the CMA e-BULLETIN

THE INSTITUTE OF COST ACCOUNTANTS OF INDIA
(Statutory body under an Act of Parliament)

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EDITORIAL

Big relief for migrant workers and those with transferable jobs

IN a relief to thousands of migrant workers and employees with transferable jobs, the Reserve Bank of India has said that a bank account can be opened with just one address proof, which can be either permanent or local.

The banks, if they need to check the address, can do so from a variety of sources including a receipt of a registered letter to even a "telephonic conversation". The relief makes the dream of walking into a bank and opening an account with just personal identification a reality for even the poorest of the citizens. Recently, the RBI had allowed minors of ten years and above to open full fledged bank accounts in their name independently.

"Henceforth, customers may submit only one documentary proof of address (either current or permanent) while opening a bank account or while undergoing periodic updation," the RBI said. Till now, banks used to insist on address proof of the place where the customer is residing.

With the new Indian government showing signs of economic reforms and brings in transparency in governance, the World Bank feels that the world's third-largest economy could achieve a growth rate of 5.5 per cent this year compared with 4.7 per cent last year.

"I think there is, overall a sense that recognition of the need for domestic solutions to policies is increasingly evident in India, as well," World Bank economist Andrew Burns told reporters during a conference recently.

Burns, lead author of the World Bank global economic outlook and the head of the team in the Macro Group, said: "The situation in India has obviously gone through a difficult period for the last couple of years, with growth below 5 per cent after several years after it was eight and even higher. Much of that has been a reflection of this process of being overheated and over-inflated, and a natural slowing of the economy. But there has also been a concern that the domestic reform process had lost momentum."

We are pleased to release this issue of the second volume of the CMA e-Bulletin for our readers and we hope you enjoy reading this issue. We look forward to your valuable suggestions and comments which will help us improve this publication.

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CONTENTS

DIRECTORATE OF RESEARCH, INNOVATION & JOURNAL

THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

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Behind every successful business decision, there is always a CMA

INDIAN ECONOMY

News

➲ RBI to offer first ever term reverse repo auction on June 2

The RBI on Friday announced its first-ever term reverse repo auction to drain excess cash from the banking system, which traders attributed to bunched-up government spending after elections.

Source: Reuters, 30 May 2014

➲ India's forex reserves fall to $312.66 bln as of May 23 - RBI

India's foreign exchange reserves fell to $312.66 billion as of May 23 compared with $314.93 billion in the week earlier, the Reserve Bank of India said on 30 May 2014.

Source: Reuters, 30 May 2014

➲ RBI to keep rates on hold despite sluggish economy: Reuters Poll

The Reserve Bank of India (RBI) is likely to keep monetary policy steady in June despite sluggish economic activity as inflation remains elevated, a Reuters poll showed on 28 May 2014.

Source: Reuters, 29 May 2014

➲ Reserve Bank to keep rates on hold, Jan-March GDP to confirm economy remains sluggish: Reuters Poll

The Reserve Bank of India (RBI) is likely to keep monetary policy steady in June despite sluggish economic activity as inflation remains elevated, a Reuters poll showed on 28 May 2014.

Source: Reuters, 28 May 2014

➲ RBI's goal is to balance growth, inflation - Rajan

Reserve Bank of India Governor Raghuram Rajan said on Tuesday fighting inflation would continue to be a top priority, although the central bank will also aim to strike a balance between promoting economic growth and containing inflation.

Source: Reuters, 27 May 2014

➲ April WPI inflation eases, but monsoon risk may spark higher prices

Wholesale inflation eased in April helped by a moderation in food prices, but the threat of a below-average monsoon in coming months will fan price pressures that will compound challenges for an incoming government.

Source: Reuters, 15 May 2014

➲ India needs to bring down inflation for sustainable growth - Rajan

Reserve Bank of India Governor Raghuram Rajan said the country's inflation needs to come down in order to achieve sustainable growth, reiterating a stance he has held since he took charge at the bank.

Source: Reuters, 09 May 2014

➲ RBI simplifies rules for rescheduling external commercial borrowings

The Reserve Bank of India said it will allow banks to reschedule loans raised by companies through External Commercial Borrowings (ECBs) effective immediately.

Source: Reuters, 09 May 2014

➲ April trade gap narrows as gold imports plummet

India's trade deficit narrowed in April due to a sharp fall in gold imports and an uptick in exports, easing pressure on the current account balance, government data showed on 9th May 2014.

Source: Reuters, 09 May 2014

➲ Forex reserves rise to $311.86 billion as of May 2 - RBI

India's foreign exchange reserves rose to $311.86 billion as of May 2 compared with $309.91 billion in the week earlier, the Reserve Bank of India (RBI) said on 9th May 2014.

Source: Reuters, 09 May 2014

➲ Rising bad loans threaten India's gradual economic recovery - OECD

India's economy will likely make a gradual recovery this year, helped by a rebound in capital investments as well as a pick-up in private consumption, but rising bad loans at its banks threaten to choke the recovery, the OECD said on 6th May 2014.

Source: Reuters, 06 May 2014

BANKING

Notifications/Circulars

➲ Interest Tax Act 1974 – Collection from borrowers

It is observed from the Supreme Court Order dated February 21, 2014 in Writ Petition (Civil) No.301 of 2005 that credit institutions which were in existence between October 1991 and March 1997 but were merged with another bank /financial institution prior to the date of the Supreme Court Order in April 2004 or merged subsequently, the transferee banks are liable to contribute to the extent of Rs.50 lakhs each as also deposit the excess amount collected by way of rounding off the interest tax on the interest income on loans and advances by the transferor banks, to the Trust Fund.

Source: Circular RBI/2013-14/579, dated May 05, 2014

➲ Levy of Penal Charges on Non-Maintenance of Minimum Balances in Inoperative Accounts

As per Circular no. RBI/2013-14/592, dated: May 15, 2014 banks will not be permitted to levy penal charges for non-maintenance of minimum balances in any inoperative account.

➲ Opening of Bank Accounts in the Names of Minors

A savings /fixed / recurring bank deposit account can be opened by a minor of any age through his/her natural or legally appointed guardian. Minors above the age of 10 years may be allowed to open and operate savings bank accounts independently, if they so desire. Banks may, however, keeping in view their risk management systems, fix limits in terms of age and amount up to which minors may be allowed to operate their deposit accounts independently. They can also decide, in their own discretion, as to what minimum documents are required for opening of accounts by minors. On attaining majority, the erstwhile minor should confirm the balance in his/her account and if the account is operated by the natural guardian / legal guardian, fresh operating instructions and specimen signature of erstwhile minor should be obtained and kept on record for all operational purposes. UCBs are free to offer additional banking facilities like internet banking, ATM/ debit card, cheque book.

Source: RBI/2013-14/587, May 12, 2014

➲ Advance against Pledge of Gold/ Silver Ornaments

As a prudential measure, it has now been decided to prescribe a Loan to Value (LTV) Ratio of not exceeding 75 per cent for UCBs' lending against gold jewellery (including bullet repayment loans against pledge of gold jewellery). Therefore, henceforth loans sanctioned by UCBs should not exceed 75 per cent of the value of gold ornaments and jewellery. In order to standardize the valuation and make it more transparent to the borrower, it has been decided that gold jewellery accepted as security/collateral will have to be valued at the average of the closing price of 22 carat gold for the preceding 30 days as quoted by the India Bullion and Jewellers Association Ltd. [Formerly known as the Bombay Bullion Association Ltd. (BBA)]. If the gold is of purity less than 22 carats, the bank should translate the collateral into 22 carat and value the exact grams of the collateral. In other words, jewellery of lower purity of gold shall be valued proportionately.

