



ASC Times

All India Taxes Weekly Referencer

Vol:Mar 07 - Mar 13, 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,

I know the Budget euphoria is not over yet and total benefits and shortcomings of the budget are matter of arguments. People or rather experts have different take on the schemes and policies. One side of it is that finally the budget 2016 took care of the largest part of the Indian population, which is rural India. On the other side views are riff about how a capitalist government is also trying to create vote bank for themselves by doing such things and behaving like a socialist. According to them gap between poor and rich has widened and no matter what is been done poor are not empowered to come out of there shell and break free.

In this regard I can suggest some of the tricks (you may call it a reform), which are required and should be addressed earnestly. First of all, India is the biggest youth population and even though the literacy rate has improved, still percentage of those going for higher studies in comparison to other developed countries is much less. The reasons for this problem can be many. For example we still do not have enough good colleges to provide quality education and at right price. Secondly, even if a graduate has capability to get admission in the college for socio-economic reasons he/she has to leave the studies incomplete and go on without it. The solution lies in transforming the education system and medium via which one can get not only good education but also relevant education for changing times. This can happen if we have more online options and platforms where it is integrated in such a manner that without leaving once responsibilities one can learn and grow.

We need to shed our prejudices for the fairer sex and should bring them in the process of development and growth. How a country can strive if 50% of its population is ignored and not brought together in the process and taken care of. So I leave you here with some food for thought. In case you want to connect back, please do so at socialmedia@ascgroup.in.

TAX CALENDER

| Due Date | Description | Law |
|----------|--------------------------|-----------------------------------------------------------------|
| 07 March | Deposit of TDS | Orissa VAT, Tripura VAT, Mizoram VAT |
| | Deposit of TDS/TCS | Income Tax Law |
| | Issue of TDS Certificate | Orissa VAT |
| 09 March | Return Filing | Gujarat VAT |
| 10 March | Deposit of Tax | Chhattisgarh VAT, Kerala VAT, Madhya Pradesh VAT |
| | Deposit of TDS | Chhattisgarh VAT, Madhya Pradesh VAT, Mizoram VAT, Nagaland VAT |
| | Return Filing | Karnataka VAT, Kerala VAT Central Excise Law |
| 12 March | Deposit of Tax | Gujarat VAT |
| 13 March | Return Filing | Nagaland VAT |

COUNTRY WIDE HOLIDAYS FOR THE WEEK

| Date | Occasion/Festival | Region |
|-------------|-------------------|-------------------------------------------------------------------------------------------------------------|
| 07 Mar 2016 | Mahashivratri | AP, Chandigarh, CG, Gujarat, Haryana, HP, Jharkhand, Karnataka, Kerala, MP, Maharashtra, Orissa, Telangana. |

INDEX GUIDE

| TOPIC | PAGE NO. |
|----------------|----------|
| Service Tax | 4-6 |
| Central Excise | 6-8 |
| Customs | 8-10 |
| Income Tax | 11-12 |
| State Taxes | 13-14 |
| Other Updates | 15-15 |
| Our Contacts | 16 |

CENTRAL TAXES

SERVICE TAX

CIRCULARS & NOTIFICATION

The Govt. vide Notification No. 08/2016 dated 01st March 2016, amend notification no. 26/2012 dated 20th June, 2012.

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

The Govt. vide Notification No. 09/2016 dated 01st March 2016, amend notification no. 25/2012 dated 20th June, 2012.

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

The Govt. vide Notification No. 10/2016 dated 01st March 2016, makes amendment in the point of taxation rules 2011 in section 94 of sub section 2 in clause (a) & (hh) of Finance Act, 1994.

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

The Govt. vide Notification No. 11/2016 dated 01st March 2016, exempt services in relation to Information Technology Software recorded on a media bearing RSP, provided Central Excise Duty has been paid.

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

The Govt. vide Notification No. 12/2016 dated 01st March 2016, amend notification No. 32/2012-Service Tax dated 20th June, 2012, so as to exempt services provided by the bio-incubators approved by the Biotechnology Industry Research Assistance Council, under Department of Biotechnology, Government of India.

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

The Govt. vide Notification No. 13/2016 dated 01st March 2016, prescribes interest rate for delayed payment of any amount in service tax under section 75 of the Finance Act, 1994.

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

The Govt. vide Notification No. 14/2016 dated 01st March 2016, reduces interest rate from 18% to 15%

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

The Govt. vide Notification No. 15/2016 dated 01st March 2016, brings into effect provisions of clause (h) of section 107.

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

The Govt. vide Notification No. 16/2016 dated 01st March 2016, makes amendment in section 68 of sub section 2 of the Finance Act, 1994 (32 of 1994), effective from 1st day of April, 2016

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

The Govt. vide Notification No. 17/2016 dated 01st March 2016, makes amendment in section 94 of sub section 2 of the Finance Act, 1994 (32 of 1994), effective from 1st day of April, 2016.

