



# ASC Times

All India Taxes Weekly Reference

Vol: May 30- June 05, 2016

## Solving any tax puzzle

Tax saving advice across all the taxes



## From the CEO's Desk



Dear Reader,

The Central Board of Direct Tax (CBDT) has extended the date of e-filing of the first appeal before a tax officer by the month of June, till 15<sup>th</sup> after taking cognizance of complaints done by taxpayers in complying with the exercise. "E-appeals which were due to be filed by May 15, 2016 can be filed up to June 15, 2016. All e-appeals filed within this extended period would be treated as appeals filed in time," a circular issued in this regard by the CBDT said. The maiden facility of filing the appeal, like filing Income Tax Returns (ITRs), can be done using a digital signature or the Electronic Verification (EVC) facility using the Aadhar, mobile number and email id of the taxpayer on the official web portal of the tax department <http://incometaxindiaefiling.gov.in/>. The existing two-page document used for this, called 'Form No. 35', has been re-formatted by the department so that it can be uploaded on the e-filing portal of the department.

After a recent clarification by the government and more so by CBDT, a stir has been created among the multinationals which are concerned about their Indian entities that might be taxed even in case of a global merger & acquisition (M&A) with another global company. The worry is more in case of multinational holding intangible assets in India, either through research and development centers or are engaged in businesses where it is tough to value assets. This comes in the wake of CBDT announcing rules for determining 'fair market value' in case of indirect transfer of shares of an Indian entity. In case of an indirect transfer of shares or transaction, if the value of Indian assets is more than 50% of the foreign target company, this could lead to taxation in India.

To increase the contribution of the almost 50% of the population of the country, industry body FICCI is planning to include more woman directors to the boardroom to get better perspective. The FICCI's ladies

wing FLO (FICCI Ladies Organization) seeks to put in place such a mechanism to ensure "inclusion of women in the workplace". "Both in India and globally, demand for women directors is increasing as corporations seek to add diversity to their boards in response to competitive challenges or mandated quotas," said FICCI Ladies Organization (FLO) President Vinita Bimbhet during an interaction. She further said, "Being the largest body of women directors in India, we are also looking at creating a pool of prospective women directors and also enhance the effectiveness of the existing ones."

Alok Kumar Agarwal

CEO

ASC Group.

## TAX CALENDER

Due Date	Description	Law
31 May	Deposit of Tax	Goa VAT, Himachal Pradesh VAT, Mizoram VAT, Punjab & Chandigarh VAT, Tripura VAT
	Filing of Return	Himachal Pradesh VAT, Punjab & Chandigarh VAT, Rajasthan VAT, Tripura VAT
05 Dec	Deposit of Tax	Kerala VAT, Rajasthan VAT
	Issue of TDS Certificate	Tamil Nadu VAT

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## COUNTRY WIDE HOLIDAYS FOR THE WEEK

Date	Occasion/Festival	Region
NA	NA	NA

# CENTRAL TAXES

## SERVICE TAX

### CIRCULAR & NOTIFICATIONS

**The Govt. vide Notification No. 30/2016 dated 26<sup>th</sup> May 2016**, made amendment in notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 12/2013-Service Tax, dated the 1st July, 2013 related to entitlement of refund to SEZ unit & effectiveness of Swachh Bharat Kalyan Cess from 01-06-2016.

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

### COURT DECISIONS

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

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

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

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

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

**OUR TAKE:** The hon'ble SUPREME COURT held that It has consistently been laid down by this Court that construction of the terms of a Contract is primarily for an Arbitrator or

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

**BRIEF:** Merely because in the show cause notice no legal provision is cited or wrong provision is mentioned, by itself may not be the ground for invalidating the action of the authority, if the power for such action can be traced to another source.

**OUR TAKE:** The Hon'ble GUJARAT HIGH COURT held that the show cause notice was more in the nature of a fishing inquiry of the assessee's outstanding tax liability. It was perhaps because of this lacuna that the Commissioner in his Revisional order had to be satisfied with directing the assessee to pay service tax on the gross amount of transport charges paid by them to the Goods Transport Operators. Therefore, the Tribunal was justified in deleting the service tax demand. **[Appeal disposed of]**

#### M/S. LUFTHANSA GERMAN AIRLINES VERSUS COMMISSIONER OF SERVICE TAX, (ADJN) , NEW DELHI [CESTAT NEW DELHI]

**BRIEF:** Passenger service fee being collected on behalf of air port authority of India and being paid to the said authority are not liable to service tax.

**OUR TAKE:** The hon'ble CESTAT NEW DELHI held that no service tax liability would arise in respect of passenger service fee being collected by the appellant on behalf of air port authority of India and being paid by them to the said authority. Accordingly while confirming the demand in respect of other charges, as not being contested, the demand on the inclusion of passenger fee charges in the value of the services along with the penalty are set aside. **[Appeal disposed of]**

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

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

## CENTRAL EXCISE

### CIRCULAR & NOTIFICATIONS

**The Govt. vide Notification No. 28/2016 dated 26<sup>th</sup> May 2016**, hereby makes the following rules further to amend the CENVAT Credit Rules, 2004 related to Krishi Kalyan Cess.

