



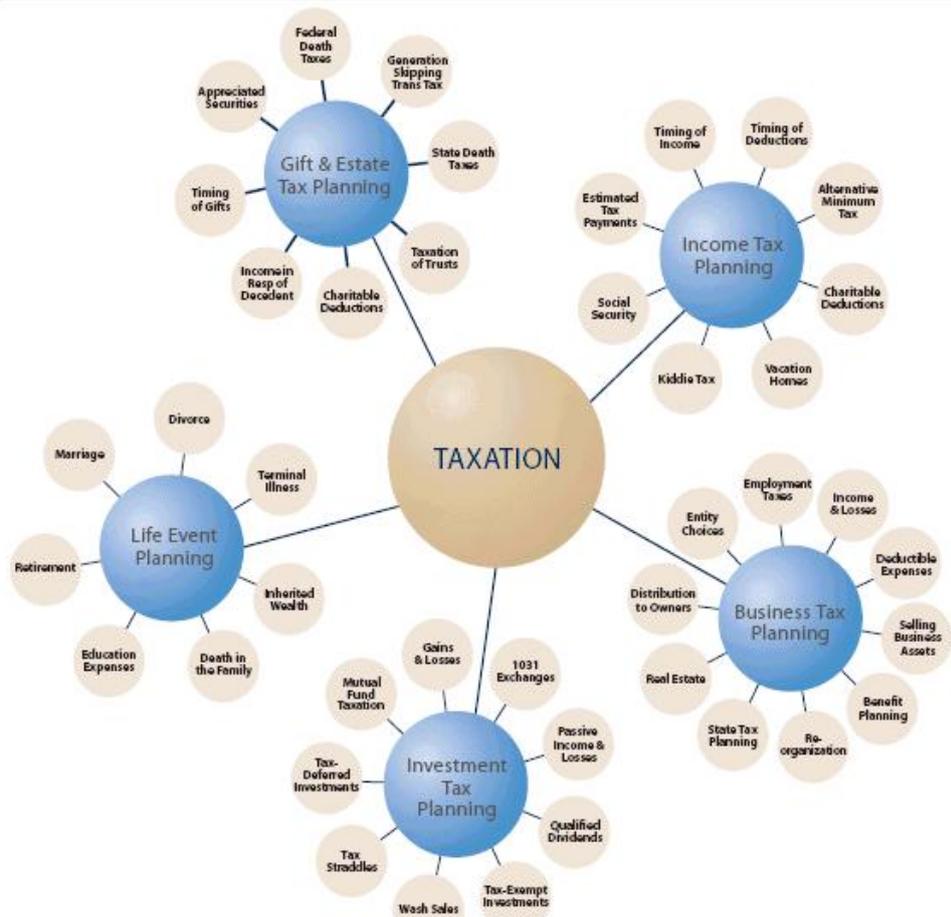
# ASC Times

All India Taxes Weekly Reference

Vol: Sep 12–Sep18, 2016

Solving  
any **tax**  
puzzle

Tax saving advice  
across all the taxes



## TAXCALENDER

Due Date	Description	Law
12 September	Return Filing	Gujarat VAT.
13 September	Return Filing	Nagaland VAT.
14 September	Deposit of Tax	Rajasthan VAT.
15 September	Return Filing	Karnataka VAT, Madhya Pradesh VAT.
	Deposit of TDS	West Bengal VAT, Mizoram VAT.
	Deposit of Tax	Bihar VAT, Jharkhand VAT, Sikkim VAT
	Issue of TDS Certificate	Andhra Pradesh VAT, Bihar VAT Himachal Pradesh VAT, Jharkhand VAT, Nagaland VAT, Punjab & Chandigarh VAT, Telangana VAT
Advance Income Tax	Income Tax Law	

## COUNTRY WIDE HOLIDAYS FOR THE WEEK

Date	Occasion/Festival	Region
12 Sep	Id-ul-Zuha (Bakri Id)	All States

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## From the CEO's Desk



Dear Reader,

President of India Pranab Mukherjee gave his assent to the Landmark Goods & Service Tax Act (GST) earlier in this week. The central government had sent the Constitutional Amendment Bill to the President after 16 states ratified the legislation. The government targets to implement the GST system from 1 April, 2017. The Centre will have to pass the Central GST and Integrated GST Bills, while the states will need to approve their respective GST legislations.

The GST rate has to be decided by the proposed GST Council, which will be chaired by the Union Finance Minister. All state finance ministers will be its members. The Council also has to put in place a dispute resolution mechanism. The states will, however, be able to adopt a GST structure that is different from that recommended by the GST Council. The council recommendations will not be binding on the states.

The Bill says the GST Council will make recommendations to the Centre and the states on issues such as taxes, cess and surcharges that might be subsumed in the GST tax rate. Parliament and state assemblies have the right to accept those recommendations in their GST Bills.

While the Pan-India overhaul of India's indirect tax regime has got the mandatory support of more than half the states, Tamil Nadu's ruling AIADMK had walked out before the voting on the Bill began, both in the Rajya Sabha and the Lok Sabha. The party had wanted some changes in the Bill, such as imposition of four percent additional tax on inter-state trade and transfer of money thus collected to the state of origin of the goods.

The Centre is to compensate the states for revenue losses for the first five years after the implementation of the GST if the states' revenues come down under the new tax regime.

