



Mysore Chapter

eNewsletter - 78

July 2010

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For Private Circulation Only

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Message from Chairperson



Dear CS Fraternity,

"Little drops of water
little grains of sand
make the mighty ocean
and the beautiful land...." - Mrs. J. A. Carney (1845)

Like the expression in the poem, the alumni of the Mysore Chapter has enabled it to touch many milestones along the way. Another milestone reached is the CSMysore eParivaar achieving a 1000 strong membership. I am sure you share this happiness with me. Congratulations to all, who made this possible!

The Moot court competition coming up at New Delhi in the month of August is the next mega event in the Calendar. Though the rules are slightly changed from earlier occasions allowing thoroughfare into finals, we are of the view that the students' representation should be based on merits.

I wish the participants a lot of success!

Yours in CS fraternity,

CS K. Sarina Chouta Harish

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Did you know?: Applicability of limitations in case of Banks

Pick of the Month: Is hypothecation a charge that requires registration?

Talk on Moot Court Competition

A talk on "Preparation for Moot Court" was organized by Chapter on 20th Jun, 2010 by Mr. Mohan B. K. Advocate and Mr. Rakesh S., who gave important inputs for the preparations to take on the moot court competition.

TalUuk on SEBI and FEMA

A talk on "SEBI and FEMA" was organized by Chapter on 27th Jun, 2010. Valuable inputs were shared by professional students Ms Shwetha Nadig and Ms. Vijayalakshmi K.

Study Circle Meetings

The chapter conducted study circle meeting for foundation, executive and professional programme students on 6th, 13th, 20th and 27th Jun, 2010. Various professional students like Mr. Mohan B.K., Mr. Rakesh S., Ms Shwetha Nadig, Ms. Vijayalakshmi K. and Ms. Veena Bhat answered the queries of foundation, executive and professional students.



New Initiative

***"Instant update:
Any time, any where!"***

With rapid changes in the economic scenario, corresponding developments are taking place in the corporate professional environment also, making it more and more difficult to keep ourselves updated.

Here is an initiative from Mr. Madhur Nandkishor Agrawal, B.Com., Lic. CS to help us in getting updates in real time with respect to legal & corporate world, over our cell phones in the form of a brief text message.

This service is free of cost. Anyone who likes to join can send the following message from his/her cell phone:

ON CS_GOVPRO to 09870807070.

GovPro is to signify that the profession of Company Secretary is the Corporate Governance Profession.

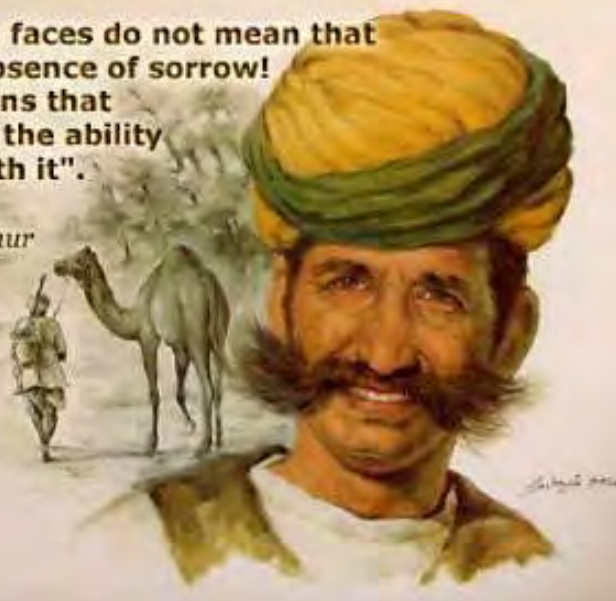
If at any point of time in future if you like to unsubscribe, it is also easy. Send another sms OFF CS_GOVPRO to 09870807070.

For any clarifications, Mr. Madhur N Agrawal is reachable at madhurna@gmail.com

Words worth Millions

"Laughing faces do not mean that there is absence of sorrow! but it means that they have the ability to deal with it".

-William Arthur





Disputes Settlement at WTO

CS. Dattatri H M, B Com, LLB, ACS, PGD IBL
AGM-Legal & CS, Essilor India, Bangalore



In May 2010 the news that WTO authorised Brazil to retaliate under WTO dispute settlement mechanism made many jaws drop! WTO had ruled in favour of Brazil against unfair practice of US in extending substantial subsidies to its cotton farmers which led trade distortion across world market. Worst hit was Brazil.

