ASC Times

All India Taxes Weekly Referencer

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From the CEO's Desk

Dear Reader,

Finally monsoon has given some respite as the Kharif crop is expected to give good yield. It can be translated into a lower inflation for food on current price. Plus India has got $19.78 billion FDI from 12 countries where MR. Modi visited in the last one year. But not all seems to be good as export sector specially, Textiles, Leather, Gems & Jewellery have seen 15-20% decline in order books positions. Worst hit are exports of yarn and fabrics as a resultant of a lower demand in China and EU. So to curb the ill effects RBI might have to take a tough decision on cutting rate for a second time this fiscal to meet government and industry expectations of lowering cost of borrowing to boost growth.

Unlike the VDIS (Voluntary Disclosure of Income Scheme), the Government has assured to those who are opting for the compliance window under the new black money law that the total confidentiality would be provided through the Income Tax Act. The compliance scheme provides an assurance under Section 138 of the I-T Act, which is applicable to the black money law as well. Further, officials also said that Government would ensure to avoid any harassment. As only senior officer will have access to information and the entire exercise would be monitored directly by the Central board of Direct Taxes and the revenue secretary.

It seems as if Gold is losing its sheen as the best investment option according to a report and the current market trends. An analyst note from Barclay's shows investors pulled money from financial derivatives based on the gold price, even as the Greek debt crisis reached its peak in June. Barclays said $480 million (£310 million) was pulled from the market that month, putting total outflows in the past two months at over $1 billion (£640 million). The yellow metal has been caught up in the wider commodities rout, which has seen prices fall across the board on concerns that production in China is slowing down.

Alok Kumar Agarwal

CEO

ASC Group

TAX CALENDER

Due Date	Description	Law
10th August	Tax Payment	Chhattisgarh VAT, Kerala VAT, Madhya Pradesh VAT
	TDS Deposit	Chhattisgarh VAT, Mizoram VAT, Nagaland VAT
	Return Filing	Karnataka VAT, Kerala VAT
	Return Filing	Central Excise Law
11th August	Return Filing	Central Excise Law
12th August	Tax Payment	Gujarat VAT
13th August	Return Filing	Nagaland VAT
14th August	Tax Payment	Rajasthan VAT
15th August	TDS Certificate	Andhra Pradesh VAT, Bihar VAT, Himachal Pradesh VAT, Jharkhand VAT, Nagaland VAT, Punjab VAT, Chandigarh VAT, Telangana VAT
	Payment of Tax	Bihar VAT, Haryana VAT, Jharkhand VAT, Kerala VAT, Sikkim VAT
	TDS Deposit	Bihar VAT, Delhi VAT, Haryana VAT, Himachal Pradesh VAT, Jharkhand VAT, Punjab VAT, Chandigarh VAT
	Return Filing	Kerala VAT, Karnataka VAT, Madhya Pradesh VAT, Tripura VAT
	Quarterly TDS certificate	Income Tax Law

COUNTRY WIDE HOLIDAYS FOR THE WEEK

Date	Occasion/Festival	Region
13th August	Patriot's Day	Manipur
15th August	Independence Day	All States/UT's

INDEX GUIDE

CENTRAL TAXES

SERVICE TAX

COURT DECISIONS

UNION OF INDIA AND OTHERS VERSUS M/S KARVY STOCK BROKING LTD. (SUPREME COURT)

BRIEF: Validity of circular regarding levy of service tax on the activity of mutual fund distribution. The High Court referred to the proviso to Section 37B of the Central Excise Act 1944 which categorically states that such kind of circulars cannot be issued.

OUR TAKE: Levy of service tax on the activity of mutual fund distribution vide circular dated 05.11.2003, it was clarified that the commission received by distributors on mutual fund distribution would be liable to service tax as it would not fall within the expression 'business auxiliary services'. High Court in [2004 (9) TMI 604 - ANDHRA PRADESH HIGH COURT] has set aside the circular on the ground that it amounts to foreclosing discretion or judgment that may be exercised by the quasi-judicial authority while deciding a particular lis under particular circumstances.

