



ASC Times

All India Taxes Weekly Reference

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Solving any tax puzzle

Tax saving advice across all the taxes



TAXCALENDER

Due Date	Description	Law
21Nov	Deposit of Tax	Assam VAT, Delhi VAT, Maharashtra VAT, Meghalaya VAT, Orissa VAT
	Deposit of TDS	Maharashtra VAT
	Issue of TDS Certificate	Maharashtra VAT
	Return Filing	Assam VAT, Maharashtra VAT
22Nov	Deposit of Tax	Gujarat VAT, Tamil Nadu VAT
	Issue of TDS Certificate	Delhi VAT
	Return Filing	Tamil Nadu VAT
25 Nov	Deposit of Tax	Arunachal Pradesh VAT
	Issue of TDS Certificate	Arunachal Pradesh VAT
	Return Filing	Jharkhand VAT

COUNTRY WIDE HOLIDAYS FOR THE WEEK

Date	Occasion/Festival	Region
NA	NA	NA

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From the CEO's Desk



Dear Reader,

The effect of demonetisation badly hits unbanked villages, small businesses as currency crisis continues. The lopsided rural-urban spread of ATMs and bank branches has snuffed out economic activity in rural India, with micro, tiny and small enterprises finding it impossible to get cash in 100-rupee notes for their daily operations. Consider this statistic: every bank branch in a rural and semi-urban centre caters to more than double the number of people in an urban and metropolitan centre. According to a December 2015 Reserve Bank of India report on “financial inclusion in India”, each rural and semi-urban bank branch serves 12,863 people compared with an urban and metropolitan branch which serves just 5,351 people. The spread of ATMs too is skewed in favour of urban centres. Delhi, for instance, has 9,070 ATMs, more than Rajasthan, the largest state in terms of size.

Former Finance Minister Mr. P Chidambaram highlighted that demonetisation decision after-effects to last longer. He said “You are seeing the first-order effects of withdrawing, sucking out 86 per cent of the currency in circulation from the market. The first order will continue for several weeks now. Then you will see the second-order effects. Talking about the first-order effects, he said there are many people now living with very less money and are not consuming, which means produce, especially perishable produce like vegetables, fruits, are not being sold. Further added that the second-order effects are already visible in places like Tripura and Surat, where lay-offs and retrenchments have started.

The second-order effects will be more prominently felt if farmers, who have sworn their farms, do not have money to buy fertiliser and hire labour. So, the consequences will certainly be negative. However, it is too early to quantify the damage, which has been done because of the decision.

Talking about the 50 days' time Prime Minister Narendra Modi had asked for his anti-black money initiative to show results, Chidambaram said it might ease the liquidity crisis for individual hands, but won't solve many other issues.

He further said "The PM's time out for 50 days might ease the liquidity crisis at individual's hands, but it won't solve many other problems. Take a simple arithmetic...they demonetised 2,200 (total volume) crore Rs 500 and Rs 1,000 notes. The capacity of all printing presses taken together is 300 crore notes (rpt) notes per month. So, even if you print note for note, it will take seven months.

Thus, we just don't know what the macroeconomic and microeconomic effect of demonetisation is going to be. It's something we've just got to wait and see about.

Alok Kumar Agarwal

CEO

ASC Group.

CENTRAL TAXES

SERVICE TAX

NOTIFICATION / CIRCULAR

The Govt. vides Circular No.1050 dated 15th Nov 2016; introduction of Combined Annual Return Form for Central Excise and Service Tax.

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

COURT DECISIONS

VIRAJ PROJECTS PVT. LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, PUNE-III [CESTAT MUMBAI]

BRIEF: If the assessed on his own ascertainment pay the service tax along with interest without protest. In such case no show cause notice should be issued u/s 73(3).

OUR TAKE: The hon'ble CESTAT MUMBAI held that the appellant admittedly recorded the entire transaction of their provision of service in their books of account. The appellant had no intention to evade the service tax which along with interest was discharged before the issuance of show cause notice without any protest. In such circumstances the case of the appellant is covered under Section 73 (3). [Decided in favour of appellant]

M/S. BSNL VERSUS COMMISSIONER OF SERVICE TAX, CHENNAI [CESTAT CHENNAI]

BRIEF: CENVAT credit - clip phones, push button phones, line jack and wires & cables installed in the premises of the consumer of the telecommunication service - taking back of equipment's to ensure undisrupted service - credit allowed.

