ASC Times

All India Taxes Weekly Reference

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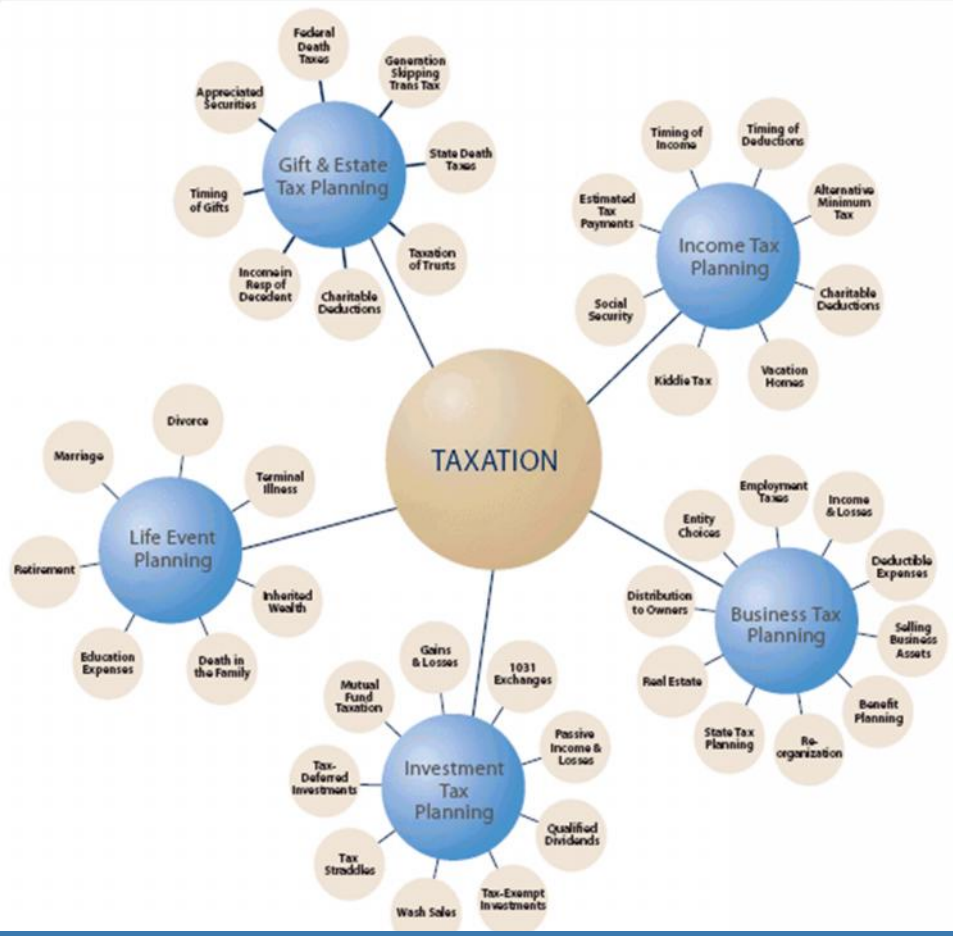

TAXCALENDER

07-05-17	TDS Payments	Monthly payment of TDS on all types of payments
	Delhi-VAT	Issue of TDS certificates for the tax deducted at source
	TCS Payments	Monthly payment of TCS u/s 206C
	TDS/TCS Declaration	Last date of submission of declaration i.e., for no TCS u/s 206C(1A) or No or lower TDS deduction
10-05-17	Monthly Return of Excise	Last Date for filing of Return of Central Excise and Cenvat Credit for the previous month
15-05-17	D-VAT	Deposit of tax deducted at source during the previous month
	PF/ESI	Monthly Payment of PF/ESI Contribution
	TDS/TCS Return	Quarterly Statement of collection of tax at source (TCS/TDS) for the Quarter Ending March 31.

COUNTRY WIDE HOLIDAYS FOR THE WEEK

Date	Region	Festival/Occasion
May 10	Metro cities and various other states of India	Budhh Purnima
May 16	Sikkim	State Day

INDEX GUIDE

From the CEO's Desk

Dear Reader,

The esteemed vision of Hon'ble Prime Minister to create a digital and paper less economy cannot be crystalize without the digitalization of documentation and removal of hurdle of hard document. With the aforementioned vision, targets are being set out and focus shifting towards digital economy which is clearly evident through its impact on current tax regimes via various modification in current tax laws. Keeping the same in mind great emphasis have been given in draft Model GST model Law*(hereinafter referred to as "MGL")* . "GST is likely to revolutionize the way India does business, setting it on a path to become one of world's most evolved and business-friendly countries"

Perhaps one of the most important economic reforms in the country, the implementation of GST lays ahead a potential opportunity for India to reshape and restructure its corporate landscape in more ways than one. In an economy developing as rapidly as India, competing and leading on a global level, GST will bring about a paradigm-shift in India's global perception and operations. While harmonizing the current tax structure and uniformity, simplification and transparency in processes remains the core intent of the bill, the impact reaches far beyond. Often regarded as a 'game-changer', GST is likely to revolutionize the way India does business, setting it on a path to become one of world's most evolved and business-friendly countries. Despite some initial lash, GST has proven to be an effective method tax collection across countries such as France, Canada, UK etc. contributing significantly to the growth of these nations. The Goods and Service Tax is premised on the agenda of creating a unified economy that facilitates seamless movement

of goods throughout. It promises to remove the existing barriers around investment and entrepreneurship, where decisions can be made purely on economic concerns, independent of tax considerations and process hassles. Reduction in tax burden, logistics and inventory costs, and distribution of goods in reduced time will have a positive, lasting impact on the sales and profitability of companies operating in diverse industries. By bringing businesses of varied sizes and DNA under a uniform tax structure, which in turn would facilitate reduction in price gaps, GST will lead to a level-playing field for both the organized and unorganized where growth opportunities will be ample and fair.

The eventual outcome will rationalise costs at all doors, increase employment, improve efficiency and put India on a vertical growth trajectory in the coming future. GST has been commonly accepted by over 140 countries in the world. The magnitude of this reform will impact all sections of the society – from small time businessmen to huge conglomerates and from a developing state to a developed state in this country. The implementation of GST will give immense boost to the growth engine pursued by the government.

Alok Kumar Agarwal

CEO

ASC Group.

