



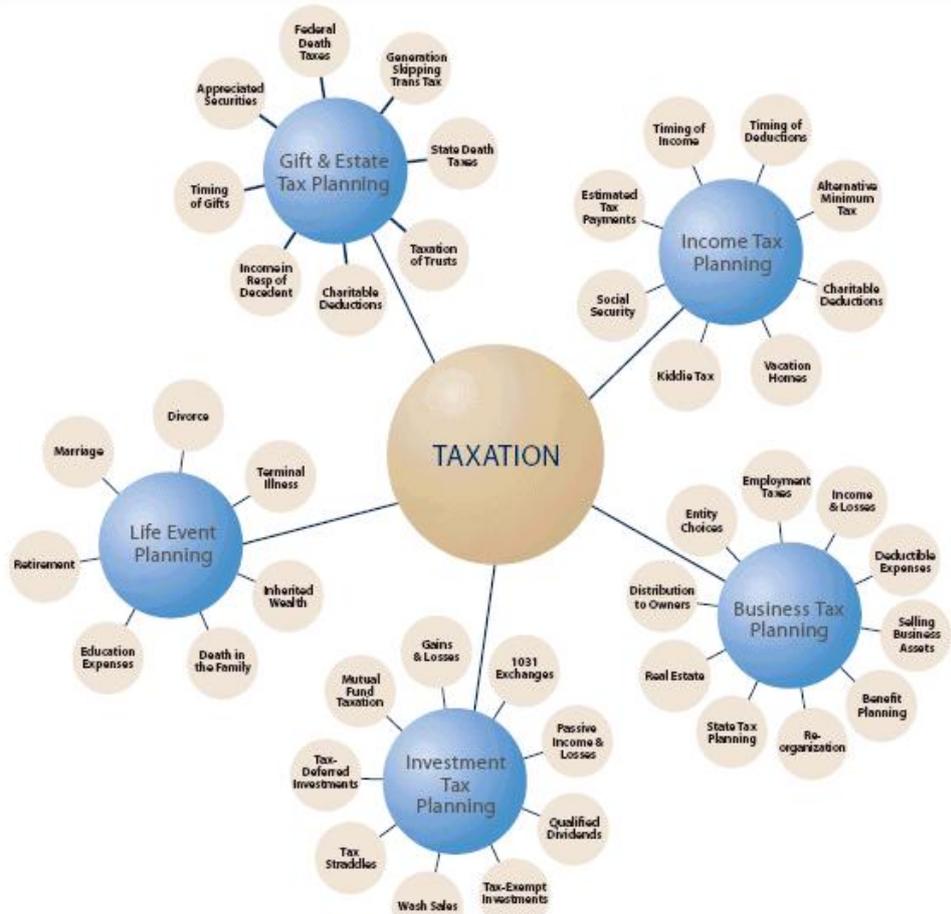
ASC Times

All India Taxes Weekly Reference

Vol: Mar 06 –Mar 12, 2017

Solving any tax puzzle

Tax saving advice across all the taxes



TAXCALENDER

Due Date	Description	Law
06 Mar	Deposit of Tax	Service Tax Law
		Central Excise Law
07 Mar	Deposit of TDS	Orissa VAT, Tripura VAT, Mizoram VAT
	Deposit of TDS/TCS	Income Tax Law
	Issue of TDS Certificate	Orissa VAT
10 Mar	Deposit of Tax	Chhattisgarh VAT, Kerala VAT, Madhya Pradesh VAT
	Deposit of TDS	Chhattisgarh VAT, Madhya Pradesh VAT, Mizoram VAT, Nagaland VAT
	Return Filing	Karnataka VAT, Kerala VAT.
Central Excise Law.		

COUNTRY WIDE HOLIDAYS FOR THE WEEK

Date	Occasion/Festival	Region
12 th March	Holi	All India
13 th March	Holi	All India

INDEX GUIDE

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From the CEO's Desk



Alok Kumar Agarwal

CEO

ASC Group.

Dear Reader,

The GST Council at its meeting on March 4, 2017 approved the final draft of the Central Goods and Service Tax Bill (CGST) and Integrated Goods and Service Tax Bill (IGST).

