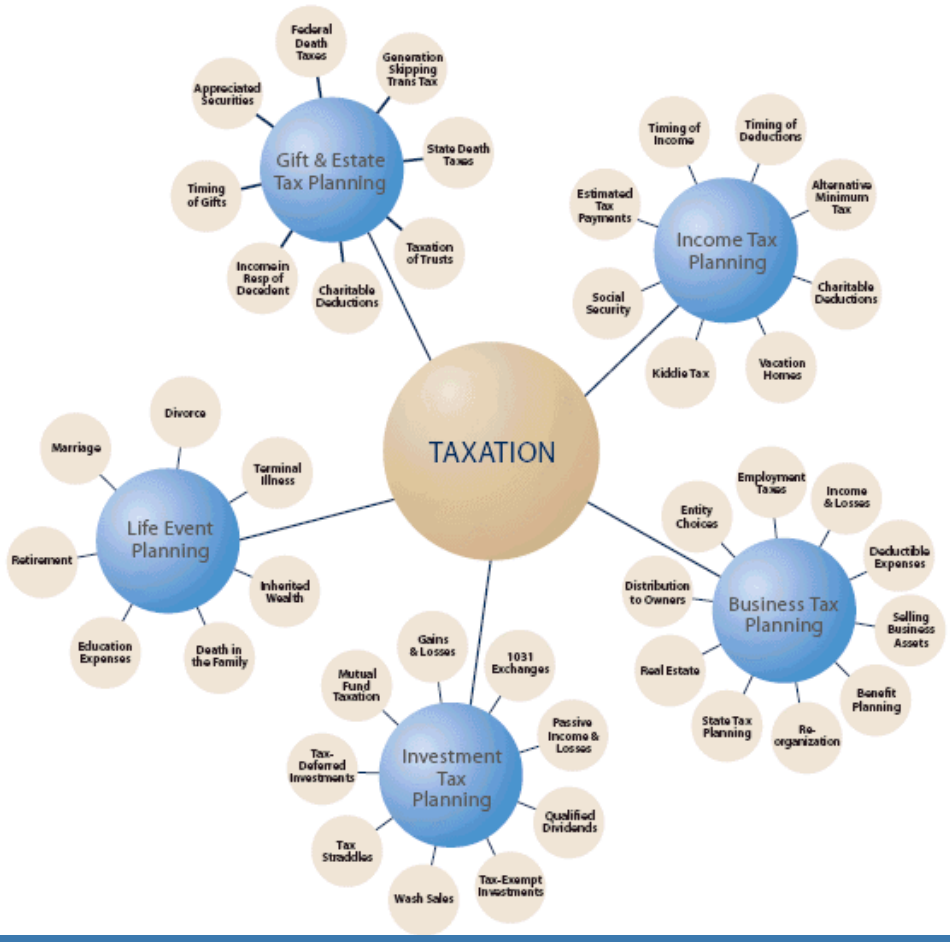
ASC Times

All India Taxes Weekly Referencer

Vol: Nov 23 - Nov 29, 2015



From the CEO's Desk

Alok Kumar Agarwal

CEO

ASC Group.

Dear Reader,

The discussion is on for GST but it has got stuck in the political logjam. And somehow industry is not very positive about that even in winter session of parliament, it would be passed by Rajya-Sabha. GST is not only required to bring clarity for domestic purposes as far as the tax structure is concerned, it is also very-very important for India in the international business scenario. For example as reforms slowed down in the last six months, credit ratings for India are also not improving. And it will be stressed further if government is backing away from reform commitment and fiscal deficit is not in control. With the Winter Session beginning on November 26, the NDA has to work out a strategy to seek Congress' support for the passage of the legislation.

We have lot of diversities in India in every sphere. We have highly educated people and also totally illiterate people as well. There are computer savvy and there are people who are not able to do simple tasks on computer and or mobile phones. So even if government has launched their mobile-apps for many services but still there are many people who are not able to avail the benefit of the same. One such service is paying one's income tax online or through an app. But still many people like to go to a CA for filling their tax returns, as they do not find it convenient to do it online. So a cloud based app is now available for CA's to file the tax return on behalf of their clients. ClearTax.in is targeting the professional CAs with the first-ever mobile tax-filing app for the Chartered Accountants (CAs). The app comes with a robust search filter to take-out client records via name, PAN number and date-of-birth. CAs can quickly check and advise their clients of the tax amount due, filing status, filing history, etc.

