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MCTC Bulletin

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E-mail: maladchamber@gmail.com Website : www.mctc.in

Regd. Office : B/6, Star Manor Apartment, 1st Floor, Anand Road Extn., Malad (W), Mumbai 400 064. **Mobile : 7039006655**
Admn. Office : C/o. Brijesh Cholerra : Shop No. 4, 2nd Floor, The Mall, Station Road, Malad (W), Mumbai-400 064

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President's Communiqué

Dear Members,

"It is not the strongest of the species that survive, nor the most intelligent, but the one most responsive to change". – Charles Darwin

We all know that change is inevitable. Change is simply a path and an important element of flourishing life. For us to thrive in this world full of evolving challenges, need for change is an inevitable deal.

Going by this rule of change, the Goods and Services Act (GST) will be a reality very soon. Doing business in India will never remain the same again. India is going to change forever.

GST provides a challenge and opportunity to all the professionals. We, as professionals, would have to accept the challenge and take this opportunity to help the Government in smooth implementation of GST. We will have to act as a bridge between the Government and the businesses. We will be part of history, who would witness the biggest transformation in the Indirect Tax laws of India.

MCTC also accepted this challenge and organised the 3rd Study Circle on "Insight on GST", which received a tremendous response from the members on 27th August, 2016. We shall continue this journey through GST in the upcoming months too. We hope to equip our members with the necessary knowledge to take on the uphill task of transitioning into GST.

We are thankful to our Past President Shri Ashwinbhai Acharya for sponsoring the 2nd study circle meeting & also to our Past President Shri Pravinbhai Shah for sponsoring the 3rd Study Circle Meeting of MCTC.

We request the members to send suggestions for per-budget Memorandum to be submitted to the Honorable Finance Minister by the Law & Representative Committee.

With the festive seasons approaching, we are having our Diwali Get together & Saraswati Sanman Samarambh on 13th November, in which we will be awarding the Eleventh Dr. Bharat D. Vasani Saraswati Sanman Trophies to the children of MCTC members for outstanding performance in passing exams of SSC/HSC with 75% marks and above and students who cleared post graduation professional exams like CA., C.S., C.W.A., MBBS, MBA, Engineers.

• JAI MATA DI! • HAPPY DASSERA!

Best Regards,

Adarsh S. Parekh
President

For Query & Submission of Forms for Membership/Seminar Please Contact any of the following Office Bearers :

Name	Designation	Contact Nos.		E-mail
Adarsh S. Parekh	*President*	28094049	9869105103	asparekhca@yahoo.co.in
Vipul M. Somaiya	*Vice-President*	28828844	9223418790	vipul@somaiyaco.com
Swapnil G. Modi	*Hon. Treasurer*	28819304	9833884273	swapnil@modiconsultancy.com
Viresh B. Shah	*Hon. Jt. Secretary*	28018520	9820780070	vireshbshah9@gmail.com
Vaibhav Seth	*Hon. Jt. Secretary*	28829028	9619721743	sethvaibhav@hotmail.com

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DIRECT TAXES – LAW UPDATE

Compiled by CA. Haresh P. Kenia

- **SECTION 44AB, READ WITH SECTION 44AD, OF THE INCOME-TAX ACT, 1961 – AUDIT COMPULSORY – CLARIFICATION ON THRESHOLD LIMIT OF TAX AUDIT UNDER SECTION 44AB AND SECTION 44AD – PRESS RELEASE DATED 20-6-2016**

  Section 44AB makes it obligatory for every person carrying on business to get his accounts of any previous year audited if his total sales, turnover or gross receipts exceed one crore rupees. However, if an eligible person opts for presumptive taxation scheme as per section 44AD(1) of the Act, he shall not be required to get his accounts audited if the total turnover or gross receipts of the relevant previous year does not exceed two crore rupees. The higher threshold for non-audit of accounts has been given only to assessees opting for presumptive taxation scheme under section 44AD.

- **INCOME-TAX (SEVENTEENTH AMENDMENT) RULES, 2016 - INSERTION OF RULE 37BC AND AMENDMENT IN FORM NO. 27Q NOTIFICATION NO. SO 2196(E) [NO. 53/2016 (F.NO. 370142/16/2016-TPL)], DATED 24-6-2016**

  Rule 37BC has been inserted for relaxation from deduction of tax at higher rate under section 206AA. This rule provides that in the case of a non-resident, not being a company, or a foreign company (hereafter referred to as 'the deductee') and not having permanent account number the provisions of section 206AA shall not apply in respect of payments in the nature of interest, royalty, fees for technical services and payments on transfer of any capital asset, if the deductee furnishes the following details:-

  (i) Name, e-mail ID, contact number;

  (ii) Address in the country or specified territory outside India of which the deductee is a resident;

  (iii) A certificate of his being resident in any country or specified territory outside India from the Government of that country or specified territory if the law of that country or specified territory provides for issuance of such certificate;

  (iv) Tax Identification Number of the deductee in the country or specified territory of his residence and in case no such number is available, then a unique number on the basis of which the deductee is identified by the Government of that country or the specified territory of which he claims to be a resident.