CENTRAL TAXES

SERVICE TAX

NOTIFICATION / CIRCULAR

NOTIFICATION No. 17/2017-Service Tax, 4th May, 2017

Seeks to amend notification No. 25/2012-ST dated 20.06.2012 so as to exempt life insurance services under Pradhan Mantri Vaya Vandana Yojana

COURT DECISIONS

Agrawal Constructions Versus Commissioner of Central Excise, Nagpur And (Vice-Versa) CESTAT MUMBAI

BRIEF: Classification of taxable services - Business auxiliary service - site formation and clearance service - mining service - supply of tangible goods service -

OUR TAKE: The Appellant authority held that Even if the work executed for M/s Hindustan Construction Corporation Ltd did incorporate procurement of machinery, there is no evidence furnished by Revenue to support their contention that the activity did not extend beyond such procurement - Revenue has not been able to identify the specific description which would best fit the activity in the manner sought for in the show cause notice. Furthermore, the manner in which the other activities, i.e. 'business auxiliary service' and 'supply of tangible goods service' are not covered by 'transportation of goods service' has not been established by Revenue - We are, therefore, unable to find any justification for interfering with the demand that was dropped in the impugned order - appeal allowed - [decided in favor of assessee]

Wipro Limited Versus Commissioner of Central Excise MADRAS HIGH COURT

BRIEF: CENVAT credit - house keeping service - land scaping service

OUR TAKE: The Appellant authority held that this Court in similar circumstances held that cenvat credit would be available to an Assessee with respect to house keeping and land scaping services - reliance placed in the case of Commissioner of Central Excise, Bangalore II Vs. Millipore India Pvt Ltd. [2011 (4) TMI 1122 - KARNATAKA HIGH COURT], where it was held that Landscaping of factory or garden certainly would fall within the concept of modernization, renovation, repair, etc. of the office premises. At any rate, the credit rating of an industry is depended upon how the factory is maintained inside and outside the premises - credit allowed - [decided in favor of assessee]

M/s. XL Health Corporation India Pvt. Ltd. Versus Commissioner of Service Tax CESTAT BANGALORE

BRIEF: Refund claim - unutilized input service credit - Rule 5 of CCR, 2004 read with N/N. 5/2006-CE dated 14.3.2006 - unjust enrichment

OUR TAKE: The Appellant authority held that it has been clearly held that the principle of unjust enrichment is not applicable in the export of services - the impugned order has clearly travelled beyond the show-cause notice and the Order-in-Original and the appellant has been put into a worse off situation than originally he was because of the Order-in-Appeal - appeals are allowed by way remand to the original authority to decide and quantify the refund claim - matter remanded.

M/s Nav Bharat International Ltd. Versus CST, Delhi CESTAT NEW DELHI

BRIEF: Refund claim - export of rice - N/N. 41/2007-ST - denial on the ground of lack of supporting evidence and co-relation of document submitted by the appellant

OUR TAKE: The Appellant authority held that There is no rejection based on any legal issue and it is found that the appellants have submitted a chart containing details like invoice number, date, shipping bill number, load port details, description of goods, service providers details, tax paid etc - the rejection of refund claims appears to be made on a summary basis. Admittedly, invoices do contain basic particulars and co-relation as per the chart furnished by the appellant should be sufficient to consider their claim - procedural infractions cannot take away the substantive benefit in cases where export of goods is established. The lower authorities did not examine all the supporting documents submitted by the appellant. It is to be noted here that the decided cases dealing similar set of facts and

Board's clarifications were also to be considered before deciding on the eligibility of the appellant for the claims - [appeal allowed by way of remand]

Sri Dilip Kumar Nayak Versus Commissioner of Central Excise, Customs & Service Tax CESTAT KOLKATA

BRIEF: Penalty u/s 78 of FA - Mining Services - The main contention of the appellant is that they are covered u/s 73(3) of the Act as they had paid the duty plus interest before issuance of SCN

OUR TAKE: The Appellant authority held that Though the appellants paid the duty and interest after investigation begun, the fact remains that they did not make payment of Service Tax within the prescribed time and did not come forward to pay the due Service Tax on their own. They were not filing the prescribed returns nor declaring the taxable income by any declaration. In that manner we find that there has been continuous suppression during the entire period for which the demand has been issued - The appellants contention that section 73(3) is applicable in their case is not correct because provision of section 73(3) of Finance Act, 1994 are subject to the provisions of sub-section 4 of section 73 of Finance Act, 1994. Once, the ingredients of section 73(4) are present the provisions of section 73(3) are not applicable. Appeal dismissed - [decided against appellant]

M/s Adbur Private Limited Versus CST, Delhi CESTAT NEW DELHI

BRIEF: Valuation - advertising agency service - discount on the gross value of media time/space - commission - role of the appellant as a "pure agent".

OUR TAKE: The Appellant authority held that the appellants have fulfilled all the conditions of a pure agent acting on behalf of M/s Dabur - the appellants being an advertising agency and a pure agent is not liable to pay service tax on amount payable to media companies on behalf of their clients - The commission received by the appellant only would be chargeable to service tax. Appeal allowed - [decided in favor of appellant.]

M/s. Mineral Enterprises Limited Versus Commissioner of Customs and Service Tax CESTAT BANGALORE

BRIEF: 100% EOU - refund of CENVAT credit of service tax paid on various input services - Rule 5 of CCR - denial on the ground that ron ore was not a manufactured product and the appellant was not entitled to avail input services

OUR TAKE: The Appellant authority held that the Commissioner (A) has misconstrued the definition of mining activity and has wrongly held that it does not amount to manufacture whereas the mining activity amounts to manufacture and is an excisable goods within the meaning of Section 2(d) of Central Excise Act, 1944 - the CBEC vide Circular No.943/4/2011-CX has also clarified with regard to few services for which the CENVAT credit is permissible - refund allowed - [decided in favor of appellant]

M/s DLF Recreational Foundation Ltd. Versus CST, New Delhi CESTAT CHANDIGARH

BRIEF: Club or association services - services to its members - Revenue is of the view that all these services are under the category of club or association services as per Section 65 (105)(zzze) read with section 65 (25a) of the FA, 1994

OUR TAKE: The Appellant authority held that the levy of service tax on the service provided by a club to its members has been purported ultra-virus under the category of club or association services - service not taxable - appeal allowed - [decided in favor of appellant.]

