



# eMagazine



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**CS M C Bhansali**  
Chairman,  
Mysore Chapter

**-: Editorial Team :-**

CS Dattatri H M

CS Sarina C H

CS Omkar Gayatri

CS Abhishek Bharadwaj

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Dear Readers,

It gives me immense pleasure to greet you all after assuming the prestigious office of the Chairman of the Mysore Chapter of ICSI.

I would like to take this opportunity to express my sincere gratitude to all of you and the members of the Chapter for reposing confidence in me.

The Mysore Chapter of ICSI has carved a niche for itself and has raised the bar of its performance. The Oral coaching class of the next batch has already begun and students will be encouraged to be a part of this chapter and engage themselves in the activities of the Institute.

The baton is handed over with much expectation as we enter to another promising beginning and I am sure that, with the expertise and verve of the new managing committee, new goals will be set and greater heights will be reached.

I request all the members and students to be a part of this chapter and enjoy the glory of growing together.

I wish you all Good Luck.

..o0O

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# Legal Metrology Law: Complexity and Multiplicity of Compliances

The Packaged Commodity Rules OR the Legal Metrology Laws in India, are driven by a simple logic - “protection of a customer’s interests by making the originator (be it the manufacturer, packer or importer) of goods accountable for such products”, which are meant for consumption by the general public.

The numerous and complex compliance requirements for different types of products and vendors, a lack of practical procedures for revision of the maximum retail price (MRP) and the treatment of imported goods on a par with the domestically manufactured goods (even at the port of import) render these laws highly impractical, ambiguous and prone to litigation. For Example, Rule 6 of the Packaged Commodity Rules alone has more than 30 mandatory compliance requirements for retailers, apart from various other compliances in the subsequent rules. Furthermore, there are many product specific legislations which have their own set of labelling requirements such as the Drugs and Cosmetics Act 1940, the Seeds Act 1966, the Food Safety and Standards Act 2006, the Foreign Trade Policy 2009-2014, Cigarettes and Other Tobacco Products (Packaging and Labelling) Rules, etc.

There has been no attempt to consolidate the requirements into a single legislation to make it simpler to follow., the list of compliance requirements involved for labelling sometimes run up to 60- 65 items, which have their source from multiple Acts and Regulations. In view of this stringency, even a very technical instance of non-compliance having no consumer impact whatsoever – for example, making labels in a size marginally smaller than the legal requirement, using non-contrasting colours, smudging the ink (even in a one-off retail pack), failing to mention the net content in the metric system, missing the manufacturing licence number, missing the pin code in the manufacturer’s address, etc. usually leads to the legal metrology officers putting the concerned entity in a precarious situation, issue of show cause notices & thereafter litigations.

As per the last report on India's Foreign Trade prepared by Department of Commerce, Government of India, it reflects that imports during the year 2015, were valued at US \$ 42821.63 million (Rs.264227.44 Crore) representing a growth of 26.79 per cent in Dollar terms and a growth of 24.91 per cent in Rupee terms over the level of imports valued at US \$ 33772.92 million (Rs. 211529.90 Crore) in 2014. Further, as per the Ministry of External affairs, Government of India, the Consumer spending in the country is expected to increase about 2.5 times by 2025. (<http://indiainbusiness.nic.in/newdesign/index.php?param=economylanding/415/1>)

Unfortunately, the Foreign Trade Policy (Specifically Import Policy) has not been amended in line with the amendments made to the Packaged Commodities Rules, and even after the introduction of the new Legal Metrology Law, which makes compliances a nightmare for exporters & importers.

The Ministry of the Consumer Affairs issued proposed amendments to the Act and the Legal Metrology (Packaged Commodities) Rules ("Rules"). The significant amendments to amend the Act and Rules made therein are as under:

1	Definition of Pre-package Commodity	The definition of the term "Prepackage commodity" which is defined under Section 3(l) in the Act presently includes a commodity which without the purchaser being present is placed in a package of whatever nature, whether sealed or not, so that the product contained therein has a pre-determined quantity.
2	Industrial consumer	In order to exempt items not meant for retail sale, the term "Industrial consumer" which means the consumer who buys packaged commodities directly from the manufacturer for use by that industry the amendment has includes purchase not only from manufacturer but also from importers and wholesale dealers as well. Further, the provision clearly mentions that such purchase is not meant for further retail sale.
3	Declarations on pre-packaged commodities	Section 18 of the Act lays down that no person shall manufacture, pack, sell, import, distribute, deliver, offer, expose or possess for sale any pre-packaged commodity unless such package is in such standard quantities or number and bears thereon such declarations and particulars in such manner as may be prescribed. Rule 6 of the Legal Metrology (Packaged Commodities) Rules, 2011("Rules") explicitly prescribes the mandatory declarations to be specified in all packaged commodities meant for sale, offer for sale distribution, etc. sub clause 3 of Section 18 which states that "the Central Government, may provide for different declarations for different type of pre-packaged commodities as required" is included.
4	Penalties for selling, etc. of non-standard packages:	Section 36 (1) of the Act states that "whoever manufactures, packs, imports, sells, distributes, delivers or otherwise transfers, offers, exposes or possesses for sale, or causes to be sold, distributed, delivered or otherwise transferred, offered, exposed for sale any pre-packaged commodity which does not conform to the declarations on the package as provided in this Act, shall be punished with fine which may extend to twenty-five thousand rupees, for the second offence, with fine which may extend to fifty thousand rupees and for the subsequent offence, with fine which shall not be less than fifty thousand rupees but which may extend to one lakh rupees or with imprisonment for a term which may extend to one year or with both."
5	New Provisions	The amendment includes two new Sections i.e. section 36A which states that whosoever fails to comply with the provision of Sub-Section (2) of Section 18 of the Act shall be punished with fine which may extend to ten thousand rupees and for subsequent offence with fine up to fifty thousand rupees. Further Section 36 B states that whoever, sells, distributes, delivers or otherwise transfers any pre-packaged commodity more than the retail sale price shall be punished with fine which shall not be less than five thousand rupees but which may extend to twenty thousand rupees and, for the second or subsequent with fine not less than twenty thousand which may extend to one lakh and for subsequent offence, with imprisonment for a term which may extend to one year and also with fine.

