ASC Times

All India Taxes Weekly Reference

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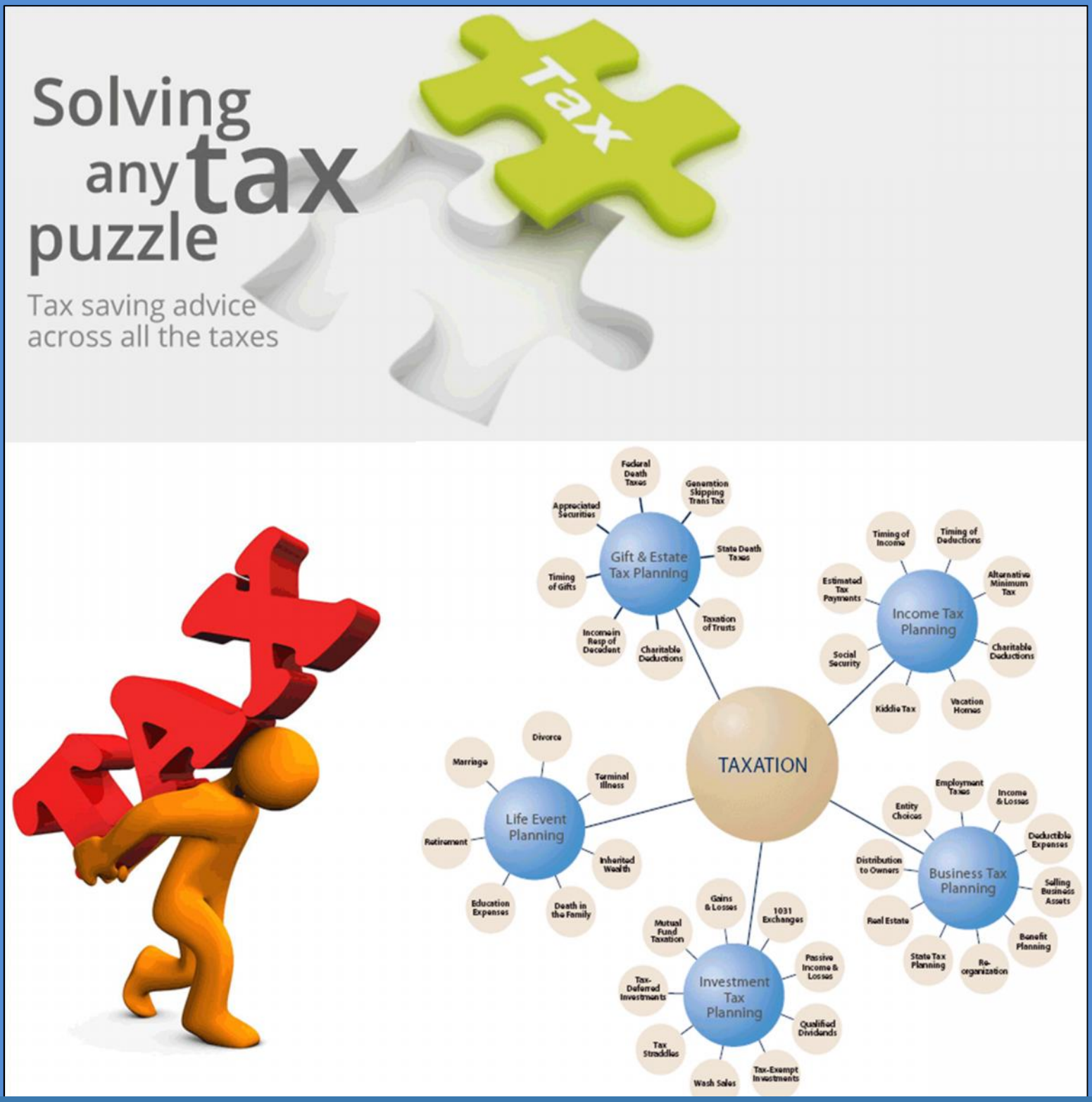

TAXCALENDER

06-06-17	Service tax Payment	Monthly payment of Service Tax Charged
	Excise Duty Payment	Monthly - payment of Central Excise Duties
07-06-17	TDS Payment	Monthly payment of TDS Deducted
	Delhi-VAT	Issue of TDS certificates for the tax deducted at source
	TCS Payments	Monthly payment of TCS u/s 206C
	TDS/TCS Declaration	Last date of submission of declaration i.e., for no TCS u/s 206C(1A) or No or lower TDS deduction
10-06-17	Monthly Return of Excise	Last Date for filing of Return of Central Excise and Cenvat Credit for the previous month
15-06-17	Income tax Payment	Advance Tax payment
	D-VAT	Deposit of tax deducted at source during the previous month
	PF/ESI	Monthly Payment of PF/ESI Contribution
	TDS/TCS Return	Quarterly Statement of collection of tax at source (TCS/TDS) for the Quarter Ending March 31.

COUNTRY WIDE HOLIDAYS FOR THE WEEK

15-06-17	Raja Sankranti	Odissa
09-06-17	Sant Guru Kabir Jayanti	Chhattisgarh, Haryana , Himachal.

INDEX GUIDE

From the CEO's Desk

Dear Reader,

In today's new economy, knowledge and information have become the main production factor. In this context, innovation and technical progress have a major contribution to the durable economic development. The electronic commerce is the key for enterprises' competitivity in this informational era, insuring the access to new market segments, increasing the speed of developing business, the increased flexibility of commercial policies, decreasing the provisioning, sale and advertising costs, simplifying the procedures etc. The impact of the electronic commerce upon the companies and upon society will be of great importance both as extent and as intensity. This study aims to establish the ways of making the Internet trade activities more effective and the possibilities by which this kind of activity contributes to the economic development and becomes a growth factor for companies' competitiveness.

