



Newsletter-15

Mysore Chapter

February 2005

From Chairman's desk...

Dear Friends,

Greetings to you all!

I had shared my anguish on the dwindling numbers of fresh registration of students in the last newsletter. The status continues. Our chapter is in an city known as educational center where an estimated 40% population is student population. Our team for career counseling has been very active & coverage was high. Still we are not looked up as a priority course. Even the Private Universities are having a more impressive registration level though the fees are prohibitively high. Does this mean we are not well placed enough in the society to evoke the type of recognition we should receive? But, the impressive track record of members of our chapter belies this view.

Our members are leaders in varied & wide spectrum spanning Stock brokerage, Investment Consultancy, Financial consultancy, Management consultancy, Tax consultancy & practice, Professional Directorship, Taxation Executives & General management cadres. etc. This revelation boosts the confidence that our profession has come out of the shadows of Section 383-A. Then why the students are rushing to courses offered by even private universities in preference to

our course? One possibility is that our clients, acquaintances etc are not aware that we are Company Secretaries. One other area, which needs our combined might, is on enhancing the visibility of our Chapter.

We have no doubt elected a few of our friends and installed a Management Committee. But, this does not prevent each one of us from supporting the campaign for popularizing the Chapter & the Course. This year being the Silver jubilee year, I request the members to contribute their ideas, time, efforts to make the year a memorable one.

I find it apt to quote a Japanese proverb – **“None of us is as smart as all of us”**.

Let us join hands & work together for the chapter in the true spirit of the above proverb!!

With warm regards,

MYSORE

Sincerely Yours,

14th February, 2005

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*Mysore Chapter celebrates its 25th Foundation Day on
13th March 2005*



Chapter Activities

Study Circle Meetings

Five Study Circle Meetings were conducted during the month of January 2005.

Date	Sub	Member	No., of Students
2.01.05	General Clarification	H M Dattatri	7
9.01.05	Personality Development	K Chandrasekar, H M Dattatri, R Rajesh	8
16.01.05	General Awareness- International Economy	H M Dattatri	11
23.01.05	Foundation Day	H M Dattatri	12
30.01.05	VAT	H M Dattatri	12

Career Counseling

A career Counselling was organized with the immense support from Mr. A Shivanna the Principal of the college and Mr. B S Subramanyam Lecturer.

Date	College	Members Participated	No., of Students
11.01.05	Mahajana P U College	C K Sabareeshan Jayalakshmi A Chandrasekar	250

Management committee had its first meeting on 09th January 2005 in the chapter premises and discussed the activities for the year 2005.

This year being the silver Jubilee year, a committee has been constituted in the first meeting of the management committee. Committee had its first meeting at the residence of Mr. K R Ganapathi on 15th January 2005. Members discussed on the program charter for the whole year.

Foundation Day

Chapter has decided to organize the Foundation Day for the year 2005 on Sunday, 13th March 2005. One full day students focused programs are being organized. Complete schedule will be mailed in due course.

Sad Demise

We regret to inform that Mr. A Ramanathan, Father of Mr. A R Vishwanathan - the past Secretary of the Mysore Chapter, had his last breath on

12th February 2005. He was seventy-five year of age. We, the fraternity members convey our deep condolences to Mr. A R Vishwanathan and Family.

State Students Meet - Milaap

ICSI Bangalore is conducting one day Karnataka ACS Students Conference 'Milaap' on Sunday 20th February 2005. The program will be held in the Rotary Club Premises situated at Lavelle Road. Around 150 students are expected to participate.



