

the CMA

e-BULLETIN

THE INSTITUTE OF
COST ACCOUNTANTS
OF INDIA

(Statutory body under an Act of Parliament)



www.icmai.in

SEPTEMBER 2014 | VOL. 2 | NO. 9

EDITORIAL

Slowdown hits 10% of all bank loans; might climb to 14%

INDIA'S economic growth continues to gain momentum while most major economies are seeing stable prospects, according to the Paris-based think-tank OECD. The readings are based on Composite Leading Indicators (CLIs), which indicate turning points in economic activity relative to trend for the month of July.

“In India, growth continues to gain momentum while in China and Russia, CLIs point to stabilisation of growth momentum. The CLI for Brazil suggests a tentative upward change in momentum,” OECD said in a statement.

India's CLI in July rose to 99 compared to 98.9 in June. It has been improving since March when it stood at 98.5h. The country's growth touched 5.7% in April-June quarter, the highest in two-and-a-half years. India's Gross Domestic Product had expanded by 4.7% in the April-June quarter of the last fiscal ended March 31. In the January-March period (last quarter of 2013-14), it was 4.6 per cent. The previous high of GDP growth rate was recorded at 6% in the October-December quarter of 2011-12.

A prolonged economic slowdown has hit Indian banks' balance

sheets, with stressed loans – those categorised as bad and restructured – amounting to about 10% of all loans. Fitch Ratings expects stressed assets to reach 14% of loans by March next year. The bulk of these bad loans are related to infrastructure projects, which have made banks prudent over lending. The level of bad loans at Indian banks is a “concern” but is not “scary”, RBI Governor Raghuram Rajan said recently.

RBI revised some of its rules recently governing instruments that qualify as bank capital under Basel III. The new norms are credit positive for Indian banks, in particular public sector banks, because they will make the instruments more attractive to investors, broaden the investor base for additional Tier 1 (AT1) securities to include retail investors and allow banks to have a higher proportion of AT1 capital in their Tier 1 capital.

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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INDIAN ECONOMY

News

➤ India's industrial growth slows in June; inflation a worry

India's industrial output slowed in June, though expanding for a third straight month, its best run since last September, boosting Asia's third-largest economy as it struggles to emerge from the longest spell of sub-par growth in a quarter-century.

Source: Reuters, dated: 12 Aug 2014

➤ India bets on Modi touch to reform infrastructure PPP drive

India's new government is betting on Prime Minister Narendra Modi to replicate his relative success with regional infrastructure projects to ensure fewer public-private partnerships (PPP) stall for want of land.

Source: Reuters, dated: 05 Aug 2014

➤ RBI keeps policy rate unchanged, sounds tough on inflation

RBI kept its key policy repo rate unchanged and voiced a commitment to bringing down inflation.

Source: Reuters, dated: 05 Aug 2014

➤ India says WTO deal not dead, can sign in September if concerns addressed

India is willing to sign a global trade deal, which it has torpedoed, if other World Trade Organization members can agree to its parallel demand for concessions on stockpiling food.

Source: Reuters, dated: 01 Aug 2014

BANKING

Notifications/Circulars

➤ Number of mandatory free ATM transactions for savings bank account customers at other banks' ATMs has been reduced from the present five to three transactions per month

The number of mandatory free ATM transactions for savings bank account customers at other banks' ATMs has been reduced from the present five to three transactions per month (inclusive of both financial and non-financial transactions) for transactions done at the ATMs located in the six metro centres, viz. Mumbai, New Delhi, Chennai, Kolkata, Bengaluru and Hyderabad. At other locations i.e. other than the six metro centres mentioned above, the present facility of five free transactions for savings bank account customers shall remain unchanged. Accordingly, banks are advised that at least five free transactions (inclusive of financial and non financial

transactions) per month should be permitted to the savings bank account customers for use of own bank ATMs at all locations. Beyond this, banks may put in place appropriate Board approved policy relating to charges for customers for use of own bank ATMs. The ceiling / cap on customer charges of Rs.20/- per transaction (plus service tax, if any) will be applicable.

Source: Notification no. RBI/2014-15/179 [DPSS. CO. PD. No. 316/02.10.002/2014-2015] dated: August 14, 2014

➤ Prudential Norms on Income Recognition, Asset Classification and Provisioning Pertaining to Advances - Projects under Implementation

As per Notification no: RBI/2014-15/182 [DBOD.No.BP. BC.33/21.04.048/2014-15] dated: August 14, 2014, banks has been allowed to fund cost overruns, which may arise on account of extension of date of commencement of commercial operations (DCCO) within the period of two years and one year from the original DCCO, without treating the loans as 'restructured asset' subject to the following conditions:

- i) Banks may fund additional 'Interest During Construction', which may arise on account of delay in completion of a project;
- ii) Other cost overruns (excluding Interest During Construction) up to a maximum of 10% of the original project cost;
- iii) The Debt Equity Ratio as agreed at the time of initial financial closure should remain unchanged subsequent to funding cost overruns or improve in favour of the lenders and the revised Debt Service Coverage Ratio should be acceptable to the lenders;
- iv) Disbursement of funds for cost overruns should start only after the Sponsors/Promoters bring in their share of funding of the cost overruns.

➤ Appointment of Non-Deposit Accepting NBFCs with asset size of Rs 100 Crore and above as sub- agents under Money Transfer Service Schemes (MTSS)

In order to broaden the network of sub-agents under the Money Transfer Service Schemes (MTSS), it has been decided to permit Non-Deposit Accepting NBFCs with asset size of Rs. 100 crore and above to act as sub-agents under MTSS subject to the following conditions:

- a. There is no co-mingling of the Indian agent's funds with that of the NBFC's funds.
- b. The Indian agent should maintain with a designated bank, a security deposit in favour of the NBFC sub-agent. The amount of the security deposit to be maintained may be mutually decided between the Agent and the sub-agent. It should be ensured that the payouts of NBFC sub-agents pending reimbursement by the agents should not, at any point of time, be higher than the security deposits.
- c. No NBFC, acting as sub-agent, should appoint any other entity as its sub-agent.

