



ASC Times

All India Taxes Weekly Referencer

Vol: Sep 14 – Sep 20, 2015

Solving
any **tax**
puzzle

Tax saving advice
across all the taxes



From the CEO's Desk



Dear Reader,

Aadhaar card is a must, not only from the point of view of citizenship records but also for other benefits which are now possible. Income Tax Department will now be able to process tax refunds in a very short time as its latest technology upgrade linked with Aadhaar cards, ITR verification has begun successfully. "The days are gone when getting an I-T refund used to take months or in some cases even a few years. The new electronic verification e-filing system has proved to be very customer-friendly and as a token of thanks to the taxpayers, the department is working to ensure their refunds are sent in a week's time or a maximum of ten days. This is surely the way forward in the administration of tax affairs in the country," a top officer of the department involved in these operations said. It can really be good news for lakhs of taxpayers.

It seems Government's tough ride is not going to be a smooth one any soon. Delay for implementing GST is very visible. Problems related to MAT could not be sorted out till now. Volatility of Rupee is a going concern and inflation bothers everyone alike. Now Government has to deal with new issues. Government has initiated many campaigns like "Make in India", "Smart Cities", and "Housing for All". They all have their own implementation problems. But I am sure Government must have not thought of some petty issues to be tackled. Like for Smart cities, number of state governments has been asking for more cities to be included from their states. For example, West Bengal Urban Development Minister Firhad Hakim requested for increasing the number of smart cities from the state including Kolkata, as he opines that Kolkata has a lot of potential untapped. Similarly, Senior Congress leader and former union Minister V. Narayanasamy urged the Centre to include Puducherry municipality under the 'Smart City' mission.

Government is been pledging to Industrialists and business houses to be more concerned about the social issues and contributing more towards the basic infrastructure for poor. Like primary education and food for all kids and better health and hygiene facilities for all. Recently Mr. Modi did a meeting with all the biggies of corporate world and asked them to be significant on the growth path. Knowledge is the base for any development and without upping the standards of our education we cannot achieve what we intend to.

Alok Kumar Agarwal

CEO

ASC Group.

TAX CALENDER

Due Date	Description	Law
14 September 2015	Deposit of Tax	Rajasthan VAT
15 September 2015	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 September 2015	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
15 September	Tithi of Srimanta Shankardev	Assam
17 September	Vinayaka Chavithi	Andhra Pradesh, Goa, Gujarat, Maharashtra, Mizoram, Odisha, Puducherry, Tamilnadu, Telangana, Goa & Uttar Pradesh
	Biswakarma Puja	Uttarakhand
	Varasiddhi Vinayaka Vrata / Vishwakarma Jayanti	Karnataka
18 September	Nuakhai	Odisha

INDEX GUIDE

TOPIC	PAGE NO.
Service Tax	4-5
Central Excise	5-6
Customs	6-7
Income Tax	7-8
State Taxes	9-11
Other Updates	11
Our Contacts	12

CENTRAL TAXES

SERVICE TAX

COURT DECISIONS

HINDUSTAN PETROLEUM CORPORATION LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, DELHI-III (DELHI HIGH COURT)

BRIEF: Waiver of pre-deposit. Tribunal did not follow the order of similar bench to grant full waiver. CESTAT was not justified in declining to grant an unconditional stay in favour of the Appellant.

OUR TAKE: The Hon'ble DELHI HIGH COURT held that if the Principal Bench of the CESTAT felt that the agreement between HPCL and IGL, identical to the agreement between HPCL and MGL, called for a different interpretation, and that therefore the decision of the Coordinate Bench of the same strength in BPCL v. CST, Mumbai required reconsideration, then the appropriate course for the Principal Bench, CESTAT to adopt would be to refer the matter to a larger Bench of the CESTAT. In any event, at the stage of considering an application for stay, the CESTAT, Principal Bench ought to have proceeded on the basis that in light of the final judgment in BPCL v. CST, Mumbai (2014 (7) TMI 159 - CESTAT MUMBAI) being favour of HPCL, it had a prima facie case.

