



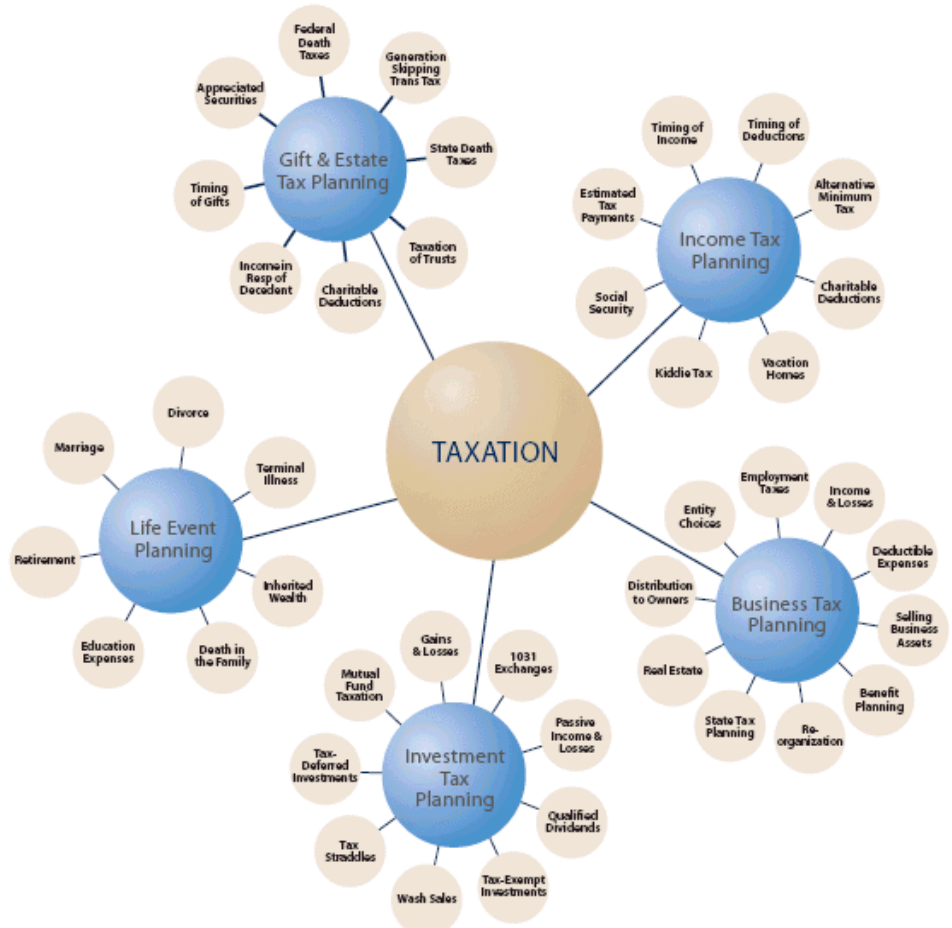
# ASC Times

All India Taxes Weekly Referencer

Vol: June 22-June 28,2015

Solving  
any **tax**  
puzzle

Tax saving advice  
across all the taxes



## From the CEO's Desk



Dear Reader,

International Yoga Day attended and curated by Mr. Narendra Modi was celebrated on 21<sup>st</sup> June 2015. The proposal to declare 21<sup>st</sup> as International Yoga Day was also presented by our PM Mr. Modi in the UN General Assembly, last September that was passed unanimously in December. The IYD is celebrated in 192 member countries of UN including the US, China, Egypt etc. "We are not celebrating a day but we are training the human mind to begin a new era of peace and harmony," said Mr. Modi from the dais, adding that it is a program for human welfare and to spread the message of goodwill. Indeed Yoga is one art which unites people worldwide and of all religions, originated from India and popularized by Indian Yogi's.

In US while interacting with top American businesses and corporate leaders, Finance Minister Mr. Jaitley described India as a bright spot in an otherwise troubled global economy. He said that the new Indian government offers a stable, predictable and transparent policy regime, making the country an attractive destination for investors. Jaitley told reporters the feedback he is receiving is that investors need a stable policy regime and the Indian government is committed to that. Hinting towards the reforms in the economy he said that Indian Government is committed to bring the GST system for taxation and also to bring in maximum transparency in the financial policies.