Panzer Division Security & Allied Services Versus Commissioner of Central Excise & Service. Tax, Noida CESTAT ALLAHABAD

BRIEF: Evasion of service tax - security service and manpower recruitment and supply service - willful evasion - difference of turnover as per balance sheet and as per their ST-3 Returns - Amount shown in TDS certificates / 26AS returns - reconciliation between bank account and books of account

OUR TAKE: The Appellant authority held that the books of accounts maintained by the appellant and the audited financial statements produced before the authority below have not been rejected. - The explanation(s) given at the time of investigations and averments made in reply to SCN, were not found untrue. In this view of the matter we find that the demand raised is vague, having no proper basis. In this view of the matter we hold that the SCN to be untenable - appeal allowed - [decided in favor of appellant]

M/s. Rajasthan State Mines & Minerals Ltd. Versus C.C.E. Jaipur-II CESTAT NEW DELHI

BRIEF: Refund claim by the percipient of services - service tax was paid by the provider of the services - rejection on the ground that classification of service has never been disputed by the service provider, and as such, the appellant

has no locus standi as a recipient of service to claim the refund on service tax paid by the service provider - time limitation

OUR TAKE: The Appellant authority held that the service provider has never disputed that they have wrongly classified the service and never filed any refund application before the jurisdictional service tax authorities. Thus, in absence of dispute regarding the classification of service by the service provider who has discharged the service tax liability, the appellant in the capacity of recipient of service, in our opinion, has no locus standi to file the application claiming refund on a different classification of service that on what was paid by the service provider - as per the mandates of Section 11B, any amount claimed as refund, has to pass the test provided therein and since condition of limitation is one of the ground mentioned therein, the same cannot be overlooked for consideration of the refund application - appeal dismissed - [decided against appellant].

CENTRAL EXCISE

NOTIFICATION / CIRCULAR

Case laws

M/s Hindustan Zinc Ltd. Versus CCE, Udaipur CESTAT NEW DELHI

BRIEF: CENVAT credit - eligible input service - consultancy service with respect to laying of pipelines for supply of water from dams to the Dariba Mines of the appellant -

OUR TAKE: The appellant authority held that the matter is covered by the ratio of the CESTAT decision in the appellant's own case [2016 (7) TMI 1064 - CESTAT NEW DELHI], where it was held that water is essential in the manufacturing process, the pipelines are exclusively used for transport of water for the said purpose. The service tax paid is on services received w.r.t. pipelines - service tax paid under subject service viz. consultancy service is eligible for Cenvat credit by the appellant - appeal allowed - [decided in favor of appellant].

Commissioner of Central Excise, Nashik Versus Thysennkrupp Electrical Steel P. Ltd. CESTAT MUMBAI

BRIEF: CENVAT credit - whether the Revenue can without reassessing the Central Excise duty paid at the end of the manufacturer-supplier, deny credit of the said duty paid in the hands of the recipient of such goods, on the premise that no such excise duty ought to have been paid by the manufacturer-supplier?

OUR TAKE: The appellant authority held that the appeals can be disposed of only on the ground that the Revenue was not entitled to question the correctness of the duty paid by the manufacturer, at the end of the recipient of the goods, without there being any challenge to the assessment to duty at the end of the manufacturer - reliance placed in the case of The Commissioner, Central Excise Goa, Versus M/s. Nestle India Ltd., [2011 (6) TMI 164 - BOMBAY HIGH COURT], where it was held that the appeals by the Revenue to the contrary are clearly not maintainable. Appeal dismissed - [decided against Revenue].

Miraj Products (P) Ltd. Versus CCE Jaipur CESTAT NEW DELHI

BRIEF: Refund claim - excess duty paid under the provision of Chewing Tobacco & Unmanufactured Tobacco Packing

Machines (Capacity Determination and Collection of Duty) Rules, 2010 - denial on the ground of unjust enrichment -

OUR TAKE: The appellant authority held that when the Appellant has produced their ledger account and they are showing excess duty payment as debts or money receivable from Revenue and this fact has further been supported by the Certificate of the Chartered Accountant, then It seems that there is no question of any further proof required to be submitted by the Appellant - The department fails to prove that said excess duty paid of ₹ 24 lacs was recovered by the assessee from the customers. Thus, the said excess burden of duty was not passed on.

M/s. Itakhuli Tea Estate Versus Commissioner of Central Excise & Service Tax CESTAT KOLKATA

BRIEF: Refund claim - Higher Education Cess and the Secondary & Higher Secondary Cess paid on tea cess for the period 2004 to 2014 - rejection on the ground of Time bar and unjust enrichment

OUR TAKE: The appellant authority held that the present case is squarely covered by the decision of the Hon'ble Gujarat High Court in the case of Joshi Technologies International v. UOI [2016 (6) TMI 773 - GUJARAT HIGH COURT], where the the petitioner was paying Cess on the clearance of Petroleum/crude oil under the provisions of OIL Industry (Development) Act, 1974. It was held in the case that Crude Oil Cess is not in the nature of excise duty and consequently, the Education Cess and Secondary and Higher Secondary Education Cess computed thereon, also does not bear the character of a duty of excise, but is merely an amount paid under a mistake of law. As a necessary corollary, it follows that the provisions of the Central Excise Act, 1944 would not be applicable for refund of such amount paid by mistake. Moreover, since there was no liability to pay Education Cess and Secondary and Higher Secondary Education Cess, the provisions of the Central Excise Act as incorporated in the OIC Act would also not apply to the amount paid by mistake. Refund allowed - appeal allowed - [decided in favor of assessee].

M/s. Motherland Laboratories, Shri Samsen Papli & Shri S. Abdul Majeeth Versus CCE, Chennai-I & IV CESTAT CHENNAI

BRIEF: Classification of goods - FRANCH OIL NH - whether FRANCH OIL NH is covered by the Tariff entry 30.03 or shall be classifiable under Tariff heading 15.02?

OUR TAKE: The Appellant authority held that the goods is basically a drug providing relief and remedy for wound healing used as antifungal-antibacterial, analgesic and has also anti-inflammatory properties. The goods has trade name ie. "FRANCH OIL NH" having the character of proprietary medicine - Having noticed the character of the goods which is drug in nature and also for the features aforesaid, including the trade name it bears that squarely falls under the Chapter 30.03 as classified by Revenue - appeal dismissed - [decided against Revenue].

M/s. Parvenu Industries Ltd. Versus CCE, Tirunelveli CESTAT CHENNAI

BRIEF: SSI Exemption - availing Benefit of N/N. 67/95-CE against captive consumption - intermediate goods - whether the intermediate PP strips manufactured by the SSI appellant falling under Chapter 38 of the CETA,75 ultimately used in the manufacture of woven sacks which were finished goods is exempted in terms of N/N. 67/95-CE dated 16.03.1995?

