

eMagazine



Mysore Chapter

*Edition 138
July 2015*

Inside

Articles:

- Mist on the appointment of Independent Director by the Board... 4
- The Bull Ride: Housing Finance Companies ... 6
- Key points for HR-Legal... 8
- Ramifications of IPR infringement ... 9

Columns:

- From Chairman's Desk... 2
- Activities at Mysore Chapter... 3
- Web Yatra... 3
- Words Worth Millions... 5
- Living Room... 10
- News Room... 11
- Spectrum Space... 12
- Regulatory Updates ... 13
- Recommended Article ... 15

For Private Circulation only





CS S Badrinarayanan
Chairman,
Mysore Chapter

-: Editorial Team :-

CS Dattatri H M

CS Sarina C H

CS Omkar Gayatri

CS Abhishek Bharadwaj

CS Ajay Madaiah

CS Vijay Shyam Acharya

CS Madhur N Agrawal

**Join
4600+ members'
strong**

“CSMysore” eParivaar

<http://www.groups.google.com/group/csmysore>

Greetings from Mysore Chapter of ICSI!!

As the government is ready to pass the very important “GST Bill” in the upcoming monsoon session of Parliament, we expect a good growth in the industrial sector in coming years. The surveys from the various sources indicated that the growth of Indian economy is good & positive. Hope the nation will get good development and the poverty will reduced soon.

During the month the chapter had organized an open house session on Secretarial Standard for Members & Students and also conducted Chapter level Company law quiz competition for students. The chapter also planned to start Oral Coaching classes for Executive & Foundation programme students from July 2015 onwards.

To all those Foundation students awaiting results during this month, I wish all success and good luck.

..oO

Now it's easy to receive the eMagazine directly into your personal mail id. Click the link <http://goo.gl/PV9Olr> and fill-in simple info. That's it☺.

You may send this link to your friends too!

*Please write your comments and feedback to us:
newsletter.icsimysore@gmail.com*

Disclaimer

Views and other contents expressed or provided by the contributors are their own and the Chapter does not accept any responsibility. The Chapter is not in any way responsible for the result of any action taken on the basis of the contents published in this newsletter. All rights are reserved.

Open House Sessions on Secretarial Standards:

The Secretarial Standards which became effective from 1st July 2015 provide detailed guidelines on conducting the Board meetings and General meetings. To understand the nuances of these Standards, the Chapter had organised a series of Open house sessions; one day in every week in the month of June 2015. CS Pracheta M, Secretary, the Mysore Chapter of ICSI co-ordinated the sessions. Members & Students of Mysore Chapter participated in deliberations.

Chapter Level Company Law Quiz Competition

The Chapter conducted the Company Law Quiz Competition at Chapter level for CS students on 18.06.2015. Two students Mr. Prajwal R & Mr. Rohit Sharma were adjudged as Winner & Runner-Up respectively based on their scores obtained. Both of them were selected for representing the Mysore Chapter of ICSI at Regional level round in SIRC of ICSI, Chennai. Congratulations and Best Wishes to the representatives of the Mysore Chapter!



Web Yatra

Guruprasada Bhat
CS Professional Student, Bangalore
guruprasadbhatcs@gmail.com



An aptitude is a component of a competency to do a certain kind of work at a certain level, which can also be considered "talent". A single construct such as mental ability, might be measured with multiple tests. Often, these test scores will be correlated with each other. Aptitudes may be physical or mental. Aptitude is not developed knowledge, understanding, learned or acquired abilities or attitude. The innate nature of aptitude is in contrast to achievement, which represents knowledge or ability that is gained through learning.

Dear Friends, here is a site <http://www.careerbless.com/index.php> one of the best sites for one who is preparing for the competitive exams. This site offers clarifications on reasoning, English language, Basic Mathematics, numbers etc. The site broadly contains topics such as Programming, Quantitative Aptitude, Speed Mathematics and Scientific Calculator etc.



This [site](http://www.careerbless.com/index.php) is very helpful to update our knowledge about basic mathematic calculations, reasoning and aptitude techniques. The site not only gives ready information to the users, anybody can ask their doubts regarding the aptitudes. Your queries would be answered by experts with reason. Don't miss the opportunity to check on this knowledge bank.



Mist on the appointment of Independent Director by the Board

In the wake of implementation of the Companies Act, 2013 (the Act), the CS fraternity often come across certain impediments in implementing certain provisions of the Act, since some of the provisions are covered by a mist (as usual ??), which makes the vision a blurred one and requires clarity. One such cloudy provision is whether an independent director shall be appointed only at the shareholders meeting or the appointment of independent director can be made at the Board Meeting also ?

One school of thought is that the independent director shall be appointed by the shareholders only, since there is no express provision in the act regarding the appointment of independent director by the Board. Another school of thought is that the independent director can be appointed by the Board also, since there is no express prohibition in the Act for the appointment of independent director by the Board.

In this article, it is intended to bring some light on the relevant provisions on the appointment of the independent director.

As per Section 150 (2) of the Act, **“the appointment of independent director shall be approved by the Company in general meeting** as provided in sub-section (2) of section 152 and the explanatory statement annexed to the notice of the general meeting called to consider the said appointment shall indicate the justification for choosing the appointee for appointment as independent director”.

As per Section 152 (2) of the Act, **“Save as otherwise expressly provided in this Act, every director shall be appointed by the Company in general meeting”**.

It is these words, “Save as otherwise as expressly provided in this Act”, lead to the ambiguity in the minds of a section of the professionals that there is no expression provision in the Act, to appoint independent director by the Board.

