



# ASC Times

All India Taxes Weekly Referencer

Vol: Dec 28 - Jan 03, 2016

## Solving any tax puzzle

Tax saving advice across all the taxes



## From the CEO's Desk



Dear Reader,

One more year has gone by, and it's time to welcome the New Year. New resolutions, new planning and possibly most needed new mindset; this is what we require as a country. We are a most diverse country and social structure but what we need to work on is having a harmony in the face of disagreement and working towards a higher goal of growth for the country as a whole. No matter what happened worldwide, in India we have achieved some milestones for sure. Putting India on the world map like never before is Mr. Modi's biggest achievement so far, apart from the various Schemes and Abhiyaans run by him. India witnessed visit of highest no. of influential expats and country heads in the recent past. Integration of urban and rural India through digitization is evident. Actually the rapid spread of technology and use of various mobile apps, private and governmental, has changed the way people connect and do stuff today. E-commerce and start-ups attracted maximum amount of investment.

But the picture is not all rosy. Our exports further declined due to recession globally. No matter what all measures were taken women are not safe in India especially in the urban India. Our government is unable to pass the GST bill to reform the tax structure of the country. Natural calamities like Tamilnadu's recent flood showed how unprepared and unplanned is our civic amenities. We are still dependent on monsoons for our irrigation purposes. Pollution is major area of concern. All efforts to streamline the black money go in vain.

The good news is we are working towards what all is required to do and slowly but steadily we are moving ahead year by year. A New Year is reason enough to hope more and to do more. I am not saying to dwell on dreams and hopes but taking actions for all what we want is the key to success and happiness. With this thought I am signing off for now and wishing you all a very Happy

New Year. I wish you all prosperity and joy in life and in years to come.

Happy reading!

Happy New Year!

Alok Kumar Agarwal

CEO

ASC Group.

## TAX CALENDER

Due Date	Description	Law
28 December	Deposit of Tax	Arunachal Prades VAT
	Return Filing	Arunachal Prades VAT
29 December	Deposit of Tax	Goa VAT
	Return Filing	Gujarat VAT,
30 December	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
Wealth Tax		
Audit Report under section 44AB.	Income Tax Law	
31 December	Annual Return	West Bengal VAT

## COUNTRY WIDE HOLIDAYS FOR THE WEEK

Date	Occasion/Festival	Region
24 -27 December	Christmas	Nagaland
30 December	U Kiang Nangbah	Meghalaya
30 December	Barahimizong Tamu Lochhar	Sikkim
31 December	New Year Eve	Mizoram
01 January	New Year	All States & UT's

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# CENTRAL TAXES

Pvt. Limited (supra) - we modify the orders of the lower authorities to the extent to hold that the refund claims filed

## SERVICE TAX

### COURT DECISIONS

**M/S ADANI PORT & SPECIAL ECONOMIC ZONE LTD AND M/S ADANI PETRONET PORT PVT. LTD. VERSUS COMMISSIONER OF SERVICE TAX, AHMEDABAD [CESTAT AHMEDABAD]**

**BRIEF:** CENVAT Credit, inputs and capital goods were used in construction of jetty for rendering port service. There is no reason to deny CENVAT credit on such input and capital goods

**OUR TAKE:** The hon'ble CESTAT AHMEDABAD held that the nexus between the Input and Output services is clearly evident from the records except for items namely Air Travel Agency, Airport Service, Mandap Keeper Service, Membership of Clubs, Passenger Embarking for Foreigner and Sponsorship Service which requires to be examined by the Adjudicating authority. So, there is no reason to deny CENVAT Credit on the input services except the items mentioned above. It is a case of eligibility of CENVAT Credit on input, input service and capital goods and most of the items are admissible and therefore, imposition of penalty is not warranted. **[Substantially decided in favor of assessee]**

**M/S. PAUL MASON CONSULTING INDIA PVT. LIMITED VERSUS COMMISSIONER OF CENTRAL EXCISE & S.T., VADODARA [CESTAT AHMEDABAD]**

**BRIEF:** Refund claim of accumulated CENVAT Credit.100% EOU. Export of services - period of limitation - the date of export invoice should be treated as the relevant date. The time limit of one year prescribed under Section 11B of the Central Excise Act would be computed from this date

