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THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

(Statutory body under an Act of Parliament)

NOVEMBER 2014 | VOL. 2 | NO. 11

EDITORIAL

Moody's still holds negative outlook on India's banking system

INDIA is the "only major economy" that is projected to see a pick-up in growth momentum whereas mixed trends are predicted for the developed world, Paris-based think-tank OECD said recently.

Most of the major economies, developed and developing, including the United States, Brazil, China and Russia, are expected to witness stable growth momentum. The Organisation for Economic Co-operation and Development (OECD) said indicators point to weak growth in Europe.

The readings, for the month of September, are based on Composite Leading Indicators (CLI) that is designed to anticipate turning points in economic activity relative to trend.

Rating agency Moody's Investors Service Inc. continues to hold a negative outlook on India's banking system, fearing that high levels of corporate leverage will prevent any meaningful recovery in asset quality over the next 12-18 months. According to Moody's, poor asset quality and low capitalization will remain the primary concerns for Indian public sector banks, which is not expected to improve much in the next 18 months.

Moody's added that public sector banks have seen a sharper uptick in non-performing and restructured loans compared to private sector banks. This has led to greater weakening in profits, the rating agency said. Profitability of banks will remain under pressure as banks continue to set aside more provisions for their stressed loans. "This is particularly problematic for public-sector banks, which have lower pre-provision margins and greater asset quality problems," Moody's said in its report.

Any significant deleveraging would only take place when economic growth picks up. Moody's expects the Indian economy to grow at 5% in fiscal 2015 and 5.6% in fiscal 2016.

The Finance Minister said in a meeting, "I am quite clear in my mind that the cost of capital has to come down. Inflation has moderated, global fuel price has eased. Therefore, if RBI, which is a highly professional organisation, in its wisdom decides to bring down the cost of capital (it) will give a good fillip to the Indian economy."

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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Updated up to October31, 2014

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INDIAN ECONOMY

News

➲ Finance Minister Arun Jaitley favours interest rate cut - paper

Finance Minister Arun Jaitley favours a cut in interest rates to trigger demand in the construction sector, a newspaper report said, but the Reserve Bank of India (RBI) has signalled it will not ease policy until it is confident of lower inflation.

Source: Reuters, dated: 25 Oct 2014

➲ Reuters Poll - Asia economic growth to languish as China slows

BANGALORE - Emerging Asia will contribute less to the global economy in 2015 than was expected just months ago as a slowdown in China drags on growth in the region, partially offset by acceleration in the United States, Reuters polls showed.

Source: Reuters, dated: 25 Oct 2014

➲ State lenders eye sale of family silver to raise cash

MUMBAI - India's state-owned banks, weighed down by bad loans and lacklustre profits, could within months begin the sale of billions of dollars of unwanted assets to help raise cash needed to meet tougher regulation.

Source: Reuters, dated: 16 Oct 2014

➲ India seeing pick-up in growth, easing inflation: RBI chief

HYDERABAD India - Reserve Bank of India (RBI) Governor Raghuram Rajan said India is seeing a pick-up in economic growth although more could be done to support that on a sustainable basis, while noting inflation was also easing.

Source: Reuters, dated: 16 Oct 2014

➲ Factbox - Indian banks' constellation of non-core financial assets

REUTERS - India's state-run lenders, weighed down by bad loans and lacklustre profits, are set to sell out of stakes in a string of non-core assets to help raise billions needed to meet global capital regulatory requirements.

Source: Reuters, dated: 16 Oct 2014

State lenders eye sale of family silver to raise cash

MUMBAI - India's state-owned banks, weighed down by bad loans and lacklustre profits, could within months begin the sale of billions of dollars of unwanted assets to help raise cash needed to meet tougher regulation.

Source: Reuters, dated: 16 Oct 2014

➲ RBI chief Rajan says in talks with govt on monetary policy framework

HYDERABAD India - Reserve Bank of India (RBI) Governor Raghuram Rajan said on Thursday the central bank was in discussions with the government over the country's monetary policy framework, calling the relationship between the two sides "cordial."

Source: Reuters, dated: 16 Oct 2014

➲ India seeing pick-up in growth, easing inflation: RBI chief

HYDERABAD India - Reserve Bank of India (RBI) Governor Raghuram Rajan said India is seeing a pick-up in economic growth although more could be done to support that on a sustainable basis, while noting inflation was also easing.

Source: Reuters, dated: 16 Oct 2014

➲ India central bank starts to monitor growing trades by companies in debt markets

MUMBAI (Reuters) - Worried that a surge in trading in debt markets by companies could pose risks to financial market stability, India's central bank has ordered its supervision team to monitor their trades, sources with direct knowledge of the situation said.

The move is the strongest expression of concern yet from the Reserve Bank of India (RBI) about companies which are building large trading positions in debt and currency markets.

Such trading can be a lucrative extra source of profits for corporate treasurers in addition to revenue from firms' more traditional businesses. But it exposes the companies to greater price volatility and there is a regulatory gray area about who supervises trades by companies in those markets.

"There is a surveillance team which is looking into the deals between banks and corporates. It is easier to get data from the banking side since the Reserve Bank controls them. The team is on the job," said a policymaker directly aware of the developments.

The official declined to specify what specific risks the team was probing. All of the sources from both the central bank and commercial banks declined to be identified because the information has not been made public.

BANKING

Notifications/Circulars

➲ KYC – Clarification on Proof of Address

RBI has advised banks to ensure that customers are not unnecessarily asked to submit additional proofs of addresses for current addresses in cases where proofs of addresses for permanent addresses are already available. But many banks are still insisting on submission of a proof of address for the current address even when a customer produces a proof of permanent address, which prevents many prospective customers, especially migrant workers, from opening bank accounts. Thus RBI has requested RRBs and StCBs/

CCBs RRBs and StCBs/CCBs to confirm the instruction to the Regional Offices concerned latest by November 7, 2014, so that the above mentioned instruction has been communicated to all their branches and the same have been meticulously complied with.
Source: Notification No. RBI/2014-15/288 (RPCD.RRB.RCB.AML. No.4424/07.51.018/2014-15) dated: October 31, 2014

➲ Introduction of Liquidity Adjustment Facility (LAF) for Scheduled Urban Cooperative Banks

As part of the Reserve Bank's continuous engagement in broadening and deepening financial markets, it has been decided to allow access to the liquidity adjustment facility (LAF) to scheduled urban co-operative banks (UCBs) in order to provide them an additional avenue for liquidity management, provided they fully comply with the eligible criteria prescribed for participation in the LAF including having current accounts and SGL accounts with Reserve Bank, Mumbai, the minimum bid size prescription.

Now, in order to provide an additional avenue for liquidity management to Scheduled Urban Co-operative Banks (UCBs), RBI has decided that, with effect from November 28, 2014, Liquidity Adjustment Facility (LAF) will be extended to Scheduled UCBs which are CBS (Core Banking System) enabled, have Capital to Risk (Weighted) Assets Ratio (CRAR) of at least 9 per cent and are fully compliant with the eligibility criteria prescribed for LAF vide Notification No. RBI/2014-15/279 [UBD.BPD. (SCB).Cir.No.1/16.27.000/2014-15] dated: October 29, 2014.

The terms and conditions for availing LAF including minimum bid size prescription etc would be as per the instructions issued by Financial Markets Department (FMD) of the Reserve Bank of India from time to time.

