



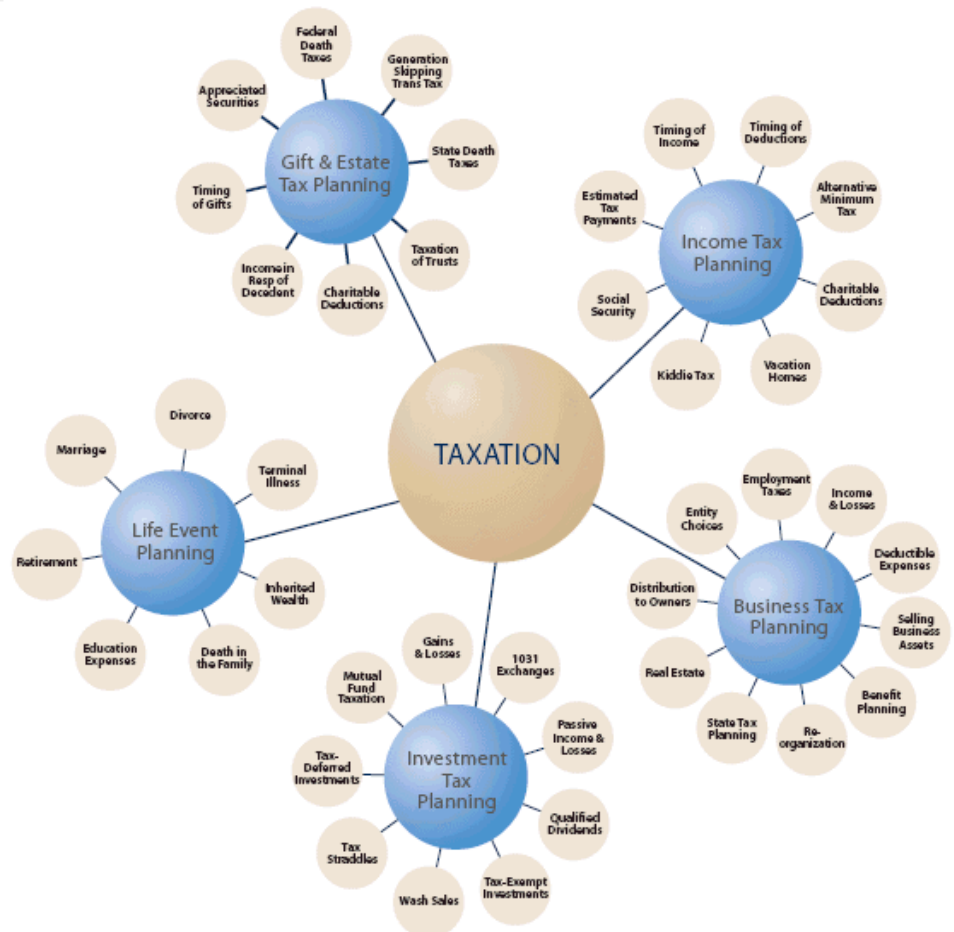
ASC Times

All India Taxes Weekly Referencer

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Solving any tax puzzle

Tax saving advice across all the taxes



From the CEO's Desk



Further Mr. Narendra Modi has disbursed loan amounting to Rs. 1 Lakh crore to small entrepreneurs under the Pradhan Mantri Mudra Yojna to encourage the youth of India to be job creators and not job seekers

Alok Kumar Agarwal
CEO
ASC Group

Dear Reader,

In an insider trading, Securities and Exchange Board of India (SEBI) has investigated on Facebook and ordered impounding of unlawful gains of approximately Rs. 2 crore from 15 individuals. These individuals were involved in trading shares of Palred Technologies Ltd. having price sensitive information due to which they earned unlawful gains. Thereon these persons have violated the regulator's Prohibition of Insider Trading (PIT) norms.