CESTAT was not justified in declining to grant an unconditional stay in favour of the Appellant, without requiring the making of any pre-deposit. Hence, stay granted. [Decided in favor of assessee]

TANUSHREE LOGISTICS PVT. LTD. VERSUS UNION OF INDIA (RAJASTHAN HIGH COURT)

BRIEF: Supply of tangible goods. Assessee did not file reply to the SCN. The instant petition preferred by the petitioner at this stage is premature and does not require interference of this Court u/Art. 226 of the Constitution of India.

OUR TAKE: The Hon'ble RAJASTHAN HIGH COURT held that on perusal of the show cause notice, we feel that it is only a prima facie view which the Commissioner, as a quasi-judicial authority, has expressed at this stage, placing reliance on the material collected, at the time of search and in our view, it cannot be said that the Commissioner has prejudged the matter of imposition of service tax and that may be considered after the reply to show cause notice is submitted by the petitioner.

The instant petition, preferred by the petitioner at this stage, is premature and does not require interference of this Court u/Art. 226 of the Constitution of India. [Decided against the assessee]

GEE PEE AGRI PVT. LTD. VERSUS COMMISSIONER OF C. EX. & CUSTOMS (SUPREME COURT)

BRIEF: There is some dispute about who is entitled to the refund of service tax but in any case the department cannot hold the service tax since they are not entitled to do so.

OUR TAKE: The Hon'ble SUPREME COURT held that it is quite clear that refund of service tax is due either to the petitioner or to the merchant exporter. There is some dispute about who is entitled to the refund of service tax, but in any case, the respondents cannot hold the service tax since they are not entitled to do so.

The service tax should be refunded to the petitioner within six weeks. In case, the merchant exporter has any issue in this regard with the petitioner, he can always take up the matter before an appropriate forum. [Decided in favor of the assessee]

M/S. RAMCHANDRA SINGH VERSUS THE UNION OF INDIA THROUGH CENTRAL EXCISE AND SERVICE TAX DEPARTMENT AND OTHERS (JHARKHAND HIGH COURT)

BRIEF: The petitioner is lethargic but certainly not an ignorant person and knows all fine niceties of law. Vigilant petitioner should have filed their appeal within the limitation period or at least within condonable delay period. Condonation denied.

OUR TAKE: The Hon'ble JHARKHAND HIGH COURT held that sufficient cause is an expression which is found in various statutes. It essentially means as adequate or enough. There cannot be any straitjacket formula for accepting or rejecting the explanation furnished for delay caused in taking steps. The causes shown for condonation have no acceptable value. In that view of the matter, the appeal deserves to be dismissed which we direct. There will be no order as to costs.

There is tendency of those persons who are liable to make payment of the tax+interest+penalty to take a chance before this Court. This "chance taking petitioner" has filed a writ petition before this Court at his own peril and risk because sometimes it takes time for final adjudication of the

writ and on another hand the period of limitation has already been started. It ought to be kept in mind by this type of "chance taking petitioner" that they should simultaneously prefer statutory appeals also so that whenever there are such type of clauses that limitation cannot be condoned beyond the period of thirty days the appeal may not be dismissed for want of condonation of delay. The petitioner is lethargic, but, certainly not an ignorant person and is knowing all fine niceties of law. Vigilant petitioner should have file their appeal within the limitation period or at least within condonable delay period. Decision in the case of Flemingo (Duty Free Shop) Pvt. Ltd. [2015 (1) TMI 22 - BOMBAY HIGH COURT] followed. [Decided against the assessee]

CENTRAL EXCISE

COURT DECISIONS

HEADWAY LITHOGRAPHIC COMPANY VERSUS COMMISSIONER OF C. EX., KOLKATA (SUPREME COURT)

BRIEF: Whether printing biri wrappers cut to size shall be classification under Chapter sub-heading 4821.00 or under Chapter Heading 4823.19?

