



ASC Times

All India Taxes Weekly Reference

Vol: Oct 24–Oct 30, 2016

Solving any tax puzzle

Tax saving advice across all the taxes



TAXCALENDER

Due Date	Description	Law
25 Oct	Deposit of Tax	Rajasthan VAT
	Issue of TDS Certificate	Mizoram VAT
	Return Filing	Delhi VAT, Jharkhand VAT, Uttarakhand VAT
		Service Tax Law
28 Oct	Deposit of Tax	Arunachal Pradesh VAT
	Return Filing	Arunachal Pradesh VAT
29 Oct	Return Filing	Gujarat VAT
30 Oct	Deposit of Tax	Andhra Pradesh VAT, Chhattisgarh VAT, Himachal Pradesh VAT, Madhya Pradesh VAT, Maharashtra VAT, Mizoram VAT, Punjab & Chandigarh VAT, Telangana VAT
	Issue of TDS Certificate	Income Tax Law
	Return Filing	Andhra Pradesh VAT, Chhattisgarh VAT, Gujarat VAT, Himachal Pradesh VAT, Madhya Pradesh VAT, Punjab & Chandigarh VAT, Telangana VAT

COUNTRY WIDE HOLIDAYS FOR THE WEEK

Date	Occasion/Festival	Region
29 th Oct 2016	Naraka Chaturdashi	Karnataka
29 th Oct 2016	Diwali	Goa, Kerala, Odisha, Pondicherry, Tamil Nadu,
30 th Oct 2016	Diwali	Andhra Pradesh, Bihar, Chhattisgarh, Dadar & Nagar Haveli, Daman & Diu, Delhi, Gujarat, Haryana, Himachal Pradesh, Jammu & Kashmir, Jharkhand, Madhya Pradesh, Manipur, Mizoram, Punjab, Rajasthan, Telengana, Tripura, Uttar Pradesh, Uttarkhand, West Bengal
31 st Oct 2016	Goverdhan Puja	Chandigarh

INDEX GUIDE

TOPIC	PAGE NO.
Service Tax	4-5
Central Excise	6-7
Customs	7-8
Income Tax	8-9
State Taxes	9-10
Other Updates	10-11
Our Contacts	12

From the CEO's Desk



The new step is an effort by the I-T department to directly communicate deposit of tax deducted through SMS alerts to salaried taxpayers. In case of a mismatch, they can contact their deductor for necessary correction. Besides, SMS alerts will also be sent to deductor who have either failed to deposit taxes deducted or to e-file their TDS returns by the due date.

Alok Kumar Agarwal

CEO

ASC Group.

Dear Reader,

Finance Minister Arun Jaitley on Monday will launch the SMS alert service for TDS for salaried class and the Central Board of Direct Taxes will soon offer this facility on a monthly basis. As many as 2.5 crore salaried taxpayers will now receive SMS alerts from the Income Tax Department regarding their quarterly TDS (Tax Deducted at Source) deductions.

Briefing reporters about the facility, Mr Jaitley said salaried class cannot afford to pay tax twice or indulge in litigations and hence they should be kept updated about their TDS deductions. "Hence taxpayers will benefit if they receive information through use of technology. So they can match the office salary slip and the SMS and at the end of the fiscal he will be clear about any possible tax dues,". He asked the CBDT to work towards making the grievance redressal system for TDS mismatch online so that there is no interface between the taxpayer and the tax department. Mr Jaitley said 'e-Nivaran' is working well for taxpayers and CBDT is taking several taxpayer-friendly initiatives. CBDT will soon extend this SMS facility to another 4.4 crore non-salaried taxpayers.

"The frequency of SMS alerts will be increased, once the process for filing TDS returns is streamlined to receive such information on a real-time basis," CBDT said. CBDT Chairperson Rani Singh Nair said the tax department is encouraging people to register their mobile number on the e-filing website. The taxpayer will initially receive a welcome message from CBDT informing him/her about the facility and after that each assessee would be sent messages informing them about their respective TDS deductions.

