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## RBI/FEMA

- **MONITORING TOOLS FOR INTRADAY LIQUIDITY MANAGEMENT ISSUED:** Reserve Bank of India has issued final norms for monitoring intra- day liquidity tools which allows them to monitor and measure expected daily gross liquidity inflows and outflows and ensure that arrangements to acquire sufficient intraday funding to meet their intraday needs are in place and they have the ability to deal with unexpected disruptions to their liquidity flows..

*[RBI/2014-15/293*

*DBR.BP.BC.No.46/21.04.098/2014-15 dated 3rd November, 2014]*

- **PREVENTIVE MEASURES AGAINST CHEQUE FRAUDS ADVISED-** In view of the rise in the number of cheque related fraud cases, RBI has asked banks to put in place preventive measures including sending an SMS alert to payer/drawer when cheques are received in clearing.

Further, to prevent cases of suspicious or large value cheques (in relation to an account's normal level of

operations), banks have been advised to alert customers by a phone call and get the confirmation from the payer/drawer.

*[RBI/2014-15/294*

*DBS.CFMC.BC.No. 006 /23.04.001/ 2014-15 dated 5th November, 2014]*

- **NBFC NORMS REVISED**

The highlights of the revised norms are as follows:

1. **Minimum net owned fund raised to Rs 2 crores:** RBI mandated all NBFCs to attain a minimum Net Owned Funds (NOF) of Rs. 200 lakh by the end of March 2017, as per the milestones given below:
  - Rs. 100 lakhs by the end of March 2016
  - Rs. 200 lakhs by the end of March 2017
2. **Deposit Acceptance:** To harmonise the deposit acceptance, RBI had asked, 'unrated' AFCs to get 'rated' by March 31, 2016. And till the time they get rated, not to accept any further deposits. The rated AFCs limit of deposit acceptance also reduced from 4 times to 1.5 times of NOF.
3. **Systemic significance threshold raised to Rs 500 crores:** The current threshold for "systematically significance" companies of Rs 100 crore is increased to Rs 500 crores.

With the revision in the threshold for systemic significance, non-deposit taking NBFCs (NBFCs-ND) and non-deposit taking systematically important NBFCs(NBFCs-ND-SI) shall be categorized into two broad categories as:

- NBFCs-ND (those with assets of less than Rs. 500 crores) and
- NBFCs-ND-SI (those with assets of Rs. 500 crores and above).

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#### 4. Relaxation of prudential norms for not systematically-important companies:

RBI relaxed the prudential norms for NBFCs which are not having assets of Rs.500crores or above as follows:

- a. Asset size, below Rs 500 crores, no public funds, no customer interface: No prudential or conduct-of-business (KYC, fair practices code or FPC) regulations
- b. Asset size, below Rs 500 crores, no public funds, having customer interface: Conduct of business regulations.
- c. Asset size, below Rs 500 crores, having public funds: Prudential regulations. Capital adequacy requirement is being done away with; however a leverage ratio of 7 times is being introduced
- d. Asset size Rs 500 crores or above and depository NBFCs: intensive regulation, as discussed below

#### 5. Provision of Standard Assets:

RBI revised the provision of standard assets from present 0.25% to 0.40%, which is to be complied by all NBFCs as follows:

- 0.30% by the end of March 2016
- 0.35% by the end of March 2017
- 0.40% by the end of March 2018

6. The RBI has implemented the fit and proper person criteria for NBFC directors. *[RBI/2014-15/299 DNBR (PD) CC.No.002/03.10.001/2014-15 dated November 10, 2014]*

- **IMMOVABLE PROPERTIES - Acquisition /transfer of immovable property in India to be governed by tax laws :** To clear the doubt that persists in public regarding requirement of payment of taxes

while undertaking property transactions, RBI had clarified that the transactions involving the acquisition of immovable property shall be governed by tax laws in India. *[RBI/2014-15/307 A.P. (DIR Series) Circular No. 38 dated 20th November, 2014]*

- **LEVY OF PENAL CHARGES ON NON-MAINTENANCE OF MINIMUM BALANCES, BANKS ADVISED AGAINST:** RBI has clarified and advised banks not to take undue advantage of customer difficulty by levying penal charges on non-maintenance of minimum balances in saving bank accounts and asked all the banks that instead of levying penal charges, to limit services available on such accounts to those available to Basic Savings Bank Deposit Accounts and restore the services when the balances improve to the minimum required level. *[RBI/2014-15/308 DBR.Dir.BC.No.47/13.03.00/2014-15 dated 20th November, 2014]*
- **REALIZATION AND REPATRIATION TIME OF EXPORT PROCEEDS REDUCED:** RBI has notified that the Exporters and units in Special Economic Zones will now have to realise and repatriate foreign sales' proceeds of goods and services in nine months against 12, from the date of shipment. *[RBI/2014-15/306 A.P. (DIR Series) Circular No. 37 dated 20th November, 2014]*
- **PARKING OF ECB PROCEEDS IN TERM DEPOSITS ALLOWED:** RBI with a view to providing greater flexibility to the ECB borrowers in structuring draw down of ECB proceeds and utilisation of the same for permitted end uses, has decided to permit AD Category -I banks to allow eligible ECB borrowers to park ECB proceeds (both under the automatic and approval routes) in term deposits with AD Category- I banks in India for a maximum period

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of six months pending utilisation for permitted end uses. *[RBI/2014-15/309 A.P. (DIR Series) Circular No. 39 dated November 21, 2014]*

