



The New Horizon

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The Institute of

Company Secretaries of India
In pursuit of professional excellence

Statutory body under an Act of Parliament

Newsletter of the Mysore chapter of the SIRC of ICSI



ICSI - Mysore to launch Collaborative Oral Coaching Center with Mahajana Educational Society



On 29th April 2004, Mysore Chapter of the ICSI launched a Collaborative Oral Coaching Center, with a prestigious educational Institution run by "SBRR Mahajana Education Society" to provide quality coaching for students at Mysore, who want to pursue the foundation course of our Institute.

Mr. Mahesh Ananth Athavale, the President of ICSI formally inaugurated the Oral Coaching Center at a function held at the Vivekananda Hall of the Mahajana P.U. College in the august presence of Mr. Vasudeva Murthy, the president of the Mahajana Education Society, as the chief Guest. Mr. Sudhir Babu, Chairman SIRC and Mr. D. Joshi Secretary of ICSI, graced the occasion. Mr. Vasudeva Murthy reassured the commitment of MES to improving the quality of education, particularly professional education, in Mysore. Appreciating the activities of the Institute and the Mysore Chapter he assured his complete support to the success of the proposed oral coaching centre.

Mr. Mahesh Athavale, stressed on the importance of quality in education in achieving professional competence, particularly in present era of globalised business environment. The foreign companies investing in India, he said, can bring technology and money, but only the Indian professional can help them in building business here. He highlighted the role of Company Secretaries, in the emerging context and expressed confidence on unfolding professional opportunities.

Mr. Sudhir Babu addressing the gathering appreciated the commitment of the Mahajana Education society for their initiations.

Mr. V S Kumar, Vice Chairman of the Mysore Chapter rendered vote of thanks.

Mysore Chapter Celebrated its 24th Foundation Day

Mysore Chapter of the ICSI celebrated its 24th Foundation Day at the Vivekananda Hall of Mahajana P U College on 29th April 2004

Mr. Mahesh Ananth Athavale, the honorable President of the ICSI was the chief guest of honour for the function. Mr. Sudhir Babu, Chairman SIRC and Mr. D. Joshi Secretary of ICSI graced the occasion.

For the first time few awards were founded to encourage and recognize the meritorious students of Mysore Chapter for their success in the examinations conducted by the Institute. The awards were sponsored by Adarsh Charitable Trust, Automotive Axels Ltd, Falcon Tyres Ltd., and J K Tyres Ltd. Individual prizes were sponsored by Mr. C K Sabareeshan and Mr. D D Bhatt.

Mr. Mahesh Athavale gave an encouraging address to the students appreciating the award winners' efforts. He advised the students to improve the communication skills. In the era of global competition company secretaries should gain highest competence to meet the expectations of the industry, he added,

There was an interactive session for the students with the dignitaries present. Students received clarifications and shared the experience of winning with the gathering.

Mr. H M Dattatri, Secretary of the Mysore Chapter rendered vote of thanks



Unjust Enrichment: Time to have a re-look

Compiled by Dattatri H M LL B ACS, AT&S India Pvt Ltd

Background:

Article 265 of our constitution stipulates that the tax can be collected only by authority of Law. Therefore tax collected in excess or illegally should be refunded. This is OK with direct taxes. But the problem was with the indirect taxes, wherein if duty is collected in excess, the taxpayer will in one way or the other pass on the burden to his customers. Refunding the tax collected illegally by him would only give him a benefit of unjust enrichment. Thus in *In UOI Vs Roplas Ltd (1988)*, court suggested to credit the refund amount to Consumer Welfare Fund (CWF), which will be used for the benefit of consumers. Theory was fantastic. It was implemented from 20th September 1991. Now for getting refunds, claimant has to prove that he has not passed on the burden to his consumers. Otherwise refunds granted will be credited to CWF.

Effect:

Law presumes that the duty burden has been passed to the customer. Unfortunate taxpayer, first have to prove that the duty has to be refunded and then again have to prove that it is not passed on to the customers. Civil courts have no jurisdiction in case of refund claim under the Act. How to prove that you have not passed on the burden to your customer? Department started crediting each refund to the CWF. Whatever proof is produced, was denied. CA certificate? NO. Cost Accountant Certificate? NO. Pre-excess duty invoice and Current Invoice? NO. The taxpayers even after fighting against illegal duty collection, could not get the refunds. Only easy way left for them is to simply pass on the burden in different ways!! Statistics showed a drastic reduction in number of cases. Thus department and the tribunal encouraged the reckless passing on of the illegal burden on consumers and upfront lazy officers to have sound sleep. Granting refunds may bring down his probability of promotion and highest collection improves such probabilities. Corruption, off course, may help you to get refunds! But that is not the way. It is true that if the competition is too stiff, the taxpayer cannot pass on the burden in the form of tax itself to the customer. But he or his customer share the illegal burden imposed by the taxman.

