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RBI & FEMA

- Certain KYC norms like while opening saving bank accounts and credit linking to their accounts, has been simplified for Self Help Groups (SHGs). - *Circular No. RBI/2012-13/461, Dated April 01, 2013.*
 - Exim Bank has entered into an agreement with the Government of the Republic of Cameroon, for making available to the latter, a Line of Credit (LOC) of USD 42 million for financing eligible goods, services, machinery and equipment including consultancy services from India for the purpose of financing Casava Plantation Project in Cameroon. - *RBI A.P. (DIR Series) Circular No. 91, Dated April 01, 2013.*
 - Exim Bank has entered into an agreement with Banco Exterior De Cuba, for making available to the latter, a Line of Credit (LOC) of USD 5 million for financing eligible goods, services, machinery and equipment including consultancy services from India for the purpose of setting up of a milk powder processing plant in Camaguey Province of Cuba. - *RBI A.P. (DIR Series) Circular No. 92, Dated April 01, 2013.*
- In order to attract more foreign inflows to fund widening current account deficit RBI has announced rationalization of FII investment in bonds, including Government Securities, by doing away with various categories. On review, RBI in consultation with SEBI has simplified the existing limits and had accordingly announced the new policy with effect from 1st April 2013, merging the existing debt limits into two broad categories as under:
- i. Government Debt limit: Category will consist of government securities of \$25 billion which merges \$10 billion for investment limit in short-term government papers, including Treasury Bills, and \$15 billion for long-term government papers and
 - ii. Corporate Debt Limit: Category is for the corporate debt with a limit of \$51 billion, including a sub-limit of \$25 billion each for bonds of infrastructure sector and non-infrastructure sector, and \$1 billion for QFIs (Qualified Foreign Investors) in non-infrastructure sector.

However, the Non-Resident Indians are not subject to any limit for investment in government securities as well as corporate debt. They will continue to be regulated as per existing guidelines. - *RBI A.P. (DIR Series) Circular No. 94, Dated April 01, 2013.*

- Guidelines provided for investment by Core Investment Companies (CICs) in an insurance joint venture. Any CIC registered with the RBI will be permitted to set up a joint venture company for undertaking insurance business with risk participation subject to the satisfaction of the conditions stipulated in the Circular. - *RBI Circular No. DNBS (PD) CC. No. 322/03.10.001/2012-13, Dated April 01, 2013.*
- Capital norms revised for financial and performance guarantees offered by banks. The applicable credit conversion factor (CCF) for determining the credit equivalent amount with regard to financial guarantees (defined in the circular) is revised to 100% of the value of the guarantee. While the CCF applicable to performance guarantee (defined in the circular) is fixed at 50% of the value of the guarantee. - *RBI Circular No. DBOD.No.BP.BC.89.21.04. 009/2012-13, Dated April 02, 2013.*
- In order to promote lending to priority sectors and to provide impetus to the objective of financial inclusion RBI has decided that UCBs (on fulfillment of certain conditions mentioned in the circular), with the prior approval of the Reserve Bank, grant unsecured loans (with or without surety) upto 25% of their total assets. - *RBI UBD.BPD. (PCB) Cir No.45 /13.05.000/2012-13, Dated April 03, 2013.*
- Authorised Money Changers (AMCs) are now allowed to sell Indian rupees to foreign tourists /visitors against International Credit Cards / International Debit Cards and to take prompt steps to obtain reimbursement through normal banking channels. - *RBI A.P. (DIR Series) Circular No. 96, Dated April 05, 2013.*
- The Reserve Bank of India issues clarification on Overseas Direct Investments pursuant to Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004. It has been observed that eligible Indian parties are using overseas direct investments (ODI) automatic route to set up certain structures facilitating trading in currencies, securities and commodities. It has come to the notice of the Reserve Bank that such structures having equity participation of Indian parties have also started offering financial products linked to Indian Rupee (e.g. non-deliverable trades involving foreign currency, rupee exchange rates, stock indices linked to Indian market, etc.). It is clarified that any overseas entity having equity participation directly / indirectly shall not offer such products without the specific approval of the Reserve Bank of India given that currently Indian Rupee is not fully convertible and such products could have implications for the exchange rate management of the country. Any incidence of such product facilitation would be treated as a contravention of the extant FEMA regulations and would consequently attract action under the relevant provisions of FEMA, 1999. The directions contained in this circular have been issued under Sections 10(4) and 11(1) of the Foreign Exchange Management Act (FEMA), 1999 (42 of 1999) and are without prejudice to permissions/approvals, if any, required under any other law. *RBI/2012-13/481 A.P. (DIR Series) Circular No. 100, Dated April 25, 2013.*

