

From the
Chairman's Desk

Dear Friends,

WISH YOU ALL A HAPPY AND PROSPEROUS NEW YEAR!!

This would be the last Message from me as Chairman of Mysore Chapter.

I have had the privilege of being Chairman of Mysore Chapter for 3 consecutive years.

I have received the best of co-operation, support and guidance from all the members and the Management Committee during my tenure which made my task easy.

I have received the unstinted support by and whole hearted involvement of the students in the last 3 years, which helped in the Chapter getting noticed at all levels and circles of professional sphere.

I would like to place on record my personal gratitude to the members, students, Head Quarters at Delhi, SIRC, other Chapters and in particular Bangalore Chapter for all the support I have received during my tenure.

I have received full co-operation and support of other professional bodies like ICAI, Mysore Chapter, ICWAI, Mysore Chapter, Taxation Executives Association Mysore (TEAM). I express my thanks to them.

I will be failing in my duty if I do not recall and place on record the sincere and committed support I received from Mr. Ramesh, the Office In Charge of the Mysore Chapter. I wish him all the best in future.

I wish the new team of Executive Committee all the best and assure them my whole hearted support whenever needed.

Thanks to one and all!



CS. D D Bhat



Lesson!

It was a sports stadium.

Eight Children were standing on the track to participate in the running event.

* Ready! * Steady! * Bang !!!

With the sound of Toy pistol , all eight girls started running .

Hardly have they covered ten to fifteen steps, one of the smaller girls slipped and fell down, due to bruises and pain she started crying .

When other seven girls heard this sound, stopped running, stood for a while and turned back, they all ran back to the place where the girl fell down.

One among them bent, picked and kissed the girl gently and enquired 'Now pain must have reduced' . All seven girls lifted the fallen girl, pacified her, two of them held the girl firmly and they all seven joined hands together and walked together and reached the winning post.

Officials were shocked. Clapping of thousands of spectators filled the stadium. Many eyes were filled with tears and perhaps it had reached the GOD even!

YES. This happened in Hyderabad, recently!

The sport was conducted by National Institute of Mental Health .

All these special girls had come to participate in this event and they are spastic children .

Yes, they were mentally retarded Challenged.

What did they teach this world?

Teamwork?

Humanity?

Equality among all???

Successful people help others who are slow in learning so that they are not left far behind.

Don't you think this is a great message...?

Inside...

Chapter News...3

Column on IPR

> Trademark-Brings Value to Business ... 4

> IPR News ...4

Legal Roundup...5

Words worth Millions...5

IT for Corp Professionals

> Microsoft OneNote ...5

> **Web Yaatra:** Apna loan...6

Spectrum Space...6

Article: Right to Information Act (Part-I) ...8

Editors:

CS. Dattatri H M

CS. Sarina C H

Omkar N G

and

'Spectrum' Team



Chapter News

Orientation Program for Foundation Students

The chapter organized an orientation program for students who have joined the course recently. The program was divided into four parts as under :

1. Introduction to the Institute and Mysore Chapter by Ms. Pracheta M.
2. Curriculum Overview by Ms. Rashmi M.R.
3. Reading Approach by Mr. Madhvesh
4. Job Prospects by Mr. Omkar Nagesh Gayatri

The program was followed by an interaction session. Delivering his concluding remarks, CS. D.D. Bhat, Chairman of the Chapter shared his rich experience with the students. The program was attended by more than 100 students.

Commencement of Special Lecture Sessions for Foundation Students

The chapter commenced its innovative special lecture sessions for the benefit of foundation course students primarily from mofussil areas. The series of 22 lecture sessions are being held every Sunday from 9th December 2007 from 9 AM to 4 PM. About 35 students are taking advantage of these sessions.

Session with CII Mysore Zone

The President of ICSI CS. Preeti Malhotra, on her visit to Mysore attended a seminar organized by CII Mysore zone at Hotel Sandesh De' Prince on 15th December 2007. CS. Preeti Malhotra spoke on "Effect of New Companies Bill on management of unlisted companies" Mr. VC. Davey, ROC ,Karnataka spoke on E-Governance initiatives.

