



Edition 119
December 2013

eMagazine

So much to clean!

**Out of State Shifting of
the Registered Office**



E- Magazine from The Institute of Company Secretaries of India, Mysore Chapter

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Message from Chairman



Dear Readers,

I wish you a very happy, prosperous and delightful new year ahead. The New Year may give each one of us strength, enthusiasm and cheer to smilingly meet all challenges and to convert them into opportunities.

I am writing this message with immense satisfaction on completion of my tenure of Chairmanship. This one year journey has given me immense enrichment in terms of knowledge and experience. During this period, we have set up a good, transparent and efficient administration system at the Chapter and which is serving the Chapter to its best in order to cater to the needs of the students, members & ICSI offices. During the year, we conducted various competitions, seminars, workshop, ranging from one day to three days and all the events were a great success.

I place on record my sincere thanks to all the members of the Managing Committee, members of the Chapter, students, office of SIRC and office of ICSI HQ, officials of the other institutes, supporting members from other Chapters and to my beloved chapter staff for extending their wholehearted support and co-operation.

I am equally thankful to my predecessors for their valuable support and guidance as and when required. I express my heartfelt thanks to my family, without their support this journey was not possible.

The Year 2014 is going to be more exciting as the Chapter has lined up exciting events. Details will be communicated in our next edition.

*Yours in CS fraternity,
CS. Sunil Kumar B G*

Articles:

So much to clean!...3
Out of State Shifting of the Registered Office...4

Columns:

I-Jnana-Made in mind...6
Web Yatra...7
Tech News...7
Living Room...8
Words Worth Millions...8
I&E Law Café...9
Spectrum Space...11
Legal Roundup ... 12
News Room...15

Inside



So much to clean!



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Every day when I hit the road, a thought passes my mind!

So much of filth everywhere. On roads, at all public places, at vacant sites, et al? All of us invariably blame municipality/ corporation for not keeping our Cities, Towns and Villages clean.

Government Initiatives for Legal Reforms:

1) **National Mission for Justice Delivery and Legal Reforms** was setup in the year 2011 to:

- help in implementing the two major goals of increasing access by reducing delays and arrears in the system and enhancing accountability at all levels through structural changes and setting performance standards and facilitating enhancement of capacities for achieving such performance standards
- improve the infrastructure of Subordinate Courts under National Mission for Delivery of Justice and Legal Reforms

Visit following links:

<http://pib.nic.in/newsite/erelease.aspx?relid=77346>

<http://pib.nic.in/newsite/erelease.aspx?relid=89580>

2) **Law Commission of India** has time and again recommended repealing of various Acts. Recommendations can be read online at <http://lawcommissionofindia.nic.in/>.

Actions from government are yet to be seen.

3) **Latest News:** Legal reforms: Government for video recording of court proceedings

<http://www.indianexpress.com/news/legal-reforms-government-for-video-recording-of-court-proceedings/1193581/>

We crib at the very sight of the unkept roads – most roads are adorned by pot holes, paper and plastic castaways, animal droppings, sometimes even the human wastes. Every damn public utility is in need of a spring cleaning. Do we blame the Politicians and Contractors for this pathetic state of affairs?! Why do the Contractors compromise on the quality of roads when he is paid for it? In Countries X, Y & Z, the rains are heavier than in India, but you don't find potholes. India is vying to be in the top four nations of the World.....Why then are we deprived of quality public infrastructure in India?

You go to the office, peek into the legal world and yet again dirt in the legal/regulatory world!!

Plenty of outdated Acts – more than 5000 legislations it seems, dozens of outdated provisions in several of the Acts... a string of illogical procedures, documentations and formalities! Complexity is unimaginable that one can hardly dream of making a legal process simpler... the more we talk on making legislations simpler, the more complex it gets. More we talk on social justice; more actions there are to sideline justice.....

You had it, if an issue takes a political twist.... a matter of social justice would turn into a legal question, it will suddenly raise its hood as a commercial problem or violation of international treaties... one would not be able to take a guess in his wildest dreams!

So much of dirt! So much to Clean! Where do we Start.....?



India has been "hurt" by scams, court process and some of the retrospective taxation acts which had given "a sense of uncertainty to investors in terms of the credibility of the government", India must give an "irreversible commitment" that law of the land has sanctity and the government approval cannot be taken lightly, otherwise India would be taken lightly"

- Ratan Tata

Out of State Shifting of the Registered Office under the Companies Act, 2013



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Provisions relating to shifting of the registered office from one state to another are contained in Section 13(4) of the Companies Act, 2013 which are detailed in the rule nos. 2.27 and 2.28. In the present article, this procedure has been given in a step by step manner for easy understanding of the readers.

Step 1: Pass resolution of Board of Directors of the company for:

- Approving the change in registered office of the company from one state to another and authorising one or more of the Directors to do all necessary acts in this regard.
- Calling general meeting for seeking member's approval

Step 2: Send notice of general meeting to all members along with explanatory statement.

Step 3: Pass special resolution of members for approving the change of registered office of the company and prepare minutes of meeting.

Step 4: Prepare application in Form No. 2.28 and all relevant annexure to be filed with the Central Government for seeking approval for shifting of the registered office from one State to another.

Step 5: Send a copy of the application with complete annexure to the Registrar (ROC) and Chief Secretary of the state where the registered office is situated at the time of filing the application and obtain acknowledgment for sending the notice.

