The Institute of
Company Secretaries of India
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

'ICSI House', 22 Institutional Area, Lodi Road, New Delhi-110003, India.
Phone-(011) 41504444, 24617321-24, Fax-(011)24626727, Email - info@icsi.edu

CS UPDATE

April 11, 2007

CONTENTS

FORTHCOMING PROGRAMMES

- **Full Day Programme on Compliance of Securities Laws by Capital Market Intermediaries**
- **Programme on Compliance of Listing Agreement**

HOME

The Institute of
Company Secretaries of India
CENTRE FOR CORPORATE RESEARCH & TRAINING

Plot No 101, Sector 15, CBD Belapur, Navi Mumbai 400 614
Phone : 022-27577814/15/16 **Fax** : 022- 27574384, **E-Mail** : ccrt@vsnl.com

Announces Full Day Program on

Compliance of Securities Laws by Capital Market Intermediaries

Venue: ICSI-CCRT Conference Hall, CBD Belapur, Navi Mumbai
Day & Date: **Saturday April 21, 2007**
Timing: 10.00 am to 5.30 pm

OBJECTIVE

The securities market has essentially three categories of participants viz. issuers of securities, investors in securities and the intermediaries. The regulators (SEBI, MCA, RBI etc.) develop fair market practices and regulate the conduct inter alia, of the intermediaries. To enable the various participants of the securities markets in general and company secretaries in particular to be aware of the regulatory framework for compliance by the capital market intermediaries i.e. brokers, mutual funds, merchant bankers, etc. ICSI-CCRT is organizing this full day program.

COVERAGE

Overview of the main regulatory framework governing the intermediaries like brokers, commodities brokers, merchant bankers, mutual funds, etc., in the securities market.

WHO SHOULD ATTEND

The Program is designed for Senior Executives in the Corporate Sector dealing with the Capital Market, Company Secretaries, Chartered Accountants, Cost Accountants, Advocates, Company Directors and other Professionals.

FACULTY

- **Shri J. Ravichandran**
  Director – National Stock Exchange of India Ltd.
  has agreed to inaugurate the Program
  and initiate the discussions
- Other eminent faculty include:
  Sri V R Narasimhan
  Chief Compliance Officer-Kotak Mahindra Asset Management Co. Ltd.
  Sri Bhashyam Seshan,
  Company Secretary, National Commodity and Derivatives Exchange Ltd.
  Ms Smruti Jhaveri,
  Vice President(Compliance)
  Edelweiss Securities
  Representatives of Merchant Bankers

Members attending the program would be entitled to **FOUR** program Credit hours as per Institute Guidelines

Fees: Rs. 900/- per Delegate for Members (ICSI/ICAI/ICWAI)
Rs.1200/- per Delegate for others
ICSI-CCRT Annual Members Free of Charge

BACK

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Company Secretaries of India

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Plot No 101, Sector 15, CBD Belapur, Navi Mumbai 400 614
Phone : 022-27577814/15/16; Fax : 022- 27574384; e-mail : ccrt@vsnl.com

Jointly with

SOUTHERN INDIA REGIONAL COUNCIL

Announces

Members attending the programme would be entitled to **Four** (4) Program Credit Hours as per Institute guidelines

Program on

COMPLIANCE OF LISTING AGREEMENT

Venue:
ICSI-SIRO House, New No.9, Old No.4,
Wheat Crofts Road, Nungambakkam, Chennai-600 034

Day, Date & Time:
Saturday, May 12, 2007 from 10.00 am to 5.00 pm

Coverage:
Compliance of Listing Agreement
Regulatory Overview
Industry Perspective
Practitioners' Role

Faculty:
Shri M. S. Sundara Rajan, Executive Director, Indian Bank
has been requested to be the **Guest of Honour** and deliver the Key Note Address

Other Faculty includes:

Representative of SEBI

Shri K. Sethuraman
Reliance Industries Limited
Shri K. Hari
Asst. Vice President
National Stock Exchange of India Limited

Fees: Rs. 900/- per Delegate for Members (ICSI/ICAI/ICWAI) - Rs. 1200/- (Others)

ICSI-CCRT Annual Members free of charge

Fees by Local Cheque/DD in favour of "The Institute of Company Secretaries of India" payable at Chennai, may be sent to the Dy. Director, ICSI-SIRO, ICSI-SIRO House, New No.9, Old No.4, Wheat Crofts Road, Nungambakkam, Chennai-600 034 .Phone: 044- 28279898/28222212
Fax No.044 28268685

Program Director: Shri R.Sridharan, Council Member, The ICSI
Program Co-ordinator: Shri S. Diraviam, Chairman, ICSI-SIRC

BACK

CASE LAW

- **Manager, ICICI Bank Ltd. vs. Prakash Kaur and Ors. (SC)**
- **S. A. Builders Ltd. v. Commissioner of Income-Tax (Appeals) and Another**

HOME

[2007] 289 ITR 26 (SC)
S. A. Builders Ltd. v. Commissioner of Income-Tax (Appeals) and Another

Facts:

S. A. Builders Ltd., a company engaged in the business of civil construction, claimed allowance based on investment deposit account under section 32AB of the Income Tax Act, 1961. The allowance was denied on the ground that civil construction is not a manufacturing activity, on the basis of Supreme Court ruling in CIT v. N. C. Budharaja and Co. [1993] 204 ITR 412

Issues:

Whether the denial of the allowance under section 32AB is correct?

Decision:

The Supreme Court decision in CIT v. N. C. Budharaja [1993] 204 ITR 412 (SC) held that

"A statute cannot always be construed with the dictionary in one hand and the statute in the other. In view of the legislative history of the relevant provisions and the context, it is not possible to read the word "construction" in the section as referring to construction of dams, bridges, buildings, roads or canals. The words "articles" and "things" are used interchangeably. In the scheme and the context of the provision, it would not be right to isolate the word "thing", ascertain its meaning with reference to the law lexicons, and attach to it a meaning which it was never intended to bear.

The expressions "manufacture" and "produce" are normally associated with movables- articles and goods, big and small- but they are never employed to denote the construction activity of the nature involved in the construction of dam or for that matter a bridge, a road or a building."

On the above basis it can be said that civil construction would not amount to any manufacturing activity and hence the investment allowance cannot be allowed.

The assessee's claim was rejected on following two grounds:

1. The assessee was engaged in the business of civil construction and was not carrying on any manufacturing activity.

2. The claim was not based on the facts on record. The deduction under section 32AB was not automatic and was subject to various conditions laid down in that provision. Whether the assessee fulfilled those conditions for claiming the deduction or not required examination into facts which were not on record.

BACK

TAXATION

CUSTOMS ACT

- Amendments in the Customs (Advance Rulings) Rules, 2002
- Imposition of provisional anti-dumping duty on import of Flat base Steel Wheels from China
- Change in the General Exemption No. 42 and 43 related to import of specified goods from Singapore
- Change in the General Exemption No. 103 related to imports under Duty Entitlement Pass Book
- Imposition of provisional anti-dumping duty on the imports of Vitamin – A Palmitate originating in or exported from China & Switzerland
- Administrative Control over Export Oriented Units which are large tax payer
- International transshipment of LCL containers at Indian Ports
- Warehousing – Charging of interest on warehoused goods
- Dispensing with verification of DEPBs at EDI ports in the light of Electronic Transmission of Shipping Bills and DEPBs.

CENTRAL EXCISE ACT

- Omission of General Exemption No. 34 relating to SEZs and 29 relatin got EOUs, STP & EHTP
- Central Excise (Advance Rulings) Amendment Rules, 2007
- Change in the Tariff value for Pan Masala in retail packages
- Requirement of filing declaration by the producers/manufacturers of hand made unbranded biris
- IV Cannulas – availability of exemption under notification No. 6/2006 dated 1.3.2006
- Simultaneous availment of Notification No. 30/2004 – CE & 29/2004 – CE both dated 9.7.2004 by the manufacturers of goods falling under Chapter 50 to 63 of the CETA, 1985
- Special procedure for removal of excisable goods for carrying out certain processes under rule 16C of the Central Excise Rules, 2002

SERVICE TAX ACT

- Service Tax (Advance Rulings) Amendment Rules, 2007
- Levy of service tax on interconnection service provided by one telecom operator to another
- Liability of 'money changers' to pay service tax under 'banking and other financial service'.

INCOME TAX ACT

- Income Tax (Third Amendment) Rules, 2007

HOME

CUSTOMS ACT

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY
PART II, SECTION-3, SUB- SECTION (i) dated the 6/3/2007].

MINISTRY OF FINANCE

(Department of Revenue)

New Delhi, the 6/3/2007.
15 Phalguna, 1928 Saka

NOTIFICATION NO. 21 / 2007 - Customs (NT)

Subject: Amendments in the Customs (Advance Rulings) Rules,2002,

G.S.R. (E).- In exercise of the powers conferred by section 156 read with sub-sections (1) and (3) of section 28 H, sub-section (7) of section 28-I of the Customs Act, 1962 (52 of 1962), the Central Government hereby makes the following rules further to amend the Customs (Advance Rulings) Rules,2002, namely: -

1. (1) These rules may be called the Customs (Advance Ruling) Amendment Rules, 2007.
(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Customs (Advance Rulings) Rules, 2002 (hereinafter referred to as the said rules), in clause (b) of rule 2, for the words “the Authority for Advance Rulings”, the words and brackets “the Authority for Advance Rulings (Central Excise, Customs and Service Tax)” shall be substituted.

3. For the “Form” appended to the said rules, the following “Form” shall be substituted, namely:-

BACK

"FORM- AAR (CUS-I)

[Application for Advance Ruling (Customs)]
(See rule 3 of the Customs (Advance Rulings) Rules, 2002)
BEFORE THE AUTHORITY FOR ADVANCE RULINGS
(CENTRAL EXCISE, CUSTOMS AND SERVICE TAX)
NEW DELHI

(Form of application for seeking Advance Ruling under section 28H of the Customs Act, 1962)

Application No…….of……

1.	**Details of Applicant**		
	(i) Full name	:	
	(ii) Complete address	:	
	(iii) Telephone number(with STD/ISD code)	:	
	(iv) Fax number (with STD/ISD code)	:	
	(v) E-mail address	:	
	(vi) Postal address (to be provided if different from (ii) above)	:	
2.	**Status of the Applicant(Tick whichever is applicable)**		
	(i) a non-resident setting up a joint venture in India in collaboration with,- **(a)** a non-resident; or **(b)** with a resident;	:	
	(ii) a resident setting up a joint venture in India in collaboration with a non-resident;	:	
	(iii) a wholly owned subsidiary Indian company, of which the holding company is a foreign company;	:	
	(iv) a joint venture in India;	:	
	(v) a resident falling within any such class or category of persons, as the Central Government may, by notification in the Official Gazette, specify in this behalf (mention notification number);	:	
	(vi) Importer/Exporter importing/ exporting any goods from Republic of Singapore under Comprehensive Economic Cooperation Agreement (CECA) dated 29.06.2005.	:	

3.	**Basis for claim as a proposed joint venture [ref. 2(i) & (ii) above] (furnish copy of following).**		
	(a) Memorandum of Understanding; or	:	
	(b) Letter of Intent; or	:	
	(c) Articles of Association etc.; or	:	
	(d) Any other document.	:	
4.	**Details of proposed joint venture**		
	(i) Full name	:	
	(ii) Complete address	:	
	(iii) Telephone number(with STD/ISD code)	:	
	(iv) Fax number (with STD/ISD code)	:	
	(v) E-mail address	:	
	(vi) Postal address(to be filled if different from (ii) above)	:	
5.	**Details of resident/non-resident party other than the applicant forming the Joint Venture**		
	(i) Full name	:	
	(ii) Complete address	:	
	(iii) Telephone number(with STD/ISD code)	:	
	(iv) Fax number (with STD/ISD code)	:	
	(v) E-mail address	:	
	(vi) Postal address(to be filled if different from (ii) above)	:	
6.	**In case of a wholly owned Indian Subsidiary Company furnish the following details:-**		
A.	**(i)** Name of Foreign holding company	:	
	(ii) Complete address	:	
	(iii) Telephone number(with STD/ISD code)	:	
	(iv) Fax number (with STD/ISD code)	:	
	(v) E-mail address	:	
	(vi) Postal address(to be provided if different from (ii) above)	:	
B.	Percentage of Foreign holding in the Indian Subsidiary Company.	:	
7.	**In case of a joint venture [ref. 2(iv) above]**		
	(i) The persons forming the joint venture/ constitution of joint venture.	:	

	(ii) Status of constituent persons, i.e. resident/non-resident.	:	
	(iii) Existing activities if any.	:	
8.	**Nature of activity proposed to be undertaken.**	:	
9.	**Present status of activity.**	:	
10.	**Importer-Exporter Code number of the applicant (if any).**	:	
11.	**Permanent Account Number (Income Tax) of the applicant (if any).**	:	
12.	**Question of Law or fact on which Advance Ruling required (Tick whichever is applicable and provide details against ticked item):-**		
	(i) classification of goods under the Customs Tariff Act, 1975;	:	
	(ii) applicability of a notification issued under sub-section (1) of section 25 of the Customs Act, 1962, having a bearing on the rate of duty;	:	
	(iii) the principles to be adopted for the purposes of determination of value of the goods under the provisions of the Customs Act,1962;	:	
	(iv) applicability of notification issued in respect of duties under the Customs Act,1962, the Customs Tariff Act, 1975 and any duty chargeable under any other law for the time being in force in the same manner as duty of Customs leviable under the Customs Act;	:	
	(v) determination of Origin of goods in terms of the rules notified under the Customs Tariff Act, 1975 and matters relating thereto.	:	
13.	**Statement of relevant facts having a bearing on the question(s) raised.**	:	
14.	**Statement containing the applicant's interpretation of law and/or facts, as the case may be, in respect of the aforesaid question(s) (i.e. applicant's view point and submissions on issues on which the advance ruling is sought).**	:	
15.	**Whether the question(s) raised is pending in the applicant's case before any officer of Customs, Appellate Tribunal or any Court of Law? If so, provide relevant details.**	:	
16.	**Whether a similar matter as raised in the question(s) by the applicant has already been decided by the Appellate Tribunal or any Court?**	:	

17.	**Concerned Commissioner of Customs i.e. from where import/export is proposed to be undertaken.**	:	
18.	**List of documents/statement attached, (attach the list on a separate sheet, if necessary.**	:	
19.	**Particulars of demand draft enclosed with the application**	:	

(Applicant's signature)

VERIFICATION

I, _____(name in full and in block letters), son/daughter/wife of _____ do hereby solemnly declare that to the best of my knowledge and belief information and statements furnished in above format and in the annexure(s) thereto including the documents enclosed are correct. I am making this application in my capacity as _____ (designation). I am competent to make and verify this application.

2. I also declare that the question (s) on which the advance ruling is sought is/are not pending in my case before any Customs Authority, Appellate Tribunal or any Court.

3. Verified this……day……..of……200 ……at ……

(Applicant's signature)

ANNEXURE I

Statement of relevant facts having a bearing on the question(s) on which advance ruling is required

Place ……..
Date …….

(Applicant's signature)

ANNEXURE II

Statement containing applicant's interpretation of law and/or facts, as the case may be, in respect of the questions(s) on which advance ruling is required

Place ……..
Date …….

(Applicant's signature)

Notes:

1.	The application must be filled in English or Hindi, in quadruplicate.
2.	The application must be accompanied by an account payee demand draft of Indian Rupees two thousand five hundred drawn in favour of Authority for Advance Rulings(Central Excise, Customs & Service Tax), payable at New Delhi. Particulars of the draft should be entered in the column pertaining to item number 19.
3.	The number and year of receipt of the application will be filled in by the office of the Authority for Advance Rulings.
4.	If the space provided for answering any item in the application is found insufficient, separate sheets may be used for this purpose. Each sheet must be signed at the bottom by the applicant.
5.	In reply to item number 2 the applicant must state its status i.e. whether an individual, Hindu undivided family firm, company, firm association of persons, wholly owned subsidiary, Joint Venture or any other person.
6.	For item number 5, the reply must be given in the context of the provisions regarding 'residence' in India, 'non resident', 'Indian Company', and 'Foreign Company' as per the Income Tax Act, 1961(43 of 1961).
7.	In reply to item number 9, the applicant must state the present status of the business activity in respect of which advance ruling has been sought i.e. the stage to which it has progressed.
8.	Regarding item number 12, the question(s) should be based on the activity proposed to be under taken; hypothetical questions will not be entertained.
9.	In respect of item number 13, the applicant must state in detail the relevant facts and also disclose the nature of his activity and the likely date and purpose of the proposed activity(s). Relevant facts reflected in document submitted along with the application must be included in the statement of facts and not merely incorporated by reference.
10.	For item number 14, the applicant must clearly state his interpretation of law or facts in respect of the question(s) on which the advance ruling is being sought.
11.	The application, the verification appended thereto, the Annexures to the application and the statements and documents accompanying the Annexures 1 and 2 must be signed on each page by the applicant."

