ASC Times

All India Taxes Weekly Referencer

Vol: Sep 7 - Sep 13, 2015

From the CEO's Desk

Dear Reader,

We are a developing economy. A lot of funds are required to create the infrastructure and many other developments. These funds are raised from various sources, i.e. tax collections, internal and external borrowings, grants and donations and so on. Borrowing money from different sources is the debt on the government, which is repaid from the revenues. We all know that we have a negative BOP (balance of payments). Which manifests itself in a highest debt-GDP ratio worldwide. So to increase the inflows Government proposes to increase the tax base by increasing the tax-GDP ratio. Now I would like you to ask that is that really a solution for a country where already the inflation is very high in comparison to its peers, and any increase in the tax will eventually affect the inflation directly. Don't you think that rather than increasing the tax; emphasis should be more on the monitoring of the expenditure. And rather than wasting a lot of money on unproductive expenditure, it should be spent in such a way that people get trained and skilled in earning their own livelihood.

And if anything can be done for collecting the taxes, it should be in the form of motivating the citizens to pay their dues correctly and honestly. Big business houses should be given incentives to create infrastructure in underdeveloped areas. Corruption in the government agencies should be abolished. So that the revenue can increase without increasing the tax base. One such effort is done by the Service Tax department. It has identified five key sectors where it sees a lot of tax evasion. These sectors are Telecom, Renting of Property, Aviation Operations, Manpower Recruitment & Security Agencies and Works Contract & Construction.

One more sector where there is a lot of ambiguity as far as the tax collection is concerned is 'E-Commerce'. E-commerce is spreading exponentially but there is no clear tax structure. If GST would have implemented than it could easily be covered but as our tax laws does not say anything for a newly mushroomed sector, and the loss of revenue from Brick and Mortar could not be compensated from the e-commerce tax collection, Government needs to look in this sector for better opportunities as it is the thing of future. E-commerce is not only capable of creating a lot of jobs it also can bring down the inflation as it is a form of direct selling and it can cut down on distribution cost.

Alok Kumar Agarwal
CEO
ASC Group.

TAX CALENDER

Due Date	Description	Law
7 September	Issue of TDS Certificate	Orissa VAT
	TDS Deposit	Orissa VAT , Tripura VAT
	Due date for deposit of Tax deducted/collected	Income Tax Law
8 September	Return Filing	Gujarat VAT
10 September	Tax Payment	Chhattishgarh VAT
	Return Filing	Karnataka VAT, Kerala VAT
	TDS Deposit	Chhattishgarh VAT, Madhya Pradesh VAT, Nagaland VAT
	Monthly Return Filing	Central Excise Law
12 September	Return Filing	Gujarat VAT
13 September	Return Filing	Gujarat VAT, Nagaland VAT

INDEX GUIDE

COUNTRY WIDE HOLIDAYS FOR THE WEEK

Date	Occasion/Festival	Region
12 September	Pitra Visarjan Amavasya	Uttarakhand

CENTRAL TAXES

SERVICE TAX

COURT DECISIONS

M/S AMBEDKAR INSTITUTE OF HOTEL MANAGEMENT VERSUS COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX, CHANDIGARH (CESTAT NEW DELHI)

BRIEF: Since the appellant are preparing mid day meals in their Institute and not in the schools where the meals are served are not involved in serving of the meals in any manner in our view they are not covered by the definition of outdoor caterer.

OUR TAKE: The **Hon'ble CESTAT NEW DELHI** held that since the appellant are preparing mid day meals in their Institute and not in the schools where the meals are served are not involved in serving of the meals in any manner, in our view they are not covered by the definition of "outdoor caterer" and hence their activity of preparing and supplying meals for mid day scheme would not be covered by the definition of taxable service under Section 65(106(zzt).

