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The Institute of Cost Accountants of India

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INDIAN ECONOMY

➲ **India's core consumer price inflation seen at around 4.85-5.0 pct in June**

India's core consumer price index was estimated to have risen around 4.85 to 5.0 percent in June from a year earlier, accelerating from an annualised 4.6 percent in May, according to a Reuters snap survey of six analysts.

Read more at: http://in.reuters.com/article/2015/07/13/india-economy-core-cpi-idINI8N0VT01620150713

➲ **Wholesale prices fall for eighth consecutive month in June 2015, but, retail inflation climbs to an 8-month high**

Wholesale prices recorded deflation of 2.4 per cent in June 2015. The wholesale prices were expected to decline y-o-y by 2.2 per cent according to economists polled by Reuters. Thus, the actual fall in prices was steeper than expected. In May 2015, deflation in wholesale prices had stood at the same level,that is 2.4 per cent.

Inflation at wholesale level has been in the negative zone since November 2014. The main reason for this has been the sustained deflation recorded by the fuel & power group due to fall in international oil prices.

Read more at: http://www.cmie.com/kommon/bin/sr.php?kall=wclrdhtm&nvdt=20150715172240040&nvpc=099000000000&nvtype=INSIGHTS

➲ **India's Factory Output Growth Slows in May**

A retarded growth in manufacturing output slowed India's overall industrial production expansion to 2.7 percent for May, against 4.1 percent in April, official data showed. As per the quick estimates of the Index of Industrial Production (IIP) released by the Central Statistical Office (CSO), the growth in manufacturing output fell from 5.1 percent in April and 5.9 percent in May 2014 to 2.2 percent in the month under review.
The manufacturing sector, which has the maximum weightage in the IIP, grew by 3.2 percent between April and May. The mining and electricity output expanded by 2.8 percent and 6 percent respectively.

Read more at: http://www.newindianexpress.com/business/news/Indias-Factory-Output-Growth-Slows-in-May/2015/07/10/article2913002.ece

➲ **Exports in May plunge 20% yoy, trade deficit narrows to 3-month low**

Falling global demand and persistent domestic bottlenecks have ensured a sixth straight monthly fall in India's exports, in May. India exported $22.34 billion worth of goods in May as against $27.99 billion a year-ago, a drop of 20.19% in dollar terms. The main exporting sectors, including petroleum products, gems and jewellery, engineering and chemicals reported a negative growth in April.

"The fall in exports is becoming a trend and it is really worrying," said Anupam Shah, chairman of Engineering Export Promotion Council (EEPC) of India, adding that Indian exporters need a significant stimulus to become competitive.

Read more at: http://www.dnaindia.com/money/report-exports-in-may-plunge-20-yoy-trade-deficit-narrows-to-3-month-low-2096241

➲ **Drought may hit rural economy, aggravating poverty**

India's farm economy could contract this fiscal year for the first time in over a decade because of drought, threatening Prime Minister Narendra Modi's drive to lift millions in the countryside out of poverty and bolster his party's support.

Source: Reuters dated: 15 Jun 2015

➲ **India to tighten screws on banks' 'window dressing' of accounts**

India's government is set to overhaul annual targets for public sector lenders this month, ending a focus on size that has long encouraged banks to inflate their loans and deposits at the year-end to hit growth objectives.

Source: Reuters dated: 09 Jun 2015

➲ **Fed seen raising rates in October as job market firms**

After an unexpected surge in U.S. job gains in May, traders are now betting the Federal Reserve will start raising interest rates as soon as October, and will make a second increase early next year.

Source: Reuters dated: 05 Jun 2015

➲ **Expert views: RBI makes third 25 bps rate cut this year**

The Reserve Bank of India cut its policy interest rate by a quarter percentage point, easing policy for a third time this year, in a move that was widely expected as policymakers try to put the improving economy on a firmer footing.

Source: Reuters dated: 02 Jun 2015

➲ **FDI in Services Sector Up 46% in FY15**

With the government taking steps to improve the ease of doing business and attract investments, foreign direct investment (FDI) inflows into the services sector grew by over 46 per cent to $3.25 billion in fiscal year 2014-15.

The services sector, which includes banking, insurance, outsourcing, R&D, courier and technology testing, had received FDI worth $2.22 billion in FY14. However, the total foreign inflow in 2014-15 in the services sector was low as compared to 2012-13 when it was $4.83 billion, data from the Department of Industrial Policy and Promotio showed.

Read more at:
http://profit.ndtv.com/news/industries/article-fdi-in-servicessector- up-46-in-fy15-771481

BANKING

➲ **Exchange-Traded Interest Rate Futures**

As per sixth Bi-Monthly Monetary Policy Statement, 2014-15, RBI has decided to introduce cash settled Interest Rate Futures (IRF) on 5-7 year and 13-15 year Government of India Securities. In this regard, the Reserve Bank of India has issued a Notification FMRD.DIRD.09/ED (CS) - 2015 dated June 12, 2015 amending the Interest Rate Futures (Reserve Bank) Directions, 2013 dated December 5, 2013 to permit introduction of cash settled IRF on 4-8 years and 11-15 years Government of India Securities vide Notification No. RBI/2014-15/640 [FMRD.DIRD.10/14.03.01/2014-15] dated: June 12, 2015. It has also been decided to modify the residual maturity of cash settled 10-year IRF to 'between 8 years and 11 years'.

Read more at: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=9784&Mode=0

➲ **Strategic Debt Restructuring Scheme**

JLF/Corporate Debt Restructuring Cell (CDR) may consider the following options when a loan is restructured:

- Possibility of transferring equity of the company by promoters to the lenders to compensate for their sacrifices;
- Promoters infusing more equity into their companies;
- Transfer of the promoters' holdings to a security trustee or an escrow arrangement till turnaround of company. This will enable a change in management control, should lenders favour it.

It has been observed that in many cases of restructuring of accounts, borrower companies are not able to come out of stress due to operational/ managerial inefficiencies despite substantial sacrifices made by the lending banks. In such cases, change of ownership will be a preferred option. Henceforth, the Joint Lenders' Forum (JLF) should actively consider such change in ownership under the above Framework issued vide the circular dated February 26, 2014.

Source: Notification No. RBI/2014-15/627 [DBR.BP.BC.No.101/21.04.132/2014-15] dated: June 8, 2015

Read more at: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=9767&Mode=0

➲ **Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Fourth Amendment) Regulations, 2015**

Reserve Bank of India makes the amendments in the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 (Notification No. FEMA 20/2000-RB dated 3rd May 2000) vide Notification No.

FEMA.344/2015 RB dated June 11, 2015.

Read more at: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=9915&Mode=0

➲ **Revision in Bank Rate – UCBs/ StCBs/ CCBs**

As per Monetary Policy Statement dated June 2, 2015, the Bank Rate stands adjusted by 25 basis points from 8.5 per cent to 8.25 per cent with effect from June 2, 2015. The interest rate on refinance for SSI under Section 17(2) (bb) read with Section 17(4)(c) of the Reserve Bank of India Act, 1934, also stands revised to 8.25 per cent with effect from June 2, 2015.

