



ASC Times

All India Taxes Weekly Referencer

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Solving any tax puzzle

Tax saving advice across all the taxes



From the CEO's Desk



Dear Reader,

The day has come when Union Budget 2016 will be presented in the parliament, while you are reading this Finance Minister Mr. Jaitely would be presenting the Budget in the parliament. Amid speculations of what the budget would be, a lot of expectations are also at stake. Different groups has different hopes from the budget, and not only Indians are waiting even the world has it's eyes on Mr. Arun Jaitely's third budget.

With it's efforts and promises for making it easier to do the business in India, corporates and industrialists are also hoping for improving cost of doing business as well. On the same lines, Tata Steel Managing Director T V Narendran said in Mumbai yesterday, "just as the government has done a commendable job in improving the ease of doing business, we would like more initiatives to reduce the cost of doing business as well," Same goes for the tax structure in country. Though the rollout of GST could not happen till now, still experts say that steady progress to deal with issues related to MAT and retrospective taxation need immediate and continuous fixing. Chief economic advisor Arvind Subramanian has said in an interview that the current government is taking 'consistent steps' to deal with legacy tax issues to regain investor confidence. He said, "Slowly, slowly they (government) are cleaning up the legacy issue. I think they will continue to do so going forward and hopefully so in the Budget. It's a long drawn agenda that we need to clean up tax system."

Then there is a question about balancing the needs of farm sector and industry. So FM needs to garner resources to boost public spending aiming at higher growth amid global headwinds. Also back-to-back droughts and other natural calamities have put considerable pressure to lay off a lot of money on social schemes. And on the other side, a lot of pressure is from industry to ease labour laws and creating better infrastructure. Further tech-savvy middle class have there

own expectations from the finance minister. Though they map with that of better irrigation and better pricing of farm products and also a strong view emerged about scrapping all tax related liabilities of senior citizens.

Let's hope for the best. And we will provide you all the details of the budget'2016 soonest possible.

Alok Kumar Agarwal

CEO

ASC Group

TAX CALENDER

Due Date	Description	Law
29 February	Deposit of Tax	Goa VAT, Himachal Pradesh VAT, Mizoram VAT, Punjab & Chandigarh VAT, Tripura VAT
	Return Filing	Gujarat VAT, Himachal Pradesh VAT, Punjab & Chandigarh VAT, Rajasthan VAT, Tripura VAT
05 March	Deposit of Tax	Kerala VAT, Rajasthan VAT
	Issue of TDS Certificate	Tamil Nadu VAT
06 March	Deposit of Tax	Service Tax Law
		Central Excise Law

COUNTRY WIDE HOLIDAYS FOR THE WEEK

Date	Occasion/Festival	Region
NA	NA	NA

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CENTRAL TAXES

SERVICE TAX

COURT DECISIONS

SRI ASHISH KUMAR DEY VERSUS FOOD CORPORATION OF INDIA [TRIPURA HIGH COURT]

BRIEF: Reverse charge - GTA services - it was contended that the FCI has wrongly deducted the service tax from the contractual amount and the same should be ordered to be refunded to the petitioners. - scope of the contract / agreement - when contractor is liable to pay all taxes as per the agreement, deduction of service tax from the amount payable to him is correct.

OUR TAKE: The hon'ble TRIPURA HIGH COURT held that court can take notice of the fact that in many such tenders or contracts where sales tax etc. are to be taken into consideration, the contractors are asked to quote rates either inclusive of tax or exclusive of tax. If they are inclusive of tax then the contractor is liable to pay all the taxes therein. No merit in the writ petition of the appellant. [Decided against the appellant]

M/S BORDUBI ENGINEERING WORKS VERSUS UNION OF INDIA, THE COMMISSIONER, CENTRAL EXCISE & SERVICE TAX, THE ADDITIONAL COMMISSIONER, CENTRAL EXCISE & SERVICE TAX, THE SUPERINTENDENT (A/E) , CENTRAL EXCISE, THE JOINT COMMISSIONER, CENTRAL EXCISE & SERVICE TAX [GAUHATI HIGH COURT]

BRIEF: Extended period of limitation - The initial burden is on the department to prove that the situations visualised by the proviso existed. However, once the department is able to bring on record material to show that the appellant was guilty of any of those situations, which are visualised by the section, the burden shifts, and then applicability of the proviso has to be construed liberally.

