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OF INDIA

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EDITORIAL

India's economic growth is gaining momentum: OECD

The Reserve Bank governor said that the country was on course to meet the bank's targets on reduced inflation, adding that it was working with the new government on the monetary policy. Mr. Rajan said the bank had started discussions with the government on a monetary policy framework that includes measures to control inflation.

Mr. Jaitley told the bank board that the government's "policy regime is being geared towards attaining higher growth rate, lower inflation and sustainable external balance", an RBI statement issued after the meet said.

In the course of the new government initiating various measures to bolster the economy, the Organization for Economic Cooperation and Development (OECD) has said India's economic growth is gaining momentum. The major developed nations, including the United States and Canada, also continue to see "stable growth momentum". According to Paris-based think tank OECD, India is poised for better growth.

The readings are based on the composite leading indicators (CLIs)

designed to anticipate turning points in economic activity relative to trend. "For the major emerging economies, the CLIs indicate growth around trend in China and Russia and below trend in Brazil, while the CLI for India points to growth gaining momentum," OECD said in a statement. India's CLI inched up to 99.2 in June from 98.9 in May.

The country's economy, which registered sub-5 per cent growth in the past two years, is expected to see better expansion rate in the coming months. Indian economy is likely to expand in the range of 5.4 to 5.9 per cent this fiscal year. After recovering in 2009-10 and 2010-11, GDP growth slowed down to decade low of 4.5 per cent in 2012-13. It picked up marginally to 4.7 per cent in 2013-14. The new government, which took charge in May, has initiated various measures to attract more investments and remove bottlenecks in the infrastructure, among others, to boost growth.

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

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WEST BENGAL FINANCE ACT, 2014 - SPECIAL AUDIT

New Opportunities of Cost Accountants under WB Finance Act, 2014

A new Section 43AB has been added vide West Bengal Finance Act, 2014.

43AB - (1) If at any stage of a proceeding initiated under the Act against a dealer, the Commissioner, having regard to the nature and complexity of the accounts, records and documents, has reasons to believe that the dealer is engaged in an activity detrimental to the State revenue, he may call for audit of such accounts, records and documents of the dealer by a special team of selected tax professionals to be nominated by him in such manner, and subject to such restrictions and conditions, as may be prescribed.

(2) The special team shall furnish a report of the audit in the prescribed form duly signed and verified by it and setting forth such other particulars as the Commissioner may require.

The said section has been effective from 1st Day of July 2014.

The relevant rules have been Gazette on 14/07/2014.

54B - Conduct of audit by a special team of tax professionals —

1. The special team to be constituted in terms of section 43AB shall consist of at least two professionals, namely a Chartered Accountant or a **Cost Accountant**, and an Advocate who are actively engaged in the practice of Value Added Tax and Sales Tax laws of the State for not less than eight years.

2. The eligible professionals as referred to in sub-rule (1), on going through the information as given in the website, if interested, may furnish their application electronically through the process as laid down in the said website for consideration by the Commissioner for empanelment.

3. The Commissioner shall from the professionals who furnished their applications under sub-rule (2), empanel those, as he may deem fit, whom he may later on nominate for conducting audit as a special team:

Provided that a professional nominated for conducting an audit under this rule in any year shall not be eligible for nomination in the following year.

4. On completion of audit, the special team shall submit its report in Form 88 with additional points, if any, which is not covered therein and as specifically called for by the Commissioner.

Source: Notification No.1183-F.T. dated: 14/07/2014

INDIAN ECONOMY

News

➔ Rural votes, old traumas drive India's WTO brinkmanship

With grain silos spilling over, exports on the rise and an avowed market champion for prime minister, India's threat to trash a global trade deal in the name of food security appears puzzling.

Source: Reuters, dated: 29 Jul 2014

➔ India threatens to derail WTO deal, prompts angry U.S. rebuke

India threatened on Friday to block a worldwide reform of custom rules, which some estimates say could add \$1 trillion to the global economy and create 21 million jobs, prompting a U.S. warning that its demands could kill global trade reform efforts.

Source: Reuters, dated: 25 Jul 2014

➔ Indian markets' post-election enthusiasm lost on consumers

Software engineer Sanjay Bhatnagar used to watch a new Bollywood movie every week with his family, but now goes to the cinema once a month as spiraling costs of food and other staples eat into his budget for non-essentials.

Source: Reuters, dated: 24 Jul 2014

➔ Asian economies to struggle on weak export demand

The outlook for emerging Asia has dimmed further this year on weak demand for exports, although growth in India is expected to accelerate into 2015 even as China is held back in part by a slowing property market.

Source: Reuters, dated: 24 Jul 2014

➔ Euro zone business on solid footing in July but firms cut prices - PMI

The euro zone's private sector expanded at the fastest rate in three months in July, although faster growth in new business was driven mainly by companies cutting prices again, surveys showed on 24th July, 2014

Source: Reuters, dated: 24 Jul 2014

➔ Jaitley says hopes rates will ease if inflation cools

Finance Minister Arun Jaitley said on Friday he hoped interest rates would be reduced should inflation ease, days after data showed consumer prices easing to their lowest since figures were first published in January 2012.

Source: Reuters, dated: 19 Jul 2014

➤ Surging gold imports drive up June trade deficit to 11-month high

A surge in gold imports widened India's trade deficit to an 11-month high in June, adding to the uncertainty from global oil prices that could pile more pressure on its current account balance.

Source: Reuters, dated: 16 Jul 2014

➤ RBI eases reserve norms for banks' infra bond sales

The Reserve Bank of India said that it will allow long-term bonds raised by banks for infrastructure lending to be exempted from mandatory reserve requirements, in line with the government's announcement in the budget.

Source: Reuters, dated: 15 Jul 2014

➤ June inflation eases to record low, drought remains a risk

India's inflation eased in June after the new government curbed farm exports, but a growing risk that drought will damage summer crops could encourage the central bank to keep interest rates on hold at a policy review meeting early next month.

Source: Reuters, dated: 14 Jul 2014

➤ Modi's farm export curbs may ease India's June inflation

India's inflation probably eased marginally in June after the new government curbed farm exports, but a growing risk that drought will shrivel summer crops could encourage the central bank to keep interest rates on hold.