TAX CALENDER

Due Date	Description	Law
25 November	Deposit of Tax	Rajasthan VAT
	Issue of TDS Certificate	Mizoram VAT
	Return Filing	Jharkhand VAT
28 November	Deposit of Tax	Arunachal Pradesh VAT
	Return Filing	Arunachal Pradesh VAT
29 November	Return Filing	Gujarat VAT

INDEX GUIDE

COUNTRY WIDE HOLIDAYS FOR THE WEEK

Date	Occasion/Festival	Region
23 November	Seng Kutsnem	Meghalaya
24 November	Lachit Divas	Assam
	Martyrdom Day of Sri Guru Teg Bahadur Ji	Punjab, Uttar Pradesh
25 November	Guru Nanak's Birthday	All States & UT's except Andhra Pradesh, Bihar, Goa, Karnataka, Kerala, Lakshadweep, Manipur, Meghalaya, Puducherry, Sikkim, Tamil Nadu, Telangana, Tripura, Uttarakhand
28 November	Kanakadasa Jayanthi	Karnataka

CENTRAL TAXES

SERVICE TAX

NOTIFICATIONS & CIRCULARS

The **Govt. vide Circular No. 188/7/2015-ST, dated 16 November, 2015** issued Accounting code for payment of Swachh Bharat Cess.

OUR TAKE: Accounting codes have been allotted for the new Minor Head "506-Swachh Bharat Cess" and new Sub-heads as under:
Swachh Bharat Cess (Minor Head): 0044-00-506
Tax Collection: 00441493
Other Receipts (Interest): 00441494
Penalties: 00441496
Deduct Refunds: 00441495

COURT DECISIONS

M/S MANYATA PROMOTERS PVT. LTD. VERSUS THE UNION OF INDIA (KARNATAKA HIGH COURT)

BRIEF: Power to conduct service tax audit. Thought Rule 5A only providing access to the registered premises as also to the documents demanded for scrutiny by the Audit party the apprehension of the petitioner that audit team is likely to conduct an audit at the registered premises of the petitioner under the Service Tax Rules is misconceived.

OUR TAKE: The **Hon'ble KARNATAKA HIGH COURT** held that petitioner is required to comply with Rule 5A of the Rules in as much as providing access to its registered premises so as to assist the audit party in discharge of duties assigned as per departmental instructions. Even according to learned counsel Rule 5A of the Rules does not permit conducting an Audit but only providing access to the registered premises as also to the documents demanded for scrutiny by the Audit party. Therefore, the apprehension of the petitioner that audit team is likely to conduct an audit at the registered premises of the petitioner under the Service Tax Rules, is misconceived. [**Decided against appellant**]

THE COMMISSIONER OF CENTRAL EXCISE, AND SERVICE TAX LARGE TAXPAYER UNIT VERSUS M/S TAMILNADU PETROPRODUCTS LTD, THE CUSTOMS EXCISE AND SERVICE TAX APPELLATE TRIBUNAL (MADRAS HIGH COURT)

BRIEF: If upon a misconception of the legal position the assessee had paid the tax that he was not liable to pay and such assessee also happens to be an assessee entitled to certain credits such as CENVAT Credit the availing of the said benefit cannot be termed as illegal.

OUR TAKE: The **Hon'ble MADRAS HIGH COURT** held that first respondent/assessee was not liable to pay service tax on the transportation of goods both inward and outward upto 31.12.2004. The liability was imposed only with effect from 1.1.2005. But, unfortunately, the first respondent/assessee paid service tax, even at a time when there was no liability on them. Since they made payment of tax under the impression that they were due to pay, they claimed CENVAT Credit to that extent. It is not the case of the Department that the first respondent claimed CENVAT Credit in respect of an amount that they had not paid or in excess of the amount that they have paid. The only grievance of the Department is that if the assessee had paid tax which they were due to pay or if they had paid duty in excess of what they are liable to pay, the only course open to them is to claim refund and not to make use of CENVAT Credit. But, we do not think so. If, upon a misconception of the legal position, the assessee had paid the tax that he was not liable to pay and such assessee also happens to be an assessee entitled to certain credits such as CENVAT Credit, the availing of the said benefit cannot be termed as illegal. Therefore, we find no infirmity in the order of the Tribunal. [**Decided against Revenue**]

M/S. G. RAMAMOORTHI CONSTRUCTIONS (I) PVT. LTD. VERSUS THE COMMISSIONER (ADJUDICATION), COIMBATORE (MADRAS HIGH COURT)

BRIEF: Construction Services provided to various educational institutions. Before confirming the demand the issue is to be decided that whether the educational institutions to whom the petitioner provided construction services are profit oriented or whether they are established solely for educational purpose without any profit etc.

