



ASC Times

All India Taxes Weekly Reference

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Solving
any **tax**
puzzle

Tax saving advice
across all the taxes



From the CEO's Desk



Dear Reader,

We have been informing you in this space about all the progress that has happened in the e-commerce sector in India and about the challenges faced by the sector. We conveyed you that how the marketplace model of e-commerce was driven by the discounts they were offering to the customers to enlarge their market share and also to add on the valuation they could fetch to show it to the investors or venture capitalists. But it seems that the game is over now and VC's are no longer interested to sponsor the discounts and want to see the ROI of their investments. More so, it happened also because of the latest guidelines provided to the marketplace e-commerce by the government when the government came out with the clarifications on FDI norms in e-commerce sector. The move was due to complains from the brick and mortar retailer's associations on how e-commerce sites are not truly B2B where 100% FDI is allowed.

So first thing according to the guidelines is, that marketplace cannot influence the selling price of the goods. However, no marketplace is ready to take the risk as yet but it is the pressing need and eventually they will have to do that. The logic behind the discounts was to educate the people about the online shopping initially and encourage them to shop more, which is by far established now. So the focus should be on quality products, quick service and innovative products to cater to the customers. Another mandate from the guidelines is that no single vendor can amount more than 25% of the sales. This is to curtail practices where some of the biggest marketplace has their own subsidiaries and they sell from there and make good profits there as well.

Another development is associated to Aadhar cards, as they are supposed to reduce the cost of government on many fronts wherever identity issues arise and pose a risk of duplication. For example issuance of ration cards, access to scholarships, pensions and provident fund accounts, they all will be linked to Aadhar card where

chances of duplicity are nil. Also government is planning to integrate all the data about businesses in the country by providing them unique 16-digit identification code like Aadhar cards. That will bring all the data under one scheme about all the establishments in the country. The Ministry of Statistics and Programme Implementation is working on the plan to allot these unique codes to each business establishment on the lines of Aadhar cards.

Alok Kumar Agarwal

CEO

ASC Group.

TAX CALENDER

Due Date	Description	Law
05 April	Deposit of Tax	Rajasthan VAT, Tamil Nadu VAT
	Return Filing	Kerala VAT
	Issue of TDS Certificate	Tamil Nadu VAT
07 April	Deposit of Tax	Tripura VAT
	Deposit of TDS	Orissa VAT
	Filing of Return	Jammu & Kashmir VAT
	Issue of TDS Certificate	Orissa VAT
	Deposit of TDS	Income Tax Law
09 April	Return Filing	Gujarat VAT
10 April	Deposit of Tax	Kerala VAT
	Deposit of TDS	Chhattisgarh VAT, Madhya Pradesh VAT, Mizoram VAT, Nagaland VAT
	Filing of Return	Karnataka VAT, Kerala VAT Central Excise law

COUNTRY WIDE HOLIDAYS FOR THE WEEK

Date	Occasion/Festival	Region
5 April	Babu Jagjivan Ram Birthday	Telangana
8 April	Ugadi	Andhra Pradesh, Karnataka, Telangana
8 April	1st Navratra, Sajibu Nongmapanba	Jammu & Kashmir, Jharkhand, Manipur
8 April	Gudi Padva	Goa, Maharashtra

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CENTRAL TAXES

SERVICE TAX

COURT DECISIONS

SRI SUDHA CONSTRUCTIONS (FORMERLY KNOWN AS SRI SUDHA TELECOM CONSULTANTS) VERSUS ITI LTD, THE COMMISSIONER OF CENTRAL EXCISE, THE ASSISTANT COMMISSIONER (SERVICE TAX) [MADRAS HIGH COURT]

BRIEF: Seeking release of payments due to the petitioner along with suitable interest - in the absence of any contract between the petitioner and the first respondent with regard to the payment of service tax and the reimbursement of the same, the said issue cannot be gone into in the writ petition.

OUR TAKE: The hon'ble **MADRAS HIGH COURT** held that there is no clause in the contract between the first respondent and the petitioner with regard to the payment of Service Tax by the petitioner. In such circumstances, in the absence of any contract between the petitioner and the first respondent with regard to the payment of service tax and the reimbursement of the same, the said issue cannot be gone into in the writ petition. Therefore, the claim made by the petitioner can be decided only by a competent civil Court and not under Article 226 of the Constitution of India. [Decided against the petitioner]

SHRI SAI MARKETING AND TRADING CO Versus GUJARAT STATE ROAD TRANSPORT CORPORATION AND 1 [GUJARAT HIGH COURT]

BRIEF: Seeking direction for refund and release of security deposit of 24,21,125/- - Amount of Service tax paid by Corporation on behalf of the petitioner - Jurisdiction under Article 226 is not the appropriate remedy to be invoked for the grievance and the dispute of the above nature which stem from contract between the parties - Petition dismissed.

OUR TAKE: The Hon'ble **GUJARAT HIGH COURT** held that even if the aspect is apart that the petitioner has challenged communication dated 30.09.2013 after unexplained gap of three years, there is no gainsaying from the facts and the outlines of the controversy recorded above that the dispute between the parties is in the realm of the contractual obligations flowing from the service contract given to the petitioner by the Corporation. Therefore, this petition is not entertain able and it does not qualify for any relief. [Petition dismissed]

SUN COMMUNICATION VERSUS MUNICIPAL COMMISSIONER AND 2 [GUJARAT HIGH COURT]

BRIEF: Recovery of Service tax from service recipient - the Corporation must be allowed to recover such charges on the computation of unpaid rentals to be paid by the petitioner to the Corporation as per offer letter.