However, it is the author’s opinion that the interpretation shall be made holistically and the intention of the Act shall be taken into account, by taking clue from the other relevant provisions.

On combined reading of Sections 150 (2) and 152 (2) of the Act as above, it may be inferred that **every director shall be appointed by the Company only in general meeting, except in cases where it is specifically provided in the Companies Act, 2013.**

Further, Section 161 (1) of the Act provides that **the articles of a Company may confer on its Board of Directors the power to appoint any person**, other than a person who fails to get appointed as a director in a general meeting, **as an additional director at any time who shall hold office up to the date of the next annual general meeting** or the last date on which the annual general meeting should have been held, whichever is earlier.

Section 161 (2) states that the Board of Directors, if so authorized by the articles, to appoint a person to act as an alternate director for a director during his absence for a period of not less than three months from India.

The Proviso to Section 161 (2) states that no person shall be appointed as an alternate director for an independent director unless he is also qualified to be appointed as an independent director under the provisions of this Act.

The Proviso to Section 161 (2) gives a clear indication that an alternate director for an independent director can be appointed by the Board, if he is otherwise qualified to be appointed as an independent director.

The alternate director for an independent director shall be deemed to be an independent director.

It may also be appropriate to mention here that as per Second Proviso to Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014, **“any intermittent vacancy of an independent director shall be filled-up by the Board at the earliest but not later than immediate next Board meeting or three months from the date of such vacancy, whichever is later”.**

The provision to appoint an additional director by the Board of Directors is to enable the company to appoint a person as a director immediately to comply with the statutory provisions instead of waiting till the Annual General Meeting or an Extra-ordinary General Meeting specifically for this purpose.

Section 161 of the Act expressly provides for appointment of additional director, alternate director and nominee director. The term **“Save as otherwise expressly provided in this Act....”** as enshrined in Section 152 (2) of the Act, may be interpreted to mean that the Act expressly provides for the appointment of an additional director in the category of independent director.

If the company is required to comply with the statutory provisions with regard to appointment of independent directors within a specific period, the Board may do so, by appointing them as additional directors in the category of independent director.

It is pertinent to mention here that the Second Proviso to the Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014, specifically stipulates that the **“intermittent vacancy”** of an independent director **shall be filled up by the board (stress is given to the word “SHALL”)**.

If the intention of the Act is to appoint the independent director only by the shareholders in the AGM/EGM, then powers would not have been given to the board to fill up even the intermittent vacancy of the independent director, since the independence of one person from the other is highly a subjective term.

Also, the Proviso to Section 161 (2) gives a clear indication that an alternate director for an independent director can be appointed by the Board, if he is otherwise qualified to be appointed as an independent director. This means that when an alternate director for an independent director can be appointed by the board, the logical chronology would be that independent directors can also be appointed by the Board.

Also, there is no prohibition in the Act for the appointment of independent director by the Board.

In view of the relevant legal provisions as referred above, it may be interpreted that an independent director may be appointed by the Board as an additional director in the category of independent director, subject to the approval of the shareholders in the general meeting.

Till the implementation of the Companies Act, 2013, for more than 5 decades, we were debating and discussing on the various provisions of the Companies Act, 1956. For Companies Act, 2013, it is just the beginning. So, there are a lot to debate and discuss on the various provisions of the Act. But we are hopeful to see some light - not at the end of the tunnel, but even before that.

Words Worth Millions

"A leader takes people where they would never go on their own."

-Hans Finzel

"You don't lead by pointing and telling people some place to go. You lead by going to that place and making a case."

-Ken Kesey



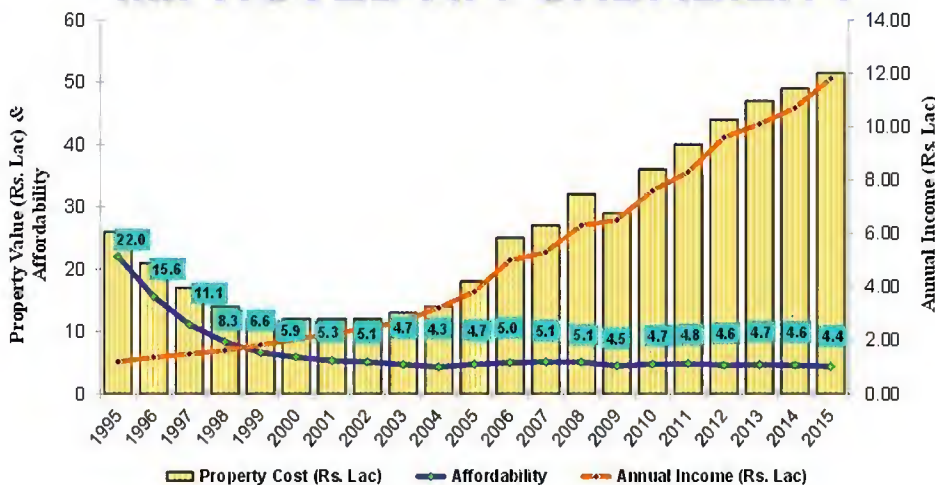
Housing Finance Companies

About the Industry: According to the 11th 5yr plan, the urban housing shortage in our country is estimated to be 2.6 Crore units. Due to this affordable housing is the need of the hour. Thus Housing Finance Companies (HFC) have a crucial role to play in reducing the Housing shortage in the country.

