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## EDITORIAL

### MULTIPLE RATES OF GST FINE FOR SOME SIN GOODS

The Centre has reportedly proposed four rates - ranging from 6 per cent to 26 per cent - for the goods and services tax (GST), with a cess on the highest tariff for ultra-luxury and demerit goods. This makes sense. The notion that multiple rates are hostile to GST is misplaced. They have functioned in the EU where value added tax (VAT) rates vary among member states, and there is no reason why it will not work in India. Two standard rates of 12 per cent and 18 per cent, presumably worked out after excluding real estate, electricity, alcohol and petroleum products, will cover a majority of taxable goods. A lower slab of 6 per cent for essential goods that do not attract excise duty is welcome, given that exemptions break the GST chain, increase the possibility of evasion and create systemic inefficiencies. A 4 per cent GST on gold is in sync with the recommendations of the Arvind Subramanian panel. It will help wean consumers away from gold and reduce inflationary pressures.

#### A case for Lower rates

In view of demonitisation, the government can consider further relaxing subjected GST rate by 4% to achieve better compliance and curb black money creation.

The panel had recommended a composite 40 per cent excise duty on non-merit goods. Instead, the Centre has now proposed a 26 per cent rate and a cess component not eligible for input tax credit. This will keep the GST chain unbroken, while discouraging sin consumption and mobilising revenue for the Centre outside the divisible pool. Manufacturers can also claim credit for the taxes paid on demerit goods used to make the final product. However, states are miffed as cesses are excluded from the divisible pool. With a dual GST, states will collect tax on services that account for a lion's share of GDP, on par with the

### LIBERAL NORMS FOR COMMODITY OPTIONS

It is welcome that the Securities and Exchange Board of India (Sebi) has decided, in principle, to let commodity exchanges introduce trading in options. Such contracts, bought for a price called the premium, give their holders the right to buy or sell a security at a predetermined price.

We need both futures and options to better manage supply and demand and attendant commodity prices. Yet, the fact is that a host of rigidities and anomalies constrain and stultify the commodities market here, and keep it functioning below potential.

The world over, commodities are recognised as an asset class. Sebi has now given its nod to launch futures contracts in six new items, including diamonds, tea and eggs, bringing the number of such notified items to 91. Yet, futures trading stands curtailed, in terms of who can trade and in what commodities. Futures are banned, for example, in tur and urad dal and rice.

Banks and mutual funds cannot trade in commodity derivatives. Regulated warehouses, whose receipts are negotiable instruments, must proliferate. Also, to deepen and widen the market, foreign investors must be allowed in.

There's also the need to rationalise trading margins and position limits. Further, there's the need to permit over-the-counter contracts (OTC) in commodity derivatives, and also make way for cash settlement of index-like products in the asset class. Besides, we need foolproof transparency when it comes to sharing of information with brokers and traders.

**LATEST IN FINANCE****LATEST IN FINANCE****1.0 RBI Cuts its Lending Rate via Monetary Policy Review**

In the tenure of RBI chief Urjit Patel, a new era has begun for the Central Bank. A six member Panel called Monetary Policy Committee or MPC has been formed for the purpose of policy decisions. All six members voted for a rate cut in a unanimous decision. The RBI in its monetary policy reviewed recently has decided to cut its key lending rate or the repo rate by 25 basis points to a six-year low of 6.25 per cent, from 6.5 per cent. As per RBI statement the committee expects that there would be strong improvement in supply management measures and sowing which will help to improve the food inflation outlook.

**2.0 Government Doubles Limit of Excise Duty Evasion for Arrest and Prosecution**

The government has doubled the limit of excise duty evasion for arrest and prosecution of accused to R2 crore and also asked officials not to resort to penal provision in cases of technical nature. "It has been decided to revise the monetary limit for arrest and prosecution in Central Excise to maintain uniformity of practice in central excise and service tax," the Central Board of Excise and Customs (CBEC) said in an order. Arrest and prosecution of a person henceforth can be resorted only if the offence relating to evasion of central excise duty or misuse of CENVAT credit is equal to or more than R2 crore, CBEC said. In October 2015, the monetary limit for excise related offences was set at Rs 1 crore.

**CORPORATE LAW****1.0 NCLT allows compounding of offence for delay in appointment of women director**

National Company Law Tribunal, Hyderabad bench held that where there was delay in appointing woman director and application was filed for compounding of offence, same was to be permitted for company and all its directors

though application for compounding was filed by company and two of its directors on payment of penalty by each of directors.

