



ASC Times

All India Taxes Weekly Reference

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Solving
any **tax**
puzzle

Tax saving advice
across all the taxes



From the CEO's Desk



Alok Kumar Agarwal

CEO

ASC Group.

Dear Reader,

Innovation is the key to success. No company or organization can thrive without being innovative. According to the data collected from 2000, out of 500 Fortune companies about 52% of them have been merged, acquired or gone bankrupt. Though it is not easy to innovate but one must spend on R&D in house or else outsource what you cannot do yourself. This holds true not only for organizations but also for individuals and more importantly for parents.

For individuals it is very important to be creative in their day-to-day activities, using their resources of time and money wisely to be abreast, and growing. In the 21st century though what has changed drastically is the way one has to raise their kids. Some of the expenses, which never existed before, are a must these days. Such as play-school, day care centres, co-curricular classes and expensive gadgets are few of them.

Likewise, in the economy or in different sectors of the economy Center government and states' governments also need to focus on innovation. Recently it is been observed that not only in manufacturing sector, services sector also saw a slump. The Nikkei, services business activity Index fell to 51 from 53.7 in April, suggesting a slow down of services activity for the second month in a row. Data collected by the same agency shows fall of factory output slipping to a five month low. Barring the projects like "make in India" still a lot has to be done. Only 15% of the firms forecast growth, citing favourable government policies, improved marketing strategies, business expansion plans and hopes of better demand conditions.

TAX CALENDER

Due Date	Description	Law
06 June	Deposit of Tax	Service Tax Law
		Central Excise Law
07 June	Deposit of TDS	Orissa VAT, Tripura VAT, Mizoram VAT.
		Income Tax Law
	Issue of TDS Certificate	Orissa VAT
09 June	Return Filing	Gujarat VAT
10 June	Deposit of Tax	Chhattisgarh VAT, Kerala VAT, Madhya Pradesh VAT.
	Deposit of TDS	Chhattisgarh VAT, Madhya Pradesh VAT, Mizoram VAT, Nagaland VAT
	Return Filing	Karnataka VAT, Kerala VAT, Maharashtra VAT
Central Excise Law		
12 June	Deposit of Tax	Gujarat VAT

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COUNTRY WIDE HOLIDAYS FOR THE WEEK

Date	Occasion/Festival	Region
NA	NA	NA

CENTRAL TAXES

SERVICE TAX

CIRCULAR & NOTIFICATIONS

The Govt. vide Instruction No. F. No. B-1/19/2016 -TRU dated 31st May 2016, made Introduction of Enactment of Bill, 2016

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

COURT DECISIONS

CST, DELHI VERSUS M/S MERA BABA REALITY ASSOCIATES (P) LTD. [CESTAT NEW DELHI]

BRIEF: Refund claim - payment of service under protest - Merely on requesting the Superintendent to refund the service tax, without even quantifying the same and without even referring to the period during which the same was deposited, especially when they continued to pay in future awaiting the decision of the HC cannot be considered to be a refund application.

OUR TAKE: The hon'ble CESTAT NEW DELHI held that the fact the service tax was deposited by the Assessee in relation to the services of Residential Complex Construction is required to be examined. The factual position is required to be ascertained irrespective of the fact as to whether the Assessee was registered under the said services or not. Further, the principle of unjust enrichment is also required to be examined. Such factual verifications can be done only at the level of Original Adjudicating Authority, for which purpose we remand the matter to him. [Revenue's appeal is partially allowed and partially remanded]

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

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

OUR TAKE: The hon'ble SUPREME COURT held that It has consistently been laid down by this Court that construction of the terms of a Contract is primarily for an Arbitrator or Arbitral Tribunal to decide and unless the Arbitrator or Arbitral Tribunal construes the contract in such a way that no fair minded or reasonable person could do, no interference by Court is called for. Viewed thus, we do not see any reason or justification to interfere in the matter. The view that the increase in rates of service tax in respect of bank guarantee and insurance premium is directly relatable to terms of the contract and performance under the Contract is certainly a possible view. [Decided against the appellant]

SANJAY AUTOMOBILE ENGINEERS PVT. LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE [CESTAT MUMBAI]

BRIEF: Demand of service tax - Period of limitation - once the audit of the records of the assessee takes place no objection is taken on a issue in dispute, the demand raised by invoking the extended period is unsustainable.

OUR TAKE: The hon'ble CESTAT MUMBAI held that the Hon'ble High Court of Karnataka in the case of CCE, Bangalore Vs MTR Foods has held that once the audit of the records of the assessee takes place no objection is taken on a issue in dispute, the demand raised by invoking the extended period is unsustainable. Therefore, in view of the authoritative judicial pronouncement, the demand is barred by limitation. The impugned order is set aside. [Decided in favour of appellant]

M/S SUNDARAM CLAYTON LTD. VERSUS CCE, CHENNAI - II [CESTAT CHENNAI]

BRIEF: Cenvat credit - various input services - all the services pertain to the manufacturing activity and the respective services were input for the said activity for which that was utilised.

