



ASC Times

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Solving any tax puzzle

Tax saving advice across all the taxes



From the CEO's Desk



consensus is achieved, the draft will be forwarded to the industry for seeking their views and ideas.

Alok Kumar Agarwal
CEO
ASC Group.

Dear Reader,

Amid the speculations about the economic trends, one can easily say that if the sentiments are not very good they are not poor either. The festive season has started and it is raining deals everywhere. The online retailers give a great boost to the overall scene. There is a sort of cold war going on between the online and offline retailers. Everyone is trying to woo the customers with offers. Customer is the real king right now. As far as the statistics go, the season has kick started with better response in comparison to last 2 to 3 years festive time. Reasons for this can be low inflation rate, higher industrial output, reduction in fuel prices etc. Job market is stabilized and no more layoffs are expected in fact new hiring are on the card. And the best part is that consumer sentiments are positive and favorable. People are ready to buy the stuff they were postponing for years.

Plus stable political scenario also gives a boost to overall activities. Different departments of the Government are trying hard to improve their efficiency and better policies been formed and required changes are been implemented in the existing ones. For example, The Central Board of Excise and Customs (CBEC) have revised the monetary limits for any actions taken against in cases of smuggling and mis-declaration of baggage from Rs. 5 Lakhs to Rs. 20 Lakhs. Limit for taking input credit of service tax and central excise is also revised from Rs.10 Lakhs and Rs. 25 Lakhs to Rs. 1 Crore in the offences related to evasion of tax or wrong utilization of input tax credit.

A meeting of all the state finance ministers is been called on 20th November to discuss the model GST (Goods and Services Tax) and I-GST (Integrated GST) legislation. The draft is already gives to all the state governments. This meeting will be to finalize the draft and once the

TAX CALENDER

Due Date	Description	Law
28 October	Deposit of Tax	Arunachal Pradesh VAT
	Return Filing	Arunachal Pradesh VAT, Delhi VAT
29 October	Return Filing	Gujarat VAT
30 October	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
		Income Tax Law, Wealth Tax Law
31 October	Audit Report	Assam VAT, Meghalaya 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 October	Lakshmi Puja	Assam, Tripura, West Bengal
	Chandi Souds/Shkumari Devi Mela	Uttarakhand
27 October	Maharishi Valmiki Janam Divas	Haryana, Himachal Pradesh, Karnataka, Punjab, Uttar Pradesh, Uttarakhand
	Mera Houchongba	Manipur
	Kumar Purnima / Maha Lakshmi puja	Odisha
31 October	Sardar Vallabhbhai Patel's Birthday	Gujarat

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CENTRAL TAXES

SERVICE TAX

NOTIFICATIONS & CIRCULARS

The **Govt. vide Notification No. 20/2015- F. No. 354/101/2015 -TRU-Service Tax, dated 21 October, 2015** makes the following further amendments in the Notification No. 25/2012-Service Tax, dated 20 June, 2012.

OUR TAKE: In the said notification,-

(i) in the opening paragraph, in entry 29, for clause (g), the following clauses shall be substituted, namely-

(g) business facilitator or a business correspondent to a banking company with respect to a Basic Savings Bank Deposit Account covered by Pradhan Mantri Jan Dhan Yojana in the banking company's rural area branch, by way of account opening, cash deposits, cash withdrawals, obtaining e-life certificate, Aadhar seeding;

(ga) any person as an intermediary to a business facilitator or a business correspondent with respect to services mentioned in clause (g);

(gb) business facilitator or a business correspondent to an insurance company in a rural area; or

(ii) in paragraph 2,-

(a) after clause (g), the following clause shall be inserted, namely :-

(ga) Basic Savings Bank Deposit Account means a Basic Savings Bank Deposit Account opened under the guidelines issued by Reserve Bank of India relating thereto;

(b) in clause (k), in sub-clause (ii), for the words religion or spirituality, the words religion, spirituality or yoga shall be substituted.