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

The Govt. vide Notification No. 18/2016 dated 01st March 2016, prescribe the extent of service tax payable by the service provider and any other person liable for paying service tax other than the service provider.

COURT DECISIONS
M/S NEWS AND ENTERTAINMENT TELEVISION VERSUS COMMISSIONER OF CENTRAL EXCISE, DELHI-I [CESTAT NEW DELHI]

BRIEF: Disallowance of Cenvat credit in excess of 20% - The appellants have reversed input of service credit taken on all common services and There is no other evidence to show certain other services were also common for which the appellants have not reversed the credit - Demand set aside.

OUR TAKE: The hon'ble CESTAT NEW DELHI held that it will be sufficient if from the records of the appellant/assessee it can be clearly established that the accounts maintained will indicate the utilization of input services credit on which is availed are attributable directly to taxable services only; then such accounts will satisfy the requirement of separate account. The appellants have reversed input of service credit taken on all common services and There is no other evidence to show certain other services were also common for which the appellants have not reversed the credit. [Decided in favour of appellant with consequential relief]

C.C.E., ALLAHABAD VERSUS SHRI ALOK PRAKASH S/O SHRI RAM ADHAR [CESTAT NEW DELHI]

BRIEF: Tour operator services - service was rendered using luxury bus, which was having permit under the Motor Vehicle Act, 1988, and the said bus was not a stage carriage but a contract carriage. Thus, the respondent provided tour operator service.

OUR TAKE: The Hon'ble CESTAT NEW DELHI held that the definition of tour operators during the relevant period covered persons engaged in business of operating tours in a tourist vehicle having a permit under the Motor Vehicle Act, 1988. In the present case there is no doubt that the service was rendered using luxury bus which was having permit under the Motor Vehicle Act, 1988 and the said bus was not a stage carriage but a contract carriage. Thus, the respondent provided tour operator service and was liable to pay service tax under Section 65 (105) (n) read with Section 65 (115) ibid. [Decided in favour of revenue]

LION SECURITIES SERVICES VERSUS COMMISSIONER OF SERVICE TAX BANGALORE-SERVICE TAX [CESTAT BANGALORE]

BRIEF: Confirmation of demand for unspecified service tax amount with interest thereon - What is clear from the show-cause notice is that the show-cause notice speaks of non-filing of return from October 2003 and does not specify any amount to be paid by the assessee. Demand of service tax and interest set aside.

OUR TAKE: The hon'ble CESTAT BANGALORE held that It is a statutory requirement that amount to be paid has to be indicated in the show-cause notice and in the adjudication proceedings, the adjudicating authority is required to determine the amount payable as per the provisions of Section 73(2) of Finance Act, 1994. Therefore, I find that the submission of learned counsel that confirmation of the demand or confirmation of the amount paid and appropriation thereto is very incorrect and not valid is correct. [Decided in favour of assessee]

COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX, COCHIN VERSUS M/S SAJU ENGINEERING COMPANY [CESTAT BANGALORE]

BRIEF: Levy of penalty - proprietary concern - respondents had been under the impression that they being "proprietary concern" were not covered by wordings "commercial concern" and were consequently not liable to payment of service tax. Levy of penalty set aside.

OUR TAKE: The hon'ble CESTAT BANGALORE held that it is clear that there were sufficient reasons for the respondents in bona fide believing that they were not liable to service tax during the relevant period especially when we view the amendments in the definition of "Industrial Construction" service made on 28.4.2006 by the Finance Act, 1994 made effective with effect from 1.5.2006 and the C.B.E.C's letter No. 334/4/2006-TRU dated 28.2.2006; thus invoking the provisions of Section 80 of the Finance Act and the provisions of Section 73(3) of the Finance Act, 1994, the respondents' case on non-imposition of penalty is sustainable and the appeal filed by the Revenue deserves to be rejected. [Decided against the revenue]

COMMISSIONER OF CENTRAL EXCISE, RAIPUR VERSUS M/S CHHATTISGARH STATE CIVIL SUPPLIES CORP. LTD. [CESTAT NEW DELHI]

BRIEF: Validity of rectification of its order by the Commissioner - principle of natural justice - an order passed without affording personal hearing is an erroneous order, rectification order passed by the commissioner is valid.

OUR TAKE: The hon'ble CESTAT NEW DELHI held it is evident that the order dated 30.04.2008 was passed without granting personal hearing when there was a request made for the same and without rejecting that request. It is certainly an error, which is apparent from the records of appeal, and such an error renders the orders to be a nullity. [Decided against the revenue]

M/S WIN MEDICARE PVT LTD VERSUS COMMISSIONER OF SERVICE TAX, DELHI [CESTAT NEW DELHI]

BRIEF: Claim of refund of service tax paid under reverse charge mechanism - export of services - non submission of BRC - since the payment of service tax was correct, revenue cannot retain the same - refund allowed.