New Ray of Hope:

Very recently courts are opening eyes towards the taxpayers problems, off course, with respect to selected circumstances.

In a landmark judgment on the applicability of the doctrine of unjust enrichment to refunds of duty paid under protest or resulting from the finalisation of provisional assessments, and the purchaser's ability to claim a refund, the Honorable Supreme Court has held that –

- (a) Bar of unjust enrichment is not applicable to refund consequent upon finalisation of provisional assessment, since the provisions in respect of finalisation of assessment entail an automatic refund of excess duties paid without requiring a claim under Section 11B to be filed.
- (b) Bar of unjust enrichment to apply to claims for refund of duty paid under protest;
- (c) Where a refund claim has been made - whether by the manufacturer or by the buyer - after finalisation of assessment, Section 11B shall be complied with, even in cases where the duty has been paid under protest by the manufacturer
- (d) The uniformity in price of the goods before and after assessment cannot lead to an inevitable conclusion that the incidence of duty has not been passed on to the buyer as such uniformity may be due to various factors

The Hon'ble Supreme Court has also held that where the authorities below have not examined the relevant factors, then notwithstanding concurrent findings of the Courts below, the Supreme Court can interfere under Article 136 of the Constitution.

[*CCE v/s Allied Photographics India Ltd. 2004 (166) ELT 3 (SC)*]

Similarly in *Finolex Industries Ltd. Vs. CC (2004 (166) ELT 230)* tribunal had a look in to the Provisional Assessment & Unjust Enrichment. The Tribunal relying on the decision of the Supreme Court in the case of *Mafatlal Industries Vs. UOI (1997 (89) ELT 247)*, has held that [refund claims arising out of finalisation of provisional assessment of imported goods are not hit by the bar of unjust enrichment.](#)

When government illegally collects more duty, how can we expect taxpayer to fight by spending over and above the extra duty he has already paid? If he wins the fight, money goes to CWF. If he loses, department retains it. How to penalize the erring officers? Can we look forward for more number of similar decisions?



PRODUCTIVE AND UNPRODUCTIVE ROLES MANAGERS PLAY – PART 2

Article by Ms. Sarina C H, CS, Meritor HVS Ltd

(Continued from Previous Edition...)

Ten different unproductive roles that managers play

1. **The fog maker**- that's the manager who keeps people guessing about what's expected and how well they're doing. They figure the fuzziest instructions; the easier it is to find some reason **to blame somebody for something**.
2. **The exterminator**- his motto is come on make my day. He tells people to do it or to lose their job. The exterminator- you do it my way or bye-bye.
3. **The God player**- Whatever people is not good enough, as if he knows everything and his people know nothing, always condescending, always correcting, always dissatisfied with the performance of the people on the team.
4. **The social director**- This kind of a manager assumes personal responsibility for everybody's problems. While we have to be concerned about people, there is a thin line that when we cross it, we forget that we are in business to conduct business, we are not in therapy.
5. **The do it yourselfer**- This person believes that if you want something done right, you have to do it yourself. This person is a collector of other people's monkeys. These are the people who tend to work long hours, weekends too, these are the people who even though they work very hard and very long, may not be the most efficient, may not be the most effective and certainly may not be the most productive.
6. **The carom shooter**-The carom shooter, among managers, is the manager who will say something about you, but he will say to him, he will get to you, but only through him. No direct lines of communication, no sense of honesty and openness. It does not create for good loyalty and for good teamwork.
7. **The old timer**-This is the person who often laments, "That's not the way we've always done it around here." This is the person who while they bring a great sense of history and past experiences which makes for really a lot of strengths, unfortunately, dwells on those issues, my way or no way because that's the way we've always done it.
8. **The paperhanger**- This is the person who doesn't process paper, they just shuffle it. They pick up the letter, they read it, they put it in this pile, tomorrow they pick it up from this pile, they put it in this pile, they just shuffle papers all over the place and when they do that they disconnect the process of communication. Either they don't know how to process this paperwork forward, or they're concerned about something, or they're afraid of the results.
9. **The prosecutor**-. This is the manager who publicly and loudly attacks anybody who makes a mistake. He would rather fix the blame than fix the problem.
10. **The wimp**- This is the manager who is afraid to confront anybody, hates everybody, but wouldn't dare tell them, so he or she keeps those feelings to themselves and when they do that it causes disconnectedness in the company and it causes a frustration, problem solving and moving things forward because they're afraid of the consequences so they play it safe.

(Concluded)

Legal Updates

- **Interest is payable on interest on refund withheld unjustifiably for a long period:** The assessee claimed interest on interest on refund due, as the refund had been delayed for about 2 years. Relying on the decision in CIT v. Narendra Doshi [2002] 254 ITR 606 (SC), it was held that the assessee was entitled to interest on interest payable on the refund amount up to the date of issue of cheque since the refund had been withheld unjustifiably for an unduly long period.

