

**Edition 109**  
**February 2013**



**Mysore Chapter**

# **eMagazine**

**Shareholders' duty of  
"Not To Ask"**



**Impact Investing:  
A Profitable Philanthropy?**

**Intensifying the scope of PIL**

**National Science Day**





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

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# Message from Chairman



*Dear Readers,*

*At the outset, I would like to express my heart-felt gratitude to my committee members and chapter members for having reposed the trust and confidence in me. The year 2012 has been an eventful year in terms of shifting of chapter administration activities to own building, strengthening of administration structure, framing chapter communication initiatives and setting new plan of action for providing new platforms for students and members to excel in their career.*

*My predecessors have set high expectations in the minds of stakeholders through their commendable performance. I undertake to come up to the expectations of the stakeholders with various initiatives in the changing environment. I seek your involvement, guidance and support in handling this esteemed position with confidence.*

*The exam result of the December, 2012 session is nearing and I wish good results to all the students who appeared for the examination. It's high time for students to keep their results' fears away and get ready for Umang'13. Mysore chapter students are geared up for their annual event with a preparation to have a 2 day- Umang'13 event. I urge students to take active participation in the event and gain the knowledge of the organisation, networking & team work and experience the skills of leadership from professional events like Umang.*

*Yours in CS fraternity,  
CS. Sunil Kumar B G*

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# Activity Report

## January 2013



### New Management Committee:

The following managing committee members were elected to the executive committee for the year 2013:

Chairman	:	CS Sunil Kumar B.G
Vice Chairman	:	CS Ajay Madaiah B.B
Secretary	:	CS Kiran T
Treasurer	:	CS Balakrishnan V

The Past Chairman CS Badrinarayanan S symbolically handed over the keys and documents to the new members and wished them all the success.

### 'Overview Of Direct Taxes':

On 27th January 2013, a program on "Overview of Direct Taxes" was conducted by the chapter. Chartered accountant Mr. Vageesh Hegde was the resource person. During the session it was discussed in brief about the computation of tax in all five heads. Students discussed and interacted with the speaker and benefitted out of the session.

### Republic Day Celebrations:

The 64th Republic Day was celebrated by the Chapter at its premises. The program began with the hoisting of National Flag by CS. M Krishna Mohan, Managing Director, AT & S India Pvt Ltd. Members of the Mysore Chapter of ICSI and students were present on the occasion.



### Students Study Circle Meetings:

The students had organized Student Study Circle Meetings on 20<sup>th</sup> January 2013. Various topics relevant to the students were discussed and the members and senior students clarified the doubts raised by the students.

Students' Events Coming up...

# Umang

In Mysore

**GET READY!**

program in மொலாப்

- "Life of a CS"
- "Developing Adversary Skills"
- "Presenting self in an interview"
- "The Evergreen Questions"
- Business Quiz
- Management Games
- Cultural Events

**ICSI** THE INSTITUTE OF Company Secretaries Of India  
IN PURSUIT OF PROFESSIONAL EXCELLENCE  
Statutory body under an Act of Parliament

BANGALORE CHAPTER

Invites you  
to the 9th State Students' Conference

# மொலாப் 2013

Meeting of Minds...

Meet, Integrate, Learn And Aspire for Professionalism

23rd and 24th of February 2013  
at  
St. Joseph's Composite P.U. College, Auditorium  
Vittal Mallya Road, Bangalore

CS. M Manjunath Reddy  
Chairman

CS. H M Dattatri  
Secretary

# SHAREHOLDERS' DUTY OF "NOT TO ASK"



**CS. Aishwarya Mohan Gahrana,**

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*Note: The views or expressions above are purely the Author's independent opinion and has no relevance to any particular person and/or company.*

We are living in an era of corporate governance but who is really interested in it! All efforts by the corporate governance are directed at bringing more transparency to the stakeholders for enabling their participation in decision making process. If that be the case on one hand, on the other, the age old concept of fiduciary relationship of board of directors, our law and law enforcement agencies render protection to the right of the board of directors to maintain complete secrecy of its decision making. I am afraid; something is wrongly settled as law. There has to be a reality check.....

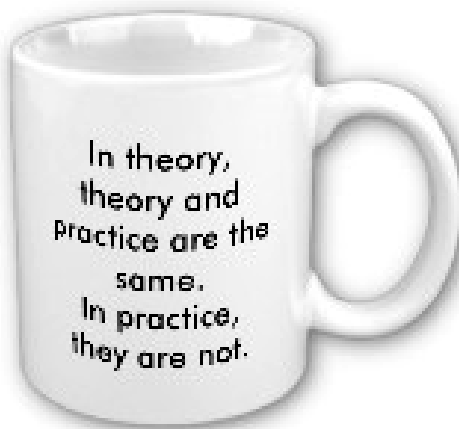
In the present legal framework, Directors are representatives of majority shareholders, if not promoters or controlling shareholders. Nominee directors represent interests of specific investors or financial institutions. Independent directors have no duty to report any thing to 'owners', the glorified members. Further, we have a full breed of professionals; issuing a host of certificates and reports. Is there any known incident where these independent directors or the reports unearth some fraud? Are these mere employment schemes?

