



# ASC Times

All India Taxes Weekly Referencer

Vol: Dec 14 - Dec 20, 2015

## Solving any tax puzzle

Tax saving advice across all the taxes



## From the CEO's Desk



of the largest democracy. It is sad as India needs it's people to shed their prejudices to make an impact on the globe and accelerate the growth rate.

Alok Kumar Agarwal  
CEO  
ASC Group

Dear Reader,

So, are you Delhites ready to take the plunge for using your cars on alternative days? If only you have more than one car with both, odd and even, number plates to suit the requirement. See, personally I have no doubts about Mr. Arvind Kejriwal's intentions to create better atmosphere for the city and he appears to be dedicated and committed to bring in change. But as pointed out by Chetan Bhagat (a new age writer who strikes a chord with Indian youth and has a perspective different from our politicians and thought leaders on problems faced by new age Indians) the problem of bad air is not only due to no of cars on the road but also with old commercial and private vehicles plying on the road. Plus a lot of industrial pollution not only in Delhi but contributed by neighboring states and it's industries. Also still many old ways to cook like wood and coal create more pollution. And if we still do the odd even system, do we have enough arrangement of public transport? Our already burdened metros and buses will not have more chaos and autos, anyways a problem will mushroom even more and may overcharge. And if one is hiring a taxi then the whole idea is a myth. My suggestion is to bring in shared taxi apps and providing tax benefits to operate offices off the rush hour. We can also encourage use of technology of conference calling and Skype to avoid unnecessary traveling for meeting without affecting the quality of work. Car pool for private car users to drop the kids to school is also one good idea.

Congress has been acting a stiff baby as far as GST rollout is concerned. Without any solid grounds it is been creating a hurdle for passage of GST bill in the Rajya Sabha. A lot has been said and directly targeted on Congress and it's high command but rigidity is not melting as of now. It seems a far cry to have any decision regarding GST in the winter session of parliament. Even when a suggestive percentage of GST at 18% is been disclosed and 1 to 1.5% top up for states also been considered; nothing seems to please the dictatorial family

## TAX CALENDER

Due Date	Description	Law
14 December	Deposit of Tax	Rajasthan VAT.
15 December	Return Filing	Karnataka VAT, Madhya Pradesh VAT.
	Deposit of TDS	Delhi VAT, Haryana VAT, Himachal Pradesh VAT, Jharkhand VAT, Punjab & Chandigarh 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
20 December	Deposit of Tax	Andhra Pradesh VAT, Goa VAT, Karnataka VAT, Manipur VAT, Punjab & Chandigarh VAT, Tamil Nadu VAT, Telangana VAT, Uttarakhand VAT
	Deposit of TDS	Andhra Pradesh VAT, Tamil Nadu VAT, Telangana VAT
	Issue of TDS Certificate	Chhattisgarh VAT, Madhya Pradesh VAT
	Return Filing	Andhra Pradesh VAT, Karnataka VAT, Manipur VAT, Punjab & Chandigarh VAT, Tamil Nadu VAT, Telangana VAT

## COUNTRY WIDE HOLIDAYS FOR THE WEEK

Date	Occasion/Festival	Region
12 <sup>th</sup> – 16 <sup>th</sup> December	Lossong	Sikkim
17 December	Nyenpa guzom	Sikkim
18 December	Death Anniversary of U SoSo Tham	Meghalaya
19 December	Liberation Day for Daman & Diu	Daman & Diu
19 December	Goa Liberation Day	Goa

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# CENTRAL TAXES

## SERVICE TAX

### NOTIFICATIONS & CIRCULARS

The **Govt. vide Notification No. 26 dated 09<sup>th</sup> December 2015** extended date for payment of Service Tax for the month of Nov '15 for the assessee in the State of Tamil Nadu till 20<sup>th</sup> December, 2015.

### COURT DECISIONS

#### ADECCO FLEXIONE WORKFORCE SOLUTIONS LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, CUSTOMS AND SERVICE TAX [CESTAT BANGALORE]

**BRIEF:** Demand of service tax & Denial of CENVAT Credit. If the Revenue is of the view that the service provider has not deposited the service tax collected by him from his customers, the remedy lies at the end of the service provider and not at the end of the service recipient.

