



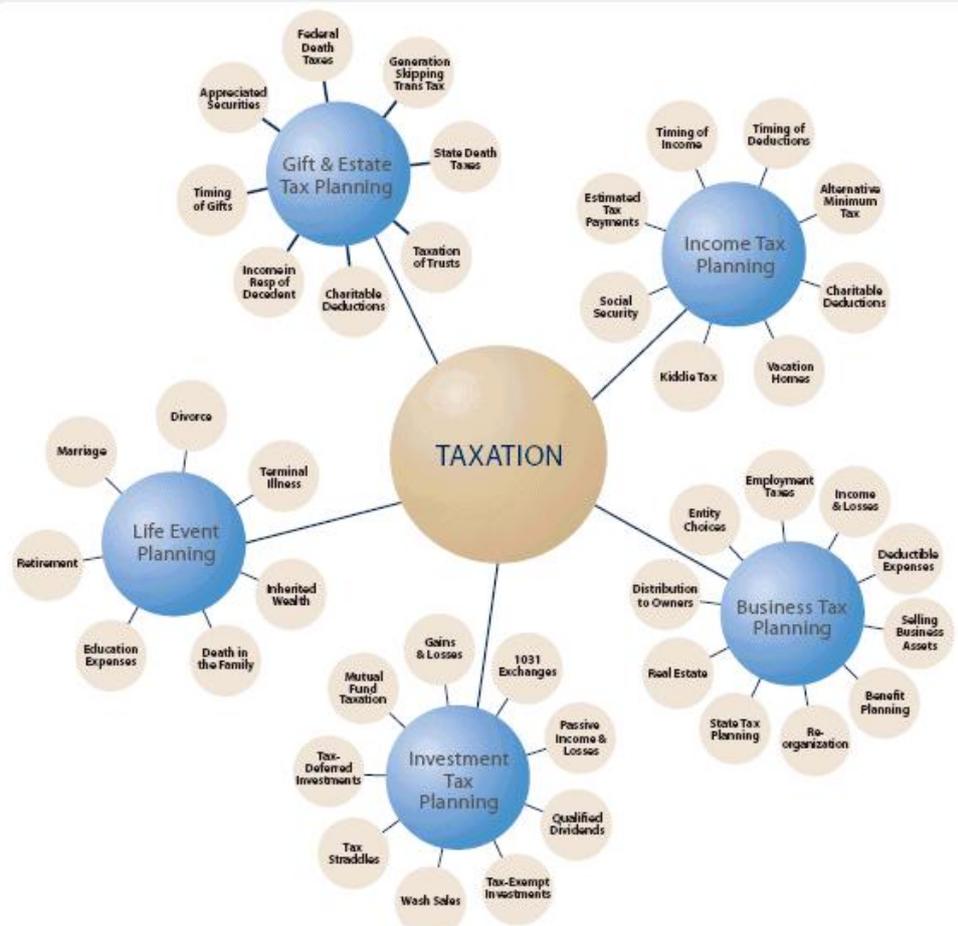
ASC Times

All India Taxes Weekly Referencer

Vol: Aug 01-Aug 07, 2016

Solving
any **tax**
puzzle

Tax saving advice
across all the taxes



From the CEO's Desk



Dear Reader,

Whenever you apply for a loan, banks or other financial institutions check your CIBIL (The Credit Information Bureau of India) rating before sanctioning it. This is basically a credit history of an individual researched and recorded in the CIBIL body. But till now citizens had no access to the information for free and if one wanted to attain that then he had to pay Rs. 550 to obtain it. This amount would include Rs. 100 for a credit information report. Rs. 60 for TransUnion Credit Score and a convenience fee of Rs. 318, rest being the taxes. But one can obtain the information once a year only and in that though history would be provided, Credit Score will not be given. Although individuals would be able to raise a dispute if the lender has submitted any incorrect information to the bureau. Satish Pillai, MD and CEO of CIBIL said that credit reports were being used more than ever before. Besides banks and finance companies that access credit history before extending loans, telecom companies allocate limits for postpaid customers based on credit scores. Insurance companies are also looking at credit scores, as there is causality between credit score and claim probability. This will start from December.