➲ Gold Loan – Bullet Repayment – UCBs

Based on Circular UBD.PCB.Cir.No.22/13.05.000/07-08 dated November 26, 2007, Urban Cooperative Banks (UCBs) were permitted to grant gold loans up to Rs. 1.00 lakh with bullet repayment option.

Now, RBI has decided to increase the quantum of loan from Rs. 1.00 lakh to Rs. 2.00 lakhs vide Notification No. RBI/2014-15/283 [UBD.BPD. (PCB).Cir.No.25/13.05.001/2014-15] dated: October 30, 2014, subject to the following conditions:

- The period of the loan shall not exceed 12 months from the date of sanction.
- Interest will be charged to the account at monthly rests but will become due for payment along with principal only at the end of 12 months from the date of sanction.
- Banks should maintain a Loan to Value (LTV) ratio of 75 % on the outstanding amount of loan including the interest on an ongoing basis, failing which the loan will be treated as a Non performing Asset (NPA).
- The valuation of gold would be as per instructions contained in para 3 of the circular UBD.CO.BPD.PCB.Cir.No.60/13.05.001/2013-14 dated May 9, 2014.

➲ Financial Inclusion by Extension of Banking Services – Use of Business Correspondents

Taking into account the recommendations of the Mor Committee, the existing guidelines on appointment of Business Correspondents (BCs) have been reviewed as under:

i) Eligible individuals/entities

It has been decided that RRBs will be permitted to engage non-deposit taking NBFCs (NBFCs-ND) as Business Correspondents, subject to the following conditions:

a) It should be ensured that there is no comingling of bank funds and those of the NBFC-ND appointed as BC.

b) There should be a specific contractual arrangement between the RRB and the NBFC-ND to ensure that all possible conflicts of interest are adequately taken care of.

c) RRBs should ensure that the NBFC-ND does not adopt any restrictive practice such as offering savings or remittance functions only to its own customers and forced bundling of services offered by the NBFC-ND and the RRB does not take place.

d)RRBs may be guided by our circular RPCD.No.RRB. BC.25/03.05.34/98-99 dated September 15, 1998 on Financial Assistance to NBFCs – Surplus Non-SLR Funds.

ii) Distance criteria

In terms of circular DBOD No BL BC 43/22.01.009/2010-11 dated September 28, 2010, with a view to ensuring adequate supervision over the operations and activities of the retail outlet/sub-agent of BCs by banks, every retail outlet/sub-agent of BC is required to be attached to and be under the oversight of a specific bank branch designated as the base branch and the distance between the place of business of a retail outlet/sub-agent of BC and the base branch should ordinarily not exceed 30 kms in rural, semi-urban and urban areas and 5 kms in metropolitan centres. In case there is a need to relax the distance criterion, the District Consultative Committee (DCC)/State level Bankers Committee (SLBC) could consider and approve relaxation on merits in respect of under-banked areas etc. With a view to providing operational flexibility to RRBs and in view of the technological developments in the banking sector, it has been decided to remove the stipulation regarding distance criteria. The RRBs should, however, while formulating the Board approved policy for engaging BCs, keep in mind their notified area of operations and the objectives of adequate oversight of the BCs as well as provision of services to customers while deciding how to modify extant distance criteria.
Source: Notification No. RBI/2014-15/281 (RPCD.CO.RRB.BC.No. 38 /03.05.33/2014-15) dated: October 29, 2014

➲ Revisions to Basel II-Advanced Approaches of Operational Risk-TSA and AMA

Reserve Bank provide Guidelines on Basel II-Advanced Approaches of Operational Risk as contained in circulars dated March 31, 2010 on 'Implementation of The Standardized Approach (TSA) for

calculation of Capital Charge for Operational Risk' and circular dated April 27, 2011 on 'Implementation of the Advanced Measurement Approach (AMA) for calculation of Capital Charge for Operational Risk'.

On October 16, 2014, a comparison of the Reserve Bank guidelines on Operational Risk with the Basel Guidelines was taken by RBI recently based on which certain revisions/additions to the guidelines has been made vide Notification No. RBI/2014-15/265 (DBOD. No.BP.BC.43/21.06.017/2014-15) dated: Oct 16, 2014.

Please visit http://www.rbi.org.in Notifications for getting the revisions / changes in the guidelines.

➲ Review of norms for classification of Urban Co-operative Banks (UCBs) as Financially Sound and Well Managed (FSWM)

Based on Notification No. RBI/2014-15/261 [UBD.CO.LS (PCB) Cir.No.20/07.01.000/2014-15] dated: October 13, 2014, Urban Co-operative Banks would henceforth be termed as FSWM fulfilling the following criteria:

(a) CRAR of not less than 10 per cent;

(b) Gross NPA of less than 7 % and Net NPAs of not more than 3%

(c) Net profit for at least three out of the preceding four years subject to it not having incurred a net loss in the immediate preceding year.

(d) No default in the maintenance of CRR / SLR during the preceding financial year;

(e) Sound internal control system with at least two professional directors on the Board;

(f) Core Banking Solution (CBS) fully implemented; and,

(g) Regulatory Comfort

➲ Fourth Bi-monthly Monetary Policy Statement, 2014-15 – SLR Holdings under Held to Maturity Category

In terms of our circular RPCD.CO.RRB.BC.No.25/03.05.33/2014-15 dated August 7, 2014 on 'Monetary Policy Statement 2014-15 – SLR Holdings under Held to Maturity Category', with effect from August 9, 2014, RRBs were permitted to exceed the limit of 25 per cent of total investments under HTM category provided the excess comprised only SLR securities, and the total SLR securities held in the HTM category was not more than 24.00 per cent of their NDTL as on the last Friday of the second preceding fortnight.

In order to further develop the government securities market and enhance liquidity, it has been decided to bring down the ceiling on SLR securities under the HTM category from 24 per cent of NDTL to 22 per cent in a graduated manner. Accordingly, it is advised that: RRBs are permitted to exceed the limit of 25 per cent of total investments under HTM category provided:

a. the excess comprises only of SLR securities, and

b. the total SLR securities held in the HTM category is not more than 23.50 per cent w.e.f January 10, 2015, 23.0 per cent w.e.f April 4, 2015, 22.5 per cent w.e.f July 11, 2015 and 22.0 per cent w.e.f September 19, 2015, of their DTL .

As per extant instructions, RRBs may shift investments to/from HTM with the approval of the Board of Directors once a year and such shifting will normally be allowed at the beginning of the accounting year.

INCOME TAX

Notifications/Circulars

➲ Clarification regarding allowability of deduction under section 10A/10AA on transfer of Technical Manpower in the case of software industry

CBDT had issued Circular No.12/2014 dated 18th July, 2014 to clarify that mere transfer or re-deployment of existing technical manpower from an existing unit to a new SEZ unit in the first year of commencement of business will not be construed as splitting up or reconstruction of an existing business, provided the number of technical manpower so transferred does not exceed 20 per cent of the total technical manpower actually engaged in developing software at any point of time in the given year in the new unit.

On 8 October 2014, CBDT issued a fresh circular no. 14/2014, where it has superseded its earlier circular no.12/2014 dated 18th July, 2014. The new circular clarifies that the transfer or re-deployment of technical manpower from existing unit to a new unit located in SEZ, in the first year of commencement of business, shall not be construed as splitting up or reconstruction of an existing business, provided the number of technical manpower so transferred as at the end of the financial year does not exceed 50 per cent of the total technical manpower actually engaged in development of software or IT enabled products in the new unit.

