the CMA e-Bulletin

OCTOBER 2015 | VOL 3 | NO 10

The Institute of Cost Accountants of India

(Statutory body under an Act of Parliament)

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DIRECTORATE OF RESEARCH & JOURNAL

The Institute of Cost Accountants of India

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INDIAN ECONOMY

News

➲ **India's September retail inflation rises at 4.41 percent**

India's retail inflation, based on the consumer price index (CPI), for September increased to 4.41 percent, from 3.74 percent recorded for the previous month, on the back of higher food prices, official data showed. The CPI for September last year was at 5.63 percent.

Rural inflation in the month in question was higher at 5.05 percent, over the urban CPI at 3.61 percent, according to data released by the ministry of statistics.

Overall food inflation was higher in September, at 3.88 percent compared to 2.2 percent in August.

September's rural food inflation rate was 4.05 percent as compared to 3.45 percent for urban.

Among the various categories under the general index, the inflation percentage in September was higher in "clothing and footwear" at 6 percent, and "fuel and light" at 5.42 percent. Housing was costlier by 4.74 percent.

Contributing most to food inflation in September were pulses, which were costlier by nearly 30 percent, followed by meat, fish, milk and milk products, the CPI rates for all of which were over 5 percent. Instead, in a worsening of the crisis for millers, retail inflation in sugar fell further by 12.91 percent.

Read more at: http://www.business-standard.com/article/news-ians/india-s-september-retail-inflation-rises-at-4-41-percent-115101201295_1.html

➲ **Wholesale prices fall for the 11th straight month in September**

India's wholesale prices fell for the 11th straight month in September, declining 4.54% from a year ago, compared with a 4.95% drop in August. A steep 17.71% fall in fuel prices kept the Wholesale Price Index in the negative zone, data released by the commerce department. The index for September is in line with expectations and does not have any policy implications, apart from highlighting continued price pressure in pulses and onions.

Read more at: http://in.reuters.com/article/2015/09/23/india-economy-stimulus-gdp-growth-idINKCN0RN0L720150923

➲ **Indian officials talk up economic stability before Fed decision**

Indian policymakers highlighted the resilience of Asia's third-largest economy, as world markets braced for what could be the first increase in U.S. interest rates since before the global financial crisis.

Read more at: http://in.reuters.com/article/2015/09/17/india-economy-gdp-growth-idINKCN0RH0GV20150917

➲ **Consumer Price Inflation, September 2015**

The Consumer Prices Index (CPI) fell by 0.1% in the year to September 2015, compared to no change (0.0%) in the year to August 2015. A smaller than usual rise in clothing prices and falling motor fuel prices were the main contributors to the fall in the rate. The rate of inflation has been at or around 0.0% for most of 2015. CPIH (not a National Statistic) grew by 0.2% in the year to September 2015, down from 0.3% in August 2015.

Read more at: http://www.ons.gov.uk/ons/rel/cpi/consumer-price-indices/september-2015/stb-cpi-september-2015.html

➲ **September core industries' output jumps 3.2 percent**

A lead indicator of the monthly industrial output grew by 3.2 percent in September from an increase of 2.6 percent in August, official data showed. The select factory output index had risen by 2.6 percent in September, 2014.

The data on the select factory output was furnished by the commerce and industry ministry for the eight core industries (ECI), which comprises 38 percent of the total weightage of items included in the Index of Industrial Production (IIP).

The index's cumulative growth from April to September 2015-16 stood at 2.3 percent, as compared to 5.1 percent during April-September 2014-15.

Read more at: http://www.business-standard.com/article/news-ians/september-core-industries-output-jumps-3-2-percent-115110201390_1.html

➲ **Monetary policy committee under "active" discussion - RBI deputy**

The RBI is holding "active" discussions with the government on the formation of a monetary policy committee that would decide interest rates, a deputy governor of the bank, S.S. Mundra, said.

Read more at: http://in.reuters.com/article/2015/09/09/india-monetary-rbi-idINKCN0R91J320150909

➲ **Chinese yuan seen depreciating further; rupee to remain stable: Reuters poll**

The Chinese yuan will weaken further over the next 12 months as policymakers ramp up efforts to support the economy through further stimulus or another currency devaluation, a Reuters poll found.

Read more at: http://in.reuters.com/article/2015/09/04/markets-forex-yuan-rupee-asia-idINKCN0R40WR20150904

➲ **India's exports fall by a fourth in September, tenth straight monthly decline**

India's exports of goods shrank by nearly a quarter in September from a year ago, falling for a 10th straight month and threatening Prime Minister Narendra Modi's goal of boosting economic growth through manufacturing.

India's economy, Asia's third largest, is mostly driven by domestic demand, but the country has still felt the effects of China's slowdown. Exports have dropped and consumer and industrial demand for imports has weakened. Imports fell 25.42 percent in September from a year earlier to $32.32 billion. Exports stood at $21.84 billion, according to data released by the Ministry of Commerce and Industry.

Read more at: http://in.reuters.com/article/2015/10/15/india-trade-data-exports-idINKCN0S91L220151015

➲ **India's 2015/16 GDP growth still seen at around 8 percent - Subramanian**

The Indian economy is still expected to grow around 8 percent in the fiscal year to March 2016, said the chief economic adviser at the finance ministry.

Arvind Subramanian's comments came days after economic growth slowed at a faster-than-expected pace to 7 percent in the quarter to June.

The slowdown has cast doubts on the government's growth estimate of 8-8.5 percent for the full fiscal year.

Subramanian also said inflation would be a challenge for Asia's third-largest economy going forward.

Read more at: http://in.reuters.com/article/2015/09/02/india-economy-adviser-idINKCN0R20PP20150902

➲ **Forex reserves up $2.263 billion to $353.069 billion**

India's foreign exchange reserves rose to $353.069 billion at the end of October 9, close to its all time high of $355.459 billion seen on June 26. Reserve Bank of India said that forex reserves rose $2.26 billion in the week to October 9 with overseas portfolio investors driving dollar inflows into Indian debt and equity markets.

Read more at: http://economictimes.indiatimes.com/article-show/49415731.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst49415731.cms

BANKING

Notifications / Circulars

➲ **Equity Investment by Banks – Review**

In reference to circulars DBOD BP (FSC) 1854/C-469-89 dated May 27, 1989 and DBOD FSC BC 45/C.469 dated October 15, 1991, in terms of which banks cannot participate in the equity of financial services ventures including stock exchanges, depositories, etc., without obtaining the prior specific approval of the Reserve Bank of India, notwithstanding the fact that such investment may be within the ceiling prescribed under Section 19(2) of the Banking Regulation Act. Such investments are already subject to prudential limits as mentioned in Para 3.1 (a) and (c) of Master Circular DBR.No.FSD. BC.19/24.01.001/2015-16 on 'Para-banking Activities' dated July 1, 2015, viz., equity investments by a bank in a subsidiary company, or a financial services company, including financial institutions, stock and other exchanges, depositories, etc., which is not a subsidiary should not exceed 10 per cent of the bank's paid-up share capital and reserves and the total investments made in all subsidiaries and other entities that are engaged in financial services activities together with equity investments in entities engaged in non- financial services activities should not exceed 20 percent of the bank's paid-up share capital and reserves. The cap of 20 per cent does not apply, nor is prior approval of RBI required, if investments in financial services companies are held under 'Held for Trading' category, and are not held beyond 90 days as envisaged in the Master Circular on 'Prudential Norms for Classification, Valuation and Operation of Investment Portfolio by Banks'.

To give more operational freedom and flexibility in decision mak ing, it is advised that banks which have CRAR of 10 per cent or more and have also made net profit as of March 31 of the previous year need not approach RBI for prior approval for equity investments in cases where after such investment, the holding of the bank remains less than 10 per cent of the investee company's paid up capital, and the holding of the bank, along with its subsidiaries or joint ventures or entities continues to remain less than 20 per cent of the investee company's paid up capital.