OUR TAKE: The hon'ble **GUJARAT HIGH COURT** held that provisions of Section 65(105) (zzze) stand ultra vires and unconstitutional as decided in the case of Ranchi Club Ltd. v. Chief Commissioner of C.Ex. & S.T., Ranchi Zone [2012 (6) TMI 636 - Jharkhand High Court]. The petition partly succeeds and is accordingly allowed to the following extent. The impugned show-cause notice dated 3rd August, 2010 issued under section 73(1) of the Finance Act, 1994 is hereby quashed and set aside to the extent the same seeks to invoke the provisions of section 65(105)(zzze) of the Finance Act qua the noticee therein. [**Decided in partly in favour of assessee**]

COMMISSIONER VERSUS RELIANCE PORTS AND TERMINALS LTD. (GUJARAT HIGH COURT)

BRIEF: Denial of CENVAT Credit. Scope of SCN. The show cause notice is the foundation of the demand. That the order-in-original and the subsequent orders passed by the appellate authorities would be confined to the show cause notice the question of examining the validity of the impugned order on grounds which were not subject matter of the show cause notice would not arise.

OUR TAKE: The hon'ble **GUJARAT HIGH COURT** held that issues raised in the questions proposed do not find place in the show cause notice. In the show cause notice, the assessee was not called upon to state as to whether the services of "Consulting Engineers" and "Banking and other Financial Services" are "input services" of the respondent or as to whether the capital goods were used for providing "output services" provided by the respondent viz. "Port Services", etc. Evidently therefore, in the present appeal, the appellant seeks to challenge the impugned order passed by the Tribunal on grounds which were never subject matter of the show cause notice.

In the light of the settled legal position as emerging from the above referred decisions of the Supreme Court, that the show cause notice is the foundation of the demand under the Central Excise Act and that the order-in-original and the subsequent orders passed by the appellate authorities under the statute would be confined to the show cause notice, the question of examining the validity of the impugned order on grounds which were not subject matter of the show cause notice would not arise. In the absence of any infirmity in the findings recorded by the Commissioner or the Tribunal, there is no warrant for interference. The questions proposed by the appellant which were not subject matter of the show cause notice, do not arise out of the impugned order passed by the Tribunal. [**Decided against Revenue**]

COURT DECISIONS

FEDERATION OF SURAT TEXTILE TRADERS' ASSOCIATION VERSUS UNION OF INDIA THROUGH SECRETARY (GUJARAT HIGH COURT)

BRIEF: Challenge the SCN issued for Levy of Service Tax service tax under section 65(105)(zzze) of the Finance Act 1994. SCN set aside to the extent demand is made in respect of Club and Association Service.

GOPALA BUILDERS VERSUS DIRECTORATE GENERAL OF CENTRAL EXCISE INTELLIGENCE & 1 (GUJARAT HIGH COURT)

BRIEF: Demand under Section 87 from debtors of Petitioner Recovery order issued within two days of SCN Liability of Petitioner yet to be crystallised; Resorting to Section 87 is not permissible.

OUR TAKE: The hon'ble GUJARAT HIGH COURT held that claim under Section 87 can be made only when final adjudication has been done after quantifying the amount due and payable by the assessee. Liability of Petitioner yet to be crystallised; Resorting to Section 87 is not permissible. Decision made in the case of R. V. Man Power Solution v. Commissioner of Customs and Central Excise [2013 (4) TMI 294 - UTTARAKHAND HIGH COURT] followed. [Appeal Allowed in favour of the assessee]

CENTRAL EXCISE

NOTIFICATIONS & CIRCULARS

The Govt. vide Notification No. 42/2015 - Central Excise, dated 19 October, 2015 Seeks to further amend Notification No.12/2012-Central Excise dated 17.03.2012.

OUR TAKE: In the said notification,
 (A) in the opening paragraph, after the second proviso, the following proviso shall be inserted, namely:-
 "Provided also that nothing contained in this notification shall apply to goods specified against serial number 113A of the said Table after the 31st day of March, 2016.";
 (B) in the Table, after serial number 113 a new entry 113 A shall be inserted. Readers are requested to read the said Notification for the details of new entry 113A.

