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SNK Newsletter

DIRECT TAXES

Judicial pronouncements

Section 2 – Definitions

Pr. Commissioner of Income Tax Vs. Kalpataru Power Transmission Ltd. [Tax Appeal No. 141 of 2017, Gujarat High Court, dtd. 02.03.2017, in favour of assessee]

High Court upholds ITAT, applies Excel Industries ratio; Carbon credits taxable only on transfer

Gujarat HC dismisses Revenue's appeal, upholds ITAT order in Kalpataru Power Transmission Ltd. ('assessee') on carbon credits taxation for AY 2009-10; ITAT had held that transfer of carbon credits is a taxable receipt, but the taxability would arise in the year of sale/transfer of carbon credits / CERs; HC rejects Revenue's stand that since the amount was receivable, it can be said to have accrued in subject AY and hence taxability cannot be deferred on the ground that the carbon receipts were neither sold nor transferred during subject AY; Applying the 'accrual' principles laid down by SC in Excel Industries Limited, HC upholds that "as neither the carbon receipts were sold and/or transferred in favour of foreign companies in the year under consideration, the same cannot be included as receipt / income in the year under consideration."

Section 10 – Income not included in total income

Meena Vaswani Vs. ACIT [(2017) 80 taxmann.com 2, ITAT Mumbai bench, dtd. 30.03.2017, in favour of revenue]

ITAT disallows HRA exemption for rent paid to mother

HRA exemption claim cannot be allowed u/s. 10(13A) based on sham rent payments supported only by rent receipts from parent where assessee produces no evidence arising in normal course of happening of transaction of hiring premises such as leave and license agreement, letter to society intimating about assessee's tenancy, payment through bank,

cash payments backed with known sources, electricity bill payments through cheque, water bill payments through cheque, some correspondence coming during that period of alleged tenancy to prove that transaction of hiring of premises was genuine and was happening during the said period and where assessee's parent files no ITR reflecting rent received from assessee and the rent paid looks excessive for a One BHK flat and assessee claims housing loan repayment deduction u/s. 80C for the flat within 5 minutes walk where she actually stays with her husband and daughter.

Section 12AA – Procedure for registration

Director of Income Tax (Exemption) Vs. North Indian Association [(2017) 79 taxmann.com 410, Bombay High Court, dtd. 14.02.2017, in favour of assessee]

Trusts registration couldn't be revoked merely because in one year its income exceeded limit prescribed u/s 2 (15)

Merely because in one year income of assessee-trust exceeded prescribed limit provided under second proviso to section 2(15), that by itself, could not warrant cancellation of registration of trust.

Section 32 – Depreciation

M/s. Mother Hospital Pvt. Ltd. Vs. CIT [Civil Appeal No. 3360 of 2006, The Supreme Court of India, dtd. 08.03.2017, in favour of revenue]

Assessee-lessee not entitled to depreciation u/s 32 absent execution of title transfer deed

SC dismisses assessee's (lessee) appeal, holds that assessee -Company wasn't entitled to depreciation on hospital building u/s 32 absent ownership for AY 1992-93; Pursuant to an agreement between the assessee and the erstwhile firm it was agreed that the firm would hand over hospital building's possession to the assessee post completing its construction, on the condition that entire cost of construction of the building would be borne by the assessee; Notes that the building was constructed by the firm and not the assessee although the cost of construction was reimbursed by the latter, further observes that it is only when the assessee holds a lease right or other right of occupancy that it is entitled to depreciation to the extent of capital expenditure incurred on construction of the building under Explanation 1 to Sec. 32; Thus rejects assessee's argument that since it was the lessee of the property and construction was made from its funds, it was entitled to claim depreciation by virtue of explanation (1) to Sec. 32, holds that "the explanation also would not come to the aid of the assessee"; Holds that the title in the building cannot pass unless it is executed on a proper stamp paper and is also duly registered with the sub-Registrar and thus "in the absence thereof, it could not be said that the assessee had become the owner of the property"

Section 37 – General

CIT Vs. Lever India Exports Ltd. [(2017) 78 taxmann.com 88, Bombay High Court, dtd. 23.01.2017, in favour of assessee]

TPO has no jurisdiction to examine sec. 37 conditions for international transactions

It is not part of TPO's jurisdiction to consider whether or not expenditure which incurred by assessee has passed test of section 37.