  Consequential amendments have been made in Form No. 27Q.

- **SECTION 44AB, READ WITH SECTION 145, OF THE INCOME-TAX ACT, 1961 – AUDIT COMPULSORY – APPLICABILITY OF INCOME COMPUTATION AND DISCLOSURE STANDARDS (ICDS) NOTIFIED UNDER SECTION 145(2) – PRESS RELEASE, DATED 6-7-2016**

  Considering the present facts, it has been decided that the ICDS shall be applicable from 1-4-2016 i.e. previous year 2016-17 (Assessment Year 2017-18).

- **FAQ ON INCOME DECLARATION SCHEME**

  Circular No. 24 dated 27/06/2016; Circular No. 25 dated 30/06/2016; Circular No. 27 dated 14/07/2016 have been issued to clarify on various issues of Income Declaration Scheme.

- **INCOME DECLARATION SCHEME, 2016 – RELAXATION OF TIME SCHEDULE FOR MAKING PAYMENTS UNDER SAID SCHEME – PRESS RELEASE, DATED 14-7-2016**

  Taking into consideration the practical difficulties of the stakeholders, the Government has decided to revise the time schedule for making payments under the Scheme as under:

  (i) A minimum amount of 25% of the tax, surcharge and penalty to be paid by 30-11-2016;

  (ii) A further amount of 25% of the tax, surcharge and penalty to be paid by 31-3-2017;

  (iii) The balance amount to be paid on or before 30-9-2017.

- **SECTION 119 OF THE INCOME-TAX ACT, 1961 – INCOME-TAX AUTHORITIES – INSTRUCTIONS TO SUBORDINATE AUTHORITIES – CLARIFICATIONS REGARDING ATTAINING PRESCRIBED AGE OF 60/80 YEARS ON 31st MARCH ITSELF, IN CASE OF SENIOR/VERY SENIOR CITIZENS WHOSE DATE OF BIRTH FALLS ON 1st APRIL, FOR PURPOSES OF INCOME-TAX ACT - CIRCULAR NO. 28/2016 [F. NO. 225/182/2016/ITA.II], DATED 27-7-2016**

  The Central Board of Direct Taxes, in exercise of powers under section 119 of the Act, hereby clarifies that a person born on 1st April would be considered to have attained a particular age on 31st March, the day preceding the anniversary of his birthday. In particular, the question of attainment of age of eligibility for being considered a senior/very senior citizen would therefore be decided on the basis of above criteria. The field authorities are directed to take note of above position for ascertaining the age while computing tax liability of a taxpayer falling in Individual' category, being resident in India.

- **SECTION 119 OF THE INCOME-TAX ACT, 1961 – INCOME-TAX AUTHORITIES – INSTRUCTIONS TO SUBORDINATE AUTHORITIES - EXTENSION OF DUE DATE FOR FILING RETURNS OF INCOME FROM 31-7-2016 TO 5-8-2016 IN CASE OF TAXPAYERS THROUGHOUT INDIA - ORDER [F. NO. 225/195/2016/ ITA.II], DATED 29-7-2016**

  On consideration of reports of Bank strike on 29th July, 2016 (Friday) and the 31st July, 2016 (Sunday), being a Bank Holiday, in order to avoid any inconvenience to the taxpayers while making payment of taxes pertaining to returns of income for Assessment Year 2016-2017, which are required to be filed by 31st July, 2016 as per provisions of section 139(1) of Income-tax Act, 1961, the Central Board of Direct Taxes, in exercise of powers conferred under section 119 of the Income-tax Act, 1961, hereby extends the 'due -date' for filing such returns of income from 31st July, 2016 to 5th August, 2016, in case of taxpayers throughout India who are liable to file their Income-tax return by the said 'due date'

JUDICIAL JUDGMENTS

Compiled by CA Dharmen Shah and CA Rupal Shah.

Nimesh N. Kampani vs. ACIT (ITAT-Mumbai), I.T.A. No. 3316/Mum/2013, 16th June, 2016

Expenditure incurred by a director in engaging lawyers to defend himself against cases filed for violation of the law by the Company of which he is a director is not personal expenditure but is allowable as business expenditure.

