ASC Times

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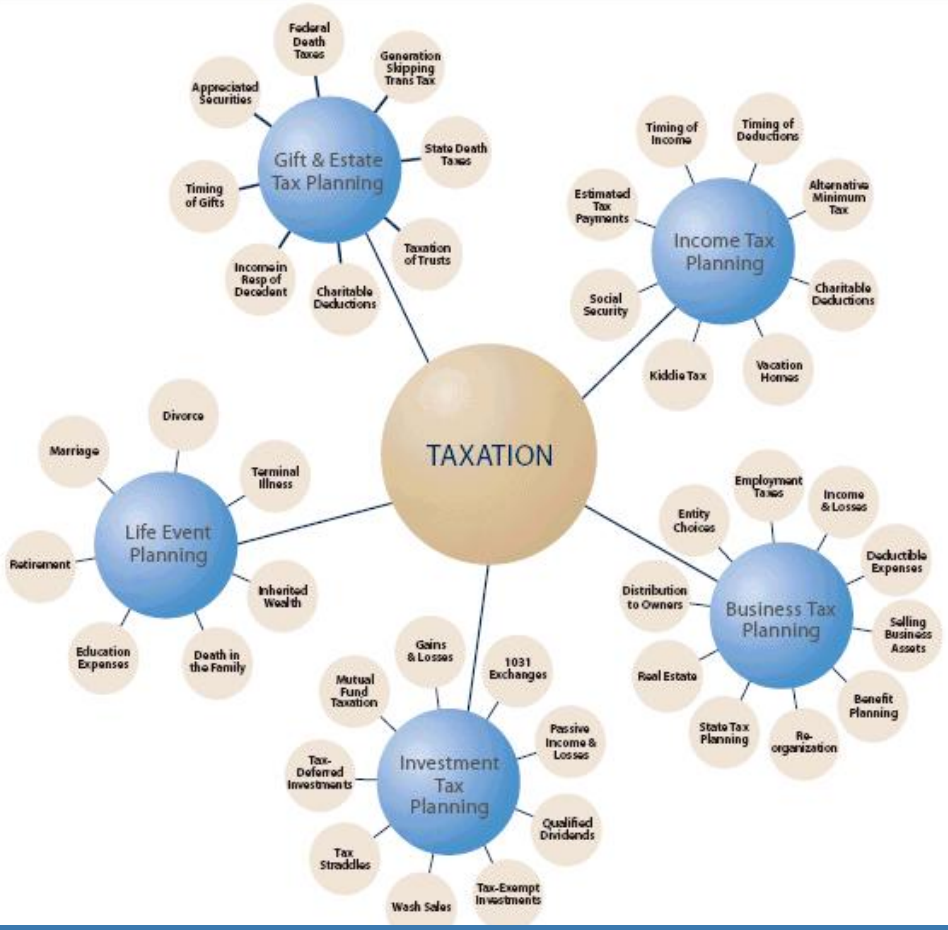

TAXCALENDER

Due Date	Description	Law
14 Nov	Deposit of Tax	Rajasthan VAT
	Return Filing	Rajasthan VAT
15 Nov	Deposit of Tax	Bihar VAT, Haryana VAT, Jharkhand VAT, Sikkim VAT
	Deposit of TDS	Bihar VAT, Delhi VAT, Haryana VAT, Himachal Pradesh VAT, Jharkhand VAT, Punjab & Chandigarh VAT
	Issue of TDS Certificate	Andhra Pradesh VAT, Bihar VAT, Himachal Pradesh VAT, Jharkhand VAT, Nagaland VAT, Punjab & Chandigarh VAT, Telangana VAT
	Return Filing	Karnataka VAT, Madhya Pradesh VAT
20 Nov	Deposit of Tax	Andhra Pradesh VAT, Goa VAT, Karnataka VAT, Manipur VAT, Punjab & Chandigarh VAT, Tamil Nadu VAT, Telangana VAT, Uttarakhand VAT
	Issue of TDS Certificate	Chhattisgarh VAT, Madhya Pradesh VAT
	Return Filing	Andhra Pradesh VAT, Karnataka VAT, Manipur VAT, Punjab & Chandigarh VAT, Tamil Nadu VAT, Telangana VAT

COUNTRY WIDE HOLIDAYS FOR THE WEEK

Date	Occasion/Festival	Region
14th Nov 2016	Guru Nanak Jayanti	Chhattisgarh, Delhi, Daman & Diu, Haryana, J&K, Jharkhand, Madhya Pradesh, Maharashtra, Punjab, Rajasthan, Uttar Pradesh, Uttarkhand, West Bengal

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From the CEO's Desk

Dear Reader,

On Tuesday 8th November 2016, India witnessed historic movement with Prime Minister Narender Modi withdrawing Rs. 500/1000 notes to fight black money. In an extraordinary step to tackle the scourge of black money in the country, Prime Minister Narendra Modi said Rs 500 and Rs 1000 notes will no longer be legal from midnight today. However, Notes of Rs 2000 and Rs 500 will be circulated soon, RBI has decided to limit the notes with higher value. He assured the nation that the notes of Rs 100, 50, 10 and coins of all denominations will remain legal tender and will not be affected and that, this step will strengthen the hands of the common man in the fight against black money. The government also listed some exceptions to help minimise inconvenience to the common man, like hospitals will continue to accept the big currencies for the next 72 hours. Rs 500 and Rs 1000 notes will also be valid for transactions related to booking of air tickets, railway bookings, government bus ticket counters till the midnight of November 11 and 12. ATM withdrawals will be restricted to Rs 2000 per day and withdrawals from bank accounts will be limited to Rs 10,000 a day and Rs 20,000 a week.