VAT White Paper Summary

1.Registration

- Existing dealers to be automatically registered under VAT
- Small dealers (upto turnover of 5 lacs) not liable to VAT
- VAT threshold increased to 50 lacs (earlier 40 lacs)

2.TIN

11-digit Tax Identification Number compulsory

3.Central Assistance to States

100% of revenue loss in 2005-06
75% of revenue loss in 2006-07
50% of revenue loss in 2007-08

4.Central Sales Tax

- CST of 4% to continue for 2005-06
- Decision of phasing out CST to be taken in 2005-06

5.Concessions

All exemptions under local concessional forms will be abolished. Existing Incentive schemes to continue such that VAT chain not affected

6.Rates of VAT

- Two basic rates of VAT:
- 4% for essential goods, basic inputs, declared goods, etc (270 items)
- 12.5% for all other goods (234 items)
- Items with social implications exempt (46 items)

7.Additional levies

- Turnover tax, surcharge, addl. surcharge to be abolished
- Entry tax to continue but will be VATable

8.Goods not covered/Services later

- Liquor, lottery tickets, ATF, petrol, diesel to be taxed under Sate Sales Tax
- Sugar, Textile, Tobacco get one year breather
- Also integration of service tax into VAT at a later date

9.Self Assessment

Returns to be self assessed. No assessment by Department but selective audit by department Audit by Department on scientific basis. Audit wing de-linked from Tax Collection wing

10.Input Tax Credit (ITC)

- ITC on locally purchased inputs
- ITC of capital goods available in maximum 36 monthly instalments
- Negative list of capital goods to be introduced on which ITC not available
- ITC on transition stock purchased after 1.4.2004
- Lock in period of three months
- To be used in six monthly instalments
- On the basis of documentary proof
- Excess ITC can be c/f upto end of next F.Y.
- Excess ITC on a/c of exports may be adjusted or refunded
- In case of stock transfer, ITC will be restricted by 4% on purchase value
- No ITC for inputs procured from other states
- SEZ and EOU - either entitled to exemption or refund of ITC

Legal Roundup

A. Income Tax

Donations to the PM's National Relief Fund

The Central Board of Direct Taxes has notified that employees who make donations to the Prime Minister's National Relief Fund, the Chief Minister's Relief Fund or the Lieutenant Governor's Relief Fund are eligible to claim deduction u/s 80G of the Income-tax Act, 1961. The circular clarifies that in cases where employees make donation to these funds through their employers, it is not possible for such funds to issue separate certificate to every such employee in respect of donations made to such funds as contributions made to these funds are in the form of consolidated cheque. Therefore, claims in respect of such donations will be admissible u/s. 80G of the Income-tax Act, 1961 on the basis of the certificate issued by the Drawing and Disbursing Officer (DDO)/Employer in this behalf.

Circular No. 2/2005 Dated 12.01.2005

TDS officer vested with powers similar to that of the AO

The TDS officer was vested with powers under section 221 (ie to levy penalty as an AO). By implication, it was held that the said TDS officer is also vested with powers under section 131; regarding discovery, production of evidence, etc. (similar to those available to an AO) in relation to the TDS returns filed by the assessee.

CESC Ltd. v. ITO [2004] 140 Taxman 646 (Cal)

No Penalty when there is a venial default and no loss of revenue

The assessee was levied penalty under section 272A for failure to issue TDS certificate within the due date. Based on the facts of the case it was held that the default was merely technical or venial in nature, and hence penalty was not leviable.

HMT Ltd. v. CIT [2004] 140 Taxman 606 (Punj & Har) 147.

No Penalty where revised return rectifying the defect filed immediately

During pendency of assessment, on direction from the WTO, the assessee got his building valued by an approved valuer. Thereafter, the wealth tax return was revised to reflect the value as determined by the valuer. This revision was made before the prescribed time limit for filing of a revised return and also before completion of the assessment. As the assessee had filed the revised return on immediately coming to know of the correct valuation of the building, it was held that there was no *mala fide* intention to furnish inaccurate particulars and hence penalty could not be levied.

CWT v. Chandrakant Gandhalal [2004] 141 Taxman 19 (Guj)

B. Sales Tax

Karnataka Value Added Tax is passed in Assembly. Implementation of VAT has become more certain.

