ASC Times

All India Taxes Weekly Reference

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Solving any tax puzzle

Tax saving advice across all the taxes

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TAX CALENDER

Due Date	Description	Law
15 August	Deposit of Tax	Bihar VAT, Haryana VAT, Jharkhand VAT, Kerala VAT, Sikkim VAT
	Issue of TDS Certificate	Andhra Pradesh VAT, Bihar VAT, Himachal Pradesh VAT, Jharkhand VAT, Nagaland VAT, Punjab VAT, Chandigarh VAT, Telangana VAT
	TDS Deposit	Bihar VAT, Delhi VAT, Haryana VAT, Himachal Pradesh VAT, Jharkhand VAT, Punjab VAT, Chandigarh VAT
	Return Filing	Kerala VAT, Karnataka VAT, Madhya Pradesh VAT, Tripura VAT
	Quarterly TDS Certificate	Jharkhand VAT.
20 August	Deposit of Tax	Andhra Pradesh VAT, Goa VAT, Karnataka VAT, Manipur VAT, Punjab & Chandigarh VAT, Tamil Nadu VAT, Telangana VAT
	TDS Deposit	Andhra Pradesh VAT, Kerala VAT, Tamil Nadu VAT, Telangana VAT, Uttarakhand VAT
	Return Filing	Andhra Pradesh VAT, Karnataka VAT, Kerala VAT, Manipur VAT, Punjab & Chandigarh VAT, Tamil Nadu VAT, Telangana VAT
	Issue of TDS Certificate	Chhattisgarh VAT, Madhya Pradesh VAT
21 August	Return Filing	Assam VAT, Maharashtra VAT, Meghalaya VAT, Orissa VAT
	Tax Deposit	Assam VAT, Delhi VAT, Maharashtra VAT, Meghalaya VAT, Orissa VAT
	TDS Deposit and Issue of TDS Certificate	Maharashtra VAT

COUNTRY WIDE HOLIDAYS FOR THE WEEK

Date	Occasion/Festival	Region
15th Aug 2016	Independence Day	All State
18th Aug 2016	Raksha Bandhan	Central States

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From the CEO's

Dear Reader,
Further to our discussion on GST, we would like to talk about it more elaborately. There is no doubt that once

GST would be implemented fully and completely functional it will make lot many things simpler, but the initial stage of the process is full of challenges no one can deny. The impact of GST on different industries will be different and it will affect Governments (Centre and States), business houses and consumers differently. In short, it will replace 17 central and state taxes with one tax on nation. For people, top three benefits can be of cheaper goods, more jobs and cheaper automobiles. For economy as a whole, GDP will increase, manufacturing will get a boost, exporters will be benefitted which in turn will create more jobs. For businesses, it will translate into lesser logistic costs, better import protection and less tax burden and compliances. Last but not the least, for government, better buoyancy as less tax evasion, easier tax management and fewer tax disputes.
I should warn here that these are all expected outcomes and real picture can be different, until the time total clarity and proper implementation takes place. The biggest pitfall can be of slowing down of the overall economy for some time. It will take time to stabilize all the possible disruptions and meanwhile inflation may rise. At least 16 states have to pass the GST bill in their respective legislations and president has to stamp it, then only the GST bill would be effective. Now, the big question stands as, can the GST be a reality until 1st April 2017? If only the timeline of all legislative compliances until December is met and from January, itself training and testing starts, GST can be rolled out in April. In addition, not to forget that rate of GST also need to be agreed upon by state governments as well.

Alok Kumar Agarwal
CEO
ASC Group.

CENTRA

SERVICE TAX

COURT DECISIONS

FEDERATION OF HOTELS AND RESTAURANTS ASSOCIATION OF INDIA AND ORS. VERSUS UNION OF INDIA AND ORS. [DELHI HIGH COURT]

BRIEF: Short-term accommodation in hotel - State government has exclusive power to levy luxury tax - levy of service tax is unconstitutional.

