

Religious saying:

We have a religious practice of offering *naivedyam* to God and accepting whatever comes back from HIM as 'PRASAD'. The same holds good with all our acts. Be dedicated to God and whatever results come we accept as HIS Prasad. – Shrimad Bhagwad Gita.

In the light of the aforesaid message of Shrimad Bhagwad Gita we at SNK have once again resumed to mail our monthly newsletter to all our valuable friends and clients and this newsletter is the humble beginning in that direction. We will be eagerly awaiting to your feed back – Prasad on this as soon as possible.

Highlights:

- Customs Tariff Act amended to cut the customs rate on the following items (vide Notification no. 6 & 7/2007, dtd. 22-1-2007):

Particulars	Old rate (%)	New rate (%)
Project Imports (Extension granted to airport development projects and metro rail projects)	12.5	7.5
Specified Capital goods and their parts and winding wires	12.5/10	7.5
Inorganic chemicals, like halogens (Fluorine, Chlorine, Bromine, Iodine), sulphur, carbon, hydrogen, rare gases (Nitrogen, Oxygen, Silicon, Phosphorus) and alkali metals (Sodium, Calcium etc)	10	5
Carbon Black Feedstock	10	5
Primary and semi-finished forms of Copper, Aluminium, Zinc, Tin, Other base metals	7.5	5
Ferro-alloys Stainless steel and other alloy steel from 7.5% to 5%	7.5	5
Pipes and tubes of aluminium, copper and zinc (heading 7907)	12.5	7.5
Calcined alumina	7.5	5
Portland cements	12.5	Nil

- Order u/s 119(2)(a) of the Income tax Act dtd. 26th June, 2006, CBDT has empowered Chief Comm. and Director Generals of Income Tax to

reduce or waive off the interest charged under section 234A, 234B and 234C of the Income tax Act in certain classes of cases or classes of income.

Economic Highlights/Indicators:

- More tax benefits for green energy – The energy ministry has proposed exemption from 4% Additional CVD levied on raw materials used in manufacturing wind energy generators. (Economic Times dtd. 1-2-2007)
- India stood 1st in Asia Pacific (Ex. Japan) for Private Equity Investment in 2006 by USD 2211.85 million.
- Inflation touching the highest peak of 6.12% (Economic Times)
- Industrial production records highest performance with a growth of 14.4%
- Exports cross landmark figure of USD 100 Billion & record FDI inflows (Economic Times-Year end review of 2006)
- Bharti-Walmart deal conforms to FDI norms
- Essar plans to de-list steel and oil companies
- Ford books all time highest loss

Pre-Budget Whispers:

- Service Tax rate may be hiked to 14%
- More services are likely to be brought within the service tax net
- Two tier tax structure for service tax is likely to be introduced and as per this service providers who have annual taxable turnover not exceeding Rs. 10 lacs may be taxed at 8-10% and others at higher rate of 14%. Basic exemption limit of Rs. 4 lacs is likely to be done away with.
- Interest payment by co-operative banks to their members/shareholders is likely to be covered under TDS net. The provisions of BCTT are also likely to be applied to these banks.
- LTUs (Large Tax Payer Units) may get prominence in budget
- CST to be brought down from present 4% to 3%
- Excise duty rates may be consolidated at 16% in order to prepare for Goods and Service Tax (GST) regime.

DIRECT TAXES**Judicial Pronouncements**

CIT v. Ralson Industries (2007) 158 Taxman 160 (SC)

In this case the Apex Court has set at rest the controversy and held that the CIT has requisite jurisdictional competence u/s 263 of the Act to initiate revision proceedings in cases where the assessments have been rectified u/s 154 of the Act.

DCIT v. Indiahit Com (P) Ltd. (2006) 105 TTJ 501 (Del)

Disallowance of expenses per se does not mean that the assessee has furnished inaccurate particulars of its income. Penalty u/s 271(1)(c) is not leviable on account of disallowance of certain expenses, particulars whereof were correctly furnished along with the return.

