ASC Times

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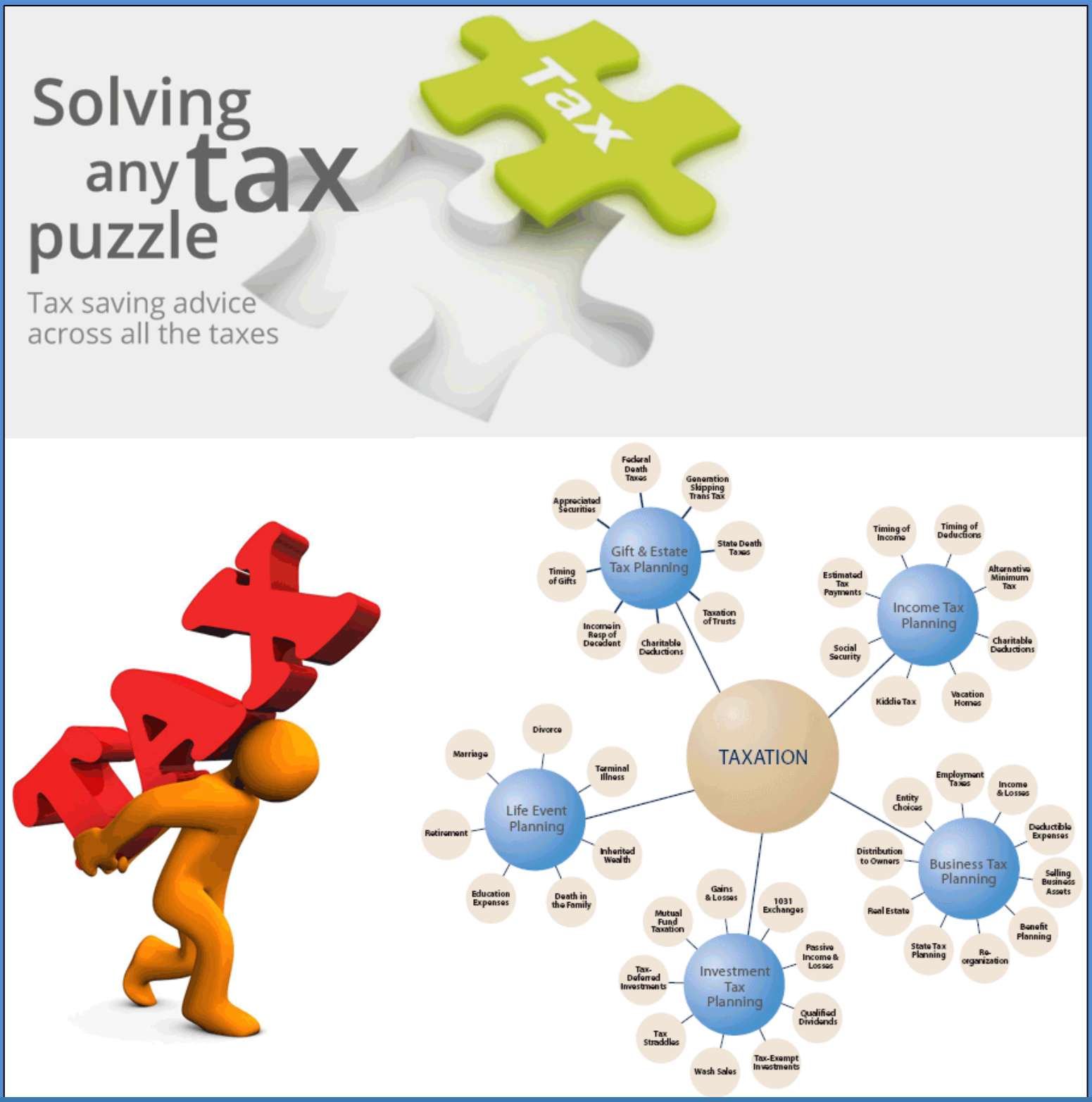

From the CEO's Desk

Alok Kumar Agarwal

CEO

ASC Group.

Dear Reader,

First of all some quickies, to fund its various development projects, Government is trying to collect funds from different measures. Last week, Finance Ministry raised excise duty on petrol by Rs. 1.60 per liter and 40 paise on diesel per liter to fetch some additional money to meet out the target of financial deficit in the budget. Likewise service tax is now 14.5% as .5% cess is been levied to fund 'Swachch Bharat Abhiyaan'. Also talks are on to offer small stakes in PSU's for collecting at least Rs. 12600 crore through this measure.

There is good news that MSME sector emerged as the single largest source to the GDP of the country and is the most innovative among all the sectors. It drives the sentiment of the economy and last two quarters of present financial year show the trend. The survey conducted to check the reality shows that, "In the coming six months there seems to be growing optimism in terms of the economic performance with 80 per cent respondents feeling that the state of the Indian economy would be better". Though one can not presume the situation as robust but signs of economic recovery are evident.

