ASC Times

All India Taxes Weekly Reference

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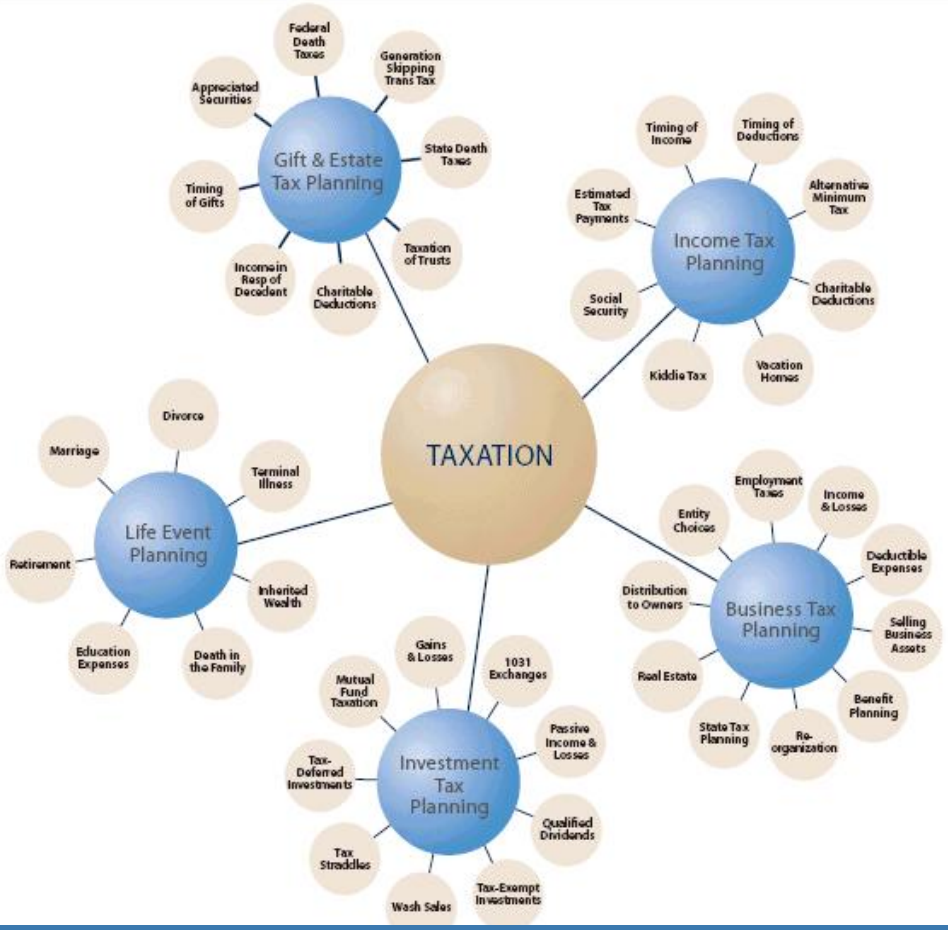

From the CEO's Desk

Dear Reader,

Communication is crucial we all know. It is the most important virtue for the CEO's these days specially when there is an information outburst, and people are distracted and economy and businesses are disruptive and thriving. People are critical for any organization and keeping them motivated and productive is the major challenge. For this to cause CEO's or the top management should be very effective in their communication. CEO of executive search firm Russell Reynolds Associates Mr. Clarke Murphy told in an interview that Communication skills in today's instant world is a new must have for CEOs. He also emphasized that how digital transformation is changing the search business and how the requirements of the costumer is ever changing, so the board rooms need to be the first one to get it so that strategies can be put to work. It all comes from the two-way communication where one-way to have all the information to make the plan and policies and the other part of it is to communicate it through the hierarchy to make it happen.

Same goes for the policies made by the government. Be it 'doing business in India' or for attracting FDI or promoting entrepreneurs through various programs like 'Digital India' or 'Start-up India'. It is very important that the various components of these plans are well communicated to the people who are affected by it. Government will soon issue a clear definition of what constitutes a 'marketplace' in the context of ecommerce in the country's FDI policy, hoping to end disputes over popular online retail websites and encourage entrepreneurship in the digital space by leaving it unfettered is one of the efforts from the Government to clearly communicate to end ambiguity. Another effort shows in a significant step towards improving the ease of doing business, the Corporate Affairs Ministry will soon centralize the whole process related to registering a new company and strive to complete the processing within a day.

