



# ASC Times

All India Taxes Weekly Referencer

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## Solving any tax puzzle

Tax saving advice across all the taxes



## From the CEO's Desk



should also be not high. Now it is government's duty to encourage these types of efforts and should deal with the red tapism very strongly.

Alok Kumar Agarwal

CEO

ASC Group

Dear Reader,

Speculations are rife as the Budget 2016 is just round the corner. Not only the whole finance ministry is engrossed in preparing the details but for the first time Prime Minister Mr. Modi, unlike his predecessors, actively involved in the process of budgeting of the resources. Ideas and suggestions are pouring in, and the finance department has a big responsibility to mitigate uncertainty and dissatisfaction as much as possible. More so, when the world economy going through a rough phase, only India seems like a bright spot. With a stable Government in the Centre and current demographic advantage, Budget 2016 needs to focus on simplifying tax regulations, corporate and Individual, for not only creating an export oriented conducive environment but also hassle free and lower TDS (Tax deduction at source) regime.

Here, we can summarize the focus of the Government for preparing the budget. In Minister of State for Finance Jayant Sinha's words, "We are working very hard in the Finance Ministry to be able to prepare a Budget that will truly eradicate poverty, provide prosperity for our farmers, help in massive job creation for young people and provide a better quality of life for all Indian citizens," He further added on his twitter handle that the Budget will be forward looking and "that will ensure that India continues to be a haven of stability and growth in a very turbulent global environment".

Inspired by the 'Digital India' and 'Make in India', people are ready to expand and for taking risk. One such example is of Patanjali, with 500 products (Foods and Cosmetics) and over Rs. 5000 crore revenue, it's an upcoming Indian brand with not only good products but also rightly priced. While addressing a gathering of 600 entrepreneurs, Ramdev, the man behind Patanjali, said India has a huge potential and the entrepreneurs should work to promote good Swadeshi products and prices

## TAX CALENDER

| Due Date    | Description              | Law   |
|-------------|--------------------------|---|
| 21 February | Deposit of Tax           | Assam VAT, Delhi VAT, Maharashtra VAT, Meghalaya VAT, Orissa VAT                            |
|             | Return Filing            | Assam VAT, Assam VAT, Maharashtra VAT, Meghalaya VAT, Meghalaya VAT, Orissa VAT, Orissa VAT |
|             | Deposit of TDS           | Maharashtra VAT   |
|             | Issue of TDS Certificate | Maharashtra VAT   |
| 22 February | Deposit of Tax           | Gujarat VAT   |
|             | Deposit of TDS           | Gujarat VAT   |
|             | Issue of TDS Certificate | Delhi VAT   |
|             | Return Filing            | Tamil Nadu VAT  |
| 25 February | Deposit of Tax           | Rajasthan VAT, Uttarakhand VAT  |
|             | Issue of TDS Certificate | Mizoram VAT   |
|             | Return Filing            | Jharkhand VAT   |
| 28 February | Deposit of Tax           | Arunachal Pradesh VAT   |
|             | Return Filing            | Arunachal Pradesh VAT   |

## COUNTRY WIDE HOLIDAYS FOR THE WEEK

| Date   | Occasion/Festival      | Region                             |
|--------|------------------------|------------------------------------|
| 22 Feb | Guru Ravi Das Birthday | Haryana, Himachal Pradesh & Punjab |

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# CENTRAL TAXES

## SERVICE TAX

### CIRCULARS & NOTIFICATIONS

**The Govt. vide Notification No. 04/2016-ST dated 15<sup>th</sup> February 2016**, notify that annual return to be furnished by every person mentioned in column (2) in respect of all transactions of the nature and value specified in the corresponding entry in column (3), recorded or received by him during every financial year beginning on or after the 1st day of April, 2015, in the Form AIRF, along with the Annexure to the said Form, as specified in column (4).

OUR TAKE: Readers are requested to read the said Notification and go through the said table as specified in notification. It is self-explanatory.