OUR TAKE: The hon'ble CESTAT CHENNAI held that all the services pertain to the manufacturing activity and the respective services were input for the said activity for which that was utilised - - Therefore, the decision of the adjudicating authority denying Cenvat Credit on above counts is reversed and the appellants are entitled to cenvat credit on all the services. [Decided in favour of appellant]

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

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

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

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

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

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

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

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

OUR TAKE: The hon'ble CESTAT NEW DELHI held that by relying on the earlier decisions held that BSS would cover only the services which are supporting nature to the main business, like services relating to customer relationship telemarketing, office infrastructure, etc and would not cover the services of renting of machinery or equipment for production or manufacture, which is an activity relating to conduct of main business. The applicants have strong prima

facie case in their favour and therefore, waiver of pre-deposit is granted for admitting the appeal. At this prima facie stage, by following the stay orders passed earlier it is found that, in similar set of facts, the present applicant has to be given full waiver of pre-deposit of adjudicated dues. **[Stay and waiver granted]**

GRR LOGISTICS PRIVATE LTD. VERSUS COMMISSIONER OF SERVICE TAX, CHENNAI [CESTAT CHENNAI]

BRIEF: Levy of penalty - appellant has already been spared from non-imposition of penalty u/s 78 by the adjudicating authority - What is not alleged in the show cause notice, cannot be traversed at a later point of time in any proceedings - No penalty.

OUR TAKE: The hon'ble CESTAT CHENNAI held that what is not alleged in the show cause notice, cannot be traversed at a later point of time in any proceedings. Therefore, by following the same the penalty under section 78 of the Finance Act is unsustainable which is proved by the judgment of the Tribunal in the case of CST, New Delhi Vs Independent News Services P.Ltd. [2011 (3)173 - CESTAT, NEW DELHI]. Accordingly, penalty is set aside. **[Decided in favour of appellant]**

M/S BSL LTD. VERSUS C.C.E., JAIPUR-II [CESTAT NEW DELHI]

BRIEF: Waiver of penalty is pleaded as the penalty under Section 78 ibid has been imposed and for an option to pay 25% (reduced) mandatory penalty under Section 78 ibid as the option was not given at the lower levels. - Levy of penalty in excess of penalty u/s 76 set aside.

OUR TAKE: The hon'ble CESTAT NEW DELHI held that by following the law laid down by the Gujarat High Court in the case of CCE, Surat Vs. Rajeshree Dyg. & Ptg. Mills (P) Ltd. [2014 - GUJARAT HIGH COURT] held against the assessee which was again appealed by assessee in the Supreme Court reported in [2016 - SUPREME COURT] and the decision of Delhi High Court in the case of Pr. CST-II Vs. Top Security Ltd. [2015 - DELHI HIGH COURT], the impugned order is upheld except for penalty under Section 76 ibid. **[Decided partly in favour of appellant]**

CENTRAL EXCISE

CIRCULAR & NOTIFICATIONS

The Govt. vide Notification No. 29/2016 dated 01st June 2016, Introduction of indirect tax dispute resolution scheme rules, 2016.

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

The Govt. vide Notification No. 80/2016 dated 02nd June 2016, notifies rate of exchange of conversion of the foreign currency with effect from 3rd June 2016.

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

The Govt. vide Circular No. F. No. 473/20/2013-LC dated 01st June 2016, manner of payment of interest on warehoused goods.

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

COURT DECISIONS

COMMISSIONER, CENTRAL EXCISE COMMISSIONERATE, PANCHKULA VERSUS M/S CURE QUICK REMEDIES P. LTD., KARNAL (PUNJAB & HARYANA HIGH COURT)

BRIEF: In the present scheme of SSI exemption, manufacturer has been given clear option to opt both of the two benefits i.e. (a) to avail the full SSI exemption without Cenvat Credit and (b) payment of duty on Goods manufacturing under the brand name of others with availing Cenvat credit.

OUR TAKE: The Hon'ble PUNJAB & HARYANA HIGH COURT held that it had been rightly distinguished by the Tribunal on the same lines as has been noticed by the Apex Court in the aforesaid pronouncement. Accordingly, there is no error in the approach of the Tribunal which may warrant interference by this Court. **[Decided against the revenue]**

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

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

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

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

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

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

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

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

OUR TAKE: The hon'ble MADRAS HIGH COURT held that the case of the assessee was that there was a claim for refund, which could have been adjusted by the Department. While passing an order in appeal No.178/2003, the Appellate Commissioner found that at least in respect of the claim

under Order in Original bearing No.18/2000, it was adjustable. Therefore, that portion of the order of the Tribunal as well as the order in appeal is without any application of mind to the quantum of interest under Section 11AA.

