

A Model of Good Judgment



New Policy on IPR - A Gol Initiative



eMagazine from The Institute of Company Secretaries of India, Mysore Chapter



Dear Readers,

Warm greetings from the Mysore Chapter of ICSI!

October is a very exuberant time in India, festivals filled with lights, music, and celebrations. Mysore reveled in the 9 days' Royal Festival of Dasara during the month with all its cultural programs, lighting, exhibitions and on the final day procession of Goddess Chamundeshwari, carried atop a lavishly decorated elephant followed by series of cultural activities.

CS. Ajay Madaiah B.B.
Chairman,
Mysore Chapter

Our Institute crossed the mark of 46th foundation day and it is an occasion and a moment of pride for all the Company Secretaries and students to cherish and carry forward the professional values and standards set by the institute and our predecessors. During the month, the Chapter has conducted a seminar on Indirect Tax, for the Industry representatives, jointly with CII Mysore branch. The Chapter had also organized crash courses for the students keeping in view the December 14 examination.

As the election tone is set for Central and Regional levels, I appeal to all the eligible voters of Mysore to vote and exercise their franchise in large numbers to make the election a grand success.

-: Editorial Team :-

CS. Dattatri H M
CS. Sarina C H
CS. Omkar Gayatri
CS. Abhishek Bharadwaj A B

Support Team:

CS. Ravishankar Kandhi
CS. Ajay Madaiah

Join
3900+ members'
strong

"CSMysore" eParivaar

<http://www.groups.google.com/group/csmysore>

Inside

Articles:

A Model of Good Judgment...4
I Jnana on 'New Policy on IPR' ...6
EPF and MP Act, 1952 ...8

Columns:

Living Room...3
Words worth Millions...5
Activities at Mysore Chapter...5
Web Yatra...7
e-Tools for Professionals...7
News Room...09
Spectrum Space...10
Legal Roundup ... 11

Disclaimer

Views and other contents expressed or provided by the contributors are their own and the Chapter does not accept any responsibility. The Chapter is not in any way responsible for the result of any action taken on the basis of the contents published in this newsletter. All rights are reserved.

One at a time...



As a man walked a desolate beach one cold, gray morning he began to see another figure, far in the distance. Slowly the two approached each other, and he could make out a local native who kept leaning down, picking something up and throwing it out into the water. Time and again he hurled things into the ocean.

As the distance between them continued to narrow, the man could see that the native was picking up starfish that had been washed upon the beach and, one at a time, was throwing them back into the water. Puzzled, the man approached the native and asked what he was doing. “I’m throwing these starfish back into the ocean. You see, it’s low tide right now and all of these starfish have been washed up onto the shore. If I don’t throw them back into the sea, they’ll die up here from lack of oxygen.”

“But there must be thousands of starfish on this beach,” the man replied. “You can’t possibly get to all of them. There are just too many. And this same thing is probably happening on hundreds of beaches all up and down this coast. Can’t you see that you can’t possibly make a difference?” **The local native smiled, bent down and picked up another starfish, and as he threw it back into the sea he replied, “Made a difference to that one!”**

Each of us is but one person - limited, burdened with our own cares and responsibilities. We may feel there is so much to be done, and we have so little to give, especially time and money. Maybe we can’t change the whole world, but there isn’t one of us who can’t help change one person’s whole world.

One at a time. We can make a difference.



A Model of Good Judgment



Image courtesy of FreeDigitalPhotos.net

Introduction

Judgment has been used in Law for many centuries. In 20th Century business judgment and professional judgment have assumed greater importance. Effective Corporate Governance and Oversight require Good Sound Judgment by all key players like management, board of directors, audit committee members, auditors, accountants, corporate secretaries, regulators etc., Alfred Sloan, General Motors, former Chairman, saw the lack of conflicting views, when all are in complete agreement on a decision. He then postponed the decision to next meeting to develop disagreement to fully appreciate the underlying problems/objectives. Many judgments are made in coming to a decision..

A Model of Good Judgment

A Framework or Model helps in following a good and sound judgment process. In a world of high stake decisions, deadlines, limited capacity, etc, judgments are vulnerable to common tendencies (shortcuts), traps and biases. Awareness of these insights can improve the judgment of experienced business, professional and board members.

Professional Judgment Process consists of five steps:

Step 1 Define the Problem and Identify Fundamental Objectives including impact, complexity, uncertainty, related issues, technical literature, pertinent

information, assumptions, estimates and outcomes. Be aware of management bias, overconfidence tendency, complexity, uncertainty & rush to solve.

Step 2 Consider Alternatives including multiple perspectives, additional issues, best practices be aware of judgment threats, biases, overconfidence, and overreliance on past practice.