Above is one side of the coin. Flip side according to Assocham is that of the Modi government is delaying key infrastructure projects in sectors like road, ports and power following 'Play it safe' approach. Though an overwhelming part of India Inc. perceives Modi Government free from corruption stigma but a strong sense of oversight on bureaucrats, bankers and PSU officials have led to a 'Play it Safe' style of working, Assocham said in a statement. For instance, it said, in the absence of environment clearances at the Centre and state level, thousands of ready to move in houses are stuck in

The National Capital Region (NCR).

A reminder: Only 9 days are left to exchange pre-2005 currency notes, including those of Rs. 500 and Rs. 1,000 denominations, at banks as the deadline to do so is June 30<sup>th</sup> 2015.

Alok Kumar Agarwal  
CEO  
ASC Group

## TAX CALENDER

Due Date	Compliances from 22/06/2015 to 28/06/2015
22 <sup>nd</sup> June	Issue of TDS Certificate for Delhi, Deposits of WCT TDS monthly, Entry tax, Monthly/central sale tax payment due for Gujarat, payment of VAT and filing of return for Tamil Nadu.
25 <sup>th</sup> June	VAT Monthly return online for Jharkhand, Monthly deposit of tax and filing of return for Kerala, Issuance of TDS Certificate for Mizoram, Deposit of VAT for Rajasthan, Intimation of tax liability as nil, (First Year of Business) for Uttarakhand,
28 <sup>th</sup> June	Deposit of tax monthly for Arunachal Pradesh, Filing of Monthly VAT Return for Arunachal Pradesh.

## COUNTRY WIDE HOLIDAYS FOR THE WEEK

**NO HOLIDAYS FOR THE WEEK**

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# CENTRAL TAXES

## SERVICE TAX

### COURT DECISIONS

#### M/S THIRUMURUGAN ENTERPRISES VERSUS THE ADDITIONAL COMMISSIONER OF CENTRAL EXCISE (MADRAS HIGH COURT)

**BRIEF:** When petitioner had paid the tax liability is this a fit case to find out whether they should be allowed to settle and redress his grievance before the Settlement Commission.

**OUR TAKE:** The hon'able **MADRAS HIGH COURT** held that the Petitioner admitting their tax liability, has also paid a sum of Rs. 14,57,464/= towards service tax and Rs. 9,70,000/= towards interest. Therefore the request made by them in their application dated 03.11.2014 to permit them to approach the Settlement Commissioner could have been considered by the respondent. As he did not do so, this court, taking note of the fact that the petitioner had also paid the tax liability alongwith interest as mentioned above, is of the view that this is a fit case to find out whether they should be allowed to settle and redress his grievance before the Settlement Commissioner. [**Decided in favour of assessee**]

#### HERITAGE AUTO PRIVATE LIMITED VERSUS UNION OF INDIA AND OTHERS (PUNJAB & HARYANA HIGH COURT)

**BRIEF:** The question is regarding Constitutional validity of proviso to Section 85(3) of the Finance Act 1994 i.e. the limited powers to condone the delay and that too not beyond three months.

**OUR TAKE:** The hon'able **PUNJAB & HARYANA HIGH COURT** held that the petitioner filed an appeal beyond the condonable period of three months, provided by the proviso to Section 85(3) of the Act. The appellate authority, therefore, dismissed the appeal. The right to file an appeal is conferred by a statute and must, therefore, be availed along with all its impediments. Section 85(3) of the Act allows an assessee to file an appeal within 90 days. The proviso to Section 85(3) of the Act empowers the appellate authority to condone delay but not beyond three months.

We are unable to discern any legal flaw in the proviso to Section 85(3) of the Act that would enable us to hold that the proviso impedes the rights of the petitioner to file an appeal or is in any manner in excess of legislature power or should be read down. [**Decided against assessee**]

#### CHAKIAT AGENCIES VERSUS UNION OF INDIA (MADRAS HIGH COURT)

**BRIEF:** Whether rejection of appeal on grounds of late filing when received by the adjudicating officer in time but not by the appellate authority is correct.

