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The Institute of Cost Accountants of India

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INDIAN ECONOMY

News

➲ **India's manufacturing PMI at eight-month high in March on strong demand**

India's manufacturing business conditions improved in March on the back of better domestic demand and increased output, a private survey showed. At an eight-month high of 52.4 in March, the seasonally-adjusted Nikkei India Manufacturing Purchasing Managers' Index (PMI) pointed to a manufacturing upturn.

A reading above 50 on this survey-based index shows expansion, while a figure below that indicates contraction. The index was 51.1 in both January and February.

Read more at: http://articles.economictimes.indiatimes.com/2016-04-04/news/72041416_1_manufacturing-business-conditions-pmi-markit

➲ **Urban unemployment rate at 9.62%, rural 7.15%: BSE index**

The unemployment rate in urban areas stood at 9.62 per cent, much higher than the 7.15 per cent in rural pockets, says a BSE index. The overall figure for the country is 7.97 per cent, the index prepared by the top stock exchange BSE in collaboration with business information firm CMIE showed.

The index is based on responses from over 1.30 lakh individuals in about 39,600 households spread across 315 cities and 3,000 villages in India. As of April 6, the jobless rate (urban) stood at 9.62 per cent while that of rural areas was 7.15 per cent, the index showed.

Read more at: http://articles.economictimes.indiatimes.com/2016-04-07/news/72132533_1_unemployment-rate-bse-cent

➲ **India's services export down 13% in February at $12.3 billion**

India's services export fell by 12.6 per cent in February to $12.33 billion over the same month a year ago, the Reserve Bank data showed. In February 2015, the services export was at $14.09 billion.

Import of services too fell by 8.9 per cent to $7.19 billion during the month, as compared with $7.89 billion in February 2015, as per the RBI data on International Trade in Services.

Read more at: http://articles.economictimes.indiatimes.com/2016-04-18/news/72424752_1_provisional-aggregate-monthly-data-rbi-releases-services-sector

➲ **India's March trade deficit narrows to $5.07 billion: Government**

In line with expectations, India's full year exports for 2015-16 settled at $261.1 billion down 15.85% from $310 billion in 2014-15. Data released by the commerce and industry ministry showed that cumulative value of imports for the period April-March 2015-16 was $379.5 billion as against $448.03billion registering a 15.28% decline leaving a trade deficit of $118.5 billion during the year.

"The trend of falling exports is in tandem with other major world economies," the ministry said in a statement. Full year oil imports were down 40% while non-oil imports fell 4.12%.

However, led by an 80.48% drop in gold imports, India's trade deficit narrowed for the third straight month in March to $5.07 billion, the lowest in more than five years. March imports declined 21.56% at $27.78 billion outpacing the 5.47% fall in exports which were $22.71 billion. Exports have fallen for sixteen months in a row.

The data came days after the WTO cut its forecast for world trade in 2016 further from 3.9% earlier to 2.8%. In September last year, it had revised the estimate for 2016 downwards to 3.9% from 4.0%. However, the WTO expects global trade growth to rise to 3.6% in 2017. In March, 17 of the 30 exports sectors registered a fall in growth. Oil meal exports posted the steepest decline at 73.37% while petroleum products shipments fell 21.43%.

"While the rate of decline in overall exports has narrowed in March,2016, the problems are far from over for the engineering exports," said Chairman of the EEPC India, T S Bhasin adding that certain policy corrections are required to help the exporters who are in distress.

In March, oil imports at $4.79 billion were 35.3% down while non-oil imports declined 17.92% to $22.98 billion. Services exports for February were $12.32 billion, down 1.9% from $12.57 billion in January.

Read more at: http://articles.economictimes.indiatimes.com/2016-04-18/news/72424589_1_trade-deficit-engineering-exports-services-exports

➲ **April-February fiscal deficit at $86.5 billion: Government**

India's fiscal deficit was $86.49 billion during April-February, or 107.1 per cent of the full-year target, government data showed. The deficit was 117.5 percent of the full-year target during the

same period a year ago. The deficit figure tends to exceed the budgeted target nearer to the end of fiscal year, but gets adjusted against hefty tax inflows in March, when the fiscal year ends.

Read more at: http://articles.economictimes.indiatimes.com/2016-03-31/news/71952419_1_lakh-crore-cga-data-fiscal-deficit-target

BANKING

Notifications / Circulars

➲ **Master Direction – Amalgamation of Private Sector Banks, Directions, 2016**

In exercise of the powers conferred by Section 35A of the Banking Regulation Act, 1949 and pursuant to the Section 44A of the Banking Regulation Act, 1949, the Reserve Bank of India being satisfied that it is necessary and expedient in the public interest so to do, hereby, issues the Directions hereinafter specified.

1. Short Title and Commencement: These Directions shall be called the Reserve Bank of India (Amalgamation of Private Sector Banks) Directions, 2016.

2. Applicability:
a. The provisions of these Directions shall apply to all private sector banks licensed to operate in India by the RBI and to the Non-Banking Financial Companies (NBFC) registered with the RBI.
b. The principles underlying these Directions would be applicable, as appropriate, to public sector banks.

3. Definitions
(i) In these Directions, unless the context otherwise requires, the terms herein shall bear the meanings assigned to them below -
a. "Private Sector Banks" means banks licensed to operate in India under Banking Regulation Act, 1949, other than Urban Co-operative Banks, Foreign Banks and banks licensed under specific Statutes.
b. "Amalgamated Company" means the company which is proposed to transfer its business to another company under the scheme of amalgamation.
c. "Amalgamating Company" means the company which is to acquire the business of the amalgamated company under the scheme of amalgamation.
(ii) All other expressions unless defined herein shall have the same meaning as have been assigned to them under the Banking Regulation Act, 1949 or the Reserve Bank of India Act, 1934 or as used in commercial parlance, as the case may be.

4. Scope: These guidelines shall cover the undernoted situations:
a. An amalgamation of two banking companies.
b. An amalgamation of an NBFC with a banking company.

5. Statutory Provisions:
a. The Reserve Bank has discretionary powers to approve the voluntary amalgamation of two banking companies under the provisions of Section 44A of the Banking Regulation Act, 1949.
b. Voluntary amalgamation of a NBFC with a banking company is governed by sections 232 to 234 of the Companies Act, 2013 in terms of which, the scheme of amalgamation has to be approved by the Tribunal.

Read more at: https://www.rbi.org.in/scripts/NotificationUser.aspx?Id=10364&Mode=0

Source: Notification No. RBI/DBR/2015-16/22 [Master Direction DBR.PSBD.No. 96/16.13.100/2015-16] dated: April 21, 2016

➲ **Master Direction - Issue and Pricing of shares by Private Sector Banks, Directions, 2016**

In exercise of the powers conferred by 35 A of the Banking Regulation Act, 1949 the Reserve Bank of India being satisfied that it is necessary and expedient in the public interest so to do, hereby, issues the Directions hereinafter specified.

1. Short Title and Commencement: These Directions shall be called the Reserve Bank of India (Issue and Pricing of Shares by Private Sector Banks) Directions, 2016.
2. Applicability: The provisions of these Directions shall apply to all private sector banks licensed by RBI to operate in India.
3. Definitions:
(i) In these Directions, unless the context otherwise requires, the terms herein shall bear the meanings assigned to them below –
"Private Sector Banks" means banks licensed to operate in India under Banking Regulation Act, 1949, other than Urban Co-operative Banks, Foreign Banks and banks licensed under specific Statutes.
(ii) All other expressions unless defined herein shall have the same meaning as have been assigned to them under the Banking Regulation Act, 1949 or the Reserve Bank of India Act, 1934 or SEBI Guidelines or Companies Act and rules made there under or as used in commercial parlance, as the case may be.

Read more at: https://www.rbi.org.in/Scripts/BS_ViewMasDirections.aspx?id=10363

Source: Notification No. RBI/DBR/2015-16/21 [Master Direction DBR.PSBD.No.95/16.13.100/2015-16] dated: April 21, 2016

➲ **Infrastructure Debt Funds (IDFs)**

In reference to the Infrastructure Debt Fund-Non-Banking

Financial Companies (Reserve Bank) Directions, 2011 issued vide Notification No.DNBS.233/CGM(US)-2011 dated: November 21, 2011 (the Directions) prescribing detailed guidelines on the regulatory framework for NBFCs to sponsor IDFs which are to be set up as NBFCs. In terms of the extant instructions, IDF-NBFCs are allowed to raise resources through issue of bonds of minimum five year maturity. On a review, with a view to facilitate better ALM, it has been decided in consultation with the Government of India, to allow IDF-NBFCs to raise funds through shorter tenor bonds and commercial papers (CPs) from the domestic market to the extent of upto 10 per cent of their total outstanding borrowings.

Source: Notification No. RBI/2015-16/381 [DNBR(PD).CC.No. 079/03.10.001/2015-16] dated: April 21, 2016

Read more at: https://rbi.org.in/Scripts/NotificationUser.aspx?Id=10362&Mode=0

➲ **Unsecured Exposure Norms for UCBs – Relaxation**

In reference to circulars UBD.BPD. (PCB) Cir No.45/13.05.000/2012-13 dated April 03, 2013 and UBD. CO. BPD. (PCB) Cir. No.29/13.05.000/2013-14 dated October 10, 2013 on the captioned subject permitting UCBs fulfilling certain conditions to grant unsecured loans and advances beyond the extant ceiling of 10% of total assets as per audited balance sheet as on March 31 of the previous financial year.

In order to provide further impetus to Urban Cooperative Banks (UCBs) engaged in financial inclusion the instructions have been reviewed and it has been decided as under:

(i) UCBs whose priority sector loan portfolio is not less than 90% of the gross loans may be allowed to grant unsecured advances to the extent of 35 % of their total assets as per the audited balance sheet at the end of the preceding financial year, subject to the following conditions:
a. The entire unsecured loan portfolio in excess of the normally permitted 10%, shall comprise of priority sector loans and the exposure to any individual borrower shall not exceed Rs. 40,000/-.
b. The bank complies with the eligibility criteria prescribed in para 3.

(ii) The dispensation for banks whose priority sector lending portfolio is less than 90 % will continue to be the same as mentioned in our circular UBD CO BPD (PCB) Cir. No.29/13.05.000/2013-14 dated October 10, 2013.

For being eligible for the dispensation either under para 2(i) or 2 (ii), the UCB should have met the following criteria as per the latest Inspection Report and audited financial statements:
a. CRAR of not less than 9%
b. Gross NPAs of not more than 7%

Read more at: https://rbi.org.in/Scripts/NotificationUser.aspx?Id=10361&Mode=0

➲ **Guidelines on Investment Advisory Services offered by Banks**

In reference to paragraphs 86, 87 and 88 of the Monetary Policy Statement 2013-14 and the subsequent draft guidelines on Wealth Management/Marketing/Distribution Services offered by Banks issued on June 28, 2013, seeking comments of stakeholders. The draft guidelines dealt with, inter alia, Investment Advisory Services (IAS) offered by banks, and the concerns arising from the conflict of interest between these activities and the marketing/ distribution activities of banks.

IAS is defined and regulated by SEBI under the SEBI (Investment Advisors) Regulations, 2013, and entities offering these activities need to be registered with SEBI. In view of the same it is advised that henceforth, banks cannot undertake IAS departmentally. Accordingly, banks desirous of offering these services may do so either through a separate subsidiary set up for the purpose or one of the existing subsidiaries after ensuring that there is an arm's length relationship between the bank and the subsidiary.

