

The Best Chapter in its Grade





eMagazine

from

The Institute of Company Secretaries of India, Mysore Chapter



CS. Ajay Madaiah B.B.
Chairman,
Mysore Chapter

Wish you all happy and prosperous New Year and Shubha Sankranti!!

As the New Year getting unfolded, Mysore Chapter has more reasons to celebrate. Mysore chapter has been adjudged as the **Best Chapter for the year 2013** under its grade at all India level. The award was presented at Udai Divas, held on 1st January, 2015 at ITC Grand Chola, Chennai. I congratulate management committee, chapter staff, members and students of the chapter for having secured this recognition again. And hearty Congratulations and best wishes to all the newly elected members of committees of the chapters, Regional & Central council team.

It has been a privilege and pleasure being served the chapter as chairman for the previous term and it is time to thank Management committee, chapter staff, members, students and well wishers who have supported and contributed towards various chapter activities. Having been Chair for previous year, the time has now come for me to pass the baton to new committee with good wishes and I do so with much comfort and secure in the knowledge that, with the existing support, their passion and enthusiasm they will take the Chapter to greater heights. May this New Year Brings us all Happiness and peace Success and Prosperity in personal and professional life Filled with joy and spirit.

-: Editorial Team :-

CS Dattatri H M
CS Sarina C H
CS Omkar Gayatri
CS Abhishek Bharadwaj A B
CS Ajay Madaiah
CS Ravishankar Kandhi
CS Vijay Shyam Acharya
CS Madhur N Agrawal

Inside

Introducing New Editorial Team...3

Articles:

Exchange Traded Fund...5
No More Collegium...6
Employees Compensation Act...7
I Jnana on 'Concepts of IPR' ...8
OMR: a stringent move or liberal approach? ...9

Columns:

Words Worth Millions...3
Activities at Mysore Chapter...4
Web Yatra...10
e-Tools for Professionals...10
News Room...11
Spectrum Space...12
Legal Roundup ... 13
Living Room...15

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New Editorial Team

Congratulations!



Reconstituted Editorial Team

1. CS Dattatri H M
2. CS Sarina Chouta Harish
3. CS Omkar Gayatri.
4. CS Abhishek Bharadwaj

5. CS Ajay Madaiah
6. CS Ravishankar Kandhi
7. CS Vijay Sham Acharya
8. CS Madhur N Agrawal



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Words Worth Millions

OUR GREATEST WEAKNESS LIES IN GIVING UP. THE MOST CERTAIN WAY TO SUCCEED IS ALWAYS TO TRY JUST ONE MORE TIME.

Thomas A. Edison

Activities at Mysore Chapter

Hat-trick by ICSI Mysore Chapter

Mysore Chapter has been adjudged as the Best Chapter for the year 2013 under Grade 'D' category. It is a hat-trick award for Mysore Chapter as the Chapter was declared the Best for the years 2011 and 2012 as well. The Chapter in the past has received the Best Chapter Award for the years 2007 and 2009.



The award was presented to Mysore Chapter at Uday Divas, held on 1st January, 2015 at 4.00 P.M. at ITC Grand Chola, Chennai. On behalf of Mysore Chapter of ICSI, CS Sunil Kumar B.G. Past Chairman, Mysore Chapter of ICSI & CS Ajay Madaiah B.B. Company Secretary of Skanray Technologies Pvt. Ltd and Chairman of Mysore Chapter of ICSI were present. The Award was presented by Dr. J. Sadakkadulla, Regional Director, Reserve Bank of India. Mr. Pandia Rajan, Chairman & Managing Director, MaFoi consulting, President of ICSI CS. R. Sridharan, Vice President CS. Vikas Khare, Central Council members CS Sudhir Babu, CS Gopalakrishna Hegde and Chief Executive & Officiating Secretary of ICSI CS Sutanu Sinha were present during the occasion.

Career Awareness Program



On 03.12.2014 Mysore Chapter of the ICSI organised a Career Awareness Program at Pooja Bhagavat Post Graduate Centre, Mysore. Around 100 students from M. Com., & M.F.M., stream attended the Program. CS Pracheta M, Managing Committee Member, Mysore Chapter explained about the course offered by the Institute and the criteria for eligibility for the course, examination, requirements of training etc., She also highlighted the importance of making the right career choice so as to be successful in life.

CS Pracheta also spoke about the role of a Company Secretary and importance of the profession of Company Secretary in the changing economic scenario. Brochures containing brief details of the Company Secretaryship Course were distributed to the participants.

Exchange traded fund:

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History, evolution benefits and operational process

Part 1

In a recent development, Exchange traded funds has gained wide popularity, among investors as financial instruments, because of the unique advantages they provide over mutual funds. These instruments are highly advantageous for investors, who find it difficult to master the tricks of the trade resulting out of analyzing and picking stocks for their portfolio.

Various Asset Management Companies, Managing Mutual funds have started providing ETF products that attempt to replicate the indices on NSE, so as to provide returns that closely correspond to the total returns of the securities represented in the index. ETF's now currently available on NSE are extremely diverse which include Equity, Debt, Gold and International Indices ETF's.

