



# Newsletter-23

Mysore Chapter October 2005

From Chairman's desk...



## In this edition...

Corporate Governance Made easy...

Though the defendant held a valid trademark registration...

You Responded...

New Oversight Rules for European Auditors...

Camel has entered Media tent...

Legal roundup...

Dear Friends,

Warm Greetings to you all!

The NATIONAL CONVENTION of the Institute is fast approaching. The members are requested to register themselves and their friends for the Convention. It is a matter of pride for the Southern Chapters and the members that the Silver Jubilee Year's Convention of the Institute is being held in South. It is therefore imperative that all of us join hands to ensure that the convention is a grand success. I am also requesting the members to get sponsors and advertisers for the convention. Needless to mention the immense benefits the Convention offers to the practicing members.

The framework for the Mega Event scheduled in January 2006 has been developed by the Silver Jubilee Celebration Committee. The members will be hearing more on this from the Silver Jubilee Committee soon.

I had requested the members, in my last message, to explore the possibilities of sponsoring the students to the national Convention in my last message. I am happy to note that some of the members have come forward with the offer to partially share the delegate fee for the interested students. The students are yet to respond to this exemplary gesture.

The Chapter has not been able to meet its target of Career Counseling due to busy schedule of the members of the career counseling Committee. The members who can spare some time are requested to lend their hand by volunteering their services for Career Counseling.

The Chapter has made arrangements for oral coaching classes for Inter as well as Foundation courses though the number of students opting for oral coaching being not on expected lines, in order to keep the continuity.

I request the members who are yet to subscribe to the Journal "Chartered Secretary" to subscribe and also to get subscriptions from their friends and acquaintances. The members are also requested to subscribe to the "Company Secretaries Benevolent Fund" if not already subscribed.

With warm Regards and Dasara greetings,

Mysore, 10th October 2005.

D D Bhat  
Chairman - Mysore chapter.

# CORPORATE GOVERNANCE *made easy*

(Continued from September 2005 edition)

**N Anantha Murthy**

Company Secretary (ACS - 17134)  
BPL Soft Energy Systems Limited

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## Synopsis

- I. Board Of Directors
- II. Audit Committee
- III. Investors' Grievance Committee
- IV. Subsidiary Companies
- V. Disclosures
- VI. CEO / CFO Certification
- VII. Compliance

Part I of this article had dealt with "BOARD OF DIRECTORS" and "AUDIT COMMITTEE"

### III. INVESTORS' GRIEVANCE COMMITTEE

Board to constitute a committee called Investors' Grievance Committee. Non-executive Director to be the Chairman of the Committee. Committee to look into the redressal of investors' complaints

To expedite the process of share transfer, Board should delegate power to an officer / committee / registrar & transfer agent, who shall attend to the same on a fortnightly basis.

### IV. SUBSIDIARY COMPANIES

i) At least one Independent Director of the Holding Company shall be a Director of a material non-listed Indian subsidiary company

ii) Audit Committee of the holding company shall review the financial statements, in particular, the investments made by subsidiary company

iii) Board Minutes of subsidiary company should be tabled at the Board Meetings of Holding Company.

iv) All significant transactions / arrangements entered into by the subsidiary should be brought to the notice of the Board of Directors of the Holding Company.

### V. DISCLOSURES

#### a) To the Audit Committee (A/C)

##### i) Related party transactions

- Statement of transactions with related parties, in the ordinary course of business

- Details of material individual transactions with related parties, which are not in the normal course of business

- Details of material individual transactions with related parties, which are not on an arm's length basis, together with management's justification

##### ii) Proceeds from Public / Rights / Preferential Issues

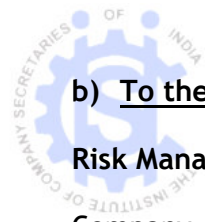
-**Quarterly:** Statement on uses and application of funds by major category (capex, sales & marketing, working capital etc.), as a part of quarterly declaration of financial results

-**Annually:** Statement of funds utilized for purposes other than those listed in the offer document. Statement to be certified by the Statutory Auditor and Audit Committee shall make recommendations to the Board, as it deems fit, to take necessary steps in the matter.

-Disclosure only till such time the money raised from issue is fully spent.

