



CONTENTS

- **RBI & FEMA**
- **Foreign Trade**
- **Corporate**
- **Securities**
- **Competition**
- **Indirect Taxes**
 - Customs
 - Central Excise
 - Service Tax
 - Others
- **Intellectual Property Rights**
 - Patents
 - Trademarks
 - Copyrights
 - Others
- **Environment**
- **Others**

RBI & FEMA

- RBI decided to permit 'standalone PDs (Primary Dealers)' to become members of SEBI approved stock exchanges for the purpose of undertaking proprietary transactions in corporate bonds, subject to all the regulatory norms and all the eligibility criteria/rules of stock exchanges. - *RBI Circular - RBI/2012-13/412, Dated Feb 6, 2013*
 - With a view to ensuring that the banking channels are not used for unlawful / illegal activities, RBI directs all UCBs (Urban Co-operative banks) to complete the process of risk categorization and compiling/updating profiles of all their existing customers to ensure strict adherence to the KYC / AML (Anti-Money Laundering) / CFT (Combating of Financing of Terrorism) guidelines issued by Reserve Bank from time to time, by end of March 2013. - *RBI Circular - RBI/2012-13/420, Dated Feb 25, 2013*
 - The Reserve Bank of India (RBI) issued the final guidelines for licensing of new private sector banks wherein entities both from private and public sector shall be eligible to set up a bank through a wholly-owned non-operative financial holding company (NOFHC).
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- RBI has set up a technical committee to examine difficulties faced by exporters to get bank credit and suggest steps to rationalise transaction cost and remove procedural bottlenecks. - *The Economic Times, Dated Feb 15, 2013*
 - Other than working capital finance, banks would not be permitted to finance purchase of gold in any form. Urban Co-operative Banks should not grant any advance for purchase of gold in any form. In respect of loans against gold ornaments availed by small borrowers the same be classified as priority sector advances and not as security for the loan. -*RBI/2012-13/411 UBD.BPD.(PCB) Cir No.36/13.05.001/2012-13; Dated Feb 6, 2013*
 - Prevention of Money-laundering (Amendment) Act, 2012 notified to be enforced/ effective from 15th Feb 2013. -*Notification S.O. 343(E), Dated Feb 8, 2013*
 - Section 3(c) of the FEMA prohibits any person from receiving foreign currency otherwise than through an authorized person –The law requires remittances to be made only through an Authorized Person, which means money changer, off-shore banking unit or any person authorized under Section 10(1) to deal in foreign currency or foreign securities. -*Nasir Baloor Mehdiabadi v. Appellate Tribunal for Foreign Exchange, New Delhi, 2013.- Andhra Pradesh High Court*

FOREIGN TRADE

- ASSOCHAM sought immediate exclusion of steel products under Chapter 72 of the International Trade Classification (ITC) code from the Indo-Korea and Indo-Japan Comprehensive Economic Partnership Agreement (CEPA), in order to ensure the sustainability of domestic steel industry.
- Paragraph 8.2(f) of FTP provides for grant of deemed export benefits to supply of goods required for setting up any Mega Power Project. These benefits will now be available for supply of goods to 111 specified projects, subject to prescribed conditions, provisions of Foreign Trade Policy and Handbook of Procedures. - *Policy Circular No. 14 - RE-2012/2009-14, Dated Feb 4, 2013*
- In SION No.J-44 relating to Textile Product, the description of export product has been expanded to include Linen. - *Public Notice No.47(RE:2012)/2009-2014, Dated Feb 8, 2013*
- DGFT modifies policy related to duty paid on capital goods under Post Export EPCG Scheme. Para 5.11 of FTP has been amended to clarify that the duty credit scrips issued under Post Export EPCG Scheme will be issued only in respect of basic customs duty and will have the same features as Chapter 3 scrips. - *Notification No. 33 (RE-2012) /2009-2014, Dated Feb 8, 2013*
- DGFT has deleted pesticides (Biocides/Fungicides/ Herbicides/Insecticides) as an item of import meant for export of raw cotton under SION Sl.No. 373 in the Handbook of Procedures (Vol.2), with immediate effect. - *Public Notice No. 49(RE:2012)/2009-2014, Dated Feb 13, 2013*