Further, importers will have to file just one 'Integrated Declaration' electronically from April'1, compared to nine forms currently for clearances of consignments from different agencies which is a move aimed at improving the ease of doing business in India.

Alok Kumar Agarwal

CEO

ASC Group.

TAX CALENDER

Due Date	Description	Law
28 March	Deposit of Tax	Arunachal Pradesh VAT
	Return Filing	Arunachal Pradesh VAT
29 March	Deposit of Tax	Goa VAT
	Return Filing	Gujarat VAT
30 March	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
31 March	Deposit of Tax	Service Tax Law & Central Excise Law
	Filing of ITR	AY 2015-16 (Without Penalty) AY 2014 – 2015 (With Penalty)

COUNTRY WIDE HOLIDAYS FOR THE WEEK

Date	Occasion/Festival	Region
NA	NA	NA

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CENTRAL TAXES

SERVICE TAX

COURT DECISIONS

PUNJAB UNAIDED TECHNICAL INSTITUTIONS ASSOCIATION VERSUS UNION OF INDIA AND ANOTHER [PUNJAB & HARYANA HIGH COURT]

BRIEF: Exemption from service tax on construction service provided in case of religious use but not to charitable purpose - clause 13(c) of Notification No. 25/2012-ST, dated 20.6.2012 - in the absence of petitioner's demonstration that the enactment/provision/notification is arbitrary, discriminatory or violative of Article 14 of the Constitution of India, it cannot be declared to be unconstitutional.

OUR TAKE: The hon'ble **PUNJAB & HARYANA HIGH COURT** held that the competent authority is not empowered to issue the impugned notification. Once there exists legislative competence in the State legislature or competent authority, in the absence of petitioner's demonstration that the enactment/provision/notification is arbitrary, discriminatory or violative of Article 14 of the Constitution of India, it cannot be declared unconstitutional. Therefore, clause 13(c) of Notification No. 25/2012-ST is constitutional. **[Decided against the petitioner]**

M/S. MAGARPATTA TOWNSHIP DEVELOPMENT AND CONSTRUCTION CO. LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, PUNE-III [CESTAT MUMBAI]

BRIEF: Liability of Service tax on TDS amount absorbed by the assessee on foreign remittance - Reverse charge - Service Tax liability needs to be discharged on amounts which have been billed by the service provider - Demand set aside.

OUR TAKE: The Hon'ble **CESTAT MUMBAI** held that the appellant had discharged the consideration as raised in the invoice/bill but there is nothing on record that indicates that the appellant had recovered that amount of Income Tax paid by them on such amount paid to the service provider from the outside India and any other material to hold that this amount is paid is consideration for services received from service provider. As per Section 67 with Rule 7 of Service Tax Valuation Rules, the Service Tax liability needs to be discharged on amounts, which have been billed by the service provider. Therefore, appellant is not liable to pay service tax. **[Decided in favour of appellant with consequential relief]**

RELIANCE ADA GROUP PVT LTD VERSUS COMMISSIONER OF SERVICE TAX, MUMBAI-IV [CESTAT MUMBAI]

BRIEF: Sharing of resources and cost / expenses with the group companies - The activities carried out by the Appellant enables the Participating Group Companies to share the common services, the best available talent and resources required for carrying out their business activities. The appellant - No service tax liability, provides no taxable service.

OUR TAKE: The hon'ble **CESTAT MUMBAI** held that by relying on the judgment of CCEx Vs Reclamation Welding Ltd. [2014, CESTAT AHMEDABAD], when recipient of same group company is eligible to avail the CENVAT Credit of the duty paid by the assessee, the assessee could not be alleged to have mala fide intent to evade payment of duty and accordingly extended period of limitation cannot be invoked. Therefore, the entire demand and any contrary finding recorded for invoking extended period, are liable to be set aside. **[Decided in favour of appellant with consequential relief]**

DELCAM SOFTWARE INDIA PVT LTD VERSUS COMMISSIONER OF CENTRAL EXCISE, PUNE -I [CESTAT MUMBAI]

BRIEF: Availment of Cenvat credit - Tax paid on services used in common for 'output services' and trading - as the turnover has been the basis for apportionment, there is no reason to interfere with the Commissioner (Appeals) order.