Meanwhile, at a meeting with the Empowered Committee of State Finance Ministers on GST last month, India Inc pitched for an 18 percent standard rate on the ground that this rate will generate adequate tax buoyancy without fuelling inflation.

As per the current indications and reports, goods will be categorised as being subject to merit rates (12 percent), standard rates (18 percent) and de-merit rates (40 percent)," Ficci said in a release following a meeting here with the Empowered Committee.

Certain goods will be exempted from the GST while bullion and jewellery will be charged at one-two percent, it said regarding classification of goods for applying GST rates.

On the implementing of GST, Ficci said that in order to provide adequate time to trade and industry to prepare for a hassle-free rollout of the GST regime, a minimum of six months should be permitted from the date of the adoption of the GST law by the GST Council. Additional time would be required in case the GST law as passed by Parliament or state legislatures is significantly different from the one adopted by the GST Council.

Alok Kumar Agarwal

CEO

ASC Group.

Board is not entitled to pass on the burden of service tax payable on its part, if the tax is leviable, upon the contractors.

# CENTRAL TAXES

## SERVICE TAX

### NOTIFICATION / CIRCULAR

**The Govt. vides Notification No. 39/2016 dated 02<sup>nd</sup> Sep 2016**, amend Entry 62 of notification No. 25/2012 - Service Tax, dated the 20<sup>th</sup> June, 2012, so as to exempt services provided by Government or a local authority by way of allowing a business entity to operate as a telecom service provider or use radio frequency spectrum during the period prior to 1st April, 2016 on payment of license fee or spectrum user charges.

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

**The Govt. vides Notification No. 40/2016 dated 06<sup>th</sup> Sep 2016**, amend Notification No. 25/2012- Service Tax, dated 20<sup>th</sup> June 2012, in relation to services provided towards renting of precincts of a religious place meant for general public, scope of exemption amended

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

### COURT DECISIONS

#### M/S BHARAT BHUSHAN GUPTA AND COMPANY VERSUS STATE OF HARYANA AND OTHERS [PUNJAB & HARYANA HIGH COURT]

**BRIEF:**On the contract for construction of BPL houses, as awarded by the Board to the petitioners, no service tax is leviable w.e.f. 1.7.2012 - The Board is not entitled to pass on the burden of service tax payable on its part, if the tax is leviable, upon the contractors.

**OUR TAKE:**The hon'ble PUNJAB & HARYANA HIGH COURT held it is wholly controlled by the State Government. BPL houses constructed by the petitioners are meant for residential purpose and not for commerce, industry or any other business or profession. On the contract for construction of BPL houses, as awarded by the Board to the petitioners, no service tax is leviable w.e.f. 1.7.2012 - The

#### THE SURAT MUNICIPAL CORPORATION VERSUS THE COMMISSIONER OF CENTRAL EXCISE AND CUSTOMS [GUJARAT HIGH COURT]

**BRIEF:**Mandap keeper services - Short-payment of service tax – extended period of limitation - Tribunal has not rendered any findings so far as the appellant had not paid the service tax on the amounts disputed and he was under the bona fide impression that the halls were not fallen under the levy of service tax - demand set aside

**OUR TAKE:**The Hon'ble GUJARAT HIGH COURT held that the information was sought for under Section 71 of the Act and if such information was not supplied then the case would fall under Section 73(a), but the demand was called for in the year 2001 and on the basis of the information supplied, show because notice came to be issued and thus the case of the assessee would not fall under Section 73(a) and it would fall under Section 73(b) of the Act. The tribunal has committed serious error by not considering the submissions made by the appellant. Appeal disposed of. [Decided in favour of appellant]

#### INDIA PESTICIDES LTD. VERSUS COMMISSIONER OF C. EX. & S.T., LUCKNOW [CESTAT ALLAHABAD]

**BRIEF:**Cenvat credit - availed on transportation charges in the process of cleaning and disposal of waste - the disposal of hazardous waste by the appellant is an essential activity, without which, the final products being excisable insecticides, cannot be manufactured. Credit allowed.

**OUR TAKE:**The hon'ble CESTAT ALLAHABAD held that the disposal of hazardous waste by the appellant is an essential activity, without which, the final products being excisable insecticides, cannot be manufactured. Thus, the transport service in question have been incurred in relation to the manufacture of final taxable products. - Decided in favour of appellant with consequential relief.

#### SUNDARAM FASTENERS LTD. VERSUS COMMISSIONER OF C. EX., CHENNAI-II [CESTAT HENNAI]

**BRIEF:**Cen vat credit - insurance premium having been paid for the health insurance of the employees of the factory and Pest Control Service availed to protect the property of the company - credit allowed.

**OUR TAKE:**The hon'ble **CESTAT AHENNAI** held that so far as the Cenvat credit on insurance service is claimed, the exclusion of such service in certain events has been incorporated into the law with effect from 1-4-2011. That is only in respect of the insurance coverage given to employees during journey availing leave travel concession. But that had not taken away welfare of workers under the Factories Act, from its fold if insurance service is availed to overcome difficulties under Workmen's Compensation Act, in case of hazard. Accordingly, appellant's claim of Cenvat credit on the service tax paid to avail insurance service for employees employed in factory is permissible. Pest Control to maintain property of the assessee being integral to the protection of the business, therefore, appellant is also entitled to credit thereon. **[Decided in favour of appellant]**

**M/S JUMERA PROMOTORS AND DEVELOPERS PVT LTD  
VERSUS COMMISSIONER OF CENTRAL EXCISE, DELHI  
[CESTAT NEW DELHI]**

**BRIEF:** Renting of farmhouse. Whether appellant is liable to pay service tax under the category of "Renting of Immovable Property Service". Scope of the lease deed, prima facie, the same is not taxable.

