



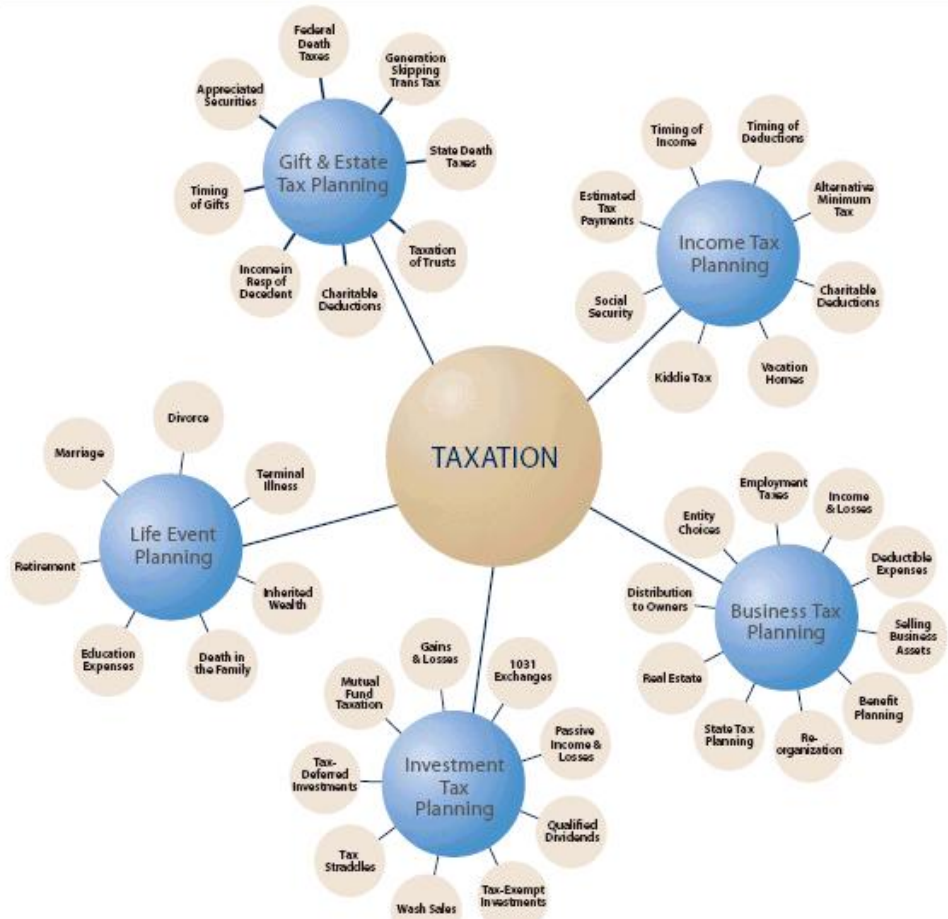
ASC Times

All India Taxes Weekly Reference

Vol: Nov 01–Nov 06, 2016

Solving any tax puzzle

Tax saving advice across all the taxes



TAXCALENDER

Due Date	Description	Law
04 Nov	Issue of TDS Certificate	Tamil Nadu VAT,
05Nov	Deposit of Tax	Rajasthan VAT, Kerala VAT,
06 Nov	Deposit of TDS	Central Excise Law
		Service Tax Law

COUNTRY WIDE HOLIDAYS FOR THE WEEK

Date	Occasion/Festival	Region
31 st Oct 2016	New Year Day Vikram Sam vat	Gujarat
31 st Oct 2016	Goverdhan Puja	Rajasthan
01 st Nov 2016	Bhai Bij	Gujarat, Himachal Pradesh, Uttar Pradesh, Uttarakhand
01 st Nov 2016	Ningol Chakkouba / Kut	Manipur

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From the CEO's Desk



Dear Reader,

Traders body CAIT on Friday proposed that the government should waive penalties on compliance errors during the first three years of rollout of the goods and services tax (GST) regime. Observing that it would be difficult for anyone to evade taxes under the new framework, CAIT said even the instances of under-invoicing will gradually wane as the tax department will have PAN-based registration and sale-purchase data of traders.

“GST will be a complex structure of taxes and we have asked the tax department to exempt traders from penalties in the transition period of first three years,” o educates traders about the new indirect tax set-up, the Confederation of All India Traders (CAIT) has entered into an MoU with Tally Solutions to train them on GST compliance and adoption.

