



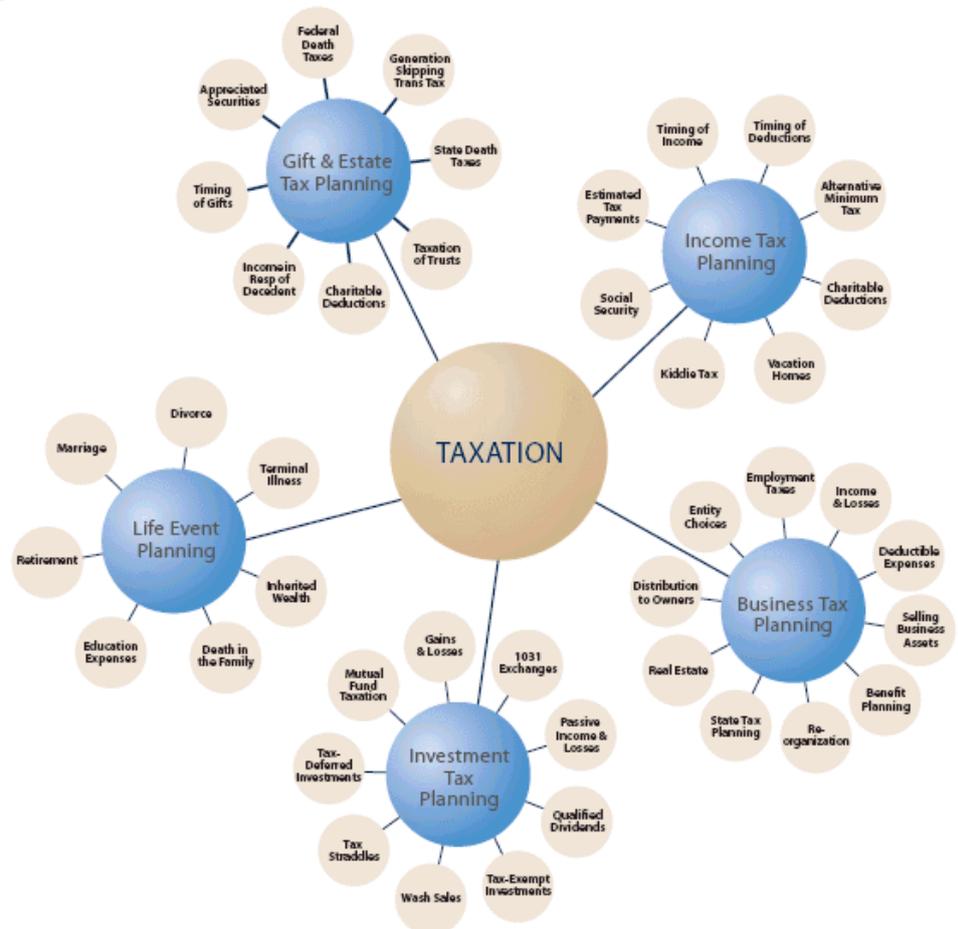
# ASC Times

All India Taxes Weekly Referencer

Vol: Oct 12 - Oct 18, 2015

## Solving any tax puzzle

Tax saving advice across all the taxes



## From the CEO's Desk



Dear Reader,

Dear Reader,

On one hand, finance ministry is struggling to create space for GST and trying to estimate the budget and implementation problems for the same. On the other hand some problems it's facing are persistent and floating time and again in front of the government. One of these issues is about FDI. This time the problem is in the face of Confederation of All India Traders (CAIT) complaining to Finance Minister Mr. Arun Jaitley about the e-commerce market places advertising via different mediums for ongoing festive 'sales and discounts' about various products. CAIT said that, "These companies claim to be a marketplace and therefore can provide only a technology platform for the sellers who are registered with them. Since ownership of inventory does not hold by the said companies they cannot offer 'sale' or 'Discounts' in totality on their online portals but they are doing so which also establishes that they are not marketplace and as such openly flouting FDI policy." CAIT has said that it also has sent a copy of their complaint to Finance Minister Mr. Arun Jaitley and Commerce Minister Nirmala Sitharaman calling for their immediate intervention and directing the concerned officials to take immediate action.

Another challenge is about increasing the tax base for which I-T department is committed. To widen the tax base, the Income Tax department has asked traders and businessmen to pay advance tax rather than filing annual returns at the end of the financial year. The idea is to add new assesses promptly. The target for given by the government to I-T department is to add at least one crore new taxpayers to its net in the current fiscal year. As part of this initiative, the department is now holding public sessions called 'Seedha Samvad' (direct communication) with industry and trade bodies in public places across the country, including in Delhi. I-T Principal Commissioner (Circle-12) Mr. Ajay Kumar Chauhan pledged that "We

have done a PAN mapping of the business area here and it is a matter of concern that tax returns have decreased as compared to the last financial years. There can be many reasons for it and we do not doubt the intentions of the taxpayers. But as part of the government's initiative to widen the tax base we would like to request you that you should pay advance tax on time and this way we will be able to consider you as our new assesses immediately."

