



ASC Times

All India Taxes Weekly Referencer

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Solving
any **tax**
puzzle

Tax saving advice
across all the taxes



From the CEO's Desk



Dear Reader,

With the festival of Lohri round the corner being one of the famous festival in the northern regions of India. The festival is celebrated to mark the closing stages of winters and enjoy the upcoming season of spring. As the budget 2016 is on its way to be announced on the last working day of February 2016, the pre budget gossips have already taken a leap out. The economic and fiscal outlook explains the pace of economic recovery that has strengthened in the first half of the last year, with annual growth rates of 7.2 and 6.7 per cent in the first and second quarters respectively. The recovery in output is yielding positive dividends in the labour market, where strong employment gains have been recorded in the first half of the year.

Delhi's odd even formula for the purpose of traffic control and bringing the pollution level down to certain extent is still a debatable issue with just five more days to go round the corner. However the data generated by National Air Quality Index provides that the air quality has been in the situation of 'severe' to 'very poor' even after the odd even formula in process.

Going in the depth of the Government activities, there has been imposed a penalty by the Delhi Government on the traders and transporters who bring undeclared goods to the state from other states, wherein the reports released by the Department of Trade and Taxes claims that around 783 vehicles have been detected with such cases. The amount of penalty is Rs. 50,000 each totaling to Rs. 3.91 crores approximately.

Further the 5 day grace period in respect of payment of provident fund contribution by employers has been removed. The Employee Provident Fund Organization (EPFO) brought out a circular to this effect which shall come into force from February 2016. The reason behind this decision was due to ease in calculations and

deposition of challan online which has reduced the entire process.

Moving ahead, Mr. S. Naganath, chief investment officer in an interview said the corporate earnings will grow around 15% in 2016-17 as the sectors such as automobiles, consumer products and private banks are expected to perform well this year. However for the fiscal year 2017-18, growth is expected to be around 15-20%.

Wishing all the readers a very Happy Lohri and Makar Sankranti with a great week ahead.

Alok Kumar Agarwal

CEO

ASC Group

TAX CALENDER

Due Date	Description	Law
12 January	Deposit of Tax	Gujarat VAT
13 January	Filing of Return	Nagaland VAT
14 January	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
15 January	Filing of Audit Report	MVAT Audit Report 2014-15

COUNTRY WIDE HOLIDAYS FOR THE WEEK

Date	Occasion/Festival	Region
11 Jan	Missionary Day	Mizoram
12 Jan	Swami Vivekananda Birthday	West Bengal
14 Jan	Makar Sankranti	Gujarat
15 Jan	Sankranti/Pongal	Andhra Pradesh, Karnataka, Tamil Nadu, Punducherry, Telangana
16 Jan	Guru Govind Singh's Birthday	Himachal Pradesh
16 Jan	Thiruvalluvar Day	Puducherry & Karaikal Regions, Tamil Nadu
16 Jan	Guru Ravidas Birthday	Punjab
17 Jan	Ujhavar Thirunal	Tamil Nadu

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CENTRAL TAXES

SERVICE TAX

COURT DECISIONS

THE ADDITIONAL COMMISSIONER CENTRAL EXCISE VERSUS M/S STRATEGIC ENGINEERING PRIVATE LTD. [MADRAS HIGH COURT]

BRIEF: Erection, Commissioning or Installation Services - receipt of labour charges for installation and commissioning of GRP Pipes for various customers - The pipes that the respondent/assessee had to lay were not plant, machinery or equipment - demand was rightly set aside.

