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THE INSTITUTE OF
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OF INDIA

(Statutory body under an Act of Parliament)

OCTOBER | 2013 VOL. 1 | NO. 7

EDITORIAL

Growth to improve in the second half of FY 2014, says Montek Singh Ahluwalia

The Indian economy expanded at a decade-low rate of 5% in the first year of the 12th Plan (2012–17) period, though the government had targeted an annual average growth rate of 8% during that period. Planning Commission Deputy Chairman Montek Singh Ahluwalia said the economy would get back on the targeted growth trajectory of 8% after two years. According to Ahluwalia, the average economic growth rate in the 12th Plan period will be lower than 8% and the Commission will make its estimate next year during the mid-term review of the 5-year-policy.

Ahluwalia said he expected growth to improve in the second half of FY 2014. India's exports in October, according to recent government data, grew 13.47% to \$27.2 billion, the fastest pace in two years. Foreign exchange reserves in India decreased to INR15309.80 billion in October of 2013 from INR16275.30

billion in September of 2013.

The US business body has welcomed the new RBI rules governing access for foreign banks operating in India, describing the move as a positive step and called for opening up of other areas, in particular the insurance sector. The Reserve Bank mandates rules governing the composition of boards of directors of the subsidiary, requiring at least one-third of directors to be independent of the bank and at least half to be Indian nationals, with one-third residing in India.

We are pleased to release the seventh issue of the *CMA E-Bulletin* for our readers. We have introduced one very important segment in this issue "Service Tax VCES 2013" for the benefit of the readers. Hope you will enjoy reading this issue of the e-bulletin. We look forward to your valuable suggestions and comments so that we can further improve the bulletin.

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INDIAN ECONOMY

Highlights

- ➔ **PE investments dip 67 per cent in Q3: PTI, dated: October 3, 2013:** The Private Equity firms invested about \$1.3 billion across 75 deals during the quarter ended September 2013, registering a decline of 67 per cent over the corresponding period last year.
- ➔ **With \$71, India tops global chart of remittances: PTI, dated: October 3, 2013:** The World Bank has forecasted that India has topped the global chart of remittances with a whopping \$71 billion in remittances in 2013, just short of three times the FDI it received in 2012.
- ➔ **Government plans cut in non-plan spending: Chidambaram: PTI, dated: October 2, 2013:** Finance Minister P Chidambaram has said the government is planning to trim non-plan expenditure to meet the fiscal deficit target of 4.8 per cent for the current financial year.
- ➔ **Manufacturing sector contracts for second month in Sept: BT Online Bureau, dated: October 1, 2013:** The HSBC India Manufacturing Purchasing Managers' Index for the manufacturing industry stood at 49.6 in September, higher from 48.5 in August, but below the crucial 50-mark which indicates a contraction.
- ➔ **Petrol prices cut by Rs 3 on rupee recovery: BT Online Bureau, dated: October 1, 2013:** Good News and good news. In Delhi, the petrol price would decrease to Rs 72.40 per litre. In Mumbai, Chennai and Kolkata, petrol would now be priced at Rs 79.49, Rs 79.51 and Rs 75.68 per litre.
- ➔ **Indian economy will grow in excess of 5 pct: New Delhi, dated: October 01 2013:** Finance Ministry said Indian economy will grow by over 5 per cent in the current fiscal on back of high farm productivity and investments and promised more steps to boost growth.
- ➔ **P Chidambaram set to wield budget knife as Indian economy slows: New Delhi, dated: October 03 2013:** Finance Minister P Chidambaram may have to slice at least Rs 200 billion from government spending to prevent a budget blow-out, which could threaten to send the country's credit rating into "junk".
- ➔ **Banks to offer cheap loans for bikes, fridges: New Delhi, dated: 03 Oct 2013:** Indian banks will offer cheaper loans to stimulate demand for two-wheelers and other consumer durables as Finance Minister P. Chidambaram tries to pull the economy out of the worst slowdown in a decade ahead of national elections due by next May.
- ➔ **Wholesale, consumer inflation seen remaining elevated: poll: Bangalore, dated: October 10, 2013:** India likely saw little respite from high inflation levels in September as prices of food and imports continued to climb despite a relief rally in the battered rupee, a Reuters poll found.
- ➔ **Wealth in India rises 7.4 pct to \$3.6 tn: Credit Suisse: New Delhi, dated: October 09, 2013:** The Credit Suisse Research Institute on Wednesday released its fourth annual Global Wealth Report 2013, which found wealth in India rose by 7.4% to \$3.6 trillion in mid-2013.
- ➔ **Inflation check: Diesel, onion, 16 other items under scanner: New Delhi, dated: October 09, 2013:** Quarterly Review: Diesel, onion to be monitored. The finance ministry on Tuesday said that it will closely monitor 18 commodities, including high-speed diesel and onion.
- ➔ **India to be top infra goods importer by 2020: HSBC: New Delhi, dated: October 08, 2013:** India will topple the United States as the world's biggest importer of infrastructure goods by 2020 and is expected to hold this position till 2030, a report by HSBC said.
- ➔ **Railway fare hike: Train journey to cost 2 per cent more from Monday: New Delhi, dated: October 06, 2013:** Travelling by train will become costlier from tomorrow with the revised fare structure coming into effect.
- ➔ **Will contain CAD below USD 70 bn: P Chidambaram: Bangalore, dated: October 05, 2013:** Asserting that the government has the capacity to overcome "this period of stress", Union Finance Minister P Chidambaram today said the current account deficit will be contained below USD 70 billion.
- ➔ **Asian Development Bank clears \$700 mn loan for infrastructure development: New Delhi, dated: October 03 2013:** The Asian Development Bank (ADB) has approved USD 700 million in loans to support the Indian government's efforts to accelerate investment in infrastructure.
- ➔ **India's 2013 monsoon delivers 6 pct more rains than normal-weather office: Mumbai, dated: October 01 2013:** India received 6 percent higher rainfall than normal in the 2013 monsoon season ended on September 30, the Indian Meteorological Department (IMD) said.
- ➔ **Indian economy to grow at over 5 pct in 2013/14: New Delhi, dated: October 01 2013:** The Indian economy will grow at more than 5 percent in the current financial year ending in March 2014, Economic Affairs Secretary Arvind Mayaram said.

➔ **After IMF, World Bank now cuts India GDP growth forecast to 4.7 per cent: New Delhi, dated: October 16 2013:** Close on the heels of the IMF, the World Bank on Wednesday slashed India's economic growth forecast for the current financial year to 4.7 per cent from an earlier projection of 6.1 per cent.

