

Newsletter-13



The Institute of Company Secretaries of India
NEWSLETTER
 JULY 2004 EDITOR'S

Career in CS course: Awareness Program

The Institute of Company Secretaries of India (ICSI) held a career awareness program on 3rd July in conjunction with the program in Bangalore. The program was conducted at Bangalore College of Engineering and Technology. The Chairman Mysore Chapter, Mr. C. K. Srinivas, addressed the students, who were highly motivated and interested in the career opportunities available in the field of Company Secretariats. The Chairman Mysore Chapter, Mr. C. K. Srinivas, also addressed the students, who were highly motivated and interested in the career opportunities available in the field of Company Secretariats.

The Institute of Company Secretaries of India
NEWSLETTER
 August 2004 Editor's

From the Chairman's Desk
Chapter News

ICSI branch
 New Delhi, Aug. 26

WITH an objective to enlighten students and to provide them with an interactive session on the subject of Company Secretariats, the Institute of Company Secretaries of India (ICSI) held a career awareness program on 26th August in New Delhi. The program was conducted at the IIT Delhi campus. The Chairman Mysore Chapter, Mr. C. K. Srinivas, addressed the students, who were highly motivated and interested in the career opportunities available in the field of Company Secretariats.

Chapter News
Professional Develop

Mysore Chapter is conducting a professional development program in Mysore. The program is being conducted in Mysore. The Chairman Mysore Chapter, Mr. C. K. Srinivas, addressed the students, who were highly motivated and interested in the career opportunities available in the field of Company Secretariats.

Career Counseling Pt

The first and second weeks of the career counseling program were held in Mysore. The program was conducted in Mysore. The Chairman Mysore Chapter, Mr. C. K. Srinivas, addressed the students, who were highly motivated and interested in the career opportunities available in the field of Company Secretariats.

Faculty Meet of Coll

First meet of the faculty of Mysore Chapter was held on 26th August. The Chairman Mysore Chapter, Mr. C. K. Srinivas, addressed the faculty members, who were highly motivated and interested in the career opportunities available in the field of Company Secretariats.

Newsletter-10 September 2004

Newsletter-11 October 2004

The Institute of Company Secretaries of India
NEWSLETTER
 November 2004

From the Chairman's Desk
Chapter News

Dear Professional Colleagues,

Greetings for a Prosperous & Prosperous Day! The Mysore Chapter is pleased to inform you that the Mysore Chapter has been selected to represent the Mysore Chapter at the National Level. The Chairman Mysore Chapter, Mr. C. K. Srinivas, addressed the students, who were highly motivated and interested in the career opportunities available in the field of Company Secretariats.

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Newsletter-12 November 2004

The Institute of Company Secretaries of India
NEWSLETTER
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From the Chairman's Desk
Chapter News

Dear Professional Colleagues,

Students met four times in October. On 3rd, 17th and 31st of October there were discussions on various difficulties faced in different subjects. On 24th of October discussions were focused on the Constitution of India. Growing enthusiasm towards combined study was observed. Regular visits to the chapter and increasing usage of library is putting more responsibility on Management Committee to upgrade the library.

Students Registration

As of now 60 students have registered for intermediate 15 for foundation and 4 for final. Though far behind the target number, the interest being shown by the registered students is confirming their quality.

Oral Coaching

Oral Coaching classes have been commenced for Group II of the intermediate from 15th of October 2004. Encouraging number of 22 students are getting coaching in this batch. Classes are by and large going on as per schedule with very good response from students.

Silver Jubilee Trip

Students of Mysore Chapter went on a trip to several places of Kodagu District on 7th November 2004. Detailed report is in next page.

ICSI-Mysore

"Slow down and enjoy life. It's not only the scenery..."

Dear Professional Colleagues,

Greetings for a Happy & Prosperous New Year 2005.

The Stock Markets hit the roof with the BSE Index registering an all time high of over 6300.