OUR TAKE: The Hon'ble SUPREME COURT held that printing of biri wrappers would not and can never fit under the description 'transfer decalcomanias' inasmuch as in the present case on plain paper simple printing is done on the wrappers which are cut to size for the purpose of wrapping the biris and there is no use of sheet of plastics. In fact it is not printed on any absorbent, lightweight papers and there is no coating of starch and gum. The conclusion would be that the goods in question would fall under Item No. 4901.90 which attracts nil duty. [Decided in favour of assessee]

COMMISSIONER OF CENTRAL EXCISE, DELHI-I VERSUS HINDUSTAN MACHINES & ORS. (DELHI HIGH COURT)

BRIEF: The case is related to SSI Exemption with regard to Use of brand name and significance of evidence. In the absence of any evidence except the single document which had no description of the goods the said document purporting to be a sales statement cannot be treated as containing the figures of sale of Maharaja brand mixer-grinders manufactured and cleared.

OUR TAKE: The Hon'ble DELHI HIGH COURT held that the

impugned order has discussed in a great detail the inter-relationship between HM and its sister concerns which were also issued a show cause notice by the Department alleging that they had mis-utilised the exemption under the aforementioned notification and were involved in clandestine removal with a view to evading excise duty. The entire case of the Department hinged upon a single document stated to have recovered from one of the marketing companies namely Technocrat Marketing P. Ltd. ('TMPL'). It is seen from the impugned order the third member that the said document did not mention the nature of the goods, i.e., whether the goods were mixer-grinder, electric press or toasters which were being manufactured by HM and the other sister concerns. There was nothing in the said document or any other document recovered to indicate that these sales figures pertained to mixer-grinders manufactured by HM.

In the absence of any evidence except the single document, which had no description of the goods, the third member to whom the matter was referred was justified in concluding the said document purporting to be a sales statement "cannot be treated as containing the figures of sale of Maharaja brand mixer-grinders manufactured and cleared by HM during 1987". It was also rightly observed that while the document at best gives rise to doubts about the claim of HM regarding their eligibility for SSI exemption during 1987-88, it is insufficient, even on a preponderance of probabilities, to constitute proof for establishing the allegations of duty evasion against the assessee. No substantial question of law arises. [Decided against Revenue]

M/S. BIOCHEM PHARMACEUTICALS IND. LTD. VERSUS COMMNR. OF CENTRAL EXCISE, DAMAN, VAPI (SUPREME COURT)

BRIEF: The issue is regarding Valuation of samples which are distributed free to the physicians. CESTAT has accepted that the method of valuation would be cost of production or manufacture of the goods. To this extent the grievance of the appellant herein stands redressed.

OUR TAKE: The Hon'ble SUPREME COURT held that CESTAT has accepted that the method of valuation would be 'cost of production or manufacture of the goods'. To this extent the grievance of the appellant herein stands redressed.

Insofar as the present case is concerned, since substantial relief is already granted to the appellant in the rectification orders passed by the CESTAT, it is not necessary to deal with the remaining period which shall be covered the order passed by the Tribunal in the instant case. [Decided against the assessee]

COMMISSIONER OF CENTRAL EXCISE, JAIPUR-I VERSUS AKSH OPTIFIBRE LTD. (RAJASTHAN HIGH COURT)

BRIEF: Levy of interest on payment of differential duty. Whether clearance of goods on provisional price basis without opting for provisional assessment would be leviable to interest or penalty?

OUR TAKE: The Hon'ble RAJASTHAN HIGH COURT held that in our view, under sub-rule (4) the interest arises only from the first day of the month succeeding the month for which such amount is determined till the date of payment thereof and in our view, it is very clear and unambiguous that the interest liability arises only upon determination of the value or the duty by the adjudicating authority and only after determination this liability arises.

In our view, merely because an application was not moved to the Assessing Officer and which the respondent-assessee did not move on such fact, no interest would be leviable nor penalty can be said to be leviable, though requirement of the Act/Rule needs to be fulfilled but in this particular case, it would be too technical to come to the said conclusion that the application was not moved by the assessee and it becomes fatal. Demand of interest and penalty set aside. **[Decided in favor of assessee]**

CUSTOMS

NOTIFICATIONS & CIRCULARS

The Govt. vide Notification No. 47/2015, dated 8 September, 2015 seeks to levy definitive anti-dumping duty on imports of Float Glass of thickness 2 mm to 12 mm (both inclusive) of clear as well as tinted variety (other than green glass) but not including reflective glass, processed glass meant for decorative, industrial or automotive purposes falling under chapter heading 7005 of the First Schedule to the Customs Tariff Act, originating in or exported from the People's Republic of China for a period of five years.