**OUR TAKE:** The hon'ble CESTAT AHMEDABAD held that a careful and harmonious reading of these decisions would reveal that CENVAT credit though not a duty, by making Section 11B applicable to refund of CENVAT credit, CENVAT credit has been equated with duty, by way of Notification No. 27/2012 dated 18.06.2012. Therefore, the time limit would be as prescribed in Section 11B. However, as per the decision of the Hon'ble Gujarat High Court the relevant date would be the date when the cause for refund has arisen, and this would obviously be when the export has taken place, as is also held by this Tribunal in the case of Apotex Research

within one year of export invoice would not be hit by the mischief of time-bar. **[Appeal disposed of]**

**COMMISSIONER OF CENTRAL EXCISE, PUNE-I VERSUS M/S FUJITSU CONSULTING PVT. LTD. [CESTAT MUMBAI]**

**BRIEF:** Refund claim made by the recipient of services. Service tax was paid wrongly by the service provider. Refund allowed.

**OUR TAKE:** The hon'ble CESTAT MUMBAI held that the respondent having centralized registration at Pune, have correctly lodged their claim at Pune, particularly when the Service Tax by M/s. IDSPL was also paid in Pune only. Respondent's Pune office has right to claim at Pune only, therefore the claim is not without the Jurisdiction. It is also not the case of the Revenue that the same refund either claimed by the respondent's Delhi office or by another person. Since the service tax was erroneously paid the same has to be refunded and M/s. IDSPL has given the disclaimer, only right to claim the refund is with respondent only, infirmity therein. Accordingly, the impugned order has to be sustained. **[Decided against Revenue]**

**DHL EXPRESS INDIA PVT LTD VERSUS COMMISSIONER OF SERVICE TAX, MUMBAI [CESTAT MUMBAI]**

**BRIEF:** Demand of service tax, best judgement assessment, Wrong filings of ST-3 return, appellants have adjusted the payables against receivables in the figures given in the return. Demand confirmed. Extended period of limitation invoked

**OUR TAKE:** The hon'ble CESTAT MUMBAI held that the demand in respect of services received by appellant and where service tax has been demanded on reverse charge basis is set aside for the period beyond the normal period of limitation. For the demand in respect of services provided by appellant to DHLI in respect of unbilled consignments the benefit of calculation of tax on cum duty basis is allowed. The penalty under Section 78 is reduced correspondingly to the revised amount of demand worked out after allowing cum duty benefit and limitation worked out - Penalty under Section 77 is upheld. **[Petition disposed of]**

**ENERVISION SERVICES P. LTD. VERSUS COMM. OF C. EX.,  
CUS. & S.T., HYDERABAD-II [CESTAT BANGALORE]**

**BRIEF:** Denial of rebate claim, receipt of commission on transaction, service was received by the recipient abroad and it is partly performed in India and partly performed abroad, refund allowed.

**OUR TAKE:** The hon'ble **CESTAT BANGALORE** held that Service has to be held as rendered to the recipient abroad and used abroad. When the service recipient analyses the orders and decides either to accept the order or to reject the same, it has to be held that service was received by the recipient abroad and it is partly performed in India and partly performed abroad. Therefore, the stand taken by the lower authorities that it cannot be considered as export of service cannot be sustained. **[Decided in favour of assessee]**

**THERMAX INSTRUMENTATION LTD. VERSUS  
COMMISSIONER OF CENTRAL EXCISE, PUNE-I [CESTAT  
MUMBAI]**

**BRIEF:** Demand of service tax on advances received. Services are yet to be provided. The advance is only an amount given as kind of earnest money and for which the appellant gives a bank guarantee to the customers of equal amount. It is more in the nature of a deposit - not liable to service tax.

**OUR TAKE:** The hon'ble **CESTAT MUMBAI** held that it is on record now that the appellant have paid service tax on the unadjusted advances in July 2011. Impugned order has no merits and is liable to be set aside. Commissioner, in the adjudication order, did not dispute the fact that the service tax was paid periodically on invoice value and that the advance was adjusted in each invoice reducing the outstanding amount correspondingly. The Commissioner only determined that service tax is payable on the advances. We have already expressed our view that the service tax was not required to be paid on the advances and further when the amounts of advance were adjusted proportionately in the invoices and service tax was paid on the invoice value. Impugned Order is set aside. **[Decided in favour of assessee]**

## CENTRAL EXCISE

### NOTIFICATIONS & CIRCULARS

**The Govt. vide Circular No. F. No.390/CESTAT/69/2014-JC dated 22<sup>nd</sup> December 2015**, issues guidelines regarding imposition of cost by CESTAT on grounds of quality of adjudication order.

