

**Exchange  
Traded Funds**

***Rights  
on  
Images***



# eMagazine

from

**The Institute of Company Secretaries of India, Mysore Chapter**



**CS. S Badrinarayanan**  
Chairman,  
Mysore Chapter

I feel this as my proud privilege to communicate with you all after having assumed the esteemed office as Chairman of the Mysore Chapter of ICSI. I would like to take this opportunity to express my sincere gratitude to all of you and members of the Chapter for reposing confidence in me.

I am indeed conscious of the duties and tasks ahead which are essential to meet the standard set by the institute and its predecessors. During the month Chapter has commenced its oral coaching classes and numbers are encouraging. During the year more emphasis will be given to students' activities and members' participation in Chapter events.

**I am confident that, with the support and wisdom of the new managing committee, I shall be able to carry out the plans and tasks which are initiated by the committee and predecessors and to raise the standard of the Chapter in all dimensions. I also wish to request all the members and students to actively take part in Chapter events and contribute to the development of the Chapter and profession. Wishing you all a happy Shivaratri.**

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# New MCs

## Congratulations!



### New MC in Mysore

1. CS. Badrinarayanan S : Chairman
2. CS. Balakrishnan V J: Vice Chairman
3. CS. Pracheta M: Secretary
4. CS. Parvati K R: Treasurer
5. CS. Mahavir Chand Bhansali: Member
6. CS. Manjunath S: Member



### New MC in Bangalore

1. CS H.M. Dattatri : Chairman
2. CS Hari Babu Thota:  
Vice Chairman
3. CS Vasanth Kumar: Secretary
4. CS K Rekha Kamath: Treasurer
5. CS Pradeep B Kulkarni: Member
6. CS Vijay Kumar Sajjan: Member
7. CS Vivek Hegde: Member
8. Mr M R Bhat, ROC, Karnataka:  
Co-opted Member
9. CS Gopalakrishna Hegde,  
Central Council Member, Ex-  
Officio
10. CS Nagendra D Rao, Chairman –  
SiRC, Ex-Officio
11. CS Ganapathi G.M, Member –  
SIRC, Ex-Officio

# Activities at Mysore Chapter

## Swachh Bharat

Mysore Chapter of The Institute of Company Secretaries of India & Rangarao PU College jointly conducted the Swachh Bharat Activity on 12<sup>th</sup> January 2015 in Chapter Premises on the eve of Swamy Vivekananda's birthday. Students & Members participated in the event and cleaned the surrounding areas & created the awareness among street vendors and public.

Chairman of the Chapter CS Ajay Madaiah B B, welcomed the Students & Members. CS Sabareeshan C K, Past Chairman briefed the role of every citizen to keep the country clean and which was the dream of Mahatma Gandhi.



## Inauguration of Oral Coaching Classes on 20.01.2015

On 20.01.2015, Mysore Chapter held inaugural session of its Oral Coaching Classes for June 2015 examination for Foundation and Executive program students at Chapter Premises. CS Badrinarayanan S, Chairman, Mysore Chapter, welcomed the students. In his welcome address, he explained the importance of CS profession in the new Companies Act 2013. He advised the students about the various method of preparation for facing the CS Examination. He further explained the students about the online facilities provided by the institute and advised the students to interact with faculties and regularly update various notifications from the institute website. Around 40 students attended the program.



## Republic Day Celebration

On 26<sup>th</sup> January 2015, Mysore Chapter of ICSI celebrated 66<sup>th</sup> Republic day in Chapter Premises.

CS. Badrinarayanan S, Chairman, Mysore Chapter of ICSI hoisted the National Flag and delivered the Independence Day speech to the students. CS Pracheta M, Secretary, Mysore Chapter of ICSI, CS Manjunath S, Member, Managing Committee of Mysore Chapter of ICSI & students participated in the ceremony.



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# Exchange Traded Fund:

## History, evolution benefits and operational process

### Part 2

{In the previous edition we introduced ETF and discussed its advantages over Mutual Funds}

#### What is Index Tracking?

Index tracking has been widely acclaimed in practice and in theory as a winning strategy for long term investing. It has been the experience that globally, a majority of actively managed funds have underperformed their respective benchmarks over a long period of time.

William Sharpe, a Nobel laureate in Economics, believes that all active fund managers together can never outperform the market. Consequently, all classes of investors viz. institutional and retail are increasingly moving towards investing in well-defined indices, which are professionally managed. In fact the largest mutual fund scheme today is an index fund on the S&P 500 managed by Vanguard in U.S.

