



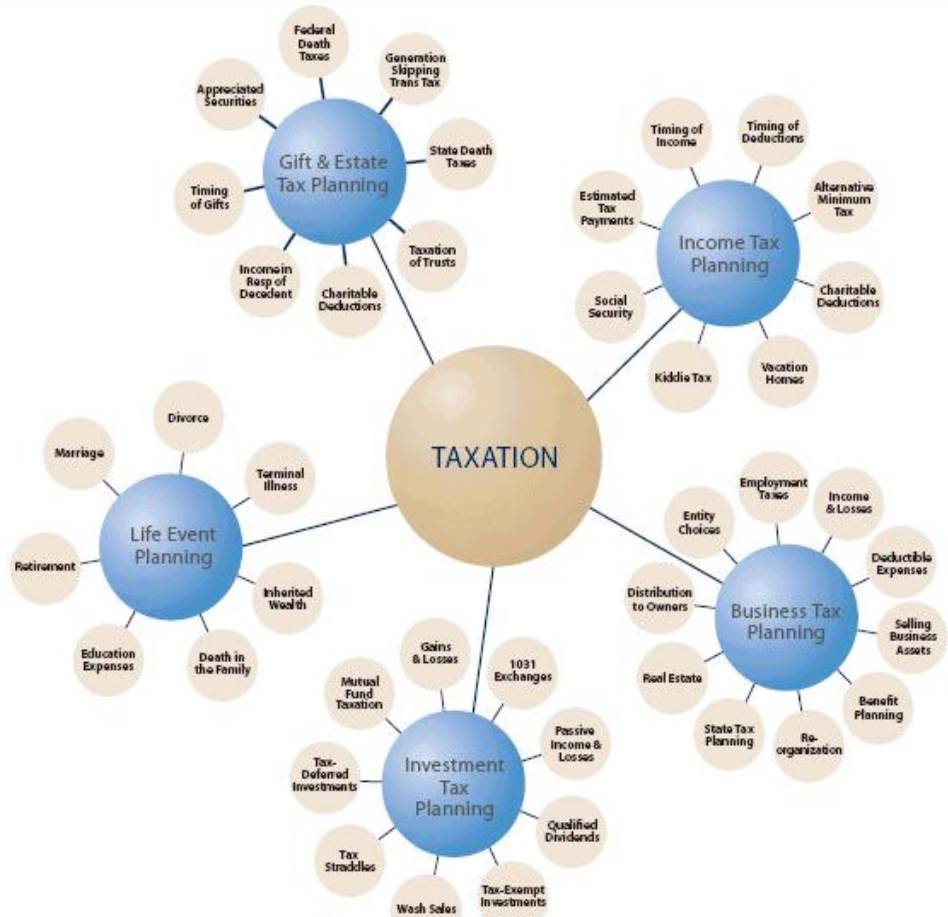
# ASC Times

All India Taxes Weekly Reference

Vol: Oct 03 - Oct09, 2016

## Solving any tax puzzle

Tax saving advice across all the taxes



## TAXCALENDER

Due Date	Description	Law
05 Oct	Deposit of Tax	Rajasthan VAT, Tamil Nadu VAT.
	Deposit of TDS	Kerala VAT.
	Issue of TDS Certificate	Tamil Nadu VAT
06 Oct	Deposit of Tax	Central Excise Law
		Service Tax Law
07 Oct	Deposit of Tax	Tripura VAT
	Deposit of TDS	Orissa VAT
	Filing of Return	Jammu & Kashmir VAT
	Issue of TDS Certificate	Orissa VAT
	Deposit of TDS	Income Tax Law
09 Oct	Filing of Return	Gujarat VAT.

## COUNTRY WIDE HOLIDAYS FOR THE WEEK

Date	Occasion/Festival	Region
05 Oct	Maharishi Valmiki Birthday	Delhi, Haryana, Himachal Pradesh, Karnataka & Punjab.
09 Oct	Durga Ashtami	Andhra Pradesh

## INDEX GUIDE

TOPIC	PAGE NO.
Service Tax	4-5
Central Excise	6-7
Customs	7-8
Income Tax	8-9
State Taxes	10-11
Other Updates	11-12
Our Contacts	13

## From the CEO's Desk



the GST regime including registration and filing of returns.

Alok Kumar Agarwal

CEO

ASC Group.

Dear Reader,

Government is working on a target date of April 1, 2017 for the rollout of Goods and Services Tax, and the first meeting of the GST Council was held in a “very cordial and constructive environment”. In his opening remarks at the Fourth Meeting of the Parliamentary Consultative Committee meeting here, he said the government so far is following the road map for implementation of GST “as per the schedule”. Jaitley said that till September 16, 2017, one year after the provisions of the Constitution (101st Amendment) Act, 2016 being brought into force, the Constitution empowers the central government to levy excise duty on manufacturing, and service tax on the supply of services.