Tata Power Delhi Distribution has launched Smart Grid Lab which was inaugurated by US Trade and Development Agency for demonstration of new technologies, products and operations for different organizations including utilities. Government has taken up a move to withdraw customs duty exemption on import of 74 drugs in order to promote domestic productions and reduce dependence on imports. However it may also lead to increase in prices of these drugs which will adversely impact patients.

Central Board of Direct Taxes has issued directives to all regional heads of the Income Tax Department to resolve the grievances of taxpayers within a period of two months. Prime Minister Mr. Narendra Modi brought out the attention of the department on this issue in a meeting. The total number of complaints pending with the IT department for more than one year pertaining to non issuance of refund, dispute in tax demands and PAN related hassles are around 7,80,081. Also similar directions were given to Customs and Central Excise Department

TAX CALENDER

Due Date	Description	Law
9 February	Return Filing	Gujarat VAT.
10 February	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 February	Deposit of TDS	Gujarat VAT.
13 February	Return Filing	Nagaland VAT.
14 February	Deposit of Tax	Rajasthan VAT.

COUNTRY WIDE HOLIDAYS FOR THE WEEK

Date	Occasion/Festival	Region
12 Feb	Saraswati Puja	Tripura
13 Feb	Shree Panchmi	West Bengal

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CENTRAL TAXES

SERVICE TAX

CIRCULARS & NOTIFICATIONS

The Govt. vide Notification No. 03/2016-ST dated 02 February 2016, amended notification No. 39/2012- ST, dated the 20th June, 2012 so as to provide for rebate of Swach Bharat Cess paid on all services, used in providing services exported in terms of rule 6A of the Service Tax Rules.

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

The Govt. vide Notification No. 02/2016-ST dated 02 February 2016, amended notification No. 12/2013- ST, dated the 1st July, 2013 so as to allow refund of Swach Bharat Cess paid on specified services used in an SEZ.

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

The Govt. vide Notification No. 01/2016-ST dated 02 February 2016, amended notification No. 41/2012- ST, dated the 29th June, 2012 so as to allow refund of service tax on services used beyond the factory or any other place or premises of production or manufacture of the said goods for the export of the said goods and to increase the refund amount commensurate to the increased service tax rate.

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

The Govt. vide Instruction F.No.390/Miss/163/2010-JC dated 04 February 2016, made reduction in Government litigation, withdrawal of appeals by the department before CESTAT.

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

COURT DECISIONS

GUJARAT STATE FERTILIZERS AND CHEMICALS LTD. VERSUS THE COMMISSIONER OF CENTRAL EXCISE, CUSTOMS AND SERVICE TAX, SURAT-II [GUJARAT HIGH COURT]

BRIEF: Cenvat Credit on input services. Service Tax paid on commission amount paid to dealers/stockist, nexus with manufacturing activity. Payment to the agents appointed by the appellant would not be eligible for Cenvat credit

OUR TAKE: The Hon'ble GUJARAT HIGH COURT held that predominantly the entire agreement was one in the nature of appointing a partnership firm as stockist of the appellant company who would upon being supplied the goods in question would store the same and dispose of in the market at agreed rates upon which would receive certain commission. A fleeting reference to attempt to sales promotion would not change the very basic nature of agreement and the relations between the appellant and the stockist converting the stockist as sales promotion agent. Payment to the agents appointed by the appellant would not be eligible for Cenvat credit. **[Decided against the assessee]**

THE LAKE PALACE HOTEL AND MOTELS P LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, JAIPUR II AND VICE-VERSA [CESTAT NEW DELHI]

BRIEF: Renting of immovable property on profit sharing basis. Demand of service tax on renting including on notional interest received on the security deposit made with the appellants. Appellant is not liable to pay service tax under the renting of immovable property service.