➔ **Inflation soars to 6.46% as onion prices continue India's tear-jerker streak, spike RBI rate cut hopes: New Delhi, dated: October 14 2013:** High food prices, especially of onion and other vegetables, pushed up September inflation to 7-month high of 6.46 per cent

BANKING

Highlights

➔ **Share Linking to Borrowing Norm in Urban Co-operative Banks**

With reference to instructions contained in para 3 of circular UBD PCB Cir. No.4/ 09.18.201/2008-09 dated July 15, 2008 on 'Instruments for Augmenting Capital Funds – UCBS' indicating the current regulatory prescriptions on share linking to borrowing viz. 2.5% for secured borrowings and 5% for unsecured borrowings. Further, the shareholding of an individual member is restricted to 5% of the total paid up share capital of a UCB vide *Circular RBI/2013-14/307, UBD CO BPD (PCB) Cir. No. 25/09.18.200/2013-14, dated: Oct 01, 2013.*

➔ **Term Repo under Liquidity Adjustment Facility**

As per *RBI/2013-14/319FMD.MOAG. No. 89 /01.01.009/2013-14, dated: Oct 08, 2013* it has been decided to conduct auctions for term repos of 7-day and 14-day tenor for a notified amount equivalent to 0.25 per cent of net demand and time liabilities (NDTL) of the banking system through variable rate auction mechanism. The first term repo auction with a tenor of seven days would be conducted on October 11, 2013 (Friday). Thereafter, auctions for term repo of 14 days and 7 days tenor will follow on alternate Fridays subject to conditions set out in the Annexure.

➔ **Revised guidelines on lending to Priority Sector for UCBS**

As per circular number UBD PCB Cir. No.11/09.09.01/2007-08 dated August 30, 2007 and the amendments thereto issued from time to time on the captioned subject, consolidated in Master Circular UBD BPD (PCB) MC No.7/09.09.001/ 2012-13 dated July 02, 2012 the Reserve Bank of India had set up a Committee to re-examine the existing classification and suggest revised guidelines with regard to Priority Sector lending classification and related issues (Chairman: Shri M.V. Nair). The recommendations of the Committee have been examined based on the interface with various stakeholders and in the light of the comments / suggestions received from Government of India, banks, financial institutions, Non-Banking Fi-

ancial Companies, Associations of industries, members of public and Indian Banks' Association it has been decided to revise certain existing guidelines (as per Annex) in supersession of the guidelines mentioned in the Master Circular vide *Circular RBI/2013-14/318/ UBD CO BPD (PCB) MC. No.18/09.09.001/2013-14 dated: Oct 08, 2013.*

➔ **Overseas Foreign Currency Borrowings by Authorized Dealer Banks**

With a view to providing greater flexibility to AD Category - I banks in seeking access to overseas funds, Reserve Bank has amended Regulation no. (4)(2)(i) vide Notification No.FEMA.288/2013-RB dated September 26, 2013 published in the Official Gazette vide G.S.R.No.668 (E) on October 1, 2013. Henceforth, authorized dealers may borrow from their Head Office or overseas branches or correspondents outside India or any other entity as permitted by Reserve Bank up to hundred per cent of its unimpaired Tier I capital or USD 10 million, whichever is higher, subject to such conditions as the Reserve Bank may direct. A copy of the amendment notification is placed as annex to this circular. Accordingly, permission is hereby granted to AD Category I banks to borrow from international / multilateral financial institutions for a limited period up to November 30, 2013 vide *circular RBI/2013-14/323, A.P. (DIR Series) Circular No. 61 dated: Oct 10, 2013.*

➔ **Launch of new RTGS System**

Circular RBI/2012-13/355 [DPSS (CO) RTGS No.1052/04.04.017/ 2012-13 dated December 31, 2012 implements new RTGS System conforming to ISO 20022 messaging standard. The new RTGS system will be operationalized on October 19, 2013 and the "RTGS System Regulations 2013" would come into effect from this date. Hence, the extant RTGS System will no longer be operational. Accordingly, the RTGS (Membership) Business Operating Guidelines, 2004 and RTGS (Membership) Regulations, 2004 would cease to exist vide *Circular RBI/2013-14/324, DPSS (CO) RTGS No.801/04.04.017/2013-14 dated: October 11, 2013.*

➔ **UCBs - Authorization for Specialized Branches - Central Processing Centres/Retail Assets Processing Centres**

Based on *Circular number RBI/2013-14/336 UBD.CO.LS.(PCB).Cir. No. 30/07.01.000/2013-14 dated: October 15, 2013* it is decided to set up Specialized Branches like Central Processing Centres (CPCs)/ Retail Assets Processing Centres/ Regional/ Zonal Processing Centres under Section 23 of the B.R. Act, 1949 (AACS). Need based authorizations for such branches would be considered for UCBS with a large network of branches having substantial volume of business to handle and process, which may ultimately result in cost reduction and faster approvals. UCBS desirous of opening such specialized branches may include the proposal in their Annual Business Plan explaining the need and objective for opening such centres.

For more details visit: http://www.rbi.org.in/scripts/BS_CircularIn- dexDisplay.aspx?Id=8525

➔ Bank Rate

With reference to *Circular RPCD.CO.RRB.RCB.BC.No.44/03.05.33/2013-14 dated October 8, 2013* and as per announcement in the Second Quarter Review of Monetary Policy 2013-14 dated October 29, 2013, the Bank Rate stands adjusted by 25 basis points from 9.0 per cent to 8.75 per cent with effect from October 29, 2013. All penal interest rates on shortfall in reserve requirements, which are specifically linked to the Bank Rate, also stand revised as indicated in Annex vide Circular RBI/2013-14/348 [RPCD.CO.RRB.RCB.BC.No. 50 /03.05.33/2013-14] dated: October 30, 2013.

Annex

Penal Interest Rates which are linked to the Bank Rate

Item	Existing Rate	Revised Rate (Effective from October 29, 2013)
Penal interest rates on shortfalls in reserve requirements (depending on duration of shortfalls)	Bank Rate plus 3.0 percentage points (12.00 per cent) or Bank Rate plus 5.0 percentage points (14.00 per cent).	Bank Rate plus 3.0 percentage points (11.75 per cent) or Bank Rate plus 5.0 percentage points (13.75 per cent).

➔ Unsecured Exposure Norms for UCBs – As per *Circular RBI/2013-14/321 UBD CO BPD (PCB) Cir. No.29/ 13.05.000/2013-14 dated: October 10, 2013*, RBI exempts unsecured loans upto Rs. 10,000/- sanctioned by UCBs from the aggregate ceiling on unsecured exposure of 10% of total assets as per audited balance sheet as on March 31 of the previous financial year, subject to certain conditions.

➔ Distribution of Banknotes and Coins– Alternative Avenue – Based on *Circular RBI/2013-14/322 DCM (Plg) No. G - 14/10.65.03/2013-14* dated: October 10, 2013, banks are advised to explore the possibility of engaging the services of Cash in Transit (CIT) entities also for the purpose of distribution of banknotes and coins.

➔ Housing Sector: Innovative Housing Loan Products – Upfront disbursement of housing loans

As per Circular RBI/2013-14/320 RPCD.CO.RCB.BC.No.43/07.51.013/2013-14 dated: October 8, 2013, State and Central Cooperative Banks are advised that disbursement of housing loans sanctioned to individuals should be closely linked to the stages of construction of the housing project/houses and upfront disbursement should not be

made in cases of incomplete/under-construction/green field housing projects.

➔ Unclaimed Deposits/Inoperative Accounts in banks – Treatment of certain savings bank accounts opened for credit of Scholarship amounts and credit of Direct Benefit Transfer under Government Schemes

Savings or current account should be treated as inoperative/dormant if there are no transactions in the account for over a period of two years and the safeguards to be adopted in dealing with such accounts vide Circular RPCD.CO.RF.BC.No. 89/07.38.012008-09 dated February 18, 2009.

State and Central Governments have expressed difficulties in crediting cheques / Direct Benefit Transfer / Electronic Benefit Transfer / Scholarships for students, etc. into Zero Balance Accounts and accounts opened for the beneficiaries under various Central/State Government schemes but had been classified as dormant/inoperative due to non-operation of the account for over two years.

