



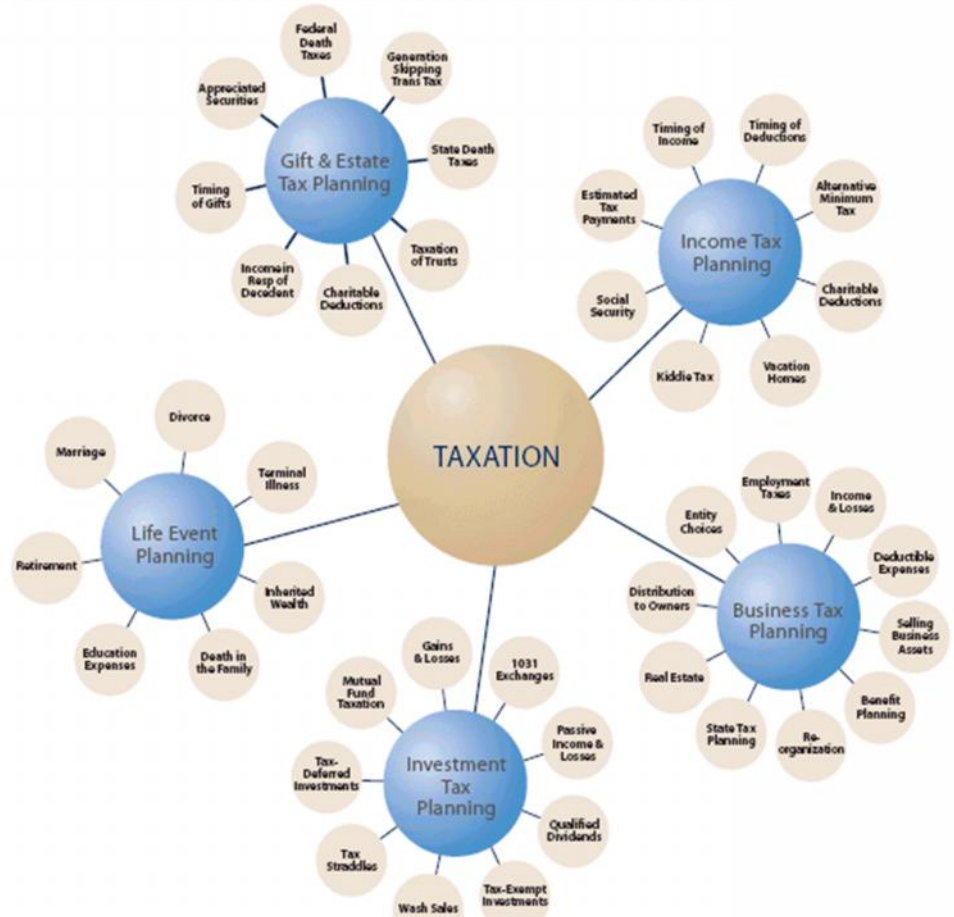
ASC Times

All India Taxes Weekly Reference

Vol :May 22 –May 28, 2017

Solving
any **tax**
puzzle

Tax saving advice
across all the taxes



**TAXCALENDER**

30-05-17	TCS Certificate	Quarterly issuance of Certificate of collection of tax at source (TCS/TDS)

COUNTRY WIDE HOLIDAYS FOR THE WEEK

Date	Holiday	States
16-05-2017	Sikkim State Day	Sikkim
26-05-2017	Birthday of Kazi Nazrul Islam	Tripura
28-05-2017	Maharana Pratap Jayanti	Haryana, Himachal Pradesh

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From the CEO's Desk



Dear Reader,

India's wait for this game-changer 'one-tax regime' is most likely to be over this July as the President of India has on 12th April 2017 given his assent on four GST-supporting legislations earlier passed by Parliament, clearing the decks for the rollout of the historic tax reform. "New Year, New Law, New India," tweeted Prime Minister Shri Narendra Modi as he congratulated the nation on the passage of the four Bills by Parliament.

The four bills—The Central GST Bill 2017; The Integrated GST Bill 2017; The GST (Compensation to States) Bill 2017; and The Union Territory GST Bill 2017—were passed by Rajya Sabha on 6th April 2017 after it being earlier passed by the Lok Sabha on 29th March 2017. Now the action shifts to the States where State GSTs have to be passed while the GST Council is also working in full swing to put in place related regulatory framework. In its 31st March 2017 meeting, it approved amended rules for GST regime, and will meet again on May 18-19 to approve rate structure for individual commodities and services. The GST Council had earlier recommended a four-tier tax structure – 5, 12, 18 and 28 percent.

Taking all the challenges in its stride, the Government Has also been proactively preparing for GST rollout, and Responding positively to the suggestions of the professional bodies, associations and other stakeholders, including the Institute of Chartered Accountants of India (ICAI). The Goods and Services Tax Network has already started migration of the present dealers registered under the Central Excise, VAT etc. in a phased manner. Nonetheless, the roll-out of GST will also immensely expand Chartered Accountants' professional horizons and bring tremendous opportunities for them. Increased compliances requirement in the form of a number of Returns, challenge in transition to the new regime, etc. would definitely require a professional hand for adherence wherein Chartered Accountants can play a vital role. The provision for audit under section 53 (4) of the Revised Model GST Law akin to tax audit is a landmark opportunity for professionals to prove

themselves as caretakers of the financial health of the country.

