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The Institute of Cost Accountants of India

*(Statutory body under an Act of Parliament)*

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The Institute of Cost Accountants of India

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SEPTEMBER 2015 | VOL. 3 | NO. 9


## CONTENTS



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# INDIAN ECONOMY

## News

➲ **RBI keeps policy rates on hold at 7.25 percent**

The Reserve Bank of India held its policy rate at 7.25 percent on Tuesday, pausing as widely expected after a spike in food prices sent consumer inflation to an eight-month high.

Read more at: http://in.reuters.com/article/2015/08/04/india-rbi-rates-expert-views-idINKCN0Q90D920150804

➲ **India's forex reserves at $354.43 bln as of Aug 14 - RBI**

India's foreign exchange reserves rose to $354.43 billion as of Aug. 14 from $353.35 billion a week earlier, the Reserve Bank of India said. Changes in foreign currency assets, expressed in dollar terms, include the effect of appreciation or depreciation of other currencies held in its reserves.

Source: http://in.reuters.com/article/2015/08/21/india-forex-reserves-idINKCN0QQ1L220150821

➲ **India's economic data brings cheer amid worries over stalled reforms**

India's retail inflation cooled to a record low in July and annual growth in industrial production hit a four-month high in June, bringing cheer to investors fretting that gridlock in parliament is stalling reforms. Consumer prices rose 3.78 percent year-on-year in July, their slowest pace on record, compared with a 4.42 percent rise predicted by analysts. The sharp cooling, however, was in large measure due to a favourable base effect.

Output at factories, utilities and mines expanded an annual 3.8 percent in June, helped by a sharp rebound in demand for consumer goods.

Read more at: http://in.reuters.com/article/2015/08/12/india-economy-inflation-idINKCN0QH1HM20150812

➲ **Core consumer inflation seen at 4-4.5 pct in July - analysts**

India's core consumer price index was estimated to have risen around 4 to 4.5 percent in July from a year earlier, slowing down from around 4.85 to 5 percent in June.

Read more at: http://in.reuters.com/article/2015/08/12/india-economy-core-inflation-idINKCN0QH1JN20150812

➲ **India's real credit growth picking up - chief economic adviser**

India's real credit growth has started picking up, the country's chief economic adviser told.

Read more at: http://in.reuters.com/article/2015/08/12/india-economy-credit-idINKCN0QH0JB20150812

➲ **Conditions favourable for further rate cuts - Jaitley**

Conditions in India are favourable for further interest rate cuts due to low global commodity prices as well as prospects of good summer crops, the finance minister said.

Read more at: http://in.reuters.com/article/2015/08/06/india-economy-jaitley-idINKCN0QB1FH20150806

➲ **India's service industry returns to modest growth in July**

India's dominant services industry bounced back to growth in July, a private survey showed on Wednesday, but the improvement was modest and unlikely to change expectations that the Reserve Bank could cut interest rates again before year-end.

Read more at: http://in.reuters.com/article/2015/08/05/india-economy-services-pmi-idINKCN0QA0CJ20150805

➲ **CPI inflation to average 5.6% this fiscal: DBS**

Retail inflation in India is likely to average around 5.6 per cent this year, down from 6.1 per cent in financial year 2014-15, says a DBS report. According to the global financial services firm, inflation has eased significantly over the past year, but a sub-par monsoon and fading base effects from earlier falls in commodity prices would prevent further disinflation. "Overall, inflation this year is likely to average a benign 5.6 per cent, down from 6.1 per cent in financial year 2014-15, but the trajectory will matter to the RBI," DBS said in a research note.

Read more at: http://www.moneycontrol.com/news/economy/cpi-inflation-to-average-56-this-fiscal-dbs_2370541.html

# BANKING

## Notifications / Circulars

➲ **Interest Rates on Deposits – Deposits of Army Group Insurance Directorate (AGID), Naval Group Insurance Fund (NGIF) and Air Force Group Insurance Society (AFGIS)**

As per circulars DBOD.No.Dir.BC.121/C.347 (26)-86 dated October 29, 1986, DBOD. No. Dir. BC.26/C.347 (26)-87 dated September 1, 1987 and DBOD. No. Dir. BC. 28/C.347(26)-87 dated September 11, 1987, in terms of which Public Sector Banks were

permitted to pay additional interest of 1.28 per cent per annum over and above the normal rate of interest permissible in terms of directives on interest rates on deposits issued by Reserve Bank of India, only on the term deposits for two years and above of Army Group Insurance Directorate (AGID), Naval Group Insurance Fund (NGIF) and Air-Force Group Insurance Society (AFGIS), provided such deposits are not in any way linked with payment of insurance premia by the bank.

In line with complete deregulation of interest rates on deposits, it has been decided to withdraw the prescription of offering additional interest of 1.28 per cent per annum on the deposits of AGID, NGIF and AFGIS. Accordingly, interest rates on such deposits should be at par with other deposits of similar maturity and amount.

Source: Notification No. RBI/2015-16/147[DBR.Dir.BC. No.33/13.03.00/2015-16] dated: August 06, 2015

➲ **Exposure Norms limit for the Standalone Primary Dealers (SPDs)**

To facilitate greater level of participation in corporate bonds by SPDs, it has been decided to increase exposure ceiling limits in respect of single borrower / counterparty from 25 per cent to 50 per cent of latest audited Net Owned Funds (NOF) and in respect of group borrower from 40 per cent to 65 per cent of latest audited NOF only for investments in AAA rated corporate bonds. The existing norm of exposure ceilings for single borrower / counterparty and group borrower of 25 and 40 per cent respectively and other instructions contained in the IDMD circular dated March 27, 2014, mentioned above will continue to apply in respect of other investments in the corporate bonds.

Source: Notification No. RBI/2015-16/149 [DNBR.CO.PD. No.068/03.10.01/2015-16] dated: August 6, 2015

➲ **Streamlining flow of credit to Micro and Small Enterprises (MSEs) for facilitating timely and adequate credit flow during their 'Life Cycle'**

Micro and small units are more prone to facing financial difficulties during their Life Cycle than large enterprises / corporate when the business conditions turn adverse. Absence of timely support at such a juncture could lead to the unit turning sick and many a time irreversibly. As such, role of banks in providing continuous support to viable MSEs during such phases of transient financial difficulties assumes significance.

Accordingly, banks have been advised to put in place Board approved policy on lending to MSEs, adopting an appropriate system of timely and adequate credit delivery to borrowers in the MSE segment within the broad prudential regulations of Reserve Bank of India. The feedback received from various stakeholders indicate that some banks have put in place such policies for extending financial help to the viable / stressed MSE borrowers by way of adequate ad-hoc and standby limits which support the MSE units during adverse business conditions as also when their credit requirements go up.