**OUR TAKE:**The hon'ble **CESTAT NEW DELHI** held that the property is leased out for residential purpose and for the employees of the lessee. We find that the lessee also issued certificate to certify that the premises was never used except for residential purposes. Moreover, electricity bills and property tax returns also support the case of the appellant. Revenue has not produced any contrary evidence to the evidence produced by the appellant. Therefore, prima facie, we are of the view that the demand confirmed under the category of "Renting of Immovable Property Service" is not sustainable. **[Stay granted]**

**M/S DABUR RESEARCH FOUNDATION VERSUS  
COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX,  
GHAZIABAD [CESTAT ALLAHABAD]**

**BRIEF:** Supply of tangible goods. Revenue was of the view that allowing use of such capital assets amounts to providing of services, namely, "supply of tangible goods" service. Stay granted partly.

**OUR TAKE:**The hon'ble **CESTAT ALLAHABAD** held that considering that the appellants have paid VAT on the transaction it will be in the interest of justice to allow stay of the recovery subject to deposit of Rs Three Lakhs only within eight weeks of this order. **[Stay granted partly]**

**DINESH M. KOTIAN VERSUS COMMISSIONER OF CENTRAL  
EXCISE & SERVICE TAX-I, MUMBAI AND VICA-  
VERSA [CESTAT MUMBAI]**

**BRIEF:** Business Auxiliary service or not. Activity of collection/dispatch of Speed Post/Export Delivery Letter etc. on behalf of the Post Office. Demand is dropped on the ground of Revenue neutral exercise.

**OUR TAKE:**The humble **CESTAT MUMBAI** held that it is clear that if the assessee pays service tax, it shall be available, as Cenvat credit to the postal department and to that extent net liability of service tax shall stand reduced while paying the service tax by the postal department. Therefore, it is an exercise of revenue neutral for this reason demand does not exist. We, therefore, drop the demand on the point of revenue neutrality without addressing the issues of taxability of service tax and limitation. **[Decided in favour of assessee]**

**BANK OF BARODA VERSUS COMMISSIONER OF SERVICE  
TAX, MUMBAI-I [CESTAT MUMBAI]**

**BRIEF:** Classification of Import of services from M/s. Society for Worldwide Interbank Financial Telecommunication (SWIFT) which is a non-resident entity, not having an office in India - reverse charge. Demand conformed invoking the extended period of limitation.

**OUR TAKE:**The hon'ble **CESTAT MUMBAI** held that both provisions have separate ingredients. In the present case the appellant has not disclosed the data related to service charges paid to SWIFT to the department. Therefore, as there is a suppression of the fact on the part of the appellant, proviso to Section 73(1), gets correctly invoked. Demand conformed invoking the extended period of limitation - **[Decided partly in favour of assessee]**

**COMMISSIONER OF CENTRAL EXCISE, NASIK VERSUS MEGA  
ENTERPRISES [CESTAT MUMBAI]**

**BRIEF:** Nature of activity. Collection of octroi on behalf of the Municipal Corporation. Cash management activity or not. Not covered by Banking and other Financial Services, revenue's appeal rejected

**OUR TAKE:**The hon'ble **CESTAT MUMBAI** held that the amount collected excess of contracted amount and retained by the assessee in respect of transit fees is not covered under the category of "banking and other financial services". Since the issue is decided in favour of the respondent-assessee in this appeal, we find no merit in the appeal filed by the Revenue, hold that the impugned order is correct and legal, and does not suffer from any infirmity. **[Decided against Revenue]**

## CENTRAL EXCISE

### NOTIFICATION / CIRCULAR

The Govt. vides Notification No. 33/2016 dated 08<sup>th</sup> Sep 2016, amend notification No.12/2012-Central Excise dated 17<sup>th</sup> march 2012.

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

### COURT DECISIONS

#### MOSER BEAR INDIA LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, NOIDA (CESTAT ALLAHABAD)

**BRIEF:** Valuation - includability - amount of royalty paid by customers in the assessable value of CD-ROMs manufactured - SCN is presumptive and hence, the same is not sustainable.

**OUR TAKE:** The hon'ble CESTAT ALLAHABAD held that it is found that Annexure-D to the SCN is relevant to be examined, to find out whether the quantification is presumptive in nature. The agreements subsequent to the period of dispute in the SCN were taken into consideration to arrive at the amount of royalty charges paid by third party per CD for the period, subsequent to the period covered by the SCN and thereby SCN is presumptive and hence, the same is not sustainable. [Decided in favour of assessee]

#### EXECUTIVE ENGINEER CENTRAL WORKSHOP DIVISION, CHATTISGARH STATE ELECTRICITY BOARD VERSUS C.C.E., RAIPUR (CESTAT NEW DELHI)

**BRIEF:** Refund claim - there is no case for unjust enrichment against the appellant both on the reason of the appellant being a State Organization and on merit of not passing on the duty to another person.

