



ASC Times

All India Taxes Weekly Reference

Vol: June 27- Jul 03,2016

Solving
any **tax**
puzzle

Tax saving advice
across all the taxes



From the CEO's Desk



Dear Reader,

"For those having undisclosed income, the government has provided a special chance to declare it by September 30. I have promised that there will be no inquiry into the source of the undisclosed income and assets if the declaration is made voluntarily. That is why I am saying it is a good chance for becoming a part of transparent system," said Mr. Modi in his monthly radio programme 'Mann Ki Baat' while answering about the various doubts and queries, which had been directed to the tax bodies. He further said by paying a penalty, those having undisclosed money can free themselves from various kinds of burden. Actually it so happened that with the domestic black money window, which is in operation right now for almost a month, CBDT has issued a fresh set of FAQ's. The trade bodies and businessmen have also sought immunity from prosecution under other financial laws like Companies Act, Excise Act, Service Tax laws, VAT laws and by market regulator SEBI once a person declares his black assets and funds under the IDS. The scheme already provides immunity from prosecution under the Income Tax Act and the Wealth Tax Act. Therefore, CBDT is considering granting immunity to declarants from other fiscal laws and extending deadline for payment of taxes till the end of the fiscal year. These queries, doubts and demands of the traders, businesspersons and others were made known to Income Tax department officials who are holding multiple awareness campaigns and sessions across the country to popularize the one-time compliance window called the Income Declaration Scheme (IDS).

Therefore, Mr. Modi further said, "My plea is that by running away from rules, we lose our peace. Any small person can harass us. Why should we let it happen? Why not we ourselves give correct information to the government about our income, about our wealth? For once, dispose off the baggage of the past. I appeal to my countrymen to get free from this. I keep saying that democracy does not mean that you vote and give contract

of five years for running the country. Voting is a crucial part of democracy, but there are several other aspects too. The biggest aspect is people's participation -- the pulse of the people, the thinking of the people. The more governments associate with the people, the more is the country strengthened."

Alok Kumar Agarwal

CEO

ASC Group.

TAX CALENDER

Due Date	Description	Law
28 June	Deposit of Tax	Arunachal Pradesh VAT
	Filing of Return	Arunachal Pradesh VAT
29 June	Deposit of Tax	Goa VAT
	Filing of Return	Gujarat VAT
30 June	Deposit of Tax	Himachal Pradesh VAT, Mizoram VAT, Tripura VAT, Goa VAT, Punjab & Chandigarh VAT
	Return Filing	Punjab & Chandigarh VAT, Himachal Pradesh VAT, Tripura VAT

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COUNTRY WIDE HOLIDAYS FOR THE WEEK

Date	Occasion/Festival	Region
NA	NA	NA

CENTRAL TAXES

SERVICE TAX

CIRCULAR & NOTIFICATIONS

The Govt. vide Notification No. 35/2016-ST dated 23rd June 2016, exempted taxable services from the whole of Krishi Kalyan Cess leviable thereon with respect to which the invoice for the service has been issued on or before 31st May, 2016 subject to the condition that the provision of the service has been completed on or before 31st May, 2016 made amendment in notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 12/2013-Service Tax, dated the 1st July, 2013 related to entitlement of refund to SEZ unit & effectiveness of Swachh Bharat Kalyan Cess from 01-06-2016.

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

The Govt. vide Notification No. 36/2016-ST dated 23rd June 2016, exempted service tax on taxable services by way of transportation of goods by a vessel from outside India upto customs station in India with respect to which the invoice for the service has been issued on or before 31st May, 2016 subject to the condition of **production of customs certified copy of the import manifest or import report required to be delivered under section 30 of the Customs Act, 1962.**

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

COURT DECISIONS

THE PRINCIPAL COMMISSIONER, SERVICE TAX, DELHI-VERSUS SHUBHAM ELECTRICALS [DELHI HIGH COURT]

BRIEF: Increase in rates of service tax in respect of bank guarantee and insurance premium is directly relatable to the terms of the contract.

