MONTHLY NEWSLETTER

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RBI/FEMA

1. DIPP REVISES POSITION ON FDI IN PHARMACEUTICAL SECTOR (MEDICAL DEVICES)

Foreign Direct Investment (FDI) up to 100 per cent which is permitted under automatic route for greenfield investments and FDI up to 100 per cent is permitted under Government approval route for brownfield investments (i.e. investments in existing companies) in pharmaceuticals sector. The extant FDI policy for pharmaceutical sector has now been reviewed and it has been decided with immediate effect that there would be a special carve out for medical devices which was earlier given the same treatment as pharmaceutical sector. – ***[A.P. (DIR Series) Circular No.70, dated 2nd February, 2015]***

2. NORMS FOR CORPORATE BONDS AMENDED

To attract long-term overseas investors, RBI has decided as follows:

a. All future investments within the USD 51 bn Corporate Debt limit category, including the limits vacated when the current investment by an FPI runs off either through sale or redemption, shall be required to be made in corporate bonds with a minimum residual maturity of three years.
b. FPIs shall not be permitted to invest in liquid and money market mutual fund schemes.
c. There will, however, be no lock-in period and FPIs shall be free to sell the securities (including those that are presently held with less than three years residual maturity) to domestic investors. – ***[A.P.(DIR Series) Circular No. 71, dated 3rd February, 2015]***

3. MERGER OF EXPORT CREDIT REFINANCE WITH SYSTEM LEVEL LIQUIDITY PROVISION

RBI has decided to merge the ECR facility with the system level liquidity provision with effect from February 7, 2015. Accordingly, no new refinancing under the ECR will be available after February 6, 2015 and the refinancing availed up to February 6, 2015 may continue till its maturity. – ***[REF.No.MPD.BC.376/07.01.279/2014-15, 3rd February, 2015]***

4. NORMS FOR COUNTERCYCLICAL CAPITAL BUFFER ISSUED FOR BANKS

RBI has issued guidelines for the implementation of Countercyclical Capital Buffer (CCCB) with the two-fold aim of ensuring capital buffer for difficult times and restricting banks from indiscriminate lending during the periods of excess credit growth. As per the guidelines, CCCB may be maintained in the form of Common Equity Tier 1 (CET 1) capital or other fully loss absorbing capital only. Further, the amount of the CCCB may vary from 0 to 2.5 per cent of total risk weighted assets (RWA) of banks. The final guidelines for implementation of CCCB in India are annexed to the circular, as mentioned herein. – ***[DBR.No.BP.BC.71/21.06.201/2014-15, dated 5th February, 2015]***

5. FPIS PERMITTED TO INVEST IN GOVERNMENT SECURITIES

RBI has permitted FPIs to invest in government securities, the coupons received on their existing investments in government securities. It has been clarified that these investments shall be kept outside

the applicable limit (currently USD 30 billion) for investments by FPIs in government securities. – ***[A.P. (DIR Series) Circular No.72, dated 5th February, 2015]***

6. RBI PERMITS RE-REPO IN GOVERNMENT SECURITIES

Subject to following conditions, RBI has decided to permit re-repo in government securities, including state development loans and Treasury Bills, acquired under reverse repo:

a. Scheduled commercial banks and Primary Dealers (PDs) maintaining subsidiary general ledger (SGL) account with the Reserve Bank of India will be permitted to re-repo the securities acquired under reverse repo;
b. Mutual Funds and Insurance Companies maintaining SGL account with the Reserve Bank of India will also be permitted to re-repo the securities acquired under reverse repo, subject to the approval of the regulators concerned;
c. Re-repo of securities can be undertaken only after receipt of confirmation/matching of first leg of repo transaction;
d. Re-repo period should not exceed the residual period of the initial repo;
e. Eligible entities undertaking re-repo transactions should 'flag' the transactions as a re-repo on the authorised reporting platform. Participants may review their systems and controls to ensure strict compliance with the requirement of reporting of re-repo transactions. – ***[FMRD.DIRD.5/14.03.002/2014-15, dated 5th February, 2015]***

