

1. **RBI & FEMA**
2. **Foreign Trade**
3. **Corporate**
4. **Securities**
5. **Competition**
6. **Indirect Taxes**
 - a. **Customs**
 - b. **Central Excise**
 - c. **Service Tax**
7. **Intellectual Property Rights**
8. **Consumer**
9. **Environment**

RBI/FEMA

1. GUIDELINES ON PRIORITY SECTOR LENDING FOR RRBS REVISED

The Reserve Bank of India (**RBI**) has revised the priority sector guidelines for Regional Rural Banks (**RRBs**). Comprehensive revised guidelines on Priority Sector Lending – Targets and Classification for RRBs have been issued vide circular, as mentioned at the end of this note. Some of the salient features of the revised guidelines are as under:-

- i. **Targets:** 75 per cent of total outstanding to the sectors eligible for classification as priority sector lending and sub sector targets as indicated in subsequent paragraphs.
- ii. **Categories of the Priority Sector:** Medium Enterprises, Social Infrastructure and Renewable Energy will form part of the Priority Sector, in addition to the existing categories, with a cap of 15 per cent of total outstanding.
- iii. **Agriculture:** 18% per cent of total outstanding should be advanced to activities mentioned under Agriculture.
- iv. **Small and Marginal Farmers:** A target of 8 percent of total outstanding has been

prescribed for Small and Marginal Farmers within Agriculture.

- v. **Micro Enterprises:** A target of 7.5 per cent of total outstanding has been prescribed for Micro Enterprises.
- vi. **Weaker Sectors:** A target of 15 per cent of total outstanding has been prescribed for Weaker Sections.
- vii. **Monitoring:** Priority Sector Lending will be monitored on a quarterly as well as annual basis.

-[RBI/2015-16/257 FIDD. CO. Plan. BC. No. 14/04.09.01/2015-16, dated 3rd December, 2015]

2. INTEREST EQUALISATION SCHEME ON PRE AND POST SHIPMENT RUPEE EXPORT CREDIT

The Government of India has announced the Interest Equalisation Scheme (earlier called Interest Subvention Scheme) on Pre- & Post-Shipment Rupee Export Credit. The said scheme has been effective from April 1, 2015 for five years. The scheme would be available to all exporters of MSME and 416 tariff lines but not for merchant exporters. Accordingly, RBI vide its circular has advised scheduled commercial banks to adhere to the operational procedure for claiming reimbursement. *-[RBI/2015-16/259 DBR. Dir. BC. No. 62/04.02.001/2015-16, dated 4th December, 2015]*

3. INTRODUCTION OF CROSS-CURRENCY FUTURES AND EXCHANGE TRADED OPTION CONTRACTS

In order to enable direct hedging of exposures in foreign currencies and facilitate execution of cross-currency strategies by market participants, RBI has permitted the recognized stock exchanges to offer cross-currency futures contracts and exchange traded option contracts in the currency pairs of EUR-USD, GBP-USD and USD-JPY. Recognised stock exchanges are also permitted to offer exchange traded currency option contracts in EUR-INR, GBP-

DECEMBER 2015

INR and JPY-INR in addition to the existing USD-INR option contract, with immediate effect. - *[RBI/2015-16/267 A.P. (DIR Series) Circular No. 35, dated 10th December, 2015]*

4. CALCULATE BASE RATE AS PER THE MARGINAL COST OF FUNDS: RBI TO BANKS

To ensure better transmission of its rate cuts to borrowers, RBI has instructed that all banks will have to follow a new and uniform methodology from April to calculate base rate as per the marginal cost of funds. As per the guidelines, all rupee loans sanctioned and credit limits renewed *m.e.f.* April 1, 2016 will be priced with reference to the Marginal Cost of Funds based Lending Rate (MCLR) which will be the internal benchmark for such purposes. The MCLR will comprise of Marginal cost of funds; Negative carry on account of CRR; Operating costs; and Tenor premium. -*[RBI/2015-16/273 DBR. No. Dir. BC. 67/13.03.00/2015-16, dated 17th December, 2015]*

5. EXTENSION OF TIMELINE FOR EXCHANGING THE PRE-2005 BANKNOTES

In reference to RBI's earlier circulars on the topic 'Withdrawal of all old series of Banknotes issued prior to 2005', RBI has extended the date for exchanging the pre-2005 banknotes to June 30, 2016. However, it has also clarified that from January 01, 2016, such facility will be available only at the identified bank branches and Issue Offices of RBI. Accordingly, Banks have been advised to facilitate the exchange of such notes without causing any inconvenience to the public, whatsoever. - *[RBI/2015-16/275 DCM (Plg) No. G-8/2331/10.27.00/2015-16, dated 23rd December, 2015]*

6. DISCONTINUATION OF THE REQUIREMENT FOR PAPER TO FOLLOW (P2F) FOR CENTRAL GOVERNMENT

CHEQUES UNDER CHEQUE TRUNCATION SYSTEM (CTS)

With a view to enhancing efficiency in cheque clearing, RBI had introduced CTS for clearance of cheques, facilitating the presentation and payment of cheques without their physical movement. Now, taking that initiative forward, it has dispensed with the current requirement of forwarding the paid Central Government cheques in physical form (commonly known as P2F) to the Government departments. The revised guidelines would be effective in respect of cheques issued by the Central Government and Union Territories (UTs) from February 1, 2016. -*[RBI/2015-16/278 DGBA. GAD. No. 2036/42.01.035/2015-16, dated 31st December, 2015]*

