ASC Times

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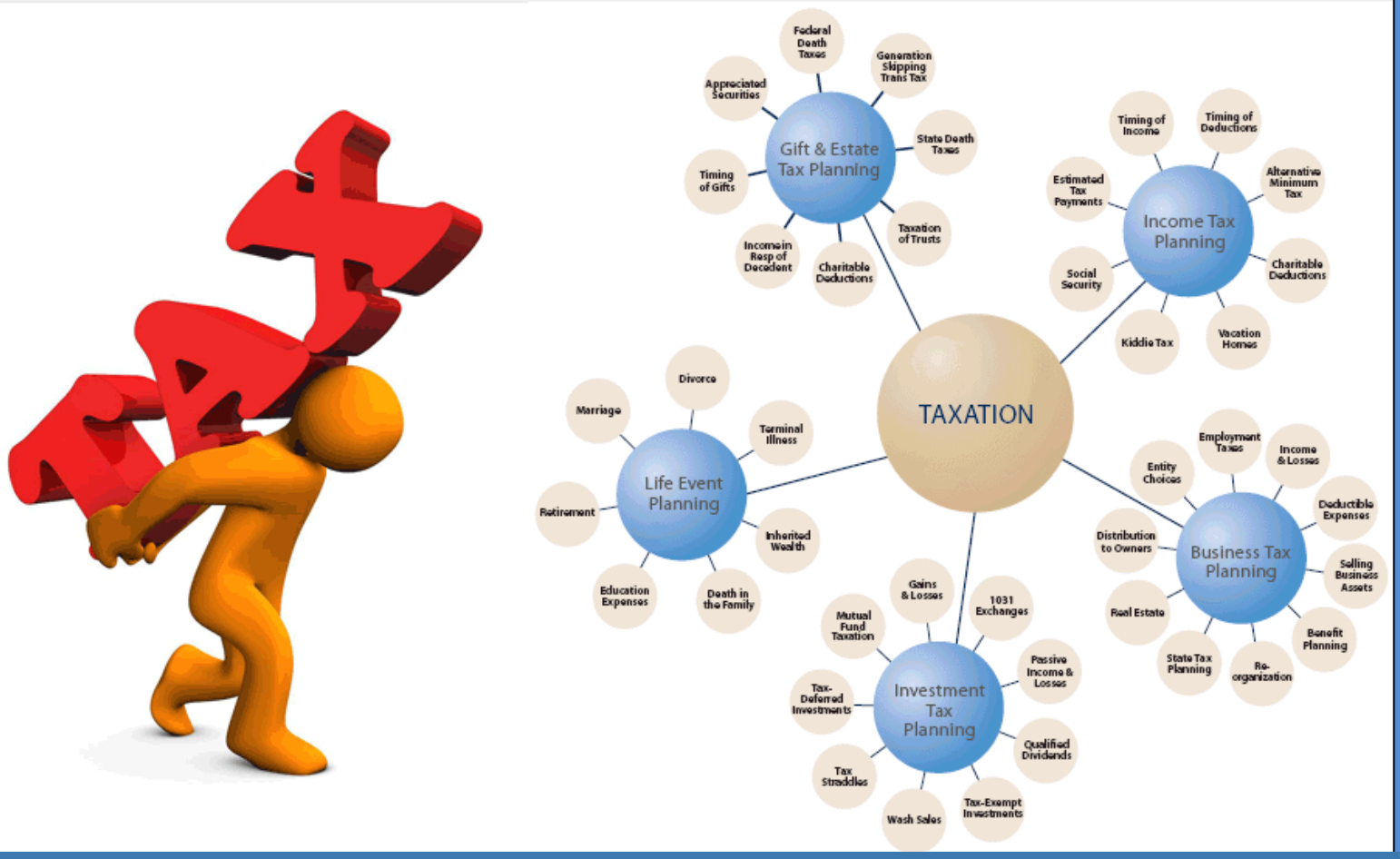

From the CEO's Desk

Dear Reader,

In our earlier issues we had mentioned that how CAIT, the traders body, had filed a complaint to Commerce Ministry against the sales organized and advertised by biggest e-commerce portals saying that such activities are B2C and being funded by foreign investors it is in conflict with FDI norms. In response to their complaint, Commerce Ministry has requested the Enforcement Directorate and RBI to examine whether e-commerce majors Flipkart, Amazon and Snapdeal violated FDI rules by engaging in business-to-consumers (B2C) activity.

In order to reform and restructure the taxing experience of people CBDT is taking many baby steps. Now Central Board of Direct Taxes (CBDT) is looking to hire an outside consultant to check on the efficiency and also audit about the various department functions. "Change management is easier achieved. It is also a common practice in some of the developed economies for government and tax departments to hire professionals from outside," said a CBDT's counterpart. All these efforts are to become more taxpayer friendly.