The government plans to roll out GST from April 1 next year. The GST will subsume excise, service tax and other local levies.

Khandelwal said the next meeting of the GST Council, to be chaired by Finance Minister Arun Jaitley, later this month will decide on tax rates, products and compliance and after that, CAIT will prepare the working module for traders. A standard GST rate of 18% would be “justified”, and at that rate, the investment cost of traders will be less, he told reporters here.

Asked about the fate of traders who do not give bills at present, Khandelwal said the GST design does not have this option. “We have to give sales details to the tax department and hence, there will be no scope of under-invoicing as over a period of time, all data will go to the tax department,” he said.

CAIT National President B C Bhatia said that since GST registration is PAN based, so the government will get to know how many traders have not registered from its own

database. “The purchase ledger of traders is with the government. So, by under-reporting of sales, if stocks start piling up, the tax department will ask why are you purchasing. With so much data, it will become difficult to evade taxes,” Bhatia reasoned. He said last-mile disposal by an importer will come under the tax lens through Integrated GST and hence, under-billing will become difficult.

Alok Kumar Agarwal

CEO

ASC Group.

CENTRAL TAXES

SERVICE TAX

COURT DECISIONS

M/S. A.L.R.K. INTERIORS PVT. LTD. VERSUS COMMISSIONER OF SERVICE TAX, CHENNAI [CESTAT CHENNAI]

BRIEF: Rate of tax - rate as on date of payment of tax or as on the date on which service provided - in the SCN nothing is mentions about the period when the services were provided - No demand can be raised on such an ill founded SCN.

OUR TAKE: The hon'ble CESTAT CHENNAI held that nothing mentioned in the SCN about the period of service. When the liability arose is not coming out of the show cause notice, it is a case of denial of course of natural justice to defend. Such an ill founded SCN not being expectation of the law, adjudication fails to stand [Decided in favour of appellant]

M/S. RADHA MOHAN TEXTILES PVT. LTD., M/S. OPEL SULZ PVT. LTD. AND M/S. SAI LEELA SYNTHETICS PVT. LTD. VERSUS C.C.E. JAIPUR-II [CESTAT NEW DELHI]

BRIEF: Reimbursement of expenses - Just because the Nepalese suppliers had billed the appellants separately for transportation from Nepal border to factory premises alongwith other expenses, they do not become the agents of the appellants.

OUR TAKE: The Hon'ble CESTAT NEW DELHI held that identical orders were passed in respect of other appellants similarly situate. It was held that there is no evidence produced to show that Nepalese suppliers had acted as the agents of the appellants for arranging transportation from Nepal border to the factory premises of the appellants. Just because the Nepalese suppliers had billed the appellants separately for transportation from Nepal border to factory premises along with other expenses, they do not become the agents of the appellants. In view of this, the appellants cannot be treated as recipients of GTA services in terms of Notification No. 35/04-S.T. and hence liable to pay Service tax. [Decided in favour of appellant]

COMMISSIONER OF CENTRAL EXCISE INDORE VERSUS M/S. NIDHI ENTERPRISES [CESTAT NEW DELHI]

BRIEF: Services of truck diversion agent - the main activity of the respondent is to divert the truck bearing the goods from M/s. Grasim for onward transportation as per the instruction of the Company officials - Not taxable as C&F agent services.

OUR TAKE: The hon'ble CESTAT NEW DELHI held that the main activity of the respondent is to divert the truck bearing the goods from M/s. Grasim for onward transportation as per the instruction of the Company officials. It is obvious that the activity undertaken by the respondent is not covered under any of the 6 CBEC Circular No. 543/7/97 TRU dated 11.7.97 in which the primary functions of C&F agents are enumerated, which will bring the activities of the respondent within the service of C&F agents. Neither the show cause notice nor the order in original clearly gives any justification as to how the activities of the respondent will be covered by C&F agents - activities of the respondent would not be covered by the services of C&F agent. [Decided against revenue]

M/S. GE INDIA INDUSTRIAL PVT. LTD. VERSUS C.C.E. NEW DELHI [CESTAT NEW DELHI]

BRIEF: CENVAT credit - validity of duty paying documents - Rule 9(2) of the CCR provides for such eventualities - The rule vests the jurisdictional AC/DC with the power to admit documents subject to verification.