In view of rapid advancement of science & technology and globalization of economies, there has been vast improvement in weighing and measuring techniques and has extended the scope of weights & measures. With the view to establish the standards of Weights & Measures, regulate trade and commerce in Weights & Measures and other goods which are sold or distributed by weight, measure or number and for matter connected therewith or incidental thereto, the Legal Metrology Act, 2009 was enforced on 1-4-2011 and subsequently amendments were made to it. The Legal Metrology Act, 2009 (Act 1 of 2010) repeals and replaces the Standard of Weights and Measures Act, 1976 and the Standards of weights and Measures (Enforcement) Act, 1985. The central government has appointed the date 01.04.2011 from which the provisions of the Act will come into force. The responsibility in relation to legal metrology is shared between the Centre and the States. Matters of national policy and other related functions such as, uniform laws on weights and measures, technical regulations, training, precision laboratory facilities and implementation of the International Recommendation are the concern of the Central Government. The State Governments and Union Territory Administration are responsible for the day to day enforcement of the laws.

**Ms. Nitza Agrait Vilá**  
Commercial Legal Lead, Microsoft India  
[nagrait@microsoft.com](mailto:nagrait@microsoft.com)



# ‘Cloud Computing’ as a Tool to Enable and Enhance Compliance

## Part II

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### How to Assess and Choose a Cloud Service Provider

*This is the second in a series of three articles entitled Cloud Computing as a Tool to Enable and Enhance Compliance. The first article published in January is entitled “What is Cloud Computing and Why Should Compliance Professionals Care?” It describes what the cloud is, including the benefits and some of the challenges to be addressed. This one is entitled “Tips on How to Assess and Choose a Cloud Service Provider.” In this article, we will explore a framework to evaluate a cloud service provider based on its practices on security, privacy, compliance, and transparency. Finally, the third article is called “The Cloud as a Tool for Legal Compliance in India,” and it will be published next month.*

*Please provide us with feedback as we publish these articles.*

Last month we discussed what the cloud is and how it can be a true business enabler of agility, scalability, cost savings, and self-service. We also suggested, based on analyst studies, that if you and your internal clients haven’t adopted cloud technologies yet, it is only a matter of time before you do so. When you do engage a cloud service provider, your company will be transferring its data to the cloud service provider’s data centers. Since your data is key to your business, you have to (i) assess that cloud service provider and (ii) identify ways to verify the cloud service provider’s practices (and that it is being true to its statements and commitments). So, what questions should you ask? What things should you be looking for? This article uses the Microsoft Trusted Cloud framework to provide you with some parameters to evaluate a cloud service provider based on its security, privacy, compliance, and transparency practices. Consider this as a tool for your due diligence process.

#### **Security – How does the cloud service provider protect my data?**

In general, the top cloud service providers converge around worldwide security standards and use third party auditors to audit against those standards. When evaluating a cloud service provider’s security practices, inquire whether they meet these standards:

1. ISO 27001 - ISO 27001 is **the** international information security management system (ISMS) standard. According to the International Organization for Standardization (ISO), an ISMS is “a systematic approach to managing sensitive company information so that it remains secure. It includes people, processes and IT

systems by applying a risk management process.” The latest version of ISO 27001 is from 2013. The cloud service provider should undergo (and commit to) annual audits for ISO 27001 compliance.

2. ISAE3402– ISAE 3402 stands for the International Standards for Assurance Engagements (ISAE) No. 3402. The cloud service provider should undergo audits based on this standard against the Service Organization Control (SOC) reporting framework for (i) SOC 1 Type 2, attesting to the design and operating effectiveness of its controls; and (ii) SOC 2 Type 2, which includes a further examination of the controls related to security, availability, and confidentiality.
3. ISO/IEC 27018 – This is a voluntary international standard governing the processing of personal information by public cloud service providers adopted on July 30th 2014. ISO states that this standard establishes “commonly accepted control objectives, controls and guidelines for implementing measures to protect Personally Identifiable Information (PII) in accordance with the privacy principles in ISO/IEC 29100 for the public cloud computing environment.” It is the first standard “born in the cloud.”
4. Payment Card Industry (PCI) Data Security Standards (DSS) Compliance. This is an information security standard for the handling of cardholder information designed to prevent fraud. The cloud service provider of this kind of solution should be compliant under one of the levels of the Payment Card Industry (PCI) Data Security Standards (DSS) as verified by an independent Qualified Security Assessor (QSA), allowing customers to establish a secure cardholder environment and to achieve their own certification.

