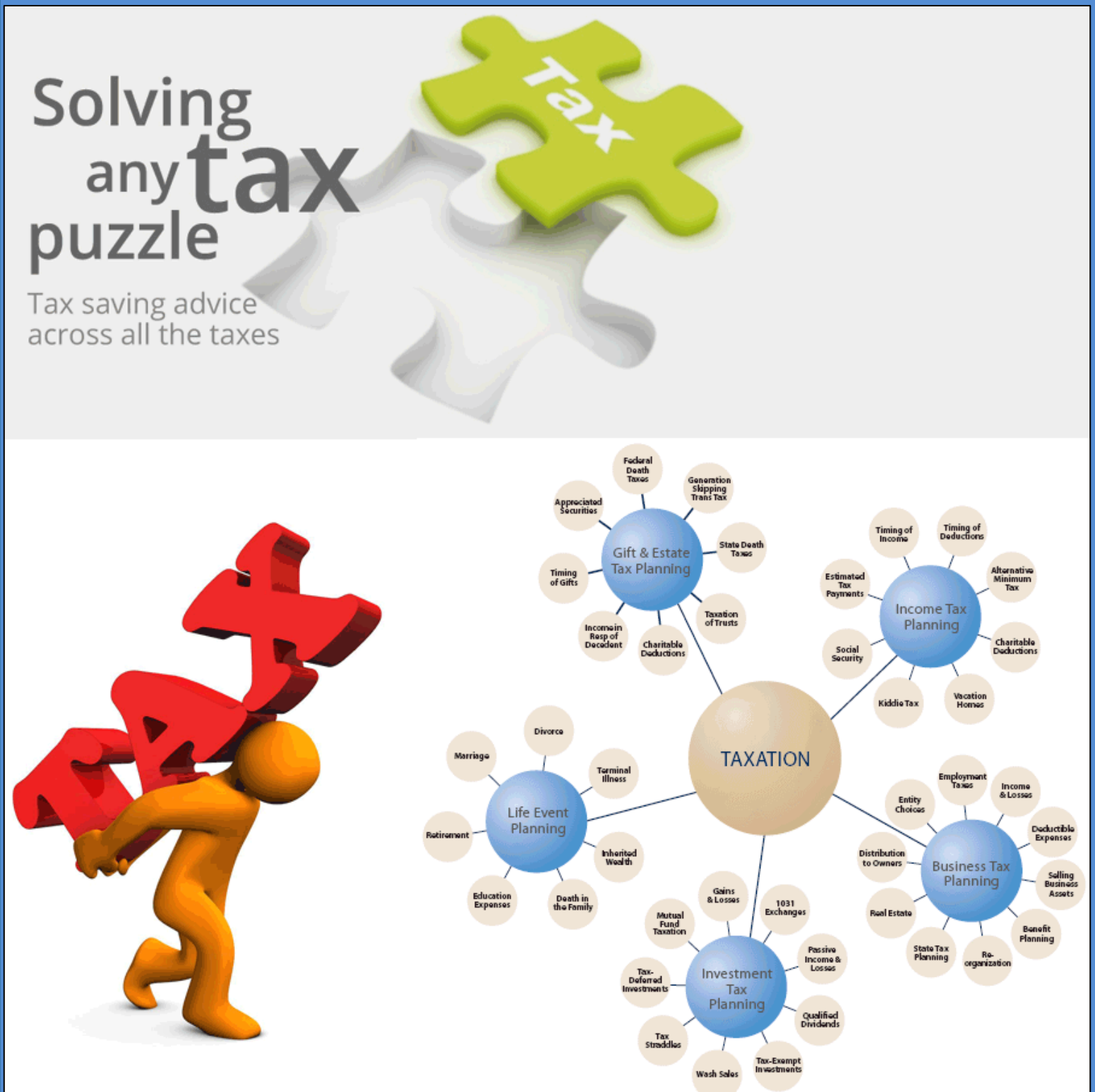
# ASC Times

All India Taxes Weekly Referencer

Vol: Sep 28 - Oct 4, 2015



## From the CEO's Desk

Dear Reader,

Finally, all foreign investors got full relief from the controversial MAT that has no permanent establishment in India which was at 18.5%. "An appropriate amendment to the Income Tax Act in this regard will be carried out. Earlier, issues relating to taxation of foreign companies, having no permanent establishment in India, have been under consideration of the government," an official statement said on Thursday. The ministry of finance has decided to amend the Income Tax Act, 1961, with effect from April 1, 2001, in a manner such that the provisions of Section 115JB shall not apply to a foreign company if it is a resident of a country, which has double taxation avoidance, accord with India. In cases where the country of domicile of the foreign company does not have a tax accord with India, this exemption shall not apply, provided the Companies Act, 2013, exempts it from having a registered office in India.

