



ASC Times

All India Taxes Weekly Reference

Vol: June 13 - June 19, 2016

Solving
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TAX CALENDER

Due Date	Description	Law
13 June	Return Filing	Nagaland VAT.
14 June	Deposit of Tax	Rajasthan VAT.
15 June	Return Filing	Karnataka VAT, Madhya Pradesh 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
NA	NA	NA

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From the CEO's Desk



Dear Reader,

Modi Government is not only trying to 'doing business in India' easier but also trying hard to woo the Indians by pulling many schemes and developments in the favour of general public. We all will agree that it is Mr. Modi's efforts to put India very strongly on the world map. Now, as both India and America are the biggest democracies, the Senate has recognized the need to make India their strategic partner to fight with the terrorism as security and peace is the top priority for both the countries. John McCain, chairman of the Senate Armed Services Committee, has introduced a legislative amendment to the National Defence Authorisation Act (NDAA) 2017 seeking necessary modifications to defence control regulations. It came soon after the Prime Minister Mr. Modi addressed a joint session of the Congress for greater defence co-operation. As per the Senate Amendment 4618, it is the sense of the Congress that the US and India face mutual security threats, and a robust defence partnership is in the interest of both countries.

After a report by Avinash Dixit, an economist at Princeton University, in which he said that India's 'dysfunctional politics' is responsible for delay in essential reforms including GST and needs to do more for the improvement of infrastructure and ease of doing business. So, the State finance ministers would be meeting to discuss on the GST Bill in the coming week heading the conclave would be Finance Minister Mr. Arun Jaitley himself. Also Mr. Modi, would be present in the joint session of CBDT and CBEC, during a first of its kind 'Rajasva Gyan Sangam' on June 16 which will be an interactive session, where all the related matters will be discussed and necessary policy changes would be proposed and introduced

On the other side Government is proposing changes in other commodities and services for the benefit of consumes. For example, government has proposed to cut the excess baggage fare charges from Rs. 300 to Rs. 100

per KG and for any cancelled boarding it has proposed to pay back a penalty of three times of basic fare to the costumers. In addition, it has directed to Telco's to spend to improve networks as call drops and bad network has been a reason for worry in the recent past. Mobile service providers have committed to invest around Rs 12,000 crore in the next three months to improve networks, which should help check the call drop issue in the country, telecom secretary JS Deepak has said. He also said jailing executives wasn't the right approach to resolving the issue of quality of services.

Alok Kumar Agarwal

CEO

ASC Group.

CENTRAL TAXES

SERVICE TAX

NOTIFICATION

The Govt. vide Notification No. F. No. 32/2016 dated 06th June 2016, amend notification no. 25/2012 dated 20th June 2012, to exempt the legal services provided by senior advocates to a business entity with a turnover up to rupees ten lakh in the preceding financial year.

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

The Govt. vide Notification No. F. No. 33/2016 dated 06th June 2016, amend Service Tax Rules, 1994 so as to specify the business entity as the person liable to service tax in respect of services provided by senior advocates.

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

The Govt. vide Notification No. F. No. 34/2016 dated 06th June 2016, amend notification No. 30/2012-Service Tax dated 20th June, 2012, so as to prescribe extent of payment of service tax by a business entity as a recipient of services provided by senior advocates.

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

COURT DECISIONS

COMMISSIONER OF SERVICE TAX DELHI-IV, GURGAON VERSUS COCACOLA INDIA PRIVATE LIMITED [PUNJAB & HARYANA HIGH COURT]

BRIEF: Imposition of Cost on adjudicating authority - The adjudicating authority had passed the order without application of mind and such orders adversely and severely impinge upon the public trust in the public

authorities - Tribunal correctly imposed the cost of 25,000/- on the adjudicating authority.

