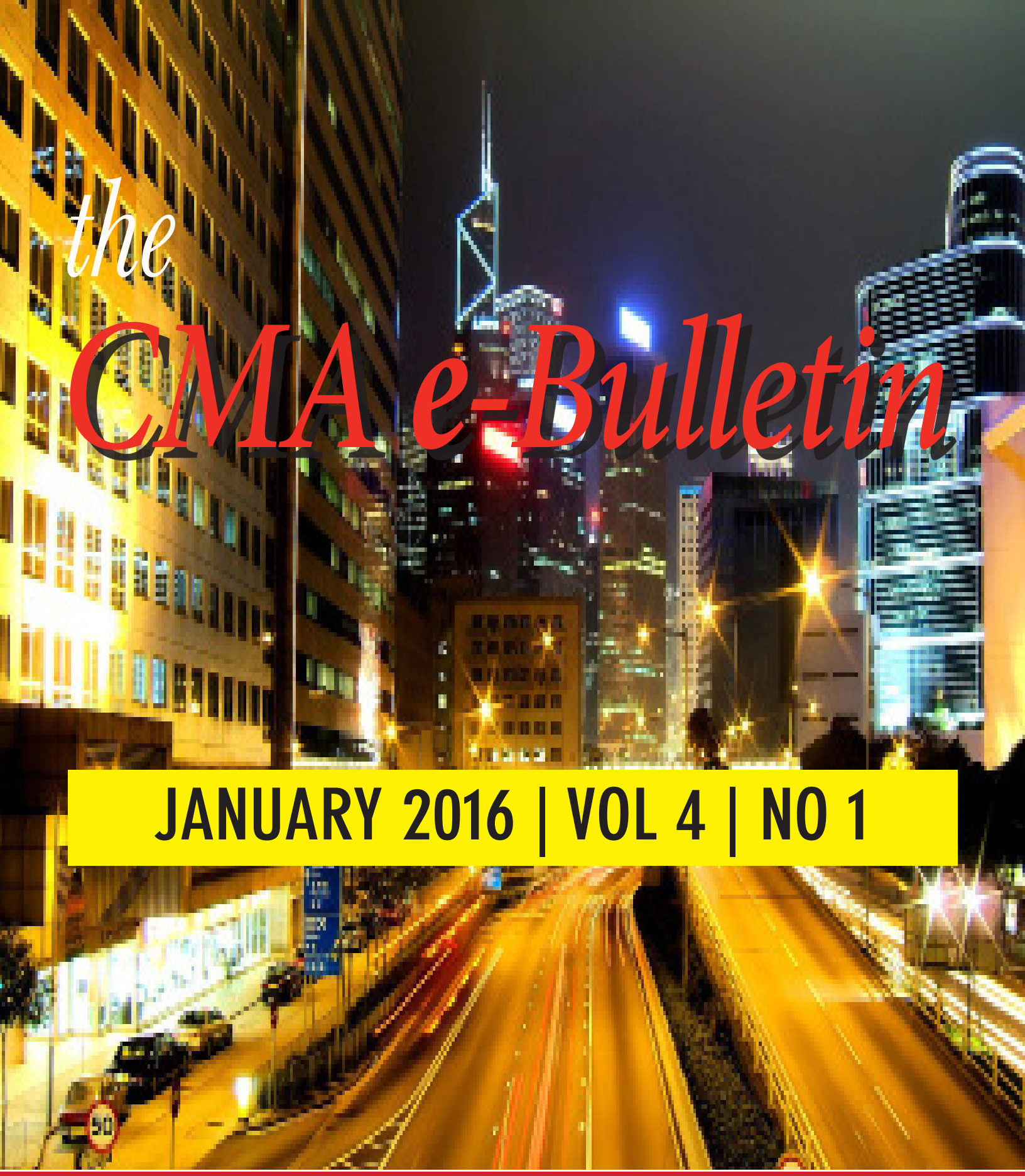

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INDIAN ECONOMY

News

➲ **Services growth hits 10 month high in December, manufacturing remains a drag**

Services sector activity touched a ten-month high in December driven by a significant rise in new business orders but the overall health of the economy remains fragile amid a weak manufacturing sector, a survey showed.

Read more at: http://www.financialexpress.com/article/economy/services-growth-hits-10-month-high-in-december-manufacturing-remains-a-drag/188907/

➲ **India's manufacturing growth slumps to a 25-month low in November**

India's manufacturing growth slumped to a 25-month low in November due to a combination of lower demand, higher input costs and softening output, a private survey showed. The Nikkei Manufacturing Purchasing Managers' Index declined to 50.3 in November from 50.7 in October, data released showed. The index fell for the fourth consecutive month in November. A reading above 50 on this survey-based index denotes expansion. The data comes a day after the central statistics office released the GDP data for the quarter to September showed a marked 9.3% increase in manufacturing during the period.

Read more at: http://articles.economictimes.indiatimes.com/2015-12-02/news/68717425_1_manufacturing-growth-november-pmi-gdp-data

➲ **India's GDP grows at 7.4% in Q2 of FY16; manufacturing grows at robust 9.3%**

India's economy picked up pace in the second quarter of the current fiscal, comfortably outpacing China in the same quarter, but the stronger growth has dampened hopes of a rate cut when the Reserve Bank of India reviews its monetary policy. India's GDP rose 7.4 % in the second quarter of 2015-16, in line with expectations but faster than the 7% growth recorded in the preceding three-months. China's GDP rose 6.9% in the same quarter. The high growth was driven by a robust 9.3% rise in gross value added (GVA) in the manufacturing sector. Despite a poor monsoon, agricultural sector did better than expected with a 2.2% rise in GVA versus 2.1% YoY. The GDP growth had declined to 7% in April-June quarter from 7.5% in the previous quarter raising concerns that the recovery was not shaping well.