OUR TAKE: The Hon'ble GAUHATI HIGH COURT held that the initial burden is on the department to prove that the situations visualised by the proviso existed. But once the department is able to bring on record material to show that the appellant was guilty of any of those situations which are visualised by the section, the burden shifts and then applicability of the proviso has to be construed liberally. When the law requires an intention to evade payment of duty then it is not mere failure to pay duty. It must be something more. [Matter remanded back for fresh decision]

COMMISSIONER, CENTRAL EXCISE CUSTOMS & SERVICE TAX, BILASPUR VERSUS M/S. SOUTH EASTERN COALFIELDS LTD. SEEPAT ROAD, BILASPUR, CHHATTISGARH. [CHATTISGARH HIGH COURT]

BRIEF: Extended period of limitation - assessee stopped payment of service tax in the pretext of seeking clarification from the Commissioner - Tribunal, without any discussion of these findings arrived at by the Commissioner, by a cryptic conclusion has held that in absence of any consignment note actually having been issued, no liability of service tax arises, matter remanded back.

OUR TAKE: The hon'ble CHATTISGARH HIGH COURT held that the Tribunal, without any discussion of these findings arrived at by the Commissioner, by a cryptic conclusion has held that in absence of any consignment note actually having been issued, no liability of service tax arises. The question in the facts of the case is that once the Respondent has admitted liability, can technicalities justify non-compliance with the law when there is no substantive defence. Case remanded back to tribunal for a fresh decision [Decided against the revenue]

COMMISSIONER, CENTRAL EXCISE CUSTOMS AND SERVICE TAX, BILASPUR VERSUS M/S. ARJUNA CARRIERS PVT. LTD. [CHATTISGARH HIGH COURT]

BRIEF: Cargo Handling Service - Whether tribunal did not consider the arguments of the revenue while setting aside the demand. If the Appellant is of the opinion that its arguments and contentions have not been considered, the proper remedy for the Appellant is to first move before the Tribunal itself inviting its attention to the same. Appeal dismissed

OUR TAKE: The hon'ble CHATTISGARH HIGH COURT held that the pleadings in the appeal extracted above are delightfully vague and cannot be construed as non-consideration of the argument of the departmental representative. Recitals in the order sheet are sacrosanct as far as the superior Court is concerned with regard to what may or may not have transpired before the Tribunal. If the Appellant is of the opinion that its arguments and contentions have not been considered, the proper remedy for the Appellant is to first move before the Tribunal itself inviting its attention to the same. Appeal dismissed. [Decided against the revenue]

M/S SHAMS HEALTHCARE SOFTWARE PVT LTD VERSUS COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX, NAGPUR [CESTAT MUMBAI]

BRIEF: Refund of un-utilized CENVAT Credit - the assessee is not a registered Central Excise or Service Tax assessee therefore cannot come under the purview of Cenvat Credit Rules, 2004, and therefore cannot claim refund under Rule 5 of the Cenvat Credit Rules, 2004.

OUR TAKE: The hon'ble CESTAT MUMBAI held that the assessee is not a registered Central Excise or Service Tax assessee therefore cannot come under the purview of Cenvat Credit Rules, 2004, and therefore cannot claim refund under Rule 5 of the Cenvat Credit Rules, 2004 – [Decided against the assessee]

COMMISSIONER OF CENTRAL EXCISE, CUSTOMS AND SERVICE TAX HYDERABAD-II VERSUS TRINTY TRAVELS [CESTAT BANGALORE]

BRIEF: Demand of service tax from the person who is sub-letting of CAB - It is not the Revenue's case that the respondent himself provided such services or letting of vehicles to the other sub-contractors is also covered by the definition of rent-a-cab service. Demand set aside

OUR TAKE: The hon'ble CESTAT BANGALORE held that merely because such service stands provided by the other sub-contractors by taking the respondent's vehicle, will not shift the responsibility to pay service tax on the respondent. It is not the Revenue's case that the respondent himself provided such services or letting of vehicles to the other sub-contractors is also covered by the definition of rent-a-cab service. [Decided against the revenue]

BHAVEN DESAI VERSUS COMMISSIONER OF SERVICE TAX, MUMBAI [CESTAT MUMBAI]