- HFCs finance millions of Indians in buying their dream home. India is one of the youngest countries in the world with 60% of the population below 30 years of age representing an extremely large consumer base.
- Also with the increase in trend of living in nuclear families and disposable income, housing sector, especially affordable housing segment, will continue to witness robust demand in coming years.
- A house is emotionally a very important asset as well for any individual. Any borrower wouldn't want to default in home loan and risk living without any roof on his head. Thus risk of NPAs is lower than that of other loan products.
- Scalable and relatively safer business model has attracted interest in housing finance business of many established NBFC/Banks. Recently, various foreign backed credit firms such as Fullerton India, a firm backed by Singapore's Temasek, entered into affordable housing finance business.
- HFC have been growing their home loan portfolio aggressively and are often preferred by borrowers as loan processing is relatively faster and simpler than Banks.
- With current government giving strong focus on home for every Indian by 2020, HFC's business is heading north.

Charts below will give more understanding about scope of market expansion:

IMPROVED AFFORDABILITY



The Chart on the left side compares shows increase in income vis-à-vis property prices.

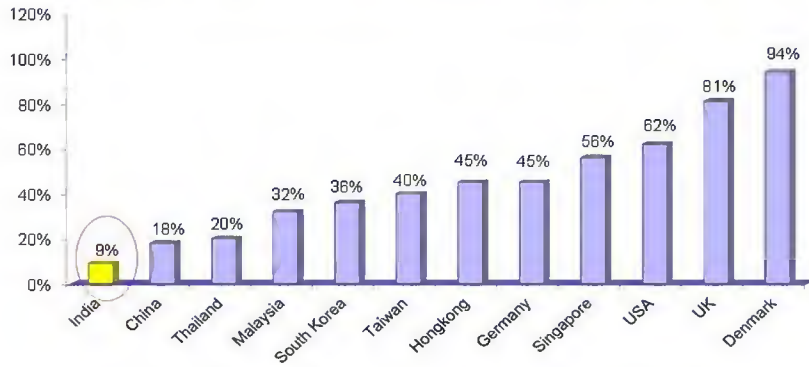
Going forward, Annual income is expected to further rise which will lead to improvement in affordability.

1 Lac = 1,00,000

Representation of property price estimates

Affordability equals property prices by annual income

LOW PENETRATION IMPLIES ROOM FOR GROWTH MORTGAGES AS A PERCENT OF NOMINAL GDP



Source : European Mortgage Federation, HOFINET & HDFC estimates for India

11

Top Housing Finance Companies:

Particulars (Fy14-15)	Can Fin Homes	LIC Finance	HDFC
Financials synopsis			
Total Revenue (Rs. In Cr.)	817	10,669	24,143
Net Interest Income	178	2,236	8,297
Net Profit after Tax	86	1,386	5,440
Market Cap (Rs. In Cr.)	1,987	22,796	203,040
Operating Ratios			
GNPA %	0.17	0.46	0.67
NIM %	2.54	3.50	3.46
Average Yield on Assets %	11.27	10.65	11.78
Return on Capital Employed %	10.29	11.39	16.7
Return on Assets %	1.2%	1.52	2.7%
Return on Net Worth %	16.73	19.76	21.6
Last 5 years performance			
Loan portfolio (CAGR %)	30	21	18
Income (CAGR %)	29	22	15
PAT (CAGR %)	15	9	16

Past 5 years robust financial performance of the leading HFCs shows the upper trajectory in Housing finance sector. Lower NPAs also shows that home loan to be relatively safer loan to the lending companies. In the last 1 year, these HFC have outperformed BSE Sensex. Such a stellar performance shows the confidence of the investors in these

companies about their future prospects.

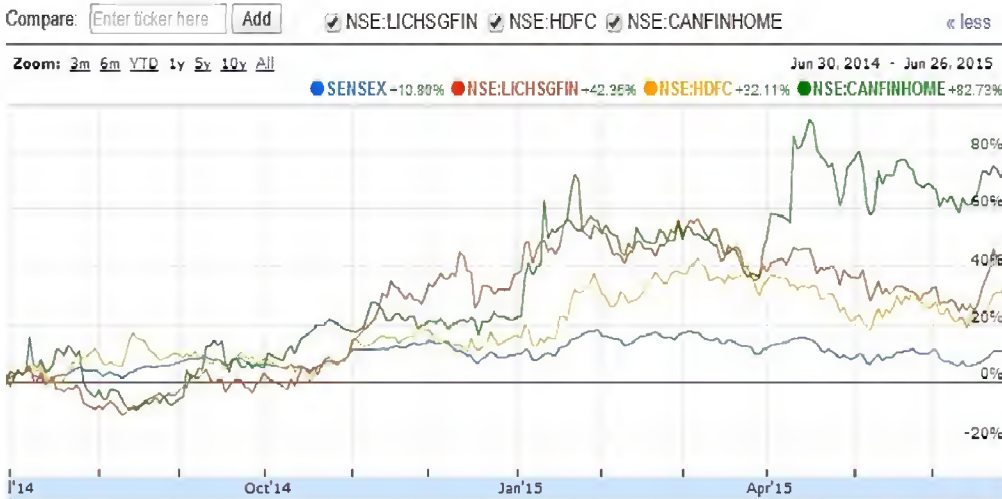


Chart besides shows share price movements of all the three HFC vis-à-vis BSE Sensex.

Disclaimer: The author of the report has prepared and issued report for publication globally. All information used in the publication of this report has been compiled from publicly available sources that are believed to be reliable; however we do not guarantee the accuracy or completeness of this report.



Mr. Sharath Mahendra Kumar

B.Com, MBA, LLB, MPhil, PGDMM. (ACS, LLM)

Bangalore

sharathm_kumar@yahoo.com

Key points for HR-Legal –What we should know!

Continued from previous edition...