Guidelines for lending to the MSE sector :

i) **Standby Credit Facility** – In terms of circular DBR.No.BP. BC.33/ 21.04.048/ 2014-15 dated August 14, 2014 banks are allowed, at the time of sanction of project loans, to sanction a 'standby credit facility' to fund unforeseen project cost overruns, if needed. Such 'standby credit facilities' are sanctioned at the time of initial financial closure; but disbursed only when there is a cost overrun. At the time of credit assessment of borrowers / project, such cost overruns are also taken into account while determining viability and repayment ability of the borrower. Banks may, as part of their lending policy to MSEs, consider a similar approach of providing a 'standby credit facility', while funding capital expenditure, to fund unforeseen increases in capital expenditure. Further, at the discretion of banks, such 'standby credit facility' may also be sanctioned to fund periodic capital expenditure.

ii) **Working Capital Limits** – In terms of extant guidelines, banks are allowed to determine working capital requirements according to their assessment of the borrowers and their credit needs. Banks are required to have a transparent policy and guidelines for credit dispensation, with the approval of their Board, in respect of each broad category of economic activity. In this connection, it is advised that banks may also incorporate, in their lending policy to MSEs, a policy for fixing a separate additional limit, at the time of sanction / renewal of working capital limits, specifically for meeting the temporary rise in working capital requirements arising mainly due to unforeseen / seasonal increase in demand for products produced by them. Such limits may be released primarily, where there is a sufficient evidence of increase in the demand for products produced by MSEs.

iii) **Review of Regular Working Capital Limits** – At present, banks review working capital limits at least once in a year based on audited financial statements. However, audited financial statements of MSE units would ordinarily be available with a time lag, post-closing of the financial year. In such cases and where banks are convinced that changes in the demand pattern of MSE borrowers require a mid-term review, they may do so. Such mid-term reviews may be based on an assessment of sales performance of the MSEs since last review without waiting for audited financial statements. However, such mid-term reviews shall be revalidated during the subsequent regular review based on audited financial statements.

iv) **Timelines for Credit Decisions** – Timely credit is critical to the growth of a healthy MSE sector.

Source: Notification No. RBI/2015-16/160, FIDD.MSME & NFS. BC.No.60/06.02.31/2015-16 dated: August 27, 2015

➲ **Cash Withdrawal at Point-of-Sale (POS) - Enhanced limit at Tier III to VI Centres**

The Reserve Bank of India (RBI) has doubled the limit for cash withdrawal at point-of-sale (POS) in Tier III to VI centres from Rs 1000 to Rs 2000 a day. This will be available for debit cards and open system prepaid cards issued only by banks.

Source: Notification No. RBI/2015-16/164 [DPSS.CO.PD. No.449/02.14.003/2015-16] dated: August 27, 2015

➲ **Security and Risk Mitigation Measures for Card Present and Electronic Payment Transactions – Issuance of EMV Chip and PIN Cards**

RBI has issued a circular DPSS (CO) PD No.2112/02.14.003/2014-15 dated May 07, 2015 that from September 01, 2015 all new cards will be issued – debit and credit, domestic and international – by banks which will be EMV Chip and Pin based cards. Now RBI has again decided to grant extension of time for issuance of EMV Chip and Pin cards vide Notification No. RBI/2015-16/163, DPSS. CO.PD.No.448/02.14.003/2015-16 dated: August 27, 2015 as under:

| Sr. No | Type of Card/s | Time extended upto |
|---|---|---|
| (i) | Cards issued under the Prime Minister Jan Dhan Yojana (PMJDY) / Basic Savings Bank Deposit Account (BSBDA) / other Government schemes | September 30, 2016 |
| (ii) | All cards other than (i) above | January 31, 2016 |

During this extended period, in case of specific requests from customers for issuance of EMV Chip and Pin cards, banks should promptly comply with the request. Besides, all cards issued for international usage will necessarily be EMV Chip and Pin cards. As regards migration of existing magnetic stripe only cards to EMV Chip and Pin cards, banks may initiate necessary steps to progressively migrate on their own accord so as to ensure that all active cards issued by them are EMV Chip and Pin based by December 31, 2018.

Read more at: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10003&Mode=0

➲ **Union Budget - 2015-16 Interest Subvention Scheme**

In reference to letter FIDD CO.FSD.No.10740/05.04.02/2014-15 dated June 17, 2015 conveying extension of Interest Subvention Scheme upto July 31, 2015. Government of India has approved the implementation of the Interest Subvention Scheme for the year 2015-16 for short term crop loans upto Rs 3.00 lakhs with the stipulations that Interest subvention @ 2% per annum will be made available to the Public Sector Banks (PSBs) and the Private Sector Scheduled Commercial Banks (in respect of loans given by their rural and semi-urban branches) on their own funds used for short-term crop loans up to Rs.3,00,000/- (Rs. three lakhs) per farmer provided the lending institutions make available short term credit at the ground level at 7% per annum to the farmers. This 2% interest subvention will be calculated on the crop loan amount from the date of its disbursement/drawal up to the date of actual repayment of the crop loan by the farmer or up to the due date of the loan fixed by the banks whichever is earlier, subject to a maximum period of one year.

Source: Notification No. RBI/2015-16/152 [FIDD.No.FSD. BC.59/05.04.02/2015-16] dated: August 13, 2015

➲ **Conduct of Government Business by Agency Banks – Payment of Agency Commission**

RBI has clarified that the following activities do not come under the purview of agency bank business and are therefore not eligible for payment of agency commission.

a. Furnishing of bank guarantees/security deposits, etc through private sector banks by government contractors/suppliers, which constitute banking transactions undertaken by banks for their customers.
b. The banking business of autonomous/statutory bodies.
c. Payments of a capital nature such as capital contributions/ subsidies/grants made by governments to cover losses incurred by autonomous/statutory bodies.
d. Prefunded schemes which may be implemented by a Central Government Ministry/Department (in consultation with CGA) and a State Government Department through any bank without reference to RBI.

Source: Notification No. RBI/2015-16/153 [DGBA.GAD.No. 617/31.12.010(C)/2015-16] dated: August 13, 2015

# COST AUDIT

## Notifications / Circulars

➲ **CASB releases Exposure Draft of CAS2 (Revised 2015)**

Cost Accounting Standards Board (CASB), the standard-setting body of the Institute, has approved the release of Exposure Draft

of Cost Accounting Standard on Capacity Determination (CAS - 2) (Revised 2015) in its 78th meeting held on 27th August 2015. The exposure draft is hosted on the website for obtaining suggestions and comments on the same. The Exposure Draft will be modified in light of comments received before being issued as a standard in final form. Please submit your views / comments / suggestions on the proposed Exposure Draft latest by 30th September 2015 through email at casb@icmai.in

Read more at: http://icmai.in/upload/CASB/ED-CAS2-Revised2015. pdf

➲ Time for filing of cost audit report to the Central Government for the Financial Year 2014-2015 in e-form CRA-4 has been extended up to 30th Sept 2015 without any penalty / late fees vide General Circular No.12/2015 dated 1st Sept 2015.

Source: http://www.mca.gov.in/Ministry/pdf/General_Circular_12_2015.pdf

# COMPANY LAW

## Notifications / Circulars

➲ **Companies (Management and Administration) Amendment Rules, 2015**

The Ministry of Corporate Affairs has issued a notification dated 28th August, 2015 of the Companies (Management and Administration) Amendment Rules, 2015 to bring out necessary amendments in the interest of the stakeholders.

