



# ASC Times

All India Taxes Weekly Referencer

Vol: Jan 25 - Jan 31, 2016

Solving  
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puzzle

Tax saving advice  
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## From the CEO's Desk



Dear Reader,

Recently, Income Tax Appellate Tribunal celebrated its Platinum Jubilee, which was inaugurated by President Mr. Pranab Mukherjee. At the event he emphasized on how cases of tax disputes are on a rise. Though he also mentioned that as the scope and no of tax returns have increased manifold from the time it was introduced in the Indian Economy, he said that more and more innovative ideas needs to be deployed to resolve these issues. He also stressed to take a call on these matters to improve India's rating for ease of doing business parameters. (We have earlier mentioned that right now India's rank is 130 on the global ranking for 'Ease of doing business'). "The rising trends in tax disputes and the quantum involved in tax litigations, call for an innovative tax litigation management system," Mukherjee said. He also highlighted that transfer pricing, taxation of digital economy and international taxation are the crucial areas that needs attention and require special skill set to deal with the disputes.

It seems that the pressure for such measures also been created by foreign dignitaries, where Mr. Modi, the Prime Minister of India, have been travelling and signing bilateral trade agreements with. In the same connection US President Mr. Barack Obama also said that he welcomes the efforts of Mr. Modi to cut red tape and make it easier for doing business in India. He promised that he will 'look at' the solutions to have Indian firms access to American technologies as 'closest allies', which will increase trade and investment in both countries and would create more jobs in both the nations. Bilateral trade between India and US is at \$100 billion right now, rising five fold in the last decade. Mr. Obama and Mr. Modi have set a goal of taking it to \$500 billion in years to come.

Elsewhere, in a meet Finance Minister Mr. Arun Jaitley said in a meeting that it is imperative for India to add to the credibility of the Indian Economy as world looks up

to India as a bright spot amid global headwinds. He emphasized that India is the only country with a growth rate of more than 7 where, most of economies are fighting with the depression. In this regard he urged to the private investors that they do not fear and invest so that more FDI can also be attracted.

Alok Kumar Agarwal

CEO

ASC Group

## TAX CALENDER

Due Date	Description	Law
25 January	Deposit of Tax	Rajasthan VAT,
	Issue of TDS Certificates	Mizoram VAT,
		Income Tax Law
	Filing of Return	Delhi VAT, Jharkhand VAT, Uttarakhand VAT
Manual Submission of Audit Report	Maharashtra VAT	
28 January	Deposit of Tax	Arunachal Pradesh VAT
	Return Filing	Arunachal Pradesh VAT, Delhi VAT
29 January	Return Filing	Gujarat VAT,
30 January	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
31 January	Annual Return	Rajasthan VAT, Uttar Pradesh VAT,
	Deposit of Tax	Goa VAT, Jammu & Kashmir VAT, Tripura VAT
	Issue of VAT Audit Certificate	Kerala VAT
	Return Filing	Bihar VAT, Goa VAT, Haryana VAT, Jammu & Kashmir VAT, Madhya Pradesh VAT, Mizoram VAT, Nagaland VAT, Sikkim VAT, Tamil Nadu VAT, Tripura VAT

## COUNTRY WIDE HOLIDAYS FOR THE WEEK

Date	Occasion/Festival	Region
26 Jan	Republic Day	All India

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# CENTRAL TAXES

## SERVICE TAX

### CIRCULARS & NOTIFICATIONS

**The Govt. vide Circular F.No.354/311/2015-TRU dated 20<sup>th</sup> January 2016**, issued report of the High Level Committee; recommendation regarding valuation of flats for levy of Service Tax

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

**The Swachh Bharat Cess (SBC) has been introduced with effect from 15th November, 2015** on all the taxable services. The board has also issued Frequently Asked Questions (FAQ) to clarify the various aspects in relation to the applicability, valuation, levy and collection of SBC.

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

**The Govt. vide Notification No. 390/Misc./163/2010-TRU dated 21<sup>st</sup> January 2016**, issued instructions regarding report in respect of withdrawal of department's appeals pending before High Court / CESTAT on the basis of ; (i) enhanced monetary limit and (ii) earlier Supreme Court's decision on the identical matters.