ETF's launched on NSE

Exchange Traded Funds (ETF) are essentially Index Funds that are listed and traded on exchanges like stocks. An ETF is a basket of stocks that reflects the composition of an Index, like CNX Nifty. The ETFs trading value is based on the net asset value of the underlying stocks that it represents. The funds rely on an arbitrage mechanism to keep the prices at which they trade roughly in line with the net asset values of their underlying portfolios. For the mechanism to work, potential arbitragers need to have full, timely knowledge of a fund's holdings.

ETF's was first introduced in USA in 1993. It took several years for them to attract public interest. But once they did, the volumes took off with a vengeance. Over the last few years more than \$120 billion (as on June 2002) is invested in about

230 ETFs. About 60% of trading volumes on the American Stock Exchange are from ETFs. The most popular ETFs are QQQs (Cubes) based on the Nasdaq-100 Index, SPDRs (Spiders) based on the S&P 500 Index, iSHARES based on MSCI Indices and TRAHK (Tracks) based on the Hang Seng Index. The average daily trading volume in QQQ is around 89 million shares.

ETF s Scheme launched on National Stock Exchange, NSE, represent Equity, Debt, Gold and World Indices. ETFs are just what their name implies: baskets of securities that are traded, like individual stocks, on an exchange.

Advantages of ETF's over Mutual Fund:

There are certain specific advantages which ETF has over Mutual Fund which are listed below:

1. Unlike regular open-end mutual funds, which are also basket of securities, ETFs can be bought and sold throughout the trading day like any stock.
2. Most ETFs charge lower annual expenses than index mutual funds. However, as with stocks, one must pay a brokerage to buy and sell ETF units, which can be a significant drawback for those who trade frequently or invest regular sums of money.
3. Even though ETFs and Futures allow investors exposure to an index, they are different in many regards. While Futures is a derivative product and trades in the F&O segment of NSE, ETFs are a cash market product and trade in the Capital Market segment of NSE.
4. The maximum tenure available for futures is 3 months while ETFs can be held for as long as the investor wants.

NIFTY ETF: A COMPARISON

	STOCKS	NIFTY MUTUAL FUND	NIFTY ETF
EXPOSURE	Narrow	Broad	Broad
VOLATILITY	High	Low	Low
EXPENSE	Low	High	Low
CAPITAL REQ	High	Low	Low
PRICE	Market Rates	NAV at EOD	Market Rates
ARBITRAGE	Yes	No	Yes
MARKET RETURNS	No	May Be	Yes
INTRADAY TRADING	Yes	No	Yes

To be continued...



No more 'Collegium', it's 'Commission' now!



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*Setting up of National Judicial Appointments Commission ('NJAC') gets President's assent
on 31st Dec 2014, New Hope for New Year 2015.*

Appointment of judges in higher judiciaries [Supreme Court ('SC') and High Courts ('HC')] has, many a time, been a national headline with controversies, which is not new... historical. To bring transparent system, legislature has proposed NJAC as against Collegium system for appointment of judges in SC & HCs. This is the third operation to the system/process for appointment of judges in SC & HC since Independence, namely:

Op I - Before 1993: Law minister selected judges in consultation with judiciary

Op II - After 1993: Collegium in SC & HC. For appointment of HC judge, collegium of that HC suggesting name to 3 member collegium of SC for its clearance. For appointment of SC judge, name cleared by 5 member collegium consisting of CJI & 4 other Sr., most judges of SC.

Op III - From 2015: Selection of SC & HC judges by NJAC as provided in NJAC Bill, 2014 ('Bill').

I. Collegium regime:-

Constitution of India in Article 124 had envisaged that the President to appoint judges of SC after consultation with such of the Judges of the Supreme Court and of the High Courts in the States (Collegium) and for appointment of judges in HC, as per Article 217, in consultation with Governor, CJI & Chief Justice of that High Court.

II. What is proposed in NJAC regime:-

As the appointment of judges to SC & HC are prescribed in the Constitution of India, changing the process required amendment to the Constitution of India, ratification of the Constitutional amendment by majority of the State Legislatures and President's assent for Constitutional amendment. And then, the promulgation of new law on NJAC. The Parliament passed the Constitution (121st Amendment) Bill, 2014 and the National Judicial Appointments Commission Bill, 2014 in August 2014 proposing new system for judicial appointments. Post constitutional amendment got ratified by >50% of the State Legislatures, setting up of NJAC got President's assent on 31st Dec 2014 bringing new hope for New Year-2015.

Composition of NJAC:

As per newly added Article 124A of the Constitution of India, NJAC is a six-member panel consisting of Chief Justice of India as Chairperson, two senior-most Supreme Court judges, Union Minister of Law and Justice and two eminent persons, as members. These eminent persons are nominated by committee comprising of the Prime Minister, CJI and Leader of Opposition in the Lok Sabha or leader of the largest opposition party in the Lok Sabha.