OUR TAKE: The hon'ble **CESTAT ALLAHABAD** held that the credit that may be availed of the tax paid on services used in common for 'output services' and trading during the relevant period is to be so apportioned and appropriate reversals effected. Therefore, as the turnover has been the basis for apportionment, there is no reason to interfere with the Commissioner (Appeals) order. **[Decided against the appellant]**

KALYANI ENTERPRISES VERSUS COMMISSIONER OF CENTRAL EXCISE [CESTAT BANGALORE]

BRIEF: Waiver of penalty - appellant-assessee suppressed the facts from the Revenue with an intention to evade payment of service tax and when there are malafide proved on the part of the appellant-assessee, they would not be entitled to take the benefit of provisions of Section 73(3)(4) ibid.

OUR TAKE: The hon'ble **CESTAT BANGALORE** held that the penalty of 200% of the Service Tax due, which was the maximum fixed under the then law, can be imposed under Section 78 ibid. Therefore, the penalty of 200% of the tax due is not rightly justified and is reduced to 100% of the liability of payment of Service tax. There is no justifiable reason to interfere with in respect of imposition of penalty under Section 77 ibid. **[Decided partly in favour of appellant-assessee]**

AMRL HITECH CITY LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE & ST TIRUNELVELI [CESTAT CHENNAI]

BRIEF: The appellants are eligible for refund under Rule 5 of CCR read with Notfn No.12/2003 as amended on the input services i.e. Company Secretary Service, Chartered Accountant service, Security service, Legal Consultancy service, ITS service, GTA service.

OUR TAKE: The hon'ble **CESTAT CHENNAI** held that since the case relates to land acquisition of 2520 acres the input services in dispute were used as authorized operation of SEZ as a developer. Therefore, the appellants are eligible for refund under Rule 5 of CCR read with Notfn No.12/2003 as amended on the input services i.e. Company Secretary Service, Chartered Accountant service , Security service, Legal Consultancy service, ITS service, GTA service. **[Decided in favour of appellant with consequential relief]**

M/S GLOBAL DIGITAL COLOR LAB, M/S S.K. COLOR LAB VERSUS COMMISSIONER OF CENTRAL EXCISE, JAIPUR-I [CESTAT NEW DELHI]

BRIEF: Taxability - Section 65 (105) (zb) - Photography services - It is pertinent to mention that bona fide belief is the belief of a reasonable person operating in an appropriate environment and is not some sort of hallucinatory belief. Thus the contention of the appellants that they were under a reasonable belief that the impugned service was not taxable is untenable and the extended period is invocable.

OUR TAKE: The hon'ble **CESTAT NEW DELHI** held that it is not even necessary to quibble much over the scope of the word photography because the appellants clearly were engaged in taking or processing of photographs and were clearly covered under the scope of definition of photography studio or agency and they clearly provided service in relation to photography. It is pertinent to mention that bona fide belief is the belief of a reasonable person operating in an appropriate environment and is not some sort of hallucinatory belief. Thus the contention of the appellants that they were under a reasonable belief that the impugned service was not taxable is untenable and the extended period is invocable. **[Decided against the appellant]**

CENTRAL EXCISE

COURT DECISIONS

M/S SHORELINE HOTEL PVT. LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, MUMBAI-I AND VICE-VERSA (CESTAT MUMBAI)

BRIEF: Refund claim - pre-deposit - As soon as the order appropriating such fine was set aside, they became eligible to refund of the deposits made during the investigations - refund allowed with Interest.