Step 6: File original application along with all necessary annexure to the Central Government and pay requisite fees thereon. The following documents need to be annexed with the application:

- Copy of Memorandum and Articles of Association
- Copy of notice convening the general meeting along with explanatory statement
- Copy of the special resolution sanctioning the alteration by the members of the company.
- Copy of the minutes of the general meeting at which the resolution authorizing such alteration was passed, giving details of the number of votes cast in favor or against the resolution
- Affidavit verifying the application
- List of creditors and debenture holders not older than one month before the date of application containing the names, addresses, nature of debt and amount of debt for each creditor and debenture holder.
- Affidavit verifying the list of creditors, signed by the Company Secretary of the company, if any and not less than two directors of the company, one of whom shall be a managing director, where there is one, confirming that they have made a full enquiry into the affairs of the



company and that the list of creditors is correct, and that the estimated value as given in the list of the debts or claims payable on a contingency or not ascertained are proper estimates of the values of such debts and claims and that there are no other debts of or claims against the company to their knowledge.

- An affidavit from the directors of the company that no employee shall be retrenched as a consequence of shifting of the registered office from one state to another state.
- A copy of the acknowledgment of service of a copy of the application with complete annexure to the Registrar and Chief Secretary of the state.
- Bank draft evidencing payment of application fee.
- Copy of Board Resolution or the executed Vakalatnama

A duly authenticated copy of the list of creditors needs to be kept at the registered office of the company and any person desirous of inspecting the same may, at any time during the ordinary hours of business, inspect and take extracts from the same on payment of a sum not exceeding ten rupees per page to the company.

Step 7: Obtain hearing date from the Central Government. (If application is found in order, Central Government will give date of hearing of application).

Step 8: At least 14 days before the date of hearing,

- advertise the application in the specified form in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and at least once in English language in an English newspaper circulating in that district
- serve, by registered post with acknowledgement due, individual notice(s) of the application, on each debenture-holder and creditor of the company
- Serve, by registered post with acknowledgement due, a notice together with the copy of the application to the Registrar and to SEBI, in the case of listed companies and to the regulatory body, if the company is regulated under any special act.

Step 9: In case the company receives any objection from any person whose interest is likely to be affected by the proposed application, then a copy of same needs to be served on the Central Government on or before the date of hearing.

If no objection is received from anybody, Central Government will confirm the change of registered office on the date of hearing and put the application for necessary orders.

If any objection is received, Central Government will, before passing any order, ensure that the company has either obtained consent of the person who had objected to the alteration or his debt or claim has been discharged or has determined, or has been secured to the satisfaction of the Central Government.



Step 10: Obtain certified copies of the order confirming the shifting of registered office from one state to another, passed by the Central Government, and file a certified copy in form 2.29 with the Registrar of each of the states along with necessary fees within 30 days of receipt of certified copy of order.

Step 11: File following documents with ROC within 30 days of confirmation of shifting by Central Government:

- Confirmation given by Central Government for change of registered office.
- Registered document of the title of the premises of the registered office in the name of the company; or (b) Notarized copy of lease / rent agreement in the name of the company along with a copy of rent paid receipt not older than one month;
- Authorization from the owner or authorized occupant of the premises along with proof of ownership or occupancy authorization, to use the premises by the company as its registered office
- Document of connection of any utility service like telephone, gas, electricity, etc. depicting the address of the premises in the name of the owner/document as the case may be which is not older than 2 months.
- the list of all other companies with their CIN, having the same unit/tenement/premises as their registered office address

Step 11: If the documents are in order, Registrars of both states will approve the forms and registered office change will be updated in register of Registrar and new Certificate of Incorporation will be issued by the Registrar of the State, where the company's registered office is going to be shifted.

Tail piece: The shifting of registered office from one state to another state shall not be allowed if any inquiry, inspection or investigation has been initiated against the company or any prosecution is pending against the company under the Act.

'Central Government' for the purpose of above shifting refers to Regional Director.



'I' Jnana - Column on Intellectual Property Rights by

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India – joining the Madrid Protocol

Indian entities wanting to get trademark registered in other countries had to apply in each country separately by engaging attorneys in each country, paying fees in each country and following documentation requirements specific to each country. It was time consuming and costly. Maintaining registration thereafter was cumbersome. Renewals in each country would be at different points of time.

All these procedural hassles have been removed to a significant extent. Application for international trademark registration can be made through the Indian trademark office using a digital signature. Before filing an international trademark application the applicant should have an Indian trademark application or a trademark registration in India. If an applicant files an international application within six months from the date of filing of the Indian trademark application, the international application will get priority of being considered as having been filed on the date the Indian trademark application was filed.

New rules for intellectual property transactions in China

China recently changed rules for making foreign currency payments for intellectual property transactions. These are expected to result in activities in China becoming faster and easier. Under the old rules, registration certificates were

required for converting renminbi to foreign currency, which often led to delays and hassles. Under the new rules, payments of US\$50,000 or less, require no documentation.

