two higher appellate forums does not deter us from holding that the very initiation of the reassessment proceedings without any further incriminating material was illegal. Revision petition allowed - decided in favor of assessee.

# GST ALERTS

## Anti Profiteering Rules, 2017

[Section 171](#) of the [Goods and Services Tax Act, 2017](#) ('Act' for short) provides for anti-profiteering measure. [Section 171\(1\)](#) provides that any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices. [Section 171\(2\)](#) provides that the Central Government may, on the recommendations of the Council, by notification, constitute an Authority, or empowering an existing Authority constituted under any law for the time being in force, to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him. [Section 171\(3\)](#) provides that the Authority shall exercise such powers and discharge such functions as may be prescribed.

In the Council Meeting held on 18.06.2017 the GST Council approved the [Anti-Profiteering Rules, 2017](#) ('Rules' for short). This Act is applicable to the whole of India except Jammu and Kashmir.

## National Anti-profiteering Authority

[Rule 2\(d\)](#) defines the term 'Authority' as the National Anti-profiteering Authority constituted under [Rule 3](#). The Authority shall consist of a Chairman and four technical members. The Chairman shall be a person who holds or held a post equivalent in rank to a Secretary to the Government of India. The Technical members shall be the persons who are or have been Commissioners of State tax or Central Tax or to have held an equivalent post under the existing law to be nominated by the Council. The Additional Director General of Safeguards shall be the Secretary to the Authority

## Tenure of the Authority

[Rule 18](#) provides that the Authority shall cease to exist after the expiry of two years from the date on which the Chairman enters upon his office unless the Council recommends otherwise. The Chairman shall hold office for a term of 2 years from the date he enters into his office or until he attains the age of 65 years, whichever is earlier. He shall be eligible for re-appointment. A person shall not be selected as the Chairman if he has attained the age of 62 years.

The Technical Member shall hold office for a term of 2 years from the date on which he enters upon his office or until he has attained the age of 65 years whichever is earlier. He shall be eligible for reappointment. A person shall not be selected as a Technical Member if he has attained the age of 62 years.

### Appointment

The Chairman and Members of the Authority shall be appointed by the Central Government on the recommendations of a Selection Committee to be constituted for the purpose by the Council.

### Salary, allowances

The Chairman shall be paid a monthly salary of ₹ 2,25,000/- (fixed) and other allowances and benefits as are admissible to a Central Government officer holding posts carrying the same pay. Where a retired officer is selected as a Chairman, he shall be paid a monthly salary reduced by the amount of pension.

The Technical member shall be paid a monthly salary of ₹ 2,05,400 and other allowances as admissible. Where a retired officer is selected as a Technical Member, he shall be paid a monthly salary of ₹ 2,05,400 reduced by the amount of pension.

### Duties of the Authority

The Authority is-

- to determine whether any reduction in rate of tax on any supply of goods or services or the benefit of the input tax credit has been passed on to the recipient by way of commensurate reduction in prices;
- to identify the registered person who has not passed on the benefit of reduction in rate of tax on supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices;
- to order-
  - reduction in prices;
  - return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of 18% from the date of collection of higher amount till the date of return of such amount; or
  - recovery of the amount not refund in case the eligible person does not claim return of the amount or is not identifiable and depositing the same in the Fund referred to in [section 57](#);
  - imposition of penalty as prescribed under the Act; and
  - cancellation of registration under the Act.

The Authority may determine the methodology and procedure for determination as to whether the reduction in rate of tax on the supply of goods or services or the benefit of input tax credit has been passed on by the registered person to the recipient by way of commensurate reduction in prices.

### Standing Committee and Screening Committee

[Rule 4\(1\)](#) provides for the constitution of a Standing Committee on Anti-profiteering. This committee shall consist of officers of the State Government and Central Government as may be nominated by it.

[Rule 4\(2\)](#) provides that a State level Screening Committee shall be constituted in each State by the State Governments. This Committee shall consist of one officer of the State Government to be nominated by the Commissioner and one officer of the Central Government, to be nominated by the Chief Commissioner.

### Examination of application

The Standing Committee shall, within a period of 2 months from the date of receipt of written application from an interested party or from a Commissioner or any other person, examine the accuracy and adequacy of the evidence provided to determine whether there is prima facie evidence to support the claim of the applicant that the benefit of reduction in rate of tax on any supply of goods or services or the benefit of input tax credit has not been passed on to the recipient by way of commensurate reduction in prices. The State level Screening Committee shall first examine the applications of local nature and if it is satisfied that the supplier has contravened the provisions of [section 171](#), forward the application with its recommendations to the Standing Committee for further action.

### Further proceedings

The following are the further proceedings-

- The application shall be referred to Director General of Safeguards for a detailed investigation;
- The Director General of Safeguards shall conduct investigation and collect evidence to determine whether the benefit of reduction has been passed on the recipient by way of commensurate reduction in prices;
- The DG shall send a notice to the interested parties for furnishing the following information-
  - the description of the goods or services for which the proceedings have been initiated;

- summary of the statement of facts on which the allegations are based; and
- the time limit allowed to the interested parties and other persons who may have information related to the proceedings for furnishing their reply;
- The DG may also issue notices to any other person for fair inquiry in this matter;
- The DG shall make available the evidence to the other parties;
- The DG shall complete the investigation within a period of 3 months of receipt of reference from the Standing Committee or within such extended period of further 3 months;
- The DG may seek opinion of any other agency or statutory authorities in discharge of his duties;
- On completion of investigation, the DG shall submit a report to the Authority.

### **Order of Authority**

[Rule 14](#) provides that the Authority shall, within a period of 3 months from the date of receipt of the report from the DG determine whether a registered person has passed on the benefit of reduction in rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices. The Authority may order, after giving reasonable opportunity to the parties-

- reduction in prices;
- return to the recipient, an amount equivalent to the amount not passed on way by of commensurate reduction in prices along with interest @ 18% from the date of collection of the higher amount till the date of return of such amount or recovery of the amount including interest and depositing the same in the consumer welfare fund.
- Imposition of penalty as prescribed in the Act; and
- Cancellation of registration under the Act.

If the Members differ in opinion on any point the same point shall be decided according to the opinion of the majority.

### **Compliance**

[Rule 16](#) provides that any order passed by the Authority shall be immediately be complied with by the registered person. If he does not comply action shall be initiated to recover the amount.

The Authority may require any authority of central tax, State tax or Union territory tax to monitor implementation of the order passed by it.

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