OUR TAKE: The hon'ble **GUJARAT HIGH COURT** held that the exemption from service tax on the provision of accommodation for a room having a declared tariff of less than 1,000 per day or equivalent is by Notification No. 12/2012 dated 17th March 2012. This is not provided in the Act or the Rules. Taxation by way of administrative instructions, which are not backed by any authority of law, is unreasonable and is contrary to article 265 of the Constitution of India. The court accordingly, strikes down Section 65 (105) (zzzzw) of the Finance Act 1994 pertaining to levy of service tax on the provision of short-term accommodation and the corresponding instructions/circulars seeking to operationalise the levy as unconstitutional and invalid. **[Decided in favour of assessee and against the revenue]**

GUJARAT STATE FERTILIZERS AND CHEMICALS LTD. VERSUS THE COMMISSIONER OF CENTRAL EXCISE, CUSTOMS AND SERVICE TAX, SURAT-II [GUJARAT HIGH COURT]

BRIEF: Cenvat Credit on input services - Service Tax paid on commission amount paid to dealers/stockist, nexus with manufacturing activity. Payment to the agents appointed by the appellant would not be eligible for Cenvat credit

OUR TAKE: The hon'ble **GUJARAT HIGH COURT** held that predominantly the entire agreement was one in the nature of appointing a partnership firm as stockist of the appellant company who would upon being supplied the goods in question would store the same and dispose of in the market at agreed rates upon which would receive certain commission. A fleeting reference to attempt to sales promotion would not change the very basic nature of agreement and the relations between the appellant and the stockist converting the stockist as sales promotion agent. Payment to the agents appointed by

the appellant would not be eligible for Cen vat credit. **[Decided against the assessee]**

THE LAKE PALACE HOTEL AND MOTELS P LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, JAIPUR II AND VICE-VERSA [CESTAT NEW DELHI]

BRIEF: Renting of immovable property on profit sharing basis - Demand of service tax on renting including on notional interest received on the security deposit made with the appellants. Appellant is not liable to pay service tax under the renting of immovable property service.

OUR TAKE: The Hon'ble **CESTAT NEW DELHI** held that the issue has already been settled in appellants own case for earlier period, that the appellant is not liable to pay service tax under the category of renting of immovable property service as leasing out the property to Hotel under the deemed provision of section 65 (105) (zzz) of the Finance Act, 1994. Therefore, we hold that appellant is not liable to pay service tax under the renting of immovable property service. Further, appellant are not liable to pay service tax on the notional interest accrued on the security deposit. Demand set aside. **[Decided in favour of assessee]**

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

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

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

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

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

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

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

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

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

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

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

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

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

BRIEF: Nature of activity - Collection of Octroi on behalf of the Municipal Corporation. Cash management activity

or not. Not covered by Banking and other Financial Services, revenue's appeal rejected

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

M/S INDUS TOWERS LIMITED VERSUS THE COMMISSIONER OF CENTRAL EXCISE [AAR]

BRIEF: Nature of activity of repair and maintenance of the equipment is so that the same can be re-used without requiring replacement. The activity is not amounting to manufacture. Cenvat Credit of excise duty paid on inputs is eligible while paying service tax on inspection, Certification and engineering services etc.

OUR TAKE: The hon'ble **AAR** held that applicant is eligible to avail Cenvat Credit of Excise Duty under the Central Excise Act, 1944 / Additional Duty of Excise under Section 3(1) of the Customs Tariff Act, 1975 paid on parts and spares used for their replacement of the defective ones and Service Tax paid on inspection, Certification and engineering services etc. for the aforesaid repair and maintenance activities and claim set off against the output service tax paid for rendering of passive infrastructure service by the applicant to its customers.

POWER LINK SYSTEM PRIVATE LIMITED VERSUS COMMISSIONER OF CENTRAL EXCISE, COIMBATORE [CESTAT CHENNAI]

BRIEF: So long as the commission paid is not disputed, which can even be verified from the bank statements or certificates from the bank, rejection of claim for want of quantification of commission paid is not legally tenable.