'One Nation One Tax' is the new slogan used by finance minister Mr. Arun Jaitley, in his recent script delivered at the 1st Dr. A P J Abdul Kalam Memorial Lecture at India Islamic Cultural Centre. "This whole idea of one nation one tax is extremely important for India, in not only reducing the level of tax but also for providing an ease (of doing business) and eliminating any forms of corruption" he said. This was all said in the light for pushing the GST bill which is pending at Rajya Sabha for the clearance. He also said that in the age of globalization India cannot afford to have an indirect tax system where an individual is taxed at every point.

Soon you will be able to deposit cash through credit card swipe machines, which are used for making payments till now. MasterCard has tied up with banks that install point

of sales (Pops) terminals to accept cash deposits for loading onto prepaid cards. The payments company has already got this proposal cleared with the RBI and would be launching this service reposer shortly. Can we see at it as a pathway for Oyster Cards like in London. These are the cards, which can be used, for payments at metro stations, utility stores and any other purchasing you want to do and if you are somehow out of limit than you can get it loaded from these outlets only. The future is 'Ease of Doing transactions' for sure.

Alok Kumar Agarwal

CEO

ASC Group.

TAX CALENDER

Due Date	Description	Law
5 Aug	Deposit of Tax	Kerala VAT, Rajasthan VAT,
	Issue of TDS Certificates	Tamil Nadu VAT,
6 Aug	Deposit of Tax	Service Tax Law
		Central Excise Law
7 Aug	Deposit of TDS	Orissa VAT, Tripura VAT, Mizoram VAT.
	Deposit of TDS/TCS	Income Tax Law
	Issue of TDS Certificate	Orissa VAT.
	Issue of TDS Certificate	Income Tax Law

COUNTRY WIDE HOLIDAYS FOR THE WEEK

Date	Occasion/Festival	Region
NA	NA	NA

INDEX GUIDE

TOPIC	PAGE NO.
Service Tax	4-5
Central Excise	5-6
Customs	7-8
Income Tax	8-9
State Taxes	9-11
Other Updates	11-12
Our Contacts	13

CENTRAL TAXES

SERVICE TAX

CIRCULARS & NOTIFICATIONS

The Govt. vides circular No. 196/06/2016-ST dated 27th July 2016, notifies the instructions regarding provisional attachment of property under Section 73C of the Finance Act, 1994.

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

COURT DECISIONS

M/S. CINEYUG WORLDWIDE VERSUS THE UNION OF INDIA, THE COMMISSIONER OF SERVICE TAX, MUMBAI-II [BOMBAY HIGH COURT]

BRIEF: Service Tax Dispute. Settlement Commission rejected the application. We specifically reject and repeal the reason given by the Settlement Commission that it cannot take evidence or that, when confronted with conflicting submissions on facts and law, its only recourse is to dismiss a settlement application brought before it.

OUR TAKE: The hon'ble **BOMBAY HIGH COURT** held that that there has been a fatal violation of the principles of natural justice. We are also satisfied that the Settlement Commission has not proceeded in accordance with its statutory mandate under Chapter V of the CEA. We specifically reject and repeal the reason given by the Settlement Commission that it cannot take evidence or that, when confronted with conflicting submissions on facts and law, its only recourse is to dismiss a settlement application brought before it. Nothing could be further from the statutory intent. Matter restored before the Settlement Commission for a fresh consideration.

VODAFONE CELLULAR LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, PUNE [CESTAT MUMBAI]

BRIEF: Point of Taxation Rules (POT). Formal invoices were not issued by the appellant because service receivers were not ready to enter into a contract with the appellant even though they were receiving service continuously from the appellant - service tax is payable by the appellant on the basis of the demand letters.