OUR TAKE: The **Hon'ble MADRAS HIGH COURT** held that admittedly, as on the date of passing the impugned proceedings, there was no evidence available before the first respondent to hold that whether the educational institutions to whom the petitioner provided construction services, are profit oriented or whether they are established solely for educational purpose without any profit, etc., While that being so, in the absence of any evidence, there is no justification on the part of the first respondent to hold contrary that too on mere non-production of such evidence

by the petitioner. In fact, till the impugned proceedings were passed by the first respondent, it was not known or expected by the petitioner that the first respondent would come to such a contrary conclusion. If at all the first respondent was of such view, he could have very well directed the petitioner by providing an opportunity to produce the relevant documentary evidence regarding the educational institutions to whom, the petitioner provided construction service and thereafter, he could have decided the issue.

Petitioner were under bona fide impression that the service tax on the constructions provided to the educational institutions is exempted as per Circular No.80, dated 17.9.2004 and that they only constructed classrooms, hostels, etc., which are primarily used for imparting education and not used either for commerce or industry and without deciding the issue that whether the construction provided by the petitioner to the educational institutions are used or to be used for commerce or industry in order to extend the benefit of exemption under the above said Circular, the first respondent has erroneously dealt with the issue holding that the educational institution to which the petitioner provided constructions, itself is an industry and running for profit impugned proceedings, dated 28.11.2014 of the first respondent are hereby set aside and the matter is remitted back to the first respondent to deal with the issue in terms of the exemption Circular No.80, dated 17.9.2004. [**Decided in favour of assessee**]

CENTRAL EXCISE

COURT DECISIONS

UNION OF INDIA VERSUS ALCOBEX METALS LTD. & ANR. (SUPREME COURT)

BRIEF: Marketability of product. Industrial dust arising during the course of manufacturing of brass and copper articles in the factory which is not a marketable commodity. Hence, not dutiable.

OUR TAKE: The **Hon'ble** High Court held that 'industrial dust' arising during the course of manufacturing of brass and copper articles in the factory of the respondent is not marketable. The **Hon'ble Supreme Court** held that 'industrial dust' in the present case is almost identically placed as the products, viz., dross and skimmings which were involved in the Indian Aluminium Co. Ltd.'s case (1995 (4) TMI 62 - SUPREME COURT OF INDIA). [**Decided against Revenue**]

C.C.E., VADODARA-I VERSUS M/S. NIRMA LTD. & ORS. (SUPREME COURT)

BRIEF: Determination of cost of production as per CAS-4 and inclusion of interest expenditure depreciation and profit margin for the purpose of Valuation of goods. Tribunal has rightly concluded that three elements are not to be included in the cost of production.

OUR TAKE: The **Hon'ble SUPREME COURT** held that the impugned order of the Tribunal shall reflect that the Tribunal has kept in mind the Costing Accounting Standard – 4 (CAS-4) as adopted by the Department itself. On that basis, it has come to the conclusion that the three elements of cost which were sought to be included by the Department could not be the factors which would be taken into consideration for arriving at the cost of production. After going through the reasons given by the Tribunal in support of the conclusions, we find no error therein. [**Decided against Revenue**]

VENKY HI-TECH ISPAT LTD. AND ORS. VERSUS CUSTOMS AND CENTRAL EXCISE SETTLEMENT COMMISSION AND ORS. (CALCUTTA HIGH COURT)

BRIEF: Validity of order of settlement commission. Since settlement under the Act is in the nature of a package the appellants having accepted immunity from prosecution cannot challenge the quantum of penalty imposed as harsh.

OUR TAKE: The **Hon'ble CALCUTTA HIGH COURT** held that appellants admittedly short paid duty by suppressing facts. Applications were filed disclosing fully and truly the duty liability. Section 32K, inter alia, speaks of immunity wholly or in part from the imposition of any penalty and fine under 'this Act'. Section 32K does not contain separate provision for calculation of total penalty and fine. Therefore, for calculation of penalty and fine, section 11AC of 'this Act', that is, Central Excise Act, 1944, is applicable. Keeping the statutory provisions in mind, under section 11AC, in a regular adjudication, the appellants would have been subjected to payment of penalty equal to duty found to have been evaded. In the instant case the appellants disclosed that the whole amount of duty evaded was Rs 1,09,92,429/-. Hence, the appellants were liable to pay an equal amount of penalty, that is Rs 1,09,92,429/-. As section 32 K empowers the Settlement Commission to reduce penalty and fine and to grant immunity from prosecution, a power a central excise officer does not possess under regular adjudication, the Commission had passed the order imposing a total penalty of Rs 52 lakhs, being a 'part' of the total penalty, and waving the balance and granting immunity from prosecution with respect to the case covered by the settlement. Thus, we find there is no infirmity in the order passed by the Commission. Since settlement under the Act is in the nature

of a package, as rightly contended by Mr. Bhardwaj, the appellants having accepted immunity from prosecution, cannot challenge the quantum of penalty imposed as harsh. [**Decided against assessee**]

COMMR. OF CENTRAL EXCISE, VADODRA VERSUS M/S HINDALCO IND LTD. (UNIT:BIRLA COPPER) (SUPREME COURT)

BRIEF: Claim of exemption from duty on production of gold bars. It is significant to note that the primary gold is the end product which is manufactured. The entry clearly describes that when the said primary gold is converted from any form of gold with the aid of power into bars as well the same would be treated as primary gold.