Appointment to SC:

1. Chief Justice of India: NJAC to recommend the name of senior most judge of SC, if he is considered fit to hold the office.
2. SC judges: NJAC to recommend the names of persons on the basis of their ability, merit and other criteria specified in the regulations. NJAC not to recommend a person for appointment if any 2 members of NJAC do not agree for such recommendation.

Appointment to HC:

1. Chief Justice of a High Court: NJAC to recommend the name based on seniority of all High Court Judges and ability, merit and any other criteria specified in the regulations.
2. HC Judges:
 - a. Seek nomination from the Chief Justice of the concerned HC recommending appointment a person to be a Judge of that HC.
 - b. NJAC to nominate names for appointment of HC judges and forward such names to the Chief Justice of the concerned HCs for his views. Chief Justice to consult two senior most judges of that HC and any other judges and eminent advocates of that HC before providing his views/nominations.
 - c. NJAC not to recommend a person for appointment if any 2 members of NJAC do not agree for such recommendation.
 - d. NJAC to elicit in writing the views of the Governor and Chief Minister of the State before making recommendations

On recommendation of NJAC, the President is to appoint the CJI, Judges of SC or CJ of HC or judges of HC. The President may require NJAC to reconsider the recommendation made by it, however, if NJAC recommends after consideration, the President shall make the appointment.

Transfer of Judges:

NJAC is to recommend transfer of CJ's and other Judges of HCs from one HC to another as specified in the regulations.

Will the independence of judiciary get disturbed with NJAC?

Amendment to the Constitution and promulgation of NJAC Bill, both providing for role of **executive** in appointment of higher judiciary, question is whether basic principles

enshrined in the Constitution of India i.e., separation of power and the independence of the judiciary are destructive? Soon the Lok Sabha and Rajya Sabha passed the 121st constitutional amendment and the NJAC Bill in Aug'2014, series of PILs have been filed before the SC challenging the constitutional validity of both the legislations.

While deciding these PILs, the three judge bench of SC refused to intervene 'at this stage' noting that the PILs are premature and it is open for the petitioners to approach the court at later stage on the same ground. Constitutional validity of constitution of NJAC and its impact on independence of the judiciary will sure be under scrutiny in the days to come and time only can tell whether NJAC will sail or sink...



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I&E Law Café- 15

Column on Industrial & Employment laws

Employees Compensation Act, 1923

An employee covered under Employees' State Insurance Act, 1948 will not be entitled to claim benefit under Employees' Compensation Act, 1923.

An employee shall be eligible for compensation under Employees' Compensation Act, 1923 which results in the total or partial disablement of the workman for period exceeding **THREE DAYS**.

An employee shall not be eligible for the Compensation for any injury caused to by his willful negligence or failure to adhere to safety standards prescribed by the employer.

Amount of Compensation under Employees' Compensation Act, 1923 is as under.,

A. In case of death:

An amount equal to **50%** of monthly wages of the deceased workman multiplied by relevant factor or an amount of **Rs.1,20,000/- WHICHEVER IS MORE**.

B. In case of Permanent total disablement:

60% of monthly wages multiplied by relevant factor or an amount of **Rs.1,40,000/- WHICHEVER IS MORE**

Procedure for Calculation:

Higher the age – Lower the compensation

Relevant factor specified in second column of **Schedule IV** giving slabs depending upon the age of the concerned workman.

For example: In case of death of workman

** Wages is Rs.8000/- pm

** Age is 23 years

** Factor as per Schedule IV is Rs.219.95

** Amount of Compensation would be 50% of Rs.8000/- p.m wages multiplied by relevant factor = Rs.4000*219.95 = Rs.879800

** **Actual Compensation:** Rs.120000/- or Rs.879800 whichever is more. It is Rs.879800/-

Maximum ceiling limit of wage for calculation of compensation purposes under Employees' Compensation Act, 1923 is Rs.8000/- per month w.e.f 31.05.2012.



Concepts of IPR

Dear readers,

This month, we will try to understand some conceptual aspects regarding intellectual property in the light of some recent pronouncements, in India.

1. Mere Registration of trademark not sufficient, if not coupled with use:

The Intellectual Property Appellate Board (IPAB) has, in connection with a petition for removal filed by ITC Limited, ordered removal of the marks ECLAIRS of Cadbury's, citing non-use of the mark by the latter. As per this pronouncement, Cadbury loses rights in the marks 'ECLAIRS'.

Principles/ Learnings to be noted:

- a) Mere registration of trademarks is not sufficient to protect intellectual property therein. Continuous uninterrupted use, with demonstrable proof of such use is vital to protect, defend and prosecute intellectual property in trademarks.
- b) Continuous extensive use of the mark, or similar mark, whether independently or in conjunction with any other trademark, by a business rival can weaken the justification for continuance of exclusive property in the trademark.
- c) In addition to litigation at the Courts, a business rival may file petition with the Registry for removal of trademarks alleging that the registered marks wrongly remained in the Trademarks Register, the said Marks have not been put to genuine use and are hence liable to be removed from the Trademarks Register and/ or that the marks in question were not distinctive of the goods of the registered proprietor.
- d) Words or expressions that are descriptive as per dictionary meaning cannot be held to be unique so as to qualify for grant of a Trademark.
- e) In the absence of demonstrable use of a Trademark, mere submission of Trademark registration certificates of various countries will not help to establish claim over the Trademark.