Interview of the President by All India Radio, FM 100.60.

An interview with the President of the Institute, Ms. Preeti Malhotra, was recorded in FM 100.60 channel of All India Radio on 16.12.2007. The theme of the interview was "Role of CS in the Globalized Economy". The president was interviewed by our ex-Secretary, CS. Dattatri H.M.

Interview of the President by TV Channel UMN

The President of the Institute, Ms. Preeti Malhotra, was interviewed by TV Channel UMN on 16.12.2007. The President stressed that CS is the profession of the present and the future. The viewers were informed about the various types of training provided by the Institute including training in soft skills. The relative ease with economically weaker sections of the society can pursue this course, the starting remuneration packages being offered at present and other salient features of the course was explained by the President.

Release of 48th Issue of the Newsletter

ICSI Mysore e-Newsletter has completed its 4th year of publication. The 48th edition of the Newsletter was released on 16th December 2007 by Ms. Preethi Malhotra, President - ICSI at a function organised by Mysore Chapter.

Seminar on Emerging Trends

The Mysore Chapter of ICSI held a whole day Seminar on "Emerging Trends" on Sunday, the 16th December, 2007. The Chief Guest of the Seminar was CS. Preethi Malhotra, President, ICSI and CS. Diraviam S., Chairman, SIRC of ICSI was the special invitee. (Detailed report in Page No. 6 under the head "Spectrum Space")

Investors' Awareness Programs

The chapter conducted an Investor Awareness Program in Madikeri on 1st December 2007 and in Chamarajanagar on 18th December 2007. CS. C.K. Sabareeshan, Ex. Chairman of the Mysore Chapter delivered an interactive lecture on overview of capital markets, book building and rights of investors. The program was attended by members of Rotary Club and General Public in large numbers.

Career Guidance Sessions

The 81st to 84th Career Guidance Sessions were held at Mahajana P.U. College o 28/12/2007 and 02/01/2008. The sessions were handled by CS. Anshuman A.S.

29th Foundation day of the Chapter

Mysore Chapter of ICSI will be celebrating its 29th Foundation day on 24th February 2008. In connection with this, following events are organized:

- a. Commercial Law Quiz
- b. Moot Court
- c. Elocution Competition

Preliminary Round on 17th February and Final Round on 24th February 2008. Interested students can contact Chapter for details.



Intellectual Property Rights

Trademark[®] – Brings Value to Business

Lokesh.V DME,M.Com,PGDBA, PGDIPRL,AMIMA

IP Management, Strategic Planning and Initiatives **L&T Ltd**, Mysore Campus

"Brands are the Rock Stars of the Business It creates many fans" - Unknown

The term a trademark is a visual symbol or a sign, a word, a device (example: I Pod) sound-Just think of Airtel ring tone /Britannia's Tin Te De Din.. , or smell (it should be secondary component of the product) that is used to distinguish the goods and services offered by one user from those offered by another. Any sign or visual symbol capable of distinguishing goods or services can be registered as a Trademark. The two main characteristics of a trademark is

- The trademark should be distinctive, and
- The trademark should not be deceptive.

Trademarks are always associated with image and reputation of an undertaking or a product. They can be very expensive to create and develop an expensive loss if the trademark is devalued. When a Trademark is registered it is suggested that the trademark owner to use the symbol ® along with the trademark. Similarly, when the trademark owner desires to merely indicate proprietary rights in the trademark the symbol TM may be used. This indicates as information to public.

The purpose of a trademark is to maintain an exclusive identity of any commodity or any service in the competitive market. It gives an indication to the purchaser as to who the manufacturer is and indicates the quality of the goods to the purchaser. It provides the purchaser a satisfactory assurance with regard to the make and quality of the product. It also creates a faith in the mind of the customer as to the genuineness of a certain product or commodity. In other words trademark generally performs the following four functions:

1. Trademark identifies the product and its origin
2. Trademark creates an image for the product
3. Trademark guarantees the unchanged quality of the product
4. Trademark advertises the product