We all know power of social media. It is day-by-day increasing. It has been possible because of massive use of the smart phones. Because of the increasing demand of mobile phones and its uses made it possible to make Mobile phones and accessories to pull out as a separate category from telephone instruments as part of large-scale changes in a comprehensive revamp of the Index of Industrial Production (IIP). The Central Statistics Office (CSO) is expected to launch a new series of IIP with effect from April 2016. The revised IIP is expected to have a new category for LED and LCD television sets instead of the existing classification called Colour TV sets, the official said. Laptops, notebooks and netbooks are also likely to be made into a separate category as against the present electronics category called 'computers'.

Some minor and some major steps have been into consideration as Indian Government proposes various reforms to boost sentiments and viability for doing business in India not only for outsiders but for Indian companies as well. Roll out of GST and single window clearance for project approvals, replacing prototype labour regulations are efforts for India to achieve 'ease of doing business' ranking under 50 by 2020.

Alok Kumar Agarwal
CEO
ASC Group

# TAX CALENDER

| Due Date | Description | Law |
|---|---|---|
| 28 September | Deposit of Tax | Arunachal Pradesh VAT |
| | Return Filing | Arunachal Pradesh VAT |
| 29 September | Deposit of Tax | Goa VAT |
| | Return Filing | Gujarat VAT |
| 30 September | 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 |

# INDEX GUIDE



# COUNTRY WIDE HOLIDAYS FOR THE WEEK

| Date | Occasion/Festival | Region |
|---|---|---|
| 28 September | Birthday of S. Bhagat Singh Ji | Punjab |
| 30 September | Jananeta Irawat Birth Day | Manipur |
| 2 October | Gandhi Jayanti | All States and Union Territories. |

# CENTRAL TAXES

## SERVICE TAX

### COURT DECISIONS

#### SHARE MICROFIN LTD. VERSUS COMMR. OF CUS., C. EX. & S.T., HYDERABAD-III (ANDHRA PRADESH HIGH COURT)

**BRIEF: Pre-deposit of the penalty amount would be required only when the order of the penalty alone is under challenge. But when there is composite order namely assessment order of the tax component along with interest and also penalty as in the present case direction for pre-deposit of any portion of the penalty amount would result in injustice as well as hardship.**

**OUR TAKE:** The hon'ble **ANDHRA PRADESH HIGH COURT** held that when the appeal is admitted for hearing and the order of the assessment is under scrutiny, unless the order of assessment reaches its finality, the question of initiation of penalty proceedings does not and cannot arise - in view of insertion of the word 'or' the Tribunal cannot ask for the pre-deposit of the penalty also. According to us, the pre-deposit of the penalty amount would be required only when the order of the penalty alone is under challenge. But when there is composite order namely assessment order of the tax component along with interest and also penalty as in the present case, direction for pre-deposit of any portion of the penalty amount would result in injustice as well as hardship. Under these circumstances, we are of the view that the direction for pre-deposit of the penalty component of the order has to be deleted and the same is accordingly deleted and the rest of the order would remain. [**Decided in favour of assessee]**

#### AKBAR TRAVELS OF INDIA (P) LTD. VERSUS C.C.E.,C. & S.T., THIRUVANANTHAPURAM (KERALA HIGH COURT)

**BRIEF: Waiver of penalty u/s 78 was allowed but waiver of penalty u/s 76 was refused by the tribunal. Once the assessee proves that there was reasonable cause for the failure. Section 80 starts to operate insulating the imposition of any other penalties under Section 76 Section 77 or Section 78 of the Act. Insofar as the appellant is concerned this is inexcusably applicable in law.**

**OUR TAKE:** The hon'ble **KERALA HIGH COURT** held that Section 80 opens with a non-obstante clause saying that notwithstanding anything contained in Section 76, Section 77 or Section 78, no penalty shall be imposable on the assessee for any failure referred to in the said provisions, if the assessee proves that there was reasonable cause for the said failure. Words "or Section 78" were introduced into Section 80 by the Finance Act of 2004, to exclude Section 79 from the net of Section 80. Therefore, once the assessee proves that there was reasonable cause for the failure. Section 80 starts to operate, insulating the imposition of any other penalties under Section 76, Section 77 or Section 78 of the Act. Insofar as the appellant is concerned, this is inexcusably applicable in law. Appeal is eligible to succeed. [**Decided in favour of assessee**]

---

## CENTRAL EXCISE

### NOTIFICATIONS & CIRCULARS

The **Govt. vide Clarification F.No.96/90/2015-CX.1, dated 21 September, 2015** issued Clarification regarding binding nature of circular and instructions.