The sponsor bank should obtain specific prior approval of Department of Banking Regulation before offering IAS through an existing subsidiary or for setting up a subsidiary for this purpose. (Setting up of any subsidiary will, as hitherto, be subject to the extant guidelines on para-banking activities of banks).

Read more at: https://rbi.org.in/Scripts/NotificationUser.aspx?Id=10360&Mode=0

Source: Notification No. RBI/2015-16/379 [DBR.No.FSD. BC.94/24.01.026/2015-16] dated: April 21, 2016

➲ **Foreign Investment in units issued by Real Estate Investment Trusts, Infrastructure Investment Trusts and Alternative Investment Funds governed by SEBI regulations**

Attention of Authorised Dealers Category – I (AD Category - I) banks is invited to the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations 2000, notified vide Notification No. FEMA 1/2000-RB dated May 3, 2000, as amended from time to time and Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000, notified vide Notification No. FEMA 20/2000-RB dated May 3, 2000, as amended from time to time (Principal Regulations).

With a view to rationalising foreign investment regime for Alternative Investment vehicles and to facilitating foreign investment in collective investment vehicles for real estate and

infrastructure sectors, it has been decided, in consultation with the Government of India, to allow foreign investment in the units of Investment Vehicles registered and regulated by SEBI or any other competent authority. At present, Investment Vehicle will include the following:

a. Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations 2014;
b. Infrastructure Investment Trusts (InvITs) registered and regulated under the SEBI (InvITs) Regulations, 2014;
c. Alternative Investment Funds (AIFs) registered and regulated under the SEBI (AIFs) Regulations 2012.

Further, unit shall mean beneficial interest of an investor in the Investment Vehicle and shall include shares or partnership interests.

The salient features of the new investment regime are:

i. A person resident outside India including a Registered Foreign Portfolio Investor (RFPI) and a Non-Resident Indian (NRI) may invest in units of Investment Vehicles.
ii.The payment for the units of an Investment Vehicle acquired by a person resident or registered / incorporated outside India shall be made by an inward remittance through the normal banking channel including by debit to an NRE or an FCNR account.
iii. A person resident outside India who has acquired or purchased units in accordance with the regulations may sell or transfer in any manner or redeem the units as per regulations framed by SEBI or directions issued by RBI.
iv. Downstream investment by an Investment Vehicle shall be regarded as foreign investment if either the Sponsor or the Manager or the Investment Manager is not Indian 'owned and controlled' as defined in Regulation 14 of the Principal Regulations.
v. In case the sponsors or managers or investment managers are organized in a form other than companies or LLPs, SEBI shall determine whether the sponsor or manager or investment manager is foreign owned and controlled.
vi. The extent of foreign investment in the corpus of the Investment Vehicle will not be a factor to determine as to whether downstream investment of the Investment Vehicle concerned is foreign investment or not.
vii. Downstream investment by an Investment Vehicle that is reckoned as foreign investment shall have to conform to the sectoral caps and conditions / restrictions, if any, as applicable to the company in which the downstream investment is made as per the FDI Policy or Schedule 1 of the Principal Regulations.
viii. Downstream investment in an LLP by an Investment Vehicle that is reckoned as foreign investment has to conform to the provisions of Schedule 9 of the Principal Regulations as well as the extant FDI policy for foreign investment in LLPs.
ix. An Alternative Investment Fund Category III with foreign investment shall make portfolio investment in only those securities or instruments in which a RFPI is allowed to invest.
Source: Notification No. RBI/2015-16/377 [A.P. (DIR Series) Circular No. 63], dated: April 21, 2016

Read more at: https://rbi.org.in/Scripts/NotificationUser.aspx?Id=10358&Mode=0

➲ **Overseas Direct Investment (ODI) – Rationalization and reporting of ODI Forms**

At present, application for ODI is required to be made in Form ODI – Part I (comprising six sections) for direct investments in Joint Venture (JV) / Wholly Owned Subsidiary (WOS) under automatic route / approval route. Further, remittances and other forms of financial commitment undertaken by the Indian Party (IP) are reported in Form ODI Part II. Annual Performance Report (APR) on the functioning of overseas JV / WOS in Form ODI Part III and details of disinvestment in Form ODI Part IV are currently required to be submitted through the designated Authorised Dealer Bank (AD bank). While Form ODI Part I and Part III are required to be submitted by the applicant undertaking ODI, the Form ODI Part II and Part IV are to be submitted by the AD bank on behalf of the applicant. In order to capture all data pertaining to the IP undertaking ODI as well as the related transaction, it has been decided to subsume Form ODI Part II within Form ODI Part I. Thus the Form ODI will have five sections instead of six.

The rationalised and revised Form ODI (Annex I) will now comprise the following parts:

Part I – Application for allotment of Unique Identification Number (UIN) and reporting of Remittances / Transactions:
- Section A – Details of the IP / RI.
- Section B – Capital Structure and other details of JV/ WOS/ SDS.
- Section C - Details of Transaction/ Remittance/ Financial Commitment of IP/ RI.
- Section D – Declaration by the IP/ RI.
- Section E – Certificate by the statutory auditors of the IP/ self-certification by RI.

Part II - Annual Performance Report (APR)

Part III – Report on Disinvestment by way of:
- Closure / Voluntary Liquidation / Winding up/ Merger/ Amalgamation of overseas JV / WOS;
- Sale/ Transfer of the shares of the overseas JV/ WOS to another eligible resident or non-resident;
- Closure / Voluntary Liquidation / Winding up/ Merger/ Amalgamation of IP; and
- Buy back of shares by the overseas JV/ WOS of the IP / RI.

Further, a new reporting format has also been introduced for

Venture Capital Fund (VCF) / Alternate Investment Fund (AIF), Portfolio Investment and overseas investment by Mutual Funds.

Source: Notification No. RBI//2015-16/374, A.P. (DIR Series) Circular No.62, dated: April 13, 2016

Read more at: https://rbi.org.in/Scripts/NotificationUser.aspx?Id=10351&Mode=0

➲ **Issuance of Rupee denominated bonds overseas**

Attention of Authorized Dealer Category - I (AD Category - I) banks is invited to the provisions contained in A.P. (DIR Series) circular No. 17 dated September 29, 2015 on issuance of Rupee denominated bonds overseas and paragraph no. 3.2, 3.3.1, 3.3.3 and 3.3.9 of Master Direction No.5 dated January 1, 2016 on External Commercial Borrowings, Trade Credit, Borrowing and Lending in Foreign Currency by Authorized Dealers and Persons other than Authorized Dealers. Attention of Authorized Dealer Category - I (AD Category - I) banks is also invited to paragraph no. 30 and 31 of the Fourth Bi-Monthly Monetary Policy Statement, 2015-16 issued on September 29, 2015, in terms of which:

- The limits for Foreign Portfolio Investment (FPI) in debt securities is to be announced / fixed in Rupee terms and;
- The issuance of Rupee denominated bonds overseas will be within the aggregate limit of foreign investment permitted in corporate debt as notified from time to time.

According to the Monetary Policy Statement, the current limit of USD 51 billion for foreign investment in corporate debt, as was given in A.P. (DIR Series) circular No. 94 dated April 01, 2013, has been fixed in Rupee terms at Rs. 2443.23 billion. Issuance of Rupee denominated bonds overseas will be within this aggregate limit of foreign investment in corporate debt.

With fixing of aggregate limit of foreign investment in corporate debt in Rupee terms, the provision at Sr. No. 7 of the table in the Annex to the aforesaid circular dated September 29, 2015 regarding the amount of borrowing by issuance of Rupee denominated bonds overseas has also been modified. As the overall limit is now prescribed in Rupee terms, the maximum amount which can be borrowed by an entity in a financial year under the automatic route by issuance of these bonds will be Rs. 50 billion and not USD 750 million as given in the circular. Proposals to borrow beyond Rs. 50 billion in a financial year will require prior approval of the Reserve Bank.

Further, in order to have consistency regarding eligibility of foreign investors in corporate debt, the criteria for investors and location for issuance of these bonds has been modified. The Rupee denominated bonds can only be issued in a country and can only be subscribed by a resident of a country:

a. that is a member of Financial Action Task Force (FATF) or a member of a FATF- Style Regional Body; and

b. whose securities market regulator is a signatory to the International Organization of Securities Commission's (IOSCO's) Multilateral Memorandum of Understanding (Appendix A Signatories) or a signatory to bilateral Memorandum of Understanding with the Securities and Exchange Board of India (SEBI) for information sharing arrangements; and

c. should not be a country identified in the public statement of the FATF as:

(i) A jurisdiction having a strategic Anti-Money Laundering or Combating the Financing of Terrorism deficiencies to which counter measures apply; or

(ii) A jurisdiction that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the Financial Action Task Force to address the deficiencies.

It has been decided to reduce the minimum maturity period for Rupee denominated bonds issued overseas to three years in order to align with the maturity prescription regarding foreign investment in corporate bonds through the Foreign Portfolio Investment (FPI) route.

Accordingly, the criteria mentioned at Sr. No. 3 and 4 of the table in the Annex to the aforesaid circular dated September 29, 2015 for recognized investors and maturity respectively, stands modified.

Borrowers issuing Rupee denominated bonds overseas should incorporate clause in the agreement / offer document so as to enable them to obtain the list of primary bond holders and provide the same to the regulatory authorities in India as and when required. The agreement / offer document should also state that the bonds can only be sold / transferred / offered as security overseas subject to compliance with aforesaid IOSCO / FATF jurisdictional requirements.

Source: Notification No. RBI/2015-16/372 [A.P. (DIR Series) Circular No.60], dated: April 13, 2016

Read more at: https://rbi.org.in/Scripts/NotificationUser.aspx?Id=10350&Mode=0

➲ **Overseas Direct Investment - Submission of Annual Performance Report**

Attention of the Authorised Dealer (AD - Category I) banks is invited to the Notification No. FEMA 120/RB-2004 dated July 7, 2004 [Foreign Exchange Management (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2004] (the Notification), as amended from time to time. Attention of AD

Category – I banks is also invited to A. P. (DIR Series) Circular No. 68 dated June 01, 2007 on Rationalisation of Forms, A. P. (DIR Series) Circular No. 29 dated September 12, 2012 on rationalisation of guidelines relating to submission of the Annual Performance Report (APR), A. P. (DIR Series) Circular No. 24 dated August 14, 2013 on Liberalised Remittance Scheme (LRS) by Resident Individuals under which they were allowed to set up JV / WOS outside India and para B.14 of FED Master Direction No. 15 /2015-16 dated January 1, 2016.

At present, an Indian Party (IP) / Resident Individual (RI) which has made an Overseas Direct Investment (ODI) has to comply with certain obligations prescribed under the Notification No. FEMA 120/RB-2004 dated July 07, 2004 as amended from time to time. One of these includes obligation for submission of an Annual Performance Report (APR) in Form ODI Part III to the Reserve Bank by 30th of June every year in respect of each Joint Venture (JV) / Wholly Owned Subsidiary (WOS) outside India set up or acquired by the IP / RI (as prescribed under Regulation 15 of FEMA Notification, ibid).

It has been observed that:

a. IP / RI are either not regular in submitting the APR or are submitting it with delay. This is not in line with Regulation 15 of the Notification, ibid.

b. Remittance/s and other forms of financial commitment are often facilitated by the designated Authorised Dealer bank (AD bank) under automatic route even though APR in respect of all overseas JV / WOS of the IP / RI effecting such remittance/s have not been submitted. This is in contravention of Regulation 6(2) (iv) of the Notification, ibid.

