



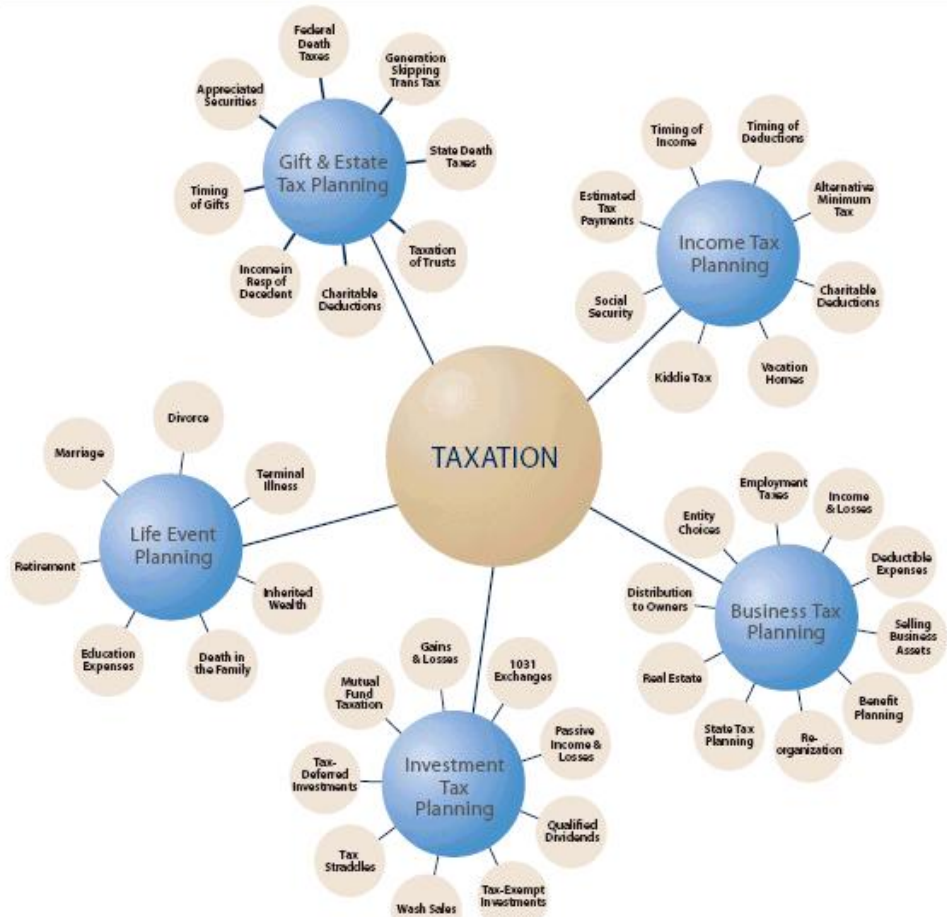
ASC Times

All India Taxes Weekly Reference

Vol: Sep 26 - Oct02, 2016

Solving any tax puzzle

Tax saving advice across all the taxes



TAXCALENDER

Due Date	Description	Law
28 Sep	Deposit of Tax	Arunachal Pradesh VAT
	Return Filing	Arunachal Pradesh VAT
29 Sep	Deposit of Tax	Goa VAT
	Return Filing	Gujarat VAT
30 Sep	Annual Return	Orissa VAT
	Issue of VAT Audit Certificate	Orissa VAT
	Deposit of Tax	Himachal Pradesh VAT, Mizoram VAT, Tripura VAT, Goa VAT, Punjab & Chandigarh VAT Income Tax Law
	Return Filing	Punjab & Chandigarh VAT, Himachal Pradesh VAT, Tripura VAT

COUNTRY WIDE HOLIDAYS FOR THE WEEK

Date	Occasion/Festival	Region
28 Sep	Birthday of S. Bhagat Singh Ji	Punjab
30 Sep	Jananeta Irawat Birth Day	Manipur
01 Oct	Maharaja Agrasen Jayanti	UP & Haryana
02 Oct	Mahatma Gandhi' Birthday	All India

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From the CEO's Desk



Dear Reader,

Income Declaration Scheme 2016 came into effect from 1 June, 2016. It's an opportunity for those who didn't disclose income or pay taxes thereon in the past. Under this scheme, such persons can declare the undisclosed income and pay tax, surcharge and penalty on the declared undisclosed income. Declaration of undisclosed income or asset should have been chargeable to tax for any assessment year prior to the assessment year 2017-18. The Centre has declared 30 September as the last date for making a declaration and 30 November as the date by which the tax, surcharge and penalty may be paid.