Similarly, the Constitution Amendment Act empowers the state governments to levy sales tax or Value Added Tax (VAT) on the sale of goods till that time September 16, 2016. The Finance Minister further said that the first meeting of the GST Council was held in a very cordial and constructive environment earlier this month. The second meeting is scheduled today. The GST Council is a joint forum of the Centre and the States. The Council will take decisions on important issues like tax rates, exemption list and threshold limits. Members of Consultative Committee sought various clarifications with regard to GST Law and gave suggestions for its better implementation.

Some of the major suggestions include need for absolute clarity and transparency with regard to where taxes will be collected, assessed and where the appeal will be filed in case of GST regime. As per a release, the members said that it will be a challenging task to tackle complex situation arising-out of implementation of GST law in a federal system. Some of them suggested there is a need for launching a large scale awareness campaign especially for small traders as most of them are still unaware of the complex procedures and processes under

# CENTRAL TAXES

COURT DECISIONS

COMMISSIONER OF CENTRAL  
EXCISE, LUCKNOW VERSUS

M/S S.K. METAL INDUSTRIES[CESTAT ALLAHABAD]

## SERVICE TAX

### NOTIFICATION / CIRCULAR

**The Govt. vides Notification No. 42/2016 dated 26<sup>th</sup> Sep 2016**, extended services by way of advancement of Yoga provided by entities registered under Section 12 AA of Income-tax Act, 1961.

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

**The Govt. vides Notification No. 43/2016 dated 28<sup>th</sup> Sep 2016**, introduction of service tax third amendment rules 2016.

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

**The Govt. vides Notification No. 44/2016 dated 28<sup>th</sup> Sep 2016**; amend notification No. 20/2005-Service Tax dated 10<sup>th</sup> August 2005.

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

**The Govt. vides Notification No. 45/2016 dated 30<sup>th</sup> Sep 2016**; notifies clarification on Service of transportation, by educational institutions to students, faculty and staff.

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

**BRIEF:**Classification - non-mention of copper alloys or Brass in CETH 74.06 does not mean that it will not contain copper alloys in its ambit - Section note-6 to Section-XV of CETA also confirms this interpretation.

**OUR TAKE:**The hon'ble CESTAT ALLAHABAD held that copper predominates by weight and brass granules has to be treated as copper granules on the basis of predominance criteria. It is further observed that CETH 74.07 also pertains to copper bars, rods and profiles' but it also covers alloys of copper under CETH 7407.12. Accordingly, non-mention of copper alloys or Brass in CETH 74.06 does not mean that it will not contain copper alloys in its ambit - Section note-6 to Section-XV of CETA also confirms this interpretation. Accordingly, this bench does not find any reason to interfere with the order passed by the first appellate authority regarding classification of brass granules.

### M/S. JUBILANT ORGANOSYS LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, NOIDA[CESTAT ALLAHABAD]

**BRIEF:**Eligibility for exemption Notification No.167/71-CE - carrying out research and development in the area of polymers, resins, adhesives, bulk drugs and drug intermediates - the said certificate is sufficient evidence to establish that the goods produced by the appellant are produced during the course of carrying out research - exemption allowed

**OUR TAKE:**The Hon'ble CESTAT ALLAHABAD held that the said Notification dated 11.09.1971 provides for full exemption to all excisable goods produced in a research Institute during the course of carrying out research. The condition of the said notification is that the Assistant Commissioner of Central Excise is satisfied that the goods produced in such research institute are produced during the course of carrying out research. It further provided that further condition for availing notification is that the manufacturer has to produce such certificate as may be required by said Assistant Commissioner of Central Excise for verifying that the goods have been produced during the course of carrying out research.

**COMMISSIONER, CENTRAL EXCISE, LUDHIANA VERSUS M/S NATIONAL FERTILIZERS LIMITED[PUNJAB & HARYANA HIGH COURT]**

**BRIEF:**Demand of interest - Once in terms of the order passed by the adjudicating authority after remand by the Tribunal, there is no delay in deposit of duty by the respondent in view of Section 11AA of the Act, the demand of interest is not justifiable.