7. FPIS DISALLOWED TO MAKE ANY FURTHER INVESTMENT IN COMMERCIAL PAPERS: CLARIFICATIONS ISSUED

RBI has clarified few queries on its A.P. (DIR Series) Circular No. 71 dated February 03, 2015. It has been clarified that FPIs shall not be allowed to make any further investment in commercial papers CPs. Further, FPIs shall not be allowed to make any further investments in debt instruments having minimum initial / residual maturity of three years with optionality clause exercisable within three years. And FPIs shall be permitted to invest in amortised debt instruments provided the duration of the instrument is three years and above. ***[A. P. (DIR Series) Circular No.73, dated 6th February, 2015]***

8. SIMPLIFICATION OF PROCEDURE FOR MAKING PAYMENTS TOWARDS IMPORTS INTO INDIA

To further liberalise and simplify the procedure, RBI has decided to dispense with the requirement of submitting request in Form A-1 to the AD Category –I Banks for making payments towards imports into India. However, AD Category –I banks need to obtain all the requisite details from the importers and satisfy itself about the *bona fides* of the transactions before effecting the remittance. – ***[A. P. (DIR Series) Circular No.76, dated 12th February, 2015]***

9. REPORTING FDI, MADE EASY UNDER E-BIZ PLATFORM

With a view to promoting the ease of reporting of transactions under FDI, RBI, under the aegis of the e-Biz project of the Government of India has enabled the filing of the following returns with the Reserve Bank of India:

a. Advance Remittance Form (ARF) - used by the companies to report the foreign direct investment (FDI) inflow to RBI; and
b. FCGPR Form - which a company submits to RBI for reporting the issue of eligible instruments to the overseas investor against the above mentioned FDI inflow.

The user manual for the two services is Annexed with the Circular. – ***[A.P (DIR Series) Circular No.77, dated 12th February, 2015]***

10. RBI EASES RULES TO FOR DOMESTIC INVESTORS TO RE-ENTER FOREIGN CURRENCY-RUPEE SWAPS

RBI has allowed domestic investors to re-enter into a foreign currency-rupee swap deal, if the underlying exposure of the original swap contract remained

valid, after the expiry of the contract. In this regard, the RBI has further clarified that the relaxation would provide flexibility to eligible domestic individuals who enter into foreign currency-rupee swap contracts to hedge exchange rate or interest rate risk exposure. – ***[A.P. (DIR Series) Circular No. 78, dated 13th February, 2015]***

11. CLARIFICATION ON WITHDRAWAL OF 20:80 SCHEME FOR IMPORT OF GOLD

As per the A.P.(DIR Series) Circular No.42 dated November 28, 2014, the 20:80 scheme for import of gold was withdrawn by the RBI. The following clarifications are now issued by RBI in this regard-

a. The obligation to export under the 20:80 scheme will continue to apply in respect of unutilised gold imported before November 28, 2014, i.e., the date of abolition of the 20:80 scheme.
b. Nominated banks are now permitted to import gold on consignment basis. All sale of gold domestically will, however, be against upfront payments. Banks are free to grant gold metal loans.
c. Star and Premier Trading Houses (STH/PTH) can import gold on DP basis as per entitlement without any end use restrictions.
d. While the import of gold coins and medallions will no longer be prohibited, pending further review, the restrictions on banks in selling gold coins and medallions are not being removed. – ***[A.P. (DIR Series) Circular No.79, dated 18th February, 2015]***

12. ASSET RECONSTRUCTION COMPANIES: ONLY CERTAIN KIND OF SHAREHOLDING CHANGES TO REQUIRE RBI'S PRIOR APPROVAL

In order to smoothen the functioning of Securitisation Company / Reconstruction Company (SC/RC companies), RBI has decided that, henceforth only the following changes in the share holding pattern of the SC/RC will require Reserve Bank's prior approval:

a. Any transfer of shares by which the transferee becomes a sponsor.
b. Any transfer of shares by which the transferor ceases to be a sponsor.
c. An aggregate transfer of ten percent or more of the total paid up share capital of the SC/RC by a sponsor during the period of five years commencing from the date of certificate of registration.

