the CMA e-BULLETIN

THE INSTITUTE OF COST ACCOUNTANTS OF INDIA
(Statutory body under an Act of Parliament)

www.icmai.in

DECEMBER 2014 | VOL. 2 | NO. 12

EDITORIAL

Make in India primarily for India, says Raghuram Rajan

FINANCE Minister Arun Jaitley said India has the potential to grow at a higher rate even at a time when the world economy is going through a critical phase. "The world economy is passing through critical phase while India's economy has the potential to grow at a higher rate," he said during an interaction with students of Stanford University, USA. Mr. Jaitley further said that various welfare programmes of the government for vulnerable sections of the society are essential and working well.

Indian economy grew at a better-than-expected rate of 5.3 percent in July-September quarter as against 5.2 percent of the same period last fiscal. However, the GDP growth was slower than 5.7 percent rate achieved in April-June quarter of 2014-15.

"Make in India will typically mean more openness, as we create an environment that makes our firms able to compete with the rest of the world, and encourages foreign producers to come take advantage of our environment to create jobs in India," RBI Governor, Raghuram Rajan said as he floated the idea of 'Make for India'. "If external demand growth is likely to be muted, we have to produce for the internal market." With regard to the Make in India initiative, he pointed out that a slowing world economy is not in a position to absorb substantial additional imports.

Mr. Rajan urged the implementation of measures including the goods and services tax (GST) for the creation of the "strongest sustainable unified market". "We are more dependent on the global economy than we think. That it is growing more slowly, and is more inward looking than in the past means that we have to look to regional and domestic demand for our growth – to make in India primarily for India," he said.

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.

the CMA

e-BULLETIN

THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

(Statutory body under an Act of Parliament)

DECEMBER 2014 | VOL. 2 NO. 12

CONTENTS

HEADQUARTERS
CMA BHAWAN 12, SUDDER STREET
KOLKATA 700 016, INDIA
PHONES: +91-33-2252 1031/1034/1035/1492/1602/1619/7143/7373
FAX: +91-33-2252-7993/1026

DELHI OFFICE
CMA BHAWAN, 3 INSTITUTIONAL AREA
LODHI ROAD,
NEW DELHI 110003, INDIA
PHONES: +91-11-24622156/57/58, 24618645
FAX: +91-11-43583642

OFFICE OF RESEARCH & JOURNAL
CMA BHAWAN, 4TH FLOOR
84, HARISH MUKHERJEE ROAD
KOLKATA 700 025, INDIA
Board: +91-33-2454 0086/87/0184
Fax: +91-33-2454 0063

Please send your feedback on the CMA e-BULLETIN at: cma.ebulletin@icmai.in

Behind every successful business decision, there is always a CMA

INDIAN ECONOMY

News

➲ GDP growth to slow to 5.1 pct, but no rate cut yet - Reuters Poll

India's economic growth probably slowed to 5.1 percent in the July-September quarter from a year ago, but economists polled by Reuters doubted whether that would be enough to persuade the central bank to cut interest rates just yet.

Source: Reuters | 27 Nov 2014

➲ Exclusive - RBI under pressure to cut rates as growth slips

India's economic growth probably slowed to around 5 percent in the three months to September, slipping from 5.7 percent in the previous quarter, two senior finance ministry sources said, putting pressure on the central bank to cut interest rates.

Source: Reuters | 25 Nov 2014

➲ India yet to decide on dates for key asset sales - official

India has yet to decide on the dates for selling a 10 percent stake in state-controlled Coal India and 5 percent in Oil and Natural Gas Corp, a government official said after a meeting with the finance minister.

Source: Reuters | 25 Nov 2014

➲ RBI may give banks more leeway to deal with bad loans

India could give banks more flexibility to restructure distressed loans in a bid to steer funding towards cash-strapped infrastructure projects.

Source: Reuters | 25 Nov 2014

➲ RBI may punish lenders who violate foreign debt rules

The Reserve Bank of India (RBI) said on Tuesday it could penalise lenders that help domestic companies raise debt abroad if that fundraising violates external commercial borrowing rules when repatriated to India.

Source: Reuters | 25 Nov 2014

➲ India's laggard state lenders face tough sell on capital raising plan

India's state-run banks face major obstacles in their plans to raise as much as $60 billion in new capital over the next few years, with investors sceptical about the prospects for most of them and workers wary of the government's grip loosening.

Source: Reuters | 26 Nov 2014

➲ ING Vysya deal captures the synergies of the two institutions

Uday Kotak Uday Kotak, promoter of Kotak Mahindra Bank announced its acquisition of ING Vysya Bank. The all-stock deal would give Kotak Mahindra geographical presence and scale.

Source: Economic Times | 21 Nov, 2014

➲ RBI revises minimum balance norms

The Reserve Bank of India (RBI) has placed curbs on the charges imposed by banks for not maintaining minimum balance requirements. The new norms require banks to notify the customer by SMS, email or letter about the intention to apply penal charges if minimum balance is not restored within a month. The new charges shall come into effect from April 2015.

Source: The Times of India | Nov 21, 2014

➲ Govt needs to infuse nearly $39 bln in state-run banks by March 2019: RBI deputy

The government needs to infuse as much as 2.4 trillion rupees ($38.78 billion) into state-owned banks by end-March 2019 to meet different kinds of capital requirements including Basel III, provisioning for asset quality, and additional risks, said a central bank Deputy Governor S.S. Mundra.

Source: Reuters | 19 Nov 2014

➲ OECD raises India growth outlook, urges reforms

India's economy will accelerate in 2015/16 but will fail to attain the heady growth rates of the past decade without sweeping structural reforms, the Organisation for Economic Cooperation and Development (OECD) said.

Source: Reuters | 19 Nov 2014

➲ Trade deficit narrows to $13.35 bln in October

India's trade deficit narrowed to $13.35 billion in October on lower oil imports.

Source: Reuters | 17 Nov 2014

➲ Slowing WPI, CPI inflation builds case for rate cut

India's inflation dropped to a new multi-year low in October, helped by slower annual rises in food and fuel prices, intensifying pressure on the central bank to cut interest rates to encourage spending and investment needed to boost growth.

Source: Reuters | 14 Nov 2014

➲ India-U.S. deal revives WTO and hope of world trade reform

India and the United States settled a dispute on Thursday that had paralyzed the World Trade Organization and risked derailing a $1 trillion package of reforms of global customs procedures.

Source: Reuters | 13 Nov 2014

➲ India, U.S. and EU set to revive WTO talks: Times of India

A global trade deal between India, the United States and the European Union is close to being signed, with India agreeing to sign the stalled international treaty on easier customs rules, the Times of India reported.

Source: Reuters | 06 Nov 2014

➲ Bond market sees rate cuts even as India central bank talks tough on inflation

The rally in Indian bonds is providing central bank governor Raghuram Rajan an unexpected gift: Falling borrowing costs are starting to provide the benefits of lower interest rates without him actually having to ease monetary policy.

Source: Reuters | 09 Nov 2014

➲ Modi's 'Make in India' push to depend on Chinese steel

India's steel consumption is expected to grow at its fastest pace in five years next year on Prime Minister Narendra Modi's infrastructure push, but a scarcity of raw materials means it will be at the expense of another key goal - curbing imports.

Source: Reuters | 09 Nov 2014

BANKING

Notifications/Circulars

➲ Import of Gold (under 20: 80 Scheme) by Nominated Banks / Agencies / Entities

As per *Circular No.42 (RBI/2014-15/329) dated: November 28, 2014*, it has been decided by the Government of India to withdraw the 20:80 scheme and restrictions placed on import of gold. Accordingly, all instructions issued about the scheme from time to time starting with *Circular No.25 dated August 14, 2013* stand withdrawn with immediate effect.

➲ Basel III Framework on Liquidity Standards – Monitoring tools for Intraday Liquidity Management

Banks will be required to report the monitoring tools, to the RBI on a monthly basis from 1 January 2015 to coincide with the implementation of the LCR reporting requirements as advised vide our circular DBOD.BP.BC.No.120/21.04.098/2013-14 dated June 9, 2014 on "Basel III Framework on Liquidity Standards – Liquidity Coverage Ratio (LCR), Liquidity Risk Monitoring Tools and LCR Disclosure Standards". It will be pertinent to mention here that while the objective of the Liquidity Coverage Ratio (LCR) is to promote the short-term resilience of the liquidity risk profile of banks, it does not include intraday liquidity within its calibration and the LCR stress scenario does not cover expected or unexpected intraday liquidity needs. Besides forming a key element of a bank's overall liquidity risk management, management of intraday liquidity risk has a close relationship with the smooth functioning of payment and settlement systems. Considering the critical importance, the imperatives of having a robust liquidity governance structure to ensure integrity of the intraday liquidity monitoring tools hardly require to be over emphasized. Boards through their senior management should develop suitable strategy, risk management policies and practices to monitor intraday liquidity, ensure integrity of regulatory reporting and review the efficacy of the monitoring tools.