CENTRAL TAXES

SERVICE TAX

COURT DECISIONS

M/S PRAKASH ASPHAL TING & TOLL HIGHWAYS (INDIA) LTD. VERSUS CCE, JAIPUR-II [CESTAT NEW DELHI]

BRIEF: Activity of toll collection on commission basis would not fall under the category of business auxiliary services, so as to make the same liable to service tax - service not liable to tax.

OUR TAKE: The hon'ble CESTAT NEW DELHI held that Section 97 of the Finance Act, 2004 grants exemption to the management, maintenance and repair of roads, with retrospective effect till 26th July, 2009. The period involved in the present appeal is 16/5/2005 to June, 2007, which periods stand covered by the above amendment. In view of the same, we find no merits for confirmation of demand of service tax on the said ground to the extent of 67, 64,987/. Accordingly, the same is set aside along with setting aside of penalty on the same count. [Decided in favour of appellant]

M/S CENTRAL INDIA ENGINEERING CO. VERSUS COMMISSIONER OF CENTRAL EXCISE, NAGPUR [CESTAT MUMBAI]

BRIEF: Service provided by the appellant to the respondent M/s NTPC Ltd. clearly falls under the category of Commercial or Industrial Construction Service - service Tax leviable.

OUR TAKE: The Hon'ble CESTAT MUMBAI held the decision in the case is not applicable as service were provided to a Government of Gujarat Water Supply and Sewerage Board and Construction of Sports Complex Stadium, allowed to be used by public. Therefore the services were provided not for commercial or industrial uses. [Partly decided in favour of appellant]

M/S AVON AWNING (PROPRIETOR LATE NAND KISHORE CHADDHA, THROUGH LEGAL HEIR SMT. KRISHNA CHADDHA) VERSUS COMMISSIONER OF CENTRAL EXCISE & S. TAX, GHAZIABAD [CESTAT ALLAHABAD]

BRIEF: Advertising agency services - The extended definition, cannot bring an entirely alien and unconnected services or a manufacturing activity within scheme of levy of service.

OUR TAKE: The hon'ble CESTAT ALLAHABAD held that neither appellant is having receipt for the activity namely display or exhibition nor the appellant have provided such service of display or exhibition under the facts and circumstances. The appellant is not liable to Service Tax under the classification Advertising Agency and/or providing a taxable service as an Advertising Agency in relation to advertisement in any manner. [Decided in favour of appellant]

CCE, INDORE VERSUS M/S SHARMA AND ASSOCIATES FIRETECH P. LTD [CESTAT NEW DELHI]

BRIEF: Refund claim - payment of service tax and sales tax on supply and installation of the said Fire Hydrant System - no evidence to show charging of paid amounts for erection and commissioning, such activities have to be held as incidental to delivery of goods to the customers - refund allowed.

OUR TAKE: The hon'ble CESTAT NEW DELHI held that the decision in the case of Allengers Medical Systems Ltd. vs. CCE, Chandigarh relied upon where it was held that where a person the goods and erection, commissioning and installation of the said sold equipment's is treated as a part of the sale of excisable goods and when there is no evidence to show charging of paid amounts for erection and commissioning, such activities have to be held as incidental to delivery of goods to the customers. [Decided against revenue]

C.C.E. INDORE VERSUS M/S. BL ARORA H & T CONTRACTOR[CESTAT NEW DELHI]

BRIEF: Extended period of limitation - As such the assessee activity were fully in the knowledge of the Revenue, in which case delayed issuance of the show cause notice in the year 2007 is not justified at all.

OUR TAKE: The humble CESTAT NEW DELHI held that board's clarification issued vide F. No. 8-11/1/2002-TRU dated 01.08.2002 clarifying that if someone hires labour / labourers for loading and unloading of goods in their individual capacity, such activities will not come under the purview of service tax as a cargo handling services. The respondent got themselves registered with the service tax department w.e.f. 16.06.2005 under the category of man power supply agency and were discharging their duty liability accordingly. As such the assessee's activity were fully in the knowledge of the Revenue, in which case delayed issuance of the show cause notice in the year 2007 is not justified at all. No suppression or malafide with an intent to evade payment of duty can be attributed to the assessee. **[Decided against Revenue]**

M/S ROBINSON AIR SERVICES VERSUS CCE, DELHI - II [CESTAT NEW DELHI]

BRIEF: Taxability of secondary services - the appellants are secondary service providers for the shipping lines, brokerage commission of 2% paid for booking of export cargo cannot be taxed under the category of 'Business Auxiliary Services' during the relevant period.