OUR TAKE: The hon'ble **CESTAT MUMBAI** held that the appellant issued demand letters. It is clearly been brought out in Para 23 of the impugned order that the appellant never declared the provision of service rendered or taxable value in the service tax returns filed with the department. Failure to fulfil this legal obligation cast on the service provider is a case of suppression of facts especially when the appellant had raised demand letters on the service receivers quantifying the charges payable for the services rendered by the appellant. Demand of service tax confirmed invoking extended period of limitation. [**Decided against the assessee**]

CCE, CHANDIGARH VERSUS PATIALA MARKETING SERVICES PVT. LTD. [CESTAT DELHI]

BRIEF: Marketing and advertising activities undertaken for ICICI Bank. The respondent has not been able to demonstrate as to how and on what basis it had a bonafide belief that the impugned service did not fall under BAS. Demand of service tax confirmed.

OUR TAKE: The hon'ble **CESTAT DELHI** held that neither at the time of adjudication at the primary level nor at the first appellate level, the issue of time bar was raised, though it being a mixed question of fact and law, it can be raised at this stage. However, we find that the nature of service rendered was such that it was clearly covered under the definition of BAS. The respondent has not been able to demonstrate as to how and on what basis it had a bonafide belief that the impugned service did not fall under BAS. Bonafide belief is not a hallucinatory belief; it is a belief of a reasonable person working in appropriate environment. It can hardly be the respondent's case that it was guided by CESTAT judgment. [**Decided in favour of Revenue**]

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 it is clear that if service tax is paid by the assessee, same shall be available as Cenvat credit to the postal department and to that extent net liability of service tax shall stand reduced while paying the service tax by the postal department. Therefore, it is an exercise of revenue neutral for this reason demand does not exist. We, therefore, drop the demand 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 and hold that the impugned order is correct and legal and does not suffer from any infirmity. **[Decided against Revenue]**

CENTRAL EXCISE

NOTIFICATION / CIRCULAR

The Govt. vides Notification No. 26/2016-CX dated 26th July 2016, amends notification no. No. 12/2012-Central Excise so as to prescribe 1% excise duty (without input and capital goods credit) on parts of articles of jewellery falling under heading 7113 of the Central Excise Tariff Act, 1985 (5 of 1986), and to prescribe a criteria for classification of an articles of jewellery or part of articles of jewellery or both as that of a particular precious metal.

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

The Govt. vides Notification No. 27/2016-CX dated 26th July 2016, Seeks to partially exempt Central Excise duty on articles of jewellery falling under heading 7113 of the Central Excise Tariff Act, 1985 (5 of 1986) manufactured by:

- (a) Re-conversion of jewellery given by the retail customer, or
- (b) Mounting of precious stone given by the retail customer.

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

The Govt. vides Notification No. 28/2016-CX dated 26th July 2016, amend notification No. 8/2003-Central Excise dated 1st March, 2003, so as to increase the SSI Exemption limit and the SSI Eligibility limit for articles of jewellery or parts of articles of jewellery or both.

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

The Govt. vides Notification No. 29/2016-CX dated 26th July 2016, amend notification No. 17/2011-Central Excise, dated the 1st March, 2011, so as to exclude handicrafts falling under heading 7113 of the Central Excise Tariff Act, 1985 (5 of 1986), from the purview of excise duty exemption for "handicrafts".

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

The Govt. vides Notification No. 40/2016-CX dated 26th July 2016, amend notification No. 36/2001-Central Excise (N.T.) dated 26th June, 2001, so as to exempt a manufacturer or principal manufacturer of articles of jewellery or parts of articles of jewellery or both, falling under heading 7113 of the Central Excise Tariff Act, 1985 (5 of 1986) from taking central excise registration upto the full exemption limit..

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

COURT DECISIONS

CCE, JAIPUR-I VERSUS M/S. MAN INDUSTRIAL CORPORATION. (CESTAT NEW DELHI)

BRIEF: Refund claim subject to unjust enrichment. It is an admitted fact that the buyer has not debited Cenvat credit along with the amount of duty in dispute as claimed by the respondent as a refund. Refund not allowed.