Further, in the alternative, if the assessee (enterprise) is able to demonstrate that the net addition of the new technical manpower in all units of the assessee (enterprise) is at least equal to the number that represents 50% of the total technical manpower of the new SEZ unit during such previous year, deduction under section 10A/10AA would not be denied provided the other prescribed conditions are also satisfied. The taxpayer will have a choice of complying with any one of the above given two alternatives.

This circular shall be applicable only in the case of taxpayers engaged in the development of software or in providing IT Enabled Services in SEZ units eligible for deduction under Section 10A or under Section 10AA of the Act.

➲ CBDT prescribes conditions to avail lower withholding tax at the rate 5 percent (u/s 194LC) on interest on borrowings made in foreign currency

The Finance Act, 2012 introduced Section 194LC in the Income-tax Act, 1961 (the Act) which provides Indian company to deduct tax on interest payable on borrowings made in foreign currency at the

rate of 5 percent as against the higher rate of 20 percent. This lower rate of taxation will apply to interest paid to a non-resident by an Indian company for money borrowed in foreign currency from a source outside India either under a loan agreement or by way of long-term infrastructure bonds.

The Finance (No. 2) Act, 2014 has amended section 194LC with effect from the 1st day of October, 2014. Consequent to the amendment, the concessional rate of withholding tax has been extended to borrowing by way of any long term bonds, not limited to a long term infrastructure bond, if the borrowing is made on or after 1st day of October, 2014. Further, the concluding date of the period of borrowings eligible for concession under Section194LC which was earlier 01/07/2015 has been extended to borrowings made before the 1st day of July, 2017 vide Circular No.-15/2014 dated: 17th October, 2014.

In respect of issue of bonds

In order to mitigate the compliance burden and hardship, CBDT conveys the approval of the Central Government for the purposes of section 194LC in respect of the issue of long term bond including long term infrastructure bond by Indian companies which has to satisfy the following conditions:-

a. The bond issue is at any time on or after 1st day of October, 2014 but before the 1st day of
July, 2017.
b. The bond issue by the Indian company should comply with clause (d) of sub section (3) of section 6 of the Foreign Exchange Management Act, 1999 read with Notification No. FEMA3/2000-RB viz. Foreign Exchange Management (Borrowing or Lending in Foreign exchange) Regulations 2000, dated May 3, 2000, as amended from time to time, (hereafter referred to as "ECB regulations"), either under the automatic route or under the approval
route.
c. The bond issue should have a loan Registration Number issued by the Reserve Bank of India (RBI).
d. The term "long term" means that the bond to be issued should have original maturity term of three years or more.

Case Laws

➲ Validity of rectification order – Amount seized u/s 132

Advance tax constitutes the existing liability as per specific provision of Section 132B or not – Held that:- The Tribunal has answered the question of chargeability of interest, against the revenue by relying upon Commissioner of Income-tax Versus Ashok Kumar [2010 (9) TMI 771 - Punjab and Haryana High Court] – the assessee is entitled to adjustment of seized amount towards advance tax liability from the date of making the application in that regard - The Tribunal has rightly held that the assessee was entitled to adjustment of the amount and no interest could be charged on that basis - Therefore, no fault could be found with the approach adopted by the Tribunal – Decided against revenue.
Source: Commissioner of Income Tax (Central) Versuas Sh. Sandeep Jain C/o. Ludhiana Steel Rolling Mills [: 2014 (10) TMI 585 - PUNJAB & HARYANA HIGH COURT - Income Tax]

➲ Addition u/s 68 – Income already shown as income under capital gains – Genuineness of transaction of sale and purchase of shares

Held that:- The Tribunal was rightly of the view that the assessee had manipulated the accounts - no sale or purchase of the shares was done by the assessee but only entries of the capital gains were given to the assessee on receipt of cash payment - since the assessee had only filed copy of sale and purchase bill and showed inability to produce the broker, the AO was right in conducting the enquiries on his own - the bogus capital gains have been generated by the assessee and, therefore, the quotations in a Gujarati Diary was of no help to the assessee - the assessee had not done any share business before financial year 2003-04 and after financial year 2004-05 in which he had earned capital gains of ₹ 51 lacs - the assessee had failed to prove the genuineness of the transaction of sale and purchase of shares - once the transaction of purchase and sale was found to be bogus then the sale proceeds had to be added as income of the assessee u/s 68 of the Act because the money received on the basis of bogus transaction had been credited by the assessee in the books of account which remained unexplained – thus, the order of the Tribunal is upheld – Decided against assessee.
Source: Chandan Gupta versus Commissioner of Income Tax, Ludhiana [2014 (10) TMI 583 - PUNJAB & HARYANA HIGH COURT - Income Tax]

➲ Scope of income from house property u/s 23(1)(a)

Whether the Tribunal was justified in holding that the notional interest income free security deposit and advance rent cannot be included in the income from property for the purpose of section 23(1)(a) – Held that:- The notional interest on security deposits cannot be taken into consideration for determining and computing the annual letting value, is to be decided against the revenue - Relying upon Commissioner of Income Tax V/s. J.K. Investors (Bombay) Ltd. [2000 (6) TMI 9 - BOMBAY High Court] – no substantial question of law arises for consideration – Decided against revenue.
Source: The Commissioner of Income Tax-19, Mumbai versus Shailaja S. Hemdev [2014 (10) TMI 580 - BOMBAY HIGH COURT - Income Tax]

➲ Imposition of penalty u/s 271(1)(c)

Various additions made by AO - Held that:- The first addition made by the AO pertains to ad hoc disallowance out of various expenses debited in the P&L account - This disallowance has been made by the AO on the ground that in the immediately preceding year, the

ratio of the expenses qua the total receipts is on the lower side in terms of percentage - This year, it has been increased and assessee failed to show the reasons for such an increase - it is an ad hoc disallowance – AO has not pointed out that which particular submitted by the assessee is inaccurate - Therefore, no penalty can be imposed for this addition.

Disallowance of bad debts – Held that:- The reasons for making the disallowance is that assessee failed to furnish the basis of identifying the debt as bad and from which date it has become bad. W.e.f. 01.04.1989, the assessee is not supposed to demonstrate the fact that debt has become bad - Its allowance can be made only on the ground that such debt has been written off in the books - there is nothing in the assessment order which can justify the imposition of penalty - AO has not pointed out which particular pertaining to bad debt is incorrect.

Ad hoc disallowance out of training and recruitment expenses - disallowance out of claim of depreciation – Held that:- The assessee has claimed the depreciation on computer peripheral @ 60%, - relying upon Income-tax Officer, Ward-31(4), Kolkatta. Versus Samiran Majumdar [2005 (8) TMI 293 - ITAT CALCUTTA-B] - depreciation on printer etc. would be admissible @ 60% - there cannot be any disallowance, the AO did not point out which particular submitted by the assessee is incorrect - The Tribunal has enquired into each of the four heads in which additions were made, examined the nature and character of the addition and the explanation offered by the assessee and whether this would satisfy the needs and requirements of the Explanation No.1 - assessee has been able to discharge the onus in respect of each addition - The claim of the assessee in the return was bona fide and it cannot be that full and true particulars and details were not submitted before the AO – thus, the order of the Tribunal is upheld – Decided against revenue.
Source: Commissioner of Income Tax-III versus Sona Mobility Services Ltd. [2014 (10) TMI 579 - DELHI HIGH COURT - Income Tax]

➲ Penalty u/s 271(1)(c)