Step 3 Gather and Evaluate information reliability, validity, certainty and accuracy. Be aware of judgment threats, bias, dead line pressure and judgment tendencies such as overconfidence, confirmation availability and anchoring (too much reliance on information or circumstances).

Step 4 Reach a Conclusion considering the big picture perspective after group analysis. Be aware of judgment threats and conflict avoidance tendencies. Group should not desire to please the central decision maker by not challenging any ideas or bringing new ideas to the discussion of how to solve the problem.

Step 5 Articulate rationale and document the Conclusion. Be aware of judgment biases influencing the conclusion. Potential factors affecting Judgment

may be external or internal including the following— Distorted Reasoning, Hindsight, Self-serving explanation, Closed Communication, Misaligned performance expectations & incentives, Regulatory, Industry, etc.. Documentation should be succinct, objective and fact-based.

Avoid including unnecessary or extraneous information. Incorporate in appendix key references, excerpts from technical Literature, standards or policies.

Conclusion: Applying Professional Judgment is an Intellectual Skill. It improves the ability to solve problems. It enhances Board Oversight by appropriately evaluating and challenging judgments. It encourages sound decision making and efficient performance. Contemplate a system of control & accountability for implementation of each decision as part of the overall decision making process for Continuous Oversight and appropriate feed forward control on emerging issues.

Activities at Mysore Chapter

Interactive Session on Indirect Tax

A seminar on Indirect Tax was held for the Industry representatives on 15th October, 2014 jointly with the CII Mysore branch and the Mysore chapter of SIRC of ICSI. CS Ajay Madaiah B.B., Chairman, Mysore Chapter of ICSI, Company Secretary of Skanray Technologies Pvt Ltd welcomed the gathering. Programme commenced with Mr. S Ramkumar Convenor, Finance & Taxation Panel, CII Mysore , CFO & Company Secretary Automotive Axles Ltd giving a perspective from the Industry on Indirect Tax and highlighted importance of the industry and department interaction to bring down the concern of the industry on the recent developments such as time bound credit availment, negative list in Service tax and reverse charge mechanism etc.,

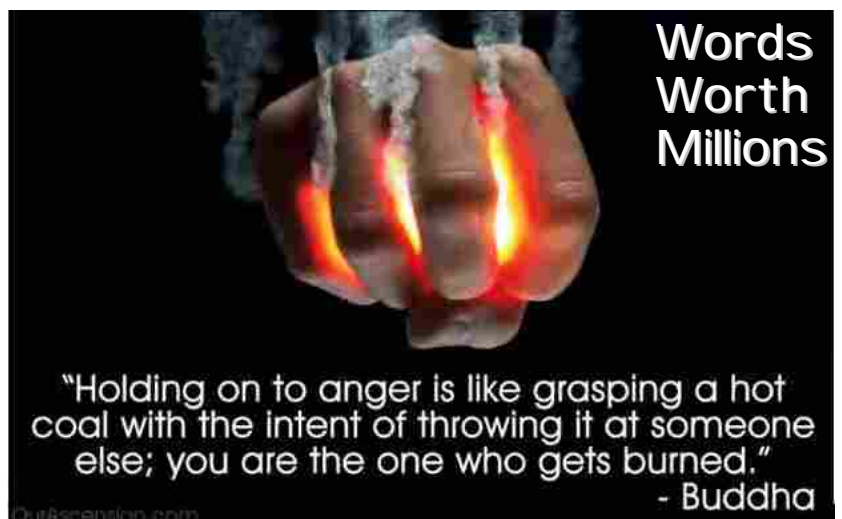


Mr. Chandrashekar, IRS, Commissioner, Mysore Commissionerate Central Excise, Customs & Service Tax stressed on the need for professionalism by companies in the compliance to the provisions and procedures of the tax and to be transparent in their transactions to serve them better and Mr. Basawaraj Nalegave, IRS, Additional Commissioner, briefed the participants that, collection from indirect tax is a major source of the revenue for the government to carry out development activities. He advised the participants to be diligent and transparent in their transaction as they can be easily traced by the department due to digitalised environment.

Later in the session Mr. K. Bhaskar Director – Indirect Tax, Deloitte Touche Tohmatsu India Pvt Ltd moderated the questions and replies in the interactive session addressed by Commissioner and Addl. Commissioner. CII Mysore branch head Mr. Mouli co-ordinated the session.

Crash course for Students

Crash courses were conducted by the chapter on 27th & 28th of October 2014 keeping in view the December 2014 examinations on “Cost and Management accounting” for the benefit of the Executive students.