OUR TAKE: The Hon'ble CESTAT NEW DELHI held that the issue has already been settled in appellants own case for earlier period, that the appellant is not liable to pay service tax under the category of renting of immovable property service as leasing out the property to Hotel under the deemed provision of section 65 (105)(zzz) of the Finance Act, 1994. Therefore, we hold that appellant is not liable to pay service tax under the renting of immovable property service. Further, appellant are not liable to pay service tax on the notional interest accrued on the security deposit. Demand set aside. **[Decided in favour of assessee]**

**M/S JUMERA PROMOTORS AND DEVELOPERS PVT LTD
VERSUS COMMISSIONER OF CENTRAL EXCISE, DELHI
[CESTAT NEW DELHI]**

BRIEF: Renting of farm house. Whether appellant is liable to pay service tax under the category of "Renting of Immovable Property Service". Scope of the lease deed, prima facie, the same is not taxable.

OUR TAKE: The Hon'ble CESTAT NEW DELHI held that the property is leased out for residential purpose and for the employees of the lessee. We find that the lessee also issued certificate to certify that the premises was never used except for residential purposes. Moreover, electricity bills and property tax returns also support the case of the appellant. Revenue has not produced any contrary evidence to the evidence produced by the appellant. Therefore, prima facie, we are of the view that the demand confirmed under the category of "Renting of Immovable Property Service" is not sustainable. **[Stay granted]**

**M/S DABUR RESEARCH FOUNDATION VERSUS
COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX,
GHAZIABAD [CESTAT ALLAHABAD]**

BRIEF: Supply of tangible goods. Revenue was of the view that allowing use of such capital assets amounts to providing of services, namely, "supply of tangible goods" service. Stay granted partly.

OUR TAKE: The Hon'ble CESTAT ALLAHABAD held that considering that the appellants have paid VAT on the transaction it will be in the interest of justice to allow stay of the recovery subject to deposit of Rs Three Lakhs only within eight weeks of this order. **[Stay granted partly]**

**DINESH M. KOTIAN VERSUS COMMISSIONER OF CENTRAL
EXCISE & SERVICE TAX-I, MUMBAI AND VICA-VERSA
[CESTAT MUMBAI]**

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

OUR TAKE: The Hon'ble CESTAT MUMBAI held that it is clear that if service tax is paid by the assessee, same shall be available as Cenvat credit to the postal department and to that extent net liability of service tax shall stand reduced while paying the service tax by the postal department. Therefore, it is an exercise of revenue neutral for this reason demand does not exist. We, therefore, drop the demand on the point of revenue neutrality without addressing the issues of taxability of service tax and limitation. **[Decided in favour of assessee]**

**BANK OF BARODA VERSUS COMMISSIONER OF SERVICE
TAX, MUMBAI-I [CESTAT MUMBAI]**

BRIEF: Classification of Import of services from M/s. Society for Worldwide Interbank Financial Telecommunication (SWIFT) which is a non-resident entity, not having an office in India - reverse charge. Demand conformed invoking the extended period of limitation.

OUR TAKE: The Hon'ble CESTAT MUMBAI held that both provisions have separate ingredients. In the present case the appellant have not disclosed the data related to service charges paid to SWIFT to the department. Therefore, as there is a suppression of the fact on the part of the appellant, proviso to Section 73(1), gets correctly invoked. Demand conformed invoking the extended period of limitation - **[Decided partly in favour of assessee]**

**COMMISSIONER OF CENTRAL EXCISE, NASIK VERSUS MEGA
ENTERPRISES [CESTAT MUMBAI]**

BRIEF: Nature of activity. Collection of octroi on behalf of the Municipal Corporation. Cash management activity or not. Not covered by Banking and other Financial Services, revenue's appeal rejected

OUR TAKE: The Hon'ble CESTAT MUMBAI held that the amount collected excess of contracted amount and retained by the assessee in respect of transit fees is not covered under the category of "banking and other financial services". Since the issue is decided in favour of the respondent-assessee in this appeal, we find no merit in the appeal filed by the Revenue and hold that the impugned order is correct and legal and does not suffer from any infirmity. **[Decided against Revenue]**

**M/S INDUS TOWERS LIMITED VERSUS THE COMMISSIONER
OF CENTRAL EXCISE [AAR]**

BRIEF: Nature of activity of repair and maintenance of the equipments so that the same can be re-used without requiring replacement. The activity is not amounting to manufacture. Cenvat Credit of excise duty paid on inputs is eligible while paying service tax on inspection, Certification and engineering services etc

