



# ASC Times

All India Taxes Weekly Referencer

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Solving  
any **tax**  
puzzle

Tax saving advice  
across all the taxes



## From the CEO's Desk



Dear Reader,

With the New Year starting we hope for new things to happen. Fair enough, because it gives us a reason to rejoice and giving momentum and reason for achieving new heights. To start with finance ministry, which has already started working on the Budget for the year 2016-17. Finance minister is hoping to roll out GST this year in the next session of parliament. Meanwhile, lot of suggestions from experts and business forums are pouring in to frame new policies and to amend some old ones. The logic is simple that many of Indian Laws and policies are made about 50 years ago and do not hold much significance in today's time. Evolving is the key, in every aspect be it personal, social, political or related to economy. Few of these suggested changes I would like to bring to your notice.

Trade association ASSOCHAM has advised to the government to raise the limit for tax-exempted savings from Rs.1.5 Lakhs to Rs.2.5 Lakhs. Also to restructure standard deductions for salaried employees to boost consumption. The logic it gave for the same to combat the effects of the increasing inflation and other cost factors. It has also suggested a depreciation allowance for salaried tax-payers in line with professionals where also the depreciation happens if the employees own the assets.

Bonus bill has already been passed in Rajya Sabha, which states that the monthly bonus calculation ceiling will be Rs. 7000 per month from Rs. 3500. It also enhances the eligibility limit for payment of bonus from Rs 10,000 per month to Rs 21,000 per month. The Payment of Bonus Act, 1965, is applicable to every factory and other establishments in which 20 or more persons are employed on any day during an accounting year.

Also the government has extended the last date for enrolment under the Pradhan Mantri Jeevan Jyoti Bima Yojana (PMJJBY) to May 31. The deadline for enrolment under Pradhan Mantri Suraksha Bima Yojana

(PMSBY) has also been extended. The aim of two policies is to bring underprivileged and unorganized sector under the cover of social security net. The two policies have been successful so far as 2.93 crore and 9.28 crore policies have been sold till December 31<sup>st</sup> respectively.

Alok Kumar Agarwal

CEO

ASC Group.

## TAX CALENDER

Due Date	Description	Law
05 January	Deposit of Tax	Rajasthan VAT, Tamil Nadu VAT
	Deposit of TDS	Kerala VAT
	Issue of TDS Certificate	Tamil Nadu VAT
06 January	Deposit of Tax	Central Excise Law
	Deposit of Tax	Service Tax Law
07 January	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 January	Filing of Return	Gujarat VAT
10 January	Deposit of Tax	Kerala VAT
	Deposit of TDS	Chhattisgarh VAT, Madhya Pradesh VAT, Mizoram VAT, Nagaland VAT
	Filing of Return Kerala VAT	Karnataka VAT Filing of Return Central Excise Law
	Filing of Return Kerala VAT	Karnataka VAT Filing of Return Central Excise Law

## COUNTRY WIDE HOLIDAYS FOR THE WEEK

Date	Occasion/Festival	Region
04-10	NA	All India

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# CENTRAL TAXES

## SERVICE TAX

### COURT DECISIONS

#### ARAFATH TRAVELS PVT. LTD., MR. SHERIF DYAN VERSUS CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL (SOUTHERN BENCH) , THE COMMISSIONER OF SERVICE TAX [MADRAS HIGH COURT]

**BRIEF:** Waiver of pre deposit under Section 35F. The order passed by the Tribunal did not indicate that, it has considered the materials to come to a prima facie conclusion. Hence, the order is liable to be set-aside, as the order had been passed, invoking the amended provisions of Section 35F, whereas the law applicable to the case of the assessee is proviso to un-amended Section 35F.

**OUR TAKE:** The Hon'ble MADRAS HIGH COURT held that there is a failure to exercise the discretion, as the Tribunal had lost sight of the provision applicable to the case, having regard to the date of filing of the appeal. When the Tribunal had failed to exercise the discretion, this Court is bound to interfere. Further, the order passed by the Tribunal did not indicate that, it has considered the materials to come to a prima facie conclusion. Hence, the order is liable to be set-aside, as the order had been passed, invoking the amended provisions of Section 35F of the Act, whereas the law applicable to the case of the assessee is proviso to un-amended Section 35F of the Act. Matter remanded back. [Decided in favour of assessee]

#### M/S L.N. GUPTA TRANSPORT CO. VERSUS COMMISSIONER OF CENTRAL EXCISE, NAGPUR [CESTAT MUMBAI]

**BRIEF:** Whether the activity of transportation services, that is carrying employees of companies from specific points to the factory/establishment and back can be categorized under "Tour operator" service .Held NO.