New Policy on IPR

The Indian Government is planning a policy initiative on IPR, may be with the intention to cull out a road map for the future of IPR in India. The Government would review the existing law and policy, recommend changes if need be, suggest reforms and measures to expedite processes - for example, speeding up the processing of patent applications. A think tank comprising of distinguished personalities having in-depth expertise and knowledge of IPR will identify areas needed to be studied and give its recommendations. There could probably be significant changes to India's IPR policy, laws and practice, drawing from best practices followed in other countries.

More importantly, the various demands placed by other countries under bilateral trade negotiations may be examined thoroughly. India has been under criticism from developed countries regarding its IPR laws, especially in the pharma sector. USA feels that India's patents regime leaves gaps in protection of innovation. It may not be out of place here, to recall the issue on patent protection on incremental innovation. Of course, India maintains that its laws are compliant with WTO Rules. Continued criticism of India's IPR laws by USA could, if allowed to escalate, lead to even trade sanctions. It is expected that India would use this policy initiative to build a pro-IP branding.

Recently, Canada and the European Union (EU) signed the Canadian – EU Comprehensive Economic

and Trade Agreement (CETA). This is described as a landmark trade agreement that is expected to provide a 20% boost in bilateral trade and a huge increase in Canada's GDP. The CETA seeks to effect several changes in the IP regime in Canada, including setting standards for IPRs, enforcement measures and the like. That apart, the following, could be some of the not so burning yet important areas in IPR legislation in India, for which action is desirable –

1. The issue of economic and moral rights of the IPR holders and adequate protection there for, could receive increased focus.

2. In furtherance of the 2012 amendment to copyright law, provisions relating to collective societies for collecting and distributing royalties for the benefit of copyright holders may be strengthened and streamlined. The role of such societies is to ensure that copyright holders who are members of such societies gain economic rights from users of their copyrighted work;

IPR laws, especially copyright laws, may require to be updated in the context of advances in digital technology. The current trend of sharing is putting a question on the investment of time and money required to make blockbuster films or music.

Is unauthorized sharing of digital music or video for free, similar to going into a shop and stealing a physical CD or DVD?

SPURRING INNOVATION
CENTRE TO COME OUT WITH IPR POLICY DOCUMENT, SET UP THINK TANK TO STRENGTHEN PATENT REGIME

- Policy document to be ready in four months
- Think tank to include professors, end-users, legal experts
- India already has a strong IPR legal framework
- IPR regime is fully compliant with WTO norms
- India has resisted pressure for 3 years from U.S. to make IPR conform to interests of American pharma, solar firms

Department of Industrial Policy and Promotion to post draft on website for public comments before finalising policy document

We will come out with an IPR policy as India does not have one
-SITHYALA SITHYARAJU, Commerce and Industry Minister

<http://bit.ly/hinduiprpolicy>

WEB YATRA

Guruprasada Bhat
CS Professional Student, Mysore
guruprasadbhatcs@gmail.com



LIVE LAW.IN
ALL ABOUT LAW

Law is, generally, a system of rules which are enforced through social institutions to govern behaviour. Law impacts the society in a big way and is deeply embedded in our social world. In India, the social dimension of law becomes especially relevant considering the fact that legal services remain largely inaccessible to the common man.

Dear Friends, <http://www.livelaw.in/> is one of the legal news portal providing the news, views, opinions, and features of law and is set to redefine the standards of legal journalism. This portal "Live law" helps you to find all the legal news of India and law colleges and schools in India. <http://www.livelaw.in/> also has the largest database of legal jobs and Indian legal news. This site mainly contains:

- ✚ Home
- ✚ News Updates
- ✚ Columns
- ✚ Interviews
- ✚ Law school corner
- ✚ Law firms
- ✚ Book review
- ✚ Job updates
- ✚ Events

<http://www.livelaw.in/> also contains the discussion on the burning legal issues and articles on the most popular judgments and issues by the experts from industry to top legal firms. Once you surf this site, it will be part of your favourite list.



e-TOOLS FOR THE PROFESSIONALS

Manjunath S. Bhat, M.Com, LLB
CS Professional Student, Bangalore
msbhat321@gmail.com



Microsoft Remote Desktop: An Android application for mobiles

Microsoft Remote Desktop, an Android application which allows us to access data something from our Windows desktop when we are out. This app will remotely connect us with our PC and files so that we can access them from anywhere. It supports Windows Professional and Windows Server editions as well as few others but not Home Premium version. It manages multiple remote desktop connections. Advantages of *Microsoft Remote Desktop* application:

1. Supports more than 109 languages;
2. It can access and manage work resources published via remote app and Desktop connections;
3. We can see all our remote connections on the home screen and open them with a single touch;
4. Customise settings for all remote connections at once or individually;
5. Supports from Windows XP till Windows 8.1 version; *and*
6. User friendly;