All other terms and conditions as stipulated to the SC/RC, while granting them the Certificate of Registration, will continue to apply. ***[DNBR(PD)CC.No. 01/SCRC/26.03.001/2014-2015, dated 24th February, 2015]***

FOREIGN TRADE

1. REDUCTION IN MINIMUM EXPORT PRICE (MEP) ON EXPORT OF EDIBLE OILS IN BRANDEDD CONSUMER PACKS OF UPTO 5KGS

   MEP on export of edible oils in branded consumer packs of upto 5 Kgs has been reduced to USD 900 per MT. Earlier it was USD 1100 per MT. ***[Notification No 108 (RE – 2013)/2009-2014, dated 6th February, 2015, (DGFT)]***

2. AMENDMENT IN IMPORT POLICY CONDITIONS OF CARDAMONS UNDER ITC (HS) 090831 OF CHAPTER 09 OF ITC (HS) 2012-SCHEDULE-1 (IMPORT POLICY)

   The minimum import price (MIP) of Cardamom with HS code 0908 31 of Chapter 09 of ITC (HS), 2012 – Schedule – 1 (Import Policy) is fixed at Rs.500/- per Kg., with immediate effect. ***[Notification No. 109 /(RE-2013)/2009-2014, dated 6th February, 2015, (DGFT)]***

3. PROHIBITION ON EXPORT OF SHARK FINS OF ALL SPECIES OF SHARK

   Export of Shark fins of all species of Shark has been prohibited. ***[Notification No 110 (RE – 2013)/2009-2014, dated 6th February, 2015 (DGFT)]***

4. NEW FORMAT FOR E-IEC

   A new format for issue of IEC numbers in electronic form i.e. e-IEC, based on online applications, has been introduced as Appendix 18B-1. Further, it is notified that decision regarding grant or refusal of IEC will be conveyed to the applicant through SMS and system generated letter, on the registered email address of the applicant. ***[Public Notice No.84/(RE 2013)/2009-14, dated 10th February, 2015, (DGFT)]***

5. FEES FOR ONLINE IEC APPLICATIONS

   The application fee for online IEC has been corrected, and now reads as Rs 250. ***[Public Notice No.85 (RE-2013)/2009-2014, dated 13th February, 2015, (DGFT)]***

6. MULTIPLE IECS, AGAINST SINGLE PAN, TO BE DEACTIVATED

   Multiple IECs against a single PAN, if not surrendered before 31.3.2015, will be deactivated. **[*Public Notice No. 87 (RE-2013)/2009-2014, dated 17th February, 2015, (DGFT)]***

7. REMOVAL OF MINIMUM EXPORT PRICE (MEP) ON EXPORT OF POTATO

   Minimum Export Price (MEP) on export of Potato has been removed. ***[Notification No. 112 (RE-2013)/2009-2014, dated 20th February, 2015, (DGFT)]***

CORPORATE

1. CORPORATE SOCIAL RESPONSIBILITY IMPLEMENTATION: HIGH LEVEL COMMITTEE TO SUGGEST MEASURES FOR IMPROVED MONITORING CONSTITUTED

   A High Level Committee has been constituted under the chairmanship of Shri Anil Baijal, Former Secretary, Government of India to suggest measures for monitoring the progress of implementation of CSR policies by companies at their level and government under the provision of Section 135 of Companies Act. ***[General Circular No 1/2015, dated 3rd February, 2015, (MCA)]***

2. APPOINTMENT OF THE COST AUDITOR: EXTENSION OF TIME FOR FILLING NOTICE OF, IN FORM CM-2

   Last date of filing of Form CM-2, for the appointment of the cost auditor, without any penalty/late fee, has now been extended upto 31st March.2015. ***[General Circular No 2/2015, dated 11th February, 2015, (MCA)]***

3. AMENDMENTS TO COMPANIES ACT 2013 TO REMOVE DIFFICULTIES CLAUSE

   Faced with the difficulty to give effect to Clause 85 of Section 2 and Section 186 of Companies Act 2013, the Central Government has made the following changes to the Act**:**

   a. in section 2, in clause (85), in sub-clause (i), for the word "or" occurring at the end, the word "and" shall be substituted; and
   b. in section 186 of the said Act, in sub-section (11), in clause (b), after item (iii), the following item shall be inserted, namely :—

      "(iv) made by a banking company or an insurance company or a housing finance company, making acquisition of securities in the ordinary course of its business.".

