



# ASC Times

All India Taxes Weekly Referencer

Vol: Dec 21 - Dec 27, 2015

## Solving any tax puzzle

Tax saving advice across all the taxes



## From the CEO's Desk



Dear Reader,

In our earlier issues of the ASC Times, we kept updating you about how, CBDT (Central Board of Direct Taxes), is trying to help the taxpayer by making most of the facilities available online. So on one side CBDT is committed to make it easier for people on the other hand CBDT is also aggressively trying to increase the tax base. In its drive for the same CBDT has given target to increase 1 crore taxpayers in the current financial year and it has been successful in adding 27 Lakh new assessee already so far. More than 27 Lakh new assessee have been identified and added to the existing tax base till recently. These new individuals and entities have been included after the department had launched a drive in the middle of this year to bring at least one crore new taxpayers under the net within this financial year," sources said. Maximum number of assessee has been from western states like Gujarat, Maharashtra and Goa. CBDT admitted that the task was not easy but the department is extensively taking the help of a special electronic module called 'non-filers management' to identify and detect financial and other links to get hold of those who have the potential to pay Income Tax but are not paying.

In an another drive, CBDT enhances monetary limits of certain transactions which require quoting of PAN with a view to bring burden of compliance on legitimate transactions and need to capture information relating to transactions of higher value. Raises the monetary limit for quoting PAN from:

- Rs. 5 Lakh to Rs. 10 Lakhs for transactions of sale/purchase of immovable property.
- Rs. 25000 to Rs. 50000 in the case of hotel or restaurant bills paid at any one time.
- Rs. 50000 to Rs 1 Lakh in case of purchase/sale of shares of an unlisted company.

- Opening of Jan Dhan a/c shall not require PAN.
- Quoting PAN shall continue to apply to opening of all bank a/c including co-operative banks.

The winter session of the parliament is ending on 23rd December, but Congress is firm on not letting pass the GST Bill. Now they have come up with yet another new reason for doing so. According to the Congress party officials, Government is not ready in its preparations to implement nationwide GST that is why it is better that it remains locked up for now.

Alok Kumar Agarwal  
 CEO  
 ASC Group

## TAX CALENDER

Due Date	Description	Law
21 December	Deposit of Tax	Assam VAT, Delhi VAT, Maharashtra VAT, Meghalaya VAT, Orissa VAT
	Return Filing	Assam VAT, Assam VAT, Maharashtra VAT, Meghalaya VAT, Orissa VAT, Orissa VAT.
	Deposit of TDS	Maharashtra VAT.
	Issue of TDS Certificate	Maharashtra VAT
22 December	Deposit of Tax	Gujarat VAT
	Deposit of TDS	Gujarat VAT
	Issue of TDS Certificate	Delhi VAT
	Return Filing	Tamil Nadu VAT,
25 December	Deposit of Tax	Rajasthan VAT, Uttarakhand VAT
	Issue of TDS Certificate	Mizoram VAT
	Return Filing	Jharkhand VAT

## COUNTRY WIDE HOLIDAYS FOR THE WEEK

Date	Occasion/Festival	Region
23 December	Milad - un - Nabi	Tamil Nadu
23 December	Ch Charan Singh Jayanti	Uttar Pradesh
24 December	Milad-Un-Nabi or Id-E-Milad (Birthday of Prophet Md.)	Andaman & Nicobar, Andhra Pradesh, Chandigarh, Delhi, Gujarat, Jharkhand, Karnataka, Lakshadweep, Maharashtra, Manipur, Mizoram, Pondicherry
24th-27th December	Christmas	Nagaland
25 December	Christmas Day	All States & UT's

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# CENTRAL TAXES

## SERVICE TAX

### NOTIFICATIONS & CIRCULARS

The **Govt. vide Circular No.190/9/2015- Service Tax F.No.354/153/2014-TRU Dated- 15th December, 2015** made applicable service tax on the services received by apparel exporters in relation to fabrication of garments.

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

The **Govt. vide F. No. 390/Misc./163/2010-JC Dated- 17th December, 2015**, in para 3 of the instruction dated 17.8.11 a sub clause 'c' shall be added which shall read as "classification and refunds issues which are of legal and/or recurring nature".

The **Govt. vide Notification No. 27 dated 18th December 2015** extended date for payment of Service Tax for the month of Nov '15 for the assessee in the State of Tamil Nadu till 20th December, 2015, may be extended up to 31<sup>st</sup> December 2015.

### COURT DECISIONS

**JANTA SAHAKARI BANK LTD. Versus COMMISSIONER OF C. EX., PUNE-III [CESTAT MUMBAI]**

**BRIEF:** Banking and other Financial Services. An amount received as a consideration for disbursement of salaries to the Govt. teachers on direction of Zillha Parishad can never be an activity covered under the definition of Business Auxiliary Service.