OUR TAKE: The Hon'ble AAR held that applicant is eligible to avail Cenvat Credit of Excise Duty under the Central Excise Act, 1944 / Additional Duty of Excise under Section 3(1) of the Customs Tariff Act, 1975 paid on parts and spares used for their replacement of the defective ones and Service Tax paid on inspection, Certification and engineering services etc. for the aforesaid repair and maintenance activities and claim set off against the output service tax paid for rendering of passive infrastructure service by the applicant to its customers.

CENTRAL EXCISE

CIRCULARS & NOTIFICATIONS

The Govt. vide Circular No.1014/2/2016-CX dated 01st February 2016, included Show Cause Notice's issued in relation to levy of CVD on vessels imported for breaking in the "Call Book".

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

The Govt. vide Circular No. 1015/3/2016-CX dated 03rd February 2016, directed refund of Excise duty on purchase of cars by physically handicapped persons.

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

The Govt. vide Instruction F.No.390/Misc./163/2010-JC dated 04th February 2016, reduced Government litigation, withdrawal of appeals by the Department before CESTAT

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

COURT DECISIONS

GOYAL M.G. GASES PVT. LTD. VERSUS COMMISSIONER OF C. EX. & S.T., CHANDIGARH (CESTAT NEW DELHI)

BRIEF: Gas filing activity. Whether the activity undertaken by the appellant amounts to manufacture? Gas is already marketable in its original form and the activity undertaken by the appellant does not render the gas marketable which is already marketable. Demand of duty set aside.

OUR TAKE: The Hon'ble CESTAT NEW DELHI held that the gas is already marketable in its original form and the activity undertaken by the appellant does not render the gas marketable which is already marketable. Therefore, we hold that the activity undertaken by the appellant does not amount to manufacture. Consequently, the appellant are not liable to pay duty. **[Decided in favour of assessee]**

M/S NEELAM STEELS, SHRI R.P. HANDA VERSUS COMMISSIONER OF CENTRAL EXCISE, LUDHIANA. [CESTAT NEW DELHI]

BRIEF: Refund of unutilised Cenvat credit. Refund claim denied on the ground that in terms of Rule 11(2) of Cenvat Credit Rules, 2004, unutilised credit would lapse on closure of the unit. ER return submitted by the appellant along with refund application is sufficient to grant refund to the appellant.

OUR TAKE: The Hon'ble CESTAT NEW DELHI held that the rejection of refund claim by the Id. Commissioner is on account of misinterpretation of the rules governing the refund. The ER return submitted by the appellant along with refund application is sufficient to grant refund to the appellant. The judgments cited at the bar by the Id. counsel for the appellant are fully applicable in the facts and circumstances of this case. In view of the facts and circumstances enumerated, set aside the impugned order and direct the respondent to grant refund within a period of two months from the receipt of the certified copy of the order. **[Decided in favour of assessee]**

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

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

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

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

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

CUSTOMS

CIRCULARS & NOTIFICATION

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

COMMISSIONER OF CENTRAL EXCISE, INDORE (MP) VERSUS M/S KRITI INDUSTRIES INDIA LTD. [CESTAT NEW DELHI]

BRIEF: Demand of interest - Though the product is made dutiable w.e.f. 1.3.2003, there was no liability to pay duty on that date, as the amendment occurred only on 28.02.2005. Demand of interest set aside

OUR TAKE: The **Hon'ble CESTAT NEW DELHI** held that The amount falls due only after the insertion of the amendment. The respondents discharged their liability within the time limit. Though the product is made dutiable w.e.f. 1.3.2003, there was no liability to pay duty on that date, as the amendment occurred only on 28.02.2005. In our considered opinion, in the present case, there is no liability to pay interest. Also see Pushti Refineries (P) Ltd. Vs. CCE & ST, Bangalore [CESTAT BANGALORE] - Decided in favour of assessee.