#### What are Index Funds?

An Index Fund is a mutual fund that tries to mirror a market index, like Nifty or Jr. Nifty, as closely as possible by investing in all the stocks that comprise that index in proportions equal to the weightage of those stocks in the index. These are passively managed funds wherein the fund manager invests the funds in the stocks comprising the index in similar weight.

Advantages of Index funds while reducing the risk associated with the market, offer many benefits to the investors.

1. Firstly, the investor is indirectly able to invest in a portfolio of blue chip stocks that constitute the index.

2. Next, they offer diversification across a multiplicity of sectors since index stocks are generally a basket of 20-25 sectors.
3. Added to these is the relatively low cost of management.
4. Index funds are considered appropriate for conservative long term investors looking at moderate risk, moderate return arising out of a well-diversified portfolio.

While many investors have similar outlooks of making maximum profits, no two are exactly alike. Due to the unique structure of ETFs, all types of investors, whether retail or institutional, long-term or short-term, can use it to their advantage without being at a disadvantage to others. They allow long-term investors to diversify their portfolio at one shot at low cost and insulate them from short-term trading activity due to the unique creation, buying / redemption process. They provide liquidity for investors with a shorter-term horizon as they can trade intra-day and can have quotes near NAV during the course of trading day. As initial investment is low, retail investors find it simple and convenient to buy / sell. They facilitate FIIs, Institutions and Mutual Funds to have easy asset allocation, hedging, equitizing cash at a low cost. They enable arbitragers to carry out arbitrage between the Cash and the Futures markets at low impact cost.

ETFs provide exposure to an index or a basket of securities that trade on the exchange like a single stock. They offer a number of advantages over traditional open-ended index funds as follows:

- While redemptions of Index fund units takes place at a fixed NAV price (usually end of day), ETFs offer the convenience of intra-day purchase and sale on the Exchange, to take advantage of the prevailing price, which is close to the actual NAV of the scheme at any point in time.
- They provide investors a fund that closely tracks the performance of an index throughout the day with the ability to buy/sell at any time, whereby trading opportunities that arise during a day may be better utilized.
- They are low cost.
- Unlike listed closed-ended funds, which trade at substantial premia or more frequently at discounts to NAV, ETFs are structured in a manner which allows Authorized Participants and Large Institutions to create new units and redeem outstanding units directly with the fund, thereby ensuring that ETFs trade close to their actual NAVs.
- ETFs are like any other index fund, wherein, subscription / redemption of units work on the concept of exchange with underlying securities instead of cash (for large deals).
- Since an ETF is listed on an Exchange, costs of distribution are much lower and the reach is wider.

These savings in cost are passed on to the investors in the form of lower costs. Further, the structure helps reduce collection, disbursement and other processing charges.

- ETFs protect long-term investors from inflows and outflows of short-term investors. This is because the fund does not incur extra transaction cost for buying/selling the index shares due to frequent subscriptions and redemptions.
- Tracking error, which is divergence between the NAV of the ETF and the underlying Index, is generally observed to be low as compared to a normal index fund due to lower expenses and the unique in-kind creation / redemption process.
- ETFs are highly flexible and can be used as a tool for gaining instant exposure to the equity markets, equitising cash or for arbitraging between the cash and futures market.

The first ETF in India, "Nifty BeEs (Nifty Benchmark Exchange Traded Scheme) based on S&P CNX Nifty, was launched in January 2002 by Benchmark Mutual Fund. It may be bought and sold like any other stock on NSE. Its symbol on NSE is "NIFTYBEES".

**To be continued...**

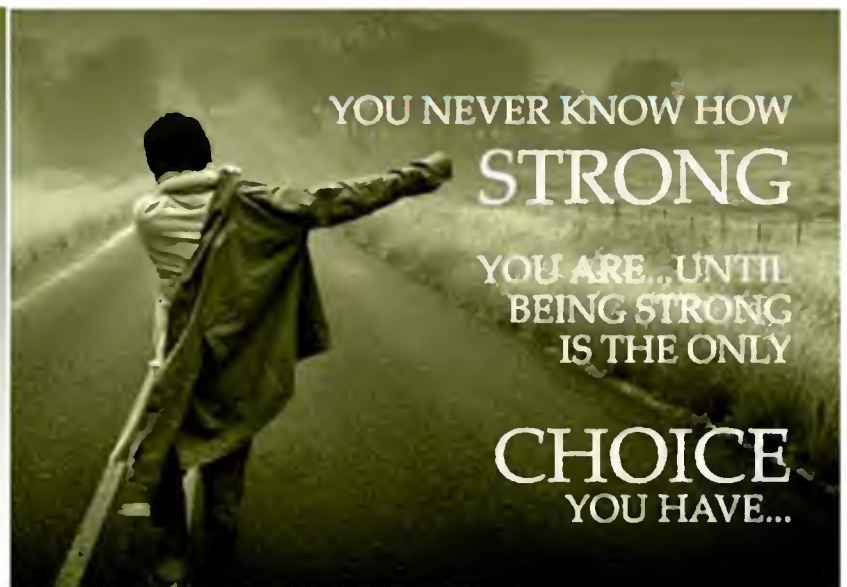
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## **BOCW Act, 1996**