Penal Interest Rates which are linked to the Bank Rate:

Item	Existing Rate	Revised Rate (Effective from June 2, 2015)
Penal interest rates on shortfalls in reserve requirements (depending on duration of shortfalls)	Bank Rate plus 3.0 percentage points (11.5 per cent) or Bank Rate plus 5.0 percentage points (13.5 per cent)	Bank Rate plus 3.0 percentage points (11.25 per cent) or Bank Rate plus 5.0 percentage points (13.25 per cent)

Source:RBI/2014-15/625[DCBR.BPD.(PCB/RCB).Cir. No.37/16.11.00/2014-15 dated: June 2, 2015

➲ **Liquidity Adjustment Facility – Repo and Reverse Repo Rates**

RBI has decided to reduce the Repo rate under the Liquidity Adjustment Facility (LAF) by 25 basis points from 7.50 per cent to 7.25 per cent with immediate effect. Consequent to the change in the Repo rate, the Reverse Repo rate under the LAF will stand adjusted to 6.25 per cent vide *Notification No. RBI/2014-2015/622 [FMOD.MAOG. No.108 /01.01.001/2014-15] dated: June 2, 2015.*

➲ **Marginal Standing Facility**

RBI has decided to reduce the Repo rate under the Liquidity Adjustment Facility (LAF) by 25 basis points from 7.50 per cent to 7.25 per cent with immediate effect. Consequent to the change in the Repo rate, the Marginal Standing Facility (MSF) rate will stand adjusted to 8.25 per cent vide *Notification No. RBI/2014-2015/623 [FMOD.MAOG.No.109/01.18.001/2014-15] dated: June 2, 2015.*

➲ **Standing Liquidity Facilities for Banks & Primary Dealers**

Standing Liquidity Facilities provided to Primary Dealers (PDs) (collateralised liquidity support) from the Reserve Bank would be available at the revised repo rate, i.e., at 7.25 per cent with effect from June 2, 2015.

In consonance with the reduced LAF repo rate, the interest rate applicable to outstanding ECR will be at the revised rate of 7.25 per cent with effect from June 2, 2015 vide *Notification No. RBI/2014-15/621 [REF.No.MPD.BC.378/07.01.279/2014-15] dated: June 2, 2015.*

➲ **Rationalisation under LRS for Current and Capital Account Transactions**

RBI has decided to make the following changes for further liberalization and rationalization on the existing guidelines:

Limit and Facilities under LRS

AD banks may now allow remittances by a resident individual up to USD 250,000 per financial year for any permitted current or capital account transaction or a combination of both. If an individual has already remitted any amount under the LRS, then the applicable limit for such an individual would be reduced from the present limit of USD 250,000 for the financial year by the amount already remitted.

The permissible capital account transactions by an individual under LRS are:

i) opening of foreign currency account abroad with a bank;

ii) purchase of property abroad;

iii) making investments abroad;

iv) setting up Wholly owned subsidiaries and Joint Ventures abroad;

v) extending loans including loans in Indian Rupees to Non-resident Indians (NRIs) who are relatives as defined in Companies Act, 2013.

All the facilities (including private/business visits) for release of exchange/remittances for current account transactions available to resident individuals under Para 1 of Schedule III to the

Foreign Exchange Management (Current Account Transactions) Rules, 2000 shall now be subsumed under the overall limit of USD 250,000. The Scheme cannot be made use for making remittances for any prohibited or illegal activities such as margin trading, lottery, etc.

Remittance Procedure

Requirements to be complied with by the remitter: The resident individual seeking to make the remittances should furnish an application cum declaration in the format indicated to the AD/ full fledged money changer (FFMC) concerned regarding the purpose of the remittances and declaration to the effect that the funds belong to the remitter and will not be used for the prohibited purposes. Resident individuals can also purchase foreign exchange from a full fledged money changer (FFMC) for private/business visits. Foreign exchange thus purchased from an FFMC should also be reckoned within the overall LRS limit USD 250,000 and declared accordingly in the application-cum-declaration form submitted to the AD bank.

Requirements to be complied with by the Authorised Persons

While allowing the facility to resident individuals, Authorised Persons, including AD Category II and FFMCs, are required to ensure that the "Know Your Customer" guidelines and the Anti-Money Laundering Rules in force have been complied with while allowing the transactions.

Requirements to be complied with by the Authorised Dealers

- It is clarified that banks should not extend any kind of funded and non-funded facilities to resident individuals to facilitate capital account remittances under the Scheme.
- The applicants should have maintained the bank account with the bank for a minimum period of one year prior to the remittance for capital account transactions. If the applicant seeking to make the remittances is a new customer of the bank, Authorised Dealers should carry out due diligence on the operations and maintenance of the account.
- No part of the foreign exchange of USD 250,000 shall be used for remittance directly or indirectly to countries notified as non-cooperative countries and territories by the Financial Action Task Force (FATF) from time to time and communicated by the Reserve Bank of India to all concerned.

Reporting of the transactions

Authorised Dealers may arrange to furnish on a monthly basis information on the number of applicants and total amount remitted under LRS to the Chief General Manager, External Payment Division, Foreign Exchange Department, Reserve Bank of India, Central Office, Mumbai - 400001 through Online Return Filing System (ORFS) only.
Source: Notification No. RBI/2014-15/620 [A.P. (DIR Series) Circular No. 106] dated: June 1, 2015

Read more at: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=9756&Mode=0

➲ **Issue of Long Term Bonds by banks for Financing of Infrastructure and Affordable Housing – Cross Holding**

In reference to circular DBOD.BP.BC.No.25/08.12.014/2014-15 dated July 15, 2014 allowing banks to issue long term bonds, with exemptions from certain regulatory pre-emptions, for their financing of infrastructure and affordable housing loans. Further, in order to provide liquidity to retail investors in such bonds, we also allowed banks; vide circular DBOD.BP.BC.No.50/08.12.014/2014-15 dated November 27, 2014, to extend loans to individuals against such long-term bonds issued by them. RBI has decided that henceforth, banks can invest in the long term bonds issued by other banks under the provisions of the above-mentioned circular dated July 15, 2014. However, the primary objective of allowing regulatory exemptions on CRR and SLR requirements as well as priority sector lending is to encourage issue of long term bonds for lending to infrastructure projects and affordable housing.
To preserve this objective and in order to prevent double counting of regulatory exemptions allowed, such investments will be subject to conditions as follows:

- Banks' investment in such bonds will not be treated as 'assets with the banking system in India' for the purpose of calculation of NDTL.
- Such investments are not to be held under HTM category.
- An investing bank's investment in a specific issue of such bonds will be capped at 2% of the investing bank's Tier 1 Capital or 5% of the issue size, whichever is lower.

- An investing bank's aggregate holding in such bonds will be capped at 10% of its total Non-SLR investments.
- Not more than 20% of the primary issue size of such bond issuance can be allotted to banks.
- Banks cannot hold their own bonds.

Source: Notification No. RBI/2014-15/618 [DBR.BP.BC. No.98/08.12.014/2014-15] dated: June 01, 2015

COST AUDIT

Circulars / Notifications

➲ **MCA issues revised e-forms for Cost Audit**

MCA issues amended Companies (cost records and audit) Rules, 2015 dated 12th June, 2015. In the said rules, MCA has notified the revised e-forms CRA-2 and CRA-4 for compliance under the new Companies Act.

Form CRA-2 is for intimating the Central Government for appointment of Cost Auditor, while Form CRA-4 is for filing the Cost Audit Report.

Read more at: http://www.mca.gov.in/Ministry/pdf/Companies_Cost_Records_and_Audit_%20amdt_Rules_2015.pdf

➲ **MCA extends time for filing notice of appointment of Cost Auditor and Cost Audit Report vide General Circular No. 8/ 2015 dated: 12 June, 2015**

The revised form CRA-2 has now been notified on 12th June, 2015 and is available on the MCA 21 system form filing. In view of the delay in availability of revised **Form CRA-2** on the MCA 21 portal, however, the additional fee on account of any delay beyond the prescribed period of 30 days from the date of Board Meeting in which the appointment of the Auditor was made for filing of CRA-2 for the financial year starting on or after 1st April, 2015 is waived for all such filings **till 30th June, 2015** vide General Circular No. 8, 2015 dated: 12th June, 2015.

The revised **e-Form CRA-4** has also been notified vide the above mentioned notification and will be made available on MCA-21 portal shortly. Therefore, on the similar lines mentioned in above paras, additional fees on delayed filing of form CRA- 4 beyond the prescribed period of 30 days from the date of receipt of a copy of Cost Audit Report from the Cost Auditor for the Financial Year starting on or after 1st April, 2014 is also waived for all such filings **till 31st August, 2015**.