In an earlier meeting the GST Council had approved the draft of the GST Compensation Bill. It is reported that the draft State Goods and Service Tax Bill (SGST) and a draft Union Territory Goods and Service Tax Bill (UTGST) would be considered in the next meeting of the GST Council scheduled on March 16, 2017.

Briefing the press after the meeting of the GST Council on March 4, 2017, Shri. Arun Jaitley stated that the draft of the GST Compensation Bill, CGST Bill and IGST Bill would be tabled in the Parliament soon after final approval of all legislation by the GST Council so as to pass the Bills before the Parliament session concludes on April 12, 2017. Once SGST draft bill is approved by the GST Council, the State Legislatures would begin the process of approval of SGST Bills.

The next major activity is Fitment of Goods/Services in the various agreed slab rates, which would be taken up by the GST Council soon after the officials have completed the activity of Fitment of Goods/Services in the various agreed slab rates. This may happen in April 2017.

Allaying the apprehension in press reports of the combined CGST + SGST could be 40%, it was clarified that there is no change in the decision to have 4 slab rates (5%, 12%, 18% and 28%) and Cess on certain demerit goods and that the 40% rate is only an enabling provision, should there be a need to increase the rate of tax at later date

Shri. Arun Jaitley also stated that the optimistic date of rollout of GST would be July 1, 2017.

CENTRAL TAXES

SERVICE TAX

NOTIFICATION / CIRCULAR

The Govt. vides Notification No. 09/2017 dated 28th Feb 2017; service Tax payable by way of admission to a museum.

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

COURT DECISIONS

M/S JOHARI DIGITAL HEALTHCARE LTD., SHREE RAM GUM & CHEMICALS, SATYAM ENTERPRISES UNIT-I AND II, SHEKHAWATI ART EXPORTS UNIT-IV, SHRINATH GUM & CHEMICALS, BHANSALI INTERNATIONAL, HINDUSTAN GUM & CHEMICALS LTD., MEC SHOT BLASTING EQUIPMENT (P) LTD., AZTEC SHIVA HANDICRAFTS & ARTS PVT. LTD., LALJI HANDICRAFTS, KRISHNA INTERNATIONAL EXIM, KRISHNA INTERNATIONAL EXIM UNIT-II AND III, ARTS & CRAFTS INC. AND VERSUS C.C.E. JAIPUR-II[CESTAT NEW DELHI]

BRIEF: Rejection of refund claim - N/N. 41/2007-ST - there is no dispute about export of goods and charges collected by the bank for realization of export proceeds. Thus, refund claim is not deniable for the procedural lapses, if any and same should be allowed.

OUR TAKE: The hon'ble **CESTAT NEW DELHI** held that the service tax was collected by the bank for realization of export proceeds and vouchers were issued by the bank. Therefore, there is no dispute about export of goods and charges collected by the bank for realization of export proceeds. Thus, refund claim is not deniable for the procedural lapses, if any and same should be allowed.**[Decided partly in favour of appellant]**

M/S PETRONET LNG LIMITED VERSUS CCE, NEW DELHI[CESTAT NEW DELHI]

BRIEF: Transaction with International Financial Corporation (IFC) - whether liable to service tax? - IFC Act 1958 clearly provides for immunity of all transactions and operations of IFC. - There is no separate exemption required as the Transaction of IFC were made immune to tax in terms of IFC Act.

OUR TAKE: The Hon'ble **CESTAT NEW DELHI** held that the law firm engaged by the appellant rendered service including advisory, legal opinion, documents and correspondence, reviewing etc. All these are in the field of contract law - the appellants received mainly legal consultancy service and not management or business consultant service. The finding of the Original Authority that the said legal firm did not represent the appellant in any Court or legal proceeding and, hence, the service is not legal consultancy, is fallacious.**[Decided in favour of assessee]**

M/S PETRONET LNG LIMITED VERSUS CCE, NEW DELHI [CESTAT NEW DELHI]

BRIEF: Import of services - Section 66A of FA, 1994 - the appellants received mainly legal consultancy service and not management or business consultant service - The finding that the said legal firm did not represent the appellant in any Court or legal proceeding and, hence, the service is not legal consultancy, is fallacious.

