



ASC Times

All India Taxes Weekly Reference

Vol: June 20 - June 26, 2016

Solving any tax puzzle

Tax saving advice across all the taxes



TAX CALENDER

Due Date	Description	Law
20 June	Deposit of Tax	Andhra Pradesh VAT, Goa VAT, Karnataka VAT, Manipur VAT, Punjab & Chandigarh VAT, Tamil Nadu VAT, Telangana VAT, Uttarakhand VAT
	Deposit of TDS	Andhra Pradesh VAT, Tamil Nadu VAT, Telangana VAT
	Issue of TDS Certificate	Chhattisgarh VAT, Madhya Pradesh VAT
	Return Filing	Andhra Pradesh VAT, Karnataka VAT, Manipur VAT, Punjab & Chandigarh VAT, Tamil Nadu VAT, Telangana VAT
21 June	Deposit of Tax	Assam VAT, Delhi VAT, Maharashtra VAT, Meghalaya VAT, Orissa VAT
	Deposit of TDS	Maharashtra VAT
	Issue of TDS Certificate	Maharashtra VAT
	Return Filing	Assam VAT, Assam VAT, Maharashtra VAT, Meghalaya VAT, Meghalaya VAT, Orissa VAT, Orissa VAT
22 June	Deposit of Tax	Gujarat VAT
	Deposit of TDS	Gujarat VAT
	Issue of TDS Certificate	Delhi VAT
	Return Filing	Tamil Nadu VAT,
25 June	Return Filing	Jharkhand VAT
	Deposit of Tax	Rajasthan VAT, Uttarakhand VAT
	Issue of TDS Certificate	Mizoram VAT

COUNTRY WIDE HOLIDAYS FOR THE WEEK

Date	Occasion/Festival	Region
NA	NA	NA

INDEX GUIDE

TOPIC	PAGE NO.
Service Tax	4-5
Central Excise	6-7
Customs	8-8
Income Tax	9-9
State Taxes	10-10
Other Updates	11-12
Our Contacts	13

From the CEO's Desk



Dear Reader,

With Monsoon round the corner, the Finance Ministry expects the country's growth rate to climb to 8 per cent in the current financial year on the back of above normal monsoon. Economic Affairs Secretary Shaktikanta Das expressed hope that the likely passage of Goods and Services Tax (GST) bill in Parliament would further add to the business sentiment, fuelling growth. He stated "We will certainly exceed 7.6 per cent growth. If the monsoon is good which we expect it will be because of the forecast and once the GST is passed, we can expect our GDP to touch 8 per cent in the current fiscal,"

In 2015-16, the country's economy grew 7.6 per cent and the Economic Survey in February had projected a growth rate of 7.75 per cent for the current fiscal while RBI had forecast 7.6 per cent for the current fiscal. He further said although the GST is likely to be rolled out from April 2017, its passage would significantly help in boosting sentiment and generating economic activity. "The moment GST is passed, the business environment will improve. This will give a huge boost to business sentiment and economy is all about real factors and sentiments. So, the sentiment will turn strongly positive and then industry and business will also start the process of re-orienting their business for GST purpose. You will suddenly see a lot of spurt in activity," he added.

Earlier this month, the India Meteorological Department (IMD) had stated that there is no possibility of a "deficient" monsoon this year and 96 per cent chances are that the rainfall would be "normal to excess". However, later, the IMD said the slow progress of the southwest monsoon has led to overall deficiency of rains by 22 per cent from June 1- June 15. The government is hoping to get the Constitution Amendment Bill passed by Parliament in the upcoming Monsoon Session. It plans to rollout GST from April 1 that will subsume excise, service tax and all local levies.

Meanwhile, the government of India has released Model GST Law after getting basic principles from Empowered Committee of State FMS. The model Goods and Services Tax (GST) law, made public by the Centre, has clarified that all e-commerce transactions will attract GST and that the tax will be collected by the service operator as soon as the supplier receives payment. Further adding, every electronic commerce operator shall, at the time of credit of any amount to the account of the supplier of goods and/or services or at the time of payment of any amount in cash or by any other mode, whichever is earlier, collect an amount representing consideration towards the supply of goods and /or services made through it, according to the model law, approved by most state finance ministers.

