



Newsletter-18

Mysore Chapter June 2005

From Chairman's desk...

Dear Friends,

Greetings to you all!

The members are well aware that the **Full-day Interactive seminar on Alternative Dispute Resolution; Trademarks, patents & Copyrights** was held on 20th May 2005.



The Seminar was attended by 27 participants. It was heartening to note that the seminar evoked good response from varied sections of professionals from various locations. 7 participants from Bangalore attended the seminar. The participants also comprised of advocates, functional directors and practicing colleagues from Mysore & other places.

The members were entitled to 4 credit hours for this program as confirmed by the head Quarters, but only a couple of practicing Secretaries from Mysore participated and earned the credit hours. More than that the real concern is that only 9 participants were from Mysore chapter. The participation by members in the programs organized by the Chapter needs to be improved if

the enthusiasm with which the Silver Jubilee Year's activities are drawn is to be sustained.



It is needless to remind that the members' active support only can make the chapter more vibrant. I request the members to give their suggestions, if any, to improve participation of members in the Chapter activities.

I am happy to inform the members that we had received some suggestions from one of the members, which were discussed at a meeting of the Management Committee, and some of her suggestions have been accepted and taken up for implementation. I look forward to and welcome similar feedbacks & inputs from all the members.



Members would be pleased to know that Shri Kiran S. Javali, Advocate, Bangalore & Mr. Shreyas Jaisimha, Advocate, Bangalore, the faculty for the Seminar on 20th May, 2005, donated the faculty fee to the Chapter Library Fund.



The Chapter participated in the Rotary Job Mela held on 4th & 5th of June, 2005 and a good number of young professionals visited the stall and showed keen interest in knowing more about the course.

The awareness about our profession among public & professionals alike is expected to improve with this visibility.

I request, once again, the members to subscribe to the Journal "Chartered Secretary" and also to get subscriptions from their friends and colleagues.

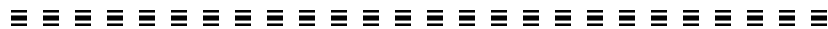
The members are also requested to subscribe to the "Company Secretaries Benevolent Fund" if not already subscribed.

I place on record the deep appreciation of the Chapter for their kind and noble gesture.

With warm Regards,

Members may please note that for the convenience of the members & students the Chapter office is kept open during morning hours also.

*D D Bhat
Chairman - Mysore chapter
Mysore, 13th June, 2005.*



Export of Services

Newsletter 17 carried an article on "Export of Services" written by Mr. Krishna Jois. Mr. Shankar Subramaniam Company Secretary working at Wartsila India Limited Mumbai had raised few queries on the article. Here are the answers from Mr. Krishna Jois.

- 1. If the Indian outfit is a subsidiary of the foreign outfit, will the Indian outfit be deemed to be " a commercial or industrial establishment" situated out side India"?**

The Service of Export Rule or Service tax provisions have not defined the term commercial or industrial establishments, Rule 3(3), has very clearly stated that, the service will become an export of service only if the services provided shall be ordered from the office located out side India, and such service would have delivered and utilized outside India. Hence the relevancy of subsidiary of foreign out fit does not arise here.

Only in case of a service ordered by the individual and the service is received outside India shall be export of service under the rule irrespective of place of utilization.

The rules imposes the following conditions to consider a service, as Export of Services under this Rules,

- a. In case of services like real estate consultancy, architect, interior decorator and construction etc. are provided in relation to an immovable property are treated as export, if the said immovable property is located outside India.**

- b. Specified taxable services such as air transport of goods, commercial coaching, dry cleaning etc. which involve physical performance, are treated as export if such service is partly or wholly performed outside India.
- c. A Remaining taxable services such as management consultancy, telephone, banking and other financial services, are treated as export subject to the following criterion:
 - Service provided to an industrial or commercial establishment, which is located outside India, for use in commerce or industry, shall be treated as export. However, if such industrial or commercial establishment also has an industrial or commercial establishment or office in India, then in such cases the services shall be considered as export only if, -
 - (i) The order for provision of service is made from outside India;
 - (ii) Such services are delivered outside India; and
 - (iii) Payment for such service is received in convertible foreign exchange.
 - Taxable services provided to a recipient and used other than in industry or commerce shall be treated as export only if the recipient is outside India at the time when such services are received.