European Union to adopt union-wide trade secrets law

European Commission recently indicated that, on Nov. 27, 2013, it will adopt a directive to harmonize national laws making possible a comparable system of redress for misappropriation of trade secrets across the Union. Every company uses confidentiality to gain a competitive advantage. But there are important differences between the levels of protection offered across the EU for defending trade secrets against unfair practices. Theft of trade secrets has long frustrated companies doing business in Europe. Lack of tough trade secret protections has resulted in many knockoffs being sold in Europe, and the original producers often have little or no recourse. Further State sponsored spying on companies, by some countries and threats due to cyber-attacks only compound the problem.

In the US most states have adopted a version of the Uniform Trade Secrets Act and provide injunctive relief in addition to civil and criminal penalties for misappropriation or unauthorised use of trade secrets. European and U.S. companies were seeking similar protections in Europe. The new rules should make it easier in EU to protect and enforce hard earned competitive advantages often acquired after painstaking research and huge development cost.

Concept for the Month

Geographical Indications

A geographical indication is a sign used on goods that have a specific geographical origin and possess qualities, a reputation or characteristics that are essentially attributable to that place of origin. Example: Mysore Silk, Nanjangud Banana, Assam Tea etc. A number of international treaties deal partly or entirely with the protection of geographical indications or appellations of origin. The Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) is the forum where WIPO's member states discuss policy and legal issues relating to the international development of law and standards for geographical indications and appellations of origin.

For lots of information on Geographical Indications, visit: http://www.wipo.int/geo_indications/en/



Human rights are "commonly understood as inalienable fundamental rights to which a person is inherently entitled simply because she or he is a human being." Human rights are thus conceived as universal and egalitarian.

Friends, here is the website www.hrln.org/ i.e, the Human Rights Law Network (HRLN), a collective effort from lawyers and social activists to advance human rights in India and the sub-continent. HRLN collaborates with human right groups, and grass-roots development and social movement to enforce the rights of poor marginalized people and to challenge oppression, exploitation and discrimination against any group or individual on the grounds of caste, gender, disability, age, religion, language, ethnic group, sexual orientation and health, economic or social status.

www.hrln.org/ provides pro bono legal services, conducts public interest litigation, legal awareness programs, investigates violations, publishes 'know your rights' materials, and participates in campaigns on Human Rights.

This website spreads light on topics like:

- Child Rights
- Dalit Rights
- Emergency/Disaster
- Labour rights
- Reproductive Rights
- People's Health Rights
- Prisoners' Rights
- Chhattisgarh Legal
- Defend the Defenders
- Sexuality Minority Rights
- Criminal Justice
- Disability Rights
- RTI
- HIV / AIDS
- Anti-Trafficking
- Women's Justice
- Refugee Rights
- Housing Rights
- Environmental Justice
- Students for Human Rights

This website is available in 71 languages which includes majority of the Indian regional languages and many foreign languages. I appeal all of you to utilize this use-full website to the fullest and introduce to others to create awareness on human rights.

Tech News

Now Nokia can transfer Chennai factory to Microsoft

Nokia has won an appeal to release a local factory seized by authorities in a tax dispute, allowing the transfer of the plant as part of the sale of its mobile phone business to Microsoft. But the tax dispute is still ongoing and if Nokia loses it may have to pay as much as \$3.4 billion, including penalties for non-payment of tax and interest, according to a tax department lawyer.

The Delhi High Court asked the Finnish company to deposit 22.50 billion rupees in an escrow account as a condition for lifting the freeze and transferring the facility to Microsoft.

Nokia's case is one of several high-profile tax disputes involving foreign companies in India, which has stepped up its pursuit of claims against such firms as it seeks to rein in its budget deficit. Other foreign firms recently involved in tax disputes in India include IBM, Royal Dutch Shell, Vodafone Plc, and LG Electronics Inc. (www.reuters.com)

The Two Wolves

A Native American grandfather was talking to his grandson about how he felt. He said, "I feel as if I have two wolves fighting in my heart. One wolf is the vengeful, angry, violent one. The other wolf is the loving, compassionate one."

The grandson asked him, "Which wolf will win the fight in your heart?"

The grandfather answered: "The one I feed."



The Chinese Farmer

There is a Chinese story of an old farmer who had an old horse for tilling his fields. One day the horse escaped into the hills and when all the farmer's neighbours sympathised with the old man over his bad luck, the farmer replied, 'Bad luck? Good luck? Who knows?'

A week later the horse returned with a herd of wild horses from the hills and this time the neighbours congratulated the farmer on his good luck. His reply was, 'Good luck? Bad luck? Who knows?' Then, when the farmer's son was attempted to tame one of the wild horses, he fell off its back and broke his leg.

Everyone thought this very bad luck. Not the farmer, whose only reaction was, 'Bad luck? Good luck? Who knows?' Some weeks later the army marched into the village and conscripted every able-bodied youth they found there. When they saw the farmer's son with his broken leg they let him off.

Now was that good luck? Bad luck? Who knows?

