

eMagazine



***Kyoto Protocol &
Carbon Credits Trading***

***Worries of a
Compliance Officer***

Small Companies



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

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Message from Chairman



Dear Readers,

Wish you all a very Happy Makara Sankramana and Pongal.

Hearty congratulations to the editorial team of ICSI Mysore eMagazine for successfully completing 10 years of journey, journey for a decade. I appreciate and acknowledge the incessant efforts of CS. Dattatri & the team in achieving this remarkable milestone

It is a pleasure and my privilege to address you all through this eMagazine after assuming the Office as the Chairman of the Mysore Chapter of ICSI.

I take this opportunity to thank the Managing committee members for reposing trust and confidence in me for this august role. I do accept this with great humility and gratitude. I am sure with the support, guidance and involvement of the present and past office bearers, members, staff, well wishers and the Institute we will be able to meet and exceed the high standards set by my predecessors and keep up the prestige of the Institute.

I am happy to assure you that I will discharge this onerous responsibility through my commitment to provide best services to students, members and by complementing the Institute in its pursuit to develop high calibre professionals for Corporate Governance & in making this profession stronger.

*Yours in CS fraternity,
Ajay Madaiah B.B.*

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Inside

Letters from Readers!



It's very motivating & encouraging to read the professional quality newsletter of the Mysore Chapter. Interesting items like Quiz, articles on IP are well researched and published. I congratulate you & the team for maintaining the standard & the quality of the newsletter.

CS. Shahjahan,
Majid Alfuttaim Group LLC ,Dubai

It is really an excellent Magazine very useful to the CS Professionals as well as others dealing with Corporate Laws.It will help them in dealing with practical problems.

Arun Kumar Maitra
Company Secretary at Old World Hospitality Pvt.
Ltd. New Delhi, India

I have just read the 119 ICSI Mysore e-Magazine December 2013 and could not resist the impulse to congratulate you and your entire e-Magazine Team.

The overall design of the magazine is impeccable (as usual) with quality contents from the Professionals.

Maintaining high quality month after month is really a challenging task and your team is able to surpass your own standards at all times by all means.

Your "Passing Thoughts" will not be a failing one. "Where do we start.....?" You have

already started. Every thought has its own power and such collective thoughts will bring some positive results soon. Congrats once again.

N.A. Srinivasan, M.Com., B.L., FCS
Genicon Business Solutions P Ltd. Chennai

Your article 'So much to clean' is an apt comparison of today's compliance requirements without any order. Take the example of Service tax notifications, there are numerous of this coming out changing periodically the regulations. Is the cost of compliance more than the benefits, both for the Government and the service provider?

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Kyoto Protocol & Carbon Credits Trading

Part 1



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Environmentalists claim that increased emission of greenhouse gases (GHG), which include ozone, carbon dioxide, methane, nitrous oxide and even water vapor, in the atmosphere has resulted in global warming. Global warming phenomena can lead the planet Earth to become inhabitable. The concern of the environmentalists was voiced at Kyoto in Japan during an international conference. At Kyoto an international agreement named, **Kyoto Protocol to the United Nations Framework Convention on Climate Change** (UNFCCC) was encrypted. Kyoto Protocol is an international treaty agreed to by industrialized/industrializing countries which formed part of the Kyoto convention to reduce emissions of greenhouse gases.

The Kyoto Protocol to the United Nations Framework Convention on Climate Change (UNFCCC) international treaty had 192 parties to the convention, including 191 states (all the UN members, except Andorra, Canada, South Sudan and the United States) and the European Union. The United States signed but did not ratify the Protocol and Canada withdrew from it in 2011. The Protocol was adopted by Parties to the UNFCCC in 1997, and entered into force in 2005.

As part of the Kyoto Protocol, many developed countries have agreed to legally binding limitations/reductions in their emissions of greenhouse gases in two commitment periods. The first commitment period applies to emissions between 2008-2012, and the second commitment period applies to emissions between 2013-2020. The protocol was amended in 2012 to accommodate the second commitment period, but this amendment has (as of January 2013) not entered into legal force.

Developed countries have been allowed to do emissions trading until late 2014 or 2015 to meet their first-round targets. Developing countries do not have binding targets under the Kyoto Protocol, but are still committed under the treaty to reduce their emissions.

Source: http://en.wikipedia.org/wiki/Kyoto_Protocol

Kyoto Protocol sets the upper/maximum limit of Greenhouse gases which any developed country to the agreement can emit in the atmosphere. In simpler words, it provides the standard of Green House Gases which can be emitted in the atmosphere, by companies/industries of the constituent countries. The parties to the protocol debated that mere setting up of upper limit in measureable terms does not incentivize the countries to be within the limits. Hence a concept of achievable and measureable gains by trading (Selling) the greenhouse gases saved as compared to the upper limit set to a Company/industry of the saving country to another country which needs to buy for compensating the excess emission above the standard was evolved. Thus this trading enables a meaningful conclusion to the Kyoto convention, whereby overall emission of Carbon Credits is restricted to sum of maximum standards fixed for all the countries together.

The term Credit in general parlance means an excess which a person has, which can be spared. The term Carbon Credit means the extent of savings of Greenhouse gases emission a country has achieved against the limit of emission set in the treaty which, it can sell to another country.

Hence a healthy competition has been evolved, whereby countries compete with each other to reduce the emission of carbon gases and hence benefit its economy profitably by trading(selling) the carbon credits. Through this process of trading, the international treaty achieved its main purpose of containing GHG emission on overall basis, and also incentivised the countries to control excess emission by way of monetary reward achieved on selling the savings in GHG emission. The trading is not only between countries, but also between entities (registered with UNFCCC) within the same country.

(More details in the next edition)



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Worries of a Compliance Officer

Recently one of my professional colleagues resigned his position as a Company Secretary. Reason being the non-compliances in that Company were so rampant and the Management was not willing to mend its ways.

