



# eNewsletter - 83

Mysore Chapter

December 2010



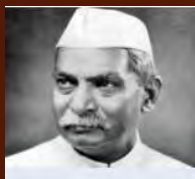
## **INDIA CORPORATE WEEK**

**December 14 - 21, 2010**

**Special Edition**

For Private Circulation Only

# Words worth Millions...



"In attaining our ideals, our means should be as pure as the end!"

- Dr. Rajendra Prasad

December 3, 1884 - February 28, 1963

First President of independent India

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## Message from Chairperson



Dear Professional Colleagues and Students,

As yet another eventful year is concluding, the new year heralds the revolution in the world of accountancy with the convergence of IFRS. The objectives are lower compliance cost, to enhance and maintain investors' confidence and accessibility of financial information to the global investors, which is critical in view of the fact that today Indian companies are also tapping the international financial markets. With more than 120 countries requiring or permitting the use of the policy of convergence, the IFRS era will open up an entire gamut of learning for all the young professionals.

**The India Corporate week has only begun yesterday. Our Chapter is supporting this with Workshops, Investor Awareness Program and this special edition of eMagazine on the occasion.**

The Elections 2010 results are eagerly awaited; we look forward to a great team to lead us at the SIRC and the Centre. As we turn around the corner to hand over the baton, I can see a younger and energetic team at the Mysore Chapter waiting to continue the race.

I wish all the students writing the December 2010 exams the very best. May you deserve the success that you are!

Wishing our readers A very Happy, peaceful & Successful New Year.....

Yours in CS fraternity,

*CS K. Sarina Chouta Harish*

## Inside.....

### Articles:

CSR in SMEs...4

Micro finance Industry...5

FDI in Retail: Top Myths...7

My Money, My Rules...10

Company Deposits: Part - 7 .... 11

Career Planning in Industries...13

### Columns:

**Living Room:** Practical Approach...6

**IT for professionals:** Office Live...14

**Web Yatra:** The Financial Express...9

**Spectrum Space...15**

**Legal Roundup ... 16**

**News Room...18**



Mysore Chapter had a series of weekend activities in November 2010. Topics of core academics were addressed in the 4 study circles held on 7th, 13th, 21st & 28th November 2010:

- Gist of All Chapters & Critical topics - Economic Laws and Commercial Laws: Study Circle headed by CS Abhishek Bharadwaj A B
- Fast track issues (Securities law - Public issues), Income tax, basic of e-stamping. Concluded with post examination knowledge development steps for executive students: Study Circle headed by CS. Kiran T

# INDIA CORPORATE WEEK

December 14 – 21, 2010

The Ministry of Corporate Affairs India has taken the initiative to organize India Corporate Week 2010 from December 14 to 21, 2010 with the theme “**Sustainable Business**”. The Week had a kick start with a national event at New Delhi where Hon’ble Prime Minister was the Chief Guest. Six national events and a large number of events will be organized in collaboration with partner organizations throughout the country.

During this Week, the deliberations at various locations will bring the representatives from Government, corporate sector, professionals, civil society organizations and other stakeholders together to develop a national perspective on the strategies that India Inc. needs to adopt so as to sustain a high rate of growth while simultaneously contributing to the inclusive growth of the people.

These events, are intending to highlight the success of the Indian corporate sector and the potential to lead the future. Institutions like Institute of Company Secretaries of India, Institute of Chartered Accountants of India, Institute of Costs and Works Accountants of India and Indian Institute of Corporate Affairs and various small and medium enterprises across the country are participating in the celebration of India Corporate Week.

Apart from organising special programs, Mysore Chapter is presenting focussed articles on themes of India Corporate Week in this Special Edition. Let us make India, a world Corporate Leader too!



### Presentation of 10<sup>th</sup> ICSI National Award for Excellence in Corporate Governance on December 16, 2010, at 4:00 PM

Venue: Scope Convention Centre, Lodi Road, New Delhi

**Hon’ble Finance Minister, Mr. Pranab Mukherjee**, has kindly consented to be the Chief Guest at the Award Function. **Hon’ble Mr. Justice R C Lahoti, Former Chief Justice of India** and Chairman, Jury has agreed to grace the occasion as Guest of Honour. **Mr. Philip Armstrong, Head, Global Corporate Governance Forum** will deliver the key note address.



The Presentation of ICSI National Award shall be preceded by a Panel Discussion on the topics “**CSR- Mandatory or Corporate Benevolence**” and “**Demystifying Corporate pyramids- A Governance Perspective**” by eminent panelists.

The Institute proposes to WEBCAST the function. The relevant links for the same shall be enabled on website [www.icsi.edu](http://www.icsi.edu)

# CSR in SMEs

Azim Premji donated about \$2 billion to fund rural education and development programs, which is said to be the biggest donation in India's history. Ratan Tata's donation of \$50 million is the largest international donation in the 102-year history of Harvard. Infosys's DCs (Development Centers) have made remarkable achievements in several Corporate Social Responsibility (CSR) initiatives. There are numerous examples of Indian Corporate achieving new milestones on CSR. But is it only for Big Corporate and MNCs? The answer is 'NO'.

CSR is an ethical ideology or theory that an entity, be it an organization or individual, has an obligation to act to benefit society at large. This responsibility can be passive, by avoiding engaging in socially harmful acts, or active, by performing activities that directly advance social goals. It is a means to integrate social and environmental concerns with business on a voluntary basis. Although CSR is mainly discussed in the context of larger enterprises, it also is a strategic tool to enhance the competitiveness of Small and Medium sized Enterprises (SMEs). The specific impact, however, often cannot be expressed in hard facts and figures and it can take some time until they become manifested.

SMEs are mostly under several constraints and bottlenecks in the way of changing market conditions, tough competition from bigger companies/ MNCs, narrowed bottom lines, access to the global market, etc., which leaves hardly any scope for these SMEs to consider the business responsibility agenda.

However, CSR is not about only donations to external bodies. There are many ways a SME can involve itself in effective discharge of its social obligations. The four dimensions of society with which any SME is involved are People, Community, environment and market.

## A focus on People includes:



- Better work life balance
- Improved working conditions
- Job opportunity to physically challenged
- Financial support
- Staff development through training and career planning.

## CSR activities targeted at the community may refer to:

- Running educational institutions, hospitals, clubs, cultural organizations;

- Donating to institutions, health camps, charitable organizations, NGOs;
- Institutionalization of good environmental policies,
- Waste reduction through recycling and helping reduction of global warming
- Contributing to the improvement of local infrastructure;

*Acting on Corporate Social Responsibility can be passive, by avoiding engaging in socially harmful acts, or active, by performing activities that directly advance social goals.*



*It is a means to integrate social and environmental concerns with business on a voluntary basis.*

### CA. Priyaranjan Das

PricewaterHouseCoopers, Bangalore

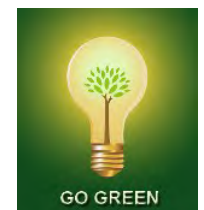
*"The views mentioned in this article are purely personal and does not have any relation to PwC."*

## Market-oriented CSR activities may include:

- Maintaining highest quality standards
- Fair pricing
- Ethical advertising
- Involving business partners for the social clause.

## CSR activities for environment protection may focus on:

- Developing eco friendly products
- Lower waste and proper waste disposal
- Efficient resource management
- Selecting business partner having equal CSR standards



A study by a UK based organization on SMEs revealed that the SMEs which demonstrated highest standard of social responsibilities get advantage in sustainable development and gaining an edge over their competition. SMEs play a key role in the economy in terms of market share and employment. While SMEs are not familiar with some of the concepts such as sustainable development, they do understand the broad principles underlying business responsibility, and also understand how it can deliver to their business. It is therefore crucial that SMEs should be able to deliver to local, national and global targets on social, environmental and economic issues.

