



# ASC Times

All India Taxes Weekly Referencer

Vol: January 19-24, 2015

## Solving any tax puzzle

Tax saving advice across all the taxes



## From the CEO's Desk



Friends,

The world is ever changing and so are the conditions and policies in which business's work. For an entrepreneur or for an executive working in the various big size organizations, it is difficult to keep up with all the updates that happen in all the laws and schedules related to various taxes. But to survive in this competitive world, it is inevitable to keep up with the latest information's so that future strategies can be designed. We felt the need at ASC and acted upon in the form of a weekly magazine to provide a snapshot of all the latest updates in all the tax related laws. The information provided is useful in a very crisp manner and not very time taking.

Plus, India is a vast country with many regional holidays, which are not included in the gazette. So for the people working pan India becomes difficult acting proactively.

So a list of regional holidays is also included for your convenience. In addition a tax calendar for the forthcoming week is given to plan in advance for all compliances.

We hope it will be helpful to you all and would be happy to hear from you for any feedback you might be able to give us for any improvement. Wishing you all success in all your endeavours.

**Before signing off,** may we reiterate that we shall be available for your queries on any issue 24x7 on our mail id or over a **telecon**.

Stay Happy!!

Truly Yours  
CA Alok Kr. Agarwal

## Tax Calendar

**9/01/15 to 24/01/15**

<b>20th Jan</b>	Filling of quarterly Return For Quarter Ending(Oct to Dec) and Monthly Return(01/12/2014 to 31/12/2014) Under <b>Punjab Vat</b> (If amount Paid By Cross Cheque or DD)and Tax payment  Filling of Quarterly Return For the period (Oct to Dec.)and Monthly Return(01/12/2014 to 31/12/2014) Under <b>UP VAT</b>
<b>21st Jan</b>	Filling of Quarterly Return For the period (Oct to Dec.)and Monthly Return(01/12/2014 to 31/12/2014) Under <b>Maharashtra VAT</b> Payment of ESI for the month of Dec.,2014 E-Payment of <b>DVAT &amp; CST for Dec</b> Payment of <b>MVAT &amp; WCT TDS for Dec</b>
<b>22nd Jan</b>	VAT Payment of <b>Gujarat VAT</b>  Issue of <b>DVAT Certificate</b> for deduction made in <b>Dec</b>  Due date for issue of <b>TDS Certificate for tax deducted under Section 194-IA</b> in the month of <b>December, 2014</b>

## Country Wide Holidays For The Week

Date	State	Occasion/Festival
<b>23rd Jan</b>	WEST BENGAL TRIPURA	Birth Day of Netaji
	ODISSA	Subash Bose Jayanti/Vir Surendrasai Jayanti
<b>24th Jan</b>	BIHAR	Basanta Panchami
	ODISSA	Basanta Panchami/Saraswati Puja
	HARYANA	Sir Chhotu Ram Jayanti/Basant Panchmi
<b>25th Jan</b>	HIMACHAL PRADESH	Statehood Day
	WEST BENGAL	Shree Panchami

# CENTRAL TAXES

## SERVICE TAX

### COURT DECISIONS

#### COMMISSIONER OF CUSTOMS, CENTRAL EXCISE AND SERVICE TAX, GUNTUR V/s M/S NARAYANACOACHING CENTRE, NELLORE (Supreme Court)

**BRIEF:** Demand of service tax without issuance of show cause notice (SCN)

**ASC Comments:** In the above case, the Hon'ble Andhra Pradesh High Court held that since no show cause notice was issued to the assessee with respect to the demand of service tax, no proceedings in connection therewith could have been done.

The Revenue then filed an SLP which was again dismissed by the Supreme Court on the same basis as that stated by the Andhra Pradesh High Court.

#### THE COMMISSIONER OF CENTRAL EXCISE V/s M/S. MOTHERSON AUTOMOTIVE TECHNOLOGIES & ENGINEERING (Madras High Court)

**BRIEF:** The respondent entered into a license agreement dated 18.6.99 with Tennex Europe Ltd. for grant of license for supply of technical information and technical assistance for manufacture of air induction systems on consideration of lumpsum amount and royalty. According to the Department, payments were made by the respondent in February, 2000 and March, 2001, as technical know-how fees and, therefore, the Department demanded service tax in terms of Section 65 under the head "Consulting Engineer" defined under Section 65 (18) of the Finance Act.

**ASC Comments:** In the above case, the Hon'ble Madras High Court held that there is no service tax liability on the assessee as the liability on any taxable service provided by a non resident or a person, located outside India, to a recipient in India, would arise w.e.f. 18.4.2006, i.e., the date of enactment of section 66A of the Finance Act, 1994.

#### SHRI. KR. VENKATACHALAM V/s CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL. (Madras HC)

**BRIEF:** The appellant is providing rent-a-cab operator services to M/s.BSNL. A SCN was issued on 21.4.2008 to the assessee demanding service tax and a pre-deposit for contravening the provisions of Section 68 of the Finance

Act, 1994 read with Rule 6(1) of Service Tax Rules, 1994, since the assessee had not paid appropriate service tax for the services rendered and also contravened the provisions of Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 by not filing the prescribed returns.

**ASC Comments:** In the above case, the Hon'ble Madras High Court held that on a prima facie case taken by the appellant for the previous year, the proceedings initiated by the Department was set aside by the Tribunal and that being the case for the subsequent period, the said benefit should enure to the appellant insofar as the pre-deposit is concerned. Thus, the appellant is entitled to waiver of entire pre-deposit.