OUR TAKE: The hon'ble CESTAT NEW DELHI held that it is an admitted fact that the buyer has not debited cenvat credit along with the amount of duty in dispute as claimed by the respondent as a refund. In the circumstances, relying on the decision in the case of Oriental Textile Processing Co. (P) Ltd. (CESTAT, NEW DELHI), we hold that the Id. Commissioner (Appeals) is in error in holding that the respondent has passed unjust enrichment. Therefore, the impugned order is set aside. **[Decided in favour of assessee]**

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

BRIEF: Allegation of fraudulent export of goods to Nepal - . It is the departmental internal correspondence to ascertain the fact that export is complete or not. For the lapses of the department, appellant cannot be held faulted

OUR TAKE: The hon'ble CESTAT NEW DELHI held that appellant has been able to prove his case of export of the goods to Nepal. Therefore, no duty can be demanded from the appellant and Cenvat Credit cannot be denied. As duty cannot be demanded from the appellant penalties on both the appellants is not imposable. With these terms, impugned

order is set aside. Appeals are allowed with consequential relief if any.

M/S. INOX AIR PRODUCTS LTD. VERSUS CCE, CHANDIGARH (CESTAT NEW DELHI)

BRIEF: Valuation - stock transfer - Differential duty on clearances to their Faridabad unit - comparable price - while the value adopted is to be based on comparable value there is no sanction to take highest of the independent sale price for such purpose.

OUR TAKE: The hon'ble CESTAT NEW DELHI held that the demands were issued based on scrutinizing of periodical monthly returns filed by the appellants. On advice by departmental officers the appellants paid the differential/additional duty on 5.10.99 well before the adjudication. Certificates under Rule 57E were also issued to them for availing credit. We find in these circumstances imposition of penalties equal to duty difference demanded is not justifiable and accordingly, we set aside the same.

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]

M/S. ABDOS OIL (P) LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, HALDIA [CESTAT KOLKATTA]

BRIEF: Eligibility to take cenvat credit on "8 cavity mould for flip to cap" sent to job worker without bringing the same into their factory. The purpose of bringing the moulds first to the factory premises and then clearing the same to a job worker may not serve any purpose except for incurring some additional transportation cost to the appellant. Credit allowed.

OUR TAKE: The hon'ble CESTAT KOLKATTA held that the argument of the appellant , that such moulds may not be brought back by the appellant if it has exhausted its production capability, has got some force. The purpose of bringing the moulds first to the factory premises and then clearing the same to a job worker may not serve any purpose except for incurring some additional transportation cost to the appellant. It is an accepted norm that raw materials can also be directly sent to the job worker without being actually brought into the factory of an assessee. In view of the above observations & settled proposition of law appeal filed by the appellant is allowed with consequential relief, if any.

CUSTOMS

NOTIFICATION / CIRCULAR

The Govt. vides Notification No. 43/2016-Cus dated 26th July 2016, amend notification No. 27/2011-Customs, dated 01.03.2011 so as to provide exemption from export duty to Organic sugar up to 10,000 MT in a year beginning with October and ending with September subject to specified conditions. The exemption for the period ending with 30th September, 2016 shall be restricted to 2500 MT.

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

The Govt. vides Notification No. 44/2016-Cus dated 26th July 2016, amend notification 52/2003-Customs dated 31st March 2003.

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

COURT DECISIONS

BUSSA OVERSEAS & PROPERTIES (P) LTD. & ANOTHER VERSUS UNION OF INDIA & ANOTHER [SUPREME COURT]

BRIEF: Maintainability of appeal before Apex Court - Challenge to the order passed by the High Court dismissing the review application on merit as well as delay. If the basic judgment is not assailed and the challenge is only to the order passed in review, this Court is obliged not to entertain such special leave petition.

OUR TAKE: The hon'ble SUPREME COURT held that It has to be understood that the Court has evolved and formulated a principle that if the basic judgment is not assailed and the challenge is only to the order passed in review, this Court is obliged not to entertain such special leave petition. The said principle has gained the authoritative status and has been treated as a precedential principle for more than two decades and we are disposed to think that there is hardly any necessity not to be guided by the said precedent. - the appeal, being not maintainable, stands 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.