As regards the mandap keeper service alleged to have been provided by them during the period of dispute, we find that during each financial year during the period of dispute its turnover is well within the threshold limit of Notification No. 6/2005-ST and therefore they will be exempted from service tax. [**Decided in favour of assessee**]

COMMISSIONER OF CENTRAL EXCISE, PUNE-I VERSUS M/S. GANESH ENTERPRISES (CESTAT MUMBAI)

BRIEF: It is not the appellant who has committed an offence of non payment of service tax it is the consultant who has defrauded them therefore there is reasonable cause for waiver of penalty under Section 78.

OUR TAKE: The **Hon'ble CESTAT MUMBAI** held that Commissioner (Appeals) has discussed in details that regarding the fraud committed by the consultant with the appellant for not depositing service tax in the government's account for which FIR proceedings also initiated against consultant by the department, which clearly shows that it is not the appellant who has committed an offence of non payment of service tax, it is the consultant, who has defrauded them therefore there is reasonable cause for waiver of penalty under Section 78. Commissioner (Appeals) has correctly set aside the penalty imposed under Section 78. However, penalty u/s 77 is reduced. [**Decided partly in favour of Revenue**]

JAIN IRRIGATION SYSTEMS LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, NASHIK (CESTAT MUMBAI)

BRIEF: The case is related to Import of taxable services and reverse charge thereon. As the duty stands paid and credit of duty paid is admissible the impugned order is set aside to the extent of recovery of interest and imposition of penalties.

OUR TAKE: The **Hon'ble CESTAT MUMBAI** held that service tax was paid by the appellant after the issue of the show cause notice and before the passing of the adjudication order. Revenue relies on the decision of the Apex court in the case of Kitply Industries (2011 (4) TMI 523 - SUPREME COURT OF INDIA). The revenue neutral situation comes about in relation to the credit available to the appellant himself and not by way of availability of credit to anyone else. Therefore, the case of Jay Yushin Ltd [2000 (7) TMI 105 - CEGAT, COURT NO. I, NEW DELHI] applies in the present situation after considering the guidance drawn by the Supreme Court in the case of KitPly Industries (supra). In this view of the matter, as the entire exercise is revenue neutral we find that mens rea is not established for imposition of penalties. As the duty stands paid and credit of duty paid is admissible, the impugned order is set aside to the extent of recovery of interest and imposition of penalties. [**Decided in favour of assessee**]

CENTRAL EXCISE

COURT DECISIONS

C.C.E., SURAT-II VERSUS M/S. BHARAT METAL DECORATORS (SUPREME COURT)

BRIEF: The issue is regarding Classification of good i.e. printing of metal backed advertisement material/posters commonly known as Danglers. Whether the respondent/assessee's product was classifiable under Chapter 49 sub-Heading 4901.90 attracting nil excise duty or it is to be classified under Chapter 83 sub-Heading 8310 of the Central Excise Tariff Act Chapter 49 deals with "Printed books, newspapers, pictures and other products of the printing industry; manuscripts, typescripts and plans"?

OUR TAKE: The **Hon'ble SUPREME COURT** held that assessee is engaged in the business of printing metal backed advertisement material/posters, commonly known as Danglers, placed at the point of sale, for customers information/advertisement of the products brand etc; the entities have calendars, religious motifs also printed in different languages. Products cannot be treated as Printed Metal advertisement posters. The Tribunal [2005 (3) TMI 237 - CESTAT, MUMBAI] has considered this aspect in detail. In its impugned judgment the Tribunal had rightly decided the case in favour of the respondent-assessee holding that the products were classifiable as printed products of the printing industry. [**Decided against Revenue**]

THE COMMISSIONER OF CENTRAL EXCISE, CHENNAI IV COMMISSIONERATE, CHENNAI VERSUS CUSTOMS EXCISE & SERVICE TAX, APPELLATE TRIBUNAL, CHENNAI AND OTHERS (MADRAS HIGH COURT)

BRIEF: Whether in the facts and circumstances of the case, the first respondent Appellate Tribunal is right in holding that the second respondent is entitled to CENVAT Credit on the capital goods/inputs used in the manufacture of goods which are exempted and which are cleared without payment of duty on Job work basis.

