

the CMA

e-BULLETIN

THE INSTITUTE OF
COST ACCOUNTANTS
OF INDIA

(Statutory body under an Act of Parliament)



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UNION BUDGET 2015-2016

Key Features of Budget 2015-2016

Taxation

- Rate of corporate tax to be reduced to 25% over next four years.
- Wealth-tax replaced with additional surcharge of 2 per cent on super rich with a taxable income of over Rs 1 crore annually.
- Donation made to National Fund for Control of Drug Abuse (NFCDA) to be eligible for 100% deduction u/s 80G of Income-tax Act.
- Limit of deduction of health insurance premium increased from Rs 15000 to Rs 25000, for senior citizens limit increased from Rs 20000 to Rs 30000.
- Senior citizens above the age of 80 years, who are not covered by health insurance, to be allowed deduction of Rs 30000 towards medical expenditures.
- Deduction limit of Rs 60000 with respect to specified disease of serious nature enhanced to Rs 80000 in case of senior
- Limit on deduction on account of contribution to a pension fund and the new pension scheme increased from Rs 1 lakh to Rs 1.5 lakh.
- Additional deduction of Rs 50000 for contribution to the new pension scheme u/s 80CCD.
- Acceptance or re-payment of an advance of Rs 20,000 or more in cash for purchase of immovable property to be prohibited.
- Domestic transfer pricing threshold limit increased from Rs 5 crore to Rs 20 crore.
- MAT rationalised for FIIs and members of an AOP.
- Payments to the beneficiaries including interest payment on deposit in Sukanya Samriddhi scheme to be fully exempt.
- Yoga to be included within the ambit of charitable purpose under Section 2(15) of the Income-tax Act.
- PAN being made mandatory for any purchase or sale exceeding Rupees 1 lakh.

Customs

- **Increase in basic custom duty:**
 - Metallurgical coke from 2.5 % to 5%.
 - Tariff rate on iron and steel and articles of iron and steel increased from 10% to 15%.
 - Tariff rate on commercial vehicle increased from 10 % to 40%.
- Basic custom duty on digital still image video camera with certain specification reduced to nil.
- Artificial heart exempt from basic custom duty of 5% and CVD.
- Basic Custom duty on certain inputs, raw materials, intermediates and components in 22 items, reduced to minimise the impact of duty inversion.
- Concessions on custom and excise duty available to electrically operated vehicles and hybrid vehicles extended upto 31.03.2016.

Service Tax

- Service tax increased to 14 per cent.
- Service-tax exemption:
 - Services of pre-conditioning, pre-cooling, ripening etc. of fruits and vegetables.
 - Life insurance service provided by way of Varishtha Pension Bima Yojana.
 - All ambulance services provided to patients.
 - Admission to museum, zoo, national park, wild life sanctuary and tiger reserve.
 - Transport of goods for export by road from factory to land customs station.
- Service-tax to be levied on service provided by way of access to amusement facility, entertainment events or concerts, pageants, non recognized sporting events etc.
- Enabling provision made to exclude all services provided by the Government or local authority to a business entity from the negative list.
- Service-tax exemption to construction, erection, commissioning or installation of original works pertaining to an airport or port withdrawn.
- Transportation of agricultural produce to remain exempt from Service-tax.
- Time limit for taking CENVAT credit on inputs and input services increased from 6 months to 1 year.
- Service-tax plus education cesses increased from 12.36% to 14% to facilitate transition to GST.
- Service Tax exemption extended to certain pre cold storage services in relation to fruits and vegetables so as to incentivise value addition in crucial sector.
- Negative List under service-tax is being slightly pruned to widen the tax base.
- Services by common affluent treatment plant exempt from Service-tax

Excise duty

- Online central excise and service tax registration to be done in two working days.
- Central excise/Service tax assesses to be allowed to use digitally signed invoices and maintain record electronically.
- Conversion of existing excise duty on petrol and diesel to the extent of Rs 4 per litre into Road Cess to fund investment.
- Excise levy on cigarettes and the compounded levy scheme applicable to pan masala, gutkha and other tobacco products also changed.
- Excise duty on footwear with leather uppers and having retail price of more than Rs 1000 per pair reduced to 6%.
- Excise duty on chassis for ambulance reduced from 24% to 12.5%.
- Excise duty on sacks and bags of polymers of ethylene other than for industrial use increased from 12% to 15%.
- Excise duty on rails for manufacture of railway or tram way track

construction material exempted retrospectively from 17-03-2012 to 02-02-2014, if not CENVAT credit of duty paid on such rails is availed.

- Excise duty exemption for captively consumed intermediate compound coming into existence during the manufacture of agarbathi

Make in India

- Revival of growth and investment and promotion of domestic manufacturing for job creation.
- Tax “pass through” to be allowed to both category I and category II alternative investment funds.
- General Anti Avoidance Rule (GAAR) to be deferred by two years.
- GAAR to apply to investments made on or after 01.04.2017, when implemented.
- Additional investment allowance (@ 15%) and additional depreciation (@35%) to new manufacturing units set up during the period 01-04-2015 to 31-03-2020 in notified backward areas of Andhra Pradesh and Telangana.
- Rate of Income-tax on royalty and fees for technical services reduced from 25% to 10% to facilitate technology inflow.
- All goods, except populated printed circuit boards for use in manufacture of ITA bound items, exempted from SAD. SAD reduced on import of certain inputs and raw materials.
- Balance of 50% of additional depreciation @ 20% for new plant and machinery installed and used for less than six months by a manufacturing unit or a unit engaged in generation and distribution of power is to be allowed immediately in the next year.

Swachh Bharat

- 100% deduction for contributions, other than by way of CSR contribution, to Swachh Bharat Kosh and Clean Ganga Fund.
- Clean energy cess increased from Rs 100 to Rs 200 per metric tonne of coal, etc. to finance clean environment initiatives.
- Enabling provision to levy Swachh Bharat cess at a rate of 2% or less on all or certain services, if need arises.

Agriculture

- Rs. 25,000 crore for Rural Infrastructure Development Bank.
- Rs. 5,300 crore to support Micro Irrigation Programme.
- Farmer's credit - target of 8.5 lakh crore.
- Target of Rs 8.5 lakh crore of agricultural credit during the year 2015-16.
- Focus on improving the quality and effectiveness of activities under MGNREGA.

Funding the Unfunded

- Micro Units Development Refinance Agency (MUDRA) Bank, with a corpus of Rs 20,000 crores, and credit guarantee corpus of Rs 3,000 crores to be created. In lending, priority will be given to SC/ST enterprises.

- MUDRA Bank will be responsible for refinancing all Micro-finance Institutions which are in the business of lending to such small entities of business through a Pradhan Mantri Mudra Yojana.
- A Trade Receivables discounting System which will be an electronic platform for facilitating financing of trade receivables of MSMEs to be established.
- Comprehensive Bankruptcy Code of global standards to be brought in fiscal 2015-16 towards ease of doing business.
- Postal network with 1,54,000 points of presence spread across villages to be used for increasing access of the people to the formal financial system.
- NBFCs registered with RBI and having asset size of Rs 500 crore and above may be considered for notifications as ‘Financial Institution’ in terms of the SARFAESI Act, 2002.

From Jan Dhan to Jan Suraksha

- Government to work towards creating a functional social security system for all Indians, specially the poor and the under-privileged.
- Pradhan Mantri Suraksha Bima Yojna to cover accidental death risk of Rs 2 Lakh for a premium of just Rs 12 per year.
- Atal Pension Yojana to provide a defined pension, depending on the contribution and the period of contribution. Government to contribute 50% of the beneficiaries' premium limited to RS 1,000 each year, for five years, in the new accounts opened before 31st December 2015.
- Pradhan Mantri Jeevan Jyoti Bima Yojana to cover both natural and accidental death risk of Rs 2 lakh at premium of Rs 330 per year for the age group of 18-50.
- A new scheme for providing Physical Aids and Assisted Living Devices for senior citizens, living below the poverty line.
- Unclaimed deposits of about Rs 3,000 crores in the PPF, and approximately Rs 6,000 crores in the EPF corpus. The amounts to be appropriated to a corpus, which will be used to subsidize the premiums on these social security schemes through creation of a Senior Citizen Welfare Fund in the Finance Bill.
- Government committed to the on-going schemes for welfare of SCs, STs and Women.