**The Govt. vide Notification No. 05/2016-ST dated 17<sup>th</sup> February 2016**, amends notification no. 22/2015-ST dated 6.11.2015, for the words, brackets and figure "notification issued under sub-section (1)", the words, brackets and figures "notification or special order issued under sub-section (1) or as the case may be under sub-section (2)" shall be substituted.

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

**The Govt. vide Notification No. 06/2016-ST dated 18<sup>th</sup> February 2016**, notify that the Central Government hereby appoints the 1st day of April, 2016 as the date on which the provisions of sub-section (1) of section 109 of the said Act shall come into effect.

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

**The Govt. vide Notification No. 07/2016-ST dated 18<sup>th</sup> February 2016**, amend Notification No. 25/2012 by inserting new entry for granting exemption from service tax for the services provided by Government or a local authority

to a business entity having turnover up to rupees of ten lakhs in the preceding financial year

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

### COURT DECISIONS

#### M/S. EMPEE DISTILLERIES LTD. VERSUS DEPUTY COMMISSIONER OF SERVICE TAX [MADRAS HIGH COURT]

**BRIEF:** CESTAT dismissed the appeal for non-prosecution. The order passed by the CESTAT with regard to the non-appearance of the Assessee is cryptic and devoid of reasons. The reasons are the soul of the Judgment. The order passed without giving reasons cannot be sustained.

OUR TAKE: The hon'ble MADRAS HIGH COURT held that these submissions made clearly go to show that the Assessee has got an arguable case. The order passed by the CESTAT with regard to the non-appearance of the Assessee is cryptic and devoid of reasons. The reasons are the soul of the Judgment. The order passed without giving reasons cannot be sustained. [Matter restored before the tribunal]

#### K.O. PERIYAKARUPPAN VERSUS UNION OF INDIA AND THE COMMISSIONER OF CENTRAL EXCISE. AND P. VIVEKANANDAN VERSUS THE UNION OF INDIA AND OTHERS [MADRAS HIGH COURT]

**BRIEF:** Management, Maintenance or Repair of roads (MMR), exemption has been extended even for the earlier period from 16.06.2005 to 26.07.2009

OUR TAKE: The Hon'ble MADRAS HIGH COURT held that Notification No.24/2009-Service Tax, dated 27.07.2009, which was issued under Section 93 of the Finance Act, 1994, also answered the question as to whether the above Notification would have retrospective effect for the period from 2005 to 2009. The special provision for exemption in certain cases relating to service tax on repair of roads was made in Section 97 of the Finance Act, 1994. The Notification No.24/2009 states that the exemption has been extended even for the earlier period from 16.06.2005 to 26.07.2009. Writ petition allowed. [Decided in favour of assessee]

**M/S. COGNIZANT TECHNOLOGY SOLUTIONS VERSUS CCE & ST (LTU) , CHENNAI [CESTAT CHENNAI]**

**BRIEF:** Refund of unutilized CENVAT credit on export of services - prescribed formula - The order rejecting the refund claim by adopting the wrong method of computation is not justified and liable to be set aside.

**OUR TAKE:** The hon'ble CESTAT CHENNAI held that The order of the LA rejecting the refund claim by adopting the wrong method of computation is not justified and liable to be set aside to that extent of restriction of the refund claim. We hold that the value of export turnover should be equal to the total turnover and the value of SEZ exports should be included in the export turnover (numerator). Accordingly, the appellants are eligible for the full refund claim. **[Decided against the revenue and in favour of assessee]**

**PIRAMAL ENTERPRISES LTD. VERSUS COMMISSIONER OF SERVICE TAX MUMBAI [CESTAT MUMBAI]**

**BRIEF:** Refund of service tax based on credit note - value of services provided (sharing of expenses) earlier were reduced as per the mutual agreement - Refund allowed.

**OUR TAKE:** The hon'ble CESTAT MUMBAI held regarding unjust enrichment, re-negotiation after initial payments does not, in any way, weaken the claim of the appellant because the fact of reduced net consideration is incontrovertible; the transaction does not extend to a chain beyond the appellant and M/s Nicholas Piramal and therefore, it can be deduced that the incidence of tax has had no scope of being passed on. Refund allowed. **[Decided in favour of assessee]**

**J.P. MORGAN SERVICES INDIA PRIVATE LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE (SERVICE TAX) , MUMBAI [CESTAT MUMBAI]**

**BRIEF:** Refund - tax paid on input services utilized for export services - failure to submit the relevant documents and follow the procedures as prescribed - when it comes to substantial benefit the absence of specific embargo in the rules, the benefit should not be denied to an assessee.