*Jalpower Corporation Ltd. v. Registrar of Companies. [2016] 74 taxmann.com 201*

**2.0 Secured creditor under SARFAESI Act can recover its dues even if such rights had seized under other Act**

The High Court of Bombay held that a secured creditor, as defined under provisions of SARFAESI Act can exercise its statutory rights under section 13 thereof notwithstanding fact that borrower has got a notification issued in its favour under provisions of Maharashtra Relief Undertakings (Special Provisions) Act, 1958, (BRU Act,) which suspends all its obligations and liabilities to secured creditor.

*JM Financial Asset Reconstruction Co. (P.) Ltd. v. State of Maharashtra. [2016] 74 taxmann.com 237*

**3.0 Even bouncing of post dated cheque issued as loan security would fall under Negotiable Instrument Act : SC**

The Supreme Court of India held that Dishonour of post-dated cheques given for repayment of loan instalment would be covered by section 138.

*Sampelly Satyanarayana Rao v. Indian Renewable Energy Development Agency Ltd. [2016] 74 taxmann.com 68*

**4.0 Default in holding AGM due to server crash at registered office is compoundable offence**

National Company Law Tribunal, Bengaluru Bench held that where company stated that due to server crash at registered office in India which was linked to main server in US, applicant company's account could not be finalized and hence, annual general meeting could not be held on time and ROC stated that this violation could be compounded by levying compounding fee, said action was to be approved.

*Control 4 India (P.) Ltd., In re. [2016] 74 taxmann.com 24*



EDITORIAL

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## MULTIPLE RATES OF GST...

Centre, and also get to tax the value addition in the production of goods. In addition, the Centre has guaranteed full compensation for revenue loss during the transition to GST for five years. So, states must see reason. There is a case for revising the system of the Centre sharing taxes with the states. While income and customs taxes are best collected by the Centre and shared with the states, there is little reason for the Centre to share central GST proceeds with the states, apart from what is required to compensate states for revenue loss.

## LIBERAL NORMS.....

The way forward is demutualisation and corporatisation of all recognised commodity associations. A vibrant derivatives market would mean better instruments to manage prices and supplies of both agricultural and other commodities and better distribution of risk across society.

## DIRECT TAXATION

### 1.0 Redress TDS Mismatch Grievance of Taxpayers

CBDT has instructed the Income Tax department to expedite cases of TDS mismatch and reduce taxpayers grievances in this regard. The instructions have been issued after a review of the Tax Deducted at Source (TDS) subject by Central Board of Direct Taxes Chairperson. "The taxpayers are facing problems due to mismatch of TDS/other taxes. These problems may be due to the non-reporting of TDS and uploading the TDS details improperly by their deductors. As a result, demand notices are being sent to the taxpayers due to non-availability of the tax credits for claim in Income Tax Returns," a recent CBDT communication said.

### 2.0 Revision of Form No 3CD w.e.f. 01.04.2017

In exercise of the powers conferred by section 295 read with Section 44AB of the Income-tax Act, 1961, the CBDT has through, Income-tax (23rd Amendment) Rules, 2016 amended the Income-tax Rules, 1962 to substitute the existing clause 13(d) in Part B of the existing Form No 3CD. Tax auditor has to report whether any adjustment is required to be made to the profits or loss for complying with the provisions of income computation and

disclosure standards notified under section 145(2) and if answer is in affirmative, clause 13(e) requires the details of adjustment to be tabulated ICDS wise.

### 3.0 Lumpsum lease premium subjected to TDS

Section 194-I of the Income-tax Act, 1961 requires that tax be deducted at source at the prescribed rates from payment of any income by way of rent. For the purposes of this section, "rent" has been defined as any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of any land or building or machinery or plant or equipment or furniture or fittings.

*Circular No.35/2016, Dated 13-10-2016*

### 4.0 Additional Tax on distributed income of domestic company for buy-back of shares

Chapter XII-DA was inserted by the Finance Act, 2013 containing Section 115QA to 115QC. Section 115QA provides for the levy of additional income tax @20% of the distributed income on account of buy back of unlisted shares by a company. Distributed income means the consideration paid by the company on buy-back of shares as reduced by the amount which was received by the company for issue of such shares, determined in the manner as may be prescribed. Thus, for the purpose of computing



distributed income, the amount received by the company for issue of shares being bought back shall be determined in the prescribed manner. The Rules to be framed would provide for manner of determination of the amount in various circumstances including shares being issued under tax neutral reorganisations and in different tranches. The income arising to the shareholders in respect of such buy back by the company would be exempt where the company is liable to pay additional income-tax on the buy-back of shares.

