ASC Times

All India Taxes Weekly Reference

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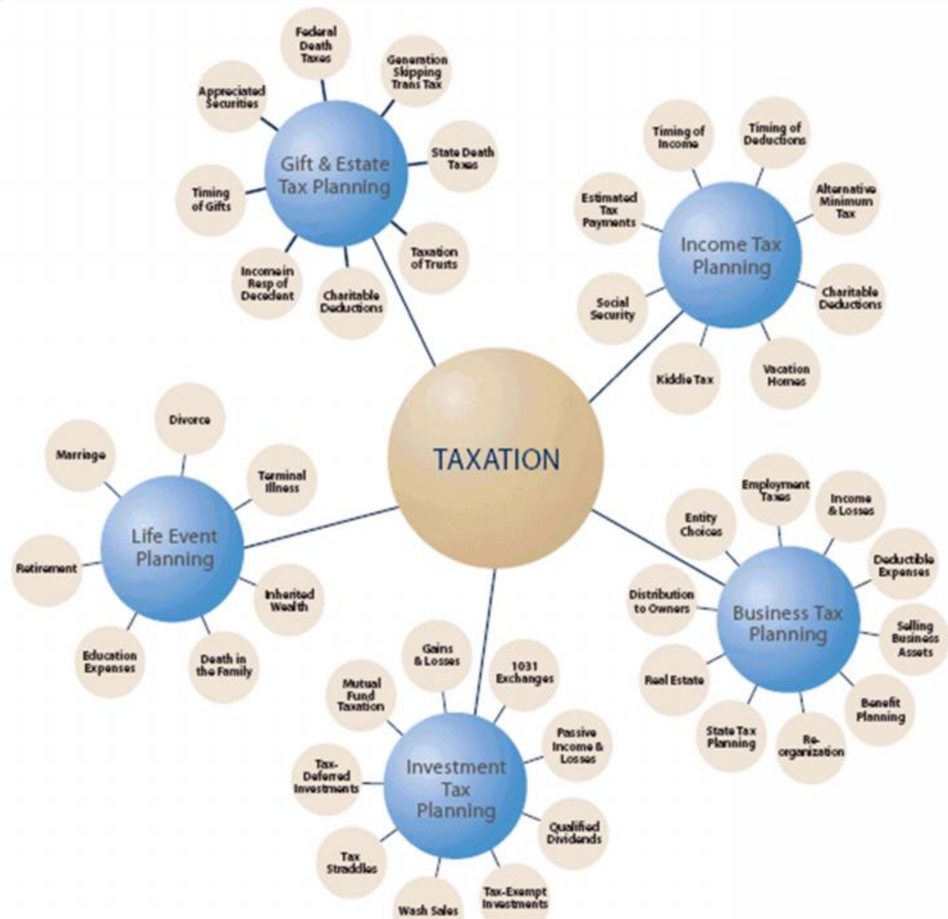
Solving any tax puzzle

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)
31-05-17	Annual Return	Filing of Statement of Financial transaction form 61A

COUNTRY WIDE HOLIDAYS FOR THE WEEK

Date	Region	Festival/Occasion
28-05-2017	Haryana, Himachal Pradesh	Maharana Pratap Jayanti
29-05-2017	Punjab	Guru Arjun Dev

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From the CEO's Desk

Dear Reader,

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, analysing 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

NOTIFICATION / CIRCULAR

COURT DECISIONS

CCE, Jaipur – II Versus M/s Rajasthan State Mines & Minerals CESTAT NEW DELHI

BRIEF: Interpretation of statute - GTA service - Reverse Charge Mechanism - demand of service tax on GTA services, where the freight paid exceeded ₹ 750/- but did not exceed ₹ 1,500/- per consignment - N/N. 34/2004-ST - The Commissioner interpreted the said notification to the effect that when the goods carriage carried only a single consignment clause (i) can be made applicable, to allow exemption -

OUR TAKE: The Appellant authority held that the gross amount charged on an individual consignment transported in a goods carriage is specifically mentioned in Clause (ii) of the notification - In the present case, the individual consignment transported in a single lorry had freight amount exceeding ₹ 750/-, thereby clearly attracting provisions of Clause (ii). Clause (i) will apply where the gross amount charged on consignments transporter in a goods carriage does not exceed ₹ 1,500/- - admittedly, there is no multiple consignments. We find no need to take a single consignment, with no other consignment in the same lorry, to be covered under the category of clause (i). Such interpretation will be against the plain reading and also will make the operation of the notification difficult in different situations, of individual consignments having freight of below ₹ 750/-/above ₹ 750/- and also above ₹ 1,500/- - where an assessee incurred freight upto ₹ 1500/- per consignment the assessee is not eligible for exemption. Appeal allowed - **decided in favor of Revenue.**

M/s. R.B. Yadav Versus C.C.E., Raipur CESTAT NEW DELHI

BRIEF: Manpower Recruitment Agency service - Labour contractor - supply of manpower - taxability - time limitation

OUR TAKE: The Appellant authority held that the ultimate use of labour by the client is not a criteria to decide the tax Liability under service tax provision - the demand u/s 73 (1) of the FA, 1994 has to be issued within the period with reference to relevant date as stipulated in the said Section. There is no provision to determine 'relevant date' based on the date of knowledge acquired by the Department - appeal dismissed - **decided against appellant.**

M/s. Cherry Hill Interiors Ltd. Versus C.S.T. Delhi-II CESTAT NEW DELHI

BRIEF: Providing marketing services to their foreign principals - Business auxiliary services or export of services - commission received from foreign principal in convertible foreign currency - taxability

OUR TAKE: The Appellant authority held that marketing operations in India were not at the behest of any Indian customer and the same were being provided to foreign recipients, the same has to be treated as export of services and not liable to service tax - the procurement of orders in the Indian market, on behalf of the foreign principal for which payment is received in foreign exchange from the principal, would not be taxable as no service is considered to have been provided in India - appeal allowed - **decided in favor of appellant.**

