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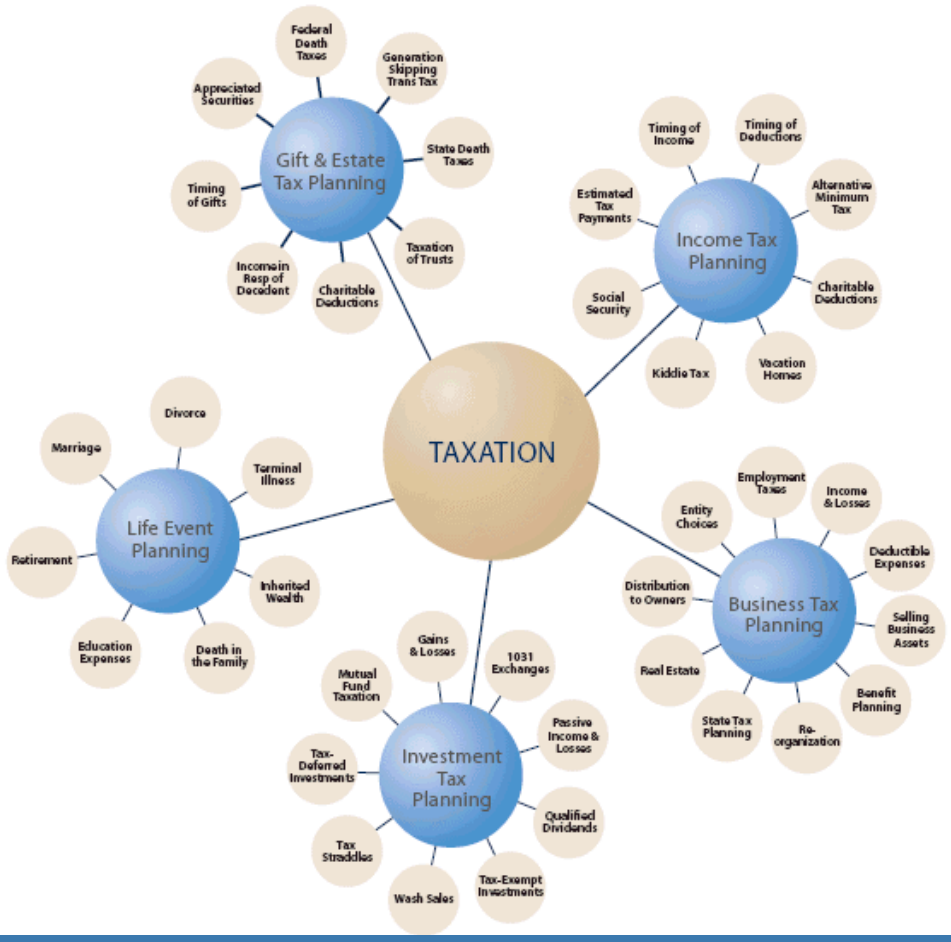

From the CEO's Desk

Dear Reader,

Indian Government led by Prime Minister Mr. Narendra Modi is trying everything to keep domestic and international sentiments up as far as politics and economy is concerned. At domestic front policies like 'one pension one rank' scheme to 'Swachh Bharat Abhiyaan' are government's efforts to lure Indians. Also recently government has asked tax department to repay all the I-T refunds less than Rs. 50000 as soon as possible. According to government data, over Rs 5,400 crore is locked in pending refunds, which has become a major grievance for taxpayers. According to the spokesperson for the finance ministry that I-T refunds are very dear to the taxpayers and it is their right too. So the funds should be transferred to their rightful claimants as soon as possible. Cases under scrutiny are not included in this drive though.

On international front, Mr. Modi is visiting as many countries and inviting state heads to come and invest in India. This has been termed as 'Modinomics'. Then, 'Make in India' campaign is also one such effort. The government has eased, rationalised and simplified processes to attract more foreign investment. Recently, the government eased FDI norms in 15 major sectors, including defence, construction, civil aviation and media, raising the Foreign Investment Promotion Board (FIPB)'s approval limit from Rs 3,000 crore to Rs 5,000 crore to attract global investors.

On the other hand, India is trying to strike a negotiation in the form of a mega trade deal- Regional Comprehensive Economic Partnership (RCEP). And also discussions are on; on whether TPP (Trans-Pacific Partnership) will have any impact on Indian trade. Trans-Pacific Partnership (TPP) is a mega free trade deal between the US and other 11 nations. Government think tank Centre for WTO has however analyzed that it may impact Indian textile and clothing businesses as far as the trade with US is concerned and Vietnam who will be part of the agreement is also a competitor of India in the textile and clothing segment. Though the experts say if India can dovetail its internal reform programmes in such a manner so as to become competitive then India can take advantage of such pacts.

Alok Kumar Agarwal

CEO

ASC Group

TAX CALENDER

Due Date	Description	Law
07 December	Deposit of TDS	Orissa VAT, Tripura VAT, Mizoram VAT.
	Deposit of TDS/TCS	Income Tax Law
	Issue of TDS Certificate	Orissa VAT
9 December	Return Filing	Gujarat VAT.
10 December	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
		Central Excise Law
12 December	Deposit of Tax	Gujarat VAT
13 December	Return Filing	Nagaland VAT

COUNTRY WIDE HOLIDAYS FOR THE WEEK

Date	Occasion/Festival	Region
10 December	Kagyed Dance	Sikkim
12 December	Pa Togan Nengminza Sangma	Meghalaya
12th – 16th December	Lossong	Sikkim

INDEX GUIDE

CENTRAL TAXES

SERVICE TAX

COURT DECISIONS

M/S INDIA HOUSING VERSUS COMMISSIONER OF CENTRAL EXCISE, LUCKNOW VERSUS CESTAT NEW DELHI

BRIEF: Denial of input service credit. The appellant was not registered with the service tax department during the relevant time it has availed the input services. Whether the appellant is entitled to take Cenvat credit?