OUR TAKE: The **Hon'ble MADRAS HIGH COURT** held that assessee had manufactured machine forgings on job work basis and supplied the same to the principal manufacturers without payment of duty. The assessee were also manufacturing similar goods on their and the same were cleared on payment of duty to independent buyers. In such duty payments, the assessee utilized CENVAT Credit on capital goods and inputs which were used in the manufacture of the job-worked goods, which was objected to by the Department. Hence show cause notice was issued alleging that as the inputs have been used in the manufacture of final products which were cleared without payment of duty, any CENVAT Credit of the duty paid on such inputs would not be available. The Adjudicating Authority sustained the allegations and ordered recovery of the CENVAT Credits in question. On appeal, at the instance of the assessee, the Commissioner (Appeals) upheld the order of the Adjudicating Authority, against which appeal has been filed before the Tribunal by the assessee. Both sides fairly conceded before this Court that the issue involved in these appeals are decided by this Court reported in [2014 (9) TMI 444 - Madras High Court](Commissioner Versus Hwashin Automotive India Pvt. Ltd.), wherein by following the unreported decision, similar question raised by the Revenue was answered against the Revenue. [**Decided against Revenue**]

COMMISSIONER OF CENTRAL EXCISE & CUSTOMS VERSUS M/S. DUTRON PLASTICS (GUJARAT HIGH COURT)

BRIEF: Whether or not the refund of Central Excise duty is admissible u/s 11B of CEA 1944 if the same is invoiced and collected and thereby passed on to the purchasers and sought to be claimed on the basis of the credit notes issued to the buyers.

OUR TAKE: The **Hon'ble GUJARAT HIGH COURT** held that excise duty paid by the Industry or assessee and it has been passed on to the consumers or the purchasers of the goods, then the assessee is not entitled to claim any refund of the amount from the Central Excise Department, as such a claim would amount to unjust enrichment. This decision has been followed by the Apex Court in the case of SAHAKARI KHAND UDYOG MANDAL LTD. VS. COMMISSIONER OF CENTRAL EXCISE & CUSTOMS reported in [2005 (3) TMI 116 - SUPREME COURT OF INDIA]. In this view of the matter, we are of the considered opinion that the view taken by CESTAT in directing refund of the amount to the assessee is illegal and deserves to be set aside. [**Decided in favour of Revenue**]

INDIA PISTONS LTD. VERSUS SUPERINTENDENT OF CENTRAL EXCISE, HOSUR (MADRAS HIGH COURT)

BRIEF: Demand u/s 11AA where SCN not issued. Impugned order is only a communication and not a demand to pay the Excise duty together with interest as stated by the respondent.

OUR TAKE: The **Hon'ble MADRAS HIGH COURT** held that impugned order is only a communication and not a demand to pay the Excise duty together with interest as stated by the respondent, it is open to the respondent to issue a fresh notice to the petitioner under the provisions of the Central Excise Act and after receipt of a reply within a stipulated time, affording an opportunity of being heard to the petitioner, it is open to the respondent to pass appropriate orders on merits and in accordance with law. [**Petition disposed of**]

CUSTOMS

NOTIFICATIONS & CIRCULARS

The **Govt. vide Notification No. 83/2015, dated 31 August, 2015** amends Notification No 36/2001, dated 3 August, 2001 for Fixation of T V of Edible oil, Brass, Poppy seed, Areca nut, gold and Silver.

OUR TAKE: In the said notification there is amendment in Table-1, Table-2, and Table-3.

The **Govt. vide Notification No. 85/2015, dated 4 September, 2015** amends Principal Notification No. 12/97.

OUR TAKE: In the said notification, in the Table, against serial number 10 relating to the State of Rajasthan, after item (viii) and the entries relating thereto, in column (3) the item "(ix) Kathuwas and Mandhan Village, District Alwar" and in corresponding column (4) the entry "Unloading of imported goods and loading of export goods" shall be inserted.

The **Govt. vide Notification No. 46/2015, dated 4 September, 2015** seeks to levy definitive anti-dumping duty on imports of Acrylonitrile Butadiene Rubber (NBR), originating in or exported from Korea RP for a period of five years.

