



Mysore Chapter

eNewsletter - 85

February 2011

FIRST VIEW OF THE PROPOSED PREMISES OF MYSORE CHAPTER

4



Milaap &
Umang 3

Words worth Millions...



"Those who deny freedom to others
deserve it not for themselves;
and, under a just God, can not long
retain it."

Abraham Lincoln

(February 12, 1809 - April 15, 1865)
16th President of the United States

-: Editorial Team :-

CS. Dattatri H M,
CS. Sarina C H,
CS. Omkar N G,
CS. Rashmi M R

Support Team:

CS. Harish B.N., CS. Abhishek Bhardwaj A B
CS. Ravishankar Kandhi

For past editions of eNewsletter:

<http://www.icsi.edu/mysore> or
<http://www.esnips.com/web/icsimysore>

Join 1000+ members' strong "CSMysore"
eParivaar at

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

For CS updates on mobile, send SMS

'ON CS_GOVPRO' to 09870807070

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.

Message from Chairperson



Dear Members and Students of CS fraternity,

It is indeed great privilege to me to be addressing all of
you as the chairperson of Mysore Chapter of ICSI and
my sincere thanks to the Managing Committee of
Mysore Chapter for giving me an opportunity to lead
one of the most vibrant Chapters of ICSI.

We have had a very good start with CS PVS Jagan Mohan
Rao, Honorable Past President of this esteemed Institute,
instituting the new Managing Committee of the Chapter
on the special occasion of the '62nd Republic Day'.

It's a pleasure to introduce my fellow Management
Committee Members: CS. Badrinarayan S (Vice
Chairman), CS. Sunil Kumar B G (Secretary), CS Parvati K
R (Treasurer) and members - CS D D Bhat, CS Anshuman
A S, CS Sarina Chouta Harish, CS Jayasheela Bhat and
CS. Omkar N. G. We are very confident that with all your
support and coordination, we would take the chapter
and the profession to new heights.

The Annual event of the Chapter Umang-2011 is coming
up and we at the managing committee look forward for
a very active participation from all of you with the same
'Zeal to Excel' as all these years.

Once again, I thank you all for allowing me to be a part
of this great institute.

Thank you,

Yours in CS fraternity,

CS. Srilatha T G

Inside.....

Articles:

FDI in Retail: A Perspective...4

Basics for Investors: Cut your Coat according to your Cloth...5

Company Deposit – Part 9: Launching FD Scheme...7

Columns:

Chapter Activities...3

Living Room: Why to Sit, when you can fly...6

IT for professionals: SE Explorer...7

Web Yatra: Knowledge Bible...8

Book Review: Super Memory ...8

Spectrum Space...9

Legal Roundup ... 10

News Room...12



ICSI Bangalore Organizes 7th State Level Student's Conference:

Milaap 2011

.....Meeting of Minds

19th and 20th February 2011

Phone: 080 - 22286574, 22261861, 22287158; milaap.cs@gmail.com

16 ADP
HRS FOR
STUDENTS

6 ADP
HRS FOR
STUDENTS

ICSI Mysore Chapter Organizes

Umang

....The Zeal to Excel

On 06th March 2011 @ Pooja Bhagvat Memorial Hall, Metagalli, Mysore
Phone 0821 2516065; mysore@icsi.edu spectrum.umang@gmail.com

ACTIVITIES AT CHAPTER

Constitution Quiz 2011

23rd January 2011. This program aimed to create awareness and recite the importance of the Constitution of India among the budding company secretaries. Students were quizzed on Preamble, Fundamental rights, Directives, Fundamental Duties, Union & State Governments, President & Governor etc. Mr. Pavan Kumar M. S. was the

WINNER.

Second and Third place were bagged by Mr. Guruprasad Bhat and Mr. Rahul R. B.

respectively. The winners were awarded with prizes and Certificates by the Honourable Past President of the Institute CS. PVS Jagan Mohan Rao on 26th Jan 2011 during the Republic Day function. The event was coordinated by CS. Omkar N. G.

Republic Day Celebrations

26th January 2011. The Chapter was honored by the presence of the Past President of ICSI, CS. PVS Jagan Mohan Rao. Addressing the Students and Members after hoisting the Flag, CS. Jagan Mohan Rao highlighted the

role to be played by the youth and advised to follow the path showed by Swami Vivekananda. The program ended with distribution of sweets to all students and members who were present at the function.

New Executive Committee

The following managing committee members were elected to the executive committee for the year 2011 :

Chairperson:
CS. Srilatha T G
Vice Chairman:
CS. Badrinarayan S
Secretary:
CS. Sunil Kumar B G
Treasurer:
CS. Parvati K R

The new Managing Committee was formally instituted by the Past President of the Institute, CS. PVS Jagan Mohan Rao by symbolic handing over of Keys and Records.