18. Every woman employed, whether directly or through any agency, for wages in any establishment shall be entitled to Maternity Benefits.
19. Even a casual woman employee shall be entitled to Maternity Benefits.
20. To be entitled to Maternity Benefit, a woman employee should have worked for at least 80 days during 12 months immediately preceding the expected date of delivery.
21. Every eligible woman employee shall be entitled to 12 weeks of maternity leave and additional leave of 01 month, in case of any pregnancy complications as provided under Sec.10 of the Maternity Benefit Act, 1961
22. Here, for maternity benefit purpose it is 12 weeks (12*7=84 days) which can either be taken prior to delivery (not more than 6 weeks) or after the delivery entire 12 weeks. But in case of additional leave for pregnancy complications, it is 01 months which is 30 or 31 days and not 4 weeks.
23. An arrangement of engaging contract labour will be brought under Contract labour act only when there is a certificate of Registration obtained by the principal employer under section 07 of the Contract Labour (Regulation & Abolition) Act, 1970 and Contractor should have obtained the license under section 12 of the Act.
24. Contract workmen can be engaged only through a licensed contractor. Unless both the conditions are complied with, the provisions of this Act would not be attracted.
25. The provision of the CL (RA) Act, 1970 will not be applicable to an establishment, if the nature of the work performed by such establishment is of Intermittent or Seasonal nature.
26. A work of an establishment would be considered **Intermittent** if it is operational only for or less than 120 days in the immediately preceding 12 months and **Seasonal** if it is performed for less than 60 days.
27. It was held by the Supreme Court in Gammon India Ltd. vs. Union of India that the subject matter of the CL (RA) Act, 1970 is not the **“Contract” but the “Contract Labour”**.
28. This also means that terms like Purchase Service Agreements (**PSA’s**), Master Service Agreements (**MSA’s**) or any other nomenclature used to determine the engagement of manpower on contract through their physical deployment at Principal Employers Premises would not absolve the Principal Employer from his responsibility and liability under the said Act.
29. The **deciding criteria** as to whether the said act provision are applicable or not is to understand whether the contract workmen is deployed at the premises of the principal employer or not. If deployed, the provisions get attracted.
30. The court cannot issue any **Mandamus** deeming the contract laborers as having become the employees of the principal employer.
31. **Automatic absorption** of the contract labours in the absence of the registration by the principal employer or contract labours performing the similar nature of the job performed by permanent employees of the principal employer is not automatic and not a rule as well. Supreme Court constitutional bench verdict in SAIL vs. SAIL worker Union, 2001, 2002, 2006.

To be continued...



Ramifications of IPR Infringement

After few updates focusing in detail on interim injunction(s) restraining acts allegedly infringing IPR, we dwelled into the aspects of IPR licenses, last month. Continuing with the same thought process and subject focus let us look at few practical examples highlighting ramifications of infringement allegations, interim reliefs thereupon, licenses and disputes under licenses.

1. License does not imply that Licensor's rights are perpetual.

Upon the expiry of the IPR of the Licensor, the Licensor cannot be allowed to continue to commercially exploit the IPR. All rights in intellectual property are ordinarily granted for a period of time. The period is determined under applicable IPR law. The inventor or valid Licensor is fully entitled to exclusively exploit the patent and gain commercially therefrom, during the tenure of the patent. Since the benefits so enjoyed under such IPR are exclusive, such exclusivity cannot be forever. Why?

Fundamentally, IPR is based on the conceptual understanding that inventions should be encouraged since inventions lead to progress of the society and common benefit of the society at large. Such encouragement is provided by conferring exclusive rights of exploitation, that is, IPR, so that efforts that have gone into the invention / creation are well rewarded. Such reward by way of exclusivity should however, not be timeless, unrestricted and unqualified, since that could lead to a monopolistic situation of abuse of exclusivity and deprivation to society. Even otherwise, any invention/ creation, however novel or unique it is, loses novelty or uniqueness with passage of time, hence perpetual exclusivity is not called for. The right balance therefore, is to make such exclusivity limited by a time period.

Though most patents have tenure of twenty years, sometimes private parties enter into licenses that do not specify an end date. When the licensee stops royalty payments on discovering that the tenure of the patent

has expired, the licensor claims that irrespective of the tenure of the patent, the licensee is contractually bound to pay royalty for the term of the license. This came up before the highest Courts in US, during June 2015. This case related to royalty for the famous Spiderman. The judges clearly upheld that patents endow their holders with certain superpowers, but only for a limited time. The usage of 'superpowers' is probably in line with the superpowers exhibited by Spiderman. More interesting is the statement in the ruling – "In this world, with great power there must also come great responsibility"- this is from a Spiderman comic of more than fifty years ago!

2. In another interesting development in the US, the application for trademark registration of a logo bearing the design of a head of a mouse was opposed, alleging that it is nearly identical in appearance, connotation and overall commercial impression to that of Mickey Mouse. What followed is a lot of action at the US Trademark office, including filing of a 'cease and desist' application seeking restraint on the logo. Though the matter is settled by compromise, this example highlights the importance of thorough review of commercial logos, possibilities of sudden and surprising infringement claims, and the larger commercial ramifications where a wide array of commercial merchandise can also be sold under a famous logo.

3. Lastly, in India, a famous saree brand alleged infringement of its logo by an equally famous ecommerce website. The allegation was that the website was using the saree brand name as a search word and using pictures of the said branded sarees as background in the relevant apparel section of the website, thereby misleading customers to believe that the sarees available on the website were of this reputed saree brand. Thus, on the internet, more care and caution has to be exercised – infringement and passing off can be alleged, though the same was probably not intended, for any manner in which an expression is communicated.