OUR TAKE: The **Hon'ble SUPREME COURT** held that it is clear from the reading of relevant entry in the exemption Notification that it exempts "primary gold" when the same is converted with the aid of power from 'any form of gold'. Explanation appended thereto defines the "primary gold" to mean gold in any unfinished or semi-finished form and includes among others, gold bars. From the process of manufacture that is explained above, it becomes clear that the gold bars are produced from gold mud. Gold mud would be qualified as "any form of gold" and the product in question viz. gold bars, therefore has to be treated as "primary gold".

What is relevant and important is that silver was recovered from anode slime and thereafter gold mud was recovered from silver. Insofar as the products in question viz. gold bars are concerned, these are produced from the gold mud. Thus, gold is converted in the form of bars from gold mud with the aid of power. It is undisputed that gold mud is a form of gold.

What is significant to note that the "primary gold" is the end product which is manufactured? The entry clearly describes that when the said "primary gold" is converted from any form of gold with the aid of power into bars as well, the same would be treated as "primary gold". [**Decided against Revenue**]

CUSTOMS

NOTIFICATIONS & CIRCULARS

The **Govt. vide Notification No. 108/2015-CUSTOMS, dated 13 November, 2015** amended TABLE-1, TABLE-2, and TABLE-3 of Notification No. 36/2001-Customs (N.T.), dated the 3rd August, 2001.

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

The **Govt. vide Notification No. 109/2015-CUSTOMS (N. T.), dated 16 November, 2015** amended the Customs, Central Excise Duties and Service Tax Drawback Rules 1995.

OUR TAKE: There is amendment in Rule 3, Rule 6, Rule 7. Readers are requested to read the said Notification. It is self-explanatory.

The **Govt. vide Notification No. 110/2015-CUSTOMS (N.T.), dated 16 November, 2015** notified All Industry Rates (AIR) of Duty Drawback w.e.f. 23.11.2015.

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

The **Govt. vide Notification No. 112/2015 - Customs (N.T.), dated 19 November, 2015** notified Rate of exchange of conversion of the foreign currency with effect from 20th November, 2015.

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

The **Govt. vide Notification No. 54/2015-Customs (ADD), dated 18 November, 2015** seeks to impose definitive anti-dumping duty on "Carbon Black used in rubber Applications", originating in or exported from China PR and Russia for a period of five years.

COURT DECISIONS

KADRI ENTERPRISE A PROPRIETOR CONCERN OF GULAM RASUL GULAM MUSTUFA SHAIKH VERSUS UNION OF INDIA & 2 (GUJARAT HIGH COURT)

BRIEF: Import of old and used tyres, a prohibited goods. In the absence of any power conferred upon the Ministry of Environment and Forests to specify any additional category of hazardous wastes the memorandum is merely in the nature of administrative instructions and has no enforceability in law.

OUR TAKE: The **Hon'ble GUJARAT HIGH COURT** held that goods that are covered thereunder are waste pneumatic

tyres and not used pneumatic tyres. The operations mentioned in the entry are to be done to the tyres which are waste and not second hand tyres which are to be reused. At this juncture reference may be made to the Chapter 40 of the CTI (HS) Classification of Export and Import Items, which clearly shows that there exists a category of Used Pneumatic tyres which fall under Exim Code 4012 20. Insofar as waste pneumatic tyres are concerned, they, prima facie, would be covered under heading 4004. In the absence of any power conferred upon the Ministry of Environment and Forests, to specify any additional category of hazardous wastes being traceable to any provisions of the Act or the rules, the impugned memorandum, as rightly submitted by the learned counsel for the applicant, is merely in the nature of administrative instructions and has no enforceability in law. Under the circumstances, the prohibition contained in the impugned office memorandum not being backed by any statutory provisions, prima facie, cannot be relied upon for the purpose of refusing to process the bills of entry submitted by the applicant. Applicant has made out a prima facie case for grant of interim relief. The balance of convenience also lies in favour of the applicant, inasmuch as, the import in question, prima facie, does not appear to be governed by the rules. [**Decided in favour of assessee**]

COMMISSIONER OF INCOME TAX, FARIDABAD VERSUS SHRI MANGAL SINGH (PUNJAB & HARYANA HIGH COURT)

BRIEF: Validity of assessment in the status of HUF. The fact that the assessee himself had filed the return in the status of HUF coupled with the provisions of Section 292BB of the Act the Tribunal was not right in declaring the assessment order as non-est.