This is the strongest form of Intellectual Property rights: Trademarks may exist forever. The initial and renewal terms for trademarks are Ten years. The Patent and Trademark Office, asks for a statement that shows the trademark in use. The registration of a trademark is not compulsory. However, it is always advisable to register a trademark. Registration is the most common way of protecting a trademark in India and in other countries as well. However, registration of a trademark is not mandatory and is not the only way of protecting a trademark. Unregistered trademark are also protected, but it is less reliable compared to a registered trademark. The reason is an unregistered trademark is not protected until it has acquired sufficient distinctiveness and a reputation in the market place, which can take considerable amount of time and investment from the initial usage. Those interested in registering a trademark before the Registry of Trademarks should verify and seek clearance on the availability of that particular trademark for registration. This is to ensure that one is not infringing someone else's Registered Trademark rights. This involves a formal Application to be filed before the Authority and seek clearance.

To talk about the current business scenario linked to Trademark. Just rethink how much would have spent by Tata to buy a brand "Land Rover" & "Jaguar". How much it would have cost for "Vodafone" to erase brand "Hutch" in the minds of market and tell "Hey Hutch is now Vodafone". The trademark not only is important to register in the minds of the market. Its even more important to register as a Trademark.

IPR News

(Compiled by Madhwesh, CS Mysore)

NPIL gets product patent from US Patent & Trademark Office:

Nicholas Piramal India on Monday said the US Patent and Trademark office has granted product patent to the company for compounds being developed for cancer treatment.

Economic Times (web)

India recognised as ISA & IPEA:

The 170 plus Member States of the World Intellectual Property Organization (WIPO), in the recently concluded General Assemblies of WIPO, endorsed India's recognition as an International Searching Authority (ISA) and an International Preliminary Examining Authority (IPEA).

The status of ISA and IPEA would be beneficial for India in several ways:

Apart from the international recognition that our IP system would get, it would also generate revenues in the form of fees that would be provided to us for functioning as an ISA/IPEA. Being the only English speaking nation in the Asian region to be recognized as an ISA/IPEA would mean that several international applications received by WIPO under the Patents Cooperation Treaty would be sent to the Indian Patent Offices for search and preliminary examination purposes.

Press info bureau – Govt of India

Legal Round-up

CENVAT

- Procedure where no export benefits are claimed

The CBEC has clarified that the manufacturer exporters are mandatorily required to follow the self sealing procedure in relation to exports under free shipping bills where no export benefits are claimed.

C.B.E.C Circular No. 860/18/2007 - CX, dated 22-11-2007

- Mandatory indication of the fifteen digit PAN based assessee code

The CBEC has issued a clarification to require the mandatory indication of the fifteen digit PAN based assessee code and jurisdictional Commissionerate code on the GAR-7 challans which are used for depositing taxes.

C.B.E.C. Letter F. No. EDP/On-Line/ 2007-08/254 dated 9-10-2007

Dutiability

- Repair of transformers - Whether manufacture?

The Tribunal has held that the process of repair of transformers does not amount to manufacture under excise law.

CCE Vs. Hindustan Transformers (P) Ltd. (2007 (218) ELT 410)

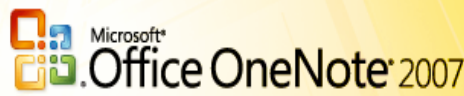
- Duty on samples destroyed during quality testing

The Tribunal has held that the no duty is payable on samples destroyed during quality control testing within the factory.

CCE Vs Economic Explosives Ltd & Anr. (2007 (83) RLT 504)

- Benefit of captive consumption

The Tribunal has held that the benefit of captive consumption under Notification No.67/95



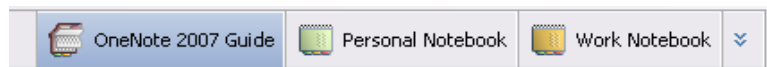
IT For Corporate Professionals

- Amitkumar Hegde B Com, MCA(Final)

I was searching for software which can easily document information which falls into different walks of life. It might be financial data, to-dos, information grabbed from internet, organization chart, graphs, whatever. Microsoft has made this task very simple with "Microsoft OneNote 2007". Use OneNote to capture your thoughts and ideas in electronic notebooks, where you can easily organize, search, and share them.