OUR TAKE: The hon'ble CESTAT NEW DELHI held if the secondary services gets consumed with the services that are being exported, no service tax will be liable on such secondary services. It is not being disputed that the activity undertaken by the appellant is a secondary service rendered to the primary service provider namely the airlines towards export of cargo services. To this extent, the CBEC Circular covers the issue in favour of the appellant. **[Decided in favour of appellant]**

BLUECHIP CORPORATE INVESTMENT CENTRE LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE MUMBAI-I [CESTAT MUMBAI]

BRIEF: Refund of service tax paid - Rejection would, certainly, have to be articulated in a speaking order with reasoned substantiation for that course of action. The rejection on grounds of being 'pre-mature' reflects either ignorance or unwillingness to act with responsibility.

OUR TAKE: The hon'ble CESTAT MUMBAI held that It would appear that the service of distribution of mutual fund was

not liable to tax before 9th July 2004 when the exemption available to 'commission agents' dealing in anything other than 'agriculture produce' was rescinded. The attempt to take the activity of agents of mutual funds out of the purview of the exemption notification that was available till then by issue of circular had been invalidated by various judgements. In these circumstances, the taxability of brokerage of mutual funds was left to quasi-judicial determination. **[The appeal is allowed by way of remand for strict compliance]**

M/S MAHESH AUTO VERSUS COMMISSIONER OF CENTRAL EXCISE, AURANGABAD [CESTAT MUMBAI]

BRIEF: Refund claim of service tax paid - classification of services - Claiming a refund of the amount paid as tax as per their understanding of law cannot be disputed now - refund claim rejected.

OUR TAKE: The hon'ble CESTAT MUMBAI held that appellant himself has classified the services, discharged tax on the commission received from financial institution under the category of "Business Support Service". The issue is no more integrate the tax liability arises on these services under "Business Auxiliary Service" as per Larger Bench decision, appellants classification of services as per his knowledge, under a category cannot be held to be as misunderstanding of law as the tax liability arises on the commission, cannot be disputed. Claiming a refund of the amount paid as tax as per their understanding of law cannot be disputed now. **[Decided against appellant]**

M/S. INDIAN PORTS ASSOCIATION VERSUS COMMISSIONER OF SERVICE TAX NEW DELHI [CESTAT NEW DELHI]

BRIEF: Taxability of club membership fees - there is mutuality of interest between the Association and its Members, inasmuch as the society is comprising of all the major ports in India and any activity even if in the nature of service, is rendered to its members. - Demand set aside.

OUR TAKE: The hon'ble CESTAT NEW DELHI held that the decision in the case of Ranchi Club Ltdvs. Chief Commissioner of Central Excise [2012 (6) TMI 636 - Jharkhand High Court] relied upon where it was held that in view of the mutuality and in view of the activities of the club, if club provides any service to its members may be in any form including as Mandap keeper, then it is not a service by one to another in the light of the decisions referred above as foundational facts of existence of two legal entities in such transaction is missing. **[Decided in favour of appellant]**

CENTRAL EXCISE

COURT DECISIONS

M.B. BAKERS PVT. LTD., PRADEEP BADLANI, DIRECTOR, JAGDISH BADLANI VERSUS C.C.E, INDORE [CESTAT NEW DELHI]

BRIEF: Manufacture - intermediate product - job work - sugar syrup prepared within the factory in further manufacturing of biscuits for their principal - marketability of the product now in question cannot be established derivatively without ascertaining the actual nature of the impugned product and also its marketability in reality.

