ASC Times

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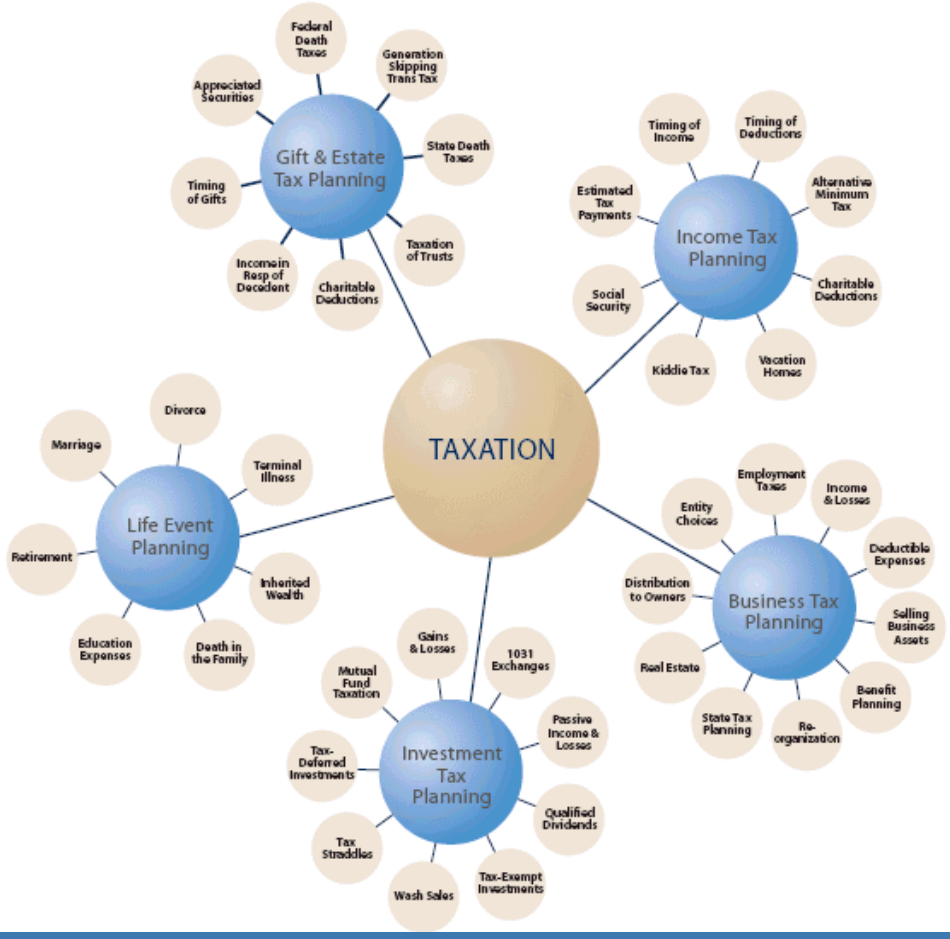

From the CEO's Desk

Dear Reader,

Even after so many disastrous terrorist attacks it seems that countries have not learnt enough. Once more few people have won over the whole security system in Paris. But till the time terrorists will keep getting funded because of some insane people, this will keep on happening. This does affect not only emotional and psychological part but it affects negatively on the political and economical environment and security in general. Especially when the sentiments are already very low.

In India we are struggling with terrorism from a long time and somehow coping with the disasters. After the change of the Government last year, many reforms are taking place ongoing and we keep updating you with those changes on a regular basis. This week's major happenings, as far as the policymaking is concerned, are listed below:

- The 'Swachh Bharat Cess' (SBC) which is been levied on the over and above 14% service tax will not be integrated in the Cenvat Credit Chain, which generally means that credit of SBC cannot be availed. Also SBC cannot be paid by utilizing any other credit, duty or tax.
- CBDT has put a stall in the International Trade Fair 2015 to provide various services like, accepting PAN application, e-filing of returns and viewing of tax credit through 26AS.
- CBDT (Central Board of Direct Taxes) is working on a mobile app for paying the direct tax or income tax. The chairperson of CBDT Ms. Anita Kapoor said that some security issues needs to be tackled after which the app will be launched.
- After a petition by CAIT, the trader's body, finance ministry has assured that they are in the process of defining the e-commerce so that the complaints regarding B-2-B and FDI can be addressed
- A government appointed panel submitted recommendations on CSR norms to the Corporate Affairs Ministry to make amendments in the Companies Act to provide more clarity on Corporate Social Responsibility (CSR).

Alok Kumar Agarwal
CEO
ASC Group.

TAX CALENDER

Due Date	Description	Law
20 November	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 November	Deposit of Tax	Assam VAT, Delhi VAT, Maharashtra VAT, Meghalaya VAT, Orissa VAT
	Deposit of TDS	Maharashtra VAT
	Issue of TDS Certificate	Maharashtra VAT
	Return Filing	Assam VAT
22 November	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
17 November	Surya Sashti/Dala Chhat	Jharkhand, Bihar

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CENTRAL TAXES

SERVICE TAX

NOTIFICATIONS & CIRCULARS

The **Govt. vide Circular No. 187/06/2015 dated 10 November, 2015** notifies speedy disbursal of pending refund claims of exporters of services under rule 5 of the CENVAT Credit Rules, 2004.