FOREIGN TRADE

- 8,587 MTs of raw cane sugar is permitted to be exported to USA under Tariff Rate Quota by M/s. Indian Sugar Exim Corporation Ltd, New Delhi. *Public Notice No. 53/ (RE 2012)/2009-14, Dated April 5, 2013.*
- Deferment in the date of effect for implementation of bar-coding on Primary level packaging on export consignment of pharmaceuticals and drugs for tracing and tracking purpose has been announced. Earlier the

requirement of affixing barcodes on Primary Level packaging was to take effect from 01.07.2013. Now this date has been deferred to 01.07.2014. *Public Notice No. 54/ (Re 2012)/ 2009-2014, Dated April 5, 2013.*

- Amendments made in the Reward/incentive Schemes of Chapter 3 of FTP 2009-14. Changes made in Appendix 37A of Vishesh Krishi and Gram Udyog Yojna (VKGUY), Appendix 37D and Appendix 37C for export made with effect from 1-05-2013. Towns of Export Excellence added in Appendix 7 of HBP v1 and 53 Latin American and African countries added in FTP 2009-2014. *Public Notice No. 3 (RE 2013)/2009-2014, Dated April 18, 2013.*
- The Director General of Foreign Trade enhanced the validity of Zero duty EPCG Authorisation to 18 months (earlier it was 9 months) from the date of issue. *Public Notice No. 4 (RE 2013)/2009-14, Dated April 18, 2013.*
- Import policy of cars manufactured prior to 1st January, 1950 is being revised from 'restricted' to 'free' for Actual Users with immediate effect. *Notification No. 5(RE 2013)/2009-2014, Dated April 18, 2013.*
- Anti-dumping duty and safeguard duty would be leviable on goods imported against transferred DFIA's. Advance Authorisations will no more be available for import/supply of 'energy'. Value Addition in respect of SEZ (in respect of para 4A.16A of FTP) would be as per SEZ Act. *Notification No. 2 (Re 2013)/2009-2014, Dated April 18, 2013.*
- Authorized person(s)/employee(s) of the IT related EOU; STP; EHTP; BTP are being permitted to work from home and/or a place outside the unit, subject to certain conditions given in the notice. *Public Notice No. 5/ (Re 2013)/2009-14, Dated April 18, 2013.*
- Harmonizing the two variants of EPCG Scheme, new version notified, which shall replace the old one with immediate effect. *Notification No. 1 (RE 2013)/2009-14, Dated April 18, 2013.*
- Amendment made in Chapter 5 pertaining to Export Promotion Capital Goods (EPCG) Scheme. The revised edition of EPCG scheme after harmonizing the two variants of the existing scheme shall replace the existing Procedure with immediate effect. *Public Notice No. 1/ (RE 2013)/ 2009-14, Dated April 18, 2013.*
- When *ab initio* exemption is available, benefit of TED refund will not be given. *Notification No.04 (RE 2013)/ 2009-13, Dated April 18, 2013.*
- The Central Government substitutes the contents of the existing Para 2.49.2 of Foreign Trade Policy 2009-14, which talk about the Personal Hearing by DGFT, with a new Para. *Notification No. 08 (RE-2013)/2009-2014, Dated April 22, 2013.*
- The Central Government makes the amendments in the ITC (HS) 2012, Schedule 1 (Import Policy). It has also inserted Policy Condition 3 after Policy Condition 2 appended to Chapter 38 ITC (HS) 2012, Schedule 1 (Import Policy). Part A, B and C of Appendix IV to ITC (HS) 2012, Schedule 1 (Import Policy) have been revised and substituted as at Annexure to the Notification. Effect of this Notification is that the import of items containing Ozone Depleting Substances (ODS) has been restricted and non-ODS items have been made free. A revised list

of countries which are parties to the Montreal Protocol under Appendix IV to Schedule 1 is notified. *Notification No. 9 (RE-2013)/2009-2014, Dated April 22, 2013.*

- The Central Government amends the Policy Condition 1 to Chapter 40 of ITC (HS) 2012, Schedule 1 (Import Policy). Also it has deleted the bracketed portion at the end of Policy Condition 1 appended to Chapter 40 of ITC (HS) 2012, Schedule 1 (Import Policy). Effect of this notification is that the redundancy in Policy Condition 1 appended to Chapter 40 of ITC (HS) 2012, Schedule 1 (Import Policy) is removed with immediate effect. *Notification No. 10 (RE-2013)/2009-2014, Dated April 22, 2013.*
- The Central Government makes the amendment in Chapter 15 of ITC (HS) 2012, Schedule 1 (Import Policy) i.e. Import Policy of Fish Body Oil (Refined). Effect of this Notification is that the prescribed standard of Eicosapentaenoic Acid (EPA) & Docosapentaenoic Acid (DHA) content in Fish Body Oil (Refined) has been revised to 'Not less than 5% by weight' without any upper limit. *Notification No. 11 (RE-2013)/2009-2014, Dated April 22, 2013.*

– FDI POLICY UPDATES

The Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce & Industry, Government of India makes policy pronouncements on FDI through Press Notes/ Press Releases which are notified by the Reserve Bank of India as amendments to the Foreign Exchange Management (Transfer or Issue of Security by Persons Resident Outside India) Regulations, 2000.