BRIEF: The costs claimed to be reimbursable are not attributable to the 'business auxiliary service' rendered by the assessee but to the cost of the product itself. Not surprisingly, the bank reimburses these expenses - demand of service tax with penalty set aside

OUR TAKE: The hon'ble CESTAT MUMBAI held that would appear that the adjudicating authority was itself not unambiguously certain about the taxability and its scope; the assessee cannot be placed on a higher pedestal of more exacting standards of comprehension and compliance. Invoking of section 73(4) of Finance Act, 1994 is, therefore, not warranted. The first appellate authority has dropped the penalty under section 76 of Finance Act, 1994. There is no justification for having continued with, and the adjudication after the tax liability had been discharged. [Decided against the revenue and in favour of assessee]

CENTRAL EXCISE

COURT DECISIONS

M/S AMPSON ENGINEERING PVT LTD VERSUS COMMISSIONER OF CENTRAL EXCISE, MUMBAI (CESTAT MUMBAI)

BRIEF: Manufacture - whether the activity of modification of moulds and dies amount to manufacture therefore it is liable to excise duty? - Firstly the activity is not amount to manufacture, secondly the movement and activity of modification is squarely covered by Rule 4(5)(a) of CCR, 2002 therefore the demand is illegal and incorrect.

OUR TAKE: The hon'ble CESTAT MUMBAI held that Rule permits to send the capital goods to job worker for further processing, testing, repair, re-conditioning or manufacture of intermediate goods necessary for manufacturing of final product or any other purpose. In view of these clear provisions, the appellant has correctly followed the procedure laid down under Rule 4(5) (a). Firstly the activity is not amount to manufacture, secondly the movement and activity of modification is squarely covered by Rule 4(5)(a) of CCR, 2002 therefore the demand is illegal and incorrect. [Decided in favour of assessee]

M/S SAINT GOBIN GYPROC INDIA LTD. VERSUS CCE DELHI-III [CESTAT NEW DELHI]

BRIEF: Refund claim of excess central excise duty because of finalization of provisional assessment on account of discounts provided to various dealers/ customers on the provisional value - the refund claim of the appellant is not hit by the doctrine of unjust enrichment.

OUR TAKE: The hon'ble CESTAT NEW DELHI held that it is of the firm opinion that the above modus operandi adopted by the appellant clearly demonstrate that they neither have recovered any amount in respect of discount from their buyers/dealers, nor have recovered any amount representing duty of Central Excise on such incentive amount. Hence, the refund claim of the appellant is not hit by the doctrine of unjust enrichment. [Decided in favour of assessee]

COMMISSIONER OF CENTRAL EXCISE, DELHI-I VERSUS M/S ROHIT BAL DESIGNS PVT LTD (CESTAT NEW DELHI)

BRIEF: Conversation of sari into a designer sari - whether such conversion is not a process of manufacture as per Section 2 (f) of the Central Excise Act, 1944 - duty demand - embroidery and hemming work after purchase of sari will not change the character of saris

OUR TAKE: The hon'ble CESTAT NEW DELHI held that the finding of the learned Commissioner (Appeals) and hold that as the respondent had purchased saris and did embroidery and hemming work thereon will not change the character of saris, therefore, the activity undertaken by the respondent does not amount to manufacture as per Section 2 (f) of Central Excise Act, 1944, consequently, not excisable. In these terms, we do not find any infirmity in the impugned order; therefore, appeal filed by the Revenue is dismissed. **[Decided in favour of assessee]**

COMMISSIONER OF CENTRAL EXCISE DELHI –I VERSUS THE HEELS & ANOTHER [DELHI HIGH COURT]

BRIEF: Classification - manufacture - change in the scope of tariff entries - iron and steel structures like trusses, columns, staircase, windows and section etc. - These steel structures are commonly known as component parts of building/ shed. These goods are not excisable.

OUR TAKE: The hon'ble DELHI HIGH COURT held that The CESTAT has held that even if the affixing of a sticker to the footwear in question may amount to manufacture, the Respondents would nevertheless be entitled to exemption under the aforementioned notification as an SSI unit. Revenue appeal dismissed. **[Decided against the revenue]**

N.S. MAHADESHWARA VERSUS COMMISSIONER OF C. EX., BANGALORE (ADJN.) [CESTAT BANGALORE]

BRIEF: Levy of penalty where duty was deposited with interest before issuance of SCN - The legislative intent for creation of the said sub-section is to avoid any futile litigation, which purpose stands defeated by the lower authorities by issuing show cause notice to the appellant.

