

MONTHLY NEWSLETTER

FEBRUARY 2023

Dear Readers,

We bring you a concise analysis of important developments, recent publications and judgements and noteworthy regulatory amendments in the corporate and financial sectors on a monthly basis.

Our newsletter will cover updates from RBI, FEMA, Foreign Trade, Corporate Laws, Securities Laws and Capital Markets, Competition Laws, Trade & Indirect Taxes and Customs, Intellectual Property Laws, Environmental Laws etc.

Perceiving the significance of these updates and the need to keep track of the same, we have prepared this newsletter providing a concise overview of the various changes brought in by our proactive regulatory authorities and the Courts!

Feedback and suggestions from our readers would be appreciated. Please feel free to write to us at mail@lexport.in.

Regards,
Team Lexport



ABOUT US

Lexport is a full-service Indian law firm offering consulting, litigation and representation services to a range of clients.

The core competencies of our firm's practice *inter alia* are Trade Laws (Customs, GST & Foreign Trade Policy), Corporate and Commercial Laws and Intellectual Property Rights.

The firm also provides Transaction, Regulatory and Compliance Services. Our detailed profile can be seen at our website www.lexport.in.

OUR LEGAL TEAM

Srinivas Kotni
Rajiv Sawhney
Raj Latha Kotni
Sandeep Chatterjee
Akshay Kumar
Shyam Kishor Maurya
Swagita Pandey
Adivitiya Raj
Rishabh Dev Dixit
Samiksha Bagai
Anirudh Ramanathan
Safal Sethi

DISCLAIMER

The information contained in this Newsletter is for general purposes only and Lexport is not, by means of this newsletter, rendering legal, tax, accounting, business, financial, investment or any 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. Hyperlinks to third party websites provided herein are for *bona fide* information and academic purposes only, and must not be construed to be indicative of any formal relationship between Lexport and such third parties.

INDEX

Banking Laws & FEMA	... 2
Corporate Laws, Securities Laws and Capital Markets	... 2
Indirect Tax	... 3
Customs, SEZ and Foreign Trade	... 4
Intellectual Property Rights	... 5

BANKING LAWS & FEMA

S. No.	Particulars	Link
1.	The RBI has extended UPI facilities to Foreign Nationals and NRIs arriving from G20 nations at select International Airports, which shall be issued to such persons after physical verification of Passport and Visa of the customers at the point of issuance.	CLICK HERE
2.	The RBI has introduced certain changes to the NEFT and RTGS systems for contributions to FCRA account received from Indian intermediary banks, in compliance with the requirement of donor details issued by the MHA.	CLICK HERE
5.	Konarkagro Polytech Pvt. Ltd. & Ors. v Bank of Baroda & Ors., WRIT - C No. - 35965 of 2022, Allahabad High Court The Allahabad High Court, while adjudicating a petition, has directed the Bank (Respondent) to re-consider its decision of declaring the Borrowers (Petitioners) as wilful defaulters, as a One Time Settlement was subsequently entered between the Bank and Borrowers and full compromise amount has been towards the Petitioner Company's accounts. The Court also granted liberty to the Borrowers to avail legal remedy if the Bank's decision on their representation is not favourable to them.	CLICK HERE
6.	Lalithambika & Ors. v. Grievance Redressal Committee & Ors., WP(C) NO. 2665 OF 2023, Kerala High Court The Kerala High Court recently held that a joint owner of a locker is entitled, as a matter of right, to operate the locker, independent of the other owner, and thus, would not have to secure any letters of administration or probate under Section 29 of the Administrators-General Act, 1963, pursuant to the death of the other owner. The Court further took note of the 1975 Madras High Court Division Bench ruling in Hepzibah Annathai Rengachari v. R. Ananthalakshmi Rangachari, AIR 1975 Mad 342, in which it had been laid down that monies in bank either in the survivor's or joint accounts, letters of administration is not necessary for claiming the same.	CLICK HERE

CORPORATE LAWS, SECURITIES LAWS AND CAPITAL MARKETS

S. No.	Particulars	Link
1.	SEBI issues clarification w.r.t. issuance and listing of perpetual debt instruments, perpetual non-cumulative preference shares and similar instruments under Chapter V of the SEBI (Issue and Listing of Non-convertible Securities) Regulations, 2021	CLICK HERE

S. No.	Particulars	Link
2.	SEBI has released the Advisory for SEBI Regulated Entities (REs) regarding best practices in Cybersecurity, in collaboration with the Financial Computer Security Incident Response Team (CSIRT-Fin).	CLICK HERE
3.	SEBI v. V. Shankar, Civil Appeal No 527 of 2023 (Supreme Court) The Hon'ble Supreme Court has held that a Company Secretary, while acting as a compliance officer in terms of the SEBI (Buyback of Securities) Regulations 1998, has to ensure that there is compliance of the company with the regulations relating to buyback of shares.	CLICK HERE