OUR TAKE: The hon'ble **CESTAT NEW DELHI** held that the law firm engaged by the appellant rendered service including advisory, legal opinion, documents and correspondence, reviewing etc. All these are in the field of contract law - the appellants received mainly legal consultancy service and not management or business consultant service. The finding of the Original Authority that the said legal firm did not represent the appellant in any Court or legal proceeding and, hence, the service is not legal consultancy, is fallacious.**[Decided in favour of appellants]**

**M/S. ALLIANCE FRANCAISE DE DELHI VERSUS C.S.T. DELHI,[CESTAT NEW DELHI]**

BRIEF: The service tax demand sought to be confirmed on translation fee itself supports the case of the appellant that translation is one of the gainful employment that can be availed by the trainee of the institute - Even on general principle such work of translation, without even the knowledge of the client's, business, cannot be considered as BSS.

OUR TAKE: The hon'ble CESTAT NEW DELHI held that whether all participants do get employment or become self-employed is not the test to determine the vocational nature of the training. Learning with some proficiency, a language which is not commonly spoken in a country, certainly provides employment opportunities or chance for self-employment, if the said language is imparted for such potential. Incidentally, the service tax demand sought to be confirmed on translation fee itself supports the case of the appellant that translation is one of the gainful employment that can be availed by the trainee of the institute - Accordingly, the exemption claimed by the appellant is available to them and the reasoning for rejecting the claim as recorded in the original order is not sustainable. **[Decided in favour of appellant]**

SUNGWOO GESTAMP HITEC (PUNE I) PTE. LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE AND VICE-VERSA [CESTAT MUMBAI]

BRIEF: The service tax liability on the amount paid as reimbursable to the professionals will not includable as gross value of services and not taxable under Rule 5(1) and also the Rule 7 of the Service Tax Valuation Rules which categorically rules out the reimbursable expenses.

OUR TAKE: The humble CESTAT MUMBAI held that appellant-assesses could have had bonafide belief as to that the amounts paid for extending corporate guarantee to the Banks may not be a service rendered to the appellant as the banks extended loan facilities to the appellant-assesses - the provisions of Section 73(3) are applicable in this case as also the Section 80 of the Finance Act, 1994 can be applicable in the peculiar facts and circumstances of the case - penalty set aside.**[Decided in favour of appellant]**

M/S. SATNAM AUTO VERSUS CCE & ST, MEERUT-I. [CESTAT NEW DELHI]

BRIEF: Service tax liability - the target incentives received by the authorized dealer cannot be subjected to service tax under the category of "BAS".

OUR TAKE: The hon'ble CESTAT NEW DELHI held that on the first issue regarding publicity expenses, we note that the amount shown in the show cause notice was taken from the expense entry made by the appellant in their annual P&L Account. There is no evidence of receipt of said amount from M/s. TVS Motors. There is no evidence of appellant's undertaking of publicity works for TVS Motors. In such situation, the expenses incurred by the appellant cannot be subjected to service tax under "BAS".**[Decided in favour of assesses]**

MERA BABA REALTY ASSOCIATE (P.) LTD. VERSUS COMMISSIONER SERVICE TAX, DELHI-III & ANR. [DELHI HIGH COURT]

BRIEF: Interest on delayed refund - Section 11B of the CEA, 1944 - the argument of the revenue that neither the adjudicating authority granted interest nor did petitioner seek it at any stage is of no avail - interest allowed - HC

OUR TAKE: The hon'ble DELHI HIGH COURT held that the clear reference to "date of receipt of such application" in Section 11 BB which mandates payment of interest, precludes the Revenue from arguing the matter which it does today - respondent's argument that neither the adjudicating authority granted interest nor did petitioner seek it at any stage is of no avail - interest allowed. **[Decided in favour of appellant]**

M/S. VANU INDIA PRIVATE LIMITED VERSUS COMMISSIONER OF SERVICE TAX [CESTAT BANGALORE]

BRIEF: Refund claim - export of services - The BAS provided from Gurgaon unit is not disclosed in the monthly SOFTEX filed with the STPI as the Gurgaon unit is not registered with Software Technology Park. Therefore, only on this ground the refund is wrongly rejected.