**OUR TAKE:** Board Circulars contrary to the judgements of Hon'ble Supreme Court become non-est in law and should not be followed.

---

The **Govt. vide Notification No. 20/2015100, dated 24 September, 2015** notifies the conditions, safeguards and procedures for supply of items like tags, labels, printed bags, stickers, belts, buttons and hangers (i.e. "specified goods") produced or manufactured in an Export Oriented Undertaking (hereinafter referred to as "EOU) and cleared without payment of duty to a Domestic Tariff Area unit in terms of Para 6.09 (g) of Foreign Trade Policy, 2015-20, for the purpose of their exportation out of India.

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

---

### COURT DECISIONS

#### COMMR. OF CENTRAL EXCISE, PATNA VERSUS M/S NEW SWADESHI SUGAR MILLS (SUPREME COURT)

**BRIEF: CENVAT Credit which was already accumulated in favour of the assessee at the time when the Rules2002 were brought into force could not have been taken away if the rigors of Rule 6 would be having only prospective effect.**

**OUR TAKE:** The hon'ble **SUPREME COURT** held that CENVAT Credit which was already earned by the assessee, could not have been taken away if the rigors of Rule 6 would be having only prospective effect. No doubt that the view of the Tribunal is perfectly justified and does not call for any interference. [**Decided against Revenue**]

## COMMISSIONER OF CUSTOMS & CENTRAL EXCISE VERSUS M/S. 20 MICRONS LTD. (SUPREME COURT)

**BRIEF: Classification of the product manufactured. Merely because the product of assessee i.e. China Clay is calcined it would not put it out of Chapter Heading 25.05.**

**OUR TAKE:** The hon'ble **SUPREME COURT** held that after mentioning the products, there is again an exclusion clause which excludes the products that have been roasted, calcined or obtained by mixing. Calcination was excluded there as well. However, when this Head Note is contrasted with Head Note 2 which was introduced in the year 1990, we find significant addition of words in the beginning of the said Note which are "except where the context otherwise requires". Therefore, the exclusion of calcination would not apply in respect of those products where the context otherwise includes calcination.

Chapter Heading 25.05 which has already been reproduced above mentions under Entry 2505.10 "Kaolin and other kaolinic clays, whether or not calcined". It is not in dispute that the china clay otherwise is known as Kaolin as well and the process of Kaolin is same as that of china clay. Here the Kaolin is included under Entry 2505.10, i.e., under Chapter Heading 25.05, even when it is calcined. Therefore, it follows from the above that the context here requires such a product to remain included under Chapter 25.05 even when it is calcined. Merely because the product of assessee, i.e., China Clay is calcined, it would not put it out of Chapter Heading 25.05. Order of the CESTAT without any blemish and are of the opinion that there is no merit in the instant appeal. [**Decided against Revenue**]

## HYDERABAD CHEMICAL SUPPLIES LTD. VERSUS C.C.E. & C., HYDERABAD-IV (ANDHRA PRADESH HIGH COURT)

**BRIEF: The trade discount was given to a wholesaler and not in the course of any retail sale. The hurdle in the context of refund namely identification of the end customer from whom the component of excise duty does not arise in this case. Refund allowed.**

**OUR TAKE:** The hon'ble **ANDHRA PRADESH HIGH** held that order of provisional assessment was made on 13-2-1995 and Excise duty so determined was paid. At the stage of passing of final order of assessment, the appellant placed before the Deputy Commissioner, the particulars of the discounts given by it in the relevant forms. The Deputy Commissioner was satisfied about the permissibility of such discounts, having regard to the purport of the law, as it stood then. The order holding that the discounts are in accordance with law has become final. It is only at the stage of refund of the differential amount, that certain controversy has arisen. The manufacturer was found to have collected the amount, representing the excise duty and when the question of refund on the basis of an order passed in the appeal arose, the plea as to unjust enrichment was taken into account. Once the manufacturer has collected the component of excise duty, refund on account of the adjudication at a subsequent stage was found to be linked with the feasibility of passing on the benefit to the end customer. Such a situation does not obtain in the instant case. The trade discount was given to a wholesaler and not in the course of any retail sale. Further, it was paid at the prescribed point of sale, namely, at the stage of removal of goods from the place of manufacture as well as the depot, in favour of the wholesaler. The order passed by the Deputy Commissioner on 30-12-2002 in this behalf, became final.

