20th issue

June

14th-20th

GST

CENTRAL EXCISE

SERVICE TAX

CUSTOMS

STATE TAXES

TAX CONNECT

JAV & ASSOCIATES

-Chartered Accountants

Head Office:
1, Old Court House Corner,
"Tobacco House" 1st Floor,
Room No.-13 (North), Kolkata-700001,
West Bengal

Branch Office:
Quarter No.-3/174, Gujarat Refinery Township
Jawaharnagar, Vadodara-391320,
Gujarat

Contact: +919331042424; +919831594980; +918697575185; +913322625203

e-mail: tb.chatterjee@dic.co.in; tb.chatterjee@yahoo.co.in; cavivekjalan@gmail.com; vivek.jalan@icai.org

EDITORIAL

Friends,

Many of our readers have said that it is very burdensome to read and retain all updates of a month at one go. They have asked us a number of times to issue a weekly bulletin rather than a monthly bulletin. Further corporate houses who are working PAN India have also been telling us to cover All India State Taxes updates rather than just West Bengal. Therefore, we have decided to come up with a weekly TAX CONNECT to update you every week rather than only once in a month. Further, we shall henceforth cover All India VAT also in our publication.

You shall receive our TAX CONNECT on every Saturday of the week henceforth, providing you updates about the week gone by and a compliance calendar to plan the week ahead. We shall also include a special section on GST!

On the GST front, it is of up teen importance that Corporates start streamlining the Indirect Taxes structure in their organizations from now and preparing for GST. More so because it seems fairly certain that Trade & Industry will get only around 2 months or so to implement GST.

As specified in the last bulletin also, like every year, we, in The Bengal Chamber of Commerce & Industry are conducting a 1 day workshop on Indirect Taxes on 18th June. The programme details are once again reiterated herein.

May we reiterate that we remain available for a discussion over mail or over a telecon!

Truly Yours

Timir Baran Chatterjee
M.Com, FCS, MBA(International Business)-IIFT, ACMA

Vivek Jalan
FCA, CIDT(ICAI), B. Com

DUE DATE	COMPLIANCES from 14/06/2015 to 20/06/2015
14-June-15	VAT,CST,ET Payment for Rajasthan
15-June-15	WCT Payment for Delhi, Haryana, Jharkhand, Punjab, Rajasthan, Himachal Pradesh
15-June-15	VAT,CST,ET,WCT,PT Payment for Sikkim, Jharkhand, Bihar
15-June-15	Provident Fund e-Payment for May,2015 (Cheque to be cleared by 20th)
15-June-15	Payment of Advance Income Tax: Companies- 15%.
20-June-15	VAT/CST/WCT/ET Payment of Andhra Pradesh, Karnataka, Tamil Nadu, Uttar Pradesh, Uttarakhand, Manipur for the month of May

Index Guide

SEMINAR ON GOODS & SERVICE TAX

10.30 a.m. onwards, 18th June, 2015
The Bengal Chamber of Commerce and Industry
Royal Exchange, 6,Netaji Subhas Road, Kolkata 700001

The Indirect Taxes Committee of The Bengal Chamber of Commerce and Industry is organizing a Seminar on Goods and Service Tax from 10.30 a.m. on 18th June, 2015 in the Chamber.

The Seminar will cover critical issues of Service Tax like **Preparedness for GST, Preventing Litigation, Handling SCN, Penalties and Prosecution in Service Tax,** New Amendments under the Finance Act, 2015, CENVAT Credit / Reverse Charge, Service Tax on Real Estate Transactions, and Works Contract Service. The programme schedule with names of speakers is enclosed for your kind reference.

We do hope that the programme will be relevant to you. You may please also nominate suitable representatives to attend the programme. For the purposes of registration, please email the enclosed Ready Reply Form, suitably filled in, to sarbani@bengalchamber.com

The participation fees (inclusive of taxes) are Rs 3500/- for members of The Bengal Chamber; Rs 4000/- for the non-members. A discount of 10% is applicable for a group registration on 4 or more participants registering from the same organization. An early bird discount of 10% is also available for registrations before 31st May 2015**.**

Following is the Tentative Programme:

TIMING	EVENT	CONDUCTED BY
10.30 a.m. – 11.00 a.m.	Registration	
11.00 a.m. – 11.05 a.m.	Welcome Address	The Bengal Chamber of Commerce & Industry
11.05 a.m. – 11.15 a.m.	Keynote Address	Shri Partha Roy Choudhury, Commissioner of Service Tax, Kolkata
11.15 a.m. – 11.30 a.m.	Inaugural Address	Dr. Gautam Ray, Chief Commissioner of Customs, Central Excise and Service Tax, Kolkata
11.30 a.m. – 11.45 a.m.	Special Address	Shri Satish Chandra, Member Secretary, Empowered Committee of State Finance, Ministers & Director GSTN
11.45 a.m. – 11.50 a.m.	Vote of Thanks	The Bengal Chamber of Commerce & Industry
11.50 a.m. – 12.00 p.m.	Tea Break	
12.00 p.m. – 12.45 p.m.	Technical Session I: Preparedness for GST	Mr. T B Chatterjee, Chairperson, Indirect Taxes Committee The Bengal Chamber of Commerce and Industry & Chief Corporate Officer, Legal and Corporate Affairs, DIC India Ltd
12.45 a.m. – 1.30 p.m.	Technical Session II: New Amendments under the Finance Act, 2015	Mr. P K Saha Partner - Tax & Regulatory Services, Price Waterhouse & Co. LLP
1.30 p.m. – 2.00 p.m.	Lunch	
2.00 p.m. – 2.40 p.m.	Technical Session III: Cenvat Credit / Reverse Charge	MR. M S Mani, Senior Director, Deloitte Touche Tohmatsu India Private Limited
2.40 p.m. – 3.20 p.m.	Technical Session IV: Preventing Litigation, Handling SCN, Penalties and Prosecution in Service Tax	Mr. Vivek Jalan, FCA JAV & Associates, Chartered Accountants
3.20 p.m. – 4.00 p.m.	Technical Session V: Service Tax on Real Estate Transactions	Mr. Arun Agarwal-FCA K N Jain & Co
4.00 p.m. – 4.40 p.m.	Technical Session VI: Works Contract Service	Mr Sushil Kumar Goyal Agrawal Singhania & Co