The move to withdraw high-denomination notes is expected to dent immediate consumption, especially of high-end goods, but will have a positive impact on growth and inflation in the long run. Sectors with a sizeable magnitude of cash transactions such as real estate, construction, jewellery, high-end retail and travel and tourism are expected to get adversely affected. White goods demand, a source of strength for the economy, is also expected to take a hit, along with that for passenger cars, which could prompt a reassessment of growth estimates for the year.

The impacts could be different depending upon sectors – deflationary in some while contractionary in others. This is a short-term risk for the economy which we would be taken care of in near future.

The sudden decline in money supply and simultaneous increase in bank deposits is going to adversely impact consumption demand in the economy in the short term, India Ratings said, putting its 7.8% growth estimate for the current financial year on watch with a downward bias. The rural economy, too, has its share of problems with cash disappearing for a while. In the immediate term, legal transactions in the unorganised sector may get temporarily disrupted, particularly in rural area.

In the long term, the economy will benefit from the reduction of black money, which will lead to higher tax collection, better business environment, less corruption and transparency. Banks are expected to see large inflows, while inflation could trend lower, helping interest rates to decline further. Flushed with funds, banks will reduce lending rates. No clarity on whether the withdrawal of legal tender status for Rs 500 and 1,000 notes will durably reduce inflation would influence whether this announcement would prompt the Monetary Policy Committee to cut rates in the December 2016 policy.

Alok Kumar Agarwal

CEO

ASC Group.

SERVICE TAX

COURT DECISIONS

VIRTUAL MARKETING (INDIA) PVT LTD. VERSUS COMMISSIONER OF SERVICE TAX, MUMBAI [CESTAT MUMBAI]

BRIEF: Even if the service tax was collected but shown as a outstanding in the balance sheet, it can be construed that appellant had no mala fide intention - appellant showed the reasonable cause for non-payment of service tax on due time. - Penalty waived.

OUR TAKE: The hon'ble **CESTAT MUMBAI** held that As regard the tax liability of the services, we find that services provided by the appellant are indeed taxable and the same is liable for service tax. As regard the penalties under Section 76, 77 and 78, we find that the appellant though not discharged service tax in due time but they have been paying service tax in instalment and almost entire demand was paid before issuance of show cause notice. The appellant given reason for non-payment of service tax in time that they were in severe financial crisis. It is also fact that appellant had accounted for entire service tax payable as an outstanding in their books of accounts which shows that they had bonafide intention to discharge the service tax. Even if the service tax was collected but shown as a outstanding in the balance sheet, it can be construed that appellant had no mala fide intention. **[Decided Partly in favour of appellant]**

INDUCTION HARDENING COMPANY VERSUS COMMISSIONER OF CENTRAL EXCISE & CUSTOMS, NASIK [CESTAT MUMBAI]

BRIEF: Maintainability of appeal – period of limitation - The mode of communication of order is relevant only so long as the actual receipt of the communication is not disputed. Once the receipt of communication is not disputed, the mode of communication becomes irrelevant.

OUR TAKE: The Hon'ble **CESTAT MUMBAI** held that in the case of Amidev Agro Care Pvt. Ltd. the communication dispatched by speed post was not received by the appellants whereas in the instant case it has been admitted by the appellant that the communication was received by them, although it was received by watchman and it was not delivered to the concerned people at the right time. Once it is admitted that the order has been received by the appellant, the decision of Hon'ble High Court of Bombay in the case of Amidev Agro Care Pvt. Ltd. can be differentiated on fact. The mode of communication of order is relevant only so long as the actual receipt of the communication is not disputed. Once the receipt of communication is not disputed, the mode of communication becomes irrelevant. **[Decided against appellant]**

M/s Andhra Pradesh State Road Transport Corporation (APSRTC) Versus The Commissioner. Hyderabad-II [CESTAT HYDERABAD]

BRIEF: Tour operator service - stage carriage permit - They do not at all become contract carriages as they do not confirm to the definition of contract carriage in Section 2(7) of M.V. Act

OUR TAKE: The hon'ble **CESTAT HYDERABAD** held that It is not disputed that the vehicles used by the assesses for the impugned services are "stage carriage" vehicles and are carrying out the impugned activities only on the basis of temporary permits issued by A.P. Transport Authorities. They do not at all become contract carriages as they do not conform to the definition of contract carriage in Section 2(7) of M.V. Act. **[Decided against appellant]**

M/S LG ELECTRONICS INDIA PRIVATE LIMITED, BHARAT BHUSHAN SHARMA MANAGER VERSUS COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX, NOIDA[CESTAT ALLAHABAD]

BRIEF: SCN did not bring forward any evidence to establish that there has been collusion between the appellant and the service provider for evasion of Service Tax and for availing inadmissible Cenvat credit - Cenvat credit cannot be denied.