OUR TAKE: The hon'ble **CESTAT BANGALORE** held that since the authorities below have specifically recorded the findings that the refund claim of service tax including interest paid by the appellant under Section 66A vide Challan No. 00037 dated 26.06.2011 against the services received during 01.01.2005 to 17.04.2006 from overseas agent is legally tenable, then rejection of refund claim on the ground of non-submission of BRC's is not supported by any provisions of law. Refund allowed. [**Decided in favour of assessee**]

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 it 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

CIRCULARS & NOTIFICATION

The Govt. vide Notification No. 05/2016 dated 01st March 2016, amends the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944).

The Govt. vide Notification No. 06/2016 dated 01st March 2016, amends the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944).

The Govt. vide Notification No. 07/2016 dated 01st March 2016, amends Notification No. 7/2012 -Central Excise dated 17th march 2012, so as to carry out Budgetary changes.

The Govt. vide Notification No. 08/2016 dated 01st March 2016, amends the notification no. dated 8/2003-Central Excise dated the 01st March 2003.

The Govt. vide Notification No. 09/2016 dated 01st March 2016, amends the notification no. No 1/2011-Central Excise, dated the 01st March 2011.

The Govt. vide Notification No. 10/2016 dated 01st March 2016, amends the notification no. No 2/2011-Central Excise, dated the 01st March 2011.

The Govt. vide Notification No. 11/2016 dated 01st March 2016, notify that government exempt central excise duty on media with recorded Information Technology Software on so much value as is equivalent to the value of the Information Technology Software recorded on the said media which is leviable to Service tax under Finance Act, 1994.

The Govt. vide Notification No. 12/2016 dated 01st March 2016, amends the notification no. No 12/2011-Central Excise, dated the 17th March 2011.

The Govt. vide Notification No. 13/2016 dated 01st March 2016, rescinds the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 62/91-CENTRAL EXCISES, dated the 25th July, 1991.

The Govt. vide Notification No. 14/2016 dated 01st March 2016, amends the notification No 33/2005-Central Excise, dated the 08th September 2005.

The Govt. vide Notification No. 15/2016 dated 01st March 2016, amends the notification No 30/2004-Central Excise, dated the 09th July 2004.

The Govt. vide Notification No. 16/2016 dated 01st March 2016, amends the notification No 16/2010-Central Excise, dated the 27th Feb 2010.

The Govt. vide Notification No. 17/2016 dated 01st March 2016, amends the notification. No 42/2008-Central Excise, dated the 01st July 2008.

The Govt. vide Notification No. 18/2016 dated 01st March 2016, amends the notification. No 06/2005-Central Excise, dated the 01st July 2008.

The Govt. vide Notification No. 01/2016 dated 01st March 2016, rescinds the notification No.1/2015-Clean Energy Cess, dated 1st March 2015

The Govt. vide Notification No. 02/2016 dated 01st March 2016, amends the notification. No.05/2010-Clean Energy Cess, dated the 22nd June 2010.

The Govt. vide Notification No. 05/2016 dated 01st March 2016, notifies that government to provide a procedure for obtaining Centralized Registration for manufacturers of articles of jewellery.

The Govt. vide Notification No. 05/2016 dated 01st March 2016, amends notification no. No. 35/2001-Central Excise (N.T) dated 26th June 2001.

The Govt. vide Notification No. 06/2016 dated 01st March 2016, amends powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944).

The Govt. vide Notification No. 07/2016 dated 01st March 2016, amends notification no. No. 07/2012-Central Excise (N.T) dated 17th March 2012.

The Govt. vide Notification No. 08/2016 dated 01st March 2016, amends notification no. No. 08/2012-Central Excise (N.T) dated 17th March 2012.

The Govt. vide Circular No. 1016/4/2016-CX dated 29th Feb 2016, notify to take registration of two or more premises as one registration in Central Excise.

The Govt. vide Circular No. 1017/5/2016-CX dated 29th Feb 2016, facility of issuing of Certificate as proof of payment of Central Excise duty was extended to Small Scale Industry.

The Govt. vide Circular No. 1018/6/2016-CX dated 29th Feb 2016, withdrawal from prosecution in Central Excise cases older than 15 years involving duty less than rupees five lakhs.

The Govt. vide Circular No. 1019/7/2016-CX dated 29th Feb 2016, Change in rate of interest on goods warehoused for export, when cleared to DTA

COURT DECISIONS
UNION OF INDIA & OTHERS VERSUS M/S HAMDARD (WAQF) LABORATORIES (SUPREME COURT)

BRIEF: Claim of interest on delayed Refund - delay in grant of refund - relevant date to be computed from the date of application of refund or from the date of rectification of defect in the refund application - The adjudicatory process by no stretch of imagination can be carried on beyond three months. It is required to be concluded within three months - Interest allowed from the date of application.

