ASC Times

All India Taxes Weekly Referencer

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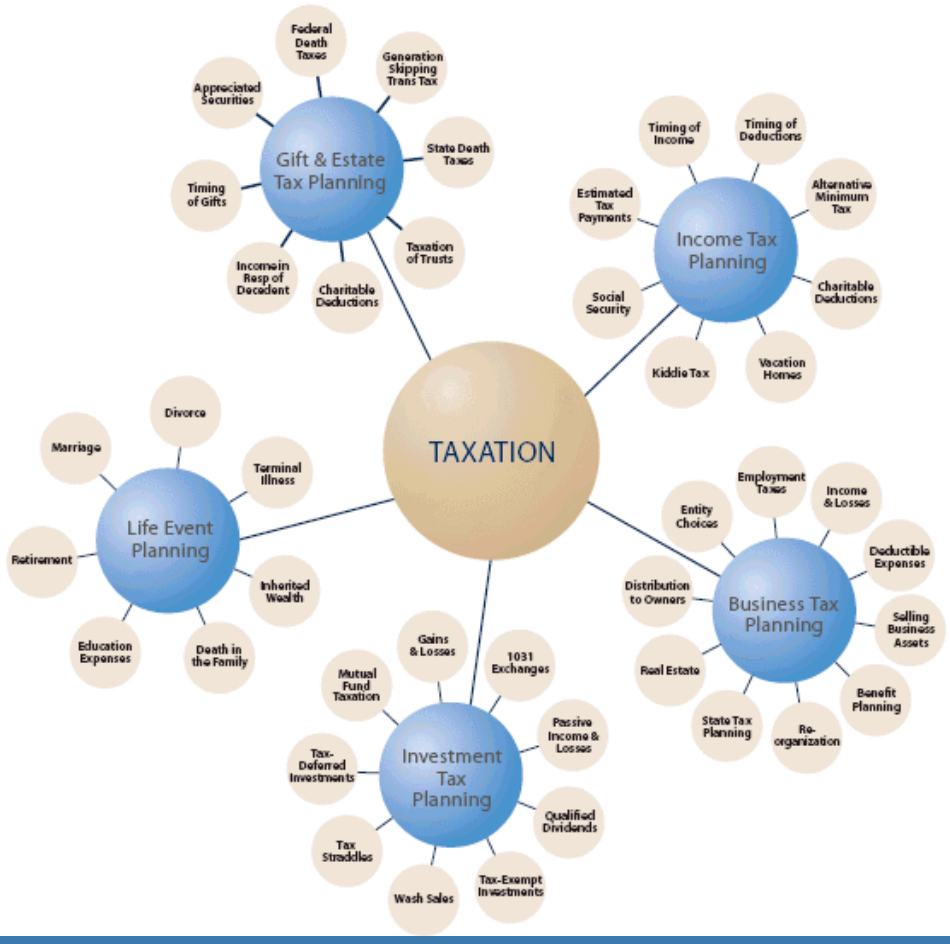

From the CEO's Desk

Dear Reader,

On the path to development Government needs to take many decisions. One of these is making various compliances easy for start-ups and new businesses. In a country like India entrepreneurship needs to be encouraged to generate jobs and more money to invest. But in the booming startup ecosystem where venture capital is available in abundance, Government should focus on easing regulatory norms for starting a business rather than 'trying to invest', IT industry body Nasscom hinted. Highlighting the challenges faced by the entrepreneurs in the country, Nasscom president R. Chandrasekhar said that while Centre and State Governments have vested interests in promoting the startups, focus should be on easing the hurdles like multiple clearances and permissions one has to take before doing business in India.

Ratio of International Trade (Export and Import) to GDP is a sign of country's progress. On one hand it validates that how well the produce of the country is accepted in the international market and on the other hand it shows how big is the domestic market itself. In the last three decades ratio of international trade to GDP has increased by about three times. In 1980 international trade contributed 15.1% of total GDP. It has now increased to 49.6% in 2014. Again it has its own pro and cons to look at. One way it is important for any country's growth, but at the same time it also impacts hugely and adversely on the economy at times of depression. In the 90ies India was not affected by the then depression much as international trade was not so big. But now any changes in the world economy, it directly impacts domestic sentiments as well. The crash of the Sensex and nifty in the beginning of the week and weaken rupee are examples of the same trend.