Source: Notification No. RBI/2015-16/176 DBR.No.FSD. BC.37/24.01.001/2015-16 dated: September 16, 2015

Trade Credit Policy - Rupee (INR) denominated trade credit

With a view to providing greater flexibility for structuring of trade credit arrangements, it has been decided that the resident importer can raise trade credit in Rupees (INR) within the following framework after entering into a loan agreement with the overseas lender:

- Trade credit can be raised for import of all items (except gold) permissible under the extant Foreign Trade Policy
- Trade credit period for import of non-capital goods can be up to one year from the date of shipment or up to the operating cycle whichever is lower
- Trade credit period for import of capital goods can be up to five years from the date of shipment
- No roll-over / extension can be permitted by the AD Category - I bank beyond the permissible period
- AD Category - I banks can permit trade credit up to USD 20 mn equivalent per import transaction
- AD Category - I banks are permitted to give guarantee, Letter of Undertaking or Letter of Comfort in respect of trade credit for a maximum period of three years from the date of shipment
- The all-in-cost of such Rupee (INR) denominated trade credit should be commensurate with prevailing market conditions
- All other guidelines for trade credit will be applicable for such Rupee (INR) denominated trade credits.

Source: Notification No. RBI/2015-16/175 [A.P. (DIR Series) Circular No.13 dated: September 10, 2015

Prudential Norms on Change in Ownership of Borrowing Entities (Outside Strategic Debt Restructuring Scheme)

In order to further enhance banks' ability to bring in a change in ownership of borrowing entities which are under stress primarily due to operational/ managerial inefficiencies despite substantial sacrifices made by the lending banks, it has been decided to allow banks to upgrade the credit facilities extended to borrowing entities whose ownership has been changed outside SDR, to 'Standard' category upon such change in ownership, subject to certain guidelines.

Read more at: https://rbidocs.rbi.org.in/rdocs/Notification/PDFs/C187D70CDFE9441E448FB3FCA919F843D25A.PDF

Change in Bank Rate

Bank Rate stands adjusted by 50 basis points from 8.25 per cent to 7.75 per cent with effect from September 29, 2015 vide Notification No. RBI/2015-16/194 [DBR.No.Ret.BC.42/12.01.001/2015-16] dated: September 29, 2015.

Read more at: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10050&Mode=0

Penal Interest Rates which are linked to the Bank Rate External Commercial Borrowings (ECB) Policy - Issuance of Rupee denominated bonds overseas

In order to facilitate Rupee denominated borrowing from overseas, it has been decided to put in place a framework for issuance of Rupee denominated bonds overseas within the overarching ECB policy. The broad contours of the framework are as follows:

Eligible borrowers: Any corporate or body corporate as well as Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InvITs).
Recognised investors: Any investor from a Financial Action Task Force (FATF) compliant jurisdiction.
Maturity: Minimum maturity period of 5 years.
All-in-cost: All in cost should be commensurate with prevailing market conditions
Amount: As per extant ECB policy.
End-uses: No end-use restrictions except for a negative list.
Standing Liquidity Facility for Primary Dealers

Standing Liquidity Facility provided to Primary Dealers (PDs) (collateralised liquidity support) from the Reserve Bank would be available at the revised repo rate, i.e., at 6.75 per cent with effect from September 29, 2015.

Source: Notification No. RBI/2015-16/192 [REF.No.MPD.BC.379/07.01.279/2015-16] dated: September 29, 2015

Liquidity Adjustment Facility – Repo and Reverse Repo Rates

RBI has decided to reduce the Repo rate under the Liquidity Adjustment Facility (LAF) by 50 basis points from 7.25 per cent to 6.75 per cent. Consequent to the change in the Repo rate, the Reverse Repo rate under the LAF will stand adjusted to 5.75 per cent.

Source: Notification No. RBI/2015-2016/190 [FMOD.MAOG. No. 110/01.01.001/2015-16] dated: September 29, 2015

Partial Credit Enhancement to Corporate Bonds

RBI has decided to allow banks to provide PCE to bonds issued by corporates /special purpose vehicles (SPVs) for funding all types of projects, subject to the certain guidelines.

While the draft guidelines included provisions for allowing PCE as a funded loan facility also, it has been decided that, to begin with, banks will be allowed to offer PCE only in the form of a non-funded irrevocable contingent line of credit. A view on allowing the PCE as a funded loan facility will be taken in due course after reviewing the implementation and performance of the contingent PCE offered by banks.

Read more at: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10035&Mode=0

Source: RBI/2015-16/183 [DBR.BP.BC.No. 40/21.04.142/2015-16] dated: September 24, 2015

➲ **Opening of foreign currency accounts in India by ship-manning / crew-management agencies**

Attention of Authorized Dealer Category-I (AD Category - I) banks is invited to Regulation 6 of Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) Regulations, 2000 notified vide Notification No. FEMA 10/2000-RB dated May 3, 2000, as amended from time to time, and A.P. (DIR Series) Circular No. 48 dated April 30, 2007, in terms of which general permission is available to ship-manning / crew managing agencies that are rendering services to shipping/ airline companies incorporated outside India, to open, hold and maintain non-interest bearing foreign currency account with an AD Category – I bank in India for meeting the local expenses in India of such shipping or airline company.
With a view to ensuring strict compliance, our guidelines on the operations in such foreign currency accounts opened with AD Category-I banks by foreign shipping or airline companies or their agents in India are reproduced below:

a. Credits to such foreign currency accounts would be only by way of freight or passage fare collections in India or inward remittances through normal banking channels from the overseas principal. Debits will be towards various local expenses in connection with the management of the ships / crew in the ordinary course of business.
b. No credit facility (fund based or non-fund based) should be granted against security of funds held in such accounts.
c. The bank should meet the prescribed 'reserve requirements' in respect of balances in such accounts.
d. No EEFC facility should be allowed in respect of the remittances received in these accounts.
e. These foreign currency accounts will be maintained only during the validity period of the agreement.

Source: Notification No. RBI/2015-16/184 [A.P. (DIR Series) Circular No.15] dated: September 24, 2015

➲ **Processing and settlement of import and export related payments facilitated by Online Payment Gateway Service Providers**

Reference to Circular No.109 dated June 11, 2013 read with Circular No.17 dated November 16, 2010 in terms of which AD Category-I banks have been permitted to offer the facility to repatriate export related remittances by entering into standing arrangements with Online Payment Gateway Service Providers (OPGSPs) in respect of export of goods and services. To facilitate e-commerce, it has been decided to permit AD Category-l banks to offer similar facility of payment for imports by entering into standing arrangements with the OPGSPs.

Source: Notification No. RBI/2015-16/185 [A.P. (DIR Series) Circular No.16] dated: September 24, 2015

➲ **Banknotes with new numbering pattern and special features for the visually impaired**

Special features for the visually impaired have been introduced in order to make it easier for them to identify banknotes, the size of the Identification Mark in Rs 100, 500 & 1000 denominations has been increased by 50% and angular bleed lines - 4 lines in 2 blocks in Rs 100, 5 lines in 3 blocks in Rs 500 and 6 lines in 4 blocks in Rs 1000 denominations, have been introduced. The design of banknotes of Rs 100, 500 and 1000 denomination is similar in all other respects to the current design of banknotes in Mahatma Gandhi Series 2005. All the banknotes in these denominations issued by the Reserve Bank in the past will continue to be legal tender.
Source: Notification No. RBI/2015-16/188 [DCM (Plg) No.G-6/1128/10.01.24/2015-16] dated: September 24, 2015

➲ **Constitution of the Audit Committee of the Board**

In reference to paragraph A(3)(i) of circular DOS.No.BC.14/Admn. /919/16.13.100/95 dated September 26, 1995 on composition of the Audit Committee of the Board (ACB) of Public Sector Banks.

In this connection it is advised that should a bank have more than one ED, the ED in-charge of internal inspection and audit should be the member of the ACB whereas other EDs can be invitees to the meeting if the agenda includes any item for discussion from their domain vide Notification No. RBI/2015-16/181 [DBS.ARS. BC 4/08.91.020/2015-16] dated: September 24, 2015.

Read more at: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10033&Mode=0

➲ **Framework for Revitalising Distressed Assets in the Economy – Review of the Guidelines on Joint Lenders' Forum (JLF) and Corrective Action Plan (CAP)**

The framework has been reviewed and it has been decided to introduce the changes/additions in the framework to make it more effective vide Notification No. RBI/2015-16/182 [DBR. BP.BC.No.39/21.04.132/2015-16] dated: September 24, 2015.

