



# ASC Times

All India Taxes Weekly Reference

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## Solving any tax puzzle

Tax saving advice across all the taxes



## From the CEO's Desk



Alok Kumar Agarwal

CEO

ASC Group.

Dear Reader,

This year also Finance Minister Mr. Arun Jaitley had announced in the Budget for a four-month compliance window for domestic taxpayers to declare their undisclosed income or asset and clear up past tax transgressions by paying tax, penalty and surcharge totaling 45% of the undisclosed income. "We plan to open the window under this Income Disclosure Scheme from June 1 to September 30, 2016 with an option to pay amount due within two months of declaration," Jaitley had said. According to the sources, any notification of the compliance window and the explanatory circular will be issued once the Finance Bill would be passed in the Parliament around mid of May this year.

This year the compliance window however would be different from that of last year's compliance window. This year disclosures made under it which is beginning June 1<sup>st</sup> will not get immunity from criminal offences like corruption, or fraud under IPC, although there will be no scrutiny of the declarations under the I-T Act. Such declarations will have immunity from prosecution for non-disclosure of wealth under Wealth Tax and certain provisions of Benami Transaction (Prohibition) Act.

Met department is hopeful for a good monsoon this year. Not only farmers are driven with this feeling but also it is affecting the Sensex. The market opened in the positive territory on hopes of a good monsoon. The bulls fearlessly pushed the markets higher by 3.9 per cent at the close of the week. On the other hand, the Government is considering a proposal to make it mandatory for foreign players entering the food-processing sector to invest part of their FDI in developing back-end agriculture infrastructure. Also the IMF retained India's GDP forecast for this fiscal year and the next, confirming its status as the world's fastest growing major economy, as it pared the global expansion estimate, citing weakening worldwide recovery amid increasing financial turbulence.

## TAX CALENDER

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

## COUNTRY WIDE HOLIDAYS FOR THE WEEK

Date	Occasion/Festival	Region
20 April	Mahavir Jayanti	Chandigarh, Chhattisgarh, Dadar & Nagar Haveli, Daman & Diu, Delhi, Haryana, Karnataka, Madhya Pradesh, Maharashtra, Rajasthan, Tamil Nadu, Uttar Pradesh,

## INDEX GUIDE

TOPIC	PAGE NO.
Service Tax	4-5
Central Excise	6-7
Customs	7-8
Income Tax	9-9
State Taxes	10-10
Other Updates	11-11
Our Contacts	12

# CENTRAL TAXES

## SERVICE TAX

### CIRCULARS & NOTIFICATION

**The Govt. vide Notification No. 22/2016-CX date 13<sup>th</sup> April 2016**, amends notification no. 25/2012 service tax dated 26<sup>th</sup> June 2012, so as to exempt from service tax, certain services provided by Government or a local authority to business entity.

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

**The Govt. vide Notification No. 23/2016-CX date 13<sup>th</sup> April 2016**, amends amend rule 6 sub-rule (2), of Service Tax (Determination of Value) Rules, 2006.

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

**The Govt. vide Notification No. 23/2016-CX date 13<sup>th</sup> April 2016**, amends amend rule 7 of Point of Taxation Rules, 2011.

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

**The Govt. vide Circular No. 192/02/2016-ST date 13<sup>th</sup> April 2016**, provides clarification on issues regarding levy of Service Tax on the services provided by Government or a local authority to business entities.

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

### COURT DECISIONS

**Disha Securities And Manpower Private Limited. Versus Assistant Commissioner of Service Tax [DELHI HIGH COURT]**

**BRIEF:** Date for deposit of Service tax by cheque - VCES Scheme, 2013 - With the cheque having been realized, the date on which the service tax should be taken to have been paid, is deemed to be the date of presentation of the said cheque in terms of Rule 6(2A) of the ST Rules.

**OUR TAKE:** The hon'ble **DELHI HIGH COURT** held that It is not in dispute that the assessee deposited the cheque constituting 50% of the service tax dues in terms of the VCES Scheme 2013 on 31.12.2013 and it was realised on 8.1.2014. With the cheque having been realized, the date on which the service tax should be taken to have been paid, is deemed to be the date of presentation of the said cheque in terms of Rule 6(2A) of the ST Rules. **[Decided in favour of assessee]**

**PR. COMMISSIONER OF SERVICE TAX VERSUS MPORTAL (INDIA) WIRELESS SOLUTIONS PVT. LTD. [KARNATAKA HIGH COURT]**

**BRIEF:** Cenvat credit - Information Technology software services - Such services are made taxable by Clause (zzzze) of Sec. 65(105) of Finance Act, 1994 with effect from 16.5.2008 - Credit allowed.