Source: RBI/2014-15/293 [DBR.BP.BC.No.46/21.04.098/2014-15] dated: November 3, 2014

➲ Revised Regulatory Framework for NBFC

As per Notification No. RBI/2014-15/299 [DNBR (PD) CC. No. 002/03.10.001/2014-15] dated: November 10, 2014 change in Regulatory Framework for NBFC has been introduced. The changes are as follows:

Requirement of Minimum NOF of Rs. 200 lakhs

NBFCs are required to obtain a Certificate of Registration (CoR) from the Bank to commence/carry on business of NBFI in terms of Section 45-IA of the RBI Act, 1934. The said section also prescribes the minimum Net Owned Fund (NOF) requirement. In terms of Notification No.DNBS.132/CGM(VSNM)-99 dated April 21, 1999, the minimum NOF requirement for new companies applying for grant of CoR to commence business of an NBFC is stipulated at Rs. 200 lakhs. Although the requirement of minimum NOF at present stands at Rs. 200 lakhs, the minimum NOF for companies that were already in existence before April 21, 1999 was retained at Rs. 25 lakhs. Given the need for strengthening the financial sector and technology adoption, and in view of the increasing complexities of services offered by NBFCs, it shall be mandatory for all NBFCs to attain a minimum NOF of Rs. 200 lakhs by the end of March 2017, as per the milestones given below:

- Rs. 100 lakhs by the end of March 2016
- Rs. 200 lakhs by the end of March 2017

It will be incumbent upon such NBFCs, the NOF of which currently falls below Rs. 200 lakhs, to submit a statutory auditor's certificate certifying compliance to the revised levels at the end of each of the two financial years as given above. NBFCs failing to achieve the prescribed ceiling within the stipulated time period shall not be eligible to hold the CoR as NBFCs. The Bank will initiate the process for cancellation of CoR against such NBFCs.

Deposit Acceptance

As per extant NBFCs Acceptance of Public Deposit (Reserve Bank) Directions, 1998, an unrated Asset Finance Company (AFC) having NOF of Rs. 25 lakhs or more, complying with all the prudential norms and maintaining capital adequacy ratio of not less than fifteen per cent, is allowed to accept or renew public deposits not exceeding one and half times of its NOF or up to Rs. 10 crore,

whichever is lower. AFCs which are rated and complying with all the prudential regulations are allowed to accept deposits up to 4 times of their NOF.

In order to harmonize the deposit acceptance regulations across all deposit taking NBFCs (NBFCs-D) and move over to a regimen of only credit rated NBFCs-D accessing public deposits, existing unrated AFCs shall have to get themselves rated by March 31, 2016. Those AFCs that do not get an investment grade rating by March 31, 2016, will not be allowed to renew existing or accept fresh deposits thereafter. In the intervening period, i.e. till March 31, 2016, unrated AFCs or those with a sub-investment grade rating can only renew existing deposits on maturity, and not accept fresh deposits, till they obtain an investment grade rating.

It has been decided to harmonise the limit for acceptance of deposits across the sector by reducing the same for rated AFCs from 4 times to 1.5 times of NOF, with effect from the date of this circular. While AFCs holding deposits in excess of the revised limit should not access fresh deposits or renew existing ones till they conform to the new limit, the existing deposits will be allowed to run off till maturity. It must be mentioned here that the data available with the Reserve Bank indicates that most AFCs are already complying with the revised norms and very few NBFCs have deposits in excess of 1.5 times of the NOF. Also, in cases where this limit is exceeded, the excess is not substantial. It is therefore expected, that this harmonization measure will not be disruptive.

Systemic Significance

Currently, NBFCs are categorized into three groups for the purpose of administering prudential regulations namely, NBFCs-D, non-deposit taking NBFCs (NBFCs-ND) with assets less than Rs.100 crore and NBFCs-ND-SI with assets Rs.100 crore and above, (categorized as non–deposit taking systemically important NBFCs, vide circular DNBS.PD/CC.No.86/03.02.089/2006-07, dated December 12, 2006). The current prudential regulation mainly comprises the following elements: a) Norms relating to Income Recognition, Asset Classification and Provisioning norms; b) Capital to Risk Weighted Assets Ratio (CRAR); and c) Credit Concentration Norms [norms at b) and c) are applicable to only NBFCs–D and NBFCs-ND-SI].

The threshold for defining systemic significance for NBFCs-ND has been revised in the light of the overall increase in the growth of the NBFC sector. NBFCs-ND-SI will henceforth be those NBFCs-ND which have asset size of Rs. 500 crore and above as per the last audited balance sheet.

With this revision in the threshold for systemic significance, NBFCs-ND shall be categorized into two broad categories viz.,

- NBFCs-ND (those with assets of less than Rs. 500 crore) and
- NBFCs-ND-SI (those with assets of Rs. 500 crore and above).

Multiple NBFCs

NBFCs that are part of a corporate group or are floated by a common set of promoters will not be viewed on a standalone basis. The total assets of NBFCs in a group including deposit taking NBFCs, if any, will be aggregated to determine if such consolidation falls within the asset sizes of the two categories mentioned above. Regulations as applicable to the two categories will be applicable to each of the NBFC-ND within the group. For this purpose, Statutory Auditors would be required to certify the asset size of all the NBFCs in the Group. However, NBFC-D, within the group, if any, will be governed under the Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Direction 1998 and Non-Banking Financial (Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2007 and other applicable Directions.

The definition of the word "group" will be the same as per Accounting Standards. "Companies in the Group", shall mean an arrangement involving two or more entities related to each other through any of the following relationships:

- Subsidiary – parent (defined in terms of AS 21),
- Joint venture (defined in terms of AS 27),
- Associate (defined in terms of AS 23),
- Promoter - promotee [as provided in the SEBI (Acquisition of Shares and Takeover) Regulations, 1997],
- For listed companies, a related party (defined in terms of AS 18), common brand name, and investment in equity shares of 20% and above.

Prudential Norms

One of the main objectives of prudential regulation is to address systemic risks. The systemic risks posed by NBFCs functioning exclusively out of their own funds and NBFCs accessing public funds cannot be equated and hence cannot be subjected to the same level of regulation. Hence, as a principle, enhanced prudential regulations shall be made applicable to NBFCs wherever public funds are accepted and conduct of business regulations will be made applicable wherever customer interface is involved.

In conformity with the above principles, the regulatory approach in respect of NBFCs-ND with an asset size of less than Rs. 500 crore will be as under:

- They shall not be subjected to any regulation either prudential or conduct of business regulations viz., Fair Practices Code (FPC), KYC, etc., if they have not accessed any public funds and do not have a customer interface.
- Those having customer interface will be subjected only to conduct of business regulations including FPC, KYC etc., if they are not accessing public funds.
- Those accepting public funds will be subjected to limited prudential regulations but not conduct of business regulations if they have no customer interface.
- Where both public funds are accepted and customer interface exist, such companies will be subjected both to limited prudential

regulations and conduct of business regulations.
• Irrespective of whichever category the NBFC falls in, registration under Section 45 IA of the RBI Act will be mandatory.
• All of the above will also be subjected to a simplified reporting system which shall be communicated separately.
All NBFCs-ND with assets of Rs. 500 crore and above, irrespective of whether they have accessed public funds or not, shall comply with prudential regulations as applicable to NBFCs-ND-SI. They shall also comply with conduct of business regulations if customer interface exists.

Prudential Regulations Applicable to NBFCs-ND with Assets less than Rs. 500 crore

Consequent to the redefining of 'systemic significance' the NBFCs-ND with asset size of less than Rs. 500 crore, are exempted from the requirement of maintaining CRAR and complying with Credit Concentration Norms.

A leverage ratio of 7 is being introduced for all such NBFCs-ND to link their asset growth with the capital they hold. For this purpose, leverage ratio is defined as Total Outside Liabilities / Owned Funds.

Prudential Regulations Applicable to NBFCs-ND-SI (asset of Rs. 500 crore and above) and all NBFCs-D

Tier 1 Capital

At present, all NBFCs-D and NBFCs-ND with asset size of Rs.100 crore and above are required to have minimum CRAR of 15%. Consequently, Tier 1 capital cannot be less than 7.5%. For Infrastructure Finance Companies (IFCs), however, Tier 1 capital cannot be less than 10%. Similarly, NBFCs primarily engaged in lending against gold jewellery have to maintain a minimum Tier 1 capital of 12% w.e.f. April 01, 2014.

