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## RBI/FEMA

### 1. WITHDRAWAL OF ADDITIONAL INTEREST RATE ON THE DEPOSITS OF AGID, NGIF AND AFGIS

The Reserve Bank of India (RBI) has withdrawn the offering of additional interest of 1.28 per cent per annum on the deposits of Army Group Insurance Directorate (AGID), Naval Group Insurance Fund (NGIF) and Air Force Group Insurance Society (AFGIS). Accordingly, interest rates on such deposits are required to be at par with other deposits of similar maturity and amount. Further, it is also provided that the guidelines will be applicable at the time of accepting fresh deposits or renewal of the existing deposits. Thus, existing term deposits of AGID, NGIF and AFGIS may be continued till maturity. *-[RBI/2015-16/147 DBR. Dir. BC. No. 33/13.03.00/2015-16, dated 6th August, 2015]*

### 2. RBI REVIEWS AND RELAXES BRANCH AUTHORISATION POLICY

RBI, in order to allow banks greater operational freedom, has reviewed and relaxed instructions regarding merger, closure, shifting, part shifting, opening of extension counters and reporting requirements have been. With this Banks can now

shift, merge or close all branches except rural branches and sole semi-urban branches at their discretion. However, shifting, merging or closing a branch in a rural area or a sole branch in a semi-urban area would continue to require prior permission from RBI in terms of Section 23 of the Banking Regulation Act, 1949.

Among other relaxations, banks are no longer required to report details of opening new mobile branches, ATMs or call centres. Banks may now also shift some activities from a branch due to space or rental constraints without seeking RBI's permission. *- [RBI/2015-16/148 DBR. No. BAPD. BC. 34/22.01.001/2015-16, dated 6th August, 2015]*

### 3. STANDALONE PRIMARY DEALERS: EXPOSURE CEILINGS INCREASED

In order to facilitate greater level of participation in corporate bonds by Standalone Primary Dealers (SPDs), RBI has decided to increase exposure ceiling limits in respect of single borrower / counterparty from 25% to 50% of latest audited Net Owned Funds (NOF) and in respect of group borrower from 40% to 65% of latest audited NOF only for investments in AAA rated corporate bonds. *-[RBI/2015-16/149 DNBR. CO. PD. No. 068/03.10.01/2015-16, dated 6th August, 2015]*

### 4. CLARIFICATION ON COMMISSION PAYABLE AGENCY BANK BUSINESS: CLARIFICATIONS ISSUED ON COMMISSION PAYABLE

RBI has clarified that the following activities/government transactions do not come under the purview of agency bank business and are therefore not eligible for payment of agency commission:

- (a) Furnishing of bank guarantees/security deposits, etc through private sector banks by government contractors/suppliers, which constitute banking

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transactions undertaken by banks for their customers.

- (b) The banking business of autonomous/statutory bodies.
- (c) Payments of a capital nature such as capital contributions/subsidies/grants made by governments to cover losses incurred by autonomous/statutory bodies.
- (d) Prefunded schemes which may be implemented by a Central Government Ministry/Department (in consultation with CGA) and a State Government Department through any bank without reference to RBI.

***-[RBI/2015-16/153 DGBA. GAD. No. 617/31.12.010(C)/2015-16, dated 13th August, 2015]***

## **5. REPORTING UNDER FDI SCHEME ON THE E-BIZ PLATFORM EASED**

With a view to promoting the ease of reporting of transactions under FDI, the RBI, under the aegis of e-Biz project of the Government of India has enabled online filing of Foreign Currency Transfer of Shares (FCTRS) returns for reporting transfer of shares, convertible debentures, partly paid shares and warrants from a person resident in India to a person resident outside India or *vice versa*.

The user manual for this has been issued with the concerned Circular. It is pertinent to note that presently the online reporting on the e-Biz platform is an additional facility to the Indian residents and the manual system of reporting would continue together till further notice. ***-[RBI/2015-16/157 A.P. (DIR Series) Circular No. 9, dated 21st August, 2015]***

## **MICRO AND SMALL ENTERPRISES: FLOW OF CREDIT STREAMLINED TO**

RBI, having observed that Micro and Small Enterprises (MSEs) are more prone to facing financial difficulties during

their Life Cycle than large enterprises / corporates when the business conditions turn adverse. Accordingly, it has advised banks to put in place Board approved policy on lending to MSEs, adopting an appropriate system of timely and adequate credit delivery to borrowers in the MSE segment within the broad prudential regulations of RBI.

