



From the Chairman's Desk

Dear Professional Colleagues,

Happy Independence Day

The e-news letter of our Chapter is being well received by our fraternity in Mysore. We have some articles contributed by our members. I would encourage you to share your insight into areas of common interest to us by regularly contributing articles/News update etc., by 10th each month so that our E-News letter could carry these for the benefit of the members in Mysore and elsewhere. Please feel free to chip in with your suggestions, views, and articles to add more value to this important communication tool.

The excitement on the Union Budget this year has perhaps settled down, but that from the State's budget is still alive.

During the month, the Chapter conducted a career awareness program at Banumiah's College on 4th for about two hundred students and at JSS Law College on 13th for about 500 students. While we are behind in achieving our target registration, these efforts are expected to improve our performance. Your suggestions in this regard would be most welcome.

The Oral Coaching Classes for December 2004 Intermediate Examination is going on well, with about 20 students undergoing the coaching.

As mentioned earlier, our chapter would be celebrating its Silver Jubilee Foundation Day next year. This would be a landmark in the history of the Chapter and I seek the support of all the members, in and around Mysore, by volunteering themselves and make this event a very special and memorable one. The Management Team of the Chapter is meeting on 15th August at the Chapter to discuss the plan for this momentous event. I would encourage you to actively participate in this meeting.

With warm regards,

C.K. Sabareeshan

Chapter News

- Career Counseling was conducted in D Banumiah's College on 04th August 2004. About 200 students participated. Mr. C K Sabareeshan took the session
- Second career Counseling was conducted in JSS Law College by Ms. Sarina and Ms. Kasturi on 13th of August 2004. About 500 students were made aware of CS course.
- Oral Coaching Classes are being conducted as per schedule. First Tests are conducted
- Registration of Students is going on in a low phase
- Chapter Accounts are maintained online in 'Wings'
- Students' response for study circle meetings is encouraging.
- Chapter has initiated discussion on Company Law concept paper recently launched by the Department of Company affairs. DCA has sought opinions of professionals for the draft companies concept paper
- Members have initiated deliberations on the celebration of the Silver Jubilee year of the Mysore Chapter

Just a minute...

"Treat people as if they were what they ought to be, and you help them to become what they are capable of being."

~ Johann Wolfgang von Goethe

"Don't let success go into your head nor failures go into your heart."





Legal World

Valuation of second hand machinery

It has been held that in countries where transaction value method is used for valuation of imported goods, determination of transaction value of second hand goods based on depreciation method is valid and not unusual.

Rajasthan Textile Mills v CC 2004 (168) ELT 127 (Trib)

Gold Card Scheme for Exporters

The Reserve Bank of India had issued a circular IECD.No.12/04.02.02/Gold Card/2003-04 dated May 18, 2004 enclosing a copy of the Gold Card Scheme. It has come to the notice of the RBI that some banks have fixed certain minimum annual turnover for the issuance of Gold Card as an eligibility criterion. The RBI vide Circular No: DBOD.IECS.No. 13/04.02.02(Gold Card)/2004-05 Dated 20.07.2004 states that the Gold Card Scheme extends to all credit worthy exporters including those in SME segment to simplify credit access and therefore banks are advised not to prescribe such a criterion as eligibility for the Gold Card Scheme.

Circular No: DBOD.IECS.No. 13/04.02.02(Gold Card)/2004-05 Dated 20.07.2004

Determination of Transaction value of Imported Goods

The construction, erection and maintenance charges are not includible in the transaction value of the imported goods as they are in the nature of post-importation charges. Further, the Tribunal has held that spares invoiced separately by the supplier and not supplied along with the machines are to be assessed independently and not along with the machine.

Mumal Marbles Ltd. Vs. CC (2004 (169) ELT 110)

Appeal to be filed against the order for claiming refund

The Larger Bench of the Tribunal, while deciding upon the applicability of the ratio of the decision of the Supreme Court in the case of CCE Vs. Flock (India) Pvt. Ltd. (2000 (40) RLT 131) to an application for refund under Section 27 of the Customs Act, 1962 has held

that an assessee cannot challenge an adjudication order on assessment passed with regard to Bill of Entry by merely filing an application for refund but is required to file an appeal against the said order.

Faxtel System (India) Pvt. Ltd. Vs CC (2004 (62) RLT 823)

Duty paid with out protest

The Tribunal has held that the importer is not precluded from challenging the enhancement in the value of the imported goods merely because he has paid the duty on the enhanced value without protest.

