



# ASC Times

All India Taxes Weekly Reference

Vol: May 9 - May 16, 2016

Solving  
any **tax**  
puzzle

Tax saving advice  
across all the taxes



## From the CEO's Desk



Dear Reader,

The Income Tax Department launched bank account based validation system for filing e-ITRs by taxpayers if they are filing the return by self in the drive to enhance the paperless regime of filling the annual IT returns. "Now, Electronic Verification Code (EVC) can be generated by pre-validating your bank account on the e-filing website," the department said in a public advisory. The Punjab National Bank is the first bank to do so and other banks are also expected to follow the suit for the taxpayers who have not availed e-banking facility as of now. The facility will be available on the official e-filing portal of the department <http://incometaxindiaefiling.gov.in>. Once on the link through generating an OTP (One Time Password) verification can be done using the Aadhaar number. These measures are taken to curb the trouble of sending the ITRs by post to Bengaluru based Central Processing Centre (CPC) for final resolution and processing.

Another development in this regard is of issuing a new form that mandates salaried employees to furnish proof of leave travel expenditure and provide the lenders' PAN to claim tax deduction on the interest on home loans. Though it has been criticized as already burdened salaried class where the tax is deducted at source, this would hound the salaried taxpayers instead of going after the big fish that dodge taxes most of the time.

According to The Sixth Economic Census by the National Sample Survey Organisation (NSSO), there are total of 58.5 million businesses in India out of which women entrepreneurs own only 8.05 million. These enterprises range from corner shops to venture-funded start-ups. India ranks at 29<sup>th</sup> of 31 countries in the 2015 global Women Entrepreneurs Leader report by ACG Inc. a consultancy, only above Pakistan and Bangladesh. And also this ratio is skewed in favour of South Indian states as women at large believe that it is much easier and socially accepted in south to have a business in

comparison to north. As many as 13.5 per cent of female-run establishments (1.08 million) are based in Tamil Nadu, more than any other state, followed by Kerala (0.91 million) and Andhra Pradesh (0.56 million). Another aspect of it is that as much as 79% of the women run enterprises are self-funded and only 4.4% have borrowed money from a financial institution or received help from the government. And SC, ST or OBC women who, not by choice but by necessity do the business run more than 50% of these enterprises. So, now under its Start-up India Scheme, Modi government has directed to banks to give loans of up to Rs. 1crore to women entrepreneurs as well with other SC/ST classes.

Alok Kumar Agarwal

CEO

ASC Group.

## TAX CALENDER

Due Date	Description	Law
09 May	Filing of Return	Gujarat VAT
10 May	Deposit of Tax	Chhattisgarh VAT, Kerala VAT, Madhya Pradesh VAT
	Deposit of TDS	Arunachal Pradesh VAT, Delhi VAT
	Return Filing	Chhattisgarh VAT, Madhya Pradesh VAT, Mizoram VAT, Nagaland VAT
12 May	Deposit of Tax	Gujarat VAT
13 May	Return Filing	Nagaland VAT
15 May	Deposit of Tax	Bihar VAT, Haryana VAT, Jharkhand VAT, Sikkim VAT
	Deposit of TDS	Bihar VAT, Delhi VAT, Haryana VAT, Himachal Pradesh VAT, Jharkhand VAT, Punjab & Chandigarh VAT
	Issue of TDS Certificate	Andhra Pradesh VAT, Bihar VAT, Himachal Pradesh VAT, Jharkhand VAT, Nagaland VAT, Punjab & Chandigarh VAT, Telangana VAT
	Return Filing	Karnataka VAT, Madhya Pradesh VAT
	Income Tax Law	Issue of TDS Certificate

## COUNTRY WIDE HOLIDAYS FOR THE WEEK

Date	Occasion/Festival	Region
NA	NA	NA

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# CENTRAL TAXES

## SERVICE TAX

### COURT DECISIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**OUR TAKE:** The hon'ble CESTAT MUMBAI held that the demand dropped on the point of revenue neutrality without addressing the issues of taxability of service tax and limitation. **[Decided in favour of assessee]**

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

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

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

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

**BRIEF:** Nature of activity. Collection of octroi on behalf of the Municipal Corporation. Cash management activity or not. Not covered by Banking and other Financial Services, revenue's appeal rejected

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

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

**BRIEF:** Nature of activity of repair and maintenance of the equipments 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

### CIRCULAR & NOTIFICATION

**The Govt. Notification No. 20/ 2016-CE dated 05<sup>th</sup> May 2016** amends notification No. 1/2011 – Central Excise dated 01<sup>st</sup> March 2011.