JUBILANT LIFE SCIENCES LTD. (UNIOT-2) VERSUS MINISTRY OF COMMERCE AND INDUSTRY AND 8 [GUJRAT HIGH COURT]

BRIEF: Refund claim - SEZ unit - Additional Commissioner, Customs, Surat returned the refund application of the petitioner on the ground that he has no authority to decide the same. The competent authority under the Customs Commissioner ate, Surat, is directed to decide the refund application upon being represented by the petitioner.

OUR TAKE: The hon'ble GUJRAT HIGH COURT held that the competent authority under the Customs Commissioner ate, Surat, is directed to decide the refund application upon being represented by the petitioner. If so done latest by 30.1.2016, decision will be taken expeditiously and preferably before 30.4.2016.

M/s ROXUL ROCKWOOL INSULATION INDIA PVT. LTD. Versus UNION OF INDIA AND 8 [GUJRAT HIGH COURT]

BRIEF: Jurisdiction to sanction Refund - Customs authorities or SEZ authorities - Refund of additional duty - SEZ unit - The refund application shall be decided by the competent officer under the Customs Commissioner ate, Surat.

OUR TAKE: The hon'ble GUJRAT HIGH COURT held that As long as the duty in the nature of customs duty has been collected, the refund would be payable only in terms of Section 27 of the Customs Act. Since the statute also prescribes the authority competent to entertain such an application, refund applications would be maintainable before such authority. Unless there is amendment in law, the respondents cannot prevent the competent officer from exercising his statutory powers, in fact, duties. In the result, impugned communication dated 30.11.2015 is quashed. The

refund application shall be decided by the competent officer under the Customs Commissioner ate, Surat as expeditiously as possible and preferably before 30.04.2016.

JSW STEEL LIMITED, SHRI RAJIV BAKSHI, WELSPUN TRADINGS LIMITED, SHRI SURESH DARAK, SHRI SOURAV DAS, UPL LIMITED, EVEREST FLAVOURS LIMITED VERSUS UNION OF INDIA, THE DIRECTOR GENERAL OF FOREIGN TRADE, THE ADDITIONAL DIRECTOR GENERAL OF FOREIGN TRADE, FOREIGN TRADE DEVELOPMENT OFFICER [BOMBAY HIGH COURT]

BRIEF: Tribunal power under the Act to extend the stay of demand in the appeals pending before it beyond the period of 365 days - Nothing has been shown to us as to why when the Revenue has accepted the earlier orders, a different stand is taken in this appeal - power to tribunal to extend stay upheld.

OUR TAKE: The hon'ble BOMBAY HIGH COURT held that it difficult to accept the proposition that where there was no cap or limit in the 2012 Notification or in any of its surrounding or contemporaneous documents such as public speeches, policy documents, changes in the Handbook of Procedures and so on, such a restriction could be said to have been brought in by the 2013 Notification. All four Petitions succeed in part. We hold that the 2013 Notification places no cap or restriction on the value of the IEIS scrip. The Authorities concerned will consider the Petitioners' applications on merits bearing in mind our findings and this order, and without any regard to the impugned Clarification of 23rd September 2014. **[Decided in favour of appellant]**

THE COMMISSIONER OF CUSTOMS VERSUS AVINASH DAWAR & ANOTHER [DELHI HIGH COURT]

BRIEF: Once the statute is clear that where the subject matter is 'gold', the Settlement Commission would not have any jurisdiction to entertain the application under Section 127B, any order passed in contravention of the statute cannot be sustained on the ground of estoppels.

OUR TAKE: The hon'ble DELHI HIGH COURT held that once the statute is clear that where the subject matter is 'gold', the Settlement Commission would not have any jurisdiction to entertain the application under Section 127B, any order passed in contravention of the statute cannot be sustained on the ground of estoppels. Impugned order is set aside. **[Decided in favour of Revenue]**

INCOME TAX

COURT DECISIONS

N. MOHAMMED ALI VERSUS THE INCOME TAX OFFICER, WARD VIII (2) , CHENNAI [MADRAS HIGH COURT]

BRIEF: Business compulsions and expediency in making the cash purchases. In the absence of any specific detail, the vague statements made in response to the show cause notice, cannot offset the entries made in the books of accounts.