Given the business activities of NBFCs, being generally 'niche' in nature, concentration risk associated with such businesses, and on account of the re-definition of systemic importance, all NBFCs-ND which have an asset size of Rs. 500 crore and above, and all NBFCs-D, shall maintain minimum Tier 1 Capital of 10%. The compliance to the revised Tier 1 capital will be phased in as follows:
• 8.5% by end of March 2016.
• 10% by end of March 2017.

Asset Classification

At present, an asset is classified as Non-Performing Asset when it has remained overdue for a period of six months or more for loans; and overdue for twelve months or more in case of lease rental and hire purchase installments, as compared to 90 days for banks. In the interest of harmonization, the asset classification norms for NBFCs-ND-SI and NBFCs-D are being brought in line with that of banks, in a phased manner, as given below.

Lease Rental and Hire-Purchase Assets shall become NPA:
• if they become overdue for 9 months (currently 12 months) for the financial year ending March 31, 2016;
• if overdue for 6 months for the financial year ending March 31, 2017; and
• if overdue for 3 months for the financial year ending March 31, 2018 and thereafter.

Assets other than Lease Rental and Hire-Purchase Assets shall become NPA:
• if they become overdue for 5 months for the financial year ending March 31, 2016;
• if overdue for 4 months for the financial year ending March 31, 2017; and
• if overdue for 3 months for the financial year ending March 31, 2018 and thereafter.

For all loan and hire-purchase and lease assets, sub-standard asset would mean:
• an asset that has been classified as NPA for a period not exceeding 16 months (currently 18 months) for the financial year ending March 31, 2016;
• an asset that has been classified as NPA for a period not exceeding 14 months for the financial year ending March 31, 2017; and
• an asset that has been classified as NPA for a period not exceeding 12 months for the financial year ending March 31, 2018 and thereafter.

For all loan and hire-purchase and lease assets, doubtful asset would mean:
• an asset that has remained sub-standard for a period exceeding 16 months (currently 18 months) for the financial year ending March 31, 2016;
• an asset that has remained sub-standard for a period exceeding 14 months for the financial year ending March 31, 2017; and
• an asset that has remained sub-standard for a period exceeding 12 months for the financial year ending March 31, 2018 and thereafter.
For the existing loans, a one-time adjustment of the repayment schedule, which shall not amount to restructuring will, however, be permitted.

Provisioning for Standard Assets

At present, every NBFC is required to make a provision for standard assets at 0.25% of the outstanding. On a review of the same, the provision for standard assets for NBFCs-ND-SI and for all NBFCs-D, is being increased to 0.40%. The compliance to the revised norm will be phased in as given below:
• 0.30% by the end of March 2016
• 0.35% by the end of March 2017
• 0.40% by the end of March 2018

Credit / Investment Concentration Norms for AFCs

As a step towards meeting the broad objective of harmonizing reg-

ulations to the extent possible within the NBFC sector, the credit concentration norms for AFCs are now being brought in line with other NBFCs. This will be applicable with immediate effect for all new loans excluding those already sanctioned. All existing excess exposures would be allowed to run off till maturity.

Corporate Governance and Disclosure norms for NBFCs

The need for adoption of good corporate governance practices continues to engage the regulator and stakeholder attention. In this connection, in continuation of previous circulars DNBS(PD) CC. No.61/02.82/2005-06 dated December 12, 2005, DNBS(PD) CC. No.94/03.10.042/2006-07 dated May 8, 2007 and DNBS(PD) CC. No.104/03.10.042/2007-08 dated July 11, 2007 on Corporate Governance, certain amendments to the Corporate Governance guidelines are made as given below.

In terms of the above mentioned circulars, NBFCs-D with deposits of Rs. 20 crore and above, and NBFCs-ND with asset size of Rs. 50 crore and above are required to constitute an Audit Committee; NBFCs-D with deposits of Rs. 20 crore and above, and NBFCs-ND with assets of Rs. 100 crore and above are advised to consider constituting Nomination Committee to ensure 'fit and proper' status of proposed/ existing Directors and Risk Management Committee. Further, NBFCs-D with deposits of Rs. 50 crore and above were advised that it was desirable that they stipulate rotation of partners of audit firms appointed for auditing the company every three years.

Board Committees

As part of harmonization, the constitution of the three Committees of the Board and instructions with regard to rotation of partners have now been made applicable to all NBFCs-ND-SI, as also all NBFCs-D. Other NBFCs are encouraged to observe such practices, if already being followed.

In addition, the Audit Committee of all NBFCs-ND-SI, as also all NBFCs-D must ensure that an Information Systems Audit of the internal systems and processes is conducted at least once in two years to assess operational risks faced by the company.

Disclosures in Financial Statements – Notes to Account

A reference is invited to DNBS.(PD)C.C.No.25/ 02.02/ 2002-03 March 29, 2003 and DNBS(PD).CC.No.125/ 03.05.002/ 2008-2009 August 1, 2008 under which NBFCs with assets of Rs. 100 crore and above were required to make additional disclosures in their balance sheets from the year ending March 31, 2009 relating to CRAR, exposure to real estate sector (both direct and indirect), and maturity pattern of assets and liabilities respectively. The above disclosures are now applicable for NBFCs-ND-SI (as redefined) and for all NBFCs-D. However, other NBFCs already disclosing the above are encouraged to continue to do so, in line with prudent practice.

The extant disclosures are however far from comprehensive. There is need for greater transparency to provide enhanced information to the market and retain stakeholder confidence. It has hence been decided that in addition to the above disclosures, all NBFCs-ND-SI (as redefined), as also all NBFCs-D shall additionally disclose the following in their Annual Financial Statements, with effect from March 31, 2015:

- Registration/ licence/ authorization obtained from other financial sector regulators;
- Ratings assigned by credit rating agencies and migration of ratings during the year;
- Penalties, if any, levied by any regulator;

Off-Site Reporting

In view of the revised regulations, NBFCs-ND, with assets less than Rs. 500 crore, including investment companies, shall henceforth be required to submit only a simplified Annual Return, the details of which shall be separately communicated. Till such time, they may continue to submit the existing Returns. NBFCs-ND-SI (as redefined), as also NBFCs-D, shall continue to submit the existing Returns.

Exemptions

In the circular dated March 21, 2014 on Early Recognition of Financial Distress, Prompt Steps for Resolution and Fair Recovery for Lenders: Framework for Revitalizing Distressed Assets in the Economy, 'Notified NBFCs' in the circular shall henceforth be defined as a) NBFCs with assets of Rs. 100 crore and above, b) NBFCs-D, and c) all NBFC-Factors.

The revisions brought through this circular shall be applicable to NBFCs-MFI also except wherever in conflict with the provision of Non-Banking Financial Company- Micro Finance Institutions (Reserve Bank) Directions, 2011, in which case the Directions ibid will be followed.

The minimum Tier 1 capital requirement for NBFCs primarily engaged in lending against gold jewellery remains unchanged for the present. This shall be reviewed for harmonization in due course.

➲ Designated Director – Amendment to Section 13(2) of Prevention of Money Laundering Act (PMLA)

As per *Notification No. RBI/2014-15/296 [DCBR.CO.BPD. (PCB). No 1/14.01.062/2014-15], dated: Nov 05, 2014* it is clarified that UCBs can also designate a person who holds the position of senior management or equivalent as a 'Designated Director'. However, in no case, the Principal Officer should be nominated as the 'Designated Director'.

➲ Levy of penal charges on non-maintenance of minimum balances in savings bank accounts

As per the recommendation of Damodaran Committee, it has been decided that while levying charges for non-maintenance of minimum balance in savings bank account, banks shall adhere to

the following guidelines. These guidelines will come into effect from April 1, 2015.

(i) In the event of a default in maintenance of minimum balance/ average minimum balance as agreed to between the bank and customer, the bank should notify the customer clearly by SMS/ email/ letter etc. that in the event of the minimum balance not being restored in the account within a month from the date of notice, penal charges will be applicable.

(ii) In case the minimum balance is not restored within a reasonable period, which shall not be less than one month from the date of notice of shortfall, penal charges may be recovered under intimation to the account holder.

(iii) The policy on penal charges to be so levied may be decided with the approval of Board of the bank.

(iv) The penal charges should be directly proportionate to the extent of shortfall observed. In other words, the charges should be a fixed percentage levied on the amount of difference between the actual balance maintained and the minimum balance as agreed upon at the time of opening of account. A suitable slab structure for recovery of charges may be finalized.

(v) It should be ensured that such penal charges are reasonable and not out of line with the average cost of providing the services.

(vi) It should be ensured that the balance in the savings account does not turn into negative balance solely on account of levy of charges for non-maintenance of minimum balance.