CENTRAL TAXES

SERVICE TAX

NOTIFICATIONS & CIRCULARS

CLARIFICATION ON RATE OF SERVICE TAX ON RESTAURANT SERVICE

The **CBEC** vide **Circular No. 184/3/2015-ST dated June 3, 2015** has clarified that in Budget 2015, there haven't been any changes made in abatement for determining valuation of services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, having the facility of **air-conditioning or central air-heating** in any part of the establishment and it shall still be determined in accordance with Rule 2C of the Service Tax Valuation Rules; where the service portion is 40% of the total amount charged for such supply.

OUR COMMENTS: Hence, with the increase in the applicable rate of service tax from 12.36% (including education cesses) to 14%, the effective rate on such establishments has increased from 4.9% to 5.6% of the total amount charged.
It is further clarified that exemption from Service tax still continues to services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, **not having the facility of air-conditioning or central air-heating** in any part of the establishment, at any time during the year.

COURT DECISIONS

DELHI TRANSPORT CORPORATION V/S COMMISSIONER SERVICE TAX (Delhi HC)

BRIEF: The assessee had entered into contracts with seven agencies (contractors/advertisers) to provide taxable service by providing space to such parties for display of advertisements on its buses, bus queue shelters, time keeping booths and other properties. In the contract it was provided that the responsibility to pay advertisement tax or any other taxes imposed by any authority will be of the Advertisers.

Two advertisers however failed to abide by the legal obligations as per the contractual terms and did not deposit the service tax in spite of contractual obligation. As a result, the assessee also did not pay the service tax on the services rendered.
SCNs were issued to the assessee wherein interest and tax along with several penalties u/s 76, 77 and 78 were imposed.

OUR COMMENTS: In the above case**, the Hon'ble Delhi High Court** held it is clear that the liability was avoided but not with intent to defraud or on account of collusion or wilful misstatement or suppression of facts. It was also held that since the services provided were taxable, the appellant was liable to discharge the service tax liability. However there is no malafide intent to suppress value of taxable services. Hence as per provisions of section 80, penalty u/s 78 cannot be levied. **[Decided partly in favour of assessee]**

COMMISSIONER OF CENTRAL EXCISE AND CUSTOMS, AURANGABAD V/S ENDURANCE TECHNOLOGY PVT LTD (Bombay HC)

BRIEF: The main question that arises is whether the assessee is entitled to avail the Cenvat credit on "management, maintenance or repair services" provided on services provided to Windmills installed and situated away from factory and factory premises which is used for generation of electricity for manufacture of final product.

OUR COMMENTS: In the above case, the **Hon'ble Bombay High Court** held that management, maintenance and repair of windmills installed by the respondents is input service as defined by **Rule 2(l)**. **Rule 3 and 4** provide that any input or capital goods received in the factory or any input service received by manufacture of final product would be susceptible to CENVAT credit. The rule does not say that input service received by a manufacturer must be received at the factory premises. Following the decision of **Hon'ble Bombay High Court** in the case of **CCE V/s Ultratech Cement Ltd (2010)**. Thus, the services used by the assessee were in relation to manufacture of the final product and Cenvat credit could not be denied. **[Decided against Revenue]**

SUN-AREA REAL ESTATE PVT LTD V/S COMMISSIONER OF SERVICE TAX, MUMBAI-I (CESTAT Mumbai)

BRIEF: The appellant against export of service, received payment for the services in Indian rupees from Deutsche

Bank and FIRCs issued by the bank has been produced before the lower authorities, whether in respect of such remittance refund is admissible under Export of Service Rules, 2005. The second issue is whether the security services and air travel services used by the appellant is an input service for providing output service which were exported. The learned Commissioner (Appeals) held that since the appellant has not received the service charges from overseas entity in convertible foreign exchange whereas the payment was received in Indian rupees, the condition of Rule 3(2) of Export of Service Rules, 2005 was not complied with and accordingly the services will not be treated as export of services. Therefore, the appellant is not entitled for the refund.

OUR COMMENTS: In the above case, the **Hon'ble CESTAT Mumbai** held that FIRCs were issued and there is a specific certification that the payment has not been received in non-convertible rupees. In other words it means that the payment is in convertible foreign exchange. - out of the total payment to be made by the insurance broker in India to the foreign insurer was reduced to the extent of his brokerage and remaining amount was remitted to foreign insurer in the foreign exchange - when a foreign bank is maintaining Indian rupees in their account obviously, such Indian rupees was obtained in lieu of foreign exchange.