OUR TAKE: The hon'ble DELHI HIGH COURT held that as rightly pointed out by the CESTAT, the Department itself is unclear whether the service performed by the Respondent was "management maintenance or repair service" or "Erection, Installation and Commissioning Services". This vagueness goes to root of the matter. Therefore, the court concurs with the CESTAT that the SCN as well as the Adjudication Order are vague as to the taxable service performed by the Respondent and, therefore, no substantial question of law arises for determination by the Court. **[Decided against the revenue]**

NATIONAL HIGHWAYS AUTHORITY OF INDIA VERSUS M/S JSC CENTRODORSTROY [SUPREME COURT]

BRIEF: Increase in rates of service tax in respect of bank guarantee and insurance premium is directly relatable to the terms of the contract.

OUR TAKE: The hon'ble SUPREME COURT held that It has consistently been laid down by this Court that construction of the terms of a Contract is primarily for an Arbitrator or Arbitral Tribunal to decide and unless the Arbitrator or Arbitral Tribunal construes the contract in such a way that no fair minded or reasonable person could do, no interference by Court is called for. Viewed thus, we do not see any reason or justification to interfere in the matter. The view that the increase in rates of service tax in respect of bank guarantee and insurance premium is directly relatable to terms of the contract and performance under the Contract is certainly a possible view. **[Decided against the appellant]** COMM. OF CENTRAL EXCISE VADODARA I VERSUS GUJARAT CONTAINER LTD [GUJARAT HIGH COURT]

**CCE, MADURAI VERSUS M/S. SUNDARAM INDUSTRIES LTD.
[CESTAT CHENNAI]**

BRIEF: Once what is received by the service receiver being output services, the same would automatically become input service in terms of Rule 2 (I) of Cenvat Credit Rules.

OUR TAKE: The hon'ble CESTAT CHENNAI held that the department had accepted the payment of tax under reverse charge but objected to the availment and future utilization of credit for discharge of future liability by the Respondent. This stand adopted by the department does not seem to be an approach in the right direction. The further finding given by the Commissioner (Appeals) with regard to non-invocation of extended period holding that the issue is purely interpretative in law cannot also be faulted with. The submission made by the Advocate for the Respondent that there is no finding with regard to the penalty or invocation of extended period is also factually true. **[Decided against the revenue]**

**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]**

**T.V. TODAY NETWORK PVT. LTD. VERSUS COMMISSIONER
OF CENTRAL EXCISE, DELHI [CESTAT NEW DELHI]**

BRIEF: Services of renting of machinery or equipment for production or manufacture, which is an activity relating to conduct of main business are not covered under Business Support Service.

OUR TAKE: The hon'ble CESTAT NEW DELHI held that by relying on the earlier decisions held that BSS would cover only the services which are supporting nature to the main business, like services relating to customer relationship telemarketing, office infrastructure, etc and would not cover the services of renting of machinery or equipment for production or manufacture, which is an activity relating to conduct of main business. The applicants have strong prima facie case in their favour and therefore, waiver of pre-

deposit is granted for admitting the appeal. At this prima facie stage, by following the stay orders passed earlier it is found that, in similar set of facts, the present applicant has to be given full waiver of pre-deposit of adjudicated dues. **[Stay and waiver granted]**

**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.

CENTRAL EXCISE

COURT DECISIONS

THE COMMISSIONER OF CENTRAL EXCISE VERSUS THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, M/S. LARSEN & TOUBRO LTD. (MADRAS HIGH COURT)

BRIEF: When the Tribunal pass the order on production of necessary documentary proof and confirmation of the same by both sides, the appeal filed to a higher forum is non-maintainable.

OUR TAKE: The Hon'ble MADRAS HIGH COURT held that when credit was available to the account of the assessee, the Department cannot act like Shylock demanding a pound of flesh. Therefore, the Department, after having confirmed the facts as borne out by documents produced before the Tribunal, could not have come up with the above appeals. [Decided against the revenue]

M/S GLOBAL SUGAR LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, KANPUR [ALLAHABAD HIGH COURT]

BRIEF: When two mandatory conditions viz. goods received in the factory premises and the evidence of payment of duty are fulfilled, Modvat credit should be allowed - Rule 57-G is only procedural in nature.

