



# ASC Times

All India Taxes Weekly Reference

Vol: May 16-May 22, 2016

Solving  
any **tax**  
puzzle

Tax saving advice  
across all the taxes



## From the CEO's Desk



Dear Reader,

“When there're new inventions, when there is growth in trade, commerce, industry, an intellectual property rights regime must be there for protection”, said finance minister Mr. Arun Jaitley while unveiling a comprehensive Intellectual Property Rights (IPR) policy on Friday. The new policy is aimed at fostering innovation, cutting delays in clearing patent, trademark and copyright applications, protecting traditional knowledge and encouraging entrepreneurship. The improved policy will help India put up with the international standards and would help improve its ranking in the World Bank's Ease of Doing Business index.

Apart from cutting the time and backlog of IPR applications there are many other benefits of the policy:

- The policy aims at fostering quality standards for healthcare, food security and environmental protection.
- It also will try to combat piracy in the films and music industry.
- It will help government to formulate incentives in form of tax concessions for research and development (R&D).
- It would work towards striking a balance between individual and national interests.
- It will foster strong laws with modern administration.
- The policy will create value and help in by commercializing innovations.

The idea behind the move is to incorporate global practices in the Indian context and adapt to the same. The policy seems to be at just the right time as all the major developing economies are facing challenges from the developed world and also mega regional trade agreements such as the Trans-Pacific Partnership (TPP). The US has kept India on a trade watch list citing “long-

standing systematic deficiencies” and some new concerns about its IPR regime.

Right now 237000 number of applications are pending in India's 4 patent offices. The time taken to clear these applications is generally 7 to 8 years or more in some cases. In the new policy the time taken would be cut down drastically to 18 months by March 2018. Trademark applications will likely get approved in one month by 2018, from 18 months currently.

Alok Kumar Agarwal

CEO

ASC Group.

## TAX CALENDER

Due Date	Description	Law
20 May	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
21 May	Return Filing	Assam VAT.
	Deposit of Tax	Assam VAT, Delhi VAT, Maharashtra VAT, Meghalaya VAT, Orissa VAT
	Deposit of TDS	Maharashtra VAT
	Issue of TDS Certificate	Maharashtra VAT
22 May	Deposit of Tax	Gujarat VAT, Tamil Nadu VAT
	Issue of TDS Certificate	Delhi VAT
	Return Filing	Tamil Nadu VAT

## COUNTRY WIDE HOLIDAYS FOR THE WEEK

Date	Occasion/Festival	Region
21 <sup>st</sup> May 2016	Budh Purnima	Chhattisgarh, Delhi, Himachal Pradesh, Jammu & Kashmir, Jharkhand, Madhya Pradesh, Maharashtra, Uttar Pradesh, Uttarakhand
21 <sup>st</sup> May 2016	Mohammad H Hazrat Ali Birthday	Uttar Pradesh

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# CENTRAL TAXES

## SERVICE TAX

### COURT DECISIONS

#### PURNIMA ADVERTISING AGENCY PVT. LTD. AND 1 Versus UNION OF INDIA THROUGH SECRETARY AND 2 [GUJARAT HIGH COURT]

**BRIEF:** Claim of interest on delayed refund - the petitioner was required to unnecessarily litigate in two rounds; in the first round, up-till the Tribunal and in the second round, upto this court, for the purpose of availing of the statutory interest payable to it. Under such circumstances, the petitioner is entitled to the grant of compensatory costs, which are quantified at 25,000/-.

**OUR TAKE:** The hon'ble GUJARAT HIGH COURT held that the petitioner was required to unnecessarily litigate in two rounds; in the first round, up-till the Tribunal and in the second round, upto this court, for the purpose of availing of the statutory interest payable to it. Under such circumstances, the petitioner is entitled to the grant of compensatory costs, which are quantified at 25,000/-. [Decided in favour of petitioner]

#### COMM. OF CENTRAL EXCISE VADODARA I VERSUS GUJARAT CONTAINER LTD [GUJARAT HIGH COURT]

**BRIEF:** Merely because in the show cause notice no legal provision is cited or wrong provision is mentioned, by itself may not be the ground for invalidating the action of the authority, if the power for such action can be traced to another source.