OUR TAKE: The Hon'ble CESTAT CHENNAI held that verification is one of the object provided by the statute as to the use of the goods to provide output service. Had the goods come back to the appellant, the appellant would have made other alternative arrangement to provide service with those goods. Therefore, it does not stand to reason as to why denial of CENVAT credit shall be made if the goods cleared shall lie in the premises of the consumer and public places to ensure

Provision of the output service. The Division Bench has taken a decision in such pragmatic approach looking into the object of the amendment of Rule 3(5) and allowed refund to the appellant in the past. Therefore, as a measure of judicial discipline, it is impractical to differ with that decision for which appeal is allowed. [Decided in favour of appellant]

VARAD FERTILISERS PVT. LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, CUSTOMS & SERVICE TAX, AURANGABAD [CESTAT MUMBAI]

BRIEF: GTA service - whether transportation subsidy received from the Government of Maharashtra can treated as part of the gross value of the GTA service?

OUR TAKE: The hon'ble CESTAT MUMBAI held that The Hon'ble Supreme Court held that the subsidy which is given by the Government is not paid by the buyer of the goods. Similarly, in the case of service the subsidy of transportation given by the Government is not paid by the service provider. The gross amount of the service can only be taken the value which is paid payable by the service recipient. In the present case also, the subsidy given by the government, since not a part of the amount paid by the service recipient to the service provider, the subsidy cannot be included in the gross value of service. Therefore, the ratio of the Hon'ble Supreme Court judgment is directly applicable to the present case. [Decided partly on favour of appellant]

M/S. ARVINTH HOSPITALS VERSUS THE ADDITIONAL COMMISSIONER CENTRAL EXCISE, THE JOINT COMMISSIONER CENTRAL EXCISE [MADRAS HIGH COURT]

BRIEF: Health Check-up and Treatment Services - Unless and until the KKT Scheme has been examined in full, the respondent cannot come to a conclusion that the nature of transaction done by the petitioner would fall within the definition of section 65(105)(zzzz) of the Finance Act.

OUR TAKE: The hon'ble MADRAS HIGH COURT held that one fundamental error which has crept in the impugned proceedings is that the authority while adjudicating the show cause notice did not examine the scope of the transaction between the petitioner and the Government/STAR. In fact that should have been the first endeavour of the adjudicating authority, since the petitioner raised a preliminary objection by stating that KKT is a Welfare Scheme and not an Insurance policy, no approval was obtained from IRDA and therefore, they will not fall within the definition of "Health Check-up and Treatment Services. [Petition allowed by way of remand]

M/S. SUDARSHAN SULZ PVT. LTD. VERSUS C.C.E. JAIPUR[CESTAT NEW DELHI]

BRIEF: GTA Service – reverse charge mechanism - is appellant receiving GTA services from exporter? - Just because the Nepalese suppliers had billed the appellants separately for transportation from Nepal border to factory premises along with other expenses, they do not become the agents of the appellants.

OUR TAKE: The humble CESTAT NEW DELHI held that Nepalese suppliers had not acted as the agents of the appellants for arranging transportation from Nepal border to the factory premises of the appellants. Just because the Nepalese suppliers had billed the appellants separately for transportation from Nepal border to factory premises along with other expenses, they do not become the agents of the appellants. In view of this, the appellants cannot be treated as recipients of GTA services in terms of Notification No. 35/04-S.T.[Decided in favour of appellant]

M/S LAXMI INDUSTRIES VERSUS CCE, PANCHKULA [CESTAT CHANDIGARH]

BRIEF: CENVAT credit - construction services for the purpose of renting of immovable property - assessee used cement and TMT bar for providing storage facility without which storage and warehousing services could not have been provided - the appellant has correctly taken the Cenvat credit.