Source: Notification no: RBI/2014-15/174 [DNBS.CC.PD.No. 405/03.

10.01/2014-15] dated: August 12, 2014

➤ Interest Rate Futures – NBFCs

All non-deposit taking NBFCs with asset size of Rs 1000 crore and above may also participate in the interest rate futures market permitted on recognized stock exchanges as trading members, subject to RBI/ SEBI guidelines vide *notification no RBI/2014-15/173 [DNBS.CC.PD.No.406/03.10.01/2014-15]* dated: August 12, 2014.

➤ Modification of Guidelines on Mortgage Guarantee Companies (MGCs)

In view the long – term beneficial impact of development of the Mortgage Guarantee industry, it has been decided to make certain modifications to the existing Guidelines on Mortgage Guarantee Companies vide *notification no. RBI/2014-15/170 [DNBS (PD) CC. No.20/MGC/03.011.001/2014-15]* dated: August 08, 2014. For more details please visit: <http://www.rbi.org.in> > Notifications.

➤ Monetary Policy Statement 2014-15 – SLR Holdings under Held to Maturity Category

RRBs are permitted to exceed the limit of 25 per cent of total investments under HTM category with effect from August 9, 2014, provided the excess comprises only SLR securities, and the total SLR securities held in the HTM category is not more than 24.00 per cent of their NDTL vide *notification no RBI/2014-15/168 [RPCD. CO.RRB. BC.No.25/03.05.33/2014-15]* dated: August 7, 2014.

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

Statutory Liquidity Ratio (SLR) of State/Central Cooperative Banks has been reduced from 22.5 per cent of their Net Demand and Time Liabilities (NDTL) to 22.0 per cent with effect from the fortnight beginning August 9, 2014 vide *notification no: RBI/2014-15/166 [RPCD.RCB.BC.No.22/07.51.020/2014-15]* dated: August 06, 2014.

➤ Refinancing of Project loans

Circular DBOD.BP.BC.No.24/21.04.132/2014-15 dated July 15, 2014 on 'Flexible Structuring of Long Term Project Loans to Infrastructure and Core Industries', which enables banks to flexibly structure new long term project loans to infrastructure and core industries. However, with regard to existing infrastructure and other project loans, banks were allowed, vide paragraph 2 of our circular DBOD.BP.BC.No.98/21.04.132/2013-14 dated February 26, 2014 on 'Framework for Revitalizing Distressed Assets in the Economy - Refinancing of Project Loans, Sale of NPA and Other Regulatory Measures', to refinance by way of take-out financing, even without a pre-determined agreement with other banks / FIs, and fix a longer repayment period without treating the same as restructuring if the following conditions are satisfied:

i. Such loans should be 'standard' in the books of the existing banks,

and should have not been restructured in the past;

ii. Such loans should be substantially taken over (more than 50% of the outstanding loan by value) from the existing financing banks / financial institutions; and

iii. The repayment period should be fixed by taking into account the life cycle of the project and cash flows from the project.

The feedback received from banks shows that the above stipulation of substantial take-over of loans i.e., more than 50% of the outstanding loan by value from the existing financing banks / financial institutions is generally difficult to achieve, since a significant number of banks are already part of the consortium/multiple banking arrangement of such project loans.

Therefore, in respect of existing project loans, it has been decided that banks may refinance such loans by way of full or partial take-out financing, even without a pre-determined agreement with other banks / FIs, and fix a longer repayment period, and the same would not be considered as restructuring in the books of the existing as well as taking over lenders, if the following conditions are satisfied:

i. The aggregate exposure of all institutional lenders to such project should be minimum Rs.1,000 crore;

ii. The project should have started commercial operation after achieving Date of Commencement of Commercial Operation (DCCO);

iii. The repayment period should be fixed by taking into account the life cycle of and cash flows from the project, and, Boards of the existing and new banks should be satisfied with the viability of the project. Further, the total repayment period should not exceed 85% of the initial economic life of the project / concession period in the case of PPP projects;

iv. Such loans should be 'standard' in the books of the existing banks at the time of the refinancing;

v. In case of partial take-out, a significant amount of the loan (a minimum 25% of the outstanding loan by value) should be taken over by a new set of lenders from the existing financing banks/Financial Institutions; and

vi. The promoters should bring in additional equity, if required, so as to reduce the debt to make the current debt-equity ratio and Debt Service Coverage Ratio (DSCR) of the project loan acceptable to the banks.

The above facility will be available only once during the life of the existing project loans.

Source: *Notification no. RBI/2014-15/167 [DBOD.BP.BC.No. 31/21.04.132/2014-15]* dated: August 7, 2014

➤ Appointment of Non-Deposit Accepting NBFCs with asset size of Rs 100 crore and above as sub - agents under Money Transfer Service Schemes (MTSS)

In order to broaden the network of sub-agents under the Money Transfer Service Schemes (MTSS), it has been decided to permit Non-Deposit Accepting NBFCs with asset size of Rs 100 crore and above to act as sub-agents under MTSS subject to the following conditions:

- a. There is no co-mingling of the Indian agent's funds with that of the NBFC's funds.
- b. The Indian agent should maintain with a designated bank, a security deposit in favour of the NBFC sub-agent. The amount of the security deposit to be maintained may be mutually decided between the Agent and the sub-agent. It should be ensured that the payouts of NBFC sub-agents pending reimbursement by the agents should not, at any point of time, be higher than the security deposits.
- c. No NBFC, acting as sub-agent, should appoint any other entity as its sub-agent.