Read more at: http://mca.gov.in/Ministry/pdf/General_Circular_8-2015.pdf

CUSTOMS

Circulars / Notifications

➲ **Amendment in the Courier Imports and Exports(Clearance) Regulations, 1998**

CBEC makes the following amendments to amend the Courier 1 Imports and Exports (Clearance) Regulations,1998. These regulations may be called the Courier Imports and Exports (Clearance) Amendment Regulations, 2015 vide *Notification No 62/2015–Customs (N.T.) dt: 17 June, 2015.*

Read more at: http://www.cbec.gov.in/customs/cs-act/notifications/notfns-2015/cs-nt2015/csnt62-2015.htm

➲ Amendment of Notification No. 60/2011 – Customs, dated 14th July 2011, so as to include Kamalasagar (Tripura) on the India-Bangladesh Border, in order to extend exemption from the whole of the duty of Customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975 to specified goods traded in the Kamalasagar (Tripura) Border Haat, with effect from the 06th day of June, 2015 vide Notification No. 36/2015-Cus,dt. 04-06-2015.

➲ Amendment of notification no 12/2012 - Customs dated 17/03/2012 so as to increase the BCD on certain iron and steel products vide Notification No. 39/2015-Cus, dt. 16-06-2015.

Read more at: http://www.cbec.gov.in/customs/cs-act/notifications/ notfns-2015/cs-tarr2015/cs39-2015.htm

➲ Tariff Notification in respect of fixation of T V of Edible oil,

Brass, Poppy seed, Areca nut, gold and Silver vide *Notification No. 61/2015-Cus(NT),dt. 15-06-2015.*

➲ Anti dumping duty: Levy definitive anti-dumping duty on imports of Nylon Tyre Cord Fabric, originating in or exported from the People's Republic of China for a period of five years vide *Notification No. 30/2015-Cus (ADD), dt. 12-06-2015.*

➲ Anti dumping duty: Levy of definitive anti-dumping duty on imports of Vitamin E, originating in or exported from the People's Republic of China for a period of five years vide *Notification No. 29/2015-Cus (ADD), dt. 10-06-2015.*

CENTRAL EXCISE

Circulars / Notifications

➲ **Section 5A of The Central Excise Act, 1944 - Power to Grant Exemption from duty of Excise - Exemption to Anti-Retroviral Drugs (Arv Drgus) and diagnostics and equipments**

In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944), the Central Government exempts the goods mentioned in column (1) of the Table below of the description specified in column (2) of the said Table from the whole of the duty of excise leviable thereon which is specified in the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), subject to the condition that the manufacturer produces at the time of clearance of the said goods, before the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise having jurisdiction, a certificate from an officer not below the rank of Deputy Secretary to the Government of India in the Ministry of Health and Family Welfare to the effect that the said goods are required for the National AIDS Control Programme funded by Global Fund to fight AIDS, TB and Malaria vide *Notification No. 33/2015-CE dated: 10-6-2015.*

➲ **Rule 9 of The Central Excise Rules, 2002 - Registration - Exemption from operation of said rule to every manufacturing unit engaged in manufacture of alumunium roofing panels**

In exercise of the powers conferred by sub-rule (2) of rule 9 of the Central Excise Rules, 2002, the Central Board of Excise and Customs hereby exempts from the operation of said rule, every manufacturing unit engaged in the manufacture of aluminium roofing panels falling under tariff item 7610 90 10 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), subject to the conditions that such roofing panels are consumed at the site of manufacture for execution of the project and the manufacturer of such goods has a centralised billing or accounting system in respect of such goods manufactured by different manufacturing units and opts for registering only the premises or office from where such centralised billing or accounting is done.

Source: Notification NO.17/2015-C.E. (N.T.), dated: 8-6-2015

Case Laws

➲ **Value of captive consumption shall be marked up by 10% even in case of loss**

Central Excise : In valuing captive consumption of intermediate products, notional profits at 10 per cent of cost are to be added to value even if assessee is incurring losses from production of intermediate products.

Section 4, of the Central Excise Act, 1944, read with rule 8, of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 and Rule 6 of the Central Excise (Valuation) Rules, 1975 - Valuation under Central Excise - Transaction value - Captive Consumption - Assessee was consuming intermediate product 'yarn' in manufacture of 'exempted fabrics' - Department valued yarn at 'cost plus notional profits at 10 per cent' - Assessee argued that since it was incurring losses in production of yarn, hence, notional profit cannot be included under rule 6(b)(ii) of 1975 rules - HELD : Rule 6(b)(ii) does not mandate that profits should be actually earned; it merely states that "profits which assessee would have normally earned on sale of such goods" - Thus, notional profits could be taken into consideration and added while arriving at value of captive material. [In favour of revenue]

Source: Supreme Court of India, Chackolas Spinning & Weaving Mills Ltd. v. Commissioner of Central Excise, Cochin [2015] 59 taxmann.com 439 (SC)

➲ **Date of e-filing of refund claim is relevant to determine whether claim is time-barred**

Section 11B of the Central Excise Act, 1944, read with rule 5 of the Cenvat Credit Rules, 2004, section 83 of the Finance Act, 1994 and section 27 of the Customs Act, 1962 - Refund - Period of limitation - Assessee filed refund claim under rule 5 ibid electronically/online as per extant circulars and got acknowledgement thereof - However, assessee filed hardcopy/physical copy of said refund claim belatedly and therefore, refund claim was rejected as time-barred - Department argued that as per section 11B and rule 5 read with notification issued there under, assessee is required to file refund claim with supportive documents, which was not done in time - HELD : Date of filing of refund claim electronically should be considered as date of filing of refund claim - As refund claim was filed electronically within time limit prescribed as per section 11B, same was within time - Hence, refund claim was remanded back for consideration on merits [In favour of assessee]

Circulars and Notifications : Circular No. 919/09/2010-CX, dated 23-3-2010 and Trade Notice No. 14/ST/09, dated 17-9-2009, Notification No. 5/2006-CE (NT)

Source: CESTAT, NEW DELHI BENCH, Transcend MT Services (P.) Ltd. v. Commissioner of Service Tax, Delhi
[2015] 59 taxmann.com 253 (New Delhi - CESTAT)

➲ **Assessee couldn't take Cenvat credit when entire manufacturing and duty payment was done by job-worker**

Cenvat Credit : Where assessee did not do manufacturing activity and both manufacturing and duty payment were done by job workers, assessee cannot be considered as manufacturer for taking Cenvat credit

Cenvat Credit : Procedures laid down for taking credit cannot be by-passed based on argument of revenue neutrality or argument that 'if not assessee, someone else could have taken credit', as that would lead to circumvention of entire rules and procedures disenabling proper verifications of credits and duty payments

Rule 2(l), read with rules 3 and 4, of the Cenvat Credit Rules, 2004 and section 11A, of the Central Excise Act, 1944 - Cenvat Credit - Input service - Transportation Services - Period January, 2005 to August, 2006 - Assessee took input service credit of transportation of : (i) inputs to job worker's premises, and (ii) final products from job worker's premises to depots - Department denied said credit to assessee, as manufacturer was job-worker and not assessee - Assessee argued that situation was revenue neutral - HELD : Assessee did not do manufacturing activity and not even paid duty; both manufacturing and duty payment were done by job workers - Hence, assessee cannot be considered as manufacturer for taking Cenvat credit - Though credit could have been taken by job-worker, if appropriate procedure was followed; but, procedures laid down for taking credit cannot be by-passed based on argument of revenue neutrality or argument that 'if not assessee, someone else could have taken credit', as that would lead to circumvention of entire rules and procedures disenabling proper verifications of credits and duty payments - However, since there was no intention to evade, invocation of extended period was set aside.
[In favour of revenue]

Rule 2(l) of the Cenvat Credit Rules, 2004 - Cenvat Credit - Input service - Transportation Services - Period January, 2005 to August, 2006 - Assessee took input service credit of transportation from depots to their dealers - Department denied said credit invoking extended period - HELD : In view of decision of jurisdictional High Court in India Japan Lighting (P.) Ltd. v. CCE [2007] 11 STT 498 (Chennai-CESTAT) impugned credit was denied - But, owing to confusion prevalent at relevant time, since there was no intention to evade, invocation of extended period was set aside.
[In favour of revenue]

Circulars and Notifications : Notification 214/86-C.E, dated 25-3-1986

FACTS

- Assessee took input service credit of transportation of -
(i) inputs to job worker's premises and
(ii) final products from job worker's premises to depots; and also from depots to dealers.
- The department denied said credit to assessee, as manufacturer was job-worker.
- The assessee pleaded revenue neutrality and also argued that extended period could not be invoked owing to different interpretations.

