



# ASC Times

All India Taxes Weekly Reference

Vol: July 25 - July 31, 2016

## Solving any tax puzzle

Tax saving advice across all the taxes



## TAX CALENDER

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

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## From the CEO's Desk



Dear Reader,

Next time when you get a sprain or a muscle pull and you go for a message therapy, it is possible that EMMA (Expert Manipulative Massage Automation) would give the treatment, which is robotic arm with a 3-D printed massage tip. However, of course if you are in Singapore. Because this particular robot is been developed by a start-up company in Singapore. Emma has a user-friendly interface and recommended guidelines for various sports injuries. The robot consists of a single, 6-axis robotic arm capable of highly articulated movements, a 3D-stereoscopic camera for vision, and a customized, fully rotatable 3D-printed massage tip.

This is the future not only in Singapore but also in India, the world, and much fear to lose their jobs to the technological advances and IT created automation. According to a report prepared by Simplilearn in the name of State of India Technology Skills Report, a compiled input from over 9200 mid-level IT/ITeS professionals, more than 60% respondents believe that technological advancements are set to impact careers by 2017-18. The World Economic Forum had also revealed that the Fourth Industrial Revolution is in progress and this progress in advanced technologies is expected to affect millions of jobs over the next 5 to 10 years. Though 62% say that it will affect the jobs and 48% believe that the impact will be due to globalization and changing consumer perceptions. However, one thing is sure that the impact would be more prominent on low and middle skilled jobs and if one has to safeguard ones job then better be prepared with skills to cope with the change.

The government is likely to list the much-delayed GST bill in the Rajya Sabha this coming week. Finance Minister Mr. Arun Jaitley is already in talks with Congress leaders and other parties and planning to bring about the changes suggested by the Empowered

Committee of state finance ministers. In addition, the different Industry bodies are trying to clear the idea of GST for particularly for their industry, for example Telco's and e-commerce companies want clarity on how GST would affect their industry. I would say that once the GST regime will be implemented there would be some teething issues but in due course, all would be well. Let GST first take off.

Alok Kumar Agarwal

CEO

ASC Group.

# CENTRAL TAXES

## SERVICE TAX

### COURT DECISIONS

#### GUJARAT STATE FERTILIZERS AND CHEMICALS LTD. VERSUS THE COMMISSIONER OF CENTRAL EXCISE, CUSTOMS AND SERVICE TAX, SURAT-II [GUJARAT HIGH COURT]

**BRIEF:** Cenvat Credit on input services. Service Tax paid on commission amount paid to dealers/stockist, nexus with manufacturing activity. Payment to the agents appointed by the appellant would not be eligible for Cenvat credit

**OUR TAKE:** The hon'ble GUJARAT HIGH COURT held that predominantly the entire agreement was one in the nature of appointing a partnership firm as stockist of the appellant company who would upon being supplied the goods in question would store the same and dispose of in the market at agreed rates upon which would receive certain commission. A fleeting reference to attempt to sales promotion would not change the very basic nature of agreement and the relations between the appellant and the stockist converting the stockist as sales promotion agent. Payment to the agents appointed by the appellant would not be eligible for Cen vat credit. [Decided against the assessee]

#### THE LAKE PALACE HOTEL AND MOTELS P LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, JAIPUR II AND VICE-VERSA [CESTAT NEW DELHI]

**BRIEF:** Renting of immovable property on profit sharing basis. Demand of service tax on renting including on notional interest received on the security deposit made with the appellants. Appellant is not liable to pay service tax under the renting of immovable property service.

**OUR TAKE:** The Hon'ble CESTAT NEW DELHI held that the issue has already been settled in appellants own case for earlier period, that the appellant is not liable to pay service tax under the category of renting of immovable property service as leasing out the property to Hotel under the deemed provision of section 65 (105) (zzz) of the Finance Act, 1994. Therefore, we hold that appellant is not liable to pay service tax under the renting of immovable property service. Further, appellant are not liable to pay service tax on the notional interest accrued on the security deposit. Demand set aside. [Decided in favour of assessee]

#### M/S JUMERA PROMOTORS AND DEVELOPERS PVT LTD VERSUS COMMISSIONER OF CENTRAL EXCISE, DELHI [CESTAT NEW DELHI]

**BRIEF:** Renting of farmhouse. Whether appellant is liable to pay service tax under the category of "Renting of Immovable Property Service". Scope of the lease deed, prima facie, the same is not taxable.