**OUR TAKE:** The hon'able **MADRAS HIGH COURT** held that admittedly, the appeal has been preferred in time and in fact, it has reached two different sections in the very same office. After all, it is a transfer from one portion of the building to another portion and especially when the appeal has been received by the very adjudicating officer, who has passed an order, he ought to have sent it to the other wing of the very same building, but the same has not been done so. **The order passed by the second respondent/appellate authority cancelling the very appeal on the ground that it was not received in time cannot be accepted.** Referred case Radha Vinyl Pvt. Ltd. [2014 (3) TMI 621 - ANDHRA PRADESH HIGH COURT]. [**Decided in favour of appellant**]

#### M/S. BOOTLEGGERS ISLAND REPRESENTED BY ITS PROPRIETOR MR. RAJESH BAJAJ VERSUS CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, THE COMMISSIONER OF SERVICE TAX (MADRAS HIGH COURT)

**BRIEF:** Whether penalty u/s 76 & 77 is imposable where tax is paid before the issue of show cause notice.

**OUR TAKE:** The hon'able **MADRAS HIGH COURT** held that the benefit of Section 80 of the Finance Act, 1994 should be extended. In the absence of such a substantial plea and there being no bonafide justification for exemption, penalty was imposed. We find no reason why the Authorities should depart from imposing such penalty as mandated by the provisions of the Act. The issue is covered by the decision [2015 (1) TMI 812 - MADRAS HIGH COURT] in the case of Dhandayuthapani Canteen - Vs - Customs, Excise and Service Tax Appellate Tribunal, wherein this Court, while considering the issue whether the penalty is imposable where the tax is paid before issuance of show cause notice held that **penalty is imposable even in cases where tax is paid before issuance of show cause notice.** [**Decided against assessee**]

## CENTRAL EXCISE

### COURT DECISIONS

#### CCE, ROHTAK VERSUS M/S. YATHARTHA YANTRA UDYOG (CESTAT NEW DELHI)

**BRIEF:** In regard to use of third party trademarks in SSI Exemption whether the marks have to be treated as trade name or brand names belonging to other persons.

**OUR TAKE:** The hon'able CESTAT NEW DELHI held that goods with marks such as VF, RE, TVS, DECENT, H.F., J.P.F. and POOJA FORGE have to be treated as the goods bearing the brand name of other persons and the same would not be eligible for SSI exemption. Decision in the case of Grasim Industries Ltd. [2005 (4) TMI 64 - SUPREME COURT OF INDIA] followed. [Decided in favour of Revenue]

#### COMMISSIONER OF CENTRAL EXCISE, NASHIK VERSUS GENOM BIOTECH PVT LTD (CESTAT MUMBAI)

**BRIEF:** When Commission is paid to agents (input services) whether utilised for export of goods or not, can CENVAT Credit be allowed/ refunded.

**OUR TAKE:** The hon'able CESTAT MUMBAI held that though the business activities mentioned in the definition are not exhaustive, the service rendered by the commission agents not being analogous to the activities mentioned in the definition, would not fall within the ambit of the expression "activities relating to business" - Assessee in this case is also not eligible for refund of the amount of service tax paid on the services of commission agent. Decision in the case of Commissioner of Central Excise, Ahmadabad - II v. CEDILE Healthcare Ltd. - [2013 (1) TMI 304 - GUJARAT HIGH COURT] followed. [Decided in favour of Revenue]

#### BHOR INDUSTRIES LTD VERSUS COMMISSIONER OF CENTRAL EXCISE, PUNE-II (CESTAT MUMBAI)

**BRIEF:** When refund was granted to another manufacturer who has lodged the protest. But assessee did not lodge any protest. There is Bar of limitation. Can assessee take the benefit of protest lodged by other manufacturer?

**OUR TAKE:** The hon'able CESTAT MUMBAI held that appellant has filed the refund claim much after the time limit prescribed under the law. The only point that was made is that Kamalakshi Finance Corporation Ltd. had paid the duty under protest. It is the contention of the appellant that the protest made by Kamalakshi Finance Corporation Ltd. would be applicable for them only. No merits in the contention of the appellant that the refund claim has been

filed within the prescribed time limit. [Decided against assessee]

#### GODFREY PHILIPS INDIA LTD VERSUS COMMISSIONER OF CENTRAL EXCISE, BELAPUR (CESTAT MUMBAI)

**BRIEF:** As the levy of excise duty on cigarette at enhanced rates as contemplated in the amendments moved on 08.05.2012 is concerned the amended provisions will have effect only from the date of assent of President i.e. from 28.05.2012.