DCIT Vs. Elitecore Technologies (P.) Ltd. [(2017) 80 taxmann.com 6, ITAT Ahmedabad bench, dtd. 31.03.2017, in favour of revenue]

Unutilized Foreign Tax Credit isn't a tax deductible expenditure

No deduction under section 37(1) could be allowed in respect of foreign tax credit for which only partial credit was allowed in the current year.

Where genuineness of commission payments made by assessee developing software products to non-resident agents for procuring business had been established, Commissioner (Appeals) rightly rejected disallowance of commission payments made by Assessing Officer and since commission agents were not chargeable to tax in India, assessee had no obligation to deduct tax at source from such commission payments to non-resident agents.

Section 41 – Profits chargeable to tax

DCIT Vs. Nalwa Chrome (P.) Ltd. [(2017) 79 taxmann.com 413, ITAT Mumbai bench, dtd. 08.03.2017, in favour of assessee]

Share application money written back in books of account cannot be treated as income

Amount received by assessee on account of share application money which was subsequently written back in books of account, could not be treated as income of assessee either under section 41(1) or section 28(iv).

Section 45 – Capital Gain

Asara Sales and Investments Private Limited Vs. ITO [ITA No. 1345/pun/2014, ITAT Pune bench, dtd. 08.03.2017, in favour of assessee]

Off-market share-sale to subsidiary not 'colourable device'; Allows long-term capital loss set-off

Pune ITAT allows set-off of long term capital loss on off-market sale of listed shares (which otherwise attract STT if routed through Stock Exchange) against taxable long term capital gains on sale of unlisted shares (which do not attract STT); ITAT notes that during relevant AY 2009-10, assessee (a Kirloskar group holding company) sold listed shares of its group company in an off market transaction to its 100% subsidiary, also notes that assessee hesitated to sell shares on the Stock Exchange as the same could have been picked up by a stranger and the groups holding would have diluted; Rejects Revenue's stand that transaction of selling listed shares off market to its 100% subsidiary without paying STT, was only a colourable device to enable set-off claim; ITAT notes that where shares are sold between two parties in off market transaction, then STT is not chargeable, hence the transaction would fall outside the ambit of Sec 10(38); Further, ITAT refers to NSDL module whereby the existence and acceptance of off market trades cannot be doubted; ITAT allows set-off of loss arising on sale of quoted shares on which no STT is paid against gain arising on unlisted share-sale (which do not attract STT); Separately, ITAT rejects Revenue's stand that by selling shares to its own subsidiary, at prices above or below the book value, assessee was manipulating the income to reduce its tax liability, clarifies that as long as the sale was effected at prevailing market price, the transaction cannot be faulted with.

Section 143 – Assessment

Nishant Construction Pvt. Ltd vs. ACIT [ITA No. 1502/Ahd/2015, ITAT Ahmedabad bench, dtd. 14.02.2017, in favour of assessee]

Loose papers which do not have full details are "dumb documents" and have no evidentiary value

The fact that the assessee sold goods at a concession does not mean that that the difference between sale value and market value can be assessed as income. The onus is on the AO to make inquiries from the buyers and bring incriminating evidence on record to show that the assessee sold flats at a higher rate

Section 147 – Income escaping assessment

Larsen & Toubro Ltd vs. State of Jharkhand [Civil Appeal No. 5390 of 2007, The Supreme Court of India, dtd. 21.03.2017, in favour of assessee]

Entire law on reopening of assessments pursuant to audit objections explained in the context of the corresponding provisions of the Bihar Finance Act.

If the AO disagrees with the information/ objection of the audit party and is not personally satisfied that income has escaped assessment but still reopens the assessment on the direction issued by the audit party, the reassessment proceedings are without jurisdiction

Section 158BD - Undisclosed income of any other person

Gunjan Girishbhai Mehta (Legal heirs of Girishbhai K. Mehta) Vs. Director of investigation & Ors. [Special leave petition to appeal (C) No. 30282/015, The Supreme Court of India, dtd. 21.03.2017, in favour of revenue]

Invalid search warrant u/s 132 doesn't invalidate block assessment u/s. 158BD on 'other person'