**OUR TAKE:** The Hon'ble **KARNATAKA HIGH COURT** held that it is true that such services are made taxable by Clause (zzzze) of Sec. 65(105) of Finance Act, 1994 with effect from 16.5.2008 but thereby it is not possible to accept the contention that, they were no service at all. Further, appellant before the Tribunal has never raised such a contention. **[Decided against the revenue]**

**SIMPLEX INFRASTRUCTURES LTD. VERSUS COMMISSIONER OF SERVICE TAX, KOLKATA [KOLKATA HIGH COURT]**

**BRIEF:** Maintainability of Writ petition - as per law an authority cannot confer on itself jurisdiction to do a particular thing by wrongly assuming the existence of a certain set of facts, existence whereof is a sine qua non for exercise of jurisdiction by such authority - Petition non maintainable.

**OUR TAKE:** The hon'ble **KOLKATA HIGH COURT** held the language of the notice suggests that the demand raised therein is per-determined. It is quite evident that the Commissioner issued the impugned show cause notice at the instance of CERA without any independent application of mind and, thereby, abdicated his powers and duty, which is not permissible in law. Service contracts simpliciter and not composite works contracts come within the service tax net under the provisions of the Finance Act. The petitioner is involved in performance of composite works contracts and vivisection of such contracts to segregate the service element and impose service tax on the same is not permissible. **[Decided in favour of petitioner]**

**COMMISSIONER OF SERVICE TAX, MUMBAI – I, J.M. FINANCIAL SERVICES PVT LTD VERSUS J.M. MORGAN STANLEY RETAIL SERVICES PVT. LTD. (SINCE RENAMED AS JM FINANCIAL SERVICES PVT LTD) , COMMISSIONER OF SERVICE TAX [CESTAT MUMBAI]**

**BRIEF:** Tax liability - Banking and other financial services Merely because the remuneration is designated as 'brokerage' and because the recipient of that 'brokerage' is a 'body corporate', the transaction cannot be taxable.

**OUR TAKE:** The hon'ble **CESTAT MUMBAI** held that the remuneration is designated as 'brokerage' and because the recipient of that 'brokerage' is a 'body corporate' is not sustainable in the light of intent to tax the activity of 'banking and other financial services' without a clear finding that the bond is a tradable security and that the recompense flows to M/s JM Financial Services Pvt. Ltd from a buyer or seller under a 'brokering' contract. The impugned order fails that test of coverage under section 65(105) of Finance Act as a 'taxable service.' **[Decided against the revenue]**

**WANBURY LIMITED VERSUS COMMISSIONER OF CENTRAL EXCISE, CUSTOMS & SERVICE TAX, RAIGAD [CESTAT MUMBAI]**

**BRIEF:** Demand - Procurement of goods or services, which are inputs for the client are to be classifiable and taxable under business auxiliary service u/s 65(19).

**OUR TAKE:** The hon'ble **CESTAT MUMBAI** held that the taxability of amounts charged from the client is not in doubt. Therefore, the impugned order is upheld only to the extent of 9, 19,094/- for rendering 'business auxiliary service' with interest thereon. The demand of tax for rendering 'scientific or technical consultancy service' does not survive. Penalties are set aside. **[Appeal disposed of]**

**ZAHEER VAKIL ESTATES PVT LTD VERSUS COMMISSIONER OF CENTRAL EXCISE, PUNE -III [CESTAT MUMBAI]**

**BRIEF:** Abatement under notification no. 1/2006-ST dated 1.3.2006 - Commercial or industrial construction service rendered to 100% EOU - Denial of substantial benefit of abatement owing to availment of CENVAT credit, does not appear to be equitable particularly as the amount has been made good - Abatement allowed.