OUR TAKE: The hon'ble **CESTAT ALLAHABAD** held that the Show Cause Notice did not bring forward any evidence to establish that there has been collusion between the appellant and the service provider for evasion of Service Tax and for availing inadmissible Cenvat credit. Therefore, the invocation of extended period in the said Show Cause Notice is not sustainable. We, therefore, hold that the said Show Cause Notice, so far as, relates to denial of Cenvat credit to the appellant, imposition of penalty on appellant, proposal for imposition of penalty on its Authorized Signatory & proposal of demanding interest from the appellant is unsustainable. We, therefore, modify the impugned Order-in-Original to the extent that the demand confirmed in respect of Cenvat credit of 3, 32, 76,600/ is set aside, order for recovery of interest on the said demand is set

aside, imposition of penalties set aside. **[Decided in favour of appellant]**

M/S. CORPORATION BANK VERSUS THE COMMISSIONER OF CENTRAL EXCISE AND CUSTOMS[CESTAT BANGALORE]

BRIEF: When cash management services stood excluded from the purview of service tax at the hands of the Bank until 31.05.2007, service tax cannot be demanded on an activity which is essentially cash management service, by taking aid of other general charging heads, such as business auxiliary service (BAS).

OUR TAKE: The humble **CESTAT BANGALORE** held that the deletion of the exclusion of cash management services is w.e.f 1.6.2007. The issue whether for the period prior to this date, such services can be charged to service tax under BAS stands decided by the Hon'ble Apex Court in the case of CST vs. M/s. Federal Bank Limited [2016 (3) TMI 354 - SUPREME COURT] where it was held that Clause (12) of Section 65 covers all charging services rendered by the Banks. - when cash management services stood excluded from the purview of service tax at the hands of the Bank until 31.05.2007, the authorities cannot levy service tax on an activity which is essentially cash management service, by taking aid of other general charging heads, such as business auxiliary service.**[Decided in favour of appellant]**

M/S MAYA ENTERTAINMENT LTD. VERSUS COMMISSIONER OF SERVICE TAX, MUMBAI-II[CESTAT MUMBAI]

BRIEF: Levy of tax - imparting training in graphic animation - obligation not to share the services provided by the appellant with any other person - service of the appellant clearly covered under the "Franchise Service", hence the same is taxable

OUR TAKE: The hon'ble **CESTAT MUMBAI** held that the appellant has provided service to M/s Digital Puppet Animation Studio in regard to right to use of course material in imparting training in graphic animation for indicating computer education in training programme in Graphic Animation and Cinematic as per the agreement, the service recipient as per the agreement the "Franchise" i.e. service recipient is under an obligation not to share the services provided by the appellant with any other person, therefore the condition of the definition of "Franchise" also stand fulfilled. **[Decided in favour of appellant]**

M/S. JOHNSON & JOHNSON PVT. LTD. VERSUS COMMISSIONER, CE& ST (LTU) , MUMBAI[CESTAT MUMBAI]

BRIEF: Management, Maintenance or Repair services in respect of SAP software - while canned software can be treated as goods the customer specific software would be classified as Information Technology software.

OUR TAKE: The hon'ble **CESTAT MUMBAI** held that the agreement with SBL is not an agreement of service provision but it is an agreement involving only reimbursement - The decision of Hon'ble High Court of Gujarat in Arvind Mills Ltd. 2014 [2014 (4) TMI 132 - GUJARAT HIGH COURT] applies - SBL is not engaged in the business of supplying manpower. Only actual cost incurred is recovered from the appellant and there is no element of profit to SBL - demand in respect of Manpower Recruitment or Supply Agency services is set aside.**[The appeal is allowed by way of remand for strict compliance]**

M/S. SUSHILKUMAR KHEMCHAND JAIN VERSUS COMMISSIONER OF CENTRAL EXCISE, NAGPUR[CESTAT MUMBAI]

BRIEF: Drilling and waste removal activity - t this activity of the appellant would get covered under the category of Site formation service.

OUR TAKE: The hon'ble **CESTAT MUMBAI** held that there is no dispute as to the fact that the contract which has been awarded to appellant was in respect of the drilling and removal of waste rock material from the site wherein Manganese Ore India Ltd., Jain Carbide and RBS & Co. we're intending to do mining of manganese ore. We find that the first appellate authority as well as the adjudicating authority has correctly held that this activity of the appellant would get covered under the category of Site formation service. There is nothing on record to controvert such finding of the first appellate authority as well as the adjudicating authority.**[Decided against appellant]**

M/S. INDIAN OIL CORPORATION LTD VERSUS THE COMMISSIONER OF C. EXICSE, MUMBAI [CESTAT MUMBAI]

BRIEF: Refund claim - exemption under N/N. 17/2009-ST - exemption to Airport service by way of refund was not available during the period July, 2009 to March, 2010.