CORPORATE

- The provisioning requirement for banks and financial institutions increased from 2.75% to 5 % with effect from 1st April, 2013. For accounts restructured prior to March 31, 2013, banks would have to make provision of 3.75% in the first phase effective March 31, 2014.
- Supreme Court issued contempt of court notice to real estate companies of Sahara group of industries, on contempt petition filed by SEBI, for not complying with its orders of refunding Rs 24000 crores to the investors.
- Relaxation based on guidelines and on case to case basis of additional fees and extension of last date in filing of various forms with the MCA, which ought to have been filed post transition of MCA 21 w.e.f. 17.01.2013, but could not be filed due to technical issues in MCA-21 system. - *Circular No. L /2013 No.17/187/2011-CL.V , Dated Feb 8, 2013.*
- Life Insurance Agents can sell Life Insurance products only after undergoing an internal training programme (min 25 hours) on health insurance, which shall cover the basics of health insurance, health insurance terminology, and products etc. and will be waived of IC 34 Certification. No agent, corporate agent of Life and/or Non-life Insurance Company shall offer his/her services to more than one Standalone Health Insurance Company. - *IRDA Guidelines - Circular no. IRDA/CAGTS/GDL/028/02/2013, Dated Feb 18, 2013*

- To address the complaints relating to variable interpretation of key insurance policy terms and to address the expectation of public more effectively, IRDA proposed certain guidelines to be effective from 1st July 2013 for group products and 1st October 2013 for other products. - *Circular No, IRDA/ HLT/CIR/036/02/2013, Dated Feb 20, 2013*
- The ICSI, in consultation with Bombay Stock Exchange Ltd (BSE) and the National Stock Exchange of India Ltd (NSEIL), has developed the format of Compliance Certificate to be issued by a PCS (to verify regulatory compliance) and also a Guidance Note for their use.
- The oppression and mismanagement petition raised the issue regarding genuineness of sale deed and undervaluation which did not result in any relief from the CLB. It was observed that the question of oppression and mismanagement arises only if the petitioners are found to be shareholders of the company on the date of petition. - *K. Venkatachalam v. Premier Roller Foot Mills Ltd. - CLB, Chennai Bench*
- In the commercial and business operations, corporate entities cannot claim immunity to civil actions. Section 86 of the CPC applies to a suit instituted against a corporate body which carries on trading or business activities even if the ownership of the share capital vests in a foreign State. Where section 84 confers a right on a foreign State to sue, sec 86(1) in substance imposes a liability on foreign States to be sued, though this is circumscribed and safeguarded by the limitations prescribed. The airline cannot avoid being sued on the ground that it is a 'foreign state' - *Qatar Airways v. Shapoorji Pallonji & Co. - Bombay High Court*
- A winding up petition is not a legitimate means of seeking to enforce payment of debt which is bona fide disputed by the company. A petition presented ostensibly for a winding up order but really to exercise pressure will be dismissed, and under circumstances may be stigmatized as a scandalous abuse of the process of the Court. - *CBZChemicals Ltd. v. KEE Pharma Ltd. - Delhi High Court*
- Effect of Section 536(2) of Companies Act, 1956, is that where a winding-up proceeding is by or subject to the supervision of the Court, any disposition of the property of the company which is made after the commencement of the winding-up is void, unless the Court otherwise orders. - *Sunita Vasudeo Warke v. Official Liquidator and Others. - Bombay High Court*
- In proceedings for winding up the company, the Court cannot adjudicate upon a bona fide disputed debt as it is well settled principle of company law that wherever there is a bona fide disputed debt, the petition for winding up of a company is not appropriate remedy to enforce the debt. - *Dr. Mangat Rai Goyal v. M/s. Moraj Finanz Pvt. Ltd. - Bombay High Court*

SECURITIES

- Scheme of Arrangement under the Companies Act 1956 – Revised requirements for the Stock Exchanges and Listed Companies. - *Circular-CIR/CFD/DIL/5/2013, Dated Feb 4, 2013*