The top cloud service providers are also innovating in the cloud space and incorporating more and more security features into their services (encryption, etc.), and you should ask the vendor for examples of what it is doing. As an example, in November of last year Microsoft’s CEO Satya Nadella announced that the company would be investing US\$1 billion in security R&D.<sup>1</sup> So, evaluate the cloud service provider’s actions and investments in this area. Finally, see what the vendor’s history and experience is in running cloud services and in security in this area.

***Privacy - Does the cloud service provider use customers’ information only to deliver services or does it use it for advertisement as well? Is the data kept confidential and access to the data restricted?***

The data that will be hosted by the cloud service provider is yours. Therefore, the cloud service provider’s rights with respect to that data should be limited. For example, the cloud service provider should commit to only use that data to provide you with the services and also commit not to exploit that data for its own purposes.

It is also important that the cloud service provider have practices and technologies to restrict access to the data to keep it confidential. The access to the data should be limited to very specific scenarios such as troubleshoot and prevent malware, and be of limited access to key personnel through exception only. The cloud service provider should commit not to disclose your information except with your consent or when required by law. Finally, the cloud service provider should also delete your data once the service is terminated or expires.

***Compliance – Does the cloud service provider manage the data in accordance with the law? Does the cloud service provider help you comply with your company’s obligations under the law?***

The cloud service provider should commit to comply with the law applicable to its role as a data processor. In addition, it should enable you and your company to meet your legal and policy requirements. As an example, Microsoft helps customers perform a gap analysis of Microsoft’s controls against your company’s requirements. You should ask other vendors to do so as well. Finally, it is important that the cloud service provider work with regulators to help them understand the latest technologies and to get their views on how the cloud service provider and its customers can be compliant with the applicable regulatory frameworks. We will discuss this pillar further in our next article.

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<sup>1</sup> Another example of what Microsoft, one of the leaders in this area, is doing is the establishment of the Microsoft Cyber Defense Operations Center, where engineers and scientists are taking data from various sources to develop an “intelligence graph” on security threats to be used by the whole company and shared with others.

## Transparency – In what ways are you able to verify the cloud service provider’s practices with your data?

The cloud service provider must provide you with ample visibility on the operations of the service. First, you should be able to access the Information Security Policy of the service and audit reports. Second, you should be able to understand where your data will reside and get on a commitment on that front. In addition, you should know who has access to your data, including the subcontractors and their roles, as well as governments. To give you an example of how Microsoft approaches disclosures, you can visit the [Microsoft Trust Center](#) and the [Microsoft Transparency Hub](#).

### Conclusion

This article has provided you with an additional tool you can use as part of your due diligence of a cloud service provider. In our third and last article, “The Cloud as a Tool for Legal Compliance in India,” we will analyze how the cloud can be used in a legally compliant way by Indian organizations and will provide examples of features that can help enhance the compliance function.

Living Room...



# The Elephant Rope

As a man was passing the elephants, he suddenly stopped, confused by the fact that these huge creatures were being held by only a small rope tied to their front leg. No chains, no cages. It was obvious that the elephants could, at anytime, break away from their bonds but for some reason, they did not.

He saw a trainer nearby and asked why these animals just stood there and made no attempt to get away.

“Well,” trainer said, “when they are very young and much smaller we use the same size rope to tie them and, at that age, it’s enough to hold them. As they grow up, they are conditioned to believe they cannot break away. They believe the rope can still hold them, so they never try to break free.”

The man was amazed. These animals could at any time break free from their bonds but because they believed they couldn’t, they were stuck right where they were.

Like the elephants, how many of us go through life hanging onto a belief that we cannot do something, simply because we failed at it once before?

## Words Worth Millions

Until the Lion learns how to write, every story will glorify the hunter.

-African Proverb

When you find no solution to a problem, it’s probably not a problem, rather a truth to be accepted.

-Anonymous

## 1. Career Awareness Programmes

The Mysore Chapter of ICSI conducted Career Awareness Programmes at 20 colleges in Mandya & Chamrajanagar Districts through Counsellors during the month. Mr Ravikumar S addressed over 1600 students and Prof Niranjana Babu Reddy over 250 students

In the above sessions the Counsellor highlighted the importance of making the right career choice so as to be successful in life. The role of a Company Secretary and importance of the profession of Company Secretary in the changing economic scenario was explained to the audience. Brochures containing brief details of the Company Secretaryship Course were distributed to the participants. Various doubts and issues raised by the participants were clarified.

## 2. Inauguration of Oral Coaching Classes on 01.01.2016

On 01.01.2016, the Mysore Chapter organized an inaugural session of its Oral Coaching Classes for June 2016 examination for Foundation and Executive programme students at Chapter Premises. CS Ajay Madaiah B B, Member, Mysore Chapter Managing Committee, welcomed the students. In his welcome address, he explained the importance of CS profession in the new Companies Act 2013. He advised the participating students to be regular in attending classes, and about the various methods of preparation for the CS Examination. The regular classes started immediately after conclusion of the inaugural session.



## 3. Session of How to Prepare for Exams & How to Approach the Subjects

On 08<sup>th</sup> January 2016, the Mysore Chapter of ICSI organized a Special Lecture on “How to prepare for the Exams & How to approach the subjects” especially for the Executive Students. CS Bhagya M G, Member of Mysore Chapter of ICSI was the speaker at the programme.

She explained the various techniques like time management, positive attitude, self confidence, study plan, revise & review, writing and presentation skills to be followed by the students while preparing for the exams. She also explained how to handle the objective type subjects & descriptive subjects. Students from in and around Mysore participated in the session & clarified the doubts regarding preparation for the exam. The students’ feedback was that the session was very useful for them to prepare for the upcoming examinations.