**BOCW Act** stands for Building & Other Construction Workers (Regulation of Employment & Conditions of Service) Act, 1996.

This Act was enacted for the purposes of regulating the employment & service conditions, to provide Safety, Health & Welfare measure. Also to provide social security.

It is further governed by the Central Rules, 1998 & each of the State has got the powers to frame their own rules for implementation of the BOCW Act, 1996.

The BOCW Act, 1996 came into force on **01<sup>st</sup> March'1996** & in **Karnataka** through the framing for the Rules on **01<sup>st</sup> Nov'2006**.

The BOCW Act, 1996 is **not applicable** for those establishments to which the Factories Act, 1948 & Mines Act, 1952 is applicable.

This means, **only the establishments** registered under respective State's Shops & Commercial Establishments Act will get covered under BOCW Act.

It is applicable to those establishments which have engaged either directly or through contractor, **10 or more construction** workers on any construction activities carried out in its premises, during the preceding 12 months, will have to register itself under BOCW Act.

Registration should be obtained on each & every new construction activity undertaken by the establishment. It is not a onetime affair of obtaining registration once & carries on the construction activity for ever.

Registration should be on the part of Employer & not on the part of Contractor.

Application for registration shall be made **within 60 days** from the commencement of the construction activities by using FORM – I with ALC / LO, Karmikara Bhavana, Bangalore.

Information about the commencement of the construction activities will have to be provided to the authorized officer 30 days prior to the commencement of the construction activities.

Cess will have to be paid within 30 days from the date of the completion of the construction activity after providing information to the accessing officer in FORM – I – **Building & Other Construction Workers' Welfare Cess Rules, 1998**

Cess, at present, is 1% of the total cost of construction **excluding cost of land & any compensation paid to construction workers under ECA, 1923.**

### **LivingRoom**

## **The Baker and the Farmer**

A baker in a little country town bought the butter he used from a nearby farmer. One day he suspected that the bricks of butter were not full pounds, and for several days he weighed them.

He was right. They were short weight, and he had the farmer arrested. At the trial the judge said to the farmer, "I presume you have scales?"

"No, your honor". "Then how do you manage to weigh the butter you sell?" inquired the judge.

The farmer replied,

**"Thats easily explained your honor. I have balances and for a weight I use a one-pound loaf I buy from the baker."**



# Rights on Images

The constantly evolving nature of technology is in turn evolving Intellectual Property Rights. Existing rights are being redefined; new rights are getting created. One such area is image rights.

Celebrities and sports stars have most to gain from a strong protection to rights on their images – even their gestures generate huge fan following and attention. Each image could be worth huge money.

In most advanced IPR jurisdictions, there is standard protection of trademark and copyright for image rights. Guernsey, an island in Europe, has gone a step ahead. Guernsey is the first jurisdiction to set up an image rights register. Expectedly, Guernsey is looking to benefit from the ‘first mover advantage’. But of course, other territories may also replicate in due course of time.

Under the Guernsey legislation, anyone seeking to profit from images of celebrities but uses them without permission from the celebrity can be proceeded against, and is liable to the image rights holder for damages.

The law allows the name of the person registering the image to be different from the subject of the image. So, can managers of football clubs register image rights of their players playing for their club? Yes. Can images of fictional or cartoon characters be registered as owned by their creators? Yes. Can images of animals be registered in the name of their owners? Yes.

**What if the image of the animal is shot by the animal itself?**

**Please don't think this is absurd.**

## Guernsey, Channel Islands

Why is this IPR update about some legislation in some far away island of just around 65,000 inhabitants? That too, when image registrations under such law are still limited, and there have been no significant instances of enforcement till now? When enforcement procedures are yet to be clarified?

1. This Guernsey ordinance on image rights is enforceable in England and Wales.
2. Persistent breach could be treated as contempt of court, and even lead to extradition proceedings.
3. This law could become the benchmark for legislations in other jurisdictions.