- **FINANCING OF INFRASTRUCTURE AND AFFORDABLE HOUSING**-Loans to individuals against investment in long-term bonds allowed

In order to provide liquidity to retail investors in Long term bonds, RBI has allowed banks to give loans to individuals against investment in long-term bonds, issued to raise money for lending to infrastructure and affordable housing projects, subject to a ceiling of Rs.10 lakhs per borrower, and tenure of loan to be within the maturity period of the bonds. *[RBI/2014-15/320 BR.BP.BC.No.50/ 08.12.014/2014-15 dated 27th November, 2014]*

- **LICENSING OF SMALL FINANCE BANKS AND PAYMENT BANKS**- Final Guidelines Issued RBI has released final guidelines for Licensing of Small Finance Banks and Payment Banks in the Private Sector, after receiving the public comments on the draft guidelines to extend banking services to the underserved and unserved sections of the population. Detailed guidelines are annexed with the circular. *[RBI PRESS RELEASE 2014-2015/1089, 2014-2015/1090]*

- **ISSUE OF FINAL GUIDELINES FOR THE BHARAT BILL PAYMENT SYSTEM (BBPS) -** RBI has also issued final guidelines for the Bharat Bill Payment System (BBPS), which will help consumers pay multiple bills like electricity, telephone and school fees at a single point of transaction. The RBI-promoted payment retail gateway and the issuer of the debit Cards, the National Payment Corporation of India (NPCI) has been appointed as the nodal body, in this regard. Detailed guidelines are annexed with the circular.

*[RBI/2014-15/327 DPSS.CO.PD. No. 940 /02.27.020/2014-2015, dated 28th November, 2014]*

- **20:80 SCHEME FOR IMPORT OF GOLD WITHDRAWN:** RBI has decided to withdraw the 20:80 scheme and other restrictions placed on import of gold with immediate effect. As per the August 14, 2013 circular, the RBI had prohibited the import of gold in the form of coins and medallions and had instructed all nominated banks/nominated agencies and other entities to ensure that at least one fifth, that is, 20 per cent, of every lot of import of gold imported to the country is exclusively made available for the purpose of exports and the balance for domestic use. *[RBI/2014-15/329 A. P. (DIR Series) Circular No.42, dated 28th November, 2014]*

## FOREIGN TRADE

- **TRANSACTION CERTIFICATE FOR EXPORT OF CERTIFIED ORGANIC PRODUCTS:** Directorate General of Foreign Trade, with respect of export of certified organic products, has clarified that “organic product” which are to be exported, to be accompanied by a transaction certificate issued by a Certification Body accredited by National Accreditation Body (NAB) for Organic Products under the National Programme for Organic Production of the Department of Commerce and to be in conformity with the standards laid down in the document “National Programme for Organic Production (NPOP)” . *[Public Notice No. 73 (RE-2013)/2009-2014 dated 18 November, 2014]*
- **IMPORT POLICY OF ‘NATURAL SANDS’REVISED :** Department of Commerce has revised the Import Policy of ‘Natural Sands’ which are

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subject to Plant Quarantine (Regulation of Import into India) Order, 2003. *[Notification No. 97 (RE – 2013)/2009-2014 dated 7th November, 2014]*

- **SCHEDULED CHEMICALS, IMPORT POLICY AMENDMENT :** Central Government has made it mandatory for the importers of chemicals to notify the details of such imports to Directorate General of Foreign Trade (DGFT), National Authority, Chemical Weapons Convention (NACWC) and Department of Chemicals and Petrochemicals within 30 days from the date of their importation. *[Notification No. 98 (RE – 2013)/2009-2014 dated 19th November, 2014]*
- **ROUGH MARBLE AND TRAVERTINE BLOCKS, POLICY FOR ISSUE OF IMPORT LICENSES - AMENDED:** Import policy for Rough Marble and Travertine blocks for the year 2014-15 has been notified by the Central Government, with a ceiling of 8 lakhs MT for the whole of the licensing year 2014-15 and it has mandated filing of monthly returns regarding imports made, to the Regional Authority of DGFT by the 15th of each succeeding month in which license is obtained. *[Notification No. 99 (RE-2013)/2009-2014 dated 20th November, 2014]*

## CORPORATE

- **COMPANY LAW BOARD (FEES ON APPLICATIONS AND PETITIONS) AMENDMENT RULES, 2014, FEE DETAILS NOTIFIED:** The Ministry of Corporate affairs notified rules amending the Company Law Board (Fees on Applications and Petitions) Rules, 1991 by inserting the fee details for applications and petitions applied to the Company Law Board, with respect to the following:

- For Rectification of register of members to be Rs.500
- For allowing any period other than April to March as Financial year to be Rs. 5000
- For directing the company to pay the sum due or for any loss or damage incurred as a result of such non-payment for Rs.100
- For allowing further time as considered reasonable to the company to repay the deposit for Rs.5000. *[MCA notification G.S.R. 772(E) dated 3rd November, 2014]*

- **FILINGS RELATED TO NOTICE OF APPOINTMENT OF COST AUDITOR CLARIFIED:** MCA vide circular 42/2104 has clarified that provisions with respect to filings related to notice of appointment of cost auditor, which is to be done in Form CRA-2,. *[MCA circular 42/2014 dated 12th November, 2014]*