M/s Alcatel Portugal S.A. (now known as M/s Thales Portugal SA) Versus CST, Delhi CESTAT NEW DELHI

BRIEF: Composite works contract - Consulting engineering service - erection, commissioning and installation service - tax liability for the period 01/01/2007 to 31/03/2011

OUR TAKE: The Appellant authority held that for the period post 01/06/2007, the tax entry "works contract service" excluded the services of works contract in respect of railways. DMRC Metro Rail Project is covered by the scope of the term "railways" - demand set aside - appeal allowed - **decided in favor of appellant.**

Serene Developers Versus Commissioner of Central Excise, Pune-I CESTAT MUMBAI

BRIEF: Penalty - Construction of residential complex - entire service tax liability and the interest is paid before the issuance of SCN - applicability of provisions of Section 73(3) of the FA, 1998

OUR TAKE: The Appellant authority held that there is nothing on record to indicate that appellant was aware of the liability to pay service tax and were not discharged willfully - there is no dispute as to the fact that the appellant has discharged the service tax liability and the interest thereof before the issuance of SCN - Identical issue came up before the Hon'ble High Court of Karnataka in the case of CCE & ST., LTU, Bangalore v. Adecco Flexion Workforce Solutions Ltd. [2011 (9) TMI 114 - KARNATAKA HIGH COURT], where it was held that after the payment of service tax and interest is made and the said information is furnished to the authorities, then the authorities shall not serve any notice under Sub-Sec.(1) in respect of the amount so paid - provisions of Section 73(3) of the FA, 1994 would apply and the revenue authorities should not have issued any SCN to the appellant for the demand of imposition of penalties - demand of tax with interest upheld - appeal allowed - **decided partly in favor of appellant.**

M/s. City Financial Consumer Finance India Ltd. Versus C.S.T. New Delhi CESTAT NEW DELHI

BRIEF: Non-payment of tax - commission received under the head subvention account for providing the services to its customers - time limitation - sub-section (1) of Section 73 of the FA

OUR TAKE: The Appellant authority held that receipt of subvention/manufacturer discount in the nature of interest was reflected by the appellant in the periodical ST-3 Returns, the charges of fraud, collusion, wilful mis-statement, suppression of facts etc. cannot be levelled against the appellant, justifying invocation of the extended period of limitation for issuance of SCN - demand should be confined to the normal period of one year - demand under proviso to sub-section (1) of Section 73 of the FA, 1994 is barred by limitation of time.

Issuance of second SCN on 23.10.2009 is clearly barred by limitation of time, having been issued beyond the period of one year from the relevant date.

Appeal allowed - decided partly in favor of appellant.

Plastichemix Industries Versus C.C.E. & Cus., Vadodara CESTAT AHMEDABAD

BRIEF: Business Exhibition Service - service received from foreign service provider - reverse charge mechanism

OUR TAKE: The Appellant authority held that section 66A is a deeming provision which says that such service shall be taxable service and such taxable service shall be treated so as if the recipient has himself provided the service in India and accordingly, the provisions of FA, 1994 for levy of service tax will be applicable to such facts - the appellant did not provide/receive any service within India. In other words, the subject services have been fully performed outside India only. There is not even part performance or part receipt of service within India - there cannot be any liability of Service Tax for the subject services which have entirely been performed outside India - appeal allowed - **decided in favor of appellant**

Commissioner of Central Excise, Pune-I Versus Sai Service Station Ltd CESTAT MUMBAI

BRIEF: Free after-sale services rendered to the customers - taxability

OUR TAKE: The Appellant authority held that the issue is no more res integra as identical issue came up before the Tribunal in the case of CCE v. Automotive Manufacturers Ltd. [2015 (12) TMI 549 - CESTAT MUMBAI] wherein the Tribunal held that service tax liability cannot be on the part of margin given by the manufacturer to the dealer as being inclusive of the charges of free sale service - demand rightly dropped - appeal dismissed **- decided against Revenue.**

M/s. S. Harlalka Versus C.S.T. - Service Tax-Delhi CESTAT NEW DELHI

BRIEF: Business Auxiliary Services - activity of providing Multi-Level Marketing to its principal - extended period of limitation - penalty

OUR TAKE: The Appellant authority held that the activity of Multi-Level Marketing whether liable to levy of service tax was contentious issue, which was resolved by the Tribunal in the case of Charanjeet Singh Khanuja [2015 (6) TMI 585 - CESTAT NEW DELHI], holding that such activity should fall under the Business Auxiliary Service - there was ambiguity in interpretation of the statutory definition of Business Auxiliary Service, thus, the demand for extended period of limitation cannot be sustained - considering the fact that the appellant has not involved in the fraudulent activities concerning suppression fraud etc., the penalty imposed u/s 78 ibid can be set aside invoking Section 80 in the interest of justice.

Matter remanded back to the original authority for quantification of service tax liability payable by the appellant within the normal period of limitation **- appeal allowed by way of remand.**

Commissioner of Central Excise, Kolhapur Versus G.M. Fabricators CESTAT MUMBAI

BRIEF: Penalty u/s 78 - power of Commissioner to condone delay - condo nation of delay in filing appeal - Commissioner could not have condoned the delay in excess of two months

OUR TAKE: The Appellant authority held that: - It can be seen that the Finance Act was amended on 28/05/2012 and only thereafter sub-section (3A) of Section 85 within the operational prior to 28/05/2012. The Commissioner at the material time had power to condone the delay of up to three months. In view of the above, it is seen that the Commissioner (Appeals) has not exceeded his power and therefore, the miscellaneous application is dismissed.
It is a fact that the respondent had collected service tax from the clients and still not paid to Revenue. The reason given by the Commissioner (Appeals) for non-imposition of penalty is that the respondent was in a rural area and not very highly educated. It is a fact that the respondent has collected the service tax from the client and not paid to Revenue. Levy of Penalty confirmed - appeal allowed - **decided partly in favor of revenue.**