      - ***[F. No. 1/13/2013-CL.V-Part, dated 13th February, 2015, (MCA)]***

4. AMENDMENT TO "COMPANIES (REGISTRATION OFFICES AND FEES) AMENDMENT RULES 2015"

   Companies (Registration Offices and Fees) Rules, 2014 have been amended by the government by the insertion of sub-rule 7 in Rule 10. It provides that "any further information or documents called for, in respect of application or e-form or document filed electronically with the Ministry of corporate Affairs shall be furnished in form No. GNL4 as an addendum. - ***[F.No. 0U16/2013 (Part-I) CL-V, 24th February, 2015, (MCA)]***

COMPETITION

1. AIMTC FINED FOR ANTI-COMPETITIVE PRACTICES WITH RESPECT TO TRUCK FREIGHT RATES

In this case the complaint was filed, by the Indian Foundation of Transport Research and Training alleging that the All India Motor Transport Congress ("AIMTC") has uniformly increased the truck freight by 15% across the country on account of diesel price hike of Rs. 5 a litre from 14 September 2012. Further, it was alleged that the AIMTC has a track record of instructing its constituents to jack up freight charges on account of increase in input costs such as diesel price. A cease and desist order was passed by the erstwhile MRTP (Monopolies and Restrictive Trade Practices) Commission on 31 August 2006 whereby the AIMTC was directed to restrain from such restrictive practices. The Competition Commission held that such collusive and concerted practices distorted the market dynamics and led the truckers to increase the prices through the decisions of associations instead of pricing the services through the market forces of demand and supply.- ***[Indian Foundation of Transport Research and Training v. Malkait Singh, President All India Motor Transport Congress, dated 16th February, 2015, (CCI)***

2. CCI PASSES CEASE AND DESIST ORDER AGAINST COAL INDIA LIMITED

The informant required coal for captive power plants alleged discriminatory treatment by CIL, as buyers were forced to sign MoUs which diluted the obligations assumed by OPs under LoAs/ FSAs. The CCI agreed with the contention of the informant that the terms and conditions incorporated in LoA did not have the balancing provisions and the same appear to be tilted in favour of the seller. The commission passed a cease and desist order however, it specified that the order will not be applicable qua the directions relatable to the clauses and conduct which were subject matter of order passed by the Commission in earlier case and now pending before COMPAT. ***[M/s GHCL Limited v. M/s Coal India Limited, dated 16th February, 2015, (CCI)]***

SECURITIES

1. CORPORATE DEBT SECURITIES: RESTRICTIONS UPON INVESTMENT BY FPIs

From now on, until further changes, all future investments within the USD 51 bn Corporate Debt limit category shall be required to be made in corporate bonds with a minimum residual maturity of three years. Resultantly, FPIs shall not be permitted to invest in liquid and money market mutual fund schemes. There will, however, be no lock-in period and FPIs shall be free to sell the securities (including those that are presently held with less than three years residual maturity) to domestic investors. - ***[CIR/IMD/FIIC/1/2015, dated 3rd February, 2015, (SEBI)]***

2. GOVERNMENT DEBT SECURITIES: CHANGE IN INVESTMENT CONDITIONS FOR FPI INVESTMENTS

FPIs shall be permitted to invest in Government securities, the coupons received on their investments in Government securities. For the purpose of investment of coupons, the FPIs shall have an investment period of 5 working days from the date of receipt of the coupon. A re-investment facility of 5 working days shall be provided on the Government securities that have been purchased by utilizing the coupons. The coupons invested in purchasing Government securities shall be classified into a separate investment category which is over and above the USD 30 billion Government debt limit.***[CIR/IMD/FIIC/2/2015, dated 5th February, 2015, (SEBI)]***

3. SEBI CANNOT PASS ORDERS ON MERITS, UNLESS IT CLARIFIES THAT THE PARTIES BEFORE IT WOULD BE HEARD BOTH ON THE PRELIMINARY ISSUE AND ON MERITS: SECURITIES APPELLATE TRIBUNAL