Another good news is for the people engaged in teaching and practicing YOGA through charitable trusts. Yoga is included in the list of items as charitable activities, hence 14% of service tax will not be levied on Yoga related practices, this will further motivate people to inculcate Yoga in their daily life for a better and healthy lifestyle. Prime Minister Mr. Modi has already put Yoga on the world map by declaring International Day of Yoga, which reinforces the efforts done by Modern Age Yoga Guru Mr. Ramdev promoted under his brand Patanjali.

Further to inform our readers the Ministry has issued clarification on utilization education cess and secondary and higher education cess against output service tax liability vide Notification No. 22/2015 dated 29/10/2015.

Alok Kumar Agarwal
CEO
ASC Group.

TAX CALENDER

Due Date	Description	Law
4 November	Issue of TDS Certificate	Tamil Nadu VAT
5 November	Deposit of Tax	Rajasthan VAT, Kerala VAT
6 November	Deposit of Tax	Central Excise Law
		Service Tax Law
7 November	Deposit of TDS	Orissa VAT, Tripura VAT
	Deposit of TDS/ TCS	Income Tax Law
	Issue of TDS Certificate	Orissa VAT

INDEX GUIDE

COUNTRY WIDE HOLIDAYS FOR THE WEEK

Date	Occasion/Festival	Region
2 November	Lhabab Duechen	Sikkim
6 November	Wangala Festival	Meghalaya

CENTRAL TAXES

SERVICE TAX

COURT DECISIONS

HINDUSTAN PETROLEUM CORPN. LTD. VERSUS COMMISSIONER OF SERVICE TAX, MUMBAI-I (CESTAT MUMBAI)

BRIEF: Refund of Service Tax for services used for export of goods. Service tax paid by MIAPL is under category which was not classified under Notification 17/2009-ST

OUR TAKE: The hon'ble **CESTAT MUMBAI** held that service tax discharged by MIAPL is under Section 65(105)(zzm) - Notification 17/2009-ST specifically grants refund of tax paid on services provided under category mentioned therein and service tax paid by MIAPL is under category which was not classified under Notification 17/2009-ST. [**Decided against the assessee**]

M/S. EXPERA INDIA PVT. LTD. AND OTHERS VERSUS COMMISSIONER OF CENTRAL EXCISE, CUSTOMS AND SERVICE TAX HYDERABAD-II (CESTAT BANGALORE)

BRIEF: On valuation and reimbursement expenses, legal position is clear that expenses actually incurred and reimbursed by service recipient are not to form part of assessable value of services

OUR TAKE: The hon'ble **CESTAT BANGALORE** held that legal position is clear that expenses actually incurred and reimbursed by service recipient are not to form part of assessable value of services. Fact of the matter needs to be seen whether receipts by appellants were on account of reimbursement of actual expenses or not. [**Matter remanded back**]

INDIAN BANKS ASSOCIATION VERSUS COMMISSIONER OF SERVICE TAX, MUMBAI (CESTAT MUMBAI)

BRIEF: Liability of Service Tax Club or Association Service or Convention Services Charge Subscription and Empanelment Fees

OUR TAKE: The Hon'ble **CESTAT MUMBAI** held that services rendered by appellant are for their own member banks and are more or less in consonance with Rules of appellant as published. Impugned order is unsustainable and set aside. Decision made in case of Federation of Indian Chambers of Commerce and Industry, M/s Electronic and Computer Software Export Promotion Council Versus CST, Delhi [2014 (5) TMI 183 - CESTAT NEW DELHI] followed. [**Decided in favour of appellant**]

REACH NETWORK INDIA PVT. LTD. VERSUS COMMISSIONER OF SERVICE TAX, MUMBAI II (CESTAT MUMBAI)

BRIEF: Whether the amounts recovered by Appellant from small time internet service provider who took connection from appellant for rendering services to their clients would be liable to service tax?

OUR TAKE: The hon'ble **CESTAT MUMBAI** held that board through Circular No. B.11/1/2001-TRU did not want to tax the amounts recovered by an ISP for interconnectivity services. Nothing found on record to show that small time ISPs had not discharged any service tax liability on the amounts collected by them from their clients. Revenue cannot argue against its own Board's clarification. [**Decided against the Revenue**]

COMMISSIONER OF CENTRAL EXCISE & CUSTOMS, NASHIK VERSUS INDIABULLS REALTECH LTD. (CESTAT MUMBAI)

BRIEF: Refund of service Tax Period of limitation. Date of invoice should not be taken as relevant date thus not found maintainable as there is no such provision in Notification. Date of payment of service tax is relevant

OUR TAKE: The hon'ble **CESTAT MUMBAI** held that service provider has charged service tax on net cost of provided services after adjusting 15% of advance already paid to service provider. Refund claim not found to be time barred in respect of 21 invoices involving refund of ₹ 17,80,316/-. No evidence regarding actual date of payment of service tax has been provided regarding one invoice no. Nasik/Misc./2012-13/RAB-021.
Refund claim of ₹ 65,624/-, Date of invoice should not be taken as relevant date thus not found maintainable as there is no such provision in Notification.
One year period envisaged in notification correctly reckoned from date of payment of service tax to service provider and not from the date of advance payment. [**Decided partially in favour of appellant**]