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

**KRISHAN KUMAR VERSUS UNION OF INDIA AND ANOTHER  
(PUNJAB & HARYANA HIGH COURT)**

**BRIEF:** Recovery of dues of the company from the Director - the action of the respondents in compelling the petitioner to clear the dues of the company cannot be sustained.

**OUR TAKE:** The hon'ble **PUNJAB & HARYANA HIGH COURT** held that in the absence of taking any specific recourse to proceedings under Section 18 of the Central Sales Tax Act, 1956 and any valid order for effecting recovery of arrears of sales tax from the directors of a private limited company in liquidation, the proceedings relating to recovery of arrears of tax from the petitioner being a director were not permissible in law. Thus, the action of the respondents in compelling the petitioner to clear the dues of the company cannot be sustained. However, the respondents shall be at liberty to proceed against the company for clearance of its dues in accordance with law. **[Petition disposed of]**

**COMMISSIONER OF CENTRAL EXCISE Versus M/s GILLETTE  
DIVERSIFIED OPERATIONS LTD. & ORS [SUPREME COURT]**

**BRIEF:** Undervaluation of goods. The case set up in the Show Cause Notice was that at the relevant time, manufacturing of electric hair removers and dyers was reserved for SSI unit; hence, Gillette could not have directly manufactured the said goods. Therefore, in connivance with Braun, which is a group company of Gillette and Rialto, it got the same manufactured in the premises of Rialto. Revenue has no merit in the case. Demand set aside

**OUR TAKE:** The hon'ble **SUPREME COURT** held that in the Show Cause Notice, the Department did not raise any objection with regard to these returns; the goods were not

manufactured by Rialto out of raw materials procured by themselves; the capital goods used for the purpose, i.e., machinery, was lawfully acquired by Rialto under a lease agreement with Braun. Facts which weighed with the Commissioner were brushed aside by the CESTAT with cogent reasons. It pointed out that the same were insignificant and were, in any case, satisfactorily explained by both Gillette and Rialto. **[Decided against Revenue]**

#### COMMR. OF CENTRAL EXCISE, PANCHKULA VERSUS M/S LIBERTY SHOES LTD (SUPREME COURT)

**BRIEF:** Transaction value u/s 4 or MRP based Valuation u/s 4A - sale of footwear to institutional buyers in bulk. The footwear is an item which is specified under Section 4A, which is covered by Weights and Measures Act and Rules, and MRP was affixed on the products supplied, which were not exempted under Rule 34 of the Rules, the provision of Section 4A of the Act shall stand attracted.

**OUR TAKE:** The hon'ble SUPREME COURT held that CESTAT had recorded specific findings to the effect that the shoes in question which were supplied in packages to the aforesaid customers had MRP affixed on them. It was further found that clearances were not under Rule 34 of the Rules which exempts supplies of materials in bulk from the operation of Weights and Measures Act, meaning thereby it was obligatory and essential on the part of the respondent to affix MRP on the goods supplied. Once we find that the footwear is an item which is specified under Section 4A, which is covered by Weights and Measures Act and Rules, and MRP was affixed on the products supplied, which were not exempted under Rule 34 of the Rules, the provision of Section 4A of the Act shall stand attracted. There is no error in the judgment of the CESTAT. **[Decision in favour of assessee]**

#### M/S. CASTROL INDIA LTD. VERSUS COMMR. OF CENTRAL EXCISE, CHENNAI [SUPREME COURT]

**BRIEF:** Valuation - deduction of cash discount / interest on receivables. Invoices for sales on credit terms, interest for the credit period was in built in the credit price.