OUR TAKE: The hon'ble CESTAT NEW DELHI held that the appellants training division is housed along with several other divisions of the company in the same premises in New Delhi. Further, the training division has been transferred to M/s. GE India Pvt. Ltd. (appellant) w.e.f. February 2005 only. Consequently, many invoices based on which Cenvat Credit have been availed did not contain full details such as correct name of appellant. However, we find that the appellant is now in a position to satisfy the Revenue authorities about the genuineness of each and every invoice involved in the present proceedings. It is also submitted before us that such a reconciliation statement backed by a Certificate from Chartered Accountant has been produced before the Adjudicating authority. However, the same does not appear to have been considered. We find that Rule 9(2) of the Cenvat Credit Rules 2004 provides for such eventualities - The rule vests the jurisdictional Assistant Commissioner or

Deputy Commissioner with the power to admit documents subject to verification. **[Decided in favour of appellant]**

COMMISSIONER OF CENTRAL EXCISE JAIPUR VERSUS M/S. APEX CONSTRUCTION CO.[CESTAT NEW DELHI]

BRIEF: Balance sheet of company is a publically available document and therefore, the allegation that data stated in the balance sheet was suppressed from the department is not viable allegation and as such, demand of service tax is to fail on the ground of limitation itself.

OUR TAKE: The humble **CESTAT NEW DELHI** held that extended period would be available to the Revenue where the assessee suppressed or misstated any information, with an intent to evade payment of duty. In the present case, there is no such evidence on record and has rightly been observed by Commissioner (Appeals) that the entire facts along with remuneration received being a part of the balance sheet which is a public document, no allegation of suppression can be made against the assessee - the issue of limitation also set aside by observing that the assessee were under bonafide belief that they were not liable to pay service tax on 'construction of residential complex' services as many of the other identical contractors engaged in identical services of Rajasthan Housing Board were not paying any Service tax. This fact is sufficient for upholding the assessee stand of bonafide belief. **[Decided against Revenue]**

M/S MAYA ENTERTAINMENT LTD. VERSUS COMMISSIONER OF SERVICE TAX, MUMBAI-II[CESTAT MUMBAI]

BRIEF: Levy of tax - imparting training in graphic animation - obligation not to share the services provided by the appellant with any other person - service of the appellant clearly covered under the "Franchise Service", hence the same is taxable

OUR TAKE: The hon'ble **CESTAT MUMBAI** held that the appellant has provided service to M/s Digital Puppet Animation Studio in regard to right to use of course material in imparting training in graphic animation for indicating computer education in training programme in Graphic Animation and Cinematic as per the agreement, the service recipient as per the agreement the "Franchise" i.e. service recipient is under an obligation not to share the services provided by the appellant with any other person, therefore the condition of the definition of "Franchise" also stand fulfilled. **[Decided in favour of appellant]**

BLUECHIP CORPORATE INVESTMENT CENTRE LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE MUMBAI-I [CESTAT MUMBAI]

BRIEF: Refund of service tax paid - Rejection would, certainly, have to be articulated in a speaking order with reasoned substantiation for that course of action. The rejection on grounds of being 'pre-mature' reflects either ignorance or unwillingness to act with responsibility.

OUR TAKE: The hon'ble **CESTAT MUMBAI** held the attempt to take the activity of agents of mutual funds out of the purview of the exemption notification that was available till then by issue of circular had been invalidated by various judgements. In these circumstances, the taxability of brokerage of mutual funds was left to quasi-judicial determination. **[The appeal is allowed by way of remand for strict compliance]**

M/S MAHESH AUTO VERSUS COMMISSIONER OF CENTRAL EXCISE, AURANGABAD [CESTAT MUMBAI]

BRIEF: Refund claim of service tax paid - classification of services - Claiming a refund of the amount paid as tax as per their understanding of law cannot be disputed now - refund claim rejected.

OUR TAKE: The hon'ble **CESTAT MUMBAI** held that appellant himself has classified the services, discharged tax on the commission received from financial institution under the category of "Business Support Service". The issue is no more integrate the tax liability arises on these services under "Business Auxiliary Service" as per Larger Bench decision, appellants classification of services as per his knowledge, under a category cannot be held to be as misunderstanding of law as the tax liability arises on the commission, cannot be disputed. Claiming a refund of the amount paid as tax as per their understanding of law cannot be disputed now. **[Decided against appellant]**

COMMISSIONER OF SERVICE TAX-V VERSUS VIJAY COTTON AND FIBRE CO. [BOMBAY HIGH COURT]

BRIEF: Refund of service tax / Cenvat credit - export of goods - Notification No. 41 of 2007 dated 6th October, 2007 - the Revenue in this case can raise a plea that the merchant exporter was not entitled to seek refund.