With the recently concluded, significant Goods & Services Tax (GST) Council meeting, held at Srinagar, final list of GST rates on goods and services out, GST is now at the doorstep to implementation. The Government has made sure to keep 81% of the total items of the list below the tax rate of 18% including the daily necessities. In the services tax rate list, basic services of healthcare and education are out of the GSTgamut. In this revolutionary move to make Indian economy, as one of the most integrated and successful economies at the global fora, Indian government has enacted and implemented various reforms confirming economic growth, social engineering, equitable opportunities, simplified taxation mechanism, advanced e-governance, empowerment of masses and cutting edge technological developments in the country. The introduction of Goods and Services Tax, as scheduled on July 1, 2017, is expected to support the remarkable GDP expansion for the current fiscal year. As per the reports of International Monetary fund, India's growth forecast envisages a faster growth going forward with the implementation of GST registering a figure around 7.5% in the financial year 2017-2018. GST is an essential contributory factor for the growth of Indian economy. At one end, where dozen of central and state taxes would be merged into one tax while helping the country to integrate into one market; at another end, the uniform taxation would reduce the cost of products and services, and thereby justifying the worth spent by the consumer and efforts endowed by the manufacturer. This makes GST, a win-win transformation for all the stakeholders including government, consumer, manufacturers, professionals and alike. Well quoted by Charles Darwin, "It is not the strongest species that survive, nor the most intelligent, but the most responsive to change". Therefore, with implementation of goods and services tax just around the corner, enterprises are looking for professional expertise for aligning their business systems with Goods and Services Tax. This makes the professionals key participants for ensuring smooth and directed implementation of GST

Alok Kumar Agarwal

CEO

ASC Group.

CENTRAL TAXES

SERVICE TAX

NOTIFICATION / CIRCULAR

COURT DECISIONS

M/s TVS Motor Company Ltd. Versus Commissioner of Central Excise& Service Tax Mysore - CESTAT BANGALORE

BRIEF: Refund claim - denial on the ground of non-realization of foreign exchange and treating that the same was sanctioned erroneously

OUR TAKE: The Appellant Authority held that the orders-in-original sanctioning the refund have already attained finality and the Revenue has not filed any appeal against the sanctioning of the refund order and the Revenue wants to recover the erroneously sanctioned refund by parallel proceedings by issue of SCN which is not permitted under law.

The appellant has also produced a copy of the agreement between his dealers by which the appellants are under obligations to supply parts under free warranty replacement then in that case, no monetary consideration flow from the buyer and therefore the department's view that bank realization certificate has not been produced is not justified ground for denial of refund.

Appeal allowed - decided in favour of appellant.

N.K. Bhasin Versus Union of India, Through Secretary, Ministry of Finance & Others - ALLAHABAD HIGH COURT

BRIEF: Renting of immovable properties - case of petitioner is that they were landlords or tenants of leased premises and contended that they could not have been saddled with liability of service tax inasmuch as it amounts to tax on 'land' hence was outside legislative competence of Parliament inasmuch as 'land' is an item covered under Entry 49 List II Schedule VII of Constitution of India and within exclusive domain of State Legislature, therefore imposition of service tax on land, by Parliament was ultra vires

OUR TAKE: The hon'ble high court held that Division Bench of Delhi High vide judgment in Home Solutions Retail India Limited [2009 (4) TMI 14 - DELHI HIGH COURT] held that Section 65(105) (zzzz) does not in terms entail that renting out of immovable property for use in the course or furtherance of business of commerce would by itself constitute a taxable service and be exigible to service tax under the said Act. While interpreting circular, it was found obnoxious and beyond the said provision. Court therefore, struck down the same. - Appeal against the decision of Delhi HC is pending before SC. - Subsequently parliament amended the provisions with retrospective effect. Petition fails **- decided against petitioner.**

M/s. Continental Mercantile Corporation Versus Commissioner of Service Tax, Mumbai-I - CESTAT MUMBAI

BRIEF: Manpower recruitment agency - appellant also providing the services abroad for which they are of the belief that it is export of service and accordingly, no service tax was paid - case of Revenue is that the service provided in abroad is not export of service for the reason that in some of the cases though the service charge was received in foreign currency but DFRC was not submitted. In some of the cases, the service charge was received in Indian Rupees

OUR TAKE: The Appellant Authority held that as per the statutory provision, the only requirement is that against the export of service payment should be in convertible foreign exchange. If that is satisfied even though the DFRC is not submitted the status of the export cannot be rejected as DFRC is only a procedural requirement. If otherwise it is established the payment was received in foreign exchange the same is to be accepted as an export of service - As regards the cases where the payment was received in Indian Rupees we find that there is no dispute that the payment though in Indian Rupees but received through foreign banks i.e. HSBC, Bank of Bahrain and Kuwait.

On both counts when the payment received in foreign exchange as well as payment received in Indian Rupees, but through foreign banks the services provided in abroad is indeed export of service - demand set aside - appeal allowed **- decided in favor of appellant.**

Hemanth Trading Co Versus Commissioner of Central Excise, Customs and Service Tax Mysore - CESTAT BANGALORE

BRIEF: SSI exemption - Benefit of N/N. 6/2005-ST dt. 01/03/2005 - denial on the ground that the services

rendered were under a brand name or trade name of another person

OUR TAKE: The Appellant Authority held that appellant did not engage a consultant and make an effective rebuttal before the original adjudicating authority. The adjudicating authority also did not go through the books of accounts submitted by them but went ahead with the confirmation of the service tax demand. When the issue was agitated before the Commissioner(Appeals), he records in his order that the appellant did not make their defence submission with material and evidences in support before the original adjudicating authority - the issue remanded to the original adjudicating authority for a de novo decision - **appeal allowed by way of remand.**

M/s Netcracker Technologies Solutions India Pvt. Ltd. Versus CC, CE & ST. Hyderabad-IV - CESTAT HYDERABAD

BRIEF: Refund of cenvat credit - export of services - rent-a-cab services - General Insurance Services - Rule 5 of the CCR, 2004 - N/N. 27/2012-CE (NT) dated 18.06.2012 - denial on the ground that the said services are utilised for insuring the premises of the appellant and other properties of the appellant

OUR TAKE: The Appellant Authority held that the travel was not for personal purpose or for leave, vacation or home travel concession. Thus, such travel undertaken by the employees are not used primarily for personal use or consumption of any employee. Therefore the exclusion part of the definition does not apply for the service availed for travel insurance of the employees in the present case. Therefore, the credit availed on such services is held to be eligible.

The appellants are entitled for refund of the amount incurred on General Insurance Services and all other services except rent-a-cab services. Appeal allowed **- decided partly in favor of appellant.**

M/s. J. Mitra and Company Pvt. Ltd. Versus C.S.T., New Delhi - CESTAT NEW DELHI

BRIEF: Export of service - reverse charge - Business Auxiliary Service - Whether Business Auxilliary Services (BAS) rendered by the assessee to their foreign client qualifies as export of service? Whether hiring-out industrial endoscopes would qualify as "supply of tangible goods for use service" or not?

