



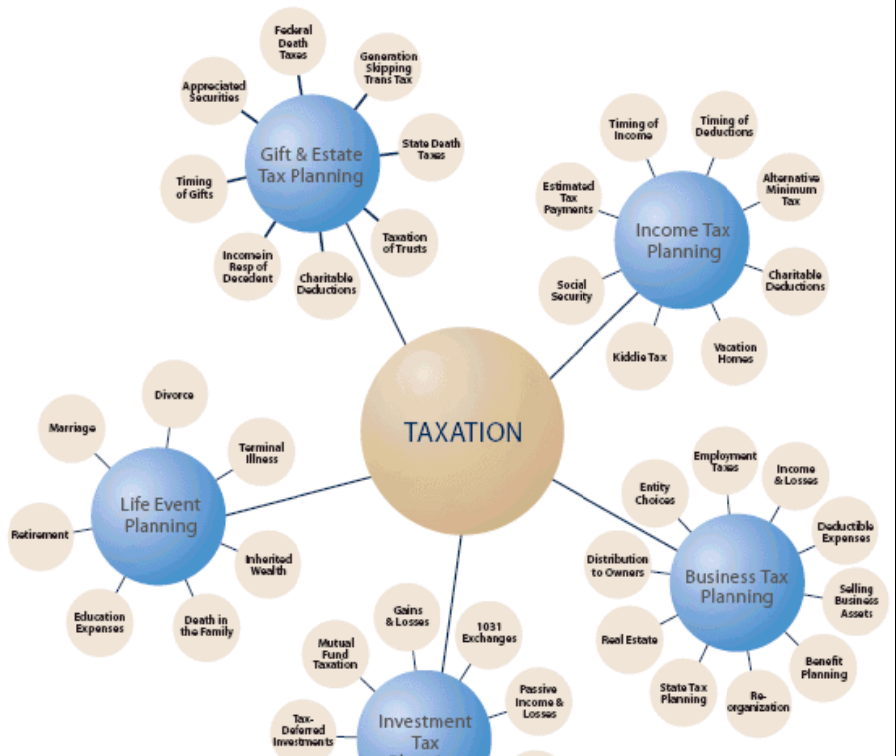
# ASC Times

All India Taxes Weekly Reference

Vol:Mar 14 - Mar 20, 2016

Solving  
any **tax**  
puzzle

Tax saving advice  
across all the taxes



## From the CEO's Desk



Alok Kumar Agarwal

CEO

ASC Group.

Dear Reader,

Two things have been talked about a lot post Budget related to EPF (Employee Provident Fund). One of these was taxing EPF amount, which has been already reversed. After facing a strong backlash from salaried taxpayers, government has decided to roll back the proposal of withdrawing more than 40% of EPF amount that was subjected to be taxed. "In view of the representation received, the government would like to do a comprehensive review of this proposal and therefore I withdraw this proposal," said finance minister Arun Jaitley in a statement published from Lok Sabha. And the second is about bringing more and more people under the umbrella of Employee Provident Fund to give them security. A senior official from labour ministry told, "The labour ministry is ready with the proposal. The government is committed to bring more workers under the social security net. Around 50 lakh more workers will be covered under EPFO". He also added that the EPFO kitty is going to swell to around Rs 20 lakh crore with the new addition and stricter enforcement.

The next thing is about statutory backing of Aadhar Card. It was said that it would help government to expand its plans to roll out welfare schemes that add up to around RS. 3.5 lakh crores and will check leaks and save anywhere between Rs. 50000 crore to 70000 crore every year. And I would say for the first the bill is passed from both the houses in parliament without much argument and delay. Telling it a landmark development NITI Aayog Vice-Chairman Arvind Panagariya said that unique identification number would be instrumental in giving people access to benefits and subsidies under the Public Distribution System (PDS).