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

### COURT DECISIONS

**BRITT WORLDWIDE INDIA PVT LTD. VERSUS THE UNION OF INDIA, THROUGH SECRETARY, MINISTRY OF FINANCE DEPARTMENT OF REVENUE [BOMBAY HIGH COURT]**

**BRIEF:** Validity of adjudication order passed 17 months after the personal hearing was over -The show cause notice shall be adjudicated afresh and on appearance of the Petitioner a fresh order would be passed by the Adjudicating Authority within a period of 30 days from the date of conclusion of personal hearing.

**OUR TAKE:** The hon'ble **BOMBAY HIGH COURT** held that In view of this affidavit and the stand taken by the Commissioner, we set aside the impugned order only on the ground of delay and which is long, unreasonable and unexplained in passing the adjudication order. The impugned order dated 23rd January 2014 is, therefore, quashed and set aside. The show cause notice shall be adjudicated afresh and on appearance of the Petitioner a fresh order would be passed by the Adjudicating Authority within a period of 30 days from the date of conclusion of personal hearing. **[Matter remanded back]**

**M/S TANYA AUTOMOBILES PVT LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX, MEERUT-I [CESTAT ALLAHABAD]**

**BRIEF:** Management, Maintenance and Repair service. Liability of service tax. The demand of Service Tax against the assessee for the cost of the goods supplied during repair does not appear sustainable.

**OUR TAKE:** The hon'ble **CESTAT ALLAHABAD** held that having considered the rival contentions and in view of the settled legal position in the case of Samtech Industries (CESTAT NEW DELHI), upholding the order of this Tribunal by the Hon'ble High Court of Allahabad [ALLAHABAD HIGH COURT] and also in view of the letter of the CBE&C accepted the legal position that the cost of items supplied/sold and there is documentary proof specifically indicating value of the goods, the demand of Service Tax against the assessee for the cost of the goods supplied during repair does not appear sustainable. In this view of the matter, we set aside the impugned order and allow the appeal with consequential benefits. **[Decided in favour of assessee]**

**K. RAM MOHAN [AUTHORITY FOR ADVANCE RULINGS, NEW DELHI]**

**BRIEF:** Activities of street light maintenance cannot be equated with maintenance of road, bridge, tunnel etc. Exemption not available.

**OUR TAKE:** The hon'ble **AAR NEW DELHI** held that the word 'road' is clear and it cannot be substituted by the term street light support structure. The reliance on para 13(a) by the applicant is, therefore, of no consequence. The learned representative of the Department has also correctly argued that there would be no question of applicability of Paragraph 13(a) of the aforementioned Notification. In view of the specific language of the said Paragraph 13(a), we accept the arguments and hold that there will be no

question of applicability of para 13(a) of the Notification. No exemption is available to assessee. **[Decided against the assessee]**

#### **M/S RS ELECTRICALS VERSUS UNION OF INDIA AND 3 [GUJRAT HIGH COURT]**

**BRIEF:** Attachment and seizure by the Service Tax Department for substantial service tax dues not paid. There is no final assessment of the petitioner's duty and penalty liabilities. Goods to be released subject to specific conditions

**OUR TAKE:** The hon'ble **GUJRAT HIGH COURT** held that we are of the opinion that, upon certain conditions, the bank accounts and the go-downs of the petitioner can be released from attachment, provided the petitioner deposits a total sum of ₹ 3.54 crores which would include ₹ 2.46 crores already collected by the Department so far. The Department shall release attachment of the bank accounts of the petitioner and remove the seals from the business go downs of the petitioner, on the conditions specified in the order.

#### **SIFY TECHNOLOGIES LIMITED VERSUS COMMISSIONER OF SERVICE TAX, LTU, CHENNAI [CESTAT CHENNAI]**

**BRIEF:** Cenvat Credit. Allocation of input services to the concerned department as earned by the Table-C department. Appellant provides taxable service as well as exempted service. Entire disallowance does not call for any decision in favour of Revenue.