**OUR TAKE:**The hon'ble PUNJAB & HARYANA HIGH COURT held that it is a case where the Tribunal finding merit in the contention raised by the respondent remanded the matter back to the adjudicating authority for fresh determination of the amount of duty payable, which necessarily means that the impugned order had lost its significance and it is only the order passed after remand, which would be applicable and enforceable. Once in terms of the order passed by the adjudicating authority after remand by the Tribunal, there is no delay in deposit of duty by the respondent in view of Section 11AA of the Act, the demand of interest is not justifiable.[Decided against the revenue]

**M/S VFC INDUSTRIES PVT. LTD. VERSUS COMMISSIONER OF C. EX. & S. TAX, VADODARA[CESTAT AHMEDABAD]**

**BRIEF:**Cenvat credit - the credit involved on the inputs lying in stock and destroyed in the fire before being put to use could not be allowed to the Appellant and the same is required to be paid back/reversed

**OUR TAKE:**The hon'ble CESTAT AHMEDABAD held that as far as the CENVAT Credit on inputs lying in stock, as such, destroyed in fire, it is crystal clear that the same had not been used in or in relation to the manufacture of final product in their factory; thus the criterion of use, the basis on which the CENVAT Credit on inputs contained in WIP goods, has been allowed in the aforesaid cases, is undoubtedly not fulfilled. Thus, the credit involved on the inputs lying in stock and destroyed in the fire before being put to use could not be allowed to the Appellant and the same is required to be paid back/reversed.

**M/S HINDUSTAN PETROLEUM CORPORATION LTD. VERSUS CCE, VISAKHAPATNAM-I [CESTAT VISHAKAPATNAM]**

**BRIEF:**Business Auxiliary service or not. Activity of collection/dispatch of Speed Post/Export Delivery Letter etc. on behalf of the Post Office. Demand is dropped on the ground of Revenue neutral exercise.

**OUR TAKE:**The humbleCESTAT VISHAKAPATNAMheld it is found that disputed input services are not barred or excluded by Rule 2(l) ibid. The catering service availed by the appellant is not in the nature of outdoor catering service used primarily for personal use or consumption of any

employee, but related to food served in training activities like seminars, workshops etc., hence their input services will not fall in the audit of the Exclusion clause (C) of Rule 2(l). With reference to credit on commissioning service appellant has clarified that this relates to project monitoring consultancy charges for FGD and PTU units; hence I hold that this service has indeed been utilised in relation to refining activities and hence not excluded by Rule 2(l).

**MARVEL BHARUCHA REALTORS, MARVEL EDGE REALTORS PVT. LTD., MARVEL PROMOTORS & DEVELOPERS PVT. LTD., MARVEL REALTORS, KAPPA BUILDCON LLP AND MARVEL ZETA DEVELOPERS PVT. LTD. VERSUS COMMISSIONER OF SERVICE TAX-I, PUNE [CESTAT PUNE]**

**BRIEF:** The evidences in the form of approximation and averaging production as 77.6% and one statement of a Director of the appellant company cannot be called a prudent conclusion of the production estimate - demand set aside.

**OUR TAKE:**The hon'ble CESTAT NEW DELHI held that there is nothing on record from the Revenue side to come to a reasonable conclusion to say that there has been preponderance of probability of such suppressed production on the part of the appellant. The evidences in the form of approximation and averaging production as 77.6% and one statement of Shri Agarwal, Director of the appellant company cannot be called a prudent conclusion of the production estimate. In view of the above, the impugned order in respect of confirmation of duty for alleged suppressed production, and imposition of fine and penalty on the appellant No. 1 and imposition of personal penalty of 40 lakhs on Shri Agarwal who is appellant No. 2 are hereby set aside.

**M/S GODREJ HERSHEY LIMITED VERSUS CCE & ST, BHOPAL (VICE-VERSA) [CESTAT NEW DELHI]**

**BRIEF:**Manufacture - PET bottle - if they supply pre-form to the job worker to be converted into PET bottles and for the further use in packing the fruit pulp, the same cannot make the appellant -assessee as a manufacturer.

**OUR TAKE:**The hon'ble CESTAT NEW DELHI held that the appellant-assessee cannot be considered as a 'manufacturer' of PET bottle for the simple reason that they have not undertaken any such process. In other words, if they supply pre-form to the job worker to be converted into PET bottles and for the further use in packing the fruit pulp, the same cannot make the appellant -assessee as a manufacturer. The admitted fact of the case is the job worker is an independent legal entity and irrespective of ownership of pre-form or the PET bottle the appellant-assessee having been not involved in any process of manufacture cannot be held as a manufacturer for excise duty purposes



## CENTRAL EXCISE

### NOTIFICATION / CIRCULAR

**The Govt. vides Notification No. 46/2016 dated 26<sup>th</sup> Sep 2016;** amend Notification No. 20/2016-CE (NT) dated 01<sup>st</sup> march 2016 [Central Excise (Removal of Goods at Concessional Rate of Duty for manufacture of Excisable and other Goods) Rules, 2016].

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

**The Govt. vides Notification No. 47/2016 dated 28<sup>th</sup> Sep 2016;** amend Notification No. 30/2014-CE (NT) dated 14<sup>th</sup> October 2014.