OUR TAKE: The hon'ble CESTAT BANGALORE held the appellant has been raising the export invoices only at Bangalore unit as it has a centralized accounting and billing system in force and the same is permissible u/r 4 of the Service Tax Rules, 1994 - Further in the SOFTEX return, only export of software services is disclosed, as the Bangalore unit is registered as a software technology park of India. The BAS provided from Gurgaon unit is not disclosed in the monthly SOFTEX filed with the STPI as the Gurgaon unit is not registered with Software Technology Park. Therefore, only on this ground the refund is wrongly rejected.**[Appeal allowed by way of remand]**

CENTRAL EXCISE

COURT DECISIONS

M/S. BIOSTAR PHARMACEUTICALS LIMITED, MR. ASHOK BORA, VERSUS THE STATE OF MAHARASHTRA & OTHERS [BOMBAY HIGH COURT]

BRIEF: Demand of differential duty - parties are related or not - loan licence arrangement - the petitioners are not concerned whether M/s. Boots makes a loss or profit in the onward sale of Betonin. They are not holding and subsidiary company - The foundation being totally weak and unsustainable in law - HC.

OUR TAKE: The hon'ble **BOMBAY HIGH COURT** held that M/s. Boots, which was earlier manufacturer of Betonin has now become a so called wholesaler and Borachem, who was earlier paid job work charges has now entered into manufacturing by floating a new company, namely, Biostar - e referred to the definition of the term "related person", the binding judgments interpreting it only to emphasise that the foundation or basis of the Commissioner's conclusion is ex-facie contrary thereto. It is wholly unsustainable in law - It is significant that when M/s. Boots surrendered its licence and Biostar obtained it for manufacture of Betonin, four directors were common in Biostar and Borachem Industries Ltd. [Petition disposed of]

M/S DAVINDER EXPORTS, SH. BALDEV SINGH, PARTNER AND DAVINDER SINGH, PARTNER VERSUS CCE, LUDHIANA [CESTAT CHANDIGARH]

BRIEF: Clandestine Removal - in the absence of evidence in the form of to Manufacture of such huge quantity, the consumption of electricity, additional packing material payment for purchase of additional packing material, payment received for clandestine removal of goods, how the goods were transported, the charge of clandestine removal cannot sustain.

OUR TAKE: The hon'ble **CESTAT CHANDIGARH** held that the investigation was conducted in the case of the appellants as well as in the case of M/s Davinder Sandhu Impex Ltd. [2016 (1) TMI 104 - CESTAT NEW DELHI] and the case was booked only on the basis of statement of Sh. Baldev Singh. [Decided in favour of appellant]

K.K. TOBACCO COMPANY, SH. LAXMI KANT PANDEY VERSUS COMMISSIONER, CENTRAL EXCISE, ALLAHABAD [CESTAT ALLAHABAD]

BRIEF: Failure to make an entry in RG-1 (DSA) register - manufacturing of Gutkha - confiscation of goods manufactured in the factory and not cleared from the factory - Confiscation of raw material - the seizure and confiscation of goods manufactured in the factory and not cleared is not sustainable in law.

OUR TAKE: The hon'ble **CESTAT ALLAHABAD** held that the duty is to be paid only when the goods are cleared from the factory and only such goods are liable for confiscations which are removed without payment of duty. Therefore, the seizure and confiscation of goods manufactured in the factory and not cleared is not sustainable in law - related penalties are also not sustainable in law - Further there is no provision in Central Excise Act for seizure of raw materials and confiscation of raw materials - appeal allowed. [Decided partly in favour of appellant]

COMMISSIONER OF CENTRAL EXCISE & ST, BHOPAL VERSUS WESTERN TOBACCO LIMITED [CESTAT NEW DELHI]

BRIEF: Who is liable to pay duty - Export Goods allegedly diverted in the local market in the guise of export - Bond executed by the non-existent merchant exporter - Manufacturer is liable to pay the duty with interest and penalty.