Facts of the case

The assessee was Director on Board of many companies including on the Board of M/s. Nagarjuna Finance Ltd. This company was charged with default in repayment of fixed deposits and interest thereon. In this regard, the Andhra Pradesh Government had filed suit against directors of the company including against the assessee. To defend him, the assessee had appointed various advocates to represent his case before various courts viz., District Court, High Court, and Supreme Court. The appellant paid fees to the advocates and incurred certain other expenses like travelling expenses.

As per A.O. the expenditure were personal in nature, he therefore disallowed the same. The assessee argued before the Assessing Officer that the expenditure was incurred to protect his business interest and, therefore, the same should be fully allowable u/s. 37(1) of the Act.

CIT(A) also confirmed the action of the A.O. against which the assessee filed an appeal before ITAT.

ITAT held in favour of assessee observing that:

The assessee serves as an Independent Director on the Board of several leading Indian companies. The assessee in his professional capacity as a director earned professional fees for the services rendered to these companies. He also regularly received sitting fees and commission from many of these companies. The same were offered to tax in the relevant years.

The Andhra Pradesh Government had since filed suit against directors of the company including Mr. Kampani. To defend him, Mr. Kampani had appointed various advocates to represent his case. As the expenditure is incurred to protect his business interest the same is required to be allowed u/s. 37(1) of the Act.

Smt. Vijaya Raman the Deputy Director of Income Tax, (International Taxation) Chennai, ITA No. 147/Mds/2016, 11th August, 2016

Husband wife treated single unit for capital gains deduction u/ss. 54/54F. Compensation paid to husband to vacate house owned by wife not allowable.

Facts of the case

The assessee was owner of a land. Her Husband had built a house on the said land. The assessee sold the land to a developer for new construction and the building was demolished. The assessee paid ₹ 30 lakhs as compensation to husband to handover vacant possession of the house.

The assessee claimed a deduction of the said amount from total income stating that unless the house was demolished, the assessee could not sell the land.

However, AO did not allow the deduction, CIT(A) also confirmed the disallowance.

It was observed that:

There was no Agreement between the assessee and her husband at the time of construction of building. The assessee had not received any compensation/rent from her husband for allowing her husband to construct the building and hence there was no justification for paying compensation when the land was sold.

Both the assessee and her husband lived together in the very same building and the assessee has not received any compensation from her husband for allowing him to construct the building. Therefore, the assessee has to be treated as owner of the building along with her husband for all practical purposes. Hence what was transferred is land and building. Therefore, the assessee is entitled for other deductions claimed under section 54 of the Act.

UPDATES ON SERVICE TAX

Compiled by CA Bhavin S. Mehta

1. Amendment to Notification No. 26/2012, insertion of new Entry '5A' [Notification No. 38/2016 Service Tax dated 30th August, 2016]

A new entry '5A' has been inserted to the Abatement notification No. 26/2012, whereby transport of passenger by air by regional connectivity scheme airport would be liable to levy of service tax on ten percent of its value for one year from commencement of operation of such regional connectivity scheme airport..

The Ministry of Civil Aviation (MoCA), Government of India released the National Civil Aviation Policy, 2016 (NCAP 2016), wherein one of the objectives is to "enhance regional connectivity through fiscal support and infrastructure development".

Amended notification is reproduced below:

Sr. No.	Description of taxable service	Percentage	Conditions
"5A	Transport of passengers, with or without accompanied belongings, by air, embarking from or terminating in a Regional Connectivity Scheme Airport.	10	CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken by the service provider under the provisions of the CENVAT Credit Rules, 2004."

After paragraph 2, the following paragraph shall be inserted, namely:-

"2A. Nothing contained at Sl. No. 5A of the TABLE shall apply on or after the expiry of a period of one year from the date of commencement of operations of the Regional Connectivity Scheme Airport as notified by the Ministry of Civil Aviation". Thus

2. Amendment to Notification No. 25/2012, Entry '62' has been modified [Notification No. 39/2016 Service Tax dated 2nd September, 2016]

Entry 62 of Notification No.25/2012 has been amended to grant exemption to services provided by Government or a local authority by way of allowing a business entity to operate as a telecom service provider or use radio frequency spectrum during the period prior to 1st April, 2016 instead of existing provision of granting exemption to services provided only during financial year 2015-16.

