



Mysore Chapter

# eMagazine

Edition 102

July 2012

**Charges: 4**

**Statutory Payments Vs  
Secured Lenders**

**7 Protracted Mechanism  
for Revocation of Suspension**

**Well-Functioning  
Boards 9**





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

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# Message from Chairperson



Dear Members and  
Students of CS fraternity,

Though later than expected, the monsoons have finally arrived and with it all the goodness and joys of the season...

Same way, it seems that finally the much awaited Companies Bill will take its leap towards becoming an Act and all are hoping that the Bill will make its way into the Monsoon Session of the Parliament. It is very heartening to note that almost all the recommendations, which the standing committee of finance has made second time around, have been accepted by the Ministry of Corporate Affairs and let us all hope the Bill will become a reality soon.

The landmark order of the Competition Commission against the Cement Cartels is a commendable step in countering the abuse of dominant position and indeed a welcome step in Indian Legal and Political scenario. These changes surely call for more from us, as professionals, and we need to be more and more capable to step up in the success ladder.

I urge the students to make best out of the competition season. Please remember, it's not just winning or losing in the competition, but what you can gain by participating in these is what matters. They not only enhance your subject knowledge but contribute to your overall development as a professional which is becoming more and more challenging day by day.

Yours in CS fraternity,  
CS. Srilatha T G

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## Message

Congratulations for e-magazine from Mysore Chapter which is very rich in contents. Keep it up.

Regards,

CS. N K Jain

Secretary & CEO

The Institute of Company Secretaries of India



## Activity Report – June 2012

### 42 INVESTOR AWARENESS PROGRAMS



The Chapter conducted 42 investor Awareness Programs during the month of June. These programs were conducted through resource persons Mr. H S Niranjan Babu Reddy, CMA Trinesh R, Mr. Ramesha M K, Mr. Rajendra and Mr. Ajith Kumar K S. The programs were conducted in Harave, Hallahally, Nanjangud, Ilawala, Ganganur, Gejjaganahalli, Dharmayyana hundi, Kebbelhundi, Navilur, Mallahalli, K R Pet, Kanagalu, Kittoor, Bettadapura, Priyapatna, Hanagudu, Konanur, Ramanathapura, Basavapattana, Bilikere Kikkeri, Nagamangala, Bellure, Chenya, Chinakurali Akkihebbal etc., covering Chamarajanagara, Mysore and Mandya District.

Awareness was created regarding investment options, primary and secondary markets, grievance handling, do's and don't's for the investors etc..

### ANNUAL GENERAL MEETING

The Annual General Meeting of the Chapter was held on 24th June 2012. The members Mysore Chapter reviewed the Financials for the year ending 31st March 2012 and also discussed about the future plans of the Chapter. Suggestions were made by the members regarding various activities planned by the chapter for the current year.

### 11<sup>TH</sup> ALL INDIA ELOCUTION COMPETITION: CHAPTER LEVEL

Chapter level selection round for 11th All India elocution competition was held in the chapter premises on 16th June, 2012. Interested students were present and participated in the selection round.

Two students Mr. Prashanth S.P. and Ms. Deepa Singh were selected from the Chapter and sent to regional level selection to SIRC Chennai.



# CREATION OF CHARGES

## STATUTORY PAYMENTS Vs SECURED LENDERS

### Part 1



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Registration of charge with Registrar of Companies acts as protection to the lenders and creditors, banks and liquidators. Part V of the Companies Act 1956 contains provisions related to Registration of the charges (Section 142 to 145), including mortgage, date of notice of charge, registration of charges, registration in case of debentures, certificate of registration, register of charges, inspection, penalties, etc.

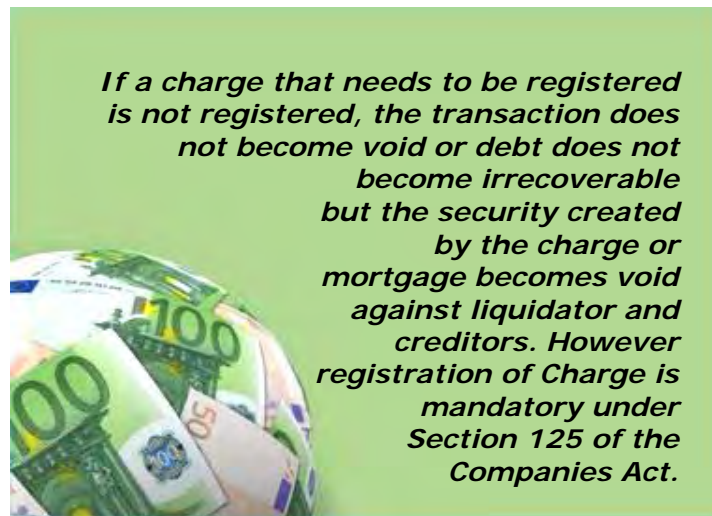
#### Consequences of Non-registration

If a charge that needs to be registered is not registered, the transaction does not become void or debt does not become irrecoverable but the security created by the charge or mortgage becomes void against liquidator and creditors. The debt secured becomes immediately payable. Also a charge on becoming void, no right of lien can be claimed on the documents of title as they were only ancillary to the charge and were delivered in pursuant to the charge.

It is mandatory for a company to file the particulars of charge and failure to do so or contravene the provisions of Section 125 are punishable under Section 142 with fine extending up to rupees Five Thousand for every day of default.