# Micro Finance Industry

Micro means small and finance means funding. Micro Finance is the provision of financial services to low-income clients, including consumers and the self-employed, who traditionally lack access to banking and related services.

Micro Financial Institution (MFI) refers to institutions that specialize in making very small loans to very poor population in developing countries.

The main feature of MF that distinguishes it from traditional money lending is that the finance is provided without any type of collateral securities to assure repayment from the lenders irrespective of the fact that the customers of the MFIs belong to the lower level in the social economy, where the risk of loan assets going bad is higher.

The modern structure of the Micro Finance sector is not limited to money lending business, now it includes Micro pension and Insurance also. The modern terminology used for such services is Financial inclusion, it means the process of assuring access to financial services and timely and adequate credit where needed by vulnerable groups such as weaker sections and low income groups at an affordable cost. The MFIs operate in rural and undeveloped areas where the residents are out of the reach of direct government aid.

The concept originally started on a nonprofit basis, it is now being done increasingly on profit making objective. The present form of micro financing had its beginning in 1970 when Grameen Bank of Bangladesh with the present business model was started by the microfinance pioneer Mohammad Yunus, for which he was awarded the Nobel Prize in 2006.

## Type of entities – Present Scenario:

- **Co-operative Society:** These may be floated under the state laws governing co-operative society.
- **Local Area Bank & Regional Rural Bank:** These entities are banking Companies floated under companies Act and Banking Regulation Act and Regional Rural Bank Act 1976. They are subject to direct control of Reserve Bank of India. Even though their objectives are same as any other banks but depending on the area of operation in rural areas they can have micro business model and engage in financial inclusion services.

**The modern structure of the Micro Finance sector is not limited to money lending business, now it includes Micro pension and Insurance also.**



**The concept originally started on a non-profit basis, it is now being done increasingly on profit making objective.**

**CS. Priti Astarag Patnaik** LLB, ACS  
KBS Local Area Bank  
Mahabubnagar, Andhra Pradesh

## Criticism and Justification relating to the sector:

**MFIs charge high rate of interest.** The reason behind the higher rate of interest is- smaller the value of the product higher is the indirect cost. In micro loans the size of the loan is small as compared to the cost incurred by the MFI which includes cost of procurement of customer, evaluation of credit worthiness, documentation, administration, and collection of EMI. Apart from that MFI have to pay interest on borrowed capital. Taking all these in to account the interest charged on micro loans goes high.

Usually MFIs lend money to poor people for starting and continuing small businesses (grocery shop, vegetable business etc.) where, though amount of profit is low, the percentage of profit is very high. Therefore there is no problem in paying higher rate of interest on the small capital borrowed from the MFIs. Again there is no restriction in India on making higher percentage of profit from any legal business activity.

There exists no monopoly in MF sector as several players are there in the Micro finance market. Recently RBI has instructed banks to impose a cap of 22-24 per cent a year (all-in cost) on loans by MFIs, which in turn has the effect of reducing the interest charged by MFIs. The MFIs operate in rural and undeveloped areas where the residents are out of the reach of direct government aid.

No sector can develop properly unless regulated by means of effective legislation. At present there is no specific act governing the Micro finance sector. **Micro Financial Sector (Development and Regulation) Bill** has been drafted with this objective of regulating and developing the sector.

The preamble of the bill says to provide for promotion, development and orderly growth of the micro finance sector in rural and urban areas.

#### **Few main features of the Bill:**

- Seeks to promote the sector and regulate micro financial Institutions (MFI).
- National Bank for Agriculture and Rural Development (NABARD) shall regulate the micro financial sector.
- Every MFI that accepts deposits needs to be registered with NABARD. Conditions for registration include (a) net owned funds of at least Rs 5 lakh; and (b) at least three years in existence as an MFI. All MFIs, whether registered or not, shall submit annual financial statements to NABARD.
- Every MFI that accepts deposits has to create a reserve fund by transferring a minimum of 15% of its net profit realised out of its thrift and micro finance services every year.

#### **Self Help Promoting Agencies and Microfinance:**

As an initiative to promote the rural economy Self Help Promoting Agencies or commonly known as Self Help Groups (SHG) have been formed and supported by Government, NGOs and Banks. In its approach it combines access to low-cost financial services with a process of self management and development for the women who are SHG members. The SHG operates on the idea of purely Microfinance i.e. the savings and credit transactions, decisions and record-keeping, or Microfinance along with other village development program, with other social development inputs.

#### **Recent Developments in the Sector:**

The sector is well developed in state of Andhra Pradesh. Recently Andhra Pradesh state government has promulgated an ordinance requiring all Micro finance institutions to get registered with District Regulatory and Development Authority. The ordinance has the basic objective of regulating the sector for better administration and development of the sector but at the same time it requires the MFIs to get registered with District/ Municipal Authority within 30 days of Ordinance and restricts to carry any of its activities i.e. both disbursement and collection until registered. The ordinance was objected in the High Court of Andhra Pradesh. The plea was that keeping in view the prevailing conditions, if the MFIs are not allowed to collect the installments of loans already disbursed by them, then it may affect the health of the MFIs very badly and that small MFIs may lose their existence apart from slow down in the sector. Relief have been granted by the honourable court to resume business.

## **Practical approach**

A scholar in mathematics had to cross a river. He found a washer man standing in knee deep water and washing the clothes.

Scholar: - "What is the depth of the river at this bank?"

Washer man: - "Sir, it is about 2 feet"

Scholar:- "What is the depth at the other side of the river?"

Washer man:-"May be about 2 feet".

Scholar:-"Any idea as to what is the depth at the middle of the river?"

## **Living Room**



Washer man: - "Sir, it may be about 10 feet".

The Scholar started crossing the river.

The washer man stopped the scholar saying-"Sir, you will drown if you cross the river here."

The scholar explained, "You do not know the law of averages. You see, the average depth of this river is less than 5 feet and I am 6 feet tall."

The scholar proceeded to cross the river and drowned.

Managers need to develop a practical approach instead of just going by the theoretical knowledge.

# FDI in Retail: Top Myths

There is proposal for quite a long time before the Government to allow FDI in retail sector. Lot of lobbying is also seems to be happening in expediting this policy move. Here is an effort to demystify the top myths that are put forward favouring FDI in retail. When India Corporate Inc itself is having required potential to operate full-fledged in retail sector too, the basic need for allowing FDI in retail itself is not justified.

## **FDI in retail brings down inflation in food price:**

This claim is based on the argument that FDI will ensure quicker and better procurement, movement and availability of agricultural produce, thereby easing supply constraints. Whether FDI can really do so, is yet to be proven. Even assuming it does, is the present inflation attributable to supply bottlenecks alone? Inflation, i.e., the rise in the general level of prices of goods and services in an economy is a result of several interdependent factors - fiscal deficit, increase in money supply, capital flows, monsoons, monetary policy, indirect taxes, aggregate demand, and so on. Core inflation, food led inflation, primary article inflation and the like are components of, and contribute to overall inflation and these in turn, could influence each other. Thus, inflation cannot be solved simply by FDI in retail.