OUR TAKE: The hon'ble **CESTAT MUMBAI** held that the ATF was supplied which was treated as exports during the period July, 2009 to March, 2010 and the Airport services which is input service was received by the appellant during the same period. The Airport service was not covered under exemption notification no. 17/2009-ST dated 7/7/2009. It is important to note that this Notification exempt the services specified in the notification by way of refund. Therefore the exemption is available in the hands of the recipient. However, service provider in the present case is MIAL supposed to discharge the service tax - point of time of exemption under notification No. 17/2009-ST is time when

services were received and used in export of the goods.**[Petition Dismissed]**

CENTRAL EXCISE

COURT DECISIONS

C.C.E. & S.T., RAIPUR VERSUS M/S. SKS ISPAT AND POWER LTD[CESTAT BANGALORE]

BRIEF: CENVAT credit - prior to 24.03.2011, no central excise duty was payable on coal produced in mine - taking of CENVAT credit of central excise duty, paid by the supplier, is in conformity with the statutory provisions.

OUR TAKE: The hon'ble **CESTAT BANGALORE** held that It is an admitted fact that CENVAT credit has been taken by the appellant on the basis of the invoices issued by the supplier of coal, reflecting therein the excise duty charged and paid into the Govt. account. The supplier of goods was duly registered with the Central Excise Department and payment of duty on coal was not disputed by the excise authorities having jurisdiction over the factory of the respondent. Further, the classification of goods is the responsibility of the excise authority, having jurisdiction over the factory of the manufacturer or supplier. Thus, the assessment made at the supplier's end cannot be re-opened at the recipient's end, and therefore, credit taken by the respondent on the basis of valid and prescribed document, is in conformity with the CENVAT scheme**. [Decided against revenue]**

VE COMMERCIAL VEHICLES LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE MUMBAI. [CESTAT MUMBAI]

BRIEF:Price variation clause - refund claim - reduction in price, resulting in excess payment of duty - in such case where price variation was anticipated, the appellant should have sought provisional assessment as provided in law - No refund

OUR TAKE: The hon'ble **CESTAT MUMBAI** held in such case where price variation was anticipated, the appellant should have sought provisional assessment as provided in law - further it is stated that both the judgements had relied upon the order of the Hon'ble Supreme Court in the case of Mauria Udyog Ltd. v. Commissioner - [2007 (10) TMI 619 - SUPREME COURT] wherein the Hon'ble Supreme Court had dismissed the Petition for Special Leave to Appeal against the judgement and order dated 22.08.2006 of the Punjab and Haryana High Court. **[Appeal Rejected]**

M/S. TRIMEX SANDS PVT. LTD VERSUS CCE, VISAKHAPATNAM-I. [CESTAT HYDERABAD]

BRIEF: Process of separating valuable mineral sands from ordinary sea sand - whether the process amounts to manufacture or not? - Was not amount to manufacture before introduction of new chapter note in 2011?

OUR TAKE: The hon'ble **CESTAT HYDERABAD** held that at the end of this process the chemical structure of the one remained the same; there was no crystallographic transformation and hence the process will not amount to manufacture - reliance placed on the decision of India Rare Earth Ltd. Vs. Commissioner [2001 (9) TMI 167 - CEGAT, KOLKATA] where it was held that similar process does not amount to manufacture. **[Decided Partly in favour of appellant]**

M/S. NCL ALLTEK & SECCOLOR LTD. VERSUS CCE, GUNTUR. [CESTAT HYDERABAD]

BRIEF: Valuation - Retail Sale Price u/s 4A or transaction value u/s 4 - supply of Superfine Spray Plaster in bulk from NCC-Maytas for their consumption in construction - construction activity is being treated as service Industry - provision of MRP based valuation not applicable.

OUR TAKE: The hon'ble **CESTAT HYDERABAD** held that decision in the case of CCE, Bangalore Vs. Mysore Cements Ltd. [2010 (8) TMI 246 - KARNATAKA HIGH COURT] relied upon where it was held that construction activity has been considered as a service industry by the Finance Ministry - general construction work for building, general construction work for civil engineering installation and assembly work building, completion and finishing work and assesses is treated as a service industry**[Decided in favour of appellant]**

M/S BOSTIK INDIA PVT LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, CUSTOMS AND SERVICE TAX BANGALORE-I (APPEALS) [CESTAT NEW DELHI]

BRIEF: Classification of goods - Roop Amrit - Complete solution - cosmetic under heading 3304 or medicament under heading 3003? - - products classified as cosmetic or toilet preparations, the valuation to be done u/s 4A.