OUR TAKE: The hon'ble **SUPREME COURT** held that it is obligatory on the part of the Revenue to intimate the assessee to remove the deficiencies in the application within two days and, in any event, if there are still deficiencies, it can proceed with adjudication and reject the application for refund. The adjudicatory process by no stretch of imagination can be carried on beyond three months. It is required to be concluded within three months. The decision in Ranbaxy Laboratories Limited (supra) commends us and we respectfully concur with the same. **[Decided against the revenue]**

LARSEN & TOUBRO LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, MUMBAI-II [CESTAT MUMBAI]

BRIEF: Refund claim - the learned Commissioner (Appeals) is in error in rejecting the refund, holding that once duty is shown in invoice, it is deemed to be passed on, as the presumption is rebuttable. Thus, the appeal is allowed. The assessee is held, entitled to refund.

OUR TAKE: The hon'ble **CESTAT MUMBAI** held that There is no dispute about the fact that the appellant have not collected the amount of duty from their buyer, which they are seeking as refund in the facts and circumstances. Accordingly, I hold that the appellant have discharged the presumption of unjust enrichment as required for getting refund. Thus, the appeal is allowed. The assessee is held entitled to refund. **[Decided in favour of assessee]**

COMMISSIONER OF CENTRAL EXCISE, CUSTOMS AND SERVICE TAX BANGALORE-I VERSUS INDIAN TELEPHONE INDUSTRIES LTD (CESTAT BANGALORE)

BRIEF: Adjustment of duty excess paid against the duty short-paid - assessee is entitled for adjustment of excess paid duty with the short-paid duty during the period of provisional assessments, upon finalization of the assessments.

OUR TAKE: The hon'ble **CESTAT BANGALORE** held that there was originally difference of opinion between the two Members of the Bench and the third Member decided the

issue. It was held that the assessee is entitled for adjustment of excess paid duty with the short-paid duty during the period of provisional assessments, upon finalization of the assessments. Inasmuch as the issue is decided by the majority decision of the Tribunal. **[Decided in favour of the assessee]**

M/S. MAN STRUCTURAL PVT. LTD. VERSUS CCE-JAIPUR-I [CESTAT NEW DELHI]

BRIEF: Demanding duty on scrap and waste generated - the metal which becomes non-useable as such waste and scrap admittedly in this matter, the waste and scrap has been used for fabrication of trolley line cannot be the said unusable waste and scrap as such. Therefore, the appellant is not liable to pay duty thereon.

OUR TAKE: The hon'ble **CESTAT NEW DELHI** held that it is clear that the metal which becomes non-useable as such waste and scrap admittedly in this matter, the waste and scrap has been used for fabrication of trolley line cannot be the said unusable waste and scrap as such. Therefore, the appellant is not liable to pay duty thereon. Further, the trolley line cannot be classified under Chapter 72 of Central Excise Tariff Act, 1985. Therefore, the waste and scrap in question is not liable for payment of duty. **[Decided in favour of assessee]**

G.M.R INDUSTRIES LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, CUSTOMS AND SERVICE TAX VISAKHAPATNAM-I [CESTAT BANGALORE]

BRIEF: Benefit of Cenvat Credit of service tax denied - The credit was availed by the appellant, by reflecting the same in the statutory records as also in the monthly returns. As such, no malafide can be attributed to the appellant to invoke the longer period.

OUR TAKE: The hon'ble **CESTAT BANGALORE** held that the demand stands raised by invoking the longer period of limitation. The credit was availed by the appellant, by reflecting the same in the statutory records as also in the monthly returns. As such no malafide can be attributed to the appellant so as to invoke the longer period. Accordingly hold the demand is barred by limitation also. – **[Decided in favour of assessee]**

CUSTOMS

CIRCULARS & NOTIFICATION

The Govt. vide Notification No. 11/2016 dated 01st March 2016, exempt CVD on imported media with recorded Information Technology Software on so much value as is equivalent to the value of the Information Technology Software recorded on the said media which is leviable to Service tax under Finance Act, 1994

The Govt. vide Notification No. 12/2016 dated 01st March 2016; amend notification no. 12/2012-Customs, dated the 17th March 2012.

The Govt. vide Notification No. 13/2016 dated 01st March 2016, amend Notification No. 171/93-Customs, dated the 16th March 1993 so as to increase the value limit for bonafide gifts imported by post or as air freight from Rs. 10,000 to Rs. 20,000.

The Govt. vide Notification No. 14/2016 dated 01st March 2016, amend Notification No. 39/96-Customs, dated the 23rd July 1996 o as to withdraw exemption of specified duties of customs on goods specified therein.

The Govt. vide Notification No. 15/2016 dated 01st March 2016, amend Notification No. 27/2011-Customs, dated the 01st March 2011 so as to exempt duty of customs leviable under the Second Schedule, to the Customs Tariff Act, 1975 (51 of 1975) [Export Duty] on items specified therein

The Govt. vide Notification No. 16/2016 dated 01st March 2016, amend Notification No. 21/2012-Customs, dated the 17th March 2012 o as to specify the rate of additional duty of customs leviable under sub-section 3 (5) of Customs Tariff Act, 1975 for items specified therein.

The Govt. vide Notification No. 17/2016 dated 01st March 2016, amend Notification No. 25/2002-Customs, dated 28th Feb 1999.