FOREIGN TRADE

1. DECELERATION OF INTENT UNDER MERCHANDISE EXPORT FROM INDIA

In order to address the concerns of the exporters regarding a situation where exports had been made through EDI generated shipping bills and the exporter had inadvertently marked 'N' in the "reward item box" and wished to seek MEIS benefit. DGFT vide a public notice has prescribed a procedure to be followed where exports have been made between 1.6.2015 to 30.9.2015 through EDI generated shipping bills, and where the exporter has inadvertently marked "N" in the "reward item box" but has declared his intention in the affirmative on the shipping bill. In such a situation Shipping bills, where declaration of intent 'Y' has not been marked and 'N' has been ticked inadvertently in the 'reward item box' while filing shipping bills in Customs for exports made between 01.06.2015 to 30.09.2015, shall be transmitted by CBEC to DGFT. -*[Public Notice 47/2015-20, 8th December, 2015 (DGFT)]*

DECEMBER 2015

2. REVISION IN THE EXPORT PRICE OF ONIONS

Minimum export price of onion has been revised by DGFT from US\$700 F.O.B. per M.T. to US \$400 F.O.B. per M.T. *-[Notification 26/2015-20, 11th December, 2015 (DGFT)]*

3. AMENDMENT IN THE IMPORT POLICY OF SECOND HAND/RECONDITIONED AIRCRAFT PARTS

The Director General of Foreign Trade (DGFT) has amended the import policy so as to permit import of reconditioned/second hand aircraft parts without “recommendation from DGCA”. *-[Notification No. 27/2015, 16th December, 2015 (DGFT)]*

4. M/S HRD DIAMOND PRIVATE LTD. PERMITTED TO IMPORT DUTY FREE DIAMONDS FOR CERTIFICATION / GRADING

M/s HRD Diamond Institute Private Limited, Mumbai, Maharashtra, India, has been added by DGFT as an agency permitted to import duty free diamonds for certification/grading and subsequent re-export, subject to conditions mentioned in paragraph 4.75 of Hand book of Procedures 2015-20 and other applicable provisions of the law. *-[Notification 28/2015-20, 16th December, 2015 (DGFT)]*

5. FIXATION OF STANDARD INPUT-OUTPUT NORMS A1663 FOR RUBBER PRODUCT

Export of all type of steel truck radial tyres (tube type) of 100 kg requiring import of miscellaneous Chemicals viz. Microcrystalline wax, Resorcinol, Paraffin Wax, Pigments, Softeners, Sulphur, Stearic Acid, Process Oil, Dip Chemicals, Mould Release agents tackifiers has been specified as 6.6425 KG by DGFT. *-[Public Notice 49/2015-20, 17th December, 2015 (DGFT)]*

6. ABROGATION OF PUBLIC NOTICE NO 30/2009-14 DATED 16TH NOVEMBER, 2012

With the transition to normal trade across indo-Myanmar Border at Moreh (Manipur), all public notices on Indo-Myanmar Border Trade have been rescinded by DGFT. *-[Public Notice No 50/2015-20, 17th December, 2015 (DGFT)]*

7. REMOVAL OF MINIMUM EXPORT PRICE ON ONIONS

Export of onions described at Serial No. 51 and 52 of chapter 7 of schedule 2 of ITC (HS) have been permitted without any Minimum Export Price by DGFT. *-[Notification No. 29/2015-20, 24th December, 2015 (DGFT)]*

8. DELETION OF PANAMA FROM COUNTRY GROUP C UNDER MEIS SCHEME

MEIS Schedule notified vide Public Notice No. 2 dated April 1, 2015 has listed Panama in two country groups as under:

- (i) “Panama Republic” is listed in the country Group-B at Serial No. 95.
- (ii) “Panama” is listed in the country Group-C at Serial No. 50.

In order to address this anomaly, ‘Panama’ has been deleted from Country Group-C of Table 1 of Appendix 3B-MEIS Schedule with effect from 1.04.2015 by DGFT. *-[Public Notice 51/2015-20, 28th December, 2015 (DGFT)]*

CORPORATE

1. OMNIBUS APPROVAL FOR RELATED PARTY TRANSACTIONS

The Ministry of Corporate Affairs (MCA) has allowed the omnibus approval for related party transactions by audit committee of the companies.

In this respect, MCA has issued Companies (Meetings of Board and its Powers) Second Amendment Rules, 2015 which add a further Rule 6A to the 2014 Rules.

The audit committee after the approval of board of directors shall specify the criteria for making omnibus approval which shall include the maximum value of transactions in aggregate that can be allowed as well as individual limit per transactions; extent and manner of disclosures; review of related party transactions pursuant to omnibus approval at intervals that audit committee feels fit and transactions which cannot be subject to omnibus approval.

The audit committee shall consider repetitiveness and justification for the need of omnibus approval while specifying the criteria for omnibus approval. The omnibus approval shall contain or indicate the following:

- (a) name of the related parties;
- (b) nature and duration of the transaction;
- (c) maximum amount of transaction that can be entered into;
- (d) the indicative base price or current contracted price and the formula for variation in the price, if any; and

- (e) any other information relevant or important for the Audit Committee to take a decision on the proposed transaction.

Omnibus approval shall be valid for a period not exceeding one financial year and shall require fresh approval after the expiry of such financial year.

Further, approvals through the omnibus route would not be allowed for transactions in respect of selling or disposing of the undertaking of the Company. In situations, where the need for related party transactions cannot be foreseen, the audit committee can allow omnibus approval provided that value of each transaction does not exceed Rs. 1 crore.

Rule 10 relating to loans to directors has been omitted through the latest circular and in rule 15 which deals with 'contract or arrangement with related party transactions' in sub-rule (3) approval of certain transactions can now be obtained through an ordinary resolution, as the word "special resolution" has been replaced by "resolution". *-[MCA Notification dated 14th December, 2015]*

2. COMPANIES (AUDIT AND AUDITORS) AMENDMENT RULES, 2015

Statutory auditors will now have to mandatorily report to the Centre all corporate frauds amounting to Rs. 1 crore or above. By specifying a threshold of Rs. 1 crore, MCA has now done away with the requirement to report immaterial frauds to the Centre.