**OUR TAKE:** The Hon'ble GUJARAT HIGH COURT held that the show cause notice was completely general in nature, gives no details of unpaid service tax and merely called upon the assessee why such service tax with interest should not be recovered. The show cause notice was more in the nature of a fishing inquiry of the assessee's outstanding tax liability. It was perhaps because of this lacuna that the Commissioner in his Revisional order had to be satisfied with directing the assessee to pay service tax on the gross amount of transport charges paid by them to the Goods Transport Operators. Therefore, the Tribunal was justified in deleting the service tax demand. [Appeal disposed of]

#### M/S. LUFTHANSA GERMAN AIRLINES VERSUS COMMISSIONER OF SERVICE TAX, (ADJN) , NEW DELHI [CESTAT NEW DELHI]

**BRIEF:** Passenger service fee being collected on behalf of air port authority of India and being paid to the said authority are not liable to service tax.

**OUR TAKE:** The hon'ble CESTAT NEW DELHI held that no service tax liability would arise in respect of passenger service fee being collected by the appellant on behalf of air port authority of India and being paid by them to the said authority. Accordingly while confirming the demand in respect of other charges, as not being contested, the demand on the inclusion of passenger fee charges in the value of the services along with the penalty are set aside. [Appeal disposed of]

#### CCE, MADURAI VERSUS M/S. SUNDARAM INDUSTRIES LTD. [CESTAT CHENNAI]

**BRIEF:** Once what is received by the service receiver being output services, the same would automatically become input service in terms of Rule 2 (I) of Cenvat Credit Rules.

**OUR TAKE:** The hon'ble CESTAT CHENNAI held that the department had accepted the payment of tax under reverse charge but objected to the availment and future utilization of credit for discharge of future liability by the Respondent. This stand adopted by the department does not seem to be an approach in the right direction. The further finding given by the Commissioner (Appeals) with regard to non-invocation of extended period holding that the issue is purely interpretative in law cannot also be faulted with. The submission made by the Advocate for the Respondent that there is no finding with regard to the penalty or invocation of extended period is also factually true. [Decided against the revenue]

#### 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.

## CENTRAL EXCISE

### CIRCULAR & NOTIFICATION

**The Govt. Notification No. 27/ 2016-CE dated 14<sup>th</sup> May 2016**, notifies to replace clause 159 of the finance bill, 2016, with sub section to section 162 of the finance act 2016.

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

**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]**

### T.V. TODAY NETWORK PVT. LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, DELHI [CESTAT NEW DELHI]

**BRIEF: Services of renting of machinery or equipment for production or manufacture, which is an activity relating to conduct of main business are not covered under Business Support Service.**

**OUR TAKE:** The hon'ble **CESTAT NEW DELHI** held that by relying on the earlier decisions held that BSS would cover only the services which are supporting nature to the main business, like services relating to customer relationship telemarketing, office infrastructure, etc and would not cover the services of renting of machinery or equipment for production or manufacture, which is an activity relating to conduct of main business. The applicants have strong prima facie case in their favour and therefore, waiver of pre-deposit is granted for admitting the appeal. At this prima facie stage, by following the stay orders passed earlier it is found that, in similar set of facts, the present applicant has to be given full waiver of pre-deposit of adjudicated dues. **[Stay and waiver granted]**

### SHRI VARINDAVAN DAIRIES VERSUS COMMISSIONER OF SERVICE TAX, JAIPUR-I [CESTAT NEW DELHI]

**BRIEF: Business auxiliary service - Pasteurizing of milk, converting some of it into butter milk/curd and then packing these products including milk in plastic pouches clearly amount to manufacture, hence not liable for service tax.**

**OUR TAKE:** The hon'ble **CESTAT NEW DELHI** held that he payment has received on the basis of per liter of the products packed in pouches and it is not possible nor is there any mechanism to identify the payments as would relate to each component of service enumerated earlier. Prima facie the essential activity is that of pasteurizing of milk, converting some of it into butter milk/curd and then packing these products including milk in plastic pouches and these activities clearly amount to manufacture in terms of Chapter Note 6 to Chapter 4 of Central Excise Tariff. It is pointed out that under section 2(f) of Central Excise Act, 1944 manufacture includes any process, which is specified in relation to any goods in the Section or Chapter Notes to the Central Excise Tariff as amounting to manufacture. Therefore, complete waiver granted. **[Stay granted]**

### COURT DECISIONS

### M/S TATA CHEMICALS LTD. VERSUS COLLECTOR OF CENTRAL EXCISE (SUPREME COURT)

**BRIEF: Inclusion of value of gunny bags for determination of assessable value of manufactured goods - obligation taken by the appellant to refund the value of the gunny bags to the Buyer in terms of any arrangement between the parties not found. Value to be included.**