Go-Green Bicycle Rally

As a 'Green initiative', to create awareness among the public and to promote the use of eco friendly measures to





reduce Global Warming, a bicycle rally was organized by the chapter on 26th January 2006. With CS. PVS Jagan Mohan Rao leading the

rally, the students and members of the chapter cycled from the chapter premises at Jayalakshmpuram. The day being the birth day of Swamy Vivekananda according to the Hindu Calender, the rally concluded at the Ramakrishna Mutt at Yadavagiri where the members and students paid homage to the great soul.



Joint Seminar by Mysore Chapter of ICSI and ICWAI

A half day Professional Development Program was organized by the Chapter jointly with the Mysore Chapter of the Institute of Cost and Works Accountants of India on 26th January 2011 at 2.30 p.m. at ICWAI Bhawan, Krishnamurthypuram, Mysore.

The Chairperson of the Chapter CS. Srilatha T G and the Vice Chairman of the Mysore Chapter of ICWAI, CMA. T L Sangameshwaran gave an insight of activities of the respective chapters. The Speaker, CS. PVS Jagan Mohan Rao addressed the gathering on 'Due Diligence - Challenges & Opportunities', 'Climate Change - Emerging Issues', and 'Leadership - Teaching from Bhagavad Geeta'. The program was attended by Members and Students of CS and CWA Fraternity.

The program was coordinated by the Secretary of the ICWAI Chapter CMA. Ashok Kumar and was concluded

with vote of thanks rendered by CS. Sunil Kumar BG, Secretary, Mysore Chapter.

Inter Chapter Cricket Match



As a joint initiative by Mysore and Bangalore Chapters of ICSI, the First Inter Chapter Rolling Shield Cricket Match was organized in Mysore on 30th January 2011.

Teams lead by CS. Kiran T (Captain of Mysore Team) and CS. Naman Joshi (Captain of Bangalore Team) played at Mahajana PU College Ground. The event was inaugurated by CS. Srilatha T G, Chairperson of Mysore Chapter of ICSI.



Best of three matches was played, in which Mysore Chapter won two matches continuously. The last match was a cliffhanger which ended in a super over match, where Bangalore Chapter won the match. The rolling shield was presented to CS. Kiran T, the Captain of Mysore Chapter team by CS. Manjunath Reddy, Secretary of Bangalore Chapter.

FIRST VIEW OF THE PROPOSED NEW BUILDING OF THE ICSI MYSORE CHAPTER



"CUT YOUR COAT ACCORDING TO YOUR CLOTH!"



'Debt' may sometimes be mistakenly heard as 'Death' and on occasions like these, it really does come closest to its true nature - Debt is Death! It is painfully difficult to break free from the

clutches of debt. In fact, what kills is prolonged and ever piled up debt. Whether it is small debts being carried forward every now and then or major debts not been able to square off, the money that you owe does not let you sleep in peace! If you choose to ride on the saddle of debt just because you can, beware, as the saddle is that of the **wild bull from the Rodeos!** Cut to the chase, better buy only as much as your pockets can afford. Extending this a little further, risk only as much as you can cover. Metaphorically, 'Cut your Coat according to your Cloth'! A smaller sleeve or a pocket lesser is better than borrowed cloth that you may not be able to repay for. Mind you, the emphasis is not on banning yourself from running risks completely but to choose your risks wisely!

Two young friends - A and B decide that they need to start investing in the stock markets. Both are equally new to the field but are somehow confident of churning out maximum benefits out of their investments. A's salary is ₹30,000 per month while B's salary is ₹20,000. The dilemma with risk certainly struck B when A set out ₹10,000 for investments out of his monthly salary. B finally did not want to be left behind when the hope of making greater absolute profit crossed his mind; therefore, leaving aside his genuine worry of risking half of his salary even though he was a beginner, he too set aside ₹10,000 to invest in the markets that month. Tragedy struck when both friends continually faltered and soon found that their investment of ₹10,000 each was reduced to no more than ₹1,000! Evidently, both lost out equal amounts on similar

investment practices, however, the loss incurred served as a bigger setback to B as he was involved with a higher share of his income. The first step towards investing is naturally to identify how much of your income you should invest really. Of course how smartly you should invest to ensure no losses is a different ball game to learn altogether! Nevertheless, firstly, you need to take a look at your cloth and only then can you pick up a good pair of scissors (read as Technique!) to shape up your coat, namely investments!

Experienced investors will second the opinion that risk as such with the stock markets is highlighted majorly when indulging heavily in margins. Margin trading is simply, investing by borrowing money from your stock broker in order to increase your stock buying capacity and in effect, to magnify your return on investments fetched otherwise. Undoubtedly, it may be termed as one risky affair! Margin or Leverage in stock terminology, works wonders when

the odds turn in your favor, however, causes magnified damage as well in cases when the odds turn against you. Consider an example - Either one of the newbie, A or B had say asked for a margin of 2 times his investment from his broker. So lets say that A

Risk only as much as you can cover. 'Cut your Coat according to your Cloth'! For an amateur investor in desperate need of money, trading on margin to expect increased profits is a blunder!