Further, banks have also been advised to ensure that their lending policies for MSEs are streamlined and made flexible in order to empower the officials concerned to take quick decisions on credit delivery to MSEs. In this connection, banks have been advised to consider the guidelines provided in this circular and tune their existing policies for lending to the MSE sector accordingly. ***-[RBI/2015-16/160 FIDD. MSME & NFS. BC. No. 60/06.02.31/2015-16, dated 27th August, 2015]***

## **6. EXTENSION OF TIME FOR ISSUANCE OF EMV CHIP AND PIN BASED CARDS BY BANKS**

Whereas, RBI vide its Circular dated May 07, 2015 issued directives that all new cards to be issued by banks viz. debit and credit, domestic and international, shall be EMV Chip and Pin based cards with effect from September 01, 2015.

However, considering the difficulties faced by banks in meeting the above timeline, RBI has extended the time for issuance of EMV Chip and Pin based cards as under:

- (a) Cards issued under the Prime Minister Jan Dhan Yojana (PMJDY) / Basic Savings Bank Deposit Account (BSBDA) / other Government schemes - Time extended upto September 30, 2016.
- (b) All other cards - January 31, 2016. ***-[RBI/2015-16/163 DPSS. CO. PD. No. 448/02.14.003/2015-16, dated 27th August, 2015]***

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## 7. CASH WITHDRAWAL LIMIT INCREASED TO 2K AT PoS IN TIER-III TO VI CENTRES

RBI has enhanced the limit for cash withdrawal at Point of Sale (PoS) (for debit cards and open system prepaid cards issued by banks in India) from Rs. 1,000/- to Rs. 2,000/- per day in Tier III to VI centres with immediate effect. However, it is noteworthy that per-day limit in Tier I and II centres remains unchanged (*i.e.* Rs. 1,000/- per day).

Further, Customer charges (if any) levied on cash withdrawals cannot exceed 1 per cent of the transaction amount at all centres irrespective of the limit of Rs. 1,000/- or Rs. 2,000/-. Such cash withdrawal facility may be provided by banks subject to conditions including merchant establishments indicating/ displaying clearly the availability of this facility along with the charges (if any) payable by the customer. *-[RBI/2015-16/164 DPSS. CO. PD. No. 449/02.14.003/2015-16, dated 27th August, 2015]*

## 8. REPORTING REQUIREMENT UNDER FOREIGN ACCOUNT TAX COMPLIANCE ACT AND COMMON REPORTING STANDARDS

With the signing of the Inter-Governmental Agreement (IGA) with the USA on July 9, 2015, (for Improving International Tax Compliance and implementing the FATCA), India has also signed a multilateral agreement on June 3, 2015, to automatically exchange information based on Article 6 of the Convention on Mutual Administrative Assistance in Tax Matters under the Common Reporting Standard (CRS). As a result, amendments have been made to the Income Tax Rules vide notification dated August 7, 2015 and have added new Rule 114F (definitions), 114G (Information to be maintained and reported) and 114H (due diligence requirement) for operationalisation of IGA and CRS.

Consequently, RBI has directed all the concerned financial institutions (as defined in the amendment Rules) that they should refer to the amended rules and take steps for complying with the reporting requirements. The FIs have been directed to register themselves on the related e-filing portal of the Income Tax Department as Reporting Financial Institution by submitting the requisite details. Thereafter, the reports can be submitted online by using the digital signature of the Designated Director of the concerned financial institutions by either uploading the Form 61B or NIL report. *-[RBI/2015-16/165 DBR. AML. BC. No. 36/14.01.001/2015-16, dated 28th August, 2015 & RBI/2015-16/167 DBR. AML. No. 3074/14.01.001/2015-16, dated 31st August, 2015]*

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## FOREIGN TRADE

### 1. FOREIGN TRADE POLICY 2015-20 :PARAGRAPH 3.05 OF HANDBOOK OF PROCEDURES OF AMENDED

DGFT, in order to provide facility for exporters to continue to file applications for benefits under Chapter 3 schemes of the earlier Foreign Trade Policy(ies) as per procedures prescribed in the corresponding handbook of procedures (HBPs), has amended paragraph 3.05 of the HBPs of FTP 2015-20. *-[Public Notice No. 29/2015-2020, 4th August, 2015, (DGFT)]*

### 2. AMENDMENT TO EXPORT POLICY ON EDIBLE OILS

Export of Rice Bran oil in bulk has been exempted from the prohibition on export of edible oils, by DGFT. Also, the quantity ceiling on export of organic edible oils has been removed. -