**OUR TAKE:** The Hon'ble **SUPREME COURT** held that it cannot be concluded that the appellant has succeeded in establishing that such an arrangement of return of the packing materials of the gunny bags with the obligation on the part of the seller to refund the value thereof existed between the parties. Also, obligation taken by the appellant to refund the value of the gunny bags to the Buyer in terms of any arrangement between the parties not found. Value to be included. **[Decided against the assessee]**

### M/S GLOBAL SUGAR LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, KANPUR [ALLAHABAD HIGH COURT]

**BRIEF: When two mandatory conditions viz. goods received in the factory premises and the evidence of payment of duty are fulfilled, Modvat credit should be allowed - Rule 57-G is only procedural in nature.**

**OUR TAKE:** The Hon'ble **ALLAHABAD HIGH COURT** held that Modvat credit could not be denied on a technical ground that the procedure for availing Modvat credit was not followed at the material moment of time. Also the Tribunal was not justified in interpreting Rule 57-T(3) of the Rules in a technical manner holding it to be a mandatory provision. **[Decided in favour of appellant]**



**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.

**M/S. ARCHANA SPINNERS LTD. VERSUS THE DEPUTY COMMISSIONER OF CENTRAL EXCISE AND OTHERS [MADRAS HIGH COURT]**

**BRIEF:** Interest under Section 11AA - After amendment with effect from 8.4.2011, Section 11AA itself is removed. Therefore, all types of cases where there is a determination under Section 11A(2) are treated alike irrespective of the presence or absence of fraud, collusion, etc.

**OUR TAKE:** The hon'ble **MADRAS HIGH COURT** held that the case of the assessee was that there was a claim for refund, which could have been adjusted by the Department. While passing an order in appeal No.178/2003, the Appellate Commissioner found that at least in respect of the claim under Order in Original bearing No.18/2000, it was adjustable. Therefore, that portion of the order of the Tribunal as well as the order in appeal is without any application of mind to the quantum of interest under Section 11AA.

**RAM SURESH RAM, SON OF LATE RAM CHANDRA RAM VERSUS THE UNION OF INDIA AND OTHERS [PATNA HIGH COURT]**

**BRIEF:** Unless it can be shown that the decision was taken malafide or with ulterior motive, for a wrong decision taken there cannot be disciplinary proceedings as it is not a mis conduct.

**OUR TAKE:** The hon'ble **PATNA HIGH COURT** held that the petitioner should not have allowed refund to the seller/ manufacturer. Refund if at all due was legally due to the buyer who had paid the duty to the manufacturer for depositing to the Department. The view of the U.P.S.C. was correct but we cannot take note of this because there was no such charge against the petitioner in the departmental proceedings. If this was the opinion of the U.P.S.C. after the enquiry had concluded, this cannot form basis of any action. Therefore, the impugned order of the disciplinary authority as also the order of the Tribunal not interfering with the order of punishment, 30% reduction of pension for 5 years is set aside and any deduction that has already been made on this count has to be refunded to the petitioner. **[Decided in favour of petitioner]**

**M/S. EVEREADY INDUSTRIES INDIA LTD. VERSUS THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, THE ASSISTANT COMMISSIONER OF CENTRAL EXCISE, THE COMMISSIONER OF CENTRAL EXCISE,. [MADRAS HIGH COURT]**

**BRIEF:** If an order of refund is passed after adjudication u/s 11B, the amount refunded will not fall under the category of "erroneous refund" so as to enable the order of refund to be revoked u/s 11A(1) - No recovery proceedings.

**OUR TAKE:** The hon'ble **MADRAS HIGH COURT** held that in none of the decisions relied upon by the learned Standing Counsel; the Courts were confronted with an order of adjudication passed under Section 11B on an application. Once an application for refund is allowed under Section 11B, the expression 'erroneous refund' appearing in Sub-Section (1) of Section 11A cannot be applied. If an order of refund is passed after adjudication, the amount refunded will not fall under the category of erroneous refund so as to enable the order of refund to be revoked under Section 11A(1). One Authority cannot be allowed to say in a collateral proceeding that what another Authority did was an erroneous thing. Therefore, the question of law has to be answered in favour of the appellant/assessee.