2. Compulsory License under Indian Patents law

The Controller of Patents may issue a compulsory license in respect of a patent, after three years of issuance of the patent if one of the following conditions is satisfied:

- a) **Reasonable requirements of the public with respect to such patented invention are not satisfied** – while a patent is granted to protect the rights of an inventor / patentee and to motivate the inventor or such other person to commercially exploit and gain from the labour and fruits of such invention, the inventor/ patentee cannot misuse the grant of a patent merely to block the harnessing of the invention, thereby depriving the public from the benefits of the invention. In other words, an inventor or patentee, by obtaining a registered patent, cannot say 'neither will I use, nor will I allow others to'.
- b) **The patented invention is not available to the public at a reasonable price** – this principle is based on social justice. Again, while an inventor/ patentee, who has undertaken high cost/ high risk research and has validly obtained exclusive rights, is entitled to commercial exploitation of the benefits of the invention to the exclusion of others, during the tenure of the patent, he/she cannot claim unreasonable profits on such invention by prohibitive pricing.
- c) **The patented invention is not worked in India.**

Thus, when the IPAB upheld grant of compulsory license to a generic pharma manufacturer in India (NATCO), it was hailed by some as a warning for drug companies engaged in exorbitant pricing, and as a ray of hope for public to access health products at affordable prices, but was despised by others as endangering pharmaceutical research. Recently, the Controller of Patents has held that an applicant for a compulsory license will first have to make all sincere efforts to obtain a voluntary license from a patentee, before seeking grant of compulsory license. This finding was pursuant to an application for compulsory license, against the patentee – Bristol Mayer Squibb (BMS).

OMR

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a stringent move or liberal approach?

The profession of Company Secretaryship is struggling to evolve in international parlance, as far as the negative polling at World Trade Organisation last year for inclusion of Secretarial Services and Governance Services in the list of international list of services for cross border free trade, is concerned.

The good news is, recognising the need of the time, the Institute of Company Secretaries of India, the alma mater, has decided to introduce the internationally acclaimed OMR i.e. Optical Mark Recognition, based pattern of examination for three subjects of Executive Program viz. Cost and Management Accounting, Tax Laws & Practice and Industrial, Labour & General Laws, wherein students will be asked hundred questions of one mark each, four options of answers will given to each question and three hours will be given to solve the entire paper. The students just have to darken the circle adjacent to correct answer with black ball pen and an extra sheet is generally given to do their rough work. Whenever we talk about options in exams and ticking the correct one, the first thing I am reminded is KBC a.k.a. Kaun Banega Karodpati, however even the KBC may not be a student's cup of tea, unless and until it's not a celebrity episode for a cause, no free cookies!

Most of the students of the Company Secretaryship course join it since it has more theoretical syllabus than practical one. Even in case of practical subjects such as Accounts and Tax the institute is keener in asking the theoretical question i.e. the questions for which no or least numerical efforts are required. The same happened with me when I appeared for Tax paper of Intermediate, wherein more than 60% of the paper was theoretical. The general mentality of students behind this is, I will read guideline answers and even if I just touch a three marks question, I will be awarded atleast one mark, with this attitude many of the students cleared their exams, they are struggling somewhere, joined somewhere on small amount, blaming the Institute for non availability of jobs and thereby leaving the institute nowhere. The crux is, when you get something very easily, you neither value it nor you respect it. See, you can't just become a 'Company Secretary' by passing the Company Secretaryship exams, for some it might be a cake walk until passing the Professional Exams, but the real journey begins thereafter.

This OMR pattern of examination, according to me will solve lots of problems as far as quality of examination is concerned. Remember the time it used to take to prepare a 10 marks Computation of Income for a company, salaried employee, etc. in Taxation paper? I used to take 15 minutes to prepare the whole computation with formats, rough work etc., which was nearly 10% to total exam duration and each such excess usage of time cost you a lot. Now imagine solving the same for merely one mark, no doubt the questions may be asked for particular only one head of income, or only for computation GTI or NTI, but surely this will be a game changer.

The bad news is, ICSI's exam department has been paralysed since last many years, recovery of which is now all depends on the new council, which seems, so far, young and dynamic. The paper checking standards of the institute has seen drastic negative demograph, needless to say the incidences where the examinees' marks were increased by 10 to 15 marks on revaluation, which is actually nothing but totalling the marks allotted to each questions, now the question arises here is, whether our examiners/paper checkers are not even capable of making correct total of marks they have been awarded to each question the examinees appeared? The answer is certainly not affirmative, looking at the variation of marks on revaluation and before revaluation.

By the time this article gets published the OMR based exams might get over, but a sincere request to the ICSI from the next session is to:

1. *Introduce negative marking, so that students just don't play it like a game;*
2. *Do not repeat the questions asked in previous exams;*
3. *Host some test exams on institute's website, so that students gets familiar with the pattern of questions;*
4. *Give more weight age to practical questions and less to theoretical.*

This initiative of ICSI for intermediate examination is first of its kind among all three professional bodies in India and the other two may follow soon, but before that let's concretize ourselves.



nature.com

I am proud to introduce a new and helpful website on the occasion of New Year to our professional colleagues.