OUR TAKE: The hon'ble **CESTAT NEW DELHI** held that during the course of investigation it has emerged that merchant exporters were found to be non-existent, at the addresses submitted by them to the department. In such circumstances, it has to be presumed that no such merchant exporters existed at their declared addresses and the bonds executed by such merchant exporters have ceased legality to be a valid document. In the absence of valid bond from the merchant exporters, the liability for payment of excise duty reverses back to the original manufacturer who manufactured the goods i.e. the respondent in the present case. [Manufacturer is required to pay Demand of duty with interest and penalty]

COMMISSIONER OF CENTRAL EXCISE RAIPUR VERSUS M/S JINDAL STEEL & POWER LTD. [CESTAT NEW DELHI]

BRIEF: CENVAT credit - site formation services - captive coalmines - Since there is no dispute that such services have been used, it is concluded that service tax paid is available as CENVAT credit.



OUR TAKE: The hon'ble **CESTAT NEW DELHI** held that prior to mining service being included as a separate service for payment of Service Tax, the activities carried out by the contractors, such as excavation, drilling and removal of the overburdens, coal cutting etc. are covered under the category of site formation and clearance services - Service tax has been paid by the contractors under the category of site formation and clearance services. Since there is no dispute that such services have been used, it is concluded that service tax paid is available as CENVAT credit - appeal dismissed. **[Decided against revenue]**

Goyal Tobacco Co. Pvt. Ltd. Shri Rajesh Goyal, Director Versus CCE & ST, Jaipur-I [CESTAT NEW DELHI]

BRIEF: Clandestine removal - tobacco pouches - While the presence of machines is an admitted fact, the manufacture and clearance has not been evidenced with any corroborative evidence established during investigation - demand set aside.

OUR TAKE: The hon'ble **CESTAT NEW DELHI** held that the actual condition of the machine at the time of detention of the said machines has become crucial - wherever the packing machines were lying, in any premises, including the premises of the manufacturer or seller of such machines, then the duty can be demanded from them in terms of the Compounded Levy Scheme. Apparently no such situation is covered by the Scheme. Presumptive duty liability as envisaged in the Compounded Levy Scheme of 2010 Rules cannot be extended to a level that automatic duty liability will arise in all cases, where some packing machines are found in a premises. **[Decided in favour of appellants]**

CUSTOM

NOTIFICATION / CIRCULAR

The Govt. vides Notification No. 07/2017 dated 1st March 2017; amendment to Notification No.09/2012-Cus reg. enabling authorised offices or agencies in India of the laboratories mentioned under para 4.74 of HBP 2015-20.

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

The Govt. vides Notification No. 13/2017 dated 28th Feb 2017; Tariff Notification in respect of Fixation of Tariff Value of Edible Oils, Brass Scrap, Poppy Seeds, Areca Nut, Gold and Silver - Reg.

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

The Govt. vides Notification No. 14/2017 dated 2nd March 2017; rate of exchange of conversion of the foreign currency with effect from 3rd March, 2017.

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

The Govt. vides Notification No. 15/2017 dated 2nd March 2017; Amendment to Notification No.62/1994-Customs (N.T.) dated 21st November, 1994 in respect of Revdanda Port in State of Maharashtra for the purpose of unloading of imported goods and loading of export goods or any class of such goods.

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

The Govt. vides Circular No. 05/2017 F.No.609 / 13 / 2017-DBK dated 28th Feb 2017; exemption from drawal of samples for the purpose of grant of drawback to the AEO certificate holders.

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

The Govt. vides Circular No. 06/2017 F.No. 609 / 03 / 2017-DBK dated 28th Feb 2017; acceptance of e-BRC of DGFT towards proof of realization of sale proceeds for exports with LEO date up to 31.03.2014 under drawback scheme.

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

COURT DECISIONS

COMMISSIONER OF CUSTOMS VERSUS DEREWALA JEWELLERY INDUSTRIES LIMITED. [CESTAT NEW DELHI]

BRIEF: Gold mountings and findings being items as jewellery are outside the purview of N/N. 62/2004-C.E. and, hence, the Board's Circulars No. 40/2004-Cus. And 13/2006-Cus. Clarifying that the gold and silver mountings and findings are covered by the N/N. 62/2004-Cus. Are contrary to the provisions of law and, hence, have no validity - No exemption - Tri.