OUR TAKE: The Hon'ble MADRAS HIGH COURT held that it could be seen from the amendment to Section 65(39a), introduced under Finance Act, 2005, that the definition of "erection, commissioning or installation" was extended so widely as to include (i) electrical and electronics devices, (ii) plumbing, (iii) heating, ventilation or air-conditioning, (iv) thermal insulation, (v) lift and escalator, and (vi) such other similar services. The pipes that the respondent/assessee had to lay were not plant, machinery or equipment. Therefore, the learned Judge [2011, MADRAS HIGH COURT] was right in allowing the writ petition. **[Decided against the revenue]**

M/S L.N. GUPTA TRANSPORT CO. VERSUS COMMISSIONER OF CENTRAL EXCISE, NAGPUR [CESTAT MUMBAI]

BRIEF: Whether the activity of transportation services, that is carrying employees of companies from specific points to the factory/establishment and back can be categorized under "Tour operator" service. Held NO.

OUR TAKE: The Hon'ble CESTAT MUMBAI held that appellant were not engaged in the business of planning, scheduling, organizing or arranging package tour of their own as provided under the new definition of "tour operator" service but were adhering to the conditions laid down with various customers. Therefore it cannot be said that they were covered under the first part of the amended definition of "tour operator". **[Decided in favour of assessee]**

GAIL INDIA LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX, LTU, NEW DELHI [CESTAT NEW DELHI]

BRIEF: Cenvat Credit. The benefit of Cenvat credit on the service tax paid by the service provider cannot be denied, only on the ground that the invoices are in the name of branch offices which were not separately registered.

OUR TAKE: The Hon'ble CESTAT NEW DELHI held that Decisions of this Tribunal in Manipal Advertising Services Pvt. Ltd. Vs. C.C.E., Mangalore - [2009, CESTAT, BANGALORE] and Well Known Polyesters Ltd. Vs. C.C.E., Vapi - [2011, CESTAT, AHMEDABAD], have clearly declared the principle that if a person is discharging service tax liability from his registered premises, the benefit of Cenvat credit on the service tax paid by the service provider cannot be denied, only on the ground that the invoices are in the name of branch offices which were not separately registered. - Benefit of credit allowed. **[Decided in favour of assessee]**

M/S. GUJARAT STATE FERTILIZERS & CHEMICALS LIMITED VERSUS COMMISSIONER OF CENTRAL EXCISE & S.T., SURAT. [CESTAT NEW DELHI]

BRIEF: CENVAT Credit. The employees had purchased food coupons from M/s. Accor Radhakrishna Corporate Services Limited. It cannot be said that the said Company had provided service to the appellant Company. Credit denied.

OUR TAKE: The Hon'ble CESTAT NEW DELHI held that It appears that the employees had purchased food coupons from M/s. Accor Radhakrishna Corporate Services Limited. It cannot be said that the said Company had provided service to the appellant Company. **[Credit cannot be allowed]**

The Commissioner (Appeals) observed that the appellant have not disclosed service in their returns - impugned order is modified to the extent the demand of service tax along with interest for the extended period of limitation is set-aside. The demand of service tax along with interest for the normal period of limitation is upheld - However, penalty is set aside. **[Decided partly in favour of assessee]**

M/S SHRI SAI CATERERS VERSUS COMMISSIONER OF CENTRAL EXCISE, NAGPUR [CESTAT MUMBAI]

BRIEF: Service Tax law, no where states that if two distinct activities are undertaken or provided in a single agreement, they should not be taxed under the same service category?

OUR TAKE: The Hon'ble CESTAT MUMBAI held that if two distinct activities are undertaken or provided in a single agreement, they should not be taxed under the same service category. In view of the clear law as has been settled by the Bench, we find that the impugned order is unsustainable and liable to be set aside. [Decided in favour of assessee]

OBEROI REALTY LTD VERSUS COMMISSIONER OF SERVICE TAX MUMBAI-II [CESTAT MUMBAI]

BRIEF: Claim of refund of service tax paid wrongly by the sub-contractor. The sub-contractor having not contested the classification, the appellant cannot come before the authority and say that the refund has to be granted as these services are in respect of construction of school building.