INDIRECT TAX

S.No.	Particulars	Link
1.	Central Excise Notification seeks to exempt Compressed Natural Gas (CNG) from so much of the duty of excise leviable on amount of GST paid on Biogas or Compressed Biogas which is blended with CNG.	CLICK HERE
2.	Central Excise Notification seeks to further amend Notification No. 04/2022-Central Excise, dated the 30th June, 2022, to reduce the Special Additional Excise Duty on Diesel to ₹1/litre.	CLICK HERE
3.	Service Tax Circular on the leviability of Service Tax on the declared service "Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act" under clause (e) of section 66E of the Finance Act, 1994.	CLICK HERE
4.	East India Hotels Ltd. Versus Commissioners of Customs, Central Excise and Central GST, 2023/DHC/000670 The Hon'ble Delhi High Court has held that where the aircraft was imported for private purposes and not for providing non-scheduled passenger or charter services, Condition No. 104 of Notification No. 21/2002-Cus for customs duty exemption is fulfilled and therefore exemption benefit is not available to the assessee. In terms of the notification, importers of aircraft are required to furnish an undertaking to the Deputy Commissioner of Customs or Assistant Commissioner of Customs, committing that the aircraft shall be used only for providing non-scheduled passenger services or non-scheduled charter services. If the importer fails to comply with the aforesaid condition to use the aircraft, the importer would be required to pay an amount equivalent to the duty payable on the aircraft.	CLICK HERE
5.	In the matter of M/s Myntra Designs Private Limited, KAR/AAAR/03/2023 The Karnataka Appellate Authority of Advance Ruling (AAAR) has held that Input Tax Credit (ITC) is not available on the vouchers and subscription packages procured by Myntra from third-party vendors. Relying on the judgement of the Hon'ble Karnataka High Court in the case of <i>M/s Premier Sales Promotion Pvt Ltd versus Union of India & Ors.</i> , the AAAR held that vouchers do not fall under the category of goods and services, and therefore, the issue and supply of vouchers would not attract GST.	CLICK HERE

CUSTOMS, SEZ AND FOREIGN TRADE

S.No.	Particulars	Link
1.	Customs notification seeks to further amend notification No. 50/2017-Customs, dated the 30th June, 2017, so as to revise/provide exemption(s) on the specified goods such as Pecan nuts, fish lipid oil for use in aquatic feed, Crude glycerine for use in manufacture of Epichlorohydrin etc.	CLICK HERE
2.	Customs Notification seeks to further amend notification No. 11/2021-Customs dated 1st February, 2021, so as to levy/exempt Agriculture and Infrastructure Development Cess (AIDC) on certain items such as silver and gold dore bar etc.	CLICK HERE
3.	Customs Notification seeks to further amend notification No. 11/2018-Customs, dated 2nd February, 2018, to revise/provide Social Welfare Surcharge (SWS) exemption(s) on specified goods such as goods falling under CTH 7110, 7113, 7114, 8703, 9503 etc.	CLICK HERE
4.	The DGFT has modified the import regulations for raw cashew nuts so that processing facilities operating within Special Economic Zones (SEZ) and export-oriented units (EOUs) are exempt from the minimum import price (MIP) requirement. The notification stated that imports by 100% EOUs and SEZs units would not be subject to the Minimum Import Price (MIP) on Cashew kernels (broken/whole), subject to the restriction that they not be sold into the domestic tariff area.	CLICK HERE
5.	M/s Cairn India Limited Versus Assistant Commissioner, Excise Appeal No. 53258 Of 2018, CESTAT New Delhi The Hon'ble CESTAT, New Delhi has held that no excise duty is payable on empty barrels used only for packing material. The Hon'ble Tribunal observed that where the empty barrels are only packing materials in which the inputs are received, and these barrels are not generated during the process of manufacture, no excise duty can be charged even on that scrap.	CLICK HERE
6.	Jindal Exports and Imports Pvt Ltd vs. Director General of Foreign Trade & Ors., 2023/DHC/001113 The Hon'ble Delhi High Court has ruled that a notification issued under Section 5 of the Foreign Trade (Development and Regulation) Act, 1992 (" FTDR Act "), which empowers the Central Government to formulate and announce the FTP, cannot be applied retrospectively by the Central Government. The Court held that once a notification issued under Section 5 of the FTDR Act is quashed by the Court, the same cannot be relied upon by the Directorate General of Foreign Trade (DGFT) to refuse Advance Authorization (AA) to an importer seeking import of certain goods, on the ground that the importer was not a party to the said proceedings before the Court.	CLICK HERE

INTELLECTUAL PROPERTY RIGHTS

S. No.	Particulars	Link
1.	Hermes International & Anr. v. Crimzon Fashion Accessories Private Limited, CS(COMM) 919/2022 The Hon'ble Delhi High Court has decreed the mark “  ” of Hermes International as a well-known trademark within the meaning of Section 2(zg) of the Trade Marks Act. The Plaintiff filed the present suit against Crimzon Fashion Accessories Private Limited for alleged infringement of its trademark “  ” for luxury footwear.	CLICK HERE
2.	Kentucky Fried Chicken International Holdings LLC v. The Registrar Of Trade Marks, C.A.(COMM.IPD-TM) 56/2022 An appeal was filed by KFC against the order of the Trade Marks Registry (TMR) refusing its application for the mark “Chicken Zinger” in Class 29 on the grounds that the word “Chicken” is a descriptive word and no exclusivity could be asserted. While allowing the appeal, the Hon'ble Delhi High Court held that while KFC has no exclusive right on the word “Chicken”, the trademark registry can consider its application for registration of mark “Chicken Zinger” in Class 29.	CLICK HERE
3.	Elsevier Ltd. And Ors. v. Alexandra Elbakyan And Ors., CS(COMM) 572/2020 The Hon'ble Delhi High Court has dismissed the application for rejection of Plaint filed by Alexandra Elbakyan, the founder of scientific shadow library website Sci-Hub and the defendant in the case, in a copyright infringement suit filed by publishing houses Elsevier, Wiley and American Chemical Society in a copyright infringement suit against her and Sci-Hub, among others.	CLICK HERE

[End of Newsletter]