#### Conflicting Priorities

There has not been any concerted, cohesive effort either to think or to codify the law of priorities over last several decades. Therefore, there are fragments of laws scattered over different enactments, each of which seems to assert its own preponderance disregarding other claims or



interests. It is rather unfortunate that such a significant area on secured lending is left to be settled by case law rather than by well-knit policy of the government. Law-making in this very serious area has been sporadic and ad-hoc – just limited to achieving a limited result, rather than comprehensive review of the matter.

There are several enactments currently competing for super-priority. Sec. 529A of the Companies Act creates a pari passu interest between secured lenders and workmen. Sec 11 of Employees' Provident Funds and Miscellaneous Provisions Act, 1952, provides that in case of insolvency of the employer or winding up of the company, the amount so due from the employer shall be deemed to be the first charge on the assets and shall be paid in priority to other debts. Sales tax laws of most states, for instance, Sec 38C of Bombay Sales Tax Act, 1959, provides that subject to the provisions regarding first charge in any Central Act, any sum of money due under this Act shall be the first charge on the property. Likewise Sec 14A of Workmen's Compensation Act, 1923 provides that any liability accrued with respect of any compensation to be paid by the employer shall have first charge on the assets, on the other hand, Sec 11 of the Central Excise Act, 1944 read with Sec 142 of the Customs Act 1962 says that the amount of duty may be recovered by attachment and sale of excisable goods.

While these are the different laws that provide for stacking order of priorities, there are several "special recovery" laws enacted from time to time, such as Recovery of Debt due to Banks and Financial Institutions Act, 1993, SARFAESI Act, SFC Acts, IDBI Act, IFCI Act,



etc. These special recovery laws either provide the secured lender direct right to sell (for instance, SARFAESI Act, SFC Acts, IDBI Act, IFCI Act, SIDBI Act), or empower a DRT to order the sale of assets to meet the claims of the secured lender.

The question of priority order of different claims will arise (a) in the event of distribution of liquidation proceeds in liquidation proceedings; (b) on recovery orders of a body like DRT; (c) self-help repossession and sale of assets by secured lenders under SARFAESI Act, IFCI Act, and SFC Act etc.

### Ruling in Central Bank of India vs. State of Kerala

In the case of *Central Bank of India vs. State of Kerala & others*, the Supreme Court in its judgment dated February 27, 2009, in the matter of priorities between statutory first charges and secured lenders makes the landscape of conflicting priorities of charges over assets even more complex.

In this case, the Supreme Court was concerned with the significant question whether the statutory first charges created by various central and state laws will prevail over the claims of the secured lender even while disposing of assets under the DRT law or the SARFAESI Act. After considering a series of rulings given in the past, such as *Bank of Bihar vs. State of Bihar*, *Dena Bank vs. Bhikhabhai Prabhudas Parekh & Co. and others*, *Central Bank of India vs. Siriguppa Sugars & Chemicals Ltd*, *State Bank of Bikaner & Jaipur vs. National Iron & Steel Rolling Corporation and others*, the Supreme Court came to the conclusion that the primacy of statutory first



charges prevails even in case of recovery under the DRT law and the SARFAESI Act.

Some important principles to decide the stacking order of priorities that emerge out of the SC ruling are as follows:

a) Central Law prevails over a State Law – Hence, if a Central Law provides for a statutory first charge, it has to gain primacy over a conflicting State Law. Sec 38C of the Bombay Sales Tax Act, clearly states that;

“...if any Central Act provides for first charge, the charge created under Section 38C of Bombay Sales Tax Act is overridden”

b) As usual, the doctrine that a later law prevails over an earlier law applies here too. So, if there are several central laws providing for priority, the later law will prevail over the earlier one.

c) Unless the law clearly provides for a “first charge”, a mere provision for attachment or recovery as land revenue does not by itself create a first charge. Based on analysis of the provisions of the Central Excise Act, in the case of *SICOM vs. Union of India* the Supreme Court came to a conclusion that the Excise dues rank only above the claims of ordinary creditors, and not secured creditors.

If the law creates a first charge, the date of creation of the charge is irrelevant - that is, the normal rule of priorities based on the date of creation of the charge is not relevant in case of statutory first charges.

### Citations:

- Central Bank of India vs. State of Kerala & others*; (2009)4 SCC 94
- Bank of Bihar vs. State of Bihar*; [(1972) 3 SCC 196]
- Dena Bank vs. Bhikhabhai Prabhudas Parekh & Co. and others*; [(2000) 5 SCC 694]
- Central Bank of India vs. Siriguppa Sugars & Chemicals Ltd*; [(2007) 8 SCC 353]
- State Bank of Bikaner & Jaipur vs. National Iron & Steel Rolling Corporation and others*;[(1995) 2 SCC 19]
- SICOM vs Union of India*; Bom 1, I (2007) BC 82; 2006 (6) Bom CR 159



**Part 2 in the next edition with:  
Position of unpaid Government dues under SARFAESI Act and  
Ruling in EPF Commissioner Vs Official Liquidator**

# Protracted Mechanism for Revocation of Suspension



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*So far more than 1000 listed companies have been suspended from trading due to variety of penal reasons. By taking away strict provisions in respect of profit track record, capitalization, etc., BSE has provided another opportunity for all suspended companies to get themselves listed again by doing necessary compliances.*