The hurdle in the context of refund, namely, identification of the end customer from whom the component of excise duty does not arise in this case. The particulars furnished under Rules 173C and 173G contained the names of the persons who were extended the trade discounts. Since it was in the form of a credit note, it becomes clear that the corresponding burden did not pass on to the end customer. [**Decided in favour of assessee**]

## TEKNOMIN AQUA EXPORTS (INDIA) LTD. VERSUS COMMR. OF CUS. & C. EX., GUNTUR (ANDHRA PRADESH HIGH COURT)

**BRIEF: Once there is an absolute prohibition against the sale of goods manufactured by the appellant in the DTA the question of making any classification or distinction of the goods or purchases in the DTA does not arise.**

**OUR TAKE:** The hon'ble **ANDHRA PRADESH HIGH COURT** held that where it becomes necessary to shift the imported goods from one customs godown to another, it can be done only on the strength of a specific order passed by the competent authority in this behalf. In case, the appellant had permission from any superior authority for removal of the goods from a godown, without payment of customs duty, the same ought to have been presented before the incharge officer of the godown. It is only when such incharge

officer is satisfied about the genuinity of the order, that he can be expected to release the goods without payment of the customs duty. The record discloses that the appellant did not produce the so-called order of the Development Commissioner, at any point of time nor it was shown to the incharge officer of the godown. The respondent as well as the Tribunal recorded specific findings to this effect. Once there is an absolute prohibition against the sale of goods manufactured by the appellant in the DTA, the question of making any classification or distinction of the goods or purchases in the DTA, does not arise. [**Decided against assessee**]

### COMMISSIONER OF CENTRAL EXCISE, MUMBAI-III VERSUS CIPLA LTD. (BOMBAY HIGH COURT)

**BRIEF: Whether denial of refund claim in case of amount paid in excess of duty at the effective rate is correct?**

**OUR TAKE:** The hon'ble **BOMBAY HIGH COURT** held that the Revisional Authority referred to such sum being lying with the Government as a deposit. The judgments of Punjab & Haryana High Court were referred and the opinion was that the Government cannot retain the amount paid without any authority of law. The direction to allow the amount to be re-credited in the CENVAT Credit account of the concerned manufacturer does not require any interference by us because even if the impugned order of the Appellate Authority and the Order-in-Original was modified by the Joint Secretary (Revisional Authority), what is the material to note is that relief has not been granted in its entirety to the first respondent. The first respondent may have come in the form of an applicant who has exported goods, either procured from other manufacturer or manufactured by it. Looked at from any angle, we do not find that any observation at all has made which can be construed as a positive direction or as a command as is now being understood. On some apprehension and which does not have any basis in the present case, we cannot reverse the order or clarify anything in relation thereto particularly when that it is in favour of the authority. [**Petition disposed of**]

### COMMISSIONER OF CENTRAL EXCISE NAGPUR VERSUS M/S HYUNDAI UNITECH ELECTRICAL TRANSMISSION LIMITED AND ANOTHER (SUPREME COURT)

**BRIEF: Whether windmill doors and electrical boxes are components and/or parts of wind operated electricity generators. Since the tower is held as part of the generator door thereof has to be necessarily a part of the generator.**

**OUR TAKE:** The hon'ble **SUPREME COURT** held that as far as windmill doors or tower doors are concerned, it is a safety device which is used as security for high voltage equipments fitted inside the tower, preventing unauthorised access and preventing entries of reptiles, insects, etc., inside the tower. This, according to us, would be sufficient to make it part of the electricity generator. We further find that this was so held by the Commissioner of Central Excise and Customs, Raipur in Order-in-Original dated 28.02.2005 as well as by the Commissioner (Appeals), Raipur, vide his orders dated 10.02.2003. The said orders were accepted by the Revenue as it is recorded by the CESTAT that the Revenue could not produce any evidence to show that those orders were challenged by it. Further, since the tower is held as part of the generator, door thereof has to be necessarily a part of the generator. No case of interference is made out. [**Decided against Revenue**]

---

# CUSTOMS

## NOTIFICATIONS & CIRCULARS

The **Govt. vide Notification No. 47/2015, 22 September, 2015** seeks to further amend Notification No.12/2012, dated 17.03.2012. In List 5, for item (11), the item "(11) Nylon-12 / Ether Ester Elastomer" shall be substituted.