Living Room...

There are two ways to live....



An interviewer said to a famous writer:

"How do you deal with the negative opinions recently held by some people about you?"

The writer smiled and said:

"When I was in high school and spent most of my time reading and writing, people said that I should quit such 'ridiculous' hobbies and focus only on my studies. When I studied literature in college, people said that I was 'stupid' to pick such a stream and would never earn a living. I didn't have enough money when I started out writing which required me to borrow money from my family or friends, so people called me 'cheap'. I spent hours reading and writing at home, so I was called 'lazy' while my friends went out to party or watch a new movie."

"When I started doing somewhat better and no longer needed to borrow, people called me 'egoistic'. When some of my articles got published in newspapers and magazines, people called me 'lucky'. Then my first book was published, I was paid enough to live a decent life, so people said that it was 'unfair since all I had was an in-born talent'. When I finally started earning more than enough and giving donations, people called me a 'show-off'".

"What I've learned from all of this is that there are two ways to live : you can either live like the way others want you to or you can live like the way you want to, work hard to achieve your dreams & care for only those who care for you."

(Story Narrated by Sourabh Yadav on Quora)



News Room



- CS Chakri Hegde, CS Vijayalakshmi Karur

FLASH NEWS

- SEBI jurisdiction upheld by SC in offshore markets with regard to GDRS by firms
- Money Laundering - new black money law has triggered defaulters to face criminal prosecution with a jail term of up to ten years
- RBI extends deadline to exchange pre-2005 currency notes till Dec 31
- UP number one in awarding death penalties (awarded 506 death sentences between 1998 and 2013, the highest in the country during that period)
- Indian exports passing through challenging phase: DGFT
- **Negotiable Instruments (Amendment) ordinance, 2015 promulgated by President on 15-06-2015**
- **One million consumers say no to LPG subsidy**
- FDI in e-commerce will make India a dumping ground: Traders
- Manual scrutiny of Service Tax returns from August 1, 2015: CBEC
- India, US sign agreement to share info on tax evasion
- US return IT professionals need to declare 401k account or face harsh penalties under the black money law that came into force on July 1.
- India is the most active area of our investment, says Temasek, the investment arm of the Singapore government.
- Indian economy is forecast to grow 7.5% in 2015: IMF
- CBEC to begin manual scrutiny of ST Returns of select assesses.

Government to come out with 'detailed clarification' on e-commerce

The Commerce and Industry Ministry will come out with "detailed clarifications" on all aspects related to the e-commerce space after holding wide consultations with various states and other stakeholders. With this aim, the Department of Industrial Policy and Promotion (DIPP) today held a series of meetings with seven

Central government departments, bankers and industry players.

SEBI eased the public issue norms - reduces timeline to boost market

SEBI has halved the time required between listing and closing of an initial public offering (IPO) to six days from existing 12 days for all public issues coming after January 1, 2016.

CCI amends filing norms for M&A deals

This move would help in avoiding undue delays as well as usher in more transparency into its decision-making process. Revising its Combination Regulations, the Commission has made it easier for entities seeking approval for merger and acquisition (M&A) deals, by providing "flexibility to parties regarding signing of the notice", among others. Now, any person duly authorised by the board of directors can sign the notice seeking CCI's approval. The number of copies of notice to be filed has also been reduced.

To bring in greater transparency regarding the review process, the amendments provide that a summary of every combination under review will be published on the CCI website.

Small service providers on tax radar

Small service taxpayers will soon find themselves subjected to detailed manual scrutiny by the taxman. The CBEC recently issued detailed scrutiny guidelines for service-tax returns of small taxpayers. These guidelines are to be followed from August 1, 2015.

Typically, only large service taxpayers come within the ambit of service-tax audit. Small service providers, whose tax liability was not significant, didn't come under the radar of this audit and there were possibilities of tax leakages. The scrutiny procedure aims at plugging such leakages.



Internet intermediary liability

“Internet intermediary liability” means the legal responsibility (“liability”) of intermediaries for illegal or harmful activities performed by users through their services. “Liability” means that intermediaries have an obligation to prevent the occurrence of unlawful or harmful activity by users of their services. Failure to do so may result in legal orders compelling the intermediary to act or expose the intermediary to civil or criminal legal action.

Intermediary liability occurs where governments or private litigants can hold technological intermediaries such as ISPs and websites liable for unlawful or harmful content created by users of those services. Intermediary liability can occur in a vast array of circumstances, around a multitude of issues including: copyright infringements, digital piracy, trademark disputes, network management, spamming and phishing, cybercrime, defamation, hate speech, child pornography, illegal content, offensive but legal content, censorship, broadcasting and telecommunications laws and regulations, and privacy protection.

In performing these roles, intermediaries cannot reasonably be expected to be aware of all the content transmitted, stored or referenced on their networks, which is constantly changing and at an automatic and rapid pace. Because of this, it is argued by some that intermediaries should not be held liable for content on their networks created by third parties.

Did You Know?

Green Climate Fund (GCF)

GCF is a fund within the framework of the UNFCCC founded as a mechanism to redistribute money from the developed to the developing world, in order to assist the developing countries in adaptation and mitigation practices to counter climate change. The GCF is based in the new Songdo district of Incheon, South Korea. It is governed by a Board of 24 members and initially supported by an Interim Secretariat. ‘The Green Climate Fund will support projects, programs, policies and other activities in developing country Parties using thematic funding windows’. It is intended to be the centre piece of efforts to raise Climate Finance of \$100 billion a year by 2020.

Does Debt Recovery Tribunal (DRT) has jurisdiction to issue Certificate of Recovery against the Guarantor?

