ASC Times

All India Taxes Weekly Referencer

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From the CEO's Desk

Dear Reader,

Last week we informed you about how Income Tax Department has eased the process of I-T refunds by linking it with Aadhaar Card and been verified by e-filing which is hassle free and done in a very short time. To further its efforts to make it easier for tax payers, IT Department has decided to launch a system of issuing mails for any notices regarding any clarifications related to assessment and scrutiny. It will save a lot of physical processes and harassment on part of tax payers specially those in slightly higher brackets of tax paying capacity. "We have been thinking how we can make life easier for taxpayers especially for those who are in the middle and the slightly higher tax bracket. So, now we are thinking of allowing that when a notice is issued in an assessment or scrutiny case, the taxpayer can send the department an e-response. We are trying to resolve some security issues in this regard now after which it could be implemented," CBDT Chairperson Anita Kapur told PTI in an interview.

On the one hand ambiguity in the tax structure and several layers of compliances does not make it easy to do business in India, FDI's are on a decline and exports have been decreasing due to fall in the demand globally, on the other hand Mr. Modi is committed to change the way world sees India. He is all set to meet Mr. Barack Obama for the third time in one year (Maximum by any Indian PM so far) followed by September 21 US-India CEO forum. The effort is to strengthen strategic tie-up between the two countries and to define and develop the role of private sector of the two countries for effective policy making taking considerations recommended by them.

In another effort the president of the Institute of Company Secretaries of India, Atul H Mehta, said that, the Companies Act, 2013 which was partially implemented till now, would likely be implemented fully by March, 2016. In a press conference he told that unimplemented parts of the law would shortly be implemented. Recently, the issue of formation of NCLT and its appellate body, which was pending in the court, has been cleared by the Supreme Court.

Alok Kumar Agarwal
CEO
ASC Group.

TAX CALENDER

Due Date	Description	Law
21 September 2015	Deposit of Tax	Assam VAT, Delhi VAT, Maharastra VAT, Meghalaya VAT, Orissa VAT
	Deposit of TDS	Maharastra VAT
	Issue of TDS Certificate	Maharastra VAT
	Return Filing	Assam VAT, Assam VAT, Maharastra VAT, Meghalaya VAT, Meghalaya VAT, Orissa VAT, Orissa VAT
22 September 2015	Deposit of Tax	Gujarat VAT
	Deposit of TDS	Gujarat VAT, Tamil Nadu VAT
	Issue of TDS Certificate	Delhi VAT
	Return Filing	Tamil Nadu VAT
	Due date for issue of TDS Certificate	Income Tax Law
25 September 2015	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
21 September	Tithi of Srimanta Shankardev	Kerala
23 September	Janmotsava of Srimanta Shankardev	Assam
	Haryana's Heroes' Martyrdom Day	Haryana
	Birthday of Baba Sri Chand Ji	Punjab
24 September	Karma Puja	Jharkhand
25 September	Bakrid (Id-UL-Zuha)	All India
26 September	Eid-ul-Azha	Jammu and Kashmir
27 September	Indrajatra	Sikkim

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CENTRAL TAXES

SERVICE TAX

COURT DECISIONS

VODAFONE INDIA LTD. VERSUS THE COMMISSIONER OF CENTRAL EXCISE, MUMBAI II (BOMBAY HIGH COURT)

BRIEF: CENVAT Credit on duty paid on towers (in CKD/SKD form) parts of towers shelters / prefabricated buildings. Goods are neither capital goods as defined in rule 2(a)(A) of the CENVAT Credit Rules 2004 and nor do they fall within the definition of input as defined in rule 2(k) thereof. Credit not allowed.