Issue of admissibility as input service credit in respect of security services was not raised in the show cause notice. Therefore, denial of refund of Rs.7,747/- and Rs.1,051/- respectively is not correct. - impugned order deserves to be modified inasmuch as the impugned order in respect of Rs.1,64,081/- is upheld and the order rejecting refund of an amount of Rs.10,98,077/- is set aside. **[Decided in favour of assessee]**

SHRI NEERAJ SHARMA, CENCEPT ENGINEERS V/S COMMISSIONER OF CENTRAL EXCISE, MEERUT-I (CESTAT New Delhi)

BRIEF: The appellant has contended that "vaastu advice does not fall in the category of consulting engineer service as that is mythological in nature and that vaastu concept is only a belief in Hinduism and some people who have allegiance to the astrology like advice with regard to vaastu" and that preparation of blue print is no where relating to consultation as blue print of house is work of tracer and not of an engineer. Preparation of project report, typing and binding also does not fall in the consulting engineer. The Dept. argued that vaastu advice falls under Consulting Engineer Service as it is related to engineering.

OUR COMMENTS: In the above case, the **Hon'ble CESTAT Mumbai** held that it is nowhere brought out in the order in appeal or in the order in original that Shri Neeraj Sharma is a professionally qualified engineer. Further it is also not brought out as to in which discipline(s) of engineering the service has been rendered. Thus the Revenue has not been able to discharge its obligation/onus to show that the appellant was professionally qualified engineer and also rendered any advice in relation to any particular branch of engineering. **[Decided in favour of assessee]**

COMMISSIONER OF CENTRAL EXCISE & CUSTOMS, NAGPUR V/S NOBLE GRAINS INDIA PVT LTD (CESTAT MUMBAI)

BRIEF: The respondents are manufacturers of soya extraction meal holding Central Excise registration and are also having service tax registration. The respondent filed refund claims of service tax as per the conditions of Notification No. 41/2007-ST dated 06/10/2007. The refund claims which had been preferred by the assessee is in respect of the service tax paid by the respondent-assessee to service providers like CHA, Cargo Handling Services, Port services, etc. which are in respect of export of goods. The said refund claims were rejected by the adjudicating authority.

OUR COMMENTS: In the above case, the **Hon'ble CESTAT Mumbai** held that the jurisdiction for claiming the refund of service tax paid on such services which are in connection with the export of goods cannot be shifted to their Indore Commissionerate as the registered office of the respondent-assessee being at Indore cannot be a reason for shifting the jurisdiction to Indore. Since, the respondent is a manufacturer-exporter; the refund claims have been correctly filed. **[Decided against Revenue]**

CENTRAL EXCISE

NOTIFICATIONS & CIRCULARS

EXEMPTION FROM EXCISE DUTY TO ETHANOL PRODUCED FROM MOLASSES GENERATED FROM CANE CRUSHED

The MOF vide **Notification No. 32/2015-Central Excise dated June 4, 2015 has made amendments to** Notification No. 12/2012 dated 17th March, 2012. Entry No.40A shall be inserted after Sl. No. 40.

OUR COMMENTS: Henceforth **'Ethanol'** produced from molasses generated from cane crushed in the sugar season 2015-16 i.e. October 1, 2015 onwards, for supply to the public sector oil marketing companies, namely, Indian Oil Corporation Ltd., Hindustan Petroleum Corporation Ltd., or Bharat Petroleum Corporation Ltd., for the purposes of blending with petrol, has been exempted from whole of Excise duty leviable thereon under Central Excise Tariff Act.

COURT DECISIONS

CCE, BANGALORE V/S M/S. VETCARE ORGANICS PVT LTD (Supreme Court)

BRIEF: The issue relates to using of the brand name 'VETCARE' by the respondent which, otherwise stands registered in the name of M/s Tetragon Chemie (P) Ltd., Bangalore. The respondent claims itself to be a Small Scale Industrial Unit (SSI) and is manufacturing organic chemicals, disinfectants and other products. It claimed the benefit of Notification No. 175/86 dated 01.03.1986 and 1/93 dated 01.03.1993 as amended from time to time which provides for exemption from payment of excise duty to the SSI unit.

OUR COMMENTS: In the above case the **Hon'ble Supreme Court** held that even if the goods are different, so long as brand name or trade name of some other Company is used, benefit of Notification 1/93 dated 01.03.1993 as amended would not be available.

The assessee cannot plead innocence merely on the fact that the permission to use the brand name was granted by Tetragon. The permission does not make the respondent owner of the brand name. It is irrelevant whether the brand name is used in relation to the same goods. The act of the assessee is therefore covered by **the *mischief of Explanation VIII*** to the **Notification No. 175/86 dated 1.3.1986**. Thus, the assessee was denied SSI Exemption. Following the decision by **Hon'ble Supreme Court in the case of Commissioner of Central Excise, Chandigarh-I Vs. Mahaan Dairies (2004)**. **[Decided in favour of Revenue]**

KALI AERATED WATER WORK, SALEM V/S COMMNR. OF CENTRAL EXCISE, MADURAI (Supreme Court)

BRIEF: The appellant herein is a SSI Unit and is manufacturing Aerated Water under various brand names using the trade mark with the "Kalimark" / M/s.Kali Aerated Water Works". It sought exemption from payment of duty in terms of Notification 1/93-CE dated 28.2.1993 (as amended vide Notification No.59/94-CE dated 1.3.1994). This exemption has however been denied by the Dept. on the fact that the brand name belongs to a third party.