## **FDI in retail improves yield & agricultural growth and thereby ease supply**

Recently, the Finance Minister made a statement that a reason for high inflation was a fall in the quantity of fruits, edible oil and pulses. If so, how FDI will improve quantity? It has been said that the foreign players who bring in FDI will work with the farmers and thereby improve the quality and quantity of farm produce. Obviously, this will not be a one way grant - lower procurement prices, supply commitments, exclusive arrangements and other terms and conditions would be imposed in return. Moreover, retail and agriculture are two diverse fields, and a retailer's expertise in agriculture, could at best, extend to a little more than supply chain management. The primary factors responsible for yield improvement, such as soil management, crop rotation, seeding, administration of fertilizers and pesticides, micro-financing of farmers and the like are largely beyond a retailer's domain. India, after independence, has had a more stable record with respect to inflation than most other developing countries. Since 1950, the inflation in Indian economy has been in single digits for most of the years. India could manage the supply problem and the consequent inflation (in a comparatively

livable way, if not satisfactorily) for so many years, in spite of so many disadvantages - sharp increase in population, poverty, shortage of food production, imports of wheat, old fashioned agricultural practices, fragmented land holdings, high dependence on monsoons, poor irrigation, high illiteracy, and so on. The past few years of course, are an exception. If food grains are either hoarded by some influential elements, or are allowed to rot in godowns, how

**Retail and agriculture are two diverse fields, and a retailer's expertise in agriculture, could at best, extend to a little more than supply chain management. The primary factors responsible or yield improvement, such as soil management, crop rotation, seeding and the like are largely beyond a retailer's domain.**



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will FDI help solve the problem? Mismanagement in public godowns attracted tremendous media attention and led to a deadlock in the Parliament (which subsequently died down). Courts, appalled by the situation, directed release of stocks stored in the godowns. But technicality was invoked- how could the Judiciary interfere in the functioning of the Executive and thereby undermine the essence of a democracy? Hence, even assuming that the present inflation is due to supply bottlenecks only, FDI in retail, in itself, will not solve the problem.

## **FDI in retail help build better logistics and back-end systems, thereby ensuring better availability of produce to the end consumer.**

It is being said that around 30% of farm produce never reaches the end consumer and is wasted; but this contention seems debatable. The Mumbai based Fruit & Vegetable Merchants Association, for instance, holds that wastage is not more than 5%. And by nature, some margin for wastage is unavoidable in the case of perishable products. Whatever be the percentage, a common reason attributed for this wastage is lack of infrastructure, transport and storage facilities. But is FDI the only answer to this? Let us remember, 'Operation Flood', supposedly the largest dairy development program in the world, which connected the consumer and the producer through a direct, efficient supply chain and spawned a modern dairy

sector that produces a range of milk products, is an achievement India boasts of. Mr. Verghese Kurien, of Amul fame, was the spearhead of this White Revolution in India. If we could do this in the 1970s, why not now? If logistics and speedy movement of produce from farm to fork is the only crippling factor, why not encourage Indian entrepreneurs to set up cold storage, transportation and other required facilities?

**Indian investment has not flown into such back-end systems because it is a low margin, low volume business. FDI will provide more depth to overcome this.**

100% FDI in cold chain is already permitted through the automatic route. But the response has not been encouraging. It has been said that to invest in the back-end, the investor seeks investment in the front end of retail as well, which is where the money is expected to be made. Thus it is an exaggeration to say that foreign investors will consider development of Indian infrastructure and systems more important than their profitability. Moreover, if the foreign investor has to first make money in front end retail, and then plough that to strengthen back end infrastructure in India, what does the foreign investor get out of all this? The usual answer to this is that the foreign retailer will make huge money from front end retail and profits will remain even after investment in the back-end. Well, ask the biggies of organized retail in India to know how many shops have been closed to trim losses. Ask Subhiksha, Vishal Retail and Koutons as well, whose very existence is at stake. Making money in retail in India is not all that easy, admittedly. In any event, today the strength of Indian business houses to invest is as good as, if not better than their overseas counterparts. During recent years, sufficient money has been pumped into organized modern front end retail, but have we made full fledged attempts to attract Indian investment in cold chain and other back-end infrastructure, by giving tax breaks, incentives, speedy approvals, financial assistance and the like? Volumes will grow over a period of time; FDI cannot be a magic wand which will guarantee instantaneous results in back end infrastructure.

Even assuming FDI genuinely flows into logistics and back-end systems, it has been estimated that it will take at least twenty years to ensure completely efficient movement and utilization of agricultural produce. So, the requirement here is investment; foreign or domestic hardly makes a difference. Even assuming that FDI will improve back-end logistics, how effectively can the regulatory powers monitor whether investment is flowing into logistics, transportation, cold storage, distribution networks etc., or into branding, showroom aesthetics, marketing and the like? Even assuming FDI will flow to setting up efficient and quick procurement, transportation, storage and distribution systems, how will all these facilities ensure quicker throughput, in the absence of proper roads and uninterrupted electricity?

### **FDI in retail will bring in technological advantages**

In so far as procurement of farm produce and the like is concerned, the technology required is quite simple. Technology required for logistics planning, transport solutions and the like is also not very complex and can be easily developed within India; if fact they already exist.

The role of technology is significant in inventory management, distribution, store management, stocking, ordering, stock retrieval, planning of business flow, billing, customer management, security and the like. Nonetheless, by its very nature, retail is not as technology intensive as say, nuclear equipment handling, aircraft building, or the like. Technological advantages have certainly helped the sector in better inventory management leading to lower cost of holding inventory, RFID (Radio Frequency Identification), online sales, and more. But technology is not elusive in a country like India which boasts of supremacy in information technology. Even otherwise, technology and allied services can anyway be procured at a price on a transactional basis, without having to actually open up the retail sector to overseas players.

**'Foreign' tag does not necessarily mean better quality in India. For example, take the case of aerated / carbonated beverages doled out by foreign brands. The same product would taste different in India compared to, say, US. Indian business houses today are competing globally. The earlier perception that 'Made in India' products are of inferior quality has certainly been wiped out.**

### **FDI in retail guarantee better products**

Foreign retailers could bring in a better range of products; a better product per-se to the end consumer is a function of competition. Indian players in organized retail today are capable of engaging in fierce competition, and they are actually doing so. All that is required is that consumers ask for more. And take the retailer to task, if there are instances of unfair trade practices. Of course, the grievance redresses mechanism has to be effective, but that's got nothing to do with foreign investment. Secondly, the earlier perception that 'Made in India' products are of inferior quality has certainly been wiped out, considering the position Indian industry has carved out for itself today in the world economy. Thirdly, a 'foreign' tag does not necessarily mean better quality in India. For example, take the case of aerated / carbonated beverages doled out by foreign brands. The same product would taste different in India compared to, say, US.

Moreover, even assuming that foreign brands or products are superior, they can continue to be imported or otherwise sold to the Indian consumer, by franchising, buy and sell agreements or other similar arrangements. FDI in retail is



not indispensable. Coming back to range and the availability of a wide array of choices, there seems to be no dearth for choice in India. Nobody's complaining, at least for now. Moreover, beyond a point, too many choices do not create incremental value to the consumer.

### **FDI in retail could lower prices**

Again, price is a function of business decisions and a complex inter-play of market factors and regulatory mechanisms. The source of investment has little relevance here. True, the world's largest retailer has given unbeatably low prices to the US consumer. But different business geographies present different challenges, more so in case of a highly diversified market like India. That apart, Indian experience with foreign players in other sectors has not given complete guarantee of lower prices. For example, consider retail/ personal banking. Even RBI has recently informed banks to reconsider their practice of arbitrarily high charges- for instance, Rs. 800/- penalty if your average minimum balance is falling short by Rs. 100/-? Let's admit, global players do adopt local practices.

### **FDI in retail guarantee better realization for farmers and other suppliers**

The argument here is that middlemen are looting the producers and suppliers and FDI will usher direct procurement practices to prevent this. But further empirical data is needed to confirm that direct



procurement automatically leads to supplier welfare. The world's largest retailer who is actively lobbying for FDI in Indian Retail is known to take advantage of its size and business volume to squeeze suppliers. Select case studies in the US show that farmers could be forced to sell their produce at lower prices.