**OUR TAKE:** The Hon'ble CESTAT MUMBAI held that appellant were not engaged in the business of planning, scheduling, organizing or arranging package tour of their own as provided under the new definition of "tour operator" service but were adhering to the conditions laid down with various customers. Therefore it cannot be said that they were covered under the first part of the amended definition of "tour operator". [Decided in favour of assessee]

#### M/S SKY LINE MOTORS INDIA PVT. LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX, NOIDA [CESTAT ALLAHABAD]

**BRIEF:** Rent-a-cab operating services for use by an educational body imparting skill or knowledge or lesson on any subject or field, other than a commercial training or coaching centre, are not includible in the meaning of "cab" and hence not taxable in the "rent-a-cab operator service". Prima facie case is in favour of assessee.

**OUR TAKE:** The Hon'ble CESTAT ALLAHABAD held that under rent-a-cab operating services for use by an educational body imparting skill or knowledge or lesson on any subject or field, other than a commercial training or coaching centre, are not includible in the meaning of "cab" and hence not taxable in the "rent-a-cab operator service". Thus we find that the appellants have made out a prima-facie case for grant of stay. Accordingly, we grant the stay for demand of duty and tax, interest and penalty till disposal of appeal – [Stay granted]

#### COMMISSIONER OF CENTRAL EXCISE, DELHI-III VERSUS M/S ASIAN COLOR COATED ISPAT LTD. [CESTAT NEW DELHI]

**BRIEF:** CENVAT Credit. Since the title or ownership of goods passed on to the buyer at their site, such site of the buyer will be considered as the "place of removal" and as per the definition of input service, the freight payable for such transportation of goods will be considered as input service for the purpose of taking Cenvat credit.

**OUR TAKE:** The Hon'ble CESTAT NEW DELHI held that since the title or ownership of goods passed on to the buyer at their site, such site of the buyer will be considered as the "place of removal" and as per the definition of input service, the freight payable for such transportation of goods will be considered as input service for the purpose of taking cenvat credit. [Decided against Revenue]

#### M/S SHRI SAI CATERERS VERSUS COMMISSIONER OF CENTRAL EXCISE, NAGPUR [CESTAT MUMBAI]

**BRIEF:** Service Tax law, no where states that if two distinct activities are undertaken or provided in a single agreement, they should not be taxed under the same service category?

**OUR TAKE:** The Hon'ble CESTAT MUMBAI held that if two distinct activities are undertaken or provided in a single agreement, they should not be taxed under the same service

category. In view of the clear law as has been settled by the Bench, we find that the impugned order is unsustainable and liable to be set aside. **[Decided in favour of assessee]**

#### COMMISSIONER OF CENTRAL EXCISE, NASHIK VERSUS SAHASTRONICS CONTROLS PVT. LTD. [CESTAT MUMBAI]

**BRIEF:** Demand of service tax. To maintain one's own equipment, to optimize the usefulness, by maintenance and repair, in the BOOT period, is certainly not liable to Service tax as services rendered to self cannot be taxed.

**OUR TAKE:** The Hon'ble CESTAT MUMBAI held that to maintain one's own equipment, to optimize the usefulness, by maintenance and repair, in the BOOT period, is certainly not liable to Service tax as services rendered to self cannot be taxed. - There is nothing on record to indicate contrary in the appeal filed by the Revenue - In our view the impugned order as well as the order of the adjudicating authority are correct, legal and does not suffer from any infirmity. – **[Decided against Revenue]**

## CENTRAL EXCISE

### NOTIFICATIONS & CIRCULARS

The Govt. vide Notification No. 27 dated 31<sup>st</sup> December 2015, made amendment in Cenvat Credit Rules 2015 regarding import of goods by authorized courier, certificate issued by appraiser of customs as valid document.

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

The Govt. vide Notification No. 01 dated 01<sup>st</sup> January 2016, increased the Basic Excise Duty rates on Petrol and Diesel (both unbranded and branded)

### COURT DECISIONS

#### M/S NOVA PETROCHEMICALS LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE-AHMEDABAD-II (CESTAT AHMEDABAD)

**BRIEF:** CENVAT Credit. Appellant themselves filed the revise return to regularize the amount. Thus, there is no material available of suppression of fact with intent to evade payment of duty under the Section 11AC. No penalty

**OUR TAKE:** The Hon'ble CESTAT AHMEDABAD held that there was a balance in the Cenvat account, more than the amount as demanded. It is clear that the appellant themselves filed the revise return to regularize the amount. Thus, there is no material available of suppression of fact with intent to evade payment of duty under the Section 11AC of the Act. It is consistently viewed by the Tribunal that to impose penalty under Section 11AC of the Act, it is required to establish the short levy of duty would arise by reasons of fraud, collusion or any wilful mis-statement or suppression of fact with intent to evade payment of duty. Impugned order is modified in so far as the demand of Cenvat Credit/duty along with interest is upheld. The penalty imposed under Rule 15(2) of the Cenvat Credit Rules read with Section 11AC of the Act, is set aside. **[Decided in favour of assessee]**