OUR TAKE: The hon'ble **GUJARAT HIGH COURT** held that if other than the rental charges, there is any other tax liability upon the petitioner; he must separately pay the same. Under the circumstances, the Corporation must be allowed to recover such charges on the computation of unpaid rentals to be paid by the petitioner to the Corporation as per offer letter. In addition, the Corporation shall be entitled to recovery of service tax also with respect of zones No.1 and 2 and there shall be no fresh computation of liability. [Decided against the petitioner]

M/S. ATCHAYA ENGINEERING PVT. LIMITED VERSUS THE ADDITIONAL COMMISSIONER LARGE TAXPAYER UNIT, CHENNAI AND OTHERS [MADRAS HIGH COURT]

BRIEF: Recovery of dues said to be payable - Attachment of bank accounts on the ground that another entity has not paid the service tax - when the petitioner company is a separate and independent entity, the bank account of the petitioner company cannot be attached for the dues of the proprietorship concern.

OUR TAKE: The hon'ble **MADRAS HIGH COURT** held that when the petitioner company is a separate and independent entity, the bank account of the petitioner company cannot be attached for the dues of the proprietorship concern, viz., M/s.Atchaya Enterprises. Therefore, the bank account of the petitioner company, which was attached by the respondents is liable to be raised and accordingly, the attachment in respect of the petitioner company stands raised. [Petition disposed of]

M/S. MAHARASHTRA STATE ROAD TRANSPORT CORPORATION VERSUS COMMISSIONER OF CENTRAL EXCISE, KOLHAPUR [CESTAT MUMBAI]

BRIEF: Classification - Providing buses for hire to various agencies/persons on contract basis - tour operator service and Rent-a-Cab service are exempted if the journeys are organized or arranged for use by an educational body

CENTRAL EXCISE

COURT DECISIONS

COMMISSIONER OF CENTRAL EXCISE, MUMBAI-IV VERSUS RUBY MILLS LTD. (CESTAT MUMBAI)

BRIEF: Valuation of the goods manufactured on job-work basis - It is necessary to include the processor's expenses, costs and charge plus profit, but it is not necessary to include the trader's profits that get the fabrics processed, because those would be post-manufacturing profits.

OUR TAKE: The hon'ble CESTAT MUMBAI held that we also find that the first appellate authority has correctly enunciated the law as to the activity of job-work as to how it should be understood and the valuation of the said goods to be done. **[Decided against revenue]**

COMMISSIONER OF CENTRAL EXCISE, VAPI VERSUS PARLE AGRO PVT LTD & 1. (GUJRAT HIGH COURT)

BRIEF: Jurisdiction of court. Territorial jurisdiction. Mere fact that the Commissioner of Central Excise and Customs, Vapi also exercises jurisdiction over the Union Territory of Dadra and Nagar Haveli would not mean that the matter ceases to relate to the Union Territory of Dadra and Nagar Haveli.

OUR TAKE: The hon'ble GUJRAT HIGH COURT held that the mere fact that the Commissioner of Central Excise and Customs, Vapi also exercises jurisdiction over the Union Territory of Dadra and Nagar Haveli would not mean that the matter ceases to relate to the Union Territory of Dadra and Nagar Haveli. **[Decided in favour of Revenue]**

UTTAM GALVA STEELS LTD. VERSUS CCE RAIGAD & VICE-VERSA [CESTAT MUMBAI]

BRIEF: CENVAT Credit on Captive consumption. Whether the assessee have availed CENVAT credit correctly or otherwise when the activity undertaken by them on the inputs according to revenue does not amount to manufacture? Credit allowed.

OUR TAKE: The hon'ble CESTAT MUMBAI held that the Tribunal after considering the issue and the case law, relied upon the judgement of the Hon'ble High Court of Bombay in the case of Ajinkya Enterprises (supra) stated that the issue is no more res integra. Impugned order is set aside **[Decided in favour of assessee]**

OUR TAKE: The hon'ble CESTAT MUMBAI held that the grounds of appeal have totally ignored the main finding of the Commissioner that tour operator service and Rent-a-Cab service are exempted if the journeys are organized or arranged for use by an educational body. As the appellants have submitted details wherein it is very clear that schools and colleges for trips hired the vehicles and this finding has not been controverted by Revenue. **[Decided against the revenue]**

M/S MARKET TOOLS RESEARCH PVT LTD VERSUS COMMISSIONER OF CUSTOMS, CENTRAL EXCISE AND SERVICE TAX AND OTHERS [CESTAT HYDERABAD]

BRIEF: Rejection of refund claim on the ground that services exported are not taxable services - Unutilized CENVAT credit filed under Rule 5 of CCR, 2004 - Refund allowed.