During April 2013, The Economic Times had published a report¹ that in a matter of time, spanning three months, more than 120 Company Secretaries had resigned from small and mid-sized firms, which grappled with governance lapses and other tricky issues. To my knowledge, that was the first time, such an issue was making headlines in a national daily.

This reminds me of the mysterious death of V Saseendran, Company Secretary from Palakkad, Kerala, the whistle blower of serious non-compliances at Malabar Cements Limited².

Being a Compliance officer, the Company Secretary becomes a soft target and is one of the first to be charged for several corporate non-compliances. It is sadly noted that, many a time, particularly in closely held companies, Company

Secretaries are fettered by restricted powers to enforce corrective actions. When a CS senses that the non-compliances are going out of hand and his warnings are falling on the deaf ears of the Management, he is left with no option but to play safe and call it a day. Nevertheless, the sword continues to hang on his head, as he can still be charged for violations taken place during his tenure.

Practicing Company Secretaries are also not exempted from the discussed risks. Advices to their clients to stay on the right side of the law can also be unheeded. So the choice may be to lose the business rather than get entangled in abetting non-compliance. Somehow this subject has not been taken as seriously as it should have been.

¹ http://articles.economictimes.indiatimes.com/2013-04-19/news/38674264_1_company-secretaries-cs-m-s-sahoo

² <http://www.indianexpress.com/news/kerala-heros-family-killed-over-anticorruption-fight/745537/>

Are our people not inclined to being compliant! Why it is so difficult to enforce compliances in our country?

One popular argument among the business heads goes like this, *“even if you comply with law to the maximum extent, the authorities will go to depths to challenge compliance to the redundant provisions- these are next to impossible to accomplish, and seek money to cover. That being the case, why should we spend on compliance as well as ‘satisfying’ the officers?”*

It is not far from true that there are government officers who feel happy to see non-compliances prevailing in companies. Frankly, this is source of revenue. On one occasion, an officer threw an open challenge at me that I better agree to pay him, else he will activate his links in labour department, as he knows certain labour law provisions which companies will not be able to comply with – so he can fix the company.

A hotel was charged for non-compliance under the provision of an Act passed during the early part of British Rule, which is still in force, waiting for some sensible government to repeal it.

During the recent issue involving Devyani Khobragade in USA, Government of India went all out in support of Devyani and at the same time targeted Sangeetha Richard, to the extent of cancelling her passport and filing cases against her in India³. We want America to apologise but Devyani need not do so for her illegal conduct.

I don't seem to understand what is the message that we are trying to communicate to the society at large? What precedents are we setting.....?!?

³ <http://www.justice.gov/usao/nys/pressreleases/December13/KhobragadeStatement.php>
<http://www.thehindu.com/news/international/world/affair-khobragade-a-tale-of-two-narratives/article5479354.ece>

Small Companies

under the Companies Act, 2013

The concept of “Small Company” has been introduced for the first time by the Companies Act, 2013. The Act identifies some companies as small companies based on their capital and turnover. Most of the exemptions provided to a small company are same as that provided to a one person company. The Act also provides for a simplified scheme of arrangement between two small companies, without requiring the approval of Tribunal i.e. with the approval of Regional Director.



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Definition: Section 2(85) defines a Small Company as:

“small company” means a company, other than a public company:

- (i) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees; or
- (ii) turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees:

Provided that nothing in this Section shall apply to—

- (A) a holding company or a subsidiary company;
- (B) a company registered under Section 8; or
- (C) a company or body corporate governed by any special Act;

For qualifying as a small company, it is enough if either the capital is less than rupees fifty lakhs or turnover is less than rupees twenty crores. It is sufficient if either one of the requirement is met without meeting the other requirement. However, these limits may be raised but not exceeding rupees 5 crores in case of capital and rupees 20 crores in case of turnover.

Further, holding and subsidiary companies are excluded from the concept of small company. Even though both the holding company and subsidiary company fulfill the capital or turnover requirement of a small company, they will still fall outside the purview of small company and the benefits which are available to a small company cannot be applied to a holding or subsidiary company.

Similarly, a company may classify as a small company in a particular year but may become ineligible in the next year and may become eligible again in the subsequent year.

Section 129(3) mandates that a company which has one or more subsidiary companies must prepare consolidated financial statements in addition to standalone statement. However, companies which have subsidiary companies, i.e. holding companies are outside the purview of small companies. It appears from the above that the requirement of consolidation of financial statements will not arise for small companies. But, explanation provided under sub-Section 3 of Section 129 contains that for the purpose of consolidation, the word “subsidiary” shall include associate company and joint venture. Thus, a small company which has any associate company or joint venture will still be required to prepare consolidated financial statements. This meaning of “subsidiary” is only for the limited purpose of Section 129(3) and not for the purpose of determining whether a company is a small company or not.



Salient Features:

- ☞ Only a private company can be classified as a small company.
- ☞ Holding company, subsidiary company, charitable company and company governed by any Special Act cannot be classified as a small company.
- ☞ For a small company, either the paid up capital should not exceed Rupees fifty lakhs or the turnover as per last statement of profit & loss should not exceed rupees two crores.
- ☞ The status of a company as “Small Company” may change from year to year. Thus the benefits which are available during a particular year may stand withdrawn in the next year and become available again in the subsequent year.

(Continued in page...8)



Column on IP Rights by

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Dear Readers,

This month, we will try to understand some conceptual aspects regarding intellectual property in the light of some recent pronouncements, in India.

