



Mysore Chapter

# eNewsletter

89th Edition

June 2011

6

**Emotions &  
Investment**



5

**Shareholders'  
Nominee Director**

3

**JUNE 5**

**WORLD ENVIRONMENT DAY**

For Private Circulation Only

## "WORDS WORTH MILLIONS"



"One individual may die for an idea; but that idea will, after his death, incarnate itself in a thousand lives. That is how the wheel of evolution moves on and the ideas and dreams of one nation are bequeathed to the next"

- Netaji Subhaschandra Bose

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## MESSAGE FROM CHAIRPERSON



Dear Members and Students of CS fraternity,

Exam fever has ended and the students are all happy to be relieved of the books. While waiting for the results, students need to utilize the time available, for skill development activities which are most required for the budding Company Secretaries.

The Competitions Season is back. Students are all geared up to take the Chapter to newer heights by continuing their winning spirit. I request all the members to render their whole hearted support to the participating students and guide them in their preparation. I'm sure when they are backed by the members; the sky would be their limit!!!

I'm happy to announce that one of the Chapter's esteemed Member, CS. N R Parasuraman has taken over as the Director of SDM Institution of Management Development, a premier Management Institution in Mysore. On behalf of all the members and students of the Chapter, I extend hearty Congratulations to him.



I wish all the success for the students who would be representing Mysore in various competitions.

Yours in CS fraternity,

CS. Srilatha T G

## Inside.....

### Articles:

World Environment Day...4

Emotions & Investment ...5

Shareholders' Nominee Director...6

Company Deposit – Part 14: Deposits in the Companies Bill...7

### Columns:

Chapter Activities & Appeal from Mysore Chapter...3

Reader's Response...3

**Book Review:** Public Speaking...4

**Living Room:** String of a bow...8

**Web Yatra:** Go for the law...9

**IT for professionals:** Team Viewer...9

**Spectrum Space...10**

**Legal Roundup ... 11**

**News Room...13**





### Study Circle Meetings

The Chapter organized five Study Circle Meetings on all the Sundays of the month, i.e on 1<sup>st</sup>, 8<sup>th</sup>, 15<sup>th</sup>, 22<sup>nd</sup> and 29<sup>th</sup> of May 2011. Led by Mr. Ajay Madaiah, these study circles provided a forum for the students to discuss various topics of academic interest.

### Career Guidance Program

On 18th May, the Chapter arranged a Career Awareness Program at Government College, Mandya. The Program was conducted by CS. Anshuman A S, and while addressing the students, he gave them a insight to the Company Secretaries

Course and the Career Prospects for CS. Around seventy five students were benefitted by this program.



### Annual General Meeting

The Annual General Meeting of the Chapter was held on 29<sup>th</sup> May 2011. The members of the Mysore Chapter reviewed the Financials for the year ending 31<sup>st</sup> March 2011 and also discussed about the upcoming building project of the Chapter. Suggestions were made by the members regarding various activities planned by the Chapter for the current year.

## Appeal from Mysore Chapter

We are happy to inform you that the Mysore chapter's Building Project is on schedule and is expected to be completed by Nov 2011. We request you to kindly go through the project details at the chapter website [www.icsi.edu/mysore](http://www.icsi.edu/mysore) and provide us your valuable suggestions for the project.

Your contribution for the project will not only augment the resources but will assure us that colleagues from all over the country are with us. Further, we will be very much obliged if you can use your good offices for obtaining donations from Corporates, philanthropists etc.

For Mysore Chapter of ICSI

**CS. ANSHUMAN A.S.**  
Chairman-Building Committee



## Readers' Response

Congrats and all the best for the new building to take full shape soon.

I am indeed proud to note that the Mysore chapter is bringing out 88th edition of e-Newsletter. Every time, when a newsletter comes, especially from Mysore chapter, I used to go through the same in entirety as it carries with it wealth of information in all spheres of activities.

The articles, write ups, news and so on are really meant to enrich everyone's knowledge and my special appreciation for all those involved in this exercise under your Chairpersonship. Once again I wish all of you all the very best and my special word of appreciation for everyone who is involved in this exercise directly and indirectly.



- B Ravi, Chairman, SIRC of ICSI

# JUNE 5<sup>TH</sup> : WORLD ENVIRONMENT DAY

This is a day that stimulates awareness of the environment and enhances political attention and public action. It was the day that United Nations Conference on the Human Environment began in 1972. The first World Environment Day was in the year 1973. World Environment Day is hosted every year with a theme and is commemorated with an international exposition in the week of 5 June.

World Environment Day is similar to Earth Day.

**Theme for 2011: Forests-Nature at Your Service:** Forests cover one third of the earth's land mass, performing vital functions and services around the world which make our planet alive with possibilities. In fact, 1.6 billion people



depend on forests for their livelihoods. They play a key role in our battle against climate change, releasing oxygen into the atmosphere while storing carbon dioxide. Thousands of activities were organized worldwide, with beach clean-ups, concerts, exhibits, film festivals, community events and much more. This year's global host is India - a country of wide biodiversity.