Till when cat and mouse game will go on in our parliament? If you remember in our earlier issues we had said that the opposition is blocking the GST bill to be passed in the Rajya Sabha as there ruling party is in minority. In a latest interview, opposition leader Mr. Gulam Nabi Azad said that how BJP had opposed the same bills when UPS was in power. So basically now Congress is in a situation to do the same it will not make the ride any smoother for NDA. We as citizens can only hope and wait for good days to come.

Alok Kumar Agarwal
CEO
ASC Group

TAX CALENDER

Due Date	Description	Law
31 August	Tax Payment	Goa VAT, Tripura VAT
	Return Filing	Tripura VAT
	Annual Information Return	Income Tax Law
4 September	Issue of TDS Certificate	Tamil Nadu VAT
5 September	Tax Payment	Kerala VAT, Rajasthan VAT
6 September	Tax Payment	Central Excise Law
		Service Tax Law

INDEX GUIDE

COUNTRY WIDE HOLIDAYS FOR THE WEEK

Date	Occasion/Festival	Region
1 September	Parkash Utsav Sri Guru Granth Sahib Ji	Punjab
2 September	Tithi of Sri Sri Madhabdev	Assam
5 September	Janmashtami	All States and Union Territory

CENTRAL TAXES

SERVICE TAX

NOTIFICATIONS & CIRCULARS

The **Govt. vide Clarification No. ST-20/STD/Misc./Sevottam/62/12/4693 dated 13 August, 2015** issued clarification on levy of Service Tax on food sold by way of Pick-up or Home Deliveries.

OUR TAKE: The Department explained the matter further by stating that the dominant intention of such transaction is that of 'Sale' as food is not served at Restaurant and no other element of service such as ambience, live entertainment (if any), air conditioning or personalized hospitality is offered. It is further stated that Service tax can be levied if there's an element of 'Service' involved which would typically be the case where food is served in Restaurant.

However, the Department has further clarified that the above transaction is not liable to Service tax, being sale in nature, only if no amount is charged for such free delivery of food.

COURT DECISIONS

COMMISSIONER OF SERVICE TAX VERSUS GLAXO SMITHKLINE PHARMACEUTICALS LTD. (BOMBAY HIGH COURT)

BRIEF: The case is regarding restoration of appeal where appeal dismissed for want of prosecution. When the Department took nearly three years to notice the dismissal this is a case of gross negligence on the part of the Department and which cannot be condoned.

OUR TAKE: The **Hon'ble BOMBAY HIGH COURT** held that it is not the case of the applicant that this Court dismissed the appeal when the name of the Advocate or the parties were incorrectly printed or that there was no name of the Advocate mentioned as against the parties' description. Thus, there was no mistake or error in printing of the daily board. The matter was notified in terms of the computerized programme. In such circumstances, it was solely the responsibility of the applicant to have remained present and the absence of the Advocate does not mean that this Court should necessarily proceed to restore such appeal. All the more, when the Department took nearly three years to notice the dismissal, this is a case of gross negligence on the part of the Department and which cannot be condoned. [**Condonation denied**]

COMMISSIONER OF CENTRAL EXCISE VERSUS M/S FEDERAL MOGUL TPR INDIA LTD. (KARNATAKA HIGH COURT)

BRIEF: Availability of CENVAT Credit of Service Tax paid on Exempted Services of Job work. Notification No. 8 of 2005 is a conditional notification and Section 5A (1A) of Central Excise Act 1944 is not applicable to the present case.

OUR TAKE: The **Hon'ble KARNATAKA HIGH COURT** held that a bare reading of this notification denotes that this notification is issued under section 93(1) of the Finance Act, 1994 which exempts the taxable services of production of goods on behalf of the principal manufacturer from the whole of service tax leviable under Section 66 of the Finance Act. However, this exemption notification is subject to the condition that the said exemption shall apply only in cases where such goods are produced using raw materials or semi-finished goods supplied by the client i.e., the principal manufacturer and goods so produced are returned back to the said client for use in or in relation to the manufacture of other goods on which appropriate duty of excise is payable. Notification is condition precedent.

Section 5A(1A) of the Central Excise Act provides for power to grant exemption from duty of excise. Section 5A(1A) of the Central Excise Act specifically provides that "for the removal of doubts, it is hereby declared that where an exemption under Sub-section (1) in respect of any excisable goods from the whole of the duty of excise leviable thereon has been granted absolutely, the manufacturer of such excisable goods shall not pay the duty of excise on such goods". The contention urged on behalf of the Department that the FMGIL having wrongly paid service tax has consequently passed an inadmissible CENVAT credit amounting to Rs 2,02,00,275/- to the principal manufacturer i.e., FMTPR much against the exemption Notification No. 8 of 2005 is not worthy of acceptance.