For details visit: http://www.mca.gov.in/Ministry/pdf/Amendement_Rules_31082015.pdf

➲ **Companies no longer required to file e-form INC-21 with ROC**

The requirement of filing declaration by a company before commencement of business or exercising its borrowing powers has been dispensed with under the Companies (Amendment) Act, 2015. Accordingly companies are no longer required to file e-form INC-21 with the Registrar through MCA portal.

Read more at: http://www.mca.gov.in

➲ Stamp duty in the State of Kerala for registration of Memorandum of Association of a proposed company is changed vide Finance Bill 2015 with effect from 1st April 2015.
Read more at: http://www.mca.gov.in

➲ Assessment Order under sub-section (3) of section 396 of the Companies Act, 1956 read with rule 12-A of the Companies(Central Government's) General Rules and Forms,1956 in the matter of proposed amalgamation of National Spot Exchange Limited(dissolved company) with its holding company, Financial Technologies (India) Limited(transferee company).

Read more at: http://www.mca.gov.in/Ministry/pdf/Assessmen¬tOrderEnglish_09042015.pdf

# INCOME TAX

## Notifications / Circulars

➲ **Section 10(23C)(vi) of the Income-Tax Act, 1961 - exemptions - University or other educational institutions - Notified University or other Educational Institution - Clarification on certain issues related to grant of approval and claim of exemption under section 10(23C)(vi) vide Circular No.14/2015 [F. NO.197/38/2015-ITA-I], dated: 17-8-2015**

Sub-clause (vi) of clause (23C) of section 10 of the Income-tax Act, 1961 ('Act') prescribes that income of any university or other educational institutions, existing solely for educational purposes and not for purposes of profit, shall be exempt from tax if such entities are approved by the prescribed authorities. Such approval is not required in cases of university or educational institutions wholly or substantially financed by the Government [sub-clause (iiiab)] or if their aggregate annual receipts do not exceed Rs. 1 Crore [sub-clause (iiiad) R.W. Rule 2BC].
Thus, while granting approval to entities covered under sub-clause (vi), the prescribed authority has to ensure that the applicant in situation must exist "solely for educational purposes and not for purposes of profit". There are several Provisos to clause (23C) of section 10 and prescribe, inter alia, various monitoring conditions subject to fulfilment of which only, the exemption can be availed. These monitoring conditions include mode and manner of application of funds, maintenance and audit of books of accounts in certain situations etc. Some other Provisos prescribe the manner of making application u/s 10(23C) (vi) and the circumstances when an approval granted earlier can be withdrawn.

Read more at: http://www.incometaxindia.gov.in/communica¬tions/circular/circular14_2015.pdf

➲ **Income-Tax (Twelfth Amendment) Rules, 2015 - Insertion of Rule 126**

In exercise of the powers conferred by Explanation 2 to clause (1) of section 6 read with section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes makes the rules further to amend the Income-tax Rules, 1962, namely the Income-tax (Twelfth Amendment) Rules, 2015. In the Income-tax Rules, 1962, in Part XV, after rule 125, the following rule shall be inserted, namely:—

**Rule 126:** Computation of period of stay in India in certain cases (1) For the purposes of clause (1) of section 6, in case of an individual, being a citizen of India and a member of the crew of a ship, the period or periods of stay in India shall, in respect of an eligible voyage, not include the period computed in accordance with sub-rule (2).

(2) The period referred to in sub-rule (1) shall be the period beginning on the date entered into the Continuous Discharge Certificate in respect of joining the ship by the said individual for the eligible voyage and ending on the date entered into the Continuous Discharge Certificate in respect of signing off by that individual from the ship in respect of such voyage.

Explanation: For the purposes of this rule,—
(a) "Continuous Discharge Certificate" shall have the meaning assigned to it in the Merchant Shipping (Continuous Discharge Certificate-cum-Seafarer's Identity Document) Rules, 2001 made under the Merchant Shipping Act, 1958 (44 of 1958);

(b) "eligible voyage" shall mean a voyage undertaken by a ship engaged in the carriage of passengers or freight in international traffic where—
(i) for the voyage having originated from any port in India, has as its destination any port outside India; and
(ii) for the voyage having originated from any port outside India, has as its destination any port in India.'

Source: Notification No. 70/2015 [F.NO.142/12/2015-TPL]/SO 2240(E), dated: 17-8-2015

➲ **Reporting requirement under Foreign Account Tax Compliance Act (FATCA) and Common Reporting Standards (CRS)**

In this regard, Government of India has notified the amendments to Income Tax Rules (Rules) vide notification dated August 7, 2015 and have added Rule 114F (definitions), 114G (Information to be maintained and reported) and 114H (due diligence requirement) for operationalisation of IGA and CRS. This information regarding US reportable persons and other reportable persons have to be furnished in a form 61B, which has also been notified with the above mentioned notification. All the concerned 'financial institutions' (this term throughout the circular has the same meaning as defined in the Rules) should refer to the amended rules and take steps for complying with the reporting requirements.

Accordingly, all the concerned financial institutions should register on the related e-filling portal of Income Tax Department as Reporting Financial Institution by submitting the requisite details. Thereafter, the reports can be submitted online by using the digital signature of the 'Designated Director' by either uploading the Form 61B or 'NIL' report.

Source: Notification No. RBI/2015-16/165 [DBR.AML.BC. No.36/14.01.001/2015-16] dated: August 28, 2015

Read more at: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10005&Mode=0

➲ **Guidance notes on implementation of reporting requirements under rules 114F to 114H of the Income-tax Rules**

Read more at: http://www.incometaxindia.gov.in/communications/notification/guidance_notes_on_implementation_31_08_2015pdf

➲ Taxpayers are requested to go to "Profile Settings --> Link Aadhaar" after logging to their account to link their Aadhaar with PAN. This is an optional feature that will enable taxpayers to e-Verify their Income Tax return if their Aadhaar-PAN linking is successful and if they have an valid mobile number registered with Aadhaar.

Read more at: https://incometaxindiaefiling.gov.in

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

Central Board of Direct Taxes under Sub Rule (9) (a) and 9 (b) of Rule 114G of the Income tax Rules 1962, the Principal Director General of Income-tax (Systems) lays down the procedures, data structure and standards for ensuring secure capture and transmission of data, evolving and implementing appropriate security, archival and retrieval policies as under:

(a) Registration of the reporting financial institution: The reporting financial institution is required to get registered with the Income Tax Department by logging in to the e-filing website with the log in ID used for the purpose of filing the Income Tax Return of the reporting financial institution. A link to register reporting financial institution has been provided under "My Account". The reporting financial institution is required to submit registration details on the screen. A reporting financial institution may submit different registration information under different reporting financial institution categories.
(b) Submission of Form 61B: Once the reporting financial institution gets registered successfully, it is required to submit the Form 61B or nil statement under "e-File" menu. The prescribed schema for the report under form 61B can be downloaded from the e-filing website. The reporting financial institution will be required to submit the calendar year for which report is to be submitted and the reporting entity category for which the report is to be submitted. The reporting financial institution will then be provided the options to upload the Form 61B. The form is required

to be submitted using a Digital Signature Certificate.