OUR TAKE: The Appellant Authority held that the subject matter is covered by the Tribunal"s decisions in the cases of M/s. Gap International Sourcing (India) Pvt. Ltd. vs. CST [2014 (3) TMI 696 - CESTAT NEW DELHI], where it was held that these services have to be treated as delivered outside India and used outside India and since payment for the service has been received in convertible foreign exchange, the same would have to be treated as exported out of India - **appeal allowed**. Held that CBEC Circular No. 334/1/2008 TRU dated 29.02.2008 clarifies that wherever supply of tangible goods for use involves transfer of both possession and control it is deemed sale leviable to VAT /Sales Tax, then the said activity would not be liable to service tax under "supply of tangible goods for use service". The circular mentions, that if the item/ instrument has been supplied for use but without any legal right of its possession and effective control, then the use of the item is to be treated as "service" and not the "sale" and in that case service tax will be liable to be paid under the category of "supply of tangible goods for use service" - the subject transactions are to be verified by the original authority, whom we are remanding this matter, then only it can be determined whether there is a "service" or a "sale". Appeal allowed - **part matter decided in favor of assessee and part matter on remand**.

India Infrastructure & Logistics Pvt Ltd Versus Union of India & Others - DELHI HIGH COURT

BRIEF: Classification of services - haulage charges - whether the services would be classified as support charges or otherwise?

OUR TAKE: The Appellant Authority held that there is such a Circular No. 334/8/2016-TRU dated 29th February, 2016, which clarifies that the services provided by the Indian Railways to CTOs is a service of 'Transport of Goods by Rail' and, therefore, eligible for abatement of tax treatment i.e., for abatement @ 70% of the value of haulage charges collected from the Petitioner - the SCN which raise a demand of service tax by treating 'haulage' as 'support services' stands negated by the aforementioned Circular - petition allowed **- decided in favor of assessee.**

CENTRAL EXCISE

NOTIFICATION / CIRCULAR

Case laws

Commissioner of Central Excise, Jamshedpur Versus M/s. B.O.C. (India) Ltd. - CESTAT KOLKATA

BRIEF: CENVAT credit - Natural Air - input or capital goods - whether the imported Molecular Sieve and activated Alumina would be treated as capital goods as held by the Adjudicating Authority or input as claimed by the Revenue?

OUR TAKE: The Appellant Authority held that Molecular Sieve is a chemical item and is used for purification of Air-Plant. It is used for absorbing Carbon-Di-Oxide and water (moisture) from the Air being processed in the manufacture of Oxygen. There are several decisions of judicial authorities where the various chemicals were treated as inputs under the Modvat/Cenvat Scheme.
The Tribunal in the case of Commissioner of Central Excise, Indore v. Flex Chemicals Pvt.Ltd.[2001 (4) TMI 720 - CEGAT, NEW DELHI] observed that the Modvat Credit on inputs cannot be denied on the ground that the assessee has claimed as capital goods - the Molecular Sieve is an input as held by the Adjudicating Authority. But the Cenvat Credit cannot be denied as it was claimed as capital goods.
Credit allowed - appeal dismissed - **decided against Revenue.**

Pharm Products Pvt. Ltd. Versus Commissioner of Customs & Central Excise, Tiruchirapalli - CESTAT CHENNAI

BRIEF: Interpretation of statute - Section 4A of the Act - Valuation - RSP valuation - quantity discount - whether the assessee is liable to pay duty on the quantity discount offered to dealers/distributes?

OUR TAKE: The Appellant Authority held that the taxability of, inter alia, quantity discount has also been reiterated by the CBEC in the circular dt. 30.06.2000 stating that discount of any type made known prior to clearance of goods to normal price subsequently and passed on to such customers is admissible deduction from transaction value - there is no such possibility in provisions of Section 4A ibid to allow for deduction of any such similar quantity discount. As mentioned earlier, there is no scope for reduction in the assessable value deemed to be equal to declared retail price. Only reduction permitted in the said section is that of abatement which would have to be specified/allowed by notification by Central Government.
There is no scope for deducting the value of M.R.P goods which are supplied along with identical goods in the same packing as quantity discount - appeal dismissed **- decided against appellant.**

Cherian Fabricators Versus Commissioner of Central Excise, Customs and Service Tax Mysore - CESTAT BANGALORE

BRIEF: Penalty - reversal of CENVAT credit - Rule 6(3) of the CCR 2004 - it was alleged that the appellants have been clearing the exempted goods to M/s BEML by raising commercial invoices since 21.5.2007 and without maintaining separate accounts as per Rule 6(2) of Cenvat Credit Rules 2004 for receipt, consumption and inventory of inputs meant for use in the manufacture of exempted goods and also not reversed the attributable credit - Section 11AC of the CE Act

OUR TAKE: The Appellant Authority held that the Division Bench of the Tribunal in the case of Sangrur Agro Ltd [2010 (2) TMI 438 - PUNJAB & HARYANA HIGH COURT] has held that the provisions of Section 11AC of the CE Act are applicable only in respect of short- payment of duty whereas the payment under Rule 6(3)(b) of Cenvat Credit Rules is not duty but an amount - the penalty imposed on the appellant is not warranted by law - appeal allowed **- decided in favor of appellant.**

Toyota Kirloskar Motors Pvt Ltd Versus Commissioner of Central Excise, Customs and Service Tax - CESTAT BANGALORE

BRIEF: Liability of interest - valuation in terms of rule 8 of the Valuation Rules 2000 - goods are supplied free but on payment of duty and valuation is arrived at in terms of rule 8 of the Valuation Rules 2000 - appellant declined to pay interest on such differential duty on the ground that in terms of rule 7(4) of CER, 2002 interest is payable from first day of the month succeeding the month for which such amount is determined; that in their case differential duty was paid before finalization of provisional assessment

OUR TAKE: The Appellant Authority held that since differential duty was voluntarily paid before finalization of assessments which did not result in any dues and payable to the Govt, the interest was not leviable. If the interest was payable on the duty on which the assessee paid differential duty prior to finalization of assessment, then the Central Excise rules 2002 would have specifically said so - appeal allowed **- decided in favor of appellant.**

Commissioner Central Excise & Service Tax Versus M/s Premier Alloys Ltd. - ALLAHABAD HIGH COURT

BRIEF: CENVAT credit - fake invoices - denial on the ground that the inputs not received in the factory and not utilized in the manufacture of final product

OUR TAKE: The Appellant Authority held that the matter is squarely covered by the judgment of this Court in Central Excise, Customs & Service Tax Vs. Juhi Alloys [2014 (1) TMI 1475 - ALLAHABAD HIGH COURT], where it was held that The goods were demonstrated to have travelled to the premises of the assessee under the cover of Form 31 issued by the Trade Tax Department, and the ledger account as well as the statutory records establish the receipt of the goods. In such a situation, it would be impractical to require the assessee to go behind the records maintained by the first stage dealer - appeal dismissed - **decided against Revenue.**