Taxpayers in the Diamond City [SURAT] have filled the coffers of income (I-T) department as their disclosures under Income Declaration Scheme (IDS) touched Rs1,100-crore. I-T sources said over half a dozen realtors, textile traders, textile dyeing and printing mill owners disclosed Rs100 crore under the IDS scheme. The realtors from Pal, Saroli and Magob alone disclosed Rs 67 crore under the IDS, followed by Rs10 crore by textile traders, Rs1.50 crores by a textile mill owner, Rs 3.50 crore by a textile group and Rs 18 crore under penny stock.

Until now, around 90 per cent of the disclosures under the IDS had come from real estate groups in the city, followed by textile traders and mill owners. The I-T has received very less amount of disclosures from diamond companies, as most of these companies have their headquarters in Mumbai. Out of Rs1,100 crore disclosed under the IDS, the realtors and textile traders have disclosed Rs 90 crore as tax earned through trade in penny stocks. Penny stocks are shares with value not exceeding a few rupees.

The income tax department is leaving no stone unturned in its bid to make the income declaration scheme (IDS) a success.

With less than 10 days to go before the September 30

deadline, small businesses and roadside eateries—many of which have never seen an IT officer before — are the latest to feel the heat. In Mumbai alone, about 50 — including a well-known Vada pav centre in Thane, a dosa centre in Ghatkopar, a sandwich centre in Andheri and a jalebiwallah in south Mumbai — were raided and the owners asked to declare their black money under IDS.

Also, about 100 raids or surveys were conducted in Ahmedabad and eateries and well-known shops in New Delhi and Kolkata. The raids are based on information collected by the tax department in the last six months. According to a tax official, about 1 lakh small businessmen and shopkeepers have been identified by the government as possible evaders. At least 20 raids are to be conducted every day in major Indian cities, said the people cited above. Apart from Mumbai and New Delhi, tax officials are also targeting small businessmen in Kolkata.

Alok Kumar Agarwal

CEO

ASC Group.

CENTRAL TAXES

BRIEF:Period of limitation - filing an appeal before the Commissioner (appeals) -

SERVICE TAX

condonation of delay - in the

absence of any material considered the date from which the limitation period ought to have been taken, it was a fit case to condone the delay.

NOTIFICATION / CIRCULAR

The Govt. vides Notification No. 41/2016 dated 22nd Sep 2016, seeks to exempt taxable service provided by State Government Industrial Development Corporations/ Undertakings by way of granting long term (thirty years, or more) lease of industrial plots to industrial units from so much of service tax which is leviable on the one-time upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable for such lease.

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

OUR TAKE:The Hon'ble **BANGALORE HIGH COURT** held that it is true that the outer limit is six months for entertaining of the appeal including condonation of delay. However, in order to find out that the limitation would begin from which date, it was obligatory on the part of the respondent No.2 to verify the record of the acknowledgement received, if any, or any other material for ascertaining the date on which the order was received by the appellant. When the appellant made statement on oath that it received the order only on 11.09.2012 to dislodge or for non-accepting the statement made, there should have been material on record for receipt of the order by the appellant on a particular date. If the material was not there, the second respondent could not proceed on the basis that the order despatched on 16.03.2012 ought to have been received within reasonable time.

COURT DECISIONS

M/S BARCO ELECTRONICS SYSTEMS PVT. LTD. VERSUS COMMISSIONER OF CUSTOM, CENTRAL EXCISE & SERVICES TAX, NOIDA [CESTAT NEW DELHI]

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 **CESTAT NEW DELHI** held that as per the law explained by the C.B.E.C., it is explicit that the services provided by the appellant is to their foreign principal who have paid for such services in convertible foreign exchange. Accordingly, we hold that appellant has satisfied both the conditions under the Rule 3 of Export of Service Rules of 2005. Accordingly, we hold that the appellant has exported the services in question and they are not liable to pay service tax under the Finance Act, 1994. Accordingly, the impugned order is set aside. **[Application disposed of]**

TECHNO CONCEPT INDIA PVT. LTD. VERSUS THE DEPUTY COMMISSIONER OF SERVICE TAX, DELHI [DELHI HIGH COURT]

BRIEF:VCES - rejection of VCES application - correct rate of service tax - petitioner had calculated and deposited tax @ 10.3% whereas the tax had to be calculated @ 12.36% as per department - There is no provision in the VCES, which permits correction of errors of this nature by the Petitioner.