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

### COURT DECISIONS

#### LAND MARK CONSTRUCTION VERSUS COMMISSIONER OF SERVICE TAX, CHENNAI (CESTAT CHENNAI)

**BRIEF:1. Construction of complex service - period 16.06.2005 to 31.12.2006 - The issue regarding demand's sustainability under construction of complex services for an activity that merits classification under works contract services is no longer res-integra - demand set aside.**

**OUR TAKE:**The hon'ble CESTAT CHENNAI held that appropriate sales tax/VAT is paid for the value of the goods involved in the execution of the works contract. It is also seen that the Learned Commissioner has merely confirmed demand only under construction of complex service. As per Explanation to Section 65(105)(zzza), we find that the legislature has clarified that where the activity involves both transfer of property in goods to the service recipient, which is leviable to tax as sale of goods and also construction service, such activity would be classifiable as "works contract services".

#### IDEA CELLULAR LTD. VERSUS COMMISSIONER OF SERVICE TAX, MUMBAI [CESTAT NEW DELHI]

**BRIEF: Cenvat credit - service tax paid on various input services and utilization thereof - Demand - utilization of**

**CENVAT credit in excess of 20% - since all the issues involved in this case are of interpretative nature, there is no reason to visit appellant with any penalty.**

**OUR TAKE:**The hon'ble CESTAT MUMBAI held that as per the provisions of Rule 6(3) of Cenvat Credit Rules, 2004, Cenvat credit cannot be utilized in excess of 20% of the credit, if an assessee is providing taxable and non-taxable services. Appellant was correct in submitting that similar issue in respect of appellant is decided by this Bench as reported at [2009 (2) TMI 91 - CESTAT NEW DELHI]. Since similar issue in appellant's own case is decided in their favour following the same, we hold that revenue has no case on this issue.

#### PERFECT THREAD MILLS LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, JAIPUR-II (CESTAT NEW DELHI)

**BRIEF: Dutiability and classification of Polyester Sewing Thread. The Dutiability does not arise by virtue of the fact the definition of Sewing Thread was provided for in certain headings, but by virtue of the fact that the process of making Sewing Thread out of single thread/yarn is a process of manufacture under Section 2(f).**

**OUR TAKE:**The hon'ble CESTAT NEW DELHI held that the Polyester Sewing Thread is distinctly known in the market and the yarn purchased by the appellant apparently cannot be marketed or used as the Sewing Thread. The Dutiability does not arise by virtue of the fact the definition of Sewing Thread was provided for in certain headings, but by virtue of the fact that the process of making Sewing Thread out of single thread/yarn is a process of manufacture under Section 2(f). In view of the above discussion, we find that there is no ground to interfere with the findings of the learned Commissioner (Appeals) and accordingly we dismiss the appeal. [Decided against the assessee]

#### COMMISSIONER OF CENTRAL EXCISE, INDORE VERSUS M/S. NATIONAL STEEL INDUSTRIES LTD. [CESTAT NEW DELHI]

**BRIEF: Classification - manufacture - change in the scope of tariff entries - iron and steel structures like trusses, columns, staircase, windows and section etc. - These steel structures are commonly known as component parts of building/ shed. - these goods are not excisable.**

**OUR TAKE:**The hon'ble CESTAT NEW DELHI held that the clear and specific classification of the impugned items was available with effect from 1.3.1988. Prior to that date, the classification was sought to be made under 7308 90: as 'Misc.' 'other articles of iron and steels'. Hence, held that these goods are not excisable. [Decided in favour of assessee]

**EMERSON EXPORT ENGINEERING CENTRE VERSUS COMMISSIONER OF CENTRAL EXCISE[CESTAT MUMBAI]**

**BRIEF:** Refund claim - unutilized CENVAT credit - the service tax paid on the renewal of the software by the service provider is eligible to be claimed as refund by the appellant.

**OUR TAKE:** The hon'ble CESTAT NEW DELHI held that the allegation in the show cause notice that steel items used by the appellant are neither components nor spares nor accessories is not sustainable. Applying the principle of "user test" laid down by the Hon'ble Supreme Court in Jawaharlal Mills case (SUPREME COURT OF INDIA) the angles, beams and channels used in the making and fabrication of these capital goods are found eligible for Cenvat credit. **[Decided in favour of assessee]**

**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 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.

**Inox Air Products Ltd. Versus The Commissioner of Service Tax, Mumbai(BOMBAY HIGH COURT)**

**BRIEF:** Validity of CESTAT order - Tribunal dismissed the appeal on the ground that matter is pending before the High court - Doctrine of merger - It could not have been dismissed as not maintainable only because the petitioner in the writ petition and the appellant before the Tribunal were pursuing both remedies.

**OUR TAKE:** The hon'ble BOMBAY HIGH COURT held that this Court is deciding the issue as to whether such a transaction would attract service tax or would it be liable and exigible to tax under the Maharashtra Value Added Tax Act, 2002.