OUR TAKE: The hon'ble **CESTAT NEW DELHI** held that as per Rule 9(2) of Cenvat Credit Rules, appellant is not entitled to take Cenvat Credit on the strength of the facts that Appellant has taken Cenvat Credit on the documents which are not correct documents under Cenvat Credit Rules, 2004. In the case of Music Broadcast Pvt. Ltd., Cenvat credit is sought to be denied by the learned Commissioner (Appeals) on the premise that appellant was not registered at the time of issuance of invoices. It was found that said issue has been dealt by the Tribunal in the case of Imagination technologies India P. Ltd [2011, CESTAT, MUMBAI]. Thereby, following the precedent decision of the Tribunal, although the appellant was not registered with the service tax department during the relevant time it has availed the services, the appellant is entitled to take Cenvat credit. - neither in the show cause notice nor in the impugned order, it has been disputed that appellant has not availed inputs service and has not paid service tax. - Appellant is entitled to take Cenvat credit. [**Decided in favour of assessee**]

NUANCE TRANSCRIPTION SERVICES INDIA PVT. LTD. VERSUS COMMISSIONER OF SERVICE TAX BANGALORE [CESTAT BANGALORE]

BRIEF: CENVAT Credit. Credit for the input services like car parking, furniture rentals, DG Set charges, facility maintenance charges - needless to say that all the input services which are subject matter of this case have nexus with the output service(s) of the appellants.

OUR TAKE: The hon'ble **CESTAT BANGALORE** held that In view of assessee own previous case [2015, CESTAT BANGALORE] there cannot be any two opinions that the appellant is entitled to Cenvat credit for all these input services as well as for the facility of Cenvat credit in case of the branches of the appellants which were earlier not found registered with the Service Tax Department. Non-registration, though the appellant pleads that they had made application and department did not do registration, may be by mistake, will not make them disentitled to the facility of Cenvat credit for the input services which they have used for their output service; needless to say that all the input services which are subject matter of this case have nexus with the output service(s) of the appellants. **[Decided in favour of assessee]**

PIONEER PUBLICITY CORPORATION PVT. LTD. VERSUS COMMISSIONER OF SERVICE TAX, MUMBAI [CESTAT MUMBAI]

BRIEF: Activity of painting, pasting, displaying and/or maintaining the same on side panel of buses on behalf of the client - Demand of service tax with interest and penalty confirmed

OUR TAKE: The hon'ble **CESTAT MUMBAI** held that appellant has not discharged the differential service tax liability on an amount received from M/s LIC and M/s New India Insurance Co. Ltd. towards painting charges and display charges. Appellant had never disputed the fact that they have received the amount towards painting charges and display charges from their clients. On perusal of the agreement/work order issued to the appellant we find that M/s. LIC has categorically stated that service tax liability arises on both the amounts. When the allegation in the show cause notice is for undervaluation and question of re-classification was never charged, we find that both the lower authorities have misdirected their findings and tried to classify the services under advertisement agency services. We find that these services are not at all disputed by appellant nor there any allegation in the show cause notice to that extent. Impugned order of confirming the demand of differential service tax liability along with interest and the penalties imposed is confirmed. [**Decided against assessee]**

BALMER LAWRIE AND CO LTD VERSUS COMMISSIONER OF CENTRAL EXCISE, RAIGAD [CESTAT MUMBAI]

BRIEF: Taxability of amount received from goods auctioned. Discharge of all the duties as per Section 150 of the Customs Act, 1962.Whether storage and warehousing service?

OUR TAKE: The hon'ble **CESTAT MUMBAI** held that Issue is no more res integra as this bench in the case of Maersk India Pvt. Ltd. vs. CCE & C, Raigad reported in [2012, CESTAT Mumbai] has relied upon the Board's Circular, as well as, the view taken in the case of Mysore Sales International ltd., vs.

Asst. CCE & ST, Bangalore reported in [2010, CESTAT, BANGALORE] held in favour of appellant/assessee therein. - facts are being very same in the case involved, we are of the view that the impugned order is not sustainable and the impugned order is liable to set aside – **[Decided in favour of assessee]**

M/S. B.S.N.L. VERSUS COMMR. OF CENTRAL EXCISE & SERVICE TAX, GUWAHATI [CESTAT KOLKATTA]

BRIEF:Demand of interest on delayed payment of service tax. Whether interest is liable to be paid under Section 75 of the Finance Act, 1994 and not barred by limitation

OUR TAKE: The hon'ble **CESTAT KOLKATTA** held that Applicants discharged finally their service tax liability for the relevant period, only in August, 2007, which has not been disputed, at any point of time, by the applicant. The difficulty mentioned by the applicant in not discharging the service tax liability, is due to non-availability of relevant data for determining the correct Service Tax liability which is clear from the finding of the Ld. Commr. (Appeal). On the other hand, prima facie, demand for recovery of interest is not barred by limitation and there is no invoking of suppression of facts, mis-statement and mis-declaration etc. for recovery of the outstanding dues. We do not find substance in the argument of the Ld. Consultant that in such cases, the interest is not liable to be paid under Section 75 of the Finance Act, 1994 being barred by limitation as held by the Hon'ble Delhi High Court in Kwality Ice Cream case (2012, Delhi High Court). - Partial stay granted.

DEEPAK & CO. VERSUS C.C.E., NEW DELHI (CESTAT NEW DELHI)

BRIEF: Demand of service tax beyond the scope of SCN. Since the demand was confirmed by the impugned order on a class of taxable service which was not alleged in the show cause notice, the demand cannot be sustained.