OUR TAKE: The **Hon'ble PUNJAB & HARYANA HIGH COURT** held that the fact that the assessee himself had filed the return in the status of HUF coupled with the provisions of Section 292BB of the Act, the Tribunal was not right in declaring the assessment order as non-est.

In view of the above, the substantial questions of law are answered in favour of the revenue and against the assessee.

COMMISSIONER OF CUSTOMS (EXPORT), CHENNAI VERSUS M/S. SEVEN SEAS PETROLEUM PVT. LTD. (CESTAT CHENNAI)

BRIEF: When the adjudicating authority has transferred the refund to the consumer welfare fund the appellate authority has not even bothered to examine whether there was really unjust enrichment. Matter remanded back.

OUR TAKE: The **Hon'ble CESTAT CHENNAI** held that it is strange to read the order of the appellate Commissioner in the present case. While in the case decided as above he says that the appeal of the Revenue is frivolous, in the present case he remands the matter on the ground that Chartered Accountant s certificate is not acceptable to him. This clearly shows much emphasis was on only Chartered Accountant s certificate but not on law. It is high time that the authority should be aware of the provisions of law and the judicial pronouncement as well as the safeguard measures granted to the parties to the proceeding by sub-section (4) of section 128A and protest interest of justice thereby.

Strangely in the present appeal, appellate authority has not at all examined whether there was eligibility of the appellant to the refund. When the adjudicating authority has transferred the refund to the consumer welfare fund, the appellate authority has not even bothered to examine whether there was really unjust enrichment. Matter remanded back to the adjudicating authority. [**Decided in favour of Revenue**]

INCOME TAX

COURT DECISIONS

M/S. STATE BANK OF PATIALA VERSUS COMMISSIONER OF INCOME TAX, PATIALA (SUPREME COURT)

BRIEF: The Interest Tax Act unlike the Income Tax Act has focused only on a very narrow taxable event which does not include within its ken interest payable on default in payment of amounts due under a discounted bill of exchange.

OUR TAKE: The **Hon'ble SUPREME COURT** held that Section 2(7) itself makes a distinction between loans and advances made in India and discount on bills of exchange drawn or made in India. It is obvious that if discounted bills of exchange were also to be treated as loans and advances made in India there would be no need to extend the definition of "interest" to include discount on bills of exchange. Indeed, this matter is no longer res integra.

The expression "payable in any manner in respect of any moneys borrowed" is an expression of considerable width. It will be noticed that the aforesaid language of the definition section contained in the Income Tax Act is broader than that contained in the Interest Tax Act in three respects. Firstly, interest can be payable in any manner whatsoever. Secondly, the expression "in respect of" includes interest arising even indirectly out of a money transaction, unlike the word "on" contained in Section 2(7) which, we have already seen, connotes a direct arising of payment of interest out of a loan or advance. And thirdly, "any moneys borrowed" must be contrasted with "loan or advances". The former expression would certainly bring within its ken moneys borrowed by means other than by way of loans or advances. We therefore conclude that the Interest Tax Act, unlike the Income Tax Act, has focused only on a very narrow taxable event which does not include within its ken interest payable on default in payment of amounts due under a discounted bill of exchange.

In fact, when we come to the second point agitated in some of the appeals by revenue namely as to whether guarantee fees paid to the Deposit Insurance and Credit Guarantee Corporation could be included in the definition of interest in Section 2(7) of the Interest Tax Act, 1974, it will be clear that such definition does not include any service fee or other charges in respect of monies borrowed or debt incurred, again unlike the definition of 'interest' under the Income Tax Act. [**Decided in favour of assessee**]

COMMISSIONER OF INCOME-TAX- II VERSUS VIJAY G. PATIL (BOMBAY HIGH COURT)

BRIEF: It is not open to the Revenue to pick and choose the Assessees against whom they would file appeal in this Court. The law should be uniformly applied its application cannot change depending upon the person affected.

OUR TAKE: The **Hon'ble BOMBAY HIGH COURT** held that they dismiss the appeal only on the ground that the Revenue having accepted the decision of the Tribunal in Javerilal D. Chhajed (2011 (11) TMI 663 - ITAT PUNE), then in an identical matter, it is not open to the Revenue to challenge a subsequent order. The Supreme Court in Union of India v. Kaumudini Narayan Dalal [2000 (12) TMI 101 - SUPREME Court] has held that the Revenue must be consistent and it cannot differentiate between different assessees. This was in the context of a High Court order. The same principle should apply in case of jurisdictional Tribunal order. We are of the view that it is not open to the Revenue to pick and choose the Assessee's against whom they would file appeal in this Court. The law should be uniformly applied, its application cannot change, depending upon the person affected. [**Decided in favour of assessee**]

KALLURI KRISHAN PUSHKAR VERSUS DEPUTY COMMISSIONER OF INCOME-TAX (ANDHRA PRADESH HIGH COURT)

BRIEF: Prosecution proceedings. Concealment of income or postponement of the tax due. It is not the case of the accused/petitioner that penalty proceedings are quashed or set aside and thereby automatically the prosecution is liable to be quashed.