## 4. Special Lecture on Secret of Success

The Mysore Chapter of ICSI arranged a special talk on “Secret of Success” on 25<sup>th</sup> January 2016 at Chapter Premises for the CS Students. The session was addressed by Mr. Kashyap Srinivasa Prasad. He is a qualified CA & CS. He has secured 10<sup>th</sup> Rank on all India basis of the CS Executive Examinations during December 2013. In his session, he explained the ways to get success in life and as well as in the professional courses. Some of the key points he highlighted are “Quitting the wrong mentalities, establishing the right habits, Focus on survival, prioritize your tasks, introduce the unexpected & network like human being”.

The session was attended by students in and around Mysore. CS Pracheta M, Secretary, Mysore Chapter of ICSI delivered the vote of thanks.







**Manjunath S. Bhat**, M.Com, LLB  
CS Professional Student, Bengaluru  
[msbhat321@gmail.com](mailto:msbhat321@gmail.com)

## e-Tools for the Professionals

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Lead – Consultant,  
N R Desai & Associates, Bengaluru  
[guruprasadbhatcs@gmail.com](mailto:guruprasadbhatcs@gmail.com)

## Web Yatra

# Helping jobseekers...



Job-seekers have reason to be happy. Prime Minister Narendra Modi launched the National Career Counseling Portal as part of an endeavour to modernise all government-run employment exchanges. Our union government launched a new website called <http://www.ncs.gov.in/> to search and apply for the job by the jobseeker. This portal is developed primarily to connect the opportunities with the aspirations of youth. This portal facilitates registration of job seekers, job providers, skill providers, career counselors, etc.

The site <http://www.ncs.gov.in/> (NCS) will offer registration for job aspirants and employers for free. But to avoid misuse, the labour ministry will ask job seekers to link their Aadhaar number when registering with the website. Similarly, companies and organisations need to submit their society registrations or company registration certificate copies while getting empanelled on the job portal.

Apart from searching and applying for jobs on the portal, candidates can also avail career-related counselling by either visiting these centres or through helpline numbers. So the NCS will provide variety of services including registrations for jobseekers and employers, job posting, career counselling, aptitude assessment, job matching, information on availability of courses at educational institutions, training providers, guidance on self-employment and entrepreneurship etc.



## EPFO Guidelines for employees proceeding to work in foreign countries

Vide its internal circular dated 20th January 2016, Office of the Central Provident Fund Commissioner has issued guidelines w.r.t coverage and compliance under EPF & MP Act, 1952 for employees proceeding to work in foreign countries.

**There are following FOUR situations for which compliance treatment is specified in the said internal circular:**

- 1. Indian Employee of covered establishment working in foreign country:**
  - EPF contribution to be paid if the salary is paid or payable by Indian employer;
  - If the salary is not paid by India employer – EPF contributions not required.
- 2. Indian Employee of covered establishment working in a foreign country with whom India has entered into Social Security Agreement (SSA) & Certificate of Coverage (COC) is obtained:**
  - EPF contribution to be paid in India & necessary compliance to be adhered in India only;
  - Exemption from the host country social security scheme should be available.
- 3. Indian Employee of covered establishment working in a foreign country with whom India has entered into Social Security Agreement (SSA) & has not obtained Certificate of Coverage (COC):**
  - EPF Contribution to be paid if any salary is paid or payable by such covered establishment out of its books in India;
  - Employee to be governed as per the law of the host country.
- 4. Indian Employee of covered establishment working in a foreign country with whom India has not entered into Social Security Agreement (SSA) & Certificate of Coverage (COC) is not obtained:**
  - EPF Contribution to be paid in India, If any salary from the books of the Indian Employer is paid in India;
  - Employee to be governed as per the law of the host country.

### Terms to be noted:

- “Host Country” refers to country other than India where an Indian Employee of covered establishment is deputed on assignment.
- “Covered Establishment” means an Indian entity covered under EPF & MP Act, 1952.

**Note:** EPFO Internal Circular copy can be accessed on official website of EPFO @ [www.epfindia.com](http://www.epfindia.com)

### News Update:

#### **Karnataka & Kerala High Court Stays retrospective amendment made to the Payment of Bonus Act, 1965:**

On 2nd February 2016, the Hon'ble High Court of Karnataka has stayed the implementation of amendment brought to the Payment of Bonus Act, 1965 through 2015 amendment Act to the extent of its application from retrospective effect i.e., from 01.04.2014. Similar stay was granted by High Court of Kerala on 27<sup>th</sup> January 2016. This means, the new amendments to Bonus Act would be, perhaps, applicable for the year 2015-16 onwards & not from 2014-15 in Karnataka and Kerala.