OUR TAKE: The Hon'ble CESTAT MUMBAI held that the sub-contractor having not contested the classification, the appellant cannot come before the authority and say that the refund has to be granted as these services are in respect of construction of school building and in effect wants to make the classification under 'Commercial and Industrial Construction Service'. Refund was rightly denied. [Decided against the assessee]

COMMISSIONER OF CENTRAL EXCISE, NASHIK VERSUS SAHASTRONICS CONTROLS PVT. LTD. [CESTAT MUMBAI]

BRIEF: Demand of service tax. To maintain one's own equipment, to optimize the usefulness, by maintenance and repair, in the BOOT period, is certainly not liable to Service tax as services rendered to self cannot be taxed.

OUR TAKE: The Hon'ble CESTAT MUMBAI held that to maintain one's own equipment, to optimize the usefulness, by maintenance and repair, in the BOOT period, is certainly not liable to Service tax as services rendered to self cannot be taxed. - There is nothing on record to indicate contrary in the appeal filed by the Revenue - In our view the impugned order as well as the order of the adjudicating authority are correct, legal and does not suffer from any infirmity. [Decided against Revenue]

CENTRAL EXCISE

COURT DECISIONS

COMMISSIONER OF CENTRAL EXCISE, MUMBAI-I VERSUS M/S MEGA RUBBER TECHNOLOGIES PVT. LTD. (CESTAT MUMBAI)

BRIEF: Cenvat Credit. Return of rejected articles of rubber back from their customer. If any inputs are issued to the job-worker for manufacturing and manufacturing activity undertaken on such inputs, the resultant product cleared as scrap and no input as such. Demand set aside.

OUR TAKE: The Hon'ble CESTAT MUMBAI held that assessee had tried to reprocess the finished goods received and in few cases no duty was paid. The finished goods received back resulted in scrap. The assessee has discharged the duty liability on scrap on the value of the invoices raised by them. In our considered view, this is a correct position of the law and if any inputs are issued to the job-worker for manufacturing and manufacturing activity undertaken on such inputs, the resultant product cleared as scrap and no input as such. Demand set aside. [Decided in favour of assessee], further held that when the Central Excise duty is paid on moulds at one time or recovered by amortising the cost of goods produces, it is the same i.e. duty on value of mould is to be recovered, which in this case has already discharged by the assessee. No demand can be made. [Decided in favour of assessee]

M/S MEGHA ENGINEERING & INFRASTRUCTURE LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, CUSTOMS AND SERVICE TAX HYDERABAD-II [CESTAT BANGALORE]

BRIEF: Denial of Cenvat credit to manufacturing activity on the ground that assessee is availing the benefit of composition scheme under works contract to pay service tax. There is no prohibition under the law for one person to be a manufacturer as also a service provider. Credit cannot be denied.

OUR TAKE: The Hon'ble CESTAT BANGALORE held that the activity of providing service starts from procurement of pipes, where the activity of manufacture of pipes ends. As such we find no justifiable and valid reasons to deny the CENVAT credit of duty paid on the inputs used in the manufacture of pipes manufactured by the appellant as a manufacturer. Accordingly, the impugned order is set aside. [Decided in favour of assessee]

COMMISSIONER VERSUS JUMBO BAG LTD. (SUPREME COURT)

BRIEF: 100 EOU. Claim of exemption. In a three legged race for export promotion by the Customs and Export Promotion authority the two authorities cannot run in opposite directions.

OUR TAKE: The Hon'ble SUPREME COURT held that the same goods cannot be treated as export by export promotion authority and non-export by another governmental authority. In a three legged race for export promotion by the Customs and Export Promotion authority, the two authorities cannot run in opposite directions. Lack of clarity, if any, should be resolved in a manner facilitating the advancement of the policy and not in a manner that defeats public policy. [Apex Court dismissed the appeal of the Revenue]

RAKO MERCANTILE TRADERS VERSUS COMMISSIONER OF CENTRAL EXCISE, LUCKNOW [CESTAT ALLAHABAD]

BRIEF: Valuation. The law does not require charging of duty on freight for technical lapse of not indicating the freight charges separately on the excise invoice.