Please find the complete changes/additions in the framework in the below link: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10034&Mode=0

➲ **Marginal Standing Facility**

RBI has decided to reduce the Repo rate under the Liquidity Adjustment Facility (LAF) by 50 basis points from 7.25 per cent to 6.75 per cent with immediate effect. Consequent to the change in the Repo rate, the Marginal Standing Facility (MSF) rate will stand adjusted to 7.75 per cent with immediate effect vide Notification No. RBI/2015-2016/191 [FMOD.MAOG. No. 111/01.18.001/2015-16] dated: September 29, 2015.

INCOME TAX

Notifications / Circulars

➲ **Procedure for registration and submission of report as per clause (k) of sub section (1) of section 285BA of the Income Tax Act, 1961 read with sub rule (7) of Rule 114G of the Income Tax rules 1962**

The Principal DGIT(Systems) has issued Notification No 4/2015 dated 04/09/2015 regarding Form No 61B related to Statement of Reportable Accounts u/s 285BA(1) of the Income-tax Act, 1961. The procedures prescribed in Notification 3 dated 25th August, 2015 stands withdrawn forthwith. The registration and submission of Nil statement already completed under the procedures prescribed in Notification 3 dated 25th August, 2015 shall continue to be valid.

For details refer: Notification No. 4/2015 dated 04/09/2015

➲ **Notification No. 76/2015, dt. 29th September 2015 - Income-tax (14th Amendment) Rules, 2015 - Format and Procedure for Self Declaration in form No.15G or 15H to reduce the Cost of Compliance and ease the Compliance burden for both, the Tax Payer and the Tax Deductor, simplified wef 01.10.2015**

Simplification of procedure for Form No.15G & 15H – regarding Tax payers seeking non deduction of tax from certain incomes are required to file a self declaration in Form No. 15G or Form No.15H as per the provisions of Section 197A of the Income-tax Act, 1961 ('the Act'). In order to reduce the cost of compliance and ease the compliance burden for both, the tax payer and the tax deductor, the Central Board of Direct taxes has simplified the format and procedure for self declaration of Form No.15G or 15H.

The procedure for submission of the Forms by the deductor has also been simplified. Under the simplified procedure, a payee can submit the self-declaration either in paper form or electronically. The deductor will not deduct tax and will allot a Unique Identification Number (UIN) to all self-declarations in accordance with a well laid down procedure to be specified separately. The particulars of self declarations will have to be furnished by the deductor along with UIN in the quarterly TDS statements. The requirement of submitting physical copy of Form 15G and 15H by the deductor to the income-tax authorities has been dispensed with. The deductor will, however be required to retain Form No.15G and 15H for seven years. The revised procedure shall be effective from the 1st day of October, 2015.

The Notification issued vide S.O. No.2663(E) dated 29th September 2015 is available on the website of the Department at: www. incometaxindia.gov.in

➲ **Section 90 of the Income-tax Act, 1961 – Double Taxation Agreement – Inter-Governmental agreement and Memorandum of Understanding (MoU) between Government of India and Government of USA to improve international tax compliance and to implement foreign account tax compliance act of USA**

An Inter-Governmental Agreement and Memorandum of Understanding (MoU) between the Government of the Republic of India and the Government of the United States of America to improve International Tax Compliance and to implement Foreign Account Tax Compliance Act of the United States of America was signed at New Delhi on the 9th day of July, 2015.

In exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies that all the provisions of the said Agreement between the Government of the Republic of India and the Government of the United States of America for the exchange of information with respect to taxes, as set out in the said Agreement, shall be given effect to in the Union of India with effect from the 31st August, 2015, that is, the date of entry into force of the said Agreement.

Source: Notification No. 77/2015 [F. No. 500/137/2011-FTD-I] / SO 2676(E) dated: 30 September 2015

Read more at: http://www.incometaxindia.gov.in/communications/notification/notification77_2015.pdf

➲ **29C - Declaration by person claiming receipt of certain incomes without deduction of tax**

A declaration under sub-section (1) or under sub-section (1A) of section 197A shall be in Form No. 15G and declaration under sub-section (1C) of section 197A shall be in Form No. 15H. The declaration referred to in sub-rule (1) may be furnished in any of the following manners, namely:-
(a) in paper form;
(b) electronically after duly verifying through an electronic process in accordance with the procedures, formats and standards specified under sub-rule (7).

(3) The person responsible for paying any income of the nature referred to in sub-section (1) or sub-section (1A) or sub-section (1C) of section 197A, shall allot a unique identification number to each declaration received by him in Form No.15G and Form No.15H respectively during every quarter of the financial year in accordance with the procedures, formats and standards specified by the Principal Director-General of Income-tax (Systems) under sub-rule (7).

The person referred to in sub-rule (3) shall furnish the particulars of declaration received by him during any quarter of the financial year along with the unique identification number allotted by him under sub-rule (3) in the statement of deduction of tax of the said quarter in accordance with the provisions of clause (vii) of sub-rule (4) of rule 31A.

The person referred to in sub-rule (3) shall furnish the statement of deduction of tax referred to in rule 31A containing the particulars of declaration received by him during each quarter of the financial year along with the unique identification number allotted by him under sub-rule (3) in accordance with the provisions of clause (vii) of the sub-rule (4) of rule 31A irrespective of the fact that no tax has been deducted in the said quarter.

Source: Notification No. 76/2015 [F.No.133/50/2015-TPL] / SO 2663 (E) dated: 29 th September, 2015

Read more at: http://www.incometaxindia.gov.in/communications/notification/notification76_2015.pdf

Case Laws

➲ **Netting off of interest on bank borrowings allowed u/s 57(iii) against interest earned from onlending to holding company if onlending to holding co. is based on commercial expediency and terms of bank loan permit such onlending and the income and expenditure do not pertain to the pre-operative period**

In the present case, the advancing of loan to SCL was a business decision taken by the Assessee out of commercial expediency.

• Further, the sanction letter of HSBC made it clear that the Assessee could draw loans up to the sanctioned limit as and when needed.
• The sanction letter also allowed assessee to further utilise the money borrowed to advance loans to others.
• The sum of Rs. 25 crores drawn by the Assessee on 24th December 2001 in terms of HSBC's sanction letter was transferred to SCL on the very same date.
• Without the facility of credit by the HSBC, the Assessee could not have advanced the loan to SCL.
• Therefore, there was a direct nexus between the earning of interest on the loan advanced by the Assessee to SCL and payment of interest to HSBC on the loan drawn in terms of the sanction letter dated 2nd August 2001. The income earned on the loan advanced to SCL was rightly offered to tax by the Assessee as "income from other sources".
• Since the interest paid to HSBC on the loan availed was in the nature of an expenditure wholly and exclusively laid out for the purpose of earning the interest income, it ought to be permitted to be netted against such 'income from other sources' in terms of Section 57 (iii).
• Since this was no longer a pre-operative phase, the interest paid to HSBC would in any event have been allowable as business expenditure under Section 36 of the Act for AY 2003-04.

Case Law: High Court of Delhi, Vodafone South Ltd. v. Commissioner of Income-tax [Dr. S. Muralidhar and Vibhu Bakhru, JJ., IT Appeal Nos. 334 & 336 of 2014, CM Nos. 10693 & 10696 of 2014 dated: September 21, 2015]

➲ **Furnishing of Audit Report in Form No. 10BB may be necessary for seeking approval under section 10(23C); however, mere failure to file Audit Report along with application under section 10(23C) would not result in rejection if the assessee furnishes the said report subsequently, prior to the rejection of the application**

Further, for purposes of granting approval under section 10(23C)(vi), the prescribed authority, would not be concerned with the compliance of the provisos to section 10(23C)(vi), its primary function would be to satisfy himself that the threshold conditions for grant of exemption under section 10(23C) exist; that is, the educational institution exists solely for the purposes of education and not for profit. In this regard, he has to examine the Charter of the Society/Trust including its objects as also the bye-laws, rules and regulations for conduct of affairs of the Society/Trust.