**OUR TAKE:** The hon'ble **CESTAT MUMBAI** held that the reversal is sufficient to render the availment to be non-existent. Consequently, appellant is entitled to abatement as computed at the time of discharge of service tax in march 2006 followed by decision of this Tribunal in the case of BG Shirke Technology P Ltd v Commissioner of Central Excise, Pune II [2012 - CESTAT, MUMBAI]. **[Decided in favour of appellant]**

**COMMISSIONER OF SERVICE TAX, MUMBAI II VERSUS EVONIK ENERGY SERVICES [CESTAT MUMBAI]**

**BRIEF:** Refund claim - Services needs to be reclassified by Revenue should be by issuing a show cause notice as reclassification in a refund claim is an incorrect appreciation of law - Refund allowed.

**OUR TAKE:** The hon'ble **CESTAT MUMBAI** held that revenue authorities cannot reclassify the services rendered by the respondent assessee in a refund claim filed by the respondent. Therefore, the impugned order is correct, legal and does not suffer from any infirmity. The cross objection filed by the respondent assessee being in support of the said impugned order is also disposed of. **[Decided against the revenue]**

**COMMISSIONER OF SERVICE TAX, MUMBAI-II VERSUS POLYDRILL ENGINEERS PVT. LTD. [CESTAT MUMBAI]**

**BRIEF:** Service tax liability - Undertaking of maintenance or repair services for self and for client do not attract tax liability under Management maintenance and repair service w.e.f. 01-05-2006.

**OUR TAKE:** The hon'ble **CESTAT MUMBAI** held that the government has enlarged the scope of services under "Business Support Services" w.e.f. 01-05-2011 by including services in respect of "Operational or Administrative assistance in any manner" which may cover the operation of plant. Since these services were taxable w.e.f. 01-05-2011 under "Business Support Services", it is not taxable under Management, Maintenance or Repair Services for earlier period but the same is forfeited by one of the Tribunal's order. **[Decided against the revenue]**



## CENTRAL EXCISE

### CIRCULARS & NOTIFICATION

**The Govt. vide Circular No. 1024/12/2016-CX date 11<sup>th</sup> April 2016**, provides clarification regarding re-refined used or waste oil.

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

### COURT DECISIONS

#### M/S MARUTI UDYOG LTD. VERSUS UOI & OTHERS (DELHI HIGH COURT)

**BRIEF:** If the taxpayer has filed within the statutory time a legally valid reference application under Section 256(1) or 256(2) of the IT Act (corresponding to Section 35G of the CE Act) 1944 "the condition of pendency of reference could be said to have been satisfied - Sufficient for accepting the declaration filed under the KVSS.

**OUR TAKE:** The hon'ble DELHI HIGH COURT held that it has been clarified that there could be cases where there may be no procedure for admitting an appeal and in such cases the mere proof of filing an appeal would be sufficient. In other words, as far as the RA filed by the Petitioner is concerned, since there does the Petitioner under the KVSS file no procedure of 'admitting' such an RA, the mere proof of pendency of the RA before the CESTAT should be sufficient for accepting the declaration. **[Petition disposed of]**

**M/S. SHREE SIDHBALI ISPAT LTD., M/S. SHRIDHAR CASTINGS PVT. LTD., M/S. SHREE BALAJI STEEL INDS., M/S. RAMSONS TMT PVT. LTD., SHRI DARPAN KADI, M/S. SANGAM MOUNT TRANSPORT CORPORATION, M/S. RAMSONS CASTING PVT. LTD., SHRI NATWARLAL VALLABHADAS DHOLAKIA, M/S. CHANDDA TRANSPORT, M/S. AKOLA GOODS TRANSPORT, M/S. SHREE VYENKATESH CASTING PVT. LTD., SHRI ANIL KANSAL, SHRI K.K. PANDEY, M/S. DASHMESH NATIONAL ROADWAYS, M/S. BHAGYALAXMI STEEL ALLOYS P. LTD., M/S. OMCO STEEL PVT LTD., M/S. ORANGE CITY ALLOYS PVT. LTD., M/S. SHREE STEEL CASTING PVT. LTD. AND M/S. KAMBOJ ISPAT PVT. LTD. VERSUS CCE NAGPUR (CESTAT MUMBAI)**

**BRIEF:** Clandestine removal cannot be sustained based merely on transporters records, which are not corroborated by any other evidence.