In addition to the normal consultancy, compliance and certification, the CAs may be called upon to study the impact of implementation of GST on business, analyzing the costs and pricing of product, restructuring of supply chain management, review of existing contract, synchronizing IT systems, treatment of incentives, knowledge sharing & capacity building, etc. Let's gear up for this new opportunity, fast emerging in the garb of challenge.

Alok Kumar Agarwal

CEO

ASC Group.

CENTRAL TAXES

SERVICE TAX

COURT DECISIONS

M/s R.K. Singhvi & Company Versus C.C.E, Jaipur-II CESTAT NEW DELHI

BRIEF: Cargo handling service - shifting of minerals from pithead to a specified area located within the mines and also removing over burden at mining sites to other location within mining area - the appellant have been paying service tax under mining services, which became taxable from 01.06.2007 - whether assessee is liable to pay for above service under the head cargo handling services or not?

OUR TAKE: The appellant authority held that the issue is no more res integra and is covered by the decision in the case of M/s. Thriveni Earthmovers Pvt. Ltd. Versus Commissioner of Central Excise, Salem [2009 (4) TMI 9 - CESTAT CHENNAI], where it was held that movement of limestone in the mining area will be covered by the entry of "Mining of mineral, oil, gas service" which cannot be taxed under "Cargo Handling Service" for the period prior to introduction of the levy under the category of mining w.e.f. 01.06.2007 - appeal allowed - **decided in favor of appellant.**

M/s National Engineering Industries Ltd. Versus CCE, Jaipur CESTAT NEW DELHI

BRIEF: Refund claim - commission received in convertible foreign exchange - the appellant was the agent of Electro Motive Diesel (EMD), who obtained the orders from the Indian Railways - whether the activity carried on by appellant comes within the scope of export of the service u/r 3 of the Export Service Rules, 2005

OUR TAKE: The appellant authority held that in the assessee appellant's case NATIONAL ENGINEERING INDUSTRIES LTD. Versus COMM. OF C. EX., JAIPUR [2011 (9) TMI 759 - CESTAT, NEW DELHI], such service was considered as the export of service u/r 3(ii)(i) (a) and 3(ii)(i) (b) of Export of Services Rules, 2005 read with Section 65(105)(zzb) of the FA, 1994 - the services are considered as export of services and refund allowed on same - appeal allowed - **decided in favor of appellant.**

M/s Godawari Power & Ispat Ltd. (formerly known as Hira Industries Ltd.) Versus CCE, Raipur CESTAT NEW DELHI

BRIEF: Valuation - Business Auxiliary Service - additional consideration in the form of iron ore fines emerging during the course of such crushing - during the course of crushing some iron ore is lost due to various reasons - whether such value of iron ore fine should be added in the crushing charges for tax liability?

OUR TAKE: The appellant authority held that the contingency of emergence of iron ore fines having some value, is not determinable at the time of fixing of crushing charges. Hence, it is not tenable to hold that the crushing charges are influenced by the possible emergence of iron ore fines and its additional value to the appellant - The Revenue has no evidence to support the allegation that the value of iron ore fines likely to emerge during the crushing operation have impacted the crushing charges and, as such, are to be considered as additional consideration for taxable service. In the absence of any indication to that effect, we are not in agreement with the proposal that there is a non-monetary consideration in the form of iron ore fine influencing the crushing charges - appeal allowed - **decided in favor of appellant.**

GMR Airport Developers Ltd. Versus CC, CE & ST, Hyderabad-II & IV CESTAT HYDERABAD

BRIEF: CENVAT credit - classification of service at the recipient's end - case of appellant is that once the Department has accepted the service tax paid by GHIAL under Airport Services, CENVAT credit cannot be denied by changing of classification of the recipient - whether the appellants have correctly availed the CENVAT credit on service tax paid by GHIAL under the Airport Services or otherwise?

OUR TAKE: The appellant authority held that it is undisputed that appellants employees are transported from various places in the city to registered office, which is situated in the GHIAL premises and the services rendered by the appellants are taxed, the CENVAT credit availed by the appellant cannot be called in question since the Revenue has accepted the service tax paid for the services rendered by

the GHIAL for the appellants. The decision of the Hon'ble Apex Court in the case of Servesh Refractories (P) Limited [2007 (11) TMI 23 - SUPREME COURT OF INDIA] directly applies in the case in hand where it was held that in so far as the classification is arrived at by the manufacturer and discharges the duty liability, the CENVAT credit cannot be denied on such capital goods by re-classifying the same at recipients end. Credit allowed - appeal allowed - **decided in favor of appellant.**

M/s Jagdish Prasad Agarwal Versus CCE, Jaipur – I CESTAT NEW DELHI

BRIEF: Management, Maintenance or Repair Services - Commercial or Industrial Construction Service - Taxability

OUR TAKE: The appellant authority held that the services provided by the appellant in respect of maintenance and repair of roads during the period 16/06/2005 to 27/07/2009 were exempted from payment of service tax under Section 97 ibid - service tax demand not sustainable.