OUR TAKE: The hon'ble CESTAT MUMBAI held that decision in the case of Rishi Bakers Pvt. Ltd. vs. C.C.E. & S.T., Kanpur [2015 (4) TMI 893 - CESTAT NEW DELHI] relied upon where it was held that Neither there is any evidence to prove that the goods, in question, are classifiable under 17029090 nor there is any evidence to prove that the goods, in question, in form in which they come into existence in the appellant's factories, are marketable. The impugned order is not sustainable. The same is set aside. **[Decided in favour of appellant]**

M/S. R.K. SILK MILLS (INDIA) LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE. [CESTAT NEW DELHI]

BRIEF: Intention to remove the goods without the payment of duty - non-accountable of goods in the RG-1 register - search in the premises - malafide intention upheld.

OUR TAKE: The hon'ble CESTAT NEW DELHI held that confiscation of the excess found goods has been upheld on the ground that same were neither entered in form IV register or lot register or RG I register. Though the appellants have argued that goods were yet to be entered in RG I register as the same were still to be inspected by the DGS&D department, but I find that even in their memo of appeal, there is no ground relatable to non-entry of goods in form IV register or lot register. As such, it cannot be said to be a mere case of non-entry in RG I register. Admittedly, on receipt of raw materials i.e., grey fabrics, the same are required to be entered in the raw materials register as also the lot register. Non entry of the same in the statutory documents would admittedly lead to appellant's malafide that same were meant for clandestine clearance - malafide intention upheld. **[Decided against of appellant]**

CAVINKARE PVT. LTD., CARISTA HERBAL PRODUCTS (P) LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, PONDICHERRY [CESTAT CHENNAI]

BRIEF: Transaction value or MRP based valuation - the appellants had cleared 6 Gms. sachet of the Hair Dye in a monopack carton containing six numbers of such sachet - appellant are to be assessed u/s 4 of the Central Excise Act without the same assessable u/s 4A

OUR TAKE: The hon'ble CESTAT CHENNAI held that the appellants had cleared 6 Gms. sachet of the Hair Dye in a monopack carton containing six numbers of such sachet. The weight of goods in individual sachet satisfies the condition of Rule 34 of 1977 Rules. Therefore, goods of appellant are covered by Rule 34 of the 1977 Rules and enjoy exemption from application of the 1977 Rules. **[Decided in favour of appellant]**

M/S. SUCHITA INDUSTRIES VERSUS COMMISSIONER OF CENTRAL EXCISE (APPALS-II) BANGALORE. [CESTAT BANGALORE]

BRIEF: Classification reusable Baby Cotton Nappies (diapers) - The Item description given for Chapter Heading 61.11 clearly covers the subject items viz., baby diaper and baby nappy. Chapter Heading 61.11 covers baby's garments and clothing accessories and when these are made up of cotton, they would fall under Chapter Heading 6111.20 only.

OUR TAKE: The hon'ble CESTAT BANGALORE held that Explanatory Notes to this Chapter Heading 61.11 says that in accordance with Note 6(a) to this Chapter the expression baby's garments and clothing accessories applies to articles for young children of a body height not exceeding 86 cm. It also covers baby's napkins matter deserves to be remanded to the original adjudicating authority for computation of duty, if any, for the period of one year prior to the date of show cause notice; it shall be decided by the original adjudicating authority within a period of three months from the receipt of this order by giving opportunity of personal hearing and that of production of necessary documents. **[Appeal disposed off]**

M/S RAYMOND LIMITED VERSUS CCE, RAIPUR. [CESTAT NEW DELHI]

BRIEF: Rejection of refund claim - reversal of CENVAT credit under protest - There is no murmur or protest or disagreement with the view taken by the inspecting officers as can be inferred from this letter - Period of limitation cannot be ignored.