**OUR TAKE:** The hon'ble **CESTAT CHENNAI** held that to make sure that the mathematical exercise is properly made by the appellant for allocation of credit rationally, the matter is remitted to the Adjudicating Authority to a limited extent to examine the allocation of the credit received by the appellant through departments in Table-C and allocable to departments in Table-A in the manner the appellant has carried out. Appellant's averment that the credit of ₹ 6,66,423/- allocated to the department in Table-B is reversed needs to be examined. Matter remanded back for limited purpose - **[Decided in favour of assessee.]**

#### **BANK OF BARODA VERSUS COMMISSIONER OF SERVICE TAX, MUMBAI-I [CESTAT MUMBAI]**

**BRIEF:** Classification of Import of services from M/s. Society for Worldwide Interbank Financial Telecommunication (SWIFT) which is a non-resident entity, not having an office in India - reverse charge. Demand conformed invoking the extended period of limitation.

**OUR TAKE:** The hon'ble **CESTAT MUMBAI** held that merely because Section 80 was invoked, it cannot be said that proviso to Sec 73(1) shall not apply. Both provisions have separate ingredients. In the present case the appellant have not disclosed the data related to service charges paid to SWIFT to the department. Therefore, as there is a suppression of the fact on the part of the appellant, proviso to Section 73(1), gets correctly invoked. Demand conformed invoking the extended period of limitation - **[Decided partly in favour of assessee]**

#### **ARAFATH TRAVELS PVT. LTD., MR. SHERIF DYAN VERSUS CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL (SOUTHERN BENCH) , THE COMMISSIONER OF SERVICE TAX [MADRAS HIGH COURT]**

**BRIEF:** Waiver of pre deposit under Section 35F. The order passed by the Tribunal did not indicate that, it has considered the materials to come to a prima facie conclusion. Hence, the order is liable to be set-aside, as the order had been passed, invoking the amended provisions of Section 35F, whereas the law applicable to the case of the assessee is proviso to un-amended Section 35F.

**OUR TAKE:** The hon'ble **MADRAS HIGH COURT** held that there is a failure to exercise the discretion, as the Tribunal had lost sight of the provision applicable to the case, having regard to the date of filing of the appeal. When the Tribunal had failed to exercise the discretion, this Court is bound to interfere. Further, the order passed by the Tribunal did not indicate that, it has considered the materials to come to a prima facie conclusion. Hence, the order is liable to be set-aside, as the order had been passed, invoking the amended provisions of Section 35F of the Act, whereas the law applicable to the case of the assessee is proviso to un-amended Section 35F of the Act. Matter remanded back. **[Decided in favour of assessee]**

#### **COMMISSIONER OF CENTRAL EXCISE, DELHI-III VERSUS M/S ASIAN COLOR COATED ISPAT LTD. [CESTAT NEW DELHI]**

**BRIEF:** CENVAT Credit. Since the title or ownership of goods passed on to the buyer at their site, such site of the buyer will be considered as the "place of removal" and as per the definition of input service, the freight payable for such transportation of goods will be considered as input service for the purpose of taking Cenvat credit.

**OUR TAKE:** The hon'ble **CESTAT NEW DELHI** held that since the title or ownership of goods passed on to the buyer at their site, such site of the buyer will be considered as the "place of removal" and as per the definition of input service, the freight payable for such transportation of goods will be considered as input service for the purpose of taking Cenvat credit. **[Decided against Revenue]**

## CENTRAL EXCISE

### CIRCULARS & NOTIFICATIONS

**The Govt. vide Notification No. 03/2016 dated 24<sup>th</sup> January 2016**, made amendment in Notifications No.56/2002-CE & No.57/2002-CE so as to insert a sunset clause of 31.03.2016 and to deny the benefit of the exemption to goods on which certain specified processes have been undertaken.

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

### COURT DECISIONS

#### CCE, JAIPUR-I VERSUS M/S. MAN INDUSTRIAL CORPORATION. (CESTAT NEW DELHI)

**BRIEF:** Refund claim subject to unjust enrichment. It is an admitted fact that the buyer has not debited Cenvat credit along with the amount of duty in dispute as claimed by the respondent as a refund. Refund not allowed.