#### SARDA ENERGY & MINERALS LTD. VS. CCE, RAIPUR-I (CESTAT Delhi)

**BRIEF:** Appellant deposited service tax as a receiver of GTA service in December 2004. The liability to pay service tax as a service receiver arose from January, 2005 onwards. Appellant after payment of service tax took CENVAT Credit. The Department denied the credit on the ground that the service was not taxable in the month of December, 2004.

**ASC Comments:** In the above case, the Hon'ble CESTAT, Delhi held that credit is available on the basis of payment of service tax and not on the basis of whether or not service tax is payable. Since the appellant had paid service tax, he was entitled to take credit of the same as per the CENVAT Credit Rules, irrespective of whether or not service tax is payable or not.

#### INOX AIR PRODUCTS LTD. V/s COMMISSIONER OF CENTRAL EXCISE, RAIGAD (CESTAT Mumbai)

**BRIEF:** The appellant is engaged in the manufacture and sale of liquid, oxygen nitrogen, etc. and also provides storage tank to their customers who do not have the storage facilities, for storage of gas, for which the appellant charges rent. Revenue is of the view that the appellant is liable to pay service tax under the category of 'Storage and Warehousing Services'.

**ASC Comments:** In the above case, the Hon'ble CESTAT, Mumbai held that storage tanks are installed at the place of the buyer and, therefore, the appellant did not have control over the goods. As a result the onus of the security of the

goods is not on the appellant. As per Section 65(105) of the Finance Act, 1994, to come under the purview of Storage and Warehousing Services, the appellant should also provide the security of the goods. Hence, the appellant is not covered under the definition of Storage and Warehousing Services as defined u/s 65(102) of the Finance Act, 1994 and no service tax is payable.

#### M/s BEICO INDUSTRIES PVT LTD. V/s COMMISSIONER OF CENTRAL EXCISE, NASIK (CESTAT Mumbai)

**BRIEF:** The appellant had received Consulting Engineer's Services as defined u/s 65(105)(g) of the Finance Act, 1994 from the service provider located outside India and thus service tax is payable as per Reverse Charge Mechanism, which the appellant had not done. On being pointed out, the appellant paid the service tax along with interest. However the Revenue issued a SCN alleging suppression of facts and confirmed a penalty u/s 77(1)(a) of the Finance Act.

**ASC Comments:** In the above case the Hon'ble CESTAT, Mumbai held that the appellant had declared the expenses of service incurred, specifically, in its books of account and there is no intention of the appellant to evade duty. The appellant has also paid the service tax along with interest, soon after being so pointed out. Thus, no SCN was required to be issued and penalty levied was set aside.

#### SEABIRD MARINE SERVICES PVT LTD. V/s COMMISSIONER OF CENTRAL EXCISE, RAIGAD (CESTAT Mumbai)

**BRIEF:** The appellant is a Container Freight Station(CFS) and, in the course of providing the service after the container is emptied at the CFS, the same is sent to the yard. The transportation charges to the yard, is denied by the lower authority on the premise that the service is not input service provided by the appellant and therefore they are not entitled for input service credit.

**ASC Comments:** In the above case the Hon'ble CESTAT, Mumbai held that if any input service provider avails any service in the course of the business of output service, it is entitled to input credit. Since the transportation of empty containers to yard is an integral part of the service provided by the appellant, it is entitled for input service credit on transportation charges of empty containers to the yard.

#### COMMISSIONER V/s RAMANASEKAR STEELS LTD. (Madras HC)

**BRIEF:** On the non-filing of the return, levy of penalty under Section 77 was confirmed. Assessee had shown 'reasonable cause' for the purposes of invoking Section 80 of the Finance Act, 1994.

**ASC Comments:** In the above case, the Hon'ble Madras High Court held that as regards the non-payment of tax the sickness of the company is pointed out. Ultimately it ended up filing a petition before BIFR (Board for Industrial and Financial Companies) in the year 2001, declaring itself as sick company under Section 3(1)(a) of the Sick Industrial Companies (Special Provisions) Act, 1985. Thus it was decided that where a company has been declared as a Sick Company as per section 3(1)(a) of the Sick Industrial Companies (Special Provisions) Act, 1985 for a certain period and has shown sufficient cause for not having been able to pay the service tax in time, the penalty for that period can be waived off.

## CENTRAL EXCISE

### COURT DECISIONS

#### ARIYA FLEXI LABELS V/s COMMISSIONER (Supreme Court)

**BRIEF:** Inclusion of value in captive consumption

**ASC Comments:** In the above case the Hon'ble Supreme Court decided that value of plastic film and plastic laminated film captively consumed had not been taken into account while calculating the aggregate value of clearances. Thus, the appeal of the appellant was dismissed and the value of the clearances had to be calculated accordingly.

#### VANASTHALI TEXTILE INDUSTRIES LTD. V/s UNION OF INDIA (Supreme Court)

**BRIEF:** The Hon'ble Rajasthan High Court had earlier waived off most of the liability of the appellant and had ordered it to deposit an amount of Rs 1 crore against the huge liability of Rs 9,50,42,002. The assessee had filed an appeal against such order.

**ASC Comments:** In the above case the Hon'ble Supreme Court dismissed the appeal filed by the assessee against the decision of High Court wherein High Court held that considering reasons assigned by Tribunal, there is no ground for interference on case of petitioner pending before B.I.F.R as far as there is no dispute of industry declared sick. The Supreme Court affirmed the order of the Tribunal and the High Court.

