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## RBI & FEMA

- The Reserve Bank of India has issued Updated Master Circulars on the various issues. The mater circulars can be accessed from the website of the Reserve Bank. - *RBI, July 01, 2013.*
- RBI has directed that banks should not discriminate between their customers at home branch and non-home branches under the Core Banking Solutions (CBS) platform and follow a uniform, fair and transparent pricing policy. - *RBI/2013-14/110 DBOD. No. Dir. BC.26/13.03.00/2013-14, dated July 01, 2013.*
- RBI has directed that banks and financial institutions need not seek borrowers' consent to share credit information with credit information companies. With Credit Information Companies (Regulation) Act, 2005 (CIC Act) coming into force, the "consent clause" has become redundant. Earlier, consent clause for sharing information with CICs was required in the loan/credit documents. - *RBI/2013-14/112 DBOD No. CID. BC. 27/20.16.042/2013-14, Dated July 01, 2013.*
- The finalised guidelines on capital requirements for banks' exposures to central counterparties are issued. These instructions would become effective from January 1, 2014. - *RBI/2013-14/113 DBOD.No.BP.BC.28 /21.06.201/2013-14, Dated July 02, 2013.*
- RBI clarified that six months gap in private placement of non-convertible debentures (NCDs) by non-banking financial companies (NBFCs) will not be effective immediately. The RBI said a decision on "the appropriate minimum time gap" would be taken by the central bank "in due course," after NBFCs raised some concerns about the measures. NBFCs are further given time until September 30 to put in place clear plans for raising funds. Last week, RBI had said that NBFCs should keep a gap of six months between two private placements of NCDs. - *RBI/2013-14/115 DNBS(PD) CC No.349/03.10.001/2013-14, Dated July 02, 2013.*
- RBI has released guidelines for calculation of total foreign investment in Indian companies, transfer of ownership and control of Indian companies and downstream investment by Indian companies. - *RBI/2013-14/117 A.P. (DIR Series) Circular No.01, Dated July 04, 2013.*
- Currently, Indian companies in the manufacturing, infrastructure sector and hotel sector are allowed to avail of ECB for repayment of outstanding rupee loan(s) availed of from the domestic banking system and / or for fresh rupee capital expenditure under the approval route. On a review, RBI has decided to extend the benefit of USD 10 billion scheme to Indian companies in the aforesaid sectors (subject to certain conditions) which have established Joint Venture (JV) / Wholly Owned Subsidiary (WOS) / have acquired assets overseas in compliance with extant regulations under FEMA, 1999. - *RBI/2013-14/137 A.P. (DIR Series) Circular No.12, Dated July 15, 2013.*

- RBI has brought down the period of realisation and repatriation for exporters of goods and software from earlier twelve months to nine months from the date of export valid till September 30, 2013. The RBI further said the provisions in regard to period of realisation and repatriation to India of the full export value of goods or software exported by a unit situated in a Special Economic Zone (SEZ) as well as exports made to warehouses established outside India remain unchanged. - *RBI/2013-14/147 A.P. (DIR Series) Circular No.14, Dated July 22, 2013.*
- Currently, banks are allowed to maintain a minimum of 70 per cent of the required Cash Reserve Ratio (CRR) during a fortnight, which is applicable on all days of the reporting fortnight. It has been decided to increase the requirement of minimum daily CRR balance maintenance to 99 per cent effective from the first day of the fortnight beginning July 27, 2013. - *RBI/2013-14/154 DBOD.No.Ret.BC.35/12.01.001/2013-14, Dated July 23, 2013.*
- RBI has directed regional rural bank (RRBs) to comply with Credit Information Companies Act and take immediate steps to become member of at least one of the credit information companies (CIC). - *RBI/2013-14/157RPCD.CO.RRB.BC.No.14/03.05.33/2013-14, Dated July 23, 2013.*
- RBI has advised banks that no fresh/additional post-dated cheques (PDC) / equated monthly instalment (EMI) cheques (either in old format or new CTS-2010 format) shall be accepted in locations where the facility of ECS / RECS (Debit) is available. The existing PDCs / EMI cheques in such locations may be converted into ECS / RECS (Debit) by obtaining fresh ECS (Debit) mandates. The objective is to reduce the usage of cheques and promote electronic transfer. - *RBI/2013-14/158DPSS.CO.CHD.No./209/04.07.05/2013-14, Dated July 24, 2013.*
- In line with the requirements of regulatory environment and proposed introduction of web based reporting platform, RBI has decided to revise the format of PD returns (PDR I, II and IV) submitted to RBI. Returns in revised format (attached in the circular) will become effective from the period ending July 31, 2013. - *RBI/2013-14/168 IDMD.PDRD.No. 346 / 10.02.23 / 2013-14, Dated July 31, 2013.*