The Govt. vide Notification No. 18/2016 dated 01st March 2016, amend Notification No. 25/2002-Customs, dated 01st March 2002.

The Govt. vide Notification No. 19/2016 dated 01st March 2016, amend Notification No. 24/2005-Customs, dated 01st March 2005.

The Govt. vide Notification No. 20/2016 dated 01st March 2016, amend Notification No. 230/286-Customs, dated 03rd April 1986.

The Govt. vide Notification No. 21/2016 dated 01st March 2016, amend Notification No. 42/96-Customs, dated 23rd July 1996.

The Govt. vide Notification No. 22/2016 dated 01st March 2016, amend Notification No. 81/2005-Customs, dated 08th Sep 2005.

COURT DECISIONS

M/S HERO EXPORTS, LUDHIANA VERSUS UNION OF INDIA AND OTHERS [PUNJAB & HARYANA HIGH COURT]

BRIEF: Validity of Show cause notice issued to 3rd respondent - Period of limitation - Since only a show cause notice has been issued and final order in response thereto is yet to be passed, all the contentions raised herein can be effectively gone into by the 3rd respondent on consideration of the reply to the show-cause notice.

OUR TAKE: The hon'ble GUJARAT HIGH COURT held that the issue of limitation raised by the petitioner would surely require consideration at the hands of 3rd respondent who shall be obligated to deal with the same by passing a reasoned order. Therefore, writ petition is disposed of at this stage with liberty to the petitioner to submit a supplementary reply to the show-cause notice, whereupon the 3rd respondent shall pass a reasoned order after hearing the petitioner's representative and respondent No.3 shall be obligated to deal with the question of limitation in addition to the merits of the matter. **[Decided in favour of petitioner]**

M/S RAJESH EXPORTS LTD. VERSUS CHAIRMAN, CENTRAL BOARD OF EXCISE AND CUSTOMS, COMMISSIONER OF CUSTOMS [KARNATAKA HIGH COURT]

BRIEF: Import of old dore bars with impurity - claim of benefit of concessional rate of customs duty - The words "in accordance" requires a literal interpretation and should not be confused with the use of words "along with goods". Both of them would give different meanings.

OUR TAKE: The hon'ble KARNATAKA HIGH COURT held that the requirement was to furnish the 'packing list' and if so done. If the words "along with" is placed by removing the words "in accordance", then a different meaning could be attached to compliance of Section 34(b); that is the goods will have to be necessarily accompanied by 'packing list'. Benefit of exemption / concessional rate of duty allowed. **[Decided partly in favour of assessee]**

PTA USERS ASSOCIATION & OTHERS VERSUS UNION OF INDIA & OTHERS [DELHI HIGH COURT]

BRIEF: Retrospective levy of anti-dumping duty - provisional duty was imposed on 25.07.2014 and the same could not extend beyond six months, - no duty can be collected during the 'Gap Period'.

OUR TAKE: The hon'ble DELHI HIGH COURT held that in order to avoid the provisions of Rule 20(2)(a) being rendered ultra vires Section 9A of the said Act, the Supreme Court has clearly held that no duty can be collected during the 'Gap Period'. No anti dumping duty can be levied and collected during the 'gap period'. **[Decided in favour of petitioner]**

COMMISSIONER OF CUS., VISAKHAPATNAM VERSUS TRUWOODS PVT. LTD. [SUPREME COURT]

BRIEF: Valuation - import of wood veneers of various thicknesses - documents procured by the Revenue do not bear any signatures and are photocopies, which are not even attested, and accordingly, the assessable value could not be enhanced based on such documents.

OUR TAKE: The hon'ble SUPREME COURT held that CESTAT has found that the documents procured by the Revenue do not bear any signatures and are photocopies, which are not even attested, and accordingly, the assessable value could not be enhanced based on such documents. In arriving at this conclusion, while doubting the genuineness of those documents, the CESTAT has kept in mind the provisions of Section 139 of the Customs Act and has relied upon various

judgments of the Tribunal on this issue. Order of tribunal sustained. **[Decided against the revenue]**

LOGIC INDIA TRADING CO VERSUS COMMISSIONER OF CUSTOMS [CESTAT BANGALORE]

BRIEF: Classification of import of Multimedia Speakers - The additional feature of FM radio in the speaker, in our opinion, would again not convert the huge speaker into a FM radio. Even going by the common parlance test, nobody would buy a huge speaker for the purpose of FM radio.

OUR TAKE: The hon'ble CESTAT BANGALORE held it was held that the multifunctional printing machines having fax facility and screening facility would continue to fall under Heading 8471 of the Customs Tariff Act as "digital printers" only inasmuch as the predominant function of the machine in question was printing. **[Decided in favour of assessee]**

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 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. **[Decided in favour 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

The Govt. vide Circular No. 04/2016 dated 29th Feb 2016, Tax Deduction at sources (TDS) on payments by broadcaster or television channels to production houses for production houses for production of content or programme for telecasting.