OUR TAKE: The Appellant authority held that the goods are neither exempt nor subject to nil rate of duty by virtue of appellant's status as SSI whose clearances were otherwise dutiable - It is mandate of the notification that when conditions attached to column 2 and 3 of the Table appended to the Notification are satisfied, grant of the notification is undeniable - The input was thereby an intermediate manufactured in the factory of the appellant and was not at all covered by the barring clauses contained in (i), (ii) and (iii) and (iv) of Col.2 of the Table appended to the N/N. 67/95-CE dated 16.03.1995 - benefit allowed - appeal allowed - [decided in favor of appellant].

CCE, Delhi-III Versus Innovatice Tech Pack Ltd. CESTAT CHANDIGARH

BRIEF: Valuation - cost of packing material received free of cost - corrugated cartons - includibility - whether in terms of Rule 6 of Central Excise Valuation Rules, 2000, the cost of such packing material supplied free of cost is to be treated as additional consideration flowing from the buyer to the assessee in relation to sale of the goods, and to be included in assessable value?

OUR TAKE: The Appellant authority held that the respondents have been receiving the packing material viz. corrugated cartons from their buyer on free of cost basis for use in packing of PET bottles/jars manufactured by them. The jars and containers are meant only for carrying the excisable goods manufactured by the respondents. Clearly, these cartons do not render the excisable goods to be marketable and are meant only for transportation - the PET containers are marketable without being put in the corrugated cartons and the ratio of judgement in the case

of CCE, Indore Vs. Grasim Industries Ltd. [2014 (4) TMI 650 - CESTAT NEW DELHI] is applicable in the present case where it was held that he cost of only that packing would be includible in the assessable value which is necessary to make the goods marketable and this principle would be applicable while interpreting the provision of Section 4. If some goods are marketable without being put into the containers, the cost of containers including their testing charged would not be includible in the assessable value - appeal dismissed - [decided against Revenue.]

M/s. Motherland Laboratories, Shri Samsen Papli & Shri S. Abdul Majeeth Versus CCE, Chennai-I & IVCESTAT CHENNAI

BRIEF: Classification of goods - FRANCH OIL NH - whether FRANCH OIL NH is covered by the Tariff entry 30.03 or shall be classifiable under Tariff heading 15.02?

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M/s. HID India Pvt. Ltd. Versus Commissioner of Central Excise, Customs and Service Tax CESTAT BANGALORE

BRIEF: CENVAT credit - eligible input service - office rental and the rental charges paid for car parking space - in or in relation to manufacture of goods

OUR TAKE: The Appellant authority held that reliance was placed in the case of KPMG vs. CCE, New Delhi [2013 (4) TMI 493 - CESTAT NEW DELHI] in which the Hon'ble CESTAT, New Delhi has held that car parking facilities constitute input service and eligible to claim CENVAT credit relying upon the decision of Desert Inn Ltd. vs. CCE, Jaipur [2011 (3) TMI 640 - CESTAT, NEW DELHI] - credit allowed - [decided in favor of assessee].

M/s Century Pulp & Paper Versus CCE, Meerut CESTAT NEW DELHI

BRIEF: Valuation - cash discount - whether the cash discount realized back by the Appellant through debit notes is chargeable to central excise duty?

OUR TAKE: The Appellant Authority held that the issue is squarely covered by the assessee's own case for the previous period [2016 (6) TMI 1151 - CESTAT NEW DELHI] where the Tribunal has also relied upon the ratio laid down by the Hon'ble Supreme Court in the case of Purolator India Vs. C.C.E., Delhi III, [2015 (8) TMI 1014 - SUPREME COURT] and held that there will be no need to add back the discounts to the assessable value, even if the same are subsequently recovered - appeal allowed - [decided in favor of appellant].

M/s Hindustan Zinc Ltd. Versus CCE, Jaipur-I CESTAT NEW DELHI

BRIEF: CENVAT credit - scope of input service - laying of the pipelines - whether the service received in relation to laying of the pipelines from Matrikundia Dam to Dariba for water supply to plant at Dariba are covered under the scope of definition of 'input service' as provided u/r 2(l) of CCR, 2004?

OUR TAKE: The Appellant Authority held that an identical issue has come up for the earlier period in the appellant's case M/s Hindustan Zinc Ltd. Versus CCE & ST, Udaipur [2016 (7) TMI 1064 - CESTAT NEW DELHI], where it was held that water is essential in the manufacturing process, the pipelines are exclusively used for transport of water for the said purpose, the scope of input services as given under Rule 2 (l) of CCR, 2004 is not restricted to the location of the factory premises alone - appeal allowed - [decided in favor of appellant].

M/s. Baka Lifetec (India) Private Ltd. Versus Commissioner of Central Excise CESTAT BANGALORE

BRIEF: Extended period of limitation - whether extended period of limitation can be invoked in September 2008 to demand the duty on clearances made without payment of duty under invoices during the period November 2005 and reflected in the returns filed as part of clearances without payment of duty under due acknowledgment from the department?

OUR TAKE: The Appellant authority held that the appellant cleared the goods under a bona fide belief that the clearances to EPCG licence holders can be made without payment of duty and in the invoices the appellant had mentioned the same and similarly, the appellant had also disclosed this fact in the ER-1 returns filed by him to the Department and the Department did not raise any objection and the Department also did not seek any clarification from them as to why they are clearing goods without payment of duty - Mere omission to give correct

information is not a suppression of fact unless it was deliberate to stop the payment of duty - entire demand is time barred - appeal allowed - [decided in favor of appellant].

CUSTOM

NOTIFICATION / CIRCULAR

Notification No.43/2017 - Customs (N.T.) 4th May, 2017
Changed rate of exchange of conversion of the foreign currency will be applicable with effect from 5th May, 2017

Notification No. 15/2017-Customs (ADD) 03rd May, 2017
Seeks to levy definitive anti-dumping duty on import of Elastomeric Filament Yarn from China PR, South Korea, Taiwan and Vietnam for a period of five years (unless revoked, superseded or amended earlier) in pursuance of final findings of the Directorate General of Anti-Dumping & Allied Duties dated 24.03.2017

Notification No. 14/2017-Customs (ADD) 03rd, May, 2017
Seeks to extend the levy of anti-dumping duty, imposed on Viscose Filament Yarn originating in or exported from China PR under notification No. 23/2012-Customs (ADD), dated 04.05.2012, for a further period of one year i.e. upto and inclusive of 03.05.2018

Notification No. S.O. 1399(E) Dated: 2-5-2017
Central Government notifies an additional area of 0.97 hectares at Village Manjari Budruk, Taluka Haveli, District Pune, in the State of Maharashtra

Notification No. S.O. 1398(E) Dated: 2-5-2017
Central Government notifies 11.35 hectares area at Village Koorgalli, Itwala, Hobli, Mysore Taluka, Mysore District, in the State of Karnataka and constitutes an Approval Committee

Circular No. 16/2017 Dated: - 2-5-2017
Monitoring of export obligation fulfilment under EPCG and Advance Authorization Schemes reg.