While this has cleared the confusion surrounding the levy of the tax on e-commerce transactions spanning different states, it will also make operations more complicated for the e-commerce platform.

Alok Kumar Agarwal

CEO

ASC Group.

CENTRAL TAXES

SERVICE TAX

NOTIFICATION

The Govt. vide Circular No. 195/05/2016-ST dated 15th June 2016, notify that speedy disbursal of pending refund claims of exporters of service tax rules 5 of the CENVAT Credit rules 2004.

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

COURT DECISIONS

COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX VERSUS G. GOVINDARAJ AND ANOTHER [MADRAS HIGH COURT]

BRIEF: Demand of service tax of the dissolved partnership firm from the erstwhile partners - Section 25 of the Partnership Act clearly mandates that all the partners are jointly and severally liable for all acts of the firm done while he is a partner - Tribunal clearly was in error in setting aside the demand.

OUR TAKE: The hon'ble MADRAS HIGH COURT held that the plea of knowledge in respect of activities of Lakshmi Travels being attributed to the Department has no legs to stand. The Tribunal clearly was in error in comparing the activities of one Sanjeev to the activities of the firm, Lakshmi Travels, Karaikal, which is in a very different place altogether. Therefore, the reasoning given by the Tribunal, on the plea of limitation is fallacious and not tenable in law. Demand confirmed. **[Decided in favour of revenue]**

M/S JANATA SAHAKARI BANK LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, PUNE [CESTAT MUMBAI]

BRIEF: Business Auxiliary Services - commission received by the appellant from the Government of Maharashtra for disbursement of government teachers salary, cannot be charged to Service Tax.

OUR TAKE: The Hon'ble CESTAT MUMBAI held that the very same issue in the appellant's own case is reported as Janata Sahakari Bank Ltd. Vs. Commissioner of Central Excise, Pune-III - [2015 - CESTAT MUMBAI], this Tribunal has held that commission received by the appellant from the Government of Maharashtra for disbursement of government teachers salary, cannot be charged to Service Tax. Demand set aside. **[Decided in favour of assessee]**

M/S GIRIRAJ CONSTRUCTION, NASHIK, M/S. PARIJAT CONSTRUCTION, NASHIK VERSUS COMMISSIONER OF CENTRAL EXCISE & CUSTOMS, SERVICE TAX, NASIK

BRIEF: Period of limitation - Service tax paid on the output service on which there was no levy - amount paid was without authority of law - Tribunal being a creature under the Central Excise/Customs Act cannot go beyond the statute and therefore cannot relax the time limitation provided under the statute.

OUR TAKE: The hon'ble CESTAT MUMBAI held that the provision if any applies for refund of such duty is only provided under Section 11B and there is no any other provision. Any amount, which is to be refunded, shall be refunded in accordance with Section 11B which include the condition of time limitation. The issue has been clearly settled by the Hon'ble Supreme Court that even though the refund of duty recovered without authority of law but for the refund claims made before the departmental authorities, limitation provided under the Customs Act/Central Excise Act or the Rules made thereunder is applicable. The authorities functioning under the Act bound by its provision. **[Decided against the appellant]**

M/S KASMISONS BUILDERS PVT. LTD. VERSUS ASSISTANT COMMISSIONER, SERVICE TAX & SUPERINTENDENT OF EXCISE, KOCHI

BRIEF: Denial of benefit of VCES - Delayed payment of second instalment of 50% amount - To allow the petitioner to effect payments belatedly would tantamount to altering the terms of the settlement and that cannot be done by this Court in exercise of its powers under Art. 226 of the Constitution of India.

OUR TAKE: The hon'ble CESTAT ALLAHABAD held is in the nature of an Amnesty Scheme and, therefore, its provisions have to be strictly interpreted, and the time limits specified in the Scheme for the payment of amounts together with interest have to be strictly adhered to. The scheme partakes of the nature of a settlement between the assessee and the

department and from the terms of the settlement, neither party can be permitted to resile. To allow the petitioner to effect payments belatedly would tantamount to altering the terms of the settlement and that cannot be done by this Court in exercise of its powers under Art. 226 of the Constitution of India. **[Decided against the petitioner]**

M/S SPANDANA SPOORTHY FINANCIAL LTD VERSUS THE COMMISSIONER C.C.E & ST, HYDERABAD [CESTAT HYDERABAD]

BRIEF: Scope of the term and taxability of Port Service - Authorized operations - for the period prior to 1.7.2010 various services, which were rendered within the port area by the appellant, were not taxable.