COURT DECISIONS

COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX LTU NEW DELHI VERSUS HAVELLS INDIA LTD (DELHI HIGH COURT)

BRIEF: Appellant / revenue has not been to show any notification by which the benefit of CENVAT credit has been expressly denied where the payment of customs duty or additional customs duty is made using DEPB scrips issued in terms of the FTP 2002-07. CENVAT Credit cannot be denied.

OUR TAKE: The hon'ble DELHI HIGH COURT held that in terms of the Notification No. 34/97-Customs dated 7th April 1997 goods specified in Schedule I to the Customs Tariff Act, 1975 (CTA) imported would be exempted from payment of the whole of the duty of customs as well as additional duty subject to importer having DEPB with sufficient credit. - Division Bench of Punjab and Haryana High Court in has in its order [2010 (4) TMI 281 - PUNJAB & HARYANA HIGH COURT] (Commissioner of Central Excise v. M/s. Neel Kanth Rubber Mills) referred to the EXIM Policy which was amended by the Notifications dated 28th January 2004 and 17th September 2004 which entitled an importer to avail CENVAT Credit of additional customs duty against the amount debited in the DEPB scrips. It was noted by the High Court that there was no condition in the said notifications that the debits made in the DEPB issued under a particular FTP alone would be eligible for CENVAT credit and that debits in a DEPB issued under a previous FTP would not be eligible for credit. Court finds that the said decision indeed covers the issue against the Department on all fours. The Appellant has not been to show any notification by which the benefit of CENVAT credit has been expressly denied where the payment of customs duty or additional customs duty is made using DEPB scrips issued in terms of the FTP 2002-07. No substantial question of law arises for consideration by the Court. [Decided against Revenue]

CUSTOMS

NOTIFICATIONS & CIRCULARS

The Govt. vide Notification No. 50/2015-Customs, dated 16 October, 2015 seeks to reduce the export duty on export of Iron Ore by MMTC Limited (only NMDC origin) to Japan and South Korea under the Long Term Agreement (LTA), from 30 to 10 , upto and inclusive of 31.03.2018.

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

The Govt. vide Notification No. 51/2015-Customs, dated 19 October, 2015 seeks to further amend notification No. 12/2012-Customs dated 17.03.2012 so as to increase the basic customs duty on wheat CTH 1001 19 00 and 1001 99 10 from the present rate of 10 to 25 for a period up to and inclusive of 31.03.2016.

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

COURT DECISIONS

M/S JHUNJHUNWALA VANASPATI LTD. JAUNPUR (U.P.) VERSUS THE COMMISSIONER OF CENTRAL EXCISE, ALLAHABAD (ALLAHABAD HIGH COURT)

BRIEF: Import of Palmolive oil. Exemption under Rule 8 of the Customs (Import of goods to concessional rate of duty for manufacture of excisable goods) Rules 1996 the object of grant of exemption was only to debar those importer/manufacturers from the benefit of the Notifications who had diverted the products imported for other purposes and had no intention to use the same for manufacture of the specified items at any stage.

OUR TAKE: The hon'ble ALLAHABAD HIGH COURT held that the object of grant of exemption was only to debar those importer/manufacturers from the benefit of the Notifications who had diverted the products imported for other purposes and had no intention to use the same for manufacture of the specified items at any stage. Impugned order is quashed and appeal allowed. Decision made in the case of BPL Display Devices Ltd [2004 (10) TMI 92 - SUPREME COURT OF INDIA] followed. [Decided in favour of the Appellant]

M/S. STAR INDUSTRIES VERSUS COMMISSIONER OF CUSTOMS (IMPORTS) , RAIGAD (SUPREME COURT)

BRIEF: Exemption from payment of CVD. Whether the Ore Concentrate imported by the assessee is eligible for complete exemption from payment of additional duty of custom/CVD under Notification No.4/2006-CE? Held No. No relief even if the exercise is revenue neutral. It is open to assessee to take credit.