**OUR TAKE:** The hon'ble CESTAT MUMBAI held that it is clear that if the assessee pays service tax, it shall be available, as Cenvat credit to the postal department and to that extent net liability of service tax shall stand reduced while paying the service tax by the postal department. Therefore, it is an exercise of revenue neutral for this reason demand does not exist. We, therefore, drop the demand on the point of revenue neutrality without addressing the issues of taxability of service tax and limitation. **[Decided in favour of assessee]**

**M/S DEWSHREE NETWORK P LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX-SURAT-I [CESTAT AHMEDABAD]**

**BRIEF:** The service provider did not sign Cenvat Credit - duty paying documents - computer generated invoices - the condition of Rule 9(2) were fulfilled. It is also noticed that on the identical situation, the Commissioner of Central Excise allowed the credit in respect of the other assessee

**OUR TAKE:** The hon'ble CESTAT AHMEDABAD held that the conditions of Rule 9(2) were fulfilled. It is also noticed that on the identical situation, the Commissioner of Central Excise allowed the credit in respect of the other assessee - However, it is required to examine the documents and therefore the matter is sent back to the Adjudicating Authority to decide afresh after considering the documents and other facts in so far as lose of original invoices due to flood. Matter remanded back. **[Decided partly in favour of assessee]**

**ADITYA VIDYUT APPLIANCES LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, MUMBAI [CESTAT MUMBAI]**

**BRIEF:** Taxability of repairing activity undertaken by the appellant of transformers manufactured by other manufacturers. The tender process through which the appellant got the contract for repairing the transformers is only a "work order" and contract for repair and it is not a "maintenance contract". Service Tax was not leviable during the relevant period.

**OUR TAKE:** The hon'ble CESTAT MUMBAI held that the requirement of statute prior to 15.06.2005 for taxability of the services rendered is very clear i.e. that the maintenance of repairs has to be provided by any person under "maintenance contract" or agreement. Undisputedly in the case in hand for the entire period, there was no maintenance contract entered by the appellant with the State Electricity Board for repairs of their transformers. - The tender process through which the appellant got the contract for repairing the transformers is only a "work order" and contract for repair and it is not a "maintenance contract". - Service Tax was not leviable during the relevant period - **[Decided in favour of assessee]**

## CENTRAL EXCISE

### CIRCULARS & NOTIFICATIONS

**The Govt. vide Instruction F. No. 96/54/2014-CX.1 dated 18<sup>th</sup> February 2016**, issued list of prosecution cases in central excise and directed to this office letter of even no. dated 11<sup>th</sup> August 2015 on the above mentioned subject.

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

### COURT DECISIONS

#### **MANGALAM ORGANICS LIMITED VERSUS UNION OF INDIA (DELHI HIGH COURT)**

**BRIEF: Manufacture of rosin and turpentine without aid of power - seeking retrospective exemption is not a constitutional right.**

**OUR TAKE:** The hon'ble **DELHI HIGH COURT** held that we do not find any fault with such a view and decision of the Government. We are further of view that discretion is granted to the Government to issue or not to issue such a notification and the discretion has been exercised after conducting survey and resurvey and on a justifiable ground, the said decision, in our view, does not require any interference. Writ petition dismissed. **[Decided against the assessee]**

#### **KETAN POTTERY WORKS AND 4 Versus UNION OF INDIA AND 2 [GUJRAT HIGH COURT]**

**BRIEF: Unconstitutionality in SSI Exemption - Exports to Nepal - notification discriminatory - the portion "and Nepal" appearing in Explanation Clause (G) to SSI Notification No.8 of 2003 declared unconstitutional with effect from 01.03.2012.**

**OUR TAKE:** The hon'ble **GUJRAT HIGH COURT** held that there cannot be further sub-classification of SSI units exporting to Nepal and those SSI units exporting to the countries other than Nepal since after 01.03.2012 the distinction has been obliterated. This distinction, which was prevalent until 01.03.2012, lost its relevance because of change of the Government of India policy. Continued reference of exports to Nepal in SSI exemption notification No.7/2003 would render, to that extent, such notification discriminatory and, therefore, violative of Article 14 of the Constitution.