We have a gamut of rules, regulations, circulars and listing agreement; which place emphasis on disclosures. The disclosures are not what are asked for by shareholders but what authorities think fit and proper. Why is this so? Are these authorities answerable only to predetermined questions or meant to disclose only predetermined "material" disclosures! These authorities have to make disclosure under various laws and at the same time are answerable to Parliament, courts, fellow authorities and general public through right to information.

In an era of Corporate Governance, there are reams of discussions on E-voting, E-meeting, frequent (pre-determined)

disclosures of 'Material' information, Whistle – blower mechanism, and so on. At best, we have protection and facilitation of shareholders' right as a foremost principle of corporate governance suggested by Adi Godrej committee. In the case of next corporate fraud, we may find that the relevant information was not determined by Authorities and Management as "material information".

May a shareholder ask for any information related to a particular board decision from 'his' company?



The answers that he might expect are sequenced- First, wait for Annual Report. Second, visit Stock Exchange web site for some mandatory disclosures. Third, pay to view public document of 'your' company on MCA21 portal. Fourth, inspect certain registers and records of 'your' company. Finally, shut up. There is an age old settled law through Circular No.8/15(169)/63-PR Dated 11th February, 1963. In layman's language this circular reads like this: "The Companies Act contains no provision either specifically permitting or prohibiting inspection by/or supply

of copies to, the shareholders of a company of the minutes of the meetings of the Board. This Department of Company Affairs is of the view that unless the Articles of Association provides to the contrary, a shareholder has no right of inspection or of obtaining copies of the minutes of its Board meetings."

This settled law needs to be unsettled immediately. This should read, ***"unless the Article of Association of a company provides to the contrary, a shareholder has right of inspection or of obtaining copies of the minutes of its Board meetings. Further, a shareholder also has right to the information that leads to decision making process by the Board"***



Conflict between People/Parties is a fact of life; it is inevitable and unavoidable. To have a healthy relation, parties shall have a good platform to resolve those conflicts that may arise. [www.odrindia.com](http://www.odrindia.com) is an e- platform to resolve the disputes that may arise from online or offline transactions or even in the course of business. This site provides an option to resolve conflicts sitting at his/her home or working place. ODRINDIA mainly provides 3 kinds of services:

- Assisted negotiations
- Mediation
- Arbitration

This site also provides:

- Complete information of panel members.
- Related legislations.
- Arbitration rules.

Those who wish to resolve conflicts through this site has to first get them registered, conflicts related to ebay and other transactions have to be filed in respective category. Fees charged for each service is also listed in the website. Visit [www.odrindia.com](http://www.odrindia.com) to get to know more. This platform appears to be a speedy, efficient and effective resolution of conflicts through negotiation or mediation or arbitration. **"Justice is paramount and should be available to all within reasonable time, as justice delayed means justice denied "**.



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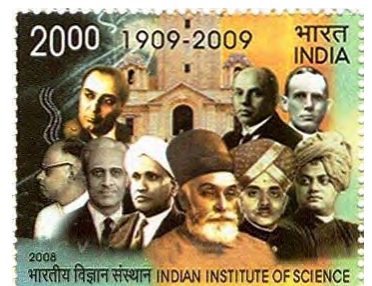
## National Science Day

National Science Day is celebrated in India on February 28 each year to mark the discovery of the **Raman Effect** by Indian physicist Sir Chandrasekhara Venkata Raman on 28<sup>th</sup> February 1928. For his discovery, Raman was awarded the Nobel Prize in Physics in 1930.

Every year, Science Day is organized with a theme. Focal Theme for 2013 is "Genetically Modified Crops and Food Security". Objective is to create enthusiasm among the people and to popularize Science & Technology to Strengthen Scientific temper among the masses.

The ground reality in India has remained that there is no motivation for opting a career in pure science. This should have prevented India from keeping pace with many other countries that are achieving great success in new scientific inventions. It has so become in India that most students who study pure science are those who can't get admission into engineering or medical colleges.

Many Indians could prove their talent in scientific inventions only after leaving India. This situation has to change for India to ensure brighter future for itself.



# “Impact Investing” – A Profitable Philanthropy?



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‘Return on Investment’ is the critical factor which is considered by most of the financial investors while putting in funds in new projects. However, a new breed of investors called ‘Impact Investors’ is getting active to support projects with social angle. These investors seek to put markets to work for millions of people around the globe – from the tenderloin to the slums of Mumbai - who struggle with hunger, homelessness, disease, and environmental degradation, Impact investing has become a hot topic among donors and financial investors.