Specification: 1. Price- Free 2. Required Android- Version 2.4.3 or more

Download **Microsoft Remote Desktop** app here: <http://bit.ly/csemagnov14tool>



I&E Law Cafe

Column on Industrial &
Employment laws

13



Sharath Mahendra Kumar
B.Com, MBA, LLB, MPhil, PGDMM. (ACS, LLM)
sharathm_kumar@yahoo.com

EPF and MP Act, 1952

EPF and MP Act, 1952 stands for Employees Provident Fund and Miscellaneous Provisions Act, 1952. It is the combination of **THREE** enactments viz.,

- Employees' Provident Fund Act, 1952 (EPF)
- Employees' Deposit - Linked Insurance Scheme, 1976 (EDLI)
- Employees' Pension Scheme, 1995 (EPS)

The said act mandates every employer who engages 20 or more employees on any day of the preceding 12 months to cover their employees under the said Act. This coverage calls for mutual contribution from employer and employee @ of 13.61 % and 12 % respectively.

Such contributions are made only on BASIC, DA, VDA and any other allowance which is not defined in the CTC of an employee. Such contributions are spread across FIVE a/c's viz.,

- **EPF a/c – A/C No.1** = 12 % of employee + 3.67% of employer contributions
- **Pension a/c – A/C No.10** = 8.33% of employer contributions – no employee contributions on it
- **Administration charges a/c – A/C No.2** = 1.1 % by employer
- **EDLI a/c – A/C No.21** = 0.50% by employer
- **Inspection charges on EDLI a/c = A/C No.22** = 0.01% by employer

The salary ceiling limit, as on date, under EPF and MP Act, 1952 up to which **ONLY** the employer has obligation to contribute is Rs. 15000/- p.m basic wages. One should note that contribution to A/C No.10 is obligatory only to the extent of Rs.15000/- and not on full basic wages as the employee draws. Rest of the contribution goes to A/C No.1 i.e, EPF A/C

An employee becomes eligible to receive pension under EPS upon contributing for **10 years** either continuously or intermittently on completion of **58 years** of age.

Up on completing 58 yrs of age and 10 years of contribution, a member will start getting pension even if the retirement age is 60 years in the establishment where he works. Once an employee starts receiving pension and still continues to work, the contribution to pension fund gets transferred to EPF a/c.

An employee is eligible to pension under Employees' Pension Scheme, 1995 on attaining the age of 58 years or upon making 10 years of contribution to Employees Provident Fund and opting for reduced pension.

Pensionable salary = Average monthly pay drawn during contributory period of 12 months preceding the date of exit from membership of Scheme.

Maximum pensionable salary is Rs.15000/- p.m as on date. Employer and Employee may at their option contribute on salary exceeding Rs.15000/- out of which 8.33% of employer's share to be remitted into pension fund.

For a new entrant i.e., for a person who is member of the pension scheme on or after 16th November'1995, pension is computed as below,

Member Monthly Pension = (Pensionable Salary x Pensionable Service)/70

A member of EPF is entitled to **loans from his accumulation** viz., buying a dwelling house, for its constructions, repaying special loans, self-marriage, children marriage, for illness, pay electricity bill, education and for any natural calamity related damages.



CS. Chakri Hegde,
Company Secretary,
Synova Innovative Technologies Pvt Ltd,
Bangalore
chakrih@synovaindia.com

CS. Vijayalakshmi
Company Secretary
Hoysala Projects Pvt Ltd, Bangalore
vijayalakshmi.k@hoysalaprojects.com



India, U.S. Agree on Food Stockpiling

India and the U.S. reached an agreement on India's massive food-stockpiling program, clearing the way for India to ratify an important World Trade Organization agreement aimed at facilitating trade. The deal to simplify trade procedures was done at a World Trade Organization (WTO) meeting summit in Bali in Indonesia last year. But India has been blocking implementation of that agreement. It wanted assurances that its food security programme would not be challenged under the WTO's rules. India's concern was that complaints based on rules limiting farm subsidies might undermine its spending on food stockpiles intended to ensure that the poor have enough to eat.

Food security programmes are covered by a so-called "peace clause" in which countries agreed to refrain for making such challenges until 2017. The US has now agreed to extend that commitment, in effect indefinitely. This bilateral agreement between the US and India still has to be endorsed by the full WTO membership, and it's likely to be discussed in the Organization's General Council next month.

Climate Panel Reconstituted

Prime Minister Narendra Modi on Wednesday re-constituted a high-level advisory group on climate change, days ahead of a crucial UN meet on global warming in Peru. While the government retained TERI chairperson R K Pachauri, Nitin Desai and retired diplomat Chandrasekhar Dasgupta as the non-government members of the 18-member 'Prime Minister's Council on Climate Change', environmentalist and director general of Centre for Science and Environment Sunita Narain and industrialist Ratan Tata have been dropped.