**OUR TAKE:** The hon'able CESTAT MUMBAI held that excise duty as provided through said Bill will have the force of law from the date on which the Finance Bill was introduced i.e. 17.03.2012. Since the amendments proposed to the Finance Bill were in the form of official amendments and no separate Bill was required for the said purpose, no declaration under the PCT Act is permissible. However, in view of the provisions of section 4(2)(a) of the PCT Act, the declaration made ceases to have force of law once the enactment comes into operation. As the amendments were proposed to the Finance Bill, 2012 only on 08.05.2012 and assented by the President on 28.05.2012, the same will have its applicability only from the date of assent by the President. Thus, insofar as the levy of excise duty on cigarette at enhanced rates, as contemplated in the amendments moved on 08.05.2012, is concerned, the amended provisions will have effect only from the date of assent of President i.e. from 28.05.2012. [Decided in favour of assessee]

#### M/S R.M. DHARIWAL (HUF) VERSUS COMMISSIONER OF CENTRAL EXCISE, PUNE-III (CESTAT MUMBAI)

**BRIEF:** If the sanctioning authority is of view that the departmental attested copies of TR6 Challan are required he could have asked the same well within the time period of three months which he failed to do.

**OUR TAKE:** The hon'able CESTAT MUMBAI held that refund claim was filed on 19/2/2009 and same was sanctioned on 30/9/2009. Hence there is apparent delay in sanctioning refund claim. It is observed that the refund is against pre-deposit of amount as directed by the Tribunal in some other matter. Appellant filed refund claim alongwith self-attested copies of TR-6 Challan and same was sufficient for sanctioning the refund claim for simple reason that the pre-deposit was ordered by the Tribunal and the same was deposited and Tribunal has accepted the compliance of such deposit. Therefore there is absolutely no dispute as regard deposit of such amount. In such circumstances the self attested copy of TR 6 Challan were sufficient for sanctioning of refund claim of pre-deposit amount within the stipulated time period of three months. Moreover, if sanctioning authority is of view that the departmental attested copies of TR6 Challan are required, he could have asked the same well

within the time period of three months which he failed to do. Appellant is legally entitled for interest on the refund claim for the period beyond three months from the date of filing of application of refund till the sanction of refund claim in terms of 11BB of Central Excise Act, 1944. **[Decided in favour of assessee]**

## CUSTOMS

### NOTIFICATIONS & CIRCULARS

The **Govt. of India vide F.No.–S/7-Misc-20/14-15/PCA, Dated 21.05.2015, Public Notice 25/2015** has notified the implementation of Document Management System (DMS) at New Custom House, Mumbai to ensure proper storage and retrieval of Bills of Entry and Shipping Bills dockets.

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

The **GOVERNMENT OF INDIA, MINISTRY OF FINANCE vide Notification No. 30/2015-Customs (ADD), Dated 12th June, 2015** notified continuation of anti-dumping duty on imports of Nylon Tyre Cord Fabric (All grades) for a period of 5 years unless revoked, superseded or amended earlier.

**OUR TAKE:** Concerned readers are requested to go through the notification.

The **Govt. of India vide F. No. S/1-29/2009 EDI, dated 27/02/2015 Public Notice No. 12/2015** issued instructions that ICEGATE is being shut down for filing of Bills of Entry on 28.02.2015 until ICES updated with the Budget related changes.

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

### COURT DECISIONS

#### M/S. M.Z. HANDICRAFTS AND ANOTHER VERSUS U.O.I. AND 4 OTHERS (ALLAHABAD HIGH COURT)

**BRIEF:** The jurisdiction of Senior Intelligence Officer u/s 110 regarding its power to stop withdrawal from account of the petitioners because an investigation was being carried out by the office after issuing summons is in question.