(Vijay Kaushik)
Under Secretary to the Government of India

[File number 275/55/2003-CX(Pt)-8A]

Note: The principal rules were published in the Gazette of India (Extraordinary), vide number G.S.R. 593(E) dated the 23rd August,2002 (notification no. 55/2002 –Customs (NT) dated the 23rd August, 2002) and subsequently was amended vide G.S.R. 578(E) dated the 23rd July,2003 (notification number 54/2003 –Customs (NT) dated the 23rd July, 2003).

BACK

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY PART II, SECTION 3, SUB-SECTION (i)]

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
***

New Delhi, dated the 29th March, 2007
8 Chaitra, 1929 (Saka)

Notification No. 51/2007-CUSTOMS

Subject: Imposition of provisional anti-dumping duty on import of Flat base Steel Wheels from China

G.S.R. (E).- Whereas, in the matter of import of Flat base Steel Wheels hereinafter referred to as the subject goods), falling under sub-heading 8708 70 00 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) originating in, or exported from the People's Republic of China (hereinafter referred to as the subject country), the designated authority, in its preliminary findings vide notification No. 14/8/2005-DGAD dated the 12th January, 2007, published in the Gazette of India, Extraordinary, Part I, Section 1, dated the 12th January, 2007, read with amendment notification 14/8/2005-DGAD dated the 12th March, 2007 has come to the conclusion that –

(a) the subject goods have been exported to India from the subject countries below its normal value;
(b) the domestic industry has suffered material injury;
(c) injury has been caused by dumped imports from the subject country,

and has recommended imposition of provisional anti-dumping duty on all imports of the subject goods originating in or exported from, the subject country;

Now, therefore, in exercise of the powers conferred by sub-section (2) of section 9A of the said Customs Tariff Act, read with rules 13 and 20 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, the Central Government, on the basis of the aforesaid preliminary findings, as amended, of the designated authority, hereby imposes on the goods, the description of which is specified in column (3) of the Table below, falling under sub-heading of the First Schedule to the said Customs Tariff Act as specified in the corresponding entry in column (2), originating in the countries as specified in the corresponding entry in column (4), and produced by the producers as specified in the corresponding entry in column (6), when exported from the countries as specified in the corresponding entry in column (5), by the exporters as specified in the corresponding entry in column (7), and imported into India, an anti-dumping duty which shall be equal to the amount specified in the corresponding entry in column(8), in the currency as specified in the corresponding entry in column (10) and per unit of measurement as specified in the corresponding entry in column (9) of the said Table.

Table

S.No. (1)	Tariff item (2)	Description of goods (3)	Country of origin (4)	Country of export (5)	Producer (6)	Exporter (7)	Amt (8)	Unit of Measurement (9)	Currency (10)
1.	8708 70 00	Steel wheels of nominal diameter 16"-20"	People's Republic of China	People's Republic of China	M/s Zhengxing Wheel Group Co:	M/s Zhengxing Wheel Group Co:	310.70	MT	USD
2.	-do-	- do-	-do-	-do-	Any combination of producer/ exporter (other than above).		368.18	MT	USD
3.	-do-	-do-	People's Republic of China	Any country other than People's Republic of China	Any	Any	368.18	MT	USD
4.	-do-	-do-	Any country other than People's Republic of China	People's Republic of China	Any	Any	368.18	MT	USD

2. The anti-dumping duty imposed under this notification shall be payable in Indian currency.

Explanation:- For the purposes of this notification, "rate of exchange" applicable for the purposes of calculation of anti-dumping duty shall be the rate which is specified in the notification of the Government of India in the Ministry of Finance (Department of Revenue), issued from time to time, in exercise of the powers conferred by sub-clause (i) of clause (a) of sub-section (3) of section 14 of the Customs Act, 1962 (52 of 1962), and the "relevant date" for the determination of the rate of exchange shall be the date of presentation of the bill of entry under section 46 of the said Customs Act.

[F.No: 354/10/2007- TRU]

(S. Bajaj)

Under Secretary to the Government of India

BACK

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

New Delhi, the 29th March, 2007

8 Chaitra, 1929 (Saka)

NOTIFICATION No.49/2007-Customs

Subject: Change in the General Exemption No. 42 and 43 related to import of specified goods from Singapore

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby directs that the following notifications of the Government of India, in the Ministry of Finance (Department of Revenue), specified in column (2) of the Table below, shall be further amended in the manner and to the extent specified in the corresponding entry in column (3) of the said Table, namely:-

Table

S.No	Notification No. and date	Amendments
(1)	(2)	(3)
1	74/2005-Customs, dated the 22Pnd July, 2005 [G.S.R. 499(E), dated the 22nd July 2005]	In the said notification, in the preamble, for the figures and words "75 *per cent*.", the figures and words "50 *per cent*." shall be substituted.
2.	75/2005-Customs, dated the 22nd July, 2005 [G.S.R. 500(E), dated the 22nd July 2005]	In the said notification, in the preamble, for the figures and words "90 *per cent*.", the figures and words "80 *per cent*." shall be substituted.

2. This notification shall come into force with effect from the 1st day of April, 2007.

[F.No.354/9/2004-TRU (Pt)]

(S.Bajaj)
Under Secretary to the Government of India

Note.-

(1) The principal notification number 74/2005-Customs, dated the 22nd July, 2005 was published in the Gazette of India, vide G.S.R number 499(E), dated the

22nd July 2005 and was last amended by notification No. 136/2006-Customs, dated the 30th December 2006 published in the Gazette of India, vide G.S.R number 797(E), dated the 30th December 2006.

(2) The principal notification number 75/2005-Customs, dated the 22nd July, 2005 was published in the Gazette of India, vide G.S.R number 500(E), dated the 22nd July 2005 and was last amended by notification No.137/2006-Customs, dated the 30th December 2006 published in the Gazette of India, vide G.S.R number 798(E), dated the 30th December 2006.

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II SECTION 3, SUB-SECTION (i)],

DATED THE 29th MARCH 2007.

8 CHAITRA, 1929- (SAKA)

BACK

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
……..

NEW DELHI, THE 29th
MARCH, 2007

NOTIFICATION N0. 48/2007-CUSTOMS

Subject: Change in the General Exemption No. 103 related to imports under Duty Entitlement Pass Book

G.S.R.257 (E). - In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 89/2005-Customs, dated the 4th October, 2005 GSR 624(E), dated the 4th October, 2005, namely:-

In the said notification, in paragraph 2, for the figures, letters and words "31st day of March, 2007", the figures letters and words "31st day of March, 2008" shall be substituted.

(JAGMOHAN SINGH)
UNDER SECRETARY TO THE GOVERNMENT OF INDIA
(605/208/2005-DBK)

Note - The notification No. 89/2005-Customs, dated the 4th October, 2005 was published in the Gazette of India Extraordinary, vide G.S.R. 624 (E) , dated the 4th October, 2005 and it was last amended by notification No.32/2006-Customs, dated the 31ST March, 2006, vide GSR No.989 (E), dated the 31st March, 2006.

BACK

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

New Delhi, dated the 28th March, 2007

NOTIFICATION No.47/2007-CUSTOMS

G.S.R. (E). – Whereas, in the matter of import of Vitamin-A Palmitate (hereinafter referred to as the subject goods), falling under tariff item 2936 21 00 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), originating in, or exported from, the Peoples Republic of China and Switzerland (hereinafter referred to as the subject countries) and imported into India, the designated authority vide its preliminary findings No. 14/11/2005-DGAD dated the 20th February, 2007, published in the Gazette of India, Extraordinary, Part I, Section 1, dated the 20th February, 2007, has come to the conclusion that -

(i) the subject goods have entered the Indian market from the subject countries at prices less than their normal values in the domestic markets of the exporting countries;

(ii) the dumping margins of the subject goods imported from the subject countries/territories are substantial and above de minimis;

(iii) the domestic industry suffers material injury;

(iv) and the injury has been caused to the domestic industry both by volume and price effect of dumped imports of the subject goods originating in or exported from the subject counties;

and has recommended imposition of provisional anti-dumping duty on the imports of subject goods, originating in or exported from, the subject countries.

Now, therefore, in exercise of the powers conferred by sub-section (2) of section 9A of the said Customs Tariff Act, read with rules 13 and 20 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, the Central Government, on the basis of the aforesaid findings of the designated authority, hereby imposes on the goods, the description of which is specified in column (3) of the Table below, falling under sub-heading of the First Schedule to the said Customs Tariff Act as specified in the corresponding entry in column (2), the specification of which is specified in column (4) of the said Table, originating in the countries as specified in the corresponding entry in column (5), and exported from the countries as specified in the corresponding entry in column (6), and produced by the producers as specified in the corresponding entry in column (7), and exported by the exporters as specified in the corresponding entry in column (8), and imported into India, an anti-dumping duty at the rate equal to the amount as specified in the corresponding entry in column (9), in the currency as specified in the corresponding entry in column (11) and per unit of measurement as specified in the corresponding entry in column (10) of the said Table.

Table.

Sl.No.	Tariff item	Description of goods	Specif-ication of goods	Country of origin	Country of export	Producer	Exporter	Amou-nt	Unit of measu-rement	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
1	2936 21 00	Vitamin-A Palmitate	Any	Switzerland	Any	DSM Nutritional Products, AG Switzerland	DSM Nutritional Products Asia Pacific Pts Ltd., Singapore	6.574	KG	US$
2	2936 21 00	Vitamin-A Palmitate	Any	Switzerland	Any other than People's Republic of China	Any other than above	Any	8.75	KG	US$
3	2936 21 00	Vitamin-A Palmitate	Any	Any other than People's Republic of China	Switzerland	Any	Any	8.75	KG	US$
4	2936 21 00	Vitamin-A Palmitate	Any	People's Republic of China	Any	Zhejiang NHU Company Ltd.	Synchem International Company Ltd.	14.94	KG	US$
5	2936 21 00	Vitamin-A Palmitate	Any	People's Republic of China	Any	Any other than above	Any	26.5	KG	US$
6	2936 21 00	Vitamin-A Palmitate	Any	Any	People's Republic of Chin.	Any	Any	26.5	KG	US$

2. The anti-dumping duty imposed under this notification shall be effective up to and inclusive of the 27th September, 2007 and shall be payable in Indian currency.

Explanation. - For the purposes of this notification, rate of exchange applicable for the purposes of calculation of such anti-dumping duty shall be the rate which is specified in the notification of the Government of India, in the Ministry of Finance (Department of Revenue), issued from time to time, in exercise of the powers conferred by sub-clause (i) of clause (a) of sub-section (3) of section 14 of the Customs Act 1962 (52 of 1062), and the relevant date for the determination of the rate of exchange shall be the date of presentation of the bill of entry under section 46 of the said Customs Act.

[F.No.354/31/2007-TRU]

(G. G. Pai)
Under Secretary to the Government of India.

BACK

Circular No. 15/ 2007-Customs

F.No.: DGEP/EOU/25/2007
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs
Directorate General of Export Promotion

New Delhi, the 20th March, 2007

Sub: Administrative Control over Export Oriented Units (EOUs) which are large tax payer-reg

Large Taxpayer Units (LTUs) have been created to service large taxpayers paying excise duty, corporate tax/income tax and service tax under a single window vide Board's Circular No. 834/11/2006-CX and 833/10/2006-CX both dated 05.10.2206. The jurisdicton of EOUs which satisfy the conditions of large taxpayer under notification No. 20/2006-CE (NT) dated 30.09.2006 has been examined.

2. It is viewed that all large taxpayer-EOUs should be under the control of LTUs. The EOUs situated in locations other than in the port cites fall under administrative control of Commissioner of Central Excise and would migrate to administrative control of LTUs.

3. Similarly, large taxpayer-EOUs situated in port cities and falling under the administrative control of the Commissioner of Customs will also be transferred to LTUs. This will apply to the large taxpayer-EOUs in Bangalore as well.

4. In respect of these large taxpayer-EOUs, specific function requiring physical presence of the officers for the purposes as warehousing, sealing or any other work as assigned by LTUs will be dealt with by the Commissioner of Customs or Central Excise, as the case may be, who has concurrent jurisdiction over these large taxpayer-

EOUs in terms of Board's circular No. 31/2003-Cus dated 07.04.2003 as amended from time to time.

5. Board's Circular Nos. 31/2003-Customs, dated 07.04.2003 stands amended to the above extent.

6. Wide publicity may please be given to these instructions by way of issuance of Public Notice. Difficulties, if any, in implementation of these instructions, may be brought to the notice of the Directorate General of Export Promotion, New Delhi.

7. This issues with the approval of CBEC.

8. Receipt of this circular may kindly be acknowledged.

(Pawan Kumar Jain)
Addl. Director General (EP)

Copy for information to:
PS to Chairman and Members of the CBEC,
All Sections of the Board's office
All Chief Commissioners of Customs/Central Excise,
All Director Generals under CBEC,
Chief Departmental Representative (CDR), Delhi
All Commissioners of Customs /Central Excise,
Joint Secretary (EP), Ministry of Commerce,
Director General of Foreign Trade,
Webmaster @ cbec.gov.in

BACK

CIRCULAR NO. 14/2007-CUS

F.No.450/99/2005-CUS-IV

Government of India

Ministry of Finance
Department of Revenue
Central Board of Excise & Customs
***

New Delhi, dated the 16th March, 2007.

To,

All Chief Commissioners of Customs,
All Chief Commissioners of Central Excise,
All Chief Commissioners of Customs & Central Excise,
All Commissioners of Customs,
All Commissioners of Central Excise,
All Commissioners of Customs & Central Excise,
Director General, Directorate of Revenue Intelligence,
webmaster@cbec.gov.in

Sir,

Subject:- International transshipment of LCL containers at Indian Ports- regarding.-

***

The Board has received references from the trade and industry on the issue of introducing a procedure for transshipment of goods meant for ports outside India. The Consolidators Association of India has also made certain suggestions and have projected the benefits in terms of earnings in foreign exchange, attraction to foreign investment, employment opportunities, freight benefits to Exim Trade, low transshipment cost etc.

2. The issue has been examined by the Board. As per sub-section (2) of section 54 of the Customs Act, 1962 transshipment of imported goods to any place outside India, shortly referred as 'International transshipment' is allowed. However, such transshipment facility is not allowed in respect of prohibited goods under section 11 of the Customs Act, 1962. Presently, international transshipment of imported goods in Full Container Load (FCL) is being permitted by the field formations. Board has decided to introduce transshipment facility for imported goods in Less than full Container Load (LCL) also at approved places under the jurisdiction of identified Custom Houses. To begin with, such facility would be provided at Cochin, Chennai, Tuticorin and Nhava Sheva. This additional facility would also be a measure of trade facilitation and is expected to provide transshipment facility to international shipping lines and enable ports to act as Transshipment Hub in the Indian Ocean region.

3. The following procedure shall be adopted on arrival of the international transshipment (ITP) containers of Less than Container Load (LCL) cargo,-

(i) The application for international transshipment of FCL cargo can be made by master of the vessel or his authorized agent, Non-Vessel Operating Common Carrier (NVOCC) or any other person duly authorized in this behalf by the foreign supplier.

(ii) No goods for international transshipment should be unloaded from the vessel until the permission for the same has been given by the AC/DC authorized in this behalf by the Commissioner of Customs, on the basis of manifested details in IGM.