Express News

- ✓ Excise duty on Petrol & diesel increased, but as of now the hike won't be passed on to Customers.
- ✓ Snapdeal plans to launch 5,000 e-commerce kiosks across 65 cities and 70,000 rural areas
- ✓ Gujarat become first state to make voting mandatory for local body elections
- ✓ Centre sets up think tank for national IPR policy
- ✓ Indian Railways to go for Bio-Diesel in a Big Way
- ✓ Paper Mills investigated CCI for forming a cartel by simultaneously increasing prices.
- ✓ Tyre companies under scrutiny again on alleged cartelisation

Recommended Article for your reading:

Why are so Many US Lawyers Leaving Law? Click this link: <http://bit.ly/csemagnewsroom>

Both Tata and Narain were members of the high-level panel on climate change constituted by the UPA government in 2007. The advisory body had not met for the past three years. Nripendra Misra, Principal Secretary to the Prime Minister, is the member convener of the panel.

World's 3rd Science Gallery to be in Bengaluru

One of Ireland's renowned universities will be setting up the world's third 'Science Gallery' – the first in Asia. Set to marvel visitors with "scientific theatre", it will join the other two in Dublin (Ireland) and London (UK).



Asian Clearing Union (ACU)

Asian Clearing Union is the simplest form of payment arrangements whereby the participants settle payments for intra-regional transactions among the participating central banks on a multilateral basis. The main objectives of a clearing union are to facilitate payments among member countries for eligible transactions, thereby economizing on the use of foreign exchange reserves and transfer costs, as well as promoting trade among the participating countries. The ACU was established with its head quarters at Tehran, Iran, on December 9, 1974 at the initiative of the United Nations Economic and Social Commission for Asia and Pacific (ESCAP), for promoting regional co-operation. The main objective of the clearing union is to facilitate payments among member countries for eligible transactions on a multilateral basis, thereby economizing on the use of forex reserves and transfer costs, as well as promoting trade among the participating countries.

The Central Banks and the Monetary Authorities of Bangladesh, Bhutan, India, Iran, Maldives, Myanmar, Nepal, Pakistan and Sri Lanka are currently the members of the ACU. The payments for export / import transaction between ACU member countries on deferred payment terms; are eligible to be settled through ACU. All transactions to be settled through the ACU will be handled by AD Category-I banks in the same manner as other normal foreign exchange transactions, through correspondent arrangements. The need for the formation of clearing unions was felt as early as in the 1930s due to foreign exchange shortages, the breakdown of the gold standard, and the collapse of the international capital markets forcing the governments to introduce controls on foreign exchange and foreign trade on the one hand and to sign bilateral trade and payments agreements on the other.

Did You Know?

Rs. 883 Crores in Investor Education and Protection Fund

As Specified in the Companies Act, companies are required to transfer such amounts as have remained unclaimed and unpaid on account of dividends, matured deposits and debentures with companies for a period of seven years from the date that they become due for payment to Investor Education and Protection Fund (IEPF). With a contribution of Rs.189.96 Crore in 2013-14, the total amount credited to this fund since 2001-02 stands at Rs. 883.33 Crore.

Pick of the month

Whether a patentee's non compliance with Section 8 of the Patent Act will lead to an automatic revocation of its patent under Section 64(1)(m) ?

Delhi High Court in *Sukesh Behl V. Koninklijke Phillips Electronics* (Division Bench. Maj. Behl Vs Philips-DB1-DHC 7.11.2014) passed a significant decision. It was held that, Section 64 uses the word 'may' which indicates that the provision is directory and also leads to the presumption that the power to revoke a patent is discretionary. As part of this discretion, the court would have to check whether the omission under Section 8 was deliberate/intentional or whether it was a clerical/bona fide error. With this the court sends out a signal that Indian courts are attempting to increase efficiency as well as dispel the notion of India being 'anti IP'.





Compiled by:
CS. Abhishek Bharadwaj A.B.

Partner, AAA & Co, Bangalore
csabhishekbharadwaj@gmail.com



Service Tax Updates
CA. Ashit Shah,
Mumbai



FEMA Updates
Team Genicon,
Chennai



CUSTOMS & FTP

Amends Notification No. 12/2012-Cus., dated March 17, 2012 so as to extend time period from 6 months to 12 months for furnishing utilization certificate from the jurisdictional AC/DC of Central Excise of generating company that CNG/NG imported by availing exemption from customs duty has been used for generating and supplying electrical energy by the said generating company.

No. 30/2014-Cus., dated October 20, 2014

In respect of import of formulations of pesticides into India, the CBEC has clarified that the technical grade/ material shall not be insisted upon with each imported consignment of formulation once such technical grade/ material has been supplied for the purpose of analysis and scrutiny prior to the registration. Further, each consignment of formulation which is imported should be verified and tested so that it matches with the technical grade material regarding specification and quality.