India, the first time global host of World Environment Day for the year 2011, marked the occasion with a week of colourful events across the country from Bangalore to New Delhi, lead by the Minister for

Environment and Forests in India, Jairam Ramesh and UN Under-Secretary General and UNEP Executive Director, Achim Steiner. For more details visit: <http://www.unep.org/wed/news/wrapup.asp>

## PUBLIC SPEAKING

By Dale Carnegie

### Book Review

CS Sanjeev Rao ACS, B.Com, LLB  
Bangalore



“Public Speaking and Influencing Men In Business” is the book for the man who daydreams about making an effective speech and who has nightmares when he has to say a few words before a gathering of business associates. It shows how to banish the nightmare and make the daydream an every-day reality. Dale Carnegie shows you how to capture an audience, how to make your meaning clear, how to close a talk and how to get action. There is a generous amount of practical advice, but the fundamental laws of human relationships are always related to the actual problem. And the same technique that puts you over with an audience will help your business and professional advancement.



Does this sound like too much for one book to accomplish? The answer is many institutions use Public Speaking and Influencing Men in Business. Dale Carnegie has helped more than fifteen thousand men develop their self-confidence and bring out the best that was in them.



## EMOTIONS AND INVESTMENT

changed only once in a three months after the quarterly results of the companies are declared. The fact that they change every second during the trading hours does give me a strong reason to believe that these prices are driven more by human emotions than anything else.

All that is traded on the exchanges is FEAR and GREED. When a person sells a particular stock he is selling out of Fear and the person buying that stock is buying out of Greed. That is the bottom line. The art of investing therefore should involve the techniques to trade these emotions rather than understanding the financial statements, earnings per share, book value or price to earning ratios.

When investors trade in emotions rather than stocks many a times they lose on opportunities that would enable them to generate tremendous profits. More often than not, when an investor detaches him/herself from emotions and invests intelligently they stand to make profits (even in a down trending market). It only requires one to keep their emotions aside, invest intelligently and ride the complete trend without fear, anxiety, joy or greed and with a lot of patience.

Emotions are described as an affective state of consciousness in which joy, sorrow, fear, hate, or the like, are experienced. *The presence of emotion is the very essence of living.* Parents rejoice the birth of their new born, sadness that dawn upon the demise of a loved one, sorrow of estranged relationship, insatiable desire for wealth, anxiety of new beginnings, turning green with envy over others achievements so on are some of the emotions every individual experiences throughout their lifetime.

It is the very nature of an individual to respond to a particular situation by venting their emotions. A good example to substantiate this would be the world cup triumph after more than two decades. The entire nation erupted in wild celebrations as MS Dhoni hit the winning six runs to give India their biggest cricketing moment and crown themselves as the ODI world champions, in addition to being the number one Test team. Jubilant Indians poured on streets to express their delight over this achievement. *Individuals are heavily governed by their emotions.*

*Shadows of emotions also cast over the equity markets.* As much as it's known as the Equity markets runs on emotions rather than the actual performances of companies. Investors' investment decisions are mostly based on the emotions of fear and greed. Investors indulge in trading of emotions rather than trading in stocks. The volatility of markets are caused by the sentiments that run in the market, the reason for drastic fluctuation in the stock prices is seldom related to the performance of stocks based on their fundamentals. *The demand and supply of stocks depends upon the two emotions that investors undergo whilst trading i.e. FEAR & GREED.*

If the prices of stock in the Equity Markets are based on P/E ratios, EPS, Book Value and other prominent ratios discussed day in and day out on business channels and business publications, the price of stocks would have

***The presence of emotion is the very essence of living. Equity markets runs on emotions rather than the actual performances of companies.***

***All that is traded on the exchanges is FEAR and GREED. Investors shall keep their emotions aside, invest intelligently and ride the complete trend.***



**Sajjad A Qadir**

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The markets are dynamic in nature it may tend to act contrary to ones expectations. It may shock or immensely please investors based on their investments, in any case one must keep a firm control over their emotions. *An investor should never get emotional with their investments. An Investor's gains can only grow to the extent his/her mind has matured.*





## SHAREHOLDERS' NOMINEE DIRECTOR!

Company being a separate legal entity, distinct and independent from its members; requires the natural persons to manage the affairs of the Company. Generally the Company is managed by the Board of Directors of the Company and nominee Director is a part of it. The Companies Act 1956 does not define the term "nominee Director". But the concept has come into vogue because of the loan facilities provided by the financial institutions to safeguard the interest of them. As per the listing agreement, the nominee Director is treated as an independent Director of the Company.

Where holding Company nominates any person as a Director in its subsidiary Company, whether the nominated Director can be treated as a Nominee Director? Yes it can be so, since such Director is nominated by the holding Company to safeguard its interest in the subsidiary Company. Similar is the position where joint venture companies reserve right to nominate a Director on the Board through Shareholders' Agreement. Thus, when we will file form 32 for appointment of a Director nominated by a shareholder in a Board Meeting, we may show him as a nominee Director instead of additional Director. In such case no need to regularize the appointment in the next shareholders' meeting and file another form 32.

