

## Patent Troll

## Labour Law Reforms @ Rajasthan

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**Your Vote  
Matter?**

Every  
Election Is  
Determined  
By The People  
Who Show Up &  
VOTE

**20th December 2014  
Chapter Elections**



# eMagazine

from

The Institute of Company Secretaries of India, Mysore Chapter



CS. Ajay Madaiah B.B.  
Chairman,  
Mysore Chapter

Greetings from Mysore Chapter of ICSI!!

It is a pleasure, as always, to reach the CS Mysore e-Parivaarians and the Professional Fraternity through this eMagazine.

During the month, the Chapter engaged its students and members through various programs. The Chapter conducted career awareness program, Chapter Level Elocution Competition for students and held a company law seminar for its members. Again it is time for another session of examination for the students. I believe all the students who are appearing for the December examination have prepared well and I wish them all the best.

With the chilling weather of December we have reached the end of the calendar year 2014 and its time to cherish all good things which have passed during the year and to look forward for the new calendar year. I wish you and your family a Happy New Year!

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# Activities at Mysore Chapter

## Career Awareness Program

On 06.11.2014 Mysore Chapter of the ICSI organised a Career Counseling Program at K Puttaswamy Composite PU College, Mysore. More than 80 students from Commerce stream attended the program. CS Sabareeshan C K, Member of the Mysore Chapter & CS Bhagya M G, Treasurer, Mysore Chapter were present during the program and explained the course offered by the Institute and the criteria for eligibility for the course, examination, requirements of training etc.



## Elocution Competition

On 08.11.2014, Mysore Chapter of ICSI has conducted Chapter Level Elocution Competition in the topic "Company Secretaries & Global Warming" to the students. Dr P V S Jagan Mohan Rao, Past President, ICSI adjudged the competition. Students of various levels participated in the competition & prizes were declared to the winning team.



## Corporate Governance & Bhagavad Gita

The Mysore Chapter of the ICSI had organized a Seminar on Corporate Governance & Bhagavad Gita in the Chapter Premises on 08.11.2014. Dr. P V S Jagan Mohan Rao, Past Chairman, ICSI was the Guest Speaker for the seminar and he explained how Bhagavad Gita & Corporate Governance are related and relevant in the current scenario. CS Ajay Madaiah B B, Chairman, Mysore Chapter of ICSI welcomed the gathering. CA Francis P W, Chairman, Mysore Chapter of ICAI addressed students and spoke on the topic. CMA R Puroshothaman, Secretary, Mysore Chapter of Cost Accountants has delivered a special address on the occasion. Members & Students from ICSI, ICAI & ICMAI participated in the session.



## Activity on Swachh Bharat

On 09.11.2014, Mysore Chapter of ICSI organized Swachh Bharat Activity. The activity was lead by Dr P V S Jagan Mohan Rao, Past President, ICSI. CS Ajay Madaiah B B, Chairman, Mysore Chapter of ICSI, Chapter Employees & Students participated in the activity and cleaned the surrounding areas of the chapter. Dustbins were presented to roadside shopkeepers and educated on to keep their vicinity clean. The activity was created awareness among the public & they appreciated the initiative taken by the chapter.



## Seminar on Companies Act 2013

A Half Day Seminar was organized in Mysore Chapter of ICSI on 09.11.2014 in the topic "Emerging Role of Board for Better Corporate Governance under Companies Act 2013. CS L Jayaraman, Practising Company Secretary, Hyderabad was the speaker for the seminar. He explained the New Companies Act 2013, which has envisaged new challenges and responsibilities on the Board and the

professionals. He gave a brief on Loans, Deposits, Related party transactions and Disclosure of interest. A good number of Members & Students had attended the session and clarified their doubts. Chief co-ordinator CS Pracheta M conducted the program & concluded with vote of thanks.

## Seminar on Shares

A Half Day Seminar was organized in Mysore Chapter of ICSI on 15.11.2014 in the topic "Shares – A Holistic Approach. CA Chinmaya A M from Guru Jana Chartered Accountants was the speaker for the seminar. In his speech, he deliberated on the history of shares, how to do rights issue, bonus issue, preferential allotment to existing shareholder & to a new investor & the procedures relating to the same. He also explained the important sections dealing with the shares in the Companies Act 2013. He shared and provided the related case laws to understand the topic easily by the participants. Members & Students of ICSI participated in the seminar. Chief Co-ordinator CS Ajay Madaiah B B, Chairman, Mysore Chapter of ICSI, conducted the program & concluded with vote of thanks.