Words worth Millions

THREE SIMPLE RULES IN LIFE

1. IF YOU DO NOT GO
AFTER WHAT YOU WANT,
YOU'LL NEVER HAVE IT.

2. IF YOU DO NOT ASK
THE ANSWER WILL
ALWAYS BE NO.

3. IF YOU DO NOT
STEP FORWARD,
YOU WILL ALWAYS BE
IN THE SAME PLACE.

I&E Law Cafe

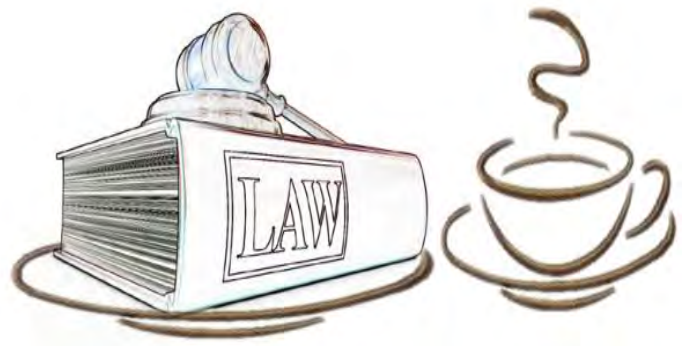
- Part 2



Column on
Industrial and Employment laws by

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The Industrial Disputes Act, 1947

Indian Trade Disputes Act, 1929 was the first legislation in India for the settlement of Industrial Disputes. Initially the Act was made to remain in force for 05 years. In 1932 certain amendments were carried out in the Act and in 1934, in consultation with the Provincial Governments, the Central Government made the Act to remain in force permanently.

Subsequently the Industrial Disputes Act was enacted in 1947 with the object to make provision for the investigation and settlement of industrial disputes and for certain other purposes.

Object: As per Supreme Court in Dimakuchi Tea Estate case – 1958

- Foster cordial relations between employer and employee;
- Investigation and settlement of Industrial disputes;
- Prevention of illegal strikes and lockouts;
- Relief to workman in the matter of layoff, retrenchment and closure
- Collective bargaining

Construction of the Act:

- 40 sections housed in 07 chapters
- 05 Schedules – Schedule 4 (Notice of Change) & 5 (Unfair Labour Practices)

Whom it is Applicable?

- Every Industrial Establishment
- Every workman employed whether directly or otherwise in such establishment

Are all my employees getting covered under this Act?

- No, only those class of employees who fall under the definition of Workman defined under Section 2(S) gets covered

- Managerial & Superintendent Staff drawing salary of Rs.10,000/- stands excluded from the application of the Act

What are the 'must know' things under this Act?

- **Industry** – Any establishment carrying on systematic activity with the cooperation of its employee for producing goods or services whether with or without profit motive. Your establishment is an Industry
- **Workmen** – Doing any manual, skilled, unskilled, operational, clerical, Technical jobs
- Industrial Dispute – difference between employer and workman, workman and workman or between employer and employer
- **Layoff** – temporary stoppage of work due to non – availability of resources of production of goods and services – cannot be for more than 45 days – 50% of Basic & DA as compensation – engaging more than 100 employees, obtain permission from Appropriate Government – Sec. 25 'M'
- **Retrenchment** – Termination of the employment of workman due to reduction in the business and does not include Fixed time contract – 15 days wages for every completed year of service – 30 days' notice and 90 days' notice in case engaging more than 100 employees – if more than 100 employees, obtain permission from Appropriate Government – Sec.25 'N'
- **Closure** – Permanent closing down of the place of employment – 60 days' notice – 50% of Basic & DA as compensation – Engaging more than 100 employees, obtain permission from Appropriate Government – Sec. 25 'O'
- **Lockout** – Temporary closing down of the place of employment
- **Strike** – Cessation of employment by the group of workman acting in concert

Note: To invoke any provisions on the above mentioned terminologies both by the employer and employee, one should adhere to the Schedule 4 – Notice of Change (21 days' notice) and beware of Schedule 5- Unfair labour Practice.

Are the disciplinary concerns getting covered under this Act?

- Yes, any disciplinary concerns will have to be dealt with keeping the provision of this Act in mind by you

- Principles of natural justice will have to be adhered while conducting any inquiry to disciplinary matters

What can be the consequences of non-compliance under this Act?

- Prosecution of the Occupier – Usually it will be MD
- Payment of monetary fine in the form of compensation Imprisonment of the Occupier or Factory Manager – minimum of 01 month and maximum of 06 months

Take a Guess.....

1. Provident Fund dues can be adjusted for any dues from an employee towards the Company on his resignation, termination, discharge or superannuation.

- i) Yes ii) No iii) Not sure iv) left to discretion of Commissioner

2. If an employee dies out of cardiac arrest after returning from his office to his residence, will be eligible for compensation under Employees Compensation Act, 1923

- i) Yes ii) No iii) Not sure iv) left to discretion of Commissioner

3. ESIC ceiling limit as on today for coverage purpose is

- i) 10,000/- p.m. ii) 13,000/- p.m. iii) 15,000/- net salary p.m. iv) 15,000/- gross salary p.m

4. Legislating labour laws comes under which of the list specified by the Indian Constitution:

- i) Union List ii) State List iii) Concurrent List iv) None of them

5. Employment of Child labour is completely banned. Is this statement correct or in-correct?

6. "Child" means a person who has not completed his (Under Child Labour (P&R) Act, 1986

- i) 13th Year of age ii) 14th Year of age iii) 15th Year of age iv) 16th Year of age

Answers are given elsewhere in this edition itself... 😊

Prevention of Sexual Harassment Act is made effective from December 9, 2013

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules 2013 ('Rules') has been notified by the Ministry of Women and Child Development.

The Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ('Act') and also the Rules are effective from **December 9, 2013.**

Any complaint under the Act filed in organisation on or after 09th December 2013 has to be tried as per the provisions of the new Act & the Rules.