M/s TVS Motor Company Ltd. Versus Commissioner of Central Excise Mysore -

BRIEF: Refund claim - courier services availed for the export of goods - rejection on the ground of non-realization of foreign exchange - the appellants have exported the spare parts to their dealers abroad by way of free warranty replacement as per their contract which is placed on record and for exporting the said components they have availed the services of courier agency for which they have paid the service tax

OUR TAKE: The Appellant Authority held that the appellant has produced the invoices on record which clearly shows that it is free warranty replacement and the invoices have been produced on record - Appellants have also produced a copy of the agreement between his dealers by which the appellants are under obligation to supply the parts under free warranty replacement, then in that case no monetary consideration flow from the buyer and therefore the department's view that bank realization certificate has not been produced is not justified ground for refusal of the refund - refund allowed - appeal allowed **- decided in favor of appellant.**

Fertilizers And Chemicals Travancore Ltd. Versus Commissioner of Central Excise, Customs and Service Tax Cochin - CESTAT BANGALORE

BRIEF: CENVAT credit - duty paying invoices - improper invoices, in as much as, they were photocopies of invoices and some invoices were not in their name

OUR TAKE: The Appellant Authority held that the CENVAT credit taken on the basis of photocopy is not permissible - the CENVAT credit taken on the basis of photocopy is rejected.

The appellant has taken CENVAT credit on the basis of invoices which are not addressed to it and are addressed to its sister concern which is only a technical lapse - the rejection of CENVAT credit on this ground is not legally justified.

Appeal allowed **- decided partly in favor of appellant.**

The Ramco Cements Limited Versus Commissioner of Central Excise, Service Tax and Customs Bangalore-IV - CESTAT BANGALORE

BRIEF: CENVAT credit - input services - Insurance - Air Travel Bills - Taxi Bills - Motor Vehicle Service charges - Club Bill which is paid to Madras Gymkhana Club and Presidency Club

OUR TAKE: The Appellant Authority held that the appellant has not brought any material on record to show that these Club bills are related to the business operation of the appellant - these are private clubs and are not business clubs and therefore the expenditure of the club cannot be termed as an 'input service' - credit not allowed.

As far as service tax paid on Insurance, Air Travel Bills, Taxi Bills and Motor Vehicle Service charges are concerned, I allow the appeal of the appellant, by allowing credit.

Appeal allowed **- decided partly in favor of appellants.**

M/s. Pragati International Private Ltd. Versus C.C.E., Delhi-II - CESTAT NEW DELHI

BRIEF: CENVAT credit - inputs - denial on the ground that the process undertaken by the appellant does not amount to manufacture

OUR TAKE: The Appellant Authority held that it is an admitted fact on record that the Registration Certificate surrendered by the appellant on 14.06.2005 was restored by the Department, stating that the processes undertaken by the appellant amount to manufacture.

The Department itself has recognized the processes undertaken by the appellant, as amounting to manufacture, and consequently the central excise duty paid by the appellant, was retained as the Government Revenue. As such, cenvat credit taken on the inputs, input services and capital goods, cannot be denied on the ground that those goods and services were used for manufacture of non-dutiable goods, on which duty liability has been discharged from cenvat credit account.

Appeal allowed - **decided in favor of appellant**.

CUSTOM

NOTIFICATION / CIRCULAR

Notification No. 24/2017 ADD Dated: 2-6-2017
Amendment in Notification No. 51/2012,-Customs (ADD), dated the 3rd December, 2012

Notification No. F. No. 354/231/2016-TRU] - G.S.R. 542(E) ADD Dated: 1-6-2017
Corrigendum – Notification No. 15/2017 – Customs (ADD), dated the 3rd May, 2017

Notification No. 52/2017 Cus (NT) Dated: 1-6-2017
Rate of exchange of conversion of the foreign currency with effect from 2nd June, 2017

Notification No. 22/2017 Cus Dated: 31-5-2017
Seek to further amend Notification No. 73/2006-Customs dated 10th July, 2006

Notification No. 51/2017 Cus (NT) Dated: 31-5-2017
Tariff Notification in respect of Fixation of Tariff Value of Edible Oils, Brass Scrap, Poppy Seeds, Areca Nut, Gold and Sliver

Case laws

M/s. G.D. Traders Versus Commissioner of Customs (Port) , Kolkata - CESTAT KOLKATA

BRIEF: Imposition of penalty u/s 112(a) of the CA, 1962 on CHA - misdeclaration as to the country of origin and evasion of Anti-Dumping duty - penalty was imposed on the appellant on the ground that the CHA had not bothered to check the authenticity and the genuineness of the declaration in the invoice and the Bills of Entry and simply put their signature on the Bills of Entry as the importer s Agent as per section 46(4) of the Act, 1962

OUR TAKE: The Appellant Authority held that Section 112(a) provides that any person, who in relation to any goods does or omits to do any act, which act or omission, would render such goods liable to confiscation under section 111 or abets the doing or omission of such an act, shall be liable to a penalty - In the present case, there is no material available on record that the appellant CHA was involved with the importer of the allged offence committed by the importer. In absence of the material evidence on record to show that the CHA connived with the importer in misdeclaration with intent to evade payment of duty, penalty on CHA u/s 112 is unwarranted. Appeal allowed **- decided in favor of appellant.**

M/s. K.R. Shrilaxmi Deals Pvt. Ltd. Versus Commissioner of Customs, Kolkata -

BRIEF: Valuation - rejection of declared price - allowance of discount - loading the assessable value on the basis of other brand of goods

OUR TAKE: The Appellant Authority held that in the appellant's own case, M/s. K.R.Srilaxmi Deals Pvt. Ltd. vs. Commissioner of Customs, Kolkata [2016 (9) TMI 1119 - CESTAT KOLKATA], the Tribunal allowed the appeal filed by the appellant, where it was held that loading the assessable value on the basis of other brand of goods not justified - appeal allowed **- decided in favor of appellant.**

Commissioner of Central Excise & Service Tax, Lucknow Versus Aimr Jewels Pvt. Ltd. - ALLAHABAD HIGH COURT

BRIEF: Jurisdiction of CESTAT - order has been passed by a judicial member only and not by the Bench as envisaged under Section 129C of the Act