Keeping the above in view, State and Central Cooperative Banks are advised that they may take appropriate steps including allotment of a different ‘product code’ in their CBS to all such accounts opened by them so that the stipulation of inoperative / dormant account due to non-operation does not apply while crediting proceeds as mentioned in para 2 above vide *Circular RBI/2013-14/313 RPCD.RCB.BC.No. 42 /07.51.014 /2013-14 dated: October 7, 2013*.

➔ Closing of Old Outstanding Bills: Export-Follow-up –XOS Statements – Based on *Circular RBI/2013-14/325 A.P. (DIR Series) Circular No. 62 dated: October 14, 2013*, RBI decides that an old export bill may be closed by AD banks as a onetime measure, provided that the case is not subject matter of any pending civil suit / criminal suit; the exporter has not come to the adverse notice of the Directorate of Enforcement (DoE)/Central Bureau of Investigation (CBI)/Directorate of Revenue Intelligence (DRI) /any such other law enforcement agency; the exporter has no externalization problems with the export recipient countries and the export bill falls under two categories mentioned in the circular.

INCOME TAX

Highlights

➔ CBDT issues Circular containing the rates of deduction of income-tax from the payment of income chargeable under the head “Salaries” during the financial year 2013-2014 and explains certain related provisions of the Act and Income-tax Rules, 1962. *Reference: Circular 8/2013, dated: October 10, 2013*

➔ In exercise of the powers conferred by clause (XVI) of section 47 of the Income-tax Act, 1961 (43 of 1961), the Central Government

passes Reverse Mortgage (Amendment) Scheme, 2013 to amend the Reverse Mortgage Scheme, 2008.

Reference: Notification 79/ 2013 dated: October 7, 2013

➤ **Order under section 119 of the Income Tax, 1961**

In exercise of powers conferred under section 119 of the Income Tax Act, 1961, the Central Board of Direct Taxes, in continuation to order u/s 119 dated 26.09.2013 in F.No. 225/117/2013/ITA.II, hereby directs THAT in case where the due date of furnishing reports of audit and corresponding income tax returns was 30th September, 2013 and where the same are furnished electronically on or 31st October, 2013, such reports of audit and returns of income shall be deemed to have been furnished within the due date prescribed under section 139 of the income tax act, 1961.

Reference: Order No. F. No. 225/117/2013/ITA.II, dated: 24th October, 2013

Case Laws

➤ **Sections 44AB, 271B of Income Tax Act, 1961**

ITAT held that assessee's failure to get accounts audited by a special auditor as was decided by AO as per the provisions of Section 44AB attracted penalty under section 271B.

Improvement Trust, Vs. The Dy. CIT (ITAT-Amritsar)

➤ **Sections 73 and 80 of Income Tax Act, 1961**

Loss of a speculative business, whether brought forward or for the current year, could not be set off against the non-speculative business income for the current year. Accordingly, ITAT directed a set off in terms of sections 73 and 80.

Kunjilata P. Shah Vs ACIT (ITAT-Mumbai)

➤ **Regulations 4(1) and 4(2)(a) and (g) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003**

Simple trading by the appellant in particular scrip, without any proved nexus between trades with the other so called group of brokers and clients is not per se punishable. In instant case, appellant had traded in the scrip for about 64 days which was admittedly minor, comprising only 0.89 percent of the total trades in the scrip. Under such circumstances, appellant cannot be held guilty of Regulations 4(1) and 4(2)(a) and (g).

Kapil Chatrabhuj Bhuptani Vs SEBI (SAT-Mumbai) (October 10, 2013)

➤ **Deduction u/s. 80IB(10)** - The meaning of "date of completion" has been given in Explanation (ii) to clause (a) to section 80IB(10) - Date of completion of construction would mean date on which completion certificate in respect of housing project was issued by the local authority.

M/s Sigma Constructions versus Income Tax Officer - 2013 (11) TMI

202 - ITAT Hyderabad - Income Tax

➤ **Nature of Lease** - In substance, finance lease is a loan from the lessor to the lessee. In an operating lease, the lessor bears the risk of loss, the period is cancellable and lease rentals are not synchronized with the economic life of the asset.

M/s TAURIAN IRON & STEEL CO PVT LTD VERSUS ADDL COMMISSIONER OF INCOME TAX - 2013 (11) TMI 201 - ITAT MUMBAI - Income Tax

➤ **Penalty u/s 271(1) (c)** - Penalty will not merely be imposed because it was lawful to do so - once the explanation was not held to be false, the penalty cannot be sustained.

NILA BAGCHI VERSUS DEPUTY COMMISSIONER OF INCOME TAX - 2013 (11) TMI 187 - ITAT KOLKATA - Income Tax

➤ **Deduction u/s 54(2)** - The date of filing the return u/s.139 of the Act has wide scope - The return can be filed u/s.139(1) or u/s.139(4) of the Act - Both the returns i.e. either filed u/s.139(1) or u/s.139(4) of the Act were legally valid and accepted returns - There was no difference between these two returns (except for charging interest u/s 234B and allowing certain deductions or carrying forward of losses)

INCOME TAX OFFICER VERSUS SMT SWARNAMBAL DAYAS-HANKAR - 2013 (11) TMI 167 - ITAT CHENNAI - Income Tax

➤ **Can't 'frown' on conversion of stock-in-trade into investment, allows LTCG exemption**

Statute does not reject or frown upon conversion of stock in trade into investment; Upholds ITAT ruling treating gain on sale of converted shares, as exempt long term capital gains; Rejects Revenue contention that conversion of shares was made on introduction of Sec 10(38), merely to claim exemption; Once conversion into investment was made, disclosure was made in audited accounts; Assessee investment for more than 2 years before sale; CBDT Circular stipulates holding two sets of portfolio viz. trading and investment: Delhi HC

Express Securities Pvt. Ltd. [TS-548-HC-2013(DEL)]

➤ **Presumption as to valid service of notice holds good if same is not returned back to department**

Where revenue dispatched notice under section 143(2), and the fact that notice was not received back raise a presumption of service under Section 27 of the General Clauses Act, 1897

Facts:

a) Notice under section 143(2) was claimed to have been issued by revenue under section 143(2);

b) The assessee raised an objection that notice was not served within 12 months from end of month in which return was furnished and, thus, it was null and void;

c) Despite this objection, revenue proceeded to finalized assess-

ment. Thus, the dispute, in the present case, revolves around the issuance and service of notices issued under Section 143(2) of the Act.