Source: Reuters, dated: 13 Jul 2014

➤ Finance secretary Mayaram defends 4.1 percent fiscal deficit target

Finance Secretary Arvind Mayaram said that plans announced in this week's budget to stick to a fiscal deficit target of 4.1 percent of GDP are "very credible", despite criticism from ratings agencies that the number is optimistic.

Source: Reuters, dated: 12 Jul 2014

➤ Industrial output grows 4.7 pct in May y/y

India's industrial production grew an annual 4.7 percent in May, the highest since October 2012, providing welcome positive news for Prime Minister Narendra Modi's new government as manufacturing activity and electricity generation increased.

Source: Reuters, dated: 11 Jul 2

➤ Britain's Hague plugs Eurofighter on visit to India

Britain's foreign secretary lobbied India on Tuesday to buy Eurofighter military aircraft, suggesting that London has not yet abandoned hope of ousting France's Rafale from a multi-billion-dollar combat jet order.

Source: Reuters, dated: 08 Jul 2014

BANKING

Notifications/Circulars

➤ Security Incident Tracking Platform- Reporting thereon

The National Security Council (NSC) has requested IDRBT to set up necessary facilities to enable sharing of information among banks and also dissemination of information on emerging security threats. Towards this end, IDRBT has developed a Security Incident Tracking Platform where banks would be able to report security incidents in an anonymous manner; thus keeping the information reported by the banks confidential. The platform will be hosted on the INFINET and the access provided only to Chief Information Security Officers (CISOs) of respective banks. IDRBT is simultaneously making arrangements to gather global threat intelligence from various sources in coordination with CERT-In.

Source: Notification - RBI/2014-15/112 (RPCD.CO.RRB.RCB.

BC.No.11/03.05.33/2014-15), dated: Jul 02, 2014

➤ Review of norms for opening of onsite/off-site ATMs by Urban Co-operative Banks

(UCBs)

CBS-enabled UCBs may install onsite/ off-site / mobile ATMs as per their need and potential in their area of operation without prior approval of RBI, subject to the conditions given below:

- The bank shall have an assessed net worth of Rs 50 crores and conform to the FSWM criteria based on the Reserve's Bank inspection Report relating to the financial year immediately preceding the financial year in which the ATM (s) is / are proposed to be installed and in the absence thereto, to the financial year just before the immediate preceding year.
- The bank should have an impeccable record of regulatory compliance and no warning letter / cautionary advice should have been issued to or monetary penalty imposed on the bank on account of violations of RBI directives / guidelines during the financial year in which the ATM(s) is/are proposed to be installed and during the two immediately preceding financial years.
- Mobile ATMs shall be operated strictly within the bank's approved area of operation and any violation thereof may lead to ban on further branch expansion and / or grant of other regulatory approvals apart from action under section 47 A of the B. R. Act, 1949 (AACS).

Source: Circular - RBI/2014-15/114 (UBD.CO.LS (PCB) Cir. No.1/07.01.000/2014-15) dated: July 2, 2014

➤ RRBs/StCBs/CCBs - Unique Customer Identification Code (UCIC) for banks' customers in India

In reference to circular RPCD.CO.RRB.RCB.AML.BC.No.82/

03.05.33 (E)/2011-12 dated June 11, 2012, RBI has advised RRBs and StCBs/CCBs to initiate steps for allotting UCIC to all their customers while entering into any new relationships for individual customers to begin with, and to existing individual customers by end-May 2013. The period for completion of allotment of UCIC was previously extended upto March 31, 2014. Now RBI has again extended the time for completing the process of allotting UCIC to existing customers up to December 31, 2014 vide *Notification No. RBI/2014-15/115 (RPCD.RRB.RCB.AML.BC.No.12/07.51.018/2014-15)* dated: July 03, 2014.

➤ Foreign Exchange Management Act, 1999 – Import of Rough, Cut and Polished Diamonds

The Clean Credit i.e. credit given by a foreign supplier to its Indian customer/ buyer, without any Letter of Credit (Suppliers' Credit) / Letter of Undertaking (Buyers' Credit) / Fixed Deposits from any Indian financial institution for import of Rough, Cut and Polished Diamonds, may be permitted for a period not exceeding 180 days from the date of shipment vide *Circular No.2 (RBI/2014-15/119)* dated: July 7, 2014.

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

As a measure of customer protection and also in order to bring in uniformity with regard to prepayment of various loans by borrowers of banks and NBFCs, RBI has advised that NBFCs shall not charge foreclosure charges/ pre-payment penalties on all floating rate term loans sanctioned to individual borrowers vide *Notification No. RBI/2014-15/121 [DNB (PD).CC.No.399/03.10.42/2014-15]* dated: Jul 14, 2014.

➤ Issue of Partly Paid Shares and Warrants by Indian Company to Foreign Investors

A review of the policy as regards partly paid shares and warrants has been undertaken and it has been decided as under:

(i) Eligible instruments and investors

Partly paid equity shares and warrants issued by an Indian company in accordance with the provision of the Companies Act, 2013 and the SEBI guidelines, as applicable, shall be eligible instruments for the purpose of FDI and foreign portfolio investment (FPI) by Foreign Institutional Investors (FIIs)/Registered Foreign Portfolio Investors (RFPIs) subject to compliance with FDI and FPI schemes.

(ii) Pricing and receipt of balance consideration

- Partly paid equity shares - The pricing of the partly paid equity shares shall be determined upfront and 25% of the total consideration amount (including share premium, if any), shall also be received upfront; The balance consideration towards fully paid equity shares shall be received within a period of 12 months.

- Warrants - The pricing of the warrants and price/ conversion formula shall be determined upfront and 25% of the consideration

amount shall also be received upfront. The balance consideration towards fully paid up equity shares shall be received within a period of 18 months.

Source: *Circular No.3 (RBI/2014-15/123)* dated: Jul 14, 2014

➤ Data Format for Furnishing of Credit Information to Credit Information Companies and other Regulatory Measures

New recommendations and modifications has been received regarding Creating Awareness about Credit Information Report (CIR), Credit Information Reports (CIRs) / Credit Bureau Usage in all Lending Decisions and Account Opening, Populating Commercial Data Records in Databases of all CICs, Standardization of Data Format, Technical Working Group, Rectification of Rejected Data, Data Quality Index, Credit Score and Standardizing Format of Credit Information Report (CIR) vide *Notification No. RBI/2014-15/128 (RPCD.RRB.RCB.BC.No. 13/03.05.33/2014-15)* dated: July 15, 2014.