- **CLARIFICATIONS WITH RESPECT TO APPLICABILITY OF CHAPTER III (PROSPECTUS AND ALLOTMENT OF SECURITIES) OF THE COMPANIES ACT, 2013 TO THE ISSUE OF FCCBS:** MCA has clarified that as issue of Foreign Currency Convertible Bonds (FCCBs) is regulated by Ministry of Finance regulations contained in, Issue of foreign currency convertible bonds and ordinary shares (through Depository Receipts Mechanism) Scheme, 1993 and Reserve Bank of India, unless otherwise provided in the said scheme, provisions of Chapter III i.e., PROSPECTUS AND ALLOTMENT OF SECURITIES shall not apply due to non-availability of this form on MCA portal, and it has decided to extend the date of filing of the said form

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without penalty upto 31st January, 2015. *[MCA circular no.43/2014 dated 13th November, 2014]*

- **COMPANY LAW SETTLEMENT SCHEME, 2014 (CLSS-2014) EXTENDED** :MCA has extended the Company Law Settlement Scheme (CLSS 2014) upto 31st December, 2014 which earlier had last date of 15th November, 2014. *[MCA General Circular No. 44/2014 dated 14th November, 2014]*
- **EXTENSION OF TIME FOR HOLDING ANNUAL GENERAL MEETING (AGM) UNDER SECTION 96(1) OF THE COMPANIES ACT, 2013-** The Ministry of Corporate Affairs (“MCA”) has issued a General Circular No. 45/2014 dated 18th November, 2014 extending the Annual General Meeting due date to 31st December, 2014 for the Companies registered in Jammu and Kashmir, on the representation made by the Kashmir Chamber of Commerce and Industry due to devastation caused by the unprecedented floods in the Kashmir valley in September, 2014. *[MCA General Circular No. 45/2014 dated 18th November, 2014]*

## SECURITIES

- **CONSOLIDATED ACCOUNT STATEMENT (CAS) FOR ALL SECURITIES ASSETS FOR EVERY INDIVIDUAL MANDATED:** SEBI decided to create one record for all financial assets of every individual, and had extensive deliberations in this regard with the Depositories, AMC (asset management companies) and RTAs (register and transfer agents) of Mutual Funds (MF-RTAs) to implement it with respect to financial assets of securities market. As a first step in this direction, SEBI decided to enable a single consolidated view of all the investments of an investor in Mutual Funds (MF) and securities held in demat form with the Depositories and consolidation of

account statement to be done on the basis of PAN. *[CIR/MRD/DP/31/2014 dated November 12, 2014 (SEBI)]*

- **ELIGIBILITY AND INVESTMENT NORMS, BETWEEN FOREIGN PORTFOLIO INVESTOR (FPI) REGIME AND SUBSCRIPTION THROUGH OFFSHORE DERIVATIVE INSTRUMENTS (ODI) ROUTE, ALIGNED:** In this regard it has been mandated that FPI shall issue ODI only to those subscribers which meet the eligibility criteria as laid down in regulation 4 of SEBI (foreign Portfolio Investor) Regulation, 2014. FPI shall issue ODIs to only those subscribers which do not have opaque structures, as defined under Explanation 1 of Regulation 32(1)(f) of SEBI (FPI) Regulation. The investment restrictions specified by Regulation 21(7) shall also apply to ODI subscribers. *[CIR/IMD/FIIC/ 20 /2014, dated 20th November, 2014 (SEBI)]*
- **TAKE OVER REGULATIONS-** Securing indebtedness by public financial institution (PFI's) through encumbrance of shares to be treated as deemed acquisition of shares under regulation 29(4) of SAST Regulations, 2011 and needs disclosures as per the regulations: Securities Appellate Tribunal (SAT) in its recent order has made it clear that Public Financial Institutions are not exempted from making disclosures on encumbrance of shares. Under Regulation 29(4) of Substantial Acquisition of shares and Takeovers Regulation, 2011, Scheduled Commercial Banks and PFI's are exempt from making disclosures when shares are acquired by them to secure indebtedness in the ordinary course of business. But if the case is of deemed acquisitions i.e., where shares are

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encumbered by creation of pledge, the regulation does not exempt Scheduled Commercial Banks and PFI's from disclosures. *[M/s. SICOM Ltd. v. SEBI, dated 28th October, 2014, (SAT)]*

- **COMPANY'S NOT LIABLE FOR NON-DISCLOSURE OF ENCUMBERED SHARES, IF PROMOTERS NOT UNDER OBLIGATION TO DO THE SAME: SAT**

In a recent case, SAT overturned the order of Adjudicating officer while observing that since neither clause 35 of the Listing Agreement nor any other clause in the Listing Agreement requires the promoter/promoter group to disclose to the Company the shares that are 'otherwise encumbered', and observed that SEBI has created an anomalous situation by directing listed Companies to disclose to the Stock Exchanges details of shares that are otherwise encumbered by the promoter/ promoter group, without making it obligatory on part of promoter/promoter group to disclose such details to the listed Companies, because, promoter/ promoter group who has details of shares that are 'otherwise encumbered' are not obliged to disclose the same to the listed Company, whereas, listed Companies to whom such details are not furnished by the promoter/promoter group are made to disclose such details to the Stock Exchanges. *[Golden Tobacco Ltd. v. SEBI, dated 30th October, 2014, (SAT)]*

- **ANNOUNCEMENT OF THE BONUS ISSUE, ONCE MADE CANNOT BE RETRACTED: SAT**

In the instant case SAT has held that since the condition precedent for the purpose of compliance of