OUR TAKE: The hon'ble **CESTAT CHENNAI** held that claim of refund under Cenvat Credit Rules is part of the export promotion scheme without properly examining the records, such benefits cannot be denied, since the Assistant commissioner, who had passed the order-in-original, can properly verify the records in question. I, therefore, remand the entire matter to the original authority for examining the issue afresh. **[Appeal disposed of]**

CENTRAL EXCISE

NOTIFICATION / CIRCULAR

The Govt. vides Notification No. 30/2016 dated 10th Aug 2016, amend notification No.12/2012-Central Excise, dated 17th March 2012 so as to withdraw the excise duty exemption on ethanol produced from molasses generated in the sugar season 2015-16 (i.e. 1st October, 2015 to 30th September 2016), for supply to the public sector OMCs for blending with petrol.

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

The Govt. vides Notification No. 41/2016 dated 10th Aug 2016, amend CENVAT Credit Rules, 2004 so as to withdraw the facility to avail of CENVAT credit of duty paid on molasses generated in the sugar season 2015-16 (i.e. 1st October, 2015 to 30th September 2016) which is used for producing ethanol for supply to public sector OMCs for blending with petrol by omitting rule 6 (6) (ix) of the CENVAT Credit Rules, 2004.

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

COURT DECISIONS

A.R. SULPHONATES PVT. LTD., COMMISSIONER OF CENTRAL EXCISE VERSUS COMMISSIONER OF CENTRAL EXCISE, AR SULPHONATES PVT LTD (CESTAT MUMBAI)

BRIEF: Whether Cenvat credit is admissible on the input contained in by-product or whether Rule 6(3)(b) is applicable in respect of clearance of by-product under exemption - Held Yes

OUR TAKE: The hon'ble **CESTAT NEW DELHI** held that it is clear that Cenvat Credit is admissible on the input contained in by-product/waste refuse. As, the Spent Acid is undoubtedly a by-product therefore, by the virtue of above provision as well as the issue does not remain as res-integra, in the light of the judgments, the demand of 10% of the value of the exemption goods in terms of Rule 6(3)(b) is not sustainable. **[Decided in favour of appellant]**

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

BRIEF: Gas filing activity. Whether the activity undertaken by the appellant amounts to manufacture? Gas is already marketable in its original form and the activity undertaken by the appellant does not render the

gas marketable, which is already marketable. Demand of duty set aside.

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

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

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

OUR TAKE: The hon'ble **CESTAT NEW DELHI** held that the rejection of refund claim by the ld. Commissioner is because of misinterpretation of the rules governing the refund. The ER return submitted by the appellant along with refund application is sufficient to grant refund to the appellant. The judgments cited at the bar by the ld. counsel for the appellant are fully applicable in the facts and circumstances of this case. In view of the facts and circumstances enumerated, set aside the impugned order and direct the respondent to grant refund within a period of two months from the receipt of the certified copy of the order. **[Decided in favour of assessee]**

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

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

OUR TAKE: The hon'ble **CESTAT NEW DELHI** held that the 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. 45/2016 dated 13th Aug 2016, notifies that exemption for import of fabrics under Special Advance Authorization Scheme under Para 4.04A of FTP 2015-20 for manufacture and export of garments.

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

COURT DECISIONS

M/S. BINNY LIMITED VERSUS THE COMMISSIONER OF CUSTOMS (IMPORTS) , THE ASSISTANT COMMISSIONER OF CUSTOMS (BONDS) , THE SUPERINTENDENT OF CUSTOMS (BONDS) [CESTAT MUMBAI]

BRIEF: Warehousing - if a request is made seeking permission to re-export the goods imported, the same may be allowed, even if the permitted period for bonding has expired and demand notice has been issued or it has been decided to put the goods under auction.