CIT v. Neha Builders Pvt. Ltd. (2007) 207 CTR (GUJ) 231

Rental income from property held as stock-in-trade will be treated as income from business and not as income from house property. The Assessee was engaged in the business of development, sale, lease etc. off land and property was treated as property of stock-in-trade, therefore, rental income derived from property cannot be assessed under income from House Property.

S.A. Builders Ltd. v. CIT (2006) 206 CTR (SC) 631

Interest free loans to sister concerns – lower authorities were not justified in disallowing interest on borrowed funds on the grounds that amount has been advanced by utilizing the overdraft account. It was required to be enquired as to whether the interest free loan was given to the sister concern as a measure of commercial expediency. If it is so, interest on borrowed funds is to be allowed. The high court and other higher authorities should have examined the purpose for which the assessee advanced the money to its sister concern, and what the sister concern did with this money, in order to decide whether it was for commercial expediency, but that has not been done. The matter is remanded to tribunal for a fresh decision in the light of aforesaid observations.

Ishikawajma-Harima Heavy Ind. Ltd. v. DCIT (2007) 158 Taxman 259 (SC)

The Hon'ble Court has categorically held as under:

- Mere existence of business connection may not result in income to non-resident from transaction with such a business connection, accruing or arising in India.
- It would be wrong to equate permanent establishment (PE) with business connection (BC).
- Income arising out of turnkey project executed in India would not be assessable in India merely because non-resident has a PE.
- For attracting taxing statute, there has to be some activity through PE and if income arises without any activity of PE, even under DTAA, taxation liability in respect of overseas services would not arise in India.
- Mere location of source of income in India would not render sufficient nexus to tax income from that source.
- For section 9(1)(vii) to be applicable, it is necessary that services provided by a non-resident under a contract should not only be utilized in India, but should also be rendered in India or should have such a live link with India that entire income from fees as envisaged in article 12 of DTAA becomes taxable in India. Thus, for a non-resident to be taxed on income for services, such a service needs to be rendered within India, and has to be a part of a business or profession carried on by such person in India.
- When entire services had been rendered outside India and had nothing to do with PE, amount received/receivable by non-resident from resident for offshore services was not liable for tax in India.

DCIT v. Mahi Valley Hotels & Resorts (2006) 287 ITR 360 (Guj.)

Service of notice as required by section 143(2) is a mandatory requirement. If the notice is issued after the expiry of period of limitation, assessment would be void ab-initio.

CIT v. Hoogly Mills Co. Ltd. (2006) 206 CTR (SC) 301

Assessee purchased an industrial undertaking as a going concern for a

specific price and also took over accrued and future gratuity liability of the employees of the vendor- Thus the entire amount of consideration; including the gratuity liability is a capital expenditure. However gratuity liability does not fall under any of the categories of assets specified in s. 32, hence no depreciation can be allowed in respect of gratuity liability even if it is regarded as a capital expenditure.

Vijay Prakash Toshniwal & sons v. CIT (2006) 156 Taxman 337(Raj.)

Assessable entity: S. 4 of income-tax Act, 1961, A.Y. 1991-92: HUF: Karta in his individual capacity and Karta representing HUF are two different entities: HUF can sublet its contract to Karta in his individual capacity: contract income assessed in the hands of individual could not be assessed in the hands of HUF.

CIT v. General Insurance Corporation (2006) 286 ITR 232 (SC)

The expenditure incurred by a company on account of stamp duty and registration fees for the issue of bonus shares is allowable as revenue expenditure.

CIT v. Aggarwal Engg. Co. (Jal.) (2006) 156 Taxman 40 (P & H)

Once the addition was made on account of low net profit rate, no further addition was called for in respect of unaccounted purchases and introduction of cash.

CIT v. Raghav Behl (2006) 286 ITR 134 (Delhi)

The assessee had purchased shares through brokers but had failed to make the payment for the same and accordingly paid interest for the delayed payment and claimed the same as deduction. The High Court held that charge of interest for delayed payment was customary in the trade of share transactions, and therefore, interest paid to brokers was allowable as business expenditure.