Notification No. 8 of 2005 is a conditional notification and Section 5A(1A) of Central Excise Act, 1944, is not-applicable to the present case. No interference is called for with the well-reasoned order of the Tribunal. [**Decided against Revenue**]

CENTRAL EXCISE

COURT DECISIONS

COMMISSIONER OF CENTRAL EXCISE, LUDHIANA VERSUS M/S. NEXO PRODUCTS (INDIA) (PUNJAB & HARYANA HIGH COURT)

BRIEF: Duty demand u/s 11A where shortage of goods found and Clandestine removal of goods. Nothing was brought on record by the revenue in any manner to show that to manufacture such a large amount of 1425900 pieces there was material which had been consumed. No evidence of purchase and sale. Hence, no Demand.

OUR TAKE: The **Hon'ble PUNJAB & HARYANA HIGH COURT** held that specific defence had been taken by the manufacturer that no effort had been made to segregate the nuts and bolts into various sizes and to find the shortage by comparing the same with the recorded balance and there was huge stock of 91 lacs pieces of various sizes of nuts and bolts and it was impossible for the Department to come to a conclusive factual finding that there was shortage of 14,25,900 pieces of particular size and if they were all mixed together. The onus would lie upon the Department to undertake the said exercise which was not possible in such a short period due to the large number of inventory which was there at the site. Nothing was brought on record, in any manner, to show that to manufacture such a large amount of 14,25,900 pieces, there was material which had been consumed since neither any relevant record had been shown to show that electricity had been consumed or labour had been utilized to manufacture the said quantity. Neither the fact of purchase of raw material from the vendors or the sale to the consumers was brought on record. In the absence of any corroborative evidence, the levy of such a huge demand was, thus, totally arbitrary and has been rightly set aside. [**Decided against Revenue**]

SUMAN PLYWOOD PVT LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE AHMEDABAD- II (GUJARAT HIGH COURT)

BRIEF: Denial of SSI exemption in case of dummy unit. During inspection of assessee s premises it was found that there was one shed and only two machines were found completely in non-working condition. No electric connection was found. Demand confirmed.

OUR TAKE: The **Hon'ble GUJARAT HIGH COURT** held that machineries, which were also examined in the presence of panch-witnesses, were not found in working condition. There was nothing to indicate that the labourers were engaged in carrying out the job work. It was a claim of one of the partners that directly from Suman Plywood Pvt. Ltd., the finished goods were being sent. The benefit of SSI exemption was claimed by a letter along with a declaration and that was explaining the process of plywood, however, on noticing that the partners were not the signatories, all these documents were held to be in the realm of ambiguity. There were many questions that the Tribunal found unanswered and many of the actions did not appeal to the reasoned mind. Both the adjudicating authority in order-in-original and the Tribunal have extensively dealt with the issues on the basis of entire gamut of facts which were presented before them. The Tribunal confirmed the view of the original adjudicating authority and set aside the reasonings of the Commissioner (Appeals). At the cost of reiteration, we hold that no illegality is found in such conclusion nor is there any perversity made out from the record, giving rise to any question of law. [**Decided against assessee**]

KIRAN ISPAT UDYOG VERSUS COMMISSIONER OF CENTRAL EXCISE, RAJKOT (SUPREME COURT)

BRIEF: Invocation of extended period of limitation. When the authorities ask the appellants to take licence in the year 1983 itself and the respondents did not comply nothing prevented the authorities to take action against the respondents immediately rather than waiting for number of years before issuing the show cause notice.

OUR TAKE: The **Hon'ble SUPREME COURT** held that it would be clear from the judicial journey that the issues involved in the present case remained entangled in judicial battle for quite some time and only in the year 2002, the hazy picture was clarified. In such a scenario, if the appellants took the decision that they were fulfilling the conditions mentioned in the Notification No. 208/83 and had not taken the licence under the Act, it cannot be stated that the aforesaid steps taken by the appellants were not bona fide. It is more so when the judicial opinion prevailing at that time was in favour of these persons. When the authorities ask the appellants to take licence in the year 1983 itself and the respondents did not comply, nothing prevented the authorities to take action against the respondents immediately, rather than waiting for number of years before issuing the show cause notice. Show cause notices were time-barred and extended period of limitation was not available to the respondents. [**Decided in favour of assessee**]

CUSTOMS

NOTIFICATIONS & CIRCULARS

The **Govt. vide Notification No. 45/2015 dated 24 August, 2015** seeks to impose anti-dumping duty on the imports of Phosphoric Acid of all grades and all concentration (excluding Agriculture or Fertilizer grade), originating in or exported from Korea RP for a period of five years.