One positive happening is about the indirect taxation. Indirect tax collection is up by 35.8% to over Rs. 3.24 lakh crore in the first half of the current fiscal, reflecting growth in economic activity. It is also an indicator of robust GDP expansion as domestic demand is on upward swing. But the worry is about the global demand as exports are declining and major economies like US and China are already slowing down.

Alok Kumar Agarwal  
 CEO  
 ASC Group

## TAX CALENDER

Due Date	Description	Law
12 October	Deposit of Tax	Gujarat VAT
13 October	Filing of Return	Nagaland VAT
14 October	Deposit of Tax	Rajasthan VAT
	Filing of Return	Orissa VAT
15 October	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
	Issue of TDS Certificate	Andhra Pradesh VAT, Bihar VAT, Himachal Pradesh VAT, Jharkhand VAT, Nagaland VAT, Punjab & Chandigarh VAT, Telangana VAT
	Filing of Return	Karnataka VAT, Madhya Pradesh VAT
	Filing of TDS Return (Form No. 24Q and 26Q)	Income Tax Law
18 October	Filing of TDS Return (Form No. 27Q)	Income Tax Law

## COUNTRY WIDE HOLIDAYS FOR THE WEEK

Date	Occasion/Festival	Region
12 October	Mahalaya Amavasye	Karnataka, Odisha, Tripura, West Bengal
13 October	Maharaja Agrasen Jayanti	Haryana, Punjab, Uttar Pradesh
14 October	Mera Chaoren Houba of Lainingthou Sanamahi	Manipur
18 October	Kati Bihu (Half Day)	Assam

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# CENTRAL TAXES

## SERVICE TAX

### NOTIFICATIONS & CIRCULARS

The Govt. vide Circular No.186/5/2015 (F. No. 354/98/20015-TRU), dated 5 October, 2015 issued clarification on levy of Service Tax on services provided by a Goods Transport Agency regarding treatment given to various services provided by GTAs in the course of transportation of goods by road.

**OUR TAKE:** Since July 1, 2012, service tax has shifted to a negative list regime, by which all the services except those covered in negative list as mentioned in section 66D of the Finance Act, 1994 or those exempted by notification are chargeable to service tax. The nature of GTA Service, inclusion of various ancillary services, GTA as single composite service, principle of interpretation enumerated in section 66 F of the Finance Act, 1994, abatement and exemptions are clarified in details in the Circular. Readers are requested to read the said Circular. It is self-explanatory.

### COURT DECISIONS

#### M/S EMERALD LEISURES LIMITED VERSUS THE COMMISSIONER OF SERVICE TAX, MUMBAI-II, MUMBAI (AUTHORITY FOR ADVANCE RULINGS)

**BRIEF:** The Club Membership fee, Annual fee and other charges received from members from time to time be liable for Service Tax. Refundable security deposit and interest there-on should not be subjected to Service Tax as per provisions of the Finance Act 1994.

**OUR TAKE:** The hon'ble AUTHORITY FOR ADVANCE RULINGS held that the relationship between the applicant and members of the club should be considered as provision of "service" by one person (service provider) to another person (service receiver) for the purpose of Section 65B (44) of the Finance Act, 1994 read with Sections 66B, 66D and Section 66E of the Finance Act, 1994 and accordingly, the Membership fee, Annual fee and other charges received from members from time to time be liable for Service Tax. Refundable security deposit and interest there-on should not be subjected to Service Tax as per provisions of the Finance Act, 1994. [Decided partly in favor of assessee]

#### COMMISSIONER OF SERVICE TAX, NOIDA VERSUS M/S GREATER NOIDA DEVELOPMENT AUTHORITY, GREATER NOIDA (ALLAHABAD HIGH COURT)

**BRIEF:** Renting of vacant land by way of lease or licence (irrespective of the duration or tenure) for construction of a building or a temporary structure for use at a later stage in furtherance of business or commerce is a taxable service only from 1.7.2010 and not so earlier to this date.