(iii) The ITP container details such as Container Number, broad description of goods etc. shall be mentioned in the Import General Manifest. In the electronic manifest, there are fields for specifying (a) Port of destination, and (b) 'cargo movement' code. For cargo movement, there are three codes which need to be filled correctly with proper port of destination. These are explained in details as follows:

(1) 'LC' – Local Cargo: This refers to the port code where cargo is delivered. It is the same as the port of arrival.
(2) 'TC' – Transshipment Cargo: It refers to international cargo and the port of destination shall be the port code where transshipment cargo is destined to or delivered.
(3) 'TI' – Transshipment to ICD: This is the local cargo where the cargo meant for transshipment to hinterland port i.e. ICD. The port of destination is the port code of the ICD.

As regards the electronic manifest message, there is a field to specify that whether the cargo is FCL or LCL or 'EMPTY'. This field is called 'Container Status'. The line and the sub-line numbers provide the inter-linkage between the cargo details and the container details. Therefore, the existing EDI System in ICES can be used for Customs documentation and processing.

(iv) The unloading of such ITP containers at gateway port would be in presence of Customs Officers. The containers would be taken to approved place / premises under Customs escort. Custodian of such premises would provide a segregated secure space for ITP containers.

(v) Customs Officers would examine the Seal of the ITP Containers. In case of tampering of the Seal, such Container should be immediately resealed with the Customs Seal in the presence of the Custodian / Shipping agent and same should be recorded. Such containers will be examined 100% by the Customs Officers and findings recorded thereof. Such cases will be put up to the AC / DC in charge for further action.

(vi) LCL Cargo meant for a foreign port (any port outside India) would be de-stuffed in the presence of Customs Officer and stored in a secured area as provided by Custodian. LCL Cargo may contain consignments meant for

transshipment to any port outside India (Foreign Port) as well as consignments for home consumption or transshipment to Inland Container Depot (ICD). This would necessitate segregation of the two types of cargo at the time of de-stuffing and moving them to respective storage areas under customs escort. Till such time, sufficient precaution should be taken to avoid duplication / mixing up or manipulation of cargo meant for Transshipment / Home-consumption.

(vii) Whenever the LCL cargo are required to be exported to foreign destination, The re-stuffing of such LCL Cargo meant for the foreign port along with the export cargo would be done under the supervision of a Customs officer. Further Container would be sealed in presence of a Customs Officer.

(viii) The details of LCL cargo would be entered in Export General Manifest.

(ix) Custodian would maintain the record of ITP LCL cargo, both loaded and unloaded, and submit a monthly summary to Customs. He shall execute a general bond for an amount equal to the approximate value of goods expected to be imported in 30 days for the purpose of international transshipment. In such bond, custodian should undertake to export transshipment cargo within 30 days or within extended period as Commissioner may allow and follow all the relevant Acts, Rules & Regulations in force.

(x) Custodian would be responsible for safe handling of the LCL cargo and ensure that there is no intermixing of ITP LCL cargo with other cargo lying with the custodian.

4. International transshipment of cargo needs to be effected within 30 days of Entry Inward of the importing ship. The permission for transshipment would not be given to cargo having arms, ammunition, explosives and other cargo considered as constituting a threat to the security/safety and integrity of the country and other goods attracting prohibition under section 11 of the Customs Act, 1962. However goods which are 'restricted' as per the Foreign Trade Policy may be permitted for transshipment to destination abroad. Further, transshipment shall not be allowed to any port / destination, in respect of which any order or prohibition is in force for the time being. Commissioners may also prescribe any additional safeguard for securing safe transshipment. The provisions of Section 48 relating to the procedure in case of goods not transshipped within 30 days after unloading shall apply to the goods meant for transshipment as these are covered under the scope of "imported goods".

5. In order to introduce international transshipment of LCL containers, the Custom Houses need to identify suitable premises within the approved place under their jurisdiction for the purpose of safe custody of imported goods and for such other authorized operations. Commissioners should adopt consultative approach with the stakeholders / operators to identify particular premises for such international

transshipment. Following factors may be considered by the Commissioner for identification of the premises,-

(i) Location of the premises.

(ii) Availability of adequate infrastructure - modern handling equipment for loading, unloading of containers from rail flats, chassis, their stacking, movement, cargo handling, stuffing/de-stuffing, refrigerated storage facility for perishable cargo etc.

(iii) Availability of sufficient secured area for segregation/ consolidation of cargo and for its safe handling.

(iv) The premises need to be connected with Custom House on EDI to handle the transshipment in ICES.

(v) Experience of Custodian in handling import export matters and working knowledge of Customs Act, rules and regulations.

(vi) Logistics arrangements including constraints, if any, in movement of containers between approved place / premises and port.

6. The above instructions may be brought to the notice of the Trade immediately through appropriate Public Notice. Jurisdictional Commissioners may also indicate detailed operational procedure, taking into account the requirements, physical movement involved in carrying goods to the approved place / premises etc. at individual Customs stations, keeping in view of the Board's instructions.

7. Receipt of this Circular may kindly be acknowledged.

Yours faithfully

(Anupam Prakash)
Under Secretary to the Government of India

Phone No.23094182

Copy to:

1. PS to Chairman (E&C),
2. All Members, CBEC
3. CDR,CESTAT
4. All Directorates, CBEC
5. All Commissioners, CBEC
6. All Joint Secretaries/Directors/Deputy Secretaries, CBEC
7. All Under Secretaries/STOs/TOs,CBEC.
8. Guard file.

(Anupam Prakash)
Under Secretary to the Government of India

BACK

CIRCULAR NO.12/2007-CUS.

F.No.473/03/2006-LC

Government of India

Ministry of Finance

Department of Revenue

…..

New Delhi, the 14th February, 2007

To

All Chief Commissioners of Central Excise & Customs

All Chief Commissioners of Central Excise

All Chief Commissioners of Customs

All Chief Commissioners of Customs (Preventive)

Sub : Warehousing – Charging of interest on warehoused goods – Clarification thereto – regarding –

Madam/Sir,

I am directed to refer to the instructions contained in Board's letter F.No.473/12/2001-LC, dated 11.10.2001 and Circular No.62/99-Cus., dated 17.09.1999 (F.No.473/24/97-LC) on the subject cited above.

2. The aforesaid circulars were issued on the basis of advice from the Law Ministry. The said advice under para 6 stated as under :-

" …. once there is an amendment to the Act modifying the terms and conditions subject to which the goods shall 'remain warehoused' the same shall apply to all goods which continue to be warehoused after coming into force of the amendment…".

3. Hon'ble Gujarat High Court's Order dated 07.10.2005 in the matter of M/s Amtrex Hitachi Appliances Vs Commissioner of Customs and Karnataka High Court's judgement in case of Bangalore Wire Rod Mills Vs U.O.I. have interpreted the law differently wherein it has been held that the notification bringing about reduction

of the warehousing period is not applicable in respect of goods warehoused prior to the amendment. The aforesaid decisions have been accepted by the Department on this count.

4. In view thereof, instructions contained in Board's aforesaid letter dated 11.10.2001 and Circular No.62/99-Cus., dated 17.09.1999 have been reviewed in consultation with the Ministry of Law. Ministry of Law has opined that an advice is an opinion and cannot be equated with a binding order of a Court/ Tribunal. As such, there is no need to reconsider the advice to bring it in tune with the subsequent judgements since the same has exhausted its effect.

5. It is accordingly clarified that an amendment to the Customs Act modifying the terms and conditions subject to which the goods shall 'remain warehoused', shall not apply to the goods warehoused prior to the amendment. The instructions contained in Board's letter dated 11.10.2001 and Circular No.62/99-Cus., dated 17.09.1999 stand modified to this extent.

6. The contents of the circular may be brought to the notice of the field formations and the trade under your jurisdiction.

Yours faithfully,

(T.K. Bandyopadhyay)

Under Secretary to the Government of India

BACK

CIRCULAR NO. 11 /2007-CUSTOMS

F.NO.605/210/2005-DBK
Government of india
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

CENTRAL BOARD OF EXCISE & CUSTOMS
*****

New Delhi, dated the 13th February,2007

To,

All Chief Commissioners of Customs

All Chief Commissioners of Customs & Central Excise

All Commissioners of Customs /Customs(Prev) /Customs & Central Excise / Central Excise

DG, CEIB, New Delhi

DGRI / DGCEI / DG (Systems & Data Management) / DG (Export Promotion)/ DGI / DG, NACEN

Chief Departmental Representative, Customs, Excise & Service Tax Appellate Tribunal, New Delhi

Sir/Madam,

Sub: Dispensing with Verification of DEPBs at EDI ports in the light of Electronic Transmission of Shipping Bills and DEPBs.

I am directed to invite your attention to the Board's Circular No. 14/99-Cus dated 15.3.99 dealing with verification of DEPBs. In terms of this Circular read with Mumbai Custom House Standing Order No. 7418/98, dated 18.12.98, the DEPBs issued by DGFT are subjected to a verification process by Customs at the port of registration. This is to ensure, inter alia, that the goods covered by the shipping bills have actually been shipped and also to ensure that the same shipping bill is not used more than once for getting the DEPB and that the credit utilized is not more than the credit allowed in the DEPB.

2. In 2005, vide Public Notice No. 57 (RE-2005) / 2004-09 dated 6.10.2005, an amendment had been made in paragraph 4.49 of Handbook of Procedures dealing with verification of DEPBs by the Customs. In terms of the amended paragraph, DEPBs issued on the basis of EDI shipping bills transmitted electronically by Customs to DGFT and the DEPBs sent to Customs through an Electronic Message

Exchange System are not required to be verified by the Customs authorities at the port of registration.

3. Pursuant to this amendment, the matter was examined by the Board and in order to facilitate the trade, a procedure for online transmission of shipping bills to DGFT as well as DEPBs from DGFT has been put in place. As per this, the DEPBs issued by DGFT would now be received online by Customs. Such DEPBs would be subjected to the prescribed validation checks online and thereafter, the same would be available for use by the importers. Details of such DEPBs would also be available on the home page of website, www. icegate.gov.in. However, as a purely temporary measure till the procedure gets stabilised, it has been decided that the importers would be required to produce the hard copies of the DEPBs issued by DGFT to the designated officer at the respective Custom House i.e. ports of registration mentioned in the DEPBs before such DEPBs are allowed to be utilised.

3.1 It has been further decided that henceforth, in respect of the DEPBs received online, the DEPB number would need to be mentioned on the bill of entry if such DEPBs are intended to be used for payment of duty instead of the registration number as is the practice with respect to manually verified DEPBs.

4. The jurisdictional Commissioners of Customs may accordingly implement the above instructions from a specified date in consultation with the Directorate General of Systems. The procedure prescribed in Circular No. 14/99 dated 15.3.99 would, however, be continued in respect of DEPBs issued before such specified date and in respect of DEPBs received manually at non-EDI stations.

5. A suitable Trade Notice and Standing Order may be issued for the guidance of the trade and staff. Difficulties faced, if any, in implementation of the Circular may be brought to the notice of the Board at an early date.

Receipt of this circular may please be acknowledged.

Yours faithfully,

(Dr. M. Subramanyam)
Director to the Govt. of India
Telefax:23360581

BACK

CENTRAL EXCISE ACT

TO BE PUBLISHED IN PART II, SECTION 3, SUB-SECTION (i) OF THE GAZETTE OF INDIA, EXTRAORDINARY.

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

DEPARTMENT OF REVENUE

New Delhi, dated the 21st February, 2007.

Notification No. 02 /2007-CENTRAL EXCISE

Subject: Omission of General Exemption No. 34 relating to SEZs and 29 relating to EOUs, STP & EHTP

G.S.R.99(E). - In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944), read with sub-section (3) of section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957), the Central Government, being satisfied that it is necessary in the Public interest so to do, hereby rescinds the following notifications of the Government of India, in the Ministry of Finance, Department of Revenue, except as respects things done or omitted to be done before such rescission, namely:-

(i) Notification No 58/2003-CENTRAL EXCISE dated the 22nd July, 2003, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide G.S.R. 575 (E), dated the 22nd July, 2003;

(ii) Notification No 146/89-CENTRAL EXCISE dated 19th May, 1989 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide G.S.R. 559(E), dated the 19th May, 1989.

[F.No.305/2/2007-FTT]

ANUPAM PRAKASH,

Under Secretary to the Government of India.

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY
PART II, SECTION-3, SUB- SECTION (i) dated the 6/3/2007]

MINISTRY OF FINANCE

(Department of Revenue)

NOTIFICATION

New Delhi, the 6/3/2007
15 Phalguna, 1928 Saka

NOTIFICATION NO. 16 / 2007 – Central Excise (NT)

Subject: Central Excise (Advance Rulings) Amendment Rules, 2007.

G.S.R.(E).- In exercise of the powers conferred by section 37 read with sub-section (1) and (3) of section 23C and sub-section (7) of section 23D of the Central Excise Act, 1944 (1 of 1944), the Central Government hereby makes the following rules to further amend the Central Excise (Advance Rulings) Rules, 2002, namely: -

1. (1) These rules may be called the Central Excise (Advance Rulings) Amendment Rules, 2007.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Central Excise (Advance Rulings) Rules, 2002 (hereinafter referred to as the said rules), in clause (b) of rule 2, for the words "the Authority for Advance Rulings", the words and brackets "the Authority for Advance Rulings (Central Excise, Customs and Service Tax)" shall be substituted.

3. For the "Form" appended to the said rules, the following "Form" shall be substituted, namely:-

BACK

"FORM- AAR (CE-I)
[Application for Advance Ruling (Central Excise)]
(See rule 3 of the Central Excise (Advance Rulings) Rules, 2002)
BEFORE THE AUTHORITY FOR ADVANCE RULINGS
(CENTRAL EXCISE, CUSTOMS AND SERVICE TAX)
NEW DELHI
(Form of application for seeking Advance Ruling under section 23C of the Central Excise Act,1944)
Application No…….of…….

1.	**Details of Applicant**		
	(i) Full name	:	
	(ii) Complete address	:	
	(iii) Telephone number(with STD/ISD code)	:	
	(iv) Fax number (with STD/ISD code)	:	
	(v) E-mail address	:	
	(vi) Postal address (to be provided if different from (ii) above)	:	
2.	**Status of the Applicant(Tick whichever is applicable)**		
	(i) a non-resident setting up a joint venture in India in collaboration with,- **(a)** a non-resident; or **(b)** with a resident;	:	
	(ii) a resident setting up a joint venture in India in collaboration with a non-resident;	:	
	(iii) a wholly owned subsidiary Indian company, of which the holding company is a foreign company;	:	
	(iv) a joint venture in India;	:	
	(v) a resident falling within any such class or category of persons, as the Central Government may, by notification in the Official Gazette, specify in this behalf(mention notification number).	:	
3.	**Basis for claim as a proposed joint venture [ref. 2(i) & (ii)**		

	above] (furnish copy of following).		
	(a) Memorandum of Understanding; or	:	
	(b) Letter of Intent; or	:	
	(c) Articles of Association etc.; or	:	
	(d) Any other document.	:	
4.	**Details of proposed joint venture**		
	(i) Full name	:	
	(ii) Complete address	:	
	(iii) Telephone number(with STD/ISD code)	:	
	(iv) Fax number (with STD/ISD code)	:	
	(v) E-mail address		
	(vi) Postal address(to be filled if different from (ii) above)	:	
5.	**Details of resident/non-resident party other than the applicant forming the Joint Venture**		
	(i) Full name	:	
	(ii) Complete address	:	
	(iii) Telephone number(with STD/ISD code)	:	
	(iv) Fax number (with STD/ISD code)	:	
	(v) E-mail address	:	
	(vi) Postal address(to be filled if different from (ii) above)	:	
6.	**In case of a wholly owned Indian Subsidiary Company furnish the following details:-**		
A.	**(i)** Name of Foreign holding company	:	
	(ii) Complete address	:	
	(iii) Telephone number(with STD/ISD code)	:	
	(iv) Fax number (with STD/ISD code)	:	
	(v) E-mail address	:	
	(vi) Postal address (to be	:	

	provided if different from (ii) above)		
B.	Percentage of Foreign holding in the Indian Subsidiary Company.	:	
7.	**In case of a joint venture [ref. 2(iv) above]**		
	(i) The persons forming the joint venture/ constitution of joint venture.	:	
	(ii) Status of constituent persons, i.e. resident/non-resident.	:	
	(iii) Existing activities if any.	:	
8.	**Nature of activity proposed to be undertaken.**	:	
9.	**Present status of activity.**	:	
10.	**Registration number of the applicant as mentioned at serial number 1 under rule 9 of the Central Excise Rules, 2002 (if any).**	:	
11.	**Permanent Account Number (Income Tax) of the applicant (if any).**	:	
12.	**Question of Law or fact on which Advance Ruling required (Tick whichever is applicable and provide details against ticked item):-**		
	(i) classification of goods under the Central Excise Tariff Act, 1985(5 of 1986);	:	
	(ii) applicability of a notification issued under sub-section (1) of section 5A of the Central Excise Act,1944, having a bearing on the rate of duty;	:	
	(iii) the principles to be adopted for the purposes of determination of value of the goods under the provisions of this Act;	:	
	(iv) notifications issued, in respect of duties of excise under the Central Excise Act,1944, the Central Excise Tariff Act, 1985 and any duty chargeable under any	:	

	other law for the time being in force in the same manner as duty of excise leviable under this Act;		
	(v) admissibility of credit of excise duty paid or deemed to have been paid on the goods in or in relation to the manufacture of the excisable goods (CENVAT);		
	(vi) determination of liability to pay duties of excise under this Act.		
13.	**Statement of relevant facts having a bearing on the question(s) raised.**	:	
14.	**Statement containing the applicant's interpretation of law and/or facts, as the case may be, in respect of the aforesaid question(s) (i.e. applicant's view point and submissions on issues on which the advance ruling is sought).**	:	
15.	**Whether the question(s) raised is pending in the applicant's case before any officer of Central Excise, Appellate Tribunal or any Court of Law? If so, provide details.**	:	
16.	**Whether a similar matter as raised in the question(s) by the applicant has already been decided by the Appellate Tribunal or any Court?**	:	
17.	**Concerned Commissioner(s) of Central Excise having jurisdiction in respect of the question referred at serial number 12.**	:	
18.	**List of documents/statement attached, (attach the list on a separate sheet, if necessary.**	:	
19.	**Particulars of account payee demand draft enclosed with the application**	:	

(Applicant's signature)

VERIFICATION

I, _____ (name in full and in block letters), son/daughter/wife of _____ do hereby solemnly declare that to the best of my knowledge and belief what is stated above and in the annexure(s), including the documents are correct. I am making this application in my capacity as _____ (designation) and that I am competent to make this application and verify it.