The High Court held as under:

- 1) The averments in the reply, duly supported by copy of the notice and the fact that notice was not received back raised a presumption of service under Section 27 of the General Clauses Act, 1897;
- 2) The onus to rebut the presumption of service of notice sent by post, lies upon the petitioner;
- 3) The petitioner has failed to discharge this onus. Mere denial by the petitioner that notice was never received, was insufficient, to record a finding in favour of the petitioner;
- 4) Thus, the instant petition was dismissed as there was no error in the impugned order or proceeding – *SHAHBAD COOPERATIVE SUGAR MILLS LTD. V. DY.CIT (2013) 38 taxmann.com 204 (Punjab & Haryana)*

➔ Disallows 'interest' expense u/s 14A though actual dividend income not received

Upholds CIT(A)'s order disallowing deduction for interest expenditure u/s 14A; Assessee utilised borrowings to acquire preference shares, dividend income from which was exempt; Marginal note to Sec. 14A clearly states that expenditure incurred in relation to income not "includible" in total income, actually earned or not, shall be disallowed; Interest not allowable as deduction against 'income from other source', though no dividend income was earned; Relies on Delhi ITAT ruling in Ever Plus Securities & Finance Ltd.; Distinguishes SC ruling in Rajendra Moody : Mumbai ITAT
Reference: Varsha R. Taurani [TS-552-ITAT-2013(Mum)]

CUSTOMS

Highlights

➔ As per Notification No. 47 / 2013 – Customs, dated 10th October, 2013 Central Government amends Notification No. 53/2011-Cus dated 1st July, 2011 so as to provide deeper tariff concessions in respect of specified goods imported from Malaysia under the India-Malaysia Comprehensive Economic Cooperation Agreement (IMCECA).

For details visit: <http://www.cbec.gov.in/customs/cs-act/notifications/notfns2013/cstarr2013/cs472013.htm>

➔ Option to close cases of default in Export Obligation (EO)

Notification No. 46/2013-Customs dated 26.9.2013 - It may be noted that cases where export obligation period is yet to be over, are not covered under the Option. Also, normally no refund is envisaged to arise on account of choosing the Option. However, there may be

cases of calculation mistakes to be dealt on merits.

Reference: Circular No. 40/2013-Customs, dated: October 9, 2013

➔ Anti Dumping Duty Notification

- Notification 26/2013 – Cus (ADD), dated: 28-10-2013 provides levy of anti-dumping duty on imports of Paracetamol, originating in, or exported from the People's Republic of China for a further period of five years.

- Notification 25/2013 – Cus (ADD), dated: 22-10-2013 finalize provisional assessments of all imports of vitrified/ porcelain tiles falling under CTH 6907 or 6908 or 6914, by M/s Foshan Qiangbiao Ceramics Co. Ltd, China PR (producer) through M/s Sheenway Corporation Ltd., Hong Kong (exporter) which have been subjected to provisional assessment pursuant to the notification No. 35/2012-Customs (ADD), dated the 10th July, 2012.

- Notification 24/2013 – Cus (ADD), dated: 21-10-2013 provides levy of anti-dumping duty on imports of Methylene Chloride, originating in, or exported from the European Union, USA and Korea RP for a period of Six Months.

- Notification 23/2013 – Cus (ADD), dated: 10-10-2013 seeks to levy anti-dumping duty on imports of Ductile Iron Pipe, originating in, or exported from the People's Republic of China, for a further period of five years.

- Notification 22/2013 – Cus (ADD), dated: 10-10-2013 provides levy of anti-dumping duty on imports of Bulk Drug Cefadroxil Monohydrate, originating in, or exported from the European Union, for a period of five years.

For details visit: <http://www.cbec.gov.in/customs/cs-act/notifications/notfns-2013/cs-add2013/cs-notfns-add13.htm>

➔ Applicable CVD on Steam Coal imported from Indonesia under FTA notification No. 46/2011-Customs

- Under Notification No. 12/2012-Customs, dated 17-03-2012, Steam Coal falling under sub-heading 27011920 attracts basic customs duty (BCD) at 2% and countervailing duty (CVD) at 2%. Steam Coal imported from Indonesia enjoys preferential BCD @ 0% under S. No. 207 of notification No. 46/2011-Customs, dated 1st June 2011 (India-ASEAN FTA). In this connection, a doubt has been raised whether an importer, while availing of the BCD exemption @ 0% under FTA (notification No. 46/2011-Customs), can simultaneously avail of the concessional CVD @ 2% as per notification No.12/2012-Customs, or he has to pay the CVD at 6%, which is the rate of excise duty applicable on Steam Coal when Cenvat facility has been availed of.

- *Circular No. 41/2013-Customs dated: 21st October, 2013* therefore clarifies that an importer while availing of BCD exemption on steam coal under FTA notification No. 46/2011-Cus can simultaneously avail of concessional CVD at 2% under notification No. 12/2012-Cus.

➔ Clarification on the commencement of the interest free period of 90 days under Section 61 of the Customs Act, 1962

Sub-section 2 (ii) of Section 61 of the Customs Act, 1962, provides that where any warehoused goods specified in sub-clause (b) of sub-section (1) of Section 61 remains in a warehouse beyond a period of ninety days, interest shall be payable at such rate, as may be fixed by the Board, on the amount of duty payable at the time of clearance of the goods in accordance with the provisions of section 15 on the warehoused goods, for the period from the expiry of the said ninety days till the date of payment of duty on the warehoused goods. A doubt has been raised as to when the period of ninety days would commence.

Circular No. 39/2013-Customs, dated: 01 October, 2013 clarifies that the period of 90 days, under Section 61 (2) (ii) of the Customs Act, 1962, would commence from the date of deposit of goods in the warehouse.

Case Laws

➔ **Confiscation – Import of old and used photocopiers – import of restricted items - commissioner (appeals) reduced the redemption fine and penalty - Held that:-** At this stage, I do not find any merit to stay the operation of the order of Commissioner (Appeals). Therefore, the stay application filed by the Revenue is dismissed. The learned counsel submits that the respondent has also filed an appeal in this matter which is numbered as C/117/2010 which may be linked with this appeal.

Commissioner of Customs, Chennai Versus M/s. Shubham Constructions [2013 (10) TMI 803 - CESTAT CHENNAI – Customs]

➔ **Duty demand - Mis-declaration of MRP on bulbs imported - -** Instead of explaining the position of the fraudulent stickers recovered during the course of investigation the appellant went on leading legal pleading. - prima facie case is against the assessee.

M/s. Linear Technologies India Pvt. Ltd. Versus C. C., New Delhi - 2013 (11) TMI 248 - CESTAT NEW DELHI – Customs

➔ **Valuation - Import of artificial marble slabs -** Once the restricted goods imported were subject to licence condition which was not fulfilled by the appellant, there is no scope to interfere with the redemption fine and penalty imposed by Customs
M/s SHRI KRISHNA IMPEX VERSUS COMMISSIONER OF CUSTOMS, - 2013 (10) TMI 1203 - CESTAT NEW DELHI – Customs

CENTRAL EXCISE

Highlights

➔ Amendment of Notification No 10/1997 - CE, dated 01.03.1997

Section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944), the Central Government exempts goods specified in column (3) of the Table below and falling under the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), from the whole of the duty of excise leviable thereon which is specified in the said Schedule, when supplied to the institutions specified in the corresponding entry in column (2) of the said Table, subject to the conditions specified in the corresponding entry in column (4) of the said Table.

For details visit: <http://www.cbec.gov.in/excise/cx-act/notfns-2k7/ce16-2k7.pdf>

Case Laws

➔ **Goods Transport Service – Waiver of Pre-deposit – Held that:-** The services have very clear nexus with the manufacturing activity and are specifically covered by the definition of ‘input services’ at Rule 2 (1) of CENVAT Credit Rules, 2004 - Relying upon *Ramala Sahkari Chini Mills Ltd. Vs CCE Meerut [2010 (11) TMI 34 - SUPREME COURT OF INDIA]* - Inputs are tangible goods and input services are intangible and therefore the degree of nexus that can be proved for inputs will be on a different footing as compared to input services - the inclusive portion of the definition in Rule 2(1) that input services of the nature are of a kind specified in the inclusive part of the definition.