**OUR TAKE:** The hon'ble CESTAT MUMBAI held that the Panchnama as clearly record that the stock positions have been worked out based on theoretical calculations by assuming the length, breadth, width of the raw materials/finished goods. Such theoretical calculations cannot be the basis for foisting demand because of shortages. In short, the investigation has failed to establish the case of clandestine removal. **[Decided in favour of assessee]**

**M/S. HIMALAYA ENGINEERING COMPANY AND SHRI RAMESHKUMAR C RAJPUT AND COMMISSIONER OF CENTRAL EXCISE & S.T., AHMEDABAD VERSUS COMMISSIONER OF CENTRAL EXCISE & S.T., AHMEDABAD AND M/S. HIMALAYA ENGINEERING COMPANY [CESTAT AHMEDABAD]**

**BRIEF:** Non obtaining of Central Excise registration on reaching full exemption limit of Rs. One Crore -Penalty confirmed.

**OUR TAKE:** The hon'ble CESTAT AHMEDABAD held that the adjudicating authority had not extended the option of payment of 25% of the duty under Section 11AC and therefore, extending the same to the appellant by the Commissioner (Appeals) in the impugned order is justified. We also find force in the arguments of the learned Consultant that separate penalty should not be imposed on Appellant No.2 who is partner of the firm, as penalty has already been imposed on the partnership firm.

**M/S RUNGTA MINES LTD, M/S RUNGTA SONS PVT LTD, M/S SAIL, M/S KAMAL JEET SING AHLUWALIA, M/S ODISHA MINING CORPORATION LTD VERSUS COMMISSIONER OF CENTRAL EXCISE, CUSTOMS AND SERVICE TAX, BBSR-II (CESTAT KOLKATA)**

**BRIEF:** Application of processes of crushing, grinding, screening and washing and grading of iron ore, converts it into iron ore concentrates and accordingly in view of the chapter note 4 of chapter 26 becomes manufacture and leviable to Excise duty.

**OUR TAKE:** The hon'ble CESTAT KOLKATA held that in absence of an increase in the Fe content by beneficiation or any other method, if there cannot be a manufacturing process, the chapter note 4 inserted with effect from 01.3.2011 defeat the very purposes and becomes otiose. Such a situation, in our opinion, cannot be the intention of the legislature. Therefore, in our considered opinion application of processes of crushing, grinding, screening and washing and grading of iron ore, converts it into iron ore concentrates and accordingly in view of the chapter note 4 of chapter 26 becomes manufacture and leviable to Excise duty.

**COMMISSIONER OF CENTRAL EXCISE, PUNE-II VERSUS SHRI K.B. CHOUGULA, M/S GHATGE PATIL INDUSTRIES LTD., SHRI M.L. SHINDE, MOHD. HANDU SAIFULLA CHOUDHARY, SHRI KIRAN J PATIL AND M/S STEEL INDIA COMPANY [CESTAT MUMBAI]**

**BRIEF:** Cenvat credit - Goods not received in the factory - As per Rule, the onus of establishing that the goods have been received in the factory is on the person who has taken the credit.

**OUR TAKE:** The hon'ble **CESTAT MUMBAI** held that there has been no effort on the part of respondents to fulfil the requirement of Rule 9(5) by proving the receipt of goods by them in terms of Rule 9(5) of the Cenvat Credit Rules. The Commissioner (Appeals) has wrongly placed the onus on the Revenue to establish that the goods have not been received. Therefore, the impugned order to that extent is set aside and for establishing the receipt of goods in terms of Rule 9(5) of the Cenvat Credit Rules, the matter is remanded back..

**COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX, BOLPUR VERSUS M/S. VISION SPONGE IRON PVT. LTD. [CESTAT KOLKATA]**

**BRIEF:** Cenvat credit - Storage tank fully embedded to the ground remain the goods and inputs like TOT/TMT Rods, Cement used in the manufacture of water tank to purify water for use in their Captive Power Plan are classified as inputs - Credit allowed.

**OUR TAKE:** The hon'ble **CESTAT KOLKATA** held that by relying on the decision of Karnataka High Court in the case of Commissioner of Central Excise, Bangalore-II vs. SLR Steels Ltd. [2012 - KARNATAKA HIGH COURT] as considered by the First Appellate Authority also which is squarely applicable to the facts and circumstances of the present appeal, the appellant is admissible for Cenvat credit. **[Decided against the revenue]**

## CUSTOMS

### COURT DECISIONS

**SHIV SHAKTI TRADING COMPANY VERSUS THE COMMISSIONER OF CUSTOMS (PREVENTIVE) & ANOTHERS [DELHI HIGH COURT]**

**BRIEF:** Release of seized goods - Despite the waiver of right to be given a SCN u/s 110(2), if no adjudication order was passed for a period of one year after the seizure, the petitioner could not be bound by such waiver after the expiry of the time limit u/s 110(2) - Goods to be released.