As a retaliation measure, Brazil announced to block all US exports irrespective of connection with cotton. US administration woke up on getting this jolt and came forward for a deal to grant Brazil about \$147 million a year in damages for a "technical assistance" fund for cotton growers in Brazil. This way US decided to continue subsidies, continue to reap benefits across international markets and keep affecting poor cotton farmers in all cotton importing countries, except for Brazil. In lieu of the US grants, on 18th June 2010 Brazil decided to withdraw retaliation threat.

WTO is having its own wing "Dispute Settlement Board (DSB)" for addressing disputes between nations. In this Board all of the representatives of the WTO member governments, usually at ambassadorial level, meet together. DSB is recognised as one of the most significant innovations of the WTO Agreement over the GATT 1947. DSB is resolving number of disputes between nations these days. Latest being the judgment in favour of Taiwan against EU on LCD imports (12th July 2010). As a result more and more disputes are knocking the doors of DSB and its influence is growing on the corporate world across the globe. Under this scenario, it is getting highly relevant for corporate professionals to understand DSB and its impacts.

Any industry that is suffering set back due to measures taken by some other country that are violative of agreements under WTO, can approach its respective government to take up the issue at DSB. Yes, it is only the national governments that can be a party to any matter before DSB. On receiving complaint from any of the member country, DSB facilitates consultations between

countries in dispute. If consultations fail to yield any results, a Dispute Settlement Panel (DSP) will be established which will work on interim report and issue the same to the parties and DSB. At this stage, party aggrieved by the report may prefer to appeal. If it does so, an appellate panel will be set up. DSB adopts the panel report with or without modifications as final order. Losing party shall implement this order in full or negotiate with winning party on most convenient methods of implementation/compensation. If the failing party does not take any measure to implement the decision, then winning party can request DSB to authorise for retaliation through economic measures against losing party. This is the stage at which Brazil declared retaliatory measures against US and story followed.

Dispute Settlement mechanism under WTO is recognized as one of the most significant innovations of the WTO Agreement over the GATT.

More and more disputes are knocking the doors of WTO. Naturally it has gained considerable influence on the corporate world across the globe making it highly relevant for corporate professionals.

Between 1995 to 2010, India has been party to 99 disputes under various standings. On 11th May 2010 India and Brazil filed separate complaints against European Union against series of detentions of generic drugs that took place in 2008 and 2009. The first such case concerned a shipment of a generic version of the hypertension drug Losartan potassium that was confiscated in

Netherlands in December 2008. The Dutch authorities held the shipment, which was bound for Brazil, for 36 days before it was returned to India, where the drugs had been manufactured. The medicine is protected by patent in Europe, but not in Brazil or India. According to India and Brazil, the seizure of goods is a clear violation of the WTO disciplines on the freedom of transit. Now this dispute is in the consultation stage. Negotiators from India and European Union will meet in July either at Brussels or Geneva to deliberate on settlement. If settlement could not be reached within 60 days, DSP shall be set up.

According to WTO sources "A majority of disputes have not proceeded beyond consultations, either because a satisfactory settlement was found, or because the complainant decided for other reasons not to pursue the matter further. This shows that consultations are often an effective means of dispute resolution".

Negative Consensus

Dispute settlement process under GATT was having a big weakness. The DSPs under GATT used to be made up of three or five independent unrelated experts. These panels wrote independent reports with recommendations and rulings for resolving the dispute, and referred them to the GATT Council. Only upon approval by the GATT Council did these reports become legally binding on the parties to the dispute. The problem was that both the setting up of the panel and the approval for the report made by the panel were based on positive consensus.

Positive consensus means that there had to be no objection from any contracting party to the decision including the disputing party. This fallacy had enabled the respondent to block the establishment of a panel itself. Even if panel was set up losing party could always see that the report does not get approval. Offcourse, in the long term interest of protecting the image in the international levels, in the normal course, member countries were not using this veto power against consensus. However in case of sensitive issues like anti dumping, the veto power was used to the detriment of the economic interests of the aggrieved countries.

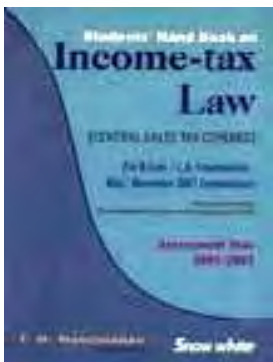
Students' handbook on

Income Tax Law

Author- T .N. Manoharan. M.Com, B.L, FCA
Publisher-Snow White Publication

*"It is said there are two things which are certain in Human Life – One is **Death** and other is **Tax**" (In a lighter way)*

Tax Laws are that important for everybody no matter whether one is a professional or student. Income Tax being a vast subject and there is a need for a book covering all the provisions / case laws / interpretations / commentaries appropriately. The **Students' handbook on Income Tax Law** by **T.N. Manoharan** provides all these aptly.