OUR TAKE: The hon'ble **CESTAT NEW DELHI** held there is no murmur or protest or disagreement with the view taken by the inspecting officers as can be inferred from this letter. It further emerges that the appellant has taken a stand before the Department that the reversal of Cenvat credit was under protest only at the time of filing the refund claims for the first time on 22/12/2000 as well as 15/1/2001. I see from the records that these refund claims were incomplete and have been resubmitted after rectifying the same on a subsequent date **[Decided against appellant]**

M/S VFC INDUSTRIES PVT LTD VERSUS COMMISSIONER OF CENTRAL EXCISE, CUSTOMS AND SERVICE TAX (APPEALS) [CESTAT AHMEDABAD]

BRIEF: Returned goods cleared as scrap - Rule 16 it cannot be said that the process by which the defective goods are converted into scrap, should be considered as manufacture within the definition of manufacture as laid down u/s 2(f) - amount taken as credit to be reversed.

OUR TAKE: The hon'ble **CESTAT AHMEDABAD** held that the decision in the case apply where it was held that the Appellant had received in their factory the defective duty paid goods for remaking, refining, reconditioning etc. It is not in dispute that the certain quantity of such defective goods were remade/reconditioned and cleared on payment of appropriate duty. However, the major portion of the returned goods was scrapped and cleared from the factory after payment of duty on the transaction value of the scrap. It is the contention of the Department that the conversion of printed/unprinted corrugated boxes into scrap cannot be considered as a process of manufacture. Hence, the credit availed under Rule 16(1) is required to be reversed. I do not find any discrepancy in the observation of the learned Commissioner (Appeals) in this regard, in as much as the provisions of the said Rules are specific. In the present case, it cannot be said that the process by which the defective goods are converted into scrap, should be considered as manufacture within the definition of manufacture as laid down under Section 2(f) of Central Excise Act, 1944. Therefore, on merit, the Appellant has no case. **[Decided partly in favour of appellant]**

CUSTOM

NOTIFICATION / CIRCULAR

The Govt. vides Notification No. 127/2016 dated 20th Oct 2016; notifies that Rate of exchange of conversion of the foreign currency with effect from 21st October, 2016.

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

COURT DECISIONS

I.S. CORPORATION PRAGNESH ISHWARBHAI JARIWALA SURAT MELTON PVT. LTD. VERSUS COMMISSIONER OF CUSTOMS (IMPORT) , NHAVA SHEVA [CESTAT MUMBAI]

BRIEF: Valuation - rejection of declared value of import of goods - Only for the reason that the insurance policy of some of the consignments of being higher amount the value cannot be enhanced.

OUR TAKE: The hon'ble **CESTAT MUMBAI** held that there is no silver or gold content in the films imported by the Appellant firms. The revenue thus accepted that the imported goods were Polyester Silver metallised polyester film/ yarn with no content of silver or gold. **[Decided in favour of appellant]**

M/S. SANDAN VIKAS (INDIA) LTD. VERSUS C.C. NEW DELHI (ICD TKD) [CESTAT NEW DELHI]

BRIEF: Classification of goods - Air Conditioner Resistors - classified under Chapter 85334090 or classified under Chapter heading 84159000 - there is no scope for classification of the product under Chapter 8533 as mere 'Resistor'

OUR TAKE: The hon'ble **CESTAT NEW DELHI** held that when the item in question is specific part of 'air conditioning system', there is no scope for classification of the product under Chapter 8533 as mere 'Resistor'. Consequently, appropriate classification for the subject item is Chapter sub-Heading 84159000. **[Decided in favour of appellant]**

M/S AMRITLAKSHMI MACHINES WORK, MR. N.K. BRAMCHARI, MANAGING PARTNER, M/S. AMRITLAKSHMI BAJAJ ENTERPRISES VERSUS COMMISSIONER OF CUSTOMS (GENERAL) MUMBAI [CESTAT MUMBAI]

BRIEF: Restoration of CHA licence - The Regulations do not require that each and every authorisation should be acknowledged by a customs officer. As long as authority letter is in possession of the agent, compliance with the Regulation cannot be disputed.