Source: RBI/2013-14/586, dated: May 9, 2014

➲ Customer Service in Regional Rural Banks

Reserve Bank, as the regulator of Regional Rural Banks (RRBs), has been actively engaged from the very beginning in the review, examination and evaluation of customer service in RRBs by means of various guidelines issued from time to time to the RRBs. On review it is felt necessary to issue additional instructions to RRBs on other areas of customer service aligning with those issued to Scheduled Commercial Banks. These guidelines would be required to be complied by RRBs in addition to instructions already issued on Customer Service from time to time.

Source: Circular No. RBI/2013-14/589, dated: May 12, 2014

➲ Issuance and Operation of Pre-paid Payment Instruments in India – Consolidated Revised Policy Guidelines

Existing provisions of Para 7.4 of Annex of Guidelines dated March 28, 2014	Revised provisions of Para 7.4 of Annex of Guidelines dated March 28, 2014
All persons authorized / approved to issue pre-paid payment instruments are permitted to cobrand such instruments with the name/logos of financial institution/Government Organization etc. for whose customers/beneficiaries such co-branded instruments are issued. The name of the issuer shall be visible prominently on the payment instrument. Banks/NBFCs/Other persons desirous of issuing such co-branded prepaid instruments may seek one time approval from Reserve Bank of India.	All persons authorized / approved to issue pre-paid payment instruments are permitted to cobrand such instruments with the name/ logos of financial institution / Government Organization etc. for whose customers/ beneficiaries such co-branded instruments are issued. The name of the issuer shall be visible prominently on the payment instrument. NBFCs/Other persons desirous of issuing such co-branded prepaid instruments may seek one time approval from Reserve Bank of India. However, banks have been granted general permission to issue rupee denominated co-branded prepaid instruments subject to the terms and conditions as mentioned in the circular RBI/2012-13/325 DBOD. No.FSD.BC. 67/24.01.019/ 2012-13 dated December 12, 2012
Source: RBI/2013-14/590, May 13 2014	

➲ Need for Bank Branches / ATMs to be made accessible to persons with disabilities –

Banks are also to take appropriate steps, including providing of ramps at the entrance of the bank branches, wherever feasible, so that the persons with disabilities/wheel chair users can enter bank branches and conduct business without difficulty. Banks are advised to report the progress made in this regard periodically to

their respective Customer Service Committee of the Board and ensure compliance. Further, it has come to our notice that some of the banks have not made at least one third of the new ATMs installed as talking ATMs with Braille keypads as advised vide circular referred to above. It is, therefore, reiterated that banks should make all new ATMs installed from July 1, 2014 as talking ATMs with Braille keypads. Banks should lay down a road map for converting all existing ATMs as talking ATMs with Braille keypads and the same may be reviewed from time to time by the Customer Service Committee of the Board.

Source: Circular No. RBI/2013-14/598, May 21, 2014

➲ Inclusion in the Second Schedule to the Reserve Bank of India Act, 1934 – Bharatiya Mahila Bank Limited

Name of "Bharatiya Mahila Bank Limited" has been included in the Second Schedule to the Reserve Bank of India Act, 1934 by Notification DBOD.BP. No.15936/21.07.002/2013-14 dated March 25, 2014, published in the Gazette of India (Part III – Section 4) dated April 12, 2014.

Source: Circular No. RBI/2013-14/599, May 21, 2014

➲ Import of Gold by Nominated Banks / Agencies / Entities

As per Circular No.133 (RBI/2013-14/600) dated: May 21, 2014, it has been decided to modify the guidelines for import of Gold by the nominated banks / agencies / entities. These revised guidelines which will come into force with immediate effect are as under:

a. Star Trading Houses / Premier Trading Houses (STH/PTH) which are registered as nominated agencies by the Director General of Foreign Trade (DGFT) may now import gold under 20:80 scheme subject to the following conditions:

The STH/PTH should have imported gold prior to the introduction of 20:80 scheme. STH / PTH should get the required verification done by the Department of Customs at any port where they have imported gold consignment in the past.

b. The first lot of gold under this scheme would be based on the highest monthly import during any of the last 24 months prior to the RBI's notification dated August 14, 2013, subject to a maximum of 2000 Kgs.

c. As in the case of other nominated agencies, the eligible quantity may be imported by STH / PTHs from any port, subject to their eligibility limit / maximum quantity allowed to them.

d. For proper compliance, before import, they must submit the import plan, port-wise and quantity-wise, to the concerned Customs office, where the verification of the figures of past performance was done. This information will be sent to all the other ports from which imports are permitted. The overall discipline of exporting 20% of each imported consignment before the next consignment is imported will be equally applicable to such STH/PTH importers.

Further, it has been decided to permit the nominated banks, to give Gold Metal Loans (GML) to domestic jewellery manufacturers out of the eligible domestic import quota of 80% to the extent of GML outstanding in their books as on March 31, 2013.

➲ CCTV Coverage of all cash handling operations in Currency Chests

In order to ensure more safety, RBI vide Circular No. RBI/2013-14/602 dated: May 23, 2014 advised banks that coverage of CCTVs surveillance should also cover all cash operations in the vaults / strong rooms and other cash handling areas to identify any mischief / irregularity and also to the Memorandum on the procedure to be followed in connection with opening of the Currency Chests issued to the banks. Further banks are also advised that Potdar from the Chest Remitting bank should accompany soiled note remittance.

➲ Levy of foreclosure charges/pre-payment penalty on Floating Rate Term Loans

As per Circular No. RBI/2013-14/582, dated: May 07, 2014, it is advised that banks will not be permitted to charge foreclosure charges/ pre-payment penalties on all floating rate term loans sanctioned to individual borrowers, with immediate effect.

➲ Investments in Market Infrastructure Companies by Primary (Urban) Cooperative Banks

On the basis of representations received from some UCBs regarding investment in shares of Market Infrastructure Companies (MICs), the following decision has been taken:

i. Investments made by UCBs for acquiring membership of MICs will be reckoned as Non-SLR investments;

ii. UCBs are allowed to exceed the limit for investments in Non-SLR/unlisted securities prescribed in Circular dated January 30, 2009, if it becomes necessary to do so for acquiring membership of MICs;

iii. The MICs eligible for such investments by UCBs are Clearing Corporation of India Ltd., National Payments Corporation of India and Society for World Wide Inter-Bank Financial Tele-Communication (SWIFT). The list of eligible MICs will be updated from time to time by the Reserve Bank of India.