HELD

I. Merits

- This is a case where the assessee did not do the manufacturing activity in respect of the goods for which Cenvat credit of input services was taken. Neither did the assessee pay excise duty on

such goods. Both manufacturing and duty payment were done by job workers. In such a situation there is no justification to consider the assessee has manufacturer for the purpose of taking Cenvat credit in respect of Service Tax paid on transportation of inputs and final products.

- Credit on such transportation service cannot be taken by considering such activity as service in relation to business.
- From the facts of the case, the job worker or the assessee could have taken credit if Service Tax incidence was borne by the person paying duty on final product and appropriate procedure was followed. However, procedures laid down for taking credit cannot be by passed based on argument of revenue neutrality or the argument that if not assessee someone else could have taken credit. Because such interpretation can be raised in most of the disputes involving value added tax and the entire rules and procedures enabling proper verifications of credits and duty payments can be circumvented. Such an interpretation cannot be supported through decisions of the Tribunal.

II. Limitation

- However, in the facts of case, taking credit was not an action with intention to evade payment of duty as far as the first component is concerned. So demand in respect of this component may be restricted to the normal period of one year.

III. Transport from depots to dealers :

- As regards credit taken for transportation from depots to their dealers also, during the relevant time there was considerable confusion about the scope of the expression service used for "clearance of final products from the place of removal" which was used in definition at rule 2(1)(ii) of the definition of "input service".
- In fact the decision of the Karnataka High Court in the case of ABB Ltd. is to the effect that such credit could be allowed up to 1-4-2008. However, the decision of the jurisdictional High Court in the case of India Japan Lighting (P.) Ltd. (supra) was followed and credit was denied.
- But since this issue was one of legal interpretation of rules wherein two views were possible, demand may be restricted to normal period of limitation.
- The penalty was set aside.

Source: CESTAT, CHENNAI BENCH, Lotte India Corporation Ltd. v. Commissioner of Central Excise
[2015] 59 taxmann.com 162 (Chennai - CESTAT)

➲ **Welding electrodes used for repairing of plant and machinery aren't eligible for credit as inputs or capital goods**

Rule 2(k) of the Cenvat Credit Rules, 2004, read with rule 2(f) of the Cenvat Credit Rules, 2001 and rules 57A and 57B of the Central Excise Rules, 1944 - Cenvat Credit - Input - Period January, 2001 to December, 2001 - Assessee, a manufacturer of sugar and molasses, took credit of welding electrodes used for : (a) re-building of worn out parts of machines such as hammer, cane crusher, cane unloader etc.; and (b) connecting pipe lines for conveying steam, liquid juice to machines installed in factory - Department denied credit - HELD : If no repair or maintenance is required for certain period, 'Welding Electrodes' shall never be used; thus, for manufacture of 'sugar' and 'molasses', 'Welding Electrodes' is not an integral part - Words 'in or in relation to manufacture' cannot be extended to cover 'Welding Electrodes' used in repair and maintenance of plant and machinery, as, this way, even land, bricks, cement, concrete, and nut bolts etc. every thing would get covered - 'Welding Electrodes' cannot also be regarded as used for manufacture of final products or as accessories of final products. [In favour of revenue]

Rule 2(a) of the Cenvat Credit Rules, 2004, read with rule 2(b) of the Cenvat Credit Rules, 2001 and rule 57Q of the Central Excise Rules, 1944 - Cenvat Credit - Capital goods - Period January, 2001 to December, 2001 - Assessee claimed that welding electrodes used for repair and maintenance of plant and machinery are capital goods - HELD : 'Welding Electrodes' do not satisfy requirement of 'capital goods' under rule 57Q or under rule 2(b) ibid - Hence, they are ineligible for credit. [In favour of revenue]

Source: High Court of Allahabad, Dhampur Sugar Mills Ltd. v. Commissioner of Central Excise

➲ **Cutting of large plates into smaller size using gas cutting machines amounts to manufacture**

Excise & Customs : Extended period cannot be invoked, if, even as per department, there were doubts as to whether process amounted to manufacture
Excise & Customs : Cutting larger size plates into small size and shapes using gas cutting machines, as per requirements of customers amounts to manufacture

Section 2(f) of the Central Excise Act, 1944 - Manufacture - General Meaning - Assessee was engaged in profile cutting viz. cutting larger size plates into small size and shapes using gas cutting machines, as per requirements of customers - Department argued that said process amounted to manufacture - HELD : Assessee gave up challenge to manufacture; hence, demand was confirmed on issue of manufacture. [In favour of revenue]

Section 11A, read with section 11AC, of the Central Excise Act, 1944, section 73 of the Finance Act, 1994 and section 28 of the Customs Act, 1962 - Recovery - Of duty or tax not levied/paid or short-levied/paid or erroneously refunded - Invocation of extended period of limitation - Department invoked extended period to demand duty on ground that process amounted to manufacture - Assessee argued that in case of another assessee, adjudication order had found that there was doubt earlier whether process amounted to manufacture and hence, owing to bona fide belief, extended period of limitation cannot be invoked - HELD : Even as per department, there were certain doubts relating to excisability of process carried out by assessee - Hence, assessee may have nurtured belief that process did not amount to manufacture - Assessee's conduct was bona fide and cannot be treated as suppression/evasion - Extended period of limitation and penalties were set aside. [In favour of assessee]

FACTS

- Assessee was engaged in profile cutting viz. cutting larger size plates into small size and shapes using gas cutting machines, as per requirements of customers.
- Department invoked extended period of limitation to demand duty.
- Assessee argued that in case of another assessee, adjudication order had found that there was doubt earlier whether process amounted to manufacture and had deleted penalty. Hence, owing to bona fide belief, there was no suppression of facts leading to invocation of extended period of limitation.

HELD

- Assessee gave up challenge to manufacture; hence, demand was confirmed on issue of manufacture.
- However, even as per the department, there were certain doubts relating to excisability of the process carried out by assessee. In view thereof, if the assessee also had nurtured this belief that the process carried out by him does not amount to manufacture and did not pay excise duty, this conduct of the assessee was a bona fide conduct and cannot be treated as suppression/evasion. Hence, extended period of limitation could not be invoked and penalties could not be levied.

Source: Supreme Court of India, Sanjay Indl. Corpn., v. Commissioner of Central Excise, Mumbai,
[2015] 57 taxmann.com 319 (SC)

SERVICE TAX

Notifications / Circulars

➲ **Return - Revised Guidelines For Scrutiny Of St-3 Returns**

CBEC has been decided that detailed scrutiny of ST-3 returns, with effect from 1-8-2015, should be carried out in the manner outlined below:—

Preliminary Online Scrutiny

The purpose of preliminary scrutiny of returns includes ensuring the completeness of the information furnished in the return, arithmetic correctness of the amount computed as tax and its timely payment, timely submission of the return and identification of non-filers and stop-filers. On the basis of the validation checks incorporated in ACES by the Directorate General of Systems & Data Management (DGS&DM), preliminary scrutiny of all returns is done online in ACES and the returns having certain errors are marked for Review and Correction (RnC). These have to be processed accordingly by the Range Officers.