No. 10/2014-Cus., dated October 17, 2014

Amends Notification No. 12/2012-Cus., dated March 17, 2012 to continue exemption to Pulses from customs duty till April 1, 2015 and Chickpeas till January 1, 2015.

No. 29/2014-Cus., dated September 25, 2014

Case Law

The Tribunal held that restricted goods when imported under customs bond for the purpose of reexport, the provisions of the Insecticides Act, 1968 is not attracted.

Royallex Vs. Commr of Customs [2014-TIOL-1916-CESTAT-MUM]

Ministry of Corporate Affairs

Notifications/Circulars/News

Considering the delay in availability of Form CRA-2 on the MCA website, it has been decided to extend the date of filing of the said form without any penalty/late fee up to 31st January 2015. Form CRA-2 will be made available on the MCA website Soon. It is noted that some companies have filed form 23 C for appointment of Cost auditor for the financial year 2014-15. It is clarified that such companies need not file form CRA 2 for the financial year 2014-15.

General Circular 42/2014 dated 12.11.2014

Issue of Foreign Currency Convertible Bonds (FCCBs) and Foreign Currency Bonds (FCBs). MCA has given Clarification regarding applicability of provisions of Chapter III of the Companies Act, 2013.

General Circular 43/2014 dated 13.11.2014

MCA has amended Schedule VII of Companies Act, 2013, following are the amendments

In item (i), after the words "and sanitation", the words "including contribution to the Swachh Bharat Kosh set-up by the Central Government for the promotion of sanitation" shall be inserted;

In item (iv), after the words "and water", the words "including contribution to the Clean Ganga Fund setup by the Central Government for rejuvenation of river Ganga;" shall be inserted.

G.S.R. 741(E) dated 24 October 2014

The MCA has notified The Company Law Board (Fees on Applications and Petitions) Amendments Rules, 2014 on 03rd November 2014

The MCA has clarified that the immunity from disqualification of directors under Section 164(2) of the Companies Act, 2013 shall be applicable to companies that have filed their balance sheets and annual returns on or after 1 April 2014 but prior to the launch of Company Law Settlement Scheme, 2014. The disqualification will only be with respect to prospective defaults.

Circular No. 41/2014 (No. 2/13/2014-CL-V) dated 15 Oct 2014

CENVAT

Notifications/Circulars/News

Clarifies that 'place of removal' used in the Cenvat Credit Rules, 2004 needs to be ascertained in terms of provisions of the Central Excise Act, 1944 read with provisions of the Sale of Goods Act, 1930. Factors like payment of transport, inclusion of transport charges in value, payment of insurance or who bears the risk are not the relevant considerations to ascertain the place of removal. The place where sale has taken place or when the property in goods passes from the seller to the buyer is the relevant consideration to determine the place of removal.

No. 988/12/2014-CX, dated October 20, 2014

Referring to doubts raised in certain quarters regarding powers of a Central Excise officer to conduct audit, in the background of a recent judgment of Hon'ble High Court of Delhi in case of M/s Travelite (India) [2014-TIOL-1304-HC-DEL-ST] {"Travelite India case"} wherein the Hon'ble court has held that the powers to conduct audit as envisaged in Rule 5A (2) of the Service Tax Rules, 1994 does not have appropriate statutory backing, the CBEC has clarified that Travelite India case did not deal with the issue of audit in Central Excise. In Central Excise there is adequate statutory backing for audit by the Central Excise Officers. Accordingly, it is clarified that officers of Central Excise shall continue to conduct audit as provided in the statute.

No. 986/10/2014-CX dated October 9, 2014

Case Law

The High Court of Madras relied on the decision of the Supreme Court in the case of CCE Vs. Rajasthan Spinning & Weaving Mills Ltd. [2010-TIOL-51-SC-CX] and held that Cenvat credit on MS Flats, Plates and Angles is admissible.

CCE Vs. Madras Aluminium Co. Ltd. [2014-TIOL-1848-HC-MAD-CX]

The Supreme Court held that Cenvat credit on inputs contained in scrap generated during manufacture of exempted goods is admissible as waste and scrap are final products.

CCE Vs. Albert David Ltd. [2014-TIOL-36-SC-CX]

The Tribunal held that even in a case where the period of 365 days has passed from the date of initial grant of stay but the appeal could not be disposed of for reasons not attributable to the appellant/assessee (in whose favour the stay was granted); and where the Tribunal is satisfied that the appellant/ assessee was ready and willing for disposal of the appeal and/ or had not indulged in any protractive strategies, extension of stay could be granted (beyond the period of 365 days) by passing a speaking order.