OUR COMMENTS: It was found that the business was started by a HUF which fell apart at some time and this was later converted to a family business. It was very much contained in the mutual agreement at the time of falling apart from the family business that the trade name 'Kalimark Aerated Water Works' and trade mark mentioned in the said agreement would remain vested in all the parties including the appellant and that the appellant was also allowed to use the same. The agreement also provides that no payment of royalty or any other remuneration has to be made to any third party. The **Hon'ble Supreme Court** therefore held that the appellant had been correctly using its own brand name. Following the decision of **Hon'ble Supreme Court in the case of CCE, Hyderabad IV vs. Stangen Immuno Diagnostics (2015) [Decided in favour of assessee]**

COMMISSIONER OF CENTRAL EXCISE V/S M/S. AMRITLAL CHEMAUX LTD. (Supreme Court)

BRIEF: The assessee is involved in repacking and / or labeling of various dyes & dye bases, napthols & fast bases, and chrome pigments. The question is as to whether the process undertaken by the assessee in these products amounted to manufacture or not.

OUR COMMENTS: In the above case the **Hon'ble Supreme Court** held that as far as the process of label or relabeling of containers is concerned, it would amount to manufacture only if the other condition, viz., repacking from bulk to retail pack is also satisfied.

Here, it is clear that there was repacking and even relabeling but the repacking of bulk was not into retail packing as the goods after repacking were supplied to industrial consumers on wholesale basis. Thus, the condition for repacking from bulk to retail pack for the purpose of fulfilling the conditions for manufacture is not satisfied. **[Decided against Revenue]**

M/S. JITENDRA SYNTHETICS V/S COMMISSIONER OF CENTRAL EXCISE & CUSTOMS (Gujarat HC)

BRIEF: The appellant was engaged in the business of manufacturing goods like synthetic filament yarn which are excisable goods. The appellant brought and installed in its factory capital goods in the nature of texturing machine on which excise duties to the tune of Rs.4,52,500/- were paid, and therefore, the appellant took credit of the above amount of duty paid on the texturizing machine under Rule 57Q of the Central Excise Rules, 1944 which allowed the credit of duties paid on capital goods while paying duties on the final products in relation to manufacture of which the capital goods were used. The above machine was purchased and brought in the factory during financial year 1994-95 and this transaction was also reflected in the appellant's statutory records. A SCN was issued denying the modvat credit of Rs.4,52,500/- with penalty of an equal amount..

OUR COMMENTS: In the above case, the **Hon'ble Gujarat High Court** if the provision for imposing penalty was not in existence in December, 1994 when the contravention took place, then, there was no question of imposition of any penalty on the basis of the subsequent rule which was not in existence at the relevant time. The **Hon'ble Supreme Court** in **Commissioner of Central Excise, Mumbai-I v. Lal Mining Engg.Works,** reported in **[2007]** has held in para-3 that the penalty cannot be invoked in a case which was before the Apex Court as the same would amount to giving retrospective operation thereto which is impermissible in law. **[Decided in favour of assessee]**

CUSTOMS

NOTIFICATIONS & CIRCULARS

IMPOSITION OF ANTI-DUMPING DUTY ON IMPORTS OF 'POLY VINYL CHLORIDE PASTE RESIN' ORIGINATING IN OR EXPORTED FROM KOREA RP, TAIWAN, PEOPLE'S REPUBLIC OF CHINA, MALAYSIA, THAILAND AND RUSSIA

The **Central Govt.** vide **Notification No. 25/2015-Customs (ADD) dated 1st June 2015** has extended the levy of Anti-Dumping duty on imports of 'Poly Vinyl Chloride Paste Resin' originating in or exported from Korea RP, Taiwan, People's Republic of China, Malaysia, Thailand and Russia, for a further period of one year and which shall remain in force upto and inclusive of the 25th day of July, 2016.

OUR COMMENTS: The notification is self-explanatory.

IMPOSITION OF ANTI-DUMPING DUTY ON IMPORTS OF 'POLY VINYL CHLORIDE PASTE RESIN' ORIGINATING IN OR EXPORTED FROM THE EUROPEAN UNION

The **Central Govt. vide Notification No.26/2015 -Customs (ADD) dated June 1, 2015**, the Central Government has amended Notification No. 70/2010-Customs dated June 25, 2010, thereby extending levy of Anti-Dumping duty on imports of 'Poly Vinyl Chloride Paste Resin' originating in or exported from the European Union, for a further period of one year and which shall remain in force upto and inclusive of the 24th day of June, 2016.

OUR COMMENTS: The notification is self-explanatory.

DEFINITIVE ANTI-DUMPING DUTY ON IMPORTS OF ACRYLIC FIBRE, ORIGINATING IN OR EXPORTED FROM KOREA RP AND THAILAND

The **CBEC** vide **Notification No. 27/2015-Customs (ADD) dated June 1, 2015**, the Central Government has imposed the definitive Anti-Dumping Duty on imports of 'Acrylic Fibre' originating in or exported from Korea RP and Thailand for a period of five years from the date of publication of this notification, i.e. June 1, 2015.