Sajjad A Qadir

CEO, Windfall Information Technology Systems Pvt. Ltd.
sajjad@winwindfall.com, www.winwindfall.com

chose to increase his buying capacity from ₹10,000 to ₹20,000, his borrowed capital being ₹10,000. Now, had he invested soundly and managed to soon discover a 20% profit over his stock, his absolute profit would have been ₹4,000. Elaborating this, his actual investment is ₹10,000; he borrows another ₹10,000 from his broker, net investment now being ₹20,000; 20% profit sees the capital grow to ₹24,000; he would hand the borrowed money of ₹10,000 back to his broker leaving him with ₹14,000 which is a 40% growth over his actual investment instead of the 20% in the absence of margin! Double the investment, double the

profit! Note, for simplicity's sake, the interest rate on which a broker lends out margin for the period of investment is ignored here.

Anyway, the above paints a very rosy picture since the odds were very well in A's favor. On the flip side, had A discovered a 20% loss on investment; because he had leveraged his investment to twice its value, the 20% loss will also be magnified to twice, that is, 40%! This is precisely why unsure investments traded on margin can be fatal! For an amateur investor in desperate need of money, trading on margin to expect increased profits is a blunder! Such a practice could undoubtedly be termed as a reckless,

misculated and unprotected risk! The stock markets do not really treat gamblers so well!

Every other time, the scarcity of money has driven individuals towards pushing their luck! The sustained recession of the year 2008 in America saw herds of unfortunately jobless citizens desperately buying lottery tickets, indulging in gambling; some continued this practice so relentlessly that they ended up 'losing their shirts' literally! You can always make choices that ensure that you hold on to your shirt; the point is, whenever you do have some cloth to grasp onto, might as well, measure it thoroughly!

LIVING ROOM



WHY TO SIT WHEN YOU CAN FLY

Once there was a king who received a gift of two magnificent falcons from Arabia. They were peregrine falcons, the most beautiful birds he had ever seen. He gave the precious birds to his head falconer to be trained.



Months passed and one day the head falconer informed the king that though one of the falcons was flying majestically, soaring high in the sky, the other bird had not moved from its branch since the day it had arrived.

The king summoned healers and sorcerers from all the land to tend to the falcon, but no one could make the bird fly. He presented the task to the member of his court, but the next day, the king saw through the palace window that the bird had still not moved from its perch. Having tried everything else, the king thought to himself, "May be I need someone more familiar with the countryside to understand the nature of this problem." So he cried out to his court, "Go and get a farmer."

In the morning, the king was thrilled to see the falcon soaring high above the palace gardens. He said to his court, "Bring me the doer of this miracle."

The court quickly located the farmer, who came and stood before the king. The king asked him, "How did you make the falcon fly?"



With his head bowed, the farmer said to the king, " It was very easy, your highness. I simply cut the branch where the bird was sitting."

Many times, we sit on our branches, clinging to the things that are familiar to us. The possibilities are endless, but for most of us, they remain undiscovered. We conform to the familiar, the comfortable, the mundane. So for the most part, our lives are mediocre instead of exciting, thrilling and fulfilling.

So let us learn to destroy the branch of fear we cling to and free ourselves to the glory of flight.

STEPS FOR LAUNCHING FD SCHEME

For a company to go in for the Fixed Deposit route it has to ascertain its eligibility. A company not having positive Net Worth or is currently in default in repayment of Fixed Deposit collected earlier, can neither invite nor accept deposit. Moreover, if the Net Owned Fund of the company is less than Rs. 1 crore, it can not invite though it can accept deposit.

If the Company is eligible to borrow through FD it shall have to decide as to whether it shall invite deposit from public or not. While taking such a decision it may be borne in mind that any invitation even to a section of public whether selected as members of company, debenture holders of company or employees of company, would amount to "invitation to public". However, if company merely intends to accept the deposit from friends /relatives of directors / shareholders, it is not inviting deposit from public. In this case, company must not appoint any Fixed Deposit Broker. Moreover, the FD Application form should bear the caption "Private and confidential and not for circulation".

Whatever course of deposit collection is adopted by the company i.e. by invitation or with out invitation, company has to get a suitable resolution passed in the meeting of its Board of Directors authorizing mobilization of fund through Fixed Deposit. In this connection the compliance of Section 292(1)(c) of the Companies Act, 1956 should be ensured which requires that power to borrow money otherwise than debentures shall be exercised by the company only by means of a resolution passed in the meeting of Board of Directors. That means no such resolution can be passed by circulation.