➤ Financial Commitment (FC) by Indian Party under Overseas Direct Investments (ODI) – Restoration of Limit

It has been decided to restore the limit of Overseas Direct Investments (ODI)/ Financial Commitment (FC) to be undertaken by an Indian Party under the automatic route to the limit prevailing, as per the extant FEMA provisions, prior to August 14, 2013. It has, however, been decided that any financial commitment exceeding USD 1 (one) billion (or its equivalent) in a financial year would require prior approval of the Reserve Bank even when the total FC of the Indian Party is within the eligible limit under the automatic route (i.e., within 400% of the net worth as per the last audited balance sheet).

Source: *Circular No.1 (RBI/2014-15/117)*, dated: Jul 03, 2014.

➤ Flexible Structuring of Long Term Project Loans to Infrastructure and Core Industries

During the last decade, commercial banks have become the primary source of long term debt financing to projects in infrastructure and core industries. Infrastructure and core industries projects are characterised by long gestation periods and large capital investments. The long maturities of such project loans consist of the initial construction period and the economic life of the asset /underlying concession period (usually 25-30 years). In order to ensure stress free repayment of such long gestation loans, their repayment tenor should bear some correspondence to the period when cash flows are generated by the asset.

Banks are also unable to provide such long tenor financing owing to asset-liability mismatch issues. To overcome the asset liability mismatch, banks invariably restrict their finance to a maximum period of 12-15 years. After factoring in the initial construction

period and repayment moratorium, the repayment of the bank loan is compressed to a shorter period of 10-12 years (with resultant higher loan installments), which not only strains the viability of the project, but also constrains the ability of promoters to generate fresh equity out of internal generation for further investments. It might also lead to levying higher user charges in the case of infrastructure projects in order to ensure that greater cash flows are generated to service the loans. As a result of these factors, some of the long term projects have been experiencing stress in servicing the project loan.

Source: *Notification - RBI/2014-15/126 (DBOD.No.BP.BC.24/21.04.132/2014-15) dated: Jul 15, 2014*

➤ Foreign Direct Investment – Reporting under FDI Scheme

Introduction of a uniform State and District code list for reporting of details of foreign direct investment by Indian companies in Form FCGPR vide Circular No. 6 (RBI/2014-15/133) dated: Jul 18, 2014. The list can be accessed on the RBI website (www.rbi.org.in → FEMA – State and District Code List).

➤ Public Provident Fund Scheme, 1968 and Senior Citizen Savings Scheme, 2004

Amendments in Rules

Sl. No	Notification No. & date	Title
1	G.S.R.392(E) dated June 09, 2014	Senior Citizen Savings Scheme (Amendment) Rules, 2014
2	G.S.R.224(E) dated March 13, 2014	Senior Citizen Savings Scheme (Amendment) Rules, 2014
3	G.S.R.225(E) dated March 13, 2014	Public Provident Fund Scheme (Amendment) Rules, 2014

The contents of these circulars may be brought to the notice of the branches of bank operating the Public Provident Fund Scheme (PPF), 1968 and Senior Citizen Savings Scheme (SCSS), 2004. These should also be displayed on the notice boards of your branches for information of the PPF, 1968 and the SCSS, 2004 subscribers.

Source: *RBI/2014-15/130 (DGBA.CDD. No. 293/15.02.001/2014-15) dated: July 17, 2014.*

➤ Issue of Prepaid Forex Cards- Due Diligence and Adherence to KYC norms

As per Circular No. 14 (RBI/2014-15/147) dated: Jul 25, 2014 it is clarified that prepaid foreign currency cards are a form of foreign currency, similar to foreign currency notes or travellers cheques.

As such, the authorized dealers/FFMCs selling pre-paid foreign currency cards for travel purposes are required to comply with the same rigorous standards of due diligence and KYC as they would in case they were selling foreign currency notes/ travellers cheques to their customers.

INCOME TAX

Notifications/Circulars

➤ Income-tax (7th Amendment) Rules, 2014

In the Income-tax Rules, 1962, Form No. 3CA, Form No. 3CB and Form No. 3CD has been substituted vide *Notification: 33 dated: 25/07/2014.*

➤ Clarification regarding taxation of 'Alternative Investment Funds' having status of non – charitable trusts under the Income –tax Act 1961

Based on Circular No. 13/2014, dated 28-7-2014 it is clarified that in the situation where the trust deed either does not name the investors or does not specify their beneficial interests, provisions of sub-section (1) of section 164 would come into play and the entire income of the Fund shall become liable to be taxed at the Maximum Marginal Rate of income-tax in the hands of the trustees of such AIFs in their capacity as 'Representative Assessee'. Also in such cases, provisions of section 166 of the Act need not be invoked in the hands of the investor, as corresponding income has already been taxed in the hands of the 'Representative Assessee' in accordance with sub-section (1) of section 164 of the Act.

However, in cases of funds where names of the beneficiaries and their interests in the Fund are determined i.e. stated in the trust deed, the tax on whole of the income of the Fund-consisting of or including profits and gains of business, would be leviable upon the Trustees of such AIF, being 'Representative Assessee' at the Maximum Marginal Rate in accordance with sub-section (1A) of section 161 of the Act.

Case Laws

➤ HC: 'Capital' u/s 13(4) also includes borrowed capital, not limited to 'share capital'

HC upholds ITAT order granting Sec 11/ 12 benefit to assessee-Trust as investment did not exceed 5% of 'capital' as contemplated u/s 13(4); Rejects Revenue's contention that 'capital' u/s 13(4) implies only 'share capital' and does not include borrowed capital; 'Capital' u/s 13(4) should be understood as total capital of the concern, cannot be considered only as 'share capital' absent Legislative expression of such intent; While granting benefit especially to charitable institutions, Legislature consciously provided for investment of Trust funds up to 5% of capital, therefore, benefit cannot be denied by placing an interpretation contrary to expressed words : Karnataka HC

Source: *Islamic Academy of Education [TS-421-HC-2014(KAR)]*

➔ HC : Allahabad HC concurs with Delhi HC, grants stay extension beyond 365 days

Allahabad HC extends stay in LG Electronics case beyond 365 days, holds that since assessee fulfilled the stay conditions and was not negligent in pursuing the proceedings before Tribunal, fit & proper to extend stay; Though Tribunal not empowered to extend stay in light of Sec 254(2A), provision does not bar or prohibit assessee from approaching HC for extending / granting stay; Relies on Delhi HC in Maruti Suzuki : Allahabad HC.