OUR TAKE:The hon'ble CESTAT MUMBAI held that Customs House Agent are required to be proficient in the customs operation and procedure and to ensure that importer/exporter possess appropriate bona fides and act in conformity with the Customs Act, 1962. **[Decided in favour of appellant]**

M/S. D. THIMMESWARA RAO, M/S. SETWIN SHIPPING AGENCY VERSUS THE COMMISSIONER OF CUSTOMS [MADRAS HIGH COURT]

BRIEF: Renewal of Customs Broker Licence - The CESTAT, rightly set aside the order of suspension and such orders were confirmed by the HC - Therefore, it would be wholly untenable on the part of the respondent to state that they will once again rely on the unsubstantiated allegations for refusing to renew the petitioner's licence.

OUR TAKE: The hon'ble GUJRAT HIGH COURT held that the CESTAT, rightly set aside the order of suspension and such orders were confirmed by the Hon'ble Division Bench of this Court. Therefore, it would be wholly untenable on the part of the respondent to state that they will once again rely on the unsubstantiated allegations for refusing to renew the petitioner's licence. **[Decided in favour of petitioner]**

BAHRU STAINLESS SDN. BHD VERSUS DESIGNATED AUTHORITY, DIRECTORATE GENERAL OF ANTI-DUMPING AND ALLIED DUTIES/MINISTRY OF FINANCE [CESTAT NEW DELHI]

BRIEF: Imposition of ADD - Hot Rolled Flat Products of Stainless steel - when the import during POI gave a fair indication about quantum being above 3% there is no need to look into post POI data for investigation.

OUR TAKE: The hon'ble CESTAT NEW DELHI held that in terms of Rule 14 (d) of, the DA shall terminate the investigation if the value of import from particular country accounts for less than 3% of the total import of subject goods. In the present

case, admittedly during POI the imports from Malaysia is above 3%. **[Decided in favour of assessee]**

INCOME TAX

COURT DECISIONS

M/S SEAKING ENTERPRISE VERSUS INCOME TAX OFFICER WARD-28 (2) , KOLKATA [ITAT KOLKATA]

BRIEF: TDS u/s 194C - The role of the lorry owners was very limited to the extent of carriage of goods without any other liability. Therefore, they cannot be considered as sub-contractors of the assessee.

OUR TAKE: The hon'ble ITAT KOLKATA held that the assessee hired the lorries from outside on sub-contract basis and there was no contract between the principal and the lorry owners. The Revenue could not establish that these sub-contractors / lorry owners were fastened with any of the liabilities for the said carried of the goods. **[Decided in favour of assessee]**

M/S. DAKSHINA KANNADA KOTA BRAHMANARA MITRA MANDALI VERSUS THE ASSISTANT DIRECTOR OF INCOME TAX, CIRCLE 17 (1) , BANGALORE. [ITAT BANGALORE]

BRIEF: The assessee has not undertaken charitable activity during the year, therefore, it is not eligible for exemption u/s. 11.

OUR TAKE: The hon'ble ITAT BANGALORE held that no charitable activity as defined under the Act was undertaken by the assessee. In the light of these facts, it is of the considered view that the assessee has not undertaken charitable activity during the year, therefore, it is not eligible for exemption u/s. 11 of the Act **[Accordingly find no infirmity in the order of the CIT(Appeals) and confirm his order]**

INCOME-TAX OFFICER, WARD -4 (2) (2), BENGALURU VERSUS THE BEML EMPLOYEES CO-OP SOCIETY LTD. [ITAT BANGALORE]

BRIEF: Eligibility of deduction u/s. 80P(2)(a)(i) - when there were no takers for the money, which assessee as a part of its objects wanted to lend, the only available choice for assessee, in order not to keep the funds idle, was to place it in banks for earning interest - deduction allowed.

OUR TAKE: The hon'ble ITAT BANGALORE held it is an admitted position that assessee was bound to give interest to its members on the deposits received by it from them. Therefore, when there were no takers for the money, which assessee as a part of its objects wanted to lend, the only available choice for assessee, in order not to keep the funds



idle, was to place it in banks for earning interest. **[Decided in favour of assessee]**

M/S. ELITE ENTERPRISES VERSUS INCOME TAX OFFICER, WARD 1, PUTTUR, DAKSHINA KANNADA DIST. [ITAT BANGALORE]

BRIEF: Disallowance of kist (EMI) payment (lease rent) - prior period item - Kist payment for the previous period - It is not the case of the department that this method of accounting of kist payment on cash basis is not consistently followed by the assessee - claim of expenditure allowed.

