



eMagazine

Secretarial Audit for Health Care Industry



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Dear Readers,

Warm greetings from the Mysore Chapter of ICSI!

With various parts of the Tamil Nadu being hit by the worst floods, let us pray for the victims of the recent floods for their recovery and strength from the incident. And it is so heartwarming to see immense voluntary help coming from various parts of the country.

During the month of November the Chapter conducted a Career Awareness Program at St. Philomena's College, Mysore for the Commerce stream students. Amid the government's resolve to push the GST Bill in Parliament, business houses have a positive opinion as this is a major reform, through this the central and state taxes will get subsumed into GST, reducing the multiplicity of taxes, and thus bringing down the compliance cost. It may give boost to the economy to overcome the recession.

Again it is time for another session of examination for the students. I believe all the students who are appearing for the December examination have prepared well and I wish them all the best.

With the chilling weather of December we have reached the end of the calendar year 2015 and its time to cherish all good things which have passed during the year and to look forward to the new calendar year. I wish you all and your family a Happy Christmas & New Year!

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Secretarial Audit for Health Care Industry

The Supervision and regulation of the quality of services provided by the health care delivery system to the people by both public and private sectors has largely remained a contentious and unresolved issue. The current structure of the health care delivery system does not provide enough incentives for improvements in efficiency. The Private sector health care delivery system in India has remained largely unregulated and uncontrolled. Problems range from inadequate and inappropriate treatment, excessive use of higher technologies, and wasting of scarce resources to serious problems of medical mal practices and negligence.



Despite many legislatures including state legislatures and many central laws enacted for regulating the Health Care Industry the general perception is current regulatory process for health care providers in India is inadequate or not responsive to ensure health care services of acceptable quality and prevention of negligence.

In spite of all regulatory issues & other problems, The Indian Healthcare sector is emerging as one of the fast-growing service sectors in India, contributing 6 – 7 percent to the country’s Growth Domestic Product (GDP). According to 2001 population norms, there was still a shortage of 4,477 primary healthcare centers and 2,337 community healthcare centers and India would require 1.75 million beds by 2025. Over 6800 more hospitals are needed in India to provide basic health facilities to people in rural areas.

In this backdrop let us see the plethora of laws that have been enacted for the Health Care Industry in India & their compliance.

TYPES OF HEALTH CARE INDUSTRY

Mobile Health – Tele Medicine - Possible Services

1. Division of hospital rendering tele medicine
2. services (tele radiology)
3. Standalone tele radiology companies
4. Service providers companies (IT)
5. Value added services
6. Tele monitoring / health monitoring

Preventive & Wellness Care Centers – Possible Services

1. Nutraceuticals and herbals
2. Dietary supplement companies
3. Organic foods and health supplements

Day Care / Short Stay Centers – Possible Services

1. Surgery / specific discipline
2. Critical Care Centers
3. Emergency Operation Rooms and recovery centers
4. Basic recovery centers
5. Ambulance services

Support Services Centers – Possible Services

1. Nursing
2. Para medics services
3. Hospital Management Services
4. Medical tourism companies
5. Hospital housekeeping
6. Ambulance services
7. Low cost health services
8. Equipment leasing / services

Pain Clinics – Possible Services

Advanced pain relieving centers

Geriatric Care Centers – Possible Services

1. General care
2. Hospice centers

Physical Therapy Centers – Possible Services

1. Post trauma
2. Post-surgery
3. Along with other support services

General Diagnostics Centers – Possible Services

1. Neuro-physiology
2. Advanced Radiology
3. Hematology and Advanced Histopathology

Whatever may be the type of Industry once recognized as a medical center OR a Hospital a plethora of acts & Licenses become applicable.

SECRETARIAL AUDIT: WHAT IT MEANS?

Secretarial Audit' is a process to check compliances made by the Company under Corporate Law & other laws, rules, regulations, procedures etc. It is a mechanism to monitor compliance with the requirements of stated laws and processes. Secretarial Audit gives comfort to the regulators, stakeholders and management, that company has disciplined approach to evaluate and improve effectiveness of risk management, control, and governance

The Secretarial Audit Report must be in Form MR -3 (which has been prescribed in the Companies Act, 2013 and a specific format has been issued). Thus the scope of Secretarial audit is not limited to the corporate laws applicable to company but it extends to **“all laws applicable to Company”**.

What should be reported under this section is a question of debate, what Laws are applicable to the respective company etc...Reporting on compliance of 'Other laws as may be applicable specifically to the company' shall as per the guidelines issued by the ICSI include all the laws which are applicable to specific industry for example; for Banks- all laws applicable to Banking Industry; for insurance company-all laws applicable to insurance industry; likewise for a company in petroleum sector- all laws applicable to petroleum industry; similarly for companies in pharmaceutical sector, cement industry etc. Therefore, all laws applicable to a Health Care Industry shall be examined by the Secretarial Auditor.