**OUR TAKE:** The hon'ble CESTAT NEW DELHI held that it is an admitted fact that the buyer has not debited cenvat credit along with the amount of duty in dispute as claimed by the respondent as a refund. In the circumstances, relying on the decision in the case of Oriental Textile Processing Co. (P) Ltd. (CESTAT, NEW DELHI ), we hold that the Id. Commissioner (Appeals) is in error in holding that the respondent has passed unjust enrichment. Therefore, the impugned order is set aside. **[Decided in favour of assessee]**

#### M/S NEELAM STEELS, SHRI R.P. HANDA VERSUS COMMISSIONER OF CENTRAL EXCISE, LUDHIANA. [CESTAT NEW DELHI]

**BRIEF:** Allegation of fraudulent export of goods to Nepal - . It is the departmental internal correspondence to ascertain the fact that export is complete or not. For the lapses of the department, appellant cannot be held faulted

**OUR TAKE:** The hon'ble CESTAT NEW DELHI held that appellant has been able to prove his case of export of the goods to Nepal. Therefore, no duty can be demanded from the appellant and Cenvat Credit cannot be denied. As duty cannot be demanded from the appellant penalties on both the appellants is not imposable. With these terms, impugned order is set aside. Appeals are allowed with consequential relief if any.

#### M/S. INOX AIR PRODUCTS LTD. VERSUS CCE, CHANDIGARH (CESTAT NEW DELHI)

**BRIEF:** Valuation - stock transfer - Differential duty on clearances to their Faridabad unit - comparable price - while the value adopted is to be based on comparable value there is no sanction to take highest of the independent sale price for such purpose.

**OUR TAKE:** The hon'ble CESTAT NEW DELHI held that the demands were issued based on scrutinizing of periodical monthly returns filed by the appellants. On advice by departmental officers the appellants paid the differential/additional duty on 5.10.99 well before the adjudication. Certificates under Rule 57E were also issued to them for availing credit. We find in these circumstances imposition of penalties equal to duty difference demanded is not justifiable and accordingly, we set aside the same.

#### COMMISSIONER OF CENTRAL EXCISE, INDORE VERSUS M/S. NATIONAL STEEL INDUSTRIES LTD. [CESTAT NEW DELHI]

**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 CESTAT NEW DELHI held that the clear and specific classification of the impugned items was available with effect from 1.3.1988. Prior to that date, the classification was sought to be made under 7308 90 : as 'Misc' 'other articles of iron and steels'. Hence, held that these goods are not excisable. **[Decided in favour of assessee]**

#### 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. Also see Pushti Refineries (P) Ltd. Vs. CCE & ST, Bangalore [CESTAT BANGALORE ] - Decided in favour of assessee.

## CUSTOMS

### CIRCULARS & NOTIFICATION

**The Govt. vide Notification No. 04/2016 dated 19<sup>th</sup> January 2016**, made amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 12/2012-Customs, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide notification No. G.S.R.185 (E), dated the 17th March, 2012.

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

**The Govt. vide Notification No. 05/2016 dated 19<sup>th</sup> January 2016**, made amendment in the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No. 21/2012- Customs, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.194(E), dated the 17th March, 2012.

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

### COURT DECISIONS

#### BALKRISHNA INDUSTRIES LTD. VERSUS THE UNION OF INDIA AND OTHERS [BOMBAY HIGH COURT]

**BRIEF:** Goods imported against advance authorization scheme - claim of exemption towards (1) whole of the Customs Duty (2) whole of the Additional Duty (CVD) (3) Anti- Dumping Duty and (4) Safeguard Duty - the Petitioner in effect wants us to direct the Government to grant an exemption which was never granted in the first place until it framed the Foreign Trade Policy 2015-2020.No merit in this Writ Petition

**OUR TAKE:** The hon'ble SUPREME COURT held that there is no doubt that the exercise of power, whether legislative or administrative, would be set aside if there is a manifest error in exercise of such power or the exercise of the power is manifestly arbitrary. We do not find any such case before us. In fact, in the present case, the Petitioner in effect wants us to direct the Government to grant an exemption which was never granted in the first place until it framed the

Foreign Trade Policy 2015-2020. No merit in this Writ Petition. **[Decided against assessee]**

#### COMMR. OF CUS. & C. EX., TIRUCHIRAPPALLI VERSUS HINDUSTAN LEVER LTD. [SUPREME COURT]

**BRIEF:** Valuation of import of soda ash light - declared price was lower than invoice price since the market price was down drastically. The provisions of sub-section (1) of Section 14 are clearly attracted and there was no necessity of invoking the rules.