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*[Notification No 17/ 2015-2020, 6th August, 2015, (DGFT)]*

### **3. INCREASE IN MINIMUM EXPORT PRICE OF ONIONS**

DGFT has directed that the Export of onions (as described at Serial Number 51 & 52 of Chapter 7 of Schedule 2 of ITC) will be subject to a Minimum Export Price (MEP) of US\$ 700 F.O.B. per MT. - *[Notification No 18/ 2015-2020, 24th August, 2015, (DGFT)]*

### **4. AMENDMENT TO PARAGRAPH 3.06 AND 3.08 OF HANDBOOK OF PROCEDURES**

Paragraphs 3.06 and 3.08 of the HBPs of FTP 2015-20 has been amended further to clarify the procedure for filing applications under Merchandise Exports from India Scheme (MEIS) and Service Exports from India Scheme (SEIS) by units located in SEZs and EOUs. -*[Public Notice No. 30/2015-2020, 26th August, 2015, (DGFT)]*

### **5. AMENDMENT TO PARAGRAPH (7) OF APPENDIX 6B OF "APPENDICES AND AAYAT AND NIRYAT FORMS" OF FTP 2015-20**

DGFT has incorporated an enabling provision in paragraph (7) of Appendix 6-B of "Appendices and Aayat Niryat Forms" of FTP 2015-20, with a view to enable the Board of Approval to consider and decide the cases for extension of Letter of Permission of existing EOUs. -*[Public Notice No. 31/2015-2020, 26th August, 2015, (DGFT)]*

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## **CORPORATE**

### **1. COMPANIES (MANAGEMENT AND ADMINISTRATION) RULES, 2014: AMENDED**

The Ministry of Corporate Affairs (MCA) has amended the Rule 23 of the Companies (Management and Administration) Rules, 2014, thereby restoring the limit of shareholding for resolutions requiring special notice (as per section 115 of the Companies Act, 2013) to not less than five lakh rupees.

Further, Form MGT-7 (annual return) has been revised and a new Form MGT-7 issued by MCA. - *[Ministry of Corporate Affairs, 28th August, 2015]*

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## **SECURITIES**

### **1. FORMATS FOR DISCLOSURES UNDER REGULATION 31 OF THE SEBI (SAST) REGULATIONS, 2011 MODIFIED**

The Securities and Exchange Board of India (SEBI) has modified the formats for disclosures under regulation 31 of SEBI (SAST) Regulations, 2011, to ensure that adequate disclosures are made to help investors in taking an informed decision.

It is relevant to mention here that regulation 31 deals with disclosures by promoters to stock exchanges and target company for encumbrance of shares/invoice of encumbrances/release of encumbrances. -*[CIR / CFD / POLICY CELL/3/2015, 5th August, 2015, (SEBI)]*

### **2. CLEARING CORPORATIONS ADVISED TO SUBMIT A MONTHLY REPORT**

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The Clearing Corporations, have been advised to submit a Monthly Report, with effect from the month of August 2015 onwards and ensure the same reaches SEBI within 10 calendar days from the close of each month. The prescribed format for this monthly report is attached as annexure to the circular. *-[CIR/MRD/DRMNP/16/2015, 6th August, 2015, (SEBI)]*

### 3. SEBI ISSUES DIRECTIVES TO IMPLEMENT THE MULTILATERAL COMPETENT AUTHORITY AGREEMENT AND FOREIGN ACCOUNT TAX COMPLIANCE ACT

India has joined the Multilateral Competent Authority Agreement (**MCCA**). In terms of MCAA, all countries that are signatories to the MCAA are obliged to exchange a wide range of financial information after collecting the same from financial institutions in their country/jurisdiction.

India and the US have inked a tax information sharing agreement under Foreign Account Tax Compliance Act (**FATCA**) which will enable automatic exchange of financial information between the two countries on tax evaders from September 30, 2015. FATCA will cover automatic sharing of information on bank accounts as well as financial products like equities, mutual funds and insurance and is aimed at fighting the menace of black money stashed abroad.

The US enacted the FATCA in 2010. Under the pact, foreign financial institutions in India would be required to report information about US account holders/taxpayers directly to the Indian government, which would be then passed on to the US Internal Revenue Service.