OUR TAKE: The hon'ble CESTAT CHANDIGARH held reliance placed in the decision of the case COMM. OF C. EX., VISAKHAPATNAM-II Versus SAI SAHMITA STORAGES (P) LTD. [2011 (2) TMI 400 - ANDHRA PRADESH HIGH COURT] where it was held that unless excluded, all goods used in relation to manufacture of final product or for any other purpose used by a provider of taxable service for providing an output service are eligible for CENVAT credit - assessee used cement and TMT bar for providing storage facility without which storage and warehousing services could not have been provided - the appellant has correctly taken the Cenvat credit to the tune of 20,84,900/- on construction services. [Decided in favour of appellant]

M/S. ODYSSEY ORGANICS P. LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, RAIGAD[CESTAT MUMBAI]

BRIEF: The activity of treatment of effluent waste cannot be considered as processing of the goods by any stretch of imagination - Demand under the category of Business Auxiliary Services set aside.

OUR TAKE: The hon'ble CESTAT MUMBAI held that It is also to be noted and is a common knowledge that disposal of

waste water in the common effluent treatment plant of Maharashtra pollution control board, needs to adhere specifications acceptable for such disposal, which are achieved by the treatment undertaken by the appellant. We notice that treatment of effluent waste cannot be considered as processing of the goods by any stretch of imagination, and we also note that the show cause notice does not invoke specific clause of the definition of Business Auxiliary Services for levy of tax - Impugned order is set aside.[The appeal is allowed]

M/S CAPITAL CARS PVT. LTD. VERSUS C.C.E., GHAZIABAD[CESTAT ALLAHABAD]

BRIEF: The requirement of actual payment of VAT is not to be taken into consideration for extending the benefit of said Notification No.12/2003, but it is only to be examined whether documentary proof indicating the value of goods sold, is available on record to extend the said benefit.

OUR TAKE: The hon'ble CESTAT ALLAHABAD held that the notification provides that there should be documentary proof indicating the value of the goods sold so as to avail benefit of exemption of such value from the assessable value for arriving at service tax. This crucial aspect was not properly understood by the Original Authority. We, therefore, hold that the requirement of actual payment of VAT is not to be taken into consideration for extending the benefit of said Notification No.12/2003, but it is only to be examined whether documentary proof indicating the value of goods sold, is available on record to extend the said benefit.[The appeal is allowed by way of remand]

THE COMMISSIONER OF CENTRAL EXCISE VERSUS M/S. SYNDICATE BANK [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, 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

OUR TAKE: The hon'ble CESTAT BANGALORE held that the Banking and Other Financial Services (BOFS) was included in the definition as it was initially introduced specifically excluded cash management services. The definition of scope of BOFS was further amended w.e.f 1.6.2007 when cash management service was specifically included under Clause (v). It is also on record that from 1.6.2007, the appellant has been discharging service tax liabilities under BOFS. Revenue authorities have taken a view that for the period prior to 1.6.2007 such services would be covered by BAS.[Decided against Revenue]

CENTRAL EXCISE

COURT DECISIONS

M/S ROSA SUGAR WORKS VERSUS COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX, LUCKNOW [CESTAT ALLAHABAD]

BRIEF: CENVAT credit - input service of GTA - transportation of Bio-manure and Cane-seed - services are utilized by the farmers and not by the manufacturer appellant - credit not allowed.

OUR TAKE: The hon'ble CESTAT ALLAHABAD held Service tax paid on the transportation of Bio-manure and Cane-seed shall become input service to the farmers and not to the manufacturer.. Therefore, I hold that Cenvat credit disputed in the matter before me, is not admissible to the appellant. [Decided against appellant]

M/S ESCORTS LIMITED VERSUS CST, DELHI - IV, FARIDABAD (VICE VERSA). [CESTAT CHANDIGARH]

BRIEF: Valuation - motor vehicles - inclusion of certain expenses incurred by the dealers - manufacture are selling their vehicle on a declared price and are not getting any additional monetary consideration from the dealers over and above what is mentioned in the sales invoice - not to be included

OUR TAKE: The hon'ble CESTAT CHANDIGARH held that the vehicle manufacturers, who are appellant/assessee in 4 appeals before us, are selling their vehicle on a declared price and are not getting any additional monetary consideration from the dealers over and above what is mentioned in the sales invoice. [Decided in favour of assessee]

CRYSTAL CABLE INDUSTRIES LTD. VERSUS COMMISSIONER OF C. EX, HALDIA [CALCUTTA HIGH COURT]