**OUR TAKE:** The hon'able **ALLAHABAD HIGH COURT** held that Section 110 A of the Act provides that any goods, documents or things seized under Section 110 may pending order of the Adjudicating Authority be released to the owner on taking a bond from him in the proper form with such

security and conditions as the Adjudicating Authority may require. Thus, the precondition stipulated under Section 110 A is that goods, documents or things must have been seized under section 110 of the Act. It has already held that the power under section 110 of the Act could not have been exercised for passing an order that the petitioners should not be permitted to make any withdrawal from the account. In such circumstances, the respondents cannot insist that the petitioners should furnish adequate security bond. **[Decided in favour of appellant]**

#### TERUMO PENPOL LTD VERSUS COMMISSIONER OF CUSTOMS (APPEALS) , DEPUTY COMMISSIONER OF CUSTOMS (MADRAS HIGH COURT)

**BRIEF:** While remanding appellate authority has no authority to direct the petitioner to pay EDD equivalent to 5% of the Assessable value since the entire issue has to be revisited by the original authority afresh.

**OUR TAKE:** The hon'able **MADRAS HIGH COURT** held that there is an effective alternative remedy available, as provided under Section 129(A) of the Customs Act, the ultimate conclusion reached by the Appellate Authority directing the petitioner to pay EDD equivalent to 5% of the Assessable value till the issue of the fresh order, in my considered opinion, is not maintainable for the reason that when the matter is remanded back to the file of the Original authority, all the issues are to be adjudicated afresh, without being influenced by any of the observation.

While so, viewing the impugned order, direction given to pay EDD equivalent to 5% of the Assessable value, against the petitioner, in my view will prejudice the mind of the original authority while deciding the issue. Therefore, the Court deleting only that portion of the order directing the petitioner to pay EDD equivalent to 5% of the Assessable value, directs the adjudicating authority to determine the issue after giving reasonable opportunity to the petitioner. Appeal disposed of.

#### M/S SUDERSAN IMPEX VERSUS THE COMMISSIONER OF CUSTOMS (EXPORTS) AND OTHERS (MADRAS HIGH COURT)

**BRIEF:** When amount is not released despite favorable order and no further appeal is filed, the third respondent is directed by HC to refund the SAD amount within a period of six weeks.

**OUR TAKE:** The hon'able **MADRAS HIGH COURT** held that admittedly, the petitioner had preferred appeals against the Order-in-Original passed by the third respondent and after granting an opportunity of personal hearing, the second

respondent allowed the appeals filed by the petitioner. Pursuant thereto, the petitioner has made a request for refund of the SAD amount. In the light of the above, recording the submission of the learned counsel for the respondents, if no further appeal is filed, the third respondent is hereby directed to refund the SAD amount of Rs. 20,672/- and Rs. 1,36,427/- vide representation dated 15.7.2014, within a period of six weeks. **[Decided in favour of assessee]**

## INCOME TAX

### COURT DECISIONS

#### **M/S CLASSIC CONCEPTS HOME INDIA PVT LTD VERSUS THE COMMISSIONER OF INCOME TAX (KERALA HIGH COURT)**

**BRIEF:** Should the failure to pay tax deducted at source to the Govt. continue to attract prosecution or draw liability under section 271C of the Income Tax Act?

**OUR TAKE:** The Hon'ble **KERALA HIGH COURT** held that it is the admitted case of the parties that the tax was deducted at source and the same was remitted belatedly, though with interest. In such case the provisions of Section 271 carefully applicable.

Insertion of a new Section 271C to provide for levy of penalty for failure to deduct tax at source. Under the old provisions of Chapter XXI of the Income Tax Act no penalty was provided for failure to deduct tax at source. This default, however, attracted prosecution under the provisions of Section 276B, which prescribed punishment for failure to deduct tax at source or after deducting, failure to pay the same to the Govt. It was decided that the first part of the default, i.e. failure to deduct tax at source should be made liable to liable to levy of penalty, while the second part of the default, i.e., failure to pay the tax deducted at source to the Govt. which is a more serious offence, should continue to attract prosecution. The Amending Act, 1987 has accordingly inserted a new section 271C to provide for imposition of penalty on any person who fails to deduct tax at source as required under the provisions of Chapter XVIIIB of the Act. The penalty is of a sum equal to the amount of tax which should have been deducted at source.