BSE had initially proposed strict norms for revocation which required compliance with stringent eligibility criteria like profit making track record, paid-up capital of Rs 10 crores or net worth of Rs 50 crores, etc. which were supposed to be applicable from April 1, 2012. However, based on representations by suspended companies and minority investors, BSE has decided to alleviate its rules and introduced new norms which have become applicable from June 1, 2012. These norms have been classified into 2 categories:

**1) Revocation of suspension, where the suspension is for a period more than 1 year:** The companies which will seek revocation of suspension will be required to comply with the norms as given below:

Sl.No.	Particulars	Norms
1	Trading in Compulsory Demat	Should have signed with at least one depository. Provided that where the company has not signed with either/ both the depositories for dematerialization, it shall submit a letter from the relevant depository rejecting admission of the security in the depository.  <i>Comments: It is in line with prevalent policy of BSE for revocation of suspension.</i>
2	Information Memorandum	Information Memorandum as provided in Schedule II of Companies Act, 1956 to the extent applicable, as certified by the Company Secretary/ MD of the Company.  <i>Comments: The companies have to now make detailed Information Memorandum and present it to BSE with certification from the Managing Director / Company Secretary.</i>
3	Other requirements	<ol style="list-style-type: none"> <li>Entire issued capital of the company must be listed.</li> <li>No investor complaints pending against the company.</li> <li>The company is in compliance with clauses of the listing agreement, filings under SEBI regulations/ circulars, SCRA and SCRR.</li> <li>The shareholding of promoter and promoter group entities shall be under lock-in from the date of in-principle revocation of suspension upto a period of 1 year following the date of commencement of trading, post revocation of suspension.</li> <li>Company should have its own website.</li> </ol>

		<p>6. Payment of reinstatement fees as applicable.</p> <p><i>Comments: Most of the requirements are in line with the prevalent policy of BSE for revocation of suspension except the fact that lock-in period of 3 months has been extended to 1 year.</i></p>
4	Additional requirements	<ol style="list-style-type: none"> <li>1. Post revocation of suspension, the trading in the securities of the company will be permitted only after the company demonstrates timely compliance for a period of 2 consecutive quarters succeeding the revocation of suspension. Such companies in watch list will be displayed on <a href="http://www.bseindia.com">www.bseindia.com</a></li> <li>2. Promoters and Promoter group entities should not have diluted their shareholding (in terms of no. of shares) during the six months period prior to the date of revocation of suspension.</li> <li>3. The names of the promoter and promoter group entities shall be displayed on the website <a href="http://www.bseindia.com">www.bseindia.com</a></li> </ol> <p><i>Comments: These are additional requirements due to which the process will be extended by minimum 2 quarters. In the event of any default during review period, listing will be delayed further.</i></p>

**2) Revocation of suspension, where the suspension is for a period less than 1 year:** The companies which will seek revocation of suspension will be required to comply with the norms as given below:

- i) Entire issued capital of the company must be listed.
- ii) No investor complaints pending against the company.
- iii) The company is in compliance with clauses of the listing agreement, filings under SEBI regulations/ circulars, SCRA and SCRR.
- iv) The shareholding of promoter and promoter group entities shall be under lock-in for a period of 3 months from the date of commencement of trading, post revocation of suspension.
- v) Company should have its own website.
- vi) Payment of reinstatement fees as applicable.

**Procedure for Revocation of Suspension:** There is no pre-defined process for revocation of suspension. However, based on practical experience as well as on discussion with BSE executives / practicing professionals, we understood that following procedure is usually followed for revocation of suspension:

- 1) Make payment of all outstanding dues towards listing fees, interest, etc.
- 2) Complete all pending compliances under the Listing Agreement / Securities Laws.
- 3) Submit a formal application to BSE for revocation of suspension of the securities of the Company along with detailed Information Memorandum.
- 4) Resolve all queries of BSE by providing necessary clarifications to them.
- 5) Approach SEBI / BSE in respect of pending investor grievances and resolve them.
- 6) If necessary, make a formal representation in the review meeting of BSE.
- 7) On getting 'In-Principle' approval from BSE, comply with all the terms and conditions as mentioned therein.
- 8) Make payment of reinstatement fees as demanded by BSE.
- 9) Inform Share Transfer Registrar in respect of lock-in of Promoters' shares for 1 year.
- 10) Take all necessary measures as directed by BSE.



**Conclusion:** As on date, there are more than 1000 listed companies in which BSE has suspended trading due to variety of penal reasons. By taking away strict provisions in respect of profit track record, capitalization, etc., BSE has provided another opportunity for all suspended companies to get themselves listed again by doing necessary compliances. However, they also need to understand that timeline has got prolonged and hence, more time will be needed for revival.





## LIVING ROOM

# BURNT BISCUITS...!

When I was a kid, I remember my Mom liked to cook food every now & then. I remember one night in particular when she had made dinner after a long, hard day at work.

On that evening, my Mom placed a plate of bread, jam and extremely burned biscuits in front of my Dad. I remember waiting to see if anyone noticed!

Yet all my Dad did was reach for his biscuit, smile at my Mom and asked me how my day was at school.

I don't remember what I told him that night, but I do remember hearing my Mom apologize to my Dad for burning the biscuits. I'll never forget what he said: "Honey, I love burned biscuits."