Provisions of Section 293(1)(d) of the Companies Act ,1956, if applicable should also be taken care of. The section deals with the situations where the moneys to be borrowed by the company together with the moneys already borrowed, excluding temporary advance availed from Company's banker, will exceed the aggregate of paid-up capital of the company and its free reserves. Where a company is visualizing such a situation ,it shall have to seek the consent of company in the general meeting to borrow through deposit by way of an ordinary resolution. However, if AGM of the Company is not slated to be held soon and Company is in a hurry to invite / accept the deposit, then it has to convene an Extra Ordinary General Meeting for this purpose, before it proceeds any further.

If company decides to invite deposit from public, it shall prepare the text of advertisement in the format provided in the Deposit Rules , get it approved in the meeting of Board of Directors and then file the same with Registrar of Companies. There after ,company shall advertise its Fixed Deposit Scheme in two news papers , one in English and other in the vernacular language circulating in that state.

If Company decides not to invite deposit from public, it shall prepare a "Statement in Lieu of Advertisement", get it approved in the meeting of Board of Directors and then file the same with

Registrar of Companies. The "statement in lieu of Advertisement" shall contain the same information as are provided in the "text of advertisement".

Company shall now get Fixed Deposit Application Forms printed. Care should be taken to ensure that the information given in the Text of Advertisement or in the "Statement in lieu of Advertisement" as the case may be, is reproduced in the F.D. Application Form, in verbatim. It may also be ensured that the deposit scheme of the company is in conformity with the provision of Companies (Acceptance of Deposits) Rules 1975, particularly in relation to deposit interest rate and deposit tenure. Moreover, the terms and conditions subject to which company is to accept deposits shall also be mentioned in the application form. Company shall maintain liquid assets to the extent of 15% of deposit. It shall file Return of Fixed Deposit with ROC with in 30th June of each year.

Summary: Receive FD application, Collect cheque, dispatch FDR and interest warrants, arrange with banker for issue & payment of warrant, maintain FD Register, ensure TDS compliance on interest, accept Form 15G/15H, send its copy to Tax Authorities, transmit deposit on request, pay prematurely, if requested, file Deposit Return with ROC before 30th June, send maturity intimation to depositor, repay FD, transfer unclaimed deposit to Investor's Fund, after every AGM file text of advertisement or statement in lieu having latest figures with ROC, issue advertisement in news papers (if inviting deposit), print new deposit application form containing latest financial figures.



CA. Kamlesh C. Agrawal B.Com; LL.B; FCA
Allahabad, kcgargwal44@yahoo.co.in

Where the company is inviting deposit from public it may appoint one or more Financial Broker to mobilize fixed deposit for company. Moreover, if the volume of Fixed Deposit in the company is high, the company may appoint "Registrar to Fixed Deposit Scheme". If the registrar is appointed complete FD related work of the company shall stand shifted to Registrar and registrar alone shall deal with the Depositors.

Alternatively, a FD Department may be created in the company it self to look after the acceptance and repayment of deposit and payment of interest. Apart from this, the department shall look after investors' service, statutory compliances and FD Brokers.

After every A G M in which annual accounts of company are adopted:

Company shall file with ROC a fresh "Text of Advertisement" or "Statement in lieu of Advertisement" as the case may be, duly authorized by its Board containing latest financial data of the company. Companies inviting deposit shall issue fresh advertisements, duly authorized by the Board, in the two News Papers containing latest financial data of the company. Company shall also get new FD Application Forms printed, containing latest financial data of company and shall accept deposit through new Application Forms only. All companies accepting deposit, whether through invitation or otherwise shall use new forms only.

[\[to be continued...\]](#)



WEB YATRA

*Pavan Kumar MS,
Student CS Professional Program, Mysore*



www.knowledgebible.com is a forum is mainly for CS, CA, CWA and Law professionals and students. This site enhances our knowledge in any segment of law which is of interest to us. Articles written by resourceful persons in the site enrich us with knowledge which will be a guide for our professional life. Articles are on FEMA, Corporate Law, Central Excise & Customs and other laws. Further, site provides forums like Current Affairs, Taxation, Statutory Manual, Legal Documents & Case laws, Business Laws and Corporate Laws, RBI, FEMA etc.,

What's New option updates us with recent notifications issued by RBI, Accounting Standards, Press releases and others. This blog gives us our own personal space to store/share data. We can also share the articles through **Face book** and **Twitter**. Knowledge is the Power - Let us share and enhance our Knowledge.

SE-EXPLORER: WINDOWS EXPLORER ALTERNATIVE

IT FOR PROFESSIONALS

*Amitkumar Hegde, B.Com, MCA,
Bangalore*



We use the windows file manager day in and day out as we deal with files and documents all the time. There are quite a few replacements for the default windows explorer. I came across SE-Explorer and found it to be quite useful for day today use. It is available as a portable version so that you can just carry on your pen drive.