## CUSTOM

**NOTIFICATION / CIRCULAR**

The Govt. vides Notification No. 53/2016 dated 29<sup>th</sup> Sep 2016; amend notification No.12/2012-Customs dated the 17th March, 2012, so as to retain the basic customs duty on ghee, butter and butter oil at 40% beyond 30<sup>th</sup> Sep 2016, for a further period up to 31<sup>st</sup> march 2017.

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

**COURT DECISIONS****M/s Intellect Components Co. Versus Commissioner of Customs, NCH, Mumbai[CESTAT MUMBAI]**

**BRIEF:** Rejection of declared value - The price of the two commodities, which is significantly different, cannot be compared in this manner. Only if ABS is imported at a price significantly different from the PLATT price then the question on the declared value can be raised on the basis of PLATT price.

**OUR TAKE:** The hon'ble CESTAT MUMBAI held that the declared value of Regrind ABS 20% Glass filled has been rejected for the reason that it is significantly different from the PLATT price of the ABS. The price of the two commodities, which is significantly different, cannot be compared in this manner. Only if ABS is imported at a price significantly different from the PLATT price then the question on the declared value can be raised on the basis of PLATT price.

**M/S. HONEST ENTERPRISES LTD., M/S. NAVNIDHI STEEL & ENGG. CO. PVT. LTD., SHREE RAMDEV METAL MART, M/S. SIDDHIVINAYAK STEEL AND M/S. RELIANCE STAINLESS STEEL VERSUS DESIGNATED AUTHORITY, DIRECTORATE, GENERAL OF ANTI-DUMPING AND ALLIED DUTIES/MINISTRY OF FINANCE[CESTAT NEW DELHI]**

**BRIEF:** Imposition of Anti-dumping duty - even if there are high priced transactions and low price transactions from a country, the very fact that the low price transactions cause injury (with positive injury margin) justifies imposition of duty on the entire country.

**OUR TAKE:** The hon'ble **CESTAT NEW DELHI** held that market share alone is not a fair indicator of presence of injury or otherwise. Domestic prices have been undercut by imports from the subject countries throughout the injury investigation period. Further, the prices of domestic industry has not increased in line with increase in costs. The profitability of the domestic Industry has been shown to be adversely affected during the said period.

**M/S. SURABHI ENTERPRISES PVT. LTD. AND M/S. SANJAY CHEMICALS VERSUS DESIGNATED AUTHORITY, DIRECTORATE GENERAL OF ANTI-DUMPING AND ALLIED DUTIES MINISTRY OF FINANCE AND OTHERS [BOMBAY HIGH COURT]**

**BRIEF:** Whether the plea that the withdrawal of the Anti-Dumping duty would have been with retrospective effect is justified? - No provisions of law found enabling the Designated Authority or empowering him to allow backdated relief in such circumstances - The answer is No.

**OUR TAKE:** The hon'ble **CESTAT NEW DELHI** held that there is no provision under Rules empowering the Designated Authority to recommend discontinuation of Anti-Dumping Duty with retrospective effect. In other words, Rule 14 enabling power of Designated authority to terminate the proceedings is not available for review proceedings in terms of Rule 23. No provisions of law found enabling the Designated Authority or empowering him to allow backdated relief in such circumstances - no justifiable reason to interfere in the Final order dated 10.2.2012 of the Designated Authority.

**GRANT INVESTRADE LTD. & ANOTHER, INDUSLND MEDIA & COMMUNICATIONS LTD. VERSUS UNION OF INDIA & 4 OTHERS [BOMBAY HIGH COURT]**

**BRIEF:** Valuation - demand of customs duty on license fee paid to the overseas licensor - payment of service tax on license fee - the DRI could not have proceeded on the footing and in the facts and circumstances of the present case that there is a definite evasion. It is their duty to bring such cases of alleged evasion to the notice of the customs

**OUR TAKE:** The hon'ble **BOMBAY HIGH COURT** held that the final anti-dumping notification has no applicability to the bills of entry presented prior to the said date. Inasmuch as the applicant has already been assessed to zero anti-dumping duty, the further demand of anti-dumping duty in

terms of the subsequent notification is not called for. Apex Court dismissed the revenue appeal as devoid of any merit.

**M/S AMRITLAKSHMI MACHINES WORK, MR. N.K. BRAMCHARI, MANAGING PARTNER, M/S. AMRITLAKSHMI MACHINE WORKS VERSUS COMMISSIONER OF CUSTOMS (IMPORT) [BOMBAY HIGH COURT]**

**BRIEF:** Levy of simultaneous penalties on both the Partner and Partnership firm in adjudication proceedings under the Customs Act. Penalty for abetting, simultaneous penalties can be imposed on the firm and the partners under the Act and more particularly under Section 112(a) of the Act.

**OUR TAKE:** The hon'ble **BOMBAY HIGH COURT** held that the penalties could be imposed on the firm and the partners under the Act and more particularly under Section 112(a) of the Act. However, as the Act itself stipulates, the same would be subject to the parties proving that the contravention has taken place without their knowledge or despite exercise of all due diligence to prevent such contravention.