## How to Face Exams

To attend the upcoming December examinations effectively, an interactive session was arranged for CS Students in the topic "How to Face Exams" in chapter premises on 15.11.2014. CS Ajay Madaiah B.B., Chairman, Mysore Chapter of ICSI conducted the session and briefed the ways to present the answer, how to prepare for the exam, making schedule for reading etc. He also explained the needs of passion, commitment and perseverance to qualify as Company Secretary. CS Parvati K R, Member, Mysore Chapter Management Committee, CS Phani Datta, Member & CA Chinmaya A M also shared their views and experience with the students to make them fit to face the exams. The students were highly motivated by the session and they clarified various doubts relating to the exams with the speakers.



## Living Room

**Success is not final,  
failure is not fatal:  
it is the courage to  
continue that counts.**

*Winston Churchill*





# Patent Troll

Patent trolls are not uncommon in countries where there is high innovation and consequent patent protection. Knowing fully well that the legal framework is committed to afford adequate protection to patent holders to safeguard the fruits of their hard work in the invention, some entities aggressively pursue actions, with the stated objective of protecting their patent rights. The fact that patent law enforcement is quite effective, advanced and active gives an opportunity to such entities to take advantage of the patent regime, sometimes even unfairly. Thus, these entities, known commonly as patent trolls, are characterized by their aggressive assertion of patent rights.

Recently, in the US, one such entity and its law firm were charged with making deceptive claims and fake legal threats to small businesses, on the pretext of patent infringement. This entity ('X') had purchased technology patents pertaining to network computer scanning. X thereafter dispatched thousands of letters to various small businesses, accusing them of infringing the said patents. X wanted these businesses to purchase a license from X if they were to continue their business operations. Further, X falsely said that many companies had already paid it huge sums as license fees, but X was willing to settle with these small businesses for a much lesser license fee. Subsequently, the law firm representing X sent notices to these small businesses that X will be forced to file patent infringement suits against them, if they failed to respond within the given timeline. That's not all; the notice sent by the law firm included a draft of the proposed compliant which would be filed in the jurisdictional federal court!

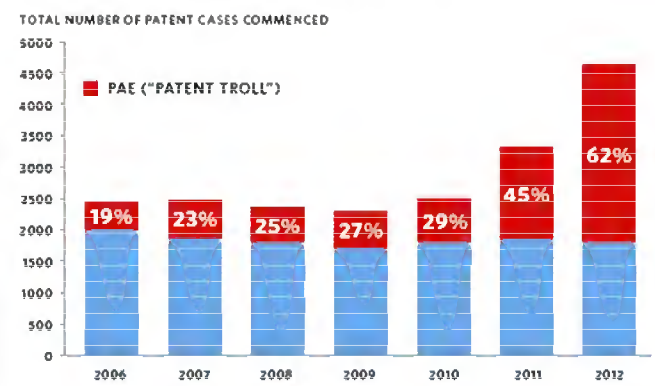
X and the said law firm were thereafter prohibited from making false statements and deceptive representations.

Of course, the case of X may be an extreme one; all patent claimants cannot be labelled unethical. Further, there could be some patent trolls who may operate or litigate without misrepresentation, wrongful intimidation or deceit. However, patent law framework and enforcement, whilst promoting innovation and protecting the toil and interests of the inventors on one hand, cannot and should not be an unintended license to engage in deception. Any respondent in an infringement claim is entitled to presume and expect that those who claim and market patent rights are themselves truthful, in the first place.

While all patent trolls cannot be categorized to be the same, there are some common traits in the manner these entities operate. A few such characteristics are –

- They are small in size and have few employees, compared to the volume, nature, or depth of their patent portfolio;
- They have astute knowledge of the latest trends in patent case laws;
- They have good relationships and tie-ups with expert patent law firms;
- They are constantly and completely engaged in legal battles alleging patent infringement, with little time, energy or resources for actual business activity to which their patents could relate to;
- While they aggressively claim that other companies are infringing their patent, they are more often than not, unable to clearly establish that they have a main line of business which would be affected by such alleged infringement.

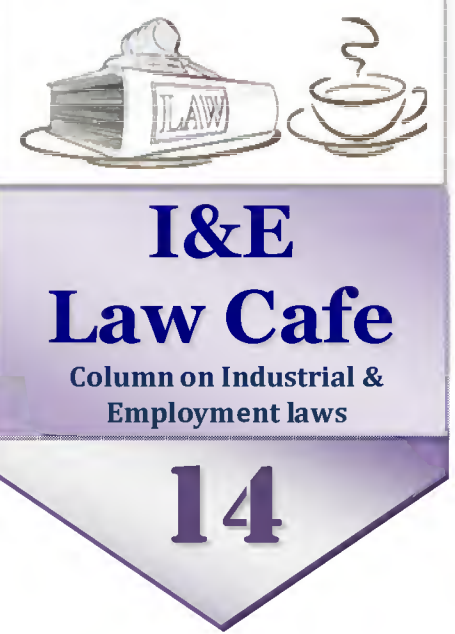
## THE RISE OF PATENT TROLLS



US Data | Chart Source: <http://www.whitehouse.gov/>



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# Reforms in Rajasthan

We may recall during mid of this year, Cabinet of Rajasthan had proposed few key changes to the labour legislations. Those were further approved by legislature of the State of Rajasthan and now they have been assented by the Hon'ble President of India and would come into force from such date as the State Government may decide and notify in its official Gazette. These reforms will have direct implication on the Industrial and Employment law functions going forward. Highlights of the changes are summarized below.