The Hon'ble **SUPREME COURT** held that the High Court referred to the proviso to Section 37B of the Central Excise Act, 1944, which categorically states that such kind of circulars cannot be issued. [**Decided against the revenue**]

THE COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX VERSUS M/S. M.M. FORGINGS LTD., CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL (MADRAS HIGH COURT)

BRIEF: The issue that the CENVAT Credit regarding outdoor catering service can be properly availed by the assessee in respect of outdoor catering services is clearly settled now.

OUR TAKE: The Hon'ble **MADRAS HIGH COURT** held that the Bombay High Court came to the conclusion that the decision of the Larger Bench of the CESTAT in the case of CCE V. GTC Industries Ltd. [2008 (9) TMI 56 - CESTAT MUMBAI] is a correct law, however, with a rider that where the cost of the food is borne by the worker, the manufacturer cannot take credit of that part of the service tax which is borne by the consumer. Various High Courts have concurred with the above-said principle of the Bombay High Court and followed the above-said decision. Therefore, the issue that the CENVAT Credit can be properly availed by the assessee in respect of outdoor catering services is clearly settled now. [**Decided against the revenue**]

EAGLE CORPORATION PVT LTD & 1 VERSUS UNION OF INDIA & 4 (GUJARAT HIGH COURT)

BRIEF: Clearing and Forwarding Services. The assessee in this case is not the sub-contractor and cannot escape the service tax liability on the ground that main contractor has paid the service tax and there will be double taxation.

OUR TAKE: The Hon'ble **GUJARAT HIGH COURT** held that we are in complete agreement with the view taken by the learned Settlement Commission while confirming the service tax liability of Rs 31,01,599/- with respect to the services provided by the petitioner to M/s.MLL. It is rightly held that with respect to the service / transportation service / buses provided by the petitioner to M/s.MLL, the petitioner is liable to pay service tax on the same. The Settlement Commission has rightly held and even as observed by us hereinabove, the petitioner cannot be said to be a subcontractor for providing transportation services to M/s. AMW Ltd. There is an independent contract for providing transportation services / bus services, between the petitioner and M/s. MM / M/s. MLL and even between M/s. MM / M/s. MLL and M/s. AMW Ltd.

The petitioner cannot be said to be a sub-contractor with respect to the transportation services provided to M/s. AMW Ltd. and therefore, the contention on behalf of the petitioner that M/s. MM / M/s. MLL paid service tax on the transportation services rendered to M/s. AMW Ltd. and therefore, the petitioner is not liable to pay service tax and/or the contention that there shall be double taxation if the tax is recovered from the petitioner, has no substance and the same cannot be accepted. The service tax paid by M/s. MM / M/s. MLL with respect to transportation services provided to AMW is with respect to the separate and independent contract entered into between M/s. MLL and M/s. AMW Ltd. and the services rendered by M/s. MM / M/s. MLL to M/s. AMW. The agreement / contract entered into between the petitioner and M/s. MM / M/s. MLL is an independent contract for providing services of transportation and therefore, the petitioner is not a subcontractor and therefore, the petitioner is liable to pay service tax on the transportation services / bus services provided by the petitioner to the M/s. MM / M/s. MLL. Under the circumstances, the petitioner is not entitled to any of the reliefs sought in the present petition. [**Decided against the assessee**]

CENTRAL EXCISE

COURT DECISIONS

COMMISSIONER OF CENTRAL EXCISE, AURANGABAD VERSUS M/S. GOODYEAR SOUTH ASIA TYRES P.L. & OTHERS (SUPREME COURT)

BRIEF: The issue is related to Valuation of goods, related person and mutuality of interest.
No doubt the two buyers had given Rs 85.66 crores interest free loan to the assessee. However that by itself may not be a reason to hold them as related persons within the meaning of Section 4(4)(c) of the Act.