<http://www.nature.com/> is one of the best sites providing weighted information regarding high impact of scientific and medical information and services across the life, i.e. physical, chemical and applied sciences and clinical medicine, the result of scientific work, research and scientific discovery. It gives the exact impact of all the scientific and medical research on the human body. In this <http://www.nature.com/> we can also get Nature research journals and Nature Reviews journals, including news and comment. Broadly this site contains the following:-

- Latest research
- Special Features
- Life science
- Chemistry
- Nature Plants
- Nature index, etc.,

This site also gives information about original research, News, Commentaries, Reviews, news and views, and Features from across the full range of disciplines concerned with the plant sciences. an also some important links.



e-TOOLS FOR THE PROFESSIONALS

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BOX: An Android application for mobiles and tablets

BOX is an Android application which allows us to create and edit new or existing files, save them to your Box account and share them with others. We can access our content online from our desktop and also from our Android phone or tablet. We can share our photos, videos and other documents. By using this application we can transfer huge data files with just a link, and no file is required to be attached with email. This application helps us to find the recently viewed or edited files by giving updates feed.

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Flash News

- RBI has asked banks to exclude non-promoter directors from the list of willful defaulters, in its recent amendment to Master Circular.
- Existing Foreign Trade Policy to continue until March 2015: Federation of Indian Export Organisations
- India may take Singapore to WTO for violation of Comprehensive Economic Partnership Agreement
- India bans imports of Poultry from US on account of avian influenza; to challenge WTO order on US poultry
- India textile export subsidy under WTO scanner according to the WTO's Agreement on Subsidies and Countervailing Measures
- India eyes on seeking a permanent solution to the food security issue at the WTO, as WTO Chief to visit India in Jan 2015
- DoT May Submit Plan to Levy Swachh Bharat Cess on telecom companies to raise funds for the Swachh Bharat Mission.
- The National Federation of Indian Railwaymen (NFIR) has vehemently opposed the Centre's proposal for FDI in Railways and threatened to go on indefinite strike in June this year.
- Indian Design Act amended effective on December 30, 2014. Accordingly a revised fee structure has been provided for filing of design application as well as other proceedings.
- RBI gets a helping hand from SEBI in pinning down willful defaulters

No Relief for Vodafone, Airtel on License Renewal at SC

The Supreme Court on Friday refused to grant any interim relief to Vodafone and Bharti Airtel after the companies sought to have their spectrum licenses extended by another 10 years in return for any auction-determined price fixed by the government without having to surrender the airwaves.

E-IPO Norms; Fast-Track Divestment by PSUs

SEBI has proposed electronic-IPO (e-IPO) to eliminate printing application form and reduce the overall cost of public issuance. The regulator said this will reduce the post issue timelines from 12 days to six days.

SEBI proposes various reforms in its regulations

Few of them include Re-Classification of Promoters as Public, regulatory framework for the issuance of debt

securities by municipal authorities, allowing Foreign Venture Capital Investors to invest in core investment companies (CICs) in the infrastructure sector, easing the process for registration of depository participants by altering the erstwhile two-stage registration process to a single registration etc.

MCA makes road map for new accounting standards

All companies, listed and unlisted, with a net worth over Rs. 500 crore together with their holding, subsidiary, joint venture or associate companies are covered in the first phase and second phase covers all the other listed companies or those in the process of listing and all other unlisted companies with a net worth over Rs. 250 crore, together with their holding, subsidiary, joint venture or associate companies.

[Recommended Article for your reading:](#)

5 stories for aspiring entrepreneurs & Dream-Big folks

Click this link: http://articles.economicstimes.indiatimes.com/2014-12-12/news/56990046_1_chumbak-pepperfry-shubhra-chadda



Learners' Corner

ENERGY SOCIETY OF INDIA (ESI)

The Energy Society (ESI) is an NGO that aims to accelerate the deployment and use of renewable energy, energy management and energy efficient technology. It organises major events that inspire and motivate large numbers of people to get involved in energy efficiency programme and make a difference.

ESI has been specializing in the development and support of integrated business applications, with clients worldwide in renewable sources of energy, energy efficient technologies, energy Management, energy trading and retailing, project development, product promotion, energy advocacy etc. The current domestic energy situation and our increasing dependence on foreign oil make the country more vulnerable, economically and from a national security perspective, than at any time in our history. This Society is formed to recognize the urgent need for Energy Efficiency, Load Management and Supply Strategies. As technology continues to change, the ESI's role has broadened to become increasingly inclusive, global and multi-disciplinary.

ESI provides various services like liasoning for any Energy Management Projects, Publicity & Propaganda of the projects and innovations through seminars, conferences and events, Product Promotion, Energy Advocacy and Clean Development Mechanism (CDM).

Did You Know?