#### SUTLEJ COACH BUILDERS (P) LTD. V/s COMMISSIONER (Supreme Court)

**BRIEF:** The Hon'ble CESTAT New Delhi had classified bodies on the chassis for public transport passenger motor vehicle, ambulance, motor vehicle for transport of goods and special



purpose motor vehicle, under Heading 87.07 (liable to a higher amount of duty) of the Central Excise Tariff Act, 1985.

The assessee claimed classification of above said goods under sub-heading No. 8702.00 8704.00 & 8705.00.

**ASC Comments:** In the above case, the Hon'ble Supreme Court decided in favour of the Revenue and affirmed the decision of the CESTAT.

#### SANJAY VIMALBHAI DEORA V/s CESTAT (Supreme Court)

**BRIEF:** The Commissioner (Appeals) had rightly levied penalty for the assessee having contravened the statutory provision and the rules and the Tribunal was justified in confirming the same.

**ASC Comments:** In the above case, the Hon'ble Gujarat High Court had confirmed the penalty order earlier passed by CESTAT Gujarat. The Hon'ble Supreme Court affirmed the same and dismissed the appeal filed by the assessee as the assessee is found guilty of concealment of excisable goods.

## CUSTOMS

### NOTIFICATIONS & CIRCULARS

The Central Board of Excise and Customs vide Circular No. 993/17/2014-CX dated 5th January, 2015 clarifies that mandatory pre-deposit would be payable in cases of demand of drawback as the new Section 129E would apply to all cases where appeal has been filed on or after 6th August, 2014. The ambit of the Section 129E of the Customs Act, 1962 in the legislation does not extend to appeals under section 129DD before the Joint Secretary (Revision Application). Therefore, while mandatory pre-deposit would be required to be paid in cases of drawback, rebate and baggage at the first stage appeal before Commissioner(Appeals), no pre-deposit would be payable in such cases while filing appeal before the JS(RA).

**ASC Comments:** The Circular is self explanatory.

### COURT DECISIONS

#### COMMISSIONER OF CUSTOMS V/s BIPIN JAVERCHAND SHAH (Gujarat HC)

**BRIEF:** The issue pertains to the power of the CESTAT to extend interim stay beyond 365 days. Revenue contended that, by virtue of Section 129B( 2A) of the Customs Act, 1962, the Tribunal did not have such powers.

**ASC Comments:** In the above case, the Hon'ble Gujarat High Court held that in case of Commissioner vs. Small Industries

Development Bank of India, it can be concluded that the Tribunal did not lack the power to extend stay beyond 365 days from the initial date of granting stay. However, if the stand of the revenue is that such extension was without recording reasons or without passing speaking order as required by the decision of this Court in case of Commissioner vs. Small Industries Development Bank of India (supra) the Department may move a rectification application before the Tribunal.

#### M/S. FLOAT GLASS CENTRE V/s UNION OF INDIA, THROUGH REVENUE SECRETARY, MINISTRY OF FINANCE (Madras HC)

**BRIEF:** The petitioner is engaged in the business of trading clear float glass in India. On a complaint filed by the respondents, the Designated Authority initiated an anti dumping investigation on 11.4.2013. The period for completion of the investigation in terms of Rule 17(1) of the Customs Tariff (Identification, Assessment and Collection of Anti Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, expired on 10.4.2014. Another extension was given upto 10.7.2014. Further the investigation could not be completed even within 10.7.2014 and another order of extension was passed on 10.7.2014 granting time upto 10.10.2014. The petitioner contended that no extension of time can be granted after the expiry of the initial period.

**ASC Comments:** In the above case, the Hon'ble Madras HC, decided that extension of time could be granted under the first proviso to Rule 17(1), after the expiry of the initial period of one year.

#### HAZEL MERCANTILE LTD. V/s COMMISSIONER OF CUSTOMS (EX), MUMBAI(CESTAT, Mumbai)

**BRIEF:** Appellants were exporting the porcelain mugs under DEPB scheme which entitles them to claim DEPB benefit at the specified rates which are related to the FOB value of the goods exported. In one instance there was huge difference between the ARE-1 value (i.e. ex-factory value) declared by the manufacturers of porcelain mugs and FOB value (i.e. export price) declared by the appellants.

**ASC Comments:** In the above case, the Hon'ble CESTAT, Mumbai held that the ARE-1 value of the goods may be higher only when goods are tailor-made but this may not impact the FOB value by 400-500 per cent of ARE-1 value. Also, branding does not cause impact to the ARE-1 value. Branding may only increase the retail price. Thus it was decided that it was a case of concealment of vital documents from Customs authorities and producing some other

irrelevant documents only to claim the declared transaction value as the actual transaction value/FOB value for availing the DEPB benefits or for bringing in illegally obtained foreign exchange.

## INCOME TAX

### NOTIFICATIONS & CIRCULARS

The CBDT vide **Notification No. 90/2014 dated 23<sup>rd</sup> December, 2014** hereby specifies the Reliance Retirement Fund set up by the Reliance Mutual Fund registered under the Securities and Exchange of Board of India (Mutual Fund Regulations, 1993) having registration No. MF/022/95/1, dated the 30th June, 1995 as a pension fund for the purposes of clause (xiv) of sub-section (2) of section 80C of the Income-tax Act, 1961 (43 of 1961), for the assessment year 2015-16 and subsequent assessment years.