BRIEF: Compliance stay order - payment through Cenvat credit - The debit entry has been made on the basis of an assumption that the petitioner would be entitled to a credit in respect of certain goods - By making a debit entry, essentially, the petitioner is trying to utilise public money to secure the claim of the authorities

OUR TAKE: The hon'ble CALCUTTA HIGH COURT held that the petitioner cannot claim such credit for the purpose of making a debit entry in discharge of its liability. First a credit has to become an asset of the petitioner for the same being used for the purpose of discharge a liability of the petitioner. By making a debit entry, essentially, the petitioner is trying

to utilise public money to secure the claim of the authorities [Amount to be deposited in Cash]

MIDAS BUSINESS MACHINES PVT. LTD., SUNIL NAGRANI VERSUS COMMISSIONER OF CENTRAL EXCISE MUMBAI-V. [CESTAT MUMBAI]

BRIEF: Manufacture - computer system assembled at the site of their clients from bought out items is a manufacturing activity and liable to duty of excise.

OUR TAKE: The hon'ble CESTAT MUMBAI held that on perusal of the records, we find that the demands raised with interest are in respect of the computer systems assembled at the site of customers. This activity is held as manufacturing by the Apex Court. On merits, the argument of the appellants is unacceptable to us that is not manufacturing computer system. [Decided in favour of assessee]

COMMISSIONER OF CENTRAL EXCISE PUNE II VERSUS FINOLEX INDUSTRIES LTD. [CESTAT MUMBAI]

BRIEF: Suo-motu credit of the amount paid - demand was set aside - the amount paid "under protest" by a debit in Cenvat account. - There cannot be a dispute as to eligibility to avail the Cenvat credit/recredit of the said amount in their Cenvat account.

OUR TAKE: The hon'ble CESTAT MUMBAI held that adjudicating authority has correctly relied upon the various case laws as decided by the Tribunal, that in this factual position, there cannot be a dispute as to eligibility to avail the Cenvat credit/recredit of the said amount in their Cenvat account. We find that the ratio of the judgement of the Hon'ble High Court of Karnataka will directly cover the issue in favour of the respondent. [Decided in favour of appellant]

Johnson & Johnson Ltd. Versus Commissioner of Central Excise Mumbai [CESTAT MUMBAI]

BRIEF: Excise duty on the waste of band aid - there is no tariff heading for classifying the scrap arising during the course of Manufacturing of Chapter 30, hence in the absence of any classification of the product, demand of the duty is unsustainable.

OUR TAKE: The hon'ble CESTAT MUMBAI held that shredded Band-Aid may not become an excisable product as it is not a manufactured item and is a waste that gets generated during the course of manufacturing and packing of final product "Band-Aid" as the shredded Band-Aid has no

market and the product is not marketable. [Decided in favour of appellant]

CUSTOM

NOTIFICATION / CIRCULAR

The Govt. vides Notification No. 137 dated 15th Nov 2016; notifies change in tariff Value of Edible Oils, Brass Scrap, Poppy Seeds, Areca Nut, Gold and Silver.

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

The Govt. vides Notification No. 138 dated 17th Nov 2016; New Exchange Rate Notification.

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

The Govt. vides Circular No. 52 dated 15th Nov 2016; notifies regarding deferred payment of Customs duty.

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

COURT DECISIONS

EMA INDIA LTD. VERSUS COMMISSIONER OF CUSTOMS (I), NHAVA SHEVA [CESTAT MUMBAI]

BRIEF: Valuation of import - enhancement of the value by 20% on the basis of subsequent agreement is illegal and cannot be sustained.

OUR TAKE: The hon'ble CESTAT MUMBAI held that the value could not have been enhanced for the previous import - enhancement of the value by 20% on the basis of subsequent agreement is illegal and cannot be sustained.

M/S. BECTON DICKINSON INDIA PVT. LTD. VERSUS COMMISSIONER OF CUSTOMS, CHENNAI - IV [CESTAT CHENNAI]

BRIEF: Refund of additional duty of customs (ADC) - the authority should act only within the parameters of law and carry out the object of the statute without any extraneous conditions imposed by him.

