



Newsletter-17

Mysore Chapter

May 2005

From Chairman's desk...

Dear Friends,

Greetings to you all!

The members might have already gone through the concept paper on Limited Liability Partnership Law. The members' views on the same are requested. The Chapter can arrange a meeting of the members on the same, based on the views of the members.

In my last message I had informed about the seminar on Alternative dispute resolution planned for 3rd Week of May 2005. [The Interactive workshop of full day is fixed on Friday, the 20th May, 2005 at Hotel Sandesh the Prince. The members are entitled to 4 credit hours for this program](#) as confirmed by the head Quarters. The Chapter has chosen the most relevant & useful Topic for the benefit of members, by roping in experienced faculty. The coverage of the Seminar also includes a session on Trademarks, patents & copyrights. The members are requested to get sponsors for the program and also mobilize delegates.

[The Chapter has extended its working hours effective May 1st 2005. New working Hrs](#)

[are 9 AM to 11.30 AM and 3 PM to 7.30 PM.](#)



I am sure that the members and students would welcome this alike.

The collaborative coaching Center for the foundation course, which was entered in to during last year with SBRR Mahajana College, was given a thrust this month and we expect the registration to the foundation Course would get a boost.

I look forward to meeting all the members at the Seminar on 20th may, 2005. Please confirm your participation to the Chapter Office at the earliest.

I request, once again, the members to subscribe to the Journal "Chartered secretary" and also to the "Company Secretaries Benevolent Fund" if not already subscribed.

With warm Regards,

D D Bhat
Chairman- Mysore chapter.

Mysore
12th May, 2005.

CIRCULAR RESOLUTION

Composed by: Pracheta (ACS -Inter)

The functions of a Company are regulated through the Board of Directors. The members of the Board will meet to discuss various matters relating to the Company, the decision taken in the Board are called as "Resolution".

In certain occasion the member may be unable to meet together to discuss those matter, which are very imperative. In such occasion a resolution may be passed by circulation of such proposal among the members. It is called as "Circular Resolution".



Section 289 of the Companies Act, 1956 deals with Circular resolution. It indicates that the following points have to be observed to make the circular resolution effective:

- 1) A draft resolution along with necessary papers (if any), should be sent to all Directors or the members of the Committee who are then present in India and to all other Directors or members of the Committee at their usual addresses in India.
- 2) It should be approved by Directors who are then present in India and it should be approved by majority of such of them as are entitled to vote on the resolution.
- 3) The number of Directors to whom draft resolution is sent should not be less than quorum fixed for the Board Meeting or Committee meeting.

As per Secretarial Standard-1 of The Institute of Company Secretaries of India, a circular resolution can be sent by hand, post, fax, e-mail or any other electronic mode. It shall be deemed to have been passed on the date on which it is signed, dated and approved by all Directors who are then present in India

or approved by a majority of Directors entitled to vote on the resolution whichever is earlier.

The Circular resolution is generally, noted at the next Board meeting and recorded in the Minutes of such meeting.

Resolutions that cannot be passed by Circular resolution:

In certain cases, the Board can exercise its powers by passing the resolution in the Board meeting itself. Circular resolution cannot be made on such matters. Some of them are:

1. Acceptance or invitation of deposits
2. Filling of casual vacancy in the Board
3. Make calls on shareholders in respect of money unpaid on their shares
4. Issue of debentures and borrowing money otherwise than on debentures
5. Making Investment in other companies or giving loan, guarantee, security to other companies
6. Appointing a person as Managing Director who is already Managing Director of another company.

As per Secretarial Standard-1 of the Institute of Company Secretaries of India, Annual accounts should be dealt only at the Board meeting. In case of listed company, if there is more than 20% variance between un-audited and audited results, or half-yearly report and the limited review report of auditors, reasons are required to be given to stock exchange. This should be discussed at the Board meeting and cannot be approved by circular resolution.

Hence before wrapping up this article we can say the Circular Resolution is a best tool provided by statute to handle day-to-day administration of the company.

Labour Law Update

The appellant/workman had been transferred to different places, however he kept on applying for leave, as a result he hardly had any accumulated leave. Even the medical leave had been exhausted. Since appellant did not report for duty after expiry of leave, action was taken against him as per a bi partite agreement, arrived at between the management and the workers. He was dismissed from service. Labour Court directed reinstatement of the appellant but without back wages. Workman and the management filed separate writs against the order, which were dismissed. Cross appeals were preferred before the Apex Court.

The Apex Court allowed the Managements appeal, it was observed that action had been taken against the workman only after giving a reasonable opportunity of being heard, as such there was no infirmity in the order.