**OUR TAKE:** The hon'ble ALLAHABAD HIGH COURT held that the findings of the tribunal in case of NEW OKHLA INDUSTRIAL DEVELOPMENT AUTHORITY VERSUS COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX [2014 (1) TMI 1203 - CESTAT NEW DELHI] are legally justified. In view of clear exclusion of vacant land from the ambit of immovable property prior to 1.7.2010 it cannot gainfully be contended by Revenue, that clause (v) to Explanation I (introduced in 2010), was a mere clarificatory endeavour, explicating the implicit and inherent meaning of Section 65 (105)(zzzz). Clause (v) is clearly an amendment which expands the scope of the taxable service; and prospectively.

The statement of objects and reasons accompanying the Finance Bill, 2010 also clarify that clause 75 of the Bill seeks to amend Chapter V of the Finance Act, 1994; to modify the scope of certain taxable services including the taxable service defined and enumerated in Section 65(105)(zzzz) , of the Act. These several contemporaneous exposition and administrative constructions and the scope of sub-clause (v) of Explanation I in Section 65(105)(zzzz) fortify the conclusion the scope of sub-clause (v). To modify and expand the scope of the taxable service to cover and include vacant land on lease or licence for construction of a building or a temporary construction at a later stage to be used for furtherance of business or commerce, within the ambit of 'immovable property' is thus the taxable service. Since the introduction of this sub-clause in Explanation I expands the scope of the taxable service and renders the taxable (a) hitherto non-taxable transaction, and absent of explicit retrospective reach provided to the amendment and insertion of this sub-clause, these transactions covered by this sub-clause of the Explanation have only the prospective operation.

Renting of vacant land by way of lease or licence (irrespective of the duration or tenure), for construction of a building or a temporary structure for use at a later stage in furtherance of business or commerce is a taxable service

only from 1.7.2010, and not so, earlier to this date. [**Decided in favor of assessee**]

### **TAHNEE HEIGHTS CO-OP. HOUSING SOCIETY LTD. VERSUS UNION OF INDIA (BOMBAY HIGH COURT)**

**BRIEF:** Revenue having complied with the Tribunal's order and granted refund partially has withheld the interest claim on a possible realisation that if this is also awarded and paid the proceedings before the Supreme Court would be rendered infructuous. This cannot be the legal position nor can the understanding of the parties be based on the same.

**OUR TAKE:** The hon'ble **BOMBAY HIGH COURT** held that revenue having complied with the Tribunal's order and granted refund partially, has withheld the interest claim on a possible realisation that if this is also awarded and paid, the proceedings before the Supreme Court would be rendered infructuous. This cannot be the legal position nor can the understanding of the parties be based on the same. The Revenue had ample time to obtain such interim order from the Supreme Court as is permissible in law so that it is relieved from the obligation to pay interest on the Principal sum. However, it has not taken any such steps and there are no interim prohibitory or restraint orders in Revenue's favour. [**Decided in favour of Assessee**]

## **CENTRAL EXCISE**

### **NOTIFICATIONS & CIRCULARS**

The **Govt. vide Circular No. F. No. 275/46/2015-CX. 8A, dated 1 October, 2015** issued instruction regarding Jurisdiction of the settlement commission (customs, central Excise & service Tax) in respect of the cases of Gold Smuggling.

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

The **Govt. vide Circular No. F. No. 280/45/2015-CX. 8A, dated 17 September, 2015** issued instruction regarding streamlining the process of adjudication.

**OUR TAKE:** The Govt. has reinstructed that there is no period of limitation prescribed, does not mean that the proceedings initiated could be concluded at the sweet will and fancies of the department. Every authority should exercise the power within a reasonable period.

The **Govt. vide Circular No. F. No. 221/09/2015-CX.6, dated 1 September, 2015** issued instruction regarding implementation of the provisions of Cigarettes and other Tobacco products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (COTPA) and the Cigarettes and Other Tobacco Products (Packaging and Labelling).

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

The **Govt. vide Notification No. 21/2015, dated 7 October, 2015** makes amendment to the CENVAT Credit Rules, 2004 and it may be called CENVAT Credit (Fourth Amendment) Rules, 2015.

**OUR TAKE:** In the CENVAT Credit Rules, 2004, in rule 6, in sub-rule (6), after clause (viii) and the entries relating thereto, the entry "(ix) Ethanol produced from molasses generated from cane crushed in the sugar season 2015-16 i.e. 1st October, 2015 onwards, for supply to the public sector oil marketing companies, namely, Indian Oil Corporation Ltd., Hindustan Petroleum Corporation Ltd. or Bharat Petroleum Corporation Ltd., for the purposes of blending with petrol, in terms of the provisions of S.No.40A of the Table in notification No.12/2012-Central Excise, dated the 17th March, 2012, number G.S.R. 163(E), dated that 17th March, 2012" shall be inserted.