Samal Developers Versus Commissioner of Central Excise, Pune-III CESTAT MUMBAI

BRIEF: Construction service - Valuation - value of material supplied free by clients for rendering services of commercial or industrial construction services - includibility

OUR TAKE: The Appellant authority held that the issue is no more res integra as Larger Bench of the Tribunal in the case of Bhayana Builders (P) Ltd. vs. CST, Delhi [2013 (9) TMI 294 - CESTAT NEW DELHI (LB)] has held that the value of goods and materials supplied free of cost by a service recipient to the provider of the taxable construction service, being neither monetary or non-monetary consideration paid by or flowing from the service recipient, accruing to the benefit of service provider, would be outside the taxable value or the gross amount charged, within the meaning of the later expression in Section 67 of the FA, 1994 - the value of free supplied material from the service recipient need not to be included in the value of discharge of service tax liability - appeal allowed - **decided in favor of assessee.**

CENTRAL EXCISE

NOTIFICATION / CIRCULAR

Case laws

M/s Lav Kush Textiles Versus The Commissioner, Central Excise, Jaipur RAJASTHAN HIGH COURT

BRIEF: Refund of cenvat credit - Duty under protest - closer of factory

OUR TAKE: The Honourable High Court held that taking into consideration, the Rule 5 of the CENVAT Credit Rules 2002, we are of the view that the Tribunal was not correct while relying upon the judgment of the Larger Bench in Gauri Plastic culture (P) Ltd. [2006 (8) TMI 225 - CESTAT, MUMBAI] as Rule 5 in no way prohibits the payment of the refund amount in cash and more particularly when after a proper adjudication of matter an amount of ₹ 63,001/- is said to have been sanctioned in favour of assessee (appellant) and the factum of their manufacturing unit having been closed, we are of the considered opinion that the present appeal deserves acceptance, the same is, therefore, allowed - **Decided in favor of the assessee.**

CCE, Raipur Versus M/s Ultratech Cement Ltd. CESTAT NEW DELHI

BRIEF: CENVAT credit - sale of waste and scrap of various metals arising within the factory including used capital goods - non-payment of central excise duty

OUR TAKE: The Appellant authority held that an identical issue has come up before this Tribunal in the assessee-Respondents' own case M/s Ultra Tech Cement Ltd. vs CCE&ST, Raipur [2016 (9) TMI 1234 - CESTAT NEW DELHI], where it was held that in view of the settled principles of law, we are not in agreement with the findings of the lower authority that prescription of Chapter Note in the tariff will create the duty liability on the waste and scrap of metal goods arisen during the course of repair and maintenance of plant and machinery - demand set aside - appeal dismissed - **decided against Revenue.**

Emil Pharmaceutical Industries Pvt. Ltd. Versus Commissioner of Central Excise, Thane CESTAT MUMBAI

BRIEF: Valuation - related party transaction - It was alleged that since the appellant had entered into an agreement regarding the sales promotion of "Cardiovit" with Pfizer Ltd. and is paying service charges to them, the appellant and M/s.Prizer Ltd. are related persons

OUR TAKE: The Appellant authority held that: - the onus of establishing that the appellants are related to Duchem Laboratories Ltd. is on the Revenue - No evidence has been produced to show that by virtue of being interconnected undertaking, Duchem Laboratories Ltd. and Pfizer become a single entity - no evidence has been produced to establish that the appellants and Pfizer Ltd. have any interest in the business of each other - From the terms of the agreement it appears that Pfizer is merely a service provider to the appellant - In the absence of any proof of mutuality of interest, it cannot be said that the parties are related - appeal allowed **- decided in favor of appellant.**

CCE, C&ST, Hyderabad Versus M/s. Nosch Labs Pvt. Ltd. CESTAT HYDERABAD

BRIEF: Refund claim - unutilised Cenvat credit which was availed on inputs and input services and finished goods cleared to 100% EOU - deemed exports

OUR TAKE: The Appellant authority held that although Rule 5 of CCR does not explicitly provide for deemed exports, there is no ground to interpret that the deemed exports are excluded from the purview of Rule 5 of CCR and the Notification issued there under for the material period. When the deemed exports would be eligible to be considered for working out the Net Foreign Exchange Earning (NFEE) and for all other export benefits, I do not see any reason why the deemed exports should be ignored for the purpose of the refund u/r 5 of CCR read with Notification issued there under - refund allowed - The appellant is however not eligible for any refund claimed on such deemed exports for the clearances made from 01.03.2015, if any, since such deemed export would not fall within the ambit of export - **decided partly in favor of appellant.**

Granules India Ltd. Versus CCE, C&ST, Hyderabad CESTAT HYDERABAD

BRIEF: CENVAT credit - input services - nexus with manufacturing activity - Property Insurance Services - Marine Policy – Directors & Officers liability - Product Liability Insurances

OUR TAKE: The Appellant authority held that property insurance is in respect of the insurance of factory premises including plant & machinery and service tax paid - Marine Policy is in relation to the inward and outward movement of manufactured goods and the service tax paid by the insurance authorities is in respect of finished goods hence Cenvat Credit was eligible - Directors and Officers liability insurance is in respect of the insurance cover taken by the appellant assessee in respect of the liability that may arise on directors and officers during discharge of their duties towards appellant company - product liability is an insurance of the products for which services were provided by insurance company - all the services have nexus with business - credit allowed - appeal allowed - **decided in favor of assessee.**

C.C.E. & S.T. Raipur Versus M/s. Shiv Shakti Steels Pvt. Ltd. CESTAT NEW DELHI

BRIEF: CENVAT credit - common input services used in dutiable as well as exempted products - Revenue took the view that in terms of the provisions of Rule 6(2), of the CCR, 2004, the appellant was required to pay an amount equal to 10% of the value of the exempted goods sold by them

OUR TAKE: The Appellant authority held that: - since in the present case, the exempted final product has emerged as an unavoidable waste or by-product, compliance of provisions of rule 6(2) is impossible - appeal dismissed - **decided against Revenue.**

C.C.E., Chandigarh Versus Himachal Wire Indus P. Ltd. and Brijsons Heatreat CESTAT CHANDIGARH

BRIEF: CENVAT credit - area based exemption - N/N. 50/2003-CE dt. 10.1.2003 w.e.f. 30.10.2004 - denial of credit on the ground that clearances effected under the said notification are not required to pay any duty, therefore, they are not entitled to take any credit

OUR TAKE: The Appellant authority held that: - the goods produced by the respondents are mentioned in the first schedule to the CETA, 1985. It is not the case of the respondents that the final products manufactured by them falls in Annexure-I appended to the notification. Therefore, the contention of the respondents, that the goods manufactured by them are not specifically exempted is completely erroneous.