In the international scenario, a survey about FTAs (Free Trade Agreements) shows that though many countries are signing free trade agreements but about 70% companies are not fully utilizing such pacts and shelling out more than necessary for tariffs and duties. The reason for this was found in the survey that one the system is not accurate with lot of manual procedures, two, complex at the same time with regulatory requirements changing faster than anticipated.

TAX CALENDER

Due Date	Description	Law
9 November	Return Filing	Gujarat VAT
10 November	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 November	Deposit of Tax	Gujarat VAT
13 November	Return Filing	Nagaland VAT
14 November	Deposit of Tax	Rajasthan VAT
	Return Filing	Rajasthan VAT
15 November	Deposit of Tax	Bihar VAT, Haryana VAT, Jharkhand VAT, Sikkim VAT
	Deposit of TDS	Bihar VAT, Delhi VAT, Haryana VAT, Himachal Pradesh VAT, Jharkhand VAT, Punjab & Chandigarh VAT
	Issue of TDS Certificate	Andhra Pradesh VAT, Bihar VAT, Himachal Pradesh VAT, Jharkhand VAT, Nagaland VAT, Punjab & Chandigarh VAT, Telangana VAT
	Return Filing	Karnataka VAT, Madhya Pradesh VAT
	Audit Report	Delhi VAT

COUNTRY WIDE HOLIDAYS FOR THE WEEK

Date	Occasion/Festival	Region
10 November	Kali Puja / Narak Chaturdasi / Diwali	Goa, Kerala, Puducherry, Tamilnadu, West Bengal
11 November	Diwali	All Other States & UT's
12 November	Vikram Samvat New Year Day	Gujarat
	Vishavkarma Day	Haryana, Punjab
	Balipadyami Deepavali	Karnataka
	Diwali (Balipratipada)	Maharashtra
13 November	Gobardhan Puja	Bihar, Gujarat, Uttar Pradesh
	Ningol Chakkouba	Manipur

INDEX GUIDE

CENTRAL TAXES

SERVICE TAX

NOTIFICATIONS & CIRCULARS

The **Govt. vide Notification No. 22/2015-Service Tax, dated 6 November, 2015** exempts all taxable services from payment of such amount of the Swachh Bharat Cess leviable under sub-section (2) of section 119 of the said Act, which is in excess of **Swachh Bharat Cess calculated at the rate of 0.5 percent of the value of taxabl**e.

Provided that Swachh Bharat Cess shall not be leviable on services which are exempt from service tax by a notification issued under sub-section (1) of section 93 of the Finance Act, 1994 or otherwise not leviable to service tax under section 66B of the Finance Act, 1994.

This notification shall come into force from the **15th day of November, 2015**.

OUR TAKE: Effective Rate of Swachh Bharat Cess is 0.5 of the value of taxable services.

COURT DECISIONS

AJAY KUMAR SANDHU VERSUS STATE OF HARYANA (PUNJAB AND HARYANA HIGH COURT)

BRIEF: Request for quashing of FIR. Once the Act of 1994 was a special and complete Code in itself wherein even the procedure for penalty has been provided governing the fact situation as obtaining in the present case registration of the impugned FIR was nothing but abuse of process of Court and the same cannot be sustained.

OUR TAKE: The hon'ble **PUNJAB AND HARYANA HIGH COURT** held that the moment petitioner received any demand put to him by the competent authority, he immediately deposited the amount of Rs 1,05,705/-, which is so mentioned in the official communication (Annexure P-3). This amount deposited by the petitioner reflected in Annexure P-3, was towards service tax because this fact has also not been disputed by learned counsel for the State. When the Act of 1994 was a special Act, which would prevail upon the general provisions, he had no answer and rightly so, it being a matter of record. It has also not been argued on behalf of the respondent-State that any competent authority, after following the procedure provided under the above said relevant provisions of law contained in the Act of 1994, has arrived at a conclusion, pointing out any financial liability of the petitioner, which might have been outstanding against him. Having said that, this Court feels no hesitation to conclude that once the Act of 1994 was a special and complete Code in itself, wherein even the procedure for penalty has been provided, governing the fact situation as obtaining in the present case, registration of the impugned FIR was nothing but abuse of process of Court and the same cannot be sustained.

If any competent authority, after following the procedure laid down under the Act of 1994, comes to the conclusion that some amount was outstanding against the petitioner on account of service tax or any other financial liability for that purpose, petitioner would not be running away from his legal obligation and he would deposit the same, as he had been doing on earlier occasions also. In this view of the matter, it can be safely concluded that continuation of the criminal proceedings arising out of the impugned FIR, would certainly result in further abuse of process of Court, therefore, the same cannot be sustained, for this reason as well. As an abundant precaution that the competent authority under the Act of 1994, would be at liberty to proceed further against the petitioner, as per the procedure provided therein. If the competent authority, after following the procedure under the Act of 1994 arrives at a conclusion that petitioner is liable to pay any amount, he shall be duty bound to pay the same, in accordance with law. [**Decided in favour of assessee**]

ASK ME ENTERPRISE VERSUS UNION OF INDIA AND 2 (GUJARAT HIGH COURT)

BRIEF: Denial of benefit of VCES when the entire amount as contemplated under the Scheme stood paid before the due date and the petitioner satisfied all other requirements under the Scheme. The respondents are not justified in denying the benefit of the Scheme to the petitioner only on the ground that the amount of Rs 636103/- had initially been paid towards the interest and penalty.