3. Amendment to Notification No. 25/2012, Entry '5' has been modified [Notification No. 40/2016 Central Excise (N.T.) dated 26th July, 2016]

Exemption restricted - Earlier clause (a) of Entry 5 of Notification No. 25/2012 which reads as "Services by a person by way of renting of precincts of a religious place meant for general public" has been substituted as "services by way of renting of precincts of a religious place meant for general public, owned or managed by an entity registered as a charitable or **religious** trust under section 12AA of the Income-tax Act,1961 (hereinafter referred to as the Income-tax Act), or a trust or an institution registered under sub clause (v) of clause (23C) of section 10 of the Income-tax Act or a body or an authority covered under clause (23BBA) of section 10 of the Income-tax Act".

Circular No. 200/10/2016 dated 6-09-2016 clarifies the scope of the word 'precincts' can be widen and consider all immovable property of the religious place located within the outer boundary walls of the complex (of buildings and facilities) in which the religious place is located, as being located in the precincts of the religious place. The immovable property located in the immediate vicinity and surrounding of the religious place and owned by the religious place or under the same management as the religious place may be considered as being located in the precincts of the religious place.

4. Service tax on Freight Forwarders on transportation of goods from India [Circular No. 197/7/2016 – Service Tax dated 12th August, 2016]

CBEC clarifies that with respect to services provided by freight forwarders while acting as an agent or as a principal of transportation of goods from India to the place outside India.

a) The Freight Forwarders acting as a principal will not be liable to pay service tax while providing the service of transportation of goods when the destination of the goods is from a place in India to a place outside India.

b) The Freight Forwarders acting as an agent with no responsibility and liability for the actual transportation of the goods may be considered as an intermediary under rule 2(f) read with rule 9 of POPS and will be liable to pay service tax.

Thus, in such cases it is important for the freight forwarder to determine whether arrangement with shipper is that of Principal to Principal or Principal – Agent relationship and accordingly determine taxability.

5. Service tax liability in case of hiring of goods without transfer of the right to use goods [Circular No. 198/08/2016 – Service Tax dated 17th August, 2016]

Taxability of transactions under VAT or Service Tax involving hiring, leasing or licensing of goods should be determined on the basis of terms of the contract. The primary generalisations or assumptions about applicability of service tax on such transactions cannot be made. It would be pertinent to see whether such transactions do not involve transfer of right to use the goods. The criteria laid down by the Supreme Court in the case of **Bharat Sanchar Nigam Limited vs Union of India,** reported in 2006(2) STR 161 SC as well as other judicial pronouncements which are emphasizing on taxability of such transactions should be carefully examined. The referred judicial pronouncements should not be applied mechanically but after considering their applicability to the facts of a particular transaction. The circular also refers to following judgments:

(i) **Commissioner VAT vs International Travel House Ltd.** – Delhi HC judgment dated 8-9-2009 in ST Appeal 10/2009

(ii) **Rastriya Ispat Nigam Limited vs Commercial Tax Officer** reported in 1990 (77) STC 182 and **State of Andhra Pradesh vs Rashtriya Ispat Nigam Limited** reported in 2002 (126) STC 114

(iii) **State Bank of India vs State of Andhra Pradesh** reported in 1988 (70) STC 215 A.P.

(iv) **Ahuja Goods Agency vs State of Uttar Pradesh** reported in 1997 (106) STC 540

(v) **Lakshmi AV Inc vs Assistant Commercial Tax Officer** reported in 2001 (124) STC 426 Karnataka

(vi) **G. S. Lamba and Sons vs State of Andhra Pradesh** reported in 2015 (324) ELT 316 A.P.

6. Services provided to Government, a Local Authority, or a Governmental authority with regard to water supply [Circular No. 199/09/2016 – Service Tax dated 22th August, 2016]

The clarification has been given *vide* aforesaid circular with respect to exemption for Contractors providing the service of construction of tube wells for the Government. Such service would be classified for exemption

under Serial Nos. 12(e) and 25(a) of Notification No. 25/2012 – Service Tax dated 20-6-2012 as amended which are provided herein below:-

Serial No. 12(e) of Notification No. 25/2012 – Service Tax dated 20-6-2012 –

"Services provided to Government, a local authority or a Governmental authority, by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal".

Serial No. 25(a) of Notification No. 25/2012 – Service Tax dated 20-6-2012 –

"Services provided to Government, a local authority or a Governmental authority by way of water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation".

7. Clause (ix), sub-rule (6) of rule 6 of CENVAT Credit Rules, 2004 shall be omitted w.e.f 10-8-2016 [Notification No. 41/2016 Central Excise (N.T.) dated 10th August, 2016]

Clause (ix), sub-rule (6) of rule 6 of CENVAT Credit Rules, 2004 shall be omitted w.e.f 10-8-2016. Effective from 1-10-2015, provision of sub-rules (1), (2), (3) and (4) of rule 6 of CCR pertaining to ethanol produced from molasses generated from cane crushed in the sugar season 2015-16 i.e., 1-10-2015 to specified public sector oil marketing companies was not applicable. Now by virtue of notification 41/2016, same has been omitted.