Concerned over the rising cases of refund related grievances of the tax-paying public, CBDT issued fresh directions to the I-T Department asking it to process all such cases within 15 days instead of the stipulated 30

## TAX CALENDER

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

## INDEX GUIDE

TOPIC	PAGE NO.
Service Tax	4-5
Central Excise	5-6
Customs	7-8
Income Tax	8-9
State Taxes	09-10
Other Updates	10-11
Our Contacts	12

# CENTRAL TAXES

## SERVICE TAX

### CIRCULARS & NOTIFICATION

**The Govt. vide Notification No. 20/2016 dated 08<sup>th</sup> March 2016**, make changes in ST3 return form due to introduction of Swachh Bharat Cess.

### COURT DECISIONS

#### M/S ARPANNA AUTOMOTIVE PVT. LTD. VERSUS COMMISSIONER OF CUSTOMS & CENTRAL EXCISE [CESTAT MUMBAI]

**BRIEF:** Imposition of Service tax under Business Auxiliary Service - the amount collected as extra charges for RTO registration is not covered under support services of business and commerce.

**OUR TAKE:** The hon'ble CESTAT MUMBAI held that as the appellant had discharged his Service tax liability and interest thereon, Section 80 of the Finance Act, 1994 is invoked penalties cannot be imposed. [Decided in favour of assessee]

#### M/S MALAYSIA AIRLINES VERSUS COMMISSIONER OF SERVICE TAX, CHENNAI [CESTAT CHENNAI]

**BRIEF:** The demand of service tax along with interest is confirmed under the category of "Transport of Export Cargo" as there was no exemption of service tax on the said service from 16.06.2005 to 23.06.2005.

**OUR TAKE:** The hon'ble CESTAT CHENNAI held that the demand of service tax along with interest is confirmed under the category of "Transport of Export Cargo" as there was no exemption of service tax on the said service from 16.06.2005 to 23.06.2005 and penalties are not to be imposed under Section 76 & 78. [Decided partly in favour of appellant]

#### M/S VANAZ ENGINEERS LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, PUNE-III [CESTAT MUMBAI]

**BRIEF:** Refund claim - Service tax paid under Erection, Commissioning and Installation service during the period March, 2007 - the Service tax liability will not arise when works contract is executed, under any other services prior to 01.06.2007. Refund allowed .

**OUR TAKE:** The hon'ble CESTAT MUMBAI held that Appellant has to design, supply, testing, erection and commissioning of Auto LPG Dispensing System on lump sum turnkey basis. It mistaken interpretation of law and discharged the Service Tax liability on 33% of the contract value under the category of Erection, Commissioning and Installation service while he was not required to do so and subsequently on being pointed out by their customer, appellant registered themselves under works contract and again discharged the Service Tax liability as applicable. The Service tax liability will not arise when works contract is executed, under any other services prior to 01.06.2007. [Decided in favour of appellant with consequential relief]

#### M/S TOWER VISION INDIA PVT LTD, M/S INDUS TOWERS LTD, M/S BHARTI INFRATEL LTD, M/S IDEA MOBILE COMMUNICATION LTD, M/S SPICE COMMUNICATIONS LTD, M/S IDEA CELLULAR LTD, M/S VODAFONE ESSAR SOUTH LTD, M/S SPICE COMMUNICATION LTD, M/S BHARTI AIRTEL LTD, M/S VODAFONE ESSAR DIGILINK LTD, M/S BHARAT SANCHAR NIGAM LTD, M/S VODAFONE ESSAR MOBILE SERVICES LTD VERSUS COMMISSIONER OF CENTRAL EXCISE (ADJ) , COMMISSIONER OF SERVICE TAX [CESTAT NEW DELHI]

**BRIEF:** Entitlement of Cenvat credit - Appellant provided telecom towers, pre-fabricated shelters and parts thereon to telecom service providers for providing passive infrastructure on lease basis and claim for Cenvat credit - Credit not allowed.