Link to the Rules - <http://wcd.nic.in/wcdact/womenworkact.pdf>

Link to the Gazette notifying effective date of the Act - <http://wcd.nic.in/wcdact/womenworkrules.pdf>





Compilation:
CS. Ajay Madaiah, Mysore

What is IBAN, SWIFT or BIC?

The **International Bank Account Number (IBAN)** is an internationally agreed means of identifying bank accounts across national borders with a reduced risk of transcription errors. It was originally adopted by the European Committee for Banking Standards (ECBS), and later as an international standard under ISO 13616:1997. The current standard is ISO 13616:2007. Initially developed to facilitate payments within the European Union, it has been implemented by most European countries and many countries in the developing world, especially in the Middle East.

The IBAN consists of up to 34 alphanumeric characters: first the two-letter ISO 3166-1 alpha-2 country code, then two check digits, and finally a country-specific Basic Bank Account Number (BBAN). The check digits enable a sanity check of the bank account number to confirm its integrity before submitting a transaction. The BBAN format is decided by each national banking community: it must be of a fixed length of case-insensitive alphanumeric characters. It includes the domestic bank account number, branch identifier, and potential routing information.

ISO 9362 (also known as SWIFT-BIC, BIC code, SWIFT ID or SWIFT code) defines a standard format of Business Identifier Codes approved by the International Organization for Standardization (ISO). It is a unique identification code for both financial and non-financial institutions. The acronym SWIFT stands for the Society for Worldwide Interbank Financial Telecommunication. When assigned to a non-financial institution, the code may also be known as a Business Entity Identifier or BEI. These codes are used when transferring money between banks, particularly for international wire transfers, and also for the exchange of other messages between banks.

The SWIFT network does not require a specific format for the transaction so the identification of accounts and transaction types is left to agreements of the transaction partners. The majority of international interbank messages use the SWIFT network. SWIFT linked more than 9,000 financial institutions in 209 countries and territories, who were exchanging an average of over 15 million messages per day.

Did you know?

Child Labour

Employment of child labour is not completely banned as per THE CHILD LABOUR (PROHIBITION AND REGULATION) ACT, 1986 ('Act'). Child can be employed in establishments not carrying occupations or processes referred to in section 3 after complying to conditions and period of work as specified under the Act.

- ✓ No child shall work for more than three hours before he has had an interval for rest for at least one hour.
- ✓ Inclusive of his interval for rest, work hour shall not be spread over more than six hours, including the time spent in waiting for work on any day.
- ✓ Not to work between 7 p.m. and 8 a.m.
- ✓ Overtime not permitted.
- ✓ No double employment on the same day.



pick of the month

Can a foreign seated Arbitral award be challenged in an Indian court?

Held, No. Recently, the Apex Court overruled its past decision in *Bhatia International vs. Bulk Trading SA*. In the case *Shri Lal Mahal Ltd v Progetto Grano SpA*, Civil Appeal No. 5085 of 2013, a crucial consequence of the judgment is that Indian courts now have jurisdiction only over arbitrations seated in India. Thus, Indian courts are no longer permitted to award interim reliefs and set aside awards passed in foreign-seated arbitrations. A foreign award can no longer be challenged in an Indian court. Awards rendered in foreign-seated arbitrations are subject to the jurisdiction of Indian courts only for their enforcement in India.



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Service Tax Updates
CA. Ashit Shah,
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FEMA Updates
Team Genicon,
Chennai



CUSTOMS & FTP Notifications/ Circulars

The CBEC has clarified that exemption from SAD in respect of parts, components, accessories, etc. imported for manufacture of mobile handset which was valid till March 3, 2013 in terms of Sl. No. 5 of Table in Notification No. 21/2012-Cus, dated 17-03-2012 should not be denied if claimed under Sl. No. 1 of Table subject to fulfillment of specified conditions.

No. 43/2013-Cus.dated November 8, 2013

Case Law

The High Court of Madras upheld constitutional validity of Notification No. 127/1999-Cus. dated December 1, 1999 enhancing rate of duty on wheat to 50% from free.

Century Flour Mills Ltd. Vs. UoI [2013-TIOL-913-MAD-CUS]

The Tribunal held that old and used tyres are restricted items which could be imported only against a valid licence. Since no licence was produced by the assessee, imported goods are to be treated as smuggled goods in terms of Section 2(39) of the Customs Act, 1962 and are liable for confiscation under Section 111(d) thereof.

Matwar and Co. Vs. Commissioner of Customs [2013-TIOL-1645-CESTAT-DEL]

The Tribunal held that on import of Aviance Slimline Lipsticks, CVD is payable as per Section 4 of the Central Excise Act, 1944 ("the Excise Act") and not on the basis of Section 4A thereof as lipstick of weight 2.2 gm/pc is not subject to the Standards of Weights and Measures Act, 1976.

Hindustan Lever Ltd. Vs. Commissioner of Customs [2013-TIOL-1630-CESTAT-MUM]

The Tribunal held that glues are prepackaged and are sold by weight which is clearly indicated on packages. Since net weight of Fevistick/ Gluestick is less than 10 grams, the assessee is exempted from declaring retail sale price on packages in terms of Rule 26 of the Legal Metrology (Packaged Commodity) Rules, 2011. Therefore, assessment of CVD has to be done on the basis of transaction price under Section 4 of the Excise Act and not on the basis of retail sale price under Section 4A thereof.