OUR TAKE: The hon'ble CESTAT HYDERABAD held that the denial of the refund on the ground that FICR and export invoices did not show one-to-one correlation is not justifiable. Also the period involved is prior to 01/04/2011 when the definition of input services had a wide ambit as the definition included the words 'activities relating to business'. So, the services if necessary for business of the appellant would qualify as input services. Therefore, the refund cannot be denied for the reason that input services do not have nexus with the output services. **[Decided in favour of appellant with consequential relief]**

M/S ULTRA TECH CEMENT LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, NAGPUR [CESTAT MUMBAI]

BRIEF: Cenvat credit in respect of Security Services provided to the residential colony of the employees situated adjacent to the factory premises is not admissible.

OUR TAKE: The hon'ble CESTAT MUMBAI held that by following the judgment of M/s. Manikgarh Cement Vs. CCE, Nagpur [2010 (10) TMI 10 - BOMBAY HIGH COURT], the Cenvat credit in respect of Security Services provided to the residential colony is not admissible. Hence, the demand of Cenvat credit is upheld. Further, the issue is not free from doubt and it involves interpretation of definition of input and input services, therefore the appellant is not liable for penalty in the facts and circumstances of the case. Therefore, the penalty imposed is set aside. **[Decided partly in favour of appellant]**

COMMISSIONER, CENTRAL EXCISE & CUSTOMS, AURANGABAD VERSUS M/S. BALKRISHNA TYRES LTD. (CESTAT MUMBAI)

BRIEF: Whether marketable on Captive consumption of rubberized tyre cord fabric and rubber tread compound merely if movement of goods from one factory to another factory has taken place and the goods were used for captive consumption. The said reason cannot be material factor to hold that the goods are marketable.

OUR TAKE: The hon'ble CESTAT MUMBAI held that department has not produced any evidence to prove that goods in question are marketable. As regard the product namely rubberized tread compound the department has failed to bring any evidence to prove that the subject goods manufactured and consumed captively by the respondent is marketable and therefore the burden of proving that goods is marketable has not been discharged by the Revenue. **[Decided against revenue]**

RAKESH KUMAR GARG, SANTOSH KUMAR GARG, DEVI DASS GARG VERSUS COMMISSIONER OF CENTRAL EXCISE [DELHI HIGH COURT]

BRIEF: Imposition of personal penalty on 3 persons for duty evasion by the manufacturer. The requisite evidence necessary for levy of penalty on each of the Appellants under Rule 26 of the CE Rules 2002 was not brought on record by the Department. No penalty.

OUR TAKE: The hon'ble CESTAT MUMBAI held that for the purposes of levy of penalty the Department would have to show the actual involvement of the person sought to be penalized in the actions of possessing, transporting, removing, keeping, concealing, selling or purchasing, etc. of the excisable goods, which he knows or has reason to believe are liable to confiscation. Court holds that the requisite evidence necessary for levy of penalty on each of the Appellants under Rule 26 of the CE Rules 2002 was not brought on record by the Department and, therefore, the levy of penalty was in the first place is unsustainable. Amounts deposited by the Appellants during the pendency of these appeals will be returned to them together with any interest accrued thereon. The guarantees furnished by the Appellants shall stand discharged. **[Decided in favour of assessee]**

SETO TEKNOLOG PVT LTD VERSUS COMMISSIONER OF CENTRAL EXCISE, MUMBAI-II [CESTAT MUMBAI]

BRIEF: Valuation - Benefit of abatement - Provisional assessment - cash discount - there is no question of rejecting the benefit of abatement of such discount on the ground that the same is not actually passed on to the buyer

OUR TAKE: The hon'ble CESTAT MUMBAI held that since the appellant have been disclosing in their regular return filed by them that they have been availing Cenvat Credit on courier bill of entry and the department has also conducted the audit from time to time of the records of the appellant and has never raised the objection of availing the Cenvat Credit on the basis of courier bill of entry and further, the respondent has not been able to bring on record any material which shows that there is a wilful misstatement or suppression of facts or contravention of any of the provisions of the Act or the Rules with intent to evade payment of duty. In view of this, the entire demand is time barred and the appellant is entitled to avail Cenvat Credit based on courier bill of entry. **[Decided in favour of assessee]**

SAHYADRI STARCH & INDUSTRIES PVT. LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, KOLHAPUR (CESTAT MUMBAI)

BRIEF: Cenvat credit on input services used for both excisable goods as well goods chargeable to nil rate of duty - no option under Rule 6 (3) can be imposed on the appellant and the appellants offer of availing the option of proportionate credit in terms of Rule 6 (3) (ii) cannot be denied to them.

OUR TAKE: The hon'ble CESTAT NEW MUMBAI held that it is seen that no option under Rule 6 (3) can be imposed on the appellant and the appellants offer of availing the option of proportionate credit in terms of Rule 6 (3) (ii) cannot be denied to them. However, they will be liable to pay interest on the amounts, which are reversed. The order-in-original is set aside and the matter is remanded to Commissioner to calculate the amount required to be reversed and the interest payable thereon.

M/S. ALLIED ELECTRICALS VERSUS C.C.E., DELHI-I [CESTAT NEW DELHI]

BRIEF: Evasion of duty -, the goods were cleared without issuing proper invoices and therefore it cannot be said that the price charged included central excise duty. In their statements, partners of the firm also did not claim that price charged was inclusive of duty - cum-duty benefit denied.