**OUR TAKE:** The hon'ble CESTAT NEW DELHI held that the provision of towers and shelters as infrastructure used in the rendition of an output service is common to both passive and active infrastructure providers, whether of "BAS" or "BSS" in one case and "telecom service" in the other, the towers and shelters and parts are decided to be immovable property. Therefore, the appellant is not entitled to Cenvat credit. [Decided against the appellant]

#### PERSISTENT SYSTEMS LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX, PUNE-III [CESTAT MUMBAI]

**BRIEF:** Return of the refund application to the appellant sans sanction or rejection - The orders of the lower authorities would appear to be no whit more than printing on a piece of paper. The claim itself is symptomatic of a lack of faith in the fairness of the institution in dealing with refund claims

**OUR TAKE:** The hon'ble **CESTAT MUMBAI** held that the eligibility for refund should have been decided taking into consideration the taxability of the service and the procedures laid down in law relating to tax collection and refund. The order of the original authority has merged with that of the first appellate authority and the merged order lacks legal sanctity for reason. Therefore, the return of the refund claim is not said to be legal and to be decided as afresh by the original authority. **[Appeal disposed of]**

**SATYA PRAKASH BUILDERS PVT. LTD. VERSUS CCE & ST, JAIPUR-I [CESTAT NEW DELHI]**

**BRIEF: Management, Maintenance and Repair Services - Whether notional interest to be taken as value of service - prima facie case is against the appellant since Notional interest is to be included in the value of services.**

**OUR TAKE:** The hon'ble **CESTAT MUMBAI** held that the fact is that the service was rendered, and only amount of ₹ 3 Lakh per flat owner was collected for this purpose although corpus fund was to be transferred to the welfare association as contended by the appellant but the corpus amount was not transferred by the appellant during the period and it earned interest thereon. Therefore, the notional interest reasonably represents the value of the said taxable service. **[Stay granted partly]**

**M/S. CARRIER AIRCONDITIONING & REFRIGERATION LTD. VERSUS CCE, GURGAON [CESTAT NEW DELHI]**

**BRIEF: Cenvat credit - the service received by the Appellant from these sub-contractors (Business Auxiliary Service) is to be treated as "input service" for the output service of repair and maintenance under AMC and the ground on which the Commissioner has denied the service tax in respect of these services is very wrong.**

**OUR TAKE:** The hon'ble **CESTAT NEW DELHI** held that the service received by the Appellant from these sub-contractors (Business Auxiliary Service) is to be treated as "input service" for the output service of repair and maintenance under AMC and the ground on which the Commissioner has denied the service tax in respect of these services is very wrong. In view of this, the Cenvat credit demand is not sustainable and has to be set aside. **[Decided in favour of assessee]**

## CENTRAL EXCISE

### CIRCULARS & NOTIFICATION

**The Govt. vide Circular No. 1020/8/2016-CX dated 11<sup>th</sup> March 2016**, introduces valuation of imported set top boxes under section 4 of the central excise act,1944.

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

### COURT DECISIONS

**EXECUTIVE ENGINEER CENTRAL WORKSHOP DIVISION, CHATTISGARH STATE ELECTRICITY BOARD VERSUS C.C.E., RAIPUR (CESTAT NEW DELHI)**

**BRIEF: Refund claim - there is no case for unjust enrichment against the appellant both on the reason of the appellant being a State Organization and on merit of not passing on the duty to another person.**

**OUR TAKE:** The hon'ble **CESTAT NEW DELHI** held that the appellants have paid the duty apparently from their fund. There is no identity of different funds and individual records for different receipts for a one to one co-relation as to which money has gone to which expenditure. Such stipulation will be impracticable. there is no case for unjust enrichment against the appellant both on the reason of the appellant being a State Organization and also on merit of not passing on the duty to another person. **[Decided in favour of assessee]**

**INDIAN OIL CORPORATION LTD. VERSUS C.C.E. &S. T., ALLAHABAD [CESTAT NEW DELHI]**

**BRIEF: Demand of education cess - the goods in question was manufactured prior to 09.07.2004, the confirmation of demand on Education Cess along with interest and imposition of penalty on the appellant is not legally sustainable.**

**OUR TAKE:** The hon'ble **CESTAT NEW DELHI** held that the appellant had maintained the proper records to demonstrate that the goods in question were manufactured prior to 09.07.2004, the confirmation of demand on Education Cess along with interest and imposition of penalty on the appellant is not legally sustainable. **[Decided in favour of assessee]**

**M/S. VINDHYACHAL AIR PRODUCTS PVT. LTD. VERSUS C.C.E., BHOPAL (CESTAT NEW DELHI)**

**BRIEF:** Sanction of a part of the refund amount by way of credit in the Cenvat account - granting refund and crediting it to the modvat account will not in effect allow the appellant to utilize the fund, which was collected and kept by the Government in excess of legal due - refund allowed in cash.

