



# ASC Times

All India Taxes Weekly Reference

Vol: Apr 11 - Apr 17, 2016

Solving  
any **tax**  
puzzle

Tax saving advice  
across all the taxes



## From the CEO's Desk



Dear Reader,

As 31st March is over, I am sure there will be a sigh of relief within the organizations as well as their financial consultants. Number game is at the back burner for some time now until fresh targets are imposed and eyes are on bigger game. No problem, this is the rule of life, the most constant thing is continuous change. Likewise, in the governance also changes are evident. The Income tax department has launched e-filing of income tax for few more categories for the assessment year 2016-17 and they are operational from some time now. These categories include: Income Tax Returns (ITRs) which is ITR-2 for individuals and Hindu Undivided Families (HUFs) not having income from business or profession. 2A for individuals and HUFs who do not have income from business or profession and capital gains and who do not hold foreign assets. ITR-3 is for individuals and HUFs who are partners in firms and do not carry out business or profession under proprietorship.

The department has activated two types of forms SAHAJ (ITR-1) and SUGAM (ITR-4S). SAHAJ is meant for individuals having income from salary and interest and SUGAM for individuals, HUF, partnership firms having income from presumptive business. All the ITRs are available on the official e-filing web portal of the department <http://incometaxindiaefiling.gov.in/>.

Government has understood that for any scheme to work it is necessary that it reaches the target audience so that ROI can be fetched on the every penny spent. To achieve this Government plans massive reboot of DBT scheme for easy transfer of money to the villagers. The exercise-Direct Benefit Transfer- with a new version, which is DBT2.0, envisages the use of post offices and roping in the friendly mail carrier as a delivery agent for door-to-door disbursement of payments, including wages for rural jobs and subsidy for fuels, food and fertilisers.

Transferring of Rs. 6000 crore of subsidies and wages every month electronically to the bank accounts of 30 crore people is quite a task. The reasons are simple and manifold, one there are not enough bank branches in the villages and sometimes 2 or 3 people manage them so they do not operate all working days or cut down on the working hours. Even if the branch is open, commuting becomes a problem for the seekers as they are 10 to 15 kilometres away and it takes a lot on transport. So, it has been decided that DBT2.0 will work with 1.55 lakhs post offices from which 1.38 lakhs are in rural areas. 5.45 lakhs fair price shops will be automated to provide DBT related to food.

Alok Kumar Agarwal

CEO

ASC Group.

## TAX CALENDER

Due Date	Description	Law
12 April	Deposit of Tax	Gujarat VAT,
13 April	Filing of Return	Gujarat VAT
14 April	Return Filing	Gujarat VAT
10 April	Deposit of Tax	Bihar VAT, Haryana VAT, Jharkhand VAT, Karnataka VAT, Sikkim VAT
	Deposit of TDS	Bihar VAT, Delhi VAT, Haryana VAT, Himachal Pradesh VAT, Jharkhand VAT, Punjab & Chandigarh VAT
	Filing of Return	Karnataka VAT, Madhya Pradesh VAT
	Issue of TDS Certificate	Andhra Pradesh VAT, Bihar VAT, Himachal Pradesh VAT, Jharkhand VAT, Nagaland VAT, Punjab & Chandigarh VAT, Telangana VAT
	Filing of TDS Return (Form No. 24Q and 26Q)	Income Tax Law

## COUNTRY WIDE HOLIDAYS FOR THE WEEK

Date	Occasion/Festival	Region
13 April	Baisakhi, Visubha Sakranti	Jammu & Kashmir, Jharkhand, Orissa
14 April	Dr. BR Ambedkar Jayanti, Bengali New Year	Andhra Pradesh, Bihar, Goa, Gujarat, Haryana, Jharkhand, Karnataka, Kerala, Maharashtra, Orissa, Puducherry, Rajasthan, Tamil Nadu, Telangana, Uttar Pradesh, Uttarakhand, West Bengal, Tripura
15 April	Ram Navami	Andhra Pradesh, Bihar, Chandigarh, Gujarat, Himachal Pradesh, Madhya Pradesh, Maharashtra, Orissa, Punjab, Rajasthan, Telangana, Uttar Pradesh, Uttarakhand

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# CENTRAL TAXES

## SERVICE TAX

### COURT DECISIONS

#### PURNIMA ADVERTISING AGENCY PVT. LTD. AND 1 VERSUS UNION OF INDIA THROUGH SECRETARY AND 2 [GUJARAT HIGH COURT]

**BRIEF:** Claim of interest on delayed refund - the petitioner was required to unnecessarily litigate in two rounds; in the first round, up-till the Tribunal and in the second round, upto this court, for the purpose of availing of the statutory interest payable to it. Under such circumstances, the petitioner is entitled to the grant of compensatory costs, which are quantified at 25,000/-.