**OUR TAKE:** The hon'ble **CESTAT BANGALORE** held that an assessee who has paid the service tax to the service provider, is entitled to avail the credit of the same, without finding whether such service tax paid by him to the service provider stands further deposited by him to the exchequer. It is neither possible nor practicable for any service recipient to verify the fact of payment of service tax by the service provider. Therefore, no justifiable reasons to deny the credit of the service tax to the appellant. Accordingly, the impugned order is set aside. **[Decided in favour of assessee]**

#### V.S.T. TILLERS AND TRACTORS LTD. VERSUS COMM. OF C.EX., CUS. & S.T., MYSORE [CESTAT BANGALORE]

**BRIEF:** Cenvat Credit, if the appellant has maintained separate accounts for the inputs and has reversed the proportionate Cenvat credit in respect of input services, the provisions of Rule 6(3) do not get attracted.

**OUR TAKE:** The hon'ble **CESTAT BANGALORE** held that admittedly the provisions of Rule 6, nowhere lay down that such a simultaneous procedure followed by an assessee in respect of inputs and input services cannot be followed. In the absence of the same, to read so in the said Rule would amount to introducing a condition in the Rule, which is not permissible. As such we are of the view that if the appellant has maintained separate accounts for the inputs and has reversed the proportionate Cenvat credit in respect of input services, the provisions of Rule 6(3) do not get attracted.

Impugned order is set aside. Matter remanded back. **[Decided in favour of assessee]**

#### M/S. KUNJ POWER PROJECT PVT. LTD. THRU' ITS DIRECTOR VERSUS UNION OF INDIA THRU' SECY. DEPTT. OF REVENUE & 2 OTHERS [ALLAHABAD HIGH COURT]

**BRIEF:** Attachment of property and bank accounts. Only a cursory remark has been indicated namely that there is fair possibility of the funds getting dissipated. Cogent and sufficient justification was found lacking in the satisfactory note. The attachment proceedings could not be initiated on such ground

**OUR TAKE:** The hon'ble **ALLAHABAD HIGH COURT** held that the proposal submitted by the Deputy Commissioner, clearly indicated that first the property should be attached and thereafter notice should be issued. This proposal was approved by the Commissioner without any application of mind and without considering the provision of the Rules and the circular.

Warning issued to Deputy Commissioner that such exercise of power has to be resorted to with utmost circumspection and with maximum care and caution. Impugned orders are quashed. **[Decided in favour of assessee]**

#### PRINCIPAL COMMISSIONER OF SERVICE TAX DELHI –II VERSUS TOPS SECURITY LTD. [DELHI HIGH COURT]

**BRIEF:** Extension of time for making reduced penalty. Was the CESTAT justified in granting to the Respondent the benefit of payment of reduced penalty to the extent of 25% in terms of the 3rd proviso to Section 78 (1) of the Finance Act 1994 (as it stood prior to its substitution by the Finance Act 2015) within 30 days from the date of the order of the CESTAT.

**OUR TAKE:** The hon'ble **DELHI HIGH COURT** held that CESTAT could not have permitted the Respondent to pay the reduced penalty amount in terms of the second proviso to Section 78 (1) of the Finance Act, 1994 within thirty days from the date of the impugned order of the CESTAT. Such a direction was contrary to the third proviso to Section 78 (1) of the Finance Act, 1994 and therefore legally unsustainable. CESTAT could not have, in terms of the third proviso to Section 78 (1) of the Finance Act, 1994 (as it stood prior to its substitution by the Finance Act 2015) read with Section 83 thereof, extend the time for the Respondent to pay the reduced penalty within 30 days from the date of the order of the CESTAT. **[Decided in favour of Revenue]**

## M/S QUALITY FABRICATORS AND ERECTORS VERSUS THE DEPUTY DIRECTOR, DGCEI ZONAL UNIT MUMBAI AND OTHERS [BOMBAY HIGH COURT]

**BRIEF:** Recovery of service tax under Section 87 by freezing bank accounts of assessee when adjudication of show cause notice is pending. The settled principle that levy, assessment and valuation alone will enable the Revenue to recover the amount of taxes and recovery cannot precede prior important steps.