Reading of this paragraph also shows that the provisions thereof have no relevance in so far as the case of the appellant is concerned. The authorities were fully justified in levying penalty under Section 271C and in the facts and circumstances of the case. **[Decided against assessee]**

#### **THE DIRECTOR OF INCOME TAX, EXEMPTIONS, BANGALORE VERSUS SRI KUTHETHUR GURURAJACHAR CHARITIES (KARNATAKA HIGH COURT)**

**BRIEF:** Notwithstanding the fact that the assessee is conferred registration under the provisions of Section 12A of the Act unless the assessee falls within the provisions of Section 2(15) of the Act excluding the first proviso. Can the assessee be entitled to the benefit of exemption from the tax?

**OUR TAKE:** The Hon'ble **KARNATAKA HIGH COURT** held that the receipts from commercial activities are more compared to the overall receipts of the charitable organization can neither lead to the conclusion that the activities of the trust or institution are not genuine nor it can be said that the activities of the trust or institution are not being carried out in accordance with the objects of the trust or institution and therefore, the two conditions stipulated under the provisions of sub-section (3) of Section 12AA of the Act, which empowers the authority to cancel the registration, do not exist in the present case. The registration granted is cancelled in view of the amendment of first proviso to Section 2(15) of the Act. That is not a ground specified in the statute for cancellation of the registration. In fact, sub-section (8) of Section 13 of the Act which is introduced by Financial Act, 2012 which came into effect from 1.4.2009 categorically provides that, nothing contained in Section 11 or 12 shall operate so as to exclude any income from the total income of the previous year or any receipt thereof. If the provision of the first proviso to clause (15) of Section 2 becomes applicable in the case of such person in the said previous year, the statute has protected the interest of the revenue. Notwithstanding the fact that the assessee is conferred registration under the provisions of Section 12A of the Act, unless the assessee falls within the provisions of Section 2(15) of the Act, excluding the first proviso, the assessee would not be entitled to the benefit of exemption from the tax. **[Decided in favour of assessee]**

#### **Quepem Urban Co-operative Credit Society Ltd. Versus Assistant Commissioner of Income-tax, Circle-1, Margoa (BOMBAY HIGH COURT)**

**BRIEF:** Deduction u/s 80P(2)(a)(i). When the three conditions as provided under Section 5 (CVV) of the Banking Regulation Act 1949 are to be satisfied cumulatively and except condition (2) the other two qualifying conditions are not satisfied. Can Ergo appellant be considered to be a co-operative bank for the purposes of Section 80P (4) of the Act.

**OUR TAKE:** The Hon'ble **BOMBAY HIGH COURT** held that as rightly pointed out on behalf of the appellant the word society as referred to by law 9(d) would include the co-operative society. This is so as the definition of a society

under the Co-operative Act is co-operative society registered under the Cooperative Act. Besides the qualifying condition 3 for being considered as a primary Cooperative bank is that the bylaws must not permit admission of any other cooperative society. This is a mandatory condition i.e. the bye laws must specifically prohibit admission of any other cooperative society to its membership. The Revenue has not been able to show any such prohibition in the bye laws of the appellant. Thus even the aforesaid qualifying condition (3) for being considered as a primary cooperative bank is not satisfied. Thus, the three conditions as provided under Section 5 (CVV) of the Banking Regulation Act, 1949, are to be satisfied cumulatively and except condition (2) the other two qualifying conditions are not satisfied. Ergo, appellant cannot be considered to be a co-operative bank for the purposes of Section 80P(4) of the Act. Thus, the appellant is entitled to the benefit of deduction available under Section 80P(2)(a)(i) of the Act.

The contention of Ms. Dessai, learned Counsel for the revenue that the appellant is not entitled to the benefit of Section 80P(2)(a)(i) of the Act in view of the fact that it deals with non-members cannot be upheld. This for the reason that Section 80P(1) of the Act restricts the benefits of deduction of income of co-operative society to the extent it is earned by providing credit facilities to its members. As at the time when effect has been given to the order of this Court, the authorities under Act would restrict the benefit of deduction under Section 80P of the Act only to the extent that the same is earned by the appellant in carrying on its business of providing credit facilities to its members. **[Decided in favour of assessee]**

# STATE TAXES

## ALL INDIA VAT

### Andhra Pradesh

The **Govt of Andhra Pradesh vide CIRCULAR 1 No. CCTs Ref. No.CCW/CS(1)/128/2015, dated 19th June, 2015** has issued instruction with a view to easy doing business in the state by use of online facilities to reduce the interface between Government staff and the public.