Read more at: http://articles.economictimes.indiatimes.com/2015-11-30/news/68661613_1_gdp-growth-lakh-crore-central-statistics-office

➲ **Private sector firms' PAT fell 9.9% in Q2 FY16: RBI**

Country's private sector companies saw a dip of 9.9 per cent in profit after tax for the second quarter of this fiscal, compared to 25.6 per cent growth in the year-ago period, RBI data showed. In the first quarter, there was a contraction in the net profit at -9.5 per cent. "Among the sectors, services (other than IT) recorded a contraction in net profits," RBI said in the data released on the performance of non-financial private firms during the second quarter of FY16. The data is based on the abridged financial results of 2,711 listed non-government non-financial companies. During the quarter, aggregate sales contracted further primarily due to a sharp contraction of 37.2 per cent in the sales of petroleum products industry group. Sales in the manufacturing sector also contracted by 7.8 per cent. The services sectors (other than IT sector) recorded improvement in sales growth (Y-o-Y) in comparison with the previous quarter.

Read more at: Economic Times | Dec 3, 2015

➲ **India's core consumer inflation seen easing to around 4.6-4.7 pct in Nov**

India's annualised core consumer inflation is estimated to have eased to around 4.6 to 4.7 percent in November, from an estimated 5.4 percent in October, according to a snap survey of two analysts.

Source: Reuters | 14 Dec 2015

➲ **November retail inflation hits 14-month high on costlier food items**

India's retail inflation accelerated to a 14-month high in November, driven up by higher food prices, underscoring the challenge the Reserve Bank of India (RBI) faces in meeting its medium-term inflation target. The consumer price index (CPI), which the central bank closely tracks for setting lending rates, rose an annual 5.41 percent last month, in line with a Reuters poll estimate. Retail prices were up 5.0 percent on-year in October. The RBI aims to keep retail inflation to around 5 percent by March 2017.

Source: Reuters | Dec 14, 2015

BANKING

Notifications / Circulars

➲ **Guidelines on trading of Currency Futures and Exchange Traded Currency Options in Recognized Stock Exchanges**

Introduction of Cross-Currency Futures and Exchange Traded

Option Contracts Market Participants, i.e., residents and FPIs, are allowed to take positions in the cross-currency futures and exchange traded crosscurrency option contracts without having to establish underlying exposure subject to the position limits as prescribed by the exchanges. The existing position limits of USD 15 million for USDINR contracts and USD 5 million for non USD-INR contracts, all put together, per exchange, for residents and FPIs, without having to establish underlying exposure, shall remain unchanged. The hedging procedure for residents as laid down in A.P. (DIR Series) Circular No. 147 dated June 20, 2014 and for FPIs as laid down in A.P. (DIR Series) Circular No. 148 dated June 20, 2014 shall also remain unchanged. AD Category-I banks may undertake trading in all permitted exchange traded currency derivatives within their Net Open Position Limit (NOPL) subject to limits stipulated by the exchanges (for the purpose of risk management and preserving market integrity) provided that any synthetic USD-INR position created using a combination of exchange traded FCY-INR and cross-currency contracts shall have to be within the position limit prescribed by the exchange for the USD-INR contract.

Source: *Notification No. RBI/2015-16/267 [A.P. (DIR Series) Circular No. 35] dated: December 10, 2015*

Read more at: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10172&Mode=0

➲ **Inclusion of "IDFC Bank Limited" in the Second Schedule to the Reserve Bank of India Act, 1934**

"IDFC Bank Limited" has been included in the Second Schedule to the Reserve Bank of India Act, 1934 vide Notification DBR. PSBD. No.5270/16.01.0146/2015-16 dated October 13, 2015, and published in the Gazette of India (Part III - Section 4) dated November 07- November 13, 2015.

Read more at: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10172&Mode=0

➲ **Section 24 and Section 56 of the Banking Regulation Act, 1949 - Maintenance of Statutory Liquidity Ratio (SLR)**

As announced in the fourth Bi-Monthly Monetary Policy Statement 2015-16 by the Reserve Bank of India on September 29, 2015, it has been decided to reduce the Statutory Liquidity Ratio (SLR) of scheduled commercial banks, local area banks, primary (Urban) co-operative banks (UCBs), state co-operative banks and central co-operative banks from 21.5 per cent of their Net Demand and Time Liabilities (NDTL) to:

(i) 21.25 per cent from April 2, 2016;
(ii) 21.00 per cent from July 9, 2016;
(iii) 20.75 per cent from October 1, 2016; and
(iv) 20.50 per cent from January 7, 2017

Read more at: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10167&Mode=0

➲ **Regional Rural Banks - Priority Sector Lending – Targets and Classification**

The comprehensive revised guidelines on Priority Sector Lending – Targets and Classification for Regional Rural Banks are enclosed as Annex. The revised guidelines supersede all earlier guidelines mentioned in the Master Circular RPCD.CO.RRB BC5/03.05.33/2014-15 dated July 1, 2014 on Regional Rural Banks - Lending to Priority Sector.

Some of the salient features of the guidelines are as under:-

Targets: 75 per cent of total outstanding to the sectors eligible for classification as priority sector lending and sub sector targets as indicated in subsequent paragraphs.

Categories of the Priority Sector: Medium Enterprises, Social Infrastructure and Renewable Energy will form part of the Priority Sector, in addition to the existing categories, with a cap of 15 per cent of total outstanding.

Agriculture: 18% per cent of total outstanding should be advanced to activities mentioned under Agriculture.

Small and Marginal Farmers: A target of 8 percent of total outstanding has been prescribed for Small and Marginal Farmers within Agriculture.

Micro Enterprises: A target of 7.5 per cent of total outstanding has been prescribed for Micro Enterprises.

Weaker Sectors: A target of 15 per cent of total outstanding has been prescribed for Weaker Sections.