OUR TAKE: The Hon'ble **SUPREME COURT** held that the expression 'in the business of each other' clearly denotes that interest of the two persons have to be mutual, i.e., in each other, in order to treat them as related persons. We find from the order of the Member Judicial that only on the ground that the two companies had given a loan of ₹ 85.66 crores to the assessee company, was treated as sufficient to establish the relationship between the assessee and the buyers. That only shows one way traffic whereas requirement is that of two way traffic. The other Member, in our opinion, aptly held that this cannot be the factor which would show the mutuality of interest. The assessee did not have any interest in the business of the buyers (Goodyear Indian Limited and CEAT Limited). Given this, the requirement of 'mutuality of interest' which is a pre-requisite under section 4(4)(c) of the Act does not get satisfied. The matter is squarely covered by the decisions of this Court in the case of Atic Industries Ltd. We have gone through the judgment in the case of Atic Industries Ltd. [1984 (6) TMI 51 - SUPREME COURT OF INDIA] wherein this court categorically held that there should be mutuality of interest in the business of each other.

No doubt, the two buyers had given ₹ 85.66 crores interest free loan to the assessee. However, that by itself may not be a reason to hold them as related persons within the meaning of Section 4(4)(c) of the Act. In the absence of any mutuality of interest existing between them, giving of this interest free loan could have been a basis to include the notional interest while arriving at the cost of product sold by the assessee to the two buyers. However, instead of doing that, the appellant wanted to make use of this factor to hold that the assessee and the two buyers are "related persons" which position is difficult to comprehend having regard to the principle laid down in Atic Industries Ltd's case.

After taking over of the assessee company by Goodyear, more than 70 per cent of the sales by the assessee company are to the third parties. That apart, there was another contention of the assessee, viz., that the goods sold to the outsiders are at a lesser rates than sold to Goodyear. These two contentions have not been refuted by the Revenue. [**Decided against Revenue**]

COMMISSIONER OF CUSTOMS, HYDERABAD VERSUS M/S. PENNAR INDUSTRIES LTD. & ANOTHER (SUPREME COURT)

BRIEF: The issue is related to Import of goods against an advance licence and export obligation.
When the DGFT has itself accepted the benefits of the assessee and carried out the amendment in the import licence and further that the assessee could make the exports on the basis of the amendment; albeit through third party such person should not be left high and dry.

OUR TAKE: The Hon'ble **SUPREME COURT** held that it is the case of the assessee that for certain bona fide reasons (as the bona fides of the assessee have been accepted by the DGFT), as the assessee was not able to export same very goods produced by it from the material imported on which he was given exemption from payment of the import duty, the DGFT allowed the assessee to meet the export obligation through third party.

Since the conditions of the exemption notification are not fulfilled and the law requires strict compliance of the exemption notification, the assessee becomes liable to pay the import duty which was payable, but for the benefit of exemption Notification No 30/1997, which was obtained by the assessee. - Decision in the case of Sheshank Sea Foods Pvt. Ltd. (1996 (11) TMI 67 - SUPREME COURT OF INDIA) followed. [**Decided against the assessee**]

It necessary to observe that the Government should bestow its consideration and make appropriate provision dealing with such situations. After all, the Exemption Notification No. 30/1997 has been issued to implement and effect the EXIM Policy provisions. Therefore, the purport of the exemption notification is to advance the objectives of the EXIM Policy. When the DGFT has itself accepted the benefits of the assessee and carried out the amendment in the import licence and further that the assessee could make the exports on the basis of the amendment; albeit through third party, such person should not be left high and dry. Therefore, necessary amendments are needed in such notifications making appropriate provisions to meet these types of eventualities. We are hopeful that the competent authority shall look into these aspects and cater for such situations as well so that unnecessary hardship is not caused to the bona fide assessees as well.

Insofar as charge of interest is concerned, we are conscious of the fact that as per the bond the assessee had agreed to pay interest @ 24% per annum. However, that would not take away our right to reduce the rate of interest if the ends of justice so warrant. In the peculiar facts of this case, more so when there was an amendment in the license by the DGFT and DGFT has taken the view that export obligation is fulfilled, we deem it proper to reduce the rate of interest from 24% per annum to 9% per annum. Further, there shall not be any penalty. [**Decided in favour of Revenue**]

UNION OF INDIA & OTHERS VERSUS M/S. N.S. RATHNAM & SONS (SUPREME COURT)

BRIEF: Levy of duty of excise on iron and steel scrap which was obtained by breaking the ship. Exemption is to particular class of assessees. Merely because with the adoption of one particular method the duty that becomes payable is lesser would not mean that two such persons belong to different categories.