We shall discuss on the various legislations applicable through an audit check list in the next edition in Part 2.





Evolution and impact of differentiated bank licensing Payment Banks & Small Finance Banks

In the first part of the article, we had discussed genesis of banking and its business viability under different economic scenarios. We also observed that with the many statutory restrictions, increasing requirement of capital, growing NPAs and increasing competition, the Central Government and RBI agenda of Financial Inclusion was getting stuck, which paved way to the bringing of Payment License and Small Bank Licenses. RBI has put certain conditions with respect to the **scope of activities, deployment of funds, capital requirement, promoter's contribution and foreign shareholding**. So far RBI has provided in-principle approval for 11 entities in India on 18th of August 2015 out of 42 applications received. Let us now move forward and understand the terms prescribed for small finance banks.

Term and conditions of Small Finance Banks:

➤ Scope of activities:

- ❖ The small finance bank, in furtherance of the objectives for which it is set up, shall primarily undertake basic banking activities of acceptance of deposits and lending to unserved and underserved sections including small business units, small and marginal farmers, micro and small industries and unorganized sector entities. It can also undertake other non-risk sharing simple financial services activities, not requiring any commitment of own fund, such as distribution of mutual fund units, insurance products, pension products, etc. with the prior approval of the RBI and after complying with the requirements of the sectoral regulator for such products. The small finance bank can also become a Category II Authorised Dealer in foreign exchange business for its clients' requirements. It cannot set up subsidiaries to undertake non-banking financial services activities.
- ❖ The annual branch expansion plans of the small finance banks for the initial five years would need prior approval of RBI. The annual branch expansion plans should be in compliance with the requirement of opening at least 25 per cent of its branches in unbanked rural centres (population upto 9,999 as per the latest census).
- ❖ There will not be any restriction in the area of operations of small finance banks; however, preference will be given to those applicants who in the initial phase set up the bank in a cluster of under-banked States / districts, such as in the North-East, East and Central regions of the country. These applicants will not have any hindrance to expand to other regions in due course. It is expected that the small finance bank should primarily be responsive to local needs. After the initial stabilization period of five years, and after a review, RBI may liberalize the requirement of prior approval for annual branch expansion plans and scope of activities of the small finance banks.

- ❖ The other financial and non-financial services activities of the promoters, if any, should be kept distinctly ring-fenced and not comingled with the banking business.
- ❖ The small finance bank will be required to use the words “Small Finance Bank” in its name in order to differentiate it from other banks.

➤ **Capital requirement**

The minimum paid-up equity capital for small finance banks shall be Rs. 100 crore. In view of the inherent risk of a small finance bank, it shall be required to maintain a minimum capital adequacy ratio of 15 per cent of its risk weighted assets (RWA) on a continuous basis, subject to any higher percentage as may be prescribed by RBI from time to time.

Tier I capital should be at least 7.5 per cent of RWAs. Tier II capital should be limited to a maximum of 100 per cent of total Tier I capital. As small finance banks are not expected to deal with sophisticated products, the capital adequacy ratio will be computed under Basel Committee’s standardised approaches.

➤ **Promoter's contribution**

The promoter's minimum initial contribution to the paid-up equity capital of such small finance bank shall at least be 40 per cent. If the initial shareholding by promoter in the bank is in excess of 40 per cent, it should be brought down to 40 per cent within a period of five years. The promoter's minimum contribution of 40 per cent of paid-up equity capital shall be locked in for a period of five years from the date of commencement of business of the bank.

Further, the promoter’s stake should be brought down to 30 per cent of the paid-up equity capital of the bank within a period of 10 years, and to 26 per cent within 12 years from the date of commencement of business of the bank. Proposals having diversified shareholding subject to the initial minimum shareholding of promoters and a time frame for listing of the bank will be preferred. However, after the small finance bank reaches the net worth of Rs.500 crore, listing will be mandatory within three years of reaching that net worth. However, small finance banks having net worth of below Rs.500 crore could also get their shares listed voluntarily, subject to fulfilment of the requirements of the capital markets regulator.

➤ **Foreign shareholding**

The foreign shareholding in the small finance bank would be as per the Foreign Direct Investment (FDI) policy for private sector banks as amended from time to time. As per the current FDI policy, the aggregate foreign investment in a private sector bank from all sources will be allowed upto a maximum of 74 per cent of the paid-up capital of the bank (automatic up to 49 per cent and approval route beyond 49 per cent to 74 per cent). At all times, at least 26 per cent of the paid-up capital will have to be held by residents. In the case of Foreign Institutional Investors (FIIs) / Foreign Portfolio Investors (FPIs), individual FII / FPI holding is restricted to below 10 per cent of the total paid-up capital, aggregate limit for all FIIs / FPIs / Qualified Foreign Investors (QFIs) cannot exceed 24 per cent of the total paid-up capital, which can be raised to 49 per cent of the total paid-up capital by the bank concerned through a resolution by its Board of Directors followed by a special resolution to that effect by its General Body.