Source: LG Electronics India Pvt. Ltd. [TS-427-HC-2014(ALL)]

➔ ITAT : Holds corporate gift of shares non-taxable; TP doesn't apply absent income

Transfer of shares in subsidiary, by way of 'gift', to an overseas step down subsidiary (in Cayman Island), not taxable as capital gains u/s 45; Such transfer 'without any consideration', a gift and eligible for exemption u/s 47(iii); Sec 47(iv) or (vi) deal with situations arising out 'contractual' obligations, not applicable to 'gift', thus, transferee company being non-Indian irrelevant; Company entitled to make 'gift' and law doesn't prescribe that only natural persons can make gift on the ground of "love and affection"; Invokes B.C. Srinivasa Setty principle, Sec 48 computation mechanism fails in share transfer without consideration; Arm's length price (ALP) computation u/s 92 dependent on income arising from international transaction; ALP computation doesn't extend to gift of shares since no income arises to assessee; Deletes TP adjustment on corporate guarantees considering facts & Delhi ITAT ruling in Bharti Airtel Ltd.; Guarantee provided by assessee does not have any bearing on profits, income, loss or assets of the assessee & not an international transaction post amendment by Finance Act, 2012 : Chennai ITAT

Source: Redington (India) Limited [TS-419-ITAT-2014(CHNY)]

➔ ITAT: No Sec 194J TDS on channel placement fees due to retrospective changes

ITAT deletes Sec. 40(a)(ia) disallowance for short deduction of tax, channel placement fee payment by NGC Networks to cable TV operators not 'royalty' for AY 2009-10 to trigger Sec 194J TDS provision; Holds assessee rightly deducted TDS u/s 194C under a 'bonafide' belief, keeping in view nature of payments and facts of case; Though payment covered by 'royalty' definition in light of Explanation 6 to Sec 9(1)(vi) inserted retrospectively by Finance Act, 2012, assessee not supposed to foresee such subsequent retrospective amendment to be held liable to TDS u/s 194J; Relies on co-ordinate bench rulings in Channel Guide, SKOL Breweries and Calcutta HC ruling in S K Tekriwal : Mumbai ITAT

Source: NGC Networks (I) Pvt. Ltd. [TS-415-ITAT-2014(Mum)]

➔ HC: Upholds Sec. 194C (2) TDS applicability to individual sub-contractors, denies 2006 amendment's undue advantage

HC rules that assessee liable to TDS u/s 194C(2) for AY 2006-07

for freight payments to truck owners (family members), following main contract of LPG carriage with Indian Oil Corporation; Rejects assessee's contention that payments were made under independent contract between assessee & truck owners and thus covered u/s 194C(1) and not as sub-contract u/s 194C(2); Holds that assessee wanted to take undue advantage of 2006 amendment to Sec. 194C(1) wherein an individual was exempted from TDS liability; Rejects assessee's reliance on co-ordinate bench ruling in Ambuja Darla Kashlog Mangu Transport Co-Op. Society, as distinguishable on facts; Upholds Sec. 40(a)(ia) disallowance on receipts paid during the year as well : Himachal Pradesh HC

Source: Palam Gas Service [TS-407-HC-2014(HP)]

➔ HC: Allows Sec. 80P(2)(a)(i) deduction to co-operative society not holding banking license

HC quashes CIT's revision order u/s 263 denying Sec 80P(2)(a)(i) deduction to assessee co-operative society engaged in providing credit facilities to its members; Limitation to claim Sec 80P(2) deduction contained in Sec 80P(4) inapplicable, as assessee not a co-operative bank, absent any banking license to carry banking business; Intention of legislation behind introduction of Sec 80P(4) was to deny deduction benefit to co-operative bank carrying on exclusive banking business, and to continue extending benefit to co-operative society; Holds AO's order extending Sec 80P(2)(a)(i) benefit to assessee not prejudicial to Revenue : Karnataka HC.

Source: Shri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha [TS-393-HC-2014(KAR)]

➔ SC: Dismisses Revenue SLP; Sec 35 deduction allowed treating software development as 'scientific research'

SC dismisses Revenue's SLP against Karnataka HC decision; HC had treated expenditure incurred by assessee on further improvement & development of software as capital in nature; HC had held that such expenditure qualifies as expense on scientific research u/s 43(4); Accordingly, HC allowed the deduction on scientific research u/s 35(1), though capital in nature, as same was incurred in relation to business carried out by assessee: SC

Source: Talisma Corporation Pvt Ltd. [TS-406-SC-2014]

CENTRAL EXCISE

Notifications/Circulars

➔ Amendment in Notification No. 67/1995-CE, dated the 16th March, 1995 so as to exempt intermediate goods manufactured and consumed coactively for further manufacture of matches vide Notification No. 19/2014-CE, dt. 11-07-2014.

➔ Exemption in excise duty on machineries required for initial set-

ting up of solar energy production projects vide Notification No. 15/2014-CE, dt. 11-07-2014.

➔ Full exemption from excise duty on machinery required for setting up of compressed biogas plant (Bio-CNG) vide Notification No. 14/2014-CE, dt. 11-07-2014.

➔ **CENVAT Credit (Sixth Amendment) Rules, 2014** - Central Government amends the CENVAT Credit Rules, 2004 vide Notification No. 21/2014-Central Excise (N.T.) dated: 11th July, 2014 which provides the following:

In the said rules, in rule 4 - Manufacturer or the provider of output service shall not take CENVAT credit after six months of the date of issue of any of the documents specified in sub-rule (1) of rule 9.