OUR TAKE: The hon'ble CESTAT NEW DELHI held that similar issue was decided in the case of CC, Jaipur vs. V.K. International [2012 (10) TMI 739 - CESTAT, NEW DELHI], where it was held that Gold mountings and findings being items as jewellery are outside the purview of N/N. 62/2004-C.E. and, hence, the Board's Circulars No. 40/2004-Cus., dated 4-6-04 and 13/2006-Cus., dated 29-3-06 clarifying that the gold and silver mountings and findings are covered by the N/N. 62/2004-Cus. Are contrary to the provisions of law and, hence, have no validity. [Decided in favour of Revenue]

M/S GREENPLY INDUSTRIES LTD. VERSUS UNION OF INDIA/DA. [CESTAT NEW DELHI]

BRIEF: Levy of Anti-Dumping Duty (ADD) - If the DA has formed an opinion regarding correctness of the claim made by the party about confidentiality then he is within his rights to withhold such information and make available only the general non-confidential summary relevant for investigation.

OUR TAKE: The hon'ble CESTAT NEW DELHI held that the DA arrived at the ex-works export price and thereafter dumping margin. The grievance of the appellant is that full particulars of the document verification have not been made available to them. We note that the DA cannot make available sensitive cost data of the exporting company. The

same is protected by the provision of Rule 7 of AD Rules. [Decided against appellant]

M/S BALAJI INTERNATIONAL VERSUS CC (ICD TKD) , NEW DELHI [CESTAT NEW DELHI]

BRIEF: Valuation of imported items - disposable cap and Halogen Lamps - there is no legal justification to conduct a market enquiry especially in the presence of comparable data authenticated in NIDB for identical goods for material period.

OUR TAKE: The hon'ble CESTAT NEW DELHI held that the classification of impugned LCD Panels to be under Tariff Item No. 9013 80 10 of Customs Tariff Act, 1975 - appeal allowed. [Decided in favour of appellants]

M/s. Tata Lucent Technologies Ltd. (Presently known as Lucent Technologies Hindustan Pvt. Ltd.) Versus The Commissioner of Customs (Appeals). [CESTAT BANGALORE]

BRIEF: Refund claim - unjust enrichment - once an assessment is provisional, it is provisional for all purposes and not necessarily provisional in respect of the particular ground - however, the CVD component of the excess duty is to be deducted from the total refund claim since the same has already been availed as CENVAT credit by the appellant in their manufacturing process.

OUR TAKE: The hon'ble CESTAT BANGALORE held that it is settled law that once an assessment is provisional, it is provisional for all purposes and not necessarily provisional in respect of the particular ground considered as has been held by the Hon'ble High Court of Madras in the case of Collector Central Excise vs. India Tyre & Rubber Co. Ltd. [1997 (1) TMI 100 - HIGH COURT OF JUDICATURE AT MADRAS]. [Refund Allowed]

SYED IRFAN MOHAMMED AND ANOTHER PETITIONERS VERSUS THE UNION OF INDIA, REP. BY ITS SECRETARY, DEPARTMENT OF REVENUE, MINISTRY OF FINANCE [ANDHRA PRADESH HIGH COURT]

BRIEF: Refund claim - unjust enrichment - once an assessment is provisional, it is provisional for all purposes and not necessarily provisional in respect of the particular ground - however, the CVD component of the excess duty is to be deducted from the total refund claim since the same has already been availed as CENVAT credit by the appellant in their manufacturing process.

OUR TAKE: The hon'ble ANDHRA PRADESH HIGH COURT held that petitioners were granted an opportunity to appear through counsel at the time of personal hearing. Therefore,

the petitioners cannot complain of violation of natural justice.
[Decided partly in favour of assessee]

INCOME TAX

COURT DECISIONS

ULHAS SECURITIES PVT. LTD Versus DEPUTY COMMISSIONER OF INCOME TAX [GUJARAT HIGH COURT]

BRIEF: Order 142(2A) appointing Special Auditor by AO - when it is stated in the order that looking to the complexity and the multiplicity of transactions, account are required to be verified by the Special Auditor, no reason to interfere in the order of appointing special auditor - HC.