In order to provide AD banks greater capability to track submission of APRs and also improve compliance level in the matter of submission of APRs by the IPs / RIs, it is now advised as under:

- The online OID application has been suitably modified to enable the nodal office of the AD bank to view the outstanding position of all the APRs pertaining to an applicant including for those JV / WOS for which it is not the designated AD bank. Accordingly, the AD bank, before undertaking / facilitating any ODI related transaction on behalf of the eligible applicant, should necessarily check with its nodal office to confirm that all APRs in respect of all the JV / WOS of the applicant have been submitted;
- Certification of APRs by the Statutory Auditor or Chartered Accountant need not be insisted upon in the case of Resident Individuals. Self-certification may be accepted;
- In case multiple IPs / RIs have invested in the same overseas JV / WOS, the obligation to submit APR shall lie with the IP / RI having maximum stake in the JV / WOS. Alternatively, the IPs / RIs holding stake in the overseas JV / WOS may mutually agree to assign the responsibility for APR submission to a designated entity which may acknowledge its obligation to submit the APR in terms of Regulation 15 (iii) of Notification, ibid, by furnishing an appropriate undertaking to the AD bank;
- An IP / RI, which has set up / acquired a JV / WOS overseas in terms of the Regulations of the Notification, ibid, shall submit, to the AD bank every year, an APR in Form ODI Part II in respect of each JV / WOS outside India and other reports or documents by 31st of December each year or as may be specified by the Reserve Bank from time to time. The APR, so required to be submitted, shall be based on the latest audited annual accounts of the JV / WOS unless specifically exempted by the Reserve Bank.

Source: Notification No. RBI/2015-16/373 [A.P. (DIR Series) Circular No.61] dated: April 13, 2016

Read more at: https://rbi.org.in/Scripts/NotificationUser.aspx?Id=10349&Mode=0

➲ **Non-Banking Financial Company-Micro Finance Institutions (Reserve Bank) Directions, 2011 – Acting as Channelizing Agents for Schemes operated by Central/State Government Agencies**

In reference to the Non-Banking Financial Company -Micro Finance Institutions (NBFC-MFIs) (Reserve Bank) Directions, 2011 (the Directions) issued by Reserve Bank of India (the Bank) vide Notification DNBS.PD.No.234/ CGM (US)- 2011 dated December 02, 2011 as modified from time to time.

In terms of the directions, one of the eligibility criteria for loans granted by NBFC-MFIs to be treated as "Qualifying Assets" is that the variance between the maximum and minimum interest rate charged should not exceed four percent. Various Government Agencies that provide loans to targeted socio-economic sections of the population have been approaching the Bank to allow them to use the NBFC-MFIs to channelize such loans. Since these loans are provided at concessional interest rates, it has been requested to exempt such loans from the regulation regarding maximum permissible variance in the interest rates.

With a view to facilitate the use of NBFC-MFI network to distribute such targeted loans, it has been decided that:

(i) Loans disbursed or managed by NBFC-MFIs in their capacity as channelizing agents for Central/State Government Agencies shall be considered as a separate business segment. These loans shall not be included either in the numerator (qualifying assets) or the denominator (total assets) for the purpose of determining the minimum qualifying assets criteria, at present, 85 percent;

(ii) consequent to (i) above, the interest charged on such loans shall be excluded for determining the variance between the maximum and minimum interest rate;

(iii) the cost of such funds shall not be reckoned for arriving at

average cost of funds as well as interest rates charged to borrowers as per NBFC-MFIs directions.

In the circumstances, the NBFC-MFIs are hereby granted general permission to act as channelizing agents for distribution of loans under special schemes of Central/State Government Agencies subject to following conditions:

(a) accounts and records for such loans as well as funds received/ receivable from concerned agencies shall be maintained in the books of NBFC-MFIs distinct from other assets and liabilities, and depicted in the financials/ final accounts/balance sheet with requisite details and disclosures as a separate segment;

(b) such loans shall be subject to applicable asset classification, income recognition and provisioning norms as well as other prudential norms as applicable to NBFC-MFIs except in cases where the NBFC-MFI does not bear any credit risk;

(c) all such loans shall be reported to credit information companies (CICs) to prevent multiple borrowings and present complete picture of indebtedness of a borrower.

Source: Notification No. RBI/2015-16/370 [DNBR.CC.PD. No.078/03.10.038/2015-16] dated: April 13, 2016

Read more at: https://rbi.org.in/Scripts/NotificationUser.aspx?Id=10347&Mode=0

➲ **Applicability of Concentration of Credit/ Investment Norms**

In terms of second proviso to sub para (1) of para 24 of the Systemically Important Non-Banking Financial (Non-Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2015, any non-banking financial company not accessing public funds, either directly or indirectly, or not issuing guarantees may make an application to the Bank for an appropriate dispensation from the concentration of credit/ investment norms.

On a review, it has been decided that concentration of credit/ investment norms shall not apply to a systemically important non-banking financial company not accessing public funds in India, either directly or indirectly, and not issuing guarantees.

Source: Notification No. RBI/2015-16/363 [DNBR (PD) CC.No.077/03.10.001/2015-16] dated: April 7, 2016

Read more at: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10336&Mode=0

➲ **Section 42(1) of the Reserve Bank of India Act, 1934 - Change in Daily Minimum Cash Reserve Maintenance Requirement**

As announced in the First Bi-Monthly Monetary Policy Statement 2016-17 dated April 5, 2016, it has been decided to reduce the minimum daily maintenance of the Cash Reserve Ratio from 95 per cent of the requirement to 90 per cent effective from the fortnight beginning April 16, 2016.

Source: Notification No. RBI/2015-16/359 [DBR.No.Ret.BC.91 /12.01.001/2015-16] dated: April 5, 2016

Read more at: https://rbi.org.in/scripts/NotificationUser.aspx?Id=10332&Mode=0

➲ **Liquidity Adjustment Facility – Repo and Reverse Repo Rates**

Reduction in the Repo rate under the Liquidity Adjustment Facility (LAF) by 25 basis points from 6.75 per cent to 6.50 per cent. Further, the Reverse Repo rate under the LAF has been increased by 25 basis points from 5.75 percent to 6.00 percent vide *Notification No. RBI/2015-2016/357 [FMOD.MAOG. No. 112 /01.01.001/2015-16] dated: April 05, 2016.*

Read more at: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10330&Mode=0

➲ **Marginal Standing Facility**

Marginal Standing Facility (MSF) rate has been reduced by 75 basis points from 7.75 per cent to 7.00 percent with immediate effect vide *Notification No. RBI/2015-2016/356 [FMOD.MAOG. No.113 /01.18.001/2015-16] dated: April 5, 2016.*

Read more at: https://www.rbi.org.in/scripts/NotificationUser.aspx?Id=10329&Mode=0

➲ **Change in Bank Rate**

As announced in the First Bi-Monthly Monetary Policy Statement 2016-17 dated April 05, 2016, the Bank Rate stands adjusted by 75 basis points from 7.75 per cent to 7.0 per cent with effect from April 05, 2016.

Penal Interest Rates which are linked to the Bank Rate:

Item	Existing Rate	Revised Rate (Effective from April 05, 2016)
Penal interest rates on short-falls in reserve requirements (depending on duration of shortfalls).	Bank Rate plus 3.0 percentage points (10.75 per cent) or Bank Rate plus 5.0 percentage points (12.75 per cent).	Bank Rate plus 3.0 per-centage points (10.00 per cent) or Bank Rate plus 5.0 percentage points (12.00 per cent).

Source: Notification No. RBI/2015-16/358 [DBR.No.Ret. BC.90/12.01.001/2015-16] dated: April 05, 2016

Read more at: https://www.rbi.org.in/scripts/NotificationUser.aspx?Id=10331&Mode=0

➲ **Standing Liquidity Facilities for Primary Dealers**

In reference to the First Bi-monthly Monetary Policy statement 2016-17 repo rate under the Liquidity Adjustment Facility (LAF) has been reduced by 25 basis points from 6.75 per cent to 6.50 per cent with immediate effect. Accordingly, the Standing Liquidity Facility provided to Primary Dealers (PDs) (collateralised liquidity support) from the Reserve Bank would be available at the revised repo rate, i.e., at 6.50 per cent with effect from April 5, 2016.

Source: Notification No. RBI/2015-16/355 [REF.No.MPD.BC.380 /07.01.279/2015-16] dated: April 5, 2016

➲ **F-TRAC – Counterparty Confirmation**

RBI has been decided to allow entities reporting trades on F-TRAC to enter into multilateral agreement drafted by the Fixed Income Money Market and Derivatives Association ("FIMMDA") for waiving physical exchange of confirmation for the deals in Commercial Papers (CPs), Certificates of Deposit (CDs), Non-Convertible Debentures (NCDs) of original maturity up to one year and repo trades in corporate debt securities, CPs and CDs.

Source: Notification No. RBI/2015-16/387 [FMRD. FMID.8/14.01.02/2015-16] dated: April 28, 2016

CENTRAL EXCISE

Notifications / Circulars

➲ **CENVAT Credit (Fifth Amendment) Rules, 2016**

In exercise of the powers conferred by section 37 of the Central Excise Act,1944 (1 of 1944) and section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules further to amend the CENVAT Credit Rules, 2004, namely CENVAT Credit (Fifth Amendment) Rules, 2016.
In the CENVAT Credit Rules, 2004 (hereinafter referred to as the said rules), in rule 4, in sub rule (7), -
(i) in the fifth proviso, after the words "documents specified in sub-rule (1) of rule 9", the words "except in case of services provided by Government, local authority or any other person, by way of assignment of right to use any natural resource" shall be inserted;
(ii) for the sixth, seventh and eighth proviso, the following provisos shall be substituted, namely :-
"Provided also that CENVAT Credit of Service Tax paid in a financial year, on the one time charges payable in full upfront or in installments, for the service of assignment of the right to use any natural resource by the Government, local authority or any other person, shall be spread evenly over a period of three years: Provided also that where the manufacturer of goods or provider of output service, as the case may be, further assigns such right assigned to him by the Government or any other person, in any financial year, to another person against consideration, such amount of balance CENVAT credit as does not exceed the service tax payable on the consideration charged by him for such further assignment, shall be allowed in the same financial year."

Source: Notification No. 24/2016- Central Excise (N.T.) dated: 13th April, 2016

Read more at: http://www.cbec.gov.in/resources//htdocs-cbec/excise/cx-act/notifications/notfns-2016/cx-nt2016/cent24-2016.pdf

➲ **Amendment in CENVAT Credit Rules, 2004**

In exercise of the powers conferred by section 37 of the Central Excise Act, 1944 (1 of 1944) and section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules further to amend the CENVAT Credit Rules,2004,namely CENVAT Credit (Fourth Amendment) Rules, 2016.

In the CENVAT Credit Rules, 2004,-

(a) in rule 6, in sub-rule (3) for clause (i), the following clause shall be substituted , namely :-
"(i) pay an amount equal to six per cent. of value of the exempted goods and seven per cent. of value of the exempted services subject to a maximum of the sum total of opening balance of the credit of input and input services available at the beginning of the period to which the payment relates and the credit of input and input services taken during that period; or" ;
(b) in rule 7B, in sub-rule (1) for the words and figures "invoices, issued in terms of the provisions of the Central Excise Rules, 2002," the words and figure "documents specified under rule 9," shall be substituted.