**OUR TAKE:** The hon'ble SUPREME COURT held that Tribunal in the impugned order mentioned that the price charged in the invoices for sales on credit terms are of WHEEL BEARING GR 88 and ALL PURPOSE GRS 88 as ₹ 68.00 and ₹ 69.50 respectively. On the other hand, price charged in invoices for cash sales was ₹ 66.81 and ₹ 68.28 respectively. - Tribunal itself, after mentioning those prices, failed to notice that the difference between price charged on credit terms and cash sales was to the extent of 1.75 per cent, which was nothing but cash discount. Invoices for sales on credit terms, interest for the credit period was in built in the credit price. Impugned order is set aside. **[Decided in favour of assessee]**

#### UNION OF INDIA & ORS. Versus M/s SARASWATI MARBLE & GRAN. INDUS. P. LTD. [SUPREME COURT]

**BRIEF:** Claim of refund of duty paid where the demand of duty has been set aside in another case holding the activity is not amount to Manufacture. Refund of amount before the date of decision cannot be allowed

**OUR TAKE:** The hon'ble SUPREME COURT held that Duty was paid by Respondent after proper adjudication and a particular view was taken which was upheld by the Tribunal as well. As mentioned above, no further appeals were brought by the respondents and, therefore, such proceedings had attained finality. The order of refund of this amount, merely because this Court took different view thereafter in some other case, would not be permissible. Thus, insofar as direction contained in the impugned judgments to refund the amount of duty, interest and penalty is concerned, the same is set aside. However, once this Court has settled the position of law holding that the aforesaid process would not amount to manufacture, from the date of the judgment of this Court, the Excise Department is not entitled to recover any such excise duty from the respondents. **[Decided in favor of revenue]**

#### COMMR. OF CENTRAL EXCISE, DELHI-III VERSUS M/S HERO HONDA MOTORS LIMITED [SUPREME COURT]

**BRIEF:** Denial of refund of unjust enrichment. Duty was paid under protest during the pendency of the adjudication proceedings. There was no question of passing on this element of duty to consumers/buyers. Refund cannot be denied

**OUR TAKE:** The hon'ble SUPREME COURT held that there was no question of passing on this element of duty to consumers/buyers. We, thus, do not find any merit in this appeal. **[Decided against Revenue]**

## CUSTOMS

### COURT DECISIONS

#### COMMNR. OF CENTRAL EXCISE, MUMBAI VERSUS M/S. PFIZER LTD. [SUPREME COURT]

**BRIEF:** Classification - imported goods Virginiamycin is a well defined chemical of 100% purity with anti bacterial properties included specifically under Chapter 29 by virtue of Chapter Note 1(a).

**OUR TAKE:** The hon'ble SUPREME COURT held that in the present case, imported goods Virginiamycin is a well defined chemical of 100% purity with anti bacterial properties included specifically under Chapter 29 by virtue of Chapter Note 1(a). The judgment of Tetragon Chemie Pvt. Ltd. has, therefore, no application to the facts of the present case. - Decided in favour of revenue. [**Decided against assessee**]

#### M/S. CHROMACHEMIE LABORATORY PRIVATE LIMITED VERSUS THE AUTHORIZED OFFICER, CHENNAI SEAPORT & AIRPORT AND THE ASSISTANT COMMISSIONER OF CUSTOMS (GROUP 2A) (MADRAS HIGH COURT)

**BRIEF:** Import of Erythritol. Application of Food Safety and Standards (packaging and Labeling) Regulations, 2011. The contention advanced by the petitioner that the goods in question 'Erythritol' is used as a food additive in manufacture of the foods and cannot be termed as item which meets the personal needs of the consumers, is liable to be rejected outright.

**OUR TAKE:** The hon'ble MADRAS HIGH COURT held that When the petitioner failed to affix necessary label on the imported goods with all details, namely, 'Best before use', 'Use by date', and date of manufacture, it is not known whether the goods in question is having the life time for further future use, therefore, this Court finding that the product in question namely, 'Erythritol' has miserably failed to satisfy the labeling requirements, is not able to see any merits in this writ petition, hence, the same fails and is dismissed - Decided against the assessee. [**Decided against the assessee**]

#### M/S PRATHAMESH SHIPPING PVT. LTD. VERSUS CUSTOMS CENTRAL EXCISE AND SERVICE TAX [MADRAS HIGH COURT]

**BRIEF:** Violation of Regulation 13 (O) of Custom House Agents Licensing Regulations, 2004, petitioner presented goods for export on behalf of fictitious/bogus exporter whom he cannot produce before the Customs Department though sufficient time was given. Petition dismissed.