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

---

## COURT DECISIONS

### M/S. KARUR K.C.P. PACKKAGINGS LTD. VERSUS THE COMMISSIONER OF CUSTOMS AND OTHERS (MADRAS HIGH COURT)

**BRIEF: Denial of Duty drawback claim. Interest u/s 75A. Respondent is hereby directed to pay the interest at the rate of 18 on the sanctioned and paid duty drawback claim amount entitled by the petitioner for the period from 18.02.2010 to 24.09.2010.**

**OUR TAKE:** The hon'ble **MADRAS HIGH COURT** held that where any drawback payable to the claimant is not paid within a period of one month from the date of filing a claim

for payment of such drawback interest at the rate fixed under Section 27-A from the date after the expiry of the said period of one month is payable to the petitioner. Therefore, when it is made clear that the petitioner is entitled to claim interest, as per Section 75-A and further notification with regard to quantum of interest and also as per Notification Customs No.18/2011-Customs (N.T), 1st March 2011, 18% interest per annum having already fixed by the Central Government is hereby fixed. Respondent is hereby directed to pay the interest at the rate of 18% on the sanctioned and paid duty drawback claim amount entitled by the petitioner for the period from 18.02.2010 to 24.09.2010, within a period of four weeks. [**Decided in favour of assessee**]

### M/S. GUPTA STEEL, BHAVNAGAR VERSUS COMMISSIONER OF CUSTOMS, JAMNAGAR (SUPREME COURT)

**BRIEF: Whether the contention of Revenue that value mentioned in MoA dated 23.08.2000 should have been the valuation for the purpose of levying the import duty is correct?**

**OUR TAKE:** The hon'ble **SUPREME COURT** held that price was genuinely revised and a lesser price was agreed to be received by the owner of the vessel and therefore, there was nothing wrong on the part of the appellant to declare that price in the Bill of Entry. We, thus, are of the opinion that the duty should have been assessed on the basis of value declared by the appellant and the assessment made on 18.03.2002 by the assessing officer did not call for any interference. [**Decided in favour of assessee**]

---

# INCOME TAX

## COURT DECISIONS

### MWP LTD. VERSUS COMMNR. OF INCOME TAX KARNATAKA (CENTRAL) (SUPREME COURT)

**BRIEF: Claim of sales tax on the excise duty component of the goods purchased. Appellant-assessee had directly deposited the excise duty payable on the goods and had claimed and received the deductions under the said head. Claim of deduction in the revised return allowed.**

**OUR TAKE:** The hon'ble **SUPREME COURT** held that High Court had exceeded its jurisdiction in recording a finding with regard to the authenticity of the Agreement dated 18.12.1991. If the Agreement dated 18.12.1991 is to be treated as a part of the record of the assessment proceedings, undoubtedly, a liability had been cast upon the assessee insofar as the sales tax payable on the excise duty component is concerned. It is not in dispute that the mercantile system of accounting was in vogue in the assessee company. In the revised return filed by the assessee deduction of the amounts claimed by M/S. Mc Dowell & Co. Ltd. on sales tax was reflected.

That the original return filed by the assessee did not reflect the aforesaid figures is not difficult to understand. At the time when the said return was filed (29.09.1982) the liability of M/S. Mc Dowell & Co. Ltd., disclaimed by the said Company, was yet to be determined. After the said claim of M/S. Mc Dowell & Co. Ltd. was negatived by the Andhra Pradesh High Court (06.12.1982) and during the pendency of the appeals before this Court M/S. Mc Dowell & Co. Ltd. had issued a letter dated 07.05.1983 to the assessee intimating that in the event the decision of the Supreme Court is adverse to M/S. Mc Dowell & Co. Ltd. the sales tax element will be collected by Mc Dowell from the assessee. It is thereafter that the revised return was filed on 27.08.1984. The liability of M/S. Mc Dowell & Co. Ltd. attained finality with the decision of the Constitution Bench M/s Mc Dowell and Company Limited Vs. Commercial Tax Officer [1985 (4) TMI 64 - SUPREME Court].

We are of view that the assessee is entitled to the benefit of deduction of the sales tax payable on the excise duty component in the assessment years in question. We, therefore, set aside the order of the High Court and restore the order of the Appellate Commissioner and the learned Tribunal deciding the said issue **in favour of the assessee**.

### COMMNR. OF INCOME TAX VERSUS M/S. HENKEL SPIC INDIA LTD. (SUPREME COURT)

**BRIEF: Accrual of interest on refundable share application money and selection of its relevant assessment year.**

**OUR TAKE:** The hon'ble **SUPREME COURT** held that as the amount of interest earned on the application money to the extent to which it is not required for being paid to the applicants to whom moneys have become refundable by reason of delay in making the refund will belong to the company, only when the trust terminates and it is only at that point of time, it can be stated that amount has accrued to the company as its income. It is not in dispute that in the year 1993-1994, the assessee had shown the income on account of interest received in the income tax returns and

paid the tax thereupon.