1. Mere Registration of trademark not sufficient, if not coupled with use:

The Intellectual Property Appellate Board (IPAB) has, in connection with a petition for removal filed by ITC Limited, ordered removal of the marks ECLAIRS of Cadbury's, citing non-use of the mark by the latter. As per this pronouncement, Cadbury loses rights in the marks 'ECLAIRS'. Principles/ Learning to be noted:

- a) Mere registration of trademarks is not sufficient to protect IP therein. Continuous uninterrupted use, with demonstrable proof of such use is vital to protect, defend and prosecute intellectual property in trademarks.
- b) Continuous extensive use of the mark, or similar mark, whether independently or in conjunction with any other trademark, by a business rival can weaken the justification for continuance of exclusive property in the trademark.
- c) In addition to litigation at the Courts, a business rival may file petition with the Registry for removal of trademarks alleging that the registered marks wrongly remained in the Trademarks Register, the said Marks have not been put to genuine use and are hence liable to be removed from the Trademarks Register and/ or that the marks in question were not distinctive of the goods of the registered proprietor.
- d) Words or expressions that are descriptive as per dictionary meaning cannot be held to be unique so as to qualify for grant of a Trademark.
- e) In the absence of demonstrable use of a Trademark, mere submission of Trademark registration certificates of various countries will not help to establish claim over the Trademark.

2. Compulsory License under Indian Patents law

The Controller of Patents may issue a compulsory license in respect of a patent, after three years of issuance of the patent if one of the following conditions are satisfied:

- a) **Reasonable requirements of the public with respect to such patented invention are not satisfied** – while a patent is granted to protect the rights of an inventor / patentee and to motivate the inventor or such other person to commercially exploit and gain from the labour and fruits of such invention, the inventor/ patentee cannot misuse the grant of a patent merely to block the harnessing of the invention, thereby depriving the public from the benefits of the invention. In other words, an inventor or patentee, by obtaining a registered patent, cannot say 'neither will I use, nor will I allow others to'.
- b) **The patented invention is not available to the public at a reasonable price** – this principle is based on social justice. Again, while an inventor/ patentee, who has undertaken high cost/ high risk research and has validly obtained exclusive rights, is entitled to commercial exploitation of

IP Now!

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'Aachi' cannot be monopolized: Madras HC!

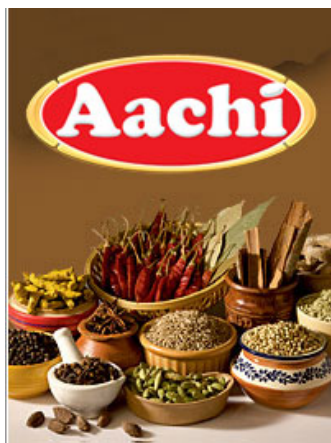
Section 29(4) of Trade Marks Act, 1999 provides for initiating an action against infringement of a registered trademark, in case an identical or similar trademark is used in relation to goods or services which are not similar to those of the goods or services for which the claimant's trademark is registered.

The Madras High Court vide its recent judgment dated 12th November, 2013 in **Aachi Masala Foods P Ltd and another v. Aachi Cargo Channels P Ltd** ruled that a claim for infringement of a registered trademark under Section 29 in respect on dissimilar goods (i.e., goods in respect of which the claimant's trademark is not registered) requires satisfaction at least one of the three conditions provided under sub-section (4) of the said Section.

Aachi Masala Foods P Ltd (Aachi Masala), the applicant, owns the trademark

the benefits of the invention to the exclusion of others, during the tenure of the patent, he/she cannot claim unreasonable profits on such invention by prohibitive pricing.

- c) **The patented invention in not worked in India** - Thus, when the IPAB upheld grant of compulsory license to a generic pharma manufacturer in India (NATCO), it was hailed by some as a warning for drug companies engaged in exorbitant pricing, and as a ray of hope for public to access health products at affordable prices, but was despised by others as endangering pharmaceutical research. Recently, the Controller of Patents has held that an applicant for a compulsory license will first have to make all sincere efforts to obtain a voluntary license from a patentee, before seeking grant of compulsory license. This finding was pursuant to an application for compulsory license, against the patentee – Bristol Mayer Squibb (BMS).



“Aachi” and the said trademark was registered in 1999 for masala and spices. Aachi Cargo Channels P Ltd (Aachi Cargo), the respondent, is involved in the business of cargo services. Aachi Masala had filed a suit seeking permanent injunction against Aachi Cargo for use of the trademark “Aachi” as part of their corporate name. They had also filed an application under Section 22 of the Companies Act, 1956 before the Regional Director seeking rectification of name. While said suit for permanent injunction was pending, Aachi Masala filed another suit for seeking temporary injunction against Aachi Cargo until the disposal of the suit for permanent injunction. The learned Single Judge who heard the matter disposed the suit against Aachi Masala and thus refused to grant temporary injunction. Hence it was appealed.

The contention of Aachi Masala was that the learned Single Judge failed to appreciate the scope and ambit of the provisions of Section 29(4) of the said Act despite the fact that the Aachi Masala was the registered proprietor of the trade mark “Aachi” and hence enjoys exclusive right to use the trade mark “Aachi” which enjoys wide reputation.

Aachi Cargo contended that, they and Aachi Masala operating in two different and distinct fields having no connection in whatsoever with each other and hence there is no likely hood of causing any confusion in the minds of public.

After examining the arguments of both parties, dismissing the appeal, the Madras High Court ruled that:

- Both Aachi Masala and Aachi Cargo operated in unconnected business
- Though both used the trademark “Aachi”, the representation by Aachi Masala on the labels of its masalas and spices has nothing to do with the cargo services offered by Aachi Cargo.
- Not even one of the three conditions of Section 29(4) namely, (i) identical or similarity of the trade marks, (ii) used in relation with dissimilar goods or services and (iii) the registered trademark having reputation in India, thereby use of the mark by the defendant will be detrimental to the distinctive character or repute of the registered trademark have been proved.
- “Aachi” in Tamil means “grandmother” which is in common use throughout the State of TamilNadu and hence it cannot be monopolised by Aachi Masala.

In the aforesaid case, even though the Madras High Court ruled that not even one of the conditions under Section 29(4) was satisfied, it may be noted that the **three conditions are cumulative in nature and not independent of each other and hence all the three conditions needs to be satisfied if the applicant has to succeed.**

“Small Companies” ... continued from page 6

Special Provisions and Exemptions: The privileges/exemptions available to a small company are same as that available to a one person company, but not all privileges available to a one person company are available to a small company. For the sake of easy understanding and clarity, all the exemptions available to a small company are provided below.