**OUR TAKE:** The hon'ble **CESTAT MUMBAI** held that an amount received as a consideration for disbursement of salaries to the Govt. teachers on direction of Zillha Parishad can never be an activity covered under the definition of Business Auxiliary Service and more so it cannot be termed as an amount received by the appellant as commission agent. In view of the facts and circumstances of this case, it was held that the impugned order is unsustainable and liable to be set aside. **[Decided in favour of assessee]**

**NESS TECHNOLOGIES (INDIA) PVT LTD Versus COMMISSIONER OF CUSTOMS, CENTRAL EXCISE AND SERVICE TAX (APPEALS), HYDERABAD-II [CESTAT BANGALORE ]**

**BRIEF:** Denial of refund claim. Software Technology Parks of India (STPI) scheme. There are several decisions taking a view that on the ground that the invoice is in the name of different person, credit cannot be denied.

**OUR TAKE:** The hon'ble **CESTAT BANGALORE** held that there are several decisions taking a view that on the ground that the invoice is in the name of different person, credit cannot be denied. Rule 9(2) of CCR specifies the essential ingredients and also provides that if these are available, credit can be allowed by the concerned authority. While considering the refund claims afresh, the original authority may please consider this aspect. Two amounts of ₹ 809/- and ₹ 2971/- have been disallowed on the ground that the refund claim related to one month whereas invoices related to three months. **[Decided in favour of Assessee]**

**COMMISSIONER OF SERVICE TAX, BANGALORE VERSUS JULY SYSTEMS AND TECHNOLOGIES PVT. LTD. [CESTAT BANGALORE]**

**BRIEF:** Denial of CENVAT Credit. A case for demand of CENVAT credit got converted to a claim for refund and was allowed by the Commissioner.

**OUR TAKE:** The hon'ble **CESTAT BANGALORE** held that the learned Commissioner (A) considered the whole issue as a claim for refund made under Rule 5 of CENVAT Credit Rules and considered each and every input service and came to the conclusion that appellant is eligible for the refund and remanded the matter. A case for demand of CENVAT credit got converted to a claim for refund and was allowed. CESTAT found substance in the appeal filed by the Revenue. Since the Order-in-Appeal has not considered the subject correctly, the impugned order is set aside. **[Decided in favour of Revenue]**

**LARSEN & TOUBRO LTD. VERSUS COMM. OF CUS. & C. EX., HYDERABAD-III [CESTAT BANGALORE]**

**BRIEF:** So long as an assessee is not undertaking manufacture of dutiable and exempted goods or providing taxable and exempted services, unless the credit is exclusively used for providing exempted services or

**manufactured goods credit cannot be denied in respect of services listed in Rule 6(5).**

**OUR TAKE:** The hon'ble **CESTAT BANGALORE** held that When a manufacturer is producing dutiable in 'Consulting Engineer Services' which the service on which Cenvat credit has been taken in this case is also included in the list of services contained in Rule 6(5) of CCR. This being the position, in the absence of any finding that services have been used exclusively in the manufacture of exempted goods or providing exempted services, credit cannot be denied in respect of services listed in Rule 6(5) of Cenvat Credit Rules. - appellant has made out a strong prima facie case for waiver and for stay against realization of dues. Stay granted.

## CENTRAL EXCISE

### NOTIFICATIONS & CIRCULARS

**The Govt. vide Circular No. F. No. 390/Misc./69/2015-JC dated 15<sup>th</sup> December, 2015** authorizes officers of the Zone to appear before CESTAT Bench.

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

**The Govt. vide Notification No. 46 dated 16<sup>th</sup> December, 2015** amends notification No 12/2012-CE dated 17.03.2012 so as to increase the Basic Excise Duty rates on Petrol and Diesel (unbranded and branded).

**The Govt. vide Notification No. 26 dated 18th December 2015** extended date for payment of Service Tax for the month of Nov '15 for the assessee in the State of Tamil Nadu till 20th December, 2015, may be extended up to 31<sup>st</sup> December 2015.

### COMMISSIONER OF CENTRAL EXCISE, MYSORE VERSUS M/S TVS MOTORS COMPANY LTD. (SUPREME COURT)

**BRIEF:** Valuation of goods. Whether the pre-delivery inspection charges and after sales service charges are to be included in the assessable value. PDI charges and free ASS charges would not be included in the assessable value under Section 4 of the Act for the purposes of paying excise duty.