**OUR TAKE:** The hon'ble **BOMBAY HIGH COURT** held that unless and until there is a crystallization of a demand by proper adjudication order recovery of service under section 87 cannot be made. Even if the letters have been addressed to the bank and there has been a freezing of the account, till date there is no adjudication order passed. The show cause notice has been issued more than a year back. In the circumstances, allowing the Petitioner's account to be frozen would not be in accordance with law. If there is a requirement of an adjudication and assessment of the tax and that is how the liability has to be ascertained then, HC did not find any substance in the contentions raised before them on behalf of the Revenue. Therefore, HC did not find any reason to sustain the impugned action. **[Decided in favour of assessee]**

## CONCURRENT TECH INDIA PVT LTD. VERSUS COMMISSIONER OF SERVICE TAX BANGALORE [CESTAT BANGALORE]

**BRIEF:** Denial of refund claim of accumulated CENVAT Credit. FIRCs received for the exports made are not in the name of the appellant. Unable to find out legal provisions which provides that in case of change in the name, refund claim is not admissible

**OUR TAKE:** The hon'ble **CESTAT BANGALORE** held that unable to find out legal provisions which provide that in case of change in the name, refund claim is not admissible. In the case of recovery of short-levy, short collection of revenue, show-cause notices are issued and amount is collected in similar cases. In such a situation, when it comes to refund, rejection of the claim only on the ground without support of any legal provision cannot be sustained. **[Decided in favour of assessee]**

## CENTRAL EXCISE

### NOTIFICATIONS & CIRCULARS

**The Govt. vide Circular No. F.No.96/85/2015-CX.I dated 07th December, 2015** issued clarification on minutes of Central Excise Tariff Conference held in Chandigarh on 28th and 29th October, 2015. Decisions regarding various technical issues of assessment and applicability of law.

**The Govt. vide Notification No. 25 dated 09<sup>th</sup> December 2015** extended date for payment of Service Tax for the month of Nov '15 for the assessee in the State of Tamil Nadu till 20th December, 2015.

**The Govt. vide Circular Order No. 1 dated 10<sup>th</sup> December 2015** extended date for payment of Service Tax for the month of Nov '15 for the assessee in the State of Tamil Nadu till 31<sup>st</sup> December, 2015.

## COMMISSIONER OF CENTRAL EXCISE, VAPI VERSUS PARLE AGRO PVT LTD & 1. (GUJRAT HIGH COURT)

**BRIEF:** Jurisdiction of court. Territorial jurisdiction. Mere fact that the Commissioner of Central Excise and Customs, Vapi also exercises jurisdiction over the Union Territory of Dadra and Nagar Haveli would not mean that the matter ceases to relate to the Union Territory of Dadra and Nagar Haveli.

**OUR TAKE:** The hon'ble **GUJRAT HIGH COURT** held that the mere fact that the Commissioner of Central Excise and Customs, Vapi also exercises jurisdiction over the Union Territory of Dadra and Nagar Haveli would not mean that the matter ceases to relate to the Union Territory of Dadra and Nagar Haveli. **[Decided in favour of Revenue]**

## UTTAM GALVA STEELS LTD. VERSUS CCE RAIGAD & VICE-VERSA [CESTAT MUMBAI]

**BRIEF:** CENVAT Credit on Captive consumption. Whether the assessee have availed CENVAT credit correctly or otherwise when the activity undertaken by them on the inputs according to revenue does not amount to manufacture? Credit allowed.

**OUR TAKE:** The hon'ble **CESTAT MUMBAI** held that assessee had cleared the products as manufactured products on

payment of appropriate duty, which was more than the CENVAT credit availed by them on the inputs which were used. The Tribunal after considering the issue and the case law, relied upon the judgement of the Hon'ble High Court of Bombay in the case of Ajinkya Enterprises (supra) stated that the issue is no more res integra. Impugned order is set aside **[Decided in favour of assessee]**

**COMMISSIONER, CENTRAL EXCISE & CUSTOMS, AURANGABAD VERSUS M/S. BALKRISHNA TYRES LTD. (CESTAT MUMBAI)**

**BRIEF:** Whether marketable on Captive consumption of rubberized tyre cord fabric and rubber tread compound merely if movement of goods from one factory to another factory has taken place and the goods were used for captive consumption. The said reason cannot be material factor to hold that the goods are marketable.

**OUR TAKE:** The hon'ble CESTAT MUMBAI held that department has not produced any evidence to prove that goods in question are marketable. As regard the product namely rubberized tread compound the department has failed to bring any evidence to prove that the subject goods manufactured and consumed captively by the respondent is marketable and therefore the burden of proving that goods is marketable has not been discharged by the Revenue. **[Decided against revenue]**

**RAKESH KUMAR GARG, SANTOSH KUMAR GARG, DEVI DASS GARG VERSUS COMMISSIONER OF CENTRAL EXCISE [DELHI HIGH COURT]**

**BRIEF:** Imposition of personal penalty on 3 persons for duty evasion by the manufacturer. The requisite evidence necessary for levy of penalty on each of the Appellants under Rule 26 of the CE Rules 2002 was not brought on record by the Department. No penalty.