OUR TAKE: The hon'ble CESTAT BANGALORE held that the impugned orders of the authorities below upholding the penalties imposed under Rules 25 and 26 of the Central Excise Rules. Inasmuch as penalties stand set aside, imposed in terms of the above Rule, no infirmity can be found for non-imposition of penalty under Section 11AC. accordingly the Revenue's appeal is required to be rejected. **[Decided in favour of assessee]**

CCE, RAIPUR VERSUS M/S. AKASH ISPAT LTD. [CESTAT NEW DELHI]

BRIEF: Valuation - goods cleared to related buyers - Revenue's assertion that a jurisdic person also can have a 'relative' in terms of Section 2(41) of the Companies Act is totally untenable - Revenue is mixing the concept of 'related person' with 'relative'.

OUR TAKE: The hon'ble CESTAT NEW DELHI held that it is apparent that the understanding by Revenue is due to mixing up of 'related person' with 'relative'. Further, the submission that the profit accruing from sale through related persons goes to same family or relative is without any factual support and in any case the respondent being Public Limited Company the profit, if any, should flow to all the share holders. **[Decided against revenue]**

ARBES TOOLS PVT. LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, MUMBAI-II [CESTAT MUMBAI]

BRIEF: Denial of benefit of CENVAT Credit on Xerox copy of courier bill of entry - appellant have correctly claimed the CENVAT Credit on the photocopy of the courier bill of entry filed by them and CENVAT Credit cannot be denied on mere technical grounds.

OUR TAKE: The hon'ble CESTAT MUMBAI held that there is no dispute that the material on which the credit has been taken was imported by the appellant and was used for manufacturing of the product. The objection of the department is that the appellants have not produced the original bill of entry and the photocopy of the courier bill of entry or consolidated courier bill of entry is not admissible for denying credit under Rule 9. Thus hold that the appellant have correctly claimed the CENVAT Credit on the photocopy of the courier bill of entry filed by them and CENVAT Credit cannot be denied on mere technical grounds. **[Decided in favour of assessee]**

CUSTOMS

CIRCULARS & NOTIFICATION

The Govt. vide Notification No. 05/2016 dated 22nd February 2016, amend notification no. 51/2015 dated 21st Oct 2015 levy definitive anti-dumping duty on imports of All Fully Drawn or Fully Oriented Yarn/Spin Draw Yarn/Flat Yarn of Polyester (non-textured and non - POY), originating in or exported from the People's Republic of China and Thailand.

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

COURT DECISIONS

COMMISSIONER OF CUSTOMS, KANDLA VERSUS M/S. INDIAN ACRYLICS LIMITED [GUJARAT HIGH COURT]

BRIEF: Extended period of limitation - alleged that DEPB Scrips were obtained by the importer fraudulently - import under fake / fraudulent DEPB licence - The Tribunal has thereafter merely applied the decision of the Jurisdictional High Court to the facts of the case by holding that the extended period of limitation could not be invoked in the facts of the present case.

OUR TAKE: The hon'ble GUJARAT HIGH COURT held that where the appellants did not have any role in the fraud and said person had practised no fraud, the Revenue could not get the benefit of extended period of limitation when such person is not party to the fraud. The conclusion of the Tribunal being based upon findings of fact recorded by it does not give rise to any question of law much less, a substantial question of law to warrant interference. [Decided against the revenue]

M/S INDIAN OIL CORPORATION LTD. VERSUS COMMISSIONERS OF CENTRAL EXCISE, CUSTOMS AND SERVICE TAX-VADODARA-I [CESTAT AHMEDABAD]

BRIEF: Clim of interest on Refund - period of limitation - refund arose on account of finalization of provisional assessment - As the refund is not sanctioned within 3 months from the said date, the appellants are also eligible for interest till the date of refund