Commercial or Industrial Construction service provided in respect of roads are specifically excluded from the purview of levy of service tax in terms of clause (25b) of Section 65 ibid - It is an admitted fact on record that the demand of ₹ 48,99,741/- is towards construction of Toll Plaza and Lanes, which are in relation to the service provided in respect of – roads. The phrase “in respect of roads” contained in clause (25b) of Section 65 ibid has a wider connotation and bears the widest possible scope and may be taken to mean “for the provision of”. Thus, the service tax demand on Toll Plaza and Lanes will not be sustainable in this case.

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

Brindesh G Agrawal Versus Commissioner of Customs, Central Excise & Service Tax, Nagpur CESTAT MUMBAI

BRIEF: Business Auxiliary Service - activity of arranging finance/loans for various borrowers - amount received by the appellant and recorded in his books accounts as commission - whether taxable under BAS or not?

OUR TAKE: The appellant authority held that the issue is no more res integra as this bench in the case of Fulchand Tikamchand v. Commissioner of Central Excise & Customs, Nagpur [2016 (2) TMI 772 - CESTAT MUMBAI] has considered identical issue and has held that In view of an equation that is devoid of an agency relationship with the financier and rules out the provision of a service on behalf of the borrower from whom the appellant receives consideration, the activities of the appellant are outside the ambit of “business auxiliary service” - appeal allowed - **decided in favor of assessee.**

M/s Durga Sakthi Agencies Versus CCE, C & ST, Tirupati CESTAT HYDERABAD

BRIEF: Imposition of penalties u/s 77 (2) and 78 of the FA, 1994 - non-payment of service tax with interest - the case of appellant is that the law was not very clear during the period in dispute

OUR TAKE: The appellant authority held that the appellant has not made out any case against the imposition of the penalties, in as much, he has not brought on record to what was the justifiable reasons for him to not to discharge the service tax liability after taking the registration from the department - On the limitation also, it is noticed that appellant has not been able to justify non-filing of returns with the department or informing the department as to the tax liability that arose, which was not discharged - appeal dismissed - **decided against appellant.**



CENTRAL EXCISE

NOTIFICATION / CIRCULAR

Central Excise - Notification No. 8/2017 CE Dated: 16-5-2017

seeks to amend notification no. 12/2012-Central Excise dated 17.03.2012 extending the time period for furnishing the final Mega power project certificate from 60 months to 120 months and extending the period of validity of security in the form of Fixed Deposit Receipt or Bank Guarantee from 66 months to 126 months, in case of provisional mega power projects

Case laws

Commissioner of Central Excise, Raigad Versus M/s. Ispat Industries Ltd. CESTAT MUMBAI

BRIEF: Cenvat Credit - Removal of goods as such - Goods cleared to sister unit was returned back - The case of the department is that the duty should have been paid on the quantity which was supplied by the appellants but subsequently returned back to them - recovery mechanism under Rule 3(4) - time limitation

OUR TAKE: The Appellant Authority held that the duty is payable only on the net quantity which has been supplied by the appellants. The quantity which has come back to the appellants cannot be considered as removal of input and no duty can be demanded on that quantity - demand not sustainable - issue of limitation not taken up as demand set aside - appeal dismissed - **decided against Revenue.**

Nicholas Piramal (India) Ltd. Versus Commissioner of Central Excise, Raigad CESTAT MUMBAI

BRIEF: Interest - penalty - reversal of CENVAT credit availed on the inputs which were cleared as such to sister concern - Revenue authorities during the period were of the view that central excise duty needs to be discharged after arriving at the assessable value as per Section 4 of the Central Excise Act on the inputs, considering them as if manufactured by the appellant

OUR TAKE: The Appellant Authority held that the law of the land is, an appellant when he removes the inputs on which cenvat credit availed, he has to only discharge the amount of duty which is availed as cenvat credit on the said quantity of the inputs. This position cannot be called in for any deliberations.

Since during the relevant time the appellant had paid differential duty on being convinced by the Revenue, he definitely can take a plea for non-discharge of interest and non-imposition of penalty before the judicial forum. It is the settled law that in the first place if the duty liability does not arise, the question of payment of interest and imposition of penalty will not arise.

Appeal allowed - decided in favor of appellant.

M/s. Swift Enterprises Pvt. Ltd. Versus Commissioner of Central Excise, Kolhapur CESTAT MUMBAI

BRIEF: SSI exemption - dummy unit - clubbing of clearances benefit of N/N. 9/2001-CE dated 01.03.2001 - The department's case is that the value of SCF should be included in the aggregate value of the appellants on the ground that there is common premises, common staff, common directors

OUR TAKE: The Appellant Authority held that SCF is a partnership firm and the respondents are a private limited company. At the first instance, as per the legal statute of both the units, partnership cannot be a related person of a private limited company - As regards the transaction of the funds between both the units, since they are doing business with each other as the respondent is getting the job work done from SCF the transaction is clearly commercial transaction. Therefore, SCF cannot be treated as a dummy unit of the respondent - SSI exemption allowed - appeal allowed - **decided in favor of appellant.**

M/s. Blue Star Ltd. Versus Commissioner of Central Excise, Mumbai III CESTAT MUMBAI

BRIEF: Clearance made against CT-3 provided by the consignee of the goods - demand on the ground that the appellants have not produced the re-warehousing certificate in time - demand of duty in terms of Rule 20(4) of CER, 2000