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

The Govt. vide Circular No. 05/2016 dated 29th Feb 2016, Tax Deduction at sources (TDS) on payments by television channels and publishing houses to advertisement companies for procuring or canvassing for advertisement.

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

The Govt. vide Circular No. 06/2016 dated 29th Feb 2016, Issue of taxability of surplus on sale of shares and securities – Capital Gains or business income – Instruction in order to reduce litigation.

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

The Govt. vide Notification No. 11/2016 dated 01st March 2016, hereby makes amendment in rules to amend the Income-tax Rules, 1962.

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

The Govt. vide Notification No. 13/2016 dated 03rd March 2016, in the table of rates at which depreciation is admissible, in part a relating to tangible assets, under the sub-heading iii. machinery and plant, in item (8), in sub-item (xii) relating to mineral oil concerns, after entry (b), “(c) Oil wells not covered in clauses (a) and (b)” shall be inserted on which depreciation shall be @ 15% on written down value shall be available.

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

ANZ GRINDLAYS BANK (NOW STANDARD CHARTERED GRINDLAYS BANK LTD.) VERSUS DEPUTY COMMISSIONER OF INCOME TAX AND OTHERS [DELHI HIGH COURT]

BRIEF: Salaries were not reflected in the profit and loss account - if an assessee under some misapprehension or mistake fails to make an entry in the books of account and although under the law, a deduction must be allowed by the Income Tax Officer, the assessee will lose the right of claiming or will be debarred from being allowed that deduction.

OUR TAKE: The hon’ble DELHI HIGH COURT held that it is wholly unable to appreciate the suggestion that if an assessee under some misapprehension or mistake fails to make an entry in the books of account and although under the law, a deduction must be allowed by the Income Tax Officer, the assessee will lose the right of claiming or will be debarred from being allowed that deduction. Whether the assessee is entitled to a particular deduction or not will depend on the provision of law relating thereto and not on the view, which the assessee might take of his rights nor can the existence or absence of entries in the books of account be decisive or conclusive in the matter. **[Decided in favour of assessee]**

DENSO INDIA LIMITED VERSUS COMMISSIONER OF INCOME TAX [DELHI HIGH COURT]

BRIEF: Transfer pricing adjustment - the unusual features that remained unexplained by the assessee, influenced the TPO and the AO to resort to transfer pricing adjustment and determine ALP by adopting the CUP method for the procurements from Sumitomo Japan.

OUR TAKE: The hon’ble DELHI HIGH COURT held that the first question framed is answered against the assessee and in favour of the revenue. Further, at the time of framing the question the Court recorded that it was framed at the insistence of the assessee's counsel. In view of the findings on the first question and in view of these facts, this question too is answered in favour of the revenue and against the assessee.

M/S RUSTAGI ENGINEERING UDYOG PVT. LTD. VERSUS DY. COMMISSIONER OF INCOME TAX [DELHI HIGH COURT]

BRIEF: Validity of reopening of assessment - Although the AO may have entertained a suspicion that the Assessee’s income has escaped assessment, such suspicion could not form the basis of initiating proceedings u/s 147 of the Act. A reason to believe – not reason to suspect - is the precondition for exercise of jurisdiction u/s 147 of the Act

OUR TAKE: The hon'ble **DELHI HIGH COURT** held that the AO had no tangible material about any of the transactions pertaining to the relevant assessment years. Although the AO may have entertained a suspicion that the Assessee's income has escaped assessment, such suspicion could not form the basis of initiating proceedings under Section 147 of the Act. A reason to believe – not reason to suspect - is the precondition for exercise of jurisdiction under Section 147 of the Act. **[Decided in favour of assessee]**

RANJEET SINGH VERSUS THE COMMISSIONER OF INCOME TAX, FARIDABAD [PUNJAB & HARYANA HIGH COURT]

BRIEF: Validity of reopening of assessment - Sanction for issue of notice - intimation u/s 143(1)(a) is not assessment. Therefore, the provision of Section 151(2) alone would apply to the present case. Therefore, consent under section 151(1) for issue of notice u/s 148 has rightly held to be not necessary.

OUR TAKE: The hon'ble **PUNJAB & HARYANA HIGH COURT** held issue on merits relating to taxability of only 50% in the hands of the assessee whatever be the nature of the money received by the assessee, the same was in the nature of income liable to tax. The CIT(A)'s direction to bring to tax this sum in the assessment year in which the assessee received these sums and also confirmed by ITAT was proper and calls for no interference. **[Decided against assessee]**

TARA SINGH PROP, M/S RAJDEEP BUS SERVICE VERSUS ITO WARD III KHANNA [PUNJAB & HARYANA HIGH COURT]

BRIEF: Best judgment assessment - justification of estimation of seats - when learned counsel for the assessee-appellant has not been able to satisfy this court that the approach of the Tribunal is arbitrary or irrational, no advantage flows to the assessee-appellant from those pronouncements.