OUR TAKE: The hon'ble **BOMBAY HIGH COURT** held that there was insurance cover taken. Therefore, it is not a claim based on no material or a claim which does not fulfil the conditions under the notification. It does not mean that the tribunal's order every time mandates the Department to produce the proof in negative and blindly relies on the version of the assessee. It is in the above circumstances that the tribunal faulted the Revenue for not being able to produce a contrary evidence. Secondly, we do not think that the Revenue in this case can raise a plea that the merchant exporter was not entitled to seek refund. **[Decided in favour of appellant]**

CENTRAL EXCISE

COURT DECISIONS

M/S MANOJ STEEL INDUSTRIES, M/S SINGHAL TRADING CO. VERSUS CCE, DELHI - I [CESTAT NEW DELHI]

BRIEF: Compounded levy scheme - manufacture of stainless steel pattas/pattis - failure to file the requisite declaration under the scheme - In the absence of any evidence to show that any goods have been manufactured and cleared there can be no justification for demand of excise duty.

OUR TAKE: The hon'ble CESTAT MUMBAI held the present cases in which the declaration regarding the number of machines has not been filed) the manufacturer will be liable to pay duty on the entire production. However, Revenue has failed to undertake any serious investigation to establish the manufacture, if any of the stainless steel patta/pattis under the circumstances, I have no option but to set aside the demands and allow the appeals. [Decided in favour of appellant]

M/S DEEPAK INDUSTRIES VERSUS CCE & ST, RAIPUR. [CESTAT NEW DELHI]

BRIEF: In the light of the fact that the availment of Cenvat credit on structural items has been in dispute for a long time, allegations of suppression cannot be made against the appellant.

OUR TAKE: The hon'ble CESTAT NEW DELHI held that the present case, I find that such allegations have been made in the show cause notice issued to the appellant. However, in the light of the fact that the availment of Cenvat credit on structural items has been in dispute for a long time, allegations of suppression cannot be made against the appellant. Under such circumstances, the benefit of waiver of penalty provided under Section 11A (2) is extendable to the appellant. [Decided in favour of appellant]

CCE, BHOPAL VERSUS M/S UNIVERSAL CABLES LIMITED [CESTAT NEW DELHI]

BRIEF: Reversal of CENVAT - whether the denial of CENVAT credit on the ground that capital goods was found defective and were re-exported by the appellant under bond without payment of duty justified?

OUR TAKE: The hon'ble CESTAT NEW DELHI held that there is no bar for a manufacturer to remove the inputs or capital goods "as such" for export under bond". - Therefore, the respondent cannot be faulted for removing the goods

without payment of duty for export. [Decided against revenue]

CCE, C & ST, HYDERABAD-III VERSUS M/S LARSEN & TOUBRO LTD. [CESTAT HYDERABAD]

BRIEF: Exemption to pipes supplied for water treatment plant - the Notification merely talks about the storage facilities and there is no restriction that the water should be delivered only to the first storage point – benefit of exemption available.

OUR TAKE: The hon'ble CESTAT HYDERABAD held that the Notification merely talks about the storage facilities and there is no restriction that the water should be delivered only to the first storage point – benefit of exemption available. [Decided against revenue]

M/S. NCL ALLTEK & SECCOLOR LTD. VERSUS CCE, GUNTUR. [CESTAT HYDERABAD]

BRIEF: Valuation - Retail Sale Price u/s 4A or transaction value u/s 4 - supply of Superfine Spray Plaster in bulk from NCC-Maytas for their consumption in construction - construction activity is being treated as service Industry - provision of MRP based valuation not applicable.

OUR TAKE: The hon'ble CESTAT HYDERABAD held that general construction work for building, general construction work for civil engineering installation and assembly work building, completion and finishing work and assessee is treated as a service industry [Decided in favour of appellant]

M BAJAJ HINDUSTAN VERSUS COMM. OF CUSTOMS, CENTRAL EXCISE & S.T. LUCKNOW & ALLAHABAD (APPEALS) [CESTAT ALLAHABAD]

BRIEF: CENVAT credit - packing materials and insulating materials are used for thermal insulation of the pipes and fittings in order to avoid heat loss - credit allowed.