Under the circumstances, the portion "and Nepal" appearing in Explanation Clause (G) to SSI Notification No.8 of 2003 is declared unconstitutional with effect from 01.03.2012.

#### **PERFECT THREAD MILLS LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, JAIPUR-II (CESTAT NEW DELHI)**

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

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

#### **COMMISSIONER OF CENTRAL EXCISE DELHI –I VERSUS THE HEELS & ANOTHER [DELHI HIGH COURT]**

**BRIEF: Classification - manufacture - change in the scope of tariff entries - iron and steel structures like trusses, columns, staircase, windows and section etc. - These steel structures are commonly known as component parts of building/ shed. These goods are not excisable.**

**OUR TAKE:** The hon'ble **DELHI HIGH COURT** held that The CESTAT has held that even if the affixing of a sticker to the footwear in question may amount to manufacture, the Respondents would nevertheless be entitled to exemption under the aforementioned notification as an SSI unit. Revenue appeal dismissed. **[Decided against the revenue]**

#### **COMMISSIONER OF CENTRAL EXCISE, INDORE (MP) VERSUS M/S KRITI INDUSTRIES INDIA LTD. [CESTAT NEW DELHI]**

**BRIEF: Demand of interest - Though the product is made dutiable w.e.f. 1.3.2003, there was no liability to pay duty on that date, as the amendment occurred only on 28.02.2005. Demand of interest set aside**

**OUR TAKE:** The hon'ble **CESTAT NEW DELHI** held that the amount falls due only after the insertion of the amendment. The respondents discharged their liability within the time limit. Though the product is made dutiable w.e.f. 1.3.2003, there was no liability to pay duty on that date, as the amendment occurred only on 28.02.2005. In our considered opinion, in the present case, there is no liability to pay interest. **[Decided in favour of assessee]**

**ARBES TOOLS PVT. LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, MUMBAI-II [CESTAT MUMBAI]**

**BRIEF:** Denial of benefit of CENVAT Credit on Xerox copy of courier bill of entry - appellant have correctly claimed the CENVAT Credit on the photocopy of the courier bill of entry filed by them and CENVAT Credit cannot be denied on mere technical grounds.

**OUR TAKE:** The hon'ble **CESTAT MUMBAI** held that objection of the department is that the appellants have not produced the original bill of entry and the photocopy of the courier bill of entry or consolidated courier bill of entry is not admissible for denying credit under Rule 9. Thus, hold that the appellant have correctly claimed the CENVAT Credit on the photocopy of the courier bill of entry filed by them and CENVAT Credit cannot be denied on mere technical grounds. **[Decided in favour of assessee]**

**VIKASH J. SHAH, DIRECTOR AND M/S. SHAH YARN TEX (P) LTD. VERSUS THE COMMISSIONER (APPEALS) , COIMBATORE AND OTHERS [MADRAS HIGH COURT]**

**BRIEF:** Eligibility of CENVAT credit based on tribunal decision - In the absence of the Department challenging the findings of the Tribunal that there is no justification to deny CENVAT Credit, the Revenue has no case and the Department is not at liberty to demand either interest or penalty.