**OUR TAKE:** The hon'ble CESTAT MUMBAI held that for the purposes of levy of penalty the Department would have to show the actual involvement of the person sought to be penalized in the actions of possessing, transporting, removing, keeping, concealing, selling or purchasing, etc. of the excisable goods, which he knows or has reason to believe are liable to confiscation. Court holds that the requisite evidence necessary for levy of penalty on each of the Appellants under Rule 26 of the CE Rules 2002 was not brought on record by the Department and, therefore, the levy of penalty was in the first place is unsustainable. Amounts deposited by the Appellants during the pendency of these appeals will be returned to them together with any interest accrued thereon. The guarantees furnished by

the Appellants shall stand discharged. **[Decided in favour of assessee]**

## CUSTOMS

### NOTIFICATIONS & CIRCULARS

The Govt. vide Notification No. 56/2015-CUSTOMS dated 11th December, 2015 makes amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.39/96-Customs, dated the 23rd July, 1996.

**OUR TAKE:** In the said notification, in the TABLE, against S.No.13, in column (3), the Explanation shall be omitted.

### COURT DECISIONS

**COMMNR. OF CUSTOMS (IMPORT) , MUMBAI VERSUS M/S. DILIP KUMAR AND ORS. [SUPREME COURT]**

**BRIEF:** Classification of Vitamin E-50 powder (Feed Grade). Whether Vitamin E-50 is classifiable under Chapter 2309.00 as "Prawn Feed" and therefore eligible for the benefit of partial exemption from duty under Notification No. 20/99 dated 28.02.1999. The same has been referred to larger bench.

**OUR TAKE:** The hon'ble SUPREME COURT held that the question that arose for consideration relates to vitamins that were mixed with animal feed as animal feed supplements. Faced with an entry which spoke of preparation of a kind used in animal feeding including dog and cat food, this Court came to the conclusion that animal feed supplements were rightly includable in such entry as they were obviously preparations of a kind used in animal feed. We feel that this judgment does not have direct relevance to the facts of this case as the entry that this Court was concerned with in that case was large enough to take within its ken animal feed supplements. HC held that this matter should be placed before Hon'ble the Chief Justice of India to constitute an appropriate Bench to resolve the doubts pointed.

**ANIK INDUSTRIES LIMITED VERSUS THE UNION OF INDIA & OTHERS (HIGH COURT OF MADHYA PRADESH)**

**BRIEF:** Validity of circular No.450/176/2014-Cus-IV dated 7/11/2014 restricting the petitioner from importing Alloy Steel Deformed Bars falling under Chapter Heading 7228 of the CTA. Circular cannot be applied retrospectively to the consignment of the petitioner

**OUR TAKE:** The hon'ble HIGH COURT OF MADHYA PRADESH considering the question of applicability of the impugned Circular dated 07.11.2014 bearing No.450/176/2014-Cus-IV and the fact that agreement is dated 24.06.2014 regarding the petitioner's goods have been received at the port in consequence of commercial invoice dated 04th September 2014, I find that the Circular cannot be applied retrospectively to the consignment of the petitioner and hence in this light also the petition needs to be partly allowed. [Decided partly in favour of assessee]

**M/S. UNIWORTH LTD. VERSUS JOINT DIRECTOR GENERAL OF FOREIGN TRADE & ANR. [CALCUTTA HIGH COURT]**

**BRIEF:** Failure to fulfill export obligation. It is important whether the belated export which he proposes to make is genuine or not. If the belated export is genuine, the purpose of the policy of generating more export earnings, by granting duty remission incentives would be fulfilled.

**OUR TAKE:** The hon'ble CALCUTTA HIGH COURT held that if for any bona fide reason an importer/exporter has been unable to fulfill his export obligation within the stipulated time, his case for extension of the validity period of the license or licenses should be reasonably considered. If the belated export is genuine, the purpose of the policy of generating more export earnings, by granting duty remission incentives would be fulfilled. Therefore, petitioner is allowed to fulfill its export obligation against advance licenses at serial nos.8 and 9 of page 50 of the writ petition on the basis of the expired licenses, without prejudice to the rights and contentions of the parties.