OUR TAKE: T The Hon'ble **SUPREME COURT** held that if the government fails to support its action of classification on the touchstone of the principle whether the classification is reasonable having an intelligible differentia and a rational basis germane to the purpose, the classification has to be held as arbitrary and discriminatory. - Decision in the case of Sube Singh v. State of Haryana [2001 (8) TMI 1374 - SUPREME COURT] followed.

It has been accepted without dispute that taxation laws must also pass the test of Article 14 of the Constitution of India. It has been laid down in a large number of decisions of this Court that a taxation statute for the reasons of functional expediency and even otherwise, can pick and choose to tax some. Importantly, there is a rider operating on this wide power to tax and even discriminate in taxation that the classification thus chosen must be reasonable. The extent of reasonability of any taxation statute lies in its efficiency to achieve the object sought to be achieved by the statute. Thus, the classification must bear a nexus with the object sought to be achieved.

Two Notifications both dated 27.03.1987 pertain to same goods namely those falling under Heading 72.15 and 73.09 of the second Schedule to the Act. Customs duty is leviable on these goods under Section 3 of the Customs Tariff Act. The said duty can be paid under any of the two methods. When two methods are permissible under the statutory scheme itself, obviously option is that of the assessee to choose in all those methods to pay the custom duty. Duty, thus, paid is to be naturally treated as validly paid.

Merely because with the adoption of one particular method the duty that becomes payable is lesser would not mean that two such persons belong to different categories. The important factors for the purposes of parity are same in the instant case, viz. the goods are same; they fall under the same Heading and the custom duty is leviable as per the Act which has been paid. Therefore, the impugned Notification giving exemption only to those persons who paid a particular amount of duty, namely Rs 1,400/- per LDT, would not mean that such persons belong to a different category and would be entitled to exemption and not other persons like the respondent herein who paid the duty on the same goods under the same Act but on the formula which he opted and which is permissible, which rate of duty comes to Rs 1,035/- per LDT.

Thus, while upholding the view taken by the High Court, we modify the same only to the extent that the respondent herein shall also be entitled to the benefit of the exemption Notification subject to the condition that the duty already paid by the respondent herein on LDT, would be taken into account and only the balance out of it would be subject to excise duty. [**Decided against the revenue**]

CUSTOMS

NOTIFICATIONS & CIRCULARS

The **Govt. vide notification No. 12/2012, dated 4-8-2015** seeks to further amend notification No. 12/2012 so as to delete the requirement of registration of Ship Repair Unit with Director General of Shipping.

OUR TAKE: The notification is self-explanatory.

The **Govt. vide CIRCULAR NO 20/2015, dated 31-7-2015 (published now)** seek to Review of Policy, Procedure and issue of revised Guidelines regarding Grant of reward to informers and Government Servants.

OUR TAKE: The notification is self-explanatory.

The **Govt. vide Notification No. 36/2015-Customs (ADD), dated 31st of July, 2015 (published now)** seeks to rescind notification No.109/2011, dated the 15th December, 2011 - 36/2015.

OUR TAKE: The notification is self-explanatory.

The **Govt. vide Notification No.73/2015, dated the 6th August, 2015** notify Rate of exchange of conversion of the foreign currency with effect from 07th August, 2015 - 73/2015.

OUR TAKE: Readers are requested to go through the notification for rates in Schedule I and Schedule II.

COURT DECISIONS

M/S. VENKATARAYA POWER LTD. VERSUS COMMNR. OF CUSTOMS, MUMBAI (SUPREME COURT)

BRIEF: Denial of project import benefit to power generation project. 1MW plant of the appellant cannot be treated as power generation project.

OUR TAKE: The Hon'ble **SUPREME COURT** held that the Tribunal has rightly held that 1MW plant of the appellant cannot be treated as power generation project. For this purpose, the Tribunal has relied upon the decision of Union of India and Others vs. Indian Charge Chrome and Another - [1999 (8) TMI 69 - SUPREME COURT OF INDIA] wherein the definition between a power project and power plant is drawn. No fault in impugned order. [**Decided against assessee**]

M/S. ANDHRA SUGARS LTD. VERSUS COMMISSIONER OF CUSTOMS (SUPREME COURT)

BRIEF: Denial of benefit of Notification No. 21/2002. Subsequent amendment in the said Notification whereby capacity expansion was also included would be prospective only as it was not clarificatory in nature.