Since the final products manufactured by the respondent are specified in the notification and the same is cleared from the unit located in the specified zone, the goods manufactured by the respondents are exempted goods. Since the only final product manufactured by respondents is held to be exempted goods, the benefit of CENVAT Credit is not eligible in the terms of Rule 6(1) of CCR, 2004. It is not the case of the respondents that they are manufacturing dutiable as well as exempted goods - the respondents are entitled to keep the credit on inputs as on 30.10.2004 for payment of duty as and when such a need arises - appeal allowed **- decided in favor of Revenue.**

Sanghi Industries Limited Versus C.C.E. & S.T. -Rajkot CESTAT AHMEDABAD

BRIEF: Valuation - MRP Valuation - cement in packed form (in 50 kg bags) - supply to industrial consumer or institutional consumer - benefit of N/N. 4/2006-CE Sr.No.1(b) or 1(c) - case of Revenue is that subject supplies/sales, though declared as Not for Resale are not covered under Rule 2A of SWM Rules, therefore, concessional rate of duty as per N/N. 4/2006-CE Sr.No.1(b) or 1(c) will not be applicable to sales made to/for builders, developers, contractors and construction firms, manufacturers of finished goods, captive consumption

OUR TAKE: The Appellant authority held that the present matter is covered by the Tribunal s decisions in the case of Ambuja Cement Ltd Vs CCE Raipur [2017 (1) TMI 1130 - CESTAT NEW DELHI], where it was held that packages of commodities containing a quantity of more than 25 kg or 25 litre excluding cement and fertilizers sold in bags up to 50 kg and packaged commodity meant the industrial or institutional consumer are excluded from the provisions of the said Rules - appellant eligible for benefit.
The sales made to various categories of buyers are covered u/R 2A of SWM Rules, 1977 and such goods are eligible for the benefit of N/N. 4/2006-CE - appeal allowed - **decided in favor of assessee.**

M/s Zenith Silk Mills Pvt Ltd Versus Commissioner of Central Excise, Customs –Surat CESTAT AHMEDABAD

BRIEF: Refund claim - refund of CENVAT Credit lying unutilized in their Cenvat Credit account

OUR TAKE: The Appellant authority held that it is clear that Rule 5 of CCR, 2004 does not authorize granting refund of CENVAT Credit in all the cases; it authorizes grant of refund only in case where final products have been exported. Thus, there is no provision in law of Central Excise for grant of refund of such accumulated credit to the appellant - As the policy of the Government is that tax on exported goods is zero rated and the export goods should not suffer any taxes. Therefore, a provision such as Rule 5 allows the refund of duty in respect of CENVAT credit on inputs which have suffered Central Excise duty but the finished goods are exported - appeal dismissed **- decided against appellant.**

CUSTOM

NOTIFICATION / CIRCULAR

Notification No. 50/2017 Cus (NT) Dated: 24-5-2017

Amendment to notification 63/94-Customs (N.T), dated 21.11.1994 so as to notify Valmikinagar in West Champaran District, Bihar as a Land Customs Station

Notification No. 8/2015-2020 Dated: 23-5-2017

Export of Red Sanders wood by Government of Andhra Pradesh, Directorate of Revenue Intelligence (DRI), Government of Maharashtra and Tamil Nadu-Extension of time regarding

Notification No. 21/2017 Dated: 22-5-2017

Central Government - Did Not Allow Benefit of Duty Free Import of cut and Polished Diamonds Exported abroad for Certification and Grading, by Authorised Offices/Agencies in India

Case laws

Commissioner of Customs, New Delhi Versus M/s. Integral Computer Limited CESTAT NEW DELHI

BRIEF: Classification of imported goods - accessories for computer system (PC cabinet with built in audio, key board, mouse pad, external port, USB Camera) - whether classified under CETH 8473 30 99 as claimed by assessee or CETH 8529 10 29 as claimed by Revenue?

OUR TAKE: The Appellant authority held that the PC, in conjunction with an optical reader projector lights on the interactive whiteboard through a medium of projector. The teaching aid comprise of PC, projector as well as interactive electronic whiteboard. The impugned goods are parts which can be used into PC by addition of suitable parts such as processor, HDD, RAM etc. - impugned goods are parts/ accessories of PC, therefore, the classification of the goods will be under Chapter heading 8473.
They do not become part of the Interactive Electronics Whiteboard even if the computer itself is used to project on to the whiteboard.
Appeal dismissed - decided against Revenue.

M/s Jay Polychem India Ltd. Versus Commissioner of Customs, Kendal CESTAT AHMEDABAD

BRIEF: Classification of imported goods - Mixed Xylene - classified under CTH 29.02 or under CTH 27.07?