**OUR TAKE:** The hon'ble **DELHI HIGH COURT** held that despite the waiver by the petitioner of the right to be given a SCN in terms of Section 110(2) of the Act, no adjudication order was passed for a period of one year after the seizure. Such waiver could therefore, not bind the Petitioner after the expiry of the time limit under Section 110(2) of the Act. In such circumstances, there was no justification for the respondents to continue to detain the goods seized - Therefore, it is directed that the goods seized be forthwith released unconditionally to the petitioner and this will, however, not preclude the respondents from proceeding under Section 124 of the Act ad passing an adjudication order in accordance with law. **[Decided in favour of petitioner]**

**UNION OF INDIA AND ORS. VERSUS M/S. ENGEE INDL. SERVICES CO. LTD. & ANR [SUPREME COURT]**

**BRIEF:** Import duty - When the vessel was manufactured by an Indian company and was sold to another Indian company, which was using this vessel, no question of import duty arises.

**OUR TAKE:** The hon'ble **SUPREME COURT** held that by no stretch of imagination, it can be treated as import when the vessel was manufactured by an Indian company and was sold to another Indian company which was using this vessel. Therefore, the CESTAT has gone totally at a tangent and has held that the appellant shall be liable to pay duty on very irrelevant consideration. Impugned order of CESTAT set aside and custom duty paid by the appellant shall be refunded within two weeks. **[Appeal disposed of]**

**COMMISSIONER OF CUSTOMS, KANDLA Versus M/s SAARTHEE SHIPPING COMPANY MUMBAI [GUJRAT HIGH COURT]**

**BRIEF:** Revocation of suspended licence - Imported cigarettes without proper declaration - As per Regulation 19&20, the order either continuing or revoking the suspension must have passed within 15 days of granting personal hearing - Revoked correctly as order not passed for nearly five and half months.

**OUR TAKE:** The hon'ble GUJARAT HIGH COURT held that the authority may decide not to continue the suspension of the licence of the broker, may nevertheless be advised to undertake proceedings for imposing penalty or some such action under Regulation 20. Likewise, mere lapsing of the order of suspension of licence for want of further continuation in terms of sub-regulation (2) of Regulation 19 may not debar the Department from further action under Regulation 20.

**M/S. K.I. INTERNATIONAL LTD. VERSUS CC, CHENNAI [CESTAT CHENNAI]**

**BRIEF:** Refund claim of 5% additional duty - even if there is no endorsement in the commercial invoices, the SAD of refund should be allowed.

**OUR TAKE:** The hon'ble CESTAT CHENNAI held that the Ld. Commissioner (Appeals) in his impugned order has not discussed the merits of the case and remand the matter back to the lower appellate authority, which is beyond the jurisdiction as observed by the Tribunal. Therefore, by following the same, the impugned order is set aside. **[Decided in favour of appellant]**

**THE COMMISSIONER OF CUSTOMS (EXPORTS) VERSUS M/S TEXWORTH INTERNATIONAL [MADRAS HIGH COURT]**

**BRIEF:** Once the Department had agreed to a second test report without reserving any right to rely upon the first test report, it is not open to the Department to contend that the second test report ought to be dumped.

**OUR TAKE:** The hon'ble MADRAS HIGH COURT held once the Department had agreed to a second test report without reserving any right to rely upon the first test report, it is not open to the Department to contend that the second test report ought to be dumped. The samples sent for the second test had also been drawn from the very same consignment. The samples were actually available with the Department. Therefore, no confiscation of goods required. **[Decided against the revenue]**

**M/S. M.R.K. IMPEX PVT. LTD. VERSUS COMMISSIONER OF CUSTOMS (PREV.) , KOLKATA [CESTAT KOLKATA]**

**BRIEF:** By virtue of Para 2.17 of the hand book of procedures under Foreign Trade Policy, all second hand goods except second hand capital goods, are only restricted - Defective shafts are not restricted goods.