OUR TAKE: The hon'ble **PUNJAB & HARYANA HIGH COURT** held that the factual matrix noticed hereinabove and more particularly when learned counsel for the assessee-appellant has not been able to satisfy this court that the approach of the Tribunal is arbitrary or irrational, no advantage flows to the assessee-appellant from those pronouncements. **[Decided against assessee]**

COMMISSIONER OF INCOME TAX, C-I VERSUS VATIKA LANDBASE PVT. LTD. [DELHI HIGH COURT]

BRIEF: Undisclosed receipt on sale of flats/space - Sale of flats of VT [Vatika Triangle] - The burden shifted to the Revenue to show, on the basis of some reliable and tangible material, how the rate at which the flats on the second and third floors of VT was higher than that indicated in the sales register or the sale deeds themselves.

OUR TAKE: The hon'ble **DELHI HIGH COURT** held that It was also not open to the AO to draw an inference on the basis of the projection in the document, particularly when the Assessee offered a plausible explanation for the document. The burden shifted to the Revenue to show, on the basis of some reliable and tangible material, how the rate at which the flats on the second and third floors of VT was higher than that indicated in the sales register or the sale deeds themselves. In the circumstances, the Court is of the view that the ITAT was justified in coming to the conclusion that the addition made by the CIT (A) was not sustainable in law. **[Decided in favour of assessee]**

PATEL BROTHERS VERSUS DY. C.I.T [GUJARAT HIGH COURT]

BRIEF: Disallowance of secret commission - CIT(Appeals) has not disallowed the entire claim but limited it to 1% of the turnover of the assessee - When these are the parameters which the CIT(Appeals) considered, for restricting the claim, no interference is required.

OUR TAKE: The hon'ble **GUJARAT HIGH COURT** held that it was noticed that as against the net profit of ₹ 6.14 lacs, the assessee claimed to have paid secret commission of ₹ 19.85 lacs. The revenue authorities also noted that the assessee had not kept any accounts or receipts of where and to whom such commission was paid. When these are the parameters which the CIT(Appeals) considered, for restricting the claim, we do not see any reason to interfere in exercise of our jurisdiction to consider substantial question of law. **[Decided against the 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]**

STATE TAXES

ALL INDIA VAT

ANDHRA PRADESH

The Govt. vide Circular No CCW/CS (1)/128/2015 dated 01st March 2016, make action point for Registrations-VAT/CST/TOT/ APPT/APET/APLT, DIPP on ease of doing business.

The Govt. vide Circular No BII (2)/04/2016 dated 01st March 2016, Reiteration of earlier instructions to Assessing Authorities / Revisional Authorities on the utilization of report of AG, etc., in the discharge of quasi-judicial functions.

The Govt. vide Circular No BII (2)/10/2016 dated 01st March 2016, Levy of penalties under Section 53 of AP VAT Act, 2005.

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

CHHATTISGARH

The Govt. vide Notification NO. F-10-03/2016/CT/V (12) dated 01st March 2016; delegates Commissioner's Power for Assessment/Reassessment.

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

DELHI

The Govt. vide Notification No.F.3(352) POLICY/VAT/2013/1559-1571 dated 01st March 2016, notify that submission of information online in Form DP-1 shall be submitted online by all the dealers latest by 31st March 2016.

The Govt. vide Notification No. F.3 (628) POLICY/VAT/2016/PF/1572-1584 dated 01st March 2016, notify that returns in Form CR-II for the first three quarters of the current financial year (i.e. 1st April, 2015 to 30th June, 2015, 1st July, 2015 to 30th September, 2015 and 1st October, 2015 to 31st December, 2015) are required to be filed by 15th March 2016.

The Govt. vide Notification No. F.3 (643)/POLICY/VAT/2016/1585-1597 dated 01st March 2016; notify that filling of returns through digital signature.

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

HIMACHAL PRADESH

The Govt. vide Notification No. EXN-F (10)-3/2014 dated 01st March 2016 makes amendment in Rule 77 & Form VAT-XXXVII.

The Govt. vides Notification No. EXN-F (10)-5/2015 dated 01st March 2016 makes amendment in HPVAT Schedule A & B.

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

MAHARASHTRA

The Govt. vides Notification No. VAT. 1516/C.R.39 (B)/TAXATION-1 dated 29th Feb 2016, notifies Municipal Corporation of Nagpur under clause (a) of Entry 5 of Schedule D (Any other kind of Motor Spirit) for period 01.03.2016 to 29.02.2017.

The Govt. vides Notification No. VAT. 1516/C.R.39 (A)/TAXATION-1 dated 29th Feb 2016, Notifies Municipal Corporation of Nagpur under clause (a) of Entry 5 of Schedule D (High Speed Diesel Oil) for period 01.03.2016 to 29.02.2017

UTTAR PRADESH

The Govt. vides Notification No KA.NI.-2-319/XI-9(135)/13-U.P.ACT-5-2008-ORDER-(151)-2016 dated 03RD March 2016, amended UPVAT Schedule-I.

The Govt. vides Notification No KA.NI.-2-319/XI-9(135)/13-U.P.ACT-5-2008-ORDER-(151)-2016 dated 03RD March 2016, exempted sugar manufactured during the Crushing Season 2015-16 by a Sugar Mill established in the State of Uttar Pradesh.

