



Newsletter-17

Mysore Chapter April 2005

From Chairman's desk...



Dear Friends,

Greetings to you all !

Members might have felt that after a month of hectic activities there is a lull. But it is planned. I can assure the members that coming months would be packed with lot of activities.

The Chapter has lined up the following programs in coming months:

1. 3rd Week of may, 2005: Half day Seminar on Alternative dispute resolution
2. 3rd Week of June, 2005: Investors' meet on Futures & Options
3. August 14th to 16th 2005: Joint Program with Bangalore Chapter on SEBI updates and Corporate Governance.

The members are requested to contribute their time, ideas & financial support to the programs of the chapter. These programs are being recommended for credit hours for the benefit of our practicing colleagues.

The members might be aware that the **First Southern India Regional Conference of Practicing Company Secretaries is being hosted by Bangalore Chapter on April 30th & May 1st 2005 at Hotel Atria, Palace Road Bangalore.** The Theme of the Conference is "Emerging Concepts And Opportunities Ahead of Us" The Conference entitles the member attending to Six Credit Hours. Considering the relevance of the topic and the locational Advantage I urge all the members and particularly the practicing Secretaries to attend the Regional Conference.

I request, once again, the members to subscribe to the Journal "Chartered secretary" and also to the "Company Secretaries Benevolent Fund" if not already subscribed.

With warm Regards,
Mysore dated 18th April, 2005.

D D Bhat
Chairman- mysore chapter

Student Registration goes online shortly

ICSI has implemented online registration facility for students over its website www.icsi.edu. However this facility is under testing as of now.

The internal circular says "The form will be run under controlled environment for a few days and then will be publicly launched as per the guidance of Secretary, The ICSI."

In the trial run held on 30th of March, 2005, ten students of both the stages - Foundation and Intermediate were successfully registered through this module in the head office.

Chapter News:

Oral Coaching Classes

Classes concluded for the first batch of intermediate course on 23rd February 2005. 22 students had the benefit. It is tentatively planned to initiate coaching for the next batch from 15th June 2005.

Students Study Circle Meetings

Chapter conducted eleven study circle meetings for students in this quarter. Subjects like Attending Interviews, Communication Skills, VAT, General Awareness on Stock Markets etc., were discussed apart from subjects' related clarifications.

Legal Roundup

Income Tax

Forms 27A and 27B were amended by CBDT.

Notification No. 122/2005 Dated 30.03.2005

E-Filing of TCS Returns Scheme, 2005

Returns of Tax Collected at Source to be filed electronically under sub-section (5B) of section 206C of the Income-tax Act, 1961. Scheme announced. It consists of methodology for preparation and furnishment of e-TCS Returns

Notification No. 121/2005 Dated 30.03.2005

Income-Tax (Eighth Amendment) Rules, 2005

These amendments relate to computation of deemed tonnage, and also notified Form No. 66 for submitting Audit Report under clause (ii) of section 115VW of the Income-tax Act, 1961.

Notification No. 120/2005 Dated 29.03.2005

Encashment of leave salary while still in service is not covered by exemption under section 10(10AA)

Commissioner of Income tax v. Ashok Kumar Dixit (273 ITR 126)

Remodeling and renovation of an old house sufficiently refer to construction and therefore cost incurred in respect of the same will qualify for deduction under section 54F

Jyoti Pat Ram v. ITO (Lucknow Bench) (92 ITD 423)

Rate of Depreciation

The important changes in the revised rates of depreciation as applicable to PY 2005-06 are as follows:

- a) Buildings - 10%
- b) General Plant and Machinery - 15%
- c) Furniture and Fixtures - 10%
- d) Motor cars - 15%

Notification No. SO 266(E) dated 28th February 2005

Taxability of Perquisite (Fringe Benefit)

Rule 3 dealing with valuation of perks has been amended to bring the same in line with the proposed Fringe Benefit Tax. The salient features:

- a) Rent free accommodation - perk rate has been increased from 10% of salary to 20% and in smaller cities from 7.5% to 15%
- b) Car perk is no longer taxable
- c) Free transport facility no longer taxable
- d) Free traveling, touring, accommodation and other expenses paid for holiday no longer taxable
- e) Free lunch is no longer taxable
- f) Gift coupons are now tax free
- g) Credit card membership fee reimbursed is not taxable
- h) Club expenses reimbursed is now not taxable
- i) Value of any other benefit or amenity, service, right or privilege provided is no longer taxed in the hands of employee

All the above are proposed to be taxed in the hands of employer as FBT.