Fashion Power v. DCIT [2004]
135 Taxman (Mag.) 109 (Mum.)

- **Ownership and CENVAT:** When the capital goods (Dyes & Fixtures) have been imported by the appellant and supplied to a Job Worker, who manufactured components and supplied to Appellant, the Job worker is entitled to avail Cenvat/Modvat on such capital goods although he is not the owners of such capital goods as ownership is absolutely irrelevant for claiming Cenvat/Modvat.

Maruti Udyog Ltd Vs. CCE, 2004
(165) ELT 226 (Tri).

- **Transaction Value:** The Tribunal has held that where the price of the imported goods was reduced in terms of the contract between the buyer and the seller, after the arrival of the goods in India, the reduced price is acceptable as the transaction value.

Goa Carbon Ltd. Vs. CC (2004)
(166) ELT 196)

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Legal Updates – Continued

- **Valuation of Second Hand Machine:** The Tribunal has upheld the valuation of second hand machines based on the price of new machines scaled down by prescribed depreciation norms and rejected the lower value of the imported goods as certified by the Chartered Engineer.

Rajasthan Textile Mills Vs. CC (2004 (61) RLT 706) and Balson's Industries Vs. CC (2004 (61) RLT 801)

- **Decision of a non-jurisdictional High Court is binding on the Tribunal:** If an authority, higher than the Tribunal, has already expressed an opinion on an issue that is before the Tribunal, the Tribunal has to follow the opinion irrespective of the fact that such an authority is a non jurisdictional High Court.

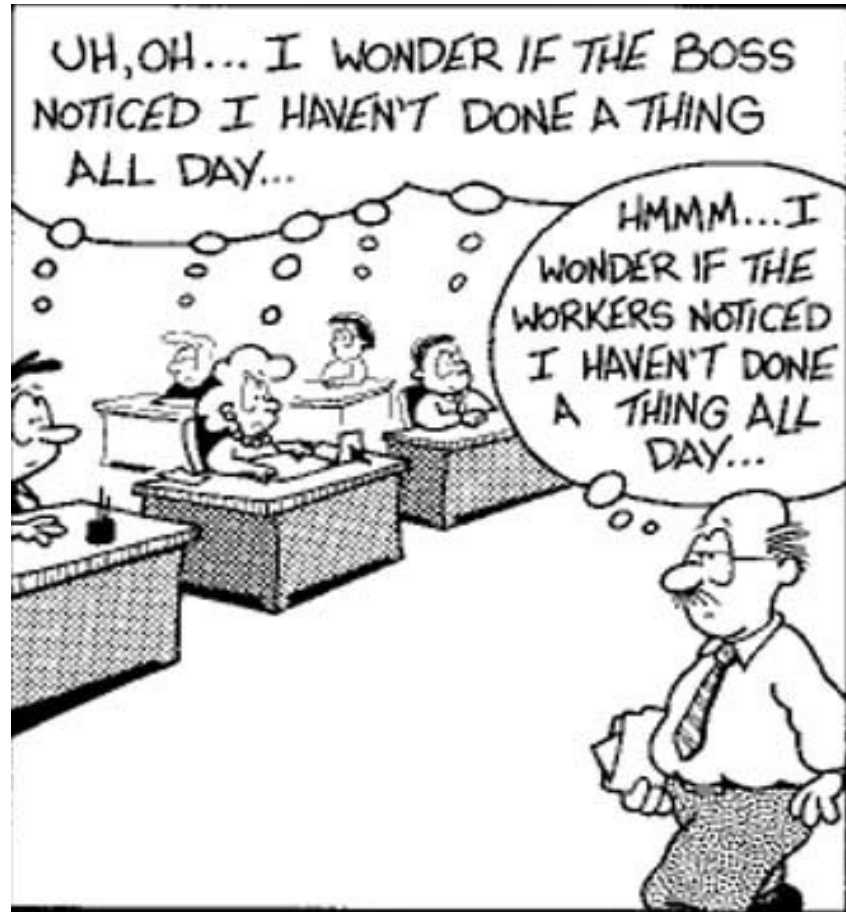
ITO v. Dilip Shirodkar [2004] 82 TTJ 869 (Panj.)

- **Duty paid in excess is not a duty at all:** When the amount was deposited with the Government in anticipation of receipt of imported consignment of particular quantities of goods but on arrival, it was found that less quantities were received at port, on the application of importer to seek refund of excess amount so deposited, the Govt. rejected said application being time-barred.

The Delhi High Court held the said amount can never be equated with "Custom Duty" so as to attract the limitation prescribed under Section 27 of Customs Act as said amount would have taken over the colour of "duty" when the goods had been received in India.

United News of India Vs. Union of India 2004 (110) DLT Page 95

On lighter side.....



Food for thought...

"We don't see things as they are, we see them as we are."

-Anais Nin