As the FIIs' investment has contributed substantially to this cause(US\$7.4 Billion), one should expect some turbulence during the close of this calendar year as the FIIs start booking profits. Hopefully, the year 2005 would see the BSE Index scaling yet another peak.

During the month, the Chapter conducted four Students study circle meetings coverings various topics of interest to students.

As mentioned earlier, our chapter would be celebrating its Silver Jubilee Foundation Day next year. This would be a land mark in the history of the Chapter and I seek the support of all the members, in and around Mysore, by volunteering themselves and make this event a very special and memorable one.

The Management Team of the Chapter met on 5th December at the Chapter to discuss the plan for this momentous event. A committee to manage this event was also appointed. This would be finalized on 25th December at a family get together of all the members in Mysore. I would encourage you to actively participate in this meeting.

With warm regards,

C.K.Sabareeshan

Monday, December 13 2004

From Chairman's Desk...

Study Circle Meetings

Date	Topics
14.11.04	General & Commercial Law Clarifications
21.11.04	General Discussions on Constitutional Matters And Securities Market
28.11.04	Clarifications
5.12.04	Clarifications

Chapter News

Management Committee Meeting

Date	Members Attended
05.12.04	C.K.Sabareeshan, H.M.Dattatri, Jayalakshmi Anshuman, Bhadrinarayanan. S., D.D. Bhat, Chander Sekhar, Sarina Harish Chauto,

Looking Back.....

The year 2004 is fast coming to an end, the year 2005 would be a milestone for the Mysore Chapter, as it is being ushered in as a Silver Jubilee year. The chapter has grown from infancy to its adolescence. The Chapter has strived to overcome all obstacles to grow to its present stature. Until December 1996, Mysore was not even an examination center and examinees had to rough it up in having to travel long distances for the purpose. The students have had the privilege of an oral coaching center for the foundation and intermediate since last few years.

It is heartening to note that the students are taking profound interest in participating in the weekly study circle meetings. Over 5000 students of the city have been addressed in the career counseling programs addressed by the members of the Institute held at various times and colleges during the year 2004. The visit by the Central council members in April 2004 added colour to the function held on the occasion of launching of Collaborative Oral Coaching Center and Foundation Day. It may be recalled that the Central team headed by Mr. Mahesh Athavale had a lot of good words about the progress that the Chapter has achieved in the past. The introduction of awards to meritorious students is expected to be inspirational and motivating to the student community. The narration of nostalgic personal experiences by students that went on picnic to the picturesque Abbi Falls, Buddhist monastery in Bailkuppe and the Nisargadhama in November 2004 is proof enough that the students are coming together as a close knit community.

There is a strong conviction that participation by all local members of the Institute in equal measure and enthusiasm will be far reaching and will go a long way in our Chapter earning more laurels. The Managing Committee invites suggestions and ideas by members and students on the path to the Chapter's progress.



Sarina CH



Thoughts and impressions...



Jayalakshmi A

It was indeed a great pleasure to see the Chapter growing at such a fast rate during the last year. Both member and student activities have been on the increase. That itself is a major step in the growth of the Chapter, for without active member and student participation no chapter can hope to grow and develop.

The Monthly Chapter Newsletter has been a good mediator between the chapter and members and a useful forum for members to put forth their ideas and viewpoints on subject matters of relevance to CS. Hats off to Dattatri for continuing with the Newsletter despite various problems associated with being an editor. I think that the students should also have access to this Newsletter by including a separate students' page. They can also be encouraged to contribute to the Newsletter and also by having a Quiz Corner. The study circle meetings and discussions can also be included so that those who could not attend the meeting can still benefit from the discussions held.



As the chapter is nearing its Silver Jubilee, I am sure that the members and a very promising student community will have lots to contribute for the betterment of the Chapter and ultimately for the betterment of themselves.



Service Tax – a discussion – Chandrasekhar



Govt of India has introduced service tax in line with the Value added concept. Honourable Minister Mr. P. Chidambaram has introduced the concept of Service in the Budget Speech 1994. Initially service tax has been levied on few services. Later on some more services have been added making total services coverage to seventy-two services.