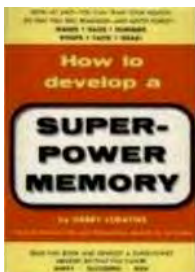
When you open it, it starts with a simple interface which displays a list of mounted drives and the files folders on the right pan. File search is exactly what the name says. It allows you to do basic and advanced searching of everything inside your hard drive. I felt this search to be more reliable and speedier than the windows default one. There is one more tab called file scanner with which you can scan for files which are taking much space and the like. You can save the result for further use also.

There is a nice feature, which allows you to compare folders. If you are taking regular backups and want to compare different copies of the same folder; then this feature will come in handy. Download it from: <http://se-soft.com/en/Products/Explorer/Downloads/>

SUPER MEMORY

BOOK REVIEW

*CS. Sanjeev Rao, ACS B.Com, LLB
Bangalore*



If you aspire for perfection and success in everything you do, then you must have definitely realized the importance of possessing an impeccable memory. "There are no such thing as good memory or bad memory; only a trained memory or untrained". You will concur with the author **Mr. Harry Lorayne** once you try and apply his systems detailed in his book "**How to Develop a Super Power Memory**".

"If you purchased this book expecting a theoretical harangue of technical terms, you are doomed to disappointment." This statement reflects the practical approach the Author followed from cover to cover. If you are thinking that this book gives you a magical formula which can make you an instant hit overnight, better change your perception now itself. This book does not give you an instant boost of your memory capabilities, instead shows you the proven ways to develop in a scientific way. Pick up your copy soon, don't forget!!

Learners' Corner

TAKEOVER CODE

- AN INTRODUCTION



Madhuri Hegde H R,
CS Executive, Bangalore

A Company is built on the foundation of enormous efforts by the Promoters. The investors too rely on the credentials of promoters and invest. But what if, on one fine day, a new person acquires the control of company and the promoters exit the company without any notice? Will it be in the interest of stakeholders? Ensuring this is the logic behind Takeover Regulations.

The concept of Takeover emerged in 19th century. It became a great tool of inorganic growth in India only in the 20th century. This resulted in growth of Indian economy at an increased pace, and it created a highly competitive business environment, which motivated many companies to restructure their corporate strategies by including the tools of mergers and takeovers.

As Ralph Waldo Emerson Said "Before we acquire great power we must acquire wisdom to use it well". Securities Exchange Board of India (SEBI) laid down this path of wisdom by enacting SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1994. In 1997, SEBI Takeover Code was enacted substituting the earlier regulation by enacting SEBI (SAST) Regulations, 1997("Takeover Code" or "Takeover Regulations").

Takeover code only regulates the Substantial Acquisition of shares or voting rights of a company. Under Takeover code, if any person or body corporate acquires shares of a company more than certain level (i.e. "Trigger Point") then such shareholder shall have to make certain disclosures. If any person acquires Substantial shares or voting rights of the target which has the power to impact on the control or management of a company then, such person shall have to provide an exit route to the other shareholders by means of **Open Offer** to the public shareholders, to buy the shares of public shareholders upon acceptance of the terms and conditions of the offer.

Takeover code specifies number of terms and conditions in the interest of the investors for the purpose of open offer like appointment of Merchant Banker, making public announcement, remitting of certain amount in Escrow account and so on. In the event of non-compliance, the acquirer is liable for the penal provisions contained as per regulation 45 of the Regulations which include forfeiting of amount in the Escrow account, suspension or cancellation of registration of intermediary and so on. Takeover code acts as a boon as well as a bane to the acquirers. Acquirers upon acquisition not only will have to fund in for the acquisition of initial acquisition of shares but also, in case of triggering the limits, the funds for Open Offer shall also have to be kept ready well in advance. This in adds on to cost of acquisition. On the other hand, it acts as a silver spoon in the mouth of the investors.

Pick of
the
Month



BONUS

Whether a person who has worked for 15 days in an accounting year in an establishment, is eligible for bonus?

No. An employee to be entitled to bonus in an accounting year, should have worked in the establishment for not less than 30 working days in that year (Sec 8 of Payment of Bonus Act, 1965)

CARBON CREDIT



A carbon credit is a generic term for any tradable certificate or permit representing the right to emit one ton of carbon or carbon dioxide (CO₂) equivalent.

Carbon credits and carbon markets are a component of national and international attempts to mitigate the growth in concentrations of greenhouse gases (GHGs). *One carbon credit is equal to one ton of CO₂*, or in some markets, CO₂ equivalent gases. Carbon trading is an application of an emissions trading approach. Greenhouse gas emissions are capped and then markets are used to allocate the emissions among the group of regulated sources.

Idea is to allow market mechanisms to drive industrial and commercial processes to lower emissions or lessen carbon intensive approaches by imposing cost on emitting CO₂ and other GHGs into the atmosphere. Since GHG mitigation projects generate credits, this approach can be used to finance carbon reduction schemes between trading partners and around the world.