The goods are sold by the applicant at the premises of the customers and they paid excise duty on the value inclusive of freight - the Tribunal had allowed credit on GTA services for outward transportation of goods from the factory to the buyers premises and the arrangement of selling the goods continued to be the same for the present period also and there has been no change in law either – waiver of pre-deposit of dues granted – Stay granted.

Reference: Inox Air Products Ltd. Versus Commissioner of Central Excise Chennai-I - 2013 (10) TMI 797 - CESTAT CHENNAI - Central Excise

➔ **Scope of Notification No. 28/2010 exempting education cess to the goods falling in Tenth Schedule of Finance Act, 2010 Exemption post levy of Clean Energy Cess - Waiver of Pre-deposit - Revenue was of the view that Cess is leviable as a percentage of Excise duty and the exemption notifications issued are not applicable to the Cess leviable as a percentage of Central Excise duty Held that - Education Cess is leviable under Sections 91 93 of the Finance Act, 1994 - All the goods specified in the Tenth Schedule of Finance Act, 2010.**

Reference: M/s Singareni Collieries Company Limited Versus Commissioner of Central Excise, Hyderabad II - 2013 (10) TMI 1040 - CESTAT BANGALORE - Central Excise

➔ Cenvat Credit – Waiver of Pre-deposit - bagasse’ is generated as waste in the course of manufacture of sugar - Revenue is of the view that the applicant had not maintained separate record regarding inputs, therefore, the applicants are liable to pay 5% / 10% of the price of ‘bagasse’ which was cleared without payment of duty – Held that:- Following Balrampur Chini Mills Ltd. vs. Union of India & others [2013 (6) TMI 116 - HIGH COURT OF ALLAHABAD] - ‘bagasse’ emerges in course of crushing of sugarcane which is necessary to extract cane sugar juice which in turn is processed for production of sugar and molasses - Bagasse is the waste product left after the crushing of sugarcane - the order is set aside after waiving the pre-deposit of dues and the appeal is allowed – Stay granted.

M/s DELTA SUGARS LTD VERSUS CCE, GUNTUR [2013 (10) TMI 796 - CESTAT BANGALORE - CENTRAL EXCISE]

➔ Bogus Invoices – CENVAT Credit - Penalty under Rule 15 and 26 of the Cenvat Credit Rules – Waiver of Pre-deposit - Held that:- Prima facie when the appellant claim to have purchased the CR Strips from M/s. Ayushi Steel who claim to have purchased these goods from M/s. Pasondia Steel and on investigation in respect of M/s. Pasondia Steel, it had been found that during the period of dispute, there was no manufacturing activity in their factory and only bogus invoices had been issued to a number of dealer including M/s. Steel - Prima facie the invoices issued by the appellant were bogus invoices - Following V. K. ENTERPRISES Versus COMMISSIONER OF C. EX., PANCHKULA [2009 (9) TMI 362 - CESTAT, NEW DELHI] - even during period prior to 01.03.07 penalty would be imposable on such persons under Rule 25(1) (d), as the person who purports to have sold the goods, cannot say that he was not a person concerned with selling of the goods and merely issued invoices or that he did not contravene any provision relating to evasion of duty - this is not case for total waiver - The appellant are directed to deposit an amount of Rs. 20,000 – upon such submission rest of the duty to be waived till the disposal – Partial stay granted.

M/s. Nidhi Enterprises Versus C. C. E. & S. T. Ltu Delhi [2013 (10) TMI 795 - CESTAT NEW DELHI - Central Excise]

➔ CENVAT Credit – Waiver of Pre-deposit - Whether the appellant is eligible for CENVAT credit of central excise duty paid on M.S. Angles, Channels etc. used for supporting structures of Machineries/equipments in their factory – Held that:- The issue is contentious and at the same time it cannot be said that a case has been made out for a total waiver - the appellant is directed to deposit 50% of the total CENVAT credit demanded – upon submission of the same there shall be waiver of pre-deposit of balance dues and stay against recovery during the pendency of appeals – Partial stay granted.

M/s. Concast Ferro Inc. Versus The Commissioner of Central Excise Visakhapatnam I [2013 (10) TMI 793 - CESTAT BANGALORE - Central Excise]

➔ CENVAT Credit on Input Services – nexus of input services with manufacturing - Waiver of Pre-deposit – Held that:- The demand is confirmed on a ground different from what was proposed in the SCN - during the relevant time there was no stipulation that the services cannot be assigned or transferred to any one factory for payment of duty on final products - there was no distribution but it was only transfer and that was the reason why the applicant was not registered as input service distributor – At any rate, this was not a ground in the Show Cause Notice - The inclusive part of the definition of input services that many services of same nature as the impugned services are specifically included - brand promotion is on the same footing as sales promotion - it is to be kept in mind that services being intangible the standard for proving nexus cannot be same as that in the case of inputs which are tangible - It is this aspect which comes out from the inclusive part of the definition - waiver of pre-deposit of dues granted during pendency of the appeals – Stay granted.

Amrutanjan Health Care Ltd. Versus Commissioner of Central Excise, Chennai-II [2013 (10) TMI 792 - CESTAT CHENNAI - Central Excise]

SERVICE TAX

Highlights

➔ As per Notification No. 14/2013-Service Tax, dated: 22nd October, 2013 Central Government amends *Notification No.25/2012-Service Tax, dated the 20th June, 2012.*

In the said notification, in the opening paragraph, after entry 19, the following entry shall be inserted, namely: “19A. Services provided in relation to serving of food or beverages by a canteen maintained in a factory covered under the Factories Act, 1948 (63 of 1948), having the facility of air-conditioning or central air-heating at any time during the year.”

Case Laws

➔ Valuation - Maintenance and repair service - demand in respect of 70% of the total value of ‘maintenance and repair service’ on which VAT has been paid - Whether deemed sale can be considered as sale or not for the purpose of levy of service tax - Held that:- The decision of the commissioner to collect service tax on the value on which the assessee had already paid State Vat was contrary to the principal of fiscal federalism adopted in the constitution. Thus the demand is not sustainable - Following decision of Sobha Developers Ltd. Versus Commissioner of Central Excise and Service Tax, Bangalore [2009 (9) TMI 342 - CESTAT, BANGALORE] - stay granted. *M/s. N. A. Enterprises Versus CCE&ST, Mysore [2013 (10) TMI 818 - CESTAT BANGALORE - Service Tax]*

➔ Demand - Service tax on construction of residential complexes - Held that:- Prima facie, it appears that applicant has discharged

full liability in respect of the Majestic Orchard Project. Therefore, we take a slightly lenient view in the matter of pre-deposit required in the case of Le Orchard and we order the applicant to make a pre-deposit of Rs.30,00,000 within 6 weeks and report compliance by 13.9.2013. Upon such deposit, pre-deposit of balance dues arising from the impugned order is waived. - stay granted partly.