### **COURT DECISIONS**

#### **C.C.E. DELHI-III VERSUS M/S HITKARI FIBRES LTD. (SUPREME COURT)**

**BRIEF:** Whether the interest was not leviable under Section 11AB of the Act particularly in view of the fact that the price indicated in the purchase orders were final during the period of supply of goods?

**OUR TAKE:** The hon'ble **SUPREME COURT** held that time when the goods were cleared, the price which was charged from M/s. Maruti and the duty was paid on the said price. No doubt, some additional amount is received thereafter, on account of price escalation. However, it is not coming on record as to under what circumstances such price escalation was given. No such case was set up by the Revenue that the price was understated or depressed at the time of clearance of the goods and the additional amount was received subsequently, by a suspicious kind of arrangement. Even

when the inquiries were made, we are conscious of the fact that the respondent-assessee had not appeared when summons were issued to clarify the position. However, in any case, the inquiries were made from M/s. Maruti and therefore, the concerned officer could find out from M/s. Maruti as to under what circumstances, price escalation was given and whether that was a factor contributing to the depression of price at the time of clearance of the goods. It is difficult to hold that the aforesaid additional amount received at a subsequent stage was to be added for the purpose of arriving at the transaction value. **[Decided against Revenue]**

#### COMMR. OF CENTRAL EXCISE, PONDICHERRY VERSUS M/S. HONDA SIEL POWER PRODUCTS LTD. (SUPREME COURT)

**BRIEF:** Denial of concessional rate of duty. Tribunal has decided the case in favour of the assessee by observing that clearing of goods with payment of excise duty with current account was only an error and the assessee had not violated the more substantial condition viz no CENVAT Credit should be taken in regard to the goods. This is clearly a faulty approach on the part of the Tribunal.

**OUR TAKE:** The hon'ble SUPREME COURT held that it is an admitted case that duty was neither paid in cash nor through account current as the duty was paid through CENVAT Credit Account and therefore the assessee did not fulfill the second condition mentioned in the notification. Tribunal has decided the case in favour of the assessee by observing that clearing of goods with payment of excise duty with current account was only an error and the assessee had not violated the more substantial condition viz no CENVAT Credit should be taken in regard to the goods. This is clearly a faulty approach on the part of the Tribunal. It is stated at the cost of repetition that the assessee was required to fulfill the condition in stricto sensu viz to pay the duty either in cash or through account current if it wanted to avail the benefit of exemption notification and not through adjustment of CENVAT Credit which is not the mode prescribed in the aforesaid conditions. Once we find that the conditions have not been fulfilled the obvious consequence would be that the assessee was not entitled to the benefit of this notification. However, since the mistake is a bonafide mistake, Interest and penalty would not be charged. **[Decided partly in favour of Revenue]**

#### M/S A.R.S & CO VERSUS COMMR. OF CENTRAL EXCISE, TRICHY (SUPREME COURT)

**BRIEF:** The process of cutting betel nuts into small pieces and addition of essential/non-essential oils menthol sweetening agent etc. did not result in a new and distinct product having a different character and use.

**OUR TAKE:** The hon'ble SUPREME COURT held that the process of cutting betel nuts into small pieces and addition of essential/non-essential oils, menthol, sweetening agent etc. did not result in a new and distinct product having a different character and use.

Matter is squarely covered by the judgment of this Court in 'Crane Betel Nut Powder Works v. CCE, Tirupathi' [2007 (3) TMI 6 - SUPREME COURT OF INDIA] which has been followed in 'Satnam Overseas Ltd. v. CCE, New Delhi' [2015 (4) TMI 356 - SUPREME COURT] as well as 'Servo Med Industries Pvt. Ltd. v. CCE, Mumbai' [2015 (5) TMI 292 - SUPREME COURT] - appeal is squarely covered in favour of the assessee. **[Decided in favour of assessee]**

#### M/S SARUP TANNERIES LTD. VERSUS COMMR. OF CENTRAL EXCISE JALANDHAR (SUPREME COURT)

**BRIEF:** MRP based Valuation of goods. Revenue for the purposes of excise duty valued the said goods taking the maximum of the three MRPs mentioned on the packaging. This is clearly in consonance with Explanation 2(a) to Section 4A of the Act.

**OUR TAKE:** The hon'ble SUPREME COURT held that invoking the provisions of Section 4A of the Central Excise Act, 1944, the Revenue, for the purposes of excise duty, valued the said goods taking the maximum of the three MRPs mentioned on the packaging. This is clearly in consonance with Explanation 2(a) to Section 4A of the Act. No error in order passed. **[Decided against assessee]**

## CUSTOMS

### NOTIFICATIONS & CIRCULARS

The **Govt. vide Notification No. 49/2015, dated 5 October, 2015** seeks to further amend notification No. 12/2012-Customs dated 17.03.2012 so as to increase the basic customs duty on ghee, butter and butter oil from the present rate of 30 to 40 for a period upto and inclusive of the 31st day of March, 2016.