OUR TAKE: The hon'ble MADRAS HIGH COURT held that the assessee neither pleaded nor proved the existence of any one of those circumstances indicated in Rule 6DD. Therefore, Rule 6DD cannot also go to the rescue of the appellant/assessee. [Decided against the assessee]

ASST. COMMISSIONER OF INCOME TAX -15 (2) , MUMBAI VERSUS MR. NITIN V SHAH AND VICA-VERSA [ITAT MUMBAI]

BRIEF: : Ad-hoc disallowance on account of telephone, mobile, motorcar expenses, office expenses, printing and stationery, staff welfare, hotel expenses and travelling expenses confirmed since the assessee could not produce the evidence that all the expenses were incurred for business purpose

OUR TAKE: The hon'ble ITAT MUMBAI held that The assessee could not explain before the AO the source of down payment made in cash, accordingly, it was added u/s 68 by the AO. The assessee's contention had been that, he had sufficient balance to pay the cash; however, no supporting details / documents were filed. The Ld CIT(A) too confirmed the said addition on the ground that, assessee could not substantiate his explanation by producing any evidence. Accordingly, the said additions were sustained. [Decided against assessee]

THE ASST. COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE – 1, NASHIK VERSU DR. NITIN LAXMIKANT LAD [ITAT PUNE]

BRIEF: Levy of penalty u/s 271(1)(c) on unrecorded receipts, expenditure and investments declared by the assessee pursuant to search confirmed.

OUR TAKE: The hon'ble ITAT PUNE held that no merit in the said claim of the assessee. Accordingly, we uphold the levy of penalty under section 271(1)(c) of the Act on unrecorded receipts, expenditure and investments declared by the assessee pursuant to search. [Decided against assessee]

Further, held that no merit in the said observations of the authorities below and we direct the Assessing Officer to levy penalty under section 271(1)(c) of the Act on the additional income assessed in the hands of assessee pursuant to search and delete the penalty for concealment on the alleged addition of 6,00,000/-. [Decided in favour of assessee in part]

ESCOLIFE IT SERVICES PVT. LTD., C/O ESCORTS LTD. VERSUS ITO, CO. WARD 11 (2) , NEW DELHI [ITAT DELHI]

BRIEF: When the trading by the assessee company is accepted by the Revenue as incidental to its main business during the earlier years, the income cannot be treated as income from other sources rather it is a business income.

OUR TAKE: The hon'ble ITAT DELHI held that the assessee has not produced the vouchers to prove the claim of sale and purchase but when the Revenue has accepted the audited profit and loss statement, they cannot be allowed to sail in two boats; that when the assessee company has not sold, discarded, demolished or destroyed the assets during the previous year, the assessee has certainly become entitled for depreciation. [Decided in favour of the assessee]

Further held that when the trading by the assessee company is accepted by the Revenue as incidental to its main business during the earlier years, the income cannot be treated as income from other sources rather it is a business income. [Decided in favour of the assessee]

JOHN DEERE INDIA PVT. LTD. VERSUS THE DCIT (TDS) – 2, PUNE. [ITAT PUNE]

BRIEF: TDS u/s 194H. Whether expenditure towards "Authority to Guarantee charges" falls within the ambit of section 194H or not?- Held no - The requirement of an agent and principal relationship is found absent in this case.

OUR TAKE: The hon'ble ITAT PUNE held that It is noticeable from the definition of expression "commission or brokerage" as appearing in section 194H of the Act that (a) a payment should be received by a person for services rendered only and (b) such person should be acting on behalf of the other person to whom the services have been rendered in respect of buying and selling of goods, etc. The finance company is merely providing financial services in the form of loan and subsequently collecting the payment against the assurance for sharing a part of losses. Therefore, we are of the considered view that section 194H is not applicable in the facts of the case. [Decided in favour of the assessee]

STATE TAXES

ALL INDIA VAT

ANDHRA PRADESH

The Govt. vides Notification G.O.MS. No. 347 dated 27th July 2016, notifies that Construction activity in the State of Andhra Pradesh - Insisting all the Contractors / Concessionaires engaged in the construction of infrastructure projects for Government, to procure materials/inputs within the State.