Dr. T.A. Quereshi v. CIT (2006) 206 CTR (SC) 489

Contraband goods seized from assessee under the provisions of Narcotic Drugs and Psychotropic Substances Act – Finding of fact recorded by the Tribunal that the assessee was engaged in manufacture and sale of heroin and that the heroin

seized was the assessee's stock-in-trade, and accordingly loss arising as a result of seizure and confiscation of stock-in-trade is allowable as business loss. [Case referred to CIT v. Piara Singh AIR 1980 SC 1271]

CIT v. Raza Buland Sugar Co. (2006) 156 Taxman 69 (All.)

The High Court held that the excess amount realized by the sugar mill as sale price of sugar over and above the levy price fixed by the Government did not form part of the trading receipt.

CIT v. Idhayam Publications Ltd. (2006) 285 ITR 221 (Mad.)

The High Court observed that in order to impose penalty u/s 271D, the Revenue has to establish that the transaction was a loan or deposit within the meaning of section 269SS. Under the Companies (Acceptance of Deposits) Rules, 1975, deposit does not include any amount received from a director or a shareholder of a private limited company. The high court, therefore, held that since the transaction between the assessee and the director-cum-shareholder was not a loan or deposit transaction but was only a current account in nature and no interest was being charged for the said transaction, the Tribunal was justified in deleting the penalty.

Dy. CIT v. Mcdowell & Co. Ltd. (2007) 207 CTR (Kar.) 219

It is held that: once the Department has accepted non-competition fees as revenue expenditure, but allowed deduction of only part of the amount relying on the accounting treatment given by the appellant treating balance expense as deferred expense, entire payment is allowable as deduction.

Kashmir Trading Co. v. Dy. CIT (ITA No. 75 of 2006, dtd. 11-9-2006)(Raj.)

Requirements of sec. 36(2) of the Act is to be established even in case where a sum is written off in books of account as an irrecoverable debt, enquiry into conditions required under sub-section (2) is still required to be made but such enquiry is required to be made only when a debt is written off in books of account.

ITO v. Smt. Kusumlata (ITA No. 387 of 2001, dtd. 1-8-2006) (Jodh.)

Where assessee claimed to have made investment in construction of house out of sale proceeds of shares and revenue had

not proved transactions in shares to be bogus, AO was not justified in treating investment in construction as unexplained.

Circulars / Notifications

Circular No. 13 dtd. 13-12-2006 - Deduction of tax at source for payments made to contractors and sub-contractors

It has been clarified that the provisions of section 194C would apply in respect of a contract for supply of any article or thing as per prescribed specifications only if it is a contract for work and not a contract for sale as per the principles in this regard laid down in para 7(vi) of Circular No. 681, dated 8-3-1994.

INDIRECT TAX

Judicial Pronouncements-Excise

Hindustan Lever Ltd. v. CCE, Nashik (2006) 5 STT 392 (Mum.-Cestat)

When the assessee took over another company along with all its assets and liabilities and requested department for transfer of unutilized Modvat credit lying with the another company and where no communication is received from the department, the credit would be deemed to have been granted after a lapse of reasonable length of time.

CCE, Trichy v. National Oxygen Ltd. (2007) 207 ELT 516 (Tri.-Chennai)

Rule 3 of Cenvat Credit Rules, 2004 - Aqachem used for purifying water used in the manufacturing process, activated alumina used for removing moisture and oil from air used in the manufacture of final product, grease used for smooth functioning of machinery are inputs and accordingly would be eligible for credit. Further, storage tank, horizontal bulk tank and spares used for storage of in-process/finished gas, hence would be eligible for credit.

Widia India Ltd. v. CCE, Bangalore (2007) 207 ELT 562 (Tri.-Bang.)

Assessee found shortages/excesses of stock during physical verification at the end of year compared to SAP system figure. RG-1 register maintained manually and production accounted from IDN (Integral Delivery Note) and clearances accounted through delivery challans. No discrepancy found by Department in manual accounting. Assessee's own system of accounting has a margin of error i.e. around 2%.