M/S. MONNET ISPAT & ENERGY LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, RAI. [CESTAT NEW DELHI]

BRIEF: Eligibility for CENVAT credit - iron and steel items used for fabrication of components / accessories of various machinery like rotary klin, rotary cooler, conveyor systems, raw material preparation plant, power plant and pollution control equipment. Credit allowed

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

The Govt. vides Circular No. 03/2016 dated 03rd February 2016, extended the Indian Customs Single Window to other locations and other Participating Government Agencies

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

The Govt. vides Notification No. 18/2016-Cus (NT) dated 04th February 2016, determines that the rate of exchange of conversion of each of the foreign currencies specified in column (2) of each of Schedule I and Schedule II, into Indian currency or vice versa, shall, with effect from 5th February, 2016

OUR TAKE: Readers are requested to read the said Notification. It is self-explanatory. The above mentioned schedules are annexed to Notification.

The Govt. vide Notification No. 19/2016 Cus (NT) dated 05th February, 2016, hereby notifies the certain countries as developing countries for the purposes of the said section.

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

The Govt. vide Notification No. 08/2016 dated 05th February 2016, hereby exempts goods described in Schedule I, when imported into India for display or use at an event specified in Schedule II, from the whole of the duty of Customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and from the whole of the additional duty of customs leviable thereon under section 3 of the said Customs Tariff Act, 1975

OUR TAKE: Readers are requested to read the said Notification. It is self-explanatory. The above mentioned schedules are annexed to Notification.

COURT DECISIONS

MANAWAT PLASTICS PVT. LTD. VERSUS THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, THE COMMISSIONER CUSTOMS, CENTRAL EXCISE & SERVICE TAX [BOMBAY HIGH COURT]

BRIEF: Conversion of Shipping Bill under DEEC Scheme to Drawback Scheme to avail export benefit. No question of law regarding the permissibility of conversion of advance licenses into a drawback facility in present facts has been specifically raised.

OUR TAKE: The Hon'ble BOMBAY HIGH COURT held that the Appellant ought to have raised a specific question of law on such facts. No question of law regarding the permissibility of conversion of advance licenses into a drawback facility in present facts has been specifically raised. Appellants have failed to raise any substantial question of law in this Appeal. Appeal dismissed. **[Decided against the appellant]**

COMMISSIONER VERSUS SUNRISE ENTERPRISE [SUPREME COURT]

BRIEF: Retrospective Imposition of ADD. The final anti-dumping notification has no applicability to the bills of entry presented prior to the said date. Decision of tribunal affirmed.

OUR TAKE: The Hon'ble SUPREME COURT held that the final anti-dumping notification has no applicability to the bills of entry presented prior to the said date. Inasmuch as the applicant has already been assessed to zero anti-dumping duty, the further demand of anti-dumping duty in terms of the subsequent notification is not called for. Apex Court dismissed the revenue appeal as devoid of any merit.

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

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

OUR TAKE: The Hon'ble BOMBAY HIGH COURT held that the penalties can be imposed on the firm and the partners under the Act and more particularly under Section 112(a) of the Act. However as the Act itself stipulates, the same would be

subject to the parties proving that the contravention has taken place without their knowledge or despite exercise of all due diligence to prevent such contravention.

M/S S. NARENDRA VERSUS COMMISSIONER OF CUSTOMS, MUMBAI [CESTAT MUMBAI]

BRIEF: Claim of exemption. Benefit of Notification No. 159/86-Cus, after examination of machine and visit to factory premises it was found that the said machine is "Laser system for diamond processing (sawing, kerfing and drilling) based on CNC. - Benefit of exemption allowed

OUR TAKE: The Hon'ble GUJRAT HIGH COURT held that the expression sawing machines had been used without any qualification. There is no dispute that the goods were imported for the purposes as specified in the notification. Other condition subject to which the benefit of concessional rate of duty was available and had also been fulfilled. The notification covers the machine imported by the appellants. Appellant succeeds on both counts. The appeal is allowed. **[Decided in favor of assessee]**

M/S SANCTUM WORKWEAR PVT. LTD. VERSUS COMMISSIONER OF CUSTOMS (EXPORT) NHAVA SHEVA [CESTAT MUMBAI]

BRIEF: Duty drawback. Mis-declared the goods in the Shipping Bill to claim higher drawback. The claim of drawback separately on Jackets & Pants is an error but malafide intention cannot be ascribed to invoke penalty.