LEGAL ROUNDUP

CENVAT

Notifications/Circulars

CG has notified a concessional customs duty of 5% on imports of all items of machinery and components required for the initial setting up of a solar power generation project or facility, subject to fulfillment of prescribed conditions.

(Customs Notn. No. 1/2011 dated 6/1/2011)

The Mumbai Commissionerate has issued instructions for cancellation of bank guarantees within one month of submission of the necessary documents by the importer/exporter in specified cases.

(Public Notice No.128/2010 dt. 22/12/2010)

CG has clarified that customs authorities should seize goods intended for export only in cases when they have reasons to believe that the said goods are liable for confiscation.

(Circ No.1/2011-Customs, dated 4/1/2011)

Case Laws - Classification

Goods performing a specific identified function and also incorporating an inbuilt system for controlling and operating the machine cannot be classified as automatic data processing machine under

Shree Nidhi Secure Print Pvt. Ltd. Vs CC (2011 (263) ELT 429)

Case Laws - Valuation

Declared transaction value cannot be rejected where the Department has no valid evidence of any contemporaneous imports at a higher value.

Crystal Dot Scan Pvt. Ltd. Vs CC (2011 (263) ELT 193)

Provisions in relation to provisional assessment are to be invoked where the proper officer is unable to assess the duty and not where assessment is sought to be deferred at the request of the importer.

Radha Krishna Trading Co. Vs CC (2011 (263) ELT 193)

Excess duty paid inadvertently on account of erroneous computation of the value of the goods can be rectified under Section 154 of the Customs Act, 1962.

CC Vs Ateq Systems Analytic India Pvt. Ltd. (2010 -TIOL-92)

Case Laws - CENVAT/MODVAT

In the absence of any specific provisions, no reversal of credit is required on input services utilized for procurement of

inputs, upon the subsequent clearance of the inputs as such.

CCE Vs. Punjab Steels (2010 (260) ELT 521)

Credit is available on Carbon Black Feed Stock (CBFS) used as an alternative fuel in the manufacture of goods.

CCE Vs. Chaudhry Hammer Works Ltd. (2010 (260) ELT 451)

**CS. Abhishek
Bharadwaj,
Mysore**



**Team Genicon,
Chennai**



**CA. Ashit Shah,
Mumbai**

Credit is available on additional duty paid subsequent to the import of goods on account of failure to fulfill the export obligations.

Lakshmi Automatic Loom Works Ltd. Vs. CCE (2011-TIOL-42-CESTAT-MAD)

The assessee is not entitled to suo motu avail credit which it had reversed earlier.

Bimetal Bearing Ltd. Vs. CCE (2010 (182) ECR 78)

CENVAT credit is admissible in respect of capital goods destroyed in the fire.

Kanoria Chemicals & industries Vs. CCE (2010 (182) ECR 109)

Pans, used for removal of slag of high temperatures which are themselves consumed after usage and become part of the molten metal, should be treated as 'input' and not 'capital goods' and accordingly 100% Credit is eligible in the year of receipt of such goods.

DCM Engineering Ltd. Vs. CCE (2010 (182) ECR 264)

Case Laws - Others

Criminal intent/mens-rea is a necessary constituent for imposition of mandatory penalty equivalent to the duty amount u/s 11AC of the CE Act.

CCE Vs. Pepsi Foods Ltd (2010 (260) ELT 481)

No education cess is payable on the sugar cess levied under the Sugar Cess Act-1982 as sugar cess is not a duty of excise.

CCE Vs. Sahakari Khand Udyog Mandali Ltd. (2011(263) ELT 34)

Goods cleared without payment of duty under the Served From India Scheme cannot be treated as exempted goods for the purpose of Rule 6 of Credit Rules.

Essar Oil Ltd. Vs. CCE (2010-TIOL-1647-CESTAT)

The restriction of credit on inputs under Rule-6 of the Credit Rules is not applicable on the goods manufactured and cleared under job work Nt. No-214/86.

Vishal Pipes Ltd. Vs. CCE (2011(263) ELT 81)

Customs

Notifications/Circulars

CG has notified a concessional customs duty of 5% on imports of all items of machinery and components required for the initial setting up of a solar power generation project or facility, subject to fulfillment of prescribed conditions.

(Customs Notn No. 1/2011 dated 6/1/2011)

Case Laws - Valuation

Goods performing a specific identified function and also incorporating an inbuilt system for controlling and operating the machine cannot be classified as automatic data processing machine under Customs Tariff Heading (CTH) 84.71

Shree Nidhi Secure Print Pvt. Ltd. Vs CC (2011 (263) ELT 429)

Case Laws - Others

Declared transaction value cannot be rejected where the Department has no valid evidence of any contemporaneous imports at a higher value.