**OUR TAKE:** The hon'ble MADRAS HIGH COURT held that appellant properly paid the duty demanded along with interest. In a case of assessment over a bill of entry, it is the duty of the Assessing Officer to properly assess the duty and onus cannot be shifted to the appellant for not calculating the correct rate of duty. Appellant promptly paid the entire amount of duty demanded along with interest. Under the present factual matrix, it is not a fit case for imposition of penalty under Section 14 (a) of the Customs Act, 1962. [**Decided in favour of assessee**]

#### M/S. RICHEMONT INDIA PVT. LIMITED VERSUS CC, NEW DELHI [CESTAT NEW DELHI]

**BRIEF:** Valuation under Rule 4 related to includibility/ non includibility of the expenses on advertising and sales promotion etc. - loading of 12.5% is not sustainable in terms of Rule 4 of the CVR, 2007.

**OUR TAKE:** The hon'ble CESTAT NEW DELHI held that we are only concerned with Rule 4 of CVR, 2007 (which the adjudicating authority has used for loading the value) and not with Rule 10 thereof while the contention of Id. DR falls within the ambit of Rule 10 (which has not been used by the adjudicating authority to arrive at loading) and for this reason it is not necessary to discuss this contention of Id. DR or for that matter the contention of the appellant that expenses incurred were not incurred as condition of sale of goods and so the judgments cited by both sides regarding inclusion (or otherwise) of the expenses incurred by the appellant in the assessable value in terms of Rule 10 do not remain germane to the issue - loading of 12.5% is not sustainable in terms of Rule 4 of the CVR, 2007. [**Decided in favour of assessee**]

# INCOME TAX

## CIRCULAR AND NOTIFICATIONS

The Govt. vide Notification No. 94/2015 [F.NO.503/08/2004-FTD-I] dated 21<sup>st</sup> December, 2015 makes amendment in section 90 of the income tax Act 1961, in Double Taxation Avoidance Agreement.

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

The Govt. vide INSTRUCTION NO.18/2015 [F.NO.153/12/2015-TPL] dated 23<sup>rd</sup> December, 2015 makes amendment in section 115JB of the income tax Act 1961, in Minimum Alternate Tax.

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

## COURT DECISIONS

### TULSI MALL (ASSOCIATION OF PERSON) AND 8 VERSUS COMMISSIONER OF INCOME TAX, VALSAD [ GUJRAT HIGH COURT]

**BRIEF:** Status of the assessee - Merely because PAN was issued by the Department erroneously, there cannot be any insistence that return should be filed in the same capacity. Erroneous description in the PAN would not change the reality that no such partnership firm ever existed.

**OUR TAKE:** The hon'ble GUJRAT HIGH COURT held that The insistence of the Department, however, on the firm filing return since the PAN was issued on the name of the firm does not appear to be valid. Even according to the Department, no such partnership firm existed. Merely because PAN was issued by the Department erroneously, there cannot be any insistence that return should be filed in the same capacity. Erroneous description in the PAN would not change the reality that no such partnership firm ever existed. However, with respect to the members of the AOP and the grievance of not being able to get credit of the tax deducted at source, we are afraid; the same cannot be resolved at this distant point of time. We are referring to the years 2005 and onwards till the fresh PAN was issued in favour of the AOP in the year 2011. [ Assessments would have been over or time-barred]

### VIKRANT DUTT CHAUDHARY VERSUS COMMISSIONER OF INCOME TAX, PANCHKULA (HARYANA) [PUNJAB & HARYANA HIGH COURT]

**BRIEF:** Photo copy of the receipt taken for the purpose of assessment, 'chargeability of income' the genuineness of the receipt and also the contents thereof are duly corroborated by all the assessee in their respective statements. Additions confirmed.