JUDGMENTS UNDER CENTRAL EXCISE & SERVICE TAX – AUGUST, 2016

Complied by CA Bhavin S. Mehta

1. Service tax on restaurants levied under section 66E(i) of the Finance Act, 1994 is constitutional and Service Tax on 'short-term accommodation' in hotel is unconstitutional (Federation of Hotels & Restaurants Association of India vs. Union of India (2016) 72 taxmann.com 161 (Delhi) [12-8-2016]

FACTS

Federation of Hotels and Restaurants Association of India filed a writ before the Delhi High Court challenging the constitutional validity provision whereby, service tax is levied on supply of food items by restaurants having AC facility.

Assessee also challenged constitutional validity of provision, whereby service tax is levied on short-term accommodation by hotels.

HELD

The Delhi High Court upheld the constitutional validity of service tax levy on foods items served in AC restaurants and made following observations:

- Rule 2C of the Service Tax (Determination of Value) Rules, 2006 enables the assessing authority to put a definite value to the service portion of the composite contract of supply of goods and services in an air-conditioned restaurant.
- Correspondingly there is abatement for that portion which pertains to the supply of goods in the form of food and drink which would be amenable to sales tax or value added tax.
- It is to be kept in mind that the ready reckoner formula is useful where an assessee does not maintain accounts in a manner that will enable the assessing authority to clearly discern the value of the service portion of the composite contract. With the machinery provision for the levy and determination of service tax on the service portion clearly being spelt out in the Rules themselves, the legal requisites stand satisfied.

The Hon'ble Delhi High Court held that levy of service tax on short-term accommodation in hotel is unconstitutional

- Section 65(105)(zzzzw) contemplates a service provided "to any person by a hotel, inn, guest house, club or camp-site by whatever name called, for providing of accommodation for a continuous period of less than three months." When the above definition is placed alongside the above extracted provisions

of the Delhi Tax on Luxuries (DTL) Act of 1996, it is difficult to discern any real difference in the subject matter of the two levies.

- In other words, what is defined under the DTL Act is an identical service of providing accommodation in a hotel. The only additional prefix in the FA is the hyphenated word "short-term" in Section 65(105)(zzzzw) followed by the expression "for a period of less than three months". However, such provision of short-term accommodation of less than three months is by no means exempt from luxury tax under the DTL Act. It is, therefore, plain that there is not merely an overlap of luxury tax and service tax as far as accommodation provided in hotels is concerned. It is in fact the same levy but by different statutes: one enacted by the State and the other by the Union. This is indeed an instance of encroachment by the Union into a field that is completely covered by a State legislation.
- The levy of service tax on short-term accommodation fails on other respects too. Significantly, the 2006 Rules do not provide the machinery for levy and collection of tax on accommodation. Even the rebate provided on the basis of the room tariff is not engrafted into the 2006 Rules. There is no corresponding provision for determining the value of the service in the case of Section 65(105)(zzzzw) of the FA. In other words there is no machinery for the computation of the taxable value of the service of providing accommodation.
- Consequently, the Court is satisfied that the provision of short-term accommodation in hotels etc. envisaged in Section 65 (105) (zzzzw) of the FA read with Section 65(44) of the FA is a taxable event that is entirely covered by the term 'luxuries' in Entry 62 of List II of the Seventh Schedule to the Constitution and therefore outside the legislative competence of Parliament.

2. Levy of service tax on 'manufacturing of alcohol on job-work basis' is valid and constitutional, as service tax is levied only on service aspect of said transaction and therefore the same is not hit by Entry 51 of State List of Schedule VII of Constitution. (Carlsberg India Pvt. Ltd. vs. Union of India (2016) 72 taxmann.com 157 (Delhi) [5-8-2016]

FACTS

- The assessee was engaged in the manufacturing, brewing and bottling of alcoholic liquor for human consumption i.e. beer of their own brands as well as brands owned by others.
- The assessee held the requisite licences from the Haryana State Government and has been paying State Excise Duty under the provisions of Punjab Excise Act, 1914 as applicable to the State of Haryana on the beer manufactured by it, whether under its own or other brand names.
- The assessee entered into an agreement with UBL for the purposes of manufacture and sale of beer under the brand name of 'Kingfisher'. UBL agreed to provide process parameters to assessee. UBL also permitted assessee to use the trademarks owned by UBL.
- On its part assessee agreed to manufacture and dispose of UBL's beer to the State Beverages Corporation/State regulated depots, wholesalers/indenters having necessary permits/licences. UBL's only responsibility was branding of the beer and to provide the process of manufacture of beer under its brand name. It was assessee's responsibility for brewing, bottling, packaging, storing and selling of beer of the Kingfisher brand, including usage of all ingredients, raw materials, brewing specifications.
- Since 1-7-2012 the processes undertaken by assessee were covered under the negative list of services and, therefore, not amenable to service tax. However, the manufacture of alcoholic liquor for human consumption was removed from the negative list by virtue of the amendment brought about by section 109(2) of the Finance Act, 2015.