2. I also declare that the question (s) on which the advance ruling is sought is/are not pending in my case before any Central Excise Authority, Appellate Tribunal or any Court.

3. Verified this…….day……..of…….200 ……at …….

(Applicant's signature)

ANNEXURE I

Statement of the relevant facts having a bearing on the question(s) on which the advance ruling is required

Place ……..
Date ……

(Applicant's signature)

ANNEXURE II

Statement containing the applicant's interpretation of law and/or facts, as the case may be, in respect of the questions(s) on which advance ruling is required

Place ……..
Date ……

(Applicant's signature)

Notes:

1.	The application must be filled in English or Hindi, in quadruplicate.
2.	The application must be accompanied by an account payee demand draft of Indian Rupees two thousand five hundred drawn in favour of Authority for Advance Rulings(Central Excise, Customs & Service Tax), payable at New Delhi. Particulars of the draft should be entered in the column pertaining to item number 19.
3.	The number and year of receipt of the application will be filled in by the office of the Authority for Advance Rulings.
4.	If the space provided for answering any item in the application is found insufficient, separate sheets may be used for this purpose. Each sheet must be signed at the bottom by the applicant.

5.	In reply to item number 2 the applicant must state its status i.e. whether an individual, Hindu undivided family firm, company, firm association of persons, wholly owned subsidiary, Joint Venture or any other person.
6.	For item number 5, the reply must be given in the context of the provisions regarding 'residence' in India, 'non resident', 'Indian Company', and 'Foreign Company' as per the Income Tax Act, 1961(43 of 1961).
7.	In reply to item number 9, the applicant must state the present status of the business activity in respect of which advance ruling has been sought i.e. the stage to which it has progressed.
8.	Regarding item number 12, the question(s) should be based on the activity proposed to be under taken; hypothetical questions will not be entertained.
9.	In respect of item number 13, the applicant must state in detail the relevant facts and also disclose the nature of proposed activity and the likely date and purpose of the proposed activity(s). Relevant facts reflected in document submitted along with the application must be included in the statement of facts and not merely incorporated by reference.
10.	For item number 14, the applicant must clearly state his interpretation of law or facts in respect of the question(s) on which the advance ruling is being sought.
11.	The application, the verification appended thereto, the Annexures to the application and the statements and documents accompanying the Annexures 1 and 2 must be signed on each page by the applicant."

(Vijay Kaushik)
Under Secretary to the Government of India

[File number 275/55/2003-CX(Pt)-8A]

Note: The principal rules were published in the Gazette of India (Extraordinary), vide number G.S.R. 594(E) dated the 23rd August,2002 (notification number 28/2002 –Central Excise (NT) dated the 23rd August, 2002) and subsequently was amended vide G.S.R. 577(E) dated the 23rd July,2003 (notification number 59/2003 – Central Excise (NT) dated the 23rd July, 2003).

BACK

Notes:

1.	The application must be filled in English or Hindi, in quadruplicate.
2.	The application must be accompanied by an account payee demand draft of Indian Rupees two thousand five hundred drawn in favour of Authority for Advance Rulings(Central Excise, Customs & Service Tax), payable at New Delhi. Particulars of the draft should be entered in the column pertaining to item number 19.
3.	The number and year of receipt of the application will be filled in by the office of the Authority for Advance Rulings.
4.	If the space provided for answering any item in the application is found insufficient, separate sheets may be used for this purpose. Each sheet must be signed at the bottom by the applicant.
5.	In reply to item number 2 the applicant must state its status i.e. whether an individual, Hindu undivided family firm, company, firm association of persons, wholly owned subsidiary, Joint Venture or any other person.
6.	For item number 5, the reply must be given in the context of the provisions regarding 'residence' in India, 'non resident', 'Indian Company', and 'Foreign Company' as per the Income Tax Act, 1961(43 of 1961).
7.	In reply to item number 9, the applicant must state the present status of the business activity/service in respect of which advance ruling has been sought i.e. the stage to which it has progressed.
8.	Regarding item number 12, the question(s) should be based on the business activity/service proposed to be under taken; hypothetical questions will not be entertained.
9.	In respect of item number 13, the applicant must state in detail the relevant facts and also disclose the nature of his business activity/service and the likely date and purpose of the proposed business activity/service(s). Relevant facts reflected in document submitted along with the application must be included in the statement of facts and not merely incorporated by reference.
10.	For item number 14, the applicant must clearly state his interpretation of law or facts in respect of the question(s) on which the advance ruling is being sought.
11.	The application, the verification appended thereto, the Annexures to the application and the statements and documents accompanying the Annexures 1 and 2 must be signed on each page by the applicant."

(Vijay Kaushik)
Under Secretary to the Government of India

[File number 275/55/2003-CX(Pt)-8A]

Note: The principal rules were published in the Gazette of India (Extraordinary), vide number G.S.R. 579(E) dated the 23rd July,2003 (notification number 17/2003 –Service Tax (NT) dated the 23rd July, 2003).

BACK

TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, IN PART II, SECTION 3, SUB-SECTION (i), DATED THE 1st MARCH, 2007.
10 PHALGUNA, 1928 (SAKA)

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

New Delhi, the 1st March, 2007.
10 Phalguna, 1928 (Saka)

NOTIFICATION No.15/2007-Central Excise (N.T.)

Subject: Change in the Tariff value for Pan Masala in retail packages

G.S.R. (E).- In exercise of the powers conferred by sub-section (2) of section 3 of the Central Excise Act, 1944 (1 of 1944), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 3/2006-Central Excise (N.T.), dated the 1st March, 2006 which was published in the Gazette of India, Extraordinary, vide number G.S.R.114(E) dated the 1st March, 2006, namely:-

In the said notification, in the Table, for S.No. 2 and the entries relating thereto, the following S.No. and entries shall be substituted, namely:-

(1)	(2)	(3)
"2.	If retail sale price is printed on the retail pack and,-	
	(i) goods fall under tariff item 2106 90 20	56% of the printed retail sale price
	(ii) goods fall under heading 2403	50% of the printed retail sale price"

[F.No.334/1/2007-TRU]

(S.Bajaj)
Under Secretary to the Government of India

Note:- The principal notification was published in the Gazette of India, Extraordinary, vide number G.S.R.114(E), dated the 1st March, 2006.

BACK

Circular No.846/04/2007-CX

F.No.201/06/2006-CX-6
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs

New Delhi dated 28th February, 2007

To

All Chief Commissioners of Central Excise
All Chief Commissioners of Customs and Central Excise
All Commissioners of Central Excise
All Commissioners of Central Excise (Appeals)
webmaster@cbec.gov.in

Subject: Requirement of filing declaration by the producers/manufacturers of hand made unbranded biris (other than paper rolled biris)-reg.

Sir,

Attention is invited to the notification nos.3/2006 C.E dated 01.03.2006 and 26/2001 CE dated 11.05.2001, which provide exemption to handmade unbranded biris (other than paper rolled biris) from the whole of the duty of excise leviable for the first clearances in a financial year upto 20 lakhs. In the Budget, 2007, the said notification has been amended by notification no.3/2007CE dated 01.03.2007, whereby a condition has been inserted in the notifications, providing that any manufacturer wanting to avail this exemption, is required to file a declaration at the beginning of every financial year giving particulars of name, address, details of manufacturing process undertaken by the manufacturer, quantity of biris manufactured in the preceding financial year, name and address of job workers manufacturing Biris on his account, and the number of Biris manufactured by each job worker or himself if any. The format of this declaration has been prescribed in the notification itself. The condition of filing of declaration has been made effective from 01.03.2007. Therefore, for the current financial year also, i.e. 2006-07, a manufacturer of biris availing the benefit of said notification is required to file the declaration giving the required particulars for the financial year 2005-06, and the said declaration is required to be filed by 31st March, 2007.

2. It may however be noted that **excise duty will continue to be levied on branded biris as well as unbranded biris, which have not been included in the declaration filed by the manufacturer**. It is further clarified that the declaration prescribed in the notification is to be filed only by a manufacturers of biris who

finally pack and sell the biris in the market and is liable to pay duty, except for the exemption provided in the notification. Therefore, this declaration is not required to be filed by individuals/household entities, who roll these biris on job work basis or who carry out other activities on job work basis for a principal manufacturer.

3. In this context, it is further directed the departmental officers should neither visit any manufacturer who has filed a declaration for conducting verification nor should summon him. In case, intelligence inputs are received that a manufacturer has filed a false declaration, or has violated any other provision of law, then the jurisdictional Commissioner of Central Excise, with prior intimation to the zonal Chief Commissioner of Central Excise, may authorize a survey or such other action in order to detect any irregularity. The jurisdictional Chief Commissioner and Commissioner should sensitize the staff to avoid any complaints of harassment.

4. Serious view would be taken of any violation of these instructions.

5. Field formations may be informed suitably.

6. Receipt of the Circular may please be acknowledged.

7. Hindi version will follow.

Yours faithfully,

(Rahul Nangare)
Under Secretary to the Govt. of India

Copy to:

1. PPS to Chairman/CBEC and All Members, CBEC
2. All Directorates-General/Directorates under CBEC
3. All sections under CBEC

BACK

Circular No.847/05/2007-CX
Dated 6.2.2007

F.No. 90/01/2005-CX.I
Government Of India
Ministry Of Finance
Department Of Revenue
Central Board Of Excise & Customs

To

All Chief Commissioners of Central Excise,
Director General of Central Excise Intelligence,
All Commissioners of Central Excise,
All Commissioners of Central Excise (Appeal),
All Commissioners of Customs,
All Commissioners of Customs (Appeal)
Webmaster@cbec.gov.in

Sub: IV cannulas –availablity of exemption under notification No. 6/2006 dated 1.3.2006

I am directed to say that S.No. 61 of notification No. 6/2006-CE dated 1.3.2006 [earlier S.No. 267 of notification No. 6/2002-CE dated 1.3.2002] exempts products mentioned at S.No. 34 in list 37 appended to notification No. 21/2002-Customs dated 1.3.2002. S.No. 34 in list 37 of notification No. 21/2202-Customs dated 1.3.2002 reads "Disposable and non-disposable cannula for aorta, vena cavae and similar veins and blood vessels and cannula for intra-corporal spaces".

2. A doubt has been raised whether the exemption under notification No. 6/2006-CE dated 1.3.2006, S. No.61, would be available to IV cannulas. In other words the question raised is whether IV cannulas are covered under the description "Disposable and non-disposable cannula for aorta, vena cavae and similar veins and blood vessels and cannula for intra-corporal spaces".

3. The matter has been examined by the Board. Advice tendered by Directorate General of Health Services, New Delhi, is enclosed as Annex A for guidance. It may be seen that:

(i) IV cannulas are primarily used in the peripheral veins and arteries for purpose of blood sampling, blood transfusion, single and multiple drug infusion, arterial pressure monitoring,etc.
(ii) Aorta and venae cavae are not similar to peripheral veins and arteries as there are various anatomical and physiological differentials which distinguish between (a) aorta and venae cava and (b) peripheral veins and arteries.

(iii) In exigencies, where specific catheter is not available, IV cannulas are rarely used in abdominal/pleural cavities but this does not justify their use and they are not recommended by standard medical text-books for use as cannula for intra-corporal spaces.

4. Therefore, it is clarified that IV cannula, which is primarily used in the peripheral veins and arteries, is not covered by the description "Disposable and non-disposable cannula for aorta, vena cavae and similar veins and blood vessels and cannula for intra-corporal spaces" and exemption under notification No. 6/2006-CE dated 1.3.2006 [earlier notification No. 6/2002-CE dated 1.3.2002] would not be available to such IV cannulas.

5. Trade and field formations may be suitably informed. Pending assessments may be disposed of accordingly.

6. Receipt of this Circular may kindly be acknowledged.

(Gaurav Sinha)
Under Secretary (CX.I)

Annex A

(i) IV cannulas(Venlon,Neoflan etc) are primarily used in the peripheral veins and arteries for the purpose of blood sampling,blood transfusion,single and multiple drug infusion,arterial pressure monitoring etc.

(ii) Aorta and venae cava are not similar to peripheral arteries and veins .

Anatomical Differentials

- Aorta and vena cava are anatomically classified as great vessels, whereas the peripheral arteries and veins are small vessels.
- The great vessels are close to the heart and opens into heart. The peripheral vessels(arteries and veins) are indirectly connected to the heart through the large and medium size vessels.
- The great vessels have big lumens whereas the peripheral vessels have small lumens.
- The thickness of the walls of the Aorta and Venae Cava and that of peripheral arteries and veins differ .
- Aorta is an elastic artery while peripheral arteries are classified as muscular arteries.
- Inferior and superior vena cava are large veins with thick wall with no valves. While peripheral veins have valves.

Physiological Differentials

- The great vessels and the peripheral vessels differ in pressure gradient, volume of blood etc

.

(iii) Cannulas for Aorta,inferior cava & superior cava used in cardiac surgeries are totally different from IV cannulas in length, diameter of the lumen and shape. These cannula are big, of the size of drumstick and have holes for drainage of blood and have twisted wires all along its length to prevent twisting/kinking of the cannula. The CVP cannulas for measuring the Central venous pressure are placed in the right atrium through internal jugular or subclavian vein, both of which are large veins. They measure 20 cm for adults and 10 cm for children;if it is through cubital fossa, then it measures 75 cm for adults and 40 cm for children. In contrast, the IV cannulas are of short length(4-6 cm) with small lumen and cannot be used for monitoring CVP.

(iv) If IV Cannulae are used for access to medium/great vessels, the plastic can get detached and then may cause embolism, threatening the life of the patient.

(v) In Pediatric Cardiac surgery, cardoplegia cannula is used for inducing cardioplegia. However, if cardoplegia cannula is not available, IV cannula can be used in emergencies but is not a substitute for cardioplegia cannula. However,the standard texts do not advocate the use of IV cannula for such procedure.

(vi) Intra corporal spaces imply non-visceral cavities inside the body. There are specific catheters/drainage tubes available for accessing the pleural cavities, the peritoneal cavities, the sub-diaphragmatic cavities and intra ventricular spaces. These are larger in size, have bigger lumen, and have trochars for their introduction. In exigencies, where specific catheter is not available, IV cannula are rarely used in abdominal/pleural cavities but this does not justify their use and they are not recommended by standard medical text books for this purpose.