**OUR TAKE:** In the said notification, after the Table, in the proviso, after clause (j) the clause "(k) the goods specified against serial number 8 of the said Table upto and inclusive of the 31st day of March, 2016;" shall be inserted.

**COURT DECISIONS**
**COMMISSIONER OF CUSTOMS, CHENNAI VERSUS M/S. DENSO KIRLOSKAR INDUSTRIES PVT LTD (SUPREME COURT)**

**BRIEF:** Inclusion of consideration paid for technical information provided. Post importation activity cost is incurred after the importation of the goods. Not to be included.

**OUR TAKE:** The hon'ble **SUPREME COURT** held that it becomes clear that the technical information which was to be provided by the Japanese company to the respondent was for the manufacture of the contract products by the respondent herein, naturally, after the setting up of the plant. This cost is, thus, incurred after the importation of the goods. - Decision made in the case 'Commissioner of Customs, Ahmedabad v. M/s. Essar Steel Limited [2015 (4) TMI 486 - SUPREME COURT] followed. **Appeal dismissed against the Revenue.**

**COMMR. OF CUSTOMS, MUMBAI-I VERSUS M/S SEIKO BRUSHWARE INDIA (SUPREME COURT)**

**BRIEF:** Denial of benefit of Exemption from SAD. Import of pig hair bristles which were exempted from sales tax. Benefit of exemption Notification No. 34/98-Cus not available.

**OUR TAKE:** The case related to Denial of benefit of Exemption from SAD Notification No. 34/98-Cus. Assessee holds that pig hair bristles may be exempted from sales tax but they are chargeable to sales tax. Revenue contended that pig hair bristles imported were sold without any sales tax been paid and benefit of Exemption Notification dated 13.06.1998 would not be availed. Revenue further contended that CESTAT has not taken note of Section 7 of Delhi Sales Tax Act, 1975 and was not correct in referring to an Exemption Notification. The hon'ble **SUPREME COURT** held that Sections 3 and 7 of the Act states that no sales tax is charged on the imported item. Silicon Electrical Steel Strip/Scrap originated from old & used dismantled transformer. **Appeal disposed of in favour of the Revenue.**

## INCOME TAX

**NOTIFICATIONS & CIRCULARS**

The **Govt. vide Notification No. 77/2015, dated 30 September, 2015** notified agreement between the Government of the Republic of India and the Government of the United States of America for the Exchange of Information with respect to taxes.

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

The **Govt. vide Circular No. 17/2015, dated 6 October, 2015** issued clarification on measurement of the distance for the purpose of section 2(14)(iii)(b) of the Income-tax Act for the period prior to Assessment year 2014-15.

**OUR TAKE:** For the period prior to assessment year 2014-15, the High Court held that the distance between the municipal limit and the agricultural land is to be measured having regard to the shortest road distance. The said decision of the High Court has been accepted and the aforesaid disputed issue has not been further contested.

The **Govt. vide Order F. No. 225/141/2015-ITA.II, dated 6 October, 2015** issued direction on validation of tax-returns through Electronic Verification Code.

**OUR TAKE:** The Govt. directs that returns of income which are filed on or after 01.04.2015 electronically (without digital signature certificate) pertaining to the Assessment Year 2014-2015 or returns filed in response to various statutory notices as prescribed under the Act or returns filed as a consequence of condonation of delay u/s 119 of the Act can also be validated through EVC.

The **Govt. vide Circular No. 16/2015, dated 6 October, 2015** issued clarification on non-applicability of Rule 9A of the Income Tax Rules 1962 in the case of Abandoned Feature Films.

**OUR TAKE:** It is clarified that Rule 9A does not apply to abandoned feature films and that the expenditure incurred on such abandoned feature films is not to be treated as a capital expenditure. The cost of production of an abandoned feature film is to be treated as revenue expenditure and allowed as per the provisions of Section 37 of the Income-tax Act.

**COURT DECISIONS**
**PRINCIPAL COMMISSIONER OF INCOME TAX, JAIPUR-2, JAIPUR VERSUS M/S HUES INDIA PVT. LTD. (RAJASTHAN HIGH COURT)**

**BRIEF:** Whether where Books of Account are rejected, does it entitle the Assessing Officer to make an addition to the Trading results?

The Assessing Officer was unable to pinpoint as to any specific defect noticed during course of the proceedings except that the Books of Account were rejected on certain discrepancies. It was for the AO to come out clearly as to the basis for rejection of the Book of Accounts.