In the case of NRIs, the individual holding is restricted to 5 per cent of the total paid-up capital both on repatriation and non-repatriation basis and aggregate limit cannot exceed 10 per cent of the total paid-up capital both on repatriation and non-repatriation basis. However, Non-Resident Indian (NRI) holding can be allowed upto 24 per cent of the total paid-up capital both on repatriation and non-repatriation basis provided the banking company passes a special resolution to that effect in the General Body.

To be concluded in the next edition



The Attitude...

During the 1965 war, son of Field Marshal Cariappa, Flt. Lt K C Cariappa, an Indian Air Force pilot, was shot down over Pakistan by Army officer Major Zaidi. He was captured and imprisoned as a prisoner of war. On realizing the identity of the wounded soldier at Dargil, Radio Pakistan immediately announced the safe capture of Flt. Lt K.C. Cariappa.

Gen Ayub Khan (Pakistan) himself contacted Field Marshal Cariappa, who was living a retired life at Mercara, his hometown, with information about his son's safety. When Gen. Khan offered to release his son immediately, Field Marshal is reported to have scoffed at the idea and told him to give his son no better treatment than any other prisoner of war. "He is my son no longer." the Old Soldier is reported to have thundered. "He is the child of this country, a soldier fighting for his motherland like a true patriot. My many thanks for your kind gesture, but **I request you to release all or release none.** Give him no special treatment," the Field Marshal is reported to have said.

Napoleon was involved in conversation with a colonel of a Hungarian battalion who had been taken prisoner in Italy. The colonel mentioned he had fought in the army of Maria Theresa. "You must have a few years under your belt!" exclaimed Napoleon. "I'm sure I've lived sixty or seventy years," replied the colonel. "You mean to say," Napoleon continued, "you have not kept track of the years you have lived?"

The colonel promptly replied, "Sir, I always count my money, my shirts, and my horses - but as for my years, I know nobody who wants to steal them, and I shall surely never lose them."

Words Worth Millions

"Leadership is not about titles, positions, or flow charts. It is about one life influencing another."

"Leaders must be close enough to relate to others, but far enough ahead to motivate them."

John C. Maxwell

Career Awareness Program

Chapter Activities

On 23.11.2015 the Mysore Chapter of the ICSI organised a Career Counseling Program at St. Philomena's College, Mysore. Around 50 students from Commerce Department attended the program. CS Manjunath S, Member of the Mysore Chapter explained in detail the course offered by the Institute.

He also highlighted the importance of making the right career choice so as to be successful in life. He then spoke about the role of a Company Secretary and importance of the profession of Company Secretary in the changing economic scenario. Brochures containing brief details of the Company Secretary Course were distributed to the participants.





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e-Tools for the Professionals



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Web Yatra



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“Democracy must be built through open societies that share information. When there is information, there is enlightenment. When there is debate, there are solutions. When there is no sharing of power, no rule of law, no accountability, there is abuse, corruption, subjugation and indignation.” So let’s share information....!!!

Dear Professionals, here is the website <http://indialawjournal.com> which is mainly devoted to express views on various current legal issues. The portal publishes ideas on latest legal issues currently being debated, thereby generating a cross current of ideas for resolving legal matters. It gives erudite response of legal luminaries which shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the ever changing social, economic and technological scenario.

The website educates law professionals and law students about the law profession by taking initiative to contribute in the field of law by submitting Articles and Book reviews. It provides an opportunity to attend various National and International Law Conferences and chance to get a Scholarship. This website will be a stepping stone for choosing an excellent career, by updating ourselves with current legal issues. It opens the door for networking with various legal luminaries and provides chance for Internships to law students in various law firms. So let’s take the best out of it and bring laurels to the law profession by our small contribution.



Labour law reforms: Agenda and Action

With the new government at the center successfully completing its one year of leading our secular nation under the able leadership of Shri Narendra Modi, Hon'ble Prime Minister of India, it has in-fact made daring effort to re-visit the archaic labour laws and wherever needed, it has proposed amendments to the existing laws and at the same time proposed for introducing all together new code connected with human resources management.

In this context, it becomes imperative for us to be informed of these proposals which would very shortly be brought into force once it is cleared in this winter session of the house of members. The NDA government's labour reforms which drew flak from trade unions were part of the agenda for discussion at the 46th Indian Labour Conference (ILC) which was scheduled in July'2015.