OUR TAKE: The hon'ble **GUJARAT HIGH COURT** held that it was after the introduction of the Scheme, that the petitioner in ignorance of the Scheme paid the amount payable towards service tax, penalty and interest in relation to four revenue paras. At that point of time, the respondent authorities did not draw the attention of the petitioner to the fact that it could avail of the benefit of the Scheme. However, well within the time limit prescribed under the

Scheme, the petitioner in due compliance with the provisions of the section 107 of the Act, submitted a declaration under sub-section (1) thereof and paid more than fifty per cent of the tax dues before 31st December, 2013 as required under sub-section (3) thereof and in order to comply with the provisions of sub-section (4), viz. payment of the remaining amount, requested for adjustment of an amount of Rs 6,36,103/- paid under the wrong accounting code of interest and penalty to the correct code of service tax, which request was duly acceded to by the respondent authorities and such correction was made before 30th May, 2014.

When the entire amount as contemplated under the Scheme stood paid before the due date and the petitioner satisfied all other requirements under the Scheme, the respondents are not justified in denying the benefit of the Scheme to the petitioner only on the ground that the amount of ₹ 6,36,103/- had initially been paid towards the interest and penalty. The impugned communication/order which seeks to deny the benefit of the Scheme to the petitioner under such hyper technical plea, therefore, cannot be sustained. [**Decided in favour of assessee**]

UTTARAKHAND VAN VIKAS NIGAM VERSUS UNION OF INDIA AND OTHERS (UTTARAKHAND HIGH COURT)

BRIEF: Service Tax Voluntary Compliance Encouragement Scheme 2013 (VCES). Inquiry or investigation which is pending.

OUR TAKE: The hon'ble **UTTARAKHAND HIGH COURT** held that intention of the Legislature appears to have been, undoubtedly, to entice large number of persons into paying the service tax dues with the assurance that, if the terms of the Scheme are complied with, they will not have to pay penalty and interest. This is, undoubtedly, for alluring such persons so that there is an increase in the revenue of the Government. But, at the same time, the Legislature was conscious of the criticism that could be levelled against such a Scheme being in the nature of promotion of dishonesty. It, therefore, felt that the Scheme should be limited to those cases, where there were no proceedings at all pending and where the concerned assessee may have, out of ignorance which is partly contributed to by the revenue in not taking any sort of action against them, not made payments, which they were otherwise liable to pay. This interpretation of ours appears to be inevitable on the clear language of Section 106 read as a whole and in part.

In the show-cause notice issued, it is stated that, though the amount was deposited on 31.03.2013, it was when the investigation was pending. A reply was given by the assessee. The reply as such is not before us, but the learned counsel for the appellant would submit that the reply has been faithfully reproduced in the impugned orders. In the impugned orders, there is no reference to the Circular as such. In other words, there is no case set up by the assessee before the authority that the notices issued under Section 14 of the Central Excise Act were of a roving nature. Besides that, as we have already noticed, the notices do specifically refer to the transport service from out of the many services, which the appellant do perform, and the documents are sought with reference to the same. Having regard to the same, we would think that it would be a futile attempt to again remit the matter back to the authority for a de novo consideration.

There was no interdiction by this Court against the authority considering the matter. In the circumstances of this case, therefore, noticing that the matter would be a futile exercise, we would decline to undertake the exercise of remitting the matter back.

In regard to the payment effected being prior to the Scheme, we would think that, insofar as the payment was effected not as on 01.03.2013, but thereafter, namely, on 31.03.2013; though the express words of Section 107 appear to contemplate payments being made after the Scheme, but, insofar as requirement is that 50 per cent is to be paid prior to 31.12.2013 and the payment effected in this case being of the full amount prior to 31.12.2013, we would think that the appellant's case cannot be thrown out on that ground. [**Decided against assessee**]

CENTRAL EXCISE

NOTIFICATIONS & CIRCULARS

The **Govt. vide Instruction F. No 275/72/2014-CX.8A, dated 19 June, 2015** orders creating awareness of the provisions relating to Settlement of Cases through Settlement Commission, by informing the noticee about the said provisions by a follow up letter after issuance of Show Cause Notice.

OUR TAKE: It has been noticed that even after more than fifteen years of operation scheme of settlement of cases through Settlement Commission has not yielded the desired results and very minuscule percentage of all the show cause notices issued are taken up by the assessee's for settlement. To encourage voluntary compliance and for settlement of the disputes by making use of the said scheme, it is directed that immediately after issuance of Show Cause Notice, a letter should invariably be written to the noticee informing him about the scheme of the settlement.

The **Govt. vide Circular No. F. No. 276/132/2015-CX.8A dated 15 May, 2015**, has notified non-filing of SLPs before Supreme Court in the cases where presently revenue is

below the threshold limit while appeal filed before 01.09.2011 in High Court.