Note. - The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide notification No. 23/2004 - Central Excise (N.T.) dated the 10th September, 2004 vide number G.S.R. 600(E) dated the 10th September, 2004 and last amended vide notification No. 13/2016(N.T.)- Central Excise (N.T.) dated 1st March, 2016 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 244 (E) , dated the 1st March, 2016.

Source: Notification No. 23 /2016- Central Excise (N.T.), dated: 1st April, 2016

Read more at: http://www.cbec.gov.in/resources//htdocs-cbec/excise/cx-act/notifications/notfns-2016/cx-nt2016/cent23-2016.pdf

➲ **Extension of time limit for taking Central Excise registration by a jewellery establishment and payment of central excise duty for the assessee jeweller vide Notification No. 1026/14/2016-CX, dated: 23-04-2016.**

Read more at: http://www.cbec.gov.in/resources//htdocs-cbec/excise/cx-circulars/cx-circulars-2016/circ1026-2016cx.pdf

➲ CBEC seeks to amend notification No. 12/2012-Central Excise dated 17.03.2012 to prescribe simplified procedure for units engaged in Maintenance, Repair and Overhaul of aircrafts vide Notification No. 19/2016-CE, dt. 26-04-2016.

Read more at: http://cbec.gov.in/resources/htdocs-cbec/excise/cx-act/notifications/notfns-2016/cx-tarr2016/ce19-2016.pdf

➲ **CBEC clarifies on Excise ability of Waste Oil**

The CBEC has issued Circular number 1024/12/2016-CX dated 11 April 2016 to clear doubts raised by its field formations on the excise ability of waste oil. The circular, drawing reference to the headings and chapter notes in the central excise tariff, instructs the field formations that waste oil is excisable if processes amounting to manufacture (including deemed manufacture as per chapter note 4 to chapter 27 of the said tariff) have been carried out.

The circular can be seen at: http://cbec.gov.in/resources//htdocs-cbec/excise/cx-circulars/cx-circulars-2016/circ1024-2016cx.pdf

Case Laws:

➲ **Excise exemption available on ACs designed for use in mobile operation theatres if supplied for 'defence research'**

Air-Conditioners designed for use in 'mobile operation theatres' for use by Indian Army and supplied to Medical/ Defence Research Organisations for 'research purposes' are exempt from excise duty under Notification No. 10/97-C.E

Section 5A of the Central Excise Act, 1944 - Exemptions - Central Excise - Supplies to Research Institutions - Assessee supplied Air-Conditioners (AC) to Medical/Defence Research Organisations and said ACs were specially designed for use in 'mobile operation theatres' for use by Indian Army in field - Assessee claimed excise exemption under Notification 10/97-CE - Department denied exemption on ground that goods were not meant for research purposes - Assessee argued that goods were suited specifically for research and relevant certificates were produced - HELD : AC system supplied by assessee was required for unique design and technical specification on temperature, humidity, air flow which is specific Defence requirement - Excise duty exemption certificate issued to assessee was signed by Research Director of Joint Secretary level, higher than requirement of Deputy Secretary level - Goods were meant for research purposes and buyer was also a public sector institution - Hence, assessee was entitled to excise duty exemption. [In favour of assessee]
Circulars and Notifications : Notification No. 10/97-C.E., dated 1-3-1997

Case Laws: CESTAT, Mumbai Bench, Auto Aircon (India) Ltd. v. Commissioner of Central Excise, Pune III

➲ **Time-limit for claiming rebate in case of export starts when docs confirming such export are furnished to assessee**

Where Adjudicating Authority relying upon provision of section 11B of Central Excise Act rejected claim of assessee for rebate of duty paid on export of goods on ground that rebate claim was filed after expiry of one year from date after export of goods, starting point for computation of period of one year would begin when documents for substantiating claim of rebate were furnished by department to assessee

Rule 18 of the Central Excise Rules, 2002 read with section 11B of the Central Excise Act, 1944 - Rebate of duty - Assessee exported certain goods on 14-7-2008 - Later on 10-9-2009 it filed a claim under rule 18 of Central Excise Rules read with Notification No. 19/2004 - C.E. (NT), dated 6-9-2004 for rebate of duty paid on export of goods - Adjudicating Authority relying upon section 11B rejected claim on ground of limitation stating that rebate claim was filed after expiry of one year from date after export of goods - Assessee contended that section 11B would not be applicable to instant case, if at all same was considered to be applicable, then date of release of necessary documents by department shall be date for computation of limitation - Whether starting point for computation of period of one year would begin when documents necessary for substantiating claim of rebate were furnished by department to assessee - Held, yes [In favour of assessee]

Circulars and Notifications: Notification No. 19/2004 - C.E .(NT), dated 6-9-2004. Notification No. 41/94- C.E., dated 12-9-1994.

FACTS

- The assessee exported certain goods on 14-7-2008.
- Later on 10-9-2009 it filed a claim under rule 18 of the Central Excise Rules read with Notification No. 19/2004 - C.E .(NT), dated 6-9-2004 for rebate of duty paid on the export of goods.
- The Adjudicating Authority relying upon the provision of section 11B of the Central Excise Act rejected the claim on the ground of limitation stating that the rebate claim was filed after expiry of one year from the date after export of goods.
- Both the First Appellate Authority and the Joint Commissioner upheld the order of the Adjudicating Authority.

▪ On writ, the assessee contended that the provision of section 11B would not be applicable to the instant case. If at all the same was considered to be applicable, then the date of release of the necessary documents by the department shall be the date for computation of limitation.

HELD

▪ Section 11B, inter alia, provides that any person claiming refund of any duty of excise and interest, if any, paid on such duty, may make an application for refund of such duty and interest if any, paid on such duty, to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise before the expiry of one year from the relevant date in such form and manner as may be prescribed and the application shall be accompanied by such documentary or other evidence including the documents referred to in section 12A as the applicant may furnish to establish that the amount of duty of excise and interest, if any, paid on such duty in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such duty and interest, if any, paid on such duty had not been passed on by him to any other person. Second proviso to section 11B provides that limitation of one year shall not apply where any duty and interest, if any, paid on such duty has been paid under protest.

▪ Rule 18 provides that where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such goods and the rebate shall be subject to such conditions or limitations, if any, and fulfilment of such procedure, as may be specified in the notification.

▪ The Notification dated 6-9-2004 has been issued by the Central Government in this behalf laying down in its clause (2) the conditions and limitations for grant of rebate. Clause 3(b) of the Notification provides that claim of the rebate of duty paid on all excisable goods shall be lodged along with original copy of the application to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacture or warehouse or, as the case may be, the Maritime Commissioner. It is thus clear that the claim would be maintainable only when the original documents are produced.

▪ There is no quarrel with proposition that if statute provided for limitation, it has to be adhered to. What however is being claimed by the assessee is different. The question which arises in the instant case is as to what should be the starting point for computation of this period of one year.

▪ The Gujarat High Court in the case of Cosmonaut Chemicals v. Union of India 2008 taxmann.com 1346 has held that any procedure prescribed by a subsidiary legislation has to be in aid of justice and procedural requirements cannot be read so as to defeat the cause of justice. The claimant cannot be asked to tender deficient claim within limitation period and claim cannot be simultaneously treated as not filed till documents furnished, if the manual of supplementary instruction indicating that refund or rebate claim deficient in any manner to be admitted when delay in providing document is attributable to the department. Where the lapse as to non-availability of requisite document is on account of Central Excise Department or Customs Department, this would be mitigating circumstance flowing from the aforesaid legislative scheme.

▪ Limitation is to be considered in the light of availability of requisite documents and should be taken to begin when documents necessary for substantiating the claim of refund are furnished by the department, which should be the starting point for computation of limitation.

▪ In view of the above, the assessee was entitled to rebate of duty. Therefore, the Adjudicating Authority was to be directed to allow the rebate to the assessee together with interest.

Case Law: High Court of Rajasthan, Gravita India Ltd. v. Union of India

➲ **Extended period can't be invoked if evasion penalty is set aside due to non-allegation of suppression against assessee.**

Where Commissioner (Appeals) set aside penalty on ground that there was no allegation of suppression and no intent to evade duty, as assessee was a Government Undertaking and revenue did not challenge said findings of Commissioner (Appeals), then, even extended period cannot be invoked.

Section 11A, read with section 11AC of the Central Excise Act, 1944 read with sections 73 and 78 of the Finance Act, 1994 and sections 28 and 114A of the Customs Act, 1962 - Recovery - Of duty or tax not levied/paid or short-levied/paid or erroneously refunded - Invocation of Extended Period of Limitation - Department raised demand levying evasion penalty and invoking extended period - Commissioner (Appeals) set aside 'evasion penalty' on ground that there was no mala fide - Assessee argued that even extended period of limitation could not be invoked - HELD : Commissioner (Appeals) set aside penalty on ground that there was no allegation of suppression and no intent to evade duty, as assessee was a Government Undertaking - Revenue did not challenge said findings of Commissioner (Appeals) - In absence of any intent to evade duty, extended period cannot be invoked - Hence, matter was remanded back for quantifying demand for normal period. [Partly in favour of assessee]

Case Law: CESTAT, New Delhi Bench, Steel Authority of India Ltd. v. Commissioner of Central Excise, Raipur

CUSTOMS

Notifications / Circulars

➲ **Bill of Entry (Electronic Declaration) (Amendment) Regulation, 2016**

In exercise of the powers conferred by section 157 read with section 46 of the Customs Act, 1962 (52 of 1962), the Central Board of Excise and Customs makes the following regulations to amend the Bill of Entry (Electronic Declaration) Regulations, 2011, namely the Bill of Entry (Electronic Declaration) (Amendment) Regulations, 2016.
In the Bill of Entry (Electronic Declaration) Regulations, 2011, (hereinafter referred to as the said regulations), in regulation 1, in sub-regulation (1), for the words Electronic Declaration, the words Electronic Integrated Declaration shall be substituted.

In the said regulations, for the words electronic declaration wherever they occur, the words electronic integrated declaration shall be substituted.
In the said regulations, in regulation 2,-
i. in clause (a), for the words the Customs House Agents Licensing Regulations, 2004, the words the Customs Brokers Licensing Regulations, 2013 shall be substituted;
ii. clause (b) shall be omitted;
iii. in clause (c), for the words includes its print-outs, the words includes its electronic records or print outs shall be substituted;

Explanation. - For the purposes of this clause, the electronic record shall have the meaning assigned to it in the Information Technology Act, 2000 (21 of 2000);

Read more at: http://www.cbec.gov.in/htdocs-cbec/customs/cs-act/notifications/notfns-2016/cs-nt2016/csnt45-2016

Source: Notification No. 45/2016 – Customs (N.T.) dated the 1st April, 2016

➲ **Customs (Fees for Rendering Services by Customs Officers) Amendment Regulations, 2016**

In exercise of the powers conferred by sections 157 and 158 of the Customs Act, 1962 (52 of 1962), the Central Board of Excise and Customs hereby makes the following regulations further to amend the Customs (Fees For Rendering Services by Customs Officers) Regulations, 1998, namely the Customs (Fees for Rendering Services by Customs Officers) Amendment Regulations, 2016.
In regulation 3, after the Table, the following proviso shall be inserted, namely:-

Provided that where the working hours in respect of clearance of cargo in Customs ports or Customs airports, has been prescribed as twenty- four hours on all days for customs clearance, no fee shall be leviable in such locations for the services rendered by the category of officers mentioned in column (1) of the Table.