- The annual return of a Small Company can be signed by the company secretary alone, or where there is no company secretary, by a single director of the company.

- A small company may hold only two board meetings in a year, i.e. one Board Meeting in each half of the calender year with a minimum gap of ninety days between the two meetings.
- A small company need not include Cash Flow Statement as part of its financial statement.
- Provision regarding mandatory rotation of auditor/maximum term of auditor being 5 years in case of an individual and 10 years in case of a firm of auditors is not applicable.

.o00



The National Legal Research Desk

Legal research is the process of identifying and retrieving information necessary to support legal decision making. The legal research includes each step of a course of action that begins with an analysis of the facts of a problem and concludes with the application and communication of the results of the investigation. The process of legal research generally involves finding primary sources of law in a given jurisdiction, searching secondary authority and searching non-legal sources for investigative or supporting information.

Legal research is performed by anyone with a need for legal information, including lawyers, Professional like us and anybody in need of legal information. Sources of legal information may differ from persons to person. Here I came up with one of the best website <http://nlrd.org/> which provides provisions of law on Violence against Women, Domestic Violence and Child Rights.

The <http://nlrd.org/> website is a knowledge Hub compiling all Laws, Judgments and Resource materials on Violence against Women and Children in India and also focuses on documenting the recent changes in the law, collect and update the recent Judgments of the Supreme Courts of India & the High Courts. Please refer the site for more information on the subject matter.

e-Tool for Professionals



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Recuva

Software that recovers deleted files, photos, music, and videos

Deleting files by accident is something that happens more often than we think, no matter how computer literates we are. This is why it's always a good idea to have a tool like Recuva, a user-friendly file recovery freeware tool for Windows. With Recuva, we can **restore files that have been accidentally deleted** from the computer and external sources which we can connect to computer like USB drives, HDD etc. It will even bring back files that have been deleted from our iPod by bugs, crashes and viruses! A very handy recovery wizard takes all the guesswork out of finding system files. All we have to do is select the type of files we want to recover (Document, photos, emails, videos, etc.) and where it's likely to be (recycle bin, on a media card, etc.). As soon as Recuva is finished, we'll see a list with all the recoverable files, which we can sort in several ways or search with a customizable filter tool. Then simply select the files we want to recover and just click recovery button. The sooner we use the program after deleting files, the more chance we have of recovering them. Also, try saving them to a different drive as it improves the success percentage.

Download RECUVA from: <http://recuva.soft32.com>

Few major advantages of the tool:

- Easy to use filter for results based on file name/type.
- Can be run from external storage devices like HDD, USB drives etc.
- Restores all types of files, documents, images, video, music, email, anything.
- Restores files from removable medias like Secure Digital, Memory Stick, Digital Cameras, External Hard Drives, etc.
- It's fast, user friendly and takes few seconds to run!

My Job

Seligman told a wonderful story. He recounted visiting a good friend in hospital when an orderly came into the room. The man proceeded to take out pictures from his bag and fix them to the wall, beyond the foot of the patient's bed. Seligman asked him what he was doing.

"My job? I'm an orderly on this floor," he answered. "But I bring in new prints and photos every week. You see, I'm responsible for the health of all these patients. Take Mr. Miller here. He hasn't woken up since they brought him in, but when he does, I want to make sure he sees beautiful things right away."

It's this issue that Martin Seligman addresses in his book: "Authentic Happiness." This hospital orderly, concluded Seligman, "did not define his work as the emptying of bedpans or the swabbing of trays, but as protecting the health of his patients and procuring objects to fill this difficult time of their lives with beauty. He may have held a lowly job, but he crafted it into a high calling."

<http://www.the-happy-manager.com/articles/motivation-in-the-workplace/>



Words worth Millions

**This is the gist of all worship:
To be pure and to do good to
others.**

Swami Vivekananda

National Youth Day is celebrated in India on 12 January on the birthday of Swami Vivekananda (12 January 1863). In 1984 the Government of India declared the day as the National Youth Day.





Column on
Industrial and Employment laws by

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The Factories Act, 1948

In India, the first Factories Act was passed in 1881. This Act was basically designed to protect children and to provide few measures for health and safety of the workers. This law was applicable to factories, which employed 100 or more workers. Subsequently several amendments were made with new version of factories act coming into play in 1891, 1911, 1922, 1934 & finally in 1948 with totally revamped legislation on factory administration. The Factories Act, 1948 is reckoned as a great landmark in the labor history of India. As the preamble states, it is an act to consolidate and amend the law regulating labour in factories. It is a social legislation and came in to force w.e.f 01st April'1949 with following objects:

- Regulate health, safety and welfare aspects of laborers working in factories.
- Prohibit employment of children below the age of 14 yrs.
- Restrict employment of women and adolescent worker before 06 am and after 07 pm.
- For certain other matters incidental and connected therewith factories.

Construction of the Act:

- 120 sections housed in 11 chapters with 03 Schedules.
- Read with Karnataka Factories Rules, 1969.

Applicability: Any premises whereon 10 or more person with the aid of power or 20 or more workers are /were without the aid of power working on any day preceding 12 months, wherein Manufacturing process is being carried on.

Key terms to be known without exception:

Factory – Sec.2 (m) means any premises including precincts thereof –

- Whereon 10 or more workers are working or were working on any day of preceding 12 months & in any such part manufacturing process is being carried with the aid of power;

- Whereon 20 or more workers are working or were working on any day of preceding 12 months & in any such part manufacturing process is being carried without the aid of power;

Manufacturing Process – Sec. 2 (k)

- Making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or
- Pumping oil, water, sewage or any other substance; or
- Generating, transforming or transmitting power; or
- Composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding;
- Preserving or storing any article in cold storage.

Occupier – Sec. 2 (n) means the person who has the **ultimate control over the affairs** of the factory.

- i. In case of firm or other associations of individuals – any one of the partners or members thereof shall be deemed to be the occupier;
- ii. In case of company – any one of the directors shall be deemed to be the occupier;
- iii. In case of factory owned or controlled by Central Government or any State Government or any local authority – the person(s) appointed to manage the affairs of the Factory by such Governments.