Minimum Public Shareholding (MSP) requirement by issue of bonus shares is that the promoters are to forgo their entitlement to equity shares, whether present or future, which may arise from such issue. Thus, the Promoters have to give-up their entitlement under the bonus issue in order to achieve the threshold of 25% towards MPS. Granting of the extension of the time as prayed for by appellant-company for the purpose of extending the benefit of bonus issue to one of the promoters would amount to permitting it to circumvent provisions of Securities Contract Regulations and Issue of Capital and Disclosure Requirements, 2009. *[Nitta Gelatin India Limited. v. SEBI, dated 5th November, 2014, (SAT)]*

- **INSIDER TRADING, DIRECTORS' DUTY TO DISCLOSE, HELD: DISCLOSURES UNDER REGULATION 13(3) AND 13(4) ARE BOTH DIFFERENT**

SAT, in its latest judgment while dismissing the contention by the appellant that disclosure was made under Regulation 13(4) would automatically mean compliance with Regulation 13(3), of the Insider Trading Regulations. In that regard SAT clarified that disclosures under Regulation 13(3) and 13(4) are both different as they are made in two different forms i.e., Form 'C' for Regulation 13(3) and Form 'D' for Regulation 13(4). The former gets triggered when the shareholding of any person holding more than 5% shares or voting rights in any listed company undergoes change in the shareholding and such change exceeds 2% of the total shareholding or voting rights in the company. Regulation 13(4) gets triggered when the shareholding of a person who is a director or officer of a listed company undergoes change from the last disclosure and such change exceeds Rs. 5 lac in value or 25,000 shares or 1% of total shareholding or voting

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rights whichever is lower.. [Gurmeet Singh Dhingra . v. SEBI, dated 13th November, 2014, (SAT)]

- **DIRECTOR HELD LIABLE FOR HUGE VARIATION IN LAST TRADED PRICE (LTP):**

By allegedly placing buy orders at prices above LTP, when the sell orders were at their lower prices, director of a Company (the appellant) made huge benefits out of the situation and was penalized by SEBI for this act. when appealed against, SAT dismissed the appeal, holding that it was not a fair trading. [Sanwaria Agro Oils Limited. v. SEBI, dated 19th November, 2014 (SAT)]

- **ALL TRADE SYNCHRONIZATION NOT BAD BUT BECOMES BAD WHEN UNDERTAKEN TO RIG, MANIPULATE OR DEFEAT FAIR PLAY IN SECURITIES MARKET : SAT**

The order of AO was set aside and sent for re-consideration, as SAT held the order was without any reasoning since price fluctuation, as a result of synchronized trading has not been dealt with at all and false appearance of trading also does not appear plausible, since trading took place, even if it was synchronized, but still if happened and price was paid, delivery taken, then how it was false, could not be explained. Each instance of synchronization has to be shown resulting in rigging/manipulation to defeat fair play in market mechanism, to be termed bad in law. In the instant case, the purpose of synchronization has not been brought out. [Super Inficon Pvt. Ltd v. SEBI, dated 24th November, 2014, (SAT)]

## COMPETITION

- **CCI GIVES APPROVAL TO FUJITSU-PANASONIC - DEVELOPMENT BANK OF JAPAN JOINT VENTURE: Finding** no horizontal overlap between the Parties in India. and also that there was no vertical relationship between the parties in India, CCI gave approval to the JV between Fujitsu-Panasonic- Development Bank of Japan The matter came to CCI as an agreement between Fujitsu Semiconductor Ltd (FSL) and Panasonic was executed. Besides, a financing agreement was also executed between FSL, Panasonic and Development Bank of Japan. As per the deal, the proposed joint venture was to "specialize in system large-scale integration design and development of certain logic integrated circuit products". The Commission observed that Fujitsu and its subsidiary, FSL, have had no sales of logic IC products in India in the last two financial years. Similarly, Panasonic Asia Pacific based in Singapore, which has insignificant sales of semiconductor/ logic IC products in India. [(Combination Registration No. C-2014/09/206, dated 27th October, 2014, (CCI)]

- **SPOT E-AUCTION SCHEME, CCI DIRECTS COAL INDIA TO DESIST FROM UNFAIR BUSINESS WAYS -** CCI has found CIL and its subsidiaries to be in contravention of the provisions of section 4(2)(a)(i) of the act for imposing unfair conditions upon the bidders under the scheme. The Commission inter alia found the stipulations provided in clause 9.2 of Spot e-Auction Scheme 2007 in contravention of the provisions of section 4(2)(a)(i) of the Competition Act, 2002 (the Act) whereby a buyer is saddled with penalty by way of forfeiture of EMD for non-lifting of coal after successful participation in the e-Auction without any corresponding liability upon CIL and its subsidiaries for failure to deliver coal in respect of accepted bids. Such arrangement in the Scheme was

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noted to be a result of market power exercised by CIL and its subsidiaries. Accordingly, the Commission held CIL and its subsidiaries to be in contravention of the provisions of section 4(2)(a)(i) of the Act for imposing unfair conditions upon the bidders under the Scheme. *[Shri Bijay Poddar v. M/s Coal India Limited and its subsidiaries, dated 27th October, 2014, (CCI)]*