OUR TAKE: The Appellant authority held that to fall in Heading 29.02, xylene must contain 95% or more by weight of xylene isomers, all isomers being taken together and xylene of lower purity would fall in heading 27.07 - In the instant case, the subject goods is a mixture containing less than 95% by weight of xylene isomers and hence would be appropriately classifiable under Heading 27.07 (SH 2707.30-Xylole) - appeal dismissed - **decided against appellant.**

Commissioner of Customs New Delhi Versus M/s. Craftex India CESTAT NEW DELHI

BRIEF: Classification of goods - New Trim Cutting Synthetic Waste - classified under CTH 63109040 or under CTH 5603 - N/N. 12/2012 Cus. dated 17.3.2012

OUR TAKE: The Appellant authority held that fabric with the width of 2.6 inches to 4 inches even if it is in running length cannot be considered as synthetic strip classifiable under CTH 5603. The CTH 6310 covers "used or new rags, scrap twine, cordage, rope and cables and worn out articles of twine, cordage, rope or cables, of textile materials".
The Circular No. 20/2011 Cus dated 15.4.2011 has clarified that the import of Trim Cutting waste or fibre trim of continuous length with width up to 10" fall under CTH 6310 required for the manufacture of Chindi rugs will be allowed for clearance without any import license. The above CBEC circular strengthens the view that imported goods are in the nature of waste used for manufacture of rugs and hence will be rightly classifiable under CTH 6310.
Appeal rejected - decided against Revenue.

M/s. PD Prasad & Sons Pvt. Ltd. Versus Commissioner of Customs (Export) , New Delhi CESTAT NEW DELHI

BRIEF: Imposition of penalty u/s 114 (iii) of the CA and u/s 117 of the CA on CHA - over-valuation of export

OUR TAKE: The Appellant authority held that the appellant filed shipping bills on the basis of documents received by them. If there is any difference in the value of the export consignment, the CHA cannot be held responsible for the same as it is not the duty of the CHA to adjudge the correct value of the goods. There is virtually no evidence on record to show that he was aware of the over-valuation of the export consignment and he simplicitor proceeded by the declaration made by the exporters. In such a scenario, the appellant cannot be held liable for any aiding and abetting and consequently to penalty - appeal allowed - penalty set aside - **decided in favor of appellant.**

Shri Rajesh Damani Versus Commissioner of Customs (Import) , Nhava Sheva CESTAT MUMBAI

BRIEF: Penalty on C&F Agent - they aided and abetted in the evasion of the customs duty - undervaluation of imported clearances - case of appellant is that he is only a clearing and forwarding agent and involved in the clearance of the goods. Therefore, as regards valuation issue, he is not a party to the undervaluation of imported goods - it is also contended by appellant that CHA were involved in the clearing of the goods but those CHAs were not made noticees in the present case

OUR TAKE: The Appellant authority held that the appellant is a clearing and forwarding agent but as per their statement they are engaged in the clearing of the goods by using the CHA licence of some other CHA. Therefore, it cannot be said that since the CHA was not penalised the appellants should also be absolved from the penalty - the appellant was actively involved in the clearing of the goods and fact of undervaluation was known to them, therefore they aided and abetted in the evasion of the customs duty, committed by the two exporters namely M/s. Vastupal Tejpal (India) and M/s. Bhaktiprem International - penalty upheld - appeal dismissed - **decided against appellant.**

INCOME TAX

NOTIFICATION / CIRCULAR

Case laws

M/s. Aquafil Polymers Co. Pvt. Ltd., Versus Addl. CIT, TDS Range, Ahmedabad ITAT AHMEDABAD

BRIEF: Penalty imposed u/s. 272A(2)(k) - late filing of TDS returns - reasons for delay

OUR TAKE: The Appellant authority held that the tax was deducted and deposited on receipt of payment and TDS returns were filed after deposit of taxes. Section 200(3) of the Income-tax Act provided that any person deducting any sum shall after paying the tax deducted to the credit of Central Government shall prepare statements for such period as may be prescribed and deliver to the prescribed income-tax authority. Provision of Section 272A(2)(k) of the Act provides for imposition of penalty for failure to deliver copy of statement within time specified in subsection (3) of Section 200 of ₹ 100/- for every day. These sections also clearly lay down that the filing of quarterly statements is consequential to payment of taxes. The delayed payment of taxes itself is the reasonable cause for late filing of quarterly statement and hence the assessee is not exigible to the levy of penalty.

When the assessee is paid the tax with interest and the TDS statements are already filed though belatedly, there is no loss to the Revenue, as held by Hon'ble Gujarat High Court in the case of Harsiddh Construction Pvt Ltd vs. CIT, (1999 (12) TMI 30 - GUJARAT High Court). - **Decided in favour of assessee**

M/s. M. Muthusamy & Co. Versus The Deputy Commissioner of Income-tax, Trichy ITAT CHENNAI

BRIEF: Revision u/s 263 - business loss cannot be set off against other sources as per sec.71

OUR TAKE: The Appellant authority held that we are of the opinion that there is a divergent view on the issue of set off of business loss out of unexplained income u/s.71 of the Act while computing the income of assessee. Being so, the AO had taken one of the possible views, which is supported by the judgement in the case of Chensign Ventures (2007 (4) TMI 204 - MADRAS High Court) and we are of the opinion that the ld.CIT is not justified in exercising the jurisdiction u/s.263 of the Act on this issue. Accordingly, the order of Learned Commissioner of Income Tax u/s.263 of the Act is quashed. - **Decided in favour of assessee.**

ITO Ward-7 (3) , Kolkata Versus M/s Energy Development Company Limited ITAT KOLKATA

BRIEF: Accrual of income - forfeiture of share warrants - whether treated as capital receipt in nature?

OUR TAKE: The Appellant authority held that in the instant case, the share warrant money was forfeited as per the terms of the issue. This fact is not in dispute. It is settled position of law that by charging provisions of section 4 and 5, the general liability to tax is imposed upon income but the Income Tax Act does not provide that whatever is received by the assessee must be regarded as income chargeable to tax.

Besides, if the initial receipts of a business are not trading receipts in the hands of the recipient, subsequent operations cannot turn them into trading receipts.