**OUR TAKE:** The hon'ble CESTAT NEW DELHI held that the appellants have paid the duty apparently from their fund. There is no identity of different funds and individual records for different receipts for a one to one co-relation as to which money has gone to which expenditure. Such stipulation will be impracticable. There is no case for unjust enrichment against the appellant both on the reason of the appellant being a State Organization and also on merit of not passing on the duty to another person. [Decided in favour of assessee]

#### INDIAN OIL CORPORATION LTD. VERSUS C.C.E. & S. T., ALLAHABAD [CESTAT NEW DELHI]

**BRIEF:** Demand of education cess - the goods in question was manufactured prior to 09.07.2004, the confirmation of demand on Education Cess along with interest and imposition of penalty on the appellant is not legally sustainable.

**OUR TAKE:** The hon'ble CESTAT NEW DELHI held that the appellant had maintained the proper records to demonstrate that the goods in question were manufactured prior to 09.07.2004, the confirmation of demand on Education Cess along with interest and imposition of penalty on the appellant is not legally sustainable. [Decided in favour of assessee]

#### M/S. VINDHYACHAL AIR PRODUCTS PVT. LTD. VERSUS C.C.E., BHOPAL (CESTAT NEW DELHI)

**BRIEF:** Sanction of a part of the refund amount by way of credit in the Cenvat account - granting refund and crediting it to the mod vat account will not in effect allow the appellant to utilize the fund, which was collected and kept by the Government in excess of legal due - refund allowed in cash.

**OUR TAKE:** The hon'ble CESTAT NEW DELHI held that the appellants are operating under small-scale exemption scheme and it is recorded that in the end of the year they are reversing the available credit in their books in order to avail SSI exemption. Considering this position, granting refund and crediting it to the mod vat account will not in effect allow the appellant to utilize the fund, which was collected and kept by the Government in excess of legal due. Under these circumstances, we find the refund sanctioned already is to be given in cash and to that extent, we modify the impugned order. [Disposed present appeal]

#### M/S NR HYTECH ENGINEERS PVT LTD VERSUS COMMISSIONER OF CENTRAL EXCISE, MUMBAI-III [CESTAT MUMBAI]

**BRIEF:** Whether the appellant is entitling for the Cenvat Credit in respect of the service tax paid by the job worker? For the purpose of limitation in taking the credit, the period of litigation in the present case shall stand excluded.

**OUR TAKE:** The hon'ble CESTAT MUMBAI held that the appellant is entitled to take the credit in terms of the adjudication order dt. 30.7.2010. Also hold that for the purpose of limitation in taking the credit, the period of litigation in the present case shall stand excluded. In view of my above observation, the present appeal is dismissed as withdrawn.

**M/S SHARP ENGINEERS, SHRI AMITBHAI BABUBHAI PATEL, SHRI BABUBHAI JOITARAM PATEL AND SHRI DHIRUBHAI K MODHWADIA VERSUS COMMISSIONER OF CENTRAL EXCISE-AHMEDABAD-I[CESTAT AHMEDABAD]**

**BRIEF:** Penalty under Section 11AC - The partner of the partnership firm had already paid the duty before issue of the show cause notice in order to avoid legal proceedings. In such situation, imposition of separate penalty on the partner of the firm is not justified.

**OUR TAKE:**The hon'ble **CESTAT AHMEDABAD** held that partner of the partnership firm had already paid the duty before issue of the show cause notice in order to avoid legal proceedings. In such situation, imposition of separate penalty on the partner of the firm is not justified.

**CCE (ST) LTU, CHENNAI VERSUS M/S. TUBE PRODUCTS OF INDIA[CESTAT CHENNAI]**

**BRIEF:** Interest on differential duty demanded before finalization of order - It is difficult on the plain language of the section to hold that the law envisages the assessee to predicate the final assessment and expect him to pay the tax on that basis to avoid the liability to pay interest. That would be asking him to do the near impossible.

**OUR TAKE:** The hon'ble **CESTAT CHENNAI** held that it would be a different matter if the return is not approved by the authority but that is not the case here. It is difficult on the plain language of the section to hold that the law envisages the assessee to predicate the final assessment and expect him to pay the tax on that basis to avoid the liability to pay interest. That would be asking him to do the near impossible. **[Decided against revenue]**

**CCE, JAIPUR-I VERSUS M/S. MAN INDUSTRIAL CORPORATION. (CESTAT NEW DELHI)**

**BRIEF:**Refund claim subject to unjust enrichment. It is an admitted fact that the buyer has not debited Cenvat credit along with the amount of duty in dispute as claimed by the respondent as a refund. Refund not allowed.

**OUR TAKE:**The hon'ble **CESTAT NEW DELHI** held that it is an admitted fact that the buyer has not debited Cenvat credit along with the amount of duty in dispute as claimed by the respondent as a refund. In the circumstances, relying on the decision in the case of Oriental Textile Processing Co. (P) Ltd. (CESTAT, NEW DELHI), we hold that the Id. Commissioner (Appeals) is in error in holding that the respondent has

passed unjust enrichment. Therefore, the impugned order is set aside. **[Decided in favour of assessee]**

**GOYAL M.G. GASES PVT. LTD. VERSUS COMMISSIONER OF C. EX. & S.T., CHANDIGARH(CESTAT NEW DELHI)**

**BRIEF:**Gas filing activity. Whether the activity undertaken by the appellant amounts to manufacture? Gas is already marketable in its original form and the activity undertaken by the appellant does not render the gas marketable, which is already marketable. Demand of duty set aside.