**ASC Comments:** Assessee can now avail of the benefit of pension fund specified u/s 80C(2)(xiv) for AY 2015-16 onwards by investing in Reliance Retirement Fund.

### DIRECTION TO OFFICERS/CITs REGARDING REQUESTS ON EXCHANGE OF INFORMATION IN TIME BARRING ASSESSMENTS

The CBDT vide **Circular F.NO.500/56/2014-FT&TR-IV dated 06-01-2015** has directed all the concerned Officers/CITs to send all requests for exchange of information getting time barred on 31.03.2015 to FT&TR Division latest by 15th of February 2015 & references beyond this date may be sent only in unavoidable circumstances.

**ASC Comments:** Since there are a large number of requests, it becomes difficult for Exchange of Information (EOI) in time barring assessments/matters. It also becomes difficult to process and forward such requests after due scrutiny to the Foreign Competent Authority in time. Thus, the CBDT has come up with the circular to ensure free flow of exchange of information.

### ATTENTION TOWARDS PROVISIONS OF SECTION-138 & SECTION-280 OF INCOME TAX ACT

The CBDT vide **Circular F. No. DIR.(HQRS.)/CH.(DT)/29/2014 dated 01-01-2015** has notified all the officers and officials of the Department for strict compliance of the provisions of section 138 of the Income Tax Act, 1961 read with notifications issued under that section, which obligates that no public servant shall produce before any person or authority any such document or record or any information or computerized data or part thereof as comes into his or her possession during the discharge of official duties unless specifically authorized to do so in accordance with the

**notifications issued under section 138.** It is also notified that the provisions contained in section 280 of the Income Tax Act, 1961 provides that if a public servant furnishes any information or produces any record in contravention of the provisions of **section 138(2) of the Income Tax Act, 1961**, he or she will be **punishable** with imprisonment which may **extend up to six months and shall also be liable to fine.**

**ASC Comments:** It is hereby informed that the privacy of taxpayer must be respected as the information relating to an assessee should be held in fiduciary capacity, and maintaining its confidentiality is a statutory obligation of the Department. Any breach of the aforesaid statutory obligation will be viewed seriously by the Board and necessary action will be initiated. The CBDT has come up with this circular due to instances of publishing information pertaining to individual taxpayers in the print media with specific reference to departmental sources & sharing of details contained in departmental documents with the representatives of media.

### FRAMING OF SCHEME FOR INDUSTRIAL PARK

The CBDT vide **Notification No. 02/2015 dated: 08.01 2015** in exercise of the powers conferred by clause (iii) of sub-section (4) of **section 80-IA of the Income-tax Act, 1961**, has framed and notified a scheme for industrial park, by **Notification No. S.O. 50(E), dated the 8th January, 2008** subsequently **amended vide Notification No. S.O. 1605(E), dated the 2nd July, 2008** and vide **Notification S.O. No. 1210(E) dated 21.5.2010**. M/s Eldeco SIDCUL Industrial Park Ltd., having its registered office at 201-212, 2nd Floor, Splendor Forum, District Center Jasola, New Delhi-110025 is developing an Industrial Park placed at Village Chargalia, Jail Camp, Sitarganj, Udham Singh Nagar, Rudrapur, Uttarakhand, 262605 and the Central Govt. has declared this as an undertaking for the Industrial Park for the purposes of the said clause (iii) subject to the terms and conditions mentioned in the annexure to the notification.

### COURT DECISIONS

#### THE COMMISSIONER OF INCOME TAX-II, AMRITSAR V/s M/S. INDO GERMAN FABS (Punjab & Haryana HC)

**BRIEF:** Assessee's account books were rejected and the assessee was assessed at a gross rate of 23% instead of 19.74%. The assessee admittedly filed an appeal which was pending adjudication. CIT served a show cause notice by rejecting the books of account and applying the G.P. rate of 27% as against that shown at 19.74%.

**ASC Comments:** In the above case, the **Hon'ble Punjab & Haryana High Court** held that the CIT had wrongly valued the

figure of finished blankets as he had included the value of raw materials and unfinished blankets also. Since, there has been an error on the part of the CIT, the decision is passed in favour of the assessee.

#### M/S. PREMIER ENTERPRISES VERSUS THE DEPUTY COMMISSIONER OF INCOME TAX. (Madras HC)

**BRIEF:** The appellant/assessee is a 100% export oriented unit doing export business in cotton fabrics. For the AY

1994-1995, the assessee filed return of income on 31.10.94 and the same was processed u/s 143 (1) (a). It was noticed that the assessee had made certain fixed deposit in banks and had treated the interest earned from the said deposit as business income and claimed deduction u/s 80 HHC of the Act. Therefore, the A.O. excluded the interest earned out of those deposit from the head 'Business Income' and treated the same under the head 'Income from other sources' and recomputed the income u/s 80 HHC of the Act.

**ASC Comments:** In the above case, the Hon'ble Madras High Court decided that the assessee had deposited the said amount for availing credit facility and the same is evident from the reasoning as reflected in the order of the CIT (Appeals), but there is no reference with regard to such deposit from the Bank. The matter was thus remanded back to the Tribunal.