Later that night, I went to kiss Daddy & say Good Night and I asked him if he really liked his biscuits burned.

He wrapped me in his arms and said, "Your Momma put in a long hard day at work today and she's real tired. And besides... a burnt biscuit never hurt anyone but harsh words do! "You know, life is full of imperfect things...And imperfect people. I'm not the best at hardly anything, and I forget birthdays and anniversaries just like everyone else.



What I've learned over the years is that learning to accept each other's faults and choosing to celebrate each other's differences is one of the most important keys to creating a healthy, growing, and lasting relationship.



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

**- Shakespeare**



# WELL-FUNCTIONING BOARDS



Compiled by:

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Chartered Accountant, Bangalore

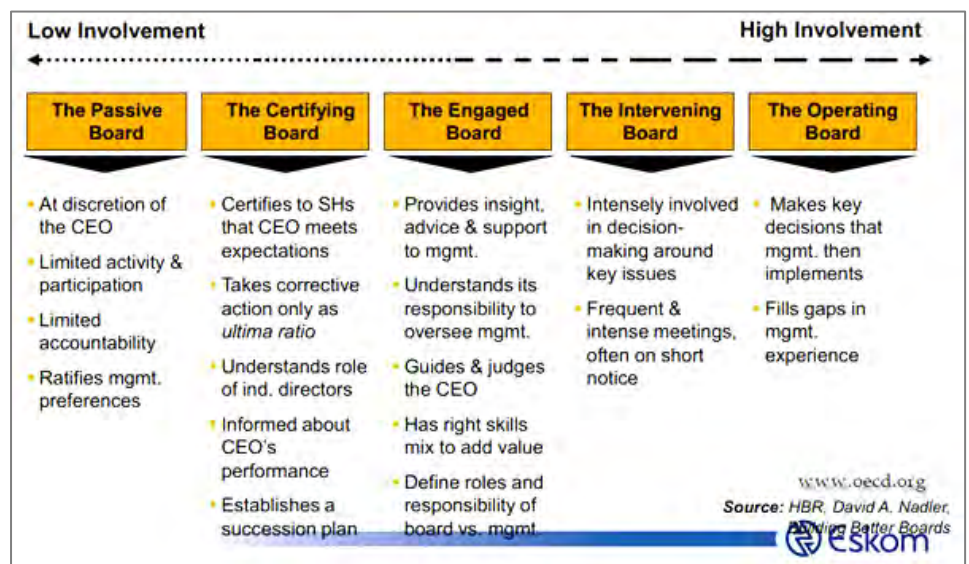
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*A Synoptic view of the study conducted by:*

*Working Group on Corporate Governance - The Group of Thirty, Washington, USA*

Well-functioning boards scrupulously discharge the following 10 essential tasks:

1. Fashion a leadership structure that allows the board to work effectively and collaboratively as a team, unified in support of the enterprise.
2. Recruit members who collectively bring a balance of expertise, skills, experience, and perspectives and who exhibit irrefragable independence of thought and action.
3. Build, over time, a nuanced and broad understanding of all matters concerning the strategy, risk appetite, and conduct of the firm, and an understanding of the risks it faces and its resiliency
4. Appoint the CEO and gauge top talent in the firm, assuring that the CEO and top team possess the skills, values, attitudes, and energy essential to success.
5. Take a long-term view on strategy and performance, focusing on sustainable success.
6. Respect the distinction between the board's responsibilities for direction setting, oversight, and control, and management's responsibilities to run the business
7. Reach agreement with management on a strategy and champion management once decisions have been made.
8. Challenge management, vigorously and thoughtfully discussing all strategic proposals, key risk policies, and major operational issues
9. Ensure that rigorous and robust processes are in place to monitor organizational compliance with the agreed strategy and risk appetite and with all applicable laws and regulations. Proactively follow up on potential weaknesses or issues.
10. Assess the Board's own effectiveness regularly, occasionally with the assistance of external advisers.





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In today's corporate scenario the most important department that a company has is undoubtedly 'Human Resource Department' (HRD). The concept of HR was conceived for Trade union Management; slowly it grew into the second generation HR where focus was applied on behavioral science. Human resource is the best asset, but its management & development is a very tough task. Here is a website helps HR professional in the process: [www.yourhrworld.com](http://www.yourhrworld.com)

With just a click, we can get many more apart from what is named below:

- Various Acts related to HRM
- Various agreement formats
- Annual return formats
- Appraisal methods
- Compensation and benefits
- Model HR policies
- Performance Appraisal Methods
- Recruitment Tips
- Reliving Letter Format
- Salary Management
- Salary Slip
- Training and Development
- Model format for MIS report.
- PF & ESI Calculators.

This site is also helpful for employees to know the basics of labour law, their rights and best practices. HRM, the vital element of a company is taking a proactive role, so the HR managers have to view their job with a broader perspective which is very important for a company's development, and this site technically supports HR personnel to be a successful.

## IT FOR CORPORATE PROFESSIONALS

### Windows 7 (continued)



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Friends, here we have some more shortcuts for you! Practice and save your precious time!