Source: Notification no. RBI/2014-15/174 [DNBS.CC.PD.No. 405/03.10.01/2014-15] dated: August 12, 2014

➔ NBFCs – Lending against Shares

At present, lending against shares carried out by NBFCs is not subject to specific instructions apart from the general prudential regulation applicable to all NBFCs. Lending against shares could be in the normal course where shares are accepted as collateral or as part of their capital market operations. NBFCs lend either by way of pledge of shares in their favour, transfer of shares or by obtaining a power of attorney on the demat accounts of borrowers. Irrespective of the manner and purpose for which money is lent against shares, default by borrowers can and has in the past lead to offloading of shares in the market by the NBFCs thereby creating avoidable volatility in the market. Certain other associated areas of concern relate to absence of adequate prior information to the stock exchanges on the shares held as pledge by NBFCs, probable overheating of the market, over-exposure by NBFCs to certain stocks and overleveraging of borrowers.

Accordingly, NBFCs lending against collateral of shares shall, with effect from the date of this circular:

- i. Maintain an LTV ratio of 50%; and
- ii. Accept only Group 1 securities (specified in SMD/ Policy/ Cir - 9/ 2003 dated March 11, 2003 as amended from time to time, issued by SEBI) as collateral for loans of value more than Rs 5 lakhs, subject to review by the Bank.

All NBFCs with asset size of Rs 100 crore and above shall report on-line to stock exchanges, information on the shares pledged in their favour, by borrowers for availing loans.

Source: Notification no. RBI/2014-15/186 [DNBS (PD).CC. No. 408/03.10.001/2014-15] dated: August 21, 2014

➔ Amendment to Public Provident Fund Scheme, 1968

The Government of India has enhanced the individual subscription limit under the Public Provident Fund (PPF) Scheme, 1968, from existing Rs 1,00,000 to Rs 1,50,000 in a financial year vide Notification no. RBI/2014-15/187 [DGBA.CDD.No.867/15.02.005/2014-15] dated: August 22, 2014.

➔ Purchase and sale of securities other than shares or convertible debentures of an Indian company by a

person resident outside India

Eligible investors, viz., SEBI registered Foreign Institutional Investors (FIIs), Qualified Foreign Investors (QFIs), registered Foreign Portfolio Investors (RFPIs) and long term investors registered with SEBI, may purchase eligible government securities directly from the issuer of such securities or through registered stock broker on a recognized Stock Exchange in India. With a view to providing flexibility in regard to the manner in which government securities can be acquired by eligible investors, it has now been decided to remove any stipulation as to the manner of acquisition from the said Regulations. Consequently, the eligible investors can acquire such securities in any manner as per the prevalent/approved market practice.

Source: Circular No.22 (RBI/2014-15/197) dated: Aug 28, 2014

INCOME TAX

Notifications/Circulars

➔ Due date for Tax Audit Report furnishing for AY 2014-15 extended to November 30, 2014

Central Board of Direct Taxes (CBDT) has extended the due date for filing of the tax audit report (for assessment year 2014-15) from 30th day of September, 2014 to 30th November, 2014 vide *Order Under Section 119 of the Income-tax Act, 1961* dated: 20th August, 2014. It is further clarified that the tax audit report under section 44AB of the Act filed during the period from 1st April, 2014 to 24th July, 2014 in the pre-revised Forms shall be treated as valid tax audit report furnished under section 44AB of the Act.

➔ Agreement for avoidance of double taxation and prevention of fiscal evasion with foreign countries – Malta

Agreement signed between the Government of the Republic of India and the Government of Malta for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income with effect from the 1st day of April, 2015 vide *notification no. 34/2014 – dated 5-8-2014 – Income Tax*.

➔ Agreement for avoidance of double taxation and prevention of fiscal evasion with Government of the Republic of Fiji

Agreement signed between the Government of the Republic of India and the Government of the Republic of Fiji for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income vide *notification no. 35/2014/F. No. 503/11/2005 – FTD – II* dated: 12th August, 2014.

Case Laws

➔ Unsecured loan obtained from companies u/s 68 – Credit-worthiness and genuineness of transaction

Held that:- CIT (A) and Tribunal was rightly of the view that the balance sheet of the lender as of 31 March 2009 had been placed on the record - The assessee had placed all the bank accounts of the lender and the confirmatory certificates in respect of borrowings made by the lender Company - CIT (A) held that identity of the lender, its creditworthiness and the genuineness of the transaction had been established - assessee was rerouting its own funds was based on surmise - The CIT (A) had the benefit of considering the balance sheet of the lender as well as confirmatory certificates in respect of the advances which the lender in turn had received - There was no material to establish that the assessee was engaged in a transaction for routing its own funds - Decided against Revenue. *Source: Commissioner of Income Tax versus M/s. Avant Grade Carpets Ltd. Gangol Road Partapur Meerut [2014 (8) TMI 564 - Allahabad High Court - Income Tax]*

➔ TDS deduction u/s 194C @ 2% or u/s 194I – Rent for hiring vehicles

Held that: - The provisions of Section 194C and not Section 194I of the Act would apply in the case of a transport contract - the assessee had entered into a transport contract with the service provider for the transportation of its employees and had deducted tax at source in terms of Section 194C of the Act – Decided against Revenue. *Source: Commissioner of Income Tax (TDS) versus M/s. Oil India Pvt. Ltd. [2014 (8) TMI 563 - Allahabad High Court - Income Tax]*

