



# ASC Times

All India Taxes Weekly Referencer

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## Solving any tax puzzle

Tax saving advice across all the taxes



## From the CEO's Desk



Hi All,

To create a hard grip on any black money tax authorities have made several additions to income tax return forms for the assessment year 2015-16. The major component of these additions is about declaring any foreign travelling and also disclosing about the expenses made on the visit including offshore expenses. Taxpayer will also have to inform about any bank account opened or closed during the previous year including those where taxpayer has the signing authority. Further, tax authorities also want information related to immovable property, financial interest in companies and details of trusts created outside the country.

List of "Most influential people of the world" is out from the reputed TIME magazine. We have four Indians on the list. Of course our Prime Minister Mr. Modi is one of the most impactful world leaders and his profile is written by none other than Mr. Obama, who has quoted him as "India's Reformer-in-Chief". Others included are Ms. Chanda Kochhar, managing director and CEO of ICICI Bank, Microsoft CEO Mr. Satya Nadella, and Mr. Vikram Patel, the co-founder of the NGO Sangath.

An important determinant of a mature economy is full capital account convertibility, which refers to the full freedom to convert local financial assets into foreign assets and back. Mr. Rajan had already hinted towards it in Pune. After years of getting full current account convertibility meaning that the rupee can be changed freely into foreign currencies for trade purposes, capital account convertibility is the logical step to gain global status for India. Junior Finance Minister Mr. Jayant Sinha has also said that India needs to eventually move towards capital account convertibility to deepen its markets and become an important global player.

Mightier gets more and the weak keeps on fighting for the space. This rule has perpetrated the virtual world as

well. To overcome the problem the concept of NET Neutrality was introduced, which is a principle that says Internet Service Providers (ISP) should treat all traffic and content on their networks equally. So to provide equal opportunities to all, big and small, old and start ups, net neutrality is important and giants like Facebook have supported the idea.

Alok Kumar Agarwal

CEO

ASC Group

## Tax Calendar

Due Date	Compliances from 20/04/2015 to 26/04/2015
20th	WCT Payment of Andhra Pradesh, Karnataka, Tamil Nadu, Uttar Pradesh, Uttarakhand, Manipur for the month of March
21st	Payment of ESI for the month of March, 2015
22nd	WCT Certificate Issue for the month of March for Delhi
25 <sup>th</sup>	Service Tax Return for the half year ended March, 2015 West Bengal Sales Tax TDS Certificate Issue for the month of March, 2015

## Country Wide Holidays for the Week

Date	State	Occasion/Festival
20th	Himachal Pradesh, Gujarat, Haryana, Uttar Pradesh	Bhagvan Shree Parshuram Jayanti
21st	Punjab, Karnataka, Tripura	Bhagvan Shree Parshuram Jayanti Basava Jayanti Garia Puja
23rd	Manipur	Khongiom Day Vir Kunber Singh
25th	Bihar, Uttarakhand	Jayanthi Shri Ganga Saptami
26th	Uttar Pradesh	Hazrat Khwaja Moyuddin Chisti Urse

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# CENTRAL TAXES

## SERVICE TAX

### NOTIFICATIONS & CIRCULARS

The **MOF vide Notification No. 10/ 2015 - Service Tax dated 8th April 2015** hereby exempts the taxable services provided or agreed to be provided against a scrip by a person located in the taxable territory from the whole of the service tax leviable thereon under section 66B of the said Act.

This notification shall be applicable to the Merchandise Exports from India Scheme duty credit scrip issued to an exporter by the Regional Authority.

The **MOF vide Notification No. 11/ 2015 - Service Tax dated 8th April 2015** hereby exempts the taxable services provided or agreed to be provided against a scrip by a person located in the taxable territory from the whole of the service tax leviable thereon under section 66B of the said Act.

This notification shall be applicable to the Service Exports from India Scheme duty credit scrip issued by the Regional Authority.

The exemption shall however be available only on satisfaction of the conditions mentioned herein.

**OUR TAKE:** Readers are requested to go through the conditions mentioned in the notifications for availing the exemptions.

The MOF vide **Circular No. 183 / 02 / 2015-ST** dated 10th April 2015 has made clarifications regarding the proposed increase in service tax rate from 12.36% (including cesses) to 14% on the value of taxable service. The new service tax rate shall come into effect from a date to be notified by the Central Government after the enactment of the Finance Bill, 2015.

**OUR TAKE:** Thus, it is clear that the increase in service tax rate will be effective once it has been notified by the Government. Until then, the existing rate of service tax, i.e., shall continue unchanged.