Scope of Detailed Manual Scrutiny

The purpose of detailed manual scrutiny of returns is to ensure the correctness of the assessment made by the assessee. This includes checking the taxability of the service, the correctness of the value of taxable services in terms of section 67 of the Finance Act, 1994, read with the Service Tax (Determination of Value) Rules, 2006 and the effective rate of tax after taking into account the admissibility of an exemption notification, abatement, or exports, if any; ensuring the correct availment/utilization of CENVAT Credit on inputs, capital goods, and input services in terms of the CENVAT Credit Rules, 2004, etc. In doing this, the proper officer must rely mainly on assessment-related documents like agreements/con-

tracts and invoices. A detailed scrutiny programme typically supplements the audit programme. The scope of audit, on the other hand, is to inspect the financial records of a company for a complete financial year in order to identify non-compliance issues and to evaluate the assessee's internal control system. The two processes of audit and scrutiny are, in fact, complementary to each other.

Selection of Returns for Detailed Scrutiny

- The detailed manual scrutiny programme must replicate some of the best practices in audit. A Return Scrutiny Cell should be created in the Commissionerate's Headquarters. The Return Scrutiny Cell shall maintain the records of the assessees and the returns which are selected for detailed scrutiny and also the results thereof.
- The focus of detailed manual scrutiny of the returns would be on the returns of those assessees which are not being audited. The detailed return scrutiny would be conducted in respect of such assessees whose total tax paid (Cash + CENVAT) for the FY 2014-15 is below Rs. 50 lakhs. Each Commissionerate has to select equal number of assessees for carrying out returns' scrutiny from each of the these three total tax paid bands (Cash + CENVAT) viz., Rs. 0 to Rs. 10 lakhs, Rs. 10-25 lakhs and Rs. 25-50 lakhs for the financial year 2014-15.
- The risk parameters and the risk tools which would govern the selection of the returns for detailed manual scrutiny have been developed. The risk scores for the Service Tax returns for the financial year 2014-15 have been calculated. The data has been segregated on the basis of Zone/Commissionerate/Division/Range.

Methodology

Detailed scrutiny of returns must be conducted by the Service Tax Range headed by the Superintendent and assisted by a complement of Inspectors. However, the Divisional DC/AC shall be responsible for the overall supervision of this business process in respect of his/her division. To begin with, the returns for the financial year 2013-2014 should be taken up for detailed scrutiny. One of the important objectives of return scrutiny is to ensure validation of the information furnished in the self-assessed ST-3 return. The validation exercise would require reconciling information furnished in the ST-3 return with ITR Form Nos. 4, 5, 6 and 26AS and any third party information made available. In addition to this, the scrutiny exercise must also look at the correctness of self-assessment with respect to taxability, admissibility of abatement and eligibility for exemption, valuation and CENVAT credit availed/utilized.

A Checklist has been prepared for carrying out detailed manual scrutiny of selected ST-3 returns. For achieving the stated objectives, the checks have been categorized as follows:

- Reconciliation for validation of the information furnished in the ST-3 return;
- Taxability in respect of services which may have escaped assessment;
- Classification (for the purposes of due availment of abatement/exemption benefit);
- Valuation; and
- CENVAT credit availment/utilization.

In case any additional details are required, the same may be obtained from the assessee through requisition rather than through a visit. Calling of such additional documents must be done with the approval of the jurisdictional DC/AC so as to obviate the complaint of administrative intrusion. Based on the experience of some Zones/Commissionerates, it is seen that in a month an Inspector will be able to perform detailed manual scrutiny of a minimum of three assessees. While some cases may take time, the scrutiny process of an assessee should be completed in a period not exceeding three months.

Documentation of Findings

In order to ensure transparency of the scrutiny process, it is important to document the findings flowing from the scrutiny effort. For this purpose, an Observation Sheet should be prepared.

Source: Circular No. 185/4/2015-ST [F.No.137/314/2012-ST], dated: 30-6-2015

➲ Clarification on rate of service tax on restaurant service

The Service Tax rate has been increased to 14% with effect from 1st June, 2015. Certain doubts have been raised in regard to abatement on value of services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, having the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year.

Matter has been examined. Valuation of services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess having the facility of air-conditioning or central air-heating

in any part of the establishment, is determined as provided in rule 2C of the Service Tax (Determination of Value) Rules, 2006. In the said rule, service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of the activity, at a restaurant has been specified as 40 percentage of the total amount charged for such supply. In Budget, 2015, no change has been made in abatement and the rate of service tax on the abated value has been increased to 14% with effect from 1st June, 2015. Therefore, effective service tax rate would be 5.6% (14% of 40%) of the total amount charged.

Hence, with the increase in the applicable rate of service tax from 12.36% (including education cesses) to 14%, the effective rate on such establishments has increased from 4.9% to 5.6% of the total amount charged. It is further clarified that exemption from service tax still continues to services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year.

Source: Circular No. 184/3/2015-ST, dated: 3-6-2015

Case Laws

➲ **Packaging of fertiliser is part of manufacturing process; not liable to ST**

Service Tax : Since fertiliser cannot be marketed without packaging, packaging of fertiliser is an integral part of manufacture and not taxable under Packaging Services

Section 65(76b), read with sections 65B(40) and 66D(f), of the Finance Act, 1994 and section 2(f) of the Central Excise Act, 1944 - Taxable services - Packaging Activity Services - Period from 16-6-2005 to 31-3-2010 - Assessee was engaged in packaging of fertiliser manufactured by Z - Department demanded service tax thereon - Tribunal held that : (a) packaging of fertiliser is a statutory requirement as per Essential Commodity Act, 1955 and Fertiliser (Control) Order, 1985; (b) fertilizer cannot be marketed without same; hence, manufacture is complete only when packaging is done and therefore, packaging would form an integral part of manufacture and excluded from scope of packaging services - HELD : There is no good ground to interfere with judgment of Tribunal - Hence, Appeal was dismissed. [In favour of assessee]

Source: Supreme Court of India, Commissioner of Central Excise, Goa v. New Era Handling Agency [2015] 59 taxmann.com 438 (SC)

➲ **Construction of railway siding to transport 'coal' to captive power generating plant amounts to 'input service'**

Construction and related services availed for getting a railway siding constructed for transport of 'coal' to captive power plant for generation of electricity for use in manufacture, amounts to 'services used in or in relation to procurement of inputs' and eligible for input service credit

Rule 2(l) of the Cenvat Credit Rules, 2004 - Cenvat Credit - Input service - Procurement of inputs/capital goods - Period June 2008 to March 2010 - Assessee got a railway siding constructed for transport of 'coal' to captive power plant for generation of electricity and resultant electricity was used in manufacture - Assessee availed engineering consultancy service for said construction and took credit thereof - Department denied credit on ground that same had no nexus with manufacture - Assessee argued that same was covered under 'services used in relation to procurement of inputs' and 'activities relating to business', as coal is one of inputs for generation of electricity for use in manufacture - HELD : Construction of railway siding is only to facilitate transportation of coal to assessee's factory - Transportation of coal is necessary for generation of electricity in captive power plant and is integrally connected with business of manufacturing of final product - Therefore, services for construction of railway siding have to be treated as 'services used in or in relation to procurement of inputs' and also 'activities relating to business of manufacture of final product' and accordingly, eligible for credit [In favour of assessee]

Rule 2(l) of the Cenvat Credit Rules, 2004 - Cenvat Credit - Input service - General - Period June 2008 to March 2010 - Definition of input service not only covers services which are used directly or indirectly, in or in relation to manufacture of final product, but also covers other services which have direct nexus or which are integrally connected with 'business of manufacture of final product'. [In favour of assessee]

Source: CESTAT, NEW DELHI BENCH, RSWM Ltd. (Fabric Division) v. Commissioner of Central Excise, Jaipur-II
[2015] 57 taxmann.com *155 (New Delhi - CESTAT)*

INCOME TAX

Circulars / Notifications

➲ **Section 119 of The Income-Tax Act, 1961 - Income-Tax Authorities - Instructions to Subordinate Authorities - Condonation Ofof Delay in Filing Refund Claim And Claim of Carry Forward Losses Under Section 119(2)(B)**

CBDT issued guidelines on the conditions for condonation and the procedure to be followed for deciding such matters:

The Principal Commissioners of Income-tax/Commissioners of Income-tax (Pr.CsIT/CsIT) shall be vested with the powers of acceptance/rejection of such applications/claims if the amount of such claims is not more than Rs.10 lakhs for any one assessment year. The Principal Chief Commissioners of Income-tax/Chief Commissioners of Income-tax (Pr.CCsIT/CCsIT) shall be vested with the powers of acceptance/rejection of such applications/claims if the amount of such claims exceeds Rs.10 lakhs but is not more than Rs. 50 lakhs for any one assessment year. The applications/claims for amount exceeding Rs.50 lakhs shall be considered by the Board.