# News Room



CS Chakri Hegde  
[chakri.hegde@gmail.com](mailto:chakri.hegde@gmail.com)



CS Vijayalakshmi Karur  
[vijukarur@gmail.com](mailto:vijukarur@gmail.com)

## NEWS EXPRESS

- ✓ Government seeks clarification on emission issue from Volkswagen India after the German car maker admitted to cheating pollution detectors in the US.
- ✓ Competition Commission amends filing requirements for entities seeking nod for merger and acquisition deals.
- ✓ SEBI scans social media accounts including Facebook accounts in insider trading case
- ✓ India to soon ratify WTO trade facilitation pact on goods and decided to seek similar pact on services as well.
- ✓ SBI-led bank consortium to auction Kingfisher House to recover a part of their debt from Kingfisher Airlines.
- ✓ Patanjali Ayurved Ltd becomes India's biggest FMCG advertiser this week; outnumbers Cadbury, Parle
- ✓ Make in India Week: India, Sweden decide to scale up bilateral relations
- ✓ US urges India to ratify WTO Trade Facilitation Agreement
- ✓ The RBI has asked those who have declared unaccounted overseas assets under the black money law to apply for regularisation of declared wealth.
- ✓ Centre says over Rs21,400 crore worth MoUs signed at Make In India event

## Centre, RBI in talks to allow more free ATM transactions

The government is in discussions with the Reserve Bank of India (RBI) to allow more free ATM transactions for certain types of accounts as part of its drive to deepen financial inclusion through the spread of cash-vending machines. Post offices, of which there are about 1.55 lakh across India, will soon have ATMs. These will be a combination of the postal department's own machines and third-party ATMs.

## Government raises the wall for steel imports

The government imposed minimum import prices (MIPs) on specific steel products to protect domestic players from cheap imports from China and other countries. Integrated domestic primary steel producers such as Sajjan Jindal-led JSW Steel, Jindal Steel & Power, state-owned Steel Authority of India and Tata Steel would be among the largest beneficiaries. However, the move would not apply to the stainless steel sector.

## TRAI supports Net Neutrality

The Telecom Regulatory Authority of India (TRAI) ruled against differential pricing for Internet services, in a major setback to Facebook Inc's plan to roll out free Internet to the masses in Asia's third-largest economy. It ruled that no service provider shall offer or charge discriminatory tariffs for data services offered based on content.

## Amazing facts about law

- Because of noise ordinance law in Europe, club owners have created "silent discos" where club goers listen to music through headphones...!!
- Sometime around 2000, the child labour laws got amended in the UK in order to film the movie "Harry Potter and the Sorcerers Stone"





## Time Stamping

Companies Act, 2013 and the secretarial standards recognizes the usage of Time Stamp for maintaining the documents electronically. **What is Time Stamp?** Time stamping, generally known as '**Trusted Timestamping**' is the process of securely keeping track of the creation and modification time of a document. Security here means that no one – not even the owner of the document – should be able to change it once it has been recorded provided that the timestamper's integrity is never compromised. A trusted digital timestamp gives you strong legal evidence that the contents of your work existed at a point-in-time and have not changed since that time. The procedures maintain complete privacy of the documents themselves. By using digital signature technology and audited security it provides an external witness (a timestamp signature) to the existence of your data, like an electronic or digital notary. **What are the kinds of TimeStamps?** There are many timestamping schemes with different security goals: PKI-based – timestamp token is protected using PKI digital signature, Linking-based schemes – timestamp is generated such a way that it is related to other timestamps, Distributed schemes – timestamp is generated with the cooperation of multiple parties, Transient key scheme – variant of PKI with short-living signing keys, MAC – simple secret key based scheme, found in ANSI ASC X9.95 Standard, Database – document hashes are stored in trusted archive; there is an online lookup service for verification and Hybrid schemes. **How does a TimeStamp work?** The trusted TimeStamp process consists of two parts - Software on your computer records the fingerprint of the file on the computer, The Internet links you to the Timestamp server which is a web-based security service. In return we get a signed electronic timestamp certificate that contains the file's fingerprint.

Did  
You  
Know?

## Net Neutrality

Net Neutrality is the principle that Internet service providers and governments should treat all data on the Internet the same, not discriminating or charging differentially by user, content, site, platform, application, type of attached equipment, or mode of communication. The term was coined by Columbia University media law professor Tim Wu in 2003, as an extension of the longstanding concept of a common carrier.

## New rule on Net neutrality - TRAI

On 08<sup>th</sup> February 2016, TRAI has barred the telecom service providers from charging differential rates for data services, leading to prohibition of Facebook's Free Basics and Airtel Zero platform by Airtel in their current form. Crux of the regulation:

- No service provider can offer/ charge discriminatory tariffs for data services based on content.
- No service provider shall enter into any arrangement by whatever name called, with any person that the effect of discriminatory tariffs for data services being offered by the service provider for the purpose of evading the prohibition in this regulation.
- Exception has been provided for offering differential services during public emergency.
- This prohibition shall not apply to other forms of tariff differentiation that are entirely independent of content.
- Violation may lead to penalty of Rs. 50,000/- to a max of Rs. 50 lakh
- Existing pack, plan or voucher shall not be valid beyond a period of six month

Pick of  
the  
month

# Regulatory Updates

Compiled by:

**CS Abhishek Bharadwaj A.B.**  
Partner, AAA & Co, Bengaluru  
[csabhishekbharadwaj@gmail.com](mailto:csabhishekbharadwaj@gmail.com)



## CUSTOMS & FTP

### Notifications/Circulars/News

The Central Government has notified that import of Natural Rubber of all varieties/forms covered under Customs Tariff Heading 4001 is allowed freely, but only through sea ports of Chennai and NhavaSheva. [No. 32/2015-Customs \(NT\) 20 Jan 2016](#)

The Central Government has notified that facility for import of Natural Rubber under Advance Authorisation issued or revalidated on or after 21 January, 2016 will not be available during the period 21 January, 2016 to 31 March, 2016.

[No. 33/2015-Customs \(N.T.\) dated 21 January, 2016](#)

The Central Government has laid down the procedure for modification/ change in Branch Office/ Registered Office address in IEC involving a shift in jurisdictional Regional Authority. It has been clarified that when there is a change in Jurisdiction of Regional Authority (RA) due to change in address, then amendment application is to be filed with the new RA.