**OUR TAKE:** The Govt. has requested all the Registering authorities to stop manual filing of registration applications in the offices of the Commercial Tax Officer and ensure that all the prospective dealers file online applications through e-registration module.

**Our Take:** The Govt. vide **CIRCULAR 2 No. CCTs Ref. No.CCW/CS(1)/128/2015, dated 19th June, 2015** requested all the Profession Tax Officers to ensure that all the Persons who file applications for APPT Registration through APPT-e-registration module are issued/approved Registration Certificates within one day from the date of filing the Application.

Also, the Deputy Commissioners and the Commercial Tax Officers are requested to give wide publicity about the facility of APPT-eRegistration available to the business people.

**BRIEF:** The Govt. vide **CIRCULAR 3 No. CCTs Ref. No.CCW/CS(1)/128/2015, dated 19th June, 2015** has issued instruction regarding refund u/s 38 of the Act for ease of doing business in the state.

**Our Take:** The Deputy Commissioner in the state are requested to ensure that all the claims of Refunds are settled and issued within Sixty days from the date of claim by the dealer.

Also, the Deputy Commissioners are requested to issue necessary instructions to the assessing authorities in this regard.

### GUJARAT

The **Govt. of Gujarat vide Notification No. GHN-23)VAT-2015-S-41(1)/TH:- Dated 19th June, 2015** extends the last date of filing Annual Return for the FY 2014-15 up to 30 June, 2015.

**OUR TAKE:** The notification is self explanatory. Forms are issued for the purpose.

- FORM SGPP-1 is issued for application for Certificate of Entitlement.
- FORM SGPP-2 is issued for Certificate of Entitlement.
- Form SGPP-3 is issued for Declaration.

### COURT DECISIONS

#### STATE OF GUJARAT VERSUS INDIAN PETRO CHEMICALS LTD. (GUJARAT HIGH COURT)

**BRIEF:** The issue is regarding interest on refund claim and Doctrine of merger. When the legislature is silent about entitlement of interest on refund of the tax amount already paid by the citizen whether the interest be considered by way of a compensatory measure.

**OUR TAKE:** The hon'ble GUJARAT HIGH COURT held that principles of compensatory measure may apply if the taxing statute is silent about the said aspect. The Legislature may control quantification of interest or the entitlement of interest on refund subject to meeting with the test of constitutional provision. But, when the legislature is silent about entitlement of interest on refund of the tax amount already paid by the citizen, the interest can be considered by way of a compensatory measure.

General principles for awarding compensation to the Assessee for the delay in receiving monies properly due to it is not disapproved by the Larger Bench of the Apex Court in the case of Commissioner of Income Tax, Gujarat Vs. Gujarat Fluoro Chemicals [2013 (10) TMI 117 - SUPREME COURT], observation made in case of Gujarat Fluoro Chemicals (supra) is a complete answer to the contention that the interest can be awarded even if not expressly barred by the statute or that the taxing statute is silent about the same.

Question raised could no more be considered as substantial question of law since such aspect is already covered by the principles of doctrine of merger well settled in the system of administration of justice and also in the above referred decision of the Apex Court as well as of this Court. No substantial question of law would arise for consideration in the present Tax Appeals. [**Decided against Revenue**]

#### ASIAN OILFIELD SERVICES VERSUS THE STATE OF TRIPURA AND OTHERS (TRIPURA HIGH COURT)

**BRIEF:** When contract involving use of machinery for doing Seismic surveys activity is performed, whether transfer of property for providing services is involved in the contract or not.