Factory Manager: Any person appointed as Manager of the factory by the Occupier who performs the function of managing the day to day functioning of the Factory.

Registration and Renewal: Registration and renewal of Factories license to be granted by Chief Inspector of Factories on submission of prescribed form, fee and plan.

Working hours, Spread over and Overtime:

- Weekly hours not more than 48
- Daily hours not more than 9
- Rest for at least 30minutes after 05 hours of working
- Spreadover not more than 10.5 hours
- Overtime not more than 1 hour per day and 12 hours per week
- Overtime not to exceed 50 hours per quarter – 3 months continuous – can be up to 75 hours with prior permission of inspector of factories.
- Overtime hour to be compensated by paying double the rate of gross wages
- Overlapping shifts prohibited
- Restrictions on employment of women & adolescent before 06.am and after 07.pm

Safety Measures – Sec.21 to 28

- Fencing of machinery
- Not allowing work on or near machinery in motion
- Not employing young persons on dangerous machines
- Striking gear and devices for cutting off power
- Installing self-acting machines
- Casing of new machinery
- Prohibition of employment of women and children near cotton – openers
- Providing hoists and lifts

Welfare Measures: Sec.42 to 49

- Canteen – 250 or more workers working
- Creches – 30 or more women workers working
- First-aid appliances – 01 first aid box for not less than 150 workers
- Welfare officer – 500 or more workers working
- Ambulance – 500 or more workers working
- Safety officer – 1000 or more worker working and 01 after ever 500 worker above 1000 worker

Health Measures: Sec.11 to 20

- Overcrowding – at least 14.2 cubic mtrs space per worker

- Drinking water, spittoons, disposal of wastes and effluents
- Ventilation and temperature, dust and fume controlling
- Artificial humidification and sufficient lighting

Annual leave with Wages: Sec.79 and 80

- Adult worker – 01 day for every 20 days worked – Accumulation up to 30 days
- Adolescent worker – 01 day for every 15 days worked – Accumulation up to 40 days
- Here encashment during the service is not provided for – it means during the service leave encashment may or may not be given.
- For leave encashment purposes wages means Gross Wages and not only Basic wages. However, since there is no provision for leave encashment during the service, encashment may be on Basic Wages during the service and must be on Gross Wages after cessation of service for any reasons.

Employment of Young Persons: Sec.67, 68 and 71

- Prohibition of employment of young children e.g. 14 years
- Non-adult workers to carry tokens – certificate of fitness
- Working hours for children not to be more than 4.5 hrs and not permitted to work during night shift.

Penal Provision:

- Contravention of Provisions or Rules – 2years imprisonment or Rs.100000/- fine or both – on continuation Rs.1000/- per day during such contravention.
- Contravention of safety provisions – Rs.25000/- for death, not less than Rs.5000/- for serious injuries and any subsequent contravention 3 years imprisonment or Rs.200000/- fine.
- Obstructing inspectors – Imprisonment up to 06 months or fine up to Rs.10000/- or both.
- Contravention by Occupier of his specific duties – 7 years imprisonment or Rs.200000/- fine or both and on continuation for one year, 10 years imprisonment.

Take a Guess....

1. Occupier means a person who has:

- i) Ultimate Control ii) Moderate Control iii) No control over the affairs of the Company.

2. Can an “Intern” be considered as Apprentice under the Apprentices Act, 1961 or under the Company Standing Orders?

- i) Yes ii) No iii) Not sure iv) Don't know

3. Workers have right to go on peaceful strike. It is their fundamental right enshrined under Part III of the Indian Constitution. Is this statement correct or in-correct?

4. How much % of employer contribution under EPF & MP Act, 1952 is attributed to Employees' Pension Fund?

- i) 12% ii) 3.67% iii) 15.67% iv) 8.33%

Answers are given elsewhere in this edition itself... 😊



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Index-based market-wide circuit breakers

SEBI has mandated that Market Wide Circuit Breakers for the movements in either BSE SENSEX or NSE Nifty whichever is breached earlier would be applicable. This would provide a cooling period to the market participants and to assimilate and re-act to the market movements. The index-based market-wide circuit breaker system applies at 3 stages of the index movement, either way viz. at 10%, 15% and 20%. These circuit breakers when triggered bring about a coordinated trading halt in all equity and equity derivative markets nationwide. The market-wide circuit breakers are triggered by movement of either the S & P BSE Sensex or the NSE CNX Nifty, whichever is breached earlier.

The trigger limits and the respective halt duration is given below:

Trigger Limit	Trigger Time	Halt duration	Pre-Opening duration post each halt	Session duration post each halt
10%	Before 1 Pm	45 Minutes	15 Minutes	
	At or After 1 PM to 2.30 PM	15 Minutes	15 Minutes	
	At or after 2.30 PM	No Halt	-	
15%	Before 1 PM	1 Hour 45 minutes	15 Minutes	
	At or after 1 PM before 2 PM	45 Minutes	15 Minutes	
	On or after 2 PM	Trading halt for the remainder of the day.	-	
20%	Any time of the day	Trading halt for the remainder of the day.	-	

Did you know?

Shrink wrap and click wrap

Shrink wrap and click wrap are common types of agreements used in electronic commerce.

Shrink wrap contracts are license agreements or other terms and conditions which can only be read and accepted by the consumer after opening the product. The term describes the shrink wrap plastic wrapping used to coat software boxes, though these contracts are not limited to the software industry.

A clickwrap agreement is mostly found as part of the installation process of software packages. It is also called a "click through" agreement or clickwrap license. The name "clickwrap" comes from the use of "shrink wrap contracts" in boxed software purchases.



Pick of the month

A joint account holder cannot be prosecuted?