We, thus, do not find any error in the order passed by the High Court holding that the interest income has accrued only in the Assessment Year 1993-1994 and was taxable in that year only and not in the Assessment Year 1992-1993. [**Decided in favour of assessee**]

### STITCHWELL QUALITEX (RF) VERSUS INCOME TAX OFFICER & ANOTHER (DELHI HIGH COURT)

**BRIEF: Entitlement to depreciation claimed in respect of Unit-II. Non-undertaking any manufacturing activity during the AY in question. It is not the Revenue's case that the building and plant and machinery were not for the purpose of business of the Assessee. Depreciation allowed.**

**OUR TAKE:** The hon'ble **DELHI HIGH COURT** held that on facts, it is not in dispute that the building was constructed in the previous year 1988-89. Further, the plant and machinery was installed in the factory in the previous year ending 31st March 1990. The Court in of the view that the installation of the plant and machinery in the building would amount to use of the building so as to justify the claim for depreciation on the building. Further, the plant and machinery installed in the building during AY 1989-90 was ready for use for the purpose of business of the Assessee. The electricity connection was given on 6th February 1990. Another important fact was that the Assessee was already conducting its business and this was Unit II which was by way of expansion of an existing business. It is not the Revenue's case that the building and plant and machinery were not for the purpose of business of the Assessee. Therefore, it is concluded that the building and machinery in Unit II were used for the purpose of the business of the Assessee during the AY in question. [**Decided in favour of assessee]**

### THE COMMISSIONER OF INCOME TAX VERSUS M/S. CHENNAI FOOTWEAR PVT. LTD. (NOW MERGED WITH M/S. FARIDA SHOES PVT. LTD.) (MADRAS HIGH COURT)

**BRIEF: A. Excessive expenditure u/s 40A(2)(b). The net profit amounted to only 0.13 of a massive turnover of about Rs 103 crores. On such a premise the conclusion that the expenses incurred were excessive or unreasonable could not have been arrived at.**

**B. Whether the finding of the Tribunal that the disallowance made under Section 40A(2)(b) is not attracted especially when the assessee had supplied its entire product to its sister concerns at exorbitant price thus bring down the profit of the assessee company?**

**OUR TAKE:** A. The hon'ble **MADRAS HIGH COURT** held that the Tribunal has recorded a factual finding that most of the items were found from the books of accounts not to be personal expenditure, but to be business promotion expenses. Therefore, the first question of law raised by the Revenue does not arise for consideration in the light of the factual finding that the expenses were found to be business promotion expenses. [Decided against revenue]

B. The hon'ble **MADRAS HIGH COURT** held that in this case, the Tribunal found that the only reason as to why the Assessing Officer came to a conclusion about the excessive or unreasonable nature of the expenditure was on the basis that the net profit amounted to only 0.13% of a massive turnover of about Rs 103 crores. On such a premise, the conclusion that the expenses incurred were excessive or unreasonable could not have been arrived at. This is why, the Tribunal pointed out there are no materials to come to the conclusion that any particular item of expenditure was expensive or unreasonable. No substantial questions of law raised. [**Decided against revenue**]

---

# STATE TAXES

## ALL INDIA VAT

### ANDHRA PRADESH

The **Govt. vide Notification No. G.O.MS.No. 356, dated 22 September, 2015** amends Schedule-I and Schedule-IV of Andhra Pradesh Value Added Tax Act, 2005 (Act No.5 of 2005).

**OUR TAKE:** In Schedule - I for the entry at Sl.No.57, the entry "57. Sugar including Khandasari Sugar" shall be substituted.
And, in Schedule - IV the entry at Sl.No.128 shall be omitted.

---

### DELHI

The **Govt. vide Order No. L-1/4/Ex./IMFL/2014-15/2815,**

**dated 22 September, 2015** orders that stock taking will not be allowed to any retail private vends licencees as well as Corporation vends.

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

---

The **Govt. vide Notification No.10(08)/Fin(Rev-I)/2015-16/dsVI/465, dated 22 September 2015** make the rules further to amend the Delhi Excise Rules, 2010.

**OUR TAKE:** In Rule sub-rule (2) of rule 152 of the Delhi Excise Rules, 2010, "(2) Country Liquor, Duty @ 245% of Wholesale Price" shall be substituted.

---

## HARYANA

The **Govt. vide Notification No. 23/H.A.6/2003/S.60/2015, dated 24 September, 2015** makes the rules further to amend the Haryana Value Added Tax Rules, 2003 by dispensing with the certain condition. It shall come into force with effect from April 1st 2014.