➔ Liability to deduct TDS u/s 194C or under amended section 194I

TDS on Pick and drop facilities for students and staff - Held that:- The assessee deducted the tax at source u/s 194C of the Act - the Tribunal is correct in coming to a conclusion that the tax was liable to be deducted at source u/s 194C of the Act, which the assessee had correctly deducted - The agreement between the assessee and the transporter clearly provided that the transporter was under a contractual obligation to provide and maintain the buses and to meet out all expenses on the running and maintenance of the vehicles and for hiring of drivers and other staff – Decided against Revenue. *Source: Commissioner of Income Tax (TDS) versus Kothari International School Kothari Charitable Trust [2014 (8) TMI 562 - Allahabad High Court - Income Tax]*

➔ HC: Unabsorbed investment allowance to be set-off against business profits for Sec 80HHC computation

Unabsorbed investment allowance u/s 32A(3) to be set-off against business profits while computing Sec 80HHC deduction; Sec 80HHC deduction, being governed by Sec 80AB, has to be computed on gross total income from business determined after allowing deductions under sections 30 to 43D of the Act; Holds placement of Sec 32A in Chapter IVD makes it clear that Sec 80HHC deduction to be computed after setting off of unabsorbed investment allowance from business profits; Relies on co-ordinate full bench ruling

in Plastiblends India Ltd. and Madras HC ruling in Asvini Cold Storage (P) Ltd. : Bombay HC.

Source: CIT vs V.M. Salgaonkar & Bros (P) Ltd

➔ HC: “Secret commission” allowable expenditure u/s 37 if no taint of illegality / secrecy proved

HC rules that “secret commission” paid for promoting business is allowable expenditure u/s 37 when 2 requirements are fulfilled viz a) particulars of commission amounts are furnished transaction wise and ultimately correlated to turnover and b) names of recipients are furnished in the returns or a plea is raised to AO’s satisfaction that disclosure is detrimental to assessee’s interests; States that although at first blush ‘secret commission’ may give the impression that it was incurred for undertaking clandestine activities, it is actually paid to certain individuals / agencies that provide transport business to assessee, no taint of illegality or secrecy with respect to the payments; Highlights that basis for co-ordinate bench’s unfavourable ruling in assessee’s own case in earlier year was that item-wise expenditures were not furnished in returns and no plea was raised to effect that disclosure of commission recipients would be detrimental to interest; Remands matter back to Commissioner for fresh disposal in accordance with law as compliance with requirements not examined: Andhra Pradesh HC.

Source: Transport Corporation of India

CENTRAL EXCISE

Notifications/Circulars

➔ CENVAT Credit (Eighth Amendment) Rules, 2004

CBEC seeks to extend CENVAT credit benefit on the basis of Service Tax Certificate for transportation of goods (STTG Certificate) issued by the Indian Railways vide *Notification no. 26/2014-CENT dated: 27-08-2014*.

➔ Amendment in Cenvat Credit Rules, 2004

As per *notification no. 25/2014 - Central Excise (N.T.) dt. 25-08-2014*, where the Central Government, having regard to the extent of misuse of CENVAT credit, nature and type of such misuse, is of the opinion that in order to prevent the misuse of the provisions of CENVAT credit as specified in these rules, it is necessary in the public interest to provide for certain measures including restrictions on a manufacturer, first stage and second stage dealer, provider of taxable service or an exporter, specify nature of restrictions including restrictions on utilization of CENVAT credit and suspension of registration in case of a dealer and type of facilities to be withdrawn and procedure for issue of such order by an officer authorized by the Board.

➔ Section 35FF

CBEC notify rate of interest to be paid on refund of Pre-deposit

made under Section - 35F of the Central Excise Act, 1944 at six percent per annum vide notification no. 24/2014-CENT dated: 12-08-14.

Case Laws

➤ 100% EOU - Concessional rate of excise duty under Notification No. 23/2003-CE dated 31.3.2003

The department sought to deny the concessional rate on the ground that MS Wire Rods has not been specified as a product in the LOP given by the Development Commissioner and, therefore, the appellant is liable to discharge the excise duty at the full tariff rate and not at the concessional rate - Held that:- There is a technical breach of the condition of the LOP by the appellant in this case, which could have been rectified by the appellant by making suitable application before the Development Commissioner which can still be done. We find merit in the appellant's contention that they had not suppressed any information in this regard and, therefore, the extended period of time could not have been invoked in the present case. In this factual scenario, deposit of duty for the normal period of limitation would suffice for hearing of the appeal which the appellant has already done. Accordingly, we grant waiver from pre-deposit of the balance of dues adjudged against the appellant and stay recovery thereof during the pendency of the appeal - Stay granted.

Source: M/s Viraj Profiles Ltd versus Commissioner of Central Excise [2014 (9) TMI 25 - CESTAT Mumbai - Central Excise]

➤ Benefit of CENVAT credit

Assessee manufacturers of vehicles and were purchasing the various forgings from the market - Forgings were being sent by them to their job workers M/s Eicher Engineering Components Ltd., in terms of the provisions of Rule 4(5)(a) - Assessee has again taken credit of the duty paid by M/s Eicher Engineering Components Ltd - Held that:- admittedly M/s Eicher Engineering Components Ltd. had "paid" the duty and M/s V.E. Commercial Vehicles Ltd. has availed the duty paid by M/s Eicher Engineering Components Ltd. It is well settled law that the credit of duty "paid and not payable" is available. The entire situation is revenue neutral. Tribunal in the case of Bharat Heavy Electricals Ltd. vs. CCE & ST, Meerut-I vide [2014 (3) TMI 203 - CESTAT NEW DELHI] has dealt with an identical situation and has held in favour of the assessee. By following the same, we dispense with the condition of pre-deposit of dues against the appellants and allow both the stay applications - Stay granted.