**OUR TAKE:** The hon'ble **SUPREME COURT** held that PDI charges and free ASS charges would not be included in the assessable value under Section 4 of the Act for the purposes of paying excise duty. The view taken by the Tribunal in favour of assessee in this behalf is correct in law and all the appeals of the Department are dismissed. On the other hand, Larger Bench view in Maruti Suzuki [2010 (8) TMI 49 - CESTAT, NEW DELHI] does not lay down the law correctly and is, therefore, overruled. **[Decided in favour of assessee]**

### M/S. DELTON CABLES LIMITED VERSUS UNION OF INDIA & OTHERS [DELHI HIGH COURT]

**BRIEF:** Refund of Terminal Excise Duty (TED), which was erroneously paid to the excise department. DGFT directed to consider the application of the writ petitioner for refund in terms of the provisions of the FTP, 2009-2014 and pass an appropriate order in accordance with law.

**OUR TAKE:** The hon'ble **DELHI HIGH COURT** held that The Hon'ble Division Bench after considering the relevant provisions of the Act and the policy directed DGFT to consider the application of the writ petitioner for refund in terms of the provisions of the FTP, 2009-2014 and pass an appropriate order in accordance with law. Petition disposed of.

### THE COMMISSIONER OF CENTRAL EXCISE, SURAT-II VERSUS ARVIND M. KAPOOR (GUJRAT HIGH COURT)

**BRIEF:** Imposition of penalty. When the main appeal has been dismissed, there is no question of interfering with the impugned order passed by the Tribunal on the question of penalty on the Managing Director.

**OUR TAKE:** The hon'ble **GUJRAT HIGH COURT** held that Tribunal took note of the fact that the revenue is against the impugned order of the Commissioner. Under the circumstances, when the main appeal has been dismissed, there is no question of interfering with the impugned order passed by the Tribunal on the question of penalty on the Managing Director. **[Decided against Revenue]**

### COMMISSIONER, CENTRAL EXCISE VERSUS SHRI V.K. TULSIAN, CHARTERED ACCOUNTANT [ALLAHABAD HIGH COURT]

**BRIEF:** Imposition of penalty for abetment against the Chartered Accountant for giving wrong certificate. This action could not be described as an act to attract penalty under Rule 26 and 27.

**OUR TAKE:** The hon'ble **ALLAHABAD HIGH COURT** held that the certificate appears to have been obtained at the time of the proceedings that were initiated for the purpose of imposition of penalty and taking action against the trader.

This therefore could not be described as an act to attract penalty under Rule 26 and 27, even though this may give a separate cause of action on the ground of money laundering or providing incorrect evidence in order to extend any benefit to the trader or the assessee. The penalty under Rule 26 and 27 therefore would not be attracted in the said background and accordingly we do not find any substantial question of law so as to entertain this appeal. **[Decided against Revenue]**

**COMMR. OF CENTRAL EXCISE & CUSTOMS, SURAT VERSUS M/S SUN PHARMACEUTICALS INDS. LTD. & ORS. [SUPREME COURT]**

**BRIEF:** Valuation of physician samples were given free of cost by the distributors and not by the manufacturer. What ultimately distributors did with these goods is extraneous and could not be the relevant consideration to determine the valuation of excisable goods. When we find that price was charged by the assessee from the distributors, the Show Cause Notice is clearly founded on a wrong reason.

**OUR TAKE:** The hon'ble SUPREME COURT held that when found that price was charged by the assessee from the distributors, the Show Cause Notice is clearly founded on a wrong reason. The case would squarely be covered under the provisions of Section 4(1)(a) of the Act. In view thereof, the Central Excise Rules would not apply in the instant case. - decision dated 10.11.2006 rendered by the CESTAT depicts the correct position of law and rightly holds that the case would be covered by the provisions of Section 4(1)(a) of the Act and in view thereof Rule 6(b)(ii) of the Rules would not apply. **[Decided against Revenue]**

**COMMR. OF CENTRAL EXCISE, DELHI-III VERSUS M/S HERO HONDA MOTORS LIMITED [SUPREME COURT]**

**BRIEF:** Valuation for inclusion of interest and gains arising out of advance received against supplies. The overall effect of the deposit on the financial position of the company or its profitability had no direct relevance to the dispute. Transaction value as the same were market driven accepted.

**OUR TAKE:** The hon'ble SUPREME COURT held that It is clear that each and every aspect of the issue is examined, on the basis of which finding is arrived at that the price of the motorcycle manufactured by it were market driven and it did not follow a cost of production plus reasonable profit pricing policy. These are finding of facts which are

arrived on the analysis of the evidence produced before it and do not call for any interference. **[Decided against Revenue]**

## CUSTOMS

### NOTIFICATIONS & CIRCULARS

**The Govt. vide Notification No. 57/ 2015 dated 14<sup>th</sup> December, 2015** made amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.69/2011-Customs dated the 29th July, 2011.

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

### COURT DECISIONS

**SHREEJI INDUSTRIES LTD. VERSUS ADDITIONAL DIRECTOR GENERAL OF FOREIGN TRADE [GUJRAT HIGH COURT]**

**BRIEF:** Fulfillment of export obligation - advance license - By merely stating that the FIR was lodged for lost documents, petitioner cannot substitute the requirement of production of documents demonstrating export obligation.