**OUR TAKE:** The hon'ble PUNJAB & HARYANA HIGH COURT held that the genuineness of the receipt and also the contents thereof are duly corroborated by all the assessee in their respective statements. It is not a case where the departmental authorities are acting merely on the basis of photo copy of the receipt. Thirdly, and more importantly, the assessee have not placed any evidence on record to rebut the contents of the receipt or even the contents of their statements. In this factual setting, we are unable to hold that the said receipt is irrelevant material for the purpose of making assessment. We therefore hold that the Assessing Officer has rightly acted upon the contents of the receipts which are duly corroborated by the assessee in their respective statements, for making the assessment under challenge before us. [Decided against assessee]

### THE COMMISSIONER OF INCOME TAX, ROHTAK VERSUS JAT EDUCATION SOCIETY, ROHTAK [PUNJAB & HARYANA HIGH COURT]

**BRIEF:** Government was substantially financing and interested in the management of the respondent-assessee and, therefore, were eligible for exemption under Section 10(23C)(iiiab) of the Act.

**OUR TAKE:** The hon'ble PUNJAB & HARYANA HIGH COURT held that In the present case, there has been financing by the Government when examined on individual institution basis to be ranging from 41% to 82% whereas when the percentage is taken for the society as a whole then it comes to 44.52% and 45.15% for the two years. The Tribunal after appreciation of evidence correctly held that the Government was substantially financing and interested in the management of the respondent-assessee and, therefore, were eligible for exemption under Section 10(23C)(iiiab) of the Act. [Decided against revenue]



**PRINCIPAL COMMISSIONER OF INCOME TAX, FARIDABAD  
VERSUS SHRI KRISHAN GOPAL (HUF) [PUNJAB & HARYANA  
HIGH COURT]**

**BRIEF:** Interest u/s 234C. The liability to pay interest under Section 234C of the Act qua the capital gains was held to be unwarranted in view of the specific provisions of the Act.

**OUR TAKE:** The hon'ble PUNJAB & HARYANA HIGH COURT held that interest under Section 234B of the Act was also restricted by directing the Assessing Officer to charge it only on the amount of capital gain worked out after taking sales consideration at the amount received by the assessee during the financial year 2006-07 and deducting proportionate indexed cost of acquisition and allowing exemption under Section 54EC of the Act for ₹ 50 lacs out of the capital gain so worked out. Still further, the liability to pay interest under Section 234C of the Act qua the capital gains was held to be unwarranted in view of the specific provisions of the Act and the CIT(A) was correct in deleting the interest levied under Section 234C of the Act - Decided against revenue.

**SH. MAKHAN SINGH VERSUS INCOME TAX OFFICER, WARD  
2 (1) , AMRITSAR AND ANOTHER [PUNJAB & HARYANA  
HIGH COURT]**

**BRIEF:** Donation of gold chhabba. Whether in light of explanation to Section 2(24) (iia) of the Act, the Dera is not a deemed trust? The cumulative effect of all the factors shows that all the transactions done by the appellant-assessee, were in his individual capacity. No exemptions.

**OUR TAKE:** The hon'ble PUNJAB & HARYANA HIGH COURT held that The Assessing Officer, the CIT(A) and the Tribunal as well have found on the basis of material before them that the appellant assessee had purchased LIC policy, gas connection, cylinder etc. from the so called funds of the Dera, which were indicative of the fact that the bank account was being operated by him for his personal use. The cumulative effect of all these factors shows that all the transactions done by the appellant-assessee, were in his individual capacity and thus, no case to differ with any of the findings of the Tribunal upholding the decision of the CIT(A) and that of the Assessing Officer has been made out. **[Decided against assessee]**

# STATE TAXES

## ALL INDIA VAT

### ANDHRA PRADESH

The Govt. vide CIRCULAR No. CCTs Ref No.CCW/CS(1)238/2015, dated 22<sup>nd</sup> December, 2015, extended date of filing of monthly return of November 15 to 05-01-16.

### GOA

The Govt. of GOA issued frequently asked questions on taxation of developers.

**OUR TAKE:** Readers are requested to read the said FAQ for detailed understanding

### MAHARASHTRA

The Govt. vide Trade Circular No. 19T of 2015 dated 21<sup>st</sup> December 2015 clarified that facility of making digitally signed certificate is made available to the dealers to whom registration certificates has been granted on or after 22<sup>nd</sup> December 2015.

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

### UTTAR PRADESH

The Govt. vide Circular No. 2015-16/2120/1516052 dated 22<sup>nd</sup> December 2015, issues guidelines on process of annual assessment for dealers having turnover upto 50 Lakh for the year 2012-13.