In CC Vs. New India Export (2004 (169) ELT 140)

Export under bond

It has been clarified that the goods manufactured or processed using excisable goods procured without payment of duty, shall be exported without payment of duty under bond.

Notification No 10/2004 - CE (NT), dated 3 June 2004

Electronic filing of Central Excise Returns - Guidelines

CBEC has provided for e - filing of Central Excise returns through Internet for which the assessee will get a computer-generated acknowledgement. The benefit of such electronic filing would be available to registered manufacturing units, 100% EOUs and the registered dealers.

Circular No 791/24/2004 - CX dated 1 June 2004

Duty rates on petroleum products

The special excise duty on Motor spirit (known as petrol) has been reduced from 14 percent to 10 percent. The basic excise duty on High Speed Diesel Oil has been reduced from 14 percent to 11 percent and on Liquefied Petroleum Gas has been reduced from 16 percent to 8 percent.

Notification No 22/2004 - CE, dated 15 June 2004



Admissibility of CENVAT Credit on Inputs

CENVAT credits are admissible on inputs which have been found to be defective subsequent to being put to use in the manufacturing process. However, CENVAT credits are not admissible on inputs, which have been rendered waste or identified as unfit for use/ rejected prior to being used in production.

Ashok Leyland Ltd. Vs. CCE (2004 (169) ELT-131)

Industrial dust arising during the course of manufacture of metal items are not excisable goods.

Alcobex Metals Ltd. Vs. CCE (2004 (168) ELT-455)

The waste and scrap arising out of repair & reconditioning of the returned goods are not in the nature of excisable goods, if such repair & reconditioning does not amount to manufacture under excise law.

Tecumseh Products India Ltd. Vs. CCE (2004 (169) ELT-55)

Waste and scrap arising out of dismantling of worn out machinery are not in the nature of excisable goods.

CCE Vs. Vijayarama Gajapathi Cooperative Sugars Ltd. (2004 (63) RLT-61)

CENVAT credit of CVD paid on re-importation of goods initially exported for repair abroad is admissible.

CCE Vs. Habasit Kakoka Pvt. Ltd. (2004 (169) ELT-237)

Where the goods were supplied at an all-inclusive provisional price, which was subsequently finalized at a lower level, the reduction in price would have the effect of correspondingly reducing the duty element included therein. The Tribunal has consequently held that the bar of unjust enrichment would not apply to the claim of refund of the excess duty paid by the assessee.

In BWL Ltd. Vs. CCE (2004 (168) ELT-458)

Unjust Enrichment

The Tribunal, in, has held that where the buyer had refused to pay the duty amount shown in the invoices and hence credit notes were issued to the buyer, the

bar of unjust enrichment would not apply to the claim for refund of such duty amount.

Alstom Ltd. Vs. CCE (2004 (168) ELT-511)

Competing exemption notifications - the more beneficial notification prevails

In case of competing exemption notifications, the assessee is entitled to the more beneficial notification, subject to fulfillment of conditions prescribed by such a notification.

Indian Petrochemicals Corporation Ltd v CCE 2004 (168) ELT 66 (Trib)

No penalty for loss in transit of goods purchased against C form

The goods purchased for trading /resale against form C were lost. As goods were lost in transit it was therefore improbable to sell or use the same goods for the purpose they were purchased. The Tribunal set aside the levy of penalty on the ground that there is no mens rea or guilty mind that the dealer has committed an offence.

Sapat Consumer Products Ltd v State of Maharashtra Second Appeal No 1020 of 2003 Maharashtra Sales Tax Tribunal Judgments

Deduction from Assessable Value

The effective rate of sales tax payable on the finished product, without taking into account the set off of input sales tax, is allowable as deduction from the assessable value.

Narayani Steel (P) Ltd. Vs. CCE (2004 (169) ELT-127)
Aditya Steel Rolling Mills Pvt. Ltd. Vs. CCE (2004 (62) RLT-975)

Entry tax legislation and sales tax legislation mutually exclusive

The provisions of entry tax legislation and sales tax legislation of a particular State are mutually exclusive and hence the provisions of one legislation cannot be applied for interpreting the provisions of the other, in the absence of express references to such effect.

Geo Miller & Co. Pvt. Ltd. Vs. State of M.P
[(2004) 136 STC 241]