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

COURT DECISIONS

COMMISSIONER VERSUS METFLOW CAST PVT. LTD. (GUJARAT HIGH COURT)

BRIEF: Allowability of refund of CENVAT Credit availed on inputs used in the manufacture of goods cleared by DTA unit to a 100 Export Oriented Unit. DTA unit clearing goods to 100 EOU can be termed as export for the purpose of allowing DTA unit to claim refund of unutilized CENVAT credit.

OUR TAKE: The hon'ble **GUJARAT HIGH COURT** held that insofar as clearances from DTA units to 100% export oriented units are concerned, the Tribunal has placed reliance upon the decision of the Supreme Court [2007 (4) TMI 6 - SUPREME COURT OF INDIA] wherein it has been held that DTA sales against foreign exchange or other supplies in India can be equated with physical exports. Thus, the Tribunal has merely applied decisions of the jurisdictional High Court as well as the Supreme Court to the facts of the case while holding that DTA unit clearing goods to 100% EOU can be termed as export for the purpose of allowing DTA unit to claim refund of unutilized CENVAT credit. Under the circumstances, it is not possible to state that the impugned order passed by the Tribunal suffers from any legal infirmity so as to give rise to any question of law, much less, a substantial question of law so as to warrant interference. [**Decided against Revenue**]

COMMISSIONER OF CENTRAL EXCISE VERSUS M/S. HARIPRIYA MARINE FOOD EXPORTS & ANR. (SUPREME COURT)

BRIEF: On processing and export of shrimps/prawns, since they are not an agricultural produce, assessee is not entitled to exemption in terms of Notification No. 6/02-CE. Tribunal committed an error in allowing exemption on the ground that in the earlier year exemption was allowed.

OUR TAKE: The hon'ble **SUPREME COURT** held that whereas Notification No. 19/99 specifically covered the produce i.e. Shrimps/Prawns, present Notification confines the exemption only to agricultural produce, Shrimps/Prawns cannot be treated as agricultural produce. This aspect is highlighted by the Commissioner (Appeals) in his analysis and the assessee in its counter affidavit has simply taken the plea that once similar benefit was granted to the assessee in the earlier year it was not open to the Department to agitate the issue once again and in support of the submission the assessee has relied upon the judgment of this Court in Commissioner of Central Excise vs. Suntract Electronics Pvt. Ltd.[2002 (11) TMI 118 - SUPREME COURT OF INDIA]. For the reasons given, the aforesaid judgment would be no help to the assessee inasmuch as the earlier period was covered by different Notification. Assessee is not entitled to exemption in terms of Notification No. 6/02-CE. The impugned decision of the Tribunal is, accordingly, set aside. [**Decided in favour of Revenue**]

COMMR. OF CENTRAL EXCISE-III, AHMEDABAD VERSUS M/S GUJARAT AMBUJA EXPORT LTD. (SUPREME COURT)

BRIEF: By-products Soyabean Solvent Extraction Raw Oil was not covered under 100 EoU scheme and hence tariff rate applicable in DTA which was nil would be applicable to the by-product.

OUR TAKE: The hon'ble **SUPREME COURT** held that Commissioner vide its Order-in-Appeal dated 26.09.1992 allowed the said appeal holding that by-products Soyabean Solvent Extraction Raw Oil was not covered under 100% EoU scheme and hence tariff rate applicable in DTA which was nil would be applicable to the by-product removed by the respondent. This finding has been upheld by the Customs, Excise and Service Tax Appellate Tribunal as well. It has affirmed the order of the Commissioner (Appeals) and dismissed the appeal of the Revenue challenging the order of the Commissioner (Appeals). No question of law arises for consideration. [**Decided against Revenue**]

CUSTOMS

NOTIFICATIONS & CIRCULARS

The **Govt. vide Notification No. 103/ 2015-Customs (N.T.), dated 3 November, 2015** notifies amendment in Principal Notification No. 12/97-Customs (N.T.) dated 02.04.1997 - 103/2015.

OUR TAKE: In the said notification, in the Table, against serial number 4 relating to the State of Gujarat, after item (xi) and the entries relating thereto, in columns (3) the item "(xii) Village Tumb, Taluka Umbergaon, District Valsad." and in column (4), the entries "Unloading of imported goods and loading of export goods" shall respectively be inserted.

The **Govt. vide Notification No. 106/2015 - Customs (N.T.) dated 5 November, 2015** has notified new rate of exchange of conversion of the foreign currency with effect from 6th November, 2015.

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

COURT DECISIONS

COMMR. OF CUSTOMS (PREVENTIVE) JAMNAGAR VERSUS M/S ESSAR OIL LTD. (SUPREME COURT)

BRIEF: Violation of Section 45 of the Customs Act. Goods were shifted without payment of duty and without authorization of the proper officer. Reducing the redemption fine from Rs 1.2 crores to merely Rs 1 lac was not proper.