OUR TAKE: This scheme is applicable to service tax registrants who are exporters of services, with respect to refund claims under rule 5 of the CENVAT Credit Rules, 2004, which have been filed on or before 31-3-2015, and which have not been disposed of as on date of the issue of this circular. Such registrants will be referred to as 'claimants' in the subsequent paragraphs.
The phrase 'disposed of ' in this context refers to either sanction of refund or denial, either in whole or in part, by way of an adjudication order. Refunds which had been finalized earlier by issuance of an adjudication order but have been remanded back to the original sanctioning authority will not be covered under this scheme since re-examination of such claims will have to be done strictly in terms of the remand order of the Commissioner (Appeals)/ CESTAT/ High Court. Readers are requested to read the said notification. It is self-explanatory.

The **Govt. vide Notification No. 23/2015-F.No. 354/129/2015 dated 12 November, 2015** seek to amend Notification No. 22/2015 in relation to Swatch Bharat Cess.

OUR TAKE: The Central Government makes the following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 22/2015-Service Tax, dated the 6th November, 2015, published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (i) vide number G.S.R. 843 (E), dated the 6th November, 2015, namely:-
In the said notification, after the proviso, the following shall be inserted, namely:-
Provided further that Swachh Bharat Cess shall be leviable only on that percentage of taxable value which is specified in column (3) for the specified taxable services in column (2) of the Table in the notification No. 26/2012-Service Tax, dated 20th June, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (i) vide number G.S.R. 468 (E), dated the 20th June, 2012.

The **Govt. vide Notification No. 24/2015-F.No.354/129/2015 dated 12 November, 2015** seek to amend Notification No. 30/2012 in relation to Swatch Bharat Cess.

OUR TAKE: The circular states that Notification No. 30/2012 of Service Tax, dated the 20th June, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 472 (E), dated the 20th June, 2012 shall be applicable for the purposes of Swachh Bharat Cess mutatis mutandis.

The **Govt. vide Notification No. 25/2015-F.No. 354/129/2015 dated 12 November, 2015** seek to amend the Service Tax Rule 6.

OUR TAKE: In the Service Tax Rules, 1994, in rule 6, after sub-rule (7C), the following sub-rule shall be inserted, namely:
(7D) The person liable for paying the service tax under sub-rule (7), (7A), (7B) or (7C) of rule 6, shall have the option to pay such amount as determined by multiplying total service tax liability calculated under sub-rule (7), (7A), (7B) or (7C) of rule 6 by 0.5 and dividing the product by 14 (fourteen), during any calendar month or quarter, as the case may be, towards the discharge of his liability for Swachh Bharat Cess instead of paying Swachh Bharat Cess at the rate specified in sub-section (2) of section 119 of the Finance Act, 2015 (20 of 2015) read with notification No.22/2015-Service Tax, dated the 6th November, 2015, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 843 (E), dated the 6th November, 2015, and the option under this sub-rule once exercised, shall apply uniformly in respect of such services and shall not be changed during a financial year under any circumstances.

The **Govt. has released FAQ on SWACHH BHARAT CESS on 15 November, 2015.**

COURT DECISIONS

VOLKSWAGEN INDIA PVT. LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, PUNE I (CESTAT MUMBAI)

BRIEF: Denial of refund claim. The relevant date for refund in the case of rebate should be from the date of payment of service tax on the taxable services exported.

OUR TAKE: The **Hon'ble CESTAT MUMBAI** held that relevant provisions of Notification, the conditions and limitations for granting the refund of the service tax paid on services exported are that the taxable service should have been exported and the payment for such services should have been received in convertible foreign exchange; that the service tax and cess have been paid on taxable service exported.
In the case in hand there is no dispute as to the services have been exported and the payment has been received in a convertible foreign exchange. It is also undisputed that the amount of service tax liability on the services exported are to be paid on or before 5th January 2010 for the services exported in the month of December 2009 and such tax liability is paid by the appellant. The relevant date for refund in the case of rebate should be, in our view from the date of payment of service tax on the taxable services exported. Impugned order which upholds the rejection of refund claim of Rs 23,29,471/- is incorrect and the appellant s appeal needs to be allowed. Impugned order is set aside. [**Decided in favour of assesse**]

M/S. I PROCESS SERVICES INDIA (P) LTD. VERSUS C.C.E. & S.T. DELHI (CESTAT NEW DELHI)

BRIEF: Claim of interest. Delayed refund and unjust enrichment. Appellant is entitled for claim of interest on delayed refund.

OUR TAKE: The **Hon'ble CESTAT NEW DELHI** held that as per the table, the appellant has returned the amount of Rs 6,11,41,066/- before filing the refund claim and a sum of Rs 4,37,66,670/- were returned on 28.09.2010 and a sum of Rs 4,24,78,264/- were returned on 26.05.2011. These facts are admitted by both the sides. It is admitted fact that refund claim was sanctioned to the appellant only on 28.10.2013. Therefore, relying on the decision of Ranbaxy Laboratories Ltd. (2011 (10) TMI 16 - Supreme Court of India) the appellant is entitled for claim of interest on delayed refund of Rs 6,11,41,066/- after three months from 31.07.2009 till 28.10.2013. For the amount of Rs 4,37,66,670/- the appellant is entitled for interest for the period 28.09.2010 to 28.10.2013. On the amount Rs 4,24,78,264/- the appellant is entitled to claim of interest for the period 26.05.2011 to 28.10.2013. Appellant is entitled to claim interest. [**Decided in favour of assessee**]

COMMISSIONER OF SERVICE TAX, MUMBAI I VERSUS BLUECHIP CORPORATE INVESTMENT CENTRE LTD. (CESTAT MUMBAI)

BRIEF: Demand of service tax cum-tax benefit expended to the assessee. Value received for the taxable purpose needs to be considered as cum-tax amount if the service tax is not charged.