In the instant case, the Appellants were aggrieved by the order where they were directed to disgorge the unlawful gains and were restrained from accessing the securities market and prohibited from buying, selling or otherwise dealing in securities directly or indirectly for a period of 10 years from that date. The impugned order was challenged on the ground that it was unsustainable not only on merits but also on ground that the said order was passed in breach of the principles of natural justice. On facts SAT held that the SEBI was not justified in passing impugned order on merits without making it clear to the appellants that at the personal hearing appellants would be heard both on the preliminary issue and on merits. And therefore impugned order was quashed and set aside and the matters are restored to the file of the WTM of SEBI for passing common order on the preliminary issue. - ***[Mr. Praveen Mohnot v. SEBI, dated 5th February, 2015, (SAT)]***

4. SAT REMANDS MATTER BACK, FOR FAILURE, IN NOT INCLUDING RELEVANT ALLEGATIONS OF MARKET MANIPULATION, AGAINST APPELLANT

In this case, pursuant to an investigation by SEBI it was found that Appellant indulged in self trade which resulted in increase in Last Traded Price (LTP) of scrip and resultant monetary profit gained and violation of PFUTP regulations. The Tribunal however, quashed the impugned order and remanded back the case to SEBI as the submission of Appellant no 1 and 2 were not dealt with properly by the Whole Time Member (WTM).***[Vasantlal Mohanlal Vora v. SEBI, dated 27th February, 2015, (SAT)]***

INDIRCT TAXES

a. CUSTOMS

1. IMPORT OF 'UREA' EXEMPTED FROM FULL BASIC CUSTOM DUTY AND COUNTERVAILING DUTY

It has now been decided to exempt import of 'Urea' falling under Custom Tariff Heading ('CTH') 3102 10 00 under the Urea Off-take Agreement, between the Government of India and Oman India Fertilizer Company S.A.O.C., from full basic custom duty and countervailing duty under section 3(1) of the CTA, as it is in excess of the amount calculated on the declared value of Urea as agreed under the said agreement. ***– [Notification No.04 /2015 – Customs, dated 16th February, 2015]***

2. ANTI DUMPING DUTY IMPOSED ON IMPORTS OF 'SODIUM NITRATE'

Anti-Dumping Duty (hereinafter "ADD") has now been levied on imports of 'Sodium Nitrate', originating in, or exported from, European Union, the People's Republic of China, Ukraine and Korea RP, for a period of five years from 19 March, 2014. – ***[Notification No. 03/2015-Customs (ADD), dated 10th February, 2015]***

3. ANTI DUMPING DUTY ON GRAPHITE ELECTRODES

ADD has been imposed on graphite electrodes of all diameters originating in and exported from China PR for a period of five years from 13 February, 2015. – ***[Notification No. 04/2015-Customs (ADD), dated 13th February, 2015]***

4. ANTI DUMPING DUTY ON ACETONE

ADD levied on imports of acetone, originating in or exported from Korea RP, for a period of five years from 18 February, 2015. – ***[Notification No. 05/2015-Customs (ADD), dated 18th February, 2015]***

b. CENTRAL EXCISE

1. CLARIFICATION ON PLACE OF REMOVAL FOR PURPOSES OF CENVAT CREDIT OF INPUT SERVICES

Upon a demand for clarification raised by the trade, whether the place of removal is the port or the airport from where the goods are finally exported, for purposes of CENVAT credit of input services. The department upon due examination has issued following clarification:

a. **In case of clearance of goods for export by manufacturer exporter**, shipping bill is filed by the manufacturer exporter and goods are handed over to the shipping line. After Let Export Order is issued, it is the responsibility of the shipping line to ship the goods to the foreign buyer with the exporter having no control over the goods. In such a situation, transfer of property can be said to have taken place at the port where the shipping bill is filed by the manufacturer exporter and place of removal would be this Port/ICD/CFS. Needless to say, eligibility to CENVAT Credit shall be determined accordingly.