OUR TAKE: The **Hon'ble BOMBAY HIGH COURT** held that goods are neither 'capital goods' as defined in rule 2(a)(A) of the CENVAT Credit Rules, 2004 and nor do they fall within the definition of 'input' as defined in rule 2(k) thereof. This Court has further held that in any event the towers and parts thereof are in the nature of immovable property and are non-marketable and non-excisable and therefore, they cannot be classified as 'inputs' so as to fall within the definition of rule 2(k) of the CENVAT Credit Rules, 2004. - Bharti Airtel's case decision [2014 (9) TMI 38 - BOMBAY HIGH COURT] squarely applies to the case of the Appellant. No substantial questions of law that need to be answered. [**Decided against assessee**]

THE COMMISSIONER OF CUSTOMS, CENTRAL EXCISE & SERVICE TAX, GUNTUR VERSUS M/S. NARASARAOPET MUNICIPALITY, NARASARAOPET, GUNTUR (ANDHRA PRADESH HIGH COURT)

BRIEF: Waiver of penalty. Since the entire amount has already been recovered there is no liability on the appellant. These reasons perhaps impelled the learned Tribunal to invoke provisions of Section 80. Order of CESTAT upheld.

OUR TAKE: The **Hon'ble ANDHRA PRADESH HIGH COURT** held that since the entire amount has already been recovered, there is no liability on the appellant. These reasons perhaps impelled the learned Tribunal to invoke provisions of Section 80 of the Act. Moreover, the learned Tribunal has followed its earlier decisions on the same point and those orders are not stated to have been challenged before any Court of law. Tribunal exercised the power under Section 80 of the Act irrationally or capriciously. [**Decided against Revenue**]

SIMPLEX INFRASTRUCTURES LTD. VERSUS COMMISSIONER OF SERVICE TAX & ANR. (CALCUTTA HIGH COURT)

BRIEF: Validity of SCN and invocation of extended period of limitation.

OUR TAKE: The **Hon'ble CALCUTTA HIGH COURT** held that it is for the department to investigate whether the issue of a works contractor not including the value of the materials supplied to them to the service recipients is related to the subject matter of the impugned show cause notice. The two issues may not be identical but are related to each other. But this question of fact as to the extent to which the subject matter of the earlier three show cause notices was a factor in the issuance of the impugned show cause notice, with all data and necessary details have to be gone into by the Commissioner and not by this court. If it is found by him that the facts, data and factors, which were the basis of the earlier show cause notices were relevant in issuing the impugned show cause notice, then the show cause notice would be clearly hit by the judgment of the **Hon'ble** Supreme Court [2006 (4) TMI 127 - SUPREME COURT OF INDIA].

In other words, the show cause notice would be barred by the laws of Limitation, because the department had knowledge of the ingredients of the impugned show cause notice. The petitioner could not be charged with suppression to invoke the longer period of limitation. Show cause notice dated 6th January, 2014 is set aside with an option to the Commissioner to scrutinise all relevant facts in the light of this judgment and to issue another show cause notice, if the same is warranted in law. [**Decided in favour of assessee**]

CENTRAL EXCISE

COURT DECISIONS

RAKHOH INDUSTRIES PVT. LTD. VERSUS THE UNION OF INDIA AND OTHERS (BOMBAY HIGH COURT)

BRIEF: Whether the Load Spreading Plates (LSP) manufactured by the three Appellants and Towers can be considered to be covered under "Wind Operated Electricity Generator, its components and parts", which are exempted under Notification No. 6 of 2006? Tribunal has clubbing the three appeal and delivered different decisions.

OUR TAKE: The **Hon'ble BOMBAY HIGH COURT** held that Tribunal held that various judicial pronouncements have, according to the Counsel, allowed exemption to Towers and their parts. However, no judicial pronouncement regarding exemption to foundation parts, namely, Anchor Rings and LSP has been brought to the Tribunal's notice. It is thereafter that the Tribunal attempted to distinguish the case of the present Petitioner. It concluded that a foundation cannot be said to be covered by the Notification. Prima facie , the Tribunal lost sight of the fact that it has to first conclude that all the products, namely, LSP and Anchor Rings, Tower Doors are foundational parts or not.

There was no justification for giving different treatment to the case of the Petitioner. The Tribunal was aware of the controversy, the issue before it and stated to be common to all the Appellants. If there was justification for rendering a separate finding in the case of the Petitioner's Appeal, then, in the first instance it is not clear as to why it was clubbed along with other Appeals. If all three Appeals involve similar question and issue, then, it is nor clarified as to what distinguishes only the present Petitioner's case from the other two Appeals. If the issue was of the Exemption Notification, its construction and interpretation, the intention of the Government in granting the exemption, then, it is common to all the Appellants.