Source: RBI/2013-14/583 dated: May 07, 2014

➲ External Commercial Borrowings (ECB) Policy: Re-schedulement of ECB - Simplification of procedure

As a measure of simplification of the existing procedures, it has been decided to delegate the power to the designated AD Category – I bank to allow re-schedulement of ECB due to changes in drawdown schedule and / or repayment schedule with the following conditions:

i.Changes, if any, in all-in-cost (AIC) is only on account of the change in average maturity period (AMP) due to re-schedulement

of ECB and post re-schedulement, the AIC and the AMP are in conformity with applicable guidelines. There should not be any increase in the rate of interest and no additional cost (in foreign currency / Indian Rupees) should be involved.

ii.The re-schedulement is allowed only once, before the maturity of the ECB.

iii.If the lender is an overseas branch of a domestic bank, the prudential norms applicable on account of re-schedulement should be complied with.

iv.The changes on account of re-schedulement should be reported to DSIM through revised Form 83.

v.The ECB should be in compliance with all applicable guidelines related to eligible borrower, recognized lender, AIC, AMP, end-uses, etc.

vi.The borrower should not be in the default / caution list of RBI and should not be under the investigation of Directorate of Enforcement.

Source: Circular No. 128 (RBI/2013-14/584) dated: May 09, 2014

➲ External Commercial Borrowings (ECB) Policy - Refinance / Repayment of Rupee loans raised from domestic banking system

As per Circular No.129 (RBI/2013-14/585) dated: May 09, 2014 , it has been decided that eligible Indian companies will not be permitted to raise ECB from overseas branches / subsidiaries of Indian banks for the purpose of refinance / repayment of the Rupee loans raised from the domestic banking system in respect of the following:

a. Scheme of take-out financing: Reference A.P. (DIR Series) Circular No. 04 dated July 22, 2010.

b. Repayment of existing Rupee loans for companies in infrastructure sector: Reference A.P. (DIR Series) Circulars Nos. 25 and 111 dated September 23, 2011 and April 20, 2012 respectively.

c. Spectrum allocation: Reference A.P. (DIR Series) Circulars Nos. 28 and 54 dated January 25, 2010 and November 26, 2012 respectively.

d. Repayment of Rupee loans: Reference A.P. (DIR Series) Circulars Nos. 134, 26, 78 and 12 dated June 25, 2012, September 11, 2012, January 21, 2013 and July 15, 2013 respectively.

➲ Operations of foreign branches and subsidiaries of the Indian banks – Compliance with statutory/ regulatory/administrative prohibitions/restrictions

It is reiterated that for undertaking activities by Indian banks' branches and subsidiaries abroad which are not permitted under the Banking Regulations Act, 1949 / respective Statute of the Public Sector Banks, banks should obtain from the RBI / Government of India necessary permission under Section 6 (1) (m) or 19 (1) (c) of the Banking Regulations Act, 1949, as the case may be, for undertaking such activities.

Source: Circular RBI/2013-14/588 dated: May 12, 2014

➲ Undertaking of activity by the Urban Cooperative Banks (UCBs) as PAN Service Agent (PSA) for providing PAN issuance services to its customers by entering into tie-up with authorized Agencies

It has now been decided that Financially Sound and Well Managed UCBs, as defined in the circular ibid may act as PAN Service Agents (PSA) by entering into a tie-up with NSDL e-Governance Infrastructure Limited or with any other agency authorized by the Income Tax Department, Government of India for this purpose with prior approval of the Reserve Bank.

Source: Circular RBI/2013-14/593 dated: May 16, 2014

➲ Requirement for obtaining prior approval of RBI in cases of acquisition/ transfer of control of NBFCs

Under Section 45 IA (4)(c) of the RBI Act, 1934, a certificate of Registration can only be given to a company if the Bank is satisfied, inter alia, that the general character of the management or the proposed management of the non-banking financial company shall not be prejudicial to the public interest or the interests of its depositors.

In this connection attention is drawn to DNBS (PD) C.C.No.160/ 03.10.001/2009-10 dated September 17, 2009 requiring prior approval of the Reserve Bank in cases of acquisition/ transfer of control of NBFCs accepting deposits. In supersession of those instructions, and to enable RBI to ensure that the 'fit and proper' character of the management of NBFCs, both deposit accepting and non-deposit accepting, is continuously maintained, it has been decided as under: The prior written permission of the Reserve Bank of India shall be required for –

(i) any takeover or acquisition of control of an NBFC, whether by acquisition of shares or otherwise;

(ii) any merger/amalgamation of an NBFC with another entity or any merger/amalgamation of an entity with an NBFC that would give the acquirer / another entity control of the NBFC;

(iii) any merger/amalgamation of an NBFC with another entity or any merger/amalgamation of an entity with an NBFC which would result in acquisition/transfer of shareholding in excess of 10 percent of the paid up capital of the NBFC.

(iv) Prior written approval of the Reserve Bank would also be required before approaching the Court or Tribunal under Section 391-394 of the Companies Act, 1956 or Section 230-233 of Companies Act, 2013 seeking order for mergers or amalgamations with other companies or NBFCs.

Source: Circular RBI/2013-14/606 dated: May 26, 2014

➲ Issue of Pre-paid Payment Instruments-UCBs

Taking into account the business profile of UCBs and the nature of risks associated with Credit/ Pre-paid Card business, it has been decided that UCBs which have installed ATMs and issued ATM-cum-Debit Cards may introduce 'Semi-Closed Pre-paid Payment Instruments' permitting payment of utility bill/ essential services up to a limit of Rs.10,000/-. These payment instruments shall be redeemable at a group of clearly identified merchant locations/ establishments which enter into contracts specifically with the UCB

to accept the payment instruments. These instruments shall not permit cash withdrawal or redemption by the holder.
Source: RBI/2013-14/607 dated: May 27, 2014

➲ Rounding off transactions to the Nearest Rupee by NBFCs

It has come to the notice of the Reserve Bank that some non-banking financial companies (NBFCs) are carrying out transactions, including payment of interest on deposits/ charging interest of advances etc., without rounding off to the nearest rupee. In order to obviate unnecessary discomfort to the public and also to align with the prevalent practice as applicable to banks, NBFCs are advised that all transactions, including payment of interest on deposits/ charging of interest on advances, should be rounded off to the nearest rupee, i.e. fractions of 50 paisa and above shall be rounded off to the next higher rupee and fractions of less than 50 paisa should be ignored. However, NBFCs should ensure that cheques/ drafts issued by clients containing fractions of a rupee should not be rejected by them.
Source: Circular RBI/2013-14/609 dated: May 27, 2014

➲ Deferred Tax Liability on Special Reserve created under Section 36(1) (viii) of the Income Tax Act, 1961-UCBs

It has been observed that some banks are not creating deferred tax liability (DTL) on Special Reserve as per Accounting Standard 22: 'Accounting for taxes on Income' (AS 22) on the ground that they do not intend to withdraw from such Reserve in the future. The matter regarding creation of DTL on Special Reserve has been examined and banks are advised that, as a matter of prudence, DTL should be created on Special Reserve.

For this purpose, banks may take the following course of action:

a) If the expenditure due to the creation of DTL on Special Reserve as at March 31, 2013 has not been fully charged to the Profit and Loss account, banks may adjust the same directly from Reserves. The amount so adjusted may be appropriately disclosed in the Notes to Accounts of the financial statements for the financial year 2013-14.

b) DTL for amounts transferred to Special Reserve from the year ended March 31, 2014 onwards should be charged to the Profit and Loss Account of that year.