This book is presented in most simple language and gives an easy approach especially for students to learn the principles relating to computation of taxable income under each head of income together with the suitable format prescribed.

Number of illustrations, case studies and exercises are provided for more practice. Updated rules, important circulars and case studies are also other additions. In each chapter "Chapter Outline" is provided in the beginning and "Summary of key points" are given at the end which will enable to grasp the subject in an effective manner.

Therefore I recommend this book to be most preferred for students and professionals.

This fallacy was rectified under WTO regime. The procedure was modified and "negative consensus" concept was brought in. What is needed to reject the panel report is a consensus against adoption by all Members represented at the relevant DSB meeting. A single Member insisting on adoption is sufficient in order to secure the adoption of the report. Atleast the representative of the winning country will insist on adoption and that is enough. Thus, so far "negative consensus" has never occurred practically in WTO.

Multilateral & Plurilateral Agreements

Trade disputes arising out of all agreements covered by WTO can be taken to DSB. 'Plurilateral Trade Agreements' that are not signed by all WTO members are not covered. However parties to such plurilateral agreements may decide to subject themselves to the DSB for settlement. There were four Plurilateral Agreements viz Agreement on Government Procurement, Agreement on Trade in Civil Aircraft, The International Dairy Agreement and The International Bovine Meat Agreement. First Agreement has subjected itself to DSB. Second one has not. Third and fourth agreements are no longer in force. Thus virtually disputes under all trade pacts between nations can be escalated to DSB.

Book Review

Sourabha Hiremath
CS Final, Bangalore





Fund raising through Public Deposit vis-à-vis Bank Borrowing



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Allahabad, kcagarwal44@yahoo.co.in

If one compares the formalities and the cost involved in availing the loan from a bank for Working Capital requirements or Project Finance with the formalities and cost that is involved in collecting public deposit, he finds that later is much easier, cheaper and convenient.

The total cost of Public Deposit to a company comes to some where 9 % to 13.5 % per annum depending upon company's financials, standing and reputation. Whereas, in case of bank borrowings the cost is between 15 % and 18%, depending upon the bank's B P L R , credit rating of borrower company and the type of credit facility company wishes to avail from the bank.

Public Deposits are always unsecured and therefore, companies having no or negligible Fixed Assets / immoveable properties too can have access to F. D. market for raising Fund . Whereas in case of bank finance most of the time fixed assets / immoveable properties are taken by banks as prime or collateral security. Since Fixed Deposits are unsecured there is no formality of creation of charge and its registration with Registrar of Companies.

In case of bank borrowing, the Company has to submit lots of papers and comply with many formalities to obtain loan. Once loan is sanctioned and disbursed; plethora of papers flow from the company to bank from time to time. Moreover, every year the C.C. limit is renewed / reviewed by the bank and company is required to furnish all necessary papers to bank in this regard. Whereas, in case of public deposit, companies are not required to furnish any paper to depositors or for that matter to any one else during full tenure of deposit except for filing a "Return of Deposit" to Registrar of Companies once in a year.

When bank loan is of high magnitude, no financial decision in the company can be taken without obtaining a "No Objection" from bank.

Even for declaring dividend in the company the permission of lender bank is usually required. Some times bank even appoints its nominee(s) in the Board of Directors of the company who at times interfere in the decisions of the board.

Where as in case of fixed deposit there is no interference by depositors in the day to day management of the company. They, being creditors of the company, may surface only in Creditors Meetings when there is a need to take their consent on some issues effecting their interest, for example,

when company is compromising or making arrangements with creditors and members (Section 391 of the Companies Act, 1956) or altering the Memorandum of Association of the company consequent to change of the place of its registered office from one state to another, [section 17(2) of Companies Act, 1956], etc. However, such occasions are very rare.

Quantum of Deposit that a company can raise is directly linked with its Net Worth / Net Owned Fund. Therefore, borrowing power of a company automatically goes up, when ever company closes its financial year with improved bottom line. Thus under such circumstances company can accept extra deposit during the next accounting year and for this additional deposit no formality is required to be observed by the company. Whereas, in the case of bank finance, for enhancement of limit or for additional facility, lots of formalities and paper work are required.

Finally, in case of Public Deposits the formalities required to be observed by the companies are so little and simple that they could be completed in a single day.

No wonder that the dependence of companies on bank finance is decreasing day by day and companies are now concentrating more on other form of borrowings like Public Deposit, Inter Corporate Deposits etc.