OUR TAKE: The Appellant Authority held that as per section 129C, if the value of the goods confiscated without right of redemption exceeds ₹ 50 lakhs, a single member of the CESTAT is not competent to decide the appeal in respect thereof - the impugned order passed by single member of the Tribunal is without jurisdiction and in violation of Section 129C of the Act - appeal dismissed **- decided against Revenue.**

Department Of Customs Versus Ram Mohan Gulati & Ors. - DELHI HIGH COURT

BRIEF: Interpretation of statute - Magistrate - Section 3(4) of the Code of Criminal Procedure, 1973 - Seizure of goods - worn clothes

OUR TAKE: The Appellant Authority held that the exercise of certification of the correctness of the inventory or taking of photographs of the seized goods or drawing representative samples can be nothing but an exercise which is administrative or executive in nature within the meaning of clause (b) of sub-Section (4) of Section 3 Cr.P.C. - the word “Magistrate” appearing in Section 110 (IB) and (1C) of the Customs Act, 1962 must be interpreted so as to be read as a reference to an Executive Magistrate and not to a Judicial Magistrate or a Metropolitan Magistrate - petition dismissed **- decided against petitioner.**

Mangalore Refinery And Petrochemicals Ltd Versus CC, Mangalore - CESTAT BANGALORE

BRIEF: Valuation - Import of crude oil - finalization of provisional assessment on the basis of transaction value

OUR TAKE: The Appellant Authority held that quantity actually received into shore tank in port in India should be the basis for payment of Customs duty - Quantity shown in bill of lading cannot be used for this purpose as it does not reflect quantity of goods at the time and place of importation - the lower authorities are directed to redetermine the customs duty by adopting the shore tank quantity as opposed to the Bill of Lading quantity. Appeal allowed - **decided partly in favor of appellant and part matter on remand.**

M/s Samsung India Electronics Pvt. Ltd. Versus Commissioner of Customs, Central Excise & Servie Tax, Noida - CESTAT ALLAHABAD

BRIEF: Violation of conditions for goods imported at concessional rate of duty for manufacture - import of LCD Panel

OUR TAKE: The Appellant Authority held that for the period subsequent to the period of SCN the said Rules were amended wherein it was provided that the imported goods which could not be utilized can be re-exported. Though the said provision was not applicable to the period for which the SCN was issued, the principle involved in the said provision should be applicable for all the material periods - if the goods on importation are re-exported as such then they should be treated as if they were never imported. In that event, Rule 8 of the said Rules will not be applicable - appeal allowed **- decided in favor of assessee.**

Oswal Chemicals & Fertilizers Ltd. Versus Union Of India & Ors. - DELHI HIGH COURT

BRIEF: Levy of SAD - import of 'sulphur' and 'rock phosphate' - N/N. 23/2002-Cus dated 1st March 2002 - the intent and purpose of SAD was "to afford a level playing field for indigenous manufacturers of goods which were also imported from outside, to protect the indigenous industry" - the case of petitioner is that with the issuance of the impugned N/N. 23/2002-Cus effective 1st March 2002 however this 'level playing field' was completely disturbed. The said notification was issued in supersession of N/N. 19/2011-Cus

OUR TAKE: The Appellant Authority held that it is not as if in the present case, the impugned notification reflected in N/N. 23/2002-Cus dated 1st March 2002 has no basis - The mere fact that the government made a reference to the prevailing rates of customs duty and not to sales tax or local tax and the impact thereof would not per se render the decision contrary to section 3 A CTA - The mere fact that there might be some inconvenience for a short period on account of the increase or decrease in rates of SAD is not by itself a reason to declare the fixation of the rate of duty as unreasonable or illegal. The Court is not satisfied that in the impugned notification can be said to be arbitrary or irrational or that it has been issued by the government without taking into account all the relevant factors. Consequently, the Court is not inclined to interfere with the impugned notification dated 1st March 2002 which in any event has been superseded by the N/N. 23/2003-Cus dated 1st March 2003. Petition dismissed **- decided against petitioner.**

Adani Enterprises Limited versus Commissioner of Customs - CESTAT BANGALORE

BRIEF: Classification of imported goods - Dumb Floating Cranes Barge Gudami imported from Muscut - The appellant seeks classification of these vessels under 8901.1040 as barges or 8901 90 00 as other vessels for transportation of goods or persons - It is the view taken by Revenue that 8901 10 covers various vessels which on the basis of description, can be inferred as those for transport of persons - whether the goods classified under CTH 8901 10 40 or classified under CTH 8905 90 90?

OUR TAKE: The Appellant Authority held that in assessee's case, though the imported vessels are described as barges, these vessels do not have the engines necessary for self-propulsion and are required to be pulled by means of a tug. Consequently, it does not have the prime requirement of having ability for classifiable under Heading 8901 - Only with the capacity to navigate, the barges can be described as vessels for the transport of persons or goods. Consequently, the classification goes out of the purview of Heading 8901.
Heading 8905 covers vessels of various types whose navigability is subsidiary to their main function. Such vessels need not have the capability of navigation on their own. The imported vessels have cranes on board and can move cargo from ship to shore and vice versa. The purpose of such vessel is to load/unload cargo from ship/shore on to the barge and to move such cargo between ship and shore. Such vessels, in our opinion, will be rightly classifiable under Heading 8905.
Appeal rejected - **decided against appellant**.

M/s Paswara Papers Ltd, M/s Mohit Trading Company, Shree Durga Laghu Udyog, Shri Om Udyog, M/s Garg Distilleries Pvt Ltd Versus Commissioner of Customs, Kandla - CESTAT AHMEDABAD

BRIEF: Classification of Rubber Process Oil - classified under CTH No. 2707 or under CTH 2710

OUR TAKE: The Appellant Authority held that the matter is covered by the decision of this Tribunal in the case of Kushal N. Desai vs. Commissioner of Customs (Import), Mumbai [2016 (9) TMI 973 - CESTAT MUMBAI], where it was held that the imports of the appellants do contain a higher percentage of aromatic constituent than prescribed for classification under Heading 2710. The alternate heading which describes the imported goods to be waste brings it under the ambit of Hazardous Waste (Management, Handling & Trans-Boundary Movement) Rules, 2008 - the subject item is rightly classifiable under CTH 27079900 - appeal dismissed **- decided against appellant.**

M/s Om Merchants Exports Pvt. Ltd. Versus Commissioner of Customs, Lucknow - CESTAT ALLAHABAD

BRIEF: Town seizure for non-notified goods - burden of proving - whether in the case of Town seizure for non-notified goods (readymade garments) under Section 123 of the Customs Act, 1962, whether it is the onus of Revenue to prove that the goods are smuggled and whether the order of confiscation with redemption fine and further penalty of ₹ 5 lakhs under Section 112(a) of the Customs Act, 1962, is sustainable?