OUR TAKE: The Appellant Authority held that The duty can be demanded from the consignor under this procedure, only in a case where goods are diverted without delivery of the goods to the consignee against CT-3 certificate, which is not the case here - demand not sustainable. The appellants admittedly did not produce re-warehousing certificate, which is requirement under the Rule. The non-production of re-warehousing is contravention of the provisions - penalty u/r 27 of CER, 2002 upheld. Appeal allowed - **decided partly in favor of appellant.**

**M/s. Sai Polymers Versus CCE, Hyderabad CESTAT HYDERABAD**

BRIEF: Refund of CENVAT credit - clearances made to 100% EOU - deemed exports - denial on the ground that the supplies made to EOU cannot be considered as actual physical exports

OUR TAKE: The Appellant Authority held that reliance was placed in the case of Commissioner Versus Amitex Silk Mills P. Ltd. [2008 (7) TMI 956 - SUPREME COURT], where it was held that deemed exports made by assessee-EOU to another EOU has to be treated on par with physical exports - rejection of refund is unjustified - appeal allowed - **decided in favor of appellant.**

M/s Rudra Alloys (P) Ltd. Versus CCE, Chandigarh CESTAT CHANDIGARH

BRIEF: CENVAT credit - input - registered dealer is bogus - the registration certificate of the dealer has been cancelled on 19.02.2008 with retrospective effect

OUR TAKE: The appellant authority held that It is not the case of the Department that appellant has not received the goods - no investigation has been conducted at the end of the appellant to ascertain they have received the goods or not. No investigation was conducted at the transporter of the goods or at the premises of the appellant to reveal the truth. No cross examination of the registered dealer was granted to the appellant to reveal the truth - Cenvat Credit cannot be denied to the appellant on the basis of deficient investigation - appeal allowed - **decided in favor of appellant.**

M/s Nile Ltd. Versus CCE, C & ST, Hyderabad-III CESTAT HYDERABAD

BRIEF: Re-credit of CENVAT credit, reversed earlier - letter rejecting request for re-credit was interpreted as appealable order - Revenue took a view that such letter cannot be considered as an appealable order and dismissed the appeal - whether the letter rejecting request of appellant for re-credit, could be treated as a speaking order which is appealable u/s 35(1) of CEA, 1944?

OUR TAKE: The appellant authority held that the Section 35(1) of CEA, 1944, says that any person aggrieved by any decision or order passed under the Act (ibid) can file an appeal u/s 35. The Section used the words 'decision' or 'order'. Such decision can be communicated in the form of a letter also. Merely, because the decision is in the form of a letter, it cannot take away the right of appeal from the

aggrieved person - the decision of the Assistant commissioner dated 25.01.2013 is an order appealable before the Commissioner (Appeals) - the matter is remanded to the Commissioner (Appeals) for reconsideration of issue on merits - **appeal allowed by way of remand.**

CUSTOM

NOTIFICATION / CIRCULAR

Notification No. 49/2017 Cus (NT) Dated: 18-5-2017

Rate of exchange of conversion of the foreign currency with effect from 19th May, 2017

Notification No. F.No. 354/119/2016-TRU ADD Dated: 16-5-2017

Corrigendum – Notification No. 17/2017 – Customs (ADD), dated the 11th May, 2017

Notification No. 48/2017 Cus (NT) Dated: 16-5-2017

Determination of Origin of Goods under the Preferential Trading Agreement between the Republic of India and the Republic of Chile (Amendment) Rules, 2017

Notification No. 7/2015-2020 Dated: 16-5-2017

Export Policy of Fertilisers - Updation of List of Manufactures/ Units of Single Super Phosphate (SSP), DAP and NP/NPK

Customs - Notification No. 23/2017 ADD Dated: 16-5-2017

Seeks to levy definitive anti-dumping duty, on imports of Aluminium Foil originating in or exported from China PR

Customs - Notification No. 22/2017 ADD Dated: 16-5-2017

Seeks to amend notification No. 23/2016-Customs (ADD) dated 06.06.2016 vide which anti-dumping duty was imposed on imports of Polytetrafluoroethylene (PTFE) originating in or exported from Russia so as to revise of the amount of anti-dumping duty applicable from US\$ 739.77/MT to US\$ 874.56/MT

Customs - Notification No. 21/2017 ADD Dated: 16-5-2017

Seeks to levy definitive anti-dumping duty on import of Amoxicillin originating in or exported from China PR for a period of five years (unless revoked, superseded or amended earlier) in pursuance of final findings of the Directorate General of Anti-Dumping and Allied Duties

Customs - Notification No. 20/2017 Cus Dated: 16-5-2017

Seeks to amend notification no. 12/2012-customs dated 17.03.2012 extending the time period for furnishing the final Mega power project certificate from 60 months to 120 months and extending the period of validity of security in the form of Fixed Deposit Receipt or Bank Guarantee from 66 months to 126 months, in case of provisional mega power projects

Customs - Notification No. 19/2017 Cus Dated: 16-5-2017

seeks to amend notification No. 101/2007 – Customs dated 11th September 2007 so as to notify the expanded schedule of tariff preferences under the India-Chile Preferential Trade Agreement (PTA)

Case laws

C.C. (Preventive) , Jamnagar Versus UltraTech Cement Limited CESTAT AHMEDABAD

BRIEF: Levy of Additional duty of Customs - Limestone Cess - mining of lime stone - whether ADC is not leviable in the form of Limestone Cess by virtue of Section 3 of Limestone and Dolomite Mines Labour Welfare Fund Act, 1972, as the mere mining of lime stone did not constitute manufacture or production?