Transactions of assessee voluminous and certain degree of negligence in maintaining stock account, is apparent. No evidence of any clandestine removal of finished goods was found. Accordingly, demand and penalty set aside as per section 11A of Central Excise Act, 1944.

Bajaj Tempo Ltd. v. CCE, Indore (2007) 207 ELT 600 (Tri.-Del.)

First-aid kit/box supplied along with vehicle manufactured by the appellant as per the statutory requirements of Motor Vehicles Act. Providing such kit as an accessory would therefore be called as used in relation to manufacture of vehicles. Accordingly, credit would be admissible in respect of value of such inputs which admittedly were included in value of vehicle manufactured by assessee.

New Shorrock Mills v. CCE. And Cus. (2006) 202 ELT 192 (Tri.-LB)

The large bench of the tribunal held that doubling or multi-folding of duty paid single yarn would not amount to manufacture.

Judicial Pronouncements-Customs

CCus. Mumbai v. Toyo Engineering India Ltd. (2006) 201 ELT 513 (SC)

The Supreme Court held that any equipment which aids or helps in setting up of an industrial plant would fall and be covered under Heading 98.01 of Customs Tariff Act, 1975. Since, the imported construction equipments were used in initial setting up of the plant, project import benefits could not be denied. The mere possibility of their being used subsequently for other projects would not de bar the assessee from availing the facility of project import.

Judicial Pronouncements-Service Tax

CCE v. Top Detective & Security Services (P) Ltd. (2005) 1 STT 22(Mum.-CESTAT) and CCE Pioneer plastic products (2006) 3 STT 118 (Kol.-CESTAT)

Penalty for failure to pay service tax – Where assessee had paid entire amount of service tax along with interest prior to issue of show-cause notice, penalty imposed u/s. 76 was to be set aside.

Re: D.C.M. Shriram Consolidated Ltd. (2006) 4 STR 610 (Commr. Appl.)

The Commissioner (Appeals) held that definition of input service not only includes services used in the manufacture of final products but also services used in post

manufacturing activities which are necessary to run day-to-day business. CENVAT credit is admissible on service tax paid on security services used for security of assets like building, plant, etc. and service tax paid on photographs taken at different occasions/activities as the cost of photographs is also included in the cost of the product.

Circulars / Notifications

Notification No.1&2 of Customs dtd.24-1-2007

Exchange rate of Indian rupee vis-à-vis specified currencies relating to imported goods and export goods has been changed for the purpose of section 14, effective from 1-2-2007.

Circular No.2/2007-Cus.,dtd. 9-1-2007.

Time limit prescribed for the time bound disposal of applications for the unit set up under EOU/EHTP/STP/BTP Scheme

OTHER LAWS

Judicial Pronouncements

UTI Bank Ltd. v. DCCx. & other (2007)
135 Comp Cas 329 (Mad)

Bank as a secured creditor in possession of mortgaged property of borrower has priority over Customs and Central Excise dues.

Circulars / Notifications

AP/DIR-24/RBI, dtd. 20-12-2006

Limit for foreign exchange remittances by a resident individual has been increased from USD 25,000 per calendar year (Jan. to Dec.) to USD 50,000 per financial year (April-March) for any current or capital account transactions or a combination of both.

Limit of USD 50,000 under the Scheme would also include remittances towards gift and donation by a resident individual.

Investment by resident individual in overseas companies would be subsumed under the Scheme of USD 50,000. The requirement of 10% reciprocal shareholding in the listed Indian companies by such overseas companies has been dispensed with.

RBI/2006-2007/222, dtd. 28-12-2006

Cheque drop-box facility and facility for acknowledgement of cheques to be provided at each bank to avoid hardship to the customers.

Due Dates of key compliances pertaining to the month of January-07:

5 th February	Service tax and excise payment - Form TR6
7 th February	TDS Payment
10 th February	Excise Return ER1 / ER2 /ER6
15 th February	PF Contribution, Excise Payment by SSI
20 th February	Payment and filing of VAT return
21 st February	ESIC Payment
28 th February	Profession Tax Payment

Queries & response:

We await your response and queries which may please be forwarded to:
newsletter@snkca.com

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