BACK

Circular No. 845/03/2006-CX

F. No. 267/01/2006-CX-8
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs
****

New Delhi dated the 1st February, 2007

To

All Chief Commissioners of Central Excise & Customs
All Director Generals
All Commissioners of Customs & Central Excise
All Commissioners of Customs& Central Excise (Appeals)
webmaster@cbec.gov.in

Subject: Simultaneous availment of Notification No. 30/2004-CE & 29/2004-CE both dated 9.7.2004 by the manufacturers of goods falling under Chapter 50 to 63 of the CETA, 1985- regarding

***

Sir/Madam,

Representations were received from trade and industry, as well as field formations seeking clarification on the above referred subject. Notification No. 29/2004-CE dated 9.7.2004 permits clearance of goods at concessional rates availing CENVAT Credit wherein a manufacturer can take CENVAT Credit on inputs. Notification No. 30/2004-CE dated. 9.7.2004 permits a manufacturer to clear the goods at 'Nil' rate of duty without availing CENVAT Credit on inputs. Further, Board's circular No. 795/28/2004-CX, dated 28.07.2004, issued by TRU had clarified that the benefit of these two notifications can be availed simultaneously provided the manufacturer maintains separate Books of Account for goods in respect of which benefit of notification No. 29/2004-CE dated 9.7.2004 is availed and similarly, for goods in respect of which benefit of notification No. 30/2004-CE dated 9.7.2004 is availed. However, it was brought to the notice of the Board that in such cases, certain manufacturers did not maintain separate accounts and availed credit on all the inputs. Subsequently, they reversed the credit availed on such inputs utilized for goods cleared under exemption notification No. 30/2004 as per the provisions of Rule 6(3) of the CENVAT Credit Rules, 2004.

2. The issue has been examined. It is seen that proviso to notification No. 30/2004-CE dated 9.7.2004 states that **'nothing contained in this Notification shall apply to the goods in respect of which the credit of duty on inputs has been taken under the provisions of the CENVAT Credit Rules, 2004'.** Therefore, it is clarified that non-availment of credit on inputs is a precondition for availing exemption under this notification and if manufacturers avail input tax credit, they would be ineligible for exemption under this notification. Reversal of credit on a later date would not suffice to make them eligible for this exemption.

3. However, it is seen that textile manufacturers/ processors have to use common inputs, which are used in a continuous manner, and it may not be practically possible to segregate and store inputs like dyes and chemicals separately or maintain separate accounts**.** In such cases, in order to facilitate simultaneous availment of the two notifications, such manufacturers may be advised not to take credit initially and instead take only proportionate input credit on inputs used in the manufacture of finished goods cleared by him on payment of duty. Such proportionate credit should be taken at the end of the month only. At the time of audit of records, or at any other time if the department requires, the assessee should support such credit availment with the relevant records maintained by them showing input quantity used for the goods manufactured and cleared on payment of duty. In case any subsequent verification reveals that such proportionate credit taken is incorrect, the penal provisions as prescribed under the law will be taken against such assessees.

4. The field formations may be suitably be informed.

5. Receipt of the Circular may be acknowledged.

6. Hindi version will follow.

Yours faithfully,

(Rahul Nangare)
Under Secretary to the Govt. of India

BACK

Circular No.844/02/2007-CX

F.No. 267/24/2006-CX.8
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs
*****

New Delhi dated the January 31, 2007

To

All Chief Commissioners of Central Excise & Customs,
All Commissioners of Central Excise & Customs,
All Commissioners of Central Excise,
All Commissioners of Central Excise (Appeals),
The Comptroller and Auditor General of India
Webmaster@cbec.gov.in

Subject: Special procedure for removal of excisable goods for carrying out certain processes under rule 16 C of the Central Excise Rules, 2002.

***

Sir,

Attention is invited to notification no. 26/2006-CE(NT), dated 28.12.06, wherein the erstwhile rule 16C of the Central Excise Rules, 2002 has been substituted with a new rule. The erstwhile rule has been redrafted with certain modifications. In the new rule, it has also been provided that a manufacturer can send excisable goods to a job worker for carrying certain processes not amounting to manufacture also. For example, a manufacturer of HR/CR coil can send the products for cutting/slitting, even though said processes does not amount to manufacture as per the court decision. As per new Rule 16C, a manufacturer can be permitted to remove excisable goods manufactured by him for carrying out test or any process not amounting to manufacture to any other premises including to a job worker without payment of duty. The said other person or a job worker may be a registered or unregistered person. The rule further provides that after carrying out specified processes, the goods can be cleared from the premises of the said other person or from the premises of the job worker on payment of duty.

2. As per this rule, the Commissioner is empowered to give the said permission by prescribing certain conditions. In order to ensure uniformity in the conditions to

be imposed by the Commissioner, it is clarified that the procedure prescribed under sub-rules (2),(3),(4) & (9) of rule 12AA of the Central Excise Rules, 2002 should broadly be followed in such cases. However, proper records of receipt of goods, its use, nature of activities carried out, goods processed and cleared by the said other person or job worker would be maintained. In other words, proper records of such goods should be maintained both by principal manufacturer and job worker. Further, any waste/scrap arising at the premises of the said other person/job worker while carrying out the test/other processes should either be cleared on payment of duties or it should be returned back to principal manufacturer. As regards, the valuation of the goods cleared from the job worker's premise, it is clarified that in such cases, the value at which the principal manufacturer (person who has sent the goods for test/carrying out processes) sells the final goods to the customer should be taken for payment of appropriate duty. This aspect should also be incorporated in the permission. Further, such permission should be given only in deserving cases and only for one financial year at a time.

3. The field formations may suitably be informed.

4. Receipt of this Circular may please be acknowledged.

5. Hindi version will follow.

Yours faithfully,

(Rahul Nangare)
Under Secretary to the Govt. of India

BACK

SERVICE TAX

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY PART II, SECTION-3, SUB- SECTION (i) dated the 6/3/2007].

MINISTRY OF FINANCE

(Department of Revenue)

New Delhi, the 6/3/ 2007.
15 Phalguna, 1928 Saka

NOTIFICATION NO. 13 /2007 – S T

Subject: Service Tax (Advance Rulings) Amendment Rules, 2007.

G.S.R.(E).- In exercise of the powers conferred by section 96-I read with sub-sections (1) and (3) of section 96C, sub-section (7) of section 96D of the Finance Act,1994 (32 of 1994), the Central Government hereby makes the following rules to amend the Service Tax (Advance Rulings) Rules, 2003, namely: -

1. (1) These rules may be called the Service Tax (Advance Rulings) Amendment Rules, 2007.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Service Tax (Advance Rulings) Rules, 2003(hereinafter referred to as the said rules), in clause (b) of rule 2, for the words “the Authority for Advance Rulings”, the words and brackets “the Authority for Advance Rulings (Central Excise, Customs and Service Tax)” shall be substituted.

3. For the “Form” appended to the said rules, the following “Form” shall be substituted, namely:-

BACK

"FORM –AAR (ST-I)
[Application for Advance Ruling (Service Tax)]
(See rule 3 of the Service Tax (Advance Rulings) Rules, 2003)

BEFORE THE AUTHORITY FOR ADVANCE RULINGS
(CENTRAL EXCISE, CUSTOMS AND SERVICE TAX)
NEW DELHI
(Form of application for seeking Advance Ruling
under Section 96C of the Finance Act, 1994.)
Application Number …… of ……

1.	**Details of Applicant**		
	(i) Full name	:	
	(ii) Complete address	:	
	(iii) Telephone number(with STD/ISD code)	:	
	(iv) Fax number (with STD/ISD code)	:	
	(v) E-mail address	:	
	(vi) Postal address (to be provided if different from (ii) above)		
2.	**Status of the Applicant(Tick whichever is applicable)**		
	(i) a non-resident setting up a joint venture in India in collaboration with,- **(a)** a non-resident; or **(b)** with a resident;	:	
	(ii) a resident setting up a joint venture in India in collaboration with a non-resident;	:	
	(iii) a wholly owned subsidiary Indian company, of which the holding company is a foreign company;	:	
	(iv) a joint venture in India;	:	
	(v) a resident falling within any such class or category of persons, as the Central Government may, by notification in the Official Gazette, specify in this behalf (mention notification number).	:	
3.	**Basis for claim as a proposed joint venture [ref. 2(i) & (ii)**		

	above] (furnish copy of following).		
	(a) Memorandum of Understanding; or	:	
	(b) Letter of Intent; or	:	
	(c) Articles of Association etc.; or	:	
	(d) Any other document.	:	
4.	**Details of proposed joint venture**		
	(i) Full name	:	
	(ii) Complete address	:	
	(iii) Telephone number(with STD/ISD code)	:	
	(iv) Fax number (with STD/ISD code)	:	
	(v) E-mail address		
	(vi) Postal address(to be filled if different from (ii) above)	:	
5.	**Details of resident/non-resident party other than the applicant forming the Joint Venture**		
	(i) Full name	:	
	(ii) Complete address	:	
	(iii) Telephone number(with STD/ISD code)	:	
	(iv) Fax number (with STD/ISD code)	:	
	(v) E-mail address	:	
	(vi) Postal address(to be filled if different from (ii) above)	:	
6.	**In case of a wholly owned Indian Subsidiary Company furnish the following details:-**		
A.	**(i)** Name of Foreign holding company	:	
	(ii) Complete address	:	
	(iii) Telephone number(with STD/ISD code)	:	
	(iv) Fax number (with STD/ISD code)	:	
	(v) E-mail address	:	
	(vi) Postal address(to be provided if different from (ii)	:	

	above)		
B.	Percentage of Foreign holding in the Indian Subsidiary Company.	:	
7.	**In case of a joint venture [ref. 2(iv) above]**		
	(i) The persons forming the joint venture/ constitution of joint venture.	:	
	(ii) Status of constituent persons, i.e. resident/non-resident.	:	
	(iii) Existing activities if any.	:	
8.	**Nature of business activity/ service proposed to be undertaken.**	:	
9.	**Present status of business activity/ service.**	:	
10.	**Registration number of the applicant as mentioned at serial number 1 under rule 4 of the Service Tax Rules, 1994 (if any).**	:	
11.	**Permanent Account Number (Income Tax) of the applicant (if any).**	:	
12.	**Question of Law or fact on which Advance Ruling required (Tick whichever is applicable and provide details against ticked item):-**		
	(i) Classification of any service as a taxable service under Chapter V of the Finance Act, 1994;	:	
	(ii) the valuation of taxable services for charging service tax;	:	
	(iii) the principles to be adopted for the purposes of determination of value of the taxable service under the provisions of Chapter V of the Finance Act, 1994;	:	
	(iv) applicability of notifications issued under Chapter V of the Finance Act, 1994;	:	
	(v) admissibility of credit of service tax;	:	
	(vi) determination of the liability to	:	

	pay service tax on a taxable service under the provisions of Chapter V of the Finance Act, 1994.		
13.	**Statement of relevant facts having a bearing on the question(s) raised**	:	
14.	**Statement containing the applicant's interpretation of law and/or facts, as the case may be, in respect of the aforesaid question(s) (i.e. applicant's view point and submissions on issues on which the advance ruling is sought).**	:	
15.	**Whether the question(s) raised is/are pending in the applicant's case before any officer of Service Tax/Central Excise, Appellate Tribunal or any Court of Law? If so, provide details.**	:	
16.	**Whether a similar matter as raised in the question(s) by the applicant has already been decided by the Appellate Tribunal or any Court?**	:	
17.	**Concerned Commissioner(s) of Service Tax / Central Excise having jurisdiction in respect of the question referred at serial number 12.**	:	
18.	**List of documents/statement attached, (attach the list on a separate sheet, if necessary.**	:	
19.	**Particulars of demand draft enclosed with the application**	:	

(Applicant's signature)

BACK

VERIFICATION

I, _____(name in full and in block letters), son/daughter/wife of _____ do hereby solemnly declare that to the best of my knowledge and belief what is stated above and in the annexure(s), including the documents are correct. I am making this application in my capacity as _____ (designation) and that I am competent to make this application and verify it.

2. I also declare that the question (s) on which the advance ruling is sought is/are not pending in my case before any Central Excise/Service Tax Authority, Appellate Tribunal or any Court.

3. Verified this…….day……..of…….200 ……at ……

(Applicant's signature)

ANNEXURE I

Statement of the relevant facts having a bearing on the question(s) on which the advance ruling is required

Place ……..
Date ……

(Applicant's signature)

ANNEXURE II

Statement containing the applicant's interpretation of law and/or facts, as the case may be, in respect of the questions(s) on which advance ruling is required

Place ……..
Date ……

(Applicant's signature)

BACK

Circular No. 91/2/2007-Service Tax
New Delhi, the 12th March, 2007

F. No. 149/2/2004-CX.4
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise and Customs
***

To

Chief Commissioners of Central Excise & Customs (All)
Chief Commissioners of Central Excise (All)
Commissioners of Service Tax (All)
Director General of Service Tax, Mumbai
Director General Central Excise Intelligence, New Delhi
Webmaster@cbec.gov.in

Sir/Madam,

Subject: Levy of service tax on interconnection service provided by one telecom operator to another – reg.

The interconnection service is provided by one telegraph authority to another to enable the telephone subscribers of these telegraph authorities to connect with each other. Interconnection in technical terms means the commercial and technical arrangements under which service providers connect their equipment, networks, and services to enable their customers to have access to the customers, services, and networks of other service providers. For providing interconnection, the telegraph authority collects interconnect usage charges (IUC). A question has been raised as to whether this service is taxable and accordingly, whether service tax is applicable to IUC.

2. In past, divergent clarifications/instructions have been issued on this matter. However, in view of representations and submissions of service provider, the issue of taxability of IUC has been examined a fresh, in consultation with service providers through the Cellular Operators Association of India.

3. As stated above, the interconnection usage service is provided by one telegraph authority to another telegraph authority. In terms of the existing definition, in the Finance Act, 1994, "telephone service" means any service provided to a subscriber by the telegraph authority in relation to a telephone connection. The subscriber means a person to whom any service of a

telephone connection has been provided by the telegraph authority. Therefore, a subscriber in respect of telephone service is the person who avails of service of telephone connection. While providing service of interconnection usage, no service of telephone connection is provided to recipient telegraph authority. No doubt, it is a service in relation to a telephone connection; however, as long as service is not provided directly to a subscriber (as mentioned above), the service may not fall in the category of telephone service. Therefore, IUC would not be taxable under the category of service. Opinion of Law Ministry/Attorney General has also been obtained in the matter. Law Ministry and Attorney General have opined that IUC is not taxable in any of the existing taxable services.

4. However, vide Finance Bill, 2007, a new definition of 'telecommunication service' has been incorporated vide clause (104) of section 65 of the Finance Act, 1994 and IUC has been specifically incorporated in the definition of 'telecommunication service' to make it a taxable service. Further, any service provided or to be provided, to any person, by a telegraph authority in relation to 'telecommunication service' has been made taxable. This amendment will come into effect from a date to be notified by the Government after enactment of Finance Bill, 2007. Therefore, after this amendment comes into effect, service tax would be applicable to IUC charges.

5 It is, therefore, clarified that for the period prior to the date when the amended definition of "telecommunication service" comes into effect, service tax is not applicable to IUC. Accordingly, all contrary circulars/ instructions issued in the matter are withdrawn. Pending cases may be decided in terms of this clarification.

6. Trade and field formations may be advised accordingly.

7. Hindi version will follow.

(Gautam Bhattacharya)

Commissioner (Service Tax)

BACK

Circular No. 92/3/2007

New Delhi, the 12th March, 2007

F. No. 249/3/2007-CX.4
Government of India
Ministry of Finance
Department of Revenue
(Central Board of Excise and Customs)

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To

Chief Commissioners of Central Excise & Customs (All)
Chief Commissioners of Central Excise (All)
Commissioners of Service Tax (All)
Director General of Service Tax, Mumbai
Director General Central Excise Intelligence, New Delhi
Webmaster@cbec.gov.in

Subject:- Liability of 'money changers' to pay service tax under 'banking and other financial service' – reg.