OUR TAKE: The hon'ble CESTAT CHENNAI held that the authority should act only within the parameters of law and carry out the object of the statute without any extraneous conditions imposed by him. Public confidence on law and statutory authority should not be shaken [Decided against appellant]

METALMAN INDUSTRIES LTD., VIJAY SONI, RAJIV L. SONI, MOHAN JAYKAR VERSUS COMMISSIONER OF CUSTOMS (EP), MUMBAI [CESTAT MUMBAI]

BRIEF: Valuation - import of import of tin plate waste - merely because floor price has been fixed under ITC Policy, the value of goods cannot be enhanced.

OUR TAKE: The hon'ble CESTAT MUMBAI held that the goods are to be treated as imports made, other than under advance licence - Notification 34(RE-98) (supra) regarding floor price restriction becomes applicable to import. [Decided in favour of assessee]

ASSOCIATED CEMENT COMPANIES LTD. VERSUS COMMISSIONER OF CUSTOMS (IMP), MUMBAI [CESTAT MUMBAI]

BRIEF: Valuation - import of Fused Magnesia - the difference between the declared price and the contemporary import price from the same company and the same country of origin is extremely high - demand confirmed.

OUR TAKE: The hon'ble CESTAT MUMBAI held that both the imports are from same supplier M/s. Possehl, Hong Kong and very proximate date of import of the appellant. In these circumstances, not relying of the import made in Vizag and relying on imports made from the same supplier at near about the same time is justified. [Decided against appellant]

CC, VISAKHAPATNAM VERSUS M/S RASHMI METALIKS LTD. [CESTAT HYDERABAD]

BRIEF: Valuation - export of goods - When the department accepts the BRC, as well as the final invoice of the exporter and has no doubt or dispute that amount other than what was reflected in final invoice was not received by the latter, the BRC has to be given credibility and reliance.

OUR TAKE: The hon'ble CESTAT HYDERABAD held that the grounds raised by the department have been taken cognizance of by the Commissioner (Appeals) and the order passed by him is well reasoned. When the department

accepts the BRC, as well as the final invoice of the exporter and has no doubt or dispute that amount other than what was reflected in final invoice was not received by the latter, the BRC has to be given credibility and reliance. This being so we do not find any infirmity in the impugned order. **[Decided against appellant]**

INCOME TAX

COURT DECISIONS

SHRI VINOD KHIMJI DEDHIA C/O. KHIMJI TOKARSHI AND SONS VERSUS INCOME TAX OFFICER-13 (2) (3), MUMBAI [ITAT MUMBAI]

BRIEF: Addition income u/s 68 - the assessee had not earned any speculation income but had merely laundered his undisclosed income for speculation profits by entering into dubious transactions in order to avail set off against brought forward unabsorbed speculation loss - additions confirmed.

OUR TAKE: The hon'ble ITAT MUMBAI held that on examination of the details thereof, observed that the assessee had not recorded any of these transactions in his books of accounts; had not made any deposit with the sub-broker and not paid security transaction tax, had not got his accounts audited even though the turnover in this 'speculation' business activity was in excess of 40,00,000/ as required under section 44AB of the Act. **[Decided against assessee]**

SHRI KETAN CHHOTALAL SHETH VERSUS ITO – 12 (3) (4) , MUMBAI [ITAT MUMBAI]

BRIEF: Long term capital gain - in case of allotment of flat under self-financing scheme of Delhi Development Authority (DDA) and co-operative societies, the date of allotment shall be the date of construction for the purpose of Section 54/54F.

OUR TAKE: The hon'ble ITAT MUMBAI held that it was stated that a beneficial right and interest in the flat was acquired by the assessee under the allotment letter dated 01-08-1994 issued by the Builder with respect to flat bearing No. 601 in 6th floor in the building known as Pujit Plaza situated at plot No. 67, Sector 11, Belapur, Navi Mumbai, which is now proposed to be sold by the assessee in March 2008. **[Decided in favour of assessee]**

M/S ALKYL AMINES CHEMICALS LIMITED VERSUS ASSISTANT COMMISSIONER OF INCOME TAX – RANGE 10 (3) , MUMBAI. [ITAT MUMBAI]

BRIEF: Weighted deduction - in-house research and development - once the entitlement and eligibility of the assessee is established by strictly construing the provision of section 35(2AB), then the provision is to be liberally construed so that full effect is given of the beneficial provision to achieve the intended objective for which the beneficial statutory provision is placed on the statute.