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

The **Govt. vide Notification No. 84/2015, dated 3 September, 2015** notified rate of exchange of conversion of the foreign currency with effect from 4 September, 2015.

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

COURT DECISIONS

M/S. RPS GLOBAL COURIER SERVICES VERSUS COMMISSIONER OF CENTRAL EXCISE, CUSTOMS & SERVICE TAX, TRIVANDRUM (KERALA HIGH COURT)

BRIEF: Illegitimate benefit of duty free Bona fide gifts duty is cast on authorised courier to act on behalf of consignor and consignee and suffer consequences as has undertaken by them under Regulations and bond furnished to statutory authority.

OUR TAKE: The **Hon'ble KERALA HIGH COURT** held that regulations clearly show that authorised courier, acts as agent of consignor or consignee and they are bound to furnish bond as contemplated under regulations. Thus duty is cast on authorised courier to act on behalf of consignor and consignee and suffer consequences as has undertaken by them under Regulations and bond furnished to statutory authority. Therefore, finding of Appellate Tribunal cannot be found fault with. In view of facts and circumstances, no reason found to interfere with order passed by tribunal. [**Decided against the appellant**]

COMMISSIONER OF CUSTOMS VERSUS ORION ENTERPRISES (DELHI HIGH COURT)

BRIEF: Goods not in conformity with Basmati Rice presence of other rice i.e. non-basmati rice was more than permissible maximum limit of 20. Additional Commissioner was justified in his conclusion that Respondent had attempted to export non-Basmati Rice prohibited for export in terms of DGFT notification.

OUR TAKE: The **Hon'ble DELHI HIGH COURT** held that test reports of RAL clearly stated that percentage of other Rice in consignment was more than 20% which was maximum permitted under Basmati Rules. Sample also did not possess natural fragrance in both raw and cooked stages. Once there was report of RAL clearly stating that samples did not conform to requirements of Basmati Rules then Customs Authority was bound by such report. If Respondent wanted to show that other rice found present to consignment was also Basmati Rice then burden was on Respondent. It was justified in proceeding on strength of test report that presence of other rice, i.e. non-basmati rice, was more than permissible maximum limit of 20%. Since consignment was not entirely of Basmati Rice, it was not sufficient that grains confirmed to length and length/breadth ratio prescribed for Basmati Rice in order to pass test. Therefore Court of opinion that Additional Commissioner was justified in his conclusion that Respondent had attempted to export non-Basmati Rice prohibited for export in terms of DGFT notification. Impugned order of Tribunal hereby set aside. [**Decided in favour of Revenue**]

K. ABDULLA KUNHI ABDUL RAHAMAN, S/O ABDUL RAHAMAN VERSUS ADDITIONAL COMMISSIONER OF CUSTOMS, THE JOINT DIRECTOR DIRECTORATE OF REVENUE INTELLIGENCE, THE DEPUTY DIRECTOR DIRECTORATE OF REVENUE INTELLIGENCE (KARNATAKA HIGH COURT)

BRIEF: Confiscation of Goods Service of notice Lapse of period date of sending or dispatching notice by registered post is date of giving notice as contemplated under Section 110(2). Date of service of notice cannot be held as one which entitles petitioner to seek for return of goods on ground that six months period had expired.

OUR TAKE: The **Hon'ble KARNATAKA HIGH COURT** held that Section 110(2) indicate giving of notice within six months from date of seizure of goods is condition precedent to retain seized goods by department and in absence of such notice being issued to owner, goods seized to be returned. Annexure-F issued by third respondent would clearly indicate that Show Cause Notice-Annexure-A came to be issued within period of six months from date of seizure of goods as contemplated under Section 110(2). Goods came to be confiscated by proper officer, show cause notice came to be issued before expiry of six months period. Section 153 provides that notice issued under Act should be served in manner as provided under said Section. It does not even remotely suggest that such person should be served with such notice to hold service of notice as complete. Dispatching of notice by registered post would constitute valid service. Thus, date of sending or dispatching notice by registered post is date of giving notice as contemplated under Section 110(2). Once authority concerned makes out case for confiscation within time-limit, it cannot sit idle. It has to make concerned person aware of such case by giving written notice. Therefore, date of service of notice cannot be held as one which entitles petitioner to seek for return of goods on ground that six months period had expired. [**Decided against assesse**]

INCOME TAX

NOTIFICATIONS & CIRCULARS

The **Govt. vide Circular dated 31 August 2015** issued Guidance Notes on Implementation of Reporting Requirements under Rules 114F to 114H of the Income Tax Rules.