ALL CARGO GLOBAL LOGISTICS LTD. VERSUS CCE RAGIAD AND VICE VERSA (CESTAT MUMBAI)

BRIEF: On storage and warehousing services, nature of amount collected from auction of goods where importer failed to take the delivery, no service tax liability arises on such amount which remains balance with the assesse

OUR TAKE: The hon'ble **CESTAT MUMBAI** held that tribunal in the case of Mysore Sales International Ltd. [2010 (12) TMI 453 - CESTAT, BANGALORE], India Gateway Terminal Pvt. Ltd. - [2010 (6) TMI 464 - CESTAT, BANGALORE] had held that Boards Circular No. 11/1/2002 TRU dated 1/8/2002 will be applicable and no service tax liability arises on such amount which remains balance with the assessee.
This ratio is followed by this Bench in the case of Maersk India Pvt. Ltd., [2012 (11) TMI 612 - Cestat, Mumbai]. We find that the facts of the case in hand are similar to the facts in the cases where this Tribunal has taken a view in favour of the appellant. Decision of High Court of Delhi in the case of Associated Container Terminals Ltd [2007 (11) TMI 247 - HIGH COURT OF DELHI] distinguished. Impugned order is set aside. [**Decided in favour of assessee**]

CENTRAL EXCISE

NOTIFICATIONS & CIRCULARS

The **Govt. vide Notification No.22/2015 Central Excise (N.T.), dated 29 October, 2015** amends Cenvat Credit Rules, 2004, so as to allow credit of Education Cess and Secondary and Higher Education Cess paid on inputs/input services and capital goods, to be utilized for payment of service tax in specified circumstances.

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

COURT DECISIONS

COMMISSIONER, CUSTOMS & CENTRAL EXCISE VERSUS M/S RHYDBURG PHARMACEUTICALS LTD. (UTTARAKHAND HIGH COURT)

BRIEF: Denial of benefit of Notification. Merely because the number of the Notification mentioned in the declaration was other than the number of the correct Notification respondent could not be denied the benefit of the said Notification

OUR TAKE: The hon'ble **UTTARAKHAND HIGH COURT** held that before first clearance, the respondent industry submitted a declaration with the appellant holding out that it is seeking to take advantage of the said Notification, but did not mention the number and date of the said Notification. Excise Department, on receipt of the said declaration, duly understood the purport thereof and proceeded on the basis that the said declaration has been submitted under the said Notification and before first clearance. In the declaration, the number of the said Notification and the date thereof was not mentioned; instead the number of some other Notification and date thereof crept in. The fact remains that there is no dispute that the declaration was submitted before the first clearance. There is also no dispute that the purport of the declaration was to take benefit of the said Notification. The fact remains that even after receipt of the said declaration, Excise Department proceeded on the basis that the purport and intent of the said declaration was to take advantage of the said Notification. That being the situation, merely because the number of the Notification mentioned in the declaration was other than the number of the Notification mentioned above, respondent could not be denied the benefit of the said Notification. [**Decided against Revenue**]

RELIANCE COMMUNICATIONS LIMITED VERSUS UNION OF INDIA & ORS. (BOMBAY HIGH COURT)

BRIEF: Failure of the DGFT to pass the orders as per the directions of the Apex Court. No endeavour has been made to seek an extension and for passing an order or taking a decision in terms of the order of this Court referred above. Cost of Rs. 1 lakh imposed.

OUR TAKE: The hon'ble **BOMBAY HIGH COURT** held that court do not countenance such state of affairs and particularly from the Directorate of Foreign Trade, the Director General of Foreign Trade or the Joint Director of Foreign Trade having his office at Mumbai. In the circumstances, we grant the time prayed but on the condition that the respondents shall pay costs, quantified at Rs. 1 lakh within four weeks from today to the petitioner. We refrain from imposing personal costs. The respondent No.1 Union of India / Central Government is free to recover the costs from either the then Director General of Foreign Trade or the Joint Director then functioning for the lapses on their part in complying with the orders and directions of this Court and thereafter creating difficulties for the Union of India/ Central Government. [**Petition disposed of**]

COMMISSIONER OF CENTRAL EXCISE, BANGALORE VERSUS M/S. OTTO BILZ (INDIA) PVT. LTD. (SUPREME COURT)

BRIEF: Benefit of SSI Exemption uses the Brand name of others German company has assigned the trade mark BILZ in favour of the assessee under Agreement dated 18.06.1996 with right to use the said trade mark in India exclusively. Because of the aforesaid assignment the

assessee is using the trade mark BILZ in its own right as its own trade mark.