OUR TAKE: The hon'ble PUNJAB & HARYANA HIGH COURT held that the Tribunal had recorded the analysis of the adjudicating authority was nothing but verbatim reproduction of the submission of the appellant, no finding was recorded about the taxability of services, and the analysis/discussions/findings of the adjudication are very shoddy. The adjudicating authority had passed the order without application of mind and such orders adversely and severely impinge upon the public trust in the public authorities. It was further recorded that a public authority in such circumstances while performing quasi-judicial function deserves to be put to costs. Accordingly, the Tribunal imposed the cost of 25,000/- on the adjudicating authority who passed the order in question. **[Decided against the revenue]**

G.B. ENGINEERS VERSUS UNION OF INDIA, ASSISTANT COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX [JHARKHAND HIGH COURT]

BRIEF: Claim of Refund - period of limitation - Amount of service tax deposited by mistake - if any amount is deposited by the assessee, the same cannot be retained by the Union of India under the one or other pretext when a service provider is not liable to make payment of the service tax and if any payment is made, it cannot be covered under Section 11B *ibid* to be read with Section 83 *ibid*.

OUR TAKE: The Hon'ble JHARKHAND HIGH COURT held that the show cause notice was given by the respondents on 20.11.2009 for the payment of service tax for the year 2004-05 and for the year 2005-06. This petitioner from the persons to whom the services were provided by this petitioner never recovered this amount in the relevant years. As there was no tax liability at all because, the tax liability starts from 16.06.2005 and therefore, the amount deposited by this petitioner, which is, ought to be refunded by the respondents. **[Decided in favour of assessee]**

M/S GIRIRAJ CONSTRUCTION, NASHIK, M/S. PARIJAT CONSTRUCTION, NASHIK VERSUS COMMISSIONER OF CENTRAL EXCISE & CUSTOMS, SERVICE TAX, NASIK

BRIEF: Period of limitation - Service tax paid on the output service on which there was no levy - amount paid was without authority of law - Tribunal being a creature under the Central Excise/Customs Act cannot go beyond the statute and therefore cannot relax the time limitation provided under the statute.

OUR TAKE: The hon'ble **CESTAT MUMBAI** held that the provision if any applies for refund of such duty is only provided under Section 11B and there is no any other provision. Any amount, which is to be refunded, shall be refunded in accordance with Section 11B which include the condition of time limitation. The issue has been clearly settled by the Hon'ble Supreme Court that even though the refund of duty recovered without authority of law but for the refund claims made before the departmental authorities, limitation provided under the Customs Act/Central Excise Act or the Rules made thereunder is applicable. The authorities functioning under the Act bound by its provision. **[Decided against the appellant]**

M/S KASMISONS BUILDERS PVT. LTD. VERSUS ASSISTANT COMMISSIONER, SERVICE TAX & SUPERINTENDENT OF EXCISE, KOCHI

BRIEF: Denial of benefit of VCES - Delayed payment of second instalment of 50% amount - To allow the petitioner to effect payments belatedly would tantamount to altering the terms of the settlement and that cannot be done by this Court in exercise of its powers under Art. 226 of the Constitution of Indi.

OUR TAKE: The hon'ble **CESTAT ALLAHABAD** held is in the nature of an Amnesty Scheme and, therefore, its provisions have to be strictly interpreted, and the time limits specified in the Scheme for the payment of amounts together with interest have to be strictly adhered to. The scheme partakes of the nature of a settlement between the assessee and the department and from the terms of the settlement, neither party can be permitted to resile. To allow the petitioner to effect payments belatedly would tantamount to altering the terms of the settlement and that cannot be done by this Court in exercise of its powers under Art. 226 of the Constitution of India. **[Decided against the petitioner]**

CHHATTISGARH STATE INDUSTRIAL DEVELOPMENT CORPORATION LTD. VERSUS C.C.E. & S. T., RAIPUR

BRIEF: The appellant is a company incorporated under Companies Act 1956 and acted as agent on behalf of the Chhattisgarh Govt. which authorised it to lease out land to prospective entrepreneurs for setting up industry etc. and to provide various services on behalf of State Govt. and it accordingly is covered under the definition of assessee.

OUR TAKE: The humble **CESTAT NEW DELHI** held that there is no doubt that the service was provided by the appellant in relation to maintenance or repair of immovable property in terms of the written agreement ('lease deed') and therefore is covered under Section 65(64) ibid both prior to 01.05.2006 and with effect there from. Thus, the service rendered by the appellant is squarely covered in the definition and we, therefore hold that the activities carried out by the appellant are taxable under MMR (or MR) service [Section 65 (64) ibid]. The charges collected by the appellant are because of the said taxable service provided by it and therefore constitute consideration for taxable service. Once the taxable service is being provided against a consideration, service tax becomes payable. **[Decided in favour of assessee]**

M/S PUNJAB NATIONAL BANK VERSUS C.C.E. & S.T. CHANDIGARH

BRIEF: Self-Adjustment of excess service tax paid with the service tax liabilities for subsequent period - Service tax amount paid at higher rate for the service tax liabilities - adjustment allowed.