**OUR TAKE:** The hon'ble SUPREME COURT held that It is clear from the above that in the show cause notice itself, the Department had accepted the fact that there was slump in the international market insofar as import of soda ash light is concerned. The documents clearly show the prevailing market rate of the goods in question in international market at the relevant period. On that basis, if the value of the goods was declared at USD 120 per M.T. by the respondent/importer, this was perfectly justified and in consonance with the provisions of the Section 14(1) of the Act. **[Decided in favour of assessee]**

#### KIRAN SHIP BREAKING CORPN VERSUS COMMISSIONER OF CUSTOMS JAMNAGAR (PREV) [CESTAT AHMEDABAD]

**BRIEF:** Import of two Vessels for breaking purpose Demand of differential duty - bunker and stores - the subject bunker and stores were declared by the master of the vessel in the manifest, which was statutory document. Burden cannot be shifted on the revenue.

**OUR TAKE:** The hon'ble CESTAT AHMEDABAD held that Appellant contended before the Commissioner (Appeals) that the burden was on the Department to prove that the subject goods bunkers and stores were imported and cleared by the importer through the Customs barrier. The Commissioner (Appeals) proceeded on the basis that the subject bunker and stores were declared by the master of the vessel in the manifest, which was statutory document. Hence, the contention of the appellant is not sustainable. **[Decided against Assessee]**

#### C.C.E., MANGALORE VERSUS MANGALORE REFINERY & PETROCHEMICALS LTD. [SUPREME COURT]

**BRIEF:** Valuation of imported goods. The demurrage charges are admittedly incurred after the goods reached at Indian ports and, therefore, it is a post-importation event.

Such charges, therefore, cannot form part of the transaction value.

**OUR TAKE:** The hon'ble **SUPREME COURT** held that it is not even necessary to go into the various nuances of the matter as we are of the opinion that these appeals are bound to fail on one simple ground. The demurrage charges are admittedly incurred after the goods reached at Indian ports and, therefore, it is a post-importation event. Such charges, therefore, cannot form part of the transaction value. Issue in this behalf is settled by this very Bench in the case of Commissioner of Customs, Ahmadabad v. M/s. Essar Steel Ltd., [2015, SUPREME COURT]. **[Decided against the revenue]**

**M/S. PRACHI SILKS, M/S. NUPUR IMPEX, M/S. MAHALAXMI SILK TRADING, RADHEY SHYAM RANDE, M/S. MAHALAXMI SILK TRADING CO., BANGALORE, M/S. GOYAL ENTERPRISES, HEMANTH KUMAR, M/S. MAHARAJA IMPEX, BANGALORE VERSUS THE COMMISSIONER OF CUSTOMS & THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI [MADRAS HIGH COURT]**

**BRIEF:** Waiver of pre-deposit - undue hardship. There is no specific pleading to the effect that the compliance of the pre-deposit condition would cause undue hardship to the appellants. The appellants cannot even contend that they have a prima facie case. No relief in stay.

**OUR TAKE:** The hon'ble **MADRAS HIGH COURT** held that Tribunal decided the cases into two categories namely (i) those, in which, a duty was levied together with penalty and (ii) those where only a penalty was imposed. It is in cases where what was imposed was only penalty that the Tribunal has given some waiver. In cases where a duty is levied together with penalty, the Tribunal has rounded off the duty amount to the next higher or lower figure and directed the said amount to be deposited. Therefore, we see no reason to interfere with the order of the Tribunal. Accordingly, all the civil miscellaneous appeals are dismissed. **[Decided against the appellants]**

## INCOME TAX

### CIRCULARS & NOTIFICATIONS

**The CBDT vide Notification No. 01/2016 dated 19<sup>th</sup> January 2016**, issued instructions on additional modes for Electronic Verification Code (EVC) for electronically filed Income Tax Return.