Case Law: High Court of Delhi, Director of Income-tax (Exemption) v. All India Personality Enhancement & Cultural Centre for Scholars Aipeccs Society, [Dr. S. Muralidhar AND Vibhu Bakhru, JJ., IT Appeal Nos. 705 of 2008 & 924 of 2009 dated: October 7, 2015]

➲ **IT : Where assessee entered into an agreement with a foreign company for acquiring germplasm and technical know-how and paid certain amount to it in that regard, since 25 per cent of expenditure was rightly treated as capital expenditure**

IT : Where assessee in terms of an agreement paid certain amount to a foreign company towards royalty, entire royalty payment was allowable as revenue expenditure

Section 37(1) of the Income-tax Act, 1961 - Business expenditure - Allowability of (Technical fee) - Assessment year 1995-96 -

Assessee (licensee) entered into an agreement with a foreign company (licensor) for acquiring germplasm and technical know-how - During year, it paid a certain amount to foreign company for acquiring germplasm and technical know how and claimed deduction of same as revenue expenditure - Commissioner (Appeals) treated 75 per cent of expenditure incurred by assessee as revenue expenditure and 25 per cent as being capital in nature - Whether since it was apparent from agreement that agreement had ensured benefits of research, development and improvements to assessee and both parties intended to benefit for a considerable period of time out of relationship emanating from agreement, order of Commissioner (Appeals) treating 25 per cent of expenditure as capital expenditure was justified - Held, yes [In favour of revenue]

Section 37(1) of the Income-tax Act, 1961 - Business expenditure - Allowability of (Royalty) - Assessment year 1995-96 - Assessee in terms of above agreement paid certain amount to foreign company towards royalty and claimed deduction of same as revenue expenditure - It was apparent from agreement that royalty payment was linked to percentage of consideration received on sale of products produced by assessee by use of germplasm and with help of technical know-how - Whether entire royalty payment was allowable as revenue expenditure - Held, yes
[In favour of assessee]

FACTS

The assessee (licensee) entered into an agreement with a foreign company (licensor) for acquiring germplasm and technical know-how.

- During the year, the assessee paid a certain amount to the foreign company for acquiring germplasm and technical know-how. It also made payment to the foreign company towards royalty. It claimed the said payments as revenue expenditure.

- The Assessing Officer held that the expenditure incurred by the assessee for acquiring germplasm and technical know-how fell within the ambit of section 35AB and allowed one-sixth of the amount so claimed as deduction. He also treated one-fourth of royalty paid as capital expenditure.

- On appeal, the Commissioner (Appeals) treated 75 per cent of the expenditure incurred by the assessee for acquiring germplasm and technical know-how as revenue expenditure and 25 per cent as being capital in nature. He further held that one-fourth of the expenditure incurred towards payment of royalty was capital in nature.
- On further appeal, the Tribunal allowed the entire expenditure incurred by the assessee as revenue expenditure.
- On appeal to High Court by revenue:

HELD

- On an analysis of the agreement entered into between the assessee and the foreign company, it is apparent that it is termed as a licensing agreement and the parties contemplated the same to be as a licensing agreement. Under the agreement, the assessee to get a right and license to use the technical information and the licensor's germplasm to research and develop, produce and sell products within India. The assessee gets immunity from legal proceedings with respect to patent rights, if any, in India. The assessee acquires documents relating to technical information with genetic material for maize, sunflower, canola, mustard, sorghum, millet and cotton. The assessee also would get assistance in acquiring appropriate personal facilities, plant, machinery and equipment for the research, development, production and processing of products by the licensee. The assessee gets the right to use, produce and sell the germplasm in a specified products by way of sub-license to its affiliates.
- One of the conclusions arrived at by the Tribunal is with regard to whether there is any enduring benefit likely to accrue in favour of the assessee on account of the agreement. This question was answered in the negative by the Tribunal by reference to the fast changing development in the filed of biotechnology.
- One significant aspect of the agreement is that the assessee is not required to return the licensor's germplasm, except in the case of termination of the agreement in terms of article 16 of the agreement. Article 16 provides for termination of the agreement only in case of the breach of the agreement as set out therein. In other words, the germplasm which has been supplied to the assessee and the relevant material on multiplication of the same is available for the assessee's use even after the currency of the agreement.]
- A close reading of the agreement would disclose that the consideration is paid for acquiring a living organism germplasm and also for technical know-how. The Commissioner (Appeals) had apportioned the same, one-fourth as on capital account and three-fourth on revenue account. Under the licensing agreement, the products produced or developed with the germplasm and the technical know-how provided under the agreement are the revenue earning products for the assessee. In other words, they are material or tools in the hands of the assessee for generating the revenue. The agreement is valid for a period of five years from the date of commercial production and eight years from the date of execution. In the sense, the germplasm is the revenue earning apparatus. The technical knowledge which has been acquired in the process of implementation particularly in the bio-technology field would certainly benefit the assessee even after the expiry of the agreement period and there is no embargo on the assessee for using the expertise and knowledge acquired.
- Further, by clearly defining 'licensee germplasm' and 'licensor germplasm' and setting out a right to access the 'licensor's 'improvements during the currency of the agreement, the agreement has ensured the benefits of research, development and improvements to the, the assessee. Further in terms of article 8 of the agreement, licensor to have access to the licensee's improvements but subject to payment of consideration in terms of article 5.1(d) of the agreement. These clauses viewed in the context of the intention of the parties would certainly point out that both

the parties intended to benefit for a considerable period of time out of the relationship emanating from the agreement. Even though in the bio-technology field changes are likely to happen in fast phase, the assessee still has the benefit of the same in view of the dynamic nature of the agreement entered into between the assessee and the technology provider. This is a distinct and distinguishing factor, which would benefit the assessee.

- In view of the aforesaid, the entire expenditure incurred for acquiring germplasm and technical know-how could not be considered as revenue expenditure. The Commissioner (Appeals) was justified in treating 25 per cent of the expenditure as capital expenditure.
- So far as the amount paid towards royalty is concerned, it is agreed to be paid by the assessee and the same needs to be treated as revenue expenditure particularly considering the fact that the same is linked to the percentage of consideration received on sale of the products produced by the assessee by use of the germplasm and with the help of the technical know-how.
- Therefore, the entire expenditure incurred by the assessee towards payment of royalty was allowable as revenue expenditure

Case Law: High Court of Andhra Pradesh, Commissioner of Income-tax, Hyderabad -I v. Advanta India Ltd

➲ **Where assessee issued debentures on which interest was payable on basis of Nifty index level as on date of balance sheet, difference between Nifty index level and level existed at time of allotment of debentures, was to be allowed as business expenditure**

An amount received by a prospective employee 'as compensation for denial of employment' was not in nature of profits in lieu of salary. It was a capital receipt that could not be taxed as income under any other head

Facts

(a) In terms of employment agreement, the assessee was to be employed as CEO of M/s ACEE Enterprises ('ACEE'). The ACEE was unable to take assessee on board due to sudden change in its business plan. The ACEE paid compensation of 1.95 crores to assessee as a "one-time payment for non-commencement of employment as proposed".

(b) The assessee had not offered such compensation to tax. The AO rejected the claim of assessee on the ground that under Section 17(3)(iii) receipt by the assessee of any sum from any person prior to his joining with such person was taxable.

(c) As per Section 17(3)(iii) "profits in lieu of salary" include any amount due to or received, whether in lump sum or otherwise, by any assessee from any person before his joining any employment with that person or after cessation of his employment with that person.

(d) However, the CIT(A) held that Section 17(3)(iii) had been brought in to account for taxing 'joining bonus' received from the prospective employer as profit in lieu of salary. The ITAT upheld the findings of CIT(A).

(e) The ld. Counsel of department urged that since the wording of Section 17(3)(iii) was that "any amount received from any person", it was not necessary that the amount had to be received only from an employer in order that such sum be brought to tax in the hands of an assessee under the had 'profits in lieu of salary'. It was submitted that the expression any person could include a prospective employer in the present case.

The High Court held as under

(1) The interpretation sought to be placed by revenue on plain language of Section 17(3)(iii) could not be accepted. The words "from any person" occurring therein have to be read together with the following words in sub-clause (A): "before his joining any employment with that person". In other words, Section 17(3)(iii) pre-supposes the existence of the relationship of employee and employer between the assessee and the person who makes the payment of "any amount' in terms of Section 17(3)(iii).