In view of the requirement to create DTL on Special Reserve, banks may reckon the entire Special Reserve for the purpose of computing Tier-I Capital.
Source: RBI/2013-14/619 dated: May 30, 2014

INCOME TAX

Notifications/Circulars

➲ New return forms for companies (ITR-6) and for others (ITR-3, ITR-4 and ITR-5)

CBDT substitutes Forms ITR 3, ITR 4, ITR 5 and ITR 6 with new forms for AY 2014-15, notifies in the Income-tax (6th Amendment) Rules, 2014.
For details please visit: http://incometaxindia.gov.in/download_all.asp

➲ CBDT expands scope of audit reports e-filing, amends Rule 12

CBDT expands scope of e-filing of audit reports vide amendment in Rule 12(2) of the Income- tax Rules, notifies Income-tax (6th Amendment) Rules, 2014. As per amended Rule 12(2), from AY 2014-15 onward, assessee shall also electronically furnish audit report u/s. 10AA, 44DA, 50B and 115VW; as per existing Rule 12(2), assessee to electronically furnish audit report u/s. 10(23C), 10A, 12A, 44AB, 80IA, 80IB, 80IC, 80ID, 80JJA, 80LA, 92E and 115JB.
Source: Notification No. 28/2014 dated May 30, 2014

➲ Income-Tax (Fifth Amendment) Rules, 2014 – Substitution of Forms 49A And 49AA - Mother's name can be shown on PAN Card

CBDT has revised PAN Application form 49A and 49AA w.e.f from 16.05.2014 vide its notification no. 26/2014, dated- 16-5-2014. This new form provides option to individuals to show mother's name on PAN card. In revised pan application form Father's name remain mandatory but column has been provided for Individuals to fill mothers name also. Further on pan card individual may opt for printing of either Mother's name or father's name

➲ Limited changes in corporate tax return form for AY 2014-15

CBDT notifies corporate tax return form ('ITR 6') for AY 2014-15; Limited changes made in substituted ITR 6 for AY 2014-15 vis-à-vis earlier ITR 6 for AY 2013-14. Tax return to provide details of buy-back tax, deemed income u/s 43CA; Details of transactions made with person located in notified jurisdiction u/s 94A of the Act to be reported; Changes also made in respect of share sale related disclosures for non-residents.

➲ CBDT allows sharing of asset details as per Return of Wealth with Public Sector Banks

CBDT directs sharing of loan defaulters asset details as per return of wealth, with Public Sector Banks ('PSBs'). Sec 42B of Wealth Tax Act enables sharing of information contained in return of wealth, only if supply of such information is in public interest; To enable recovery of loans by PSBs, CBDT clarifies information on assets of loan defaulters is in public interest; To safeguard tax dues, PSBs to obtain 'No Objection Certificate' from jurisdictional CIT of loan defaulter before appropriation of surplus recovered from sale of defaulter's asset.
Source: F. No. 328/10/2014-WT, Department of Revenue (CBDT),

Ministry of Finance, GOI

➲ Applicability of PAN requirement for Foreign Nationals

As per General *Circular No. 12/2014 dated: 22nd May, 2014,* it is hereby clarified that PAN details are mandatory only for those foreign nationals who are required to possess "PAN" in terms of provisions of the Income Tax Act, 1961 on the date of application for incorporation. Where the intending Director who is a Foreign National is not required to compulsorily possess PAN, it will be sufficient for such a person to furnish his/her passport number, along with undertaking stating that provisions of mandatory applicability of PAN are not applicable to the person concerned.

Case Laws

➲ Upholds exemption on converted agricultural land absent commencement of actual commercial activity

ITAT holds land as 'agricultural', though converted into commercial, thus compulsory land acquisition by NHAI not eligible to capital gains tax; Mere conversion of land from agricultural to commercial does not change character of land until actual commercial activity done on it; As assessee never carried any commercial activity on land (originally purchased as agricultural and subsequently converted into 'commercial') after its purchase, confirms 'agricultural' nature of land; Further, absent material brought on record that NHAI paid compensation treating it as commercial land, upholds CIT(A)'s order holding agricultural land, not being a capital asset u/s 2(14)(iii) : Jodhpur ITAT.

Source: Manju Devi Jagetia [TS-328-ITAT-2014(JODH)]

➲ Gift Cheques

Held: The material came into existence during post search enquiry when it became known that the gift cheques shown in the return filed under Section 139 of the Act were not regular transactions but were purely arranged transactions to avoid income tax. Such income disclosed in the return filed under Section 139 of the Act could not become "undisclosed income", merely because in post search enquiry, it came known that the gift cheques was a sham transaction. An amount which has already been included in the regular assessment cannot be assessed again in the course of block assessment. The gift cheques, having been disclosed in the return under Section 139 of the Act could not be re-assessed in block assessment proceedings under Section 158BC. The authorities were justified in not including the gift cheques in block assessment proceedings. The material found in post search enquiries could form a "reason to believe" that income had escaped assessment by issuance of a notice under Section 143(2) of the Act. Since the period under Section 143(2) of the Act had expired, the Assessing Officer having genuine reasons to believe that income had escaped assessment and consequently, could issue a notice under Section 148 of the Act. Such notices so issued were perfectly justified and was within the powers of the Assessing Officer. The Supreme Court in Rajesh Jhaveri (Supra) clearly held that the expression "reason to believe" in Section 147 of the Act would mean cause of justification to know that income had escaped assessment. At the stage of issue of notice, the only question is, whether there was relevant material on which a reasonable person could form the requisite belief that income had escaped assessment. Bench was of the opinion that in the given circumstances, the Assessing Officer was justified in forming an opinion, that income had escaped assessment and was, therefore, justified in issuing notice under Section 148 of the Act. Writ petition dismissed.

Source: Anand Prakash Agrawal vs. Commissioner of Income Tax (Central) and others (ALL) (29 May, 2014)

➲ Case Law on DTAA

ITAT upholds assessment of loss from Australian house property in hands of resident assessee in India; Rejects Revenue's contention that assessee was required to file tax return in Australia in respect of rental income and such income could not be included in Indian income; It is an option to assessee u/s 90(2) whether to return income under Indian tax laws where DTAA is applicable, assessee had a right to file the return of global income in India and the Revenue is bound to give effect to such return; Distinguishes SC decision in PVAL Kulandagan Chettiar : Chandigarh ITAT.

Source: Sumit Aggarwal [TS-300-ITAT-2014(CHANDI)]

➲ Family pension" not taxable in India; Interprets residuary Article 23(3) of UK DTAA

ITAT holds 'family pension' received by assessee (resident in India) from his deceased wife's employer in UK, not taxable in India in view of Article 23(3) of India-UK DTAA; Once tax already deducted in source country (i.e. UK), taxing it again in state of residence (i.e. India) shall render India-UK DTAA provisions otiose; Interpreting residuary Article 23(3) governing 'other income', holds expression "may be taxed in that other state" used therein authorizes only source country to tax such income; Distinguishing "family pension" from "pension", rejects applicability of Article 20 relating to pension received by an employee in consideration of past employment; Relies on co-ordinate bench ruling in Mideast India Ltd and Mumbai ITAT ruling in Pooja Bhatt : Delhi ITAT.