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

COURT DECISIONS

MANGALORE REF AND PETROCHEMICALS LTD. VERSUS COMMISSIONER OF CUSTOMS, MANGALORE (SUPREME COURT)

BRIEF: Levy of duty on goods actually imported Revenue in its show cause stated that quantity of crude oil mentioned in various bills of lading should be basis for payment of duty and not quantity actually received into shore tanks in India. Contention of the revenue rejected.

OUR TAKE: The Hon'ble SUPREME COURT held that levy of customs duty under Section 12 is only on goods imported into India. If the goods are pilfered after they are unloaded or lost or destroyed at any time before clearance for home consumption or deposit in warehouse, importer is not liable to pay duty leviable on such goods. Reasons given by Tribunal are incorrect in law. Tribunal's reasoning that somehow when customs duty is ad valorem basis for arriving at quantity of goods imported changes, is wholly unsustainable. Therefore Tribunal's judgment set aside and declares that quantity of crude oil actually received into shore tank in port in India should be basis for payment of customs duty. Appeals disposed of. **[Decided in favour of assessee]**

M/S. DR. REDDY'S LABORATORIES VERSUS COMMISSIONER OF CUSTOMS (SUPREME COURT)

BRIEF: Classification of goods as auto analysers or photometers Admitted fact that models BTS 310 and BTS 320 were imported with inbuilt software that contained programmes for analysis and interpretation from this it does not follow that what has been imported is only photometer.

OUR TAKE: The Hon'ble SUPREME COURT held that without any analysis of whether imported equipment were, auto analysers or were only photometers, tribunal went on to conclude that one can never come to conclusion that photometer is same as auto analyser. Admitted fact that models BTS 310 and BTS 320 were imported with inbuilt software that contained programmes for analysis and interpretation. From this it does not follow that what has been imported is only photometer. Contention that description of imported goods was changed from photometers to auto analysers to avail benefit of exemption under notification No. 20/1999, would be material in deciding whether Section 111(m) are attracted as to amount to mis-declaration of description of goods resulting in confiscation of said goods, fine, and penalty. Therefore,

appeal of assessee allowed and order of tribunal imposing penalty set aside. [Decided in favour of Assessee]

THE COMMISSIONER OF CUSTOMS (EXPORT) VERSUS M/S. RELIANCE INDUSTRIES LTD. (BOMBAY HIGH COURT)

BRIEF: If customs duty is exempted in favour of assessee then education cess on imported goods is also not to be levied and collected.

OUR TAKE: The Hon'ble BOMBAY HIGH COURT held that duty exemption remission scheme and duty exemption pass book scheme are essentially to promote economic growth and in terms of new policy adopted by Government of India. Education cess on imported goods shall be in addition to any other duties of customs chargeable on such goods under Customs Act, 1962 or any other law for the time being in force. As per view taken by Gujarat high court in case of Gujarat Ambuja Exports Ltd. [2012 (7) TMI 679 - GUJARAT HIGH COURT] if customs duty is exempted in favour of assessee, then education cess on imported goods is also not to be levied and collected. Following High Court Gujarat Judgment, substantial question of law answered in favour of assessee. [Decided against revenue]

COMMISSIONER OF CUSTOMS (IMPORT) VERSUS M/S. WINGS ELECTRONICS & ANR. (SUPREME COURT)

BRIEF: If goods bore Australia marking Appraising Officers of Department should have objected at time of import since no objection was raised at time of import assessments cannot be reopened for valuation under guise of mis-declaration of country of origin.

OUR TAKE: The Hon'ble SUPREME COURT held that no material was produced by Department to indicate payment by assessee importer on basis of such alleged invoice showing higher amounts. Declaration of country of origin was to be made by supplier/exporter, if goods bore Australia marking, Appraising Officers of Department should have objected at time of import. Since no objection was raised at time of import, assessments cannot be reopened for valuation under guise of mis-declaration of country of origin. No cogent material was collected to substantiate allegations. It is matter of year 1997 and it seems that exercise of remitting matter back may be futile. Therefore, appeal dismissed as no question of law involved. [Decided against Revenue]

INCOME TAX

NOTIFICATIONS & CIRCULARS

The Govt. vide Notification No. 4/2015, dated 4 September, 2015 notified procedure for registration and submission of report as per clause (k) of sub section (1) of section 285BA of Income-tax Act, 1961 read with Sub rule (7) of Rule 114G of Income-tax Rules.