Circular No. 1055/04/2017-CX Dated: - 1-5-2017
Clarification regarding posting of Central Excise officer in Cigarette units-reg.

Case laws

Sakthi Coco Products Versus Commissioner of Customs CESTAT BANGALORE

BRIEF: Valuation - import of desiccated coconut from Sri Lanka - transaction value - fixation of value on the basis of evidence received from Sri Lankan authorities - appellant claims that from the copies of documents procured by DRI from Sri Lankan Customs, it cannot be reasonably inferred that the goods covered by the documents are the same

goods which were received by the importer, accordingly he prayed that the transaction value should be accepted

OUR TAKE: The Appellant authority held that It is seen from the proceedings before the lower authorities that copies of these documents were made available to the importer which clearly indicated the bill of lading number, container number, supplier name, quantity and description of goods, etc., which exactly match with the respective details in the Bills of Entry - The appellant could not produce any material evidences to support the declared value - rejection of transaction value upheld - appeal dismissed [decided against appellant].

Commissioner Of Customs Import & General Versus Lextrix Motors Ltd. DELHI HIGH COURT

BRIEF: Levy of CVD on imported CKD E-bike kits - N/N. 06/2006 (S.No.35) dated 01.03.2006 - Whether on the basis of the classification under the Customs Tariff Act can a benefit under the Exemption Notification be granted, when the language of the notification is clear and unambiguous?

OUR TAKE: In the context of CVD what has to be seen is whether goods of a like nature if manufactured in India would be exigible to excise duty. Where such goods are not exigible to excise duty, then naturally there would be no corresponding CVD on such goods when imported. In the domestic manufacturing context, the question of goods being in either in CKD condition or a Semi Knocked Down (SKD) does not arise. When goods are imported, as in the present case, in a CKD condition, what in fact is imported is the entire vehicle. All that is required to be done is to assemble the various components to obtain the complete vehicle. That is why it is called a CKD kit. Since virtually what is imported is in fact an entire electrically operated vehicle, in this case is E-bikes, there would be no justification in denying the exemption from excise duty under the Notification in question. Therefore, no CVD would be applicable on such imported CKD E-bike kits - appeal dismissed - decided against Revenue

CC, Amritsar Versus M/s. Sheefa Exports Pvt. Ltd. CESTAT CHANDIGARH

BRIEF: Valuation - rejection of transaction value as fixed by foreign chartered engineering certificate - case of respondent is that the department has arbitrarily gone with the third Chartered Engineer value without giving any reason to the importer for rejecting the value of foreign chartered engineer or of the first two chartered engineers - principles of natural justice

OUR TAKE: The appellate authority held that no reason was given for rejecting the declared value by assessing officer and no opportunity of personal hearing was given to the assessee before enhancing the value on the basis of third Chartered Engineer certificate. Besides this, no speaking order was issued. Mere presence of the CHA at the time of examination does not mean that the copy of the third chartered engineer report was provided to the respondent and it is clear that they were not given a chance to rebut the same. Appeal of department dismissed - decided in favor of respondent.

Plastene India Limited Versus C.C., Kandla CESTAT AHMEDABAD

BRIEF: Refund claim - SAD - N/N. 102/2007-Cus dated 14.9.2007 - appellant claims that even though initially they have availed the CENVAT credit of the duty paid on the said imported goods, but later the credit had been reversed before clearance/sale and also before filing the refund claims

OUR TAKE: The appellate authority held that Similar issue has been dealt by Hon'ble Gujarat High Court in the case of Ashima Dyecot Limited [2008 (9) TMI 87 - HIGH COURT GUJARAT], in the context of eligibility of N/N. 30/2004 CE, where the condition was non-avaiment of Credit on the inputs; the circumstance was similar to the present one, that is, the credit initially taken, but later reversed while claiming the benefit of the exemption notification and it was held that credit availed of and reversal would amount to the effect as if the same was not availed - refund allowed - decided in favor of appellant.

Unique Pharmaceutical Laboratories Versus Commissioner of Customs, (NS - II) , Nhava Sheva CESTAT MUMBAI

BRIEF: Conversion of shipping bills after export of goods - rejection on account of time bar - case of appellant is that the conversion had been sought u/s 149 of CA, 1962 which does not spell out any time limit as interpreted in the impugned order.

OUR TAKE: The appellate authority held that benefit of scheme arising from any amendment will not be governed by section 149 of Customs Act, 1962 but shall be governed by the circular prescribing conditions thereto which cannot be said to be moored to any provision of the Act - there is no infirmity in the application of time limit to the application for conversion - appeal dismissed - decided against appellant

INCOME TAX

NOTIFICATION / CIRCULAR

Case laws

M/s. Palam Gas Service Versus Commissioner of Income Tax SUPREME COURT

BRIEF: Interpretation of Section 40(a)(ia) - Disallowance due to non deduction of tax at source (TDS) - Amount payable at the end of FY or any time during the year - Whether the provisions of Section 40(a)(ia) shall be attracted when the amount is not 'payable' to a contractor or sub-contractor but has been actually paid?

OUR TAKE: The Supreme Court held that when the entire scheme of obligation to deduct the tax at source and paying it over to the Central Government is read holistically, it cannot be held that the word 'payable' occurring in Section 40(a)(ia) refers to only those cases where the amount is yet to be paid and does not cover the cases where the amount is actually paid. If the provision is interpreted in the manner suggested by the appellant herein, then even when it is found that a person, like the appellant, has violated the provisions of Chapter XVIIB (or specifically Sections 194C and 200 in the instant case), he would still go scot free, without suffering the consequences of such monetary default in spite of specific provisions laying down these consequences. The view taken by the High Courts of Punjab & Haryana, Madras and Calcutta is the correct view and the judgment of the Allahabad High Court in CIT v. Vector Shipping Services (P) Ltd., did not decide the question of law correctly. [Decided in favor of revenue].