Source: Karan Thapar [TS-343-ITAT-2014(DEL)]

➲ Deletion of disallowance of deduction u/s 80IB(10) of the Act – Owner of land and development permission not granted - Construction and development of housing project

Held that:- Following Commissioner of Income-tax v. Radhe Developers [2011 (12) TMI 248 - GUJARAT HIGH COURT] - It is true that the title in the land had not yet passed on to the assessee – the title would pass only upon execution of a duly registered sale

deed - the term works contract contained in the Act is inclusive definition and includes not merely the works contract as normally understood but it is a wide definition which includes any agreement for carrying out building or construction activity for cash, deferred payment or other valuable consideration - the interpretation was based on not the normal meaning of term "works contract" but on the special meaning assigned to it under the Act itself, which provided for a definition of the inclusive nature - the Tribunal committed no error in holding that the assessees were entitled to the benefit u/s 80IB(10) of the Act even where the title of the lands had not passed on to the assessees and in some cases, the development permissions may also have been obtained in the name of the original land owners – Decided against Revenue.

Source: Commissioner of Income Tax-IV versus Swastik Associates (2014 (5) TMI 708 - GUJARAT HIGH COURT - Income Tax)

➲ Rate of depreciation on electrical cables & fittings connected with windmill

Held that:- Specialized foundation and specialized area specifically earmarked to facilitate a flow of wind without hindrance, and specialized electrical fittings and high tension lines are all basic requirements for a wind mill plant - None of the requirements including the premises can be seen detached from what is called a "wind mill" since a wind mill to work these are essential – all these are necessary inputs going into ultimate cost of wind mill – thus, the electrical cables, fittings and other electrical works connected with windmill are single composite unit are eligible for depreciation at the rate of 80% - Decided against Revenue.

Source: The Assistant Commissioner of Income Tax versus M/s. Kutti Spinners Pvt. Limited (2014 (5) TMI 692 - ITAT CHENNAI - Income Tax)

CENTRAL EXCISE

Notifications/Circulars

➲ Classification of rice par-boiling machinery

The par-boiling machine and dryer are self-contained machines which are designed to be installed independently and which perform their respective functions independently. Therefore, though they may be installed in a rice mill to work in conjunction with the milling machinery, the par-boiling machine and dryer do not appear to satisfy the requirements of Section Note 3 to be called composite machines/multi-function machines meriting classification under CETH 8437. Further, par-boiling machinery does not constitute grain dampening machine as the end result of par-boiling of rice is reduction in the moisture of paddy. In view of the above, rice par-boiling machine and dryer would merit classification under CETH 8419 as per Note 2 to Chapter 84 vide Circular No. 982 / 06 / 2014 – CX, dated: 15.05.2014.

Case Laws

➲ Cenvat/Modvat Credit - Capital goods

Whether the Cenvat credit is admissible in respect of explosive, Ammonium Nitrate and Detonators, which are used in mines for blasting/fragmenting the solid lime rocks situated outside the factory - mines is situated far away from the factory i.e., 40 Kms - Held that:- Supreme court in the case of Vikram Cement Vs Commissioner of Central Excise, Indore reported in [2006 (2) TMI 1 - Supreme court] has held that, credit is eligible if the mines are captive mines so that they are integrated with the concerned cement factory. - Decided in favour of assessee.

Source: M/S Chettinad Cement Corpn Ltd. versus Commissioner of Central Excise, Trichy (2014 (5) TMI 679 - CESTAT CHENNAI - Central Excise)

➲ Penalty under Section 11AC of the Central Excise Act, 1944, read with Rule 15(2) of the Cenvat Credit Rules, 2004 - Suppression of facts - Evasion of duty

Held that: - On perusal of the show-cause notice there is no allegation of fraud, collusion or willful mis-statement or suppression of facts or contravention of Central Excise Act/ Rules, 1944 with intent to evade payment of duty. Therefore, the extended period of limitation is not invokable and accordingly, penalty is not warranted - Decided in favour of assessee.

Source: M/S Dhariwal Industries Ltd. versus Commissioner of Central Excise, Pune-III (2014 (5) TMI 716 - CESTAT Mumbai - Central Excise)

➲ Proof of export - assessee has failed to submit original and duplicate copy in respect of ARE-1 No. 1/04-05, Shipping Bill and Bill of Lading, with due endorsement from the Customs Authorities and in respect of ARE-1 No. 2/04-05, did not submit the shipping bill

Whether the Department is bound to accept Shipping Bill and Bill of Lading without verifying its corroborative value for purposes of ascertaining whether the goods in question have been exported - Held that:- The material on record would clearly show that the fact that the assessee has produced attested copy of the shipping bill is not in dispute. In view of the Circular No. 527/23/2000-CX., dated 1-5-2000, it is clear that production of attested copy clearly indicating the name of the person signing it would itself be proof of export of goods. It is well settled that Circulars issued by the revenue is binding on the department and therefore the order of the Tribunal holding that production of the attested copy of the shipping bill is sufficient to prove the export of goods in view of Circular No. 527/23/2000-CX., dated 1-5-2000 referred to above is justified - Decided against Revenue.

Source: CC. E., C. & ST., Belgaum versus Model Buckets & Attachments Pvt. Ltd. (2014 (5) TMI 638 - Karnataka High Court - Central Excise)

➲ Waiver of pre deposit - Application under Section 35F

Whether the Tribunal would be competent to decide the appeal filed at the instance of the assessee without deciding first the application for waiver of deposit of the duty demanded or the penalty thereon - Held that:- assessee has not filed any application for waiver at all at the time when the appeal was filed before the Commissioner of Central Excise (Appeals). In such event, the respondent/assessee could maintain the appeal only after the pre-deposit. The Commissioner (Appeals) should not have taken the appeal when the assessee has not made pre-deposit. All the more, the Commissioner (Appeals) has not taken notice of the fact that the assessee has not even filed an application seeking for waiver of pre-deposit so as to enable him to consider the request under the first proviso to Section 35F of the Act - pre-deposit is a condition precedent for filing an appeal before the Commissioner (Appeals) and the filing of application for waiver of such deposit is also a condition precedent, without either of the above, the appeal could not have been entertained by the Commissioner (Appeals). However, keeping the above principle in mind, the facts of the present case should be considered. As the assessee has already paid the entire amount and the Revenue has not raised the said point before the Commissioner (Appeals) and for the first time, it was raised before the CESTAT. We are, therefore, not inclined to interfere with the order of the CESTAT on the facts of the present case. - Decided against Revenue.

Source: COMMR. OF C. EX., CHENNAI-III versus GANGADHARAM APPLIANCES PVT. LTD. (2014 (5) TMI 639 - Madras High Court - Central Excise

➲ CENVAT Credit - Warranty charges - Denial of CENVAT Credit of Service Tax paid on bills/ invoices issued by M/s Jayshree Enterprise, Rajkot who were providing Maintenance and Repairing Services of Diesel Engines cleared by the Appellant within one year warranty period

Revenue contends that such repair & maintenance of engines during warranty period would not fall under the category of input service as the scope of the credit is restricted to the services used at factory premises and not beyond that point. - Penalty u/s 11AC.