SC dismisses assessee's SLP against Gujarat HC judgement upholding validity of block assessment proceedings u/s. 158BD; SC notes that search warrant u/s. 132 was issued on a dead person and assessee, in capacity, as a legal heir participated in block assessment proceedings u/s. 158BC, subsequently notice u/s 158BD was issued on assessee based on information found during search; Rejects assessee's stand that since the original search warrant was invalid (being issued in the name of deceased), the notice u/s 158BD (on 'other person') pursuant to search was also invalid, SC notes that assessee did participate in the assessment proceedings u/s 158BC and the issue of invalidity of the search warrant was not raised at any point of time prior to the notice u/s 158BD; SC rules that "The information discovered in the course of the search, if capable of generating the satisfaction for issuing a notice u/s 158BD, cannot altogether become irrelevant for further action under Section 158BD of the Act".

Section 254 – Orders of Appellate Tribunal

CIT Vs. B. G. Shirke Construction Technology (P.) Ltd. [(2017) 79 taxmann.com 306, Bombay high Court, dtd. 06.03.2017, in favour of assessee]

Fresh claim not made in original return can be raised before Tribunal for first time

An assessee is entitled to make a claim before Tribunal which was not raised before Assessing Officer at time of filing return of income or by filing a revised return of income

Return filed under section 153A(1) is a return furnished under section 139 and, therefore, provisions of Act which apply in case of return filed in regular course under section 139(1), would also continue to apply in case of return filed under section 153A.

Section 271 – Failure to furnish returns, comply with notices, concealment of income, etc.

Samson Maritime Ltd vs. CIT [ITA No. 1718 of 2014, The Bombay High Court, dtd. 09.03.2017, in favour of revenue]

Disclosure of income, or withdrawal of claim for deduction after specific notice issued. cannot be said to be a "voluntary disclosure"

A disclosure of income, or withdrawal of claim for deduction, by the assessee after a specific s. 142(1)/ 143(2) notice is issued cannot be said to be a "voluntary disclosure" so as to avoid the levy of penalty. The argument that the earlier non-disclosure of income/ wrong claim for expenditure was due to "mistake" is not an acceptable defense (Mak Data 358 ITR 593 (SC) followed, Price Waterhouse Coopers 348 ITR 306 (SC) distinguished)

Chapter IX of the Finance Act, 2016 – The Income Declaration Scheme, 2016

Kumudam Publications (P.) Ltd. Vs. CBDT [(2017) 79 taxmann.com 466, Delhi High Court, dtd. 30.03.2017, in favour of assessee]

Credit of advance tax and TDS can be claimed for years in which benefit of IDS is sought

Delhi HC allows assessee-company's writ, directs Revenue to grant credit of advance tax paid and TDS deducted against the tax payable under the Income Declaration Scheme, 2016 ('IDS'); HC notes that no return was filed by assessee u/s 139 from

AY 2010-11 onwards till date owing to non-audit of accounts, however, assessee paid advance tax in the past 5 years in terms of the un-audited accounts, consequently, assessee made declaration under the IDS and claimed credit for the advance tax paid and TDS deducted; Rejects Revenue's stand that TDS credit may be granted to assessee in terms of CBDT circular 25/ 2016 (which clarified that credit for TDS shall be given while computing tax liability under IDS), however, in absence of express mandate, advance tax credit cannot be granted under IDS which is a self-contained code in itself; Though HC accepts that IDS is to be interpreted on a 'stand-alone' basis, but holds that there is nothing in the IDS Scheme which provides that such past amounts are not to be reckoned for purposes of 'payments' under IDS; Notes that IDS only provides that tax and surcharge amounts under the scheme 'shall be paid on or before a date to be notified', opines that "These words necessarily refer to all payments. They are not limited in their meaning to only what is paid immediately before, or in the proximity of the declaration filed"; Distinguishes Revenue's reliance on co-ordinate bench ruling in Intercraft Ltd. which dealt with the Kar Vivad Samadhan Scheme, 1998('KVSS'), holds that the most distinguishing feature which sets apart the IDS Scheme from KVSS is that there is no express bar which precludes taking into account of previously paid amounts relating to the AYs covered by the IDS declaration; Further distinguishes Revenue's reliance on SC rulings in Hemalatha Gargya and Nitdip Textile Processors Private Limited, notes that in the words of Supreme Court, the schemes therein were in the nature of tax composition schemes or tax litigation settlement schemes, whereas the avowed objective of IDS is to enable assessees who did not file their returns, an opportunity to do so; Accepts assessee's stand that there is no 'intelligible differentia' for treating advance tax paid differently from TDS as both the taxes are in the nature of 'tax paid in advance'