OUR TAKE: The hon'ble ITAT MUMBAI held that assessee has also submitted details of various loans raised by the assessee and interest paid to contend that none of the loans raised were deployed towards investments made and these are old investments and no fresh investment are made during the impugned assessment year.

THE ACIT (EXEMPTION) -1 (1) , MUMBAI VERSUS KARUNA MEDICAL SOCIETY. [ITAT MUMBAI]

BRIEF: Exemption u/s 11 - running hospital - the chemist shop is part and partial of the hospital being incidental/ancillary to achieve the objects of the hospital - exemption allowed.

OUR TAKE: The hon'ble ITAT MUMBAI held that activity of running a pharmacy shop is incidental to the attainment of the objects of the trust as well as running shop is not a planned activity, though assessee is paying VAT on sales. The activity of chemist of was held to be incidental or ancillary to the dominant object and purpose to run a hospital. **[Decided in favour of assessee].**

COMMITTEE OF RESOURCE ORGANIZATION, MUMBAI VERSUS DEPUTY COMMISSIONER OF INCOME TAX CENTRALIZED PROCESSING CELL-TDS. [ITAT MUMBAI]

BRIEF: Late Filing Fee U/S 234E - default in submitting the TDS statements in time - AO has exceeded his jurisdiction in levying fee under Section 234E while processing the statement and make adjustment under Section 200A of the Act.

OUR TAKE: The hon'ble ITAT MUMBAI held that it is made clear that it is open to the Assessing Officer to pass a separate order under Section 234E of the Act levying fee provided the limitation for such a levy has not expired. Accordingly, the intimation under Section 200A as confirmed by the CIT (Appeals) in so far as levy of fee under Section 234E is set aside and fee levied is deleted. **[Decided in favour of assessee]**

M/s FFC Aromas Pvt. Ltd. Versus Income Tax Officer Ward 8 (1) (4) , Mumbai [ITAT MUMBAI]

BRIEF: Disallowance of research & development expense - disallowance u/s 35 & 37 - the disallowance cannot be made

only on the ground that results of the research were not shown by the assessee during the year under consideration.

OUR TAKE:The hon'ble ITAT MUMBAI held that the disallowance has been made without bringing any cogent material on record to reject the details and evidences submitted by the assessee. The disallowance cannot be made only on the ground that results of the research were not shown by the assessee during the year under consideration. [Decided in favour of assessee]

STATE TAXES

ALL INDIA VAT

CHHATTISGARH

The Govt. vides Notification NO. F-10-42/2016/CT/V (75) dated 16th Nov 2016, notifies tax exemption to Debit/Credit Card Swipe Machine.

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

HIMACHAL PRADESH

The Govt. vides Notification No. EXN-F (10)-20/2014-Loose dated 17th Nov 2016, amends schedule A.

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

JAMMU AND KASHMIR

The Govt. vides Notification NO. 03/READER/NOTIFI/II/1176-1188 dated 14th Nov 2016, notifies guidelines for implementation of amnesty scheme under Notification SRO 361 Dated 13th Nov 2016.

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

MAHARASHTRA

The Govt. vides Notification ORDINANCE NO. XXVII OF 2016 dated 17th Nov 2016, notifies that there is extension in date for Maharashtra Settlement of Arrears in Disputes (Third Amendment) Ordinance, 2016 up to 30th Nov 2016.

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

RAJASTHAN

The Govt. vides Circular NO. F26 (315) CCT/MEA/2014/1371 dated 14th Nov 2016, notifies that date of submission of quarterly return in Form VAT 10, for the second quarter of the year 2016-17, i.e. quarter ending on 30th September, 2016, to be furnished by the class of dealers covered under sub-rule (5)(b) of rule 19 of the Rajasthan Value Added Tax Rules, 2006, up to November 21st, 2016.

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

DAMAN AND DIU

The Govt. vides Circular NO. DMN/VAT/VATSOFT/2016-2017/341 dated 14th Nov 2016, introduction of provisional ID & Password for GSTN.