OUR TAKE: The hon'ble **CESTAT HYDERABAD** held that appellant was entitled to avail Cenvat credit on documents evidencing receipt of eligible inputs, capital goods or input services , even before the date they obtained service tax registration. They can very well adjust part or whole of their service tax liability by utilization of such credit availed, subject to the relied upon invoices/ documents evidencing sufferance of tax/duty found to be otherwise eligible for such availment pe se for the purposes of Cenvat Credit Rules, 2004. There is no justification for equal penalty under section 78 of the Finance Act, 1994; the same requires to be set aside, which we hereby do. We however do not interfere with the penalties imposed under Sections 76 and 77(1) (a) ibid. **[Decided partly in favour of assessee]**

M/S PUNJAB NATIONAL BANK VERSUS C.C.E. & S.T. CHANDIGARH

BRIEF: Self-Adjustment of excess service tax paid with the service tax liabilities for subsequent period - Service tax amount paid at higher rate for the service tax liabilities - adjustment allowed.

OUR TAKE: The hon'ble **CESTAT NEW DELHI** held that Self Adjustment of excess service tax paid with the service tax liabilities for subsequent period - Service tax amount paid at higher rate for the service tax liabilities - Held that:- it is found that Rule 6(3) of the Service Tax Rules clearly provides for such adjustment. Therefore, the impugned order is set aside. **[Decided in favour of appellant with consequential relief]**

COMMISSIONER OF CENTRAL EXCISE, CUSTOMS & SERVICE TAX VERSUS PNP MARITIME SERVICES PVT. LTD.

BRIEF: Pure agent - reimbursement of expenses - appellant has not satisfied the conditions prescribed in Rule 5 of the Service Tax (Determination of Value) Rules, 2006 to satisfy the criteria for a pure agent.

OUR TAKE: The hon'ble **CESTAT MUMBAI** held that there is no segregation of consideration for the back-up land even if that is assumed facilitation of space in relation to cargo. It is also an admitted fact that duty liability on import cargo is discharged while yet on the mother vessel. Consequently, custodianship of import cargo requiring assigning of storage space is not a statutory obligation of the Maharashtra Maritime Board. Therefore, even if the goods are allowed to be stored after landing, the lease terms does not transform the activity into one of rendering other port services. Therefore, show cause notice do not sustain

KOMATSU INDIA PRIVATE LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE [CESTAT CHENNAI]

BRIEF: Demand of interest - availment of ineligible credit of service tax on reverse charge basis - later on reversed without utilizing the same - the question of demand of interest does not arise.

OUR TAKE: The hon'ble **CESTAT CHENNAI** held that t he interest is not payable as there has been only an availment and no utilization. It is well settled that when there has been only availment and no utilization and when there is no loss to the Revenue, the question of demand of interest does not arise. The contention of the Revenue that UOI and Ors. Vs Ind-Swift Laboratories Ltd. case [2011 (2) - Supreme Court] covers the situation on hand cannot be accepted as this Tribunal in the case of T.V.Sundram Iyengar & Sons Ltd. Vs CCE Madurai [2015 - CESTAT CHENNAI], has already held that while deciding the Ind-Swift Laboratories case the previous decision of the Supreme Court in the case of Bombay Dyeing was not brought to the notice of the Apex Court. Therefore, the contention of the Revenue on this count is unsustainable. Accordingly, the impugned order is set aside. **[Decided in favour of appellant]**

CENTRAL EXCISE

COURT DECISIONS

NOTIFICATION

The Govt. vide Notification No. 24/2016 dated 14th June 2016, amends notification no. 214/86-CE dated 25th march 1986.

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

The Govt. vide Notification No. 25/2016 dated 14th June 2016, amends notification no. 67/95-CE dated 16th march 1995.