(2) Therefore the words in Section 17(3)(iii) cannot be read disjunctively to overlook the essential facet of the provision, viz, the existence of 'employment', i.e., a relationship of employer and employee between the person who makes the payment of the amount and the assessee.

(3) The other plea of revenue that said amount should be taxed under some other head of income, including 'income from other sources', was also unsustainable. In case of CIT v. Rani Shankar Mishra [2009] 178 Taxman 324 (Delhi) it was held that where an amount was received by a prospective employee 'as compensation for denial of employment', such amount was not in nature of profits in lieu of salary. Thus, it was a capital receipt that could not be taxed as income under any other head.

Case Law: In the ITAT Mumbai Bench 'K', J.P. Morgan Securities India (P.) Ltd. v. Additional Commissioner of Income-Tax, B.R. Baskaran, Accountant Member and Amit Shukla, Judicial Member [IT Appeal Nos. 1759 (Mum.) of 2014 and 452 (Mum.) of 2015, ASSESSMENT YEARS 2009-10 & 2010-11 dated: SEPTEMBER 16, 2015]

➲ **No "transfer" of capital asset takes place in the ordinary sense of the word 'transfer' or even within the extended meaning given to the term 'transfer in section 2(47)(vi) when the plant and machinery along with land and building is leased out for a limited period of 10 years giving limited right to the lessee to hold and possess the facilities leased to it with further restriction on sub-letting it or transferring any right or interest therein to anyone without the permission of the lessor and with the lease agreement making it explicit that at the end of the lease period the facilities leased would revert to the lessor-assessee. This is in view of Explanation1 to section 2(47) which incorporates reference to section 269UA(d) for which purposes 'transfer' has been defined to section 269UA(f)(i) to include lease for a period of not less than 10 years**

• No "transfer" of capital asset takes place within the meaning of section 2(47) when the plant and machinery along with land and building is leased out for a limited period of 10 years giving limited right to the lessee to hold and possess the facilities leased to it with further restriction on sub-letting it or transferring any right or interest therein to anyone without the permission of the lessor and with the lease agreement making it explicit that at the end of the lease period the facilities leased would revert to the lessor-assessee.
• This is in view of Explanation1 to section 2(47) which incorporates reference to section 269UA(d) for which purposes 'transfer' has been defined to section 269UA(f)(i) to include lease for a period of not less than 10 years.
• This is especially so when assessee-lessor has claimed depreciation on plant and machinery leased out and the facilities indeed did revert back to assessee-lessor at the end of the 10 years lease period and assessee-lessor did indeed sell these facilities to another party and was assessed for long-term capital gains on such sale.
• The mere fact that the Assessee may have applied under Section 230A of the Act to seek permission of the Department cannot be held against it as far as the correct legal position is concerned. In other words the fact that certain columns in the concerned form were filled by the Assessee to imply that there was a transfer of leasehold/ownership rights cannot be read to constitute a waiver by the Assessee of the legal defences that flow from a correct interpretation of the clauses of the lease agreement and from a correct reading of Section 2 (47) with Section 45 of the Act.
• The lease agreement had to form the fundamental basis for understanding what the transaction in effect was. The relationship between the parties could not be re-configured on the basis of surmises and conjectures.
• The AO and CIT (A) appeared to have proceeded on the basic suspicion that the lease agreement was a tax avoidance device and this prevented them from objectively viewing the transaction for what it in effect was.
• There has to be an extinguishment of ownership rights in order that a transaction can be said to be a 'sale'. Here, the lessee does not even have the right of sub-letting the facilities. The leasehold right is only for a period of ten years and at the end of that period the leased facilities revert to the owner.

Case Law: High Court of Delhi, Teletube Electronics Ltd. v. Commissioner of Income-tax, Delhi-VI, [Dr. S. Muralidhar and Vibhu Bakhru, JJ., IT Appeal Nos. 38 & 132 of 2002 dated: September 24, 2015]

CUSTOMS

Notifications / Circulars

➲ **CBEC seeks to further amend notification No. 12/2012-Customs dated 17.03.2012 so as to:**

- extend zero import duty regime for all pulses except gram [CTH 0713 20 00] and lentil [CTH 0713 40 00] without an end date;
- extend zero import duty regime for gram [CTH 0713 20 00] and lentils [CTH 0713 40 00] only up to 31.12.2015

Source: Notification No. 48/2015-Cus,dt. 30-09-2015

➲ **Customs: Duties on oils increased**

Various edible, crude and refined oils have been subjected to an increase in basic customs duty by amending the relevant entries in notification 12/2012-Customs. This has been done by notification 46/2015-Customs dated 17 September 2015.

Read more at: http://cbec.gov.in/htdocs-cbec/customs/cs-act/notifications/notfns-2015/cs-tarr2015/cs46-2015

➲ CBEC levied definitive anti-dumping duty on imports of Acrylonitrile Butadiene Rubber (NBR), originating in or exported from Korea RP for periods of five years vide Notification No. 46/2015- Cus (ADD), dt. 04-09-2015.

➲ CBEC levied definitive anti-dumping duty on imports of Float Glass of thickness 2 mm to 12 mm (both inclusive) of clear as well as tinted variety (other than green glass) but not including reflective glass, processed glass meant for decorative, industrial or automotive purposes falling under chapter heading 7005 of the First Schedule to the Customs Tariff Act, originating in or exported from the Peoples' Republic of China for a period of five years vide Notification No. 47/2015-Cus (ADD), dt. 08-09-2015.

➲ **Increase in BCD on certain iron and steel products**

CBEC amends notification no 12/2012 - Customs dated 17-03-2012 so as to increase the BCD on certain iron and steel products vide Notification No. 45/2015-Cus,dt. 12-08-2015.

➲ **Customs: Currency conversion rates notified**

The CBEC has issued notification number 93/2015-Customs (NT) dated 17 September 2015 to notify currency conversion rates for customs purposes effective from 18 September 2015. From that date, inter alia, the Euro converts to INR 76.10 for valuation of imported goods and INR 74.25 for export goods; the pound sterling converts to INR 103.25 for imported goods and INR 101.00 for export goods, and the US dollar converts to INR 67.05 for imported goods and INR 66.00 for export goods.

Read more at: http://cbec.gov.in/htdocs-cbec/customs/cs-act/notifications/notfns-2015/cs-nt2015/csnt93-2015

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

Brass, Poppy seed, Areca nut, Gold and Sliver

The CBEC has revised tariff values for specified commodities under section 14 of the Customs Act 1962 vide Notification No. 96/2015-CUSTOMS (N. T.) dated: 30th September, 2015.

Read more at: http://www.cbec.gov.in/htdocs-cbec/customs/cs-act/notifications/notfns-2015/cs-nt2015/csnt96-2015

➲ **Provisional safeguard duty on certain hot-rolled flat steel products**

CBEC seeks to levy provisional safeguard duty on Hot-rolled flat products of non-alloy and other alloy Steel in coils of a width of 600 mm or more [heading 7208 or tariff item 7225 30 90] at the rate of 20% for a period of 200 days.

Source: Notification No. 02/2015, Cus. (SG), dt. 14-09-2015

CENTRAL EXCISE

Notifications / Circulars

➲ **CBEC notifies conditions, safeguards and procedures for supply of items like tags, labels, printed bags, stickers, belts, buttons and hangers (hereinafter referred as specified goods) produced or manufactured in an Export Oriented Undertaking and cleared without payment of duty to a Domestic Tariff Area unit in terms of Para 6.09 (g) of Foreign Trade Policy, 2015-20, for the purpose of their exportation out of India**

Conditions:-

(i) the EOU shall furnish a general bond in the Form specified in Annexure-I to the Ministry of Finance (Department of Revenue) notification No. 42/2001-Central Excise (N.T.), dated the 26th June, 2001, as amended from time to time, to the jurisdictional Deputy or Assistant Commissioner of Central Excise in a sum equal to the duty chargeable on the specified goods, with 5% Bank Guarantee or as cash security;

(ii) the specified goods after being used for the specified purpose shall be exported within six months from the date on which such goods cleared from EOU or within such extended period as the Deputy or Assistant Commissioner of Central Excise may in any particular case allow;

(iii) the shipping bill filed by the DTA exporter shall contain the name and I.E. Code of the DTA exporter along with the name and I.E. Code of the EOU as supporting manufacturer;

(iv) the DTA exporter shall apply for export incentives based on the Freight On Board (FOB) value of the consignment exported minus the value of specified goods.