Haldiram India Vs. CCE [2014-TIOL-1965-CESTAT-DEL-LB]

VAT, Sales Tax and Entry Tax

Case Law

The High Court of Uttarakhand held that it may be true that the product in question (Pan masala containing tobacco) is subjected to duty under the Additional Duties of Excise (Goods of Special Importance) Act, 1957 ("Additional Duties of Excise Act"), however there is no provision in the Uttar Pradesh Trade Tax Act, 1948 ("the UP Trade Tax Act") which exempts the product on the basis that it is subjected to tax under the Additional Duties of Excise Act. Further, there is nothing in Additional Duties of Excise Act which forecloses the State to impose sales tax/VAT on those commodities which are subjected to duty under the Additional Duties of Excise Act. Therefore, even if the product is covered under sub-heading 2404.49 of the Additional Duties of Excise Act, it will not in any way deprive the State of power to levy tax under the UP Trade Tax Act as applicable to the State of Uttarakhand.

Dharpal Satyapal Ltd. Vs. State of Uttarakhand [2014-VIL-319-UTR]

The High Court of Orissa held that language of Section 60 (1) of the Orissa Value Added Tax Act, 2004 ("Orissa VAT Act") does not reveal that the legislative intent is to withhold refund wherever an order giving rise to refund is the subject matter of an appeal or further proceeding or other proceedings are pending under the Orissa VAT Act. Had it been so, the provisions would have been clearly enjoined that no refund shall be granted till the conclusion of the appeal or further proceeding. Discretion vested

with the Commissioner to withhold refund due to the dealer arising out of an order passed by the quasi-judicial authority must be exercised judicially as Article 265 of the Constitution enjoins that no tax shall be levied or collected except by authority of law.

Unit Construction Company Pvt. Ltd. Vs. Commissioner of Commercial Taxes [2014-VIL-318-ORI]

The High Court of Madhya Pradesh held that even for imposing penalty under Section 69 (2) of the Madhya Pradesh Commercial Tax Act, 1994, if the revenue is in possession of certain material which shows concealment, then before imposing penalty, an assessee is entitled under law to know the material available against him and only after giving him an opportunity to explain the position or rebut the same, the revenue authorities can proceed in the matter for imposing penalty. Without giving due opportunity of defence based on the material collected behind the back of the assessee, imposition of penalty cannot be sustained.

Ramesh Chand Lakhimal Vs. CTO [2014-VIL 298-MP]

The High Court of Rajasthan held that goods of which the dominant and essential component is copper are "products of copper". Hence the manufacture of Electrical Wires, PVC Power Electrical Cables and Electrical Cables with 85% component of copper satisfied the condition of the Notification dated March 6, 1991 that the copper purchased at a concessional rate was to be utilised for the manufacture of copper products. Accordingly, assessee is entitled to benefit of Notification dated March 6, 1991.

Assistant Commissioner of Commercial Taxes Vs. Romesh Power Product Pvt. Ltd. [2014-VIL-301-RAJ]

The High Court of Allahabad held that welding rods and welding electrodes would be liable to tax at 8% under the Notification dated September 7, 1981 under Entry-73.

Advani Oerlinkon Ltd Vs. Commr of Trade Tax [2014-VIL-299-ALH]

The High Court of Madhya Pradesh held that pressure cooker even though, not made of aluminium will fall in the category of 'kitchenware' as indicated in Entry 51 of Schedule-II to the Madhya Pradesh Entry Tax Act, 1976 and, therefore, exempt from payment of duty.

Hawkins Cookers Ltd. Vs. State of MP [2014-VIL-284-MP]

Service Tax

Notifications/Circulars

Clarifies that service of an agent or the representation service provided by an Indian entity/ bank to a foreign money transfer service operator (MTSO) in relation to money transfer falls in the category of intermediary service.

No. 180/06/2014-ST, dated October 14, 2014

Case Law

The taxable event is the date of rendition of service and not the date of raising the invoice or receipt of payment and accordingly the rate of service tax as on the date of rendition of service would be applicable.

Epic India Pvt Ltd., - (2014) 35 STR 948 (Tri-Del.)

The respondents are working subagents of M/s. AFL Ltd., Mumbai who turn in to work as a principal representative

of M/s. Western Union Money Transfer Services, Ireland. The main function of the respondents is delivery of money to the ultimate beneficiary in India as per directions given by their principal representative for which the respondents get commission. Relying on Paul Merchants Ltd., case the Tribunal held that advertisement and sale promotion by agent/sub agent as also delivery of money to the ultimate beneficiary in India is to be treated as export of service and therefore not liable to service tax.

Ashu Forex Pvt Ltd., - (2014) 35 STR 776 (Tri-Del.)