OUR TAKE: The Hon'ble CESTAT ALLAHABAD held that commercial invoice indicates the value and freight amount separately. We find all these documents tallying in respect of a particular consignment. Only because the freight amount was not indicated separately in the excise invoice, although it is clearly reflected in the commercial invoice and GR, is not sufficient ground to deny the substantive benefit. The law does not require charging of duty on freight for technical lapse of not indicating the freight charges separately on the excise invoice. Reliance is placed on the judgments in the case of West Coast Paper Mills Ltd. v. CCE [2004, CESTAT, BANGALORE] and Goodyear India Ltd. v. CCE [2014,CESTAT NEW DELHI]. Impugned order is set aside. [Decided in favour of assessee]

COMMR. OF CENTRAL EXCISE, CHENNAI VERSUS M/S SAI MIRRA INNOPHARMA PVT. LTD. [SUPREME COURT]

BRIEF: Undervaluation of goods, related person. When department fails to prove any one of the following condition the allegation of under valuation is not sustainable (i) mutuality of interest, (ii) price is lower to the normal price and (iii) buyer and seller are related persons.

OUR TAKE: The Hon'ble SUPREME COURT held that tribunal has arrived at the aforesaid findings by giving cogent reasons on the basis of evidence that was

produced by the respondent(s)/assessee(s). These are pure findings of fact arrived at by the Tribunal. In fact, in the appeal filed by the Department it is not even a ground that these findings are perverse. No question of law arises. [Decided against Revenue]

M/S KORES INDIA LTD. M/S NEPTUNE STATIONARY PVT LTD, M/S NEHA STATIONARY PVT LTD, M/S MARS STATIONARY PVT LTD, LT. COL. HARBHAJAN SINGH (RETD) , SHRI SS BHANDARI, DIRECTOR, M/S NANDINI STATIONARY PVT LTD, SHRI SK THIRANI, CHAIRMAN VERSUS COMMISSIONER OF CENTRAL EXCISE [CESTAT NEW DELHI]

BRIEF: SSI Exemption on clubbing of clearances. Merely because common electricity connection was used by both the units by itself will not make it a dummy of one another. Similarly, a common accountant or a common store room for raw materials cannot be held to be a reason for clubbing the clearances of both the units.

OUR TAKE: The Hon'ble CESTAT NEW DELHI held that merely because common electricity connection was used by both the units by itself will not make it a dummy of one another. Similarly, a common accountant or a common store room for raw materials cannot be held to be a reason for clubbing the clearances of both the units - independent existence and legal identity of the SSI units have not been disputed. In that position we find the financial and management control as discussed in the impugned order has also not been categorically established. The original order also did not assert under which provision such clubbing is called for either in terms of the notification 1/93-CE or the provision of Central Excise Act or Rules made there under. As such we find that the findings of the original authority cannot be sustained and accordingly we set aside the order. [Decided in favour of assessee]

CUSTOMS

NOTIFICATIONS & CIRCULARS

The Govt. vide Notification No. 01/2016 dated 04th January 2016, made amendment in serial no 23, in Colum No. 4, for the entry "5%", the entry 'NIL' shall be substituted.

OUR TAKE: Export duty on Iron ore pellets reduced to Nil rate from 5%.

The Govt. vide Notification No. 02/2016 dated 06th January 2016, inserted Serial No. 359A after Serial No. 359 related to goods specified in List 13.

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

The Board vide Circular No. 01/2016 dated 06th January 2016, has now decided that the facility of 24x7 Customs clearance for specified imports viz. goods covered by 'facilitated' Bills of Entry and specified exports viz. factory stuffed containers and goods exported under free Shipping Bills will be made available at Krishnapatnam Sea port in Nellore, Andhra Pradesh. This would be the 19th Sea port in the country where 24x7 facilities would be in operation.