Procedure to be followed by EOU manufacturing the specified goods:-

(i) after furnishing a bond along with Bank Guarantee or cash security, as the case may be, EOU is permitted to clear goods without payment of duty to DTA manufacturer or as the case may be, processer;
(ii) the EOU shall ensure that the debit in bond account does not exceed the credit available therein at any point of time;

Export of goods:-

(i) the DTA exporter shall export specified goods as part of export goods. The shipping bill filed by DTA exporter for export shall also contain name and address of the EOU as supporting manufacturer, details of the specified goods, like their description, quantity, value, etc., and reference of invoice number under which the said specified goods were received from the EOU. The value of the specified goods should not be less than the value of these goods removed by EOU:

Provided that in case of shipping bill filed claiming the benefits under any export promotion scheme, the FOB value of consignment exported shall exclude the value of specified goods procured from EOU for the purpose of claiming such benefits;
(ii) the EOU will submit attested photocopy of the shipping bill (EP copy), Customs attested copy of invoice and self-attested photocopy of bill of lading or air way bill to the jurisdictional Central Excise and Customs Superintendent for verification of export of the specified goods. The said Superintendent of Central Excise having jurisdiction over EOU shall verify the details of export of the specified goods with reference to the document submitted by exporter;

(iii) the proof of export should be submitted by the EOU to the jurisdictional Central Excise Office within a period of six months from the date of clearance of goods from the EOU;

(iv) on submitting certification of export of specified goods and proof of payment received for the exported goods in which the said specified goods were contained such supplies of specified goods shall be taken into account for counting towards discharge of export obligation of the EOU by the Development Commissioner.

Recovery of duty in certain cases:-

Where the specified goods are not received by the DTA Unit or are not exported by the DTA exporter within the specified period or the extended period as permitted by the Assistant or Deputy Commissioner in charge of EOU, the EOU shall be liable to pay

the duty leviable on such specified goods alongwith interest and penalty, if any, in accordance with the provisions of the Central Excise Act, 1944 (1 of 1944).
Explanation 1.- For the removal of doubts, it is hereby clarified that the specified goods shall be deemed not to have been used for the specified purpose even if any of the quantity of the subject goods is lost or destroyed by natural causes or by unavoidable accidents or for any other reasons during transport from the place of procurement to the DTA exporter and no wastage of the specified goods shall be allowed and duty on such goods lost or destroyed shall be payable by the EOU, alongwith interest and penalty, if any, in accordance with provisions of Central Excise Act, 1944 (1 of 1944).

Explanation 2.- For the purpose of this notification,-

(i) "Export Oriented Undertaking" has the same meaning as assigned to "hundred per cent. export oriented undertaking" in clause (ii) to the Explanation of sub-section (1) of section 3 of the Central Excise Act, 1944 (1 of 1944);
(ii) "Domestic Tariff Area" means India except Special Economic Zone and hundred per cent. export oriented undertakings;
(iii) Foreign Trade Policy, 2015-2020 means Foreign Trade Policy, 2015-20 notified by the Central Government in the Ministry of Commerce and Industry vide Notification No. 1/2015-2020, dated the 1st April, 2015 and as amended from time to time;
(iv) Development Commissioner means Development Commissioner of Special Economic Zone.

Source: Notification No. 20/2015 - Central Excise (N.T.) dated: 24th September, 2015

Read more at: http://www.cbec.gov.in/htdocs-cbec/excise/cx-act/notifications/notfns-2015/cx-nt2015/cent20-2015

➲ CBEC hereby makes further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 12/2012-Central Excise, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.163(E), dated the 17th March, 2012, namely: -

In the said notification, in the ANNEXURE, in Condition No. 52, under the column heading "Conditions",-
(a) for clause (iii), the following clause shall be substituted, namely:-
(iii) such ships or vessels carry containerised cargo namely, export-import cargo or empty containers or domestic cargo, between such ports;";
(b) for clause (iv), the following clause shall be substituted, namely:-
(iv) such ships or vessels file an import manifest (IGM) or an export manifest (EGM), as the case may be, in each leg of the voyage.

Source: Notification No. 41/2015 - Central Excise, dated: 17th September, 2015
Read more at: http://www.cbec.gov.in/htdocs-cbec/excise/cx-act/notifications/notfns-2015/cx-tarr2015/ce41-2015

Case Laws

➲ **Where : (a) all prices are "ex-works"/ "ex-factory"; (b) goods were cleared by manufacturer from factory on payment of appropriate sales tax; (c) invoices were prepared at factory directly in name of customer with name of Insurance Company; (d) goods were handed over to transporter without manufacturer reserving any right to disposal of goods, it was clear that title had already passed to customer at factory and therefore, place of removal was 'factory' and freight and transport from factory to buyer's premises was not includible in excisable value**

Held: All prices were "ex-works", like the facts in Escorts JCB's case. Goods were cleared from the factory on payment of the appropriate sales tax by the assessee itself, thereby indicating that it had sold the goods manufactured by it at the factory gate. Sales were made against Letters of Credit and bank discounting facilities, sometimes in advance. Invoices were prepared only at the factory directly in the name of the customer in which the name of the Insurance Company as well as the number of the transit Insurance Policy were mentioned. Above all, excise invoices were prepared at the time of the goods leaving the factory in the name and address of the customers of the respondent. When the goods were handed over to the transporter, the respondent had no right to the disposal of the goods nor did it reserve such rights inasmuch as title had already passed to its customer.

On facts, therefore, it is clear that Roofit's judgment is wholly distinguishable. Similarly in Commissioner Central Excise, Mumbai-III v. M/s. Emco Ltd, this Court re-stated its decision in the Roofit Industries' case but remanded the case to the Tribunal to determine whether on facts the factory gate of the assessee was the place of removal of excisable goods. This case again is wholly distinguishable on facts on the same lines as the Roofit Industries case. Appeal dismissed.

Case Law: Supreme Court of India, Commissioner of Customs & Central Excise, v. Ispat Industries Ltd. [R. F. Nariman AND A.K. SIKRI, JJ. Civil Appeal No. 637 of 2007 dated: October 7, 2015]

➲ **Whether printing process amounts to manufacture or not**

The respondent/assessee herein purchased GI paper from the market which is already duty paid base paper. On this paper, the process of printing is carried out by the assessee according to the design and specifications of the customers depending on their requirements. This printing is done in jumbo rolls of GIP twist wrappers. Bulk orders are received from Parle, which needs the

said paper as a wrapping/packing paper for packing of their goods. On the paper, logo and name of the product is printed in colorful form. After carrying out the printing as per the requirement of the customers, the same is delivered to the customers in jumbo rolls without slitting. No doubt, the paper in-question was meant for wrapping and this end use remained the same even after printing. However, whereas blank paper could be used as wrapper for any kind of product, after the printing of logo and name of the specific product of Parle thereupon, the end use was now confined to only that particular and specific product of the said particular company/ customer. The printing, therefore, is not merely a value addition but has now been transformed from general wrapping paper to special wrapping paper. In that sense, end use has positively been changed as a result of printing process undertaken by the assessee.