In Recent days Union Govt increased the service tax rates, at the same time central excise duty on various commodities have been reduced gradually. The intention behind this seems to be making the service tax on par with the excise

duty. Service tax being an indirect tax and administered by the Central Board of Excise and Customs (CBEC). Recently service tax rate has been increased to 10% from 8 % w.e.f. 10th September, 2004.

Finance Tax no 2004 (2) introduced CENVAT Rules 2004 by merging Cenvat rules on excise duty. Earlier Service tax credit rules allowed to take credit of service tax paid on input services, only persons who are engaged in providing the out put services. But the Cenvat Rules 2004 allows an **assessee, who is engaged in manufacturing or producing the excisable goods and paying excise duty but does not engaged in providing service and not liable to service tax accordingly.** The original procedures, manner, methods and conditions for availing CENVAT credit on inputs and capital goods will remain same even after merging of Excise and Service Tax Credit. Therefore, the provisions of proposed CENVAT Credit rules, 2004 pertaining to credit of Service tax paid are discussed hereinafter:

Availability of Service Tax as CENVAT Credit

Now the manufacturer of final product will be eligible to avail and utilize the service tax leviable under section 66 of the Service Tax Act; paid on “input services” used, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products from the place of removal. Here, “Input services” includes the following services used in:

- relation to setting up a factory,

-relation to setting up an office relating to such factory,
- Advertisement, or sales promotion,
- Procurement of input,
- Activities relating to management of business, such as Accounting, Auditing, Financing, Recruitment and Quality control.

Further, any service tax paid on input services used by the job worker availing exemption under notification no. 214/86 shall also be available to manufacturer of the final products.

When CENVAT credit on Input services allowed:

CENVAT credit in respect of service tax paid on **input services** shall be available only **after actual payment is made** for the value of input services and the service tax paid or payable as indicated in invoice or bill or challan referred to in rule 7.

Whereas the CENVAT credit of duties of excise paid on Input and Capital Goods is available on **receipt of goods** in the factory of production. However, the above provision seems to be logical also as the provider of services is liable to pay service tax only if he realizes the amount of services provided by him, on the contrary the excise duty is payable according to date of removal of goods from the factory irrespective of the fact that the amount has been realized or not.

Where the manufacturer engaged in manufacturing of dutiable and exempted goods:

Earlier, the manufacturer who were not keeping separate records, were liable to pay 8% on the total price of the exempted goods. Now, since the service tax credit is being merged with cenvat credit, the manufacturer of exempted goods and dutiable goods shall be liable to pay 10% instead of 8%.

Further, an option is available to the manufacturer of excisable and exempted goods to keep separate records for dutiable goods and exempted goods. But, where the assessee availing the credit of service tax on input services as explained above, it is more difficult to maintain such records, for example services like Auditing, Accounting, Financing, recruitment etc., are used for combined activity.

Cenvat Credit on Service tax on input services is eligible even if, it used in the exempted products:

In the following cases the service tax paid on input services is available, even if the manufacturer produces both dutiable and exempted goods and no need to pay 10% amount on the price of exempted goods or no need to keep separate records:

Services provided by:

- A Consulting Engineer [Sec. 65(105)(g)]
- An Architect [Sec. 65(105)(p)]
- An Interior Decorator [Sec. 65(105)(q)]
- A Management Consultant [Sec. 65(105)(r)]
- Real Estate Agent [Sec. 65(105)(v)]
- Erection, Commissioning & Installation Agency [Sec. 65(105)(zzd)]
- Technical Testing and Analyzing Agency. [Sec. 65(105)(zzh)]
- Technical Inspection and Certification Agency [Sec. 65(105)(zzi)]
- commercial concern in relation to Construction service. [Sec. 65(105)(zzq)]

-Holder of intellectual property rights [Sec. 65(105)(zzr)]

Documents and Records

Duty Paying Documents:

CENVAT credit of Service Tax paid shall be taken on the basis of any of the followings documents:

- an invoice or bill or challan issues by provider or input services
- an invoice issued by a input service distributor.