When opened for the first time, OneNote opens with a tutorial on how best it can be used. It has a very simple user interface as other Microsoft products and can be easily integrated with other Microsoft products.

OneNote follows a notebook style to organize data. We can maintain separate notebooks for different subjects. All these notebooks will be available as 'tabs' on the left side of the screen as shown in the following snapshot (It is shown in horizontal order to save space.). New notebooks can be created with the help of File menu.



Each of these notebooks can contain different sections. For example, if I have to maintain profile of a company, company history will be one section, key people in the company will be another section, financial details will be another section and so on. These sections will appear as 'tabs' at the top as follows. Each of these sections is color coded for easy navigation.



In each of these sections we can have as many pages as we want which we use to house the information. We can literally insert any type of information. Photos, links to files, charts, tables, notes or any other data snippet can easily be inserted. Each information entity will be put in to a separate block which, one can drag and drop anywhere on the page. Huge set of page-templates are included to suit different needs.

Along with all these it comes with other features such as spell-check, formatting data etc. which are standard for all Microsoft products. As a conclusion I can say it is one of the best and easiest information management software available today.

Words worth millions...

"No great work can be achieved by humbug. It is through tremendous energy that all undertakings are accomplished. Therefore manifest your manhood."

- Swamy Vivekananda

- Amitkumar Hegde B Com, MCA(Final)

Want to get a loan and you are confused about where to get a good bargain? Then www.apnaloan.com is the website which will solve your problem. The site is regularly updated and provides all the information you need to get a loan sanctioned.

The website provides information on Personal Loan, Home Loan, Car Loan, Education Loan etc. Each of the section provides information about Loan Rates, Details of Banks, News, Some articles that guide us on making a good choice etc. The site guides us on how to apply for a loan, what are the documents required, and eligibilities to apply for a particular loan. You can also read some valuable articles on different topics related to Loan and Credit Cards.

If you have a question you can post it and get it answered by professionals. Queries are categorized into different sections such as Home Loan Query, Bank Grievances Query, and Miscellaneous Query etc. You can also view queries and answers posted already.

Calculator section provides some good Loan Calculators such as EMI calculator, Loan Eligibility Calculator for Salaried and Self-employed, Actual cost of 0% Loans etc.

So when applying for a loan or a new credit card, don't forget to go through this website.

Spectrum Space

Dear Friends..!!!!!!

At the outset we wish you all a very happy, prosperous and rewarding New Year. The New Year may give each one of us tremendous strength, enthusiasm and cheer to smilingly meet all challenges that come our way and to profit from all opportunities that present themselves to us. Let us all have the courage and the tendency to convert challenges into great opportunities and enhance the gain from plain opportunities.

PRESIDENT'S VISIT :

The programme held on the occasion of the President's Visit on 16th December 2007 at Bahadur Institute, Mysore was lauded by one and all. The theme of the Programme **EMERGING TRENDS** – creating an apt platform for the discussion and interaction with our beloved Institute President Ms. CS. PREETI MALHOTRA and Special invitee CS.DIRIVIAM S., Chairman, SIRC of ICSI. The presence of Members, Students & Friends numbering nearly two hundred from around Mysore made the Programme a memorable event.

The Day kicked off with the welcome address given by CS. Jayalakshmi Anshuman the Secretary of the Mysore Chapter. The 48th Issue of the ICSI Mysore e-Newsletter was inaugurated by the President; touching a new milestone by completing 4 years of publication. First technical session of the day opened up with a presentation titled **“Company Secretary in Globalised Scenario”** by Madwesh, who has just started his career as a Company Secretary and Subodh, a CS intermediate student. The session focused on the avenues open for the CS profession by highlighting the dominance of the service sector over the economies of the world. The session emphasized the four modes of services covered under the GATS (General Agreement on Trade in Services) and the possible opportunities it offers to the profession.

It was followed by another technical session on **“Thoughts on Alternative**

cannot be denied for the reason alone that the manufacturer has separately recovered the costs of such captive consumed goods from the customers.