b. **In case of export through merchant exporters**, however, two transactions are involved. First is the transaction between the manufacturer and the merchant exporter. The second transaction is that between the merchant exporter and the foreign buyer. As far as Central Excise provisions are concerned, the place of removal shall be the place where the property in the goods passes from the manufacturer to the merchant exporter. As explained in paragraph 4 in the Circular, in most of the cases, this place would be the factory gate since it is here that the goods are unconditionally appropriated to the contract in cases where the goods are

sealed in the factory, either by the Central Excise officer or by way of self-sealing with the manufacturer of export goods taking the responsibility of sealing and certification, in terms of notification no. 19/2004- Central Excise (N.T.) dated 6.9.2004, etc. – ***[Circular No. 999/6/2015-Central Excise, dated 28th February, 2015]***

2. SUPERSCRIPTION ON THE GOODS "MANUFACTURED AND PACKED BY S.V.S .& SONS" IS NOT A BRAND NAME OR TRADE NAME AND HENCE ELIGIBLE FOR EXEMPTION FROM DUTY UNDER NOTIFICATION NO.6 /2002 DATED 1.3.02: MADRAS HC

The respondent assessee was clearing its goods, viz., refined groundnut oil, sunflower oil and palm oil using the logo "S.V.S. & SONS". Exemption was denied on the ground that the packs contained brand name. In the given factual and legal matrix the Hon'ble Madras HC held that the superscribed words simply represented the name of the respondents and nothing else. The goods cleared by the assessee bear a superscription "manufactured and packed by S.V.S.& Sons", which is not a brand name or trade name. The holding was based upon the reasoning that there is a clear distinction between the brand name used and the superscription as found in the packaging. Hence the assessee is entitled to the benefit of Notification 06/02 dated 1.3.02. - ***[CCE, Puducherry v. M/s S V Sivalinga Nadar and Sons & Anr., dated 30th January, 2015 (Madras HC)]***

3. LIABILITY TO PAY INTEREST ARISES ONLY ON ANY AMOUNT PAYABLE TO CENTRAL GOVERNMENT AND CONSEQUENT TO ORDER FOR FINAL ASSESSMENT UNDER RULE 7 SUB-RULE(3): BOMBAY HC

After due consideration of the issues in the instant case, Hon'ble Bombay High Court came to a conclusion that the Rule 7 and its sub-rules, if read together, would denote as to how the Revenue secures itself against any provisional assessment. If on a provisional assessment, certain amount of duty is paid, but it is not accurate and correct, then, the final assessment is contemplated on a finalization of the assessment. Upon finalizing, it is possible that the Revenue will determine the duty liability and to that of something more that has been recovered in the provisional assessment. When that exercise is finalized and consequent thereon that the Assessee shall be liable to pay interest on any amount payable to the Central Government. Thus, the liability to pay interest arises on any amount payable to Central Government and consequent to order for final assessment under Rule 7 sub-rule (3). However the court further observed that it is not a situation to be found in the present case. Having found that the final assessment resulted in nothing due and payable to the Government, the Court did not find any justification then to recover interest. If the interest was to be recovered and was indeed payable on the date on which the Assessee made payment of differential duty and prior to finalization of the assessment, then, the Rule would have specifically said so. - ***[Ceat Ltd v. CCE & CC, Nashik, dated 6th February, 2015 (Bombay HC)]***

c. SERVICE TAX

1. MADRAS HC DISTINGUISHES BETWEEN SERVICES PROVIDED BY A THEATRE ARTIST FROM THE SERVICES PROVIDED BY A MOVIE/FILM ARTIST

In a Petition under Article 226 of the Constitution of India, for declaring that Notification No.25/2012 dated 20.06.2012 (Entry 16) is discriminatory and violative of Fundamental Rights. It was contended that in so far as the notification provides for an exemption in respect of services provided by a performing

artist in folk or classical art forms of music, dance or theatre from service tax leviable under Section 66-B of the Finance Act 1994 as discriminatory and violative of Articles 14 and 19(1)(g) of the Constitution of India in the absence of the same benefit being extended to other performing artist namely film actor. Upon due consideration of the facts and law, the Hon'ble Court was pleased to hold that, the two categories are clearly different and distinguishable and cannot be treated at parity. The mere fact that there is an element of drama or acting both in case of theatre and in case of films does not mean that the two activities are identical, taking into consideration the circumstances in which films are made and theatre is performed. Petition is therefore dismissed. - ***[Siddharth Suryanarayan Vs UOI &Ors., dated 26th February, 2015 (Madras HC)]***