(c) Submission of Nil statement: In case nil statement has to be submitted by the reporting financial institution, the option to submit nil statement is required to be selected.

(d) Digital signature certificate: In case if the designated director (as reported in registration details submitted by the reporting financial institution as per para 2(a) above is same as the person authorized to verify the return of income of the reporting financial institution as per the provisions of section 140 of the Income-tax Act, 1961, the Form 61B or Nil statement is required to be submitted with the digital signature certificate of the person authorized to sign the return of income of the reporting financial institution. In other cases, the procedure will be notified separately.

Source: Notification No. 3/2015 dated: 25th August, 2015

## Case Laws

➲ **Where assessee, engaged in business of clinical testing of drugs and formulations on human beings, was granted approval by DSIR, an expert body, as a research and development company, its claim for deduction under section 80-IB(8A) was to be allowed**

Section 80-IB, read with section 263, of the Income-tax Act, 1961 and rules 18D and 18DA of the Income-tax Rules, 1962 - Deductions - Profits and gains from industrial undertakings other than infrastructural development undertakings (Scientific research and development) - Assessment years 2008-09 and 2009-10 - Assessee-company was engaged in business of clinical testing of drugs and formulations on human beings - It claimed deduction under section 80-IB (8A) by projecting itself to be an entity engaged in research and development - Assessing Officer allowed assessee's claim - Commissioner was of opinion that assessee was only a contract research organization without any transfer of technology developed - He thus taking a view that assessee was not eligible for deduction under section 80-IB(8A), passed a revisional order setting aside assessment - Whether once DSIR which was an expert body, granted approval to assessee by specifically declaring it as a research and development company eligible for deduction under section 80-IB(8A), read with rules 18D and 18DA of 1962 Rules, revenue authorities could not decline assessee's claim for deduction on one pretext or another in assessment or revisional proceedings - Held, yes - Whether, therefore, impugned revisional order was to be set aside- Held, yes [In favour of assessee]

Source: In the ITAT Ahmedabad Bench 'C', Deputy Commissioner of Income-tax, Circle -1, Ahmedabad v. B.A. Research India Ltd., Anil Chaturvedi, Accountant Member and S.S. Godara, Judicial Member [2015] 61 taxmann.com 57 (Ahmedabad - Trib.)

➲ **Amount deposited in PLA (Personal Ledger Account) which remained unutilized at the end of the year is allowed to be deducted under Section 43B**

**Facts**

(1) Assessee, a manufacturer, paid certain sum under PLA.
(2) Normally, at the time of payment of excise duty, the amount is first deposited under PLA, which is an item of asset appearing in the balance sheet. When goods are removed from bonded warehouse, a corresponding sum of excise duty is taken away from PLA and is carried to Profit and Loss account as Excise duty.
(3) Hence, amount deposited in PLA is treated as an advance payment of excise duty which is adjusted against the amount of excise duty payable at the time of removal of goods from bonded warehouse.
(4) Assessee claimed deduction under section 43B in respect of the amount deposited in PLA which remained unutilized at the end of the year. Assessee contended the amount deposited in PLA as advance payment of excise duty should be allowed to be deducted as per section 43B.
(5) Assessing officer (AO) rejected the claim of assessee and made disallowance under Section 43B.
(6) Aggrieved by the order of AO, assessee filed the instant appeal before the Tribunal.

**The Tribunal held in favour of assessee as under :**

(a) As per section 43B, an assessee can get deduction of excise duty only in the year of payment and not with the mere incurring of liability. Thus, it is clear that if excise duty is paid in the year of incurring liability itself, then deduction is allowed in such year.

(b) In the instant case, there was a converse situation where excise duty was paid in advance by depositing the amount under PLA, though a specific liability to pay excise duty would arise in later years at the time of removal of goods from bonded warehouse.

(c) In such circumstances, the obligation of depositing the amount of duty under PLA as per respective excise rules would allow deduction under provisions of Section 43B notwithstanding the fact that the goods have not yet been lifted from the bonded warehouse at the end of the year.

Source: In The ITAT Delhi Bench 'I-1', Maruti Suzuki India Ltd. v. Additional Commissioner of Income-tax, Rang-6 New Delhi R.S. Syal, Accountant Member and A.t. Varkey, Judicial Member [2015] 60 taxmann.com 411 (Delhi - Trib.)

➲ **If a receipt/gain is not "income" within the meaning of section 2(24), it cannot be subjected to MAT u/s 115JB .Capital gains from transfer of asset by holding company to its Indian Wholly Owned Subsidiary which is tax exempt u/s 47(iv) is not chargeable to capital gains and consequently is not "income" within meaning of section 2(24)(vi) and hence cannot be included in computation of "book profit" for MAT purposes u/s 115JB**

• The provisions of section 10 lists out various types of income, which do not form part of Total income.

• All those items of receipts shall otherwise fall under the definition of the term "income" as defined in section 2(24) of the Act, but they are not included in total income in view of the provisions of section 10 of the Act. Since they are considered as "incomes not included in total income" for some policy reasons, the legislature, in its wisdom, has decided not to subject them to tax u/s 115JB of the Act also, except otherwise specifically provided for.

• Clause (ii) of Explanation 1 to section 115JB specifically provides that the amount of income to which any of the provisions of section 10 applies (other than the provisions contained in clause (38) thereof) than it is to be reduced from the Net profit, if they are credited to the Profit and Loss account.

• The logic of these provisions is that an item of receipt which falls under the definition of "income", are excluded for the purpose of computing "Book Profit", since the said receipts are exempted u/s 10 of the Act while computing total income. Thus, it is seen that the legislature seeks to maintain parity between the computation of "total income" and "book profit", in respect of exempted category of income.

• If the said logic is extended further, an item of receipt which does not fall under the definition of "income" at all and hence falls outside the purview of the computation provisions of Income tax Act, cannot also be included in "book profit" u/s 115JB of the Act.

• The profits and gains arising on transfer of capital asset by holding company to its Wholly Owned Indian Subsidiary is not falling under the definition of "transfer" and consequently, the same does not fall within the purview of the definition of "income" given u/s 2(24) (vi) of the Act.

• Since the said profit does not fall under the definition of "income" at all and since it does not enter into the computation provisions at all, there is no question of including the same in the Book Profit as per the scheme of the provisions of sec. 115JB of the Act.

Source: In The ITAT Mumbai Bench 'E', Shivalik Venture (P.) Ltd. v. Deputy Commissioner of Income-tax, 8(3), Mumbai [2015] 60 taxmann.com 314 (Mumbai - Trib.)

➲ **Landing and parking charges payable by Airlines in respect of aircrafts are not for the 'use of land' per se but the charges are in respect of number of facilities provided by the Airport Authority of India. Thus, landing and parking charges payable by Airlines would attract TDS under Section 194C and not under Section 194-I**

**Facts:**

(a)The issue that was disputed in the instant case was as to whether landing and parking charges paid by Airlines would attract TDS under Section 194-I or under Section 194C of the income-tax Act ('the Act').

(b) The High Court of Delhi in case of CIT v. Japan Airlines Co. Ltd. [2009] 180 Taxman 188 (Delhi) has held that landing and parking charges would attract TDS under Section 194-I of the Act.