Mutual Industries Ltd Vs CCE (2007 (83) RLT 549)

Valuation

➤ Refrigerators to be considered as packaged commodities

The Supreme Court has held that refrigerators would be considered as packaged commodities in terms of the Standards of Weights & Measures Act, 1976, even if the packages are required to be opened for testing prior to sales, and accordingly would be valued on the basis of their retail sale price under Section 4A of the Central Excise Act.

Whirlpool of India Ltd. Vs. Union of India (2007 (218) ELT 167)

➤ No duty on principal w.r.t., undervaluation by job worker

The Tribunal has held that no duty can be demanded from the principal with regard to any undervaluation of goods by job workers.

Gillette Diversified Operations Ltd Vs CCE (2007 (217) ELT 551)

➤ Consideration collected for buying and distributing gifts

The Tribunal has held that the additional consideration collected on behalf of dealers and distributors for buying and distributing gifts among themselves is not includible in the value of goods.

CCE&C Vs. Reliance Industries Ltd. (2007 (83) RLT 402)

➤ Principal and job worker

The Tribunal has held that in a situation where the principal supplies inputs and discharges excise duty on the finished goods manufactured by the job worker, CENVAT credits cannot be denied on the ground that no

manufacturing activity is carried out at the principal's premises.

S.G.Zaveri Pharmapack Vs. CCE (2007 (217 ELT 591)

➤ CENVAT Credit

The Tribunal has held that CENVAT credit availed on inputs cannot be denied merely on the ground that the duty actually paid on final products was not payable under the provisions of law.

Super Forging and Steels Ltd Vs. CCE (2007 (217) ELT 559)

➤ CENVAT credits on imported inputs

The Tribunal has held that CENVAT credits on imported inputs are not deniable merely on the ground that the CVD was paid by utilizing DEPB scrips instead of in cash.

Sheshasayee Paper and Boards Ltd Vs. CCE (2007 (217) ELT 562)

➤ Factory shifted - unutilized CENVAT credit on inputs

The Tribunal has held that if a factory is shifted to another site, along with the capital goods, the unutilized CENVAT credit on inputs can be transferred even if there are no stocks of inputs as such or in process at the time of shifting of the factory.

Shree Rama Multi-Tech Ltd. Vs. CCE (2007 (83) RLT 636)

➤ No denial of remission of duty where goods are destroyed in an accident

The Tribunal has held that remission of duty cannot be denied in case the goods are destroyed in an accident during transportation from the job worker's premises to the appellants' factory for further processing.

Tata Coffee Ltd. Vs CCE (2007 (82) RLT 817)

➤ Unjust enrichment

The Tribunal has held that the bar of unjust enrichment is not applicable in case of deposits

Disputes Resolution" (ADR) By CS. D. D. Bhat, Chairman, Mysore Chapter. The meaning of the concept ADR was explained. The nitty gritty of the ADRs were lucidly explained by him.

A 13 minute movie titled **"India Clip"** capturing the essence of India was shown. This was conceptualized by Harish B.N. , CS Final student and Aditya Bhat, CS Intermediate Student.

A musical skit **"CS is the Best"** was a morale booster for the young hopefuls of the CS profession and was well acclaimed by the audience.

The Post lunch events started with a **Musical Jugalbandhi** by Madwesh and Rakesh, CS Intermediate Student.

The Final technical session titled **"IPR and Company Secretary"** was presented by Ms. Pracheta M., who will be shortly enrolled as a member and Chinmay, a CS intermediate student. The session laid out the role of a Company Secretary in the world of IPRs.

Merit awards and recognitions were distributed to the toppers in the June 2007 CS examinations and the winners of the various competitions held at the National level conducted by the Institute. The Awards were sponsored by Adarsh Memorial Trust and S. N. Harish Memorial Trust.

The Chairman of the SIRC, CS. Diraviam S. in his address expressed his happiness over the way in which the chapter has groomed the budding talents. He praised the chapter for its untiring efforts in surpassing all the targets fixed for the number of registrations, career counseling programmes, etc.

The President CS. Preeti Malhotra in her address to the students and members mentioned about the various changes brought about by the Institute for the benefit of the students. The President also highlighted the future of the profession and the importance of a Company Secretary in an organization. The President appreciated the creative talents of the students of the chapter.