OUR TAKE: The Guidance Notes is in detailed booklet format. Readers are requested to read the said Notification. It is self-explanatory.

The **Govt. vide Instruction No. 08/2015, dated 31 August, 2015** issued instructions regarding Compulsory manual selection of cases for scrutiny during the Financial Year 2015-2016.

OUR TAKE: Readers are requested to read the said Instruction. It is self-explanatory in question and answer format.

The **Govt. vide Instruction No. 9/2015, dated 2 September, 2015** issued report on applicability of Minimum Alternate Tax (MAT) on FIIs/FPIs for the period prior to 01.04.2015 and acceptance of the Government thereof.

OUR TAKE: Readers are requested to read the said Instructions. It is self-explanatory in question and answer format.

The **Govt. vide Circular No. 15 of 2015, dated 3 September, 2015** issued Clarifications on Tax Compliance for Undisclosed Foreign Income and Assets.

OUR TAKE: Readers are requested to read the said Notification. It is self-explanatory in question and answer format.

COURT DECISIONS

GRIHALAKSHMI VISION VERSUS THE ADDITIONAL COMMISSIONER OF INCOME TAX (KERALA HIGH COURT)

BRIEF: Penalty levied u/s 271D and 271E. Cash loans taken by the assessee in contravention of 261SS. There is no law that every receipt from a partner or a sister concern cannot in all circumstances be treated as a loan or deposit. Levy of penalty confirmed.

OUR TAKE: The **Hon'ble KERALA HIGH COURT** held that the only case of the assessee is that if the period of limitation prescribed in Section 271(1)(c) is reckoned from the date of the assessment order dated 6.11.2007, the penalty order passed by the Joint Commissioner on 29.7.2008 is beyond the time permitted in the above section. As we have already held, the initiation of the penalty proceedings is not by the Assessing Officer but by the Joint Commissioner and if that be so, the order levying penalty passed by the Joint Commissioner is within the time prescribed in Section 275(1)(c).

It is the admitted case that amounts were received from partners and other sister concerns of the assessee and were repaid, there is no material whatsoever to infer that these receipts were anything other than loans or deposits. There is no law that every receipt from a partner or a sister concern cannot, in all circumstances, be treated as a loan or deposit. On the other hand, the nature of the receipt would depend upon the agreement between the parties and the evidence

that is produced. As we have already stated, there is no material whatsoever to accept the case of the assessee that these are loan or deposit. In such circumstances, the findings of the Assessing Officer confirmed by the Appellate Commissioner and the Tribunal that it was a loan or deposit

that was received by the assessee also has to be upheld and we do so. [**Decided in favour of the Revenue**]

COMMISSIONER OF INCOME TAX, DHANBAD VERSUS T.N. MALHOTRA, M/S JAI STEEL INDUSTRIES, MAHUDA MORE, DHANBAD (JHARKHAND HIGH COURT)

BRIEF: Dis-allowance of insurance claim written off. This amount was written off in the year 1993-94. In the assessment year 1993-94 no theft was committed but it was in the year 1989 and therefore rightly A.O. as well as CIT(A) have dis-allowed the insurance claim written off.