The Supreme Court of India, in a recent case, Mrs. Aparna A. Shah v. Sheth developers (p.) Ltd. (2013) 40 Considering the language used in section 138 of the Negotiable Instrument Act, 1881 ('NI Act') and taking note of background agreement pursuant to which a cheque was issued by more than one person, it was opined that it was only the drawer of the cheque who could be made liable for the penal action under the provisions of the NI Act as per the provisions of the NI Act, in case of issuance of cheque from joint accounts, a joint account holder cannot be prosecuted, unless the cheque has been signed by each and every person who is a joint account holder. It couldn't be said that the complainant had no remedy against the appellant, but certainly not under section 138 of NI Act.



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Service Tax Updates
CA. Ashit Shah,
Mumbai

FEMA Updates
Team Genicon,
Chennai



CUSTOMS & FTP Notifications/ Circulars

Clarifies that benefit of SAD exemption on goods cleared from the Special Economic Zone/ Free Trade Warehousing Zone into Domestic Tariff Area unit on stock transfer basis for self-consumption i.e. otherwise than by way of sale is not available.

TRU Circular No. 44/2013-Cus. Dated December 30, 2013

Re-iterates that under no circumstances, Custom Cargo Service Provider approved for custody of imported or export goods and for handling of such goods shall lease, gift, sell or sublet or in any other manner transfer any of the premises in a customs area; or sub contract or outsource functions permitted or required to be carried out by him without written approval of the jurisdictional Commissioner of Customs.

No. 45/2013 dated December 31, 2013

Notifies that the Customs Baggage Declaration Regulations, 2013 providing for detailed declaration in Form I shall come into force from March 1, 2014 instead of January 1, 2014.

No. 133/2013-Cus. (NT) dated December 30, 2013

Amends Notification No. 10/2008-Cus. Dated January 15, 2008 to provide further concessions in respect of goods covered under the Comprehensive Economic Cooperation Agreement between India and Singapore.

No. 50/2013-Cus. Dated December 16, 2013

Amends Notification No. 12/2012-Cus, dated March 17, 2012 to increase rate of Basic Customs Duty on natural rubber from Rs 20/kg to Rs 30 /kg.

No. 51/2013-Cus. Dated December 20, 2013

Seeks to amend notification No. 98/2010-Customs dated 28th September, 2010 to modify the amount of anti-dumping duty on imports of DVD originating in or exported from Vietnam.

34/2013 - Cus (ADD), dt 31-12-2013

Seeks to levy anti-dumping duty on imports of Phosphoric Acid- Technical grade and Food grade (including Industrial grade) originating in or exported from China PR for a further period of five year.

33/2013 - Cus (ADD), dt 31-12-2013

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Case Law

The larger bench of CESTAT has held that wherever as per the terms of contract and on account of delay in delivery of manufactured goods, the buyer is liable to pay lesser amount (i.e. after reducing liquidated damages) than the generally agreed price, the resultant price would be the transaction value and such value shall be liable to levy of excise duty. It was held that after amendment to Section 4, the eventual value payable, after factoring in liquidated damages contractually stipulated for delayed supply, would be the transaction value and this would be the value relevant for levy of excise duty.

Commissioner V. Victory Electricals Ltd. - 2013 (298) ELT 534 (Tri. - LB)

Revisionary authority in the Ministry of finance has held that Rule 18 and Rule 19 of the Central Excise Rules, 2002 are two different sets of rules providing export benefits and that the manufacturer is free to opt any one. Once an option is exercised, it attains finality and cannot be reverted subsequently. In this case, the assessee exported goods without payment of duty under Rule 19 of the Central Excise Rules, 2002. However, subsequently duty was paid on such goods by debiting Cenvat Credit account and rebate under Rule 18 was claimed. The authority disallowing rebate under rule 18, however, allowed re-credit of such duty amount in Cenvat account of assessee.

In Re: Radiall India Pvt. Ltd. - 2013 (298) ELT 149 (GOI)

FEMA/RBI/SEBI Notifications/Circulars/News

It is decided to permit Holding Companies/ Core Investment Companies to raise ECB under automatic route/approval route for use in SPV subject to the following main conditions:

The business activity of SPV should be in the infrastructure and established exclusively for implementing the project.

The ECB proceeds is utilized either for fresh Capex or for refinancing of existing Rupee loans (under the approval route).

The ECB for SPV can be raised up to 3 years after the commencement of commercial operations of the SPV

In case of Holding Companies that come under the Core Investment Company (CIC) regulatory framework, The ECB availed is within the ceiling of leverage stipulated for CICs; and In case of CICs with asset size below Rs. 100 crore, the ECB availed should be on fully hedged basis. While using ECB proceeds for refinancing the existing rupee loans availed by SPV, it must be ensured that refinancing is not exceeding 25% of ECB raised by the infrastructure Companies (in the case of power Company it is 40%). All other aspects of extant ECB guidelines shall remain unchanged.

A.P. (DIR Series) Circular No. 78 dated December 3, 2013

The unlisted Companies who are proposing to access capital through issue of FCCB/ADR/GDR in the international capital market would require prior or simultaneous listing in India. The DIPP has liberalized the condition of prior or simultaneous listing in India for the period of two years from the date of issue of FCCB/ADR/GDR, subject to satisfaction of conditions specified in the circular.

Press note no. 7/2013 - DIPP

CENVAT

Notifications/ Circulars

Amends Notification No. 30/2012-CE dated July 09, 2012 and adds additional categories of products in the list of exports not eligible under Focus Market Scheme and Incremental Export Incentive Scheme.

No. 31/2013-CX, dated December 26, 2013

Fixes tariff value in respect of excisable goods falling under Tariff Heading 3304 of the Central Excise Tariff Act, 1985 in retail packages, and in respect of which the provisions of Section 4A of the Central Excise Act, 1944 do not apply, equivalent to retail sale price declared on such goods less such amount of abatement prescribed under Notification No.49/2008-CE (NT) dated December 24, 2008.

No. 16/2013-CE (NT) dated December 31, 2013

Amends Rule 9 of the Central Excise Rules, 2002 to make it mandatory for an importer to obtain central excise registration for issuing Cenvatable invoice.