Monitoring: Priority Sector Lending will be monitored on a quarterly as well as annual basis.

Read more at: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10155&Mode=0

➲ **Interest Equalisation Scheme on Pre and Post Shipment Rupee Export Credit**

The Government of India has announced the Interest Equalisation Scheme on Pre and Post Shipment Rupee Export Credit to eligible exporters. The scheme is effective from April 1, 2015. Accordingly,

scheduled commercial banks are advised to adhere to the following operational procedure for claiming reimbursement:

A. Procedure for passing on the benefit of interest equalisation to exporters:

• For the period April 1, 2015 to November 30, 2015, banks shall identify the eligible exporters as per the Government of India scheme and credit their accounts with the eligible amount of interest equalisation.
• From the month of December 2015 onwards, banks shall reduce the interest rate charged to the eligible exporters as per our extant guidelines on interest rates on advances by the rate of interest equalisation provided by Government of India.
• The interest equalisation benefit will be available from the date of disbursement up to the date of repayment or up to the date beyond which the outstanding export credit becomes overdue. However, the interest equalisation will be available to the eligible exporters only during the period the scheme is in force.

B. Procedure for claiming reimbursement of interest equalisation benefit already passed on to eligible exporters:

• The sector-wise consolidated reimbursement claim for the period April 1, 2015 to November 30, 2015 for the amount of interest equalisation already passed on to eligible exporters should be submitted to RBI by December 15, 2015.
• The sector-wise consolidated monthly reimbursement claim for interest equalisation for the period December 2015 onwards should be submitted in original within 15 days from the end of the respective month, with bank's seal and signed by authorised person, in the prescribed format.

Read more at: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10159&Mode=0

INCOME TAX

Notifications / Circulars

➲ **CBDT allows Service of notice, summons, requisition, order etc. by Email**

In exercise of the powers conferred by section 282 read with section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely Income-tax (18thAmendment) Rules, 2015.

Rule 127 :
For the purposes of sub-section (1) of section 282, the addresses (including the address for electronic mail or electronic mail message) to which a notice or summons or requisition or order or any other communication under the Act (hereafter in this rule referred to as "communication") may be delivered or transmitted shall be as per sub-rule (2).

The addresses referred to in sub-rule (1) shall be-

(a) for communications delivered or transmitted in the manner provided in clause (a) or clause (b) of subsection (1) of section 282-
(i) the address available in the PAN database of the addressee; or
(ii) the address available in the income-tax return to which the communication relates; or
(iii) the address available in the last income-tax return furnished by the addressee; or
(iv) in the case of addressee being a company, address of registered office as available on the website of Ministry of Corporate Affairs:

Provided that the communication shall not be delivered or transmitted to the address mentioned in item (i) to (iv) where the addressee furnishes in writing any other address for the purposes of communication to the income-tax authority or any person authorised by such authority issuing the communication;

(b) For communications delivered or transmitted electronically-

(i) email address available in the income-tax return furnished by the addressee to which the communication relates; or
(ii) the email address available in the last income-tax return furnished by the addressee; or
(iii) in the case of addressee being a company, email address of the company as available on the website of Ministry of Corporate Affairs; or
(iv)any email address made available by the addressee to the income-tax authority or any person authorised by such income-tax authority.
(3) The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems) shall specify the procedure, formats and standards for ensuring secure transmission of electronic communication and shall also be responsible for formulating and implementing appropriate security, archival and retrieval policies in relation to such communication."

Source: Notification No. 89/2015/ F. No. 133/79/2015-TPL, dated: 2nd December, 2015

➲ **Revision of monetary limits for filling of appeals by the Department before Income Tax Appellate Tribunal and High Courts and SLP before Supreme Court - measures for reducing litigation vide Circular No. 21 / 2015 dated: 10 December, 2015.**

Read more at: http://www.incometaxindia.gov.in/communications/circular/circular21_2015.pdf

Case Laws

➲ **Where deemed short term capital gain arose on account of sale ofdepreciable assets that was held for a period to which long term capital gain would apply, assesseewould be entitled to claim setting off said gainagainst brought forward long term capital losses andunabsorbed depreciation**

Section 74, read with section 50 of the Income-tax Act, 1961 - Losses under head capital gains - (Setting off deemed short term capital gain) - Assessment year 2005-2006 - Whether where deemed short term capital gain arose out of sale of depreciable assets that was held for a period to which long term capital gain apply, assessee was entitled to claim set off said gain against brought forward long term capital losses and unabsorbed depreciation; for purposes of section 74, deemed short term capital gain would continue to be long term capital gain - Held, yes. [In favour of assesse]

FACTS

- The respondent-assessee had for the subject assessment year inter alia disclosed an amount of Rs.7.12 Crores as deemed short term capital gain under Section 50.This deemed short term capital gain arose on account of the sale of depreciable assets. This deemed short term capital gain was setoff against brought forward long term capital losses and unabsorbed depreciation.
- The Assessing Officer held that in view of Section 74, such set off on short term capital gain against the long term capital gain was not permitted. Thus, disallowed the set off of brought forward long term capital loss and unabsorbed depreciation against the deemed short term capital gain of Rs.7.12 Crores.
- The Commissioner (Appeals)allowed the respondent's appeal.
- On appeal to the High Court:

HELD:

The deemingfiction under Section 50 is restricted only to the mode of computation of capital gains contained in Sections 48 and 49. It does not change the character of the capital gain from that of being a long term capital gain into a short term capital gain for purpose other than Section 50. Thus, the respondent-assessee was entitled to claim set off as the amount ofRs.7.12 Crores arising out of sale of depreciable assets which are admittedly on sale of assets held for a period to which long term capital gain apply. Thus for purposes of Section 74 of the Act, the deemed short term capital gain continues to be long term capital gain. Moreover, it appears that the Revenue has accepted the decision the Tribunal in Komac Investments and Finance Pvt. Ltd v. ITO 132 ITD 290, no appeal was apparently being filed from that order.