Pidlite Industries Ltd. Vs. Commissioner of Customs [2013-TIOL-1592-CESTAT-MUM]

FEMA/RBI/SEBI Notifications/Circulars/News

Waiver of NoC's for transfer of shares from resident to non-resident:

As you may be aware the FC TRS has to be filed with respective AD bank for transfer of shares of an India Company from resident to non-resident and if the Company is in the business of financial services, then the FC TRS has to be accompanied with NOC's from the respective regulators i.e such as RBI, IRDA, etc as well as from transferor and transferee. The RBI vide A. P. (DIR Series) Circular No.72 dated 11/11/2013 has decided that the requirement of NoCs will be waived and no such NoCs need to be filed along with form FC- TRS. However, any 'fit and proper/due diligence' requirement as regards the non-resident investor as stipulated by the respective financial sector regulator shall have to be complied with.

CENVAT Notifications/ Circulars

Amends Notification No. 22/2013-CE dated July 29, 2013 to increase time limit for availing excise duty exemption from present 30 days to 90 days in respect of scheduled formulations as defined under the Drugs Price Control Order, 2013 subjected to reprinting, relabeling, repacking and stickering in premises not registered under the Central Excise Act, 1944.

No. 29/2013-CX dated November 26, 2013

Amends Rules 8, 9 and 10 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 ("the Excise Valuation Rules").

No. 14/2013-CE(NT) dated November 22, 2013

Explains amendment of the Excise Valuation Rules vide Notification No. 14/2013-CE dated November 22, 2011.

No. 975/09/2013-CX dated November 25, 2013

Amends Rule 8 of the Central Excise Rules, 2002 to lower threshold limit for electronic payment of excise duty to INR one lakh from INR ten lakh.

No. 15/2013-CE(NT) dated November 22, 2013

The High Court observed that while adjudicating refund claims, assessing officers should dispose off all objections. Otherwise, proceedings remain pending for several years before the Tribunal and result in orders of remand for failure of assessing officer to deal with all aspects. This prolongs litigation. The High Court directed the CBEC to issue necessary guidelines in the form of an administrative circular to ensure that assessing officers and first appellate authorities decide all objections to refund claims.

Oil & Natural Gas Corporation Ltd. Vs. Union of India [2013-TIOL-809-HC-MUM-CX]

The Tribunal held that it is settled law that there are no provisions in the Excise Act to grant interest on belated payment of interest.

CCE Vs. Mahavir Crimpers [2013-TIOL-1690-CESTAT-AHM]

The High Court quashed Order in Original passed by the Commissioner on the ground that a request for cross examination was made by assessee which was not granted. It was incumbent upon the Commissioner to decide request of cross examination of assessee before finally adjudicating show cause notice.

Vulcan Industrial Engineering Company Ltd. Vs. Union of India [2013-TIOL-911-AHM-CX]

Larger bench of the Tribunal held that wherever assessee is liable to pay lesser amount than generally agreed price as a result of a clause in agreement stipulating variation in price on account of liability to liquidated damages, resultant price would be transaction value for levy of excise duty.

CCE Vs. Victory Electricals Ltd. [2013-TIOL-1794-CESTAT-LB]

The High Court of Punjab & Haryana held that excise duty liability on final products covered under Compounded Levy Scheme can be discharged through Cenvat credit.

CCE Vs. Punjab Casting Private Limited [2013-VIL-02-P&H-EX]

VAT, Sales Tax and Entry Tax

Case Law

The High Court of Karnataka held that since goods under transportation were not for sale and were only stock transferred, imposition of penalty is not justified on the ground old delivery note in Form 505 was used for transportation of goods.

Lanco Infratech Limited Vs. Additional Commissioner of Commercial Taxes [2013 VIL-108-KAR]

The High Court of Tamil Nadu held that vend fee collected from Tamil Nadu State Marketing Corporation i.e. licensee in terms of Rule 15(1) of the Tamil Nadu India Made Foreign Spirits (Supply by Wholesale) Rules, 1981 cannot be included in the taxable turnover of the assessee i.e. manufacturer of India made Foreign Spirit.

Mohan Breweries and Distilleries Limited Vs. State of Tamil Nadu [2013 MAD]

The High Court of Rajasthan held that optional service charges collected by assessee as per separate contract of warranty is

not to be included in sale price and sales tax is not leviable on the same.

Assistant Commissioner Vs. Godrej GE Appliances and Anr [2013-VIL-101]

The High Court of Madhya Pradesh held that seller having already received price of goods and having handed over goods to transporter for delivering to buyer, goods could not have been detained by check post officer for realization of tax under Section 57(1) Madhya Pradesh Value Added Tax Act, 2002.

Kabra Bulk Transport Carrier Vs. Commissioner of Commercial Tax [2013 VIL-104-MP]

The High Court of Karnataka held that the Tribunal does not have discretion to reduce penalty leviable under Section 53(12) the Karnataka Value Added Tax Act, 2003 which is imposed for failure to carry delivery note in Form 505 with consignment.

State of Karnataka Vs. D-M-E Company (India) Private Ltd. [2013-VIL]

The High Court of Madhya Pradesh held that power of revision under Section 47 of the Madhya Pradesh Value Added Tax Act, 2002 can be exercised by the Commissioner, Commercial Tax only on his own motion and not at the instance of the dealer.