No. 17/2013-CX (NT) dated December 31, 2013

Seeks to amend notification no. 30/2012-cen ex dated 09.07.2012 for adding additional categories in the list of exports not eligible under Focus Market Scheme and Incremental Export Incentive Scheme

31/2013-CE, dt. 26-12-2013

Seeks to amend the notification No. 12/2012- Central Excise, dated 17th March, 2012 by adding the name of Kameng Hydro Electric Power Project, (600 MW) of North Eastern Electric Power Corporation Ltd. (NEEPCO)

32/2013-CE, dt. 26-12-2013

Case Law

Refund of Special Additional Duty of Customs as per Customs Notification 102/2007-Cus., was rejected by commissioner (Appeals) on the ground that the importer did not mention in the invoices, the exact wordings used in the exemption notification, that no credit of the additional duty shall be available. The Tribunal however, allowing refund, held that

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the wordings used will not make a difference as long as the intent and purpose are satisfied.

Singhania Chemicals Vs. Commissioner - 2013-TIOL-1853-CESTAT-DEL

CESTAT, Ahmedabad has set aside the penalty imposed under section 112 of the Customs Act, 1962 when the differential duty was discharged by the importer prior to service of show cause notice. The tribunal relied upon Section 28(2). The importer in this case had availed benefit of concessional rate of duty under notification No. 21/2002 and the goods were cleared after examination by Customs. Differential duty and interest were further paid after ineligibility to avail benefit under the notification was pointed out by the department which also issued a show cause notice subsequent to payment of duty. Confiscation of the goods which were cleared without seizure was set aside by the Tribunal.

Shreeji shipping ltd. Vs. Commissioner-2013-TIOL-1860-CESTAT-AHM

VAT, Sales Tax and Entry Tax

Case Law

The High Court of Kerala held that air bubble film roll is classifiable under Tariff Heading 3920 of the HSN Code which is assigned to Entry No. 60 of List A of Schedule 3 to the Kerala Value Added Tax Act, 2003. Therefore, same is taxable @ 4% and not at residuary rate.

COF AB Vs. Commissioner of Commercial Taxes [2013-VIL-119-KER]

The High Court of Madhya Pradesh held that high mast iron pipes used as electric poles are covered under Entry No. 30(V) of Part II of Schedule II of the Madhya Pradesh Value Added Tax Act, 2002 and are exigible to be taxed at 4%. The High Court also observed that residuary rate of tax can only be resorted to when in a liberal construction the specific entry cannot cover the goods in question.

Surya Roshni Ltd. Vs. State of MP [2013-VIL-121-MPJ]

The High Court of Madras held that supplying, laying and polishing of hydraulic pressed mosaic tiles at the site of customer is outright sale of goods and not works contract.

M.R. Tiles Vs. State of Tamil Nadu [2013-VIL-123-MAD]

The High Court of Madhya Pradesh held that when subsequent to filing of return and passing of assessment order, auditor find that assessee was liable to be assessed at residuary rate of tax in respect of certain product, it could not be held that petitioner acted deliberately in defiance of law or guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. In such circumstances, imposition of penalty is against the law.

Vikash Rexine House Vs. State of MP [2013-VIL-126-MPJ]

The High Court of Kerala held that construction of floating restaurant is a works contract and not a contract of outright sale.

Floatles India Pvt. Ltd. Vs. CTO [2013-VIL-127-KER]

The High Court of Madras held that contract for assembling of design, manufacture assembling, supply erection, commissioning of crane is a composite works contract and not a simple sale.

Jessop & Co. Ltd. Vs. State of TN [2013-VIL-129-MAD]

Service Tax

Notifications/ Circulars/News

Seeks to amend notification no. 06/2013-ST dated 18.04.2013 for adding additional categories in the list of exports not eligible under Focus Market Scheme and Incremental Export Incentive Scheme

17/2013-ST dt. 26-12-2013

Case Law

The Tribunal relied on the decision of the High Court of Ranchi in the case of Ranchi Club Vs CCE [2012-TIOL Jharkhand-ST] and held that when provides service to its members, it is not a service by one legal entity to another. Accordingly, the same is not liable to service tax.

Alliance Francaise De Delhi Vs. Commissioner of Service Tax [2013-TIOL 1906-CESTAT-DEL]

The Tribunal held that, promoting a particular game or sport is not a public service. Therefore, exemption in respect of charitable service provided in terms of exclusion in the definition of club or association service would not be available to assessee.

Vidarbha Cricket Association Vs. CCE [2013 TIOL-1915-CESTAT]

There was delay in filing refund application under Notification No. 12/2005 - ST dated 19-04-2005. Refund claim was filed on 03-11-2008, in respect of service tax paid between the period 13-04-2006 to 09-02-2007. Pursuant to Section 11B of the Central Excise Act, 1944, refund application has to be made within a period of one year from the relevant date. Hon'ble Ahmedabad Tribunal had relied on the basis of judgment of Manubhai & Co. [Final Order No. A/1446/2010 - WZB/Ahd dated 17-09-2010 where in it was held that the requirement of filing of declaration is of procedural nature under notification and delay, if any, can be condoned.

Kothari Infotech Ltd. - 2013 (38) Taxmann.com 298 (Ahmedabad)

Penalty was imposed under section 77 & 78 of the Finance Act, 1994 by Commissioner (Appeals). Appellant had challenged the said decision by relying on the decision of P & H High Court in the matter of First Flight Courier Ltd. (2011) 22 STR 622 (P & H). Respondent relied on the decision of Kerala High Court in the matter of Krishna Poduval (2006) 1 STR 185 (Ker). Delhi Bench fell within the jurisdiction of P & H High Court and thus its decision had to be followed and not the contradictory decision of the other High Court pronounced before the said decision. Accordingly, matter was set-aside.