## FOREIGN TRADE

- Cut & polished diamonds of 0.10 carat or above can be exported and thereafter re-imported duty free after certification by authorised laboratories. Earlier this was allowed for diamonds of size 0.25 carat and above only. - *Notification No 25 (RE-2013) / 2009-2014, Dated July 3, 2013.*
- Amendment made in Special chemicals, Organism, Materials, Equipment and Technologies (SCOMET) list, that was notified vide Notification No.37 (RE-2012) /2009-2014 dated 14th March, 2013. The existing entry in SCOMET category 3D001 is substituted. -*Notification No. 26 (RE-2013)/2009-2014, Dated July 3, 2013.*
- Amendment made in the Import Policy of Electrical Energy under Exim Code 2716 00 00. Henceforth, import of electrical energy will not require authorization. -*Notification No 27 (RE-2013) / 2009-2014, Dated July 5, 2013.*
- SION A-1442 has been revised to add (i) two new inputs and (ii) reduce the quantity of two existing inputs. The name of the export product has been widened from “Ortho Tertiary Butyl Cyclohexyl Acetate” to “Ortho Tertiary

Butyl Cyclohexyl Acetate and or Ortho Tertiary Butyl Cyclohexyl Acetate Super". -*Public Notice No.16/(RE 2013)/2009-14, Dated July 9, 2013.*

- A new SION A-3643 under Chemicals and Allied Products - in respect of the export product "Fatty Alcohol (Cetyl, Stearyl, Ceto-Stearyl)" is being notified. -*Public Notice No.17/(RE 2013)/2009-14, Dated July 9, 2013.*
- The description of export product under SION A-3530 and A-3529 for "Activated Polydimethyl Siloxane" and "Simethicone" has been modified. -*Public Notice No.18/(RE 2013)/2009-14, Dated July 10, 2013.*
- Amendments made in the Reward/Incentive Schemes of Chapter 3 of Foreign Trade Policy 2009-14. Certain products (mentioned in the Public Notice) are added in Table 1 of Appendix 37D (Focus Product Scheme) after Sl. No. 888 for export made with effect from 15.08.2013. The item Copper Sulphate (THUTIA) appearing at Sl. No. 333 of Appendix 37A VKGUY (Table 2) is deleted with immediate effect. -*Public Notice No.19/(RE 2013)/2009-14, Dated July 10, 2013.*
- Para 2.49.2 of FTP deals with the grievance redressal mechanism. It was amended on 22.04.2013. Now as per the amended provisions, DGFT would grant a Personal Hearing (PH) to such exporter/importer as stated in the Para 2.49.2 of FTP. For this purpose, the important conditions required to be fulfilled are: (a) Exporter/Importer is aggrieved by any decision, except an adjudication order (b) the Exporter /Importer continues to be aggrieved in-spite of a review of that decision.

It has now been decided that Personal Hearing (PH) in such cases by the Director General of Foreign Trade will be held at Udyog Bhawan, New Dehli-11 on second Tuesday of every month between 3:00PM to 4:00PM. In case, in any month, 2nd Tuesday is not a working day then such PH may be held on next Tuesday.

Any importer/exporter who satisfies the conditions given in the Para 2.49.2 of Foreign Trade Policy (FTP) may submit a representation addressing to DGFT for seeking PH before him with the header: Request for PH before DG under Para 2.49.2 of FTP. The covering page of such representation must have the details as given in this Trade Notice. -*Trade Notice No. 05 /2013, Dated July 19, 2013.*

- Para 2.17A of FTP has been harmonized with Rule 47 of the SEZ Rules, 2006. Accordingly, a SEZ unit/Developer/ Co-developer may be allowed to dispose off in DTA any waste or scrap, including any form of metallic waste and scrap, generated during manufacturing or processing activity, without an authorization, on payment of applicable Customs Duty. -*Notification No 28 (RE-2013) / 2009-2014, Dated July 24, 2013.*
- Sanitary Import Permit requirements vide Notification No.18 of 11.6.2013 will not be applicable to Human hair under ITC (HS) Code 0501. Only items of animal origin or the products intended for animal feeding containing animal origin materials under ITC (HS) Code 2309 will require Sanitary Import Permit. -*Notification No 29 (RE-2013) / 2009-2014, Dated July 24, 2013.*
- There has been an Inclusion of Kattupalli Sea Port as a Port of Registration under Para 4.19 of Handbook of Procedures (HBP) (Vol. I). -*Public Notice No.20/(RE 2013)/2009-14, Dated July 29, 2013, NCDRC.*

- In order to prevent unintended benefit under the scheme in cases where growth in exports is more than 25 % or the total incremental growth is Rs. 10 crore or more, all Regional offices (RAs) of DGFT would have to be more careful. All stakeholders are requested / encouraged to give feedback /suggestion, to prevent unintended benefit under incremental Export Incentivisation Scheme, through e-mail to hardeep.singh@nic.in up to 18.00 hrs on 20.08.2013. - *Trade Notice No. 06 /2013, Dated July 31, 2013.*

## CORPORATE

- MCA vide its Notification dated 16 July, 2010 declared unnecessary the appointment of Sole Selling Agents by any company for sale of every category of “Bulk drugs”, “drugs” and “formulations” as defined in the Drugs (Prices Control) Order, 1995 (not being bona fide preparation in Ayurvedic, Unani or homoeopathic) in India for a period of three years, from the date of publication of notification. This period of three years has been extended to six years by present notification. -*Notification No GSR. 487(E), Dated July 15, 2013.*

