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# SNK

## Newsletter

### RECENT ECONOMIC DEVELOPMENT

- ◆ An index mapping the India's short term financial conditions has plunged over 12 points for the fourth quarter of the current fiscal ending March 31, as compared to the previous quarter. The CII IBA Financial Conditions Index stood at 53.2 for the fourth quarter (Q4) of 2017-18 as against 65.3 in the October-December period.
- ◆ India's trade deficit widened to \$16.30 billion in January from \$14.88 billion in the previous month, government data showed.
- ◆ India's annual wholesale price inflation eased in January for the second straight month after touching an eight-month high in November, helped by a softer rise in food and fuel prices, government data showed. Annual wholesale price inflation last month slowed to 2.84 percent from a year earlier, from a provisional 3.58 percent rise in December.
- ◆ India's retail inflation slightly eased in January from a 17-month high in December but remained above the 4 percent medium-term target of the Reserve Bank of India (RBI) for the third straight month. The CPI index, rose 5.07 percent in January from a year earlier, data released by the Ministry of Statistics showed.
- ◆ India's industrial output grew 7.1 percent in December from a year earlier, government data showed. Economists surveyed by Reuters had forecast 6.2 percent growth in output compared with a upwardly revised 8.8 percent year-on-year increase in November.
- ◆ NCAER forecasts a growth of 6.7 per cent for the India's Gross Domestic Product (GDP) at market prices. For 2018-19, NCAER forecasts a growth of 7.5 per cent for GDP at market prices. the National Council of Applied Economic Research (NCAER) also said that in 2017-18, the real agriculture Gross Value Added (GVA) is envisaged to grow at 1.0 per cent, real industry GVA at 5.2 per



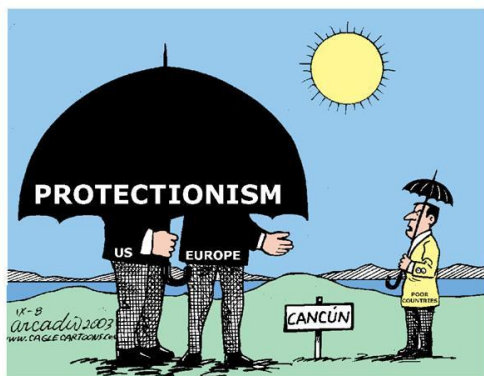
cent, and real services GVA at 8.0 per cent.

- ◆ The gross value added growth stood at 6.7 percent in the third quarter of 2017-18 compared with a revised 6.9 percent in the same period last year and a revised 6.2 percent in the previous quarter, according to data released by the Central Statistics Office. The more commonly tracked gross domestic product growth stood at 7.2 percent compared with a revised 6.5 percent in the second quarter.
- ◆ Bihar clocked a growth rate of 10.3 per cent in 2016-2017 as against 7.5 per cent in the corresponding fiscal a year ago, riding largely on the back of the services sector, according to the latest Economic Survey tabled in the state Assembly.
- ◆ India has "increased substantially" its score in the latest international Intellectual Property (IP) index released by the US Chambers of Commerce, ranking 44th out of 50 countries. India's overall score has increased substantially from 25 per cent (8.75 out of 35) in the fifth edition of the Index to 30 per cent (12.03 out of 40) in the sixth edition, according to the annual report prepared by the Global Innovation Policy Center (GIPC) of the US Chambers of Commerce.

(Source: Business news papers and Magazines)