The law is not settled when dealing with conflicts between the Director's duty to the organization and the interest of the member nominating that Director. A related issue is the fact that nominee Directors are often in receipt of information in their capacity as a Director, which in the best commercial interest of their nominator should be disclosed to their nominator, which may be subject to the duty of confidentiality owed as a Director. Nominee Directors owe their duties to the organization to which they are appointed and can only act according to duties owed to their nominators if this does not cause detriment to the organization, for which they are Directors.

Sec. 5 of the Companies Act, 1956 has excluded nominee Directors from the rigorous of the prosecution and penal liability. However, this exoneration is limited to the

offences committed by a Company under the Company Act. Said Section 5 brings into purview of the definition "officer in default" only those Directors and officers of the Company who are in charge of the management of a Company and not the nominee Directors. However a nominee Director could be proceeded against and they cannot claim wholesale exoneration from the proceeding merely by virtue of their being nominee Directors unless there is an express provision to that effect under the statute for contravention of which the Company and its Directors are proceeded against. Further, by adding a proviso to the Section 141(1) of the Negotiable Instruments Act, 1881 through Negotiable Instruments (Amendment & Miscellaneous Provisions) Act, 2002 nominee Directors have been exempted from the provisions of Section 141 concerning prosecution for dishonour of cheques.

The State formulates various laws and regulations keeping in mind its welfare state role. Thus, a balance has been maintained between social responsibilities of the company on the one hand and conferment of absolute autonomy and freedom from interference upon the Company on the other. The nominee Directors are required to maintain this

***The Companies Act 1956 does not define the term "nominee Director". If a shareholder has got right to nominate a Director on the Board, such Director can be treated as Nominee Director. Normally holding companies, Joint venture companies reserve such right.***

***Such nomination does not require regularization in the Shareholders' Meeting.***



**CS. Ashok Kumar Sahoo**

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balance because the whole purpose of their appointment is superfluous if they do not contribute in sound corporate governance. The interest of the shareholders and the institutions appointing them is also adequately safeguarded in their active participation and presence on the Board of Directors. Thus one can safely conclude that the nominee Directors play an important role in bringing sound corporate governance and for meeting the various social responsibilities of a Company.



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# DEPOSITS IN THE COMPANIES BILL

The Companies Bill 2009 inter-alia, contained many important provisions pertaining to company deposit under clause No. 66, 67 and 68 of the said Bill. These are summarized as under:

1. Company shall now accept deposit only from its members. No deposit shall be accepted from public.

2. The definition of deposit is now specific. The deposit accepted from shareholders will only be a Deposit. Other unsecured loans, borrowing, deposit of money will not be a deposit [Clause 66(2)].

3. The concept of insurance and credit rating of fixed deposit has been introduced.

4. The deposit shall be secured against the charge of Fixed Assets of the company.

5. All deposits, accepted by a company before the commencement of the new Act, and interest thereon which were due for payment but remained unpaid on such commencement or becomes due at any time thereafter, the company shall file within a period of three months from such commencement or from the date on which such payments, are due, with the Registrar a statement of all the deposits accepted by the company and sums unpaid on such amount with the interest payable thereon along with the arrangements made for such repayment.

**6. Deposits accepted by the company before the commencement of this Act shall be repaid on maturity or within one year from the date of commencement of the new Act whichever is earlier.** In case of any hardship on the part of company on such pre-payment, extension of time for pre-payment may be granted by the Tribunal, in deserving cases, on an application made to it.

7. Where a company fails to repay the deposit on the due date or with in one year from the commencement of the Act, which ever is earlier, or with in extended period, if any, the company shall be punishable with minimum fine of one crore rupees which may extend to ten crore rupees and every officer of the company who is in default shall be punishable with imprisonment which may extend to seven years or with minimum fine of twenty-five lakh rupees which may extend to two crore rupees, or with both.

8. If company fails to repay deposit and it is proved that the deposit was accepted with the intent to defraud the depositors, every officer who was responsible for acceptance of deposits shall be **personally** responsible,

without any limitation of liability for all losses or damages incurred by the depositors. (Clause 68)

9. Any suit or other action may be taken by any person, group of persons or any association of persons who had incurred any loss as a result of the failure of the company to repay the deposit.

### Procedure of inviting / accepting deposit as contained in the Bill:

(a) A circular containing the salient features of the deposit scheme and information relating to company's financials, its credit rating, figure of existing fixed deposits and number of depositors, security offered for securing the proposed Deposit etc. shall be circulated among members of the company. A copy of this circular shall be filed with RoC within 30 days from the date of its circulation among members.

(b) Terms and condition of fixed deposit scheme shall be discussed in the shareholders meeting and only if same is approved, through a resolution passed in that meeting, the Company may proceed further. Else the matter shall end there it self.