The Eventful Programme concluded with the vote of thanks proposed by CS. Nimmoo Kinger. Ms. Smitha compered the events.

We wish to take this opportunity to express our thanks to all the members of the managing committee of Mysore chapter of ICSI, Students & Friends for their support in making this event a great success.

STUDY CIRCLE:

1. **First Week:** Questions and Answers on Fundamental of Accounting
2. **Second Week:** Company Law queries
3. **Third Week:** Session on SEBI DIP GUIDELINES
4. **Fourth Week:** Session IPR

The Chapter has a powerful vision that will drive all Mysore chapter students to set new national benchmarks. A number of initiatives have been taken and efforts are needed to realize our vision. These initiatives have been a concerted effort of the members and students of the chapter and, we believe this will continue in times to come.

We wish you all **A VERY HAPPY AND PROSPEROUS 2008**

- Spectrum Friends

made during the pendency of appeals before the CESTAT and the Supreme Court.

Madura Coats Private Ltd. Vs. CCE (2007 (83) RLT 609)

Service Tax

➤ Promotion of lottery tickets

The High Court of Sikkim has held that services in relation to promotion of lottery tickets are not taxable under the category of business auxiliary services.

Martin Lottery Agencies Ltd. Vs. UOI (2007 (8) STR 561)

➤ No Service tax if sales tax is paid

The Tribunal has held that if sales tax has been paid on the transfer of the right to use goods, service tax is not required to be paid on the transaction.

Thermax Limited Vs. CCE (2007 (8) STR 487)

➤ Transfer of technical know-how by sale - No ST

The Tribunal has held that the transfer of technical knowhow by way of sale for a valuable consideration, is a sale transaction and is not chargeable to service tax.

Matrix Laboratories Ltd. Vs. CC & CE (2007 (11) STT 400)

➤ Storing of own goods

The Tribunal has held that the activity of storing own goods and collection of demurrage charges from the original sellers by the purchasers, upon subsequent sale of such goods to other parties by the purchasers, is not chargeable to service tax.

Karnataka State Beverages Corporation Ltd. Vs. CST (2007 (8) STR 481)

Sales Tax

➤ Inter-state sale

The Supreme Court has held that movement of goods outside the State by the seller in pursuance

Article

Part I

RIGHT TO INFORMATION ACT

An Overview

Dinchu Oommen, ACS, LL.B, Bangalore
Company Secretary & Executive - Legal, ABB Group

The Constitution of India guarantees seven Fundamental Rights to its citizens. For more than two decades, the Supreme Court of India has recognized the right to information as a constitutionally protected fundamental right, established under Article 19 (right to freedom of speech and expression) and Article 21 (right to life) of the Constitution. The Court has recognized the right to access information from government departments is fundamental to democracy. Activists at the grassroots have famously relied upon the right to demonstrate that access to information is also essential to ensuring effective participatory development. "In a government...where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people...have a right to know every public act, everything that is done in a public way, by their public functionaries...The responsibility of officials to explain or to justify their acts is the chief safeguard against oppression and corruption" - Justice K K Mathew, Supreme Court of India (*State of UP v Raj Narain*, AIR 1975 SC 865). Proponents of the right to information in India have long made it clear that the legal right to information simply recognizes the moral fact that information held by the government on behalf of the public, collected with public money and accumulated by public servants rightfully belongs to the people. Information is not a gift, graciously bestowed by India's leaders - it is no less than every person's human right.

The first draft of the Right to Information Bill was presented to Parliament on 22 December 2004. After intense debate, more than a hundred amendments to the draft Bill were made between December 2004 and 15 June 2005, when the bill finally passed. The Act came fully into effect on 13 October 2005.

Scope of the Act

The Act covers the whole of India except Jammu and Kashmir. It is applicable to all constitutional authorities, including the executive, legislature and judiciary, any institution or body established or constituted by an act of Parliament or a state legislature. It is also defined in the Act that bodies or authorities established or constituted by order or notification of appropriate government including bodies "owned, controlled or substantially financed" by government, or non-Government organizations "substantially financed, directly or indirectly by funds" provided by the government are also covered in the Act's ambit.