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

The Govt. vide Notification No. 1031/19/2016-CX dated 14th June 2016, levies excise duty on readymade garments and made articles of textiles bearing a brand name or sold under a brand name and having a retail sale price of Rs. 1000 or more

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

COMMISSIONER OF CENTRAL EXCISE, NAGPUR VERSUS M/S. TARANG ENGINEERING PVT. LTD. [CESTAT MUMBAI]

BRIEF: Cenvat Credit in respect of supplementary invoice issued by the service provider for payment of service tax for the past period - prior to 1.4.2011 the credit cannot be denied borrowing the restriction provided in unamended Rule 9(1).

OUR TAKE: The hon'ble CESTAT MUMBAI held that the As during the relevant period of this case, Rule 9(1) (b) of Cenvat Credit Rules, 2004, does not put any restriction for availing the Cenvat Credit on the supplementary invoice in respect of input services received by the assessee. Admittedly, the restriction was brought by insertion of Sub-clause (bb) of Rule 9(1) of Cenvat Credit Rules w.e.f. 1.4.2011. Therefore, prior to 1.4.2011 the credit cannot be denied borrowing the restriction provided in unamended Rule 9(1). This proposition has been endorsed by the various

Tribunal decision as cited by the Ld. Counsel. **[Decided in favour of assessee]**

M/S. SHAKTI ORGANIC CHEMICAL INDUSTRIES PVT. LTD. VERSUS CCE, NEW DELHI [CESTAT NEW DELHI]

BRIEF: Valuation - if some goods are marketable without being put into the containers, the cost of containers including their testing charged would not be includible in the assessable value.

OUR TAKE: The hon'ble CESTAT NEW DELHI held that On going through the orders passed by the Asstt. Commissioner and the Commissioner (Appeals), we find that the Asstt. Commissioner has relied upon the precedent decisions of the higher authorities in dropping the demand. The Appellate Authority has not disputed the fact that the said decisions relied upon by the Asstt. Commissioner fully apply in respect of the valuation of the goods where the packing materials itself is being supplied by the customers, but has decided not to follow the same on the ground that the provisions of Section 4 were amended w.e.f. 1.7.2000. The very same decisions stand considered by the Tribunal in a recent decision in the case of Commissioner of Central Excise Vs. Grasim Industries Ltd. [2014-CESTAT NEW DELHI] wherein held that if some goods are marketable without being put into the containers, the cost of containers including their testing charged would not be includible in the assessable value. **[Decided in favour of assessee]**

THE COMMISSIONER OF CENTRAL EXCISE AND CUSTOMS VERSUS KRISHAK BHARTI COOPERATIVE LTD

BRIEF: Dutiability and classification of Polyester Sewing Thread. The Dutiability does not arise by virtue of the fact the definition of Sewing Thread was provided for in certain headings, but by virtue of the fact that the process of making Sewing Thread out of single thread/yarn is a process of manufacture under Section 2(f).

OUR TAKE: The hon'ble CESTAT NEW DELHI held that the Polyester Sewing Thread is distinctly known in the market and the yarn purchased by the appellant apparently cannot be marketed or used as the Sewing Thread. The Dutiability does not arise by virtue of the fact the definition of Sewing Thread was provided for in certain headings, but by virtue of the fact that the process of making Sewing Thread out of single thread/yarn is a process of manufacture under Section 2(f). In view of the above discussion, we find that there is no ground to interfere with the findings of the learned Commissioner (Appeals) and accordingly we dismiss the appeal. **[Decided against the assessee]**

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 i.e. 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 Jawaharlal 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]

THE COMMISSIONER, CENTRAL EXCISE, CUSTOMS & SERVICE TAX VERSUS M/S. BALLARPUR INDUSTRIES LIMITED (ORISSA HIGH COURT)

BRIEF: Compliance of sub-section (2) of Section 35B of the Central Excise Act, 1944 - Authorisation made in Annexure-3 of the affidavit filed by the appellant to prefer appeal without same being filed along with appeal is surely an incurable defect and the same cannot be rectified by filing an authorization letter.