Explanation submitted by assessee satisfactory or not – 200% of penalty levied of the value of gold seized by AO which CIT(A) reduced to 100% - Value of gold treated as undisclosed income u/s 69A – Gold seized during search u/s 132 – Held that:- The assessee's case falls into sub-clause (b) - by the time the search was undertaken, the assessee had time to file returns, and as a matter of fact, the returns were filed on 30.09.1986, wherein the income through which the seized gold was acquired, was also disclosed – relying upon Assistant Commissioner of Income Tax, Udaipur Versus M/s. Gebilal Kanhaialal HUF, Through Karta, Udaipur [2012 (9) TMI 297 - SUPREME COURT] - three conditions must be fulfilled by an assessee, before claiming the immunity under clause (2) of Explanation 5 to Section 271 of the Act - the search was made on 26.06.1985, and the returns were filed within time, on 30.09.1986 - There was no finding at any stage of the proceedings that the acquisition of the seized gold was during any earlier AY - the first condition can be deemed to have been complied with by the appellant - what is required in the context of clause (2) of Explanation 5 to Section 271 of the Act is making of a statement by the assessee and not the acceptability or otherwise of it - Since the assessee made the statement, this condition is complied with.

The value of the seized gold was treated as income of the assessee and he paid thereon - the case fits into clause (2) of Explanation 5, which in turn, would bring about immunity to the appellant vis--vis Section 271 of the Act - The Tribunal proceeded on hyper- technicalities and acted as though every seizure must entail initiation of proceedings u/s 271 of the Act - Such an approach cannot be countenanced - the case of the assess is covered by clause (2) of Explanation 5 of Section 271 of the Act – thus, the order of the Tribunal is set aside – Decided in favour of assessee.
Source: M/s. L. Giridharilal And Co. versus Income Tax Officer [2014 (10) TMI 576 - ANDHRA PRADESH HIGH COURT - Income Tax]

➲ Capital gain u/s 45 - Transfer of assets from partnership firm to Private limited company – Taxability u/s 45(4)

Held that:- Under the Income Tax Act, a firm can be charged as a distinct assessable entity as distinct from its partners who can also be assessed individually - Following the decision in Commissioner of Income-Tax Versus Texspin Engineering And Manufacturing Works [2003 (3) TMI 56 - BOMBAY High Court] - an existing firm was transformed into a company under Part IX of the Indian Companies Act - the erstwhile firm has been treated as a Limited Company by virtue of Section 575 of the Companies Act - Section 45(4) clearly stipulates that there should be transfer by way of distribution of capital assets - section 45(4) is not attracted as the very first condition of transfer by way of distribution of capital assets is not satisfied - the latter part of Section 45(4), which refers to computation of capital gains u/s 48 by treating fair market value of the asset on the date of transfer, does not arise.

The shares of the respective shareholders in the respondent-company were defined under the partnership deed - The only change that has taken place on the respondent being transformed into a company was that the shares of the partners were reflected in the form of share certificates - beyond that, there was no physical distribution of assets in the form of dividing them into parts, or allocation of the same to the respective partners or even distributing the monetary value – thus, the order of the Tribunal is upheld – Decided against revenue.
Source: Commissioner of Income Tax versus M/s. United Fish Nets [2014 (10) TMI 574 - ANDHRA PRADESH HIGH COURT - Income Tax]

➲ ITAT: Explains law on 'hedging contracts'; Holds Forex Forward contract loss as speculative

ITAT disallows loss on account of foreign currency forward contract to assessee (a dealer in diamonds), holds it "speculative" in nature u/s 43(5); As assessee was dealing in 'diamonds', holds for-

ward contract ('FC') entered for 'foreign exchange' not covered under proviso (a) to Sec 43(5) [which provides that 'hedging transactions' shall not be deemed as 'speculative transactions']; Relies on Andhra Pradesh HC ruling in M.G.Brothers, Calcutta HC ruling in Nuddea Mills Co.Ltd., Delhi HC ruling in Delhi Flour Mills Co.Ltd. and Gujarat HC ruling in Pankaj Oil Mills to hold that for availing proviso (a) benefit, hedging transaction commodity dealt should be same; Further observes that assessee failed to show that forward contracts were relatable to specific export/import; Moreover, absent evidencing actual delivery of 'foreign exchange' pursuant to forward contract transactions, holds proviso (a) benefit not available : Mumbai ITAT.

Source: The ruling was delivered by ITAT bench of Shri D. Manmohan and Shri Rajendra.

Mr. Manish J. Sheth argued on behalf of the assessee. [TS-644-ITAT-2014(Mum)]

SEBI

Notifications/Circulars

➲ Revision of proprietary position limits of non-bank stock brokers for currency derivatives contracts

Proprietary open position limits of a stock broker, who is not a bank, across all contracts in a permitted currency pair shall be higher of (a) 15% of the total open interest in the currency pair, or (b) USD 50 million / EUR 25 million / GBP 25 million / JPY 1000 million, as applicable vide *Circular - CIR/MRD/DP/30/2014, dated: October 22, 2014.*

➲ Modification of client codes of non-institutional trades executed on stock exchanges (All Segments)

SEBI had issued circular CIR/DNPD/6/2011 dated July 05, 2011 pertaining to client code modifications of non-institutional trades on stock exchanges.

Upon receipt of various representations from stock brokers and stock exchanges to review the penalty structure specified in the aforementioned circular, it has been decided to partially modify the circular as under:

(i) Stock exchanges may waive penalty for a client code modification where stock broker is able to produce evidence to the satisfaction of the stock exchange to establish that the modification was on account of a genuine error.

(ii) Not more than one such waiver per quarter may be given to a stock broker for modification in a client code. Explanation: If penalty wavier has been given with regard to a genuine client code modification from client code AB to client code BA, no more penalty waivers shall be allowed to the stock broker in the quarter for modifications related to client codes AB and BA.

(iii) Proprietary trades shall not be allowed to be modified as client trade and vice versa.

(iv) Stock exchanges shall submit a report to SEBI every quarter regarding all such client code modifications where penalties have been waived.

Source: Circular - CIR/MRD/DP/29/2014 dated: October 21, 2014

➲ Single registration for Stock Brokers & Clearing Members

For the purpose of implementing the revised registration requirements, the following guidelines are being issued:

a. If a new entity desires to register as a stock broker or clearing member with any stock exchange or clearing corporation, as the case may be, then the entity shall apply to SEBI through the respective stock exchange or clearing corporation in the manner prescribed in the Broker Regulations. The entity shall be issued one certificate of registration, irrespective of the stock exchange(s)/ clearing corporation(s) or number of segment(s).

b. If the entity is already registered with SEBI as a stock broker with any stock exchange, then for operating on any other stock exchange(s) or any clearing corporation, the entity can directly apply for approval to the concerned stock exchange or clearing corporation, as per the procedure prescribed in the Broker Regulations for registration. The stock exchange/ clearing corporation shall report to SEBI about such grant of approval.

c. Similarly, if any entity is already registered with SEBI as a clearing member in any clearing corporation, then for operating in any other clearing corporation(s) or any stock exchange, the entity shall follow the procedure as prescribed in Clause b above.

d. Fees shall be applicable for all the stock brokers, self clearing members and clearing members as per Schedule V of the Broker Regulations. As per current requirement, the entity shall continue to be liable to pay fees for each segment approved by the stock exchange or clearing corporation, as per the Schedule to the Brokers Regulations.