(c) Company shall Deposit not less than 15% of the amount of its deposits maturing during the financial year and financial year next following, in a Deposit Repayment Reserve Account.

(d) Deposit insurance is mandatory.

(e) Company shall certify that company has not defaulted in the repayment of deposits accepted earlier.

(f) Company shall provide security for the repayment of deposit and create charge on the company's assets.

However, many procedural matters are still to be prescribed by the Central Government and only then the entire procedure / picture will emerge. These are as under:

- full rule and procedure with respect to acceptance of deposits from members.
- form and manner in which particulars are to be contained in circular to members of company for inviting deposits.
- the manner and limit for providing insurance against deposits.
- the manner in which the charge has to be created,

**Cause for Concern:** The Bill provides that all the existing deposits of the company as on the

commencement of Act shall be repaid on their maturity or with in one year from the date of commencement of Act whichever is earlier. Now let us assume, that Act commences on 14<sup>th</sup> September 2011. In this case deposit accepted for 3 years, say on 2<sup>nd</sup> August 2011, shall have to be compulsorily repaid with in 14<sup>th</sup> September 2012, against its actual maturity date falling on 1<sup>st</sup> August, 2014. Such situation shall create a financial havoc and turmoil in the companies because of following reasons:

1. Because of unplanned high outflow of funds, Companies might run short of funds.
2. Since companies can accept deposits only from its members, inflow of funds might substantially reduce.
3. This mismatch of inflow and out flow of fund in most of the companies in India might face FD Repayment crisis similar to one witnessed during the year 1996 to 1998.

Way out is to approach National Company Law Tribunal for granting extension of time. However the extension of time by the Tribunal shall be an exception rather than a rule. In fact, under these circumstances, there shall be a spate of applications by Companies to Tribunal for extension of time. Obviously, the permission shall be accorded only to some "deserving" cases and not en masse. Other Companies shall be compelled to default and face the consequences which could be detrimental to the interest of FD Market in India.

Moreover, the penalty prescribed under the Companies Bill for not pre-paying the deposits are quite stringent and arbitrary i.e. penalty on Company of an amount between Rs. 1 crore and 10 crore, imprisonment to officers of the company in default up to 7 years and fine of an amount from Rs. 25 lac to 2 crore that too with out any fault on the part of Companies.

**THEREFORE**, it is desirable that companies be allowed to repay their deposits as and when they mature. Any

attempt to pressurize the companies to pre-pay the deposits shall only be counter productive.

### Special provisions applicable on acceptance of loan or deposit by un-incorporated bodies

It may sound quite strange that even an individual, a proprietary concern, an HUF, a partnership firm or a body of individuals, are regulated by Reserve Bank of India Act, 1934, in so far as their borrowing is concerned. With effect from 1<sup>st</sup> April, 1997, **Section 45 S , under Chapter III C of Reserve Bank of India Act 1934**, prohibits every individual, proprietary concern ,HUF, partnership firm and body of individuals, engaged in the business , **wholly or partly**, of hire purchase finance, leasing, money lending, or other form of financing, or in the investment in shares and security, from accepting any loan / deposit. Thus these persons can not accept any loan or deposit from public.

However, an individual can receive any money by way of loan from any of his relatives and a firm may receive money as a loan from the relative(s) of any of the partners.

**Penalty for contravention: Section 58B (5A) of the RBI Act, 1934** prescribes stringent penalty of imprisonment for a term up to 2 years and also the fine up to twice the amount of deposit accepted.

It is interesting to note that prior to 1st April, 1997 all the individuals and proprietary concerns, irrespective of the nature of business they were in, were restrained from accepting loan or deposit from more than 25 persons at a time. Moreover, in case of partnership Firms the total number of depositor / lenders at a time was restricted to 25 per partner or 250 depositor/ lender, whichever was low.

[Concluded](#)

## LIVING ROOM

### "WHY IS THE STRING ON YOUR BOW NOT TIGHT?"

They say that Saint John the Apostle liked to play with his pet sparrow from time to time. One day a hunter came to visit him and was surprised to see such a famous man playing. He surely could and should be making better use of his time. So he asked him, "Why do you waste your time playing? Why devote so much attention to something as useless as a sparrow?" Saint John looked at him in surprise and asked: "Why is the string on your bow not tight?" "Oh, you can't keep it tight all the time," the hunter explained, "otherwise it loses its tension and becomes useless for shooting arrows."

So Saint John told him in return: "My friend, just as you always release the tension on your bowstring, so you must release the tension inside of you and relax. If I don't relax and just play, I have no strength for any great undertaking. I don't even have the strength to do what I have to and what is necessary."







## WEB YATRA

*Pavan Kumar MS,  
Student of CS Professional Program, Mysore*

Globalization has conveyed original encounters and opportunities to the legal fraternity, legal profession and legal professionals. **www.goforthelaw.com** website offers a platform for legal education and consciousness among legal community as well as public in general.