**OUR TAKE:** The hon'ble CESTAT NEW DELHI held that the appellants are operating under small-scale exemption scheme and it is recorded that in the end of the year they are reversing the available credit in their books in order to avail SSI exemption. Considering this position, granting refund and crediting it to the modvat account will not in effect allow the appellant to utilize the fund, which was collected and kept by the Government in excess of legal due. Under these circumstances, we find the refund sanctioned already is to be given in cash and to that extent, we modify the impugned order. **[Disposed present appeal]**

**M/S NR HYTECH ENGINEERS PVT LTD VERSUS COMMISSIONER OF CENTRAL EXCISE, MUMBAI-III [CESTAT MUMBAI]**

**BRIEF:** Whether the appellant are entitle for the Cenvat Credit in respect of the service tax paid by the job worker? For the purpose of limitation in taking the credit, the period of litigation in the present case shall stand excluded.

**OUR TAKE:** The hon'ble CESTAT MUMBAI held that the appellant is entitled to take the credit in terms of the adjudication order dt. 30.7.2010. Also hold that for the purpose of limitation in taking the credit, the period of litigation in the present case shall stand excluded. In view of my above observation, the present appeal is dismissed as withdrawn.

**M/S SHARP ENGINEERS, SHRI AMITBHAI BABUBHAI PATEL, SHRI BABUBHAI JOITARAM PATEL AND SHRI DHIRUBHAI K MODHWADIA VERSUS COMMISSIONER OF CENTRAL EXCISE-AHMEDABAD-I [CESTAT AHMEDABAD]**

**BRIEF:** Penalty under Section 11AC - The partner of the partnership firm had already paid the duty before issue of the show cause notice in order to avoid legal proceedings. In such situation, imposition of separate penalty on the partner of the firm is not justified.

**OUR TAKE:** The hon'ble CESTAT AHMEDABAD held that partner of the partnership firm had already paid the duty before issue of the show cause notice in order to avoid

legal proceedings. In such situation, imposition of separate penalty on the partner of the firm is not justified.

**CCE (ST) LTU, CHENNAI VERSUS M/S. TUBE PRODUCTS OF INDIA [CESTAT CHENNAI]**

**BRIEF:** Interest on differential duty demanded before finalization of order - It is difficult on the plain language of the section to hold that the law envisages the assessee to predicate the final assessment and expect him to pay the tax on that basis to avoid the liability to pay interest. That would be asking him to do the near impossible.

**OUR TAKE:** The hon'ble CESTAT CHENNAI held that It would be a different matter if the return is not approved by the authority but that is not the case here. It is difficult on the plain language of the section to hold that the law envisages the assessee to predicate the final assessment and expect him to pay the tax on that basis to avoid the liability to pay interest. That would be asking him to do the near impossible. **[Decided against revenue]**

**CCE, JAIPUR-I VERSUS M/S. MAN INDUSTRIAL CORPORATION. (CESTAT NEW DELHI)**

**BRIEF:** Refund claim subject to unjust enrichment. It is an admitted fact that the buyer has not debited Cenvat credit along with the amount of duty in dispute as claimed by the respondent as a refund. Refund not allowed.

**OUR TAKE:** The hon'ble CESTAT NEW DELHI held that it is an admitted fact that the buyer has not debited cenvat credit along with the amount of duty in dispute as claimed by the respondent as a refund. In the circumstances, relying on the decision in the case of Oriental Textile Processing Co. (P) Ltd. (CESTAT, NEW DELHI ), we hold that the Id. Commissioner (Appeals) is in error in holding that the respondent has passed unjust enrichment. Therefore, the impugned order is set aside. **[Decided in favour of assessee]**

## CUSTOMS

### CIRCULARS & NOTIFICATION

**The Govt. vide Circular No. 07/2016 dated 07<sup>th</sup> March 2016,** revised guidelines issued by RBI has not prescribed any restriction on denomination of Indian currency, carried by an Indian traveller or Captain of a Ship.