Surya Consultants - 2013(32) STR 217 (Tri-Del)

Appellant paid the service tax twice, once on billing bases instead of receipt bases and another at the instance of Department, as Department had passed orders raising the demand of service tax on receipts realized in subsequent period without adjusting service tax paid at the time of billing. Hon'ble High Court held that question of limitation in case of retention of service tax, which was paid twice, would not arise and as such retention was without authority of law. Unjust enrichment would also be not applicable in the

instance matter. Accordingly, direction issued to refund the tax paid.

C. C. Patel & Associates P. Ltd. - (2012) 32 STR 392 (Guj)

Appellant had taken Cenvat Credit in the year 2009 for the period pertaining to year 2004 to 2009. Department had denied the Cenvat Credit and levied interest and penalties on the same. Hon'ble Chennai Tribunal observed that neither the Central Excise Act nor Cenvat Credit Rules prescribed any time limit within which credit should be taken, although it was prescribed that Cenvat credit would be available immediately. Hence, appeal was allowed with consequential relief.

Central Bank of India - 2013 (32) STR 525

Assessee was providing Renting of Immovable Property Services and charges Electricity Charges separately from the Tenants and not included such charges in the value of taxable services. Department had issued Show Cause Notice to include the amount in the value of taxable services. Hon'ble Mumbai Tribunal observed that Electricity is regarded as goods due to Excise Tariff Heading 27 of Central Excise Tariff Act and as per Schedule A-20 of the Maharashtra Value Added Tax Act. Notification No. 12/2003 provides exemption for supply of goods and hence service tax was held not applicable on reimbursement of electricity expenses.

ICC Reality (India) P. Ltd. - 2013 (32) STR 427 (Tri - Ahmedabad)

Assessee was providing services of transportation of answer sheets from various district collection Centers and delivered to Nagpur University. Charges for such transportation were paid on per kilo meter basis. Lower Authority considered such services as liable under "Rent-a-cab" services and levied penalty and interest. Hon'ble Mumbai Tribunal observed that the assessee was hired on monthly, weekly or daily basis and therefore the service of transportation of answer sheets could not be termed as "rent a cab operator's services". Thus demand as well as penalty and interest were set aside.

Swapnashilp Travels - (2013) TIOL 1765 (Tri - Mum)

Direct Tax

Case Law

ITAT rejects assessee's contention that there was no provision in return of income to disclose bank details; Confirms penalty as assessee failed to prove bonafides of explanation regarding source of bank deposits and also failed to discharge burden under Explanation 1 to Sec. 271(1)(c); Follows SC ruling in MAK Data; However, penalty reduced from 200% to 100% of tax sought to be evaded: Cochin ITAT

Mohamed Haris [TS-674-ITAT-2013(COCH)]

ITAT confirms TP adjustment for interest in respect of delay in receiving sales proceeds from AEs beyond 200 days; Rejects assessee's claim that no TP adjustment is required as no interest was charged on non-AE receivables; Delay in receiving proceeds from AEs extended beyond 700 days, while maximum delay for non-AE receivable was 203 days; Transactions with non-AE not comparable with transactions with AEs; Interest to be charged at LIBOR plus 1.5%; Mumbai ITAT

Dania Oro Jewellery Pvt. Ltd. [TS-360-ITAT-2013(Mum)-TP]

Still Guessing? Answers for the queries in Page 12: 1. "i" 2. "ii" 3. "Incorrect" 4. "iv"

NEWS ROOM

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Bullet News →

- *The Government has reduced import tariff value of gold and silver to \$392 per ten grams and \$638 per KG, respectively.*
- *Demat allotment of preferential shares must for foreign investors: SEBI*
- *Fund raising via IPOs sinks to 12- yr low in 2013*
- *Rs.5,000-crore deepwater container transshipment port to be set up at Vizhinjam, Kerala cleared by Environment ministry*

EU moves WTO against India's curbs on marble

The European Union has moved the WTO on restrictions by India on import of rough marbles and marble products on safety concerns and has sought to know the safety issues that marble imports posed for the country. According to the EU, India has restricted import of rough marble and travertine blocks to 6 lakh tonnes and that too at a minimum import price of \$325 per tonne for 2013-14.

China Accepts WTO Ruling on Chicken imports from US

China is geared to re-examine the anti-dumping duties on chicken imported from the U.S. after the WTO's unfavourable ruling against the country anti dumping duties. China's Ministry of commerce initiated antidumping and countervailing investigations of import of "broiler products" from U.S. in the year 2009. Although the U.S. offered to settle down the disputes through consultations, the parties failed to reach a conclusion. The U.S. appealed to the WTO for redressing the China's violation of numerous procedural and substantive obligations under the WTO's Anti-Dumping Agreement and Agreement on Subsidies and Countervailing Measures.

US SPY Agency developing computer to crack privacy codes

The US National Security Agency is trying to develop a computer that could ultimately break most encryption programs, whether they are used to protect other nations' spying programs or consumers' bank accounts. The report,

which the newspaper said was based on documents leaked by former NSA contractor Edward Snowden, comes amid continuing controversy over the spy agency's program to collect the phone records Internet communications of private citizens. The Washington Post said that the NSA is trying to develop "quantum computer" to break encryption codes used to cloak sensitive information. Such a computer, which would be able to perform several calculations at once instead of in a single stream, could take years to develop, the newspaper said.

Vodafone seeks clear, early deal to end tax dispute

British telecom giant Vodafone Plc has requested Finance Ministry for an early non-binding reconciliation to end the two ongoing tax disputes involving more than Rs. 20,000 crore. The telecom major is also said to have suggested that all tax claims against the company be clubbed together for settlement. In a letter to the finance ministry, Vodafone has suggested that an early resolution to the tax issues will help its subsidiary focus on expansion plans, a senior official in the telecom ministry said. Contents of the letter also reflect the conciliatory approach the company recently indicated to end the tax issues.

DoT allows telecom service providers to switch technologies

The department of telecommunications (DoT) has eased the rules for companies planning to participate in the auctions for airwaves due in February. The DoT has given freedom to the telecom service providers to switch between technologies. This will make the roll out of 4G technologies easier. This is in response to as many as 276 queries raised by the telecom industry on the spectrum auctions.