OUR TAKE: The **Hon'ble JHARKHAND HIGH COURT** held that it appears that theft was committed on 10th of September, 1989. Insurance was claimed by the assessee which was rejected by the insurance company in the next year mainly for the reason that there was no theft of plant and machinery or the raw materials. This amount was written off in the year 1993-94. Thus, in the assessment year 1993-94 no theft was committed, but, it was in the year 1989 and, therefore, rightly A.O. as well as the Commissioner (Appeals) have dis-allowed the insurance claim written off. ITAT has failed to appreciate that the theft was committed in the year 1989, whereas, the claim was written off in the assessment year 1993-94, despite the claim was rejected by the insurance company in the very next year of the theft and, therefore, such amount of insurance claim ought to be added in the income of the assessee. [**Decided in favor of revenue**]

Additions made u/s 40A(3) - ITAT upholding the order of the CIT(A) in restricting the additions made u/s 40A(3) to 20% of the cash purchases in excess of Rs 10,000/-. It was held that in the facts of the present case, 175 vouchers were also fabricated, because no vouchers were signed for the receipts of such cash. Moreover, Section 40A(3) of the Income Tax Act, 1961 imposes a limit of 20% of disallowance of the total cash transaction which was brought into effect from 1st of April, 1996, whereas, prior thereto, there were no such limit of 20%. The present matter is pertaining to assessment year 1993-94 and, hence, the 20% limit which was brought into force from 1st of April, 1996 is not applicable. These aspects of the matter have not been properly appreciated by the Commissioner (Appeals), nor by ITAT, nor even exception/conditions referred to in Rule 6DD of the Income Tax Rules 1962 have been proved by the respondent-assessee. [**Decided in favor of revenue**]

STATE TAXES

ALL INDIA VAT

BIHAR

The **Govt. vide Notification S.O. 205, dated 3 September, 2015** amends the table appended to Departmental Notification No. S.O. 24, dated 24th March, 2005 (as amended from time to time).

OUR TAKE: The amendments are as follows:

1. The present entries in column (2) of serial number 2 of the Table appended to the Departmental Notification number S.O. 24, dated 24th March, 2005 (as amended from time to time), shall be substituted, by " Potable spirit, wine or liquor whether imported from other countries or manufactured in India."

2. Serial number 8 and its corresponding entries of the Table appended to the Departmental Notification number S.O. 24, dated 24th March, 2005 (as amended from time to time) is deleted.

The **Govt. vide Notification S.O. 207 Dated 3 September, 2015** amends the Departmental Notification number S.O. 43 dated 4 May, 2006 (as amended from time to time).

OUR TAKE: The amendments are as follows:

1.The present entries of column (2) of serial number 6 of the Table appended to the Departmental Notification number S.O. 43, dated 4 may, 2006 (as amended from time to time), shall be substituted by the " Potable spirit, wine or liquor whether imported from other countries or manufactured in India "

2. Serial number 8 and its corresponding entries of the Table appended to the Departmental Notification number S.O. 43, dated 4 May, 2006 (as amended from time to time), is deleted.

The **Govt. vide Notification S.O. 209 dated 3 September, 2015** amends the table appended to Departmental Notification No.-S.O. 51 dated 04th May, 2006 (as amended from time to time).

OUR TAKE: After serial number 3 of the Table appended to the Departmental Notification number S.O. 51 dated 4 May, 2006 (as amended from time to time), the new serial number 4 shall be added, and its entries shall be "Potable spirit, wine or liquor whether imported from other countries or manufactured in India" with rate being "20%".

CHHATTISGARH

The **Govt. vide Notification No. F-10-34 /2015/CT/V (61) dated 1 September, 2015** in exercise of the powers conferred by Section 15-B of the Chhattisgarh Value Added Tax Act, 2005 (No. 2 of 2005), the State Government exempts the class of goods specified in column (2) of the Schedule, from payment of tax to the extent specified in column (3), for the period from 1.9.2015 to 31.3.2016.

OUR TAKE: In Sl. No. 1, the goods "All varieties of cloth (excluding hessian cloth)" is exempt from whole of tax.

And in Sl. No. 2, the goods "All varieties of cloth (excluding hessian cloth)" is exempt from whole of tax.

DELHI

The **Govt. vide Notification No. F.3(352)/Policy/VAT/2013/625-36, dated 31 August, 2015** notify that the Form DP-1 shall be submitted online by all the dealers latest by 30/09/2015.

OUR TAKE: The Notification is self-explanatory.