OUR TAKE: The hon'ble **CESTAT NEW DELHI** held that PP Ayurveda medicament may have incidental outcome of beauty enhancement. In such situation, it is necessary to go by the common parlance of the practice of trade - reliance placed on the decision of Puma Ayurvedic Herbal P. Ltd. where it was held that cosmetic products are meant to improve the appearance of a person, whereas a medical

product or a medicament is meant to treat some medical condition. **[Decided in favour of appellant]**

CUSTOM

NOTIFICATION / CIRCULAR

The Govt. vides Notification No.52/2016dated 09th November 2016, notifies to levy anti-dumping duty at modified rates on 4, 4 Diamino Stilbene 2, 2 Disulphuric Acid (DASDA) originating in or exported from People's Republic of China up to and inclusive of 22nd January, 2019.

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

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COURT DECISIONS

COMMISSIONER OF CUSTOMS (IMPORT), JNCH VERSUS M/S. BRITISH ELECTRICALS [CESTAT MUMBAI]

BRIEF: Classification of goods - LED Panel Indicator - The Commissioner (Appeals) decides the classification under heading 85312000. Therefore if at all any appeal is maintainable before the Tribunal of the Revenue shall be on the issue of conflicting tariff heading between the 85318000 and 85312000. The department is not allowed to file the appeal claiming some third tariff item number 8538.56

OUR TAKE: The hon'ble **CESTAT MUMBAI** held that the Revenue though classified the goods in the bill of entry under Customs Tariff Heading No.85318000 has not challenged the same before Commissioner (Appeals). It is the respondent who challenged the classification in the Bill of Entry by filing appeal before the Commissioner (Appeals). The Commissioner (Appeals) decides the classification under heading 85312000. Therefore if at all any appeal is maintainable before the Tribunal of the Revenue shall be on the issue of conflicting tariff heading between the 85318000 and 85312000.**[Decided against Revenue]**

VARDHAMAN FERTILIZERS & SEEDS PVT LTD., ANIKA INTERNATIONAL RR SHAH Versus Commissioner of Customs Pune [CESTAT MUMBAI]

BRIEF: Re-classification of imported goods - 'mono potassium phosphate' with purity of 99.6% - The inclusions of the imported items in the Fertiliser (Control) Order 1985, as amended in 1995, cannot but reinforce the opinion that these are indeed fertilisers as decided by the competent department of the Government of India - imported goods are fertilizers.

OUR TAKE: The hon'ble **CESTAT MUMBAI** held that the goods listed in notes 2(A), 3(A), 4(A) or 5 to which note 1(b) refer are intended to restrict the applicability under one or other of headings 31.02, 31.03, 31.04 as applicable. Note 6 of chapter in relation to the residuary category restricts classification under 'other fertiliser' in 31.05 to goods to be used as 'fertilisers' and containing one of the fertilizing elements. In view of the above arrangement of exclusions and inclusions in chapter 31, it would appear that all of the headings preceding 31.05 are to be taken as 'fertiliser' to the extent that these are also used as fertilizer and not excluded by note 1(b). **[Decided in favour of appellant]**

M/S GREENPLY INDUSTRIES LTD. VERSUS UOI & ORS [CESTAT NEW DELHI]

BRIEF: Quantification of rate of ADD - The future possibility of continuing exemption or termination of such exemption cannot be predicted and factored into while arriving at the findings on material injury for DI.

OUR TAKE: The hon'ble **CESTAT NEW DELHI** held that we have perused the confidential calculation of non-injurious price submitted by the counsel for the DA. We note that under the Administrative heads, advertising and sales promotion expenses have been fully allowed as claimed by the appellant. On this, we find no merit in the argument of the appellant.

M/S. KOLUTHARA EXPORTS LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE & CUSTOMS[CESTAT BANGALORE]

BRIEF: 100% EOU - the refrigerated trucks are used only for the purpose of transporting the frozen raw materials when it is brought into the factory for manufacture/production and also to carry the finished goods from factory to port for export - cannot be said that such trucks are in the nature of capital goods

OUR TAKE: The hon'ble **CESTAT BANGALORE**held that the appellant deals with highly perishable sea food. But the connotation of the term capital goods is to cover plant, machinery, equipment or accessories required for manufacture of goods including refrigeration equipment. But from the use of refrigerated trucks by the appellant, it cannot be said that the said use is in the nature of capital

goods and cannot be covered by the Notification No.13/81-Cus. **[Decided against appellant]**

INCOME TAX

COURT DECISIONS

DCIT, CIRCLE-6, KOLKATA VERSUS NARIMAN FINVEST PVT. LTD. AND VICE-VERSA[ITAT KOLKATA]

BRIEF:TDS u/s 194C - non deduction of tds on catering charges - The provisions of TDS u/s. 194C of the Act are applicable for a works on contract and they do not apply on the sale-purchase of products.

OUR TAKE: The hon'ble **ITAT KOLKATA** held that the existing transaction is falling within the exceptions provided in clause (c) to section 43(5) of the Act. As per the provisions of the section 43(5) of the Act the transaction is falling within the definition of speculation transaction but the same has been provided in the exception list as per clause (c) to section 43(5) of the Act. The transaction undertaken for the sale & purchase of the shares in F&O market to safeguard the loss on account of price fluctuations of the share held by the assesses within the same script cannot be regarded as speculation transactions.**[Decided in favour of assessee]**

DEPUTY COMMISSIONER OF INCOME TAX, COMPANY CIRCLE 1 (1), CHENNAI VERSUS M/S. ATMEL R&D INDIA PRIVATE LTD. AND VICA-VERSA. [ITAT CHENNAI]

BRIEF:TDS u/s 195 - non deduction of tds on software expenses representing reimbursement of software cost to its parent company - it cannot be held as 'royalties' coming into the ambit of Article 12 of DTAA or 'fee for technical services' u/s 9(1)(vii).