OUR TAKE: The Principal Director General of Income-tax (Systems) laid down the procedures, data structure and standards for ensuring secure capture and transmission of data, evolving and implementing appropriate security, archival and retrieval policies regarding registration of reporting financial institution, submission of Form 61B and Submission of Nil statement (as the case may be).

COURT DECISIONS

COMMISSIONER OF INCOME TAX VERSUS BINANI INDUSTRIES LTD. (CALCUTTA HIGH COURT)

BRIEF: Validity of reopening of assessment in case of non-deduction of TDS. Without application of mind they had disposed of the matter. CIT(A) shall decide the question as regards the legality of exercise of power under Sections 147 and 148.

OUR TAKE: The Hon'ble CALCUTTA HIGH COURT held that some amount of exercise in order to find out whether the contention of the assessee was correct was required both on the part of the CIT(A) and the Tribunal, regard being had to the fact that they are the fact finding authorities. Surprisingly they did not think it necessary to do any such thing and proceeded to dispose of the matter merely on the basis that the exercise of power was based on change of opinion.

We have no doubt in our mind that without application of mind they had disposed of the matter. In the circumstances, both the orders passed by the CIT(A) and the Tribunal are set aside. The matter is remanded to the CIT(A) for a decision afresh. The CIT(A) shall decide the question as regards the legality of exercise of power under Sections 147 and 148 after going into the claims and contentions raised by the assessee including the submission that no tax was deductible at source. [Decided in favour of revenue for statistical purposes]

FAST BOOKING (I) PVT. LTD. VERSUS DY. COMMISSIONER OF INCOME TAX -11 (1) (DELHI HIGH COURT)

BRIEF: ITAT declined to permit the Assessee to maintain the cross objections on the ground that since the Assessee had not urged the plea of being entitled to the benefit under Section 10 A before the CIT (A) it could not be permitted to urge such plea for the first time before the ITAT. The order of ITAT is not correct.

OUR TAKE: The Hon'ble DELHI HIGH COURT held that the Court is of the view that ITAT was in error in declining to examine the cross objections filed by the Appellant Assessee. The powers of the ITAT while hearing appeals and cross objections have been explained by this Court in CIT v. Edward Keventer (Successors) Pvt. Ltd. (1979 (11) TMI 73 - DELHI High Court) wherein held the Tribunal, in deciding an appeal, is not confined to the grounds set forth in the memorandum of appeal or those which the appellant may urge with its leave. It can decide the appeal on any ground provided only that the affected party has an opportunity of being heard on that ground. Also see NTPC v. CIT (1996 (12) TMI 7 - SUPREME Court) as held reason to restrict the power of the Tribunal under Section 254 only to decide the grounds which arise from the order of the Commissioner of Income-tax (Appeals). Both, the assessee and the Department have a right to file an appeal/cross-objections before the Tribunal.

Consequently, the question framed is answered in the negative, i.e. in favour of the Assessee and against the Revenue. The impugned order dated 10th December 2014 of the ITAT to the extent that it declined to examine the Appellant Assessee's cross objections on merits is hereby set aside and restored to the file of the ITAT for consideration on merits. [Decided in favour of assessee]

TRIYOGI NARAYAN SINGH VERSUS CIT, KOLKATA-X, KOLKATA (CALCUTTA HIGH COURT)

BRIEF: Rejection of books of accounts u/s 145. AO proceeded to exercise power under section 144. Therefore it is not possible to accept the submission that the assessing officer really made the assessment under section 143(3) and by mistake he recorded to have passed the same under section 144.