OUR TAKE: The hon'ble CESTAT ALLAHABAD held the 'input' means all goods used in or in relation to manufacture of final products which directly or indirectly and whether contained in final product or not and includes items like lubricating oils, grease, cutting oils etc., in relation to manufacture of final product or for any other purpose within factory of production. [Decided in favour of appellant]

CUSTOM

COURT DECISIONS

M/S ASR MULTIMETALS PVT LTD, M/S GOKUL REFOILS & SOLVENT LTD, M/S ACI INDUSTRIAL ORGANIC PVT LTD VERSUS COMMISSIONER OF CUSTOMS, COMMISSIONER OF CENTRAL EXCISE, CUSTOMS AND SERVICE TAX (APPEALS) [CESTAT AHMEDABAD]

BRIEF: Waiver of pre-deposit - 7.5% was deposited before filing an appeal before Commissioner (Appeals) - Now whether appellant is required to deposit entire 10% amount in addition to deposit made earlier or only 2.5% after adjustment of the amount paid earlier, for filing an appeal before the tribunal - Fresh amount of 10% to be deposited.

OUR TAKE: The hon'ble CESTAT AHMEDABAD held that the said provision in any other manner so as to come to the conclusion that the Appellants are required to deposit 2.5% and not 10% as prescribed under the said provision in view of the settled principle of statutory interpretation. **[Decided against appellant]**

M/S SYNDICATE LABELS VERSUS CC (I&G) , NEW DELHI CESTAT NEW DELHI

BRIEF: Classification of measuring or checking instruments - independent complete device which automatically inspect, count, process, stores and displaying the data - to be classified under Chapter Heading 90318000 of Customs Tariff

OUR TAKE: The hon'ble CESTAT NEW DELHI held that the Explanatory Note to Chapter 9031 extracted above makes it further clear that measuring or checking instruments, whether or not optical are to be covered under Chapter Heading 9030 - Further Revenue produced a copy of the import data as an evidence that subject item is being classified by Customs at Air Cargo Bombay under Chapter 90318000, where the goods were imported from Israel and the date of clearance/reference has been given as 5th Jan. 2016. **[Decided against appellant]**

M/S AMRITLAKSHMI MACHINES WORK, MR. N.K. BRAMCHARI, MANAGING PARTNER, M/S. AMRITLAKSHMI BAJAJ ENTERPRISES VERSUS COMMISSIONER OF CUSTOMS (GENERAL) MUMBAI [CESTAT MUMBAI]

BRIEF: Restoration of CHA licence - The Regulations do not require that each and every authorisation should be acknowledged by a customs officer. As long as authority letter is in possession of the agent, compliance with the Regulation cannot be disputed.

OUR TAKE: The hon'ble CESTAT MUMBAI held that Customs House Agent are required to be proficient in the customs operation and procedure and to ensure that importer/exporter possess appropriate bona fides and act in conformity with the Customs Act, 1962. **[Decided in favour of appellant]**

M/S RADIANT CABLES PVT LTD. VERSUS CC, HYDERABAD [CESTAT HYDERABAD]

BRIEF: Interpretation of notification - refineries and power projects - Cables were exempted from all duties of customs - import of raw material for manufacture of cables instead of cables? - Appellant cannot claim unintended benefits by imported items which are not listed or included in the notification.

OUR TAKE: The hon'ble CESTAT HYDERABAD held that nowhere in the aforesaid notification or lists/entries thereof, are raw materials for manufacture of cables included or permitted for duty exemption benefit. This being the case, the appellant cannot stretch the scope of the notification and argue that if cables are extended exemption therein, raw materials for manufacture of such cables would also come within the permissible ambit of exemption. This is definitely not the benefit intended by the said notification. It is settled law that exemption notification has to be strictly interpreted. **[Decided in favour of appellant]**

INDIAN SEAMLESS METAL TUBES LTD. VERSUS COMMISSIONER OF CUSTOMS, MUMBAI [CESTAT MUMBAI]

BRIEF: Project Import - valuation - drawing and documents for use during construction, erection, assembly etc. and know how fees to be included in assessable value? - 10% towards technical knowhow includible in the value of the goods.

OUR TAKE: The hon'ble CESTAT MUMBAI held that even technical services, engineering and consultancy even provided by the third party, the fees thereon was held to be added in the value of the imported capital goods under Rule 9 of the Customs Valuation Rules, 1988. **[Decided against appellant]**

INCOME TAX

COURT DECISIONS

COMMISSIONER OF INCOME TAX, KOLKATA-II, KOLKATA
Versus M/s. TRINETRA COMMERCE & TRADE PVT. LTD.
[CALCUTTA HIGH COURT]

BRIEF:These are two different causes of action leading to addition against the income of two different person's u/s 68 and 69. There is as such no question of any double taxation. - Sorry to say that the tribunal (ITAT) has mixed up the matters.