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

COURT DECISIONS

FAIRDEAL POLYCHEM LLP, KUMHO PETROCHEMICALS CO. LTD., CENTURY PLYBOARDS INDIA LTD. VERSUS UNION OF INDIA & ANOTHER, THE DESIGNATED AUTHORITY, DIRECTOR GENERAL OF ANTI-DUMPING & ALLIED DUTIES & ANOTHER [DELHI HIGH COURT]

BRIEF: Imposition of anti-dumping duty on Acrylonitrile Butadiene Rubber (NBR) imported from Korea RP. Levy of anti-dumping duty on imports of Phenol. Method and procedure - Period of review - Central Government has the power to grant an extension of 6 months for concluding a review.

OUR TAKE: The Hon'ble DELHI HIGH COURT held that the Central Government has the power to grant an extension of 6 months for concluding a review. We, however, are making it clear once again that we have not examined and were not called upon to examine whether this power has been

exercised legitimately. As such, the writ petitions are liable to be dismissed and they are dismissed - Decided against the appellants. **[Decided against assessee]**

A.M. GIREESH VERSUS UNION OF INDIA THROUGH SECRETARY MINISTRY OF FINANCE, NEW DELHI AND JOINT SECRETARY (COFEPOSA) , NEW DELHI [KERALA HIGH COURT]

BRIEF: Smuggling of Gold into India. Proceeding under COFEPOSA Act. A step taken to secure the presence of the person against whom an order of detention is issued cannot be the basis for challenging the order of detention at its pre-execution stage.

OUR TAKE: The Hon'ble KERALA HIGH COURT held that step taken to secure the presence of the person against whom an order of detention is issued cannot be the basis for challenging the order of detention at its pre-execution stage. We reject the contention raised by the petitioner. **[Decided against the petitioner]**

M/S CALTEX GAS INDIA PVT LTD VERSUS COMMISSIONER OF CUSTOMS, TUTICORIN [CESTAT CHENNAI]

BRIEF: Denial of SAD exemption on the imported LPG through high sea sales. Demand of SAD on the imported goods is not sustainable.

OUR TAKE: The Hon'ble CESTAT CHENNAI held that appellants have imported LPG through high sea sales transactions and there is no dispute on the sale of LPG to various customers and also discharged sales tax. On identical issue the Tribunal has relied on the decision of Vigirom Chem (P) Ltd. (2005, CESTAT, BANGALORE). The case on hand is identical to the above and hence by applying the above decision we hold that the demand of SAD on the imported goods is not sustainable. Accordingly, we set aside the impugned order. **[Decided in favour of assessee].**

INCOME TAX

COURT DECISIONS

VIJAYSINH MANSINH MANGROBALA AND OTHERS VERSUS INCOME TAX OFFICER, TDS-2, SURAT [ITAT AHMEDABAD]

BRIEF: : Levy of fees under section 234E - Fee for default in furnishing statements - late filing of TDS returns - levy of fee prior to 1.6.2015 deleted.

OUR TAKE: The Hon'ble GUJRAT HIGH COURT held that Revenue fairly did not dispute that the provisions accepting levy of late filing fees under section 234E have indeed been brought to the statute w.e.f. 1st June,, 2015 and the impugned order was passed much before that date. Thus we hereby delete the levy of late filing fees in all these three appeals under section 234E of the Act by way of impugned intimation issued. **[Decided in favour of assessee]**

COMMISSIONER OF INCOME TAX, FARIDABAD VERSUS M/S LAKHANI RUBBER UDYOG P. LIMITED [PUNJAB & HARYANA HIGH COURT]

BRIEF: Depreciation. Only 10% area was let out by the assessee to its associated concerns for administrative work whereas the remaining area was being used by it. Thus, depreciation only to the extent of 1/10th was disallowed.