No condonation application for claim of refund/loss shall be entertained beyond six years from the end of the assessment year for which such application/claim is made. This limit of six years shall be applicable to all authorities having powers to condone the delay as per the above prescribed monetary limits, including the Board. A condonation application should be disposed of within six months from the end of the month in which the application is received by the competent authority, as far as possible.

In a case where refund claim has arisen consequent to a Court order, the period for which any such proceedings were pending before any Court of Law shall be ignored while calculating the said period of six years, provided such condonation application is filed within six months from the end of the month in which the Court order was issued or the end of financial year whichever is later.
The powers of acceptance/rejection of the application within the monetary limits delegated to the Pr.CCsIT/CCsIT/Pr.CsIT/CsIT in case of such claims will be subject to Following conditions:
i. At the time of considering the case under Section 119(2)(b), it shall be ensured that the income/loss declared and/or refund claimed is correct and genuine and also that the case is of genuine hardship on merits.

ii. The Pr.CCIT/CCIT/Pr.CIT/CIT dealing with the case shall be empowered to direct the jurisdictional assessing officer to make necessary inquiries or scrutinize the case in accordance with the provisions of the Act to ascertain the correctness of the claim.

A belated application for supplementary claim of refund (claim of additional amount of refund after completion of assessment for the same year) can be admitted for condonation provided other conditions as referred above are fulfilled. The powers of acceptance/rejection within the monetary limits delegated to the Pr.CCsIT/CCsIT/Pr.CsJT/CsIT in case of returns claiming refund and supplementary claim of refund would be subject to the following further conditions:

i. The income of the assessee is not assessable in the hands of any other person under any of the provisions of the Act.
ii. No interest will be admissible on belated claim of refunds.
iii. The refund has arisen as a result of excess tax deducted/collected at source and/or excess advance tax payment and/or excess payment of self-assessment tax as per the provisions of the Act.

In the case of an applicant who has made investment in 8% Savings (Taxable) Bonds, 2003 issued by Government of India opting for scheme of cumulative interest on maturity but has accounted interest earned on mercantile basis and the intermediary bank at the time of maturity has deducted tax at source on the entire amount of interest paid without apportioning the accrued interest/TDS, over various financial years involved, the time limit of six years for making such refund claims will not be applicable.

Source: Circular 9/2015 [F.NO.312/22/2015-OT], dated: 9-6-2015

➲ **Section 197A of the Income-Tax Act, 1961 - Deduction of tax at Source - No deduction in certain cases - Specified payment under section 197A(1F)**

Central Government hereby notifies that no deduction of tax under Chapter XVII of the said Act shall be made on the payments of the nature specified in clause (23FBA) of Section 10 of the said Act received by any investment fund as defined in clause (a) of the

Explanation 1 of section 115UB of the said Act vide Notification No. 51 /2015 dated: 25th June, 2015.

In exercise of the powers conferred by sub-section (1F) of section 197A of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies that no deduction of tax under Chapter XVII of the said Act shall be made on the payments of the nature specified in clause (23FBA) of section 10 of the said Act received by any investment fund as defined in clause (a) of the Explanation 1 of section 115UB of the said Act vide Notification No. 51 /2015 dated: 25th June, 2015.

➲ **Income-tax (Ninth Amendment) Rules, 2015**

51A - Nature of business relationship — For the purposes of sub-clause (viii) of Explanation below sub-section (2) of section 288, the term "business relationship" shall be construed as any transaction entered into for a commercial purpose, other than, –
(i) commercial transactions which are in the nature of professional services permitted to be rendered by an auditor or audit firm under the Act and the Chartered Accountants Act, 1949 (38 of 1949) and the rules or the regulations made under those Acts;

(ii) commercial transactions which are in the ordinary course of business of the company at arm's length price – like sale of products or services to the auditor, as customer, in the ordinary course of business, by companies engaged in the business of telecommunications, airlines, hospitals, hotels and such other similar businesses."

Source: Notification No. 50/2015, F.No.142/9/2015-TPL dated: 24th June, 2015

➲ **New Revised ITR Forms ITR-1 ITR-2 ITR-2A ITR-4S Notified**

CBDT has notified New "simplified" Income Tax return forms for AY 2015-16 vide notification 49/2015 dated 22.06.2015.The original forms were released on 15-04-2015 and revised forms has been issued after two months .No major changes has been made in revised forms and more or less they are similar to Form issued for AY 2014-15.However few changes which have been introduced earlier this year has been twisted and a new form ITR-2A has been introduced.

The main changes are given below:

1) Individuals having exempt income without any ceiling (other than agricultural income exceeding Rs. 5,000) can now file Form ITR 1 (SAHAJ). Similar simplification is also introduced for individuals/HUF in respect of Form ITR 4S (SUGAM).

2) At present individuals/HUFs having income from more than one house property and capital gains are required to file Form ITR-2. It is, however, noticed that majority of individuals/HUFs who file Form ITR-2 do not have capital gains. A simplified form for these individuals/HUFs, a new Form ITR 2A has been introduced which can be filed by an individual or HUF who does not have capital gains, income from business/profession or foreign asset/foreign income.

3) In lieu of foreign travel details, only Passport Number, if available, would be required to be given in Forms ITR-2 and ITR-2A. Details of foreign trips or expenditure thereon are not required to be furnished.

4) As regards bank account details in all these forms, only the IFS code, account number of all the current/savings account which are held at any time during the previous year will be required to be filled-up. The balance in accounts will not be required to be furnished. Details of dormant accounts which are not operational during the last three years are not required to be furnished.

5) An individual who is not an Indian citizen and is in India on a business, employment or student visa (expatriate), would not mandatorily be required to report the foreign assets acquired by him during the previous years in which he was non-resident if no income is derived from such assets during the relevant previous year.

➲ Central Government notifies for the purposes of the said clause, "West Bengal Electricity Regulatory Commission", a Commission constituted under the Electricity Regulatory Commission Act, 1978 (West Bengal Act No. 14 of 1998), of West Bengal in respect of the following specified income arising to that Commission, namely:-

(a) income from the fund maintained in accordance with the provisions of the West Bengal Electricity Regulatory Commission

(Manner of application of Fund) Rules, 2006;
(b) income from the fees collected in accordance with the provisions of the West Bengal Electricity (fees for application for grant of license) Rules, 2005, notified by the Government of West Bengal. This notification shall be applicable for the financial years 2011-12 to 2015-16.
The notification shall be effective subject to the conditions that West Bengal Electricity Regulatory Commission –
(a) shall not engage in any commercial activity;
(b) its activities and the nature of the specified income remain unchanged throughout the financial years; and
(c) it files return of income in accordance with the provision of clause (g) of sub-section (4C) Section 139 of the said Act.

Source: Notification No. 48/2015 dated: 18th June, 2015

➲ **Release of Return Preparation Software**

Software for preparing ITR 1 & ITR 4S in Java, Excel & Online for AY 2015-16 are now available for e-Filing. ITR 1 & ITR 4S can also be filled and submitted online after logging to the e-Filing website. E-filing of ITRs 2 and 2A will be enabled shortly.

Refer: https//incometaxindiaefiling.gov.in/

➲ **Due date for filing Income Tax Returns**

CBDT vide order u/s 119 extended the due date for filing return of income for AY 2015-16 for certain classes of taxpayers from 31st July, 2015 to 31st August, 2015.