#### INCOME TAX OFFICER Versus DEVI EXHIBITORS (Gujarat HC)

**BRIEF:** The assessee is a partnership firm engaged in the business of real estate and also running a theatre. In the year 1971, the assessee acquired a piece of land through lease deed. The assessee constructed two theatres on the said land and started earning income by exhibiting films as well as rental income from some of the shops in the theatre building. The assessee had shown capital gain in its return of income for the AY 1993-94. However, the Assessing Officer rejected the assessee's claim.

**ASC Comments:** In the above case, the Hon'ble Gujarat High Court held that Floor Space Index is a capital asset because it is attached with the property and not with the business. Therefore, the appeal of the Revenue was dismissed and decision was given in favour of the assessee.

#### COMMISSIONER OF INCOME TAX RAJKOT III Versus VIPASSANA TRUST (Gujarat HC)

**BRIEF:** The Respondent-Trust made an application for recognition under Section 80G (5) of the Income Tax Act, 1961 ('the Act', for short), in the prescribed format before the appellant. The application was rejected on the ground that the Respondent-Trust had failed to spent 85 per cent of the amount for the A.Y. 2013-14

**ASC Comments:** In the above case, the Hon'ble Gujarat High Court held that at the time of granting approval u/s 80G of the Act, what is to be examined is the object of the trust and so far as the aspect of income is concerned, same can be very well examined by the AO at the time of framing assessment. Thus it was decided that the extent of activities are not required to be examined at the stage of registration u/s 12AA of the Act. The same is required to be examined only at the time of assessment proceedings.

#### COMMISSIONER OF INCOME TAX V/s SMT. MEENAKSHI DEVI (Allahabad HC)

**BRIEF:** No notice was issued under Section 143(2) of the Income Tax Act, 1961.

**ASC Comments:** In the above case, the Hon'ble Allahabad High Court held that the service of the notice on the assessee within the period provided under the proviso is mandatory. In the absence of the notice being served within the stipulated period under section 143(2) of the Act, the assessment proceeding comes to an end and is deemed to have become final. Thus it was decided that since the assessment order was void ab initio, further dealing with the question of law as framed against the assessee. Thus the order of the Tribunal was upheld.

# STATE TAXES

## ALL INDIA VAT

### NOTIFICATIONS & CIRCULARS

#### DAMAN & DIU

#### AMENDED RULES FOR FILING OF E-RETURN (DVAT-16)

The Administration Of Daman & Diu (Dept Of Vat) vide Notification No. DMN/VAT/Rules/2005/2014-15/840 dated 05.01.2015 has amended the Rule 28 of Daman and Diu Value Added Tax Rule, 2005 as follows:

After sub-rule (4) of Rule 28, the following Sub-rule (5) shall be added:

"(5) Every dealer referred to in Sub-rule (1) to (4) shall file the Return DVAT-16 electronically within prescribed limit and will furnish the "DVAT-49- Acknowledgement Slip of e-Return (DVAT-16)", in duplicate, duly signed & sealed by the authorized signatory within seven (7) working days of submission of online Return, in the manner stated in Rule 62 & on submitting of Form "DVAT-49", the department

shall issue the acknowledgement with signature and stamp on one copy of the said Form. If Dealers fail to submit Form "DVAT-49" and / or to obtain the acknowledgement, it shall be constructed that no return has been furnished by the dealer for that tax period.

(5A) The verification of the return in Form "DVAT-49", referred to in sub-rule (5), shall be accompanied by proof of payment of tax, interest or any other sum in form DVAT-20, copy of TDS Certificate(s), as specified in DVAT-49 or in Return form".

In the list of prescribed forms after Form No. "DVAT-48", the new form shall be inserted, namely, "DVAT-49-Acknowledgement Slip of e-Return (DVAT-16)" annexed as Annexure I to this Notification.

Annexed form "DVAT-49" shall come into effect from the subsequent tax period after 05.01.2015 for all original return submissions and revisions of returns of previous periods.

**ASC Comments:** The Dept. has come up with new annexures that will make the return exhaustive and more explanatory. However, the dealers are now required to take sufficient care while filing the original and the revised returns.

## KARNATAKA

### APPLICATION FOR DECLARATION FORM OF PURCHASES BETWEEN DEALERS

The Govt Of Karnataka (Dept Of Commercial Taxes)vide **NOTIFICATION No. CCW/CR.8 / 2013-14 dated 02.01.2015** in supersession of this office notification of even number dated 09.09.2014 notified that every dealer registered under the provisions of the Central Sales Tax Act, 1956, and who has electronically filed return for any month or quarter commencing from 01.01.2013, shall after end of the relevant tax period (month or quarter) , apply for obtaining a declaration in Form 'C' that has to be furnished for any purchase of goods in such month or quarter, which would be a single declaration form covering all transactions of purchases which took place in a month/quarter of a financial year between two dealers. For details of the procedure refer to the aforesaid notification.

**ASC Comments:** The Notification No. KSA.CR 248/08-09 dated 10-03-2010 issued in this behalf stands modified to the extent that a single declaration form covering all transactions of purchases which took place in a month of a financial year between two dealers is being issued with immediate effect.

## KERALA

## THE KERALA TAXATION LAWS(AMENDMENT) ACT 2005

The Govt. of Kerala vide **Notification No. 20478/Leg. A2/2014/Law dated 01.01.2015** has made significant amendments to Kerala Stamp Act, 1959, the Kerala Plantation Tax Act, 1960, the Kerala Land Tax Act, 1961, the Kerala General Sales Tax Act, 1963, the Kerala Motor Vehicles Taxation Act, 1976, the Kerala Tolls Act, 1976, the Kerala Value Added Tax Act, 2003 and the Kerala Finance Act, 2008.