Source: Notification No. 46/2016-Cus (NT), dt. 01-04-2016

Read more at: http://www.cbec.gov.in/htdocs-cbec/customs/cs-act/notifications/notfns-2016/cs-nt2016/csnt46-2016

➲ CBEC seeks to amend notification No. 12/2012-Customs dated 17.03.2012 to prescribe simplified procedure for units engaged in Maintenance, Repair and Overhaul of aircrafts vide *Notification No. 29/2016-Cus, dt. 26-04-2016.*

Read more at: http://www.cbec.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2016/cs-tarr2016/cs29-2016.pdf

➲ Exchange Rate notification with effect from 05th April, 2016 thereby amending Notification No.41/2016-Customs (N.T.), dated 17th March, 2016 vide Notification No. 47/2016-Cus (NT),dt. 04-04-2016.

Read more at: http://www.cbec.gov.in/htdocs-cbec/customs/cs-act/notifications/notfns-2016/cs-nt2016/csnt47-2016

➲ Rate of exchange of conversion of the foreign currency with effect from 22nd April, 2016 vide Notification No. 55/2016-Cus (NT),dt. 21-04-2016.

Read more at: http://www.cbec.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2016/cs-nt2016/csnt55-2016.pdf

➲ CBEC seeks to levy definitive anti-dumping duty on imports of Synchronous Digital Hierarchy Transmission Equipment originating in, or exported from China PR and Israel for a period of five years – Notification No. 15/2016-Cus (ADD), dt. 26-04-2016.

Read more at: http://www.cbec.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2016/cs-add2016/csadd15-2016.pdf

➲ CBEC imposed definitive anti-dumping duty on Barium Carbonate originating in or exported from China PR for a period of five years – Notification No. 14/2016-Cus (ADD), dt. 21-04-2016.

Read more at: http://www.cbec.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2016/cs-add2016/csadd14-2016.pdf

➲ CBEC levied definitive anti-dumping duty on Normal Butanol or N-Butyl Alcohol, originating in, or exported from the European Union, Malaysia, Singapore, South Africa and USA, for a period of five years – Notification No. 13/2016-Cus (ADD), dt. 13-04-2016.

Read more at: http://www.cbec.gov.in/htdocs-cbec/customs/cs-act/notifications/notfns-2016/cs-add2016/csadd13-2016

➲ Tariff Notification in respect of Fixation of Tariff Value of Edible Oils, Brass Scrap, Poppy Seeds, Areca Nut, Gold and Silver vide Notification No. 60/2016-Cus (NT),dt. 29-04-2016.

Read more at: http://www.cbec.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2016/cs-nt2016/csnt60-2016.pdf

Case Laws:

➲ **Cenvat Credit: Credit may be taken on basis of invoices issued by manufacturer or importer or their distributor/dealer and said requirement is mandatory; since endorsement of invoice is not provided in rules, hence, job-worker cannot take credit on basis of invoices endorsed by principal-manufacturer**

Rule 9 of the Cenvat Credit Rules, 2004, read with rule 57G of the Central Excise Rules, 1944 - Cenvat Credit - Documents on which credit may be taken - Period January 1995 to May 1995 – Assessee - job worker took input-credit on basis of invoices where consignee was principal-manufacturer PRMTL and PRMTL had endorsed those invoices in favour of assessee - Department denied credit arguing endorsed invoices are ineligible for credit - HELD : Vide notifications issued under rule 57G, invoices issued by manufacturer or importer or their distributor/dealer are eligible documents; hence, invoices can be issued only by a registered dealer and only then, credit can be claimed on strength of such invoices - Requirements of said rule and notifications there under are mandatory and no credit is available contrary to said rule - Procedure of endorsement of duty paying documents stands eliminated, i.e., endorsement of invoice is not provided in this rule - Hence, impugned credit could not be allowed on basis of endorsed invoices [In favour of revenue]

Circulars and Notifications: Notification No. 16/94-C.E. (N.T.), dated 30-3-1994, Notification No. 33/94-C.E. (N.T.), dated 4-7-1994

Case Law: High Court of Gujarat, Commissioner of Central Excise & Custom v. Marigold Coatings (P.) Ltd.

➲ **Paying back 'export incentive' on re-import of exported goods is prime facie in nature of CVD and eligible for credit**

Cenvat Credit: Where on re-import of exported goods consequent to their rejection, assessee pays back 'export incentive' under Notification 94/96-Cus. in name of 'customs duty', then, such amount is prima facie in nature of additional duty of customs/CVD and is eligible for credit.

Rule 3 of the Cenvat Credit Rules, 2004, section 20, read with sections 12 and 25 of the Customs Act, 1962 and section 3 of the Customs Tariff Act, 1975 - Cenvat Credit - General - Assessee-manufacturer exported finished goods availing DEPB benefit - Due to quality problem, said goods were re-imported duty-free for repairs and re-export under Notification No. 158/95-Cus. - However, goods could not be re-exported within time-limit and thereupon, assessee surrendered DEPB benefit of Rs. 26 lakh under Notification 94/96-Cus. - Assessee took credit of Rs. 26 lakh treating it as additional duty of customs/CVD under section 3(1) of Customs Tariff Act - Department held that Rs. 26 lakh paid was Basic Customs Duty (BCD) and, therefore, ineligible for credit.

HELD : As held in Birla NGK Insulators (P.) Ltd. v. Commissioner of Customs 2014 (309) ELT 501 (Tri-Ahd.), Notification 94/96-Cus. exempts BCD, CVD and Special CVD subject to return of export incentive and, therefore, prima facie, return of export incentive is in nature of CVD eligible for credit - However, matter was remanded back to Commissioner (Appeals) for adjudication afresh. [In favour of assessee/Matter remanded]

Circulars and Notifications: Notification No. 158/95-Cus., dated 14-11-1995, Notification No. 94/96-Cus, dated 16-12-1996, Notification No. 23/2002-Cus., dated 1-3-2002

Case Law: CESTAT, Ahmedabad Bench, Birla Ngk Insulators (P.) Ltd. v. Commissioner of Central Excise, Customs & Service Tax, Vadodara-II [2016] 69 taxmann.com 263 (Ahmedabad - CESTAT)

➲ **Credit of capital goods initially used for exempted goods can't be denied if later on same is used for dutiable goods.**

Cenvat Credit : Where, at time of taking credit, capital goods were used exclusively for exempted goods, then, credit was inadmissible on that date; however, when subsequently, since same capital goods were used for dutiable goods, credit was allowable on that subsequent date

Rule 6 , read with rule 2(d) and rule 2(e), of the Cenvat Credit Rules, 2004 - Cenvat Credit - Exempted and dutiable goods or exempted and taxable services, obligation of assessee - Assessee was manufacturing cotton yarn - Assessee took credit of capital goods, which were exclusively used for manufacture of 'exempted cotton yarn' under Notification 30/2004-CE - On department's insistence, assessee reversed credit even prior to issuance of notice dated 25-10-2005 - Assessee argued that same capital goods were put to use on 2-2-2006 for manufacture of 'dutiable cotton yarn' under Notification 29/2004-CE; hence, credit cannot be denied.
HELD : At time of taking credit, capital goods were used exclusively for exempted goods; hence, credit was inadmissible on that date - However, on 2-2-2006, since same capital goods were used for dutiable goods, credit cannot be held to be inadmissible - Hence, matter was remanded back for allowing credit from 2-2-2006, if it is found that capital goods were used for manufacture of dutiable goods. [In favour of assessee]

Section 11A, read with section 11AC, of the Central Excise Act, 1944, read with rules 14 and 15 of the Cenvat Credit Rules, 2004 - Recovery - Of duty or tax not levied/paid or short-levied/paid or erroneously refunded - Payment on own ascertainment - Assessee was manufacturing cotton yarn - It took credit of capital goods, at time when it was availing exemption under Notification 30/2004-CE - On department's insistence, assessee reversed credit even prior to issuance of notice - However, department issued notice seeking penalty - Later, assessee started clearing goods on payment of duty under Notification 29/2004-CE - HELD : Both Notifications 29/2004-CE and 30/2004-CE could be availed of simultaneously by assessee and it could have cleared one small consignment of mere Rs. 100 on payment of duty under Notification 29/2004-CE on date it took impugned credit, so that there would have remained no basis to initiate these proceedings.

Hence, there was no mala fide on part of assessee and since credit was reversed prior to issuance of notice, no notice could be issued as per section 11A(2B) for imposition of penalty [In favour of assessee]
Circulars and Notifications : Notification No. 29/2004-C.E., dated 9-7-2004, Notification No. 30/2004-C.E., dated 9-7-2004

Case Law: CESTAT, New Delhi Bench, Shree Rajasthan Syntex v. Commissioner of Central Excise, Jaipur-II
[2016] 69 taxmann.com 331 (New Delhi - CESTAT)

SERVICE TAX

Notifications / Circulars

➲ **CBEC seeks to amend rule 6 sub-rule (2), of Service Tax (Determination of Value) Rules, 2006**

In exercise of the powers conferred by clause (aa) of sub-section (2) of section 94 of the Finance Act,1994 (32 of 1994), the Central Government hereby makes the following rules further to amend the Service Tax (Determination of Value) Rules, 2006, namely Service Tax (Determination of Value) Amendment Rules, 2016.
In rule 6, in sub-rule (2), in clause (iv), the following proviso shall be inserted namely:-

"Provided that this clause shall not apply to any service provided by Government or a local authority to a business entity where payment for such service is allowed to be deferred on payment of interest or any other consideration."

Source: Notification No. 23 /2016-Service Tax, dated: 13th April, 2016

Read more at: http://www.cbec.gov.in/htdocs-servicetax/st-notifications/st-notifications-2016/st23-2016

➲ **Point of Taxation (Third Amendment) Rules, 2016**

In exercise of the powers conferred by clause (a) and clause (hhh) of subsection (2) of section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules further to amend the Point of Taxation Rules, 2011, namely the Point of Taxation (Third Amendment) Rules, 2016.

In the Point of Taxation Rules, 2011, in rule 7, after the third proviso, the following proviso shall be inserted namely:

"Provided also that in case of services provided by the Government or local authority to any business entity, the point of taxation shall be the earlier of the dates on which, -
(a) any payment, part or full, in respect of such service becomes due, as specified in the invoice, bill, challan or any other document issued by the Government or local authority demanding such payment; or
(b) payment for such services is made.".