OUR TAKE: The Hon'ble PUNJAB & HARYANA HIGH COURT held that Tribunal while affirming the findings arrived at by the CIT (A) that only 10% area was let out by the assessee to its associated concerns for administrative work whereas the remaining area was being used by it. Thus, depreciation only to the extent of 1/10th was disallowed. No error was pointed out by the learned counsel for the revenue in the findings recorded by the CIT (A) as well as the Tribunal. **[Decided in favour of assessee]**

THE COMMISSIONER OF INCOME TAX-10 VERSUS M/S RELIANCE SILICONES (I) LTD [BOMBAY HIGH COURT]

BRIEF: Any grievance of the parties in respect of the Tribunal, not complying with the order of this Court for whatever reason could not be remedied by an Appeal under Section 260A of the Act. Thus Appeal as filed from the impugned order is not maintainable under Section 260A of the Act.

OUR TAKE: The Hon'ble BOMBAY HIGH COURT held that the order passed by the Tribunal consequent to the order passed under Section 256(2) of the Act is not an order passed in Appeal by the Appellate Tribunal. An application under Section 256(2) of the Act and the order passed by this Court

there under are in the exercise of its advisory jurisdiction. Therefore, any grievance of the parties in respect of the Tribunal, not complying with the order of this Court for whatever reason could not be remedied by an Appeal under Section 260A of the Act. Thus Appeal as filed from the impugned order is not maintainable under Section 260A of the Act.

COMMISSIONER OF INCOME TAX II, CHANDIGARH VERSUS M/S AGRO DUTCH INDUSTRIES LIMITED, CHANDIGARH [PUNJAB & HARYANA HIGH COURT]

BRIEF: Interest paid to ICICI and IDBI band on funds utilized to make the impugned FDRs is an allowable deduction under section 57(iii) against the interest income on such FDRs.

OUR TAKE: The Hon'ble PUNJAB & HARYANA HIGH COURT held that it has to be held that the interest paid to ICICI and IDBI band on funds utilized to make the impugned FDRs is an allowable deduction under section 57(iii) against the interest income on such FDRs. Thus, the claim of the assessee under section 57(iii) of the Act on account of interest expenditure amounting to ₹ 11,56, 764/- being more than the amount of interest assessable under the had 'income from other sources', there remains a loss of ₹ 1,44,240/- assessable under the head 'income from other sources'. **[Decided against revenue]**

COMMISSIONER OF INCOME TAX-II, CHANDIGARH VERSUS M/S ESSAR COMMVISION LTD. (NOW HFCL INFOTEL LTD.) , MOHALI [PUNJAB & HARYANA HIGH COURT]

BRIEF: Whether the interest earned by the assessee on the fixed deposits kept for managing bank guarantees during pre-operative period would reduce the cost of the capital assets?

OUR TAKE: The Hon'ble PUNJAB & HARYANA HIGH COURT held that The substantial question of law is answered against the revenue and in favour of the assessee as as in the present case, the assessee had earned interest income on the fixed deposits kept for arranging bank guarantees in the formative period and not that the surplus funds were utilized for earning additional interest income. **[Decided in favour of assessee]**

STATE TAXES

ALL INDIA VAT

DELHI

The Govt. vides Notification No.F.7 (433)/Policy-II/VAT/2012/PF/1259-70 dated 08th January 2016, issued directions regarding Delhi Sugam-2 (DS-2).

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

The Govt. vide Notification No. F. 3(556)/Policy/VAT/2015/1271-82 dated 08th January 2016, specifies conditions for downloading the Central Statutory forms online.

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

GUJARAT

The Govt. vides Notification No. (GHN-5) VAR-2016(37)/TH dated 08th January 2016, made Gujarat Value Added Tax (Amendment) Rules, 2016 - Amendment in Rule 19 & 20 and Substitution of Form 203 and Form 204 - Additional Forms for Textile Incentives.

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

HIMACHAL PRADESH

The Govt. vide Notification No. No. EXN-F(10)-5/2010-Loose dated 04th January 2015, made amendment in Part II of Schedule 'A' related to tax rate of central armed police forces canteen.