C. Excise

Items used for trial runs are not eligible for CENVAT credit

The appellants were manufacturers of High Density Polyethylene (HDPE) granules and they had imported duty paid HDPE for performing a trial run of their facilities. The issue was *inter alia*, whether HDPE used in such trial runs was eligible to CENVAT credit. It was held that items used in trial runs are not eligible inputs for credit under CENVAT.

D. Customs

Changes in the All Industry Rates of Duty Drawback

The salient features of the new drawback schedule are as follows:

- Factoring of education Cess in the drawback rates;
- Replacement of the ad valorem rates by specific rates for most products;
- Introduction of a drawback rate for the excise duty portion.
- Withdrawal of all industry duty drawback rates for final products where the inputs are exempt from customs duty.

(Circular No.3/2005 dt 18/01/05)

Supplies made to SEZ units are eligible for DFRC

Representations have been received regarding availability of DFRC on supplies made to SEZ units.

The issue has been examined and it is hereby clarified that since all supplies to SEZs is treated as physical exports with effect from 1st September 2004, such supplies will be entitled to the benefit of DFRC under the Foreign Trade Policy.

This issues with the approval of Director General of Foreign trade.

POLICY CIRCULAR No. 16 / 2004-09 dated 18.1.2005

No Duty exemption on import of Warranty Replacements

The benefit of Notification No. 80/70-Cus., dated 29/8/1970 which exempts articles supplied free under warranty as replacement for defective ones would not extend to imports of warranty replacements by companies or commercial organisations and is limited to imports by individuals only.

(Circular No.1/2005 dt 11/01/05)

Valuation

The Tribunal has held that the reduced price mutually agreed between the supplier and the importer on account of deficiency in the imported goods, is acceptable as the transaction value

Jai Jagdish Ship Breakers Pvt. Ltd. Vs. CC (2005 (66) RLT 10)

E. Service Tax

Service Tax collected in March to be paid in March itself

The Ministry of Finance and Company Affairs notifies that the Service Tax Rules, 1994 has been amended by the Service Tax (Amendment) Rules, 2005. The said Service Tax (Amendment) Rules, 2005 inserts a new proviso to the Service Tax Rules, 1994 that the Service Tax on the value of taxable services received during the month of March or the quarter ending March, shall be paid to the credit of the Central Government by the 31st day of March of the calendar year.

Notification No: 1/2005 Dated 14.01.2005

Service tax to Foreign Service Provider

The Tribunal has held that in the absence of a provision regarding deduction of tax at source under the service tax legislation, the service receiver is not required to deduct service tax from the payment made to a Foreign Service provider for the services procured.

In Bajaj Auto Limited Vs. Commissioner (2005 (1) STJ 58)

Erection etc are not consulting Engineer Services

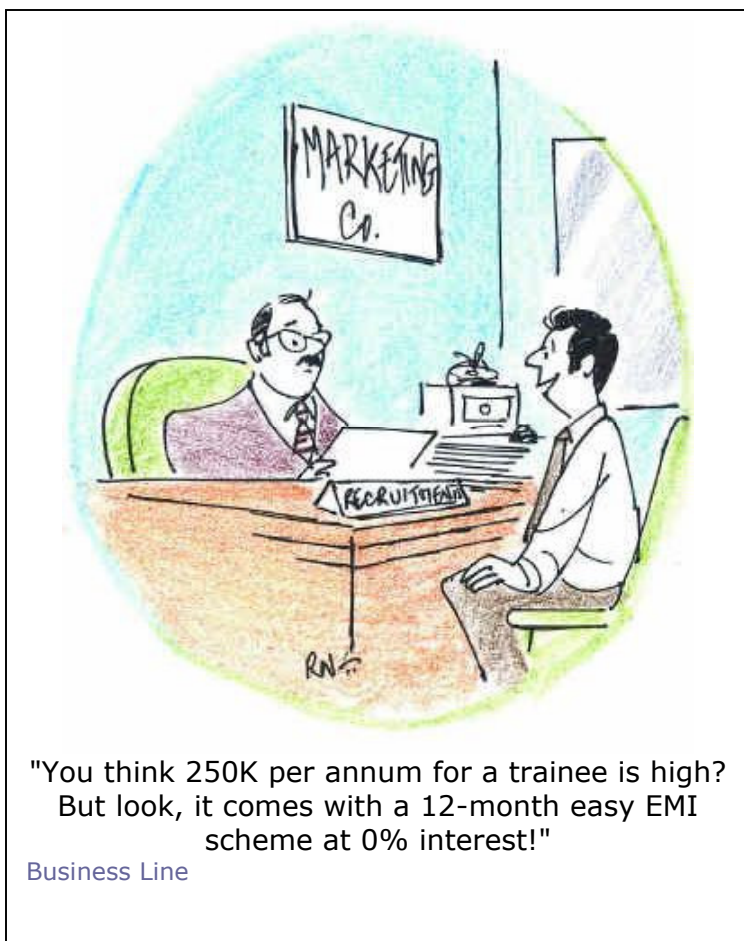
It was held that erection, installation and commissioning activities are not covered under the taxable category of consulting engineer services.