Therefore, the addition made by AO on account of forfeiture of share warrants as capital receipt in nature, needs to be deleted. - **Decided against revenue**

Divine Educational Institute and Social Development Society, New Delhi Versus ITO (Exemptions) Ghaziabad ITAT DELHI

BRIEF: Deduction u/s 10(23C) (iiiad) disallowed - assessee has not been granted registration u/s 12AA nor registered u/s 10(23C)(vi)

OUR TAKE: The Appellant authority held that corpus fund which is meant for specific purpose to meet out capital expenditure could not be part of annual receipts of educational institution, even if no registration u/s 12AA have been granted. If the corpus fund is excluded, the balance aggregate annual receipt of the assessee's educational institution would be less than ₹ 1 crore. Therefore assessee would be entitled for exemption u/s 10(23C)(iiid). In this view of the matter I set aside the orders of authorities below and direct the Assessing Officer to grant exemption to assessee u/s 10(23C)(iiid) of I.T. Act. **- Decided in favour of assessee**

Shri. Ramesh Babu Bonthala Versus The Income Tax Officer, Ward-5 (2) (2) , Bengaluru ITAT BANGALORE

BRIEF: Leased rental received - Income from house property or business income

OUR TAKE: The Appellant authority held that we find that through lease deed, the assessee has leased out the entire property to M/s. Prathibha Housing and Finance (Pvt) Ltd., vide lease deed dated 31.01.2011. Through this lease deed, the possession of the property was given to the lessee and

the lessee has exclusive right over the entire property for its use and also to sublease any portion of premises to the tenant for a period within the lease agreement period. Day to day maintenance of leased premises shall also be the responsibility of the lessee.

We have carefully perused the other terms of the lease deed and we find that the assessee has simply leased out its property to M/s. Prathibha Housing and Finance (Pvt) Ltd. During the first year of lease he has agreed to receive the 60% profit of the business as annual rental income but subsequently the annual rent has been prescribed in clause 3 of the lease deed. Therefore, by any stretch of imagination it cannot be said that the assessee was doing business with M/s. Prathibha Housing and Finance (Pvt) Ltd., on profit sharing basis. It was simply a case of leasing out of property to M/s. Prathibha Housing and Finance (Pvt) Ltd. Therefore the leased rent received by the assessee is chargeable to tax as income from house property. - **Decided against assessee.**

ITO (TDS) Haldwani, US Nagar, Uttrakhand Versus GB Pant University of Agriculture & Technology Pantnagar ITAT DELHI

BRIEF: TDS u/s 194J - payments made to retired professors, doctors, teaching personnel's etc. - whether the contractual teaching personnel are not covered under the definition of "profession" for the purpose of Section 194J ? - Existence of employers employee relationship - CIT(A) held that the payments made to GRFs & SRFs are exempt u/s 10(16)

OUR TAKE: The Appellant authority held that as per Notification no. 88/2008 dated 21.08.2008 the professions notified are: sports persons, umpires and referees, coaches and trainers, team physicians and physiotherapists, event managers, commentators, anchors and sports columnists. Thus, the finding of the CIT(A) is just and proper that the scope of this section includes specified personnel or services and leaves very little scope for reading in between the lines to include professions, such as teaching, at will.

Secondly, in the case of the assessee University the payments to such teachers are made from their salary head and the appointments religiously follow the State's policy on reservation, etc. Also the university exercises significant control over the teachers almost at par with regular employees. See case of Max Muller Bhawan, New Delhi (2004 (5) TMI 61 - AUTHORITY FOR ADVANCE RULINGS) wherein it has been ruled that such engagements are covered u/s 192 for the purposes of TDS. Also the relationship between the teachers so employed and the employer is seen to have the rigidity of "contract of employment" and not the flexibility seen in "contracts for employment." Thus it is held that the University's liability for TDS is u/s 192 of the Act and not 194J of the Act. The CIT(A) has rightly arrived at the conclusion and **allowed the appeal of the assessee.**

Mr. Kannan Chandrasekar Versus The Income Tax Officer, Corporate Ward – 16 (2) , Chennai ITAT CHENNAI

BRIEF: Non-granting of exemption u/s.54 in respect of sale of the residential property - whether the assessee can be considered to have constructed or acdquired residential property within 3 years from the sale of residential property i.e. 21.06.2014?

OUR TAKE: The Appellant authority held that the present case, the assessee had already appropriated the capital gains for the purpose of construction of residential unit. However, construction was not completed within the stipulated period. In our opinion, liberal interpretation to be considered while granting exemption u/s.54 of the Act as it is a beneficial provision.

The judgement in the case of CIT Vs. Smt. V.S.Shantha Kumari in (2015 (8) TMI 274 - KARNATAKA HIGH COURT) wherein held that completion of construction within three years was not mandatory and was necessary was that the construction should be commenced. That cannot be disputed. When the commencement of the construction of the residential unit which is evidenced by construction agreement cited supra and also sale deed cited supra, in our opinion, assessee over and above satisfied the conditions laid down by Sec.54 of the Act and demonstrated his intention to invest the capital gains in residential house. In our opinion, assessee ought not to have denied the claim of deduction u/s.54 of the Act. Accordingly, we are of the opinion that the assessee is entitled for exemption u/s.54 - **Decided in favour of assessee.**

The Commissioner of Income Tax, Meerut And Another Versus M/s Jindal Poly Films Ltd. ALLAHABAD HIGH COURT

BRIEF: Income derived from the sale of equity shares - business income or Long Term Capital Gain

OUR TAKE: The Honourable high Court held that the equity shares were held by the assessee company since 1988-89 as a long term investment i.e. for a period of more than one year prior to the assessment in question and that the said equity shares were transferable through recognised stock exchange meaning thereby that they were listed shares.

The Government of India Ministry of Finance Department of Revenue vide Circular No.6 of 2016 of the Central Board of Direct Taxes 29th February, 2016 referring to the earlier circular No. 4 of 2009 dated 15th June, 2007 has laid down that in order to reduce litigation, the sale of listed shares would be treated as capital gain if they are held by the

assessee for a period of more than 12 months immediately preceding the date of these transfers.
Thus the said equity shares not only for one year but for more than 16 years and that the shares were listed shares, the income derived from their transfer has rightly been treated as Long Term Capital Gain and not as business income.