OUR TAKE: The Hon'ble ALLAHABAD HIGH COURT held that Modvat credit could not be denied on a technical ground that the procedure for availing Modvat credit was not followed at the material moment of time. Also the Tribunal was not justified in interpreting Rule 57-T(3) of the Rules in a technical manner holding it to be a mandatory provision. [Decided in favour of appellant]

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.

M/S. ARCHANA SPINNERS LTD. VERSUS THE DEPUTY COMMISSIONER OF CENTRAL EXCISE AND OTHERS [MADRAS HIGH COURT]

BRIEF: Interest under Section 11AA - After amendment with effect from 8.4.2011, Section 11AA itself is removed. Therefore, all types of cases where there is a determination under Section 11A(2) are treated alike irrespective of the presence or absence of fraud, collusion, etc.

OUR TAKE: The hon'ble MADRAS HIGH COURT held that the case of the assessee was that there was a claim for refund, which could have been adjusted by the Department. While passing an order in appeal No.178/2003, the Appellate Commissioner found that at least in respect of the claim under Order in Original bearing No.18/2000, it was adjustable. Therefore, that portion of the order of the Tribunal as well as the order in appeal is without any application of mind to the quantum of interest under Section 11AA.

RAM SURESH RAM, SON OF LATE RAM CHANDRA RAM VERSUS THE UNION OF INDIA AND OTHERS [PATNA HIGH COURT]

BRIEF: Unless it can be shown that the decision was taken malafide or with ulterior motive, for a wrong decision taken there cannot be disciplinary proceedings as it is not a mis conduct.

OUR TAKE: The hon'ble PATNA HIGH COURT held that the petitioner should not have allowed refund to the seller/manufacturer. Refund if at all due was legally due to the buyer who had paid the duty to the manufacturer for depositing to the Department. The view of the U.P.S.C. was correct but we cannot take note of this because there was no such charge against the petitioner in the departmental proceedings. If this was the opinion of the U.P.S.C. after the enquiry had concluded, this cannot form basis of any action. Therefore, the impugned order of the disciplinary authority as also the order of the Tribunal not interfering with the order of punishment, 30% reduction of pension for 5 years is set aside and any deduction that

has already been made on this count has to be refunded to the petitioner. **[Decided in favour of petitioner]**

M/S. EVEREADY INDUSTRIES INDIA LTD. VERSUS THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, THE ASSISTANT COMMISSIONER OF CENTRAL EXCISE, THE COMMISSIONER OF CENTRAL EXCISE,. [MADRAS HIGH COURT]

BRIEF: If an order of refund is passed after adjudication u/s 11B, the amount refunded will not fall under the category of "erroneous refund" so as to enable the order of refund to be revoked u/s 11A(1) - No recovery proceedings.

OUR TAKE: The hon'ble **MADRAS HIGH COURT** held that in none of the decisions relied upon by the learned Standing Counsel, the Courts were confronted with an order of adjudication passed under Section 11B on an application. Once an application for refund is allowed under Section 11B, the expression 'erroneous refund' appearing in Sub-Section (1) of Section 11A cannot be applied. If an order of refund is passed after adjudication, the amount refunded will not fall under the category of erroneous refund so as to enable the order of refund to be revoked under Section 11A(1). One Authority cannot be allowed to say in a collateral proceeding that what another Authority did was an erroneous thing. Therefore, the question of law has to be answered in favour of the appellant/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]**

CUSTOMS

CIRCULAR & NOTIFICATIONS

The Govt. **vide notification No. 39/2016-Cus dated 16th June 2016**, amend Notification No. 96/2008-Customs dated 13.08.2008 so as to include 'Republic of Togo' and 'Republic of Chad' in the list of countries eligible for preferential tariff under the said notification. Makes amendments in the notification No. 27/2011-Customs, dated the 1st March 2011 namely: - In the said notification, in the Table, serial number 24BA and the entries, relating thereto shall be omitted.

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

The Govt. **vide notification No. 40/2016-Cus dated 16th June 2016**, amend notification No. 53/2011-Customs dated 01st July, 2011 so as to provide deeper tariff concessions in respect of specified goods imported from Malaysia under the India-Malaysia Comprehensive Economic Cooperation Agreement (IMCECA) w.e.f. 30.06.2016 .