OUR TAKE: The hon'ble CESTAT NEW DELHI held that _In their statements, partners of the firm also did not claim that price charged was inclusive of duty. **[Decided against assessee]**

CUSTOMS

CIRCULARS & NOTIFICATION

The Govt. vide Notification No. 28/2016 date 31st March 2016 amends notification no. 69/2011 dated 29th July 2016.

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

The Govt. vide Notification No. 27/2016 date 31st March 2016, amends notification no. 137/1990 dated 20th March 1990.

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

The Govt. vide Notification No. 27/2016 date 31st March 2016, amends notification no. 136/1990 dated 20th March 1990.

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

The Govt. vide Notification No. 25/2016 date 30th March 2016, notify that government exempt customs duty on cut/polished diamonds imported for testing/certification.

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

The Govt. vide Notification No. 24/2016 date 28th March 2016 amends notification No. 12/2012-Customs, dated the 17th March, 2012 so as to

(i) Continue BCD @ 25% on import of wheat beyond 31st March 2016 up to 30th June 2016

(ii) Retain BCD @ 40% on import of Ghee Butter and Butter oil, beyond 31st March 2016 up to 30th June 2016

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

The Govt. vide Notification No. 46/2016 date 1st April 2016 amends fees for rendering services by customs officer's amendment regulations, 2016.

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

The Govt. vide Notification No. 45/2016 date 1st April 2016, amendment in electronic filling of bill of entry regulation 2016.

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

The Govt. vide Notification No. 44/2016 date 1st April 2016, amends notification in respect of Fixation of 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.

COURT DECISIONS

ANANDEYA ZINC OXIDES PVT. LTD. VERSUS THE UNION OF INDIA [BOMBAY HIGH COURT]

BRIEF: Entitlement for Custom duty drawback - Finished goods were removed under bond without payment of duties - Petitioners have availed of the benefits under Rule 19(2) *ibid*, the question of availing any drawbacks in terms of said Notification would not arise at all.

OUR TAKE: The hon'ble **BOMBAY HIGH COURT** held that It is well settled that the taxation and fiscal statutes have to be strictly construed. The Courts cannot read words into such proviso. Once it is not disputed that the Petitioners have availed of the benefits under Rule 19(2) *ibid*, the question of availing any drawbacks in terms of said Notification would not arise at all. Therefore, as the petitioners has availed the said benefits and removed exported excisable goods without payment of duty from the factory, the question of availing of any drawback in terms of the said Scheme is not at all justified. **[Decided against the petitioner]**

M/S. SRI ADINATH TRADERS VERSUS THE UNION OF INDIA, THE CHAIRMAN, CENTRAL BOARD OF EXCISE & CUSTOMS, THE MEMBER, CUSTOMS CENTRAL BOARD OF EXCISE & CUSTOMS, THE NARCOTICS COMMISSIONER, CENTRAL BUREAU OF NARCOTICS, M/S. RADHEY SHYAM RATANLAL, M/S. HUKUM CHAND DURGA PERSHAD M/S. ALL INDIA SPICES IMPORTERS EXPORTERS & DISTRIBUTORS ASSOCIATION, M/S. ASTRA MANAGEMENT SERVICES PVT. LTD. [MADRAS HIGH COURT]

BRIEF: Classification of importers of poppy seeds - cap on import of poppy seeds - It could be seen that even an importer, who continuously imports for a period of two years, would be in a disadvantageous position than the one who did it for the preceding three financial years out of the total five financial years. - Public notice dated 14.09.2015 insofar as the classification A and B are concerned set aside.

OUR TAKE: The hon'ble **MADRAS HIGH COURT** held that it cannot be said that exclusion of importers on artificial classification can be justified in the eye of law. It is further to be seen that the very purpose of classification itself is for the reason that it is impossible to satisfy all the importers. Also the decision aforesaid has not taken into consideration of the concept of "level playing field". **[Decided in favour of petitioner]**

M. RATHAKRISHNAN, D. MURALIDHARAN VERSUS ADDITIONAL DIRECTOR GENERAL DIRECTORATE OF REVENUE INTELLIGENCE, THE COMMISSIONER OF CUSTOMS [MADRAS HIGH COURT]

BRIEF: Validity of show cause notice - Issued with pre-judged mind - When the first respondent had issued the show cause notices with pre-judged mind, there is no purpose in issuing show cause notices at all.

OUR TAKE: The hon'ble **MADRAS HIGH COURT** held that the first respondent should have taken utmost care to manifestly keep an open mind, as they have to act fairly in adjudging the guilt of the petitioners and especially when he has a power to take punitive steps against the petitioners after giving them a show cause notice. Therefore, the show cause notice in question liable to be set aside. **[Decided in favour of appellant]**

M/S CONSOLIDATED METAL FINISHING PVT LTD VERSUS THE COMMISSIONER OF CUSTOMS, THE COMMISSIONER OF CUSTOMS (APPEALS-II) , THE ASSISTANT COMMISSIONER OF CUSTOMS (REFUNDS) [MADRAS HIGH COURT]

BRIEF: Refund of excess amount erroneously collected - while making payment the portal displayed a message "Bank away server application error", whereby, the payment got debited nine times - refund allowed.