**OUR TAKE:** The hon'ble GUJRAT HIGH COURT held that when the petitioner failed to produce any documents whatsoever of having discharged the export obligation, we see no infirmity in the orders passed by the authorities below. By merely stating that the FIR was lodged for lost documents, petitioner cannot substitute the requirement of production of documents demonstrating export obligation. We may recall even this reaction from the petitioner came long after the period for filing relevant documents before the authorities had lapsed. The firm, in the meantime, was already declared defaulter for being unable to fulfill export obligation. It was only in response to show cause notice issued by the authorities that for the first time, the petitioner took the stand that the documents could not be produced since they were lost. **[Decided against assessee]**

**M/S ROSHANLAL GUPTA AND SONS PVT. LTD. VERSUS UNION OF INDIA AND 2 (GUJRAT HIGH COURT)**

**BRIEF:** Waiver of pre-deposit. Mandatory or not. Appeal was pending before 06.08.2014. The petitioner had a right to seek waiver of pre deposit. The Tribunal would, therefore, restore such appeal and decide the same in

accordance with law, after first deciding the petitioner's application for waiver of pre-deposit.

**OUR TAKE:** The hon'ble **GUJRAT HIGH COURT** held that the amended section 129-E of the Customs Act with effect from 06.08.2014 would not apply to both the appeals of the petitioner which are pending before the Tribunal. The petitioner would, therefore, be governed by the original section 129-E as it prevailed prior to 06.08.2014. The petitioner had a right to seek waiver of pre-deposit. The Tribunal would, therefore, restore such appeal and decide the same in accordance with law, after first deciding the petitioner's application for waiver of pre-deposit. For such purpose, the impugned order is set aside. **[Decided in favour of assessee]**

**M/S. OSWAL CABLES PVT. LTD. VERSUS COMMR. OF CENTRAL EXCISE & CUSTOMS- SILLIGURI [CESTAT KOLKATA]**

**BRIEF:** Evasion of education cess. In a case of assessment over a bill of entry, it is the duty of the Assessing Officer to properly assess the duty and onus cannot be shifted to the appellant for not calculating the correct rate of duty. No penalty

**OUR TAKE:** The hon'ble **CESTAT KOLKATA** held that appellant properly paid the duty demanded along with interest. In a case of assessment over a bill of entry, it is the duty of the Assessing Officer to properly assess the duty and onus cannot be shifted to the appellant for not calculating the correct rate of duty. Appellant promptly paid the entire amount of duty demanded along with interest. Under the present factual matrix, it is not a fit case for imposition of penalty under Section 14 (a) of the Customs Act, 1962. **[Decided in favour of assessee]**

## INCOME TAX

### CIRCULAR AND NOTIFICATIONS

**The Govt. vide Notification No. G.S.R. 978(E) dated 16<sup>th</sup> December, 2015 makes the following rules further to amend the Income-tax Rules, 1962.**

**OUR TAKE:** In the Income-tax Rules, 1962 (hereafter referred to as the said rules), for rule 37BB, the following rule shall be substituted, namely:-"37BB.Furnishing of information for payment to a non-resident, not being a company, or to a foreign company. Further, kindly refer the Notification as it is self explanatory.

**The CBDT vide Circular 22/2015 dated 17<sup>th</sup> December 2015 allows employer's contribution to funds for welfare of employees in terms of section 43B(b) of the Income Tax Act.**

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

### COURT DECISIONS

**FARUKBHAI MOHAMMED MAHIDA VERSUS INCOME TAX OFFICER WARD 2 (2) (5) [ GUJRAT HIGH COURT]**

**BRIEF:** Reopening of assessment. The disposal of the objections was done in a mechanical manner. Even today, the Department has not been able to bring on record anything to suggest that the petitioner's frontal assertion that he did not have any bank account in Kotak Mahindra Bank nor did he make any cash deposit in the said bank account as alleged is false.

**OUR TAKE:** The hon'ble **GUJRAT HIGH COURT** held that the Department has not been able to bring on record anything to suggest that the petitioner's frontal assertion that he did not have any bank account in Kotak Mahindra Bank nor did he make any cash deposit in the said bank account as alleged, is false. In fact, the petitioner reconciled the said amount by pointing out that this was exactly the same amount which the Kotak Mahindra Bank released by way of car loan, which was, in fact, paid over directly to the dealer. **[Decided in favour of assessee]**

**M/S PUNJAB COMMUNICATIONS LIMITED VERSUS COMMISSIONER OF INCOME TAX, CHANDIGARH [PUNJAB & HARYANA HIGH COURT]**

**BRIEF:** Deduction u/s 32AB. There is nothing on the basis of which it could be deduced that deduction is to be allowed only out of the profit of a unit or undertaking where machinery is installed and not out of the profits of the assessee.