OUR TAKE: The **Hon'ble ANDHRA PRADESH HIGH COURT** held that it is ultimately held that the penalty proceedings and prosecution proceedings are clearly independent and that the result of proceedings does not bind and Criminal Court has to independently judge on the evidence placed before it. It further held that it is the settled law that levy of penalties and prosecution under Section 276C are simultaneous and once penalties are cancelled on that ground there is no concealment, the prosecution for concealment is liable to be quashed automatically and thereby held the prosecution will not survive and is liable to be quashed thereby the High Court held committed an error.

Here, it is not the case of the accused/petitioner that penalty proceedings are quashed or set aside and thereby automatically the prosecution is liable to be quashed. It is not even his case that even there is any finding by any Tribunal of no wilful default on the part of him despite presumption against him with a burden on him under reverse onus clause to say consequently that finding is binding on the criminal Court with the analogy of law laid down in R.K. Builders (2004 (1) TMI 7 - SUPREME Court) to quash the prosecution thereby the decision relied has no application for the factual matrix referred (supra).

In fact, it is though not mentioned in the original quash petition about the trial Court's order, after hearing both sides as a private warrant procedure framed charges against the accused and the accused was examined, in the course of hearing it is filed as additional material. On perusal of the charges framed by the trial Court also it nowhere requires any interference from what is referred supra.

Having regard to the above there are no grounds to quash the prosecution proceedings in C.C.No.103 of 2014 on the file of the learned Special Judge for Economic offences, Hyderabad which reached stage for commencement of trial before the learned Special Judge. But for to say the observation herein no way much less, the charges framed by the trial Court, influence the trial Judge in deciding the criminal cases on its own merits from the ultimate

appreciation of the evidence oral and documentary on record.

STATE TAXES

ALL INDIA VAT

DELHI

The **Circular No. 29 of 2015-16 F.7(420)/Policy/2011/PF/1018-1024, dated 16 November, 2015** issued instruction for filing of online return for second quarter of 2015-16.

OUR TAKE: In partial modification to this department's Circular No. 27 of 2015-16 the Govt. extended the last date of filing of online/hard copy of second quarter return for the year 2015-16, in Form DVAT-16, DVAT-17 and DVAT-48 along with required annexure/enclosures to 20/11/2015.

However, the tax due shall continue to be paid in the usual manner as per the provisions of section 3(4) of the Delhi Value Added Tax Act, 2004. The dealers filing the returns through digital signature need not file hard copy of the return/Form DVAT-56.

The **Govt. vide Circular No. 30 of 2015-16 F.3(556)/Policy/VAT/2015/1028-1034, dated 18 November, 2015** issued instructions regarding issuing central statutory forms online.

OUR TAKE: The ratio of purchase and sale shall be worked out for current and succeeding quarters cumulatively. If the ratio still falls below 60%, then forms shall be allowed to be downloaded only after scrutiny of returns by the ward officer concerned. The factum of purchase of capital goods shall be kept out of the proposed mechanism which shall be available only to eligible dealers. However, purchase of capitals goods shall be allowed to dealers eligible to make such purchases only. Validation checks already in place for downloading of forms shall continue in the usual manner.
Further, the dealers who have applied for cancellation of registration or ward officer has issued show cause notice for cancellation or whose registration has been cancelled for any reason, shall not be able to download the forms without the approval of concerned ward officer.

The Govt. vide Notification No. F.3(21)/Fin(Rev-I)/2015-2016/dsvi/907, dated 12 November, 2015 makes the rules further to amend the Delhi Value Added Tax Rules, 2005.

OUR TAKE: There is Amendment of rule 7 by inserting a proviso regarding cigarettes. And in the Forms DVAT 16, in Annexure-1, in field A3, after sub-field A3.7 a new sub filed A3.7.1 for Tax credit disallowed on account of sales made under Section 8(1) of Central Sales tax Act [Section 9(10)] is inserted.

The **Govt. vide Notification No. F.3(20)/Fin(Rev-I)/2015-2016/dsvi/906, dated 12 November, 2015** certain Rules are amended to amend the Delhi Value Added Tax Rules, 2005.

OUR TAKE: There is amendment in Form DVAT 16, and insertion of ANNEXURE 1E in it, amendment of Form DVAT 30, amendment of Form DVAT 31. Readers are requested to read the said Notification for detailed amendment.