### **Restriction on FDI in retail prevent competition**

Indian business houses today are competing globally. The present competition between organized and unorganized retailers and between organized retailers themselves is high. The thirst for retail space has pushed store rentals to a peak. Price wars are spilling to newspapers and other media. Moreover, India is anyway understood to have a very high density of per capita retail outlets.

### **FDI in retail bring about better hygiene and environment consciousness**

FDI could promote better hygiene practices, but whether hygiene will be guaranteed is to be seen. If worms could be found in a chocolate of international repute to subsequently open a debate whether the worms entered the chocolate while in the factory or while stored in the shop, if top selling noodles of an international brand could contain wax, nobody is infallible. And coming to talk of the environment, ground water extraction by an international soft drink brand has created too much attention to be missed.



## **Web Yatra**

*Pavan Kumar MS,  
Student CS Professional Program, Mysore*

## **THE FINANCIAL EXPRESS**

[financialexpress.com](http://financialexpress.com) provides us an authentic information on stocks and a complete up-to-date source for business, finance, stock market news in India. Site has an online forum with experts to provide advise in different areas.

Company information option in the site provides a complete information about a company its profile, capital structure, auditors report, shareholding pattern, director's report, meetings, and balance sheet, etc. Stocks option helps us to know the top gainers and top losers along with stock indices which helps layman to understand trend in price movements of his desired stock. Latest news on Industry sector deals with many aspects like jobs, commodities, automobiles, insurance, etc. ePaper and

achieves are also available with expert opinions and predictions.

Print edition deals with corporate and markets, international reports, microfinance and magazines. Further, site provides news on finance and banking which helps us to know the lending rate, profitability etc. Also, portal provides complete information on IPO and Sensex in India.

We can call this site as 'Financial Encyclopedia'. Hope visiting this site enriches your knowledge in financial sector. Let's meet with another interesting site in the next edition. Wish you a very happy and prosperous English New Year in advance.



# My Money, My Rules

The power of Equity markets is a well recognized sentiment. But while entering the playground that is ruled by Bulls and Bears, an investor is skeptical about investing individually mainly because he can very well have professionals manage the game for him. However, the investment skills of these so-called 'professional investors' are highly debatable since majority of the Mutual Funds/ULIPs lag behind the performances of the benchmark indices themselves; raising a question on their investment skills when compared to an average investor.

Entrusting your hard earned money into the hands of Fund Managers who would obviously have their motives kept at a higher priority over yours, is synonymous to handing your car keys to a stranger not knowing where he will take you.

the market; whereas according to the regulations imposed by SEBI, fund houses have to invest almost their entire fund in the market irrespective of its state. Also, fund houses are not allowed to make optimum use of the financial instruments like Derivatives, thus leaving them impotent during financial crisis.

The need to be responsible for your own money was majorly highlighted during recession. When the entire world was sulking over how their money just vanished into thin air, only the people who managed their funds intelligently by themselves had a smile on their face. Not only did they save their hard earned money but at the same time, made a fortune out of the helplessness of others. All the advocates of Mutual funds were found saving their faces.

**Unfortunately, dealing in the share market has always been projected as being highly complex, thereby, creating room for a belief that it is best to commit your money to experienced players of the markets (Fund Managers) for them to manage its growth safely.**



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Unfortunately, dealing in the share market has always been projected as being highly complex, thereby, creating room for a belief that it is best to commit your money to experienced players of the markets (Fund Managers) for them to manage its growth safely. It cannot be denied that the investment concepts followed widely have grown into a vast ocean of techniques ranging from fairly understandable to extremely complicated ones. However, it is barely acknowledged that only a few simple and handy concepts followed by an investor will help him ace the game eventually. Often, beauty lies in simplicity.

Retail investors have been granted many privileges thus giving them an edge over the Fund Houses. It is easier for an individual to enter and exit the market. He can be out of the market when he is not confident of the performance of

In the age of consumerism, when everyone is trying to create and maintain a lifestyle for themselves, it is important that every individual is financially literate and starts shouldering responsibilities for his own investment decisions not only to save him from falling prey to financial leashes like debt but also to elevate and arm him in the quest of fulfilling his financial desires.

**Thanks for Voting!**

**“Elections for new management committees for Chapters of ICSI is ahead”**

Whoever gets elected, will formulate the policies for the future of the profession. Let us not miss the opportunity to elect right candidates having vision for the profession. Please speak to candidates contesting to understand their vision for the profession.

Measure their capability. Decide whom to vote.

**Let us ensure that we vote!**

# Deposits out of the purview of Sec 58A and RBI Directions 1998

For deposits that does not fall with in the definition of deposit, no formalities that we discussed in our earlier editions shall be required to be observed. Following are such exempted receipts:

1. Amount received from state and central Government or any amount borrowed which is guaranteed by state or central Government;

2. Amount borrowed from co-operative banks, commercial banks, electricity board, government corporations, general insurance companies, state financial corporations and other financial institutions;

3. Amount received from Indian local authority or foreign body or foreign national;

4. Amount raised by issue of Debenture / bond fully secured by the mortgage of immoveable property;

5. Unsecured Convertible debentures: In case of partly convertible debentures only convertible portion of the debenture is exempt in terms of the provision of rule 2(b)(x). However, once the period of conversion is over, the unconverted portion of debenture would be treated as loan and would fall in the definition of deposit.

6. Unsecured loan from promoters of the company in pursuance of a stipulation of Financial Institutions;

7. Commercial Papers - Notification No. DNBS 148 / CGM (RS)-2001 dated 27-06-2001;

8. Any amount received by an NBFC as hybrid debt or subordinated debt (maturity period 60 months or above)- Notification No. DNBS. 134/CGM (VSNM)-2000 dated 13-01-2000;

9. A loan taken from a Mutual Fund - Notification No. DNBS 133/ CGM (OPA)-99 dated 15-11-1999;

10. Any amount received by a Systemically important non-deposit taking non-banking financial company by issuance of 'perpetual debt instruments' in accordance with Company Circular DNBS (PD) CC. No.131 /03.05.002/2008-2009 dated October 29, 2008 as amended from time to time - Notification No. DNBS (PD) 203/CGM (VSNM)-98 dated 18-12-1998;

11. Deposit received by a public limited company from its Director/s if Directors furnish a declaration to the company to the effect that the amount of deposit placed by them with the company is their own fund and not acquired out of borrowing from others. This requirement, perhaps, is to check the entry of common investor's fund in the Company, in the guise of Director's Deposit and thus be beyond the scope of Companies Acceptance of Deposits (Rules), 1975.

12. In case of an N B F C which is a public limited company, the deposit received from the relatives of directors is also under the

exempted category - Notification No. DNBS 141 / CGM ( VSNM) -2000 dated 30-06-2000;

13. Any amount received by a NBFC from a non corporate entity registered under the state enactment relating to money lending which is in force shall not be deposit. Thus a individual of partnership firm registered under the U.P. Money Lending Act, or any other state money lending Act, which primarily is acting as private money lender, deposits with a NBFC any amount, such deposit shall not be a deposit - Section 451 (bb) (vi) of RBI Act 1934.

14. Deposit from shareholders, directors and their relatives: Since such deposits accepted by a private limited company are out of the purview of definition of deposit under Companies (Acceptance of deposits) Rule 1975, company may accept deposit from persons falling under this category, provided they furnish a declaration to the Company to the effect that the amount of deposit placed by them with the company is their own fund and not acquired out of borrowing from others. This requirement again is to check the entry of public money in the Company, as Director and Member Deposit, jeopardizing the basic characteristic of a private company as enshrined in Section 3 (1) (iii) (d) of Companies Act, 1956.