OUR TAKE: The Appellant authority held that reliance placed in the case of Lucky Minmat Pvt. Limited. vs. Commissioner of Income Tax, Jaipur [2000 (8) TMI 6 - SUPREME Court] where it was held that mere mining of limestone and marble blocks and cutting the same before it was sold will not constitute manufacture or production - no Additional Duty of Customs in the form of Lime Stone Cess u/s 3 of the Customs Tariff Act, 1975 read with Section 3 of Lime Stone and Dolomite Mines Labour Welfare Fund Act, 1972, for the subject import goods is leviable - appeal dismissed - **decided against Revenue.**

Tulip IT Services Ltd., H.S. Bedi Versus Commissioner of Customs (ACC & Import) , Mumbai and (Vice-Versa) CESTAT MUMBAI

BRIEF: Import of Wit link 2000 system including IDU 2002 S/N PIN 22161 ODU4-1-1-13/ODU 4-1-3-13" with frequency of 13 GHz - notification provides exemption applicable for Base Trans receiver Stations - benefit of N/N. 21/2002-Cus. (Serial No.239) applicable or not?

OUR TAKE: The Appellant authority held that the goods as declared by them, were subjected to examination by the Department of Telecommunications, Government of India and vide letter No.TBVV/F/VAS-GEN/01.TEC/05 dated 31.5.2005 specifically stated that the goods imported do not seem to be Cellular Repeater or Router. The benefit of N/N. 21/2002 (serial No.239) is only for Cellular Repeater or Router - benefit not applicable.

In case of confiscation of goods the auththerty held that goods which were cleared earlier were cleared on final assessment of the bills of entry and the goods are not available for confiscation. In the absence of any goods, the

adjudicating authority was correct in not confiscating the said goods - **claim of Revenue rejected.**

M/s. BBL Foods Pvt. Ltd., Shri Lakhbir Mutchall Versus CCE&C, Hyderabad CESTAT HYDERABAD

BRIEF: Valuation - second hand machine - Cone Machine - Chocolate Depositing Plant and Lentil Plant

OUR TAKE: The Appellant authority held that there were no procedural irregularities in arriving at the assessable value of the impugned goods. The authority, in the impugned order, has gone into all aspects of the case and has arrived at well reasoned findings. - There is no dispute that the local Chartered Engineer did not have any credentials or was not recognised for such work. Nonetheless, the importer did not want to accept the price assessed by the local Chartered Engineer and instead insisted on acceptance of value on the basis of foreign Chartered Engineer Certificate. In the end, the original authority has worked out the assessable value on the basis of manufacturer's value suggested by local Chartered Engineer, applied principles of depreciation as laid down by CBEC and arrived at the derived total value of ₹ 50,54,047/- as representing the assessable value for these goods.

The quantum of redemption fine imposed on BBL and the penalties imposed on BBL and on Shri Lakhbir Mutchall are commensurate with their acts and omissions.

Appeal dismissed - decided against appellant.

Commissioner of Customs & Central Excise, Goa Versus Dream Logistics Company (I) Pvt Ltd CESTAT MUMBAI

BRIEF: Valuation of exported goods - whether the appellate authority is correct in holding that invoice price for the goods exported and corroborated by bank realisation certificate is to be treated as value of the goods exported on which customs duty is payable or whether the value of the goods declared in the shipping bill at the time of exportation of the goods is to be considered as correct?

OUR TAKE: The Appellant authority held that this bench has settled this issue in the case of Hira Steel Limited [2017 (1) TMI 11 - CESTAT MUMBAI], where it was held that, it is settled law that analysis of departmental laboratory, unless challenged, has to be accepted as true and correct. Since the value/price of the iron ore fines is based upon the Fe content of the consignment, the value was, in our opinion, correctly worked out by the lower authorities. - appeal allowed - **decided in favor of Revenue.**

INCOME TAX

NOTIFICATION / CIRCULAR

Case laws

Surela Investment & Trading P. Ltd. Versus Income Tax Officer, Mumbai ITAT MUMBAI

BRIEF: Method of accounting - development agreement - Adhoc addition of 3% of work in progress - assessee is regularly following project completion method of accounting for computation of its income

OUR TAKE: The Appellant Authority held that AO tried to invoke AS-7 of the accounting standard which is applicable to the contracts entered into during accounting period commencing on or after 01-04-2003. In the present case, the contract was entered in 1993 by way of development agreement and the assessee has returned the working progress from AY 1999-2000 and department has accepted consistently. In view of these facts, we direct the AO to compute the income on the basis of completed project method and not on percentage completion method of accounting. **The appeal of the assessee is allowed.**

M/s Sucheta Memorial Trust, C/o RRA Taxindia Versus ITO (Exemptions) , Faridabad ITAT DELHI