The **Govt. issued Circular No. 21 of 2015-16 No.F.3(566)/Policy/VAT/2015/640-46, dated 1 September, 2015** regarding mismatch of Annexure A & B.

OUR TAKE: Sale and purchase details are filed along-with return in the form of Annexure 2A & 2B. In the present system the sale and purchase details of the dealers are matched for authenticity of the claims.

It has now been decided that matched transaction of a tax period would be hard coded meaning thereby that after the filling of return such transactions would be unaffected by revision of return.
Further, it may also happen in some rare cases that both buyer and seller might have committed a mistake in reporting the transaction. In such cases it is further decided that the buyer can approach the Assessing Authority of his ward with a communication from the selling dealer admitting the mistake. This would facilitate the buyer who wants to revise his 2A to reopen the particular hard coded transactions. The Assessing Authority, after checking and verifying the transactions, would take a decision for allowing both the dealers to revise the respective entries. The entries so reopened can be revised by both seller and buyer resulting in revision of the return within the period prescribed under section 28 of the DVAT Act.

OUR TAKE: The **Govt. vide Circular No. 22 of 2015-16 No.F.3(458)/Policy/VAT/2014/648-654 dated 1 September, 2015** in continuation of Circular No. 10 of 2014-15 (No. 3(458)/Policy A/AT/2014/335-341 dated 03/09/2014) reiterated that Objection Hearing Authority can impose a pre-condition on the dealers to deposit an amount out of disputed amount before their objections are entertained, in cases, where the objection pertains to tax period beyond 01/10/2011 and no pre-condition is required to be prescribed for the objections for the tax periods up-to 30/09/2011.

In the above context it is also decided that the Systems Branch shall remove checks only against those functional dealers who have filed the objections online and also filed a hard copy of the same before the OHA in the matters related to the objections pertaining to the tax period prior to 01/10/2011.

GUJARAT

The **Govt. vide Notification No. (GHN-28)VAT-2015-S.5(2)(44)/TH dated 18 May, 2015** amends the Government Notification, Finance Department No. (GHN-35)VAT-2006-S.5 (2) (1)-TH, dated the 31st March, 2006.

OUR TAKE: In the Schedule appended to the said notification, in the entry at serial No. 1, in Annexure II appended to sub entry (iii), the Entry Sl. No. 100, 102, 103 and 107 shall be deleted.

JAMMU AND KASHMIR

OUR TAKE: The Govt. vide Notification No. SRO 295 dated 2 September, 2015 in exercise of the powers, conferred by section 4 of the Jammu and Kashmir General Sales Tax Act, 1962 direct that in schedule "B" to notification SRO 117 of 2007 dated 30-03-2007, the entry "27. Broadcasting Services provided by the Direct to Home (DTH) Operators." shall be added after entry 26.

PUNJAB

The **Govt. vide Notification No. G.S.R. 594(E), 594(E) and 596(E), each dated 28 July, 2015** extends to the Union territory of Chandigarh, the Punjab Value Added Tax (Third Amendment) Act, 2011 (Punjab Act No.26, of 2011), Punjab Value Added Tax (Fourth Amendment) Act, 2011 (Punjab Act No.27 of 2011) and the Punjab Value Added Tax (Amendment) Act, 2013 (Punjab Act No.28 of 2013) respectively, as in force in the State of Punjab on the date of publication of these notifications, subject to the certain modifications.

OUR TAKE: The Notifications are self-explanatory.

RAJASTHAN

The **Govt. vide Notification No. F.4(33)FD/Tax/87-Pt-I-85 dated 31 August, 2015** amends department's Notification No. F.4(33)FD/Tax/87-03 dated 25.05.2009.

OUR TAKE: In condition number 3 of the said notification, for the existing expression "that the sale of such goods shall be made to the members of the force only: and", the expression "that the sale of such goods shall be made to the members of BSF and ITBPF only; and" shall be substituted.