For implementation of the MCCA and agreement with USA, the Government of India has made necessary legislative changes to Section 285BA of the Income Tax Act, 1961. Further, the Government of India has notified Rules 114F to 11H under the Income Tax Rules, 1962 and Form No 61B for furnishing of statement of reportable account. *- [CIR/MIRSD/2/2015, 26th August, 2015, (SEBI)]*

### 4. FAILURE ON PART OF A COMPANY TO UPDATE ATR IN SCORES OR UNDUE DELAY IN DOING SO HAS TO BE TREATED AS NON REDRESSAL OF INVESTOR'S COMPLAINTS: SEBI

In this case the appellant was aggrieved by the imposition of penalty under Section 15C of SEBI Act, 1992 and argued on the point that Section 15C does not contemplate imposition of any penalty for delayed submission of an action taken report as required by the SCORES. The Securities Appellate Tribunal (**SAT**) after hearing the parties has imposed penalty on a company for failure to redress investors' grievances as per the SCORES. SAT has based its reasoning on SEBI circular dated 3rd June, 2011 which *inter alia* provides that failure on a part of the company to update the action taken report in SCORES is to be treated as non-redressal of complaint by the said company and reading of Section 15C, rejected the argument.

In the aforesaid background SAT has ruled that SEBI has powers to impose penalty on a company for failure to redress investors' grievances as per the SCORES within the meaning of Section 15C. However, it further ruled that SEBI does include a power to impose punishment on a defaulter company for delayed and / or non-submission of an

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action taken report as required by SCORES. *-[Kiev Finance Ltd. v. SEBI, 4th August, 2015, (SAT)]*

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## 5. PERMITTING PACL TO OPERATE CIS IS TRAVESTY OF JUSTICE: SAT

SAT, while dismissing an appeal filed by Pearls Agrotech Corp. Ltd (**PACL**) challenging the SEBI's order to refund at least Rs. 29,420.65 crore raised from some 58.5 million customers through collective investment schemes (**CIS**) has ruled that doing so would amount to travesty of Justice.

In this case, the company had allotted land to some 12.2 million customers till March 2012, when its total customer advances stood at Rs. 14,331 crore. On 11 August 2014 PACL told SEBI that it had collected another Rs. 29,420.65 crore from 46.31 million customers to whom it is yet to allot land.

After hearing the parties to the appeal SAT in its order observed that the PACL did not have enough land and plots to meet the allotment requirements for customers who have been investing money in the company's two schemes. SAT found that the company had only lands worth Rs. 11,706.96 crore out of which it has not only to satisfy the claim of 4.63 crore customers who have deposited Rs. 29,420 crore with it, but also it has to satisfy 1.22 crore customers, to whom the land has been allotted but sale deeds have not been executed. In view such a scenario, SAT observed that , the proposal did not appear to be serious and reasonable.

For raising such huge sums of money from the public over several years without securing regulatory permissions, SEBI directed PACL, its promoters and directors Tarlochan Singh, Sukhdev Singh, Gurmeet Singh and Subrata Bhattacharya to wind up all the existing schemes and refund the money within three months. *-[PACL Ltd. v. SEBI, 12th August, 2015, (SAT)]*

## COMETITION

### 1. CCI ORDER AGAINST THOMAS COOK SET ASIDE BY COMPAT

In this case, CCI had imposed a penalty of Rs 1 crore on Thomas Cook and Sterling Holidays for carrying out certain market purchases related to their deal before seeking the regulator's approval. Thomas Cook bought a 9.93 percent stake in Chennai-based Sterling Holidays from the open market just days before seeking the fair trade regulator's approval for Rs. 870/- crore merger.

The Competition Appellate Tribunal (**COMPAT/Tribunal**) has set aside the order and has observed that the appellants (Thomas Cook) had never tried to suppress the market purchases of equity shares of SHRIL [Sterling Holidays Resorts (India) Ltd.] for the purpose of obtaining any advantage under the Act. Rather, in the notice filed on 14.02.2014 under Section 6(2) [for seeking approval of merger/amalgamation] they had made a categorical reference to the transaction involving the market purchase of the equity shares of SHRIL.