### COURT DECISIONS

#### COMMISSIONER OF CENTRAL EXCISE AND CUSTOMS AURANGABAD V/S M/S. BANSOD CLASSES (CESTAT Mumbai)

**BRIEF:** The appeal is directed against Order-in-Appeal No. AGS(76)53/2010 dated 22/4/2010 passed by Commissioner (Appeals), Central Excise & Customs, Aurangabad, wherein the Ld. Commissioner (Appeals) maintained the penalty under Section 70, however penalty under Section 77 was reduced to 200/- per day per summons in respect of 4 summons to fixed penalty of ₹ 5000/- each against 4 summons and which comes to ₹ 20,000/-. The Revenue, aggrieved with aforesaid order filed the appeal before this Tribunal for enhancing penalty to ₹ 3,07,400/- at the rate of ₹ 200 per summons from the date of summons till the date of compliance.

**OUR TAKE:** In the above case, the Hon'ble CESTAT Mumbai held that u/s 70, the provision of the penalty are built in but u/s 77, the provision of imposition of penalty is flexible. Considering the nature of the service provided and the situation through which the service provider is passing, leniency is required to be shown. Moreover the appellants had already deposited an amount of ₹ 20,000/- towards penalty vide Challan dated 31.03.2010. In view of the above reduction of penalty to ₹ 5000/- each against non-appearance to summons dated 19.08.2008, 30.09.2008, 4.12.2008 and 18.1.2009 totally amounting to ₹ 20,000 is justified and it is the discretion of the officer to reduce the penalty depending upon the nature of the case. Penalty of ₹ 200 per day is not in the nature of mandatory. **[Decided against Revenue]**

#### M/S. ZYDUS TECHNOLOGIES LTD. V/S COMMISSIONER OF SERVICE TAX, AHMEDABAD (CESTAT Ahmedabad)

**BRIEF:** The appellants are engaged in the manufacture of Pharmaceutical products in Pharmaceutical SEZ, under the SEZ Act, 2005 read with SEZ Rules, 2006. The appellants, during the period of setting up of the plant, before starting the commercial production, received various services and paid the service tax. The appellant obtained a letter of approval from the Development Commissioner for setting up of the plant for manufacturing of the Medicaments. Notification No.4 /2004-ST, dt.31.03.2004 , provides exemption from payment of service tax of any taxable service procured by a unit or a developer situated in a SEZ. The said notification was superseded by Notification No.9 /2009-ST, dt.03.02.2009 , directing that

any taxable service procured by a unit or a developer in SEZ would liable to pay the service tax at appropriate rate and file a refund claim after following the procedure laid down therein. Notification No.9 /2009-ST was amended by Notification No.15 /2009-ST dt.28.05.2009 providing unconditional exemption to services within SEZ without filing refund claims. The present appeals relate to the refund claims filed under Notification No.9 /2009-ST which were rejected by the lower authorities on various grounds. The Commissioner (Appeals) upheld the adjudication orders except in Appeal No.E /12939/2013 and E/13621/2013, where the appeal was partly allowed/rejected and partly remanded. Hence, the appellants filed these appeals before the Tribunal.

**OUR TAKE:** In the above case, the **Hon'ble CESTAT Ahmedabad** held that u/s 7 and 26 of the SEZ Act 2005, the taxable service provided to developer or unit to carry out authorized operation in SEZ is exempted from service tax. The Notification No.9 /2009- ST, cannot disentitle the immunity enjoyed by SEZ Act. Both sides failed to demonstrate and clarify the other issues, where the refund claims were denied. Thus, other issues should be examined by the Adjudicating Authority. It is seen that in the impugned orders, the Commissioner (Appeals) also had not split up the issues pertaining to admissibility of refunds in respect of individual service for reason other than the reasons covered in the judgment of **CST Vs Zydus Technologies Ltd (2014 GUJARAT HIGH COURT)** and **Intas Pharma Ltd Vs CST [2013 CESTAT AHMEDABAD]** and **Tata Consultancy Services Ltd. [2012 CESTAT, MUMBAI]** - Matter remanded back [Decided in favour of assessee]

## CENTRAL EXCISE

### NOTIFICATIONS & CIRCULARS

The **MOF** vide **Notification No. 20/2015 - Central Excise dated 8th April 2015** hereby exempts the goods specified in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), when cleared against a duty credit scrip issued by the Regional Authority under the Merchandise Exports from India Scheme from:

- i) the whole of the duty of excise leviable thereon under the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);
- ii) the whole of the additional duty of excise leviable thereon under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);
- iii) the whole of the additional duty of excise leviable thereon under section 3 of the Additional Duties of

Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978).

The exemption shall however be available only on satisfaction of the conditions mentioned herein.