Held that: - Appellants were engaged in the manufacture of electrical transformers and those were cleared on payment of duty. As per the terms of contract, the assessee was under obligation to repair and maintain the transformers during the warranty period free of charge. Those jobs of repair and maintenance were entrusted to third person who raised bills for repair and maintenance on assessee in turn the assessee took credit of Service Tax so paid. The issue was dealt with by the Tribunal which stands decided in favour of the assessee. In the present case before me the Appellant as per the terms of the warranty were under obligation to provide repair and maintenance service to their customer. Moreover it is an undisputed fact as apparent from the cost accountant s certificate for the respective years annexed with the appeal memo that the value of such services already stands included in the assessable value of the Diesel Engines.

Transaction value means the price actually paid or which are payable for the goods when sold and those includes servicing and warranty also. Admittedly the service and warranty is post manufacturing expenses which are to be provided to the customer after sale. I therefore hold that the Appellant is entitled for credit of the Service Tax paid on expenses on such repair and maintenance during the warranty period, which is basically after sales charges and hold that the impugned orders disallowing credit are not sustainable.

Issue of availment of credit was apparent from the records and the audits were conducted in the previous periods and no objections were raised. Secondly the issue involved is related to interpretation of term 'Input Services'. In such view of the facts of this case, the demands raised against the Appellant by invoking extended period of limitation are not sustainable and apart from merits the same are set aside on the ground of limitation also. - Decided in favour of assessee.

Source: M/s Gujarat Forging Ltd. versus CCE Rajkot (2014 (5) TMI 641 - CESTAT AHMEDABAD - Central Excise)

CUSTOMS

Notifications/Circulars

➲ Amendment in Notification No. 62/1994-NT dated 21.11.1994 to include Kiranpani in Maharastra as Port for Loading and Unloading of Imported goods namely Coal, Sulpher, Bauxite, Mill Scale, Iran Ore and Sugar

CBEC vide its notification no. 39/2014-Customs (N.T.) dated 07th May, 2014 hereby makes further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.62/1994- Customs (N.T.) dated the 21st November, 1994 to include Kiranpani in Maharashtra as Port for Loading and Unloading of Imported goods namely Coal, Sulpher, Bauxite, Mill Scale, Iran Ore and Sugar.

➲ Agreement between the India-Taipei Association in Taipei (ITA) and the Taipei Economic and Cultural Center in India (TECC) on the FICCI / TAITRA Carnet for the Temporary Admission of Goods

Agreement between the India-Taipei Association in Taipei and the Taipei Economic and Cultural Center in India on the Federation of Indian Chambers of Commerce & Industry (FICCI)/ Taiwan External Trade Development Council (TAITRA) Carnet for the Temporary Admission of Goods was signed on 20th March, 2013. As per this agreement goods described in Schedule I, when imported into India for display or use at any event specified in Schedule II are exempted from the whole of the duty of customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975 (51

of 1975) and from the whole of the additional duty leviable thereon under section 3 of the said Customs Tariff Act vide Notification No.10/2014-Customs dated: 12th May, 2014.

SCHEDULE -I

(a) Goods intended for display or demonstration;

(b) Goods intended for use in connection with the display of foreign products, including -

(i) goods necessary for the purpose of demonstrating machinery or apparatus to be displayed;

(ii) construction and decoration material including electrical fittings, for the temporary stands of foreign exhibitors;

(iii) advertising and demonstration materials which are demonstrably publicity material for the goods displayed, for example, sound recording, films and lanterns, slides and apparatus for use therewith;

(iv) equipment including interpretation, apparatus, sound recording apparatus and films of an educational, scientific or cultural character intended for use at international meetings conferences.

SCHEDULE II - EVENTS

(a) Trade, industrial, agricultural or crafts exhibition, fair, or similar show or display;

(b) Exhibition or meeting which is primarily organized for a charitable purpose;

(c) Exhibition or meeting which is primarily organized to promote any branch of learning, art, craft, sport or scientific, educational or cultural activity to promote friendship between people, or to promote religious knowledge or worship;

(d) Meeting of representatives of any international group of organizations;

(e) Representative meeting of an official of commemorative character.

Explanation: - The events specified in this Schedule do not include exhibitions organized for private purposes in shops or business premises with a view to promote the sale of foreign goods.

➲ FICCI/TAITRA Carnet (Form of bill of entry and shipping bill) Regulations, 2014

The bill of entry or the shipping bill to be presented by an importer or an exporter of any goods for import or export under the agreement between the India-Taipei Association in Taipei and the Taipei Economic and Cultural Center in India on the FICCI / TAITRA Carnet for the temporary admission of Goods signed on 20th March, 2013 vide Notification No. 40/2014-Customs (N.T.) dated: 12th May, 2014.

➲ Tariff Value in respect of some of the imported goods

As per Notification No. 44/2014-CUSTOMS (N. T.) dated: 30th May 2014, CBEC amends principal notification no. 36/2001-Customs (N.T.), dated: 3rd August, 2001 (last amendment vide notification no.42/2014-Customs (N.T.), dated 15th May, 2014) and fixes the tariff values specified in column (4) of the Table below, in respect of the im¬ported goods of the description specified in the corresponding entry in column (3) of the said Table and falling under Chapter or heading or sub-heading No. of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

TABLE-1

Sl. No	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value US $ (Per Metric Tonne)
1	1511 10 00	Crude Palm Oil	897
2	1511 90 10	RBD Palm Oil	945
3	1511 90 90	Others – Palm Oil	921
4	1511 10 00	Crude Palmolein	953
5	1511 90 20	RBD Palmolein	956
6	1511 90 90	Others – Palmolein	955
7	1507 10 00	Crude Soyabean Oil	962
8	7404 00 22	Brass Scrap (all grades)	3890
9	1207 91 00	Poppy seeds	3255

TABLE-2

Sl. No	Chapter/ heading/ sub-heading/ tariff item	Description of goods	Tariff value US $
1	71 or 98	Gold, in any form, in respect of which the benefit of entries at serial number 321 and 323 of the Notification No. 12/2012-Customs dated 17.03.2012 is availed	408 per 10 grams
2	71 or 98	Silver, in any form, in respect of which the benefit of entries at serial number 322 and 324 of the Notification No. 12/2012-Customs dated 17.03.2012 is availed	617 per kilogram

TABLE-3

Sl. No	Chapter/ heading/ sub-heading/ tariff item	Description of goods	Tariff value US $ (Per Metric Tonne)
1	080280	Areca nuts	1908

➲ Anti – Dumping Duty

• Levy of definitive anti-dumping duty on imports of Methylene Chloride, originating in or exported from the European Union, United States of America and Korea RP for a period of five years from the date of imposition of the provisional anti-dumping duty, that is, 21st October, 2013 vide notification no. 24/2014-Cus (ADD), dt. 21-05-2014.

• Levy of provisional anti-dumping duty on imports of phenol, originating in or exported from Chinese Taipei and USA for a period of six months vide notification no. 23/2014-Cus (ADD), dt. 16-05-2014.

• As per notification no. 22/2014-Cus (ADD), dt. 16-05-2014, definitive anti-dumping duty is levied on imports of persulphates, originating in or exported from Taiwan, Turkey and USA for a period of five years.