**MAHADEV METALIKS PVT. LTD. VERSUS UNION OF INDIA, MINISTRY OF FINANCE, (DEPARTMENT OF REVENUE) AND OTHERS [ANDHRA PRADESH HIGH COURT]**

**BRIEF:** Import of Gold jewellery under the bilateral agreement (FTA) at concessional rate of duty. Doubt has been entertained with regard to the origin of the goods as

emanating from Indonesia. Provisional assessment of goods.

**OUR TAKE:** The hon'ble ANDHRA PRADESH HIGH COURT held that respondent Authorities, without following the procedure as prescribed in the Regulations, merely on suspicion, had issued the impugned communication, thereby putting the onerous condition on the petitioners, which is otherwise unwarranted. The action of the respondents is totally contrary to the notified procedure and thus is in contravention of the Regulations affects the right to carry on the trade, apart from being arbitrary, is liable to be interfered with as offending Article 14 of the Constitution of India. Authorities have failed to adhere to the procedure with respect to entertaining of the doubt within the timeframe which is allowed under the Regulations. In the result, impugned communication is set aside. [Decided in favour of assessee]

**THE COMMISSIONER OF CUSTOMS VERSUS AVINASH DAWAR & ANOTHER [DELHI HIGH COURT]**

**BRIEF:** Once the statute is clear that where the subject matter is 'gold', the Settlement Commission would not have any jurisdiction to entertain the application under Section 127B, any order passed in contravention of the statute cannot be sustained on the ground of estoppels.

**OUR TAKE:** The hon'ble DELHI HIGH COURT held that once the statute is clear that where the subject matter is 'gold', the Settlement Commission would not have any jurisdiction to entertain the application under Section 127B, any order passed in contravention of the statute cannot be sustained on the ground of estoppels. Impugned order is set aside. [Decided in favour of Revenue]

# INCOME TAX

## CIRCULAR AND NOTIFICATIONS

The **Govt. vide Press Release dated 7<sup>th</sup> December 2015** extended due date for deposit of tax deducted at source and tax collected at source for the State of Tamil Nadu for the month of November 2015 from 7th of December to 20th December, 2015.

The **CBDT vide Notification No.20/2015 dated 8th December 2015** instructed that price of milk or milk products is determined at a rate which is fixed on the basis of the quality of milk, namely, fat content and Solid Not Fat (SNF) content of milk

**OUR TAKE:** Kindly refer the Notification as it is self explanatory.

The **Govt. vide Notification No. 91/2015 dated 8<sup>th</sup> December, 2015** hereby specifies deduction on investment in HDFC Retirement Saving Fund under section 80C eligible from AY 2016-17.

**OUR TAKE:** Kindly refer the Notification as it is self explanatory.

The **CBDT vide Circular No.21/2015 F No 279/Misc. 142/2007-ITJ (Pt) dated 10<sup>th</sup> December 2015** revised monetary limits for filing of appeals by the Department before Income Tax Appellate Tribunal and High Courts and SLP before Supreme Court.

**OUR TAKE:** Appeals/ SLPs shall not be filed in cases where the tax effect does not exceed the monetary limits given hereunder:

- Before Appellate Tribunal 10,00,000/-
- Before High Court 20,00,000/-
- Before Supreme Court 25,00,000/-

## COURT DECISIONS

### COMMISSIONER OF INCOME TAX VERSUS VISHISHTH CHAY VYAPAR LTD. [ DELHI HIGH COURT]

**BRIEF:** Reopening of assessment on grounds of the legal requirement that "the reason to believe must be predicated on tangible material or information" and that "the belief must be rational and bear a direct nexus to the material on which such a belief is based" was not fulfilled in the present case.

**OUR TAKE:** The hon'ble **DELHI HIGH COURT** held that no mention was made by the AO of the failure by the Assessee to make a full and true disclosure of all material facts in the original assessment. The Assessee had consistently followed the said method of valuation of shares at cost or at market price whichever is lower and that this method had been accepted by the Revenue for the earlier AYs. Clearly, therefore, the legal requirement that "the reason to believe must be predicated on tangible material or information" and that "the belief must be rational and bear a direct nexus to the material on which such a belief is based" was not fulfilled in the present case. **[Decided in favour of assessee]**

### COMMISSIONER OF INCOME TAX, DELHI, COMMISSIONER OF WEALTH TAX VERSUS SUMAN DHAMIJA [DELHI HIGH COURT]

**BRIEF:** Money received by the assessee by way of enhanced compensation/interest. Whether the amount of enhanced compensation received by the assessee during the relevant previous year is taxable in view of the provisions of Section 45(5)(b) of the Income Tax Act, 1961 ?