- **DOMINANT POSITION - CCI imposed a fine of Rs 10.62 lakh on chemist and druggist association, Goa (CDAG) :** Xcel Healthcare brought to the notice of the Commission that CDAG was restraining pharmaceutical companies such as Glenmark Pharmaceuticals and Wockhardt from doing business with non-authorized stockists. It was found that CDAG was continuing to exercise control on the supply chain through which drugs and medicines are made available in the market through the practice of requirement of LOC/NOC (Letter of Consent/No Objection Certificate) prior to appointment of stockists by pharmaceutical companies without having any legal or statutory authority in this respect. CDAG forced pharmaceutical companies to follow its mandate by threatening other stockists in Goa to stop taking supplies or suspend receiving supplies from them till such time they stopped supplies to unauthorized stockists such as Xcel Healthcare. *[Collective boycott/refusal to deal by the Chemists & Druggists Association, Goa (CDAG), M/s Glenmark Company and, M/s Wockhardt Ltd., dated 27th October, 2014, (CCI)]*
- **UNFAIR TRADE PRACTICES - Jute mills and gunny trade bodies fined for unfair trade practices:** It was held that Indian Jute Mills Association and Gunny Trade Association members were indulging in

anti-competitive pact while fixing sale price of jute packaging material by issuing daily price bulletin for bags. Provisions of the Jute Packaging Materials (Compulsory Use in Packaging Commodities) Act, 1987 were held to be against the principle of competitive neutrality as the entities manufacturing matching products were denied market access. A penalty of 48.29 lakhs was imposed on the Opposite Parties. *[Indian Sugar Mills Association & Ors., v. Indian Jute Mills Association, dated 31st October, 2014, (CCI)]*

## INDIRECT TAXES

### (A) SERVICE TAX

- **WRIT PETITION NOT MAINTAINABLE FOR DETERMINATION OF RATE OF DUTY/TAX- MADRAS HIGH COURT**

In the instant case, the petitioner sought issuance of a Writ of Prohibition to prohibit the respondents from levying and collecting service tax on the transfer of right to use copyright. The Hon'ble High Court held that writ petition for the purpose of determination of rate of duty/tax not maintainable. *[M/s T T Krishnamachari & Co v. Union of India, Department of Revenue, Commissioner of Service Tax dated 17th November, 2014]*

- **RELEVANT DATE FOR CALCULATION OF LIMITATION PERIOD IS DATE OF PAYMENT OF SERVICE TAX: CESTAT**

In the instant case, CESTAT held that the relevant date for calculation of limitation period in respect of filing refund claims relating to service tax is the date of payment of service tax. *[CCE, Pune vs M/s Meadwestvaco India Pvt. Ltd., dated 31st October,*



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*2014 (CESTAT, Mumbai)*

## (B) CENTRAL EXCISE

- **CESTAT HAS NO POWER TO DISMISS AN APPEAL EXCEPT TO PASS ORDER CONFIRMING, MODIFYING OR ANNULING THE ORDER APPEALED AGAINST : SC**

In this case, appellant a partnership firm engaged in the manufacture and sale of Hot Re-rolled products was aggrieved by the order of the Commissioner on re-fixation of the annual capacity and duty liability, filed an appeal before CESTAT and the Tribunal, dismissed the appeal for want of prosecution and the appeal was filed before High Court. The Hon'ble High Court held that even if the appellant was not present before the Tribunal when the appeal was taken up for hearing, it could not have been dismissed for want of prosecution and that the Tribunal can only confirm, modify or annul the order appealed against and it has no power to dismiss the appeal for want of prosecution even if the appellant therein has not appeared when the appeal was taken up for hearing and directed the Tribunal to decide the appeal on merits and thus, allowed the appeal before Tribunal. *[Balaji Steel Re-Rolling Mills v. Commissioner of Central Excise and Customs., dated 14th November, 2014 (Supreme Court)]*

- **CLARIFICATION REGARDING RE-CREDIT UNDER THE PROVISIONS OF CENVAT CREDIT RULES - Availment of cenvat credit within six months, condition does not apply for taking re-credit of amount reversed**

Central Board of Excise and Customs vide its circular dated 19th November, 2014 has clarified regarding Rule

4(1) and 4(7) of CENVAT Credit Rules, 2004 (CCR, 2004) which says that manufacturer or output service provider shall not take CENVAT credit after six months of the date of issue of the documents and applicability of the same for the provisions of re-credit.

The rules of CCR, 2004, related to re-credit, on which concerns were raised are as follows:

- Rule 4(7) which prescribes that if the payment of value of input service and service tax payable is not made within 3 months of date of invoice, then the CENVAT Credit availed is required to be paid back and when such payment is made, the amount so paid back to be re-credited.
- Rule 3(5B) is about the value of any input or capital goods before being put to use on which CENVAT Credit has been taken, in case of this being written off or such provisions if made in Books of Account, then the manufacturer or service provider is required to pay an amount equal to credit so taken and when the inputs or capital goods are subsequently used, the amount so paid to be re-credited in the account.
- Rule 4(5)(a) prescribes that in case inputs sent to job worker are not received back within 180 days, then the manufacturer or service provider is required to pay an amount equal to credit taken on such inputs in the first instance and when the inputs are subsequently received back from job worker, the amount so paid to be re-credited in the account.