OUR TAKE: The hon'ble ORISSA HIGH COURT held that the authorisation made in Annexure-3 of the affidavit filed by the appellant to prefer appeal without same being filed along with appeal is surely an incurable defect and the same cannot be rectified by filing an authorization letter as stated by the learned counsel for the appellant. Similarly, as the authorization by the Committee of Commissioners of Central Excise is not found in the impugned order, it must be observed that the impugned order passed by the CESTAT is correct, legal and proper. Hence, we are of the considered view that the impugned order passed by the learned CESTAT being valid, legal and proper, cannot be interfered with.

M/S INSUCON CABLES & CONDUCTORS PVT. LTD. VERSUS CCE, JAIPUR - I. [CESTAT NEW DELHI]

BRIEF: Valuation - if the assessee charged and collected amount towards sales tax but not paid the said full amount to the State, the amount retained under whatever name shall not be eligible for exclusion in terms of Section 4(3)(d)

OUR TAKE: The hon'ble CESTAT NEW DELHI held that the demand of differential duty is to be restricted to the normal period which shall be payable with applicable interest by the appellants. On the same reasoning, we find imposition of penalty equal to the duty amount is also not sustainable. Since, the assessee has not collected the excise duty applicable on retained sales tax amount from the buyers; they are eligible for calculation of duty liability taking the differential value as cum duty value. The demand shall be restricted to the normal period and the duty will be calculated based on cum duty valuation. [The penalty imposed also is set aside]

CUSTOMS

NOTIFICATION / CIRCULAR

The Govt. vides notification No. 37/2016-Cus dated 16th June 2016, amends notification no. amend notification No. 27/2011-Customs, dated 01st march 2011 to impose export duty of 20% on raw sugar, white or refined sugar.

The Govt. vides notification No. 38/2016-Cus dated 17th June 2016, amend notification No. 12/2012-Customs, dated the 17th March 2012 to continue with the imposition of BCD of 25% on wheat beyond 30.06.2016 and without an end date.

The Govt. vides notification No. 87/2016-Cus dated 16th June 2016, notifies that Rate of exchange of conversion of the foreign currency with effect from 17th June, 2016

DECISIONS

MANAWAT PLASTICS PVT. LTD. VERSUS THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, THE COMMISSIONER CUSTOMS, CENTRAL EXCISE & SERVICE TAX [BOMBAY HIGH COURT]

BRIEF: Conversion of Shipping Bill under DEEC Scheme to Drawback Scheme to avail export benefit. No question of law regarding the permissibility of conversion of advance licenses into a drawback facility in present facts has been specifically raised.

OUR TAKE: The hon'ble **BOMBAY HIGH COURT** held that the Appellant ought to have raised a specific question of law on such facts. No question of law regarding the permissibility of conversion of advance licenses into a drawback facility in present facts has been specifically raised. Appellants have failed to raise any substantial question of law in this Appeal. Appeal 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 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.

M/S AMRITLAKSHMI MACHINES WORK, MR. N.K. BRAMCHARI, MANAGING PARTNER, M/S. AMRITLAKSHMI MACHINE WORKS VERSUS COMMISSIONER OF CUSTOMS (IMPORT) [BOMBAY HIGH COURT]

BRIEF: Levy of simultaneous penalties on both the Partner and Partnership firm in adjudication proceedings under the Customs Act. Penalty for abetting, simultaneous penalties can be imposed on the firm and the partners under the Act and more particularly under Section 112(a) of the Act.

OUR TAKE: The hon'ble **BOMBAY HIGH COURT** held that the penalties could be imposed on the firm and the partners under the Act and more particularly under Section 112(a) of the Act. However, as the Act itself stipulates, the same would be subject to the parties proving that the contravention has taken place without their knowledge or despite exercise of all due diligence to prevent such contravention.