OUR TAKE: The hon'ble **ITAT CHENNAI** held that Nature of work carried on by M/s.Jeevan Scientific Technology Ltd. is IT Enabled Services, though it was called by different name. The nature of service performed by M/s.Jeevan Scientific Technology Ltd. is IT Enabled Services and when assesses itself included ERP in IT segment, TPO cannot be re-characterised without making any enquiry u/s.133(6) of the Act. In our opinion, the direction given by the DRP that ERP is nothing but ITES and to include the ERP in ITES segment so as to compute the profit margins is justified. The Direction of the DRP is upheld.

R.K. EDUCATIONAL TRUST, 8A/8, KAROL BAGH, NEW DELHI VERSUS DIT (EXEMPTIONS) , NEW DELHI. [ITAT DELHI]

BRIEF:Non granting registration u/s 12A - partition of education society without seeking necessary approvals / sanctions from competent authority in terms of societies registration act - DIT(E) failed to make out a case for rejection of registration u/s 12AA / 12A of I.T. Act.

OUR TAKE: The hon'ble **ITAT DELHI** held that Objects of the appellant trust included to establish, maintain, support and run schools, colleges, social service centres, industrial training centres, skill development centres, coaching institutes, boarding houses, day shelters, research and training centres and other institutions of education, having objects similar to those of this trust for imparting elementary and higher education, technical, industrial or commercial knowledge or training amongst public. These objects are clearly in the nature of charitable purposes, and more particularly, are to be regarded as "education". **[Decided in favour of assesse].**

M/S. PHENIL SUGARS PVT. LTD. VERSUS CIT (A) – 19, MUMBAI AND ITO, WARD 14 (4) , NEW DELHI.. [ITAT DELHI]

BRIEF: When no fresh investment has been made by the assesses during the year under assessment nor it has incurred any expenditure the question of invoking provisions contained u/s 14A read with Rule 8D does not arise.

OUR TAKE: The hon'ble **ITAT DELHI** held that audited books of account maintained by the assesses in respect of investment and dividend income nor AO has recorded his dis-satisfaction as to how any expenditure has not been incurred by the assessee in maintaining the investment. In the given circumstance, the disallowance u/s 14A cannot exceed the amount of 28,666/ already claimed exempt u/s 10(34). CIT (A) has also failed to appreciate the arguments addressed by the assessee that when no fresh investment has been made by the assessee during the year under assessment nor it has incurred any expenditure the question of invoking provisions contained under section 14A read with Rule 8D does not arise.. **[Decided in favour of assesses]**

DCIT, CIR. 3 SURAT VERSUS SMT. SHAILYBEN SURESHBHAI BAPNA [ITAT AHMEDABAD]

BRIEF: Computation of capital gains - Unless the AO possesses some evidences, demonstrating the fact that full value of the consideration disclosed by the assesses was incorrect, he cannot replace that value by estimation or on the basis of his own estimation.

OUR TAKE: The hon'ble **ITAT AHMEDABAD** held that even a single transaction can be treated as a venture into a trade, but the AO failed to point out those peculiar circumstances. Reasons given by the ld.CIT(A) in the finding extracted supra would indicate that the assesses has not borrowed funds for

making investment. She has not shown shares as stock-in-trade. She did not take help of experts; she did not incur any expenditure towards selling consultancy or maintaining of any office. She has not purchased shares of any other companies in this period.

STATE TAXES

ALL INDIA VAT

GUJRAT

The Govt. vides Notification NO. (GHN-68)VAT-2016-S.11(6)(6)-TH dated 10th Nov 2016, notifies that reduction in Input Tax Credit on Pan Masala, Beverages, Mobile Phone and goods taxable @20% rate.

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

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JAMMU & KASHMIR

The Govt. vides Notification NO. SRO 355 dated 8th Nov 2016, notifies n exercise of the powers conferred by proviso to sub-rule (2) of rule 28 of the Jammu and Kashmir Value Added Tax Rules, 2005, the Government hereby directs that the last date for filing of returns for the First and the Second Quarter of 2016-17 shall now be 30th of November, 2016 and 31st December, 2016 respectively.

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

RAJASTHAN

The Govt. vides Notification NO. F.12 (105) FD/TAX/2014-PT.-I-54 dated 9th Nov 2016, Modification in Rajasthan Investment Promotion Scheme-2014.

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

WEST BENGAL

The Govt. vides Circular NO. MEMO NO. 919CT/PRO/3C/PRO/2015 dated 09th Nov 2016, notifies last date for filling quarterly return of forms 14/14D & 15 for 3rd quarter is extended up to 16th Nov 2016 .