Considering the "Make In India" campaign driven by our Prime Minister, it becomes very important for us to be on par with the competitive labour market existing across global world without comprising on ensuring adequate social security safety extended to our workforce.

Some of the important updates are detailed below:

1. Industrial Disputes Act, 1947:

- Industrial Establishment employing **up to 300 workers can retrench or shut shop/establishment** without Government's permission (against current limit of 100) (Government of Rajasthan has already incorporated this provision)
- In case of retrenchment, a worker should raise an objection **within 3 months** (there is no time limit at present).
- **Pay 45 days** average salary as compensation as against **15 days** in case of retrenchment.
- Enacting Industrial Relations Code which is blend of three enactments i.e. Industrial Disputes Act, 1947, Industrial Establishments (Standing Orders) Act, 1946 and Trade Unions Act, 1926.
- A Union which goes for strike will have to mandatorily give notice to his employer and the moment notice is extended for strike, it is implied that the conciliation has begun and during the pendency of the conciliation, no Unions can go on strike. This makes it almost impossible for the Unions to go on strike.

2. Factories Act, 1948:

- The Act will apply to factories **with 40 workers**, if without electricity & **20 workers**, if with electricity (the present condition is 20 & 10 respectively).
- Complaints against an employer about violation of this Act would not receive cognizance by a Court without prior written permission from the State Government.
- A provision for compounding of offences **has been** added.
- Enactment of Small Factories (Facilitation and Regulation of Employment and Conditions of Services) Bill which will exempt Small Factories (**meaning employing less than 40 workers**) from **six important** labour legislations viz. Factories Act, 1948, Industrial Disputes Act, 1947, Industrial Employment (Standing Orders)

Act, 1946, Minimum Wages Act, 1948, Payment of Wages Act, 1936 and State Shops and Commercial Establishments Act.

- Minimum eligibility criteria for entitlement of leave encashment will be amended to **90 days** in place of present **240 days** of work.
- Increase of overtime hours from **50 to 100** in continuous period of three months.
- To provide separate shelters and restrooms if the total workers employed is **75 or more from the present 150**.

3. Contract Labour (R&A) Act, 1970:

- The Act will apply to establishments employing **more than 50 workers** (against 20 current provision).
- The Industries will be able to hire more temporary workers without passing on to them the benefits the contract workers are entitled to.

4. Trade Union Act, 1926:

- Under the new law, forming labour unions will also be difficult as it would require a **membership of 30% of the workforce against the 15% earlier**.
- The lower limit allowed many unions to emerge often increasing inter-union conflicts & multiplicity.
- Recent update is that Union with more than 50% of the total workforce of the Industry will be recognized for collective bargaining. If no Union has more than 50% population, then more than one union may be recognized provided it meets the 50% membership criteria.

5. Inspection curtailed:

The amendments have been made to ensure no inspector can initiate any proceedings against any firm without the prior nod of the State.

6. Unified Wage code for Organized & Unorganized Sector:

- The Central Government is planning to introduce a Unified Wage Code applicable to all States in India which will replace all Central Laws relating to Payment of Wages, Minimum Wage, Equal Remuneration and Payment of Bonus Act.
- Proposed Code will help to lay down a “Statutory National Floor Level Minimum Wage” will be binding on all States to fix Minimum Wages specified for different employments.
- This will help to set basic provisions to regulate laws relating to wage & bonus.

7. Payment of Bonus Act, 1965:

- Increase the salary ceiling limit for coverage purpose from the present basic salary of Rs.10,000/- pm to Rs.20,000/- pm.
- For calculation of bonus, the basic wage to be increased from Rs.3,500/- to Rs.5,000/-

8. Child Labour (Prohibition and Regulation) Act, 1986:

- Complete ban of child labour engagement in all forms of work including family run business.
- As of now, children below the age of 14 years can be engaged in non-hazardous family enterprises or entertainment business.



News Room



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NEWSROOM EXPRESS

- Cabinet approves much awaited Real Estate (Regulation and Development) Bill, 2015
- French stationary major BIC has fully acquired Cello Pens, the largest Indian manufacturer of writing instruments, for Rs 540 crore
- Rajan warns corporates to avoid over-borrowing, says debt is like a 'dynamite'
- Essar Ports Shares to Stop Trading on Exchanges from Dec 24 as the company plans to voluntarily delist its equity scrips.
- Notices issued in 728 Hawala cases in 4 yrs
- 12 Coal India projects get environment clearance

India wants WTO to honour Bali commitments

From December 15 to 18, trade ministers of 162 member countries of the World Trade Organisation (WTO) will meet for four days at Nairobi to find ways to take forward the agenda of trade liberalisation and elimination of trade-distorting measures. Hopes of a meaningful consensus on key issues seem very slim. India's demand that the World Trade Organization (WTO) take steps, on a priority basis, to safeguard the interests of poor farmers as well as the food security programmes in developing countries has received support within the U.S. Several prominent U.S.-based civil society organisations including World Food Program USA, Oxfam America and ActionAid USA have asked Washington to agree to support the developing countries' demands on food security and poor farmer issues.