OUR TAKE: The Hon'ble CALCUTTA HIGH COURT held that as quoted the relevant part of the order passed by the assessing officer from which it clearly appears that the assessing officer first exercised his power under section 145 and thereafter, he proceeded to exercise power under section 144. Therefore, it is not possible to accept the submission that the assessing officer really made the

assessment under section 143(3) and by mistake he recorded to have passed the same under section 144.

The submission that in an assessment under section 144 the assessing officer can make disallowances may be correct in the backdrop that the assessee may raise contentions disputing the materials collected by the assessing officer and allowances claimed in the defence to be taken by the assessee the assessing officer may have occasion to make disallowances. He has exercised power under section 145 because the books of accounts are not believable because the books of accounts according to him are neither correct, nor complete. If the assessing officer in such a case wishes to make an assessment under section 144, he has to make such assessment only in accordance with section 144. [Decided in favour of the assessee]

LATE M.S. RAMASAMY, REP BY M.R. SARASWATHY VERSUS THE INCOME TAX OFFICER, ARD I (7) , SALEM – 7 (MADRAS HIGH COURT)

BRIEF: Claim of business loss rejected. Loss comprised of deposit relatable to dealership/distributorship and the balance referable to cylinder hire charges due to fraud/cheating on him. The said deposit made should not be treated as revenue in nature and the loss thereof must not be treated as business loss.

OUR TAKE: The Hon'ble MADRAS HIGH COURT held that admittedly, the assessee had not commenced its distributorship business. The deposits made by the assessee were for the purpose of acquiring profit and securing dealership/distributorship. Originally, the assessee was in the business of manufacturing handloom silk and not in the business of LPG distributorship. Hence, the purpose of entering into such a new business must be considered to be for the purpose of securing an enduring benefit of a capital nature and hence, the deposit made in that regard cannot be treated as expenditure in the course of carrying on the existing business. The deposit was made by the assessee pursuant to an agreement between the parties for getting dealership/distributorship of LPG. Hence, the deposit made by the assessee was for the purpose of acquiring a profit-making asset to carry on business in LPG. Therefore, the said deposit made should not be treated as revenue in nature and the loss thereof must not be treated as business loss. The loss thereof was a loss suffered on the capital account and could not be deducted on the basis that it was a business loss. See Hasimara Industries Ltd. v. Commissioner of Income Tax and another reported in [1997 (9) TMI 5 - SUPREME Court]. [Decided against the assessee]

STATE TAXES

ALL INDIA VAT

BIHAR

The **Govt. vide Notification S.O. 211, dated 8 September, 2015** substitute the present entry "5 Lakh" of column number (3) of serial number- 2 of table appended to Rule 2A of Bihar Value Added Tax Rules, 2005 by the entry "10 Lakh" with immediate effect.

OUR TAKE: The said notification is for "All dealers other than dealers engaged in the business of transactions specified in clause (ii) and clause (iv) of sub-section (zc) of section 2 (i.e. those specified at serial number 1 to Rule 2A).

DELHI

The **Govt. vide Notification No. F.7(433)/Policy/VAT/2012/PF/703-712, dated 10 September, 2015** directs for issue of Form Delhi Sugam-2 in place of Form T-2.

OUR TAKE: Department of Trade & Taxes has designed and developed a new simplified online form namely Form Delhi Sugam-2 (in short DS2') in place of Form T-2 for providing information to the Department in respect of goods purchased or received as stock transfer or received on consignment agreement from outside by the registered dealers of Delhi. In this regard, Govt. directs that the details of Invoices and Goods Receipt (GR) Notes in respect of all goods purchased or received as stock transfer or received on consignment agreement basis from outside Delhi shall be submitted online, in Form Delhi Sugam-2 (DS2), as annexed with this Notification, by all the registered dealers of Delhi before physical entry of the goods in Delhi.

The **Govt. vide Circular No. 24 of 2015-16, dated 10 September, 2015** instructed for reassessment in respect

of system generated default assessment notices dated 19/06/2015..

OUR TAKE: Based on the **Hon'ble** High Court order it was instructed to the concerned VATO for issue of fresh notices in accordance with law and will take steps pursuant thereto which would also be in accordance with law and would not be system generated notices or orders without human interface.

Readers are requested to read the said Circular for details of notices quashed.