Skill India

- Less than 5% of our potential work force gets formal skill training to be employable. A national skill mission to consolidate skill initiatives spread across several ministries to be launched.
- Deen Dayal Upadhyay Gramin Kaushal Yojana to enhance the employability of rural youth.
- A Committee for 100th birth celebration of Shri Deen Dayalji Upadhyay to be announced soon.
- A student Financial Aid Authority to administer and monitor the front-end all scholarship as well Educational Loan Schemes, through the Pradhan Mantri Vidya Lakshmi Karyakram.
- An IIT to be set up in Karnataka and Indian School of Mines, Dhanbad to be upgraded in to a full-fledged IIT.

- New All India Institute of Medical Science (AIIMS) to be set up in J&K, Punjab, Tamil Nadu, Himachal Pradesh and Assam. Another AIIMS like institutions to be set up in Bihar.
- A post graduate institute of Horticulture Research & Education is to be set up in Amritsar.
- 3 new National Institute of Pharmaceuticals Education and Research in Maharashtra, Rajasthan & Chattisgarh and one institute of Science and Education Research is to be set up in Nagaland & Orissa each.
- An autonomous Bank Board Bureau to be set up to improve the governance of public sector bank.
- The National Optical Fibre Network Programme (NOFNP) to be further speeded up by allowing willing states to execute on reimbursement of cost basis.
- Special assistance to Bihar & West Bengal to be provided as in the case of Andhra Pradesh.
- Government is committed to comply with all the legal commitments made to AP & Telengana at the time of their re-organisation.
- In spite of large increase in devolution to state sufficient fund allocated to education, health, rural development, housing, urban development, women and child development, water resources & cleaning of Ganga.
- Part of Delhi-Mumbai Industrial Corridor (DMIC); Ahmedabad-Dhule Investment region and Shendra-Bidkin Industrial Park are now in a position to start work on basic infrastructure.
- Made in India and the Buy and the make in India policy are being carefully pursued to achieve greater self-sufficiency in the area of defence equipment including air-craft.

Infrastructure

- Rs. 70,000 crores to Infrastructure sector.
- Tax-free bonds for projects in rail road and irrigation
- PPP model for infrastructure development to be revitalised and govt. to bear majority of the risk.
- Rs. 150 crore allocated for Research & Development
- NITI to be established and involvement of entrepreneurs, researchers to foster scientific innovations.
- Govt. proposes to set up 5 ultra mega power projects, each of 4000MW.
- National Investment and Infrastructure Fund (NIIF), to be established with an annual flow of Rs 20,000 crores to it.
- PPP mode of infrastructure development to be revisited and revitalized.
- Atal Innovation Mission (AIM) to be established in NITI to provide Innovation Promotion Platform involving academicians, and drawing upon national and international experiences to foster a culture of innovation, research and development. A sum of Rs 150 crore will be earmarked.
- (SETU) Self-Employment and Talent Utilization) to be established as Techno-financial, incubation and facilitation programme to support all aspects of start-up business. Rs 1000 crore to be set

aside as initial amount in NITI.

- Ports in public sector will be encouraged, to corporatize, and become companies under the Companies Act to attract investment and leverage the huge land resources.

Financial Market

- Public Debt Management Agency (PDMA) bringing both external and domestic borrowings under one roof to be set up this year.
- Forward Markets commission to be merged with SEBI.
- Section-6 of FEMA to be amended through Finance Bill to provide control on capital flows as equity will be exercised by Government in consultation with RBI.
- Proposal to create a Task Force to establish sector-neutral financial redressal agency that will address grievance against all financial service providers.
- India Financial Code to be introduced soon in Parliament for consideration.
- Vision of putting in place a direct tax regime, which is internationally competitive on rates, without exemptions.
- Government to bring enabling legislation to allow employee to opt for EPF or New Pension Scheme. For employee's below a certain threshold of monthly income, contribution to EPF to be option, without affecting employees' contribution.

Defence

- Rs. 2, 46,726 crore for Defence.
- Focus on Make in India for quick manufacturing of Defence equipment.

Investment

- Foreign investments in Alternate Investment Funds to be allowed.
- Distinction between different types of foreign investments, especially between foreign portfolio investments and foreign direct investments to be done away with. Replacement with composite caps.
- A project development company to facilitate setting up manufacturing hubs in CMLV countries, namely, Cambodia, Myanmar, Laos and Vietnam.

Safe India

- Rs 1000 crores to the Nirbhaya Fund.

Monetising Gold

- Gold monetisation scheme to allow the depositors of gold to earn interest in their metal accounts and the jewellers to obtain loans in their metal account to be introduced.
- Sovereign Gold Bond, as an alternative to purchasing metal gold scheme to be developed.
- Commence work on developing an Indian gold coin, which will carry the Ashoka Chakra on its face.

Tourism

- Resources to be provided to start work along landscape restoration, signage and interpretation centres, parking, access for the differently abled, visitors' amenities, including securities and toilets, illumination and plans for benefiting communities around them at various heritage sites.
- Visas on arrival to be increased to 150 countries in stages.

Green India

- Target of renewable energy capacity revised to 175000 MW till 2022, comprising 100000 MW Solar, 60000 MW Wind, 10000 MW Biomass and 5000 MW Small Hydro.

Important Numbers to Note

Non-Plan Expenditure	Rs 13, 12,200 crore
Plan Expenditure	Rs 4, 65,277 crore
Total Expenditure	Rs 17,77,477 crore
Gross Tax Receipts	Rs 14,49,490 crore
Devolution to the States	Rs 5,23,958 crore
Share of Central Government	Rs 9,19,842 crore
Non Tax Revenues	Rs 2,21,733 crore

Fiscal Deficit: 3.9% of GDP and Revenue Deficit: 2.8% of GDP

Budget at a Glance

in crore of Rupees				
Particulars	2013-2014 Actuals	2014-2015 Budget Estimates	2014-2015 Revised Estimates	2015-2016 Budget Estimates
1.Revenue Receipts	1014724	1189763	1126294	1141575
2. Tax Revenue (net to centre)	815854	977258	908463	919842
3. Non-Tax Revenue	198870	212505	217831	221733
4.Capital Receipts (5+6+7)	544723	605129	554864	635902
5. Recoveries of Loans	12497	10527	10886	10753
6. Other Receipts	29368	63425	31350	69500
7. Borrowings and other liabilities	502858	531177	512628	555649

Particulars	2013-2014 Actuals	2014-2015 Budget Estimates	2014-2015 Revised Estimates	2015-2016 Budget Estimates
8. Total Receipts (1+4)	1559447	1794892	1681158	1777477
9.Non-Plan Expenditure	1106120	1219892	1213224	1312200
10. On Revenue Account of which	1019040	1114609	1121897	1206027
11. Interest Payments	374254	427011	411354	456145
12. On Capital Account	87080	105283	91327	106173
13.Plan Expenditure	453327	575000	467934	465277
14. On Revenue Account	352732	453503	366883	330020
15. On Capital Account	100595	121497	101051	135257
16.Total Expenditure (9+13)	1559447	1794892	1681158	1777477
17. Revenue Expenditure (10+14)	1371772	1568111	1488780	1536047
18. Of Which, Grants for creation of Capital Assets	129418	168104	131898	110551
19. Capital Expenditure (12+15)	187675	226781	192378	241430
20.Revenue Deficit (17-1)	357048	378348	362486	394472
21. Effective Revenue Deficit (20-18)	227630	210244	230588	283921
22. Fiscal Deficit {16-(1+5+6)}	502858	531177	512628	555649
23. Primary Deficit (22-11)	128604	104166	101274	99504

Source: <http://indiabudget.nic.in/ub2015-16/bag/bag11.pdf>

INDIAN ECONOMY

News

➔ India's forex reserves scale new heights at \$333 billion

India's foreign exchange reserves have hit a fresh high, rising by USD 2.956 billion to USD 333.169 billion in the week to February 13, helped by a healthy increase in foreign currency assets. In the previous week, the reserves had increased by USD 2.329 billion to USD 330.213 billion.