#### M/S MEGHA ENGINEERING & INFRASTRUCTURE LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, CUSTOMS AND SERVICE TAX HYDERABAD-II [CESTAT BANGALORE]

**BRIEF:** Denial of Cenvat credit to manufacturing activity on the ground that assessee is availing the benefit of composition scheme under works contract to pay service tax. There is no prohibition under the law for one person to be a manufacturer as also a service provider. Credit cannot be denied.

**OUR TAKE:** The Hon'ble CESTAT BANGALORE held that the activity of providing service starts from procurement of pipes, where the activity of manufacture of pipes ends. As such we find no justifiable and valid reasons to deny the CENVAT credit of duty paid on the inputs used in the manufacture of pipes manufactured by the appellant as a manufacturer. Accordingly, the impugned order is set aside. **[Decided in favour of assessee]**

#### M/S MEGHA ENGINEERING & INFRASTRUCTURE LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, CUSTOMS AND SERVICE TAX HYDERABAD-II (CESTAT BANGALORE)

**BRIEF:** Export of goods without payment of duty. Procedure not followed. Demand was raised for non-furnishing of export documents. Appellant has to pay the duty for failure to furnish the export documents. It is not a fit case for imposition of penalty since there is no clandestine removal of goods.

**OUR TAKE:** The Hon'ble SUPREME COURT held that the activity of providing service starts from procurement of pipes, where the activity of manufacture of pipes ends. As such we find no justifiable and valid reasons to deny the CENVAT credit of duty paid on the inputs used in the manufacture of pipes manufactured by the appellant as a manufacturer. Accordingly, the impugned order is set aside. **[Decided in favour of assessee]**

**ASTAMED HEALTHCARE [I] PVT. LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, THANE-II [CESTAT MUMBAI]**

**BRIEF:** Refund of excess tax paid - duty was paid on higher price - unjust enrichment - appellant has been showing the amount for which refund is claimed, in the balance sheet under head loan and in advances. - appellant has not expended out the amounts which have been paid by them as excess Central Excise duty - Refund allowed

**OUR TAKE:** The Hon'ble CESTAT MUMBAI held that appellant has been showing the amount for which refund is claimed, in the balance sheet under head loan and in advances. This also indicates that appellant has not expended out the amounts which have been paid by them as excess Central Excise duty in this appeal. Impugned order is held as unsustainable and liable to be set aside. **[Decided in favour of assessee]**

**COMMR. OF CENTRAL EXCISE, CHENNAI VERSUS M/S SAI MIRRA INNOPHARMA PVT. LTD. [SUPREME COURT]**

**BRIEF:** Undervaluation of goods, related person. When department fails to prove any one of the following condition the allegation of under valuation is not sustainable (i) mutuality of interest, (ii) price is lower to the normal price and (iii) buyer and seller are related persons.

**OUR TAKE:** The Hon'ble SUPREME COURT held that tribunal has arrived at the aforesaid findings by giving cogent reasons on the basis of evidence that was produced by the respondent(s)/assessee(s). - these are pure findings of fact arrived at by the Tribunal. In fact, in the appeal filed by the Department it is not even a ground that these findings are perverse. No question of law arises. **[Decided against Revenue]**

**COMMISSIONER OF CENTRAL EXCISE (LTU), MUMBAI VERSUS M/S RELIANCE INDUSTRIES LTD. [CESTAT MUMBAI]**

**BRIEF:** Cenvat Credit. Eligible input services. Nexus with manufacturing activity, any services which are considered for pricing of final product, CENVAT Credit should be allowed.

**OUR TAKE:** The Hon'ble CESTAT MUMBAI held that that any services which are considered for pricing of final product, CENVAT Credit should be allowed. Appeal filed by the Revenue is devoid of merits. **[Decided in favour of assessee]**

**M/S JAY BHARAT MARUTI LTD. VERSUS CCE, DELHI – II [CESTAT NEW DELHI]**

**BRIEF:** Claim of refund or suo-moto re-credits. Reversal of excess Cenvat credit wrongly. Appellant is entitled to take refund/re-credit of the excess amount Cenvat credit reversed by them. Refund claim filed by the appellant are allowed which will regularize the suo-moto Cenvat credit taken by the appellant.