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

ORISSA

The Govt. vide Notification No.FIN-CT1 TAX-0044-2015-236 dated 04th January 2016, made resolution regarding increase or decrease in rate of tax of petrol & diesel.

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

RAJASTHAN

The Govt. vides Notification No. F 12(129)FD/Tax/2011-pt-110 dated 05th January 2016, made reduction of CST on the sale of textile fabric impregnated, coated, covered or laminated with plastic etc. under CST Act, 1956.

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

The Govt. vide Notification No. F. 12(79)FD/Tax/2014-111 dated 08th January 2016, made Rajasthan Value Added Tax (Amendment) Rules, 2016 - Substitution of Rule 12, 13, 25, 77, Form-01 & Form VAT-26 and Amendment of Rule 14, 16, 22A & 33.

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

COURT DECISIONS

M/S CHERAN CEMENTS LTD. VERSUS THE JOINT COMMISSIONER (CT) , THE COMMERCIAL TAX OFFICER (MADRAS HIGH COURT)

BRIEF: Rejection of applications for settlement under the Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2011 - A person who had collected tax from the customers and allowed to retain it under a deferred payment scheme, cannot claim that he would pay 40% of what was collected by him together with interest calculated from the date of assessment.

OUR TAKE: The Hon'ble MADRAS HIGH COURT held that as per the agreement and the interest free deferral scheme, they were liable to pay interest from the date of filing of monthly returns. The emphasis on bonafide conduct of an assessee made by the Division Bench in EID Parry is completely absent in this case. This case is governed not merely by the statutory provisions relating to payment of interest, but also by the agreement executed by the appellant with reference to the interest free deferral scheme. A person who had collected tax from the customers

and allowed to retain it under a deferred payment scheme, cannot claim that he would pay 40% of what was collected by him together with interest calculated from the date of assessment. This is not the purport of the Samadhan Scheme. **[Decided against assessee]**

COMMERCIAL TAXES OFFICER VERSUS M/S RAMDEV FOOD PRODUCTS PVT. LTD. & OTHERS [RAJASTHAN HIGH COURT]

BRIEF: Classification - VAT - AO was of the view that in so far as Asafetida (Hing) is concerned, the tax of 4% only was being paid but the AO was of the view that it falls in the category of Packed Masala and once it is a Packed Masala, it falls in the entry where levy of tax is @16% - When spices are not mixed, it remains Asafetida (Hing) only and no new product emerges - to be levied @4%.

OUR TAKE: The Hon'ble RAJASTHAN HIGH COURT held that masala is always treated to be mixing of two and more spices and since Asafoetida (Hing) is not mixture of two and more spices, therefore, it cannot be termed as a Masala. It is also worth mentioning that the claim of counsel for the respondent that in most of the States Asafoetida (Hing) finds place in the list of Kirana goods, also supports contention of the Tax Board and the arguments raised by counsel for the respondents and not disputed by the counsel for the Revenue. - Tax Board has correctly analyzed the Entry No.82 and no contrary view can be taken in the facts and circumstances of the instant petitions. When the very levy of rate of tax @ 4% has been found to be properly levied then the question of penalty does not arise. **[Decided against Revenue]**

OTHER UPDATES

FEMA

The RBI vide FED Master Direction No. 18/ 2015-16 dated 01st January 2016, has prescribed various reports and forms under FEMA to be submitted by/ through Authorised Persons/ Authorised Dealer Category – I Banks/ Authorised Banks.

The RBI vide FED Master Direction No. 2/2015-16 dated 01st January 2016, issues direction on Opening and Maintenance of Rupee/Foreign Currency Vostro Accounts of Non-resident Exchange Houses.