- SEBI has allowed mutual funds to accept investor funds in new offers under the newly introduced Rajiv Gandhi Equity Savings Scheme (RGESS) for 30 days, as against a 15-day subscription period in other schemes. Besides, SEBI said the timeframe for RGESS mutual funds allocating the refund money and issuance of statements by mutual fund houses would be 15 days from the closure of the initial subscription. The deadline remains at five days for other mutual fund schemes. - *Circular-CIR/IMD/DF/02/2013, Dated Feb 07, 2013*
- In respect of existing Liquidity Enhancement Scheme in derivatives segment, SEBI has now permitted stock exchanges to introduce incentives for trading in illiquid securities (as defined in the circular) of Equity Cash Market Segment. - *Circular - CIR/MRD/DP/05/2013, Dated Feb 8, 2013*
- SEBI has allowed gold Exchange Traded Funds (ETFs) of mutual funds to invest in the Gold Deposit Scheme (GDS) of banks, subject to prescribed conditions. *Circular-CIR/IMD/DF/04/2013, Dated Feb 15, 2013*
- A direction issued under sections 11 and 11B of the SEBI Act by the Whole Time Member of the Board can be modified or continued by such Member only and not by an authority subordinate to him, to whom such power has not been delegated. - *D & A Financial Services P. Limited and Mr. Dinesh R. Kaushik v. SEBI - Securities Appellate Tribunal Feb 7, 2013*
- Non-compliance to summons is violation of the provisions of law and entails penalty. Even if a person is of the view that the summons were wrongly addressed to him he must reply to board accordingly. - *Dilip S. Mehta v. SEBI - Securities Appellate Tribunal Feb 21, 2013*
- Request made by the appellant has been summarily rejected by the board without assigning any reasons. Tribunal observed that if the request contained in the letter did not find favour with the Board, the reasons there for must be conveyed to the appellant. - *M/s. Gillete India Ltd. v. SEBI - Securities Appellate Tribunal Feb 22, 2013*

COMPETITION

- The agreement referred to in Section 3 of the Competition Act, 2002 is not an agreement to form an association. It is an agreement which leads to an anti-competitive behaviour in the market. To treat formation of a trade association as an agreement hit by Section 3, it has to be established that such an association is causing an appreciable adverse effect on competition in India. - *M/S Santuka Associates Pvt. Ltd v. All India Organization of Chemists & Druggists - CCI Feb 19, 2013.*
- It was alleged that the defendant indulged in 'Predatory pricing'. Predatory pricing essentially means quoting below cost prices to throw out the competitors from the market in the initial stage itself, with an eye on future market and to increase prices later. Held that in order to make out a case for predatory pricing, it is necessary for a complainant to show as to what was the cost of providing services to the party who resorted to predatory pricing and how the cost at which service was being provided to the customer was lower than the cost to the party. - *H.L.S. Asia Limited, New Delhi v. Schlumberger Asia Services Ltd. Gurgaon and Another. - CCI, Feb 6, 2013*

- It was held that BCCI is a regulator of a sport in India and not just a not for profit society, therefore, it is an enterprise for the purpose of the Competition Act. Complainant alleged irregularities in the grant of franchise rights for team ownership, media rights for coverage of the league (IPL) and award of sponsorship rights. The CCI passed a "cease and desist" order charging the BCCI with abuse of dominant position. - *Sh. Surinder Singh Barmi v. B.C.C.I and IPL. - CCI, Feb 8, 2013.*

INDIRECT TAXES

– CUSTOMS

- An exemption notification has been issued in respect of whole of BCD and CVD on goods when imported into India, against a Post Export EPCG duty credit scrip (under both 0% and 3% EPCG variants), providing for duty remission (refund) in proportion to export obligation fulfilled. - *Notifications No. 05/2013 & 06/2013 - Customs (Tariff), Dated Feb 18, 2013*
- Imposition of anti-dumping duty (ADD) extended on 'Flexible Stabstock Polyol', originating in or exported from the USA and Japan, by an year, i.e. upto February 4, 2014. - *Notification No. 01/2013 - Customs (ADD), Dated Feb 04, 2013*
- Refund claim of customs duty was not in proper format, relevant documents were not produced along with letter for claim. Tribunal in the interest of justice treated the letter itself as a refund claim. *M/s P. S. Tech com Pvt Ltd. v. Commissioner of Customs, Bangalore. - CESTAT Bangalore*
- Eighteen years elapsed after confiscation of gold and gold ornaments, without the petitioner opting for redemption. Tribunal held that the Petitioner was himself to blame for not paying the redemption fine within a reasonable period and the period of 18 years cannot be regarded as a reasonable period. -*Maresh Zaveri v. Commissioner of Customs (Preventive) and Another. - CESTAT Bangalore*
- Madras High court held that the payment of provisional anti-dumping duty is subject to finalization and refund becomes automatic only after the final notification is issued. - *Enterprise International Ltd. v. The Commissioner of Customs, Chennai & others. - Madras High Court*