In sub-rule (7) -

In respect of input service where whole of the service tax is liable to be paid by the recipient of service, credit shall be allowed after the service tax is paid:

➔ Provided further that in respect of an input service, where the service recipient is liable to pay a part of service tax and the service provider is liable to pay the remaining part, the CENVAT credit in respect of such input service shall be allowed on or after the day on which payment is made of the value of input service and the service tax paid or payable as indicated in invoice, bill or, as the case may be, challan referred to in rule 9.

• Provided also that in case the payment of the value of input service and the service tax paid or payable as indicated in the invoice, bill or, as the case may be, challan referred to in rule 9, except in respect of input service where the whole of the service tax is liable to be paid by the recipient of service, is not made within three months of the date of the invoice, bill or, as the case may be, challan, the manufacturer or the service provider who has taken credit on such input service, shall pay an amount equal to the CENVAT credit availed on such input service and in case the said payment is made, the manufacturer or output service provider, as the case may be, shall be entitled to take the credit of the amount equivalent to the CENVAT credit paid.

➔ **Central Excise Valuation (Determination of Price of Excisable Goods) Amendment Rules, 2014**

Central Government amends the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 vide Notification No 20/2014 - Central Excise (N.T.) dated: 11th July, 2014. As per the new rule price is not the sole consideration for sale of such excisable goods and they are sold by the assessee at a price less than manufacturing cost and profit, and no additional consideration is flowing directly or indirectly from the buyer to such assessee, the value of such goods shall be deemed to be the transaction value.

➔ **Central Excise (Third Amendment) Rules, 2014** - Central Gov-

ernment amends Central Excise Rules, 2002 and provides that if the assessee fails to pay the duty declared as payable by him in the return within a period of one month from the due date, then the assessee is liable to pay the penalty at the rate of one per cent on such amount of the duty not paid, for each month or part thereof calculated from the due date, for the period during which such failure continues vide Notification No. 19/2014-CENT dt. 11-07-2014. Here month means the period between two consecutive due dates for payment of duty.

➔ Central Government hereby specifies "the resident private limited company" as class of persons for the purposes of section 23A of the Central Excise Act, 1944 - 18/2014-CENT dt. 11-07-2014.

➔ **Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Second Amendment Rules, 2014**

Break-up of duty payment for apportionment between various duties

Duty	Duty ratio for pan masala	Duty ratio for pan masala containing tobacco
The duty leviable under the Central Excise Act, 1944	0.3453	0.7903
The additional duty of excise leviable under section 85 of the Finance Act, 2005	0.1294	0.0677
National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001	0.4962	0.1129
Education Cess leviable under section 91 of the Finance Act, 2004	0.0194	0.0194
Secondary and Higher Education Cess leviable under section 136 of the Finance Act, 2007	0.0097	0.0097
Source: Notification No. 22/2014-CENT dt. 11-07-2014		

Case Laws

➔ **Valuation - Sample medical equipments received as Gift - Mis declaration regarding value - Confiscation of goods - Redemption fine**

Held that: - There is no restriction in the matter of import of medical

equipments. Further, the duty payable on medical equipments is also low as may be seen from the fact that the duty demand is only about 10% of the CIF value. In this type of offence, involving only attempt to evade duty and no attempt to circumvent restrictions on import redemption fine and penalty should be based on duty that would have escaped assessment and not on the value of the item. Profit margin on sale of goods is a proper extension in cases of import of restricted goods without the necessary license. The adjudicating officer has put redemption fine of about 50% of the duty sought to be evaded and penalty of about 25% of duty sought to be evaded and these are reasonable and I do not find any reason to interfere with the impugned order - Decided against Revenue.

Source: *Cc, (Airport & Cargo), Chennai versus M/S. Wellcare Hospital & Research Institute* [2014 (6) TMI 714 - CESTAT Chennai - Customs]

➤ Waiver of pre deposit - duty on broken pieces of wrecked ship -

Customs included the cost of the broken ship, salvaging cost, transportation of broken pieces, etc. and as a result, differential duty - Held that:- wrecked ship when purchased had already reached Indian shore and therefore importation has already been taken place. Therefore, the issue is debatable and requires more detailed consideration of relevant provisions, relevant rules, precedent decisions on the subject. - Commissioner (Appeals) could have passed an order without insisting on any pre-deposit. - stay granted.

Source: *M/S Arihant Ship Breakers versus Commissioner of Customs* [2014 (6) TMI 783 - CESTAT Bangalore - Customs]

➤ Restoration of appeal - tribunal dismissed the appeal for failure to pre-deposit the amount

Held that:- the Tribunal, after hearing the learned counsel on either side; perusing the records and keeping in mind the undue hardship that would be caused to the appellant and the interest of the Revenue, had shown sufficient indulgence to the appellant by granting time to deposit a part of the tax demanded. The appellant has not chosen to seek modification of the said order or extension of time and in fact, failed to comply with the conditional order - Tribunal has rightly dismissed the appeal - Decided against the assessee.

Source: *Chitra Constructions P. Ltd. versus Customs, Excise and Service Tax Appellate Tribunal* [2014 (7) TMI 833 - MADRAS HIGH COURT - Central Excise]

➤ Rebate / refund of duty - there was no endorsement of the subject ARE-1 No.48 dated 10/2/2009 on the Shipping Bill by the Customs Authority of the Port of Export

thus, it was found that the petitioner had not exported the goods - Held that:- petitioner did not submit the original copy of the ARE-1 duly certified by the Customs Authority and Invoice (duplicate copy of transport, in original). It was also found that the even Di-

vision Office did not receive duplicate of the said ARE-1 in original duly authorised by Customs Authority of the Port of Export - Even in the triplicate of ARE-1, there was no endorsement certified by the Customs Authority with respect to Shipping Bill No.7074421.

When all the authorities below have concurrently found that the petitioner had not exported the goods of ARE-1 No.48 dated 10/2/2009 under Shipping Bill No.7074421 for which they claimed rebate, we are of the opinion that as such no error has been committed by any of the authorities below - there is no reason to interfere with the same in exercise of the power under Article 226/227 of the Constitution of India. - petition rejected - Decided against the assessee.