OUR TAKE: The hon'ble **SUPREME COURT** held that respondent is using brand name 'BILZ' of a foreign company which makes the respondent ineligible to seek exemption under the aforesaid Notification. However, it has come on record that the foreign company, viz., M/s. Otto Bilz Wekzugfabrik GMPH & Co., a German company, has assigned the trade mark 'BILZ' in favour of the assessee under Agreement dated 18.06.1996 with right to use the said trade mark in India exclusively. Because of the aforesaid assignment, the assessee is using the trade mark 'BILZ' in its own right as its own trade mark and therefore, it cannot be said that it is using the trade mark of 'another person'. We, thus, are in agreement with the view taken by the Customs, Excise and Service Tax Appellate Tribunal that the assessee would be entitled to the aforesaid Exemption Notification. Show cause notice dated 31.03.1999 which pertained to the period July, 1997, to March, 1998, is held to be time barred by CESTAT and further holding that the Revenue could not avail the benefit of proviso to Section 11A of the Central Excise Act. Finding of the CESTAT on this issue is also without any blemish. [**Decided against Revenue**]

CUSTOMS

NOTIFICATIONS & CIRCULARS

The **Govt. vide notification No. 102/2015-CUSTOMS (N.T) dated 30 October, 2015** amends Tariff Notification in respect of fixation of T V of Edible oil, Brass, Poppy seed, Areca nut, gold and silver.

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

COURT DECISIONS

M/S CAIRN INDIA LIMITED VERSUS UNION OF INDIA (GUJARAT HIGH COURT)

BRIEF: Levy of Safeguard duty Import of Patented Premium VAM Top Threaded and Coupled Connection it would be expedient if the CBEC decides the representation of the petitioner without leaving it to the concerned statutory authorities to decide the issue.

OUR TAKE: The hon'ble **GUJARAT HIGH COURT** held that issue involved is a pure question of law and does not involve any question of fact. Jurisdiction of Respondent authorities is under challenge, it cannot be said that petition under Article 226 is not maintainable; petition thus maintainable. Notification excludes Non-API and Patented Premium Joints/Premium Connections/Premium Threaded Pipes and Tubes; there cannot be non-API pipes of API grade. Respondents are directed to allow clearance of subject goods as and when imported subject to bank guarantee to the extent of 25% of duty that may be assessed; failing on which, will have to deposit full duty.
CBEC directed to decide the representations dated 16th December, 2014, 12th February, 2015 and 13th March, 2015 filed by the petitioner on or before 23rd October, 2015 and a copy of such decision shall be placed before this court on or before the returnable date.

THE COMMISSIONER OF CENTRAL EXCISE, CENTRAL EXCISE COMMISSIONERATE VERSUS M/S. SUPER SPINNING MILLS LTD AND CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, CHENNAI BENCH (MADRAS HIGH COURT)

BRIEF: Improper accounting of the imported materials. Relevant provision of Section 72 was not invoked and there was no charge or SCN in support of such demand; assessee cannot be asked to answer the charge which is not specifically raised

OUR TAKE: The hon'ble **MADRAS HIGH COURT** held that relevant provision of Section 72 was not invoked and there was no charge or SCN in support of such demand; assessee cannot be asked to answer the charge, which is not specifically raised. There is no question of suppression of facts on part of assessee. First question of law does not arise, since the SCN does not support such a plea. SCN is bereft of demand to support claim under Section 72; second question of law is not relevant to the facts of the present case. [**Decided in favour of assessee**]

M/S HINDUSTAN GRANITES VERSUS THE ADDITIONAL DIRECTOR GENERAL (KARNATAKA HIGH COURT)

BRIEF: Collection of amount under threat without any authority of law. No demand for duty made even after lapse of two years. Amount to be refunded within 6 weeks; in case SCN issued within 6 weeks amount need not be refunded.

OUR TAKE: The hon'ble **KARNATAKA HIGH COURT** held that no justification found for continued retention of amount and it is unnecessary to examine the submission of petitioner that it was collected under threat. Amount to be refunded

within 6 weeks; in case SCN issued within 6 weeks, amount need not be refunded. [**Decided partly in favour of assessee**]

SMT. REKHA UMESH SHETTY VERSUS COMMISSIONER OF CUSTOMS (I) AND OTHERS (BOMBAY HIGH COURT)

BRIEF: Waiver of penalty imposed on deceased husband. Section 147 would not enable the Respondents to recover the penalty; no other section brought to notice of the Court

OUR TAKE: The hon'ble **BOMBAY HIGH COURT** held that communications addressed to petitioner are not legally tenable. Section 147 would not enable the Respondents to recover the penalty; no other section brought to notice of the Court. Penalty cannot be recovered from the petitioner; communications are quashed and set aside. [**Decided in favour of Petitioner**]

COMMISSIONER OF CUSTOMS, PUNE VERSUS CUMMINS INDIA LTD (BOMBAY HIGH COURT)

BRIEF: Recovery of drawback duty under Rule 16 of Drawback Rules Respondent assessee made a statement that no All Industry Rate of drawback fixed or existing. Merely making one statement in application filed under Rule 6 will not mean that drawback amount was erroneously granted.