Court therefore, of the opinion that the process of aforesaid particular kind of printing has resulted into a product, i.e., paper with distinct character and use of its own which it did not bear earlier. Appeal is allowed

Case Law : Commissioner of Central Excise, Mumbai –IV Vs. Fitrite Packers(SC)

➲ **Cenvat Credit : In case of irregular availment of credit on distribution by Input Service Distributor (ISD), show-cause notice under rule 14 of the CENVAT Credit Rules, 2004 for wrong/irregular 'availment' of credit has to be issued to 'manufacturing/service provider' unit which had availed credit and not to ISD, as ISD had neither availed credit nor utilized credit**

Cenvat Credit : For period prior to 1-4-2011, trading is not a service and hence services used in trading cannot be considered as input services and therefore, credit taken on common input services has to be disallowed/reversed based upon trading turnover and manufacturing turnover

Case Law: CESTAT, Mumbai Bench, Clariant Chemicals (I) Ltd. v. Commissioner of Central Excise, [P.K. Jain, Technical Member and S.S. Garg, Judicial Member, Order No. A/3360/15/eb and m/4755/15/eb and others, dated: October 13, 2015]

➲ Parts, components and assemblies of earth moving vehicles, namely, scannia trucks, dumpers, motor graders, wheel loaders, dozers and hydraulic excavators, procured domestically or imported, are covered within term 'automobile' and are covered within third schedule to Central Excise Act; therefore, putting tag showing part number thereon would amount to 'labelling' and would be deemed manufacture under section 2(f)(iii) of Central Excise Act.

Where goods notified under section 4A are received in unpacked condition and are sold in unpacked condition, provisions of section 4A will not be applicable and, therefore, value will be determined as per section 4. However, in any other case viz. if goods are sold in retail packs, section 4A would apply.

Case Law: CESTAT, Mumbai Bench, Larsen & Toubro Ltd v. Commissioner of Central Excise & Customs, Nagpur [P.K. Jain, TECHNICAL MEMBER and S.S. Garg, JUDICIAL MEMBER, Order Nos. 3357-3359/2015/EB, Appeal Nos. E/86741, 86747 & 86748/2013, dated:October 8, 2015]

SERVICE TAX

Case Laws

➲ **Finance Act, 1994, being a special and complete Code, prevails over general provisions of IPC and, accordingly, for alleged non-payment of service tax, department cannot filed FIR under provisions of IPC**

Section 89, read with section 90 of the Finance Act, 1994 and section 406 of the Indian Penal Code, 1860 and section 482 of the Code of Criminal Procedure, 1973 - Offences and penalties - Service Tax - Alleging non-payment of service tax of Rs. 1,05,705, department filed FIR against assessee under section 406 - Assessee sought quashing of FIR on ground that general provisions of IPC cannot be applied for service tax purposes - HELD : Assessee made payment of service tax on demand being put up by service tax authorities - Finance Act, 1994 is a special and complete Code in itself and, therefore, same would prevail over general provisions of IPC - When service tax law itself provides for adjudication, interest and penalty for default in payment of service tax, department's action in registering FIR was abuse of process of Court - Since assessee had undertaken to pay demand, if any, still arising under service tax law, continuation of criminal proceedings would amount to further abuse of process of court - Therefore, FIR was quashed accordingly. [In favour of assessee]

Case Law: High Court of Punjab and Haryana, Ajay Kumar Sandhu v. State of Haryana [Rameshwar Singh Malik, J.crm-m-No. 29708 of 2014 (O & M) dated: September 11, 2015]

➲ **Activity of buying and selling of lottery is not service. Department cannot demand service tax on said activity on basis of Rule 6(7C) of Service Tax Rules since it is an optional scheme of payment of tax and does not create a charge of service tax**

Facts

(1) Assessee was engaged in business of sale of paper and online lottery tickets organized by Government of Sikkim.
(2) Section 65B(44) defines service. It excludes transaction in money or actionable claim. An Explanation was inserted vide

Finance Act, 2015 to restrict the meaning of transaction in money or actionable claim. Explanation excluded, from purview of transaction in money or actionable claim, activity carried out by a lottery distributor or selling agent in relation to promotion, marketing, organising, selling of lottery or facilitating in organising lottery of any kind.
(3) Section 66D provides negative list of services. Any service listed under Section 66D is outside the ambit of service tax net. An Explanation was inserted in Section 66D to exclude aforesaid activity from purview of negative list of services.
(4) The effect of aforesaid amendments was: said activities in relation to lottery became subjected to service tax. Department demanded service tax from assessee on the basis of aforesaid amendments.
(5) The assessee challenged said levy of service tax.

The High Court held in favour of assessee as under

(a) Section 65B(44) defines service. Principal requirements of said provision is that the activity should be carried out by a person for another and that such activity should be for a consideration. Activity of assessee did not establish the relationship of principal and agent but rather that of a buyer and a seller on principal to principal basis. Nature of transaction being bulk purchase of the lottery tickets by the assessee from the State Government on full payment of price as a natural business transaction. There is no privity of contract between State and assessee. It was held in an earlier case of assessee and this position is not changed even after Finance Act, 2015.
(b) Department demanded service tax on the strength of Rule 6(7C) the Service Tax Rules, 1994. In earlier case of assessee it was held that Rule 6(7C) only provides an optional composition scheme for payment of service tax which by itself does not create a charge of service tax. This Rule is only a piece of subordinate legislation framed under the rule making power provided in the Finance Act, 1994 and, therefore, in view of the position of law that Subordinate Legislation cannot be override the statutory provisions, Rule 6(7C) cannot go beyond the provision of the Finance Act, 1994. This provision has not changed even now.
(c) Assessee in buying and selling the lottery tickets was not rendering service to the State and, therefore, their activity does not fall within the meaning of 'service' as provided under Section 65B(44) and, therefore, outside the purview of impugned Explanation as well.
(d) Hence levy of service tax on activities carried out by assessee is invalid.

Case Law: High Court of Sikkim, Future Gaming & Hotel Services (P.) Ltd. v. Union of India

➲ **Activity of buying and selling of lottery is not service. Department cannot demand service tax on said activity on basis of Rule 6(7C) of Service Tax Rules since it is an optional scheme of payment of tax and does not create a charge of service tax**

Facts

(1) Assessee was engaged in business of sale of paper and online lottery tickets organized by Government of Sikkim.
(2) Section 65B(44) defines service. It excludes transaction in money or actionable claim. An Explanation was inserted vide Finance Act, 2015 to restrict the meaning of transaction in money or actionable claim. Explanation excluded, from purview of transaction in money or actionable claim, activity carried out by a lottery distributor or selling agent in relation to promotion, marketing, organising, selling of lottery or facilitating in organising lottery of any kind.
(3) Section 66D provides negative list of services. Any service listed under Section 66D is outside the ambit of service tax net. An Explanation was inserted in Section 66D to exclude aforesaid activity from purview of negative list of services.
(4) The effect of aforesaid amendments was: said activities in relation to lottery became subjected to service tax. Department demanded service tax from assessee on the basis of aforesaid amendments.
(5) The assessee challenged said levy of service tax

The High Court held in favour of assessee as under

(a) Section 65B(44) defines service. Principal requirements of said provision is that the activity should be carried out by a person for another and that such activity should be for a consideration. Activity of assessee did not establish the relationship of principal and agent but rather that of a buyer and a seller on principal to principal basis. Nature of transaction being bulk purchase of the lottery tickets by the assessee from the State Government on full payment of price as a natural business transaction. There is no privity of contract between State and assessee. It was held in an earlier case of assessee and this position is not changed even after Finance Act, 2015.
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(c) Assessee in buying and selling the lottery tickets was not rendering service to the State and, therefore, their activity does not fall within the meaning of 'service' as provided under Section 65B(44) and, therefore, outside the purview of impugned Explanation as well.
(d) Hence levy of service tax on activities carried out by assessee is invalid.