Therefore, it held that the penalty imposed by the commission cannot be sustained by assuming appellants deliberately flouted the mandate of section 6(2) of the Act. *-[Thomas Cook (India) Ltd. v. CCI, 26th August, 2015, (Competition Appellate Tribunal)]*

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## INDIRECT TAXES

### a. CUSTOMS

#### 1. REQUIREMENT, AS TO OF REGISTRATION OF SHIP REPAIR UNIT WITH DIRECTOR GENERAL OF SHIPPING, DONE AWAY WITH

Vide Notification No. 12/2012-Customs, the Department has amended the requirement of registration of Ship Repair Unit with Director General of Shipping. Henceforth, any ship repair unit is now eligible for the exemption on articles imported for repair of ocean-going ships. - *[Notification No. 43/2015 - Customs, dated 4th August, 2015]*

#### 2. INCREASE OF BCD ON WHEAT FROM NIL TO 10%

Notification No. 12/2012-Cus dated 17.03.2012 has been amended by the Department so as to increase the basic customs duty (BCD) on wheat from nil to 10% upto 31.03.2016. - *[Notification No. 44/2015 - Customs, dated 7th August, 2015]*

#### 3. INCREASE OF BCD ON CERTAIN IRON AND STEEL PRODUCTS

Notification No. 12/2012-Cus dated 17.03.2012 has been amended by the Department so as to increase the BCD on certain iron and steel products including copper, nickel and aluminium by 2.5%. - *[Notification No. 45/2015 - Customs, dated 12th August, 2015]*

#### 4. LEVY OF ADD ON IMPORT OF VISCOSE STAPLE FIBRE EXTENDED

The Department has extended the term of the Notification No 76/2010- Customs (ADD) dated

26.07.2010 for a further period of one year so as to extend the levy of anti dumping duty (ADD) on imports of Viscose Staple Fibre excluding Bamboo Fibre falling under CTH 5504 10 00 of CTA, originating in or exported from the People's Republic of China and Indonesia, up to 25 July, 2016. - *[Notification No. 37/2015 - Customs (ADD), dated 6th August, 2015]*

#### 5. LEVY OF ADD ON IMPORT OF VITAMIN C EXTENDED

The Department has extended the term of the ADD on imports of Vitamin C, falling under CTH 2936 27 00 of CTA, originating in or exported from the People's Republic of China, for a period of five years from 06 August, 2015. - *[Notification No. 38/2015 - Customs (ADD), dated 6th August, 2015]*

#### 6. LEVY OF ADD ON IMPORT OF FLAX OR LINEN FABRIC EXTENDED

The Department has extended the term of the ADD on imports of Flax or Linen Fabric having flax content of more than 50%, originating in or exported from the People's Republic of China and Hong Kong, for a period of five years. - *[Notification No. 39/2015 - Customs (ADD), dated 12th August, 2015]*

#### 7. LEVY OF ADD ON IMPORT OF POTASSIUM CARBONATE EXTENDED

The Department has extended the term of the ADD on imports of Potassium Carbonate, originating in or exported from Taiwan and Korea RP, for a period of five years. - *[Notification No. 40/2015 - Customs (ADD), dated 12th August, 2015]*

#### 8. LEVY OF ADD ON IMPORT OF DIKETOPYRROLO PYRROLE PIGMENT RED 254 EXTENDED

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The Department has extended the term of the ADD on imports of Diketopyrrolo Pyrrole Pigment Red 254 (DPP Red 254), originating in or exported from the People's Republic of China and Switzerland, for a period of five years. - *[Notification No. 41/2015 - Customs (ADD), dated 17th August, 2015]*

## 9. LEVY OF ADD ON IMPORT OF CAUSTIC SODA EXTENDED

Like above, ADD on imports of Caustic Soda, originating in or exported from China PR and Korea RP, has been extended for a period of five years. - *[Notification No. 42/2015 - Customs (ADD), dated 18th August, 2015]*

## 10. APPLICATION UNDER SECTION 127B CANNOT BE MADE IN RESPECT OF ITEMS TO WHICH SECTION 123 OF CUSTOMS ACT, 1962 APPLIES: DELHI HC

The issue involve in the instant case was smuggling of gold. Hon'ble High Court of Delhi, in the facts and circumstances of the case has held that an application under Section 127B cannot be made in respect of, *inter alia*, gold, which is specifically an item to which Section 123 of Customs Act, 1962 applies. It has further held that the Settlement Commission does not have the jurisdiction to entertain such an application as there was a complete bar provided in the third proviso to Section 127B(1) read with Section 123 of the said Act. In view of the findings it set aside the order passed by the Settlement Commission being without jurisdiction. - *[Addl. Commissioner of Customs v. Shri Ram Niwas Verma, dated 25th August, 2015 (Delhi HC)]*

## 11. CUSTOMS AUTHORITY BOUND BY REPORT OF AGMARK LAB CLEARLY: DELHI HC

Hon'ble High Court of Delhi in this case has held that once there is a report of the Agmark Laboratory stating that the samples did not conform to the requirements of the Basmati Rules, inasmuch as the presence of other rice exceeded the maximum permissible limit of 20%, then the Customs Authority was bound by such report. - *[Commissioner of Customs v. Orion Enterprises, dated 25th August, 2015 (Delhi HC)]*