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

The **Govt. vide Notification No. 82/2015, dated 25 August, 2015** amends the Notification of the Central Board of Excise and Customs No. 81/2015-CUSTOMS (N.T.) dated the 20th August, 2015, with effect from 26th August, 2015.

OUR TAKE: In Schedule- I of the said Notification, for Serial Nos. 4, 5 and 15 and the entries relating thereto, the Rate of exchange of one unit of foreign currency equivalent to Indian rupees are specified.

COURT DECISIONS

PARISONS AGROTECH (P) LTD. & ANOTHER VERSUS UNION OF INDIA & OTHERS (SUPREME COURT)

BRIEF: Prohibition on import of Palm oil Violation of Article 14 Revenue have been able to demonstrate intelligible basis for issuing impugned Notifications having rational nexus with objectives sought to be achieved Thus it cannot be said that notification was violative of Article 14 of Constitution.

OUR TAKE: The **Hon'ble SUPREME COURT** held that since import price of crude palm oil has been much less than price of coconut oil, perception of Coconut growers in State of Kerala was that it was affecting their livelihood. Huge import of palm oil had led to price decline in coconut. It is more than abundantly clear that restriction is imposed keeping in view welfare of farmers in the State. Respondents have been able to demonstrate intelligible basis for issuing impugned Notifications having rational nexus with objectives sought to be achieved. Thus, it cannot be said that notification was violative of Article 14 of Constitution. No material produced on record to show how impugned Notification would affect interests of consumers. Section 3 empowers Central Government to make provision for: (i) prohibiting; (ii) restricting; or (iii) otherwise regulating 'the import or export of goods or services or technology', such action cannot be arbitrary or irrational and should be backed sound reasons. Calcutta High Court in Kalindi Woolen Mills (P) Ltd. [1994 (2) TMI 70 - HIGH COURT AT CALCUTTA] overlooked aforesaid pertinent aspect which gives sufficient powers to Central Government to act in manner it has acted. Therefore, no fault found with view taken by High Court upholding Notifications in question. [**Decided against Appellant**]

M/S. NITISH TOOLS PVT. LIMITED VERSUS CUSTOMS, CENTRAL EXCISE & SERVICE TAX, SETTLEMENT COMMISSION, THE COMMISSIONER OF CENTRAL EXCISE, THE COMMISSIONER OF CUSTOMS (MADRAS HIGH COURT)

BRIEF: Settlement of case True and full Disclosure lack of co-operation on part of petitioners for settlement of their case Commission has rightly held that it was fit case for sending it back to original authority for disposal in accordance with law.

OUR TAKE: The **Hon'ble MADRAS HIGH COURT** held that fundamental requirement of application under Section 127-B was full true and candid disclosure by applicant of liability to pay duty which was not disclosed before proper officer. Significantly, these include particulars of dutiable goods in respect of which applicant admits short levy, on account of mis-declaration or undervaluation. Petitioners accepted only 11.89% of total liability demanded by department based on documentary evidence. Petitioners were admittedly given sufficient opportunities to come up with true and full disclosure of their liability, however, right from inception, petitioners have been dodging matter without participating in settlement proceedings. Petitioners have not failed to make true and full disclosure of their duty liability in their applications, but have also failed to provide required co-operation to Bench to settle case in true spirit of settlement. Therefore, considering facts and circumstances of case and more particularly, lack of co-operation on part of petitioners for settlement of their case, Commission has rightly held that it was fit case for sending it back to original authority for disposal in accordance with law. [**Decided against petitioner**]

M/S. FOODS, FATS AND FERTILISERS LTD. VERSUS THE DEPUTY COMMISSIONER OF CUSTOMS (MADRAS HIGH COURT)

BRIEF: The issue is regarding effective date of issue of notification. Revenue failed to prove that the same was published as on 3.8.2001. Therefore impugned Notification was notified in official gazette to public only on 06.08.2001 duty becomes payable only from date it was notified in official gazette.