Service tax is leviable on foreign exchange (forex) broking service under the category of 'banking and other financial service'. In terms of the provisions of the Finance Act, 1994, foreign exchange broker includes a money changer (authorized dealer of foreign exchange). In this context, a question has arisen as to whether the service provided by a money changer in relation to exchange of foreign currency is a forex broking service for applicability of service tax levy under 'banking and other financial services'.

2. The issue has been examined by the Board. It was noted that 'money changing' and 'foreign exchange broking' are two distinct activities. Money changing is an activity of sale and purchase of foreign exchange at the prevalent market rates. On the other hand, foreign exchange broking is the activity performed as an intermediary, on a commission/brokerage basis, for facilitating the clients who wish to buy or sell foreign exchange. The foreign exchange broker providing foreign exchange broking service does not hold title to the foreign exchange. Accordingly, Board is of the view that service tax is not leviable on money changing *per se,* as such activity does not fall under the category of foreign exchange broking.

3. The instruction issued earlier vide letter F. No. 341/44/2005-TRU, dated 6.10.2005 stands superceded.

Trade and field formations may be advised accordingly.

5. Hindi version will follow.

(Gautam Bhattacharya)
Commissioner (Service Tax)

BACK

INCOME TAX ACT

Notification no. 83/2007, dated 26-3-2007

Subject: Income-tax (Third Amendment) Rules, 2007

In exercise of the powers conferred by section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely:-

1. (1) These rules may be called the Income-tax (Third Amendment) Rules, 2007.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Income-tax Rules, 1962, in APPENDIX II, for Form No. 16, Form No. 16A and Form No. 27D, the following Forms shall be substituted, namely:-

Form 16

Form 16A

Form 27D

BACK

SEBI UPDATES

- Common platform for electronic filing and dissemination of information about listed companies
- SEBI constitutes Derivatives Market Review Committee
- SEBI to introduce consent orders
- SEBI signs Memorandum of Understanding with Emirates Securities and Commodities Authority
- SEBI constitutes Committee on Infrastructure Funds
- SEBI permits submission of unaudited financial results subject to limited review for companies whose debentures are listed
- Proposed Policy For Fixing Base Price For Applying Price Bands Upon The Commencement/ Re-Commencement Of Trading For Certain Scrips Other Than IPOs
- Establishment of Connectivity with both NSDL and CDSL – Companies eligible for Shifting from Trade for Trade Segment (TFTS) to Rolling Segment
- SEBI to revise regulations and create master circulars

HOME

Views solicited on Proposed SEBI Policy for fixing Base Price for applying price bands upon the commencement/ re- commencement of trading for certain scrips other than IPOs

SEBI has placed on its website the Proposed Policy for fixing Base Price for applying price bands upon the commencement/ re-commencement of trading for certain scrips other than IPOs for public comments.

We request your views and suggestions on the proposed policy and would appreciate to receive the same by April 14 ,2007 at drs1@icsi.edu with a copy to sonia@icsi.edu so that we may collate all views and thereafter finalise the views of the Institute for sending to SEBI.

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PROPOSED POLICY FOR FIXING BASE PRICE FOR APPLYING PRICE BANDS UPON THE COMMENCEMENT/ RE-COMMENCEMENT OF TRADING FOR CERTAIN SCRIPS OTHER THAN IPOs

Background

Currently, the stock exchanges do not apply price bands / circuit filter in following cases:

A. On first day of listing of Initial Public Offerings (IPOs),

B. Commencement/ Re-commencement of trading arising pursuant to a scheme of de-merger, amalgamation, capital reduction, scheme of arrangement, restructuring etc.,

C. Scrips listed/permitted on any other exchange where the scrip is not actively traded.

However, dummy circuit filters / operating ranges (decided by BSE & NSE) are applied on the base price to avoid punching errors etc., if any.

Issue for Consideration

Recently, it has been noticed that there are significant price spikes on the first day of commencement/ re-commencement of trading in certain securities. It is felt that in view of such large price rise on the first day of trading, it would be appropriate to apply price bands / circuit filters upon the commencement/ re-commencement of trading for cases other than IPOs. The matter has been discussed with the Stock Exchanges and the Exchanges have indicated that would require a base price for applying the price bands/circuit filter. Accordingly, a draft policy has been framed for fixing the base price for cases other than IPOs.

Proposed Policy

The matter has been deliberated at length in the weekly surveillance meetings held with the stock exchanges. After taking into account the views of the stock exchanges, it is now proposed as under

I. Price band / Circuit filter of 20% (except trade-to-trade scrips where maximum price band / circuit filter of 5% to be applied) would be applied by the stock exchanges on commencement/ re-commencement of trading to all the cases of de-merger, amalgamation, capital reduction, scheme of arrangements, revocation of suspension, etc. as decided by the Exchanges from time to time.

II. The company shall obtain valuation certificate from any of the SEBI registered Merchant Bankers in all such cases. The indicative price/ fair value mentioned in the certificate of SEBI registered Merchant Banker provided by

the company will be considered as base price for applying actual price band / circuit filters upon the commencement/ re-commencement of trading.

III. The Merchant Banker would undertake due diligence for the purpose of valuation which would be based on the financials and / or the other relevant information. However, the transfer /transaction price discovered, if any, outside the stock exchange mechanism, in the 1 year period prior to date of valuation, would not be considered for the purpose of fixation of the base price.

IV. The Merchant Banker would adopt a policy which in their opinion is appropriate in arriving at the valuation and that they would furnish to the Exchange the methodology adopted while arriving at such valuation.

V. There should be sufficient advance notice to the market at large about the fixation of the base price/ imposition of price band thereon, along with the detailed reasons for the company undertaking the exercise as well as details of the valuation undertaken by the Merchant Banker.

Comments/suggestions are invited on the above proposals.

BACK

General manager-Division of Policy

Market Regulation Department

E-mail: mdrao@sebi.gov.in

Tel: 2644 9370

MRD/DoP/SE/Cir-4/07

April 02, 2007

The Executive Directors/Managing Directors/

Administrators of all Stock Exchanges

Dear Sir/Madam,

Sub: Establishment of Connectivity with both NSDL and CDSL – Companies eligible for Shifting from Trade for Trade Segment (TFTS) to Rolling Segment

1. It is observed from the information provided by the depositories that the companies listed in Annexure 'A' have established connectivity with both the depositories on or before 31.01.2007.

2. The stock exchanges may consider shifting the trading in these securities to rolling settlement subject to the following:

a) At least 50% of non-promoter holdings as per clause 35 of Listing Agreement are in dematerialized mode before shifting the trading in the securities of the company from TFTS to Rolling settlement. For this purpose, the listed companies shall obtain a certificate from its Registrar and Transfer Agent (RTA) and submit the same to the stock exchange/s. However, if an issuer-company does not have a separate RTA, it may obtain a certificate in this regard from a **practicing Company Secretary**/Chartered Accountant and submit the same to the stock exchange/s.

b) There are no other grounds/reasons for continuation of the trading in TFTS.

3. The Stock Exchanges are advised to report to SEBI, the action taken in this regard in Section II, item no. 13 of the Monthly/Quarterly Development Report.

Yours faithfully,

S V MURALIDHAR RAO

Encl: a/a

Annexure A

S.No	NAME OF THE COMPANY	ISIN
1.	Brakes Auto (India) Ltd.(Formerly Brakes and (India) Pvt. Ltd.)	INE222G01019
2.	Wire and Wireless (India) Ltd.	INE965H01011
3.	Zee News Ltd.(Formerly Zee Sports Ltd.)	INE966H01019
4.	Ennore Coke Ltd.(Ennore Coke & Power Ltd./Khatoo Synthetics Ltd.)	INE755H01016
5.	Consolidated Securities Ltd.	INE718F01018
6.	Apex Auto Ltd.(Formerly Apex Auto Pvt. Ltd.)	INE756H01014
7.	RIBA Textiles Ltd.	INE811H01017
8.	Sobhagya Mercantile Ltd.	INE754D01018
9.	Vipul Ltd.	INE946H01011

BACK

PRESS RELEASE

PR No123/2007

Common platform for electronic filing and dissemination of information about listed companies

In order to enhance transparency and efficiency of the securities market, SEBI had advised the two major stock exchanges, Bombay Stock Exchange Ltd. (BSE) and National Stock Exchange of India Ltd. (NSE), to explore the possibility of setting up a common electronic platform which should aim at (i) providing a single window filing to listed companies irrespective of multiple listing, (ii) eliminating paper filing with the Stock Exchanges (iii)covering all listed companies (including companies listed in Stock Exchanges other than BSE and NSE) and (iv) being a one stop shop for sourcing corporate information of listed companies by investors.

Accordingly on January 01, 2007, BSE and NSE jointly launched the common platform at www.corpfiling.co.in which is jointly owned, managed and maintained by the two exchanges. In the first phase since its launch, the platform has been disseminating filings made by companies listed on these exchanges. In the second phase which will be effective from April 02, 2007, the platform will enable electronic filing by companies listed in BSE and NSE.

Full details about the filing platform and the phased manner of implementing the same would be announced by BSE and NSE in a joint press release to be issued by them.

Mumbai

April 02, 2007

BACK

PRESS RELEASE

PR No.115/2007

SEBI constitutes Derivatives Market Review Committee

Securities and Exchange Board of India (SEBI) has constituted a 'Derivatives Market Review Committee' to look into the developments in derivatives market in India. This Committee will also suggest future possibilities and course of action.

The members of the Committee are:

- Professor M.Rammohan Rao, Dean, Indian School of Business (ISB) Hyderabad
- Dr. Nachiket Mor, Dy. Managing Director, ICICI Bank, Mumbai
- Ms. Chitra Ramakrishna, Dy. Managing Director, National Stock Exchange, Mumbai
- Ms. Deena Mehta, ex-President, Bombay Stock Exchange, Mumbai
- Dr. Sanjeevan Kapshe, Officer on Special Duty, SEBI – Member-Secretary and Convener

Mumbai

March 30, 2007

BACK

PRESS RELEASE

PR No.114/2007

SEBI to introduce consent orders

Securities and Exchange Board of India (SEBI) has decided to introduce consent orders for all matters which are pending regulatory action or pending before Securities Appellate Tribunal / Courts. The 'Frequently Asked Questions' on the subject will be put up on the SEBI website tomorrow.

Mumbai
March 28, 2007

Frequently Asked Questions (FAQs) - (PDF)

On Consent Orders & Compounding of Offences

Q1. What is a Consent Order?

A. Consent Order means an order settling administrative or civil proceedings between the regulator and a person (Party) who may *prima facie* be found to have violated securities laws. It may settle all issues or reserve an issue or claim, but it must precisely state what issues or claims are being reserved. A Consent Order may or may not include a determination that a violation has occurred.

Q2. What is Compounding of Offence?

A. Compounding is a process whereby an accused pays compounding charges in lieu of undergoing consequences of Prosecution.

Q3. What are Administrative/Civil enforcement actions?

A. Administrative/Civil enforcement actions include issuing directions, suspension or cancellation of certificate of registration, imposition of monetary penalty, pursuing suits and appeals in Courts and Securities Appellate Tribunal (SAT).

Q4. What is Prosecution?

A. Filing of criminal complaints before various criminal courts by SEBI for violation of provisions of securities laws which may lead to imprisonment and/ or fine.

Q5. What is the objective of Consent Order?

A. Consent Order provides flexibility of wider array of enforcement and remedial actions which will achieve the twin goals of an appropriate sanction, remedy and deterrance without resorting to litigation, lengthy proceedings and consequent delays.

Q6. What is the objective of Compounding of Offence?

A. Compounding of offence allows the accused to avoid a lengthy process of criminal prosecution, which would save cost, time, mental agony, etc in return for payment of compounding charges.

Q7. Does SEBI has power to pass consent orders?

A. The Parliament of India has recognised SEBI's powers to pass an order with consent of the parties. This will of the Parliament is clear from the words of Section 15T of the SEBI Act 1992. Section 15T(2) of the SEBI Act reads as under:

"15T (2) No appeal shall lie to the Securities Appellate Tribunal from an order made

(a) by the Board on and after the commencement of the Securities Laws (Second Amendment) Act, 1999;

(b) by an adjudicating officer,

with the Consent of the parties."

Thus, the Parliament in its wisdom has recognized that SEBI and its authorized delegate have power to pass consent orders. Similarly, courts have well recognized inherent powers to settle a case before them on an application made by the parties.

Q8. Is compounding of an offence permitted?

A. Section 24A of SEBI Act permits compounding of offences by the court where prosecution proceedings are pending.

Q9. What kind of offences/cases can be compounded or consented?

A. Consent Orders can be passed in respect of all types of enforcement or remedial actions including administrative proceedings and civil actions e.g. proceedings under Sections 11, 11A(1)(b), 11B and 11D of SEBI Act or under Enquiry Proceedings Regulations or Adjudication Rules or equivalent proceedings under the Securities Contracts (Regulation) Act 1956, Depositories Act 1996 and other civil matters pending before SAT/courts. Compounding of offence can cover appropriate prosecution cases filed by SEBI before the criminal courts.

Q10 Who can seek settlement of proceedings through consent order and compounding?

A. Any person who is notified that a proceeding may or will be initiated/instituted against him/her, or any party to a proceeding already initiated/instituted, may, at any time, propose in writing for settlement.

Q11. What factors will be taken into consideration for the purpose of passing Consent Order/ Compounding of offence?

A. Following factors, which are only indicative, may be taken into consideration for the purpose of passing Consent Orders and also in the context of compounding of offences under the respective statute:

1. Whether violation is intentional.
2. Party's conduct in the investigation and disclosure of full facts.
3. Gravity of charge i.e. charge like fraud, market manipulation or insider trading
4. History of non-compliance. Good track record of the violator i.e. it had not been found guilty of similar or serious violations in the past.
5. Whether there were circumstances beyond the control of the party
6. Violation is technical and/or minor in nature and whether violation warrants penalty.
7. Consideration of the amount of investors' harm or party's gain.
8. Processes which have been introduced since the violation to minimize future violations/lapses.
9. Compliance schedule proposed by the party
10. Economic benefits accruing to a party from delayed or avoided compliance.
11. Conditions where necessary to deter future non-compliance by the same or another party.
12. Satisfaction of claim of investors regarding payment of money due to them or delivery of securities to them.
13. Compliance of the civil enforcement action by the accused.

14. Party has undergone any other regulatory enforcement action for the same violation.

15. Any other factors necessary in the facts and circumstances of the case.

Q12. At what stage can Consent Orders be passed?

A. Consent Order can be passed at any stage where probable cause of violation has been found. In the event of a serious and intentional violation, the process cannot be completed till the fact finding process is completed whether by way of investigation or otherwise.

Q13 How will a person propose to consent or compound an violation/offence?

A person can make an application proposing consent to the officer who has issued a show cause notice to such person. Where a compounding is proposed by a party, such application may be made addressed to "Division of Prosecution, Enforcement Department" at SEBI's Head Office. Where a matter is pending before a court or SAT, the person may address his application to 'Division of Regulatory Action, Enforcement Department'.

Q14. At what stage Compounding of Offence can take place?

A. At any stage after filing criminal complaint by SEBI.

Q15. What are the principal terms and conditions of Consent Order and Compounding of offence?

A. Consent orders are passed by Competent Authority/SAT/Court where proceedings are pending, subject to the party taking remedial action and on such further consent terms including consent bars or consent penalties as the Competent Authority/SAT/Court where proceedings are pending, may find appropriate in the facts and circumstances of the case. Consent orders can be passed either a) admitting guilt or b) without admitting or denying guilt. Where an order is passed without admitting or denying guilt, such person shall never represent subsequently that he/she is not guilty. In the event such a representation is made, the enforcement process may be reopened. Similar appropriate terms will be sought by SEBI from Court where the prosecution is pending.

Q 16 What is the process for passing consent orders/ compounding of offences?

A. When the proposal of settlement is submitted by the party, it will be examined by an internal committee of SEBI which will submit its views/ recommendations to the Competent Authority/Adjudicating Officer where proceedings are pending for passing consent order. As regards Compounding of Offence, the accused has to submit his proposal before Court where the prosecution is pending. Upon taking necessary orders from Court where the prosecution is pending, SEBI's internal committe will examine the compounding proposal and file its reply/ recommendations before the Court where the prosecution is pending after taking approval from Competent Authority of SEBI. Where proceedings are pending before SAT/Court, a consent proposal can be sent to SEBI, whose Competent Authority will decide the appropriate terms of draft consent terms. These terms will be filed by SEBI and the party jointly before SAT/Court, which may accept, reject or modify such draft terms.