Caselaws: High Court of Bombay, Commissioner of Income-tax v. Parrys (Eastern) (P.) Ltd. [2016] 66 taxmann.com 330 (Bombay)

➲ **Where assessee disclosed all material facts relating to deduction claimed under sections 80HHC and 80HHE at time of making assessment, AO could not reopen assessment after expiry of four years from end of relevant year on ground that export incentives relating to export of goods other than export of software were to be excluded from profits eligible for deduction**

Section 80HHE, read with sections 80HHC and 147, of the Income-tax Act, 1961 - Deductions - Profits and gains from export of computer software (Reopening of assessment) - Assessment year 2003-04 - For relevant year, assessee filed its return claiming deduction under section 80HHE - After expiry of four years from end of relevant year, Assessing Officer sought to reopen assessment on ground that assessee had shown profits eligible for deduction which also included export incentives related to export of goods out of India other than export of software and, since, export incentives were not eligible for deduction under section 80HHC, said amount should have been reduced from eligible profits - Whether since issue of deduction under sections 80HHC and 80HHE was duly disclosed by assessee in its return of income together with audit report of Chartered Accountant, in view of proviso to section 147, Assessing Officer had no jurisdiction to reopen assessment - Held, yes [In favour of assessee]

FACTS

- For the relevant year, assessee filed its return claiming deductions under sections 80HHC, 80HHE and 80-IB.
- The assessment was completed under section 143(3) allowing the assessee's claim for deductions.
- After expiry of four years from end of relevant year, the Assessing Officer initiated reassessment proceedings on ground that assessee had shown profits eligible for deduction under section 80HHE, which also included export incentives related to export of goods out of India other than the export of software. According to the Assessing Officer export incentives were not eligible for deduction under section 80HHC and, said amount should have been reduced from profits eligible for deduction under section 80HHE.
- The assessee raised an objection that since it had disclosed all material facts relating to deductions claimed at time of assessment, in view of proviso to section 147, initiation of reassessment proceedings was not permissible.
- The Assessing Officer set aside objection raised by the assessee.
- The Commissioner (Appeals) upheld the validity of reassessment proceedings.
- On second appeal:

HELD

- It is quite clear that the case has been opened after a period of four years from the end of the relevant assessment year. In such a scenario, a case can be reopened after four years from the end

of the relevant assessment year only if the assessee fails to file the return or there is a failure on the part of the assessee to disclose fully and truly all material facts relevant for the assessment.

- From a plain reading of section 147, it is quite clear that for the cases which have already been assessed under section 143(3), the limitation period for reopening under section 148 is four years from the end of the relevant assessment year, with an exception in cases where the assessee fails to file the return of income or fails to disclose fully and truly all material facts necessary for assessment. Therefore, before going further, one has to see whether in the present case, the assessee has disclosed all material facts fully and truly as this is not a case of non-filing of return.
- The issue of deduction under sections 80HHC and 80HHE was duly disclosed by the assessee in its return of income together with audit report of Chartered Accountants in this regard. Further, on queries raised by the Assessing Officer, due disclosures were made by the assessee. From the record, it is not inferred from anywhere that the assessee has failed to disclose any material fact relating to the issue in question.
- Now, the obvious question arises is whether in such a case, even on the issue of law wrongly applied in the original assessment, the reopening can be done.

The position at this stage, what emerges, is that as per the Assessing Officer, though the assessee may have disclosed fully and truly all material facts necessary for assessment, the claim of deduction made by it is wrong (not as per law). It is well settled that the duty of the assessee is to disclose all material facts fully and truly and the duty ends at that. On the basis of these material facts, the duty is that of the Assessing Officer to apply the law correctly. The assessee is not obliged to teach the revenue authorities the correct law to be applied on the basis of his disclosure. The duty of the assessee does not extend beyond the full disclosure of material facts. The inability of Assessing Officer to not apply law properly on full and true disclosure made by assessee cannot be covered up in guise of reopening of assessment, that too after four years from the end of the relevant year. In view of the above, in the facts and circumstances of the case, the Assessing Officer had no jurisdiction to reopen the case as the same was barred by limitation, having been opened after four years from the end of relevant assessment year.

In addition to the above, from the appraisal of material and evidences on record as well as the enquiries conducted by the Assessing Officer during the original assessment proceedings, it is found that the issue of deduction under Chapter VIA was quite open to the Assessing Officer. He has already applied his mind to all these and now reappraising the same issue and re-examining the same under section 148 amounts to change of opinion, which is not permitted under the law.

In view of the above, the reopening of assessment is wholly unjustified and the Assessing Officer has not assumed jurisdiction in accordance with law. Therefore, the reopening of the assessment is set aside.

Source: In the ITAT Chandigarh Bench, New Era Control Devices (P.) Ltd. v. Assistant Commissioner of Income-tax, Circle-V, Ludhiana

➲ **Where assessee, Indian company, advanced interest-free loan to its foreign subsidiary, it was LIBOR which had to be considered while determining arm's length interest rate**

Section 92C of the Income-tax Act, 1961 - Transfer pricing - Computation of arm's length price (Comparables and adjustments/ Adjustments - Interest) - Assessment year 2007-08 - Assessee, an Indian company, received interest on loan advanced to its foreign subsidiary and applied LIBOR + 25 basis points, i.e., average rate of 6.07 per cent for earlier year - Lower authorities opined that rate of interest prevailing in India for borrowing in rupees as applicable to five year BB rated bonds by making adjustments to CRISIL average yield for BBB related bonds was appropriate benchmark for USD loan given to subsidiary and computed adjustment accordingly - Whether since it was LIBOR rate which had to be considered while determining arm's length interest rate and average of LIBOR for 1-4-2005 to 31-3-2006 was 4.42 per cent and assessee had charged interest at 6 per cent which was higher than LIBOR, no addition was liable to be made in hands of assessee - Held, yes [In favour of assessee]

FACTS

The assessee, an Indian company, received interest on loan advanced to foreign subsidiary company for commercial expediency. It charged rate of interest at LIBOR + 25 basis point and claimed that interest charged worked out to average rate of 6.07 per cent for earlier year and, thus, it was at arm's length.