Broadly defined, Impact Investing means providing capital to eligible projects which can generate social impact in such a way that also takes care of monetary returns. These returns may vary from the initial principal amount upward (or potentially downward) depending on the nature of the investment. Impact Investors have primarily made such investments because they realized that they have the potential of making more impact per unit invested in this manner instead of giving a donation.

Impact Investing offers an alternative to philanthropists who reject the notion that, investing for profit and giving money to a social cause, are two mutually exclusive objectives. Although Impact Investing could be categorized as a type of socially responsible investing it contrasts with negative screening, which focuses primarily on avoiding investments in bad or harmful companies. Instead, Impact Investors actively seek to capitalize businesses and funds that are part of a global solution.

So is Impact Investing limited to philanthropic investors? Not quite. A non-philanthropic profit-driven private investor views impact investment as a new asset class. Many impact Investments have very little correlation to the performance of the global markets. For instance, in many developing countries the majority of workforce operates in the informal or unorganized sector which is quite disconnected from the global

**Impact Investing is providing capital to eligible projects which can generate social impact in such a way that also takes care of monetary returns.**



marketplace. So, while global prices for fuel and food may affect them, much else about their life is unaffected. Therefore, businesses serving them are also often insulated from global trends. As a result, such investments can improve the overall performance of an investment portfolio.

Rapidly growing supply of capital is seeking placement in Impact Investments across geographies, sectors and asset classes with a wide range of return expectations. What binds these Impact Investors is the shared conviction that creative investments can play a crucial part in addressing social and environmental challenges while also generating returns. This investment interest is sparking the emergence of a new industry that operates in the largely uncharted area between philanthropy and singularly focused profit-maximization.



Entrance of social enterprises, has attracted some level of attention from Angel Investors and Venture Capitalists (VCs) in the space. But ‘Social Investing’ still being an evolving asset class and investors have followed a fairly risk averse approach i.e. they are likely to invest in companies who have displayed proof of concept or proof of market. Early stage Impact Investors are investors who

have realized this problem of the funding gap and are willing to take higher risk than VCs. These investors are open for assuming the market risk, technology risk and many-a-times business model risk.

It is with the support of such investors that social enterprises can actually move to the next level and begin to make an impact. These investors not only provide investment but also non-financial support that adds tremendous value to these enterprises such as developing strategic partnerships, scaling-up to new markets and regions, hiring talent etc. The entry of these new early stage impact investors in the Indian market

augurs well for the social entrepreneurship sector. However, since the concept is relatively new and the first investments are yet to bear fruit, Impact Investing is still difficult to sell as a proposition for funds.

According to a recent study by the Planning Commission of India, investments by these funds have crossed Rs 1,200 crores in the following 17 funds that operate in this sector:

- 1) Aavishkar
- 2) Accion
- 3) Acumen
- 4) Bellwether (Caspian Advisors)
- 5) BlueOrchard Group
- 6) Creation Investments
- 7) Dia Vikas Capital
- 8) Elevar
- 9) Grassroots
- 10) Incofin
- 11) India Financial Inclusion Fund
- 12) Intl Finance Corporation
- 13) Lok Capital
- 14) Michael & Susan Dell Foundation
- 15) Omidyar Network
- 16) SONG
- 17) Unitus



five sub-sectors of inclusive business could range from between \$183 billion and \$667 billion over the next ten years, with invested capital ranging from between \$400 billion and \$1 trillion. It is also predicted that in the next 10 years, high net worth investors would allocate 10 per cent of their portfolio to such investments, while institutions would allocate around five per cent. This report characterized the Impact Investing field as 'in its infancy and growing'. Further the sector is still to make up its mind about the relationship between returns and social impact, especially on whether sacrificing one will improve the other. While some investors,

especially family foundations and charities, are ready to settle for a lower IRR (internal rate of return), provided they achieve the desired impact, others are aiming at achieving commercial IRRs with impact icing it.

Potential investors need to realize that Impact Investing will require significant due diligence and attention to measuring results, and till the field emerges, traditional philanthropic contributions will continue to be necessary. It is aptly said that:

*"If you move your focus from profit computation to social contribution, life automatically becomes a celebration for everyone."*

A report by J.P. Morgan, Rockefeller Foundation and the Global Impact Investing Network (GIIN) made waves simultaneously in the worlds of social change and investment in 2010. The report estimated that potential profit for Impact Investors across just

## Words worth Millions

It doesn't matter how many resources we have. If we don't know how to use them, they will never be enough!





# Intensifying the scope of PIL



**Viral Shrinath Tripathi**

ACS, LL.M (IPR), PGDIRPM & B.COM

Company Secretary

Gateway Technolabs Private Limited, Ahmadabad



"Public Interest Litigation (PIL) means a legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected."