Indo-Iran trade scam: Top UCO Bank officials in dock

Three top officials of Kolkata-based UCO Bank are alleged to be the main conspirators of the Indo-Iran trade scam, believed to be around Rs 20,000 crore. The Enforcement Directorate (ED), which is investigating the case under the provisions of Foreign Exchange Management Act (FEMA), is working on a tip-off from external sources that officials who worked on Indo-Iran business scheme made provisions for anti-national elements and terror outfits to divert funds to Dubai and Hong Kong in the guise of advance remittance for export.

Most of CCI's penalties are stuck in court

Since its inception in 2009, the Competition Commission of India (CCI) has levied Rs.13,900 crore in penalties on companies for violating rules. The regulator's success rate in recovering the money is, however, alarmingly dismal at Rs.82.1 crore (0.6%), CCI data shows. "The reason for a small recovery of penalty vis-à-vis the total collection is that 97% of the penalty (approximately) has been stayed by the courts/appellate authority," said Smita Jhingran, secretary at the CCI, explaining the gap between the penalty levied and the amount recovered.

SEBI directs two cos to refund investors' money

SEBI ordered two companies - Real Vision International and AM Fund Managers - to refund, along with interest, the money they had illegally raised from investors and also barred the firms and their directors from the capital markets with immediate effect.

India Demands Safeguards from Import Surge At WTO

India on Thursday said that WTO members need to allow developing countries use special safeguard measures (SSM) to raise tariffs in case of an import surge as it sought additional ammunition to deal with possible spikes in dairy, poultry and apple shipments into the country.



User Experience Professionals (UX)

User experience (UX) is an approach to product development that incorporates direct user feedback throughout the development cycle in order to reduce costs and create products and tools that meet user needs and have a high level of usability. User experience work is based on designing products and services with the people who will use the product or service in-mind. This practice of focusing on the users is sometimes more specifically called user-centered design. In UCD work, the focus is on the users through the planning, design and development of a product. There is also an international standard that is the basis for many UX/UCD methodologies. This standard (ISO 13407: Human-centred design process) defines a general process for including human-centered / user-centered activities throughout a development life-cycle, but does not specify exact methods. The User Experience Professional Association (UXPA) defines a UX professional broadly as people who research, design, and evaluate the user experience of products and services. Some specialize in conducting usability tests or other user research while others practice UX as part of other responsibilities in designing products, services, software applications or web sites. The training and professional background of UX professionals is equally broad. Many have qualifications in closely related fields like human-computer interaction (HCI), information design or psychology. Others have used their backgrounds in computer science, project management, journalism, fine arts, library science, or business as part of their journey towards being a UX professional.

Did
You
Know?

Water from Air

An Atmospheric Water Generator (AWG) is a device that extracts water from humid ambient air. The vapour in the air is condensed by cooling the air below its dew point, exposing the air to desiccants, or pressurizing the air. Unlike a dehumidifier, an AWG is designed to render the water potable. AWGs are useful where pure drinking water is difficult or impossible to obtain, because there is almost always a small amount of water in the air that can be extracted. The two primary techniques in use are cooling and desiccants. The extraction of atmospheric water may not be completely free of cost, because significant input of energy is required to drive some AWG processes. Certain traditional AWG methods are completely passive, relying on natural temperature differences, and requiring no external energy source. Research has also developed AWG technologies to produce useful yields of water at a reduced (but non-zero) energy cost.

Issue of Preference Shares by Sec 8 Company

The Companies incorporated under Section 8 of the Companies Act, 2013 with charitable objects are prohibited from declaring dividend to its shareholders. The analysis of definition of the Preference Shares u/s 43 indicates that these shares shall declare fixed dividend every year irrespective of the rate and terms. Hence, on interpretation of both the provisions on constructive notice basis, it would be evident that the Section 8 companies are prohibited from issuing Preference Shares.

Pick of
the
month

Regulatory Updates

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CUSTOMS & FTP

Notifications/Circulars/News

The Central Government has notified Village Tumb, Taluka Umbergaon, District Valsadin State of Gujarat as Inland Container Depots (ICD) for unloading of imported goods and loading of export goods.