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

COURT DECISIONS

M/S. GREEN GLOBE TRADING COMPANY VERSUS THE UNION OF INDIA AND OTHERS, M/S. BORA AGRI TECH, ALL INDIA SPIECES IMPORTERS EXPORTERS & DISTRIBUTORS ASSOCIATION, M/S. RADHEY SHYAM RATANLAL [MADRAS HIGH COURT]

BRIEF: No new conditions can be imposed by way of trade notice, in the absence of any amendment to Import-Export policy framed by Central Government by publishing a notification over and above the three stipulated in Chapter 12 of Exim Code for import of poppy seeds

OUR TAKE: The hon'ble **MADRAS HIGH COURT** held that article 39 (2) of the Constitution of India will not in any way be a source of power or provides a springboard to the fourth respondent to impose the conditions in the impugned public notice. **[Decided in favour of petitioner]**

M/S. TRANSPORT LOGISTICS VERSUS THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, THE COMMISSIONER OF CUSTOMS (SEAPORT - IMPORTS) [MADRAS HIGH COURT]

BRIEF: Revocation of CHA licence is a harsh penalty for giving blank signed forms to third parties, if there is no other role either played in the substitution of goods or tampering with custom seal.

OUR TAKE: The hon'ble **MADRAS HIGH COURT** held that a perusal of the order passed by the Collector, Custom Commissioner as well as the order impugned herein would reveal no connivance on the part of the appellant in either mis-declaration or substitution of the goods by tampering with the Custom seal. Therefore, the extreme penalty of cancellation of CHA licence is not warranted in this case. – **[Decided partly in favour of appellant]**

SATHIK TANNING COMPANY THROUGH ITS PROPRIETOR VERSUS COMMISSIONER OF CUSTOMS (EXPORTS) [DELHI HIGH COURT]

BRIEF: Appropriate course for release of confiscated goods is to furnish a bank guarantee for the entire amount of redemption fine and penalty.

OUR TAKE: The hon'ble **BOMBAY HIGH COURT** held that it is directed to the petitioner to furnish a bank guarantee in favour of the Department, for the entire amount of redemption fine and penalty as ordered by the Order-in-Original, the goods in question shall be released to the Petitioner. **[Petition disposed of]**

KUSH GEMS PVT LTD AN 5 VERSUS UNION OF INDIA AND 2 [GUJARAT HIGH COURT]

BRIEF: Authorities can exercise such powers, if there is any error apparent on the face of the record which requires rectification.

OUR TAKE: The hon'ble **GUJRAT HIGH COURT** held that linking the return of the bank guarantee and the cancellation of bond to the penalties was done either wholly through oversight or at any rate without legal justification. In either case, we would strike down that portion of the appellate order and permit the petitioners to pursue their pending appeal before the Tribunal for the rest of the grievances. **[Petition disposed of]**

SANWAR AGARWAL VERSUS COMMISSIONER OF CUSTOMS (PORT) & OTHERS [CALCUTTA HIGH COURT]

BRIEF: Legality/validity of Circular - classification of Filters referred to as 'Disposable Sterilized Dialyzer' and 'Micro barrier' for filtering blood - The said show cause notice is admittedly based on the impugned circular. If the circular is quashed, the show cause notice automatically goes.

OUR TAKE: The hon'ble **CALCUTTA HIGH COURT** held that this is a point without any substance. The said show cause notice is admittedly based on the impugned circular. If the circular is quashed, the show cause notice automatically goes. Hence, the impugned circular is bad in law being without jurisdiction and cannot be sustained. The Circular No. 19/2013-CUS dated 9 May 2013 is quashed and set aside. **[Decided in favour of applicant]**

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.

INCOME TAX

COURT DECISIONS

THE COMMISSIONER OF INCOME TAX, MANGALURU AND THE INCOME TAX OFFICER, KARWAR VERSUS THE NAGARBAIL SALT-OWNERS [KARNATAKA HIGH COURT]

BRIEF: Transfer of fund for subsequent distribution to the members before payment of tax is not a 'deductible expenditure' in computation of business income of the Assessee-Co-operative Society.