It may be noted that if, after accepting deposit from its members, directors, or their relatives, a private company is converted into a public company, these deposits continue to be in the exempted category and is not treated as deposit under section 58 A, till their maturity. But these deposits shall be taken in to account while computing the ceilings on the overall quantum of deposits that can be accepted by the company as laid down in the deposit acceptance rule.

(a) **Deposit from relative of shareholders:** Strictly speaking in case of private limited company, deposit from

relative of shareholders does not fall in the exempted category of deposit. The wording of the rule is "Deposit received from share holders, directors and their relatives. Since a coma has been placed after the word "shareholders" the word "relative" can not be related to shareholders and it seems to have relation with the word "Directors" only. Thus deposit from relative of director falls into the exempted category of deposit.

However, a private limited company, keeping in view the ambiguity in the language of the section, may accept deposit from relatives of the shareholders also and treat it as exempted deposit. It is a well settled law that if there is an ambiguity in the law the interpretation which is favorable to company will be followed. Therefore, if matter goes to court there are chances that it shall be decided in favour of the company.

**Definition of relative:** The word relative has been defined under section 2 (41), Section 6 and Schedule IA of the Companies Act 1956, where more than 22 categories of relations have been specified. Company may take deposit from these relatives of Shareholders and directors.



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***If, after accepting deposit from its members, directors, or their relatives, a private company is converted into a public company, these deposits continue to be in the exempted category.***

Deposit taken from a firm may be treated as deposit from directors provided all the partners of this firm are directors of the deposit accepting private limited company. Consequently, this deposit will fall in the exempted category. Similarly, if all the partners of a firm are shareholders/members of the private company, deposit from such firm, by the same logic, may be treated as deposit from shareholders/ members of company.

**Disclosure:** This deposit amount shall be shown under the heading "unsecured Loan" as "Deposit from shareholders, directors and their relatives".

(b) They should be Shareholder/ director/ relative of director/ relative of shareholder at the time, **when deposit was accepted by the company.** Therefore, if later on depositor is no more a director or shareholder or their relative still the deposit received from them will continue to remain in the exempted category till its maturity. For example, a director is appointed in a private company and deposit is accepted from him on the same day and after two days, he resigns from directorship; his deposit shall continue to be treated as "deposit from directors" and shall be under the exempted category, till its maturity. Similarly, deposit once received from a shareholder/member shall continue in this category, till its maturity, even if the entire share held by him is transferred and he remains no more a shareholder/ member of the company.

(c) **Joint deposit,** where the second or third depositor is shareholder of the company: Even if first named depositor is not a shareholder of the company, as per Departmental Clarification, such deposit shall fall in the exempted category and shall be deemed to have been received from shareholder, provided any joint depositor(s) is shareholder of the company.

Moreover, it may also be noted that deposit received from the first/ second or third joint share holder, shall also be treated as deposit from a shareholder. For example, if a third joint shareholder, deposits in the company as second joint depositor, such deposit shall also fall in the category of "Shareholders Deposit" and consequently be under the exempted category.

15. **Share application money** received from prospective shareholder: Any amount received as share application may remain with the company for a maximum period of 7 years and thereafter it has to be transferred to Investor's Education and Protection Fund. (Sec. 205C of Companies Act, 1956).

If company is returning money to applicant with out allotting any share it may even pay interest to applicant as a gesture of good corporate governance. Moreover, interest may be paid at any percentage as may be agreed up on between the parties. No interest rate ceiling shall apply in this case. It may be noted here that even if, interest is paid on application money for earlier year(s) the interest expense can not be regarded as 'expenses relating to earlier year" and thus can not be disallowed. In such cases, interest liability arises in the year in

which the demand for interest is made by the applicant. The application money, by its very nature, does not carry any interest and therefore, company can not foresee any interest liability on application money and therefore it is not supposed to provide for accrued interest at every year end. The interest is claimed by applicant and is allowed by the company to him because company is retuning application money after an unduly long period and that too with out allotting any share to the applicant. Moreover, this amount can not be disallowed in the

income tax assessment of company treating the same as "penalty" because it is a commercial liability of the company and not a penalty imposed by any government authority for infringement of any law.

If any money is received from a firm as share application money, same shall be credited, in the books of the company, in the Share Application Account (a partner of the firm shall be treated as share applicant). Under the Companies Act, 1956 shares can not be allotted to a Firm and name of firm can not be entered into the register of members. Hence in this case the share applicant can be only a partner of the firm. The firm may debit this amount in Share Application Account in its books. Company may return application money to firm in due course, if shares are not allotted to partner.

16. **Inter corporate Deposit:** Amount may be borrowed by any private or public company with out any

limit or restriction from any other private or public company. However, if the lending company is a public limited company it has to observe the provisions of section 372A of the Companies Act, 1956.

17. **Amount received from employees as security deposit:** As per Section 417 of Companies Act, 1956 such security amounts has to be deposited in the post office or in the Scheduled bank with in 15 day of its receipt. Hence no purpose will be served by taking such security deposit. However, such deposit may be availed for a period of 15 days.

18. **Advance money received for supply of goods, property or services, security deposit received from a purchasing or selling agent, dealer or distributor:** These are very common heads in which amounts are frequently shown to have been taken by companies because they are not "deposits" under the Acceptance of Deposit Rules.

19. **Money received in trust or money in transit:** The Company may collect fund in such a manner that it can claim that it had been received as money in trust / in transit. These amounts are out of the purview of definition of deposit.

**A private limited company, keeping in view the ambiguity in the language of the section, may accept deposit from relatives of the shareholders also and treat it as exempted deposit.**

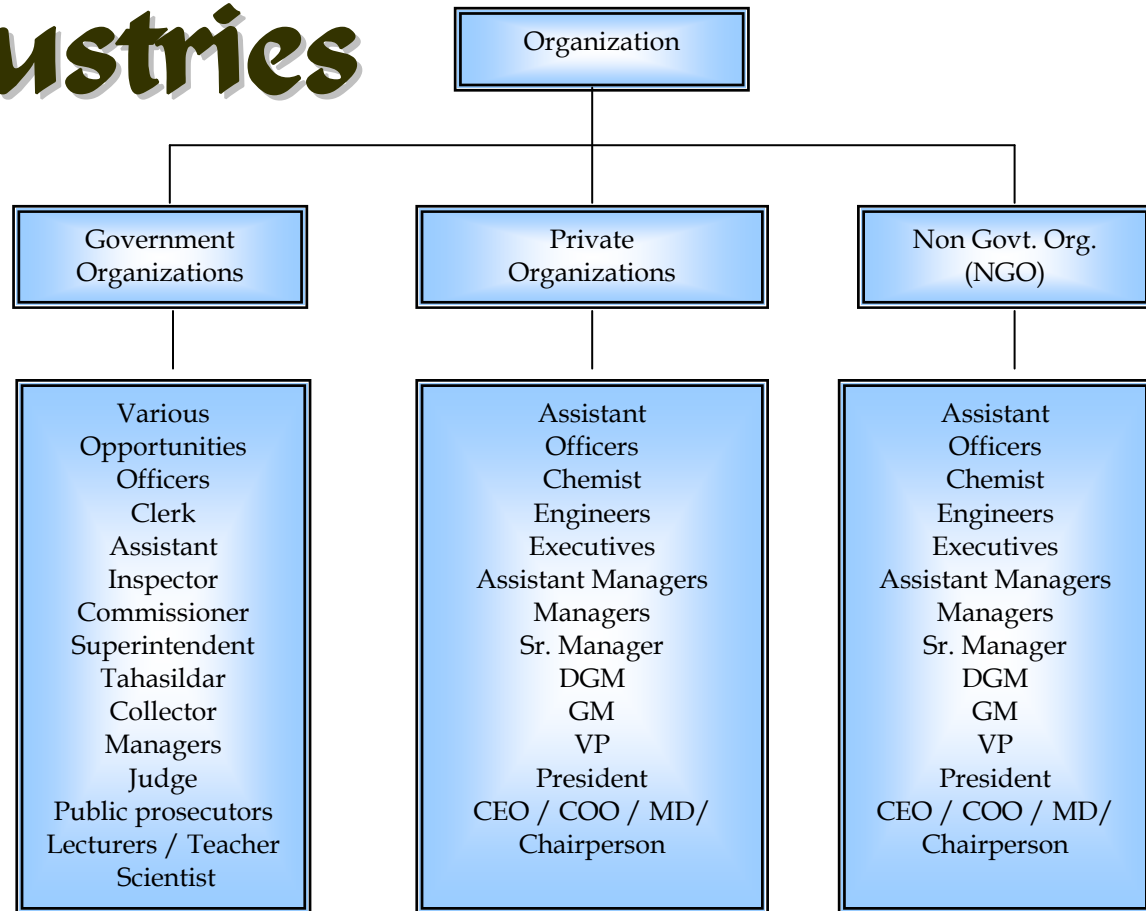
**It is a well settled law that if there is an ambiguity in the law the interpretation, whichever is favorable to company can be followed.**