No, Hon’ble Supreme Court in Standard Chartered Bank (supra) concluded that Section 34 of the DRT Act provides that the said Act would have overriding effect. Thus, the sacrosanct purpose with which the tribunals have been established is to put the controversy to rest between the banks and the borrowers and any third party who has acquired any interest. Inter alia, it observed that, tribunals have been conferred jurisdiction by special legislations to exercise a particular power in a particular manner as provided under the Act. It cannot assume the role of a court of different nature. It is only required to decide the list that comes within its own domain. If it does not fall within its sphere of jurisdiction it is required to say so. It is pertinent to note here that hon’ble Supreme Court observed that the Tribunals and Appellate Tribunals have been established to put the controversy to rest between the banks and the borrowers, however, there is no reference to guarantors. It is settled law that the terms ‘borrowers’ and ‘guarantors’ convey altogether different legal persons.

Pick of the month

Regulatory Updates

Compiled by:

CS Abhishek Bharadwaj A.B.
Partner, AAA & Co, Bangalore
csabhishekbharadwaj@gmail.com



CUSTOMS & FTP

Notifications/Circulars/News

The Central Government has notified Kamalasar in Tripura as Land Customs Station for trade with Bangladesh.

No. 50/2015-Customs (NT) dated 3 June, 2015

The Central Government, in the interest of expediting decision-making and faster settlement of outstanding disputes, has delegated the power of the Central Board of Excise and Customs (CBEC) to appoint common adjudicating authority in cases investigated by DRI to Principal Director General of Revenue Intelligence (Principal DG, DRI). The following are the key decisions taken by the CBEC in this regard:

1. Following cases initiated by DRI shall be assigned to Additional Director General (Adjudication)-DRI:

- Cases involving duty of INR 50 Mn and above;
- Groups of cases on identical issues involving aggregate duty of INR 50 Mn or more;
- Cases involving seizure value of INR 5 Mn or more;
- Cases of over-valuation irrespective of value involved; and
- Existing DRI cases with erstwhile Commissioner (Adjudication).

2. Cases other than at (1) above, involving more than one Customs Commissionerate would be assigned to the Jurisdictional Commissioner of Customs on the basis of the maximum duty evaded;

3. Cases other than at (1) above involving a single Customs Commissionerate would be assigned to the Jurisdictional Commissioner of Customs.

No. 18/2015 dated 9 June, 2015 and Notification No. 60/2015-Customs, dated 4 June, 2015

The Central Government has notified certain amendments to bring clarity to certain points, and to amend certain provisions in Foreign Trade Policy (FTP) and Hand Book of Procedures, 2015-20 (HBP) relating to mandatory documents required for import/export, ineligible categories for Merchandise Export from India Scheme (MEIS) and Service Export from India Scheme (SEIS), export obligations related to various duty exemption/ remission schemes etc. - *No. 08/2015-2020 dated 4 June, 2015 and Public Notice No. 16/2015-20 dated 4 June, 2015*

The Central Government has clarified that:

- benefit of SEIS is not available for services provided by a unit located in DTA to SEZ; and
- benefit of SEIS is available for services provided from a SEZ unit to other countries. - *No. 1/2015-20, dated 11 June, 2015*

The Central Government has notified that following applications can be filed manually with DGFT till 30 September, 2015:

- application for Status Holder Certificate in ANF 3C;
- application for bond waiver in ANF 4F; and
- application for Nominated Agency Certificate in ANF 4-I.

Notice No. 17/2015-20, dated 4 June, 2015

The Central Government has notified new format of Bank Guarantee, to be executed with DGFT, for recognition as Pre-Shipment Inspection Agency (PSIA).

Notice No. 21/2015-20, dated 23 June, 2015

The Central Government, in order to facilitate 'ease of doing business in India', has released beta version of online ANF 3A with facility to upload application form along with supporting documents for MEIS. - *Trade Notice No. 05/2015, dt 16 June, 2015*

The Central Government, in order to facilitate 'ease of doing business in India' has released beta version of online ANF 5A with facility to upload application form along with supporting documents for issuance of Export Promotion Capital Goods (EPCG) authorisation. - *Notice No. 03/2015, dated 1 June, 2015*

The Central Government has levied anti-dumping duty on imports of Hot Rolled Flat Products of Stainless Steel, of ASTM grade 304 with all its variants, falling under chapter 72 of CTA, originating in or exported from People's Republic of China, the Republic of Korea and Malaysia, for a period of five years from 5 June, 2015.

No. 28/2015-Customs (ADD) dated 5 June, 2015

The Central Government has extended the levy of anti-dumping duty on imports of Vitamin E, falling under chapter 29 and 23 of CTA, originating in or exported from the People's Republic of China, for a period of five years from 10 June, 2015.

No. 29/2015-Customs (ADD) dated 10 June, 2015

The Central Government has extended the levy of anti-dumping duty on imports of Nylon Tyre Cord Fabric, falling under chapter 59 of CTA, originating in or exported from the People's Republic of China for a period of five years from 12 June, 2015.

No. 30/2015-Customs (ADD) dated 12 June, 2015

Case Law

Fees paid for licence, training and technical services related to post-import activity should not be added when calculating value of imported goods.

CC v Hindalco Industries Ltd. (2015 (320) ELT 42 (SC))

Customs duties other than NCCD had to be computed on transaction value, even if quantity actually received was less than quantity exported by the overseas supplier (due to loss in transit), since the same transaction value will be the value for quantity received

-NCCD was levied at specific rate so it had to be levied on actual shore quantity received

-Excess payment of duty against one Bill of Entry (BOE) could not be adjusted against subsequent BOE, since under Customs law, each transaction had to be examined separately, and there was no provision for clubbing of clearance.