Source: *Star Dyes and Intermediates versus Union of India Thro Secretary & 3* [2014 (7) TMI 735 - GUJARAT HIGH COURT - Central Excise]

➤ Penalty u/s 11AC and 11AB

Held that:- Commissioner (Appeals) set aside the demand of interest and penalty on the ground that the respondent paid the duty before issue of the show-cause notice. The Supreme Court in the case of Union of India Vs Rajasthan Spinning and Weaving Mills reported in [2009 (5) TMI 15 - SUPREME COURT OF INDIA] held that penalty under Section 11AC of the Act cannot be set aside merely on the ground that duty was paid before issue of the show-cause notice. On perusal of the impugned order, I find that the main contention of the respondent was that they have paid the duty before the issue of the show-cause notice and, therefore, penalty is not sustainable. It is seen that the respondent had not contested penalty and interest on merit. As the respondent had not contested penalty and interest on merit and in view of the decision of the Hon'ble Supreme Court, the imposition of penalty and demand of interest is sustainable. - Decided in favour of Revenue.

Source: *COMMISSIONER OF CENTRAL EXCISE, TIRUCHIRAPALLI versus M/s PSP STEEL (P) LTD* [2014 (7) TMI 733 - CESTAT CHENNAI - Central Excise]

➤ Confiscation of goods - Availment of SSI Exemption

Seizure of goods on the basis that same were not accounted in C.E. Records - Department contends that the clearances of the appellant were far in excess of the threshold limit for SSI exemption - Held that:- Confiscation of the goods seized from the premises of M/s Shree Ganesh Plywood and M/s Ply Care would be sustainable only if the allegation of duty evasion against M/s Shree Ganesh Plywood by wrongly availing the SSI exemption and grossly under reporting the value of the goods manufactured and cleared by them is upheld. If this allegation is not upheld and it is found that the value of clearances of M/s Shree Ganesh Plywood were well within the SSI exemption, they would neither be required to take Central Excise registration nor would be required to maintain the statutory records. Thus, the issue involved in these appeals is linked with the facts and issues involved in the show cause notice dated 09/05/2012 issued

to M/s Shree Ganesh Plywood and both the matters should have been adjudicated together. When the allegation of wrong availing of SSI exemption by under reporting the value of the goods manufactured and cleared is yet to be adjudicated, M/s Shree Ganesh Plywood cannot be accused of not obtaining Central Excise registration and not maintaining the RG-1 register and other statutory Central Excise records - Matter remanded back - Decided in favour of assessee.

Source: *M/s Shree Ganesh Plywood and M/s Ply Care Versus CCE, Delhi I [2014 (7) TMI 734 - CESTAT NEW DELHI - Central Excise]*

CUSTOMS

Notifications/Circulars

- ➔ Reduction of BCD to 5% on machinery required for settings up of compressed bio-gas (Bio-CNG) projects vide Notification No. 13/2014-Cus, dt. 11-07-2014.
- ➔ Reduction of BCD to 5% and CVD to Nil on machinery for initial setting up of solar energy production projects vide Notification No. 14/2014-Cus, dt. 11-07-2014.
- ➔ Export duty on Bauxite has been increased from 10% to 20% vide Notification No. 15/2014-Cus, dt. 11-07-2014
- ➔ Amendment in notification No. 24/2005-Customs dated 1st March 2005 so as to levy BCD @ 10% on specified telecommunication products not covered under the ITA vide Notification No. 11/2014-Cus, dt. 11-07-2014.
- ➔ CBEC exempts cut and polished diamonds falling within chapter 71 of the First schedule to the Customs Tariff Act, 1975 (51 of 1975), when re-imported into India after certification/grading by the laboratories / agencies as notified in the Foreign Trade Policy in this regard, from the whole of the duty of customs if each piece of cut & polished diamonds so re-imported is not be less than 0.25 of a carat in weight vide notification no. 09/2012 Customs dated 9th March, 2012. Now this above notification has been amended so as to increase the variation levels in respect of re-import of cut and polished diamonds. Notification No. 16/2014-Cus, dt 11-07-2014 provides that a variance not exceeding +_ 0.05 mm in diameter for round shape diamonds and +_ 0.07 mm in length and breadth for diamonds of other shapes and variance not exceeding +_ 1 cent in weight shall be allowed.
- ➔ Levy of education cess on CVD portion of customs duty leviable on imported IT products vide Notification No. 18/2014-Cus, dt. 11-07-2014.

➔ Levy of secondary and higher education cess on CVD portion of customs duty leviable on imported IT products vide Notification No. 19/2014-Cus, dt. 11-07-2014.

➔ Amendment in notification No. 230/86-Customs, dated the 3rd April, 1986 so as to notify concerned State Governments as sponsoring authority for Metro Rail Projects covered under the Project Import Regulations, 1986 vide Notification No. 25/2014-Cus,dt. 11-07-2014.

Case Laws

➔ **Claim of duty drawback - condonation of delay in filing of supplementary claim - Rule 15 of the Custom, Excise Duties and Service Tax (drawback) Rules, 1995**

Held that: - the status of the drawback claim whether signed or under any query/deficiency, is always available in the EDI System and can be ascertained by the exporter or their authorized person from the counter at the service center. It further goes on to say that the designated bank also credits the drawback amount in the account of the exporter on the next day and informs the exporter by sending a fortnightly statement about the payment of drawback claims to them. Therefore, the onus of ascertaining the status of the drawback claim, whether sanctioned short or under any query/deficiency, so as to avoid any delay in filing the subsequent supplementary drawback claims, solely lies on the exporter himself.

The bank is an agent of the petitioner and if the bank is at fault and no evidence has been brought on record by way of representation or otherwise to the Bank, then the respondents cannot be faulted with.

The second ground is also of no substance for the reason that on one hand, the petitioner says that they were busy in various International Trade Fairs and obviously in so far as the present claim is concerned, it appears that they were not bothered at all or interested in obtaining the benefit which was due to them and for the lapses on the part of the petitioner itself, no one else can be blamed about it.

The expression "sufficient cause" employed in Section 5 of the Indian Limitation Act, 1963 and similar other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which sub serves the ends of justice. Although, no hard and fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate.