Source: PTI Feb 21, 2015

➔ Exclusive - Subsidy cuts in budget may disappoint investors

India may slash its food and fuel subsidy bill by about \$8 billion in next week's budget, two sources said, but despite the impressive headline, the cut is not as radical as free market champions had hoped for in Prime Minister Narendra Modi's first full budget. Most of the 20 percent cut in the budget for subsidies results from lower global oil prices rather than structural changes, with the government's appetite for reform tempered by a heavy local election defeat in New Delhi this month.

Source: Reuters 20 Feb 2015

➔ India likely to keep lead over China in gold consumption: World Gold Council

India is likely to remain the world's biggest gold consumer this year after regaining the top spot from China in 2014, driven by robust jewellery demand, the World Gold Council (WGC) said. Indian consumer demand for gold jewellery and investment totalled 842.7 tonnes last year, compared with 813.6 tonnes by China, according to WGC data. Demand dipped in both countries in 2014 from record levels a year earlier, but Indian demand slid only 14 percent, compared with a much steeper 38 percent fall in China. The two countries accounted for over half of global demand.

Source: Reuters Feb 12, 2015

➔ Instant View: India consumer inflation accelerates to 5.11 pct

India's annual consumer inflation accelerated to 5.11 percent in January from 4.28 percent a month ago, after New Delhi shifted to a new base year for calculating prices. The country's statistics department has started using 2012 as the new base in place of 2010 for measuring retail prices. It has lowered weighting for food and fuel items in the revamped price index.

Source: Reuters Feb 12, 2015

➔ Firms need to manage unhedged FX exposure - RBI deputy

The unhedged foreign exchange exposure of Indian businesses is a risk for the country's economic and financial stability, a deputy governor of India's central bank said. Speaking at an industry conference in Mumbai, deputy governor H.R. Khan said the central bank would not "micromanage" firms' hedging strategies, but he said companies needed to "take care" of their unhedged exposures. Khan also said the Reserve Bank of India (RBI) needs to continue to prepare for volatility, even though macroeconomic risks have subsided. In times of extreme volatility, no amount of foreign exchange reserves are enough, he said.

Source: Reuters Feb 10, 2015

➔ India pegs 2014/15 growth at 7.4 pct; GDP grows 7.5 pct y/y in Dec quarter

The government forecast annual economic growth to accelerate to 7.4 percent in the fiscal year ending in March 2015 after Asia's third-largest economy grew 7.5 percent in the quarter to end-December.

Source: Reuters 09 Feb 2015

➔ Expert views: India pegs 2014/15 GDP growth at 7.4 pct

The government on Monday forecast annual economic growth to accelerate to 7.4 percent in the fiscal year ending in March 2015 after Asia's third-largest economy grew 7.5 percent in the quarter to end-December.

Source: Reuters 09 Feb 2015

➔ Banks in India feel squeeze of rock-bottom fees, despite big deals

Foreign investment banks are showing signs they will be more choosy about bidding for roles to help manage government share sales after the country's largest ever equity offering of \$3.6 billion left them splitting a fee of just one rupee.

Source: Reuters 05 Feb 2015

➔ RBI chief Raghuram Rajan says inflation still a concern

Reserve Bank of India Governor Raghuram Rajan said on Wednesday that inflation was still a concern but added the deflationary global environment gave the central bank some elbow room with monetary policy.

Source: Reuters 04 Feb 2015

➔ India allows banks flexibility on big projects to reboot growth

The Reserve Bank of India (RBI) has allowed lenders more flex-

ibility to restructure large projects that stall when cash runs out, but stopped short on Tuesday of giving banks freer rein on other problematic loans.

Source: Reuters 03 Feb 2015

➤ Expert Views - RBI keeps rates on hold

The RBI held interest rates steady at 7.75 percent after easing monetary policy just three weeks ago, leaving its next move probably until after the government presents its annual budget at the end of this month.

Source: Reuters 03 Feb 2015

➤ Bonds, rupee fall; RBI keeps rates steady, cuts SLR

Bonds and rupee fell after the central bank held interest rates steady on Tuesday but reduced the statutory liquidity ratio, or the amount of bonds that lenders must set aside, by 50 basis points.

Source: Reuters 03 Feb 2015

➤ Expert Views - RBI keeps rates on hold

The RBI held interest rates steady at 7.75 percent on Tuesday after easing monetary policy just three weeks ago, leaving its next move probably until after the government presents its annual budget at the end of this month.

Source: Reuters 03 Feb 2015

BANKING

Notifications/Circulars

➤ Section 23 of the Banking Regulation Act, 1949 – Installation of off-site Cash Deposit Machines (CDMs) / Bunch Note Acceptor Machines (BNAMs)

Scheduled Commercial Banks (including RRBs) are permitted to install Cash Deposit Machines / Bunch Note Acceptor Machines at centres / places identified by them without having the need to take permission from Reserve Bank in each case, subject to following conditions:

- CDMs/BNAMs may be installed at any place identified by banks with adequate security arrangements.
- CDMs/BNAMs should not return any note which is suspect / counterfeit to the customer.
- An audit trail of transactions should be available to enable reporting detection of counterfeit notes.

The banks (including RRBs) should report full details of opening such off-site CDMs / BNAMs (that are not installed in existing branch premises / ATM rooms) to the Regional Office of concerned DBS or DBR, CO (in respect of CDMs / BNAMs installed in Maharashtra and Goa) immediately after installation, and in any case not later than two weeks after making the machines active / live.

Source: Notification No. RBI/2014-15/438 (DBR.No.BAPD.BC.68/22.01.001/2014-15) dated: Feb 02, 2015

➤ Foreign Direct Investment in Pharmaceuticals sector – Clarification

In terms of Schedule 1 to the Notification ibid, Foreign Direct Investment (FDI) up to 100 per cent is permitted under automatic route for greenfield investments and FDI up to 100 per cent is permitted under Government approval route for brownfield investments (i.e. investments in existing companies) in pharmaceuticals sector. The extant FDI policy for pharmaceutical sector has since been reviewed and it has now been decided with immediate effect that there would be a special carve out for medical devices which was earlier given the same treatment as pharmaceutical sector.

Source: Circular No.70 dated: 02 Feb 2015

➤ Section 24 of the Banking Regulation Act, 1949 (AACS) – Maintenance of Statutory Liquidity Ratio (SLR)

RBI has decided to reduce the Statutory Liquidity Ratio (SLR) of Urban Co-operative Banks, State and Central Co-operative Banks from 22.0 per cent of their Net Demand and Time Liabilities (NDTL) to 21.5 per cent with effect from the fortnight beginning February 7, 2015 vide Notification No. RBI/2014-15/446(DCBBP.D.(PCB/RCB).Cir.No.14/16.26.000//2014-15) dated: Feb 03, 2015.

➤ Export Credit Refinance Facilities

RBI has been decided to merge the Export Credit Refinance (ECR) facility with the system level liquidity provision with effect from the fortnight beginning on February 7, 2015 vide notification no. RBI/2014-15/444(REF.No.MPD.BC.376/07.01.279/2014-15) dated: Feb 03, 2015. Accordingly, no new refinancing under the ECR will be available after February 6, 2015 and the refinancing availed up to February 6, 2015 may continue till its maturity.

➤ Ready Forward Contracts in Corporate Debt Securities

To further develop the corporate debt market, RBI has been decided to permit bonds issued by multilateral financial institutions like World Bank Group (e.g., IBRD, IFC), the Asian Development Bank and the African Development Bank in India as eligible underlying for repo in corporate debt securities vide Notification No. RBI/2014-15/447 (FMRD.DIRD.04/14.03.002/2014-15) dated: Feb 03, 2015.