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

### COURT DECISIONS

**M/S MEGHMANI ENERGY LTD. VERSUS DEPUTY COMMISSIONER OF INCOME TAX (OSD) - I [ GUJRAT HIGH COURT]**

**BRIEF:** MAT computation. Working of tax liability on book profit u/s.115JB - receipt of dividend income. Reopening of assessment - AO formed wrong belief that for the purpose of computing book profit u/s 115JB, the said amount of ₹ 15,458/- disappeared from the consideration - notice of reopening being bad in law, quashed.

**OUR TAKE:** The hon'ble **GUJRAT HIGH COURT** held that for the computation of income for normal tax provisions or as per the book profit under Section 115JB of the Act, the said amount of ₹ 15,458/- was duly reflected and was accounted for. The Assessing Officer formed wrong belief that for the purpose of computing book profit under Section 115JB of the Act, the said amount of ₹ 15,458/- disappeared from the consideration. Under the circumstances, notice of reopening being bad in law, is quashed. **[Decided in favour of assessee]**

**COMMISSIONER OF INCOME TAX (TDS) VERSUS HERAMEC LTD [ANDHRA PRADESH HIGH COURT]**

**BRIEF:** : TDS u/s 194J - procurement of ready study data by the parent company, from another foreign company, and supplying it to the assessee amounts - Non deduction of TDS on technical services rendered to a resident. No TDS required

**OUR TAKE:** The hon'ble **ANDHRA PRADESH HIGH COURT** held that revenue has also not been able to show how procurement of ready study data by the parent company, from another foreign company, and supplying it to the assessee amounts to services rendered to a resident attracting Section 194-J of the Act. The Tribunal is the final court of facts and, as the finding recorded by it is on the basis of the material on record, the order under appeal cannot be said to be perverse. **[Decided in favour of assessee]**



**COMMISSIONER OF INCOME TAX VERSUS TATA  
TELESERVICES (MAHARASHTRA) LTD. [BOMBAY HIGH  
COURT]**

**BRIEF:** Tribunal power under the Act to extend the stay of demand in the appeals pending before it beyond the period of 365 days - Nothing has been shown to us as to why when the Revenue has accepted the earlier orders, a different stand is taken in this appeal - power to tribunal to extend stay upheld.

**OUR TAKE:** The hon'ble **BOMBAY HIGH COURT** held that The only substantial difference in the pre-substituted third proviso and substituted third proviso to Section 254(2A) of the Act is the addition of the words "even if delay in disposing of the appeal is not attributable to the assessee" These additional words added in the substituted third proviso to Section 254(2A) of the Act has been struck down by the Delhi High Court in Pepsi Foods (P) Ltd. Vs. Asstt. Commissioner of Income Tax, (2015, DELHI HIGH COURT). [**Decided against revenue**]

**THE COMMISSIONER OF INCOME TAX-10 VERSUS M/S  
RELIANCE SILICONES (I) LTD [BOMBAY HIGH COURT]**

**BRIEF:** Any grievance of the parties in respect of the Tribunal, not complying with the order of this Court for whatever reason could not be remedied by an Appeal under Section 260A of the Act. Thus Appeal as filed from the impugned order is not maintainable under Section 260A of the Act.

**OUR TAKE:** The hon'ble **BOMBAY HIGH COURT** held that the order passed by the Tribunal consequent to the order passed under Section 256(2) of the Act is not an order passed in Appeal by the Appellate Tribunal. An application under Section 256(2) of the Act and the order passed by this Court there under are in the exercise of its advisory jurisdiction. Therefore, any grievance of the parties in respect of the Tribunal, not complying with the order of this Court for whatever reason could not be remedied by an Appeal under Section 260A of the Act. Thus Appeal as filed from the impugned order is not maintainable under Section 260A of the Act.

# STATE TAXES

## ALL INDIA VAT

### ANDHRA PRADESH

The Govt. vides Circular No. CCTs Ref No.CCW/152/2015, dated 19th January, 2016, informs e-CST Way bills and e-Waybills (VAT) to be generated electronically.