In view of the above Rules, CBEC clarified that the limitation of six months would apply when the credit is taken for the first time on an eligible document and it would not apply for taking re-credit of amount reversed, after meeting the conditions prescribed in these rules. *[Circular No.: 990/14/2014-CX-8 dated 19th November, 2014]*

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- **PRE-AUDIT - Splitting up of rebate claims to avoid pre-audit:** The Board after noticing that the assessee who are submitting rebate claims are splitting the amounts of claims so as to keep each individual claim below Rs. 5 lakhs to avoid pre-audit, in order, to overcome this, Rebate sanctioning authorities have been authorized to pre-audit by clubbing such claims where such claims are artificially split. *[F. No. 206/05/2014-CX.6 dated 03.11.2014]*
- **AVAILMENT OF CENVAT CREDIT ON TOWER PARTS & PRE-FABRICATED BUILDINGS FOR MOBILE SERVICE PROVIDER :** The Central Government has clarified that Cellular Mobile Service Provider are not entitled to avail CENVAT credit on Tower Parts & Pre-fabricated buildings as towers and PFB are in the nature of immovable goods and are non-marketable and non-excisable. *[F. No. 267/60/2014-CX.8 dated 11th November, 2014]*
- **ALUMINUM DROSS AND SKIMMING WHETHER TO BE CONSIDERED AS MANUFACTURE GOODS OR NOT- :** The Central Government has clarified that Aluminium dross and skimmings and similar non-ferrous metal dross and skimmings which arise as a by-product in the process of manufacture of aluminium / non-ferrous metal products are manufactured goods and hence excisable. *[F. No. 17/02/2009-CX.1 (Pt) dated 12th November, 2014]*
- **ALL INDUSTRY RATES (AIRS) OF DUTY DRAWBACK - Revised rates to be effective from 22.11.2014 :** The Ministry has notified revised All Industry Rates (AIR) of Duty Drawback which came into force from 22.11.2014, with the following amendments:
  - in drawback caps on most tariff items with AIRs revised,
  - in the case of project exports, where export product has no drawback cap been prescribed in the Schedule, the revised AIR notification now specifies a cap,
  - the hitherto residuary rate of 1% (composite) and 0.3% (Customs) is changed to 1% (composite) and 0.15% (Customs) ,
  - all caps have been made on the basis of per sq.mtr instead of earlier per kg (for some items) in the chapter,
  - Laptop bags and shopping bags have been specifically mentioned at six digit level below TI 4202.
  - ‘Cami’ has been included with women’s/girl’s tops in TI 611402 and 621102; ‘three fourth pants’ along with ‘capris’ included in TI 610302, 610402, 620302, and 620402; and ‘leggings’ included in TI 610402.
  - An entry for ‘other jackets’ below TI 6114 and 6211 has been made.
  - Mountain terrain bicycles have been specified against TI 871203.
  - Cricket bats made from English willow (TI 9506) have been distinguished from other cricket bats.
  - AIR has been fixed as Rs. 219.9/gm for gold jewellery /parts and Rs. 3112.5/kg for silver jewellery /articles.
  - Note/Condition (20) in the AIR Notification specifies that “shirts” shall include “shirts with hoods”.

## (C) CUSTOMS

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In that regard the Ministry has made it clear that where the claim for duty drawback is filed with reference to the rate in the AIR Schedule, an application for fixation of Brand Rate under Rule 7 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 shall not be allowed. *[Circular No. 13/ 2014-Customs dated 18th November, 2014]*

- **CUSTOMS DUTY EXEMPTED ON IMPORTED GOODS FOR MALARIA CONTROL**

It has been notified that imported goods which are required for the Intensified Malaria Control Project (IMCP)-Phase II under the National Vector Borne Disease Control Programme (NVBDCP) are exempted from the whole of the customs duty and from whole of the additional duty leviable under Customs Tariff Act, 1975, subject to the condition that the importer shall produce, prior to clearance of the said goods, a certificate from an officer not below the rank of Deputy Secretary to the Government of India in the Ministry of Health and Family Welfare, specifying the usage of the goods imported for the same. *[Notification No. 32/2014 – Customs dated 21st November, 2014]*

- **ANTI DUMPING DUTY (ADD) ON DICLOFENAC SODIUM, LEVY EXTENDED**

Central Government after reviewing the matter of continuation of ADD, has extended the period of anti-dumping duty, due to the continuous dumping of Diclofenac Sodium into the country, which is affecting the Indian industry, revising the earlier ADD, for a period of five years from the date of publication of this notification. *[Notification No. 44/2014-Customs (ADD) dated 21st November, 2014]*

- **ANTI DUMPING DUTY(ADD) ON DIGITAL VERSATILE DISCS-RECORDABLE (DVD-R AND DVD-RW), LEVY EXTENDED**

Central Government, on reviewing the matter of continuation of anti-dumping duty on imports of Digital Versatile Discs-Recordable (DVD-R and DVD-RW), has decided to continue levy of ADD for a period of five years from the date of publication of the notification with revised ADD rates, as it was observed by the authorities that there has been continuous dumping of Digital Versatile Discs-Recordable, due to which the domestic industry of India is suffering from material injury, and this losses to the industries is going to increase further, if the present ADD is withdrawn.

*[Notification No. 45/2014-Customs (ADD) dated 21st November, 2014]*

- **Rule 7 of Customs, Central Excise duties and Service tax drawback rules, 1995, Amended:**

The Ministry has amended Rule 7 of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, specifying that application for determination of amount of duty drawback, if less than four-fifth of the duties or taxes paid, cannot be made under Rule 7, if made under Rule 3 or Rule 4, within 3 months. *[Notification No. 109 /2014- Customs (N.T) dated 17th November, 2014]*

- **IMPORT OF CARBON BLACK UNDER ADVANCE AUTHORIZATION SCHEME METHOD OF CALCULATION OF SAFEGUARD DUTY, CLARIFIED**

The Central Government has clarified that in the case of imports of carbon black against Advance Authorisation, the applicable SG duty levied under

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section 8C of the CTA, 1975 will be calculated as under-

(a) On import of carbon black from China, ADD is leviable @ USD 0.423 per kg vide notification No.9/2013-Customs (ADD) dated 26.04.2013. Though on imports of carbon black against Advance Authorisation there is a conditional exemption from ADD vide notification No.96/2009-Customs, dated 11.09.2009, the ADD payable is USD 0.423 per kg but for the exemption.