## SECURITIES

- It has been decided to increase the number of investor service centres providing *inter alia* arbitration facility (arbitration as well as appellate arbitration). -*CIR/MRD/ICC/21/2013, Dated July 5, 2013.*
- Para 8 of the Circular no. CIR/MRD/DSA/24/2010 dated August 11, 2010 is being modified. Para 8 of the said Circular deals with “Place of Arbitration”. Accordingly, the stock exchanges are advised to make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the amendment immediately; and bring the provisions of this circular to the notice of the members of the stock exchange and also to disseminate the same through their website; and communicate to SEBI, the status of implementation of the provisions of this circular in the Monthly Development Reports to SEBI. -*CIR/MRD/ICC/20/2013, Dated July 5, 2013.*
- The position limits applicable for Client and Trading Member for Exchange Traded Currency Derivatives has been modified. It has been decided to curtail position limits and increase margin requirements for Currency Derivatives as follows: **(a) Margins:** Initial and extreme loss margins shall be increased by 100% of the present rates for USD-INR contracts in Currency Derivatives. **(b) Client level position limits:** The gross open position of a client across all contracts shall not exceed 6% of the total open interest or 10 million USD, whichever is lower. **(c) Non-bank Trading Member position limits:** The gross open position of a Trading Member, who is not a bank, across all contracts shall not exceed 15% of the total open interest or 50 million USD whichever is lower. -*CIR/MRD/DP/ 22 /2013, Dated July 8, 2013.*
- The consolidated FDI policy circular issued by the Department of Industrial Policy and Promotion, effective from April 05, 2013, states that FII investments in Security Receipts issued by Asset Reconstruction Companies should be within the FII limit on corporate bonds prescribed from time to time. Accordingly, the investments in Security Receipts issued by Asset Reconstruction Companies by FII’s shall be reckoned against the extant Corporate Debt Limits. The investments of FIIs in Security Receipts shall be subject to terms and conditions as specified by the Reserve Bank of India from time to time. -*CIR/IMD/FIIC/9/2013, Dated July 9, 2013.*

- The Securities and Exchange Board of India (SEBI) has issued Operational, Prudential and Reporting norms for Alternate Investment Funds (AIFs). -*CIR/IMD/DF/10/2013, Dated July 29, 2013.*
- Companies in order to get their shares listed on a stock exchange must have minimum public shareholding requirement of 25%, as prescribed in Securities Contracts (Regulation) Rules, 1957 (SCRR). Appellant should comply with the requirement by adopting a simple route as elaborated by SEBI circulars issued on December 16, 2010 and February 8, 2012, or which gets the approval of SEBI, rather than a contentious and circuitous route. -*Gillette India Ltd. v. SEBI & Ors., Dated July 3, 2013, SAT.*
- The mere fact of transfer of the shares in question from the account of one of the promoters to the Appellant's account would not make the whole transaction illegal and violative of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (FUTP Regulations) in question. Appellant intended to treat the shares purchased in an auction as a long term investment. Without the Appellant having transferred such shares to second level entities or to any other person, he cannot be held guilty of circular trading or creating false volumes in the scrip. There is no proof to show that the Appellant was part of an alleged scheme of manipulation, or any collusion with other entities in the matter of creating circular trade or creation of false volume. -*Ramswarup Sarda v. SEBI, dated July 23, 2013, SAT.*
- If the essentials of justice in the sense of granting opportunity of hearing are ignored in passing an order to the prejudice of a person, the order is a nullity for want of natural justice and no amount of post-decisional hearing can cure the same. To hold a post decisional hearing in the fact and circumstances of the present case is no more than eyewash. The matter remanded back to respondent for fresh consideration. -*Zenith Infotech Ltd. & Ors v. SEBI & Ors., Dated July 23, 2013, SAT.*
- The question was whether Appellants business was in nature of Collective Investment Scheme and thus requires to be registered with SEBI under the provision of SEBI (CISs) Regulation, 1999. Held that in situations where high returns are promised to investors in any form, a CIS may be said to be in place, subject to fulfilment of other conditions as per law. In the interpretation of regulatory measures, like the CIS Regulations, the most important task is to determine the 'pith and substance' of the provisions concerned i.e., their essential and true character. The whole scheme of CIS as enshrined in the SEBI Act, 1992 and the CIS Regulations, 1999 as already discussed hereinabove is the welfare of millions of innocent investors by duly protecting their interests. The legislative intent and idea of the Parliament as well as SEBI seem to bring more transparency to the affairs of various CISs by duly regulating the same. Closing or winding up such CISs is an extreme measure to be resorted to in rare cases of adamant companies who do not wish to abide by the CIS Regulations in the matter of registration and other conditionalities laid down therein. The scheme carried on by the Appellants, under the pretext of being a real estate business, falls squarely within the parameters of the concept of a CIS as pointed by SC in *PGF Ltd. v. UoI & Ors.* The Tribunal finds no infirmity with impugned order passed by SEBI and allotted the Appellants a period of 6 months to repay the amount of investors. -*Maitreya Services Private Limited v. SEBI, Dated July 23, 2013, SAT.*