INTERNATIONAL TAXATION

Chapter X – Special provisions relating to avoidance of tax

ACIT Vs. Millpore (India) Ltd. [(2017) 80 taxmann.com 12, ITAT Bangalore bench, dtd. 07.03.2017, in favour of assessee]

No TP adjustment due to delay or early realization of sale proceeds from AE if sales is made at ALP

Early or late realisation of sale proceeds from AE was not a separate international transaction and, thus, no ALP adjustment of notional interest was permissible in respect of same.

Cadila Healthcare Ltd. Vs. ACIT [(2017) 80 taxmann.com 24, ITAT Ahmedabad bench, dtd. 03.03.2017, in favour of assessee]

'Quasi-capital' loan not to be compared with 'loan' for ALP computation

Where assessee gave loan to its AE with an option to convert same into equity at par, it was in nature of quasi capital transaction which could not be compared with simple loan transaction so as to make addition to assessee's ALP in respect of interest on loan granted to AE.

Saira Asia Interiors (P.) Ltd. Vs. ITO [(2017) 79 taxmann.com 460, ITAT Ahmedabad bench, dtd. 28.03.2017, in favour of assessee]

No Sec. 195 TDS on crediting income to payee when it is taxable on receipt basis under treaty

Taxability of royalty is dependent on payment by resident of a contracting state and receipt of same by resident of other contracting state; Unless actual payment takes place, taxability under artide 13 of Indo-Italian DTAA does not arise. In other words, the mere fact that an Indian resident credits the amount of royalty payable to an Italian resident does not trigger taxability under article 13 of the Indo-Italian DTAA.

When the royalty so credited by the assessee is not taxable at the time of credit of such amount to the account of payee, in the light of law laid down by Hon'ble Supreme Court in the case of GE Technology Centre P. Ltd. v. CIT [2010] 327 ITR 456/193 Taxman 234, it does not give rise to any tax withholding obligations under section 195 (1) either.

Bhavin A Shah Vs. ACIT [ITA No. 933/Ahd/2013, ITAT Ahmedabad bench, dtd. 29.03.2017, partly in favour of revenue]

FTC cannot exceed applicable withholding under treaty; Lays down principle for computation

Ahmedabad ITAT sets aside CIT(A)'s order disallowing foreign tax credit ('FTC') with respect to taxes withheld on dividend earnings in the US for AY 2009-10 in case of assessee-individual (resident in India), observes that reasons given by lower authorities are "too

vague and general"; Noting that taxes withheld were almost 30% of total dividend amount with actual rate applied differing from case to case, reject assessee's submission to restrict FTC to 25% (which is maximum withholding tax rate under Article 10 of Indo-US treaty); Observes that in order to avail treaty benefits, it is not sufficient that the assessee is a 'resident' of India under the Income Tax Act, but he has to satisfy the requirements of Article 4 of the treaty; Thus, lays down several aspects which AO need to examine before granting FTC viz. (i) residential status of assessee under treaty, (ii) whether amounts shown as dividends are actually in the nature of dividends, (iii) whether US tax withholding is in accordance with the provisions of Article 10 of the treaty and (iv) whether FTC claimed is lower of such tax withholding or Indian tax liability on such income whichever is less and in any case it cannot exceed rate specified under Article 10; Accordingly, ITAT observes that "There is no scope of sweeping generalizations while computing tax credit" and directs AO to examine the evidence and decide the issue on case to case basis.