## Reason for such amendment:

- A. 85% of the factories in Rajasthan employs less than 100 workers
- B. The said amendment would generate 1.5 million additional jobs in the State of Rajasthan

## Amendments:

### 1. Industrial Disputes Act, 1947:

- Industrial Establishment employing up to 300 workers can retrench or shut shop/establishment without Government's permission (against current limit of 100).
- In case of retrenchment (RIF in GE terms), a worker should raise an objection within 3 months (there is no time limit at present).

### 2. Factories Act, 1948:

- The Act will apply to factories with 40 workers, if without electricity & 20 workers, if with electricity (the present condition is 20 & 10 respectively).

- Complaints against an employer about violation of this Act would not receive cognizance by a Court without prior written permission from the State Government.
- A provision for compounding of offences has been added.

### 3. Contract Labour (R&A) Act, 1970:

- The Act will apply to establishments employing more than 50 workers (against 20 current provision).
- The Industries will be able to hire more temporary workers without passing on to them the benefits the contract workers are entitled to.

### 4. Trade Union Act, 1926:

- Under the new law, forming labour unions will also be difficult as it would require a membership of 30% of the workforce against the 15% earlier.
- The lower limit allowed many unions to emerge often increasing inter-union conflicts & multiplicity.

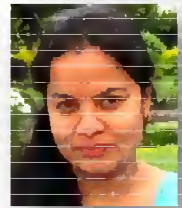
### 5. Inspection curtailed:

- The amendments have been made to ensure no inspector can initiate any proceedings against any firm without the prior nod of the State.

While it is a welcome step in taking radical approach in reviving the archaic laws, it is pertinent to note that along with labour – market flexibility, it is important that such move is accompanied with some form of social safety net and adequate compensation for fired workers.



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# Practical Typography

“Mere designers can learn from a *designer who is also a lawyer*”

I feel, it would not be wrong if the word **designer** is replaced with the word **professional**.

A Good Typography, which is an essential skill, can help one to engage readers, guide them, and ultimately persuade them. And here is a website <http://practicaltypography.com/>, providing you an e-book, aiming at making you a better typographer, designed and authored by Matthew Butterick, a famous writer, typographer and lawyer in Los Angeles. For all those who need to communicate clearly and even add a modicum of aesthetic value to their messages this publication provides everything you always wanted to ask but didn't know how to, with the below contents mainly.

- Typography in ten minutes
- Why typography matters
- Sample documents
- Summary of typography rules
- Page Layout
- Appendix & Type composition

Starting from the basics of typography and the best Typography Rules the website assists you to choose best alternative fonts and you will also find the most recent font designs like triplicate, equity, concourse, etc. As I went on reading this site, there was something that caught my attention- a **brief history of the famous font 'Times New Roman'** and I was astonished to know the positives and shortcomings of this font, which was created for a newspaper several years ago and also numerous Times new Roman alternatives that share its essential flavor but avoids its shortcomings.

You will receive guidance also on other components of typography like drafting, editing, formatting, printing, pdf, web page designing and it teaches you many aspects of it. Remember to read instructions provided to use this e-book while you are on <http://practicaltypography.com/>. I am sure this book will make you a better typographer optimizing our typography.