**OUR TAKE:** The hon'ble GUJARAT HIGH COURT held that the petitioner was required to unnecessarily litigate in two rounds; in the first round, up-till the Tribunal and in the second round, upto this court, for the purpose of availing of the statutory interest payable to it. Under such circumstances, the petitioner is entitled to the grant of compensatory costs, which are quantified at 25,000/-. [Decided in favour of petitioner]

#### YES & YES HI-TECH PROMOTERS INDIA PVT. LTD. VERSUS THE COMMISSIONER OF CENTRAL EXCISE, THE CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL [MADRAS HIGH COURT]

**BRIEF:** Dismissal of appeal for non-compliance of order for making pre-deposit - Once a consequential order is passed, the appellant would have no cause of action as against the original order. Consequently, the order cannot be challenged in the absence of compliance with the original order. Hence, the appeals cannot be entertained.

**OUR TAKE:** The Hon'ble MADRAS HIGH COURT held that the order dismissing the appeal happened long after on 30.6.2015. Once a consequential order is passed, the appellant would have no cause of action as against the original order. Consequently, the order cannot be challenged in the absence of compliance with the original order. Hence, the appeals cannot be entertained. [Decided against the appellant]

#### M/S. MCNALLY BHARAT ENGINEERING CO. LTD. VERSUS COMMISSIONER OF SERVICE TAX, KOLKATA [CESTAT KOLKATA]

**BRIEF:** Cenvat Credit - Medicare Services Club for its employees - Appellant has produced a certificate from the Chartered Accountant to that effect that the expenses incurred because of Medicare services have been included in the value of the output services being provided. Credit allowed.

**OUR TAKE:** The hon'ble CESTAT KOLKATA held the First Appellate Authority while rejecting Appeal of the Appellant, only gave one reason for denying the Cenvat Credit that there was no evidence produced by the Appellant whether expenses on account of Medicare Services have been included in the value of the services being provided by the Appellant. The Appellant has now produced a certificate from the Chartered Accountant to that effect that the expenses incurred on account of Medicare services have been included in the value of the output services being provided. Therefore, Cenvat credit has to be allowed. [Decided in favour of appellant]

#### M/S ANUSHKA ENTERPRISES VERSUS COMMISSIONER OF CENTRAL EXCISE, PUNE-I [CESTAT MUMBAI]

**BRIEF:** Imposition of penalties - the consultant, upon handing over the Service Tax matter defrauded appellant by showing the payment of entire Service Tax liability by forged challans - penalties waived.

**OUR TAKE:** The hon'ble CESTAT MUMBAI held that as the ratio in the case of Hemangi Enterprises vs. Commissioner of Central Excise, Pune I [2015 - CESTAT MUMBAI] covers the issue. By respectfully following the same, the penalties imposed on the appellant are set aside. [Decided in favour of appellant]

#### BHARAT ART AND CRAFTS, SHIVAM EXPORT (100% EOU) , BOTHRA INTERNATIONAL VERSUS COMMISSIONER OF CENTRAL EXCISE, JAIPUR-II [CESTAT NEW DELHI]

**BRIEF:** Rejection of refund claim - input services used in export of goods - when the goods were exported under claim of drawback, the impugned refund claims would not be admissible by virtue of proviso (e) to Notification No.41/2007-ST.

## CENTRAL EXCISE

### CIRCULARS & NOTIFICATION

**The Govt. vide Circular No. 1022/10/2016-CX date 06<sup>th</sup> April 2016**, notify classification of Micronutrients, Multi-micronutrients, Plant Growth Regulators and Fertilizers

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

**The Govt. vide Circular No. 1023/11/2016-CX date 08<sup>th</sup> April 2016**, Adjudication of Show Cause Notices on the basis of CERA/CRA objection.