ASSESSEE'S ARGUMENTS

Parliament lacks the legislative competence to enact said amendments since activity of manufacture of alcoholic liquor for consumption, whether for oneself or for another person, lies exclusively within the domain of the State Legislature under Entry 51 of List II of Schedule VII to the Constitution.

DEPARTMENT'S ARGUMENTS

The department argued that service tax is not levied on the manufacture of alcohol but on the service aspect of the contract of manufacturing of alcohol on behalf of the principal manufacturer/brand owner.

HELD

- It was held that what is sought to be made amenable to service tax is the activity of contract manufacturing of alcoholic liquors fit for human consumption by one entity for another. Such provision of service which is in pith and substance not covered under Entry 51 of List II of the Seventh Schedule to the Constitution of India is certainly amenable to levy of service tax by Parliament which is competent to legislate on that aspect with reference to Entry 97 of List I.
- The validity of the notification appointing the commencement date of the above amendment as 1-6-2015 as the date on which the above provision would come into force is also, therefore, upheld.

3. An order cannot be said to be without jurisdiction merely because of error of law or wrong conclusion on part of authorities and, hence, writ cannot be maintained thereagainst bypassing statutory appeal. Writ cannot be entertained bypassing statutory appeal merely because: (a) authorities have committed error of law or arrived at wrong conclusion, or (b) making of mandatory pre-deposit is not conformable to assessee. (*Jiban Kumar Saha vs. Jt. Commissioner of Central Excise & Service Tax, Shillong*) (2016) 72 taxmann.com 218 (Meghalaya) [29-07-2016]

FACTS

- The petitioners, engaged in the business of undertaking works contracts, seek to question the orders passed by the competent authorities under the Central Excise Act, 1944 ['the Act of 1944'] pursuant to the respective show cause notices, holding them liable for service tax in relation to the road construction/ renovation works said to have been undertaken by them.
- The case of the petitioners is that the construction/renovation works carried out by them were that of exempted service under the provisions of the Commercial and Industrial Construction Service as also under the Works Contract Service [respectively under Sections 65(105)(zzq) and 65(105)(zzzza) of the Finance Act of 1994] and under Notification No.24/2009-Service Tax dated 27.07.2009 and hence, they were not liable for service tax. The competent authorities have, however, rejected the contentions of the petitioners in their impugned orders.

ASSESSEE'S ARGUMENTS

- The petitioners contended that the remedy of appeal under section 35 of the Act of 1944 cannot be said to be an efficacious remedy for several reasons including the fundamental one that with the amended section 35-F of the Act of 1944, it is mandatorily required of an appellant to make pre-deposit @ 7.5% for the first time appeal and @ 10% for the second time appeal, of the duty and penalty confirmed in the order; and looking the substantial amount of duty imposed with equal amount of penalty and interest, the petitioners would suffer serious hardship in depositing huge amount for maintaining the appeals.
- The learned counsel for the petitioners contended the concerned Appellate Authority has already expressed its views in another case relating to road construction for ONGC in its order dated 28-4-2015; and repetition of the same erroneous view of law by the said Authority is not ruled out in petitioners' cases too and, therefore, the remedy of appeal cannot be considered to be an efficacious one. The learned counsel for the petitioners has referred to and relied upon several decisions.

DEPARTMENT'S ARGUMENTS

- No case for bypassing the regular remedy of statutory appeal is made out and these writ petitions deserve to be dismissed on this ground alone.
- The contentions of the petitioners that the authorities concerned have taken a wrong decision or have reached to a wrong conclusion with incorrect determination of any question do not make out a case of want of jurisdiction. It remains trite that a Judicial Authority, when having jurisdiction to decide the matter, would not be considered having acted without jurisdiction by merely coming to a wrong conclusion, whether on law or on facts. Thus, the suggestion that the orders impugned suffer from want of jurisdiction, being wholly baseless, is required to be rejected.

HELD

- After having given thoughtful consideration to the rival submissions and having examined the matters in totality, it is viewed that no case for bypassing the regular remedy of statutory appeal is made out and these writ petitions deserve to be dismissed on this ground alone.