## CUSTOMS

### CIRCULAR & NOTIFICATION

**The Govt. Circular No. 17/ 2016-CE dated 14<sup>th</sup> May 2016,** amends Ch IX of the Customs Act, 1962 – removal of goods from a customs station- instructions regarding affixation of one-time-lock

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

**The Govt. Circular No. 18/ 2016-CE dated 14<sup>th</sup> May 2016,** amends Ch IX of the Customs Act, 1962 – Bond required to be filed under section 59.

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

### COURT DECISIONS

**M/S HOSPIRA HEALTH CARE INDIA PVT. LTD. VERSUS DEVELOPMENT COMMISSIONER, MEPZ SPECIAL ECONOMIC ZONE & HEUS, DIRECTOR GENERAL OF FOREIGN TRADE (DGFT) AND OTHERS [MADRAS HIGH COURT]**

**BRIEF:** Rejection of refund claim - Reimbursement of Central sales Tax - Inter-state purchase made by an EOU from another EOU - If the procedural norms are in conflict with the policy, then the policy will prevail and the procedural norms to the extent they are in conflict with the policy, are liable to be held to be bad in law.

**OUR TAKE:** The hon'ble **MADRAS HIGH COURT** held that procedure was to be prescribed by an authority in implementing the policy and must be in consonance with the policy. If the procedural norms are in conflict with the policy, then the policy will prevail and the procedural norms to the extent they are in conflict with the policy, are liable to be held to be bad in law. Since the impugned communications are in conflict with paragraph 6.11 of the Foreign Trade Policy, the same are liable to be set aside. **[Decided in favour of appellant]**

**M/S. GREEN GLOBE TRADING COMPANY VERSUS THE UNION OF INDIA AND OTHERS, M/S. BORA AGRI TECH, ALL INDIA SPIECES IMPORTERS EXPORTERS & DISTRIBUTORS ASSOCIATION, M/S. RADHEY SHYAM RATANLAL [MADRAS HIGH COURT]**

**BRIEF:** No new conditions can be imposed by way of trade notice, in the absence of any amendment to Import-Export policy framed by Central Government by publishing a notification over and above the three stipulated in Chapter 12 of Exim Code for import of poppy seeds

**OUR TAKE:** The hon'ble **MADRAS HIGH COURT** held that in the absence of any amendment to Import-Export policy framed by Central Government by publishing a notification in the official gazette, it has to be held that the fourth respondent is not empowered to impose the conditions in the impugned public notice. In addition, Article 39 (2) of the Constitution of India will not in any way be a source of power or provides a springboard to the fourth respondent to impose the conditions in the impugned public notice. **[Decided in favour of petitioner]**

**M/S. TRANSPORT LOGISTICS VERSUS THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, THE COMMISSIONER OF CUSTOMS (SEAPORT - IMPORTS) [MADRAS HIGH COURT]**

**BRIEF:** Revocation of CHA licence is a harsh penalty for giving blank signed forms to third parties, if there is no other role either played in the substitution of goods or tampering with custom seal.

**OUR TAKE:** The hon'ble **MADRAS HIGH COURT** held that a perusal of the order passed by the Collector, Custom Commissioner as well as the order impugned herein would reveal no connivance on the part of the appellant in either mis-declaration or substitution of the goods by tampering with the Custom seal. Therefore, the extreme penalty of cancellation of CHA licence is not warranted in this case. – **[Decided partly in favour of appellant]**

**SATHIK TANNING COMPANY THROUGH ITS PROPRIETOR VERSUS COMMISSIONER OF CUSTOMS (EXPORTS) [DELHI HIGH COURT]**

**BRIEF:** Appropriate course for release of confiscated goods is to furnish a bank guarantee for the entire amount of redemption fine and penalty.

**OUR TAKE:** The hon'ble **BOMBAY HIGH COURT** held that the appropriate course would be to permit the petitioner to

furnish a bank guarantee for the entire amount of redemption fine and penalty and for the goods be released to the petitioner. Therefore, it is directed to the petitioner to furnish a bank guarantee in favour of the Department, for the entire amount of redemption fine and penalty as ordered by the Order-in- Original, the goods in question shall be released to the Petitioner. **[Petition disposed of]**

#### **KUSH GEMS PVT LTD AN 5 VERSUS UNION OF INDIA AND 2 [GUJARAT HIGH COURT]**

**BRIEF:** Authorities can exercise such powers, if there is any error apparent on the face of the record which requires rectification.