Bharat Petroleum Corporation Ltd v CC (2015 (320) ELT 294)

Where currency of exporting country devalued, the reduced import value was acceptable.

CC v Kanhaiyalal and Co (2015 (319) ELT 615 (SC))

Transaction value of goods imported from related party was liable to be rejected when similar goods after adjustment of additional work were imported at a higher price by any independent third party in India.

Habasit Lakoka Pvt Ltd v CC (2015-TIOL-141-SC-CUS)

Excess customs duty shown as recoverable in balance sheet was sufficient evidence to pass the test of unjust enrichment.

Madhucon Bina Puri v CC (2015 (320) ELT 458)

Benefit of project import scheme was not available when new machinery was installed for manufacture of new product by removing the machinery used for manufacturing a different old product, since there was no substantial expansion.

Tata Steel Limited v CC (2015 (320) ELT 462)

CESTAT could not reduce penalty without giving reasons, merely by observing that the penalty 'appear to be excessive'.

CC v Diascans (India) Ltd (2015 (320) ELT 177 (SC))

Appeal against the Tribunal's order relating to determination of question as to whether the assessment was provisional or final, should have been filed before the HC and not before the SC. Only cases involving classification and valuation issues could be filed directly with the SC.

CC v Glencore India Pvt Ltd (2015 (319) ELT 555 (SC))

CVD was not leviable on imported Shawls and Scarves when no excise duty was levied on similar goods produced domestically.

Ahujasons Shawlwale (P) Ltd v CC (2015 (319) ELT 576 (SC))

Notifications come into force on fulfilment of two mandatory conditions viz:

1. Notification was published in the official gazette; and
2. The Gazette copy was offered for sale by concerned department.

Union of India v Param Industries Ltd (2015-TIOL-140-SC-CUS)

Benefit under EPCG scheme could not be availed, if the goods exported were not manufactured in the factory where imported capital goods under EPCG scheme were installed.

Beetel Teletech Ltd v CC (2015 (320) ELT 137)

Where exemption from filing a Bank Guarantee under the scheme of FTP has been denied in terms of provisions of FTP, there was no violation of right to equality and right to trade.

Laxmi Organic Industries Ltd v Uol (2015 (319) E.L.T 667)

In a case where an assessee had discharged export obligation under Advance Licence as amended by DGFT, then Customs Authorities could not demand differential duty.

Nagesh Hoisery Exports Ltd v DGFT, Uol (2015 (320) ELT 95)

No penalty was leviable on Customs officers in case of over-valuation of goods by an exporter, when they have taken due care and allowed export on the basis of evidence, since this could not be taken as an abetment of offence under Customs Law.

Ruchika International v CC (2015-TIOL-1224-CESTAT-MUM)

Ministry of Corporate Affairs Notifications/Circulars/News

Clarification on repayment of deposits accepted by the companies before the commencement of the Companies Act, 2013 under section 74 of the said Act. Follow the link for the circular

http://www.mca.gov.in/Ministry/pdf/General_Circular_9-2015.pdf

General Circular 9/2015 dated 18.06.2015

Relaxation of additional fees and extension of last date of filing of forms MGT-7 (Annual Return) and AOC-4 (Financial Statement) under the Companies Act, 2013 Follow the link for the circular:

http://www.mca.gov.in/Ministry/pdf/General_Circular_10-2015.pdf

General Circular 10/2015 dated 13.07.2015

CENVAT Case Law

Sterilisation of syringes and needles did not amount to manufacture, as no new product with distinct name, usage and character emerged.

Servo-Med Industries Pvt Ltd v CCE (2015-TIOL-103-SC-CX)

Excise duty was payable on transmission assemblies which came into existence as intermediate products during manufacture of exempted tractors, since such products were known in the market as distinctive products.

Escorts Ltd v CCE (2015 (319) ELT 406)

Installation of bought out items of telephone exchanges at site did not amount to manufacture as no new commodity with distinct commercial identity or character or use emerged.

BSNL v CCE (2015-TIOL-1018-CESTAT-DEL)

Transportation charges collected from buyers was not includible in the assessable value when ownership of the goods was transferred at the factory gate.

CCE v Aeons Construction Products Ltd (2015 (319) ELT 548)

Amount received as insurance claim could not be termed as transaction value of the damaged goods.

Mahendra Sponge and Power Ltd v CCE (2015-TIOL-1139-CESTAT-DEL)

CENVAT credit already availed on inputs lying in stock or contained in final product lying in stock was not required to be reversed when, subsequently, the final product became exempted, since no correlation between the input and the final product was required under law.

Tractor and Farm Equipment Ltd v CCE (2015 (320) ELT 357)

When certain inputs based on a particular invoice were received during the six-month period, but the last and final lot was received after the six-month period, the six-month time limit under the erstwhile MODVAT rules, being procedural in nature, did not disentitle the claim of credit on such invoice.

Century Laminating Com v CCE (2015 (320) ELT 406)

CENVAT credit was admissible on inputs and input services used in setting up of windmills and operation and maintenance of such mills, when electricity generated from such mills were made available through electricity board under barter system.

India Cement Ltd v CCE (2015-TIOL-982-CESTAT-MAD)

CENVAT credit could not be denied on the ground of non-payment of duty by input supplier inasmuch as buyer of inputs was not expected to know whether the supplier had discharged duty burden. - *Ultratech Cement Ltd v CCE (2015 (320) ELT 492)*

When there was a slump sale of working factory along with raw materials, packing materials, etc., there was no cause for reversal of CENVAT credit on inputs as there was no 'removal' from factory.