This site helps legal fraternity to improve their analytical reasoning and communication skills keeping in view of the International developments. Registered members will have access to publish articles, moot court problems and solutions, and also comment on articles.

Moot Court forum helps students in understanding the concept of Moot Court, preparation for moot court, pattern of submission of papers at moot court etc. Information and Quick Access provides data base on Constitution and all Judgments.

The Research and Development wing helps the students with their requests and queries answered by the Professors, Faculty of Law, Advocates as well as by the Law Students.



Site provides link to the following:

- CAT (Central Administrative Tribunal)
- Law Commission of India
- Controller and general of Patents, Designs and Trademarks
- Supreme Court Judgments from 1950
- Legislations (Acts) from 1836
- Law Commission Reports from 1999

Site also provides free online courses offered by WIPO (World Intellectual Property Organisation) like:

- General Course on Intellectual Property
- General Primers - Introduction to the Patent Cooperation Treaty
- Copyright and Related Rights
- Electronic Commerce and Intellectual Property

Let us enhance our analytical, reasoning and communication skills to meet the global requirement. Hope this site serves as best legal guru for all professionals.



## IT FOR PROFESSIONALS

*Amitkumar Hegde, B.Com, MCA,  
Bangalore*



TeamViewer is very useful if you have to access your computer remotely or if you want to share your screen with others. It is an excellent file sharing and business collaboration application. Following are the salient features of Team Viewer.

- ✓ Share demos/presentations over Internet and collaborate with business associates;
- ✓ Integrated secure file transfer;
- ✓ Online status display - so that team mates can find out who is online and who is not;
- ✓ Team viewer supports browser based support so that you can participate from the browser; and
- ✓ Teamviewer automatically optimizes display based on the connection speed.



When you log in to Team Viewer, you will be given an access code and a password. Sharing those allows your computer to be controlled for remote support, presentation, file transfer, or VPN. TeamViewer also has a Web-based version, for remote connecting to home from public computer with internet connection. Even the installation process is simple and strait forward. Users can toggle admin rights, can opt out of running at startup, and can opt into installing the TeamViewer VPN driver for more secure screen sharing.



# Registration of Designs

**Shwetha Ravishankar,**  
B.A., LL.B., M.A.  
Practicing Advocate, Bangalore



The word “**Designs**” refers to creative activity which results in the ornamental appearance of a product. Designs have an element of intellectual property.

An article is distinguished not only by its utility but also its usual appeal which too usually play an important role in shaping the buyers preference for the article. Therefore, the design of an article and even design of its packaging is important from the commercial point of view.

The Designs Act, 2000 after repealing the old Designs Act, 1911 aims at protecting the Designs which serve the purpose of visual appeal. A Design to be registered under the Designs Act, 2000 must be of some shape, configuration, pattern or ornamentation or composition of lines or colours applied to such article in any form by any Industrial process.

### Conditions for registration of a Design:

- Design should be is new or original and not previously published in India.
- Design must be applied to a particular article.
- Design must have visual appeal

### Who can Register?

Any person who claims to be the proprietor of new or original design which is not previously published in India can apply for registration of the design.

### Procedure for registration of a Design

- Submission of application
- Acceptance/objections/ refusal
- Removal of objections/ appeal to Central Government
- Decision of Central Government
- Registration of design

### Rights granted when a design is registered:

- The right to exclusive use of the design for 10 years from the date of registration. The said period can be extended for 5 years on application and fee.
- Right to protect the design from piracy. That is a person complaining of infringement of his design can certainly file a suit for damages, passing off and rendition of accounts.

**Jurisdiction of the Court:** A suit can be instituted in a District Court or a High Court depending upon the quantum of damages claimed.



## Pick of the Month

**Whether a salary advance given to a relative of director without obtaining approval of Central Government, contravenes the provisions of Sec. 295?**

*A salary advance made to an employee of a private company who happens to be the wife of the managing director does not per se amount to a loan so as to violate Sec 295. The burden of proving that the transaction is a sham lies on the prosecution.*

*- M.R. Electronic Components Ltd. V. Asst Registrar of Cos. (1987) 61 Com Cases 8(Mad)*

## Did you Know ?



## Filing of B/s and P&L A/c in XBRL Format

Ministry of Corporate Affairs' vide General Circular No: 37/2011 dated 07.06.2011 has mandated certain categories of companies to file their Balance Sheet and Profit and Loss account for the year 2010-11 onwards using XBRL format.

As per the above mentioned circular (i) all listed companies and their Indian subsidiaries, (ii) all companies having a paid up capital of Rs 5 Crore or more, and (iii) all companies having a turnover of Rs. 100 Crore or above are mandated for compulsory XBRL filing.

However banking companies, insurance companies, power companies and non-banking finance companies are exempted from XBRL filing till further orders.

# LEGAL ROUNDUP

## CENVAT

### Notifications/Circulars

New Legal Metrology (Packaged Commodities) Rules, 2011 have been notified with effect from 1.04.2011.