## COMPETITION

- The question of dominant position by the Opposite Party (India Yamaha Motors) does not arise. The OP has not restricted the market for the informant (Authorized Dealer in OP's motorcycles). Opposite Party had a right to

appoint any number of dealers in the relevant geographic market to expand its sales. Such conduct cannot be stated to be anti-competitive rather it promotes intra brand competition between the dealers of the same brand resulting into consumer good. -*Kanwaljit Singh v. India Yamaha Motors Pvt. Ltd., Dated July 1, 2013, CCI.*

- The various issues raised in the present case are similar in nature with the issues involved in The Belaire case. Therein DLF was found to be in dominant position, contravening S. 4(2)(a)(i) of Act, in imposing unfair conditions on the sale of its services to consumers. The commission observed that cease and desist order as passed in the Belaire case would apply to present case as well, without imposing penalty, as it has already been imposed on DLF. -*Dinesh Trehan v. M/s DLF Ltd, Dated July 1, 2013, CCI.*
- In order to attract the provisions of section 4 of the Act, the dominance of the enterprise needs to be examined under explanation (a) to section 4 of the Act with due regard to the factors mentioned under section 19(4). A number of players are operating in the relevant market. Thus, in view of the market construct the OPs cannot be said to be dominant in the relevant product market. -*DLF City Club Members Welfare Association v. DLF Recreational Foundation Ltd. & Ors., Dated July 1, 2013, CCI.*
- The chemists & druggists allotted shops by the State within the premises of public health facilities can be bound with such reasonable conditions which facilitate the availability of medicines and drugs to the consumers at a reasonable price. Such a policy cannot be said to be anticompetitive policy. -*M/s Oracle Drugs & Ors. v. Secretary, Department of Health and Family Welfare, Government of Odisha & Others, Dated July 1, 2013, CCI.*
- Informant alleged formation of a cartel by the members of Indian Broadcasting Foundation. In the present case the OPs collectively took the decision to shift from the gross billing method to net billing method. Although there has been a collective action by OP 1 and its members but primarily the trade associations are for building consensus among the members on policy/other issues affecting the industry and to promote these policy interests with the government and with other public/private players. Such activities may not necessarily lead to competition law violation. To perceive otherwise will render the trade association bodies as completely redundant, being opposed to competition law. -*Advertising Agencies Guild v. Indian Broadcasting Foundation & members, Dated July 1, 2013, CCI.*
- The relevant market in every case must be determined after giving due regard to the relevant geographic market and relevant product market as required by the provisions under Section 2(r) read with section 19(5) of the Act. For section 19(3) of the Act to apply, there should be an agreement which creates barriers to new entrants in the market or forecloses competition by hindering entry into the market or curtails accrual of benefits to the customers, all of which are understood to have appreciable adverse effect of competition. None of these seems to be present in this case. -*V. Senthilnathan, CA v. M/s United India Insurance Co. Ltd., Dated July 1, 2013, CCI.*
- Tender conditions cannot be termed as discriminatory or unfair just because the informant was unable to meet those conditions. The conditions can vary according to specific requirement of a particular tender having regard to local conditions obtaining therein. Thus the impugned conditions not being unfair or discriminatory cannot be said to be abusive. -*M/s Dipak Nath v. M/s ONGC & Ors., Dated July 5, 2013, CCI.*

**INDIRECT TAXES**– **CUSTOMS**

- Notification No. 12/2012-Cus. Dated March 17, 2012 amended, so as to increase Standard Rate of Duty from 10% to 15% on raw sugar, refined sugar and raw sugar imported by a bulk consumer. - *Notification No. 34 /2013 - Customs, Dated July 08, 2013.*
- Notification No.46/2011-Cus. dated June 01, 2011 amended, so as to allow import of self copy paper etc. from ASEAN countries& Philippines at reduced tariff. - *Notification No. 35 / 2013 - Customs, Dated July 18, 2013.*
- Notification No. 12/2012-Cus. dated March 17, 2012 amended, so as to allow any importer to import Liquefied natural gas (LNG) and natural gas (NG) for supply to a generating company for generation of electrical energy at Nil rate of Customs duty. - *Notification No. 36/ 2013-Customs, Dated July 22, 2013.*
- Notification No. 46/2011-Customs, dated 1st June, 2011 amended, so as to include Hilsa Fish (HS 03038910) imported from Myanmar under India-ASEAN Free Trade Agreement. - *Notification No. 37 / 2013 - Customs, Dated July 22, 2013.*
- Foreign Post Office, New Delhi, included as port of export for the purpose of Export Promotion benefits. - *Notification No. 38 / 2013 - Customs, Dated July 26, 2013.*
- Courier Imports and Exports (Clearance) Regulations, 1998 amended, so as to notify 'Tiruchirappalli Airport' for courier import and export operations. - *Notification No.74/2013-Customs (N.T.), Dated July 12, 2013*
- The levy of anti-dumping duty on import of Poly Vinyl Chloride Emulsion Resin, originating in or exported from European Union has been extended till 24 June, 2015. - *Notification No. 15/2013-Customs (ADD), Dated July 03, 2013.*
- The levy of anti-dumping duty on import of specified rubber chemicals falling under chapter 29 or 38, originating in or exported from China PR and Korea RP has been extended till 4 May, 2014. - *Notification No. 16/2013-Customs (ADD) and Notification No.17/2013-Customs (ADD), Dated July 05, 2013.*
- It has been clarified that imports of retreaded or used tyres are allowed subject to compliance with the provisions of the Foreign Trade Policy (FTP), and the requirement of consent/permission from the Ministry of Environment and Forest as stipulated in the Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008. - *Customs Instruction No. 5, Dated July 12, 2013.*
- It has been clarified that re-import of pets as baggage is allowed subject to establishment of identity of pets by Customs authorities, production of the required health certificate from the country of export and examination of said pets by the concerned Quarantine Officer at this end. - *Circular No.25 /2013, Customs, Dated July 01,2013.*
- Customs authorities confiscated consignment of GSM Dual SIM Mobile phones having one IMEI number on the ground that dual SIM phones should have two IMEI numbers as per DGFT Notification. Telecom Equipment Manufacturer's Association of India has clarified that mobile having single CPU shall need one IMEI no. irrespective