**e-TOOLS FOR  
THE PROFESSIONALS**

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- India to seek US support for an international treaty to protect its traditional knowledge of medicinal plants and herbs from being patented by other nations
- US steel industry criticizes WTO ruling favouring India, on CVD on imports of steel flat products from India.
- India should allow banks to hold gold as reserves: World Gold Council
- India is considering challenging the recent WTO panel ruling over imports of US poultry meat.
- Industry giant Hero Cycles has been found allegedly violating environmental norms by disposing of around 11 lakh litres of effluent-ridden water every day into the sewage system that eventually meets the Buddha Nullah, resulting in severe pollution in the stream and beyond. (Hindustantimes)
- Govt sets up high-level panel on tax issues - a move aimed at boosting confidence among taxpayers.
- Snapdeal buys gift e-tailer Wishpickeran - online gift retailer founded by IIT-Delhi graduates.
- No lock-in period of 3 years for FDI in construction. Also 100% FDI is permitted under automatic route in completed projects for operation and management of townships, malls and business centers.
- YouTube launched an offline feature in India to overcome handicaps posed by low bandwidth and high costs of data plans. Under the service, a user can click on the special icon on the site and download a video which can be watched later.
- Money laundering: SEBI bars Moryo, 90 others from capital markets
- SEBI passes orders against 8 companies for non-disclosures in IPO including realty major DLF, Brooks Laboratories, Bharatiya Global Infomedia, Onelife Capital Advisors, P G Electroplast, RDB Rasayans, Taksheel Solutions and Tjaria Polypipes
- RBI panel decides against replacing Gandhi with other personalities on banknotes
- RBI asks banks to push use of mobile banking
- RBI panel has decided against the inclusion of any other national leader's image on banknotes saying that no other personality could better represent the ethos of the country than Mahatma Gandhi.
- Competition Commission of India suggests structural remedy to clear Holcim-Lafarge deal, the Europe-based multinationals, which would together form the world's largest cement company by manufacturing capacity and sales.
- Competition Commission clears Coca-Cola's deal with Monster BeveragesThe deal involves Coca-Cola, its group firm European Refreshments, Monster and its subsidiary new Laser Corp.

*[Recommended Article for your reading:](#)*

## 25 biggest and most embarrassing mistakes ever made

Click this link: <http://list25.com/25-biggest-and-most-embarrassing-mistakes-ever-made/>





## National Financial Reporting Authority

Through Section 132 of the Companies Act, 2013, the Central Government has introduced a new regulatory authority named as National Financial Reporting Authority (NFRA) with wide powers to recommend, enforce and monitor the compliance of accounting and auditing standards. Under the erstwhile Companies Act, Central Government had formed National Advisory Committee on Accounting Standards (NACAS). This is now being renamed with enhanced powers and authority as National Financial Reporting Authority (NFRA). NFRA shall be responsible for monitoring and enforcing compliance of auditing and accounting standards and for that purpose, oversee the quality of professions associated with ensuring such compliances. The Authority shall investigate professional and other misconducts which may be committed by professional Institutes members and firms. There is also a provision for appellate authority.

The NFRA shall be a quasi – judicial body to regulate matters related to accounting and auditing. With increasing demand of non – financial reporting, it may be referred to as a National level business Reporting Authority to regulate standards of all kind of reporting- financial as well as non – financial, by the companies in future. The Authority will also change the way of notifying of Accounting and Auditing Standards as is evident from provisions of Clauses 133 and 143 of the Companies Act, 2013. The introduction of NFRA is an important step to build up a transparent mechanism for accounting, auditing and financial reporting, when it gets notified.

### Did You Know?

### Cost of climate change

According to recent report published by Asian Development Bank the total climate change cost in South Asia will increase over time and will be prohibitively high in the long term. Without global deviation from a fossil-fuel-intensive path, South Asia could lose an equivalent 1.8% of its annual gross domestic product (GDP) by 2050, which will progressively increase to 8.8% by 2100. The model suggests that the Maldives will be hardest hit in GDP loss, while Bangladesh, Bhutan, India, Nepal, and Sri Lanka are projected to face 2.0%, 1.4%, 1.8%, 2.2%, and 1.2%, respectively, loss of annual GDP by 2050.

### Pick of the month

### Is hiring of cabs is liable to ST under 'rent-a-cab services' ?

No, in a recent case it is held that, hiring of cab is different from renting of cab; hiring of cabs is not liable to ST under 'rent-a-cab services'.

Unless control of vehicle is made over to hirer and he is given possession for howsoever short a period to deal with vehicle, there would be no 'renting'; hence, 'hiring' of vehicles on per km. basis without transfer of possession and control is not liable to service tax under 'rent-a-cab services'





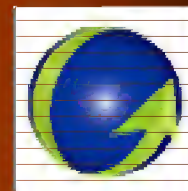
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**Service Tax Updates**  
**CA. Ashit Shah,**  
**Mumbai**

**FEMA Updates**  
**Team Genicon,**  
**Chennai**



## CUSTOMS & FTP

### Notifications/Circulars/News

The CG has notified the revised All India Rates (AIR) of Duty Drawback effective 22 Nov 2014. Some relevant changes are as under: Several entries have been modified/amended to address issues brought to Ministry's notice; It is clarified that "vehicles" of chapter 87 shall comprise completely built unit or completely knocked down (CKD) unit or semi knocked down (SKD) unit.  
**No. 110/2014-Cus(NT) Dt. 17 Nov, 2014**

The Central Government has issued valuation and assessment practices to be followed by Custom Authorities in respect of export of iron ore, to overcome the differences in quality and price at the loading port and port of discharge.  
**No. 12/2014-Cus Dt. 17 Nov, 2014**

Seeks to exempt from customs duty goods required for the Intensified Malaria Control Project funded by GFATM.  
**No. 32/2014-Cus, dt. 21-11-2014**