OUR TAKE: The hon'ble **GUJRAT HIGH COURT** held that if a request is made seeking permission to re-export the goods imported, the same may be allowed, even if the permitted period for bonding has expired and demand notice has been issued or it has been decided to put the goods under auction. However, while doing so, it is necessary to extend the period of warehousing under Section 61 of the Customs Act, to enable the importer to export the goods within the permitted period of warehousing. Appellant is permitted to make a representation to the respondents seeking permission to re-export the goods lying in the balance containers. Time limit for clearance granted is one year. Appeal allowed. **[Decided in favour of appellant]**

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 final anti-dumping notification has no applicability to the bills of entry presented prior to the said date. Inasmuch as 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]

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 been fulfilled. The notification covers the machine imported by the appellants. Appellant succeeds on both counts. The appeal is allowed. **[Decided in favour of assessee]**

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 mi-declaration of description or value. In this case it is not so. **[Decided in favour of assessee]**

SHRI PAYANGADI MOIDU MOHAMMED ALI VERSUS COMMISSIONER OF CUSTOMS, CHENNAI [CESTAT CHENNAI]

BRIEF: Tribunal has no jurisdiction to entertain a baggage matter for which the appellant may choose to exercise its right of revision before the Revisionary Authority.

OUR TAKE: The hon'ble **CESTAT CHENNAI** held that the tribunal has no jurisdiction to entertain a baggage matter for which the appellant may choose to exercise its right of revision before the Revisionary Authority. **[Appeal dismissed]**

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 AHEMDABAD]

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 AHEMDABAD** 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 ld. CIT(A). We uphold the same. **[Decided in favour of assesse]**

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), assesse did not establish the nexus between the borrowed funds and the investment so made with a clear intention to conceal the income by furnishing inaccurate particulars of such income, therefore, in our view, penalty was rightly imposed.

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

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

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

OUR TAKE: The hon'ble **GUJARAT HIGH COURT** held that mere accounting entry or even if there 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 AHEMDABAD]

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 AHEMDABAD** held that the Assessing Officer invoked the impugned disallowance quoting assesses 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

ASSAM

The Govt. vides Notification No.FTX.55/2005/PT-VII/63 dated 10th Aug 2016, amends Modification in First, Second, Third, Fourth & Fifth Schedule - Enhancement in general rate of tax to 15%.

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

The Govt. vides Notification No. FTX.100/2007/305 dated 10th Aug 2016 notifies Concessional rate of tax for Central Police Canteen (CPC).

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

BIHAR

The Govt. vide Notification No. BIKRI KAR/VIVIDH-43/2011-3055 dated 10th Aug 2016 notifies format for form D-IXA - form of Declaration for e-commerce companies.

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

The Govt. vides Notification SRO No. 184 dated 10th Aug 2016, Enhancement in rate of tax on petrol & diesel.

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

HIMACHAL PRADESH

The Govt. vide Notification No. EXN-F(10)-05/2014 dated 10th Aug 2016, amends HPVAT Schedule 'A & 'B'.

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

MAHARSHTRA

The Govt. vides Notification No. VAT.1516/CR-85/TAXATION-1 dated 06th Aug 2016 amends Rule 52A & 83A.

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

The Govt. vide Notification No. VAT.1516/CR-86/TAXATION-1 dated 06th Aug 2016, amends to Rule 17A, 21 & 23 - Insertion of Rule 21A.

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

RAJASTHAN

The Govt. vide Notification No. F.12 (6) FD/TAX/2015-32 dated 08th Aug 2016, amends RIPS Order no F.12 (28) FD/Tax/2010-Pt-I-115 dated 08th Aug 2016 Regarding Cellular and Telecom Operators.

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

The Govt. vides Notification No. F26 (315) CCT/MEA/2014/1000 dated 08th Aug 2016, notifies extension in date of submission of quarterly return in Form VAT 10, for the first quarter of the year 2016-17.