Accura Polytech P. Ltd. Versus The I.T.O. Ward-1 (1) Ahmedabad ITAT AHMEDABAD

BRIEF: Reopening of assessment - wrong claim of carry forward of unabsorbed depreciation

OUR TAKE: The Appellant authority held that it is difficult to accept the cause/justification recorded by the AO in this regard. Admittedly, the AY 2006-07 is merely a transient year where the carry forward of earlier year has been brought forward to this year and again carried forward to next year for set off in the appropriate assessment year. AY 2006-07 only seeks to disclose the pending entitlement of the assessee in respect of unabsorbed depreciation rightfully or wrongfully. This has no impact on the "chargeable income" of the AY 2006-07 which is alleged to have escaped assessment. Therefore, the precondition for invoking jurisdiction under section 147 in so far as this reason is concerned is untenable in law and cannot be upheld. **- Decided in favour of assessee**.

Failure to increase the book profit computed under section 115JB of the Act on account of bad debts reserves debited to P&L Account - Held that:- A bare reading of Explaantion-1(c) to section 115JB would suggest that the aforesaid clause is meant to increase the book profit in respect of provisions towards unascertained liabilities. It is apparent that bad debts reserves are not on account of any provision towards any liability far less unascertained liabilities. The provision, as pleaded by the assessee, is in the nature of amounts set aside for diminution in the value of sundry debtors which is an asset rather than a liability. Therefore, the entire basis for the formation of belief to invoke section 147 is a damp squib. As a Corollary, the reasons recorded are not in sync with section 147 of the Act and are marred by wrong application of law and therefore cannot be sustained. **- Decided in favour of assessee.**

State Level Taxes

ALL INDIA VAT

COURT DECISIONS

Vansh Electromechanical Devices (P) Ltd. Versus Commissioner of Trade & Taxes & Anr. DELHI HIGH COURT

BRIEF: Refund claim - denial of input tax credit - Section 9(2) (g) of the DVAT Act

OUR TAKE: The Honourable High Court held that what the VATO has done is clearly an abuse of the powers conferred to him under the DVAT Act. It is in utter disregard of his statutory obligation of processing the refund claim in accordance and within the time stipulated for that purpose under the DVAT Act. The Court, therefore, has no hesitation to quash the default assessments of tax and interest dated 17th December, 2016 u/s 9 (2) of the CST Act and the default assessment of penalty dated 10th January, 2017 u/s 33 of the DVAT Act - refund orders will be issued by the VATO concerned in favour of the Petitioner - petition allowed - **decided in favor of petitioner.**

M/s Pradhan Trading Company Versus Commissioner, Commercial Tax ALLAHABAD HIGH COURT

BRIEF: Rate of tax - classification - Mehndi Cone - whether 'Mehndi Cone' would be covered by Entry 23 of Schedule-1 of U.P. VAT Act or not?

OUR TAKE: The Honourable High Court held that The entry specified in the notification grants exemption under Schedule-1 to Mehndi leaves or powder and not Mehndi itself - the 'Mehndi Cone' is a new product, which comes into being after Mehndi powder is processed by adding oil and chemicals. Once a distinct new entity has come into existence, it cannot be said to be either Mehndi leave or Mehndi powder. 'Mehndi Cone' does not fall within the exemption notification issued under Schedule-I - appeal dismissed - **decided against Revenue.**

M/s S.K. Jain Contractor, Lalitpur Versus Commissioner of Trade/Commercial Tax, U.P. Lucknow ALLAHABAD HIGH COURT

BRIEF: Composite works contract - valuation - According to the department, after excluding the earthwork, the remaining part of contract constitutes the works contract, and since labour charges have not been separately appropriated in the books of account, as such, benefit of labour charges to the extent of 30% has been allowed relying upon the provisions of Rule 9(3) of The Uttar Pradesh Value Added Tax Rules, 2008

OUR TAKE: The Honourable High Court held that In absence of any material brought on record to show the basis for such further categorization of work into one constituting labour work, and the other constituting works contract, which also included labour component, the authorities cannot be said to have acted in an unjustified manner in discarding the assessee's claim in that regard - In absence of any material brought on record to the contrary, the finding of the Tribunal that remainder i.e. after excluding the earthwork, entire contract constitutes the works contract and that 30% thereof was liable to be appropriated towards labour charge is based upon correct interpretation of Rule 9(3) and the grievance of assessee in that regard cannot be accepted.
Tribunal was justified in treating the quantum of works contract to be ₹ 41,04,40,584/- and appropriating 30% thereof towards labour charges - Appeal dismissed - **decided in favor of Revenue.**

M/s Reliance Industries Products, Jaipur Versus The Commercial Taxes Officer, Anti Evasion, Jaipur, Zone-2, Jaipur And Vice-Versa RAJASTHAN HIGH COURT

BRIEF: Rate of tax - Solvent Cement Solution - taxable at 4% or at 10%? - whether PVC Solvent Cement included within Entry No.54 of the Notification dt.26.03.1999 or otherwise?

OUR TAKE: The Honourable High Court held that in a case of classification one can take into consideration common parlance test, in my view as well, for stopping common leakage some other products will have to be purchased rather than the product which has been used/produced/sold by the assessee. The entry insofar as VAT Act under consideration is concerned, is limited and it is to be read as it is and cannot be enlarged as claimed by the counsel for the petitioner - the finding reached by the Tax Board is a finding of fact and no question of law can be said to arise out of the order of the Tax Board. Appeal allowed - **decided partly in favor of assessee.**

OTHER UPDATES

Allied Laws - Notification No. F. No. 5(91)/2015-BE-I - G.S.R. 501 (E) Dated: 23-5-2017
Supersession Notification No. G.S.R. 180 (E) dated 17th February, 2016

Allied Laws - Notification No. S.O. 1696(E) new Dated: 26-5-2017
Amendments to Certain Acts to Provide for Merger of Tribunals and Other Authorities and Conditions of Service of Chairpersons, Members brought into effect from 26 May 2017

Money Laundering - Notification No. F. No. 5/7/2009-PMLA - G.S.R. 515 (E) new Dated: 24-5-2017
Adjudicating Authority (Procedure) Amendment Regulations, 2017

GST ALERTS

The concept of reverse charge was introduced in the service tax regime vide Notification No. 30/2012, dated 20.06.2012 and came into effect from 20.06.2012.