**OUR TAKE:** The hon'ble **MADRAS HIGH COURT** held that when the input duty credit is allowed, the duty is deemed to have been paid on the original date of payment of duty. When input duty credit is allowed, then there is no question of any liability to pay further duty. Further, when the Central Excise Act, 1944 and the Rules framed there under, permit the adjustment of CENVAT Credit, and when the CENVAT Credit is granted, there is no outstanding duty payable and therefore, the question of payment of interest and penalty do not arise. **[Decided in favour of assessee]**

## CUSTOMS

### CIRCULARS & NOTIFICATION

**The Govt. vide Notification No. 25/2016 Cus (NT) dated 15<sup>th</sup> February, 2016**, amend notification No. 36/2001-Customs (N.T.), dated the 3<sup>rd</sup> August, 2001

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

**The Govt. vide Notification No. 26/2016 dated 15<sup>th</sup> February 2016**, hereby appoints officers mentioned in column 5 to act as a Common Adjudicating Authority to exercise powers and discharge duties conferred or imposed on officers mentioned in column (4) of Table mentioned in respect of cases mentioned in column (3) of said Table for purpose of adjudication of show cause notices mentioned.

**OUR TAKE:** Readers are requested to read the said Notification. Further, to go through the table mentioned in notification. It is self-explanatory.

**The Govt. vide Notification No. 09/ 2016 dated 16<sup>th</sup> February 2016**, notify that Customs duty applicable on electricity imported or cleared from SEZ to DTA in table for S. No. 145 & 146.

**OUR TAKE:** Readers are requested to read the said Notification. Further, to go through the table mentioned in notification. It is self-explanatory.

**The Govt. vide Notification No. 10/2016-Cus (NT) dated 17<sup>th</sup> February 2016**, amend notification No. 12/2012-Customs, dated the 17<sup>th</sup> March, 2012.

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

**The Govt. vide Notification No. 27/2016 dated 18<sup>th</sup> February 2016**, amend notification of the Government of India in the Ministry of Finance (Department of Revenue) No.12/97-CUSTOMS (N.T.), dated the 2nd April, 1997.

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

**The Govt. vide Notification No. 28/2016 dated 18<sup>th</sup> February 2016**, amend notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 63/94-CUSTOMS (NT), dated the 21st November, 1994.

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

**The Govt. vide Notification No. 29/2016 dated 18<sup>th</sup> February 2016**, notify that the rate of exchange of conversion of each of the foreign currencies specified in column (2) of each of Schedule I and Schedule II, into Indian currency or vice versa, shall, with effect from 19th February, 2016, be the rate mentioned against it in the corresponding entry in column (3) thereof, for the purpose of the said section, relating to imported and export goods.

**OUR TAKE:** Readers are requested to read the said Notification. Further, to go through the table mentioned in notification. It is self-explanatory.

## COURT DECISIONS

### COMMISSIONER OF CUSTOMS VERSUS M/S K.M. GANTRA & CO. [SUPREME COURT]

**BRIEF:** Jurisdiction of tribunal to exercise its discretion and grant relief to the respondents - Miss-use of the DEEC and DEPC Scheme and submitting fictitious or forged shipping bills. The misconduct reflects a chain of acts. In such a situation, we are disposed to think that the discretion exercised by the tribunal is inappropriate.

**OUR TAKE:** The hon'ble SUPREME HIGH COURT held that it is clearly perceptible that there has been number of violations by the respondent. The enquiry report which formed the plinth of the order of the Commissioner demonstrates that by virtue of the transfer of the licence in contravention of the Regulations, on many an occasion, immense financial loss has been caused to the revenue. As the factual matrix would exposit, it is a serious violation. The misconduct reflects a chain of acts. In such a situation, we are disposed to think that the discretion exercised by the tribunal is inappropriate. Resultantly, we allow the appeal, set aside the orders of the High Court and the tribunal, and restore that of the Commissioner. **[Decided in favour of Revenue]**

### M/S O.M. TRADERS VERSUS THE UNION OF INDIA AND OTHERS [KARNATAKA HIGH COURT]

**BRIEF:** Import of poppy seeds from Turkey - The explanation offered by the respondents (government) as to the reason and rationale in adopting a prescription of a provisional cap and a country cap, in so far as the imports from Turkey is concerned, is also acceptable.

**OUR TAKE:** The hon'ble KARNATAKA HIGH COURT held that the explanation offered by the respondents as to the reason and rationale in adopting a prescription of a provisional cap and a country cap, in so far as the imports from Turkey is concerned, is also acceptable. Hence, the petition lacks merit and is hereby dismissed.