Crystal Dot Scan Pvt. Ltd. Vs CC (2011 (263) ELT 193)

Provisions in relation to provisional assessment are to be invoked where the proper officer is unable to assess the duty and not where assessment is sought to be deferred at the request of the importer.

Radha Krishna Trading Company Vs CC (2011 (263) ELT 193)

Foreign Trade Policy

Notifications/ Circulars

CG has dispensed with the requirement of issuance of fresh credit scrips by the (DGFT) for re-credit of duty in duty credit scrips in specified cases.

(Public Notice 22 (RE-2010)/09-14 dt 14/01/11)

CG has permitted refixation of the annual average export obligation under the (EPCG) in case exports of any sector/product have declined by more than 5% as compared to the previous year.

(Circ No. 8 (RE-2010) 2009-14 dt 24/12/2010)

CG has started an additional facility of submission of "on-line" applications for obtaining the new (IEC). This facility is now available from 01/01/2011.

(Circular No. 10 (RE-2010) 2009-14 dated 31/12/2010)

CG has prohibited the import of milk and milk products including chocolates, chocolate products and candies/confectionary/food preparations with milk or milk solids as an ingredient from China for a period of one year from 24/12/2010.

(Notn No. 16(RE-2010)/2009-14 dt 03/01/2011)

Case Laws

Notification issued by the DGFT, restricting the import of marble under the India Sri Lanka FTA only from Kolkata port, is with a intention to withdraw the concession given under Customs Tariff Act and is therefore not a valid notification.

Gopal Lal Sarda Vs Union of India (2011 (263) ELT 24)

FTP, which provides for fulfillment of positive value addition under the (EOU) Scheme, casts a binding legal obligation on the unit and its provisions cannot be treated as merely directory/advisory in nature.

Simac Electricals Pvt. Ltd. Vs Union of India (2011 (263) ELT 69)

In case of violation of the conditions of the notification providing the exemption to imported goods under the Advance Licence Scheme, the customs authorities are justified in invoking the bank guarantee for

Recovery of differential duty.

Shri Shakambari Exports Vs Joint Director of Foreign Trade (2011 (263) ELT 393)

Benefit of Serve from India Scheme (SFIS) is not available on gross consideration received for sale of immovable property but is limited to the commission/brokerage for services provided in relation to sale of immovable property.

DLF Ltd. Vs Union of India (2011 (263) ELT 321)

Antidumping Duty

Notifications/ Circulars

CG has extended the imposition of definite anti dumping duty on import of Rubber Chemicals namely MOR,PX13 and

TDQ falling under Chapter 29 and 38 of the Customs Tariff Act originated in, or exported from European Union, China PR, Chinese Taipei and USA, till 11/05/2011.

(Notification No. 132/2010 dated 28/12/2010)

Service Tax

Notifications/ Circulars

CG has clarified that the activity of fumigation of export cargo, loaded into containers or otherwise, does not meet the statutory definition of 'cleaning activity' services and is not chargeable to service tax in India.

(ST Circ No. 132/1/ 2011 dated 12/01/2011)

Case Laws

Canteen services, being a service necessary and in relation to the manufacture of final products, are eligible input services.

Gujarat High Court, in CCE Vs. Ferromatik Milacron India Ltd (2011-TIOL-18-HC)

Category "Construction of Residential Complex Services" seeks to tax the service of construction provided by a builder, separate from the sale to the final buyer, and the levy of such tax is not beyond the legislative competence of the Union Government.

Punjab & Haryana High Court, in G.S. Promoters Vs. UOI (2011 (21) STR 100)

Registration under an incorrect taxable category cannot be made the basis for denial of refund.

CCE Vs. Dishman Pharmaceuticals & Chemicals Ltd (2010-TIOL-1639)

Residential quarters leased out by the Government of India (GoI) to its employees will tantamount to 'personal use' and services rendered towards construction of such quarters are not taxable under the category of Construction of Complex Services.

Khurana Engineering Ltd. Vs. CCE (2011 (21) STR 115)

The introduction of a new taxable category of service, without amendments in existing definitions, presupposes that prior to such introduction; the services in question were not taxable under any other existing category.

CCE Vs. Yokogawa Blue Star (2011 (21) STR 161)

The limitation prescribed under Section 11B of the Central Excise Act, 1944, applicable mutis mutandi to service tax, does not apply to levies collected without authority of law.

CST Vs. HMA Udyog Pvt. Ltd. (2010 (20) STR 827)

Refund of service tax cannot be granted in the absence of any evidence that the

burden of service tax has not been passed on to the final customer.

Golden Multi Services Club Ltd. Vs. CST (2011 (21) STR 175)

Credit is not available to an assessee on services received at any premise not registered as an input service distributor.