OUR TAKE: The hon'ble **MADRAS HIGH COURT** held that since the third respondent is withholding the amount, excessively paid by the petitioners and when the second respondent himself has stated that the provisions of Sec.27 of the Customs Act are not applicable, the contentions, now raised by the learned counsel for the respondents, cannot be accepted. Therefore, the third respondent is liable to refund the amount excessively paid to the petitioner and the impugned order is set aside. **[Decided in favour of petitioner]**

M/S INDICON COPIER SERVICES VERSUS COMMISSIONER OF CUSTOMS (EXPORTS) , CHENNAI [CESTAT CHENNAI]

BRIEF: Test of Unjust enrichment - Refund consisting differential fine and penalty - proviso to sub-section (2) of Section 27 of Customs Act, 1962 deals with applicability of test of unjust enrichment to the duty and interest element but not to differential fine or penalty. - Refund allowed.

OUR TAKE: The hon'ble **CESTAT CHENNAI** held there proviso to sub-section (2) of Section 27 of Customs Act, 1962 deals with applicability of test of unjust enrichment to the duty and interest element but not to differential fine or penalty. Therefore, the action of the authority below to deny the refund to the appellant to the extent indicated above on the ground that unjust enrichment shall apply to differential fine and penalty is not the sanction of the law. **[Decided in favour of appellant]**

M/S PUSHPANJALI LOGISTICS VERSUS COMMISSIONER OF CUSTOMS (GENERAL) , NEW DELHI [CESTAT NEW DELHI]

BRIEF: Validity of Commissioner's order - Revocation of CHA licence - the order is invalid, as there is a clear and fatal violation of the clear procedure mandated for revocation of the appellant's licence authorised under Regulation 20, qua the mandated procedure under Regulation 22.

OUR TAKE: The hon'ble **CESTAT NEW DELHI** held that the order is invalid, as there is a clear and fatal violation of the clear procedure mandated for revocation of the appellant's licence authorised under Regulation 20, qua the mandated procedure under Regulation 22. **[Decided in favour of appellant]**

INCOME TAX

INSTRUCTIONS

The Govt. vides office memorandum F.NO.1/04/2016-NS.II], dated 01st April 2016, discontinued physical mode of National Savings Certificate KVP and NSC shall stand discontinued.

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

COURT DECISIONS

M/S ESPN STAR SPORTS MAURITIUS S.N.C. ET COMPAGNIE (NOW KNOWN AS ESS ADVERTISING (MAURITIUS) S.N.C ET COMPAGNIE) VERSUS THE UNION OF INDIA & ANOTHER AND VICA-VERSA [DELHI HIGH COURT]

BRIEF: An assessment order passed by the AO which is contrary to the mandatory requirement of Section 144C of the Act, is entirely without jurisdiction.

OUR TAKE: The hon'ble DELHI HIGH COURT held that an assessment order passed by the AO which is contrary to the mandatory requirement of Section 144C of the Act, is entirely without jurisdiction. Thus, the draft assessment order dated 28th March 2014 and the final assessment order dated 28th January 2015 passed by the AO are held to be void ab initio and quashed on that basis. The orders consequential thereto also do not survive.

RYATAR SAHAKARI SAKKARE KARKHANE VERSUS ASST. COMMISSIONER OF INCOME TAX C-I, BIJAPUR AND OTHERS [KARNATAKA HIGH COURT]

BRIEF: Failure to discharge TDS liability - evidence of expenditure towards fee paid to the lawyers and engagement of services of Chartered Accountant are sufficient circumstances to hold that non-deduction of tax at source is not due to ignorance of law

OUR TAKE: The hon'ble KARNATAKA HIGH COURT held that the appeals filed by the Revenue are allowed by answering the following substantial question of law in its favour and it is held that in the facts and circumstances of this case, the Tribunal was not correct in interpreting the language of section 40(a) (ia) to mean that the consequence of disallowance is attracted only in respect of amounts which remain payable on the last day of the financial year. **[Decided in favour of revenue]**

M/S VAM-HI-FASHION GARMENTS PVT. LTD. VERSUS ACIT, RANGE-17, NEW DELHI [ITAT DELHI]

BRIEF: Addition u/s 68 - creditor from the foreign country - Even the AO has also not disputed the identity, source and genuineness of share capital. We are also of the view that it is unnecessary burden upon the assessee by pressuring it to bring the creditor from the foreign country which is contrary to the facts of the case as well as evidence produced by the assessee.

OUR TAKE: The hon'ble ITAT DELHI held that the reconciliation statement was filed during the assessment proceeding vide letter dated 05.02.2013 in which the difference was duly explained and as such the observation of Assessing Officer seems to be factually incorrect and addition made by the AO and confirmed by the Ld. CIT(A) needs to be deleted. **[Decided in favour of assessee]**

M/S REGEN INFRASTRUCTURE & SERVICES PVT. LTD. (FORMERLY) M/S. RENEWABLE ENERGY GENERATION PVT. LTD. VERSUS THE CENTRAL BOARD OF DIRECT TAXES, THE COMMISSIONER OF INCOME TAX, CHENNAI- VERSUS , THE INCOME TAX OFFICER [MADRAS HIGH COURT]

BRIEF: Entitlement to claim carry forward loss - delay in filing the return - when the petitioner as a litigant is entitled to claim carry forward loss, mere delay should not defeat the claim of the petitioner - CBDT should have condoned the delay of one day in filing the return by the petitioner.