OUR TAKE: The **Hon'ble MADRAS HIGH COURT** held that in the case of Param Industries Ltd., Vs. Union of India [2002 (9) TMI 115 - HIGH COURT OF KARNATAKA], it was observed that, no records have been produced to show the exact date on which notification was published in the Gazette. Annexure-R1 would only reveal that the notification was forwarded to the Manager, Government of India Press to publish the same in the Official Gazette and there is no record further to show that pursuant to the said letter Gazette notification was published on 3-8-2001 itself. But on a perusal, it is clear from Annexure-R1 that the date 6-8-2001 has been overwritten as 3-8-2001 and that apart in the letter sent to the Government of India Press on 3-8-2001 the said overwriting has not been attested or explained in the affidavit.

Therefore impugned Notification was notified in official gazette to public only on 06.08.2001, duty becomes payable only from date it was notified in official gazette. Hence, impugned demand set aside and Petition allowed. [**Decided in favour of Assesse**]

M/S VEETRAG ENTERPRISES, CHETAN KUMAR RANKA, NIRMAL KUMAR LUNKAD VERSUS THE COMMISSIONER OF CUSTOMS (SEAPORT EXPORTS) (MADRAS HIGH COURT)

BRIEF: The case is related to denial of cross examination and mis-declaration of import of goods. Neither any speaking order was passed nor was respondent justified in not permitting petitioner to cross-examine eight witnesses. Matter remanded back.

OUR TAKE: The **Hon'ble MADRAS HIGH COURT** held that rules of natural justice require that party must be given opportunity to adduce all relevant evidence upon which he relies by giving opportunity of cross-examining witnesses examined by that party. In present case, neither any speaking order was passed nor respondent was justified in not permitting petitioner to cross-examine above said eight witnesses. Thus, petitioner was not given fair opportunity to defend their case. Accordingly, impugned order set aside and Petition allowed. [**Decided in favour of Petitioner**]

PROVENANCE FOOD PVT. LTD. VERSUS UNION OF INDIA (BOMBAY HIGH COURT)

BRIEF: Precondition to Appeal. Reproduction of Commissioner's findings show that there was no conclusion reached that assessee had violated any comprehensive policy or any provisions in Customs Manual That itself made out arguable case. Tribunal was not justified in imposing condition of deposit on assesse.

OUR TAKE: The **Hon'ble BOMBAY HIGH COURT** held that Reproduction of Commissioner's findings show that there was no conclusion reached that assessee had violated any comprehensive policy or any provisions in Customs Manual. That itself made out arguable case, therefore there were no basis for imposing precondition for hearing of appeal on merits and stay of recovery. Conditions imposed ought to be reasonable and not excessive. They must have bearing on nature of reliefs that assessee claimed and to which it was held disentitled. In matters of natural calamities where customs manual or terms and conditions of bond prima facie ought not guide, Customs Commissioner to decide appeal. Thus, Tribunal was not justified in imposing condition of deposit on assesse. Appeal allowed and matter resotred before the Tribunal. [**Decided in favour of Assesse**]

INCOME TAX

COURT DECISIONS

COMMISSIONER OF INCOME TAX (C) -I VERSUS MGF AUTOMOBILES LTD. (DELHI HIGH COURT)

BRIEF: Whatever was recovered during the search having been destroyed in a fire was not available with the AO when he framed the assessments u/s 153A. Assessment is not sustainable.

OUR TAKE: The **Hon'ble DELHI HIGH COURT** held that The Court is unable to appreciate on what basis the AO has in the assessment orders for the AYs in question proceeded to discuss the facts relating to the sale of land by the Assessee in the AY 2007-08 and conclude that the Assessee as an amalgamated company failed to comply with the requirements of Section 72-A (2) (b) (i) of the Act. The court enquired from Mr. Sahni whether there is any indication anywhere in the assessment orders that the information regarding the land of CML having been sold by the Assessee during the AY 2007-2008 was obtained as a result of any material gathered during the search or any information obtained during the search. Mr. Sahni candidly answered in the negative.

The inescapable conclusion is that the AO proceeded to frame assessments under Section 153 A of the Act relying on some information not unearthed during the search. Further, whatever was recovered during the search having been destroyed in a fire was not available with the AO when he framed the assessments. Consequently, the assessment orders passed with reference to Section 153 A (1) of the Act were unsustainable in law. [**Decided in favour of assessee**]

THE COMMISSIONER OF INCOME TAX, CENTRAL-1, MUMBAI VERSUS M/S FOREVER DIAMONDS PVT. LTD. (BOMBAY HIGH COURT)

BRIEF: Whether the AO has power to recast the profit and loss account even when the same is, according to him, not correctly prepared in accordance with Schedule VI to the Companies Act, 1956?