Source: M/s VE Commercial Vehicles Ltd and M/s Eicher Engineering Components Ltd versus CCE & ST, Indore [2014 (8) TMI 571 - CESTAT NEW DELHI - Central Excise]

➤ Denial of CENVAT Credit

Whether the appellants are entitled to avail the CENVAT credit of duty paid on welding electrodes and gases used for repair and

maintenance of plant and machinery - Held that: - duty paid on the items used for repairs and maintenance would be available as CENVAT credit - Following decision of Samruddhi Cement Ltd. Vs. C.C.E., Indore [2012 (9) TMI 885 - CESTAT NEW DELHI] - Decided in favour of assessee.

Source: M/s The Oudh Sugar Mills Ltd versus Commissioner of Central Excise, Lucknow [2014 (8) TMI 570 - CESTAT New Delhi - Central Excise]

➤ Interest on differential duty

Whether interest is payable under Section 11AB of the Central Excise Act, 1944 on the differential duty paid on supplementary invoices consequent to price increase - Held that:- Supreme Court in the case of CCE, Pune Vs. SKF (India) Pvt. Ltd. [2009 (7) TMI 6 - SUPREME COURT] has held that interest is payable on the differential duty paid on the basis of supplementary invoice on price escalation. In view of that, No reason to interfere with the order of the Commissioner (Appeals) - Decided against assessee.

Source: M/s Dynamatic Technologies Ltd versus Commissioner of Central Excise [2014 (8) TMI 569 - CESTAT Chennai - Central Excise]

➤ Waiver of pre-deposit of the service tax

Denial of CENVAT Credit - Availment of credit at job worker's premises - Held that: - applicant has not received the services although at the premises of the job worker. The invoices are also in the name of the applicant even though the address mentioned is of the job worker. When the service tax has been paid by the applicant for the services received by them therefore, prima facie the applicant is entitled to take CENVAT Credit. Hence, the applicant has made out a case for 100% waiver of pre-deposit. - Stay granted.

Source: Larsen & Toubro Ltd versus CCE [2014 (8) TMI 575 - CESTAT Mumbai - Central Excise]

CUSTOMS

Notifications/Circulars

➤ Increase in customs duty

Increase in customs duty on raw as well as refined/white sugar from 15% to 25% vide *notification no. 26/2014-Cus, dt 21-08-2014.*

➤ Safeguard duty

As per *Notification No. 02/2014 - Cus. (SG), dt 13-08-14*, safeguard duty has been levied on imports of Seamless Pipes and Tubes into India for a period of two and a half years.

➤ Safeguard duty

Based on *Notification no. 03/2014 - Cus. (SG), dt 28-08-14* provisional safeguard duty has been levied on imports of Saturated Fatty Alcohols.

➔ **Guidelines for considering request for exemption from payment of Customs Duty under Section 25(2) of Customs Act, 1962 vide Circular No. 09/2014 – Customs dated: 19th August, 2014**

• Imports made by Central/State Governments, Municipalities, public sector undertakings and autonomous bodies will not be considered for ad-hoc exemption – All such agencies are expected to make budgetary provisions for payment of customs duty along with the cost of the imported goods. However, an exception could be considered in cases where such agencies are recipients of imported goods as grants from foreign Governments/foreign organizations.

• Cases of re-import of artefacts and memorabilia representing India's historical, cultural and art heritage intended for public exhibition, could also be considered for exemption, subject to recommendation for duty exemption by the Secretary, Ministry of Culture, Government of India.

• Cases of import required for treatment of individuals, who are suffering from life threatening diseases, could be considered on case-to-case basis. Such cases will be examined from the point of view of the nature of the medical condition and financial circumstances of the applicant.

• Import of goods meant for relief and rehabilitation of people affected by natural disasters and epidemics could be considered for exemption subject to fulfilling the following conditions:

- The goods imported for charitable use should be distributed free of cost in a manner so as not to restrict access to their benefits on the basis of factors like caste, creed, language, race or religion.
- The goods should not be in the nature of or tend to promote/propagate any religious or spiritual activity.
- The distribution of the goods to the affected people shall be certified by the authorities of the State Government concerned not below the rank of the District Magistrate/Collector.

• Import of medical or surgical instruments and apparatus by charitable hospitals could be considered for exemption of duty subject to fulfilling the following conditions:

- The hospital should not charge any fee for medical services from any class of patients.
- The goods should be used in a manner so as not to restrict access to their benefits on the basis of factors like caste, creed, language, race or religion.
- The hospital should be registered with the Income Tax authorities as a charitable organization/institution.

• Import of goods for free distribution by charitable institutions/organizations could also be considered for exemption of duty subject to fulfilling the following conditions:

- The import should be received as donation or gift by the institution/organization.
- The institution/organization should not be engaged in any commercial activity.

c) The goods should be for distribution, free of cost, in a manner so as not to restrict access to their benefits on the basis of factors like caste, creed, language, race or religion.

d) The goods should not be in the nature of or tend to promote/propagate any religious or spiritual activity.

e) The Institution/organization should be registered with the Income Tax authorities as a charitable organization/institution.

➔ **Section 129EE - Interest on delayed refund of amount deposited under the proviso to section 129E**

Fixation of rate of interest @ 6% under section 129EE vide *Notification No.70 / 2014 – Customs (N.T.) dated 12.08.2014.*

➔ **Tariff Value in respect of some of the imported goods**

CBEC amends principal notification no. 36/2001-Customs (N.T.), dated the 3rd August, 2001 vide Notification No. 73/2014 – Customs (N.T.) dated: 29 August, 2014 and fixes the tariff values specified in column (4) of the Table below, in respect of the imported 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).