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

COURT DECISIONS

THE COMMISSIONER OF SALES TAX VE0RSUS M/S. VEER RADIOS (BOMBAY HIGH COURT)

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

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

COMMISSIONER OF COMMERCIAL TAXES, THIRUVANANTHAPURAM, KERALA VERSUS M/S K.T.C. AUTOMOBILES [SUPREME COURT]

BRIEF: levy of penalty for non-maintenance of complete, true accounts - sale of motor vehicles from another state - According to the Intelligence Officer, the sales were concluded at Kozhikode, and hence the vehicles should have been registered within the State of Kerala. - Mere doubt cannot create any liability - No penalty.

OUR TAKE: The hon'ble **SUPREME COURT** held that they do not lead to a conclusive inference that the sales under controversy had taken place at Kozhikode, Kerala. To the contrary, in view of propositions of law discussed hereinbefore, the judgment of the High Court gets reinforced and deserves affirmation. **[Decided against the revenue]**

STATE OF GUJARAT VERSUS JAYANT AGRO ORGANICS LTD[GUJARAT HIGH COURT]

BRIEF: Denial of Input Tax and Credit (ITC)- GVAT - purchase of castor oil seeds for production of castor oil - Only the waste is used as fuel and that too again in the manufacturing process of oil. - Credit cannot be denied

OUR TAKE: The hon'ble **GUJARAT HIGH COURT** held that there is no deliberate attempt on the part of the Company to manufacture Deoiled cake so that the same can be used as fuel. Input tax credit allowed. **[Decided against the revenue]**

OTHER UPDATES

COMPANY LAW

COURT DECISIONS

RAJ SHEKHAR AGRAWAL AND ANR. VERSUS UNION OF INDIA AND ANR [DELHI HIGH COURT]

BRIEF:The question, whether the petitioners can be said to be Directors of the subject company is doubtful and without the petitioners / applicants having a clear right to act as Directors and which is being opposed, the question of the petitioners / applicants incurring any disqualification or liability under Section 162 of the Act also, would not arise.

OUR TAKE: The hon'ble **DELHI HIGH COURT** held that the question, whether the petitioners can be said to be Directors of the subject company is doubtful and without the petitioners / applicants having a clear right to act as Directors and which is being opposed, the question of the petitioners / applicants incurring any disqualification or liability under Section 162 of the Act also, would not arise. The application is thus dismissed with liberty to the petitioners / applicants to apply to the CLB for the same reliefs.

FEMA

COURT DECISIONS

BIPINCHANDRA G. CHOCKSHI AND 1 VERSUS STATE OF GUJARAT AND 2(GUJARAT HIGH COURT)

BRIEF:Detaining authority is under obligation to comply with the requirements by formulating grounds for detention

OUR TAKE: The hon'ble **GUJARAT HIGH COURT** held that the petition is allowed resulting into quashing and setting-aside the impugned order of detention dated 11.6.1976 at Annexure 'A' to the petition and declaration under Section 12A of the COFEPOSA, 1974 at Annexure 'B' dated 11.6.1976 and quash and set-aside three notices under Section 6 of SAFEMA, 1976, Annexure 'D' Collectively dated 28.4.1977, 20.1.1997 and 23.3.1977.

SAJAL DUTTA VERSUS RESERVE BANK OF INDIA & OTHERS(CALCUTTA HIGH COURT)

BRIEF:Both the company and its principal shareholders had an interest in the grant of the licence or revocation of it, by the Reserve Bank of India.

OUR TAKE: The hon'ble **CALCUTTA HIGH COURT** held that the importation was made more than 20 years ago. These capital goods have spent their life. Their value, now after depreciation is nil. At the time of their importation their declared value was 3, 05, 53,290/-. Against this value, shares were allotted to Kamal. Even if Sajal now succeeds, the equipment's cannot be returned to Kamal. The monetary value has to be refunded with interest from the other assets of the Company. That is plainly not permissible or feasible. W

JIJU LUKOSE VERSUS STATE OF KERALA [KERALA HIGH COURT]

BRIEF: Right to receive copy of the FIR even before the stage of proceedings under Section 207 of the Cr.P.C - Accused is entitled for copy of the FIR.

OUR TAKE: The hon'ble **KERALA HIGH COURT** held that It is in the domain of authorities as to which category of the FIRs are to be put on website for information to the public in general. But there has to be a decision and appropriate categorization or norms for taking a decision as to in which case FIR be uploaded and in which it is not be uploaded. The State can come with any such decision which may balance right of information available to the public in general and interest of the State. We are thus of the opinion that petitioner has made out a case for issuing directions to the State to consider all aspects of the matter and take appropriate decision regarding uploading of the FIR in the police website with all details regarding its operation and mechanism.

GST ALERTS

GST IMPACT OVER GST INDUSTRY

Goods and Services Tax (GST) is arguably the most talked about fiscal reform in recent times and India appears set to transition into a GST regime in the coming year.
To recap, with a view to preserve the fiscal autonomy of the Central as well as State Governments, Indian lawmakers have proposed a "dual GST" structure in terms of which, every supply of goods and services is expected to attract a Central

GST as well as State GST. While at a conceptual level this seems simple, here is a look at some key aspects a service provider in the information technology (IT) services sector should evaluate from a GST transition perspective.