There was no reasonable cause which could justify condoning the delay and the reasons, which have been made out, have been found to be unjust and improper. - Decided against the assessee. Source: *M/s Cheer Sagar versus The Commissioner of Customs & Others [2014 (7) TMI 731 -RAJASTHAN HIGH COURT - Customs]*

SERVICE TAX

Notifications/Circulars

➔ As per Notification No. 15/2014-ST dt. 11-07-2014 CBEC specifies "the resident private limited company" as class of persons for the purposes of section 96A of the Finance Act, 1994.

➔ Amendment in the Service Tax (Determination of Value) Rules, 2006 so as to prescribe the percentage of service portion in respect of works contracts, other than original works contract vide Notification No. 11/2014-ST dt. 11-07-2014.

➔ As per Notification No. 09/2014-ST dt. 11-07-2014 Service Tax Rules, 1994 has been amended so as to prescribe:

- (i) the person liable to pay service tax for certain specified services and
- (ii) mandatory e-payment of service tax for all the assesseees, with effect from 1st October, 2014

➔ Amendment in Notification No. 12/2013-ST dated 1st July, 2013, relating to exemption from service tax to SEZ Units or the Developer vide Notification No. 07/2014-ST dt. 11-07-2014.

Case Laws

➔ Condonation of delay - Tribunal declined to condone delay holding gross negligence on part of assessee

Held that: - a perusal of the typed set of papers would reveal that the relevant papers pertaining to the application filed before the Tribunal for condonation of delay is not enclosed therein. This attitude of the appellant would only go to show that the appellant is not serious in pursuing the matter and is only trying to drag on the proceedings - document, viz., the application for condonation of delay, is a very relevant document, which is very much required for adjudicating the present appeal, as the said document alone would show the stand taken by the appellant before the Tribunal for condoning the delay. In the absence of the said vital document, the veracity of the stand taken by the appellant before this Court itself becomes questionable. The non-furnishing of the abovesaid document along with the typed set of papers would by itself show the callousness with which the appellant is dealing with the matter, which would stand proof of the fact that the appellant is not interested in pursuing the matter - Decided against assessee.

Source: *M/s. North Star Shipping Services Pvt. Ltd. versus The Commissioner of Service Tax*

[2014 (7) TMI 828 - MADRAS HIGH COURT - Service Tax]

➔ Refund claim of service tax paid earlier - unjust enrichment - assessee is entitled for self adjustment u/r

6(3) of excess service tax paid

revenue argued that assessee did not opt for provisional assessment u/s 6(4) - appellant has already refunded the excess service tax along with credit bill to its customers. - Period of limitation for self adjustment - Held that:- Rule 6(3) is applicable not only to the case of excess payment of service which can be made good in subsequent period and bit also to the case where taxable values are not ascertainable for longer period - sub-rule 6(3) is not dependent on provision of sub-rule 6(4). Moreover there is no time limit prescribed under sub-rule 6(3) for making adjustment - Matter remanded back - Decided in favour of assessee.

Source: *M/s Central Mine Planning and Design Institute Ltd. versus CCE, Bhopal* [2014 (7) TMI 830 - CESTAT NEW DELHI - Service Tax]

➔ Extension of stay order - power of tribunal to extend stay beyond 365 days - appeals could not be disposed of within time specified in Section 35C (2A)

Held that:- High Court ruling in Maruti Suzuki (2014 (2) TMI 1037 - DELHI HIGH COURT), declare this legal position, unequivocally; and after analysis of the amended provisions of the Income Tax Act (which are in pari materia provisions of the Excise Act) and duly considering the judgement of the Supreme Court in Kumar Cotton Mills Pvt. Ltd. [2005 (1) TMI 114 - SUPREME COURT OF INDIA] - In light of exposition of the legal position qua the judgement in Maruti Suzuki, it must be concluded that the provisions of Section 35C (2A) of the Central Excise Act eviscerate the power of (CESTAT) to extend operation of a stay granted and extended beyond a total period of 365 days. Delhi High Courts distinguished the judgement of the Bombay High Court in Income Tax Vs. Ronak Industries - [2010 (11) TMI 461 - Bombay High Court] which followed its earlier judgment in Narang Overseas P. Ltd. Vs. ITAT & Others - [2007 (7) TMI 5 - HIGH COURT, BOMBAY] - Extension of stay denied.

Source: *RAJASTHAN STATE INDUSTRIAL DEVELOPMENT & INVESTMENT CORPORATION LTD versus CST, DELHI* [2014 (7) TMI 829 - CESTAT NEW DELHI - Service Tax]

➔ Waiver of pre-deposit - Intellectual property rights - Purchase of trademark of foreign company under permission obtained from RBI

Held that: - appellant has made out a prima facie case against the impugned demand - It was found that there was no actual purchase of brand. This finding was recorded after a reading of the Deed of Transaction dated 12-9-2006, which we have also perused. The recitals of that document prima facie indicate absolute transfer of trademarks and Foster's Brand Intellectual Property from the foreign company to the assessee. It is also on record that the appellant qua owner of the trademarks obtained registration in India under the Trademarks Act. It is also on record that they paid stamp duty on the entire consideration paid by the appellant-

company for purchase of trademarks. The RBI's permission was also for such purchase of the trademarks. Thus the documentary evidence in this case is abundantly in support of the appellant's case. Hence there will be waiver of pre-deposit and stay of recovery in respect of the adjudged dues - Stay granted.

Source: *SKOL BREWERIES LTD. versus COMMISSIONER OF SERVICE TAX, BANGALORE* [2014 (7) TMI 821 - CESTAT BANGALORE - Service Tax]

➤ **Valuation of the services - maintenance & repair service; erection, commissioning & installation service - service tax paid on 15% value of services and VAT is paid on rest 85%**

Held that:- adjudicating authority while deciding the issue, has not considered the submissions made by the appellant and has held that the contracted value has been artificially bifurcated into the material portion and the service portion. It is observed from the clause 25 of the representative contract dt.06.11.2009 entered into between the appellant and M/s Tej Complex, Ahmedabad, that 15% of the contract value represent erection, commissioning and installation services on which VAT / Sales Tax is not paid by the appellant.

As per Rule 2A(ii) of the Service Tax (Determination of Value) Rules 2006, the actual value of transfer of property in goods involved in execution of the works contract is not to be taken into consideration while discharging Service Tax liability under the works contract services. It is the claim of the appellant that VAT/ Sales Tax was paid on the actual material value of the material sold, as per audit account furnished to the adjudicating authority and on examination of the records, it seems to be so. However, this matter whether VAT/ Sales Tax has been paid on the actual materials sold to the service recipient is required to be gone into detail by the adjudicating authority - Matter remanded back - Decided in favour of assessee.