MCA has also spelt out the procedure for fraud reporting to the Centre. First, the auditor has to inform the Board or audit committee and seek their views within 45 days. On receipt of audit committee's views, the auditor would have to send his report to

DECEMBER 2015

the Centre within 15 days. The report shall be in the form of a statement as specified in Form ADT-4.

For frauds involving amounts lower than Rs. 1 crore, statutory auditors now need to report the matter only to the audit committee of the company or to the board. The reporting to the audit committee would have to be done not later than two days of his knowledge of the fraud. Specifying the nature of fraud, approximate amount involved and parties involved. These details shall also be divulged in Boards report along with remedial action taken, MCA has notified. *-[MCA Notification No. G.S.R. 972(E) dated 14th December, 2015]*

3. RELAXATION OF ADDITIONAL FEES AND EXTENSION OF LAST DATE FOR ANNUAL FILING IN RESPECT OF THE COMPANIES HAVING RO IN THE STATE OF TAMIL NADU AND UT OF PUDUCHERRY

MCA has clarified that there would be relaxation in the additional fees payable for the State of Tamil Nadu and UT of Puducherry on e-forms AOC-4 (Annual Returns), AOC (Consolidated Financial Statement) AOC-4 XBRL and e- Form MGT-7 upto January 30, 2016, wherever additional fee is applicable. *-[General Circular No. 16/2015, 30th December, 2015 (MCA)]*

SECURITIES

1. INTRODUCTION OF SYSTEM DRIVEN DISCLOSURES IN SECURITIES MARKET

The Securities and Exchange Board of India (SEBI) has specified the disclosures to be made concerning the acquisition, sale and pledge of securities under SEBI (Substantial Acquisition of Shares and

Takeovers) Regulations, 2011 and SEBI (Prohibition of Insider Trading) Regulations 2015.

In order to explore the possibility of making these disclosures in the mode of advanced technologies and systems used by the stock exchanges, depositories, registrars and share transfer agents, SEBI has issued a comprehensive system-driven disclosures manner vide this circular. *-[CIR/CFD/DCR/17/2015, 1st December, 2015, (SEBI)]*

2. REVIEW OF ANNUAL CUSTODY/ISSUER CHARGES

SEBI has revised the per folio charges from Rs 8.00 to Rs. 11.00, subject to a minimum for following classes: where nominal value of admitted securities is upto Rs. 5 crore, annual custody fee payable by the issuer to each depository shall be Rs. 9000. In case the nominal value is above Rs. 5 crore and upto Rs. 10 crore, fee payable shall be Rs. 22500. In case nominal value is above 10 crores and upto 20 crores fee payable shall be Rs. 45000 and Rs. 75000 where the nominal value of securities is above 20 crore.

Further, in order to compensate the DPs towards the cost of opening and maintaining Basic Services Demat Accounts (BSDA), the depositories shall pay an incentive of Rs. 100/- for every new BSDA opened by their participants in other than the top 15 cities, SEBI has notified.

In addition, to incentivize the DPs to promote holdings in the BSDA, the depositories may pay an amount of Rs. 2 per folio per ISIN to the respective depository participant. The reimbursement to DPs shall be made on an annual basis at the end of the financial year. The depositories shall set aside 20% of the incremental revenue received from the Issuers to manage the aforementioned incentive schemes.

DECEMBER 2015

The incentive scheme is intended to be reviewed by SEBI every two years and shall come in force from the financial year 2015-16. - *[CIR/MRD/DP/18/2015, 9th December, 2015, (SEBI)]*

3. FACILITY FOR BASIC SERVICES DEMAT ACCOUNT

Taking note of the fact that few individuals have converted their regular accounts to a BSDA in last three years despite large number of demat accounts being eligible for conversion into BSDA.

In order to facilitate the eligible individuals to avail the benefits of BSDA, SEBI has advised DPs to convert all such eligible demat accounts into BSDA unless such Beneficial Owners (BOs) specifically opt to continue to avail the facility of a regular demat account.

Resultantly, the DPs shall assess the eligibility of the BOs at the end of the current billing cycle and convert eligible demat accounts into BSDA. - *[CIR/MRD/DP/ 20 /2015, 11th December, 2015, (SEBI)]*

4. INVESTMENT BY GOLD ETFs IN GOLD MONETIZATION SCHEME OF BANKS

As per RBI notification dated October 22, 2015, the Gold Monetisation Scheme, 2015 (GMS) will replace the Gold Deposit Scheme, 1999 (GDS). However, the deposits outstanding under the GDS will be allowed to run till maturity unless these are withdrawn by the depositors prematurely.

In this regard, SEBI has clarified that GMS will also be designated as a gold related instrument, in line with GDS of Banks. Investment in GMS by Gold

ETFs of Mutual Funds will be subject to following conditions:

- (a) The cumulative investment by Gold ETF in GDS and GMS will not exceed 20% of total AUM (asset under management) of such schemes;
- (b) All other conditions applicable to investments in GDS of banks will also be applicable to investments by Gold ETFs in GMS.

Also existing investments by Gold ETFs of Mutual Funds under the GDS will be allowed to run till maturity unless these are withdrawn prematurely. - *[CIR/IMD/DF/11/2015, 31st December, 2015, (SEBI)]*

5. PROCEDURE TO DEAL WITH CASES PRIOR TO APRIL 01, 2014 INVOLVING OFFER/ALLOTMENT OF SECURITIES TO MORE THAN 49 UPTO 200 INVESTORS IN A FINANCIAL YEAR

SEBI vide its relevant circular has prescribed that the companies against which action had been initiated for not following procedures under companies Act 1956 and SEBI guidelines while offering securities to persons beyond 49. As per the Circular such companies may now avoid penal action if they provide the investors with an option to surrender the securities and get the refund amount at a price not less than the amount of subscription money paid along with 15% interest p.a. thereon or such higher return as promised to investors. It may be remembered that prior to 1st April, 2014 offer of securities to more than 49 persons was considered to be public offer. This threshold was raised to 200 under the Companies Act, 2013, post 1st April 2014. - *[CIR/CFD/DIL3/18/2015, 31st December, 2015, (SEBI)]*

COMPETITION

1. CCI PENALISES ANTI COMPETITIVE PRACTICES IN PHARMACEUTICAL SECTOR

In this case the informant, who was a distributor of pharmaceutical products in Kerala, alleged that Opposite Party 2 (OP2) Alkem laboratories, manufacturer of pharmaceutical products was refusing to act as its stockist because of informant's failure to obtain a No Objection Certificate (NOC) from Opposite Party 3 (OP3) which is a society engaged in pharma sector facilitating exchange of information among members.