Private bodies are not within the Act's ambit directly. However, information that can be accessed under any other law in force by a public authority can also be requested for. In a landmark decision of 30-Nov-2006 (*Sarbajit Roy v. DERC*) the Central Information Commission also reaffirmed that privatised public utility companies continue to be within the RTI Act- their privatisation notwithstanding. The Act also explicitly overrides the Official Secrets Act and other laws in force on 15-June-2005 to the extent of any inconsistency.

Under the terms of the Act, any person may request information from a "public authority" (a body of Government or instrumentality of State) which is required to reply expeditiously or within thirty days. The Act also requires every public authority to computerize their records for wide dissemination and to proactively publish certain categories of information so that the citizens need minimum recourse to request for

with a centralized contract with the buyer will amount to an inter-State sale even though the goods were dispatched to the branches of the seller in different States since such transfers are in pursuance to the main contract with the buyer in accordance to which the said dispatches were made.

I. D. L. Chemical Ltd. Vs. State of Orissa [(2007) 10 VST 644]

➤ Notice - Subsequent to assessment

The Central Sales Tax Appellate Authority- New Delhi has held that where an original assessment was completed treating movement of goods from factory to a branch in another State as a branch transfer, any subsequent notice to the dealer to reassess the transaction as an inter-state sale was not permissible except when there was a fraud, collusion, misrepresentation or willful suppression of facts by the dealer or the earlier order was void or voidable or vitiated by a jurisdictional error.

Steel Authority of India Ltd. Vs. Secretary, Finance Department, Govt. Of Karnataka [(2007) 10 VST 451]

Customs

➤ Appropriate authority for the sanctioning and disbursement of drawback claims

The Central Government has clarified that the appropriate authority for the sanctioning and disbursement of drawback claims with regard to supplies made from Domestic Tariff Area (DTA) to Developers of Special Economic Zones (SEZs) and Units in SEZs are the customs officials posted in the SEZ, where such claims are filed by the SEZ Developers/Units. However, where the claims are filed by the DTA suppliers on the basis of disclaimers issued by the SEZ Developers/ Units, these will be sanctioned by the jurisdictional customs authorities

information formally. Central Information Commission and State Information Commissions are to be constituted by the Central Government and State Governments respectively for carrying out the powers and functions as prescribed under the Act.

What does information mean?

Information means any material in any form including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force but does not include "file notings".

What does Right to Information mean?

It includes the right to -

- inspect works, documents, records
- take notes, extracts or certified copies of documents or records
- take certified samples of material
- obtain information in form of printouts, diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts.

What is the procedure to be followed?

Under the Act, all complying departments must appoint their Public Information Officer (PIO). Any citizen of India may submit a request to the PIO for information in any format, paper or electronic in English or Hindi or in the official language of the area. It is the PIO's responsibility to ensure that the information is obtained from the appropriate department or section. If the request pertains to another public authority (in whole or part) it is the PIO's responsibility to transfer/forward the concerned portions of the request to a PIO of the other within 5 days. In addition, the every public authority is required to designate Assistant Public Information Officers (APIOs) to receive RTI requests and appeals for forwarding to the PIOs of their public authority. The person making the request is not obliged to explain why the information is needed. The Act specifies timeframes for complying with the request.

- If the request has been made to the PIO, compliance is expected within **30 days**.
- If the request has been made to an APIO, compliance is expected within **35 days**.
- If the PIO transfers the request to some other department (better concerned with the information requested), the time allowed is **35 days**.
- Information about Human Rights violations by Security agencies have to be provided within **45 days** with the prior approval of the Central Information Commission.
- However, in any of the above cases, if life or liberty is involved, the PIO has to comply within **48 hours**.

Since the information is to be paid for, the time between the reply of the PIO and the time taken to deposit the further fees for information is excluded from the time allowed. If information is not provided within this period, it is treated as a refusal. Refusal with or without reasons may be ground for appeal.