Notification No. SO 265(E) dated 28th February 2005

Customs

Divergence of Practice

Reference to C.B.E.& C. only in cases of divergence or change in practice. Only those cases involving divergence of practice or change in the practice or existing system of assessment shall be referred to the Board Demi-officially by the Chief Commissioner/Director General only. The reference to the Board should accompany details of the issue, view of the Chief Commissioner/Director General and copies of relevant documents. A copy of reference should also be sent by e-mail to the Director (Customs).

M.F. (D.R.) Circular No. 4/2005-Cus., dated 31-1-2005



Leviability of Education Cess:

On imports under Advance license, DFRC, EPCG and DEPB Schemes.

- Imports against Advance Licenses - Education cess at 2% not leviable on such imports.
- Imports against DFRC - Education cess at 2% leviable.
- Imports against EPCG Scheme - Education cess at 2% leviable.
- In case of imports under DEPB Scheme, the Education cess at 2% would also be debited from the DEPB scrip.

M.F. (D.R.) Circular No. 5/2005-Cus., dated 31-1-2005

Procedure for on-line payment of Customs duty

Bangalore Air Cargo Complex has been chosen to enable an online payment mechanism for remittance of customs duties for import consignments being transacted under the Indian Customs Electronic-data-interchange System (ICES) at the Air Cargo Complex, Bangalore.

Trade Facility No. 8/2005, dated 12-1-2005
Commissioner of Customs, Bangalore-1

Filing import documents of EOU's/STP/EHTP units.

EOU/STP/EHTP units can file all the relevant documents pertaining to Import consignment with the range office at the first visit itself so that the officer can process the same and complete the work within a reasonable period and hand over the requisite documents to the units for further action.

Trade Facility No. 9/2005, dated 18-1-2005
Commissioner of Customs, Bangalore-1

Duty drawback for SEZ supplies by DTA units

With regard to the admissibility of Duty Drawback in respect of supplies effected by DTA Units to Special Economic Zones, it has been clarified that with the operationalisation of the provisions of Chapter X-A of the Customs Act, 1962 w.e.f. 11-5-

2004, the duty drawback is to be granted for the supplies made from the DTA to the SEZ.

M.F. (D.R.) Circular No. 7/2005-Cus., dated 14-2-2005

Petroleum products - payment of duty

It has been decided to withdraw the facility of transfer of petroleum products without payment of customs duty from the warehouse at the port of import to inland warehouses. Henceforth, the warehousing facility for petroleum products would be available only at the port of import, and no removal to inland bonded warehouses without payment of customs duty will be allowed.

M.F. (D.R.) Circular No. 8/2005-Cus., dated 14-2-2005

Clarification to Circular No. 8/2005

Instructions issued vide Circular 8/2005 apply both to petroleum (including crude) and petroleum products. Hence whenever the word "petroleum products" occurs in the said circular, it should be read as "petroleum and petroleum products".

M.F. (D.R.) Circular No. 9/2005 Cus., dated 15-2-2005

The Central Government clarification: Second hand DG sets of 10KVA and above are classifiable as second hand capital goods on account of their industrial application and are permitted for import under the EPCG scheme.

Policy Circular No. 20/2004-09 dt 23/02/05

CASE LAWS

Drawback not available to Export cargo destroyed within territorial water of India in an accident of ship.

UOI v. Rajendra Dyeing and Printing Mills Ltd. 2005 (180)
ELT 433 (S.C.)

Del Credere Agency not covered under purview of Clearing and Forwarding operations.