PIL's explicit purpose is to alienate the suffering of all those who have borne the brunt of insensitive treatment at the hands of fellow human being/s. Transparency in public life & fair judicial action are the right answer to check increasing menace of violation of legal rights. Traditional rule was that the right to move the Supreme Court is only available to those whose fundamental rights are infringed. This traditional rule was considerably relaxed by the Supreme Court in its following rulings:

People's Union for Democratic Rights v. UoI (A.I.R.. 1982, SC 1473). The court now permits PIL or Social Interest Litigation at the instance of "Public spirited citizens" for the enforcement of constitutional & legal rights of any person or group of persons, who, because of their socially or economically disadvantaged position are unable to approach court for relief. PIL is a part of the process of participatory justice and standing in civil litigation that must have liberal reception at the judicial door steps.

In the Judges Transfer Case - AIR 1982, SC 149: Court held PIL can be filed by any member of public having sufficient interest for public injury arising from violation of legal rights so as to get judicial redress. This is absolutely necessary for maintaining Rule of law and accelerating the balance between law and justice. It is a settled law that when a person approaches the court of equity in exercise of extraordinary jurisdiction, he should approach the court not only with clean hands but with clean mind, heart and with clean objectives.

Shiram Food & Fertilizer case AIR (1986) 2 SCC 176 SC through PIL directed the company manufacturing hazardous & lethal chemicals and gases posing danger to life and health of workmen to take all necessary safety measures before re-opening the plant.

In the case of M.C Mehta V. UoI (1988) 1 SCC 471 - A PIL brought against Ganga water pollution so as to prevent any further  
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pollution of Ganga water. Supreme Court held that petitioner although not a riparian owner is entitled to move the court for the enforcement of statutory provisions, as he is the person interested in protecting the lives of the people who make use of Ganga water.

In Parmanand Katara V. UoI AIR 1989, SC 2039 Supreme Court held in the PIL filed by a human right activist fighting for general public interest that it is a paramount obligation of every member of medical profession to give medical aid to every injured citizen as soon as possible without waiting for any procedural formalities.

Council For Environment Legal Action V. UoI - (1996)5 SCC281: PIL filed by registered voluntary organisation regarding economic degradation in coastal area. Supreme Court issued appropriate orders for enforcing the laws to protect ecology.

During the last few years, Judicial Activism has opened up a new dimension for the judicial process and has given a new hope to the millions who starve for their livelihood. There is no reason why the Court should not adopt activist approach similar to Courts in America, so as to provide remedial amplitude to the citizens of India.

Supreme Court realizing its proper role in welfare state, is using its new strategy for the development of a whole new corpus of law for effective and purposeful implementation of PIL. One can simply approach the Court for the enforcement of fundamental rights by writing a letter or post card to any Judge. That particular letter based on true facts and concepts will be converted to writ petition. When Court welcomes PIL, its attempt is to endure observance of social and economic programs frame for the benefits of have-nots and the handicapped. PIL has proved to be a boon for the common men. PIL has set right a number of wrongs committed by an individual or by society. By relaxing the scope of PIL, the Court has brought legal aid to the doorsteps of the teeming millions of Indians; which the Executive has not been able to do despite a lot of money being spent on new legal aid schemes operating at the Central and State levels. Supreme Court's pivotal role in expanding the scope of PIL as a counter balance to the lethargy and inefficiency of the Executive is commendable.





Compilation:  
CS. Ajay Madaiah, Mysore

## World Economic Forum (WEF)

The World Economic Forum is an independent international organization, a not-for-profit foundation which is supported by membership, drawn from leading global companies. Committed to improving the state of the world by engaging business, political, academic and other leaders of society to shape global, regional and industry agendas. It was incorporated in 1971, and headquartered in Geneva, Switzerland.

The Forum's headquarters are in Cologny, on the outskirts of Geneva, Switzerland. The Forum also has an affiliate in New York, World Economic Forum USA, a representative office in Beijing, and opened the Japan office in Tokyo in September 2009.

The World Economic Forum brings together leaders in business, politics and society for reflection and connection to generate

ideas and proposals, bridging countries and cultures to address the issues affecting the world. It also brings the very best minds and experts to provide the necessary insight to allow leaders to make decisions that can bring about change for the better. Conferences like the Annual Meeting in Davos and regional summits are an occasion for leaders to outline major challenges and define strategies to address them.

The World Economic Forum's annual meeting of 2013 was held at **Davos-Klosters, Switzerland** from January 23 to 27, concluded on Saturday night amid warnings that attendees were too relaxed and optimistic about the state of the global economy.

(Source : <http://www.weforum.org>)

### Did you know?

#### Search Engine Optimization (SEO)

It is the process of affecting the visibility of a website or a web page in a search engine's "natural" or un-paid ("organic") search results. In general, the earlier (or higher ranked on the search results page), and more frequently a site appears in the search results list, the more visitors it will receive from the search engine's users. SEO may target different kinds of search, including image search, local search, video search, academic search, news search and industry-specific vertical search engines.