OUR TAKE: The hon'ble CESTAT AHMEDABAD held that refund should be sanctioned within 3 months from the date of assessment of duty finally, and if not done so, then the interest shall be paid till the date of refund of such amount. In the instant case, it is undisputed that provisional

assessment was finalized vide letter no. F.No. V Misc (30)23/IOCL/B.E./2005 dated 22.02.2008. Therefore, the appellants are eligible for refund consequent to the said finalization. As the refund is not sanctioned within 3 months from the said date, the appellants are also eligible for interest until the date of refund. [Decided in favour of assessee]

M/S AMRITLAKSHMI MACHINES WORK, MR. N.K.BRAMCHARI, MANAGING PARTNER, M/S. AMRITLAKSHMI MACHINE WORKS VERSUS COMMISSIONER OF CUSTOMS (IMPORT) [BOMBAY HIGH COURT]

BRIEF: Levy of simultaneous penalties on both the Partner and Partnership firm in adjudication proceedings under the Customs Act. Penalty for abetting, simultaneous penalties can be imposed on the firm and the partners under the Act and more particularly under Section 112(a) of the Act.

OUR TAKE: The hon'ble BOMBAY HIGH COURT held that the penalties could be imposed on the firm and the partners under the Act and more particularly under Section 112(a) of the Act. However as the Act itself stipulates, the same would be subject to the parties proving that the contravention has taken place without their knowledge or despite exercise of all due diligence to prevent such contravention.

M/S BANSWARA SYNTAX P LTD. VERSUS COMMISSIONER OF CUSTOMS JAMNAGAR (PREV) [CESTAT AHMEDABAD]

BRIEF: Levy of penalty - Provisional assessment and release of goods against P.D. bond - non supply of documents and information within prescribed period - violation of conditions of Bond - As there is no doubt that the appellants were negligent, we do find that there is sufficient reason to impose penalty on the appellants u/s 117

OUR TAKE: The hon'ble CESTAT AHMEDABAD held that the appellants had not taken the appropriate steps at the appropriate time that they had not submitted the documents in time as prescribed in the P.D. Bond executed by them nor had they approached the Department for extension of time. This has resulted in Revenue issuing a show cause notice, which set the adjudication process and present litigation in motion. As there is no doubt that the appellants were negligent, we do find that there is sufficient reason to impose penalty on the appellants under Section 117 of the Customs Act, 1962. - Levy of penalty (though reduced) confirmed. [Decided partly in favour of appellant]

M/S. SCHWING STETTER (INDIA) PVT. LTD. VERSUS COMMISSIONER OF CUSTOMS (IMPORTS) , CHENNAI [CESTAT CHENNAI]

BRIEF: Valuation - it is evident that the invoice price of Euro 1,62,350/- of pumps imported, sold to third parties on High Sea Sale Basis are not comparable goods with the goods imported by the appellants @ Euro 1,49,000. The rejection of declared price and loading EURO 1,62,350 ordered by the authority is not sustainable.

OUR TAKE: The hon'ble **CESTAT CHENNAI** held there it is evident that the invoice price of Euro 1,62,350/- of pumps imported, sold to third parties on High Sea Sale Basis are not comparable goods with the goods imported by the appellants @ Euro 1,49,000. The rejection of declared price and loading EURO 1,62,350 ordered by the authority is not sustainable. We hold that the declared value of the pumps imported is the correct transaction value. Loading of value rejected. **[Decided in favour of assessee]**

M/S. BHAGYANAGAR METALS LTD, SHRI NARENDERSURANA, MD, SHRI BALASUBRAMANIAN, VP, M/S. SURANA TELECOM LTD, SHRI BALASUBRAMANIAN, VP, M/S LG ELECTRONICS, M/S. HUAWAI TECHNOLOGIES CO LTD VERSUS COMMISSIONER OF CENTRAL EXCISE, HYDERABAD-II, CCE, GOA [CESTAT HYDERABAD]

BRIEF: Valuation - Claim of exemption on import of software - the software/data loaded on the Flash memory is specific to the user/customer. It contains caller ID and caller block software. The phones imported have embedded software with required parameters for its functioning - demand confirmed though interest and penalty waived

OUR TAKE: The hon'ble **CESTAT HYDERABAD** held that t The Fixed Wireless phones as imported require to be classified and assessed as phones with no segregation of value assignable to the software separately, as claimed by the importers. - Demand of duty confirmed - however, demand of interest, redemption fine and penalty waived. **[Decided partly in favour of assessee]**