The consolidated FDI Policy 2013 subsumes and supersedes all Press Notes/Press Releases/ clarifications/circulars issued by DIPP, which were in force as on April 4, 2013 and reflects the FDI Policy standing as on April 5th, 2013. This Circular accordingly takes effect from April 5, 2013. Reference to any statute or legislation made in this Circular shall include modifications, amendments or re-enactments thereof.

A brief comparative analysis of the FDI Policy dated April 5th, 2013 with the earlier policy issued on April 10th, 2012 is given below:

S. No.	Earlier Position (As per Consolidated FDI Policy dated April 10th, 2012)	Revised Position (As per Consolidated FDI Policy dated April 5th, 2013)
Multi Brand Retail Trading		
1.	Per para 6.1 of the FDI Policy, FDI in Retail Trading, except single brand product retailing, was prohibited.	Upto 51% FDI is permitted in multi brand retail under the Government Approval subject to <i>inter alia</i> the following conditions: <ol style="list-style-type: none"> 1. Fresh agricultural produce can remain unbranded; 2. Minimum amount to be bought in as FDI is US \$ 100 Million. 3. Atleast 50% of total FDI bought in shall be invested in "backend infrastructure"¹ within 3 years of the first tranche of FDI; 4. Atleast 30% of the value of procurement of

¹ "Backend Infrastructure" includes capital expenditure on all activities excluding front end units, cost towards land or rental. It is deemed to include processing, manufacturing, distribution, design improvement, packaging, logistics etc.

	<p>manufactured/processed products purchased shall be sourced from Indian small industries- which have a total investment in plant and machinery not exceeding US\$ 1 Million.</p> <p>5. Companies are required to self-certify compliances with the above 3 conditions.</p> <p>6. FDI in e commerce companies undertaking retail trading is not allowed.</p> <p>7. Retail sales outlets may be set up only in cities with a population of more than 10 lakhs as per the 2011 census and may also cover an area of 10 kms around the municipal/urban agglomeration limits of such cities.</p>
<p>Investments by Pakistani citizens and corporate entities</p>	
<p>2. A non- resident entity (other than a citizen of Pakistan or an entity incorporated in Pakistan) can invest in India subject to the FDI policy.</p>	<p>An entity or citizen of Pakistan can invest in India after prior approval from the government. (Investments can only be made under the Government approval route).</p>
<p>Civil Aviation Sector</p>	
<p>3. Per paragraph 6.2.9.3 of the Consolidated FDI Policy, foreign airlines were not allowed to participate, whether directly or indirectly, in the equity of an Air Transport Undertaking² engaged in operating Scheduled³ and Non-Scheduled Air Transport Services⁴ except cargo airlines.</p>	<p>The Committee has now permitted foreign airlines to make investments in domestic airline operators as follows:</p> <ol style="list-style-type: none"> 1. Scheduled Air Transport Services/ Domestic Scheduled Passenger Airline- 49% FDI (100% for NRI's) 2. Non Scheduled Air Transport Service- 74% FDI (100% for NRI's)- Automatic route upto 49% and government approval route beyond 49% to 74%. <p>Subject to <i>inter alia</i> the following conditions:</p> <ol style="list-style-type: none"> a) Scheduled operator's permit can be granted to a company registered and having its principal place of business in India; b) The substantial ownership and effective control of the company shall be vested in Indian nationals; c) The chairman and 2/3rd of the directors shall be Indian citizens.
<p>Broadcasting Sector</p>	
<p>4. Per para 6.2.7 of the FDI Policy, foreign investment was allowed as follows:</p>	<p>Raises FDI cap in various broadcasting services to 74%.</p> <p>The Committee had now permitted foreign</p>

² "Air Transport Undertaking" means an undertaking whose business includes the carriage by air of passengers or cargo for hire or reward.

³ "Scheduled air transport service" means an air transport service undertaken between the same two or more places and operated according to a published time table or with flights so regular or frequent that they constitute a recognizably systematic series, each flight being open to use by members of the public.

⁴ "Non-Scheduled Air Transport Service" means any service which is not a scheduled air transport service and will include Cargo airlines;