BRIEF: Denial of exemption u/s. 10(23C)(iii)(ad) - assessee is AOP

OUR TAKE: The Appellant Authority held that All the Trustee are belonging to the family of Sh. Balwant Rai Satija and the motto of the Trust is to run the Educational school and to earn profit and creating a assets. Therefore, the Trust has not fulfilled the conditions of section 10(23C)(iii)(ad) of I.T. Act and therefore, the Trust is not eligible for exemption u/s 10(23C)(iii)(ad) of the I.T. Act and the same was rightly denied. We further note that the case laws cited by the Ld. Counsel of the assessee are not applicable because the assessee is earning profit year by year and purchasing the property, making FDRs and also earning interest thereon and most importantly, the Assessee is a family Trust and earning profit/benefits and not achieving the objects of the Trust. Accordingly the income of the Trust was assessed as AOP and exemption u/s. 10(23C)(iii)(ad) was rightly not allowed and the addition i.e. surplus of profit shown by the assessee was made to the income of the assessee and exemption u/s. 10(23C)(iii)(ad) which was rightly been confirmed by the Ld. CIT(A), by holding that assessee organization is an educational institution being run for profit and thus ineligible for the exemption as claimed, which does not need

any interference on our part, hence, we uphold the order of the Ld. CIT(A) and dismiss the appeal of the assessee. - **Decided against assessee.**

M/s Mackinnon Mackenzie and Co. Ltd. Versus Income Tax Officer 2 (2) (3) , Aayakar Bhavan, MK Road, Mumbai ITAT MUMBAI

BRIEF: Addition u/s 41- being advances received from the customers - amount held on behalf of principal and monies received from Kenyan Government u/s 28(iv)

OUR TAKE: The Appellant authority held that mere outstanding balances for many years would not justify the conclusion that there was cessation of liability u/s 41(1) of the Act. The appellant has also acknowledged the credits and shown them in the balance sheet. Thus we set aside the order of the Id.CIT(A) and direct the AO to delete the addition.

It is only if the benefit or the perquisite is not in cash or money but is non-monetary benefit or non-monetary perquisite that the question of including the value of such benefit or perquisite would ever arise. Under these circumstances the Tribunal was right in rejecting the contention urged on behalf of the revenue that the amount of ₹ 15,964 should be brought to tax as value of any benefit or perquisite within the meaning of section 28 (iv). The Tribunal doubted whether the amount of ₹ 15 964 was any benefit-" It may or may not be a benefit". Another question is whether the phrase "whether convertible into money or not" would normally mean something else than money. In our opinion, the conclusion of the Tribunal that section 28(iv) would not apply when the amount received is cash or is considered in terms of money, is correct, and the provisions of s 28 (iv) can never be made applicable to the facts of the present case, where excise refund was received by the assessee. - **Decided in favour of assessee.**

Vodafone Cellular Ltd. Versus Additional Commissioner of Income-Tax ITAT PUNE

BRIEF: Levy of penalty under section 271C - violation of the provisions of section 194H - non deduction of tds on sale of SIM cards/recharge coupons at discounted rates to the distributors

OUR TAKE: The appeal of the assessee for the assessment year 2007-08 was allowed, as the order passed by the Assessing Officer under section 201(1) and 201(1A) of the Act was barred by limitation. In respect of the other assessment years i.e. the assessment years 2008-09 to 2012-13, the Tribunal held that sale of SIM cards/recharge

coupons at discounted rate to the distributors is not commission and therefore, not liable to the TDS provisions under section 194H of the Act. Although the Tribunal has remitted the matter back to the file of the Assessing Officer to verify the manner in which the books of account are maintained and whether the sale discount is reflected in the books. However, in principle the Tribunal has deleted the addition holding that there is no payment of commission, hence, the provisions of section 194H are not attracted. Various Benches of the Tribunal in the assessee's own case have taken a consistent view holding that the TDS provisions under section 194H are not applicable in respect of sale of SIM cards/recharge coupons at discounted rates to the distributors.

Once, the substratum for the levy of penalty has eroded there is no question for sustaining the penalty. Since the coordinate Bench of the Tribunal has deleted the quantum addition in all the assessment years under appeal, under such circumstances there is no question of levy of penalty. Accordingly, the impugned orders are set aside and **all the appeals of the assessee are allowed.**

Shankarlal Khaitan Versus Assistant Commissioner of Income-Tax and others ORISSA HIGH COURT

BRIEF: Non-supply of the certified copies of the order sheets

OUR TAKE: The Appellant authority held that It is the right of every assessee to seek for the certified copy of entire order sheet of any assessment proceeding. While seeking for such copies, even if details have not been provided however, since the entire order sheet has been sought for, it is open for the authorities to compute whatever is the amount payable for providing such certified copies and issue notice and demand the petitioner to deposit the same. On such deposit, the certified copies as entitled shall be handed over forthwith. In such background, we direct opposite party No. 1 to act in tune with the above observation/direction of ours.

The Deputy Commissioner of Income-tax (Exemptions) -II, Chennai Versus M/s. Chennai Kammavar Trust - CESTAT CHENNAI

BRIEF: Granting exemption u/s.11 - earning income from letting out of Kalayana Mandapam for marriage and other functions - whether regard to the terms of the Trust Deed, it can be said that the activities carried on by the assessee in the form of running of community hall, viz "Chennai Kamawar Kalyana Mahal" was itself held under the Trust

OUR TAKE: In this case, it is brought on record by the AO that the assessee collected ₹ 11,28,000/- as corpus donation from 93 persons who performed functions at "Chennai Kamawar Kalyana Mahal". In addition to this, ₹ 4,70,000/- was rent for utilizing the facilities of "Chennai Kamawar Kalyana Mahal" by 53 persons, totaling is ₹ 15,98,000/-. As against this, in guise of corpus donation collected ₹ 11,28,000/- from the persons, who have performed the functions in the "Chennai Kamawar Kalyana Mahal". That amount of ₹ 11,28,000/- cannot be considered as corpus donation instead it should be a rental income. On enquiry by assessing officer, it was proved that the persons who paid rent of community hall and who paid the corpus donation were same.

