



# ASC Times

All India Taxes Weekly Referencer

Vol: Feb 01 - Feb 07, 2016

Solving  
any **tax**  
puzzle

Tax saving advice  
across all the taxes



## From the CEO's Desk



Alok Kumar Agarwal

CEO

ASC Group.

Dear Reader,

According to the governmental sources Budget 2016 is due on February 29. North Block is buzzing with the activities and Finance Minister has to address many issues which he had post-poned in the last budget for this year. He now has to take a call on these issues. Some of these issues include, addressing the budget deficit and also to take a concrete decision on grants and subsidies. One major reason of deficit in the budget is also because of exports going down continuously. For this to tackle commerce ministry proposes for SEZ's (Special economic zones) to be exempted from various corporate taxes, including the minimum alternative tax (MAT). But this idea contradicts with the idea of uniform tax structure, which does not favor this unit or that region, proposed by Finance Minister Mr. Arun Jaitley. It also impacts on the tax revenue hugely.

The logic behind not giving tax breaks is also that rather than giving tax exemptions focus should be on providing world-class manufacturing hubs. The SEZ's been created in India mainly are tax havens or to grab the land. Whereas if you see how China has created SEZ's they are not only world-class in infrastructure for manufacturing but they are the most beautiful cities with world-class power, water, port and airports. Shenzhen in China is the true example of it.

Government also proposing to changes in the laws which are not only old but do not hold much significance in today's economic environment. One such 50-year law is that deals with the specific fulfillment of a contract, which needs to be amended for ease of doing business in India. The law namely is Specific Relief Act, 1963. Other such issues are to create facilities to make India truly digital. Many challenges are surfacing such as opening of bank accounts for one and all. A long way to go but slowly and steadily everything is achievable.

## TAX CALENDER

Due Date	Description	Law
5 February	Deposit of Tax	Kerala VAT, Rajasthan VAT,
	Issue of TDS Certificates	Tamil Nadu VAT,
6 February	Deposit of Tax	Service Tax Law
		Central Excise Law
7 February	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
01 – 07 Feb	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. vide Instruction F.No.390/Miss/163/2010-JC dated 28<sup>th</sup> January 2016**, issued order to reduce government litigation at all judicial fora, Board has increased the monetary limits for filing appeals by the department before CESTAT and High court.

**OUR TAKE:** Readers are requested to read the said Instruction. 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

## CIRCULARS & NOTIFICATIONS

**The Govt. vide Notification No. 04/2016 dated 30<sup>th</sup> January 2016,** Seeks to further amend notification No 12/2012-Central Excise dated 17.03.2012 so as to increase the Basic Excise Duty rates on Petrol and Diesel(both unbranded and branded)

**OUR TAKE:** 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 impossible. 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 As under Rule-4(5)(b) moulds etc can be sent to the job worker but no condition, like its receipt back within 180 days etc as prescribed in Rule-4(5) (a) of the cenvat credit Rules -2004 is specified. 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

### CIRCULARS & NOTIFICATION

**The Govt. vide Notification No. 06/2016 dated 28<sup>th</sup> January 2016**, made amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 12/2012-Customs, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide notification No. G.S.R.185 (E), dated the 17th March, 2012.

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

**The Govt. vide Notification No. 16/2016 dated 29<sup>th</sup> January 2016**, made amendment in the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No. 36/2001- Customs, dated the 3<sup>rd</sup> August, 2001.

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

**The Govt. vide Notification No. 4/2016 dated 29<sup>th</sup> January, 2016**, made amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 133/2008-Customs, dated the 12th December, 2008,.

OUR TAKE: 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.

## 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]**

**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]**



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

### BIHAR

**The Govt. vides Notification No. L.G.-01-01-/2016/03 dated 28<sup>th</sup> January 2016**, made amendment in Section 3A, 14 & 70 in Bihar Value Added Tax Act, 2005 (ACT 27, 2005). Further, made enhancement in surcharge and residual rate.

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

### CHANDIGARH

**The Govt. vides Notification No. E&T-ETO (Ref.)-2016/166 dated 27<sup>th</sup> January 2016**, made amendments in VAT Schedule 'A'. Included 'Battery Operated Vehicles'.

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

### DELHI

**The Govt. vides Circular No. F.3(556)/Policy /VAT/2015/1366-71 (6) (5)-TH dated 27th January, 2016**, modified conditions specified for issuance of statutory forms under the Central Sales Tax Act, 1956.

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

**The Govt. vides Circular No. 36 dated 27th January, 2016**, extended date for filing of online return for third quarter of 2015-16 to 05.02.2016.