**OUR TAKE:** The Hon'ble CESTAT NEW DELHI held that it is a peculiar case where the appellant himself has reversed excess Cenvat credit which they want to take re-credit. For this excess reversal of Cenvat credit, only the account books/statutory records are the documents to be verified by the authorities below. This fact has not been disputed therefore, we hold that appellant is entitled to take refund/re-credit of the excess amount Cenvat credit reversed by them. Refund claim filed by the appellant are allowed which will regularize the suo-moto Cenvat credit taken by the appellant. **[Decided in favour of assessee]**

**M/S DELHI AUTOMOBILES LTD. VERSUS CCE, DELHI - IV, FARIDABAD [CESTAT NEW DELHI]**

**BRIEF:** Denial of Concessional rate of duty. Fuel efficient light commercial motor vehicles. The fuel efficiency certificate, if any, in possession of the supplier of engine/chassis namely Eicher Motors Ltd. cannot by itself be the basis for the appellant to claim such concession.

**OUR TAKE:** The Hon'ble CESTAT NEW DELHI held that The motor vehicles cleared by them were not subjected to any such test for fuel efficiency. The fuel efficiency certificate, if any, in possession of the supplier of engine/chassis namely Eicher Motors Ltd. cannot by itself be the basis for the appellant to claim such concession. Such interpretation will be against the terms and conditions mentioned in the said notification. We find no infirmity in the order of the lower authority. **[Decided against assessee]**

## CUSTOMS

### COURT DECISIONS

#### BALKRISHNA INDUSTRIES LTD. VERSUS THE UNION OF INDIA AND OTHERS [BOMBAY HIGH COURT]

**BRIEF:** Goods imported against advance authorization scheme - claim of exemption towards (1) whole of the Customs Duty (2) whole of the Additional Duty (CVD) (3) Anti- Dumping Duty and (4) Safeguard Duty - the Petitioner in effect wants us to direct the Government to grant an exemption which was never granted in the first place until it framed the Foreign Trade Policy 2015-2020.No merit in this Writ Petition

**OUR TAKE:** The Hon'ble SUPREME COURT held that there is no doubt that the exercise of power, whether legislative or administrative, would be set aside if there is a manifest error in exercise of such power or the exercise of the power is manifestly arbitrary. We do not find any such case before us. In fact, in the present case, the Petitioner in effect wants us to direct the Government to grant an exemption which was never granted in the first place until it framed the Foreign Trade Policy 2015-2020. No merit in this Writ Petition. **[Decided against assessee]**

#### EASTERN SILK INDUSTRIES LTD., SR SHYAM SUNDAR SAHA, M/S. LUCKY GOLDENSTAR, SHRI SHYAM SUNDAR LATH, M/S. GEMINI OVERSEAS LTD., M/S. COMET OVERSEAS PVT. LTD., SUBHAM ENTERPRISES, S.K. SILK AND GAUTAM SILKS VERSUS COMM. OF CUSTOMS (AIRPORT/ADMN.) , KOLKATA [CESTAT KOLKATA]

**BRIEF:** Duty demand. Import has obtained the DFIA license by fraud. Transfer of licenses DFIA. Duty demands and interest have been correctly confirmed against all the appellants. However penalties are not imposable upon the transferee appellants as they have no knowledge of the nature of goods used and exported by the manufacturers/exporters.

**OUR TAKE:** The Hon'ble CESTAT KOLKATA held that Duty demands and interest have been correctly confirmed by the Adjudicating authority against all the appellants. However, we are of the considered opinion that penalties are not imposable upon the transferee appellants as they have no knowledge of the nature of goods used and exported by the manufacturers/exporters. Accordingly, penalties imposed

upon the transferee appellants are set aside. **[Decided partly in favour of assessee]**

#### SRI NAND KISHORE SUMANI, SRI RAKESH SOMANI, SHRI KRISHNA ROY, SHRI MANOJ GATTANI VERSUS COMMISSIONER OF CUSTOMS, CENTRAL EXCISE AND SERVICE TAX-SILIGURI [CESTAT KOLKATA]

**BRIEF:** Seizure of gold. Smuggling, chemical examiner can only give the percentage of gold in the gold bars but cannot say whether the seized goods are of foreign origin. Seized gold bars do not bear foreign markings, do not have uniform weight/purity. Allegation of smuggling is not tenable.

**OUR TAKE:** The Hon'ble SUPREME COURT held that there could be non-observance of provisions of some other enactments like income tax or sales tax laws but the same cannot be grounds for confiscation of goods under Section 111 of the Customs Act, 1962 when there is no iota of evidence that seized gold bars are of foreign origin or smuggled into India . Suspicion/presumption howsoever strong cannot take the place of evidence. Impugned order is set aside. **[Decided in favour of assessee]**

#### KIRAN SHIP BREAKING CORPN VERSUS COMMISSIONER OF CUSTOMS JAMNAGAR (PREV) [CESTAT AHMEDABAD]

**BRIEF:** Import of two Vessels for breaking purpose Demand of differential duty - bunker and stores - the subject bunker and stores were declared by the master of the vessel in the manifest, which was statutory document. Burden cannot be shifted on the revenue.