- Lower authorities opined that rate of interest prevailing in India for borrowing in rupees as applicable to five year BB rated bonds by making adjustments to the CRISIL average yield for BBB rated bonds was appropriate benchmark for USD loan given to subsidiary and, accordingly, computed TP adjustment.
- On appeal:

HELD

- It was submitted that this issue has been decided in assessee's own case for assessment year 2008-09, wherein this Tribunal had decided that since loan given was in foreign currency, interest rate charged which is within ± 5 per cent of LIBOR is at arm's length. It was LIBOR rate which had to be considered while determining the arm's length interest rate in respect of the transaction between the assessee and the Associated Enterprises and the average of the LIBOR rate for 1-4-2005 to 31-3-2006 was 4.42 per cent and since the assessee had charged interest at 6 per cent which is higher than

the LIBOR, no addition on this count is liable to be made in the hands of the assessee.
▪ Respectfully following the said decision of this Tribunal, interest charged on loan is deleted.

Case Law: *In The ITAT Bangalore Bench 'A', Sami Labs Ltd. v. Deputy Commissioner of Income-tax, Circle 12(3), Bangalore*

CENTRAL EXCISE

Notifications / Circulars

➲ **Guidelines for handling and storage of valuable goods that are seized/ confiscated by the Department**

In terms of Section 110 of Customs Act, 1962 if the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods that may include valuables such as gold. In the recent past, the smuggling of high value goods, especially gold is on the rise, as evidenced by the increasing number of seizures made by Directorate General of Revenue Intelligence and the field formations. In order to prevent such loss/ theft of valuables in future, the following guidelines are issued re-inforcing/ re-iterating and in continuation of the existing instructions/ circulars in this regard for strict compliance by all field formations.

Valuables:
For the purpose of these guidelines, the valuables include:
i. diamonds, precious and semi-precious stones, pearls, gold/ silver;
ii. articles including jewellery made of or containing these valuables mentioned at (i) above;
iii. high value watches;
iv. currency including foreign currency; and
v. such other articles of small bulk and high value as Commissioner of Customs may by special or general order specify as valuables.

Custodian:
• Only experienced officers whose integrity is absolutely beyond doubt, should be posted as incharge of the strong room/ valuable godown. Similar check from vigilance & integrity angle should also be ensured for the superior officer who is given the overall supervision of the strong room and custody of the second key.
• Whenever the Custodian or his superior officer is transferred, a regular substitute should be provided, who shall take proper charge of the strong room/valuable godown.

Source: Instruction [F.No.394/97/2015-Cus (AS)] GOI, Ministry of Finance, Department of Revenue, CBEC, dated: 01-12- 2015

Read the full notification at: http://www.cbec.gov.in/resources//htdocs-cbec/customs/cs-instructions/cs-instructions-2015 guidlns-handlng-strg-goods-cs-asu.pdf

➲ **Excise duty exemption to units in North Eastern Region**

CBEC clarified that new units or units undertaking substantial expansion after 01.12.2014 and upto the cut-off date of 31.03.2017 shall continue to he eligible for excise duty exemption under Notification No.20/2007-Central Excise dated 25.04.2007 subject to the conditions specified thereunder.

Source: Circular No.1012/19/2015-CX [F. No. 332/03/2014-TRU] dated: 2nd December, 2015

Read more at: http://www.cbec.gov.in/resources//htdocs-cbec/excise/cx-circulars/cx-circulars-2015/circ1012-2015cx.pdf

Case Laws

➲ **Assessee could be arrested for evasion of excise even on basis of prima facie quantification of duty**

Excise & Customs : Where prima facie quantification of duty shows alleged evasion of duty of Rs. 10 crores, offence is cognizable and non-bailable; therefore, arrests can be made by Intelligence Officers of department

Excise & Customs : In case of arrested persons, only Superintendent and higher officers of Central Excise have power to send them to Magistrate as per sections 19 and 21; since Intelligence Officers have not been empowered in this behalf, judicial remand ordered at request of Intelligence Officers is void

Section 9 , read with sections 9A, 11A and 11AC, of the Central Excise Act, 1944, sections 7378 and 89 of the Finance Act, 1994 and sections 28, 114A,135 and 137 of the Customs Act, 1962 - Offences and penalties - Central Excise - Department issued various summons to assessee and on assessee's non-appearance conducted search/seizure and found incriminating documents suggesting prima facie evasion of duty of Rs. 10 crore - Intelligence Officer of Department arrested assessee - Assessee argued that arrest can be made only after final quantification of duty and not on basis of prima facie quantification - HELD : Prima facie assessment of duty showed that evasion was almost Rs. 10 crores, far exceeding monetary limit/ceiling of Rs. 1 crore - Hence, offence was prima facie cognizable and non-bailable and therefore, assessee's arrest was correct in law. [In favour of revenue]

Section 21, read with sections 19 and 20 of the Central Excise Act, 1944 - Arrests - Central Excise - Intelligence Officer arrested assessee and sought remand of assessee - Magistrate granted remand - Assessee argued that officer empowered under sections 18 and 21 for forwarding arrested persons to Magistrate and seeking

remand is Superintendent or higher grade officer and Intelligence Officers are not empowered; therefore, remand proceedings and consequent order was invalid - HELD : Intelligence Officers may have been given power to arrest but nothing has been indicated to show whether they are empowered under sections 19 and 21 to forward arrested persons to Magistrate for judicial custody or remand or bail - Assessee's contention that Intelligence Officer was not empowered under sections 19 and 21 was not controverted by Department - Since Intelligence Officers were not empowered in this behalf, consequent proceedings and remand order were vitiated - Assessee was directed to be released. [In favour of assessee]