OUR TAKE: The hon'ble **BOMBAY HIGH COURT** held that respondent assessee made a statement that no All Industry Rate of drawback fixed or existing. Merely making one statement in application filed under Rule 6 will not mean that drawback amount was erroneously granted; no amount should be demanded. Order of revisional authority cannot be termed as perverse or vitiated by any error of law; no material irregularity which could be termed as resulting in manifest injustice. [**Decided against the Revenue**]

M/S CONTINENTAL CARBON INDIA LTD. VERSUS UNION OF INDIA AND OTHERS (ALLAHABAD HIGH COURT)

BRIEF: Goods not cleared on the basis of being hazardous. By not passing any orders on the petitioner's application for provisional assessment or by not passing any orders on the application of the petitioner under Section 49 of the Act for storage of the imported goods in a warehouse pending clearance would amount to detention of the goods.

OUR TAKE: The hon'ble **ALLAHABAD HIGH COURT** held that provision of Section 45 read with the Regulation 2(b), 5 and 6 of Regulations of 2009 states customs cargo service provider is responsible for providing storage facilities; is entitled to charge demurrage charges but not in case where goods are detained, seized or confiscated by customs department. Consequently, permitting the cargo to remain in the customs area for months on the pretext of seeking a clarification from the MOEF with regard to the nature of the goods being hazardous or not appears to unjustified and arbitrary, especially when the petitioner made a specific application for shifting the goods to a warehouse in terms of Section 49 of the Act.

By not passing any orders on the petitioners application for provisional assessment or by not passing any orders on the application of the petitioner under Section 49 of the Act for storage of the imported goods in a warehouse pending clearance would amount to detention of the goods. Petitioner granted relief; allowed to clear goods without payment of demurrage charges up to the period 15th January, 2015; handling or demurrage charges leviable subsequent to 15th January, 2015 till the actual clearance. [**Decided in favour of Petitioner**]

INCOME TAX

NOTIFICATIONS & CIRCULARS

The **Govt. vide notification No. 86/2015 dated 29 October, 2015** notifies percentage under third proviso to section 92C for computation of Arm's length price under transfer pricing.

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

COURT DECISIONS

COMMISSIONER OF INCOME-TAX-III, BANGALORE VERSUS MPHASIS SOFTWARE & SERVICE INDIA (P.) LTD. (KARNATAKA HIGH COURT)

BRIEF: Eligibility for deduction u/s 10A. The assessee provides all relevant information and inputs to the AE on behalf of the end customer. The AE is admittedly answerable to the assessee and not the end customer. In such nature of the work which is carried on by the AE on behalf of the assessee it cannot be said that there is no nexus between off-shore development and on-site development

OUR TAKE: The hon'ble **KARNATAKA HIGH COURT** held that the entire 'on-site' work has been sub-contracted to the AE. The MSA provides for the AE to work under total supervision and control of the assessee. The software to be produced by the assessee during its 'on-site' development has to be as per the specifications given by the assessee. The AE has no concern or direct dealing with the end customer. The assessee provides all relevant information and inputs to the AE on behalf of the end customer. The AE is admittedly answerable to the assessee and not the end customer. In such nature of the work which is carried on by the AE on behalf of the assessee, it cannot be said that there is no nexus between 'off-shore' development and 'on-site' development.

In view of the above we are of the opinion that in the facts of the present case, the income earned by the assessee through 'on- site' development of software by the AE on behalf of the assessee, would be eligible for deduction under Section 10A of the Act. [**Decided in favour of the assessee**]

M/S SREE FOUNDATION VERSUS THE TAX RECOVERY OFFICER-I, THE SUB-REGISTRAR, M/S COSMO FOUNDATION LIMITED (MADRAS HIGH COURT)

BRIEF: Recovery proceedings against the buyer of the property from the defaulter assesse. A person who had taken possession and made payment of the consideration was the owner though he had not obtained the deed of conveyance.

OUR TAKE: The hon'ble **MADRAS HIGH COURT** held that it is relevant to refer to the decision of the Honourable Supreme Court rendered in the case of Mysore Minerals Ltd. v. CIT (1999 (9) TMI 1 - SUPREME Court), wherein it has been held that a person who had taken possession and made payment of the consideration was the owner though he had not obtained the deed of conveyance. In the case on hand, the Petitioner, having purchased the property in question, by paying the entire sale consideration, became the absolute owner of the property in question.

In the case on hand, the Petitioner has become the owner of the property in question, to put it differently the 3rd Respondent ceased to be the owner on and from 08.02.2010, when everything for transfer of the property excepting the execution and registration of conveyance was completed. Admittedly, alleged dues are recoverable from the 3rd Respondent. Under the Income-tax Act, the dues of the Revenue do not form charge on the property and this can only be recovered under the method and mode as provided under the Income-tax Act and the Rules framed thereunder.