(b) Accordingly, SG duty leviable under section 8C of the CTA, 1975 will be 30% minus ADD payable, but for the exemption at the time of import i.e. 30% less USD 0.423 per kg. In a case where the SG duty payable is negative, the same shall be treated as Nil. *[Circular No.11/2014-Customs dated 14th November, 2014]*

- **CUSTOMS DUTY ON EXPORT OF IRON ORE, VALUATION PROCEDURE MADE TRANSPARENT**

Central Board of Customs & Excise has mandated Customs Houses to adopt the following procedure to bring in transparency and consistency in assessment of export of Iron Ore:

(a) For the consignment entered for export of iron ore, sample for testing, to be drawn in the presence of Customs.

(b) Upon receipt of the load port test report and discharge port test report the proper officer to compare the two reports. Where variations in the two test reports are within tolerance limits, the proper officer may proceed to finalize the provisionally assessed shipping bill.

(c) In cases variation between the load port test report and discharge port test report, the proper officer shall proceed to re-determine the value of the goods. *[Circular No. 12/2014 –Customs dated 17th November, 2014]*

- **APPEAL TO BE FILED BEFORE CESTAT AGAINST THE ORDERS PASSED BY COMMISSIONER OF CUSTOMS: DELHI HC**

In the instant case, petitioner (a Customs Broker) filed petition against order passed by Commissioner of Customs before High Court. On perusal of the case, Hon'ble High Court citing Regulation 21 of Customs Brokers Licensing Regulations, 2013 asked the petitioner to file an appeal before CESTAT for the order passed by the Commissioner, being the delegating authority above Commissioner and dismissed the petition and asked to file an appeal within a period of two weeks from judgement day. *[M/s Premier Shipping Agencies v. Commissioner of Customs., dated 10th November, 2014 (Delhi HC)]*

- **INVOKING WRIT JURISDICTION TO PERPETUATE AN ILLEGAL STAY, HELD NOT PERMISSIBLE**

In the instant case, petitioner filed writ petition before the High Court, against Development Commissioner against non renewal the approval letter for the unit established under the Special Economic Zones Act, 2005. Hon'ble High Court clarified that not to treat High Court as a drop box, for invoking writ jurisdiction by dropping an application in the High Court due to the ignorance of litigants. The High Court held that it cannot pass an order directing any statutory Authority or the State to consider some representation or pending

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application/letter of the litigant invoking the writ jurisdiction unless that party establishes such a legal right. *[M/s Infoquest Infotech Pvt Ltd and Anr v. The Union of India and Anr., dated 29th October, 2014 (Bombay HC)]*

filed within time, though before wrong authority, it cannot be said that the said application was barred by limitation. - *[Singh International vs CC (General), Mumbai and Polygrass Acrylic Mfg. Co. Pvt. Ltd. vs CC(Import), Mumbai, dated 31st October, 2014 (CESTAT Mumbai)]*

## • CUSTOMS COMMISSIONER CANNOT ACT BEYOND ITS JURISDICTION

In the instant case, CESTAT held that The Customs Commissioner at Bombay having no jurisdiction over the Sikka port in Gujarat could not have issued any show cause notice proposing confiscation and imposition of penalty in respect of an act which was committed beyond his jurisdiction. it was further held that the vessel, even if treated as 'goods' were not liable to any Customs duty as the same was exempt from payment of duty under Notification No. 21/2002-Cus. *[The Shipping Corporation of India Ltd. vs CC (Import), Mumbai, dated 5th November, 2014 (CESTAT MUMBAI)]*

## • ORIGINAL APPLICATION FOR REFUND , FILED BEFORE WRONG AUTHORITY, FILED WITHIN TIME CANNOT BE SAID BARRED BY LIMITATION: CESTAT

In the instant case, the appellants filed the claim of refund at ICD, Dadri within a period of one year from the date of payment of SAD. However, the goods were imported at CFS, Mulund and the SAD was paid there. By the time the refund claims were forwarded by Customs authorities at Dadri to the authorities at Mulund, a period of over one year had lapsed from the time of payment of duty to the time of receipt of refund claims at CFS, Mulund. Held that since the original application for refund was

## IPR

### PATENTS

- **WHEN REVOCATION OF A PATENT, NOT AUTOMATIC :** Delhi HC Issue, in the instant, case was whether the failure to comply with the requirement of Section 8 of the Patents Act would invariably lead to the revocation of the suit patent under Section 64(1)(m) of the Patents Act? Held that it is no doubt true that it is mandatory to comply with the requirements under Section 8(1) of the Patents Act and non-compliance of the same is one of the grounds for revocation of the patents under Section 64(1)(m). However, the fact that the word “may” is used in Section 64(1) itself indicates the intention of the legislature that the power conferred thereunder is discretionary. The mere fact that the requirement of furnishing information about the corresponding foreign applications under Section 8(1) is mandatory, is not the determinative factor of the legislative intent of Section 64(1). The Court found that the language of Section 64(1) is plain and unambiguous and it clearly confers a discretion upon the authority/Court while exercising the power of revocation. - *[Maj. (Retd.) Sukesh Behl & Anr. v. Koninklijke Phillips Electronics, dated 7th November, 2014 (Delhi HC)]*