OUR TAKE: The Appellant Authority held that the readymade garments in question, being not notified goods under Section 123 of the Customs Act, 1962, were freely importable. It is well settled that initial burden to prove smuggling of non-notified goods lies on the Department. The appellants have given cogent explanation along with evidence of import of the goods, through licit route and the same have not been found to be untrue. Further, revenue have rejected the evidences produced, on flimsy ground which is not tenable. I find that the whole case of revenue is based on presumptions and no evidence have been led as to the allegation of smuggling. Mere failure on the part of the appellant to produce some document to the satisfaction of the Customs Authority does not ipso-facto lead to inevitable conclusion that the goods are smuggled. Appeal allowed **- decided in favor of appellant.**

INCOME TAX

NOTIFICATION / CIRCULAR

Notification No. 2/2017 Dated: 1-6-2017
Prevention of Money-laundering (Maintenance of Records) Second Amendment Rules, 2017

Notification No. 6/2017 Dated: 30-5-2017
Declaration in Form 15G/15H to be furnished to the Deductor/Payer for each Financial Year – Clarifications

Notification No. 7/2017 Dated: 30-5-2017
Procedure for Acceptance of Statement of Financial Transactions from Sub-Registrar Office and Post Offices (SFT) as per section 285BA of Income-tax Act. 1961 read with Rule 114E of Income-tax-Rules 1962

Notification No. 41/2017 Dated: 29-5-2017
Under section 80G(2)(b) the Central Government Notified notifies "Ariyakudi Sri Srinivasa Perumal Temple, Kottivakkam, Chennai," to be place of historic importance and a place of public worship

Notification No. 5/2017 Dated: 29-5-2017
TDS and filing of ITR in case both the parents are dead of minor - reg.

Case laws

Dharam Jeet Dahiya Versus Income Tax Officer, Ward-1, Hisar - ITAT DELHI

BRIEF: Denial of exemption u/s 10(10) - amount received by the assessee towards arrears of gratuity and on account of arrears of leave encasement

OUR TAKE: The Appellant Authority held that respectfully following the order in the case of Ram Kanwar Rana Vs ITO (2016 (6) TMI 687 - ITAT DELHI) the impugned order is set aside and the AO is directed to allow the claim of the assessee on account of gratuity & leave encashment as held the assessee is found to be an employee holding a civil post under a State, the provisions of section 10(10)(i) are fully attracted in this case entitling him to exemption for the amount under consideration. Once a case falls under clause (i) of section 10(10), the same cannot be brought within the purview of clause (iii) of section 10(10). Therefore, hold that the assessee is entitled to exemption u/s 10(10)(i) in respect of gratuity amount received and arrears of leave encasement **- Decided in favour of assessee.**

Yagya Techno Solutions Pvt Ltd. Versus ACIT, Circle Karnal, Haryana - ITAT DELHI

BRIEF: Addition u/s 68 - proof of genuineness of transaction - accommodation entries

OUR TAKE: The Appellant Authority held that five companies are claiming to have invested a sum of ₹ 5 lac each in the assessee company, but, the facts about their total income vis-à-vis the value of assets, do not prove the genuineness of transaction. It is further relevant to note that the assessee is claiming to have issued its share with face value of ₹ 10/- at a premium of ₹ 90/-. It is beyond my comprehension as to why a person will purchase the shares of the assessee company at such a huge premium, more so, when there is no payment of any dividend, etc. No prudent investor will park his funds at such a high premium without the expected return commensurate with the investment. When all the facts and circumstances are seen in entirety, it becomes evident that the assertion of Shri Surrender Kumar Jain group (entry operator) about providing accommodation entries to the assessee was correct as the assessee could not prove the genuineness of transactions. CIT(A) was justified in sustaining the addition. **- Decided against assessee.**

Oncology Services India Pvt Ltd. Versus Assistant Director of Income Tax International Taxation -III, Ahmedabad - ITAT AHMEDABAD

BRIEF: TDS u/s 195 - tax withholding demand - remittance to OSE Oncology Services Europe S.a.r.l, Germany - DTAA - PE in India

OUR TAKE: The Appellant Authority held that the essence of the arrangement, even going by the material on record and admission of the assessee in unambiguous words, is on sharing the SOPs, which, as we have noted above, amounts to sharing of scientific experiences taxable under article 13 of Indo German tax treaty. As for the fact that OSE does not have a permanent establishment in India, it is only elementary that existence of PE is sine qua non only for taxation of business profits but that the foreign entity not having a PE in India does not come in the way of taxation of royalties- which precisely is the case of the revenue. In this view of the matter, the payment for sharing of the SOPs, as is the case before us, indeed taxable as 'royalties' under the Indo German tax treaty.

We see no reasons to interfere in the conclusions arrived at by the authorities below. Once we come to the conclusion that the consideration received by the OSE, for sharing of SOPs, was taxable in its hands in terms of the provisions of the Indo German tax treaty, and there is nothing before us to even challenge its taxability under the provisions of the domestic law either, it is only a natural corollary of this finding that the assessee ought to have deduct tax at source from the payment in question. There is no, and there cannot be any, challenge to this fundamental legal position. There is thus no infirmity in the impugned tax withholding demand. **- Decided against assessee.**

Rameshbhai Ravjibhai Dobaria Versus Dy. Commissioner of Income Tax, Circle -12 Ahmedabad - ITAT AHMEDABAD

BRIEF: Penalty u/s. 271(1)(c) - at the time of preparing the Return of Income, entry of Short Term Capital Gain are done in the Short Term Capital Gain on Shares instead of Short Term Capital Gain other than Shares

OUR TAKE: The Appellant Authority held that intention of the assessee is not to hide any income and any particulars but there is Data Entry mistake done by the Tax Practitioner only that please note. The intention of the assessee is not to hide and / or avoid any particulars in his books accounts but is a genuine human mistake. There is no intention of the assessee to hide the tax and income and he doesn't get any benefit. He recorded all the accounting entries in his books as well as paid the tax as he is liable for. But due to the human mistake i.e. at the time of passing the accounting entries by an accountant and calculation mistake of Tax Practitioner at the time of calculating the tax.