OUR TAKE: The hon'ble **CESTAT NEW DELHI** held that Self Adjustment of excess service tax paid with the service tax liabilities for subsequent period - Service tax amount paid at higher rate for the service tax liabilities - Held that:- it is found that Rule 6(3) of the Service Tax Rules clearly provides for such adjustment. Therefore, the impugned order is set aside. **[Decided in favour of appellant with consequential relief]**

COMMISSIONER OF CENTRAL EXCISE, CUSTOMS & SERVICE TAX VERSUS PNP MARITIME SERVICES PVT. LTD.

BRIEF: Pure agent - reimbursement of expenses - appellant has not satisfied the conditions prescribed in Rule 5 of the Service Tax (Determination of Value) Rules, 2006 to satisfy the criteria for a pure agent.

OUR TAKE: The hon'ble **CESTAT MUMBAI** held that there is no segregation of consideration for the back-up land even if that is assumed facilitation of space in relation to cargo. It is also an admitted fact that duty liability on import cargo is discharged while yet on the mother vessel. Consequently, custodianship of import cargo requiring assigning of storage space is not a statutory obligation of the Maharashtra Maritime Board. Therefore, even if the goods are allowed to be stored after landing, the lease terms does not transform the activity into one of rendering other port services. Therefore, show cause notice do not sustain

CENTRAL EXCISE

COURT DECISIONS

M/S. SIVALOGAM STEELS PVT. LTD. VERSUS THE CUSTOMS EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, THE COMMISSIONER OF CENTRAL EXCISE (APPEALS) [MADRAS HIGH COURT]

BRIEF: Condonation of delay - 405 days - appellant has contended that his mother had passed away - length of time, should not weigh in the minds of the Courts/tribunals, in considering the sufficiency of the cause shown, but at the same time, cause should be explanatory.

OUR TAKE: The hon'ble MADRAS HIGH COURT held that the said order certainly is prejudicial to the interest of the appellant. However, while dismissing the condonation petition, CESTAT, Chennai Bench, has observed that there is no justifiable cause, going through the reasons assigned, it could be seen that the appellant has not offered a detailed explanation. In addition, the Tribunal has observed that dislocation of residence is not a justifiable cause. But the fact remains that the appellant has contended that his mother had passed away. As rightly contended by the appellant that length of time, should not weigh in the minds of the Courts/tribunals, in considering the sufficiency of the cause shown, but at the same time, cause should be explanatory.

Alpha Infravision Pvt Ltd Versus Union of India & Another [DELHI HIGH COURT]

BRIEF: Imposition of penalty by the Settlement Commission department took the stand that the job work activity undertaken by the Petitioner amounts to manufacture and not service and that the Petitioner was required to pay excise duty - penalty imposed by Settlement Commission is set aside.

OUR TAKE: The hon'ble DELHI HIGH COURT there was no justification for the Settlement Commission to have imposed a penalty of 30,000 on the Petitioner as per advice of Service Tax Department. The Petitioner acted bona fide on the advice of the Service Tax Department and initially got itself registered with the said Department. Later, again on the insistence of the Excise Department, the Petitioner got registered under the CE Act. There was no attempt by the Petitioner to deliberately evade payment of tax. Accordingly, the penalty imposed by Settlement Commission is set aside. The said penalty amount, which has been adjusted against the penalty already paid by the Petitioner, shall be refunded to the Petitioner within one month from today.

