



Mysore Chapter

# eMagazine

Edition 101

June 2012



4

**BSE SME Exchange:  
Maintaining  
High Quality Standards**

7

**Real Integrity and  
Practical Solutions**



For Private Circulation Only



**E- Newsletter from  
The Mysore Chapter of the  
Institute of Company Secretaries  
of India**

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**Message from  
Chairperson**



**Dear Members and  
Students of CS fraternity,**

I thank all the readers for the overwhelming response to the centenary edition of the newsletter. I hope with your continued support, we would reach newer landmarks.

I take this opportunity to inform you all that CS. Omkar N G, an active member of the Managing Committee of the Chapter has rendered his resignation from the Managing Committee of the Chapter. I thank him on behalf of members for his remarkable contribution to the Chapter and also extend a warm welcome to CS. Kiran T, who is to be co-opted as a new member to the Managing Committee.

I hope all the students who have appeared for the Exam have performed well. Now its time to relax, after the examination pressure and engage in various self development activities. The Competitions are back and I request all the students to take active part in all the three competitions and exhibit your talent.

I wish all the very best to you all and hope you bring in new laurels to the Chapter.

Yours in CS fraternity,  
CS. Srilatha T G

**Inside.....**

**Activity Report ...3**

**BSE SME Exchange: Maintaining High Quality Standards...4**

**Living Room: Carrot, Egg or Coffee...6**

**Words worth Millions...6**

**Real Integrity and Practical Solutions...7**

**Resources: ...8**

- Highlights of MCA Notifications in the year 2011
- Introduction and Overview of Direct Tax Code

**Web Yatra: [www.whyquit.com](http://www.whyquit.com) ...9**

**IT for Professionals: Keyboard Shortcuts for Windows 7...9**

**Spectrum Space...10**

**Legal Roundup ... 11**

**News Room...13**





# Activity Report – May 2012

## ‘OVERVIEW OF DIRECT TAXES’

On 15<sup>th</sup> April, 2012, a program on “Overview of Direct Taxes’ was conducted by the Chapter. Practicing Chartered accountant CA Kumar Pal was the resource person. On the session it was discussed in brief about the computation of tax in all five heads. Students discussed and interacted with the speaker.

## INVESTOR AWARENESS PROGRAMS:

The Chapter conducted 2 investor Awareness Programs on 30<sup>th</sup> and 31<sup>st</sup> May through the resource person Mr. H S Niranjana Babu Reddy. The programs were conducted

in Computer Coaching Centre, Kamagere, Chamarajanagara District and at Community Hall, Martalli, Kollegal, Chamaraja Nagara District. Awareness was created regarding investment options, primary and secondary markets, grievance handling, do’s and don’ts for the investors etc..

## STUDY CIRCLE MEETINGS

In the month of April and May 2012, Chapter has conducted 5 study circles on 1<sup>st</sup> and 8<sup>th</sup> April and 6<sup>th</sup>, 13<sup>th</sup> and 20<sup>th</sup> May. The students discussed regarding Company Accounts, Tax laws and General & Commercial law, Cost and Management accounting etc.. Students discussed various topics from the exam point of view and previous question papers were solved.

## Update from e-Magazine Team:



The e-Magazine team warmly welcomes its new member CS. Abhishek Bharadwaj A B.

*In addition to being a Company Secretary, he is also an Advocate. He has been associated with the Newsletter team for over 3 years and has steadily contributed to the newsletter as a member of the Support team. CS. Abhishek is basically from Mysore. Currently he is working in Bangalore.*

*Please join us in welcoming him to the team!!*

## 14 JUNE | World Blood Donor Day “Celebrating the Gift of Blood”

On 14 June, countries worldwide celebrate World Blood Donor Day with events to raise awareness of the need for safe blood and blood products and to thank voluntary unpaid blood donors for their life-saving gifts of blood.

The theme of the 2012 World Blood Donor Day campaign, “**Every blood donor is a hero**” focuses on the idea that every one of us can become a hero by giving blood. While recognizing the silent and unsung heroes who save lives every day through their blood donations, the theme also strongly encourages more people all over the world to donate blood voluntarily and regularly.