**ASC Comments:** Readers are advised to refer the said Acts for the relevant amendments.

## EXTENSION OF TIME LIMIT FOR FILING AUDIT REPORT FOR THE YEAR 2013-14

The Dept of Commercial Taxes vide **CIRCULAR No. 01/2015 No.C1-40622/14/CT Dated 06.01.2015** has extended the time limit for filing certified audited report in Form No.13 and statement of particulars in Form No.13A by dealers other than companies for the assessment year 2013-14, upto 31.01.2015, which earlier was 31st December, 2014 and no further extension will be granted in any case.

**ASC Comments:** The Kerala VAT Department has now provided an extension of time for completing VAT Audit which would have got time barred otherwise on 31.12.2014.

## ODISHA

### AMENDMENT IN ODISHA ENTRY TAX RULES(1999)

The Govt of Odisha vide **Notification dated 01.01.2015** has brought about a number of amendments in the **Odisha Entry Tax Rules, 1999. They shall henceforth be called Odisha Entry Tax (Amendment) Rules, 2014.** A number of new provisions have been inserted .

**ASC Comments:** Readers are hereby advised to please refer the Odisha Entry Tax (Amendment) Rules, 2014. Significant changes have been made to the **procedure of registration and documents required for such registration** which makes it whatsoever more important.

## RAJASTHAN

### TAX RATES ON MANUFACTURED LAMINATED AUTOMOBILE TEXTILE FABRICS

**Govt Of Rajasthan (Finance Dept)** vide **NOTIFICATION No. F.12(129)FD/Tax/2011-pt.-169 dated 07.01.2015** has directed that the tax payable under the said Act, by a registered dealer having his place of business in State, in respect of the sale of laminated automobile textile fabrics



manufactured by him, from any such place of business in the State, in the course of interstate trade or commerce, shall be calculated at the rate of **0.5** percent subject to the condition of furnishing declaration in **Form 'C'**.

**ASC Comments:** The tax payable on inter-state trade of laminated automobile textile fabrics shall henceforth be

calculated at the rate of 0.5% subject to furnishing of declaration in Form C.

### TRIPURA

The **Government Of Tripura vide Notification No.F.I-11(60)-TAX/2014 dated 9th January 2015** hereby makes the following amendments to the Tripura Value Added Tax Act, 2004:

**1.) Amendment of Schedule III:**

Under entry no.31(i) of Schedule III, the expression, "biri, unmanufactured tobacco, tobacco for manufacture of biri", shall be deleted.

**2.) Amendment of Schedule II(b):**

Under entry no.129 of Schedule II(b), after the expression, "Pan masala, pan chutney, scented supari and the like", the expression, " , biri, tobacco for manufacture of biri and any kind of unmanufactured tobacco", shall be inserted.

**ASC Comments:** The dealers and the respective assessing authorities coming under the purview of the aforesaid notification are hereby directed to take the effect of the same.

### DELHI

#### INSERTION OF SL. NO, REGN NO. & EMBASSY NAME IN SIXTH SCHEDULE

The **Govt. of National Capital Territory Delhi (Dept Of Trade & Taxes) vide Notification No.F.5(54)/Policy/VAT/2013/PF/659-670 dated 02.01.2015** in exercise of the powers conferred by sub-section (2) of Section 103 of the Delhi VAT Act, 2004 (Delhi Act 03 of 2005) has made the following amendments in the Sixth Schedule of the said Act namely:

In the Sixth Schedule appended to the Delhi VAT Act, 2004 (Delhi Act 03 of 2005), in Entry No.1, in Part-A- List of Embassies, after Sl.No. A-146, the following shall be inserted, namely:-

"Sl. No.- A-147 , Registration No.- 07829946498, Name of the Embassy Republic of Latvia"

**ASC Comments:** The above amendment shall come into force w.e.f 22.09.2014. The dealers and the respective assessing authorities coming under the purview of the

aforesaid notification are hereby directed to take the effect of the same.

### MAHARASHTRA

#### REVISED INSTRUCTIONS REGARDING STAY IN APPEALS

**Ref: Trade Circular Ho, 15T of 2014 dated 6th August 2014**

The **Sales Tax Department vide Trade Circular No. 1 T of 2015 dated 7th January, 2015** has modified para 'c)' on page 12 of the Trade Circular No. 15T of 2014 dated 6th August 2014 & it shall read as follows:

" c) In case, an appellant receives some forms after the assessment order is passed, then the appellant should produce the list in the enclosed format at the time of filing of appeal. The appellate authority shall check the declarations as per the list and accordingly fix part payment, as per the amended provision. It is clarified that the declarations received up to the date of filing appeal only would be considered for the purpose of the proviso to section 26(6)."

**ASC Comments:** The Dept. has come up with the revision because there are certain appellants delaying the submission of the declarations for the purpose of fixing part payment, delaying disposition of appeals.

### MADHYA PRADESH

#### AMENDMENT TO MADHYA PRADESH VAT ACT, 2002

The Govt. of Madhya Pradesh has made numerous amendments to the Madhya Pradesh VAT Act, 2002 which may be called Madhya Pradesh Vat (Amendment) Ordinance, 2014.