**OUR TAKE:** The hon'ble PUNJAB & HARYANA HIGH COURT held that deduction is to be allowed only out of the profit of a unit or undertaking where machinery is installed and not out of the profits of the assessee. Nothing was urged by learned counsel for the revenue to raise any challenge to the aforesaid finding of the Tribunal. In the absence of any issue raised by the revenue, no ground for interference by this Court is made out. **[Decided in favour of assessee]**

**SRI C.M. MAHADEVA S/O SRI MANCHE GOWDA VERSUS THE COMMISSIONER OF INCOME TAX, MYSORE [KARNATAKA HIGH COURT]**

**BRIEF:** Reopening of assessment. Disclosure of the purchase of the property was not made in his return of income. In the absence of any legal obligation on the assessee to disclose about the purchase of property in his return of income, it cannot be said that the assessee had concealed any income

**OUR TAKE:** The hon'ble KARNATAKA HIGH COURT held that in the absence of any legal obligation on the assessee to disclose about the purchase of property in his return of income, it cannot be said that the assessee had concealed any income, even though when there is no dispute about the fact that he had disclosed his agricultural as well as non-agricultural income during the assessment year. In our view, the same cannot be a ground for initiating proceedings under Section 148 of the Act. It was for the Assessing Officer to take proper steps earlier by issuing notice under Section 143(2), and if the law does not now permit issuance of any such notice, then invoking some other provision, which would not be applicable, is not the correct mode. **[Decided in favour of assessee]**

**INDUS MOTOR COMPANY PVT. LTD. VERSUS DEPUTY COMMISSIONER OF INCOME-TAX [KERALA HIGH COURT]**

**BRIEF:** Amount expended for putting up multi-storied structures on leasehold land and refurbishing leasehold buildings. Capital or Revenue expenditure. Entitlement to depreciation. Matter referred to larger bench.

**OUR TAKE:** The hon'ble KERALA HIGH COURT held that after the introduction of Explanation 1 to section 32(1) of the Act, there is no scope left out at all for any interpretation since by

a legal fiction, the assessee is treated as the owner of the building for the period of his occupation. This means that by refurbishing, decorating or by doing interior work in the building an enduring benefit was derived by the assessee for the period of occupation and, therefore, is a capital expenditure and not revenue expenditure. Matter referred to larger bench for reconsideration.

**THE PR. COMMISSIONER OF INCOME TAX-4 VERSUS JYOTINDRA INTERNATIONAL [GUJRAT HIGH COURT]**

**BRIEF:** Revenue or capital expenditure. The expenses incurred towards pledge agreement with the bank was for borrowing working capital availed from bank and by incurring he expenditure no capital asset has come into existence.

**OUR TAKE:** The hon'ble GUJRAT HIGH COURT held that assessee contended that machinery had become old and without changing the core machinery, replacement of parts was carried out by way of reconditioning and the expenditure involved was for such purpose. Assessing Officer without rejecting the contention of the assessee that the core machinery remained unchanged, disallowed the expenditure and treated as capital expenditure. Here also, the Tribunal observed that merely because the cost of repair was close to written down value of the machinery, would not justify in treating as one of capital expenditure. **[Decided against revenue]**

# STATE TAXES

## ALL INDIA VAT

### BIHAR

The Govt. vide S.O. 357 dated 14<sup>th</sup> December 2015 notifies Serial No. 1, 2, 3 of department Notification No. 189 dated 03 August 2015 shall come into force from 4<sup>th</sup> November 2015.



The **Govt. vide S.O. 359 dated 14<sup>th</sup> December 2015** notifies Serial No. 4, 5, 6 and 8 of department Notification No. 189 dated 03 August 2015 shall come into force from 4<sup>th</sup> November 2015.

#### DELHI

The **Govt. vide Circular No. 32 of 2015-16** extended date of filing of reconciliation return for the year 2014-15 to 15/01/2016. The return is to be filed by dealers who have made interstate sale at concessional rates against statutory forms 'C' or stock transferred against 'F' forms or sold the goods against 'H' forms to dealers (other than Delhi) or claimed deduction from taxable turnover against E-I/EII forms or I/J forms etc.

#### HIMACHAL PRADESH

The **Govt. vide Notification No. EXN-F(10)-7/2011 dated 14<sup>th</sup> December 2014** amends rule 40 – B. After the words and sign “according to such return”, the words and sign “except dealers whose electronically filed monthly or quarterly and annual returns as applicable bear their digital signature” shall be inserted.

#### KARNATAKA

The **Govt. vide Notification No. FD 125 CSL 2014 Dated 17<sup>th</sup> December, 2015**, exempts with immediate effect, the tax payable on the sale of application forms, prospectus and brochures by the educational institutions funded by state or central government with funding not less than 50% of their annual income.