Under reverse charge, the recipient of service is to pay the tax to the credit of the Central Government. The reverse charge is of two types – Full reverse charge and partial reverse charge. Under the full reverse charge, the service recipient is to pay 100% of the tax on the value of services received by him. Under partial reverse charge, the service recipient is to pay certain percentage of tax on the value of taxable service and the balance amount is to be payable by the service provider.

The Notification No. 30/2012 has met many amendments and as on date the following services come under the net of reverse charge mechanism-

- in respect of services provided or agreed to be provided by an insurance agent to any person carrying on insurance business – **100%;**
- in respect of services provided or agreed to be provided by a recovery agent to a banking company or a financial institution or a non-banking financial company – **100%;**
- in respect of services provided or agreed to be provided by a selling or marketing agent of lottery tickets in relation to lottery in any manner to a lottery distributor or selling agent of the State Government under the provisions of the Lottery (Regulations) Act, 1998 (17 of 1998)- **100%;**
- in respect of services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road – **100%;**
- in respect of services provided or agreed to be provided by way of sponsorship – **100%;**
- in respect of services provided or agreed to be provided by an arbitral tribunal – **100%;**
- in respect of services provided or agreed to be provided by an individual advocate or firm of advocates by way of legal services, directly or indirectly
- in respect of services provided or agreed to be provided by Government or local authority excluding,-

  (1) Renting of immovable property, and

  (2) Services specified in sub-clauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act,1994 – **100%**;

- in respect of services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers on abated value to any person who is not engaged in the similar line of business – **100%;**
- n respect of services provided or agreed to be provided by way of supply of manpower for any purpose or security services **– 100%;**
- in respect of any taxable services provided or agreed to be provided by any person who is located in a non-taxable territory and received by any person located in the taxable territory other than non-assessee online recipient– **100%;**
- n respect of any service provided or agreed to be provided by a person involving an aggregator in any manner – **100%;**
- in respect of services provided or agreed to be provided by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India – **100%;**

Under partial reverse charge

- in respect of services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers on non abated value to any person who is not engaged in the similar line of business – **service provider – 50% and service receiver – 50%;**
- n respect of services provided or agreed to be provided in service portion in execution of works contract – **service provider – 50% and the service receiver – 50%;**

Reverse charge under GST

Section 2(98) of the CGST Act defines the expression 'reverse charge' as the liability to pay tax by the recipient of supply of goods or services or both instead of the supplier of such goods or services or both under section 9(3) or (4) or under section 5(3) or (4) of Integrated Goods and Services Tax Act, 2017.

Chapter V of Finance Act, 1994 applies the reverse charge only to the services received by the recipient of services. But the GST Act makes the reverse charge applicable to both services and goods.

The provisions of the Act and the rules made there under applicable to the service provider are also applicable to the service recipient under reverse charge mechanism. In this Act it is provided that the service recipient, who receives services or goods from the unregistered person, is liable to pay service tax under reverse charge mechanism and for this purpose he is to raise an invoice.

Services coming under Reverse charge under GST

Under the provisions of GST there is no partial reverse charge mechanism. The GST Council in its 14th Council meeting held on 19.05.2017 approved the list of services coming under reverse change mechanism. Nearly 12 services are coming under reverse charge mechanism. The service recipients in all these case are liable to pay the entire tax (no partial reverse charge mechanism). The following table gives the list of services coming under the reverse charge mechanism, who is the service provider who is the service recipient liable to pay the tax under this scheme @ **100%**

Sl. No.	Name of service	Provider of service	Recipient of service
1	Services by any person who is located in a non taxable territory and received by any person in the taxable territory other than non assessee online recipient (OIDAR)	Any person who is located in a non taxable territory	Any person located in the taxable territory other than non assessee online recipient (Business recipient)
2	Services by a Goods transport agency in respect of transportation of goods by road	Goods Transport Agency (GTA)	(a)any factory registered under or governed by the Factories Act,1948; (b) any society registered under the Societies Registration Act, 1860 or under any other law for the time being in force in any part of India; (c) any co-operative society established by or under any law; (d) any person registered under CGST/SGST/UTGST Act; (e) any body corporate established by or under any law; or (f) any partnership firm whether registered or not under any law including association of persons; (g) casual taxable person
3	Services provided or agreed to be provided by an individual advocate or firm of advocates by way of legal services, directly or indirectly	An individual Advocate or firm of advocates	Any business entity
4	Services provided by an arbitral tribunal	An arbitral tribunal	Any business entity
5	Sponsorship services	Any person	Anybody corporate or partnership firm
6	Services by Government or local authority excluding- 1.renting of immovable	Government or local authority	Any business entity

	property; and 2. services specified below- (i) services by the Department of posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government ; (ii) services in relation to an aircraft or a vessel inside or outside the precincts of a port or an airport; (iii) transport of goods or passengers;		
7	Services by a director of a company or a body corporate to the said company or the body corporate	A director of a company or a body corporate	A company or a body corporate
8	Services by an insurance agent to any person carrying on insurance business	An insurance agent	Any person carrying on insurance business
9	Services by a recovery agent to a banking company or a financial institution or a non banking financial company	A recovery agent	A banking company or a financial institution or a non banking financial company
10	Services by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India	A person located in non taxable territory	Importer as defined under clause (26) of section 2 of the Customs Act, 1962.
11	Transfer or permitting the use or enjoyment of a copy right covered under clause (a) of sub-section (1) of section 13 of the Copyright Act, 1957 relating to original literary, dramatic, musical or artistic works	Author or music composer, photographer, artist etc.,	Publisher, Music company, producer
12	Radio taxi or passenger transport services provided through electronic commerce operator	Tax driver or rent a cab operator	Any person – tax is payable by electronic commerce operator by 100%.

The above list is subject to changes.

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