Source: *M/s Trio Elevators Co. India Ltd. versus CST Ahmedabad* [2014 (7) TMI 748 - CESTAT AHMEDABAD - Service Tax]

➤ **Small service provider Exemption under notification no.6/05-ST - providing the services under the brand name/trade mark of ICICI Bank Ltd.**

Held that:- Just by providing the 'Business Auxiliary Service' to ICICI Bank Ltd. by using the promotional material provided by ICICI Bank Ltd., the Respondent cannot be treated as using the brand name of ICICI Bank Ltd. and providing their service under the brand name of ICICI Bank. In fact the Respondent are not the Franchise of ICICI Bank Ltd. in the sense that they are providing financial services by using the business model and brand name of ICICI Bank. It is not the case of the department that the respondent for using the brand name or trade name of ICICI Bank Ltd. were paying some amount to the bank. On the contrary, it is the ICICI Bank which is paying to the respondent for providing the marketing services. The respondent, therefore, cannot be treated using the brand name of ICICI Bank Ltd. - No infirmity in impugned order - Decided against Revenue.

Source: *CCE, Chandigarh versus M/s. AS. Financial* [2014 (7) TMI 746 - CESTAT NEW DELHI - Service Tax]

SEBI

Notifications/Circulars

➤ **Change in Government Debt Investment Limits**

Government debt investment limit - The incremental investment limit of USD 5 billion (INR 24,886cr) shall be required to be invested in government bonds with a minimum residual maturity of three years. Further, all future investment against the limit vacated when the current investment by an FII/QFI/FPI runs off either through sale or redemption shall also be required to be made in government bonds with a minimum residual maturity of three years - *Circular CIR/IMD/FIIC/ 17/2014 dated: July 23, 2014.*

➤ **Clarification and extension of deadline with respect to circular on 'Guidelines on disclosures, reporting and clarifications under AIF Regulations**

Based on Circular No - CIR/IMD/DF/16/2014 dated: July 18, 2014, the deadline for sending of annexure to the placement memorandum to the investors under clause 2(a)(iii) is extended till August 31, 2014. With respect to disclosure of disciplinary history under clause 2(a)(ii), the same shall be applicable for the last 5 years and where monetary penalty is involved, in cases where such penalty is greater than Rs. 5 lakhs.

➤ **Dispatch of physical Statements to BOs having Zero Balance and Nil Transactions**

Accounts with zero balance and nil transactions during the year: DP shall send at least one annual physical statement of holding to the stated address of the BO in respect of accounts with no transaction and nil balance even after the account has remained in such state for one year. The DP shall inform the BO that if no Annual Maintenance Charge (AMC) is received by the DP, the dispatch of the physical statement may be discontinued for the account which continues to remain zero balance even after one year. DPs shall send electronic statement of holding to all the BOs whose email ids are registered with them. Also, if a BO requests for a physical statement, the DPs shall provide the same.

For the purpose of valuation of holdings in an account as provided in clause 4(b) of the aforesaid circular, it is clarified that the value of suspended securities may not be considered for the purpose of determining eligibility of demat account as BSDA.

Circular - CIR/MRD/DP/ 21 /2014 dated: July 01, 2014

➤ **Delivery Instruction Slip (DIS) Issuance and Processing**

As per Circular - CIR/MRD/DP/ 22 /2014, dated: July 04, 2014, depository participants (DPs) shall not accept old Delivery In-

struction Slip (DIS) for execution from a Beneficial Owner (BO) who has been issued new DIS. It is clarified that a period of one month may be given for receipt of DIS by the BOs. The DPs may accept old DIS during this transit period. Further, while issuing new DIS the DPs shall intimate the BO that old DIS cannot be used after the new DIS is received.

➔ Clarification and extension of deadline with respect to circular on 'Guidelines on disclosures, reporting and clarifications under AIF Regulations'

The deadline for sending of annexure to the placement memorandum to the investors under clause 2(a) (iii) is extended till August 31, 2014.

With respect to disclosure of disciplinary history under clause 2(a) (ii), the same shall be applicable for the last 5 years and where monetary penalty is involved, in cases where such penalty is greater than Rs. 5 lakhs. With respect to disputed tax liabilities, the same shall not apply to liabilities in personal capacity of an individual. Contingent liabilities shall be as disclosed in books of accounts of the entity.

With respect to clause 2(b) (iii), the changes shall include modifications in terms or documents of the fund/scheme and the same may be intimated to investors and SEBI once every six months on a consolidated basis. With respect to clause 2(b) (iv), 'material' changes may be construed as changes in the fundamental attributes of the fund/scheme and the process for exit under the clause shall not apply in cases where the AIF has approval of not less than 75% of unit holders by value of their investment in the AIF with

respect to sub-clauses (a) and (b).

Circular - CIR/IMD/DF/16/2014 dated: July 18, 2014

FOREIGN TRADE

Notifications/Circulars

➔ Export Policy of Onions

Export of onion for the item description at Serial Number 51 & 52 of Chapter 7 of Schedule 2 of ITC(HS) Classification of Export & Import Items shall be permitted subject to a Minimum Export Price(MEP) of US\$ 500 per Metric Ton vide Notification No 86 (RE – 2013)/2009-2014, dated: 2 July, 2014.

➔ Amendments in the ITC (HS) 2012, Schedule 1 (Import Policy)

Import policy of the item 'foie gras' covered under EXIM Code 0207 43 00 in Chapter 2 of ITC(HS), 2012 Schedule I (Import Policy) is revised from 'free' to 'prohibited' vide Notification No 87 (RE-2013)/2009-2014, dated: 3rd July, 2014.

➔ Export policy of sugar

As per Notification No 88 (RE – 2013)/2009-2014, dated: 4 July, 2014 the quantity ceiling for export of organic sugar has been removed till the time export of sugar is permitted "Freely". Also export of organic sugar would be permitted subject to registration of quantity with DGFT and certification by APEDA as sugar being organic sugar.



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