➤ Foreign investment in India by Foreign Portfolio Investors

As per Sixth Bi-Monthly Monetary Policy Statement, 2014-15, issued on February 03, 2015 all future investment by FPIs in the debt market in India will be required to be made with a minimum residual maturity of three years. Accordingly, all future investments by

an FPI within the limit for investment in corporate bonds shall be required to be made in corporate bonds with a minimum residual maturity of three years. Further, all future investments against the limits vacated when the current investment runs off either through sale or redemption, shall be required to be made in corporate bonds with a minimum residual maturity of three years. FPIs shall not be allowed to make any further investment in liquid and money market mutual fund schemes. There will, however, be no lock-in period and FPIs shall be free to sell the securities (including those that are presently held with less than three years residual maturity) to domestic investors.

Source: Circular No. 71 dated: 03 Feb 2015

➔ Foreign investment in India by Foreign Portfolio Investors

FPIs are permitted to invest in government securities, the coupons received on their existing investments in government securities. These investments shall be kept outside the applicable limit (currently USD 30 billion) for investments by FPIs in government securities vide Circular No.72 dated: Feb 05, 2015.

➔ Re-repo of Government Securities Market

As per fourth bi-monthly Monetary Policy Statement 2014-15 wherein it was proposed that re-repo of Government securities will be permitted subject to appropriate control measures and development of IT infrastructure. Now RBI has decided to permit re-repo of government securities, including state development loans and Treasury Bills, acquired under reverse repo, subject to following conditions:

- Scheduled commercial banks and Primary Dealers (PDs) maintaining subsidiary general ledger (SGL) account with the Reserve Bank of India will be permitted to re-repo the securities acquired under reverse repo;
- Mutual Funds and Insurance Companies maintaining SGL account with the Reserve Bank of India will also be permitted to re-repo the securities acquired under reverse repo, subject to the approval of the regulators concerned;
- Re-repo of securities can be undertaken only after receipt of confirmation/matching of first leg of repo transaction;
- Re-repo period should not exceed the residual period of the initial repo;
- Eligible entities undertaking re-repo transactions should 'flag' the transactions as a re-repo on the authorised reporting platform. Participants may review their systems and controls to ensure strict compliance with the requirement of reporting of re-repo transactions.

Source: Notification No. RBI/2014-15/454 (FMRD, DIRD.5/14.03.002/2014-15) dated: February 05, 2015

➔ Reserve Bank of India directs banks to report kisan vikas patra deals daily

The Reserve Bank directed banks to report all kinds of Kisan Vikas Patra (KVP) transactions on a daily basis, failing which bank or their branches may face penal action, including de-authorization. As per RBI rules, banks need to directly credit KVP dealings such as receipt, payment, penalty to government's account at the Central Account Section of the RBI in order to maintain uniformity for reporting, reconciliation and accounting. "The agency banks are required to observe the rules and regulations of the Scheme and non-observance of rules and regulations would attract penal action, including de-authorization of the branch or bank," RBI said in a notification.

Source: PTI dated: Feb 9, 2015

➔ Guidelines on Import of Gold by Nominated Banks / Agencies

The Reserve Bank of India and the Government have been receiving requests for clarification on some of the operational aspects of the guidelines on import of gold consequent upon the withdrawal of 20:80 scheme. Accordingly, in consultation with the Government, the following clarifications are issued:

- The obligation to export under the 20:80 scheme will continue to apply in respect of unutilised gold imported before November 28, 2014, i.e., the date of abolition of the 20:80 scheme.
- Nominated banks are now permitted to import gold on consignment basis. All sale of gold domestically will, however, be against upfront payments. Banks are free to grant gold metal loans.
- Star and Premier Trading Houses (STH/PTH) can import gold on DP basis as per entitlement without any end use restrictions.
- While the import of gold coins and medallions will no longer be prohibited, pending further review, the restrictions on banks in selling gold coins and medallions are not being removed.

Source: Circular No.79 dated: Feb 18, 2015

INCOME TAX

Notifications/Circulars

➔ Section 90 of the Income-Tax Act, 1961 - Double Taxation Agreement - Agreement for Avoidance of Double Taxation and Prevention of Fiscal Evasion with Foreign Countries - South Africa - Amendment in Notification No. GSR 198(E), dated 21-4-1998

Whereas the annexed Protocol amending the Agreement between the Government of the Republic of India and the Government of the Republic of South Africa for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income

was signed in Pretoria on the 26th day of July, 2013.

And Whereas, the date of entry into force of the said protocol is the 26th day of November 2014, being thirty days after the date of receipt of later of notifications of completion of the procedures required by the respective laws for bringing the Protocol into force, in accordance with Article II of the said Protocol.

Now, Therefore, in exercise of the powers conferred by section 90 of the Income-tax, Act 1961 (43 of 1961), the Central Government hereby notifies that all the provisions of the said Protocol annexed hereto shall be given effect to in the Union of India with effect from the 26th day of November 2014.

Source: Notification NO.10/2015-FT&TR-II [F.NO.500/144/2005-FTD-II] / SO 316 (E), dated 2-2-2015

➤ **Commodities Transaction Tax**

CBDT amended Commodities Transaction Tax vide Notification no. 13/2015, F. No. 142/09/2013-TPL dated: 10 February, 2015. The new rule is called Commodities Transaction Tax (First Amendment) Rules, 2014.

For details, please visit: http://www.incometaxindia.gov.in/communications/notification/notification_11_2015.pdf

Case Laws

➤ **Unexplained credit u/s 68 - commission paid on entry taken from entry provide - Reopening of assessment**

Held that: - The CIT (Appeals), as also the ITAT, in the case at hand, in our view, unjustifiably criticized the AO for not having confronted the assessee with the facts regarding return of some of the summons under Section 131 or not having given opportunity for the identity of all the share applicants to be properly established. The order sheet entries taken note of in the order of CIT (Appeals) seem to indicate otherwise. The order of CIT (Appeals), which was confirmed by ITAT in the second appeal, does not demonstrate as to on the basis of which material it had been concluded that the genuineness of the transactions had been duly established. There is virtually no discussion in the said orders on such score, except for vague description of the material submitted by the assessee at the appellate stage. Whilst it does appear that the time given to the assessee for proving the identity of the third party was too short, and further that it is probably not always possible for the assessee placed in such situation to be able to enforce the physical attendance of such third party (who, in the case of share applicants vis-à-vis a company, would be individuals at large and may not be even in direct or personal contact), the curtains on such exercise at verification may not be drawn and adverse inferences reached only on the basis of returning undelivered of the summonses under Section 131. Conversely, with doubts as to the genuineness of some of the parties persisting on account of non-delivery of the processes, the initial burden on the assessee to adduce proof of identity cannot be

treated as discharged.

We are inclined to agree with the CIT (Appeals), and consequently with ITAT, to the extent of their conclusion that the assessee herein had come up with some proof of identity of some of the entries in question. But, from this inference, or from the fact that the transactions were through banking channels, it does not necessarily follow that satisfaction as to the creditworthiness of the parties or the genuineness of the transactions in question would also have been established.

The AO here may have failed to discharge his obligation to conduct a proper inquiry to take the matter to logical conclusion. But CIT (Appeals), having noticed want of proper inquiry, could not have closed the chapter simply by allowing the appeal and deleting the additions made. It was also the obligation of the first appellate authority, as indeed of ITAT, to have ensured that effective inquiry was carried out, particularly in the face of the allegations of the Revenue that the account statements reveal a uniform pattern of cash deposits of equal amounts in the respective accounts preceding the transactions in question. This necessitated a detailed scrutiny of the material submitted by the assessee in response to the notice under Section 148 issued by the AO, as also the material submitted at the stage of appeals, if deemed proper by way of making or causing to be made a "further inquiry" in exercise of the power under Section 250(4). This approach not having been adopted, the impugned order of ITAT, and consequently that of CIT (Appeals), cannot be approved or upheld. - Decided in favour of the Revenue.