The **MOF** vide **Notification No. 21/2015 - Central Excise dated 8th April 2015** hereby exempts the goods specified in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), when cleared against a Service Exports from India Scheme duty credit scrip issued by the Regional Authority under the Merchandise Exports from India Scheme from:

- i) the whole of the duty of excise leviable thereon under the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);
- ii) the whole of the additional duty of excise leviable thereon under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);
- iii) the whole of the additional duty of excise leviable thereon under section 3 of the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978).

The exemption shall however be available only on satisfaction of the conditions mentioned herein.

**OUR TAKE:** Readers are requested to go through the conditions mentioned in the notifications for availing the exemptions.

### COURT DECISIONS

#### COMMISSIONER OF CENTRAL EXCISE, JAIPUR V/S M/S. PITAMBER COATED PAPER LTD (Supreme Court)

**BRIEF:** The assessee is engaged in the manufacture of coated and uncoated paper falling under Chapter 48 of the Schedule to the Central Excise Tariff Act, 1985. The Department alleged that uncoated paper and paper board manufactured by the assessee and consumed captively for the manufacture of coated paper and paper board was not eligible for exemption under Notification No.67/95-CE dated 16.3.1995. This is because the assessee had cleared final product i.e. coated paper at nil rate of duty under Notification No.3/2001-CE dated 1.3.2001 as amended. SCNs were issued demanding certain amount of excise duty and the demand along with penalty was confirmed.

**OUR TAKE:** In the above case the **Hon'ble Supreme Court** seconded the decision taken by the CESTAT where it was held that on coating uncoated paper, an article with



different name commercially may have emerged but it is not a distinct article with different character or use and therefore no manufacturing process was involved when uncoated printing and writing paper is coated. A reading of the exemption notification would clearly show that it grants an exemption from payment of duty on paper and paper board articles made therefrom. **[Decided against Revenue]**

### SHIV ENTERPRISES V/S THE COMMISSIONER OF CENTRAL EXCISE & CUSTOMS (Gujarat HC)

**BRIEF:** The appellant M/s Shiv Enterprise, proprietary concern is engaged as a dealer of dutiable excisable goods and has been granted provisional registration No.370104/D/145/2003 dated 12.6.2003. It was the case of the department that M/s Shiv Enterprise has wrongly availed CENVAT credit amounting to ₹ 7,36,707/- under Rule 3 of CENVAT Credit Rules 2002 on the invoices issued by M/s Ankit Textiles, a manufacturer with provisional registration No.370104/M/537/2003 dated 16.7.2003. It was further alleged by the department that M/s Ankit Textiles which was supposed to have supplied polyester grey fabric was found to have given fake/fictitious address. A SCN was issued narrating contravention of CENVAT Credit Rules 2002 to the present appellant directing to show cause as to why penalty of equivalent amount of availing CENVAT credit of ₹ 7,36,707/- should not be imposed upon it.

**OUR TAKE:** In the above case, the Hon'ble Gujarat High Court held that availment of CENVAT credit on the part of the present appellant is a clear case of fraud committed by M/s Ankit Textiles. The fraud vitiates entire transaction. When M/s Ankit Textiles cannot be held valid to enable credit by the dealer as it is fictitious because the present dealer has purchased from M/s Ankit Textiles who is no more in existence and fictitious firm and, therefore, the present appellant could not have availed CENVAT credit and, therefore, the authorities below as well as learned Tribunal have rightly confirmed ultimately by reducing the amount of penalty from ₹ 7,36,707/- to ₹ 2,00,000/- which was in consonance with the allegations levelled against the appellant and proved fact in view of the clear provisions of the CENVAT Credit Rules, 2002. **[Decided against assessee]**

## CUSTOMS

### NOTIFICATIONS & CIRCULARS

#### 4% SAD REFUND CLAIM

The CBEC vide Circular No. 12/2015-Customs dated 9th April 2015 has simplified the provisions regarding SAD Refund Claim. As a trade facilitation measure it has been decided that importers may file refund claim of 4% SAD

Refund in terms of notification No. 102/2007- Customs dated 14.09.2007 at the Customs station where imports are made.

**OUR TAKE:** The manner of refund claim and sanction have been amended so as to simplify the existing provisions of filing one Refund Claim application in a month in a Commissionerate. Now, where imports have been made by an importer from more than one customs location in the Commissionerate, importers can file the refund claim application at the same customs location. However, the number of such claims at a Customs station shall be limited to one in a particular month.