**OUR TAKE:** There is amendment in Rule 49-A for Lump sum Scheme In Respect Of Developers (Section 9), and after the existing "Form VAT C-5", the "FORM VAT-CD1" shall be inserted.

---

## JHARKHAND

The **Govt. vide Notification S.O. 67, dated 23rd September, 2015** seek to amend the Schedule – II Part-E of Jharkhand Value Added Tax Act, 2005 (Jharkhand Act 05, 2006).

**OUR TAKE:** There is amendment in In the Schedule II Part-E of the Jharkhand Value Added Tax Act, 2005, the Serial Nos. 2 i.e. for "High Speed Diesel Oil, Light Diesel Oil" and Serial No.6 i.e. for Petrol.
Readers are requested to read the said Notification. It is self-explanatory.

---

## MAHARASHTRA

The **Govt. vide Notification No. VAT. 1515/ C.R. 100/Taxation-1, dated 18 September, 2015** specify that, with effect from 1st October 2015, the refund, if any, due under the Maharashtra Value Added Tax Act, 2002 (Mah. IX of 2005) to the registered dealer, shall be credited to his bank account by way of the National Electronic Funds Transfer (NEFT) of Reserve Bank of India.

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

---

## MIZORAM

The **Govt. vide Notification No .J.11020/1/2012-Tax, dated 16 September, 2015** seek to amend Schedule-II part 'D' of Mizoram Value Added Tax Act, 2005 with effect from the date of issue of this Notification.

**OUR TAKE:** VAT rate on Tobacco Products including Cigarettes, Cigars, Cigarillos and Vaihlo in all forms is revised from the existing 20% to 30% in Schedule-II part 'D' of the said act.

---

## ODISHA

The **Govt. vide Notification No. 25338-FIN-CT1-TAX-0019-2015, dated 21 September, 2015** amends the notification of the Government of Odisha in the Finance Department No.40563/2006/F, dated the 26th September, 2006 and further direct that the benefit under the said notification shall be deemed to have been allowed with effect from the 1st day of April, 2005.

**OUR TAKE:** In the said notification, before the figures "42, 42A, 43, 43A, 44, 44A, 45, 45A, 46 and 46A" wherever they occurs, the figure "35H" shall be inserted.

---

## RAJASTHAN

The **Govt. vide Notification No. F.12(43)FD/Tax/05-Pt-88, dated 24 September, 2015** exempts, with immediate effect, from payment of tax leviable in respect of transfer of property in goods involved in the execution of works contracts, executed within the territory of Special Economic Zone (SEZ), awarded by the units being established in SEZ or co-developers or developers of SEZ,

up to 31.03.2016 and where the SEZ is established entirely in backward areas specified by the State Government, such exemption shall be available up to 23.08.2017.

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

---

## TRIPURA

**The Govt. vide Notification No. F-1-1(43)-TAX/2015, dated 15 September, 2015** amend the Tripura Value Added Tax Rules, 2005, with objective to inserting suitable provisions to delegate the power of revision u/s 70(2) of the Commissioner of Taxes to any officer not below the rank of Joint Commissioner of Taxes and modification of VAT Form-I for Application Form for Registration.

**OUR TAKE:** There is amendment in Rule 8, Rule 11 and modification of VAT Form-I for Application Form for Registration. Readers are requested to read the said Notification. It is self-explanatory.

---

## UTTARAKHAND

The **Govt. vide Notification No. 809/146(120)/2015/XXVII(8)/2008, dated 16 September, 2015** seek to amend Notification No. 714/2015/146(120)/XXVII(8)/2008, dated 14 September, 2015.

**OUR TAKE:** There is change in rate of Motor Spirit and Diesel as defined under the United Provinces Sales of Motor Spirit, Diesel oil and Alcohol Taxation Act, 1939 (Sl. No. 2 and 3). Readers are requested to read the said Notification. It is self-explanatory.