The **Govt. vide Notification No. F.3(22)/Fin(Rev-I)/2015-2016/dsvi/913, dated 16 November, 2015** amends the Schedules III and IV appended to the said Act.

OUR TAKE: In the Third Schedule, in Entry at serial No. 86, the sub-entry (xxviii) is amended.

The Fourth Schedule Entry at serial No. 1 regarding petroleum products is amended and is taxable at Twenty paise in the rupee and a new Entry 14 for "Aviation Turbine Fuel (ATF)" taxable at "Twenty Five paise in the rupee" is inserted.

The **Govt. vide Notification No. F.3(23)/Fin(Rev-I)/2015-2016/dsvi/914, dated 16 November, 2015** amends the Delhi Value Added Tax Rules, 2005.

OUR TAKE: There is amendment of Rule 35. Readers are requested to read the said Notification. It is self-explanatory.

GOA

The **Govt. vide Order No. CCT/12-22/2015-16/3368, dated 12 November, 2015** specified the method for selection of assesses for the purpose of detailed assessments.

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

MAHARASHTRA

The Govt. vide Trade Circular No. 18T of 2015, dated 20 November, 2015 seek to amend Notification No. VAT 1515/CR-81/ Taxation-1, dated 5th November 2015.

OUR TAKE: The interest under rule 88(1) for the amount of delayed tax payment is revised. A new slab for interest on monthly basis is introduced. Readers are requested to read the said Circular for rate of interest in detail. The said amendment is effective from 1st of December 2015.

PUNJAB

The **Govt. vide Notification No. S.O.50/P.A.8/2005/S.8/2015, dated 17 November, 2015** amends Schedule-E of Punjab Value Added Tax Act, 2005 (Punjab Act No. 8 of 2005).

OUR TAKE: In the said Schedule-E, after Serial No. 26 and the entries relating thereto, “Serial No. 27”, “All automobiles (i.e. commercial vehicles, passenger vehicles, three wheelers, two wheelers)”, rate of tax being “12%” shall be added.

The **Govt. vide Public Notice dated 19 November, 2015** informed that the last date of e-filing of VAT-20 for the year 2014-15 has been extended till 30th November, 2015.

RAJASTHAN

The **Govt. vide Notification No. F. 12(101) /FD/ TAX /2011-100 17 November, 2015** amends department's notification number F.12(23)FD/Tax/2015-206 dated 09.03.2015.

OUR TAKE: In the said notification, -
(i) for the existing clause 3.2, the following shall be substituted, namely:-
"3.2 No application under clause 2.1.1 of this notification shall be entertained after expiry of ninety days from the date of completion of contract as stipulated in original work order or two years from the date of award of works contract, whichever is earlier.";
(ii) for the existing serial number 7 of Form WT-2, appended to the said notification, the following shall be substituted, namely:-
"7. This certificate shall be only valid for the works contract mentioned in table given in serial number 6, unless cancelled or revoked."

The **Govt. vide Notification No. F. 16 (100)Tax/CCT/14-15/7115, dated 17 November, 2015** amends the notification No. F.16 (100)Tax/CCT/14-15/2787, dated 21.10.2014 as for the existing expression "up to the year 2012-13", the expression "up to the year 2013-14" shall be substituted.

OUR TAKE: The Format manner for the verification of deposit of tax in the said notification now stands valid for the year 2013-14 as well for the purpose of allowing the input tax credit.

The **Govt. vide Notification No. F. 12(93)FD/Tax/2012-102, dated 20 November, 2015** with effect from 09.03.2015, exempts from tax payable under the Act on earth moving and mining machinery including hydraulic excavator, hydraulic dumper, tipper, heavy loader, backhoe loader, wheel loading shovel, wheel excavator, tracked excavator, compactor, mobile crane, road roller, dozer, grader and skid steer, brought into local area, subject to condition that the tax already deposited shall not be refunded.

TAMIL NADU

The **Govt. vide Notification No. No. II(2)/CTR/694(a)/2015, dated 12 November, 2015** makes

variation to the Commercial Taxes and Registration Department Notification No. II(2)/CTR/751(d-1)/2014.

OUR TAKE: In the said Notification, in paragraph 2, for the expression "upto and inclusive of the 31st December 2015", the expression "upto and inclusive of the 31st December 2016" shall be substituted.

TRIPURA

The **Govt. vide Notification No. F-1-11(62)-TAX/VAT/2014, dated 6 November, 2015** amends Schedule II(a) and Schedule II(b) appended to the Tripura Value Added Tax Act, 2004 (Tripura Act No. 1 of 2005).