**M/S. BDB EXPORTS PVT. LTD., SHRI NIRMAL KUMAR BHURA VERSUS COMMISSIONER OF CUSTOMS (PREV.) , WEST BENGAL, KOLKATA [CESTAT KOLKATA]**

**BRIEF:** Classification - import of processed cloves - minor activities done by the supplier will not make the goods as processed cloves and that such processed cloves come into existence only when oil is extracted from natural cloves

**OUR TAKE:** The hon'ble **CESTAT KOLKATA** held that when the base goods are not produced/manufactured in the contracting countries. The only requirement under these Rules is that a certification of origin has to be produced for availing concessions as issued by the designated authority of Govt. of exporting contracting state and notified to the other contracting states in accordance with the certification procedures mentioned in the form annexed to SAPTA Rules.



## INCOME TAX

### COURT DECISIONS

#### SUNIL KUMAR GUPTA VERSUS ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE-II, AMRITSAR[PUNJAB AND HARYANA HIGH COURT]

**BRIEF:**Income from house property - if the maintenance charges etc. are stipulated to be payable by the licence or the lessor it must form a part of the rent for the purpose of computing the annual value of the property.

**OUR TAKE:** The hon'ble PUNJAB & HARYANA HIGH COURT held that the actual rent received would be much higher where the facilities are better. Section 23 provides that the annual value of the property shall be deemed to be the sum for which the property might reasonably be expected to let from year to year or where the property is let, the actual rent received or receivable by the owner whichever is higher. In either case the rent that is received in respect of the premises in a building where the common amenities are better is bound to be higher than the rent that is expected to be received or is received in a building where the amenities are not as good.

#### MAHAVIR INDUCTOMENT PVT. LTD. VERSUS ASST. CIT, (OSD) -1, RANGE-4, AHMEDABAD AND VICA-VERSA[ITAT AHMEDABAD]

**BRIEF:**Disallowance out of interest expenses @ 3% u/s 40A(2)(b). It was observed that as Assessee Company and parent company both were taxed at marginal rate and therefore it cannot be said that service charges paid to parent company are unreasonable so as to evade tax.

**OUR TAKE:** The hon'ble ITAT AHMEDABAD held that the assessee company is not a shareholder in Mahavir Rolling Mills Pvt. Ltd., therefore, no addition could be made u/s 2(22)(e) of the Act, as deemed dividend and accordingly, we find no reason to interfere with the order of Id. CIT(A). We uphold the same. [Decided in favour of assessee]

#### DY. COMMISSIONER OF INCOME TAX-5 (2) , MUMBAI VERSUS M/S M. SURESH COMPANY PVT. LTD. [ITAT MUMBAI]

**BRIEF:**Penalty u/s 271(1)(c), assessee did not establish the nexus between the borrowed funds and the investment so

made with a clear intention to conceal the income by furnishing inaccurate particulars of such income, therefore, in our view, penalty was rightly imposed.

**OUR TAKE:**The hon'ble ITAT MUMBAI held that the totality of facts clearly indicates that the assessee did not establish the nexus between the borrowed funds and the investment so made with a clear intention to conceal the income by furnishing inaccurate particulars of such income, therefore, in our view, penalty was rightly imposed by the Assessing Officer. The stand of the Revenue is further fortified by the fact that even the assessee did not file appeal against the disallowance of huge interest expenditure while deciding the quantum addition and accepted the same. [Decided against assessee]

#### 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 were 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 FORUM PROJECTS PVT. LTD. VERSUS DCIT, CENTRAL CIRCLE-II, KOLKATA.[ITAT KOLKATA]

**BRIEF:**Disallowance u/s 14A. The action of the AO in directly embarking on Rule 8D(2) Of the Rules is not appreciated and hence no disallowance u/s 14A could be made in the facts of the instant case.

**OUR TAKE:**The hon'ble ITAT KOLKATA held that action of the Learned AO in directly embarking on Rule 8D (2) of the Rules is not appreciated and hence no disallowance u/s 14A of the Act could be made in the facts of the instant case.[Decided in favour of the assessee]

#### ACIT, NAVSARI CIRCLE, NAVSARI VERSUS SHRI JUGALKISHORE K. AGRAWAL [GUJARAT HIGH COURT]

**BRIEF:**When the entire block of purchases made by the assessee is disallowed, the same would have automatic and direct impact on bringing up the Gross Profit ratio of the assessee during such year.

**OUR TAKE:**The hon'ble GUJARAT HIGH COURT held that no further scope of making addition in the guise of adjusting the

Gross Profit ratio. The disallowance itself would automatically reflect in increasing the Gross Profit from one claimed by the assessee in the original return.