M/s. Lumbini Constructions Ltd. Versus Addl. Commissioner of Income Tax, Range-16, Hyderabad ITAT HYDERABAD

BRIEF: Penalty proceedings u/s. 271D - assessee had received loans from various individual- Directors in cash in excess of the limits prescribed u/s. 269SS

OUR TAKE: The appellant authority held that the company has accepted amounts from the directors and the explanations from the directors was considered in the assessment proceedings and accepted. There is truth in the contention of the assessee that on the same explanation given in the assessment proceeding, the penalty proceedings cannot be initiated. Further, assessee has given a reasonable explanation that the amounts were taken in cash for i) for payment to the court in lieu of directions given by the court to pay the amount in Bengaluru. Assessee in fact has purchased a DD in Andhra Bank Bengaluru and paid to the creditor as per the directions of the court, ii) an amount of ₹ 80,024/- was paid to ICICI Bank for car instalments in small amounts, iii) an amount of ₹ 6,90,000/- was spent for day to day running expenses of the office as the company is having financial difficulties. Further substantial amount was deposit in Bank Account directly. Explanation given was accepted in assessment proceedings, so the same can be considered as reasonable for accepting cash for the purpose of section 271D read with section 273B. Thus it is of the view that the assessee has shown reasonable cause within the meaning of section 273B, therefore, the penalty order is to be set aside.[Decided in favour of assessee].

The Income-tax Officer, Ward-2 (1) , Jaipur Versu Shri Devendra Kumar Maloo ITAT JAIPUR

BRIEF: Addition on account of ceased liability u/s 41(1)

OUR TAKE: The appellant authority held that the merit in the contention of the appellant as the AO neither had made any inquiries nor brought any material on record that the creditors either had written off the said liabilities in their book of accounts or denied to own these amounts. In considered opinion, no addition u/s 41(1) can be made merely on the ground that the debts remained unpaid in the appellants' books for a number of years and no presumption can be made that the said liability had ceased or had been remitted. It is noted from the assessment order that out of the 4 invoiced, the payments for which outstanding as on 31.03.2012, the 2 were pertaining to the AY 2012-13 i.e. the year under consideration and 1 each was pertaining to AY 2010-11 and 2011-12, and thus as on 31.03.2012, these debts were not even barred by limitation. Thus AO was not justified in making addition u/s 41(1) of the Act - [Decided against revenue]

Income-tax Officer, Ward -1 (1) (3) , Mumbai Versus M/s. Eminent Travels Pvt. Ltd. ITAT MUMBAI

BRIEF: Set off of carried forward Business losses against the Short Term Capital Gains - Scope of section 72

OUR TAKE: section 72 of the Act prescribes set-off of unabsorbed business loss against the profits and gains of any business or profession carried on by the assessee and assessable for that assessment year - the objection of the Assessing Officer that the gain on sale of office premises was assessable as short term capital gain is of no avail to deny the set-off envisaged under section 72 of the Act because in commercial sense, the gain on sale of office premises represents profits of business - the brought

forward losses are eligible for set-off against short term capital gain on sale of office premises - decision of CIT(A) upheld. Appeal dismissed - decided against Revenue.

M/s International School of Hyderabad Versus The Income Tax Officer, Exemptions-2, Hyderabad ITAT HYDERABAD

BRIEF: Exemption u/s 11 of the IT Act - denial on the ground that it exceeded the number of Indian students permitted in each class, in violation of the approval granted by Min of External Affairs

OUR TAKE: The ITAT held that the Ld.CIT(A) upheld the order of A.O on the issue of admission of Indian students over and above the prescribed limits, without noticing the order of her predecessor, which was accepted by Revenue in that year. Since this issue was already crystallised by the order of CIT(A) in earlier year, We are of the opinion that A.O was precluded in making that as an issue in the Assessing Order in this year. Ld. CIT(A) should have followed the predecessor order on the issue, rather than relying the consequential order passed by A.O on wrong appreciation of facts. Since, this issue is no longer required to be adjudicated, as it was crystallised in earlier year in favour of Assessee, we have no hesitation in setting aside the order of A.O and CIT(A) on this issue and allow the grounds of Assessee - appeal allowed - [decided in favor of assessee.]

The Commissioner of Income Tax And Another Versus M/s Privilege Investment Pvt. Ltd. ALLAHABAD HIGH COURT

BRIEF: Service of notice - whether sending of a notice under Section 148 of the Act to the addressee at his correct address by registered post would be deemed to be served, if not returned undelivered and would be sufficient service for the purposes of Section 148 of the Act and reassessment proceedings? -

OUR TAKE: The Hon'ble high court held that, In view of the Section 27 of General Clauses Act, since the notice under Section 148 of the Income Tax Act was admittedly sent to the respondent-assessee by registered post at his proper address and the same was not returned unserved, a presumption of service of the said notice arises. After the service of the notice as aforesaid, proceedings under Section 142 were drawn and notice under Section 142(1) was issued to the respondent-assessee on 23.01.2002. In respect to the said notice, the respondent-assessee filed reply on 04.02.2002 and claimed that he had not received any notice under Section 148 of the Act - The filing of the aforesaid reply by the respondent-assessee reveals that he actually had the knowledge of the notice under Section 148 of the Act. Moreover, as desired by him, the reasons for issuing the notice under Section 148 of the Act were communicated to him as is evident from the order-sheet entry dated 05.03.2002. A notice sent by post to the addressee at his proper address would be deemed to have been delivered to him in the ordinary course, if not returned undelivered and such service is sufficient even for the purposes of Section 148 of the Act. Appeal allowed - [decided in favor of Revenue]

ACIT, Cir. 6, Ahmedabad Versus M/s. Indo German Tool ITAT AHMEDABAD

BRIEF: Depreciation on lease hold building and plant & machinery - disallowance - case of Revenue is that since building and infrastructure were stated to have been provided by the Govt. of Gujarat/Govt. of India/German Government, depreciation claimed by the assessee and allowed in the assessment mainly on lease holding building and plant & machinery was not in order - whether the contributions made by three governments, viz. Govt. of India, Govt. of Gujarat and German Government was to be treated as a contribution on behalf of the promoters or it was to be treated as a subsidy by the Government?