No. 103/2015-Customs (N.T.) dated 3 November, 2015

The Central Government has notified certain new products for benefit under the Merchandise Exports from India Scheme.

No. 44/2015-20, dated 29 October, 2015

The Central Government has permitted export of finished leather, Wet Blue and EI Tanned leather through the ICD at Jalandhar and Nagpur.

No. 43/2015-20, dated 28 October, 2015

The Central Government has notified revised All Industry Rates of Duty Drawback effective from 23 November, 2015. The revised rates factor in impact of increase in Central Excise Duty and Service Tax.

No. 110/2015-Customs (N.T.) dated 16 November, 2015

The Central Government has extended the levy of anti-dumping duty on imports of Carbon Black used in rubber applications, falling under Chapter 28 of Customs Tariff Act (CTA), originating in or exported from the Peoples Republic of China, Russia and Thailand, for a period of five years from 18 November, 2015.

No. 54/2015-Customs (ADD) dated 18 November, 2015

Case Law

The Supreme Court held that the assessable value of parts imported under rotatable exchange programme had to be according to the invoice value, and that value of defective parts re-exported earlier to the supplier could not be considered when import was made at the declared list price.

GMR Energy Ltd. v CC (2015-TIOL-259-SC-CUS)

The Supreme Court held that goods of Chinese origin were not comparable with goods imported from Italy, since such goods did not qualify as "identical goods" or "similar goods" as defined in Indian Customs Valuation Rules.

CC v Jai Industries (2015 (325) ELT 3)

The Supreme Court held that the Customs Valuation Rules would be applicable only when value of imported goods was not determinable under section 14(1) of the Customs Act, 1962.

CC v Hindustan Lever Ltd. (2015 (325) ELT 7)

The Supreme Court of India held that consideration paid for technical know-how and use of intellectual property rights for manufacture of goods in India was not includible in the value of imported goods, since it was post-importation activity.

CC v Same Engines India Pvt. Ltd. (2015 (325) ELT 241)

The Tribunal held that oxygen sensors of engines of vehicles were not instruments or apparatus. Therefore, these were classifiable under CTH 9031 8000, instead of CTH 9027 1000.

Denso Haryana Pvt.Ltd. v CC. (2015-TIOL-2316-CESTAT-DEL)

The Tribunal held that supervision charges being a statutory levy, could not be collected in case these were not due. In case they were collected where not due, the amount had to be refunded.

Vikram Ispat v CC.(2015-TIOL-2419-CESTAT-MUM)

The Supreme Court held that value declared for goods exported under Duty Entitlement Pass Book (DEPB) Scheme could not be rejected unless the department had cogent reasons for rejection of declared value.

CC v Crown International (2015 (325) ELT 462)

The Delhi Tribunal held that in case of hire-purchase transactions, the liability to pay import duty was on the importer who had executed bond which obliged him to abide by the conditions of Notification No. 53/97 Customs dated 3 June, 1997, and not on the financier.

CC v C.T. Cotton Yarn Limited(2015 (325) ELT 194)

The High Court held that if the EPCG licence was issued after the date of clearance of goods, but the relevant Committee of DGFT had given its approval before clearance, then such provisional clearance of goods could not be held against the importer to deny the benefit.

Supper Spinning Mills Ltd. v CC (2015-TIOL-2621-HC-MAD-CUS)

The Supreme Court held that conversion of free shipping bills into drawback shipping bills was permissible only when claim for duty drawback was beyond the control of the exporter.

Cargill India Private Limited v CC (2015-TIOL-263-SC-CUS)

The Tribunal held that the importer could not be held liable for import of restricted scrap where the authorised Pre-shipment Inspection Agency did not take the precautions required to be undertaken by them, as per the procedure prescribed by DGFT for examination of imported scrap.

Alang Metal Exim Pvt Ltd. v CC (2015-TIOL-2339-CESTAT -AHM)

The Supreme Court of India held that for inclusion of exports made by the third party towards fulfilment of the Export obligation under EPCG licence, exports had to be in the name of the EPCG licence holder. In the present case, third party export was not under a licence held by the importer, and therefore were not includible for the purpose of determining fulfilment of export obligation.

Parasrampuria Synthetics Ltd. v CC (2015 (325) ELT 221 (SC))

The Tribunal held that in case there was any mis-declaration on account of quantity, description or value of goods to be exported with an intent to claim ineligible benefits under DEPB scheme, Customs officer had the power to confiscate such goods.

Rainbow Silks v CC (2015 (325) ELT 599)

The Karnataka High Court held that in case the delay in filing documents for claiming Duty Drawback claim was genuine, condonation of delay had to be granted.