*Notification No. 94/2016, dated 17-10-2016*

#### **5.0 Protocol amending the DTAC between India and Japan**

The existing Double Taxation Avoidance Convention between India and Japan was signed on 7th March, 1989 and was notified on 1st March 1990. The DTAC was subsequently amended on 24th February, 2006. A Protocol amending the DTAC between India and Japan for the Avoidance of Double Taxation and the Prevention of Fiscal evasion with respect to taxes on income which was signed on 11th December, 2015 has been entered into force on 29th October, 2016 on completion of procedural requirements by both countries. The Protocol amending the DTAC aims to promote transparency and cooperation between the two countries.

*Notification No. 102/2016, dated 28-10-2016*

#### **6.0 Sum paid to foreign entity for advertisement in foreign journals wasn't taxable in absence of its PE in India**

ITAT Delhi bench held that where assessee had made remittances to foreign countries related to rent for office accommodation, expenses incurred toward exhibitions outside India and advertisement in foreign journals towards display of its products, since foreign parties did not have their PE in India, said payments were not chargeable to tax in India.

*Income-tax Officer, Ward 1 (1) (2), International Taxation, New Delhi v. Brahmos Aerospace (P.) Ltd. [2016] 74 taxmann.com 191*

#### **7.0 Sec. 50C can't be triggered on sale of development rights of land**

The ITAT Mumbai bench held that provisions of section 50C could not be applied to sale of development rights of land owned by assessee.

*Voltas Ltd. v. Income-tax Officer, Ward 7(3)(4), Mumbai. [2016] 74 taxmann.com 99*

#### **8.0 Sum paid for software without any right of utilizing copyright of said programme couldn't be held as royalty**

Where assessee made payment for acquisition of software from its parent company to be used for its business purpose only, without any right of utilizing copyright of said programme, payment made in respect of same did not give rise to any royalty income.

*Deputy Commissioner of Income-tax, Company Circle 1(1), Chennai v. Atmel R & D India (P.) Ltd. [2016] 74 taxmann.com 106*

#### **9.0 Products obtained in course of ship breaking activity won't fall within definition of scrap; not liable to TCS**

ITAT Ahmedabad bench held that since products obtained in course of ship breaking activity were usable as such, same would not fall within definition of scrap under section 206C.

*Dhasawala Traders v. Income-tax Officer, TDS-4, Ahmedabad. [2016] 74 taxmann.com 20*

#### **10.0 Change of standing counsel isn't a valid cause to justify 3 year's delay in filing appeal by revenue**

The Supreme Court of India held that where revenue filed appeal before High Court with a delay of 1494 days and further re-filed appeal with a delay of 1021 days and sought condonation of delay stating that case of assessee had been transferred to New Delhi and thereafter revenue after taking opinion of Standing Counsel filed appeal before Delhi High Court and reason for delay in re-filing appeal was change of Standing Counsel and High Court dismissed applications for condonation of delay on plea that there was no justifiable reason for delay and accordingly





dismissed appeal of revenue, SLP was to be dismissed.

*Principal Commissioner of Income-tax, Delhi-2 v. Bhaskar Power Projects (P.) Ltd. [2016] 73 taxmann.com 401*

**11.0 Trust promoting Jain Community entitled to registration if it was also working for benefit of general public**

The High Court of Gujarat held that where Trust had large number of other objects for benefit of general public apart from objects for benefit of a religious community, Tribunal was correct in allowing registration to it.

*Commissioner of Income-tax (Exemptions) v. Bayath Kutchhi Dasha Oswal Jain Mahajan Trust [2016] 74 taxmann.com 199*

**12.0 Assessee can change method of ascertaining cost of closing stock to weighted average method**

The High Court of Bombay held that where assessee-company changed method of valuation of its closing stock from 'lowest price during year' method to 'weighted average cost' method, as changed method accords with international standards and more scientific and same was followed regularly, such change was justified.

*Bajaj Auto Ltd. v. Commissioner of Income-tax-II [2016] 74 taxmann.com 164*

**13.0 SetCom has powers to make addition in income of assessee to determine tax liability: HC**

The High Court of Orissa held that Settlement Commission is self-regulatory body having all powers of adjudication and conciliation as it has got statutory power to implement, vary, modify and rectify its own order and it even has powers to make addition to income of assessee to determine tax liability.

*Commissioner of Income-tax, Sambalpur v. Income-tax Settlement Commission. [2016] 73 taxmann.com 93*

**14.0 TNMM had to be used instead of PSM if assessee was only selling machines manufactured by Head Office**

The ITAT Delhi bench held that where assessee, a Japan based company, was involved in selling of machines manufactured by head office to various customers in India through its branch office, in view of fact that in transfer pricing proceedings TPO had accepted TNMM as most appropriate method, he could not make addition to assessee's ALP by holding that in terms of Profit Split Method (PSM), 50 per cent of gross profit arising from sales was attributable to PE in India.