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

### COURT DECISIONS

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

#### POWER LINK SYSTEM PRIVATE LIMITED VERSUS COMMISSIONER OF CENTRAL EXCISE, COIMBATORE [CESTAT CHENNAI]

**BRIEF:** So long as the commission paid is not disputed, which can even be verified from the bank statements or certificates from the bank, rejection of claim for want of quantification of commission paid is not legally tenable.

**OUR TAKE:** The hon'ble **CESTAT CHENNAI** held that claim of refund under Cenvat Credit Rules is part of the export promotion scheme without properly examining the records, such benefits cannot be denied, since the Assistant commissioner, who had passed the order-in-original, can properly verify the records in question. I, therefore, remand the entire matter to the original authority for examining the issue afresh. **[Appeal disposed of]**

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

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

**OUR TAKE:** The hon'ble **CESTAT NEW DELHI** held that by relying on the earlier decisions held that BSS would cover only the services which are supporting nature to the main business, like services relating to customer relationship telemarketing, office infrastructure, etc and would not cover the services of renting of machinery or equipment for production or manufacture, which is an activity relating to conduct of main business. The applicants have strong prima facie case in their favour and therefore, waiver of pre-deposit is granted for admitting the appeal. At this prima facie stage, by following the stay orders passed earlier it is found that, in similar set of facts, the present applicant has to be given full waiver of pre-deposit of adjudicated dues. **[Stay and waiver granted]**

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

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

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

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

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

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



**THE COMMISSIONER, CENTRAL EXCISE, CUSTOMS & SERVICE TAX VERSUS M/S. BALLARPUR INDUSTRIES LIMITED (ORISSA HIGH COURT)**

**BRIEF:** Compliance of sub-section (2) of Section 35B of the Central Excise Act, 1944 - Authorisation made in Annexure-3 of the affidavit filed by the appellant to prefer appeal without same being filed along with appeal is surely an incurable defect and the same cannot be rectified by filing an authorization letter.

**OUR TAKE:** The hon'ble **ORISSA HIGH COURT** held that the authorisation made in Annexure-3 of the affidavit filed by the appellant to prefer appeal without same being filed along with appeal is surely an incurable defect and the same cannot be rectified by filing an authorization letter as stated by the learned counsel for the appellant. Similarly, as the authorization by the Committee of Commissioners of Central Excise is not found in the impugned order, it must be observed that the impugned order passed by the CESTAT is correct, legal and proper. Hence we are of the considered view that the impugned order passed by the learned CESTAT being valid, legal and proper, cannot be interfered with.

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

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

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

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

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

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

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

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

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

## CUSTOMS

### CIRCULAR & NOTIFICATIONS

The Govt. vide Notification No. 35/2016 dated 26<sup>th</sup> May 2016, hereby makes amendments in the notification No. 27/2011-Customs, dated the 1st March, 2011 namely :- In the said notification, in the Table, serial number 24BA and the entries relating thereto shall be omitted.

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

### COURT DECISIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

# INCOME TAX

## COURT DECISIONS

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

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

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

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

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

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

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

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

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

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

### KANTI AUTO FABRICATION PVT LTD VERSUS ASSISTANT COMMISSIONER OF INCOME TAX [GUJARAT HIGH COURT]

**BRIEF:** Reopening of assessment. Mere accounting entry or even if there was some defect in indicating such amount in the accounts presented by the assessee, as long as income chargeable to tax had not escaped assessment, reopening of the assessment would not be permissible.

**OUR TAKE:** The hon'ble GUJARAT HIGH COURT held that mere accounting entry or even if there was some defect in indicating such amount in the accounts presented by the assessee, as long as income chargeable to tax had not escaped assessment, reopening of the assessment would not be permissible. **Decided in favour of the assessee]**

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

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

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

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

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

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



# STATE TAXES

## ALL INDIA VAT

### DELHI

**The Govt. vide Notification No.F3 (671)/Policy/VAT/2016/ 284-296 dated 27<sup>th</sup> May 2016**, made withdrawal of Form Delhi Sugam-1 (DSL)

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

### GUJRAT

**The Govt. vides Notification No. (GHN-35)VAT-2016-SCH-II (42A) (24)-TH dated 27<sup>th</sup> May 2016**, deletes entry 246 pertaining to salt from the industrial input.

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

### HARYANA

**The Govt. vides Notification No. 16/ST-1/H.A6/2003/S.59A/2016 dated 27<sup>th</sup> May 2016**, notifies the powers conferred by section 59A of the Haryana Value Added Tax Act, 2003 (6 of 2003), the Governor of Haryana hereby notifies a Scheme namely, the Haryana Amnesty Scheme, 2016 for dealers affected during reservation agitation in the month of February, 2016 to provide relief in respect of tax, interest, penalty or other dues payable under the Act, for the period from the 1st January, 2016 to 31st March, 2016.