OUR TAKE: The hon'ble **CESTAT MUMBAI** held that the deposits made by the SHPL during investigations were appropriated against redemption fine. As soon as the order appropriating such fine was set aside, they became eligible to refund of the deposits made during the investigations in terms of Circular No. 802/35/04-CX dated 8.12.2004 read with the decisions of the tribunal cited above in this para. **[In view of the above, the appellants are also entitled to interest]**

SETO TEKNOLOG PVT LTD VERSUS COMMISSIONER OF CENTRAL EXCISE, MUMBAI-II [CESTAT MUMBAI]

BRIEF: Eligibility of CENVAT CREDIT - whether the courier bill of entry is a proper document for availing Cenvat Credit under the CENVAT Credit Rules, 2004? - Held Yes - Tri

OUR TAKE: The hon'ble **CESTAT MUMBAI** held that since the appellant have been disclosing in their regular return filed by them that they have been availing Cenvat Credit on courier bill of entry and the department has also conducted the audit from time to time of the records of the appellant and has never raised the objection of availing the Cenvat Credit on the basis of courier bill of entry and further, the respondent has not been able to bring on record any material which shows that there is a wilful misstatement or suppression of facts or contravention of any of the provisions of the Act or the Rules with intent to evade payment of duty. In view of this, the entire demand is time barred and the appellant is entitled to avail Cenvat Credit based on courier bill of entry. **[Decided in favour of assessee]**

SAHYADRI STARCH & INDUSTRIES PVT. LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, KOLHAPUR (CESTAT MUMBAI)

BRIEF: Cenvat credit on input services used for both excisable goods as well goods chargeable to nil rate of duty - no option under Rule 6 (3) can be imposed on the appellant and the appellants offer of availing the option of

proportionate credit in terms of Rule 6 (3) (ii) cannot be denied to them.

OUR TAKE: The hon'ble **CESTAT NEW MUMBAI** held that it is seen that no option under Rule 6 (3) can be imposed on the appellant and the appellants offer of availing the option of proportionate credit in terms of Rule 6 (3) (ii) cannot be denied to them. However, they will be liable to pay interest on the amounts, which are reversed. The order-in-original is set aside and the matter is remanded to Commissioner to calculate the amount required to be reversed and the interest payable thereon.

M/S. ALLIED ELECTRICALS VERSUS C.C.E., DELHI-I [CESTAT NEW DELHI]

BRIEF: Evasion of duty -, the goods were cleared without issuing proper invoices and therefore it cannot be said that the price charged included central excise duty. In their statements, partners of the firm also did not claim that price charged was inclusive of duty - cum-duty benefit denied.

OUR TAKE: The hon'ble **CESTAT NEW DELHI** held that In their statements, partners of the firm also did not claim that price charged was inclusive of duty. **[Decided against assessee]**

TATA TOYO RADIATORS LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, PUNE-I [CESTAT MUMBAI]

BRIEF: Recovery of interest on the cenvat credit wrongly taken - the appellant is liable to discharge interest liability paid subsequently under protest to the respondent.

OUR TAKE: The hon'ble **CESTAT MUMBAI** held that Only the mode of recovery is as provided for under Section 11AB of the Central Excise Act. The Hon'ble Supreme Court in the case of Ind-Swift Laboratories Ltd. (2011 Supreme Court) examined the question whether interest would be liable to be paid even when the Cenvat credit has been taken wrongly but not utilized and noted that since the Rule covers both the situations i.e. Cenvat credit taken or utilized wrongly and the word "or" is disjunctive in nature, even if the credit has been availed wrongly, the liability pay interest would accrue. Therefore, hold that the appellant is liable to discharge interest liability paid subsequently under protest to the respondent. **[Decided against assessee]**

CUSTOMS

COURT DECISIONS

ANANDEYA ZINC OXIDES PVT. LTD. VERSUS THE UNION OF INDIA [BOMBAY HIGH COURT]

BRIEF: Entitlement for Custom duty drawback - Finished goods were removed under bond without payment of duties - Petitioners have availed of the benefits under Rule 19(2) ibid, the question of availing any drawbacks in terms of said Notification would not arise at all.