(c) However, the Madras High Court in case of CIT v. Singapore Airlines Ltd. [2012] 24 taxmann.com 200 (Madras) has taken a contrary view the landing and parking charges would attract TDS under Section 194C. The two judgments are in conflict with each other and it has to be determined as to which judgment should be allowed to hold the field.

**The Supreme Court held as under:**

(1) In the instant case, the Airlines are allowed to land and take-off their Aircrafts at Indira Gandhi International Airport ('IGIA') for which landing fee is charged. Likewise, they are allowed to park their Aircrafts at IGIA for which parking fee is charged. It is done under an agreement and/or arrangement with Airport Authority of India ('AAI'). The moot question is as to whether landing and take-off facilities on the one hand and parking facility on the other hand, would mean to 'use of land'.

(2) In the opinion of the Delhi High Court (Supra) "when the wheels of an aircraft coming into an airport touch the surface of the airfield, use of the land of the airport immediately begins". Similarly, for parking the aircraft in that airport, there is use of the land. This is the basic, rather, the only reason given by the Delhi High Court in support of its conclusion that landing and parking charges would attract TDS under Section 194-I.

(3) The Madras High Court (Supra) examined the matter keeping wider perspective in mind thereby encompassing the utilization of the airport providing the facility of landing and take-off of the airplanes and also parking facility. After taken into consideration these aspects, the Madras High Court came to the conclusion that the facility was not of 'use of land' per se but the charges on landing and take-off by AAI from these airlines were in respect of number of facilities provided by the AAI which was to be necessarily provided in compliance with the various international protocol. The charges, therefore, were not for land usage or area allotted simpliciter. These were the charges for various services provided.

(4) We are convinced that the charges which are fixed by the AAI for landing and take-off services as well as for parking of arcrafts are not for the 'use of land'. That would be too simplistic an approach, ignoring other relevant details which would amply demonstrate that these charges are for services and facilities offered in connection with the aircraft operation at the airport. These services include providing of air traffic services, found safety services, aeronautical communication facilities, installation

and maintenance of navigational aids and meteorological services at the airport.

(5) Therefore, it is not mere use of land. On the contrary, it is the facilities that are to be compulsorily offered by the AAI in tune with the requirements of the protocol, which is the primary focus. For example, runways are not constructed like any ordinary roads. Special technology of different type is required for the construction of these runways for smooth landing and take-off of the aircarfts. Specialised kind of orientation and dimensions are needed for these runways which are prescribed with precision and those standards are to be adhered to. Further, there has to be proper runway lighting, runway safety are, runway markings etc.

(6) Technological aspects of runways were emphasized to highlight the precision with which designing and engineering goes into making these runways to be fool proof for safety purposes. The purpose is to show that the AAI is providing all these facilities for landing and take-off of and aircraft and in this while process, 'use of the land' pails into insignificance. What is important is that the charge payable are for providing of these facilities.

(7) Charges are not for use of land per se and, therefore, it cannot be treated as 'rent' within meaning of Section 194-I of the Act. Therefore, the view taken by the Madras High Court (Supra) is correct and the judgment of the Delhi High Court (Supra) is over-ruled.

Source: Supreme Court of India, Japan Airlines Co. Ltd. v. Commissioner of Income-tax, New Delhi
[2015] 60 taxmann.com 71 (SC)

# CUSTOMS

## Notifications / Circulars

➲ **India to impose import duty of 10 percent on wheat**

Import Duty will be levied on wheat at 10% w.e.f 1st April 2016 as compared to 'Nil' earlier vide Notification No. 44/2015-Cus dated 7th August -2015.

➲ Amendment of notification No. 12/2012-Customs so as to delete the requirement of registration of Ship Repair Unit with Director General of Shipping vide Notification No. 43/2015-Cus,dt. 04-08-2015.

Read more at: http://www.cbec.gov.in/customs/cs-act/notifications/notfns-2015/cs-tarr2015/cs43-2015.pdf

➲ CBEC further amend 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.

➲ CBEC amend notification No. 12/2012-Cus dated 17.03.2012 so as to increase basic customs duty on wheat from nil to 10% upto 31.03.2016 vide Notification No. 44/2015-Cus,dt. 04-08-2015.

➲ CBEC impose anti-dumping duty on the imports of Phosphoric Acid of all grades and all concentration (excluding Agriculture or Fertilizer grade), originating in or exported from Korea RP for a period of five years vide Notification No. 45/2015-Cus (ADD), dt. 24-08-2015.

➲ CBEC impose anti-dumping duty on the imports of Caustic Soda, originating in or exported from China PR and Korea RP for a period of five years vide Notification No. 42/2015-Cus (ADD), dt. 18-08-2015.

➲ Levy of definitive anti-dumping duty on imports of Diketopyrrolo Pyrrole Pigment Red 254 (DPP Red 254) , originating in or exported from the People's Republic of China and Switzerland for a period of five years vide Notification No. 41/2015-Cus (ADD), dt. 17-08-2015.

➲ CBEC impose anti-dumping duty on the imports of Potassium Carbonate, originating in or exported from Taiwan and Korea RP for a period of five years vide Notification No. 40/2015-Cus (ADD), dt. 12-08-2015.

➲ Levy of definitive anti-dumping duty on imports of Flax or Linen Fabric having flax content of more than 50% , originating in or exported from the People's Republic of China and Hong Kong for a period of five years vide Notification No. 39/2015-Cus (ADD), dt. 12-08-2015.

➲ **India extends anti-dumping duty on Vitamin-C from China**

India extended anti-dumping duty on import of all forms and grades of Vitamin-C at $ 3.74 per kg from China for five years to safeguard the interest of domestic industry. The anti-dumping duty has been imposed following the findings of designated authority which concluded that imports of Vitamin-C have caused injury to the domestic industry.

"The anti-dumping duty shall be applicable to all synonyms of Vitamin-C, including...ascorbic Acid, L-Xyloascorbic Acid, 3-Oxo-L-gulofuranolactone (enol form), L-3-Ketothreohexuronic Acid Lactone, etc," the Central Board of Excise and Customs (CBEC) said in a notification. It further said that the anti dumping duty of $ 3.74 per kg will continue for five years unless revoked earlier vide Notification No. 38/2015-Cus (ADD), dt. 06-08-2015.

Read more at: http://www.cbec.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2015/cs-add2015/csadd38-2015.pdf

➲ Fixation of T V of Edible oil, Brass, Poppy seed, Areca nut, gold and silver vide Notification No. 83/2015-CUSTOMS (N. T.) dated: 31st August 2015.