Sl. No	Chapter/heading/Sub-heading/tariff item	Description of goods	Tariff value US \$ (Per Metric Tonne)
(1)	(2)	(3)	(4)
1	1511 10 00	Crude Palm Oil	743
2	1511 90 10	RBD Palm Oil	752
3	1511 90 90	Others – Palm Oil	748
4	1511 10 00	Crude Palmolein	771
5	1511 90 20	RBD Palmolein	774
6	1511 90 90	Others – Palmolein	773
7	1507 10 00	Crude Soyabean Oil	890
8	7404 00 22	Brass Scrap (all grades)	4077
9	1207 91 00	Poppy seeds	3429

Sl. No	Chapter/heading/Sub-heading/tariff item	Description of goods	Tariff value US \$ (Per Metric Tonne)
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	420 per 10 grams

Sl. No	Chapter/heading/Sub-heading/tariff item	Description of goods	Tariff value US \$ (Per Metric Tonne)
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	645 per kilogram

Sl. No	Chapter/heading/Sub-heading/tariff item	Description of goods	Tariff value US \$ (Per Metric Tonne)
1	080280	Areca nuts	2017

➔ **Anti-dumping duty**

- Levy of definitive anti-dumping duty on imports of sodium nitrite, originating in or exported from the European Union, for a further period of five years vide *notification no. 37/2014-Cus (ADD), dt. 08-08-2014.*
- Extension of the validity of notification No. 119/2010-Customs dated 19.11.2010 for a further period of one year vide *notification no. 38/2014-Cus (ADD), dt. 13-08-2014.*
- Levy of definitive anti-dumping duty on imports of Ceftriaxone Sodium Sterile originating in or exported from the People's Republic of China, for a period of five years vide *notification no. 39/2014-Cus (ADD), dt 14-08-2014.*

Case Laws

➔ **EXIM - Shipping bill**

Conversion from 'Advance Licence to DEPB Scheme' - Request made after more than one year of export - Request rejected on the ground that Circular No. 36/2010-Cus., dated 23-9-2010 permitted conversion within three months from the date of 'Let Export' order and no documentary evidence produced by the exporter which existed at the time of export to support the request - whether the appellant's application for conversion of Shipping Bills from DFIA to Drawback scheme needs to be allowed or otherwise, when such application filed on 20-07-2013 is made after the goods have been exported, no imports are made against such DFIA and cancellation of such DFIA on 10-07-2013 by DGFT - Held that:- Circular being beneficiary in nature, issued consequently to a number of Tribunal's decisions holding that amendment of shipping bill after export is governed by proviso to Section 149 of Customs Act, 1962, which

prescribes no time-limit for such conversion and if the documentary evidence available at the time of export is produced such conversion needs to be allowed - appellant's exports are not in any dispute as regards description, quality, quantity, value, BRC etc., having no import against DFIA the substantial benefit on such exports now available need not be denied - Following decision of Diamond Engg. (Chennai) P. Ltd vs CC [2013 (3) TMI 46 - CESTAT CHENNAI] - Decided in favour of assessee.

Source: M/s VRA. Cotton Mills Pvt. Ltd. versus CC Jamnagar (Preventive) [2014 (8) TMI 772 - CESTAT Ahmedabad - Customs]

➔ **Exemption from duty**

Whether or not jewellery re-imported was eligible for exemption under Notification No.94/96-CUS, dated 16.12.1996 - benefit denied by Revenue on the ground that the item re-imported was different from that exported which was established in examination; and contested herein - Held that: - The crucial evidence not being reconciled by either side, that gave rise to difference between two parties. It is evident that when there was export of huge quantity of goods taking photograph thereof was impracticable - For such peculiar facts and circumstances the appeal is allowed. But saying so, no precedent is created by this order. - Decided in favour of assessee.

Source: M/s Indian Jewels versus CC. (Import & General), New Delhi [2014 (9) TMI 22 - CESTAT New Delhi - Customs]

SERVICE TAX

Notifications/Circulars

➔ **Exemption of Services**

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), Central Government exempts services by a specified organisation in respect of a religious pilgrimage facilitated by the Ministry of External Affairs of the Government of India, under bilateral arrangement, from the whole of the service tax leviable thereon under section 66B of the said Act vide Notification No.17/2014 - Service Tax dated: 20th August, 2014.

Here specified organisation means

- (a) Kumaon Mandal Vikas Nigam Limited, a Government of Uttarakhand Undertaking; or
- (b) 'Committee' or 'State Committee' as defined in section 2 of the Haj Committee Act, 2002 (35 of 2002).

➔ **Amendment in Service Tax Rules, 1994**

In the Service Tax Rules, 1994, after rule 10, the following rules have been inserted vide *Notification No. 19/2014 - Service Tax dated: 25th August, 2014:*

Rule 11 - Determination of rate of exchange - The rate of exchange for determination of value of taxable service shall be the

applicable rate of exchange as per the generally accepted accounting principles on the date when point of taxation arises in terms of the Point of Taxation Rules, 2011.

Rule 12 - Power to issue supplementary instructions – The Board or the Chief Commissioners of Central Excise may issue instructions for any incidental or supplemental matters for the implementation of the provisions of the Act.”

These rules shall come into force from 1st day of October, 2014.

Case Laws

➔ Works contract services - valuation - composition scheme - applicability of Rule 2A of the Service Tax (Determination of Value) Rules, 2006

Held that: - In the contracts there was a specific mention as to the value of the goods supplied. The quantum of consideration in respect of service is also mentioned. The case of the Revenue is that the applicants are paying service tax on the estimate value mentioned in the contracts. It was found that before the adjudicating authority the applicants produced the actual data regarding the value of goods transferred in execution of the contract and the VAT paid in respect of all the contracts.

The actual value of property of goods transferred in execution of the contract is the value adopted for purposes of payment of VAT and shall be taken as value of property in goods transferred in execution of the said work contracts for determination of value of service portion in the execution of the contract. In the present case, data in respect of actual value of property in goods transferred in execution of the work is available and produced before the adjudicating authority and the same has not been taken into consideration while confirming the demand - matter requires reconsideration - matter remitted back - decided in favor of assessee.