### b. CENTRAL EXCISE

## 1. TRIBUNAL HAS INHERENT POWER TO GRANT STAY : CESTAT-DELHI

In this case, a miscellaneous application was filed by the appellant seeking extension of stay granted by the Tribunal on the ground that the Revenue is insisting for recovery. The AR submitted that with effect from 06.08.2014 Section 35C(2A) of the Central Excise Act, 1944, has been abolished and, therefore, the Tribunal does not have any power to grant extension of stay.

However, the Bench of Hon'ble Tribunal observed that the power to grant stay has not been expressly provided in the Statute but the same is an inherent power. Application for extension of stay allowed. - *[Ultratech Concrete v. CST, Delhi, dated 10th August, 2015 (CESTAT)]*

## 2. LIABILITY OF PAST EXCISE DUES PAYABLE BY CORPORATION CANNOT BE RECOVERED FROM THE PURCHASER OF THE ASSETS OF CORPORATION IN CASE OF IT BEING WOUND UP: ALLAHABAD HC



In this case, Hon'ble Allahabad High Court has held that since the petitioner had only purchased the assets of the Corporation pursuant to the winding up order passed by the High Court and had not taken over a running business of the Corporation, therefore the liability of past Central Excise dues payable by the Corporation cannot be fastened nor recovered from the petitioner. Accordingly, the demand notice was quashed and the Writ Petition was allowed. - *[M/s Jaiprakash Associates Ltd v. UOI & Ors., dated 17th August, 2015 (Allahabad HC)]*

### 3. VASELINE INTENSIVE CARE HEEL GUARD IS MEDICAMENT: SC

The issue involved in the present case appeal was that whether Vaseline Intensive Care Heel Guard (for short, 'VHG') is to be treated as merely a skin care preparation classifiable under Chapter Heading 3304.00 (excise duty @ 40%) or it is a medicament having curing properties covered under Chapter Heading 3003.10 (excise duty @ 15%).

The Hon'ble Apex Court observed, while contrasting the two Entries, namely, Entry 3304.00 on the one hand and 3003.10 on the other, it can be discerned that if it is a product for care of the skin, then it would fall under Chapter Heading 3304.00 but if it is for the cure of skin disease then the product in-question would be medicament; meaning thereby the inquiry has to be whether it is a care product or a product meant for cure.

In a nutshell, if a particular product is substantially for the care of skin and simply because it contains subsidiary pharmaceutical or antiseptic constituents or is having subsidiary curative or prophylactic value, it would not become medicament and would still qualify as the product for the care of the skin. There would be

certain products which would be purely for the care of skin and certain other products would be clearly medicament and such cases may not pose any problem.

The issue of determination as to whether a particular product falls in Chapter 33 or Chapter 30 would arise in those cases where certain products have the shades or qualities of both, namely, skin care as well as cure of skin diseases. In such cases, the necessary exercise requires to be undertaken. Onus is on the Department to show that it is not medicament.

Based on the above guidelines, the Supreme Court observed that the product in question, Vaseline Intensive Care Heel Guard, is medicament as it is marketed as a solution for cracked heels and it is claimed that this solution is specially developed by the scientists at Vaseline Research. -*[CCE, Chennai v. Hindustan Lever Ltd, dated 25th August, 2015 (Supreme Court of India)]*

### c. SERVICE TAX

#### 1. AMOUNT RECOVERED FROM CUSTOMERS AS CUM-TAX AMOUNT IF NOT SEPARATELY CHARGED IN BILL AND REFUND WOULD NOT BE ALLOWED ON THE GROUND OF UNJUST ENRICHMENT: CESTAT - MUMBAI

Appellant filed an application for refund of Rs. 4,20,49,912/-. In this case the appellant was engaged in extraction of iron ore and during the period June, 2005 to May 2007 it had wrongly paid service tax under the category of 'Business Auxiliary Service' under pressure from the Revenue authorities. The Bench of the Tribunal after hearing the parties observed that the appellant had not charged any service tax

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separately in the bills raised but when the revenue authorities directed them to pay service tax under the category of 'Business Auxiliary Service' it is seen that the appellant had discharged service tax liability considering the amount recovered from their customers as cum-tax amount and worked out the service tax liability. This point is not disputed by the appellant in their appeal memorandum.