**OUR TAKE:** The hon'ble **RAJASTHAN HIGH COURT** held that CIT(A) as well as the Tribunal, after appreciation of evidence on record and considering the facts have come to a definite finding of fact that the trading results were not required to be interfered with merely because G.P. rate had decreased to an extent. The assessee has pin-pointedly placed material on record that the turn over stood increased from about 2 crore in the assessment year 2002-03 to 3.74 crore in the assessment year 2003-2004, and apart from this fact the Assessing Officer has not controverted or observed contrary to the claim of the assessee that cost had increased, when specific material was placed, before the Assessing Officer. Though the Books of Account have been rejected, and proper estimation can certainly be made but it is no ground to make an addition in a case where the Assessing Officer was not able to come to further material or controvert the facts narrated by the assessee during the course of assessment proceedings. The Assessing Officer was unable to pinpoint as to any specific defect noticed during course of the proceedings except that the Books of Account were rejected on certain discrepancies. It was for the Assessing Officer to come out clearly as to the basis for rejection of the Book of Accounts.

As decided in CIT v. Gotan Lime Khanij Udyog [2001 (7) TMI 19 - RAJASTHAN High Court] in the absence of any finding recorded by the Commissioner (Appeals) that the expenses incurred on any account appeared to be unreasonable or excessive, the additions sustained merely on suspicion of pilferage or leakage were not justified. This conclusion was a finding of fact keeping in view that the additions in the profits and gains returned by the assessee were not a necessary concomitant of an order made under sections 145(1) or 145(2). Therefore, there was no error in the order of the Tribunal deleting the entire additions to the trading results

after holding that the proviso to section 145(1) was applicable. **[Decided against revenue]**

**DIRECTOR OF INCOME TAX-I, PR. COMMISSIONER OF INCOME TAX VERSUS MITCHELL DRILLING INTERNATIONAL PVT. LTD. (DELHI HIGH COURT)**

**BRIEF:** Computation of the taxable income u/s 44BB. The service tax is not an amount paid or payable or received or deemed to be received by the Assessee for the services rendered by it. The Assessee is only collecting the service tax for passing it on to the government. Not to be included.

**OUR TAKE:** The hon'ble **DELHI HIGH COURT** held that The Court concurs with the decision of the High Court of Uttarakhand in DIT v. Schlumberger Asia Services Ltd (2009 (7) TMI 51 - UTTARAKHAND HIGH COURT) which held that the reimbursement received by the Assessee of the customs duty paid on equipment imported by it for rendering services would not form part of the gross receipts for the purposes of Section 44 BB of the Act.

The Court accordingly holds that for the purposes of computing the 'presumptive income' of the assessee for the purposes of Section 44 BB of the Act, the service tax collected by the Assessee on the amount paid to it for rendering services is not to be included in the gross receipts in terms of Section 44 BB (2) read with Section 44 BB (1). The service tax is not an amount paid or payable, or received or deemed to be received by the Assessee for the services rendered by it. The Assessee is only collecting the service tax for passing it on to the government.

The Court further notes that the position has been made explicit by the CBDT itself in two of its circulars. In Circular No. 4/2008 dated 28th April 2008 it was clarified that "Service tax paid by the tenant doesn't partake the nature of "income" of the landlord. The landlord only acts as a collecting agency for Government for collection of Service Tax. Therefore, it has been decided that tax deduction at source under sections 194-I of Income Tax Act would be required to be made on the amount of rent paid/payable without including the service tax.' In Circular No. 1/2014 dated 13th January 2014, it has been clarified that service tax is not to be included in the fees for professional services or technical services and no TDS is required to be made on the service tax component under Section 194J of the Act. **[Decided in favour of the Assessee]**

**M/S KHIZARIA LEATHERS VERSUS THE DEPUTY COMMISSIONER OF INCOME TAX SPECIAL RANGE III, CHENNAI (MADRAS HIGH COURT)**

**BRIEF:** Whether the Tribunal is correct in concluding that the provisions of Section 269SS of the Act were attracted to

**the transactions under consideration with a view to levy penalty under Section 271D of the Act?**

**Whether the exercise of discretion to find out the existence or nonexistence of a reasonable cause was properly explained by the authorities or not?**

**OUR TAKE:** The hon'ble **MADRAS HIGH COURT** held that it is true that certain amount of discretion is vested in the assessing officer as well as the appellate authority and the Tribunal to choose not to impose penalty if the assessee proves that there was reasonable cause for the failure. But, what is reasonable cause is not clearly indicated either in section 269SS or in section 273B. Therefore, in an appeal under section 260A, we can only go by the question whether the exercise of discretion to find out the existence or nonexistence of a reasonable cause was properly explained by the authorities or not.