Order of tribunal set aside. The special Bench of the Tribunal shall call for the records of the Petitioner's Appeal and allow the Petitioner to participate in the proceedings/Reference. [**Decided in favour of Assessee**]

M/S. SMILE ELECTRONICS LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE CUSTOMS AND SERVICE TAX (KARNATAKA HIGH COURT)

BRIEF: Whether the non- fulfillment of conditions of Notification No.214/86-CE as also Notification No.83/94-CE, dated 11.4.1994 can be held to be procedural violation so as to extend the benefit of the Notification to the appellant?

OUR TAKE: The **Hon'ble KARNATAKA HIGH COURT** held that Appellant admittedly has not followed the substantive conditions of the Notification in question which require the supplier of the raw material or semi-finished goods to give an undertaking to the proper officer of Central Excise having jurisdiction over the factory of the job worker to the effect that such goods shall be used in or in relation to the manufacture of the final product in his factory and removed from his factory either on payment of duty or without payment of duty under bond for export or to units in free trade zone or to 100% EOUs etc. Hence, we do not find any ground to interfere with the impugned order, inasmuch as it is seen that the detailed conditions prescribed in Notification No.214/1986 are substantive conditions, which require fulfillment so as to ensure that the goods manufactured by the assessee suffer duty of excise at the hands of the customer who has supplied the inputs free of cost to the job worker. [**Partial stay granted**]

R. KRISHNA MOHAN VERSUS THE ASSISTANT COMMISSIONER OF CENTRAL EXCISE, PROSECUTION UNIT, CHENNAI (MADRAS HIGH COURT)

BRIEF: Section 9AA of the Central Excise Act 1944. Request for quashing of complaint. Without impleading the partnership firm prosecution initiated against the partners is not maintainable and on that ground these petitions may be allowed.

OUR TAKE: The **Hon'ble MADRAS HIGH COURT** held that though the judgment in Anil Gupta v. Star India Pvt. Ltd. & Another [2014 (7) TMI 545 - SUPREME COURT] was delivered on 07.07.2014, the **Hon'ble** Supreme Court only laid down the law and did not state in the order that the order will have only prospective operation. Therefore, having regard to the provisions of Section 9AA of the Central Excise Act, 1944, which is in parimateria with Section 141 of the Negotiable Instruments Act, without impleading the partnership firm, prosecution initiated against the partners is not maintainable and on that ground, these petitions may be allowed. [**Decided in favour of assessee**]

M/S. DELPHI-TVS DIESEL SYSTEMS LTD. VERSUS CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, COMMISSIONER OF CENTRAL EXCISE (APPEALS) , DEPUTY COMMISSIONER OF CENTRAL EXCISE (MADRAS HIGH COURT)

BRIEF: Denial of refund claim. The Commissioner has the power and discretion under proviso (i) to Rule 173L to entertain an application within a total period of two years. This is a case where the Commissioner should have at least exercised the said discretion in favour of the assessee.

OUR TAKE: The **Hon'ble MADRAS HIGH COURT** held that Rule 173L(1) states under proviso (i) that the claim for refund on returned goods may be admitted only if such goods had been returned to the factory within one year of

the date of payment of duty or within such further period not exceeding one year in the aggregate. Returned goods were subjected to a further process of reconditioning or remake and they were sold to a different customer. If a substantial provision of the statutory enactment contains both the period of limitation as well as the date of commencement of the period of limitation, the rules cannot prescribe over a different period of limitation or a different date for commencement of the period of limitation. In this case, sub-section (1) of Section 11B stipulates a period of limitation of six months only from the relevant date. The expression relevant date is also defined in Explanation (B)(b) to mean the date of entry into the factory for the purpose of remake, refinement or reconditioning. Therefore, it is clear that Section 11B prescribes not only a period of limitation, but also prescribes the date of commencement of the period of limitation. Once the statutory enactment prescribes something of this nature, the rules being a subordinate legislation cannot prescribe anything different from what is prescribed in the Act.