[No. 53/2015-20, dated 5 January, 2016](#)

The Central Government has deleted the name of "Panama Republic" from the list of countries under Group-C of Merchandise Exports from India Scheme (MEIS) Schedule with effect from 01 April, 2015, since the same was covered in the list of countries under Group-B of the said Schedule.

[No. 51/2015-20, dated 28 December, 2015](#)

The Central Government has notified that dates of implementation of Track and Trace systems for export of drug formulations along with maintaining the Parent Child relationship in packing have been extended to 01 April, 2016 for non-SSI manufactured drugs, and to 01 April, 2017 for SSI manufactured drugs. -

[No. 52/2015-20, dated 5 January, 2015](#)

The Central Government has permitted the export of Finished Leather, Wet Blue and EI tanned Leather through the ICD at Kheda. -

[No. 55/2015-20, dated 6 January, 2016](#)

To facilitate reporting of trade statistics relating to export/import of services, the Central Government has urged that all those exporters of services who do not possess IEC, should voluntarily obtain IEC from Regional Authorities of Directorate General of Foreign Trade (DGFT). -

[No. 13/2015-20, dated 15 January, 2016](#)

The Central Government has asked for strict adherence to the notification, wherein mandatory documents required for export and import were notified. Also, the concerned RA may, in exceptional cases, seek additional documents as deemed necessary to ensure legal compliance.

[No. 15/2015-20, dated 21 January, 2016](#)

### Case Law

Valuation for the purpose of levy of Customs duty on imported cars had to be on Transaction Value basis, even if at the time of import under ATA Carnet, a higher commercial value related to country of export was declared.

[Daimler Chrysler India Pvt.Ltd. v CC \(2016-TIOL-67-CESTAT-MUM\)](#)

Custom Authorities could not impose loading on the basis of identical goods in case there was a difference in commercial levels and in quantity of goods imported in terms of Rule 4 of the Customs Valuation Rules, 2007.

[RichemontIndia Pvt.Ltd. v CC \(2016-TIOL-205-CESTAT-DEL\)](#)

Department could not indefinitely delay drawback claims merely on the basis of pending investigation into mis-declaration of weight or classification without even issuing a show cause notice.

[JSR International vUnion of India \(2016-TIOL-25-HC-AHM\)](#)

Once value of imported goods had been enhanced applying the contemporaneous value of import, no further enhancement is permissible on the basis of already existing information.

[Rico Gems Corporation & Ors. vCC\(2016-TIOL-23-CESTAT-MUM\)](#)

That credit of Special Additional Duty paid on goods imported under Export Promotion Capital Goods scheme was allowed since the notification & the FTP provided for the same.

[Temple Packing Pvt Ltd. vCE \(2016-TIOL-192-CESTAT-AHM\)](#)

The conversion of shipping bill from Duty Free Import Authorisation (DFIA) to drawback was permitted without any time limit even after export of goods. In terms of Section 149 of Customs Act, 1962, any limit prescribed in the Circular for conversion of shipping bill was beyond the provisions of said Section.

[VRA Cotton Mills Pvt.Ltd. vCC \(2016-TIOL-2339-CESTAT-AHM\)](#)

Provisions of unjust enrichment were not applicable on excess payment of interest due to clerical error, since excess interest paid was in the nature of deposit, and not duty.

[Wind World India Ltd. vCC \(2016-TIOL-268-CESTAT-MUM\)](#)

Foreign brands having base in India, and providing services out of India, were not eligible for Served From India Scheme benefit.

[NamanHotels Pvt.Ltd. v Union of India \(2015 \(326\) ELT 513\)](#)

## Ministry of Corporate Affairs

### Notifications/Circulars/News

Whether HUF/its Karta can become Partner /Designated Partner (DP) in Limited Liability Partnership (LLP)

MCA vide General Circular No. 13/2013 dated 29th July, 2013 has clarified that as per section 5 of LLP Act, 2008, only individual or body corporate may be a partner in a limited liability partnership. An HUF cannot be treated as a body corporate for the purpose of LLP Act, 2008. Therefore HUF or its Karta cannot become designated partner in LLP. However, since there continues to be a mist on this aspect, MCA vide General Circular No. 2/2016 dated 15th January, 2016 has clarified again that HUF or its Karta cannot either become partner or designated partner in LLP.

Establishment of Central Registration Centre (CRC)

MCA vide notification dated 22nd January, 2016 has stated that the Central Government has established a Central Registration Centre (CRC) for the purpose of carrying out the function of processing and disposal of applications for reservation of names in

e-form INC-1. The CRC shall function under the administrative control of Registrar of Companies, Delhi (ROC Delhi), who shall act as the Registrar of the CRC until a separate Registrar is appointed to the CRC. However Processing and approval of name or names proposed in e-form INC-29 shall continue to be done by the respective Registrar of Companies having jurisdiction. The above said notification has come into force on 26th January, 2016. **Authority for administering Investor Education and Protection Fund**

Under the Companies Act, 2013, the provision relating to Investor Education and Protection Fund i.e section 125 has not been notified yet. But now the Central Government vide Notification dated 13th January 2016 has notified Sub-Section (5), SubSection (6) [except with respect to the manner of administration of the Investor Education and Protection Fund] and Sub-Section (7) of section 125. With this Notification, an authority is being constituted, to administer the Investor Education and Protection Fund, maintenance of accounts and other relevant records of the Investor Education and Protection Fund. Further, MCA has also notified the Investor Education and Protection Fund Authority (Appointment of Chairperson and Members, holding of meetings and provision for offices and officers) Rules, 2016 on 13th January, 2016. These rules contain the composition of the authority, eligibility for becoming a Member of the Authority, the terms of office of members and functions of the Authority.