**OUR TAKE:** The Hon'ble CESTAT AHMEDABAD held that Appellant contended before the Commissioner (Appeals) that the burden was on the Department to prove that the subject goods bunkers and stores were imported and cleared by the importer through the Customs barrier. The Commissioner (Appeals) proceeded on the basis that the subject bunker and stores were declared by the master of the vessel in the manifest, which was statutory document. Hence, the contention of the appellant is not sustainable. **[Decided against Assessee]**

# INCOME TAX

## CIRCULAR AND NOTIFICATIONS

The Govt. vide Circular No. 23/2015 dated 28<sup>th</sup> December 2015, clarified that interest on FDR's made in name of registrar general of the court or the depositor of the fund on the directions of the court will not be subject to TDS till the matter is decided by court.

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

The Govt. vide Notification No. 95/2015 S.O. 3545(E) dated 30<sup>th</sup> December 2015, makes rules 114B, 114C & 114D further to amend Income Tax Rules, 1962.

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

The Govt. vide Circular No. 24/2015 dated 31<sup>st</sup> December 2015, clarified that recording of satisfaction note under section 158BD/153C has been subject matter of litigation.

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

The Govt. vide Circular No. 25/2015 dated 31<sup>st</sup> December 2015, clarified that prior to 01/04/2016, where the income tax payable on total income as computed under the normal provisions of the act is less than the tax payable on the books profits u/s 115 JB of the Act, then penalty under 271 (1) (c) of the Act is not attracted with reference to additions/disallowances made under normal provisions. It has been further clarified that in cases prior to 01.04.2016, if any adjustments is made in the income computed for the purpose of MAT, then levy of penalty under section 271(1)(c) of the Act, will depend upon the nature of adjustments.

## COURT DECISIONS

### M/S MEGHMANI ENERGY LTD. VERSUS DEPUTY COMMISSIONER OF INCOME TAX (OSD) -I [ GUJRAT HIGH COURT]

**BRIEF:** MAT computation. Working of tax liability on book profit u/s.115JB - receipt of dividend income. Reopening of assessment - AO formed wrong belief that for the purpose of computing book profit u/s 115JB, the said amount of ₹ 15,458/- disappeared from the consideration - notice of reopening being bad in law, quashed.

**OUR TAKE:** The Hon'ble GUJRAT HIGH COURT held that for the computation of income for normal tax provisions or as per the book profit under Section 115JB of the Act, the said amount of ₹ 15,458/- was duly reflected and was accounted for. The Assessing Officer formed wrong belief that for the purpose of computing book profit under Section 115JB of the Act, the said amount of ₹ 15,458/- disappeared from the consideration. Under the circumstances, notice of reopening being bad in law, is quashed. [Decided in favour of assessee]

### JMC PROJECTS (INDIA) LTD. VERSUS PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL) [GUJRAT HIGH COURT]

**BRIEF:** Revision u/s 263 - Merely because the assessing officer has made additions in a particular manner would not mean that the CIT would be confined to scrutiny of the methodology adopted by the assessing officer and to proceed either to confirm or to delete the additions, if such methodology is not found entirely satisfactory.

**OUR TAKE:** The Hon'ble PUNJAB & HARYANA HIGH COURT held that the Commissioner lacked jurisdiction to issue the impugned notice. When the question is the very foundation of the notice and jurisdiction of the Commissioner to exercise such powers, the question of relegating the petitioner to alternative remedy or to permit the Commissioner to complete the proceedings and thereafter to direct the petitioner to take appeal route does not arise. [Decided in favour of assessee]

### THE COMMISSIONER OF INCOME TAX-10 VERSUS M/S RELIANCE SILICONES (I) LTD [BOMBAY HIGH COURT]

**BRIEF:** Any grievance of the parties in respect of the Tribunal, not complying with the order of this Court for whatever reason could not be remedied by an Appeal under Section 260A of the Act. Thus Appeal as filed from the impugned order is not maintainable under Section 260A of the Act.

**OUR TAKE:** The Hon'ble BOMBAY HIGH COURT held that the order passed by the Tribunal consequent to the order passed under Section 256(2) of the Act is not an order passed in Appeal by the Appellate Tribunal. An application under Section 256(2) of the Act and the order passed by this Court there under are in the exercise of its advisory jurisdiction. Therefore, any grievance of the parties in respect of the Tribunal, not complying with the order of this Court for whatever reason could not be remedied by an Appeal under Section 260A of the Act. Thus Appeal as filed from the impugned order is not maintainable under Section 260A of the Act..