OUR TAKE: The **Hon'ble CESTAT MUMBAI** held that adjudicating authority has held that the respondent has received an amount of Rs 7,01,26,712/- as commission from Reserve Bank of India for the sale of bonds. Undoubtedly, no service tax was paid on the said amount and accordingly the conclusion reached by the adjudicating authority that the entire amount needs to be considered as cum-tax amount and tax liability worked out on such value is the correct conclusion and the judgment of the Tribunal in the case of Advantage Media Consultant (2008 (3) TMI 59 - CESTAT KOLKATA) holds so. Judgment has been upheld by the **Hon'ble** apex Court by dismissing Civil Appeal filed by the Revenue after condoning the delay which would mean that the value received for the taxable purpose needs to be considered as cum-tax amount if the service tax is not charged. Impugned order is correct. [**Decided against Revenue**]

CENTRAL EXCISE

NOTIFICATIONS & CIRCULARS

The Govt. vide Notification No. 43/2015, dated 6 November, 2015 seeks to further amend notification No. 12/2012-Central Excise, dated 17.03.2012 and 43/2015 dated 6-11-2015.

OUR TAKE: In the said notification, in the Table, following amendments are done:
(i) in serial number 70,-
(a) against item (i) of column (3), for the entry in column (4), the entry "Rs.7.06 per litre" shall be substituted;
(b) against item (ii) of column (3), for the entry in column (4), the entry "Rs.8.24 per litre" shall be substituted;
(ii) in serial number 71,-
(a) against item (i) of column (3), for the entry in column (4), the entry "Rs.4.66 per litre" shall be substituted;
(b) against item (ii) of column (3), for the entry in column (4), the entry "Rs.7.02 per litre" shall be substituted.
This notification shall come into force with effect from the 7th day of November, 2015.

COURT DECISIONS

COMMR. OF CENTRAL EXCISE, GOA VERSUS BHAGYANAGAR METALS LIMITED (SUPREME COURT)

BRIEF: On valuation of goods, whether the value of the software was to be included while arriving at the transaction value of the cellular phones and for the purpose of payment of duty.

OUR TAKE: The **Hon'ble SUPREME COURT** held that when these proceedings were pending, certain other information came to the notice of the Department on the basis of which further Show Cause Notices were issued by different Commissionerates. One of the pieces of evidence which came to the notice of the Department was that as far as foreign exporter is concerned, it wanted to sell the goods, viz., cellular phones and software as one package with single invoice but the splitting thereof was done at the instance of the **assessee**es. It was also found by the Department that Tata and Reliance had imported cellular phones and software as one item at one price and paid the duty accordingly. Suffice is to state that on the basis of these evidences, the CESTAT has decided the cases in favour of the Department and it is for this reason that two appeals by the **assessee**es are preferred. Evidence which has surfaced later on and relied upon by the Department in other Show Cause Notices shall be considered as common evidence in all these cases. Impugned order is set aside. [**Matter remanded back to larger bench of the tribunal**]

INDIAN OIL CORPORATION LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, MUMBAI II (CESTAT MUMBAI)

BRIEF: Revenue authorities on receipt of classification list did not direct the appellant to go for the drawal of the samples and get the same tested in order to ascertain the correct classification of the product.

OUR TAKE: The **Hon'ble CESTAT MUMBAI** held that if the Department had any doubts as to the classification of the said products, they should have informed the appellant to produce further documents in order to correctly classify the products. There being no correspondence from the Department, before the approval of the classification list, it has to be inferred that the classification done by the appellant is acceptable to the Department. The appellant having got the classification list approved, clear the said products as per the approved classification list discharging the duty as per the classification list, cannot be charged with the allegation of mis- statement or suppression of facts to evade payment of duty. Further, it is noticed that the revenue authorities, on receipt of classification list, did not direct the appellant to go for the drawal of the samples and get the same tested in order to ascertain the correct classification of the product, during the relevant period. Having not done so, revenue authorities now cannot turnaround and allege that there was suppression, mis-statement on the part of appellant.

There is nothing on record to show that during the relevant period, the job cards of the products in question were indicative of the classification under chapter 34. In any case, revenue having failed to indicate to the appellant **assessee**e that the classification sought by them is unacceptable now cannot rely upon the job cards which were of latter period. It is settled law that the case of classification of a product, the revenue has to play a proactive role, which is absent in the case in hand. Demand is otherwise barred by limitation, impugned order is unsustainable on the ground of limitation, and is liable to be set aside. [**Decided in favour of assesse**]

M/S. NGA STEELS PVT. LTD. VERSUS CCE, SALEM (CESTAT CHENNAI)

BRIEF: Clandestine removal of goods. There was an established case of issuance of parallel invoices by appellant with same numbers.

OUR TAKE: The **Hon'ble CESTAT CHENNAI** held that there is no material coming up even today in the course of hearing from the appellant to discard the allegation of issuance of parallel invoices by the appellant to the four buyers as is stated in Sl. No. (ii) to (v) of para 1 appearing at the outset of this order to demonstrate that removal of the quantity of the goods to them had suffered duty. The JMD who was present on the spot on the date and time of investigation had no answer to the parallel invoices issued by appellant in respect of the alleged clearance to the buyers of the goods as above. Law mandates that what that is manufactured and cleared is to be accounted in the statutory record and anything cleared unaccounted not suffering excise duty is questionable. There was an established case of issuance of parallel invoices by appellant with same numbers. Those were recovered from the four buyers aforesaid. That proved quantum of unaccounted transactions entered into between the appellant and those buyers. At no point of time the appellant discarded the evidence gathered by investigation to defend against issuance of parallel invoice nor demolished the stand of investigation adducing any evidence to the contrary. Burden of proof was discharged by Revenue. Allegation of clandestine removal was established from cogent evidence and Revenue proved its case with precision without the adjudication being made under surmise or suspicion.

Bureau of Indian Standard (BIS) has prescribed certain standard value in respect of goods manufactured in India. It would be proper if the matter goes back to adjudicating authority on this limited count of conversion of the quantity found into proper weight following the standard laid down by that Bureau to serve interest of justice. [**Decided partly in favour of assesse**]

CUSTOMS

NOTIFICATIONS & CIRCULARS

The **Govt. vide Notification No. 107/2015-CUSTOMS (N.T.) dated 9 November, 2015**, seeks to amend fixation of TV of Edible oil, Brass, Poppy seed, Areca nut, gold and Silver.

OUR TAKE: The circular notifies amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 36/2001-Customs (N.T.), dated the 3rd August, 2001, published in the Gazette of India, Extraordinary, Part-II, Section-3, Sub-section (ii), vide number S. O. 748 (E), dated the 3rd August, 2001. For the substitution of TABLE-1, TABLE-2, and TABLE-3, readers are requested to read the said notification. It is self-explanatory.

The **Govt. vide Order No. 3/Ad.IV/2015 dated 13 August, 2015** notifies renaming of DG Inspections (Customs & Central Excise) as Directorate General of Performance Management under CBEC.

OUR TAKE: Approval of Competent Authority is conveyed for renaming of the existing Directorate General of Inspection (Customs & Central Excise) as Directorate General of Performance Management (Customs, Central Excise & Service Tax) with immediate effect and until further orders.

COURT DECISIONS

S.N. OJHA VERSUS COMMISSIONER OF CUSTOMS (DELHI HIGH COURT)

BRIEF: Misdeclaration of goods and serial numbers. Considering the number of consignments and the value thereof the submission that there was heavy pressure of work and therefore the Appellant cannot be held responsible is unacceptable.

OUR TAKE: The **Hon'ble DELHI HIGH COURT** held that as observed by the Commissioner of Customs, there is sufficient corroboration by the fact that as many as 100 consignments were allowed to be cleared without proper verification. The Appellant has been unable to show that any relevant piece of evidence has been overlooked or that the appreciation of the evidence by the Commissioner or the CESTAT is perverse. As regards the procedure followed, it is not the case of the Department that the EDI computer system had thrown up these discrepancies. The Department has been able to substantiate that the Appellant had given oral instructions to his subordinates on how they should act. The Court is conscious that in the criminal case the CBI chargesheet did not name the Appellant as an accused. However, that cannot by itself lead to the inference that in the adjudication proceedings, where the standard is of preponderance of probabilities, the Department has failed to establish its case. Joseph Kuok was exonerated in the adjudication proceedings does not in any affect the case against the Appellant. The case of the Department against the Appellant stands substantiated by the evidence on record. Considering the number of consignments and the value thereof, the submission that there was heavy pressure of work and therefore, the Appellant cannot be held responsible is unacceptable. There is no legal infirmity in the impugned orders of the Commissioner of Customs or the CESTAT. Further, the penalty levied on the Appellant cannot be said to be excessive. It does not call for interference. [**Decided against assessee**]

COMMISSIONER OF CUSTOMS (SEA), CHENNAI VERSUS M/S. NATIONAL LAMINATION INDUSTRIES (SUPREME COURT)

BRIEF: Undervaluation of goods. No documentary evidence was produced by the assessee to support the plea that the goods at Chennai port were inferior in quality than the goods imported and cleared at Mumbai port.

OUR TAKE: The **Hon'ble SUPREME COURT** held that Tribunal has not only misinterpreted the statements of two partners of the **assessee**e, it has also sidetracked and ignored other relevant material. We have gone through the statements of the two partners of the **assessee**e and find that there is a categorical admission on their part that the prices/values declared by them for imports through Chennai port for similar items was much less compared to the values declared at Mumbai port. The factory of the **assessee**e is at Daman and, thus, Mumbai port was much closer. On this basis, specific query was put to the **assessee**e as to why certain imports were made through Chennai port instead of Mumbai port. However, no satisfactory reply was given to this question except making a bald averment that landing charges etc. were much less compared to rates at Mumbai which does not inspire any confidence, that too in the absence of any material given by the **assessee**e in support of this plea. No documentary evidence was produced by the

assesseee to support the plea that the goods at Chennai port were inferior in quality than the goods imported and cleared at Mumbai port and there was no warranty clause of the goods imported at Chennai.

The goods imported by the **assessee**e which were cleared at Mumbai port were found to be similar in nature. These imports were by the **assessee**e itself. Therefore, price declared therein could be made the basis of valuation. Minimum price was taken as the transaction value. It was clearly permissible under Rule 8 read with Rules 5 and 6 of the Valuation Rules. Impugned order is set aside. [**Decided in favour of Revenue**]

COMMR. OF CUSTOMS, MUMBAI VERSUS M/S AIRPORT AUTHORITY OF INDIA LTD. (SUPREME COURT)

BRIEF: Classification of goods, Bridges/Aerobridges, required to be used for the modernization of airport facilities - benefit of Notification No. 36/96-CUS dated 23.07.1996 and Notification No.11/97-CUS dated 01.03.1997 allowed.

OUR TAKE: The **Hon'ble SUPREME COURT** held that if the goods fall within the description as mentioned therein the classification may not be of any relevance, inasmuch as, Chapter Heading states "84 or any other chapter". Coming to the description of goods, landing equipments are specifically covered. Of course, in order to get the benefit of this Notification, the **assessee**e is also required to satisfy condition no. 21 as mentioned therein.

For availing the benefit of the said Notification the **assessee**e had produced certificate which was issued by the Regional Airworthiness Office of DGCA and the said Regional Airworthiness Office is the delegated authority of DGCA to issue such certificate. The **assessee**e had thus fulfilled the condition laid down in Notification No. 36/96. To the same effect is the Notification No. 11/97-Part I. - conclusion of the Tribunal does not call for any interference. [**Decided against Revenue**]

INCOME TAX

NOTIFICATIONS & CIRCULARS

The **Govt. vide Instruction No. 16/2015 F. No. 197/38/2015-ITA.I dated 6 November, 2015** orders prescribed time limit in passing order u/s 12AA of the Income-tax Act, 1961.

OUR TAKE: Sub-section (2) of Section 12AA of the Income-tax Act. 1961 prescribes that every order granting or refusing registration under clause (b) of sub-section (1) of that Section shall be passed before the expiry of six months from the end of the month in which the application was received under clause (a) or clause (aa) of the sub-section (1) thereof. Thus while processing the application u/s 12AA of the Act, the time limit of six months has to be adhered to by the Commissioner of Income Tax (Exemptions).

The **Govt. vide instruction No. 17/2015, dated 9 November, 2015** notifies constitution of local committees to deal with taxpayers grievances from High-Pitched Scrutiny Assessment.

OUR TAKE: A need has been felt to lay down an institutional mechanism to quickly resolve the taxpayers' grievances arising on account of high-pitched and unreasonable additions made by the Assessing Officers. Readers are requested to read the said notification for further details.

COURT DECISIONS

COMMISSIONER OF INCOME-TAX VERSUS JAIPUR STOCK EXCHANGE LTD. (RAJASTHAN HIGH COURT)

BRIEF: Entitlement to exemption u/s 11(2). The memorandum of association does not permit the profits to be distributed between the members. The profits are provided to be utilised for services of the public utility would thus clearly fall and will qualify for exemption within the meaning of charitable purpose as defined in section 2(15).

OUR TAKE: The **Hon'ble RAJASTHAN HIGH COURT** held that it has gone through the objects of the Jaipur Stock Exchange Ltd. in the memorandum of association. The Jaipur Stock Exchange Ltd. is a company, registered by the Income-tax Department as charitable trust under section 12A of the Income-tax Act. The object of the stock exchange is not only to further the interests both of the brokers and dealers but also the public interested in securities, to assist, regulate and control the trade or business in securities, to maintain high standards of commercial honour and integrity, to promote and inculcate honourable practices, and just and equitable principles of trade and business, to discourage and to suppress malpractices, to settle disputes, and to decide all questions of usage, custom or courtesy in the conduct of trade and business. The memorandum of association does not permit the profits to be distributed between the members. The profits are provided to be utilised for services of the

public utility, would thus clearly fall and will qualify for exemption within the meaning of "charitable purpose", as defined in section 2(15) of the Act.

In our view, the question is covered by the judgment of the **Hon'ble** Supreme Court in Delhi Stock Exchange Association Ltd. v. CIT (1997 (3) TMI 11 - SUPREME Court), and CIT v. Andhra Chamber of Commerce (1964 (10) TMI 19 - SUPREME Court), CIT v. Bar Council of Maharashtra (1981 (4) TMI 8 - SUPREME Court). [**Decided in favour of assessee**]

COMMISSIONER OF INCOME-TAX AND ANOTHER VERSUS KARNATAKA STATE AGRICULTURAL PRODUCE PROCESSING AND EXPORT CORPORATION LTD. (KARNATAKA HIGH COURT)

BRIEF: Interest earned on grants made by the State Government kept in fixed deposits pending utilization. Interest on all these fixed deposits are considered to be capitalized and not revenue receipts to treat it as an income.

OUR TAKE: The **Hon'ble KARNATAKA HIGH COURT** held that the very purpose of granting ₹ 10 crores to the **assessee**e was to act as a nodal agency for implementation of the scheme. There is no profit motive as the entire fund entrusted and the interest accrued there from from deposits has to be utilised only for the purpose of the scheme originally granted. The whole of the fund belongs to the State exchequer and the **assessee**e has to channelize them to achieve the objects of centrally sponsored scheme of infrastructural development as specified in the Government order. Hence, interest on all these fixed deposits are considered to be capitalised and not revenue receipts to treat it as an income. The Tribunal considering these aspects and more particularly, following the judgment of this court in KUIDC case [2006 (2) TMI 114 - KARNATAKA High Court] has held that the interest earned on these grants is not an income, which we do not find fault with. [**Decided in favour of assessee**]

BRIGHT ENTERPRISES PVT. LTD. VERSUS COMMISSIONER OF INCOME TAX, JALANDHAR (PUNJAB) (PUNJAB & HARYANA HIGH COURT)

BRIEF: Disallowance of interest paid to the bank. The appellant/assessee had advanced an interest free loan to its sister concern. There would be a direct benefit on account of the advance made by the appellant to its sister company if the same improves the financial health of the sister company and makes it a viable enterprise.

OUR TAKE: The **Hon'ble PUNJAB & HARYANA HIGH COURT** held that the Assessing Officer's view that the advance was not for business purposes as the appellant had no business dealings with the sister company is erroneous. Commercial expediency in advancing loans does not arise only on account of there being transactions directly between the holding company and the subsidiary company or between the group companies inter se. The two companies may even be in a different line of business. It would make no difference. It would still be commercially expedient for one group company to advance amounts to another group company, if, for instance, as a result thereof the former benefits.

In the present case, as we have already demonstrated, there would be a direct benefit on account of the advance made by the appellant to its sister company if the same improves the financial health of the sister company and makes it a viable enterprise. We hasten to add that it is not necessary that the advance results in a positive tangible benefit. So long as the amount is advanced with that view in mind or with any other commercially expedient view in mind that is sufficient.

Thus the question of law is answered in favour of the appellant and against the department. The order of the Tribunal is set aside. The appellant shall be entitled to the deduction under Section 36(1)(iii). [**Decided in favour of assesse**]

STATE TAXES

ALL INDIA VAT

DELHI

The **Govt. vide Notification No. 02 of 2015 dated 4 November, 2015** notifies constitution of Bench at Chandigarh.

OUR TAKE: The notification states formation of Regional Bench at Chandigarh that shall deal with all matters arising within its jurisdiction specified in the circular in a table.

The **Govt. vide Notification No. F.3(515)/Policy/VAT/2015/1003-1014 dated 12 November, 2015** extends date returns in form EC-II & EC-III for 1st & 2nd Qtr of 15-16 to 30-11-15.

OUR TAKE: In partial modification of Notification No.F.3(515)/Policy/VAT/2015/870-81 dated 12/10/2015,

extends the last date for filing of online returns for the 1st and 2nd quarters of the year 2015-16, in Forms EC-II and EC-III to 30/11/2015.

HIMACHAL PRADESH

The **Govt. vide File No. EXN-F(10)-8/2013 dated 7 November 2015**, seek to amend Schedule II to the Local Area Act, 2010 (Act No. 9 of 2010) regarding all industrial inputs, raw material and packing material.

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

The **Govt. vide Notification No. EXN-F(10)-16/2014 dated 7 November 2015**, seek to amend Himachal Pradesh Value Added Tax (4th Amendment) Rules, 2015.

OUR TAKE: Insertion of new rules 75B, 75C, 75D, 75E and 75 Schedule II to the Local Area Act, 2010 (Act No. 9 of 2010). Readers are requested to read the said notification. It is self-explanatory.

KERALA

The **Govt. vide circular No. 26/15 C3/35960/12/CT, dated 11 November, 2015** notifies KVAT Act, 2003 on Multi-level Marketing Entities registration, payment of tax at Compounded rates.

OUR TAKE: Readers are requested to read:

1. Circular No. 5/2011 dated 31/3/2011.
2. Kerala Finance Act – 2015.
3. Circular No. 1871/C2/2014/TD dated 14/9/2015 issued by the Principal Secretary, Taxes (C) Department, Government of Kerala.

In order to streamline the functioning of the Multi-level Marketing sector in the State of Kerala and also to ensure that the revenue due to the State ex-chequer is duly received, it was announced in the Kerala Budget 2015 that all multi-level marketing companies, their distributors and agents would be made liable to take out registration under the Kerala Value Added Tax Act, 2003.

MADHYA PRADESH

The **Govt. vide Notification No. F-A-3-60/2015/1/V(35) dated 13 November, 2015** notifies levy of Additional Tax of Rs.1 per litre on petrol w.e.f. 16-11-15.

OUR TAKE: The additional tax of Rs 1 per litre on petrol shall be payable on the sale of the goods inside the State of Madhya Pradesh. The return in Form 10 as prescribed under the Madhya Pradesh VAT Rules, 2006 shall mutatis mutandis apply to the registered dealer selling the goods.

The **Govt. vide Notification No. F-A-3-58/2015/1/V(36) dated 13 November, 2015** seek to make draft Amendment of schedule II Part II, IIIA and IV.

OUR TAKE: The notification states following draft of amendments in schedule-II of Madhya Pradesh Vat Act, 2002 (No. 20 of 2002),

(i) in part-II, serial no. 22 B and entries related thereto shall be omitted;

(ii) in part-Ill A, against serial no.8, in column(3), for the figure "14", the figure "20" shall be substituted;

(iii) in part-IV, after serial no. 1, the following serial numbers and entries related thereto shall be added, namely all kinds of non-alcoholic drinks and beverages, all type of two wheeler, three wheeler and four wheeler motor vehicle, refrigerators, deep freezers, air conditioning plants and television.

MAHARASHTRA

The **Govt. vide Circular No. 17T of 2015, dated 7 November, 2015** notifies Trade Circular Physical Submission of statement of Submission and acknowledgement of Audit Report in Form 704 for the Financial Year 2014-15.

OUR TAKE: The last date for submission of audit report u/s 61 of the MVAT Act 2002, for the period 2014-15 on 15th January, 2016. After uploading their audit reports for the period 2014-15, the dealers shall submit the following documents:

I. The statement of submission of Audit Report in the format given in the notification No. VAT/AMD-2013/1B?ADM-8 dated 23rd August, 2013. The statement of submission should be duly certified with signature, stamp, seal of the dealer with date, and

Ii. The copy of Acknowledgement generated after uploading of audit Report in Form-704, duly certified with

Signature, stamp, Seal of the Dealer and Auditor, with date.
Readers are requested to refer notification for further details.

RAJASTHAN

The Govt. vide Notification No. F. 26(315) /MEA/ CCT /2014//1892 dated 10 November, 2015 extend date of second quarter return to 30-11-2015.

OUR TAKE: The notification extends the date of submission of quarterly return in Form VAT 10, for the Second quarter of the year 2015-16, i.e.; quarter ending on 30th September, 2015, to be furnished by the class of dealers covered under sub-rule (5)(b) of rule 19 of the Rajasthan Value Added Tax Rules, 2006, up to November 30, 2015.

TELANGANA

The **Govt. vide Circular-CCT's Ref No. Enft/D2/172/2010, dated 9 November, 2015** instructs mandatory usage of e-waybills by VAT dealers.

OUR TAKE: It is decided that the systems of e-waybills is mandatory for all the dealers of the Twin cities and R.R.District. Method of transporting goods of the strength of e-waybills is implemented scrupulously with effect from 01.12.2015. All the dealers of Twin Cities and R.R.District are not permitted to use the manual waybills.

COURT DECISIONS

THE STATE OF KARNATAKA VERSUS IBM INDIA PRIVATE LIMITED FORMERLY KNOWN AS M/S. IBM INDIA LTD (KARNATAKA HIGH COURT)

BRIEF: Levy of VAT on transfer of goods or not. Integration process of the developed ERP software is undertaken by the assessee by deputing ERP implementation team to render ERP implementation service.

OUR TAKE: The **Hon'ble KARNATAKA HIGH COURT** held that integration process of the developed ERP software is undertaken by the **assessee**e by deputing ERP implementation team to render ERP implementation service. What this team does is, they install the ERP software, integrate it and implement at the client's end. This implementation is performed not only by the **assessee**e's personnel but also along with the employees of the client. The members of the ERP Software implementation team of the **assessee**e play various roles in the ERP software implementation process depending on their skills. The team with the skill ensures that the ERP software is appropriately integrated in the system of the client. In the process the experts will take all necessary steps to provide functional data for the installation of the ERP software and it becomes useful for the client. In the process there is no transfer of any goods involved. Unless the goods is in existence and deliverable so that the right in the goods is transferred, VAT is not attracted. There is no marketable commodity in existence to be sold. Unless such a commodity, whether tangible or intangible, exists there cannot be a sale.

COMMERCIAL TAXES OFFICER, SPECIAL CIRCLE-II, JAIPUR VERSUS UNITED FELTS & CARPETS (RAJASTHAN HIGH COURT)

BRIEF: Exemption from tax on manufacturing of non-woven felts used in cars as a matting. Once the product manufactured by the assessee is held to be fabric the nature would remain the same and it would continue to remain as textile/fabric.

OUR TAKE: The **Hon'ble RAJASTHAN HIGH COURT** held that Tax Board has rightly come to the conclusion that it falls within the definition of "fabric" and is thus exempt. A fabric has been defined to mean "All textiles no matter how constructed, how manufactured, or the nature of the material from which made." and the expression "textile" is described as "any product manufactured from fibres through twisting, interlacing, bonding, looping, or any other means in such a manner that the flexibility, strength and other characteristic properties of the individual fibres are not suppressed". "Fabric" has also been defined as "a collective term applied to cloth, no matter how constructed or manufactured and regardless of the kind of fiber from which made. In structure it is planner produced by interlacing yarns, fibres or filaments. Textile fabrics include the following varieties, bonding, felted, knitted, braided and woven".

Once the product manufactured by the **assessee**e is held to be fabric, the nature would remain the same and it would

continue to remain as textile/fabric. **Assessee**e displayed the samples of the products in question not only before the Tax Board but was available in the file of the learned AO and the Tax Board has come to a definite finding of fact and after verification of the items has come to the conclusion that the items fully withstand the test of pliability and once the factual finding has come on record, the view of the Tax Board, after analysing the material on record, appears to be well justified. [**Decided against Revenue**]

TATA TEA LTD. AND ANOTHER VERSUS STATE OF ASSAM AND OTHERS

BRIEF: Levy of entry tax on the import of tea and local sale and inter-State sale of the blended tea is untenable.

OUR TAKE: The **Hon'ble GAUHATI HIGH COURT** held that Entry 40 of the Schedule discloses that tea is specified goods. Upon reading of sub-sections (1) and (2) of section 2, the view taken by the Commissioner does not appear to be correct. It may be that the petitioner imports the tea from outside and a part of it is sold in Assam by blending and a part of it is sold in other States as inter-State sale. He paid VAT for the sale in Assam and Central sales tax for the sale outside the State. Tea imported should be sold in the same form in order to get exemption of entry tax does not appear to be a correct view. By blending local varieties, there is no change in the nature of the product both for the local sale of local variety and after blending with the imported goods, VAT is paid and for inter-State sale Central sales tax is paid and the tea even after blending very much remains as specified goods. Levy of entry tax on the import of tea and local sale and inter-State sale of the blended tea is untenable. [**Decided in favor of assessee**]

MANISHA ENTERPRISES VERSUS STATE OF ORISSA AND OTHERS (AND OTHER CASES) (ORISSA HIGH COURT)

BRIEF: Claim of sales tax exemption on rice bran. It is not for the selling dealer to go after the purchasing dealer to find out as to in what manner he utilized the goods which it has purchased on the strength of the Declaration Forms in order to be entitled to the deduction. Such a requirement would fasten an impossible burden on the selling dealer.

OUR TAKE: The **Hon'ble ORISSA HIGH COURT** held that under Section 5(2)(A)(a)(i) of the Act the sale of any goods notified from time to time as tax free under Section 6 is deducted from the gross turnover of a selling dealer for the purpose of computation of a taxable turnover. In other words, a selling dealer, who produced evidence to show that it has sold goods covered by notification issued under Section 6 and the conditions and exceptions are complied with, is entitled to a deduction while its taxable turnover is computed. So far as Section 5(2)(A)(a)(ii) is concerned, it is found that when a selling dealer otherwise entitled to tax free purchase by giving declaration in Form XXXIV has to resell the goods in Orissa in a manner that such resell shall be subject to levy of tax under the Act. In other words, if the selling dealer in a series of sale purchases goods by giving declaration in Form XXXIV, he has to sell the same to another registered dealer in the State of Orissa in a manner that would be subject to levy of tax under the Act. It is not for the selling dealer to go after the purchasing dealer to find out as to in what manner he utilized the goods, which it has purchased on the strength of the Declaration Forms in order to be entitled to the deduction. Such a requirement would fasten an impossible burden on the selling dealer. It is the purchasing dealer, who is getting exemption on fulfilment of certain conditions. Therefore, if goods purchased on the basis of the declaration are put to a different use, the benefit of exemption is to be denied to it, i.e. the purchasing dealer. The selling dealer cannot be faulted if there is any diversion or change of user. There is no conflict of opinion in the decisions rendered by this Court in both the aforesaid cases, i.e. State of Orissa vrs. M/s. Sahoo Traders and Tilakraj Mediratta vrs. State of Orissa, (1992 (2) TMI 338 - ORISSA HIGH COURT). [**Appeal disposed of**]

OTHER UPDATES

COMPANY LAW

The **Govt. vide Notification No. F. No. 1/4/2013 CL-V dated 6 November, 2015,** seeks to further amend the Companies (Share Capital and Debentures) Rules, 2014.

OUR TAKE: The notification clarifies that:

1. (1) These rules may be called the Companies (Share Capital and Debentures) Third Amendment Rules, 2015.

(2) They shall come into force from the date of their publication in the Official Gazette.

2. In the Companies (Share Capital and Debentures) Rules, 2014,

(i) in rule 18,-

(a) In sub-rule (1), in clause (a) for sub-clause (iii) following sub-clauses shall be substituted, namely:-
"(iii) Infrastructure Debt Fund Non-Banking Financial Companies' as defined in clause (b) of direction 3 of Infrastructure Debt Fund Non-Banking Financial Companies (Reserve Bank) Directions, 2011;
(iv) Companies permitted by a Ministry or Department of the Central Government or by Reserve Bank of India or by the National Housing Bank or by any other statutory authority to issue debentures for a period exceeding ten years."

DGFT

The **Govt. vide Public Notice No. 45/2015-2020 dated 9 November, 2015** seek to make amendment in Para 2.90 (d) of HBP 2015-20.

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

The **Govt. vide Public Notice No. 46/(2015-2020) dated 9 November, 2015** seek to make amendment in Para 9.06 of Handbook of Procedure (2015-20).

OUR TAKE: Existing para: 9.06 Consumption Register:
Importer shall maintain a register as in Appendix-4G (for 3 years period) of items imported under an Authorisation and separately for items imported with actual user condition and its consumption. In respect of particular schemes such register shall be maintained for specified period
Revised Para: Para 9.06 Consumption Register
Importer shall maintain a register, as in Appendix-4H (for 3 years period) of items imported under an Authorisation and separately for items imported with actual user condition and its consumption. In respect of particular schemes, such register shall be maintained for specified period

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