This is an act of quid pro for hiring the hall and no question of voluntary contribution in this payment. It is also to be noted that the dates exhibited in both cases were same. Being so, the provisions of sec.2(15) of the Act is squarely applicable as total receipts of rent from community hall exceeds ₹ 10 lakhs, and we do not find any infirmity in the order of AO in rejecting the claim of exemption u/s.11 of the Act. Accordingly, the order of Ld.CIT(A) is reversed and the order of AO is restored. - **Decided against assessee.**

Milap Industrial Corporation Versus Joint Commissioner of Income-Tax - ITAT CHANDIGARH

BRIEF: Disallowance of commission expenses

OUR TAKE: The Appellant authority held that no work was done by the agents for the assessee warranting payment of commission. This fact has not been controverted by the assessee before us. No evidence whatsoever has been produced before us contradicting this finding of the Commissioner of Income-tax (Appeals). The only evidences on which the learned authorised representative places reliance upon is the Income-tax returns of the agents which do not establish that they had done any work for the assessee. Further the statement of the three agents admitting in so many words that the commission paid was merely an accommodation entry, explaining the manner of execution also coupled with the above facts as found by the Assessing Officer that no evidence of services rendered by the agents was filed by the assessee, the agents had no knowledge of the product sold, had no links with the purchasers, had claimed the receipt of commission only for introducing the buyers and the fact that most of the buyers were known to the assessee and did not require any introduction, seals the matter against the assessee.

Thus we uphold the order of the Commissioner of Income-tax (Appeals) confirming the disallowance of commission expenses paid - **Decided against assessee.**

Commissioner of Income-Tax Versus Rekha Bai SUPREME COURT OF INDIA

BRIEF: Interest income - undisclosed income - addition based on seized documents - full value of the promotes seized at the time of survey should have been taken into account and not 30%

OUR TAKE: From the order of the first appellate authority, we find that the Assessing Officer had examined some of the borrowers mentioned in the promotes and they have categorically stated that the amount advanced is 50 per cent. or less which explanation has been accepted by the first appellate authority and confirmed by the Tribunal. The Department has failed to bring on record any material to the contrary except the seized documents which, in our considered opinion, could not absolve the Department or give any right to negate the view taken by the first appellate authority and the Tribunal. So far as the income divided among the family members of the respondent-assessee is concerned, we find that all of them were carrying on same business from the same premises. Therefore, it is but natural that if any concealed income has been found at the time of search and survey, it has to be distributed among all the family members who were carrying on business. Thus the impugned order of the High Court [2005 (12) TMI 85 - MADRAS High Court] does not call for any interference.

Deensons Trading Co. (P.) Ltd. Versus Income Tax Officer, Co. Circle - I (4) , Chennai - ITAT CHENNAI

BRIEF: Date of reckoning of acquisition of the property for the purpose of computation of capital gains - LTCG or STCG - What would be the period of holding of the asset-whether it would relate back to the date when (personal) capital asset was converted in to business asset a few years back or the date of conversion now from business asset back to capital asset?

OUR TAKE: In the instant case, the appellant has acquired the property in 1988-89 and 1991-92, the property remained in the hands of the assessee company as stock in trade and the property was transferred as investment in the books of accounts during the FY 1994-95 and sold in 1996-97. The Assessing Officer also observed that the assessee was dealing in real estate and all the expenses have been claimed regularly as business expenses and have been allowed too. During the A.Y 1997-98 also the assessee has also paid MMDA plan submission charges of Rs,15300/- and claimed as deduction. The above finding of the AO shows that though the assessee claimed to have converted the asset in to investment in books of accounts, it continued to claim the maintenance expenses as business expenditure. Even

otherwise also from the date of conversion of the asset it was held as capital asset in the hands of the assessee for less than 36 months.

CIT (A) rightly held the asset as short term capital asset and the gains should be taxed as short term capital gains since the holding period was less than 36 months from the date of conversion of stock in trade in to the capital asset. Accordingly, **we uphold the order of the Ld. CIT (A) and dismiss the assessee's appeal.**

State Level Taxes

ALL INDIA VAT

COURT DECISIONS

The Commissioner, Commercial Tax, U.P., Lucknow Versus M/s I.T.T. Ltd.