OUR TAKE: The hon'ble ITAT BANGALORE held that as more than 93% of the expenditure pertains to the EMI payment interest on EMI and license fees which has been accounted on payment basis. Therefore undisputedly in the business of the assessee almost entire expenditure is incurred in respect of purchase of goods by making advance payment or simultaneous payment as the payment was being made to the Government. **Decided in favour of the assessee]**

MR. KUMAR V. VASANI VERSUS INCOME TAX OFFICER-32 (2) (2) , C-13, MUMBAI. [ITAT MUMBAI]

BRIEF: Penalty u/s 271(1)(c) - conscious concealment of facts by the assessee - non disclosure of bank accounts in which cash was deposited - assessee deliberately concealed his income/furnished inaccurate particulars of such income.

OUR TAKE: The hon'ble ITAT KOLKATTA held that the material facts, available on record clearly indicates that the assessee deliberately concealed his income/furnished inaccurate particulars of such income, therefore, in my view, the penalty was rightly imposed by the Assessing Officer and confirmed by the Ld. Commissioner of Income Tax (Appeal). **[Decided against the assessee]**

VATSALA SHENOY VERSUS JOINT COMMISSIONER OF INCOME TAX (ASSESSMENT) , MYSORE [SEPREME COURT]

BRIEF: Partnership firm - Nature of the certain considerations received after the dissolution of the firm - The appellants as erstwhile partners are liable to pay capital gain on the amount received by them towards the value of their share in the net assets of the firm are liable for payment of capital gains u/s 45

OUR TAKE: The hon'ble SUPREME COURT held that the partnership firm had dissolved and thereafter winding up proceedings were taken up in the High Court. The result of those proceedings was to sell the assets of the firm and distribute the share thereof to the erstwhile partners. Thus, the 'transfer' of the assets triggered the provisions of Section 45 of the Act and making the capital gain subject to the payment of tax under the Act. **[Appeal Disposed Of]**

STATE TAXES

ALL INDIA VAT

GOA

The Govt. vides Notification No. 4/5/2005-FIN(R&C) (141) dated 20th Oct 2016, Goa Value Added Tax Act, 2005 (Goa Act 9 of 2005) - pursuance of entry (26) of Schedule 'C' - regarding benefits to defence personnel.

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

HARYANA

The Govt. vides Notification No. 21/ST-1/H.A. 6/2003/S.59/2016 dated 17th Oct 2016, notifies that Exemption levy of VAT on Sale of Technetium 99M Generators used in diagnosis of cancer.

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

UTTAR PRADESH

The Govt. vides Notification No. KA.NI.-2-1490/XI-9(168)/16-U.P.ACT-5-2008-ORDER-(168)-2016 dated 17th Oct 2016, amends Form-21 for Mentha oil, Supari, Iron & Steel, Edible Oil - To be carried and accompanied.

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

COURT DECISIONS

THE COMMISSIONER OF SALES TAX VEORSUS M/S. VEER RADIOS(BOMBAY HIGH COURT)

BRIEF: Nature of assessment - best judgment assessment or not - the entries in the books of account varying with returns filed are relied upon and then the assessment has been completed. – Cannot be held as best judgment assessment - levy of penalty deleted.

OUR TAKE:The hon'ble BOMBAY HIGH COURT held that it is not best judgment assessment. If the return is filed belatedly and it does not give correct and complete figures, the provisions of Section 33(3) of the said Act can be applied by the department to such return. Levy of penalty confirmed. [Decided in favour of revenue]

COMMISSIONER OF COMMERCIAL TAXES, THIRUVANANTHAPURAM, KERALA VERSUS M/S K.T.C. AUTOMOBILES [SUPREME COURT]

BRIEF: levy of penalty for non-maintenance of complete, true accounts - sale of motor vehicles from another state - According to the Intelligence Officer, the sales were concluded at Kozhikode, and hence the vehicles should have been registered within the State of Kerala. - Mere doubt cannot create any liability - No penalty.