Source: RBI/2014-15/308 (DBR.Dir.BC.No.47/13.03.00/2014-15) dated: November 20, 2014

➲ External Commercial Borrowings (ECB) Policy – Parking of ECB proceeds

At present, eligible ECB borrowers are required to bring ECB proceeds, meant for Rupee expenditure in India for permitted end uses, such as, local sourcing of capital goods, on-lending to Self-Help Groups or for micro credit, payment for spectrum allocation, etc., immediately for credit to their Rupee accounts with AD Category - I banks in India.

With a view to providing greater flexibility to the ECB borrowers in structuring draw down of ECB proceeds and utilization of the same for permitted end uses, it has been decided to permit AD Category -I banks to allow eligible ECB borrowers to park ECB proceeds (both under the automatic and approval routes) in term deposits with AD Category- I banks in India for a maximum period of six months pending utilization for permitted end uses. The facility will be with the following conditions:

The applicable guidelines on eligible borrower, recognized lender, average maturity period, all-in-cost, permitted end uses, etc. should be complied with.

No charge in any form should be created on such term deposits i.e. to say that the term deposits should be kept unencumbered during their currency.

Circular No. 39 (RBI/2014-15/309) dated: November 21, 2014

➲ Export of Goods / Software / Services – Period of Realization and Repatriation of Export Proceeds – For exporters including Units in SEZs, Status Holder Exporters, EOUs, Units in EHTPs, STPs and BTPs

Attention of Authorized Dealer Category-I (AD Category-I) banks is invited to A.P. (DIR Series) Circular No. 52 dated November 20, 2012 extending the enhanced period for realization and repatriation to India, of the amount representing the full value of exports, from six months to twelve months from the date of export. This relaxation was available up to March 31, 2013. Thereafter, in terms of A.P. (DIR Series) Circular No. 105 dated May 20, 2013, this period was brought down from twelve months to nine months from the date of export, valid till September 30, 2013. Further, in terms of A.P. (DIR Series) Circular No. 35 dated April 01, 2002, A.P. (DIR Series) Circular No. 25 dated November 01, 2004 and A.P. (DIR Series) Circular No. 108 dated June 11, 2013, the Units located in SEZs, Status Holder Exporters, EOUs, Units in EHTPs, STPs & BTPs shall realize and repatriate full value of goods/software/services, to India within a period of twelve months from the date of export.

2. The issue has since been reviewed and it has been decided, in consultation with the Government of India, that henceforth the period of realization and repatriation of export proceeds shall be nine months from the date of export for all exporters including Units in SEZs, Status Holder Exporters, EOUs, Units in EHTPs, STPs & BTPs until further notice.

3. The provisions in regard to period of realization and repatriation to India of the full exports made to warehouses established outside India remain unchanged.

Source: Circular No. 37 (RBI/2014-15/306), dated: November 20, 2014

➲ Review of the Non-Banking Financial Company – Factors (Reserve Bank) Directions, 2012

Please refer to DNBS (PD) CC. No. 297/Factor/22.10.91/ 2012-13, dated July 23, 2012 in terms of which an NBFC-Factor shall ensure that its financial assets in the factoring business constitute at least 75 per cent of its total assets and its income derived from factoring business is not less than 75 per cent of its gross income. Taking into consideration the representation received from the industry and also to encourage the factoring sector in India, it has been decided that an NBFC for registering as NBFC-Factor shall ensure that its financial assets in the factoring business constitute at least 50 per cent of its total assets and its income derived from factoring business is not less than 50 per cent of its gross income.

Source: RBI/2014-15/300 [DNBR (PD) CC.No. 003/22.10.91/2014-15], dated: November 10, 2014

INCOME TAX

Notifications/Circulars

➲ Deduction under Section 80C

The allowable deduction under Section 80C of the ITA 1961 in re-

spect of Bank Term Deposit increased to Rs 1.50 lacs vide CBDT Notification No.63/2014 dated 13th Nov, 2014.

➲ Section 245N(b)(iia) of the Income-tax Act, 1961 – Tax Liability of a resident applicant determined by authority for advance rulings – Specified resident

In exercise of the powers conferred by sub-clause (iia) of clause (b) of section 245N of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby specifies a resident, in relation to his tax liability arising out of one or more transactions valuing rupees one hundred crore or more in total which has been undertaken or proposed to be undertaken, being such class of persons, as applicant for the purposes of Chapter XIX-B of the said Act vide Notification No.73/2014/ F. No. 142/6/2014-TPL dated: 28th November, 2014.

➲ Order under Section 119 of the Income-tax Act, 1961

Considering the devastation due to floods in the State of Jammu & Kashmir, the Central Board of Direct Taxes, in exercise of powers conferred under section 119 of the Income-tax Act, 1961 ('Act') and in continuation to the earlier order under section 119 of the Act dated 16.09.2014, hereby further extends the 'due date' of furnishing return of income from 30th November,2014 to 31st March, 2015, in cases of Income-tax assesses in the State of Jammu & Kashmir which are covered under clause (a) or clause (aa) of Explanation 2 to sub-section (1) of section 139 of the Act.

The 'due date' for obtaining and furnishing reports of audit for the assesses in the State of Jammu and Kashmir under various provisions of the Act pertaining to such returns of income is also extended to 31st March,2015.

Source: F.No. 225/268/2014/ITA.II dated: 28th of November, 2014

➲ Clarification in respect of Circular No.3 of 2008 dated 12/3/2008 of CBDT

Chapter XIX-A of the Income-tax Act, 1961 contains provisions relating to settlement of cases by the Income-tax Settlement Commission (ITSC). The provisions contained in the said chapter were amended by Finance Act, 2007 and a Revised Settlement Scheme was put in place. Explanatory Circular No. 3/2008 dated 12.03.2008 issued by CBDT vide para 61 (comprising sub paras 61.1 to 61.17) deals with Revised Settlement Scheme.

Para 61.2 of Circular No.3 of 2008 reads:-

"61.2 under the existing provisions, an assessee may make an application to the Commission at any stage of the proceedings in his case pending before any Income-tax Authorities. After 31st May, 2007, an assessee can make an application to the Commission only during the pendency of the proceedings before the Assessing Officer. It is further clarified that (a) since intimation under section 143(1) is not an assessment order, there will be no bar in filing an application for settlement subsequent to receipt of an intimation under section 143(1). It is not material whether time-limit for issue of notice under section 143(2) has expired or not; (b) the assessment shall be deemed to have been completed only on the date of service of assessment order to the applicant".

It has been inadvertently stated in para 61.2 of Circular No.3 of 2008 that the assessment shall be deemed to have been completed only on the date of service of assessment order to the applicant. This statement is not in consonance with the provisions contained in Explanation to clause (b) of section 245A of the Income-tax Act which, inter alia, provides that a proceeding for assessment of any assessment year shall be deemed to have concluded on the date on which the assessment is made.

In view of the above, para 61.2 of Circular No.3 of 2008 is replaced with the following with effect from the 1st day of June, 2007:-

"61.2 Under the existing provisions, an assessee may make an application to the Commission at any stage of the proceedings in his case pending before any Income-tax Authorities. After 31st May, 2007, an assessee can make an application to the Commission only during the pendency of the proceedings before the Assessing Officer. It is further clarified that (a) since intimation under section 143(1) is not an assessment order, there will be no bar in filing an application for settlement subsequent to receipt of an intimation under section 143(1). It is not material whether time-limit for issue of notice under section 143(2) has expired or not; (b) the assessment shall be deemed to have been completed on the date on which the assessment order is passed."

Source: Circular No. 16/2014 dated: November 17, 2014

Case Laws

➲ **Entitlement for deduction u/s 80IB – Assessee not the owner of property – Built up area of flats less than 1500 sq. ft. – Held that:-** Following the decision in The Commissioner of Income Tax Business Ward XV(3), Chennai. Versus M/s. Sanghvi and Doshi Enterprise [2012 (12) TMI 84 - MADRAS HIGH COURT] - for the purpose of considering the deduction, it is not necessary that the assessee, engaged in developing and construction of housing project, should be the owner of the property - when the local authority, being part of Chennai Metropolitan Development Authority and also the approving authority, thus having certified about the completion, there was no justifiable ground to invoke Explanation (2) to sub-section (10) of Section 80IB of the Income Tax Act for the purpose of negativing the claim - the Explanation cannot have a control on the substantive provision – thus, the assessee is entitled to deduction in respect of the built up area exceeding 1500 sq. ft. on a proportionate basis – thus, the order of the Tribunal is upheld – Decided against revenue.