(Notification GSR No. 202(E) dt. 7.03.2011)

The CBEC has issued clarification on various issues relating to CENVAT Credit Rules, 2004 which includes:

(a) Credit is not admissible on goods and services used primarily for personal use or consumption of employees and on any inputs or input services used exclusively in trading.

(b) Credit is admissible on goods such as furniture and stationary used in an office within the factory etc.

(Circular No. 943/04/2011-CX dt. 29/04/2011)

### Case Laws

The process of setting up of refrigeration/air conditioning system at site with the duty paid components and parts does not result in the manufacture of goods and hence is not excisable.

CCE Vs. M/s. Globus Stores (P) Ltd. & Anr (2011-TIOL-50-SC-CX)

The process of mere cutting of paper backed aluminum foil and embossing thereon not resulting into new product, would not amount to manufacture under excise law.

CCE Vs. GTC Industries Ltd. (2011 (266) ELT 160)

The value of non-essential bought out items cleared from the head office of the company is not includible in the value of manufactured goods cleared from the factory.

T & I Ltd. Vs. CCE (2011 (266) ELT 414)

In absence of any other evidence, the mere fact that the buyer-dealer has sold the goods at a much higher price cannot be a ground to hold the parties as related persons.

Hello Mineral Water (P) Ltd. Vs. CCE (2011 (266) ELT 355)

Credit is eligible on inputs used in the trial run production, even if cost of such inputs has been capitalized in books of accounts from Income Tax perspective.

Shree Rama Multitech Ltd. Vs. CCE (2011 (266) ELT 81)

When the demand on manufactured goods is raised on the assessee, the CENVAT credit on inputs cannot be denied merely for the reason that assessee was not registered during the

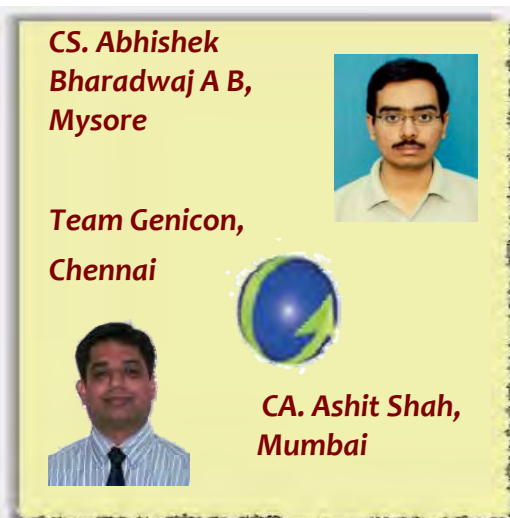
period when such goods were manufactured and cleared from factory.

Well Known Polyesters Ltd. Vs. CCE (2011 (267) ELT 221)

Provisions of unjust enrichment would not be applicable when the price of the final product remained the same irrespective of payment of duty for which refund is claimed.

CCE Vs. Alliance Udyog Limited (2011 (184) ECR 318)

Penalty provision being penal in nature



cannot be made effective retrospectively.

CCE Vs. Bharat Electronics Ltd. (2011 (267) ELT 172)

### Customs Notifications

The CG has given the following instructions:

- Assessments under the Project Import should be completed within a period of 60 days from the date of submission of required documents by the importer.
- specified period is applicable only if all the required documents are submitted
- penal provisions may be invoked for delay in submission of reconciliation statements

(Circular No. 22/2011-dt. 04/05/2011)

The CG has issued instructions in relation to manual filing/processing of bills of entry and shipping bills in order to prevent frauds and duty evasion associated with them.

(F. No.401/81/2011 dt. 4/5/2011)

### Case Laws

The import duty is levied on the goods cleared as waste or refuse for home

consumption that were obtained from the in bond manufacturing operations performed in warehouse.

Cochin Shipyard Ltd. Vs CC (2011 (267) ELT 387)

The refund of customs duty paid in excess inadvertently cannot be denied merely on the ground that the shortage of goods was not recorded before the issue of out of charge control from customs.

Dalmia Cement (Bharat) Ltd. Vs CC (2011 (267) ELT 234)

Substantive benefits cannot be denied merely on account of procedural lapses.

Leighton Contractors (India) Pvt. Ltd. Vs CC (2011 (267) ELT 422)

The CA's certificate submitted by an importer for claiming refund of 4% ADC is sufficient to substantiate the bar of unjust enrichment.

STP Ltd. Vs CC (2011 (267) ELT 110)

Imported goods cannot be confiscated merely on account of delay in filing of bill of entry.

Bhavane Pte Ltd. Vs CC (2011- TIOL - 632)

## Service Tax

### Notifications/ Circulars

CBEC has clarified the following issues:

- Input services received by providers of Works Contract Services are classifiable under the taxable categories covering those services
- The exemption of service tax towards construction of dams, tunnels, roads and bridges does not extend to the subcontractors engaged by the primary Works Contract Service provider.