Under the proviso (i) to Rule 173L, the Commissioner is given the discretion to extend the period of one year stipulated therein by a further period not exceeding one more year. In other words, the Commissioner has the power and discretion under proviso (i) to Rule 173L to entertain an application within a total period of two years. This is a case where the Commissioner should have at least exercised the said discretion in favour of the assessee. [**Decided in favour of assessee**]

CUSTOM

NOTIFICATIONS & CIRCULARS

The **Govt. vide Notification No. 92/2015, dated 15 September, 2015** issued Tariff Notification in respect of fixation of T V of Edible oil, Brass, Poppy seed, Areca nut, gold and Silver.

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

The **Govt. vide Notification No. 2/2015, dated 14 September, 2015** Seeks to levy provisional safeguard duty on Hot-rolled flat products of non-alloy and other alloy Steel in coils of a width of 600 mm or more heading 7208 or tariff item 7225 30 90 at the rate of 20 for a period of 200 days.

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

The **Govt. vide Notification No.93/2015, dated 17 September, 2015** notified rate of exchange of conversion of the foreign currency with effect from 18th September, 2015.

OUR TAKE: Readers are requested to read the said Notification for exchange rate.

The **Govt. vide Notification No. 41/2015, dated 17th September, 2015** seeks to further amend Notification No.12/2012, dated 17.03.2012.

OUR TAKE: In the said notification, in the ANNEXURE, in Condition No. 52, there are amendments under the column heading "Conditions". Readers are requested to read the said Notification for details.

The **Govt. vide Notification No. 46/2015, dated 17th September, 2015** seeks to further amend Notification No.12/2012, dated 17.03.2012.

OUR TAKE: Rates are amended in Table. Readers are requested to read the said Notification for details.

COURT DECISIONS

KUMAR IMPEX (GOVERNMENT OF INDIA)

BRIEF: Drawback Claim under S.no. 48026210 export of plain paper cut in size. Quality of goods onus was on department and not on respondent to prove nature of goods. Nothing substantial could be brought on record to prove that goods were other than prime in nature.

OUR TAKE: GOVERNMENT OF INDIA held that original authority held that goods are not of prime quality and hence, classifiable under drawback S. 48020099 @ 1% only. Benefit of drawback @ 5.5% is available to those sheets cut to sizes only from prime quality paper. CPPRI to whom samples were sent for testing, neither confirmed that goods were prime or otherwise. Nature of finished goods as 'prime' or otherwise is decided on basis of physical, chemical and other critical parameters of finished goods and not by nature of raw material used for manufacture of such finished goods. There are no categorical evidences brought on record that impugned goods are not prime. Report of CPPRI is inconclusive. Further, onus was on department and not on respondent, to prove nature of goods. Nothing substantial could be brought on record to prove that goods were other

than prime in nature. Therefore, respondents are rightly eligible for drawback @ 5.5%. [**Decided against revenue**]

TATA TELESERVICES (MAHARASHTRA) LTD. VERSUS UNION OF INDIA (BOMBAY HIGH COURT)

BRIEF: If one organ of Union of India does not comply with orders passed by this Court other organs of Union of India cannot take benefit of same and act prejudicial to interest of party.

OUR TAKE: The **Hon'ble BOMBAY HIGH COURT** held that Respondent-2 and 3 and respondent-4 are all organs of Union of India. If one organ of Union of India does not comply with orders passed by this Court, other organs of Union of India cannot take benefit of same and act prejudicial to interest of party, though party is entitled to benefit as per orders passed by present Court. Respondent-1 has not yet complied with directions issued by present Court and on other hand, respondent-2 and 3 are trying to take benefit of non-compliance by respondent-4 of order. In view of matter, petitioners have made out case for grant of ad-interim relief. [**Decided in favour of petitioner**]

M/S. JKM DAERIM AUTOMOTIVE LTD. (NOW MERGED WITH DYNAMATICS TECHNOLOGIES LIMITED), BANGALURU VERSUS THE COMMISSIONER OF CUSTOMS (APPEALS), CHENNAI AND OTHERS (MADRAS HIGH COURT)

BRIEF: Restoration of appeal. Non compliance of pre deposit order. The appellant has complicated the matters for themselves but demonstrated their bona fides by first making a debit entry in the CENVAT book and next making a cash deposit. Matter restored before tribunal.