<p>1. Upto 49% (FDI + FII) is permitted in teleports (setting up up-linking HUBs/Teleports), Direct-to-Home and Cable Networks under the Government approval route.</p> <p>Further, there was no dispensation under the FDI Policy for Mobile TV.</p>	<p>investment up to 74% in Teleports, Direct-to-Home, Cable Networks and Mobile TV. Investments up to 49% will be under the automatic route and investment from 49% to 74% will be under the Government approval route.</p> <p>Further, for the purpose of calculation of the FDI, the Committee clarified that the foreign investment limit shall include, in addition to FDI, investment by FIIs, NRIs, Foreign Currency Convertible Bonds, American Depository Receipts, Global Depository Receipts and convertible preference shares held by foreign entities.</p>
<p>Power Trading Exchanges</p>	
<p>5. In terms of para 6.2 of the FDI Policy, FDI upto 100% was permitted in the power sector (except atomic energy) under the automatic route, however, there was no specific dispensation for power trading exchanges.</p>	<p>Permits up to 49% foreign investment in the power trading exchanges.</p> <p>The Committee has now permitted foreign investment upto 49% [FDI: 26% and FII: 23%] in power trading exchanges. Investment by FIIs will be under the automatic route and FDI will be under the Government approval route.</p> <p>Further, investment by FIIs will be restricted to secondary market only and any non-resident investor/entity cannot hold more than 5% of the equity of such company.</p>
<p>Asset Reconstruction Companies</p>	
<p>6. 49% under the government approval route.</p>	<p>Foreign investment ceiling in ARC was raised to 74%. This move is aimed at inviting foreign expertise in this segment. It has also been said that the total shareholding of an FII in an ARC will not exceed 10 per cent of the total paid-up capital.</p>
<p>New Addition</p>	
<p>7. -N/A-</p>	<p>A new paragraph has been added with regards to the issue price of shares as follows:</p> <p>“However, where non- residents (including NRI’s) are making investments in compliance with the provisions of the Companies Act, 1956 by way of subscription to its Memorandum of Association, such investments may be made at face value subject to their eligibility to invest under the FDI Scheme.</p>

A copy of the aforesaid public release may be reviewed and downloaded from the following link:

http://dipp.nic.in/English/Policies/FDI_Circular_01_2013.pdf

CORPORATE

- There has been further relaxation of additional fees and extension of last date in filing of various forms with the Ministry of Corporate Affairs till 15-04-2013. It is clarified that fee payable for forms on/till 16-01-2013 will remain payable along with additional fee and relaxation of any additional fee will be considered for forms on or after 17-01-2013. *Circular No. 08/2013, Dated, April 10, 2013.*
- An order under section 433(e) is discretionary. There must be a debt due and the company must be unable to pay the same. The inability referred to in the expression ‘unable to pay its dues’, in Section 433(e) should be taken in the commercial sense. It is plainly and commercially insolvent. Its assets are such, and its existing liabilities are such, as to make it reasonably certain – as to make the court feel satisfied – that the existing and probable assets would be insufficient to meet its existing liabilities. *Tricon Polymers (P) Ltd. v. IDEB Projects (P) Ltd., HC of Karnataka.*

SECURITIES

- Clarifications issued regarding FII debt limits. Merger of existing debt limits in two broad categories- ‘Government Debt’ with combined limit of US\$ 25billion and ‘Corporate Bonds’ of US\$ 51billion. The current auction mechanism of allocating debt limits for corporate bonds shall be replaced by the ‘on tap system’ currently in place for infrastructure bonds. *CIR/IMD/FIIC/6/2013, April 1, 2013.*
- SEBI issued master circular consolidating all applicable circulars and related clarifications relating to Exchange Traded Derivatives. *CIR/MRD/DRMNP/11/2013, Dated April 1, 2013.*
- Stock exchanges may consider shifting from Trade for Trade Settlement (TFTS) to Normal Rolling Settlement subject to the condition that 50% of other than promoter holdings are in dematerialised mode. Listed company for this purpose shall obtain a certificate from its RTA and submit it to stock exchanges. *CIR/MRD/DP/12/2013, Dated April 8, 2013.*
- A master circular pertaining to Depositories was issued which is a compilation of circulars/communications issued by SEBI up to March 31, 2013. *CIR/MRD/DP/13/2013, Dated April 15, 2013.*
- Master circular for Stock Exchange/Cash Market issued. *CIR/MRD/DP/14/2013, Dated April 17, 2013.*
- All listed companies were called upon to redress investor grievances and inform them within 30 days of receipt of the complaint. The details of investor complaint would be available on <http://scores.gov.in/admin>, accessed through respective SCORES user ID of each company. SCORES user ID and password can be obtained by sending in the details as per Form-A (enclosed with the circular) and email to scores@sebi.gov.in. Failure to do so within 30 days of circular would be deemed as non-redressal of investor grievances and indicative of wilful avoidance. *CIR/OIAE/1/2013, Dated April 17, 2013.*