Ben Foundations Pvt. Ltd. Versus Commissioner of Service Tax, Chennai [2013 (10) TMI 816 - CESTAT CHENNAI - Service Tax]

➤ Residential Complex - Section 65(91a) – whether Construction of Complex Service is chargeable to service tax – Held that:- The houses that were constructed should be considered to be in the personal use of the State Government – relying upon the judgement of *Khurana Engineering Ltd. Vs CCE, Ahmedabad – (2010 (11) TMI 81 - CESTAT, AHMEDABAD)*- the houses constructed are owned by the State Government and were allotted to police personnel by the Government - The Police Housing Corporation appears to have worked as an extended arm of the Government - Following decision of *S KADIRVEL VERSUS COMMISSIONER OF CENTRAL EXCISE, SERVICE TAX, TIRUCHIRAPALLI [2013 (8) TMI 262 - CESTAT CHENNAI]*, stay granted.

Sh. D. H. Patel and Sh. R. N. Dobariya Versus CCE & ST, Surat [2013 (10) TMI 815 - CESTAT AHMEDABAD - Service Tax]

➤ Waiver of pre-deposit - service tax on advance received from foreign customers - denial of cenvat credit for non-maintenance of separate accounts - Rule 6(3) of CCR - Held that:- it appropriate to grant waiver of pre-deposit and stay all further proceedings for realization of the adjudicated liability, on condition that the petitioner deposits Rs.30 lakhs, to the credit of Revenue within six weeks from today and reports compliance by 25.9.2013. - stay granted partly.

Mercer Consulting (India) Pvt. Ltd. Versus C. S. T. (Adjudication), New Delhi

[2013 (10) TMI 813 - CESTAT NEW DELHI - Service Tax]

➤ Extension of operation of the orders - Section 35F and 35C - Held that:- there is no specific provision authorising grant of stay of realisation of the adjudicated liability. However the power to grant of stay pending the hearing of an appeal being an inherent power of an appellate forum/quasi judicial forum, such power is exercised as integral to the appellate jurisdiction. It is this exercise of the power to grant of stay that is the subject matter of the sunset clause in the proviso to Sub Section (2A) of Section 35C. The sunset clause does not apply to grant of waiver of pre-deposit, an exercise conditioned by the provisions of Section 35F - orders of the Tribunal in the stay application in the two appeals, notwithstanding the observations that the grant of waiver shall operate during the pendency of the appeal - stay to continue till disposal of appeal.

Shyam Kumar & Co. Pvt. Ltd. Versus CCE & ST, Noida [2013 (10) TMI 811 - CESTAT NEW DELHI - Service Tax]

SEBI

Highlights

➤ Facilitating transaction in Mutual Fund schemes through the Stock Exchange Infrastructure

SEBI vide circular SEBI /IMD / CIR No.11/183204/ 2009 dated November 13, 2009 and circular CIR/IMD/DF/17/2010 dated November 9, 2010, on captioned subject, facilitate purchasing and redeeming the permitted units of mutual fund schemes through stock exchange infrastructure. However, this facility was available for stock brokers and clearing members.

As per Circular No CIR/MRD/DSA/32/2013 dated: October 04, 2013 it has been decided to allow mutual fund distributors also to use recognized stock exchanges infrastructure to purchases and redeem mutual fund units directly from Mutual Fund/Assets Management Companies on behalf of their clients. For the aforesaid purpose, only a mutual fund Distributor registered with Association of Mutual Funds in India (AMFI) and who has been permitted by the concerned recognized stock exchange, (MF distributor) shall eligible to use recognized stock exchanges' infrastructure to purchases and redeem mutual fund units directly from Mutual Fund/Assets Management Companies.

➤ Know Your Client Requirements

SEBI circular No. CIR/MIRSD/ 09 /2012 dated August 13, 2012, advising that Aadhaar Letter issued by UIDAI would be admissible as Proof of Address in addition to it being recognized as Proof of Identity.

As per Circular CIR/MIRSD/ 09/ 2013, dated: October 8, 2013 in consultation with Unique Identification Authority of India (UIDAI) and the market participants, it has now been decided to accept e-KYC service launched by UIDAI also, as a valid process for KYC verification. The information containing relevant client details and photograph made available from UIDAI as a result of e-KYC process shall be treated as sufficient proof of Identity and Address of the client. However, the client shall have to authorize the intermediary to access his data through UIDAI system.

➤ Gold Exchange Traded Fund Scheme (Gold ETFs) and Gold Deposit Scheme (GDS) of Banks

Circular No. CIR/IMD/DF/16/2013, dated: October 18, 2013 modifies Para 2 (c) of SEBI circular no. CIR/IMD/DF/04/2013 dated February 15, 2013 that Gold certificates issued by Banks in respect of investments made by Gold ETFs in GDS can be held by mutual funds in dematerialized or physical form also.

➤ Formats under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011(Regulations)

The formats for the reports/disclosures to be filed under the Regulations have been prescribed by SEBI vide circular No SEBI/CFD/DCR/SAST/ 1/2011/09/23 dated September 23, 2011 and SEBI/

CFD/DCR/SAST/ 2/2011/10/20 dated October 20, 2011. In order to ensure that adequate disclosures are made to help investors in taking an informed decision, it has been decided to modify the formats for disclosures under regulation 29 (1), 29 (2) and 31 of the Regulations vide Circular No. CIR/CFD/POLICYCELL/11/2013, dated: October 21, 2013.

For details visit: <http://www.sebi.gov.in/sebiweb/home/list/1/7/0/0/Circulars>

➤ Listing of specified securities of small and medium enterprises on the Institutional Trading Platform in a SME Exchange without making an initial public offer

It has been decided to permit listing without an Initial Public Offer and trading of specified securities of small and medium enterprises (SMEs) including start-up companies on Institutional Trading Platform (ITP) in SME Exchanges vide Circular No. CIR/MRD/DSA/33/2013, dated: October 24, 2013.

➤ Standardization and Simplification of Procedures for Transmission of Securities

With a view to make the transmission process more efficient and investor friendly, it has been decided in consultation with Registrars Association of India (RAIN) and the depositories, that Share Transfer Agents (STAs) / issuer companies and the depositories shall adhere to the following guidelines, as applicable to them vide Circular No. CIR/MIRSD/10/2013, dated: October 28, 2013:

I. In case of transmission of securities in dematerialized mode, where the securities are held in a single name without a nominee, the existing threshold limit of Rs. 1, 00,000 (Rupees One lakh only) per beneficiary owner account has now been revised to Rs. 5, 00,000 (Rupees Five lakh only).

II. In case of transmission of securities held in physical mode:

a. where the securities are held in single name with a nominee, STAs/issuer companies shall follow the standardized documentary requirement as given in Annexure A.

b. where the securities are held in single name without a nominee, the STAs/issuer companies shall follow, in the normal course, the simplified documentation as given in Annexure A, for a threshold limit of ` 2,00,000 (Rupees Two lakh only) per issuer company.

III. The timeline for processing the transmission requests for securities held in dematerialized mode and physical mode shall be 7 days and 21 days respectively, after receipt of the prescribed documents.

➤ Disclosure of Investor Complaints on websites of Stock Exchanges

SEBI Circular No. MRD/DoP/SE/Cir-10/2009 dated September 03,

2009 prescribes the formats for disclosing the details of complaints lodged by clients/investors against stock brokers on the website of stock exchanges. The 'Report 1C' prescribes the format for disclosure of redressal of complaints lodged by clients against stock brokers during the financial year.