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

### COURT DECISIONS

#### M/S TATA CHEMICALS LTD. VERSUS COLLECTOR OF CENTRAL EXCISE (SUPREME COURT)

**BRIEF: Inclusion of value of gunny bags for determination of assessable value of manufactured goods - Arrangement between appellant and buyers of soda ash - there is no arrangement to return the gunny bags - value to be included in the transaction value.**

**OUR TAKE:** The hon'ble SUPREME COURT held that it cannot be concluded that the appellant has succeeded in establishing that such an arrangement of return of the packing materials of the gunny bags with the obligation on the part of the seller to refund the value thereof existed between the parties. Also, obligation taken by the appellant to refund the value of the gunny bags to the Buyer in terms of any arrangement between the parties not found. Value to be included. **[Decided against the assessee]**

#### SRI KAILASH AGRAWAL VERSUS THE COMMISSIONER (APPEALS-I) , CENTRAL EXCISE & CUSTOMS (APPEALS-I) RAIPUR (CHATTISGARH HIGH COURT)

**BRIEF: A litigant approaching the Court with a perceived grievance according to his understanding has a right to be told why his perception was not correct. He cannot be confronted with the conclusions without telling him the reasons.**

**OUR TAKE:** The hon'ble CESTAT NEW DELHI held that the grounds namely services not covered under port service, non-submission of proof of payment of service tax under GTA service and debit note not being prescribed document for this purpose have been analysed in appellant's own case and decided in its favour reported in [2016 (2) TMI 259 - CESTAT NEW DELHI]. Regarding CHA services bills of lading and container numbers are clearly mentioned therein and thus it would be quite possible to link as to which goods the CHA bills related to. Therefore this ground for denial of refund in respect of CHA services is not sustainable. **[Decided partly in favour of appellant]**

#### M/S PRAKASH SADASHIV KARDE VERSUS COMMISSIONER OF CENTRAL EXCISE, CUSTOMS & SERVICE TAX, AURANGABAD [CESTAT MUMBAI]

**BRIEF: Waiver of penalties - The appellant paid the entire service tax and interest from their own pocket. So, this itself is a burden on the appellant - When the assessee discharged service tax along with interest before issuance of show cause notice, penalty waived invoking section 80.**

**OUR TAKE:** The hon'ble CESTAT MUMBAI held that the assessee discharged service tax along with interest before issuance of show cause notice penalty has been waived, therefore, when the appellant themselves after discharging the service tax liability along with interest, opted the waiver of show cause notice the case is clearly falls under the provisions of Section 73(3) of Finance Act and the appellant has made out a fit case for waiver of penalty. The penalties and fees imposed under Sections 76, 77, 78 and 70 of the Finance Act, 1994 by invoking Section 73(3) read with Section 80 are waived of. **[Decided in favour of appellant]**

#### COMMISSIONER OF SERVICE TAX-VI, MUMBAI VERSUS BALAJI TELEFILMS LTD. [CESTAT MUMBAI]

**BRIEF: Export of service - the usage of the programme after delivery to the overseas entity is irrelevant in deciding upon the tax liability as 'programme producer'.**

**OUR TAKE:** The hon'ble CESTAT MUMBAI held that HSBC, their bankers, indicating that inward remittance from the overseas entity was in convertible foreign currency. Consequently, there is no justification for entertaining any doubt that inward remittances were in convertible foreign currency. Therefore, both the conditions for export in Rule 3(2) of Export of service Rules, 2005 have been complied with. **[Decided against the revenue]**

**OUR TAKE:** The hon'ble **CHATTISGARH HIGH COURT** held that It is trite law that justice must not only be done but it must appear to be done. A litigant approaching the Court with a perceived grievance according to his understanding has a right to be told why his perception was not correct. He cannot be confronted with the conclusions without telling him the reasons. Modification application restored to file for fresh disposal on merits in accordance with law.

**COMMISSIONER OF CENTRAL EXCISE DELHI-II VERSUS SOM PAN PRODUCTS ALLOYS PVT LTD [DELHI HIGH COURT]**

**BRIEF: Demand of interest - The Court is not satisfied that the demand of interest for a period of three months, which was occasioned on Department's own inability to promptly decide the request of Assessee, is sustainable in law.**

**OUR TAKE:** The hon'ble **DELHI HIGH COURT** held that the Department has given no plausible reason in the first instance for the delay of three months in deciding the Assessee's request for abatement of the excess duty paid by it during the month of January 2011. The Court is not satisfied that the demand of interest for a period of three months, which was occasioned on Department's own inability to promptly decide the request of Assessee, is sustainable in law. Consequently, the Court leaves the question raised in the present case for examination in appropriate case if the facts so warrant.