OUR TAKE: The hon'ble MADRAS HIGH COURT held that when the petitioner as a litigant is entitled to claim carry forward loss, mere delay should not defeat the claim of the petitioner. The judgments relied on by the learned counsel for the petitioner squarely applies to the facts and circumstances of the present case. In these circumstances, it is of the view that the first respondent should have condoned the delay of one day in filing the return by the petitioner.

SREE EDUCATIONAL SOCIETY VERSUS ASST. COMMISSIONER OF INCOME-TAX [ITAT HYDERABAD]

BRIEF: Additional/capitation fees receipt - the income cannot be charged to tax in the hands of society as well as in the hands of trustee cum secretary of the society.

OUR TAKE: The hon'ble ITAT HYDERABAD held that section 40 is applicable only when deductions u/s 30-38 are being made in computing income chargeable under the head 'profits and gains of business or profession' u/s 28. Similarly, provisions of section 40(a) are not applicable in case of charitable trust or institution where income and expenditure is computed in terms of section 11. **[Decided in favour of assessee]**

STATE TAXES

ALL INDIA VAT

GOA

The Govt. vides Notification No. NO. 4/5/2005-FIN(R&C) (134) dated 30th March 2016, amendment in goa VAT schedule "B", "C" & "D".

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

GUJRAT

No.(GHN-19) GER-2016-S.20(4)/TH dated 01st April 2016, amend Gujarat Tax on Entry of Specified Goods into Local Areas (Second Amendment) Rules, 2016.

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

HIMACHAL PRADESH

The Govt. vides Notification No. NO. EXN-F (10)-7/2011-VOL.I dated 28th March 2016, notify the classes of dealers for making compulsory e-declaration in Form VAT-XXVI before the dispatch of taxable goods in the course of intra-state transactions of goods.

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

The Govt. vides Notification No. NO. EXN-F (10)-7/2011-VOL.I dated 28th March 2016, makes amendment in rule 61 B.

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

JAMMU & KASHMIR

The Govt. vides Notification No.1- F.T dated 31st March 2016, Electronic filing of CST Return by the registered dealer having gross annual turnover of Rs.20 lacs and above.

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

The Govt. vides Notification No.2- F.T dated 31st March 2016, Electronic filing of GST Return by the registered dealer having gross annual turnover of Rs.20 lacs and above.

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

The Govt. vides Notification No.3- F.T dated 31st March 2016, Electronic filing of VST Return by the registered dealer having gross annual turnover of Rs.20 lacs and above.

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

The Govt. vides Notification SRO 106 dated 31st March 2016, amends schedules A.

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

The Govt. vides Notification SRO 107 dated 31st March 2016, notify the Extension of exemption to Inter-state trade and commerce made by the manufacturer operating a Small, Medium and Large scale unit.

KARNATAKA

The Govt. vides Notification No. FD 34 CSL 2016 dated 31st March 2016, Karnataka budget notification.

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

MADHYA PRADESH

The Govt. vides Notification No. F-A-3-60-05-1-V-(17) dated 31st March 2016, makes amendment in following notification.

S. No.	Notification No.	Amendment
1.	F-A-3-88-06-1-V (06) dated 21-3-2007	For the figures "31-3-2016", the figures "31-03-2017" shall be substituted
2.	F-A-3-60-05-1-V (09) dated 1-4-2007	For the figures "31-3-2016", the figures "31-03-2017" shall be substituted.
3.	F-A-5-4-2007-1-V (25) dated 27-6-2007	For the figures "31-3-2016", the figures "31-03-2017" shall be substituted.
4.	F-A-3-42-07-1-V (29) dated 22-9-2007	For the figures "31-3-2016", the figures "31-03-2017" shall be substituted.
5.	F-A-3-2-2010-1-V (47) dated 1-4-2010	For the figures "31-3-2016", the figures "31-03-2017" shall be substituted.
6.	F-A-3-23-2010-1-V (92) dated 19-11-2010	For the figures "31-3-2016", the figures "31-03-2017" shall be substituted
7.	F-A-3-11-2011-1-V (16) dated 31-03-2011	For the figures "31-3-2016", the figures "31-03-2017" shall be substituted.
8.	F-A-3-44-2014-1-V (35) dated 13-08-2014	For the figures "31-3-2016", the figures "31-03-2017" shall be substituted.

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

The Govt. vides Notification No. F-A-3-15-2016-1-V-(18) dated 31st March 2016, amends Exercise books, graph books, drawing books and laboratory books for the purpose of said proviso.

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

The Govt. vides Notification No. F-A-3-15-2016-1-V-(19) dated 31st March 2016, make exemption to inter-state trade or commerce of De- Oiled cake.

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

The Govt. vides Notification No. F-A-3-60-2005-1-V-(20) dated 31st March 2016, amends notification no. F-A-3-60-2005-1-V-(09).

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

MAHARASHTRA

The Govt. vides Notification No 1516/C.R.39(A)/TAXATION-1 dated 29th March 2016, Notifies Municipal Corporation of Nagpur under clause (a) of Entry 5 of Schedule D (High Speed Diesel Oil) for period 01st March 2016 to 29th Feb 2016.