**OUR TAKE:**The hon'ble **CESTAT NEW DELHI** held that the gas is already marketable in its original form and the activity undertaken by the appellant does not render the gas marketable, which is already marketable. Therefore, we hold that the activity undertaken by the appellant does not amount to manufacture. Consequently, the appellant is not liable to pay duty. **[Decided in favour of assessee]**

**M/S NEELAM STEELS, SHRI R.P. HANDA VERSUS COMMISSIONER OF CENTRAL EXCISE, LUDHIANA.[CESTAT NEW DELHI]**

**BRIEF:** Refund of unutilised Cenvat credit. Refund claim denied on the ground that in terms of Rule 11(2) of Cenvat Credit Rules, 2004, unutilised credit would lapse on closure of the unit. ER return submitted by the appellant along with refund application is sufficient to grant refund to the appellant.

**OUR TAKE:**The hon'ble **CESTAT NEW DELHI** held that the facts and circumstances enumerated, set aside the impugned order and direct the respondent to grant refund within a period of two months from the receipt of the certified copy of the order. **[Decided in favour of assessee]**

**PERFECT THREAD MILLS LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, JAIPUR-II(CESTAT NEW DELHI)**

**BRIEF:** Dutiability and classification of Polyester Sewing Thread. The Dutiability does not arise by virtue of the fact the definition of Sewing Thread was provided for in certain headings, but by virtue of the fact that the process of making Sewing Thread out of single thread/yarn is a process of manufacture under Section 2(f).

**OUR TAKE:**The hon'ble **CESTAT NEW DELHI** held that the Dutiability does not arise by virtue of the fact the definition of Sewing Thread was provided for in certain headings, but by virtue of the fact that the process of making Sewing Thread out of single thread/yarn is a process of manufacture under Section 2(f). There is no ground to interfere with the findings of the learned Commissioner (Appeals) and

accordingly we dismiss the appeal. **[Decided against the assessee]**

## CUSTOMS

### NOTIFICATION / CIRCULAR

**The Govt. vides Notification No. 48/2016 dated 08<sup>th</sup> Sep 2016;** amend Notification No. 12/2012 dated 17<sup>th</sup> March 2012

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

### COURT DECISIONS

#### **M/S FAIRDEAL SUPPLIES (P) LTD. VERSUS COMMISSIONER OF CUSTOMS, JAMNAGAR [CESTAT AHMEDABAD]**

**BRIEF:** Import of coking coal of Chinese origin - it is found that presence of ash content is more than what is declared by the appellant which results in denial of exemption under the Customs Notification No. 21/2002.

**OUR TAKE:** The hon'ble **CESTAT AHMEDABAD** held that sample was drawn in presence of the authorized representative of the importer/CHA (who did not object about the method of sampling) and on testing the sample, the Chemical Examiner, Central Excise & Customs, Regional Laboratory, Vadodara, certified that the ash content is 15.1%. In addition, the testing was done as per the prescribed method. Therefore, the presence of ash content is more than what is declared by the appellant, which results in denial of exemption under the Customs Notification No. 21/2002. **[Decided against the appellant]**

#### **M/S AISHWARYA PLAST EXPORTS PVT LIMITED VERSUS COMMISSIONER OF CUSTOMS-AHMEDABAD [CESTAT AHMEDABAD]**

**BRIEF:** Re-export of entire goods - Prohibition on import of goods - Goods involves Toxic, Hazardous Contamination - the portion of goods that contains the bar codes or stickers needs to be segregated and re-exported, and the balance portion to be cleared on payment of reduced redemption fine and penalty.

**OUR TAKE:** The hon'ble **CESTAT AHMEDABAD** held that the imported goods are not put to any use whatsoever and are virgin new material, as per the certificates of the

manufacturer suppliers submitted along with the consignment at the time of customs clearance. Also the appellants have drawn sample on their own from the consignment and sent the same to CIPET, Chennai, who certified the goods to be plastic scrap virgin. Therefore, the portion of goods, which contains the bar codes or stickers, needs to be segregated and re-exported and the balance portion to be cleared on payment of reduced redemption fine and penalty. **[Decided partly in favour of appellant]**

#### **PENSHIBAO WANG PVT. LTD. AND RAJWANT SINGH, M.D. VERSUS COMMISSIONER OF CUSTOMS (SEAPORT-IMPORT), CHENNAI [CESTAT CHENNAI]**

**BRIEF:** The classification and assessment of imported goods as "Plant Bio-Fertilizer" was done based on the Test Reports and goods were cleared during the relevant period, so, the question of alleging misdeclaration or suppression of facts by the appellant does not arise.