UTTARAKHAND

The Govt. vides Notification No 181/2016/181(120)/XXVII (8)/2008 dated 01ST March 2016, makes amendment in Rule 26C, 29 & 30.

The Govt. vides Notification No 181/2016/7(120)/XXVII (8)/2015(8)/2008 dated 01ST March 2016, makes amendment in Rule 11.

The Govt. vides Notification No 192/2016/17(120)/XXVII (8)/2014 dated 02ND March 2016, levies Cess on Petrol & Diesel.

The Govt. vides Notification No 193/2016/17(120)/XXVII (8)/2014 dated 02ND March 2016, levies of Cess on Liquor, Kaini, Tobacco, Cigarettes & Gutka.

The Govt. vides Notification No 194/2016/17(120)/XXVII (8)/2014 dated 02ND March 2016, levies of Cess on on Fast food items, Sale by Pizza outlets and Fired Chicken outlets, pre-packed eatables, soft drinks, fruit drinks, flavoured drinks and beverages excluding pre-packed lassi, buttermilk and milk

The Govt. vides Notification No 126/2016/03(120)/XXVII (8)/2016 dated 03RD March 2016, notify Changes in Section 43 of VAT Act - Regarding Lorry Challan

COURT DECISIONS
M/S THE ANAPARAI ESTATES LTD. VERSUS THE STATE OF KARNATAKA (KARNATAKA HIGH COURT)

BRIEF: Levy of penalty under section 72(2) of the KVAT Act 2003 - there is no understatement of tax liability made by the assessee, the same are disclosed in the returns to claim input tax deductions. In such circumstances, the Assessing Officer levying penalty as mandatory is not acceptable.

OUR TAKE: The hon'ble **KARNATAKA HIGH COURT** held that the assessee has claimed the input tax deduction on the purchase of manure like pesticides, chemicals etc, used in the course of business declaring the same in the returns filed. As such, there is no understatement of tax liability made by the assessee, the same are disclosed in the returns to claim input tax deductions. In such circumstances, the Assessing Officer levying penalty as mandatory is not acceptable. Levy of interest confirmed. Levy penalty set aside. **[Decided partly in favour of assessee]**

M/S ARIHANT UNITECH REALITY PROJECTS LTD. VERSUS ASSISTANT COMMISSIONER (CT) , COMMERCIAL TAX OFFICER [MADRAS HIGH COURT]

BRIEF: Levy of vat / taxability of sale of land after plotting - While so, it had incurred certain expenses for the leveling of the land, laying of roads and for the creation of other infrastructural facilities, before the plots were advertised and sold. Matter remanded back.

OUR TAKE: The hon'ble **MADRAS HIGH COURT** held that the first respondent had considered the land development and construction charges incurred by the petitioner, up to the period 2011-12, as the sale consideration, for the construction of the flats and had determined the deemed sales value and had levied tax and also levied penalty, under Section 27(3) of the Act, in the impugned proceedings, when there was no proposal to levy such penalty in the pre-revision notices, dated 20.8.2015. Order set aside. Matter remanded back for fresh decision.

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

29nd Feb 2016, the government could gain in 2016 the votes it needs to pass the GST Bill. The legislation could have far reaching macroeconomic and earnings implications.

29nd Feb 2016, Maharashtra Government may tap new sectors for tax to recover revenue loss. As per state minister, govt. shall face shortfall of at least 7000 crores in 2016-17 F.Y. if parliament does not pass GST in the ongoing session.

01st Mar 2016, Former finance minister P. Chidambaram on Monday said GST bill has been delayed because the BJP-led NDA regime is unwilling to step away from its stubborn position.

01st Mar 2016, the government shall reach out to the congress in the current session of parliament to resolve the deadlock over the GST bill, Finance Minister Arun Jaitely said on Monday.

01st Mar 2016, in the bid to discourage imports of goods, finance minister in Union budget for financial year 2016-17 has announced imposition of 14% service tax on services provided by domestic shipping companies transporting goods from outside India.

01st Mar 2016, finance minister gives major thrust to Make in India through Indirect Taxes.

01st Mar 2016, footwear industry looks to GST to improve sector health.

02nd Mar 2016, govt. signals GST may be implemented from 01 April 2017.

03rd Mar 2016, Infosys makes tech innovations for GST rollout easier.

03rd Mar 2016, computerisation of commercial tax departments in all states has been completed for developing a technology platform for proposed GST but entire project is yet to be completed.

05th Mar 2016, increase in service tax brings closer to GST.

05th Mar 2016, Congress will not block GST bill if three demands are met. GST rate to be capped at 18%, removal of proposed 1% additional levy on inter-state trade and an independent dispute resolution for states.

05th Mar 2016, foreign institutional investor Morgan Stanley thinks BJP will have sufficient number of MPs to pass GST Bill by July 2016, according to economic times.

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: | nitin@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.