##### iii) Financial Statements of Subsidiaries

- Audit Committee of the holding company shall review the financial statements, in particular, the investments made by subsidiary company



## **b) To the Board of Directors**

### **Risk Management**

Company to lay down procedures to inform the Board about the risk assessment and minimization procedures

Should be periodically reviewed to ensure that executive management controls risk through defined framework

### **Material financial and commercial transactions**

Senior Management to make disclosure of all material financial and commercial transactions where they have personal interest which may have potential conflict with the interest of the Company at large

### **Mandatory Information**

Mandatory information as referred in Annexure - IA of Clause 49

### **Review of Compliance Reports**

Board should review compliance reports of all applicable laws and also the steps taken to rectify the non-compliances, if any.

### **With respect to Subsidiary Company**

Board Minutes of subsidiary company shall be tabled at the Board Meetings of Holding Company. All significant transactions / arrangements entered into by the subsidiary should be brought to the notice of the Board of Directors of the Holding Company.

## **c) Under the Corporate Governance Section in the Annual Report**

i) Annual Report to have separate section titled 'Corporate Governance' with detailed compliance report on the same. (Refer Annexure - IC of Clause 49 of the Listing Agreement)

ii) Non-compliance of mandatory requirements together with reasons thereof and the extent to which the non-mandatory requirements have been adopted, be specifically highlighted (Refer Annexure - ID of Clause 49 of the Listing Agreement).

## **Regarding remuneration of Directors**

- Pecuniary relationship or transactions of non-executive directors with the company
- Elements of remuneration package of individual directors
- Details of fixed component, performance linked incentive along with the performance criteria, service contracts, notice period, severance fees, stock option details - whether issued at discount, period over which accrued and exercisable
- Criteria for making payments to non-executive directors - (this may alternatively be posted on the Company's website and reference can be drawn in the annual report)
- No. of shares / convertible instruments held by the non-executive directors

### **Accounting Treatment**

Accounting treatment different from one that is prescribed in Accounting Standard, if followed, be disclosed in the financial statement together with management's explanation

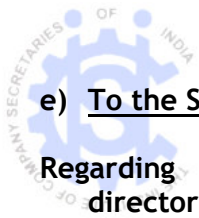
*Note: Non-executive directors to disclose their shareholding to the Company prior to their appointment, which shall further be disclosed in the notice of general meeting dealing with such appointment.*

## **d) In the Directors' Report OR a separate report titled Management Discussion & Analysis (MD&A) in the Annual Report**

MD&A to form part of the Annual Report, covering discussion on the following:

- Industry structure and developments
- Opportunities & Threats
- Segment-wise or product-wise performance
- Outlook
- Risks & concerns
- Internal control systems and their adequacy
- Discussion on financial performance with respect to operational performance
- Material developments in Human Resources / Industrial Relations, including no. of people employed

*Note: Non-executive directors to disclose their shareholding to the Company prior to their appointment, which shall further be disclosed in the notice of general meeting dealing with such appointment.*



#### e) To the Shareholders - In the notice of AGM

#### Regarding appointment / re-appointment of director

- Brief resume
- Nature of expertise in specific functional areas
- Directorships / Memberships held in other companies
- Shareholding of non-executive directors

#### f) On Company's Website

Quarterly results and presentations made by the company to analysts. Alternatively, this can be sent to stock exchange, who in turn will post it on its own website

Code of Conduct adopted by the Company for Directors & Senior Management

### VI. CEO / CFO CERTIFICATION

CEO (i.e., MD or Manager) and the CFO (i.e., Finance Director or Finance Head) to certify to the Board that:

- a) They have reviewed the financial statements & cash flow statement and to the best of their knowledge and belief, the statements give a true and fair view of the Company's affairs and are in compliance with the accounting standards and applicable laws & regulations and does not contain untrue statement or omit any material fact or contain statement which is misleading

- b) There are no transactions entered into by the Company which are fraudulent, illegal or violative of the Company's code of conduct
- c) They accept responsibility for establishing / maintaining internal controls and have evaluated the effectiveness of the internal control systems and have disclosed to the Auditors and the Audit Committee of the deficiencies in the design & operation of the internal control and the steps taken / proposed to be taken to rectify the deficiencies.
- d) They have indicated to the Auditors and the Audit Committee, significant changes in internal control and accounting policies, instances of significant fraud in which the management or an employee has any involvement

### VII. COMPLIANCE

- a) A **certificate** from the Statutory Auditor / Practicing Company Secretary **regarding compliance of conditions of corporate governance be annexed to the Directors' Report** and the same shall be sent to the stock exchange along with the Annual Report

b) Implementation of non-mandatory requirements is at Company's discretion. However, **details of compliance with mandatory requirements and adoption / non-adoption of non-mandatory requirements be disclosed** in the section on 'Corporate Governance' in the Annual Report.