**COMMISSIONER OF INCOME TAX VERSUS TATA TELESERVICES (MAHARASHTRA) LTD. [BOMBAY HIGH COURT]**

**BRIEF:** Tribunal power under the Act to extend the stay of demand in the appeals pending before it beyond the period of 365 days - Nothing has been shown to us as to why when the Revenue has accepted the earlier orders, a different stand is taken in this appeal - power to tribunal to extend stay upheld.

**OUR TAKE:** The Hon'ble BOMBAY HIGH COURT held that The only substantial difference in the pre-substituted third proviso and substituted third proviso to Section 254(2A) of the Act is the addition of the words "even if delay in disposing of the appeal is not attributable to the assessee" These additional words added in the substituted third proviso to Section 254(2A) of the Act has been struck down by the Delhi High Court in Pepsi Foods (P) Ltd. Vs. Asstt. Commissioner of Income Tax, (2015, DELHI HIGH COURT). [**Decided against revenue**]

**MUDRA FOUNDATION FOR COMMUNICATIONS RESEARCH AND EDUCATION VERSUS CHIEF COMMISSIONER OF INCOME TAX – AHMEDABAD-IV [GUJARAT HIGH COURT]**

**BRIEF:** Certificate under Section 10(23C)(vi) refused. Certificate under Section 12A already issued. Petitioner institution is established for the sole purpose of imparting education in a specialised field. Hence, the petition is allowed. Certificate under Section 10(23C)(vi) to be allowed.

**OUR TAKE:** The Hon'ble GUJRAT HIGH COURT held that It is an admitted position that a certificate under Section 12A of the Act has already been issued in favour of the petitioner and the same has continued till date. Therefore, it is established that the petitioner-institution is a charitable trust as far as applicability of the Income Tax Act is concerned. Considering the object of the petitioner institution, we are of the opinion that the petitioner institution is established for the sole purpose of imparting education in a specialised field. Hence, the petition is allowed. Certificate under Section 10(23C)(vi) to be allowed. [**Decided in favour of assessee**]

# STATE TAXES

## ALL INDIA VAT

### BIHAR

The Govt. vide Order No. 7111 dated 28<sup>th</sup> December 2015, extended date of filing of annual return form 31<sup>st</sup> December 2015 to 15<sup>th</sup> January 2016.

### CHATTISGARH

The Govt. vide Ordinance, 2015 dated 30<sup>th</sup> December 2015, made amendment in CVAT Schedule – II, change in rate of tax on petrol & diesel.

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

The Govt. vide Notification No. F-10/48/2015/CT/V (71) , 2015 dated 31<sup>st</sup> December 2015, made amendment in Chhattisgarh Entry Tax Act, increased rate of tax on Cigarette, Gudakhu, Pan Masala containing tobacco effective from 31.12.2015

The Govt. vide Notification No. F-10/48/2015/CT/V (72) , 2015 dated 31<sup>st</sup> December 2015, withdrew exemption granted to Pan Masala vide Notification No. F-10-68/2007/CT/V (36), dated 24.07.2007 with effect from 1<sup>st</sup> January 2016.

### DELHI

The Govt. vide Notification No. F.3(352)Policy/VAT/2013/1210-21 dated 31<sup>st</sup> December 2015, extended date for submission of Form DP-1 to 31<sup>st</sup> January 2016.

### GOA

The Govt. vide Notification No. 4/5/2005-Fin(R&C)(130) dated 29<sup>th</sup> December 2015, stated that whose turnover for the previous financial year 2014-15 has exceeded Rs.

25.00 lakhs (Rupees twenty five lakhs), shall file their quarterly returns, commencing from 1-10-2015 to 31-12-2015, online, through electronic system, within a period of 30 days from the end of the quarter. The first compulsory e-return shall be filed by said dealers on or before the 30th day of January, 2016.

**The Govt. vide Notification No. 4/5/2005-Fin(R&C)(130) dated 29<sup>th</sup> December 2015**, stated that whose turnover for the previous financial year is Rs. 25.00 lakhs (Rupees twenty five lakhs) and below, except those who have opted for composition of tax under section 7 of the said Act, shall file a single annual return of their sales for the year, in Form VAT III, online, through electronic system. The first compulsory e-return for the financial year 2015-16 shall be filed by these dealers on or before the 30th day of April, 2016.

#### HARYANA

**The Govt. vide Notification No. 01/ST-1/H.A. 6/2003/S.59/2016 dated 01st January 2015**, made revision on tax rate on sale of bidi.