Evidence before CCI established that OP 3 had been indulging in the practice of mandatory NOC/clearance certificate before appointment of any new stockist by threatening the pharmaceutical companies that it would boycott the products pharmaceutical companies which did not comply with such a requirement.

Accordingly, the Competition Commission of India (CCI) held that OP 3 had been exercising influence and controlling the supply of medicines by way of allocations the geographic market, or number of stockists in the market and enforcing such intervention by way of boycotts etc.

This conduct resulted in restricting the provisioning of goods in the market, is in contravention of section 3(3)(b) read with section 3(1) of the Act.

The commission therefore held OP3 and two of its office bearer guilty for breach of provision of act. A penalty of Rs 4,35,778 was imposed on the trade association along with Rs. 50,203 on the president of the association and ordered the President and

General secretary to be disbarred from the association for a period of two years.

Further, CCI held that denial of supply to unauthorized stockists by various pharmaceutical companies like OP 2 undoubtedly affects the competition in the market adversely and appreciably. The commission ordered a penalty of Rs.7463 lakh and individual penalties on two of its office bearers. - *[Mr. P. K. Krishnan v. Paul Madavana, Manager Alkem Laboratories & All Kerala Chemists and Druggists Association, 1st December, 2015, (CCI)]*

2. CCI DISMISSES CHARGES OF ALLEGED ABUSE OF DOMINANT POSITION AGAINST TAXI AGGREGATOR UBER

Meru Travel Solutions had filed a complaint against Uber India and two of its group companies alleging abuse of dominant position in having a predatory pricing policy in the radio taxi service market in Kolkata.

Meru alleged that the pricing strategy of the Uber is predatory in nature which can't be matched by the competitors except at a loss. Based on the TechSci report, Meru claimed that Uber held a dominant position in the radio taxi services market in Kolkata on the basis of fleet size (52 percent).

CCI, however, of facts ruled that Uber did not hold a dominant position in the relevant market. CCI held that OP Group (Uber) did not seem to hold a dominant position owing to an even larger share held by one of its competitors. Further, since OP Group (Uber) does not seem to be dominant, there is no need to go into the examination of OP Group's conduct in such relevant market. Accordingly case was directed to be closed by CCI. -*[Meru Travel*

DECEMBER 2015

Solutions Private Limited v. Uber India System Private Limited, 22nd December, 2015, (CCI)

3. COMPAT SETS ASIDE CARTELISATION PENALTY IMPOSED ON 11 CEMENT FIRMS

The CCI which had imposed the penalty after an investigation into complaints from Builders Association of India (BAI) against alleged price cartelisation among cement firms, as it found that major cement manufacturers were controlling the cement market in India and were in violation of various provisions of the Competition Act.

On Appeal, the Competition Appellate Tribunal (COMPAT) ruled that the arguments of the counsel for CCI that no prejudice has been caused to the appellants due the participation of the Chairperson in the decision-making process cannot be accepted. It is not possible to make a guesswork of what would have been the fate of the case if the Chairperson had not taken part in the decision-making process, the COMPAT observed.

Accordingly, the order by CCI was set aside along with the penalty and matter was remitted back to the commission for fresh adjudication. -[*Lafarge India Ltd. & Others v. CCI & Builder Association of India, 11th December, 2015, (COMPAT)*]

INDIRECT TAXES

a. CUSTOMS

1. CONCESSIONAL RATE OF BCD IN RESPECT OF TARIFF ITEM 84082020 AND 87084000

The Central Board of Excise and Customs (CBEC) has amended the Notification No. 69/2011-Customs, dated 29th July, 2011 so as to provide a concessional rate of BCD in respect of tariff item 84082020 (engines of a kind used for the propulsion of motor vehicles – of cylinder capacity exceeding 250 cc) and 87084000 (gear box and parts thereof, of motor vehicles), *w.e.f.* 1st January, 2016 at 5.94% and 8.13%, respectively, when imported under the India-Japan Comprehensive Economic Partnership Agreement. - [Notification No. 57/2015 - Customs, dated 14th December, 2015]

2. DEEPER TARIFF CONCESSIONS IN RESPECT OF SPECIFIED GOODS WHEN IMPORTED FROM ASEAN COUNTRIES

CBEC has amended the Notification No. 46/2011-Customs dated 01.06.2011 so as to provide deeper tariff concessions in respect of specified goods when imported from ASEAN countries under the India-ASEAN Free Trade Agreement *w.e.f.* 1st January, 2016. -[Notification No. 58/2015 - Customs, dated 30th December, 2015]

3. DEEPER TARIFF CONCESSIONS IN RESPECT OF SPECIFIED GOODS IMPORTED FROM MALAYSIA

CBEC has amended the Notification No. 53/2011-Customs dated 1st July, 2011 so as to provide deeper tariff concessions in respect of specified goods imported from Malaysia under the India-Malaysia Comprehensive Economic Cooperation Agreement *w.e.f.* 1st January, 2016. -[Notification No. 59/2015 - Customs, dated 30th December, 2015]

4. DEEPER TARIFF CONCESSIONS IN RESPECT OF SPECIFIED GOODS IMPORTED FROM KOREA RP

CBEC has amended the Notification No. 152/2009-Customs dated 31st December, 2009 so as to provide deeper tariff concessions in respect of specified

DECEMBER 2015

goods imported from Korea RP under the India-Korea Comprehensive Economic Partnership Agreement *m.e.f.* 1st January, 2016. **-[Notification No. 60/2015 - Customs, dated 30th December, 2015]**

5. FIREWORKS NOTIFIED UNDER SECTION 110(1A) OF THE CUSTOMS ACT, 1962 AS PERISHABLE GOODS

Goods seized under the Customs Act are usually stored pending adjudication and are available for return to the owner if so ordered. However, goods notified under section 110(1A) of the Customs Act which are hazardous or perishable in nature, can be disposed early, even before adjudication of the case.