+ Up Arrow	Maximizes the current window	+ Down Arrow	Minimizes/restores the current window
+ Home	Minimizes all but the current window	+ Shift + Left/Right Arrow	Moves the current window from one monitor to the next
+ Left Arrow	Tiles the window on the left side of the screen	+ Right Arrow	Tiles the window on the right side of the screen
Alt + Spacebar	Accesses the shortcut menu for the current window	Alt + Enter	Opens the Properties dialog box of the selected item
Alt + Left Arrow	Displays the previous folder	Alt + Right Arrow	Displays the next folder
Alt + Up Arrow	Moves up one folder level in Windows Explorer	Alt + Esc	Cycles between open programs in the order they were opened
Alt + D	Selects the Address Bar	Alt + Tab	Cycles forward through open windows
Alt + F4	Closes the current window; opens the Shut Down Windows dialog box from the Desktop		

So far we have covered commonly used and Alt shortcut options in Windows 7. We will come back with Shift, Control and many more in next editions.

*(To continue in the next edition...)*



Compilation:  
CS. Ajaay Madaiah, Mysore

## Competition Commission of India (CCI)

The Competition Act, 2002, as amended by the Competition (Amendment) Act, 2007, follows the philosophy of modern competition laws. The Act prohibits anti-competitive agreements, abuse of dominant position by enterprises and regulates combinations (acquisition, acquiring of control and M&A), which causes or likely to cause an appreciable adverse effect on competition within India.

CCI, has been established by the Central Government with effect from 14th October 2003 and consists of a Chairperson and 6 Members appointed by the Central Government. It is the duty of the Commission to eliminate practices having adverse effect on competition, promote and sustain competition, protect the interests of consumers and ensure freedom of trade in the markets of India.

Recently it was noticed an incident, wherein CCI imposed a whopping Rs. 6,307 Crores penalty on 11 leading Cement firms for forming a cartel and colluding to charge higher prices from consumers. The maximum fine was imposed on Jaiprakash Associates at Rs 1,323.6 crore followed by Aditya Birla Group's Ultratech Cements (Rs 1,175.49 crore), Ambuja Cements (Rs 1163.91 crore) and ACC (Rs 1,147.59 crore). Other companies found guilty are Grasim Cements (now merged with Ultratech), Lafarge India, JK Cement, India Cements, Madras Cements, Century Textiles and Binani Cements.

In another instance CCI has imposed a penalty of over Rs 8 Crores on three entities of cable TV service operator Fast Way Group for abusing its dominant position in Punjab and Chandigarh. CCI has imposed penalty on the Group's entities – Fast Way Transmission, Hathway Sukhamrit Cable and Datacom and Creative Cable Network – at the rate of 6% of their average turnover for last three financial years. However companies can move to tribunal questioning the act of CCI.

### Did you know?

#### Reduction of Time-line for Transfer of Shares

Securities Exchange Board of India (SEBI), vide Circular No.CIR/MIRSD/8/2012 dated 5th July 2012, issued directions with regard to time lines for transfer of equity shares and debt securities of listed companies.

As a result, listed companies needs to expedite the transfer process in the interest of the investors, by registering the transfer of shares within reduced timeline of 15 days from the date of lodgement, instead of 1 month, as stipulated in the Listing Agreement.

Accordingly, amendments shall be made in the respective Listing Agreements. In addition to the above, SEBI has vide another Circular of the same date, has revised the Reporting formats for the RTAs to the Issues, needed to be filed with SEBI with 3 months of the end of each half year. The new format shall be applicable w.e.f the half year ended 30th September 2012.



### Pick of the month

#### Does Companies have Citizenship?

Company is an artificial person created by law. But it can act only through human beings. It is considered as a legal person, which can enter into contracts, possess properties in its own name, sue and can be sued by others etc. Though it is a legal person, is not a citizen under The Citizenship Act, 1955 framed under Indian Constitution. However company will have its nationality, domicile and residence based on its place of registration, control and management of affairs of the company.





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## CUSTOMS & FTP Notifications/ Circulars

The Ministry of Commerce, Industry and Textiles has released Annual Supplement 2012-13 to the Foreign Trade Policy 2009-14 ("the Foreign Trade Policy") on June 5, 2012

*No. 1(RE-2012)/2009-2014 dated June 5, 2012*

Mega/ Ultra mega power projects may furnish a fixed deposit receipt or bank guarantee in order to claim customs duty exemption under Notification No. 12/2012-Cus dated March 17, 2012.

*No. 43/2012-Cus dated June 27, 2012*

The Deputy Commissioner of Customs and Central Excise is Proper Officer for recovery of duties in cases specified under Section 28AAA of the Customs Act, 1962 ("the Customs Act").

*No. 53/2012-Cus(NT) dated June 21, 2012*

The Director General of Foreign Trade ("the DGFT") notified the Handbook of Procedures - Volume I (Appendices and Aayat Niryat Forms) which shall come into force on June 20, 2012. Appendix 37A, 37C and 37D will be deemed to have come into effect on 5<sup>th</sup> June, 2012.

*No. 06 (RE-2012)/ 2009-2014 dated June 20, 2012*

Export of certain products through Land Custom Stations of North Eastern Region and Sikkim entitled for additional 1% Duty Credit Scrip.

*No. 7(RE-2012)/2009-14 dated: June 26, 2012*

Information and guidelines with respect to electronic Bank Realization Certificate ("e-BRC") system clarified for banks, exporters and RAs

*No. 01(RE- 2012)/2009-14 dated June 18, 2012*

## Case Law

The Customs, Excise and Service tax Appellate Tribunal ("the CESTAT") held that the CESTAT cannot exercise review powers even where the Hon'ble Supreme Court has given the assessee liberty to file a review application. The CESTAT does not possess inherent powers of review. The CESTAT can only rectify mistakes apparent on the face of record.