**OUR TAKE:** The hon'ble CESTAT NEW DELHI held that the property is leased out for residential purpose and for the employees of the lessee. We find that the lessee also issued certificate to certify that the premises was never used except for residential purposes. Moreover, electricity bills and property tax returns also support the case of the appellant. Revenue has not produced any contrary evidence to the evidence produced by the appellant. Therefore, prima facie, we are of the view that the demand confirmed under the category of "Renting of Immovable Property Service" is not sustainable. [Stay granted]

#### M/S DABUR RESEARCH FOUNDATION VERSUS COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX, GHAZIABAD [CESTAT ALLAHABAD]

**BRIEF:** Supply of tangible goods. Revenue was of the view that allowing use of such capital assets amounts to providing of services, namely, "supply of tangible goods" service. Stay granted partly.

**OUR TAKE:** The hon'ble CESTAT ALLAHABAD held that considering that the appellants have paid VAT on the transaction it will be in the interest of justice to allow stay of the recovery subject to deposit of Rs Three Lakhs only within eight weeks of this order. [Stay granted partly]

#### DINESH M. KOTIAN VERSUS COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX-I, MUMBAI AND VICA-VERSA [CESTAT MUMBAI]

**BRIEF:** Business Auxiliary service or not. Activity of collection/dispatch of Speed Post/Export Delivery Letter etc. on behalf of the Post Office. Demand is dropped on the ground of Revenue neutral exercise.

**OUR TAKE:** The humble CESTAT MUMBAI held that it is clear that if the assessee pays service tax, it shall be available, as Cenvat credit to the postal department and to that extent net liability of service tax shall stand reduced while paying the service tax by the postal department. Therefore, it is an exercise of revenue neutral for this reason demand does not

exist. We, therefore, drop the demand on the point of revenue neutrality without addressing the issues of taxability of service tax and limitation. **[Decided in favour of assessee]**

#### **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 both provisions have separate ingredients. In the present case the appellant has 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]**

#### **COMMISSIONER OF CENTRAL EXCISE, NASIK VERSUS MEGA ENTERPRISES [CESTAT MUMBAI]**

**BRIEF:** Nature of activity. Collection of Octroi on behalf of the Municipal Corporation. Cash management activity or not. Not covered by Banking and other Financial Services, revenue's appeal rejected

**OUR TAKE:** The hon'ble **CESTAT MUMBAI** held that the amount collected excess of contracted amount and retained by the assessee in respect of transit fees is not covered under the category of "banking and other financial services". Since the issue is decided in favour of the respondent-assessee in this appeal, we find no merit in the appeal filed by the Revenue, hold that the impugned order is correct and legal, and does not suffer from any infirmity. **[Decided against Revenue]**

#### **M/S INDUS TOWERS LIMITED VERSUS THE COMMISSIONER OF CENTRAL EXCISE [AAR]**

**BRIEF:** Nature of activity of repair and maintenance of the equipment is so that the same can be re-used without requiring replacement. The activity is not amounting to manufacture. Cenvat Credit of excise duty paid on inputs is eligible while paying service tax on inspection, Certification and engineering services etc.

**OUR TAKE:** The hon'ble **AAR** held that applicant is eligible to avail Cenvat Credit of Excise Duty under the Central Excise Act, 1944 / Additional Duty of Excise under Section 3(1) of the Customs Tariff Act, 1975 paid on parts and spares used for their replacement of the defective ones and Service Tax

paid on inspection, certification and engineering services etc. for the aforesaid repair and maintenance activities and claim set off against the output service tax paid for rendering of passive infrastructure service by the applicant to its customers.

#### **POWER LINK SYSTEM PRIVATE LIMITED VERSUS COMMISSIONER OF CENTRAL EXCISE, COIMBATORE [CESTAT CHENNAI]**

**BRIEF:** So long as the commission paid is not disputed, which can even be verified from the bank statements or certificates from the bank, rejection of claim for want of quantification of commission paid is not legally tenable.

**OUR TAKE:** The hon'ble **CESTAT CHENNAI** held that claim of refund under Cenvat Credit Rules is part of the export promotion scheme without properly examining the records, such benefits cannot be denied, since the Assistant commissioner, who had passed the order-in-original, can properly verify the records in question. I, therefore, remand the entire matter to the original authority for examining the issue afresh. **[Appeal disposed of]**

#### **ARAFAATH 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]**

## CENTRAL EXCISE

### NOTIFICATION / CIRCULAR

**The Govt. vide Circular No. 1037/25/2016-CX dated 19<sup>th</sup> July 2016**, notifies the classification of Tamarind Kernel Powder under CETA, 1985.