### COURT DECISIONS

#### DEPARTMENT OF CUSTOMS V/S SHARAD GANDHI (Delhi HC)

**BRIEF:** During the course of clearance of courier bags of M/s DHL Worldwide Express, a wooden box was intercepted on suspicion and was examined by the Customs Preventive Officers. The wooden box had contained Stone Figure Handicrafts in the courier manifest. In the air waybill, sender was shown as Mr Robert Jaeger and receiver was shown as M/s DHL Worldwide Express. On examination of wooden box, it was found containing one partly mutilated stone head. The officers of Archaeological Survey of India were called to examine the said stone head. The officers of Archaeological Survey of India identified the sand stone head as of Buddha and declared the same to be an Antiquity. The same was, therefore, seized. The allegation against the respondent was that the sand stone head of Buddha was booked by him for Robert Jaeger through M/s DHL Worldwide Express. The air waybill was signed by the accused and thus the accused was the owner of the consignment and he had attempted to export the seized antique piece of sandstone of Buddha illegally. The respondent was arrested on 06.07.1995 in accordance with law. Aggrieved, the petition is filed by the assessee.

**OUR TAKE:** In the above case, the Hon'ble Delhi High Court held that Section 4 of the Antiquities Act, 1947 made all the provisions of the Customs Act, 1962 applicable to an offence committed u/s 3 of the 1947 Act. As per the Antiquities Act, Provisions of the Customs Act are now applicable only for confiscation and not for prosecution. Section 25 of the Antiquities Act stipulates that if any person contravenes the provision of Section 3, he shall be liable for punishment without prejudice to the action of confiscation or penalty for which he has rendered himself liable under the Customs Act. A reading of Section 25 shows that confiscation and penalty has to be under the Customs Act, whereas the punishment and prosecution has to be

under the Antiquities Act for breach of Section 3 of the Antiquities Act. Section 25 of the Antiquities Act clearly creates a bar with regard to the prosecution under the Customs Act. **[Decided against Revenue]**

**M/S. NOVEL DIGITAL ELECTRONICS V/S THE COMMISSIONER CUSTOMS (IMPORTS), CUSTOMS HOUSE (Madras HC)**

**BRIEF:** The assessee imported toys, viz., Talking Parrot classifying the goods under tariff heading 950380.01. The appraising group was of the view that the said goods is covered by Exim Code No.950349.09 and that it needed a Specific Import Licence. The plea of the assessee is that the goods classified under tariff heading 950380.01 under EXIM code as 'other toys and models incorporating motor', though restricted are allowed to be cleared under Special Import Licence. The Dept. took the view that specific Import Licence should be obtained for import of the said goods. Since the importer did not produce a valid licence, it was held that the goods were liable for confiscation under Section 111 (d) of the Customs Act. Accordingly, the goods, were confiscated invoking Section 111 (d) of the Customs Act read with Section 3 (3) of the Foreign Trade (Development & Regulation) Act, 1992 with liberty to the assessee to redeem the same on payment of fine of ₹ 6,80,000/- under Section 125 of the Customs Act and also imposed a penalty of ₹ 68,000/- under Section 112 of the Act.

**OUR TAKE:** In the above case, the Hon'ble Madras High Court held that it was clear from the records that the assessee was pursuing the matter under the bona fide belief that the classification offered by it is correct. Even, the CESTAT was initially not clear about the classification. In such circumstances, it cannot be said that the act of the assessee was wilful, deliberate and dishonest and that he wanted to avoid payment of duty, thereby evading tax liability. The present case falls squarely within the parameters as propounded by the Hon'ble Supreme Court in Akbar Badurddin's case (1990) Thus, penalty, as imposed on the assessee was not justified **[Decided in favour of assessee]**

**M/S. PRABHU STEEL TRADERS PVT. LTD. V/S COMMISSIONER OF CUSTOMS (EP), MUMBAI (CESTAT Mumbai)**

**BRIEF:** The appellant filed a refund claim on 13.2.2012 in respect of SAD paid on the imported goods namely, Prime Hot Rolled Steel Sheets/Cold Rolled Steel Sheets. In support of their claim all the documents required to be submitted in terms of Notification No. 102/2007 dt. 14.9.2007, were submitted. Para 6 of the Order of

**Commissioner (Appeals) reproduces Para (viii) of Board Circular No. 16/2008 dated 13.10.2008 which required that in case of sale of imported goods through consignment agents, the refund of 4% CVD shall be granted subject to the condition that the consignment agent has been authorized to sell the imported goods in terms of the agreement entered into between the importer and the consignment agent. According to the Commissioner (Appeals), the agreement between the consignment agent and the importer does not contain the signature of the witnesses and therefore, is not legally valid. Therefore, he agreed with the rejection of the refund claim**

**OUR TAKE:** In the above case, the Hon'ble CESTAT Mumbai held that only ground for rejecting the refund is that the agreement between the importer and the consignment agent does not contain the signature of the witnesses. As per the copy of the Agreement, it bears signatures of both the importer, being the first party, and the consignment agent being the second party. There is no requirement in the statutory provisions that the Agreement should bear the signatures of the witnesses. In fact, the notification providing for refund does not require that the appellant should submit a copy of the agreement. The finding of Commissioner (Appeals) is indeed very strange and totally unwarranted. In the circumstances, the appellant have submitted all required documents for processing and sanctioning of the refund claim. **[Decided in favour of assessee]**