ST Circ.No.38/07/2011 dt. 06/05/2011)

Condition "used outside India" envisaged in Rule 3(2)(a) of the Export of Service Rules 2005 would be satisfied only on satisfaction of the following two events:

- The service recipient is located outside India and
- Effective use and enjoyment of the service accrues outside India for the purpose of availment of export benefits.

ST Circ.No.41/10/2011 -TRU dt. 13/05/2011

The CBEC has issued a circular clarifying various aspects pertaining to claims for refund of service tax from Special Economic Zones.

ST Circ.No.42/11/2011 dt. 18/05/2011)



## Case Laws

The Supreme Court has upheld the constitutional validity of service tax levy on renting of immovable property under Section 65(90-A).

*Utkal Builders Ltd Vs. Union of India (2011 (22) STR 257)*

Service paid by a service recipient on input services is available as CENVAT credit and the department having jurisdiction over the service recipient cannot question the taxability of such services.

*Ultratech Cement Ltd. Vs. CCE (2011 (22) STR 289)*

A claim for refund of input service tax credits cannot be denied on account of non-registration of the service recipient.

*CCE Vs. E-Care India Pvt. Ltd. (2011-TIOL-590-CESTAT)*

Once the tax liability has been discharged by Goods Transport Agency, the service recipient is not liable to discharge the same liability.

*Deccan Chromates Ltd. Vs. CCE (2011-TIOL-597-CESTAT-Bang)*

No service tax is leviable on laying of pipelines as the water supplied by these pipelines is not for commercial purpose.

*Larsen & Toubro Ltd. Vs. CST (2011 (22) STR 459)*

An assessee is not liable for payment of service tax on services received from outside India prior to the enactment of Section 66A on 18/04/2006.

*Kansal Hosiery Exports Vs. CCE (2011 (22) STR 416)*

Service tax paid on renting of property, architect and interior decorator service, authorized service station are all eligible input services.

*Bharat Fritz Werner Ltd Vs. CCE, (2011 (22) STR 429)*

## Foreign Trade Policy

### Notifications/ Circulars

CG has notified Municipal Corporation of Delhi (MCD), as an agency to carry out pre-shipment inspection of meat products for export.

*(Notification No. 48 dt. 18/05/2011)*

CG has amended the FTP to provide that samples of freely exportable items can be exported as part of their passenger baggage without any authorization.

*(No. 45 (Re-2010)/2009-2014 dt. 03/05/2011)*

Import Licensing Note No. 1 and 2 of Chapter 87 of ITC (HS) which provides for specific requirements of imported motor vehicles, will apply to motor vehicles only and will not apply products like Reach Stackers/Fork Lifts etc.

*(Circular No. 30 dt. 27/04/2011)*

## Case Laws

Incise imports are held to be illegal; the quantum of redemption fine and penalty fixed by fact finding authority cannot be interfered.

*Dhillon Enterprises Vs CC (2011-TIOL-260)*

Duty drawback cannot be claimed when goods are exported by DTA unit which were manufactured by EOU as the benefit of duty drawback is available only when the inputs of finished goods have suffered the duty burden.

*CC Vs Leela Scottish Lace Limited (2011-TIOL-276)*

Exemption from payment of duty is available on imported capital goods removed from a unit based in Domestic Tariff Area to a unit set up under Electronic Hardware Technology Park Scheme (EHTP).

*CCE Vs Solectron Centum electronics Limited (2011 (267) ELT 160)*

Commissioner of Customs has the powers and not the Development Commissioner to appoint Custodian of SEZ.

*Diamond & Gem Development Corporation Vs Union of India (2011-TIOL-256)*

Rebate of duty paid on input material procured indigenously will not be available incase duty free raw material imported under advance license is also used for manufacture of export product.

*International Tractors Limited (2011 (267) ELT 429)*

## Antidumping Duty Notifications/ Circulars

CG has extended the levy of anti dumping duty on Viscose Filament Yarn falling under tariff item 5403 of the Customs Tariff Act originating in or exported from China PR till 24/02/2012.

*(No. 38/2011 dt. 09/05/2011)*

## Sales Tax

### Case Laws

Stainless steel wires are not declared goods under Section 14 of the CST Act.

*Bansal Wire Industries Limited Vs. State of UP [(2011) VIL 14 (SC)]*

Where the tax became payable under the Act but not paid by the due date, interest would be payable from the date when the tax was due and not from the date of the assessment order fixing the correct rate of tax.

*PepsiCo India Holdings Ltd. Vs. Commissioner of Trade Tax, UP [(2011) NTN (Vol 45) 275 (SC)]*

Sale of printed labels and hang tags to exporters of readymade garments qualify as penultimate sale - eligible for export benefit under Sec 5(3) of the CST Act.

*Access International Vs. Tamilnadu Sales Tax Appellate Tribunal [(2011) 40 VST 357 (Mad)]*

No penalty shall be levied where movement form is not accompanied with the goods due to some bona-fide reasons provided the same is filed along with the reply to show cause notice.