Circulars and Notifications : Notification No. 30/99-CE(N.T.), dated 11-5-1999, Notification No. 9/99- C.E., (N.T.), dated 10-2-1999

Case Law: *HIGH COURT OF JHARKHAND, Hemant Goyal v. Union of India, [2016] 66 taxmann.com 226 (Jharkhand)*

➲ **Excise & Customs: Interest on deposits received by assessee from customers cannot be added to excisable value where price is market-driven and not determined on 'cost plus basis and deposits were not significant enough to influence price**

Section 4 of the Central Excise Act, 1944 read with rule 6 of the Central Excise Valuation (Determination of Price of excisable goods) Rules, 2000 - Valuation under Central Excise - General - Period 1985-86 to 1990-91 - Assessee, a manufacturer of motor cycles, was taking a deposit of Rs. 500 per motorcycle at time of booking from customers - Department argued that said deposit was partly used to meet working capital requirement as well as partly invested, which led to decrease in cost and receipt of income and, being additional consideration, same was addable to value - Tribunal fund that : (a) price was not determined on 'cost plus basis'; (b) deposits were used for working of company and not necessarily working capital; (c) interest on deposit was not significant enough to influence price; and (d) assessee had been suffering loss despite price-rises; therefore, deposit was not a relevant factor in pricing - HELD : Price of motorcycle was market-driven and assessee did not follow a 'cost-plus-profit' pricing policy - In view of findings of fact of Tribunal, no interference was called for. [In favour of assessee]

Case Law: Supreme Court of India, Commissioner of Central Excise, Delhi - III v. Hero Honda Motors Ltd.

CUSTOMS

Notifications / Circulars

➲ CBEC amended Notification No. 152/2009-Customs dated 31.12.2009 so as to provide deeper tariff concessions in respect of specified goods imported from Korea RP under the India-Korea Comprehensive Economic Partnership Agreement (CEPA) w.e.f. 01.01.2016 vide *Notification No. 60/2015-Cus,dt. 30-12-2015.*

➲ **Waiver of Interest on crude stored in underground rock caverns**

In exercise of the powers conferred by the second proviso to clause (ii) of sub- section (2) of section 61 of the Customs Act, 1962 (52 of 1962), the Central Board of Excise and Customs, being satisfied that it is necessary so to do in the public interest, hereby specifies the class of goods, namely crude, imported and stored in underground rock caverns, in respect of which no interest shall be charged under the said section 61 vide *Notification No. 147/2015-Customs (N.T.) dated: 23rd December, 2015*.

➲ CBEC amended notification No. 53/2011-Customs dated: 1st July, 2011 so as to provide deeper tariff concessions in respect of specified goods imported from Malaysia under the India-Malaysia Comprehensive Economic Cooperation Agreement (IMCECA) w.e.f. 01.01.2016 vide *Notification No. 59/2015-Cus,dt. 30-12-2015.*

➲ Amendment in Notification No. 46/2011-Customs dated 01.06.2011 so as to provide deeper tariff concessions in respect of specified goods when imported from ASEAN countries under the India-ASEAN Free Trade Agreement w.e.f. 01.01.2016 vide *Notification No. 58/2015-Cus,dt. 30-12-2015*.

➲ Amendment in Notification No. 69/2011-Customs, dated 29th July, 2011 so as to provide a concessional rate of basic customs duty in respect of tariff item 84082020 [engines of a kind used for the propulsion of motor vehicles – of cylinder capacity exceeding 250 cc] and 87084000 [gear box and parts thereof, of motor vehicles], w.e.f. 1st of January, 2016 at 5.94% and 8.13%, respectively, when imported under the India-Japan Comprehensive Economic Partnership Agreement (IJCEPA).

Source: *Notification No. 57/2015-Cus,dt. 14-12-2015*

Anti-dumping duty :

➲ CBEC levied definitive anti-dumping duty on Melamine Tableware and Kitchenware products originating in, or exported from the People's Republic of China, Thailand and Vietnam for a period of five year.

Source: Notification No. 55/2015-Cus (ADD), dt. 04-12-2015

➲ Levy of definitive anti-dumping duty on Phthalic Anhydride, originating in, or exported from Japan and Russia for a period of five year vide *Notification No. 56/2015-Cus (ADD), dt. 04-12-2015*.

➲ As per *Notification No. 58/2015-Cus (ADD), dt. 08-12-2015* CBEC levied provisional anti-dumping duty on Methylene

Chloride originating in, or exported from the People's Republic of China and Russia for a period not exceeding six months.

➲ CBEC levied definitive anti-dumping duty on Gliclazide, originating in, or exported from the People's Republic of China for a period of five year vide *Notification No. 59/2015-Cus (ADD), dt. 08-12-2015*.

➲ CBEC levied provisional anti-dumping duty on Purified Terephthalic Acid, originating in, or exported from the People's Republic of China, Iran, Indonesia, Malaysia and Taiwan for a period not exceeding six months vide *Notification No. 60/2015-Cus (ADD), dt. 10-12-2015*.

➲ Based on *Notification No. 61/2015-Cus (ADD), dt. 11-12-2015* CBEC levied definitive anti-dumping duty on import of Cold Rolled Flat Products of Stainless Steel originating in, or exported from the People's Republic of China, Korea, European Union, South Africa, Taiwan (Chinese Taipei), Thailand and USA for a period of five years.