2. Whether the provisions in notification no. 11 are repeated in notification no. 12 of 2005.

Notification 11/2005 deals with rebate of Service Tax and cess paid on exported services. Notification No. 12 deals with rebate on inputs and input services used in exported services.

3. How exactly we can define and interpret, the phrase “Physical Performance”, whether service rendered by an international tour operator to his client are export of service?

The Rules have not defined the term Physical Performance, this area requires clarification. But, on interpreting the word “Physical Performance”, with the provisions under the rules, we can conclude that, Physical Performance begins with beginning of providing service and ends with the delivery of such service.

In case of International Tour Operator, the operators books the ticket in India, the same ticket may be delivered out side India, such services will be export of service under the Rules.



Overtime rewards



Team Work

Article by: Ms. Sarina Chouta Harish, Company Secretary, Meritor HVS Ltd, Mysore

Team work is prevalent in organizations, yet it has pitfalls such as social loafing, group think, over dependence on a dominant leader, over commitment to goals, and diffusion of responsibility. Such negative factors can be overcome and team effectiveness improved when teams intentionally focus on learning. Learning from experience is proposed as the process whereby teams develop in six areas - purpose, membership, role leadership, context, process and action.

To learn from their experience, teams must create a conversational space where members can reflect on and talk about their experience together.

This shared image becomes the guiding light that enables the team to learn and shape itself to respond effectively to the challenges of its mission and environment. A team that cannot see itself accurately is ultimately flying blind. To develop this shared self image, a team needs to create a hospitable conversational space. Members need to respect and be receptive on consequences of action and the big picture; and to desire growth and development.



of the assignment may be minimal compared with their personal agendas.

If a team learns together about its purpose and goals, it can avoid some of the dysfunctional team behaviours. The root cause of social loafing, for example, often lies with team members, who are privately pursuing their individual goals and have little commitment to the team purpose. At the other extreme, over commitment can result, particularly in highly motivated voluntary teams. A political action group, for instance, can become so focused on having its candidate win that it ignores other goals such as honesty and fairness.

A team is made up of individuals, who bring different experiences, skills, styles and knowledge to the team. Understandably, when individuals come together with differences, key issues develop associated with team membership. These key

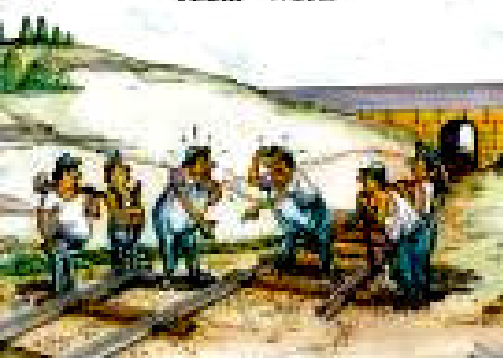
membership issues are size, compatibility, cohesion, psychological, safety and inclusion.

Teams should be large enough to accomplish their goals but small enough to ensure co-ordination of their tasks. An important consideration for team membership is whether members are similar or different. For compatibility, members who are different from one another must get along. Team members who are very similar tend to be more compatible; however, such homogeneity does not always lead to effective team outcomes.

Teams with less similar members are often more innovative, but members need to work to value others who are different. The challenge for teams is to sustain a high degree of compatibility among team members, when the team members are different. Learning style of team members is based on a variety of factors such as personality, education, special skills and member background.

(To be continued...)