- Consent proceedings were pending and it is only on conclusion of such proceedings that it is open for the adjudicatory officer to give its ruling on the preliminary objections raised. *Udita Mercantile Pvt. Ltd. V. SEBI, Dated April 8, 2013, SAT.*
- If the Board proposes to pass an order which is likely to affect the appeal pending before this Tribunal, it is expected that the Board should bring this fact to the notice of the Tribunal before passing such order. Lest such action may be seen as interference in judicial process. Statement has been by the Board that final order will be passed within three months from the date of receipt of reply from appellant. If the Board fails to do so, the impugned order passed against the appellant shall stand vacated. *White Water management Services v. SEBI, Dated April 9, 2013, SAT.*
- Substantial acquisition of shares and takeovers should operate principally to ensure fair and equal treatment to all shareholders in relation to substantial acquisition of shares and takeovers. The object of the Regulations is to give equal treatment and opportunity to all shareholders and protect their interests. Board to bring about transparency in the transactions and it is for this purpose that dissemination of full information is required. Regulations require the making of disclosures on pre-acquisition and post-acquisition stages and the requirement in Regulation 7 at post acquisition stage is one among them. *K. Nirmala v. SEBI, Dated April 18, 2013, SAT.*
- The Securities Exchange Board of India has issued a circular to all Mutual Funds/ Asset Management Companies/ Trustee Companies/ Boards of trustees of mutual funds in respect of notification no. LAD-NRO/GN/2013-14/03/5652 dated April 16, 2013 amending the SEBI (Mutual Funds) Regulations, 1996. *CIR / IMD / DF / 7 / 2013, Dated April 23, 2013.*
- Shri Rajeev Kumar Agarwal, Whole Time Member, SEBI has passed an order suspending the certificate of registration of M/s M. Bhiwaniwala & Co. Member, Calcutta Stock Exchange Ltd., for a period of three months, in respect of its dealings in the shares of G. R. Industries and Finance Ltd. The order shall come into force immediately on expiry of twenty one days from the date of the order. *PR No. 44/2013, Dated April 05, 2013.*
- Shri Rajeev Kumar Agarwal, Whole Time Member, SEBI has passed an order directing M/s. Saradha Realty India Ltd. and its Managing Director, Mr. Sudipta Sen, to wind up its existing Collective Investment Schemes (CIS) and refund the money collected by it under the schemes with returns which are due to the investors as per the terms of offer within a period of three months from the date of this order and submit a winding up and repayment report to SEBI. Also the company and its Managing Director have been directed not to access the capital market and have been further restrained and prohibited them from buying, selling or otherwise dealing in the securities market till all its collective investment schemes are wound up and all the monies mobilised through them are refunded to the investors. *PR No. 45/2013, Dated April 23, 2013.*

COMPETITION

- The opposite party does not appear to be a dominant buyer/procurer of the services of trucks for transportation of goods by road as alleged. The question of abuse of dominance by it does not arise. The OP has business

liberty to bring about any changes in the tender for its own interest. This is legitimate business decision which need not be interfered with. *M/s Keerthy Krishnan & others v. BPCL, Mumbai, CCI, Dated April 10, 2013.*

- Agreement for sale of flat between a seller and purchaser does not fall within the purview of Section 3(3) of the Act, neither within the purview of Section 3(4) as the end users cannot be said to be forming part of the supply chain. *Tushar kanti Dhingra v. M/s Universal Buildwell Pvt. Ltd., Dated April 10, 2013.*
- The theory of interdependence posits that firms in a highly concentrated market may maintain their prices at supra-competitive levels, or even raise them to those levels, without engaging in any overt concentrated action. Oligopoly pricing will result in prices above the competitive price level (although below the full monopoly or cartel prices level). Though not desirable, it is an outcome of the structure of the market and a consequent conduct that the firms cannot avoid. The non-competitive nature of a market, standing alone, does not imply an 'agreement'. Interdependent behaviour is not an 'agreement' (i.e., price and output decisions are arrived at independently, but take into account rivals reactions). *Shailesh Kumar v. M/s Tata Chemicals Limited & Others, Dated April 16, 2013.*

INDIRECT TAXES

– CUSTOMS

- Notification No. 96/2008-Customs, dated Aug 13, 2008 amended, so as to include "Republic of Yemen" in the list of Least Developed Countries eligible to avail of the benefit of duty free tariff preferences (DFTP) scheme. - *Notification No. 19/2013 - Customs, New Delhi, Dated Apr 02, 2013.*
- Kattupalli (Tamil Nadu) is included in the list of ports permitted for exports and imports. - *Notification No. 20/2013 - Customs, New Delhi, Dated Apr 03, 2013.*
- Anti-dumping duty levied on imports of 'Sodium Nitrite', originating in, or exported from, European Union extended for a further period of one year i.e. upto and inclusive of 10th April, 2014. - *Notification No. 04/2013 - Customs (ADD), New Delhi, Dated Apr 10, 2013.*
- Anti-dumping duty levied on imports of 'Sulphur Black', originating in, or exported from, People's Republic of China extended for a further period of one year i.e. upto and inclusive of 10th April, 2014. - *Notification No. 05/2013 - Customs (ADD), New Delhi, Dated Apr 10, 2013.*
- Definitive anti-dumping duty imposed on Plain Gypsum Plaster Board (as defined in the notification) originating in or exported from China PR, Indonesia, Thailand and UAE. - *Notification No. 06/2013 - Customs (ADD), New Delhi, Dated Apr 12, 2013.*
- Customs (Appeal) Rules, 1982 amended and new forms for filing appeal before the CESTAT (C.A.-3, C.A.-4, C.A.-5) introduced in place of old forms. These forms have been made effective from June 01, 2013. - *Notification No. 37/2013 - Customs (N.T.), New Delhi, Dated Apr 10, 2013.*