Source: The Commissioner of Income Tax Versus Smt. Jagadeeswari [2014 (11) TMI 610 - MADRAS HIGH COURT]

➲ **Allowability of deduction on interest income u/s 80P(2)(a)(i) - Whether the Tribunal was right in law in allowing deduction u/s 80(P)(2)(a)(i) on interest income as being attributable to the business of banking – Held that:-** In Commissioner of Income-Tax Versus Baroda Peoples Co-operative Bank Ltd. [2005 (7) TMI 33 - GUJARAT High Court] it has been held that as per the Scheme of the Income Tax Act net income relatable to a particular head or item has to go in as a component of the gross total income before any deduction under Chapter VIA is allowed – u/s 80P(2)(a)(i) of the Act the two activities, viz., business of banking or providing credit facilities to its members, are distinct and separate activities; the former connotes a larger activity than the activity of providing credit facilities to its members - the Tribunal was right in allowing deductions u/s 80P(2)(a)(i) of the Act on interest income as being attributable to the business of banking – decided against revenue.
Source: CIT. -GANDHINAGAR Versus MEHSANA JILLA SAHAKARI KHARID VECHAN SANGH LTD. [2014 (11) TMI 609 - GUJARAT HIGH COURT]

➲ **Levy of penalty u/s 271(1)(c) - Whether on the facts and in the circumstances of the case and in light of documentary evidence on record and explanation of the assessee the Tribunal was justified in law in confirming the levy of penalty u/s. 271(1)(c) – Held that:-** The Tribunal erred in coming to the conclusion that penalty u/s 271 of the Act was rightly imposed upon the assessee – in New Sorathia Engineering Co. Versus Commissioner of Income-Tax [2006 (1) TMI 71 - GUJARAT High Court] it has been held that the penalty order and the order of CIT(A) show that no clear cut finding has been reached - The Tribunal has failed to appreciate the legal issue - the order of penalty cannot be sustained and the Tribunal could not have sustained the same - The Tribunal having failed to take into consideration and deal with the decision of the jurisdictional High Court it would constitute an error in law which goes to the very basis of the controversy involved - even on the assumption that the initial onus lies on the asseessee, the assessee sufficiently discharged its burden by placing explanation and evidence from time to time - no inquiry was made in case of lenders - the Tribunal committed an error in imposing penalty u/s 271(1)(c) of the Act – thus, the order of the Tribunal is upheld – Decided in favour of assessee.
Source: MITSU INDUSTRIES LTD. Versus DY. CIT [2014 (11) TMI 608 - GUJARAT HIGH COURT]

➲ **Validity of assessment u/s 114 r.w section 158BD – revision order u/s 263 – evidences produced for claiming 50% of commission expenses or not – Held that:-** Assessees are individuals engaged in the business of financing and commission agency with Sree Gokulam Chits and Finance Company Limited - the proceedings initiated u/s 158BD of the Act by issuance of notice to the assessees was beyond the period of two years of completion of assessment u/s 158BC of the Act in the case of Sree Gokulam Chits and Finance Company Limited - Revenue contended that there is no time limit prescribed in the statute for completion of block assessment in respect of persons other than the person on whom search was made and, therefore, the notices issued u/s 158BD of the Act by the AO are valid - where limitation is not prescribed, action must be taken within reasonable period.

The reasonable period would depend upon the facts of each case and it would be open to the assessee to contend that it is bad on the ground of delay - block assessment in respect of the Sree Gokulam Chits and Finance Company Limited was proceeded under Section 158BC of the Act - It is only on the basis of the block assessment of the person with respect to whom search was made under Section 132 of the Act, proceedings under Section 158BD of the Act in respect of any other person can be initiated - the provisions of Sections 158BD and 158BC are intertwined - the jurisdiction to issue notice u/s 158BD of the Act to any person, other than the person with respect to whom search was made, and the consequent time limit prescribed under Section 158BE of the Act in respect of third parties, would certainly be included within the two years period given to the AO for completion of block assessment under section 158BE(1) of the Act - When such an inference can be drawn from a bare reading of the provisions which are explicit, it does not lie in the mouth of the Revenue to state that there is no time limit prescribed in the statute for initiation of proceedings under Section 158BD of the Act – in Commissioner of Income Tax v. Umesh Chandra Gupta [2014 (2) TMI 521 - DELHI HIGH COURT] also the same has been held – as such no substantial question of law arises for consideration – Decided against revenue.
Source: Commissioner of Income Tax, Central-I Versus VD. Muralidharan, K. Venugopal, VP. Ullas [2014 (11) TMI 607 - MADRAS HIGH COURT]

➲ **Effect of amendment u/s 55(2) – treatment of amount included in total income on goodwill received on retirement – capital gains tax or not – Held that:-** The AO found that the assessee was entitled to receive an amount of ₹ 67,50,000/- from M/s. Jyoti Estate out of which the assessee had already received ₹ 28,00,000/- on 24.6.1989 and the balance was to be paid to him by 24.2.1990 - the assessee also contended that the amount received from the two firms was capital receipts which was exempt from income-tax - The Tribunal rightly considered CIT VS. MOHANBHAI PAMABHAI [1971 (9) TMI 56 - GUJARAT High Court] wherein it has been held that the interest of a partner in a partnership is not interest in any specific item of the partnership property - It is a right to obtain his share of profits from time to time during the subsistence of the partnership and on dissolution of the partnership or on his retirement from the partnership to get the value of his share in the net partnership assets which remain after satisfying the debts and liabilities of the partnership.

When a partner retires from a partnership and the amount of his share in the net partnership assets after deduction of liabilities and

prior charges is determined on taking accounts on the footing of notional sale of the partnership assets and given to him, what he receives is his share in the partnership and not any consideration for transfer of his interest in the partnership to the continuing partners - His share in the partnership is worked out by taking accounts in the manner prescribed by the relevant provisions of the partnership law and it is this, namely, his share in the partnership which he receives in terms of money - There is in this transaction no element of transfer of interest in the partnership assets by the retiring partner to the continuing partners – the order of the Tribunal is upheld – Decided against revenue.

Source: DY. CIT. (ASSTT.). Versus MOHMED YUSUF ISMAIL TADHA [2014 (11) TMI 606 - GUJARAT HIGH COURT]

➲ **Re-computation of deduction u/s 10A – Insurance and commission expenses - Whether CIT(A) was correct on facts and circumstances of the case and in law in deleting the reduction in respect of Insurance & Commission expenses and on account of expenses incurred in foreign currency, both from the 'export turnover', for the purpose of recomputing the deduction u/s 10A – Held that:-** The assessee had not incurred various expenses in foreign exchange for providing Technical services outside India - when the expenses were not included in export turnover, there was no question of exclusion of the same from the export turnover - the communication expenses were related to domestic usage and there was no nexus with export of services.

Explanation 2(iv) to sec. 10A of the Act provides that freight, telecommunication charges or insurance attributable to the delivery of the articles or things or computer software outside India or expenses, if any, incurred in foreign exchange in providing the Technical services outside India not to be included in export turnover – in CIT Vs Gem Plus Jewellery India Ltd. [2010 (6) TMI 65 - BOMBAY HIGH COURT] the same has been decided - since export turnover has been defined by Parliament and there is a specific exclusion of freight and insurance, the expression "export turnover" cannot have a different meaning when it forms a constituent part of the total turnover for the purposes of the application of the formula - A construction of a statutory provision which would lead to an absurdity must be avoided. Moreover, a receipt such as freight and insurance which does not have any element of profit cannot be included in the total turnover - Freight and insurance do not have an element of turnover – the order of the CIT(A) is upheld – Decided against revenue.

Source: DCIT, Circle 12(1), New Delhi Versus Granada Services Pvt. Ltd [2014 (11) TMI 604 - ITAT DELHI]

➲ **Proceedings u/s 153C – Held that:-** Assessment order u/s 143(3) of the Act was passed on 31.03.2006 by making various disallowances and additions - the AO framed the assessment order u/s 153C/143(3) of the Act despite the fact that no incriminating material was found during the course of search - This aspect is evident by the fact that the AO framed the impugned assessment order u/s 153C/143(3) of the Act by taking the total income arrived at in the original assessment order u/s 143(3)/154 of the Act dated 02.08.2006 which included various disallowance and additions - order u/s 143(3) of the Act has been passed earlier and the issue was further adjudicated before the higher authorities and accordingly the assessment for assessment year under dispute was not pending on the date of initiation of action u/s 153C of the Act - the hand over of the materials which belonged to the assessee was taken much later after passing of assessment order us 143(3) of the Act.

Where none of the assessments were pending on the date of search the AO is precluded from re-agitating issues u/s 153C of the Act which have attained finality in original assessment dehorse any incriminating material found during the course of search - the only action left for the AO in that respect as no addition was conceived on incriminating materials is to drop the proceedings - under the provision of Act only the proceedings which is pending shall get abated - any proceedings that has reached its finality shall not be disturbed unless there are materials found, indicating existence of income embedded in incriminating documents - No incriminating material has been proved to have been found in the course of search which belonged to the assessee warranting the re-assessment u/s 153C of the Act for the AY.