OUR TAKE: The hon'ble GUJARAT HIGH COURT held that One of the requirement for exercising the powers under Section 142(2A) that the AO must be satisfied in interest of revenue, the account is required to be audited by the Special Auditor is concerned, it is required to be noted that considering the amended provision of Section 142(2A) of the Act which has come into force w.e.f. 1.6.2013, the special Auditor can be appointed if at any stage of the proceedings before him, the AO having regard to the nature and complexity of the account of the assessee and the interest of the revenue.

COMMISSIONER OF INCOME TAX-2 VERSUS M/S. SEAPRINCESS HOTELS AND PROPERTIES PVT. LTD. [BOMBAY HIGH COURT]

BRIEF: Nature of expenditure - revenue or capital in nature - assessee had engaged a professional interior designer to plan temporary access and exit from the Five Star Hotel and for which an amount of ₹ 22.44 lakhs was paid - this expenditure is allowable as deduction u/s 37(1) as revenue expenditure - HC.

OUR TAKE: The hon'ble BOMBAY HIGH COURT held that as during the period of construction of two additional floors, a temporary operational plan had to be prepared providing for alternative access to and exit from the Hotel. This without compromising on the high standard expected by customers in respect of ambience and comforts in a Five Star Hotel. The respondent-assessee had engaged a professional interior designer to plan temporary access and exit from the Five Star Hotel and for which an amount of ₹ 22.44 lakhs was paid.

PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL) – 2 VERSUS M/S. NAU NIDH OVERSEAS PVT. LTD. [DELHI HIGH COURT]

BRIEF: Satisfaction Note u/s. 153C - cash seized belonged to the third party, i.e., the assessee in the present case. Such statement also constitutes as material because it is made in the course of the search under Section 132(4) - HC.

OUR TAKE: The hon'ble DELHI HIGH COURT held that in the present case too Jatinder Pal Singh was one of the Directors of the assessee. In the course of the search of his residential and other premises, he clearly stated that some cash seized in those premises belonged to the assessee. For the purposes of Section 153C, the satisfaction of the AO recorded was, in this Court's opinion sufficient.

DR. KALYAN CHAUDHURI VERSUS INCOME TAX OFFICER, WARD 19 (3) , KOLKATA [ITAT KOLKATA]

BRIEF: Penalty u/s. 271(1) (c) - bonafide mistake - assessee could not be said to have filed "false" returns when it did not include the amount of interest and notional house property income in the taxable income - no penalty.

OUR TAKE: The hon'ble ITAT KOLKATA held that Loss incurred on derivative transaction was not a speculative loss and is allowed to be adjusted against business income. See Asian Financial Services Ltd. Vs. Commissioner of Income Tax-3, Kolkata [2016 (3) TMI 685 - CALCUTTA HIGH COURT].

ARAMBAGH CO-OP AGRICULTURAL MARKETING SOCIETY LTD VERSUS ASSTT. COMMISSIONER OF INCOME-TAX, CIRCLE-1, WEST BENGAL [ITAT KOLKATA]

BRIEF: Penalty U/S 271B - delay in filing the Tax Audit Report before the specified date - delay in appointment of auditors by the co-operative department for statutory audit - This appointment is not in the control of the assessee - it is not a fit case to impose the penalty u/s. 271B.

OUR TAKE: The hon'ble ITAT KOLKATA held that The assessee could not obtain and file the tax audit report as required u/s. 44AB of the Act due to delay in appointment of auditors by the co-operative department for statutory audit. This appointment is not in the control of the assessee. It is only then after that the assessee appoints tax auditor. The assessee filed the tax audit report immediately after obtaining the same from its Tax Auditor in Form No.3CA on 14-09-2009.

STATE TAXES

ALL INDIA VAT

DELHI

The Govt. vides Circular No. 25 dated 28th Feb 2017, Extension in date is 08th March 2017 for filing of online return for 3rd quarter of 2016-17.

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

HARYANA

The Govt. vides Notification No.05/F-368/ST-7/2017 dated 27th Feb 2017, award Scheme “Apna Bill Apna Vikas”.