#### MADHYA PRADESH

The **Govt. vide Notification No. -A-3-58/2015/1/Five (44) Dated 17<sup>th</sup> December, 2015**, enhance tax rate of non alcoholic beverages to 20%, Motor vehicle, refrigerator, Television to 15% & cigarette to 16% w.e.f.18-12-15

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

#### PUNJAB

The **Govt. vide Punjab Ordinance No. 9, 2015 dated 14<sup>th</sup> December, 2015** promulgated ordinance for non – discriminatory and compensatory levy of tax on the entry of specified goods into the local area for

development of trade, commerce and industries and the matters connected therewith or incidental thereto.

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

#### TAMIL NADU

The **Punjab Govt. promulgates new ordinance** on entry tax on sugar with retrospective effect from 06.05.2015.

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

The **Govt. vide Notification No. G.O.MS.No. 126 - I dated 20<sup>th</sup> December 2015**, made amendment to Rule 7 of TNVAT Rules, 2007. Last date extended for dealers of certain rain affected districts for the month of November 2015 to 20<sup>th</sup> December 2015, may be furnished on or before 31<sup>st</sup> December 2015.

The **Govt. vide Notification No. G.O.MS.No. 126 - II dated 20<sup>th</sup> December 2015**, made amendment to Rule 3 of TNVAT Act, 2006. Last date extended for dealers of certain rain affected districts for the month of November 2015 to 20<sup>th</sup> December 2015, may be furnished on or before 31<sup>st</sup> December 2015.

#### TELANGANA

The **Govt. vide Notification No. G.O.MS.No. 237 dated 17<sup>th</sup> December 2015**, amended schedule – VI.

**OUR TAKE:** Petrol rate has been enhanced from 31% to 35.20% and Diesel Oil (All kinds of Diesel Oil including C-9) rate enhanced from 22.25% to 27%. The amendment deemed to be effective from 17<sup>th</sup> January 2015.

#### UTTAR PRADESH

The **Govt. vide Notification No. K.A. NI-2-1821/XI-9(104)/15-U.P. Act-5-2008-Order-(148)-2015** amends Schedule B “accessories packed with cell phones M.R.P. Not exceeding rupees ten thousand” .shall be inserted at the end.

The **Govt. vide Notification No.KA.NI.-2-1822/XI-7 (23)/83-U.P. Act-5-2008-Order – (149) -2015** amends schedule, in clause (c), in column 3, for the words “Members of Central Security Forces” the words “Members of the Central Security Forces and P.A.C. Employees of UP” shall be substituted.

## COURT DECISIONS

### MS CITI BANK VERSUS COMMISSIONER OF SALES TAX (DELHI HIGH COURT)

**BRIEF:** Disposal of repossessed cars by bank from defaulting borrowers is a dealer within the meaning of Section 2(e) read with section 2(c) of the DST Act.

**OUR TAKE:** The hon’ble **DELHI HIGH COURT** held that disposal of repossessed cars by the bank constitutes a sale under DST Act. The activity carried on by the bank amounts to business under clause (i) of Section 2(c) of the DST Act. Therefore, sale of repossessed cars by the Appellant Bank is incidental or ancillary or in connection with the Appellants business. **[Decided in favour of revenue]**

### M/S K.S.B. PUMPS LIMITED VERSUS STATE OF TAMIL NADU REP. BY THE DEPUTY COMMISSIONER (COMMERCIAL TAXES) , COIMBATORE [MADRAS HIGH COURT]

**BRIEF:** Disallowance of exemption on second interstate Sales - requirement under the statutory prescription is that an assessee should file E1 and C declaration forms. This has been done admittedly by the revision petitioner. Therefore, an obligation, which is not cast upon the assessee under the statutory prescription contained in Section 6(2) of the CST Act, 1956 cannot be imposed upon the revision petitioner by the Tribunal.

**OUR TAKE:** The hon’ble **MADRAS HIGH COURT** held that Tribunal was not right in non suiting the petitioner on the short ground that they ought to have produced the forms before the Assessing Officer within five years, as per the circular of the Commissioner. Requirement under the statutory prescription is that an assessee should file E1 and C declaration forms. This has been done admittedly by the revision petitioner. Therefore, an obligation, which is not cast upon the assessee under the statutory prescription contained in Section 6(2) of the CST Act, 1956 cannot be imposed upon the revision petitioner by the Tribunal. **[Decided in favour of assessee]**

### M/S A.V. THOMAS LEATHER AND ALLIED PRODUCTS PVT LTD VERSUS THE ASSISTANT COMMISSIONER (CT) [MADRAS HIGH COURT]

**BRIEF:** Levy of penalty under Section 10-A of the Central Sales Tax Act. Even the exports covered by Form-H, have not been taken note of by the assessing officer. They are also packing materials, which were covered against Form-H. Levy of penalty set aside.