OUR TAKE: The hon'ble **CESTAT NEWDELHI** held that Services provided by the appellants do not fall within the category of support services for business or commerce. As a consequence of this finding since the proceedings were initiated only on the allegation that appellants had provided services of support of business or commerce, the proceedings should have been dropped. However, the lower appellate authority proceeded to analyze the nature of the services and concluded that the appellant had provided business auxiliary service and confirmed the demand assessed by the primary authority. - Since the demand was confirmed by the impugned order on a class of taxable service which was not alleged in the show cause notice, the demand cannot be sustained. **[Decided in favour of assessee]**

COMMISSIONER OF CENTRAL EXCISE, AURANGABAD VERSUS M/S AURANGABAD MUNICIPAL CORPORATION [CESTAT MUMBAI]

BRIEF: Demand of service tax by revenue as Franchisee service. The service clearly reflects a joint venture to run buses in the city. Even the logo is to be decided by both parties. There is no relationship of franchisor and franchisee

OUR TAKE: The hon'ble **CESTAT MUMBAI** held that AMT is nothing but the name of service provided and the notice has permitted i.e given representational right to use name AMT i.e logo on the city buses to be run by M/s APMSS. Providing of the service of use of name AMT on city buses by M/s APMSS is nothing but a service mark/logo, trade name and slogan which is covered under Franchise Service falling under Section 65(47) of Finance Act, 1994 and chargeable to Service Tax under section 65(105)(zze) of Finance Act, 1994 w.e.f 01.07.2003." We have seen the conditions of the Agreement between the appellant and APMSS as extracted in the adjudication order. We find that it clear reflects to a joint venture to run buses in the city. Even the logo is to be decided by both parties. There is no relationship of franchisor and franchisee. We did not find any representational right having been granted by appellant to APMSS to provide any service identified with the franchisor. [Decided against Revenue]

MICROSOFT INDIA (R&D) PVT. LTD. Versus COMMR. OF SERVICE TAX, BANGALORE [CESTAT BANGALORE]

BRIEF: Refund claim on Business Auxiliary Services on Export of services. Products support services shall include phone, e-mail, web based and onsite support for all MSFT products. It cannot be said that services have been used in India.

OUR TAKE: The hon'ble **CESTAT BANGALORE** held that refund claim could have been clearly identified as relatable to the consideration received as a result of product support service agreement. The appellants have produced some sample invoices and from one of the invoices, we clearly find that the invoice not only shows that appellant had billed for product support service fee but had also mentioned the agreement dated 1st July, 2002 in the invoice also. We find that in product support services agreement, it is clearly provided that 'territory' shall mean worldwide. When according to the agreement both the parties have to understand that 'territory' means 'worldwide' how an inference could be drawn that territory means region of India could not be understood. - appellants are providing product support service from India and according to the agreement the product support services shall include standard MSFT product support services for products which are generally made available to end-users in the territory and shall include requests for support originating from within the territory.

Products support services shall include phone, e-mail, web based and onsite support for all MSFT products. It cannot be said that services have been used in India. **[Decided in favour of assessee]**

CENTRAL EXCISE

NOTIFICATIONS & CIRCULARS

The Govt. wide **circular No. 1012** issued clarification regarding suspension of benefits under North East Industrial and Investment Promotion Policy (NEIIPP), 2007 and its bearing on Central Excise duty exemption.

OUR TAKE: Fresh registrations for the schemes under NEIPP, 2007 have been suspended. New Units or units undertaking substantial expansion after 01.12.2014 and up to cut-off date of 31.03.2017 shall continue to be eligible for excise duty exemption under notification No. 20/2007 – Central Excise dated 25-04-2007 subject to condition specified therein.

COMMISSIONER OF CENTRAL EXCISE, GUNTUR VERSUS M/S. VIRAT CRANE INDUSTRIES LTD. **(SUPREME COURT)**

BRIEF: Claim of exemption (Exemption Notification No. 08/2001 CE dated 01.03.2001) on clearance of product known as "Crane Gutkha" which is containing Tobacco. The contention proceeds on the premise that the branded goods belonging to third party only would be treated as branded and insofar as goods sold under brand name belonging to the assessee are concerned, they have to be treated as unbranded. Whether branded or not?

OUR TAKE: The hon'ble **SUPREME COURT** held that the goods of the assessee are preparations containing chewing Tobacco. Thus, the only question is as to whether branded or unbranded preparations in order to qualify for exemption under the aforesaid Notification, the assessee have to prove that goods are unbranded. It has been pointed out that the assessee is selling these goods under the brand name "Crane Gutkha". However, the contention of the learned counsel for the assessee is that since this is the home brand name that brand name belongs to the assessee itself which has to be treated as unbranded. This contention proceeds on the premise that the branded goods belonging to third party only would be treated as branded and insofar as goods sold under brand name belonging to the assessee are concerned, they have to be treated as unbranded. This contention is clearly misconceived and untenable. - Judgment of the Tribunal is unsustainable in law and is liable to be set aside. Thus, assessee is not entitled to any exemption under the aforesaid Notification. [**Decided in favour of Revenue**]

AMBUJA CEMENT LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, CHANDIGARH **(SUPREME COURT)**

BRIEF: As per the CESTAT, Rule 6 of CCR applies only if some final product is partly exempt and partly dutiable. However, there is no such restriction in Rule 6 which contemplates the situation where a manufacturer produces (a) final products which are chargeable to duty, as well as (b) exempted goods. The Rule does not provide that the same final product should be partly dutiable and partly exempted.

OUR TAKE: The hon'ble **SUPREME COURT** held rule 6 of CCR does not provide that the same final product should be partly dutiable and partly exempted. On the contrary, this Rule relates to taking of CENVAT Credit in respect of 'inputs'. Reversal of Cenvat Credit - Rule 6 is not applicable as such in its totality since taking of CENVAT credit is not in issue in these cases. On the other hand, relevance of this Rule is only to the extent of 'obligation' contained in the said Rule which is to be discharged. A plain reading of clause (vi) of the notification would show that it only contemplates a situation where 'a manufacturer manufactures both dutiable as well as exempt final products'. There may be different final products manufactured by the same manufacturer. The final products may be made out of the same product or out of different products. Clause (vi) does not contemplate that the manufacturer should manufacture only 'one final product' or that if he manufactures only one product that product itself should be both dutiable and exempted. The basis adopted by the CESTAT that the 'same final product' should be partly dutiable and partly exempt, is neither a requirement of clause (vi) nor a requirement of Rule 6. Impugned order is set aside - [**Decided in favour of assessee.**]