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

HIMACHAL PRADESH

The Govt. vides Notification EXN-F (5) - 2 / 2013-VOL.-I dated 01st March 2017, Himachal Pradesh Taxation (On Certain Goods Carried by Road) Act, 1999 - Reduction in tax rate on Clinker.

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

JAMMU & KASHMIR

The Govt. vides Notification NO. SRO 79 dated 28th Feb 2017, Amendment to JKVAT Schedules-A & C - Regarding entry 'Oil cake'.

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

MADHYA PRADESH

The Govt. vides Notification NO. F. NO. A-3-04-2017-1-V (8) dated 27th Feb 2017, notification regarding Circle and Ward/Area.

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

The Govt. vides Notification NO. F. NO. A-3-04-2017-1-V (9) dated 27th Feb 2017, notification regarding Circle and Ward/Area.

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

The Govt. vides Notification NO. F. NO. A-3-04-2017-1-V (10) dated 27th Feb 2017, notification regarding Circle and Ward/Area.

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

The Govt. vides Notification NO. F. NO. A-3-04-2017-1-V (11) dated 27th Feb 2017, notification regarding Circle and Ward/Area.

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

MAHARASHTRA

The Govt. vides Notification NO. NO. VAT 1517/CR 10/TAXATION-1 dated 28th Feb 2017, Notifies Municipal Council of Nagpur for clause (a) of entry 5 of MVAT Schedule-D.

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

The Govt. vides Notification NO. NO. VAT 1517/CR 10/TAXATION-1 dated 28th Feb 2017, Notifies Municipal Council of Nagpur for clause (a) of entry 10 of MVAT Schedule-D.

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

The Govt. vides Notification NO. VAT 1517/CR 10/TAXATION-1 dated 27th Feb 2017, notifies last date for



Disabling Provisional Id of non-Compliant Phase 1 and Phase 2 dealers.

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

RAJASTHAN

The Govt. vides Notification NO. NO. F26 (315) CCT/MEA/2014/2364 dated 28th Feb 2017, Last date for filing of Quarterly Return for 3rd quarter FY 2016-17 is extended up to 15th March 2017.

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

The Govt. vides Notification NO. F26 (315) CCT/MEA/2016/2376 dated 28th Feb 2017, Last date for filing of Annual Return and Revised Quarterly Returns for FY 2015-16 is extended up to 15th March 2017.

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

COURT DECISIONS

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

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

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

OTHER UPDATES

GST ALERTS

GST MIGRATION

Whether GST migration is mandatory for all existing dealers having turnover is less than threshold limit 20L/10L?

The 101 Constitutional Amendment of the Goods and Service Tax (GST) is only Constitution amendment with reference the Goods and Service Tax in the place of existing Indirect Tax Mechanism. The Final bill is yet be approved by the House of Parliament and respective State Legislature Assembly.

Now the question is whether GST Migration is mandatory for all the existing Commercial Tax Registered dealers who registered under the State Commercial Tax Authority even if his turnover is less than the threshold limit and which is 20 Lakhs/10 Lakhs?

My answer is "Yes". Till the date only constitutional amendment has come into existence and the Final Bill is yet being approved the by House of Parliament and respective State Legislature Assembly. Till the time, it is only a draft law. All the Commercial Tax dealers obligated to enrol for the GST migration. As per my understanding there is no Exemption as far as now. One may be covered under Reverse Charge Mechanism with reference to procurement of services and Un-Registered Dealer Purchases should come within the ambit of Goods and Service Tax. Hence, they need to enrol for GST migration without fail. Submitting the documents for the GST migration is not a conclusive evidence that the GSTN is mandatory.

As per the existing Commercial Tax provisions, the dealer has to submit the information which is sought by the Commercial Tax Department without fail. With reference to the GST Migration, the data is required by the Commercial Tax Department is purely in relation to the dealers information such as constitution details of a dealers entity, premises details, directors details, authorised person details etc. Hence, it is obligation for the dealer to produce all the details which is sought by the Commercial Tax Department/Service Tax Department/ Excise Department without fail in order to avoid further penalty.

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