*Advance Petrochemical Co. Vs. Designated Authority [2012 (280) ELT 56]*

Goods alleged to be imported in violation of the Intellectual Property Right (Imported Goods) Enforcement Rules, 2007 ("the IPR Rules") confiscated by the Customs at the port of import. On appeal the CESTAT held that since the intellectual property right holder in India did not discharge his obligation under IPR Rules, goods are not liable to confiscation.

*SRK Enterprises Vs. CC [2012 (280) ELT 264]*

Software preloaded on hard disk/flash drive at a factory in Sweden before dispatch to India. The Customs, Excise & Service Tax Appellate Tribunal ("the CESTAT") found that final cost of equipment included cost of programs in the form of software, which define and characterize hardware and elevate the same to the functional apparatus/equipment and there is no separate identity for software to be marketable as a separate commodity. Based on these facts the CESTAT held value of software is to be included for determining value of imported equipments.

*Bharti Airtel Ltd. Vs. CC [2012-TIOL-746-CESTAT]*

Assessee was granted refund since their appeal in entirety had been allowed by the lower Appellate Authority. The department filed an appeal against refund order on the grounds that lower Appellate Authority only allowed appeal on valuation and did not

consider classification of goods. The CESTAT held that if department was aggrieved, it was appropriate for it to file an appeal against the earlier order of the lower Appellate Authority which has not been done and appeal against order of refund not maintainable.

*CC Vs. Dhanalakshmi Paper Mills Ltd. [2012-TIOL-715-CESTAT]*

The Larger Bench of the CESTAT held no appeal lies before it against order of the Commissioner of Customs in respect of rejection of an application for renewal of Customs House Agent ("the CHA") license under the Customs House Agent Licensing Regulations, 2004. If the CHA is aggrieved with such rejection of renewal, he can challenge the same before the Chief Commissioner of Customs & Excise.

*Intercontinental Cargo Services Vs. CC [2012-TIOL-731-CESTAT-DEL-LB]*

The CESTAT held customs cargo service provider can be directed not to charge rent or demurrage in respect of goods which are detained, seized or confiscated by a proper officer in

accordance with the Handling of Cargo in Customs Area Regulations, 2009.

*Stonemann Royale Ltd. Vs. CC [2012 (280)ELT 407]*

The CESTAT held since invoice value of imported goods was also FOB value of goods, duty paid under the Agricultural and Processed Food Products (Export Cess) Act, 1985 could not have been included in invoice value. Thus, there is no case for unjust enrichment.

*Asia Pacific Commodities Ltd. Vs. Assistant Commissioner of Customs [2012 (280) ELT 481]*

## Regulatory Developments Notifications/ Circulars

The states have been demanding Rs 19,000 crore compensation for the year 2010-11 and the Centre has paid only Rs. 6,000 crore. In the Budget 2012-13, the Central Government has made a provision of Rs. 300 crore for payment towards CST compensation. Earlier, Mr. Mukherjee the then Finance Minister said the Centre cannot go on providing compensation endlessly but later agreed to pay 50 per cent of the compensation for phasing out CST.

*Centre likely to pay states 50% for CST phase-out [The Indian Express, June 28, 2012]*

Mr. Montek Singh Ahluwalia, the Deputy Chairperson of Planning Commission conveyed to Mr. Sushil Modi, Chairman of the Empowered Committee of State Finance Ministers on GST ("the Committee") that the Government is ready to reach out to BJP on long-pending major tax reform and expressed keenness to move on GST.

*Montek Singh Ahluwalia reaches out to Sushil Modi on GST rollout [The Times of India, June 29, 2012]*

## CENVAT Notifications/ Circulars

Mega/ Ultra mega power projects may furnish a fixed deposit receipt or bank guarantee in order to claim central excise duty exemption under Notification No. 12/2012-CE dated March 17, 2012.

*No. 28/2012-CE dated June 27, 2012*

## Case Law

The High Court held that where the assessee manufactured certain goods at a separate site away from the main site in order to avoid traffic jams, the expression 'site' may not be given a restrictive meaning and shall include any premises made available to the manufacturer of goods, provided that the goods manufactured at such premises are solely used in the said construction work only in terms of general exemption notification.

*CP Meier Vs. CCE [2012 (280) ELT 3]*

The High Court held that explanatory amending notifications are in the nature of judgments of the courts, which only interprets existing rights and are therefore to be treated as part and parcel of the original notification and operative from the date of original notification.

*Loyalty Textile Mills Ltd. Vs. Joint Secretary [2012 (280) ELT 8]*

The CESTAT held SSI exemption cannot be denied since audio cassette casing is not traded in the market under brand name

'Universal' and is further used in manufacture of pre-recorded audio cassettes. Therefore assessee is not engaged in manufacturing branded goods.

*CCE Vs. Jacob Electronics Pvt. Ltd. [2012 (280) ELT 457]*

## Service Tax Notifications/ Circulars

The mega exemption list, of services specifically exempted from service tax renotified in terms of Chapter V of the Finance Act, 1994 ("the Finance Act").