- ◆ China reported trade balance data with a \$20.34 billion surplus, compared to a \$54.10 billion surplus seen for January, data showed. Export rose 11.1%, compared to a 9.6% gain seen and up from 10.9% in December, while imports soared 36.9%, compared to a 9.8% rise expected, and a jump from 4.5% in December.
- ◆ U.S. homebuilding increased to more than a one-year high in January, boosted by a rebound in the construction of single-family housing units, and further gains are likely as building permits soared to their highest level since 2007. Housing starts jumped 9.7 percent to a seasonally adjusted annual rate of 1.326 million units, the Commerce Department said. That was the highest level since October 2016 and followed an upwardly revised sales pace of 1.209 million units.
- ◆ U.S. consumer sentiment unexpectedly increased in February, according to a report. The preliminary publication of the data for February from the University of Michigan's Consumer Survey Center showed that consumer sentiment rose to 99.9 last month. That was its second highest reading since 2004.
- ◆ U.S. factory output was flat for the second straight month in January, raising questions about the manufacturing outlook as production dropped in the aerospace, plastics and food industries. Overall industrial production fell 0.1 percent in January, dragged down by a 1.0 percent decline in mining output. Utilities output rose 0.6 percent last month.
- ◆ U.S. mortgage application activity fell to its lowest in five weeks as interest rates on 30-year fixed-rate home loans jumped to their highest in four years, the Mortgage Bankers Association said.
- ◆ Japan reported provisional fourth quarter GDP at 0.5% on year, compared to a 0.9% gain seen and a 0.1% rise on quarter with a 0.2% increase seen.
- ◆ Americans' debt level rose during the fourth quarter, driven by an increase in mortgage loans, according to a Federal Reserve Bank of New York report. Total U.S. household debt was \$13.15 trillion in the three months to December, up \$193 billion from the prior three months. Debt levels were \$402 billion higher than during the fourth quarter of 2016.
- ◆ Sales of new U.S. single-family homes fell more than expected in January, according to data released. The Commerce Department said new home sales fell by 7.8% to a seasonally adjusted annual rate of 593,000 units last month.
- ◆ British inflation unexpectedly held close to its highest level in nearly six years in January, highlighting the challenge facing the Bank of England and reinforcing expectations of a rise in interest rates in May. Consumer price inflation held at an annual rate of 3.0 percent in January, unchanged from December, after hitting its highest since March 2012 in November at 3.1 percent, the Office for National Statistics said.
- ◆ Irish firms increased the value of goods exported to the United Kingdom last year by 8 percent, reversing a 4 percent fall in 2016 when sterling weakness made Irish goods more expensive for British consumers. The value of exports to the UK rose by 1.1 billion euros (975.95 million pounds) to 14.5 billion in 2017, representing 11.8 percent of the total value of goods exported last year. Only the United States, at 27.2 percent, is a larger single-country trading partner, data from the central statistics office showed.
- ◆ France's unemployment rate fell to 8.9 percent in the fourth quarter of last year, down from 9.6 percent in the previous quarter, according to data published by the INSEE national statistics office.
- ◆ Gross domestic product of Italy rose a quarterly 0.3 percent at the end of the year, following a 0.4 percent rise in the July-to-September period, and was up 1.6 percent on an annual basis, national statistics bureau ISTAT reported.
- ◆ China's non-financial outbound direct investment rose nearly 40 percent in January from a year earlier, in the latest sign that Beijing may be slowly relaxing tough foreign exchange controls as the government grows less worried about capital flight.
- ◆ Saudi Arabia's annual consumer price inflation jumped to 3.0 percent in January after the government introduced a 5 percent value-added tax and hiked domestic gasoline prices at the start of the year, official data showed. Food and beverage prices jumped 6.7 percent from a year earlier, restaurants and hotels gained 5.8 percent, and transport costs soared 10.5 percent. However, clothing and footwear prices fell 7.9 percent from a year earlier, partly because of deep discounting by retailers battling a slow economy, while housing and utility prices rose only 1.3 percent.





**Industrial Infrastructure Development Corporation (Gwalior) M.P. Ltd. Vs CIT, Gwalior (Supreme Court)**

The CIT had no jurisdiction to cancel the registration certificate once granted by him under Section 12A till the power was expressly conferred on the CIT by Section 12AA(3) of the Act w.e.f. 1-10-2004.

**Income-tax officer, New Delhi Vs Canyon Financial Services Ltd. (Supreme Court)**

SLP dismissed against High Court's ruling that where Assessing Officer of assessee had not proved that seized documents belonged to assessee and not to searched person and no reason was recorded how satisfaction notes recorded by Assessing Officer of assessee and Assessing Officer of searched person were identically worded carbon copy, proceedings could not be initiated against assessee under section 153C

**Muthoot Finance Ltd. Vs JCIT, Kochi (Kerala High Court)**

Excavation of land to install wind turbine generators was part of infrastructure development for establishing wind-mills, thus, amount spent on same was eligible for depreciation.

Where assessee could not demonstrate to Assessing Officer's satisfaction that it actually invested its own funds to start its new business, disallowance of interest on investment expenditure incurred on its new business

was justified.

**Mallikarjun School Society Vs Chief Commissioner of Income-tax (Uttarakhand High Court)**

Merely because surplus earned by assessee educational institution was invested for expansion of school building, it could not be held that assessee did not exist solely for educational purpose so as to deny assessee exemption under section 10(23C)(vi).