OUR TAKE: The hon'ble **SUPREME COURT** held that there is a clear violation of the provisions of Section 45 of the Customs Act. In such circumstances, when the confiscation was held to be valid, we are of the view that reducing the redemption fine from Rs 1.2 crores to merely Rs 1 lac was not proper. We have considered this aspect. According to us the interest of justice would be subserved in fixing the redemption fine to the extent of 50% of the fine imposed by the Commissioner. Other directions contained in the order of the Tribunal are maintained. [**Appeal disposed of**]

BHARMPAL PANCHAL AND ANOTHER VERSUS UNION OF INDIA AND OTHERS (BOMBAY HIGH COURT)

BRIEF: Validity of order of Settlement Commission rejecting the balance Settlement Applications arising out of the second and third Show Cause Notices. Since section 28AB no longer remained on the statute-book no interest was paid by them under the said section.

OUR TAKE: The hon'ble **BOMBAY HIGH COURT** held that admittedly the Settlement Applications were filed by the Petitioners in the year 2012-2013. On the date when these Applications were filed under section 127B, section 28AB no longer remained on the statute-book and therefore it was impossible for the Petitioners to comply with the condition as set out in clause (c) of the 1st proviso to section 127B (1) which continued to stipulate that no Settlement Application could be made unless the Applicant had paid the additional amount of customs duty accepted by him along with interest due under section 28AB. It was in these circumstances and as rightly submitted by Mr Shah, that the Petitioners brought to the notice of the Authorities that since section 28AB no longer remained on the statute-book, no interest was paid by them under the said section. Despite this, the Petitioners had undertaken that they would pay interest under section 28AA as and when determined by the Settlement Commission. Admittedly, the Settlement Commission, whilst ordering that the Settlement Applications (arising out of the 2nd and 3rd SCNs) are allowed to be proceeded with, did not impose any condition or direct the Petitioners to pay any interest

The Settlement Commission was totally in error in coming to the conclusion that the Petitioners' Settlement Applications could not be entertained because an Appeal was pending before the CESTAT. As stated earlier, the Appeal before the CESTAT was not against the 3rd SCN but was against the ex-parte decision of the Authorities to appropriate a sum of Rs 41,79,324/- towards a time barred claim.

Matter restored back to the file of the Settlement Commission for a de novo consideration and in accordance with law. [**Appeal disposed of**]

M/S. MOSER BAER INDIA LTD. VERSUS COMMR OF CUSTOMS, NOIDA (SUPREME COURT)

BRIEF: Goods were imported by the appellant-assessee for construction of its unit from where the goods meant for export were to be manufactured and therefore these goods are in the nature of capital goods.

OUR TAKE: The hon'ble **SUPREME COURT** held that it is not necessary that the material which is imported into India has to be used in the manufacture of articles which are to be exported out of India. Even if the said material is used "for the purpose of manufacture of articles" or "for being used in connection with the production or packaging or job work", the same shall still be covered by the aforesaid notification and thus would not attract any customs duty. The table which mentions the goods that are entitled to exemption specifically include "capital goods". It could not be disputed that the aforesaid good were imported by the appellant-assessee for construction of its unit from where the goods meant for export were to be manufactured and therefore, these goods are in the nature of capital goods.

Goods are used for the purpose for which they are imported. If the perception of the Revenue was that these are not captive goods or the benefit of Notification No. 53/97 is not available to the assessee, the period of limitation started at the threshold and therefore, on the facts which were known to the Revenue the Show Cause Notice could have been issued within a normal period of

limitation prescribed under Section 28 which was six months at the relevant time. [**Decided in favour of assesse**]

INCOME TAX

NOTIFICATIONS & CIRCULARS

The **Govt. vide Notification No. 4(19)-W&M/2014 dated October 30, 2015** notified Sovereign Gold Bonds Scheme, 2015.

OUR TAKE: The notification contained the details of the scheme. Readers are requested to read the said Notification. It is self-explanatory.

The **Govt. vide Circular IDMD.CDD.NO.939/14.04.050/2015-16, dated 30 October, 2015** notified to issue Sovereign Gold Bonds, 2015 with effect from November 05, 2015 to November 20, 2015 as per the Notification F.No.4(19)-W&M/2014 dated October 30, 2015.

OUR TAKE: The terms and conditions of the issuance of the Bonds are mentioned in the circular. The readers are requested to read the said circular. It is self-explanatory.

COURT DECISIONS

DR. AMRIT LAL MANGAL AND OTHERS VERSUS THE UNION OF INDIA AND OTHERS (PUNJAB & HARYANA HIGH COURT)

BRIEF: Levy of late filing fee u/s 234E without issuing SCN. Delay in submitted TDS returns.

OUR TAKE: The hon'ble PUNJAB & HARYANA HIGH COURT held that with reference to the judgments relied upon by learned counsel for the petitioners, suffice it to notice that the principles of law enunciated therein are well recognized but in view of pronouncements of Bombay High Court in Rashmikant Kundalia's case (2015 (2) TMI 412 - BOMBAY HIGH COURT) and Karnataka High Court in Lakshminirman Bangalore Pvt. Ltd's case (2015 (8) TMI 379 - KARNATAKA HIGH COURT), with which we express our concurrence where Section 234E of the Act has been held to be intra vires, no benefit can be derived by the petitioners from such enunciations. Further, all the pronouncements relied upon by the petitioners are prior to incorporation of Section 234E of the Act by the Finance Act, 2012 with effect from 1.7.2012.