Case Laws

➲ Penalty u/s 117 - violation of Section 61 of Customs Act, 1962 - extension of time for warehousing the goods

Held that: - no time limit has been prescribed for filing extension for warehousing of the goods. As no time limit is prescribed, therefore, appellant are at liberty to file application for extension of warehousing till the period they have not been asked to pay duty. In this case, admittedly, after expiry of the bonded period, no duty liability was fastened on the appellant and extension has been granted to them. In these circumstances, the appellant has not violated provision of Section 61 of the Customs Act, 1962 - penalty under Section 117 of the Customs Act, 1962 are not imposable - Decided in favour of assessee.

Source: Cipla Ltd. versus Commissioner of Customs (Import), Nhava Sheva (2014 (5) TMI 711 - CESTAT Mumbai - Customs)

➲ Classification – Refrigerator originating from Thailand - benefit of notification No. 85/04-Cus

assessing officer classified the goods under CTH 84181090 on the ground that the goods under importation were combined refrigerators-freezers, fitted with separate external doors and therefore, not eligible for the aforesaid exemption – Held that:- Following decision of assessee's own previous case [2012 (12) TMI 554 - CESTAT, MUMBAI]

goods under importation are classifiable under CTH 8418 10 90 and consequently the appellant is not eligible for the benefit of Notification No. 85/2004 - Decided against assessee.

Source: Hitachi Home & Life Solution (India) Ltd. versus Cc. (Imports), Nhava Sheva (2014 (5) TMI 674 - CESTAT Mumbai – Customs)

➲ Redemption fine - Penalty - Restriction on import of Secondary/Defective HR Coils covered under CTH No. 7208 through the JNPT, Nhava Sheva

Revenue contends that Import Licensing Note 4 of Chapter 72 and the goods should also be accompanied by a pre-shipment certificate - Held that:- as per the Import Licencing Note 4 of Chapter 72, the import of the impugned items from Nhava Sheva Port is restricted but as per Public Notice No. 16/2004-09, dated 15-10-2004, the impugned items have been allowed to be imported from Nhava Sheva Port subject to compliance of certain conditions - The appellant has also complied with the conditions as per the Public Notice cited herein above by way of Pre-shipment Inspection Certificate dated 21-11-2010 and in the case of MTC Business Pvt. Ltd. (2011 (5) TMI 796 - CESTAT, MUMBAI) the import of melting scrap was allowed to be imported from Nhava Sheva Port. Therefore, the impugned goods are also entitled for import from Nhava Sheva subject to the fulfilment of the conditions mentioned in Public Notice No. 16/2004-09, dated 15-10-2004. - Redemption fine and penalty set aside - Decided in favour of assessee.

Source: Mohammed Khambhati & Co. versus Commr. of Cus. (Import), Nhava Sheva (2014 (5) TMI 673 - CESTAT MUMBAI – Customs)

➲ Conversion of free shipping bills to drawback shipping bills

Whether the appellant's application for conversion of free shipping bills into drawback shipping bills needs to be allowed or otherwise, when such application is made after the goods were exported - Held that: - documents relating to the exports i.e. invoice, shipping bills, Bills of lading and the bank realization certificate clearly indicate that the goods were exported and said goods were described in documents as "furnace oil". It is also undisputed that the appellant was exporting the said goods and subsequently the specific brand rate was fixed for the appellant's goods i.e. furnaceoil.

Documents like ARE-1, Bills of Lading, shipping bills specifically were signed by the Customs officers clearly indicate that the goods which were cleared for export was furnace oil - CBEC vide Circular No.25/2005/Cus, has specifically not accepted the representation of the Trade and the recommendations of the conference of the Chief Commissioners that the manufacturer/exporter's in-house quality control results can be relied upon if the said manufacturers/exporters are awarded with ISO 9000 series certificate. In our view, non-production of appellant's in-house certificate, may not have any bearing on the outcome of the case in as much as there is no contest to the certificate issued by M/s Geochem laboratory who are one of the Government of India's recommended and authorized analytical laboratories. - No reason why the benefit of said circular be not extended to cover the case of the appellant in seeking conversion of free shipping bills into drawback shipping bills, when there is a unimpeachable evidence of export of the furnace oil

If the duty drawback is not allowed to the appellant, the appellant is perforce required to export the taxes, which gets included in the FOB value. In our view, this being not the

intention, conversion of free shipping bills into drawback shipping bills needs to be allowed - Decided in favour of assessee.
Source: M/S Essar Oil Ltd versus Commissioner of Customs, Kandla (2014 (5) TMI 635 - CESTAT Ahmedabad – Customs)

➲ Waiver of pre deposit - Import of mobile phone accessories using the IEC code - Violation of provisions of Rule 3 of the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007

Held that:- From the statements recorded from the appellant as also the IEC holder, it is evident that the appellant Avesh Hanif Pitodia is the real importer and he has placed the order with the foreign supplier, engaged the CHA, paid the Customs duty and has taken delivery of the goods M/s Cell On Traders in whose name of the goods have been imported as declared in the imported documents are merely a dummy or a front for the illegal activities undertaken by the appellant and the said firm is a proprietorship belonging to the employee of the appellant. It is also on record that merely for the use of the IEC, the appellant has been paying a fixed sum per container basis to the IEC holder. It is further seen that the appellant has been importing 'Nokia' brand mobile phone accessories which are duplicate in nature and therefore, violating of IPR (Imported Goods) Enforcement Rules is also involved. Thus it is not a mere case of misuse of IEC code but involves violations of a number of laws including undervaluation and mis-declaration of the goods - The appellant not only mis-declared the value of the goods but also imported duplicate goods bearing the brand name of well known brands there by contravening the provisions of IPR (Imported Goods) Enforcement Rules, 2007 and Foreign Trade (Regulations) Rules, 1993. Thus the appellant has not made out a case for total waiver of the penalty imposed on the appellant - Conditional stay granted.
Source: Avesh Hanif Pitodia versus Commissioner of Customs (Adjudication) [2014 (5) TMI 712 - CESTAT MUMBAI – Customs]

SERVICE TAX

Case Laws

➲ Denial of benefit of Notification No. 45/2010-S.T. dated 20.7.2010 - services relating to transmission and distribution of electricity

Held that: - Appellant is, prima facie, eligible for the benefit of notification cited by the appellant and the matter requires fresh consideration as regards the applicability of notification as well as re-quantification. Accordingly, the requirement of pre-deposit is waived and the appeal itself is taken up for final decision - both sides agree that the matter is required to be remanded to the original adjudicating authority to consider the issue whether the benefit of exemption Notification would be available in respect of the services rendered to Power Distribution Company and also the original authority can consider the issue of re-quantification claimed by the appellant. Accordingly, the matter is remanded to the original adjudicating authority to consider the issues afresh and pass an appropriate order in accordance with law after giving reasonable opportunity to the appellant to present their case - Decided in favour of assessee.
Source: M/s Laxmi Electrical Works versus Commissioner of Central Excise, Customs and Service Tax - Hyderabad-III [2014 (5) TMI 691 - CESTAT BANGALORE - Service Tax]

➲ Reversal of CENVAT Credit - Information Technology and Software service - Sponsorship service