As an Internet marketing strategy, SEO considers how search engines work, what people search for, the actual search terms or keywords typed into search engines and which search engines are preferred by their targeted audience. Optimizing a website may involve editing its content, HTML and associated coding to both increase its relevance to specific keywords and to remove barriers to the indexing activities of search engines. Promoting a site to increase the number of back links, or inbound links, is another SEO tactic.

Source : <http://en.wikipedia.org>



### Pick of the month

#### Can a Company ask for more than a Proxy?

*Mr. A, a shareholder, appointed Mr. P as his proxy to attend the Annual General Meeting of a company in the form set out in Schedule IX to the Companies Act, 1956. The Company did not permit Mr. P to attend the meeting on the ground that the special requirements for the instrument in the articles have not been fulfilled. Is the move of the Company right?*

Answer: NO, as per Section 176(6), the Company shall not refuse to accept the proxy form on the ground that the form was not the one that had been posted to them by the company. So long as proxy form is in the proforma prescribed under Schedule IX, the company shall not refuse to register the same. Hence, in this case, the contention of the company is not correct. The company must accept the proxy form lodged by Mr. A.



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## CUSTOMS & FTP Notifications/ Circulars

Amends Notification No. 12/2012-Cus, dated March 17, 2012 to enhance rate of custom duty on all types of crude edible oils to 2.5%.

*Notification No. 2/2013-Cus, dated January 21, 2013*

Amends Notification No. 12/2012-Cus., dated March 17, 2012 to enhance rate of custom duty on gold bars.

*Notification No. 1/2013-Cus, dated January 21, 2013*

The Central Board of Excise & Customs ("the CBEC") allowed passengers importing firearm as baggage on transfer of residence to dispose the same after ten years of import to persons legally entitled to possess firearm.

*Circular No. 4/2013- Cus. dated January 15, 2013*

Allows replacement of Fixed Deposit Receipts (FDRs) furnished in respect of provisional mega and ultra-mega power projects in terms of Notification No. 12/2012-Cus. dated March 17, 3, 2012 and Notification No. 12/2012-CE, dated March 17, 2012 with Bank Guarantees from a scheduled bank.

*Circular No. 2/2013 - Cus. dated January 1, 2013*

Amends Notification No.36/2001-Cus. (NT), dated August 3, 2001 to hike tariff value of gold, silver & RBD Palmolein.

*Notification No.3/2013 -Cus. (NT) dated January 15, 2013*

Private/public warehouses for gems/jewellery sector have been allowed to be set up in SEZ/DTA for the purpose of import and re-export of specified goods.

*DGFT Notification No; 30(RE:2012)/2009-2014 dated 31.01.2013*

## Case Law

The Tribunal held that textile color designing/ matching books even if having fabrics sample pasted therein apart from matter printed on every page are classifiable as printed books and eligible for exemption under Notification No. 21/2002-Cus dated March 01, 2002.

*Honesty Subscription Agency Vs. Commissioner of Customs [2013- TIOL-18-CESTAT-MUM]*

The Supreme Court of India held that mere non-payment of duties is not equivalent to collusion or willful misstatement or suppression of facts. Construing mere nonpayment as any of the three categories contemplated by the proviso to Section 28 of the Customs Act, 1962 would leave no situation for which limitation period may apply.

*Uniworth Textiles Ltd. Vs. CCE [2013-TIOL-13-SC-CUS]*

In cases where goods are exported without the Let Export Order (LEO), there is clear violation of the provisions of the Customs Act and hence the goods are liable for confiscation and penalty can be imposed on the exporter and the CHA. It was noted that Sections 50 and 51 of the Customs Act cast a responsibility on the exporter as well as his agent to ensure that goods are exported after completion of all customs formalities such as assessment, examination and issue of LEO. The tribunal further held that no mens rea is required for imposition of penalty under section 114.

*Patkar & Sons Shipping Agency Pvt. Ltd. Vs. Commissioner-2013-TIOL-91-CESTAT-MUM)*

## Regulatory Developments Notifications/ Circulars

Centre, States agree on CST compensation [Business Standard, January 28, 2013]

The Centre and the State Governments agreed to a compensation formula for CST. A sub-committee of Centre and State Government officials recommended 100 percent compensation to States for a cut in CST from four percent to two percent for 2010-11, 75 per cent for 2011-12 and 50 per cent for 2012-13, respectively. Central Government will now have to fork out INR 34,000 as CST arrears to compensate States.

States can stay out of GST loop [Orissa Post, January 30, 2013]  
The Central Government agreed to allow States to keep out of GST loop if they so desire.

## CENVAT Notifications/ Circulars

Amends Notification No. 12/2012-CE dated March 17, 2012 to enhance rate of excise duty on Gold bars to 5%.