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

**The Govt. vide Circular No. 08/2016 dated 08<sup>th</sup> March 2016,** issued declaration form which is prescribed for the domestic passengers travelling along with international passengers in the international flight flying in its domestic leg would be dispensed herewith.

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

**The Govt. vide Circular No. 09/2016 dated 08<sup>th</sup> March 2016,** wireless microphone sets/systems consisting of one or more wireless microphones and a wireless receiver are not being uniformly classified under Customs Tariff Act, 1975.

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

**The Govt. vide Notification No. 12/2016 dated 11<sup>th</sup> March 2016,** amends notification no. 27/2014, Customs (ADD) dated 13<sup>th</sup> June 2016.

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

### COURT DECISIONS

#### M/S FAIRDEAL SUPPLIES (P) LTD. VERSUS COMMISSIONER OF CUSTOMS, JAMNAGAR [CESTAT AHMEDABAD]

**BRIEF:** Import of coking coal of Chinese origin - it is found that presence of ash content is more than what is declared by the appellant which results in denial of exemption under the Customs Notification No. 21/2002.

**OUR TAKE:** The hon'ble CESTAT AHMEDABAD held that sample was drawn in presence of the authorized representative of the importer/CHA (who did not object about the method of sampling) and on testing the sample, the Chemical Examiner, Central Excise & Customs, Regional Laboratory, Vadodara, certified that the ash content is 15.1%. In addition, the testing was done as per the prescribed method. Therefore, the presence of ash content is more than what is declared by the appellant, which results in denial of exemption under the Customs Notification No. 21/2002. **[Decided against the appellant]**

#### M/S AISHWARYA PLAST EXPORTS PVT LIMITED VERSUS COMMISSIONER OF CUSTOMS-AHMEDABAD [CESTAT AHMEDABAD]

**BRIEF:** Re-export of entire goods - Prohibition on import of goods - Goods involves Toxic, Hazardous Contamination - the portion of goods that contains the bar codes or stickers needs to be segregated and re-exported, and the balance portion to be cleared on payment of reduced redemption fine and penalty.

**OUR TAKE:** The hon'ble CESTAT AHMEDABAD held that the imported goods are not put to any use whatsoever and are virgin new material, as per the certificates of the manufacturer suppliers submitted along with the consignment at the time of customs clearance. Also the appellants have drawn sample on their own from the consignment and sent the same to CIPET, Chennai, who certified the goods to be plastic scrap virgin. Therefore, the portion of goods, which contains the bar codes or stickers, needs to be segregated and re-exported and the balance portion to be cleared on payment of reduced redemption fine and penalty. **[Decided partly in favour of appellant]**

#### PENSHIBAO WANG PVT. LTD. AND RAJWANT SINGH, M.D. VERSUS COMMISSIONER OF CUSTOMS (SEAPORT-IMPORT), CHENNAI [CESTAT CHENNAI]

**BRIEF:** The classification and assessment of imported goods as "Plant Bio-Fertilizer" was done based on the Test Reports and goods were cleared during the relevant period, so, the question of alleging misdeclaration or suppression of facts by the appellant does not arise.

**OUR TAKE:** The hon'ble CESTAT CHENNAI held that under Section 112(a) of the Customs Act, 1962 for live consignment and under Section 114/114A ibid for the past consignment - Held that: the penalty to be imposed on the importer and its

imposed under Section 114/114A ibid. **[Decided partly in favour of appellant]**

**M/S S. NARENDRA VERSUS COMMISSIONER OF CUSTOMS, MUMBAI [CESTAT MUMBAI]**

**BRIEF:** Claim of exemption. Benefit of Notification No. 159/86-Cus, after examination of machine and visit to factory premises it was found that the said machine is "Laser system for diamond processing (sawing, kerfing and drilling) based on CNC. - Benefit of exemption allowed

**OUR TAKE:** The hon'ble **GUJRAT HIGH COURT** held that the expression sawing machines had been used without any qualification. There is no dispute that the goods were imported for the purposes as specified in the notification. Other condition subject to which the benefit of concessional rate of duty was available and had also been fulfilled. The notification covers the machine imported by the appellants. Appellant succeeds on both counts. The appeal is allowed. **[Decided in favor of assessee]**

**M/S SANCTUM WORKWEAR PVT. LTD. VERSUS COMMISSIONER OF CUSTOMS (EXPORT) NHAVA SHEVA [CESTAT MUMBAI]**

**BRIEF:** Duty drawback. Mis-declared the goods in the Shipping Bill to claim higher drawback. The claim of drawback separately on Jackets & Pants is an error but malafide intention cannot be ascribed to invoke penalty.