We do not find any perversity in the approach of the Tribunal. As a matter of fact, instead of distinguishing the correctness of the discretion exercised by the assessing officer, the Tribunal has independently decided the question as to whether there was a reasonable cause or not. The Tribunal has independently applied its mind and come to the conclusion that there was no reasonable cause. In the circumstances, we do not think that question Nos.1 and 3 are to be answered in favour of the assessee. **Accordingly, question Nos.1 and 3 are also answered against the assessee.**

6.75% prescribed in this notification is valid for a period of one year from the date of publication of the notification.

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

#### DADRA NAGAR & HAVELI

The **Govt. vide Circular No. ADM/DC (VAT) /Assessment/2011-12/1586, dated 3 October, 2015** issued notice for reconciliation of exemptions claimed under central sales act.

**OUR TAKE:** Registered dealer are directed to file list of statutory forms, proof of export out of India/proof of deemed export out of India/High sea sales and other exemption claimed under the said Act, for the noted period within Fifteen Days in the office of the undersigned, failing which further necessary action will be initiated.

#### DELHI

The **Govt. of Delhi vide Notification No. F.3(15)Fin.(Rev-I)/2015-16/o/s VI/843, dated 8 October, 2015** notified introduction of an award scheme for the general public "Bill Banvao, Inaam Pao".

**OUR TAKE:** The scheme is to reward general public on drawing of lot basis for collecting and sharing with department the VAT-able Bill/ Cash Memo/ Retail Invoice. The taxable value of goods should not be less than Rs. 100. Readers are requested to read the said Notification for further details.

#### HIMACHAL PRADESH

The **Govt. vide Notification No. EXN-F(10)-8/2013, dated 3 October, 2015** amendment in Schedule-II appended to Himachal Pradesh Tax on Entry of Goods into Local Area Act, 2010 (Act No. 9 of 2010).

**OUR TAKE:** There is amendment in entry no. 14 of Schedule-II of the said act. Entry tax rate of Industrial Inputs, raw material & packing material for new industrial unit commence production after 1-4-2015 @ 1%.

# STATE TAXES

## ALL INDIA VAT

### ANDHRA PRADESH

The **Govt. vide Order No. 965, dated 7 October, 2015** prescribes 6.75% as the rate of discount for calculating and paying the net present value of the deferred taxes by an industrial unit under the said rule. The discount rate of

## JHARKHAND

The **Govt. vide Notification No. LEG-35/2015/100, dated 23 September, 2015** seek to amend the Jharkhand Value Added Tax (Amendment) Act, 2015 (Jharkhand Act, 10, 2015).

**OUR TAKE:** There is amendment in Section 18. Readers are requested to read the said Notification. It is self-explanatory.

## RAJASTHAN

The **Govt. vide Order No. F.12(105) FD/Tax/2014-92, dated 30 September, 2015** clarified Interpretation of clause 2(xiv) of the Scheme.

**OUR TAKE:** The clarification is as follow:

"Expansion" means creation of additional capacity for production of goods or operational capacity for service in same line of production/operation or through a new product line or new line of services by an existing enterprise provided that in case of expansion at existing site, additional investment is more than 25% of its existing investment on the date of initiating expansion at that site;

According to above clause, in case of expansion, there must be creation of additional capacity. Where any enterprise is purchasing an ongoing existing enterprise, no additional capacity is being created by such enterprise and the enterprise is only acquiring the capacity already created by the existing enterprise. Therefore, the purchase of an on-going existing enterprise shall not fall under "expansion".

## TRIPURA

The **Govt. vide Notification No. F.I-11(62)-TAX/VAT/2014, dated 3 October, 2015** amend the Schedule II(a) and Schedule II(b) appended to Tripura Value Added Tax Act, 2004.

**OUR TAKE:** In entry no. 74 of Schedule II(a), after Sl. No. ii) the expressions 'iii) pre-owned / used car' shall be inserted.

And in entry no. 117 of Schedule II(b), after the expressions 'Motor vehicle' the expressions 'other than pre-owned / used car' shall be inserted.

## WEST BENGAL

The **Govt. vide Notification No. 1605-F.T., dated 16 September, 2015** make the amendments in the West Bengal Value Added Tax Rules, 2005.

**OUR TAKE:** In the said rules, in Chapter VI, in Part I, "Rule 26KA for deduction from turnover of sales for goods sold to Exide Industries Ltd" and "Rule 26KB for deduction from turnover of sales for goods sold to Exide Industries Ltd." are inserted.