Grants exemption from the duties of Customs to goods imported for donation for the relief and rehabilitation of people affected by the floods in the State of Jammu and Kashmir.  
**No. 33/2014-Cus, dt. 11-12-2014**

Seeks to levy definitive anti-dumping duty on imports of diclofenac sodium, originating in or exported from People's Republic of China, for a period of five years.  
**No. 44/2014-Cus (ADD), dt. 21-11-2014**

Seeks to levy definitive anti-dumping duty on imports of Digital Versatile Discs-Recordable (DVD-R and DVD-RW), originating in or exported from People's Republic of China, Hong Kong and Chinese Taipei for a period of five years.  
**No. 45/2014-Cus (ADD), dt. 21-11-2014**

Seeks to impose anti-dumping duty on Sodium Nitrite originating in or exported from China PR  
**No. 46/2014-Cus (ADD), dt. 08-12-2014**

Seeks to levy definitive anti-dumping duty on imports of cable ties, originating in or exported from People's Republic of China and Chinese Taipei, for a period of five years  
**No. 47/2014-Cus (ADD), dt. 09-12-2014**

Seeks to impose definitive anti-dumping duty on imports of Clear Float Glass originating in or exported from Pakistan, Saudi Arabia and United Arab Emirates (UAE).  
**No. 48/2014-Cus (ADD), dt. 11-12-2014**

The Central Government has made it mandatory for importers of specified chemicals that at the time of import, for each import consignment, the importer has to notify the details of import to Directorate General of Foreign Trade (DGFT), National Authority, Chemical Weapons Convention and Department of Chemicals and Petrochemicals within 30 days from the date of their importation. -  
**No. 98(RE-2013)/2009-14 Dt. 19 Nov, 2014**

### Case Law

The Mumbai Tribunal held that royalty paid on account of technical know-how was not includible in assessable value of imported goods as the same was not a condition of sale of imported goods.  
**Atlas Copco India Ltd v CC (2014-TIOL-2269-CESTAT-MUM)**

The Mumbai Tribunal held that the consideration paid in terms of management consultancy services agreement was not includible in assessable value of imported goods as there was no nexus of the same with imported goods.  
**Alcan India Ltd v CC (2014-TIOL-2292-CESTAT-MUM)**

The High Court of Madras held that the bank guarantee could not be insisted on for differential duty when a favourable order had been received from the Commissioner (Appeals), and no stay had been granted by Tribunal.  
**Hine Hydraulics India v CC (2014-TIOL-1989-HC-MAD-CUS)**

The Mumbai Tribunal held that refund of Special Additional Duty (SAD) could not be denied in case of non-endorsement on the invoice that credit of the same was not available to the buyer, in case the buyer was not registered with the central excise department.  
**Vijay Steel Industries v CC (2014-TIOL-2240-CESTAT-MUM)**

The Mumbai Tribunal held that it was a settled position in law that the onus to prove the entitlement to exemption notification was on the person who was claiming benefit of such exemption notification. As the importer did not fulfil the post-importation conditions of giving free treatment to specified

percentage of OPD & IPD patients in consonance of Notification 64/88-Cus, the benefit of exemption was held not available.

*Sunitidevi Singhania Hospital & Medical Research Centre v CC (2014-TIOL-2062-CESTAT-MUM)*

The Mumbai Tribunal held that benefit of the exemption notification was available on fulfilment of conditions prescribed therein which should be construed strictly.

*Rashtriya Chemical & Fertilizers Ltd v CC (2014-TIOL-2218-CESTAT-MUM)*

The Mumbai Tribunal held that bar of unjust enrichment was not applicable on security deposit.

*Surat Textiles Mills Ltd v CC (2014-TIOL-2241-CESTAT-MUM)*

The Mumbai Tribunal held that pre-packaged goods intended for use by industrial consumer were not exempt from SAD as conditions of the exemption notification were not fulfilled.

*Pooja Hardware v CC (2014-TIOL-2201-CESTAT-MUM)*

The Mumbai Tribunal held that refund was not allowed directly without challenging the assessment order.

*Infrastructure Logistics Pvt Ltd v CC (2014 (309) ELT 288)*

The Mumbai Tribunal held that amendment in bill of entry had to be allowed even though goods were out of customs charge, on the basis of documentary evidence warranting such an amendment. -

*Reiter India Pvt Ltd v CC (2014 (309) ELT 277)*

The Mumbai Tribunal held that EPCG scheme benefit could not be denied on the ground of classification of goods into a different heading since the goods were freely importable.

*Goan Hotels and Clubs Pvt Ltd v CC (TS-540-Tribunal-2014-CUST)*

The Mumbai Tribunal held that the provisions of anti-dumping notification being specific and applicable on imports from specific sources, would prevail over the generalised notification covering large number of goods.