**ASC Comments:** The amendments relate to provisions of **disposition of appeals, input tax rebate, penalty, power to reopen assessments**, etc. This shall come into effect from the dates mentioned as against the relevant provisions. Please refer the Madhya Pradesh Vat (Amendment) Ordinance, 2014 for the complete details.

### BIHAR

The **Govt. of Bihar vide Notification No. S.O. 3 dated 15th January 2015** hereby substitutes the entry " 16.00 % " in Column no. 3 of serial no.6 (Speed Diesel Oil and Light Diesel) of the table (Schedule IV) appended to Commercial Taxes Department Notification No. S.O. 24 dated 24th March, 2005 as amended from time to time, by the following entry " 18.00 % " with immediate effect.

**ASC Comments:** The Bihar VAT Dept hereby directs the dealers, by the aforesaid notification, to take the effect of the same from the date mentioned herein.

## COURT DECISIONS

### K.V.SESHIAH CHETTY & CO V/s THE STATE OF TAMIL NADU (Madras HC)

**BRIEF:** The dealer had availed an input tax credit on goods that on verification were found short. The dealer submitted

its objections stating that the small difference in weightment is due to different weigh bridges and weighing machines and claims that the input tax credit should not be reversed.

**ASC Comments:** In the above case, the Hon'ble Madras High Court held that as per 19(9)(i) of the TNVAT Act it is evident that no input tax credit shall be availed by a registered dealer for purchase of goods, if such goods are not sold because of any theft, loss or destruction, for any reason, including natural calamity. Thus, it was decided that if the dealer has already availed excess input tax credit against purchase of goods, then there shall be reversal of input tax credit.

### M/s INDIAN OIL CORPORATION LTD V/s STATE OF KARNATAKA (Karnataka HC)

**BRIEF:** The assessee carries on business (as a Marketing Division of M/s. Indian Oil Corporation Ltd.), for sales of petroleum products and liquefied petroleum gas— both domestic and industrial. The assessee had paid taxes on purchases made within the state and the same was sold within the state, ensuring his entitlement to input tax credit.

**ASC Comments:** In the above case, the Hon'ble Karnataka High Court held that All the LPG purchased within the state is sold within the state as is reflected from the invoices. The dealer can be denied the input tax credit only if there is a stock transfer of the goods. Decided that the matter should be remanded back to the first appellate authority to consider the documents produced by the assessee and then decide whether there is a stock transfer in respect of non – domestic LPG purchased from local registered dealer.

### M/S. KAMAKHYA ENTERPRISES THROU. ITS PROPRIETOR VINOD KUMAR V/S COMMISSIONER COMMERCIAL TAXES U.P. (Allahabad HC)

**BRIEF:** The applicant's (registered under U.P. Value Added Tax Act, 2008) truck was carrying the goods without any

proper documents. The authorities issued notice to the applicant and thereafter, passed seizure order. The Tribunal affirmed the seizure order, modified the same and required the applicant to deposit 10% of the total value of the seized goods in cash and 30% by way of security other than cash and bank guarantee.

**ASC Comments:** In the above case, the Hon'ble Allahabad High Court held that both the applicant as well as the revenue agreed that the applicant shall furnish security to the extent of 2 lakhs only in cash and the remaining security of 30% in the form of personal guarantee of the proprietor of the applicant firm. Decided that the goods shall be released in favour of the applicant only on furnishing some cash security in lump sum and the security for some amount by way of personal guarantee of the proprietor of the applicant firm.

### M/S BHAGAT HALWAI AND CONFECTIONERS. VERSUS THE COMMISSIONER OF TRADE TAX (Allahabad HC)

**BRIEF:** The applicant is a dealer engaged in the business of purchase and sale of sweetmeats, namkeens, liquid form of syrup and confectioneries. The applicant made purchases of synthetic soft drink concentrate syrup from registered dealers inside State of U.P and the said syrup was processed into consumable soft drink on which it did not admit any tax liability. The Assessing Authority fixed the tax liability at the rate of 15% on self manufactured soft drinks.

**ASC Comments:** In the above case, the Hon'ble Allahabad High Court held that the definition of 'manufacture' in Section 2(e-1) of the UP Trade Tax Act includes processing, treating or adapting any goods. The expression 'manufacture' covers within its sweep such activities which bring into existence a new commercial commodity different from the articles on which that activity was carried on and also such activities which do not necessarily result in bringing into existence an article different from the articles on which such activity was carried on. Thus it was decided that it is immaterial whether the commercial identity of the product changes or not. The crux is that it is a case of manufacture as defined in Section 2(e-1) of the UP Trade Tax Act and is hence liable to tax.

### M/s LALBAUGCHA RAJA SARVAJANIK GANESHOTSAV MANDAL V/s STATE OF MAHARASHTRA (Maharashtra Sales Tax Tribunal)

**FACTS:** The appellant, a public charitable trust, formed for the purpose of celebrating Ganeshotsav receives donations in cash and kind. The donations received in kind in the form of gold / silver ornaments, coins, etc., are disposed of by way of auction.

**ASC Comments:** In the above case, the **Hon'ble Maharashtra Sales Tax Tribunal** held that Public Charitable trust is specifically included in the definition of 'dealer' in view of Section 2(8) of the MVAT Act by amendment dated 1.4.2005. Even the sale of certain goods are entitled to be brought in the tax net even though it could not be called a 'business' activity. Thus, it was decided that Public Charitable trust is also a 'dealer'. Sale by such dealer of certain goods received in donations by way of auction is also a 'sale' within a meaning of the Act and person carrying out activity of sale of goods whether by way of auction or otherwise is liable to pay VAT.

charge on immovable assets, movable assets, financial securities and issue of corporate and / or personal guarantees in favour of overseas lender / security trustee, to secure the ECB to be raised / raised by the borrower, subject to satisfying themselves. Thus, The RBI has expanded the scope of security for ECBs raised by the borrowers.