**THE COMMISSIONER OF CENTRAL EXCISE, PUNE-I VERSUS M/S. S.S. ENGINEERS (BOMBAY HIGH COURT)**

**BRIEF: Cross utilization of the credit on excuse duty and service tax denied - the cross utilization of credit on goods and services being not covered by any restrictive provision, leave alone any prohibition or embargo, the Tribunal's order does not call for any interference.**

**OUR TAKE:** The hon'ble **BOMBAY HIGH COURT** held that A reference to that also does not vitiate the impugned order inasmuch as Rule 7 states that input service distributor may distribute the CENVAT credit in respect of the service tax paid on the input service to its manufacturing units or units providing output service, subject to the conditions stipulated therein. In such circumstances, the cross utilization of credit on goods and services being not covered by any restrictive provision, leave alone any prohibition or embargo, the Tribunal's order does not call for any interference. The interpretation placed on the Rule is a probable and a possible view.

**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 Department did not bring the requisite evidence necessary for levy of penalty on each of the Appellants under Rule 26 of the CE Rules 2002 on record. 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]**

## CUSTOMS

### CIRCULARS & NOTIFICATION

**The Govt. vide Notification No. 48/2016 date 08<sup>th</sup> April 2016**, notify that the rates of exchange of conversion of each of the foreign currencies specified in Schedule I and Schedule II, into Indian currency or vice versa with the effect from 08<sup>th</sup> April 2016.

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

**The Govt. vide Notification No. 47/2016 date 04<sup>th</sup> April 2016**, amends notification no. 41/1990 dated 17<sup>th</sup> March 2016.

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

**The Govt. vide Instruction No. 528/15/2016-STO (TU) date 08<sup>th</sup> April 2016**, clarified that in Notification No. 151/94-Cus dated 13<sup>th</sup> July 1994, exemption is not limited to the 'Indian Airlines' (now called as 'National Aviation Company of India Limited'). It is available to any Indian airline, in other words, to all Indian airlines.

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

### COURT DECISIONS

**M/S HOSPIRA HEALTH CARE INDIA PVT. LTD. VERSUS DEVELOPMENT COMMISSIONER, MEPZ SPECIAL ECONOMIC ZONE & HEOS, DIRECTOR GENERAL OF FOREIGN TRADE (DGFT) AND OTHERS [MADRAS HIGH COURT]**

**BRIEF:** Rejection of refund claim - Reimbursement of Central sales Tax - Inter-state purchase made by an EOU from another EOU - If the procedural norms are in conflict with the policy, then the policy will prevail and the procedural norms to the extent they are in conflict with the policy, are liable to be held to be bad in law.

**OUR TAKE:** The hon'ble **MADRAS HIGH COURT** held that the petitioner can be prevented only if the policy is amended prohibiting refund of tax for the purchases made from an

100% EOU. The procedure was to be prescribed by an authority in implementing the policy and must be in consonance with the policy. If the procedural norms are in conflict with the policy, then the policy will prevail and the procedural norms to the extent they are in conflict with the policy, are liable to be held to be bad in law. Since the impugned communications are in conflict with paragraph 6.11 of the Foreign Trade Policy, the same are liable to be set aside. **[Decided in favour of appellant]**

**M/S. PRECISION POLYPLAST PVT. LTD. VERSUS COMMISSIONER OF CUSTOMS (PORT) , KOLKATA [CESTAT KOLKATA]**

**BRIEF:** Eligibility for refund of SAD - Appellant (SEZ unit) was an importer of the goods when imported into India and paid VAT at the time of sales to DTA units. The SAD paid has not been recovered from the DTA buyers - refund allowed.

**OUR TAKE:** The hon'ble **CESTAT KOLKATA** held that the Appellant was an importer of the goods when imported into India and paid VAT at the time of sales to DTA units. The SAD paid has not been recovered from the DTA buyers. The conditions of Notification No.102/2007-CUS are, therefore, fulfilled and the ratio laid down by the case law Adinath Trade Link v. Commissioner of Customs, Kandla [2013, CESTAT AHMEDABAD] is squarely applicable to the facts of the present case. Hence, the appellant is eligible for refund. **[Decided in favour of appellant with consequential relief]**

**M/S STANDARD INDS LTD. VERSUS COMMISSIONER OF CUSTOMS (ACC) , MUMBAI [CESTAT MUMBAI]**

**BRIEF:** Duty liability on warehoused goods under prevailing rate on the date - the bond executed for storage of warehoused goods in the warehouse expired on 24-01-2003. Hence, the goods cannot be said to have been bonded or warehoused goods for which only provisions of Section 15 of the Customs Act apply.