OUR TAKE:The hon'ble **DELHI HIGH COURT** held that it was not obligatory for the Respondent to inform the Petitioner what the correct rate of service tax was. It was for the Petitioner to have ascertained the correct rate of tax and calculated the service tax liability accordingly. There is no provision in the VCES, which permits correction of errors of this nature by the Petitioner. In this writ petition, the Court is called upon to examine if the Respondent has committed any legal error in rejecting the application of the Petitioner under the VCES. The Court is unable to find any such error either in fact or in law Consequently the relief prayed for by the Petitioner cannot be granted. **[Decided against the petitioner]**

M/S. EBLITZ INC VERSUS ADDITIONAL COMMISSIONER OF SERVICE TAX, SERVICE TAX COMMISSIONERATE, BANGALORE AND COMMISSIONER OF SERVICE TAX (APPEALS) [BANGALORE HIGH COURT]

MERA BABA REALTY ASSOCIATE (P) LTD. VERSUS COMMISSIONER OF SERVICE TAX, DELHI [DELHI HIGH COURT]

BRIEF:4. Refund claim - the protest was lodged within reasonable time of the appellant becoming aware that the amounts were not recoverable as Service Tax. That is

sufficient to attract proviso to Section 11B(1) - period of limitation not applicable - refund allowed.

OUR TAKE:The hon'ble **DELHI HIGH COURT** held that once it is admitted that the levy itself came into force with effect from 01.07.2010 per se, amounts collected without authority of law fall beyond the imprint of expression or expropriation under pretence of authority of law. Therefore, the fundamental question of the appellant or any other assessee seeking recourse being restricted by the period of limitation under the statute authorising levy and its recovery should not arise. Furthermore, even if that reasoning were to be perused, the fact remains that the protest was lodged within reasonable time of the appellant becoming aware that the amounts were not recoverable as Service Tax. That is sufficient to attract proviso to Section 11B (1). **[Decided in favour of appellant]**

M/S HINDUSTAN PETROLEUM CORPORATION LTD. VERSUS CCE, VISAKHAPATNAM-I [CESTAT VISHAKAPATNAM]

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 VISHAKAPATNAM** held it is found that disputed input services are not barred or excluded by Rule 2(I) ibid. The catering service availed by the appellant is not in the nature of outdoor catering service used primarily for personal use or consumption of any employee, but related to food served in training activities like seminars, workshops etc., hence their input services will not fall in the audit of the Exclusion clause (C) of Rule 2(I). With reference to credit on commissioning service appellant has clarified that this relates to project monitoring consultancy charges for FGD and PTU units; hence I hold that this service has indeed been utilised in relation to refining activities and hence not excluded by Rule 2(I).

MARVEL BHARUCHA REALTORS, MARVEL EDGE REALTORS PVT. LTD., MARVEL PROMOTORS & DEVELOPERS PVT. LTD., MARVEL REALTORS, KAPPA BUILDCON LLP AND MARVEL ZETA DEVELOPERS PVT. LTD. VERSUS COMMISSIONER OF SERVICE TAX-I, PUNE [CESTAT PUNE]

BRIEF: VCES declaration - the designated authority has in the group companies' case on the very same issue accepted the VCES declaration while in the appellants' case herein, rejected the same - designated authority directed to re-adjudicate the matter.

OUR TAKE:The hon'ble **CESTAT PUNE** held that all these appeals are maintainable before the Bench. It is found that whether the appellants herein are eligible for the VCES benefit or otherwise has to be decided by the designated

authority. In these cases, in hand, the designated authority has in the group companies' case on the very same issue accepted the VCES declaration while in the appellants' case herein, rejected the same. Therefore, without going into the merits of the case and keeping all the issues open, we record that the designated authority should be given an opportunity to reconsider the issue afresh. Accordingly, we set aside the impugned order and restore the VCES declarations to their original numbers before the designated authority with a direction that he should decide the VCES declarations on merits after following the principles of natural justice. **[Appeals allowed by way of remand]**

TOMY THOMAS & LATA THOMAS VERSUS COMMISSIONER OF SERVICE TAX BANGALORE-SERVICE TAX [CESTAT BANGALORE]

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 BANGALORE** held that this case is remanded back to the original authority who will decide the refund claim. The original authority will issue the notice before disposing of the case and after following the principles of natural justice, will pass a reasoned order. **[Appeal allowed by way of remand]**

GENO PHARMACEUTICALS LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, GOA [CESTAT GOA]

BRIEF: Reverse charge - Business auxiliary services - reimbursement of expenses to the agent appointed in Myanmar for procurement certain services - not taxable - Demand set aside.