M/S RHOMBUS PHARMA (P) LTD. VERSUS COMMISSIONER, CENTRAL EXCISE & SERVICE TAX, AHMEDABAD-III AND VICE-VERSA **(CESTAT AHMEDABAD)**

BRIEF: SSI exemption benefits under Notification No.8/2001, 8/2002 and 8/2003 - clearance of the goods on their own account and paid duty in respect of clearance of the goods bearing brand name of the loan licensee. Whether demand of duty for the extended period of limitation can be sustained

OUR TAKE: The hon'ble **CESTAT AHMEDABAD** held that Appellant had disclosed the location of the factory, clearance of goods on payment of duty separately in the ER-1 return. In any event, the Appellant cleared the goods bearing brand name of the loan licensee and declared in their ER-1 return. So, the Department was aware of the location of the factory in the rural area. Thus, there is no suppression of facts with intent to evade payment of duty. We also find that the decision of the Tribunal in the case of Pharmanza (India) (2009, CESTAT, AHMEDABAD) is squarely

applicable in the present case. Demand of duty for the extended period of limitation cannot be sustained and the Adjudicating authority rightly dropped the demand for the extended period of limitation. The demand of duty with interest for the normal period of limitation is upheld. Adjudicating authority directed to re-quantify the demand for the normal period of limitation as contended by the Assessee - Appeal disposed of.

SHREE KRISHNA NYLON PVT. LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, MUMBAI-III [CESTAT MUMBAI]

BRIEF: Denial of refund claim subject to unjust enrichment. Assessee returned excess duty paid through debit / credit Notes. Appellant admittedly accounted for the said amount as 'receivable' in the balance sheet. It is a sufficient evidence to hold that incidence of duty has not been passed on.

OUR TAKE: The hon'ble **CESTAT MUMBAI** held that appellant, though initially charged duty in the sale invoice, who on clarification that they have paid the excess duty, issued credit notes and against the said credit notes, the buyer of the goods has returned the excess charged excise duty. The appellant accounted for the said amount in their balance sheet as receivable under the head loan and advances. The lower authority verifying these facts and following the direction of the Commissioner (Appeals) given in the earlier order dated 5.2.2008 applying the ratio of the ONGC case (2003, CESTAT, NEW DELHI), sanctioned the refund. It is not open for the Revenue to challenge the finding of the Commissioner (Appeals)'s order dated 5.2.2008 without filing any appeal against the same. Therefore, the impugned order of the Commissioner (Appeals) cannot be sustained. - it is settled that even if the excess duty for which refund is sought for is collected but subsequently returned by way of credit note, it cannot be said that the incidence of refund amount has been passed on. [**Decided in favour of assessee**]

COMMISSIONER OF CENTRAL EXCISE, CHANDIGARH Versus MODI METALS UDYOG [CESTAT NEW DELHI]

BRIEF: Removal of semi-finished goods for certain purposes without obtaining requisite permission under Rule 16B of the Central Excise Rules, 2002. Application was filed and the Commissioner did not act upon the same immediately - Objection of the revenue cannot sustain.

OUR TAKE: The hon'ble **CESTAT MUMBAI** held that application was filed and the Commissioner did not act upon the same immediately and the appellant cleared the goods during the pendency of decision on the said application. In any case the permission having been granted by the Commissioner in the relevant period, the Revenue's objection that the said permission was not available at the time when the goods were cleared cannot be sustained. [**Decided against Revenue**]

REMIDEX PHARMA PVT. LTD. Versus COMMR. OF C. EX. CUS. & S.T., BANGALORE-I [CESTAT BANGALORE]

BRIEF: Denial of CENVAT Credit on invoices which did not contain the registration number of the service provider which is a mandatory requirement for Cenvat Claim.

OUR TAKE: The hon'ble **CESTAT BANGALORE** held that even under Rule 9(2) of Cenvat Credit Rules, which empowers the proper officer to condone such omissions, non-mentioning of the registration number of the provider is not one of the omissions which can be condoned. Therefore, the demand Service Tax and interest has to be sustained as correctly made. Since the mistake is not on the part of the appellant and in fact if they were vigilant they could have got credit by insisting on a proper invoice. In such a situation for a mistake committed by the service provider, it may not be appropriate to impose penalty in addition to the reversal of credit with interest. Accordingly, the penalty imposed on the appellant is set aside – **[Decided partly in favour of assessee]**

LARSEN AND TOUBRO LTD AND ORS Versus COMMISSIONER OF CENTRAL EXCISE AND CUSTOMS, NAGPUR [CESTAT MUMBAI]

BRIEF: Scope of the term automobile. Activity of packing/re-packing, labeling/re-labeling and fixing of MRP on automobile parts amounts to manufacture. Demand of duty confirmed.

OUR TAKE: The hon'ble **CESTAT MUMBAI** held that Just because such automobiles have machinery aspect which helps them use in the construction and mining industry, will not take them away from the term automobile.[Decided substantially against the assessee].

CUSTOMS

NOTIFICATIONS & CIRCULARS

The Govt. vide Notification No. 135/2015-CUSTOMS dated 30th November, 2015 makes the amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 36/2001-Customs (N.T.), dated the 3rd August, 2001.

OUR TAKE: Kindly refer the notification related to fixation of tariff value.

The **Govt. has issued Guidelines for handling and storage of valuable goods that are seized/ confiscated by the Department, dated 1-12-2015.**

OUR TAKE: Kindly refer the guidelines issued by customs. The guidelines are self – explanatory.