---

## COURT DECISIONS

### SOUDAMINI SIVADAS VERSUS STATE OF KERALA AND OTHERS (KERALA HIGH COURT)

**BRIEF: Applicable rate of VAT on Margarine is 4 or 12.5? Moving from abstract to the concrete we can say Margarine is a generic produce having sub-classifications among which Liquid Margarine stands excluded. Essentially what follows is that the rest of varieties are included or at least have not been separately dealt with. Classifiable with HSN Code No. 1517.**

**OUR TAKE:** The hon'ble **KERALA HIGH COURT** held that all the subjects of enumeration should constitute a class or category and that there should be no indication of a different legislative intent. In the present instance, however, it is very clear that HSN Code Nos. 1516 and 1517 have their own distinctive enumerations. As it could be seen from the above ratio, the principle of ejusdem generis can be applied to a particular class or category, but not across the classes or categories. No interpretation, however appealing it is, can be permitted by doing violence to the plain language of the statute. The aids of interpretation are meant to steer clear of statutory ambiguities, but not to create one in the place of none. Margarine is shown with HSN Code No. 1517 and it has not even remote mention in HSN Code No. 1516. Just because supposedly similar products are listed in 1516, we cannot deracinate and transport Margarine from 1517 to 1516.

At best the controversy could be confined to one aspect: With the exclusion of 'Liquid Margarine', can we presume that margarine, sans liquid margarine includes every other category, or is there anything left so that it can be classified along with other analogous products, going by their technical analysis of its constituent elements?

Hon'ble Supreme Court has already disapproved the technical analysis of products to extricate them from the tax net. Further, it is, again, a well established cannon of statutory interpretation that if a genus comprises many species and only one or a few of the species have been excluded for a particular purpose, the inexorable indication of such an arrangement is that all the rest of species have been included under the genus. Moving from abstract to the concrete, we can say Margarine is a generic produce having sub-classifications, among which Liquid Margarine stands excluded. Essentially what follows is that the rest of varieties are included or at least have not been separately dealt with.

Classifiable with HSN Code No. 1517. Liable to tax @ 12.5%. [**Decided against the assessee**]

---

# OTHER UPDATES

## ALLIED LAW

## COURT DECISIONS

### VIVEK VISHNUPANT KULKARNI VERSUS THE STATE OF MAHARASHTRA AND OTHERS (BOMBAY HIGH COURT)

**BRIEF: RTI - Missing public records. In view of the clear direction issued by the Second Appellate Authority they were bound to set criminal law in motion as the documents could not be traced within the stipulated time.**

**OUR TAKE:** The hon'ble **BOMBAY HIGH COURT** states that the case in hand is a classic example, as to how the Government officers for protecting their fellow officers tend to frustrate the basic intention of the legislature behind the enactment of the Right to Information Act, 2005.

Section 9 of the Maharashtra Public Records Act clearly mandates that whoever contravenes the provisions of Section 4 or Section 8 of the said Act shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to ten thousand rupees or with both.

Taking into consideration the directions given by the State Information Commission, it was mandatory firstly for Mr. Suresh Kakani and secondly for Mr. S.K. Salimath to set criminal law in motion and leave it to the investigating agency to find out the culprits. In view of the clear direction issued by the Second Appellate Authority, they were bound to set criminal law in motion as the documents could not be traced within the stipulated time.

State directed to pay cost of Rs 15,000/- to the Petitioner.

---

## DGFT

The **Govt. vide Public Notice No. 37/2015-20, dated 21 September, 2015** make amendment in Para 2.63 of HBP, 2015-20.

**OUR TAKE:** As a result of this amendment, for temporary import / export of exhibits without Authorisation, the condition of submitting of both bond / security to Customs and ATA Carnet has been replaced by either bond / security to Customs or ATA Carnet.

---

## FEMA

The **Govt. vide Notification S.O. 2438(E), dated 21 August, 2015** Set up a sector specific Special Economic Zone for Gems and Jewellery at Ichhapor, Surat, in the State of Gujarat.

---

The **Govt. vide Circular No.15, dated 24 September, 2015** issued direction regarding opening of foreign currency accounts in India by ship-manning / crew-management agencies that are rendering services to shipping/airline companies incorporated outside India, to open, hold and maintain non-interest bearing foreign currency account with an AD Category – I bank in India for meeting the local expenses in India of such shipping or airline company.

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

---

The **Govt. vide Circular No.16, dated 24 September, 2015** issued instruction regarding Processing and settlement of import and export related payments facilitated by Online Payment Gateway Service Providers.

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

---

## We may be contacted at the following offices:

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

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

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

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

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

**INTERNATIONAL BRANCH**
303,5th Avenue Suite 1007,
New York, NY 10016, U.S.A

### For enquiries related to:

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

**Disclaimer:**
*This e-bulletin is for private circulation only. Views expressed herein are of the editorial team. ASC or any of its employees do not accept any liability whatsoever direct or indirect that may arise from the use of the information contained herein. No matter contained herein may be reproduced without prior consent of ASC. While this e-bulletin has been prepared on the basis of published/other publicly available information considered reliable, we do not accept any liability for the accuracy of its contents.*

© ASC Group 2015. All rights reserved.