*No. 25/2012-ST dated June 20, 2012*

The Central Government notified percentage of abatement for specified services.

*No. 26/2012-ST dated June 20, 2012*

The Place of Provision of Services Rules, 2012 been notified to come into effect from July 1, 2012.

*No. 28/2012-ST dated June 20, 2012*

The Central Government exempted service of renting of an immovable property, from service tax in excess of service tax calculated on a value equivalent to gross amount charged for renting of such immovable property less taxes on such property, namely property tax levied and collected by local bodies.

*No. 29/2012-ST dated June 20, 2012*

The Central Government notified percentage of service tax payable on specified services by service recipient and service provider.

*No. 30/2012-ST dated June 20, 2012*

The Central Government notified amendments to the Service Tax Rules, 2004 ("the Service Tax Rules"), which includes new definition of "person liable to pay service tax" and insertion of Rule 6A which deals with export of services.

*No. 36/2012-ST dated June 20, 2012*

The Central Government granted rebate of whole of duty paid on excisable inputs or service tax and cess paid on all input services used export of service in terms of Rule 6A of the Service Tax Rules.

*No. 39/2012-ST dated June 20, 2012*

The Cenvat Credit Rules, 2004 ("the Credit Rules") amended to provide interalia for refund of Cenvat credit to service providers providing services taxed on reverse charge basis.

*No. 28/2012-CE(NT) dated June 20, 2012*

The Central Board of Excise and Customs ("the CBEC") notified procedure, safeguards, conditions and limitations subject to which refund of CENVAT credit shall be allowed.

*No. 27/2012-CE(NT) dated June 18, 2012*

Amends The Service Tax Rules, 1994 in line with other amendments such as Negative List, Reverse charge mechanism, Export/Import of services. These rules may be called the Service Tax (Second Amendment) Rules, 2012 and they shall come into force on the 1st day of July, 2012.

*No. 36/2012- dated 20th June, 2012*

The Central Government exempts taxable services of aggregate value not exceeding ten lakh rupees in any financial year from the whole of the service tax leviable thereon under section 66B

of the said Finance Act subject to certain conditions as specified under the notification.

*No. 33/2012 - dated 20th June, 2012*

The Central Government exempts taxable services, provided or to be provided, by a Technology Business Incubator (TBI) or a Science and Technology Entrepreneurship Park (STEP) recognized by the National Science and Technology Entrepreneurship Development Board (NSTEDB) of the Department of Science and Technology, Government of India, from the whole of the service tax leviable thereon under section 66B of the said Finance Act, subject to certain conditions.

*No. 32/2012- dated 20th June, 2012*

## Case Law

The High Court held that where a club provides any service to its members, it is not service by one legal entity to another, and is therefore not liable to service tax.

*Ranchi Club Ltd. Vs. CCCE&ST [2012 (26) STR 401]*

The CESTAT held that determination of classification of service is to be decided based on the factual matrix and intention of the contracting parties. Each case has to be decided on its own facts and judicial pronouncements cannot be applied blindly.

*Vaman Pharma Pvt. Ltd. Vs. CCE [2012 (26) STR 424]*

The High Court held that order of the CESTAT must be consistent as inconsistent orders shake the faith of a citizen in the impartiality of judicial forums whose whole purpose is to prevent discrimination and arbitrariness.

*Pearl Enterprises Vs. Union of India [2012 (26) STR 408]*

The CESTAT held that the assessee may avail of Cenvat credit of duty paid on the inputs used in the manufacture of final product cleared without payment of duty for further utilization in the manufacture of final product, which were cleared on payment of duty by principal manufacturer.

*Bansal Precision Forge Ltd. Vs. CCE [2012-TIOL-670-CESTAT-BANG]*

The CESTAT held the assessee was entitled to avail of Cenvat credit on service tax paid on input services used to export exempt service.

*Zenta Pvt. Ltd. Vs. CCE [2012-TIOL-624-CESTAT-MUM]*

The CESTAT held the assessee was entitled to avail of Cenvat credit of duty paid even on a provisionally assessed Bill of Entry. Whether Bill of Entry is provisionally or finally assessed it is the document on which credit can be availed by a manufacturer.

*Monarch Catalysts Pvt. Ltd. Vs. CCE [2011 (11) LCX 0114]*

The High Court held that merely because goods were initially used in manufacture of exempted goods, credit of duty paid on capital goods could not be denied when assessee started to use them for manufacture of excisable goods.

*CCE Vs. Kailash Auto Builders Ltd. [2012 (280) ELT 49]*

The CESTAT held charges collected for restructuring of loans and prepayment of loans is a way of value addition and can be considered as cost incurred by borrower and therefore liable for service tax.

*Housing & Development Corporation Limited Vs. CST, Ahmedabad [2012 (26)STR 531]*

The CESTAT held since assessee has provided only vocational courses not recognised by any law for the time being in force, exemption from service tax not available to under Notification No. 24/2004-ST dated September 10, 2004.

*B.D. Somani Institute of Art & Fashion Technology Vs. CST [2012-TIOL-690-CESTAT]*

The CESTAT held Cenvat credit on capital goods, which were transferred to depots and branches and not used in the factory of production, was permissible under Rule 4(5)(a) of the Credit Rules, which allows Cenvat credit even if goods are sent to job worker for any other purpose.