of the number of provision for SIM card one or two or more. Held that since it is not the case of the department that the mobile handsets are with Zeroes IMEI, import of the same cannot be prohibited. Therefore confiscation of the impugned goods and imposition of penalty are not sustainable in law. - *M/s Current Systems vs Commissioner Of Customs, CESTAT Mumbai, July 22, 2013.*

- Clarifying the relation between Rule 8 and Section 28AB - Rule 8 does not incorporate Section 28AB. Levy of interest for short levy of duty is prescribed by Rule 8 itself. Interest is chargeable because of the provisions of Rule 8 and not because of Section 28AB. Pre-conditions or the conditions mentioned in Section 28AB do not get incorporated in Rule 8. Rule 8 applies by its own force and on its own strength. Reference to Section 28AB in Rule 8 is only for the purpose of rate of interest. The rate of interest payable under Rule 8 was/is the rate of interest fixed by the notification issued under Section 28AB. - *M/s Pioneer Soap And Chemicals vs Union Of India And Another, Delhi High Court, July 04, 2013.*
- Import of old and used Datagraphic Display Tubes. Tribunal held that the goods imported are electronic assemblies for direct re-use and, therefore, the same would be covered by Serial No. 1110 of Part B of the Schedule-III to the Hazardous Waste Rules, 2008 (Rules), which would require prior permission from Ministry of Environment & Forests and since these goods have been imported without permission from the Ministry of Environment & Forests, the same would be liable for confiscation under Section 111(d) of the Customs Act, 1962. And the same, in accordance with Rule 17(2) have to be re-exported by the Importer at his cost. - *M/s Eastron Overseas Inc vs CC, CESTAT New Delhi, July 04, 2013.*

#### — CENTRAL EXCISE

- Exempts scheduled formulations as defined under the Drugs Price Control Order, 2013 dated May 15, 2013 and which are subjected to re-printing, re-labelling, re-packing or stickering, in a premises not registered under the Central Excise Act, 1944 from payment of whole of excise duty subject to satisfaction of conditions prescribed therein. - *Notification No.22 /2013-Central Excise, Dated July 29, 2013.*
- CBEC has clarified that sedans such as Toyota Corolla and Maruti Suzuki SX4 will attract a 27 per cent excise duty as opposed to 30 per cent levied on SUVs. These vehicles under the sedan category will not be clubbed under the 30% excise duty applicable to sports utility vehicle (SUVs) like Mahindra Scorpio or the Toyota Fortuner. - *Circular No. 972/06/2013, Central Excise, Dated July 24, 2013.*
- The appellants while availing the CENVAT credit in respect of capital goods, it seems that they availed the credit in respect of those items which according to the Revenue were not capital goods. The said fact was pointed out by the audit and the appellant accepted the same and reversed the excess availed credit. The dispute relates to as to whether such excess availed credit would attract interest and penalty or not. Held that since the assessee reversed the credit before utilization and the same remains only as a book entry, no interest would be leviable. As regards penalty, it was held that penal provisions are invokable, once there is a *mala fide* on the part of the assessee. Therefore, in the absence of any such element, there is no justification for imposing penalties upon the assessee. - *M/s Balrampur Chini Mills Ltd v. Commissioner of Central Excise, CESTAT Allahabad, July 03, 2013.*
- If the department on inspection of manufacturing premises on a particular day detects that goods of a particular specification are being manufactured, the department is entitled in law to presume that (until the manufacturer proves the contra) goods of the same specification are continued to be manufactured. However, in the present case no



samples were drawn at all for the department to draw an initial presumption. The content of the recovered file and the statements of the employees of the respondent must be examined to ascertain the fact whether the respondent manufactured yarn of a higher count than the declared count during the period covered by the file. - *Commissioner of Central Excise, Madurai v. Ayyappan Textiles Ltd, Supreme Court of India, July 23, 2013.*

- Delay of 825 days in filing appeal by Revenue. Revenue submitted that the delay has occurred due to the fact that the appellant was prosecuting bonafide its application for rectification of mistake and thereafter the Writ Petition in this Court. Court held that explanation is not at all satisfactory and thoroughly vague. Delay not condoned. - *The Commissioner of Central Excise, Mumbai v. M/s Ceat Ltd, Bombay High Court, July 08, 2013.*