Public deposits are cost effective, unsecured, involves less paper work and there is no interference in regular management decisions by depositors. This is not so with bank financing.

Thus dependence of companies on bank finance is coming down fast.

History of Regulation of Company Deposits in India:

Acceptance of deposit by companies from public was witnessed in the early sixties when companies were found inviting deposit from public at a very high interest rates. There was no legislation, at that time, to regulate these deposits. As a result, lots of companies defaulted and depositors were duped of their hard earned money by unscrupulous companies.

For the first time, in the year 1966, the Reserve Bank of India came out with a direction under Chapter IIIB of Reserve Bank of India Act 1934 to regulate such deposit accepting companies. However, the directions were not effective enough and defaults by companies continued. Therefore, government again took initiative to regulate the acceptance of deposit by companies in the year 1974 when Section 58A and 58B were introduced in the Companies Act, 1956 by the Companies (Amendment) Act, 1974 and Companies (Acceptance of Deposits) Rules 1975 was framed. Thereafter, from time to time various sub-sections were inserted in Section 58A. Again two new sections, 58 AA and 58 AAA, were introduced in the Companies Act, 1956 by Companies (Amendment) Act, 2000 w. e. f. 13-12-

2000 to further tighten the grip on Deposit accepting companies.

Present Law Governing Company Deposit:

Acceptance of Deposit by a company is governed by Section 58A, 58AA, 58AAA, 58B of the Companies Act 1956, Companies (Acceptance of Deposits) Rules 1975, Non - Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 1998 and National Housing Finance Companies (NHB) Direction 2001.

The provisions contained in the Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 1998 applies to Non-Banking Financial Companies only, where as provisions contained in Companies (Acceptance of Deposits) Rules 1975 applies to Non- Banking Non- Financial Companies like companies engaged in manufacturing, trading, service rendering, etc. The National Housing Finance Companies (NHB) Direction 2001 regulates the acceptance of deposit by housing finance companies.

However, we are not discussing Housing Finance Direction, in view of limited scope of this series.

Let us discuss on legal provisions relating to company deposits in our next edition.

LIVING ROOM



Dr. K. S. Vamsi Krishna

BPT, MD(AM), Exe Mgt Program(IIMCalcutta),(CS Exe)

Persistence & confidence

Success is nothing more than failure which has persisted long enough to achieve excellence. If you don't get it right the first time, by all means keep on going. What more powerful confidence could there be, than the confidence which is born out of persisting in spite of failure?

The fear of failure keeps most people out of the game. Yet once you've experienced failure, and picked yourself back up again, what's left to fear? Fear of failure is only for the weak and arrogant, for those who foolishly think that somehow they can achieve success without paying the price. Those who know true success also know that failure is not to be feared.

No person would intentionally set out to fail. We must give our best effort, and highest expectations, to each attempt. And if we fall short of the mark it is no disgrace. It is in fact another rung we've climbed on the ladder to eventual success. Out of failure - comes the confidence and the determination to succeed.





Pavan Kumar M S,
CS Final Student, Mysore

Let me introduce you to the various Indian Government Ministries and Departments. Amazed? Here is National Portal of India www.india.gov.in developed with an objective to provide single window and easy access to various information about the Government – Centre and State, their programs and policies.

Site provides information and provisions of various Acts, Welfare Schemes, Rules, and day to day case list of our Courts. Also provides the initiatives taken by the Government of India on health, education and employment of the citizens of India. Section “**How Do I?**” deals with contribution to PM Relief fund, Obtaining Birth certificates, Domicile Certificate etc. Further the site provides access to ministry of finance site wherein, we find Tax Laws and Rules, Filing Online Returns, TDS etc. This site also introduces Foreign Embassies in India, Sitting Judges of Supreme Court, Defence Chiefs, links to various ministry websites, Scholarships and Awards and Aids for Education.

Let us understand the Schemes of our Government and convey to more and more people for whom these schemes are made. “**India is the cradle of the human race**”. The hand cares the Cradle is the hand that rules the world.

We can also send India specific greeting cards to our loved ones through this portal. One such card is here for you.



Amitkumar Hegde,
B.Com, MCA, Bangalore

Keep your bookmarks synchronized

Of late we are becoming more net savvy and there are a count less web sites which we want to visit later. Even though we can catalog them in the browser favorites, here is a better option to keep all of them synchronized form all your browsers. Download Xmarks plug-in form <http://www.xmarks.com/> which helps you to synchronize your bookmarks from Internet Explorer, Firefox, Chrome and Safari.