Since the 3rd Respondent failed to pay the dues to the department on time, the property in question has been attached. In the proceedings between the Department and the 3rd Respondent, the tax liability was reduced by CIT (Appeals) and the same was also paid by the 3rd Respondent. By virtue of the completion of the entire sale transaction and registration of the same, the Petitioner became the absolute owner of the property in question. While so and when the 3rd Respondent was not the owner of the property and when on the date of passing the order of attachment, the property in question did not belong to the assessee, namely, the 3rd Respondent, the attachment of the property in question, which has been in absolute possession and enjoyment of the Petitioner by virtue of the completion of the entire sale transaction, made by the 1st Respondent for the dues payable by the 3rd Respondent, is not binding on the Petitioner and hence, unsustainable and accordingly, the impugned attachment has to be lifted and consequently, the sale deed has to be released, after numbering the same. If at all the 1st Respondent can proceed on the other property of the 3rd Respondent for the tax liabilities if any payable by the 3rd Respondent.

Thus the impugned attachment of the property in question is directed to be lifted forthwith and the concerned Registering Authority is directed to number the impugned sale deed executed in respect of the property in question and release the sale deed, if it is otherwise in order. However, it is open to the 1st Respondent Department to proceed against the other property of the 3rd Respondent for the tax dues if any payable by the 3rd Respondent, in accordance with law, by keeping the attachment of the other property, pending disposal of the appeal preferred by the 3rd Respondent as well as the 1st Respondent.

COMMISSIONER OF INCOME TAX-5 VERSUS JINDAL IRON & STEEL COMPANY LTD. (BOMBAY HIGH COURT)

BRIEF: Claim of bad debts. Nature of amount received on settlement whether towards principal or interest in view of sections 60 of the Indian Contract Act it is at the option of the person receiving money to adjust the same either against the principal or interest as it deem fit

OUR TAKE: The hon'ble **BOMBAY HIGH COURT** held that as decided in assessee's own case on similar issue [2015 (10) TMI 1752 - BOMBAY HIGH COURT] the impugned order of the Tribunal has restored both the issue to the Assessing Officer i.e. with regard to the applicability of Section 14A of the Act with a direction that in case the Respondent Assessee fails to satisfy the Assessing Officer of utilization of its own funds and/or interest free funds for the purpose of making investment in the light of the order in Reliance Utilities & Power Ltd. (2009 (1) TMI 4 - HIGH COURT BOMBAY), then in that event, the disallowance be determined under Section 14A of the Act. This, undoubtedly would be on an application of a reasonable method as held by this Court in Godrej & Boyce (2010 (8) TMI 77 - BOMBAY HIGH COURT). Thus, we are at a loss to understand the

grievance of the revenue. No substantial question of law. [**Decided against revenue**]

Claim of bad debts. Tribunal allowing written off amount as irrecoverable as the same has to be allowed as bad debt u/s 36 (1) (vii) r.w.s.36 (2). Tribunal held that investment in ICDS was part of the business activity as interest accrued therefrom has been treated as business income and loss arising on such investment was allowed as business loss? The hon'ble BOMAY HIGH COURT held that in view of the above acceptance of the interest received as 'business income' by the revenue in the earlier years it is not open to it to now take up a plea that the amount which are written-off as 'interest not received' cannot be allowed as loss on account of business. Thus the interest not received can be written off in terms of section 36 (1) (vii) of the Act. Moreover, once the interest received on ICDs is held to be income chargeable to tax under the head 'business income' the lending on which this amount of interest was earned by the respondent has necessarily to be in the course of its activity of business and therefore allowed as business loss. The contention on behalf of the revenue that the amount received on settlement should have been first adjusted towards the principal amount and only thereafter the interest amount is not acceptable as there is nothing on record to indicate that debtors had directed the respondent to adjust the amount being repaid in a particular manner. Therefore, in view of sections 60 of the Indian Contract Act it is at the option of the person receiving money to adjust the same either against the principal or interest as it deem fit. Therefore, we find no reason to interfere with the order of the Tribunal as it does not give rise to any substantial question of law. [**Decided against revenue**]

STATE TAXES

ALL INDIA VAT

ANDHRA PRADESH

The **Govt. vide CIRCULAR No. CCTs Ref No.AI(1)/12/2014, dated 27 October, 2015** clarifies on processing of refund claims and provisional gross 28NCCF as on May 2014

OUR TAKE: It is noticed that some of the dealers including the spinning mills failed to claim refunds in the Box 23 of VAT 200 return of the month of May 2014, if at all they were eligible for claim of refund. In cases, where Audit and Final Assessment completed by the assessing authorities and the dealers are found to have made export, Refunds may be issued after the assessment order is issued without waiting till the month of March, 2016.
Further, since the total NCCF of the undivided State of Andhra Pradesh and Telangana, the exact amount of Net Credit as on May 2014 also to be ascertained and mentioned categorically in the assessment order. Further, since the NCCF adjustment provision is made in VATIS, the officers concerned shall also ensure that the Net Credit is not adjusted more than once.

The **Govt. vide notification No. G. O. Ms 395 dated 21 October, 2015,** make amendments to Schedule-VI of change in rate of tax of IMFL and other alcoholic drinks.