**OUR TAKE:** The hon'ble **CESTAT MUMBAI** held there is no mis-declaration of description of goods in the Shipping Bill. Neither is there any mis-declaration of value. The claim of drawback separately on Jackets & Pants is an error but malafide intention cannot be ascribed to invoke penalty. Section 113(i) can be invoked when there is mis-declaration of description or value. In this case it is not so. **[Decided in favour of assessee]**

## INCOME TAX

### COURT DECISIONS

**CIT, CENTRAL – I, KOLKATA VERSUS BINANI CEMENT LTD. [CALCUTTA HIGH COURT]**

**BRIEF:** Computation of MAT u/s 15JB - Book Profit - Once it is realized that the assessee had correctly debited the profit and loss account for the loss arising out of the transfer of investment division, there remains no difficulty in realizing that the CIT proceeded on a wrong premise which was responsible for exercise of jurisdiction under Section 263 which he would not have done if he had realized the correct position.

**OUR TAKE:** The hon'ble **CALCUTTA HIGH COURT** held that it is realized that the assessee had correctly debited the profit and loss account for the loss arising out of the transfer of investment division, there remains no difficulty in realizing that the CIT proceeded on a wrong premise which was responsible for exercise of jurisdiction under Section 263 which he would not have done if he had realized the correct position. The only conclusion, which can be arrived at, is that the order passed by the learned Tribunal is unexceptionable. **[Decided against revenue]**

**PRINCIPAL COMMISSIONER OF INCOME-TAX-08 VERSUS M/S SHRUTI FASTNERS LTD. [DELHI HIGH COURT]**

**BRIEF:** Reopening of assessment - The ITAT observed that "just one unrealistic and absurd figure of net profit is taken out from the print out of the rough document from the CPU/hard disk and adopted for assessment of total income. Such an approach cannot be approved - the view taken by the ITAT is a plausible one and cannot be said to suffer from any perversity warranting interference.

**OUR TAKE:** The hon'ble **DELHI HIGH COURT** held that The contention of the Revenue that the difference in the figures of closing stock as on 31st March 2011 and the opening stock as on 1st April 2011 were due to unaccounted sales was rejected as being absurd. The ITAT observed that "just one unrealistic and absurd figure of net profit is taken out from the print out of the rough document from the CPU/hard disk and adopted for assessment of total income. Such an approach cannot be approved. **[Decided against revenue]**



**DY. COMMISSIONER OF INCOME TAX-5 (2) , MUMBAI  
VERSUS M/S M. SURESH COMPANY PVT. LTD. [ITAT  
MUMBAI]**

**BRIEF:** Penalty u/s 271(1)(c), assessee did not establish the nexus between the borrowed funds and the investment so made with a clear intention to conceal the income by furnishing inaccurate particulars of such income, therefore, in our view, penalty was rightly imposed.

**OUR TAKE:** The hon'ble ITAT MUMBAI held that the totality of facts clearly indicates that the assessee did not establish the nexus between the borrowed funds and the investment so made with a clear intention to conceal the income by furnishing inaccurate particulars of such income, therefore, in our view, penalty was rightly imposed by the Assessing Officer. The stand of the Revenue is further fortified by the fact that even the assessee did not file appeal against the disallowance of huge interest expenditure while deciding the quantum addition and accepted the same. **[Decided against assessee]**

**KANTI AUTO FABRICATION PVT LTD VERSUS ASSISTANT  
COMMISSIONER OF INCOME TAX [GUJARAT HIGH COURT]**

**BRIEF:** Reopening of assessment. Mere accounting entry or even if there was some defect in indicating such amount in the accounts presented by the assessee, as long as income chargeable to tax had not escaped assessment, reopening of the assessment would not be permissible.