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

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

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

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

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

OUR TAKE: The hon'ble **MADRAS HIGH COURT** held that if an order of refund is passed after adjudication, the amount refunded will not fall under the category of erroneous refund so as to enable the order of refund to be revoked under Section 11A(1). One Authority cannot be allowed to say in a collateral proceeding that what another Authority did was an erroneous thing. Therefore, the question of law has to be answered in favour of the appellant/assessee.

CUSTOMS

CIRCULAR & NOTIFICATIONS

The Govt. vides notification No. 36/2016-Cus dated 01st June 2016, notifies addition of new ports in EP to allow import/export under EP schemes from these ports.

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

The Govt. vides notification No. 80/2016-Cus dated 02nd June 2016, notifies rate of exchange of the foreign currency with effect from 3rd June,2016.

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

COURT DECISIONS

GREATSHIP (INDIA) LTD. VERSUS UNION OF INDIA & ORS. [DELHI HIGH COURT]

BRIEF: SFIS - there is no justification for the DoR to insist that the vessels of the Petitioner that have completed more than three years after import should be transferred only by sale within group companies or managed hotels or be re-exported.

OUR TAKE: The hon'ble **DELHI HIGH COURT** held that the letter dated 12th June 2013 issued by the DoR asking the DGFT to keep in abeyance the NOC granted by the PRC is contrary to the legal position explained above and can have no binding effect on the DGFT. On questions of interpretation of the FTP, it is the DGFT whose views will prevail. For the same reason, the stand of the DoR conveyed to the Court through the letter to the DoR, and recorded in the Court's order cannot prevail. Hence, the DoR is restrained from objecting to the transfer/sale of the vessels Greatship Aarti, Greatship Ahalya, Greatship Amrita, Greatship Anjali and Greatship Asmi belonging to the Petitioner since each of the said vessels has been imported more than five years ago. **[Petition disposed of]**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

COMMISSIONER OF (IMPORT & GENERAL) , NEW DELHI VERSUS MR. SHAMSUDDIN MALIK, SHRI DIDAR SINGH [GOVT. OF INDIA]

BRIEF: Smuggling of memory cards in unaccompanied baggage - adjudicating authority has rightly ordered absolute confiscation of the impugned goods - commissioner (Appeals) has erred in allowing releasing of the impugned goods on payment of redemption fine and reduced penalty.

OUR TAKE: The hon'ble **GOVT OF INDIA** held that the justification of appellate authority in reducing the penalty is not tenable and Government restores the penalty amount as imposed by the original authority on both the respondents. **[Revision applications allowed in favor of revenue]**

INCOME TAX

COURT DECISIONS

TECHNIP SINGAPORE PTE LTD. VERSUS DIRECTOR OF INCOME TAX & ANR. [DELHI HIGH COURT]

BRIEF: 'Royalty' receipt - Revenue was not able to show that the Petitioner had a PE in India; the income earned by the Petitioner from the contract with IOCL cannot be brought to tax in India in terms of Article 7 of the DTAA - Decision of AAR reversed.

OUR TAKE: The hon'ble DELHI HIGH COURT held that it was erroneously concluded that the payment for such mobilisation/demobilisation constitutes royalty. In that view of the matter, the consideration for installation cannot not be characterized as FTS and brought within the ambit of Article 12.4(a) of the DTAA. Revenue was not able to show that the Petitioner had a PE in India, the income earned by the Petitioner from the contract with IOCL cannot be brought to tax in India in terms of Article 7 of the DTAA. **[Decided in favour of assessee]**

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

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

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

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

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

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

assessee filed their return on 16.07.2004. The assessing officer calculated interest for the period starting from December 2002 until the date of filing of the return. It is not disputed that the notice dated 23/ the transferee officer issued 24.12.2002. It is only the order under Section 127 of the Act, which was served on the appellants in September 2003. The appellants were bound to comply with the notice and file their return and failure to file the return would attract interest under Section 158 BFA. **[Decided in favour of the revenue]**

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

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

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

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

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

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

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

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

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

STATE TAXES

ALL INDIA VAT

GUJRAT

The Govt. vides Notification No. (GHN-36) VAR-2016(39)/TH dated 31st May 2016 amends rule 5 for Gujarat Value Added Tax.