OUR TAKE: The hon'ble SUPREME COURT held that Tribunal has rightly arrived at the conclusion that by virtue of Note 4, concentrate has to be necessarily treated as different from ores which is deemed as manufactured product after Molybdenum Ores underwent the process of roasting. Roasting of ores and converting the same into concentrates; process would be of manufacture. Molybdenum Ore underwent roasting and Notification No. 4/2006-CE exempts only 'ores'; concentrates automatically falls outside the purview of said notification. It is rightly argued by the learned senior counsel for the Revenue that exemption notifications are to be construed

strictly and even if there is some doubt, benefit thereof shall not enure to the assessee but would be given to the Revenue. Decision made in the case of IVRCL Infrastructure & Projects Ltd. v. Commissioner of Customs, Chennai [2015 (4) TMI 562 - SUPREME COURT] followed.

Contention of Revenue is held correct. Assessee being appellant and exercise of Revenue is neutral; no need to file the appeal arises. Be that as it may, if that is so, it is always open to the assessee to claim such a credit. [Decided against the assessee]

COMMNR. OF CUSTOMS, BANGALORE VERSUS M/S. HUTCHISON ESSAR SOUTH LTD. (SUPREME COURT)

BRIEF: Payment of Differential Duty Assessee imported imported Base Transceiver Station (BTS) along with Antenna and Installation Cable Antenna becomes an integral and inseparable part of the BTS without which it cannot even function Differential duty not to be paid. Benefit of exemption allowed.

OUR TAKE: The hon'ble SUPREME COURT held that definition of BTS in Wiley Encyclopaedia of Electrical and Electronics Engineering specifically mentions that the same is inclusive of Antenna. Antenna becomes an integral and inseparable part of the BTS without which it cannot even function. Differential duty not to be paid. Appeal lacks merit. [Disposed in favour of the assessee]

INCOME TAX

COURT DECISIONS

KS JEWELERS PVT LTD. VERSUS DIRECTOR OF INCOME TAX (GUJARAT HIGH COURT)

BRIEF: In view of the assessment orders made in the case of the petitioner the respondent authorities can no longer continue with the seizure of the ornaments in question and the same are required to forthwith be returned to the petitioner.

OUR TAKE: The hon'ble GUJARAT HIGH COURT held that silver ornaments weighing 219.841 KG came to be seized by the respondent authorities in exercise of powers under section 132A of the Income Tax Act, 1961 in the financial year

2011- 2012. Thereafter, the assessment came to be framed by the Assessing Officer of the petitioner at Varanasi for assessment year 2012-13, whereby after taking note of such seizure made by the authorities at Surat, the return as filed by the petitioner came to be accepted without making any addition on account of such seizure. In the aforesaid premises, the respondent authorities are no longer authorized to continue with such seizure made by them under section 132A of the Act. Under the circumstances, without entering into the merits of the validity of the authorization issued under section 132A of the Act, this court is of the opinion that in view of the assessment orders made in the case of the petitioner, the respondent authorities can no longer continue with the seizure of the ornaments in question and the same are required to forthwith be returned to the petitioner. [Decided in favour of assessee]

PR. COMMISSIONER OF INCOME TAX -5 VERSUS JKD CAPITAL & FINLEASE LTD. (DELHI HIGH COURT)

BRIEF: Penalty u/s 271-E - The Add. CIT ought to have been conscious of the limitation u/s 275(1)(c) i.e. that no order of penalty could have been passed u/s 271-E after the expiry of the financial year in which the quantum proceedings were completed or beyond six months after the month in which they were initiated whichever was later.

OUR TAKE: The hon'ble DELHI HIGH COURT held that in the present case, at the level of the AO, the quantum proceedings was completed on 28th December 2007. Going by this date, the penalty order could not have been passed later than 31st March 2008. The second possible date is expiry of six months from the month in which the penalty proceedings were initiated. With the AO having initiated the penalty proceedings in December 2007, the last date by which the penalty order could have been passed is 30th June 2008. The later of the two dates is 30th June 2008.