For details click here: https://incometaxindiaefiling.gov.in/eFiling/Portal/StaticPDF/Order_under_section_119.pdf

Case Laws

➲ **Profit arising to a German Co. from high sea sale of equipment to Indian customer couldn't be taxed in India even if equipment was subjected to inspection in India**

Facts

(a) Assessee, a German company, sold equipment to an Indian Customer on high seas. The consideration for sale of equipment was received outside India in the foreign currency;
(b) Significant amount was payable upon delivery of equipment on FOB basis at foreign port of shipment. The balance amount was payable on inspection of the equipment (i.e., acceptance test) by the customer;
(c) It was noted by the Assessing officer (AO) that assessee had a supervisory Permanent Establishment (PE) in India and it had sold equipments for various projects in the year under consideration;
(d) AO attributed the profits from sale of equipment to assessee's supervisory PE in India contending that sale was concluded in India as equipment was subjected to inspection in India;
(e) On appeal, DRP confirmed the order of the AO. Aggrieved by the order, assessee filed the instant appeal before the Tribunal.

The Tribunal held in favour of assessee as under:

(1) The clause of the agreement which requires payment of balance sum after acceptance test generally happens in common trade parlance and partakes the character of trade warranties. Any breach of the warranty could result in payment of damages but it would not mean that the title in the goods would pass on to buyer in India only after conducting the acceptance test. Hence, undue importance could not be given to such clause to construe that sale was concluded in India;
(2) As far as attribution of profit to supervisory PE was concerned, the Article 5(2)(i) of the DTAA between India and Germany reads as under:
'The term "permanent establishment" includes especially, - (i) a building site or construction, installation or assembly project or supervisory activities in connection therewith, where such site, project or activities continue for a period exceeding six months'
The words 'such site, project or activities' as mentioned under Article 5(2)(i) of India-Germany DTAA clearly indicate that the supervisory PE has to be examined separately for each of the projects;
(3) In the instant case, majority of the projects of the assessee did not have a supervisory PE in India. In that case the question of any attribution of profit from supply of equipment to the supervisory PE would not arise at all;
(4) Hence, no portion of receipts from sale of equipment could be taxed in India since equipment was sold by assessee outside India and it didn't have any PE in India in respect of the project for which equipment was sold.

Source: In the ITAT KOLKATA BENCH 'C', Qutotec GmbH v. Deputy Director of Income-tax, (International Taxation)-2(1), Kolkata

➲ **Excess application of funds over and above income of trust can arise only when funds are applied from the corpus of the trust, accumulated funds, loans or goods and services received from the creditors. When funds are applied from borrowed funds or by way of sundry creditors the same can be treated as application of funds in the year in which such loan/sundry creditors are repaid from the income of the trust. However, when amount is applied from the corpus fund or accumulated fund the same cannot be treated as application of funds under section 11, because such funds have already been exempt from the income of trust in the year in which they are received or such amount is set aside. Thus, trust cannot carry forward excess application of funds**

Facts:

(a) Assesses-trust was running an educational institution. It was registered under sec 12A. It claimed that excess application of income be carried forward. The AO allowed carried forward of certain claim.

(b) On appeal, the CIT(A) denied the benefit of carry forward of excess application of funds. The aggrieved-assessee filed the instant appeal before the Tribunal.

The Tribunal held in favour of revenue as under:

(1) Section 11(1)(a) provides that "income derived from property held under trust wholly for charitable or religious purpose" shall not be included in the total income to the extent such income is applied for charitable or religious purpose in India. The Act also provides that if upto 15% of such income is accumulated or set apart, then that shall also not be included in total income.

(2) Further, Section 11(1)(d) provides that income in the form of "voluntary contribution made with specific direction that they shall form part of the corpus of the trust or institution" will not be included in the total income.

(3) Therefore, what is provided under the Act is with respect to application of income from the income derived from the property held under trust and any voluntary contributions received by the trust other than the contributions made with specific direction that they shall form part of the corpus of the trust. Thus, there is no reference in Section 11 with respect to application of fund from the corpus of the trust, loan obtained by the trust, sundry creditors of the trust or accumulated fund of the trust for claiming exemption under Section 11(1).

(4) Application of fund by any charitable trust is possible from the following sources:

i. Voluntary contributions received by the Trust towards its corpus,
ii. Other voluntary contributions,
iii. Accumulated fund,
iv. Amount received by way of loan,
v. Sundry creditors, and
vi. Income derived from the "Property" held under the Trust.

(5) Excess application of fund over and above the income of the trust can arise only when funds are applied from the corpus of the trust, accumulated funds, loans or goods and services received from the creditors.

(6) When funds are applied from borrowed funds or by way of sundry creditors the same can be treated as application of fund in the year in which such loan/sundry creditors are repaid from the income of the trust.

(7) However, when amount is applied from the corpus fund or accumulated fund the same cannot be treated as application of funds for the purpose of Section 11, because such funds have already been exempt from the income of trust in the year in which these are received or such amount is set aside and therefore, once again treating the same as application of income will amount to double deduction.

(8) Therefore, carry forward of excess application of fund in the commercial principles cannot be allowed as per the provisions of the Act because it would result in notional application of income in the subsequent year.

Source: In the ITAT Chennai Bench, 'A', Anjuman-E-Himayath-E-Islam v. Assistant Director of Income-tax (Exemption)-IV, Chennai [2015] 59 taxmann.com 379 (Chennai - Trib.)

➲ **Long-term capital loss of sale of equity shares attracting STT is allowed to be set off against long term capital gain on sale of land in accordance with section 70(3)**

Section 10(38) excludes in expressed terms only the income aris-

ing from transfer of Long term capital asset being equity share or equity fund which is chargeable to STT and not entire source of income from capital gains arising from transfer of shares. It does not lead to exclusion of computation of capital gain of Long term capital asset or Short term capital asset being shares.

Accordingly, Long term capital loss on sale of shares would be allowed to be set off against Long term capital gain on sale of land in accordance with section 70(3).

Source: In the ITAT Mumbai Bench 'D', Raptakos Brett & Co. Ltd. v. Deputy Commissioner of Income-tax, Mumbai [2015] 58 taxmann.com 115 (Mumbai - Trib.)

➲ **No penalty was imposable under section 272B where assessee failed to mention correct PAN of few deductees in quarterly e-TDS return which in fact were not available with it at relevant time but on being show-caused it obtained correct PANs and filed revised return**

Section 139A, read with section 272B, of the Income-tax Act, 1961 - Permanent Account Number - Assessment year 2010-11 - In quarterly TDS statements filed by assessee in Form No. 26Q, PANs of certain tax deductees were found to be incorrect - On being show-casued, assessee obtained relevant PANs and filed revised statement of TDS - Assessing Officer levied penalty under section 272B - Whether there was a reasonable cause in assessee not mentioning correct PANs in respect of a few deductees at time of originally filing e-TDS quarterly statement of deduction of tax in Form No. 26Q, which were in fact, not available with assessee at material time and, therefore, no penalty could be levied under section 272B on assessee - Held, yes [In favour of assessee]

FACTS

- The assessee filed quarterly e-TDS statement in Form No.26Q for the first quarter of the financial year 2009-10.
- On processing of the aforesaid return, it was observed that PANs of certain tax-deductees were invalid.
- On being show caused, the assessee filed correction returns duly stating PANs of a few tax deductees which were not earlier available.
- The Assessing Officer invoked the provisions of section 139(5B) and imposed penalty under section 272B.
- On appeal, the Commissioner (Appeals) deleted the penalty.
- On revenue's appeal:

HELD

- A careful perusal of section 139A indicates that where an amount has been paid after deducting tax, then, the person deducting tax is required to quote the Permanent Account Number in the statements mentioned in the provision. Non-compliance with the mandate of section 139A attracts penalty under section 272B.