Acer India Pvt. Ltd. v Union of India (2015 (325) ELT 519)

The Supreme Court held that if the product imported by an EOU was not used as a consumable, but as a raw material in manufacture of finished goods, the concessional rate on clearance of finished goods would not be available, since goods could not be said to have been manufactured from wholly domestically procured material.

Meridian Industries Ltd. vCCE (2015 (325) ELT 417)

The Tribunal held that the re-credit under the DEPB scheme eligible on re-export of goods, could not be denied on the ground that the permission was not sought from Commissioner, where the permission was once granted by the Deputy Commissioner duly, since internal approval from Commissioner was the responsibility of subordinate officers.

Balakrishna Industries Ltd. v CC (2015 (324) ELT 705)

Ministry of Corporate Affairs

Notifications/Circulars/News

Form MGT 7 is revised by substituting the new form. Major changes which has taken place being under the head “certification of compliances”, where the compliances under Companies Act, 2013 is included.

Companies (Management and Administration) Third Amendment Rules, 2015 dated 16th November 2015

In continuation of this Ministry's General Circular 14/2015 dated 28.10.2015, keeping in view requests received from various stakeholders, it has been decided to relax the additional fees payable on e-forms AOC4, AOC (CFS) AOC-4 XBRL and e- Form MGT-7 upto 30.12,2015, wherever additional fee is applicable.

General circular No. 15/ 2015 Dated: 30 /11/2015

CENVAT

Case Law

The Supreme Court held that printing on duty-paid paper as per design and specifications of customers with logo and name of products in colourful form would convert such paper into special wrapping paper, and hence this process was held to amount to manufacture.

CCE v Fitrite Packers (2015 (324) ELT 625)

The Supreme Court held that ‘industrial dust’ arising during the course of manufacture of brass and copper, being identically placed as ‘dross and skimmings’, was not an excisable good.

UOI v Alcobex Metals Ltd (2015 (325) ELT 242)

The Bangalore Tribunal held that the activity of filling duty-paid ammonia from a tanker into cylinders did not amount to manufacture in terms of Chapter Note 9 to Chapter 28 since tankers could not be considered to be bulk packs.

Hyderabad Ammonia & Chemicals (P) Ltd. v CCE (2015 (325) ELT 167)

The Supreme Court held that insurance of goods during transit could not possibly be the sole consideration to decide ownership or point of sale of goods. Hence, based on the fact that sales were ex-works, it was held that cost of insurance to cover risk of loss during transit was not includible in assessable value.

CCCE v Ispat Industries Ltd. (2015 (324) ELT 670)

The Supreme Court held that installation, erection and commissioning of goods at buyer premises, being post-clearance charges, were not includible in the assessable value.

CCE v Official Liquidator for Brimco Plastic Machinery P. Ltd. (2015 (324) ELT 637)

The Mumbai Tribunal held that while adopting the comparable cost of packed soap at job premises, deduction towards the cost of cartons should be allowed to arrive at assessable value of the soap cleared in bulk to job worker for packing individual soaps.

Hindustan Lever Ltd. vCCE (2015 (324) ELT 614)

The Supreme Court held that reversal of credit on inputs used in exempted products amounted to not taking credit.

CCE v Precot Meridian Ltd. (2015 (325) ELT 234)

The Madras High Court held that manufacturer could avail credit of duty paid by job worker even when he was not required to pay it.

CCE v Sundaram Auto Components Ltd. (2015 (325) ELT 104)

The Ahmedabad Tribunal held that credit was admissible on trolleys used for carrying components in the assembly line of Air Conditioners.

Hitachi Life & Solution India Ltd. v CCE&ST (2015 (325) ELT 148)

The Mumbai Tribunal held, based on facts, that refund of CENVAT credit under rule 5 was admissible when the amount was not debited on the date of filing refund claim, but was debited later.

Sandoz Pvt. Ltd. v CCE(2015 (325) ELT 387)

The Supreme Court held that Ready Mix Concrete (RMC) was different from Concrete Mix, and hence, exemption under Notification No.4/1997-C.E., dated 1 March, 1997 available on on-site manufacture of Concrete Mix for use in construction, could not be extended to RMC.

Larsen and Toubro Limited vCCE (2015 (324) ELT 646)

The Uttarakhand High Court held that benefit of area-based exemption which otherwise admissible, could not be denied merely because the notification number was wrongly mentioned in the declaration.

CCCE v Rhydburg Pharmaceuticals Ltd (2015 (324) ELT 457)

The Gujarat High Court held that even in the absence of any statutory provision, interest was payable by the department on delayed grant of permission for transfer of CENVAT credit under Rule 10 of CENVAT credit rules.

Hindustan Coca-Cola Beverages Pvt. Ltd. v UOI (2015 (324) ELT 299)

GST (VAT, Sales Tax and Entry Tax)

Case Laws

The Tamil Nadu High Court held that input tax credit could not be denied to a buyer for failure on the seller's part to disclose the transaction in its return and deposit the tax so collected from the buyer.