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

DELHI

The Govt. vides Notification No. F.3(4)/FIN.(REV.-1)/2016-17/DS-VI/238 dated 25th July 2016, notifies that In exercise of the powers conferred by sub-section (3) of section 1 of the Delhi Value Added Tax (Amendment) Act, 2016 (Delhi Act 03 of 2016), the Lieutenant Governor of the National Capital Territory of Delhi, hereby, appoints the 26th July 2016 as the date on which said Act shall come into force.

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

JAMMU & KASHMIR

The Govt. vides Notification No. SRO 244 dated 27th July 2016, notifies that In exercise of the powers conferred by proviso to sub-rule (2) of Rule 28 of the Jammu and Kashmir Value Added Tax Rules, 2005, the Government hereby directs that the last date for filing of returns for the First Quarter of 2016-17 and revised return for the Fourth Quarter 2015-16 shall now be 31st of August, 2016.

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

MADHYA PRADESH

The Govt. vides Notification No. F-A-3-20-2013-1-V(38) dated 29th July 2016, amends notification No. F-A-3-20-2013-1-V(32), dated the 30th May 2016

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

TELENGANA

The Govt. vides Notification G.O.MS. No. 186 dated 28th July 2016, notify that In exercise of the powers conferred by sub-section (1) of section 79 of the Telangana Value Added Tax Act, 2005 (Act No.5 of 2005), the Government of Telangana hereby makes the following amendment to the Schedule-IV of the said Act.

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

UTTAR PRADESH

The Govt. vides Notification KA.NI.-2-1062/XI-9(156)/16 dated 29th July 2016, notifies that Sanitary Napkin and Maternity Napkin manufactured by Uttar Pradesh Panchayat Udyog had been exempt.

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

UTTARAKHAND

The Govt. vides Notification 472/2016/24(120)/XXVII(8)/2010 dated 27th July 2016, amends Schedule-I and Schedule-II - Regarding Khoya/Khoa

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

COURT DECISIONS
M/S ROHIL ZINC LTD. VERSUS THE STATE OF MAHARASTHRA & OTHERS (BOMBAY HIGH COURT)

BRIEF: Maintenance of records for 5 years. The five year period to be reckoned from the last day of the financial year concerned or not. Revision proceedings based of records on the file is valid.

OUR TAKE: The hon'ble **BOMBAY HIGH COURT** held that this is not a case where any order to the prejudice of the applicant-dealer has been passed because of non availability or non production of the records. The Second Appellate Order initially passed on 23rd June, 2010, recites the facts. The Revisional Authority passed the order ex-parte on scrutiny of the case records underlying the assessment order dated 30th November, 1995. Thus, the records before the Assessing Authority were taken into consideration. The dealer was called upon on the basis thereof to satisfy the Revisional Authority as to why the assessment order should not be revised. There was absolutely no prejudice, therefore, to the dealer and he could have, on the basis of the order of assessment, opposed the exercise of the Revisional power. **[Decided against the assessee]**

VIJAY TANKS AND VESSELS P. LIMITED VERSUS STATE OF KARNATAKA, DEPUTY COMMISSIONER OF COMMERCIAL TAXES (AUDIT-3), STATE BANK OF SOURASHTRA [KARNATAKA HIGH COURT]

BRIEF: Premature recovery proceedings where there is time to file such an appeal. No precipitate action would be taken if the petitioner would file an appeal within the period prescribed for filing the appeal.

OUR TAKE: The hon'ble **KARNATAKA HIGH COURT** held that the learned Government Advocate submits that no precipitative action would be taken if the petitioner would file an appeal within the period prescribed for filing the appeal. - Recording the submission of the learned Government Advocate, the petitions stand disposed of. If no appeal is filed, it is open for the respondents to execute the order.

OTHER UPDATES

COMPANY LAW
COURT DECISIONS
M/S JAIMURTY MINERALS & CHEMICALS PRIVATE LIMITED VERSUS M/S LAKHANI RUBBER UDYOG (P) LIMITED [PUNJAB & HARYANA HIGH COURT]

BRIEF: Winding up petition - failure to pay the admitted liability/debt. In view liability being admitted the company is ordered to be wound up and the Provisional Liquidator is now appointed as Liquidator of the company.