Standard Chartered Grindlays Pty Ltd. Vs. Dy. Director of Income Tax [ITA No. 3578/Del/2013, ITAT Delhi bench, dtd. 10.03.2017, in favour of revenue]

PE's interest-expense to UK bank-HO not deductible; Distinguishes Sumitomo and ABN rulings

Delhi ITAT rules against Standard Chartered Bank (a UK-based bank), denies deduction for Rs 24.8 crore interest paid by the Indian branch [i.e. permanent establishment (PE)] on foreign currency loan availed from its head office (HO) for making deposits in India; ITAT considers the language of Article 7(5) and Article 7(7) of the India-UK treaty (since assessee is a UK resident), which states that expense deductions to PE shall be subject to domestic law limitations; ITAT holds that under domestic law, interest paid by branch to HO is not deductible and further observes that "Since it has not been disputed by the assessee that payment of interest by PE to HO amounts to payment to self and, therefore, it is not tax deductible under domestic tax law, the ld. CIT (Appeals) in our view was justified in coming to the conclusion that the interest paid by PE to HO on money lent by HO to PE shall not be allowed as deduction in accordance with provisions of Article 7(5) read with Article 7(7) of Indo-UK DTAA."; ITAT rejects taxpayer's reliance on ITAT Special Bench ruling in Sumitomo Banking Corporation which was delivered in the context of India-Japan treaty; ITAT accepts Revenue's argument that India-Japan treaty is distinct from India-UK treaty and as per Article 7(3) of the India-Japan DTAA, there is no stipulation that interest deduction is subject to domestic law; ITAT further rejects taxpayer's reliance on ABN Amro Bank ruling; ITAT observes that "....the decision in the case of ABN Amro Bank N.V. Vs. CIT (supra) relied upon by the ld. AR having different issue is not applicable in the present case as in that case issue was as to whether interest paid by branch to its head office is subject to TDS and hence, not allowable as deduction under section 40(a)(i) read with section 195 of the Act, which is otherwise tax deductible, whereas in the present case the issue involved is as to whether interest paid by the branch office to HO is tax deductible per se or not"; ITAT further rejects taxpayer's alternate argument that interest paid by branch to HO exempt u/s 10(15)(iv)(fa); Taxpayer had argued that loan from HO was taken for further deposit with National Housing Bank, which was in the nature of a "deposit" and to be considered as RBI-approved considering the RBI directives; Before ruling on substantive issue, ITAT also rejects taxpayer's plea that assessments were time-barred; Separately, ITAT agrees with the taxpayer that for levy of interest u/s 220(2) of the Act, issue notice of demand u/s 156 is a pre-requisite.

Fidelity Business Services India Pvt. Ltd. Vs. ACIT [IT(TP)A. No. 4106/Bang/2016, ITAT Bangalore bench, dtd. 22.02.2017, partly in favour of assessee]

ITAT blesses share buyback from Mauritian parent, but adds 'fair-value' rider & AO's intervention

Bangalore ITAT rules that share buyback payment by assessee (Indian subsidiary) to its 99% Mauritian holding company to the extent of Fair market price ('FMP'), not a colourable device and capital gains benefit under Article 13(4) of India-Mauritius DTAA available for AY 2011-12; Relies on CBDT circular 3/2016 wherein it was clarified that pre-2013 share buy-back shall be taxable as capital gains, and it cannot be re-characterized as dividend; However, ITAT notes that in present case the buy-back price was Rs. 2,85,108 per share (having face value of Rs.10), clarifies that "So far as the payment on account of buy back …to the extent of the FMP of the share of the assessee company is concerned, the same would be treated as capital gain in the hand of the holding company as per the provisions of Section 46A…", however, the payment over and above the FMP would fall within the ambit of 'dividend' / s Sec 2(22)(d) subject to Dividend Distribution tax ('DDT'); ITAT opines that "In case the buy back price is not based on the real valuation and it is artificially

inflated by the parties then it is certainly a device for transfer of the reserves and surplus to the holding company by avoiding the payment of tax and therefore it will be treated as a colourable device.", accordingly ITAT remits matter to AO to determine the FMP of share as on the date of buyback

Circulars/Notifications / Instructions

Notification No. 18/2017, dtd. 23.03.2017

Vide the above notification, central government has notified all the provisions of the Third Protocol amending the Agreement between the Government of the Republic of India and the Government of the Republic of Singapore for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income. For detail please visit –

http://www.incometaxindia.gov.in/communications/notification/notification18_2017.pdf

Notification No. 21/2017, dtd. 30.03.2017

CBDT has vide above notification released ITR for Assessment Year 2017-18. The number of ITR Forms have been reduced from the existing nine to seven forms. The existing ITR Forms ITR-2, ITR-2A and ITR-3 have been rationalized and a single ITR-2 has been notified in place of these three forms. Consequently, ITR-4 and ITR-4S (Sugam) have been renumbered as ITR-3 and ITR-4 (Sugam) respectively.