Khaitan Electricals Vs. CCE (2011(21) STR 184)

Services received towards booking of air travel are eligible input services under Rule 2 (I) of the CCR where the travel is undertaken for business purposes.

CCE Vs. Light Alloy Products (2011 (21) STR 186)

Services received from a commission agent located outside India by a recipient in India is liable to service tax only after 18.4.2006.

Banco Product (India) Ltd Vs. CCE (2010-TIOL-1644-CESTAT)

Services rendered by one branch of a legal entity to another, being service rendered to self, is not chargeable to service tax.

M/ Deekay Shipping Services Vs. CC (2010-TIOL-1651-CESTAT)

Applicable rate of service tax is that prevailing on the date of issue of invoice and not the rate prevailing on the date of realization of consideration for such service.

CST Vs. Hospitality Consultant India (P) Ltd (2011-TIOL-41-CESTAT)

Sales Tax

Case Law

Reassessment proceedings under the UP Trade Tax Act can be initiated only when there is a reason to believe that any part of the turnover of the dealer has escaped assessment. A mere change in the opinion of the assessing officer in respect of the same material which was available on record at the time of the original assessment cannot be the ground for initiating reassessment.

Dabur India Limited Vs. State of U.P. [(2011) NTN (Vol 45) 19]

FEMA & SEBI

RBI has issued directions to Full Fledged Money Changers (FFMCs) and Authorised Dealers Category-II (ADs Category-II) to participate in the designated Currency Futures and and currency options on exchanges recognized by the (SEBI).

A.P. (DIR Series) Circ No. 40, A.P (FL Series) Circ No. 10 Dt 25.01.2011

SEBI has prepared a discussion paper on outsourcing of activities related to the intermediation services. This is placed for public comments on SEBI's website www.sebi.gov.in under the heading "Reports for Public Comments".

- *Notn. No. LAD-NRO/GN/2010-11/24/741 Dt 07.01.2011*



India set to move WTO against 9/11 Health Act

India is contemplating to move the World Trade Organisation (WTO) against The James Zadroga 9/11 Health and Compensation Act of 2010, signed by US president Barack Obama, which levies a two per cent tax on all goods and services procured by the US from countries not party to an international procurement agreement with it.

It is seen to violate the very premise of the WTO which calls for Most Favoured Nation (MFN) and national treatment obligation to countries which are a part of the world trade body.

WTO ruling: billions in Boeing subsidies distort competition

The World Trade Organisation (WTO) decision confirms that Boeing has received massive and illegal government subsidies for many decades, and that they have had a significant and ongoing negative effect on European industry. The final WTO-report to be publicly released in a few weeks can be expected to say that Boeing would not have been able to launch the 787 without illegal subsidies, it has received at least \$5 billion of US taxpayer dollars which has been determined illegal. The effect of these subsidies will continue in the future, putting Airbus at a significant disadvantage.

India can be world tech leader, says US commerce Secretary Locke

US Secretary of Commerce Gary Locke, while sharing that Indian management thinkers have contributed largely to the way business leaders do business across the world, acknowledged there is a need for countries like India to work towards addressing global issues.

Addressing students at the Indian Institute of Science (IISc), Mr Locke stated that solutions to daunting problems lie with students and faculty since they focus on research. "We are in a time, globally, that is both frightening and exciting with issues such as terrorism, poverty, disease and climate change having to be dealt with. India is producing more engineers and Ph.Ds than the US and the country must seize this opportunity to become leaders in science and technology."

Notices served on 17 Indians over black money abroad: Mukherjee

Notices have been served on 17 Indians suspected of having stashed black money in tax havens abroad but it will not be possible to reveal their names as yet, Finance Minister Pranab Mukherjee said. He said the names would be revealed in court when the matter comes up for prosecution. Mukherjee's remarks come against the backdrop of his statement last month that secrecy clauses in treaties with other countries were preventing the government from disclosing the names of Indians with black money abroad, estimated at \$462 billion to \$1.4 trillion.

'India is developing good competition policy'

World Trade Organisation's Director (Intellectual Property Division) Antony Taubman said that India is a good example in terms of balancing sustainable development initiatives with Intellectual Property Rights enforcement.

"India is developing a good competition policy. To ensure strong IPR regime, the country has put in very significant resources not just on the legislative side but also on legal and institutional aspects," Taubman said. He pointed out that India also has the technology power as well as the platform for innovations that would help in having a good IPR regime.

Copyright Amendment Bill, 2009 to be presented before parliament

The Indian Cabinet had approved the Copyright Amendment Bill on 24 December 2009 and it is proposed to be presented before the Parliament during the upcoming budget session in 2011.

The proposed amendments have been made in order to clarify, remove operational difficulties and address the newer issues that have emerged in the context of digital technology and the internet. Some of the proposed amendments seek to bring the Act in conformity with the World Intellectual Property Organization (WIPO) Internet Treaties, namely WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT).