



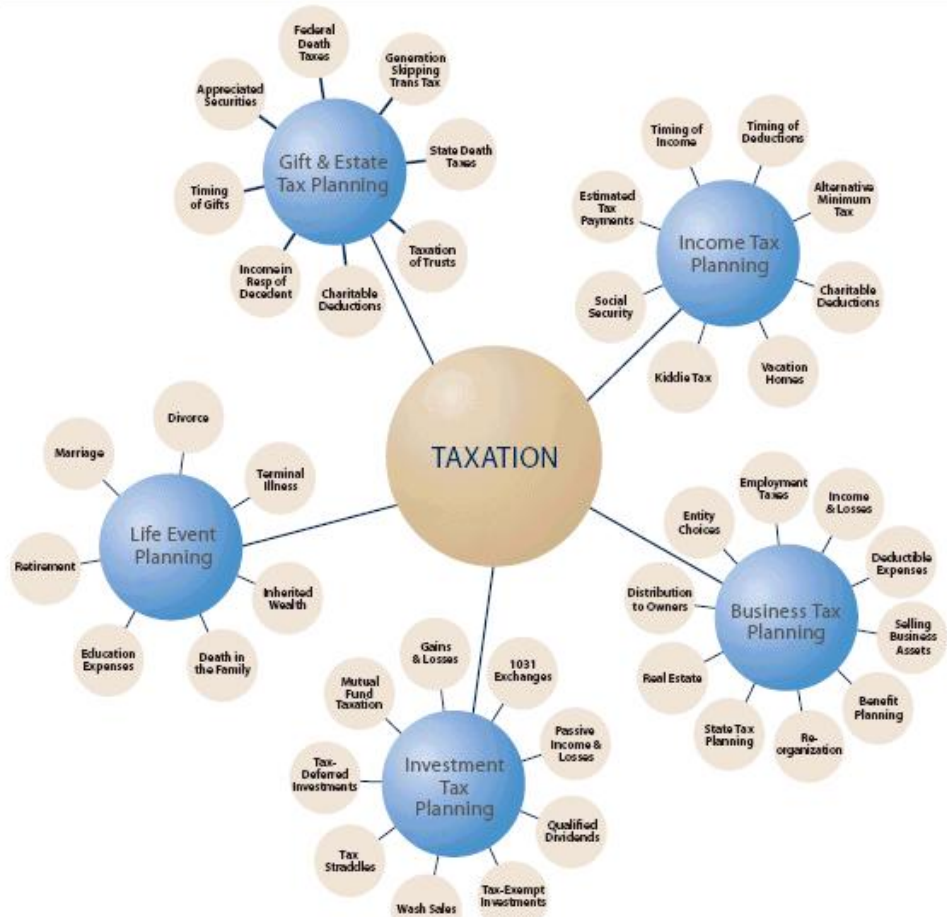
# ASC Times

All India Taxes Weekly Reference

Vol: Oct 17 - Oct23, 2016

## Solving any tax puzzle

Tax saving advice across all the taxes



## TAXCALENDER

Due Date	Description	Law
20 Oct	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	Tamil Nadu VAT
	Issue of TDS Certificate	Chhattisgarh VAT
	Return Filing	Andhra Pradesh VAT, Karnataka VAT, Manipur VAT, Punjab & Chandigarh VAT, Tamil Nadu VAT, Telangana VAT
21 Oct	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, Maharashtra VAT, Meghalaya VAT, Orissa VAT
15 Oct	Deposit of Tax	Gujarat VAT, Tamil Nadu VAT
	Deposit of TDS	Delhi VAT
	Return Filing	Tamil Nadu VAT

## COUNTRY WIDE HOLIDAYS FOR THE WEEK

Date	Occasion/Festival	Region
NA	NA	NA

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## From the CEO's Desk



Dear Reader,

Traders body CAIT on Friday proposed that the government should waive penalties on compliance errors during the first three years of rollout of the goods and services tax (GST) regime. Observing that it would be difficult for anyone to evade taxes under the new framework, CAIT said even the instances of under-invoicing will gradually wane as the tax department will have PAN-based registration and sale-purchase data of traders.

“GST will be a complex structure of taxes and we have asked the tax department to exempt traders from penalties in the transition period of first three years,” o educates traders about the new indirect tax set-up, the Confederation of All India Traders (CAIT) has entered into an MoU with Tally Solutions to train them on GST compliance and adoption.

The government plans to roll out GST from April 1 next year. The GST will subsume excise, service tax and other local levies.

Khandelwal said the next meeting of the GST Council, to be chaired by Finance Minister Arun Jaitley, later this month will decide on tax rates, products and compliance and after that, CAIT will prepare the working module for traders. A standard GST rate of 18% would be “justified”, and at that rate, the investment cost of traders will be less, he told reporters here.

Asked about the fate of traders who do not give bills at present, Khandelwal said the GST design does not have this option. “We have to give sales details to the tax department and hence, there will be no scope of under-invoicing as over a period of time, all data will go to the tax department,” he said.

CAIT National President B C Bhatia said that since GST registration is PAN based, so the government will get to know how many traders have not registered from its own

database. “The purchase ledger of traders is with the government. So, by under-reporting of sales, if stocks start piling up, the tax department will ask why are you purchasing? With so much data, it will become difficult to evade taxes,” Bhatia reasoned. He said last-mile disposal by an importer will come under the tax lens through Integrated GST and hence, under-billing will become difficult.

Alok Kumar Agarwal

CEO

ASC Group.

## SERVICE TAX

### COURT DECISIONS

#### STATE OF RAJASTHAN VERSUS UNION OF INDIA AND OTHERS [ SUPREME COURT ]

**BRIEF:** Levy of service tax - security services - sovereign functions - After choosing one particular remedy the plaintiff cannot avail the other remedy as well, in respect of the same relief founded on same cause of action.

**OUR TAKE:** The hon'ble SUPREME COURT held that order passed by the Assessing Officer, the plaintiff had even preferred an appeal before the Commissioner, Central Excise, Jaipur, which appeal was dismissed by the Commissioner. Not only has this, against the order of the Commissioner, the plaintiff filed statutory appeal before the Customs Excise & Service Tax Appellate Tribunal (CESTAT), which is pending consideration by the CESTAT. **[Decided against petitioner]**

#### M/S. DAYS INN DECCAN PLAZA (A UNIT OF DECCAN'S PARK) VERSUS COMMISSIONER OF SERVICE TAX (APPEALS) -I, ADDITIONAL COMMISSIONER OF SERVICE TAX [MADRAS HIGH COURT]

**BRIEF:** Cenvat Credit - eligible input services - When they filed the previous Written Petition, merits of the petition was canvassed, therefore, once over again the petitioner cannot be allowed to raise the same grounds and the petitioner is stopped from doing so.

**OUR TAKE:** The Hon'ble MADRAS HIGH COURT held the service rendered by AHPL to the petitioner in the capacity of full-fledged Operator of the Hotel and arranging catering, rooms and thereby promoting hospitality service of the Five Star Hotel comparable standards. Secondly, service rendered by AHPL cannot be allowed as eligible input service for the petitioner so as to provide the relief in terms of Rule 6(5) of the Cenvat Credit Rules. The findings rendered by the second respondent is perfectly justified and valid. **[Decided in favour of assessee]**

#### M/S. KALBHOR CONSTRUCTION CO. VERSUS COMMISSIONER OF CENTRAL EXCISE, PUNE [CESTAT MUMBAI]

**BRIEF:** Levy of penalty - delay in payment of service tax - appellant had collected the service tax but not deposited the same at the same time, but deposited before issuance of show cause notice.

**OUR TAKE:** The hon'ble CESTAT MUMBAI held that the decision of the Hon'ble High Court [2016 (2) TMI 174 - GUJARAT HIGH COURT] has been given in circumstances where the appellant had not filed the requisite periodical returns and the fact of non-payment of service tax came to light only on the result of special investigation. In the instant case, appellant has been filing regular returns and therefore there could not have been any specific intention to evade duty. In these circumstances, the decision of the Hon'ble High Court of Gujarat is distinguishable. - Relying on the decision of the Tribunal in Vista InfoTech (2009 (8) TMI 289 - CESTAT, BANGALORE) we hold that the penalty under Section 78 is unwarranted and the same is set aside. However, penalty under Section 77 is upheld. **[Decided partly in favour of assessee]**

#### M/S. HOT SPOT COLOR LAB. VERSUS C.C.E. INDORE [CESTAT NEW DELHI]

**BRIEF:** Refund claim - period of limitation - the payments made by the appellant were on account of differential amount of service tax and was not mere deposit during the period of investigation, the provisions of section 11B would admittedly apply.

**OUR TAKE:** The hon'ble CESTAT NEW DELHI held that the payments made by the appellant were on account of differential amount of service tax and was not mere deposit during the period of investigation, the provisions of section 11B would admittedly apply. As per the said provisions, the refund can be staked only within the period of one year from the relevant date. The authorities working under the said act are bound by the provisions of the act, and cannot travel beyond section 11B - the refund claim having filed after a period of one year from the date of payment of the same, stands rightly rejected on the ground of limitation - appeal rejected. **[Decided against appellant]**

#### M/S CRISIL LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, THANE [CESTAT MUMBAI]

**BRIEF:** Classification of service - credit rating activity - the advisory service provided by the appellant does not fall under the category of Management Consultancy Service, however it is correctly classifiable under Banking and Other Financial Services.

**OUR TAKE:** The humble CESTAT MUMBAI held on the services in question the appellant has been paying Service Tax under the head of Banking and Other Financial Services w.e.f. 16.08.2002 and the Department had accepted the

same. That being so, the Department cannot demand Service Tax on the very same activity under the category of Management Consultancy Service. The decision in the case of HSBC SECURITIES & CAPITAL MARKETS (I) PVT. LTD. Versus COMM. OF ST., MUMBAI [2008 (6) TMI 159 - CESTAT MUMBAI] relied upon where it was held that advisory and due diligence services on acquisition of shares in listed companies rendered to an existing organisation cannot be considered to be Management Consultancy Service.. **[Decided in favour of Appellant]**

#### **M/S. JAGJIT INDUSTRIES LTD. VERSUS CCE, LUDHIANA (VICE-VERSA) [CESTAT CHANDIGARH]**

**BRIEF:** Intellectual Property Rights - whether the manufacturing/tie up based agreement entered into by the appellant-assessee with bottlers can be considered as agreement for payment of royalty by the bottlers to the appellant-assessee liable to service tax.

**OUR TAKE:** The hon'ble CESTAT CHANDIGARH held on careful perusal of the terms of both agreements, we find that there are substantial material differences and the tie up agreement cannot be considered for service tax liability under the category of royalty payment. We find that though the lower authority noted the contents of both Board's circular dated 27.10.2008 to the effect that tie up based agreements are not covered the IPR services for service tax, he proceeded to record that in the present case manufacturing agreement are essentially same as royalty based agreement except for difference of methodology used for calculation of royalty. We also find that the lower authorities fell in error in appreciating the provisions of the terms of contract vis-a-vis the position categorically clarified by the Board on 27.10.2008 and 30.10.2009. - No service tax liability - **[Decided partly in favour of appellant]**

#### **MEN POWER SECURITY AGENCIES VERSUS COMMISSIONER OF C. EX. & S.T., MEERUT [CESTAT NEW DELHI]**

**BRIEF:** Refund claim - Unjust enrichment - Service recipient has reversed the Cenvat credit subsequently after availing the same - copies of ledger produced - seen to have clearly established that there is no unjust enrichment.

**OUR TAKE:** The hon'ble CESTAT NEW DELHI held the appellant had produced the ledgers maintained by the recipient of services, M/s. Ashok Hall Girl's Residential School vide the entry dated 28-3-2014 in the ledger, which clearly records debit of 2,48,600/- earlier credited to the appellant towards Service Tax. Thus the component of Service Tax earlier borne by the service recipient and passed on by the appellant, stood reversed by the school and stood debited from the consideration due to the appellant from the school. In the circumstances, the appellant is seen to

have clearly established that there is no unjust enrichment. Since unjust enrichment was the sole ground for denial of refund and that is not found to exist in the facts and circumstances of this case, the appellant is entitled to refund. **[Decided in favour of appellant]**

#### **Oil & Natural Gas Corporation Limited Versus C.C.E., Cus. & S.T., Surat-II [CESTAT AHMEDABAD]**

**BRIEF:** Suo motu adjustment of excess payment of service tax made in October, 2008 with subsequent service liability - procedural violation - demand of service tax of the said amount is not sustainable.

**OUR TAKE:** The hon'ble CESTAT AHMEDABAD held that there is no dispute that the appellants have paid excess service tax during the period from April, 2008 to September, 2008. Therefore, they are eligible for getting back the excess amount paid, either by way of refund or by adjustment. The appellants choose to re-adjust the same suo motu. It is apparent that they have not followed the procedures in this regard. However, the fact remains that they were entitled for the amount. Therefore, demand of service tax of the said amount is not sustainable. **[Appeal disposed of]**

#### **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.

## **CENTRAL EXCISE**



## NOTIFICATION / CIRCULAR

**The Govt. vides Notification No. 48/2016 dated 07<sup>th</sup> Oct 2016;** amends Notification No. 27/2014-Central Excise(NT), dated 16<sup>th</sup> Sep 2014.

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

## COURT DECISIONS

**COMMISSIONER OF CENTRAL EXCISE, MUMBAI-I VERSUS M/S. FOUR CIRCLE CLOTHING CO (CESTAT MUMBAI)**

**BRIEF:** SSI Exemption - whether after assignment agreement in respect of brand name, it can be inferred that the respondent is using the brand name of another person and accordingly not entitled for the S.S.I. exemption Notification No. 8/2001-CE - Held No - Benefit of exemption allowed.

**OUR TAKE:**The hon'ble CESTAT MUMBAI held as regard assignment agreement, there is no dispute in the facts of legal assignment of the brand in favour of the respondent vide agreement. Therefore, agreement stands legal and in force. Ld. Commissioner (Appeals) held the admissibility of exemption notification relying on the judgment of Collector of C.Ex., Ahmedabad vs Vismara Trading & Invest P. Ltd. [2003-SUPREME COURT OF INDIA], wherein under identical set of facts, the S.S.I. exemption Notification was allowed despite the fact that the assignment was not registered. We find that the said judgment is squarely applicable in the present case. Therefore, here is no infirmity in the order of Ld. Commissioner (Appeals) in as much as the S.S.I. exemption was extended to the respondent based on assignment agreement. **[Decided against the revenue]**

**M/S JAYASWAL NECO INDUSTRIES LIMITED VERSUS CCE, RAIPUR. [CESTAT NEW DELHI]**

**BRIEF** Cenvat credit - railway tracks are embedded to earth - the structural items used in the fabrication of support structures would fall within the ambit of Capital Goods as contemplated under Rule 2(a) of the Cenvat Credit Rules, hence will be entitled to the Cenvat Credit.

**OUR TAKE:** Thehon'ble CESTAT NEW DELHI held that the eligibility of manufacturer for availing credit on various steel items like in the present case has been a subject matter of decision by the Tribunal and Hon'ble High Courts and Hon'ble Supreme Court. In the appellant s own case the Hon'ble Supreme Court (2015 (4) TMI 569 - SUPREME COURT) held that railway track and equipment's used for

handling raw material are eligible for credit. Admittedly, railway tracks are embedded to earth and are not regularly moved from place to place. **[Decided in favour of assessee]**

**CCE, CHANDIGARH-L VERSUS. NATIONAL CONDUIT PIPES, NATIONAL CONDUIT PIPES, VIVEK STEEL TUBES, R.M. STEELS (P) LTD., G.C. SPINTEX, R.S. STEELS, NATIONAL STEEL PIPES, R.K. INDUSTRIES, RAMESH KUMAR, SHAM LAL, BIMAL KUMAR, HARISH SHARMA VINOD SHARMA, SANJAY BABBAR, YOGESH KUMAR, THE TRUCK OPERATONS UNION AND JANTA ROAD CARRIERS (CESTAT CHANDIGARH)**

**BRIEF:** SSI Exemption - dummy units - There is no financial flow back and there is no mutuality of interest between the units. Therefore, not all the four units can be clubbed together.

**OUR TAKE:** Thehon'ble CESTAT CHANDIGARH held the facts are similar to the facts in the case of Nova Industries Pvt.Ltd. and on the analysis of that decision, it is held that all the units are having separate machinery, separate registration number and dealing separately. There is no financial flow back and there is no mutuality of interest between the units. Therefore, all the four units cannot be clubbed together and the same has been confirmed by the adjudicating authority in the impugned order giving detailed findings on the issue after her personal inspection of the units. In the circumstances, it can be held that the all the units cannot be clubbed together and the respondents are entitled to the benefit of SSI exemption from time to time - issue answered in favour of respondent. **[Decided in favour of appellant]**

**M/S WELSPUN CORPORATION LIMITED AND M/S WELSPUN PROJECT LIMITED VERSUS CCE, CHANDIGARH-II. [CESTAT CHANDIGARH]**

**BRIEF:** WCL availed CENVAT credit on the inputs for manufacturing of their final product before production of exemption certificate by M/s GMADA, the appellant has rightly availed CENVAT credit on inputs.

**OUR TAKE:** Thehon'ble CESTAT NEW DELHI held that the Revenue has failed to appreciate the fact that inputs are available for credit at the time of start of manufacture of the goods. There is a great difference between manufacture and their clearance. In this case manufacturing process started much earlier before the date when the exemption certificate was obtained by M/s GMADA. Prior to obtaining the exemption certificate, the character of final manufactured goods was dutiable, in that circumstances, the CENVAT credit availed by the appellant is in accordance of law. The same view was taken by Hon'ble High Court of Bombay in the case of CCE, Thane I vs. Nicholas Primal (India) Ltd. [2009 (8) TMI 224 - BOMBAY HIGH COURT]. **[Decided in favour of appellant]**

**M/S KANORIA CHEMICALS & INDUSTRIES LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, ALLAHABAD. [CESTAT ALLABHAD]**

**BRIEF:** Exemption Notification No.108/95-CE dated 28.08.1995 - goods not supplied directly to UNICEF but were supplied to project assisted and Financed by UNICEF - benefit of exemption allowed

**OUR TAKE:** The hon'ble CESTAT ALLABHAD held the said notification as amended by notification No.40/99 dated 02/11/99 at clause (b) (i) provides that the goods supplied to organizations appearing in the annexure for the projects that is approved by Government of India and finance by such organizations and certified by such organization that the said goods are intended for such use, then such goods are exempted from the whole of duty of Central Excise. We find that various certificates and purchase orders and instruction of UNICEF to deliver the goods at various places and certificate issued by Procurement Officers of UNICEF which were produced before the first appellate authority were sufficient proof to establish the eligibility of appellant to the benefit of the said notification No. 108/95. – **[Decided in favour of appellant]**

**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]**

## CUSTOM

### NOTIFICATION / CIRCULAR

**The Govt. vides Notification No. 126/2016 dated 03<sup>rd</sup> Oct 2016;** notifies Fixation of Tariff Value of Edible Oils, Brass Scrap, Poppy Seeds, Areca Nut, Gold and Silver-Reg.