*Surya Colour Products P. Ltd. Vs. CCE [2012 (280) ELT 455]*

The CESTAT held that assessee has correctly paid excise duty on used capital goods on the basis of transaction value. The department's demand for reversal of Cenvat credit equal to the amount which had been taken at the time of receipt of such capital goods in the factory was found to be untenable.

*JNM fibres Pvt. Ltd. Vs. CCE [2012 (280) ELT 458]*

The CESTAT held Cenvat credit of service tax paid on mobile phone services availed correctly even though mobile phone bills are in company's name c/o the employee. The CESTAT further held requirement that company has to show that all calls made were relating to business would result in voluminous work for both sides, which would be unproductive.

*Muscat Polymers Pvt. Ltd. Vs. CCE [2011 (09) LCX 0163]*

## VAT, Sales Tax and Entry Tax

### Notifications/Circulars

The Uttarakhand State Government has enhanced rate of VAT applicable to the goods covered under Schedule II(B) from the existing 4% to 5% and goods falling under residuary entry from 12.5% to 13.5%.

*No. 189/2012/02/(120)XXVII(8)/12 dated May 28, 2012.*

## FEMA & RBI

### Notifications/Circulars

Annual Return on Foreign Assets and Liabilities reporting by Indian Companies- Revised format: the Indian Companies who have received and/or made FDI abroad are required to file annual return by July 15 of every year. The RBI modified the format of return and the return has to be filed in Soft Form addressing to fl@rbi.org.in.

*A.P. (DIR Series) Circular No. 133 dated June 20, 2012*

Due to the liberalization and rationalization of ECB guidelines, the RBI has revised the Form 83 for reporting of ECB.

*A. P. (DIR Series) Circular No. 136 Dated June 26, 2012*

The RBI have issued the Master circular on various subjects which consolidates the earlier circulars issued during the previous years and the Master circular will be effective from July 01, 2012 to June 30, 2013. You may access the master circulars at [http://www.rbi.org.in/scripts/BS\\_ViewMasterCircularDetails.aspx](http://www.rbi.org.in/scripts/BS_ViewMasterCircularDetails.aspx)

*Master Circulars issued by RBI*





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## **Brazil, China, India Defend Generic Drugs at WTO Counterfeit Session**

The US House of Representatives and the US Patent and Trademark Office (USPTO) have threatened to drag India to the World Trade Organization's dispute panel for issuing the first ever compulsory licence to a domestic company to manufacture generic version of Bayer's cancer drug Nexavar, saying the move violates international trade laws.

Compulsory licence (CL) is a provision under Trade Related Intellectual Property law (TRIPS), which empowers the government to allow someone else to produce the patented product or process without the patent owner's consent. In March this year, the Indian patent office issued compulsory licence to Hyderabad-based company to produce Bayer's cancer drug Nexavar.

## **No Service Tax on foreign currency in India from overseas: CBEC**

The Central Board of Excise and Customs (CBEC) clarified that there will not be any service tax per se on the amount of foreign currency remitted to India from overseas.

The CBEC through a circular issued on Tuesday stated that the matter has been examined and it is clarified that in the negative list regime, service has been defined in clause (44) of section 65B of the Finance Act 1994, as amended, which excludes transaction in money.

## **Cabinet to back airlines' no to EU carbon tax**

The Union Cabinet is likely to soon pass a resolution endorsing the fact that Indian airliners would not share their specific carbon emission data with European Union (EU) authorities. This will be the first time since the embarrassment began over the buzz that government was going to officially communicate to the EU that it would not adhere to the EU's changed emission trading system (ETS) laws.

While around 35 countries have refused to follow the EU's new directives on carbon emission, only India and China have even refused to share their carbon emission data with Brussels. The government is also likely to indicate it is open to the idea of reviewing all the separate bilateral agreements on civil aviation that India has with each of the 27 member-states of the EU.

## **Remove mismatch between domestic, global crude price: RBI**

Reserve Bank of India urged the government to remove the mismatch between the domestic and global crude price by withdrawing the subsidies.

RBI Deputy Governor told that Subsidies to oil and fertilizer sector is one of the factors that is hurting the economy and the government has an appropriate opportunity at present with a moderate inflation and growth to do away with them as indicated in the budget

## **E Voting mandatory for top 500 listed companies: SEBI**

Market regulator, Securities and Exchange Board of India (SEBI) today decided to make it mandatory for top 500 listed companies, to facilitate e-voting, making it easier for shareholders to participate in key decisions without being physically present in the meetings.

## **Delhi HC restrains Amitabh's Hair Oil Ad on allegations of copyright infringement**

The Delhi High Court on a plea of city based manufacturer restrained the cosmetic company Emami Ltd from screening Megastar Amitabh Bachchan's advertisement for its product Navratan oil as it maligns the credibility of Ayurvedic oil Himgange which is in existence Since 1987.

## **WTO to decide whether India's ban on U.S. poultry exports is legal**

The World Trade Organization agreed to investigate whether Indian restrictions on U.S. poultry and egg exports break international trade rules or not.

India has banned imports of various U.S. farm products for more than five years, arguing that restrictions are needed to prevent the spread of low-pathogenic avian influenza. The U.S. Trade Representative's office accuses India of ignoring scientific evidence, citing USDA assertions that low-pathogenic bird flu causes "minor illness poses no risk to human health and sometimes manifests no clinical signs."