See Price Waterhouse Coopers (P.) Ltd. vs. Commissioner of Income Tax, Kolkata-I [2012 (9) TMI 775 - SUPREME COURT] wherein held the calibre and expertise of the assessee has little or nothing to do with the inadvertent error. Absence of due care, in a case such as the present does not mean that the assessed is guilty of either furnishing inaccurate particulars or attempting to conceal its income. Imposition of penalty on the assessee is not justified **- Decided in favor of assessee**

M/s. Sri Sai Prasanthi Realtors, And M/s. Sri Sai Eswar Real Estates & Developers Versus Deputy Commissioner of Income Tax, Central Circle-5, HYDERABAD - ITAT HYDERABAD

BRIEF: Penalty u/s. 271B - non enclosure of audit report to the return of income

OUR TAKE: The Appellant Authority held that as seen from the order of the AO u/s. 153C, it is very clear that AO has initiated penalty proceedings for not enclosing the audit report, but not for completing the audit before the due date. Board Circular No. 5 of 2007 clearly states that while uploading the return, no audit report should be attached to the return and also further states that it should not be furnished separately also before or after due date. Non-enclosure of audit report to the return of income does not

attract any penalty u/s. 271B, as specified in the Board Circular extracted above. Since AO has initiated the penalty proceedings only for non-enclosure of audit report along with the Return, we are of the opinion that the same is not attracting penalty, on the facts of the case, as assessee has complied with the Board Circular.

If the audit report was not enclosed to the return of income filed by assessee subsequently in response to proceedings u/s. 153C, AO should have treated the return as defective return. No such action was taken by the AO, which indicates that the return is complete in all respects. Since prior approval of the Addl. CIT u/s. 153D was also taken by the AO before completion of assessment, we are of the opinion that non enclosure of audit report to the return of income does not attract penalty proceedings u/s. 271B. Accordingly, penalty levied is cancelled**. - Decided in favour of assessee.**

DCIT-17 (2) , Mumbai Versus Ateev V. Gala - ITAT MUMBAI

BRIEF: Receipt of Gift from HUF - income from other sources - whether HUF comes under the term 'group of relatives' defined u/s 56(2)?

OUR TAKE: The Appellant Authority held that If the observation made in the assessment order, leading to addition made to the total income, conclusion drawn in the impugned order, conclusion drawn in the order of the Tribunal, material available on record, assertions made by the ld. respective counsels, if kept in juxtaposition and analyzed, we find that while adjudicating the issue, the Bench duly considered section 56 of the Act and on the question of chargeability of tax on a question whether a gift received from relative held that it is exempt from tax under the provision of section 56(2)(vi) on a question whether HUF is a group of relatives, it was held that the gift received from HUF would be exempt from tax u/s 56(2)(vi) of the Act. It is noted that in the case before Rajkot Bench of the Tribunal, the amount was received from HUF, where the assessee was also member of HUF. **- Decided against revenue**

Dy. Commissioner of Income Tax, Circle – 10, Pune Versus Steel Vision India Pvt. Ltd. - ITAT PUNE

BRIEF: Addition made on the basis of declaration of the assessee during search action - bogus purchases

OUR TAKE: The Appellant Authority held that the assessee has filed copy of ledger extracts of Shree Sai Industries and Soham Metal Pvt. Ltd. for the financial year 2004-05 indicating purchases made during the financial year starting from 01-04-2004 to 31-03-2005. The Department has not raised any doubt over the ledger extracts furnished by the assessee. The letter dated 28-03-2012 along with Annexure-I was filed by the assessee shortly after search. The said letter clearly indicates that the additional income declared includes opening balances for Financial Year 2004-05. We do not find any infirmity in the findings of Commissioner of Income Tax (Appeals) in deleting the addition. **- Decided against revenue**

Murarilal Mittal Versus A.C.I.T. Central Circle-3, Jaipur - ITAT JAIPUR

BRIEF: Penalty U/s 271AAA - assessee has not clarified and not substantiated the manner in which the assessee derived undisclosed income

OUR TAKE: The Appellant Authority held that in the statement recorded U/s 132(4) of the Act when the assessee categorically stated that he has derived undisclosed income by way of inflating expenses recorded in the books of account. In view of this, the ld. CIT(A) was not justified in holding that the assessee has not clarified and not substantiated the manner in which the assessee derived undisclosed income. The assessee has categorically stated in answer to questions No. 5 to 7 in the statement recorded U/s 132(5) of the Act - **Decided in favour of assessee.**

State Level Taxes

ALL INDIA VAT

COURT DECISIONS

The State of Gujarat Versus M/s. Pipavav Defense And Offshore Engineering Company Limited - GUJARAT HIGH COURT

BRIEF: Input Tax credit - capital investment made by the Dealer in respect of Dry Dock and Fit Out Berth more particularly on purchase of cement, steel, greet etc. used in construction of Dry Dock and Fit Out Berth, which were used as capital goods - the main issue of this appeal is Whether the Hon'ble Tribunal has erred in holding that Input Tax Credit u/s.11(3)(a)(vii) of the Gujarat Value Added Tax Act, 2003 is available for purchase of cement, sand, steel, greet, concrete etc. that are used for manufacture of capital goods?

OUR TAKE: The hon'ble high court held that relying in the case of Scientific Engineering House (P) Ltd. [1985 (11) TMI 1 - SUPREME Court] it is held that the definition of the "Capital Goods" contained in section 2(5) of the VAT Act, Dry Dock and Fit Out Berth which are necessary for the purpose of business of the Dealer, the same are to be treated and held as "plant" - the issue is **held in favor of the Dealer** and against the Revenue and it is held that Dry Dock and Fit Out Berth are plant / capital goods.

Held that as cement, sand, steel, greet, concrete etc. are required to be used in manufacturing of "Capital Goods" viz. Dry Dock and Fit Out Berth, which is an integral part of the final product of the Dealer are without the Dry Dock and Fit Out Berth, it is not possible for the Dealer to carry on his business which is of ship building / manufacture and repairs of ship and that the Dry Dock and Fit Out Berth are specialized in nature which are required to be constructed specially and specifically for the purpose of business of the Dealer i.e. ship building / manufacture and repairs of ship, applying the "User Test" it is to be held that on purchase of cement, sand, steel, greet, concrete etc. which are used in Dry Dock and Fit Out Berth (Capital Goods), Dealer shall be entitled to Input Tax Credit **- answered in favor of assessee.**

M/s Shivalik Buildtech Pvt. Ltd. Versus State of U.P. And 2 Others - ALLAHABAD HIGH COURT

BRIEF: Validity of re-assessment proceedings - permission u/s 29(7) of the U.P. VAT Act, 2008

OUR TAKE: The hon'ble high court held that neither in the notice nor in the impugned order any material or fresh material has been referred to for the formation of the opinion with regard to the reason to believe that the matter requires reassessment. It is only on the basis of the fact that the royalty amount has not been clarified in the invoices that a decision has been taken to reopen the assessment. This by itself is not sufficient and a good ground when the assessing authority was possessed with all material at the time of initial assessment and nothing material was concealed from him.