GOA

The **Govt. vide Notification 7/16/2015-LA, dated 7 September, 2015** notified publication of The Goa Value Added Tax (Eighth Amendment) Act, 2015 (Goa Act 13 of 2015).

OUR TAKE: There is amendment in Section 29 and Section 1 of Act 12 of 2013. Readers are requested to read the said Notification for detail.

HARYANA

The **Govt. vide Notification No. 22/ST-1/H.a.6/2003/S.59/2015, dated 7 September, 2015** amend Schedule E appended to the Haryana Value Added Tax Act, 2003 by dispensing with the condition of previous notice.

OUR TAKE: In the Haryana Value Added Tax Act, 2003 (Act 6 of 2003), existing Schedule E stands revised. Readers are requested to read the said Notification for revised "Schedule E".

KERALA

The **Govt. vide Notification No. S.R.O. No. 545/2015. GO(P) No. 144/2015/TD., dated, 17 August, 2015** make rules further to amend the Kerala Value Added Tax Rules, 2005 issued by notification under G. O. (P) No. 42/2005/TD dated 31st March, 2005 and published as S. R. O. No. 315/2005 in the Kerala Gazette Extraordinary No. 675 dated 31st March, 2005.

OUR TAKE: There is amendment in Rule 17 in sub rule (8), clause "Xi" regarding furnishing of documents for proving the ownership/ possession of the business premises, insertion in clause "xii" and insertion of new clause "xiii".

NAGALAND

The **Govt. vide Notification No. FIN/REV-3/UTRN/2014-15, dated 12 August, 2015** introduced an Electronically Generated Payment Challan Form "e-challan" as an alternative mode for making manual payment of all kinds of taxes in addition to the existing modes of payment.

OUR TAKE: Each "e-challan" will have a 'Unique Transaction Reference Number' (UTRN) for facilitating easy tracking and references. It may be accessed through the department's web portal www.nagalandtax.nic.in which is available 24/7. It will allow deposit of all kinds of taxes "Direct to Bank". The notification also contains roles and responsibilities and the procedures to be followed by stakeholders.

RAJASTHAN

The **Govt. vide Notification No. F.12(100)FD/Tax/87-Pt-87, dated 9 September, 2015** makes amendment in Schedule VI appended to the Rajasthan Value Added Tax Act. 2003 (Act No. 4 of 2003).

OUR TAKE: In Schedule VI appended to the said Act, in column number 3 against serial number 12, for "Aviation turbine fuel" Rate of tax is substituted to "26%".

UTTAR PRADESH

The **Govt. vide Notification No. K.A. NI-2-1291/XI-9(150)/15-U.P. Act-5-2008-Order-(139)-2015, dated 11 September, 2015** seeks to amend Schedule -I.

OUR TAKE: In the Schedule-I, for entry at serial number 53, the goods description of "Motor/battery operated e-rickshaw distributed/for distribution under the state Government's scheme of free distribution of Motor/battery operated e-rickshaw to urban rickshaw pullers" shall be inserted.

UTTARAKHAND

The **Govt. vide Notification No. 381/2015/01(120)/XXVII(8)/2015, dated 31 August, 2015** amend Schedule-I of the Uttarakhand Value Added Tax Act.

OUR TAKE: In Schedule-I, for the existing entry at serial no. 44, the entry "Phosphatic and potash components of all chemical fertilizers described under the Fertilizer (Control) Order, 1985 as amended from time to time" shall be substituted. The value of phosphatic and potash components of a chemical fertilizer shall be determined according to guidelines issued by the Department of Agriculture, Uttarakhand from time to time.

COURT DECISIONS

SWASTIK INDUSTRIAL POWERLINE LTD VERSUS COMMISSIONER TRADE & TAXES DELHI (DELHI HIGH COURT)

BRIEF: Where Sales are against Form ST-1 under DVAT and correctness of ST-1 is in question, Assessee could not be held responsible for any discrepancy in the ST-2 Account furnished by the purchasing dealer to the Sales Tax Authorities.