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

**The Govt. vides Circular No. 1038/26/2016-CX dated 19<sup>th</sup> July 2016**, notifies that manual signature required for digitally signed invoices.

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

**The Govt. vides Circular No. 1039/27/2016-CX dated 21<sup>st</sup> July 2016**, notifies Classification of Micronutrients, Multi-micronutrients, Plant Growth Regulators and Fertilizers-clarification regarding classification of Glyph sates

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

### COURT DECISIONS

#### GOYAL M.G. GASES PVT. LTD. VERSUS COMMISSIONER OF C. EX. & S.T., CHANDIGARH (CESTAT NEW DELHI)

**BRIEF:** Gas filing activity. Whether the activity undertaken by the appellant amounts to manufacture? Gas is already marketable in its original form and the activity undertaken by the appellant does not render the gas marketable, which is already marketable. Demand of duty set aside.

**OUR TAKE:** The hon'ble CESTAT NEW DELHI held that the gas is already marketable in its original form and the activity undertaken by the appellant does not render the gas marketable, which is already marketable. Therefore, we hold that the activity undertaken by the appellant does not amount to manufacture. Consequently, the appellant are not liable to pay duty. **[Decided in favour of assessee]**

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

**BRIEF:** Refund of unutilised Cenvat credit. Refund claim denied on the ground that in terms of Rule 11(2) of Cenvat Credit Rules, 2004, unutilised credit would lapse on closure of the unit. ER return submitted by the appellant along with refund application is sufficient to grant refund to the appellant.

**OUR TAKE:** The hon'ble CESTAT NEW DELHI held that the rejection of refund claim by the Id. Commissioner is because of misinterpretation of the rules governing the refund. The ER return submitted by the appellant along with refund application is sufficient to grant refund to the appellant. The judgments cited at the bar by the Id. counsel for the appellant are fully applicable in the facts and circumstances of this case. In view of the facts and circumstances enumerated, set aside the impugned order and direct the respondent to grant refund within a period of two months from the receipt of the certified copy of the order. **[Decided in favour of assessee]**

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

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

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

**COMMISSIONER OF CENTRAL EXCISE, 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 i.e. 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]

**M/S. MONNET ISPAT & ENERGY LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, RAI. [CESTAT NEW DELHI]**

**BRIEF:** Eligibility for CENVAT credit - iron and steel items used for fabrication of components / accessories of various machinery like rotary klin, rotary cooler, conveyor systems, raw material preparation plant, power plant and pollution control equipment. Credit allowed

**OUR TAKE:** The hon'ble CESTAT NEW DELHI held that that the allegation in the show cause notice that steel items used by the appellant are neither components nor spares nor accessories is not sustainable. Applying the principle of

“user test” laid down by the Hon'ble Supreme Court in Jawaharlal Mills case (SUPREME COURT OF INDIA) the angles, beams and channels used in the making and fabrication of these capital goods are found eligible for Cenvat credit. [Decided in favour of assessee]

**THE COMMISSIONER, CENTRAL EXCISE, CUSTOMS & SERVICE TAX VERSUS M/S. BALLARPUR INDUSTRIES LIMITED (ORISSA HIGH COURT)**

**BRIEF:** Compliance of sub-section (2) of Section 35B of the Central Excise Act, 1944 - Authorisation made in Annexure-3 of the affidavit filed by the appellant to prefer appeal without same being filed along with appeal is surely an incurable defect and the same cannot be rectified by filing an authorization letter.

**OUR TAKE:** The hon'ble ORISSA HIGH COURT held that the authorisation made in Annexure-3 of the affidavit filed by the appellant to prefer appeal without same being filed along with appeal is surely an incurable defect and the same cannot be rectified by filing an authorization letter as stated by the learned counsel for the appellant. Similarly, as the authorization by the Committee of Commissioners of Central Excise is not found in the impugned order, it must be observed that the impugned order passed by the CESTAT is correct, legal and proper. Hence, we are of the considered view that the impugned order passed by the learned CESTAT being valid, legal and proper, cannot be interfered with.