**OUR TAKE:** The hon'ble **CESTAT MUMBAI** held that the duty liability should be on the date of clearance of the consignment from Custom bonded warehouse. The appellant has no case, the bond executed for storage of warehoused goods in the warehouse, expired on 24-01-2003. Hence, the goods cannot be said to have been bonded or warehoused goods for which only provisions of Section 15 of the Customs Act apply. **[Decided against the 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]**

# INCOME TAX

## COURT DECISIONS

### COMMISSIONER OF INCOME TAX (TDS) VERSUS HERAMEC LTD [ANDHRA PRADESH HIGH COURT]

**BRIEF:** : TDS u/s 194J - procurement of ready study data by the parent company, from another foreign company, and supplying it to the assessee amounts - Non deduction of TDS on technical services rendered to a resident. No TDS required

**OUR TAKE:** The hon'ble **ANDHRA PRADESH HIGH COURT** held that revenue has also not been able to show how procurement of ready study data by the parent company, from another foreign company, and supplying it to the assessee amounts to services rendered to a resident attracting Section 194-J of the Act. The Tribunal is the final court of facts and, as the finding recorded by it is on the basis of the material on record, the order under appeal cannot be said to be perverse. **[Decided in favour of assessee]**

### SURESH KUMAR HOODA VERSUS THE COMMISSIONER OF INCOME TAX, ROHTAK AND ANOTHER [PUNJAB & HARYANA HIGH COURT]

**BRIEF:** Service of an independent contractor. Whether would be taxable as salary contrary to the contract of service - Whether it is professional or skilled work; nature of establishment and the right to reject, are also required to be scanned before arriving at the conclusion of the employer-employee relations.

**OUR TAKE:** The hon'ble **PUNJAB & HARYANA HIGH COURT** held that the control test and the organization test are not the only factors whereas several other factors viz. who is the appointing authority; who is pay master; who can dismiss; how long alternative service lasts; the extent of control and supervision; the nature of the job e.g. Whether it is professional or skilled work; nature of establishment and the right to reject, are also required to be scanned before arriving at the conclusion of the employer-employee relations - matter is remanded to the Tribunal to decide the same afresh keeping in view the principles.

### YUM RESTAURANTS (INDIA) PRIVATE LIMITED AND COMMISSIONER OF INCOME TAX-09 VERSUS INCOME TAX OFFICER AND YUM RESTAURANTS (INDIA) PRIVATE LIMITED [DELHI HIGH COURT]

**BRIEF:** Carry forward accumulated business losses - change in shareholding. The question of 'piercing the veil' at the instance of Yum India does not arise. - in terms of Section 79 of the Act, Yum India cannot be permitted to set off the



carry forward accumulated business losses of the earlier years.

**OUR TAKE:** The hon'ble **DELHI HIGH COURT** held that the As there was indeed a change of ownership of 100% shares of Yum India from Yum Asia to Yum Singapore, both of which were distinct entities. Although they might be AEs of Yum USA, there is nothing to show that there was any agreement or arrangement that the beneficial owner of such shares would be the holding company, Yum USA. The question of 'piercing the veil' at the instance of Yum India does not arise. In the circumstances, it was rightly concluded by the ITAT that in terms of Section 79 of the Act, Yum India cannot be permitted to set off the carry forward accumulated business losses of the earlier years.

**THE COMMISSIONER OF INCOME TAX, PANCHKULA VERSUS M/S GYMKHANA CLUB, PANCHKULA [PUNJAB & HARYANA HIGH COURT]**

**BRIEF:** Principle of mutuality. Whether the ITAT was right in law in treating the charges received from non-member/guests as not liable to tax? Matter remanded back for ascertaining facts.

**OUR TAKE:** The hon'ble **PUNJAB & HARYANA HIGH COURT** held that tribunal had not recorded any definite finding of fact on the basis of legal enunciations on the issue. Therefore, in such a situation, the issue being considered to be primarily a question of fact relating to applicability of doctrine of mutuality, it would be appropriate to set aside the order of the Tribunal and remand the case back to the Tribunal to adjudicate the same and pass a speaking order after hearing both the sides.