Team Work



predominates. Even though the group may have been assigned a purpose by a course instructor or work supervisor, individual's understanding and ownership

Legal Roundup

Income Tax

Income Tax Returns

Income Tax Rules 1962 has been amended vide Income Tax (Tenth Amendment) Rules, 2005 to introduce quarterly TDS returns as follows:

TDS for Salary	- Form 24Q
TDS other than salary	- Form 26Q
TCS	- Form 27EQ

These returns are filed on or before 15th of July, October, and January in respect of 3 quarters of the financial year and on or before the 30th April following the last quarter of the financial year.

The annual statement of tax deducted or collected or paid the same should filed prescribed form within 15th June of the following the financial year.

Income Tax (Tenth Amendment) Rules, 2005

Last date for filing first quarterly returns are extended till 30th July 2005

Banking Cash Transaction Tax Rules, 2005 is notified.

Notification No. 156/2005 Dated 30.05.2005:

Customs

Bond not required

Advance License and EPCG Scheme - Imports by star Export Houses, Public Sector Undertakings - Security along with Bond not required -

In case of imports by Star Export Houses, public sector undertaking etc under Advance License and EPCG schemes, the intention is not to take a Surety along with Bond and therefore it is clarified that for above categories, a Bond without Surety shall be accepted for the purposes of import of goods under Advance License / EPCG Scheme.

M.F. (D.R.) Circular No.20/2005-Cus; dated 22.3.2005.
2005(182), E.L.T. T 4

Exports - Exemption from declaration in GR/SDF/PP/Softex forms when value not exceeding USD 25,000 -

Consequent to RBI's AP (DIR Series) Circular No. 61 dated 31.1.2004, the exporters have been exempted from declaration in GR/SDF/PP/Softex forms for export value upto US \$ 25,000.

M.F.(D.R.) Letter F.No. 450/25/2005-Cus.IV, dated 29.3.2005. 2005 (182) ELT T 11

Exemption to Goods Produced/Manufactured in a SEZ from Additional Duty

CBEC has exempted the goods produced or manufactured in a Special Economic Zones (SEZs) from additional duty of customs leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975, provided that no such exemption shall be applicable if such goods, when sold in domestic tariff area, are exempted by the State Government from payment of sales tax or value added tax.

Notification No. 45/2005 Dated 16.05.2005

Additional Duty on Computers

The Central Government has amended the Computers (Additional Duty) Rules, 2004 such that the additional duty of customs @ 7% would be uniformly leviable on computers (other than central processing units imported separately) under the Customs Tariff Act, 1975 (CTA).

(Notification No. 38/2005 dt. 02/05/05)

Changes in Industry Rates Of Duty Drawback

The Central Government has issued a circular explaining the various changes made in the all Industry Rates of Duty Drawback. The salient features of the new Drawback Scheme are as follows:

-Replacement of specific rates by *ad valorem* rates;



-Adoption of the Harmonised System of Nomenclature (HSN) classification as the basis for fixing drawback rates; and

-Determination of different rates in circumstances where the Central Value Added Tax (CENVAT) facility has been availed and in those where it has not been availed.

(Circular No. 22/2005 dt. 02/05/05)

Case Laws:

In the Tribunal has held that the declared transaction value of imported goods could not be enhanced on the basis of contemporaneous imports of a much lesser quantity.

Medi Herbs Vs. CC (2005 (67) RLT 662)

The Tribunal has held that technical know-how fee and royalty paid to the foreign supplier, not being a condition of sale of the imported goods and relatable to the manufacture of finished goods in India, are not includible in the transaction value.

*El-O-Matic (India) Pvt. Ltd. Vs. CC (2005 (68) RLT 102),
Rane Nastech Ltd. Vs. CC (2005 (68) RLT 190)
and
Siemens Ltd. Vs. CC (2005 (183) ELT 31)*

The Tribunal has held that the permission for re-export of goods cannot be denied where the title of the goods has not passed to the importer. Further, the Tribunal has held that in such a situation, payment of customs duty on the said goods would not be required as this would amount to clearance of goods for home consumption.