Raja Rajeshwari Intl. Polymers (P) Ltd. v. CCE. - 2005
(180) ELT 448 (Tri.)

The Tribunal has held in relation to the transaction value cannot be rejected where the transaction did not fall under any of the exceptions in Rule 4(2). The technical know-how fees paid to the foreign

supplier, not being a condition of sale of the imported goods but relating to the manufacture of finished goods in India, was not includible in the transaction value of the imported goods.

Jay Yushin Ltd. vs. CC (2005 (181) ELT 120)

Excise

Duty on Motor Spirit and High Speed Diesel exported under Bond

It is clarified that Additional Excise Duty or Special Additional Excise Duty levied on Motor Spirit and High Speed Diesel under respective sections of Finance Acts are not required to be paid for goods exported under bond.

C.B.E. & C. Circular No. 807/4/2005-CX., dated 10-2-2005.

Case laws

It was held that even the interest paid in pursuance of a demand is refundable. Ground that Section 11B of the C.Ex., Act, 1944 does not cover refund of interest not available.

Commissioner of C.Ex., Thane-II v. Mehta Pharmaceutical Indus. Ltd. 2005 (180) ELT 26 (Tri.-Mumbai)

The Tribunal has held that process of electroplating does not amount to manufacture.

In Pragati Silicones Ltd. Vs. CCE (2004 (176) ELT 158)

The Tribunal has held that the conversion of old diesel engines into CNG engines does not amount to manufacture, as the modification does not bring into existence any new goods.

Nugas Technologies India Pvt. Ltd. Vs. CCE (2005 (181) ELT 75),

The Tribunal has held that no duty is chargeable on the waste & scrap generated during repair, re-conditioning, use or dismantling of capital goods, as no manufacture of goods was involved.

CCE Vs. Birla Corporation Ltd. & Others (2005 (67) RLT 51) and in Kumbhi Kasari Ltd. Vs. CCE (2005 (67) RLT 109),

The Tribunal has held that royalties paid by the principal manufacturer to the copyright owner are includible in the transaction value of the copyrighted

goods manufactured by the job worker on behalf of the principal manufacturer.

K.R.C.D. (I) Pvt. Ltd. Vs. CCE (2004 (176) ELT 427)

The Tribunal in a case, held that the value of software is not includible in the transaction value of the computer.

Hewlett Packard India Ltd. Vs. CCE (2005 (119) ECR 434)

The Tribunal has held that an assessee is entitled to utilize the accumulated credits on inputs for payment of duty on final products on which duty has been subsequently re-imposed.

Rasoi Limited Vs. UOI (2004 (176) ELT 101)

The Tribunal has held that there is no provision in law, which, requires the reversal of credits availed on inputs used in the manufacture of final products which were dutiable at the time of receipt of inputs and which were exempt subsequently.

Poona Bottling Co. Ltd. Vs. CCE (2005 (66) RLT 857),

Service Tax

Service tax liability on transfer of technical know-how from foreign company to Indian counterpart falls within the category of 'intellectual property services' introduced vide Finance (No. 2) Act, 2004, and not under 'Consulting Engineering Services'.

Araco Corporation v. Commr., of C.Ex., Bangalore 2005 (180) ELT 91 (Tri.-Bang.)

Case Laws

Penalty for delay in payment of service tax, the discretion to impose between maximum and minimum penalty is available and the same is to be exercised on sound judicial principles and circumstances of the case may be.

Inma International Security Academy Pvt. Ltd. v. CCE., Chennai 2005 (180) ELT 107 (Tri.-Chennai)

The Tribunal has held that the activity of letting out sites for display of advertisements is not a taxable activity as 'advertising services'.

CCE Vs. Team Upd Ltd. (2005 (1) STJ 707)

FEMA

Compounding of Contraventions under FEMA 1999

The Government of India has in consultation with Reserve Bank placed the responsibilities of administering compounding of cases with the Reserve Bank, except under Section 3 (a) of FEMA. Directorate of Enforcement would continue to exercise powers of compounding under clause (a) of Section 3 of FEMA (dealing essentially with Hawala transactions). Further procedure for compounding of contraventions has also given.