OUR TAKE: The **Hon'ble MADRAS HIGH COURT** held that in so far as the allegation of non-compliance with the conditional order is concerned, the appellant appears to have complied with the conditional order twice over, but in a wrong account and after the time granted by the Tribunal. The appellant complied with the conditional order first on 24.7.2012 by making a debit entry in the CENVAT book. This compliance was, irrespective of whether it was proper compliance or not, made within the time stipulated by the Tribunal. The second compliance was on 28.2.2014 by way of cash, which was certainly beyond the period of time. Therefore, the appellant has complicated the matters for themselves, but demonstrated their bona fides by first making a debit entry in the CENVAT book and next making a cash deposit. In essence, the appellant has suffered to the extent of 100% of the duty levied. Orders of the Tribunal are set aside. The appellant shall be taken to have complied with the conditional order. [**Decided in favour of assessee**]

THE COMMISSIONER OF CENTRAL EXCISE CUSTOMS AND SERVICE TAX VERSUS FIROMENICH AROMATICS (INDIA) PVT. LTD. (BOMBAY HIGH COURT)

BRIEF: Demand for interest and penalty Delay in service of notice Clearly seen that there is delay of more than three years from date on which first cause of action arose and more than two years from date on which last cause of action arose Said delay has not at all been explained.

OUR TAKE: The **Hon'ble BOMBAY HIGH COURT** held that demand for interest pertains to dues which were paid on various dates. Clearly seen that there is delay of more than three years from date on which first cause of action arose and more than two years from date on which last cause of action arose. Said delay has not at all been explained. In that view of matter, it cannot be said that Tribunal was unjustified in holding that delay in issuing show cause notice was not sustainable in law. Tribunal has rightly allowed appeal of Respondent. [**Decided against Revenue**]

INCOME TAX

COURT DECISIONS

M/S. DHARMAPURI PAPER MILLS PVT. LTD. VERSUS THE JOINT COMMISSIONER OF INCOME TAX (MADRAS HIGH COURT)

BRIEF: Amount withdrawn from the reserves created or provisions made. The assessee may fall within the ambit of the mischief sought to be undone by Section 115JA. But so long as the express language is in its favour the mischief or no mischief cannot be cured.

OUR TAKE: The **Hon'ble MADRAS HIGH COURT** held that the proviso under clause (i) of the Explanation makes it clear that in case where Section 115JA is applicable to an assessee in any previous year, the amount withdrawn from the reserves created or provisions made "in a previous year relevant to the assessment year commencing on or after the first day of April, 1997", shall not be reduced from the book profit unless the book profit of such year has been increased by those reserves or provisions out of which the said amount was withdrawn under the Explanation. It is not the case of the assessing officer that the provisions made by the assessee in this case were relatable to a previous year relevant to the assessment year commencing on or after the first day of April, 1997.

Pointing out the object behind Section 115JA, it was contended by Mr.J.Narayanasamy, learned standing counsel that by a jugglery of the accounting methods, the assessee cannot always make it a "zero tax" company even while making profits or at least showing profits to certain stakeholders. We appreciate the concern. But the law relating to income tax being what it is, we do not think that the Court is entitled to go in for a purposive interpretation when the plain language of the taxing statute is clear. Explanation (i) is very clear in its purport. The assessee may fall within the ambit of the mischief sought to be undone by Section 115JA. But so long as the express language is in its favour, the mischief or no mischief cannot be cured. [**Decided in favour of assessee**]

COMMISSIONER OF INCOME TAX –V VERSUS KAPIL NAGPAL (DELHI HIGH COURT)

BRIEF: The prior to date on which house was purchased the Assessee was not the owner of another residential house and therefore the exemption under Section 54 read with Section 54F of the Act could not be denied to him.