### FAQ's on Corporate Social Responsibility

In continuation of MCA circular dated 18th June, 2014 and 17th September, 2014, MCA has issued a General Circular No.1/2016 dated: 12th January, 2016 by responding to a set of FAQ's for effective implementation of CSR activities. The said notification may be referred for more clarity on the subject.

### Leverage in obtaining name approval

MCA vide Notification dated 22nd January, 2016 has issued the Companies (Incorporation) Amendment Rules, 2016. Accordingly, now the name of the company need not be in consonance with the principal objects in its MOA. Abbreviated name based on the names of the promoters will be allowed. Also the name can reflect the scope or scale of its activities which would be beyond the resources at its disposal. In case if the company changes its line of business activity it is not required to change its name Earlier the company can use the name of a person other than the name(s) of the promoters or their close blood relatives. No objection from such other person(s) shall be attached with the application for name. In case the name includes the name of relatives, the proof of relation shall be attached and it shall be mandatory to furnish the significance and proof thereof for use of coined words made out of the name of the promoters or their relatives. Now, these requirements for use of name of a person other than the name(s) of the promoters or their close blood relatives have been done away with. E-form INC - 1 shall be approved or rejected by the Central Registration Centre. Earlier only Two re-submission of e-form INC-29 (Integrated Form for incorporation) was permitted and the total time period for both re-submissions should not be beyond 30 days. Now, there can be three resubmissions however there is no change in the time period for resubmission.

## CENVAT

### Notifications/Circulars/News

The Central Board of Excise & Customs (CBEC) has issued guidelines for transfer of funds directly to beneficiary's bank account after sanction of the refund/rebate claim.

*No. 1013/1/2016-CX, dated 12 January, 2016*

The excise exemption available under notification 56/2002 and 57/2002 to new units set up/ units undertaking substantial expansion/ units making new investment to generate additional employment in Jammu and Kashmir State is restricted to units commencing commercial production/ undertaking substantial expansion/ making investment to generate employment, on or before 31 March, 2016. Further, the exemption under these notifications is no longer available to goods which have only undergone processes ancillary to manufacture such as preservation during storage, cleaning, sorting, declaration or amendment of MRP etc.

*No. 03/2016-CE dated 22 January, 2016*

### Case Law

Conversion of raw tamarind into tamarind paste/ concentrate by subjecting it to the processes of boiling, washing, filtering, squeezing, and concentrating did not result in manufacture of a new product. - *CCE vDabur India Ltd. (2015 (325) ELT 613)*

The process of filling compressed gas into cylinders for supply to manufacturer did not amount to manufacture, as the word 'consumer' in the expression 'adoption of any other treatment to render the product marketable to consumer' did not include an industrial user or manufacturer.

*Goyal M.G. Gases Pvt.Ltd. vCCE (2015 (325) ELT 768)*

The assessee was entitled to claim refund of excess duty paid on account of deduction of liquidated damages from the invoice price.

*In United TelcomLtd vCCE (2015-TIOL-2824-CESTAT-BANG)*

Amounts received from a customer towards third party inspection charges undertaken on request of such customer was not includible in the transaction value.

*Central Cables Ltd vCCE (2015-TIOL-2683-CESTAT-MUM) & CCE vSulzerPumps India Ltd. (2015 (326) ELT 619)*

The manufacturer was eligible to take credit of CVD paid on imported goods even in absence of a declaration by the importer that 'no refund of CVD shall be claimed', when there was no allegation of double benefit of CVD, i.e., credit by manufacturer and refund by importer, levelled in the show cause notice.

*CCE vTata Motors Ltd. (2015 (325) ELT 569)*

Cash refund of pre-deposit made through CENVAT credit was allowable when assessee was not in a position to utilize credit on account of shifting unit to exempted hill area.

*CCE vBirla Textile Mills (2015 (325) ELT 651)*

Cables used as conductors in providing electric power and plastic crates used in the factory to carry machine tools were eligible for credit as capital goods. - *CCE vMillennium Appliances India Ltd (2015-TIOL-2851-CESTAT-BANG)*

There was no requirement of reversal of CENVAT credit on removal of capital goods after use for ten years.

*United White Metal Ltd. vCCE (2015 (326) ELT 202)*

Demand for reversal of CENVAT credit on damaged parts was not sustainable when the appellant had paid duty on full value of the transformer, including the value of the damaged parts.