- c) **Quarterly compliance report** signed by the Compliance Officer or the CEO be submitted to stock exchange within 15 days from closure of the quarter (Refer Annexure - IB of Clause 49 of the Listing Agreement)

## New "oversight rules" for auditors in Europe

With the aim to enhance the quality of auditing and improve the public trust in the profession, lawmakers in European Union have approved the new oversight rules for auditors, which will require the European auditors and auditing companies to prove their independence from the management of the company they are scrutinizing. The new rules will require the companies to create an oversight board for accounting firms and is expected to boost economic confidence by fostering trust on European quarterly reports on stock markets.

## Intellectual Property - Delhi High Court

### Though the defendant held a valid trademark registration for the mark...

Koninklijke Philips Electronics NV v. Smt. Kanta Arora & Ors



#### Gist:

High Court upheld the ad interim order of an injunction restraining the defendants from manufacturing, selling or offering for sale its product under the name 'PHILIPS', though the defendant held a valid trademark registration for the mark 'PHILIPS' in respect of pressure cookers.

#### The Story...

The defendants M/s Kumar Enterprises applied for the registration of trademark 'PHILIPS'. The plaintiff had opposed the defendants' application on the ground that the use by the defendants of the trademark 'PHILIPS' was dishonest.

However, the Trade Mark Registry dismissed the objection of the plaintiffs and granted a registration certificate in favour of the defendants.

The defendants started advertising their products, viz., pressure cookers under the trade mark 'PHILIPS' on cable television channels. The plaintiffs' case, inter alia, was that the adoption and use of an identical trade mark in respect of the same/allied and cognate goods not only tantamounts to infringement of the plaintiff's right but is bound to create confusion and deception in the minds of the consumer. The defendants laid emphasis on the registration of the trade mark 'PHILIPS' in their name; thereby claiming statutory protection.

Issues were two:

- (i) Whether the defendants held a valid registration of trade mark 'PHILIPS' to oppose the injunction preventing its use qua their products; and
- (ii) Whether the defendants could use the trademark 'PHILIPS' which is identical to the trademark under which the plaintiffs have been marketing their wide range of products including kitchen utensils.

In answering the first question the Court, relying on earlier judicial decisions, held that even though the defendants had registered pressure cookers in the name of 'PHILIPS', this could not affect the right of the plaintiffs' action for passing off under the provisions of Section 27(2), of the Trade Marks Act, 1999 that

- (i) Registration of a mark in the trade marks registry is irrelevant for an action of passing off and
- (ii) **Mere presence of the mark in the register maintained by the trademark registry does not prove its use by the person in whose name the mark has been registered.**

Therefore, the order for injunction already passed by the Court was made absolute in favour of plaintiffs.

#### *You Responded...*

Dears,

Thank you for sending me a copy of your News Letter - September, 2005 which is most interesting, educative and above all commendable since it is emanating from a Chapter of the size of Mysore !

I am delighted to know that "Thrishna" was conceived, mapped and executed by the Students! I wonder whether it is possible for other Chapters of ICSI to emulate this example. Congrats to all! Also I join others in congratulating the students of Mysore for achieving 20% results in their examinations, which is no doubt a stupendous feat.

The Article by Mr. Anantha Murthy is very useful and he deserves kudos.

I wish I get an opportunity to participate in one of your programs at the earliest. All the best for your future endeavors.