- The provisions of sub-section (2) of section 272B are not attracted when there is a violation of sub-section (5B) of section 139A. Such violation shall be covered under the provisions of sub-section (1) which provides that in case of a failure 'to comply with the provisions of section 139A, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum of ten thousand rupees.' In the instant case, the assessee originally did not have the correct PANs of all the persons from whose payments, tax at source was required to be deducted. Despite that, the assessee did deduct tax at source and paid the amount to the exchequer well in time. The only fault of the assessee was in not filling PANs of some of the deductees which were not available at the time of filing e-returns. As soon as the Assessing Officer issued notice for imposing penalty under section 272B, the assessee obtained the relevant PANs and complied with the requirement by filing the revised statement.

- The provisions of section 272B are subject to section 273B which provides that notwithstanding anything contained in the provisions, inter alia, of section 272B, no penalty shall be imposed for any failure referred to in the said provision if it is proved that there was a reasonable cause for the said failure. Considering the entirety of the facts and circumstances prevailing in the instant case, there was a reasonable cause in the assessee for not mentioning the correct PANs in respect of a few deductees at the time of originally filing e-TDS quarterly statement of deduction of tax in Form No.26Q, which were, in fact, not available with the assessee at the material time. As and when the necessary information was obtained, the assessee corrected the lapse and revised the statement by furnishing due particulars thereof. The Commissioner (Appeals) was justified in deleting the penalty by relying on the judgment of the Supreme Court in the case of Hindustan Steel Ltd. v. State of Orissa [1972] 83 ITR 26, in which the Supreme Court has laid down that penalty cannot be ordinarily imposed unless the party obliged either acts deliberately in defiance of law or is guilty of conduct contumacious or dishonest, or acts in conscious

disregard of its obligation.

Source: High Court of Delhi, Mool Chand Khairati Ram Trust v. Director of Income-tax (Exemptions) [2015] 59 taxmann.com 398 (Delhi)

➲ **Assessee will not lose non-resident status due to forced stay in India due to invalid impounding of passport**

Where assessee was forced to stay in India for more than 182 days in a previous year due to impounding of passport found by courts to be wrongful and he was fighting court cases to get passport released so that he could travel outside India to maintain his NRI status, the period of such forced/unwilling stay in India cannot be counted for determining his residential status u/s 6. If assessee's stay in India without counting such forced stay is for less than 182 days, he retains his NRI status for tax purposes.

Source: High Court of Delhi, Commissioner of Income-tax (C) -I v. Suresh Nanda, [2015] 57 taxmann.com 448 (Delhi)

SEBI

Circulars / Notifications

➲ **Exchange Traded Cash Settled Interest Rate Futures (IRF) on 6 year, 10 year and 13 year Government of India Security**

SEBI vide circular CIR/Mement framework, the safeguards and the risk protection mechanisms, the surveillance systems etc.
10-Year Cash Settled IRF: SEBI vide circular CIR/MRD/DRMNP/35/2013 dated December 05, 2013 while stipulating norms for cash settled 10-year IRF, inter alia, prescribed underlying bonds' maturity criteria, position limits and maximum tenure for cash settled 10-year IRF.
The residual maturity of the underlying bonds as prescribed in the said circular stands modified to 'between 8 years and 11 years' for both option A and B. In the said circular, for cash settled 10-year IRF, maximum three serial monthly contracts were permitted. In this regard, Stock Exchanges are now permitted to introduce three quarterly contracts of March/ June/ September/ December cycle in addition to three serial monthly contracts.

SEBI vide circular CIR/MRD/DRMNP/2/2014 dated January 20, 2014 prescribed monitoring mechanism for IRF positions of Fo eign Portfolio Investors (FPIs). The mechanism specified in the said circular shall also be applicable on cash settled Interest Rate Futures on 6-Year and 13 year GoI Security.

Read more at: http://www.sebi.gov.in/cms/sebi_data/attachdocs/1434103814150.pdf

Source: Circular CIR/MRD/DRMNP/11/2015 dated: June 12, 2015

➲ **Requirements specified under the SEBI (Share Based Employee Benefits) Regulations, 2014 Requirements under the SEBI (Share Based Employee Benefits) Regulations, 2014 Regulation 3(3) - Minimum Provisions in Trust Deed**

The trust deed shall, inter alia, cover the following:
1. Details of the trust, including:
(i) Name of the trust;
(ii) Object of the trust;
(iii) Details of settlor;
(iv) Details of scheme(s) administered;
(v) Source of funds;
(vi) Description of the manner in which the trust funds shall be used for meeting object of the trust;
(vii) Description of the classes of beneficiaries along with their rights and obligations;
(viii) Details of trustee(s);

2. Powers and duties of trustee(s), including:
(i) Frame rules for administration of the scheme(s) in compliance with the scheme documents, object of the trust and the regulations;
(ii) Maintain books of accounts of trust as required under law including the regulations;

3. Provisions on dissolution of the trust;

4. Trust deed shall provide that it would be the duty of the trustees to act in the interest of employees who are beneficiaries of the trust and subject to provisions of the regulations, it shall not act in any manner or include any provision in the trust deed that would be detrimental to the interests of the beneficiaries.

5. Such other clauses which are necessary for safeguarding the interests of the beneficiaries.

Regulation 6(2) - Contents of the explanatory statement to the notice and resolution for shareholders meeting

The explanatory statement to the notice and the resolution proposed to be passed for the schemes in general meeting shall, inter alia, contain the following information:
a. brief description of the scheme(s);
b. the total number of options, SARs, shares or benefits, as the case may be, to be granted;
c. identification of classes of employees entitled to participate and be beneficiaries in the scheme(s);
d. requirements of vesting and period of vesting;
e. maximum period (subject to regulation 18(1) and 24(1) of the regulations, as the case may be) within which the options / SARs / benefit shall be vested;
f. exercise price, SAR price, purchase price or pricing formula;
g. exercise period and process of exercise;
h. the appraisal process for determining the eligibility of employees for the scheme(s);
i. maximum number of options, SARs, shares, as the case may be, to be issued per employee and in aggregate;
j. maximum quantum of benefits to be provided per employee under a scheme(s);
k. whether the scheme(s) is to be implemented and administered directly by the company or through a trust;
l. whether the scheme(s) involves new issue of shares by the company or secondary acquisition by the trust or both;
m. the amount of loan to be provided for implementation of the scheme(s) by the company to the trust, its tenure, utilization, repayment terms, etc.;
n. maximum percentage of secondary acquisition (subject to limits specified under the regulations) that can be made by the trust for the purposes of the scheme(s);
o. a statement to the effect that the company shall conform to the accounting policies specified in regulation 15;
p. the method which the company shall use to value its options or SARs;
q. the following statement, if applicable:

In case the company opts for expensing of share based employee benefits using the intrinsic value, the difference between the employee compensation cost so computed and the employee compensation cost that shall have been recognized if it had used the fair value, shall be disclosed in the Directors' report and the impact of this difference on profits and on earnings per share ("EPS") of the company shall also be disclosed in the Directors' report.

Read more at: http://www.sebi.gov.in/cms/sebi_data/attachdocs/1434444609664.pdf

Source: Circular CIR/CFD/POLICY CELL/2/2015, dated: June 16, 2015

➲ **Review 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. The OFS framework has been modified subsequently from time to time on the basis of representation/suggestion received from market participants. SEBI has been taking steps to encourage retail investors to participate in the OFS. In order to enhance more retail participation in the OFS process and to simplify the bidding process for retail investors, it has been decided that:

- OFS notice shall continue to be given latest by 5 pm on T-2 days. However T-2 days shall be reckoned from banking day instead of trading day.
- It would be mandatory for sellers to provide the option to retail investors to place their bids at cut off price in addition to placing price bids.

Source: Circular No. CIR/MRD/DP/12/2015 dated: June 26, 2015

➲ **Cyber Security and Cyber Resilience framework of Stock Exchanges, Clearing Corporation and Depositories**

SEBI as a member of IOSCO has adopted the Principles for Financial Market Infrastructures (PFMIs) laid down by CPMI-IOSCO and has issued guidance for implementation of the principles in the securities market vide *Circular - CIR/MRD/DP/13/2015 July 06, 2015*.

Read more at: http://www.sebi.gov.in/cms/sebi_data/attachdocs/1436179654531.pdf

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