THE COMMISSIONER OF CENTRAL EXCISE AND CUSTOMS VERSUS KRISHAK BHARTI COOPERATIVE LTD

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 Polyester Sewing Thread is distinctly known in the market and the yarn purchased by the appellant apparently cannot be marketed or used as the 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). In view of the above discussion, we find that there is no ground to interfere with the findings of the learned Commissioner (Appeals) and accordingly we dismiss the appeal. [Decided against the assessee]

COMMISSIONER OF CENTRAL EXCISE, INDORE VERSUS M/S. NATIONAL STEEL INDUSTRIES LTD. [CESTAT NEW DELHI]

BRIEF: Classification - manufacture - change in the scope of tariff entries - iron and steel structures like trusses, columns, staircase, windows and section etc. - These steel structures are commonly known as component parts of building/ shed. - these goods are not excisable.

OUR TAKE: The hon'ble CESTAT NEW DELHI held that the clear and specific classification of the impugned items was available with effect from 1.3.1988. Prior to that date, the classification was sought to be made under 7308 90: as 'Misc.' 'other articles of iron and steels'. Hence, held that these goods are not excisable. [Decided in favour of assessee]

COMMISSIONER OF CENTRAL EXCISE, INDORE (MP) VERSUS M/S KRITI INDUSTRIES INDIA LTD. [CESTAT NEW DELHI]

BRIEF: Demand of interest - Though the product is made dutiable w.e.f. 1.3.2003, there was no liability to pay duty on that date, as the amendment occurred only on 28.02.2005. Demand of interest set aside

OUR TAKE: The hon'ble CESTAT NEW DELHI held that the amount falls due only after the insertion of the amendment. The respondents discharged their liability within the time limit. Though the product is made dutiable

i.e. 1.3.2003, there was no liability to pay duty on that date, as the amendment occurred only on 28.02.2005. In our considered opinion, in the present case, there is no liability to pay interest. Also, see Pushti Refineries (P) Ltd. Vs. CCE & ST, Bangalore [CESTAT BANGALORE] – **[Decided in favour of assessee]**

M/S. MONNET ISPAT & ENERGY LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, RAI. [CESTAT NEW DELHI]

BRIEF: Eligibility for CENVAT credit - iron and steel items used for fabrication of components / accessories of various machinery like rotary klin, rotary cooler, conveyor systems, raw material preparation plant, power plant and pollution control equipment. Credit allowed

OUR TAKE: The hon'ble CESTAT NEW DELHI held that that the allegation in the show cause notice that steel items used by the appellant are neither components nor spares nor accessories is not sustainable. Applying the principle of "user test" laid down by the Hon'ble Supreme Court in Jawaharlal Mills case (SUPREME COURT OF INDIA) the angles, beams and channels used in the making and fabrication of these capital goods are found eligible for Cenvat credit. **[Decided in favour of assessee]**

THE COMMISSIONER, CENTRAL EXCISE, CUSTOMS & SERVICE TAX VERSUS M/S. BALLARPUR INDUSTRIES LIMITED (ORISSA HIGH COURT)

BRIEF: Compliance of sub-section (2) of Section 35B of the Central Excise Act, 1944 - Authorisation made in Annexure-3 of the affidavit filed by the appellant to prefer appeal without same being filed along with appeal is surely an incurable defect and the same cannot be rectified by filing an authorization letter.

OUR TAKE: The hon'ble ORISSA HIGH COURT held that the authorisation made in Annexure-3 of the affidavit filed by the appellant to prefer appeal without same being filed along with appeal is surely an incurable defect and the same cannot be rectified by filing an authorization letter as stated by the learned counsel for the appellant. Similarly, as the authorization by the Committee of Commissioners of Central Excise is not found in the impugned order, it must be observed that the impugned order passed by the CESTAT is correct, legal and proper. Hence, we are of the considered view that the impugned order passed by the learned CESTAT being valid, legal and proper, cannot be interfered with.

CUSTOMS

NOTIFICATION / CIRCULAR

The Govt. vides notification No. 83/2016-Cus dated 09th June 2016, amends notification no. 61/94-Customs (N.T) dated 21st November 2011.

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

DECISIONS

MANAWAT PLASTICS PVT. LTD. VERSUS THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, THE COMMISSIONER CUSTOMS, CENTRAL EXCISE & SERVICE TAX [BOMBAY HIGH COURT]

BRIEF: Conversion of Shipping Bill under DEEC Scheme to Drawback Scheme to avail export benefit. No question of law regarding the permissibility of conversion of advance licenses into a drawback facility in present facts has been specifically raised.