**K. Narayana Swamy**

VP - India Satcom Ltd. Bangalore  
(Past Chairman, SIRC)



# CAMEL HAS ENTERED MEDIA TENT...

Compiled by: **H M Dattatri**

ACS 16132  
AT&S India Pvt Ltd



It's all over now. All voices that were raised against foreign investments in media are silent. National Security, Public interest, opinion-making power of the media were the main points against foreign investment in media industry in India. This is how policies are implemented in India. You need not answer for crying people. Be quiet for some time and then do it.

Government of India (GOI) has decided to permit 26% investment in an Indian company publishing newspapers and periodicals dealing with news and current affairs. Indian company accepting FDI would have to comply with the guidelines issued on July 13, 2005 by the Ministry of Information and Broadcasting (MIB) in this regard. A.P. (DIR Series) Circular No. 06 dated – Aug 11, 2005

The MIB Guidelines allow:

- Foreign entities must be of sound credentials and international standing;
- New entity should be an Indian Company
- Equity held by the largest Indian shareholder is at least 51% of the paid up equity, excluding the equity held by public sector banks and public financial institutions;
- While calculating the 26% foreign investment ceiling in the equity of the new entity, the foreign holding component, if any, in the equity of the Indian shareholder companies of the new entity will be duly reckoned on *pro rata* basis so as to arrive at the total foreign holding the new entity;
- At least 50% of the FDI will have to be inducted by issue of fresh equity. The balance 50% of the FDI, may be inducted through transfer of existing equity; and
- At least 3/4th of the directors, all key executives and editorial staff should be resident Indians.

## Facsimile editions:

Any Indian entity, with or without foreign investment, desirous of publishing a facsimile edition of foreign newspaper, or any foreign company owning the original foreign newspaper will be permitted to publish the facsimile edition of its newspapers in whole or in part(s), provided:

- It has its commercial presence in India with its principal place of business in India; and

- At least 3/4th of the directors, all key executives and editorial staff are resident Indians.

Any entity publishing a facsimile edition of a foreign newspaper in India will be subject to all the relevant laws and guidelines applicable to Indian newspapers and their publishers.

## Aakashvani, the Radio:

Not an exception. You will have lot of radio channels... around 338 channels covering 91 cities across India. Foreign investment of 20% is allowed. You may be aware that in July 2005, the MIB had formulated a policy on Phase II of FM radio broadcasting services through private agencies. On September 21, 2005 MIB has invited tenders as well as the tender document for all these new channels. The bidding process is contemplated in two stages. Pre-qualification bid, where the MIB will essentially evaluate eligibility will be on November 7, 2005. The financial bid will be opened in the early part of the year 2006 (between January 6, 2006 and February 3, 2006). Applicants should be Indian companies. Other conditions for bidders are:

- One Indian individual or company should own more than 50% of the paid up equity in the applicant entity excluding the equity held by banks and other public financial institutions;
- The majority shareholder should exercise management control over the applicant entity;
- All directors and key executives should be resident Indians

Camel will certainly sit fully in. Will you be in or out, depends on how big the tent is.

As far as telecom sector is concerned, temporary good news is here. The Ministry of Communications has communicated to World Trade Organisation ('WTO') that since the guidelines on allowing 74% FDI in telecom are not yet effective, India is at present not in a position to give a commitment as a member country of the WTO with regard to the proposed increase to 74% in the FDI cap. Therefore WTO has indicated its cap on FDI in India in the telecom sector as being 49% instead of the proposed 74%.





# Legal Roundup....

## Income Tax

### Introduction of new Challan No.283

This is a new challan introduced. It is for the payment of (a) Banking Cash Transaction Tax - Major Head 0036 and (b) Fringe Benefit Tax - Major Head 0026.

Notification No. 189/2005[F.NO.142/18/2005-TPL], dated 12.08.05

### Cost Inflation Index

Cost Inflation Index for the financial year 2005-06 is fixed at 497 for the purpose of indexation under Second Proviso to section 48

### Motorla Inc v. DCIT (Special Bench)

In the above landmark decision, the ITAT ruled as follows;

- a) A wholly owned subsidiary per se does not create a PE for the overseas holding company
- b) Interest under IT Act may be levied even if the section reference is not made in the assessment order
- c) Payment for license to use computer software does not amount to royalty
- d) A notice under section 142(1) cannot be issued after the end of assessment year

## Customs

### India to sign Kyoto protocol

India will soon sign the Kyoto protocol on Customs to give added impetus to India's efforts towards trade facilitation. The protocol, which lays down basic standards for customs procedures, has been revised to include 121 legal provisions.