OUR TAKE: The hon'ble KARNATAKA HIGH COURT held that an ideology however lofty does not ipso facto exempt such entity from the solemn duty and sacrosanct obligation of obeying the law of the land nor does it insulate the entity from the vigour of penal actions in case of default. Thus, assessee a co-operative entity which runs a business enterprise is duty bound to offer its profits to tax before diverting any funds to the Distributable Pool Fund Account. [Decided in favour of revenue]

THE CHIRAKKAL SERVICE CO-OPERATIVE BANK LTD. VERSUS THE COMMISSIONER OF INCOME TAX [KERALA HIGH COURT]

BRIEF: Denial of exemption under section 80P on the mere ground of belated filing of return by the assessee concerned not justified.

OUR TAKE: The hon'ble KERALA HIGH COURT held that a return filed by the assessee beyond the period stipulated under section 139(1) or 139(4) or under section 142(1) or section 148 can also be accepted and acted upon provided further proceedings in relation to such assessments are pending in the statutory hierarchy of adjudication in terms of the provisions of the IT Act. In all such situations, it cannot be treated that a return filed at any stage of such proceedings could be treated as non est. in law and invalid for the purpose of deciding exemption under section 80P of the IT Act..

VIJAY KUMAR CHAUDHARY, RAM BABU ROY VERSUS INCOME TAX APPELLATE TRIBUNAL AND OTHERS [PATNA HIGH COURT]

BRIEF: Charge of interest under Section 158 BFA (1) of the Income Tax Act, 1961 were automatic and the same were leviable from the date of service of the first notice.

OUR TAKE: The hon'ble PATNA HIGH COURT held that the facts, which are not in dispute, are that notice under section 158BC of the Income Tax Act was issued on 24.12.2002, which was received by assessee on 04.01.2003. However, the assessee filed their return on 16.07.2004. The assessing

officer calculated interest for the period starting from December 2002 until the date of filing of the return. It is not disputed that the notice dated 23/ the transferee officer issued 24.12.2002. It is only the order under Section 127 of the Act, which was served on the appellants in September 2003. The appellants were bound to comply with the notice and file their return and failure to file the return would attract interest under Section 158 BFA. [Decided in favour of the revenue]

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 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. Decided in favour of the assessee]

M/S CACHET PHARMACEUTICALS PVT. LTD. VERSUS COMMISSIONER OF INCOME TAX-1, PATNA, DY. COMMISSIONER OF INCOME TAX [PATNA HIGH COURT]

BRIEF: Building which is constructed solely for the manufacturing of medicine is a 'plant' and is entitled to higher depreciation at the rate of 25%.

OUR TAKE: The hon'ble PATNA HIGH COURT held that the finding of the Assessing Officer for the previous two years and applying the functional test, we find that the building which is constructed solely for the manufacturing of medicine is a 'plant' and is entitled to higher depreciation at the rate of 25%. Thus, the question of law is answered in the affirmative [In favour of the assessee and against the revenue]

PR. COMMISSIONER OF INCOME TAX-VADODARA-1 VERSUS GUJARAT STATE ELECTRICITY CORPORATION LTD. [GUJARAT HIGH COURT]

BRIEF: Unascertained liability cannot be excluded in the provision of gratuity for the computation of book profit under section 115JB.

OUR TAKE: The hon'ble GUJARAT HIGH COURT held that the controversy involved in the present case stands concluded by a decision of this court in the case of Deputy Commissioner of Income Tax v. Inox Leisure Limited, (2013 - GUJARAT HIGH COURT) [in favour of the assessee and against the revenue]

STATE TAXES

ALL INDIA VAT

BIHAR

The Govt. vide Circular S.O.155 dated 17th June 2016, amends rules Rule 19, 33 & Form-RT-IV; Substitution of Form RT-I, Form-RT-III, Form RT-V

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

RAJASTHAN

The Govt. vide Circular No. 06/2016-17 F.16 (95)/Tax/CCT/14-15/655 22nd June 2016, facilitates Single user ID for VAT, CST, Entry Tax (Goods), Entertainment Tax & Luxury Tax.