UTTAR PRADESH

The **Govt. vide Notification No. KA.NI.-2-1309/XI-9(1)/2014-U.P.Act-5-2008-Order-(138)-2015**, dated 3 September 2015 amends, with effect from 4 September, 2015, the Notification No. KA.NI.-2-419/XI-9(1)/08-U.P.Act-5-2008-Order-(69)-2011 dated 31 March, 2011 as amended from time to time.

OUR TAKE: In the Table to the aforesaid notification,

(a) entry at serial number 4 shall be omitted

(b) for entries at serial numbers "5", Description of goods shall be "Tyres and Tubes excluding Tyres and tubes of tractor as described in Schedule II Part-A, to the said Act" and Rate at column no. 3 shall be "3%"

and for entries at serial numbers "7", Description of goods shall be "Goods described in Schedule-V to the said Act other than the goods described in serial number 3, 5 and 6 above" and Rate at column no. 3 shall be "2%".

WEST BENGAL

The **Govt vide Trade Circular No. 16/2015 dated 28th August, 2015** introduced of Electronic Module for Anti-evasion exercise.

OUR TAKE: The trade Circular is regarding extension of online facilities to anti-evasion exercises/proceedings. Readers are requested to read the said Circular. It is self-explanatory.

COURT DECISIONS

SHREE YAMUNA TRADING CO. VERSUS ASSISTANT COMMISSIONER OF COMMERCIAL TAX - GHATAK-4 (GUJARAT HIGH COURT)

BRIEF: Levy of tax Validity of purchase Cancellation of Registration of seller in absence of sufficient reasons assigned by Assessing Officer order becomes vulnerable and therefore requires to be quashed and set aside.

OUR TAKE: The **Hon'ble GUJARAT HIGH COURT** held that Assessing Officer has not properly dealt with case and ought to have discussed and appreciated material produced by petitioner on record. True that there is alternative remedy in form of statutory appeal. However, we are of opinion that in absence of sufficient reasons assigned by Assessing Officer, order becomes vulnerable and therefore, requires to be quashed and set aside. However, matter remanded to Assessing Officer for fresh consideration. [**Decided in favour of Petitioner**]

M/S B.K. STEELS VERSUS STATE OF PUNJAB AND ANOTHER (PUNJAB & HARYANA HIGH COURT)

BRIEF: Condonation of delay Invalid service of notice Well settled that party should not be condemned unheard and case should not be rejected on technical grounds rather should be decided on merit unless delay is attributable to gross negligence of party.

OUR TAKE: The **Hon'ble PUNJAB & HARYANA HIGH COURT** held that admittedly revenue instead of sending order at address of appellant had sent same to Branch Office of appellant, which as per appellant was never received. Tribunal has wrongly drawn presumption of service upon appellant under Section 27 of General Clause Act, 1897. Appellant never requested revenue to send copy of order upon address of its branch office. Revenue could not give any satisfactory explanation for not sending copy of order to appellant, upon its address given in memorandum of appeal. Well settled that party should not be condemned unheard and case should not be rejected on technical grounds, rather should be decided on merit unless delay is attributable to gross negligence of party. Therefore order of Tribunal liable to be set aside. Delay of 907 days' in filing appeal hereby allowed. Tribunal directed to decide appeal of appellant on merit in accordance with law. [**Decided in favour of Assesse**]

OTHER UPDATES

DGFT

The **Govt. vide Notification No. 19 /2015-2020, dated 4 September, 2015** amend General Notes No.10 regarding Import Policy.

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

The **Govt. vide Public Notice No. 32/2015-2020, dated 4 September, 2015** amends the Appendices under Foreign Trade Policy, 2015 – 20 by incorporating a new Appendix to be known as Appendix–2X enlisting the countries wherefrom import of Textiles and Textile Articles is exempted from testing of samples for presence of Azo Dyes as per General Notes 10(III) as incorporated vide Notification No.19 /2015-2020, dated 4th September, 2015.

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

FEMA

The **Govt. vide Policy Circular No. 03/2015-20, dated 2 September, 2015** notify applicability of Para 5.10 (d) of Handbook of Procedure, 2015-20 relating to third party exports under EPCG Scheme.

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

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