**OUR TAKE:** The hon'ble **DELHI HIGH COURT** held that the question of bringing the enhanced compensation received by the Assessee during the relevant previous year to tax for the purposes of capital gains under Section 45 (5) (b) of the Act & the question of assessing to tax the interest received by the assessee on enhanced compensation in the same year in which the enhanced compensation is received will have to await the final decision in the appellate proceedings emanating from the order of the ADJ in the proceedings under Section 31 (2) LA Act.

### THE COMMISSIONER OF INCOME TAX-II VERSUS NTRANCE CUSTOMER SERVICES PVT. LTD. [BOMBAY HIGH COURT]

**BRIEF:** Exemption u/s 10A. The disallowed expenditure, becomes a part of the income derived from the activity of export of software and entitled to the deduction under Section 10A of the Act.



**OUR TAKE:** The hon'ble **BOMBAY HIGH COURT** held that entire income of the Respondent-Assessee is attributable to the activity of export of computer software and is entitled to deduction under Section 10A of the Act. In the circumstances, the disallowed expenditure becomes a part of the income derived from the activity of export of software and entitled to the deduction under Section 10A of the Act. In these circumstances, as the issue stands concluded against the Revenue and in favour of the Respondent Assessee.

**COMMISSIONER OF INCOME TAX, CHANDIGARH-II VERSUS M/S PUNJAB STATE CIVIL SUPPLIES CORPORATION LTD, CHANDIGARH [ PUNJAB & HARYANA HIGH COURT]**

**BRIEF:** Income from house property. The unrealized rent cannot be taken to be taxable in the hands of the assessee under the head "income from house property" when it is not realizable.

**OUR TAKE:** The hon'ble **PUNJAB & HARYANA HIGH COURT** held that the unrealized rent cannot be taken to be taxable in the hands of the assessee under the head "income from house property" when it is not realizable. The revenue could not refer to any material on record to show that the assessee was ever confronted to establish the requirements of Rule 4 of the Rules to claim benefit of unrealized rent. Accordingly, the substantial question of law claimed on that basis does not arise. In view of the findings noticed hereinbefore, no benefit can be derived by the revenue from the aforesaid pronouncements. **[Decided against revenue]**

**THE PRI. COMMISSIONER OF INCOME TAX-1 VERSUS APPLITECH SOLUTION LTD. – 2015 [GUJRAT HIGH COURT]**

**BRIEF:** Interest u/s 234B - the liability would end on the date of determination of total income u/s 143(1) or, in case of regular assessment, the date of such assessment.

**OUR TAKE:** The hon'ble **GUJRAT HIGH COURT** held that Section 234B has two parameters. One is the principal on which such interest would be computed and the other is the period, during which, such interest liability would arise. There is no scope for extending such liability to a later date and relate it to a revision appellate or a rectification order as is desired by the revenue. **[Decided against revenue]**

# STATE TAXES

## ALL INDIA VAT

### CHANDIGARH

The **Govt. vide Notification No. E & T-ETO (Ref.) – 2015/3646** includes Coal, Rice, Wheat, Paddy in Schedule 'B' & Petrol, Premium Branded Petrol & Automobiles in Schedule 'E'.

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

### DAMAN & DIU

**THE DAMAN AND DIU VALUE ADDED TAX (AMENDMENT) REGULATION, 2015** enhance Tax Rate from 4% to 5% effective date to be notified.

### KERALA

The **Govt. vide Circular No. 31/2015 dated 07<sup>th</sup> December 2015** issued direction on condonation of delay in filing the appeals and observation of the Hon'ble High Court of Kerala

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

### MADHYA PRADESH

The **Govt. vide Notification No. F-A-3-63-2015-I-V(39) dated 9th December, 2015** amends Rule 23, revised return pertaining to the year 2014-15 can be furnished up to 31st December, 2015 by a dealer having an annual turnover exceeding Rs. 1 Crore.