When the AO recommended the initiation of penalty proceedings the AO appeared to be conscious of the fact that he did not have the power to issue notice as far as the penalty proceedings under Section 271-E was concerned. He, therefore, referred the matter concerning penalty proceedings under Section 271-E to the Additional CIT. For some reason, the Additional CIT did not issue a show cause notice to the Assessee under Section 271-E (1) till 20th March 2012. There is no explanation whatsoever for the delay of nearly five years after the assessment order in the Additional CIT issuing notice under Section 271-E of the Act. The Additional CIT ought to have been conscious of the limitation under Section 275 (1) (c), i.e., that no order of penalty could have been passed under Section 271-E after the expiry of the financial year in which the quantum

proceedings were completed or beyond six months after the month in which they were initiated, whichever was later. In a case where the proceedings stood initiated with the order passed by the AO, by delaying the issuance of the notice under Section 271-E beyond 30th June 2008, the Additional CIT defeated the very object of Section 275 (1) (c). [Decided in favour of assessee]

BANCO PRODUCTS (INDIA) LTD. VERSUS DEPUTY COMMISSIONER OF INCOME TAX (GUJARAT HIGH COURT)

BRIEF: A. Subsidy received prior to insertion of Explanation 10 to section 43(1). Whether can still be reduced from the cost of assets?

B. And regarding education u/s 80HHC. ITAT held that for the purpose of calculating deduction u/s 80HHC gross interest income without reducing therefrom the interest expenditure is required to be excluded.

OUR TAKE: The hon'ble GUJARAT HIGH COURT held that in the present case, the assessee carries on embroidery work on synthetic fabrics. When the assessee carries on embroidery work on the synthetic fabric, such synthetic fabric is converted into a new article, viz. embroidered synthetic fabric which is commercially known as another article. The nature of the article produced would depend upon the kind of embroidery carried out on the synthetic cloth. The ultimate article produced may be an embroidered saree or an embroidered dress material or some other article. Therefore, there would be a transformation in the basic synthetic fabric on which embroidery has been carried out resulting into a new article which is commercially known as another article. Under the circumstances, the work of embroidery carried on by the assessee would fall within the ambit of definition of "manufacture" as envisaged under section 2(29BA) of the Act. The Tribunal, therefore, did not commit any legal error in holding that the activity carried on by the assessee falls within the ambit of manufacturing activity and thereby the assessee is entitled to avail of the additional depreciation under section 32(1)(iia) of the Act in relation to the machinery installed by it. [Decided in favour of assessee]

STATE TAXES

ALL INDIA VAT

ANDHRA PRADESH

The **Govt. vide Circular AI(1)/45/2014, dated 14 October, 2015** issued instruction in response to complain received regarding Insistence to obtain transport declarations at border check Posts/ICPs for Inter-State movement of goods purchased by Government Departments and consumers for their own use.

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

The **Govt. vide Order No. G.O.Ms.No. 395, dated 21 October, 2015** makes the amendments to Schedule-VI of Andhra Pradesh Value Added Tax Act.

OUR TAKE: There is amendment regarding Item No. 1A, 1B and 1C (alcoholic beverage). Readers are requested to read the said Order for tax rates in detail. It is self-explanatory.

DELHI

The **Govt. vide Notification No. F.3(352)/Policy/VAT/2013/929-40, dated 21 October, 2015** in partial modification of Notification No.F.3(352)/Policy/VAT/2013/818-829 dated 30/09/2015, regarding submission of information online in Form DP-1, it is notified that the Form DP-1 shall be submitted online by all the dealers latest by 23/11/2015. The form shall be filed by dealers registered upto 30/09/2015.

JAMMU AND KASHMIR

The **Govt. vide Notification No. 04, dated 16 October, 2015** notified that the registered dealers whose gross turnover in a year is Rs. 1.00 crore or more and who are required to file the prescribed audit reports before the concerned Assessing Authority and Commissioner Commercial Taxes, shall do so for the accounting year 2014-15 by 31st October, 2015 before the concerned Assessing Authority with a true copy thereof to the Commissioner Commercial Taxes, J&K.