In order to bring more transparency in the disclosure of complaint redressal status of the stock brokers on the website of stock exchange, in consultation with the stock exchanges and the associations of stock brokers, it has been decided to modify the format by including following information vide Circular No. CIR/MIRSD/11/2013 October 28, 2013:

a. Number of active clients of each stock broker. "Active client" means the client who has traded at least once in the last year.

b. Percentage of number of complaints received as against number of active clients of the stock broker (to be calculated by dividing the number of complaints received against stock broker with number of active clients)

c. Percentage of complaints resolved as against complaints received by the stock broker (to be calculated by dividing number of total complaints redressed with number of complaints received against stock broker)

The stock exchanges shall also disclose separately in a prominent manner (i) total number of complaints received against all the stock brokers of the Exchange, number of their active clients and its percentage and (ii) overall market redressal rate by dividing total number of complaints redressed with total number of complaints received against all stock brokers of the Exchange.

➤ Issues pertaining to primary issuance of debt securities

Based on the suggestions received from issuers and various other market participants regarding the issues concerning development of Corporate Bond Market it has been decided to implement the following measures vide Circular No. CIR/IMD/DF/18/2013, dated: October 29, 2013

• Disclosure of Cash Flows

It has been decided that the cash flows emanating from the debt securities shall be mentioned in the Prospectus/Disclosure Document, by way of an illustration. Further it has also been decided that if the coupon payment date of the debt securities, falls on a Sunday or a holiday the coupon payment shall be made on the next working day. If the maturity date of the debt securities, falls on a Sunday or a holiday, the redemption proceeds shall be paid on the previous working day.

• Withdrawal of requirement to upload bids on date-time priority

It has been decided that the allotment in the public issue of debt securities should be made on the basis of date of upload of each application into the electronic book of the stock exchange. However, on the date of oversubscription, the allotments should be made to the applicants on proportionate basis.

• **Disclosure of unaudited financials with limited review report**
Listed issuers (who have already listed their equity shares or debentures) who are in compliance with the listing agreement, may disclose unaudited financials with limited review report in the offer document, as filed with the stock exchanges in accordance with the listing agreement, instead of audited financials, for the stub period, subject to making necessary disclosures in this regard in offer document including risk factors.

• **Disclosure of contact details of Debenture Trustees in Annual Report**

It has been decided to amend the Listing Agreement for Debt Securities (as specified in Annexure B) by inserting a clause stating that the companies, which have listed their debt securities, shall disclose the name of the debenture trustees with contact details in their annual report and as ongoing basis, on their website, to enable the investors to forward their grievances to the debenture trustees.

For more details visit:

<http://www.sebi.gov.in/sebiweb/home/list/1/7/0/0/Circulars>

FOREIGN EXCHANGE MANAGEMENT ACT

Highlights

➔ The following notification has been published regarding Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Sixteenth Amendment):

• **FEMA - FEMA - 292/2013-RB - 04-10-2013**

Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Sixteenth Amendment) Regulations, 2013.

• **FEMA - FEMA - 290/2013-RB - 04-10-2013**

Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Fourteenth Amendment) Regulations, 2013.

• **FEMA - FEMA - 289/2013-RB - 04-10-2013**

Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Thirteenth Amendment) Regulations, 2013.

FOREIGN TRADE POLICY

Highlights

➔ **Amendment in Notification No 22(RE-2012)/2009-14 dated 18th June, 2013 relating to export of edible oil**

As per Notification No. 45 (RE – 2013)/2009-2014, dated: 9th

October, 2013 MEP on export of edible oils in branded consumer packs of upto 5 Kgs has been reduced to USD 1400 per MT. Earlier it was USD 1500 per MT.

➔ **Import of new motorcycles from Bangladesh through Land Customs Stations (LCSs) across Indo-Bangladesh Border**

In addition to the existing 12 Ports / ICDs, 2 more LCSs (Bena-pole/Petrapole & Agartala) across Indo-Bangladesh Border are permitted for importing new motorcycles vide Notification No 46 (RE – 2013)/2009-2014, dated: 23 October, 2013.

➔ **Relaxation in export policy for export of Red Sanders wood**

As per Notification No. 47 (RE- 2013)/2009-2014, dated the 24 October, 2013 prohibition on export of Red Sanders wood in log form has been relaxed for export of 9784.1363 MT of Red Sanders wood in log form through Government of Andhra Pradesh & Directorate of Revenue Intelligence (DRI).

➔ **Procedure for closure of cases of default in Export Obligation under Public Notice No.22 dated 12.08.13**

Policy Circular No. 8 /2009-2014 (RE 2013), dated: 25.10.2013 provides procedure for closure of cases of default in Export Obligation under Public Notice No.22 dated 12.08.13.

VALUE ADDED TAX

Highlights

➔ As per Notification No.VAT - Delhi - DVAT - F. 7(400)/Policy/VAT/2011/PF/864-877 dated: 01-10-2013 Dena Bank and Bank of Maharashtra are denotified for collections of VAT/CST dues from the dealers with effect from 15th October, 2013.

SPECIAL ECONOMIC ZONE

Highlights

➔ Setting up of a sector specific Special Economic Zone for engineering and related industries (formerly, light engineering including automotive/automotive components) at Kalwara, Bhamboriya, Bagru Khurd and Jhai village, tehsil- Sanganer, District Jaipur, Rajasthan vide Notification No. SEZ - SEZ - S.O. 3253(E) - 23-10-2013.

➔ Notification No. SEZ - SEZ - S.O. 3059(E) - 04-10-2013 provides setting up of a multi product Special Economic Zone at Jamnagar in the State of Gujarat.

➔ Circular No. 78 dated: 21-10-2013 grants permission regarding sub-contracting by a SEZ Unit to a DTA Unit.

SPECIAL FOCUS ON SERVICE TAX



SERVICE TAX

Voluntary Compliance Encouragement Scheme

VCES – 2013

THE FINANCE ACT, 2013 (17 OF 2013)
CHAPTER VI

SERVICE TAX VOLUNTARY COMPLIANCE ENCOURAGEMENT SCHEME, 2013

Short title

104. This Scheme may be called the Service Tax Voluntary Compliance Encouragement Scheme, 2013.

Definitions

105. (1) In this Scheme, unless the context otherwise requires, -

- (a) "Chapter" means Chapter V of the Finance Act, 1994;
- (b) "declarant" means any person who makes a declaration under sub-section (1) of section 107;
- (c) "designated authority" means an officer not below the rank of Assistant Commissioner of Central Excise as notified by the Commissioner of Central Excise for the purposes of this Scheme;
- (d) "Prescribed" means prescribed by rules made under this Scheme;
- (e) "tax dues" means the service tax due or payable under the Chapter or any other amount due or payable under section 73A thereof, for the period beginning from the 1st day of October, 2007 and ending on the 31st day of December, 2012 including a cess leviable thereon under any other Act for the time being in force, but not paid as on the 1st day of March, 2013.

(2) Words and expressions used herein and not defined but defined in the Chapter or the rules made there under shall have the meaning respectively assigned to them in the Chapter or the rules made there under.

Person who may make declaration of tax dues

106. (1) Any person may declare his tax dues in respect of which no notice or an order of determination under section 72 or section 73 or section 73A of the Chapter has been issued or made before the

1st day of March, 2013:

Provided that any person who has furnished return under section 70 of the Chapter and disclosed his true liability, but has not paid the disclosed amount of service tax or any part thereof, shall not be eligible to make declaration for the period covered by the said return.