OUR TAKE:The hon'ble **CESTAT GOA** held that the Revenue has no case on merits for more than one reason. Firstly, on perusal of the various e-mails sent by Shri S. Gupta to the appellant they clearly indicate that the said Shri Gupta has claimed tour expenses monthly and it indicates only the air fare, car hire, hotel charges and petrol charges incurred by him for a particular month. The said e-mails or the expenses statement seem to have been accepted by the Revenue authorities as they are claiming service tax on the amount claimed as reimbursement by Shri S. Gupta.

CENTRAL EXCISE

COURT DECISIONS

BERGER PAINTS INDIA LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE AND OTHERS(DELHI HIGH COURT)

BRIEF: Validity of order directing special audit - Section 14AA of the Central Excise Act, 1944 - The Commissioner has not discussed of the quantum of the duty credit or utilised Cenvat credit by the manufacturer - petitioner was not afforded any opportunity of hearing - order of audit set aside.

OUR TAKE: The hon'ble DELHI HIGH COURT held that the petitioner has availed of duty credit or utilised Cenvat credit beyond the normal limits having regards to the nature and quantity of finished goods manufactured and cleared. The Commissioner has not discussed the nature of finished goods manufactured and cleared by the petitioner. The Commissioner has not discussed of the quantum of the duty credit or utilised Cenvat credit by the manufacturer. The foundational basis for the assumption of jurisdiction by the Commissioner under Section 14AA of the said Act has not been stated in the impugned order. [The impugned order is unreasoned]

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 on account 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 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.

CUSTOM

NOTIFICATION / CIRCULAR

The Govt. vide Notification No. 50/2016 dated 22nd Sep 2016; amend notification No. 12/2012-Customs dated 17th march 2012.

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

The Govt. vides Notification No. 51/2016 dated 23rd Sep 2016; amend notification No.12/2012-Customs dated the 17th March 2012, so as to:

- Reduce import duty on potatoes from 30% to 10% up to 31st Oct 2016.
- Reduce import duty on wheat from 25% to 10% up to 29.02.2017.
- Reduce import duty on palm oil from 12.5% to 7.5% for crude palm oil of edible grade, and from 20% to 15% for refined palm oil of edible grade.

The Govt. vides Notification No. 50/2016 dated 22nd Sep 2016; amend three Customs notifications namely 104/2009-Cus, 16/2015-Cus and 17/2015.

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

COURT DECISIONS

Golden Enterprises Versus C.C.E. & ST. Ludhiana [CESTAT PUNJAB]

BRIEF: To conclude that the imported goods were not PDO but 'base oil' and allege mis-declaration on the part of the importer only on the basis of the chemical examiner's report on one out of three characteristics will not be correct.

OUR TAKE: The hon'ble CESTAT PUNJAB held that in the absence of conclusive evidence of mis-declarations, the Customs Authorities have gone with the declaration and finalized the assessments.

MISHRA & MISHRA AGENCIES & ANR. VERSUS UNION OF INDIA & ANR. [CALCUTTA HIGH COURT]

BRIEF: Maintainability of writ petition - it is not the legal position that once a petition is admitted, it cannot be dismissed on the ground of alternative remedy.

OUR TAKE: The hon'ble **BOMBAY HIGH COURT** held that 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]**

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 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. 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 also 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 there is no mis-declaration of description of goods in the Shipping Bill. Neither is there any mis-declaration of value. The claim of drawback separately on Jackets & Pants is an error but malafide intention cannot be ascribed to invoke penalty. 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 shareholder 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, penalty was rightly imposed by the Assessing

Officer. 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 KOLKATA]

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 KOLKATA 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

ANDHRA PRADESH

The Govt. vides Notification G.O.MS.NO. 437 dated 19th Sep 2016, hereby makes amendments to the Andhra Pradesh Value Added Tax Rules, 2005, issued in G.O.Ms.No.394, Revenue (CT-II) Department, Dated: 31st march 2005.