*Notification No. 01/2013-CE dated January 21, 2013*



## Case Law

The Supreme Court held that once it is established that a specified goods is a branded goods, whether it is sold without any trade name on it or by another manufacturer, it does not cease to be a branded goods of first manufacturer. Such goods would not be eligible for exemption from excise duty available to small scale units under Notification No. 1/93-C.E., dated February 28, 1993.

*CCE Vs. Australian Foods India (P) Ltd. [2013-TIOL-03-SC-CX]*

The High Court of Delhi quashed show cause notice and adjudication order passed on mere assumption on part of revenue that petitioner is manufacturing blank CDs & DVDs at intermediate stage although such blank CDs & DVDs has not been manufactured at any stage and integrated process produced prerecorded CDs and DVDs. The High Court also observed that as assessee got two officers of revenue arrested on charges of bribery, it is a fit case for exercise of jurisdiction under Article 226 of the Constitution despite the fact that petitioner has an alternative remedy of filing appeal. The existence of an alternative remedy is not always a sufficient reason for refusing a party quick relief by way of a writ petition.

*Siddharth Optical Disc Pvt. Ltd. & Others Vs. UOI & Another [2013-TIOL-37-HC-DELUX]*

The Tribunal held that imported paraffin wax used for smooth process of manufacture of cotton yarn cannot be said to be a raw

material for manufacture of cotton yarn. Accordingly, benefit of Notification No. 8/97-CE dated March 1, 1997 available if goods were manufactured from raw material produced or manufactured wholly in India.

*Amit Spinning Industries Ltd. Vs. CCE, Kolhapur [2013-TIOL-89-CESTAT-MUM]*

The High Court of Gujarat held that sales commission agent's service is not an 'input service' in terms of Rule 2 (I) of the Cenvat Credit Rules, 2004 as it is not used directly or indirectly in or in relation to the manufacture of final products or clearance of final products from the place of removal and is also not analogous to the activities mentioned in the inclusive clause of definition of 'input service' under the Credit Rules. The High Court also observed that commission agent is directly concerned with sales rather than sales promotion, consequently, Cenvat credit would not be admissible.

*CCE Vs. Cadilaa Healthcare Ltd. [2013-TIOL-12-HC-AHM-ST]*

In a Writ Petition seeking stay of Circular No.967/01/2013-CX dated January 01, 2013 issued by the Central Board of Excise & Customs, the High Court of Andhra Pradesh has granted interim stay for recovery of tax till application of stay is disposed off by the appellate authority. Similar relief has also been given by other High Courts in number of writ petitions.

*Ultratech Cement Ltd. Vs. UOI [2013-TIOL-23-HC-AP-CX]*

The Tribunal held that assessee is liable to pay excise duty on MRP less abatement on physician samples cleared free of cost.

*Skan Research (P) Ltd. Vs. CCE [2013-TIOL-186-CESTAT-MAD]*

The Tribunal held that service provided for valuation of property, other than factory premises, service in relation to empty plot by security agencies, repair and maintenance of

air conditioner at residences of employees cannot be considered as input service in terms of Rule 2(I) of the Cenvat Credit Rules, 2004 ("the Credit Rules").

*Golden Tobacco Ltd. Vs. CCE [2013-TIOL-163-CESTAT-MUM]*

The Tribunal held that services of a real estate agent for preparing office premises from where they are providing outward service is an input service in terms of Rule 2(I) of the Credit Rules.

*Group M Media India Pvt. Ltd. Vs. Commissioner of Service Tax [2013-TIOL-175-CESTAT-MUM]*

## Service Tax

### Case Law

The High Court of Uttarakhand held that by providing facility of transportation from Mansa Devi to Chandi Devi and vice versa, assessee did not carry out tour operation. It facilitated journey of its clients from one place to the other as is being done by passenger transporters while carrying out their transportation business.

*CCE Vs. Usha Breco Ltd. [2013-TIOL-20-HC-UKHAND-ST]*

The High Court of Calcutta held that Comptroller and Auditor General ("CAG") has no power to audit records of a private assessee as there is no provision under Chapter V of the Finance Act, 1994 or under the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971, which empowers CAG to audit accounts of an assessee which is a nongovernment company and not in receipt of aid or assistance from any government or government entity.

*SKP Securities Ltd. Infinity Infotech Parks Ltd. Vs. Deputy Director (RA-IDT) & Ors [2013-TIOL-38-HC-KOL-ST]*

Dispute before the High Court of Delhi was whether in respect of services provided prior to May 14, 2003 for which payment was received after May 14, 2003; service tax was chargeable @ 5% or 8%. The High Court held that that taxable event as per the Finance Act is providing of taxable services. Since taxable event in the present case i.e. provision of taxable service took place prior to May 14, 2003, rate of tax prior to that date would be applicable i.e. 5% not 8%.