*Bharat Heavy Electricals Ltd. vCCE (2015 (326) ELT 611)*

CENVAT credit cannot be denied on the ground that first stage dealer did not supply goods to the second stage dealer, when

appellant had maintained records showing receipt of goods from second stage dealer and made payment through banking channels.  
*ManoranjanSingh Duggal vCCE (2015 (325) ELT 892)*

There was no bar in the CENVAT Credit Rules on distribution of credit earned prior to taking registration by ISD.  
*Lona Industries Ltd vCCE (2015-TIOL-2694-CESTAT-MUM)*

Interest was not payable on supplementary invoice raised subsequent to clearance of goods, when finalisation of price took place only after publication of RBI price index as per escalation clause in the contract. - *MaluSleepers (Maharashtra) PvtLtd vCCE (2015-TIOL-2849-CESTAT-MUM)*

## GST (VAT, Sales Tax and Entry Tax)

### Case Laws

A buyer could not be denied input tax credit on account of procedural defects on the invoice such as name and TIN not being mentioned on the invoice. - *Sanjeev Stone Crushing Company vState of Haryana and others [2015-TIOL-2743-HC-P&H-VAT]*

Pure labour contracts were outside the purview of sales tax, and hence the consideration received towards labour activities could not be subject to tax. - *HS Power Projects Pvt. Ltd vCommissioner of Trade & Taxes [TS-2-HC-2016(DEL)-VAT]*

## Service Tax

### Notifications/Circulars/News

The CBEC has clarified that where a land owner has transferred the land/ development rights to the builder/ developer for consideration in the form of constructed flats, the value of the construction services provided by the builder/ developer would be the value of such flats charged by the builder/ developer from the buyers of such flats nearer to the time at which the land is made available for construction. The CBEC has also clarified that the Education Guide, 2012 is merely an educational aid based on a broad understanding of a team of officers on the issues, and it is neither a 'Departmental Circular' nor a manual of instructions issued by the CBEC. To that extent, it does not command the required legal backing to be binding on either side in any manner. Hence, circulars issued by the CBEC would prevail on Education Guide, 2012. - *No. F.No. 354/311/2015-TRU dated 20 Jan, 2016)*

### Case Laws

The package tours offered by the appellant in addition to air travel were not classifiable as 'tour operator services' as the appellant did not plan, schedule or organise the tours for the passengers.- *Jet Airways (India) Limited vCommissioner of Service Tax, Mumbai I (TS-693-CESTAT-2015-ST)*

In case of vehicles provided to employees under a 'Car Lease Scheme' for the duration of their employment, the activity of 'making available' a car would not amount to provision of 'service' as it would be treated as provided in the course of employment and in relation to employment, and correspondingly, would be covered under the exclusion in the definition of 'service'.

*J P Morgan Services India Private Limited (2015-TIOL-12-ARA-ST)*

The Tribunal did not have the powers to direct the Commissioner (Appeals) to admit an appeal beyond the period prescribed for filing of appeal (including the period for which delay could be condoned by him).

*KooltekAir Conditioning Work vCommissioner of Central excise, Lucknow (2016-TIOL-200-CESTAT-ALL)*

CENVAT credit on capital goods installed in Jammu and Kashmir, and input services received in Jammu and Kashmir, could not be availed. In arriving at this conclusion, the Tribunal observed that capital goods/ towers installed in Jammu and Kashmir could not be said to have been used in providing roaming services in Jammu and Kashmir, which were liable for service tax, in the absence of any specific additional charge collected for roaming in Jammu and Kashmir, and accordingly, such services were deemed to have been rendered at the place where registration was obtained.

*Vodafone Essar SpacetelLimited vCommissioner of Central Excise, Customs & Service Tax, BBSR-I (2016-TIOL-249-CESTAT-KOL)*

Service tax would be payable on the SMS termination charges levied by the terminating telecom operators on the originating telecom operators on the basis of demand letters issued, since the demand letters contained all details which needed to be mentioned on the invoice. - *Vodafone Cellular Limited vCommissioner of Central Excise, Pune (TS-4-CESTAT-2016-ST)*

In case of merger of companies, wherein one legal entity merged with another and ceased to exist, the unutilised balance in the PLA shall be available to the merged entity. Non-surrender of service tax registration by the legal entity which had ceased to exist, could not be said to mean that the PLA balance was available to such entity. - *PSP Projects Private Limited vCommissioner of ST Ahmedabad (2016-VIL-42-CESTAT-AHM-ST)*

In case of separate service tax registrations for different premises, the Commissioner of Service Tax of one jurisdiction did not have the power to adjudicate cases originating outside his jurisdiction, although the consolidated balance sheets were prepared at the head office located in his jurisdiction. In such a case, the Commissioner could make show cause notices answerable to the respective jurisdictional Commissioners, or seek approval from the CBEC for adjudicating the case of services rendered pan-India.

*InoxLeisure Limited vCommissioner of Service Tax, Mumbai (2016-TIOL-239-CESTAT-MUM)*

## FEMA/SEBI/RBI

### Notifications/Circulars/News

**Discontinuation of physical filing of Form ARF, FCGPR and FCTRS from February 8, 2016**

With a view of promoting the ease of reporting of transactions related to Foreign Direct Investment (FDI), the Reserve Bank of India, under the aegis of the e-Biz project of the Government of India has enabled online filing of the following returns with the Reserve Bank of India viz. Advance Remittance Form (ARF) which is used by the companies to report the FDI inflows to RBI; FCGPR Form which a company submits to RBI for reporting the issue of eligible instruments to the overseas investor against the above mentioned FDI inflow; and FCTRS Form which is submitted to RBI for transfer of securities between resident and person outside India. At present both the options, i.e. online filing and physical filing of above mentioned forms, are available to the users. Now, it has been decided that from February 8, 2016 the physical filing of forms ARF, FCGPR and FC-TRS will be discontinued and forms submitted in online mode only through e-Biz portal will be accepted.

**FAQ on SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015**

SEBI has issued FAQ circular on (Listing Obligations and Disclosure Requirements) Regulations, 2015 dated January 29, 2016 in order to provide guidance on the provisions.