➲ Levy of definitive anti-dumping duty on Abendazole, originating in, or exported from the People's Republic of China, for a period of five years vide *Notification No. 62/2015-Cus (ADD), dt. 14-12-2015.*

Case Laws

➲ **Excise & Customs : Where re-processing of returned 'defective finished goods' results in scrap, duty is payable on such scrap at rate applicable to scrap and asessee cannot be asked to pay back entire credit taken on return of defective finished goods**

Rule 16 of the Central Excise Rules, 2002, read with rule 2(k) of the Cenvat Credit Rules, 2004 - Return of duty-paid goods to factory - Assessee received-back defective finished goods in its factory and took credit of duty paid thereon - In nearly one per cent of cases, reprocessing of defective goods resulted in destruction of goods and resultant scrap was cleared on payment of duty applicable to scrap - Department argued that in cases of scrap, since there was no manufacturing process, entire credit taken on return of finished goods must be reversed - HELD : In this case, assessee had tried to reprocess defective finished goods, which resulted into scrap - Since re-processing undergone was re-manufacture, payment of duty on resultant scrap at rate of duty applicable to scrap was valid. [In favour of assessee]

Section 4 of the Central Excise Act, 1944, read with rule 6 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 and rule 16 of the Central Excise Rules, 2002 - Valuation under Central Excise - Transaction value - Additional Consideration - Assessee was manufacturing/re-manufacturing rubber articles using dies/mould - Department alleged that amortization of dies/mould was includible in value - Assessee claimed that amortization amount had already been included in value and duty paid thereon; therefore, demand could not be sustained - HELD: Since assessee had claimed that duty had already been paid on amortization and there was no rebuttal by department, demand was set aside.
[In favour of assessee]

Case Law: CESTAT, Mumbai Bench, Commissioner of Central Excise, Mumbai-I v. Mega Rubber Technologies (P.) Ltd.

SERVICE TAX

Case Laws

➲ **Cenvat Credit : Works contract services availed for minor repairs of premises as well as equipments, etc., are eligible for input service credit to exporter of 'software services'**

Rule 2(l), read with rule 5 of the Cenvat Credit Rules, 2004 - Cenvat Credit - Input service - General - Period from May 2008 to March 2009 - Assessee, an exporter of software services, took input service credit of : (a) Business Support Services, (b) Foreign Exchange Broking services, (c) General Insurance Services, (d) Outdoor Caterer Services and (e) Works Contract Service - Assessee claimed that all such services had nexus with output service - In case of works contract service, assessee claimed that they were mainly for minor repairs essential not only for premises but also for equipments, etc., for exporting output service -

HELD : From 1-4-2011, words 'in relation to business' have been removed from definition of input service under rule 2(l) ibid - For period prior thereto, therefore, input services in question have got nexus with output service viz., Information Software Services which are being exported by assessee - Hence, credit was allowed subject to verification of quantum of refund in case of works contract services. [In favour of assessee]

Case Law: CESTAT, Bangalore Bench, Rearden Commerce India (P.) Ltd. v. Commissioner of Service Tax
[2016] 66 taxmann.com 255 (Bangalore - CESTAT)

➲ **Pipes cannot be regarded as 'plant and machinery'; therefore, laying of 'pipes' cannot be regarded as 'commissioning or installation' of 'plant or machinery' and cannot be charged to service tax**

Section 65(39a) of the Finance Act, 1994 - Taxable services - Erection, Commissioning and Installation Services - Period 1-7-2003 to 31-10-2003 - Assessee was engaged in manufacture of GRP pipes and was also collecting charges for laying same - Department

argued that charges were liable to service tax under Erection, Commissioning and Installation Services - HELD : Laying of 'pipes' cannot be regarded as 'commissioning or installation' of 'plant or machinery' - Before amendment by Finance Act, 2005, installation of plumbing, drain laying or other installations for transport of fluids was not covered within scope of taxable service - Hence, no service tax could be demanded for relevant period. [In favour of assessee]

Article 227 , read with Article 226 of the Constitution of India - Writ petition - Challenge thereto in writ appeal - Assessee filed writ in year 2006 against adjudication order - Department argued that, in view of alternate appeal remedy, writ was not maintainable - Learned single judge admitted writ and allowed same on merits in year 2011 - Department filed writ appeal thereagainst - HELD : It is not in every case but only in rarest of rare cases that High Court can entertain a writ petition against adjudication order allowing assessee to bypass alternative remedy of appeal - However, since, in this case, about 9 years had elapsed from date of adjudication order and 5 years had elapsed from date of impugned order of single judge, it would be futile to set aside impugned order at this stage. [In favour of assessee]

FACTS

- Assessee was engaged in manufacture of GRP pipes and was also collecting charges for laying same.
- Department argued that charges were liable to service tax under Erection, Commissioning and Installation Services.
- Assessee argued that 'pipes' were not plant and machinery.
- The department argued that the contract that the assessee had was for fabrication, erection, alignment and hydrotesting of GRP piping at the LNG Terminal of a company by name Petron Engineering Constructions Ltd. Therefore, these pipes form part of plant and machinery.

HELD

- A careful look at the development that had taken place from 1-7-2003 would show :

(i) that the focus of section 65(28) with effect from 1-7-2003 was on the commissioning or installation of plant, machinery or equipment,

(ii) that the focus of section 65(39a) with effect from 10-9-2004 was also on commissioning or installation of plant, machinery or equipment, with the addition of the service of erection, and

(iii) that the focus of section 65(39a) with effect from 2005 was on several things, apart from plant, machinery or equipment.