A photographer, while on a safari in an Indonesian animal park, put down his camera, least expecting that a monkey is watching him. The monkey not only takes hold of the camera without his knowledge, but also manages to click a selfie!!

Who owns this image? The photographer? The Indonesian animal park? Or the monkey? All these and more questions could be interestingly debated and challenged in Court as and when this law takes shape and develops.

In the meantime, all we can say is that image rights, whether in Guernsey or elsewhere, is a serious affair and no monkey business!!





## Legal Information Institute [LII]

OPEN ACCESS TO LAW SINCE 1992

Dear professional friends, it is not enough if we learn the Indian law. In the present globalization scenario we need to learn the laws, constitutions, rules and regulations of every country. This time I am making an attempt to introduce the US based website for better understanding of the US law. Here is the site <http://www.law.cornell.edu/> which provides the legal information about the United States of America and each of its State. It provides information to users from outside the legal profession to more easily access and understands the laws that govern them. This site includes the definitions and explanations of legal topics, Supreme Court cases and alerts and their decisions and Code of Federal Regulations.

<http://www.law.cornell.edu/> broadly contains the following..,

Constitution, Supreme court, U S Code, CFR, Federal Rules, U C C, Law by jurisdiction, Lawyer Directory, Legal Encyclopaedia, Business Law, Employment Law, Help Out, About Us etc.,

This site also contains law of each and every state in the United States of America and some important links like, legal resources and certain books. It is time to enhance our knowledge, please log on to <http://www.law.cornell.edu/> and be more competitive in US also.

## e- Tools for the Professionals

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## Cam Scanner: An Android application for mobiles:

Cam Scanner, an Android application turns your phone with a camera into a quality scanner to easily and simply create pdf documents and JPEG image files which can be easily shared with others or saved for future reference. Paid version of this application gives 10GB of cloud storage in which we can share and save the scanned documents. The scanned documents produced cannot be edited once it has been scanned. The Application allows us to enhance the images produced by the Camera into a new image or pdf documents. We can sync the scanned data across the device also through this application.

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### Specification:

1. Price- Free |
2. Requires Android- 2.3 and more

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## Flash News

- Competition Commission of India rejects complaint against DLF Universal as it does not appear to be dominant in the relevant market.
- SEBI wants government to relax tax rules to make REITs popular
- India to overtake Indonesia for Honda two wheelers - With both Indonesia and India planning capacity expansion, HMSI is expected to overtake Honda Indonesia is the next "couple of years".
- FY16 disinvestment target to be around Rs 43,000 Cr
- NBFCs traditionally heavily dependent on banks for funding needs, are now turning to Debt Market.
- RBI, SEBI amend FPI norms for corporate bonds to make their future investments only in corporate bonds with minimum residual maturity period of three years with no lock-in period.
- Banks want steps to increase liquidity in state govt bonds with varying maturities rather than only 10-year papers.
- Forest officials' views to be considered before amendments to key environmental laws
- Myntra planning to shut down its website by year-end and fully depend on mobile internet

## India, US to battle it out at WTO over Solar policy

Both countries have signed an agreement to promote clean energy and expand solar energy initiatives, a move widely seen as giving US companies access to the lucrative Indian market, the two countries are preparing to slug it out in the WTO over India's solar policy. Member countries of the World Trade Organisation (WTO) have shown keen interest in learning more about making investments and business opportunities in Myanmar as the country plans to build special economic zones, according to general council of WTO.

## India offers support to LDCs

India has made substantial offers like waiving off visa fees, granting market access and technical assistance to service providers from poor nations, showing its resolve to support the Least Developing Countries.

## WTO upholds Complaints against China

A World Trade Organization dispute panel upheld most parts of a complaint against China on Friday in a case brought by Japan and the European Union challenging Chinese anti-dumping duties on high performance seamless stainless steel tubes.

## Nuns, priests in govt service have to pay income tax: Kerala HC

The petitioners contended that they have to handover their salaries to congregations and hence, it cannot be considered as their own income. The court held that remuneration in the nature of salary and pension has to be treated as income.