**OUR TAKE:** The hon'ble **GUJRAT HIGH COURT** held that the redemption fine and the penalties having been modified by the Appellate Authority, direction ought to have been given for return of the bank guarantee and cancellation of the bonds upon the petitioners depositing substituted redemption fine. Linking the return of the bank guarantee and the cancellation of bond to the penalties was done either wholly through oversight or at any rate without legal justification. In either case, we would strike down that portion of the appellate order and permit the petitioners to pursue their pending appeal before the Tribunal for the rest of the grievances. **[Petition disposed of]**

#### **SANWAR AGARWAL VERSUS COMMISSIONER OF CUSTOMS (PORT) & OTHERS [CALCUTTA HIGH COURT]**

**BRIEF:** Legality/validity of Circular - classification of Filters referred to as 'Disposable Sterilized Dialyzer' and 'Micro barrier' for filtering blood - The said show cause notice is admittedly based on the impugned circular. If the circular is quashed, the show cause notice automatically goes.

**OUR TAKE:** The hon'ble **CALCUTTA HIGH COURT** held that this is a point without any substance. The said show cause notice is admittedly based on the impugned circular. If the circular is quashed, the show cause notice automatically goes. Hence, the impugned circular is bad in law being without jurisdiction and cannot be sustained. The Circular No. 19/2013-CUS dated 9 May 2013 is quashed and set aside. **[Decided in favour of applicant]**

## INCOME TAX

### COURT DECISIONS

#### **THE COMMISSIONER OF INCOME TAX, MANGALURU AND THE INCOME TAX OFFICER, KARWAR VERSUS THE NAGARBAIL SALT-OWNERS [KARNATAKA HIGH COURT]**

**BRIEF:** Transfer of fund for subsequent distribution to the members before payment of tax is not a 'deductible expenditure' in computation of business income of the Assessee-Co- operative Society.

**OUR TAKE:** The hon'ble **KARNATAKA HIGH COURT** held that an ideology however lofty does not ipso facto exempt such entity from the solemn duty and sacrosanct obligation of obeying the law of the land nor does it insulate the entity from the vigour of penal actions in case of default. Thus, assessee a co-operative entity which runs a business enterprise is duty bound to offer its profits to tax before diverting any funds to the Distributable Pool Fund Account. **[Decided in favour of revenue]**

#### **THE CHIRAKKAL SERVICE CO-OPERATIVE BANK LTD. VERSUS THE COMMISSIONER OF INCOME TAX [KERALA HIGH COURT]**

**BRIEF:** Denial of exemption under section 80P on the mere ground of belated filing of return by the assessee concerned not justified.

**OUR TAKE:** The hon'ble **KERALA HIGH COURT** held that a return filed by the assessee beyond the period stipulated under section 139(1) or 139(4) or under section 142(1) or section 148 can also be accepted and acted upon provided further proceedings in relation to such assessments are pending in the statutory hierarchy of adjudication in terms of the provisions of the IT Act. In all such situations, it cannot be treated that a return filed at any stage of such proceedings could be treated as non est. in law and invalid for the purpose of deciding exemption under section 80P of the IT Act..

#### **VIJAY KUMAR CHAUDHARY, RAM BABU ROY VERSUS INCOME TAX APPELLATE TRIBUNAL AND OTHERS [PATNA HIGH COURT]**

**BRIEF:** Charge of interest under Section 158 BFA (1) of the Income Tax Act, 1961 were automatic and the same were leviable from the date of service of the first notice.

**OUR TAKE:** The hon'ble **PATNA HIGH COURT** held that the facts, which are not in dispute, are that notice under section 158BC of the Income Tax Act was issued on 24.12.2002, which was received by assessee on 04.01.2003. However, the assessee filed their return on 16.07.2004. The assessing



officer calculated interest for the period starting from December 2002 until the date of filing of the return. It is not disputed that the notice dated 23/ the transferee officer issued 24.12.2002. It is only the order under Section 127 of the Act, which was served on the appellants in September 2003. The appellants were bound to comply with the notice and file their return and failure to file the return would attract interest under Section 158 BFA. **[Decided in favour of the revenue]**

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

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

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

#### M/S CACHET PHARMACEUTICALS PVT. LTD. VERSUS COMMISSIONER OF INCOME TAX-1, PATNA, DY. COMMISSIONER OF INCOME TAX [PATNA HIGH COURT]

**BRIEF:** Building which is constructed solely for the manufacturing of medicine is a 'plant' and is entitled to higher depreciation at the rate of 25%.