Provided further that where a notice or an order of determination has been issued to a person in respect of any period on any issue, no declaration shall be made of his tax dues on the same issue for any subsequent period.

(2) Where a declaration has been made by a person against whom, -
(a) an inquiry or investigation in respect of a service tax not levied or not paid or short-levied or short-paid has been initiated by way of -

- (i) search of premises under section 82 of the Chapter; or
- (ii) issuance of summons under section 14 of the Central Excise Act, 1944, as made applicable to the Chapter under section 83 thereof; or
- (iii) requiring production of accounts, documents or other evidence under the Chapter or the rules made there under ; or

(b) an audit has been initiated,

And such inquiry, investigation or audit is pending as on the 1st day of March, 2013, then, the designated authority shall, by an order, and for reasons to be recorded in writing, reject such declaration.

Immunity from penalty, interest and other proceeding

108. (1) Notwithstanding anything contained in any provision of the Chapter, the declarant, upon payment of the tax dues declared by him under sub-section (1) or section 107 and the interest payable under the proviso to sub-section (4) thereof, shall get immunity

Procedure for making declaration a payment of tax dues

107 (1) Subject to the provisions of this Scheme, a person may make a declaration to the designated authority on or before the 31st day of December, 2013 in such form and in such manner as may be prescribed

(2) The designated authority shall acknowledge the declaration in such form and in such manner as may be prescribed

(3) The declarant shall, on or before the 31st day of December, 2013, pay not less than fifty per cent, of the tax dues so declared under sub-section (1) and submit proof of such payment to the designated authority.

(4) The tax dues or part there of remaining to be paid after the payment made under sub-section (3) shall be paid by the declarant on or before the 30th day of June, 2014:

Provided that where the declarant fails to pay said tax dues or part thereof on or before the said date, he shall pay the same on or before the 31st day of December, 2014 along with interest thereon, at such rate as is fixed under section 75 or, as the case may be, section 73B of the Chapter for the period of delay starting from the 1st day of July, 2014.

(5) Notwithstanding anything contained in sub-section (3) and sub-section (4), any service tax which becomes due or payable by the declarant for the month of January, 2013 and subsequent months shall be paid by him in accordance with the provisions of the Chapter and accordingly, interest for delay in payment thereof, shall also be payable under the Chapter.

(6) The declarant shall furnish to the designated authority details of payment made from time to time under this Scheme along with a copy of acknowledgement issued to him under sub-section (2).

(7) On furnishing the details of full payment of declared tax dues and the interest, if any, payable under the proviso to sub-section (4), the designated authority shall issue an acknowledgement of discharge of such dues to the declarant in such form and in such manner as may be prescribed.

from penalty, interest or any other proceeding under the Chapter.

(2) Subject to the provisions of section 111, a declaration made under sub-section (1) of section 107 shall become conclusive upon issuance of acknowledgement of discharge under sub-section (7) of section 107 and no matter shall be reopened thereafter in any proceedings under the Chapter before any authority or court relating to the period covered by such declaration.

No refund of amount paid under the Scheme

109. Any amount paid in pursuance of a declaration made under sub-section (1) of section 107 shall not be refundable under any

circumstances.

Tax dues declared but not paid

110. Where the declarant fails to pay the tax dues, either fully or in part, as declared by him, such dues along with interest thereon shall be recovered under the provisions of section 87 of the Chapter.

Failure to make true declaration

111. (1) Where the Commissioner of Central Excise has reasons to believe that the declaration made by a declarant under this Scheme was substantially false, he may, for reasons to be recorded in writing, serve notice on the declarant in respect of such declaration requiring him to show cause why he should not pay the tax dues not paid or short-paid.

(2) No action shall be taken under sub-section (1) after the expiry of one year from the date of declaration.

(3) The show cause notice issued under sub-section (1) shall be deemed to have been issued under section 73, or as the case may be, under section 73A of the Chapter and the provisions of the Chapter shall accordingly apply.

Removal of doubts

112. For the removal of doubts, it is hereby declared that nothing contained in this Scheme shall be construed as conferring any benefit, concession or immunity on the declarant other than the benefit, concession or immunity granted under section 108.

Power to remove difficulties

113. (1) If any difficulty arises in giving effect to the provisions of this Scheme, the Central Government may, by order, not inconsistent with the provisions of this Scheme, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date on which the provisions of this Scheme come into force.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

Power to make rules

114. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Scheme.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

- (a) the form and the manner in which a declaration may be made under subsection (1) of section 107;
- (b) the form and the manner of acknowledging the declaration under sub-section (2) of section 107;
- (c) the form and the manner of issuing the acknowledgement of discharge of tax dues under sub-section (7) of section 107;
- (d) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

(3) The Central Government shall cause every rule made under this Scheme to be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both

Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Service Tax Voluntary Compliance

Encouragement Rules, 2013

[Notification No. 10/2013 – ST dated 13/5/2013]

G. S. R..... (E). – In exercise of the powers conferred by sub-sections (1) and (2) of section 114 of the Finance Act, 2013 (17 of 2013), the Central Government hereby makes the following rules regarding the form and manner of declaration, form and manner of acknowledgement of declaration, manner of payment of tax dues and form and manner of issuing acknowledgement of discharge of tax dues under the Service Tax Voluntary Compliance Encouragement Scheme, 2013, namely: -

1. Short title and commencement-

- (1) These rules may be called the Service Tax Voluntary Compliance Encouragement Rules, 2013.
- (2) They shall come into force on the date of its publication in the Gazette of India.

2. Definitions. –

- (1) In these rules, unless the context otherwise requires, -
 - a) “Act” means the Finance Act, 2013;
 - b) “Form” means the Forms annexed to these rules.
 - c) “Scheme” means the Service Tax Voluntary Compliance Encouragement Scheme, 2013 as specified in the Act;
- (2) Words and expressions used but not defined in these rules but defined in the Scheme shall have the meanings respectively assigned to them in the Scheme.

3. Registration. – Any person, who wishes to make a declaration under the Scheme, shall, if not already registered, take registration under rule 4 of the Service Tax Rules, 1994.

4. Form of declaration. – The declaration under sub-section (1) of section 107 of the Act, in respect of tax dues under the Scheme

shall be made in Form VCES-1.

5. Form of acknowledgement of declaration. –

The designated authority on receipt of declaration shall issue an acknowledgement thereof, in Form VCES-2, within a period of seven working days from the date of receipt of the declaration.

6. Payment of tax dues. –

- (1) The tax dues payable under the Scheme along with interest, if any, under section 107 of the Act shall be paid to the credit of the Central Government in the manner prescribed for the payment of service tax under the Service Tax Rules, 1994.
- (2) The CENVAT credit shall not be utilized for payment of tax dues under the Scheme.

7. Form of acknowledgement of discharge. –

- (1) The designated authority shall issue an acknowledgement of discharge under sub-section (7) of section 107 of the Act, in Form VCES-3.
- (2) The acknowledgement of discharge shall be issued within a period of seven working days from the date of furnishing of details of payment of tax dues in full along with interest, if any, by the declarant.

Source:

Central Board of Excise & Customs
Department of Revenue
Ministry of Finance
Government of India

For the “Forms” and “Frequently Asked Questions”, please visit our website: www.icmai.in.



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