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

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

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

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

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

**OUR TAKE:** The hon'ble CESTAT MUMBAI held that there is no dispute that the goods were imported for the purposes as specified in the notification. Other condition subject to which the benefit of concessional rate of duty was available and had been fulfilled. The notification covers the machine imported by the appellants. Appellant succeeds on both counts. The appeal is allowed. **[Decided in favour of assessee]**



## INCOME TAX

### COURT DECISIONS

**M/S SANCTUM WORKWEAR PVT. LTD. VERSUS COMMISSIONER OF CUSTOMS (EXPORT) NHAVA SHEVA [CESTAT MUMBAI]**

**BRIEF:** Duty drawback - Mis-declared the goods in the Shipping Bill to claim higher drawback. The claim of drawback separately on Jackets & Pants is an error but malafide intention cannot be ascribed to invoke penalty.

**OUR TAKE:** The hon'ble CESTAT MUMBAI held there is no mis-declaration of description of goods in the Shipping Bill. Neither is there any mis-declaration of value. The claim of drawback separately on Jackets & Pants is an error but malafide intention cannot be ascribed to invoke penalty. Section 113(i) can be invoked when there is mis-declaration of description or value. In this case it is not so. **[Decided in favour of assessee]**

**M/S INDIA TOURISM DEVELOPMENT CORPORATION VERSUS COMMISSIONER OF CUSTOMS (AIRPORT CSI) , MUMBAI [CESTAT MUMBAI]**

**BRIEF:** Remission of duty on warehoused goods - damage due to unprecedented floods - In the normal course, remission of duty under Section 68 of the Customs Act is granted if there is loss because of natural causes. However, relinquishment of title and consequent remission of duty is not permissible where an offence has been committed.

**OUR TAKE:** The hon'ble CESTAT MUMBAI held that remission of duty under Section 68 of the Customs Act is granted if there is loss because of natural causes. However, relinquishment of title and consequent remission of duty is not permissible where an offence has been committed. In the present case, offence of not extending the bond period was committed and such goods are to be treated as goods improperly removed in terms of Section 72(1)(b) for violation of Section 61(1)(b) as goods had not been removed before the expiry of the bond period. Appeal dismissed. **[Decided against the appellant]**

**HYOSUNG CORPORATION Versus THE AUTHORITY FOR ADVANCE RULINGS AND ANR [DELHI HIGH COURT]**

**BRIEF:** Advance Rulings - it serves no purpose, and certainly not that of the Petitioner, to pronounce on the validity of the portion of clause (i) of Section 245R(2) of the Act, that exempts resident PSUs from the bar of that provision, to be violative of Article 14 of the Constitution.

**OUR TAKE:** The hon'ble DELHI HIGH COURT held that the applications filed by the Petitioner in respect of the transaction of supply of equipment for AY 2008-09 and 2009-10 were rightly rejected by the AAR since on the date of filing of such applications before the AAR, the question raised therein was already pending before the income tax authorities by virtue of the notices under Section 142 (1) of the Act having already been issued to the Petitioner.

**M/S SANRA SOFTWARE LTD. VERSUS THE DY. CIT, CHENNAI [MADRAS HIGH COURT]**

**BRIEF:** Deduction u/s 80-IA - Whether the Tribunal was right in holding that the deduction under Section 80-IA is not allowable at all to the assessee since there was no taxable income though the unit eligible for deduction had net profit.

**OUR TAKE:** The hon'ble MADRAS HIGH COURT held that the question of deduction would not arise, if there were no positive income. In this case, the Assessee having maintained single set of books of accounts wants to claim that there was a positive income in Pondicherry unit but there was a loss in Chennai unit. Therefore, the Assessee is not entitled to the said benefit, in view of the decision of the Supreme Court in IPCA Laboratory vs. Deputy Commissioner of Income Tax [2004, Supreme Court]. **[Decided against assessee]**