**OUR TAKE:** The hon'ble PATNA HIGH COURT held that the finding of the Assessing Officer for the previous two years and applying the functional test, we find that the building which is constructed solely for the manufacturing of medicine is a 'plant' and is entitled to higher depreciation at the rate of 25%. Thus, the question of law is answered in the affirmative **[In favour of the assessee and against the revenue]**

#### PR. COMMISSIONER OF INCOME TAX-VADODARA-1 VERSUS GUJARAT STATE ELECTRICITY CORPORATION LTD. [GUJARAT HIGH COURT]

**BRIEF:** Unascertained liability cannot be excluded in the provision of gratuity for the computation of book profit under section 115JB.

**OUR TAKE:** The hon'ble GUJARAT HIGH COURT held that the controversy involved in the present case stands concluded by a decision of this court in the case of Deputy Commissioner of Income Tax v. Inox Leisure Limited, (2013 - GUJARAT HIGH COURT ) **[in favour of the assessee and against the revenue]**

# STATE TAXES

## ALL INDIA VAT

### DELHI

**The Govt. vides Notification No. F3(3)/Fin/Rev-1/2016-17/dsvi/148 dated 09<sup>th</sup> May 2016**, amends DVAT Third & Fourth Schedule.

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

### GUJRAT

**The Govt. vides Notification No. (GHN-28)VAT-2016-S.5 (2) (51)-TH dated 12<sup>th</sup> May 2016**, notifies reduction in rates of taxes on vehicles, chassis in entry No.112 & 113.

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

### MAHARASHTRA

**The Govt. vide Notification No. VAT/AMD-2015/1A/15/ADM-8 dated 09<sup>th</sup> May 2016**, notifies that powers conferred by sub-section (3) of section 55 of the Maharashtra Value Added Tax Act, 2002 (Mah.IX of 2005), the Commissioner of Sales Tax, Maharashtra State hereby constitute the Advance Ruling Authority.

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

### TELENGANA

**The Govt. vide Act No. 9 of 2016 dated 09<sup>th</sup> May 2016**, notifies increase in VAT rate on petrol & diesel i.e 35.20% & 27%.

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

The Govt. vide Act No. 10 of 2016 dated 09<sup>th</sup> May 2016, amends sec 22 of Telangana value added taxes.

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

The Govt. vide Act No. 11 of 2016 dated 09<sup>th</sup> May 2016, amends schedule 4 & 6

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

### COURT DECISIONS

#### 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]

#### RECKITT BENCKISER (INDIA) PRIVATE LIMITED VERSUS STATE OF UTTARAKHAND AND ANOTHER [UTTARAKHAND HIGH COURT]

**BRIEF:** Input tax credit - the case of stock transfer is squarely covered by the proviso and no input tax credit is vouchsafed in respect of packing materials used in connection with finished products, which are stock transferred outside the State in course of inter-State trade or commerce.

**OUR TAKE:** The hon'ble PUNJAB & HARYANA HIGH COURT held that the case of stock transfer would not fall within the ambit of Section 6(3)(d) of the Uttarakhand VAT Act. Therefore, the case of stock transfer is squarely covered by the proviso and no input tax credit is vouchsafed in respect of packing materials used in connection with finished products, which are stock transferred outside the State in course of inter-State trade or commerce. [Decided against the appellant]

## OTHER UPDATES

### 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 equipments cannot be returned to Kamal. The monetary value has to be refunded with interest from the other assets of the Company. That is plainly not permissible or feasible. W

## ALLIED LAWS

## COURT DECISIONS

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

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

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

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

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

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

## 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.

**UMA ENTERPRISES PRIVATE LIMITED [RAJASTHAN HIGH COURT]**

**BRIEF:** The scheme of demerger of which sanction is sought appears to be only a device for avoidance of obligation towards capital gains tax and stamp duty and also falls foul of Explanation to Section 2(19AA) of the Income Tax Act of 1961. The scheme of de-merger cannot therefore be sanctioned.

**OUR TAKE:** The hon'ble RAJASTHAN HIGH COURT held that the scheme of demerger of which sanction is sought appears to be only a device for avoidance of obligation towards capital gains tax and stamp duty and falls foul of Explanation to Section 2(19AA) of the Income Tax Act of 1961. The scheme of de-merger cannot therefore be sanctioned. **[Decided against Petitioner Company]**

## LATEST NEWS ON PROPOSED GST

**11<sup>th</sup> May 2016,** Congress claimed in the Rajya Sabha that the "real opposition" to the long-pending GST bill was coming from within the government and that the main opposition was ready to give full support to it provided its three key recommendations are accepted.

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