M/s DGP Windsor India Ltd. Vs. CCE (2005 (1) STJ 120)

Demand of Service tax and penalty

No penalty could be imposed on the basis of retrospective amendment by Finance Act, 2000.

Vidhyachal Air Products Pvt Ltd. vs. CCE, Raipur
2004 (174) ELT 326 (Tri.-Del.)



ICSI seeks inclusion of profession to present cases before tax tribunal

Richa Mishra New Delhi , Feb. 1

THE Institute of Company Secretaries of India (ICSI) has sought amendments to the National Tax Tribunal Bill 2004 to enable company secretary in practice to present cases before the National Tax Tribunal.

Seeking inclusion of their profession for appearing before the tribunal, ICSI sources said, this would be beneficial for both the practicing professionals as well as assesses looking for experts to represent their cases.

The Bill for setting up of the National Tax Tribunal (NTT) has been placed before Parliament and subsequently referred to a Parliamentary Committee. In fact, the institute has asked in its pre-Budget memorandum for amendments to Clause 13 by including company secretary in practice in the Clause of the said Bill to act as an authorised representative.

A company secretary in practice needs to be accorded due recognition along with other

professionals. The Clause currently allows chartered accountants and legal practitioners to appear before the tribunal. Regarding whether company secretaries are qualified to appear before the tribunal, sources told *Business Line*, "Our members are already rendering services under taxations. Besides, they are also appearing before the central excise as well as service tax authorities. Therefore, representing before NTT would not be a difficult task."

The NTT Bill, when enacted, will lead to the setting up of a tribunal with at least 25 benches across the country. With large number of tax cases pending before various High Courts, the creation of the tribunal is expected to speed up their disposal. The tribunal will examine cases relating to both direct and indirect taxes.

The ICAI has also sought amendments to the NTT Bill to allow chartered accountants to present cases before the tribunal on behalf of the Central Government. Though the provision of Clause 13(2) does allow chartered accountants to present the case of the assessee before the NTT, it does not allow them to present cases on behalf of the Centre.

ICAI expects to complete peer review in 3 years

Our Bureau

Hyderabad , Jan. 30

THE Institute of Chartered Accountants of India (ICAI), which has taken up the proactive measure of peer review of its members by an independent team, expects to complete the review process for all its 65,000 plus practicing members in the next three years, the Peer Review Board Chairman, Mr Shanti Lal Daga, said.

Addressing the National Conference on 'Quality and Professional Excellence' here on Saturday, Mr Daga said the process involved the review

of auditing work done by ICAI members by other members of a similar standing.

According to him, the peer review process, essentially a self-regulatory mechanism, is aimed at maintaining and enhancing the quality of attest services and strengthening public confidence in financial reporting. The Peer Review Board certification signifies a hallmark of professional excellence, he said.