CCE v Hindustan Lever Ltd (2015-TIOL-966-CESTAT-MUM)

Replacement of existing machinery with new ones resulting in expansion of installed capacity by 25% would fulfil the requirement of area-based exemption Notification No. 50/2003-CE. - [CCE v Rana Castings Ltd \(2015 \(320\) ELT 396\)](#)

Fire caused in factory on account of electrical short circuit had to be held as covered by the expression, 'unavoidable accident' and therefore eligible for remission under rule 21.

[Bajaj Healthcare Ltd v CCE \(2015-TIOL-1110-CESTAT-MUM\)](#)

VAT, Sales Tax and Entry Tax

Case Law

Transaction of replacement of spare parts amounted to sale and hence was liable to tax. The High Court relied on the Supreme Court's (SC) judgement in Mohd Ekram Khan and Sons v CTT (2004 taxmann.com 1806), wherein it had been held that since the assessee had received the payment for parts supplied to customers, transactions were subject to levy of tax.

[Kataria Automobiles \(P\) Ltd v State of Gujarat \(\(2015\) 57 taxmann.com 244 \(Gujarat\)\)](#)

Supply of drugs, medicines, implants, stents, valves and other implants was integral to medical services/procedures and could not be severed to infer a sale, and therefore was not liable to VAT. The HC, relying on the SC judgment in Bharat Sanchar Nigam Ltd v Union of India, held that sub-clauses of article 366(29A) of the Constitution did not cover hospital services.

[Fortis Health Care Ltd v State of Punjab \(\(2015\) 57 taxmann.com 44 \(Punjab and Haryana\)\)](#)

Service Tax

Notifications/Circulars

It has been clarified that effective from 1 June, 2015, the rate of service tax on services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess having the facility of air-conditioning or central air-heating in any part of the establishment would be 5.6% (14% of 40%) of the total amount charged. - [No. 184/3/2015-Service tax dt 3 June, 2015](#)

Case Laws

Input service distributor (ISD) was neither liable to pay tax nor does it provide any taxable service, therefore, could not be termed an assessee. Even though the 'input service distributor' (ISD) had to file half yearly return/ declaration, the question of assessment/ self-assessment would not arise. Accordingly, it was held that where both the factory and the ISD were located in the same jurisdiction, SCN proceedings initiated against factory instead of ISD for denial of CENVAT credit distributed by ISD was permissible. - [SKF India Ltd, SKF India Ltd \(ISD\) v CCE \(2015-TIOL-914-CESTAT-MUM\)](#)

Marketing support services in India provided by the appellant to its principal located outside India for which commission was received in foreign exchange, would qualify as export of services under the erstwhile export of services rules. - [CST v Pulcra Chemicals \(India\) Pvt Ltd \(2015-TIOL-915-CESTAT-MUM\)](#)

Just because the sub-contractor provided pre-construction anti-termite treatment services in relation to a construction project carried on by the contractor, he (the sub-contractor) could not be held liable to tax under 'commercial or industrial construction service' (CICS) or 'construction of complex service' (CCS).

[Premier Pest Control Pvt Ltd v CST \(2015-TIOL-943-CESTAT-DEL\)](#)

Where the export remittances were settled by the exporter's banker using a 'Nostro account' maintained in the importer's country, resulting in realisation of export proceeds in Indian rupees instead of in foreign currency, the proceeds were deemed to have been received in convertible foreign exchange (approved by RBI as a valid manner of receipt of foreign exchange). Since the banker had issued Foreign Inward Remittance Certificate (FIRC) to certify the receipt of foreign exchange in the exporter's account, the benefits of export of services were granted to the service provider.

[Sun-Area Real Estate Pvt Ltd v CST \(2015-TIOL-956-CESTAT-MUM\)](#)

Where the appellant maintained a library of images on a website which could be explored online and downloaded by paying the quoted price, it would be liable to tax under the category of 'online information and database access or retrieval services' even if the images were protected by copyright.

[Photolibary India Pvt Ltd v CST \(2015-TIOL-1013-CESTAT-MUM\)](#)

Where the appellant provided services of sending bulk SMSs to their clients' customers with contents supplied by clients, the services were held liable to tax under 'business auxiliary services'. The Tribunal further held that since the price charged for the services did not include service tax, cum-tax benefit could not be granted to the appellant. - [Cellebrum Technologies Ltd and Ors v CCE \(2015-TIOL-1098-CESTAT-DEL\)](#)

In a repair and maintenance contract, where the values of goods and of labour were separately disclosed, and applicable VAT charged on the value of goods, service tax would be payable only on the value of labour charges.

[Technocrate Transformers v CCE \(2015-TIOL-1106-CESTAT-DEL\)](#)

The activities of preparing and serving food in the employer-run canteen by the employees' co-operative society would be liable to tax under the service category of 'outdoor catering services'. The Tribunal observed that employees' cooperative society was a different legal entity from the employer or its employees/ members. - [Alfa Laval \(India\) Ltd, Employees Co-operative Consumers Society v CCE \(2015-TIOL-1184-CESTAT-MUM\)](#)

Recommended Article for your reading:

Ten reasons why Asia is good for your career

"While all of us have it to some degree, Asia helps us appreciate the importance of humility in our everyday actions. Leaders in Asia use their humility to connect with others, find creative solutions, and adapt their styles to meet the needs of other people and situations."

https://www.linkedin.com/pulse/ten-reasons-why-experience-asia-good-your-career-michael-bekins?goback=%2Emid_16012123425018044416*4500_*1_*1_*1