ABL Traders vCTO (2015-TIOL-2554-HC-MAD-VAT)

The Rajasthan High Court held that even though batteries and their parts could be used for other purposes, they were primarily used in motor cars, and therefore, they would be classified as parts of motor cars for levy of VAT. In this case, the assessee

were carrying on the business of sale of battery and its parts, and were charging VAT at the rate applicable on 'parts of motor vehicles'. The AO imposed differential tax on sale of battery and its parts, contending that since battery and its parts were being used for diverse purposes and not exclusively for installation/fitting in a motor vehicle, the rate as applicable on motor-parts could not be applied.

[ACTO v SwastikAgencies \[2015-TIOL-2567-HC-RAJ-VAT\]](#)

Service Tax

Notifications/Circulars/News

Abatement equal to abatements available for determination of service tax liability have been granted for Swachh Bharat Cess as well. It has also been clarified that the value of taxable services for calculation of Swachh Bharat Cess would be the value computed in terms of the Valuation Rules.

[No. 23/2015, dated 12 November, 2015](#)

Reverse charge mechanism for collection of service tax also made applicable to collection of Swachh Bharat Cess.

[No. 24/2015, dated 12 November, 2015](#)

Persons providing services of air travel agents, life insurers, purchasing or selling foreign exchange, or a distributor or selling agent of lottery, for which the service tax rules provide for an alternate mechanism to compute service tax liability, can compute and pay Swachh Bharat Cess as Amount payable as service tax $\times 0.5/14$

[No. 25/2015, dated 12 November, 2015](#)

The Board has issued a circular directing payment of 80% of amount of CENVAT credit claimed as refund by service exporters on provisional basis, subject to submission of a certificate from statutory auditor/Chartered Accountant for corporate/non-corporate assesseees. The scheme is applicable only for refund claims filed on or before 31st March, 2015, and does not cover any refund claim that has to be reviewed in terms of any remand by a higher authority.

[No. 187/6/2015-ST, dated 10 November, 2015](#)

Case Laws

The tribunal held that excess baggage charges collected by the Airlines were an integral part of the main service, i.e., service of transportation of passengers by air, and therefore could not be classified as services of transportation of goods by air.

[Kingfisher Airlines Limited, Jet Airways Limited v CST \(2015-TIOL-2329-CESTAT-MUM\)](#)

The Tribunal held that intellectual property rights that were not covered by the Indian laws would not be covered under the taxable service category of "Intellectual Property Right services". Moreover, the phrase 'law for the time being in force' in the definition of 'intellectual property right' implied only such laws as were applicable in India. In the present case, the appellant was paying a royalty for technical know-how, which was not covered under any Indian law, and therefore such royalty was not liable to service tax as an intellectual property right.

[Tata Consultancy Services Limited v CST, Mumbai \(2015-TIOL-2370-CESTAT-MUM\)](#)

The Tribunal held that manpower recruitment services provided to foreign clients, involving identifying, shortlisting and confirming the employment of Indian personnel for working outside India, would qualify as export of services, and would not be taxable in India.

[International Overseas Services v CST, Mumbai \(2015-TIOL-2331-CESTAT-MUM\)](#)

SEBI/FEMA/RBI

Notifications/Circulars/News

Earlier this year, SEBI notified the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("SEBI Listing Regulations) replacing the Listing Agreement. Accordingly, SEBI Listing Regulations also contain the provisions pertaining to the requirement of seeking comments / approval from SEBI on any Scheme of Arrangement involving listed entities proposed to be filed with High Court(s) / Tribunal. Based on the above, SEBI has recently vide circular has stated the procedural aspects and the approval requirements to be undertaken by Listed Entities involved in Scheme of Arrangement.

[CIR/CFD/CMD/16/2015 dated 30th November 2015](#)

In its notification dated November 30, 2015, RBI has revised the framework for policy on external commercial borrowings (ECB). "ECB framework has been incrementally calibrated taking into account the emerging financing needs of the Indian entities and the macroeconomic developments, by bringing more resident entities as eligible borrowers, recognizing more entities as lenders". RBI has taken a "more liberal approach" to attract long-term foreign currency borrowings and ECBs.

The RBI vide a notification dated 16 November 2015 has notified the much-awaited regulations enabling foreign investments under the automatic route in Alternative Investment Funds ("AIF"). Real Estate Investment Trusts ("REIT"), Infrastructure Investment Trusts ("InvIT") and other entities regulated by the Securities Exchange Board of India ("SEBI") or any other authority designated for such purpose (collectively referred to as "Investment Vehicles").

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