### CBEC facilitates 'Digital Signatures'

The Central Board of Excise & Customs has set up a facility for obtaining Digital Signature Certificates for enabling secure transactions with the Department over the Internet.

(Source: CBEC website)

## Notifications

### Export documentation - Abolition of various declarations

It has been found by the Sub-Committee that the documents required for export under customs are only five viz.:

- Commercial invoice
- Packing list
- ARE-1
- Self Declaration form
- Declaration pertaining to various export promotion scheme

Therefore all other documents have been abolished for submission at the time of export.

M.F. (D.R.) Circular No. 34/2005-Cus., dated 5-8-2005

**Bangkok Agreement** - Import of specified products from Bangladesh, China, Korea or Sri Lanka and Singapore are exempted.

Notification No. 72/2005-Cus., dated 22-7-2005,  
Notification No.59/2005-Cus(NT) dated 20.7.2005.  
Notification No. 73/2005-Cus., dated 22-7-2005

The Central Government has notified a 75% reduction in the customs duty rates, as applicable on 1st January 2004, for the 82 items identified under the Early Harvest Scheme of the Framework Agreement for establishing a Free Trade Area between India and Thailand. These provisions are effective from 1st September 2005.

(Notification No. 79/2005 dt 01/09/05)

The Central Government has notified concessional rates of customs duties for goods required in projects for generation of power using non-conventional materials.

(Notification No. 81/2005 dt 08/09/05)

## Case Laws - Classification

The Tribunal, in G.M. Pens International Ltd. Vs. CC (2005 (70) RLT 209), has held the explanatory notes to the Harmonised System of Nomenclature (HSN) can be used for the purposes of clarification of the scope of any tariff entry only in cases where there is reasonable doubt or ambiguity about such scope.



## Case Laws - Valuation

In NCL Industries Ltd. Vs. CC (2005 (69) RLT 807), Hindustan Motors Ltd. Vs. CC (2005 (126) ECR 364) and R. Stahl Pvt. Ltd. Vs. CC (2005 (126) ECR 80), the Tribunal has held that technical know-how/ license fee paid to foreign supplier, which were related to the manufacture of finished goods and not being a condition of sale of imported goods is not includible in the transaction value of the goods.

In Parag Sheth Vs. CC (2005 (70) RLT 281), the Tribunal has held that where there is more than one value of contemporaneous imports of comparable goods, the lowest of such value has to be taken for the purposes of determining the transaction value. Further, the Tribunal has also held that the transaction value could not be enhanced on the basis of a proforma invoice or a letter obtained from an importer, which was not presented for cross examination.

In CC Vs. Gujarat Small Industries Corpn Ltd. (2005 (186) ELT 579), the Tribunal has held that the transaction value cannot be enhanced where suitable adjustments as required under Rule 6 of the CVR have not been made while comparing contemporaneous imports of similar goods.

In Marshil Exports Vs. CC (2005 (70) RLT 90), the Tribunal has held that the customs authorities cannot adopt an arbitrary method for enhancing the value of the imported goods in the absence of contemporary imports at higher prices.

## Case Laws - Others

The Tribunal, in Rubfila International Ltd. Vs. CC (2005 (70) RLT 149), has held that a drawback claim is not admissible where no or negligible duty incidence has been borne on local procurement used in the manufacture of the exported product.

The Tribunal, in Transformers & Electricals Kerala Ltd. Vs. CC (2005 (70) RLT 53), has held that the principle of unjust enrichment is not applicable where the price of imported goods is pre-determined under a contract and a chartered accountant has certified that the duty element has not been passed on.

Yamaha Motors (I) Pvt. Ltd. v. CCE - 2005 (186) E.L.T. 161 (Tri.) - Under Technical Collaboration Agreement, if the consideration is paid for Transfer of intellectual property and not for any consultancy, then such value of any incidental

advice if any cannot be cut out and be subjected to service tax as consulting engineer services.

Real Food Products Pvt Ltd vs CCE 2005 (186) ELT 205 (Tri. - Bang) - Provisions of unjust enrichment would not be applicable to refund of amount pre-deposited as per stay order. The amount which is being pre-deposited as a result of finalization of provisional assessment, cannot be credited to Consumer Welfare fund.