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

UTTARAKHAND

The Govt. vide Notification No. 304/2016/04(120)/XXVII(8) /2016 dated 21ST June 2016, amends Schedule-I Regarding Khadi cloth and all types of Khadi garments and made ups of Khadi

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

COURT DECISIONS

GNG EXPORTS VERSUS SALES TAX OFFICER, PARK STREET CHARGE & OTHERS (KOLKATA HIGH COURT)

BRIEF: Rejection of C-forms - petitioner not been able to correlate the two C-forms with matching invoices - Benefit allowed since substantial co-relation has been established.

OUR TAKE: The hon'ble **PUNJAB & HARYANA HIGH COURT** held that it is true that in matters of accounts, the figures should tally up to the last digit on either side and chartered accountants burn their midnight all over such details, but when it comes to a matter of adjudication as to whether the relevant bill was relatable to the amounts claimed in the two C-forms, the Board ought to have shown a greater degree of flexibility and accepted the same. Therefore, the petitioner is entitled to the benefits in respect of C-forms bearing nos.2116542 and 2116543 since all the invoices pertaining thereto have been identified and there is substantial co-relation which has been established. **[Decided in favour of appellant]**

R.S. ISPAT LIMITED VERSUS THE JOINT COMMISSIONER, COMMERCIAL TAXES, SALT LAKE CHARGE & OTHERS (KOLKATA HIGH COURT)

BRIEF: Whether it is possible to settle a part of a pending dispute under the West Bengal Sales Tax (Settlement of Dispute) Act, 1999 without settling the entire appeal or revision.

OUR TAKE: The hon'ble **KOLKATA HIGH COURT** held that it is the admitted position that the petitioner had attempted to settle only a part of the dispute which was the subject-matter of the pending revision before the West Bengal Commercial Taxes Appellate and Revisional Board, the department cannot be faulted for issuing the show cause notice calling upon the petitioner to explain why the application filed by the petitioner for part settlement should not be dismissed. **[Petition Disposed Off]**

OTHER UPDATES

FEMA

CIRCULAR & NOTIFICATIONS

The Govt. vide Notification No. FEMA. 368/2016-RB dated 26th May 2016 hereby makes the following amendments in the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 (Notification No. FEMA. 20/2000-RB, dated 3rd May 2000).

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

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 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 equipments 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

CIRCULAR & NOTIFICATIONS

The ICAI vide Guideline No. 1-CA (7)/03/2016 dated 21st May 2016, hereby issue the guidelines for compliance by the members of the Institute.

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

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.

M/s ANAND NIKETAN EDUCATION TRUST VERSYS HUDCO, AHMEDABAD REGIONAL OFFICE [GUJARAT HIGH COURT]

BRIEF: In the matters involving commercial dispute, rule of alternative remedy is adhered to and applied steadfast.

OUR TAKE: The hon'ble **GUJARAT HIGH COURT** held that Stage obtained in the process of auction by the respondent under the SARFAESI Act is a post-13(4) stage. The petitioner therefore has an alternative statutory remedy of filing an appeal under Section 17 of the Act before the Debts Recovery Tribunal. It is trite that in the matters involving commercial dispute, rule of alternative remedy is adhered to and applied steadfast. Present petition is not entertained. The petitioner is at liberty to approach the Debts Recovery Tribunal in accordance with law.

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.

UMA ENTERPRISES PRIVATE LIMITED [RAJASTHAN HIGH COURT]

BRIEF: The scheme of demerger of which sanction is sought appears to be only a device for avoidance of obligation towards capital gains tax and stamp duty and also falls foul of Explanation to Section 2(19AA) of the Income Tax Act of 1961. The scheme of de-merger cannot therefore be sanctioned.

OUR TAKE: The hon'ble **RAJASTHAN HIGH COURT** held that the scheme of demerger of which sanction is sought appears to be only a device for avoidance of obligation towards capital gains tax and stamp duty and falls foul of Explanation to Section 2(19AA) of the Income Tax Act of 1961. The scheme of de-merger cannot therefore be sanctioned. **[Decided against Petitioner Company]**

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