OUR TAKE: The Hon'ble **SUPREME COURT** held that subsequent amendment in the said Notification whereby capacity expansion was also included would be prospective only as it was not clarificatory in nature. We, thus, find no merit in this appeal. [**Decided against assessee**]

INCOME TAX

COURT DECISIONS

THE COMMISSIONER OF INCOME TAX-8, MUMBAI VERSUS PERFECT THREAD MILLS PVT LTD, MUMBAI (BOMBAY HIGH COURT)

BRIEF: Principal amount of loans waived off by the financial institutions / banks. Loan amount had been taken for the purchase of machinery / fixed assets being on capital account and not on trading account would not be hit by Section 41(1) r.w. section 28(iv) of the Act.

OUR TAKE: The Hon'ble **BOMBAY HIGH COURT** held that be that as it may, the loan being taken was undisputedly in the Capital field then its waiver should also be in the Capital field. The sine quo non for application of Section 41(1) of the Act is that a deduction must have been claimed by assessee in the Revenue field respect of the loan taken while arriving at its profit in the earlier years so that a subsequent benefit of the same has to be taxed as income in the assessment year in which it is received. This admittedly is not the situation here. Moreover as held by this Court in Mahindra and Mahindra [2003 (1) TMI 71 - BOMBAY High Court] that Section 28(iv) of the Act is applicable only on the receipt of any benefit or perquisite and would not apply to benefits obtained in cash or money. In this case also the waiver of loan is not a benefit or perquisite in kind but the right to recovery money of Rs 79.81 lakhs is given up. Thus the issue stands concluded by the decision of this Court in Mahindra & Mahindra and the addition of Explanation 10 to Section 43 of the Act, does not in any manner impact the binding nature of this Court's order in Mahindra and Mahindra.

Loan amount had been taken for the purchase of machinery / fixed assets being on capital account and not on trading account would not be hit by Section 41(1) r.w. section 28(iv) of the Act. [**Decided in favour of assessee**]

SUN TAN TRADING CO. PVT. LTD. VERSUS THE DEPUTY COMMISSIONER OF INCOME TAX, 1 (3) (1) , MUMBAI AND OTHERS (BOMBAY HIGH COURT)

BRIEF: The assessee is not an enemy. The attitude of the revenue seems to be that the assessee has to be taxed and to achieve that object fair play could be jettisoned. The revenue is certainly expected to ensure that every paisa due to the State is collected but the same has to be only in accordance with law and in compliance with rules of fair play.

OUR TAKE: The Hon'ble **BOMBAY HIGH COURT** held that we notice that the petitioner had sought a copy of the sanction granted to the Assessing Officer in terms of Section 151 of the Act to issue the impugned reopening notices. The orders disposing of the objections records that as it is administrative sanction and the Assessing Officer is not obliged to provide a copy of the same to assessee. The affidavit-in-reply to the above petition filed by the revenue also does not contain a copy of this sanction, although it does mention that the necessary sanction has been obtained. Mr Chhotaray, the learned Counsel for the revenue submits that revenue cannot be compelled to give a copy of the sanction to the assessee. We find this attitude of the revenue rather strange. The law requires the sanction to be obtained while issuing notice under Section 151 of the Act as in the absence of appropriate sanction, the proceedings itself are without jurisdiction. We would have expected the revenue to have made a copy of sanction available to the assessee, when sought, of its own. This is the minimum fair play expected of the State. The assessee is not an enemy. The attitude of the revenue seems to be that the assessee has to be taxed and to achieve that object, fair play could be jettisoned. The revenue is certainly expected to ensure that every paisa due to the State is collected but the same has to be only in accordance with law and in compliance with rules of fair play.

In the above circumstances, we set aside the three orders dated 15 January 2015 and restore the issue to the Assessing Officer to enable disposal of the petitioner's objections in accordance with the law. So as to avoid the reassessment proceedings becoming time barred, we make clear that the period of 15 weeks from today would stand excluded for the purpose of computing period of limitation under Section 153 of the Act.