INCOME TAX

COURT DECISIONS

FORTUNA FOUNDATION ENGINEERS AND CONSULTANT (P) LTD. VERSUS ADDL. CIT, RANGE IV, LUCKNOW [ITAT LUCKNOW]

BRIEF: Loss on revaluation of investments - valuation of stock in trade - the securities of the Banks are investment and have to be valued at costs or market price, whichever is less - claim of loss allowed

OUR TAKE: The hon'ble **ITAT LUCKNOW** held that In the absence of any other specific evidence to establish that the project was completed before 31.3.2011, it is not possible for us to hold that the project was completed within the prescribed period, more so in the light of the fact that the completion certificate was issued on 26.9.2011 and accordingly the date of issuance of completion certificate is the date of completion of the project. In the light of these facts, we are of the view that the assessee is not entitled for deduction under section 80IB(10) of the Act in respect of Fortuna Riviera Blues Housing Project also. **[Decided against assessee]**

THE COMMISSIONER OF INCOME-TAX (CENTRAL) LUDHIANA VERSUS SHRI JAWAHAR LAL OSWAL AND OTHERS [PUNJAB & HARYANA HIGH COURT]

BRIEF: Genuity of gift - One cannot be oblivious to the fact that such a large gift received from a foreign country is bound to raise suspicion but cannot disregard the fact that suspicion and doubt cannot replace proof or translate into reasons, much less reasons for invoking a deeming provision to hold that gifts represent the income of the assessee, particularly in the absence of relevant facts.

OUR TAKE: The hon'ble **PUNJAB & HARYANA HIGH COURT** held that the Tribunal has rightly opined that the gift could not be treated as a deemed income of the assessee. Consequently, the substantial questions of law are answered against the revenue.

COMMISSIONER OF INCOME TAX-IV VERSUS VADILAL ENTERPRISES LTD [GUJARAT HIGH COURT]

BRIEF: Expenses allowable as revenue expenditure u/s 37 - there is no concept of deferred revenue expenditure in the Act except under certain specified sections where amortisation is specifically provided. Normally, the ordinary rule would be that the revenue expenditure incurred in a particular year is to be allowed in that year

OUR TAKE: The hon'ble **GUJARAT HIGH COURT** held that the amount would be said to have been paid even if same is not actually paid but incurred on the basis of method of accounting. It was further held and observed that there is no concept of deferred revenue expenditure in the Act except under certain specified sections where amortisation is specifically provided. Normally, the ordinary rule would be that the revenue expenditure incurred in a particular year is to be allowed in that year. If the assessee claims the expenditure in the year when the same was made, the department cannot deny it. **[Decided in favour of assessee]**

COMMISSIONER OF INCOME TAX AHMEDABADI VERSUS M/S CORNERSTONE EXPORTS PVT. LTD [GUJARAT HIGH COURT]

BRIEF: Addition on interest paid on loans - the action of the assessee company to make advances at a lower rate of interest than the interest liability discharged by the assessee company in borrowing such funds was not shown to be in any manner actuated by business expediency. AO was perfectly justified in disallowing such component of interest

OUR TAKE: The hon'ble **GUJARAT HIGH COURT** held that he action of the assessee company to make advances at a lower rate of interest than the interest liability discharged by the assessee company in borrowing such funds was not shown to be in any manner actuated by business expediency. The Assessing Officer was perfectly justified in disallowing such component of interest. **[Decided in favour of revenue]**

ASSTT CIT VERSUS NORMA DETERGENT (PVT) LTD [GUJARAT HIGH COURT]

BRIEF: Interest for defaults in payment of advance tax u/s 234B - even in absence of any direction by the A.O. while passing assessment order under section 143(3) of the Income Tax Act, which according to under section only for determining assessed tax, there can be demand of levy and demand of interest u/s 156 of the Income Tax Act

OUR TAKE: The hon'ble **GUJARAT HIGH COURT** held that A.O. had no such discretion and moment he determines the "assessed tax" and on the eventuality as mentioned in section 234B, i.e. (i) an assessee who is liable to pay advance tax under section 208 has failed to pay such tax, or, where advance tax paid by such assessee under the provisions of section 210 is less than 90% of the "assessed tax", assessee shall, be liable to pay simple interest at the rate of 1% for every month or part of a month comprised in the period from the first day of April next following such financial year to the date of determination of total income under sub-section (1) of section 143 and (ii) where regular assessment is made to the date of such regular assessment, on the amount equal to assessed tax, or, as the case may be, on the amount by which advance tax paid, as aforesaid, falls short of assessed tax.