For Resources and Theme Video visit:  
<http://www.who.int/worldblooddonorday/en/>

**You don't have to be a doctor to save lives.**



**Just Donate Blood.**  
It's safe. It's simple. And it saves lives.



**BLOOD Should Circulate!**  
Donate Blood without waiting for a call

# BSE SME Exchange:

## Maintaining High Quality Standards



### CS. Amar Kakaria

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*The Micro Small and Medium Enterprise (MSME) sector forms the largest generator of employment in the Indian economy. The Prime Minister's Task Force (Jan. 2010) has recommended to set-up a dedicated Stock Exchange/ Platform for SME. SEBI has also laid down the regulation for the governance of SME Platform.*

Visit: <http://www.bsesme.com>

Micro, Small and Medium Enterprises (MSMEs) companies often find it difficult to mobilize resources for their survival and growth, despite being the largest generator of employment in Indian economy. SME Exchange is a very useful mechanism offered to them for raising long term funds.

As per the directions of PMO Taskforce and SEBI Guidelines, BSE and NSE have unveiled SME Exchanges to help Small and medium sized companies access capital markets in the last fiscal year. Two companies viz. BCB Finance Limited and Monarch Health Services Limited have so far come out with a public issue on BSE SME Exchange, while Max Alert Systems Limited is in the process of launching its public issue.

Though BCB Finance is an older company with some track record since 2005, Monarch Health Services is a relatively young company which was incorporated in October 2011. Following is the comparative analysis for both the companies:

	BCB Finance			Monarch Health
Incorporation Year	2005			2011
Financial Snapshot				
Rs Lakhs	FY 2009-10	FY 2010-11	FY 2011-12#	FY 2011-12*
Sales	154.21	146.95	138.48	15.00
Net Profit	22.15	22.61	8.23	(43.84)
Share capital	159.25	159.25	796.26	312.15
Net Worth	1,073.10	1,095.72	1,103.94	306.15
Loans	365.60	278.41	276.39	0.00
Net Fixed Assets	5.54	5.90	1.44	211.75
IPO Size	# 6 Months Ended 30/09/2011			* Six months only
Market Cap	885			1200
	2881			2448
	Actual (As on 24/05/2012)			Estimated @ IPO Price

Prima facie, Monarch Health has launched its public issue without any proven business model / track record and hence, there could be risk to investors if it does not perform in future.

To avoid any misuse of liberal listing norms for SME platform in future, in addition to SEBI Guidelines, BSE SME Exchange has stipulated following **eligibility norms** for getting listed on SME Exchange Platform (Letter No. OW/WRD/DSA/ 30653/ 2011 dated 27-09-2011 of SEBI):

1. Net tangible assets of at least Rs 1 crore as per the latest audited financial results.
2. Net worth (excluding revaluation reserve) of at least Rs 1 crore as per the latest audited financial results.

3. Track record of distributable profits in terms of sec. 205 of Companies Act, 1956 for at least two years out of immediately preceding three financial years and each financial year has to be a period of at least 12 months. Extraordinary income will not be considered for the purpose of calculating distributable profits. Other wise, the net worth shall be at least Rs 3 Crores.

4. Other Requirements:

- The post-issue paid up capital of the company shall be at least Rs. 1 crore.
- The company shall compulsorily facilitate trading in demat securities and enter into an agreement with both the depositories.
- Companies must have a website.



5. Declaration from the applicant company / promoting companies that:

- The Company has not been referred to the Board for Industrial and Financial Reconstruction (BIFR). It should be noted that if the company is out of BIFR, it can get listed.
- There is no winding up petition against the company that has been accepted by a court.

6. For listing on BSE SME platform, it will be mandatory for the Promoters to attend an interview with the Listing Advisory Committee.

Further, the companies seeking migration to Main Board of BSE need to satisfy the eligibility criteria as specified in 26(1) of SEBI (ICDR) Regulations, 2009 either at the time of initial listing on SME platform or at the time of seeking migration to Main Board. However, same will not be applicable where the company had sought listing on SME platform by following the process and requirements prescribed in 26(2) (a) of SEBI (ICDR) Regulations, 2009.

Identifying high growth companies, nurturing them properly and thereafter, getting them listed in domestic capital markets can make wonders for those SME companies. It can not only make SME sector much stronger but also generate more employment. Besides generating value to all the stakeholders, it will as well add significant value to Indian economy.

BSE has always been pro-active in protecting interests of the investors. By introducing tougher eligibility norms, BSE has clearly indicated that it will allow only good companies with proven track record to get listed on its SME platform.