Viveka Nand Sethi Vs. Chairman Jammu and Kashmir Bank Limited and others (2005 SC)

Export of Services

Composed By: Krishna Jois LLB (ACS inter)

The notification no. 9/2005 (Export of Services Rules) has clarified the definition of Export of service, which shall come into force from 15th March 2005 and the notification no. 10/2005 has withdrawn the exemption on service tax on taxable services for which payments are received in convertible foreign exchange. Earlier taxable services for which payments were received in convertible foreign exchange were fully exempt from service tax (notification no 21/2003).

The Central Government in Budget 2004 empowered itself to make rules for defining export of services, providing exemption from service tax to such exports and rebate of tax paid on input services or duty paid on the inputs used.

Acknowledging that export of services cannot be defined in the same way as export of goods, since services are not tangible, the Government has held that services are treated as exports if a person outside the country ordered them and such services were delivered outside the country. In other words, the recipient of service who is the principal beneficiary of the service should be outside the country.

In case of recipient of service has any commercial or industrial establishment or any office relating thereto, in India, such taxable services provided shall be treated as export of services only if-

- (a) Order for provision of such service is made by any office located outside India;

- (b) Service so ordered is delivered outside India and used in business outside India; and
- (c) Payment for such service provided is received by the service provider in convertible foreign exchange;

Taxable services provided to a recipient and used other than in industry or commerce would be treated as exports only if the recipient is outside India at the time when such services are received.

As per the export of services rules, real estate consultancy, architecture, interior decoration and construction services (provided in relation to an immoveable property) are treated as exports, if the said immoveable property is located outside India. General insurance service provided in relation to an immoveable property located outside India would also be covered under this category.

Services such as air transport of goods and other services, which involve physical performance, are treated as exports if such services are partly or wholly performed outside India.

As per the export of services rules, the rebate on service tax paid on such taxable services would be available (notification no. 11/2005), if services were exported after the payment of service tax. The rebate will also be available on exported service, for which service tax on input services and excise duty thereon were paid (notification no. 12/2005).

Environment Laws

The petitioner, a company, manufacturer of Diesel General Sets, filed a writ petition before the High Court, seeking quashing of a notification amending the Environment (Protection) Second Rules, 2002. By the said notification, the permissible noise limit fixed for Diesel Generator Sets was changed. According to the amendments, noise from diesel generator set must be controlled by providing an acoustic enclosure or by treating acoustically at the manufacturing stage.

The notification was assailed on the ground that, rules are violative of the provisions contained in Articles 14, 19 and 21 of the Constitution of India in so far as they fix standard noise limit of 75 dB(A) for all diesel generator sets up to 1000 KVA irrespective of location for use and capacity

The petition was dismissed with the observations that the state was authorized to make provisions for reducing the noise level at the manufacturing stage itself.

Jackson and Company Vs. Union of India (UOI) and another, MANU/DE/0506/2005



"NONSENSE - IT'S NOT A RARE DISEASE AT ALL, THREE MILLION PEOPLE DIED OF IT LAST YEAR!!"

Legal Roundup

Income Tax

Finance Bill passed in Loksabha on 2nd May 2005

Fringe Benefit Tax ("FBT")

FBT was for the first time proposed by the Finance Bill, 2005, providing for levy of a tax in the hands of employers (on the value of fringe benefits provided or deemed to have been provided to the employees) @ 30% as increased by applicable surcharge and education cess.

FBT not applicable FBT not applicable to - Individual or Hindu Undivided Family. - Specified Funds, Educational Institutions or Hospitals existing not for the purposes of profit and claiming exemption under section 10(23C) of the Income-tax Act, 1961 ("the Act") and those trusts or institutions registered under section 12AA of the Act.

Scope of certain deemed Fringe Benefits restricted:

- Provision of hospitality not to include any expenditure on paid vouchers which are not transferable and usable only at eating joints or outlets.
- Conference expenses not to include fee paid by employees for participation in any conference.
- Sales promotion (including publicity) not to include
 - Expenses (including rental) on advertisement of any form in print or electronic media or transport system
 - Expenses on holding of, or participation in any press conference or business convention, fair or exhibition
 - Expenses on sponsorship of any sports event etc.
 - Expenses on advertisement by way of signs, art work, painting, banners, direct mail, electric spectaculars, kiosks, hoardings, bill boards etc.
 - Expenses on publication in print or electronic media of any notice required by law
 - Any payment to the advertising agency for the above purposes.
- Employee welfare expenses to exclude any expenses incurred to fulfill any statutory obligation or mitigate occupational hazards or provide first aid facilities in hospital or dispensary run by employer.
- Expenses on maintenance of any accommodation used for training purposes excluded.
- Telephone expenses to exclude expenditure on leased telephone lines.