KARNATAKA

The **Govt. vide Circular No. 14 / 2015/16 No. CCW/CR-44/2013-14, dated 19 October, 2015** extend date of Revision option under electronic Uploading of Purchase and Sales Statements (e-UPaSS) module for the Tax

periods May 2014 to May 2015 to 31-12-2015.

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

TELANGANA

The **Govt. vide Order No 486, dated 17 October, 2015** waive the demand raised over and above 5% of the tax, for the period from 31.01.2013 to 16.08.2013 on Diesel Power Generators, subject to the condition that waiver should be given only to the extent where the dealers could prove with evidence that they did not collect VAT at enhanced rate from the customer.

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

COURT DECISIONS

CLEAN FOODS LTD. VERSUS THE COMMERCIAL TAX OFFICER AND JOINT COMMISSIONER OF COMMERCIAL TAX (KARNATAKA HIGH COURT)

BRIEF: Imposition of penalty u/s 53 (12). Movement of goods in the disguise of movement in the course of export to avoid tax liability. Levy of penalty confirmed.

OUR TAKE: The hon'ble **KARNATAKA HIGH COURT** held that invoice dated 07.03.2006 also shows the name of Pepsico India Holdings Private Limited, Gurgaon, Haryana. Thus, the invoice is raised in the name of Company situated in India. However, in one of the columns it is mentioned that export is sought to be made to Riyadh. Therefore, prima facie, the documents which were available at the check-post as also before the Addl. Commissioner who conducted the suo moto proceedings would clearly indicate that the appellant sought to transport goods from Belgaum to Mumbai and the consignee of the goods was M/s. Pepsico India Holdings Private Limited, Gurgaon. In the light of the documents produced by the appellant himself which clearly indicate the names of the consignor and consignee are two Indian companies. Transaction is within the country. Therefore, the argument on behalf of the appellant that the goods were being exported directly by the consignor cannot be countenanced. Additional Commissioner has rightly recorded the finding of Appellate Authority and restored the penalty

imposed in original proceedings. No exception can be taken to the findings recorded and conclusions arrived at by the Additional Commissioner. [**Decided against assessee**]

AERO CLUB VERSUS COMMISSIONER, TRADE & TAXES, DELHI (DELHI HIGH COURT)

BRIEF: Levy of penalty u/s 86(19) of the DVAT Act. Whether bill of entry was not a valid document or invoice. Impounding order u/s 59/61 of the DVAT and recorded the reason for doing so as Goods without Bill. There was no legal justification for issuance of the impugned penalty.

OUR TAKE: The hon'ble **DELHI HIGH COURT** held that there is no mention of the absence of GRs in the "Mal Roko Aadesh". The only reason cited is that the goods were 'without bill'. The relevant documents of import, including the B/E, customs certificate etc. were produced by the dealer on the next day along with the letter dated 29th July 2011. The third reason mentioned in the opinions of the majority is that the statement of the driver substantiated the case of the VATO. This statement was, however, never put to the Appellant and has been held to be inadmissible. There was no legal justification for issuance of the impugned penalty order under Section 86 (19) of the DVAT Act. [**Decided in favour of assessee**]

OTHER UPDATES

FEMA

The **Govt. vide Circular No. 22/2015, 21 October, 2015** issued instruction regarding Annual Return on Foreign Liabilities and Assets (FLA Return), Reporting by Limited Liability Partnerships.

OUR TAKE: In order to capture the statistics relating to Foreign Direct Investments (FDI), both inward and outward, by Limited Liabilities Partnerships (LLPs) in India, it has been decided that henceforth, all LLPs that have received FDI and/or made FDI abroad (i.e. overseas investment) in the previous year(s) as well as in the current year, shall submit the FLA return to the Reserve Bank of India by July 15 every year, in the format as prescribed in the A.P (DIR Series) Circular No. 145 dated June 18, 2014. Since, LLPs do not have 21-Digit CIN (Corporate Identity Number), they are advised to enter 'A99999AA99999LLP999999' against CIN in the FLA Return.

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