## COURT DECISIONS

### BANSAL DYE CHEM PVT. LTD. VERSUS COMMISSIONER VALUE ADDED TAX, DELHI & ANOTHER (DELHI HIGH COURT)

**BRIEF:** Levy of penalty on the Appellant Assessee under Section 86(10) of the DVAT Act without issuing notice to the Assessee. Order is unsustainable in law and is hereby set aside.

**OUR TAKE:** The hon'ble **DELHI HIGH COURT** held that no notice was issued to the Assessee by the VATO on the aspect of penalty. The mere fact that the Assessee had paid the penalty under protest would not preclude it from questioning the levy of penalty on the ground that the basic procedural requirement was not fulfilled by the VATO. Assessment of penalty is an exercise separate from the main assessment for determining the tax and interest payable. This is evident from a perusal of Sections 31 and 32 (which talk of the self-assessment and default assessment) and Section 33 of the DVAT Act which deals with the penalty assessment. On the basis of the survey, a notice was issued to the Assessee under Section 59 of the DVAT Act as regards the assessment to tax. The Assessee did not participate in the assessment proceedings and an ex parte 'Notice of Default Assessment of Tax and Interest' was issued on 24th February 2013 by the VATO under Section 32 of the DVAT Act read with Rule 36 (1) of the DVAT Rules in Form 24. On the same day the VATO passed the penalty order, without any service of prior notice on the Assessee. The VATO sent to the assessee the penalty order as a "Notice of Assessment of Penalty" under Rule 36 (2) of the DVAT Rules in Form 24A. The Assessee was simply called upon to deposit the penalty amount already determined by the VATO.

As the penalty order dated 24th February 2013 under Section 86 (10) of the DVAT Act was passed by the VATO without service of prior notice of penalty on the Assessee and without affording the Assessee an opportunity of being heard on the question of penalty, the said order is held unsustainable in law and is hereby set aside. The consequential order dated 21st January 2014 of the OHA and the impugned order dated 28th April, 2015 of the AT are also set aside. Matter remanded back. **[Decided in favour of assessee]**

## OTHER UPDATES

### DGFT

The **Govt. vide Notification No. 23/2015-2020, dated 7 October, 2015** amendment in Chapter 10 of Schedule 2 of ITC (HS) Classification of Export & Import Items relating to export of rice.

**OUR TAKE:** The existing entries against Sl. No. 55, 56 & 58 of Chapter 10 of Schedule 2 of ITC(HS) Classification of Export & Import Items are replaced. As a result export of rice of seed quality has been moved from 'Free' to 'Restricted' category.

The **Govt. vide Notification No.24/2015-2020, dated 9 October, 2015** introduced amendment in policy condition 1 of Chapter 88 of ITC (HS), 2012 of Schedule –1 (Import Policy).

**OUR TAKE:** The list of Organisations under Policy Condition 1 of Chapter 88 of ITC (HS), 2012 – Schedule – 1 (Import Policy) stands updated. Readers are requested to read the said Notification. It is self-explanatory.

### FEMA

The **Govt. vide Press Note No. 11 (2015 series), dated 1 October, 2015** announced Foreign Direct Investment (FDI) upto 100% in White Label ATM Operations under automatic route.

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

The **Govt. vide Circular No. 19, dated 6 October, 2015** issued clarification regarding investment by Foreign Portfolio Investors (FPI) in Government Securities.

**OUR TAKE:** The limits for FPI investment in Govt. Securities are announced/ fixed in Rupee terms through the Circular. Readers are requested to read the said Circular. It is self-explanatory.

The **Govt. vide Notification No. 353/2015-RB, dated 6 October, 2015** amends the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 (Notification No. FEMA.20/2000-RB dated 3rd May, 2000).

**OUR TAKE:** There is amendment in Schedule 5.

(A) in paragraph 2,

(i) the existing sub-paragraph (3) shall be re-numbered as Paragraph 2C

(ii) After the existing sub-paragraph (2), the following has been added namely:-

“(3) A Non- Resident Indian may subscribe to National Pension System governed and administered by Pension Fund Regulatory and Development Authority (PFRDA), provided such subscriptions are made through normal banking channels and the person is eligible to invest as per the provisions of the PFRDA Act. The annuity/accumulated saving will be repatriable.”

(iii) After adding sub-paragraph (3) in paragraph 2, the existing paragraph 2C shall be re-numbered as sub-paragraph (4) in Paragraph 2.

(B) In paragraph 3, after the existing sub-paragraph (2), the following shall be inserted namely:-

“(2A) A non-resident Indian who subscribes to the National Pension System, under sub-paragraph (3) of paragraph (2) of this Schedule shall make payment either by inward remittance through normal banking channels or out of funds held in his NRE/FCNR/NRO account.”

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