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

### BIHAR

The Govt. vides Notification No. 16 dated 20<sup>th</sup> January 2016, makes amendment in entry tax schedule after Serial number 34 of the schedule the following new serial number and their corresponding entries shall be added.

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

The Govt. vides Notification No. 18 dated 20<sup>th</sup> January 2016, amends Schedule and Notification for Entry Tax Rates.

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

The Govt. vides Notification No. 20 dated 20<sup>th</sup> January 2016, amends Schedule and Notification for Entry Tax Rates.

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

### DELHI

The Govt. vides Notification No. No.F.3(26)/Fin.(Rev-1)/2015-2016/dsvi/22 dated 18<sup>th</sup> January 2016, makes amendment in the fourth schedule in serial no 13 & 14, enhances tax rate on Petrol & Diesel to 27% & 18% respectively.

**OUR TAKE:** Readers are requested to read the said Notification. It is self-explanatory. This notification shall come into force with effect from the day immediately following the date of its issuance.

### GOA

The Govt. vides Notification No. 4/5/2005-Fin (R&C)(132) dated 20th January, 2016, amends notification related to Motor Car sold by a registered dealer to defense personnel.

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

### MADHYA PRADESH

The Govt. vides Notification Act No. No. F-A-3-02-2016-1-V (10) dated 22<sup>nd</sup> January, 2016, lists the goods which require to carrying an invoice, bill or challan when brought from a place outside the State of Madhya Pradesh to a place inside the State.

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

The Govt. vides Notification Act No. No. F-A-3-60-2015-1-V (11) dated 22<sup>nd</sup> January, 2016, enhances additional tax on Petrol & Diesel.

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

### RAJASTHAN

The Govt. vides Notification Act No. F.12(16)FD/Tax/2009-116 dated 21<sup>st</sup> January 2016, issues Rajasthan Amnesty Scheme 2016.

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

### COURT DECISIONS

#### M/S CHERAN CEMENTS LTD. VERSUS THE JOINT COMMISSIONER (CT) , THE COMMERCIAL TAX OFFICER (MADRAS HIGH COURT)

**BRIEF:** Rejection of applications for settlement under the Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2011. A person, who had collected tax from the customers and allowed to retain it under a deferred payment scheme, cannot claim that he would pay 40% of what was collected by him together with interest calculated from the date of assessment.

**OUR TAKE:** The hon'ble MADRAS HIGH COURT held that as per the agreement and the interest free deferral scheme, they were liable to pay interest from the date of filing of monthly returns. The emphasis on bonafide conduct of an assessee made by the Division Bench in EID Parry is completely absent in this case. This case is governed not merely by the statutory provisions relating to payment of interest, but also by the agreement executed by the appellant with reference to the interest free deferral scheme. A person, who had collected tax from the customers and allowed to retain it under a deferred payment scheme, cannot claim that he would pay 40% of what was collected by him together with interest calculated from the date of assessment. This is not the purport of the Samadhan Scheme. **[Decided against assessee]**

#### COMMERCIAL TAXES OFFICER VERSUS M/S RAMDEV FOOD PRODUCTS PVT. LTD. & OTHERS [RAJASTHAN HIGH COURT]

**BRIEF:** Classification - VAT - AO was of the view that in so far as Asafetida (Hing) is concerned, the tax of 4% only was being paid but the AO was of the view that it falls in the category of Packed Masala and once it is a Packed Masala, it falls in the entry where levy of tax is @16% - When spices are not mixed, it remains Asafetida (Hing) only and no new product emerges - to be levied @4%.