CCE vs R.K.Swamy BBDO Advertising Pvt Ltd 2005 (186) ELT 291 - Initially, the levy of service tax challenged by assessee and interim stay granted by High Court. The assessee paid the service tax after the stay was vacated by High Court, interest is payable for the entire period of delay in payment of service tax in absence of any specific order of High Court regarding exclusion of period covered by stay order.

## FEMA

### FDI

100% Foreign Direct Investment in Petroleum Sector and 49% in Air Transport Services is allowed under the Automatic Route in Petroleum Product Marketing, Oil Exploration in both small and medium sized fields and Petroleum Product Pipelines. However, no direct or indirect equity participation by foreign airlines would be allowed.

Circular No. 04 dated -July 29, 2005

100% Foreign Direct Investment (FDI) in Construction Development Sector is allowed, subject to the guidelines mentioned therein. A.P. (DIR Series) Circular No. 07 dated August 17, 2005

### FDI - Foreign Investments in India: Transfer of security by way of gift - Procedure

As hitherto, a person resident in India who proposes to transfer, by way of gift, to a person resident outside India any security including shares/convertible debentures is required to obtain prior approval of the Reserve Bank. However, the application is now required to be submitted along with certain information/documents, a list of which is annexed to the circular. Applications in this regard may be submitted to the Chief General Manager, Reserve Bank of India, Foreign Exchange Department,





Foreign Investment Division, Central Office, 11th floor, Fort, Mumbai 400 001.

Reserve Bank would, henceforth, consider the specified factors while considering such applications.

A.P. (DIR Series) Circular No. 08 dated August 25, 2005

### ***FDI - Transfer of Shares/Convertible Debentures by way of Sale - Clarification***

Whether the general permission also includes transfer of shares/convertible debentures, which earlier required FIPB/SIA approval but now falls under Automatic route and transfer of shares through buy-back or capital reduction. It is, therefore, clarified that the transactions detailed below are also covered under the powers delegated to AD banks vide A. P. (DIR Series) Circular No.16 dated October 04, 2004 subject to the terms and conditions stipulated therein.

### **External Commercial Borrowings (ECB)**

It has been decided to liberalise/modify the ECB policy as indicated below:

- i. ECB with minimum average maturity of 5 years by NBFCs from multilateral financial institutions, reputable regional financial institutions, official export credit agencies and international banks to finance import of infrastructure equipment for leasing to infrastructure projects would be considered by the RBI under the Approval Route;
- ii. Foreign Currency Convertible Bonds (FCCB) by housing finance companies satisfying specific criteria would be considered by the Reserve Bank under the Approval Route;
- iii. Minimum holding of equity by the foreign equity holder in the borrower's company (which would qualify the foreign equity holder as a recognised lender for ECB) has been clarified;
- iv. Prepayment of ECB up to USD 200 million (as against the existing limit up to USD 100 million) may be allowed by Authorised Dealers without prior approval of RBI subject to compliance of applicable minimum average maturity period for the loan. Pre-payment of ECB for amounts exceeding USD 200 million would be considered by the Reserve Bank under the Approval Route.

## **FTP**

### ***Notifications***

If you are an importer of specified goods, please note that Central Government has amended the conditions for import of specified goods as provided for under the ITC (HS) Classification of Export and Import Items 2004-2009.

*(Notification No. 23 (RE-2005)/2004-2009 dt.31/08/2005 and Notification No. 26 (RE- 2005)/ 2004 - 2009 dt. 02/09/2005)*

***EOUs shall have minimum 1 crore investment:*** The Central Government has amended the provisions pertaining to 100% Export Oriented Units (EOU) to *inter alia* provide that only projects having minimum investment of Rs. 1 crore in plant and machinery shall be considered for establishment as 100% EOUs under the scheme. However, the Board of Approval can allow establishment of 100% EOUs with a lower quantum of investment.