*Needless to mention, higher the quality standards of companies, more will be the value creation for the investors.*



## Tips to Success by Harish Machia Kodandera

### Be Excited to Learn

Referring back to the analogy of Edison, when asked about his failures by a young boy, Edison commented, “Young man, I didn’t fail 9,999 times, I discovered 9,999 ways of how not to make the light bulb.” As you work toward your specific success, always enjoy opportunities to learn, even if it takes longer than you think it should.

### Be a Good Listener

To succeed, you need to learn how to listen first. Pay attention to other people who have enjoyed successes in their life, attend seminars given by people that can motivate and encourage, or be open to hearing that a particular idea is not a good one. Good listening takes time to learn but in the



end, it will be your greatest tool.

### Share your Success

Although this may be more at the end of the process, it is important. When you finally do reach your success, use your experience to teach, guide, and mentor others so that they too might succeed.

### Seek Input

Whatever your idea of success, conduct a “sanity check” throughout the process of reaching your goal. This should be done with someone you trust and who are themselves successful. Ask them to provide honest feedback about your success and as you move through different milestones, bounce concerns or new ideas off them to help keep you on the right track.



# CARROT, EGG OR COFFEE

A daughter complained to her father about life and how hard things are for her. She said she wanted to give up as she was tired of struggling. For just as one problem was solved, another arose.

Her father, a chef, took her to the kitchen, filled three pots with water and placed the fire on high.

Soon the three pots came to a boil. In one he placed carrots, in the other he placed eggs and in the last he placed ground coffee beans. He let them sit and boil, without saying a word. The daughter wondered what he was trying to do.

In half an hour he turned down the fire and took out the contents of the pots and put them in bowls. Turning to her he said, "My dear child, what do you see?" Smartly she replied, "Carrots, eggs and coffee."

He brought her closer and asked her to feel the carrots. She did and noted that they were soft. He then asked her to take an egg and break it. After shelling it, she observed it was hard-boiled now. Finally, he asked her to take a sip of the fragrant coffee. She winced as it was very strong.

Humbly, she asked, "What does it mean father?" He explained, "Each of them faced the same adversity, 100°C of boiling water. However, each reacted differently. The carrot was strong, hard and unrelenting. But, after going through boiling water, it softened and became weak. The egg was fragile. A thin outer shell protected a liquid centre. But after sitting in the boiling water, the inside became hardened.

However, the coffee beans are unique. After they were in the boiling water, they became stronger and richer. Which one of these are you?" he asked.



Are you the carrot that seems hard but with the smallest amount of pain, adversity or heat, you wilt and become soft with no strength? Are you the egg, which starts off with a malleable heart? But after a death, breakup, divorce or layoff become hardened and stiff? Your shell looks the same but you are bitter and tough inside. Or are you like the coffee bean? The bean does not get its true flavour until it reaches 100°C. When the water gets hotter, it just tastes better. When things are at their worst, you get better.

So how do you handle adversity? Are you a carrot, an egg or a coffee bean?

**"Everyone is an explorer.  
How could you possibly live your life  
looking at a door and not opening it?"**

**— Robert Ballard**

# Real Integrity and Practical Solutions



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*A Synoptic view of the write up:*

*"Real integrity: practical solutions for organisations seeking to promote and encourage integrity"*

In [www.icaew.com](http://www.icaew.com) by Jim Baxter, James Dempsey, Chris Megone and Jongseok Lee

Integrity is a much-desired but little-understood feature of organisations and of the individuals they employ. It features widely in codes of conduct and lists of ethical principles. A lack of integrity is frequently cited as a cause of crises and scandals in business and public life. The responsibility for promoting integrity in organisations ultimately falls to their leaders.

According to the philosophical literature on integrity, people of integrity partly define themselves by, and act consistently on the basis of, principles and commitments, at least some of which are ethical in nature and which include honesty, openness and fairness. They will also stand up for their principles and thereby attempt to influence the culture of their organisation or society. Professional integrity involves commitment to the founding values of a profession and may involve attempting to influence the culture of that profession. As well as having employees with greater or lesser degrees of integrity, organisations can exhibit integrity by achieving consistency between their expressed values and what is genuinely valued within the organisation by valuing ethical behaviour and by taking a wider view of the social context in which they operate.



## Think about the big picture

Rewards for ethical behaviour should be in line with the organisation's stated values; a culture in which issues can be raised openly needs to be supplemented by the availability of confidential advice and support for whistleblowers as a last resort; ethics training should help employees understand and apply the principles enshrined in a code of conduct. Taking any of these elements in isolation is likely to be less effective than treating them as integral parts of a general framework.