PR. COMMISSIONER OF INCOME TAX, DELHI-2 VERSUS CITI FINANCIAL CONSUMER FINANCE INDIA PVT. LTD. (DELHI HIGH COURT)

BRIEF: AO has no power to frame the assessment in respect of an AY which has already been finalised and concluded. The language of Section 292B of the Act also offers no assistance to the Revenue.

OUR TAKE: The Hon'ble **DELHI HIGH COURT** held that a plain reading of the language of Section 292B of the Act indicates that it would have no application in the facts and circumstances of the present case. First and foremost, Section 292B of the Act cannot be read to confer jurisdiction on the AO where none exists. The said Section only protects return of income, assessment, notice, summons or other proceedings from any mistake in such return of income, assessment notices, summons or other proceedings, provided the same are in substance and in effect in conformity with the intent of purposes of the Act. Learned counsel appearing for the Revenue has been unable to point out any mistake or omission in the AOs order dated 19th November, 2010. The issue involved is not about a mistake in the said Order but the power of the AO to pass the Order. Clearly, the said Order is not in accordance with provisions of the Act, as the AO has no power to frame the assessment in respect of an AY which has already been finalised and concluded. The language of Section 292B of the Act also offers no assistance to the Revenue in its contention that AO's order dated 20th January, 2010 was a mistake.

Unable to accept that the AO's order dated 20th January, 2010 was only an administrative order to give effect to the order of the Tribunal. At this stage, it is also relevant to note that the order dated 20th January, 2010 was captioned as "Order u/s 254/250/147/143(3) of the Income Tax Act, 1961". It is, thus, apparent that the Order itself indicated that it was not an administrative order but an Assessment Order under Section 143(3) of the Act. In the circumstances, it is not be open for the Revenue to contend to the contrary. [**Decided against revenue**]

STATE TAXES

ALL INDIA VAT

ANDHRA PRADESH

The **Govt. vide Circular No. CCTs Ref. No. CCW/152/2015, dated 6th August, 2015** issued certain instructions regarding certain commodities not figured in the CST registrations, Online CST e-way bills not generated and certain representations received from business associations.

OUR TAKE: The Circular is self-explanatory.

ASSAM

The **Govt. vide Circular No. 11/2015 No. CT/COMP-69/2015/3, dated 5th August,** 2015 issued instruction regarding matter relating to collection of PAN, mobile number and e-mail id of dealers as part of preparedness for GST migration.

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

BIHAR

The **Govt. vide Notification No. S. O. 189 F. No. Bikri kar/Sansodhan-02/2015/4110, dated 3rd August, 2015** make certain rules to amend the Bihar Value Added Tax Rules, 2005.

OUR TAKE: The Notification is self-explanatory.

DELHI

The **Govt. vide Notification No. F. 12(2)/Fin(Rev-I)/2015-16/ds-vi/594, dated the 30/07/2015** in exercise of the powers conferred by sub-section (2) of section 3 of the Delhi Tax on Luxuries Act, 1996 (Delhi Act 10 of 1996) and in supersession of this Government's Notification No.F.12(6)/Fin(T&E)/2008-2009/jsfin/248 dated the 22nd June hereby notifies that the rate of tax to be levied on the turnover of receipt of a proprietor of hotels shall be fifteen percent w.e.f. 1st August 2015.

OUR TAKE: The Notification is self-explanatory.

HARYANA

The **Govt. vide memo. No. Secy/ACSET/2015/183, dated 4.8.2015,** order implementation of electronic governance, for the purposes of registration and furnishing of returns, with immediate effect, for carrying out the various provisions of the Act and the Rules framed thereunder.

The **Govt. vide Notification No. Leg. 9/2015, dated 3rd August, 2015** seek to issue The Haryana Value Added Tax (Second Amendment) Ordinance, 2015.

OUR TAKE: Readers are requested to read the said Notification. There are amendments in various sections.

KARNATAKA

The **Govt. vide Notification No. FD 71 CSL 2015, dated 1st August, 2015 (published now)** hereby exempts with immediate effect, the tax payable by a dealer under the said Act on the sale of Solar PV panels, and Solar Inverters.