2. EXPORT SERVICES TO FOREIGN CLIENTS PAYING CONSIDERATION IN FOREX, MEANS, NO LIABILITY TO PAY SERVICE TAX: BOMBAY HC

The respondent, in the instant case, was engaged in rendering taxable services as Steamer Agent on Indian shores to their overseas clients and is a registered service provider, receiving consideration in convertible foreign exchange. Upon due consideration, Hon'ble Court held that as the clients who were serviced by the respondent were residents abroad, and as such the services rendered to them were export services. Such service to foreign clients paying consideration in convertible foreign exchange would not visit respondent with liability to pay service tax. The service being exempted from payment of service tax is also clear from two exemption notifications No.6 /99 and 21/03. - ***[CST, Mumbai v. M/s Maersk India Pvt Ltd, dated 24th February, 2015 (Bombay HC)]***

INTELLECTUAL PROPERTY RIGHTS

1. DELHI HC RESTRAINS USE OF TRADEMARK "LUCYNTA" BY DEFENDANTS, FOR BEING DECEPTIVELY SIMILAR

In the instant case, the plaintiff filed suit for permanent injunction restraining passing off and rendition of accounts and/or damages, against the defendants in respect of the mark "LUCYNTA". It was averred that the plaintiff in the year 2008, adopted the mark NUCYNTA in relation to its Tapentadol based drug, an opioid pain reliever. It is the case of the plaintiff that sometime in the month of March 2012, plaintiff's attention was drawn to defendant No.1's drug for the treatment of oncology related ailment containing Tapentadol being sold under the mark LUCYNTA. The Hon'ble Court after discussing the concepts of identical goods, prior user, legal principles and precedents on the point and under the circumstances of the case held that the plaintiff has established a prima facie case in its favour. The plaintiff being the prior adopter and user of the mark NUCYNTA internationally. The defendant No. 1's adoption of a similar mark LUCYNTA is not coincidental. The defendant No.1 has no plausible justification for the adoption/use of the mark LUCYNTA. Taking into consideration the fact that the products in questions are pharmaceutical preparations having a bearing on public health and safety, the Court passed an interim order restraining defendants from using of trademark LUCYNTA in respect of pharmaceutical and medicinal preparation and/or any mark which is deceptively similar to the plaintiff's trade mark NUCYNTA, during the pendency of the suit. – ***[Johnson & Johnson v. Lupin Limited AndAnr, dated 27th February, 2015 (Delhi HC)]***

2. DELHI HC HOLDS TWO MARKS, LAVERA AND MAC LAVERA, AS DECEPTIVELY SIMILAR

In this case, the Hon'ble Court observed that the plaintiff prima facie has been able to make out a strong case of goodwill and reputation as well as trans- border user of the mark LAVERA. Further that the plaintiff adopted the trademark LAVERA which is a completely arbitrary mark/word when used in connection with cosmetic products prior to use of the mark by the defendants. Therefore it came to the conclusion that the two marks LAVERA and MAC LAVERA both are deceptively similar and the defendants are not the proprietor of the trademark LAVERA which is an unusual, uncommon and arbitrary mark. – ***[Laverana Gmbh & Co Kg v. MAC Personal Care Pvt Ltd &Ors, dated 19th February, 2015 (Delhi HC)]***

3. IN AN ACTION OF PASSING OFF, IN ORDER TO SUCCEED IN GETTING AN INTERIM INJUNCTION, THE PLAINTIFF HAS TO ESTABLISH USER OF THE MARK PRIOR IN POINT OF TIME THAN THE IMPUGNED USER BY THE DEFENDANT: DELHI HC