OUR TAKE: The hon'ble **BOMBAY HIGH COURT** held that It is well settled that the taxation and fiscal statutes have to be strictly construed. The Courts cannot read words into such proviso. Once it is not disputed that the Petitioners have availed of the benefits under Rule 19(2) ibid, the question of availing any drawbacks in terms of said Notification would not arise at all. Therefore, as the petitioners has availed the said benefits and removed exported excisable goods without payment of duty from the factory, the question of availing of any drawback in terms of the said Scheme is not at all justified. **[Decided against the petitioner]**

M/S. SRI ADINATH TRADERS VERSUS THE UNION OF INDIA, THE CHAIRMAN, CENTRAL BOARD OF EXCISE & CUSTOMS, THE MEMBER, CUSTOMS CENTRAL BOARD OF EXCISE & CUSTOMS, THE NARCOTICS COMMISSIONER, CENTRAL BUREAU OF NARCOTICS, M/S. RADHEY SHYAM RATANLAL, M/S. HUKUM CHAND DURGA PERSHAD M/S. ALL INDIA SPICES IMPORTERS EXPORTERS & DISTRIBUTORS ASSOCIATION, M/S. ASTRA MANAGEMENT SERVICES PVT. LTD. [MADRAS HIGH COURT]

BRIEF: Classification of importers of poppy seeds - cap on import of poppy seeds - It could be seen that even an importer, who continuously imports for a period of two years, would be in a disadvantageous position than the one who did it for the preceding three financial years out of the total five financial years. - Public notice dated 14.09.2015 insofar as the classification A and B are concerned set aside.

OUR TAKE: The hon'ble **MADRAS HIGH COURT** held that it cannot be said that exclusion of importers on artificial classification can be justified in the eye of law. It is further to be seen that the very purpose of classification itself is for the reason that it is impossible to satisfy all the importers. Also the decision aforesaid has not taken into consideration of the concept of ''level playing field''. **[Decided in favour of petitioner]**

M. RATHAKRISHNAN, D. MURALIDHARAN VERSUS ADDITIONAL DIRECTOR GENERAL DIRECTORATE OF REVENUE INTELLIGENCE, THE COMMISSIONER OF CUSTOMS [MADRAS HIGH COURT]

BRIEF: Validity of show cause notice - Issued with pre-judged mind - When the first respondent had issued the show cause notices with pre-judged mind, there is no purpose in issuing show cause notices at all.

OUR TAKE: The hon'ble **MADRAS HIGH COURT** held that when the first respondent had issued the show cause notices with pre-judged mind, there is no purpose in issuing show cause notices at all. The first respondent should have taken utmost care to manifestly keep an open mind, as they have to act fairly in adjudging the guilt of the petitioners and especially when he has a power to take punitive steps against the petitioners after giving them a show cause notice. Therefore, the show cause notice in question liable to be set aside. **[Decided in favour of appellant]**

M/S CONSOLIDATED METAL FINISHING PVT LTD VERSUS THE COMMISSIONER OF CUSTOMS, THE COMMISSIONER OF CUSTOMS (APPEALS-II) , THE ASSISTANT COMMISSIONER OF CUSTOMS (REFUNDS) [MADRAS HIGH COURT]

BRIEF: Refund of excess amount erroneously collected - while making payment the portal displayed a message "Bank away server application error", whereby, the payment got debited nine times - refund allowed.

OUR TAKE: The hon'ble **MADRAS HIGH COURT** held that since the third respondent is withholding the amount, excessively paid by the petitioners and when the second respondent himself has stated that the provisions of Sec.27 of the Customs Act are not applicable, the contentions, now raised by the learned counsel for the respondents, cannot be accepted. Therefore, the third respondent is liable to refund the amount excessively paid to the petitioner and the impugned order is set aside. **[Decided in favour of petitioner]**

M/S INDICON COPIER SERVICES VERSUS COMMISSIONER OF CUSTOMS (EXPORTS) , CHENNAI [CESTAT CHENNAI]

BRIEF: Test of Unjust enrichment - Refund consisting differential fine and penalty - proviso to sub-section (2) of Section 27 of Customs Act, 1962 deals with applicability of test of unjust enrichment to the duty and interest element but not to differential fine or penalty. - Refund allowed.