*ONGC v CC (2014-TIOL-2098-CESTATMUM)*

The Mumbai Tribunal held that second-hand propping pipes imported for rendering construction service were freely importable as the same were capital goods.

*Peri (India) Pvt Ltd v CC (2014 (308) ELT 691)*

The New Delhi Tribunal held that encashment of bank guarantee by the Revenue for non-fulfilment of export obligations could not be treated as duty payment, and that the assessee could claim refund of such bank guarantee only after fulfilment of export obligations.-

*SS Agro Industries v CC (2014 (309) ELT 334)*

The Delhi High Court held that under EPCG, the importer was exempt from payment of duty on condition of generation of foreign exchange and export to the extent of CIF value of its imports. If the condition precedent was not met, importer would be liable to pay requisite dues, despite the fact that the failure to meet export obligation was beyond the control of importer on account of failure of the business plan.

*DSJ Communications v Union of India (2014 (309) ELT 230)*

## Ministry of Corporate Affairs

### Notifications/Circulars/News

In view of the exceptional circumstances, Registrar of Companies Jammu and Kashmir is advised to exercise powers

conferred on him under the third proviso to section 96(1) of the Companies Act, 2013 to grant extension of time upto 31/12/2014 to those companies registered in the State of Jammu and Kashmir who could not hold their AGMS (other than first AGM) for the financial year 2013-14 within the stipulated time.

*General Circular No. 45/2014 Dt. 18th Nov 2014*

## Companies (Amendment) Bill, 2014

The Union Cabinet has approved the introduction of the Companies (Amendment) Bill, 2014 and the same has been introduced in Lok Sabha in order to address some issues raised by stakeholders, following amendments in the Act have been proposed:

1. Omitting requirement for minimum paid up share capital, and consequential changes. (For ease of doing business)
2. Making common seal optional and consequential changes for authorization for execution of documents. (For ease of doing business)
3. Prescribing specific punishment for deposits accepted under the new Act. This was left out in the Act inadvertently. (To remove an omission)
4. Prohibiting public inspection of Board resolutions filed in the Registry. (To meet corporate demand)
5. Including provision for writing off past losses/depreciation before declaring dividend for the year. This was missed in the Act but included in the Rules.
6. Rectifying the requirement of transferring equity shares for which unclaimed/unpaid dividend has been transferred to the IEPF even though subsequent dividend(s) has been claimed. (To meet corporate demand)
7. Enabling provisions to prescribe thresholds beyond which fraud shall be reported to the Central Government (below the threshold, it will be reported to the Audit Committee). Disclosures for the latter category also to be made in the Board's Report. (Demand of auditors)
8. Exemption u/s 185 (Loans to Directors) provided for loans to wholly owned subsidiaries and guarantees/securities on loans taken from banks by subsidiaries. (This was provided under the Rules but being included in the Act as a matter of abundant caution).
9. Empowering Audit Committee to give omnibus approvals for related party transactions on annual basis. (Align with SEBI policy and increase ease of doing business)
10. Replacing 'special resolution' with 'ordinary resolution' for approval of related party transactions by nonrelated shareholders. (Meet problems faced by large stakeholders who are related parties)
11. Exempt related party transactions between holding companies and wholly owned subsidiaries from the requirement of approval of non related shareholders. (corporate demand)
12. Bail restrictions to apply only for offence relating to fraud u/s 447. (Though earlier provision is mitigated, concession is made to Law Ministry and ED)



13. Winding Up cases to be heard by 2member Bench instead of a 3 member
14. Bench. (Removal of an inadvertent error)
15. Special Courts to try only offences carrying imprisonment of two years or more. (To let magistrate try minor violations). (ANI)

## CENVAT

### Notifications/Circulars/News

Seeks to exempt from excise duty goods required for the Intensified Malaria Control Project funded by GFATM.

*23/2014-CE, dt. 21-11-2014*

Seeks to amend notification no 12/2012 - Central Excise Dt. 17/03/2012 so as to increase the Basic Excise Duty (BED) on petrol (both branded as well as unbranded) and diesel (both branded as well as unbranded).-

*24/2014-CE, dt. 02-12-2014*

Grants exemption from Basic Excise Duty to goods donated or purchased out of cash donations for the relief and rehabilitation of people affected by the floods in the State of Jammu and Kashmir -

*25/2014-CE, dt. 11-12-2014*

### Case Law

The Mumbai Tribunal held that the activity of affixing of label and MRP on imported packages before cleared for home consumption, being a mandatory requirement under Standards of Weights and Measure Act, did not amount to 'manufacture'.

*L'Oreal India Pvt Ltd v CCE (2014 (308) ELT 746)*

The Mumbai Tribunal held that non-compete fees and trademark licence fees received from the buyer are includible in the assessable value when non-compete agreement and trademark agreement were integrally connected with manufacturing agreement and were inseparable from each other.