OUR TAKE: The appellant authority held that the ld.AO has misconstrued whole constitution of the Society. He was not justified to assume that three governments who are promoters of the Society have given subsidy instead of contribution for creation of the Society. Here the governments are doing business themselves by constituting the Society. It is not a benefit given by the government for any particular assessee or class of assessees by exercising its Legislative powers. The ld.CIT(A) has considered this aspect and therefore allowed the claim of the assessee. After going through the order of the ld.CIT(A), we do not find any error in it - appeal dismissed - [decided against Revenue]

Income-Tax Officer, TDS-3, Surat Versus Shree Madhi Vibhag Khand Udyog Sahakari Mandali Ltd ITAT AHMEDABAD

BRIEF: Applicability of TDS on payments made to the farmers representing cutting and transporting of the sugarcane - Supply of sugarcanes at the gates of factories of the respective assesses was a part of sale transaction?

OUR TAKE: TDS - payments made to the farmers representing cutting and transporting of the sugarcane - assessee claims that the assessee used to pay sugarcane price to the growers at "ex-factory price" and any advance to the farmer is only towards cost of sugarcane finally

adjusted from the sugarcane price payable to the grower on the basis of final price determined - Held that: - The Tribunal has followed the judgment of Hon'ble Gujarat High Court in assessee's own case for AY 2003-04 and held that the supply of sugarcanes at the gates of factories of the respective assesses was a part of sale transaction, and therefore, the assesses are not liable to deduct TDS - appeal dismissed - [decided against Revenue].

ITO (TDS) -1 (2) (2) , Mumbai Versus M/s Enam Financial Consultants Pvt. Ltd ITAT MUMBAI

BRIEF: Non deduction of TDS - rent - premium paid to MMRDA by the Assessee for additional FSI - AO treated the premium paid by the Assessee as akin to rent and therefore since the Assessee failed to deduct TDS u/s 194-I of the Act he held the Assessee as defaulter u/s 201(1) and also charged interest u/s 201(1A) for failure to deduct TDS on such premium paid by the Assessee to MMRDA

OUR TAKE: the Tribunal in Assessee's own case for the assessment year 2009-10 considered similar issue and held that the lease premium paid by the Assessee to MMRDA for acquiring staircase, lifts, lift room, lobbies etc. as additional FSI is not in the nature of rent within the meaning of Section 194-I and therefore the Assessee need not deduct TDS - appeal dismissed - [decided against Revenue].

Deputy Commissioner of Income Tax Versus M/s Omil-JSC (JV) ITAT JAIPUR

BRIEF: Deduction U/s 80IE of the Act - eligible of deduction towards excess provision written back - foreign currency fluctuation gain - manufacturing work in Arunachal Pradesh

OUR TAKE: The Appellant authority held that the issues are covered in favor of the assessee by the order of the ITAT in assessee's own case for the assessment year 2011-12 [2016 (7) TMI 1050 - ITAT JAIPUR], where it was held that The foreign currency gain is the part of raw material there is nothing wrong in this claim. Assessee is entitled for deduction u/s 80IE of the Act. As regards excess provision written back it was held that this is the expenditure, which has been booked in excess in earlier year and by this amount the deduction u/s 80IE has been reduced in the said year since the deduction is available for the unit for consecutive 10 years. AO's action in treating the excess provision written back as income cannot be justified, hence deleted - appeal dismissed - [decided against Revenue]

DCIT, Circle-3 (1) (TDS) , Vijayawada Versus Sudalagunta Hotels Ltd. ITAT VISAKHAPATNAM

BRIEF: TDS - default u/s 201(1) of the Act - rent - the assessee has submitted that the TTD has obtained no deduction certificate u/s 197 of the Act, from the department for nondeduction of tax at source on rent payments and hence, the assessee has not deducted tax at source

OUR TAKE: The ITAT held that no matter, whether the payment has been made by the assessee directly or paid on behalf of the directors, as long as the recipient income is exempt and also the recipient had got a certificate u/s 197 of the Act, for non-deduction of tax at source on the impugned payment, the assessee need not to deduct tax at source on such payments. M/s. TTD is an entity governed by section 12A of the Act had obtained certificate u/s 197 of the Act for non-deduction of tax at source on rental receipts from the tenants. Since, the income of the recipient M/s. TTD is exempt from tax and also fact that the recipient has obtained no deduction certificate u/s 197 of the Act, the assessee not obliged to deduct tax at source on the impugned payments - appeal dismissed - [decided against Revenue]

State Level Taxes

ALL INDIA VAT

COURT DECISIONS

M/s. Godrej and Boyce Manufacturing Company Limited Versus The Commercial Taxes Officer, Anti Evasion, Zone 1, Jaipur RAJASTHAN HIGH COURT

BRIEF: Classification of goods - Hydraulic door closers - whether classified under Schedule under entry 92 "fitting for doors" or under VAT Schedule (v)? - levy of VAT at 4% or 12.5%?

OUR TAKE: The appellant authority held that similar issue decided in the case of State of Karnataka Vs. Sanjiv Mehra and Another [1989 (11) TMI 289 - KARNATAKA HIGH COURT], wherein door closer has been held to be machinery and also taking into consideration the other material, the Assessing Officer was of the view that the "hydraulic door closers" would fall under VAT Schedule (v) where a rate of 12.5% is applicable - also, specific entry 92 of the Schedule (iv) shows various parts of door fittings namely'; Stoppers, Suspender, Springs, Magic Eye, Trolley Wheels, Pulleys & Holdfasts etc but "hydraulic door closers" does not find place in it. "Hydraulic door closers" appears to be a mechanical device and as submitted by the counsel for the petitioner, it stops the speed of the door or retard the speed - Even if, one takes into consideration the common parlance test which even the Apex Court time and again in the case of classification has taken into consideration it prima-facie appears that if a person asks from the dealer about part of fitting of doors, it would certainly mean to be Stoppers, Suspender, Springs, Magic Eye, Trolley Wheels, Pulleys & Holdfasts & Channels etc. but none would give "hydraulic door closers" as fitting for doors. Petition dismissed [decided against petitioner]:

The Commissioner, Commercial Tax Versus S/S Laxmi Wires Industrial Area Allahabad High court

BRIEF: Levy of VAT - steel wires - Tribunal was of the view that when steel rod is used to manufacture steel wires, then the product so manufactured would not be liable to be taxed under the provisions of the U.P. Trade Tax Act, as tax has already been paid upon purchase of steel rod

OUR TAKE: It is admitted that steel wire is a distinct commodity brought into existence pursuant to manufacturing process undertaken. Since a new commodity has come into existence pursuant to manufacturing activity, Tribunal was not justified in relying the circular to hold that tax is not payable upon such commodity, on the ground that tax was paid upon the rod used for manufacturing - appeal allowed - decided in favor of Revenue.