Prior to 18/04/2006 the exports exemption under the Export Rules is available even if the amounts for the rendition of service were not received in foreign currency.

ESPN Software India (P) Ltd. - (2014) 35 STR 927 (Tri-Del.)

The Appellant had paid commission to agents abroad during October to March 2007 for marketing their finished goods that were exported and they had paid service tax under reverse charge on such commission on 2/4/2008 for which they filed a refund claim on 19/03/2009 which was rejected by the Revenue on the ground of time bar. The Hon'ble Tribunal allowing the refund claim held that the period of one year for filing the refund claim shall be reckoned as per Clause (f) of Explanation B to section 11B of the Central Excise Act, 1944 viz., from the date of payment of service tax i.e. 02/04/2008.

K.K.S.K. Leather Processors (P) Ltd. - (2014) 35 STR 956 (Tri.-Chennai)

The VCES declaration of the petitioner was rejected since there was a small shortfall in the 50% tax dues payable by 31/12/2013. The petitioner prayed for restoring the VCES declaration on his paying the shortfall with interest. The Court held that the VCES scheme makes no difference between tax dues which are short paid due to bonafide error and one which flows from deliberate inaction. There is no power for waiving or relaxing the condition of depositing 50% tax dues by 31st December 2013, u/s107. Courts have no jurisdiction in this matter and accordingly the petition was disposed.

Assessee-manufacturer took credit of services relating to dismantling of plant. It was observed that normally input gives rise to tangible output without ending in no output. Dismantling of plant can, by no stretch of imagination, be held to be input service. Further, assessee could not show that said activity was relevant, indispensable and intimately connected with or in relation to manufacture or for providing output service. When basic requirement of rule 2(l) is not satisfied, credit could not be allowed.

Nectar Lifesciences Ltd. (Unit-I) - [2014] 49 taxmann.com 594 (New Delhi - CESTAT)

Assessee's subsidiaries outside India provided onsite software maintenance services to assessee's customers outside India. Subsidiaries raised bill to assessee and assessee was raising bill to its customers. Assessee claimed refund under Rule 5 of CENVAT Credit Rules regarding it as export of services by it. It was held that Onsite services provided by assessee's subsidiaries located outside India to assessee's customers outside India cannot be regarded as

'provided from India', as assessee's subsidiaries were not acting as agents of assessee but were acting independently as contractors.

Tech Mahindra Ltd. v/s Commissioner of Central Excise, Pune-III-[2014] 50 taxmann.com 365 (Bombay)

The High Court of Ahmedabad held that Cenvat credit of Service tax paid on services of Overseas Commission is not a "input Service Tax". Hence the Cenvat credit of the same is not admissible to assessee.

Dynamic Industries Vs. CCE [2014-TIOL-1692-HC-AHM-ST]

The Tribunal held that service tax is not payable on the value of interest received on bill discounting facility extended by the banks to its Customers as the same is exempted in terms of Notification No. 29/2004 dated September 22, 2004.

UCO Bank Vs. Commissioner of Service Tax [2014-TIOL-1902-CESTAT-KOL]

The Tribunal held that reimbursement of freight charges, octroi, sales tax, licence fees and DFC unloading charges by service recipient is not addable in gross value for payment of service tax since the assessee has rendered services as a pure agent. However, on reimbursements of Courier, fax and telephone charges, electricity charges and stationery charges, packing material, Genset and cool room expenses, service tax is payable along with interest as these charges have been incurred as part of the C&F agency function.

Pharmalinks Agency (I) Pvt. Ltd. Vs. CCE [2014-TIOL-1948-CESTAT-MUM]

The Tribunal held that service provided to Principal situated in Singapore to market products in India is an export of service and not liable to service tax.

Microsoft Corporation (I) Pvt. Ltd. Vs. Commissioner of Service Tax [2014-TIOL-1964-CESTAT-DEL]

FEMA/RBI/SEBI

Notifications/Circulars

The RBI has delegated additional powers to compound specified offences (as provided in the table herein below) to all Regional Offices except Panaji and Kochi and FED, CO Cell, New Delhi. Panaji and Kochi Regional Offices can compound offences upto ₹ 1 crore while applications for other contraventions above ₹ 1 crore will continue to be compounded at Cell for Effective Implementation of FEMA ("CEFA"), Mumbai.

RBI/2014-15/266 A.P. (DIR) Circ. No. 36 dt 16 Oct 2014

SEBI has replaced the SEBI (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999 with SEBI (Share Based Employee Benefits) Regulations, 2014 ("ESOP Regulations"). The ESOP Regulations include guidelines for acquisition of shares by employee welfare trusts from the secondary market with certain safeguards. Further, many changes have been brought to bring the guidelines in line with the Companies Act, 2013 ("CA 2013").- *LAD-NRO/GN/20*