In this regard, CBEC has now added the 'Fireworks' to the list of goods under Section 110(1A) of the Customs Act, 1962. **-[Notification No. 143/2015-Customs (N.T.), dated 15th December, 2015]**

6. LEVY OF ADD ON MELAMINE TABLEWARE AND KITCHENWARE PRODUCTS

Anti-dumping duty (ADD) has been levied on Melamine Tableware and Kitchenware products originating in, or exported from the People's Republic of China, Thailand and Vietnam for a period of five year. **-[Notification No. 55/2015-Customs (ADD), dated 4th December, 2015]**

7. LEVY OF ADD ON PHTHALIC ANHYDRIDE

ADD has been levied on Phthalic Anhydride, originating in, or exported from Japan and Russia for a period of five year. **-[Notification No. 56/2015-Customs (ADD), dated 4th December, 2015]**

8. LEVY OF ADD ON PLASTIC PROCESSING OR INJECTION MOULDING MACHINES

ADD has been levied on import of all kinds of plastic processing or injection moulding machines, also known as injection presses used for processing or moulding of plastic materials, having clamping force not less than 40 tonnes and not more than 1000 tonnes originating in or exported from the People's Republic of China for a period of five years. **- [Notification No. 57/2015-Customs (ADD), dated 4th December, 2015]**

9. LEVY OF PROVISIONAL ADD ON METHYLENE CHLORIDE

Provisional ADD levied on Methylene Chloride originating in, or exported from the People's Republic of China and Russia for a period not exceeding six months. **-[Notification No. 58/2015-Customs (ADD), dated 8th December, 2015]**

10. LEVY OF ADD ON GLICLAZIDE

ADD has been levied on Gliclazide, originating in, or exported from the People's Republic of China for a period of five year. **-[Notification No. 59/2015-Customs (ADD), dated 8th December, 2015]**

11. LEVY OF PROVISIONAL ADD ON PURIFIED TEREPHTHALIC ACID

Provisional ADD has been levied on Purified Terephthalic Acid, originating in, or exported from the People's Republic of China, Iran, Indonesia, Malaysia and Taiwan for a period not exceeding six months. **-[Notification No. 60/2015-Customs (ADD), dated 10th December, 2015]**

12. LEVY OF ADD ON COLD ROLLED FLAT PRODUCTS OF STAINLESS STEEL

ADD has been levied on import of Cold Rolled Flat Products of Stainless Steel originating in, or exported from the People's Republic of China, Korea, European Union, South Africa, Taiwan (Chinese Taipei), Thailand and USA for a period of five years.

DECEMBER 2015

-[Notification No. 61/2015-Customs (ADD), dated 11th December, 2015]

13. LEVY OF ADD ON ABENDAZOLE

ADD has been levied on Abendazole, originating in, or exported from the People's Republic of China, for a period of five years. *-[Notification No. 62/2015-Customs (ADD), dated 14th December, 2015]*

14. COERCIVE MEASURES OF FREEZING BANK ACCOUNT TO BE TAKEN ONLY UPON ADJUDICATION OR CRYSTALLISATION OR ASCERTAINMENT OF ANY SUM: BOMBAY HC

In this case Petitioner challenged the legality and validity of the proceedings initiated by the adjudicating authority, restraining him from dealing with his immovable properties and freezing his bank accounts.

The Petitioner was alleged to be engaged in smuggling of red sanders and certain endangered species of wild flora and fauna.

In the facts and circumstances of the Hon'ble High Court held that without any order being made in pursuance of adjudication or any sum crystallised or ascertained, coercive measures of freezing bank account initiated and undertaken cannot continue. Even if the Petitioner is alleged to have indulged in smuggling, he has to be proceeded against in accordance with law. *-[Shri Rajendra Vitthal Shinde v. UOI & Anr., dated 22nd December, 2015 (Bombay HC)]*

15. ENORMOUSLY DELAYED ORDER OF REVENUE QUASHED BY BOMBAY HC

Revenue passed an order after 16 months from the date of personal hearing. On facts, Hon'ble HC held that since Revenue's orders have immediate impact and parties ought to know their position in financial

year to year, it is not proper that such an enormous delay should take place. Resultantly, the Hon'ble High Court has quashed the Order and directed the revenue to pass fresh order after rehearing. *-[M/s Excel Production Audio Visuals Pvt Ltd & Anr. v. UOI & Ors., dated 21st December, 2015 (Bombay HC)]*

b. CENTRAL EXCISE

1. INCREASE IN BASIC EXCISE DUTY ON PETROL AND DIESEL

CBEC has amended the Notification No. 12/2012-Central Excise dated 17.03.2012, to increase the Basic Excise Duty rates on Petrol and Diesel (both unbranded and branded). *-[Notification No. 46/2015-Central Excise, dated 16th December, 2015]*

2. AMENDMENT TO CENVAT CREDIT RULES, 2004

Cenvat Credit Rules 2004 have been amended to make a certificate issued by Appraiser of Customs a valid document for taking Cenvat credit in case of imports by authorised courier. *-[Notification No. 27/2015 - Central Excise (N.T.), dated 31st December, 2015]*

3. EXEMPTION STILL AVAILABLE FOR NEW UNITS OR UNITS UNDERTAKING SUBSTANTIAL EXPANSION IN NORTH EAST

Upon doubt having been raised regarding availability of Central Excise Duty exemption under Notification No.20/2007 - Central Excise dated 25.04.2007 to new units or units undertaking substantial expansion after 01.12.2014 in the North Eastern Region including Sikkim pursuant to the suspension of fresh registrations by the Department of Industrial Policy

DECEMBER 2015

& Promotion (**DIPP**) for the schemes under North East Industrial and Investment Promotion Policy (**NEIIPP**), 2007 with effect from 01.12.2014.