OUR COMMENTS: The notification is self-explanatory.

IMPOSITION OF DEFINITIVE ANTI-DUMPING DUTY ON IMPORTS OF 'HOT ROLLED FLAT PRODUCTS OF

STAINLESS STEEL OF ASTM GRADE 304', ORIGINATING IN OR EXPORTED FROM PEOPLE'S REPUBLIC OF CHINA, THE REPUBLIC OF KOREA AND MALAYSIA

The **Central Govt.** vide **Notification No. 28/2015-Customs (ADD) dated 5th June 2015** has imposed the definitive Anti-Dumping Duty on imports of 'Hot Rolled Flat Products of Stainless Steel of ASTM Grade 304 and all its variants', originating in or exported from People's Republic of China, Korea and Malaysia for a period of five years from the date of publication of this notification, i.e. June 5, 2015.

OUR COMMENTS: The notification is self-explanatory.

COURT DECISIONS

COMMISSIONER OF CUSTOMS, DELHI V/S M/S. BAXTER (I) PVT LTD (Supreme Court)

BRIEF: The question involved in the present appeal is as to whether Continuous Ambulatory Peritoneal Dialysis Fluid (CAPD fluid) is medical equipment which attracts nil rate of custom duty.

OUR COMMENTS: In the above case the **Hon'ble Supreme Court** held that on going through the list 29 we find that in the said list at serial No.46 CAPD fluid is specifically mentioned. It would, thus, clearly fall within the aforesaid nomenclature, namely, medical equipment and that is no duty was to be paid on the import of this equipment. **[Decided against Revenue]**

MJ BIO-PHARM PVT LTD V/S COMMISSIONER OF CENTRAL EXCISE, MUMBAI (CESTAT Mumbai)

BRIEF: The appellant had imported the raw materials for manufacturing of life saving medicines, namely, "insulin injection". Revenue contends that assessee is using 5 gms from each consignment for quality control test as samples and for testing purposes are not used in the manufacture of final products, hence the quantity is not used for the intended purposes as per Notification No. 21/2002-Cus dated 01/03/2002 and ordered the assessee to pay the differential duty.

OUR COMMENTS: In the above case the **Hon'ble CESTAT Mumbai** held that manufacturing of the final product as per Drugs and Cosmetics Act and Rules made thereunder cannot be undertaken unless the raw materials are tested for which sampling is undertaken in form of drawal of about 5 gms of raw material at starting stage of manufacturing activity. The purpose of the imported goods is for manufacturing of medicines which cannot take place unless the samples are drawn and tested. Raw materials testing process is the part of final manufacturing process and the raw materials cannot be issued to the manufacturing process without quality control test. Hence, quality control test is very much part of manufacturing process and integral to it. Thus, the impugned orders were set aside. **[Decided in favour of assessee]**

M/S. PRABHU STEEL TRADERS PVT. LTD. V/S COMMISSIONER OF CUSTOMS (EP), MUMBAI (CESTAT Mumbai)

BRIEF: The appellant filed the SAD refund claim with all necessary documents. Para 6 of the Order of Commissioner (Appeals) reproduces Para (viii) of Board Circular No. 16/2008 dated 13.10.2008 which required that in case of sale of imported goods through consignment agents, the refund of 4% CVD shall be granted subject to the condition that the consignment agent has been authorized to sell the imported goods in terms of the agreement entered into between the importer and the consignment agent. According to the Commissioner (Appeals), the agreement between the consignment agent and the importer does not contain the signature of the witnesses and therefore, is not legally valid. Therefore, he the refund claim was rejected.

OUR COMMENTS: In the above case the **Hon'ble CESTAT Mumbai** held that only ground for rejecting the refund is that the agreement between the importer and the consignment agent does not contain the signature of the witnesses However, as per the copy of the Agreement, it bears signatures of both the importer, being the first party, and the consignment agent being the second party. Also, there Page 6 of 9 Vol: 1st to 7th June 2015 is no requirement in the statutory provisions that the Agreement should bear the signatures of the witnesses. In fact, the notification providing for refund does not require that the appellant should submit a copy of the agreement.

The finding of Commissioner (Appeals) was totally unwarranted. In the circumstances, the appellant have submitted all required documents for processing and sanctioning of the refund claim. **[Decided in favour of assessee]**

COMMISSIONER OF CUSTOMS (PORT - IMP) , CHENNAI V/S M/S SHUBHAM CONSTRUCTION (CESTAT Chennai)

BRIEF: The brief facts of the case are that the respondents have imported 'Digital Multifunction Printing and Photocopying Machines' vide Bill of Entry No. 279266 dated 05.08.2009. The adjudicating authority in his order dated 15.09.2009, ordered confiscation of the impugned goods under Section 111

(d) of the Customs Act, 1962 and allowed the goods on imposition of redemption fine of Rs.4,18,000/- and also imposed a penalty of Rs.3,49,000/- under Section 112 of the Customs Act, 1962. On appeal by the respondent, the lower appellate authority has reduced the redemption fine to Rs.2,10,000/- and penalty to Rs.1,30,000/-.