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

### KERALA

**The Govt.** enacted the Kerala Finance Bill, 2016 dated 26/02/2016.

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

### MADHYA PRADESH

**The Govt. vides Notification No. F-A-3-4-2016-1-V-(30) dated 25<sup>TH</sup> May 2016**, notifies Deduction and payment of tax in certain cases – Exemption to All Public Sector Undertaking & All Public Limited companies

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

### COURT DECISIONS

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

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

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

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

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

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

# OTHER UPDATES

## FEMA

### CIRCULAR & NOTIFICATIONS

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

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

### COURT DECISIONS

#### BIPINCHANDRA G. CHOCKSHI AND 1 VERSUS STATE OF GUJARAT AND 2 (GUJARAT HIGH COURT)

**BRIEF:** Detaining authority is under obligation to comply with the requirements by formulating grounds for detention .

**OUR TAKE:** The hon'ble **GUJARAT HIGH COURT** held that the impugned order of detention dated 11.6.1976 at Annexure 'A' to the petition and declaration under Section 12A of the COFEPOSA, 1974 at Annexure 'B' dated 11.6.1976 and quash and set-aside three notices under Section 6 of SAFEMA, 1976, Annexure 'D' Collectively dated 28.4.1977, 20.1.1997 and 23.3.1977.

#### SAJAL DUTTA VERSUS RESERVE BANK OF INDIA & OTHERS (CALCUTTA HIGH COURT)

**BRIEF:** Both the company and its principal shareholders had an interest in the grant of the licence or revocation of it, by the Reserve Bank of India.

**OUR TAKE:** The hon'ble **CALCUTTA HIGH COURT** held that the importation was made more than 20 years ago. These capital goods have spent their life. Their value, now after depreciation is nil. At the time of their importation their declared value was 3, 05, 53,290/-. Against this value, shares were allotted to Kamal. Even if Sajal now succeeds, the equipments cannot be returned to Kamal. The monetary value has to be refunded with interest from the other assets of the Company. That is plainly not permissible or feasible. W

## ALLIED LAWS

### CIRCULAR & NOTIFICATIONS

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

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

### COURT DECISIONS

#### JIJU LUKOSE VERSUS STATE OF KERALA [KERALA HIGH COURT]

**BRIEF:** Right to receive copy of the FIR even before the stage of proceedings under Section 207 of the Cr.P.C - Accused is entitled for copy of the FIR.

**OUR TAKE:** The hon'ble **KERALA HIGH COURT** held that It is in the domain of authorities as to which category of the FIRs are to be put on website for information to the public in general. But there has to be a decision and appropriate categorization or norms for taking a decision as to in which case FIR be uploaded and in which it is not be uploaded. The State can come with any such decision which may balance right of information available to the public in general and interest of the State. We are thus of the opinion that petitioner has made out a case for issuing directions to the State to consider all aspects of the matter and take appropriate decision regarding uploading of the FIR in the police website with all details regarding its operation and mechanism.

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

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

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

## COMPANY LAW

## CIRCULAR &amp; NOTIFICATIONS

**The Govt. vide Notification No. GSR 540 (E) dated 23<sup>rd</sup> May 2016** hereby makes the rules further to amend the Companies (Corporate Social Responsibility Policy) Rules, 2014.

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

## COURT DECISIONS

**RAJ SHEKHAR AGRAWAL AND ANR. VERSUS UNION OF INDIA AND ANR [DELHI HIGH COURT]**

**BRIEF:** The question, whether the petitioners can be said to be Directors of the subject company is doubtful and without the petitioners / applicants having a clear right to act as Directors and which is being opposed, the question of the petitioners / applicants incurring any disqualification or liability under Section 162 of the Act also, would not arise.

**OUR TAKE:** The hon'ble **DELHI HIGH COURT** held that the question, whether the petitioners can be said to be Directors of the subject company is doubtful and without the petitioners / applicants having a clear right to act as Directors and which is being opposed, the question of the petitioners / applicants incurring any disqualification or liability under Section 162 of the Act also, would not arise. The application is thus dismissed with liberty to the petitioners / applicants to apply to the CLB for the same reliefs.

**UMA ENTERPRISES PRIVATE LIMITED [RAJASTHAN HIGH COURT]**

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

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

## LATEST NEWS ON PROPOSED GST

**25<sup>th</sup> May 2016,** India's premier traders body has criticised India Inc's suggestion that the government should focus on political consensus for the passage of Goods and Service Tax (GST), saying it would be better if the industry asks Congress to do the same.

**26<sup>th</sup> May 2016,** The Union government is confident it would be able to garner an adequate number of votes in the Rajya Sabha to ensure the passage of the Constitution amendment Bill on goods and services tax (GST) during the forthcoming monsoon session of Parliament. Based on this, it has already begun working on a timeline that envisages roll-out of the GST regime from April 2017.

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