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

HARYANA

The Govt. vides Notification No.20/ST-1/H.A. 6/2003/S.59A/2016 dated 21st Sep 2016, amends Schedule B and C - Exemption from levy of VAT on Sale of 'Technetium 99M Generators' used in diagnosis of Cancer.

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

UTTAR PRADESH

The Govt. vides Notification No.KA.NI.-2-1341/XI-9(107)/07-U.P.ACT-30-07-ORDER-(165)-2016 dated 21st Sep 2016, introduction of entry tax on transportation for online shopping goods.

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

The Govt. vides Notification No.KA.NI. -2-1342/XI-9(107)/07-U.P.ACT-30-07-ORDER-(165)-2016 dated 21st Sep 2016, entry tax applicable at the rate of 5 % notifies that All kind of goods except the goods described in Schedule-I of the Uttar Pradesh Value Added Tax Act, 2008, purchased or ordered through online shopping or E-Commerce and consigned or brought into a local area from outside the State,

otherwise than in connection with business or for personal use.

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

The Govt. vides Notification No.KA.NI.-2-1343/XI-9(107)/07-U.P.ACT-30-07-ORDER-(165)-2016 dated 21st Sep 2016; Entry Tax exemption to Gas based electric units

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

COURT DECISIONS

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

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

OUR TAKE: The hon'ble BOMBAY HIGH COURT held that 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]

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.

GST ALERTS

NOTIFICATION / CIRCULAR

The CBEC released Frequently Asked Questions (FAQ) on GST as on 21.09.2016.

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

The Govt. vides Notification No.F. No. 31011/07/2014-SO (ST) dated 16th Sep 2016, hereby appoints the 16th day of September, 2016 as the date on which the provisions of Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19 and 20 of the said Act, shall come into force.

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

TRANSITIONAL PROVISIONS

MIGRATION OF EXISTING TAX PAYERS (SECTION 142)

- All the persons registered under the present Tax structure shall be migrated automatically to GST on provisional basis, which is valid for a period of 6 months or extended period as State/Central Govt. may prescribe.
- Every person to whom provisional Registration as stated above has been granted needs to furnish information as may be called for by proper officer and upon furnishing of same, final registration shall be granted by State / Central Govt. officer as the case may be.
- Provisional Certificate issued to Existing Tax payer shall be cancelled if the person fails to furnish the information as called for.
- If the taxable person under the present tax system submits application that he is not liable to be registered under GST Act, then the certificate of registration issued on provisional basis shall be deemed to have not been issued upon cancellation of provisional registration under GST.

CARRY FORWARD OF CENVAT CREDIT IN RETURN TO BE ALLOWED AS TAX CREDIT IN GST (SECTION 143)

- Registered Taxable person shall be allowed to take credit of CENVAT / VAT as available on the day immediately preceding the day on which GST Act comes into force. Tax credit has to be taken as opening balance in Electronic Ledger i.e. online Input Tax Credit Ledger in GSTIN.
- CENVAT Credit available under Excise and Service Tax as on date preceding to GST Act date shall be carried forward in Electronic Ledger under the head "CGST" and Vat credit under the head "SGST".
- Tax Credit has to be carry forward provided the same is admissible both under present and in GST law.
- Tax Credit shall be recovered as tax arrears by Central / State GST officers if the same is found to be recoverable as a result of any proceeding initiated before or after the GST Act comes into force.

We may be contacted at the following offices:

CORPORATE OFFICE

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

GURGAON

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

NOIDA

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

MUMBAI

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

ASSAM

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

SINGAPORE

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

For enquiries related to:

Service	Contact Person	11Service	Contact Person
DVAT:	faiz@ascgroup.in	Service Tax:	nitin@ascgroup.in
HVAT:	deepak@ascgroup.in	Transfer Pricing & PE:	shailendra@ascgroup.in
Excise:	deepak@ascgroup.in	Legal Metrology:	mayank.singhal@ascgroup.in
UPVAT:	jaswant@ascgroup.in	Company Law:	legal@ascgroup.in
Income Tax:	vikash@ascgroup.in	PR/Media	socialmedia@ascgroup.in
Maharashtra VAT:	nitin@ascgroup.in		

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