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

The **Govt. vide Andhra Pradesh circular no. 422, dated 19 October, 2015** exempts eWaybills for inter-state movement of incoming and outgoing goods vehicles of PSU Oil Companies.

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

ASSAM

The **Govt. vide Circular No. 14/2015 No. CTS-53/2014/Pt/182 dated 28 October, 2015** notifies starting of online registration under Assam Value Added Tax Act, 2003, Assam Entry Tax Act, 2008 and Central Sales Tax Act, 1956 with effect from June, 2015.

OUR TAKE: Since online registration is granted after field verification report by the jurisdictional Inspector of Taxes, it is observed that in some cases, undue delay occurs in granting registration under this process. In conformity with earlier Guwahati based CVRC registration, it is decided that from now onwards, Registration Certificate should be issued on the same day or on the next working day if all documents are found to be in order.
The dealers are advised to refer to the procedure followed in earlier method of registration issued under CVRC (Circular Nos. 24/2009 and 30/2009).

The **Govt. wide Notification No. FTX.49/2014/88 dated 12 October, 2015** notifies extended date for filing of Annual Return and Audit Report to 31-12-2015

OUR TAKE: Governor of Assam has extended the time limit for filing of annual return under section 29 of the Assam Value Added Tax Act, 2003 (Assam Act VIII of 2005 Notification Extend date for filing of Annual Return and Audit Report to 31-12-2015 Act read with proviso to rule 17(5) and rule 17B of the Assam Value Added Tax Rules, 2005 and the filing of audit report connected therewith by a dealer, up to 31st December, 2015 provided that such extension of time shall not in any way affect the original lime limit as provided under proviso to rule 17(5) and rule 17B of the said Rules in respect of the subsequent filing to be made after the expiry of the aforesaid extended period.

DELHI

The **Govt. vide Circular No. 27 of 205-16 F.7(420)/Policy/2011/PF/955-961 dated 28 October, 2015** notifies the extension of the last date of filing of online/hard copy of second quarter return for the year 2015-16, in Form DVAT-16, DVAT-17 and DVAT-48 along with required annexure/enclosures to 16/11/2015.

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

The **Govt. vide Circular No. 28 of 2015-16 F.3(589)/Policy/VAT/2015/963-970 dated 30 October, 2015** notifies extension of date for Filing of reconciliation return for the year 2014-15 in Form 9 to 15/12/2015

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

GOA

The **Govt. vide Notification No. 4/5/2005-Fin(R&C)(127)1243 dated 26 October, 2015** amends Schedules B insert entry 163 Sanitary napkins and diapers including adult diapers & E & appoint date of Seventh Amendment Act

OUR TAKE: In Schedule 'B' appended to Goa Value Added Tax Act, 2005 (Goa Act 9 of 2005), after entry at serial number (162), "(163) Sanitary napkins and diapers including adult diapers" shall be inserted.

In Schedule 'E', appended to the Goa Value Added Tax Act, 2005 (Goa Act 9 of 2005), for the existing entry at serial number (5), entries shall be substituted that includes works contractor who undertakes the work of construction of flat/s, dwelling unit/s, house/s, row houses, building/s or premises and transfers them in pursuance of an agreement along with land or interest underlying the land, where the aggregate amount of consideration of such flat, dwelling unit, house or row house, building or premises specified in such agreement.

The **Govt. vide notification no. 1245 notifies November 1, 2015** as the date of effect of provisions of section 2(ii) of the Goa Value Added Tax (Seventh Amendment) Act, 2013 Act.

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

GUJARAT

The **Govt. vide Notification No. (GHN-37)VAT-2015-S.5(2)(45)/TH, dated 20 October, 2015** notifies exemption of purchase tax on sugarcane in Gujarat.

OUR TAKE: Amending the Schedule appended to the said Notification the Government Notification, Finance Department No. (GHN-35)VAT-2006-S.5 (2) (1)-TH, dated 31st March, 2006, Gujarat government has exempted tax on purchase of sugarcane for the purpose of use in the manufacture of sugar or khandsari (entry no. 54). The exemption is on purchases made till 31st March, 2016.

MAHARASTHRA

The **Govt. vide Notification No. VAT. 1515/C.R. 118/Taxation-I. dated 26 October, 2015** exempts Sales of e-bid Re-gasified Liquid Natural Gas by Gas Authority of India to the Ratnagiri Gas and Power Private Ltd.

OUR TAKE: Maharashtra government notifies to exempt the sales of e-bid Re-gasified Liquid Natural Gas (RLNG) by Gas Authority of India Limited to the Ratnagiri Gas and Power Private Ltd. from payment of whole tax, with effect from the 26th October 2015 upto 31st March 2017, subject to the conditions and restrictions that include:

1. Purchasing dealer, shall use the e-bid Re-gasified Liquid Natural Gas (RLNG) for generation of electricity.
2. Claimant dealer shall furnish a certificate from Maharashtra State Power Generation Co. Ltd. within three months from the end of the year, certifying that the terms and conditions mentioned in the office Memorandum No. 4/2/ 2015/Th-1, dated 27th March 2015, issued by the Government of India, Ministry of Power have been complied.