It is evident from a combine reading of Memorandum of Association that the society has been primarily established to impart education. The school is required to have necessary infrastructure to impart education in an effective manner. The Chief Commissioner has come to a wrong conclusion that the society was making systematic profit. The schools are required to invest in the infrastructure including expansion of building etc. Every school is required to provide latest facilities to the students and for this purpose, the construction of new building is essential. The business earned by the society is pumped again for raising the infrastructure. Accordingly, the respondent is directed to grant exemption to the petitioner-society for the relevant assessment year.

**CIT vs. NGC Networks (India) Pvt. Ltd (Bombay High Court)**

A party cannot be called upon to perform an impossible Act i.e. to comply with a provision not in force at the relevant time but introduced later by retrospective amendment. S. 40(a)(i) disallowance can be made only if the royalty falls under Explanation 2 to s. 9(1)(vi) but not if it falls under Explanation 6 to s. 9(1)(vi).

**PCIT-6 Vs Mohan Export India (P.) Ltd. (Delhi High Court)**

Commission paid by assessee to various agents in order to secure orders

from other countries and to ensure payment is to be allowed under section 37 (1).

The assessee is a private party; it sources goods and commodities and trades in them in various countries in Africa. To secure contracts and also to ensure that payments were received in a timely manner and repatriated expeditiously, it utilizes the services of local agents in each country. From the angle of the Indian economy, the assessee's efforts lead to export transactions, which in turn augment the foreign exchange resources; the assessee reports income, which is subjected to taxation. The commission expenditure laid out, therefore, can reasonably be linked with its business; its claim that it is laid out wholly for commercial terms is not fantastic; neither are the parties paid the amounts, bogus or dubious. In fact, they even confirmed receiving payments. By disallowing this expenditure, based on the AO's personal understanding of how business ought to be conducted, the purpose of Section 37 was set at naught; besides, the AO virtually positioned himself in the arm-chair of the assessee, as regards the business conducted by it an entirely untenable situation, that the law frowns upon. For these reasons, the concurrent findings of fact rendered by the lower appellate authorities do not call for disturbance.

**Pr CIT vs. Shree Gopal Housing & Plantation Corporation (Bombay High Court)**

The law in Nayan Builders 368 ITR 722 (Bom) does not mean as a matter of rule that in case where the High Court admits an appeal relating to quantum proceedings ipso facto i.e. without anything more, the penalty order gets vitiated. The question of entertaining an appeal from an order imposing / deleting penalty would have to be decided



## Judicial pronouncements

on a case to case basis. There can be no universal rule to the effect that no penalty can be levied if quantum appeal is admitted on a substantial question of law.

### **P. Chidambaram Vs ACIT, Chennai (Madras High Court)**

Sale proceeds of coffee seeds subjected to only curing and pulping is agricultural income.

### **Rashtriya Chemicals & Fertilizers Limited vs. CIT (ITAT Mumbai)**

Even if there is lack of inquiry by the AO and the assessment order is "erroneous" under Explanation 2 to s. 263, the order is not "prejudicial to the interests of the Revenue" because Fringe Benefit Tax is not "tax" as defined in s. 2(43) and cannot be disallowed u/s 40(a)(v) or added back to "Book Profits" u/s 115JB.

### **DCIT, CC-19 Vs Smt Mala Kalsi (Delhi Tribunal)**

No addition was to be made in case of assessee on 'protective basis', when said amount had already been added to income of overseas companies on 'substantive basis' in which assessee was a shareholder.

### **Rajat B Mehta vs. ITO (ITAT Ahmedabad)**

The expression "cost of the residential house so purchased" in s. 54 is not confined to the cost of civil construction but includes furniture and fixtures if they are an integral part of the purchase. The fact that the assessee did not make the claim is no reason to deny the claim if he is otherwise entitled to it.

## International Taxation

### **Telsima Communications (P.) Ltd. Vs DCIT (Bangalore Tribunal)**

Where AO disallowed advertisement



charges paid by assessee to a foreign company on ground of non-deduction of tax at source, in view of fact that, Assessing Officer had not rendered any finding on assessee's contention that there was no PE of non-resident concern in India to whom said payments for advertisement were made, impugned disallowance was to be deleted.