The Delhi HC has once again reiterated the principles, in an action of passing off in order to succeed in getting an interim injunction that the plaintiff has to establish user of the mark prior in point of time than the impugned user by the defendant. It is an action necessarily based on the principle of equity and fair play. It is a discretionary relief which the Court may or may not grant depending upon the factual matrix of the case which has been built by the parties. Common use is paramount. The defendant is not permitted to defeat the right of the plaintiff if he establishes that he has been a concurrent user or that the defendant has been using the mark for a considerable length of time with the knowledge of the plaintiff. – ***[KRBL Ltd v. LalMahal Ltd AndAnr, dated 23rd February, 2015 (Delhi HC)]***

CONSUMER

1. INVESTORS AND DEPOSITORS HAVE A RIGHT TO SEEK COMPENSATION UNDER THE CONSUMER PROTECTION ACT IN CASE OF DEFAULTS FROM A FINANCIAL ESTABLISHMENT

   In this case, the National Commission, upon careful consideration of the definition of the term 'consumer' under Section 2(1)(d) of the Consumer Protection Act, 1986, has concluded that the investors and depositors too have a right to seek compensation under the consumer protection act in case of defaults from a financial establishment. It viewed that the term 'service' has been defined in Section 2(a) of the Act to mean service of any description, which is made available to potential users. The Complainants hired or availed the services of the opposite party for investing their savings in the schemes floated by Shivaji Estate Livestock, and deposited money with it for investing on their behalf in goat farming and allied activities. Therefore, it can hardly be disputed that the complainants are consumers of Shivaji Estate Livestock within the meaning of Section 2(1)(d) of the Consumer Protection Act. ***[Shivaji Estate Livestock v. Pratibha Adelkar & Ors (NCDRC)]***

ENVIRONMENT

1. DELHI'S AIR IS THE WORST AMONG VARIOUS CITIES IN THE NATIONAL CAPITAL REGION AND PLACES LOCATED IN RAJASTHAN

   The CPCB submitted data on analysis of ambient air quality in Delhi, NCR and other areas over a period of 68 days from December 5 to February 10 before the NGT. Delhi was found topping the list in terms of highest levels of nitrogen dioxide, sulphur dioxide, and carbon monoxide. – ***[The Hindu, dated 26th February, 2015]***

2. HIMACHAL PRADESH GOVERNMENT REJECTS NGT'S 'CNG BUSES ONLY' PROPOSAL

   The NGT in its order, last month, had said that no tourists vehicle more than 15 years old should be permitted and the government should, instead, make CNG buses operational on the route to Rohtang Pass for tourists. It had also ordered removal of dhabas en-route to Rohtang Pass. However, Himachal Pradesh government has rejected the National Green Tribunal's (NGT) proposal, calling it as counterproductive. – ***[The Indian Express, dated 24th February, 2015]***

3. GURGAON GETS NGT NOTICE AGAINST CONCRETE AROUND TREES

   NGT has directed authorities in Gurgaon to not "concretise" trees and said the process of concretisation was undertaken in a very "unscientific manner". The NGT issued notice to Haryana government, Municipal Corporation of Gurgaon and Haryana Urban Development Authority (HUDA). It also asked the Conservator of Forest to file a status report regarding the number of trees in Gurgaon and how many had been concretised. – ***[The Indian Express, dated 24th February, 2015]***

4. NGT ASKS DTTDC TO GET ENVIRON CLEARANCE FOR A DELHI BRIDGE

   NGT has directed Delhi Tourism and Transportation Corporation (DTTDC) to obtain environmental clearance for a new bridge across river Yamuna under construction at Wazirabad. Holding that it would not be in public interest to order demolition as a major portion of the bridge has already been completed, it directed that all steps needed to prevent any adverse effect on the environment should be undertaken. – ***[Business Standard, dated 12th February, 2015]***

5. NGT REJECTS PLEA FOR TOTAL BAN ON MINING IN GANGA

   NGT has turned down the plea filed by MatriSadan Ashram in 2014 for a complete ban on mining in Ganga. According to NGT, sand can be taken out from the riverbed and not from the riverbank or any other mining site near or in the river. What is to be prohibited is unregulated, illegal and unsustainable mining activity on the river banks. Removing the collected sands from the riverbed is an established and time-tested practice. However, it should be removed scientifically and to a limited extent so that no harm is done to the river's ecology and bio diversity.-***[The Pioneer, dated 10th February, 2015]***