Notification No. 26/2017, dtd. 03.04.2017

Vide the above notification, CBDT has notified form No. 10DA [Report under section 80JJAA of the Income-tax Act, 1961] for claiming deduction u/s. 80JJAA.

Notification No. 28/2017, dtd. 05.04.2017

Vide the above notification, CBDT has notified that the provision of section 269ST (Mode of Undertaking transactions) shall not apply to receipt by any person from an any banking company, post office savings bank or co-operative bank. Thus the restriction on cash receipts above Rs. 2 Lakhs would be applicable to withdrawal of cash from a bank, post office savings bank or co-operative bank.

Circular No. 10/2017, dtd. 23.03.2017

Vide the above circular, CBDT has provided clarification in the form of FAQs on Income Computation and Disclosure Standards (ICDS) notified under section 145(2) of the IT Act. For detail please visit –

http://www.incometaxindia.gov.in/communications/circular/circular10_2017.pdf

Circular No. 11/2017, dtd. 24.03.2017

Vide the above circular, CBDT has provided guideline for waiver of interest charged under section 201(1A)(i) of the IT Act. For detail please visit –

http://www.incometaxindia.gov.in/communications/circular/circular11_2017.pdf

INDIRECT TAXES

Judicial pronouncements

SERVICE TAX

Jayaswals Neco Ltd. Vs. Commissioner of Central Excise [TS-65-CESTAT-2017-Exc, dtd. 06.02.2017, partly in favour of assessee]

Cannot deny credit without notice / order, but suo-moto restoration of reversed amount erroneous

Mere observations in assessment of returns without challenge to MODVAT credit entitlement, insufficient to debar assessee from availing credit, however, suo moto re-credit of reversed entry amounts to breach of proper procedure; CESTAT accepts assessee's contention that credit cannot be disallowed absent notice or formal order denying its claim as 'capital goods', while relying on SC ruling in Kosan Metal Products Ltd.; But opines that, "an erroneous process adopted by assessing officer will not endow the assessee with the liberty to right any wrong" and same should have been subjected to rectification through procedure established by law, which obligation devolves on the assessee; Holds, since assessee patently failed in this, such lacunae in procedure cannot obtain seal of approval in these proceedings and hence, restoration of credit is not in order; Noting Larger Bench ruling in BDH Industries, CESTAT finds no justification in imposition of penalty, states that such constitution of Larger Bench to determine procedure for restoration of reversed credit amply illustrates lack of clarity and absence of clear provisions in Central Excise laws

Grant Thornton Vs. Comm. of Central Excise [(2017) 79 taxmann.com 196, CESTAT New Delhi bench, dtd. 04.01.2017, in favour of assessee]

Service-tax amendment, which includes reimbursement in definition of consideration, has prospective effect

Out of pocket expenses which are in nature of conveyance, travel, mobile expenses etc. cannot be included for purpose of levy of service tax under category of management consultant.

Old World Hospitality Ltd. Vs. Comm. of Service Tax [(2017) 79 taxmann.com 218, CESTAT New Delhi bench, dtd. 20.01.2017, in favour of assessee]

Reimbursement of expenditure not liable to service if gross earnings are shared between parties

Where assessee a service provider entered into an agreement with IHC for combined management of facilities available with IHC and gross revenue was also shared showing common intent, agreement was not for rendering of service by one to another, rather a common pool of resources, hence amount received by assessee from IHC would not be liable to service tax.

Where assessee had wrongly availed cenvat credit of duty paid on inputs and, input services and later, reversed whole disputed cenvat credit along with interest it will be eligible for abated rate of duty.

Amway India Enterprises (P.) Ltd. Vs. Comm. of Central Excise [(2017) 79 taxmann.com 142, CESTAT New Delhi bench, dtd. 06.02.2017, in favour of assessee]

Extended period of limitation can't be invoked if dept. conducted audit of assessee and business were known

Where modus operandi adopted by appellant for selling its products were known to Department since 2005, show-cause proceedings initiated in year 2009 by invoking extended period of limitation with regard to 'Franchise service' were barred by limitation.

Where appellant delayed in paying service tax for business auxiliary service, interest was rightly levied on it.