Under the circumstances and considering the subsequent decisions of the Hon'ble Supreme Court in the case of Anjum M.H. Ghaswala (2001, SUPREME Court) and in the case of Karanvir Singh Gossal (2012 (9) TMI 334 - SUPREME COURT), question of law posed for consideration of this Court is to be answered in favour of the revenue and against the assessee.

COMMISSIONER OF INCOME TAX- 2 VERSUS M/S TATA POWER CO. LTD. [BOMBAY HIGH COURT]

BRIEF: Calculation of interest u/s 244A - when a refund of tax has to be reduced by refund already granted it is only the tax element, which has to be adjusted, and not the interest element paid on the delayed refund of the tax. This is so as the interest, which is paid to the assessee, is for the wrongful withholding of the assessee's refund by the revenue.

OUR TAKE: The hon'ble **BOMBAY HIGH COURT** held that when a refund of tax has to be reduced by refund already granted it is only the tax element, which has to be adjusted, and not the interest element paid on the delayed refund of the tax. This is so as the interest, which is paid to the assessee, is for the wrongful withholding of the assessee's refund by the revenue. It has no element of tax which would justify reducing the same from the refund due while computing the interest payable on the delayed payment of refund. **[Decided against revenue]**

THE COMMISSIONER OF INCOME TAX, CHENNAI VERSUS M/S. FARIDA LEATHER COMPANY [MADRAS HIGH COURT]

BRIEF: Disallowance u/s 40(a)(i) - TDS - commission payments to the non-resident agents are not taxable in India, as the agents are remaining outside, services are rendered abroad and payments are also made abroad.. When the transaction does not attract the provisions of Section 9 of the Act, then there is no question of applying Explanation 4 to Section 9.

OUR TAKE: The hon'ble **MADRAS HIGH COURT** held that the commission payments to the non-resident agents are not taxable in India, as the agents are remaining outside, services are rendered abroad and payments are also made abroad.. When the transaction does not attract the provisions of Section 9 of the Act, then there is no question of applying Explanation 4 to Section 9 of the Act. Therefore, the Revenue has no case and the Tax Case Appeal is liable to be dismissed. **[Decided in favour of assessee]**

STATE TAXES

ALL INDIA VAT

CHANDIGARH

The Govt. vide Circular dated 26th February 2016, discontinued manual submission of the applications for grant of registration under VAT.

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

DELHI

The Govt. vide Notification No. F3(619)/POLICY/VAT/2016/1496-150645 dated 25th February 2016, notifies date of furnishing of returns in form GE -II for the first three quarters of the current financial year shall be 7th March 2016.

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

MAHARASHTRA

he Govt. vides Circular No. 6T dated 23rd February 2016, notify that Correction of mistakes made by the dealers or miscellaneous refunds of excess payment of taxes.

OUR TAKE: Where the dealer has made double payment of taxes then the dealer shall make application along with appended Annexure 'A' for refund of excess amount after the due date of filling of return containing the period for which the payment was made twice to the respective Joint Commissioner of Sales tax (Nodal Division) in Mumbai and Pune or concerned Joint Commissioner of Sales Tax (VAT-ADM) in mofussil areas.

The Govt. vides Circular No. 7T dated 25th February 2016, make changes in the automation processes and other changes in procedures. The web portal will offer different e-Services to the registered dealers through a common window.

OUR TAKE: Readers are requested to read the said Circular to understand different e-services offered. It is self-explanatory.

UTTARAKHAND

The Govt. vide Notification No. 112/2016/19(120)/XXVII(8)/2012 dated 23rd February 2016, extend the date of third quarter return and TDS of year 2015-16 to 31-3-16.