## TRADE MARK

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- **ONCE THE DEFENDANT CLAIMED BEFORE THE TRADE MARKS OFFICE AND HAS TRIED TO OBTAIN THE REGISTRATION OF THE MARK, HE IS ESTOPPED TO RAISE THE PLEA OF VALIDITY OF THE REGISTERED TRADEMARK OF THE PLAINTIFF : DELHI HC** In the present case, the defendant itself having applied for registration of the trademark. and claiming before the Trade Marks office and trying to obtain the registration of the mark, he is estopped to raise the plea of validity of the registered trademark of the plaintiff. The services provided by the defendant are allied and cognate. [*The Royal Bank Of Scotland Group PLC v. Sharekhan Limited, dated 7th November, 2014 (Delhi HC)*]
- **DELHI HIGH COURT ON DECEPTIVELY SIMILAR MARK** In the instant case suit for injunction and damages for infringement of registered trade mark, passing off and unfair trade competition was filed by the plaintiffs against the defendants in respect trademarks CITI and CITICORP. The case of the plaintiffs was that in and around January 2013 they came across defendants' website www.citicorpbiz.com which revealed that the same was created on 17th May, 2012. The impugned website revealed that the defendants were not only using the plaintiffs' registered trade mark CITICORP as a part of their domain name, but were also using it as a part of their corporate name CitiCorp Business And Finance Pvt. Ltd. to provide services such as financial services, broking distributions, mutual fund and insurance, loan syndication, real estate, financial education, research and advisory, finance consulting etc. Court observed that in order to establish infringement, the main ingredients of Section 29 of the Act are that the plaintiff's mark must be registered

under the Act; the defendant's mark is identical with or deceptively similar to the registered trade mark; and the defendant's use of the mark is in the course of trade in respect of the goods covered by the registered trade mark. Court after discussing many precedents on the point decided the issues of infringement, passing off and domain name in favour of the Plaintiff. [*Citigroup Inc. & Anr. v. Citicorp Business & Finance Pvt. Ltd., dated 24th November, 2014 (Delhi HC)*]

## CONSUMER

- **VEHICLE PERMIT NOT FUNDAMENTAL ISSUE FOR INSURANCE CLAIM FOR DAMAGED GOODS: NCDRC** The NCDRC recently held in a case that the transfer of permit issued by the transport authority is not an issue fundamental to the cause of insurance. In the case against National Insurance Co. Ltd, the forum decided that when a party seeks insurance claim for its damaged goods, the permit is necessary but not to the *extent that it puts the right to claim in question.* [*Dinesh Kumar Shah v. National Insurance Co. Ltd*]
- **WHEN REPLACEMENT OR REFUND CLAIM NOT MAINTAINABLE**

In the instant case where Force Motors was sued for replacement and refund, NCDRC ruled in favour of the petitioners (Force Motors). The commission held that the petitioner had complied with the order of the District Forum and repaired the vehicles to the satisfaction of the opposite parties who tried and tested the vehicle. Having done so, no claim can be brought against them for replacement or refund whatsoever. [*Force Motors Limited v. DPS Secondary School*]

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- **RELIEF AGAINST MEDICAL SERVICES FREE OF CHARGE NOT MAINTAINABLE: NCDRC**

In the recent case, NCDRC upheld the State Commission's order to set aside the petitioner's appeal since the petitioner does not fall under the ambit of a consumer having availed services free of cost. It said, even if the employer had paid for the reimbursement of the petitioner, he would've fallen in the category of consumer. But In the case in hand, no charges had been paid by either the petitioner or the government, and thus would agree with the State Commission. *[Major Singh v. State of Punjab and ors]*

## ENVIRONMENT

- **CPCB ORDERED TO LIST CRITERIA FOR CLASSIFYING UNITS POLLUTING GANGA ON ITS WEBSITE BY NGT**

NGT has directed the Central Pollution Control Board to list on its website the criteria for classifying industries discharging effluents into the Ganga as "seriously polluting" and "not seriously polluting" and for categorising them into red, green and orange. The order comes two weeks after a penalty of Rs.5 crore was imposed on a sugar and distillery unit in Ghaziabad district for seriously polluting the river for much over three decades. Tribunal also directed CPCB and the team constituted for inspection of the industries polluting or discharging effluents into the Ganga or in its tributaries to place inspection reports on its website. - *[The Hindu, dated 3rd November, 2014]*

- **NGT BANS CUTTING OF TREES WITHOUT CLEARANCE**

In an interim order, NGT issued directions to restrain any person, company, authority

from carrying out cutting of trees from forests anywhere in the country without obtaining environmental clearance from MoEF [the Ministry of Environment and Forests]/SEIAA [State Level Environment Impact Assessment Authority] and license from the competent authorities. The order came as a check on cutting of trees for production of charcoal which on burning causes further environmental hazards. *[The Hindu, dated 26th November, 2014]*

- **VEHICLES MORE THAN 15 YRS OLD NOT TO PLY IN DELHI: NGT**

Considering the increasing level of air pollution in Delhi the NGT held that all vehicles more than 15 years old would not be permitted to ply on the roads, wherever such vehicles were noticed, the authorities should take steps, including the seizure of the vehicles, in line with the law. This direction would be applicable to all vehicles, that is, two-wheelers, three-wheelers, four-wheelers, light vehicles and heavy vehicles, commercial or otherwise. It was also directed that no person shall be permitted to burn plastic or any other material in the open. If found doing so, he would be liable to be proceeded against in line with the law. *[The Business Standard, dated 27th November, 2014]*