COURT DECISIONS

M/S. WARDHMAN TRADING CO. VERSUS COMMISSIONER OF CUSTOMS, NAGPUR (CESTAT MUMBAI)

BRIEF: Valuation of import of old and used monitors which are restricted in terms of Para 2.32 of the Exim Policy. Confiscation of goods - Imposition of redemption fine and penalty – Mis-declaration of goods

OUR TAKE: The hon'ble **CESTAT MUMBAI** held that as per the facts of the case, the appellant has mis-declared the description of the goods and on examination; the imported monitors were found to be used and old. As per the Exim Policy import of old and used items can be made only on the import license. The appellant fail to comply this requirement of the policy, therefore the goods were rightly confiscated. However, we find that the value of the goods declared and enhanced by the Customs Authority is not much different. The enhancement is only to the tune of ₹ 94,682/- which is not significant. Therefore, in view of this differential valuation and taking into consideration facts and circumstances of the case, we find that redemption fine of ₹ 2,50,000/- and penalty of ₹ 60,000/- imposed by the Ld. Commissioner is also on higher-side. Redemption fine and penalty is reduced, redemption fine from ₹ 5,00,000/- to ₹ 1,00,000/- and penalty of ₹ 60,000/- is reduced to ₹ 25,000/-. [**Decided partly in favour of assessee**]

M/S ESSAR STEEL LTD VERSUS COMMISSIONER OF CUSTOMS, AHMEDABAD (CESTAT AHMEDABAD)

BRIEF: Denial of the benefit of Project Import Regulations 1986 on Import of 10 numbers cooling bells and thereby duty demanded. The appellant produced clarification of the supplier and the Ministry of Steel Government of India which cannot be brushed aside in such a casual manner.

OUR TAKE: The hon'ble **CESTAT AHMEDABAD** held that 10 Cooling Bells are technically similar in nature of 12 Cooling water plus greasing ventilateur extra Kool. The supplier by letter dated 07.3.2005 clarified that the 24 cooling bells delivered includes 10 cooling bells for HNX Batch Annealing Facility items 753; as Cooling water plus greasing ventilateur extra kool. The clarification of the supplier is matching with the description of the license - adjudicating authority had observed that there is distinct use of these items, which is not based on any authority. On the other hand, the appellant produced clarification of the supplier and the Ministry of Steel, Government of India, which can not be brushed aside in such a casual manner. In our considered view, the Revenue can not dispute the clarification of the supplier and the Ministry of Steel, Govt. of India, unless there is any contrary material is available and therefore, such clarifications are required to be accepted. Hence the demand of duty along with interest and penalty cannot be sustained. [**Decided in favour of assessee**]

M/S ADANI POWER LIMITED & 1 VERSUS UNION OF INDIA THROUGH SECRETARY MINISTRY OF FINANCE & 3 [GUJRAT HIGH COURT]

BRIEF: Levy of customs duty on goods cleared from SEZ to DTA and non-processing area of the SEZ - Custom duty at the rate of 16% ad-valorem levied by Notification dated 27.2.2010 could not be imposed retrospectively w.e.f. 26.6.2009 and, therefore, retrospective amendment is illegal and arbitrary and deserves to be set aside.

OUR TAKE: The hon'ble **GUJARAT HIGH COURT** held that Petitioner should not be made liable to suffer double taxation, and the petitioner is made to pay the custom duty for the energy supplied then payment on duty of raw materials or any other duty on inputs should not be levied on the petitioner, and the duty paid by the petitioner on raw materials is liable to be refunded, as otherwise, the levy of duty on the power supplied to DTA from SEZ amounts to double taxation and it would be in violation of Article 265 of the Constitution of India. Custom duty at the rate of 16% ad-

valorem levied by Notification dated 27.2.2010 could not be imposed retrospectively w.e.f 26.6.2009 and, therefore, retrospective amendment is illegal and arbitrary and deserves to be set aside. [**Decided partly in favour of assessee**]

AJANTA PRIVATE LIMITED & 1 VERSUS UNION OF INDIA & 3 [GUJRAT HIGH COURT]

BRIEF: Levy of anti dumping duty - anti-dumping duty is levied for the protection of domestic industry and not to safeguard the interest of the revenue.

OUR TAKE: The hon'ble **GUJRAT HIGH COURT** held that the very premise on which the respondents seek to recover anti-dumping in respect of sheet glass falling under Tariff Item 70049099 is to safeguard the interest of the revenue, is itself fallacious, having regard to the fact that anti-dumping duty is levied for the protection of domestic industry and not to safeguard the interest of the revenue. **[Decided in favour of assessee].**

COMMISSIONER OF CUSTOMS (IMPORT) , MUMBAI VERSUS BHUSHAN STEEL & STRIPS LTD.[CESTAT MUMBAI]

BRIEF: Target Plus Scheme. Discharge of Education Cess @ 2% on the goods imported. Revenue submitted that under the Target Plus Scheme, basic customs duty and additional customs duty are exempted but Education Cess is not exempted. Contention of the revenue rejected

OUR TAKE: The hon'ble **CESTAT MUMBAI** held that first appellate authority was correct to come to such a conclusion. This view of the first appellate authority and the view of this Tribunal is affirmed by the Hon'ble High Court in the case of Pasupati Acrylon Ltd. (2014, GUJARAT HIGH COURT). - As regards the reliance placed on Circular No. 5/2005 we find that the learned Counsel is correct in bringing to our notice that the said Circular has been struck down in the case of Gujarat Ambuja Exports Ltd. (2012 (7) TMI 679 - GUJARAT HIGH COURT).The first appellate authority has not erred in passing such an order. Impugned order is upheld as correct, legal and does not suffer from any infirmity. [Decided against Revenue]

INCOME TAX

CIRCULAR AND NOTIFICATIONS

The **CBDT vide** Circular No.19/2015 dated 27th November 2015 has issued explanatory Notes to the provisions of the Finance Act 2015.

OUR TAKE: Kindly refer the circular as it is self explanatory.

The **CBDT vide** Notification No. 89/2015 dated 2nd December, 2015 makes the Rules for determination of Address including Electronic Address (e-mails) for sending the communication for purposes such as Service of notice, summons, requisition, order and other communication.

OUR TAKE: Kindly refer the notification for purpose of addresses for communication including the address for electronic mail or electronic mail message.