**OUR TAKE:** The hon’ble **MADRAS HIGH COURT** held that the certificate of registration shows that the wooden strips, wooden insert cap, grey board, rose board, PVC sheeting, stamping foil etc., are also included in the certificate of registration issued to the appellant. Therefore, straight-away, the very basis on which the proposals were made under Section 10-A, is found to be shallow - Even the exports covered by Form-H, have not been taken note of by the assessing officer. They are also packing materials, which were covered against Form-H - levy of penalty set aside. **[Decided in favour of assessee]**

## OTHER UPDATES

### FEMA

The **Govt. vide Circular No. DBR.AML.No.7835/14.06.001/2015-16 dated 15<sup>th</sup> December 2015**, implemented section 51-A of Unlawful Activities Prevention Act (UAPA), 1967. Updates to Al-Qaida Sanctions List.

The **Govt. vide Circular No. DPSS.CO.PD.No./1265/02.23.001/2015-2016 dated 17<sup>th</sup> December 2015**, issued guidelines for Mobile Banking Transactions in India, Operative Guidelines for Banks, Customer Registration for Mobile Banking.

The **Govt. vide Circular No. DBR.No.Dir.BC.67/13.03.00/2015-16 dated 17<sup>th</sup> December 2015**, issued guidelines on interest rate on advances.

## ALLIED LAWS

## COURT DECISIONS

**SHASHI JINDAL AND ORS VERSUS GOVT. OF NCT AND ORS [DELHI HIGH COURT]**

**BRIEF:** Criminal Complaint under Sections 138 of Negotiable Instruments Act, 1881 - No merit in this petition. This petition amounts to gross abuse and misuse of process of law. The petitioners have succeeded in delaying the complaint before the Metropolitan Magistrate for more than four years.

**OUR TAKE:** The hon'ble **DELHI HIGH COURT** held that No merit in this petition. This petition amounts to gross abuse and misuse of process of law. The petitioners have succeeded in delaying the complaint before the Metropolitan Magistrate for more than four years.

**M/S BRIDGESTONE INDIA PVT. LTD. VERSUS INDERPAL SINGH [SUPREME COURT]**

**BRIEF:** Section 142(2)(a), amended through the Negotiable Instruments (Amendment) Second Ordinance, 2015, vests jurisdiction for initiating proceedings for the offence under Section 138 of the Negotiable Instruments Act, inter alia in the territorial jurisdiction of the Court, where the cheque is delivered for collection.

**OUR TAKE:** The hon'ble **SUPREME COURT** held that the instant appeal is allowed, and the impugned order passed by the High Court of Madhya Pradesh, by its Indore Bench, dated 05.05.2011, is set aside. The parties are directed to appear before the Judicial Magistrate, First Class, Indore, on 15.01.2016. In case the complaint filed by the appellant has been returned, it shall be re-presented before the Judicial Magistrate, First Class, Indore, Madhya Pradesh, on the date of appearance indicated hereinabove.

## COMPANY LAW

## NOTIFICATIONS &amp; CIRCULARS

The **Govt. vide Notification No. G.S.R. 971(E) dated 14<sup>th</sup> December 2015 makes second amendment rules 2015 to amend company rules 2014.**

**OUR TAKE:** After Rule 6, rule 6A has been inserted "Omnibus approval for related party transactions on annual basis". Readers are requested to read the said Notification. It is self-explanatory.

## COURT DECISIONS

**JAGRAN PRAKASHAN LIMITED AND ANR Versus UNION OF INDIA [DELHI HIGH COURT]**

**BRIEF:** Exclusive employment of the company. Prohibition contained in Section 314(1)(b) of the 1956, relative of a Director of a company. The statutory mandate is that being a Director in a non-remunerative and non-executive position in other companies does not amount to being in employment of those companies or holding a place of profit in those companies.

**OUR TAKE:** The hon'ble **DELHI HIGH COURT** held that a Director cannot be said to hold any office or place of profit if he should receive the remuneration to which he is entitled as such Director; on the other hand he will be said to hold an office or place of profit only when, besides the remuneration to which he is entitled as such Director, he obtains from the company a remuneration such as salary, fees, commission, perquisites. Thus, though the reasoning may be correct if supported by the facts but de hors a factual finding is contrary to the statutory mandate. The statutory mandate is that being a Director in a non-remunerative and non-executive position in other companies does not amount to being in employment of those companies or holding a place of profit in those companies.

**OFFICIAL LIQUIDATOR OF, M/S JUPITER BIOSCIENCE LTD (IN LIQN) VERSUS THE TAX RECOVERY OFFICER, THE ASST. COMMISSIONER OF INCOME TAX [ KARNATAKA HIGH COURT]**

**BRIEF:** Removal of the attachment orders - it is appropriate to raise the attachment and permit the Official Liquidator to take possession of property and proceed in accordance with law. It is also necessary to direct the respondents to hand over books and records, if any with them, to the Official Liquidator.