*Commissioner of Service Tax Vs. Consulting Engineering Services (I) Pvt. Ltd. [2013-TIOL-60-HC-DEL-ST]*

The High Court of Andhra Pradesh held that activities of 'Scientific Research' and 'Consulting Engineer Services' are different. Therefore 'Scientific Research' is not taxable prior to July 16, 2001 under Consulting Engineer Service

*CCE Vs. National Ship Design & Research Centre [2013-TIOL-59-HC-AP-ST]*

Hon'ble Tribunal observed that appellant were in the bona fide belief that they were not required to pay service tax and there was no deliberate intention on their part to evade the service tax, deserves to be accepted. Hence, penalty under Section 78 of the Finance Act is not sustainable. Accordingly, penalty under Section 78 is waived.

*India Trimming (P) Ltd. - 2013 (29) Taxmann 425*

Hon'ble Tribunal observed that on perusal of the definition of 'input service' given above reveals that the inclusive part of the definition includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises. The appellant has claimed that the said service falls

under the service of 'renovation'. Hence, the Cenvat credit is admissible to the appellant of the service tax paid by them on the service of 'dismantling' as the same is duly covered under the definition of input service."

*Jindal Pipes Ltd. - 2013 (29) Taxmann 323*

Hon'ble Tribunal observed that it is well settled that a sole proprietorship concerned has no legal entity independent of its proprietor. Hence issuance of SCN is bad in law as it was issued against any non-existent firm. In respect of undertaking given by the legal heirs of deceased proprietor for pending dues under dispute, which do not cover demand raised vide SCN issued after 3 years thereafter. Hence, the demand confirmed on the basis of aforesaid show cause notice cannot be sustained and demand is set-aside.

*Shree Ambica Steel Industries - 2013 (29) Taxmann 309*

Hon'ble Tribunal held that benefit of N. No. 12/2003 would be available subject to condition that there is documentary proof specifically indicating the value of the said goods and materials. Further, Board Circular No. 59/8/2003 dated 20-06-2003 clarifies that only extra text books or extra material which is : (a) sold to students and is also available for sale to outsiders and students or (b) procured from outside and sold to students, will not form part of taxable coaching services. Since assessee had created an artificial firm to bifurcate coaching receipts relating and provision of study materials, value of study material and test papers is a part of coaching services and hence to be included in the value of coaching services.

*Soni Classes - 2013 (29) Taxmann 308*

## VAT, Sales Tax and Entry Tax

### Notifications/Circulars

Information technology goods, as specified in serial number 51 of Part II of Schedule II of Madhya Pradesh Value Added Tax Act, 2002, have been exempted from payment of whole of Entry Tax. This exemption will be available for the period from 14.09.2012 to 13.09.2017.

*No. F-A-3-47-2012-1-V (02), dated 02.01.2013*

## RBI clarifies KYC norms in the event of Shifting of bank accounts to another centre

Banks are advised that KYC once done by one branch of the bank should be valid for transfer of the account within the bank as long as full KYC had been done for the concerned account. The customer should be allowed to transfer his account from one branch to another branch without restrictions.

Banks may transfer existing accounts at the transferor branch to the transferee branch without insisting on fresh proof of address etc and on the basis of a self-declaration from the account holder about his/her current address, subject to submitting proof of address within a period of six months.

## Case Laws....

The High Court of Delhi held that in the absence of any mechanism enabling a purchasing dealer to verify if selling dealer deposited tax with the Government and in the absence of notification whereby purchasing dealer can ascertain that a selling dealer's registration is cancelled, benefit of input tax credit under Section 9(1) of the Delhi Value Added Tax Act, 2004 cannot be denied.

*Shanti Kiran India Pvt. Ltd. Vs. Commissioner of Trade & Taxes [2013-VIL-04-DEL]*

The High Court of Kerala in proceedings pertaining to detention of goods under Section 47 of the Kerala Value Added Tax Act, 2003 ("the Kerala VAT Act") held that where penalty is imposed on a dealer but security in the form of bank guarantee is furnished, then there must be a waiting period of 30 days for enforcing of bank guarantee.

*Siemens Limited Vs. Commercial Tax Inspector [2013-VIL-02-KER]*

The issue before the High Court of Andhra Pradesh was whether rental charges collected by manufacturer from distributors/wholesalers for bottles and crates is to be treated as part of sale price of soft drinks or is to be treated as a compensation for transfer of possession. The High Court held that bottle is used only for storing contents (soft drinks), and when the bottle is returned to retailer by customer and so on to the manufacturer, cost of bottle cannot be said to get included in the cost of soft drink.

*Hindustan Coco Cola Beverages Pvt. Ltd. Vs. State of Andhra Pradesh [2013-VIL-08-AP]*

## FEMA & RBI

### Notifications/Circulars

RBI revisits the limits prescribed with respect to foreign investment in India by SEBI registered FIIs in Government securities and corporate debt

*RBI/2012-13/391 A. P. (DIR Series) Circular No.80 Jan 24, 2013*

it has been decided to dispense with the stipulation made in A.P. (DIR Series) Circular No. 124 dated May 10, 2012, that EEFC account holders henceforth will be permitted to access the forex market for purchasing foreign exchange only after utilizing fully the available balances in the EEFC accounts.