COURT DECISIONS

RAKESHBHAI VITTHALBHAI PATEL VERSUS INCOME TAX OFFICER, WARD-4 & 1 (GUJRAT COURT)

BRIEF: Reopening of assessment due to misconception of law. Assessee has not followed the due procedure which is required to be followed for the purpose of challenging the notice under section 148 of the Act and has avoided filing return on income.

OUR TAKE: The hon'ble **SUPREME COURT** held that the petitioner has not followed the due procedure which is required to be followed for the purpose of challenging the notice under section 148 of the Act and has avoided filing return on income pursuant to the impugned notice. Besides, as noted earlier, except for a bare assertion, nothing has been pointed out on behalf of the petitioner to show as to why the second respondent lacked jurisdiction to issue the notice under section 148 of the Act. Thus no merit in any of the submissions advanced on behalf of the petitioner so as to warrant exercise of powers under Article 226 of the Constitution of India. [**Decided against the assessee**]

PRINCIPAL COMMISSIONER OF INCOME TAX 2 VERSUS LINCOLN PHARMACEUTICALS LTD (GUJARAT HIGH COURT)

BRIEF: In the absence of having any reason to believe that income chargeable to tax has escaped assessment for the assessment years under consideration, the assumption of jurisdiction on the part of the Assessing Officer u/s 147 of

the Act by issuing notice u/s 148 of the Act is clearly without any authority of law.

OUR TAKE: The hon'ble **GUJARAT HIGH COURT** held that the assessee remained an SSI Unit for the years under consideration. In the aforesaid premises, it is evident that the Assessing Officer has proceeded on an erroneous assumption that the respondent assessee does not meet with the requirement of an SSI unit when the record clearly points out to the contrary. Under the circumstances, it is manifest that based upon the material on record on the basis of which the Assessing Officer sought to reopen the assessment, he could not have formed the belief that the assessee did not meet with the requirements of an SSI unit and consequently could not have formed the requisite belief that income chargeable to tax has escaped assessment. In the absence of having any reason to believe that income chargeable to tax has escaped assessment for the assessment years under consideration, the assumption of jurisdiction on the part of the Assessing Officer under section 147 of the Act by issuing notice under section 148 of the Act is clearly without any authority of law. In the light of the above discussion, while disagreeing with the reasons recorded by the Tribunal for holding that the reopening of assessment was bad in law, for the reasons recorded hereinabove, the court is in agreement with the final conclusion arrived at by the Tribunal. [**Decided in favour of assessee]**

INCOME TAX OFFICER, WARD 3 (1) , JAIPUR VERSUS BHAWANI SINGH JADON [ITAT JAIPUR]

BRIEF: Entitlement to deduction U/s 54 - Assessing Officer cannot allow deduction claimed during the course of assessment proceedings, it can be claimed only in revised return filed before him. The assessee return was belated, which cannot be revised under the law.

OUR TAKE: The hon'ble **ITAT JAIPUR** held that The ld CIT(A) has not provided any opportunity to the Assessing Officer as no details were submitted by the assessee during the assessment proceedings. Before us also no evidence has been placed. The assessee return is belated. The Assessing Officer is not supposed to entertain the deduction U/s 54F by relying on the decision of Hon'ble Supreme Court in the case of GOETZE (INDIA) LTD. v. COMMISSIONER OF INCOME-TAX [2006 (3) TMI 75 - SUPREME Court] wherein held that the Assessing Officer cannot allow deduction claimed during the course of assessment proceedings, it can be claimed only in revised return filed before him. The assessee return was belated, which cannot be revised under the law. Therefore, the revenue's appeal is set aside to the Assessing Officer and the Assessing Officer is directed to give reasonable opportunity of being heard and consider the above observation made by this Bench. [Decided in favour of revenue for statistical purposes only]

M/S PERFETTI VAN MELLE INDIA PRIVATE LIMITED VERSUS DEPUTY COMMISSIONER OF INCOME TAX AND ANOTHER [PUNJAB & HARYANA HIGH COURT]

BRIEF: Stay application during recovery proceedings. Once the petitioner has already been granted opportunity to pay the outstanding demand in four instalments as noted above and no prejudice has been demonstrated to be caused to the assessee on that account.

OUR TAKE: The hon'ble **PUNJAB & HARYANA HIGH COURT** held that applying the aforesaid guiding principles and keeping in view the totality of facts and circumstances of the case as noticed herein before, once the petitioner has already been granted opportunity to pay the outstanding demand in four instalments as noted above and no prejudice has been demonstrated to be caused to the assessee on that account, there appears to be no error in the impugned order passed. Further, learned counsel for the petitioner has also not been able to show that the order is unjustified. Consequently, finding no merit in the petition, the same is hereby dismissed.

AKSHAR ASSOCIATES VERSUS ACIT, CIRCLE - 10, AHMEDABAD [ITAT AHMEDABAD]

BRIEF: The interest income cannot notionally be excluded for the purpose of determining the allowable deduction of remuneration paid to the partners under Section 40b

OUR TAKE: The hon'ble **ITAT AHMEDABAD** held that interest income is to be excluded from computation of permissible remuneration of partners - Held that:- The issue in appeal is now squarely covered by the judgement of Hon'ble jurisdictional High Court in the case of CIT vs. J J Industries (2013, GUJARAT HIGH COURT) wherein Their Lordships have upheld the Tribunal's stand to the effect that for the purpose of ascertaining ceiling on the basis of book profit, the profit shall be in the profit and loss account. The interest income, therefore, cannot notionally be excluded for the purpose of determining the allowable deduction of remuneration paid to the partners under Section 40b of the Act. As in the present case, in this case also interest was assessed as business income, and yet, for the purpose of computing admissible deduction under section 40(b), a different path was followed. **[Decided in favour of assessee]**

INCOME TAX OFFICER, WARD 11 (4) , NEW DELHI VERSUS M/S INTEGRATED INFOSOFT PVT. LTD. AND VICA-VERSA [ITAT DELHI]

BRIEF: Addition u/s 68 on account of alleged bogus accommodation entries. Having regard to the modus operandi of accommodation entry providers, the practice of taking cash and receiving cheques in the guise of subscription and share capital consideration in the form of

commission, the assessee company had not discharged its initial onus lying upon it.