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

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

**OUR TAKE:** The hon'ble ITAT MUMBAI held that the totality of facts clearly indicates that the assessee did not establish the nexus between the borrowed funds and the investment so made with a clear intention to conceal the income by

furnishing inaccurate particulars of such income, therefore, in our view, penalty was rightly imposed by the Assessing Officer. The stand of the Revenue is further fortified by the fact that even the assessee did not file appeal against the disallowance of huge interest expenditure while deciding the quantum addition and accepted the same. **[Decided against assessee]**

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

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

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

#### **M/S FORUM PROJECTS PVT. LTD. VERSUS DCIT, CENTRAL CIRCLE-II, KOLKATA. [ITAT KOLKATTA]**

**BRIEF: Disallowance u/s 14A. The action of the AO in directly embarking on Rule 8D (2) Of the Rules is not appreciated and hence no disallowance u/s 14A could be made in the facts of the instant case.**

**OUR TAKE:** The hon'ble **ITAT KOLKATTA** held that action of the Learned AO in directly embarking on Rule 8D (2) of the Rules is not appreciated and hence no disallowance u/s 14A of the Act could be made in the facts of the instant case. **[Decided in favour of the assessee]**

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

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

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

# STATE TAXES

## ALL INDIA VAT

### BIHAR

**The Govt. vide Notification No. 45 dated 17<sup>th</sup> February 2016**, amend the notification number S.O. 45, dated the 4th May, 2006 issued by the Commercial Taxes Department composition scheme for brick.

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

### DAMAN & DIU

**The Govt. vide Circular No. DMN/VAT/VATSoft/2013-14/502 dated 18<sup>th</sup> February 2016**, introduced online facility of statutory forms for all the registered dealers from the Financial Year 2005-2006 onwards.

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

### DELHI

**The Govt. vide Circular No. 38 dated 18<sup>th</sup> February 2016**, for framing central assessments which required registered dealers who have made inter-state sales at concessional rates against 'C' forms or made stock transfers against 'F' Forms or made penultimate sale made against 'H' forms are required to file details of such forms in a reconciliation return (Form 9).

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

### RAJASTHAN

**The Govt. vide Notification No.F.16 (95) TAX /CCT/14-15/7548 dated 15<sup>th</sup> Feb 2016**, notify that the e-Commerce companies or the persons are required to file the information for the month of February, 2016 latest by 15th March, 2016 and for the subsequent months, within 15 days of the end of the relevant month.

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

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**The Govt. vide Notification No. F.12(105) FD/TAX/2014-PT. I-178 dated 15<sup>th</sup> Feb 2016**, notify that the State government may grant a customized package under section 11 of the Rajasthan Enterprises Single Window Enabling and Clearance Act, 2011, to the cement manufacturing enterprises investing more than Rs. 750 crores.

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

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**The Govt. vide Clarification No. F.16 (95)/Tax/CCT/14-15/7548 dated 15<sup>th</sup> February, 2016**, issued clarification regarding information to be submitted by e-Commerce companies

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

#### TAMIL NADU

**The Govt. vide Notification No. 35 dated 16<sup>th</sup> February 2016**, notify that dealer have to furnish CST details in Form 1.

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

#### COURT DECISIONS

**MI STEEL PROCESSING INDIA PVT. LTD. VERSUS THE ASSTT. COMMISSIONER (CT) , THE APPELLATE DEPUTY COMMISSIONER (CHENNAI-SOUTH) (MADRAS HIGH COURT)**

**BRIEF:** Question of Refund of amount deposited during pendency of appeal as per the direction and when appeal was dismissed as not maintainable - TNVAT - amount to be refunded.

**OUR TAKE:** The hon'ble **MADRAS HIGH COURT** held that When the second respondent held that there is no jurisdiction to adjudicate on the issues raised, then the consequential orders passed are also without jurisdiction and it is a nullity. It is settled law that any order passed without jurisdiction is non-est. in the eye of law. Therefore, the second respondent should have ordered the return of

amount, which was already paid by the appellant herein. Therefore, the claim of the appellant that the learned single judge ought to have specifically directed the second respondent to return the amount is correct and it has to be accepted.