National Thermal Power Corporation Ltd. and Anr Vs. Addl Commissioner, Commercial Tax and Others [2013 MP]

The High Court of Allahabad held that the Uttar Pradesh Value Added Tax Act, 2008 does not provide for seizure of goods for not carrying transit declaration form. Therefore, order of seizure is without jurisdiction and cannot be sustained.

Prakash Transport Corporation Vs. Commissioner, Commercial Tax, UP [2013 VIL-96-ALH]

The High Court of Madhya Pradesh held that 'Mediker' is basically a medicinal product but is used as shampoo and in this sense, a cosmetic. Therefore, the assessing authority erred in charging Mediker under the Madhya Pradesh Entry Tax Act, 1976.

Marico Industries Ltd. Vs. State of MP [2013-VIL-92-IND]

The High Court of Rajasthan held that assessee is charging fees/commission from its dealers for selling petroleum products supplied by it as per sale volumes and the tanks and pumps installed at the retail outlets remain property of the therefore, no tax and the penalty can be levied by terming installation of the tanks and pumps as sale.

Assistant Commissioner Vs. IBP Ltd. [2013 VIL-93-RAJ]

Service Tax

Notifications/ Circulars/News

Amends Notification No. 12/2013 July 1, 2013 to provide that exemption from payment of service tax to services received by a Special Economic Zone Unit or Special Economic Zone Developer ("Developer") shall be available subject condition that SEZ Unit or Developer furnish to the jurisdictional Superintendent of Central Excise a quarterly statement in Form A-3 giving details of specified services received without payment of service tax by 30th of the month following particular quarter. It has been further specified that for quarter of July 2013 to September 2013, Form A-3 shall be furnished by December 15, 2013.

No. 15/2013 November 21, 2013

Amends Rule 6(2) of the Service Tax Rules, 1994 to lower threshold limit for electronic payment of service tax to INR one lakh from INR ten lakh.

No. 16/2013 November 22, 2013

Clarifies inter alia the following in respect of the Service Tax Voluntary Compliance Encouragement Scheme, 2013 ("the Scheme"):

No declaration under the Scheme shall be returned. Defects therein should be explained to the declarant and possible assistance be provided in rectifying these defects.

The conditions for rejection of declaration under the Scheme as enumerated under Section 106(2) of Chapter V of the Finance Act, 1994 shall be construed strictly and no declaration should be rejected on frivolous grounds or taking wider interpretation of conditions enumerated under Section 106(2) there

Benefit of the Scheme would be available in respect of any amount covered under the definition of 'taxes dues', if paid by an assessee after the date of the Scheme coming into effect but before a declaration is filed, provided that Cenvat credit has not been utilized for payment of such amount.

Declaration cannot be made in case where service tax pertaining to period covered by the Scheme along has already been paid before the Scheme came into effect. However, lenient view can be taken on issue of penalty.

No. 174/9/2013 November 25, 2013

Case Law

The Commissioner (Appeals) rejected appeal of assessee on the ground of limitation in view of amendment to Section 85 of Chapter V of the Finance Act, 1994 ("the Finance Act") reducing time for filing of appeal to two months. The High Court held that materials available on record show that order was passed by the original authority before amendment was introduced. Therefore, appeal should be taken up for consideration in accordance with provision prior to introduction of amendment and the Commissioner (Appeals) is not justified in rejecting appeal.

Winwind Power Energy Pvt. Ltd. Vs. CCE [2013-TIOL-863-HC-MAD-ST]

Appellant took Modvat/Cenvat credit on the strength of invoices issued by a supplier. During verification it was found that the supplier of inputs had not discharged full duty liability for the period covered by the invoices. Department was of the view that since appropriate duty had not been paid by manufacturer of inputs, it was obligatory on the part of the assessee to take all reasonable steps to ensure that appropriate duty of excise had been paid on such inputs. Supplier of inputs had, in this case, given declaration indicating that excise duty had been paid on said inputs. When there is a prescribed procedure and that has been duly followed by assessee, it cannot be said that assessee had not taken reasonable steps as prescribed in notification. Due care and caution was taken by assessee and it was not stated by Department what further care and caution could have been taken. Requirement of "reasonable care" does not mean

verification from department whether duty stands paid by supplier because that would be travelling beyond notification and practically impossible and would lead to transactions getting delayed.

[Kay Kay Industries - (2013) 38 Taxmann.com 336 (SC)]

Appellant was directed to make pre-deposit as a condition of filing appeal and made such pre-deposit by utilizing balance lying in Cenvat Credit Account. Appellant had intimated it to Commissioner (Appeals). However, appeal came to be dismissed for non-compliance with pre-deposit order.

Rule 3 of Cenvat Credit Rules, 2004 allows an assessee to take benefit of his credit under any of category as mentioned in sub-rule (1) thereof. Rule 3(1) does not prohibit assessee from utilizing Cenvat credit against liability created by order which is sought to be challenged in appeal requiring deposit of amount under section 35F of Central Excise Act. Hence, appellant had rightly utilized his credit against his liability.