## Integrity breeds integrity

Disciplinary procedures which are not open, reward systems which are unfair or partisan, advice that is not really confidential, all have the potential to breed cynicism, resentment and distrust. Conversely, an organisation which takes ethics seriously, admits its mistakes, genuinely values its

employees' contributions, and practices what it preaches, can make its employees feel proud to work for it and motivate them to go the extra mile. The challenge for leaders is therefore to lead by example, demonstrating integrity in both words and actions

## Promoting integrity

The responsibility to promote integrity ultimately falls to organisational leaders.

At any rate, HR should certainly be involved in any activities from early in the process. The responsibility of leaders and HR departments does not absolve employees of a responsibility to contribute themselves. While the organisational environment can be made more conducive to integrity, it still requires individuals to make the right decisions. Ideas such as organisational openness rely on individual openness if they are to be effectively implemented.

## Training Pitfalls

Problems with ethics training identified included:

- Trying too much to enforce rigid patterns of behaviour.
- Training which is patronising and therefore causes resentment.
- Training which is too abstract, or a simple 'box-ticking exercise.'
- Online training which is too simplistic.
- A one-day course in isolation rather than long term.
- Training might be taken to imply that the person being trained has done something wrong, causing resentment.
- Training which is contradicted by the tone from the top of the organisation.

Avoiding the pitfalls above, the training should be based on real life case studies, since this both demonstrates the relevance of ethics, and enables participants to improve their ethical decision-making skills through the discussion of scenarios which are qualitatively similar to those they are likely to face in real life. WAY FORWARD

Leaders should seek to ensure that disciplinary procedures are fair, transparent and consistent. If discipline is to be effective as a tool to promote ethical standards, it is vital that it is subject to the highest ethical standards in the way it is applied.

Leaders should ensure that there is a confidential route to reporting unethical behaviour, that policies are fair and consistent, and that all employees are genuinely able to take advantage of this if they need to. Tone from the top, or the demonstration by organisational leaders of integrity in their own behaviour, is widely recognised as being very important. A stated list of values is a useful way of crystallizing and embedding organizational ethics and list of values should be:

- succinct;
- refreshed only in response to organisational change;
- demonstrated using real-life case studies;

- actively and regularly communicated to staff;
- seen to inform organisational strategy; and
- built into objectives alongside performance.

The codes of conduct are referred to most often during disciplinary procedures but that they also have a role to play in making organisational values concrete and in guiding decision making.

Though organisations do not frequently engage in proactive monitoring of integrity, but that there is a key role for this in highlighting issues and in checking the effectiveness of the overall framework.

### **Role of Professional Bodies**

*The professional bodies have a role, or a potential role, to play in promoting integrity. Particular areas where professional bodies can be effective are as providers of independent advice, support for whistle blowing and continuing professional development.*



## **Highlights of MCA Notifications in the year 2011**

Compiled by: CS. Sireesha,  
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The Central Government (Ministry of Corporate Affairs - MCA) is empowered under sub-section (1) of section 642 to make rules by way of a notification for all or any of the matters prescribed under the Companies Act, 1956 for carrying out the purposes of the Act in a much beneficial manner. Ministry has released 61 Notifications, during the year 2011. For discussion on few notification which had a significant impact on the corporate, please visit this link:

<https://docs.google.com/open?id=0BxViiXAXyX24UFU3cDRROFpiV2c>



## **Introduction and Overview of Direct Tax Code**

**B R Ramesh**, CS Executive Program  
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[rameshtotalsolutions@yahoo.co.in](mailto:rameshtotalsolutions@yahoo.co.in)

The Direct Taxes Code Bill, 2010 consolidates and integrates all direct tax laws and replaces both the Income-tax Act, 1961 and the Wealth-tax Act, 1957 by a single legislation. The provisions applicable to a taxpayer are in the main clauses while complex computations and exceptions have been placed in Schedules. The proposed DTC Bill, 2010 comprises of 22 Chapters, 319 Clauses and 22 Schedules. Please visit the link for an introduction and overview to the Direct Tax Code:

<https://docs.google.com/open?id=0BxViiXAXyX24S0xvNDFTM3l5a1U>



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We have dedicated this month's Web Yatra to Motivate, Educate and Support QUIT SMOKING MOVEMENT! 31<sup>st</sup> May of every year is observed as 'World No Tobacco Day (WNTD)' since 1987. Last day of previous month we have observed WNTD with fervor to reduce tobacco consumption which leads to deadly diseases like cancer and cause early death. Want to know how to quit? Just give a click to <http://whyquit.com/>