OUR TAKE: 1. Amendment of Schedule II(a) :
In entry no. 74 after sl. no. ii) , the expressions : 'iii) pre-owned /used car' shall be inserted
2. Amendment of Schedule II(b) :
In entry no. 117 after the expressions 'Motor vehicle' the expressions ' other than pre-owned /used car' shall be inserted.

The **Govt. vide Notification No. F-1-6(24)-TAX/95 (P-3), dated 14 November, 2015** notifies a scheme under which a brick kiln may opt to pay lump sum amount of Rs.8,80,000/- (Rupees eight lakh eighty thousand only) as VAT only during the financial year 2015-16 under the specified terms and conditions.

OUR TAKE: Readers are requested to read the said Notification for the detailed Terms and Conditions.

UTTARAKHAND

The **Govt. vide Notification No. 957/2015/152(120)/XXVII(8)/2008, dated 9 November, 2015** seek to amendment Schedule-I of the Uttarakhand Value Added Tax Act, 2005.

OUR TAKE: In Schedule I, for the existing entry at serial no. 1, the following entry shall be substituted:

"(i) Agricultural implements other than those mentioned in any other schedule of this act, manually operated or animal driven or tractor driven (excluding parts and accessories thereof which are made of wood or timber).
(ii) Distillation units used in the processing of aromatic plants and their products."

The **Govt. vide Notification No. 477/2015/181(120)/XXXVII(8), dated 9 November, 2015** seek to amend Rule 11 of The Uttarakhand Value Added Tax (Amendment) Rules, 2015.

OUR TAKE: For the existing clause (a) of sub-rule (9) of rule 19 of the "Principal Rules" the following clause shall be substituted:
Manner of Payment: (9)(a): Any amount payable under the Act or Rules may be paid electronically. For the purpose of e-payment an e-challan in Form-VI (Amended-I) shall be used. It shall be made available on the website of the Department.

COURT DECISIONS

THE STATE OF KARNATAKA VERSUS M/S. UNITED BREWERIES LTD. (KARNATAKA HIGH COURT)

BRIEF: Levy of tax / VAT on franchisee fees/royalty paid. The assessee shall be liable to pay tax on the royalty received from the licensee dealers who have been transferred the right to use brand name/trade mark-Kingfisher packaged drinking water.

OUR TAKE: The **Hon'ble KARNATAKA HIGH COURT** held that only when there is transfer of right to use the brand name/trade mark belonging to the assessee, without any restriction, then alone it could be a case of transfer of right to use the intangible goods, which would be the brand name/trade mark. However, if no such right to use is given to the manufacturer, it would not amount to transfer of right. In the case of manufacture of beer, the amount paid towards 'brand franchise fees' is to the assessee, and admittedly the assessee, has not transferred any right to the manufacturer of beer to exploit the brand name for its own use. The manufacturers (CBUs) do not get effective control of the brand name for full commercial exploitation. As such, it cannot be considered as 'sale' of intangible goods by the assessee, which would be subject to Sales Tax under the KST Act. It is also noteworthy that, for the amount received by the assessee as 'brand franchise fees' from the CBUs, admittedly, the assessee is paying Service Tax, as the same is covered as Intellectual Property Service under sub-Section 55(b) of Section 65 of the Finance Act, 1994. Levy of tax, penalty and interest, in the case of manufacture of beer, on the amount received by the assessee as 'brand franchise

fees' from CBUs for the assessment years in question, cannot be justified in law.

Since it is not disputed that under the agreement, the trade mark-'Kingfisher' is transferred to the licensee dealers, with a right to use the trade mark and exploit the same for commercial use, which was on payment of royalty to the assessee, the same would amount to transfer of right to use the intangible goods, being the trade mark-'Kingfisher', which would thus be subject to tax under KST Act. It is not disputed that in case of drinking water-'Kingfisher', the effective control over the brand name is transferred to the licensees to use and exploit the brand name for commercial use, which would amount to transfer of right to use goods, liable to tax under the KST Act. As such, the finding recorded by the First Appellate Authority in this regard, is confirmed and the order of the Tribunal with regard to this issue, is set aside. [**Decided partly in favour of Revenue**]

OTHER UPDATES

COMPANIES LAW

The **Govt. vide F.No.01/34/2013-CL-V- Part-I, dated 16 November, 2015** amended Companies (Management and Administration) Third Amendment Rules, 2015.

OUR TAKE: In the Companies (Management and Administration) Rules, 2014, Form No. MGT-7 has been substituted.

DGFT

The **Govt. vide F.No.01/34/2013-CL-V- Part-I, dated 16 November, 2015** amended Companies (Management and Administration) Third Amendment Rules, 2015.

OUR TAKE: In the Companies (Management and Administration) Rules, 2014, Form No. MGT-7 has been substituted.

We may be contacted at the following offices:

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

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

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

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

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

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

For enquiries related to:

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