Source: The Commissioner Of Income Tax versus M/s Jansampark Advertising and Marketing (p) ltd. [2015 (3) TMI 410 - Delhi High Court - Income Tax]

➤ **Penalty under Section 158BFA (2) - income which was not undisclosed income but was determined on the basis of estimation on the application of Weight Formula on gross credits in various bank statements considered as turnover**

Held that: - In the present instance, there is no doubt at all that the AO did determine the undisclosed income; that it was based upon estimation or an inference is a matter of detail. The plain text of the enactment admits no room for doubt that all manners of determination of income, per se might call for action at the discretion of the AO. As to whether the AO has properly exercised discretion in a particular matter or otherwise can certainly be subject to further scrutiny. The assessee's argument that there was no fresh material since the entire amount was disclosed earlier and that amount has not been varied, in our opinion, is not accurate. The sum of Rs 1, 04, 76, 94,004/- was claimed in entirety (originally) to have been derived from share business. However, it did not exclusively stem from the share business and in fact the assessee admitted, in the course of search proceedings under Section 132(4) of the Act, that the said amount also included sums forming part of the turnover on account of providing accommodation entries. Now, that rad-

ically changed the complexion of the nature of declaration made and certainly formed the basis for materials discovered during the course of proceedings. Furthermore, having regard to this admission, the AO, most importantly, was entitled to determine: having regard to the nature of commission originally declared, whether that was in line with the new activity disclosed. It is a matter of record - noted by the CIT (A) in the quantum proceedings that the commission ranged upto 1%. Having regard to the conspectus of circumstances, therefore, the AO determined the commission to be 1.5% on the said total turnover; the ITAT decreased it. Nonetheless, the important fact is that the determination in the course of block assessment order was based upon a material discovered, i.e. in the form of statement made by the assessee under Section 132(4) of the Act; that radically changed the character of the income originally declared. Consequently, the estimation directed by the ITAT was accepted by the assessee.

In view of the above circumstances, this Court is of the opinion that the question of law urged has to be answered against the assessee - Decided in favour of the Revenue.

Source: JRD Stock Brokers (P) Ltd versus Commissioner of Income Tax [2015 (3) TMI 409 - Delhi High Court - Income Tax]

➔ **Goodwill v/s non compete fee - Tribunal held that no part of the consideration should be apportioned towards goodwill, and that the entire amount should be treated as non compete fee contrary to the ruling of this Court in the case of G.D.Naidu (1985 (11) TMI 5 - Madras High Court)**

Held that:- The admitted fact in this case is the assessee company has transferred the technical knowhow and other advantages to the joint venture company consisting of the assessee company and MR and the assessee continued its business using its own logo, trade name, licenses, permits and approval under an agreement with another company. The Tribunal came to hold that there was no intention to acquire goodwill of the assessee and therefore, non-compete fee received by the assessee could not be treated as goodwill and it is not taxable as income. We find, on facts, that there is no reason to differ with the said finding.

The reliance placed by the Assessing Officer on Section 55(2)(a) of the Income Tax Act was repelled by the Tribunal rightly on a plea that the said provision came into effect in the year 1998-99, whereas the assessment year in the present case is 1996-97. Therefore, there was no basis to fall back on the said provision. As has been recorded by the Commissioner of Income Tax (Appeals) and the Tribunal, we find, in the facts of the present case, that the non-compete fee received by the assessee is capital in nature. See *Guffic Chem. P. Ltd. V. Commissioner of Income-Tax* [2011 (3) TMI 6 - Supreme Court] - Decided in favour of assessee.

Source: Commissioner of Income Tax, Chennai versus Hackbridge Hewittic & Easun Ltd. [2015 (3) TMI 408 - MADRAS HIGH COURT - Income Tax]

CUSTOMS

Notifications/Circulars

- Exemption of part of customs duty on import of Urea under Urea Off-Take Agreement between the Government of India and Oman-India Fertilizer Company S.A.O.C. vide Notification No. 04/2015-Cus, dt. 16-02-2015.
- CBEC amends Drawback Rules 1995 vide Notification No. 20/2015-Cus (NT), dt. 10-02-2015. Read more at: <http://www.cbec.gov.in/customs/cs-act/notifications/notfns-2015/csnt2015/csnt20-2015.htm>

Case Laws

➔ **Denial of benefit of Board's Circular No. 20/2011-Cus. dated 15.11.2011 - Enhancement in declared value - Confiscation of goods - Imposition of redemption fine and penalty**

Held that:- On plain reading of the Board's Circular, it is seen that the cutting waste or fabric trims would continuous length with maximum width restriction upto ten inches. In the present case, there is no dispute that the cutting waste is not in a continuous length. The learned counsel for appellant mainly thrust upon her argument that the width is below 10 inches. She has not made any submission that the goods are in running length. On perusal of the impugned order, we find that the goods do not have any continuous length. It is also seen that the appellant have not declared the width in their invoice or in the Bill of Entry. In the invoice it is only mentioned 'Fabric Waste (cutting waste)'. The DRI officers upon examination of the goods found that it is a cut and waste to small pieces of cuts and bits. Hence, in our considered view the appellant is not eligible to get the benefit of the Board's Circular dated 15.4.2011. - Decided in favour of assessee.

Source: M/s. Anisha Impex versus Commissioner of Customs, Tuticorin [2015 (3) TMI 164 - CESTAT CHENNAI - Customs]

➔ **Determination of assessable value of export goods whether duty be calculated on 'Wet Weight' basis, under which the Assessee/Respondent agreed to supply the goods to the overseas purchaser or on the transaction value of the goods on 'Dry Weight' basis for the period after 13.06.2008**

Held that:- Following decision of assessee's own previous case [2014 (8) TMI 213 - CESTAT KOLKATA] it is held that for the period after 01.01.2009, the said goods be assessed to duty adopting the FOB Price - export goods namely, Iron Ore Fines, be assessed to duty, adopting the criteria of 'Dry Weight', as agreed to between the Assessee/Respondent and the overseas purchasers - for determination

of the value, we remand the case to the Id. Adjudicating Authority for deciding the issue afresh after supplying the relevant data to the Respondent. - Decided in favour of Revenue.

Source: Commissioner of Customs (Port), Kolkata, Commissioner versus M/s. Sesa Goa Ltd. [2015 (3) TMI 417 - CESTAT Kolkata - Customs]

➤ Denial of refund claim - Unjust enrichment

Held that:- This is a matter which should not have travelled to this Tribunal at all. The original adjudicating authority had acted correctly. It has to be noted that refund claim has been made immediately and refund received within the financial year and therefore, question of showing it as expenditure would not arise at all. It cannot also be shown as receivable since the original adjudicating authority sanctioned the refund on 14/12/2012. The importation took place on 7/9/2012. The second payment was made on the advice of department and because of the helplessness of the department to connect payment earlier made to the Bill of entry and make the computer system facilitate clearance of goods. In such a situation, requiring the appellant to prove unjust enrichment is against the spirit of law. Learned Commissioner (Appeals) observed that the assessee has to prove that there was no unjust enrichment beyond any doubt. - Here the Commissioner is requiring an importer to prove beyond any doubt that there is no unjust enrichment when there is a clear case of double payment and the problem that has arisen in the computerized system of the department and inability of the department to help an importer not to make second payment. No importer would be happy to make the second payment and claim refund. For three months, more than ₹ 80 lakhs have been with the Government for which no interest is payable. We find absolutely no justification to uphold the impugned order. - Decided in favour of assessee.

Source: 2015 (3) TMI 165 - CESTAT BANGALORE - Customs M/s. Bangalore Metro Rail Corporation Ltd. Versus Commissioner of Customs, Bangalore

SERVICE TAX

Notifications/Circulars

➤ Simplification of Registration Procedures in Service Tax

Registration Procedures in Service Tax has been simplified vide Circular No. 997/4/2015-CX dated: 28th February 2015:

In service tax, the registration process for single registration has been simplified by providing for grant of registration online within two working days of filing the complete Form ST-1 in ACES, thus initiating trust-based registration. The specified documents should reach the office of the jurisdictional Deputy/Assistant Commissioner within 15 days of the date of filing the registration application. Where the need for the verification of premises arises, the same will have to be authorized by an officer not below the rank

of Additional /Joint Commissioner. The conditions relating to the grant of registration in two working days have been specified in the Order No. 1/2015-Service Tax dated 28th Feb., 2015.