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

**The Govt. Notification No. 21/ 2016-CE dated 05<sup>th</sup> May 2016** amends notification No. 2/2011 – Central Excise dated 01<sup>st</sup> March 2011.

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

**The Govt. Notification No. 12/ 2016-CE dated 05<sup>th</sup> May 2016** amends notification No. 2/2011 – Central Excise dated 17<sup>th</sup> March 2011.

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

### COURT DECISIONS

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

**BRIEF:** Gas filing activity. Whether the activity undertaken by the appellant amounts to manufacture? Gas is already marketable in its original form and the activity undertaken by the appellant does not render the gas marketable which is already marketable. Demand of duty set aside.

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



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

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

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

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

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

**OUR TAKE:** The hon'ble CESTAT NEW DELHI held that the Polyester Sewing Thread is distinctly known in the market and the yarn purchased by the appellant apparently cannot be marketed or used as the Sewing Thread. The Dutiability does not arise by virtue of the fact the definition of Sewing Thread was provided for in certain headings, but by virtue of the fact that the process of making Sewing Thread out of single thread/yarn is basically a process of manufacture under Section 2(f). In view of the above discussion, we find that there is no ground to interfere with the findings of the learned Commissioner (Appeals) and accordingly we dismiss the appeal. [Decided against the assessee]

**COMMISSIONER OF CENTRAL EXCISE, INDORE VERSUS M/S. NATIONAL STEEL INDUSTRIES LTD. [CESTAT NEW DELHI]**

**BRIEF:** Classification - manufacture - change in the scope of tariff entries - iron and steel structures like trusses, columns, staircase, windows and section etc. - These steel structures are commonly known as component parts of building/ shed. - these goods are not excisable.

**OUR TAKE:** The hon'ble CESTAT NEW DELHI held that the clear and specific classification of the impugned items was available with effect from 1.3.1988. Prior to that date, the classification was sought to be made under 7308 90: as 'Misc' 'other articles of iron and steels'. Hence, held that these goods are not excisable. [Decided in favour of assessee]

**COMMISSIONER OF CENTRAL EXCISE, INDORE (MP) VERSUS M/S KRITI INDUSTRIES INDIA LTD. [CESTAT NEW DELHI]**

**BRIEF:** Demand of interest - Though the product is made dutiable w.e.f. 1.3.2003, there was no liability to pay duty on that date, as the amendment occurred only on 28.02.2005. Demand of interest set aside

**OUR TAKE:** The hon'ble CESTAT NEW DELHI held that The amount falls due only after the insertion of the amendment. The respondents discharged their liability within the time limit. Though the product is made dutiable w.e.f. 1.3.2003, there was no liability to pay duty on that date, as the amendment occurred only on 28.02.2005. In our considered opinion, in the present case, there is no liability to pay interest. Also see Pushti Refineries (P) Ltd. Vs. CCE & ST, Bangalore [CESTAT BANGALORE ] - Decided in favour of assessee.

**M/S. MONNET ISPAT & ENERGY LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, RAI. [CESTAT NEW DELHI]**

**BRIEF:** Eligibility for CENVAT credit - iron and steel items used for fabrication of components / accessories of various machinery like rotary klin, rotary cooler, conveyor systems, raw material preparation plant, power plant and pollution control equipment. Credit allowed

**OUR TAKE:** The hon'ble CESTAT NEW DELHI held that that the allegation in the show cause notice that steel items used by the appellant are neither components nor spares nor accessories is not sustainable. Applying the principle of "user test" laid down by the Hon'ble Supreme Court in Jawahar 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]

## CUSTOMS

### CIRCULAR & NOTIFICATION

**The Govt. Notification No. 30/ 2016-CE dated 05<sup>th</sup> May 2016**, amends notification No. 12/2012 – Central Excise dated 17<sup>th</sup> March 2012.