– CENTRAL EXCISE

- An exemption has been issued from the whole of Central Excise Duty and CVD on goods cleared for home consumption against a Post Export EPCG duty credit scrip (under both 0% and 3% EPCG variants), providing for duty remission (refund) in proportion to export obligation fulfilled. - *Notification No.02/2013 & 03/2013- Central Excise, New Delhi, Dated Feb 18, 2013*
- Appellant can claim benefit of CENVAT credit on GTA service used by them for outward transportation of final products from the factory to customers premises for the period prior to 1/4/2008 only. After 1/4/2008 due to amendment of definition of Input service (the word 'up to' was inserted preceding the expression 'the place of removal') under Rule 2(1) of the CENVAT Rules, the law is against the appellant. *M/s Maini Precision Products Pvt. Ltd. v. The Commissioner of Central Excise. Bangalore. - CESTAT Bangalore*

- A manufacturer who is paying excise duty on the goods manufactured and also is a service tax assessee can use the CENVAT credit of service tax for the payment of Central Excise Duty or vice versa, according to his convenience. *M/s S. Engineers v. Commissioner of Central Excise, Pune-I. - CESTAT Mumbai*
- Supplies from DTA (Domestic tariff area) to SEZ (Special economic zone) are eligible for claim of rebate under Rule 18 of Central Excise Rules, 2002 even without Bill of Export or shipping bill. - *In re: Rohit Poly Product Pvt. Ltd.*
- Negligence of employee cannot be considered as sufficient cause for not filing the appeal within the normal period and for condonation of delay. - *Astee Lifesciences Ltd. v. Commissioner of Central Excise, Raigad. - CESTAT Mumbai*
- Payment of duty by the main manufacturer would not result in conclusion of proceedings against all other persons (eg., directors, employees, officers etc.) on whom penalty proposed under Rule 26. - *Commissioner Of Central Excise, Raipur v. Shri Anand Agrawal & Others. - CESTAT New Delhi*

– **SERVICE TAX**

- Form ST- 3 in the New Format (for the period 1st July, 2012 to 30th September, 2012) to be submitted by 25th March, 2013. - *Notification No.01/2013 - Service Tax, New Delhi, Dated Feb 22, 2013*
- For the purpose of refund of un-utilized CENVAT credit, outdoor catering services, training services and professional services used by the assessee, who is an EOU registered as an STPI unit, held as 'input services' in relation to their exports. - *Commissioner of Service Tax Bangalore v. M/s Mercedes Benz Research and Development India (p) ltd. - CESTAT Bangalore*
- If the product emerging at the end of process undertaken by the assessee for his clients has the essential character of the input, then the same doesn't amount to rendering of Business Auxiliary Services and assessee is eligible for exemption under Notification No. 14/2004-S.T. - *Mahi Agro Products Pvt. Ltd. V. Commr. Of Cus., C. Ex. & S. T., Guntur. - CESTAT, Bangalore*
- For determining the rate of service tax on Works Contract Service, the rate prevailing on the date when services were rendered would be relevant and not the rate applicable on the date of payment. - *Vistar Construction (p) Ltd/Piyare Lal Hari Singh Builders Pvt Ltd v. Union of India and ors. - Delhi High Court*
- Services provided to an SEZ or an SEZ unit is deemed as export as per the Section 2 (m) (ii) of the SEZ Act, 2005. As per Rule 31 of the SEZ Rules, 2006, the appellants are entitled for exemption from payment of service tax on such services and also refund under Section 11B of Central Excise Act, 1944. - *M/S Zydus Hospira Oncology Pvt Ltd v. Commissioner Of Central Excise, Ahmedabad. - CESTAT Ahmedabad.*

INTELLECTUAL PROPERTY RIGHTS

– PATENTS

- The Department of Pharmaceuticals (DoP) has come up with a formula to price patented drugs in order to end a constant irritant for global drug makers, but given the complexity its implementation may be tricky. The formula will take the price of drugs in five advanced countries such as the UK and France, and their per capita income, the draft guidelines said. The final price will be arrived on the basis of Indian purchasing power. - *The Economic Times, Feb 27, 2013*