You need not take trouble to ask why to quit. This site already has answers with practical experiences and scientific evidences. Sections 'How Tobacco Destroys the Body' and 'More Truth About Tobacco' opens our eyes on TOBACCO EFFECTS. Apart from articles and videos, the site has important e-Books free for you: Joel Spitzer's 'Never Take Another Puff' and John Polito's 'Freedom from Nicotine - The Journey Home'

You are free to ask questions on quitting to **Mr. Joel Spitzer**, who has been a leading authority in the development and implementation of smoking cessation and prevention programs for over 40 years. This site consists of Joel's Library with numerous articles, audios, videos, books and Daily Quitting Lesson Guide. Friends, let us take an oath today to spread QUIT SMOKING MOVEMENT and introduce this site to our beloved ones who don't know that their mouth is on fire!













## IT FOR CORPORATE PROFESSIONALS

### KEYBOARD SHORTCUTS - Part 1

## Windows 7



Everyone wants to be faster and smarter in this world. As its e-World, it is very important that we keep pace with changing environment. Hence, we have this column from last 24 editions plus. You know many e-tools and techniques introduced in this column. One very important technique to be faster in desktop or laptop is using keyboard shortcuts to the maximum. In our day-to-day work all of us use Operating System, MS Office (Word, Excel or Powerpoint) and Internet explorer to a greater extent. First let us understand the shortcuts for most frequently used items in Windows 7, the latest Operating System from Microsoft.

	Opens the Start menu	 + M	Minimizes all windows
 + E	Opens Computer	 + Shift+M	Restores all minimized windows
 + R	Opens Run dialogue box	 + Pause/Break	Opens System page
 + F	Search on computer	 + L	Locks the computer
 + Spacebar	Preview Desktop (makes all open windows transparent)	 + D	Show/Hide Desktop (minimizes/restores all windows)
 + Tab	Accesses Windows Flip 3D and cycles forward through open programs	 + Shift+Tab	Accesses Windows Flip 3D and cycles backward through open programs

We will come back with few more interesting shortcuts in next edition.



Compilation:  
CS. Ajay Madaiah, Mysore

### Stagflation



This is one of the words which are running around us these days. Most often we get to read and hear the word Stagflation. This is a stage of economy of a situation wherein the inflation rate is high, the economic growth rate slows down, and unemployment remains steadily high. It raises a dilemma for economic policy since actions designed to lower inflation or reduce unemployment may actually worsen economic growth.

Stagflation can result when the productive capacity of an economy is reduced by an unfavorable supply shock, such as an increase in the price of oil for an oil importing country. Such an unfavorable supply shock tends to raise prices at the same time that it slows the economy by making production more costly and less profitable.

Both stagnation and inflation can result from inappropriate macroeconomic policies. For example, central banks can cause inflation by permitting excessive growth of the money supply, and the government can cause stagnation by excessive regulation of goods markets and labor markets and also by its huge public spending policies. Either of these factors can cause stagflation. Excessive growth of the money supply taken to such an extreme that it must be reversed abruptly can clearly be a cause.

### Did you know?



National Small Industries Corporation  
राष्ट्रीय लघु उद्योग निगम लिमिटेड

National Small Industries Corporation (NSIC) is a government of India enterprise. It is in pursuit of facilitating the growth of small enterprises since 1955. It has reinforced its strength by building new competencies to serve the emerging needs of micro, small and medium enterprises in today's competitive environment.

NSIC has been accorded a "Mini Ratna" status by Government of India – a status awarded under a benchmark of performances– physical and financial.

NSIC's bouquet of services comprises of consortia bidding for big government contracts, single point agency for government purchases, bulk supplier for raw materials, financial consultancy, B2B (Business to Business) marketing, and marketing intelligence provider apart from other services. It's Rapid Incubation Program for creating self employment opportunities is in big demand not only in India but also in other developing countries.

For more details visit: [www.nsic.co.in](http://www.nsic.co.in)



### Pick of the month

#### How to become a member of Company

- By way of subscription to memorandum,
- By subscribing shares in the primary market,
- By acquiring shares in Secondary market,
- Consequent to merger or Amalgamation
- By way of Court order,
- By way of transmission/Nomination of shares,
- By way of gift.