#### – SERVICE TAX

- Supersedes Notification No. 40/2012-ST, dated June 20, 2012 and exempts services received by a Unit located in Special Economic Zone (“the SEZ Unit”) or Developer of SEZ (“the Developer”) and used for authorised operation, from the whole of service tax, education cess and secondary and higher education cess leviable thereon. Exemption is to be claimed by way of *ab initio* not paying of service tax or by way of refund depending upon fulfilment of conditions and requirements specified in the notification. - *Notification No. 12 / 2013-Service Tax, Dated July 01, 2013.*
- Service Tax on Restaurants and hotels is beyond the legislative competence of the Parliament. Refund can be claimed if tax paid: The very purpose of incorporating the definition of tax on sale or purchase of goods in Article 366 was to empower the State Governments to impose tax on the supply, whether it is by way of or as a part of any service of goods either being food or any other article for human consumption or any drink either intoxicating or not intoxicating whether such supply or service is for cash, deferred payment or other valuable consideration. It can be seen from Article 366(29-A) (f) that service is also included in the sale of goods. If the constitution permits sale of goods during service as taxable necessarily Entry 54 has to be read giving the meaning of sale of goods as stated in the Constitution. If read in that fashion, necessarily service forms part of sale of goods and State Government alone will have the legislative competence to enact the law imposing a tax on the service element forming part of sale of goods as well, which they have apparently imposed. - *Kerala Classified Hotels and Resorts Association and others v Union of India and others, Kerala High Court, July 03, 2013.*

## INTELLECTUAL PROPERTY RIGHTS

#### – PATENTS

- Appellant invented 'A Chaos Theoretical Exponent Value Calculation system' and applied for patent. Deputy Controller rejected invention as not patentable Section 3(k) of the Act and held that functions of so-called system were based on mathematical method for solving mathematical equations, and declined to accept technical effect theory followed under European Patent law. Controller opined that Indian law did not allow patent for mathematical methods which have technical effect. Controller also opined that invention which was technical advance was itself nothing more than 'a mathematical method for solving mathematical claims which were further based on various algorithms'. Tribunal held that Controller's reasoning was that merely because mathematical method was technical advance it should not cross Section 3(k) bar was right and hence, Appeal dismissed. - *Electronic Navigation Research Institute, Japan and others v. Controller General of Patents and Design and others, Intellectual Property Appellate Board, July 05, 2013.*

- Appellant applied for patent application related to 'methods for enhancing stress tolerance in plants and methods thereof' which was later amended as 'a method of producing a transgenic plant with increased heat tolerance, salt tolerance, or drug tolerance'. Respondent rejected appellant's patent application on basis that subject matter of claims lack inventive step. Tribunal held that It was method, that included act of human intervention on plant cell and producing in that plant cell some change. Therefore respondent erred in finding this method essentially biological process and excluded u/s. 3(j) of the Act, however, this would not make subject invention patentable automatically in view of human intervention. When claims related to recombinant DNA, plant cell, progeny, plant, crop plant, propagule, seed etc and claims transgenic plant, Isolated protein and 20 field crop have been given up by appellant, claimed method was considered as series of generic steps modified by plant cell. By itself such discovery was merely discovery of new property of known substance and not invention. Hence, Petitions dismissed. - *Monsanto Technology LLC, U.S.A v. Controller of Patents and Designs, Trademark and Geographical Indications, Mumbai and others, Intellectual Property Appellate Board, July 05, 2013.*

#### – TRADEMARKS

- The provisions relating to the international registration of trademarks under the Madrid Protocol have come into force in India from July 08, 2013. The amendments in the Trademarks Act and Rules enabling the international registration of trademarks under the Madrid Protocol have also come into force from the same date. Accordingly, any natural person or legal entity which has a real and effective industrial or commercial establishment in, or is domiciled in, or is a national of India and has got a registration of a trademark or an application pending for the registration of a trademark in India may make an online application for the international registration of the trademark under the Madrid Protocol. A gateway for this purpose has been provided on the home page of the website [www.ipindia.nic.in](http://www.ipindia.nic.in). - *Public Notice, Intellectual Property India, Dated July 08, 2013.*
- Both the companies were selling 'sildenafil citrate tablets' used to treat erectile dysfunction and had filed cross-suits against each other. On perusal of the documents, the board found that HAB had been using the trademark 'Vega' since 2001 while Vee started using the trademark 'Vega Asia' in 2002. The trademarks are deceptively similar and are likely to cause confusion and deception. In such a case the prior user has the better right. The mark which is in subsequent use shall not remain on the register. Board also said that as only the trademark Vega was used by HAB in 2001 and not Vegah, it has to discontinue the second trademark. - *M/s. HAB Pharmaceuticals & Research Limited v. VEE Excel Drugs & Pharmaceuticals Pvt. Ltd, Intellectual Property Appellate Board, July 31, 2013.*
- The rival marks "FENA" and "FINA" are phonetically, structurally and visually deceptively similar within the meaning of Sec. 2(1)(d) of the Act. Therefore, the plaintiff was held entitled to a permanent injunction restraining the defendants from using the impugned trade mark 'FINA' with respect to goods and services under Class 3 (soaps and detergents). However, in the absence of any factors of confusion i.e. similar trade channel, similar market, similar class of customers etc., no such restriction is placed upon the defendants for using the impugned trade mark with respect to lubricants or any other goods and services falling outside of Class 3. - *Fena Limited v. Fina Europe S. A. and others, Delhi High Court, July 22, 2013.*
- A comparison of the two marks 'AMLOBET' and 'AMLOVATE' shows that there is overall structural and phonetic similarity between the marks when examined from the point of view of a man of average intelligence and imperfect recollection. The two drugs are prescribed for treating the same symptom viz., high blood pressure that makes even stricter the test of deceptive similarity leading to confusion in the mind of an average customer. Therefore it was held

that the use by the defendants of the mark AMLOVATE/AMLOVATE-A amounts to passing off. - *Sun Pharmaceuticals Industries Limited v. P. Mukesh Kumar and others, Delhi High Court, July 22, 2013.*