OUR TAKE: The **Hon'ble DELHI HIGH COURT** held that it is well established that a selling dealer would have no duty to examine the correctness of the Form ST-1 submitted; the selling dealer would also not be responsible for any misapplication of goods by the purchasing dealer or failure on the part of the purchasing dealer to maintain the correct records. Clearly, the Assessee could not be held responsible for any discrepancy in the ST-2 Account furnished by the purchasing dealer to the Sales Tax Authorities.

Assessee had produced documents for the sale of goods and the duly receipted invoices along with original ST-1 Forms coupled with receipt of consideration through bank drafts and cheques that would clearly establish the transactions claimed by the Assessee. The AA was unduly influenced by the ST-2 Account filed by the purchasing dealer and the fact that the purchasing dealers were not found in existence at the time of making the remand assessment order.

The Court found it difficult to sustain the denial of deduction claimed by the Assessee for the sales made against ST-1 Forms. [**Decided in favor of assessee**]

STATE OF PUNJAB AND ANOTHER VERSUS GENUS OVERSEAS ELECTRONICS LIMITED (PUNJAB AND HARYANA HIGH COURT)

BRIEF: Officers who were authorised to carry out checking on roadside in exercise of powers conferred under section 51 of Act cannot delve into question of nature of item and rate of tax applicable thereto.

OUR TAKE: The Hon'ble PUNJAB AND HARYANA HIGH COURT held that Tribunal came to conclusion that nature of transaction could be determined by Assessing Authority. Assessing Authority shall adjudicate whether goods were actually inverters or UPS. Officers who were authorised to carry out checking on roadside in exercise of powers conferred under section 51 of Act cannot delve into question of nature of item and rate of tax applicable thereto. No error could be pointed out in approach of Tribunal which may warrant interference. No merit in appeal. [**Decided against revenue**]

OTHER UPDATES

DGFT

The **Govt. vide Notification No. 20 /2015-20, dated 7 September, 2015** notified the export policy of sugar.

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

The **Govt. vide Public Notice No. 33/2015-2020, dated 4 September, 2015** notifies a new SION with serial number J-377 in Textile Product Group for export product 'Dipped Belting Fabrics (EP) Conveyor Duck/Synthetic Fabrics of Nylon 6/66 & Polyester 840 Denier and above'.

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

OUR TAKE: The **Govt. vide Public Notice No. 34/2015-2020 (RE-2015), dated 9 September, 2015** amends the arrangements Trade in Border Haats across the border in Tripura between Bangladesh and India.

FEMA

OUR TAKE: The **Govt. vide Circular No.11, dated 10 September, 2015** with a view to liberalizing the procedure, it has now been decided to dispense with the statement regarding transactions relating to loans/ advances from EEFC account that may be reported by the AD banks on a quarterly basis to the Regional Office of Reserve Bank, with immediate effect.

COMPANY LAW

The **Govt. vide Notification No. F.1/19/2013-CL-V-Part, dated 4 September, 2015** issued notification regarding sub-section (6) of section 129 of the Companies Act, 2013 (18 of 2013).

OUR TAKE: In exercise of the powers conferred by the sub-section (6) of section 129 of the Companies Act, 2013 (18 of 2013), directs that paras 5 (ii) (a) (1), 5 (ii) (a) (2), 5(ii) (e), 5 (iii), 5 (viii) (a), 5 (viii) (b), 5 (viii) (c) and 5 (viii) (e) relating to Additional Information of the General Instructions for preparation of Statement of Profit and Loss in Schedule III of the Companies Act, 2013 shall not apply to government companies producing Defence Equipment including the Space Research subject to fulfillment of certain conditions.

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

SitaiVihar,
Plot No 67A, Sector New 50
4th Floor, B- Wing
Navi Mumbai – 400706
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

INTERNATIONAL BRANCH

303,5th Avenue Suite 1007,
New York, NY 10016, U.S.A

For enquiries related to:

Service	Contact Person	Service	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		

Disclaimer:

This e-bulletin is for private circulation only. Views expressed herein are of the editorial team. ASC or any of its employees do not accept any liability whatsoever direct or indirect that may arise from the use of the information contained herein. No matter contained herein may be reproduced without prior consent of ASC. While this e-bulletin has been prepared on the basis of published/other publicly available information considered reliable, we do not accept any liability for the accuracy of its contents.