The stock exchange or clearing corporation shall grant approval for operating in any segment(s) or additional segment(s) to the SEBI registered stock broker, self-clearing member or clearing member, as the case may be, after exercising due diligence and on being satisfied about the compliance of all relevant eligibility requirements, and shall also, interalia ensure:

i. The applicant, its directors, proprietor, partners and associates satisfy the Fit and Proper Criteria as defined in the SEBI (Intermediaries) Regulations, 2008;

ii. The applicant has taken satisfactory corrective steps to rectify the deficiencies or irregularities observed in the past in actions initiated/ taken by SEBI/ stock exchanges(s) or other regulators. The stock exchange or clearing corporation may also seek details whether the Board of the applicant is satisfied about the steps taken. They may also carry out inspection, wherever considered appropriate; and

iii. Recovery of all pending fees/ dues payable to SEBI, stock exchange and clearing corporation.

Source: Circular - CIR/ MIRSD/ 4/ 2014, dated: October 13, 2014

➲ Clarification on Government Debt Investment Limits

SEBI clarifies that all investments by Long Term PIs (Sovereign Wealth Funds (SWFs), Multilateral Agencies, Endowment Funds,

Insurance Funds, Pension Funds and Foreign Central Banks)in the USD 5 billion Government debt limit shall continue to be made in Government bonds having a minimum residual maturity of 1 year. Government debt investment limits shall be as follows :

Type of limit	Cap (US$ bn)	Cap (INR Crore)	Eligible Investors	Remarks
Government Debt	25	24,432	FPIs	Available on demand. The incremental investment limit of USD 5 billion (INR 24,886 cr) 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 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.
Government Debt – Long Term	5	29,137	FPIs which are registered with SEBI under the categories of Sovereign Wealth Funds (SWFs), Multilateral Agencies, Endowment Funds, Insurance Funds, Pension Funds and Foreign Central Banks	Available on demand. Eligible investors may invest only in dated securities of residual maturity of one year and above.

Source: Circular - CIR/IMD/FIIC/19/2014, dated: October 09, 2014

CENTRAL EXCISE

Notifications/Circulars

➲ Determination of place of removal

Board has come up with the clarity that, determination of "place of removal" which is recently defined in Cenvat Credit Rules 2004., inserted by way of notification no 21/2014 C.E (NT) dated 11.07.2014. Few issues clarified vide this circular are:-

a. As the definition is now provided in the CCR, wherever Cenvat credit is available upto the place of removal, this definition of place of removal would apply, irrespective of the nature of assessment of duty.

b. As regards ascertainment of place of removal is that the place where sale takes place is the place of removal. The place where sale has taken place is the place where the transfer in property of goods takes place from the seller to the buyer. This can be decided as per the provisions of the Sale of Goods Act, 1930 as held by Hon'ble Tribunal in case of Associated Strips Ltd Vs Commissioner of Central Excise , New Delhi [2002 (143) ELT 131 (Tri-Del)] . This principle was upheld by the Hon'ble Supreme Court in case of M/s. Escorts JCB Limited v. CCE, New Delhi [2002 (146) E.L.T. 31 (S.C.)

Finally the board concluded that place of removal needs to be ascertained in term of provisions of Central Excise Act, 1944 read with provisions of the Sale of Goods Act, 1930. Payment of transport, inclusion of transport charges in value, payment of insurance or who bears the risk are not the relevant considerations to ascertain the place of removal. The place where sale has taken place or when the property in goods passes from the seller to the buyer is the relevant consideration to determine the place of removal.

For detailed view of circular, follow the reproduced link http://www.cbec.gov.in/excise/cx-circulars/cx-circ14/988-2014cx.htm

➲ Audit by officers of Central Excise

The judgment of M/s Travelite (India) [2014-TIOL-1304-HC-DEL-ST] wherein the Hon'ble court has held that the powers to conduct audit as envisaged in rule 5A (2) of the Service Tax Rules, 1994, does not have appropriate statutory backing and therefore quashed the rule. The board has clarified that for Central Excise there is adequate statutory backing for audit by the Central Excise Officers. The statutory provision relevant for audit is clause (x) of Section 37(2) and rule 22 of the Central Excise Rules, 2002.

For detailed view of circular, follow the reproduced link http://www.cbec.gov.in/excise/cx-circulars/cx-circ14/986-2014cx.htm

➲ Export warehousing –Extension of facility at Bhuj Taluka in Kutch District in the state of Gujarat

Board is of the view that extension of the facility of export warehousing to Bhuj Taluka of Kutch district in the state of Gujarat would facilitate the trade and industry. Therefore, it has been de-

cided to amend paragraph 2(2) of the Circular No. 581/18/2001-CX dated 29th June, 2001 to include Bhuj Taluka of Kutch District in the state of Gujarat. Accordingly, the said paragraph shall now read as follows:

Places: The warehouses may be established and registered in Ahmedabad, Bangalore, Kolkata, Chennai, Delhi, Hyderabad, Jaipur, Kanpur, Ludhiana, Mumbai, the districts of Pune and Raigad in the state of Maharashtra, the district of East Midnapore in the state of West Bengal, the district of Kancheepuram in the state of Tamil Nadu, the district of Indore in the state of Madhya Pradesh, the taluka Ankleshwar in the district of Bharuch in the state of Gujarat, Navi Mumbai in the district of Thane in the state of Maharashtra, Sholinghur in the district of Vellore in the state of Tamil Nadu, Bidadi in the Bangalore Rural District, Karnataka, the district of Thiruvallur in the state of Tamil Nadu, the district of Gautam Budh Nagar in the state of Uttar Pradesh, the district of Nagpur in the state of Maharashtra, Tehsil of Tijara of Alwar district in the state of Rajasthan and Bhuj Taluka of Kutch District in the state of Gujarat.

Source: Circular No. 987/11/2014-CX, dated 15.10.2014

Case Laws

➲ CENVAT Credit - Credit taken on furnace oil - furnace oil used in manufacturing of job work goods which were cleared without payment of duty

Held that: - As the issue has been settled by the Hon'ble High Court of Bombay in the case of Sterlite Inds. [2004 (12) TMI 108 - CESTAT, MUMBAI] wherein it has been held that if the job worker has taken any input credit on furnace oil which has been used in the job work goods and same has been cleared without payment of duty but the principal manufacturer has paid the duty on the final product, in that case Cenvat Credit on furnace oil is available to the job worker. - Decided against Revenue.

Source: COMMISSIONER OF CENTRAL EXCISE, MUMBAI-II versus M/s VENKATESH STEEL IND LTD (2014 (10) TMI 594 - CESTAT MUMBAI - Central Excise)

➲ Denial of CENVAT credit - Credit stand denied on the ground that the said registered dealer was not found available at the premises disclosed in his registration and his registration was cancelled with retrospective effect

Held that: - Appellant availed credit on the basis of invoices issued by the registered dealer who were carrying all the requisite particulars along with his registration number. The said invoices so received by the appellant duly stand entered by them in their RG 23A Part I register and shown to have been used in the manufacture of final product cleared on payment of duty. Apart from the general statement of the dealer of the manufacturer, there is no evidence on record to show that inputs were not actually received by the appellant or they have procured the inputs from any other sources. In the absence of inputs, the appellant could not have manufactured their final product. Accordingly, in the absence of any allegation of procurement of inputs from any other sources, the inputs received by the appellant have to be held as having been received under the cover of cenvatable invoices issued by the registered dealer. As per the provisions of Rule 7 of Cenvat Credit Rules, a manufacturer is under a legal obligation to verify the identity of the person supplying the inputs and is not expected to go beyond it and find out as to whether the supplier was procuring the goods in accordance with the law or not. - Following decision of Talson Mill Store v. CCE & ST, Ludhiana [2014 (2) TMI 443 - CESTAT NEW DELHI] - Decided in favour of assessee.