[\[to be continued...\]](#)

# Career Planning in Industries

Please see the chart besides that gives an idea of the types of Organization and Opportunities therein. From an organisation's point of view, career planning is "Planning for Progress in work life". An employee's progress in work life implies his / her advancement from the position of initial entry to more rewarding or satisfying positions overtime. Subsequent positions may carry increased pay and perks, higher rank, superior status, greater authority & responsibility, job satisfaction, independence and such other attributes.



For an employee or a student, Career Planning is a lifelong process, which includes choosing an occupation, getting a job, growing in our job, possibly changing career / jobs and eventually retiring. Our focus will be on career choice and the process one goes through in selecting an occupation. This may happen once in our lifetime, but it is more likely to happen several times as we first define and then redefine ourselves and our goals.

Generally **career planning is of four steps**. Whether one chooses to work with a professional or not or work through the process on his / her own is less important than the amount of thought and energy put into choosing a career.

**Step1. Self-Assessment:** This is the process of gathering information about oneself in order to make an informed / proper / planned career decision. A self assessment is to make an self introspection / self analyses which includes one's Values, Interest, Personality, Skills / Aptitudes, Roles, Preferred Environments, Developmental needs. Our realities, Strength / Weaknesses / Areas for improvement.

Step 2. Options: One shall explore the occupations in which one is interested, research the industries in which one would like to work and research the Labor Market. One needs to narrow down the chosen / matching options by getting more specific information by following modes;

- Getting proper input / guidance on various types of jobs
- Part time work , internships or volunteer opportunities
- Written materials
- Informal interviews

**Whether one chooses to work with a professional or not or work through the process on his / her own is less important than the amount of thought and energy put into choosing a career.**



**Anil Patro**  
HR Manager - India, ArvinMeritor

**A goal is a dream with a deadline.**

**Step 3. Match:** During this phase one needs to work on identifying the possible occupations, evaluating these occupations, explore alternatives and choose both a short-term & a long-term option.

**Step 4. Action:** One need to develop planned steps / actions in order to reach / achieve his / her goal i.e. getting the desired career.

- Investigating sources of additional training & education if needed
- Career preparation
- Developing a job search strategy
- Preparing one's Resume / Bio-data / CV
- Gathering company information
- Composing cover letters
- Preparation for job interview
- Marketing yourself
- Career Management



positive experience & following our some tips for achieving successful career planning:

- Make career planning an annual event
- Map your path since last career planning
- Reflect on your likes & dislikes, needs & wants
  - Examine your pastimes and hobbies
  - Make note of your past accomplishments
  - Look beyond current job for transferable skills
  - Review career and job trend
  - Set career and job goals
  - Explore new education / training opportunities
  - Research further career / job advancement opportunities
  - Final thought on career planning - Do not wait too long between career planning sessions.
  - Career planning can have multiple benefits, from goal setting to career change, to a more successful life. Once

you begin regular review and planning your career using above tips, you will find yourself better prepared for whatever lies ahead in your career - and in your life. The reason most people do not turn their wishes and dreams into reality because they do not take these wishes / dreams and make them goals.

### Tips for successful career planning

Career planning is not a activity that should by done once - in high school or college - and then left behind as we move forward in our jobs and careers rather it is an activity that is best done on a regular basis at every step of our lifetime. Career planning is linked with reward /

**A goal is a dream with a deadline.**



## IT for Professionals



**Amitkumar Hegde**, B.Com, MCA,  
Bangalore

We have been using MS word since the day we learnt to use computer. To us word processor means MS word even though there are quite a few such software. Till date we were using it on standalone computers, but now Microsoft has come up with online version of MS word on Office Live. All you need is a hotmail/live id to start using this service.

We have already seen Google docs and ZOHO. This endeavor from Microsoft is relatively new.

As part of MS Office Live, Microsoft has released Word, Excel, Power Point and One Note. The best part is you can you can start working online on a document, save it go to another PC and launch the same on the installed Word and make modifications and upload to Office Live. The document has become truly mobile now. You can also share the document with your friends with edit permission or read permission.

The user interface is very similar to Office 2010 so you need to search for anything. Everything loads up neatly, though not all the features are available. As a sample I tried to create some presentations and downloaded them. It worked like a charm. In fact I shared article online after writing it on Office Live; Things have become that simple.

Since this service was launched last month many are not aware. Once it catches up, working on documents reviewing them etc. will become very simple. **Checkout: [www.office.live.com](http://www.office.live.com)**



Compilation:  
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## Learners' Corner

# Transfer Pricing

Governments and Multi National Corporations (MNCs) are both concerned with the transfer pricing issue as Governments want to earn more tax and MNCs want the flexibility to save taxes. **Transfer pricing** (TP) is simply the act of pricing of goods and services or intangibles when the same is given for use or consumption to a related party (e.g. Subsidiary). This process is generally known as Transfer Pricing Methodology (TPM). TPM is fixing transfer price, which generally results in saving the total quantum of organization's tax by shifting accounting profits from high tax to low tax jurisdictions. The implication is moving of one nation's tax revenue to another. It is discouraged by Governments as they want to earn more tax. TP issue has gained importance in the recent past due to organizations acquiring huge economic power operating in scores of nations, making it complex to come under the purview of one tax regime. The other phenomenon is increasing liberalization due to which a larger number of countries are allowing entry of these MNCs. This has resulted in a higher proportion of intra organization trade in international trade.

The regulations made in India to put a check on TP Manipulation: The Finance Act 2001 introduced detailed TP regulations w.e.f. 1st April, 2001. The basic idea behind regulations is determining whether 'International Transactions' between 'associated parties' are conducted at 'arm's length prices' Arm's Length Price (ALP) - This is the price that would be charged in uncontrollable transactions, i.e. when parties are unrelated. There are various methods prescribed by Indian regulations to find out the arm's length price are comparable uncontrolled price method (CUP), resale price method (RPM), cost plus method (CPM), Profit split method (PSM), Transactional net margin method (TNM) and such other method as may be prescribed by the concerned authorities. There are clearly some roadblocks in implementation of ALP, like specialized nature of goods/services and uniqueness of intangibles; Independent entities might not undertake similar transactions, because of copyright issues. For e.g. Coke would only share its formula with a related party where it has some stakes;

There is a huge administrative burden on part of tax authorities in determining the true TP and this exercise might sometime take years, by when the situation changes dramatically; Confidentiality issue may restrict availability of comparable information. In the present world of globalization TP is inherent with numerous organizations operating in multiple countries and most importantly due to varying tax and other laws in different nations. Also nations have to achieve a fine balance between loss of revenues in the form of outflow of tax and making their country an attractive investment destination by giving flexibility in TP.