Fringe Benefits - Birds eye view	Original Proposal	Final	Net Tax cost @ 33.66%
Contribution to approved superannuation fund	100%	100%	33.66%
Free / concessional ticket (net of recovery from employee) for private journey	100%	100%	33.66%
Entertainment, conference, sales promotion and publicity, employees' welfare	50%	20%	6.73%
Conveyance, tour and travel (including foreign travel)			
•General	20%	20%	6.73%
•Employer engaged in business of manufacture or production of computer software	20%	5%	1.68%
•Employer engaged in manufacture / production of pharmaceuticals	20%	5%	1.68%
Hotel, Boarding and Lodging facilities -			
•General	20%	20%	6.73%
•Employer engaged in manufacture / production of computer software	20%	5%	1.68%
•Employer engaged in manufacture / production of pharmaceuticals	20%	5%	1.68%
Repair, running and maintenance of motor cars -			
•General	20%	20%	6.73%
•Transport Business	20%	5%	1.68%
Repair running and maintenance of aircraft -			
• General	20%	20%	6.73%
• Airlines	20%	NIL	NIL
Telephones (including mobile phones) excluding leased telephone lines	10%	20%	6.73%
Guest House	50%	20%	6.73%
Festival celebrations, health club, club facilities, gifts, scholarships	50%	50%	16.83%
	100%	50%	16.83%

Scope of certain deemed fringe benefits extended

- Expenses on mobile phone included.
- Scholarship to persons other than children of the employees included.

Free or subsidized transport facility

- Specific exclusion of free or subsidized transport or any allowance provided by the employer to employees for commuting between residence and place of work withdrawn.

Individual Taxation- Basic exemption limit enhanced

- Senior citizens: INR 150,000 to INR 185,000;
- Woman (below the age of 65 years) : INR 125,000 to INR 135,000.

Investments / Payments for claiming deduction under section 80C

- The requirement to invest *out of* income chargeable to tax withdrawn.

Corporate Taxation

Undertakings in SEZ no longer required to begin to manufacture or produce articles or things or computer software on or before March 31, 2009 to claim deduction under section 10A of the Act.

Banking Cash Transaction Tax

Circular issued by the Board is not a 'Notification' issued under Chapter V of Finance Act, 1994. Advance Ruling cannot be sought on a question based on a circular issued by Board.

IN RE: Jason James Clemens 2005 (181) ELT 16 (AAR)

Customs

EOU - Procedure for fast track clearance

The fast track clearance procedure shall apply only to eligible EOUs having status holder certificate under FTP. The areas in which Fast Track clearance available are as follows:

1. Self Sealing of containers
2. Factory stuffing
3. Examination of goods at the Gateway port
4. Clearance of rejects
5. Export of samples
6. Temporary removal of capital goods and parts
7. Installation of Fax/computers
8. DTA Sales of finished goods

Personal carriage of gems & jewellery for export promotion tours

M.R.(D.R.) Circular No.12/2005-Cus dated 4.3.2005

Advance Rulings Regulations - Salient features

New procedure known as 'Authority for Advance Rulings (Customs, Central Excise and Service Tax) Procedure Regulations, 2005' [AARUL (CEST) Procedure Regulations, 2005] has been notified. Brief features are as follows:

- 1) Applications relating to Service tax has been included

- 2) Provision for reopening of hearing in a case prior to the pronouncement of order by Authority is prescribed.
- 3) Applicant can now seek amendment of a question on which an advance ruling is sought.
- 4) The Authority may also appoint an advocate as Amicus Curiae to assist it in an application

Withdrawal of application beyond the stipulated 30 days time may be allowed by the Authority in its discretion

Trade Notice No. 8/2005, dated 21-2-2005

DEPB Scheme Extended

The Central Government has extended the period of exemption from payment of customs duty on imports effected under the Duty Entitlement Pass Book (DEPB) Scheme to 30/9/2005.

(Notification No 31/2005 dt. 30/03/2005)

Target Plus Scheme

The Central Government has issued a notification providing for exemption from payment of customs duty on imports against a duty credit certificate issued under the Target Plus Scheme of the Foreign Trade Policy 2004-2009.

(Notification No 32/2005 dt 08/04/2005)

Excise

New 8 digit Central Excise Tariff

All Central Excise Tariff headings would have Harmonized System of Nomenclature (HSN) based on from six digit to eight-digit classification code from 28-2-2005.

C.B.E.& C. Circular No. 808/5/2005-CX., dt 25-2-2005

The Tribunal has held that credit is admissible on capital goods which were initially used in the manufacture of exempted goods but were subsequently used in the manufacture of dutiable goods.

Arvind Mills Ltd. Vs. CCE (2005 (182) ELT 362)

Service Tax

The Supreme Court has upheld as valid and constitutional, the law imposing service tax on those availing the services of goods transport operators and clearing and forwarding agents.

Gujarat Ambuja Cement Limited Vs UoI(2005) 1 STJ 991

The Tribunal, has held that transfer of technology is not a service chargeable to service tax under the heading of Consulting Engineer services.

CCE Vs Valeo Friction Material India (P) Limited(2005)

1 STT 7