OUR TAKE: The hon'ble **ITAT DELHI** held that the assessee company failed to discharge the initial onus that was lying upon it in terms of the provisions of Section 68 of the Act as he failed to furnish the identity, creditworthiness and genuineness of the transaction of share application money received. The ld. CIT(A) had deleted the addition solely on the ground that there were no credit in the nature of M/s Garg Finvest Pvt. Ltd. and Shekhawati Finance Pvt. Ltd. In our opinion, the ld. CIT(A) fell in error by holding that the provisions of Section 68 are not applicable to the facts of the present case. Having regard to the modus operandi of accommodation entry providers, the practice of taking cash and receiving cheques in the guise of subscription and share capital consideration in the form of commission, the assessee company had not discharged its initial onus lying upon it, nor rebutted the report of Investigation Wing. Further, we find from the order of the CIT(A) that certain additional evidences/details were filed by way of paper book and there is nothing on record to show that the requirements of the provisions of Section 46A of the Income Tax Rules, 1962 had been complied with by the ld. CIT(A). In the circumstances, we are of the considered opinion that the interest of justice would be served, if the matter is restored to the file of the Assessing Officer for de-novo assessment. **[Decided in favour of revenue by way of remand.]**

Validity of reassessment proceedings - Held that:- The information received from the Investigation Wing of the Department enabled the Assessing Officer to form an opinion that the income chargeable to tax had escaped assessment. It is trite law that at the stage of initiation of the reassessment proceedings, there need not be conclusive finding on fact against the assessee, only requirement is reasonable belief of the Assessing Officer. See Sowdagar Ahmed Khan Vs. ITO, (1967, SUPREME Court); Brij Mohan Aggarwal Vs. ACIT (2004 ALLAHABAD High Court); & Praful Chunila Patel: Vasant Chunilal Patel Vs. Asstt. CIT,(1998, GUJARAT High Court). **[Decided against assessee]**

STATE TAXES

ALL INDIA VAT

ANDHRA PRADESH

The **Govt. vide Circular No. CCTs Ref No.BII(3)/42/2015, dated 24 November, 2015** issued certain instructions regarding conducting VAT audit.

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

DELHI

THE DELHI VALUE ADDED TAX (THIRD AMENDMENT) BILL, 2015 Introduced and passed in the assembly on **4-12-2015** amends Section 3, 29, 89, Insert section 50A & 91A.

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

KARNATAKA

The Govt. vide **Circular No. 2015/16 No. IPI/CR.21/2015-16 Dated 4th December, 2015** extended fiscal benefits by refund of input tax paid on purchase of inputs by a registered dealer who is a co-developer of Special Economic Zone [SEZ].

OUR TAKE: Tax paid under this Act on purchase of inputs by a registered dealer who is a developer of any special economic zone or an unit located in any special economic zone established under authorization by the authorities specified by the Central Government in this behalf, shall be refunded or deducted from the output tax payable by such dealer, subject to such conditions and in the manner as may be prescribed.

MADHYA PRADESH

The Govt. vide **Notification No. F-A-3-53/2015-I-V(38) dated 1st December, 2015** made amendment in Schedule-I, after serial number 66, 66A "Neemuch Stones" has been inserted and omitted from Schedule-II, in part-II against serial number 59, in column (2).

MAHARASHTRA

The **Govt. vide Public Notice issued detailed FAQ on e-704 (Audit Report).**

OUR TAKE: Readers are requested to read the said Notification. It is self-explanatory. Detailed FAQ's on form e704 are available on website www.mahavat.gov.in.

PUNJAB

The **Govt. vide Notification** No. **S.O.56/C.A.74/1956/S.8/2015**, **dated 2nd December, 2015** made reduction in CST rate on Paper Board @ 1% percent of his turn over or any part thereof, subject to the production of declaration in Form 'C.'

The **Govt. vide Notification** No. **S.O.57/P.A.8/2005/S.8/2015**, **dated 2nd December, 2015** made amendment in PVAT Schedules 'B' and 'E'. Reduction in rate of tax on LED lights to 5.5% & Dry fruits to 4.5%. LED Lights has been introduced in Schedule B vide entry No. 174 and dry fruits deleted from Schedule B and inserted in Schedule E.

RAJASTHAN

The **Govt**. vide **Notification No. F.12(79)FD/Tax/2014-103** Dated **2nd December, 2015** made amendment in Rule 21, 22A, 41 and 53, Form 65 and Insertion of Form 72 (declaration to be issued by dealer)

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

UTTARAKHAND

The Govt. vide **Circular No, 4278 dated 30/11/2015** addresses that all dealers shall issue e-form 16 from 01.11.2015. However printed form 16 which are in transit can be used up to 31.12.2015.

The Govt. **vide Notification No. 885/2015/146(120)/XXVII(8)/2008 dated 5th December, 2015** amends Schedule III for tax Rate of diesel 21 percent or Rs. 9 per/lit. whichever is greater w.e.f.6-12-15.

COURT DECISIONS

ZYLOG SYSTEMS (P.) LTD. VERSUS ADDITIONAL COMMISSSIONER OF COMMERCIAL TAXES (KARNATAKA HIGH COURT)

BRIEF: Levy of VAT on smart cards. The requisite information is embedded and supplied to the department. The contract entered into between the parties for supply of smart cards is for rendering service only and there is no element of sale. Not liable to VAT.