[Akshay Steel Works (P) Ltd. - (2013) 37 Taxmann.com 41 (Jharkhand)]

Appellant was engaged in marketing, trading, export and import of jewellery, gold ornaments, diamond ornaments etc. and was a registered dealer under the State VAT law. It was having Service Tax registration under the category of 'Franchise Services' and discharging service tax liability. The VAT department argued that royalty received by a dealer from franchisees for use of trademark would attract VAT and the transfer of right to use any goods would be taxable under VAT Act. After introduction of deemed sales in Article 366(29A), meaning of "goods" has not been not altered and it is to be defined according to known legal connotations.

Franchise agreement where franchisees can use trademark of assessee did not amount to 'transfer of right to use' trademark, because : (1) transfer of its use is not to exclusion of transferor, viz. assessee; (2) assessee retains right to use and/or transfer use of trademark to others also and had actually done so; (3) assessee retained effective control and franchisees had not got effective control of trademark; and (4) there was no delivery of trademark/goods to franchisees to exclusion of assessee himself and others. Hence, it did not amount to 'deemed sale' under Article 366(29A)(d). In fact, such franchise agreement amounted to provision of services, which included feasibility studies for showroom, project plan for setting up showroom, selection of site, design of interiors, etc. Accordingly, royalty received from franchisees could not be charged to VAT.

[Malbar Gold (P) Ltd. (2013) 35 Taxmann.com 569 (Kerala)]

Appellant, sugar factory, received buffer stock subsidy from Government on which Department sought to levy service tax on ground that it was granted for expenses incurred towards storage of goods. Buffer-stock subsidy cannot be considered as a consideration received for services rendered and, therefore, service tax would not be leviable on such activity. Furthermore, sugar factories were storing sugar for themselves and, therefore, there cannot be any service to self. Even otherwise, subsidies are negative taxation and there cannot be a positive tax on the same under service tax.

[Shree Datta SSK Ltd. (2013) 37 Taxmann.com 424 (Mumbai)]

Still Guessing? Answers for the queries in Page 11: 1. (ii), 2. (i), 3. (iv), 4.(iii), 5.Incorrect, 6.(ii)



Bullet News →

- *AirAsia India gets nod to import 10 aircraft (firstpost.com)*
- *Unique Identification Authority of India issues 51 crore Aadhaar numbers(PIB)*
- *Black money: In 2011, Rs 4 lakh crore went out, a 24% rise - Report by the international watchdog Global Financial Integrity (ET)*
- *States asking companies for CSR pie is illegal: Sachin Pilot (ET)*
- *Cabinet panel clears Rs 7,947 cr projects in oil & gas sector: Moily (BL)*
- *Standard & Poor upgrades TCS, Infosys, Wipro credit rating to A from BBB+ (DH)*
- *DoT invites application for 2G spectrum auction starting Jan 23*

Major victory for India at WTO, no threat to food security plan

In a major victory for India, the WTO finally agreed to allow countries to provide subsidy on staple food crops without any threat of punitive action, a concession that salvaged the current round of world trade talks from the brink of collapse.

After burning the midnight oil and tough negotiations over the past four days in the face of India's unrelenting stand on the food security issue, the 159-member World Trade Organization (WTO) reached a historic agreement.

The deal allows nations such as India to fix a Minimum Support Price (MSP) for farm produce and to sell staple grains to the poor at subsidized rates. It also permits countries to store foodgrains to meet contingency requirements.

CCI imposes penalty on Coal India

The Competition Commission of India (CCI) has imposed a penalty of Rs. 1773.05 Crores on Coal India Limited for abusing its dominant position. Specific charges on Coal India were: supplying low-quality coal at high prices; retaining the right to unilaterally terminate contracts with buyers; not providing a fair dispute redressal mechanism; and preferring other state-owned companies over private buyers of coal.

The final order was passed on 09.12.2013 on a batch of informations filed by Maharashtra State Power Generation Company Ltd. And Gujarat State Electricity

Corporation Limited against Coal India Ltd. and its subsidiaries (Mahanadi Coalfields Ltd., Western Coalfields Ltd., South Eastern Coalfields Ltd.).

The CCI held that CIL through its subsidiaries operates independently of market forces and enjoys undisputed dominance in the relevant market of production and supply of non-coking coal in India. The Commission inter alia also held CIL and its subsidiaries in contravention of the provisions of section 4(2)(a)(i) of the Competition Act, 2002 for imposing unfair/discriminatory conditions in Fuel Supply Agreements (FSAs) with the power producers for supply of non-coking coal.

India's Mars Orbiter Mission Settled into Flight

India's Mars Orbiter Mission (MOM), performed the Trans-Mars Injection (TMI) on 1st December, and is off on its long journey towards Mars. The spacecraft has crossed the Moon's orbit and is now the farthest object India has ever put in Space. MOM launched close on the heels of NASA's Mars Atmosphere and Volatile Evolution (MAVEN), a space probe designed to study the Martian atmosphere while orbiting Mars which launched on 18th November.

India and UAE signed Bilateral Investment Promotion and Protection Agreement

India and United Arab Emirates on 12 December 2013 signed a Bilateral Investment Promotion and Protection Agreement (BIPPA) that would accelerate fresh capital investments of UAE in India. At present, Abu Dhabi National Energy Company (TAQA) wants to invest 700 million dollars in Himachal Pradesh in the electricity sector, whereas the DP World Operations is aimed at expansion of their footprint in the port sector in India.