## INCOME TAX

### NOTIFICATIONS & CIRCULARS

The CBDT vide **Notification No. 34/2015 dated 10th April 2015** hereby notifies for the purposes of clause (46) of section 10 of the Income-tax Act, 1961 (43 of 1961) '**Rajasthan State Pollution Control Board**', a Board constituted under the provisions of Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974) of Rajasthan State Legislature in respect of the following specified income arising to that Board, namely:-

- amount received in the form of Government grants;
- amount received as licence fees and fines
- interest earned on Government grants license fees and fines

**This notification shall be applicable for the financial years 2012-13 to 2016-17.**

The CBDT vide **Notification No. 35/2015 dated 10th April 2015** hereby notifies for the purposes of clause (46) of

section 10 of the Income-tax Act, 1961 (43 of 1961) '**Haryana Electricity Regulatory Commission**', a Commission constituted under the Haryana Electricity Reform Act, 1997 (Haryana Act No.10 of 1998), in respect of the following specified income arising to that body, namely:-

- a) grants and loans made by the Government of Haryana;
- b) fees received under the Electricity Act, 2003 (36 of 2003)
- c) interest earned on government grants and loans and fees received under the Electricity Act, 2003 (36 of 2003)

**This notification shall be applicable for the financial years 2012-13 to 2016-17.**

The **CBDT vide Notification No. 36/2015 dated 10th April 2015** hereby notifies for the purposes of clause (46) of section 10 of the Income-tax Act, 1961 (43 of 1961) '**Punjab State Electricity Regulatory Commission**', constituted by the Government of Punjab, in respect of the following specified income arising to that Commission, namely:-

- a) amount received in the form of processing fee for determination of tariff;
- b) amount received in the form of licence fee
- c) amount in the form of petition fee; and
- d) amount of interest income earned on bank deposits

**This notification shall be applicable for the financial years 2011-12 to 2015-16.**

**However, all of the above mentioned in Notifications 34/2015 to 36/2015 should file return of income in accordance with the provision of 139 (4C) (g) of the Income Tax Act, should not engage in any commercial activity and the activities and the nature of the specified income derived shall remain unchanged throughout the financial years.**

**OUR TAKE:** Section 10(46) deals with specified income arising to a body or authority or Board or Trust or Commission, established by or under a Central or State Act or by a Central or State Govt with the object of regulating or administering any activity for the benefit of the general public, which would be exempt from tax subject to the condition that the said entity is not engaged in any commercial activity.

#### **INCREASE IN TRANSPORT ALLOWANCE GRANTED TO AN EMPLOYEE**

The **CBDT vide Notification No. 39/2015 dated 13th April 2015** has increased the transport allowance exemption granted to an employee from Rs.800p.m. to Rs.1600 p.m.

**It has also increased the transport allowance exemption granted to an employee, who is blind or orthopaedically handicapped with disability of lower extremities from Rs.1600 p.m. to Rs.3200 p.m.**

**OUR TAKE:** The notification is self explanatory.

#### **NOTIFICATION NO. 40/2015**

The **CBDT vide Notification No. 40/2015 dated 15th April 2015** hereby notifies that **Indian Institute of Technology Samantapuri Bhubaneswar (PAN - AAAAI2760A)** has been approved by the Central Government for the purpose of **section 35(1)(ii) of the Income-tax Act, 1961** read with **Rules 5C and 5E of the Income Tax rules 1962** from Assessment year 2014-2015 and onwards in the category of "University College and other Institution", engaged in research activities subject to the following conditions, namely:-

- i) The sums paid to the approved organization shall be utilized only for scientific research; and not for other streams;
- ii) The approved organization shall carry out scientific research through its faculty members or its enrolled students;
- iii) The approved organization shall maintain separate books of accounts in respect of the sums received by it for scientific research, and get the books audited.

**OUR COMMENTS:** The Central Government shall withdraw the approval if the approved organization fails to maintain separate books of accounts, fails to furnish its audit report, fails to furnish its statement of the donations received and sums applied for scientific research, ceases to carry on its research activities or its research activities are not found to be genuine; or ceases to conform to and comply with the provisions of section 35(1)(ii) of the Income-tax Act, 1961 read with Rules 5C and 5E of the Income Tax rules 1962.

#### **CLARIFICATION ON INTEREST UNDER SECTION 17B OF WEALTH TAX ACT, 1957 FOR NON -FURNISHING OF RETURN**

The **CBDT vide Circular No. 5/2015 dated 9th April 2015** has decided that no interest u/s 17B of the Wealth Tax Act shall be charged if the amount of self assessment tax payable by

the assessee is paid before the due date of filing the Return of Net Wealth.