*In M.V. Marketing & Supplies Vs. CC
(2005 (122) ECR 113)*

FTP

The Central Government has clarified that goods being cleared from a 100% Export Oriented Unit (EOU) under the Export Promotion Capital Goods Scheme would attract CENVAT equal to the aggregate customs duties leviable on like goods, if imported under the EPCG Scheme.

(Policy Circular No. 5/2004-2009 dt. 13/05/05)

Antidumping Duty

Antidumping duty has been imposed on nylon tyre cord fabric originating or exported from the People's Republic of China.

(Notification No.36/2005 dt 27/04/05)

Excise

New Forms ER-1 and ER-3 specified under Central Excise Rules, 2002

The Central Board of Excise and Customs, has vide this notification, specified new format for forms ER-1 and ER-3. Form ER-1 is used for filing monthly return for production and removal of goods and other relevant particulars and CENVAT credit, and form ER-3 is a form to be submitted by the assessee falling under proviso to rule 12 of the Central Excise Rules, 2002, along with returns.

Notification No. 26/2005-NT Dated 16.05.2005

The Central Government has amended its earlier Notification No.23/2003 dated 31/3/03 in order to incorporate the condition that the exemption from the 4% additional duty of customs with regard to goods manufactured in 100% EOUs/ units in EHTPs/ STPs and sold in DTA will only apply where such goods are not exempt by the State Government from payment of sales tax or VAT.

(Notification No. 26/2005-(CE) dt. 16/5/05)

The CBEC has superceded its earlier circular in order to clarify that the valuation of free samples will be done on the basis of their transaction value as per Section 4 of the Central Excise Act, read with the Valuation Rules and not on the basis of 115% of the cost of production thereof.

(CBEC Circular No.813/10/2005-CX dt. 25/4/05)

Case Laws

The Tribunal has held that a mere wrong classification of goods at a point of time does not operate as estoppel /*res judicata* against the assessee for claiming the correct classification,

under the correct tariff heading / sub heading of the Central Excise Tariff, for subsequent periods.

CCE Vs. Mahakoshal Potteries (2005 (183) ELT 289

Service Tax

Transport of goods by road - Scope of abatement of 75%

It is clarified by DG ST that the benefit of Notification No. 32/2004 dated 3.12.2004 granting an abatement of 75% from the gross amount charged by goods transport agency for providing the said taxable service, is available only in cases where Goods Transport Agency is liable to pay service tax. This benefit is not available in cases where the provisions of Notification No.35/2004 dated 3.12.2004 are applicable. (i.e., where the consignee or consignor are from the one of the seven categories mentioned therein). This clarification seems to be against the plain words of the statute and notifications issued in this regard.

DG ST F.No.V/DGST/43-GTO/02/2005/19879 dated
30.03.2005

Base of Service Tax expanded, Certain Services exempted and Trade Facilitation Measures Announced

Notification No. 15/2005 to 28/2005 Dated 07.06.2005: These notifications (i) specify the effective date from which certain provisions of the Finance Act, 2005 will become effective; (ii) provide exemption to certain taxable services; and (iii) pertain to other procedural and facilitation issues relating to levy of service tax. Levy of service tax has been proposed on 9 new services - 1) Transport of goods through pipeline or other conduit; 2) Site formation and clearance, excavation and earth moving and demolition services, other than those provided to agriculture, irrigation and watershed development; 3) Dredging service of river, port, harbour, backwater or estuary; 4) Survey and map making other than those by Government departments; 5) Cleaning services other than in relation to agriculture, horticulture, animal husbandry or dairying; 6) Membership of club or association with specified exclusions; 7) Packaging services; 8) Mailing list compilation and mailing; and 9) Construction of residential complexes having more than twelve residential

houses or apartments together with common areas and other appurtenances.