*Recommended Article for your reading:*  
Enforceability of MOU with a message that "don't be just carried away by title, conclude based on the language inside MOU"  
<http://www.patanjaliassociates.com/inner.php?id=24>



## Learners' Corner

## UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANISATION (UNIDO)

UNIDO is the specialized agency of the United Nations that promotes industrial development for poverty reduction, inclusive globalization and environmental sustainability. On 17 November, 1966, the United Nations General Assembly passes resolution 2152 (XXI) establishing the United Nations Industrial Organization (UNIDO) as an autonomous body within the United Nations. Its mission is to promote and accelerate the industrialization of developing countries. The United Nations Secretary-General nominates Ibrahim Helmi Abdel-Rahman (Egypt) as UNIDO's first Executive Director. The mandate of the UNIDO is to promote and accelerate inclusive and sustainable industrial development in developing countries and economies in transition. In recent years, UNIDO has assumed an enhanced role in the global development agenda by focusing its activities on poverty reduction, inclusive globalization and environmental sustainability. The Organization draws on four mutually reinforcing categories of services: technical cooperation, analytical and policy advisory services, standard setting and compliance, and a convening function for knowledge transfer and networking. The Organization is recognized as a specialized and efficient provider of key services meeting the interlinked challenges of reducing poverty through productive activities, integrating developing countries in global trade through trade capacity-building, fostering environmental sustainability in industry, and improving access to clean energy.

### Did You Know?

## DAY FOR PRESERVATION OF THE OZONE LAYER

September 16 is the **International Day for the Preservation of the Ozone Layer**. It was proclaimed by the UN in 1974.

**How big is the ozone hole?** Very big! 8.9 million square miles (23 million square kilometres); only slightly smaller than the whole of North America. The ozone hole was biggest in 2006 – at 10 million square miles (26 million square kilometres) – but since the ban on CFCs, halons and other ozone-destroying chlorine compounds it actually got a tiny bit smaller.

## Pick of the month

*Whether interest is payable on self-assessment tax paid before the due date of the filing the return of income?*

No, The CBDT has issued a circular No. 2/2015 dated 10.02.2015 on the issue of chargeability of interest u/s 234A of the Income Tax Act, 1961 on the self-assessment tax paid before the due date of the filing the return of income. The CBDT has pointed out that in CIT vs. Prannoy Roy 309 ITR 231 (SC), the Supreme court has held that interest u/s 234A of Act on default in furnishing return of income shall be payable only on the amount of the tax that has not been deposited before the due date of the filing the return of the relevant assessment year. The CBDT has accordingly reviewed the present practice of charging interest u/s 234A of the Act on self assessment tax paid before the due date of the filling the return of income. The CBDT decided that no interest u/s 234A of the Act is chargeable on the amount of self assessment tax paid by the assessee before the due date of the filing the return of income.





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**Service Tax Updates**  
**CA Ashit Shah,**  
**Mumbai**

**FEMA Updates**  
**Team Genicon,**  
**Chennai**



## **CUSTOMS & FTP**

### **Notifications/Circulars/News**

The Central Government has prohibited the import of GSM mobile handsets with duplicate International Mobile Station Equipment Identity (IMEI) or fake IMEI and CDMA mobile handsets with duplicate Electronic Serial Number (ESN)/Mobile Equipment Identifier (MEID) or fake ESN/MEID.

*No. 107(RE-2013)/2009-14 dated 16 January, 2015*

The Central Government has removed all the restrictions on import of GSM/ CDMA based vehicle tracking system having a valid IMEI/ ESN/MEID number. Now, no licence is required for such imports. - *No. 105(RE-2013)/2009-14 dated 1 January, 2015*

The Central Government has extended the benefit of exemption from filing of Bank Guarantee in respect of Advance License/ EPCG Schemes, even where the importer has been penalised during the previous three financial years, subject to satisfaction of the jurisdictional Commissioner of Customs, regarding revenue's interest. - *No. 15/2014-Customs dt 18 December, 2014*

The Central Government, in order to simplify custom procedures, has provided an option to importers/ exporters for filing a combined commercial invoice-cum -packing list, provided the same contains the specified fields of normal packing list.

*No. 1/2015-Customs dated 12 January, 2015*

### **Case Law**

Mumbai Tribunal held that optical fibre cables which are not made of individually sheathed fibres, merited classification under Customs tariff heading (CTH) 9001 which covered 'Optical fibre cables other than those of heading 8544' and not under CTH 8544 covering 'Optical fibre cables made up of individually sheathed fibres'. - *Reliance Communications Infrastructure Ltd v CC (2015-TIOL-177-CESTAT-MUM)*

Delhi Tribunal held that a wheel rim for harvester combines had to be classified under CTH 8433 90 00 of Customs Tariff Act, 1975 and not under chapter 87, which covered wheel rims for commercial vehicles. The Tribunal further held that classification of past imports could not be changed on the basis of doubt due to current consignment.

*Darshan Singh and Co v CC (2015-TIOL-36-CESTAT-DEL)*

Mumbai Tribunal held that at the time of re-determining value of imported goods on the basis of contemporaneous imports, adjustments have to be made for quantity difference.