The person who is searched u/s 153A of the Act can be assessed only on the basis of incriminating material found and the other person who is assessed u/s 153C of the Act in connection with the same search should be assessed de hors any incriminating material - the provision of section 153C(1) was amended to obviate practical difficulties which arose in its interpretation - To put it simply this amendment to proviso to section 153C(1) of the Act debars the AO from making any assessment dehorse any incriminating material found during the search - assessment in the AYs have been completed u/s 143(3) of the Act - the assessment for the concerned assessment year does not abate - assessment u/s 153C of the Act in these cases dehorse any incriminating material is not sustainable –thus, the order is set aside – decided in favour of assessee.

Source: Trishul Hi-Tech Industries, Kolkata Versus DCIT., Central-XI, Kolkata [2014 (11) TMI 603 - ITAT KOLKATA]

➲ **Transfer pricing adjustment – Whether segmental information to be considered while computing margin of the assessee in its TP study – Held that:-** Segmental information provided must be taken and only the AE transactions ought to be considered, unless it was shown by the TPO/DRP that there were specific issues with the same – in M/s. Four Soft Ltd. Hyderabad Versus The Dy. Commissioner of Income-tax, Circle 1(3), Hyderabad [2011 (9) TMI 634 - ITAT HYDERABAD] it has been held that the lower authorities were not justified in not excluding profit or loss in respect of domestic transactions for determining the profit declared by the assessee in respect of AE transactions - They were not justified in adopting the profit level achieved by the assessee in respect of all

its transactions including domestic transactions as the profit level declared in respect of AE transactions - the assessee had furnished separately its working of the profit declared by it in respect of its AE transactions before the TPO as well as before the DRP - there is no legal requirement that the segment-wise working submitted before the TPO should be audited by the assessee's CA - In absence o

Source: Kenexa Technologies (P.) Ltd. Versus Deputy Commissioner of Income-tax, Circle -2(1), Hyderabad [2014 (11) TMI 587 - ITAT HYDERABAD]

SEBI

Notifications/Circulars

➲ Consolidated Account Statement (CAS) for all securities assets

Pursuant to the Interim Budget announcement in 2014 to create one record for all financial assets of every individual, SEBI had extensive deliberations with the Depositories, AMFI and RTAs of Mutual Funds (MF-RTAs) to implement it with respect to financial assets of securities market vide Circular - CIR/MRD/DP/31/2014 dated: November 12, 2014.

➲ Conditions for issuance of Offshore Derivative Instruments under SEBI (Foreign Portfolio Investor) Regulations, 2014

It has been decided to align the applicable eligibility and investment norms between Foreign Portfolio Investor (FPI) regime and subscription through the Offshore Derivative Instruments (ODI) route. Accordingly, it is clarified as under:

a. the applicant is resident of a country whose securities market regulator is a signatory to International Organization of Securities Commission's Multilateral Memorandum of Understanding (Appendix A Signatories) or a signatory to bilateral Memorandum of Understanding with the Board;

b. the applicant being a bank, is a resident of a country whose central bank is a member of Bank for International Settlements;

c. the applicant is not resident in a country identified in the public statement of Financial Action

An FPI shall issue ODIs only to those subscribers which do not have opaque structure(s), as defined under Explanation 1 of Regulation 32(1) (f) of SEBI (Foreign Portfolio Investors) Regulations, 2014. Regulation 21(7) of SEBI (Foreign Portfolio Investor) Regulations, 2014, lays down the investment restrictions which are applicable to FPIs. It is clarified that:

a. These investment restrictions shall apply to ODI subscribers also. For this purpose, two or more ODI subscribers having common Beneficial Owner (BO) shall be considered together as a single ODI subscriber, in the same manner as is being done in the case of FPIs.

b. Further, where an investor has investments as FPI and also holds positions as an ODI subscriber, these investment restrictions shall apply on the aggregate of FPI investments and ODI positions held in the underlying Indian Company. In other words, the investment as FPI and positions held as ODI subscriber will be clubbed together with reference to the said investment restrictions.

Source: Circular - CIR/IMD/FIIC/ 20 /2014 dated: November 24, 2014

CENTRAL EXCISE

Notifications/Circulars

➲ Clarification regarding availment of CENVAT credit after six months

The Central Board of Excise and Customs (CBEC), to address the concerns of industry, have issued Circular No. 990/14/2014-CX-8 dated: November 19, 2014 to clarify the issue of re-availment of CENVAT credit post expiry of six months from the date of invoice.

The CBEC has clarified that where the CENVAT credit has to be reversed in compliance with the provisions of the CENVAT credit rules in the following cases:

- Where the payment of value of input service and service tax payable is not made within three months of date of invoice, challan, etc. (refer third proviso to rule 4(7)),
- Where the value of any input or capital goods before being put to use on which CENVAT Credit has been taken, is written off or provisions are made in Books of accounts (refer rule 3(5B)),
- Where the inputs sent to job worker are not received back within 180 days (refer rule 4(5) (a)), the limitation period of six months from the date of invoice specified under rule 4(1) and rule 4(7) applicable for availment of credit would not apply at the time of taking re-credit of amount reversed, after having met the conditions prescribed in the relevant rules.

➲ Excisability of Odoriferous compound/agarbathi mix arising during the course of manufacture of agarbathi

Odoriferous Compound' is normally used in the manufacture of Agarbathis in a continuous manner. The formula of preparation of such compounds is kept a secret. Such odoriferous substances which are not capable of being bought and sold in the market in normal course of trade are not excisable products. It has been reported that some manufacturers of such odoriferous compounds have claimed non-excisability on the ground that such compounds are a trade secret, not sold in the market and hence not excisable. This is despite the fact that such compounds have shelf life and are capable of being marketed as a distinct identifiable commodity.

It may be noted that Section 2(d) of the Central Excise Act, 1944 has been amended in 2008 to insert a deeming fiction regarding marketability. Specific cases have been detected, where intermedi-

ate masala mix has been found to be actually bought and sold. It is therefore clarified that Board's Circular No. 495/61/1999-CX.3 dated 22.11.1999 is applicable only to such intermediate compound or odoriferous compounds as are not capable of being bought and sold. In cases where on the basis of evidence it is established that such intermediate compounds are capable of being marketed, the same will be excisable, irrespective of whether the compound is actually marketed or not vide *Circular No.:989/13/2014-CX.3 dated: 07.11.2014.*

➲ Exemption from excise duty goods required for the Intensified Malaria Control Project funded by GFATM vide 23/2014-CE, dt. 21-11-2014.

➲ Exemption from Central Excise duty leviable on bunker fuels, namely IFO 180 CST and IFO 380 CST falling under Chapter 27 of the Central Excise Tariff for use in Indian Flag vessels for carrying export-import (EXIM) containers and empties vide 21/2014-CE, dt. 11-11-2014.

Case Laws

➲ **Denial of registration - Whether the respondent is justified in passing the impugned order to clear the dues of the predecessor without affording an opportunity of hearing to the petitioner. - Whether the petitioner could be called upon to pay the dues liable to be paid by his lessees as a condition precedent to issue fresh registration certificate - Held that:-** registration stood in the name of three persons, who are the lessees and even according to the department, two of them are absconding and one of them who is the Managing Director, is unable to recover the dues. Therefore, they caught hold of the petitioner, when he applied for fresh registration certificate. Hence, the respondent has passed a non-speaking order without affording an opportunity of hearing to the petitioner, rejecting his claim. When the department having recognised those three as lessees, cannot claim the amount payable by them from the petitioner. If they are not recognised as lessees then the question is different.

From the records produced it is seen that the name of three persons, in whose name registration certificate has been granted and they have been described as lessees of the tea factory. Therefore, if an opportunity for personal hearing had been granted to the petitioner, he would have placed all the records including the decisions relied on stating that the liability left behind by lessees cannot be fastened on the petitioner, when he seeks for a fresh registration certificate in the capacity of owner of the factory. Since on the first ground itself this Court is convinced, that the petitioner has not been afforded with a reasonable opportunity, the petition is entitled to be allowed. In the light of the above, the second question need not be gone into since that would require examination of the facts and this should be done by the second respondent after issuing a show cause notice to the petitioner - Decided in favour of assessee.