Create a free account with xmarks so that all your bookmarks are maintained on their server. Install the xmarks plug-in for your favorite browser. You will notice a new xmarks icon on the tool bar. Sign in with your account and synchronize. All your bookmarks stored on the browser will be saved on xmarks server.

Now you can access your bookmarks anywhere just by logging in to your account. This will help a lot on the move. Say for example if you want all the bookmarks from office at home or vice-versa, then its just a click on the synchronize button. No more keeping book marks on notepad or the like. In Xmarks you can create different categories for your bookmarks such as business related, health, entertainment and so on which will make any book mark to be located very easily. Xmarks has a nice search facility also which should come in handy. Probably now you can go ahead and keep all your bookmarks more portable and more organized.



Compilation:
CS. Ravishankar Kandhi,
Bangalore



Learners' Corner

Whistleblower



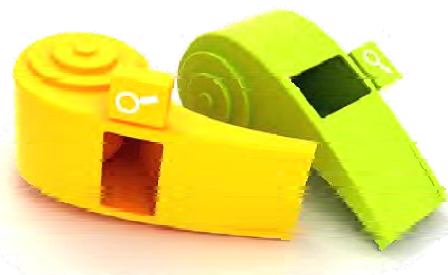
Vijayalakshmi Karur, CS Final

Law is always subject to violation in one way or the other. Unless it is checked/controlled by the proper authority through proper mechanism, followed by remedial action the intention behind the law is killed (can not be fulfilled).

Hence, there is always need for a mechanism to prevent/control such violation and 'whistle blowing' is one of such mechanism providing a platform for the effective implementation of law.

Under the said mechanism- whistleblower is a person who raises a concern about wrongdoing like violation of a law, rule, regulation and/or a direct threat to public interest, such as fraud, health/safety violations, and corruption occurring in an organization. Whistleblowers may make their allegations internally or externally.

The term whistleblower derives from the practice of English police officers, who would blow their whistles when they noticed the commission of a crime.



Internal whistleblowers, report misconduct on a fellow employee or superior within their company.

External whistleblowers, however, report misconduct to outside persons or entities like lawyers, the media, law enforcement agencies or Governmental agencies depending on the information's nature.

The concept receives an alarming attention against wrong doing or malpractices in an organisation and alerts the responsible authority to take actions against the same.

Though there exist Whistle blower policy the success is not ensured at all times because of fear of loosing job, relationships and retaliation inside and outside work area because in majority cases these people are very low-profile people and receive little or no media attention.

Legal protection under the concept varies from country to country. In the United Kingdom, the Public Interest Disclosure Act 1998 provides a framework of legal protection for individuals.

In India SEBI, the market regulator amended listing agreement in August 2003 to include guidelines with respect to Whistle Blower to Clause 49.

It is not only the duty of the whistle blower to report against the wrong doing or malpractices but it is necessary for the professionals to frame proper policy and to create supportive environment for the successful implementation of the same, contributing to the healthy development of organisation.

Is Hypothecation a charge requiring registration?

Kiran T, CS Final

Hypothecation being a kind of pledge is not regarded as charge under Sec 125(e) of the Companies Act, 1956.

As per Sec 125 all charges specified in the said section has to be registered. Hypothecation being a kind of pledge need not be registered with ROC. In [Ideal Bank Ltd. (In liquidation) V/S Pride of India Pictures Ltd. (In liquidation)], (1985) 57 Com cases 546: AIR 1983 Del 546] "where movable property is hypothecated to a bank, whether delivery has been made or not, it will be an effective pledge whether registered or not".

However Sec 134 (2) gives the right for interested party to make an application for registration of deed with ROC and expenses of the same can be recovered from the concerned company.

Consumer, Be aware

Did You Know



Applicability of Limitation in case of Banks

A bank may exercise lien under section 171 of Contract Act even where the debt is barred by limitation. Also a consumer can initiate proceeding against a banker for non-release of securities even after the expiry of the period of limitation.

This is based on the principle that the banker holds any goods as security from a customer as trustee and the security is not intended to be transferred to him, nor can he acquire any title to it, except on the basis of legal proceedings.

Legal Roundup

CS. Abhishek Bharadwaj, Bangalore

Veena Bhat Kibballi, Mysore

V. Sasikumar & D. Saravanan, Chennai
and

CA. Ashit Shah, Pune

CENVAT

Notn.s/Circulars

In relation to export of goods without payment of duty has been amended to exclude goods chargeable to nil rate of duty or wholly exempt from duty, other than goods cleared by 100% EOU, from its applicability.