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

**The Govt. vides Circular No. 37 dated 29<sup>th</sup> January, 2016**, decided that all refunds pending up to the tax period ending 31st March, 2015 and having amount up

to Rs. 10,000 in a tax period, would be processed expeditiously.

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

#### GOA

**The Govt. vides Circular No. 37 dated 29<sup>th</sup> January, 2016,** decided that all refunds pending up to the tax period ending 31st March, 2015 and having amount up to Rs. 10,000 in a tax period, would be processed expeditiously.

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

#### GUJRAT

**The Govt. vides Order No. CCT/12-2/11-12/4885 dated 28<sup>th</sup> January, 2016,** extended date of filing of quarterly returns for the quarter ending 31st December, 2015 to 29<sup>th</sup> February 2016.

**OUR TAKE003A** Readers are requested to read the said Order. It is self-explanatory.

#### MADHYA PRADESH

**The Govt. vides Notification Act No. F-A-3-02-2016-1-V (10) dated 22<sup>nd</sup> January, 2016,** with a view to prevent or check evasion of tax erected check post and barrier in Village Jmalpura, District Mandsaur for a period of six months from 1st December 2015.

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

#### MAHARASHTRA

**The Govt. vides Circular No. 3T dated 28<sup>th</sup> January, 2016,** extended time for filing VAT Audit Report in Form 704 for year 2014-15 to 01.02.2015.

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

#### PUNJAB

**The Govt. vides Public Notice dated 30<sup>th</sup> January, 2016,** informs that the last date of e-filing of VAT-15 for the 3rd Quarter of 2015-16 has been extended till 5th February, 2016.

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

#### RAJASTHAN

**The Govt. vides Notification No. F26(315) CCT/MEA/2014/2362 Dated 30<sup>th</sup> January, 2016,** extends date for furnishing annual return for year 2014-15 to 29-2-16.

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

#### TAMIL NADU

**The Govt. vides NOTIFICATION-I. G.O. (Ms) No.17 Dated: 29th January 2016,** amend the Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act, 1990.

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

**The Govt. vides Notification II No. G.O. Ms.No. 15, Dated 29th January, 2016,** notify that provisions contained in the Information Technology Act. Further notifies Goods under Section 67-A, and exemption for SEZ.

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

#### WEST BENGAL

**The Govt. vides ORDER Memo No. 78/CT/PRO /3C/PRO/2015 dated 29th January, 2016,** Extend Date of submission of Return Q.E.31-12-2015 to 07-2-16.

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

## COURT DECISIONS

### M/S ROHIL ZINC LTD. VERSUS THE STATE OF MAHARASHTRA & 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

## FEMA

The **RBI vide RBI/2015-16/302 dated 28<sup>th</sup> January 2016**, makes provision of Safe Deposit Locker facility by NBFCs.

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

## COMPANY LAW

### CIRCULAR & NOTIFICATION

**The Govt. vide Notification No. 1/13/2013 CL-V-part-II - dated 22<sup>nd</sup> January 2016**, makes amendment to amend the Companies (Incorporation) Rules, 2014.

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

## 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. Offences 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 videographed and necessary arrangements would be made for the same. Petition dismissed. **[Decided against the petitioner]**

#### **LATEST NEWS ON PROPOSED GST**

**25 Jan, 2016,** Finance Minister Arun Jaitley is yet to name a chairman for the Empowered Group of State Finance Ministers [ECSFM] on the proposed National GST, even two months after Kerala Finance Minister K M Mani stepped down.

**25 Jan, 2016,** Health Insurance and Diagnostics might get tax laden. At present health sector enjoys several exemptions and it is still unclear whether these exemptions will stay or not after GST is passed.

**27 Jan, 2016,** Government has alleged the Nasdaq-listed company evaded service tax liability of Rs. 67 crore. Make My Trip charge points to grey areas in rules.

**27 Jan, 2016,** India's most transformative tax reform needs a proper design and an enabling assessment environment to succeed.

**27 Jan, 2016,** the government is likely to raise the service tax exemption threshold for small businesses sharply besides introducing a simple turnover based regime for those just above the limit for goods.

**27 Jan, 2016,** Sunil Kanoria, President of Assocham, said Imposition of GST will improve the ease of doing business in the country apart from giving uniform market to producers.

## 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		

### Disclaimer:

*This e-bulletin is for private circulation only. Views expressed herein are of the editorial team. ASC or any of its employees do not accept any liability whatsoever direct or indirect that may arise from the use of the information contained herein. No matter contained herein may be reproduced without prior consent of ASC. While this e-bulletin has been prepared on the basis of published/other publicly available information considered reliable, we do not accept any liability for the accuracy of its contents.*