INTERNET OF THINGS (IoT)

The Internet of Things (IoT) is a scenario in which objects, animals or people are provided with unique identifiers and the ability to transfer data over a network without requiring human-to-human or human-to-computer interaction. IoT has evolved from the convergence of wireless technologies, micro-electromechanical systems and the Internet. Things, in the IoT, can refer to a wide variety of devices such as heart monitoring implants, biochip transponders on farm animals, automobiles with built-in sensors, or field operation devices that assist fire-fighters in search and rescue. Current market examples include smart thermostat systems and washer/dryers that utilize Wi-Fi for remote monitoring.

Pick of the month

First Directors of the Company Promoted By Corporate Entities

When a company is promoted by 2 corporate entities or companies, say a SPV, and if the names of the first Directors are not mentioned in the articles, then the provision of Sub-section (1) of Section 152 shall not be applicable for the subscribers to be deemed First Directors because, it provides only for the subscribers who are individuals to be deemed first directors and not in any other case. Hence, the first Directors of a company promoted by the Corporate Entities must be either named in articles or appointed in a General Meeting.





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CUSTOMS & FTP

Notifications/Circulars/News

Pursuant to the Cadre structuring/ reorganization of Central Board of Excise and Customs (CBEC) new posts in the rank of Commissioners of Customs have been created in Directorate of Revenue Intelligence (DRI) and Directorate General of Central Excise Intelligence (DGCEI) for the adjudication of cases investigated by DRI and DGCEI.

No. 14/2014-Customs dt 11 Dec, 2014

The Central Government has amended the policy for export of cotton and cotton yarn to dispense with the requirement of registration for export of these products.

No. 102 and 103 (RE-2013)/2009-14) dated 8 December, 2014

The Central Government has constituted a High Level Committee (HLC) to interact with trade and industry as announced in Budget Speech 2014-15. HLC will give recommendations to CBDT/ CBEC for issuance of appropriate clarifications by way of circulars, instructions, etc. on tax issues. -*CBEC Press Note dt 3 Dec 2014*

Case Law

Broadcasting equipment for communication between field and news studio working with the help of GSM cellular network was classifiable under Customs Tariff Heading (CTH) 8517 as apparatus for communication in a wired or wireless network and not under CTH 8525 50 20 as TV broadcast transmitter since broadcasting related to the public at large, and it was not intended for the general public, and was only for private purposes.

CC v Dejero Logix Pvt Ltd (2014 (310) ELT 254)

The Delhi Tribunal held that the transaction value of exported goods could not be rejected when no doubt on declared value was raised in terms of Customs Valuation (Determination of Value of Export Goods) Rules, 2007.

Rail Associates Enterprises v CC (2014 (310) ELT 397)

The Gujarat High Court held that prima facie arguable case of assessee did not warrant total waiver of pre-deposit in cases where there was no evidence of financial hardship to the assessee.- *Ashapuri Metals Pvt Ltd v CC (2014-TIOL-2219-HC)*

The Madras High Court held that in case the Tribunal found that there was an error in the order, the Tribunal had the power to

remand the matter back to the competent authority who had the jurisdiction to pass an order, and it was not warranted to remand it to authority which had passed the order.

CP Aqua Culture (India) Pvt Ltd v CESTAT Chennai and Ors (2014-TIOL-2170-HC)

On clearance of goods from SEZ to DTA, no CVD was payable in case there was any exemption from payment of CVD under section 5A of Central Excise Act, 1944, because SEZ Act provided that clearance from SEZ to DTA were in the nature of dutiable imports. Hence, on clearance from SEZ to DTA, duty equivalent to import duties was payable. Also, if there was any exemption on import, the same had to be granted.

Gujarat High Court ,in Roxul Rockwool Insulation India Pvt Ltd v UOI (2014-TIOL-2123-HC-CUS)

The Delhi High Court held that neither the Central Government nor DGFT had the power to amend the Foreign Trade Policy or withdraw any export benefit with retrospective effect.

Malik Tanning Industries v Uoi (2014-TIOL-2197-HC)

The Delhi High Court held that no prejudice had been caused to importer in case DGFT had not granted extension of period for fulfilling export obligation in a case where there was no attempt by the importer to export any alternate product.

DSJ Communication Ltd v Uoi and Ors (2014-TIOL-2233-HC)

The Supreme Court held that duty drawback granted to exporter could not be considered as evidence that the transporter had duly delivered the goods to foreign buyer, and had duly discharged his liabilities.

Transport Corporation of India Ltd v Ganesh Polytex Ltd (2014 (310) ELT 213 (SC))

The Ahmedabad Tribunal held that restrictions and prohibitions on imports under licence could not be imposed by way of circulars and public notices by DGFT.

Global Exim v CC (2013 (310) ELT 322)

Ministry of Corporate Affairs

Notifications/Circulars/News

Highlights of Changes vide Amendment:

Application of Cost Records: Earlier, Companies were required to maintain cost audit records u/s 148(1) category-wise on the basis of net worth and/or turnover basis. Now

only two categories (regulated sectors and non-regulated sectors) have been retained and a general threshold of turnover of Rs. 35 crores or more has been prescribed for companies covered. Micro enterprise or a small enterprise as per MSMED Act, 2006 have been taken out of the purview

Applicability for Cost Audit: Even for regulated sectors like Telecommunication, Electricity, Petroleum and Gas, Drugs and Pharma, Fertilizers and Sugar, Cost audit requirement has been made subject to a turnover based threshold of Rs. 50 crores for all product and services and Rs. 25 crores for individual product or services. For Non-regulated sector the threshold is Rs. 100 crores and 35 crores respectively.