OUR TAKE: The hon'ble **CALCUTTA HIGH COURT** held in the case before us, there were 40 shareholders. 38 of them could not be found. Two of them stated that they had no connection with the company. They never applied for any share. They were drivers by profession. They did not give any money. **[Decided in against assessee]**

M/S. UJJAL TRANSPORT AGENCY VERSUS CIT, CENTRAL-II,
KOLKATA. [ITAT KOLKATA]

BRIEF:Since no material whatsoever was found in the course of search, the question of allowing additional depreciation or not could not have been subject matter of proceedings u/s 153A of the Act.

OUR TAKE: The hon'ble **ITAT KOLKATA** held the process has attained the finality which can only be assailed u/s 148 or 263 of the Act. It can thus be concluded that making of an addition in an assessment under section 153A of the Act, without the backing of incriminating material, is unsustainable even in a case where the original assessment on the date of search stood completed under section 143(1) of the Act, thereby resulting in non-abatement of such assessment in terms of the Second Proviso to section 153A(1) of the Act. **[Decided in favour of assessee]**

INCOME-TAX OFFICER, WARD -4 (2) (2), BENGALURU
VERSUS THE BEML EMPLOYEES CO-OP SOCIETY LTD. [ITAT
BANGALORE]

BRIEF:Eligibility of deduction u/s.80P(2)(a)(i) - when there were no takers for the money, which assessee as a part of its objects wanted to lend, the only available choice for assessee, in order not to keep the funds idle, was to place it in banks for earning interest - deduction allowed.

OUR TAKE:The hon'ble **ITAT BANGALORE** held it is an admitted position that assessee was bound to give interest to its members on the deposits received by it from them. Therefore, when there were no takers for the money, which assessee as a part of its objects wanted to lend, the only available choice for assessee, in order not to keep the funds idle, was to place it in banks for earning interest. **[Decided in favour of assessee]**

M/S. LORDS CHLORO ALKALI LTD. VERSUS THE ACIT,
CIRCLE- 1, ALWAR. [ITAT BANGALORE]

BRIEF:Disallowance u/s 40A(2)(b) in respect of professional fees - payment to a partnership firm whose partners are having substantial interest in the business of the assessee company - Revenue's case is no more than an allegation or a surmise.

OUR TAKE:The hon'ble **ITAT JAIPUR** held that it is only such a comprehensive analysis, the details of the expenditure being available from the relevant bills raised, so that the details of the charges raised qua various services performed or charged for is available, that would yield the basis for a decision with regard to the reasonability thereof, including with reference to the legitimate needs of the assessee's business, could if at all be taken. Accordingly, find little merit in the Revenue's case, and direct the deletion of the impugned disallowance. **[Decided in favour of assessee].**

MR. KUMAR V. VASANI VERSUS INCOME TAX OFFICER-32
(2) (2) , C-13, MUMBAI. [ITAT MUMBAI]

BRIEF:Penalty u/s 271(1)(c) - conscious concealment of facts by the assessee - non disclosure of bank accounts in which cash was deposited - assessee deliberately concealed his income/furnished inaccurate particulars of such income.

OUR TAKE:The hon'ble **ITAT KOLKATA** held that the material facts, available on record clearly indicates that the assessee deliberately concealed his income/furnished inaccurate particulars of such income, therefore, in my view, the penalty was rightly imposed by the Assessing Officer and confirmed by the Ld. Commissioner of Income Tax (Appeal). **[Decided against the assessee]**

KARSHANBHAI DAHYABHAI KAKADIA GOVINDJI BUNGLOW
VERSUS ITO, WARD-9 (2) , SURAT [ITAT AHMEDABAD]

BRIEF:Reopening of assessment - Once the alleged land was shown in the balance sheet of HUF, taxes were paid in the hands of HUF, and then how that very alleged unexplained investment can be considered in the hands of the individual?