*RBI/2012-13/390 A. P. (DIR Series) Circular No. 79 Jan 22, 2013*

## Royalties on sales of mobile handsets made by a foreign entity

The Delhi Bench of the Income Tax Appellate Tribunal ruled that royalties with respect to manufacturing licenses granted to a non-resident organization by another non-resident for the manufacture of CDMA handsets, is not liable to taxation in India despite the handsets being sold to Indian companies / vendors / parties. The Indian entities buying these handsets cannot be constituted as an income source, because the handsets are being manufactured outside India. The royalties towards this sale, will be deemed to have been at the place where the patent of the manufactured product is being exploited, i.e. where the manufacturing of the CDMA handset has taken place.





## Indian Turmeric War Completed!

Traditional Knowledge Digital Library (TKDL) a unit of Council of Scientific and Industrial Research (CSIR) has trampled the claim made by a US multinational company, Metaproteomics on the usefulness of turmeric, apple, basil (tulsi) for the treatment of inflammation, psoriasis and gastritis. The patent titled "Curcuminoid compositions exhibiting synergistic inhibition of the expression and/ or activity of Cyclooxygenase-2" claimed the usefulness of turmeric, apple, basil, kalamegha and licorice for the treatment of inflammation, psoriasis, gastritis and as anti-inflammatory to be novel, has been filed at the Canadian Intellectual Property Office.

The TKDL has submitted evidences in the form of references in books which includes, Khazaain-al-Advia, Muheet-e-Azam, Vaidyamanorama, RasayogaSagara, Rajanighantauh, Bhavaprakasa, Siddhabhesaja manimala and Ilaaj-al-Amraaz from 18th century to the 20th century citing evidences that turmeric, apple, basil, kalamegha and licorice have been used alone or in combination with a few other ingredients for the treatment of inflammation, psoriasis, gastritis and as anti-inflammatory in the Indian systems of medicine. "Within a period of 87 weeks, a 10 years' old attempt to pirate India's knowledge by a multinational company of USA was ended," sources added.

## India rejects WTO draft Agreement on IT and Environment

India said that it will not accept any agreement on IT and environmental goods as the plurilateral agreements on these issues which US and Europe seem to be eager to ink would exclude the interests of developing and the least developed countries

## CCI slaps Rs 52.24 cr penalty on BCCI

Competition Commission of India (CCI) has found the Board of Control for Cricket in India (BCCI) guilty of abusing its dominant position in handling the Indian Premier League (IPL) tournament. BCCI contended that it is a 'not-for-profit' society for the promotion of sport of cricket and its activities were outside the purview of the term "Enterprise" as defined in Competition Act. However, the Director General Investigation in its finding concluded that though the BCCI is a not-for-profit society, its activities related to IPL, such as grant of franchise rights, media rights and other sponsorships rights where huge

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revenues are involved, are different from so-called non-profit activities. CCI has also raised questions over BCCI misusing its position by blocking players who could have opted for competitive leagues such as the Indian Cricket League (ICL). The investigation found the cricketing body guilty of "bid rigging" and "creating entry barriers" for new entrants. Slapping a penalty of whopping Rs 52.24 crore on the cricketing body (at the rate of 6 per cent of BCCI's revenues over the last three years), the fair trade regulator has asked the BCCI to 'cease and desist' from such practices.

## Kotak acquires Barclays' lending business

Private sector lender Kotak Mahindra Bank acquired Barclays India's business loans portfolio or SME lending business worth about Rs 700 crore. The sold-out business was being managed by Barclays India Investment and Loan Ltd and had a book size of about Rs 700 crore involving 6,000 customers. The parties had won the go-ahead for the deal from the Competition Commission last week

## India may drag Egypt to WTO against levy on cotton yarn

India is considering filing an official complaint against Egypt at the World Trade Organisation for "wrongful" imposition of penal duties on cotton yarn imported from the country. With Turkey recently withdrawing similar duties on Indian cotton yarn after the country filed a WTO complaint, New Delhi is hoping for a similar outcome with Egypt. India arguing that, an additional duties ranging between 13 per cent and 14 per cent on cotton yarn has affected the industry's competitiveness.

## SEBI clears Diageo Plc's offer for USL

Liquor major Diageo Plc has finally received the clearance from the SEBI for an open offer to acquire 26 per cent stake from public shareholders of UB group firm United Spirits Ltd (USL). The British firm is to acquire 26% shareholding in USL through the open offer worth Rs 5,441 Crore, as part of a deal to buy up to 53.4% stake in the company.

## RBI allows Hotel Sector to Avail ECBs

Now Indian companies in the hotel sector to avail benefits under the ECB (External Commercial Borrowings) scheme to repay their outstanding rupee loans and or to finance fresh capital expenditure.