Application fees are to be prescribed which must be reasonable. If further fees are required, then the same must be intimated in writing with calculation details of how the figure was arrived at. Applicant can seek review of the decision on fees charged by the PIO by applying to the appropriate Appellate Authority. No fees will be charged from people living below the poverty line. Applicant must be provided information free of cost if the PIO fails to comply with the prescribed time limit. For Central departments as of 2006, there is a fee of Rs. 10 for filing the request, Rs. 2 per page of information and Rs. 5 for each hour of inspection after the first hour. States can fix their own rules.

(to continue in the next edition)

of the DTA suppliers.

*Customs Circular No. 43/2007
dated 05/12/07*

➤ Laptop and desktop computers - Classification

The Supreme Court has held that laptop computers and desktop computers are totally different items though capable of performing same or similar functions. A desktop computer is a combination of a CPU with monitor, mouse and key board imported together as a set and what is thus covered is a set of items brought together and capable of being put together to make a computer. A notebook, on the other hand, comes in an integrated and inseparable form and hence not a combination of CPU, monitor, mouse and keyboard. Accordingly, import of laptops is not subject to the levy of additional duty @ of 7% under the Computers (Additional Duty) Rules, 2004.

CC Vs. Acer India Pvt. Ltd. (2007 (218) ELT 17)

Valuation

➤ Statement of unconnected person

The Tribunal has held that the value of imported goods cannot be enhanced based on the statement of a person who is not connected with the goods.

Brij Mohan Sood Vs. CC (2007 (217) ELT 570)

➤ No rejection of TV without setting reasons

The Tribunal has held that the transaction value of imported goods cannot be rejected without the assessing authority setting out the reasons for rejecting the evidence adduced by the importer in respect of the declared value.

Ahammed Kunhi Vs. CC (2007 (218) ELT 270)

[Contd., in adjacent Column...](#)

Legal Round up ..Contd..

➤ Rejection based on contemporaneous imports.

The Tribunal has upheld the rejection of the declared transaction value of imported goods based on the higher values of contemporaneous imports.

Vijay Cines Services Ltd. Vs. CC (2007-TIOL-1784-CESTAT-MUM)

➤ Price fluctuations in value of imported goods

The Tribunal has held that where the imported goods are subject to price fluctuations, the declared transaction value cannot be rejected in the absence of any evidence to doubt the commercial nature of the transaction and in the absence of any of the circumstances mentioned in Rule 4(2) of the Customs Valuation Rules, 1988(CVR).

Oswal Fats & Oils Vs. CC (2007 (149) ECR 56)

Others

➤ Person responsible w.r.t., imported goods

The Tribunal has held that any liability that arises with respect to the imported goods is to be discharged by the person who has filed the bill of entry for clearance of such goods and in whose name the goods have been imported.

Brij Mohan Sood Vs. CC (2007 (217) ELT 570)

➤ Benefit of exemption

The Tribunal has held that where a notification extends the benefit of exemption to imported goods, alongwith standard accessories, the non-importation of the accessories does not render the principal goods ineligible for the benefit.

Precision Diagnostics Vs. CC 2007 (149) ECR 162)

➤ Refund in case of excess duty

The Tribunal has held that where excess duty has been paid as a result of an oversight on the part of the customs authorities to consider an exemption notification, the refund claim filed by the importer cannot be denied on the ground of non filing of an appeal against the assessment order.

G. S. Metalica Vs. CC (2007 (83) RLT 455)

FTP

➤ Goods removed are lost in transit

The Tribunal has held that where goods removed by a 100% EOU are lost in transit prior to export, such goods will be treated as cleared to the DTA and chargeable to appropriate duties.

Meghmani Industries Ltd. Vs. CC (2007 (218) ELT 50)

➤ No charge of mis-declaration

The Tribunal has held that since the determination of the export value has to be done by the customs authorities, no charge of mis-declaration can be made against the exporter who has claimed DEPB benefit on the basis of the value so determined by the customs authorities. Further, the transaction value of export goods can only be rejected on the basis of evidence of contemporaneous exports at lower prices.

Advance Exports Vs. CC (2007 (218) ELT 39)

Disclaimer: The information contained in this newsletter is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate. No one should act on such information without appropriate professional advice.