#### STATE OF JHARKHAND & OTHERS VERSUS TATA STEEL LTD. & OTHERS [SUPREME COURT]

**BRIEF:** Repayment schedule of deferred tax scheme after conversion of sales tax scheme to value added tax (VAT) scheme -The repayment schedule is 5 years from the expiry of eligibility period of deferment. The period of 5 years has to be so arranged that it does not go beyond 13 years from the date of deferment.

**OUR TAKE:** The hon'ble **SUPREME COURT** held that Imposition of interest and penalty under the JVAT Act. Rule 66 - the question of levy of penalty as envisaged under Rule 66 of the Rules should not be made applicable to the case at hand. Assessee shall pay 12% interest per annum (and not 2.5% per month). [**Decided partly in favour of Revenue**]

#### BHUPINDER AUTO INTERNATIONAL VERSUS COMMISSIONER, TRADE & TAXES & OTHERS [DELHI HIGH COURT]

**BRIEF:** Pray for de-sealing of its business premises exercise the powers indiscriminately and routinely under DVAT - The action of the Respondents in proceeding to seal the premises of the Petitioner, almost in continuation of the action u/s 59 of the DVAT Act, and only for the failure to produce books of accounts, without anything more, is unsustainable in law.

**OUR TAKE:** The hon'ble **DELHI HIGH COURT** held that the action of the Respondents in proceeding to seal the premises of the Petitioner, almost in continuation of the action under Section 59 of the DVAT Act, and only for the failure to produce books of accounts, without anything more, is unsustainable in law. Learned counsel for the Petitioner states that the Petitioner is prepared to produce the records and accounts before the concerned VATO on any date as may be directed. Revenue directed to de-seal the property. [**Decided in favour of appellant**]

# OTHER UPDATES

## DGFT

The **Govt. vide Notification No 40/2015-20 dated 15<sup>th</sup> February 2016**, makes amendment in export policy of Pulses.

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

The **Govt. vide Trade Notice No. 01/93/180/20/AM-13/PC-2(B) dated 12<sup>th</sup> February 2016**, issued Instruction on applications for IEC / modification in IEC.

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

## ALLIED LAW

## COURT DECISIONS

### M/S LAXMI SADAN, SECTOR 19, REWARI VERSUS STATE OF HARYANA AND OTHERS [PUNJAB & HARYANA HIGH COURT]

**BRIEF:** Levy of tax on open space termed as “banquet halls” providing only accommodation or space for marriages/receptions in terms of Section 2(c) in the manner stated under Section 2(k) of the Haryana Tax on Luxuries Act, 2007 - The validity of the same is upheld and the petition is dismissed.

**OUR TAKE:** The hon’ble **PUNJAB & HARYANA HIGH COURT** held that the provisions of Explanation to Section 2(k) of the Act and also the other provisions of the Act to which an attempt has been made to assail as ultra vires, cannot be held to be beyond the legislative competence of the Haryana State Legislature or that they had exceeded its law making power or contravened any of the provisions of the Constitution of India on the basis of which it could be declared to be unconstitutional. The validity of the same is upheld and the petition is dismissed.

## LATEST NEWS ON PROPOSED GST

**17<sup>th</sup> Feb 2016**, The GST constitutional amendment bill is work in progress in the Rajya Sabha. After it is passed there, the bill be debated and taken up for voting in the state assembly.

**18<sup>th</sup> Feb 2016**, while GST introduction remains at top of the heap, the delay in implementing GST provides an opportunity to correct the flaws in current indirect tax system.

**18<sup>th</sup> Feb 2016**, In GST, Government is planning to reduce the rate of CST to 1% & Swach Bharat Cess to increase by 2 % that is in line with current GST amendment bill proposals

**19 Feb 2016**, while everyone has been chanting about GST since the past couple of years, no one has really ever wondered the impact of GST in general. BI India took the pain to understand and figure out what GST would really mean for the Indian economy as a whole.

**19 Feb 2016**, India lowered its GDP projection for current year from 8.1-8.5 percent to 07 -7.5 percent.

**20 Feb 2016**, A hike in service tax rates & removal of exemptions from excise for several consumer items are on the cards in the upcoming budget.

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