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

COURT DECISIONS

THE COMMISSIONER OF SALES TAX VE0RSUS 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 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 is reinforced and deserves affirmation. **[Decided against the revenue]**

M/S. S.M. CONSTRUCTIONS, LUDHIANA VERSUS STATE OF PUNJAB AND OTHERS (PUNJAB & HARYANA HIGH COURT)

BRIEF: Refund of excess TDS - construction business - Section 27 & 24 of HVAT Act would be applicable only to the taxable turnover, i.e. after deducting service component and turnover relating to sales outside State in the course of inter-state sales or in the course of import.

OUR TAKE: The hon'ble **PUNJAB & HARYANA HIGH COURT** held that petition is disposed of by directing respondent No.3 to take a decision on the representation dated 18.1.2016, in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioner. **[Matter disposed of]**

OTHER UPDATES

COMPANY LAW

COURT DECISIONS

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

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

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

FEMA

COURT DECISIONS

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

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

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

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

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

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

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 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 petitioner therefore has an alternative statutory remedy of filing an appeal under Section 17 of the Act before the Debts Recovery Tribunal. It is trite that in the matters involving commercial dispute, rule of alternative remedy is adhered to and applied steadfast. Present petition is not entertained. The petitioner is at liberty to approach the Debts Recovery Tribunal in accordance with law.

GST ALERTS

TIME OF SUPPLY OF GOODS (SECTION 12)

Determination of time of supply of goods is a significant event to determine a taxable event. Section 12 of the model GST law defines the time of supply of goods.

This section determines the liability to pay CGST and SGST on the goods at the time of supply. The time of supply of goods shall be determined in the earlier of the following:

a. The date on which Goods are disposed for supply to the recipient, where the goods are required to be removed.

b. The date on which Goods are made available to the recipient, where the goods are not required to be removed. For this, it would be necessary to understand that this would apply in the case where the goods:-

   - Are physically not capable of being moved; or
   - Are supplied in assembled or installed form; or
   - Are supplied by the supplier to his agent or his principal.

Where the expression "made available to the recipient," mean when goods the goods are placed at the disposal of the recipient.

c. The date on which invoice is issued by supplier w.r.t. or to the extent of supply.

d. The date on which payment is received by supplier w.r.t. or to the extent of supply. In other words, the date on which the payment is entered in his books of accounts or the date on which the payment is credited to his bank account, whichever is earlier.

e. The date on which recipient shows goods received in his books of account.

This Section also, determines the time of supply of goods in case of continuous supply of goods. The continuous supply of goods generally involves successive statements of accounts or successive payments. In this case, the time of supply shall be date of expiry of the period to which such successive statements of accounts or successive payments relate. However, if there are no successive statements of account, the time of supply shall be the date of issue of invoice or the date of receipt of payment, whichever is earlier.

Further, with the introduction of GST, the Government is introducing the concept of Reverse Charge Mechanism (RCM) on goods as well. The draft model law, by way of this section, defines tax liability on goods under RCM. The time of supply of goods under reverse charge shall be determined in earlier of the following events:

a. the date of the receipt of goods, or

b. the date on which the payment is made (in other words the date on which the payment is entered in the books of accounts of the recipient or the date on which the payment is debited in his bank account, whichever is earlier, or

c. the date of receipt of invoice, or

d. the date of debit in the books of accounts.

Where the goods being sent or taken on approval or sale or return are removed before it is known whether a supply will take place, then the time of supply shall be the time when it becomes known that the supply has taken place or six months from the date of removal whichever is earlier.

However, if the time of supply cannot be determined by any/all the above-explained provisions, then the time of supply shall be the date on which periodical return is to be filed, or the date on which CGST/ SGST is paid. In other words, the date of filing of returns shall be the time of supply or in case where periodical return is not filed then the date on which the CGST and SGST is paid shall be the time of supply.

For enquiries related to:

For enquiries related to:

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