Read more at: http://www.cbec.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2015/cs-nt2015/csnt83-2015.pdf

➲ **Declarations need to be furnished w.e.f. 18th August 2015 under Customs Baggage Declaration Regulations, 2013 vide Notification No. 76/2015-Cus (NT) dated 18th August 2015**

Read in detail at: http://www.cbec.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2015/cs-nt2015/csnt76-2015.pdf;jsessionid=A25E725B355EB8F52F82F1DD272156BB

## Case Laws

➲ **Levy of Anti-dumping Duty on USB Flash Drives - validity of investigation and findings of the Designated Authority (DA)**

Sub section (5) of Section 9A of the Customs Tariff Act, 1975 - It is contended by the petitioner that the non-supply of the data/evidence relied upon by the Designated Authority violated the principles of natural justice and curtailed the rights of the petitioner to defend/oppose the imposition of the Anti-Dumping Duty and also amounted to a denial of an opportunity to effectively participate in the investigation - Held that:- In the present case, the Designated Authority has disregarded the transaction-by-transaction import statistics submitted by the domestic industry alongwith the application seeking initiation and introduced fresh data and relied on the transactions-by-transactions imports statistics obtained by him from the respondent No.4 at the very fag end of the investigation. The data was introduced after a period of seventeen months of initiation of investigation. Neither the copy of the said data relied upon by the Designated Authority nor the non confidential summary thereof was not supplied to the petitioners despite the same being demanded on the ground of confidentiality.

The DA, in not providing the information/material considered by him, has violated the principles of natural justice and the same is fatal to the Final Findings rendered. Consequently, the Final Findings, having been rendered in violation of the principles of natural justice, stand vitiated and cannot be sustained. As a result, the impugned Final Findings are quashed. - Decided in favor of appellants. There is no merit in the contention of the respondent that since, the Final Finding are only recommendatory in nature, the petition is premature. It is no longer res-integra that this court in exercise of powers under Article 226 of the Constitution of India is empowered to entertain a petition challenging the Final Findings even prior to the same being accepted by the central government more so in a case where the principles of natural justice have not been complied with.

The fact that the Rules prescribe that if the Designated Authority is satisfied that the request for confidentiality is not warranted or the supplier of the information is either unwilling to make the information public or to authorize its disclosure in a generalized or summary form, it may disregard such information, further emphasises the fact that for an investigation to comply with the principles of natural justice, it mandatorily entails sharing with the interested parties, the information/data being considered by the Designated Authority.

Source: Sandisk International Ltd. versus the Designated Authority & ORS. Central Excise[2015 (9) TMI 402 - Delhi High Court - Customs]

➲ **If goods are tax-free and not chargeable to sales-tax on their resale by importer, the said goods cannot be exempted from Special Additional Duty (SAD) of customs or special CVD at time of import**

Section 3(5), read with erstwhile section 3A, of the Customs Tariff Act, 1975 and sections 3 and 7 of the Delhi Sales-Tax Act, 1975 - Charge/levy - Additional Duty of Customs/Special CVD - Goods were exempt from Special CVD/SAD, except where no tax was chargeable on sale thereof by importer - Assessee imported 'pig hair bristles' claiming exemption from special CVD and sold same without any sales-tax been paid thereon, as goods were tax-free - Department denied special CVD exemption, as no sales-tax was paid on sale by importer - HELD : Charging section 3 of Delhi Sales-Tax Act uses term 'liable to pay tax' and section 7 ibid uses expression 'no tax shall be payable' - Hence, no tax is charged on pig bristles - Obviously, therefore, proviso to Notification dated 13-6-1998 gets attracted and since no tax is chargeable on sale of such goods, exemption in respect of special CVD will therefore not apply [In favour of revenue]
Circulars and Notifications : Notification No. 34/98-Cus., dated 13-06-1998

Source: Case Law - Supreme Court of India, Commissioner of Customs, Mumbai-I v. Seiko Brushware India

➲ **Royalty paid by seller to buyer for use of buyer's brand does not amount to 'additional consideration', as it does not flow from buyer to seller; hence, same is not includible in transaction value**

Section 4 of the Central Excise Act, 1944, read with rule 5 of the Central Excise (Valuation) Rules, 1975 and rule 6 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 - Valuation under Central Excise - Transaction value - Additional Consideration - Assessee was manufacturing torches under brand name 'Novino' of LNL and was selling same to LNL and other parties - Assessee paid royalty for use of said brand to

LNL at 2.5 per cent of 'sales to other parties' - Sales to LNL were at prices lower than price charged for sale to other parties - Since price charged from LNL was lower, department made addition of deemed royalty at 2.5 per cent of sales to price charged from LNL, treating it as 'additional consideration' - Assessee argued that 'additional consideration' flows from buyer to seller and not from seller - Assessee to buyer - LNL - HELD : When assessee is paying royalty to LNL (buyer) and that too, for using brand name 'Novino' which belongs to buyer, question of treating same as 'additional consideration' within meaning of rule 5 and adding to price charged from LNL for sale of aforesaid product could not arise - Hence, Tribunal order was reversed [In favour of assessee]

Source: Case Law - Supreme Court of India, Lakhanpal Ltd. v. Commissioner of Central Excise & Customs, Vadodara

➲ **Customs duty is different from purchase tax and is leviable only on quantity actually imported and entered for home consumption and not on quantity stated in bill of lading; therefore, where goods actually received are lesser than quantity stated in bill of lading, duty would be leviable only on value of goods actually received**

Section 12, read with sections 13, 14, 23 and 47 of the Customs Act, 1962 and rules 3 and 9 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 and rule 3 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 2007 - Charge/levy - Customs Duty - Assessee imported crude oil, which was liable to duty on ad valorem basis - Department demanded duty based on quantity of crude oil mentioned in bills of lading, as assessee had paid price based on said quantity - Assessee argued that since quantity actually received into shore tanks in India was lesser, quantity actually received should be basis for payment of duty - HELD : Customs duty is a duty only on 'goods imported' i.e., goods brought into India from a place outside India - Since act of import is complete only after an order permitting clearance of goods for home consumption is made under section 47, duty can be demanded only on quantity of goods entering for home consumption - In accordance with said principles, no duty is demanded under sections 13 and 23 on goods which are pilfered, lost, destroyed or abandoned before clearance - Customs duty is different from purchase tax and therefore, quantity stated in a bill of lading is merely quantity involved in purchase transaction and can only be validly looked at in case of a purchase tax but not in case of an import duty - Whether customs duty is at a specific rate or is ad valorem makes no difference to above statutory scheme - Under section 14, value is determined only for goods imported and further, transaction value is price that is actually paid or payable only for 'imported goods' - Hence, quantity of crude oil actually received into a shore tank in a port in India should be basis for payment of customs duty - Circular dated 12-1-2006 was held to be contrary to law. [In favour of assessee]

Interpretation of Statutes : Difference between customs duty and purchase tax Circulars and Notifications : Circular No. 6/2006-Cus., dt12-1-2006

Source: Supreme Court of India, Mangalore Ref. and Petrochemicals Ltd. v. Commissioner of Customs
[2015] 61 taxmann.com 58 (SC)

➲ **Cenvat Credit : Where input-supplier had filed returns and had paid duty during relevant period and returns were assessed by department, then, so as to deny credit to buyers of said inputs, it could not be concluded that input-supplier was non-existent**