**OUR TAKE:** The hon'ble TRIPURA HIGH COURT held that the petitioner is not engaged in drilling work but was only engaged for carrying out seismic survey work. The said work does not fall within the ambit of Section 4(3) of the TVAT Act. The Seismic survey is carried out to investigate the Earth's subterranean structure. There was no transfer of the right to use goods. The equipment of the petitioner contractor remained the equipment and material owned and provided by the contractor. The equipment remained in the control of the petitioner. The petitioner remained in exclusive possession and control of the said equipment and all the resources were supplied by the contractor. These provisions of the contract clearly indicate that the contractor's equipment remained his equipment solely under his control and even the equipment of the company, if any, given to him did not become his equipment but remained the equipment of the company. Therefore, **there was no transfer of right to use goods and the petitioner was only rendering services which are only amenable to tax by the Union of India and not by the State.** [**Decided in favour of assessee**]

## OTHER UPDATES

### NOTIFICATIONS & CIRCULARS

The Government of India vide General Circular No. 08/2015, File No./1/40/2013/CL-V, dated 12<sup>th</sup> June, 2015 notified for extension of time for filing of Notice of appointment of the Cost Auditor for the F.Y. 2015-16 in Form CRA-2 and filing of cost audit report to the Central Government for the F.Y. 2014-15 in form CRA-4. Date extended upto 30th June, 2015 & 31st August, 2015 respectively.

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

The Ministry of Commerce & Industry, Department of Commerce vide Notification No: 11 /2015-2020, dated 15<sup>th</sup> June 2015, notified regarding provision for Import, auction/sale and re-export of rough diamonds in Special Notified Zone (SNZ) notified insertion of new Para 4.49 A on Special Notified Zone in FTP 2015-20.

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

The RBI vide Circular No. 110, RBI/2014-15/643, dated June 18, 2015 announced to move from manual reporting of BEF statement. Now submission on line in Extensible Business Reporting Language (XBRL) system is to be used from half year ended June 2015.

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

### COURT DECISIONS

#### SULAKSHANA CIRCUITS LTD VERSUS ROLEX METERS PVT. LTD (ANDHRA PRADESH HIGH COURT)

**BRIEF:** Winding up petition u/s 433 and 434 of the Companies Act 1956 where the respondent company is a profit making company and not a single instance of any creditor's legal action before any forum was pointed out whether prima facie dispute exists about the debt.

**OUR TAKE:** The hon'ble ANDHRA PRADESH HIGH COURT held that keeping in view the ratio of the decision of the Supreme Court in M/s. MADHUSUDHAN GORDHANDAS & CO. v. MADHY WOOLLEN INDUSTRIES PVT. LTD. [1971 (10)



TMI 49 - SUPREME COURT OF INDIA ] it has to held that the defense of the respondent company appears bonafide but the exact amount of debt, which is disputed, cannot be ascertained on the basis of the evidence on record. However, it cannot be said that the defense of the respondent company is not a substantial defense. Since the object and purpose of the present winding up petition is not regarding quantification of debt due and payable, so far as is relevant for the purpose of the present petition, though the petitioner/creditor has prima facie established entitlement for the amount, as claimed in the company petition, it cannot be said that the defense of the respondent company is mere moonshine and is only raised for the purpose of avoiding its inability to pay the debt.

Following principles related to bona fide disputes evolved from the Supreme Court decision in Tube Investments of India Ltd. - If there is dispute as regard the payment of sum towards principal however small, petition for winding up is not maintainable. Existing of dispute with regard to payment of interest cannot be construed as existence of bona fide

dispute. If there is no bona fide dispute with regard to sum payable towards principal, it is open to the creditor to resort both the remedies of filing a civil suit as well as filing a petition for winding up. In the present case also it is not shown that the respondent company is unable to meet its liability as and when they accrued. It is also accepted in the present case that the respondent company is a profit making company and not a single instance of any creditor's legal action before any forum was pointed out by P.W.1. In view of that, therefore, since, prima facie, dispute exists about the debt, as claimed by the petitioner company, The court do not find any justification for ordering winding up of the respondent company.

There are neither pleadings nor any evidence to support the petitioner's claim that the respondent company is liable to be wound up on the ground that such order would be just and equitable. On the contrary, the facts, on record, clearly show that a profit making company for the last more than three years is not required to be wound up on any ground. Petition for winding up dismissed.

## We may be contacted at the following offices:

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