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

The **Govt. vide Notification No. F-A-3-63-2015-I-V(40) dated 9th December, 2015** amends Rule 54, audit report pertaining to the year 2014-15 can be furnished upto 31st December, 2015 without a late fee.

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

## TELANGANA

The Govt. vide Notification No. G. O. Ms No. 235 dated 10th December, 2015 Notification reduces time limit for refund of tax from 90 days to sixty days and Amends Profession Tax Rule 4.

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

## TAMIL NADU

The Govt. vide Circular No.45/2015 CC4/678/2012 dated 10th December, 2015 instructions are issued that manual "C" and "F" forms can be issued to the dealers and this facility is extended up to 31/03/2016.

## UTTAR PRADESH

The Govt. vide Notification No. KA.NI.-2-1708/XI-9(115)/14-U.P.Act-5-2008-Order-(146)-2015 dated 08<sup>th</sup> December 2015 made amendment in UPVAT Schedule-I.

**OUR TAKE:** In the said Schedule-I, in the entry at serial number 13, the semicolon and the words "; Engine and generating set operated by Biomass/Biogas and parts thereof" shall be inserted at the end that is exempts Engine & generating-set operated by Biomass/Biogas and Brushes used for painting and varnishing

The Govt. vide Notification No. KA.NI.-2-1709/XI-9(111)/15-U.P.Act-5-2008-Order-(147)-2015 dated 08<sup>th</sup> December 2015 made amendment in UPVAT Schedule-I and Schedule-II.

**OUR TAKE:** In the said Schedule-I, "brushes which are used for painting and varnishing" shall be inserted at the end. In the said Schedule-II, "brushes other than tooth brush "brushes other than brushes which are used for painting and varnishing" shall be inserted.

## COURT DECISIONS

**TVL. ZAITOON MULTI CUISINE FAMILY RESTAURANT VERSUS THE ASSISTANT COMMISSIONER (CT) , THIRUVANMIYUR ASSESSMENT CIRCLE, CHENNAI (MADHYA PRADESH HIGH COURT)**

**BRIEF:** Rate of VAT, [TNVAT]. The trade mark registration is meant for the restaurant as well as the products

manufactured by it and when the activity of service for providing food and drink is considered as a trade mark ,the food items also are to be considered as 'branded items'. Levy of tax on such branded food and drink items would be at 14.5%

**OUR TAKE:** The hon'ble MADHYA PRADESH HIGH COURT held that the trade mark registration is meant for the restaurant as well as the products manufactured by it and when the activity of service for providing food and drink is considered as a trade mark under the Act, the food items also are to be considered as 'branded items' and therefore, levy of tax on such branded food and drink items would be at 14.5% as prescribed under Section 7(1)(a) of the TNVAT Act, 2006 and the respondent has rightly passed the impugned assessment order. [Decided against assessee]

**SAMSUNG INDIA ELECTRONICS PVT. LIMITED VERSUS STATE OF PUNJAB AND ANOTHER [PUNJAB & HARYANA HIGH COURT]**

**BRIEF:** Rate of VAT on cell phone battery charger. Charger is sold as composite package along with cell phone mobile/cell phone charger is an accessory to cell phone and is not a part of the cell phone

**OUR TAKE:** The hon'ble PUNJAB & HARYANA HIGH COURT held that Mobile/cell phone charger is an accessory to cell phone and is not a part of the cell phone. No ground for interference is made out with the impugned order. [Decided against Revenue]

**MAHENDRA KUMAR VERSUS STATE OF KARNATAKA AND ANOTHER [KARNATAKA HIGH COURT]**

**BRIEF:** Restoration of the penalty on transporting goods without valid document. It is only in cases where there was no consignor at all and the document on which reliance was placed was found to be not genuine, action has been taken.

**OUR TAKE:** The hon'ble KARNATAKA HIGH COURT held that it is not a case of avoidance of tax by the transporter but a case of transporting goods without valid document. When the transporter is unable to produce confirmation letter from the persons from whom he received the goods for transportation, nothing more requires to be done. In all cases where genuinely he received the document from the consignor, on being satisfied about the genuineness, the authorities have cleared those goods. It is only in cases where there was no consignor at all and the document on which reliance was placed was found to be not genuine, action has been taken. The Tribunal was also justified in imposing additional penalty. In these circumstances, we do not see any

justification to interfere with the well considered order passed by the Appellate Tribunal. **[Decided in favour of Revenue]**

### M/S EASTMAN INTERNATIONAL VERSUS STATE OF PUNJAB AND ANOTHER [PUNJAB & HARYANA HIGH COURT]

**BRIEF:** Detention of goods on evasion of tax. Though the quantity in both the bills was the same but the rates and amounts varied. It was concurrently concluded by all the authorities that the transaction was an attempt to evade tax on the part of the appellant. Demand confirmed.