OUR TAKE:The hon'ble ITAT AHMEDABAD held that at the time when he has recorded reasons for reopening of the assessment he was not possessing any material in the individual cases of the assessee. The DVO has submitted his report on 5.12.2011 and valued the land at 19.12 lakhs for Block No.559/B at the time of purchases and 22.31 lakhs at the time of sale i.e. on 18.10.2005. **[Decided in favour of assessee]**

STATE TAXES

ALL INDIA VAT

ASSAM

The Govt. vides Circular No. CTS-81/2007/408 dated 25th Oct 2016, notifies that Issuance of Single ID under VAT Act, CST Act, Assam Entry Tax Act, Luxury Tax Act, and Entertainment Tax Act & Assam Professional Tax Act.

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

HARYANA

The Govt. vides Order dated 25th Oct 2016, notifies that extension in date for filing online quarterly returns for the quarter ending 30th Sep 2016 is extended 07th Oct 2016.

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

MAHARASHTRA

The Govt. vides Circular dated 24th Oct 2016, notifies that introduction of Instruction sheet for uploading of e-return under the Maharashtra Tax on the Entry of Goods into Local Areas Act, 2002.

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

The Govt. vides Circular 32T dated 27th Oct 2016, notifies that First Phase Go Live of e-payment under SAP-TRM new automation process.

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

The Govt. vides Circular 33T dated 27th Oct 2016, notifies that E>Returns for dealers registered under The Maharashtra Tax on the Entry of Goods into Local Areas Act, 2002.

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

ORISSA

The Govt. vides Notification No. 28704-FIN-CT1-TAX-0029-2014 dated 26th Oct 2016, notifies that there is exemption from tax to sale of pulses and dals.

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

RAJASTHAN

The Govt. vides Notification No. F.12 (16) FD-TAX-2009-50 dated 24th Oct 2016, notifies that the State Government being of the opinion that it is expedient in the public interest so to do, hereby, waives the amount of late fee payable under rule 19A of the Rajasthan Value Added Tax Rules, 2006,

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

The Govt. vides Notification NO. F. 12(105) FD/TAX/2014-PT.I-51 dated 25th Oct 2016, amends order no F.12 (28)FD/Tax/2010-Pt.I-114 dated 08th Oct 2014 (RIPS-2014).

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

The Govt. vides Notification NO. F.12 (105) FD/TAX/2014-PT.I-52 dated 25th Oct 2016, amends order no F.12 (28)FD/Tax/2010-Pt.I-115 dated 08th Oct 2014 related to RIPS-2014.

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

The Govt. vides Notification NO. F. 12(105) FD/TAX/2014-PT.I-53 dated 25th Oct 2016, amends notification no F.12 (28)FD/Tax/2010-Pt.III-192 dated 24th Feb 2015 regarding entry tax exemption under RIPS-2014.

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

UTTAR PRADESH

The Govt. vides Circular No. 1617045 dated 26th Oct 2016, notifies that The last date for filing of Annual Return (Form 52, 52A & 52B) for FY 2015-16 is extended up to 31.12.2016.

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

WEST BENGAL

The Govt. vides Circular No. 06 dated 26th Oct 2016, notifies that Updating of e-mail addresses and contact mobile numbers by dealers registered under WBVAT Act, 2003.

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

The Govt. vides Circular Memo No. 903CT/PRO/3C/PRO/2015 dated 28th Oct 2016, notifies that the last date for filing VAT Return for Q.E. 30th Sep 2016 has been extended.

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

COURT DECISIONS

THE COMMISSIONER OF SALES TAX VEORSUS M/S. VEER RADIOS(BOMBAY HIGH COURT)

BRIEF: Nature of assessment - best judgment assessment or not - the entries in the books of account varying with returns filed are relied upon and then the assessment has been completed. – Cannot be held as best judgment assessment - levy of penalty deleted.

OUR TAKE: The hon'ble BOMBAY HIGH COURT held that it is not best judgment assessment. If the return is filed belatedly and it does not give correct and complete figures, the provisions of Section 33(3) of the said Act can be applied by the department to such return. Levy of penalty confirmed. [Decided in favour of revenue]

COMMISSIONER OF COMMERCIAL TAXES, THIRUVANANTHAPURAM, KERALA VERSUS M/S K.T.C. AUTOMOBILES [SUPREME COURT]

BRIEF: levy of penalty for non-maintenance of complete, true accounts - sale of motor vehicles from another state - According to the Intelligence Officer, the sales were concluded at Kozhikode, and hence the vehicles should have been registered within the State of Kerala. - Mere doubt cannot create any liability - No penalty.