*(Notification No. 27 (RE-2005)/2004-2009 dt 12/09/2005)*

### ***Circulars/Public Notices***

The Central Government has made certain amendments/ deletions/ corrections in the Standard Input Output Norms as contained in the Handbook of Procedures, Vol 2, 2004- 2009

*(Policy Circular No.44/2005-2009 dt 26/08/05)*

## **CENVAT**

### ***Returns - ER-1 and ER-3 returns - Manner of scrutiny by Proper Officer***

Under Rule 12(3), the Board has laid down the manner of scrutiny of correctness of duty assessed by the assessee as follow:

- Scrutiny of the returns shall be done by the Superintendent of C.E. who will be assisted by the Inspectors of that Range.
- Scrutiny would be in 2 stages - 'Scrutiny of return' and 'Scrutiny of assessment' which should be completed within three months of the date of receipt of return.
- The scrutiny shall be made as per the check list given in Annexure to the Circular.
- The proper officer, for verification purpose may call for documents and may even visit assessee's premises, however visits should be made very sparingly.



- A register of scrutiny of assessment should be maintained.
- Monthly report shall be submitted by each Range Superintendent to the jurisdictional Deputy/Asst. Commissioner.
- In every six months, the scrutiny has to be done by the Deputy/Asst. Commissioner for the units paying annual PLA revenue of Rs. 1 crore to 5 crores and the report shall be sent to the Commissioner.
- Similarly, for the units who are paying revenue of more than 5 crores, the scrutiny has to be done by Addl./ Joint Commissioner and send report to the Commissioner every six months.

C.B.E. & C. Circular No.818/15/2005-CX., dated 15-7-2005

## Case Laws

### Manufacture - Dutiability

The Tribunal, in *Craft Interiors Ltd. Vs. CCE (2005 (187) ELT 113)*, has held that customized permanent fixtures such as workstations, partitions etc, erected at site are not excisable but cabinets, desks and other items of furniture are moveable goods and hence excisable.

The Tribunal, in *Sudhir Engineering Company Vs. CCE (2005 (126) ECR 290)*, has held that the activity of repair of old and damaged DG sets does not amount to manufacture as no new, distinct and identifiable products have emerged therefrom.

### Valuation

The Tribunal, in *Yokogawa India Ltd Vs. CCE (2005 (187) ELT 50)*, has held that the value of application and system software is not includible in the value of hardware.

In *Pearl Soap Co. Vs. CCE (2005 (187) ELT 460)*, the Tribunal has held that the raw material supplier's profit is not includible in the value of goods manufactured by a job worker

The Tribunal, in *JBM Sungwoo Ltd. Vs. CCE (2005 (70) RLT 69)*, has held that ownership of goods is irrelevant for determining the eligibility to CENVAT credit on capital goods.

The Tribunal, in *Hindustan Coca Cola Beverages Pvt. Ltd. Vs. CCE (2005 (187) ELT 318)*, has held that a manufacturer is eligible to avail the balance 50% credit on capital goods even if the

final product manufactured by using such goods has since been exempted from duty.

## Others

In *J.S. Gupta & Sons Vs. CCE (2005 (126) ECR 374)*, the Tribunal has held that in the absence of specific legal provisions, the facility of duty free procurement of raw materials by a 100% EOU cannot be suspended for the reason of alleged misuse of concessions.

## Service Tax

### Adjudication for penalty - Monetary powers of Central Excise Officers notified

Under Section 83A, CBEC has specified the limits for the purpose of adjudging penalty under Chapter V of Finance Act, 1994 or Rules made there under.

Notification No. 30/2005-S.T., dated 10.8.2005

## Sales Tax

### Form C made quarterly

The Central Government has amended the Central Sales Tax (Registration and Turnover) Rules, 1957 vide the Central Sales Tax (Registration and Turnover) Third Amendment Rules, 2005. The following important changes are effective from 1st October 2005 in relation to the forms prescribed under the above Rules: -

- (a) a single declaration form will henceforth cover all transactions of sale which take place in a quarter of a financial year between two registered dealers.
- (b) it would be necessary to furnish a separate declaration or certificate in respect of all goods delivered in each quarter of a financial year by one registered dealer to another.
- (c) the declaration Forms C/F/E-I/E-II shall be furnished to the prescribed authority within three months after the end of the period to which they relate.

[Notification No.G.S.R.588 (E) F.No. 24/1/2005- ST dt.16/09/