Source: RINOX ENGG. Versus COMMISSIONER OF CENTRAL EXCISE, CHANDIGARH-I

[2014 (10) TMI 512 - CESTAT NEW DELHI - Central Excise]

➲ 100% EOU - reversal of Cenvat credit - assessee contended that the clearances were made against CT-3 certificate issued in terms of Notification No.22/2003 dated 31.03.2003 by the customs authorities and that such clearances made to EOUs/EHTPs have the status of deemed exports and therefore, there is no need to reverse the credit involved

Held that: - EOU is entitled to procure goods duty free. Such procurement is permissible only subject to fulfillment of condition of the exemption notification. Further, the decision of Larger Bench of the Tribunal in Lakshmi Automatic Loom Works Ltd., [2008 (10) TMI 57 - CESTAT CHENNAI] deals with only reversal of input as such and not removal of used capital goods. In the instant case, the assessee is having Domestic Tariff Area (DTA) Unit in the ground floor. It is having Electronic Hardware Technology Parks (EHTP) Unit in the first floor. The assessee while purchasing the capital goods as well as inputs to its DTA unit has paid duty. Therefore, it has availed Cenvat credit. In so far as the capital goods are concerned, it was used by the assessee in DTA unit. Thereafter, with the permission of the authorities in terms of the Rules 11 and 20 of the Central Excise Rules 2002 and Clause (6) of the Notification No.22/2003, the assessee removed the said goods from DTA unit to EHTP unit.

Capital goods purchased for DTA unit was used, it was not removed as such and when it was removed to EHTP unit again, they have no liability to pay the credit. This aspect has been completely missed by the authority. They proceeded on the assumption that user industry thereby mean EHTP unit was not bringing excisable goods directly from the factory of manufacture or warehouse and therefore they are not eligible for exemption. In the light of the aforesaid Notification which granted exemption, it is very clear that EHTP unit is entitled to exemption of payment of duty. Therefore, the assessee rightly availed the Cenvat credit and then reversed it when those goods were moved to EHTP unit and claimed refund. - Decided in favor of assessee.

Whether the assessee was not liable to pay any duty when capital goods after it is being used was removed to the EOU unit - Held that:- In so far as the inputs are concerned, it is not in dispute that the assessee while purchasing the said goods for its DTA unit has paid duty. It is only when those inputs as such were removed to the EHTP unit, the Cenvat credit availed was reversed. It is because, if the assessee had purchased those inputs for its EHTP unit by virtue of aforesaid Notification, there was no duty payable, as the said inputs were removed with the previous permission of the department as reflected in CT-3. There was no liability to pay the duty and already Cenvat credit had been taken, it was reversed under protest and therefore, they were entitled to the refund of the said amount. - Decided against Revenue.

Source: The Commissioner of Central Excise, Bangalore-II versus M/s Solectron Centum Electronics Ltd. [2014 (10) TMI 596 - KARNATAKA HIGH COURT - Central Excise]

➲ Denial of CENVAT credit - Credit stand denied on the ground that the said registered dealer was not found available at the premises disclosed in his registration and his registration was cancelled with retrospective effect

Held that:- Appellant availed credit on the basis of invoices issued by the registered dealer who were carrying all the requisite particulars along with his registration number. The said invoices so received by the appellant duly stand entered by them in their RG 23A Part I register and shown to have been used in the manufacture of final product cleared on payment of duty. Apart from the general statement of the dealer of the manufacturer, there is no evidence on record to show that inputs were not actually received by the appellant or they have procured the inputs from any other sources. In the absence of inputs, the appellant could not have manufactured their final product. Accordingly, in the absence of any allegation of procurement of inputs from any other sources, the inputs received by the appellant have to be held as having been received under the cover of cenvatable invoices issued by the registered dealer. As per the provisions of Rule 7 of Cenvat Credit Rules, a manufacturer is under a legal obligation to verify the identity of the person supplying the inputs and is not expected to go beyond it and find out as to whether the supplier was procuring the goods in accordance with the law or not. - Following decision of Talson Mill Store v. CCE & ST, Ludhiana [2014 (2) TMI 443 - CESTAT NEW DELHI] - Decided in favour of assessee.

Source: RINOX ENGG. Versus COMMISSIONER OF CENTRAL EXCISE, CHANDIGARH-I (2014 (10) TMI 512 - CESTAT NEW DELHI - Central Excise)

➲ Manufacturing activity - Printing and writing paper

Held that:- the lower appellate authority observed that by cutting paper into desired sizes does not amount to manufacture as the product remains only paper and even if duty is demanded, the appellant would be entitled to Credit on inputs - Printing and writing paper itself is classifiable under CETH 4802 90/99. By cutting into required sizes, no new product has been emerged. Therefore, cutting and slitting of paper does not amount to 'manufacture' - Decided against Revenue.

Source: COMMISSIONER OF C. EX., THANE versus ANUPAM STATIONARY MFG. LTD.(2014 (10) TMI 511 - CESTAT MUMBAI - Central Excise)

➲ Waiver of pre deposit

Whether the Hon'ble CESTAT erred in granting waiver of pre-deposit of assessed demand in favour of the respondents during pendency of the appeal thereby extending the period of stay beyond 365 days ignoring the recent amendment to section 35-C of the Central Excise Act, 1944, made through enactment of Finance Bill, 2013 - Held that:- Tribunal has noted that a waiver of pre-deposit and unconditional stay on the realisation of the adjudicated liability was granted by the Tribunal since a prima facie case was found in favour of the assessee. The Tribunal has also observed that the appeal has not been disposed of only on account of the pendency of several older appeals and not on account of any delay on the part of the assessee. ends of justice would be met if the Tribunal is requested to dispose of the appeal expeditiously and preferably within a period of six months from today. The waiver of pre-deposit will continue to remain valid for a period of six months from date of this order - Decided partly in favour of Revenue.

Source: Commissioner Central Excise versus Shri Naveen Khanna Director [2014 (10) TMI 513 - ALLAHABAD HIGH COURT - Central Excise]

SERVICE TAX

Notifications/Circulars

➲ CBEC has issued Circular No. 180/06/2014-ST dated October 14, 2014 superceding the earlier Circular No. 163/14/2012-ST dated July 10, 2012 regarding activities involved in relation to inward remittances from abroad to beneficiaries in India through Money Transfer Service Operator ('MTSO'). The Circular clarifies that the value of intermediary service provided by any Indian Bank or any other entity as an agent or their sub-agents to MTSO is the commission or fee or any similar amount, by whatever name called, received by it from MTSO or agent, as the case may be, and service tax is payable on such commission or fee.

Further, it has also been clarified that any activity of money changing comprises an independent taxable activity. Therefore, service tax is payable on currency conversion in such cases.

➲ CBEC clarified that agents involved in Money Transfer Service Operators would fall under the ambit of service tax?