#### HIMACHAL PRADESH

**The Govt. vide Notification No. EXN-F(10)-12/2015 dated 28<sup>th</sup> December 2015**, the Governor, Himachal Pradesh is pleased to constitute State Empowered Committee on Goods and Service Tax (GST) to be rolled out in the State.

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

#### MADHYA PRADESH

**The Govt. vide Notification No. F-A-3-34-2010-1-V-(45) dated 31<sup>st</sup> December 2015**, extends the period up to 31st January 2016, for completion of every such assessment and reassessment proceedings in respect of every dealer, under the said Acts, which is not completed by the 31st December, 2015.

#### MAHARASHTRA

**The Govt. vide Notification No. No. VAT. 1515/CR-158/Taxation-1 dated 30<sup>th</sup> December 2015**, after rule 52A, rules 52B has been inserted, regarding set-off in respect of certain goods covered under Schedule D of the MVAT Act.

#### ORISSA

**The Govt. vide Notification No.80-FIN-CT1-TAX-0020-2015 dated 01<sup>st</sup> January 2015**, made amendment in OVAT Schedule 'B' and Schedule 'C'. Rate of tax for Part-III of Schedule B amended to 14.5% from 13.5% & Increase in rate of tax on Foreign Liquor from 25% to 35% effective from 01<sup>st</sup> January 2015.

#### RAJASTHAN

**The Govt. vide Notification No. F26 (315) ACCT/MEA/2015/2147 dated 28<sup>th</sup> December 2015**, extended date of filing of annual return to 31<sup>st</sup> January 2016.

**The Govt. vide Notification No. F.16(708)/Tax/CCT/2015/7307 dated 31<sup>st</sup> December 2015**, issued instructions regarding furnishing of information by e-commerce entity in Form EL-1, EL-2, & EL-3.

#### UTTAR PRADESH

**The Govt. vide Circular No. 1516056 dated 30<sup>th</sup> December 2015**, extended date of filing of annual return to 31<sup>st</sup> January 2016.

**The Govt. vide Notification No. KA.NI.-2-1979/XI-9(235)/12-U.P.Act-5-2008-Order-(150)-2016 dated 01<sup>st</sup> January 2015**, made amendment in UPVAT Part-A of Schedule-II - Regarding 'Plastic Footwear'.

#### COURT DECISIONS

**M/S CHERAN CEMENTS LTD. VERSUS THE JOINT COMMISSIONER (CT) , THE COMMERCIAL TAX OFFICER (MADRAS HIGH COURT)**

**BRIEF:** Rejection of applications for settlement under the Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2011 - A person who had collected tax from the customers and allowed to retain it under a deferred payment scheme, cannot claim that he would pay 40% of what was collected by him together with interest calculated from the date of assessment.

**OUR TAKE:** The Hon'ble MADRAS HIGH COURT held that as per the agreement and the interest free deferral scheme, they were liable to pay interest from the date of filing of monthly returns. The emphasis on bonafide conduct of an assessee made by the Division Bench in EID Parry is completely absent in this case. This case is governed not merely by the statutory provisions relating to payment of interest, but also by the agreement executed by the appellant with reference to the interest free deferral scheme. A person who had collected tax from the customers and allowed to retain it under a deferred payment scheme, cannot claim that he would pay 40% of what was collected by him together with interest calculated from the date of assessment. This is not the purport of the Samadhan Scheme. **[Decided against assessee]**

#### COMMERCIAL TAXES OFFICER VERSUS M/S RAMDEV FOOD PRODUCTS PVT. LTD. & OTHERS [RAJASTHAN HIGH COURT]

**BRIEF:** Classification - VAT - AO was of the view that in so far as Asafetida (Hing) is concerned, the tax of 4% only was being paid but the AO was of the view that it falls in the category of Packed Masala and once it is a Packed Masala, it falls in the entry where levy of tax is @16% - When spices are not mixed, it remains Asafetida (Hing) only and no new product emerges - to be levied @4%.

**OUR TAKE:** The Hon'ble RAJASTHAN HIGH COURT held that masala is always treated to be mixing of two and more spices and since Asafoetida (Hing) is not mixture of two and more spices, therefore, it cannot be termed as a Masala. It is also worth mentioning that the claim of counsel for the respondent that in most of the States Asafoetida (Hing) finds place in the list of Kirana goods, also supports contention of the Tax Board and the arguments raised by counsel for the respondents and not disputed by the counsel for the Revenue. - Tax Board has correctly analyzed the Entry No.82 and no contrary view can be taken in the facts and circumstances of the instant petitions. When the very levy of rate of tax @ 4% has been found to be properly levied then the question of penalty does not arise. **[Decided against Revenue]**

## OTHER UPDATES

### FEMA

The RBI vide Notification No. FEMA 12R/2015-RB dated 29<sup>th</sup> December 2015, notifies the regulations / conditions under which a person resident in India allowed to have a general or life insurance policy issued by an insurer outside India.