OUR TAKE: The **Hon'ble BOMBAY HIGH COURT** held that the issue stands settled by the decision of the Apex Court in Apollo Tyres Ltd. (2002 (5) TMI 5 - SUPREME Court) wherein held Assessing Officer has to accept the authenticity of the accounts with reference to the provisions of the Companies Act, which obligate the company to maintain its accounts in a manner provided by that Act and the same to be scrutinized and certified by statutory auditors and approved by the company in general meeting and thereafter to be filed before the Registrar of Companies who has a statutory obligation also to examine and be satisfied that the accounts of the company are maintained in accordance with the requirements of the Companies Act. Subsection (1A) of section 115J does not empower the Assessing Officer to embark upon a fresh enquiry in regard to the entries made in the books of account of the company. Also see Adbhut Trading (2011 (7) TMI 716 - Bombay High Court), the question as proposed does not give rise to any substantial question of law. [**Decided against revenue**]

C.I.T VERSUS M/S. RS AVTAR SINGH AND OTHERS (DELHI HIGH COURT)

BRIEF: Setting off of the Share of the loss of the AOP claimed as business loss of the joint venture against the profit of the Assessee as a business loss by the AO reversed by CIT (A) on the ground that the AO could have computed the loss of the AOP only after the AOP filed its own return.

OUR TAKE: The **Hon'ble DELHI HIGH COURT** held that under Section 86 of the Act it is provided that when the Assessee is a member of the AOP, income tax shall not be payable by the Assessee in respect of his share in the income of the AOP computable in the manner provided in Section 67 (A). Clause (b) of the first proviso to the above Section states that unless the AOP is chargeable to tax on its total income at the maximum marginal rate, the share of member computed in terms of Section 67 (A) shall form part of its total income. However, there is no corresponding provision for setting off of a member's share of the losses of the AOP against his personal income.

In the instant case the CIT (A) was right in reversing the decision of the AO to set off the Assessee's share of the loss of the joint venture against the profit of the Assessee as a business loss. The ITAT's order reversing the CIT (A) was, therefore, erroneous. The question referred is answered by holding that the ITAT erred in holding that the order passed by the AO was not prejudicial to the interests of the Revenue.

STATE TAXES

ALL INDIA VAT

BIHAR

The **Govt. seeks to amend the Bihar Value Added Tax Act, 2005 (Act, 27 of 2005) through Bihar Act 13, 2015**.

OUR TAKE: There is amendment in Section 3, Section 3AA, Section 24, Section 25, Section 32 and Section 93.

The **Govt. vide Notification S.O. 199 dated 27 August 2015** seek to amend Schedule V of Bihar Value Added Tax Act, 2005.

OUR TAKE: "Borlaug Institute for South Asia (BISA)" is added in S.N. 137 after S.N. 136 of schedule V (of section 17) of the said Act, 2005.

CHHATTISGARH

The **Govt. vide Notification No. F-10-33 /2015/CT/V (59), dated 22 August, 2015** makes amendment in the Chhattisgarh Value Added Tax Rules, 2006.

OUR TAKE: There is amendment in Rule 57 and Rule 63. Readers are requested to read the said notification for

the amendment in detail.

GOA

The **Govt. vide Notification No. 4/5/2005 dated 24 August, 2015** amend the Goa Value Added Tax Rules, 2005.

OUR TAKE: There is amendment in Rule 23 and Rule 25. Readers are requested to read the said Notification. It is self-explanatory.

The **Govt. vide Notification No. 4/5/2005-Fin(R&C)(122), dated 28 August, 2015** directs that the returns to be filed by registered dealers under Section 24 of the Goa Value Added Tax Act, 2005 (Goa Act 9 of 2005) hereinafter referred to as the "said Act" other than those opted for composition of tax under Section 7 of the said Act, for the quarter ending 30-06-2015, shall be accepted beyond 28th August, 2015 but upto 28th October, 2015, without payment of penalty.

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

MAHARASHTRA

The **Govt. vide Notification No. VAT. 1515/ C.R. 74/Taxation-1, dated 12 August, 2015 (now published)** seek to amend Schedule 'A' appended to the Maharashtra Value Added Tax Act, 2002.