OUR COMMENTS: In the above case the **Hon'ble CESTAT Chennai** held that lower appellate authority has not considered the facts of repetitive offence committed by the respondents while reducing the redemption fine and penalty. It is seen that the appellants cleared identical goods repetitively and the impugned import is the third one. Hence, the impugned order reducing the redemption fine and penalty is set aside and the matter was remanded to the lower appellate authority, with the direction to re-determine the redemption fine and penalty. **[Decided in favour of assessee]**

INCOME TAX

NOTIFICATIONS & CIRCULARS

The **MOF** vide **Notification No. 45/2015 dated 22nd May 2015 has amended** the Convention between the Republic of India and the Kingdom of Denmark for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital.

OUR COMMENTS: Readers are requested to go through the notification for more information on the protocol.

INSTRUCTION REGARDING NOT TO PUT ANY INCONVENIENCE TO ASSESSEE FOR NON-DEPOSIT OF TDS BY THE DEDUCTOR

The **CBDT** vide **Order-Instruction dated 1st June 2015** has decided that the assessee shall not be called upon to pay the tax to the extent tax has been deducted from his income where the tax is deductible at source under the provisions of Chapter- XVII.

OUR COMMENTS: The CBDT has decided that where the deductor has deducted tax at source from payments made to them in accordance with the provisions of Chapter-XVII of the Income-tax Act, 1961 but has failed to deposit the same into the Government account leading to denial of credit of such deduction of tax to these taxpayers and consequent raising of demand, the assessees should not be put at any inconvenience on account of default of deposit of tax.

COURT DECISIONS

NAVIN KUMAR AGARWAL VS. CIT (Calcutta HC)

BRIEF: A search u/s 132 of the Act was conducted on 8th December, 1999. The restraint order imposed on 8th December, 1999 was vacated on 31st January, 2000. The search party drew the panchnama dated 31st January, 2000 stating that the search commenced at 15:20 hours and was closed at 15:30 hours. The assessee claimed that the search was concluded on 8th December, 1999 and that the search dated 31st January, 2000 was only for the purpose of revocation of the restraint order dated 8th December, 1999 passed under Section 132 (3) of the Income-tax Act. The assessee contended that the period of limitation has to be reckoned from the search dated 8th December, 1999 and the period of limitation expired on 31st December, 2001, whereas the assessment order was

passed on 31st January, 2002 which is out of the prescribed period of limitation.

OUR COMMENTS: In the above case, the **Hon'ble Calcutta High Court** held that the search ends and the period of limitation begins only on the drawing up of the formal panchnama to record the ending of the search. The argument by the assessee that the search is concluded on the date of the search itself if nothing is seized thereafter is not acceptable. **[Decided against assessee]**

FERROUS INFRASTRUCTURE PVT. LTD. & ANOTHER V/S DEPUTY COMMISSIONER OF INCOME TAX (Delhi HC)

BRIEF: There are two points raised in the writ petition:

1. The purported reasons for initiating reassessment proceedings had been recorded after the issuance of notice under Section 148 .

2. The objections furnished by the petitioners to the Section 148 notice had not been disposed of by a separate speaking order prior to the reassessment order

OUR COMMENTS: In the above case, the **Hon'ble Delhi High Court** held that the reasons have to be recorded prior to the issuance of notice under Section 148. If they are not so recorded, then the notice under Section 148 and proceedings pursuant thereto are without authority of law.

In the present case the reasons were recorded only after the notice under Section 148 had been issued. Thus the notice under Section 148 would be invalid and consequently all proceedings pursuant thereto would also be vitiated.

The Assessing Officer has to pass a speaking order disposing of the objections "before proceeding with the assessment". Since a separate speaking order is not passed petitioner is liable to succeed. **[Decided in favour of assessee]**

CIT VS. M. M. AQUA TECHNOLOGIES LTD (Delhi HC)

BRIEF: The main issue that arises here is:

"Whether the funding of the interest amount by way of a term loan amounts to actual payment as contemplated by Section 43B of the Income-tax Act, 1961?"

OUR COMMENTS: In the above case, the **Hon'ble Delhi High Court** held that Explanation 3C to section 43B clearly states that deduction of any sum, being interest payable under clause (d) of Section 43B of the Act shall be allowed if such interest has been actually paid and any interest referred to in that clause, which has been converted into a loan or borrowing, shall not be deemed to have been actually paid. A similar matter was decided by the **Hon'ble Madras High Court** in the case of **Eicher Motors Limited v. Commissioner of Income Tax** to hold that in view of the Explanation 3C appended to Section 43B with retrospective effect from 01.04.1989, conversion of interest amount into loan would not be deemed to be regarded as actually paid amount within the meaning of Section 43B of the Act. Thus, the assessee cannot claim deduction under Section 43B of the Act. **[Decided in favour of Revenue]**

M/S. HOTEL ROOPA V/S COMMISSIONER OF INCOME TAX (Karnataka HC)

BRIEF: The assessee is a partnership firm which is running boarding and lodging by name Hotel Roopa in Mangalore. Originally it consisted of four partners and on 06.10.2000, one more partner was inducted as a partner. On 20.10.2001, three partners retired from the partnership firm and the business was continued only with the remaining two partners. The assessee firm borrowed a sum of Rs. 75,00,000/- from the Bank for the purpose of settling the account to the retiring partners and the claim deducted of Rs. 5,04,803/- under Section 36(1)(iii) towards interest on the borrowal made to the Bank. The A.O. rejected the claim of the assessee on the ground that the borrowal has been made for the purpose of discharging the personal liability for the continuing partners of the firm and the payment made to the retiring partners has nothing to do with the business of the firm.