*Deputy Director of Income-tax, Circle-3(2), International Taxation, New Delhi v. Mori Seiki Co. Ltd. [2016] 74 taxmann.com 104*

**15.0 Co-owner gets full credit of sec. 194-I TDS as it paid to other co-owners their share in TDS**

The High Court of Calcutta held that where assessee, co-owner of a property, paid share of rental income to other co-owners without deducting TDS amount from rent received from tenant and no TDS credit was claimed by other co-owners, assessee would be entitled to credit of tax deducted at source in its entirety.

*Commissioner of Income-tax, Central-II, Kolkata v. Ganesh Narayan Brijlal Ltd. [2016] 74 taxmann.com 96*

**16.0 SetCom has powers to make addition in income of assessee to determine tax liability: HC**

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*Commissioner of Income-tax, Sambalpur v. Income-tax Settlement Commission. [2016] 73 taxmann.com 93*



### 17.0 SetCom can't review its own order: Madras High Court

The High Court of Madras held that Settlement Commission cannot review final order passed by it under section 245D.

*R.Vijayalakshmi v. Income Tax Settlement Commission.* [2016] 73 taxmann.com 367

## INDIRECT TAXATION

### 1.0 Tribunal can't reduce excise penalty below the statutory minimum limit

The Supreme Court of India held that Tribunal cannot reduce penalty under section 11AC for an amount lesser than amount of duty which has been upheld.

*Commissioner of Central Excise & Customs, Surat-I v. Vandana Art Prints (P.) Ltd.* [2016] 74 taxmann.com 158

### 2.0 Dept. must pay interest if refund is granted after 3 months of receipt of refund claim

The High Court of Bombay held that if refund is granted after 3 months from date of receipt of duly-completed application, assessee is automatically entitled to interest on belated refund from date after expiry of said 3 months, to date of grant of refund.

*Shelf Drilling International Inc. v. Union of India.* [2016] 74 taxmann.com 73

### 3.0 Freight forwarding is taxable as transportation service and not as intermediary service

Authority for Advance Rulings, New Delhi held as follows:

In case of Freight Forwarding (Buying and Selling cargo space) on principal-to-principal basis, freight margin would not amount to 'intermediary services' and Place of Provision thereof would be determined as per rule 10 of Place of Provision of Services Rules, 2012

Place of Provision of freight margin on export shipment would be outside India and not taxable; however, in case of import shipment : (a) freight margin was in negative list upto 31-5-2016; (b)

from 1-6-2016, freight margin on transport by aircraft will be exempt and freight margin on transport by vessel will be taxable.

*Global Transportation Services (P.) Ltd., In re.* [2016] 73 taxmann.com 365

### 4.0 No refund of excise duty if duty-burden is transferred to ultimate consumer: SC

The Supreme Court of India held that if incidence of duty was passed on once by assessee to his buyer and there is no material to show that assessee's buyer did not pass it onto ultimate consumer, then, even if assessee has issued credit notes to his buyer, refund cannot be allowed to assessee.

*Commissioner of Central Excise, Madras v. Addison & Co. Ltd.* [2016] 73 taxmann.com 319

### 5.0 Software loading into Bluetooth device doesn't amount of manufacture:AAR

Authority for Advance Rulings, New Delhi held that loading of business software into Bluetooth-enabled 'Nucleus Device' pre-embedded with basic input-output system for use as 'cashless currency transmitting apparatus' does not amount to manufacture under Central Excise law.

*Nucleus Software Exports Ltd., In re.* [2016] 73 taxmann.com 399

### 6.0 Body building of buses on job-work basis should be valued under rule 10A of Excise

The Supreme Court of India held that Body-building activity carried out on job-work basis over chassis supplied by chassis/automobile manufacturers is to be valued as per rule 10A of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000.