BRIEF: Validity of reassessment proceedings - change of opinion - material relied upon both for assessment and reassessment had remained the same, and therefore, subsequent view taken in reassessment proceedings was nothing but change of opinion, and was thus not permissible

OUR TAKE: The Appellant authority held that the material forming the basis for assessment and also for reassessment are one and the same. It is further apparent that on the basis of such materials, the assessing authority had accepted the claim put forth by the assessee. The reassessment proceedings are also on the basis of same set of materials. In such circumstances, the basis for reassessment could at best be either change of opinion or non-application of mind, both of which would not validate an order of reassessment. Tribunal's view that based upon the same material an order of reassessment would be impermissible being in the realm of 'change of opinion', does not suffer from an error of law and is maintained - revision rejected - **decided against Revenue.**

Sharma Trading Co. Versus Commissioner Of Trade & Taxes

BRIEF: Refund claim with interest - C-Forms not submitted

OUR TAKE: The Appellant Authority held that refund claim will be processed within a period of two weeks from submission of C-Forms - as regards interest, the undertaking of the DVAT Department that such withheld amount will be paid, subject to the outcome of the decision of the case of Commissioner, Trade and Taxes v. Vizien Organics [2017 (3) TMI 485 - SUPREME COURT OF INDIA], within four weeks from the date of the said order of the Supreme Court is placed on record - petition allowed - **decided in favor of petitioner.**

Jai Kumar Shyam Sukha Versus The State of Assam & 2 Others

BRIEF: Liability of tax - Assessment Year 2009-2010 - business of 'supari' - stock transfer - levy of tax u/s 12 of the Act on the purchase value of 'supari' dispatched outside the State of Assam - petitioner claim that since the tax on 'supari' was leviable u/s 10 of the Act on its sale price, the petitioner was not liable to pay tax u/s 12 of the Act

OUR TAKE: The concerned authority held that u/s 10 tax is leviable on 'supari' and u/s 12 tax can be levied only when the purchase is made from any person in the circumstances, in which, no tax u/s 10 is leviable on the sale price on such taxable goods - Admittedly, when the petitioner purchased 'supari', tax under Section 10 was leviable on its sale price. Therefore, the pre-condition for the applicability of Section 12 was wholly absent in the case at hand.

Merely because the Department for some reason could not collect tax on the sale of 'supari' u/s 10 would not mean absence of 'levy' or 'liability' conferring right to levy tax u/s 12.

Revision allowed - decided in favor of assessee.

GST ALERTS

Rate fitments on Day 1 of 14th GST Council Meeting

In Srinagar, the all-powerful GST Council headed by the Hon'ble Finance Minister, Mr. Arun Jaitley met for the fourteenth time to finalise the nuts and bolts of the new GST tax framework. This meeting is paving the way for India to join select League of Nations with a GST rollout from July 1, 2017 as envisaged.

Approval to 7 Draft GST Rules & 2 Draft GST Rules sent for legal vetting:

The GST Council has given its approval to 7 sets of Draft Rules dealing with [Registration](#), [Payment](#), [Refund](#), [Invoice](#), [Debit & Credit Note](#), [Input Tax Credit](#), [Valuation](#) and [Composition](#).

Two Draft GST Rules on [Transition provisions](#) and [Returns](#) have been sent for legal vetting.

- **Approval to GST tax rates for 1205 items of goods, tax fitment of remaining 6 items & services will be taken up today:**

The GST Council has broadly [approved the GST rates for 1205 items of goods out of 1211 items at nil rate, 5%, 12%, 18% and 28%](#) to be levied on certain goods, with essential items of daily use being kept in the lowest bracket of 5%. A decision on the tax rate for remaining 6 categories of items, including Gold, Bidis, Textile, Footwear, Agricultural implements and Packaged/Branded food items, along with tax fitment for categories of services was kept in abeyance and will be taken up for discussion today.

GST Rate Schedule for Goods has been uploaded immediately after the GST Council's decision and however, it will be subject to further vetting during which the list may undergo some changes.

Revenue Secretary, Dr. Hasmukh Adhia, has categorized the percentage of items in different rate slabs as under:

Percentage of total items	Applicable Tax Rate slab
7%	Exempt
14%	5%
17%	12%
43%	18%
19%	28%

cleaner, shavers, hair clippers, automobiles, motorcycles, aircraft for personal use, and yachts etc., will attract a highest rate of tax i.e. 28%.

Glimpse of GST Rate Schedule for Goods is given as under for easy digests:

- i. **Nil Rate (0%):** No tax will be imposed on items like fresh meat, fish chicken, eggs, milk, butter milk, curd, natural honey, fresh fruits and vegetables, flour, besan, bread, prasad, salt, bindi, Sindoor, stamps, judicial papers, printed books, newspapers, bangles, handloom etc.
- ii. **5% Rate:** Items such as fish fillet, cream, skimmed milk powder, branded paneer, frozen vegetables, coffee (except instant coffee), tea, spices, pizza bread, rusk, sabudana, kerosene, coal (tax under the existing system is 11.69%), medicines, stent, lifeboats will attract tax of 5%.
- iii. **12% Rate:** Frozen meat products , butter, cheese, ghee, dry fruits in packaged form, animal fat, sausage, fruit juices, Bhujia, namkeen, Ayurvedic medicines, tooth powder, agarbatti, colouring books, picture books, umbrella, sewing machine, and cellphones will be taxable at 12%.
- iv. **18% Rate:** Most of the items will fall 18% tax slab which include flavoured refined sugar, pasta, cornflakes, pastries and cakes, preserved vegetables, jams, sauces, soups, ice cream, instant food mixes, mineral water, tissues, envelopes, tampons, note books, steel products, printed circuits, camera, speakers and monitors etc.
- v. **28% Rate:** Chewing gum, molasses, chocolate not containing cocoa, waffles and wafers coated with chocolate, pan masala, aerated water, paint, deodorants, shaving creams, after shave, hair shampoo, dye, sunscreen, wallpaper, ceramic tiles, water heater, dishwasher, weighing machine, washing machine, ATM, vending machines, vacuum

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