OUR TAKE: The hon'ble BOMBAY HIGH COURT held that the Appellant ought to have raised a specific question of law on such facts. No question of law regarding the permissibility of conversion of advance licenses into a drawback facility in present facts has been specifically raised. Appellants have failed to raise any substantial question of law in this Appeal. Appeal dismissed. **[Decided against the appellant]**

COMMISSIONER VERSUS SUNRISE ENTERPRISE [SUPREME COURT]

BRIEF: Retrospective Imposition of ADD. The final anti-dumping notification has no applicability to the bills of entry presented prior to the said date. Decision of tribunal affirmed.

OUR TAKE: The hon'ble SUPREME COURT held that the applicant has already been assessed to zero anti-dumping duty, the further demand of anti-dumping duty in terms of the subsequent notification is not called for. Apex Court dismissed the revenue appeal as devoid of any merit.

M/S AMRITLAKSHMI MACHINES WORK, MR. N.K. BRAMCHARI, MANAGING PARTNER, M/S. AMRITLAKSHMI MACHINE WORKS VERSUS COMMISSIONER OF CUSTOMS (IMPORT) [BOMBAY HIGH COURT]

INCOME TAX

COURT DECISIONS

MUMBAI VERSUS UNICHEM LABORATORIES LTD. [ITAT MUMBAI]

BRIEF: TDS u/s 194H - no tax was required to be deducted at source on this discount to MRP given by the assessee company to the distributors at the time of sale of drugs-medicine to the distributors.

OUR TAKE: The hon'ble ITAT MUMBAI held that the instant appeal is for the assessment year 2009-10 which is prior to the assessment year 2013-14, we hold that no tax was deductible at source on payment of Directors sitting fee paid by the assessee company to its Directors u/s 194J of the Act and the assessee company could not be held as 'assessee in default' u/s 201(1) and 201(1A) of the Act. [Decided in favour of assessee]

MAHAVIR INDUCTOMENT PVT. LTD. VERSUS ASST. CIT, (OSD) -1, RANGE-4, AHMEDABAD AND VICA-VERSA [ITAT AHMEDABAD]

BRIEF: Disallowance out of interest expenses @ 3% u/s 40A(2)(b). It was observed that as Assessee Company and parent company both were taxed at marginal rate and therefore it cannot be said that service charges paid to parent company are unreasonable so as to evade tax.

OUR TAKE: The hon'ble ITAT AHMEDABAD held that the assessee company is not a share holder in Mahavir Rolling Mills Pvt. Ltd., therefore, no addition could be made u/s 2(22)(e) of the Act, as deemed dividend and accordingly, we find no reason to interfere with the order of Id. CIT(A). We uphold the same. [Decided in favour of assessee]

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

BRIEF: Levy of simultaneous penalties on both the Partner and Partnership firm in adjudication proceedings under the Customs Act. Penalty for abetting, simultaneous penalties can be imposed on the firm and the partners under the Act and more particularly under Section 112(a) of the Act.

OUR TAKE: The hon'ble BOMBAY HIGH COURT held that the penalties could be imposed on the firm and the partners under the Act and more particularly under Section 112(a) of the Act. However, as the Act itself stipulates, the same would be subject to the parties proving that the contravention has taken place without their knowledge or despite exercise of all due diligence to prevent such contravention.

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 favor of assessee]

M/S SANCTUM WORKWEAR PVT. LTD. VERSUS COMMISSIONER OF CUSTOMS (EXPORT) NHAVA SHEVA [CESTAT MUMBAI]

BRIEF: Duty drawback. Mis-declared the goods in the Shipping Bill to claim higher drawback. The claim of drawback separately on Jackets & Pants is an error but malafide intention cannot be ascribed to invoke penalty.

OUR TAKE: The hon'ble CESTAT MUMBAI held there is no mis-declaration of description of goods in the Shipping Bill. Neither is there any mis-declaration of value. The claim of drawback separately on Jackets & Pants is an error but malafide intention cannot be ascribed to invoke penalty. Section 113(i) can be invoked when there is mis-declaration of description or value. In this case it is not so. [Decided in favour of assessee]

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 were 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 KOLKATTA]

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 KOLKATTA 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]**

ACIT, NAVSARI CIRCLE, NAVSARI VERSUS SHRI JUGALKISHORE K. AGRAWAL [ITAT AHMEDABAD]

BRIEF: Disallowance of interest expenditure u/s 57. Nexus between the interest income vis-à-vis the interest expenditure - No nexus between the impugned income and interest is forthcoming - Additions confirmed.