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

The Govt. vides Notification No LBT. 2016/CR-14/2016/UD-32 dated 29th March 2016, amends the date for completing the assessment of returns filed under the Maharashtra Municipal Corporation Local Body Tax Amnesty Scheme, 2015 (hereinafter referred to as the "Amnesty Scheme"), from 15th August 2015 to the 31st March 2016 to 31st march 2017.

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

The Govt. vides Notification No. 1516/CR 51/TAXATION-1 dated 30th March 2016, makes amendment in composition scheme for Restaurants, Clubs and Hotels, Caterers, Bakers, Retailers & Dealers in second hand Motor vehicles i.e.

1. 5 % of the turnover in the case of a registered dealer, whose turnover of such sales, does not exceed rupees three crore in the previous year.
2. 8 % of the turnover of sales in the case of a registered dealer, whose turnover of such sales exceeds rupees three crore in the previous year
3. 10 % of the turnover of sales in the case of an unregistered dealer

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

The Govt. vides Notification No. VAT. 1516/C.R. 31/TAXATION-1 dated 30th March 2016, amends in schedule 'A' & 'C' from 5% to 5.5%

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

PUNJAB

The Govt. vides Notification No S.O. 36/P.A.8/2005/S.6/2016 dated 31st March 2016, amendment in Advance Tax on 'All types of yarn' and 'polyester yarn' etc.

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

The Govt. vides Notification No S.O. G.S.R.28/P.A.8/2005/S.70/AMD. (58)/2016 dated 31st March 2016, amendment in rule 3.

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

The Govt. vides Notification No S.O. 37/P.A.8/2005/S.8/2016 dated 31st March 2016, amended in schedule A, B & E.

RAJASTHAN

The Govt. vides Notification No F.12 (11) FD/TAX/2016-251 dated 30th March 2016, amended in schedule 1 appended to RVAT Act, 2003.

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

The Govt. vides Notification No F.12 (11) FD/TAX/2016-252 dated 30th March 2016, amended in schedule 2 appended to RVAT Act, 2003.

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

The Govt. vides Notification No F.12(11) FD/TAX/2016-253 dated 30th March 2016, notify exemption from payment of tax payable by dealers having license for retail sale of country liquor.

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

The Govt. vides Notification No F.12(11) FD/TAX/2016-254,255 & 256 dated 30th March 2016, amended in schedule 4,5 & 6 appended to RVAT Act, 2003.

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

The Govt. vides Notification No F.12 (11) FD/TAX/2016-257 30th March 2016, amended notification no. F.12 (63) FD/Tax/2005-37 dated 06th may 2006 (Composition scheme for Gems and Stones, 2006)

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

The Govt. vides Notification No F.12 (11) FD/TAX/2016-258 30th March 2016, amended notification no. F.12(63) FD/Tax/2005-39 dated 06th may 2006 (Composition scheme for Sraffa dealers, 2006)

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

The Govt. vides Notification No F.12(11) FD/TAX/2016-259 30th March 2016, amended notification no F.12(16) FD/Tax/2009-116 dated 21st Jan 2016

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

The Govt. vides Notification No F.12(11) FD/TAX/2016-260 30th March 2016, amended notification no F.12(23) FD/Tax/2015-211 dated 9th March 2015

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

The Govt. vides Notification No F.12(11) FD/TAX/2016-261 30th March 2016, amended notification no F.12(23) FD/Tax/2015-212 dated 9th March 2015

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

The Govt. vides Notification No F.12(11) FD/TAX/2016-262 30th March 2016, notify exemption from tax on yarn

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

COURT DECISIONS

THE STATE OF MAHARASHTRA VERSUS M/S KING FURNITURE WORKS (BOMBAY HIGH COURT)

BRIEF: Condonation of delay, it does not demonstrate that the Government or the Department concerned was vigilant, serious and attentive and did its best to protect the public revenue. Therefore, delay cannot be condoned.

OUR TAKE: The hon'ble BOMBAY HIGH COURT held that the explanation for the delay in Para 10, with the assistance of Annexure 'G' does not inspire confidence. It does not demonstrate that the Government or the Department concerned was vigilant, serious and attentive and did its best to protect the public revenue. Therefore, delay cannot be condoned. **[Decide against the Government]**

M/S. CASIO INDIA CO. PVT. LTD. VERSUS STATE OF HARYANA [SUPREME COURT]

BRIEF: Benefit of exemption Notification - Scope of the proviso to then main condition - Giving over due and extended implied interpretation to the proviso in the notification will nullify and unreasonably restrict the general and plain words of the main notification. Such construction is not warranted.

OUR TAKE: The hon'ble SUPREME COURT held that Giving over due and extended implied interpretation to the proviso in the notification will nullify and unreasonably restrict the general and plain words of the main notification. Such construction is not warranted. Therefore, the assessee shall reap the benefit of the notification in question. **[Decided in favour of appellant]**

OTHER UPDATES

FEMA

CIRCULAR & NOTIFICATIONS

The RBI vide Notification No. G.S.R.384. dated 31st March 2016, makes regulations to prohibit, restrict and regulate establishment in India of a branch office or a liaison office or a project office or any other place of business by a person resident outside India.