**OUR TAKE:** The hon'ble **CESTAT CHENNAI** held that under Section 112(a) of the Customs Act, 1962 for live consignment and under Section 114/114A ibid for the past consignment - Held that: the penalty to be imposed on the importer and its Managing Partner under Section 112(a) ibid and not to be imposed under Section 114/114A ibid. **[Decided partly in favour of appellant]**

#### **M/S S. NARENDRA VERSUS COMMISSIONER OF CUSTOMS, MUMBAI [CESTAT MUMBAI]**

**BRIEF:** Claim of exemption. Benefit of Notification No. 159/86-Cus, after examination of machine and visit to factory premises it was found that the said machine is "Laser system for diamond processing (sawing, kerfing and drilling) based on CNC. - Benefit of exemption allowed

**OUR TAKE:** The hon'ble **GUJRAT HIGH COURT** held that the expression sawing machines had been used without any qualification. There is no dispute that the goods were imported for the purposes as specified in the notification. Other condition subject to which the benefit of concessional rate of duty was available and had also been fulfilled. The notification covers the machine imported by the appellants. Appellant succeeds on both counts. The appeal is allowed. **[Decided in favour of assessee]**



# INCOME TAX

## COURT DECISIONS

### CIT, CENTRAL – I, KOLKATA VERSUS BINANI CEMENT LTD.[CALCUTTA HIGH COURT]

**BRIEF:**Computation of MAT u/s 15JB - Book Profit - Once it is realized that the assessee had correctly debited the profit and loss account for the loss arising out of the transfer of investment division, there remains no difficulty in realizing that the CIT proceeded on a wrong premise which was responsible for exercise of jurisdiction under Section 263 which he would not have done if he had realized the correct position.

**OUR TAKE:** The hon'ble CALCUTTA HIGH COURT held that it is realized that the assessee had correctly debited the profit and loss account for the loss arising out of the transfer of investment division, there remains no difficulty in realizing that the CIT proceeded on a wrong premise which was responsible for exercise of jurisdiction under Section 263 which he would not have done if he had realized the correct position. The only conclusion, which can be arrived at, is that the order passed by the learned Tribunal is unexceptionable. [Decided against revenue]

### PRINCIPAL COMMISSIONER OF INCOME-TAX-08 VERSUS M/S SHRUTI FASTNERS LTD.[DELHI HIGH COURT]

**BRIEF:**Reopening of assessment - The ITAT observed that "just one unrealistic and absurd figure of net profit is taken out from the print out of the rough document from the CPU/hard disk and adopted for assessment of total income. Such an approach cannot be approved - the view taken by the ITAT is a plausible one and cannot be said to suffer from any perversity warranting interference.

**OUR TAKE:** The hon'ble DELHI HIGH COURT held that The contention of the Revenue that the difference in the figures of closing stock as on 31st March 2011 and the opening stock as on 1st April 2011 were due to unaccounted sales was rejected as being absurd. The ITAT observed that "just one unrealistic and absurd figure of net profit is taken out from the print out of the rough document from the CPU/hard disk and adopted for assessment of total income. Such an approach cannot be approved.[Decided against revenue]

### DY. COMMISSIONER OF INCOME TAX-5 (2) , MUMBAI VERSUS M/S M. SURESH COMPANY PVT. LTD. [ITAT MUMBAI]

**BRIEF:** Penalty u/s 271(1)(c), assessee did not establish the nexus between the borrowed funds and the investment so made with a clear intention to conceal the income by furnishing inaccurate particulars of such income, therefore, in our view, penalty was rightly imposed.

**OUR TAKE:**The hon'ble ITAT MUMBAI held that the totality of facts clearly indicates that the assessee did not establish the nexus between the borrowed funds and the investment so made with a clear intention to conceal the income by furnishing inaccurate particulars of such income, therefore, in our view, penalty was rightly imposed by the Assessing Officer. The stand of the Revenue is further fortified by the fact that even the assessee did not file appeal against the disallowance of huge interest expenditure while deciding the quantum addition and accepted the same. [Decided against assessee]

### KANTI AUTO FABRICATION PVT LTD VERSUS ASSISTANT COMMISSIONER OF INCOME TAX[GUJARAT HIGH COURT]

**BRIEF:** Reopening of assessment. Mere accounting entry or even if there was some defect in indicating such amount in the accounts presented by the assessee, as long as income chargeable to tax had not escaped assessment, reopening of the assessment would not be permissible.

**OUR TAKE:**The hon'ble GUJARAT HIGH COURT held that mere accounting entry or even if there was some defect in indicating such amount in the accounts presented by the assessee, as long as income chargeable to tax had not escaped assessment, reopening of the assessment would not be permissible. Decided in favour of the assessee]

### M/S FORUM PROJECTS PVT. LTD. VERSUS DCIT, CENTRAL CIRCLE-II, KOLKATA.[ITAT KOLKATA]

**BRIEF:** Disallowance u/s 14A. The action of the AO in directly embarking on Rule 8D(2) Of the Rules is not appreciated and hence no disallowance u/s 14A could be made in the facts of the instant case.

**OUR TAKE:**The hon'ble ITAT KOLKATA held that action of the Learned AO in directly embarking on Rule 8D (2) of the Rules is not appreciated and hence no disallowance u/s 14A of the Act could be made in the facts of the instant case.[Decided in favour of the assessee]

# STATE TAXES

## ALL INDIA VAT

### BIHAR

The Govt. vides Notification No.L.G.-01/15/2016/173/LG dated 02<sup>nd</sup> Sep 2016, introduced Bihar Industrial Investment Promotion Act, 2016.