Q17. Will SEBI obtain waivers while passing the Consent Order?

A. Yes, while considering the proposal of the Party, SEBI will obtain a waiver from the Party of taking any legal proceedings against SEBI concerning any of the issues covered by the consent order.

The Party shall waive:

1. all hearings pursuant to the statutory provisions under which the proceeding is to be or has been instituted;
2. the filing of proposed findings of fact and conclusions of law;
3. proceedings before the Board or any officer;
4. all post-hearing procedures; and
5. Appeal/review before/by SAT/court.

By submitting an offer of settlement the Party shall further waive:

a. such provisions of the Regulations or other requirements of law as may be construed to prevent any officer of SEBI from participating in the preparation of, or advising the Competent Authority as to, any order, opinion, finding of fact, or conclusion of law to be entered pursuant to the offer; and

b. any right to claim bias or prejudgment by SEBI based on the consideration of or discussions concerning settlement of all or any part of the internal proceeding.

In addition, if the Party violates the consent order subsequently, the party shall waive a plea of limitation for reopening the case.

Similar appropriate waivers will be sought by SEBI from the accused before Court where the prosecution is pending.

Q18 When will final acceptance of any offer of settlement/Compounding come in to effect?

A. The final acceptance of any offer of settlement/ Compounding will come in to effect only upon the Competent Authority/ SAT/Court passing the consent order/Compounding order.

Q19. What will be the procedure after passing Consent Orders?

A. The consent order will be published through press release and would be put on SEBI website. In cases where a Party undertakes compliances, it has to comply with the same as per agreed schedule.

Q20. Whether the party has to pay any compounding/settlement charges for mitigating the violation?

A. Yes. Depending upon the facts and circumstances of the case, gravity of alleged violation, interest of investors and the securities market and deterent affect, amount payable by a party will be decided. In pending prosecution cases and cases pending before SAT/courts, the party is also liable to pay legal expenses incurred by SEBI.

Q21. Whether SEBI can consent, if the enforcement order was already passed and appeal is pending before Securities Appellate Tribunal/ Court?

A. Where a matter is already in SAT/Court, the same process will be undertaken and the draft consent terms will be filed before the SAT/Court with an appropriate prayer to consider the terms of the consent and subject to such

further terms as the SAT/Court may find appropriate in the facts and circumstances of the case.

Q22. What will be the remedies available with SEBI, if the Consent Order is violated by a party?

A. Failure to obey consent orders would invite appropriate action, including for violating SEBI orders, besides revival of the pending action. In this context any proceeding which had been kept in abeyance pending the consent process will begin from such stage at which it was suspended.

Q23. What will be the consequences of non-acceptance?

A. If SEBI rejects the offer of settlement, the person making the offer shall be notified of the same and the offer of settlement shall be deemed to be withdrawn. The rejected offer shall not constitute a part of the record in any proceeding against the person making the offer, provided, however, that rejection of an offer of settlement does not affect the continued validity of waivers. SEBI and the Party will be free to resort to legal recourse as may be available to them under law and neither SEBI nor the Party would be entitled to use any information relating to the settlement process in such proceedings. In cases where SEBI is not inclined to accept Settlement/Compounding of offence, SEBI would file its objections before SAT/Court for consideration.

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BACK

PRESS RELEASE

PR No.111/2007

SEBI signs Memorandum of Understanding with Emirates Securities and Commodities Authority

Securities and Exchange Board of India (SEBI) has signed a bilateral Memorandum of Understanding (MoU) with the Emirates Securities and Commodities Authority (ESCA).

The Memorandum of Understanding was signed in New Delhi today by Mr. M. Damodaran, Chairman, SEBI and Mr. Abdullah S. Al Turaifi, Chief Executive Officer of ESCA, in the presence of Hon'ble Prime Minister of India, Dr. Manmohan Singh and Vice–President and Prime Minister of UAE and Ruler of Dubai, H.H. Sheikh Mohammed bin Rashid Al Maktoum.

The MoU will promote co-operation between the jurisdictions towards fostering a common understanding of the regulatory issues and co-operation, particularly in matters relating to cross-border trading and supervision of investment products.

In the past, SEBI has signed similar MoUs with a number of countries. India is a signatory to multi-lateral MoU of International Organization of Securities Commissions (IOSCO). In order to encourage the exchange of information and assistance, SEBI has been signing MoUs with the jurisdictions who are yet to become the signatory to multi-lateral MoU of IOSCO.

Mumbai
March 26, 2007

BACK

PRESS RELEASE

PR No.108/2007

SEBI constitutes Committee on Infrastructure Funds

Finance Minister Shri P. Chidambaram in his budget speech for the financial year 2007-08 has inter-alia announced that to promote the flow of investment to the infrastructure sector, Mutual Funds would be permitted to launch and operate dedicated infrastructure funds.

In order to suggest a detailed action plan to operationalise the budget announcement, it has been decided by SEBI to set up a Committee.

The Committee will be headed by Shri U.K. Sinha, Chairman & Managing Director, UTI AMC. Shri Milind Barve, Managing Director, HDFC AMC and Shri S.Naganath, President, DSP Merrill Lynch Fund Managers Ltd. will be the Members of the Committee and Shri P.K. Nagpal, Chief General Manager (CGM), SEBI will be the Member Secretary.

The Committee will be required to submit its report within a period of three months.

Mumbai

March 23, 2007

BACK

PRESS RELEASE

PR No.104/2007

SEBI permits submission of unaudited financial results subject to limited review for companies whose debentures are listed

SEBI vide circular dated March 20, 2007, has amended the listing agreement for debentures in order to rationalize the provisions of continuous disclosures made by issuers who have listed their debt securities and not their equity shares; and to introduce submission of unaudited financial results with a limited review.

Pursuant to the amendment, issuers whose debentures have been issued on private placement basis shall submit unaudited half-yearly results subject to a limited review instead of half-yearly audited results, as required at present. Issuers whose debentures have been issued on public/ rights issue basis shall be required to submit unaudited quarterly results subject to a limited review instead of unaudited quarterly results without limited review required at present.

The results are to be submitted to the exchange within one month from the end of the reporting period and a copy of the limited review report prepared by the statutory auditors of the company (or in case of public sector undertakings, by any practicing Chartered Accountant) is to be submitted within two months from the end of the period. The circular also provides a format for the limited review report.

The full text of the above circular is available on the website: www.sebi.gov.in

Mumbai
March 20, 2007

BACK

PRESS RELEASE

PR No.113/2007

SEBI to revise regulations and create master circulars

Securities and Exchange Board of India (SEBI) issues various circulars to market participants giving its views and mandates to various participants. It is proposed to compress all the circulars issued by SEBI into Master Circulars - this would be done subject by subject. For example, there would be only one Master Circular on Mutual Funds. The proposed Master Circulars would enable SEBI's entire policy structure read with the Rules and Regulations of SEBI to be found in one place. This would help in minimising unintended or technical violation of circulars.

As our regulations and circulars have been accretive in nature, with the advent of time our circulars have become bulky and diffused. Some may even be unnecessary as the market structure has changed very rapidly over the past few years. SEBI is therefore looking at revising not merely the form, but also the content of the circulars.

In addition, SEBI would also like to review all its Regulations so that they are alive to the current market structure and address regulatory concerns adequately. This process of checking for relevance and updation in the substantive regulation would run parallel to the creation of Master Circulars in the same area so that the two efforts can be coordinated.

SEBI would like to move towards use of plain English in its regulations so that the regulations are comprehensible and easy to follow.

Given the ambitious nature of the project, it is estimated to take over a year and three months to complete. In this project, besides the relevant departments of SEBI, the National Law School of India University, Bangalore has agreed to be the partner school. National University of Juridical Sciences,

Calcutta will also participate in the project subsequently. A senior securities lawyer will give his inputs on an honorary basis. A former Judge of the Supreme Court of India will give his guidance in important areas of securities law jurisprudence.

After the work and brainstorming amongst SEBI, law schools and experts the draft of one area of regulations, would be put on SEBI's website for public comments and work will simultaneously begin on the next area. The areas and time schedules which are proposed will be separately hosted on the SEBI website in due course, so public can offer their comments on the drafts, considering which the final regulations will be drafted. The importance of public comment cannot adequately be emphasized as the success of the task will rest to a large extent on the inputs of investors, market intermediaries and professional experts to the first draft put up on the SEBI website. The first set of draft regulations and Master Circulars can be expected to be hosted on the SEBI website in the month of May 2007.

Mumbai
March 28, 2007

BACK

MEMBERS CONTRIBUTION

- **Ready Reckoner for sec. 138 of Negotiable Instruments Act, 1881**
- **Manager, ICICI Bank Ltd. vs. Prakash Kaur and Ors. (SC)**

HOME

READY RECKONER FOR SEC. 138 OF THE NEGOTIABLE INSTRUMENTS ACT, 1881

Contributed by: Shri J. M. Shah, FCS

S. 138 OF NEGOTIABLE INSTRUMENTS ACT, 1881 AS AMENDED BY

(i) APRIL 1, 1989 BY THE BANKING, PUBLIC FINANCIAL INSTITUTIONS AND NEGOTIABLE INSTRUMENTS (AMENDMENT) ACT, 1988 &

(ii) NEGOTIABLE INSTRUMENTS (AMENDMENT and MISCELLANEOUS PROVISIONS) ACT, 2002 &

(iii) NEGOTIABLE INSTRUMENTS (AMENDMENT AND MISCELLANEOUS PROVISIONS) ACT, 2002, IN FORCE FROM FEBRUARY 6, 2003

POINT 1 SERVICE OF NOTICE:

Notice to be sent in 30 days of dishonor of cheque
(amended from 15 days to 30 days w.e.f. 06.02.2003)

POINT 2 MODE OF DISPATCH OF SERVICE

If notice sent by RPAD is good service u/s 27 of General Clauses Act.

S. 27:-

"Where any (Central Act) or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, where the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing pre-paying and posting by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

Courts need to presume delivery u/s 114 of Indian Evidence Act- Illustration (f) :-

S.114:-

"The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.
Illustrations:
(f) That the common course of business had been followed in particular cases;"

If a letter is properly directed, is proved to have been either put in to the post office or delivered to the postman, it is presumed, from the known course of business in that department of public service, that it reached destination at the regular time and was received by the person to whom it was addressed.

Harihar Banerjee v Ramshashi Roy AIR 1918 PC 102
Vandavashi Karthikeya v S. Kamalamma AIR 1994 AP 102
R.A.Qureshi v Xth Addl. DJ. Meerut AIR 1995 All 345

NOTICE SENT BY RPAD

AIR 1999 SC 3762; (1999) 7 SCC 510; 1999 CrLJ 4606 - K. BHASKARAN v SANKARAN VAIDHYAN BALAN And Another

SERVICE BY POST

Tampering with postal delivery stamp render the document unreliable - Proper course is to retain postal stamp in its original form and to obtain certificate from postal authorities about date of actual delivery.

Jusbir Singh Dhanda v1s Dean, Mahatma Gandhi Institute of Vedical Sciences. AIR 1991 SC 330.

UPC

The judgement in the case of Subash Chandra Venna v/s State of Bihar AIR 1995 SC 904 discusses about the evidentiary value which can be given to certificate of posting.

POINT 3 RETURN OF NOTICE – DEEMED SERVICE

UNSERVED

The question is of service of notice in a suit for specific performance in respect of' execution of agreement. Notice served on petitioner by way of process server and by registered card AD and by Gazette publication. Notice returned unserved an alleged refusal.

It is held that notice must be deemed to have been served.
Bhabia Devi v Parmanad Yadav (1997) 3 SCC 631; AIR 1997 SC 1919.

ENVELOPE UNSERVED / AD SLIP NOT RECEIVED BACK

Notice was sent to the respondent but neither the unserved notice nor the acknowledgement cards were received. It is held that notice must be deemed to have been served.

(i) Shimla Development Authority v Santosh Sharma (1997) 2 SCC 63 7-AIR 1997 SC 1791,

(ii) G.S.Srikanth and others v M/s Shri Laxmi Financiers and another 1999 CrLJ 329

a. Referred therein at Para 14 AIR 1989 SC 630 Madan & Co. v Wazir Javir Chand

".. if a registered letter is addressed to a person at his residential address does not get served in the normal course and is returned, it can only be attributed to the addressee's own conduct."

NOT KNOWN

Notice returned with endorsement "not known". Held, **in the circumstances** notice must be deemed to have been served.
State of Kerala and Others v V T K Udaya Sankaran and Others, 1995 Supp. (3) SCC 518.

REFUSED – Deemed Service

- Where addressee refused to accept letter, the presumption of due or proper service arises and knowledge of contents of letter is imputed to addressee.
  Harcharan Singh v. Shiv Rani, 14IR 1981 SC 1284~

- Postal endorsement refused. It will be deemed to have been served.
  Jagdish Singh v. Nattu Singh, AIR 1992 SC 1604.

ADDRESSEE OUT OF STATION

Notice sent by RPAD. Returning with endorsement Addressee out of station – Notice deemed to have been duly served

2000 CrLJ 1005 (AP) – M/s Aparna Agencies Hyderabad v P Sudhakar Rao and Another

POINT 4 CONTENTS OF NOTICE

Notice must demand the amount of cheque.

The amount demanded in the notice may be in addition to the amount of cheque and /or along with the amount of cheque.
(2000) 2 SCC 380;(2000)2GLR (SC) 1071; 2000SCC (Cri) 414 – Suman Sethi v Ajay K Churiwal and Another

POINT 5 REASONS FOR DISHONOR

ACCOUNT CLOSED

Offence made out – SC

NEPC Micon LTD AND Others v Magma Leasing Ltd AIR 1999 SC 152

Offence made out – SC

(i) Madras High Court in S. Prasanna v R. Vijayalakshmi 1992CrLJ 1233 " offence not made out"
(ii) Overruled by **SC** in NEPC Micon LTD AND Others v Magma Leasing Ltd AIR 1999 SC 152 (This Madras Case is referred in this case at Para 4)
(iii) This NEPC case is referred at Para 7 in AIR 2003 SC 2035 – Goaplast Pvt Ltd v Shri Chico Ursula D'Souza and another Closing of account is followed by withdrawal of money form the account that leaves money insufficient to honour cheque issued earlier.