OUR TAKE: The hon'ble ITAT AHMEDABAD held that the Assessing Officer invoked the impugned disallowance quoting assessee's failure in proving nexus between the impugned interest income vis-à-vis the interest expenditure. The same is nowhere applicable qua the facts of the instant case wherein no nexus between the impugned income and interest is forthcoming. Thus, we accept Revenue's arguments. The Assessing Officer's findings disallowing the impugned interest expenditure are accordingly restored. **[Decided in favour of the assessee]**

STATE TAXES

ALL INDIA VAT

DELHI

The Govt. vides Circular No. 09 dated 06th June 2016, notifies that item wise details required in forms Annexure-2A, Annexure-2B, DVAT-30 & DVAT-31.

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

JHARKHAND

The Govt. vides Notification No. S.O. 27 dated 08th June 2016, hereby make the amendments in the Departmental Notification No S.O. 219 Dated 31 March, 2006.

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

MAHARASHTRA

The Govt. vides Notification No. VAT 1516/CR 83/TAXATION-1 dated 09th June 2016, hereby appoints the 10th June 2016 to be the date on which the provisions of sub-section (1) of section 10 of the said Act, shall come into force.

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

ORISSA

The Govt. vides Notification No. 9336/ CT. III-36/5/2015-Policy dated 08th June 2016, hereby delegate the powers and duties of the Commissioner to be exercised by the officers appointed under sub-section (2) of Section 3 of the Commissioner under the Odisha Value Added Tax Act, 2004 and the Odisha Value Added Tax Rules, 2005.

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

PUNJAB

The Govt. vides Notification No. S.O.46/P.A.8/2005/S.6/2016 dated 06th June 2016, hereby makes amendment in the Government of Punjab, Department of Excise and Taxation, Notification No. S.O.90/P.A.8/2005/S.6/2013, dated 4th October 2013, on and with effect from the 1st day of April 2016.

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

COURT DECISIONS

THE COMMISSIONER OF SALES TAX VEORSUS M/S. VEER RADIOS (BOMBAY HIGH COURT)

BRIEF: Nature of assessment - best judgment assessment or not - the entries in the books of account varying with returns filed are relied upon and then the assessment has been completed. – Cannot be held as best judgment assessment - levy of penalty deleted.

OUR TAKE: The hon'ble BOMBAY HIGH COURT held that the tax has been worked out based on books of account of assessee after he produced the same in response to notice of department and, therefore, it is not best judgment assessment. If the return is filed belatedly and it does not give correct and complete figures, the provisions of Section 33(3) of the said Act can be applied by the department to such return. Levy of penalty confirmed. **[Decided in favour of revenue]**

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

BRIEF: levy of penalty for non-maintenance of complete, 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.

G.V. PRATAP REDDY THROUGH G.P.A. TSR RESOURCES PVT LTD. VERSUS K.V.V.S.N. ASSOCIATES AND ORS [SUPREME COURT]

BRIEF: On reading of the terms of the NIT it is clear that the word "Company" can only mean a company as understood under the Companies Act and cannot be read to include a firm. The word "Company" in the NIT is incapable of any other meaning.

OUR TAKE: The hon'ble SUPREME COURT held On reading of the terms of the NIT it is clear that the word "Company" can only mean a company as understood under the Companies Act and cannot be read to include a firm. The word "Company" in the NIT is incapable of any other meaning. The NIT makes it absolutely clear that only an individual or a company is eligible to participate in the tender. Since Respondent No. 1 is neither an individual nor a Company but a firm, Respondent No. 3 was fully entitled to reject the bid of the said respondent.

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.

LATEST NEWS ON PROPOSED GST

10th June 2016, A group of central and state government officials set up to frame the law for the proposed goods and services tax (GST) has submitted its final draft that could be taken up at a meeting of the empowered committee of state finance ministers next week.

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