Source: Schindler (I) Pvt Ltd. Versus Commissioner of Service Tax, Mumbai-Ii [2014 (9) TMI 216 - CESTAT Mumbai - Service Tax]

➔ Adjustment of excess tax paid - Telephone services

Whether the assessee during the period of dispute were permitted to adjust excess amount of service tax paid for certain months against their service tax /education cess liability for the subsequent months - The department's contention is that for such adjustments under Rule 6(4A) read with Rule 6(4B), the assessee should have obtained centralized registration under Rule 4(2) - The other conditions are that an assessee with centralized registration under Rule 4(2) can adjust excess payment in one month against this tax liability in other months without any limit, for other assessee, there is a monetary limit of Rs. One lakh for such adjustment.

Held that: - The excess payment referred to in sub-rule (4A) read with sub-rule (4B), is like advance payment under sub-rule (1A) of Rule 6. There is no condition in Rule 6(4A) read with Rule 6(4B) providing that for availing of the adjustment facility, the assessee must have opted for centralized registration under Rule 4(2). Moreover when an assessee during certain months, for reasons oth-

er than interpretation of law, taxability, classification, valuation or applicability of exemption, has paid service tax in excess of his actual tax liability, the Government cannot retain the excess tax paid by the assessee by refusing its adjustment against his tax liability during other months and refusing adjustment of such excess tax payment during a month against tax liability during other months and appropriation and retention of the same would amount to collection of tax without the authority of law which is contrary for the provisions of Art 265 of the Constitution of India.

Therefore, if excess payment of tax in a month is not on account of reasons involving interpretation of law, taxability, classification, valuation or applicability of exemption notification and is purely on account of inability of the assessee to exactly determine the total amount collected during the month against the bills raised, as a result of which he had determined his tax liability or estimation basis, the excess amount of tax paid during the month can be adjusted against his tax liability during other months and in this regard, there cannot be any monetary limit - Decided in favour of assessee. *Source: General Manager (CMTS) Versus Commissioner of Central Excise [2014 (8) TMI 589 - CESTAT New Delhi - Service Tax]*

➔ Classification of service - information technology service - Intellectual Property Rights Services - trading activity or service activity - purchase and sale of third party's standardized software products - sale of in-house developed customized software - sale of hardware - refund of services tax for services provided in SEZ

Held that:- The fact of purchase and resale of software and payment of VAT/ST on the software also point to the fact that the transaction entailed 'sale of goods' and not supply of services. Similarly, sale of hardware would be clearly a trading activity. Therefore, this is also clearly outside the purview of information technology software service. As regards the sale of in-house developed software, we have seen the product literature furnished by the appellant. From the product literature for the software developed in-house, it is seen that they are standard software, which are sold to a particular class of buyers, such as banks, insurance companies, mutual funds and various other financial service providers, under a trade/brand name. Therefore, they appear to be goods, which can be marketed or sold. Inasmuch as the appellant has discharged the sales tax/VAT liability on such software, there is merit in the contention of the appellant that liability to pay service tax does not arise on a sale transaction. - prima facie case is in favor of assessee - stay granted.

Refund for services provided to the SEZ unit - Held that:- It is clear that exemption has to be claimed in the manner prescribed and the manner has been provided vide Notification No. 9/2009-ST dated 3-4-2009. In the present case it is an admitted fact that the said procedure has not been followed. Therefore, prima facie in the absence of compliance to the procedure prescribed, the appellant cannot claim exemption from levy of service tax. - assessee directed

to make pre-deposit of Rs 1.40 crore for services provided in SEZ - stay granted partly.

Source: *3I INFOTECH LTD versus COMMISSIONER OF SERVICE TAX [2014 (8) TMI 590 - CESTAT MUMBAI - Service Tax]*

➤ Waiver of pre-deposit of Service Tax - Business auxiliary services - export of services

Held that: - Services rendered by the appellant is on specific appointment of him by the foreign buyers. It is also undisputed that the acceptance of the finished goods i.e. processed foods are done only on an approval/inspection done by the appellant. At this juncture, we find that prima facie, the services rendered by the appellant may get covered under BAS, as per the Board's Circular dated 24-2-2009, which specifically talks about the non-taxing of services, even when all the relevant activities though taking place in India, benefits of these services are accrued outside India. We find that the appellant has made out a prima facie case for the waiver of the pre-deposit of the amounts involved. Accordingly, application for the waiver of pre-deposit of the amounts involved is allowed and recovery thereof stayed till the disposal of appeal - Stay granted.

Source: *Priya Marine Products versus Commissioner of C. EX., Bhavnagar [2014 (8) TMI 587 - CESTAT Ahmedabad - Service Tax]*

➤ Classification - Business Auxiliary Service or Advertising Agency Service

Held that:- On going through the specimen of the publication produced before us which clearly shows that the appellant are advertising the materials supplied by their clients and they are providing the space/slot for advertisement in their publication for their clients. The said activity is covered under the category of 'Advertising Agency Service' and the same is liable to service tax for sale of space/slot for advertisement. The appellant are also paying service tax on the said activity w.e.f. 1-5-2006 onwards - activity of the appellant does not cover under the category of 'Business Auxiliary Service' - Decided in favour of assessee.

Source: *HSBC INVESTDIRECT (India) Ltd. versus Commissioner of Service Tax, Mumbai [2014 (8) TMI 582 - CESTAT Mumbai - Service Tax]*

SEBI

Notifications/Circulars

➤ Monitoring of Compliance by Stock Exchanges

As per Clause 5.2 of the Circular dated November 18, 2013 and the provisions of the revised Clause 49 which are scheduled to take effect from October 01, 2014, all recognized stock exchanges are advised to step up and equip their monitoring framework to identify and monitor such practices and to ensure that requirements laid down by Principles of Corporate Governance in the revised Clause 49 of the Listing Agreement vide *Circular No. CIR/CFD/*

DIL/4/2014 dated: August 01, 2014.