Board has clarified taxability of service tax under given situations:

Issues	Clarification
Whether service tax is payable on remittance received in India from abroad?	No service tax is payable per se on the amount of foreign currency remitted to India from overseas. As the remittance comprises money, it does not in itself constitute any service in terms of the definition of 'service' as contained in clause (44) of section 65B of the Finance Act 1994.
Whether the service of an agent or the representation service provided by an Indian entity/ bank to a foreign money transfer service operator (MTSO) in relation to money transfer falls in the category of intermediary service?	Yes. The Indian bank or other entity acting as an agent to MTSO in relation to money transfer, facilitates in the delivery of the remittance to the beneficiary in India. In performing this service, the Indian Bank/ entity facilitates the provision of Money transfer Service by the MTSO to a beneficiary in India. For their service, agent receives commission or fee. Hence, the agent falls in the category of intermediary as defined in rule 2(f) of the Place of Provision of Service Rules, 2012.
Whether service tax is leviable on the service provided, as mentioned in point 2 above, by an intermediary/agent located in India (in taxable territory) to MTSOs located outside India?	Service provided by an intermediary is covered by rule 9 (c) of the Place of Provision of Service Rules, 2012. As per this rule, the place of provision of service is the location of service provider. Hence, service provided by an agent, located in India (in taxable territory), to MTSO is liable to service tax. The value of intermediary service provided by the agent to MTSO is the commission or fee or any similar amount, by whatever name called, received by it from MTSO and service tax is payable on such commission or fee.
Whether service tax would apply on the amount charged separately, if any, by the Indian bank/entity/ agent/sub-agent from the person who receives remittance in the taxable territory, for the service provided by such Indian bank/entity/agent/sub-agent	Yes. As the service is provided by Indian bank/entity/agent/ sub-agent to a person located in taxable territory, the Place of Provision is in the taxable territory. Therefore, service tax is payable on amount charged separately, if any.
Whether service tax would apply on the services provided by way of currency conversion by a bank /entity located in India (in the taxable territory) to the recipient of remittance in India?	Any activity of money changing comprises an independent taxable activity. Therefore, service tax applies on currency conversion in such cases in terms of the Service Tax (Determination of Value) Rules. Service provider has an option to pay service tax at prescribed rates in terms of Rule 6(7B) of the Service Tax Rules 1994.
Whether services provided by sub-agents to such Indian Bank/entity located in the taxable territory in relation to money transfer is leviable to service tax?	Sub-agents also fall in the category of intermediary. Therefore, service tax is payable on commission received by sub-agents from Indian bank/entity.

For more details, please visit: http://www.servicetax.gov.in/st-circulars-home.htm

Circular No. 180/06/2014 – ST, dated: 14th October, 2014

Case Laws

➲ Commercial or Industrial Construction Service - main contractor has paid Service Tax on the transaction - Whether the sub-contractor of a main contractor is liable to discharge the service tax liability on the services provided by him on the same transaction

Held that:- Notification No. 1/2006-ST is in confrontation with the charging section, Section 66 of the Finance Act, 1994 and accordingly I hold the same is not applicable in the facts and circumstances of the case so far as the condition relating to not taking of CENVAT Credit is concerned of the service tax paid by the sub-contractor. Further, I notice that the finding of fact recorded by the adjudicating authority having not been challenged by any of the parties, and in view of the categorical finding of fact recorded, I

hold that the respondent assessee is entitled to refund - Apex Court in the case of L&T Ltd. [2008 (8) TMI 21 - SUPREME COURT], I hold that opinion of the third member as rendered in the case of Sunil Hi-tech Engineers Ltd. [2014 (10) TMI 524 - CESTAT MUMBAI (LB)] by this Tribunal is not binding and held per incuriam as the same is directly in the teeth of the ruling of the Apex Court and is passed without taking notice of the aforementioned ruling of the Hon'ble Supreme Court - Decided against Revenue.
Source: SUNIL HI-TECH ENGINEERS LTD versus COMMISSIONER OF CENTRAL EXCISE, NAGPUR [2014 (10) TMI 524 - CESTAT MUMBAI (LB) - Service Tax]

➲ Reversal of differential duty of 50% of CENVAT credit - Benefit of Section 80

Held that:- Since there is direct judgement on the issue in the case of Ceolric Services [2011 (2) TMI 764 - CESTAT, BANGALORE] remanding the matter to the adjudicating authority, I set aside the impugned order and remand the matter back to the adjudicating authority for reconsideration in view of provisions of Rule 7C of the Rules and after verification of the records. This has to be done as ld. Advocate has contended that they have actually taken cenvat credit of 50% on capital goods but due to mistake it was shown as 100% - Adjudicating authority shall pass order within three months from the date of issue of this order after affording a reasonable opportunity of producing records - Decided in favour of assessee.
Source: Bharat Sanchar Nigam Ltd. versus CCE & ST, Jaipur-II [2014 (10) TMI 606 - CESTAT NEW DELHI - Service Tax]

➲ Waiver of pre deposit - Information Technology services - service consumed in SEZ

Held that:- In the case of Adani Power Ltd. (2014 (1) TMI 200 - CESTAT AHMEDABAD), unconditional stay was granted on the ground that the Notification No.4/2004-ST dt. 31.3.2004 specifically extended to the consumption of taxable service of any description to a developer of Special Economic Zone or any unit in any Special Economic Zone for consumption of the services within such Special Economic Zone. The other issues would be examined in detail at the time of appeal hearing - deposit of ₹ 14.53 lakhs is sufficient for waiver of predeposit of balance amount of tax along with interest and penalty. Accordingly, predeposit of balance amount of tax along with interest and penalty would be waived and recovery be stayed till disposal of appeal - Stay granted.
Source: WIPRO LTD versus COMMISSIONER OF CUSTOMS AND CENTRAL EXCISE, PONDICHERRY [2014 (10) TMI 605 - CESTAT CHENNAI - Service Tax]

➲ Waiver of pre deposit - Eligibility of Cenvat Credit

construction of an immovable property - Held that:- in the case of Sai Sahmita Storages (P) Ltd. [2011 (2) TMI 400 - ANDHRA PRADESH HIGH COURT] and this tribunal in the case of Navratna S.G. Highway Pro. (P) Ltd. [2012 (7) TMI 316 - CESTAT, AHMEDABAD] has held that Cenvat Credit of service tax paid on input services used in the construction of immovable property would be available if such immovable property is used for rendering other taxable services. Following the same in the present case also, we hold that the appellant has made out a prima facie case for grant of stay. Accordingly, we grant unconditional waiver from pre-deposit of dues adjudged against the appellant and stay recovery thereof during the pendency of the appeal - Stay granted.
Source: OBEROI MALL LTD. versus COMMISSIONER OF SERVICE TAX, MUMBAI [2014 (10) TMI 604 - CESTAT MUMBAI - Service Tax]

➲ Penalty u/s 78 - erection, commissioning and installation services

Held that:- During the impugned period, Service Tax was payable on receipt basis. Therefore the allegation of the ld. AR that the appellant has utilised the Service Tax is not sustainable in the facts that still the appellant has not received 100% remuneration of the services provided by them. We further find that the appellant have calculated the liability on accrual basis and paid Service Tax payable along with interest as pointed out by the department. In these circumstances, it cannot be said that they had mala fide intention to evade payment of service tax. Therefore, the appellants need immunity from imposing penalty under Section 78 of the Finance Act, 1994. Accordingly, we set aside the penalty under Section 78 of the Finance Act, 1994 - Decided in favour of assessee.
Source: COBRA INSTALACIONES Y. SERVICIOS SA. versus COMMISSIONER OF C. EX., NASHIK [2014 (10) TMI 603 - CESTAT MUMBAI - Service Tax]

CUSTOMS

Notifications/Circulars

➲ Extension of time period of furnishing the utilization certificate from the jurisdictional AC/DC of Central Excise from 6 months to 12 months

Amendment of notification No 12/2012-Customs dated 17/03/2012 [condition number 100 of the ANNEXURE] to extend the time period for furnishing the utilization certificate from the jurisdictional AC/DC of Central Excise from 6 months to 12 months vide notification no. 30/2014-Cus, dt. 20-10-2014.