**MONSANTO INDIA LTD VERSUS ADDL COMMISSIONER OF INCOME TAX [ITAT MUMBAI]**

**BRIEF:** Allow ability of exemption u/s 10(1). For earning agricultural income, it is not necessary that the assessee must own the land and it is enough if it is established that the agricultural organizations have been actually carried on by the assessee.

**OUR TAKE:** The hon'ble **ITAT MUMBAI** held that for earning agricultural income, it is not necessary that the assessee must own the land and it is enough if it is established that the agricultural organizations have been actually carried on by the assessee. In view of the finding of the fact recorded - Decided in favour of assessee. **[Decided in favour of assessee]**

**SMT. MINALBEN DIPAKBHAI MEHTA VERSUS ITO, WARD-3 (3) SUAT. [ITAT AHMEDABAD]**

**BRIEF:** Addition u/s 68 - cash credit - the alleged surplus cash accumulated in the cash book out of the withdrawals from the bank is to be considered as source of re-deposit.

**OUR TAKE:** The hon'ble **ITAT AHMEDABAD** held that assessee claimed that sum of amount has been received from her son and daughter - the assessee has produced prima facie evidence about the source of amount. The AO, except disbelieving the version of the assessee, failed to bring any evidence contrary to the one submitted by the assessee. Thus, the addition to this extent, source proved, would be deleted. The assessee has explained the sources. Therefore, in our opinion, the alleged surplus cash accumulated in the cash book out of the withdrawals from the bank is to be considered as source of re-deposit. **[Decided in favour of assessee in part]**

**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]**

# STATE TAXES

## ALL INDIA VAT

### GOA

**The Govt. vides Notification No .L.G.-01-01/2016/57-LEG dated 04<sup>th</sup> April 2016**, amendment in following.

- Section 3A - The words "twenty per centum" used in sub-section (1) of section-3A of the said Act, 2005 shall be substituted by the words "thirty per centum."
- Section 14 - The words "thirteen and a-half percent" used in clause (d) of sub-section (1) of section-14 of the said Act, 2005 shall be substituted by the words "fourteen and a-half percent."
- Section 70 - The words "ninety days" used anywhere in section-70 of the said Act, 2005 shall be substituted by the words "sixty days."

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

**The Govt. vides Notification No. 1303 dated 05<sup>th</sup> April 2016**, notify that the Commissioner has decided to adopt following criteria for selection of dealers registered under the Bihar Value Added Tax Act, 2005, for detailed VAT audit of their business in respect of Financial Year 2014-15.

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

**The Govt. vides Notification No. L.G.-1-03/2016/68-LEG dated 07<sup>th</sup> April 2016**, Introduction of Bihar Settlement of Taxation Disputes Act, 2016.

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

### HARYANA

**The Govt. vides Notification No. 13 /ST-1/H.A.6/2003/S.59/2016 dated 07<sup>th</sup> April 2016**, notify that change in rate of liquor from 8% to 10%.

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

### MADHYA PRADESH

**The Govt. vides Act No. 12 dated 05<sup>th</sup> April 2016**, introduced Madhya Pradesh Upkar (Sanshodhan) Adhiniyam, 2016.

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

**The Govt. vides Act No. 14 dated 05<sup>th</sup> April 2016**, amends section 9, 14, 18, 26 & 34, Insertion of Section 28-A and Amendment of Schedule-I & II

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

### UTTAR PRADESH

**The Govt. vides Notification KA.NI. -2-391/XI-9(13)/2010-U.P.ACT. -5-2008-ORDER-(155)-2016 dated 04<sup>th</sup> April 2016**, Notify that there is discontinuation of transport memo for cement.

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

**The Govt. vides Notification KA.NI. -2-485/XI-9(13)/2010-U.P.ACT. -5-2008-ORDER-(156)-2016dated 04<sup>th</sup> April 2016**, Notify that there is increase in rate of advance tax of cement by 4%.

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

## COURT DECISIONS

### RECKITT BENCKISER (INDIA) PRIVATE LIMITED VERSUS STATE OF UTTARAKHAND AND ANOTHER (UTTARAKHAND HIGH COURT)

**BRIEF:** Input tax credit - the case of stock transfer is squarely covered by the proviso and no input tax credit is vouchsafed in respect of packing materials used in connection with finished products, which are stock transferred outside the State in course of inter-State trade or commerce.