*CC v Buying Overseas (2015-TIOL-146-CESTAT-MUM)*

Mumbai Tribunal held that lumpsum payment of royalty with respect to the usage of trade mark and transfer of technical know-how could not be added to the value of the imported raw material, so long as the agreements did not stipulate any condition with regard to the source of procurement of raw materials from a specified foreign supplier or related party.

*Can-Pack (India) Pvt Ltd v CC (2015-TIOL-158-CESTAT-MUM)*

Mumbai Tribunal held that effective from 6 August, 2014, the Tribunal was barred from entertaining any appeal unless the pre-deposit as mentioned in the amended section 129E of the Customs Act, 1962 was made. - *Bhatia Global Trading Ltd and Others v CC (2014-TIOL-2637-CESTAT-Mum)*

Kolkata Tribunal held that mens rea was not required as a condition precedent for levying personal penalty under section 112 (a) of the Customs Act, 1962.

*Shri Vinod Agarwal and Others v CC (2014-TIOL-133-CESTAT-KOL)*

Mumbai Tribunal held that refund of SAD in terms of Notification No. 102/2007, dated 14 September, 2007, could not be rejected merely on the ground that at the time of filing of refund claim, the appellant had not discharged VAT liability, even though VAT liability was discharged subsequently within the specified period. Once the appellant had complied with all the substantive conditions, rejection of refund claim on technical grounds was not sustainable in law.

*Standard Conduits Pvt Ltd v CC (2015-TIOL-200-CESTAT-MUM)*

Mumbai Tribunal held that goods supplied from DTA to contractors of SEZ units/ developers without payment of duty had to be treated as export in view of the Special Economic Zone Act, 2005, read with rule 6(6)(i) of the CENVAT Credit Rules, 2004. - *Ultratech Cement Ltd v CCE (2015 (315) ELT 238)*

The Kerala High Court held that the benefits under the Focus Market Scheme(FMS) could not be denied merely for the reason that Directors of exporter company held a substantial interest in some other company which had a liability towards Export Promotion Capital Goods Scheme (EPCG).

*GTN Textiles Limited v Union of India (2015 (315) ELT 191)*

Mumbai Tribunal held that the exemption of SAD was available on stock transfer of goods from EOU to DTA, in case there was no exemption from levy of VAT by the State government, as the condition of exemption notification was fulfilled.

*VVF Ltd v CCE (2015 (315) ELT 303)*

The Madras High Court held that in case of failure to fulfil export obligation under erstwhile Duty Exemption Entitlement Certificate Scheme (DEEC), penalty can be imposed even if the payment of duty and interest is made by the assessee on non-fulfilment of export obligation.

*CC v Pattu Exports Pvt Ltd (2014-TIOL-2340-HC-MAD-CUS)*

Mumbai Tribunal held that on clearance of capital goods from EOU, duty was payable on the depreciated value in case such capital goods were once installed and put to use by the unit.

*New Era Fabric Ltd v CCE (2015 (315) ELT 225)*

The Delhi Tribunal held that the conversion of shipping bills from one export promotion scheme to another could not be denied if the exporter had given the intimation in time and such conversion was justified and fair.

*Cheema Spintex Ltd v CC (2015 (315) ELT 140)*

## Ministry of Corporate Affairs Notifications/Circulars/News

MCA has constituted a High Level Committee to suggest measures for improved monitoring of the implementation of Corporate Social Responsibility policies by the companies under Section 135 of the Companies Act, 2013.

*General Circular No. 01/2015 dated February 03, 2015*

In the Companies (Corporate Social Responsibility Policy) Rules, 2014, in rule 4, in sub-rule (2), - (i) for the words established by the company or its holding or subsidiary or associate company under section 8 of the Act or otherwise, the words established under section 8 of the Act by the company either singly or along with its holding or subsidiary or associate company or along with any other company or holding or subsidiary or associate company of such other company, or otherwise shall be substituted.

*Companies (Corporate Social Responsibility Policy) Amendment Rules, 2014 dated 19.01.2015*

In case a company has already filed Form DIR-12 with the Registrar under rule 15, a foreign director of such company resigning from his office may authorise in writing a practising chartered accountant or cost accountant in practice or company secretary in practice or any other resident director of the company to sign Form DIR-11 and file the same on his behalf intimating the reasons for the resignation.