Case Laws

➤ Levy of service tax on Film Artistes

Discrimination between artistes in theatre & drama and artistes in Film - violation of Article 14 and 19(1)(g) of the Constitution of India - Notification No.25/2012 dated 20.06.2012 - Service tax exemption only to performing artistes in theatre & drama, and not artistes in Film - Film actors performs similar skills as artists performs in theatre or drama - Intent to support native art and cultural - Held that:- From the Judgment [2007 (5) TMI 325 - SUPREME COURT OF INDIA], it is clearly establish, in our view, that taxation statutes have to be dealt with on a different plank with due deference to the legislative intent. Much latitude is allowed to the State for classification upon a reasonable basis, and what is reasonable is a question of practical details and variety of factors which the Court would be reluctant and ill-equipped to investigate.

It is in the aforesaid context of a taxing statute that the principles of Article 14 of Constitution of India are sought to be applied to claim relief by the writ petitioner, while, in our view, the two categories are clearly different and distinguishable and cannot be treated at parity. The mere fact that there is an element of drama or acting both in case of theatre and in case of films does not mean that the two activities are identical, taking into consideration the circumstances in which films are made and theatre is performed.

In fact we asked the learned counsel for the petitioner as to whether the petitioner would perform at the rates at which theatre artistes perform. It is towards the object of Article 229 of the Constitution of India that a salutary endeavour has been made to give support to native art and culture and encourage them as they suffer from financial constraints. This is not the position of films. - Decided against the assessee.

Source: Siddharth Suryanarayan Versus Union of India Secretary Ministry of Finance Department of Revenue And Others [2015 (3) TMI 183 - Madras High Court - Service Tax]

➤ Denial of refund claim u/s 11B

SEZ - assessee claimed refund of service tax paid thereon under Notification No.9/2009-ST dated 3rd March, 2009, as amended by Notification No.15/2009-ST dated 20th May, 2009 - Department was of the view that the services consumed within the SEZ are exempt from tax. Hence, no refund can be claimed on such exempt input services under the Notifications - Held that:- Following decision of Tata Consultancy Services [2012 (8) TMI 500 - CESTAT, MUMBAI] and Wardha Power Company [2012 (5) TMI 289 - CESTAT, MUMBAI] - Thus the appellant is eligible for refund of service tax paid on input services wholly consumed within SEZ under the provisions of section 11B of the Central Excise Act, 1944, read with

section 83 of the Finance Act, 1994, subject of course to the satisfaction of conditions stipulated therein - Decided in favour of assessee.

Source: Credit Suisse Services (India) Pvt. Ltd. versus Commissioner of Central Excise [2015 (3) TMI 182 - CESTAT MUMBAI - Service Tax]

➔ Waiver of pre deposit - CENVAT Credit - Management Consultancy Service

Held that:- There is no proposal to classify the service received as 'Business Support Service' at all. Secondly, the Commissioner's decision that the service received can be considered as 'Business Auxiliary Service', in our opinion, prima facie, is not sustainable. Whether it can be correctly classified under 'Management Consultancy Service' or not is an issue which, in our opinion, does not require any consideration when we are considering the issue whether Cenvat credit is admissible or not. If we consider, it amounts to reclassification of service in the hands of receiver who has taken the credit. The assessment of tax payable on service received and the Cenvat credit to be paid is not the responsibility of the service receiver but the service provider. If we take a decision that service receiver should have examined the correctness of the classification, it amounts to reassessment which is also not permissible in law. Therefore, prima facie, we find that the impugned order is not sustainable. Accordingly, requirement of pre-deposit of the adjudged dues is waived and stay against recovery is granted during pendency of the appeals. - Stay granted.

Source: M/s MIDDLE EAST HOTEL COMPANY PVT LTD Versus COMMISSIONER OF CENTRAL EXCISE, CUSTOMS & SERVICE TAX, COCHIN [2015 (3) TMI 180 - CESTAT BANGALORE - Service Tax]

CENTRAL EXCISE

Notifications/Circulars

➔ Clarification regarding place of removal

Circular No. 988/12/2014-CX dated 20.10.2014 issued from F. No. 267/49/2013-CX.8 on the clarifies that the place of removal needs to be ascertained in terms of provisions of Central Excise Act, 1944 read with provisions of the Sale of Goods Act, 1930 and that payment of transport, payment of insurance etc are not the relevant considerations to ascertain the place of removal. The place where sale takes place or when the property in goods passes from the seller to the buyer is the relevant consideration to determine the place of removal. In this regard, a demand has been raised by the trade that it may be clarified that in the case of exports, for purposes of CENVAT credit of input services, the place of removal is the port or the airport from where the goods are finally exported.

The matter has been examined. It is seen that section 23 of the

Sale of Goods Act, 1930 provides that where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract, and therefore, in view of the provisions of the Section 23 (1) of the Sale of Goods Act, 1930, the property in the goods would thereupon pass to the buyer. Similarly, section 39 of the Sale of Goods Act, 1930 provides that where, in pursuance of a contract of sale, the seller is authorized or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not for the purpose of transmission to the buyer, or delivery of the goods to a wharfinger for safe custody, is prima facie deemed to be a delivery of the goods to the buyer.

In most of the cases, therefore, it would appear that handing over of the goods to the carrier/transporter for further delivery of the goods to the buyer, with the seller not reserving the right of disposal of the goods, would lead to passing on of the property in goods from the seller to the buyer and it is the factory gate or the warehouse or the depot of the manufacturer which would be the place of removal since it is here that the goods are handed over to the transporter for the purpose of transmission to the buyer. It is in this backdrop that the eligibility to Cenvat Credit on related input services has to be determined.

Clearance of goods for exports from a factory can be of two types. The goods may be exported by the manufacturer directly to his foreign buyer or the goods may be cleared from the factory for export by a merchant exporter. In the case of clearance of goods for export by manufacturer exporter, shipping bill is filed by the manufacturer exporter and goods are handed over to the shipping line. After Let Export Order is issued, it is the responsibility of the shipping line to ship the goods to the foreign buyer with the exporter having no control over the goods. In such a situation, transfer of property can be said to have taken place at the port where the shipping bill is filed by the manufacturer exporter and place of removal would be this Port/ICD/CFS. Needless to say, eligibility to CENVAT Credit shall be determined accordingly. In the case of export through merchant exporters, however, two transactions are involved.

First is the transaction between the manufacturer and the merchant exporter. The second transaction is that between the merchant exporter and the foreign buyer. As far as Central Excise provisions are concerned, the place of removal shall be the place where the property in the goods passes from the manufacturer to the merchant exporter. As explained in paragraph 4 supra, in most of the cases, this place would be the factory gate since it is here that the goods are unconditionally appropriated to the contract in cases where the goods are sealed in the factory, either by the Central Excise officer or by way of self-sealing with the manufacturer of export goods taking the responsibility of sealing and certification, in terms of notification no. 19/2004- Central Excise (N.T.) dated 6.9.2004, etc.

However, in isolated cases, it may extend further also depending on the facts of the case, but in no case, this place can be beyond the Port/ ICD/CFS where shipping bill is filed by the merchant exporter. The eligibility to CENVAT Credit shall be determined accordingly.