Compiled by:  
**CS. Abhishek Bharadwaj A.B.**  
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**CA. Ashit Shah, Team Genicon, CS. Kasturi S.,**  
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## CUSTOMS & FTP Notifications/ Circulars

The Handling of Cargo in Customs Areas Regulations, 2009 ("the Regulations") have been amended to provide that no relaxation from conditions required to be fulfilled by a customs cargo service provider shall be granted by the Commissioner where the overall safety and security of premises are likely to be affected by such relaxation. [No. 43/2012-Cus\(N.T.\) 16-05-2012](#)

It has been clarified that capital goods sourced from Special Economic Zone ("SEZ") are treated as 'imported goods'. Hence, Export Promotion Capital Goods ("EPCG") Scheme is available for import of spares for such imported capital goods. [No. 65 \(RE-2010\)/2009- 14 dated May 18, 2012](#)

The Central Government hereby notifies the Foreign Trade Policy, 2009-2014 as updated upto 5th June 2012 and incorporating the Annual Supplement. This shall come into force w.e.f. 5th June, 2012. [No. 1 \(RE-2012\) 2009-2014 05-05-2012](#)

At present, for claiming benefits under various schemes of Foreign Trade Policy, exporters have to obtain Bank Realisation Certificate (BRC) from banks in the existing formats prescribed at Appendix 22A and 22B of Handbook of Procedure -Vol.1 and submit the same to the DGFT manually. With the introduction of electronic BRC system, banks will issue and transmit BRC's electronically to DGFT's server. The existing system of physical BRC along with the new system of 'e-BRC' will however, run concurrently for a period of one month from the date of issue of this Public Notice. [No. 02 \(RE-2012\) / 2009-14 dt 5th June, 2012](#)

**Case Law:** Transaction value of goods was rejected at the time of import on the basis that contemporaneous imports were at a slightly higher price. The Customs, Excise & Service Tax Appellate Tribunal ("the CESTAT") held since there was no flow back of money from the importers to their supplier, invoice price duly supported by purchase order and sales confirmation, cannot be rejected. - [National Organic Chemical Ltd. Vs. CC \[2012 \(279\) ELT 454\]](#)

## Regulatory Developments Notifications/ Circulars

Section 92C of the Indian-tax Act (ITA) prescribes 5 methods for computation of the ALP along with a residuary clause for the

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CBDT to prescribe any other method. The CBDT has now notified, a new method for determining the ALP. The new method is broad in its applicability and provides that any method that takes into account the price that has been charged or paid, or would have been charged or paid, for the same or similar uncontrolled transaction, with or between non-associated enterprises, under similar circumstances, considering all the relevant facts can be considered for determination of the ALP. However, unlike in the case of the five prescribed methods, no further guidance is provided on the manner in which the new method is to be applied. The Rule is applicable for the financial year 2011-12 and subsequent years.

[No. 18/2012, dated 23 May 2012](#)

## CENVAT Notifications/ Circulars

It is clarified that CENVAT Credit is available in respect of parts of Boiler, the same is not admissible in respect of the structural components used for laying of foundation or making of structures for support of capital goods/ Boiler. The above clarification is in conformity with the views expressed in the judgments of the Hon'ble Supreme Court/ different benches of the CESTAT. - [No. 966/09/2012-CX, dated 1-05- 2012](#)

Credit Rules, 2004 is amended to provide that no reversal of CENVAT credit would be required when goods are removed to supplies made for setting up of solar power generation projects or facilities. - [No 25/2012 Central Excise \(N T\) dt. 08-05- 2012](#)

The Central Government has amended the rate of abatement in respect of goods liable to central excise based on retail sale price. The rates of abatement are furnished as Annexure to this communicate. - [No 26/2012 Central Excise \(N T\) 10-05- 2012](#)

## Case Law

The CESTAT held that an assessee can claim refund of deposit made voluntarily during investigations as in the case of any duty payment or duty deposit and the department has no right to retain any amount so long as there is no confirmed demand of duty or tax against such assessee.

[CCE Vs. Shiv Saraswati Steel Industries \[2012 \(279\) ELT 418\]](#)

Used machinery was cleared from factory at a certain price and duty paid thereon. Machinery was returned as rejected and Cenvat credit of duty paid was availed of. Subsequently, price

of machinery was renegotiated. The CESTAT held that duty is not payable on value of first sale but on final sale value of such goods.

*Majestic Auto Ltd. Vs. CCE [2012 (279) ELT 421]*

The CESTAT held where Cenvat credits taken are verifiable from documents available with the assessee, denial of refund merely on the ground that refund relates to period prior to registration may not be justified.