CBEC, allaying all such doubts has clarified that the exemption continues to be available for new units or units undertaking substantial expansion. *-[Circular 1012/19/2015-CX, dated 2nd December, 2015]*

4. MONETARY LIMIT FOR FILING APPEALS REVISED BY CBEC

In order to reduce the volume of litigation, CBEC has revised the monetary limit for filing appeals by the department before CESTAT/High Courts and Supreme Court. Threshold for appeals by the department to the CESTAT has been increased to Rs.10 lakh and to High Courts to Rs.15 lakh and to Supreme Court to Rs.25 lakh. *-[CBEC Instruction F. No. 390/Misc./163/2010-JC, dated 17th December, 2015]*

5. COMMITTEE OF COMMISSIONERS IS AN ADMINISTRATIVE FUNCTION, CESTAT HOLDS

In this case Revenue had filed applications seeking condonation of delay in filing the appeals. It was submitted that the delay was for the reason that initially the Review Committee of Commissioners accepted the impugned orders. However, thereafter, the Review Committee reviewed its own decision and ordered the appeal to be filed in terms of Section 35E(1) of the Central Excise Act, 1944. On the other hand it was contended by the Counsel appearing for the parties that the Committee of Commissioners once having passed the review order under Section 35E(1) of the CEA, 1944 cannot review its own order.

Hon'ble CESTAT, after due consideration to the rival arguments has held that the decision rendered by the Committee of Commissioners is an administrative function and the same can be

changed/reviewed by the Committee. It was further held that the fresh decision by the same Committee is valid in law. The delay was condoned. *-[CCE, Goa v. M/s Vinka Industries & Ors., dated 14th December, 2015 (CESTAT)]*

6. NOTICE BY DEPARTMENT TO PAY DUTY AGAIN UNDER CORRECT CODE AND TO SEEK REFUND OF DUTY PAID UNDER WRONG CODE QUASHED BY THE GUJARAT HC

In the instant case, petitioner while depositing the duty under challan, had mentioned the incorrect assessee Code Number. Realising the mistake the petitioner immediately communicated it to the Audit Officer, explaining the background leading to the error. The Department wrote to the petitioner that the assessee code now cannot be changed and only remedy available to the petitioner would be to seek refund; that the duty paid in the wrong assessee code cannot be treated as payment of excise duty for the month of July 2014; and that the assessee should therefore make payment of the said amount again. The departmental communication was followed by a notice proposing recovery of duty with interest and penalty.

Hon'ble High Court, upon facts, held that whatever be the accounting difficulty, when undisputed fact is that the petitioner did pay a certain excise duty, merely mentioning wrong code in the process, cannot result into such harsh consequence of the entire payment not being recognized as valid, incurring further liability of repayment of the basic duty with interest and penalties. The impugned communication dated 05.05.2015 and notice dated 21.07.2015 was quashed with the directions to the authority to give credit of the duty paid by the petitioner for a sum of Rs. 22.15 lacs by making necessary accounting entries on the basis that the same was paid at the relevant time. *-[Devang Paper Mills Pvt Ltd & Anr. v. UOI & Ors., dated 30th November, 2015 (Gujarat HC)]*

7. IF THERE IS NO MANUFACTURE OF THE 'WASTE & SCRAP', THEN NO DUTY LEVIABLE: CESTAT

In this case, the Appellant was a manufacturer of biscuits. During manufacture, some waste of packaging material which was not useful and was rejected was cleared as scrap.

On facts, Hon'ble CESTAT held that as no manufacture of 'waste' takes place, demand of CE duty was not sustainable. *-[The Great Oasis Enterprises Pvt Ltd v. CCE, Mumbai, dated 10th December, 2015 (CESTAT)]*

8. REVENUE APPEAL INVOLVING DUTY LESS THAN RS. 5 LAKHS IS NOT MAINTAINABLE BEFORE TRIBUNAL: CESTAT

The appeal in the instant case was filed by the Revenue. The amount involved was less than Rs.5,00,000/-. CESTAT in the facts and circumstances of the case held that as, vide Board's letter F.No. 390/Misc./163/2010-JC dated 20.10.2010 read with Board's letter of even no. dated 17.08.2011, appeals are not required to be filed to CESTAT where the duty involved or total revenue including fine and penalty is Rs.5 lakhs or below, in case of appeals filed on or after 1.11.2010. *-[CCE, Pune v. M/s Sunny Enterprises, dated 17th December, 2015 (CESTAT)]*

9. REVENUE CANNOT ARGUE AGAINST ITS OWN CIRCULAR: CESTAT

In the instant case Hon'ble CESTAT held that the instructions issued by the circulars are binding on the Revenue and the Revenue cannot be allowed to argue against it. And resultantly the impugned order was set aside and the appeals were allowed with consequential relief holding that the appellant's case was fully covered by the cited circular and that it was

a settled law that substantive benefit cannot be denied merely on purely technical grounds,. - *[Bhairav Synthetics Pvt Ltd v. CCE, Thane, dated 4th December, 2015 (CESTAT)]*

c. SERVICE TAX

1. DISTINCTION BETWEEN MANPOWER SUPPLY SERVICE AND JOB WORK SERVICE CLARIFIED

The Tax Research Unit of CBEC has issued a circular clarifying that the nature of manpower supply service is quite distinct from the service of job work.