Rule 9 , read with rule 3 of the Cenvat Credit Rules, 2004, Cenvat Credit - Burden of Proof - Department denied input credit on ground that it was taken without actual receipt of inputs, as input-supplier A did not have manufacturing facilities and said fact was admitted by assessee's employees and brokers of supplier - Assessee argued that inputs were directly sent from supplier to job-worker and processed materials were received for further manufacture - HELD : Since A had filed returns and paid duty during relevant period, department's finding that 'A was non-existent' could not be upheld - Assessee had shown relevant invoices, transport receipts and job-work challans as well as purity-check results of goods, thereby, correlating receipt of inputs and job-work thereon - Assessee had discharged its responsibility and therefore, credit cannot be denied - Further, credit cannot be denied on ground of non-receipt of inputs, if department fails to prove that any alternative raw material was received and used. [In favour of assessee]

Source: CESTAT, AHMEDABAD BENCH, STI Industries v. Commissioner of Central Excise & Service Tax,Vapi
[2015] 60 taxmann.com 436 (Ahmedabad - CESTAT)

# CENTRAL EXCISE

## Case Laws

➲ **Mere cutting of jumbo rolls of paper into smaller sizes and printing thereon by job-worker resulting into 'printed cork tipping paper' does amount to 'manufacture' for purpose of charging excise duty**

Section 2(f) of the Central Excise Act, 1944 - Manufacture - General Meaning - November 1994 to September 1999 - Assessee : (a) received paper in jumbo rolls of width 470 to 520 mm and length 12,100 meters; (b) cut those Jumbo rolls into strips of width 35mm to 48 mm and length of 2000-3000 meters; (c) carried out printing thereon; and (d) dispatched same, in smaller rolls, commonly known in trade as 'bobbins' or 'printed cork tipping paper' to other parties for use in manufacture of filtered cigarettes - Department demanded duty treating said process as manufacture and resultant product classifiable under Heading 4901.90 - Tribunal held that

said process did not amount to manufacture - HELD : In view of precedents, said process does not amount to manufacture - Hence, appeal was dismissed [In favour of assessee]

Source: High Court of Andhra Pradesh, Commissioner of Central Excise and Customs, Hyderabad-IV Commissionerate v. Rasmi Wax Coated Paper & Printing Industry

➲ **Central Excise : Cash discount "known" at or prior to clearance of goods, being contained in agreement of sale, is to be deducted from sale price in order to arrive at value of excisable goods "at time of removal", even if not actually availed**

Section 4 of the Central Excise Act, 1944 - Valuation under Central Excise - Transaction value - Cash Discount/Finance Cost/Interest - Period on or after 1-7-2000 - As per agreement, buyers were eligible for 'cash discount' - Assessee claimed deduction of 'cash discount' in arriving at 'assessable value' even in cases where same was not actually availed - Department argued that cash discount can be allowed only if it is "actually allowed" in price "actually paid" and not in cases where buyer did not avail cash discount - HELD : On each removal of excisable goods, "transaction value" of such goods must be determined - "Transaction value" has to be read along with expression "for delivery at time and place of removal" - Therefore, value of excisable goods even on basis of "transaction value" has only to be at time of removal, that is, time of clearance of goods from assessee's factory or depot - Expression "actually paid or payable for the goods, when sold" means whatever is agreed to as price for goods forms basis of value, whether such price has been paid, has been paid in part, or has not been paid at all - Basis of "transaction value" is therefore agreed contractual price - Expression "when sold" is not meant to indicate time at which such goods are sold, but is meant to indicate that goods are subject matter of an agreement of sale - Hence, cash discount which is "known" at or prior to clearance of goods, being contained in agreement of sale between assessee and its buyers, must therefore be deducted from sale price in order to arrive at value of excisable goods "at time of removal" - Hence, cash discount was deductible [In favour of assessee]

Circulars and Notifications : Central Board of Excise and Customs Bulletin for the period January-March, 1975

Source: Supreme Court of India, Purolator India Ltd. v. Commissioner of Central Excise, Delhi-III
[2015] 60 taxmann.com 471 (SC)

➲ **Maintainability of appeal - Section 35G**

Held that:- An appeal under Section 35G of the Act would not lie to the High Court in terms of sub-section 1 of that Section in relation to an order relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for the purpose of assessment. Any question having a relation to the value of goods for the purpose of assessment goes out of the jurisdiction of the High Court in terms of Section 35G in view of the exclusionary clause provided by sub-section 1 of that section. The determination of the value of the goods for the purpose of assessment necessarily takes in the quantification of the goods involved in the assessment. - Appeal is not maintainable - Decided in favour of assessee.

Source: Case Law - Rajan Beedi Company versus Commissioner of Central Excise, Cochin
[2015 (9) TMI 407 - KERALA HIGH COURT - Central Excise]

➲ **Levy of interest on payment of differential duty - valuation - clearance of goods on provisional price basis without opting for provisional assessment**

Assessee submitted an explanation in which it was submitted that sub-rule (4) of Rule 7 makes it clear that the interest payment arises only from the first day of the month succeeding the month for which such amount is determined and according to the assessee, it was to be determined from the date of finalization of the provisional assessment and not the date of payment of final duty, it was submitted that neither interest nor penalty is leviable and accordingly, it was requested that the proceeding be dropped - Held that:- In our view, under sub-rule (4) the interest arises only from the first day of the month succeeding the month for which such amount is determined till the date of payment thereof and in our view, it is very clear and unambiguous that the interest liability arises only upon determination of the value or the duty by the adjudicating authority and only after determination this liability arises. In our view, merely because an application was not moved to the Assessing Officer and which the respondent-assessee did not move on such fact, no interest would be leviable nor penalty can be said to be leviable, though requirement of the Act/Rule needs to be fulfilled but in this particular case, it would be too technical to come to the said conclusion that the application was not moved by the assessee and it becomes fatal. - Demand of interest and penalty set aside - Decided in favor of assessee.

Source: Case Law - Commissioner Of Central Excise, Jaipur-I versus Aksh Optifibre Ltd.
[2015 (9) TMI 404 - Rajasthan High Court - Central Excise]

➲ **Royalty paid by seller to buyer for use of buyer's brand does not amount to 'additional consideration', as it does not flow from buyer to seller; hence, same is not includible in transaction value**

Section 4 of the Central Excise Act, 1944, read with rule 5 of the Central Excise (Valuation) Rules, 1975 and rule 6 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 - Valuation under Central Excise - Transaction value - Additional Consideration - Assessee was manufacturing torches

under brand name 'Novino' of LNL and was selling same to LNL and other parties - Assessee paid royalty for use of said brand to LNL at 2.5 per cent of 'sales to other parties' - Sales to LNL were at prices lower than price charged for sale to other parties - Since price charged from LNL was lower, department made addition of deemed royalty at 2.5 per cent of sales to price charged from LNL, treating it as 'additional consideration' - Assessee argued that 'additional consideration' flows from buyer to seller and not from seller - Assessee to buyer - LNL - HELD : When assessee is paying royalty to LNL (buyer) and that too, for using brand name 'Novino' which belongs to buyer, question of treating same as 'additional consideration' within meaning of rule 5 and adding to price charged from LNL for sale of aforesaid product could not arise - Hence, Tribunal order was reversed [In favour of assessee]

Source: Case Law - Supreme Court of India, Lakhanpal Ltd. v. Commissioner of Central Excise & Customs, Vadodara [2015] 61 taxmann.com 211 (SC)