The RBI vide Notification No. FEMA 15R/2015-RB dated 29<sup>th</sup> December 2015, notifies debit cards, ATM cards or any other instrument by whatever name called that can be used to create a financial liability.

The Govt. vide Notification No. RBI/2015-16/279 dated 31<sup>st</sup> December 2015, extended credit facilities to overseas step-down subsidiaries of Indian Corporate.

The Govt. vide Notification No. RBI/2015-16/278 dated 31<sup>st</sup> December 2015, discontinuation of the requirement for Paper to Follow (P2F) for Central Government cheques under Cheque Truncation System

### ALLIED LAW

### COURT DECISIONS

#### DEVELOPMENT CREDIT BANK LTD. VERSUS APPELLATE TRIBUNAL FOR FORFEITED PROPERTY NEW DELHI AND OTHERS [BOMBAY HIGH COURT]

**BRIEF:** Condonation of delay in filing of appeal. Power of tribunal under SAFEMA to condone the delay, the Appellate Tribunal had no power to condone the delay beyond the period of 60 days from the date on which the order impugned in the appeal was served on the aggrieved party.

**OUR TAKE:** The Hon'ble BOMBAY HIGH COURT held that In view of the authoritative pronouncements of the Supreme Court as well as a Division Bench of this Court, we are clearly of the view that Respondent No.1 had no power to condone the delay beyond the period of 60 days from the date on which the order was served upon the Petitioners. As stated earlier, it is admitted that the appeal of the Petitioners was not filed within the aforesaid period, and therefore, clearly time barred. In this view of the

matter, no fault can be found with the impugned order requiring interference in our extraordinary, equitable and discretionary jurisdiction under Article 226 of the Constitution of India. **[Decided against the appellant]**

## COMPANY LAW

### COURT DECISIONS

**BRIEF: Application u/s 8 of the Arbitration and Conciliation Act, 1996 - Whether the dispute raised in a properly filed petition under sections 397, 398, 402 and 403 of the Companies Act can be referred to arbitration in accordance with the agreement between the parties?**

**OUR TAKE:** The **Hon'ble COMPANY LAW BOARD** held that the arguments look attractive at the first blush but when examined closely find that it lacks substance. The aforesaid observations were made in the teeth of the view taken by **Hon'ble** Supreme Court in the case of Haryana Telecom Ltd. (1999, SUPREME COURT OF INDIA ) that Arbitrator would have no power to order for winding up of a company for which a sole fora has been provided by the Companies Act. I do not think that para 27 of the judgment of the Supreme Court advances the case of applicant-petitioner. It cannot be concluded that arbitrator enjoys all those powers which are vested in a CLB under sections 397, 398, 402 and 403 of the Companies Act. I don't feel the necessity of refereeing to various other judgments of Company Law Board on which reliance has been placed by Mr. Nayyar. The prayer for making reference to the arbitration stands rejected

## LATEST NEWS ON PROPOSED GST

**25 Dec, 2015,** Tax advocates have suggested to finance minister Arun Jaitley that administration of the goods and service tax (GST) – once it passes the legislative hurdle – be handed over to state revenue authorities and not the central ones.

**21 Dec, 2015,** Cigarette manufacturers such as ITC, Godfrey Phillips and Golden Tobacco will have to 'rework' their supply chain when the GST is implemented in the country.

**28 Dec, 2015,** the states appears to have dropped their reservations against bringing the petroleum products under the ambit of the proposed Goods and Service Tax (GST).

**29 Dec, 2015,** the GST, which has been making for nine years, is undoubtedly the most significant and transformative piece of tax reform that India has seen since independence.

**29 Dec, 2015,** the congress took to you tube on Monday to counter the BJP on the GST bill after the finance minister Arun Jaitely told the news agency that the government's top priority for 2016 will be to the proposed law.

**30 Dec, 2015,** ICAI president Chartered Accountant Manoj Fadnis said that delay in implementation of the GST Bill will deprive the consumers of its benefits.

**01 Jan, 2015,** GST bill passage and the Union Budget would be the key triggers for the Indian markets in the New Year.

**02 Jan, 2015,** BJP's stubborn attitude blocked GST bill, says Congress leader P Chidambaram.

**02 Jan, 2015,** finance minister asks revenue officials to make taxation a painless process for people.

**03 Jan, 2015,** govt. ready for special house session to pass GST.

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