The essential characteristics of manpower supply service are that the supplier provides manpower which is at the disposal and temporarily under effective control of the service recipient during the period of contract. Service provider's accountability is only to the extent and quality of manpower. Deployment of manpower normally rests with the service recipient. The value of service has a direct correlation to manpower deployed, i.e., manpower deployed multiplied by the rate. In other words, manpower supplier will charge for supply of manpower even if manpower remains idle.

On the other hand, the essential characteristics of job work service are that service provider is assigned a job e.g. fabrication/stitching, labeling etc. of garments in case of apparel. Service provider is accountable for the job he undertakes. It is for the service provider to decide how he deploys and uses his manpower. Service recipient is concerned only as regard the job work. In other words service receiver is not concerned about the manpower. The value of service is function of quantum of job work undertaken, i.e. number of pieces fabricated etc. It is immaterial as to whether the job worker undertakes job work in his premises or in the premises of service

DECEMBER 2015

receiver. *-[Circular No. 190/9/2015-Service Tax, dated 15th December, 2015]*

2. CENVAT CREDIT ON THE INPUTS AND CAPITAL GOODS USED IN THE CONSTRUCTION OF JETTY IS ELIGIBLE FOR OUTPUT SERVICE, NAMELY PORT SERVICE: CESTAT

The appellants, in this case, were providing services in relation to Port. They availed CENVAT Credit on inputs, capital goods and input services used in providing various output services. However, credit was denied to them by the adjudicating authority.

The Hon'ble CESTAT, in the facts and circumstances of the case, held that CENVAT credit on inputs and capital goods used in construction of jetty is eligible for output service, namely Port service because the Jetty is used within port for loading and unloading of goods from vessel. Port cannot function without jetty.. *-[M/s Adani Port And Special Economic Zone Ltd & Anr. v. CST, Ahmedabad, dated 15th December, 2015 (CESTAT)]*

INTELLECTUAL PROPERTY RIGHTS

1. FRAUDULENT REGISTRATION OF TRADEMARK AND TRADE THEREUNDER HELD TO BE PASSING OFF: DELHI HC

In the instant case, the Plaintiff argued that the defendant fraudulently and by way of misrepresentation and non-disclosure of material facts, obtained registration of trademark 'SENGE' Shri Ram & Co. (Label) under No. 1409887 in class 21. According to the Plaintiff he is the prior user of the mark 'SENGE'.

The Hon'ble High Court, in the facts and circumstances of the case, held that the since defendant was aware of the plaintiff's rights,

goodwill, reputations, benefits and users etc. in the plaintiff's said trademark SENGE with the device of fearless lion at the time of its impugned adoption and use of the trademark. The defendant has adopted the impugned trademark dishonestly, fraudulently and out of positive greed with a view to take advantage and to trade upon the established goodwill, reputation and proprietary rights of the plaintiff in the plaintiff's said trademark/logo of SENGE with the device of fearless lion. The use by the defendant by its impugned adoption and user of the impugned trademark is violative of the plaintiff's rights in its said trademark SENGE with the device of fearless lion and thereby passing off and enabling others to pass off their impugned goods and business as that of the plaintiff. *-[Senge Himalayan Ceramics v. Shri Ram & Company, dated 7th December, 2015 (Delhi HC)]*

2. RESPONDENTS RESTRAINED FROM USING THE MARK OF THE PETITIONER WITH THE COLOUR SCHEME: CALCUTTA HC

The petitioners, in the instant case claimed that its asbestos units started manufacturing in 1977 and started selling asbestos sheets under the mark "RHINO" in colour scheme of red, black and white. This colour scheme, according to the petitioners, was adopted in 1998 and by virtue of continuous and extensive use of mark "RHINO" by the petitioners, the same has become a well-known trademark and acquired a secondary significance.

It is the case of the petitioner that the respondents had recently started marketing and selling cement under the mark "RHINO". Such user by the respondents was dishonest as they were not only using the identical mark "RHINO", but also the device of the Rhino and the same colour scheme.

The Hon'ble High Court on facts restrained the respondents, their men, servants, agents, assigns, dealers, distributors and/or anyone claiming through

DECEMBER 2015

them are restrained from manufacturing, marketing, selling, distributing, advertising and/or otherwise dealing any cement under the mark "RHINO" with the same colour scheme. *-[Assam Roofing Ltd. & Anr. v. JSB Cement LLP & Anr., dated 9th December, 2015 (Calcutta HC)]*

3. CGPDTM LAUNCHES NEW UNIQUE NUMBERING SYSTEM FOR PATENT APPLICATIONS AND REQUESTS FOR EXAMINATION IN THE PATENT OFFICE

The numbering system of Patent Applications and Request for Examination filed in the Indian Patent Office is being streamlined and standardized with a view to attain uniformity in accessibility and processing of patent applications by all Patent offices across India. Accordingly a new format of numbering has been introduced *w.e.f.* 1st January, 2016 by CGPDTM. *-[Office Order No. 74 of 2015, dated 31st December, 2015 (CGPDTM)]*

CONSUMER

1. THE EXPRESSION "IMMEDIATELY" CONCERNING REPORTING OF LOSS/THEFT TO INSURER HAS TO BE CONSTRUED STRICTLY: NCDRC

The Complainant, in this case, reported the theft of his insured car after a delay of 30 days. The insurance policy clearly mentioned that theft of the insured vehicle has to be reported "immediately". The State Commission dismissed the claim. The apex forum also rejected the complaint, taking support from Supreme Court's interpretation of the word immediately in insurance policy.