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

TAMIL NADU

The Govt. vides Circular NO. 15 dated 16th Nov 2016, notifies that filing of Audit Report through online Form-WW and manual Form-WW in the pre-revised format for the assessment year 2015-2016.

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

WEST BENGAL

The Govt. vides Circular NO. MEMO NO. 950CT/PRO/3C/PRO/2015 dated 16th Nov 2016, notifies that extension of the last date of filing WBST Return for Form 14/14D & 15 is 28th Nov 2016 and for form 14e/15e is 14th Dec 2016.

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

COURT DECISIONS

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

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

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

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]

OTHER UPDATES

ALLIED LAWS

MANGANESE ORE INDIA LTD. VERSUS STATE OF M.P. & OTHERS (SUPREMECOURT)

BRIEF: Interpretation of the terms “mineral” and “processing” under the definition of “mine” - The Ferromanganese Alloy manufactured by the appellant using the mineral Manganese at its Ferromanganese plant is an entirely different product from its mineral raw material both physically and even chemically.

OUR TAKE: The hon'ble **SUPREME COURT** held that Ferromanganese Alloy so manufactured by the appellant using the mineral Manganese at its Ferromanganese plant is an entirely different product from its mineral raw material both physically and even chemically. Moreover, unlike Manganese ore a ferromanganese alloy can never be found in the natural state and it has to be manufactured from the manganese ore and other minerals only. The same logic applies to copper concentrate as a different and distinct product comes into existence. The different products in commercial parlance have emerged. Therefore, the analysis made by the High Court is not correct and, accordingly, the judgments rendered by it deserve to be set aside and we so direct. However, during this period if any amount has been paid by the appellants to the revenue, the same shall be adjusted towards future demands.

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

GSP UNDER GST

Recently GSTN invited application for becoming GSTN Sudha Provider (GSP) under GSTN for enabling much awaited Goods and Service Tax. GSTN received total 344 applications. CEO GSTN reported in GSP workshop on 25th October that about 98 of these applicants are qualified for further evaluations according to them.

The GSP application process, when started created lot of confusion and concern on the eligibility criteria. The eligibility criteria are given here. One common concern was the financial capability criteria are set by GSTN of:

1. Paid up / Raised capital of at least Rs. 5 crores and
2. Average turnover of at least 10 Crores during last 3 financial years.

iSPIRT had proposed that instead of a heavy turnover criterion the GSTN could have used a performance guarantee or a surety bond, both to ascertain the serious players and cover the risk of fly by night operators. This would allow some start-ups to take the risk and succeed to become GSPs. The announcement did not clarify what is a GSP or what role will it have in the system.

A large number of interested startups through the GSP was about an application provider of product to file and comply with GST. Hence, the above criteria were considered as a barrier to startups. GSTN although off the record said they will accept application from all and will then evaluate who will be fit to become a GSP. This was however a very subjective approach, where GSTN will use their discretion to allow an enterprise to setup a GSP or not.

These concerns and doubts created confusion in minds of many startups, who have been looking towards the GST as an opportunity to innovate and implement in the space of tax compliance with added value with analytics and business

intelligence. It is subsequent to the workshop that many of these doubts have been cleared.

What finally turns out to be is that the GSPs are the middle layer infrastructure or utility provider or a API gateway to large number of GST filing apps. There may be a mix of GSP/ASP model where an ASP sets up a captive GSP. Even in that case GSP is merely a Gateway.

ANSWERS TO BASIC QUESTION OF GSP\ASP

- What is GSTN?
 - GSTN stands for Goods and Service Tax Network. It is a section 8, not for profit private company, with shareholding of Government of India, Government of States and UTs and financial institutions. As a Special purpose vehicle (SPV), GSTN's mandate is to establish, develop and manage the required infrastructure, systems, technology, partnerships and eco-system for implementation of GST.
 - What is a GSP?
 - GSP stands for GSTN Suvidha Provider. GSTN does not want to facilitate or connect to Goods and Service Tax filing application (called ASPs by GSTN and in this document) directly. This is for reasons of security and scale. Therefore, GSTN has planned a number of GSPs who will act as a middle layer between the ASPs or business and GSTN. GSPs will facilitate the use of GSTN system to the businesses as well as products and application (developed by ASPs) to file the GST returns, match sales and purchase invoices to settle tax credits. The GSPs will hence help secure GSTN from direct exposure to users on internet as well as distribute the load in a large economy like India.
- A GSP will hence act as a gateway that will pass enable the pass through of GSTN APIs (application programming interface) to and from users. There are three types of GSPs envisaged:
- Plain GSP (Independent GSPs) who will just facilitate the ASPs to use them as Gateways
 - Captive GSPs – (GSP/ASP) used by large businesses for their API consumption/pass through. These may include ASPs wanting to become GSP and use the GSP for their APS having heavy load
 - Open GSPs (GSP/ASP + ASPn) who may use for their ASP and also allow independent ASPs