*Companies (Appointment and Qualification of Directors) Amendment Rules, 2014 dated 19.01.2015*

In the Companies (Accounts) Rules, 2014 after rule 2, following rule shall be inserted, namely: 2A. Notice of address at which books of account are to be maintained. For the purposes of the first proviso to sub-section (1) of section 128, the notice regarding address at which books of account may be kept shall be in Form AOC-5. In the Companies (Accounts) Rules, 2014 in rule 6, after the third proviso, the following proviso shall be inserted, namely: Provided also that nothing in this rule shall apply in respect of consolidation of financial statement by a company having subsidiary or subsidiaries incorporated outside India only for the financial year commencing on or after 1st April, 2014.

*Companies (Accounts) Amendment Rules, 2014 dated 16.01.2015*

## CENVAT

### Case Law

Punjab and Haryana High Court held that the activity of grinding/ buffing/ polishing and packing of value seats amounted to manufacture as new products with distinct name, usage and character emerged.

*Friends Auto Industries (Regd) v CESTAT (2014 (310) ELT 630)*

Mumbai Tribunal held that activity of cutting plastic film and sheets into required shape and size, not resulting in any new product, did not amount to manufacture.

*CCE v Universal Enterprises (2014 (310) ELT 789)*

Mumbai Tribunal held that goods cleared to industrial consumers with the declaration in the packages as Industrial Use were assessable under section 4 and not under section 4A (MRP based assessment).

*Kroslink Polymers P Ltd v CCE (2015-TIOL-149-CESTAT-MUM)*

Mumbai Tribunal held that differential freight realised from customers was not includible in the assessable value since the duty of excise was on manufacture and not on profit made by the dealer on transportation.

*Indo Rama Synthetics (I) Ltd v CCE (2015-TIOL-69-CESTAT-MUM)*

Allahabad High Court held that CENVAT credit was allowable on packing material/ containers when their cost was included in the value of final products.

*CCE v Denso India Ltd (2014 (310) ELT 487)*

Bangalore Tribunal held that there was no requirement to reverse CENVAT credit on inputs and capital goods under rule 3(5) on leasing out of factory to another company since there was no physical removal of such goods.

*Ultratech Cement Ltd v CCE (2014 (310) ELT 554)*

Madras High Court held that CENVAT credit was admissible on MS angles, MS beams, MS channels and TMT bars used in the erection of machinery, which was a part of Dry Process Cement Manufacturing Plant.

*CCE v India Cement Ltd v CCE (2014 (310) ELT 636)*

Madras High Court held that CENVAT credit was not permissible when goods under one invoice were split up in different consignments and transported separately since individual invoice for each consignment was necessary.

*CPRM Steels Ltd v CESTAT (2014 (310) ELT 859)*

Delhi Tribunal held that exemption under Notification 108/95-CE could not be denied on the ground that the goods were not supplied directly to the Project when there was no allegation of diversion of material supplied for any other purpose.

*CCE v Kamdhenu Ispat Ltd (2014 (310) ELT 755)*

Larger Bench of Ahmedabad Tribunal held that remission of duty was permissible on goods cleared from factory for export but subsequently damaged in fire accident at port.

*Honest Bio-vet Pvt Ltd v CCE (2014 (310) ELT 526)*

Madras High Court held that interest and penalty was not imposable under rule 14 of the CENVAT Credit Rules, 2004 when erroneous credit was reversed before its utilisation.

*In CCE v Strategic Engineering (P) Ltd (2014 (310) ELT 509)*

## VAT, Sales Tax and Entry Tax

### Case Law

The Madras High Court held that interest and commitment charges for delay in making payment against sale of goods formed part of the taxable turnover for levy of VAT. The HC observed that buyers had agreed to pay interest and commitment charges for the belated payment in the very same invoice, and not under any independent agreement. Consequently, receipt of interest and commitment charges for belated payment could not be said to be arising out of post-sales activity.

*Raj Lubricants (M) Private Ltd v State of Tamil Nadu (2015(1)(TMI)682)*

The Karnataka High Court held that issue of notification which required specified dealers to furnish additional details electronically along with their returns was not unconstitutional nor discriminatory or excessive delegation of powers. The HC observed that the State legislature had left it to the Commissioner's wisdom to specify class of dealers and nature of information/ particulars to be furnished and, while furnishing such information, in no way hampered or adversely affects the business of dealers. - *Harsha Enterprises v State of Karnataka (WP No 31297-31298/2014 (T-Res)*

## Service Tax

### Case Laws

The Supreme Court of India held that the activity of producing audiovisual coverage of 'Indian Premier League' cricket matches held in India by non-resident service providers would be liable to tax under 'programme production services' and the Indian service recipient was liable to pay tax under section 66A on reverse charge basis. The Tribunal further held that any service (Hawkeye) that formed part of the programme being produced would also fall under the category of 'programme production services'. - *BCCI v CST (2015-TIOL-04-SC-ST)*

The Supreme Court of India held that the supply of ready-mix concrete was a contract for sale, and could not be held liable to service tax.