The Govt. vide Circular No. 2015-16/2120/1516053 dated 22<sup>nd</sup> December 2015, issued list of dealers whose TIN has been cancelled under UP Vat Act, 2008.

**COURT DECISIONS**
**SODEXO SVC INDIA PRIVATE LIMITED VERSUS STATE OF MAHARASHTRA & OTHERS (SUPREME COURT)**

**BRIEF:** : Taxability of Sodexo Meal Vouchers. Paper based vouchers affiliates are bound to honor, appropriate test would be as to whether such vouchers can be traded and sold separately. The answer is in the negative. Therefore, this test of ascertaining the same to be 'goods' is not satisfied.

**OUR TAKE:** The hon'ble **SUPREME COURT** held that Value of such free food and non-alcoholic beverage provided by an employer to an employee is treated as expenditure incurred by the employer and amenity in the hands of the employee. It is this perquisite given by the customer to its employees by adopting the methodology of vouchers and for its proper implementation, services of the appellant are utilized. Judgment of the High Court has not discussed and decided the issue correctly and warrants interference. We, thus, allow these appeals and set aside the judgment of the High Court [2015 - BOMBAY HIGH COURT] by holding that Sodexo Meal Vouchers are not 'goods' within the meaning of Section 2(25) of the Act and, therefore, not liable for either Octroi or LBT. **[Decided in favour of Assessee]**

**GEETABEN J. PATEL VERSUS THE ASSISTANT SALES TAX COMMISSIONER AND 1 [GUJRAT HIGH COURT]**

**BRIEF:** Recovery from wife for husband's dues. Attachment of property - there is nothing on the record to suggest that the husband had any right, title or interest in such property. Mere reference to the powers under Section 48A of the Gujarat Sales Tax Act would not save the situation for the Department.

**OUR TAKE:** The hon'ble **GUJRAT HIGH COURT** held that Nothing has been stated in the affidavit in reply to justify the action of the Department in attaching the property of the petitioner for the dues of her husband. By merely stating that only qua share of the husband, the said property was attached, would nor further the case of the Department. This is in fact curious statement. It does not clarify whether the share referred to is that of the sales tax dues or of the interest in the property. If later is the case, there is nothing on the record to suggest that the husband had any right, title or interest in such property - Mere reference to the powers under Section 48A of the Gujarat Sales Tax Act would not save the situation for the Department. Such powers can be exercised only where the facts so permit. **[Decided in favour of appellant]**

**STATE OF ANDHRA PRADESH VERSUS BHARAT DYNAMICS LIMITED [ANDHRA PRADESH HIGH COURT]**

**BRIEF:** Misuse of C-Forms / D-Forms . Even assuming for the sake of argument that if there is mis-utilization of C-Forms or any of the Forms which are issued under the Act, at best, a dealer may invite penalties or punitive measures, but sale turnover cannot be enhanced.

**OUR TAKE:** The hon'ble **ANDHRA PRADESH HIGH COURT** held that not persuaded by the argument of the learned counsel for the Department that on account of the alleged misuse of C-Forms, we have to assume that there is a sale transaction involved. Even assuming for the sake of argument that if there is mis-utilisation of C-Forms or any of the Forms which are issued under the Act, at best, a dealer may invite penalties or punitive measures. This aspect of the matter is settled by the judgment of the Hon'ble Supreme Court in Commissioner of Sales Tax v. Leather Facts Co. [1987, SUPREME COURT OF INDIA]. Hence, we find no reason to interfere with the orders of the Tribunal. **[Decided against the revenue]**

**YONGNAM ENGINEERING & CONSTRUCTION (PRIVATE) LIMITED VERSUS COMMISSIONER, DELHI VALUE ADDED TAX & OTHERS [DELHI HIGH COURT]**

**BRIEF:** DVAT - it is only the Commissioner who can pass an order under Section 36A(8) unless and until the power of the Commissioner has been delegated under Section 68 of the said Act to the VATO. - But that has, admittedly, not been done. Order set aside