Source: Circular No. Circular No. 999/6/2015-CX dated: 28th February, 2015

➤ Simplification of Registration Procedures in Central Excise

Registration Procedures in Central Excise has been simplified vide Circular No. 997/4/2015-CX dated: 28th February 2015. The salient features of the revised registration procedure are as follows –

- Registration in Central Excise presently envisages filing of application online on ACES, submission of documents, examination of documents, verification of premises by the departmental officer, submission of verification report, generation of Registration Certificate by the Deputy / Assistant Commissioner, dispatch of signed copy of Registration Certificate to the assessee and enabling the assessee to electronically pay the duty.
- Under the new simplified procedure, once duly completed application form is received online on ACES, registration would be granted within two working days and issued online without any examination of the documents and verification of documents or premises before the grant of registration, thus initiating trust based registration. Simultaneously, assessee would be enabled to electronically pay duty. Further, the assessee would not need a signed copy of Registration Certificate as proof of registration. Registration Certificate downloaded online from ACES system would be accepted as proof of registration. Verification of the documents and premises shall be carried out post facto.
- Verification of the premises shall be carried out after the registration has been granted. The applicant shall tender self-attested copy of the prescribed documents at the time of the verification of the premises.
- Henceforth, registration shall mandatorily require that the PAN number of the proprietor or the legal entity being registered be quoted with the exception of the Government Departments for whom this requirement shall be non-mandatory. Applicants, who are not Government Department, shall not be granted registration in the absence of PAN number.
- Communication with assessee is proposed to be made electronic to reduce transaction time and to achieve this e-mail address and mobile number of the applicant is being made mandatory. Existing registrants, who have not submitted this information, are requested to file this information within three months of the new registration process coming into effect.
- Document to establish possession of the premises can be any document which establishes that the applicant is in possession of the premises required to be registered such as proof of ownership,

lease or rent agreement, allotment letter from the Government, no objection certificate (NOC) from the landlord. Any of the following documents shall be submitted to establish identity, viz. PAN card, Ration Card, Passport, Voter I-card, Aadhar Card, Driving licence, or any other Photo-identity card issued by the Central Government, State Government or PSU.

- The process of De-registration and cancellation of the registration has also been streamlined by prescribing clear procedure for the same so that winding up of business and starting new business of manufacture is made easy .

Case Laws

➤ Waiver of pre deposit of duty - Penalty u/s 11AC

Held that: - Cost Accountant had not signed the annexures to the Certificate, the Ld. Commr. (Appeal) has confirmed the Order-in-Original dated 30/01/2009 and rejected the appeal filed by the appellant. Now the Ld. Advocate submits that even though the certificate was signed but its annexures were not signed while submitting before the Ld. Commr. (Appeal). However, the same is signed now and a copy is placed before the Tribunal. The contention of the Ld. A.R. for the Revenue on the other hand is that the certificate does not conform to CAS-4 method. Therefore, the same may not be accepted at this stage. The Ld. Advocate submits that all the data required for completing the CAS-4 certificate are available in the present certificate. However, they have no objection to compile the data in accordance with CAS-4 guidelines. We are of the view that in the interest of justice, the appellant be given an opportunity to submit the certificate in proper form i.e. CAS-4 and after the said certificate is submitted, the Ld. Commr. (Appeal) would consider the same in accordance with law. Needless to mention that all issues are kept open in relation to adjudication order dated 30/01/2009. In the result, the impugned order-in-Appeal is set aside to the extent of deciding the issue in relation to the adjudication order dated 30/01/2009 and to that extent the matter is remitted to decide the issue on merit, without insisting for any pre-deposit - Decided in favour of assessee.

Source: *M/s. Ess Dee Aluminium Ltd. versus Commr. Of Central Excise, Kolkata-III* [2015 (3) TMI 428 - CESTAT KOLKATA - Central Excise]

➤ Demand of differential duty - Classification of goods

Held that: - Court in previous order has held that the classification of the product manufactured by the appellant would fall under Chapter 54 of Central Excise Tariff Act, 1985 and rejected the claim of the appellant that it would fall under Chapter 56 of Central Excise Tariff Act, 1985. We do not find any merit in the appeal filed by the appellant as regards the issue of classification and following our order dt.29.05.2009 uphold the impugned order which classify the product manufactured by the appellant under Chapter 54.

Penalty of Rs 1 lakh imposed by the adjudicating authority on the appellant under Rule 25 of Central Excise Rules 1944 is unwarranted and the same is accordingly set aside for the reason that appellant is still disputing the classification before Apex Court - appeal filed by the appellant is rejected on the point of classification and allowed on the point of penalty imposed - Decided partly in favour of assessee.

Source: *Sarla Performance Fibres Ltd. versus Commissioner of Central Excise, Vapi* [2015 (3) TMI 173 - CESTAT Ahmedabad - Central Excise]

➤ SSI exemption under Notification No. 8/2003-CE (NT) dated 1.3.2003 - Use of other person's brand name

Held that: - Brand name 'Elac' was registered in the name of M/s. K.N. Industries. The applicant filed an application to the Trademark Authority for registration of the brand name 'Elac Excel'. The learned counsel submitted that the brand name 'Elac' and 'Elac Excel' referred are different and therefore demand of duty is not justifiable. He relied upon the decision of the Hon'ble Madras High Court. The adjudicating authority observed that the brand name 'Elac Excel' is akin to 'Elac' belonging to M/s. K.N. Industries and therefore they are not eligible to avail SSI exemption.

Dispute relates to brand name 'Elac Excel' which is similar to 'Elac' which will be decided at the time of hearing the appeals at length. However, there is some force in the submission of the learned counsel for the applicant that there is a difference between the two brand names 'Elac' and 'Elac Excel'. Hence, the applicant failed to make out a strong prima facie case for waiver of predeposit of entire dues. At this stage, the learned counsel submits that the applicants are eligible for CENVAT credit of ₹ 30,93,454/- and undertakes not to utilize the CENVAT credit till the disposal of the appeals. In view of that, we direct the applicant to file an undertaking within one month from the date of the receipt of the order to the jurisdictional Deputy Commissioner of Central Excise that the CENVAT credit amount of ₹ 30,93,454/- will not be utilized till the disposal of the appeals. Upon such undertaking, predeposit of the balance dues stands waived and recovery thereof stayed during the pendency of the appeals. - Stay granted.

Source: *M/s. Elac Marketing Pvt. Ltd. Shri KS. Ganesh, Director Versus Commissioner of Central Excise, Chennai-II* [2015 (3) TMI 170 - CESTAT CHENNAI - Central Excise]

➤ Denial of CENVAT Credit

Trading activity - Held that:- Appellant had availed credit of service tax paid on the services which are used for trading activity. As per the Cenvat Credit Rules, the credit of service tax is available to the manufacturer or provider of output service if such

services are used for manufacture or providing output service. In the present case, the appellants are undertaking the trading activity which is neither a manufacturing activity nor output service. The Tribunal in the case of Mercedes Benz India Pvt. Ltd. (2014 (4) TMI 12 - CESTAT MUMBAI) upheld the confirmation of demand and imposition of penalties which were made on the same grounds. In these circumstances, I find no infirmity in the impugned order - Decided against assessee.

Source: *Finolex Cables Ltd. versus Commissioner of Central Excise, Pune-I* [2015 (3) TMI 169 - CESTAT Mumbai - Central Excise]

SEBI

Notifications/Circulars

➤ Change in investment conditions / restrictions for FPI investments in Corporate Debt securities

All future investments within the USD 51 bn Corporate Debt limit category, including the limits vacated when the current investment by an FPI runs off either through sale or redemption, shall be required to be made in corporate bonds with a minimum residual maturity of three years. FPIs shall not be permitted to invest in liquid and money market mutual fund schemes. There will, however, be no lock-in period and FPIs shall be free to sell the securities (including those that are presently held with less than three years residual maturity) to domestic investors.

Source: *Circular - CIR/IMD/FIIC/1/2015 dated: February 03, 2015*

➤ Change in investment conditions for FPI investments in Government Debt securities

SEBI has decided that investment of coupons in Government securities will be enabled even when the existing limits for FPIs are fully utilized. Accordingly, FPIs shall be permitted to invest in Government securities, the coupons received on their investments in Government securities. Such investments shall be kept outside the applicable limit (currently USD 30 billion) for investments by FPIs in Government securities.

For the purpose of investment of coupons, the FPIs shall have an investment period of 5 working days from the date of receipt of the coupon. A re-investment facility of 5 working days shall be provided on the Government securities that have been purchased by utilizing the coupons. It is further clarified that coupons received on these Government securities purchased by investment of coupons shall also have the same facility. The coupons invested in purchasing Government securities shall be classified into a separate investment category which is over and above the USD 30 billion Government debt limit. The depositories shall put in place the necessary systems for the daily reporting by the custodians of the FPIs and shall also disseminate this coupon investment data along with the daily

debt utilization data.