**OUR TAKE:** The CBDT clarifies that section 17B of the Wealth Tax Act is similar to section 234A of Income Tax Act. Section 234A of the Income Tax Act clearly states that interest shall be payable under this section only if the amount of tax payable is not paid before the due date of filing of the return. Similarly, it has been decided that no interest u/s 17B of the Wealth Tax Act is chargeable on the amount of self-assessment tax paid by the assessee before the due date of filing return of net wealth.

## COURT DECISIONS

### INCOME TAX DEPARTMENT V/S M/S AYUSH AJAY TOLLS PVT. LTD. (Madhya Pradesh HC)

**BRIEF:** The assessee company is substantial holder (having equity share over 10%) of the company Ayush Ajay Construction Pvt Ltd; that the assessee company had shown receipt of Rs.82,09,300/- from that company ( i.e. Ayush Ajay Construction Pvt Ltd) and the assessee had claimed that receipt as share application money. The AO however did not agree with the assessee's claim as regards to the nature of such receipts, The AO was of the view that the amount was in the nature of loans and advances and accordingly he added the same treating that as deemed dividend u/s 2(22)(e) of the I T Act.

**OUR TAKE:** In the above case, the Hon'ble Madhya Pradesh High Court held that it was found on record that the assessee had filed copy of the relevant share application money, account of share application money, copy of the Board's resolution for allotment of shares and copy of form no.2 with ROC for allotment of shares. The documentary evidence clearly establishes that the money so received was on account of share application money. Thus, the additions made were deleted and appeal of the Revenue was dismissed. [Decided against Revenue]

### M/S MALLIGE MEDICAL CENTRE PVT LTD V/S THE JOINT COMMISSIONER OF INCOME-TAX RANGE-5, BANGALORE (Karnataka HC)

**BRIEF:** The assessee is a Pvt. Ltd. Co running a hospital. The assessee filed return of income for the AY 2005-06 declaring a total income of Rs.94,43,461/-. It claimed deduction of a sum of Rs.5,00,000/- spent for the higher education of Dr. Gowri, D/o. Dr. A.C. Sriram and Mrs.Kala Sriram, who are Managing Director and Executive Director of the Company on grounds that their daughter was committed to work for the assessee company after successful completion of her studies. It is not in dispute that after successful completion of studies, she has come

back and is working in the said assessee company. She was paid a sum of Rs.20,000/- per month as salary before she was sent for higher studies. After returning, she is being paid Rs.30,000/- per month. The Assessing Authority disallowed the assessee's claim on the ground that the expenditure incurred was out of love and affection and meeting the cost of their education cannot become business expenditure.

**OUR TAKE:** In the above case, the Hon'ble Karnataka High Court held that before expenditure was incurred the daughter had acquired a degree in medicine and was employed in the company. The expenditure incurred was to improve the services that were being given to the patients. Merely because she is the daughter of the MD and the executive director of the company, it cannot be said that the money is spent by her parents out of love and affection. Since she was an employee of the company and was being paid salary which was increased post her higher studies, there is a direct nexus between the expenses incurred towards her education with the business that the assessee is carrying on. [Decided in favour of assessee]

### COMMISSIONER OF INCOME TAX-III V/S M/S. SONAL CONSTRUCTION CO (Gujarat HC)

**BRIEF:** The assessee firm engaged in the business of civil construction filed its IT returns for the AY 2001-02 declaring an income of Rs.1,98,170/-. The assessment was completed at an income of Rs.38,05,860/- making an addition of Rs.36,07,690/- on account of bogus/non-existing liabilities in respect of labour charges as reflected in the balance sheet.

As per accounts, the assessee declared G.P. of Rs.19,10,123/- @4.91% and N.P. of Rs.4,12,500/- @1.06%. The P&L A/c was debited with Rs.1,17,38,951/- on account of labour charges out of which outstanding liability was shown in the balance sheet at Rs.46,79,034/-. The assessee furnished necessary details and other evidences in support of the above liabilities. However, the assessee failed to prove the genuineness of the liabilities to the extent of Rs.36,07,690/- and the addition was made by the A.O. accordingly invoking the provisions of Section 145(3) of the IT Act. The above addition was duly agreed to by the assessee and the penalty proceedings u/s. 271(1)(c) of the I.T. Act were initiated accordingly.

**OUR TAKE:** In the above case, the Hon'ble Gujarat High Court held that assessee furnished relevant details i.e. names, addresses, confirmations etc. and offered AO to call some of them for examination. However, these details were not inquired into by the A.O. and the assessee offered about amount for addition purpose. A.O. should have inquired matter independently in penalty proceedings.