In view of the above, we find that the provisions of Section 234E of the Act are neither ultra vires nor unconstitutional and, thus, finding no merit in the instant writ petition, the same is hereby dismissed. [**Decided against assesse**]

MANPREET KAUR, PROP. M/S LILY'S CREATION BOUTIQUE VERSUS COMMISSIONER OF INCOME TAX, PATIALA (PUNJAB AND HARYANA HIGH COURT)

BRIEF: Penalty under section 271(1) (c). The cost of construction in the immovable property was found to be a false claim. Where the claim of the assessee was found to be false the assessee is liable to penalty under section 271(1)(c).

OUR TAKE: The hon'ble **PUNJAB AND HARYANA HIGH COURT** held that the Tribunal while affirming the findings of the Assessing Officer and the CIT(A) had recorded that the assessee had failed to produce bills or vouchers. She had also failed to produce any proof of construction and the date of completion of construction during the assessment proceedings. Merely reflecting the expenditure incurred on construction in the balance sheet alongwith the income tax return was not sufficient to establish the claim.
No merit in the claim of the assessee that it is not exigible to levy of penalty under section 271(1)(c) of the Act on the aforesaid disallowance as the claim made by the assessee vis a vis the cost of construction in the immovable property was found to be a false claim and the assessee has failed to discharge the onus of establishing that it had undertaken the aforesaid construction of the immovable asset. Merely because the assessee had reflected certain amount of expenditure claimed to be on account of construction of property in its balance sheet does not entitle the assessee to the claim of deduction under section 54 of the Act being the amount spent on construction of the asset on sale of residential property. In the entirety of the facts and circumstances where the claim of the assessee was found to be false, the assessee is liable to penalty under section 271(1)(c) of the Act. [**Decided against assesse**]

COMMISSIONER OF INCOME TAX CHENNAI VERSUS M/S. SHRIRAM INVESTMENTS LTD (MADRAS HIGH COURT)

BRIEF: Accrual of income. Taxation in the light of Section 145, the terms of the agreements which enable the assessee to demand overdue charges (AFC) is only an enabling provision and the recovery of overdue charges is not certain and is taxable on cash receipt basis and not accrual basis.

OUR TAKE: The hon'ble **MADRAS HIGH COURT** held that in the instant case, the Revenue is not in a position to show that due to the change of accounting method, the Revenue suffered loss. Admittedly, there is no finding to that effect in the assessment order. We also find that the change in method of accounting has not caused any loss to the Revenue, because AFC on receipt by the assesse, company has been offered to tax. Accordingly, we hold that the change of method of accounting of overdue charges from the mercantile basis to cash system insofar as AFC does not create any income, but the method of accounting only recognizes income.

It would not be proper for the Department to contend that post amendment to Section 145 of the Income Tax Act, the change in the method of accounting adopted by the assessee should be re-looked. In the light of the decision of this court in the case of Annamalai Finance (2004 (10) TMI 51 - MADRAS High Court), we find no justification or good reason why we should reject the claim of the assessee. We have no hesitation to hold that collection and accrual of AFC happen simultaneously in the present case as and when received, as has been held by this Court. Hence, AFC cannot be treated as income on accrual basis.

Following the decision of this Court reported in CIT V. Annamalai Finance Ltd [2004 (10) TMI 51 - MADRAS High Court] and CIT V. Annamalai Finance Ltd.(2009 (11) TMI 11 - MADRAS HIGH COURT), we hold that the terms of the agreements, which enable the assessee to demand overdue charges (AFC) is only an enabling provision and the recovery of overdue charges is not certain and is taxable on cash receipt basis and not accrual basis. Deletion of additions made towards Additional Finance Charges, also known as Overdue charges confirmed. [**Decided in favour of assesse**]

STATE TAXES

ALL INDIA VAT

DELHI

The **Govt. vide Circular No. 28 of 2015-16, dated 30 October, 2015** extend the last date of filing of online return in Form 9 for the year 2014-15, prescribed under Rule 4 of Central Sales Tax (Delhi) Rules, 2005 to 15/12/2015.

The **Govt. vide Notification No. F.3(18)/Fin(Rev-I)/2015-2016/DSVI/886, dated 30 October, 2015** notified the rules to further amend the Central Sales Tax (Delhi) Rules, 2005.

OUR TAKE: There is amendment in Form 1 under the Central Sales Tax (Delhi) Rules, 2005.

GUJARAT

The Govt. vide notification has revised the time limit for filing e-returns for monthly and quarterly dealers and for e- payment above Rs.10 Lacs with immediate effect.

OUR TAKE: Dealers to note that Time Limit for filing E-Returns has been revised as under with immediate effect. The notification contains the due date for various months.

HARYANA

The **Govt. vide Notification No. Leg. 22/2015, dated 21st September, 2015** seek to amend Haryana Value Added Tax (Second Amendment) Act, 2015.