*HMM Infra Ltd. v. Commissioner of Central Excise, Panchkula.* [2016] 74 taxmann.com 86

### 7.0 Payment made to foreign holding Co. for Trademark and business support services is taxable under reverse charge

Authority for Advance Rulings, New Delhi held that payments to foreign holding company towards : (a) trademark and license fee for using trademark/brand of foreign holding company; and



## REBATE OF DUTIES PAID ON RAW MATERIALS AND ADMISSIBILITY OF DUTY DRAWBACK

Assessee have been facing difficulty in simultaneously availing drawback of Customs portion and rebate of duties of excise on raw material used in the manufacture or processing of goods exported. In this regard, Central Government vide Circular No. 1047/35/2016-CX, Dated: September 16, 2016 has provided the following:

i) Where in respect of exports, CENVAT credit is not availed on inputs but input stage rebate on excisable goods except diesel is availed under rule 18 of the Central Excise Rules, 2002, drawback of Customs portion, as per rates and caps specified in drawback schedule will be admissible;

ii) Where in respect of exports, CENVAT credit is not availed on inputs but the inputs except diesel, are procured without payment of Central Excise duty under sub-rule (2) of rule 19 of Central Excise Rules, 2002, drawback of Customs portion, as per rates and caps specified in the drawback schedule will be admissible;

iii) Where in respect of exports, input stage rebate on diesel under rule 18 of Central Excise Rules, 2002 is

availed or diesel is procured without payment of Central Excise duty under sub-rule (2) of rule 19 of Central Excise Rules, 2002, no drawback under the drawback schedule will be admissible.

Divisional Assistant/Deputy Commissioner, Central Excise, while sanctioning the rebate claim should verify this aspect and in case of availment of any drawback, where input stage rebate on diesel under rule 18 of Central Excise Rules, 2002 is also availed will deny the claim of rebate involved on diesel out of the rebate claimed, for any violation of the declaration (d) of the ARE 2.

In cases where diesel is procured without payment of Central Excise duty under sub-rule (2) of rule 19 of Central Excise Rules, 2002, and the goods are exported under claim of drawback the Central Excise duty involved on diesel will be recovered for violation of the declaration (d) of the ARE 2, while examining the proof of export.

*Circular No. 1047/35/2016, Dated: September 16, 2016*

(b) Sales and Business Support fee for services in relation to Business Planning, strategies, operational & administrative support etc., are liable to service tax in hands of Indian subsidiary under reverse charge.

*H & M Hennes & Mauritz Retail (P.) Ltd., In re. [2016] 73 taxmann.com 314*

### 8.0 No VAT penalty on basis of discrepancy found during survey if no witness was available at that time

The High Court of Rajasthan held that where Assessing Officer conducted survey upon assessee and taking into consideration discrepancies noticed at that time levied penalty under section 77(8) upon assessee, since there was no witnesses present at time of survey, there was no compliance of rule 50 and, therefore,

### FINANCIAL INDICATORS

	Current Rate*	Previous Month	3 Month ago	6 Month ago
3 Month LIBOR (%)	0.4920	0.3671	0.333	0.2808
SENSEX	25252.32	25482.52	25622.17	27730.21
NIFTY	7683.30	7731.8	7788.1	8353.1
CRR (%)	4	4	4	4
REPO (%)	6.75	6.75	7.25	7.25
REVERSE REPO (%)	5.75	5.75	6.25	6.25
Gold (per 10 gm)	25324	25184	25952	26716
Silver (per kg)	33841	33754	34910	36502
Crude (USD/bbl)	40.45	44.55	48.89	63.2
₹ vs USD	66.7905	66.1138	63.759	63.8495
₹ vs Euro	73.4629	70.3914	74.7139	72.3186
₹ vs 100 Yen	54.91	53.63	55.14	51.73
₹ vs RMB	10.3715	10.3840	10.4082	10.234
₹ vs Pound	101.3679	100.5128	102.293	100.9361
MCX Aluminium (per kg)	98.75	96.1	107	105.15
MCX Copper (per kg)	304.05	306.05	356.1	361.45

\*As on November 10, 2015

(Sources: MoneyControl, NSE, BSE, RBI, MCX)

penalty was rightly deleted by Appellate Authorities.  
*Commercial Taxes Officer v. Dueful Laboratories.*  
[2016] 74 taxmann.com 41

### 9.0 Dept. must pay interest if refund is granted after 3 months of receipt of refund claim

The High Court of Bombay held that if refund is granted after 3 months from date of receipt of duly-completed application, assessee is automatically entitled to interest on belated refund from date after expiry of said 3 months, to date of grant of refund.

*Shelf Drilling International Inc. v. Union of India.* [2016] 74 taxmann.com 73

### 10.0 Assessee running a Hospital and medical store in its premises isn't a dealer under Gujarat VAT

The High Court of Gujarat held that where assessee, a charitable institution, was having its own hospital where patients were treated at concessional rate or free of cost and hospital had a medical store in premise from where medicines and other pharmaceutical drugs and equipments were sold, assessee was not a dealer.

*State of Gujarat v. Saurashtra Kidney Research Institute.* [2016] 74 taxmann.com 72

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