Records:

The manufacturer of final product availing CENVAT credit on input services shall maintain proper records containing the relevant information regarding:

- Sl. No. and date of documents
- Service tax registration number and name of input service provider
- Description and value of input service
- Service Tax Credit availed, and utilize

The burden of proof regarding the admissibility of CENVAT credit shall lie upon the person taking such credit.

It should be noted that service tax should be levied only on services provided in India. Commission paid outside India for arranging export sales are not subject to service tax.



Legal Round up: Service Tax

Interest on delayed payment of service tax

Interest on delayed payment of service tax is 13% per annum with effect from 10 September 2004.

Notification No 26/2004 – ST, dated 10 September 2004

No service tax applicable on shared services between related entities

The appellants had recovered certain amounts towards staff costs & other expenses from another company. It was held that the charges recovered from the subsidiary were executory costs and not advisory costs and thus not chargeable to service tax under the category of 'management consultant services'.

Glaxo Smithkline Pharmaceuticals Ltd v CCE 2004 TIOL 786 CESTAT

CHECKLIST FOR NEW CLAUSE 49 [Apart from the usual list]

Mahadev Prakash

A. Information to be placed before the Board of Directors:

- The Board to periodically review the compliance reports of all laws applicable to the Company as well as steps taken by the Company to rectify instances of non-compliance. [Clause 49 I (C) iii]
- The Board to consider and adopt a Code of conduct for all Board members and senior management of the Company. [Clause 49 I (D) i]
- The Board of the listed holding Company to review the minutes of the Board Meetings of the unlisted subsidiary company as well as a statement of all significant transactions and arrangements entered into by the unlisted subsidiary company. [Clause 49 III iii]
- The Board to periodically review the risk assessment and minimization procedures to ensure that executive management controls risk through means of a properly defined framework. [Clause 49 IV (C)]
- The Board to review the disclosures made by the senior management relating to all material financial and commercial transactions, where they have personal interest, that may have a potential conflict with the interest of the Company at large. [Clause 49 IV (F) ii]
- The Board to review the certification by the CEO/MD/Manager and CFO/Finance Director/person heading the finance function, on matters covered under Clause 49 V (a) to (d). [Clause 49 V]

B. Information to be placed before the Audit Committee:

- The Audit Committee of the listed holding company to review the financial statements, in particular, the investments made by the unlisted subsidiary company. [Clause 49 III ii]
- The Audit Committee to periodically review a statement in summary form of transactions with related parties in the ordinary course of business. [Clause 49 IV (A) i]
- The Audit Committee to review the details of material individual transactions with related parties, which are not in the normal course of business. [Clause 49 IV (A) ii]
- The Audit Committee to review the details of material individual transactions with related parties or others, which are not on arm's length basis together with Management's justification for the same. [Clause 49 IV (A) iii]
- The Audit Committee to review on a quarterly basis the uses/applications of funds raised through public/rights/preferential issues etc. and on an annual basis a statement of funds utilised for purposes other than those stated in the offer document/prospectus/notice. [Clause 49 IV (D)]

C. Disclosures to be made in the Annual Report:

- The Annual Report to contain a declaration signed by the CEO to the effect that all the Board members and senior

management personnel have complied with the applicable code of conduct. [Clause 49 I (D) ii]

- The Annual Report to contain all pecuniary relationship or transactions of the non-executive directors vis-à-vis the company. [Clause 49 IV (E) i]
- The Annual Report/web site to contain the criteria of making payments to non-executive directors and a reference that the same has been posted on the Company's web site. [Clause 49 IV (E) iii]
- The Annual Report to contain a disclosure as to the number of shares and convertible instruments held by non-executive directors. [Clause 49 IV (E) iv]
- The Corporate Governance section of the Annual Report to contain a disclosure as to compliance with mandatory /non-mandatory requirements vis-à-vis corporate governance norms. [Clause 49 VII (2)]
- The Corporate Governance Report to contain an explanation by the management as to why it believes that an alternative treatment (if any) different from that prescribed in an Accounting Standard in the preparation of financial statements, is more representative of the true and fair view of the underlying business transaction. [Clause 49 IV (B)]