**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]

## CUSTOMS

### NOTIFICATION / CIRCULAR

The Govt. vides Notification No. 102/2016-Cus dated 21<sup>st</sup> July 2016, notifies Rate of exchange of conversion of the foreign currency with effect from 22<sup>nd</sup> July 2015.

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

### COURT DECISIONS

**MANAWAT PLASTICS PVT. LTD. VERSUS THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, THE COMMISSIONER CUSTOMS, CENTRAL EXCISE & SERVICE TAX [BOMBAY HIGH COURT]**

**BRIEF:** Conversion of Shipping Bill under DEEC Scheme to Drawback Scheme to avail export benefit. No question of law regarding the permissibility of conversion of advance licenses into a drawback facility in present facts has been specifically raised.

**OUR TAKE:** The hon'ble **BOMBAY HIGH COURT** held that the Appellant ought to have raised a specific question of law on such facts. No question of law regarding the permissibility of conversion of advance licenses into a drawback facility in present facts has been specifically raised. Appellants have failed to raise any substantial question of law in this Appeal. Appeal dismissed. **[Decided against the appellant]**

**COMMISSIONER VERSUS SUNRISE ENTERPRISE [SUPREME COURT]**

**BRIEF:** Retrospective Imposition of ADD. The final anti-dumping notification has no applicability to the bills of entry presented prior to the said date. Decision of tribunal affirmed.

**OUR TAKE:** The hon'ble **SUPREME COURT** held that the final anti-dumping notification has no applicability to the bills of entry presented prior to the said date. Inasmuch as the applicant has already been assessed to zero anti-dumping duty, the further demand of anti-dumping duty in terms of the subsequent notification is not called for. Apex Court dismissed the revenue appeal as devoid of any merit.

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

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

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

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

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

**OUR TAKE:** The hon'ble **GUJRAT HIGH COURT** held that the expression sawing machines had been used without any qualification. There is no dispute that the goods were imported for the purposes as specified in the notification. Other condition subject to which the benefit of concessional rate of duty was available and had been fulfilled. The notification covers the machine imported by the appellants. Appellant succeeds on both counts. The appeal is allowed. **[Decided in favour of assessee]**

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

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

**OUR TAKE:** The hon'ble **CESTAT MUMBAI** held section 113(i) can be invoked when there is mis-declaration of description or value. In this case it is not so. **[Decided in favour of assessee]**



## INCOME TAX

### COURT DECISIONS

#### MUMBAI VERSUS UNICHEM LABORATORIES LTD. [ITAT MUMBAI]

**BRIEF:** TDS u/s 194H - no tax was required to be deducted at source on this discount to MRP given by the assessee company to the distributors at the time of sale of drugs-medicine to the distributors.

**OUR TAKE:** The hon'ble ITAT MUMBAI held that the instant appeal is for the assessment year 2009-10 which is prior to the assessment year 2013-14, we hold that no tax was deductible at source on payment of Directors sitting fee paid by the assessee company to its Directors u/s 194J of the Act and the assessee company could not be held as 'assessee in default' u/s 201(1) and 201(1A) of the Act. [Decided in favour of assessee]

#### MAHAVIR INDUCTOMENT PVT. LTD. VERSUS ASST. CIT, (OSD) -1, RANGE-4, AHMEDABAD AND VICA-VERSA [ITAT AHMEDABAD]

**BRIEF:** Disallowance out of interest expenses @ 3% u/s 40A(2)(b). It was observed that as Assessee Company and parent company both were taxed at marginal rate and therefore it cannot be said that service charges paid to parent company are unreasonable so as to evade tax.

**OUR TAKE:** The hon'ble ITAT AHMEDABAD held that the assessee company is not a share holder in Mahavir Rolling Mills Pvt. Ltd., therefore, no addition could be made u/s 2(22)(e) of the Act, as deemed dividend and accordingly, we find no reason to interfere with the order of Id. CIT(A). We uphold the same. [Decided in favour of assessee]

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

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

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

our view; the Assessing Officer rightly imposed penalty. The stand of the Revenue is further fortified by the fact that even the assessee did not file appeal against the disallowance of huge interest expenditure while deciding the quantum addition and accepted the same. [Decided against assessee]

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

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

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

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

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

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

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

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

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

# STATE TAXES

## ALL INDIA VAT

### CHHATTISGARH

The Govt. vides Notification No. F-10-28/2016/CT/V (67) dated 19<sup>th</sup> July 2016, notifies that Entry Tax exemption under Industrial Policy 2014-19.