(Notn. No - 24/2010 Dt. 26-5-2010 - Central Excise (N.T))

Case Laws - Manufacture

The process of conversion of straight grade into blown grade bitumen does not amount to manufacture.

CCE Vs. Tikitar Industries (10 (253) ELT 513) SC

Case Laws - CENVAT/MODVAT

The credit is admissible on endorsed bills of entry.

CCE Vs. Pepsi Foods Ltd (2010 254 ELT 284) in Punjab & Haryana HC

The Credit is eligible on chemicals used for purification of water to be used in the manufacture of cement.

India Cements Ltd. Vs. CCE (2010 (253) ELT 510)

The credit is allowed on storage system used for storing of raw materials.

CCE Vs. Sonal Engineering Pvt. Ltd. (2010 (253) ELT 806),

The credit can be availed on industrial washing equipment /machines used for washing the uniforms of employees working in the factory.

CCE Vs. Micro Labs Ltd. (2010-TIOL-686 CESTAT),

The credit on duty paid inputs received in the factory cannot be denied merely on the basis that the activity carried out by the supplier of such inputs does not amount to manufacture.

KTMS Engineering Pvt. Ltd. Vs. CCE (2010 (176) ECR 24

In case of conditional exemption Notn. requiring non availment of credits on inputs, the benefit is available only if such credits if availed are reversed prior to clearance of final product.

Spentex Industries Ltd. Vs. CCE (2010 (253) ELT 225)

The credit is fully admissible on education cess paid on inputs procured from 100% EOUs.

The Tribunal in Tyche Industries Vs. CCE (2010 TIOL 810)

CENVAT Credit Rules is only applicable for inputs "cleared as such" or partially processed inputs and is not applicable for clearance of final product.

CCE Vs. Tehri Girders Ltd. (2010 (253) ELT 327)

Case Laws - CENVAT/MODVAT

No interest and penalty is leviable if the erroneous credit availed is reversed prior to utilization.

CCE Vs. Rana Sugar Ltd (2010 (253) ELT 366), the Allahabad HC

In the absence of any price variation clause in the agreement, a refund claim filed on the basis of a subsequent reduction in price is not sustainable.

Gulf Corporation Ltd. Vs. CCE (2010 (253) ELT 630)

The principle of unjust enrichment would not be applicable where duty amounts have been refunded through credit notes to customers dealers.

CCE Vs. Sirpur Paper Mills Ltd. (2010 (253) ELT 269)

100% EOU is entitled to duty free procurement of the raw material used for manufacture of the final exported product even if some portion of such materials is used for R&D purposes or is contained in waste & scrap.

CCE Vs. Dr. Reddy Laboratories Ltd (2010 (253) ELT 316)

The procedure relating to provisional assessment is not applicable to goods subject to MRP based assessment.

Kinetic Engineering Ltd Vs. CCE (2010 254 ELT 289)

Customs

Notn.s/Circulars

The period for making an application for determining the amount or rate of drawback or revision thereof has been extended from sixty days to three months.

(Notn. No. 49/2010 Dt. 17/06/10)

The CG has amended the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995.

(Notn. No. 48/2010 Dt. 17/06/10)

The CG has notified Vietnam and Myanmar under the Rules of Origin issued for import of goods in India under the ASEAN FTA.

(Notn. No.44/2010 Dt. 31/05/10)

TV of imported goods warehoused and sold before being cleared for home consumption would be the value at the time of filing of into-bond bill of entry.

(Customs Circular No. 11/2010 Dt. 3/06/2010)

Case Laws - Classification

The classification of goods is to be governed by its essential characteristics at the time of import.

The Tribunal, in CC Vs. Midas Impex (2010-TIOL-781)

Case Laws - Valuation

Duty drawback will not be eligible even upon reversal of CENVAT credit earlier availed, since the reversal of such credit does not tantamount to non availment of credit in the first instance, so as to be eligible.

The Tribunal, in Go Go International Pvt. Ltd. Vs. CC (2010-TIOL-741)

Once duty was paid by the importer at the time of clearance of goods, the burden to prove unjust enrichment is on such importer.

Spectrum Fabrics Vs. CC (2010 (177) ECR 070)

Case Laws - Others

The customs authorities cannot detain the goods for an indefinite period on the ground that they are in the process of checking the value or nature of goods unless the goods are prohibited goods and are liable for confiscation.

Om Udyog Vs. Uol (2010 (177) ECR 012)HC

The customs authorities cannot demand duty in respect of the past imports which are already assessed and cleared, in the absence of a show cause notice in that regard.