As on date, there is no definitive indication on what the GST rate is likely to be. While a combined GST rate of 27 percent is being discussed in the context of goods, some reports indicate that services could attract a lower rate, at least, in the initial years of GST. Be that as it may, it should be reasonable to infer that the GST rate for services is likely to be higher than the current rate of 12.36 percent.

In addition to a potential change in tax rate, in pricing services under GST, a service provider may well need to evaluate a reduction in the cost of providing services as well as the ability of the customer to absorb the GST charged on the supply. By way of illustration, today, an IT service provider is unable to claim credits of value added tax/sales tax incurred in creating his IT infrastructure and the service tax charged by the IT service provider to a customer who is a trader is a cost to such trader. However, under GST, both the service provider as well as his customer in the above example should be in a position to claim full credit of GST. This may provide a window of opportunity for the service provider to leverage on the tax efficiency and recoup additional profits on the supply. On the other hand, supplies to an end consumer or government or other non-taxable sectors would involve the customer being unable to avail GST credit and hence cause potential pricing pressures. Also, relevant is the cash flow impact a service provider may need to budget for in the light of an increase in the tax pay out on procurements. While appropriate pricing would undoubtedly be critical, what is expected to be even more critical for service providers in general and IT service providers in particular is the impact of potential decentralized compliances under GST.

To recap, under GST, while an intra-state supply of services is expected to attract Central GST plus State GST, an inter-state supply of service is expected to attract an Integrated GST or IGST (which is a combination of Central GST and State GST). What assumes importance in this scheme of things is identifying the relevant State which can stake claim to the State GST on a supply of services. It is expected that the 'place of supply of services' shall be determined by a specific set of rules that are somewhat aligned to the rules presently in force for determining the 'place of provision of services' in the context of cross border supply of services into and from India.

Today, most IT service providers have a multi-locational presence with the preferred mode of service tax compliance being on a centralized basis from a single location. An IT service provider enjoys the benefit of availing input service credits, issuing output invoices, discharging service tax liability as well as applying for refunds all on a centralized basis. As opposed to paying service tax to a single jurisdictional service tax authority, the service provider may well be required to pay GST (State GST, Central GST, IGST, as the case may be) to GST authorities across multiple States. What is presently not clear is whether the rules will provide for the service provider to pay an IGST on such supplies from his location or in effect require for the service provider to obtain a GST registration in each relevant State (especially in the case of services that are taxed based on the location of their performance). Either way, the service provider would need to map the relevant place of supply for each of his supplies and report compliance basis the same.

An important related aspect in this regard is for the service provider to ensure that GST credits pertaining to the supplies are captured and availed in the location from where output GST is paid. The issue of determining the place of supply can be expected to assume more significance in the context of IT services provided to customers with a pan-India presence. Should the concept of centralized supply and billing undergo a change under GST, an IT service provider engaged in ERP systems implementation across branches of a customer in 20 States may well be required to split GST payment across the 20 States. On the reverse side, the same IT service provider procuring software licenses for his branches across 6 States may now require to issue 6 purchase orders to his vendor to ensure that appropriate GST is charged on each of the procurements. Unless simple proxies are fixed for determining the 'place' or State of supply, several complexities could arise in manner of taxation of IT services. A classic case in point being provision of cloud services by an IT company headquartered in one State, from an infrastructure hosted in another State to customers located across multiple other States. It is hoped that clear and specific proxies are prescribed to determine the place of taxation of such services that involve assets and people across different States coming together to service customers in a third State.

While there is some speculation on retaining centralized compliances for Central GST with state-wise compliances being restricted to State GST, maintenance of State-wise books of accounts as well as undergoing audits, investigations and assessments across States (where the service provider has a presence) could enhance the burden of compliances on service providers.

On a related matter, IT service exporters under the Software Technology Park ('STP') scheme, presently burdened with recurring service tax refund claims could well see an increase in the number as well as quantum of such refund claims under GST. With only basic customs duty exemption expected to continue for these exporters, the possibility of State-wise refund claims for Central GST, State GST and IGST for goods as well as services cannot be ruled out under GST.

Should this happen, the very rationale of operating under the STP scheme may need to be re-evaluated. No discussion on the IT services sector would be complete without a reference to the dual taxation of electronic supplies of software both as goods under the VAT law and as services under the service tax law.

While this sector hopes that GST shall put an end to this dual levy regime, the same would be contingent on a clear classification of electronic software supply either as a 'good' or as a 'service'. In the absence, thereof, this debate could well continue under GST to the extent the place of supply as well as rate of GST varies for goods and services.

While significant headway is being made towards GST, it is hoped that the proposed methodology of taxation of services is disclosed soon so that service providers are in a position to gear up for the same, and more importantly, where required, engage in a discussion with the lawmaker to ensure a smooth transition into GST. The views of the authors are personal.

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