– TRADEMARKS

- A decree of permanent injunction was passed and the defendant was restrained from using the mark 'IMA' or any other trade mark identical, deceptively and/or confusingly similar to Plaintiffs registered 'IMABEQ' mark, with respect to Pharmaceutical products. - *Merck Kga and Anr v. Eaco Labs Ltd - Delhi High Court*
- Defendant in a passing off action restrained from using the mark 'DISNEY' and the 'Disney characters'. Plaintiff's trademark 'DISNEY' and 'Disney characters' hold worldwide reputation and goodwill. While awarding damages court further held that it is not necessary that the plaintiff must show some particular benefit has accrued to the defendant or that the plaintiff must satisfy the Court by leading evidence that it has suffered actual loss. - *Disney Enterprises, Inc v. Mr. Rajesh Bharti & Ors - Delhi High Court*

– COPYRIGHTS

- Decree of permanent injunction was passed and held that there was infringement of copyrights as defendants used unlicensed pirated software programmes developed and marketed by Plaintiffs. The '*software programmes*' as developed and marketed by the plaintiffs were computer programme within the meaning of s. 2(ffc) of the Copyright Act, 1957 and also included in the definition of literary work as per s. 2(o) of Act - The plaintiffs' work are also protected in India under Section 40 of the Copyright Act, 1957 read with the International Copyright Order 1999. - *Microsoft Corporation & Anr v. Mr. Ganesh Wakode & Ors - Delhi High Court*

– OTHERS

- All applicants and their advocates/trade mark attorneys are advised to file TM-46/TM-70 well in time and mention the specific purpose for obtaining certified copy or expedited certified copy in bold characters. Particularly, when the request is filed for expedited certified copy on form TM-70 for the purpose of producing the same before the Court in a suit for infringement and passing off, the Suit or Case number as well as the date of hearing should be specifically mentioned and highlighted. Certified copies /expedited certified copies will be despatched only by registered/speed-post and not by giving hand delivery barring very very exceptional cases in extremely emergent Circumstances. - *CGPDTM issued public notice regarding issuance of Legal Certificates, Dated Feb 25, 2013.*
- CGPDTM launches online public view of Geographical Indication (GI) documents. - *Dated 14 Feb, 2013*

ENVIRONMENT

- Interim injunction order was passed restraining the respondents from carrying on any structural modifications, alterations or any medical activity in the complex under question till the disposal of the appeal. Held that respondents have acted not only with an undue haste but also against the pending proceedings (as the Environmental Clearance matter is pending adjudication before the Tribunal). - *R. Veeramani v. The Secretary, PWD, Government of Tamil Nadu and others - National Green Tribunal, Chennai.*
- It is the State's discretion whether to forward the proposal of the appellant for Forest Clearance to the Central Government or not. - *Hindalco Industries Ltd. v. State of Maharashtra & Ors. - National Green Tribunal, New Delhi.*

OTHERS

- Prime Minister ratified a proposal to make the national floor level minimum wage mandatory for all the unskilled workers in the country. Over 93% of India's 400 million plus workforce is employed in the informal sector. The centre has pegged daily floor level minimum wage at Rs.115 for the sector., *The Economic Times, Dated Feb22, 2013*
- Cooperative Credit Societies are not required to obtain banking licence from the Reserve Bank of India (RBI). As per the existing instructions of RBI, the Primary Agricultural Cooperative Credit Societies (PACS) are not authorised to collect deposits from the public except members. They offer deposit services to their members and, in turn, use these resources to lend to the needy members of the Societies.
- Central Public Sector Enterprises (CPSEs) that fail to comply with corporate governance norms will get negative marking from next fiscal., *The Economic Times, Dated Feb 22, 2013*
- The Equity and Derivatives segment of MCX Stock Exchange (MCX-SX) was inaugurated and flagship index of MCX-SX – "SX40" was launched. SX40 will be a free-float based index of 40 large-cap and liquid stocks, representing diverse sectors of the economy. The base value of SX-40 will be 10,000 and with its base date being March 31, 2010. *The Economic Times, Dated Feb 10,2013*