OUR TAKE: In entry 12A of Schedule 'A', with effect from the 12th August 2015, certain drugs are notified as the drugs for the treatment of Cancer, whether sold under a generic name or brand name for the purposes of the said entry. List of drugs are given in the notification.

PUDUCHERRY

The **Govt. vide Circular No. 5088/CTD/HQ/2015/1, dated 20 August, 2015 (now published)**, as a step toward GST, informed regarding a module developed & hosted in the PVAT software and made available in the dealer's login. All the dealers are hereby requested to fill up the GST Registration entry format and submit with complete particulars before 31.08.2015.

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

PUNJAB

The **Govt. vide Notification No. 2576, dated 28 August, 2015** amend the Central Sales Tax (Punjab) Rules, 1957.

OUR TAKE: There is amendment in Rule 7. Readers are requested to read the said notification for detailed amendments.

COURT DECISIONS

STATE OF KARNATAKA VERSUS ASHOK IRON WORKS PRIVATE LIMITED (KARNATAKA HIGH COURT)

BRIEF: Input tax Credit under KVAT. When consumables were used in job work in respect of which no output tax was payable by assesse or used in manufacturing activity and when said manufactured goods were sold there was liability to pay output tax by assesse. Assesse was entitled to benefit of input tax rebate on total taxable turnover of his business.

OUR TAKE: The **Hon'ble KARNATAKA HIGH COURT** held that benefit of input tax rebate was available when goods which have suffered input tax were used in course of business of dealer. By virtue of Section 10(2), if dealer had paid input tax on consumables which were used in course of his business, though he was not liable to pay any output tax, still in taxable turnover of said business, he was entitled to claim deduction of this input tax, however, subject to restriction specified in Sections 11, 12, 13, 14, 17 and 18. When consumables were used in job work in respect of which no output tax was payable by assesse or used in manufacturing activity and when said manufactured goods were sold there was liability to pay output tax by assesse. Assesse was entitled to benefit of input tax rebate on total taxable turnover of his business. Tribunal rightly extended benefit of tax rebate.

If goods which suffered input tax was despatched outside State or used as input in manufacturing, processing or packing of other taxable goods despatched to place outside State, then, input tax shall not be deducted in calculating net

tax. Benefit of deduction of input tax was available only when assesse has paid output tax within State. Therefore, finding of Tribunal that assesse was entitled to benefit of deduction of input tax irrespective of goods being sold within State or outside State was not correct. [**Decided partially against revenue**]

STATE OF GUJARAT VERSUS DELTA RUBBER AND PLASTICS PRODUCTS (GUJARAT HIGH COURT)

BRIEF: The case is related to Input tax credit. Whatever may be effect of retrospective cancellation upon selling dealer it can have no effect upon any person who has acted upon strength of registration certificate when registration was current Hence cross objections allowed.

OUR TAKE: The **Hon'ble GUJARAT HIGH COURT** held that the Tribunal had not committed any error in removing interest as well as penalty imposed upon assesse. It was undisputed fact that when assessee had purchased goods from dealer/seller, he was registered under provisions of VAT Act and subsequently, his registration was cancelled. Therefore, assesse cannot be deprived of his right of getting credit of input tax available under provisions of VAT Act. Supreme court in State of Maharashtra v. Suresh Trading Company [1996 (2) TMI 451 - SUPREME COURT OF INDIA] observed that whatever may be effect of retrospective cancellation upon selling dealer, it can have no effect upon any person who has acted upon strength of registration certificate when registration was current.

Hence, cross objections allowed. [**Decided in favour of Assesse**]

OTHER UPDATES

DGFT

The **Govt. vide Notification No. 18 /2015-20, dated 24 August, 2015** seek to amendment, with immediate effect, in Notification No. 13/2015-20 dated 26.06.2015 read with Notification No. 73 (RE- 2013)/2009-14 dated 12.03.2014 relating to export of onion.

OUR TAKE: There is amendment in para 2 of Notification No. 13/2015-20 dated 26.06.2015. Export of onion for the item description at Serial Number 51 & 52 of Chapter 7 of Schedule 2 of ITC (HS) Classification of Export & Import Items shall be permitted subject to a Minimum Export Price (MEP) of US$ 700 F.O.B. per Metric Ton or as notified by DGFT from time-to-time.

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