Sales (VAT), Entry & Professional Tax

Exemption on Entry Tax for few Importers

Karnataka Government has exempted with effect from the tax payable under sub sec (1) of sec 5 of the Karnataka Special Tax on Entry of Certain Goods Act, 2004 an importer causing entry of any notified goods into a local area, for the purpose of :-

Display, demonstration, exhibition, performance, concert, shows or similar events, provided that the said goods are taken outside the state after such display, demonstration or exhibition within thirty days from the date of entry into local area. Procedures Notified.

Karnataka Government has levied tax under sub sec (1) of sec 5 of the Karnataka Special Tax on Entry of Certain Goods Act, 2004 on the entry of the following goods, namely :-

1. Plastic woven sacks.
2. Paper of all kinds including ammonia paper, blotting paper, carbon paper, cellophane, PVC coated paper, stencil paper, water proof paper, art boards, card boards, corrugated boards, duplex boards, pulp boards, straw boards, triplex boards and the like, including photographic paper.
3. Stationery articles namely, Account books, paper envelopes, dairies, calendars, race cards, catalogues, greeting cards, invitation cards, humour postcards, picture post cards, cards for special occasions, photo and stamp albums.

This notification is effective from 1st April 2005. (2005) 58 KLJ-St 124

Notification No. FD 17 CET 2005(4), Bangalore dated: 31st March 2005

Karnataka Government reduced with effect from 01.05.2005 the tax payable by a dealer under the Karnataka Value Added Tax Act 2003, to four per cent on the sale of about 48 specified goods, which includes:

- a) Computer stationery
- b) Medical equipments, devices and implants
Certain Tools

VAT Notification No. FD 197 CSL 2005(3) dt: 30th
April, 2005

By this notification, the Karnataka Government superceded Notification No.FD 55 CSL 2005(8), dated 23rd March 2005, and specified with effect from the first day of May 2005, various industrial inputs and packing materials for the purpose of entry no.35 of III Schedule to the VAT Act providing for tax rate of 4%.

VAT Notification No. FD 197 CSL 2005(6) dt: 30th April,
2005

Case Laws

The Madras High Court has held that entry tax cannot be imposed on entry of goods in the local area for storage in a custom approved warehouse. The liability to entry tax/sales tax is attracted only on subsequent clearances of such goods from the warehouse.

Tarajyot Polymers Ltd. Vs. Deputy Commercial Tax
Officer [(2005) 140 STC 239]

The Madras High Court has held that for a sale to qualify as an inter-State sale, there must be some stipulation, either express or implied, in the contract for sale envisaging the inter-State movement of goods.

Karnataka Soaps and Detergents Ltd. Vs. District Forest
Officer [(2005) 140 STC 112]

Miscellaneous

RBI

AP DIR (Series)-Liberalizations as regard to Overseas Investment

In terms of Regulation 6 of the FEMA notification no. FEMA.120/RB-2004 dated 7th of July, 2004, an Indian entity is permitted to invest upto 100 per cent of their net worth in overseas Joint Ventures and/or Wholly Owned Subsidiaries (JV/WOS) in any bonafide business activity under automatic route. Now, with a view to promote Indian investment abroad and to enable Indian companies to reap the benefits of globalization, it has been decided to raise the above ceiling from the present 100 per cent of the net worth to 200 per cent of the net worth of the investing company.

Circular No. A.P.(DIR Series) Circular No.42 Dated
12.05.2005:

Environment (Protection) 2nd Amendment Rules, 2005

The said rules shall come into force on 16th day of April 2005. The amendments relate to the noise limit for generator sets run with diesel.

Notification No. GSR315(E) Dated 16.05.2005:

Public Provident Fund (Amendment) Scheme, 2005

The Central Government, vide this notification, has made the Public Provident Fund (Amendment) Scheme, 2005. Now, such accounts could be survived in the name of self or minor, and not in the name of a Hindu Undivided Family or an Association of persons.

Notification No. GSR291(E) Dated 13.05.2005



"How come you have given me only a name but no password?"