OUR TAKE: The hon'ble **CESTAT CHENNAI** held there proviso to sub-section (2) of Section 27 of Customs Act, 1962 deals with applicability of test of unjust enrichment to the duty and interest element but not to differential fine or penalty. Therefore, the action of the authority below to deny the refund to the appellant to the extent indicated above on the ground that unjust enrichment shall apply to differential fine and penalty is not the sanction of the law. **[Decided in favour of appellant]**

M/S PUSHPANJALI LOGISTICS VERSUS COMMISSIONER OF CUSTOMS (GENERAL) , NEW DELHI [CESTAT NEW DELHI]

BRIEF: Validity of Commissioner's order - Revocation of CHA licence - the order is invalid, as there is a clear and fatal violation of the clear procedure mandated for revocation of the appellant's licence authorised under Regulation 20, qua the mandated procedure under Regulation 22.

OUR TAKE: The hon'ble **CESTAT NEW DELHI** held that the order is invalid, as there is a clear and fatal violation of the clear procedure mandated for revocation of the appellant's licence authorised under Regulation 20, qua the mandated procedure under Regulation 22. **[Decided in favour of appellant]**

VECTRA ADVANCED ENGINEERING PRIVATE LTD. VERSUS COMMISSIONER OF CUSTOMS (PORT-IMPORT) , CHENNAI [CESTAT CHENNAI]

BRIEF: Restoration of appeal - Dismissal of appeal for non-compliance and also for non-appearance exparte, should not deprive the parties to contest the order on merits when delay in filing the restoration application has been explained and the contesting parties should not suffer for lapses on the part of their counsel.

OUR TAKE: The hon'ble **CESTAT CHENNAI** held that as the appellants have not made out a prima facie case for complete waiver of pre-deposit. Therefore, the appellant is directed to pre-deposit a sum of 10, 00,000/ (Rupees 10 lakhs only) and upon such deposit, there shall be waiver of pre-deposit and recovery of balance dues. **[Decided in favour of appellant]**

INCOME TAX

COURT DECISIONS

APEEJAY SURRENDERA PARK HOTELS LTD. AND ANOTHER, FEDERATION OF HOTEL AND RESTAURANT ASSOCIATIONS OF INDIA AND OTHERS VERSUS UNION OF INDIA & OTHERS [DELHI HIGH COURT]

BRIEF: TDS u/s 194I - whether the tour operators/travel agents were required to deduct TDS under Section 194-I of the Act while making payments to the hotels on behalf of foreign tourists ? - Held Yes

OUR TAKE: The hon'ble **DELHI HIGH COURT** held that it will depend on the facts of every case, and the onus would be on the concerned hotel to show, whether the payment made by the customers to the hotel includes any payment that can be said to be outside the ambit of 'rent' as defined under Section 194-I of the Act. fall outside the ambit of Explanation to Section 194-I of the Act.

COMMISSIONER OF INCOME TAX DELHI-XI, INDIAN NATIONAL CONGRESS (I) /ALL INDIA CONGRESS COMMITTEE VERSUS INDIAN NATIONAL CONGRESS (I) /ALL INDIA CONGRESS COMMITTEE, COMMISSIONER OF INCOME TAX DELHI-XI [DELHI HIGH COURT]

BRIEF: Exemption u/s 13A - ITAT was justified in denying exemption to the INC under Section 13A of the Act and refusing to condone the delay that had occurred in the audit of some of the state units by holding that the ITAT was right in its conclusion that the INC failed to fulfil the three conditions envisaged under clauses (a), (b) and (c) of Section 13A of the Act.

OUR TAKE: The hon'ble **DELHI HIGH COURT** held that TAT was justified in denying exemption to the INC under Section 13A of the Act and refusing to condone the delay that had occurred in the audit of some of the state units by holding that the ITAT was right in its conclusion that the INC failed to fulfil the three conditions envisaged under clauses (a), (b) and (c) of Section 13A of the Act. **[Decided against assessee]**

COMMISSIONER OF INCOME TAX, DELHI-XI VERSUS JANATA PARTY [DELHI HIGH COURT]

BRIEF: Exemption u/s 13A - As long as a political party continues to avail the exemption from payment of income tax, there can be no excuse for not maintaining its account whether it has one or more state units. - no valid reasons have been given by the ITAT for overturning the reasoned and detailed orders of the AO and CIT (A).