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

**The Govt. Notification No. 31/ 2016-CE dated 05<sup>th</sup> May 2016**, amends notification No. 21/2012 – Central Excise dated 17<sup>th</sup> March 2012.

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

**The Govt. Notification No. 32/ 2016-CE dated 05<sup>th</sup> May 2016** amends notification No. 24/2005 – Central Excise dated 01st March 2005.

**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 the penalties can be imposed on the firm and the partners under the Act and more particularly under Section 112(a) of the Act. However as the Act itself stipulates, the same would be subject to the parties proving that the contravention has taken place without their knowledge or despite exercise of all due diligence to prevent such contravention.

#### M/S S. NARENDRA VERSUS COMMISSIONER OF CUSTOMS, MUMBAI [CESTAT MUMBAI]

**BRIEF:** Claim of exemption. Benefit of Notification No. 159/86-Cus, after examination of machine and visit to factory premises it was found that the said machine is "Laser system for diamond processing (sawing, kerfing and drilling) based on CNC. - Benefit of exemption allowed

**OUR TAKE:** The hon'ble **GUJRAT HIGH COURT** held that the expression sawing machines had been used without any qualification. 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]**

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

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

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

**COMMISSIONER OF CUSTOMS (AIRPORT) CHENNAI VERSUS VISHAL SURGICAL EQUIPMENT CO. (P) LTD. [CESTAT CHENNAI]**

**BRIEF:** Import of medical equipment - As per the technical definition "Gastro Intestinal Video Endoscope", it is nothing but Gastro scope using Video technology. The present equipment is based on wireless capsule and which covers not only throat but also entire gastro intestinal tract. - Benefit of exemption allowed.

**OUR TAKE:** The hon'ble CESTAT CHENNAI held that as per the technical definition "Gastro Intestinal Video Endoscope", it is nothing but Gastro scope using Video technology. The present equipment is based on wireless capsule and which covers not only throat but also entire gastro intestinal tract. **[Benefit of exemption allowed]**

## INCOME TAX

### COURT DECISIONS

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

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

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

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

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

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

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

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

**OUR TAKE:** The hon'ble PATNA HIGH COURT held that the appellants were bound to comply with the notice and file their return and failure to file the return would attract interest under Section 158 BFA. **[Decided in favour of the revenue]**



## COMMISSIONER OF INCOME TAX versus M/s APEEJAY TEA CO. LTD [SUPREME COURT]

**BRIEF:** : Addition of cess on green leaf - part of income is agriculture income - Expenditure on cess should be allowed as a deduction before computing the composite income under Rule 8 and the apportionment is to be made after the income is so computed.

**OUR TAKE:** The hon'ble SUPREME COURT held that expenditure on cess should be allowed as a deduction before computing the composite income under Rule 8 and the apportionment is to be made after the income is so computed.

## COMMISSIONER OF INCOME TAX, KOL-II VERSUS M/S MORAN TEA CO. LTD. [CALCUTTA HIGH COURT]

**BRIEF:** Addition of cess on green leaf - deduction on cess paid on green tea leaves has to be allowed on 100 per cent, of the composite income under the Income-tax Act, 1961, and not on 60 per cent, of the agricultural income.

**OUR TAKE:** The hon'ble CALCUTTA HIGH COURT held that the deduction on cess paid on green tea leaves has to be allowed on 100 per cent, of the composite income under the Income-tax Act, 1961, and not on 60 per cent, of the agricultural income. [Decided in favour of the 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 was some defect in indicating such amount in the accounts presented by the assessee, as long as income chargeable to tax had not escaped assessment, reopening of the assessment would not be permissible. Decided in favour of the assessee]

# STATE TAXES

## ALL INDIA VAT

### CHHATTISGARH

**The Govt. vides Notification No. F-10-29/2016/CT/V (56). Dated 03<sup>rd</sup> May 2016**, exempt Part-C of Form-18 as specified in rule 20(2)(b).