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

### COURT DECISIONS

**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 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 also been fulfilled. The notification covers the machine imported by the appellants. Appellant succeeds on both counts. The appeal is allowed. [Decided in favor 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 mis-declaration of description or value. In this case it is not so. [Decided in favour of assessee]

**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 AHMEDABAD]**

**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 AHMEDABAD held that the assessee company is not a shareholder 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 Id. CIT(A). We uphold the same. [Decided in favour of assessee]

**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), 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.

**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 KOLKATA]**

**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 KOLKATA** 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 AHMEDABAD]**

**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 AHMEDABAD** held that the Assessing Officer invoked the impugned disallowance quoting assessee's 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

### DADAR & NAGAR HAVELI

The Govt. vides Notification No. ADM/VAT/EMP.COMM/2012/1626 dated 13<sup>th</sup> Oct 2016, notifies increase in rate of tax from 4% to 5% in respect of goods specified in Third Schedule.

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

### COURT DECISIONS

#### **THE COMMISSIONER OF SALES TAX VEORSUS 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 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 gets reinforced and deserves affirmation. **[Decided against the revenue]**

## 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. 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 VERSUS 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.

## GST ALERTS

### WAREHOUSING UNDER GST SCENERIO

Reorganization of the warehousing strategy will be based on the three major factors and optimizing on these factors

1. Consumption data at state/district and retail level along with future consumption growth
2. Optimizing and balancing the real estate costs with transportation costs
3. A look at future road network development, online and big retailer's consumption and power supply availability (24X7).

GST is bound to impact the supply chain of a business. One of the important components of supply chain is warehousing.

Today, if a company decides to sell goods to a distributor (or dealer) in another state such a sale will be subject to the Central Sales Tax (CST). As CST is non-creditable in the hands of the distributor, it becomes a cost in the supply chain and eats into the margins of either the company or its distributor. If the same sale is routed through a warehouse, it does not attract any CST. Many companies therefore use the warehouse model to save on the tax costs, besides other logistics advantages of having warehouses in specific locations. However, they have to bear with the additional cost of maintaining warehouses. The exporting states- i.e. the states from where the goods have moved- also put a restriction on the VAT credit on inputs when finished goods are transferred to warehouses. As long as the cost of these two items is less than the cost of CST, the warehouse model can still be profitable. Such companies typically set up warehouses in almost every state.

The tragedy in such cases however is that such decisions with regard to the location and number of warehouses are more influenced by tax efficiencies rather than operating and commercial efficiencies.

Under GST, seamless tax credits are likely to be available at each point in the supply chain. The requirement of having a warehouse in almost every state where the company has customers may no longer remain a necessity. This would encourage companies to rearrange warehouses. While on one hand, the adjoining areas of states like Delhi, Haryana,

Rajasthan, UP and even Punjab can have a single warehouse, bigger states can have more than one warehouse depending upon the concentration of customers and other business considerations. In most cases companies, can have fewer but more strategically located warehouses. The decisions relating to the location/number of warehouses would be driven by considerations like logistics costs, customer service considerations, just-in-time (JIT) inventory and not by tax considerations.

But one must remember that these advantages also come with a compliance requirement of taking credits and paying taxes, maintaining records and filing returns at each warehouse. This would add to compliance costs.

The best supply chains aren't just fast and cost-effective. They should also be flexible and adaptable. Till date, tax had stopped businesses from creating supply chains that are cost effective, fast as well as flexible. Now is the opportunity to rework the supply chain to help derive maximum benefit – operationally as well as financially. This would no doubt take time. But those additional few months' companies have got due to the non-passing of the GST bill in the last winter session of parliament, can be effectively used for this purpose.

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