OUR TAKE: The hon'ble **PUNJAB & HARYANA HIGH COURT** held that As the respondent company was not in a position to discharge its admitted liability, vide order dated 21.4.2015, the petition was admitted. He was asked to take over the movable and immovable assets of the company. No purpose would be served in keeping the matter pending and therefore, in view liability being admitted the company is ordered to be wound up and the Provisional Liquidator is now appointed as Liquidator of the company.

ALLIED LAW
COURT DECISIONS
VISHAL N. KALSARIA VERSUS BANK OF INDIA AND ORS. [SUPREME COURT]

BRIEF: Eviction of tenant from mortgaged property, validity of lease. A non obstante clause (Section 35 of the SARFAESI Act) cannot be used to bulldoze the statutory rights vested on the tenants under the Rent Control Act.

OUR TAKE: The hon'ble **SUPREME COURT** held that such a situation was not contemplated by the Parliament while enacting the SARFAESI Act and therefore the interpretation sought to be made by the learned counsel appearing on behalf of the Banks cannot be accepted by this Court as the same is wholly untenable in law. Appeals allowed. **[Decided against the Banks]**

KARAM SINGH & OTHERS VERSUS UNION OF INDIA & OTHERS [PUNJAB AND HARYANA HIGH COURT]

BRIEF: Money Laundering. Offenses are bailable or not. Whether the offence is cognizable or non-cognizable, as noticed, Section 4 provides for punishment for more than

3 years and thus offences would be cognizable as provided in the Cr.P.C. itself.

OUR TAKE: The hon'ble **PUNJAB & HARYANA HIGH COURT** held that the complaint has to be filed and with the investigation being at the initial stage the same cannot be quashed at a thresh hold in the absence of any legal bar provided under the Statute. The ancillary prayers made for video graphy at the time of investigation in the presence of the advocate while recording statements thus is the only issue left for consideration in view of the above discussion. It is to be noticed that counsel for the respondent, vide order dated 19.03.2015, had undertaken that on the petitioners joining the investigation, they would have no objection to the interrogation/examination being videographer and necessary arrangements would be made for the same. Petition dismissed. **[Decided against the petitioner]**

GST ALERTS

Section 8 of Goods and Services Tax Act, 2016 (hereinafter referred as the "Act") of the Model GST Law deals with the scheme for Composition Levy.

At present there is composition levy for specific transaction for all goods, in each state, based on turnover, under VAT law; on steel, patta/ patti under Excise Law; and w.r.t. WCT under Service Tax Law.

The composition scheme under GST law overrides all other provisions under the Act which is contrary to the

composition scheme except for sub-section (3) of section 7, which is for Reverse Charge Mechanism under GST law. This means that composition scheme does not override liability under reverse charge under the new Act. It is interesting to note that this scheme is also on turnover basis i.e. for a registered taxable person whose aggregate turnover in a financial year does not exceed fifty lakh of rupees. Further, the rate of tax under this scheme shall be notified on the recommendation of the Council, by the proper officer of the Central or a State Government, subject to such conditions and restrictions as may be prescribed. But such rate shall not be less than one percent of the turnover during the year.

However, no such facility shall be available to a taxable person who effects any inter-State supplies of goods and/or services. Also, no such permission shall be granted to a taxable person unless all the registered taxable persons, having the same PAN as held by the said taxable person, also opt to pay tax under the provisions of this sub-section.

There is penal provision on fraudulent availment of benefit under this scheme. If the proper officer has reasons to believe that a taxable person was not eligible to pay tax under the scheme, such person shall be liable to a penalty in addition to such tax that may be payable by him under other provisions of this Act. The quantum of penalty shall be equivalent to the amount of tax payable as aforesaid.

A notice to show cause must be given with affording a reasonable opportunity of being heard to the person proceeded against before levy of such penalty.

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

SitaiVihar,
Plot No 67A, Sector New 50
4th Floor, B- Wing
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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