**OUR TAKE:** The hon'ble **UTTARAKHAND HIGH COURT** held that the proviso would appear to be an independent provision and the concept of sale would apply to both an intra-State sale, as also, inter-State trade and commerce within the meaning of Section 6(3)(d) of the Uttarakhand VAT Act. In other words, the case of stock transfer would not fall within the ambit of Section 6(3)(d) of the Uttarakhand VAT Act. Therefore, the case of stock transfer is squarely covered by the proviso and no input tax credit is vouchsafed in respect of packing materials used in connection with finished products, which are stock transferred outside the State in course of inter-State trade or commerce. **[Decided against the appellant]**

### CTO, A/E, BHILWARA VERSUS M/S SUZUKI TEXTILES LTD., BHILWARA [RAJASTHAN HIGH COURT]

**BRIEF:** Imposition of tax - Packing material used for packing the clothes - tax not imposable on packing material used for packing the clothes.

**OUR TAKE:** The hon'ble **RAJASTHAN HIGH COURT** held that relying on the decision of co-ordinate Bench of this Court in the case Commercial Taxes Officer, Anti Evasion, Bhilwara Vs. M/s Suzuki Textiles Ltd., Village Gudda, Post Office- Mandal, District Bhilwara, S.B. Civil (Sales Tax) and Assistant Commissioner, Commercial Taxes Department Vs. Teletube Electronic Ltd. [2002, RAJASTHAN HIGH COURT], the tax not imposable on packing material used for packing the clothes. **[Decided against the revenue]**

# OTHER UPDATES

## DGFT

### CIRCULAR & NOTIFICATIONS

The Govt vide Trade Notice No. 1/2016 dated 07<sup>th</sup> April 2016, sates categories of export product/sector shall be ineligible for Duty Credit Scrip under Focus Market Scheme (FMS) of FTP 2009-14.

**OUR TAKE:** Readers are requested to read the said Notice. 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 pendente 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

#### CIRCULAR & NOTIFICATIONS

**The ICAI vide Guideline No. 1-CA(7)/03/2016 dated 07<sup>th</sup> April 2016**, hereby issue the guidelines for compliance by the members of the Institute.

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

#### COURT DECISIONS

#### KARNATAKA STATE CHARTERED ACCOUNTANTS ASSOCIATION AND OTHERS VERSUS THE STATE OF KARNATAKA AND OTHERS [KARNATAKA HIGH COURT]

**BRIEF: Cost accountant v/s Chartered Accountants - nature of work - amendment to Section 63 of the Karnataka Co-operative Societies Act, 1959 - auditing of accounts by Cost Accountants of a firm of Cost Accountants permitted. - Amendment sustained.**

**OUR TAKE:** The hon'ble KARNATAKA HIGH COURT held that it is not evident that by virtue of the impugned amendment, a Cost Accountant has been enabled to carry out functions, which can only be performed by a Chartered Accountant. This is statutorily governed and there can be no entrenchment on such functions. It is not the case of the petitioners that auditing the accounts of a cooperative society is the exclusive domain of Chartered Accountants. If that be so, there is no ground for challenge made out.

#### LATEST NEWS ON PROPOSED GST

**04<sup>th</sup> April, 2016**, Assuring Saudi and Indian business leaders that his government is working to set up a predictable long-term taxation regime, Prime Minister Narendra Modi on Sunday said the long-awaited Goods and Services Tax (GST) would soon be implemented in India.

**04<sup>th</sup> April, 2016**, Gold traders, jewellers and artisans have been observing strike since March 2. The larger impact is going to be, if I keep a luxury item out of the proposed GST, then the standard rate of the GST itself will have to go up – Arun Jaitley.

**07<sup>th</sup> April, 2016**, GST roll out is a good policy idea is reckoned by all the political parties. If the Congress wants to play—and wants to be seen as playing—an effective role, it needs to pro-actively support the GST Bill in the same manner as it did the real estate Bill: writing to the Prime Minister and seeking its early passage.

**07<sup>th</sup> April, 2016**, It would be preferable to wait till April 1, 2017, for a better Goods and Services Tax (GST) regime so that the essential objective of the GST to harmonise all the taxes prevails, NITI Aayog member Bibek Debroy said on Tuesday.

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