**OUR TAKE:** The hon'ble CESTAT KOLKATA held that even if it is considered that the shafts were cut into small pieces of different sizes then also the same has to be considered as scrap for which no license is required. Therefore, defective shafts imported by the appellant were not prohibited/restricted goods. Accordingly, the confiscation of goods and imposition of penalties upon the appellant were not justified. **[Decided in favour of appellant with consequential relief]**

**M/S ESCORTS HEART INSTITUTES AND RESEARCH CENTRE, MR. BHUVANDER KAUL, M/S J MITRA AND BROTHERS, M/S ELECON CARGO PVT LTD VERSUS COMMISSIONER OF CUSTOMS (IMPORT AND GENERAL) , NEW DELHI [CESTAT NEW DELHI]**

**BRIEF:** Demand of Interest - provisional assessment - interest cannot be demanded upon finalisation even if such finalisation was done after 13.07.2006.

**OUR TAKE:** The hon'ble MADRAS HIGH COURT held once the very fact that the relevant invoice was duly enclosed along with the Bill of Entry submitted to Customs is indicative enough that it was not the intention of the CHA in any way to hoodwink Customs. Thus, penalty on the CHA is not attracted. **[Matter disposed of]**



## INCOME TAX

### COURT DECISIONS

#### ANJANI GOLD PRIVATE LIMITED AND ANOTHER VERSUS INCOME TAX OFFICER, WARD – 9 (1) KOLKATA & OTHERS [CALCUTTA HIGH COURT]

**BRIEF:** Orders passed under Section 127 for transferring a case should be forwarded to the concerned assessee, if only for the assessee to understand the circumstances in which the transfer takes place.

**OUR TAKE:** The hon'ble CALCUTTA HIGH COURT held that the order of transfer dated September 10, 2015 is set aside and the concerned official is requested to reconsider the matter upon affording the petitioning assessee a further opportunity of hearing. The further order of the official should disclose the reasons in brief that would indicate the application of the mind to the matters in issue so that the conclusion reflected therein appeals to the senses.

#### T. RAJKUMAR AND OTHERS VERSUS UNION OF INDIA, MINISTRY OF FINANCE AND OTHERS [MADRAS HIGH COURT]

**BRIEF:** Challenges to Section 94-A (1) of the Income Tax Act, 1961, the Notification dated 1.11.2013 and the Press Release dated 1.11.2013 are not sustainable in law.

**OUR TAKE:** The hon'ble MADRAS HIGH COURT held that the word denotes a place of safety, a refuge or sanctuary. In association with the word "tax", the word "haven" has assumed different connotations in the recent past and Panama appears to have followed Cyprus. Therefore, Section 94A was the need of the hour and we do not find the same to suffer from unconstitutionality. Hence, all the writ petitions are dismissed. However, there will be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

#### M/S TIMKEN INDIA LIMITED AND OTHERS VERSUS DEPUTY COMMISSIONER OF INCOME TAX AND OTHERS [CALCUTTA HIGH COURT]

**BRIEF:** Distinction had to be made in respect of assessee covered by Section 44AC between those who would be able to justify the deductions claimed and others who may not stay back for the same or have their books in order for such purpose.

**OUR TAKE:** The hon'ble DELHI HIGH COURT held that The minor premise of the ratio decided was that a distinction had to be made in respect of assessee covered by Section 44AC of the Act between those who would be able to justify the

deductions claimed and others who may not stay back for the same or have their books in order for such purpose.

#### M/S PATNA GOLF CLUB LIMITED VERSUS COMMISSIONER OF INCOME TAX-I, PATNA, INCOME TAX OFFICER, WARD-2 (2) , PATNA [PATNA HIGH COURT]

**BRIEF:** Interest income received by the club from fixed deposit in bank cannot be form the house property and consequently this income is from other sources - there is no principle of mutuality

**OUR TAKE:** The hon'ble PATNA HIGH COURT held that the interest income cannot be form the house property and consequently this income is from other sources. In view of judgment of Gujarat High Court in the case of Sports Club of Gujrat Limited (1987 - GUJARAT High Court) there is no principle of mutuality between the interest income from the F.D.R. and other activities of the club. [Decided in favour of the Revenue]

#### MONSANTO INDIA LTD VERSUS ADDL COMMISSIONER OF INCOME TAX [ITAT MUMBAI]

**BRIEF:** Allow ability of exemption u/s 10(1). For earning agricultural income, it is not necessary that the assessee must own the land and it is enough if it is established that the agricultural organizations have been actually carried on by the assessee.