OUR TAKE: Regarding sale of shares the **Hon'ble DELHI HIGH COURT** held that after analysing the documentary evidence produced by the Assessee, the CIT (A) fairly concluded that the actual transfer of the shares took place only on 8th November 2006 and that therefore, the Assessee had held shares for more than one year. The further consequential finding that long term capital gains resulted cannot be said to be perverse. [**Question is answered in favour of the Assessee and against the Revenue**]

Regarding Exemption u/s 54F the **Hon'ble** DELHI HIGH COURT held that the evidence produced by the Assessee showed that the house was purchased by him on 10th April 2007 within the time allowed under Section 54F of the Act, after making payment and by obtaining the possession thereof. A substantial part of the consideration of Rs 2 crores was paid on the date of the agreement to sell itself. The balance payment of Rs 22 lakhs was made on 17th April 2007 when the possession was handed over. The conclusion that the house was in fact purchased on 10th April 2007 within the time allowed under Section 54F of the Act stands supported by the documents placed on record by the Assessee. The Court is satisfied that the prior to 10th April 2007 the Assessee was not the owner of another residential house and therefore the exemption under Section 54 read with Section 54F of the Act could not be denied to him. [**Decided in favour of the Assessee**]

M/S. MOOKAMBIKA ASSOCIATES VERSUS ASSISTANT COMMISSIONER OF INCOME TAX AND OTHERS (KARNATAKA HIGH COURT)

BRIEF: Waiver of interest under Section 220(2) rejected. Whether petitioner suffered genuine hardship? Hardship when pressed into service must be genuine and must smack of a conduct of a worthy citizen. No waiver.

OUR TAKE: The **Hon'ble KARNATAKA HIGH COURT** held that petitioner, a partnership firm, did not submit its returns for the year 2006-07 and 2007-08 within the time stipulated but did so only after the machinery provided under the Income Tax Act was put into force i.e. a search conducted and notice issued, pursuant to which returns were filed on 20.9.2010. The conduct of the petitioner speaks volumes of its commitment to rule of law. The fact that returns submitted when accepted, petitioner was required to pay tax of Rs 74,74,229/- for the assessment year 2006-07 and Rs 2,06,00,000 for the assessment year 2007-08. Petitioner did not make the payments immediately thereafter but did so only after coercive steps were taken by attaching the Bank accounts and property of the petitioner, whence Rs 35 lakhs was paid on 8.5.2014 and the balance of Rs 75,21,573/- on 20.1.2015 for the assessment year 2006-07, while for the assessment year 2007-08 Rs 15 lakhs was paid on 11.9.2014 and Rs 1,11,75,366/- on 20.1.2015. Despite the laxity on the part of the Department in the matter of recovery of the taxes by reason of which petitioner was in possession of the amounts due and payable as tax for almost ten years from the assessment year 2006-07, yet again speaks volumes of the conduct of the petitioner in the matter of payment of taxes.

If regard is had to the aforesaid facts and material dates, the contention that petitioner suffers from hardship hence entitled to waiver of interest under Section 220(2) of the Income Tax Act is far from acceptance. "Hardship" when pressed into service must be genuine and must smack of a conduct of a worthy citizen. In the facts and circumstances hardship cannot be comprehended in favour of the petitioner. Suffice it to state that the Prl. Commissioner of Income Tax Act-V, Bangalore was fully justified in declining waiver of interest at the request of the petitioner. [**Decided against assessee**]

THE ASSISTANT COMMISSIONER OF INCOME TAX VERSUS VICTORY AQUA FARM LTD. (SUPREME COURT)

BRIEF: Whether 'natural pond' which as per the assessee is specially designed for rearing prawns would be treated as 'plant' within Section 32 for depreciation claim?

OUR TAKE: The **Hon'ble SUPREME COURT** held that an attempt was made by the learned counsel for the Revenue to the effect that the pond in question was natural and not constructed/specially designed by the assessee. We do not find it be so. In the judgment of the High Court [2004 (10)

TMI 84 - KERALA High Court], which is decided in favour of the assessee, the High Court has specifically mentioned that the prawns are grown in specially designed ponds. Further this very contention that these are natural ponds has been specifically rejected as not correct. Moreover, from the order passed by the Assessing Officer we find that this was not the reason given by the Assessing Officer to reject the claim. Therefore, finding of fact on this aspect cannot be gone into at this stage. See Commissioner of Income Tax, Karnataka vs. Karnataka Power Corporation [2000 (7) TMI 72 - SUPREME Court]