*ACTO, Flying Squad Vs. Prakash Punj [(2011) 40 VST 396 (Raj)]*

## FEMA & Others

### FDI - Liberalization:

**Guarantee to step down subsidiary of JV / WOS:** The Indian promoter entity may extend corporate guarantee on behalf of the first generation step down operating company under the Automatic Route.

In the case of second generation step down operating subsidiaries, the Indian Company can provide guarantee provided it holds 51 per cent or more stakes in such Companies and should obtain approval from RBI.

**Only 50% of the amount of the performance guarantees** may be reckoned for the purpose of computing financial commitment to its JV/WOS overseas, within the 400% of the net worth of the Indian Company as on the date of the last audited Balance Sheet.

Indian promoters who have set up WOS abroad or have at least 51 per cent stake in an overseas JV, may write off capital (equity / preference shares) or other receivables of the JV /WOS subject to certain terms and conditions.

*AP DIR Circular No.69 dt. May 27, 2011*

**Criteria to be public financial institution under the Companies Act:**

- A Company/ Corporation shall be established under a Special Act or Central Act.
- Main business should be industrial/ infrastructural financing;
- The Company must be in existence for at least 3 years and more than 50% of their income must be from Industrial / financing activities;
- The net worth shall be above Rs. 1000 crores;
- The Company is registered as Infrastructure Finance Company with RBI or as an Housing finance Company with National Housing Bank; and
- In case of CPSU's/ SPSU's, no restrictions will apply with regard to financing specific sector and net worth.

*MCA General Circular 34/2011 dt. 02-06-2011*



## WTO duty concession finds support

India, which is on the verge of signing a free trade agreement with the European Union, may consider lowering duties on select industrial manufactures at the upcoming World Trade Organisation (WTO) talks as a deal sweetener.

Trade officials say that since India has either already offered or is in the process of negotiating duty cuts in deals with the European Union, Japan, Asean, Australia, the Common Market for East and Southern Africa, New Zealand, Mercosur (Latin American Common market) and Israel, it will make sense to link the cuts in industrial tariffs to matching offers of duty cuts in the service sector and greater concessions relating to the movement of highly skilled labour.

India could focus on duty cuts for high-value textiles, engineering products, auto components, electronics and electrical products, chemicals and plastics. Officials say negotiations can take off from the West's offer of zero duty for zero duty and work out low duty offers in each sector. "These would be sectoral negotiations and not some kind of an across-the-board tariff cuts."

## Trade protectionism on the rise - WTO

Trading nations are succumbing to protectionism in the wake of the global financial crisis, limiting exports of food and raw materials and installing new import barriers, said the World Trade Organisation.

Commodities export restrictions on items ranging from Indian cotton and Ukrainian wheat to Chinese minerals are "not without hazards", the WTO said in a report on protectionist behaviour of more than 180 nations. The rising protectionist trend, studied by the reports' authors between October 2010 and April 2011, contradicts promises made by the world's leading and industrialised economies to resist protectionism and its negative fallout.

## OPEC outcome to hurt Asian economies

OPEC's failure to agree to raise output will hurt Asian economies which already spend heavily on fuel subsidies. Since India is the fourth-largest oil consuming country and a net importing country, India is deeply concerned at this highly negative development.

## Govt hints at flexibility in WTO talks in line with FTAs

An indication was given that India may show some flexibility on a demand from the industrialised nations that the developing world should agree for zero or close-to-zero duties on their imports of specific goods. So far, India has opposed any mandatory provision for enforcing duty elimination, arguing in different WTO for that such a course should, at best, be voluntary.

## Pakistan to grant India MFN

Bilateral trade between India and Pakistan has potential to increase three-fold within the next three years with the grant of Most-Favored Nation (MFN) status to India even as Pakistani industry is hopeful of an Early Harvest Scheme (EHS) with India. According to WTO rules, it is the fundamental right of a country to get MFN status from another member country. Grant of MFN status by Pakistan would expand number of products to be traded in a positive list of commodities that are exported by India.

## India, Asean to push services, investment deal

Senior economic officials from the Association of South-East Asian Nations (Asean) and India would be meeting on June 24-25 in an effort to push forward the much-awaited services and investment agreement, stuck for many years over the issue of temporary movement of people. An agreement on goods was signed in 2009 and implemented in January 2010. Once the services and investment deal is signed, the pact would be referred as the India-Asean Comprehensive Economic Partnership Agreement (CEPA).

## WTO will strengthen EU claims on China export curbs: EU

An upcoming ruling by the World Trade Organization on whether China broke global rules by limiting raw material exports will bolster European plans to challenge other curbs by Beijing, the EU's trade chief said on Tuesday. China recently imposed new export restrictions on rare earth minerals - crucial for the production of mobile phones, fiber optics and other high-tech goods. China controls 97 percent of world production of the minerals.