Source: Circular CIR/IMD/FIIC/2/2015 dated: February 05, 2015

COMPANY LAW

Notifications/Circulars

➔ MCA notifies Roadmap for applicability of Indian Accounting Standards

Ministry of Corporate Affairs has notified Roadmap for applicability of Indian Accounting Standards (Ind AS) for compliance by the class of companies specified in the said roadmap. The notification has been uploaded on www.mca.gov.in along with the thirty nine (39) Indian Accounting Standards (Ind AS).

Obligation to comply with Indian Accounting Standards (Ind AS)

(1) The Companies and their auditors shall comply with the Indian Accounting Standards (Ind AS) in preparation of their financial statements and audit respectively, in the following manner, namely:-

(i) any company may comply with the Indian Accounting Standards (Ind AS) for financial statements for accounting periods beginning on or after 1st April, 2015, with the comparatives for the periods ending on 31st March, 2015, or thereafter;

(ii) the following companies shall comply with the Indian Accounting Standards (Ind AS) for the accounting periods beginning on or after 1st April, 2016, with the comparatives for the periods ending on 31st March, 2016, or thereafter, namely:-

(a) companies whose equity or debt securities are listed or are in the process of being listed on any stock exchange in India or outside India and having net worth of rupees five hundred crore or more;

(b) companies other than those covered by sub-clause (a) of clause (ii) of sub rule (1) and having net worth of rupees five hundred crore or more;

(c) holding, subsidiary, joint venture or associate companies of companies covered by sub-clause (a) of clause (ii) of sub- rule (1) and sub-clause (b) of clause (ii) of sub- rule (1) as the case may be; and

(iii) the following companies shall comply with the Indian Accounting Standards (Ind AS) for the accounting periods beginning on or after 1st April, 2017, with the comparatives for the periods ending on 31st March, 2017, or thereafter, namely:-

(a) companies whose equity or debt securities are listed or are in the process of being listed on any stock exchange in India or outside India and having net worth of less than rupees five hundred crore;

(b) companies other than those covered in clause (ii) of sub- rule

(1) and subclause (a) of clause (iii) of sub-rule (1), that is, unlisted companies having net worth of rupees two hundred and fifty crore or more but less than rupees five hundred crore.

(c) holding, subsidiary, joint venture or associate companies of companies covered under sub-clause (a) of clause (iii) of sub- rule (1) and sub-clause (b) of clause (iii) of sub- rule (1), as the case may be: Provided that nothing in this sub-rule, except clause (i), shall apply to companies whose securities are listed or are in the process of being listed on SME exchange as referred to in Chapter XB or on the Institutional Trading Platform without initial public offering in accordance with the provisions of Chapter XC of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009.

(2) For the purposes of calculation of net worth of companies under sub-rule (1), the following principles shall apply, namely:-

(a) the net worth shall be calculated in accordance with the stand-alone financial statements of the company as on 31st March, 2014 or the first audited financial statements for accounting period which ends after that date;

(b) for companies which are not in existence on 31st March, 2014 or an existing company falling under any of thresholds specified in sub-rule (1) for the first time after 31st March, 2014, the net worth shall be calculated on the basis of the first audited financial statements ending after that date in respect of which it meets the thresholds specified in sub-rule (1).

(3) Standards to these rules once required to be complied with in accordance with these rules, shall apply to both stand-alone financial statements and consolidated financial statements.

(4) Companies to which Indian Accounting Standards (Ind AS) are applicable as specified in these rules shall prepare their first set of financial statements in accordance with the Indian Accounting Standards (Ind AS) effective at the end of its first Indian Accounting Standards (Ind AS) reporting period.

Explanation.- For the removal of doubts, it is hereby clarified that the companies preparing financial statements applying the Indian Accounting Standards (Ind AS) for the accounting period beginning on 1st April, 2016 shall apply the Indian Accounting Standards (Ind AS) effective for the financial year ending on 31st March, 2017.

(5) Overseas subsidiary, associate, joint venture and other similar entities of an Indian company may prepare its standalone financial statements in accordance with the requirements of the specific

jurisdiction:

Provided that such Indian company shall prepare its consolidated financial statements in accordance with the Indian Accounting Standards (Ind AS) either voluntarily or mandatorily if it meets the criteria as specified in sub-rule (1).

(6) Indian company which is a subsidiary, associate, joint venture and other similar entities of a foreign company shall prepare its financial statements in accordance with the Indian Accounting Standards (Ind AS) either voluntarily or mandatorily if it meets the criteria as specified in sub-rule (1).

(7) Any company opting to apply the Indian Accounting Standards (Ind AS) voluntarily as specified in sub-rule (1) for its financial statements shall prepare its financial statements as per the Indian Accounting Standards (Ind AS) consistently.

(8) Once the Indian Accounting Standards (Ind AS) are applied voluntarily, it shall be irrevocable and such companies shall not be required to prepare another set of financial statements in accordance with Accounting Standards specified in **Annexure** to Companies (Accounting Standards) Rules, 2006.

(9) Once a company starts following the Indian Accounting Standards (Ind AS) either voluntarily or mandatorily on the basis of criteria specified in sub-rule (1), it shall be required to follow the Indian Accounting Standards (Ind AS) for all the subsequent financial statements even if any of the criteria specified in this rule does not subsequently apply to it.

5. Exemptions - The insurance companies, banking companies and non-banking finance companies shall not be required to apply Indian Accounting Standards (Ind AS) for preparation of their financial statements either voluntarily or mandatorily as specified in sub-rule (1) of rule 4.

Read more at: MCA, The Companies (Indian Accounting Standards) Rules, 2015 [F. No. 01/01/2009/CL-V (February 16, 2015)]

➔ Insurance/banking Cos allowed to acquire securities in normal course without complying with investment norms

Companies (Removal of Difficulties) Order, 2015 - Amendment in Sections 2 and 186 of the Companies Act, 2013 vide order [F. NO. 1/13/2013-CL.V-PART]/SO 504(E), dated 13-2-2015

Companies Act, 2013 (18 of 2013) received the assent of the President on the 29th August, 2013;

And whereas, clause (85) of section 2 of the said Act provides for definition of the term “small company”

And whereas, clause (b) of sub-section (11) of section 186 of the said Act provides that the requirements of provisions of section 186 [except sub-section (1) of the said section] shall not apply to any acquisition made by a non-banking financial company registered under Chapter IIIB of the Reserve Bank of India Act, 1934 (2 of 1934) and any other company whose principal business is acquisition of securities;

And whereas, such provisions of clause (85) of section 2 and section 186 of the said Act had come into force on the 1st day of April, 2014; And whereas, the following difficulties have arisen in giving effect to the above provisions of the said Act:—

- According to clause (85) of section 2, a company may be treated as a ‘small company’ if it meets either of the conditions provided therein thereby making the second limit unrestricted or inconsequential. Difficulties have arisen in this regard as companies which, though, meet one of the criteria but exceed the monetary limit in respect of second criteria excessively are also getting classified as ‘small companies’; and
- In clause (b) of sub-section (11) of section 186, in the absence of provisions for exemption to a banking company or an insurance company or a housing finance company making acquisition of securities in its ordinary course of business, a difficulty has arisen that such companies cannot make any acquisition of securities in their ordinary course of business;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 470 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following Order to remove the aforesaid difficulties, namely:—

- Short title and commencement - (1) This Order may be called the Companies (Removal of Difficulties) Order, 2015.
- It shall come into force on the date of its publication in the Official Gazette.

In the Companies Act, 2013 (hereinafter referred to as the said Act),—

- in section 2, in clause (85), in sub-clause (i), for the word “or” occurring at the end, the word “and” shall be substituted; and
- in section 186 of the said Act, in sub-section (11), in clause (b), after item (iii), the following item shall be inserted, namely:—
“(iv) made by a banking company or an insurance company or a housing finance company, making acquisition of securities in the ordinary course of its business.”



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