OUR TAKE: The hon'ble **DELHI HIGH COURT** held that no valid reasons have been given by the ITAT for overturning the reasoned and detailed orders of the AO and CIT (A). In the circumstances, the question framed is answered in the affirmative by holding that the finding of the ITAT is perverse and contrary to evidence on record, in so far as applicability of Section 13A of the Act is concerned. **[Decided, in favour of the Revenue and against the Assessee]**

M/S REGEN INFRASTRUCTURE & SERVICES PVT. LTD. (FORMERLY) M/S. RENEWABLE ENERGY GENERATION PVT. LTD. VERSUS THE CENTRAL BOARD OF DIRECT TAXES, THE COMMISSIONER OF INCOME TAX, CHENNAI- VERSUS , THE INCOME TAX OFFICER [MADRAS HIGH COURT]

BRIEF: Entitlement to claim carry forward loss - delay in filing the return - when the petitioner as a litigant is entitled to claim carry forward loss, mere delay should not defeat the claim of the petitioner - CBDT should have condoned the delay of one day in filing the return by the petitioner.

OUR TAKE: The hon'ble **MADRAS HIGH COURT** held that when the petitioner had satisfactorily explained the delay in filing the said return, the approach of the first respondent should be justice oriented to advance the cause of justice. In this case, when the petitioner as a litigant is entitled to claim carry forward loss, mere delay should not defeat the claim of the petitioner. The judgments relied on by the learned counsel for the petitioner squarely applies to the facts and circumstances of the present case. In these circumstances, it is of the view that the first respondent should have condoned the delay of one day in filing the return by the petitioner.

ASHOK KUMAR VERSUS STATE OF HARYANA AND ANOTHER [PUNJAB & HARYANA HIGH COURT]

BRIEF: TDS on the enhanced amount compensation - TDS is only liable to be deducted on the enhanced amount and not on interest.

OUR TAKE: The hon'ble **ITAT KOLKATTA** held that the finding arrived at by the trial court is not justifiable and against the revenue record. As per jamabandi Annexure P-1 the nature of the land is Chahi Nehri (agricultural). There is no reflection that the property was gair mum kin. The executing court has misread the jamabandi and more so, in view of the ratio decidendi culled out in Jagmal Singh and another Vs. State of Haryana and another [2016 (3) TMI 733 - PUNJAB & HARYANA HIGH COURT] read as the TDS is only liable to be deducted on the enhanced amount and not on interest.

STATE TAXES

ALL INDIA VAT

CHHATTISGARH

The Govt. vides Notification NO. F-10-12/2016/CT/V (19) dated 23rd March 2016, amends notification no. F-10/78/2014/CT/V (86) & F-10-36/2015/CT/V (64).

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

DELHI

The Govt. vides Circular No. F.3 (645)/Policy/VAT/2016/1739-44 dated 21st March 2016, In supersession to earlier Circular No. 41, 2015-16 issued vide No.F.3(645)/POLICY/VAT/2016 /1688-93/ dated 16th march 2016 regarding sealing and de-sealing of the business premises.

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

MAHARASHTRA

The Govt. issues steps for filing of sales & purchase annexure

OUR TAKE: Readers are requested to read the said steps for filing of return.

UTTAR PRADESH

The Govt. vides Notification No.KA.NI. -2-430/XI-9(78)/16-U.P. Act-5-2008-Order-(154)-2016 dated 21st March 2016, notify that sale of goods to district disaster relief committee for distribution to drought affected families of Bundelkhand are exempt.

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

WEST BENGAL

The Govt. vides Notification No.93- F.T dated 22nd March 2016, hereby appoint the Officers, being persons appointed by the designation of Senior Joint Commissioner of Sales Tax or Joint Commissioner of Sales Tax by the State Government under sub-section (1) of section 6 of the said Act.

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

COURT DECISIONS

M/S GULLU'S VERSUS COMMISSIONER, TRADE & TAXES, & OTHERS (DELHI HIGH COURT)

BRIEF: Collected of cheque at the time of inspection - no dealer would be coerced by the officers of the DT&T to make payment of any amount either towards alleged tax dues or otherwise either by cheque or cash at the time of a survey or inspection or any other proceeding including proceedings under Section 60 of the DVAT Act, the department is doing so which is very disappointing.