OUR TAKE: The hon'ble SUPREME COURT held that they do not lead to a conclusive inference that the sales under controversy had taken place at Kozhikode, Kerala. To the contrary, in view of propositions of law discussed hereinbefore, the judgment of the High Court gets reinforced and deserves affirmation. [Decided against the revenue]

OTHER UPDATES

COMPANY LAW

COURT DECISIONS

RAJ SHEKHAR AGRAWAL AND ANR. VERSUS UNION OF INDIA AND ANR[DELHI HIGH COURT]

BRIEF: The question, whether the petitioners can be said to be Directors of the subject company is doubtful and without the petitioners / applicants having a clear right to act as Directors and which is being opposed, the question of the petitioners / applicants incurring any disqualification or liability under Section 162 of the Act also, would not arise.

OUR TAKE:The hon'ble DELHI HIGH COURT held that the question, whether the petitioners can be said to be Directors of the subject company is doubtful and without the petitioners / applicants having a clear right to act as Directors and which is being opposed, the question of the petitioners / applicants incurring any disqualification or liability under Section 162 of the Act also, would not arise. The application is thus dismissed with liberty to the petitioners / applicants to apply to the CLB for the same reliefs.

ALLIED LAWS

COURT DECISIONS

JIJU LUKOSE VERSUS STATE OF KERALA [KERALA HIGH COURT]

BRIEF:Right to receive copy of the FIR even before the stage of proceedings under Section 207 of the Cr.P.C - Accused is entitled for copy of the FIR.

OUR TAKE:The hon'ble KERALA HIGH COURT held that It is in the domain of authorities as to which category of the FIRs are to be put on website for information to the public in general. But there has to be a decision and appropriate categorization or norms for taking a decision as to in which case FIR be uploaded and in which it is not be uploaded. The State can come with any such decision which may balance right of information available to the public in general and

interest of the State. We are thus of the opinion that petitioner has made out a case for issuing directions to the State to consider all aspects of the matter and take appropriate decision regarding uploading of the FIR in the police website with all details regarding its operation and mechanism.

GST ALERTS

MANNER OF DISTRIBUTION OF CREDIT BY INPUT SERVICE DISTRIBUTOR

1. The Input Service Distributor(ISD) may distribute, in such manner as may be prescribed,
 - The credit of CGST as IGST and IGST as IGST (CGST Act),
 - The credit of SGST as IGST (SGST Act),
 - The credit of CGST and IGST as CGST (CGST Act),
 - The credit of SGST and IGST as SGST (SGST Act),

by way of issue of a prescribed document containing, inter alia, the amount of input tax credit being distributed or being reduced thereafter, where the Distributor and the recipient of credit are located in different States.

2. The ISD may distribute the credit subject to the following conditions: -
 - a. The amount of the credit distributed shall not exceed the amount of credit available for distribution;
 - b. The credit of tax paid on input services attributable to a supplier shall be distributed only to that supplier;
 - c. The credit can be distributed against a prescribed document issued to each of the recipients of the credit so distributed, and such invoice or other document shall contain such details as may be prescribed;
 - d. the credit of tax paid on input services attributable to more than one supplier shall be distributed only amongst such supplier(s) to whom the input service is attributable and such distribution shall be pro rata on the basis of the turnover in a State of such supplier, during the relevant period, to the aggregate of the turnover of all such suppliers to whom such input service is attributable and which are operational in the current year, during the said relevant period



Service	Contact Person	11Service	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		

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

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

SINGAPORE

1 North Bridge Road,
10-09 High Street Road,
Singapore(179094).

Disclaimer:

This e-bulletin is for private circulation only. Views expressed herein are of the editorial team. ASC or any of its employees do not accept any liability whatsoever direct or indirect that may arise from the use of the information contained herein. No matter contained herein may be reproduced without prior consent of ASC. While this e-bulletin has been prepared on the basis of published/other publicly available information considered reliable, we do not accept

any liability for the accuracy of its contents.

© ASC Group 2015. All rights reserved.