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

HIMACHAL PRADESH

The Govt. vides Notification No. EXN-F(10)-20/2014 dated 01st June 2016, proposes to make amendments in SCHEDULE-'B' appended to the Act ibid and the same is hereby published in the Rajpatra, Himachal Pradesh for the information of general public.

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

JHARKHAND

The Govt. vides Notification No. S.O. 26 dated 01st June 2016, exempts the Central Master Canteen of Central Reserve Police Force (CRPF), Group Centre, Sembo, Ranchi, TIN- 20060107505 from levy and payment of Tax payable on the consumer goods under the said Act

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

MADHYA PRADESH

The Govt. vides Notification No. F-A-3-20/2013/1/V (32) dated 30th May 2016, specifies two classes of registered dealers for the purpose of assessment - Requirements, restrictions and conditions

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

MAHARASHTRA

The Govt. vides Notification No. VAT 1516/CR 77/TAXATION-1 dated 31st May 2016 amends schedule D- Increase in rate of tax on motor spirit.

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

RAJASTHAN

The Govt. vides Notification No. F.16 (708)/TAX/CCT/2015/122 dated 31st May 2016, amends Notification No. F.16 (708)/Tax/CCT/2015/7307 dated 31.12.2015 - Regarding e-commerce Form EL-1, EL-2 and EL-3.

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

The Govt. vides Notification No. 480/2016/19(120)/XXVII(8)/2012 dated 01st June 2016, extends date of filing of fourth quarterly return of assessment year 2015-16 upto 30/06/2016.

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

TELENGANA

The Govt. vides Notification No. G.O. MS. No. 115 dated 01st June 2016 hereby prescribes 8% as the rate of discount for calculating and paying the net present value of the deferred taxes by an industrial unit under the said rule. Provided, the Industrial unit is permitted payment of amount at the discount rate of 8% if the current year instalment is paid at least 10 months in advance. The discount rate of 8% prescribed in this notification is valid upto 31-03-2017 and shall come into effect from 01-06-2016.

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

UTTAR PRADESH

The Govt. vides Notification No. KA.NI.-2-773/XI-9(135)/2015-U.P.ACT-30-07-ORDER-(158)-2016 dated 02nd June 2016, levies Entry Tax on H.D.P.E./P.P. Laminated and Un-laminated Bags and H.D.P.E./P.P. Laminated and Un-laminated Fabrics.

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

The Govt. vides Notification No. KA.NI.-2-773/XI-9(135)/2015-U.P.ACT-30-07-ORDER-(159)-2016 dated 02nd June 2016, specifies Rate of Entry Tax on H.D.P.E./P.P. Laminated and Un-laminated Bags and H.D.P.E./P.P. Laminated and Un-laminated Fabrics.

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

The Govt. vides Notification No. KA.NI.-2-773/XI-9(135)/2015-U.P.ACT-30-07-ORDER-(160)-2016 dated 02nd June 2016, notifies that Tax Rebate to H.D.P.E./P.P. Laminated and Un-laminated Bags and H.D.P.E./P.P. Laminated and Un-laminated Fabrics.

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

COURT DECISIONS
RECKITT BENCKISER (INDIA) PVT. LTD. VERSUS STATE OF UTTARAKHAND AND ANOTHER (UTTARAKHAND HIGH COURT)

BRIEF: Restriction on input tax credit - The State only wished to provide the benefit of ITC in a limited manner even in respect of raw materials used for production of finished goods, which are stock transferred. We cannot deny the right of the State with its plenary powers of legislation within the field of legislation, which is admittedly and legitimately exercised by it otherwise, the right to raise taxes.

OUR TAKE: The hon'ble UTTARAKHAND HIGH COURT held that special appeals were filed on behalf of Hindustan Unilever Limited against the judgment and order of learned Single Judge without meeting any success. Furthermore,

when the SLPs were preferred before the Hon'ble Supreme Court, the same were also dismissed on 07.12.2015. Since the propositions of law have already been dealt with and discussed by learned Single Judge and Hon'ble Division Bench of this Court and SLPs against which have also been dismissed, therefore, no useful purpose will be served by discussing those provisions again. There is no merit in the aforementioned writ petitions. **[Decided against the petitioner]**

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

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

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

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

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

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

OTHER UPDATES

FEMA

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

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

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

ALLIED LAWS

COURT DECISIONS

JIJU LUKOSE VERSUS STATE OF KERALA [KERALA HIGH COURT]

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

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

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

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

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

COMPANY LAW

COURT DECISIONS

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

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

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

LATEST NEWS ON PROPOSED GST

04th June 2016, India will attempt to keep the proposed Goods & Services Tax (GST) rate as moderate as possible and the government will push for passage of the bill introducing the levy in the upcoming monsoon session of Parliament, finance minister Arun Jaitley said

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