- Jurisdiction issue - The respondent/plaintiff itself is neither registered at Delhi nor has its office at Delhi. It is otherwise not the case of the respondent/plaintiff that it is personally working for gain at Delhi. Thus, in the circumstances, it was held that respondent/plaintiff has failed to prima facie show that the courts at Delhi have territorial jurisdiction to try the suit for reason of his Dealership Agreement with J.L. Morison or on account of having made defendant No.2 party to the suit. - *Pioneer Products v. Alberto Culver International Inc., Delhi High Court, July 01, 2013.*
- The trade mark law is a specific part of the larger field of unfair competition law and enforcement of trademark protection serves to prevent acts of unfair competition. All factors which are likely to create or allay deception or confusion must be considered in combination. Broadly speaking, factors creating confusion would be, for example – the nature of the mark itself, the class of customer, the extent of the reputation, the trade channels, the existence of any connection in the course of trade and so on. - *Izuk Chemical Works, Delhi v. (1) Sahajanand Medical Technologies Private Limited, Surat; (2) Registrar of Trade Marks, Ahmedabad, Intellectual Property Appellate Board, July 03, 2013.*

#### – COPYRIGHTS

- The underlying principles in relation to copyright law are different from those relating to trademark law. There is no provision in the Copyright Act for any premium to be accorded in respect of an artistic work in respect of which the trademark has been registered under the Trademark Act, 1999. Publication is a sine qua non under the Act for claiming authorship of an artistic work. A perusal of Rule 16 of the Copyright Rules, 1958 read with Form 4 shows that an applicant for registration of a copyright is required to mandatorily file statement of particulars setting out whether the work is published or not and the year of publication, etc. - *Raj Kumar Saraf, Proprietor Bindal Food Products v. Vaidya Nandram Gigranj Chamaria, Delhi High Court, July 19, 2013.*

#### – OTHERS

- The Intellectual Property Appellate Board (IPAB) has said that it has powers to review its own order in certain conditions and the power to grant interim orders pending final application, based on various guidelines. It was noted that if the litigant had the right of review before the High Court either in appeal or in application, when the appeals were transferred to the IPAB, it cannot be taken away by the Board. The Bench also said that the IPAB's orders are final and there is no appeal and considering various rules and regulations, the remedy of review must exist. In this regard, it was noted that there is no express bar for review and further Rule 23 would become meaningless if it is held otherwise. Further, the Board was of the view that once the power of review is found and is implied in the statute, then whether the orders passed are interim orders or final or decision or judgment is not material. It held that this power to review is not limited to procedural errors but extends to substantive review but cannot extend to rehearing of the matter. - *Aachi Masala Foods Private Limited, Chennai vs S. D. Murali and others, Intellectual Property Appellate Board, July 08, 2013.*

#### CONSUMER

- The revisional powers of the National Commission are derived from Section 21 (b) of the Act, under which the said power can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order, and

only then, may the same be set aside. -*Uday Shankar Verma v. Continental Airlines Inc., Dated July 2, 2013, NCDRC.*