Held that: - Since all the issues above have not been considered by the original adjudicating authority because they were not placed before him and the Commissioner (A) because he considered the same as additional evidence, we consider that the request made by the learned CA to remand the matter at this stage itself is reasonable. Accordingly, we consider the deposits already made by the appellant sufficient and set aside the impugned order and remand the matter to the original adjudicating authority for fresh consideration of all the issues that have been raised and that may be raised at the time of adjudication by the lower adjudicating authority - Decided in favour of assessee.
Source: M/s. Semnox Solution Pvt. Ltd. versus Commissioner of Central Excise and Service Tax – Mangalore (• 2014 (5) TMI 690 - CESTAT Bangalore - Service Tax)

➲ Del Credre Agent - Market Research Agency - Lower appellate authority concluded that the services rendered by a Del Credre Agent does not merit classification as a Market Research Agency

Held that: - From the agreement entered into by the respondent with RIL, it is clear that the respondent has been appointed as Del Credere Agent and has undertaken the functions of a Del Credere Agent for which the commission has been paid. No doubt, the agreement includes a clause that at the request of the Principal, they shall also undertake market survey. However, from the facts recorded by the lower appellate authority, it is clear that the respondent has not undertaken any such activity even though the agreement provided for the same. Even otherwise, when a number of services are rendered, for the purpose of classification, the principal service which gives the essential character to the service has to be seen. From the documentary evidence available on record, it is seen that the essential character of the service is that of a Del Credere Agent which is classifiable under Business Auxiliary Service. Following decision of CST, Bangalore v. N.K. Agencies Pvt. Ltd. reported in [2010 (7) TMI 192 - KARNATAKA HIGH COURT] - Decided against Revenue.
Source: Commissioner of Central Excise, Pune versus Kesar Petro Products Ltd. (2014 (5) TMI 689 - CESTAT MUMBAI - Service Tax)

➲ **Valuation of service - Addition of price of electricity for determining the taxable value for purpose of service tax - quantum of service tax liability - operation and maintenance of the plant relating to two of its customers**

Held that: - gross amount charged by the service provider for the service provided is as per the agreement. The price of electricity cannot be considered as an additional consideration received by the appellant form their customers. The appellant does not get benefitted by the free supply of the electricity in any way. Further, the electricity is consumed in the manufacture of oxygen. Thus, electricity is an input for the manufacture of oxygen. Oxygen, in turn, is used by the appellant's clients in the manufacture of iron and steel products.

Electricity cannot be considered as an input for providing the services of operation of air separation plant, it cannot be considered as an additional consideration flowing to the appellant from their client for providing the service of operation of plant and cannot be considered as part of the gross amount charged for the service of operation of the plant - Decided in favour of assessee.

Source: Inox Air Products Ltd. versus Commissioner of Central Excise, Nagpur [2014 (5) TMI 651 - CESTAT MUMBAI - Service Tax]

➲ **CENVAT Credit - input services - authorized service station - GTA service, advertisement services, Insurance services, audit fee, Valuation charges, repair and maintenance, AC machine repairing, Courier service etc.**

Held that: - The respondents are authorized dealer of M/s. FIAT India Pvt. Ltd. engaged in sale of cars and car parts and besides this, they are an authorized service station for servicing of motor vehicles, which is a taxable service. The services, in question, received by the respondent cannot be said to be exclusively used in or in relation to providing the output service, while they would be eligible for Cenvat credit only in respect of those services which are in or in relation to providing their output services of authorized service station. They would not be eligible for Cenvat credit in respect of the value of the services which have been received in connection with their trading activity. We find that this aspect has not been discussed in the impugned order.

The impugned order is, therefore, set aside and the matter is remanded to the original adjudicating authority for fresh adjudication after verification as to what extent, the services, in question, have been used in or in relation to the providing of output services of authorized service station by the respondent and Cenvat credit would be available only to that extent. However, as regards the Commissioner (Appeals)'s order setting aside the penalty on the respondent under Section 76, since this is dispute regarding availment of Cenvat credit, penalty under Section 76 has called for, and the same has been correctly set aside. The Commissioner of Central Excise (Appeals)'s order setting aside the penalty under Section 76 is upheld. - Decided partly in favour of assessee.

Source: Commissioner of Central Excise, Raipur versus Gk. Motors (2014 (5) TMI 687 - CESTAT New Delhi - Service Tax)

SEBI

Notifications/Circulars

➲ **Risk management framework for Foreign Portfolio Investors (FPI) under the SEBI (Foreign Portfolio Investors) Regulations, 2014 –**

SEBI vide Circular No. CIR/MRD/DP/15/2014 dated: May 15, 2014 are directed to take following measures with regard to trading and risk management of FPI trades:

- **Margining of trades undertaken by FPIs in the Cash Market**: The trades of FPIs in Category I, II & III shall be margined on a T+1 basis in accordance with SEBI circular MRD/DoP/SE/Cir-18/2008 dated May 22, 2008. However, the trades of FPIs who are Corporate bodies, Individuals or Family offices shall be margined on an upfront basis as per the extant margining framework for the non-institutional trades.

- **Position limit of an FPI in the Equity Derivatives Segment and for Interest Rate Futures:** Category I & II FPIs shall have position limits as presently available to FIIs. Category III FPIs shall have position limits as applicable to the clients.

- **Facility for allocation of trades**: In modification to the SEBI circular MRD/DoP/SE/Cir-35/2004 dated October 26, 2004, the following framework shall be implemented to facilitate allocation of trades of a FPI to other FPIs:

I. Entities who trade on behalf of FPIs shall inform the stock brokers of the details of FPIs on whose behalf the trades would be undertaken.

II. The stock broker, in turn, shall inform the stock exchanges the details of such related FPIs.

III. Stock exchanges shall put-in place suitable mechanism to ensure that allocation of trade by a FPI is permitted only within such related FPIs.

➲ **Companies exclusively listed on Derecognized / Non-operational Stock Exchanges**

SEBI vide circular dated May 30, 2012 (Exit Circular) issued guidelines in respect of exit options to stock exchanges. In terms of these guidelines, if the stock exchange is not able to achieve the prescribed turnover of Rs 1000 Crore on continuous basis or does not apply for voluntary surrender of recognition and exit before the expiry of two years from the date of SEBI circular dated May 30, 2012, SEBI shall proceed with compulsory de-recognition and exit of the stock exchanges, in terms of the conditions as may be specified by SEBI.

The provisions of this Circular are applicable for all those stock exchanges which have not achieved the prescribed turnover of Rs. 1000

Crore on continuous basis on or before May 30, 2014 vide *Circular No. CIR/MRD/DSA/18/2014 dated: May 22, 2014.*

➲ Cash investments in Mutual Funds

Based on SEBI Circular No : *CIR/IMD/DF/10/2014 dated: May 22, 2014* it has been decided to increase the limit of cash transactions in mutual funds from the existing limit of Rs.20,000/- per investor, per mutual fund, per financial year to Rs.50,000/- per investor, per mutual fund, per financial year, subject to (i) compliance with Prevention of Money Laundering Act, 2002 and Rules framed there under, the SEBI Circular(s) on Anti Money Laundering (AML) and other applicable AML rules, regulations and guidelines and (ii) sufficient systems and procedures in place.

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