# Agflation

The term 'agflation' is derived from a combination of the words "agriculture" and "inflation".

An increase in the price of food that occurs as a result of increased demand from human consumption and use as an alternative energy resource. Interest in alternative energies significantly contributes to agflation. In order to produce biofuel (such as biodiesel and ethanol), manufacturers need to use food products such soybeans and corn. This creates more demand for these products, which causes their prices to increase.

# What is "Double Dip Recession"?



"Double dip" refers to a recession followed by a short-lived recovery that then slides into a second recession.

It can be measured by fluctuations in Gross Product(GDP), i.e., when the GDP of an economy goes up into the negative, after a brief period of showing positive growth, the economy said to be faced with a double-dip recession.

Economists also refer double-dip recession as "W" shaped recession where the two dips in the "W" represent the double-dip recession, and the quick incline in the middle is the intermediate recovery.

# Legal Roundup

## CENVAT

### Case Laws - Manufacture

Purification and filtration of acid to make the product marketable would be covered by the definition of manufacture.

*CCE Vs Alok Enterprises (2010 (259) ELT 333)*

In the absence of any evidence, the parties to the transaction cannot be said to be related to each other merely for the reason that the entire production was sold to one company or that the premises of the buyer was rented out to the assessee.

*RAD-MRO Manufacturing Private Ltd. Vs CCE (2010 (258) ELT 235)*

### Case Laws - Others

Interest is payable under Section 11BB of the CE Act in respect of delayed refund of CENVAT credit under Rule 5 of the Credit Rules.

*CCE Vs Reliance Industries Ltd. (2010 (259) ELT 356)*

Where the intermediate product was cleared to another unit of the same company, interest was payable on the differential duty paid at the end of the year.

*Indian Explosives Limited Vs. CCE (2010-TIOL-1334-CESTAT-MUM)*

Interest was payable under Section 11AB of the CE Act even if the duty amount has been paid prior to issuance of the Show Cause Notice.

*Yamaha Motors Private Ltd. Vs CCE (2010 (259) ELT 400)*

### Case Laws - CENVAT/MODVAT

Bought out tubes/flaps cleared along with manufactured tyres cannot be considered as accessories of the latter and are hence not eligible for CENVAT credits, as inputs.

*CCE Vs Apollo Tyres Ltd. (2010 (259) ELT 194)*

Where the entire factory was sold, there was no removal of capital goods to the buyer in order to attract payment of duty under the Credit Rules.

*Chemplast Sanmar Ltd. Vs CCE (2010-TIOL - 1391-CESTAT-MAD)*

No CENVAT credit reversal in respect of inputs which were damaged or found defective during manufacturing process.

*Laxmi Ring Travellers (CBE) Vs CCE (2010 (259) ELT 64)*

## Customs

### Notifications/Circulars

CG has notified Brunei Darussalam under the India ASEAN Foreign Trade Agreement (FTA).

*(Customs Notification No's 115/2010 dated 01/11/10 and 94/2010-NT dated 03/11/2010)*

The Mumbai Commissionerate has simplified the procedures for registration of EOU/EHTP/STPs for clearance of imported goods at JawaharLal Nehru Customs House, Nhava Sheva.

*(Public Notice No. 117/2010 dated 23/11/2010)*

**CS. Abhishek Bharadwaj, Mysore**

**Team Genicon, Chennai**

**CA. Ashit Shah, Mumbai**

### Case Laws - Classification

The predominant function test should be the basis of classification of imported goods which perform composite functions.

*Xerox India Ltd. Vs CC (2010-TIOL-97)*

In the event that tariff headings, read in conjunction with the chapter notes, are clear, then other aspects viz. ITC(HS) are not to be considered for the purpose of classification of goods.

*Adani Wilmar Ltd. Vs CC (2010 (259) ELT 464)*

### Case Laws - Valuation

Post import reductions in the value, in terms of an addendum to the contract of sale, cannot result in a reduction in the transaction value.

*CC Vs Capital Steel Corporation (2010 (181) ECR 163)*

### Case Laws - Others

The refund of SAD cannot be denied merely on the ground that goods sold fall under a different customs tariff heading

as that of the imported goods. It further held that *judicial precedents would prevail over the circulars issued by the Board.*

*Agarwalla Timbers Pvt. Ltd Vs CC (2010-TIOL-1378)*

The time barring provisions in relation to refund of customs duty is not applicable in a case where the duty was not leviable in the first place.

*Veekay Prints Pvt. Ltd Vs CC (2010-TIOL-1432)*

The refund of 4% (SAD) cannot be denied on the ground that the importer has paid VAT on sales of goods by debiting the VAT credit account.

*CC Vs Poonam Steel Industries (2010-TIOL-1464)*

Submission of a CA's certificate alone to satisfy conditions of unjust enrichment is not sufficient for claiming refund of import duty.

*CC Vs BPL Ltd (2010 (259) ELT 526)*

An endorsement made by the adjudicating authority in (BoE) is conclusive and is an appealable order.

*CC Vs Shlok Exim Corporation (2010 (181) ECR 56)*

## Foreign Trade Policy

### Notifications/ Circulars

CG has exempted the basic customs duty in excess of 3% ad valorem on import of Crude Petroleum oils and oils obtained from bituminous minerals.

*(Customs Notn No. 116/10 dated 01/11/2010)*

### Case Law

Goods stored in the second floor canteen premises of the corporate office of the EOU (non bonded area) were deemed to be removed outside the EOU and hence were liable for payment of duty and redemption fine.

*Camiceria Apparels Pvt. Ltd. Vs CC (2010-TIOL-1457)*

No waiver of penalty and interest can be granted on the grounds of there being a global economic crisis, in cases of non fulfillment of export obligations under the EPCG scheme.

*CC Vs Sanghi Industries Limited (2010 (259) ELT 221)*

The date of determination of the rate of duty is the date on which the let export order was given.

*Narayan Bandkar & Sons Pvt. Ltd. Vs CC (2010 (259) ELT 362)*

Duty drawback cannot be denied on re-export of imported goods for reasons of non receipt of sale proceeds.

*CC Vs Phoenix Cement Ltd. (2010 (259) ELT 372)*



## Antidumping Duty Notifications/ Circulars

CG has continued the imposition of definitive anti-dumping duty on import of bias tyres, tubes and flaps originating in or exported from China PR and Thailand.

*(Customs Notifn No. 117/10 dated 18/11/10)*

CG has imposed a definitive anti-dumping duty on the import of Polypropylene falling, originating in or exported from Oman, Saudi Arabia and Singapore.

*(Customs Notn No. 119/10 dated 19/11/2010)*

## Service Tax Case Laws

"Financial lease" and "hire purchase" were services, and the levy of service tax on these transactions was within the powers of the Parliament, even though VAT was chargeable thereon as well.

*Association of Leasing & Financial Service Companies Vs. UOI (2010-TIOL-87)*

The expression 'relating to business' in Rule 2(l) of the CENVAT Credit Rules, 2004 (CCR) refers to those activities which are integrally related to the business of the assessee.

*CCE Vs Manikgarh Cement (2010-TIOL- 720)*

The scope of the term 'input services' also includes input services used in or in relation to the business of manufacture of final products.