*GMK Concrete Mixing Pvt Ltd v CST (2015-TIOL-05-SC-ST-LB)*

The Mumbai Tribunal held that where the value of goods used while rendering repair and maintenance services was shown separately in the invoice on which Sales tax/ VAT had been paid, the service tax would be chargeable only on the service/ labour component and the value of goods used for repair would not be includible in the assessable value of the service.

*Safeway Motors v CCE (2015-TIOL-79-CESTAT-MUM)*

The Ahmedabad Tribunal held that in the case where the service tax was paid towards services which were not rendered eventually, amount paid has to be considered as 'deposit' and the same would be outside the purview of limitation period prescribed in law for filing refund claim.

*CCEST v Madhvi Procon Pvt Ltd (2015-TIOL-87-CESTAT-AHM)*

The Mumbai Tribunal held that notional interest accrued on security deposit could not be added to rent agreed upon between the parties for the purpose of levy of service tax under the category of 'renting of immovable property' services.

*K Raheja Corp Pvt Ltd v CCE (2015-TIOL-100-CESTAT-MUM)*

The Delhi Tribunal held that the meaning of the term 'any service' used in clause (zzm) of section 65(105) of the Finance Act 1994 'airport services' could not be qualified to mean 'any

taxable service'. This effectively means that the term 'any service' in relation to airport services would include all services which were taxable under any other category of service, or were non-taxable. However, the scope of the term 'any service' was restricted to those services which Airport Authority of India (AAI) was expected to provide at the airport as per the provisions of the Airport Authority of India Act, 1994. Accordingly, the Tribunal held that the revenue from passenger service fee, left luggage facility, rest room/ retiring rooms, supply of trolleys, renting/ leasing of space inside airport to various airlines and for other business activities, renting of space inside airport for hoarding/ advertisements, licence fees for car parking, public admission and issue of season tickets/ temporary passes would be liable to service tax under the category of 'airport services'.

*Airport Authority of India v CST and CST v Airport Authority of India (2015-TIOL-148-CESTAT-DEL)*

## FEMA/RBI

### Notifications/Circulars/News

In view of changes in definition / classification of exports in foreign trade policy 2014-2019 it has been decided to review the policy framework for Overseas Direct Investments (ODI) by a proprietorship concern / unregistered partnership firm in India. Accordingly, henceforth, the following revised terms and conditions are required to be complied with for considering the proposal of ODI, by a proprietorship concern / unregistered partnership firm in India, by the Reserve Bank under the approval route.

*RBI/2014-2015/419 A.P. (DIR Series) Circular No.59 dated January 22, 2015*

RBI has permitted 100% FDI under automatic route in Construction development sector with effect from 03.12.2014 subject to conditions specified in the press note 10 (2014 Series) issued by DIPP in this regard. Remittance of salary by Non resident who work on deputation.

*No. RBI/2014-15/420 dated January 22, 2015*

DIPP vide its press note no.2 (2015 Series) clarified that 100% FDI is permitted for manufacturing of medical devices whether greenfiled or brownfiled. Further, sector specific conditions shall not be applicable. - *APDIR Circular No.70 dated 2nd, Feb 2015.*

With a view to promoting the ease of reporting of transactions under foreign direct investment it has enabled the filing advance reporting and FCGPR through online. For this purpose, the Government has developed a portal named e-Biz Portal and hosted on the National Informatics Centre (NIC) servers using a Virtual Private Network (VPN) Account obtained from NIC. The design of the reporting platform enables the customer to login into the e-Biz portal, download the reporting forms (ARF and FCGPR), complete and then upload the same onto the portal using their digitally signed certificates. The Authorised Dealer Banks (ADs) will be required to download the completed forms, verify the contents from the available documents, if necessary by calling for additional information from the customer and then upload the same for RBI to process and allot the Unique Identification Number (UIN). It has been decided that the ARF and FCGPR services of RBI will be operational on the e-Biz platform from Feb 19, 2015. The user manual for e-filing is attached in the above said APDIR Circular. It may be noted that the online reporting on the e-Biz platform is an additional facility to the Indian companies to undertake their ARF and FCGPR reporting and the manual system of reporting as prescribed in terms of A.P. (DIR Series) Circ No. 102 dt Feb 11, 2014 would continue till further notice.

*APDIR Circular No.77 dated February 12, 2015*