4. Airport taxes and passenger service fees collected by airlines on behalf of airports and paid to airports/Government authorities would not form part of value of 'passenger-transport services by air' (*Lufthansa German Airlines vs. Commissioner of Service Tax*) (2016) 70 taxmann.com 60 (New Delhi-CESTAT)[28-4-2016]

FACTS

- The appellant is engaged in providing services of transport of passengers by Air embarking in India for International Journey and were duly registered with the Service Tax Department for payment of service tax. As the appellant were issuing tickets for the air journey to be undertaken by their customers, the said tickets also reflected the passenger service fee and the airport tax, which was being collected by the appellant from their customers and were being further deposited by them to the respective Government Authorities.
- The dispute arose as regards valuation of the services. By entertaining a view that the appellant is required to include the airport tax and passenger service fee in the assessable value of the services being provided by them, proceedings were initiated resulting in passing of the impugned order confirming service tax along with confirmation of interest and imposition of penalties.

HELD

- Reference was made to the judicial ruling of *Continental Airlines Inc. vs. CST* [Final Order Nos. 52076-52077/2015, dated 2-7-2015] where it was held that the airport taxes as also the passenger service fees collected by the airlines on behalf of the airports and paid to them are not includable in the assessable value for the purpose of levy of service tax. By following the said decision of the Tribunal, the service tax demand against the present assessee for the earlier period raised on the same grounds was set aside by the Tribunal in the case reported as *Lufthansa German Airlines vs. CST* [Final Order No. 51234/2016, dated 31-3-2016].

5. Though rule 12B deems trader/principal as 'assessee' in respect of job-work got done on textiles, however, duty is payable by such principal on behalf of, and up to extent leviable on, job-worker; therefore, principal is liable to pay duty on 'raw material cost plus job-work charges' and not on sale price charged by principal.

Processes like cutting to short length, stitching ends, ironing, folding and packing carried out on 'processed grey fabric' to convert them into 'Dhotis' may in enhancement value of product, but, same do not amount to manufacture (Commissioner of *Central Excise, Kochi vs. Kitex Ltd.*)(2016) 72 taxmann.com 50 (SC) [18-7-2016]

FACTS

- The respondent being Principal supplied “grey material” to job worker. Job-worker returned processed grey fabric and respondent principal paid ‘duty payable by job-worker’ on value at job-worker premises i.e. raw material cost plus job-worker charges.
- Respondent, thereafter, carried out cutting, ironing, folding and packing and sold resultant 'Dhotis'.
- Department argued that as per rule 12B, respondent is deemed to be 'assessee' and, hence, he was liable to pay duty at 'transaction value' viz. sale price of 'Dhotis.

HELD

- After receiving the product from job-worker, at whose end excise duty is duly paid, the assessee simply cuts them into Dhotis and, therefore, in terms of Rule 12(B) read with **Circular No. 557/53/2000-CX dated 03.11.2000**, it will continue to be classifiable as fabric under Chapter 52/54/55 and such a process undertaken by the appellant does not amount to manufacture.
- When the job-worker returns the processed goods to the appellants, that amounts to clearance and the duty liability crystallizes at that stage. As per the Board's clarification and the circular issued, the valuation is done on the basis of the principles enunciated in the **Ujagar Prints** case. That means the value to be adopted for payment of duty is basis of the raw materials cost plus the job charges. After receiving the materials, the appellant simply cuts them and packs them and then thereafter he sells the same. In that process, definitely there is value addition but in terms of Rule 12B and the Board's Circular, the value to be adopted is only the value at the end of the job workers premises. Moreover, the processes undertaken by the appellant do not amount to manufacture. Therefore, it was held that the appellants discharged the duty liability correctly and there is no merit in the demand of the revenue for fixing the duty liability on the sale value of the goods sold by the appellant. That is completely against the provisions of Rule 12B read with Board's Circular.

PHOTOGRAPHS OF 2nd STUDY CIRCLE ON TAX AUDITS

CA. Adarsh Parekh welcoming the Speaker CA. R. R. Lingsur

CA. Viresh Shah, CA. Harsh Shah, CA. R. R. Lingsur (Speaker), CA. Adarsh Parekh (President)

Speaker CA. R. R. Lingsur addressing the 2nd Study Circle on Checks & Controls in Tax Audits

PHOTOGRAPHS OF 3rd STUDY CIRCLE ON GST

CA. Adarsh Parekh welcoming the Speaker CA. Ashit Shah

CA. Vipul Somaiya, CA. Adarsh Parekh (President), CA. Ashit Shah (Speaker), CA. Viresh Shah

Speaker CA. Ashit Shah addressing the 3rd Study Circle on GST

3rd Study Circle on "Insight on GST" received huge response

What Is Innate Multiple Intelligence Evaluation?