We find that the judgment dated 14.10.2004 rightly rests this case on 'functional test' and since the ponds were specially designed for rearing/breeding of the prawns, they have to be treated as tools of the business of the assessee and the depreciation was admissible on these ponds. [**Decided in favour of the assessee**]

STATE TAXES

ALL INDIA VAT

DADRA AND NAGAR HAVELI

The **Govt. vide The Dadra And Nagar Haveli Value Added Tax (Amendment) Regulation, 2015 NO. 1 OF 2015, dated 15th September, 2015** amend section 4, in sub-section (1), in clause (b), for the words "four per cent." the words "five per cent." shall be substituted.

OUR TAKE: The rates of tax payable on the taxable turnover of a dealer in respect of goods specified in the Third Schedule shall be at the rate of five per cent.

DELHI

The **Govt. vide Circular F1/(142)/Ex/Permit/2013-14/2701-2703, dated 14 September, 2015** notifies Public holidays for Banks on every 2nd and 4th Saturday of every month and full working day on other Saturdays.

HIMACHAL PRADESH

The Govt. vide Notification No. EXN-F(10)-7/2011, dated 16 September, 2015 notify for compulsorily electronically payment of taxes.

OUR TAKE: All dealers registered under the Himachal Pradesh Value Added Tax Act,2005 and the Central Sales Tax Act,1956, except dealers paying lump-sum tax by way of composition, shall compulsorily pay tax electronically through the web portal of the Excise and Taxation Department with effect from 01.10.2015.

The **Govt. vide Notification No. EXN-F(10)-1/2009, dated 16 September, 2015** notifies that In clause(iii) of the para No.4 of the notification No.EXNF(9)2/99, dated 23rd July,1999, for the word and figure "80 percent", the word and figure "70 percent" shall be substituted.

OUR TAKE: This is with regard to percentage of manpower employed. Readers are requested to read the said Notification.

TELANGANA

The **Govt. vide Notification No. G.O.MS.No. 169, dated 18 September, 2015** Order adaption and modification of the Andhra Pradesh Tax on Professions, Trades, Callings and Employments Act, 1987 for the purpose of facilitating its application in relation to the State of Telangana. And the word “Andhra Pradesh” is substituted by “Telangana”.

The **Govt. vide Notification No. G.O.MS.No. 170, dated 18 September, 2015** Order adaption and modification of the Andhra Pradesh Tax on Professions, Trades, Callings and Employments Rules, 1987 for the purpose of facilitating its application in relation to the State of Telangana. And the word “Andhra Pradesh” is substituted by “Telangana”.

UTTARAKHAND

The **Govt. vide Notification No. 714/2015/146(120)/XXVII(8)/2008, dated 14 September, 2015** seek to amend Schedule-III of the Uttarakhand Value Added Tax Act.

OUR TAKE: There is change in rate of Motor Spirit and Diesel as defined under the United Provinces Sales of Motor Spirit, Diesel oil and Alcohol Taxation Act, 1939 (Sl. No. 2 and 3).

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

The **Govt. vide Circular dated 16 September, 2015** seek to extend date for using printed Form-16 till 30/09/2015.

COURT DECISIONS

M/S BHORA MARBLES VERSUS THE COMMERCIAL TAX OFFICER, THE ASSISTANT COMMISSIONER (CT) (MADRAS HIGH COURT)

BRIEF: Detention of Goods Non availability of E-Transit passes TNVAT. Petitioner's vehicles need not carry E-Transit pass in middle of transit. When subject vehicles have accompanied with KK Forms Bill of Entry and Sale Bill of Seller in Bombay against C Forms first respondent could have released vehicles along with goods after verifying above documents.