Hon'ble Tribunal held that, if that be so, it would mean that the amount which has been billed by the appellant to their customers and paid by their customers includes service tax liability and the same has to be held as being passed on to the customers and the appeal fails on the ground of unjust enrichment. - *[Hardesh Ores Pvt Ltd v. CCE, Goa, dated 29th July, 2015 (CESTAT, Mumbai)]*

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## INTELLECTUAL PROPERTY RIGHTS

### PERMANENT INJUNCTION GRANTED FOR INFRINGEMENT OF REGISTERED TRADEMARKS, PASSING OFF, DILUTION, TARNISHMENT, DAMAGES AND DELIVERY

Plaintiff, Louis Vuitton, in this case was a well known company duly incorporated and existing under the laws of France. The plaintiff in addition to the originator of the mark "Louis Vuitton", the initials of Louis Vuitton namely "LV", has also been used as a trademark by the plaintiff since 1890. The case of the plaintiff against the defendants in this case was that the defendants are allegedly in the business of unauthorised selling of counterfeit products under multiple registered trademarks of the plaintiff. The Court, after duly considering the matter held that the trademarks being exclusively associated with the plaintiff, including the "LV" logo, the Toile Monogram and the Damier pattern are well-known throughout the world, therefore, a decree for

permanent injunction needs to be passed in favour of the plaintiff and against the defendants restraining infringement of registered trademarks, passing off, dilution, tarnishment, damages and delivery up against the defendants. - *[Louis Vuitton Malletier v. Mr. Manoj Khurana & Ors., dated 20th August, 2015 (Delhi HC)]*

### PERMANENT INJUNCTION GRANTED RESTRAINING THE USE OF "SHOLAY", "GABBAR" "GABBAR SINGH" TRADEMARKS

The plaintiffs in this case claimed that the copyright owners in the entire Sippy repertoire of 32 films including the film 'SHOLAY' and its constituent parts including the script, screenplay, underlying music and lyrics, synchronized background score, artwork, characters, dialogues and all exclusive rights under Section 14 of the Copyright Act, 1957, either by virtue of being producers as provided under Section 2(d)(v) and Section 2(uu) read with Section 17(c) of the Copyright Act and/or by virtue of devolution of rights and the Defendants having made a remake of the Plaintiffs film Sholay. had infringed its rights. The Court, in facts and circumstances of the case held that the publicity material coupled with the impugned film, gives an overall impression that it is a remake of the film SHOLAY. The use of similar plot and characters in the impugned film coupled with use of the underlying music, lyrics and background score and even dialogues from the original film SHOLAY amounts to infringement of copyright in the film SHOLAY. Even if the impugned film is considered as an adaptation of the film SHOLAY, the same being without authorization of the copyright owner amounts to passing off as the plaintiffs are the owner of the names of characters and dialogues. Such use by the defendant Nos.3 to 6 was unauthorized and it is a deliberate act of the said defendants in order to gain profits. They are also guilty of infringement under Section 14(a) read with Section 55 of the Copyright Act, 1957. The defendants have distorted and mutilated the original copyright work of the plaintiffs. The defendants have

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also infringed the moral rights of the plaintiffs as under Section 57 of the Copyright Act, 1957.

The suit of the plaintiffs was accordingly decreed by passing the permanent injunction restraining the defendants, their partners or proprietor as the case may be, their principal officers, servants and agents, from manufacturing, selling, offering for sale, distributing, advertising including on the internet and in any other manner using the SHOLAY, GABBAR, GABBAR SINGH trademarks or any other deceptively similar mark amounting to infringement of the plaintiffs' registered trademarks and from infringing the copyright of the plaintiffs in the cinematographic film SHOLAY, by substantially reproducing the film SHOLAY or the constituent parts of the film SHOLAY i.e. the script, screen play, sound recordings, lyrics, musical works, art works amounting to infringement of copyright in the works of the plaintiffs and from passing off their film or other production, using the mark SHOLAY or any other deceptively similar mark, or by using the characters or names thereof, from the plaintiffs' work, or in any other manner associating their film or other production with the film of the plaintiffs in any other deceptive manner, as to pass off or enable others to pass off the defendants' production or work as that of the plaintiffs and also from infringing the moral rights of the plaintiffs, and from distorting, mutilating, modifying or doing any other act that is prejudicial to the honour and reputation of the work as well as to the plaintiffs and their work. *-[Sholay Media And Entertainment Pvt. Ltd And Anr. v. Parag Sanghavi And Ors., dated 24th August, 2015 (Delhi HC)]*