➲ Amendment in Tariff Value in respect of some of the imported goods

CBEC amends principal notification no. 36/2001-Customs (N.T.), dated the 3rd August, 2001 vide Notification No. 100/2014-CUSTOMS (N. T.) dated: 31st October, 2014 and fixes the tariff values specified in column (4) of the Table below, in respect of the imported goods of the description specified in the corresponding entry in column (3) of the said Table and falling under Chapter or heading

or sub-heading No. of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

Table 1

Sl. No	Chapter/ heading/ Sub - heading/ tariff item	Description of goods	Tariff value US $ (Per Metric Tonne)
(1)	(2)	(3)	(4)
1	1511 10 00	Crude Palm Oil	704
2	1511 90 10	RBD Palm Oil	737
3	1511 90 90	Others – Palm Oil	721
4	1511 10 00	Crude Palmolein	743
5	1511 90 20	RBD Palmolein	746
6	1511 90 90	Others – Palmolein	745
7	1507 10 00	Crude Soya bean Oil	837
8	7404 00 22	Brass Scrap (all grades)	3831
9	1207 91 00	Poppy seeds	3747

Table 2

Sl. No	Chapter/ heading/ Sub - heading/ tariff item	Description of goods	Tariff value US $
1	71 or 98	Gold, in any form, in respect of which the benefit of entries at serial number 321 and 323 of the Notification No. 12/2012-Customs dated 17.03.2012 is availed	391 per 10 grams
2	71 or 98	Silver, in any form, in respect of which the benefit of entries at serial number 322 and 324 of the Notification No. 12/2012-Customs dated 17.03.2012 is availed	551 per kilogram

Table 3

Sl. No	Chapter/ heading/ Sub - heading/ tariff item	Description of goods	Tariff value US $ (Per Metric Tonne)
(1)	(2)	(3)	(4)
1	080280	Areca nuts	2239

Case Laws

➲ **Violation of provisions of Sections 40 & 51 - Penalty u/s 114**

On recording the findings that the goods have been loaded and the ship which sailed before the issuing of the LEO and hence, the goods were liable to confiscation under the provisions of Section 13(g) and accordingly liable to penalty under Section 114(iii) of the Act. The goods were held liable to confiscation. - Held that:- Shipping bills were presented under the EDP system almost two days prior and further the goods were stuffed under the supervision of Excise/Customs authorities in the factory. In the present case as per the endorsement, the goods were loaded on the ship under the supervision of the Customs authorities at port. In view of the fact that exporter did not have any control over loading of container on the vessel, I find it is a fit case that no penalty should be levied for the alleged violation - Decided in favour of assessee.

Source: APOLLO TYRES LTD. versus COMMISSIONER OF CUSTOMS (EXPORT), NHAVA SHEVA [2014 (10) TMI 507 - CESTAT MUMBAI - Customs]

➲ **Denial of refund claim - Overvaluation of goods - Voluntary payment of duty**

Held that: - Once the payment is made under protest, it means assessment also has been challenged. In such cases, either an assessment order confirming the original assessment has to be issued or the refund claim has to be considered. In any case, the appellant has the option to file an appeal against the assessment also in case the refund was rejected. In this case, the respondent did not have any grievance since the refund was sanctioned by the original authority as agreed upon between the two parties as emerging from the letter written by the party. No doubt there is no estoppel in law. At the same time, the officers of customs are also required to follow the law and the refusal to collect correct rate of duty compelling the assessee to pay higher duty itself was wrong. The correct procedure would have been to resort to provisional assessment in which case, the appellant would not have paid higher duty at all. The facts and circumstances show that the refund sanctioned by the original authority was in accordance with law and there was no need to interfere with the same by filing an appeal. Fortunately, the Commissioner (Appeals) has agreed with the lower authority in this case - No merit in the appeal filed by the Revenue - Decided against Revenue.

Source: COMMISSIONER OF CUS., C. EX. & ST., GUNTUR Versus FAIRWAY TRADING COMPANY PVT. LTD. [2014 (10) TMI 506 - CESTAT BANGALORE – Customs]

➲ **Misdeclaration of goods - Courier Agency service**

Held that:- There is no categorical finding that the goods were different consignments, there is no evidence to support the claim that the goods were actually unaccompanied baggage and in the absence of details of consignments verified and found to be fictitious, we consider that at this stage itself the matter should be remanded to the original adjudicating authority for fresh adjudication. Further

we also consider that since the appellants were to keep the authorization only for one year, the question as to whether the demand could have been made for more than one year from the issue of show cause notice is also required to be considered. All these aspects have not been considered in a perspective manner by the adjudicating authority and therefore, the impugned order is set aside and the matter is remanded to the original adjudicating authority for fresh adjudication in accordance with law - Decided in favour of assessee.

Source: M/s Transit Freight Forwarders versus Commissioner of Central Excise, Customs and Service Tax, Thiruvannathapuram [2014 (10) TMI 593 - CESTAT BANGALORE – Customs]

FOREIGN TRADE

Notifications/Circulars

➲ Streamlining the procedure for grant of industrial licenses

1. Increasing the validity period of Industrial License

As a measure of ease of doing business, henceforth two extensions of two years each in the initial validity of three years of the industrial License shall be allowed up to seven years. This is in supersession of Press Note No. 5(2014 Series) dated 02.07.2014,

2. Removal of stipulation of annual capacity in the industrial License.

It has been decided to deregulate the annual capacity for defense items for industrial License. However, the licensee shall submit half yearly production return to Department of Industrial Policy & Promotion and Department of Defence Production, Ministry of Defence in the prescribed format, to be notified separately.

3. Sale of Defence items to Government entities without approval of Ministry of Defence.

The Licensee shall be allowed to sell Defence items to Government entities under the control of Ministry of Home Affairs (MHA), state Governments, Public Sector Undertakings (PSUs) and other valid Defence Licensed Companies without prior approval of the Department of Defence Production (DoDP). However, for sale of the items to any other entity, the Licensee shall take prior permission from the Department of Defence Production, Ministry of Defence.

Source: Press Note No. 9 (2014 Series) - dated: October 20, 2014

➲ Export of Dried Silk Worm Pupae to EU - 95 (RE-2013)/2009-2014 - dated 22-10-2014 Foreign Trade Policy

Tariff Item HS Code	Unit	Item Description	Export Policy	Nature of Restriction
051199	Kg	Dried Silk Worm Pupae when exported to European Union	Free	Export to EU allowed subject to the following conditions: (i) A 'Shipment Clearance Certificate' is to be issued consignment-wise by the CAPEXIL indicating details of the name and address of the exporter, address of the registered plant, IEC No. of the exporter, plant approval number, nature of export product, quantity, invoice number and date, port of loading (Name of the port) and destination. (ii) After the shipment is made, the exporter shall also provide a 'Health Certificate" consignment wise to the buyer giving details of vessel name, shipping bill number with date, etc. as per the requirement of EU. The certificate would be issued jointly by CAPEXIL & Regional Animal Quarantine Officer, Department of Animal Husbandry, Dairying & Fisheries, Ministry of Agriculture, Government of India

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