OUR TAKE: Repeal Ordinance Amends Section 2(w), 8, 15A, 16, 17, 34, 60 and insert Section 2(oo), 54A & 54B under Haryana Act No. 15 of 2015. Readers are requested to read the said Notification. It is self-explanatory.

The **Govt. vide Order dated 2 November, 2015** notifies extension of the period for filing online quarterly returns for the quarter ending 30-9-2015, upto 16.11.2015.

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

HIMACHAL PRADESH

The **Govt. vide Notification No. EXN-F(10)-5/2010-Loose, dated 29 September, 2015** amended the existing entry No. 7 of Part-II of Schedule 'A'.

OUR TAKE: For the existing entry No.7 of Part-II of Schedule 'A' "7 (a). Goods on which rate of tax otherwise applicable is more than 4%, other than Motor-spirit (Petrol including ATF and Diesel), when sold to Central Police Canteens directly subject to furnishing of a certificate duly signed and stamped by the officer authorized to make purchases certifying that

the goods purchased are meant for sale to serving and retired Central Armed Police Forces personnel i.e. ITBP,CISF, SSB, BSF and CRPF directly or through unit run canteens. (b). Goods mentioned at entry No.7(a) when further sold to serving and retired Central Armed Police Forces personnel by Central Police canteens directly or through unit run canteens." shall be substituted.

JHARKHAND

The **Govt. vide Circular No. 4276, dated 1 November, 2015** has issued Jharkhand Circular for Revised Return.

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

MADHYA PRADESH

The **Govt. vide Notification No. 6 of 2015 dated 31 October, 2015** issued Madhya Pradesh VAT (Second Amendment) Ordinance, 2015.

OUR TAKE: The Governor of Madhya Pradesh has promulgated the Ordinance and thereby amended Section 2 and inserted Section 9-AA.
9-AA is read as "(1) Notwithstanding anything to the contrary contained in section 9 and 9-A, there shall be levied additional tax, based on weight, volume, measurement on unit, on the sales of such goods specified in Schedule II, other than declared goods, at such rate as may be notified by the State Government.
(2) The provisions of section 14 shall mutatis mutandis apply to the additional tax levied under sub-section (1)."

MAHARASHTRA

The **Govt. vide Circular No. 16T of 2015, dated 4 November, 2015** notified revision in rates of Maharashtra Value Added Tax.

OUR TAKE: By virtue of the notification No. VAT.1515/C.R.128A/Taxation 1, dated 30 September 2015, the schedule rates of tax on certain commodities have been increased with effect from the 1st October 2015. By notification No. VAT.1515/C.R.128B/Taxation 1, dated 30th September 2015, the formula provided in the notification u/s 41(5) of the MVAT Act, applicable to liquor dealers has been modified.

The **Govt. vide Notification No. 1515/CR-81/Taxation-1, dated 5 November, 2015** amends Rule 88 Prescribe rates of interest for the purposes of sub-sections (1), (2) and (3) of section 30 under Maharashtra Value Added Tax.

OUR TAKE: Readers are requested to refer notification for the rates in tabular form.

ODISHA

The **Govt. vides Legislation No. 9848-I-Legis 5/2015-L** introduced amendment in various sections under The Odisha Value Added Tax (Amendment) Act, 2015.

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

RAJASTHAN

The **Govt. vides Notification No. F.12(105)FD/Tax/2014 Pt.-I-97, dated 3 November, 2015** makes the following amendments in this department's order No. F.12 (28) FD/Tax12010-Pt.1-115 dated 08.10.2014.

OUR TAKE: There are substitution and insertion of certain words. Readers are requested to read the said Notification. It is self-explanatory.

SIKKIM

The **Govt. vide Notification No. 110/CTD/2015, dated 31st October, 2015** seek to extend date for filing of return for period July to September 2015 to 15-11-15.

UTTARAKHAND

The **Govt. vides Notification No. 3016 dated 31 October, 2015** extends date for using printed Form-16 till 30/11/15.

WEST BENGAL

The **Govt. vide Order Memo No. 919/CT/PRO/3C/PRO/2015 dated 29 October, 2015** has extended the due date of submission Form 14/14D and Form 15 of return quarter ending 30-9-2015 to 16-11-15.

COURT DECISIONS

BHARTI AIRTEL LTD. VERSUS STATE OF U.P. AND OTHERS (ALLAHABAD HIGH COURT)

BRIEF: Levy of Entry Tax under the provisions of the U.P. Act of 2007. On demand of interest, since the petitioner has disputed its liability from the very inception the same cannot be treated to be the admitted tax for the purpose of Section 8(1) of the Act read with Section 33(2).

OUR TAKE: The **hon'ble ALLAHABAD HIGH COURT** held that from a perusal of the assessment order that the department has imposed the tax liability on the goods imported by the Company treating it to be "machinery". The petitioner has disputed the liability of tax under the Act from the very outset and has contended that the goods imported by the petitioner are "electrical equipments" and not a "machinery" and was, therefore, not liable to pay any tax. On the other hand the department contends that the petitioner had challenged the vires of the Act of 2007. The validity of the entry tax was upheld by the High Court and consequently, the petitioner was required to deposit the entry tax along with returns which was legally due and payable. Since the same was not deposited, the tax would be deemed to be the admitted tax in view of Section 8(1) of the Act read with Section 33 of the U.P. VAT Act.