ICRA Ltd. Vs. Comm. of Central Excise [(2017) 79 taxmann.com 148, CESTAT Chennai bench, dtd. 22.07.2016, in favour of assessee]

Extended period of limitation can be invoked only if there is fraud or suppression

Expression 'management or business consultant' was of sufficient latitude to encompass operation and functioning of all aspects of enterprise.

Where original authority failed to render finding on fraud, suppression, etc. by assessee credit rating agency with intent to evade duty nor was there any such inference by appellate authority, extended period of limitation for raising demand of duty could not be invoked.

Bharat Hotels Ltd. Vs. Comm. of Service Tax [(2017) 79 taxmann.com 198, CESTAT New Delhi bench, dtd. 22.12.2016, in favour of revenue]

Service receiver can't change classification of services

Classification and categorization of service cannot be changed at end of recipient.

Andhra Pradesh State Road Transport Corporation (APSRTC) Vs. Comm. of Central Excise, Customs and Service tax [(2017) 79 taxmann.com 149, CESTAT Hyderabad, dtd. 02.01.2017, in favour of assessee]

Condition of unjust enrichment satisfied if service tax adjusted against amount due from service receiver

Where assessee-Road Transport Corporation collected service tax from ad agencies for providing services of sale of space or time of advertisement and erroneously deposited same with Government, since amount collected from assessee had already been adjusted by assessee with parties, it would be entitled to refund.

Cadbury India Ltd. Vs. Comm. of Service Tax [(2017) 79 taxmann.com 143, CESTAT Mumbai bench, dtd. 11.01.2017, in favour of assessee]

No penalty under reverse charge as assessee can claim credit of such service tax paid

Where assessee was recipient of service and could have availed cenvat credit for service tax paid under reverse charge mechanism, no penalty could be imposed on assessee under section 73.

CENVAT CREDIT

Comm. of Central Excise Vs. IVP Ltd. [(2017) 79 taxmann.com 407, Bombay high Court, dtd. 20.02.2017, in favour of assessee]

Manufacturer of both dutiable and exempted goods are entitled to reverse proportionate Cenvat credit

Even if manufacturer of both dutiable and exempted goods, who availed cenvat credit of duty paid on inputs, failed to maintain separate accounts of inputs for dutiable as well as exempted goods, it was entitled to reverse proportionate CENVAT credit and, therefore, option of paying amount equal to 10 per cent of sale value of exempted goods at time of clearance of exempted goods could not be enforced on it.

Trichem Enterprises (P.) Ltd. Vs. Comm. of Central Excise [(2017) 79 taxmann.com 220, CESTAT Ahmedabad bench, dtd. 28.12.2016, in favour of assessee]

Credit in respect of creditor written off is allowable

Cenvat credit availed by assessee on inputs, value of which was shown to have been written off, under category of 'other income', in their books of account would be admissible.

Comm. of Central Excise, Customs and Service tax Vs. Flash Forge (P.) Ltd. [(2017) 79 taxmann.com 219, CESTAT Hyderabad bench, dtd. 18.01.2017, in favour of assessee]

No penalty imposed on non-reversal of Cenvat Credit if there was no suppression by manufacturer

Where apart from non-reversal of credit as required in transitional provision contained in rule 9 there was no irregularity in cenvat credit availed by respondent-manufacturer, there was no suppression by respondent for imposing penalty under section 11AC of Central Excise Act.

Tata Motors Ltd. Vs. Comm. of Central Excise [(2017) 79 taxmann.com 193, CESTAT Mumbai bench, dtd. 20.01.2017, in favour of assessee]

Ownership is not a criterion for allowing credit on capital goods

Ownership is not criteria for allowing credit on capital goods; only criteria is that capital goods should be installed in factory of assessee and used in manufacture of final product

Circulars/Notifications / Instructions

Notification No. 10/2017-ST, dtd. 08.03.2017

Vide the above notification, the scope of mega exemption available to educational institution has been reduced and now only exemption would be available to institution providing services by way of pre-school education and education up to higher secondary school or equivalent.

Due Dates of key compliances pertaining to the month of April 2017:

10th April	*Excise Return*
15th April	*PF Contribution for the month of March*
21st April	*ESIC payment of for the month of March*
25th April	*Service tax return for the half year ended on 31st March*
30th April	*Payment of TDS for the month of March*

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