- In view of falling global prices of the gold and silver, Government further slashed the tariff value of gold to 449 US Dollars per ten grams from 499 US Dollars per ten grams (notification no.38/2013) and silver to 762 US Dollars per kg from 890 US Dollars per kg (notification no.38/2013). - *Notification No. 39/2013 - Customs (N.T.), New Delhi, Dated Apr 17, 2013.*
- Sodium Saccharin is a 'corrosion inhibitor' as clarified by the Norms Committee of the Commerce Ministry and any product which is a 'corrosion inhibitor' imported under DFIA (Duty Free Import Authorisation) licence is eligible for benefit of Notification. 40/2006-Customs which exempts materials imported into India against a DFIA. - *CC v. M/s Nandanlal Bankatlal Pvt Ltd. - Mumbai CESTAT.*
- For confiscating imported goods, the competent authority should identify the imported commodity and show that it is a prohibited item. Without ascertaining the correct identity of the goods, one cannot hold it to be prohibited or to have been misdeclared. Confiscation of unknown substance set aside. - *M/s Pasura Life Sciences Pvt Ltd v. CC - Bangalore CESTAT.*
- Double duty paid on imported consignment by e-payment as well as manually. Held that excess duty paid cannot be treated as 'duty' so as to apply the bar of limitation for granting refund. - *Kansai Nerolac Paints Ltd v. CC - Mumbai CESTAT.*
- The vehicle carrying offended goods is liable for confiscation under Section 115 (2) of the Customs Act, 1962, only when it is established that the owner or his agent is aware of the fact that the vehicle is used in the transportation of the offended goods. - *Shri Ratan Biswas v. CC - Kolkata CESTAT.*
- The Circular No.27/2010-Customs, dated 13.08.2010, regarding procedure on refund of 4% Special Additional Duty (SAD). The above Circular provides the facility of manual filing of Bill of Entry for utilizing the amount of re-credited 4% SAD refunds for payment of duty in case of re-credited DEPB/ Reward Scheme scrips upto 31-03-2012. Circular No. 10/2012-Customs dated 29.03.2012 further extended the time upto 30.06.2012 utilizing the amount of recredited 4% SAD refunds for payment of duty in case of re-credited DEPB/ Reward Scheme scrips. References have been made from trade in the Board that importers have not been able to utilize the re-credited amount of 4% SAD. The matter has been examined in consultation with Director General of Foreign Trade (DGFT) and it has been decided to extend time limit for using re-credited DEPB scrips/ Reward Scheme scrips in case of 4% SAD upto 30th September, 2013. *Circular No. 18 /2013-Customs, Dated April 29, 2013.*
- **CENTRAL EXCISE**
 - Central Excise (Appeal) Rules, 2001 amended, and new forms for filing appeal before the CESTAT (E.A.-3, E.A.-4, E.A.-5) introduced in place of old forms. These forms have been made effective from June 01, 2013. - *Notification No. 06/2013 - Central Excise (N.T.), New Delhi, Dated April 10, 2013.*
 - Since chemicals have been used as inputs in manufacture of sugar i.e. dutiable product only and not in manufacture of Bio-compost, an exempted product. Seeking recovery of 8% of price of Bio-compost is not legal and proper. - *CCE v. M/s Eid Parry India Ltd., Madras High Court.*
 - Lower appellate authority has not passed any stay order but directed the appellant to make pre-deposit at the time of personal hearing. Held that any order directing the party to pay any amount should be in writing and has

to be tendered as per the provisions of s.37C of the Central Excise Act, 1944 (Service of decisions, orders, summons, etc.). - *M/s Royal Electricals v. CCE-I - Mumbai CESTAT*.

- Inputs/Capital goods destroyed in fire. Appellant has been able to prove through a certificate issued by National Insurance Company that they have not entertained the MODVAT credit component while entertaining their insurance claim. CENVAT Credit allowed. - *Schenectady Specialities Asia Ltd v. CCE - Mumbai CESTAT*.
- In the case of reversal of CENVAT Credit it was held that Interest has to be paid even if credit is not utilised. - *CCE v. M/s Cadila Healthcare Ltd - Ahmedabad CESTAT*.
- If an assessee has to transfer inputs corresponding to the transfer of entire CENVAT credit the assessee can at any time clear the inputs on payment of duty and avail the credit of the same at the different location, in such a situation the provision of Rule 10 would be rendered redundant. - *Ispat Industries Ltd v. CCE - Mumbai CESTAT*.
- For any commodity to be called excisable goods, it should satisfy cumulatively both the conditions viz. manufacture and marketability. In this case it was held that "saw dust" is marketable but not a manufactured product as it is generated as a waste during the course of manufacture of the excisable product viz. plywood. - *Hunsur Plywood Works Pvt Ltd v. CCE - Bangalore CESTAT*.