Source: Notification No. 24 /2016-Service Tax, dated: 13th April, 2016

Read more at: http://www.cbec.gov.in/htdocs-servicetax/st-notifications/st-notifications-2016/st24-2016

➲ CBEC seeks to amend Notification No. 25/2012- Service Tax dated 20.06.2012, so as to exempt from Service Tax, certain services provided by Government or a local authority to business entity vide *Notification No. 22/2016-Service Tax dt. 13-04-2016.*

Read more at: http://www.cbec.gov.in/htdocs-servicetax/st-notifications/st-notifications-2016/st22-2016

Case Laws:

➲ **Service Tax: Merely supplying manpower to work at cement packing plant, without actually undertaking packing/unpacking or loading/unloading, would not amount to Cargo Handling Services and would not be liable to service tax**

Section 65(23), of the Finance Act, 1994 - Taxable services - Cargo Handling Agency Services - Period August 2003 to January, 2005 - Under contract with Birla Cement, assessee was supplying manpower to work at cement packing plant - Packing/unpacking or loading/unloading of cement bags was carried out through automatic machines - Department demanded service tax under cargo handling services - HELD : For a service to be 'Cargo Handling Service', two conditions must be fulfilled : (1) there must be a cargo i.e. a packed or unpacked commodity accepted by a transporter or carrier for carrying same from one destination to another; and (b) service provider must independently be involved in loading-unloading or packing-unpacking of cargo - Since said

conditions were not fulfilled, service in question was not cargo handling services. [In favour of assessee]

Article 226, of the Constitution of India, 1950 - Writ petition - Maintainability of - High Court maintained writ against notice - Department argued that High Court could not maintain writ and by-pass adjudication and appellate procedures - HELD : High Court went by contract entered into by assessee and taking into consideration all averments made in show-cause notice, on basis of admitted facts, came to conclusion that even if allegations in notice are accepted, activity is not liable to service tax - Since no disputed questions of fact were involved and legal issue was to be decided on basis of facts, as admitted by parties, which were so specifically recorded by High Court itself, hence, there was no error committed by High Court. [In favour of assessee]

Circulars and Notifications: Circular F.No.B11/1/2002-TRU, dated 1-8-2002

FACTS

- Department found that as per contract with Birla, :
- assessee was engaged in packing, loading and unloading etc. of the goods, for which labour was supplied by assessee to Birla ;
- the assessee was raising two bills : (a) charge towards amount of payments made to labour; and (b) charge towards other expenses.
- The department issued notice demanding service tax on composite amount classifying services under 'Cargo Handling Service'.
- The assessee challenged such notice before High Court in writ petition arguing that it was only supplying labour and the labour was not doing any work of packing, unpacking, loading and unloading of any cargo.
- The High Court held in favour of assessee.
- The department challenged High Court judgment on maintainability of writ as well as on merits of the issue.

HELD

I. Writ was rightly maintained, as facts were not disputed

- The department argued that it was not appropriate for the High Court to deal with the said writ petition, bypassing the adjudicatory machinery provided under the Act, more so when the statutory appeals against the adjudication orders are also provided.
- However, it is found that the High Court has simply gone by the contract in question, which was entered into between the assessee and Birla and taking into consideration all the averments, which were made in the show-cause notice, on the basis of admitted facts, it has come to a conclusion that even when the allegations in the show-cause notice are accepted, the said contract does not amount to providing any 'Cargo Handling Service' as defined in section 65(23).
- Therefore, the High Court did not commit any mistake or illegality in entertaining the writ petition when no disputed questions of fact were involved and the legal issue was to be decided on the basis of the facts, as admitted by the parties, which were so specifically recorded by the High Court itself.

II. Services did not amount to 'cargo handling'

- Two conditions for considering any service to be 'Cargo Handling Service' need to be satisfied, namely —

(1) there must be a cargo i.e. a packed or unpacked commodity accepted by a transporter or carrier for carrying the same from one destination to another. It is only after the commodity becomes a cargo, its loading and unloading at the freight terminal for being transported by any mode becomes a cargo handling service, if it is provided by an independent agency and;

(2) the service provider must independently be involved in loading-unloading or packing-unpacking of the cargo.

- As per the contract entered into between the assessee and the customer, namely, Birla, the assessee was to supply manpower for working at the packing plant as per the customer's requirement. The contractor-assessee was to ensure that manpower deployed on the work given by customer's officers is executed properly, diligently, uninterruptedly and to the satisfaction of the customer in the factory premises of its works.
- It is significant to note that no part of loading or unloading was assigned to the workers of the assessee upto transportation of the cement bags out of the factory. This work was, in fact, been performed by the automatic machines. It is through these automatic machines, the cement bags were loaded, unloaded, packed or unpacked and this included Cargo Handling Services provided for freight in special containers or for non-containerized freight, services provided by a container freight terminal or any other freight terminal, for all modes of transport and cargo handling service incidental to freight, but does not include handling of export cargo or passenger baggage or mere transportation of goods.

- On the reading of the aforesaid contract, the High Court has rightly concluded that the aforesaid services would not fall within the definition of 'Cargo Handing Services'.

➲ **Exporters can claim refund of service tax paid on terminal handling, documentation and bill of lading charges**

Service Tax: Terminal handling charges, documentation charges, bill of lading charges, etc. are rightly classified under Port Services and, therefore, service tax paid thereon for export of goods, is eligible for refund to exporters.

Section 93 of the Finance Act, 1994 - Exemptions - Service Tax - Refund of tax paid on services used for export goods - Assessee-exporter claimed refund of service tax paid on : (a) Terminal handling charges, documentation charges, bill of lading charges, etc. classified under Port Services; (b) GTA services; (c) CHA services; (d) Courier charges, (e) Cleaning activity and Technical

testing/inspection - Department denied refund on grounds that : (a) said charges did not fall under Port Services; (b) there was no correlation of GTA services with export; (c) debit notes issued by CHA are not eligible documents; (d) courier invoice did not contain all particulars; (e) there was no written agreement for cleaning and technical testing/inspection - HELD : Refund was allowed for : (a) Terminal handling charges, etc. as they were rightly classified as Port Services, (b) Documents/debit note issued by GTA, CHA and courier agency, as they contained requisite particulars evidencing use for export - However, refund was denied for cleaning and technical testing, as mandatory condition of prior written agreement was not complied with. [Partly in favour of assessee]

Circulars and Notifications : Notification No. 41/2007-ST, dated 6-10-2007, Notification No. 42/2007-S.T., dated 29-11-2007

Case Law: CESTAT, New Delhi Bench, Khemchand Handicrafts v. Commissioner of Central Excise, Jaipur

[2016] 69 taxmann.com 162 (New Delhi - CESTAT)

➲ **Service received from foreign intermediary in connection with raising of ECB is liable to ST under reverse charge**

Service Tax: Services received from foreign intermediary in connection with raising of External Commercial Borrowings (ECB) is liable to service tax under 'Banking and Other Financial Services' under reverse charge in hands of Indian service recipient.

Section 65(12), read with sections 66A and 75, of the Finance Act, 1994 - Taxable services - Banking and other Financial Services - Assessee raised External Commercial Borrowings (ECB) in form of Foreign Currency Convertible Bonds (FCCB) and appointed JIL for conducting/managing same - Department argued that amount paid for JIL for its services is liable to service tax under reverse charge in hands of assessee - HELD : In view of majority decision in Tata Steel Ltd. v. CST [Final Order No. A/3637/2015/STB, dated 1-10-2015], services received from foreign intermediary in connection with raising of ECB is liable to service tax under reverse charge in hands of Indian service recipient - Hence, demand was confirmed with interest. [In favour of revenue]

Section 80, read with sections 76, 77 and 78, of the Finance Act, 1994 - Penalty - Not to be imposed in certain cases - Assessee did not pay service tax under reverse charge on services received from foreign intermediary in connecting with raising ECB - Department levied penalties - Assessee argued that since issue was being agitated and was ultimately settled by majority decision, hence, penalties must be set aside - HELD : Till date, assessee had not paid full demand of tax and interest and had merely paid 50 per cent service tax - There being no discharge of service tax liability and interest, provisions of section 80 cannot be invoked as there is no justifiable reason or cause shown for setting aside penalties. [In favour of revenue]

Case Law: CESTAT, Mumbai Bench, Gitanjali Gems Ltd. v. Commissioner of Service Tax, Mumbai-I
[2016] 69 taxmann.com 266 (Mumbai - CESTAT)

➲ **Where services rendered by non-residents were not in nature of technical services, there was no liability on assessee to deduct tax at source on payments made to non-residents for such services as amounts received by non-resident recipients were not in nature of income deemed to accrue or arise in India in their hands; provisions of section 40(a)(i) were not exigible**

Where assessee an Indian Company made payments in consideration for services rendered by non-residents, in view of fact that no finding had been brought on record by any of the lower authorities that non-residents had business connection with India, it could be concluded that no services were rendered by non-residents in India. Further no finding had been given as to the nature of payments and revenue could not bring any material on record in support of his claim that impugned payments were in the nature of 'fees for technical services. 'Thus, provisions of tax deduction at source were not applicable to the impugned payments as the amounts received by the recipients were not in the nature of income deemed to accrue or arise in India in their hands. Therefore, provisions of section 40(a)(i) could not be invoked.

Case Law: In the ITAT Chandigarh Bench, IDS Infotech Ltd. v. Deputy Commissioner of Income-tax, Circle 4(1), Chandigarh
[2016] 69 taxmann.com 393 (Chandigarh - Trib.)

INCOME TAX

Notifications / Circulars

➲ **Payment of interest on refund under section 244A of excess TDS deposited under section 195 of the Income-tax Act, 1961**

Read more at: http://www.incometaxindia.gov.in/communications/circular/circular11_2016.pdf

Source: *Circular No. 11/2016, dated: 26 April 2016*

➲ **Limitation for penalty proceedings under sections 271D and 271E of the Income-tax Act, 1961 vide** *Circular No. 10/2016, dated: 26 April 2016.*

Read more at: http://www.incometaxindia.gov.in/communications/circular/circular10_2016.pdf

➲ **Commencement of limitation for penalty proceedings under sections 271D and 271E of the Income-tax Act, 1961 vide** *Circular No. 9/2016, dated: 26 April 2016*

Read more at: http://www.incometaxindia.gov.in/communications/circular/circular9_2016.pdf

Case Laws:

➲ **Cash paid to commission agent for facilitating transaction with framers won't attract sec. 40A(3) disallowance**

IT : Where assessee, engaged in business of ginning and pressing of cotton, failed to show that he was engaged in integrated activities of handling, storage and transportation of food grains, his claim for deduction under section 80-IB(11A) was to be rejected

IT : Where assessee purchased agricultural produce from farmers through some parties who charged their commission for facilitating said transaction of sale and purchase, payments made to those parties could not be disallowed by invoking provisions of section 40A(3)

I. Section 80-IB of the Income-tax Act, 1961 - Deductions

- Profits and gains from industrial undertakings other than infrastructure development undertakings (Handling, storage and transportation of food grains) - Assessment year 2008-09 - Assessee was engaged in business of ginning and pressing of cotton and warehousing - Assessee filed his return claiming deduction under section 80-IB(11A) - Assessing Officer rejected assessee's claim holding that assessee was not engaged in integrated business of handling, storage and transportation of food grains - Assessee could not bring any document on record to show any agreement/ arrangement with outsourcing agencies for supply of labour - Moreover, assessee had not placed on record any agreement/ arrangement with transporters for transportation of food grains nor any bills/invoices had been produced to substantiate payment for transportation - Whether on facts, assessee had not been able to show that activities of handling, storage and transportation of food grains allegedly carried out by him were part of one composite activity and were integrated in any manner - Held, yes - Whether, therefore, Assessing Officer was justified in rejecting assessee's claim - Held, yes [In favour of revenue]

II. Section 40A(3) of the Income-tax Act, 1961 - Business disallowance - Cash payments exceeding prescribed limits (Agent) - Assessment year 2008-09 - During relevant year, Assessing Officer made disallowance under section 40A(3) in respect of payments made to four persons for purchase of agricultural produce - Commissioner (Appeals) found that assessee had purchased agricultural produce from farmers through aforesaid parties - In return, those persons charged commission for facilitating sale and purchase of foodgrains - Commissioner (Appeals) thus deleted disallowance made by Assessing Officer - Whether since revenue failed to controvert finding recorded by Commissioner (Appeals), impugned order passed by him did not require any interference - Held, yes [In favour of assessee]

FACTS-I

- The assessee was engaged in the business of ginning and pressing of cotton and warehousing. He filed return claiming deduction under section 80-IB(11A).
- The Assessing Officer held that the assessee was not engaged in the integrated business of handling, storage and transportation of food grains. It was neither having labourers on its payroll nor the assessee was having own fleet of vehicles for transportation. Therefore, the assessee did not fulfil the requisite conditions for claiming deduction under section 80-IB(11A) of the Act. Accordingly, assessee's claim was rejected.
- The Commissioner (Appeals) upheld the order of Assessing Officer.
- On second appeal:

HELD-I

- A bare perusal of the provisions of section show that deduction under section 80-IB(11A) is available in the case of an undertaking deriving profit from the 'integrated' business of handling, storage and transportation of food grains. The vital word used in the section is 'integrated'. The term integrated has not been defined in the Act nor it is defined under the General Clauses Act, 1897. Thus, to understand the meaning of word 'integrated' in common parlance, one has to refer to Oxford English Dictionary, which explains the word integrate as,

(i) Combine or be combined to form whole and

(ii) Bring or come into equal participation in an institution or body.