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

The RBI vide Notification No. 366/2016-RB. dated 30th March 2016, hereby makes amendments in the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 (Notification No. FEMA. 20/2000-RB dated 3rd May 2000),

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

COMPANY LAW

CIRCULAR & NOTIFICATIONS

The RBI vide Notification No. G.S.R. 365 (E) dated 30th March 2016, in consultation with the National Advisory Committee on Accounting Standards, hereby makes rules to amend the Companies (Indian Accounting Standards) Rules, 2015.

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

The RBI vide Order No. F. No. 17/45/2015-CL-V dated 29th March 2016, after consultation with the, committee constituted under proviso to sub-section (11) of section 143 of the Companies Act, 2013 hereby makes the Order.

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

The RBI vide Notification No. G.S.R.358 (E) dated 29th March 2016, makes the rules further to amend the Companies (Share Capital and Debentures) Rules, 2014.

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

COMPANY LAW

COURT DECISIONS

IN RE : UMA ENTERPRISES PRIVATE LIMITED [RAJASTHAN HIGH COURT]

BRIEF: The scheme of demerger of which sanction is sought appears to be only a device for avoidance of obligation towards capital gains tax and stamp duty and also falls foul of Explanation to Section 2(19AA) of the Income Tax Act of 1961. The scheme of de-merger cannot therefore be sanctioned.

OUR TAKE: The hon'ble RAJASTHAN HIGH COURT held that the scheme of demerger of which sanction is sought appears to be only a device for avoidance of obligation towards capital gains tax and stamp duty and falls foul of Explanation to Section 2(19AA) of the Income Tax Act of 1961. The scheme of de-merger cannot therefore be sanctioned. **[Decided against Petitioner Company]**

UNION OF INDIA VERSUS M/S. AMBICA CONSTRUCTION [SUPREME COURT]

BRIEF: if contract expressly bars award of interest pendente lite, the Arbitrator cannot award the same. - the bar to award interest on delayed payment by itself will not be readily inferred as express bar to award interest pendent lite by the Arbitral Tribunal, as ouster of power of Arbitrator has to be considered on various relevant aspects

OUR TAKE: The hon'ble SUPREME COURT held that Our answer to the reference is that if contract expressly bars award of interest pendent lite, the same cannot be awarded by the Arbitrator. We also make it clear that the bar to award interest on delayed payment by itself will not be readily inferred as express bar to award interest pendent lite by the Arbitral Tribunal, as ouster of power of Arbitrator has to be considered on various relevant aspects referred to in the decisions of this Court, it would be for the Division Bench to consider the case on merits.

ALLIED LAW

COURT DECISIONS

BRIJENDRA ENTERPRISE C/O SHAIL ENTERPRISE AND 1 Versus STATE OF GUJARAT AND 1 [GUJARAT HIGH COURT]

BRIEF: Negotiable Instruments - Cheque - To restrain negotiability, addition of words 'Not Negotiable' or "Account Payee Only' is necessary. A crossed bearer cheque can be negotiated by delivery and crossed order cheque by endorsement and delivery. Crossing affords security and protection to the holder of the cheque.

OUR TAKE: The hon'ble GUJARAT HIGH COURT held that the object of crossing is to secure payment to a banker so that it could be traced to the person receiving the amount of the cheque. Crossing is a direction to the paying banker that the cheque should be paid only to a banker or a specified banker. To restrain negotiability, addition of words 'Not Negotiable' or "Account Payee Only' is necessary. A crossed bearer cheque can be negotiated by delivery and crossed order cheque by endorsement and delivery. Crossing affords security and protection to the holder of the cheque. Thus, in view, the learned Metropolitan at Ahmadabad has the jurisdiction to try the case instituted by the complainant for the dishonour of the cheque.

KARoor VYSYA BANK LTD. VERSUS SHRIDI SAI STEEL & ORS. [SUPREME COURT]

BRIEF: The Appellate Bench should have applied more restraint and proceeded in accordance with law instead of making a roving enquiry. Such a step is impermissible and by no stretch of imagination sub-serves any public interest.

OUR TAKE: The hon'ble SUPREME COURT held that The same principle cannot be taken recourse to in respect of a contractual controversy. It is also surprising that the High Court has been entertaining series of writ petitions at the instance of the respondent, which is nothing but abuse of the process of extraordinary jurisdiction of the High Court. The Appellate Bench should have applied more restraint and proceeded in accordance with law instead of making a roving enquiry. Such a step is impermissible and by no stretch of imagination sub-serves any public interest. Thus the appeal is allowed and the judgment and order passed by the Appellate Bench is set aside.

LATEST NEWS ON PROPOSED GST

28th March 2016, the stated object of the proposed GST law is to eliminate the cascading effect of taxes and provide for a common national market for goods and services. The champions of this major tax reform would consider it as an attribute of "co-operative federalism". Of late, the Union Finance Minister has gone a step further to call it "competitive federalism". He hopes, GST can be rolled out on April 1 next year.

30th March, 2016, the Congress, which authored the original GST draft, has been demanding that a cap be set on GST at 18 per cent or 20 per cent as otherwise the tax would be too high and unbearable for ordinary citizens

30th March 2016, Finance minister Arun Jaitley said he agrees to the Congress demand that the proposed Goods and Services Tax (GST) rate should not go beyond 18 %, brightening prospects of the passage of the legislation in the second half of the budget session.

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