# SERVICE TAX

## Case Laws

➲ **Even assuming that education is an industry, exemption to 'civil construction services for educational institutions' cannot be denied if said constructions are used other than for commerce/ industry**

Section 65(105)(zzzza), read with section 65(25b), of the Finance Act, 1994 - Taxable services - Works contract services - Period October, 2008 to June 2012 - Assessee constructed classrooms, hostels, etc., for educational institutions - Department demanded service tax on ground that it was 'civil construction primarily for commerce or industry', as institutions earning profits are to be regarded as commercial/industries - HELD : Even assuming that education is an industry, exemption cannot be denied if constructions are used other than for commerce/industry - Since assessee had given details of educational institutions, department could have called for records from Income-tax department to satisfy itself as to usage of buildings or civil structures - In absence of any evidence and even without giving assessee an opportunity to produce evidence that 'educational institutions were not profit-oriented', department could not hold to contrary - Hence, matter was remanded back for fresh consideration [In favour of assessee/ Matter remanded]

Circulars and Notifications : Circular No. 80-10-2004 ST, dated 17-9-2004

Source: High Court of Madras, G. Ramamoorthi Constructions (I) (P.) Ltd. v. Commissioner (Adjudication), Commissioner of Central Excise, Customs and Service Taxes

➲ **Wharfage charges and lease rent recovered by port authorities cannot be regarded as 'service' in relation to 'a vessel or goods' and cannot be said to be a service provided by 'port or person authorised by it'; hence, same is not liable to service tax under port services**

Section 65(82) of the Finance Act, 1994 - Taxable services - Port Services - Period 1-10-2003 to June, 2008 - Assessee, a statutory body for operating and maintaining minor ports in State of Gujarat, permitted UCL to construct and use a jetty/port for 20 years on BOT/BOOT basis - Assessee collected only 20 per cent wharfage charges (80 per cent allowed as rebate) from UCL and also lease rent for use of waterfront - Assessee paid service tax under port services on 20 per cent wharfage charges - Department demanded service tax on balance wharfage charges as well as lease rent of waterfront, under 'port services' - Tribunal held that : (a) there was no port service by assessee, as port was constructed and used by UCL for 20 years, (b) even if there be any service, same would be 'renting of vacant land', not taxable prior to 1-7-2010; and (c) payment of service tax on 20 per cent charges under port service, cannot act as estoppel against assessee - HELD : Assessee was recovering wharfage charges from licensee UCL and port was constructed and maintained by UCL only - Assessee did not authorize UCL to recover such charges from other persons - Hence, no service was rendered by a 'port' or by 'any person authorized by such port' - Lease rent charged for use of waterfront also does not include any service in relation to a vessel or goods and cannot be described as 'port service' - Hence, no service tax could be levied. [In favour of assessee]

Source: Supreme Court of India, Commissioner of Central Excise, Bhavnagar v. Gujarat Maritime Board

➲ **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

# FOREIGN TRADE

## Notifications / Circulars

➲ Export of Rice Bran oil in bulk has been exempted from the prohibition on export of edible oils. Also, the quantity ceiling on export of organic edible oils has been removed vide Notification No. 17/2015-2020 dated 06/08/ 2015.

Read more at: http://dgft.gov.in/Exim/2000/NOT/NOT15/note17.pdf

➲ Export of all varieties of onions for the item description at Serial Number 51 & 52 of Chapter 7 of Schedule 2 of ITC (HS) Classification of Export & Import will be subject to a Minimum Export Price (MEP) of US$ 700 F.O.B. per M.T. [Notification No. 18/2015-2020 dated 24/08/ 2015]

➲ **Reporting under FDI through e-Biz project**

The Reserve Bank of India(RBI) has issued A.P. (DIR Series) Circular No. 9 dated 21st August, 2015 with a view to to promoting the ease of reporting of transactions under foreign direct investment, the Reserve Bank of India (RBI), under the aegis of the e-Biz project of the Government of India has enabled online filing of the Foreign Currency Transfer of Shares (FCTRS) returns for reporting transfer of shares, convertible debentures, partly paid shares and warrants from a person resident in India to a person resident outside India or vice versa. The design of the reporting platform enables the customer to login into the eBiz portal, download the reporting form (FCTRS), complete and then upload the same onto the portal using their digitally signed certificates.

The Authorised Dealer Banks (ADs) will be required to download the completed forms, verify the contents from the available documents and if necessary, call for additional information from the customer and then upload the same for RBI to process and allot the Unique Identification Number (UIN). The FCTRS services of RBI will be made operational on the e-Biz platform from August 24, 2015.

Read more at: https://rbi.org.in/Scripts/NotificationUser.aspx?Id=9993&Mode=0

# SEBI

## Notifications / Circulars

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

The formats for the reports/disclosures to be filed under the Regulations have been prescribed by SEBI vide circular No SEBI/ CFD/DCR/SAST/ 1/2011/09/23 dated September 23, 2011, SEBI/ CFD/DCR/SAST/ 2/2011/10/20 dated October 20, 2011and CIR/ CFD/POLICYCELL/11/2013 dated October 21, 2013.

In order to ensure that adequate disclosures are made to help investors in taking an informed decision, it has been decided to modify the formats for disclosures under regulation 31of the Regulations vide Circular - CIR/CFD/POLICYCELL/3/2015 dated: August 05, 2015.

Read more at: http://www.sebi.gov.in/cms/sebi_data/attachdocs/1438767276433.pdf

➲ **Implementation of the Multilateral Competent Authority Agreement and Foreign Account Tax Compliance Act vide Circular No. CIR/MIRSD/2/2015 dated: August 26, 2015**

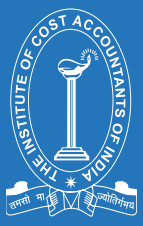
It is brought to the attention of all the intermediaries that India has joined the Multilateral Competent Authority Agreement (MCAA) on Automatic Exchange of Financial Account Information on June 3, 2015. In terms of the MCAA, all countries which are a signatory to the MCAA, are obliged to exchange a wide range of financial information after collecting the same from financial institutions in their country/jusridiction.

Further, on July 9, 2015, the Governments of India and United States of America (USA) have signed an agreement to improve international tax compliance and to implement the Foreign Account Tax Compliance Act (FATCA) in India. The USA has enacted FATCA in 2010 to obtain information on accounts held by U.S. taxpayers in other countries. As per the aforesaid agreement, foreign financial institutions (FFIs) in India will be required to report tax information about U. S. account holders/ taxpayers directly to the Indian Government which will, in turn, relay that information to the U. S. Internal Revenue Service (IRS).

For implementation of the MCAA and agreement with USA, the Government of India has made necessary legislative changes to Section 285BA of the Income-tax Act, 1961. Further, the Government of India has notified Rules 114F to 114H under the Income Tax Rules, 1962 and form No. 61B for furnishing of statement of reportable account as specified in the Rules.

The Rule is available at :
http://www.incometaxindia.gov.in/communications/notification/notification%20no.%2062%20dated%2007-08-2015.pdf

Read more at:
http://www.sebi.gov.in/cms/sebi_dataattachdocs/1440580845807.pdf

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