OUR TAKE: The hon'ble **KARNATAKA HIGH COURT** held that the smart cards supplied to the department are not commercial commodities. The same cannot be sold to any other person. The smart cards, which are produced by the petitioner, have no utility or value to any other person than the department who paid for the service rendered by the petitioner. The material purchased and utilized in preparation of photo-identity cards is incidental. Another important aspect is that the smart cards also contained the official logo of the Government of Karnataka along with key management microchip. The same cannot be used or sold by the petitioner to any other person. As such, it was a special kind of job and delicate in nature which is predominant in the transaction and not the value of the materials which are used in executing the job. The smart cards are not the commodities saleable in open market. It fetches no commercial value in the open market. Hence, supply of smart cards to RTO cannot be held as sale. It is a contract for labour and service. The contract entered into between the parties for supply of smart cards is for rendering service only and there is no element of sale. - Not liable to VAT. **[Decided in favour of assessee]**

JODHPUR VERSUS M/S CHAGNI RAM GEHLOT, JODHPUR [RAJASTHAN HIGH COURT]

BRIEF: Purchase of goods for use in works contract from other state - interstate movement of goods against Form-C. Denial of exemption claim - Notification dated 28.04.1993. Revision petition filed by the revenue dismissed

OUR TAKE: The hon'ble RAJASTHAN HIGH COURT held that the Assessee is a contractor and carrying on the constructions works and he purchased the goods in the course of inter-State trade, the CST would be payable in the appropriate State, i.e. U.P. wherefrom the movement of the goods commenced and for this reason, the contractor was not liable to pay any tax under the provisions of the RST Act, 1994 and the State of Rajasthan could not ask the contractor to pay tax

under the provisions RST Act on such inter- State purchases of the Contractor. Therefore, it could not be treated as violation of the condition No. 4 of the Notification dated 28.04.1993. - Court finds no force in the present revision petition filed on behalf of the Revenue and the same is liable to be dismissed in terms of the judgment dated 22.08.2013 passed in the case of CTO Vs. M/s Jatan Construction Pvt. Ltd., while upholding the orders of the Deputy Commissioners (Appeals) and of the learned Tax Board. [Decided against Revenue]

MAHENDRA KUMAR VERSUS STATE OF KARNATAKA AND ANOTHER [KARNATAKA HIGH COURT]

BRIEF: Restoration of the penalty on transporting goods without valid document. It is only in cases where there was no consignor at all and the documents on which reliance was placed was found to be not genuine, action has been taken.

OUR TAKE: The hon'ble **KARNATAKA HIGH COURT** held that the material on record clearly establishes that on an investigation by the authorities, some other documents on which reliance was placed by the transporter were found to be not genuine. It is not a case of avoidance of tax by the transporter. It is a case of transporting goods without valid document. When the transporter is unable to produce confirmation letter from the persons from whom he received the goods for transportation, nothing more requires to be done. In all cases where genuinely he received the document from the consignor, on being satisfied about the genuineness, the authorities have cleared those goods. It is only in cases where there was no consignor at all and the document on which reliance was placed was found to be not genuine, action has been taken. The Tribunal was also justified in imposing additional penalty. In these circumstances, we do not see any justification to interfere with the well considered order passed by the Appellate Tribunal. [**Decided in favour of Revenue**]

M/S NEW DEVI GRIT UDYOG, RAISEENA, GURGAON VERSUS STATE OF HARYANA AND OTHERS [HARYANA HC]

BRIEF: Disallowance of Input tax credit. Appellant failed to produce original purchase invoices and VAT C4 certificates before the respondent during the assessment proceedings. The invoices in possession of the appellant did not have its name, TIN number mentioned by the seller on them at the time of issue which is mandatory requirement.

OUR TAKE: The hon'ble **HARYANA HIGH COURT** held that the Assessing Officer was not justified in declining the benefit of input tax credit only on the ground that the tax invoices did not contain the name of the buyer and also its TIN number. No doubt, non mentioning of the name and the TIN number can be a circumstance, but it cannot be held to be conclusively against the purchaser. The judgment cited by learned counsel for the State in Babu Verghese's case (1999, SUPREME COURT) was different. The question involved therein was validity of extension granted by the Bar Council of India to existing members of Kerala Bar Council (KBC) under proviso to Section 8 of the Advocates Act, 1961 and consequent validity of elections held by KBC during the extended term. - Matter remanded back - Decided in favour of assessee.

OTHER UPDATES

FEMA

The **Govt. vide Notification No.FEMA.359/2015-RB, dated 2nd December, 2015** amends Foreign Exchange Management (Transfer or Issue of Any Foreign Security) (Amendment) Regulations, 2015.

OUR TAKE: The Govt. has made amendment of the Regulation 21 (2) (ii), the following proviso shall be inserted, namely:- "Provided that under these Regulations, the Reserve Bank may, in consultation with the Government of India, change / prescribe for the automatic as well as the approval route of FCCBs, any provision or proviso for issuance of FCCBs and of the Regulation 21 (2) (iii), the following proviso shall be inserted, namely:- Provided that under these Regulations, the Reserve Bank may, in consultation with the Government of India, change / prescribe any provision or proviso for issuance of FCEBs.

The **Govt. vide Notification No.FEMA.358/2015-RB, dated 2nd December, 2015** made amendments in the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000 (Notification No. FEM A. 3/2000-RB dated 3rd May 2000).

OUR TAKE: The Govt. has made amendment in Schedule I & Schedule II of Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) (Amendment) Regulations, 2015. The readers are requested to read said notification for detailed amendment.

ALLIED LAWS

The **MCA vide Circular No. 15/2015, dated 30th November, 2015** decided to relax Additional Fees and Extend the last date of filing of forms MGT-7 (Annual Return) and AOC-4 (Financial Statement) upto 30.12.2015.

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

GOODS & SERVICE TAX ACT, 2016

The Government has released Model Draft of Proposed GST Act, 2016 on 3rd December, 2015.

OUR TAKE: The readers are requested to read said notification for detailed understanding of GST to be implemented in India.

Dr. Arvind Subramanian made press Release on the Revenue Neutral Rate (RNR) on 4th December, 2015.

OUR TAKE: The committee headed by the Chief Economic Adviser Dr. Arvind Subramanian on Possible Tax rates under GST submits its Report to the Finance Minister on the Revenue Neutral Rate (RNR). The Committee recommends the same in the range between 15 percent and 15.5 percent (Centre and states combined) with a preference for the lower end of that range based on the analysis made in the Report. The readers are requested to read said press release for highlights of the Executive Summary of the Report.

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