Biharilal Singhal Vs. Uol (2010 (176) ECR 101) Bombay HC

Technical know how paid for the manufacture of a finished product cannot be included in the transaction value of imported machine as the fees do not relate to the imported goods and are not a condition of sale.

Gee Dee Weilder (P) Ltd. Vs. CC (2010-TIOL-747)

Foreign Trade Policy

Notn.s/ Circulars

Validity of certificates / licenses extended issued under the Handbook of

Procedures (RE-2003), (RE-2004) and (RE-2005) for a further period of 12 months.
(Public Notice No.68/2009-14 Dt. 26/05/2010)

Case Law

At the time of de-bonding of goods by a STP unit, depreciation will be allowed at the rates prescribed in the customs exemption Notn. and not in the Handbook of Procedures.

[Cogniant Informatics \(I\) Pvt. Ltd. Vs CC \(2010\) \(253\) ELT 651](#)

While demanding duty for failure to comply with a post importation condition, the rate is to be determined taking into account the exemption Notn., in force at the time of clearance of such goods.

[Bharat Earth Movers V. CC \(2010\)\(176\)ECR 141](#)

Once the EODC issued under the EPCG scheme is withdrawn for whatever reason, the importer is reverted to the original position in which he is liable to take steps to discharge the export obligation.

[CC Vs. Hotel Bissau Palace \(2010-TIOL-728\)](#)

Duty cannot be demanded on goods those have been properly warehoused in the EHTP unit and undisputedly used for research, study and evaluation for the purpose of manufacture of export goods in the unit.

[The Tribunal, in American Power Conversion \(I\) Pvt. Ltd. Vs. CC \(2010-TIOL-729\)](#)

Antidumping Duty

Case Laws

The levy of anti dumping duty cannot be extended after a sunset review unless the likelihood of increase in dumping or recurrence of dumping is determined.

[BASF South East Asia Pte. Ltd. Vs. Designated Authority \(2010\) \(253\) ELT 554](#)

Service Tax

Case Laws

An assessee is not liable for payment of service tax on services received from outside India prior to the coming into force of Section 66A from 18/04/2006.

[S R Batliboi & Associates Vs. UOI & Ors. \(2010-TIOL-376-HC\)](#)

Service tax paid on catering services for a canteen located within factory premises is an eligible input service.

[CCE Vs. Castrol India Ltd. \(2010-TIOL-733\)](#)

Payment collection services received by an assessee in relation to bills raised on customers are services 'in relation to the business' and are eligible input services

[The Tribunal, in Nav Bharat Tubes Ltd. Vs. CCE \(2010\) \(26\) STT 150](#)

Service tax paid on canteen services and medical insurance services is allowable as eligible input service tax credit to a manufacturing unit.

[Tecumseh Products India \(P\) Ltd. Vs CCE \(2010\) \(26\) STT 175](#)

Pursuant to the constitutional permissibility for vivisection of a turnkey contract for the purpose of levy of VAT on goods supplied there under, the remnant value, relating to services, would be subject to service tax.

[CCE Vs. BSBK \(P\) Ltd. \(2010\) \(26\) STT 263](#)

ST Updates from CA Ashit Shah:

Notn.s/ Circulars

Nine new services and certain existing taxable services whose scope has been widened become operative from 1st July 2010.

[Notn. No. 24/2010 - Dt. 22-06-10](#)

Exemption granted to Transport of passengers by Air.

[Notn. No. 25, 26 & 27/2010 - Dt. 22-06-10](#)

Certain exemption granted to Construction Industries

[Notn. No. 29 & 30/2010 - Dt. 22-06-10](#)

Certain specified tournaments or championships organized by the specified bodies were exempted from payment of service tax when provided under Sponsorship services.

[Notn. No. 30/2010 - Dt. 22-06-10](#)

Case Laws

Cenvat Credit of goods like cement and steel items used for laying "foundation: and for supporting structure of building can not be treated as either "inputs" or "capital goods".

[Spice Communication - 2010 TIOL 915 CESTAT Delhi](#)

Inclusion of an amount disclosed / declared to IT dept in to value of taxable services cannot be added to the value of taxable services rendered unless corroborative evidence or document on record to show that

amount disclosed was earned by providing taxable services.

[Ramesh Studio & Color Lab - 2010 TIOL 893 CESTAT Delhi](#)

Commission received by Custom House Agent (CHA) from Steamer Agent for arranging containers for exporters. No service tax would be chargeable.

[Ruth Shipping Agencies - 2010 TIOL 891 CESTAT Mad](#)

Sales Tax

Notn.s/ Circulars

The rate of entry tax on all varieties of textiles has been reduced from 4% to 2%. Entry tax on sugar and tea has been discontinued.