**OUR TAKE:** The hon'ble RAJASTHAN HIGH COURT held that Masala is always treated to be mixing of two and more spices and since Asafoetida (Hing) is not mixture of two and more spices, therefore, it cannot be termed as a Masala. It is also worth mentioning that the claim of counsel for the respondent that in most of the States Asafoetida (Hing) finds place in the list of Kirana goods also supports contention of the Tax Board and the arguments raised by counsel for the respondents and not disputed by the counsel for the Revenue. - Tax Board has correctly analyzed the Entry No.82 and no contrary view can be taken in the facts and circumstances of the instant petitions. When the very levy of rate of tax @ 4% has been found to be properly levied then the question of penalty does not arise. **[Decided against Revenue]**

# OTHER UPDATES

## FEMA

The **RBI vide Press Release 2015-16/1724 dated 21<sup>st</sup> January 2016**, makes its Master Direction on Gold Monetization Scheme more customer-friendly

The **Reserve Bank of India, in consultation with the Government of India vide press release 2015-16/1737 dated 22<sup>nd</sup> January 2016**, extends Directions issued to CKP Co-operative Bank Ltd, Mumbai, Maharashtra till July 31, 2016.

## COMPANY LAW

### CIRCULAR & NOTIFICATION

The **Central Govt. on 19<sup>th</sup> January 2016**, has granted certain exemptions to private companies under companies act 2013. Impact analysis related to Corporate Laws / Banking / SEBI / LLP. These exemptions and relaxations are applicable only to a private company which is not a subsidiary of public company.

## COURT DECISIONS

### M/S JAIMURTY MINERALS & CHEMICALS PRIVATE LIMITED VERSUS M/S LAKHANI RUBBER UDYOG (P) LIMITED [PUNJAB & HARYANA HIGH COURT]

**BRIEF: Winding up petition - failure to pay the admitted liability/debt - in view liability being admitted the company is ordered to be wound up and the Provisional Liquidator is now appointed as Liquidator of the company.**

**OUR TAKE:** The hon'ble **PUNJAB & HARYANA HIGH COURT** held that As the respondent company was not in a position to discharge its admitted liability, vide order dated 21.4.2015, the petition was admitted. He was asked to take over the movable and immovable assets of the company. No purpose would be served in keeping the matter pending and therefore, in view liability being admitted the company is ordered to be wound up and the Provisional Liquidator is now appointed as Liquidator of the company.

### M/S BHAIKAV INDUSTRIES, THE OFFICIAL LIQUIDATOR, M/S. SHREE GHANSHYAM PARTS PVT. LTD. VERSUS M/S GOPANI METAL INDUSTRIES PVT. LTD. [BOMBAY HIGH COURT]

**BRIEF:** Petition praying the official liquidator be restrained from taking possession of the said plot - transaction itself is not bona-fide and in view of the settled legal position that a transaction not completed before the order of winding up has been passed, cannot be completed after the winding up order is passé.

**OUR TAKE:** The hon'ble **BOMBAY HIGH COURT** held that the counsel for the applicant requested for a stay of eight weeks of this order. When I have found that the transaction itself is not bona-fide and in view of the settled legal position that a transaction not completed before the order of winding up has been passed, cannot be completed after the winding up order is passed I cannot grant any stay. Hence, stay is rejected.

## ALLIED LAW

## COURT DECISIONS

### JAGATJIT INDUSTRIES LTD. VERSUS THE INTELLECTUAL PROPERTY APPELLATE BOARD AND OTHERS. [SUPREME COURT]

**BRIEF: Rectification of register where trademark 'BLENDERS PRIDE' was registered by inadvertence/error - time for filing notice of opposition within the three month - The Registrar's power to maintain the purity of the register of trademarks would still remain intact.**

**OUR TAKE:** The hon'ble **SUPREME COURT** held that If the Registrar is barred from undertaking a suo motu exercise under Section 57(4) to maintain the purity of the register, there could conceivably be cases where a defendant, after raising the plea of invalidity in a suit for infringement, chooses not to proceed with the filing of a rectification petition before the Appellate Board - The Registrar's power to maintain the purity of the register of trademarks would still remain intact even in such cases, as has been held by the judgment in Hardie's case. The Division Bench judgment requires no interference. - Decided against the appellants

## LATEST NEWS ON PROPOSED GST

**20 Jan, 2016**, at a time when government is pushing hard for GST, companies and their technology vendors are working hard to make their IT systems meet the requirements under the new indirect tax regime.

**21 Jan, 2016**, Finance Minister Arun Jaitley said, Congress demand to put cap on GST rate in statute preposterous.

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