OUR TAKE: The hon'ble **DELHI HIGH COURT** held that The Court expected a categorical instruction to be issued by the Commissioner, Trade & Taxes (CTT). Therefore, the directions are again issued to the CTT to comply by himself and would not be delegate this task to any other officer including any Special Commissioner who may be otherwise authorised to do so. **[Petition disposed of]**

ENNORE FOUNDRIES LIMITED VERSUS THE STATE OF TAMIL NADU [MADRAS HIGH COURT]

BRIEF: Principles of natural justice - it was the assessee, who invited the attention of the Tribunal to the balance sheet - the Tribunal is entitled to come to its own conclusion from what was produced. It is not part of the principles of natural justice to expect the Tribunal to confront the person producing the document with what is found by the Tribunal.

OUR TAKE: The hon'ble **MADRAS HIGH COURT** Assuming that the Tribunal rejects the petitions for rectification, it is not as though the petitioner is without a remedy. Assuming that the Tribunal allows the rectification petitions, but sustains the findings, even then, the doors are not shut for the assessee. If the rectification petitions are allowed, but the conclusion is sustained, the reasoning and the conclusion may not go in tandem. Therefore, the question of perversity cannot be examined at this stage when the petitions for rectification are pending from 2014. **[Petition disposed of]**

OTHER UPDATES

RBI

CIRCULAR & NOTIFICATIONS

The Govt. vides Notification No. RBI/2015-16/343 dated 17th March 2016, notifies Scheme for Collection of Dues of (i) Central Board of Direct Taxes (ii) Central Board of Excise and Customs (iii) Departmentalised Ministries Account. Reporting and Accounting of March Transactions. Special Arrangements - Financial Year 2015-16.

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

ALLIED LAW

COURT DECISIONS

PRATIBHA RAMESH PATEL VERSUS UNION OF INDIA AND OTHERS [SUPREME COURT]

BRIEF: Having invoked a constitutional remedy before the High Court under Article 226 of the Constitution of India, the petitioner cannot, under Law, file another petition under Article 32 of the Constitution of India on identical set of facts for identical reliefs.

OUR TAKE: The hon'ble **SUPREME COURT** held that having invoked a constitutional remedy before the High Court under Article 226 of the Constitution of India, the petitioner cannot, under Law, file another petition under Article 32 of the Constitution of India on identical set of facts for identical reliefs. Writ petition is dismissed with costs of 1,00,000/ (rupee one lakh only) to be deposited with the Supreme Court Legal Services committee within four weeks.

KAROOR VYSYA BANK LTD. VERSUS SHRIDI SAI STEEL & ORS. [SUPREME COURT]

BRIEF: Offence punishable under section 138 and 142 of the Negotiable Instruments Act, 1881 - Whatever defence has been taken by the accused respondents as pointed out by the learned counsel appearing for the respondents before us, cannot be a ground for quashing a criminal prosecution.

OUR TAKE: The hon'ble **SUPREME COURT** held that section 118(g) contains a mandate that until the contrary is proved the holder of a negotiable instrument shall be presumed to be a holder in due course. Thus, there is no escape for the court from drawing such presumption - Whatever defence has been taken by the accused respondents as pointed out by the learned counsel appearing for the respondents before us, cannot be a ground for quashing a criminal prosecution.

COMPANY LAW

COURT DECISIONS

IN RE : 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]**

UNION OF INDIA VERSUS M/S. AMBICA CONSTRUCTION [SUPREME COURT]

BRIEF: if contract expressly bars award of interest pendente lite, the Arbitrator cannot award the same. - the bar to award interest on delayed payment by itself will not be readily inferred as express bar to award interest pendent lite by the Arbitral Tribunal, as ouster of power of Arbitrator has to be considered on various relevant aspects

OUR TAKE: The hon'ble **SUPREME COURT** held that Our answer to the reference is that if contract expressly bars award of interest pendent lite, the same cannot be awarded by the Arbitrator. We also make it clear that the bar to award interest on delayed payment by itself will not be readily inferred as express bar to award interest pendente lite by the Arbitral Tribunal, as ouster of power of Arbitrator has to be considered on various relevant aspects referred to in the decisions of this Court, it would be for the Division Bench to consider the case on merits.

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