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

### DELHI

**The Govt. vides Notification F3(643)/ VAT/2016/157-169 dated 03<sup>rd</sup> May 2016**, notifies requirement to furnish return with digital signatures in accordance with the provisions of the Information Technology Act, 2000 shall be for the tax period commencing from 1<sup>st</sup> April, 2016 and subsequent tax periods.

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

**The Govt. vides Notification F3(619)/ VAT/2016/183-196 dated 06<sup>th</sup> May 2016**, notifies that details of purchases where the total amount of an invoice does not exceed Rs.1000/- (one thousand rupees) shall not be mandatorily required to be furnished in Form GE-II and further that the returns in Form GE-II for all the four quarters of the financial year 2015-2016, which have not been filed till date, are now required to be filed upto 16th May, 2016.

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

**RAJASTHAN**

**The Govt. vide Notification No. F.12(80)FD/Tax/2014-17 dated 06<sup>th</sup> May 2016**, exempts the tax payable on the sale of semi- stitched garments for the period 08<sup>th</sup> March 2016 to 31<sup>st</sup> March 2016.

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

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**The Govt. vide Notification No. F.12 (80) FD/Tax/ 2014-08 dated 06<sup>th</sup> May 2016**, changed VAT rate for Ready Garments.

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

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**The Govt. vide Notification No. F.12 (80) FD/Tax/ 2014-08 dated 06<sup>th</sup> May 2016**, changed VAT rate for Semi – Stitched Lehnga Sets & Semi Stitched salwar suits, Kurta/Kurti.

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

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**The Govt. vide Notification No. F.12 (80) FD/Tax/ 2014-10 dated 06<sup>th</sup> May 2016**, amends F.12 (59) FD/Tax/ 2014-18 dated 14<sup>th</sup> July 2014.

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

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**The Govt. vide Notification No. F.12 (80) FD/Tax/ 2014-11 dated 06<sup>th</sup> May 2016**, amends F.12 (84) FD/Tax/2009-21 dated 08<sup>th</sup> July 2009.

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

**COURT DECISIONS**
**COMMISSIONER OF DVAT VERSUS ABB LIMITED (SUPREME COURT)**

**BRIEF:** Goods Imported/purchased interstate used in Works Contract, would be exempt from VAT.

**OUR TAKE:** The hon'ble **SUPREME COURT** held that in case the goods are purchased from other States or are imported from outside the country for the purpose of only using in the works contract, then the transaction would be covered under the Central Sales Tax Act and not liable to tax under local VAT act. To sum up after this judgement, in case the goods are purchased from other States or are imported from outside the country for the purpose of only using in the works contract, then the transaction would be covered under the Central Sales Tax Act and not liable to tax under local VAT act.

**SRI. ANJANEYA AGRO TECH VERSUS THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES (AUDIT) , DAVANAGERE AND OTHERS [KARNATAKA HIGH COURT]**

**BRIEF:** Whether the petitioner could avail the benefit of the judgment, which was rendered much after the assessment order, was passed and whether such reassessment orders can be passed on their prayer for rectification of the earlier assessment.

**OUR TAKE:** The hon'ble **KARNATAKA HIGH COURT** held that it would be only just and fair to direct the revenue to consider the prayer of the petitioner for rectification, when there is no dispute that they were entitled to full tax rebate by virtue of the decision in M.K.Agro Tech, supra. It would be a formality for the respondent to pass a rectification order and grant full tax rebate to the petitioner in terms of its prayer. The petitions are allowed. **[Decided in favour of assessee]**

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# OTHER UPDATES

## FEMA

### COURT DECISIONS

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

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

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

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

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

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

## ALLIED LAWS

### COURT DECISIONS

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

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

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

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

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

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

## COMPANY LAW

## COURT DECISIONS

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

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

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

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

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

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

## LATEST NEWS ON PROPOSED GST

**03<sup>rd</sup> May 2016,** Since GST is a destination-based tax on consumption, it will not be possible for states to continue to give the VAT exemptions they have given today. And since the GST will subsume all taxes, the excise/CVD advantage given by the Centre to local manufacturers will also be difficult to retain — though the Centre can keep the GST rate lower for mobile phones as compared to the standard rate, this will apply to both imports as well as local manufactures.



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