AO had imposed penalty solely on the basis of agreed addition by assessee. However, assessment proceedings and penalty proceedings are separate and distinct and merely because additions have been made, same will not lead to automatic levy of penalty. Decided by **Hon'ble Supreme Court** in the case of **ACIT, Udaipur v. M/s. Gebilal Kanhaialal HUF, Through Karta, Udaipur** and also in the case of **Northland Development and Hotel Corporation v. CIT**. [Decided in favour of assessee]

# STATE TAXES

## ALL INDIA VAT

### ANDHRA PRADESH

The Govt. of Andhra Pradesh vide Circular No. Enft/E3/ 421 /2015 dated 9th April 2015 has withdrawn the facility to issue physical Waybills from CDSC to dealers dealing in the commodities of Iron & Steel, Scrap, Waste paper, Old empty bottles, Pulses & Dhalls, Sugar.

The dealers dealing in the above mentioned commodities can avail the facility of eWaybills or obtain the physical waybills (VAT) from the Dealer Service Centres of the divisions only.

The CTO to issue a maximum of 50 Waybills (one book) for the dealers dealing in above mentioned commodities. He has to decide the limit as per his best of judgment to prevent misuse.

**OUR TAKE:** It is noticed that dealers who do business in commodities like Iron & Steel, Scrap, Waste paper, Old empty bottles, Pulses & Dhalls and Sugar are resorting to large scale tax evasion by taking huge number of waybills and misusing them. Now, the CTO is to issue waybills to the dealers dealing in the above mentioned commodities only after verifying the third copy of the waybills and also online waybills utilized statement. Also, at the time of issue of the waybills to the dealers dealing in these commodities, each of these waybills shall be stamped with the commodity name.

### CHANDIGARH

The Administrator of Chandigarh has made the following amendments in the VAT Schedules:

1. In Schedule 'B', in Serial No. 60 and entries relating thereto, item namely "Cell Phone" shall be omitted
2. In Schedule 'C-1', item namely "Pulses", thereto shall be omitted

3. In Schedule 'F', the items namely, "batteries" and "Timber" shall be omitted
4. In Schedule 'A', after Serial No. 65 and the entries relating thereto, the following Serial number and item shall be added, namely;  
"66 Blanket"
5. In Schedule 'B', after Serial. No. 156 and the entries relating thereto, the following Serial number and item shall be added, namely;  
"157. Timber"
6. In Schedule 'C', after Serial No. 4 and the entries relating thereto, the following Serial number and item shall be added, namely;  
"5. Pulses"
7. In Schedule 'E', after Serial No. 8 and the entries relating thereto, the following Serial numbers, items and rate of taxes shall be added, namely:  
"9. Batteries                      14.30%"  
"10. Mobiles                      9.35%"

**OUR TAKE:** The notification is self-explanatory.

### HIMACHAL PRADESH

The Govt. of Himachal Pradesh vide Notification No. EXN-F(10)-17/2014 dated 6th April 2015 has directed that henceforth the tax exemption under section 6 of the Himachal Pradesh Value Added Tax Act, 2005 on the sale of goods manufactured by the dealers running any new industrial unit located in category 'C' areas shall be admissible as per table and subject to the conditions mentioned in the notification:

#### Quantum of Value Added Tax and Central Sales Tax incentives

Eligible Area	Limit of exemption	Period of exemption
Tribal area	80% of the total FCI	7 years maximum
	(Total of all taxes i.e. VAT and CST)	
Backward Panchayat	60% of the total FCI	7 years maximum
	(Total of all taxes i.e. VAT and CST)	

**OUR TAKE:** Readers are requested to go through the conditions stated for availing the exemptions.

### JHARKHAND

The Govt. of Jharkhand vide Notification No. S.O.2 dated 10th April 2015 has added the Serial No. 100B in the

**Schedule-II Part-B of the Jharkhand Value Added Tax Act, 2005:**

Sl.No.	Description of goods	Rate of Tax
100B	Plywood, Block Board, Flush Doors and Laminates.	5%

Also, vide **Notification S.O.3 dated 10th April 2015** the following entry as **Sl. No. 4 in schedule II Part -F of the Jharkhand Value Added Tax Act, 2005** has been amended:

Sl.No.	Description of goods	Rate of Tax
4.	Tobacco products including tobacco produce, i.e. to say tobacco refuse, cigars, cheroots of tobacco, cigarettes, cigarillos of tobacco, imported varieties of tobacco and tobacco produce, other tobacco products, but excluding Biri and unmanufactured tobacco as specified in Serial No. 16 of Schedule-II Part B appended to this Act.	22%