This is how it is depicted in the above slide shown in GSP workshop. However, during the talk on GSP workshop it was mentioned that it will be mandatory for all GSPs to allow any ASP to use the GSTN APIs. Hence, it remains to be clarified by GSTN, whether the model 2 shown in above diagram means a Captive GSP and whether a captive GSP can deny access to third party ASPs to its GSP. GSTN will sign an agreement with the selected GSPs which will govern the contractual relationship between GSTN and GSPs.

- How many GSPs would be allowed?
 - There is no final decision on how many GSPs will finally exist or be allowed. However, in the first phase, 98 GSP applicants would be allowed to participate in the technical evaluation. How many will pass or how many more will be evaluated has not been declared yet.
- Who is an ASP? What is relationship between an ASP and a GSP?
 - Application Service Providers are – Accounting Software, Invoicing Software, Point of Sale (POS) systems and other innovative applications that can enable businesses comply with GST. ASPs can work with multiple GSPs to enable GST for their customers. Some ASPs may also have their own captive GSP. Dominant accounting and ERP product companies may have their captive GSP as this further opens up in future. ASPs will have a contractual relationship with GSPs that they use.
- How many ASPs can exist? Does ASP is related to GSTN under a formal relationship?
 - As per GSTN, they do not want to control the ASPs and leave this for market forces to decide how many ASPs can be there. ASPs are not a directly related party with GSTN. ASPs will have a contractual relationship with GSPs and GSTN will ensure the GSPs provide a free and fair access to ASPs to the GSTN resources.
- Can an ASP apply to become a GSP later?
 - GSTN, says yes, they will evaluate on case to case basis. There is no defined policy. On eligible as per the criteria laid out it in the next phase
- What are the commercial terms for a GSP?
 - As per current information, GSTN will waive the first-year charges for the GSPs. However, the GSPs would be allowed to charge the downstream ASPs. GSPs can also

provide value added services on top of GSTN APIs and charge for them.

Again, there is no defining answer. The market will decide many things in future. For start-ups and small ASP players, it is important number of independent GSPs emerge for a fair and free market to exist.

- Can GSP share or use Data for business?
 - As per announcement at GSTN workshop, the GSPs will not be allowed to share the GST data of businesses filing returns or sell the data to third parties. However, GSP can use this data themselves to create value added service offerings like business analytics and charge the individual businesses to do so. This means the data can be used to create a service offering for the given business only and cannot be cross sold to other parties. GSP will have to strictly adhere to data privacy clauses.
- How will GSTN ensure third party ASPs get GSP services early on launch of GST?
 - NSDL e-Governance Infrastructure Limited (NSDL e-Gov) is the depository (promoted by NSE, now running infrastructure and services for many mission mode projects of Government of India. NSDL is also slated to run the GSTN services. NSDL will provide the neutral GSP services as an official independent GSP to ASPs. GSTN thus ensures that at least one GSP is ready for third party ASP providers get a GSP to serve the market.
- Will GSPs expose the same API set as per GSTN Sandbox?
 - As per GSTN answers to this questions, the GSPs will be legally bound to expose the GSTN APIs on a complete transparent pass through. However, GSP can provide additional rapper APIs for value add that they will like to build or management of their system.
- Will the developer sandbox be available to anyone?
 - As per GSTN response, Yes.
- Will there be any further workshops or hackathons?
 - GSTN may conduct these in the future. However, none planned as of now.
- Where can one find the workshop PPT and other resources of GSTN?
 - One can use following resources of GSTN to get to more details.

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