**OUR TAKE:** The hon'ble ITAT MUMBAI held that for earning agricultural income, it is not necessary that the assessee must own the land and it is enough if it is established that the agricultural organizations have been actually carried on by the assessee. In view of the finding of the fact recorded - Decided in favour of assessee. [Decided in favour of assessee]

#### M/S. WARREN TEA LIMITED VERSUS ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE-5, KOLKATA & OTHERS [CALCUTTA HIGH COURT]

**BRIEF:** Section 142 of the Act of 1961 allows the assessing officer to make an enquiry before the assessment - AO cannot invoke the provisions of Section 142(1) after an order u/s 143(3)(ii).

**OUR TAKE:** The hon'ble CALCUTTA HIGH COURT held that the mistake in the order of assessment under Section 143 sought to be corrected is not available to the Department particularly in view of the fact that, the appellate forum has also proceeded on the basis that assessment has taken place in respect of the relevant assessment year. The impugned action of the Department in issuing a notice under Section 142 of the Act of 1961 and all consequential steps taken there-under are set aside. [Decided in favour of assessee]

# STATE TAXES

## ALL INDIA VAT

### CHATTISGARH

**The Govt. vides Notification No. F-10/24/2016/CT/V (51), dated 14<sup>th</sup> April 2016**, notify that there is exemption to blooms & slabs.

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

### DELHI

**The Govt. vides Notification F.3(30)/FIN(REV-I)/2015-16/DSVI/121 dated 12<sup>th</sup> April 2016**, amend form 16,17,30 & 31.

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

### MAHARASHTRA

**The Govt. vides Trade Circular No. 8T dated 12<sup>th</sup> April 2016**, grants administrative Relief to Un-registered Dealers

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

### RAJASTHAN

**The Govt. vide Notification No. F.16 (115) VAT/TAX/CCT/ 2016-17/ 60 dated 13<sup>th</sup> April 2016**, notify grant of permission for the type of change in dealer's principal place of business.

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

**The Govt. vide Notification No. F.16 (115) VAT/TAX/CCT/ 2016-17/53 dated 14<sup>th</sup> April 2016**, issues guidelines related to online refund application process.

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

## COURT DECISIONS

### EVEREADY INDUSTRIES INDIA LTD VERSUS STATE OF KARNATAKA (SUPREME COURT)

**BRIEF:** Benefit of exemption notification - Essential requirement for claiming exemption under N/N FD.11.CET.93(3) dated 31.03.1993, a unit should fall within the ambit of "new industrial unit"

**OUR TAKE:** The hon'ble SUPREME COURT held that t is a different matter that once the conditions contained in the exemption notification are satisfied and the assessee gets covered by the exemption notification, for giving benefit notification has to be construed liberally. However, in the present case, the appellant has not been able to cross the threshold and to find entry under notification dated 31.03.1993. Therefore, the appellant was not entitled to exemption from entry tax. **[Decided against the appellant]**

### M/s. ENERCON (INDIA) LTD. Versus STATE OF KARNATAKA [SUPREME COURT]

**BRIEF:** Works contract - a fundamental mistake, which is committed by the authorities below, is that foundation work or installation work, which is even considered as part of works contract by the Assessing Officer himself, cannot be treated as "goods".

**OUR TAKE:** The hon'ble SUPREME COURT held that as the Assessing Officer himself classified such goods involved in execution of works contract. Once this was the opinion of the Assessing Officer and the part of work viz. foundation or erection work related to works contract, on this ground itself, no sales tax could have been charged thereon. Also even the First Appellate Authority proceeded on the basis that the work like foundation work, electrical work, commissioning etc. was "series of activities and further that it was indivisible". On this finding as well, no further action to levy sales tax was required. - Apex Court decided the case in favour of appellant with consequential relief.

# OTHER UPDATES

## DGFT

### CIRCULAR & NOTIFICATIONS

**The Govt vide Notification No 1/2015-20 dated 08<sup>th</sup> April 2016**, specifies requirement of certification regarding export of Betel Leaves.