*CST Vs. Focus Infosys (India) Pvt. Ltd. [2012-TIOL-575-CESTAT-BANG]*

## Service Tax Notifications/ Circulars

The Service Tax (Settlement of Cases) Rules, 2012 have been notified providing for form and manner of applying to the Settlement Commission for settlement of service tax disputes and also specifying fee required to be paid.

*No. 16/2012-ST dt May 29, 2012*

The ST(Compounding of Offences) Rules, 2012 have been notified providing for form and manner of application for compounding, procedure on receipt of application, determination of compounding amount, and granting of immunity from prosecution for offences under Chapter V of the Finance Act, 1994 ("the Finance Act").

*No. 17/2012-ST dt. 29-05-2012*

## Case Law

The CESTAT held that where a contract, is not for a "transfer of right to use" and is in the nature of permission to use trademark which continues to be the property of the licensor; and right to use is assigned subject to certain conditions, such transfer cannot be considered a sale and would be eligible to service tax under intellectual property service.

*Eicher Good Earth Ltd. Vs. CST [2012- TIOL-579-CESTAT-DEL]*

The CESTAT while considering scope of 'brokerage service' has held that receipts not in the nature of commission or brokerage should not be taxed in disguise and only the brokerage or commission service provided by stock broker shall be liable to service tax. Section 67 of the Finance Act is the sole repository of law governing value of taxable service provided by stock broker, and therefore any charge on non-includible elements other than brokerage or commission will result in arbitrary taxation. - *LSE Securities Vs CCE 2012-TIOL- 593-CESTAT-DEL*

## VAT, Sales Tax and Entry Tax Case Law

The Delhi Government reduced VAT on price of petrol bringing petrol price down to Rs.71.92/litre. However, VAT on transport fuel CNG has been increased by Rs 1.77. Beedi, unmanufactured tobacco, saris, plastic cups and glasses will also become costlier. Hairpins, hairclips, safety pins, kirpans, sacred threads, tricycles geometry boxes, crayons and pencil sharpeners will be cheaper with removing or reducing VAT on them.

*VAT on Petrol Slashed in Delhi Budget, CNG Dearer [Daily News and Analysis, May 28, 2012]*

## FEMA & RBI Notifications/Circulars

Online reporting of overseas direct investment was effective from March 2010 enabling online generation of the Unique

Identification Number (UIN). It is decided to automate the reply allotting the UIN through an auto generated email id to the email id specified in the form. Accordingly, with effect from 01.06.2012, the auto generated e-mail, giving the details of UIN allotted to the JV / WOS under the automatic route, shall be treated as confirmation of allotment of UIN and no separate letter shall be issued by the RBI to the Indian party and AD Category - I bank confirming the allotment of UIN. Accordingly, subsequent remittances should be reported on receipt of the email allotting the UIN. All other procedural aspects remain the same. - *AP DIR Series Circular 131 dt 31st May 2012*

As per the existing guidelines, ECB proceeds can be utilised for permissible foreign currency expenditure and rupee expenditure. In order to ensure that the amounts earmarked for rupee expenditure are repatriated into India the RBI has decided to obtain the details of the bifurcation of the utilisation of the ECB proceeds towards foreign currency and rupee expenditure in Form 83 from the borrower at the time of availing the Loan Registration Number (LRN). *AP DIR Series Circ. 119 dt 07-05-2012*

The facility of EEFC scheme is intended to enable exchange earners to save on conversion/transaction costs while undertaking foreign exchange (forex) transactions in future. Prior to the review EEFC account holders were permitted to maintain 100% balances in the account. EEFC account holders henceforth will be permitted to access the forex market for purchasing foreign exchange only after utilising fully the available balances in the EEFC accounts. Authorised Dealers to obtain a declaration while selling foreign exchange to their constituents. - *AP DIR Series Circular 124 dt 10th May 2012*

Limit for foreign exchange remittance for miscellaneous purpose without documentation requirement is raised to USD 25,000/- or its equivalent from USD 5,000/- . The remittance can be undertaken on the basis of a simple letter containing basic information such as name and address of the applicant and the beneficiary, amount and purpose of remittance. Accordingly AD's are advised not to insist upon Form A2. *AP DIR Series Circular 118 dt 7th May 2012*