The Andhra Pradesh Industrial Development Corporation Ltd. Versus The State Bank of India, rep. by its Chief Manager ANDHRA PRADESH HIGH COURT

BRIEF: VAT liability - The petitioner is a Corporation wholly owned and controlled by the State of Andhra Pradesh. The creator cannot fight with the creation. - HC - VAT and Sales Tax

OUR TAKE: It is true that the petitioner was not a party to the writ petition filed by the A.P. State Finance Corporation. But it is on record that pursuant to the auction conducted by the writ petitioner, a sale deed was executed on 29.01.2004. This sale deed was jointly executed by the petitioner herein and the A.P. State Finance Corporation. Therefore today the petitioner cannot totally wash their hands off as though they had nothing to do with the writ petition filed by the A.P. State Financial Corporation. In any case, the sale proceeds have gone into the coffers of the petitioner as well as the A.P. State Financial Corporation. A person, who secured an interim order from a Court, should certainly honour its decision after the case is finally disposed of. Therefore, we do not think that the petitioner can escape the liability on this score.

GST ALERTS

SUPPLY BY BANKS UNDER GST

GST will be levied on supplies and not on sale or service. For the purpose of GST, supply shall include:

- all forms of supply of goods and/or services made or agreed to be made for a consideration by a person in the course or furtherance of business,
- Importation of service for a consideration, and
- Services have been specified in schedule I, which shall be considered as a supply even if made without consideration.

The present taxable event under service tax is rendition of services which will no longer be relevant and only one event i.e., 'supply' will be relevant for charge of tax. Supply has been defined in an inclusive manner. Tax is on supply of service, therefore, even the supply, as prescribed in Schedule-I, made without consideration will be taxable. In the present scenario, the services provided without consideration i.e., free services are not taxable.

Transactions between banks / FI / NBFC and its agents would also be considered as supply and liable to GST. This would cover transactions with recovery agent, auctioneer etc.

Any lease, tenancy, license a letting out of land and building, transfer of business assets or their disposal, renting of immovable property temporary transfer of intellectual property rights, series in relation to information technology software and works contracts will be treated as supply of services.

Non-Performing Assets (NPAs) are common to banking industry and securitization of assets often resorted to. 'Service' does not include actionable claims but these (actionable claim) will be considered as goods in GST regime, as against present tax laws. If actionable claims are taxed for GST, it will be a major setback. Banks may seek exemption or a lower rate on the same.

Under the GST regime, financial leases would be considered as supply of goods and taxed to GST accordingly. However, other leases would be treated as services. Leased assets from outside India shall be subject to levy of IGST.

In case of repossession of assets by banks / FIs / NBFC's, same will be treated as supply of goods in term of Schedule-II to the model GST law (version-II). Accordingly, any transfer of the title in goods is supply of goods.

Where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, such transfer or disposal is a supply of goods by the person.

Where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless-

(i) The business is transferred as a going concern to another person; or

(ii) The business is carried on by a personal representative who is deemed to be a taxable person.

GST will be applicable on such transactions which will add to the cost of services. Presently, VAT is applicable but GST may be levied at a higher rate.

Many banks are also engaged in insurance business for which place of supply is crucial. Readers may refer to Chapter 5 for the detailed study on insurance services.

Since interest is a return on money lent to borrowers, it may continue to the out of GST net. Presently, leasing companies are burdened with both taxes- VAT as well as Service Tax. In GST regime, it is expected that such anomaly will go and there should not be dispute on the nature of transaction and it would be easier to decide as to when will a transaction in relation to transfer of right to use goods takes place in course of inter-state trade or commerce and where will be citus of transaction in case of transfer of right to use movable goods.

Time of Supply

The time of supply of services in case of banks and financial services shall be earlier of the following events:

- Date of issue of invoice or on the last date on which invoice is required to be issued.
- Date on which bank receives payment with respect to such supply.

As per place of supply provisions, if banks are required to pay tax on reverse charge basis, then time of supply shall be earlier of the following events:

- Date on which payment is made or
- Date immediately following sixty days from the date of issue of invoice by the bank / service provider

Place of Supply

As per section 9 of IGST law, the place of supply of banking and other financial services including stock broking services to any person shall be the location of the recipient of services on the records of the supplier, where the location of supplier of service and location of service recipient is in India. However, if the location of the recipient of services is not on the records of the supplier, the place of supply shall be the location of the supplier of services.

Place of supply of services where the location of supplier (banking company) or location of the recipient is outside India, location of bank shall be the place of supply for:

(a) Services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders;

(b) Intermediary services.

The issue which arises here is determination of appropriate state which will pay the tax in case of massive volume of transactions or multiple state activities. The place of supply in such shall determine the state which will pay appropriate taxes or where services will be consumed. For example, in case of multi State-activities like lending, ATMs, credit cards, bank guarantees, forex etc., place of supply shall be location of the recipient of services i.e. customer's address on the records of the bank.

In case of real time transactions like RTGS, NEFT etc. service tax is charged on transactions charges on transactions carried out under RTGS/NEFT facility under service tax regime. The issue here is levy of taxes on real time basis based on address is not possible. In present regime, service tax is charged from account of the customer affecting such RTGS or NEFT on real time basis. Under GST, place of supply provisions provides solution to this issue. It provides for levy of tax in the State in which registered address of customer is mentioned in records (i.e., KYC documents) of the bank. The GST shall be levied on real time basis as in the present regime.

Another issue for concern could be in case of multiple addresses for B2B transactions as to what shall be the place of supply. In such case, definition of 'location of recipient of services' shall provide for address of the recipient which shall be as under:-

a. where a supply is received at a place of business for which registration has been obtained, the location of such place of business;
b. where a supply is received at a place other than the place of business for which registration has been obtained, that is to say, a fixed establishment elsewhere, the location of such fixed establishment;
c. where a supply is received at more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the receipt of the supply; and
d. in absence of such places, the location of the usual place of residence of the recipient;

In case of intermediary services like online banking services, de-mat services etc, place of supply shall be location of recipient of services.

Service providers may face challenges in respect of following:

- Location of service recipient in 'anywhere banking' setup
- 'Account' should also include credit cards / debit cards / borrowers etc.
- Banking and financial services have not been defined so far and as such its scope ought to be clarified as banks provide certain other management related services.
- Place of supply would be difficult to fix where a customer and/ or borrower is served from multiple locations but tagged to one home branch.

While GST is being claimed to the biggest reform in India, the banking and financial services need special provisions since they are very crucial to the economy as a whole.

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