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

## COMPANY LAW

### COURT DECISIONS

**THE CHIEF CONTROLLING REVENUE AND SUPERINTENDENT OF STAMP (HEADQUARTERS) MUMBAI VERSUS M/S. RELIANCE INDUSTRIES LIMITED MUMBAI AND M/S. RELIANCE PETROLEUM LIMITED GUJARAT [BOMBAY HIGH COURT]**

**BRIEF: Computation of stamp duty and valuation does not make Scheme of Amalgamation alone chargeable to stamp duty - Basically, a scheme/compromise/arrangement between the two companies is never a document chargeable to stamp duty.**

**OUR TAKE:** The hon'ble **BOMBAY HIGH COURT** held that the orders of the court, sanctioning a Scheme of amalgamation are not just incidental orders even in accordance with the Scheme of the Companies Act laid down by Section 391 r/w, Section 394. Only after the Court, passes the orders sanctioning the Scheme of Amalgamation, such a scheme becomes operational and effective. Computation of stamp duty and valuation does not make Scheme of Amalgamation alone chargeable to stamp duty. The order is the instrument.

**M/S HETERO DRUGS LIMITED, HYDERABAD VERSUS M/S NECTAR LIFESCIENCES LIMITED [PUNJAB & HARYANA HIGH COURT]**

**BRIEF: Winding up petition - Parameters of admitted liability enabling the Court to pass the winding up order not met.**

**OUR TAKE:** The hon'ble **PUNJAB & HARYANA HIGH COURT** held that there is no dispute that prior to the placing of the

Purchase Order dated 18.8.2010, the respondent company had placed the Purchase Order with regard to CT and had been supplied the material worth 3,20,64,210/-, but owing to the non-supply of CP, the company had purchased the material from other source at a higher price, for which the civil suit is pending and the same shall be proved in those proceedings and the petitioner company shall have a right to rebut the same. In view, at this stage, the petitioner company cannot be permitted to continue, much less seek winding up order of admission.

## ALLIED LAW

### COURT DECISIONS

**SAROJBEN D/O RAGHUVIR YADAV VERSUS STATE OF GUJARAT AND 1 [GUJARAT HIGH COURT]**

**BRIEF: Order passed under section 14 of the SARFAESI Act is not amenable to the Revisional jurisdiction as provided under section 397 of the Code.**

**OUR TAKE:** The hon'ble **GUJARAT HIGH COURT** held that order passed under section 14 of the SARFAESI Act is not amenable to the revisional jurisdiction as provided under section 397 of the Code. This Court therefore finds that there is no error much less any error apparent on the face of the record, which warrants interference of this Court in its extraordinary jurisdiction under Article 226 of the Constitution.

## LATEST NEWS ON PROPOSED GST

**13<sup>th</sup> April, 2016**, GST will settle issues regarding double taxation of software: Service Tax Commissioner.

**14<sup>th</sup> April, 2016**, E-commerce in India is set to grow exponentially from \$10 billion in 2015 to \$250 billion in 2025.

**14<sup>th</sup> April, 2016**, NASSCOM says entry tax on e-commerce goods will affect inter-state trade Gujarat, Assam, Odisha, Uttarakhand, Rajasthan and Mizoram have such a tax and Punjab, Himachal, UP and MP are considering having it.

## We may be contacted at the following offices:

### CORPORATE OFFICE

73, National Park  
Lajpat Nagar IV,  
New Delhi - 110024  
INDIA  
P: +91-11-41729056-57,  
41729656/57

### GURGAON

605, Suncity Business Tower  
Golf Course Road, Sector-54,  
Gurgaon,  
Haryana - 122002  
P: +91-124-4245110/116/117 +91-  
124-4245111

### NOIDA

C-100, Sector-2,  
Noida- 201301  
Uttar Pradesh  
M: +91- 9811481093

### MUMBAI

12A/401, Fam Society,  
Koperkhairane,  
Navi Mumbai – 400706  
Mumbai  
M: +91- 9022131399

### ASSAM

House No. 76,  
Near Godrej Interio,  
Forest Gate, P.O. Narangi,  
Guwahati – 781026  
P: +91-0361-2552302  
M: +91-9864857565

### INTERNATIONAL BRANCH

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

## For enquiries related to:

Service	Contact Person	Service	Contact Person
DVAT:	faiz@ascgroup.in	Service Tax:	nitin@ascgroup.in
HVAT:	deepak@ascgroup.in	Transfer Pricing & PE:	shailendra@ascgroup.in
Excise:	deepak@ascgroup.in	Legal Metrology:	mayank.singhal@ascgroup.in
UPVAT:	jaswant@ascgroup.in	Company Law:	legal@ascgroup.in
Income Tax:	vikash@ascgroup.in	PR/Media	socialmedia@ascgroup.in
Maharashtra VAT:	nitin@ascgroup.in		

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