- Thus, the word integrated used in the section connotes, that the business of handling, storage and transportation of food grains should be carried out in a combined manner. However, the section does not put any pre-condition that for carrying out the integrated activities of handling, storage and transportation of food grains the assessee should own the infrastructure facilities or should have manpower on its rolls for carrying out such business activities. If the undertaking is carrying out these integrated activities by employing hired labourers or by taking warehousing facilities on rent and hiring transportation facilities, the undertaking is eligible to claim deduction under section 80-IB(11A).
- In the present case it is an undisputed fact that the assessee is neither having labour on its payrolls nor the assessee is owning fleet of vehicles for the transportation. However, the assessee is having warehousing facilities of his own. The assessee in support of its contention has placed on record vouchers for loading, unloading and transportation to substantiate that he is engaged in integrated business.
- In addition to above the Commissioner (Appeals) has also noted

that the assessee has not filed Audit report in the prescribed form 10CCB for claiming deduction.

- As observed above, the deduction under section 80-IB(11A) can be claimed only if the assessee has been able to show that it is engaged in integrated activities of handling, transportation and storage of food grains. Owning of transportation facilities, warehousing facilities and manpower on payroll is not sine qua non for claiming the deduction. What is essential is that all the three activities of handling, storage and transportation should be sewn together in a manner that they become a single structured process.
- In the present case the assessee has not been able to show the integration of the three activities for claiming deduction. With regard to manpower the contention of the assessee is that it does not have skilled/unskilled labour on its payroll and has outsourced the same. However, the assessee has failed to place on record any document to show any agreement/arrangement with the outsourcing agencies for supply of labour. The assessee has further failed to show from the records that the payments have been made to labourers, except for some self made vouchers, the sanctity of which is highly doubtful, there is no other document to support the claim of assessee.
- Similarly, in respect of transportation activity the contention of the assessee is that he is using hired trucks. A perusal of records show, that the assessee has claimed ad hoc expenditure of ` 10,000/- per month for transportation that to on the basis of internal vouchers. The assessee had not placed on record any agreement/ arrangement with the transporters for the transportation of food grains nor any bills/invoices had been produced to substantiate the payment for transportation. Although, the assessee has placed on record a report from the Joint Monitoring Committee to show that the warehouses owned by the assessee are as per Govt. specifications, but this is not sufficient to claim deduction under section 80-IB(11A).
- From the documents on record the only indelible inference that can be drawn is that the assessee is providing warehousing facilities for storage of food grains. The assessee had not been able to show from the records that the activities of handling, storage and transportation of food grains allegedly carried out by it were part of one composite activity and were integrated in any manner. The assessee has failed to substantiate handling and transportation component of integrated business.
- In so far as the objection of the revenue for non-filing of Audit report is concerned, the assessee can file Audit report even at the appellate stage for claiming deduction. The deduction cannot be denied merely on the ground that the assessee has not filed Audit report along with the return of income or at the time of assessment proceedings. In the present case, the assessee has not filed Audit report before the Assessing Officer. Thereafter, the assessee did not file the Audit report in the prescribed form before the First Appellate Authority. Although, one of the reasons for rejecting the claim of the assessee was non-filing of the Audit report. Now, before the Tribunal the assessee has filed an application for admission of additional evidence i.e. the Audit report. The assessee has placed on record Audit report in form 10CCB. In the application for admission of additional evidence the reason for non-filing of Audit report before the Assessing Officer, as well as, Commissioner (Appeals) has been mentioned as inadvertent mistake. No other reason has been given for non-filing of the Audit report.
- There is no bar for filing Audit report at later stage. However, the assessee has to show bona fide reason for not filing the same before the Assessing Officer and the Commissioner (Appeals). Non-filing of Audit report inadvertently before the Commissioner (Appeals) cannot be considered as sufficient cause when the Assessing Officer has specifically taken a ground to disallow deduction to the assessee for non-filing of Audit report before him. The assessee has been negligent and callous in pursuing his cause before the authorities below.
- Thus, in the facts of the case and documents on record, it is held that the assessee has failed to show that he is engaged in the integrated business of handling, storage and transportation of food grains and thus, the assessee is not eligible for claim deduction under section 80-IB(11A) of the Act.

Case Law: In the ITAT PUNE BENCH 'B', Anurag Radhesham Attal v. Income-tax Officer, Ward- 2 (1), Aurangabad

➲ **Deductor won't be treated as an assessee-in-default if no tax was payable by deductee due to losses**

IT: Where pending dispute regarding taxability of payment of roaming charge by one telecom operator to other, assessee, an operator, furnished all details of payees who had no income-tax liability due to loss, assessee-deductor could not be held to be assessee-in-default for non deduction of tax at source.

Section 194J, read with section 201, of the Income-tax Act, 1961 - Deduction of tax at source - Fees for technical services - Assessment years 2010-11 and 2011-12 - Assessee telecom operator submitted that since payment of roaming charges to other telecom operator did not require any human intervention, it could not be regarded as fees for technical services requiring TDS under section 194J - It was noted that issue as to whether roaming charges paid by assessee to other telecom operator was in nature of 'fees for technical services' did not reach final conclusion, in view of fact that case of Vodafone Essar Mobile Services Ltd., dated 31-12-2010 had not been concluded by any appellate authority or any court - Whether, therefore, Tribunal should be refrained from deciding issue whether roaming charges paid were in nature of 'fees for technical services' and assessee was liable for deduction of tax at source under section 194J - Held, yes - Whether, however, since assessee had furnished declaration from various payees and had also furnished PAN details and jurisdiction in which payees were assessed for tax, assessee could not be treated as 'assessee-in-default' - Held, yes - Whether since deductees had themselves

incurred huge losses and thus, no income-tax was payable, assessee could not be held to be assessee-in-default nor non-deduction of tax would entail levy of interest under section 201(1A) - Held, yes. [Partly in favour of assessee/Matter remanded]

Case Law: In the ITAT MUMBAI BENCH 'D', Reliance Communications Ltd. v. Assistant Commissioner of Income-tax (TDS) - Range 3(2), Mumbai

SEBI

Notifications / Circulars

➲ **Disclosure of Proprietary Trading by Commodity Derivatives Broker to Client and "Pro - account" Trading terminal**

In order to increase the transparency in the dealings between the stock broker and the clients in commodity derivatives market, it has been decided to align the provisions relating to the proprietary trading carried out by the stock brokers of commodity derivatives exchanges in line with the securities market.

Disclosure of proprietary trading by broker to client:
The provisions of the directions issued by SEBI vide its circular no. SEBI/MRD/SE/Cir- 42 /2003 dated November 19, 2003, regarding the disclosure of proprietary trading by stock broker to client, are made applicable to all the commodity derivatives exchanges.
"Pro – account" trading terminals: All the commodity derivatives exchanges shall ensure compliance with the provisions of the directions issued by SEBI vide its circular no. SEBI/MRD/SE/Cir-32/2003/27/08 dated August 27, 2003 regarding "Pro – account" trading terminals.

This circular supersedes the circulars issued by the erstwhile Forward Markets Commission related to "Pro – account" trading terminal from time to time and shall come into force with effect from three months from the date of this circular.

Source: Circular - SEBI/HO/CDMRD/DMP/CIR/P/2016/49, dated: April 25, 2016

Read more at: http://www.sebi.gov.in/cms/sebi_data/attachdocs/1461583368115.pdf

➲ **Electronic book mechanism for issuance of debt securities on private placement basis**

1. SEBI (Issue and Listing of Debt Securities) Regulations, 2008, govern public issue of debt securities and listing of debt securities issued through public issue or on private placement basis, on a recognized stock exchange. Regulation 31(2) of SEBI (ILDS) Regulations, 2008 inter alia provides that:-
"In particular, and without prejudice to the generality of the foregoing power and provisions of these regulations, such orders or circulars may provide for all or any of the following matters, namely: (a) Electronic issuances and other issue procedures including the procedure for price discovery; "

2. Accordingly, in order to streamline procedures for issuance of debt securities on private placement basis and enhance transparency to discover prices, it has been decided to lay down a framework for issuance of debt securities on private placement basis through an electronic book mechanism.

3. To begin with, this electronic book mechanism would be mandatory for all private placements of debt securities in primary market with an issue size of Rs.500 crores and above, inclusive of green shoe option, if any.

4. The following issuers shall have an option to follow either electronic book mechanism or the existing mechanism:-
4.1. issues with a single investor and where coupon rate are fixed. However arrangers acting as underwriters shall not be considered as single investors.
4.2. issues wherein the issue size is less than Rs. 500 crores, inclusive of green shoe option, if any.
However, for all issues below Rs.500 crore, issuer shall disclose the coupon, yield, amount raised, number of investors and category of investors to the Electronic Book Provider and/ or to the information repository for corporate debt market as notified by SEBI, in the format as specified.

5. Electronic book provider
5.1. The electronic book mechanism shall be provided by recognized stock exchange(s) only after obtaining prior approval from SEBI.
5.2. Such recognized stock exchange(s) referred to in Para 5.1 above shall be referred to as Electronic Book Provider ("EBP").
5.3. The following shall be eligibility conditions for a recognised stock exchange to act as EBP:-
5.3.1. EBP shall provide an on-line platform for receiving bids in private placement of debt securities.
5.3.2. EBP shall own website/ URL (hereinafter referred to as bidding portal) on which it proposes to offer its services.
5.3.3. EBP shall have all the necessary infrastructure like adequate office space, equipments, risk management capabilities, manpower and other information technology infrastructure to effectively discharge the activities of EBP.
5.3.4. EBP shall ensure that there is adequate backup, disaster management and recovery plans for the electronic book mechanism so provided by EBP.
5.3.5. The EBP shall ensure safety, secrecy, integrity and retrievability of data.
5.3.6. The electronic book mechanism so provided by EBP would

be subject to periodic audit by Certified Information Systems Auditor (CISA) under Annual System Audit prescribed by SEBI.

Read more at: http://www.sebi.gov.in/cms/sebi_data/attachdocs/1461236399007.pdf

Source: Circular - CIR/IMD/DF1/48/2016, dated: April 21, 2016

FOREIGN TRADE

Notifications / Circulars

➲ **Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Third Amendment) Regulations, 2016**

In exercise of the powers conferred by clause (b) of sub-section (3) of Section 6 and Section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Reserve Bank of India hereby makes the following amendments in the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 (Notification No.FEMA 20/2000-RB dated 3rd May 2000) namely Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) (Third Amendment) Regulations, 2016.