## OTHER UPDATES

### MCA

**With effect from 31st December, 2014, the amended Companies (Cost Records & Audit) Rules, 2014 requires every company to maintain Cost Records if turnover exceeds Rs. 35 crores or more during immediately preceding Financial Year in respect of the products and services specified.**

#### APPLICABILITY OF COST AUDIT

Cost Audit is applicable for:

- Regulated Industry- If turnover exceeds Rs 50 crores
- Others- If turnover exceeds Rs 100 crores

#### EXEMPTIONS FOR COST AUDIT

**Companies whose revenue from exports, in foreign exchange, exceeds 75% of total revenue, and Companies operating from Special Economic Zones are exempted from the applicability of Cost Audit.**

**ASC Comments:** With the amendment coming into force there may be a number of companies which get exempted from the compliances of maintaining Cost Records and Cost Audit.

### RBI

#### SECURITY FOR EXTERNAL COMMERCIAL BORROWINGS

RBI vide Circular No. A.P. (DIR Series) Circular No. 55 dated January 01, 2015 has allowed to AD Category-I for creation of

#### OVERSEAS DIRECT INVESTMENTS BY INDIAN PARTY – RATIONALIZATION / LIBERALIZATION

RBI vide Circular no. A.P. (DIR Series) Circular No.54 dated December 29, 2014 allowed AD bank to give permission of creation of charge / pledge on the shares of the JV / WOS / SDS (irrespective of the level) of an Indian party in favour of a domestic or overseas lender for securing the funded and / or non-funded facility to be availed of by the Indian party or by its group companies / sister concerns / associate concerns or by any of its JV / WOS / SDS (irrespective of the level) under the automatic route subject to some conditions.

**ASC Comments:** With the above circular coming into effect, the RBI has liberalized the FDI Policy for the Indian Companies.

#### EXTENSION OF DATE OF EXCHANGE OF PRE-2005 BANK NOTES

RBI has decided to extend the date for exchanging the pre-2005 banknotes to June 30, 2015 from January 01, 2015. All Banks are advised to facilitate the exchange of such notes for full value without causing any inconvenience to the public, whatsoever. These notes will retain their legal tender status and the public can continue to use these for any transaction/ payment. Further such notes are not dispensed through the ATMs/ over your counters. The methodology to be followed for dealing with the Pre-2005 series banknotes contained in the earlier circular will remains unchanged.

**ASC Comments:** The public thus gets more time, till 30<sup>th</sup> June 2015, to exchange the notes prior to 2005.

### DGFT

**Amendments in "Detailed Guidelines for Issue / Modification of Importer Exporter Code Number (IEC)" as notified vide Public Notice No. 76 dated the 27th of November, 2014 and Para 9.1 of Handbook of Procedure vol.1 (2009-14).**

**ASC Comments:** Director General of Foreign Trade hereby amends Part V of the "Detailed Guidelines for Issue / Modification of Importer Exporter Code Number (IEC)" as notified vide Public Notice No. 76 (RE- 2013)/2009-2014 dated the 27th of November, 2014 and Para 9.1 of Handbook

of Procedure vol.1 (2009-14). DGFT has done inclusion of certain additional documents, for fresh application and modification of IEC Code. Further, all applicants will have to submit online application for modification in IEC and pay Rs

500 /- as application fee. They have done away with the manual process of filing of an application for allotment of IEC.

# GST CASE STUDY

## QUERY

We are a concern from Delhi, manufacturing and selling goods in Delhi. We have been paying excise duty and the relevant VAT amount as per the specified rates on the sales as the case may be. With the emergence of GST, the tax structure is getting complicated as to what amount will be payable on the sales. Please clarify the provisions and impacts of the upcoming GST mechanism.

*Name and Address Withheld*

## REPLY

For your convenience we have done a small analysis on Intra State Transactions of goods. **WE SHALL COME OUT WITH SIMILAR CASE STUDIES ON VARIED TRANSACTIONS IN OUR FUTURE ISSUES**

IMPACT OF GST ON SALE OF GOODS IN INTRA STATE TRANSACTIONS										
Particulars	PRESENT REGIME					GST REGIME				
	Amount	Excise Duty @12.36%	Total	VAT @13.5%	Total Billing	Amount	CGST @12%	Total	SGST @8%	Total Billing
Goods manufactured	5000	618	5618	758.43	6376.43	5000	600	5600	448	6048
Wholeseller to Distributor	6500	0	6500	877.5	7377.5	6500	780	7280	582.4	7862.4
Liability of VAT/GST				119.07			180		134.4	
Distributor To Retailer	7000		7000	945	7945	7000	840	7840	627.2	8467.2
Liability of VAT/GST				67.5			60		44.8	
Retailer To Customer	10000		10000	1350	11350	10000	1200	11200	896	12096
Liability of VAT/GST				405			360		268.8	
Total Liability of Excise Duty /GST		618					1200			
Total Liability of VAT /GST				1350					896	
Total					1968					2096
Effective IDT Rate is					19.68					20.96



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