OUR TAKE: The hon'ble SUPREME COURT held that they do not lead to a conclusive inference that the sales under controversy had taken place at Kozhikode, Kerala. To the contrary, in view of propositions of law discussed hereinbefore, the judgment of the High Court gets reinforced and deserves affirmation. [Decided against the revenue]

OTHER UPDATES

COMPANY LAW

COURT DECISIONS

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

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

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

FEMA

COURT DECISIONS

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

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

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

SAFEMA, 1976, Annexure 'D' Collectively dated 28.4.1977, 20.1.1997 and 23.3.1977.

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

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

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

ALLIED LAWS

COURT DECISIONS

JIJU LUKOSE VERSUS STATE OF KERALA [KERALA HIGH COURT]

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

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

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

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

OUR TAKE: The hon'ble GUJARAT HIGH COURT held that Stage obtained in the process of auction by the respondent under the SARFAESI Act is a post-13(4) stage. The petitioner



therefore has an alternative statutory remedy of filing an appeal under Section 17 of the Act before the Debts Recovery Tribunal. It is trite that in the matters involving commercial dispute, rule of alternative remedy is adhered to and applied steadfast. Present petition is not entertained. The petitioner is at liberty to approach the Debts Recovery Tribunal in accordance with law.

GST ALERTS

SUPPLY CHAIN UNDER GST

Proper procurement planning and vendor management is going to be key during GST regime especially during transition phase and upto sometimes post migration. There after there may be need to have continuous relook at professionalism of vendor base and the need to reconsider alternative source of procurement so that the overall cost of procurement is optimised.

FEW IMPORTANT ASPECTS IN PROCUREMENT PLANNING AND VENDOR MANAGEMENT COULD BE AS FOLLOWS:

1. Procurement from registered vendors: The cascading effect of taxes is going to come down significantly in GST owing to cross sectional credit admissibility. This requires that the vendor must be registered so that the tax paid by him on his procurement is not added to the cost of goods/services and passed on to the company resulting in reduction of cost to that extent.
2. Purchase from unregistered vendor- likelihood of tax on purchases: It is learnt that purchase of goods/services from unregistered dealers could attract the levy of GST in the hand of recipient resulting in increased compliance burden.
3. Purchase from taxable person under composition scheme: There could be a situation where the vendor is registered under composition scheme and not charging GST. On the face of invoice, it could appear that the prices are lower but it may not be necessary considering the fact that tax paid on his procurement become integral part of the cost of his product/service and not passed on the company. Hence, all B2B purchase should be made from vendor registered under normal scheme.
4. Timely registration of vendor during migration to GST: There is provision that all existing registered assessee under VAT, CST, Excise, Service Tax or other taxes being subsumed in GST would be allowed automatic

registration under GST on provisional basis valid for 6 months. Final registration would be granted on furnishing necessary details. But it is always preferable to insist the vendor to migrate/obtain registration under GST in advance to avoid the following problems:

- A. The vendor master of ERP could be updated timely.
 - B. In case the vendor is not allowed to registration owing to deficiency in documentations/any other reasons, the credit taken during the period tax charged by him under provisional registration could be questioned. (Though provision is not clear till date as to what would happen under this circumstances).
 - C. There is no need of having reconciliation of records on vendor obtaining normal registration post provisional number.
5. Realignment of source of vendor: The factors determining selection of vendors, in past, were largely driven based on indirect tax impact due to many restriction/non-allow ability of credits. However, these considerations may not be determining factors in GST while making vendor selection. Important criteria under GST for vendor selection could be as follows:
- a) The cost of product/service being offered
 - b) The quality of product/services being offered
 - c) The professionalism of vendor in doing the business
 - d) Compliance level (registration, timely raising of invoices, timely payment of taxes and filing of returns etc.) followed by vendors under GST
 - e) Proximity of source of procurement to the place of its usage in case the product/service is critical to the product/services being supplied by company.
 - f) Cost of transportation
- This indicates that the tax consideration may not be dominant after GST. Hence, existing vendors selected based on the tax consideration may require relook in GST.
6. Change in procurement/inventory policy: The policy followed by company may require relook in GST

especially the policy followed as to inventory holding viz a viz Just in Time (JIT) Purchase considering the fact that accumulation of stock in large quantity could entail blockages of huge working capital. Most of the businesses would prefer to go for JIT purchase in GST with minimum stock in hand.

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

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

SINGAPORE

1 North Bridge Road,
10-09 High Street Road,
Singapore(179094).

For enquiries related to:

Service	Contact Person	11Service	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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