Source: M/s. Armagal Tea Estates Company (P) Ltd. Versus The Assistant Commissioner of Central Excise [2014 (11) TMI 622 - MADRAS HIGH COURT - Central Excise]

➲ **Demand of interest - revenue neutrality - Exemption by virtue of the Notification No.67/95-CE dated 16 March 1995 - Levy of Additional Excise Duty - Held that:-** If the Assessee carries out bleaching, dyeing, printing and mercerizing of textile fabrics, which would invite levy of excise duty on each stage of manufacture, however, if the Assessee is also entitled to Modvat credit on duty paid at each stage, then something which is required to be paid or remitted at the final stage could be set off or there is a revenue neutrality. That approach is a permissible approach. If the component of interest is on the tax or duty demanded on the product and if that duty or tax is liable to be set off or adjusted against the credit available at the intermediate stage, then the demand itself was neutralised . Once it was so neutralised and in terms of the judgment of the Hon'ble Supreme Court [2008 (9) TMI 57 - SUPREME COURT], then, one cannot segregate or take out the interest component and call upon the Assessee to pay the sum demanded as interest. The approach of the Tribunal, therefore, in holding that there is a revenue neutrality cannot be termed as illegal or erroneous. The view taken is a possible and probable one. It is taken in the given facts and circumstances and peculiar to the Assessee. In such circumstances, the same cannot be termed as perverse or vitiated by any error of law apparent on the face of record enabling us to entertain this further Appeal. - Decided against assessee.
Source: The Commissioner of Central Excise, Pune-III Versus M/s. Siddheshwar Textile Mills Pvt. Ltd. [2014 (11) TMI 621 - BOMBAY HIGH COURT]

➲ **Imposition of penalty - Rule 26 of Central Excise Rules, 2002 - Clandestine removal of goods - Held that:-** Extensive role attributed to the present appellant as a Director to M/s. SAPL to M/s. Deora Wires (DWNMPL) as also an authorised signatory of SHEL, not only he had knowledge at every stage, while removing, keeping, selling, concealing the excisable goods and it would not have been possible without his active role and connivance with other buyers. The Commissioner (Appeals) has rightly levied penalty for his having contravened the statutory provision and the rules and the Tribunal was justified in confirming the same. Although, the discussion with regard to the confirmation of penalty is very brief that itself cannot deter us from upholding such findings of the Tribunal inasmuch as the Tribunal, while concurring with the reasonings of the Commissioner (Appeals) in imposing the penalty need not have elaborated his role and the provision of Rule 26. It also need not have any specific terms holding the person liable for penalty with both the adjudicating authorities below have discussed elaborately the role of appellant and the order of the Tribunal also attributes such clandestine removal and confirmation of demand of duty to the Director of SAPL against the company also the penalty has been

confirmed in way of confirmation of demand on duty. - Decided against assessee.
Source: SANJAY VIMALBHAI DEORA Versus CESTAT [2014 (11) TMI 620 - GUJARAT HIGH COURT]

➲ **Waiver of pre-deposit - validty of order of tribunal seeking pre-deposit of duty - principle of natural justice - Held that:-** No reason has been recorded by the appellate tribunal while deciding the application for waiver of pre-deposit/grant of stay and, therefore, the same has been in violation of principles of natural justice. In view of the law laid down by the Apex Court in the case of DCM Financial Services Ltd. v. J.N. Sareen & Anr., [2008 (5) TMI 613 - SUPREME COURT OF INDIA] and also to the fact that the decision cited by the learned counsel for the department has been considered by the Madras High Court and the question has been referred to the Larger Bench and the issue is pending before the Larger Bench, we are of the view that the writ petition filed by the petitioner is maintainable. It is true that deposit of money demanded by the respondents is a condition precedent as per Section 35F of the Act. However, the same can be waived or dispensed with only if deposit of the money is going to cause undue hardship to such a person and a prima facie case has been made out - Matter remanded back - Decided in favour of assessee.
Source: TANEJA IRON AND STEEL CO. LTD. Versus UNION OF INDIA [2014 (11) TMI 619 - MADHYA PRADESH HIGH COURT]

SERVICE TAX

Case Laws

➲ **Waiver of pre deposit - eligibility of credit taken on various services - classification of service has not been mentioned in the invoice/bill** - Held that:- Even though this is not an essential requirement, to decide the nexus and the eligibility, the requirement as to under which service the service received is classifiable and how it is an input service for the appellant will have to be considered and for this purpose it would be necessary to see what was the classification under which tax was paid by service provider. Since for substantial amount, the matter is required to be remanded and a substantial portion has been accepted and not disputed, we consider it appropriate that the requirement of pre-deposit has to be waived and the matter is remanded at this stage itself for fresh adjudication - stay granted - matter remanded back.
Source: Shivanssh Infrastructure Development Pvt Ltd. Versus Commissioner of Central Excise, Customs and Service Tax HYDERABAD-I (2014 (11) TMI 631 - CESTAT BANGALORE - Service Tax)

➲ **CENVAT credit - whether amount of services written of due to non receipt is amounting to exempted service** - Held that: - Service receivers did not pay the consideration and was written off. Tax was payable only on receipt of consideration during the relevant period and if a customer did not pay the consideration and the same is written off, the service tax would not be payable but the service as such cannot be considered as an exempted service. - Decided in favor of assessee.

Demand of service tax on the ground that assessee filed to produce the copy of challans - Held that: - The appellants did not have a copy of the challan, it may not be appropriate to demand the tax again. No doubt the challan copy should have been kept by the appellant for a period of five years and failure to do so would be violation of the provisions of law. But the demand for tax has to be in accordance with law and only when the tax has not been paid, the question of demanding the same would arise. Since ST-3 return was not available to be shown and it was not shown before the original authority also and demand has been confirmed only on the ground that appellant could not produce proof in the form of challan, we consider it appropriate that the matter should be remanded for verifying the payment particulars and confirmation that amount has not been paid. - Matter remanded back - Decided in favour of assessee.
Source: Aegis Ltd. versus Commissioner of Central Excise, Customs and Service Tax HYDERABAD-III [2014 (11) TMI 627 - CESTAT BANGALORE - Service Tax]

➲ **Waiver of service tax, interest and penalty - ineligible cenvat credit - advertisement service and broadcasting services** - Held that: - Appellant has availed input service credit on broadcasting services for advertising their products in the media through their advertising agencies. The advertising agency raised two sets of invoices, one for the services rendered by the agency for development of design and content and another is billed for the reimbursements of the broadcasting charges. I find that the copy of the invoice dt. 15.10.2009 raised by Zee News Ltd. is in the name of Jyothy Laboratories Ltd. and the agency name is mentioned as Lintas Media Group, Mumbai. Following decision of IOCL [2014 (11) TMI 659 - CESTAT MUMBAI] - appellant has prima facie made out a case for waiver of predeposit. Accordingly, the predeposit of amount of tax, interest and penalty is waived and its recovery is stayed till disposal of the appeal - Stay granted.
Source: Jyothy Laboratories versus Commissioner of Central Excise Puducherry [2014 (11) TMI 673 - CESTAT BANGALORE - Service Tax]

➲ **CENVAT Credit- input services - Advertisement and broadcasting agency service - assessee born the incidence of service tax or not** - Held that:- Broadcasting of advertisement has been done on behalf of the appellant and the bills have also been raised on the appellant and the appellant has borne the incidence of Service Tax on the broadcasting service. Further, while passing the order dated 30.9.2013, the adjudicating authority has caused verification of the transactions undertaken by the appellant

in respect of broadcasting services and advertising agency services. After verifying that the appellant had availed both the services and has also borne the incidence of Service Tax, he came to the conclusion that the appellant is rightly eligible for the benefit of the CENVAT Credit of the Service Tax paid on broadcasting service. The same ratio shall apply for the previous period also. Therefore, we do not find any merit in the impugned order. Accordingly, we set aside the same - Decided in favour of assessee.

Source: M/s INDIAN OIL CORPORATION LTD versus COMMISSIONER OF CENTRAL EXCISE, MUMBAI - II [2014 (11) TMI 659 - CESTAT MUMBAI - Service Tax]

➲ **Penalties under Sections, 76, 77 and 78 - Issue of SCN u/s 73 - service tax liability along with interest is charged before the issue of show cause notice** - Held that: - From a perusal of Section 73(3) it is abundantly clear that once the assessee discharges the service tax liability along with interest thereon, either on his own account or on pointing out by the department, the proceedings abate and there is no need for issue of show cause notice. The explanation makes it abundantly clear that once the payments are made, no penalty can be imposed under the provisions of Chapter V of the Finance Act, 1994. The Board's circular relied upon by the appellants clarifies this position. In spite of the clear provision in law and clarification given by the Board in this regard, the appellate authority has completely ignored these provisions and chosen to proceed with imposition of penalties which is clearly unsustainable in law. Therefore, I set aside the penalties imposed on the appellants under Sections 76, 77 and 78 of the Finance Act, 1994 adjudicating authority directed to refund, within a period of one month from the date of receipt of this order, the amount of penalty pre-deposited by the appellants subsequent to passing of the impugned order - Decided in favour of assessee.