Assessing Authority with a true copy thereof to the Commissioner Commercial Taxes.

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

# STATE TAXES

## ALL INDIA VAT

### ANDHRA PRADESH

**The Govt. vides Notification SO No. 244 dated 28<sup>th</sup> Sep 2016**, notifies change in rate for advance deduction of tax from Works Contractors from 5 % to 8%.

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

**The Govt. vides Notification SO 246 dated 28<sup>th</sup> Sep 2016**, amends BVAT schedule - III

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

**The Govt. vides Notification SO 242 dated 28<sup>th</sup> Sep 2016**, amends Rule 18, 29 & Insertion of Rule 18B and Substitution of Form RT-I, Form RT-III, Form RT-V.

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

### JAMMU & KASHMIR

**The Govt. vides Notification No. 04 dated 29<sup>th</sup> Sep 2016**, notifies that the registered dealers whose gross turnover in a year is Rs. 1.00 crore or more and who are required to file the prescribed audit reports before the concerned Assessing Authority and Commissioner Commercial Taxes, shall do so for the accounting year 2015-16 by 31st October, 2016 before the concerned

### MADHYA PRADESH

**The Govt. vides Notification No. F-A-3-46-2016-1-V (41) dated 28<sup>th</sup> Sep 2016**, notifies the person for the purpose of the sub-section (2) of Section 3 of the Act.

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

**The Govt. vides Notification No. F-A-3-46-2016-1-V (42) dated 28<sup>th</sup> Sep 2016**, hereby, directs that entry tax under sub-section (2) of Section 3, shall be payable at the rate of 6 percent by the persons and in respect of the goods notified under sub-section (2) of Section 3 by this department's notification No. F-A-3-46-2016-1-V (41), dated 28th September 2016.

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

**The Govt. vides Notification No. F-A-3-46-2016-1-V (43) dated 28<sup>th</sup> Sep 2016**, hereby, appoints transporter, courier, agent or any other person bringing goods into any local area within the State of Madhya Pradesh on behalf of the persons notified by this department's notification No. FA 3-46-2016-1-V (41) dated 28<sup>th</sup> Sep 2016, as the "person transporting goods" to collect entry tax from such notified persons and to pay the collected entry tax to the State Government, in respect of the goods notified under sub-section (2) of Section 3 by the same notification, in the manner and subject to the terms and conditions specified

**The Govt. vides Notification No. F-A-3-46-2016-1-V (44) dated 30<sup>th</sup> Sep 2016**, notifies that goods mentioned in notification no. F A-3-46-2016-1-V(41), dated 28th September 2016 are exempt from payment of entry tax.

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

---

**The Govt. vides Notification No.KA.NI. -2-1342/XI-9(107)/07-U.P.ACT-30-07-ORDER-(165)-2016 dated 21<sup>st</sup> Sep 2016**, entry tax shall be applicable at the rate of 5 % on all kind of goods except the goods described in Schedule-I of the Uttar Pradesh Value Added Tax Act, 2008, purchased or ordered through online shopping or E-Commerce and consigned or brought into a local area from outside the State, otherwise than in connection with business or for personal use.

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

---

**The Govt. vides Notification No.KA.NI. -2-1343/XI-9(107)/07-U.P.ACT-30-07-ORDER-(165)-2016 dated 21<sup>st</sup> Sep 2016;** entry Tax exemption to Gas based electric units

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

## MAHARASHTRA

**The government of Maharashtra hereby introduces Maharashtra Advance Ruling Authority Act, 2016.**

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

---

**The Govt. vides Ordinance No. 24dated 30<sup>th</sup> Sep 2016**, notifies the person for the purpose of the sub-section (2) of Section 3 of the Act.

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

## COURT DECISIONS

### T M/S. HEMA ENGINEERING VERSUS THE STATE OF KARNATAKA(KARNATAKA HIGH COURT)

**BRIEF:**Whether the re-assessment was permissible under the head of “Rectification of the order in purported exercise of the power u/s 69 of Karnataka Value Added Tax Act, 2003 on the basis of a clarification issued by the Commissioner which itself is after the order of re-assessment dated 28.6.2010? - Held no.

**OUR TAKE:**The hon’ble **KARNATAKA HIGH COURT** held that it is not the case of respondent-revenue that any other clarification like 21.2.2012 was already in existence prior to 28.6.2010 i.e. date on which the order of re-assessment was passed.

### INDIRA DEVI A.V VERSUS THE COMMERCIAL TAX OFFICER, THIRUVANANTHAPURAM DIST. AND OTHERS[KERALA HIGH COURT]

**BRIEF:** Levy of tax on discount received from the suppliers - KVAT - The question whether the discount has to be added to the turn over was not a matter which ought to have been taken up afresh especially when no appeal had been filed by the revenue authorities

**OUR TAKE:**The hon’ble **KERALA COURT** held that It is apparent from the materials placed on record that the assessing officer had taken a different view from what has been taken earlier by issuing a fresh notice under Section 25 (1) of the Act. Merely for the reason that there had been a mistake committed by an earlier Officer, it is not open for the Officer considering the same again to have a different view. Revenue authorities also had a right of appeal and no such opportunity had been availed of at the relevant time.