BRAINBOW

PLEASE ANSWER THESE QUESTIONS BEFORE MAKING ANY DECISIONS FOR YOURSELF AND MOST IMPORTANT FOR YOUR CHILDREN.

WHICH BOARD IS SUITABLE FOR YOUR CHILD ? (STATE - ICSE - CBSE - IB)

WHICH STREAM AFTER STD. X ?

(MATHEMATICAL SCIENCE / BIOLOGICAL SCIENCE / COMMERCE / ARTS)

CAREER - ACADEMIC / TECHNICAL / MANAGERIAL

LEARNING STYLES? VISUAL, AUDITORY, KINESTHETIC

INBORN INTELLIGENCE OF MY CHILD'S

WHAT ARE MY IQ, EQ, CQ & AQ ?

LEFT BRAIN VS RIGHT BRAIN

PROFESSIONAL QUADRANTS ?

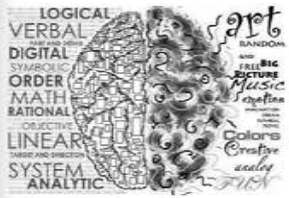
SELF DEVELOPMENT ACTIVITIES ?

MOST APPROPRIATE HOBBIES & ACTIVITIES ?

WHAT NEXT / ELSE ?

INPUT - OUTPUT RATIO OF BRAIN

What is Your Life Purpose?



HOW TO BALANCE 3 RESOURCES ?

DO YOU FEEL " I WANNA TO GROW UP ONES AGAIN " ?

DO YOU FEEL THERE IS SOMETHING HOLLOW AND INCOMPLETE WITHIN ?

DO YOU THINK YOU COULD HAVE ACHIEVED MORE THEN WHAT YOU HAVE TODAY ?

WANT TO STRENGTHEN RELATIONSHIP OR COMPATIBILITY ?

DO I UNDERSTAND MYSELF ?

ARE YOU HAPPY & SATISFIED WITH YOUR PROFESSION ?

HAS LIFE BECOME MONOTONOUS ?

IS MY PARENTING STYLE RIGHT ?

DO YOU HAVE LEISURE TIME ?

WHAT NEXT / ELSE ?

DO YOU HAVE FINANCIAL SECURITY ?

Coming on 13th November, 2016 to Answer All Your QUESTIONS

HOW DO WE HELP FIND ANSWERS TO THOSE QUESTIONS PROFESSIONALLY ?

WE DECODING BRAIN & ASKED NO QUESTIONS, EVALUATE SCIENTIFICALLY !!!

THIS EVALUATION CAN BE DONE FOR ANY AGE GROUP

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MANSI B. MANEK : 098205 54680 @ mansi.manek@hotmail.com

FORTHCOMING EVENTS

SARASWATI SANMAN & DIWALI GET TOGETHER			
Venue	**SNDT, MD Shah Mahila College, Malad (West), Mumbai-400 064**		
Dates	**Time**	**Subject**	**Speaker**
Sunday, 13th November, 2016	10 a.m. to 1 p.m.	Presentation by Brain Bow about D&MIT	Shri Bhavesh Manek
We will award 11th Dr. Bharat D. Vasani Saraswati Sanman Trophies to the children of MCTC member for outstanding performance in passing exams of SSC/HSC with 75% marks & above, to the students who have cleared graduation and post graduation professional exams like CA, C.S., C.W.A., MBBS, MBA, Engineers.			
All members are requested to send attched form along with the certified marks sheets to Brijesh M. Cholera at Following address along with following details OR Scan copy of marks sheet & form mail to maladchamber@gmail.com on or before 15th October, 2016.			

Form for 11th Dr. Bharat D. Vasani Saraswati Sanman Trophies

Member's Name: _____

E-mail ID: _____

Mob. No.: _____

Details of Student _____

FIRST NAME MIDDLE NAME SURNAME Male/Female:

Age: _____

Name of Exam Cleared: _____

Year of Exam: _____

Percentage: _____

Name of School / College / Institution: _____

Send it to following address or else you can mail to maladchamber@gmail.com with scan copy of mark sheet on or before 15th October, 2016

Brijesh M. Cholera, Shop No. 4, 2nd Floor, The Mall, Station Road, Malad-West, Mumbai-400 064. Tel.: 022-2889 5161. Mobile: 7039006655

NOTE : Application should be complete in all respects and the Form with the mark sheet should reach us before the due date.

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