PAYMENT STOPPED

S.139 read with S. 118 (a) – Presumption under –

AIR 2003 SC 2035 - Goaplast Pvt Ltd v Shri Chico Ursula D'Souza and another

POINT 6 PRESUMPTION OF DISCHARGE OF DEBT OR LIABILITY

S.139 read with S. 118 (a) – Presumption under –

1. 1998(3) SCC 249 Modi Cements Ltd v Kuchil Kumar Nandi * AIR 1996 SC 2339 Electronic Trade and Technology Development Corp Ltd v Indian Technologists and Engineers (Modi Case overruled this case) *

2. 2001(3) SCC 726 Ashok Yeshwani Badave v Surendra Madhavrao Ninghojakar & another *

3. AIR 2003 SC 2035 - Goaplast Pvt Ltd v Shri Chico Ursula D'Souza and another (* marked are referred in this case)

4. 2002SCC(Cri)14 K.N.BEENA v MUNIYYAPAN AND Another

5. AIR 1999 SC 3762; (1999) 7 SCC 510; 1999 CrLJ 4606 - K. BHASKARAN v SANKARAN VAIDHYAN BALAN And Another

POINT 7 PARTNERSHIP FIRMS / COMPANIES

PARTNER OF FIRM WHEN NOT LIABLE

No allegation in the notice - Complaint not maintainable
2002 (7) SCC 655 – Katta Sujatha (Smt) v Fertilizers and Chemicals Travancore Ltd

COMPANY

Person not in charge of affairs of a company at the time of offence – can not be prosecuted
2001(2) GLR 1023 – Alka N Shah v State of Gujarat and Anr – GUJ HC

POINT 8 JURISDICITON OF COURT

AIR 1999 SC 3762; (1999) 7 SCC 510; 1999 CrLJ 4606 - K. BHASKARAN v SANKARAN VAIDHYAN BALAN And Another

Any one of the local areas within the territorial limit of which any one of the following five acts, components of the offence, took place :-

Where
(i) cheque is drawn
(ii) cheque is presented for payment
(iii) cheque is returned by drawee bank
(iv) notice is given demanding payment
(v) failure of drawer to make payment

POINT 9 PRESUMPTION AS TO

(i) MAKING OR DRAWING OF CHEQUE
(ii) FOR CONSIDERATION
(iii) ON THE DATE ON WHICH MADE

Cheque signed - admitted – Admits making / drawing of cheque, having received consideration and signing on the date it bears

"Post dated Cheque shall be deemed to have been drawn on the date it bears and the previous date on which it was made over by the drawer to the drawee".- decided by TWO Judge bench of SC - Anilkumar Sawhney v Gulshan Rai (1993)4 SCC 424. *

2001(3) SCC 726 Ashok Yeshwani Badave v Surendra Madhavrao Ninghojakar & another –DB of KT Thomas, RP Sethi and BN Agrwal JJ (*Anilkumar case is referred at Point No. 6 on page 1675 and also at Point No. 18 Page 1679 – agreeing on this point)

AIR 1999 SC 3762; (1999) 7 SCC 510; 1999 CrLJ 4606 - K. BHASKARAN v SANKARAN VAIDHYAN BALAN And Another – Para 9

Body of cheque not written by drawer not material – sign material 1997(2) Crimes 203 Satish Jayantila Shah v Pankaj Mashruwala - Guj HC

POINT 10 COMPLAINT BY

Complaint need not be filed by payee personally and can be lodged by POA

POINT 11 SUBSEQUENT DEVELOPMENT

Compromise – Settlement between the parties – Subsequent events taking place during the pendency of appeal – On facts to be taken in to account by Appellate Court while disposing of the appeal.

2000 SCC (Cri)1388; LW:4.1.2001 Chartered Secretary 2001- Cranex Ltd and Another v Nagarjuna Finance Ltd and Another

POINT 12 DEATH OF COMPLAINANT

Proceeding does not abate on death of payee - Dismissal on that ground improper.

1998 CrLJ 3870 Anil G Shah v I.J. Chittaranjan Co. and Another (Guj HC)

POINT 13 HOW MANY TIMES CHEQUE CAN BE PRESENTED

Cheque can be presented any number of times within the period of its validity
(1999) 8 SCC 221

POINT 14 POWER TO TRY SUMMARILY S. 143

JMFC or Metropolitan Magistrate shall try case summarily.

On conviction in a summary trial :-

Sentence not exceeding one year.
Fine exceeding Rs. 5,000.

SENTENCE EXCEEIDNG ONE YEAR:-

At commencement of trial or in the course of, if it appears to Magistrate that nature of case is such sentence – Exceeding One year – permissible

For any reason undesirable to try case summarily

After hearing parties, recording order to that effect, recall any witness and proceed to hear or rehear the case in the manner provided in Code (CrPC).

S. 143 (2) Trial hearing day to day as far as practicable

S. 143 (3) trial to be conducted as expeditiously as possible and concluded within **six** months of the date of filing complaint.

POINT 15 SERVICE OF SUMMONS

Summons to Accused / witness

Where ordinarily resides / carries on business / personally works for gain

By Speed Post – s. 144 (1) or by such courier as approved by Court of Sessions

POINT 16 EVIDENCE ON AFFIDAVIT

Evidence of the Complainant on Affidavit S. 145 (1)

POINT 17 BANKER'S SLIP PRIMA FACIE EVIDENCE

Banker's Slip or Memo evidencing return of cheque – *prima facie* evidence unless contrary is proved.

New ENTRY 13-10-2006

2004(4) Crimes 277 (SC)

V. Raja Kumari v. R.Subbarama Naidu & Anr.

Where demand notice u/s 138 of Negotiable Instruments Act was returned with endorsement "house locked" burden will be on complainant to show that accused managed to get incorrect postal endorsement made and in fact it would be deemed service.

New ENTRY 17-10-2006

2005 (1) Crimes 265

Francis v Pradeep

Soul of provisions of Section 138 of Negotiable Instruments Act, will be lost if there was no expeditious enforcement.

BACK

CASE LAW - Manager, ICICI Bank Ltd. vs. Prakash Kaur and Ors. (SC)

Contributed by: Shri Jayendra Shah, FCS

2007(1) CRIMES 417

CASE NO.: Appeal (crl.) 267 of 2007

PETITIONER: Manager, ICICI Bank Ltd

RESPONDENT: Prakash Kaur & Ors

DATE OF JUDGMENT: 26/02/2007

BENCH: Dr. AR. Lakshmanan & Altamas Kabir

JUDGMENT: J U D G M E N T
(Arising Out of SLP (Crl.) No. 15 OF 2007)
Dr. AR. Lakshmanan, J.

I had the privilege of perusing the judgment proposed by my learned Brother - Hon'ble Mr. Justice Altamas Kabir. While respectfully concurring with the conclusion arrived by the learned Judge, I would like to add the following few paragraphs:-

1) Regarding the role of Recovery Agents

- use of abusive language
- due process of law RBI guidelines.

FACTORS:

- The issue of Banks employing alternate means of recovery other than by due process of law i.e., either through Courts, Tribunals, Adalats or Commissions is an issue that has to be viewed from two angles (1) from the angle of the common man and (2) from the angle of the bank.

REASONS:

- First of all, the entrance of the multi national banks into the country has spread the culture of Credit Cards, Loans on an unimaginable level where rather than the rich, it is the middle class, the lower middle class and the lower class who are at the receiving end of the bonanzas promised by the Banks.

- Inadequate information on the Credit Card application, Loan Applications, Advertisements or even while meeting the bankers in person in respect of the lending rates and hidden charges, leads to this class of people being lured into the buying of the Credit Cards or taking of the home loan or education loan without knowing the ramifications of non-payment and default.

- The first mistake here is most definitely on the part of the bank who does not believe in educating the masses regarding the promises. Once the credit card or loan is taken and there appears a default, then the witch-hunt begins.

- Now the bank is the aggressor and the public is the victim. The first step to recovery of the money due is through the so called RECOVERY/COLLECTION

AGENTS. A very dignified term used for paid recovery agents who are individual and independent contractors hired by the Banks to trace the defaulters and to both physically, mentally and emotionally torture and force them into submitting their dues.

- A man's self respect, stature in society are all immaterial to the agent who is only primed at recovery. This is the modernized version of Shylock's pound of flesh. No explanation is given regarding the interest charge and the bank takes cover under the guise of the holder of the card or loan having signed the agreement whose fine print is never read or explained to the owner.

- When a harassed man approaches the Court or the police station he is not armed with a recording phone and finds it difficult to give evidence of the abuse he has suffered.

- Here the bank gets away with everything. Young and Old members of the family threatened on streets, institutions and also at home at godforsaken hours by these agents who have the full support of their contractor bank. The stance taken by the bank in any suit alleging such incidents is that no such agent has been appointed by them or their agents do not misbehave in the manner aforesaid and if found guilty the agents have to bear the cross and the bank gets away scot free.

- Using of the abusive language for recovery is the norm of the day for most nationalized or multi national bank or non-nationalized bank. Though some are smart enough to record the abuse and proceed to establish the same through Court of Law, most of them are unfortunate not to have recourse to it. Such people form the majority and such litigations are pending in large volumes before the Civil and Consumer Courts. Again the banks escape liability since these agents are not salaried employees of the bank and hence not directly liable for anything.

- Taking it from the angle of the common man the inflow of software money and high salaries has resulted in uncontrolled expenditure. Rather than utility it is a
- fashion to carry a card for it makes a statement depending on the type of card one carries.

- To maintain ones image one pays the price of utilizing the card without realizing that even a single day's delay in payment results in more than 100 to 200 rupees being charged as default and penalty charges, which if accumulates over a month, results in the charges exceeding the actual payment due.

- As for loans, when litigation is commenced by the customer against the bank or an institution, then they refuse to divulge the true statement of account stating
- that it will be produced in court. This gives ample scope for manipulation.

SUGGESTIONS

- Chronic defaulters should mean a default of a maximum of three months if intermittent payments have been made.

- It is mandatory that the banks be held vicariously liable for such acts of agents. These agents have to be identified as registered agents of the bank and should be bought directly under the purview of the RBI.

- It may be useful that in view of the enormous amount of litigation pending and being filed against the banks that the recovery agents be made employees of the bank and the bank be held liable directly for all actions of such employees.

- Also every statement sent by the bank should disclose clearly the rate of interest and the default interest and penalty charges separately calculated and added to the amount pending and due by the customer.

- At the very first month of default, the card should automatically be terminated by the bank to prevent further use/misuse.

- At the time of issuance of card itself, the issuance letter should contain every single charge being made, explained in simple terms and the penalty the customer will bear for such non-payment.

- These agents should be held responsible for every background check done on the person to whom the card is issued and the defaulter should be made liable along with the agent. This would ensure that the agent does not source illegal or fraudulent customer.

- This is dealt with elaborately in the RBI guidelines issued on 21.11.2005 but which still remains only on paper and is not being followed.

2) HIRE PURCHASE:

FACTORS:
Very many banks and more importantly banks like ICICI have extended liberal credit facilities for purchase of vehicles whether two wheelers or four wheelers, more the number the targets are achieved. This results in a certain amount of default cases. The default can be two-fold (1) genuine and (2) fraudulent. Both, in the case of genuine and fraudulent the method usually adopted by these institutions is to engage thug/hooligan/gangster for recovery or the two wheelers or four wheelers. Many times even notice is not given to them.
They seize the vehicles even in public places deliberately to cause embarrassment. There is no codification till date. This requires immediate attention. In all the cases of hire purchase, advance cheques for a period of 36 months or 48 months or 60 months are obtained and since there is no proper collection process, they not only seize the vehicles but also continue to present the cheques merely to harass the customers. A recent incident has taken place when the Recovery Agent had gone and threatened a school going child for the money due by the father.
Unless we have an effective supervisory system the abuse will continue.

SUGGESTION
Most of the non-banking financial institutions adopt the arbitration route for the purpose of getting a commissioner of the Court appointed for seizing the vehicles. The most important aspect would be a broad guideline for fixing the targets, whether they be for lending or for recovery. This would result in a proper balance between the extreme differences of working conditions between the Multinational Commercial Banks and Nationalized and Non-nationalized Banks who are doing the very same credit business with dignity.

3) Agency systems to be abolished

FACTORS
Though there are voices raised stating that the agency system should be abolished, this has to be examined from the view of the bank for whom this system has proved to be extremely productive in view of chronic and regular defaulters and customers who have a premeditated intention of cheating the bank. Such people are identified easily by the agents and produced physically before the bank who resort to all means including the local police help to force such customers to repay their dues.

REASON
The delay in the Courts and the in-effective and corrupt police structure enables the bank to seek the help of such agencies which proves to be cost effective and less cumbersome.

SUGGESTION
- Abolition of the system is not the answer but effective control over the agency by the respective banks is essential.

- ❖ Even though, the Reserve Bank of India Guidelines permit the use of an Independent Agency, no prescribed qualification or licence is granted.

- ❖ If there could be a guideline only licensed recovery agents would be employed and misuse of the agents as against the borrowers can be eradicated.

- ❖ License also should be granted after the respective agents get through in a course conducted by the banks.

- ❖ In accordance with the RBI Guidelines, in any proven cases the license of the agent should be cancelled with penal consequences on them.

- ❖ This could be the best alternative if the banks do not come forward to employ their own personnel and depute them for recovery of outstandings.

4) RBI Guidelines

- ❖ The widely published and circulated guidelines dated 21.11.2005 has constituted a working group on regulatory mechanisms and for fair trade practices.

- ❖ It came into effect as of 30th November, 2005 and covers a wide area pertaining to the rights of the customers and right to privacy, confidentiality, practice of debt collections, Redressal of grievances and monitoring systems to be implemented by the banks.

- ❖ Pursuant to this certain knowledgeable persons/executives aggrieved by the agencies behaviour took recourse through the Ombudsman.

- ❖ Not many are aware of this forum and the banks continue to be safe.

5) Banking Regulations Act

- ❖ Banking Regulations Act does not, in any way, provide the details of the conduct of the bank business.

- ❖ It only contemplates the registration of a bank, incorporation of a bank and thereafter puts the bank under the control of RBI.

- ❖ While there are guidelines both for lending and recovery which contemplates that no use of force or abuse is used in recovery proceedings, in the absence of an effective overseeing body, these abuses continues.

- ❖ Since every bank should hold a license issued to carry on the banking business in India by the RBI in accordance with the conditions imposed by the RBI, if and when both nationalized and MNB's violate any of the

rules and regulations consistently over a period of time, then strictures ought to be imposed on such digressing banks to curb their high handed activities and to make them

- ❖ answerable to the general public.

- ❖ Only this would reinstate the confidence of the masses in the banking system who are already burdened with the population of over 60 years of age having lost
- ❖ tremendously on the lowering of the interest rates.

- ❖ The banking procedures should be people friendly at the same time, strict in its enforcement and educative enough to guide the public on the benefits of prudent
- ❖ banking and savings and at the same time, enlighten them on the pitfalls of borrowing or taking credit from institutions for various purposes, way beyond their
- ❖ means.

CONCLUSION:

On an overall assessment of the system presently existing in India, the Multi National Banks score over the nationalized banks in terms of connectivity and ease in functioning, since they are highly automated and efficient. The staff too is well trained and well paid also. The disadvantage here is that the more the pay, the greater the pressure. Every facility is provided but work is extracted to the maximum irrespective of the age or personal circumstances. In a nationalized bank, since there is no fear of immediate removal, the attitude of the staff is tolerant. No effort is made to go a little more to help the masses. Burden is shifted easily at the lower level. The middle management and higher management are under tremendous pressure, since they are to achieve targets on par with the Multi National Banks. Though there is job security and comfort in pension, there is no answerability. This leads to a recalcitrant attitude and apathy.

As a conclusion, one can state that though efficiency is necessary, it should not be attained under pressure and this situation would only improve if answerability is made the prime criteria in both the sectors.

ADDITIONAL INPUTS

Considering the difficulties of the customers as well as banks, the concept to be developed is to create distinct and separate department for recovery. This should be manned by persons who will not resort to violence or force when they are in the process of recovery of the dues.

While the fraudulent defaulters can be dealt with by taking the Police help for such action, it is only when law is taken into the hands of the so called recovery agents, who are appointed on contract basis, the issue gets aggravated. A separate wing, wherein appropriate training is given in accordance with RBI guidelines would facilitate the bank in its recovery process and also would provide more responsibilities to the persons so engaged.

Yet another suggestion would be that of loans whether they are Personal Loans or Credit Cards or Housing Loan with less than Rs.10 lakhs exposure, can be referred to Lok Adalat which can be specially created for resolving the issues between the banks and the borrowers. In fact, the Lok Adalat should be used as an effective machinery to resolve the issues and concentrate with reference to keeping the fine balance between the Banks and Borrowers.

If the Agency System is inescapable, then the Agency must be coupled with a license issued after conducting examination. Appropriate training should be given to the agents who should have requisite qualification and maturity to handle delicate and sensitive situation. Merely because the Agency System is convenient to the banks, and has been approved by RBI, it should not lead to lawlessness and conduct resulting in challenge to rule of law.

While performance of the banks are always co-related with reference to its growth, its assets utilization and finally profit in the balance sheet, that and that alone cannot be relied upon, with reference to a country like India, where there is enormous disparity in respect of various sections of the society. These are all positive steps that would bring in the over all balance in the working of all these institutions.

Whether it is a bank, which concentrate on higher segment of banking or it is a bank which concentrate upon middle class, lower middle class and such other segment of the Indian Public who look to and requires the banking comfort, it is not mere question of lending the money that matters, but also the consequences thereafter. The social responsibility is larger than the banks profit and growth ratio alone.

Keeping in mind the social responsibility, it is absolutely necessary to appoint a Special Committee who will look into the disparity in working conditions, at least upto the managerial level and make such recommendations to the RBI and Union of India for all remedial actions.

In conclusion, we say that we are governed by a rule of law in the country. The recovery of loans or seizure of vehicles could be done only through legal means. The Banks cannot employ *goondas* to take possession by force.

BACK