## OTHER UPDATES

### GST ALERTS

### NOTIFICATION / CIRCULAR

**On 27<sup>th</sup> September, CBEC released draft Rules and Forms for GST refund and returns.**

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

- Draft Return Rules
- Draft Return Formats
  - GSTR 9B
  - ITC Mismatch Report
- Draft Refund Rules
- Draft Refund Formats

---

**On 27th September, CBEC released Draft Rules and Formats - Draft GST Registration Rules, GST Payment Rules and GST Invoice Rules with formats**

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

- Draft Registration Rules
- Draft Registration formats
- Draft Payment Rules
- Draft Payment formats
- Draft Invoice Rules
- Draft Invoice formats

### TRANSITIONAL PROVISIONS

#### UNAVAILED CENVAT CREDIT ON CAPITAL GOODS NOT CARRY FORWARD IN RETURN TO BE ALLOWED IN GST IN CERTAIN SITUATION (SECTION 144)

- Unveiled CENVAT credit means that the tax credit on capital goods which have not been availed. For e.g. in the present Excise law, CENVAT credit is eligible @ 50% of Tax amount during first year and remaining 50% to be claimed in next F.Y. Hence 50% CENVAT Credit on Capital goods acquired during F.Y. 2016-17 remains unveiled in 2015-16, which can be claimed in 2016-17 in GST Regime.
- Every Capital Goods shall have meaning as defined in clause 2(a) of CENVAT Credit Rules 2004.
- Registered Taxable person shall be allowed to take credit of unveiled credit of CENVAT / VAT not taken in return furnished under present law and as available on the day immediately preceding the day on which GST Act comes into force.
- CENVAT Credit available under Excise Tax as on date preceding to GST Act date shall be carried forward in Electronic Ledger under the head “CGST” and Vat credit under the head “SGST”.
- Tax Credit is allowed provided the same is admissible both under present and in GST law.
- Tax Credit shall be recovered as tax arrears by Central / State GST officers if the same is found to

be recoverable as a result of any proceeding initiated before or after the GST Act comes into force.

- The above provisions shall be incorporated under respective CGST and SGST Acts.

#### CARRY FORWARD OF CENVAT CREDIT IN RETURN TO BE ALLOWED AS TAX CREDIT IN GST (SECTION 143)

Registered Any person who is into the sales of exempted goods under the present law is exempted from Registration and further he shall have to get himself registered under the GST Act if the products come out of exemption or is subject to levy under the GST Act.

Such registered persons under the GST Act shall be eligible to claim Input Tax credit in respect of Inputs, WIP held in stock, Inputs contained in final products as on the date immediately preceding to the Date from which GST Act comes into force.

#### CREDIT OF ELIGIBLE DUTIES AND TAXES ON INPUTS HELD IN STOCK TO BE ALLOWED TO A TAXABLE PERSON SWITCHING OVER FROM COMPOSITION SCHEME (SECTION 146)

- Any Registered person who is paying tax in the capacity of Composite Tax Payer at a fixed rate or fixed amount under the present tax law of Centre / State shall be eligible to take input Tax credit in Electronic Credit Ledger in respect of Inputs, WIP held in stock, input contained in Finished Goods as on the date immediately preceding to the Date from which GST Act comes into force.
- Tax Credit is allowed provided the same is admissible both under present and in GST law.
- Tax Credit shall be recovered as tax arrears by Central / State GST officers if the same is found to be recoverable as a result of any proceeding initiated before or after the GST Act comes into force.
- The above provisions shall be incorporated under respective CGST and SGST Acts.

## We may be contacted at the following offices:

### CORPORATE OFFICE

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

### GURGAON

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

### NOIDA

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

### MUMBAI

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

### ASSAM

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

### SINGAPORE

1 North Bridge Road,  
# 10-09 High Street Road,  
Singapore(179094).

## For enquiries related to:

Service	Contact Person	11Service	Contact Person
DVAT:	faiz@ascgroup.in	Service Tax:	nitin@ascgroup.in
HVAT:	deepak@ascgroup.in	Transfer Pricing & PE:	shailendra@ascgroup.in
Excise:	deepak@ascgroup.in	Legal Metrology:	mayank.singhal@ascgroup.in
UPVAT:	jaswant@ascgroup.in	Company Law:	legal@ascgroup.in
Income Tax:	vikash@ascgroup.in	PR/Media	socialmedia@ascgroup.in
Maharashtra VAT:	nitin@ascgroup.in		

## Disclaimer:

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