– SERVICE TAX

- Service Tax Rules, 1994 amended and new forms for filing appeal before the CESTAT (S.T.-5, S.T.-6, and S.T.-7) introduced in place of old forms. These forms have been made effective from June 01, 2013. - *Notification No. 05/2013 - Service Tax, New Delhi, Dated April 10, 2013*.
- Date for filing of the Form ST-3 for the period July 01, 2012 to September 30, 2012 has been extended from April 15, 2013 to April 30, 2013. - *Order No. 02/2013, Service Tax, New Delhi, Dated April 12, 2013*.
- Services provided by way of erection of pandal or shamiana would attract the levy of service tax. - *Circular No. 168/3/2013, Service Tax, New Delhi, Dated April 15, 2013*.
- Recruiting staff and supplying them to the group companies to deal with the activities undertaken by the group companies, such an activity does not, prima facie, come under the purview of the Business Auxiliary services. - *K Raheja Real Estate Services Pvt Ltd v. CCE, Mumbai CESTAT*.
- Post 27/02/2010, the only condition required to be satisfied to constitute export of service is that payment for such services should be received by the service provider in convertible foreign exchange, even if the service is rendered from a place outside India. The rule does not differentiate between "onsite services" and "offsite services". - *Tech Mahindra Ltd v. CCE, Mumbai CESTAT*.
- Any service which has nexus with business activity whether it is manufacturing or rendering service has to be treated as 'input service'. In the present case mobile phones were given to employees, held that service tax paid on mobile bill is an input service. - *Welspun Maxsteel Ltd v. CCE - Mumbai CESTAT*.

- CENVAT Credit taken on the same invoices twice. Appellant paid the amount along with interest. Held that no penalty is required as it is a case of mistake rather than any intentional evasion of duty. - *M/s Aquasub Engineering v. CC, CCE & ST - Chennai CESTAT*.
- When a service is rendered to a third party at the behest of your customer, the service recipient is your customer and not the third party. Appellant in this case agreed to provide telecom services to customer of Foreign Service provider while he is in India using appellant's telecom network. Held that such a service transaction constitutes export under the Export of Service Rules, 2005. - *M/s Vodafone Essar Cellular Ltd v. CCE - Mumbai CESTAT*.
- If a person is simply selling a product manufactured by another or licensing software developed by another, it cannot *prima facie* be considered as a franchisee service. - *M/s Sap India (P) Ltd v. CCE - Bangalore CESTAT*.
- Central Board of Excise & Customs extends the date of submission of the Form ST-3, for the period from 1st October 2012 to 31st March 2013, from 25th April, 2013 to 31st August, 2013. The circumstances of a special nature, which have given rise to this extension of time, are, "The Form ST-3, for the period from 1st October 2012 to 31st March 2013, is expected to be available on ACES around 31st of July, 2013". - *Order No: 03/2013-Service Tax, Dated April 23, 2013*.

INTELLECTUAL PROPERTY RIGHTS

– PATENTS

- The Petitioners have filed the petition for grant of Leave under Clause XIV of the Letters Patent. The Respondents are opposing the said grant on the ground that this is a fit case for refusal of leave in exercise of the discretion conferred on the Court by Clause XIV of the Letters Patent. It is held that there can be no hard and fast rule prescribed by any Court in any of its decisions as to under what circumstances the Court should grant leave or decline leave. The Court has to use its judicial discretion and arrest any abuse of the process of the Court, however, keeping uppermost in mind that multiplicity of litigation is to be avoided wherever possible. In this case leave is granted to the Plaintiffs under Clause XIV of the Letters Patent as sought. However, it is clarified that all the contentions raised by the parties are kept open and the adinterim/ interim and final reliefs shall be granted by the Court without being influenced by any of the observations made in this Judgment. The Leave Petition is accordingly disposed of. - *Jagdish Gopal Kamath and others v. Lime & Chilli Hospitality Services P. Ltd., Bombay High Court, Dated April 22, 2013*.
- The Supreme Court dismissed Novartis AG's appeal for patent protection of its anticancer drug, Glivec, putting an end to a seven-year battle between the Swiss drug maker, several domestic generic manufacturers, as well as patient groups fighting for affordable medicines. A Bench of judges Aftab Alam and Ranjana Desai said in an 110-page judgment: "We firmly reject Novartis' case that Imatinib Mesylate is a new product and the outcome of an invention... We hold and find that Imatinib Mesylate is a known substance. Imatinib Mesylate does not qualify the test of 'invention' as laid down in Section 2(1)(j) and Section 2(1)(ja) of the Patents Act." *Novartis AG v. Union of India & others, SC, Dated April 01, 2013*.