There was no material or any reason to believe on part of the respondent no. 2 for granting permission u/s 29(7) of 'the Act' for reassessing the petitioner for the assessment year 2009-10 - petition allowed - **decided in favor of petitioner.**

GST ALERTS

Valuation of supply of goods and services

Value for supply of goods and services is important part of GST. For valuing any goods or services is subject matter of discussion and contentious in nature. Value means price of any goods or service on which tax to be imposed particularly when parties are related or distinct person. This has all been incorporated in Section 15 of the CGST Act,2017. Main basis of valuation is Transaction value which has not been defined in the Act but includes having price , between person not related and the price being sole consideration. In valuation one need to keep in mind the inclusion and exclusion from the price of goods and service on which tax under GST Shall be charged.

Value of Taxable Supply

1. The value of supply of goods or supply of services shall be transaction value that is price actually paid or payable where the supplier and recipient of supply is not related party and price is the sole consideration for supply.

2. Transaction value mentioned above shall include the following;

- Any amount incurred by the recipient of supply with respect to such supply and which was paid and payable by the supplier which has not been included in transaction value

- Any taxes, duties, fees and charges levied under any statute other than tax under this Act. Like CGST, SGST, UGST etc.
- Incidental expenses such as commission or packing charged by supplier to recipient of goods or services or both including any amount charged by supplier for the supply of goods or services at the time or before delivery of goods or supply of services..
- Subsidy directly linked to the price excluding subsidy provided by the Central or State Government
- Interest or late fees or penalty for delayed payment of consideration for any supply.

3. Following shall not be included;

   a] Transaction value shall not include any discount allowed before or at the time of supply provided such discount is recorded in the invoice.

   b] after the supply has been effected if;

      i] Discounts is given as per the agreement entered into at or before the supply and linked to relevant invoices.

      Ii] Input tax credit is reversed by the recipient of supply on such discount.

4. Where the value can not be determined as per sub section 1, the same shall be determined as may be prescribed.

Valuation Rules

1. **Value of supply of goods or service where the consideration is not wholly in money**

   Value shall be

   - o Open market value
   - o If OMV is not available, Total consideration in money.
   - o If above two are not available, value of supply of goods or service or both of like kind and quality.

2. **Value of goods or service or both between distinct or related person.**

   Value shall be

   - o Open market value
   - o If OMV is not available, value of supply of goods or service or both of like kind and quality
   - o If above two are not available, value as determine by application of Rule 4 and 5 in that order.

   Where the goods are for further supply by recipient, the value shall be at option of the supplier. An amount shall be 90% of the price charged by recipient to his customer.

   Where recipient is taking ITC, the value charged in the invoice of goods or service shall deemed to be open market value.

3. **Value of supply of goods made or received through agent.**

   Value of supply of goods between principal and his agent shall

   - o OMV of goods supplied or at the option of supplier , an amount shall be 90% of the price charged of like kind and quality by recipient to customer not being related person.
   - o Where the value is not fixed as above, it will be fixed as per rule 4 or 5 .

4. **Value of supply of goods or service or both at cost**

   Where the value goods or services or both can not be determined as per the proceeding rules, the value shall be 110% of the cost of production or manufacture or cost of acquisition or cost of provision.

5. **Residual method for valuation of goods or services or both**

   Where the value goods or services or both cannot be determined as per the Rules 1 to 4, same can be fix by reasonable means consistent with principles and general provision of section 15 and these rules. In case of supply of services , the supplier may opt for this rule.

6. **Determination of value in respect of certain supplies**

1. Value of supply in relation to purchase and sale of foreign currency. At the option of supplier may be any hereinafter;

a] The value of supply of service in purchase or sale of foreign currency including money changing shall be determined by supplier of service as follows:

- When currency used is INR, difference of buying and selling and RBI rate for currency at that time.
- If RBI rate are not available, 1% of the gross amount provided or received.
- If money exchange is not having INR, the value shall be 1% of the lesser of the two amount received after conversion into INR at RBI rate.

Method once adopted will not be changed in rest of financial year.

b] The value of supply of service in purchase or sale of foreign currency including money changing shall be deemed to be

- 1% of the gross amount of currency exchanged subject to minimum of ₹ 250 up to ₹ 1 lac.
- Rs.1000 plus 0.50% of the gross amount of currency exchanged for an amount exceeding ₹ 1 lac up to ₹ 10 lacs.
- ₹ 5500 plus 0.10% of gross amount of currency exchanged for an amount exceeding ₹ 10 lacs subject to maximum amount of ₹ 60000.

2. Booking of ticket in travel by air.

5% of basic fare in domestic and 10% of basic fare in International

3. Life insurance business

- Gross amount charged from policy holder reduced by amount allocated for investment or saving on behalf of policy holder if such amount has been intimated to policy holder.
- In case of single premium annuity, 10% of single premium
- In case of other, 25% of premium charged in the first year and 12.5% of premium in subsequent year.

Provide that this rule will not apply where premium paid by policy holder is towards coverage of risk cover in life insurance.

4. Where taxable supply is provided by person dealing in buying and selling of second hand goods and no ITC has been claimed, value in this case shall be the difference of buying and selling of goods.

Where the purchase value of goods repossessed from defaulting borrower, who is not registered, Value of goods shall be reduced by 5% per quarter or part of the quarter from the date of purchase to the date of sale by person taking the repossession.

5. Value of token or voucher or coupon or stamp which redeemable against supply of goods or services or both shall be equal to money value of goods or service redeemed against such token or coupon.

6. Where supply of goods or services as per paragraph 2 of Schedule-I between distinct person or related person and ITC is available, shall be deemed to be nil.

7. **Value of supply of service in case of pure agent**

Expenses or cost incurred by supplier as recipient of supply shall be excluded from the value of supply if all the following conditions are satisfied.

- Supplier act as pure agent of recipient of supply, when he makes payment to third party after authorization by recipient.
- The payment made by agent has been separately mentioned in the invoice issued by agent to recipient.
- Supply procured by pure agent from third party as pure agent of recipient are in addition to services supplies on his own a/c.

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