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

COURT DECISIONS

M/S. PARLE AGRO PVT LTD VERSUS COMMISSIONER COMMERCIAL TAXES, TRIVANDRUM (KERALA HIGH COURT)

BRIEF: Rate of VAT @14.5% or 20% - Classification of Appy Fizz as 'Fruit Juice Based Drink', as similar other products not mentioned or aerated branded soft drinks excluding soda - The product answers to the description of aerated branded soft drink which would fall specifically within the confines of Section 6(1)(a) - to be taxes at 20%

OUR TAKE: The hon'ble MADRAS HIGH COURT held that A reading of Entry 71 of the notified list as amended would go to show that aerated water and soda water are the aerated products included in the entry. Sub entries 2 to 4 refer to soft drinks, which are not aerated or branded, and to health drinks. This is clearly, because aerated branded soft drinks have already been included in the tax net with a higher rate of tax. The product answers to the description of aerated branded soft drink which would fall specifically within the confines of Section 6(1)(a). **[Decided against the assessee]**

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 Deoiled cake is a by-product and therefore it cannot be said that the same was purchases for using as a fuel. Deoiled cake is an inevitable by-product, which the company can throw it away as waste or use it as a fuel. 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

SECURITIES AND EXCHANGE BOARD OF INDIA VERSUS KISHORE R. AJMERA [SUPREME COURT]

BRIEF: Fraudulent/ manipulative practices under the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations - if the primary authority had thought it proper to impose different penalties in different cases involving different set of facts, we do not see how and why interference should be made in present appeals.

OUR TAKE: The hon'ble SUPREME COURT held that no other material to hold either lack of vigilance or bona fides on the part of the sub-broker so as to make respondent-broker liable. An irresistible or irreversible inference of negligence/lack of due care etc., in our considered view, is not established even on proof of the primary facts alleged so as to make respondent-broker liable under the Conduct Regulations, 1992 as has been held in the order of the Whole Time Member, SEBI which, according to us, was rightly reversed in appeal by the Securities Appellate Tribunal.

LATEST NEWS ON PROPOSED GST

22nd Feb 2016, there could be a temptation to further increase the effective service tax rate to say 16.5%. If that turns out to be the case, then it is going to pinch every consumer as they will have to pay more for eating out at restaurants, hotel stay, phone bills, broadband connections, air tickets etc.

22nd Feb 2016, Amit Mitra, finance minister of West Bengal and the new chief of GST, will now have to take forward the unfinished agenda of his predecessor and rival, Asim Dasgupta.

23rd Feb 2016, Under GST, it is expected that there would be standardised and centralised registration cell for obtaining the indirect tax-related registrations.

23rd Feb 2016, the government reportedly wants to hike the service tax rate in the coming Budget to boost revenues.

Services are taxed at 14.5 per cent and the ostensible reason for raising the service tax rate is to bring it closer to the standard goods and services tax (GST) rate of about 18 per cent.

24 Feb 2016, Prospects of the GST bill being passed seem to have brightened as differences between the government and Congress have shrunk to just one contention — the demand to cap the tax rate at 18% by making it part of the Constitution Amendment Bill.

26 Feb 2016, expressing disappointment over delay in the passage of GST Bill, the economic Survey today said the roll out of Goods and Services Tax would usher in an “unprecedented reform” in modern global tax history. GST will subsume excise, service tax, VAT and other state levies, and will bring in a single-rate indirect tax in the country and is estimated to affect 2-2.5 million excise and service taxpayers.

27 Feb 2016, awaiting forward movement on the GST, which we believe will have a multiplier effect on India's overall economy. As you know, estimates are pegged at nearly a 2 % fillip to the GDP. More specifically, GST will also have a positive impact on the logistics sector, which is crucial to India's long-term growth, particularly.

27 Feb 2016, As Railway Budget 2016 promised focus on freight corridors and Railway Board Chairman A K Mittal revealed the strategy to tap sectors like fast-moving consumer goods (FMCG) and automobiles to increase traffic, the success of the ambitious plan hinges on the goods and services (GST) tax regime.

27 Feb 2016, It is an acknowledged deficiency in our tax system that our system operates on the principle of origin based taxation, whereas the world over the taxation under value added tax regimes has been by destination principle. The levy of central sales Tax ('CST') has been criticized for distorting the supply chain, taking away focus from operational efficiencies to tax mitigation oriented supply chain. The elimination of CST was one highlighted as one of the features of Goods and Services Tax ('GST').

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