Source: SUNITA TOOLS PVT LTD. AND SUNITA DIE PARTS PVT LTD versus COMMISSIONER OF SERVICE TAX MUMBAI - II (2014 (11) TMI 625 - CESTAT MUMBAI - Service Tax)

CUSTOMS

Notifications/Circulars

➲ CBEC has announced the revised All Industry Rates (AIR) of Duty Drawback 2014-15 vide Notification No. 110/2014-Customs (NT) dated 17/11/2014 w.e.f 22/11/2014. For more information please visit http://www.cbec.gov.in/customs/cs-act/noetifications/notfns-2014/cs-nt2014/cs-notfns-nt14.htm

➲ Exemption from customs duty leviable on bunker fuels, namely IFO 180 CST and IFO 380 CST falling under Chapter 27 of the Customs Tariff for use in Indian Flag vessels for carrying export-import (EXIM) containers and empties vide 31/2014-Cus, dt. 11-11-2014.

➲ Exemption from customs duty goods required for the Intensified Malaria Control Project funded by GFATM. - 32/2014-Cus, dt. 21-11-2014.

➲ Amendment to Rule 7 of The Customs, Central Excise Duties and Service Tax Drawback Rules 1995 vide Notification No.109/2014-Cus (NT), dt. 17-11-2014. For more information please visit http://www.cbec.gov.in/customs/cs-act/notifications/notfns-2014/cs-nt2014/csnt109-2014.pdf

Case Laws

➲ **Waiver of pre-deposit - Penalties imposed under Section 114(i) and Section 114 AA - allegation that all these appellants were engaged in aiding/abetting diversion of Muriate of Potash which was imported at concessional duty for use as fertilizer or manufacture of composite fertilizer** - Held that:- Adjudicating authority in impugned order has recorded detailed findings as to the role played by each of the appellant. It is noticed that the role attributed to Shri Vijay Singh Gohil is in respect of procuring and providing the place for conversion of MOP into different packing and labelling thereof, providing logistic support for transportation of goods to the port. The adjudicating authority has attributed the role of signing the export document to the appellant Shri Chhaganlal Arun though being an employee of CHA has done so without proper authorization. As regards the role played by Shri Anupam Krishi, it is recorded that this appellant had knowingly sold MOP to individuals on invoices which were raised on individual farmers and authorised dealers. It is also recorded that M/s Ashoka Salt Refinery Industries had played a role of supplying and invoices for salt without any sale transactions which was utilised by the people for export of MOP under the guise of Feldspar Powder. role attributed to every appellant before us prima facie seems to be an activity which is performed for contravention of the provisions of Customs Act 1962. - Partial stay granted.

As regards the application for the waiver of pre-deposit of the amount penalty imposed on M/s Ashoka Salt Refinery Industries, we find from the records that the said appellant had only issued one invoice of sale of salt to Ashok Agarwal. This solitary act of the appellant could not mean that he has any role to play in the export of MOP as Feldspar Powder. We are of the view that this appellant has made out a case for the waiver of the pre-deposit of the amounts as penalties imposed by the adjudicating authority. This application for waiver of pre-deposit of the amount of penalty involved is allowed and recovery thereof stayed till the disposal of this appeal. - Stay granted.

Source: Shri Anupam Krishi, M/s Classic Freight Forwarders and M/s Ashoka Salt Refinery Industries Versus CC., Kandla [2014 (11) TMI 613 - CESTAT AHMEDABAD]

➲ **Valuation - Suppression of value of goods - Inclusion of separate charge for design, engineering fee - Confiscation of goods - Redemption fine and penalty** - Held that:- Appellants never concealed any fact from the Department and as soon as they were asked to furnish documents, they submitted all the documents such as contracts and detailed agreements, etc. when the documents were received, the department objected that design and engineering charges also should suffer duty and this was also paid by them with interest and it is the appellant s submission that appellant s did not even wait for all the clearances to take place even though the design and engineering charges were being paid in installments and not exactly lumpsum and when the duty was paid, the amount had not yet been paid in full to the supplier. advance amount received by the appellant was accepted as part of the consideration without any objection and without any hesitation and differential duty with interest was paid. Therefore, we find that in respect of advance amount received and duty paid, the imposition of penalty cannot be sustained. Accordingly, we set aside the penalty in respect of this alone.

When contract produced for supply of basic design and engineering, drawings and supervision of erection, etc., one is as much a part and condition of the contract as the other and addition of these charges to the assessable value is sustainable - no segregation of supervision cost, local material cost, local engineering cost have been made. At the same time, there is also no indication that the design and engineering cost does not include the basic design and engineering, cost of the equipment supplied. Prima facie, we do not find any merit.

In respect of design and engineering charges and technical supervision charges, we find that it is always a disputable item and requires interpretation of the agreement, application of valuation rules and unless there is evidence to show that such agreement was deliberately forged and was not part of the contract for supply of equipment or it was not declared at all and there was a considerable effort to hide the fact of payment of such charges, it may not be appropriate to impose penalty. In this case, from the second bill of entry, always the assessment was provisional and therefore on that ground also, it may not be appropriate to impose penalty. Therefore the penalty imposed on this basis is also set aside.

When we have limited the whole case to confirmation of demand for duty and interest thereon, and set aside the penalties on all the counts, it would not be appropriate to uphold the confiscation of the goods and imposition of fine in lieu of penalty. Therefore, the redemption fine also has to be set aside and is set aside. When there is no penalty on the main appellant, there cannot be penalty on the employee also. Therefore, the penalty imposed on the employee who is the second appellant before us is also set aside. - Decided in favour of assessee.

Source: M/s. Jai Balaji Industries Ltd. Versus Commissioner of Customs And Service Tax VIsakhapatnam-CUS [2014 (11) TMI 612 - CESTAT BANGALORE]

➲ **Confiscation of goods u/s 113 (d) - Redemption fine and penalty - Mis declaration of goods** - Held that:- In the guise of Basmati rice, attempt was made to export non Basmati rice adopting questionable modus operandi. Actually 13 containers were attempted to be cleared. Containers were stuffed in such way that front row contained Basmati rice and second row contained non-Basmati rice. Findings of the Commissioner relating to confiscation of the goods and imposition of redemption fine of ₹ 32.50 lakhs. In the facts and circumstance is justified when questionable modus operandi remained un-explained. Intentional misdeclaration does not deserve leniency. Therefore redemption fine imposed in adjudication remains un-intouched. Conduct of appellants show that they were consciously involved in the export of non basmati rice following dubious method to defraud the revenue. Therefore imposition of penalty on the exporter does not call for interference for which entire penalty is confirmed - Decided against assessee.

Source: M/s. Vaibhav Overseas Shri Gyan Chan, Partner Versus CCE. NOIDA [2014 (11) TMI 611 - CESTAT NEW DELHI - Customs]

FOREIGN TRADE

Notifications/Circulars

➲ Import Policy of Scheduled Chemicals

Import of chemicals listed at Category 1A, 1B & 1C of Appendix 3 (SCOMET list) to Schedule 2 of ITC (HS) Classification of Export and Import Items is subject to the condition that for each import consignment, the importer shall, within 30 days of imports, notify the details of import to Directorate General of Foreign Trade (DGFT), National Authority, Chemical Weapons Convention (NACWC) and Department of Chemicals and Petrochemicals.

Source: Notification No. 98 (RE – 2013)/2009-2014, dated: 19 November, 2014

➲ Policy for issue of import licenses of Rough Marble and Travertine Blocks for the financial year 2014-15

Import policy of Rough Marble and Travertine blocks for the year 2014-15 has been notified with a quota of 8 lakh MT and an MIP of US$ 325 per MT vide *Notification No. 99 (RE-2013)/2009-2014 dated: 20th November, 2014.*

➲ Parking of ECB proceeds

RBI has decided to permit AD Category -I banks to allow eligible ECB borrowers to park ECB proceeds (both under the automatic and approval routes) in term deposits with AD Category- I banks in India for a maximum period of six months pending utilization for permitted end uses subject to certain conditions for details refer to RBI/2014-15/309 A.P. (DIR Series) Circular No. 39 November 21, 2014.

www.icmai.in

THE INSTITUTE OF COST ACCOUNTANTS OF INDIA
(Statutory body under an Act of Parliament)

HEADQUARTERS
CMA Bhawan
12, Sudder Street, Kolkata 700 016
Tel: +91 33 2252 1031/1034/1035/1492/1602/1619/7373/7143
Fax: +91 33 2252 7993/1026/1723
E-mail: cma.ebulletin@icmai.in

DELHI OFFICE
CMA Bhawan
3, Institutional Area, Lodhi Road, New Delhi – 110 003
Tel: +91-11-24622156/57/58, 24618645
Fax: +91-11-43583642