Even though the vires of the Act of 2007 had been upheld, the petitioner nonetheless disputed the liability of payment of tax under the Act of 2007 on the ground that the petitioner was importing "electrical equipments" and that the petitioner was not liable to pay any tax as it was not “machinery". This fact, that the petitioner has disputed its liability under the Act is not disputed by the respondents. The fixation of the liability under the Act of 2007 in the assessment orders are being contested by the petitioner in the appeal. We are consequently of the opinion that since the petitioner has disputed its liability from the very inception, the same cannot be treated to be the admitted tax for the purpose of Section 8(1) of the Act read with Section 33(2) of the U.P.VAT Act. Thus, for the purpose of imposition of interest, the provisions of Section 8(1B) of the U.P. Act read with Section 33(4) of the U.P. VAT Act would be applicable for the purpose of determining the interest liability. [**Decided in favour of assessee**]

OTHER UPDATES

DGFT

The **Govt. vide Trade Notice 08/2015 dated 3 November, 2015** has issued application for Duty Credit Scrips of additional 2% under Market Linked Focus Product Scheme (MLFPS)

OUR TAKE: Under the Foreign Trade Policy 2009-14, DGFT vide Public Notice No. 53 dated 27.2.2014 allowed for grant of additional Duty Credit Scrips @ 2% to certain specified products under the Market Linked Focus Product Scheme (MLFPS) for exports made w.e.f. 1.3.2014 to 31.8.2014 if exported to the EU (27 countries). This 2% duty credit scrips was in addition to the benefits of 2% under Focus Product Scheme (FPS).

Few exporters have already filed their application for FPS and received their claim. But they are eligible for additional benefits as per Public Notice No. 53 dated 27.2.2014 and are unable to file their applications online as their shipping bills have already been utilised to claim benefit under FPS and the system does not allow the claim of additional benefit on the utilised shipping bills

To sort out the issue, it is decided that the exporters may file a letter with the concerned RA to claim additional benefit intimating the details of earlier application No. (E-Com Reference no.) file no. etc. along with shipping bill number, date of shipping bill, description etc. and coverage indicating serial no. of the Public Notice.

FEMA

The **Govt. vide Notification No. FEMA.354/2015-RB dated 30 October, 2015** seek to amend Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Tenth Amendment) Regulations, 2015.

OUR TAKE: Reserve Bank of India has made amendments in the Foreign Exchange Management (Transfer or issue of Security by a Person Resident outside India) Regulations, 2000 (Notification No. FEMA 20/2000-RB dated 3rd May

2000). Readers are requested to read the said notification. It is self-explanatory.

The **Govt. vide Notification No. A. P. (DIR Series) Circular No. 26, dated 5 November 2015**, notifies switching from Barter Trade to Normal Trade at the Indo-Myanmar Border.

OUR TAKE: FEMA, in consultation with Government of India, has decided to do away with the barter system of trade at the Indo-Myanmar border and switch over completely to normal trade with effect from December 1, 2015. Hence instructions contained in A.P. (DIR Series) Circular No. 17 dated October 16, 2000, stand withdrawn. Accordingly, all trade transactions with Myanmar, including those at the Indo-Myanmar border with effect from December 1, 2015 would be settled in any permitted currency in addition to the Asian Clearing Union mechanism.

We may be contacted at the following offices:

CORPORATE OFFICE
73, National Park
Lajpat Nagar IV,
New Delhi - 110024
INDIA
P: +91-11-41729056-57, 41729656/57

GURGAON
605, Suncity Business Tower
Golf Course Road, Sector-54,
Gurgaon,
Haryana - 122002
P: +91-124-4245110/116/117 +91-124-4245111

NOIDA
C-100,Sector-2,
Noida- 201301
Uttar Pradesh
M: +91- 9811481093

MUMBAI
SitaiVihar,
Plot No 67A, Sector New 50
4th Floor, B- Wing
Navi Mumbai – 400706
Mumbai
M: +91- 9022131399

ASSAM
House No. 76,
Near Godrej Interio,
Forest Gate, P.O. Narangi,
Guwahati – 781026
P: +91-0361-2552302
M: +91-9864857565

INTERNATIONAL BRANCH
303,5th Avenue Suite 1007,
New York, NY 10016, U.S.A

For enquiries related to:

Service	Contact Person	Service	Contact Person
DVAT:	faiz@ascgroup.in	Service Tax:	nitin@ascgroup.in
HVAT:	deepak@ascgroup.in	Transfer Pricing & PE:	shailendra@ascgroup.in
Excise:	deepak@ascgroup.in	Legal Metrology:	mayank.singhal@ascgroup.in
UPVAT:	jaswant@ascgroup.in	Company Law:	legal@ascgroup.in
Income Tax:	vikash@ascgroup.in	PR/Media	socialmedia@ascgroup.in
Maharashtra VAT:	niten@ascgroup.in		