Amendment to Regulation 2:
A. After the existing sub-regulation (ii), a new sub-regulation shall be inserted namely:-
"(iiA) 'Category I Alternative Investment Fund (Cat-I AIF)' means an Alternative Investment Fund registered under the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012 which raises money and invests in such funds or sectors or activities or areas in accordance with the said Regulations."
B. The existing sub-regulation (vb) shall be deleted.
C. After the existing sub-regulation (x), a new sub-regulation shall be inserted namely:-
"(xA) 'startup' shall mean an entity, incorporated or registered in India not prior to five years, with an annual turnover not exceeding INR 25 Crores in any preceding financial year, working towards innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property,
Provided that such entity is not formed by splitting up, or reconstruction of a business already in existence. For this purpose,

- 'entity' shall mean a private limited company (as defined in the Companies Act, 2013), or a registered partnership firm (registered under section 59 of the Partnership Act, 1932) or a limited liability partnership (under the Limited Liability Partnership Act, 2008.
- the expression 'turnover' shall have the same meaning as assigned to it under the Companies Act, 2013.
- An entity is considered to be working towards innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property if it aims to develop and commercialize (a) a new product or service or process; or (b) a significantly improved existing product or service or process that will create or add value for customers or workflow.

Provided that it will not include the mere act of developing (a) products or services or processes which do not have potential for commercialization; or (b) undifferentiated products or services or processes or (c) products or services or processes with no or limited incremental value for customers or workflow.

Amendment to Regulation 5:
In Regulation 5, the existing sub-regulation (5) shall be substituted by the following namely:-
"(5) A Foreign Venture Capital Investor registered with SEBI may make investment in the manner and subject to the terms and conditions specified in Schedule 6."

Read the full notification at: https://rbi.org.in/scripts/NotificationUser.aspx?Id=10386&Mode=0

Source: Notification No.FEMA.363/2016-RB, dated: April 28, 2016

➲ **Foreign Exchange Management (Remittance of Assets) Regulations, 2016**

In exercise of the powers conferred by Section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999) and in supersession of Notification No. FEMA 13/2000-RB dated May 3, 2000, as amended from time to time, the Reserve Bank makes the following regulations in respect of remittance outside India by a person whether resident in India or not, of assets in India, namely the Foreign Exchange Management (Remittance of Assets) Regulations, 2016.

Prohibition on Remittance outside India of assets held in India:-
Save as otherwise provided in the Act or rules or regulations made or issued thereunder, no person, whether resident in India or not, shall make remittance of any asset held in India by him or by any other person:
Provided that the Reserve Bank may, for sufficient reasons, permit any person to make remittance of any asset held in India by him or by any other person.

Permission for remittance of assets in certain cases:-
(1) A citizen of foreign state, not being a Person of Indian origin (PIO) or a citizen of Nepal or Bhutan, who:
(i) has retired from an employment in India, or
(ii) has inherited the assets from a person referred to in sub-

section (5) of section 6 of the Act; or
(iii) is a widow/ widower resident outside India and has inherited assets of the deceased spouse who was an Indian citizen resident in India, may remit through an authorised dealer an amount, not exceeding USD 1,000,000 (US Dollar One million only) per financial year on production of documentary evidence in support of acquisition, inheritance or legacy of assets by the remitter.

Provided that for the purpose of arriving at annual ceiling of remittance, the funds representing sale proceeds of shares and immovable property owned or held by the citizen of foreign state on repatriation basis in accordance with the Foreign Exchange Management (Acquisition and transfer of immovable property in India) Regulations, 2016 and Foreign Exchange Management (Transfer or issue of security by a person resident outside India) Regulations, 2000 made under the Act, shall not be included.

Provided further that where the remittance is made in more than one instalment, the remittance of all instalments shall be made through the same authorised dealer.

(iv) had come to India for studies/ training and has completed his studies/ training, may remit the balance available in his account, provided such balance represents funds derived out of remittances received from abroad through normal banking channels or rupee proceeds of foreign exchange brought by such person and sold to an authorised dealer or out of stipend/ scholarship received from the Government or any Organisation in India.

(2) A Non-Resident Indian (NRI) or a Person of Indian Origin (PIO) may remit through an authorised dealer an amount, not exceeding USD 1,000,000 (US Dollar One million only) per financial year,

(i) out of the balances held in the Non-Resident (Ordinary) Accounts (NRO accounts) opened in terms of Foreign Exchange Management (Deposit) Regulations, 2016/ sale proceeds of assets/ the assets acquired by him by way of inheritance/ legacy on production of documentary evidence in support of acquisition, inheritance or legacy of assets by the remitter;
(ii) Under a deed of settlement made by either of his parents or a relative (relative as defined in Section 2(77) of the Companies Act, 2013) and the settlement taking effect on the death of the settler, on production of the original deed of settlement;
Provided that where the remittance under Clause (i) and (ii) is made in more than one instalment, the remittance of all instalments shall be made through the same Authorised Dealer.
Provided further that where the remittance is to be made from the balances held in the NRO account, the account holder shall furnish an undertaking to the Authorised Dealer that "the said remittance is sought to be made out of the remitter's balances held in the account arising from his/ her legitimate receivables in India and not by borrowing from any other person or a transfer from any other NRO account and if such is found to be the case, the account holder will render himself/ herself liable for penal action under FEMA."

(3) An authorised dealer in India may, also allow remittance out of the assets of Indian companies under liquidation under the provisions of the Companies Act, 2013, subject to the following conditions:

(i) Authorised Dealer shall ensure that the remittance is in compliance with the order issued by a court in India/ order issued by the official liquidator or the liquidator in the case of voluntary winding up; and
(ii) no remittance shall be allowed unless the applicant submits:-
(a) Auditor's certificate confirming that all liabilities in India have been either fully paid or adequately provided for.
(b) Auditor's certificate to the effect that the winding up is in accordance with the provisions of the Companies Act, 2013.
(c) In case of winding up otherwise than by a court, an auditor's certificate to the effect that there is no legal proceedings pending in any court in India against the applicant or the company under liquidation and there is no legal impediment in permitting the remittance.

Read more at: https://rbi.org.in/Scripts/NotificationUser.aspx?Id=10326&Mode=0

Source: Notification No. FEMA 13 (R)/2016-RB, dated: April 01, 2016

➲ **Foreign Exchange Management (Deposit) Regulations, 2016**

In exercise of the powers conferred by clause (f) of sub-section (3) of section 6, sub-section (2) of section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999) and in supersession of Notification No. FEMA 5/2000-RB dated May 3, 2000, as amended from time to time, the Reserve Bank makes the following regulations relating to deposits between a person resident in India and a person resident outside India, namely the Foreign Exchange Management (Deposit) Regulations, 2016.

(1) Restrictions on deposits between a person resident in India and a person resident outside India:-

Save as otherwise provided in the Act or Regulations or in rules, directions and orders made or issued under the Act, no person resident in India shall accept any deposit from, or make any deposit with, a person resident outside India:

Provided that the Reserve Bank may, on an application made to it and on being satisfied that it is necessary so to do, allow a person resident in India to accept or make deposit from or with a person resident outside India.

(2) Acceptance of deposits by an authorised dealer/ authorised bank from persons resident outside India:

An authorised dealer in India may accept deposit:

- under the Non-Resident (External) Account Scheme (NRE account), specified in Schedule 1, from a non-resident Indian;
- under the Foreign Currency (Non-Resident) Account Banks Scheme, (FCNR(B) account), specified in Schedule 2, from a non-resident Indian;
- under the Non-Resident (Ordinary) Account Scheme, (NRO account), specified in Schedule 3, from any person resident outside India;

(3) Acceptance of deposits by persons other than authorised dealer/ authorised bank:-

1) A company registered under Companies Act, 2013 or a body corporate created under an Act of Parliament or State Legislature shall not accept deposits on repatriation basis from a non-resident Indian or a person of Indian origin. The company may, however, renew the deposits which had been accepted on repatriation basis from an NRI or a PIO subject to terms and conditions mentioned in Schedule 6.

2) A company registered under Companies Act, 2013 or a body corporate, a proprietary concern or a firm in India may accept deposits from a non-resident Indian or a person of Indian origin on non-repatriation basis, subject to the terms and conditions mentioned in Schedule 7.

3) An Indian company may accept deposits by issue of Commercial Paper to a non-resident Indian or a person of Indian origin or a foreign portfolio investor registered with the Securities and Exchange Board of India subject to the following conditions, namely:

- the issue is in due compliance with the Non-Banking Companies (Acceptance of Deposits through Commercial Paper) Directions, 1989 issued by the Reserve Bank as also any other law, rule, directions, orders issued by the Government or any other regulatory authority, in regard to acceptance of deposits by issue of Commercial Paper;
- payment for issue of Commercial Paper is received by the issuing company by inward remittance from outside India through banking channels or out of funds held in a deposit account maintained by a Non-Resident Indian or a Person of Indian Origin in accordance with the Regulations made by Reserve Bank in that regard;
- the amount invested in Commercial Paper shall not be eligible for repatriation outside India; and the Commercial Paper shall not be transferable.

Read more at: https://rbi.org.in/Scripts/NotificationUser.aspx?Id=10325&Mode=0

Source: Notification No. FEMA 5(R)/2016-RB, dated April 01, 2016

➲ **Status Holder-Amendment in Para 3.20(b) of Foreign Trade Policy 2015-20**

Central Government makes amendments in the Foreign Trade Policy (FTP) 2015-2020 with immediate effect:

Existing Paragraph 3.20(b) of FTP 2015-20:

All exporters of goods, services and technology having an import-export code (IEC) number shall be eligible for recognition as a status holder. Status recognition depends upon export performance. An applicant shall be categorized as status holder upon achieving export performance during current and previous two financial years, as indicated in paragraph 3.21 of Foreign Trade Policy. The export performance will be counted on the basis of FOB value of export earnings in free foreign exchange.

Amended Paragraph 3.20(b) of FTP 2015-20:

All exporters of goods, services and technology having an import-export code (IEC) number shall be eligible for recognition as a status holder. Status recognition will dependon export performance. An applicant shall be categorized as status holder on achieving export performance during the current and previous three financial years (for Gems& Jewellery Sector the performance during the current and previous two financial years shall be considered for recognition as status holder) as indicated in paragraph 3.21 of Foreign Trade Policy. The export performance will be counted on the basis of FOB of export earning in free foreign exchange.

Effect of this Notification:

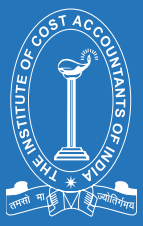
The criteria for recognition as status holder has been changed w.e.f 01.04.2016 to the exports in the current and previous three financial years from the existing criteria of current and previous two financial years. Forthe Gems and Jewellery Sectors the existing criteria of export performance in the current and previous two years shall continue.

Source: Notification No.04/2015-2020, dated: 29thApril, 2016

Read more at: http://dgft.gov.in/Exim/2000/NOT/NOT16/noti0416.pdf

➲ **Updation of SCOMET list [Appendix 3 to Schedule 2 of ITC (HS) Classification of Export & Import Items] vide Notification No. 05 /(2015-2020), dated: 29th April, 2016.**

Read more at: http://dgft.gov.in/Exim/2000/NOT/NOT16/noti0516.pdf



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