[\(Notn. No.FTX40/2010/4 Dt. May 31, 10\)](#)

Case Laws

Mere production of form C is not sufficient to claim the benefit of concessional rate of tax.

[The Kerala High Court, in State of Kerala Vs. Crompton Greaves Limited \[\(10\) 30 VST 426\]](#)

Air turbine fuel supplied to foreign aircraft is exempt from the levy of sales tax.

[The Punjab and Haryana HC, in IOC Vs. UT of Chandigarh \[\(2010\) 30 VST 447\]](#)

The transfer of assets by a partnership firm to its partner, as his share in the partnership at the time of dissolution of the firm, does not constitute a sale and is not liable to sales tax.

[The Bombay HC in Synthetic Suppliers Vs. CST\(2010\) 30 VST 632](#)

FEMA & SEBI

Updates from Genicon:

Notn.s/Circulars:

The Minimum public shareholding of Listed Companies has been increased to 25%.

[SEBI Notn. No F.No.5/35/2006-CM Dt. 04.06.10](#)

RBI has issued master circulars on various subjects on 1st July 2010. These master circulars are superseding circulars issued on 1st July 2009. The RBI has issued simplified process for Compounding of Contravention under FEMA.

[A.P. \(DIR Series\) Circular No. 56 Dt. 28.06.10](#)

12 months period for realization and repatriation of export value of goods or software further extended upto March 31, 2011.

[A.P DIR Series Circular No.70 Dt. June 30, 09](#)



India may join WTO panel on Govt Purchases Agreement (GPA)

GPA is a pact that deals with the issues relating to government purchases. India may become member of a multilateral agreement under which it will have to subject government purchases to WTO scrutiny subject to country getting prepared to take the benefits that the US and EU markets offer.

WTO delays release of ruling on Boeing subsidies

The case is the European Union's counterclaim, after a U.S. case regarding European subsidies to Airbus. In the first case, a WTO panel ruled that European Union governments illegally subsidized numerous Airbus programs. Executives from Airbus and parent EADS have said the ruling in the counterclaim will show that Boeing got at least as much in illegal subsidies as the panel found Airbus received. The delay means it will be a while yet before the WTO affirms or rejects that assessment. The delay also complicates EADS North America's fight to rebut Boeing backers' effort to penalize the company's Air Force aerial refueling tanker bid based on the WTO ruling.

Anti-dumping duty on pesticide chemical from China

India has imposed anti-dumping duty of up to USD 1.15 per tonne on a chemical used in pesticides, to protect the domestic industry from the cheap Chinese shipments. Diethyl Thio Phosphoryl Chloride is a highly toxic chemical and is used in production of pesticides like phoxime and parathion.

Rich Countries Raised Farm Subsidies

The world's rich countries boosted government support for agriculture in 2009, according to a report that the Organisation for Economic Co-operation and Development (OECD) released last week. (Source: Bridges Weekly)

G-20 leaders in debate over fiscal health

In the two-day G-20 summit in Toronto the European sovereign debt crisis has prompted the leaders of the

world's 20 largest industrial and emerging economies to place the fiscal health issue at the top of the agenda.

Nations divided over lifting ban on whale hunt

The Inter-national Whaling Commission begins a five-day meeting in Morocco's Atlantic resort of Agadir – arguably it's most important gathering since 1986, when a moratorium on commercial whaling halted the factory-style slaughter of tens of thousands of animals every year. The deal would legitimize commercial hunting in exchange for a drop in the number of whales actually killed by those claiming

exemptions to the ban – Japan, Norway and Iceland.

Since the ban took place, about 33,600



whales have been killed, as per Animal Welfare Institute in Washington. Several environmental groups said they would favor a deal only if endangered species are excluded from the hunt, whaling is stopped in the Antarctic sanctuary, trade in whale products is outlawed and no country is exempt.

Sony accused of IPR infringement

Taiwan's largest LCD manufacturer, Chimei Innolux, has sued Sony Corp. in the US and Chinese mainland for patent infringements, demanding a halt in sales of Sony products, including Bravia televisions, Cybershot camera and digital photo frames and compensatory damages.

Taiwan wins against EU in WTO ruling on LCD imports www.techeye.net

It's the first time Taiwan has filed a trade complaint since joining the WTO back in 2002. EU bodies said that larger LCDs are consumer products and placed a tariff on them.

Taiwanese Manufacturers argued that they should be considered as information technology products so they can ship duty-free. WTO has now ruled in favour of Taiwan.