OUR TAKE: The Notification is self-explanatory.

KERALA

The **Govt. vide Notification No. 5959/Leg.A2/2015/Law, dated 29th July, 2015 (published now)** hereby published for general information The Act of the Kerala State Legislature. The Bill as passed by the Legislative Assembly received the assent of the Governor of Kerala on the 29th day of July, 2015.

OUR TAKE: The notification contains the Kerala Finance Act, 2015.

The **Govt. vide Circular No. 21/2015 No.C1-12107/12/CT, dated 3rd August, 2015** issued certain instructions regarding use of Online Delivery Note.

OUR TAKE: To alleviate the hardships on account of constraints in timely delivery of digitally signed delivery note, it has been decided to do away with the digital signing of delivery note till the technical difficulties are resolved. Hence from 6th August, 2015 onwards, dealers will be permitted to download Delivery Notes without digital signature. The service can be availed from their KVATIS login account only until further orders.

MADHYA PRADESH

The **Govt. vide ACT No. 15 of 2015 which received the assent of the Governor on 4th August, 2015** publishes The Madhya Pradesh Vat (Amendment) Act, 2015.

OUR TAKE: There are amendments in various sections.

RAJASTHAN

The **Govt. vide Notice Under Section 91(2), dated 05-08-2015** direct to all such registered dealers who have failed to update their PAN data correctly and have failed to submit the returns in Form VAT-10 or VAT-11, as the case may be, which have become due for the year 2014-15.

OUR TAKE: The said notice is self-explanatory.

UTTAR PRADESH

The **Govt. vide Notification No. K.A. NI-2-1042/XI-9(29)14-U.P. Act-5-2008-Order-(137)-2015, dated 31st July, 2015** seeks to amend Schedule-I and Schedule-II of the said Act.

OUR TAKE: In Schedule-I, for the existing entry at serial no. 43, the Description of Goods shall be substituted by "Kite, manja & charkhi used for flying kites; bans ki tilli (Fatti)". And, in Schedule-II (A) the goods specified at serial No. 13 the words "bans ki tilli (Fatti)" shall be omitted.

OTHER UPDATES

DGFT

The **Govt. vide Public Notice No. 29/2015-20, dated 4th August, 2015** amends paragraph 3.05 of Handbook of Procedures of FTP, 2015-2020.

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

The Govt. vide Notification No 17 /2015-20, dated 6-8-2015 amends export policy of edible oils.

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

FEMA

The Govt. vide Circular No.7 (RBI//2015-16/146), dated 6-8-2015 Exim Bank's GoI supported Line of Credit of USD 18.08 million to the Government of Republic of Chad.

OUR TAKE: The Circular is self-explanatory.

COMPANY LAW

COURT DECISIONS

SRIDHAR SUNDARARAJAN VERSUS ULTRAMARINE & PIGMENTS LTD. AND RANGASWAMY SAMPATH (BOMBAY HIGH COURT)

BRIEF: Section 196(3) of Companies Act 2013 does not interrupt appointment of Managing Director where at date of such appointment or re-appointment Managing Director was below age of 70 years but crossed that age during his tenure Word continue therefore must be read contextually.

OUR TAKE: The Hon'ble **BOMBAY HIGH COURT** held that vested right would arise only if Appellant had actually been appointed – Merely because additional eligibility condition was laid down, it does not mean that any vested right of Appellants was affected, nor does it mean that Regulation laying down such minimum eligibility condition would be retrospective in operation. On closer reading of Section proviso tells us age of 70 is not an absolute bar. Public limited company may well appoint person of 80 years of age as Managing Director; all that is needed is special resolution. Clearly in view of sections 196, 269(2) and 267, there was no 'discontinuance' of Managing Directorship at age of 70; section applied only to his appointment (and that includes his reappointment). Section 196(3) does not interrupt appointment of Managing Director where at date of such appointment or re-appointment Managing Director was below age of 70 years but crossed that age during his tenure. Word 'continue', therefore, must be read contextually – Decision in the case of P. Suseela & Ors. v. University Grants Commission & Ors. [2015 (8) TMI 69 - SUPREME COURT] followed. [**Decided against Appellant**]

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