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

### KERALA

Introduction of Kerala Finance Bill, 2016 on 20<sup>th</sup> July.

### 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 the tax has been worked out based on books of account of assessee after he produced the same in response to notice of department and, therefore, 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 the allegations and facts made or noted by the Intelligence Officer no doubt create some doubts but 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]**

#### M/S. S.M. CONSTRUCTIONS, LUDHIANA VERSUS STATE OF PUNJAB AND OTHERS (PUNJAB & HARYANA HIGH COURT)

**BRIEF:** Refund of excess TDS - construction business - Section 27 & 24 of HVAT Act would be applicable only to the taxable turnover, i.e. after deducting service component and turnover relating to sales outside State in the course of inter-state sales or in the course of import.

**OUR TAKE:** The hon'ble PUNJAB & HARYANA HIGH COURT held that petition is disposed of by directing respondent No.3 to take a decision on the representation dated 18.1.2016, in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioner. **[Matter disposed of]**

## 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.

## FEMA

### COURT DECISIONS

#### BIPINCHANDRA G. CHOCKSHI AND 1 VERSUS STATE OF GUJARAT AND 2 (GUJARAT HIGH COURT)

**BRIEF:** Detaining authority is under obligation to comply with the requirements by formulating grounds for detention

**OUR TAKE:** The hon'ble **GUJARAT HIGH COURT** held that the petition is allowed resulting into quashing and setting-aside the impugned order of detention dated 11.6.1976 at Annexure 'A' to the petition and declaration under Section 12A of the COFEPOSA, 1974 at Annexure 'B' dated 11.6.1976 and quash and set-aside three notices under Section 6 of SAFEMA, 1976, Annexure 'D' Collectively dated 28.4.1977, 20.1.1997 and 23.3.1977.

#### SAJAL DUTTA VERSUS RESERVE BANK OF INDIA & OTHERS (CALCUTTA HIGH COURT)

**BRIEF:** Both the company and its principal shareholders had an interest in the grant of the licence or revocation of it, by the Reserve Bank of India.

**OUR TAKE:** The hon'ble **CALCUTTA HIGH COURT** held that the importation was made more than 20 years ago. These capital goods have spent their life. Their value, now after depreciation is nil. At the time of their importation their declared value was 3, 05, 53,290/-. Against this value, shares were allotted to Kamal. Even if Sajal now succeeds, the equipment's cannot be returned to Kamal. The monetary value has to be refunded with interest from the other assets of the Company. That is plainly not permissible or feasible. W

## 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

### CHARGING SECTION: LEVY OF, AND EXEMPTION FROM, TAX (Section 7)

Section 7 of Goods and Services Tax Act, 2016 (hereinafter referred as the "Act") of the Model GST Law deals with levy of, and exemption from, taxation. Charging section of taxation law outlines the scope of taxability of any events. In other words, a transaction must fall within the ambit of the charging section for levy of tax.

Unlike the present laws, GST funnel chargeability on both, Goods and Services under one section for all intra-state supplies i.e. supplies within the state. It is interesting to note that The Act do not specify any rate for such levy. Instead, it states the tax shall be levied at "the rate specified in the Schedule to this Act". This means there shall be introduced an exhaustive schedule for rate of tax for goods and services, both on pan India basis. The manner of collection of such tax shall also be provided by way of Rule in further publication by Govt.

Every taxable person in accordance with the provisions of this Act shall pay the CGST/SGST.

As the new law renders the taxable person liable to pay tax, it would be interesting understand the meaning of taxable person under the purview of this Act. Taxable person means a person who carries on any business at any place in India and who is registered or required to be registered under Schedule III of the Act. The turnover of such person must exceed specified sum in aggregate [i.e. 5 lakhs for North East states and 10 lakhs for other states]. The definition of taxable person excludes employer-employee relation; agriculturist; transaction in such goods and services that are not liable to tax; and person receiving services of value not exceeding such sum in a year for personal use, other than for use in the course or furtherance of his business.

The next part of charging section overrides the law discussed supra. More interestingly, it empowers both, Central Govt. and State Govt. to notify such goods or services which shall be covered under reverse charge mechanism. In this particular case, taxable person shall be receiver of goods and services. Deeming fiction is introduced in this regard as such person shall be considered as taxable person.

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