OUR COMMENTS: In the above case, the **Hon'ble Karnataka High Court** held that the outgoing partner or his estate is entitled at the option of himself or his representatives to such share of the profits made since he ceased to be a partner as may be attributable to the use of his share of the property. The amount paid to the retiring partners is not a share of the profit. Therefore, following the decision of the **Hon'ble Supreme Court** in **Madhav Prasad Jatia v. CIT U.P**, the amount borrowed was not for the purpose of business. Hence the claim for deduction u/s 36(1)(iii) was not justified. **[Decided against assessee]**

THE COMMISSIONER OF INCOME TAX, FARIDABAD V/S M/S CARRIER AIR CONDITIONING AND REFRIGERATION (FORMERLY KNOWN AS AIRCON LIMITED) (Punjab & Haryana HC)

BRIEF: **The assessee filed a return of income of 11,72,00,980/-. The revised return declared the same income. The assessment was completed under section 143(3) at a total income of Rs. 11,64,04,200/-. The assessee had debited an amount of Rs. 2,66,33,000/- on account of warranty expenses in the Profit and Loss account. The assessee stated that the warranty costs were**

determined on the basis of the past experience and are provided for in the year of sale. This provision was increased from the previous year by an amount of Rs. 60,25,000/-. The A.O. enquired why the warranty expenses to the extent of Rs. 60,25,000/- should not be added back to the respondent's income.

OUR COMMENTS: In the above case, the **Hon'ble Punjab & Haryana High Court** held that the liability would be an accrued liability and would not convert into a conditional one merely because the liability was to be discharged at a future date. It was always open to the tax authorities concerned to arrive at a proper estimate of the liability having regard to all the circumstances of the case (As decided in **Calcutta Co. Ltd. v. CIT by the Hon'ble Supreme Court**). Similar matter was decided by the Hon'ble Supreme Court in **Rotork Controls India P. Ltd. v. Commissioner of Income Tax**. Since the provision is based essentially on the respondent's past experience such a liability is to be treated in the present time and would not be contingent liability. **[Decided in favour of assessee]**

COMMISSIONER OF INCOME TAX V/S CO-OPERATIVE BANK OF RAJKOT LTD (Gujarat HC)

BRIEF: The main question involved here is:

"Whether on the facts and in the circumstances of the case, learned ITAT is justified in allowing Rs.68,25,000/- being amortization of premium paid on investments under "held to maturity category" holding that the same is revenue expenditure in nature?"

OUR COMMENTS: In the above case, the **Hon'ble Gujarat High Court** held that an identical question was answered in the case of Rajkot Dist. Coop. Bank Ltd. and considering the paragraph (vii) of the CBDT Circular No.17 of 2008, assessee is entitled to the amortization of security premium. **[Decided in favour of assessee]**

PR COMMISSIONER OF INCOME TAX -3 V/S FORTUNE TECHNOCOMPS (P) LTD (DELHI HC)

BRIEF: The assessee used to deal with electronic articles. In the normal course of its business it used to procure unbranded electronic items and sell them. In the scrutiny assessment, the Assessing Officer added Rs. 3,62,49,274/- after rejecting the assessee's explanation with regard to the purchase made from nine named parties. It was held that these were bogus transactions and that the assessee could not report any satisfactory explanation. The AO was guided by the fact that the sellers/vendors of the items purchased by the assessee had not responded to notices under Section 131 and also relied upon the report of the Income Tax Inspector in that regard.

OUR COMMENTS: In the above case, the **Hon'ble Delhi Court** held that the remand report obtained by the CIT(A) comprised Various materials including the PAN Number, TIN Number and assessment orders secured from the sales tax authorities. The genuineness of the underlined transactions claimed by the assessee, therefore, on having purchased goods from its vendors, could not be doubted. Thus, the disallowance on the part of the A.O. was wrongly made. **[Decided against Revenue]**

STATE TAXES

BIHAR

The **Govt. of Bihar vide Notification No. S.O. 114 dated 4th June 2015** has declared that CST at a higher rate will not be recovered from those micro Industrial Units registered by the Industries Department, which, in course of interstate trade or commerce, have been collected as Central Sales Tax on sales from buyers of its manufactured products at the rate of only one percent during 12.10.2006 to 13.03.2013.

OUR COMMENTS: The notification is self-explanatory.

HIMACHAL PRADESH

The **Govt. of Himachal Pradesh vide Notification No.EXN-F(10)-2/2015-Loose dated 3rd June 2015** has made amendments to the Himachal Pradesh Value Added Tax Rules, 2005. The said amendment rules shall be called the Himachal Pradesh Value Added Tax (3rd Amendment) Rules, 2015.

OUR COMMENTS: Several important amendments have been made. Readers are requested to go through the notification for updates on such amendments.

KARNATAKA

The **Govt. of Karnataka vide Notification No. FD 127 CSL 2014 dated 30th May 2015** hereby exempts with immediate effect, the tax payable under the said Act on the sale of Biogas produced and sold by Units using municipal solid waste and bottled in cylinder, subject to the condition that such units are notified by the Government on the recommendation of the Bengaluru Bruhath Mahanagara Palike.

OUR COMMENTS: The notification is self-explanatory.