Where TPO made certain addition to assessee's ALP in respect of software development services rendered to AE which was confirmed by DRP, in view of fact that DRP had passed a cryptic order without deciding on functional comparability of individual companies, impugned addition was to be set aside.

### **Safilo India (P.) Ltd. Vs DCIT, Mumbai (Mumbai ITAT)**

Where there was no contractual obligation on part of AE to replace goods when same had been damaged or destroyed after title of goods was transferred to assessee, writing off of out-of-fashion, old and obsolete goods (sunglass and spectacles) by assessee was an extraordinary event but not an international transaction. Departmental authorities cannot make ad hoc disallowance under section 92C.

### **ACIT Vs Billion Wealth Minerals (P.) Ltd. (Mumbai ITAT)**

Where TPO had used an external source i.e. TIPS data for determining ALP of international transaction of sale

of iron ores, to AE as well as non-AEs, mean of GP rates realised from each of non-AE-transactions would be appropriate to determine arm's length price.

## INDIRECT TAXES

### **CST vs. Shri Krishna Chaitanya Enterprises (Bombay High Court)**

Service-tax on maintenance of property: Under the MOFA, the builder/ developer is under a statutory obligation to look after the day-to-day upkeep, maintenance and repair of the property till conveyance to the co-op society. Such maintenance of the structure is not rendering a taxable service as per s. 65 (64) of the Finance Act, 1994.

### **Abicor and Binzel Technoweld Pvt. Ltd vs. UOI (Bombay High Court)**

GST Network: The regime is not tax friendly. GST was highly publicised and termed as popular but there has been great hue and cry because assesseees are unable to obtain access to the GST website. Those in charge of implementation and administration must wake up and put in place the requisite mechanism to preserve the image, prestige and reputation of this country, particularly when we are inviting and welcoming foreign investment in the State and the country.

### **Pandit Automobiles Vs Commissioner of Customs, Central Excise & Service Tax (Allahabad - CESTAT)**

Amount paid by vehicle-manufacturer to vehicle service station for three free services and/or pre-delivery inspection given to customers during warranty period, was not liable to service tax.

Service Tax was not payable on spares and consumable shown separately in invoice and on which admissible VAT/ Sales tax was charged or paid.



### Forbes & Co. Vs Commissioner of Central Excise, Salem (Chennai - CESTAT)

Where assessee besides acting as broker and auctioneer was also engaged in a number of other activities for promoting sale and marketing of goods of tea sellers, services would fall under category of 'business auxiliary services'

#### Notification / Circular

- In case of import of goods in India, importer in India may import the same on CIF basis. In such cases all the expenses of insurance and freight till the port of destination in

India is borne by the foreign supplier. Foreign supplier may engage a foreign shipping line to do the transportation of goods to India. Payment in such cases will be made by the foreign supplier to the foreign shipping line and Indian importer makes payment for goods as per agreed CIF rates to the foreign supplier.

- Govt. has assigned the GSTO and AC for processing of refund under Delhi GST Act, 2017. If the amount of refund is more than Rs. 10 lakhs but less than Rs 50 lakhs of tax, then GSTO/AC shall issue refund

after obtaining the prior approval of zonal in charge. If the amount of refund is more than Rs 50 lakhs of tax, then GSTO/AC shall issue refund after obtaining the prior approval of refund approval committee.

- Govt. has assigned proper officer upto the rank of Additional/Joint Commissioner of central tax for issuance of SCN under GST Act. Further, Govt. has also prescribed the monetary limit of tax for issuance of SCN and orders under sections 73 and 74 of the CGST Act.

### Due Dates of key compliances pertaining to the month of March 2018:

7 <sup>th</sup> Mar. 2018	TDS/TCS Payment for the month of February
10 <sup>th</sup> Mar.2018	GSTR-1 for Feb. - for assessee having turnover more than Rs. 1.50 Cr.
15 <sup>th</sup> Mar.2018	ESIC / PF Payments for the month of February
15 <sup>th</sup> Mar.2018	Advance Income Tax Installment for all assesses
20 <sup>th</sup> Mar.2018	GSTR3B Return for February

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The information contained in this newsletter is of a general nature and it is not intended to address specific facts, merits and circumstances of any individual or entity. We have tried to provide accurate and timely information in a condensed form however, no one should act upon the information presented herein, before seeking detailed professional advice and thorough examination of specific facts and merits of the case while formulating business decisions. This newsletter is prepared exclusively for the information of clients, staff, professional colleagues and friends of SNK.