OUR TAKE: The Hon'ble CESTAT MUMBAI held there is no mis-declaration of description of goods in the Shipping Bill. Neither is there any mis-declaration of value. The claim of drawback separately on Jackets & Pants is an error but malafide intention cannot be ascribed to invoke penalty. Section 113(i) can be invoked when there is mis-declaration of description or value. In this case it is not so. **[Decided in favour of assessee]**

INCOME TAX

COURT DECISIONS

MUMBAI VERSUS UNICHEM LABORATORIES LTD. [ITAT MUMBAI]

BRIEF: TDS u/s 194H - no tax was required to be deducted at source on this discount to MRP given by the assessee company to the distributors at the time of sale of drugs-medicine to the distributors.

OUR TAKE: The Hon'ble ITAT MUMBAI held that the instant appeal is for the assessment year 2009-10 which is prior to the assessment year 2013-14, we hold that no tax was deductible at source on payment of Directors sitting fee paid by the assessee company to its Directors u/s 194J of the Act and the assessee company could not be held as 'assessee in default' u/s 201(1) and 201(1A) of the Act. **[Decided in favour of assessee]**

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

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

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

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

BRIEF: Penalty u/s 271(1)(c), assessee did not establish the nexus between the borrowed funds and the investment so made with a clear intention to conceal the income by furnishing inaccurate particulars of such income, therefore, in our view, penalty was rightly imposed.

OUR TAKE: The Hon'ble ITAT MUMBAI held that the totality of facts clearly indicates that the assessee did not establish the nexus between the borrowed funds and the investment so made with a clear intention to conceal the income by furnishing inaccurate particulars of such income, therefore, in

our view, penalty was rightly imposed by the Assessing Officer. The stand of the Revenue is further fortified by the fact that even the assessee did not file appeal against the disallowance of huge interest expenditure while deciding the quantum addition and accepted the same. **[Decided against assessee]**

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

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

OUR TAKE: The Hon'ble GUJARAT HIGH COURT held that mere accounting entry or even if there 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 FORUM PROJECTS PVT. LTD. VERSUS DCIT, CENTRAL CIRCLE-II, KOLKATA. [ITAT KOLKATTA]

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

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

ACIT, NAVSARI CIRCLE, NAVSARI VERSUS SHRI JUGALKISHORE K. AGRAWAL [ITAT AHMEDABAD]

BRIEF: Disallowance of interest expenditure u/s 57. Nexus between the interest income vis-à-vis the interest expenditure - No nexus between the impugned income and interest is forthcoming - Additions confirmed.

OUR TAKE: The Hon'ble ITAT AHMEDABAD held that the Assessing Officer invoked the impugned disallowance quoting assessee's failure in proving nexus between the impugned interest income vis-à-vis the interest expenditure. The same is nowhere applicable qua the facts of the instant case wherein no nexus between the impugned income and interest is forthcoming. Thus, we accept Revenue's arguments. The Assessing Officer's findings disallowing the impugned interest expenditure are accordingly restored. **[Decided in favour of the assessee]**

STATE TAXES

ALL INDIA VAT

BIHAR

The Govt. vides Order No. 22 dated 02nd February 2016, substituted the present entry "20 percent" of column number (3) of serial number 1 and 2 of table appended to Departmental Notification Number S.O. 51 dated 04.03.2006 (as amended from time to time) by the entry "30 percent" with immediate effect.

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

DELHI

The Govt. vides Notification No.F.3 (352)Policy/VAT /2013/1395-1405 dated 01st February 2016, notify that the Form DP-1 shall be submitted online by all the dealers latest by 29.02.2016.