*CCE Vs. Ultratech Cement Ltd.*

On Grants given by the Central / State Government to private agencies no service tax was payable.

*APITCO Ltd. Vs. CST (2010 (20) STR 475)*

Any additional requirements prescribed under a CBEC circular cannot be made the basis for denial of substantive rights accruing to an assessee under a notification.

*CST Vs. M/s Transformers & Rectifiers (India) Ltd. (2010-TIOL-1371)*

Taxable services received from outside India prior to 18.04.2006 were not liable to service tax under the reverse charge mechanism.

*Bhel-Ge Gas Turbine Services Pvt. Ltd. Vs. CST (2010-TIOL-1495)*

Where excise duty has already been paid on the full value of the machinery, no service tax was to be paid on the erection, commissioning and installation services.

*Alidhara Texspin Engineers Vs. CCE&C (2010 (20) STR 315)*

## Corrigendum to Notification No. 26/2010 dated 22-06-2010

Notification No. 26/2010 - Service Tax dated 22.06.2010, provides exemption in respect of services referred in clause (zzzo) of section 65(105). This notification was issued under Clause (aa) of sub section (2) of section 94, while it should have been issued under Section 93(1) of the Finance Act. This error had been rectified by issuing corrigendum.

*[F. No. 334/3/2010 - TRU dated 23-11-2010]*

## Service tax on Stock Brokers.

Stock Brokers recovers Turnover charges, NSE/BSE/NSDL/CSDL transaction charges, DEMAT charges and SEBI fees from that are recovered by the brokers from their clients while they execute transaction on their behalf. The Security Transaction Tax (STT) and Stamp duty are not includible in the taxable value for charging service tax as Stock Broker is acting as "pure agent" in terms of Rule 5(2) of the Service tax (Determination of value) Rules, 2006.

*[F.No. 187/107/2010 - CX 4 dt 17-09-09]*

## ST on Renting of Immovable Property upheld retrospectively.

Hon'ble High Court held that Renting of property for commercial purposes is certainly a service and has value for the service receiver. Moreover, the aspect of service element in renting transaction is certainly an independent aspect covered under Entry 92C read with Entry 97 of List I. In any case, subject matter of impugned levy being outside the scope of entry 49 of List II, power of Union Legislature is undoubted. It is well settled that competent legislature can always clarify or validate a law retrospectively.

*Shubh Timb Steels Ltd. - 2010*

## Whether penalty under section 76 is justified, if taxes paid before issuance of show cause notice?

Hon'ble Tribunal had accepted the contention of the appellant and held that when tax is paid along with interest and information is with the Central Excise Officer, such matters will be squarely covered with in the provision of section 73(3) and there is no need to issue show cause notice and penalty under section 76 can not be sustained.

*[Jay Dwarkadish Engineering & Electrical Contractors - ST/61/10/WZB/AHD/2010 - Ahmedabad Tribunal]*

## Sales Tax Case Law

Battery charger sold along with the mobile phone as a composite package and without any extra charge was eligible to the concessional rate of tax under the entry description of mobile phones and parts thereof.

*Nokia India Private Limited Vs. State of Punjab and Others [2010 VIL (65) P&H]*

## FEMA & SEBI

### FDI Policy Changes:

1. First master circular was issued on March 31, 2010.
2. September 30, 2010 DIPP has issued second master circular. Highlights:
  - Prohibition of FDI in manufacturing of cigarettes, etc
  - FDI is allowed in certain branches of agricultural activities
  - FDI in separation of titanium bearing minerals & ores liberalized
  - FDI in NBFC activities liberalized
  - Minimum lock in period is clarified
  - Definition of "Capital" Policy is amended
  - Certain exemptions are notified from SEBI Takeover Code

## Others

### Easy Exit Scheme is back in 2011

MCA has notified Easy Exit Scheme 2011 to remain in force from 01<sup>st</sup> of January 2011 till 31<sup>st</sup> of January 2011.

### Case Laws:

Right to information is an integral part of the fundamental right to freedom of speech and expression guaranteed by the Constitution.

*Central Public Information Officer, Supreme Court of India Vs. Subhash Chandra Agrawal (Decided on 26. 11. 2010) MANU/SC/0991/2010*

### Proposed scheme for reduction of share capital

Held, Courts do not sit in judgment over the commercial wisdom of parties. Consequently, the Company Court's jurisdiction to that extent is peripheral and supervisory and not appellate (ratio in Miheer H. Mafatlal v. Mafatlal Industries Ltd applied) Company petition allowed

*Wartsila India Limited. Vs. Janak Mathuradas and Ors. (Dt 15. 11. 10) MANU/MH/1514/2010*



### 'India-EU FTA & generic drug supplies'

Allaying fears that India-EU trade pact would make global supplies of medicines expensive, New Delhi said the agreement will not deter Indian pharma companies from manufacturing and exporting generic drugs.

"Nothing in the agreement would limit TRIPS (Trade Related Intellectual Property Rights) flexibilities concerning access to medicines," a report on the progress of Broad Based Trade and Investment Agreement (BTIA) released by India's Commerce Ministry said.

Several NGOs in India and Europe had expressed fears that the bilateral trade deal about to be wrapped up, after four years of negotiations, can adversely impact supplies of affordable generic drugs from India. Thanks to off-patent drugs, manufactured and exported by India and Brazil, the cost of life saving medicines including anti-AIDS drugs has come down drastically all over the world.

### Apple to buy Nortel Patent Assets?

Nortel Networks, which filed for bankruptcy in 2009 and is selling off all of its assets, is soliciting bidders for its extensive patent portfolio, and Apple is rumored to be one of the major players looking to acquire the rights.

The mobile space currently involves a convoluted network of patent lawsuits in which companies are seeking to gain the upper hand over their rivals in the competitive market. Apple, which has been the most-sued technology company over the past several years, is currently suing or being sued by a number of companies, including Nokia, Motorola, HTC, and Kodak

### Thai envoy says flexibility will ensure Doha success

Many world leaders are wary about the global imbalances in world economies. A multilateral trading regime can ensure all members keep their markets open and do not resort to unilateral protectionist measures, he said.

"Given that members recognise that 2011 could very well be the last window of opportunity to conclude the Doha Round, and everyone seems to acknowledge the need to intensify negotiations in all possible formats, I am more

optimistic that the round can be concluded next year," says Thawatchai Sophastienphong, the Thai ambassador to the WTO.

The group of 153 member countries expects to come up with a proposal by April, allowing for wrangling and legal editing during the latter half of 2011.

### India-Asean services deal hits roadblock

Talks between India and the Asean, have hit a roadblock, with some of the advanced developing countries demanding greater flexibilities from India. Under the services sector, India had been demanding greater opening in the Mode IV category to ensure that professionals like doctors, nurses, chefs, accountants get more job opportunities in the Asean bloc

### Draft guidelines on mergers soon: IRDA

The Insurance Regulatory and Development Authority (IRDA) would soon come out with draft guidelines to put in place a framework for mergers in the insurance sector. It was also planning to launch a software to monitor the complaints filed by customers against insurance firms, said IRDA Chairman J Hari Narayan. The regulator's existing rules and regulations lack clarity for approving a merger or acquisition plea.

### Royal Sundaram to merge with Reliance General

The merger of Royal Sundaram Insurance with Reliance General Insurance is expected shortly. The merger will take place soon after the creation of the framework of mergers of general insurance companies, which is expected to be ready in a week.

### CCI wing says NSE stifled competition

The DG's office at the Competition Commission of India (CCI), in a 245-page report following a probe, said NSE had done this by systematically waiving fees on transactions in 2000-02 to gain market share when equity derivatives trading was in its infancy.