➤ Expansion of framework of Offer for Sale (OFS) of Shares through stock exchange mechanism

Comprehensive guidelines on sale of shares through Offer for Sale mechanism were issued vide circular no CIR/MRD/DP/18/2012 dated July 18, 2012. These guidelines have been modified vide circulars dated CIR/MRD/DP/04/2013 dated January 25, 2013 and CIR/MRD/DP/17/2013 dated May 30, 2013. The OFS mechanism has been successfully used to divest promoter stake, market feedback indicated that there is a need to take measures to encourage retail participation in OFS, enable other large shareholders to use the OFS mechanism and expand the universe of companies to use this framework. Accordingly, the OFS framework shall be modified as under:

- The OFS mechanism shall be available to top 200 companies by market capitalization in any of the last four completed quarters.
- Any non-promoter shareholder of eligible companies holding at least 10% of share capital may also offer shares through the OFS mechanism.
- In case a non-promoter shareholder offers shares through the OFS mechanism, promoters/ promoter group entities of such companies may participate in the OFS to purchase shares subject to compliance with applicable provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 and SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.
- Minimum 10% of the offer size shall be reserved for retail investors. For this purpose, retail investor shall mean an individual investor who places bids for shares of total value of not more than Rs.2 lakhs aggregated across the exchanges. If the cumulative bid value across exchanges exceeds Rs.2 lakhs in the retail category, such bids shall be rejected.
- Individual retail investors shall have the option to bid in the retail category and the general category. However, if the cumulative bid value of such investors exceeds Rs.2 lakhs, the bids in the retail category shall become ineligible.
- The cut off price i.e. the lowest price at which the entire offer gets sold shall be determined based on all valid bids. The cut off price shall be determined separately for bids received in the retail category and for bids received in the non-retail category.
- Upon determining the cut-off price, the offer size reserved for retail investors shall be allocated to eligible bids of retail investors. Any unutilized portion shall be offered to non-retail category of investors. In case of excess demand in retail category at the cut-off price, allocation shall be on proportionate basis.
- Indicative price for retail and non-retail portion shall be displayed separately.
- Seller shall announce intention of sale of shares latest by 5 pm on T-2 day (T day being the day of the OFS) to the stock exchange. Stock exchanges shall inform the market immediately upon receipt of notice.

- In case of disclosure of the floor price, seller shall disclose the floor price latest by 5 pm on T-1 day to the stock exchange. Stock exchanges shall ensure that the same is informed to the market immediately.
- Seller may offer discount to retail investors. The details of discount and percentage of reservation for retail investors shall be disclosed upfront in the notice of OFS to the exchange.

Discount to retail investors may be offered as follows:

Multiple Clearing price OFS-

- Retail investors may be allocated shares at a discount to the cut-off price determined in the retail category, irrespective of the bid price entered by them. or
- Retail investors may be allocated shares at a discount to the bid price entered by them.

Single clearing price OFS-

Retail investors shall be allocated shares at a discount to cut off price determined in the retail category.

In case of both of the above methodologies, the discounted price which shall be the final allocation price to the retail investors may be below the floor price.

Source: Circular no - CIR/MRD/DP/ 24 /2014 dated: August 08, 2014

➤ Information regarding Grievance Redressal Mechanism

SEBI has been taking various measures to create awareness among investors about grievance mechanisms available to them through workshops as well as through print and electronic media.

As an additional measure and for information of all investors who deal/ invest/ transact in the market, it has now been decided that offices of all Stock Brokers (its registered Sub-Broker(s) and Authorized Person(s)) and Depository Participants shall prominently display basic information, as provided in Annexure-A, about the grievance redressal mechanism available to investors. For other intermediaries, the information as provided in Annexure-B shall be prominently displayed in their offices.

The intermediaries shall take necessary steps to implement the provisions of this circular and ensure its full compliance in respect of all its offices on or before 60 days from the date of this circular.

Source: Circular no. CIR/MIRSD/3/2014 dated: August 28, 2014

➤ Formats for disclosure under Regulation 30 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011(Regulations)

The format for the reports/disclosures to be filed under Regulation 30 of the Regulations has been prescribed by SEBI vide Circular No. SEBI/CFD/DCR/SAST/ 1/2011/09/23 dated September 23, 2011. The format for continual disclosures under regulation 30(1) and 30(2) of the Regulations has been revised vide Circular CIR/CFD/ POLICYCELL/5/2014 dated: August 25, 2014.

For details please visit: www.sebi.gov.in

FOREIGN TRADE

Notifications/Circulars

➤ Export benefits / incentives against exports to Iran

Export proceeds against exports to Iran realized in Indian rupees are permitted to avail exports benefits/ incentives under the Foreign Trade Policy, 2009-14, at par with export proceeds realized in freely convertible currency vide Notification No. 89 (RE-2013)/2009-2014 dated: 6th August, 2014.

➤ Export Policy of Onions

Export of onion for the item description at Serial Number 51 & 52 of Chapter 7 of Schedule 2 of ITC (HS) Classification of Export & Import Items shall be permitted subject to a Minimum Export Price (MEP) of US\$ 300 per Metric Ton F.O.B vide Notification No. 91 (RE – 2013)/2009-2014dated: 21 August, 2014

➤ Quantity of input to be allowed under Advance Authorization/DFIA

This shall be in proportion to the quantity of input actually used/ consumed in production vide Notification No. 90 (Re-2013)/ 2009-2014, dated 21st August, 2014.



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