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

### HIMACHAL PRADESH

The Govt. vides Notification No.L.L.R.-D (6)-23/2016-LEG dated 06th Sep 2016, Himachal Pradesh Tax on Entry of Goods into Local Area (Second Amendment) Ordinance, 2016 - Amendment to Section 3 & 8.

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

### COURT DECISIONS

COMMISSIONER OF COMMERCIAL TAXES, THIRUVANANTHAPURAM, KERALA VERSUS M/S K.T.C. AUTOMOBILES [SUPREME COURT]

**BRIEF:** Levy of penalty for non-maintenance of complete and true accounts - sale of motor vehicles from another state - According to the Intelligence Officer, the sales were concluded at Kozhikode and hence the vehicles should have been registered within the State of Kerala. - Mere doubt cannot create any liability - No penalty.

**OUR TAKE:**The hon'ble SUPREME COURT held that the allegations and facts made or noted by the Intelligence Officer no doubt create some doubts but they do not lead to a conclusive inference that the sales under controversy had taken place at Kozhikode, Kerala. To the contrary, in view of propositions of law discussed hereinbefore, the judgment of the High Court gets reinforced and deserves affirmation. [Decided against the revenue]

# OTHER UPDATES

### COMPANY LAW

### COURT DECISIONS

RAJ SHEKHAR AGRAWAL AND ANR. VERSUS UNION OF INDIA AND ANR[DELHI HIGH COURT]

**BRIEF:**The question, whether the petitioners can be said to be Directors of the subject company is doubtful and without the petitioners / applicants having a clear right to act as Directors and which is being opposed, the question of the petitioners / applicants incurring any disqualification or liability under Section 162 of the Act also, would not arise.

**OUR TAKE:**The hon'ble DELHI HIGH COURT held that the question, whether the petitioners can be said to be Directors of the subject company is doubtful and without the petitioners / applicants having a clear right to act as Directors and which is being opposed, the question of the petitioners / applicants incurring any disqualification or liability under Section 162 of the Act also, would not arise. The application is thus dismissed with liberty to the petitioners / applicants to apply to the CLB for the same reliefs.

### FEMA

### COURT DECISIONS

BIPINCHANDRA G. CHOCKSHI AND 1 VERSUS STATE OF GUJARAT AND 2(GUJARAT HIGH COURT)

**BRIEF:**Detaining authority is under obligation to comply with the requirements by formulating grounds for detention

**OUR TAKE:**The hon'ble GUJARAT HIGH COURT held that the petition is allowed resulting into quashing and setting-aside the impugned order of detention dated 11.6.1976 at Annexure 'A' to the petition and declaration under Section 12A of the COFEPOSA, 1974 at Annexure 'B' dated 11.6.1976 and quash and set-aside three notices under Section 6 of SAFEMA, 1976, Annexure 'D' Collectively dated 28.4.1977, 20.1.1997 and 23.3.1977.

SAJAL DUTTA VERSUS RESERVE BANK OF INDIA & OTHERS(CALCUTTA HIGH COURT)



**BRIEF:**Both the company and its principal shareholders had an interest in the grant of the licence or revocation of it, by the Reserve Bank of India.

**OUR TAKE:**The hon'ble **CALCUTTA HIGH COURT** held that the importation was made more than 20 years ago. These capital goods have spent their life. Their value, now after depreciation is nil. At the time of their importation their declared value was 3, 05, 53,290/-. Against this value, shares were allotted to Kamal. Even if Sajal now succeeds, the equipment's cannot be returned to Kamal. The monetary value has to be refunded with interest from the other assets of the Company. That is plainly not permissible or feasible. W

#### ALLIED LAWS

#### COURT DECISIONS

#### JIJU LUKOSE VERSUS STATE OF KERALA [KERALA HIGH COURT]

**BRIEF:**Right to receive copy of the FIR even before the stage of proceedings under Section 207 of the Cr.P.C - Accused is entitled for copy of the FIR.

**OUR TAKE:**The hon'ble **KERALA HIGH COURT** held that it is in the domain of authorities as to which category of the FIRs are to be put on website for information to the public in general. But there has to be a decision and appropriate categorization or norms for taking a decision as to in which case FIR be uploaded and in which it is not be uploaded. The State can come with any such decision which may balance right of information available to the public in general and interest of the State. We are thus of the opinion that petitioner has made out a case for issuing directions to the State to consider all aspects of the matter and take appropriate decision regarding uploading of the FIR in the police website with all details regarding its operation and mechanism.

#### M/s ANAND NIKETAN EDUCATION TRUST VERSYS HUDCO, AHMEDABAD REGIONAL OFFICE [GUJARAT HIGH COURT]

**BRIEF:**In the matters involving commercial dispute, rule of alternative remedy is adhered to and applied steadfast.

**OUR TAKE:**The Hon'ble **GUJARAT HIGH COURT** held that Stage obtained in the process of auction by the respondent under the SARFAESI Act is a post-13(4) stage. The petitioner therefore has an alternative statutory remedy of filing an appeal under Section 17 of the Act before the Debts Recovery Tribunal. It is trite that in the matters involving commercial dispute, rule of alternative remedy is adhered to and applied steadfast. Present petition is not

entertained. The petitioner is at liberty to approach the Debts Recovery Tribunal in accordance with law.