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## CONSUMER

### 1. GODREJ AND BOYCE MANUFACTURING COMPNAY LTD FINED FOR CHARGING OVER AND ABOVE THE MRP

In this case, the Complainant in her complaint before the district consumer forum alleged that she was lured by the firm to purchase their products and a pair of silver watch would be given free as per terms and conditions of the scheme. She booked a fridge, on exchange offer, and a washing machine by paying Rs. 500 in advance and subsequently paid the remaining balance. Later on it transpired that the firm was charging more amount than the MRP. In the facts and circumstances the District Forum directed the refund of excess amount and compensation of Rs.18,722. The Forums' order was upheld by State Commission. The Apex Commission found no fault in the order of lower fora's and increased the amount of fine to Rs. 1 lakh. *-[Godrej and Boyce Co Ltd. v. Anagha Vilas Kulkarni, 21st August, 2015, (NCDRC)]*

### 2. UNITECH ORDERED TO REFUND PRINCIPAL AMOUNT PAID BY A HOME BUYER WITH 18% INTEREST FOR FAILING TO DELIVER A FLAT IN GREATER NOIDA

In the instant case, the Complainant had booked a flat in the company's Unitech Habitat project in 2006 and had paid 95% of the cost and was aggrieved on account of unfairness. Upon complaint, the Commission, after hearing the Parties held that the buyer-seller agreement was "unfair" and "unreasonable" as it tilted more towards the builder. As per the agreement, in case the buyer fails to pay the balance or there is delay in paying installments, he is liable to pay interest at 18% per annum compounded quarterly. Furthermore, if he fails to pay or delays paying any installment with interest within 90 days from due date, the developer shall have the right to cancel the allotment and forfeit the entire amount of earnest/ registration money.



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On the contrary, if the builder fails to deliver flat in time, it is required to pay only the holding charges calculated at Rs. 5 per sq. ft. per month of the super area. If it fails to offer the apartment altogether, then it shall offer an alternative property or refund the amount in full with simple interest at 10% per annum without any further liability to pay damages or any other compensation.

Observing that such conditions are "wholly one sided, unfair and unreasonable" NCRDC recorded that while builder charges compound interest at 18% for buyer's default, it seeks to pay less than 3% per annum of the capital investment for its failure. - *[Swarn Talwar & 2 Ors. v. Unitech Ltd, 14th August, 2015, (NCDRC)]*

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## ENVIRONMENT

### 1. FINE OF Rs. 1 LAKH IMPOSED ON AMC FOR DUMPING WASTES ALONG YAMUNA FLOOD PLAINS

NGT has imposed a fine of Rs. 1 lakh on Agra Municipal Corporation (AMC) for dumping hazardous waste along the banks of river Yamuna. It also directed civic agencies to demolish an illegal pipeline, discharging sewer water from residential colonies and households into the river. -*[The Times of India, dated 27th August, 2015]*

### 2. FARIDABAD HOSPITAL (QRG HOSPITAL) FINED Rs. 12 CRORE AND ENVIRONMENTAL CLEARANCE CANCELLED

QRG hospital, a venture of the promoters of Havells India, was directed by the NGT to pay an environmental compensation of Rs. 6.88 crore for "degrading the environment", and another Rs. 5

crore for having started the project without obtaining environmental clearance. -*[Indian Express, dated 26th August, 2015]*

### 3. Rs. 20,000 FINE IMPOSED FOR POLLUTING HINDON

NGT has directed the East Delhi Municipal Corporation (EDMC) and the civic authorities of Ghaziabad to impose a fine of Rs. 20,000 on anyone found dumping waste in and around the Hindon canal.

The Tribunal also ordered the authorities to clear the entire municipal solid waste and construction debris dumped along the canal within two days. -*[The Times of India, dated 25th August, 2015]*

### 4. RAIN WATER HARVESTING SYSTEM IN EVERY GOVT. PROJECT A MUST: NGT DIRECTS

NGT has directed the Centre and all public authorities to ensure that rain water harvesting systems are installed in every project including flyovers, bridges or any other construction activity carried out by the government. -*[Business Standard, dated 20th August, 2015]*

### 5. BAN ON 10 YEAR OLD VEHICLES TO STAY

NGT has refused to modify its order banning plying of diesel vehicles which are over 10 years old in Delhi-NCR. Further, the bench observed that it is for the Delhi government and the concerned authorities to decide on the issue of challaning such vehicles or not. - *[The Economic Times, dated 12th August, 2015]*

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