MADHYA PRADESH

The **Govt. of Madhya Pradesh vide Madhya Pradesh Ordinance No.3 of 2015 dated 8th June 2015** has introduced the Madhya Pradesh Vat (Amendment) Ordinance, 2015.

OUR COMMENTS: Several Sections of the Madhya Pradesh Vat Act, 2002 have been amended. Readers are requested to go through the amendments.

PUNJAB

The **Govt. of Punjab vide Notification No. S.O.21/P.O.1/2015/S.4/2015 dated 1st June 2015** hereby levies tax at the rate of eleven percent (11%) on the entry of sugar for consumption, use or sale into the State of Punjab.

OUR COMMENTS: The notification is self-explanatory.

RAJASTHAN

The **Govt. of Rajasthan vide Notification No.F.12 (74) FD/Tax/2014-20 dated 2 June, 2015** hereby amends the rate of tax on Cigarettes covered by **Schedule V Entry No 15**. The description of the cigarettes along with the rate of tax is specified in the Notification.

OUR COMMENTS: Readers are requested to go through the amendments.

TELANGANA

The **Govt. of Telangana vide Notification G.O.MS.No. 72 dated 1 June, 2015** has inserted Rule 18A and rule 18B after rule 18 in the Telangana State Value Added Tax Rules, 2005.

OUR COMMENTS: Rule 18A states that any tax deducted u/s 22(3C) remitted to the State Govt. by the said authority shall be treated as payment on behalf of the Rice Miller and the said authority shall issue a certificate intimating the same to the Rice Miller within 7 days.
Rule 18B states that any tax deducted u/s 22(3D) remitted to the State Govt. by the said authority shall be deemed as payment on behalf of the dealer of Empty Bottles and the said authority shall issue the certificate intimating the same to the dealer within 7 days of the payment to the Govt.

UTTAR PRADESH

The **Govt. of Uttar Pradesh vide Notification No.- KA.NI.-2-729/XI-9(235)/12-U.P.Act-5-2008-Order-(133)-2015 dated 1 June, 2015** amends Schedule I and Schedule II of the Act.

OUR COMMENTS: In the said Schedule-I, for the entry at serial number 52, the following entry shall be substituted, namely:

"52- All kinds of footwear including hawai chappals and straps thereof, with maximum retail price not exceeding rupees three hundred per pair provided that the maximum retail price is indelibly marked or embossed on the footwear itself"

In the said Schedule-II, in Part-A, the entry at serial number 83 shall be omitted.

Also, vide No.- KA.NI.-2-722/XI-9(52)/15-U.P.Act-5-2008-Order-(132)-2015 dated 29th May 2015 has made the amendment in Schedule-I to the said Act.

OUR COMMENTS: In the said Schedule-I, for the entry at serial number 6, the following entry shall columnwise be substituted, namely:

"Betel leaves, paan both prepared or unprepared; Gulkand"

KERALA

The **Govt. of Kerala vide Circular No 16 of 2015 dated 3 June, 2015** extends the last date of filing Annual Return for the FY 2014-15 up to 30 June, 2015.

OUR COMMENTS: The notification is self-explanatory.

FAQS ON GST

Q. How will GST benefit industry, trade and agriculture?

Ans. The GST will give more relief to industry, trade and agriculture through a more comprehensive and wider coverage of input tax set-off and service tax set-off, subsuming of several Central and State taxes in the GST and phasing out of CST. The transparent and complete chain of set-offs which will result in widening of tax base and better tax compliance may also lead to lowering of tax burden on an average dealer in industry, trade and agriculture.

Q. How will GST benefit the exporters?

Ans. The subsuming of major Central and State taxes in GST, and comprehensive set-off of input goods and services and phasing out of Central Sales Tax (CST) would reduce the cost of locally manufactured goods and services. This will increase the competitiveness of Indian goods and services in the international market and give boost to Indian exports. The uniformity in tax rates and procedures across the country will also go a long way in reducing the compliance cost.

Q. How will GST benefit the common consumers?

Ans. With the introduction of GST, all the cascading effects of CENVAT and service tax will be more comprehensively removed with a continuous chain of set-off from the producer's point to the retailer's point than what was possible under the prevailing CENVAT and VAT regime. Certain major Central and State taxes will also be subsumed in GST and CST will be phased out. Other things remaining the same, the burden of tax on goods would, in general fall under GST and that would benefit the consumers.

Q. How will GST benefit the small entrepreneurs?

Ans. The present threshold prescribed in different State VAT Acts below which VAT is not applicable varies from State to State. The threshold of goods under State VAT is Rs. 5 lakhs for a majority of bigger States and a lower threshold for North Eastern States and Special Category States.

A uniform State GST threshold across States is desirable and, therefore, the Empowered Committee has recommended that a threshold of gross annual turnover of Rs. 10 lakh both for goods and services for all the States and Union Territories may be adopted with compensation for the States (particularly, the States in North-Eastern region and Special Category States) where lower threshold had prevailed in the VAT regime.
Keeping in view the interest of small traders and small scale industries and to avoid dual control, the States considered that the threshold for Central GST for goods may be kept at Rs 1.5 crore and the threshold for services should also be appropriately high. This raising of threshold will protect the interest of small traders. A composition scheme for small traders and businesses has also been envisaged under GST. Both features of GST will adequately protect the interests of small traders and small scale industries.