ALLIED LAW

COURT DECISIONS

ONIL SADH VERSUS FEDERAL BANK LTD. AND ORS. [DELHI HIGH COURT]

BRIEF: Validity of proceedings under SARFAESI Act Petitioner claims to be a bona fide purchaser of the property without knowledge of the prior alleged mortgage by the borrower in favour of respondent No.1. Petitioner to raise all his objections before the DRT. Petition dismissed

OUR TAKE: The Hon'ble DELHI HIGH COURT held that the facts of the present case are that the petitioner claims to be a bona fide purchaser of the property without knowledge of the prior alleged mortgage by the borrower in favour of respondent No.1. The contentions of the petitioner would necessarily have to be adjudicated upon under Section 17 of the SARFAESI Act by the DRT. It would not be for the CMM to adjudicate on the rights of the petitioner. Hence, there is no merit in the submission of the petitioner about illegality of the order of CMM dated 6.7.2015.

MOHAN LAL VERSUS JASWINDER PAL SINGH [PUNJAB & HARYANA HIGH COURT]

BRIEF: Rebuttal of presumption. Complaint u/s 138 of the Negotiable Instruments Act. Cheque Bounce due to payment stopped by drawer. Discharge of liability. The defense version given by the accused is probable and rebuts the presumption under Section 139 of the Negotiable Instruments Act

OUR TAKE: The Hon'ble PUNJAB & HARYANA HIGH COURT held during the cross-examination, the complainant has not given reply on so many material questions to know whether complainant was knowing the accused or not. Again, complainant is the resident of Sri Muksar Sahib whereas the accused is resident of Sri Ganganagar. The defence version given by the accused is probable and rebuts the presumption under Section 139 of the Negotiable Instruments Act. - The judgment dated 25.05.2015 passed by learned JMIC, Sri Muksar Sahib, is correct, as per law and evidence - accused-respondent was acquitted. **[Decided against the complainant / appellant]**

LATEST NEWS ON PROPOSED GST

04 Jan, 2016, the Odisha Cabinet on Thursday decided to enhance VAT on goods from 13.5% to 14.5%, expecting to generate additional revenue of Rs.280 crore per annum.

04 Jan, 2016, real estate players are beginning to focus on warehousing, pinning their hopes on the implementation of the GST, a boom in the e-commerce industry and a spurt in the manufacturing on account of the Make in India Campaign.

04 Jan, 2016, safety match producers are looking forward for introduction of GST. Currently, the manufacturers are liable to excise duty, sales tax, service tax, and also TDS. The introduction of GST would certainly minimise the expenditure burden.

04 Jan, 2016, Mahesh Gupta, chairman of Kent RO Systems & president of Chamber of Commerce & Industry told GST is stuck due to politicking. Complete edited experts at http://www.business-standard.com/article/economy-policy/gst-is-stuck-due-to-politicking-mahesh-gupta-116010400028_1.html

04 Jan, 2016, lack of GST can stifle Modi's start-up India dream.

05 Jan, 2016, with the winter session of the parliament ending without the passage of constitution amendment bill, it's clear that official date of April 2016 for GST implementation is clearly out. But the real question is whether GST will strike in 2016 else get shifted to April 2017.

05 Jan, 2016, the blame game between Congress & BJP over who is blocking the GST entered yet another round over the weekend. The verbal attacks were led by P Chidambaram from the Congress side & Union Minister for urban development and parliamentary affairs Venkaiah Naidu from the BJP Camp.

05 Jan, 2016, Implementation of GST may boost FMCG prospects in 2016.

05 Jan, 2016, relief to customers as proposed GST will paid on the actual sale price and shall factor discounts given to customer.

06 Jan, 2016, at a national conference of trade leaders of the country, traders came openly in support of GST demand, single tax single authority GST regime in India.

06 Jan, 2016, the central government has set a new dead line for GST as April 1, 2017, a good one year after the current one of April 1, 2016.

09 Jan 2016, the congress on Friday hit out at the ruling BJP with the "documentary evidence" to substantiate its charge that Narendra Modi led government was not interested in passing GST bill and was deliberately misleading country by placing the blame on the opposition party.

09 Jan 2016, health care sector demands exemption from GST.

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