Prior to this issue of this notification, NRIs / PIOs were not permitted to transfer funds from NRO to NRE account. It has now been decided to permit Non Resident Indian (NRI) to transfer funds from NRO account to NRE within the overall ceiling of USD 1 million per financial year subject to payment of tax as applicable if the funds were remitted abroad. Payment of tax as applicable to be read as taxes as applicable if the funds were transferred abroad. *AP DIR Series Circ. 117 dt 07-05- 2012*

In terms of the CIC guidelines issued in January 2011, every systemically important core investment company shall apply to the RBI for grant of certificate of registration. Systemic CIC means a CIC fulfilling both the conditions - (a) having total assets less than Rs. 100 Crore either individually or in aggregate along with other CIC in the group and (b) raises or holds public funds. Exempt CIC Issuing Guarantee - During the course of business while issuing guarantee or absorbing contingent liabilities on behalf of their group the CIC's must ensure that they can meet the responsibility without recourse to public funds if the liability dissolves. It would be considered violation of the CIC directions 2011 - if unregistered CIC with asset size greater than 100 Crores has accessed public funds.

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## India and Netherlands conclude Protocol

According to a Press Release dated 10-05-2012, India and Netherlands have concluded a Protocol on 10.05.2012 to amend the Article 26 of the DTAA concerning Exchange of Information to bring it in line with the international standards.

The amendment will allow exchange of banking information as well as information without domestic interest. It will allow use of information for non-tax purpose if allowed under the domestic laws of both the countries, after the approval of the supplying state.

## U.S. Loses China Shrimp Case at WTO

U.S. government lost a dispute brought against it by China over the way American authorities calculate anti-dumping penalties on imports of Chinese shrimp.

China charged before the World Trade Organization panel hearing the dispute that the Commerce Department of US Government broke the trade watchdog's Anti-Dumping Agreement in the way it calculated the penalty, specifically the U.S. use of the 'zeroing' methodology.

In this case, the U.S. put punitive duties of up to 112.8% on Chinese shrimp. In 2003 China exported \$380 million worth of scrimp into the American market, Chinese authorities said. In 2004 American authorities started penalizing importers of China's shrimp.

## On textile subsidy cuts, India readies WTO defense

Indian negotiators are busy weaving their strategy ahead of the upcoming meeting of the committee on subsidies and countervailing measures (SCM) of the World Trade Organisation (WTO) in October. At stake is the \$77 billion textiles industry that employs 3.5 crore workers directly and about 4.7 crore indirectly.

The United States, the single largest importer of India's textiles products, accounting for around \$10 billion trade, has moved the committee against India's policy of subsidising its textiles exports.

According to WTO's SCM rules, a developing country like India can provide export subsidies to its exporters till the time it reaches export competitiveness threshold.

This threshold is reached when a country achieves a share of 3.25% of world trade in two consecutive years.

India has long crossed that threshold, according to WTO data. In 2008, 2009 and 2010, the country's share in world textile trade was 3.5%, 4% and 4%, respectively. Figures for 2011 are expected in a few weeks.

"While we have surpassed the export competitiveness threshold on section-based calculations, if we calculate on the basis of the 14 chapters, then only seven of our products fall in the competitive category," said an Indian negotiator at the WTO.

"Even if the Indian government has to withdraw its subsidies for the textiles sector, the Indian government should follow the example of quota phase-out by the USA and EU under the provisions on agreement on textiles and clothing. Subsidies of low impact can be withdrawn first and those with serious implications can be withdrawn at the end of the phase out period that India would be entitled to," said DK Nair, secretary general, Confederation of Indian Textiles Industry.

## WTO Warns of Rising Trade Protectionism

The World Trade Organization has raised serious concern over the steep rise in trade protectionism by member countries in reaction to the financial crisis in 2008.

WTO Director-General reported during the recent informal meeting of heads of delegations to the WTO that the finding is contained under its recently published monitoring report on trade and investment measures taken in the crisis.

According to the officials of WTO, the implementation of new measures restricting or potentially restricting trade has remained unabated over the past seven months, which is aggravated by the slow pace of rollback of existing measures.

## China Floods the WTO With Tit-for-Tat

On May 8, China imposed extra import duties on stainless steel seamless tubes imported from the European Union and Japan, saying the tubes damaged the Chinese machinery they were installed in. The Chinese move came less than two months after the EU and Japan, along with the U.S., went to the World Trade Organization to challenge China's curbs on exports of its rare earths, scarce minerals that are vital to so many industrial processes.