D. Disclosures to be made in the Notice of General Meeting:

- The notice of General Meeting in which a non-executive director is proposed to be appointed/re-appointed, to contain a disclosure of his shareholding both held individually as well as by/for others on a beneficial basis, in the Company. [Clause 49 IV (E) v]
- The notice of General Meeting in which a new director is proposed to be appointed or a director is proposed to be re-appointed, to contain the following information: [Clause 49 IV G i]
 - A brief resume of the director
 - Nature of his expertise in specific functional areas
 - Names of companies in which the person also holds the directorship and the membership of Committees of the Board
 - Shareholding of non-executive directors

E. Disclosures to be made in the Web Site:

- The web site to contain code of conduct for all Board members and senior management of the Company. [Clause 49 I (D) i]
- The web site to contain the quarterly results and presentations made by the Company to analysts. [Clause 49 IV (G) ii]

F. Shareholders' Approval:

- Previous approval of shareholders for payments of all fees/compensation if any payable to non-executive directors, including independent directors as fixed by the Board of Directors. [Clause 49 I (B)]

Legal Round up

SEBI

As per SEBI (Central Database of Market Participants) Regulations, 2003 all the Listed Companies and/or promoters having shareholding in other listed Companies have to obtain Unique Identification Number [UIN] on or before 31.12.2004 in order deal with the said securities on and after 1.1.2005. The said UIN is mandatory.

Income Tax

Short-deduction of tax under section 194-I would render the payer in default

It was held that if the person responsible for deducting tax fails to do so, it would not be open to him to assert that he is not an assessee in default, simply because the recipient has disclosed the income to the department and advance tax has been paid on such income. Accordingly, the demand raised against him for short deduction cannot be deleted.

ACIT v. Air Canada [2004] 84 TTJ 615 (Del.)

Payments to non-residents: No TDS on routine maintenance

In this case the Delhi Bench has held that if the service rendered by a non-resident was primarily for carrying out routine maintenance of components it cannot be held to be fees for technical services and hence *no TDS be made from the payment made to the non-resident as the routine maintenance repairs are excluded from the ambit of the fees for technical services* by a circular no.715.

Lufthansa Cargo India (P) Ltd. v. DCIT140 Taxman-ITAT 1

UPS eligible for higher depreciation:

Automatic voltage controller and UPS qualify to be regarded as energy saving devices so as to be entitled to higher rate of depreciation
DCIT v. Surface Finishing Equipment – Jodhpur Bench of ITAT 140 Taxman-ITAT 43

Sales Tax

Electronics and Controls Power Systems Pvt. Ltd., Bangalore v. State of Karnataka(2004) 57 KLJ 290

In the above case the Hon'ble Karnataka Appellate Tribunal has held that where the price charged by the dealer is inclusive of the sales tax and the purchaser is not required to pay any amount over and above the price so charged, mere exhibition of wrong rate of sales tax on the bill does not lead to a conclusion that the dealer has unjustly enriched himself as there may be a difference between the amount shown on bills and the amount paid to the coffers of the government . If there are errors in preparing the sales bill the dealer can always rectify the sales bill.

Excise

In Reliance Industries Ltd. Vs. CCE (2004 (173) ELT 106), the Tribunal has held that MODVAT credit is not admissible on inputs used in the trial run of plant and machinery.

In R.H. Enterprises Vs. CC 92004 (173) ELT 374), the Tribunal has held that transaction value cannot be rejected on the basis of price lists of similar goods sold in other countries or of Indian goods sold in the Indian market.

Dears,

It was a dream to build a bridge among CS members in Mysore. The tool flashed was a newsletter. Dream is realizing. Just now you had a glance on the 13th edition of E-Newsletter. This would not have happened with out your support and contributions.

Let us grow together.
Happy New Year

Sincerely,
Dattatri