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

DAMAN & DIU

The Govt. vides Circular No. No. DMN/VAT-2005/2015-16/02 dated 2nd February, 2016, exempted sale of high speed diesel by co-op society of fisherman.

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

HARYANA

The Govt. vide Order dated 03rd February 2016, extended date of online filing of third quarter return from 31.12.2015 to 15.02.2016

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

MAHARASHTRA

The Govt. vides Circular No. 4T dated 05th February 2016, made modification in Trade Circular 7T of 2015 regarding Online application for registration.

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

COURT DECISIONS

THE COMMISSIONER OF SALES TAX VERSUS M/S. VEER RADIOS (BOMBAY HIGH COURT)

BRIEF: Nature of assessment - best judgment assessment or not - the entries in the books of account varying with returns filed are relied upon and then the assessment has been completed. – Cannot be held as best judgment assessment - levy of penalty deleted.

OUR TAKE: The Hon'ble BOMBAY HIGH COURT held that the tax has been worked out on the basis of books of account of assessee after he produced the same in response to notice of department and, therefore, it is not best judgment assessment. If the return is filed belatedly and it does not give correct and complete figures, the provisions of Section 33(3) of the said Act can be applied by the department to such return. Levy of penalty confirmed. **[Decided in favor of revenue]**

COMMISSIONER OF COMMERCIAL TAXES, THIRUVANANTHAPURAM, KERALA VERSUS M/S K.T.C. AUTOMOBILES [SUPREME COURT]

BRIEF: Levy of penalty for non-maintenance of complete and true accounts - sale of motor vehicles from another state - According to the Intelligence Officer, the sales were concluded at Kozhikode and hence the vehicles should have been registered within the State of Kerala. - Mere doubt cannot create any liability - No penalty.

OUR TAKE: The Hon'ble SUPREME COURT held that the allegations and facts made or noted by the Intelligence Officer no doubt create some doubts but they do not lead to a conclusive inference that the sales under controversy had taken place at Kozhikode, Kerala. To the contrary, in view of propositions of law discussed hereinbefore, the judgment of the High Court gets reinforced and deserves affirmation. **[Decided against the revenue]**

OTHER UPDATES

DGFT

The **Govt. vide Notification No 37/2015-20 dated 3rd February 2016**, makes amendment, with immediate effect, in Schedule 2 of ITC (HS) Classification of Export & Import Items relating to export of sesame seeds to the European Union countries.

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

The **Govt. vides Public Notice No. 60/2015-20 dated 3rd February 2016**, incorporates Para 2.79A [Export permission for "Stock and Sale"] and Para 2.798 [Export permission for Spare Parts for SCOMET] in Handbook of Procedure 2015-2020 as under:

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

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

01 Feb, 2016, Goods & Service Tax Network is a new institution created specifically to act as central technology platform that will implement GST. GSTN will tip the balance in favour of tax compliance rather than tax evasion.

02 Feb, 2016, GST, competitive logistics, e-mandis and food processing parks may integrate to sell daal at Rs. 20/kg and mangoes at Rs. 10/kg.

03 Feb, 2016, GST to have direct impact on milk producers. With proposed GST rate @ 18%, it is not clear whether GST would be applied for all dairy products.

04 Feb, 2016, GST to benefit retail sector. It tries to eliminate indirect taxes and mitigate cascading or double taxation issues and leads to common National Market, with elimination of state boundaries.

05 Feb, 2016, GST will soon become a reality. Finance Minister said GST has been supported by most political leaders and hoped soon others will see reason to make this law reality.

06 Jan, 2016, GST in India is the biggest issue for Swedish companies in terms of investment, said Herald Sandberg, Ambassador of Sweden to India, on Friday, ahead of Swedish Prime Minister maiden visit to the country next week.

06 Feb, 2016, IMF chief Christine Lagarde has hoped that the government would be able to implement a series of "critically important" economic reforms including GST for unleashing the country's growth potential.

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