Case Law: High Court of Sikkim, Future Gaming & Hotel Services (P.) Ltd. v. Union of India [Mrs. Meenakshi Madan Rai and Sonam Phintso Wangdi, JJ., WP (C) No. 39 of 2015 dated: October 14, 2015]

➲ **Where collection of entrance fee by club from its members : (a) did not confer members any access to services, facilities or advantages; and (b) was to meet expenses necessary for sustenance and survival of club and maintenance of its assets, then, entrance fee, not being a consideration, was not chargeable to service tax**

Section 66 of the Finance Act, 1994 - Charge/levy - Service Tax - Period 16-6-2005 to 30-1-2006 - Assessee was a members' club and was run by members themselves through appropriate management bodies and, in event of liquidation, amount was to be received by members - Department demanded service tax on entrance fee collected by assessee from members - Assessee argued that it was governed by principle of mutuality and not liable to service tax - HELD: Principle of mutuality applies squarely to assessee as a members' club and ruling in Sports Club of Gujarat (supra) would settle case in favour of assessee [In favour of assessee]

Section 65B(44) of the Finance Act, 1994 - Service - Activity carried out for a consideration - Service cannot be presumed merely on flow of consideration until its benefit is perceived in hands of recipient and signified by readiness to recompense provider - Existence of a monetary flow combined with convergence of two entities for such flow cannot be regarded as a taxable event without identifying specific activity that links provider to recipient - Mere capacity to deliver a service cannot be equated with providing or agreeing to provide a service - Contributions for discharge of liabilities or for meeting common expenses of a group of persons aggregating for identified common objectives will not meet criteria of taxation in absence of identifiable service that benefits an identified individual or individuals who make contribution in return for benefit so derived [In favour of assessee]
Section 65(25aa) of the Finance Act, 1994 - Taxable services - Club or Association's Services - Period 16-6-2005 to 30-1-2006 - Department sought levy of service tax on entrance fee collected by assessee from its members arguing that it was covered within phrase "subscription or any other amount"

Assessee argued that : (a) it was not a consideration for any service, as mere payment of entrance fee did not entitle member to any service; (b) assessee being a members' club, entrance fee was indirectly returned to members in event of liquidation - HELD : Mere capacity of clubs to provide services does not amount to "club or association" services; there must be some "service" provided or agreed to be provided - Every fee or charge payable by members to a "club or association" does not, ipso facto, become taxable; each category of fee or charge needs to be examined severally to determine whether it is for some "service" - In this case, entrance fee did not confer members access or services, facilities or advantages and was merely for inclusion in restricted group of members - It was merely towards contribution of expenses, which are necessary for sustenance and survival of club and maintenance of its assets - Hence, not being a consideration, same cannot be charged to service tax. [In favour of assessee]

Section 11B, read with section 12A, of the Central Excise Act, 1944, section 83 of the Finance Act, 1994 and section 27 of the Customs Act, 1962 - Refund - Doctrine of unjust enrichment - Assessee collected entrance fee from members and paid tax thereon under protest - Assessee applied for refund of service tax - Department denied refund on ground of unjust enrichment - HELD : Tax was paid on entrance fee without collecting same from new members; hence, tax was paid out of common funds of assessee as members paid nothing more than entrance fee - Further, entrance fees are fixed in bye-laws without reference to tax leviable, if any, thereon - Hence, tax burden has not been transferred to members from whom entrance fees were collected and refund is grantable. [In favour of assessee]

Case Law: CESTAT, Mumbai Bench, Cricket Club of India Ltd. v. Commissioner of Service Tax [S.S. Garg, Judicial Member and C.J. Mathew, Technical Member, Order No. A/3117/2015/stb appeal no. st/20/2009 dated: September 21, 2015]

SEBI

Notifications / Circulars

➲ **Disclosures to be made by NBFCs in the Offer Documents for public issue of Debt Securities under the SEBI (Issue and Listing of Debt Securities) Regulations, 2008**

SEBI, vide circular no. CIR/IMD/DF/12/2014 dated June 17, 2014, interalia, prescribed additional disclosures to be provided for public issue of debt securities by NBFCs. Based on the feedback from market participants on disclosures in offer document by NBFCs, after due deliberations, it has been decided to align the disclosures made in the offer documents to be in line with the stipulations as required by the Reserve Bank of India (RBI).

a) Point 4 (I)(d) (iv) of the Circular shall be modified as follows:
Aggregated exposure to the top 20 borrowers with respect to the concentration of advances, exposures to be disclosed in the manner as prescribed by RBI in its guidelines on Corporate Governance for NBFCs;
b) Point 4 (I)(d) (v) of the Circular shall be modified as follows:
Details of loans, overdue and classified as non-performing in accordance with RBI guidelines. Further, in order to allow investors to better assess the NBFC issue, it has been decided that

the following additional disclosures shall be made by NBFCs in their offer documents: -
i. A portfolio summary with regards to industries/ sectors to which borrowings have been made by NBFCs.
ii. Quantum and percentage of secured vis-à-vis unsecured borrowings made by NBFCs.
iii. Any change in promoter's holdings in NBFCs during the last financial year beyond a particular threshold. At present, RBI has prescribed such a threshold level at 26%. The same threshold shall be applicable or as may be prescribed by RBI from time to time.

Source: Circular CIR/IMD/DF/6/2015 dated: September 15, 2015
Read more at: http://www.sebi.gov.in/cms/sebi_data/attachdocs/1442310923565.pdf

➲ **Format for compliance report on Corporate Governance to be submitted to Stock Exchange (s) by Listed Entities Regulation 27(2) of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("Listing Regulations"), specifies that the listed entity shall submit quarterly compliance report on corporate governance in the format specified by the Board from time to time to recognised Stock Exchange(s) within fifteen days from close of the quarter**

Accordingly, formats for Compliance Report on Corporate Governance are :
• Annexure - I - on quarterly basis;
• Annexure - II - at the end of the financial year (for the whole of financial year);
• Annexure - III - within six months from end of financial year. This may be submitted alongwith second quarter report.
Additionally, the following reports shall also be placed before the board of directors of the listed entity in terms of requirement under Regulation 17(3) of Listing Regulations :-
• Compliance Reports
• Secretarial Audit Report prepared in accordance with Rule 9 of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 under Section 204 of the Companies Act, 2013 in so far as it pertains to Securities Laws.

For more information read: http://www.sebi.gov.in/cms/sebi_data/attachdocs/1443091241915.pdf

➲ **Registration of Members of Commodity Derivatives Exchanges**

Pursuant to the Notification No. SEBI/LAD-NRO/GN/2015-16/017 dated September 07, 2015 amending the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 (hereinafter referred to as Stock Broker Regulations), all existing members of commodity derivatives exchanges who satisfy the eligibility requirements for membership, as prescribed in the rules, regulations and bye-laws of the exchange of which it holds membership, shall be eligible to apply for registration to SEBI, within a period of three months from September 28, 2015. Such existing members of commodity derivatives exchanges shall be required to meet the eligibility criteria as specified under Rule 8 of Securities Contract (Regulation) Rules, 1957 within a period of one year from the date of transfer and vesting of rights and assets of the Forward Market Commission (FMC) with SEBI i.e., by September 28, 2016.

The application shall be accompanied by Additional Information as prescribed vide SEBI Circular No. SMD/POLICY/ CIR-11/98 dated March 16, 1998. The minimum net worth specified for members of commodity derivatives exchanges, as per Stock Broker Regulations, shall have to be computed as per the formula prescribed vide SEBI Circular No. FITTC/DC/CIR- 1/98 dated June 16, 1998. It is clarified that, "business in goods related to the underlying" and/ or "business in connection with or incidental to or consequential to trades in commodity derivatives by a member of a commodity derivatives exchange, would not be disqualified under Rule 8(1)(f) and Rule 8(3)(f) of the Securities Contract (Regulation) Rules, 1957.

Source: Circular CIR/MIRSD/4/2015 dated: September 29, 2015

FOREIGN TRADE

➲ **Export policy of sugar**

The requirement of registration of quantity with DGFT for export of sugar has been dispensed with vide Notification No. 20/2015-20 dated: 7 September 2015.

Read more at: http://dgft.gov.in/Exim/2000/NOT/NOT15/noti2016.pdf

➲ **Amendment in import policy conditions of apples under Exim code 0808 10 00 of Chapter 08 of ITC (HS), 2012 - Schedule - 1 (Import Policy)**

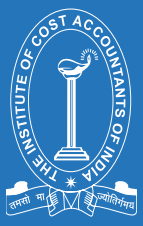
Import of the item 'Apples' covered under EXIM Code 0808 10 00 is allowed only through Nhava Sheva port vide Notification No. 21/2015-20 dated: 14 September 2015.

Read more at: http://dgft.gov.in/Exim/2000/NOT/NOT15/noti2115.pdf

➲ **Amendment of General Notes No.10 regarding Import Policy**

Textiles and Textile Articles originating from specific countries as in para 2.III of the notification are exempted from testing of samples for presence of Azo Dyes.

Read the full notification at: http://dgft.gov.in/Exim/2000/NOT/NOT15/noti1916.pdf



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