Maintenance of Cost Records: The requirement to maintain cost records in Form CRA-1 have been postponed to Financial Year 2015-16 for the following companies in some non-regulated sectors, namely; Coffee and Tea, Milk Powder and Electricals and electronic machinery.

Cost Audit: Any casual vacancy in the office of a cost auditor, whether due to resignation, death or removal to be filled by the Board of Directors within thirty days of occurrence of such vacancy and the company shall inform the Central Government in Form CRA-2 within thirty days of such appointment of cost auditor.

Companies Cost Records and Audit Amendment Rules 2014 dated 31-12-2014

In the Companies (Central Government's) General Rules and Forms, 1956, in Rule 12A, for the brackets and words (Accounts) in the Department of Company Affairs, the words in the Ministry of Corporate Affairs shall be substituted.

Companies (Central Government's) General Rules and Forms Amendment Rules, 2014 dated 17 December 2014

CENVAT

Case Law

The Mumbai High Court held that aluminium dross and skimmings which arose as a by-product in the process of manufacture of aluminium, were not manufactured goods even after amendment to section 2(d) of the Central Excise Act, 1944, and therefore the larger bench decision reported in (2014-TIOL-1762-CESTAT-MUM-LB) as well as CBEC circulars dated 28 October, 2009 and 14 February, 2011 were quashed.

Hindalco Industries Ltd v CCE (2014-TIOL-2266-HC-MUM-CX)

The Mumbai Tribunal held that the activity of labelling/ re-labelling and affixing of stickers on imported goods after clearance of goods from customs in private warehouse, amounted to 'manufacture' under section 2(f)(iii) of the Central Excise Act, 1944. -*United Distributors v CCE (2014 (309) ELT 571)*

The Mumbai Tribunal held that where parts were cleared over period of time or were not presented together, they could not be considered as constituting entire machine in terms of rule 2(a) of the General Interpretative Rules.

Bharat Bijlee Ltd v CCE (2014 (309) ELT 129)

The Delhi Tribunal held that 'sludge' obtained during the manufacture of paper were not excisable goods even after the amendment to section 2(d) of Central Excise Act, 1944.

Magnum Ventures Ltd v CCE (2014-TIOL-2496-CESTAT-DEL)

The Mumbai Tribunal held that the process of dilution of water into inputs amounted to 'manufacture' since such process of transformation was a trade secret and is not known to trade or end users.

Sika India Pvt Ltd v CCE (2014-TIOL-2567-CESTAT-MUM)

The Mumbai Tribunal held that valuation of the motor vehicle body built on chassis supplied by customers would be under rule 10A and not under rule 6.

Tata Motors Ltd v CCE (2014 (310) ELT 153)

The Delhi Tribunal held that optional cylinder testing charges recovered from customers, which had nothing to do with marketability of goods in ordinary course, would not be includible in assessable value.

Goyal M G Gases Pvt Ltd v CCE (2014 (309) ELT 327)

The Chennai Tribunal held that Mixies, Table Top Wet Grinders, Electric Table Fans and Electric Rice cookers sold to Tamil Nadu Civil Supplies Corporation (TNCSC) for free distribution to women beneficiaries, were assessable under section 4A and not under section 4 since TNCSC could not be called an institutional or an industrial consumer.

Butterfly Gandhimati Appliances Ltd v CCE (2014-TIOL-2466-CESTAT-MAD) and LLM Appliances Ltd v CCE (2014-TIOL-2536-CESTAT-MAD)

The Delhi Tribunal held that the amount paid to the dealer for after-sales service was not includible in the assessable value, as the appellant had paid the dealer, and not the other way round.

Eicher Tractors Ltd v CCE (2014-TIOL-2389-CESTAT-DEL)

The Mumbai Tribunal held that there was no requirement of reversal of CENVAT Credit in respect of the inputs involved in the work-in-progress lost due to fire in factory.

Glenmark Generics Ltd v CCE (2014-TIOL-2507-CESTAT-MUM)

The Delhi Tribunal held that CENVAT Credit was admissible on welding electrode used for maintenance and repair of machinery.

Gobind Sugar Mills Ltd v CCE (2014-TIOL-2482-CESTAT-DEL)

The Supreme Court held that CESTAT had no powers to dismiss appeals for non-prosecution/ default of appearance of appellant, and it had to decide appeal on merits.

Balaji Steel Re-rolling Mills v CCE (2014 (310) ELT 209)

The Andhra Pradesh High Court held that CESTAT, being a creature of statute with specific powers mentioned in the statute itself, did not have any inherent power like Civil Court to order for deposit of security while remanding case for re-adjudication.