- It was observed that, there were no allegations against the Surveyor. He appeared to be guileless and there was no reason to discard his statement/report. Supreme Court of India had already held that a Surveyor's report has significant evidentiary value unless it is proved otherwise, which the complainant had failed to do so in the instant case. -*M/s Shital Fibres Ltd. v. M/s Bharti Axa General Insurance Co. Ltd., Dated July 4, 2013, NCDRC.*
- In order to curb uncalled for and frivolous litigation, the Courts have to ensure that there is no incentive or motive for uncalled for litigation. To achieve clandestine objects, false pleas are often taken and forged documents are filed indiscriminately in courts because they have hardly any apprehension of being prosecuted for perjury or pay heavy costs. Present petition was held to be a gross abuse of the process of law and the revision petition totally meritless and frivolous, which is required to be dismissed with punitive costs of Rs.1,00,000. -*Ansal Properties & Infrastructure Ltd. v. Nidhi jain, Dated July 5, 2013, NCDRC.*
- If at all there was a pressure on the complainant to sign the discharge voucher for full and final settlement, the complainant under ordinary course of circumstances instead of waiting for six months would have protested against the so called coercive measures adopted by the opposite party. From the conduct of the complainant also, it appears that the complaint after entering into the settlement has been filed on after-thought with a view to extract more money from the opposite party. -*M/s K.K. Jewels Impex v. The Oriental Insurance Company, Dated July 5, 2013, NCDRC.*
- Complainants had availed the services of the opposite party bank for a commercial purpose i.e. construction of hotel for earning profit. Thus, in our view, the complainants are not covered under the definition of "consumer" as defined under section 2 (1) (d) (ii) of the Act. As such, the complaint is not maintainable before the consumer fora. -*M/s Ashiana Inn Ltd. v. Avtar Singh, Dated July 5, 2013, NCDRC.*
- Complaint was filed in the background of the information that the Surveyor had assessed the loss to be Rs.70.5 lakhs while the insured had accepted Rs.51.89 lakhs, in 'full and final' settlement. It is thus a case where, the insured is seeking to reopen his claim for further relief. No evidence was led before the State Commission to show that the acceptance of the appellant/Complainant was obtained by any acts of fraud or misrepresentation or coercion on the part of the respondent/Insurance Company. -*M/s Ravinder Spinners v. National Insurance Co. Ltd., Dated July 8, 2013, NCDRC.*
- If Jet Airways schedules a flight to land at Mumbai Airport at a particular time and another connecting flight to take off at a particular time, it must provide for time required in all services/functions including security, immigration and air traffic management, which are necessarily concerned with or mandated for such landing and departure. The travelling public is in no way responsible for delay caused by any of them. The State Commissions order was upheld reimbursing the complainant for his ticket to Hong-Kong and compensation of Rs. 50,000 together with cost of Rs. 25, 000. -*Jet Airways (India) v. Vandana Jain, Dated July 9, 2013, NCDRC.*
- The contract of insurance is a contract of trust and it was obligatory on the part of the insured to disclose previous disease, treatment, etc. but as deceased not only suppressed all these material facts, but also answered in negative and in such circumstances, respondent has not committed deficiency in repudiating the claim. -*Satyavati Sharma v. Life Insurance Corporation, Dated July 10, 2013, NCDRC.*

- The Complainant is a Private Limited Company, which is registered under the Companies Act 1986. The shares were purchased by the Complainant Company and not by any individual. It was not established that these shares were not purchased for any commercial purpose. The disputes between the parties relating to commercial purposes are excluded under the Act. This view stands fortified by a recent judgment of National Commission, reported in “Vijay Kumar Vs. Indusind Bank”. -*M/s Sterlite Industries (India) Ltd v. Ganapati Finsec Pvt. Ltd., Dated July 12, 2013, NCDRC.*
- The case entails lot of evidence, examination of witnesses, examination of Expert report, etc. Under the Consumer Protection Act, 1986, the commission deal with summary procedure. The complaint itself runs into 43 pages and is a voluminous record. Although under Section 3 of the CP Act, 1986, this Commission can deal with such like matters, yet, when lot of evidence is to be recorded, the case must be dealt with by the Civil Court/High Court. - *G. Somashekhar v. ICICI bank & Ors, Dated July 19, 2013, NCDRC.*
- Vehicle in dispute did not have a valid registration number on the date of the accident and hence was being used in violation of the law and condition of the insurance policy. Registration of the vehicle is a mandatory requirement of the law and the relevant provisions is contained in Section 39 of the Motor Vehicles Act, 1988. The use of the vehicle in question was in violation of the law itself and hence would take it beyond the protection of the insurance policy. - *Bharti AXA General Insurance Co. v. Lokesh Kumar, Dated July 25, 2013, NCDRC.*
- For treating a writing signed by the party as an acknowledgment, the person acknowledging must be conscious of his liability and the commitment should be made towards that liability. -*M/s Tolani Shipping Co. v. Sterling Holiday Resort (I) Ltd, Dated July 30, 2013, NCDRC.*

## ENVIRONMENT

- Taking cognizance of reports that the forest department is severely short of staff, National Green Tribunal has asked the forest department for a status report on its staff strength. Hearing a case on three illegal roads built in Rajokri forest, Delhi Development Authority has been ordered to remove all encroachments from reserved forest areas and said it should be given police help as and when needed. - *Times of India, Dated July 13, 2013.*
- Following the directives of National Green Tribunal, the Goa State Pollution Control Board has issued show cause notices to around 2,635 units to apply for consent to operate. The Goa state pollution control board (GSPCB) has decided to amend the Air (Prevention and Pollution Control) Rules, to give relief to 2,635 units who have to pay a late fee for applying for consent to operate. - *Times of India, Dated July 20, 2013.*
- Dumping on the riverbed will now cost the offender Rs 5 lakh. The National Green Tribunal said this amount would be recovered from the truck owner found dumping the debris, the person to whom the rubble belongs and the contractor responsible for demolition and transfer of the rubble. The court has directed all agencies concerned to clear all debris from the river banks, especially the Geeta Colony site, by August 15. - *Times of India, July 23, 2013.*

## **OTHERS**

- A Voluntary Retirement Scheme introduced by a company is essentially a part of the company's desire to weed out the deadwood. It is well-established that a VRS introduced by a company does not entitle an employee as a matter of right to the benefits of the Scheme. Whether an employee should be allowed to retire in terms of the Scheme is a decision which can only be taken by the employer company, except in cases where the Scheme itself provides for retirement to take effect when the notice period comes to an end. - *C V Francis v. Union Of India & Ors, Supreme Court of India, July 03, 2013.*

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