**OUR TAKE:** The hon'ble GUJARAT HIGH COURT held that mere accounting entry or even if there was some defect in indicating such amount in the accounts presented by the assessee, as long as income chargeable to tax had not escaped assessment, reopening of the assessment would not be permissible. **Decided in favour of the assessee]**

**M/S FORUM PROJECTS PVT. LTD. VERSUS DCIT, CENTRAL  
CIRCLE-II, KOLKATA. [ITAT KOLKATA]**

**BRIEF:** Disallowance u/s 14A. The action of the AO in directly embarking on Rule 8D (2) Of the Rules is not appreciated and hence no disallowance u/s 14A could be made in the facts of the instant case.

**OUR TAKE:** The hon'ble ITAT KOLKATA held that action of the Learned AO in directly embarking on Rule 8D (2) of the Rules is not appreciated and hence no disallowance u/s 14A of the Act could be made in the facts of the instant case. **[Decided in favour of the assessee]**

# STATE TAXES

## ALL INDIA VAT

### HIMACHAL PRADESH

The Govt. vides Notification NO. F (10)-25/2014-LOOSE dated 09<sup>th</sup> March 2016, amends schedule-II.

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

### JHARKHAND

The Govt. vides Notification No.L.G.-35/2015-31/Leg dated 08<sup>th</sup> March 2016, makes amendment in clause (ii) of sub-section (4) of Section-18, clause (iii) of sub-section (4) of Section-18, clause (ix) of sub-section (8) of Section-18.

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

### ORISSA

The Govt. vides Notification No.F.12(11) FD/Tax/2016-247 dated 08<sup>th</sup> March 2016, amends order no. F.12(28) FD/Tax/2010-63 dated 25.08.2010 (regarding RIPS-2010).

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

### UTTARAKHAND

The Govt. vides Notification No 100/2016/9(120)/XXVII (8)/2011 dated 09<sup>th</sup> March 2016, makes amendment in demand of security sub-section (5) of section 20 of the UVAT Act for Marble & Tiles.

**OUR TAKE:** Readers are requested to read the said Notification. 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 the tax has been worked out on the basis of books of account of assessee after he produced the same in response to notice of department and, therefore, 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 favor 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 and 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 the allegations and facts made or noted by the Intelligence Officer no doubt create some doubts but 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

## 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.

**OANALI ISMAILJI SADIKOT Versus STATE OF GUJARAT AND 1 [GUJARAT HIGH COURT]**

**BRIEF:** Offense punishable under Section 138 of the Negotiable Instruments Act - it is very difficult for the Court to take a view that a partnership firm for the purpose of Section 138 read with Section 141 of the Act is not a legal entity, and therefore, it need not be made an accused in the complaint. - The prosecution launched against only one of the partners of the partnership firm, without joining the partnership firm, cannot be maintainable.

**OUR TAKE:** The hon'ble **GUJARAT HIGH COURT** held that if the evidence led in trial discloses offences committed by other persons who could be tried along with the accused, then there need not be a fresh complaint and fresh order of cognizance against those persons. I reiterate that the complaint was liable to be dismissed on the very first day of its presentation and no process could have been issued against the partners in the absence of the partnership firm. Thus that the application under Section 319 of the Cr.P.C. is not maintainable, and the Court below rightly rejected the

**07<sup>th</sup> March, 2016**, The government is likely to gain votes that it requires to get the Goods and Services Tax (GST) Bill passed in the Rajya Sabha this year, according to a report by American investment banker Morgan Stanley.

---

**08<sup>th</sup> March, 2016**, India should prioritize the implementation of a goods and services tax to raise revenue for priority capital and social expenditures, according to the International Monetary Fund (IMF).

---

**08<sup>th</sup> March, 2016**, The Narendra Modi government has not moved as fast as expected to implement long-awaited reforms like the GST and Land Acquisition Bill, a senior US trade official said and asked American businesses to be patient since reforms cannot be implemented overnight.