– TRADEMARKS

- In applying triple identity test namely, identical goods/services, identical trade mark and identical trade channel, the defendants, their partners, officers, employees, agents, distributors, franchisees, representatives and assigns are restrained by way of permanent injunction from using AGARWAL and/or AGARWAL's PACKER and/or AGARWAL's PACKER & MOVERS or any other trade mark or name similar to the Plaintiff's registered trade mark AGARWAL PACKERS & MOVERS in any other manner whatsoever. - *M/S. Drs Logistics (P) Ltd v. Rajesh Agarwal & Anr, Delhi High Court.*

CONSUMER

- By virtue of Section 3 consumer fora has got the parallel jurisdiction, yet when the case is decided by the Civil Court or DRT, it remains bound by that. It cannot re-open the controversy again. It cannot take a contrary view from that of the Civil Court. Commission is not armed with power to sit as an Appellate Court over the orders passed by the DRT. The DRT has got its own Appellate authority, which is known as Debts Recovery Appellate Tribunal. *B. L Joshi & Ors. v. Bank of India & Ors. Dated April 1, 2013 NCDRC.*
- Section 14 of the Limitation Act would be available if one had pursued the remedy in the wrong forum with due diligence and in good faith. While dealing with an application for condonation of delay the Court must bear in mind the object of expeditious disposal of consumer dispute which would be defeated if highly belated petitions were entertained. When the notices were received back undelivered only option left with the District Forum was to resort to the substituted service by publication which was exercised u/s 24-A (4) of the Act. *Koganti Atchuta Rao v. Koganti Vineet, Dated April 9, 2013, NCDRC.*
- Judicial and quasi-judicial courts/authorities are required to pass speaking orders. As many as 100 non-speaking orders passed by Rajasthan State Commission have been set aside in past and the commission was asked to pass speaking orders as per directions of SC. *Terex Vectra Equipment Pvt. Ltd v. Meharchand & Ors. Dated April 9, 2013, NCDRC.*
- The provision of Consumer Protection Act, 1986 give to the consumer an additional remedy besides those that may be available under existing laws. The compensation awarded by state commission was upheld in addition to the settlement of claim as per the Carriage by Air Act, 1972 in a case of losing and mishandling of luggage. *M/s Emirates Airlines v. Rakesh Chopra, Dated April 11, 2013, NCDRC.*
- A student took admission at Gurgaon centre of M/s FIIT Jee Ltd. but was forced to attend classes at Delhi centre. This practice was held not right as inconvenience was caused to the student and was allowed refund of fees with 1 Lakh in damages. *M/s FIITJEE Ltd. v. Ashok Kumar Jain, Dated April 17, 2013, NCDRC.*
- The Supreme Court set aside the rulings of the National Consumer Commission and the Chhattisgarh state consumer commission and awarded Rs. 7 lakhs with interest at the rate of 6 % per annum from the date of filing the complaint to a person who had lost sight in one eye when he fell down while playing. In this case the company argued that the insured person had no eyesight from his birth. When this was disputed, a medical team

conducted investigation which stated that the “loss of vision could have been caused by fall while playing”.
Sandeep Chourasia v. New India Assurance Co., Dated April 02, 2013.

ENVIRONMENT

- The Respondents in this case have failed to ensure that Fundamental Right available to the citizens of the township in the matter of protection of life is taken care of. The right to life includes the right to pollution free air and pure water. Having regard to the foregoing discussion, the Tribunal deemed it proper to allow the application and give appropriate directions to the Respondents. - *Satpal Singh & Others v. State of Punjab & Anr, National Green Tribunal, Dated April 25, 2013.*
- The Sub-clause (2) of Section 31 of the Air (Prevention and Control of Pollution) Act, 1981 and Sub-clause (2) of Section 28 of the Water (Prevention and Control of Pollution) Act, 1974 make it explicit that the Appellate Authority shall consist of a single Member or three Members appointed by the State Government. It does not mention a two Member Authority to function as Appellate Authority. The intention of legislature appears that the decision can be taken either by a single Member or by three Members. If a decision is taken by single member authority, then it becomes final decision of the authority. If it is the decision of a three member authority, there is inherent provision to mitigate any difficulty arising due to difference of opinion, i.e. if one of the members disagrees the opinion of the rest of the two Members will prevail and can be treated as a majority decision of the Appellate Authority. This is not possible if only two members are appointed because if there is a divergence of opinion among them, there is no third member to overcome the difficulty. - *Gurdial Singh & Sudesh Kumar v. State of Punjab & Ors. National Green Tribunal, Dated April 30, 2013.*

OTHERS

- In pursuance of sub-clause (ii) of clause (a) Sub-Section (1) of Section 138 of the Income-tax Act, 1961 the Central Government specifies officers of the rank of Joint Director and above serving in Directorate of Enforcement, Department of Revenue, Ministry of Finance, Government of India, who are performing functions under the Foreign Exchange Management Act, 1999 and the Prevention of Money Laundering Act, 2002, for the purpose of the said clause. *Notification No. 32/2013, F. No. F. No. 225/62/2013-(ITA-II), Dated April 18, 2013.*