The **Govt. vide Notification No. CST. 1415/C.R. 118/Taxation-1. dated 26 October, 2015** exempts Central Sale Tax on Sales of e-bid Re-gasified Liquid Natural Gas by Gas Authority of India.

OUR TAKE: No tax under Central Sales Tax Act, 1956 shall be payable by M/s. Gas Authority of India Limited, having its place of business in the State of Maharashtra, in respect of sales of e-bid Re-gasified Liquid Natural GAs (RLNG), covered under sub-section (1) of section 8 of the Central Sales Tax Act, 1956 from any such place of business, with effect from the 26th October 2015 upto 31st March 2017, made by it in the course of interstate trade or commerce to the dealers, who are eligible units as per the conditions specified in the office Memorandum No. 4/2/2015/Th-1, dated 27th March 2015 issued by the Government of India, Ministry of Power, subject to the conditions mentioned below :-
1. The purchasing dealer shall use the e-bid Re-gasified Liquid Natural Gas (RLNG) for the generation of electricity.
2. The claimant dealer shall furnish a certificate from respective power plant/DISCOM, within three months from the end of the year, certifying that the terms and conditions mentioned in the Office Memorandum No. 4/2/2015/Th.1, dated 27th March 2015, issued by the Government of India, Ministry of Power, have been complied.

ODISHA

The **Govt. vide Notification No. 28080FIN-CT1-TAX-0017-2013, dated 19 October, 2015** notified Odisha Value Added tax Amendment Act, 2015 and amends Section 9, 10, 11, 16, 20, 25, 27, 30 to 33, 39, 41, 42, 43, 50, 54, 57 to 59, 65, 77 w.e.f. 1-10-15.

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

PUNJAB

The **Govt. vide Punjab Public Notice, dated 29 October, 2015** extends date of e-filing of VAT-15 for 2nd Quarter of 2015-16 till 5-11-2015.

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

UTTAR PRADESH

The **Govt. vide Uttar Pradesh Circular, dated 28 October, 2015,** extends date of filing Annual Return in Form 52, 52A & 52B to 31-12-2015.

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

COURT DECISIONS

M/s EASTMAN INTERNATIONAL VS STATE OF PUNJAB AND ANOTHER (PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH)

BRIEF: Punjab Value Added Tax Act, 2005, evasion of sale of goods which were rejected by one buyer to another buyer. It was contended by petitioner that in such circumstances, there was no attempt to evade tax.

OUR TAKE: The **hon'ble PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH** held that the findings recorded by the Assistant Excise and Taxation Commissioner and Deputy Excise and Taxation Commissioner (Appeals) records that the documents accompanying the goods are in genuine. The goods are meant for trade. The dealer has made an attempt to evade the payment of tax by transporting the goods by documents which are already rejected - The only attempt on the part of the appellant is to reappraise the evidence. The findings of fact recorded by the authorities below are not illegal or perverse in any manner. [**Appeal dismissed**]

OTHER UPDATES

DGFT

The **Govt. Vide Public Notice No. 44 /2015-2020, dated October 29, 2015** amends Merchandise Exports from India Scheme (MEIS).

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

FEMA

The **Govt. vide circular No. 23, dated 29 October, 2015**, directs no fresh permission/ renewal of permission to LOs of foreign law firms.

OUR TAKE: The Hon'ble Supreme Court has directed RBI not to grant any permission to any foreign law firm for opening of Liaison Office (LO) in India. Hence, no foreign law firm shall be permitted to open any LO in India till further orders/notification in this regard.

The **Govt. vide circular No. 24, dated 29 October, 2015**, amends subscription to National Pension System by Non-Resident Indians (NRIs).

OUR TAKE: With a view to enabling NRIs' access to old age income security, it has now been decided, in consultation with the Government of India, to enable National Pension System (NPS) as an investment option for NRIs under FEMA, 1999. Accordingly, NRIs may subscribe to the NPS governed and administered by the Pension Fund Regulatory and Development Authority (PFRDA), provided such subscriptions are made through normal banking channels and the person is eligible to invest as per the provisions of the PFRDA Act.

FTP

The **Govt. vide Notification No. 25/2015-2020, dated 26 October, 2015** seek to amend the import policy of Human Embryo classified under Exim Code 0511 99 99 of Chapter 05 of ITC (HS), 2012 Schedule 1 (Import Policy).

OUR TAKE: Import policy of the item 'Human Embryo' classified under EXIM Code 0511 99 99 in Chapter 05 of ITC (HS), 2012 Schedule I (Import Policy) is revised from "free" subject to a 'No Objection Certificate' from Indian Council of Medical Research (ICMR)" to "Prohibited' except for research purposes based on the guidelines of the Department of Health Research.

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