*Godrej Consumer Products Ltd v CCE (2014 (308) ELT 61)*

The Delhi Tribunal held that excess freight realised from customer was not includible in the assessable value unless it was proved that value of goods were collected under the garb of freight charges.

*Dhampur Sugar Mills Ltd v CCE (2014 (308) ELT 488)*

The Ahmedabad Tribunal held that subsidy received by fertilizer company from the Government could not be considered as additional consideration in terms of clarification given in Circular No. 983/7/2014-CX Dt. 10 July, 2014.

*Coromandel International Ltd v CCE (2014-TIOL-2272-CESTAT-AHM)*

The Mumbai Tribunal held that when the duty liability was discharged on the price at which the job-worked goods were sold by the principal manufacturer, the question of adding the value of scrap generated at job work premises does not arise at all.

*Shilpa Steel & Power Ltd v CCE (2014-TIOL-2254-CESTAT-MUM)*

## VAT, Sales Tax and Entry Tax

### Case Law

The Karnataka High Court held that in case of non-production of C forms, interest shall be payable from the date the dealer was

liable to pay tax. However, in case C forms filed were found defective at a later date, the interest would be payable from the date of such determination during assessment.

*State of Karnataka v Bharat Heavy Electricals Ltd and Others (TS-499-HC-2014-KARVAT)*

The Rajasthan High Court upheld the constitutional validity of section 18(3A) of Rajasthan VAT Act which restricts the input tax credit to the extent of the output tax payable in cases where such goods are sold at a price lesser than the purchase price of goods.

*State of Panwar Trading Corporation v State of Rajasthan and Ors (TS-538-HC-2014-RAJ-VAT)*

The Madras High Court held that industrial air compressors fell under the heading 'capital goods' and were eligible for concessional rate of VAT @ 4%. The Court observed that merely because machinery, spare parts and components were supplied through dealer distribution network, it would not alter the tax position.

*Elgi Equipments Ltd v Deputy Commissioner (W.P. Nos. 10446 to 10451 of 2014)*

## Service Tax

### Notifications/Circulars

Rule 5A(2) of Service Tax Rules, 1994 authorizes department to conduct audit by CAG or any audit party deputed by Commissioner & the assessee was bound to produce the specified documents within 15 days from date of demand( of the prescribed documents) the said auditor.

Vide Notification CBEC has amended rule 5A(2) and the pronouncement of Allahabad High Court has been followed principally & CAs/CMAs have been made empowered to conduct service tax audits. Furthermore, earlier limit of 15 days for production of specified documents has now been replaced with the time limit specified by the concerned audit party/CAG/CAs/CMAs, as the case may be.

*No. 23/2014- ST Dt. - 05.12.2014*

### Case Law

Department cannot sought to initiate recovery proceedings in pursuance of Circular No. 967/01/2013-CX, pending stay applications filed before Tribunal and held that (a) said circular had no legal sanction/backing; (b) recovery cannot be permitted pending disposal of stay applications, if such pendency was not attributable to assesses.

*Ramesh Kumar Agarwal - (2014) 51 Taxmann.com 14 (Allahabad)*

All leases of immovable property would be covered for service tax whether lease is short-term or long-term or lease perpetuity. However, "premium" or "salami" paid by lessee to lessor for transfer of interest in property from lessor to lessee is not liable to service tax, as same is not for continued enjoyment of property leased. Premium is price paid for obtaining lease of an immovable property; while rent is payment made for use and occupation of immovable property leased.

Since taxing event under Service Tax is renting of immovable property, service tax would be leviable only on element of rent i.e. payments made for continuous enjoyment under lease which are in nature of rent irrespective of whether this rent is collected periodically or in advance in lump sum.

Service tax cannot be charged on "premium" or "salami" paid by lessee to lessor for transfer of interest in property from lessor to

lessee, as this amount is not for continued enjoyment of property leased.

*Greater Noida Industrial Development Authority - (2014) 51 Taxmann.com 73 (New Delhi - CESTAT)*

Adjustment of service tax paid in excess in certain months towards service tax liability of subsequent months cannot be denied on such technical grounds, if procedure prescribed under Rule 6(4A) i.e. intimation to jurisdictional superintendent within 15 days, is not followed.

*Jubilant Organosys Ltd. - (2014) 51 Taxmann.com 64 (New Delhi - CESTAT)*

Service forming part of supply of goods in a restaurant, as well as, short-term accommodation services in hotels, inns, etc. is unconstitutional being violative of Entries 54 and 62, respectively, of State List and State has only right to levy tax. It was upheld that prior to Constitution (Forty Sixth Amendment) Act, same was considered to be wholly a service. Further, by virtue of Constitution (Forty Sixth Amendment) Act and as per judgment in *K. Damodarasamy Naidu & Bros [2000] 117 STC 1 (SC)*, this transaction is deemed to be a sale, conferring authority on States to tax on whole consideration received by person making supply of food and beverages.