#### GST ALERTS

#### NOTIFICATION / CIRCULAR

**The Govt. vides Notification No. 2915 dated 10<sup>th</sup> Sep 2016**, hereby appoints the 12th day of September, 2016 as the date on which the provisions of section 12 of the said Act shall come into force.

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

#### GST COUNCIL

#### NATURE OF GST COUNCIL

The nature of GST Council will be quasi-legislative-cum-administrative body, as it will perform the legislative function delegated by the parliament to it and will also perform the administrative function. It will be a constitutional body, since it draws its power from the Constitution of India. The GST Council will be a recommendatory body, in other words the decision taken by the GST Council will not be binding on the Central Government or State Governments. However, since it comprises of big political guns from the Centre as well as from the States i.e. the Finance Minister of the Centre and the Finance Ministers of the States, so it will not be easy for the Centre or the States to ignore its recommendations without any strong reason.

#### COMPOSITION OF GST COUNCIL

The GST Council shall consist of following members:

- Union Finance minister, who will be Chairperson of GST Council;
- Union minister of State in charge of Revenue or Finance;
- The minister in charge of Finance or Taxation or any other minister nominated by each State Government and they will choose one among themselves to be the vice chairperson of the council for a particular period.

The GST Council shall make the recommendations to the Union and the States on the following subjects:

- GST rates, cesses and surcharges levied by the Union, States and Local bodies which may be subsumed in the GST;
- Goods and Services exempted from GST;
- Model GST Law which is put on public domain on June 14, 2016, will be analysed clause by clause;
- The apportionment of Integrated Goods and Services Tax (“IGST”), the principles that govern the place of supply and the principles of levy;
- Threshold limit of turnover below which goods and services may be exempted from GST;
- Special provisions with respect to the States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand;
- Prescribe the detailed procedure for conduct of its own business;
- Recommend the date from which the GST would be levied on petroleum crude, high speed diesel, motor spirit (Commonly known as Petrol), natural gas and aviation turbine fuel; and
- Any other matter relating to GST, as the council may decide.

#### APPROVAL OF GST COUNCIL

In GST Council, every decision shall be taken, when it is approved by at least 75% of the weighted votes of members present and voting.

From the above voting pattern, it appears that it will not be possible for the States to take any decision against the will of Centre, since the Centre has 33% votes and to get any decision passed, 75% votes are required, which is possible only when center supports that particular decision. In the similar way Centre cannot take any decision which is opposed by States.

#### CHALLENGES BEFORE GST COUNCIL

The GST Council has to face challenges while taking the given below decisions:

- Computation of compensation in lieu of revenue loss to the States, since losses are going to be notional in nature, so it becomes important to laid down a transparent and detailed method to calculate the compensation, which is to be provided to States for initial five years;
- Finalization of common list of exempted goods and/or services, since every States has priority for its own goods and services having local importance, to which they want to promote by providing exemption;
- Determining the Revenue Neutral Rate (“RNR”), since many important things will depend upon RNR viz. GST rate structure, impact of GST on inflation, GST compliance etc.
- Prescribing the machinery e.g. Tribunal, to resolve the disputes of different kinds, but to resolve the disputes between Centre and States or among States, the apex court has the original jurisdiction as per Article 131 of the Constitution of India, so setting up of any parallel machinery to resolve the given disputes, that machinery may be held to be unconstitutional by the apex court.

There will be many more challenges, which will be come into picture once the GST Council start its work, but as we all know there is always a solution for every problem and we hope that GST Council will be able to find constructive solutions for such problems arises before it and will make the GST a successful experiment in India.

## We may be contacted at the following offices:

### CORPORATE OFFICE

73, National Park  
Lajpat Nagar IV,  
New Delhi - 110024  
INDIA  
P: +91-11-41729056-57,  
41729656/57

### GURGAON

605, Suncity Business Tower  
Golf Course Road, Sector-54,  
Gurgaon,  
Haryana - 122002  
P: +91-124-4245110/116/117 +91-  
124-4245111

### NOIDA

C-100, Sector-2,  
Noida- 201301  
Uttar Pradesh  
M: +91- 9811481093

### MUMBAI

12A/401, Room No. 401,  
4th Floor, Sector – 11  
Koparkhairne  
Navi Mumbai – 400709  
Mumbai  
M: +91- 9022131399

### ASSAM

House No. 76,  
Near Godrej Interio,  
Forest Gate, P.O. Narangi,  
Guwahati – 781026  
P: +91-0361-2552302  
M: +91-9864857565

### SINGAPORE

1 North Bridge Road,  
# 10-09 High Street Road,  
Singapore(179094).

## For enquiries related to:

Service	Contact Person	11Service	Contact Person
DVAT:	faiz@ascgroup.in	Service Tax:	nitin@ascgroup.in
HVAT:	deepak@ascgroup.in	Transfer Pricing & PE:	shailendra@ascgroup.in
Excise:	deepak@ascgroup.in	Legal Metrology:	mayank.singhal@ascgroup.in
UPVAT:	jaswant@ascgroup.in	Company Law:	legal@ascgroup.in
Income Tax:	vikash@ascgroup.in	PR/Media	socialmedia@ascgroup.in
Maharashtra VAT:	nitin@ascgroup.in		

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