OUR TAKE: The **Hon'ble MADRAS HIGH COURT** held that Section 70(1)(b) of TNVAT Act, r/w. Rule 15(17)(bb) of TNVAT Rules, shows that owner of goods vehicle, shall deliver within prescribed period, transit pass to officer in charge of last check post or barrier, before exit of goods vehicle from State. In view of above, petitioner's vehicles need not carry E-Transit pass in middle of transit. Therefore, considering fact that when subject vehicles, have accompanied with KK Forms, Bill of Entry and Sale Bill of Seller in Bombay against C Forms, first respondent could have released vehicles, along with goods, after verifying above documents. Therefore impugned orders hereby set aside and directs to release goods. [**Decided in favour of Petitioner**]

M/S SRI NANJUNDESHWARA TRADERS VERSUS STATE OF KARNATAKA, BENGALURU AND OTHERS (KARNATAKA HIGH COURT)

BRIEF: Denial of input tax deduction Bogus or false invoices Assessing officer arrived at conclusion that input tax credit claimed by petitioner was based on false invoice even prior to extending opportunity to petitioner to prove otherwise. Matter restored before AO.

OUR TAKE: The **Hon'ble** KARNATAKA HIGH COURT held that petitioner had claimed input tax credit however said claim was disallowed by after verifying records and finding that invoice which was relied upon by petitioner to claim input tax credit was bogus invoice or false invoice. Burden was cast on assesse, to prove that claim for deduction of input tax was correct. Assessing officer arrived at conclusion that input tax credit claimed by petitioner was based on false invoice even prior to extending opportunity to petitioner to prove otherwise. Thus order required to be interfered. Matter remitted back for being adjudicated by extending opportunity to petitioner. [**Decided in favour of Assesse**]

OTHER UPDATES

ALLIED LAW

Central Government vide Notification F. No. 1/9/SM/2015 - S.O. 2362(E), dated 28 August, 2015 appoints the 28th day of September, 2015 as the date on which the provisions of Part I (excluding Section 132) and Part II of Chapter VIII of the Finance Act 2015 shall come into force.

Central Government vide Notification F. No. 1/9/SM/2015 - S.O. 2363(E), dated 28 August, 2015 appoints the 29th day of September, 2015 as the date on which the provisions of Section 132 of the Finance Act 2015 shall come into force.

COMPANY LAW

The **Govt. vide Notification F.No 1/8/2013-CL-V, dated 15 September, 2015** issued The Companies (Acceptance of Deposits) Second Amendment Rules, 2015.

OUR TAKE: There is amendment in Rule 2 and Rule 3.

DGFT

The **Govt. vide Public Notice No. 35 /2015-2020, dated 11 September, 2015** amends Appendix 4J and Appendix 4B of Appendices and Aayat Niryat Forms of FTP 2015-20.

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

The **Govt. vide Notification No. 21/2015-2020, dated 14 September, 2015** make amendment in import policy conditions of apples under Exim code 0808 10 00 of Chapter 08 of ITC (HS), 2012 Schedule 1 (Import Policy).

OUR TAKE: Import of the item 'Apples' covered under EXIM Code 0808 10 00 is allowed only through Nhava Sheva port.

The **Govt. vide Public Notice 36/2015-2020, dated 14 September, 2015** notifies operationalisation of modification in IEC.

OUR TAKE: Modifications in Electronic IECs as well as physical IECs will now be carried out online. Applicants can seek modifications in their e-IEC's/ IEC's by paying a fee of Rs 200/-online from the 21st of September, 2015.

FEMA

The **Govt. vide Press Note No. 9 (2015 Series), dated 15 September, 2015** review of the existing Foreign Direct Investment policy on Partly Paid Shares and Warrants.

OUR TAKE: Para 2.1.5 is amended and a new para after para 3.3.3 of Consolidated FDI Policy Circular of 2015 is inserted. Readers are requested to read the said Notification for details.

The **Govt. vide Circular, dated 15 September, 2015** issued clarification on FDI Policy on Facility Sharing Arrangements between Group Companies.

OUR TAKE: It is clarified that facility sharing agreements between group companies through leasing/sub-leasing arrangements for the larger interest of business will not be treated as 'real estate business' within the provisions of the Consolidated FDI Policy Circular of 2015, provided such arrangements are at arm's length price in accordance with relevant provisions of Income Tax Act, 1961 and annual lease rent earned by the lessor company does not exceed 5% of its total revenue.

The **Govt. vide Circular No.14, dated 16 September 2015** notifies Exim Bank's GoI supported Line of Credit of USD 26.24 million to the Government of Republic of Nicaragua.

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