Stating that the accounting profession across the globe had come under spotlight following major accounting scams such as Enron and Xerox, Mr Daga said it was in this backdrop that ICAI had mandated its members to undergo peer review. Having roped in and

trained 972 reviewers so far, the Peer Review Board has recently completed the first phase of peer review involving 231 large practicing units.

The Board proposes to take up peer review of 268 large practicing units in the second phase,

1,576 practicing units in the third phase and the balance in the last phase.

The Board has issued certificates to 85 practicing units.

Review decision on appointment: Co secretaries

Richa Mishra

New Delhi , Feb. 5

WITH a new dispensation at the Ministry of Company Affairs and the Institute of Company Secretaries of India (ICSI), company secretary professionals are looking forward to better days.

The ICSI has requested the Ministry to reconsider its decision to exempt a certain category of companies from appointing a whole-time secretary. The Ministry's move to ease the norms for appointing company secretaries for certain categories of companies had irked professionals. In a changing corporate environment, CS professionals are looking for more job opportunities and a level-playing field with other professions, they said.

In October 2003, the Government had issued a notification that companies with a paid-up share capital of Rs 2-5 crore and a registered

office in towns with population of less than a lakh will neither be required to get a compliance certificate from a certified company secretary nor necessarily be required to appoint a company secretary. A company falling under this category could appoint any individual who possesses any of the qualifications specified in the Rules for appointment and qualification of a secretary, as its whole-time secretary.

Sources said that the Ministry, in response, has informally asked for the number of companies that fall under the category and the extent of job losses suffered, if any. It is very difficult for the institute to furnish this information, sources said.

Voicing concerns arising due to the amendment, they pointed out that the term 'corporate office' has not been defined in the Companies Act. This could lead to some companies circumventing the facts to suit their convenience.

Draft concept rules propose strict norms for company names

Our Bureau

New Delhi , Feb. 6

THINKING about incorporating a company? Ensure that the proposed name should not have a phonetic similarity or is a translation of a name of the existing known company.

The Ministry of Company Affairs has stated this in the guidelines for name availability sketched out in Draft Concept Rules for the Concept Paper on the simplified company law.

If the proposed name happens to be the exact Hindi translation of the name of an existing company in English, especially of a company with reputation, then the name would not be available to you, according to the Rules.

In cases where the proposed name is not in consonance with the principal objects of the company as set out in its memorandum of association, then the names would not be considered.

"This does not necessarily mean that every name should be indicative of its objects, but when there is some indication of business in the name, then it should be in conformity with its objects.

"However, unless the application for availability of name is for name change, the principal object of the proposed company in suitable words need to be part of the proposed name," sources said.

For instance if the company's main business is finance, the name should be indicative of that financial activities - chit funds, investments, loans, insurance or banking.

The Rules also stated that the proposed names

should not include any words, which are offensive to any section of the people.

Even names, which appear confusing with any political or religious organisation, would be considered as undesirable.

The Rules also suggested that the proposed name should not have a close phonetic resemblance to the name of a company in existence for example: JK Industries Ltd, Jay Kay Industries Ltd.

If the proposed name is vague like DJMO Ltd or TNVR Private Ltd or SSRP Ltd, then the abbreviated names can be considered by the Registrar for change of name.

However, the company should be having a paid-capital of Rs 5 crore and a turnover of minimum Rs 100 crore and should be popularly known with the proposed abbreviated names, it stated.

Further, the company should possess either a trademark or patent registered with the abbreviated name.

If the proposed name includes registered trademark, then unless the promoters have produced the consent of the owner of the trademark, the proposed name would not be considered.

It may not be possible in all cases to check up the proposed name with the trademark, or trademark for which application is pending before the appropriate authority.

However, if the registrars are in the knowledge or some interested party/parties bring to their notice a trade mark, which is included in the proposed name, then it should not be allowed unless a no-objection certificate is obtained from the party who has registered the trade mark in its own name or has made an application for registration of trade mark, the Rules stipulates.