Maa Mahamaya Industries Ltd v CCE (2014 (310) ELT 244)

The Bombay High Court held that no penalty was imposable on the assessee when the material produced was not pointing towards fraud, collusion or any wilful misstatement or suppression of facts with an intent to evade payment of duty.

CCE v Jyoti Structure Ltd (2014 (309) ELT 209)

VAT, Sales Tax and Entry Tax

Case Law

The Kerala High Court held that no VAT was payable on the profit margin earned by a contractor where the entire contract had been sub-contracted to a third party sub-contractor. The HC observed that in the absence of sale of material by contractor to the contractee no tax can be fastened on the contractor.

Surya Constructions v State of Kerala (TS-552-HC-2014(KER)-VAT)

The Supreme Court held that the mobile/ cell phone charger is an accessory to cell phone, and is not a part of the cell phone, even when the same is supplied as a combo pack. The SC observed that battery charger was an independent product

which could be sold separately without selling the cell phone, and therefore the same was subject to VAT at residual rate.

State of Punjab and Ors v Nokia India Pvt Ltd (TS-590-SC-2014-VAT)

Service Tax

Case Laws

Assessee was engaged in the activity of buying of goods from M/s. MGL and thereafter selling the same to the buyers on principal to principal basis. Assessee was not providing any services of marketing or promotion of the goods belongs to M/s. MGL. Service tax cannot be demanded on the grounds that since trading margin was shown as commission on its invoices or bills.

Bharat Petroleum Corporation Ltd. (2014) 36 STR 433 (Tri Mum)

Assessee was a registered trust under the Maharashtra State, to teach the art of yoga. Assessee had undertaken the activity of treating particular ailments by combination of yoga and medicine. It was upheld that such activity carried out by the assessee would be covered under service category of Health & Fitness services.

Manav Sansadhan Vikas Ani Sansodhan Manch (2014) 36 STR 385 (Tri Mum)

Assessee became co-owner of technology by paying, out of court settlement, to another company. The revenue contended that such payment to be considered as payment towards intellectual property right (IPR) and demanded service tax. It was upheld that (i) In the absence of any law in India governing trade secrets and confidential information, same could not be considered as IPR under the service tax law and (ii) since there was a permanent transfer of copyright and not a temporary transfer, the same could not constitute service. Accordingly no service tax would be attracted on payment on such transfer.

Thermax Ltd. (2014) 36 STR 318 (Tri Mum)

Assessee is a manufacturer of gases and had imported liquid helium from overseas supplier. Assessee had paid rentals to overseas suppliers for providing arrangement for transportation of liquid helium in insulated tanks. Revenue sought demand of service tax from manufacturer under reverse charge mechanism. Tribunal upheld that during transportation, overseas supplier had no control over the tanks and hence failed to satisfy the essential test viz. providing security of goods, stacking, loading / unloading etc., of storage & warehouse keeper service. Accordingly demand raised by revenue is not tenable.

Inox Air Products Ltd. (2014) 36 STR 391 (Tri Mum)

Assessee had received free supply of diesel from the recipient of services. Revenue had added such free supply to value of taxable services and demanded service tax on such value of free supply.

It was held that free supply cannot be included in gross consideration and therefore demand is not sustainable.

Gurmehar Constructions (2014) 36 STR 545 (Tri Del)

Assessee located in India, received services outside India by Foreign Service provider. Revenue contended that such services would be covered within Rule 3 of Import of Service Rules and recipient of services would be liable to service tax. Assessee contended that services provided to them by Foreign Service provider outside India and hence consumed / received by them outside India, accordingly, service tax would not be attracted. It was held that consumption / receipts of services are immaterial under Rule 3 of Import of Service Rules. Service tax would attract once recipient of such service is located in India.

Gujarat Borosil Ltd. (2014) 36 STR 808 (Tri Ahm)

Cenvat Credit cannot be denied for want of registration certificate with Central Excise Department as entire exercise being done for setting up of factory for manufacturing of excisable goods that can be done so only when assessee erects, installs and commission capital goods with the help of various agencies.

Beico Industries Ltd. (2014) 36 STR 551 (Tri Ahm)

FEMA/RBI/SEBI

Notifications/Circulars

The Reserve Bank of India (RBI) has issued the conditions for creation of charges and issue of guarantees as security for external commercial borrowings (ECBs) availed of by Indian companies under the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000 (ECB Regulations).

A.P. (DIR Series) Circular No. 55 dated January 1, 2015,

The RBI has liberalized the conditions for the creation of charges by Indian entities on shares of their overseas joint venture (JV) or wholly owned subsidiary (WoS), or on domestic or overseas assets, in favour of domestic or overseas lenders under the Foreign Exchange Management (Transfer of Issue of any Foreign Security) Regulations, 2000.

A.P. (DIR Series) Circular No. 54 dated December 29, 2014,

The Department of Industrial Policy and Promotion (DIPP) has liberalized the conditions for foreign direct investment (FDI) in the pharmaceutical sector by specifically permitting FDI up to 100% under the automatic route for the manufacture of medical devices.

Press Note 2 (2015 series) dated January 6, 2015

Living Room

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

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

Whos Counting?