---

**08<sup>th</sup> March, 2016**, Successful implementation of the goods and services tax hinges on the quality of tax administration reforms that the states can carry out. The CBEC's experience can offer useful lessons to the states.

---

**09<sup>th</sup> March, 2016**, Prime Minister Narendra Modi made a fresh pitch for passage of GST and other legislations in the Rajya Sabha considering the "conducive atmosphere" that has been prevailing in Parliament this session with cooperation from the opposition.

---

**10<sup>th</sup> March, 2016**, NDA government on Wednesday expressed hope that Parliament will pass the proposed Goods and Services Tax (GST) Bill in the ongoing budget session of Parliament to enact the comprehensive reform of India's indirect tax regime.

---

**10<sup>th</sup> March 2016**, "The Finance Minister should withdraw

with the optional duty regime that applies currently, until GST is introduced. Once GST is introduced, the whole value chain will be covered by duty and traceability as well as compliance will improve tremendously and implementation problems will also ease considerably,".

---

**11<sup>th</sup> March, 2016**, Revenue uncertainties have dominated discussions about the goods and services tax (GST). This has been especially pronounced among the states which see the movement towards the GST as a leap in the dark.

---

**12<sup>th</sup> March, 2016**, In a double jolt for the already cash-strapped state government, the delay in enforcing a Goods and Services Tax (GST) regime in the country will mean that it has to bear an additional outgo towards compensating local bodies for abolition of the local body tax (LBT). This is in addition to the revenue loss due to the delay in rolling out the tax reform.

---

**13<sup>th</sup> March, 2016**, The Goods and Services Tax (GST) Bill intends to put an end to current taxation system, simplifying by making the ultimate consumer or purchaser to pay tax. The 13th Finance Commission, headed by Vijay Kelker (2010), was entrusted with the task of facilitating the transition from the prevailing system of indirect taxation to the GST. When all taxes are abolished and in their place the GST is implemented, it is feared that revenue both at the Central as well as State level may go down. Any such loss in revenue would not only adversely affect the States' finances directly as well as indirectly, as their share in Central revenues would also go down; for such an eventuality the Finance Commission has made a provision of Rs 50,000 crores.

---

## We may be contacted at the following offices:

### CORPORATE OFFICE

73, National Park  
Lajpat Nagar IV,  
New Delhi - 110024  
INDIA  
P: +91-11-41729056-57,  
41729656/57

### GURGAON

605, Suncity Business Tower  
Golf Course Road, Sector-54,  
Gurgaon,  
Haryana - 122002  
P: +91-124-4245110/116/117 +91-  
124-4245111

### NOIDA

C-100, Sector-2,  
Noida- 201301  
Uttar Pradesh  
M: +91- 9811481093

### MUMBAI

Plot No 67A, Sector New 50  
4th Floor, B- Wing  
Navi Mumbai – 400706  
Mumbai  
M: +91- 9022131399

### ASSAM

House No. 76,  
Near Godrej Interio,  
Forest Gate, P.O. Narangi,  
Guwahati – 781026  
P: +91-0361-2552302  
M: +91-9864857565

### INTERNATIONAL BRANCH

303,5th Avenue Suite 1007,  
New York, NY 10016, U.S.A

## For enquiries related to:

Service	Contact Person	Service	Contact Person
DVAT:	faiz@ascgroup.in	Service Tax:	nitin@ascgroup.in
HVAT:	deepak@ascgroup.in	Transfer Pricing & PE:	shailendra@ascgroup.in
Excise:	deepak@ascgroup.in	Legal Metrology:	mayank.singhal@ascgroup.in
UPVAT:	jaswant@ascgroup.in	Company Law:	legal@ascgroup.in
Income Tax:	vikash@ascgroup.in	PR/Media	socialmedia@ascgroup.in
Maharashtra VAT:	niten@ascgroup.in		

### Disclaimer:

*This e-bulletin is for private circulation only. Views expressed herein are of the editorial team. ASC or any of its employees do not accept any liability whatsoever direct or indirect that may arise from the use of the information contained herein. No matter contained herein may be reproduced without prior consent of ASC. While this e-bulletin has been prepared on the basis of published/other publicly available information considered reliable, we do not accept any liability for the accuracy of its contents.*