Also, vide **Notification S.O.4 dated 10th April 2015** the following entry **after Sl. No. 4 in schedule II Part -F of the Jharkhand Value Added Tax Act, 2005** has been added

Sl.No.	Description of goods	Rate of Tax	Conditions and Restrictions
5.	Pig iron, Steel scrap, Iron Ore, Palate, Ferro Alloys and other items as defined u/s 14 of the Central Sales Tax Act, 1956 used in manufacturing by Micro, Small and Medium Enterprises (MSME) of the State of Jharkhand based on Iron and Steel.	2.5%	1. This facility shall be available for the goods sold within the State and in course of interstate trade and commerce only. 2. This facility shall not be available for the

			goods sold by interstate stock transfer.
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**OUR TAKE:** The notifications are self-explanatory.

**RAJASTHAN**

The **Govt. of Rajasthan vide Notification F.12 (14)FD-Tax-2012-Pt-1-5 Dated 10th April 2015** has clarified that the reimbursement of 25% of amount of VAT paid on purchase of plant and machinery or equipment to a tourism sector enterprise as defined under the Rajasthan Investment Promotion Scheme-2014 shall be allowed on the purchase of goods mentioned in the list given below, in accordance with the provisions of the scheme:

**LIST**

S. No.	Particulars
1	AC plants, ACs, Fans & Exhaust Fans, Coolers etc.
2	Pollution control machines for air, water and light.
3	Non CFC equipment for refrigeration and air conditioning and other Eco-friendly measures and initiatives.
4	DG Sets.
5	Housekeeping machines & equipments
6	Solar Heaters and Solar Plants/Geysers/Cold & Hot Running water machine
7	Furniture
8	Lifts and elevators.
9	Metal detectors (door frame or hand held)
10	CCTV
11	X-Ray Machine
12	Under belly scanners to screen vehicles.
13	Smoke detectors.
14	Heating and cooling systems, machines & plants.
15	Safe keeping / in room safe
16	Minibar / fridge
17	TV
18	Dry-cleaning / laundry related equipment
19	Tea / coffee making machines equipments etc.

**OUR TAKE:** The notifications are self-explanatory

**ASSAM**

The **Govt. of Assam vide Circular No. 3/2015 dated 2nd April 2015** has issued guidelines to be followed for verification and assessments of coal. All prescribed authority shall insist on the following documents in order to realize proper taxes, allowing transportation of coal and doing assessments:

1. The Meghalaya coal purchase bill.
2. Production of copy of treasury challan of royalty paid.
3. Consignment note from the place of stock of coal to the State of Assam and from Assam to other States.
4. Bank transaction of the dealer in order to authenticate the purchase and sales transaction.
5. They will also maintain a separate register of the receipt of exit of coal trucks.
6. Duly filled in and cross verified Form 'C' and 'F' in support of sales and stock transfer under the CST Act, 1956.

All the cement plants and other bulk consumers will also have to maintain the following records of purchase of coal in compliance of the Hon'ble National Green Tribunal order.

1. The name of the supplier with complete address.
2. VAT & CST registration of the supplier.
3. The truck registration number of the vehicle.
4. Copy of challan & Consignment Note with Number.
5. Quantum of coal purchased.
6. Invoice No.
7. The cost price of coal.

**OUR TAKE:** The prescribed authorities while collecting tax from the coal dealers, and allowing transportation of coal and the subsequent assessments are required to be follow the guidelines issued by the Committee constituted by the NGT scrupulously. They have to take steps in conformity with the guidelines of the Hon'ble National Green Tribunal.

## OTHER UPDATES

### RBI

#### GUIDELINES ON OFF-SITE/MOBILE AUTOMATED TELLER MACHINES (ATMs)

The **RBI vide Circular RBI/2014-2015/556 dated 16th April 2015** has decided that the State Co-operative Banks may be allowed to install Off-site ATMs/Mobile ATMs as per their need and potential in their area of operation without prior permission from RBI subject to satisfying the following criteria.

- (a) CRAR not being less than 9 per cent
- (b) No default in maintenance of CRR/SLR during the preceding financial year
- (c) Net NPA being less than 5 per cent
- (d) The bank should have a track record of regulatory compliance and no monetary penalty should have been imposed on the bank on account of violation of RBI directives/guidelines during last two financial years.

The above parameters should be as assessed by NABARD in their latest inspection report.

#### GUIDELINES ON CORPORATE GOVERNANCE

The **RBI vide Notification No. DNBR. 019/CGM (CDS)-2015 dated 10th April 2015** has issued directions for the purpose of enabling the Bank to regulate the credit system to the advantage of the country. These Directions shall be known as the Non-Banking Financial Companies – Corporate Governance (Reserve Bank) Directions, 2015.

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