*Kerala Bar Hotels Association, Cochin - (2014) 51 Taxmann.com 365 (Kerala)*

Renting of cabs is liable to service tax irrespective of whether control over vehicle is of service provider or of service recipient and irrespective of whether it is 'hiring' of cabs or 'renting' of cabs; therefore, supplying vehicles for transportation of papers/answer sheets, examiners, staff etc. on distance travelled basis also amounts to rent-a-cab services.

*Vijay Travels - (2014) 51 Taxmann.com 72 (Gujarat)*

Corporation was providing insurances services by way of Employees State Insurance (ESI) - Department sought levy of service tax of Rs. 1945.35 crores along with interest and penalty. It was held, as per section 100 of FINANCE Act, 1994 (as inserted by FINANCE (No. 2) Act, 2014), owing to a non obstante provision, no service tax shall be collected in respect of taxable services provided by the Employees' State Insurance Corporation set up under the Employees State Insurance Act, 1948, during period prior to 1-7-2012.

Moreover, for period on or after 1-7-2012, the services are already exempt under Entry 36 of Notification No. 25/2012-ST Dt. 20-6-2012.

*Employees State Insurance Corporation - (2014) 51 Taxmann.com 113 (New Delhi - CESTAT)*

Every non-payment/non-levy of tax doesn't attract extended period. There must be some positive action which betrays a negative intention of wilful default. For invoking extended period of limitation, intention to deliberately default is a mandatory prerequisite and inadvertent non-payment doesn't attract extended period of limitation.

In such a situation, burden of proving mala fide on part of assessee lies on shoulders of Department who alleges it and assessee cannot be asked to substantiate his bona fide conduct. Further, extended period of limitation finds application only when specific and explicit averments challenging bona fides of conduct of assessee are made in show cause notice.

*Uniworth Textiles Ltd. - (2013) 31 Taxmann.com 67 (SC)*

## FEMA/RBI/SEBI Notifications/Circulars

The SEBI has tightened the conditions for issuance of offshore derivative instruments ("ODIs") by foreign portfolio investors ("FPIs") under the Securities and Exchange Board of India (Foreign Portfolio Investor) Regulations, 2014 ("FPI Regulations").

*Circular CIR/IMD/FIIC/20/2014 Dt. Nov 24, 2014*

The SEBI has, in its meeting on Nov 19, 2014, approved a proposal ("FVCI Proposal") to amend the Securities and Exchange Board of India (Foreign Venture Capital Investors) Regulations, 2000 to permit foreign venture capital investors ("FVCIs") to invest in Core Investment Companies ("CICs"). A CIC is a non-banking financial company ("NBFC") carrying on the business of acquisition of shares and securities.

The SEBI has, in its meeting on Nov 19, 2014, approved a proposal to convert, consolidate, and streamline the provisions of the existing listing agreements to be entered into by companies with stock exchanges into the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2014 ("Listing Regulations").

The Reserve Bank of India ("RBI") has permitted alternative investment funds ("AIFs") to make investments in foreign securities. While the Securities and Exchange Board of India (Alternative Investment Fund) Regulations, 2012 had enabled AIFs to invest overseas, it was unclear whether such investments by AIFs were permitted by the RBI.

*A.P. (DIR Series) Circular No.48, Dt. Dec 9, 2014*

The RBI has issued clarifications regarding the routing of funds raised abroad by Indian companies into India under the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000 ("ECB Regulations").

*A.P. (DIR Series) Circular No. 41 Dt. Nov 25, 2014*

The RBI has amended the conditions for parking proceeds of external commercial borrowings ("ECBs") to allow greater flexibility to borrowers in structuring the draw-down of ECB proceeds and utilizing the proceeds for permitted end uses.

*A.P. (DIR Series) Circular No. 39 Dt. Nov 21, 2014*

## Guidelines on Refinance

RBI would shortly come out with guidelines on refinance of existing projects as demanded by the industry, according to its deputy governor S S Mundra said on Wednesday. He said new projects would get the scope for refinance every five years till the economic life of the projects as already declared. "But for existing projects, the guidelines will be out soon," he said.

Sounding a word of caution on big projects having thin equity, Mundra said, "There are many projects based on thin equity. This is like skating on thin ice." He said that when economic growth is robust, such projects carry on as many of the ills are taken on stride. "But when growth falters, signs of early distress crop in. RBI is keeping a vigil on projects which are having thin equity to see whether there are signs of early distress," Mundra said. Ahead of the RBI central board meeting here tomorrow, Mundra said the regulator was keeping its ears close to the ground.

Source: <http://www.dnaindia.com/>