**OUR TAKE:** The hon'ble **DELHI HIGH COURT** held that it is evident that an order under Section 36A(8) has to be passed by the Commissioner in writing. Section 66(3) specifically provides that the Commissioner and the Value Added Tax Authorities shall exercise such powers, as may be conferred upon them, and perform such duties, as may be required by or under this Act. In other words, it is only the Commissioner who can pass an order under Section 36A(8) unless and until the power of the Commissioner has been delegated under Section 68 of the said Act to the VATO. We could have understood if this power of the Commissioner had been delegated by the Commissioner in terms of Section 68 of the said Act to the VATO. But that has, admittedly, not been done. As such, the impugned order dated 07.08.2013 is liable to be quashed as the VATO did not have the jurisdiction to pass such an order. The impugned order is quashed. **[Decided in favour of assessee]**

## LATEST NEWS ON PROPOSED GST

# OTHER UPDATES

## FEMA

The Govt. vide Circular No. RBI/2015-2016/275 DCM (Plg) No.G-8/2331/10.27.00/2015-16 dated 23<sup>rd</sup> December 2015, decided to extend date for exchanging the pre-2005 bank notes to June 30, 2015. However, from January 01, 2016, such facility will only be available at identified bank branches and Issue Offices of RBI.

The Govt. vide Circular No. RBI/2015-16/274 DGBA.GAD. No. 2023/15.01.001/2015-16 dated 23<sup>rd</sup> December 2015, advised that interest for the calendar year 2015 may be promptly disbursed to the SDS account holders @ 8.7% per annum from 1st January 2015 to 31st December 2015 through electronic mode such as ECS/NECS/ NEFT/RTGS or by way of account payee cheques on January 01, 2016 itself, subject to instructions.

## COMPANY LAW

## COURT DECISIONS

**GAUTAM KUNDU VERSUS MANOJ KUMAR, ASSISTANT DIRECTOR, EASTERN REGION, DIRECTORATE OF ENFORCEMENT (PREVENTION OF MONEY LAUNDERING ACT) GOVT. OF INDIA [SUPREME COURT]**

**BRIEF: Appellant floated as many as 27 companies to allure the investors to invest in their different companies on a promise of high returns and funds were collected from the public at large which were subsequently laundered in associated companies of Rose Valley Group. High Court has not committed any wrong in refusing bail in the given circumstances.**

**OUR TAKE:** The hon'ble DELHI HIGH COURT held allegations may not ultimately be established, but having been made, the burden of proof that the monies were not the proceeds of crime and were not, therefore, tainted shifted on the accused persons under Section 24 of the PML Act, 2002. High Court has not committed any wrong in refusing bail in the given circumstances. Accordingly, we do not find any reason to interfere with the impugned order so passed by the High Court and the bail, as prayed before us, challenging the said order is refused. **[Decided against the appellant]**

**21 Dec, 2015**, the constitutional amendment bill on GST provided that 'An additional tax on supply of goods, not exceeding one per cent, in the course of inter-state trade or commerce shall be levied and collected by the government of India for a period of 2 years or such other period as GST may recommend.'

**21 Dec, 2015**, Former RBI Governor said that proposed additional tax of 1 percent tax, that has been contemplated, goes against the spirit of GST and should not be implemented.

**22 Dec, 2015**, manufacturing companies fear loss of input tax credit, GST on transfer to self. Draft model of GST law defines supply to include supply made without consideration.

**22 Dec, 2015**, Infosys, which a few months ago won a landmark of Rs.1380 crore contracts from government to develop a state of the art technology platform for the proposed GST, is going ahead with the project despite the delay in passing GST Bill.

**23 Dec, 2015**, delay in implementation of GST will be lost opportunity in terms of growth. The political deadlock in the house cannot have sufficient justification of any reason when it comes to neglect of passing GST Bill.

**23 Dec, 2015**, financial stability report release by RBI said GST is the key to enable India to achieve its potential growth rate.

**24 Dec, 2015**, the model law of much awaited GST will be out by the end of January next for general public for feedback.

**25 Dec, 2015**, tax advocates suggested finance minister that administration of GST should be handed over to state authorities and not central ones. State officials have greater penetration, spread & expertise.

**26 Dec, 2015**, tobacco companies now need to re-work their supply chain under GST regime as change in tax implications on cigarettes & tobacco will be higher compared to other products.

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