A.P. (DIR Series) Circular No. 31 dated 01.02.05

Sales Tax

VAT

Karnataka VAT Act, 2003 has been amended by the Amendment Act, 2005 [LA Bill No.4 of 2005 passed on 04.02.2005. Salient features of amendment:

1. EOUs have to pay tax at the time of purchase but may claim refund thereafter
2. New section 9A has been inserted to provide for TDS

Appeal made subject to payment of 50% of disputed tax,

58 KLJ-St 55 (2005)

Central Sales Tax Appellate Authority

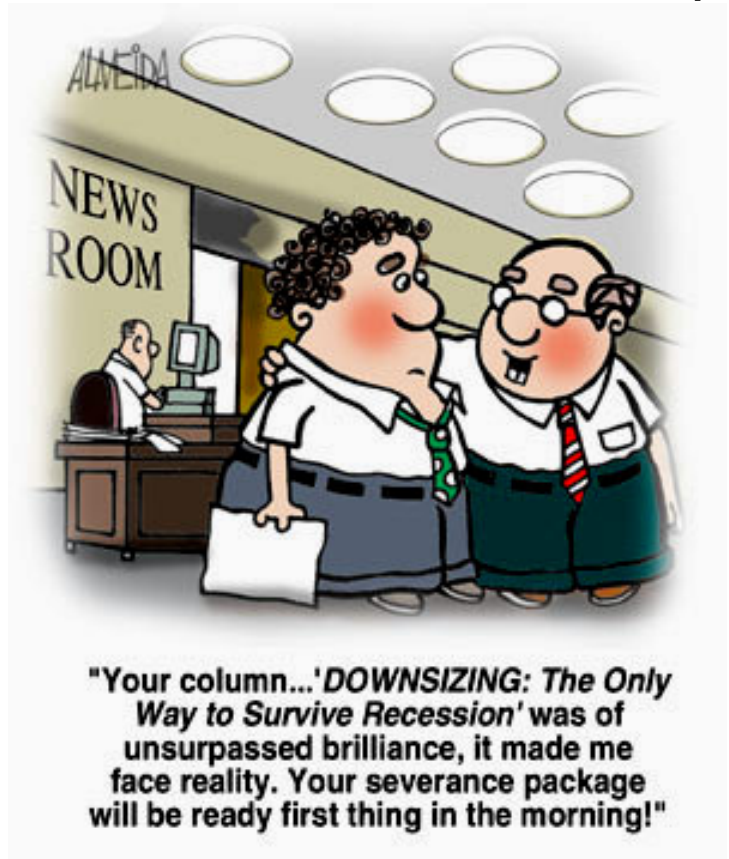
Authority for Advance Rulings constituted under Section 245-O of the Income-tax Act, 1961 shall also be the Central Sales Tax Appellate Authority to settle inter-State disputes falling under Section 6A read with Section 9 of the Central Sales Tax Act, 1956 on and from 17th March, 2005, the day on which the Central Sales Tax (Amendment) Act, 2001 (41 of 2001) will be coming into force and till such time as the Central Sales Tax Appellate Authority is constituted under Section 19 of the said Act.

Notification No. SO327(E) Dated 17.03.2005

Case Law

The Madras High Court has held that a beneficial circular issued by the Commissioner cannot be withdrawn retrospectively even though it is inconsistent with the statutory provisions.

Mohan Breweries Ltd. Vs. CTO Chennai [(2005) 139 STC 477]



Arbitration Act

Setting aside of Arbitration Award

In appeal the Apex Court, remarked that an award passed by an arbitrator can be set aside only on the grounds specified in the Arbitration Act, 1940, it is not open to a court to re-appreciate the entire evidence. It was held that when awarding interest, the powers of the arbitrator are not regulated by the civil procedure code, 1908.

Bhagwati Oxygen Limited. Vs. Hindustan Copper Limited.