M/S S. NARENDRA VERSUS COMMISSIONER OF CUSTOMS, MUMBAI [CESTAT MUMBAI]

BRIEF: Claim of exemption. Benefit of Notification No. 159/86-Cus, after examination of machine and visit to factory premises it was found that the said machine is "Laser system for diamond processing (sawing, kerfing and drilling) based on CNC. - Benefit of exemption allowed

OUR TAKE: The hon'ble **GUJRAT HIGH COURT** held that the expression sawing machines had been used without any qualification. There is no dispute that the goods were imported for the purposes as specified in the notification. Other condition subject to which the benefit of concessional rate of duty was available and had also been fulfilled. The notification covers the machine imported by the appellants. Appellant succeeds on both counts. The appeal is allowed. **[Decided in favor of assessee]**

INCOME TAX

COURT DECISIONS

THE CORRESPONDENT, HOLY CROSS PRIMARY SCHOOL VERSUS THE CENTRAL BOARD OF DIRECT TAXES, THE PRINCIPAL CHIEF COMMISSIONER OF INCOME TAX, THE INCOME TAX OFFICER, THE DIRECTOR OF TREASURIES AND ACCOUNTS, THE PAY AND ACCOUNTS OFFICER, THE DISTRICT TREASURY OFFICER, THE DISTRICT ELEMENTARY EDUCATIONAL OFFICER, THE ASSISTANT ELEMENTARY EDUCATIONAL OFFICER [MADRAS HIGH COURT]

BRIEF: Deduction of TDS from the salaries of the Religious Nuns in the service of the petitioners' school - because the Government is paying authority, the Income Tax Department on receipt of such affidavit and on their satisfaction would give a certificate or a letter to the Government of Tamil Nadu that they need not deduct TDS insofar as the Priests and Nuns are concerned.

OUR TAKE: The hon'ble MADRAS HIGH COURT held that It is made clear because the Government is paying authority, the Income Tax Department on receipt of such affidavit and on their satisfaction would give a certificate or a letter to the Government of Tamil Nadu that they need not deduct TDS insofar as the Priests and Nuns are concerned because they are not paying salary to the individual which are now being paid only in the name of the Congregation or Diocese only. – [Decided in favour of petitioners / assessee]

MAHAVIR INDUCTOMENT PVT. LTD. VERSUS ASST. CIT, (OSD) -1, RANGE-4, AHMEDABAD AND VICA-VERSA [ITAT AHMEDABAD]

BRIEF: Disallowance out of interest expenses @ 3% u/s 40A(2)(b). It was observed that as Assessee Company and parent company both were taxed at marginal rate and therefore it cannot be said that service charges paid to parent company are unreasonable so as to evade tax.

OUR TAKE: The hon'ble ITAT AHMEDABAD held that the assessee company is not a share holder in Mahavir Rolling Mills Pvt. Ltd., therefore, no addition could be made u/s 2(22)(e) of the Act, as deemed dividend and accordingly, we find no reason to interfere with the order of Id. CIT(A). We uphold the same. [Decided in favour of assessee]

DY. COMMISSIONER OF INCOME TAX-5 (2) , MUMBAI VERSUS M/S M. SURESH COMPANY PVT. LTD. [ITAT MUMBAI]

BRIEF: Penalty u/s 271(1) (c), assessee did not establish the nexus between the borrowed funds and the investment so made with a clear intention to conceal the income by furnishing inaccurate particulars of such income, therefore, in our view, penalty was rightly imposed.

OUR TAKE: The hon'ble ITAT MUMBAI held that the totality of facts clearly indicates that the assessee did not establish the nexus between the borrowed funds and the investment so made with a clear intention to conceal the income by furnishing inaccurate particulars of such income, therefore, in our view, penalty was rightly imposed by the Assessing Officer. The stand of the Revenue is further fortified by the fact that even the assessee did not file appeal against the disallowance of huge interest expenditure while deciding the quantum addition and accepted the same. [Decided against assessee]

KANTI AUTO FABRICATION PVT LTD VERSUS ASSISTANT COMMISSIONER OF INCOME TAX [GUJARAT HIGH COURT]

BRIEF: Reopening of assessment. Mere accounting entry or even if there was some defect in indicating such amount in the accounts presented by the assessee, as long as income chargeable to tax had not escaped assessment, reopening of the assessment would not be permissible.