**OUR TAKE:** The hon'ble PUNJAB & HARYANA HIGH COURT held that after considering the entire material on record and the documents, it has been recorded that the documents accompanying the goods were not genuine. The goods which were intercepted by the detaining officer were meant for trade. The dealer had made an attempt to evade the payment of tax by transporting the goods by in-genuine documents. **[Decided against Assessee]**

## OTHER UPDATES

### FEMA

The Govt. vide Circular No. RBI/2015-16/260 dated 07th December, 2015 issued instructions on auction of Government of India Dated Securities.

**OUR TAKE:** Government of India has offered to sell (re-issue) five dated securities for notified amount of Rs 15,000 crore. The auction for securities will be price based using multiple price method. Readers are requested to read the said circular. It is self-explanatory.

### ALLIED LAWS

### COURT DECISIONS

### NARAYAN SINGH VERSUS KALLARAM @ KALLURAM KUSHWAHA AND OTHERS [HIGH COURT OF MADHYA PRADESH]

**BRIEF:** Whether the certified copy of documents obtained under Right to Information Act, 2005 can be admitted as secondary evidence.

**OUR TAKE:** The hon'ble MADHYA PRADESH HIGH COURT held that Clause (f) of Section 65 of Evidence Act makes it crystal clear that a certified copy permitted under the

Evidence Act or by any other law in force can be treated as secondary evidence. Therefore, the court below has rightly opined that the documents can be admitted as secondary evidence. Since the documents are covered under section 65 of the Evidence Act, there was no need to compare the same with the originals. **[Decided against assessee]**

### LATEST NEWS ON PROPOSED GST

**7 Dec, 2015,** BJP government proposed that petroleum products to come under proposed GST regime subject to states approval.

**8 Dec, 2015,** it is being proposed that Centre's exemption list of around 300 items will be reduced to the states' value added tax (VAT) list of close to 90.

**8 Dec, 2015,** if all exemptions are removed and petroleum, alcohol, real estate, electricity, education & health care are brought under GST regime, the tax rate for all items except the demerit goods can be as low as 12%.

**8 Dec, 2015,** the bill is likely to be introduced in Upper House in the on-going winter session and hectic parlays are on between the government and the congress to negotiate a deal for securing its passage.

**8 Dec, 2015,** e-commerce companies want government to keep aggregators out of GST. By same logic they want companies like Flipkart, Snapdeal, Amazon etc. to be viewed as service providers to vendors, liable to pay GST only on service income.

**8 Dec, 2015,** GST shall make Transport Corporation of India in pole position to gain from e-commerce.

**9 Dec, 2015,** barter & exchanges to carry GST. This move of government may impact automobile, consumer durable sectors. Consumers has to pay GST on value of goods returned.

**9 Dec, 2015,** cars prices may come down significantly if standard rate of GST 17-18 percent is accepted. Currently manufacturers pay 30-50 percent taxes.

**9 Dec, 2015**, manufacturers likely to gain most from GST regime. At present, manufacturers pay 27-30 percent tax indirectly. If proposed GST rate implemented, prices of goods shall come down by 10-12%.

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**10 Dec, 2015**, Chief Economic Officer said GST can help to curb black money, graft by bringing maximum goods/services under GST regime.

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**10 Dec, 2015**, panel set up by government seeks to end 'exemptions raj'.

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**11 Dec, 2015**, ambiguity over self-service tax continues to haunt GST. Govt. Mum on reverse charge, which would be levied for the services exchanged between different offices of the company. Tax to impact IT firms most.

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**12 Dec, 2015**, higher rate of GST of 2-6% on precious metals like gold, silver may not impact prices of precious metal significantly due to removal of lot of hidden taxes and smooth flow of tax credits.

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**12 Dec, 2015**, Congress President Sonia Gandhi has called a meeting of senior party leaders on Sunday evening to discuss its strategy on GST Bill. A meeting with government can happen only after that, but there is no certainty or even talks on the possible date for it right now.

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