The NCDRC held that the terms of Policy have to be construed as it is and nothing can be added or subtracted from the same. The Policy provides that

in the case of theft, the matter should be reported 'immediately'. In the context of a theft of the car, word 'immediately' has to be construed strictly to make the insurance company liable to pay the compensation. *[Narender Singh v. United India Insurance Co. Ltd., 1st December, 2015, (NCDRC)]*

2. CLAIM UNDER CP ACT MAY BE ACCEPTED IF IT IS ESTABLISHED THAT ANY OF THE OPPOSITE PARTY RESIDES OR WORKS FOR GAIN WITHIN TERRITORY OF INDIA EXCEPT J&K OR THE CAUSE OF ACTION HAS ARISEN WITHIN TERRITORY OF INDIA EXCEPT J&K: NCDRC

The complainants in this case were the legal heirs of deceased couple who lost their lives in a helicopter crash during the flight from Srinagar to Amarnath. Opposite Party four in this complaint is responsible for regulation and operation of aircraft in the territory of India. OP 2&3 were private tour operators and OP was the Secretary of Government of Jammu and Kashmir.

The investigation in the crash revealed that helicopter operator violated the norms, laws and regulations so much so that the helicopter was non-scheduled and without any valid permit. The opposite parties challenged such claims and raised jurisdictional concerns as the Consumer Protection Act in view of section 1 does not extend to state of Jammu and Kashmir.

The counsel for complainant however argued that conjoint reading of section 11(2)(c) and 22 makes it clear that the consumer complaint can be instituted before the National Commission if the cause of action wholly or in part has arisen within the territory of National Commission. That is, if any of the

DECEMBER 2015

opposite parties voluntarily resides or carry on business or works for gain within the territory of Union of India except the State of Jammu & Kashmir or the cause of action has arisen within the territory of India except Jammu & Kashmir either wholly or in part. And since the tour operator (also OP2) through which ticket for the helicopter ride were booked and also the Resident Commissioner of Government of Jammu & Kashmir has its office in Delhi, the complainant should be entertained under Consumer Protection Act.

The consumer forum rejected this plea, holding that tour operating was merely there for facilitating the booking and was not responsible for the operation of the helicopter which was rightfully under the control of state of Jammu and Kashmir. And merely because the State of Jammu & Kashmir is operating an office of Resident Commissioner at Delhi to have liaison with the Central Government, it cannot be said that the seat of Government of Jammu & Kashmir is at Delhi. Therefore, the complainant was not admitted, as neither the parties nor the cause of action rose either in part of whole within the jurisdiction of the apex consumer forum. And it was held that the rightful claim lay before the state of Jammu and Kashmir. *-[Smt. Ram Dulari & Anr. v. Govt. of Jammu and Kashmir & Others, 14th December, 2015, (NCDRC)]*

ENVIRONMENT

1. DELHI GOVT ORDERS 38 MAJOR PROJECTS TO PAY GREEN COMPENSATION

The Delhi government has imposed an environment compensation penalty of Rs. 50,000/- on 38 major projects across the city causing dust pollution. *-[The Indian Express, dated 8th December, 2015]*

2. NGT BANS PLASTIC FROM GOMUKH TO HARIDWAR

The National Green Tribunal (NGT) has ordered complete ban on use of plastic of any kind from Gomukh to Haridwar along Ganga river with effect from February 1, 2016. The Tribunal has also passed a slew of directions to keep the river pollution free. *- [The Times of India, dated 10th December, 2015]*

3. NO FRESH REGISTRATION OF DIESEL-RUN SUVs AND LUXURY SEDANS ABOVE 2,000 CC FOR THE NEXT THREE MONTHS: SUPREME COURT

Amid mounting concerns over alarming pollution levels in Delhi, the Supreme Court proposed no fresh registration of diesel-run SUVs and luxury sedans above 2,000 cc for the next three months. *-[The Time of India, dated 16th December, 2015]*

4. NGT ORDERS INSPECTION OF PETROL PUMPS TO CHECK FUEL ADULTERATION

On a petition against alleged adulteration of petrol and diesel at fuel stations, NGT has directed inspection of petrol pumps across Delhi-NCR and seek a response from the Centre on the issue. Notices were issued to Ministry of Environment and Forests, Ministry of Petroleum, Delhi government, Central Pollution Control Board (CPCB), Indian Oil Corporation, Bharat Petroleum Corporation, Hindustan Petroleum Corporation and others. *-[The Times of India, dated 21st December, 2015]*

5. NGT RESTRAINS RAILWAY FROM CUTTING TREES AT ALUVA STATION

NGT has restrained Southern Railway from cutting trees at Aluva railway station till they obtain sanction from the State Government. The petition was filed before the Kerala High Court by the association for

DECEMBER 2015

environment protection stating that the trees had high ecological value.

The Court later transferred the case to NGT, which observed that the State Government had made appropriate amendments to the Kerala Promotion of Tree (growth in non-forest areas) Act to prevent indiscriminate felling of trees. *-[The Times of India, dated 24th December, 2015]*

Disclaimer: The information contained in this Newsletter is for general purposes only and LEXport is not, by means of this newsletter, rendering accounting, business, financial investment, legal, tax, or other professional advice or services. This material is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Further, before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor. LEXport shall not be responsible for any loss sustained by any person who relies on this newsletter.

As used in this document, "LEXport" means LEXport - Advocates and Legal Consultants.

Please see www.lexport.in/about-firm.aspx for a detailed description about the LEXport and services being offered by it.

LEXport on-boards Mr. Chandrahas Mathur



You know, LEXport is a full service law firm based in New Delhi with a branch at Bangalore. We have been providing an entire spectrum of legal services to our clients for last more than 15 years. Indirect Taxation has been a core area of practice for us.

We are glad to inform that recently LEXport has on-boarded **Mr. Chandrahas Mathur** as a Senior Advisor and Consultant in the Indirect Taxation vertical.

Mr. Mathur had an illustrious background in the Indian Revenue Service, from which he retired after a distinguished career. As an expert in Indirect Taxes he has worked throughout the country and has covered every aspect of the subject during his association with the Government. He held coveted and very senior positions including that of Chief Commissioner and Member Settlement Commission. These days he has been working extensively in the emerging area of GST. The detailed profile of **Mr. Mathur** can be seen at our website url:

<http://lexport.in/team.aspx#>