**OUR TAKE:** The hon'ble **KARNATAKA HIGH COURT** held that the attachment made by the Tax Recovery Officer, Raichur range, Raichur, is in force. Therefore, the Official Liquidator cannot take possession or deal with the property. The property is deemed to be in the custody of this court in view of the winding up proceedings. Therefore, it is appropriate to raise the attachment and permit the Official Liquidator to take possession of property and proceed in accordance with law. It is also necessary to direct the respondents to hand over books and records, if any with them, to the Official Liquidator.

**LATEST NEWS ON PROPOSED GST**

**14 Dec, 2015**, the union government may call out for a meeting over the Goods & Service Tax Bill, which is fast running out of shelf life for this parliament session as Rajya Sabha remains stalled due to continued protest by opposition.

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**14 Dec, 2015**, importers profit to rise as profit margins are set to rise as GST would allow a larger share of input credit to importers as compared with current regulations.

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**14 Dec, 2015**, Health Advocates hail GST's panel to tax sugar sweetened beverages on line of tobacco in his report to the government on the Goods & Service Tax (GST) Bill.

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**14 Dec, 2015**, Government proposes Authority for advance ruling (AAR) to help traders to obtain advance ruling on GST.

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**15 Dec, 2015**, once the constitution amendment Bill to roll out GST is passed by parliament, the centre and states will have to adopt their own law to give effect to the new indirect tax regime.

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**16 Dec, 2015**, Finance Minister seeks Congress support to GST, says India can touch 9% growth.

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**16 Dec, 2015**, GST would make sense financially for both states UP & Maharashtra but it is political hot potato, with the Centre getting far larger domain of India's tax administration.

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**16 Dec, 2015**, the government is mulling waiting till the budget session of parliament to secure passage for GST Bill. Instead of getting bill passed now by compromises, it can get

passed in April 2016 as a number of congress members are retiring in March-Apr next year.

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**16 Dec, 2015**, Chief Economic Advisor said that the spate of reforms in direct & indirect taxes will help India transform into India into clean & efficient system from a nation that practised "tax terrorism".

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**17 Dec, 2015**, IMF managing director said early implementation of GST will help India create more jobs, increase revenue as well as promote domestic manufacturing.

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**17 Dec, 2015**, Finance Minister hinted at accepting congress stand on scrapping of 1% additional tax but said that their demand for incorporating the GST rate in the constitution is not agreeable.

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**17 Dec, 2015**, Govt. mulling to postpone GST roll out date from April to June 2016 as by latter half of the budget session next year to give clear 2/3 rd majority to political parties that support GST.

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**18 Dec, 2015**, the finance minister will shortly roll out final draft of GST bill after drastically pruning the list of central exemptions.

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**18 Dec, 2015**, opposition parties agree to allow Rajya Sabha functioning smoothly from Monday but still mum on GST.

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**19 Dec, 2015**, FM hinted that GST Bill may not go through in the current session of parliament as the said bill is being delayed due to collateral reasons.

## We may be contacted at the following offices:

### CORPORATE OFFICE

73, National Park  
Lajpat Nagar IV,  
New Delhi - 110024  
INDIA  
P: +91-11-41729056-57,  
41729656/57

### GURGAON

605, Suncity Business Tower  
Golf Course Road, Sector-54,  
Gurgaon,  
Haryana - 122002  
P: +91-124-4245110/116/117 +91-  
124-4245111

### NOIDA

C-100, Sector-2,  
Noida- 201301  
Uttar Pradesh  
M: +91- 9811481093

### MUMBAI

SitaiVihar,  
Plot No 67A, Sector New 50  
4th Floor, B- Wing  
Navi Mumbai – 400706  
Mumbai  
M: +91- 9022131399

### ASSAM

House No. 76,  
Near Godrej Interio,  
Forest Gate, P.O. Narangi,  
Guwahati – 781026  
P: +91-0361-2552302  
M: +91-9864857565

### INTERNATIONAL BRANCH

303,5th Avenue Suite 1007,  
New York, NY 10016, U.S.A

## For enquiries related to:

Service	Contact Person	Service	Contact Person
DVAT:	faiz@ascgroup.in	Service Tax:	nitin@ascgroup.in
HVAT:	deepak@ascgroup.in	Transfer Pricing & PE:	shailendra@ascgroup.in
Excise:	deepak@ascgroup.in	Legal Metrology:	mayank.singhal@ascgroup.in
UPVAT:	jaswant@ascgroup.in	Company Law:	legal@ascgroup.in
Income Tax:	vikash@ascgroup.in	PR/Media	socialmedia@ascgroup.in
Maharashtra VAT:	nitien@ascgroup.in		

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