OUR TAKE: The hon'ble GUJARAT HIGH COURT held that mere accounting entry or even if there were some defect in indicating such amount in the accounts presented by the assessee, as long as income chargeable to tax had not escaped assessment, reopening of the assessment would not be permissible. Decided in favour of the assessee]

ACIT, NAVSARI CIRCLE, NAVSARI VERSUS SHRI JUGALKISHORE K. AGRAWAL [ITAT AHMEDABAD]

BRIEF: Disallowance of interest expenditure u/s 57. Nexus between the interest income vis-à-vis the interest expenditure - No nexus between the impugned income and interest is forthcoming - Additions confirmed.

OUR TAKE: The hon'ble ITAT AHMEDABAD held that the Assessing Officer invoked the impugned disallowance quoting assessee's failure in proving nexus between the impugned interest income vis-à-vis the interest expenditure. The same is nowhere applicable qua the facts of the instant case wherein no nexus between the impugned income and interest is forthcoming. Thus, we accept Revenue's arguments. The Assessing Officer's findings disallowing the impugned interest expenditure are accordingly restored. [Decided in favour of the assessee]

STATE TAXES

ALL INDIA VAT

RAJASTHAN

The Govt. vides Circular No. F. 12(61) FD/TAX/2014-PT-I-25 dated 16th June 2016, amends notification no. F.12 (23) FD/Tax/2015-211 dated 09th march 2015.

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

The Govt. vides Circular No. F. 12(61) FD/TAX/2014-PT-I-26 dated 16th June 2016, notifies exemption from payment of tax on entry of goods specified at serial number 48 in Notification no F.12(23)FD/Tax/2015-211 dated 09th march 2015.

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

MAHARASHTRA

The Govt. extends due date of filing of return for the month of April 2016 to 30th June 2016.

TELANGANA

The Govt. vides Notification No. 02 dated 14th June 2016, notifies that an ordinance to amend certain taxing statutes to provide for constitution of a state level authority for clarification and advance rulings and for matters connected therewith or incidental thereto.

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

COURT DECISIONS

M/S. ARJUN GRANITES, PRAKASAM DISTRICT VERSUS COMMERCIAL TAX OFFICER, PRAKASAM DISTRICT AND 3 OTHERS (ANDHRA PRADESH HIGH COURT)

BRIEF: E-Fraud - the petitioner who was provided with user ID and password and maintaining privacy of the account as per the norms affixed by the Central Government, the petitioner cannot be exonerated from liability to pay tax on the turnover covered by E-way bills which was generated by the petitioner.

OUR TAKE: The hon'ble ANDHRA PRADESH HIGH COURT held that the complaint filed against unknown, but during investigation, arrested the accused on suspicion, produced before the Magistrate along with remand report may at best, the allegation made against those persons, for commission of alleged offence, till it is proved beyond reasonable doubt before the criminal court, it is difficult to accept the contention of the petitioner. Therefore, in those circumstances, the petitioner who was provided with user ID, password, and maintaining privacy of the account as per the norms affixed by the Central Government, the petitioner cannot be exonerated from liability to pay tax on the turnover covered by E-way bills which was generated by the petitioner. Therefore, we find no ground to exercise judicial discretion to grant any relief in this writ petition. **[Writ petition dismissed]**

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 the allegations and facts made or noted by the Intelligence Officer no doubt create some doubts but 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.

G.V. PRATAP REDDY THROUGH G.P.A. TSR RESOURCES PVT LTD. VERSUS K.V.V.S.N. ASSOCIATES AND ORS [SUPREME COURT]

BRIEF: On reading of the terms of the NIT it is clear that the word "Company" can only mean a company as understood under the Companies Act and cannot be read to include a firm. The word "Company" in the NIT is incapable of any other meaning.

OUR TAKE: The hon'ble SUPREME COURT held On reading of the terms of the NIT it is clear that the word "Company" can only mean a company as understood under the Companies Act and cannot be read to include a firm. The word "Company" in the NIT is incapable of any other meaning. The NIT makes it clear that only an individual or a company is eligible to participate in the tender. Since Respondent No. 1 is neither an individual nor a Company but a firm, Respondent No. 3 was fully entitled to reject the bid of the said respondent.

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.

LATEST NEWS ON PROPOSED GST

14th June 2016, Government of India releases model GST Law after getting basic principles from empowered committee of state FMs.

15th June 2016, Government of India releases model GST Law after getting basic principles from empowered committee of state FMs.

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