- It could be seen from the amendment to section 65(39a), introduced under Finance Act, 2005, that the definition of "erection, commissioning or installation" was extended so widely as to include (i) electrical and electronics devices, (ii) plumbing, (iii) heating, ventilation or air-conditioning, (iv) thermal insulation, (v) lift and escalator, and (vi) such other similar services. [Para 14]
- Therefore, it is clear that before the amendment to section 65(39a) under Finance Act, 2005, installation of plumbing, drain laying or other installations for transport of fluids was not included within the definition of "erection, commissioning or installation". This is why the Single Judge came to the conclusion that the contract that the assessee had with its customers for the purpose of laying pipelines did not come within the definition of the expression "commissioning or installation" as it prevailed under section 65(28) as on 1-7-2003. There is nothing wrong in the conclusion reached by the Judge.
- Pipes or pipelines would not come under the category of "plant, machinery or equipment"; hence, the Judge was right in holding that the services rendered by the assessee to its customers did not form part of taxable services as on 1-7-2003.
- GRP pipes are fundamentally used for carrying Liquefied Natural Gas. The Finance Act, 2005 specifically included plumbing, drain laying or other installations for transport of fluids. Therefore, the Judge was right in allowing the writ petition. Hence, there are no merits in the writ appeal.

Case Law: High Court of Madras, Additional Commissioner, Central Excise v. Strategic Engineering (P.) Ltd
[2016] 65 taxmann.com 152 (Madras)

➲ **Cenvat Credit : Courier Service used for sending/receiving documents related to business, or for movement of inputs and finished goods is eligible for credit only upto place of removal; credit cannot be allowed for movement of finished goods, after place of removal**

Rule 2(l) of the Cenvat Credit Rules, 2004 - Cenvat Credit - Input service - Courier Services - Assessee, a manufacturer of automotive goods viz., seats, head liner, sunvisor, etc., had availed credit of courier services for sending goods/documents to customers - Department denied credit on ground that said services were availed beyond 'place of removal' - HELD : For period upto 31-3-2008, clearance of final product 'from' place of removal was eligible for credit and hence, Courier Services used for transportation of documents and goods from place of removal would be eligible for credit - However, from 1-4-2008, said services are eligible for credit only 'upto' place of removal i.e., assessee would be eligible for CENVAT credit on Courier Service used for sending/receiving documents related to business, or for movement of inputs and finished goods upto place of removal, credit cannot be allowed for movement of finished goods, after place of removal. Accordingly, matter was remanded back to re-quantify demand. [Partly in favour of assessee]

Case Law: CESTAT, Ahmedabad Bench, Lear Automotive India (P.) Ltd. v. Commissioner of Central Excise & Service Tax, Vadodara

➲ **Cenvat Credit: Where principally agreement is to appoint**

agent/stockist for storing and selling goods of assessee, such stockist would be 'commission agent' and not 'sales promotion agent'; hence, commission so paid to him is ineligible for credit

Rule 2(l) of the Cenvat Credit Rules, 2004 - Cenvat Credit - Input service - Advertisement and Sales Promotion - Assessee paid commission to its agents/stockists and took credit of service tax charged on commission - Department denied credit relying on judgment in CCE v. Cadila Healthcare Ltd. [2013] 32 taxmann.com 105 (Guj.) - Assessee claimed that agents were also engaged in 'sales promotion'; hence, judgment in Cadila Healthcare Ltd. (supra) would not apply - HELD : Lower authorities and Tribunal found that there was no material to establish that agents had incurred any expenses, or involved in any means, for sales promotion - Even otherwise, agency agreement was for appointment as stockist/agent for stocking and selling goods of assessee; hence, a fleeting reference to attempt to sales promotion would not change nature of agreement and would not convert stockist into sales promotion agent - Therefore, credit was rightly denied. [In favour of revenue]

Case Law: High Court of Gujarat, Gujarat State Fertilizers & Chemicals Ltd. (Fiber Unit) v. Commissioner of Central Excise, Customs & Service Tax, Surat-II

➲ **Where cenvat credit of service tax paid by department providing input service was allocated to other two departments, one providing taxable service while other exempted service, cenvat credit allocated to department providing taxable service could not be disallowed on plea that department providing exempt service availed cenvat credit**

Rule 6 of the Cenvat Credit Rules, 2004 - Cenvat Credit - Common inputs and input services for taxable and exempt final products and services - Period 1-4-2008 to 15-5-2008 - Assessee, a service provider, had three departments, namely, 'A', 'B' and 'C' - Department 'A' provided taxable service - Department 'B' provided exempted service - Department 'C' received input service - Assessee allocated cenvat credit of service tax paid on input service availed by department 'C' to department 'A' to extent of Rs. 1.11 crores and department 'B' to extent of Rs. 6.66 lakhs on ratio of turnover - Adjudicating Authority disallowed entire cenvat credit allocated to department 'A' on ground that department 'B', which provided exempted service, availed part of cenvat credit - Whether disallowance of credit allocated to department 'A' was contrary to principle of proportionately - Held, yes [In favour of assessee/Matter remanded]

FACTS

- The assessee, a service provider, had three departments. The department 'A' provided taxable service. The department 'B' provided exempted service. The department 'C' received the input service.
- The assessee allocated the cenvat credit of service tax paid on input service availed by the department 'C' to the department 'A' to the extent of Rs. 1.11 crores and the department 'B' to the extent of Rs. 6.66 lakhs on the ratio of the turnover.
- The Adjudicating Authority disallowed the entire cenvat credit allocated to the department 'A' on the ground that the department 'B', which provided exempted service, availed part of the cenvat credit.
- On the assessee's appeal to the Tribunal the revenue submitted that when the manufacturer or the service provider provides taxable service as well as exempted service, he comes under rule 6(2) to maintain record for verification by revenue. Once the assessee comes under rule 6(2), in that circumstance, application of rule 6(2) and rule 6(3) simultaneously is not possible. The assessee failed to comply with the condition prescribed by rule 6(3) read with rule 6(3A). Therefore, the Adjudicating Authority has rightly denied the entire cenvat credit of Rs. 1.11 crores allocated to the department 'A'.

HELD

- A bare reading of sub-rule (2) and sub-rule (3) of rule 6 makes clear that sub-rule (3) contains overriding provision which is independent in its nature irrespective of anything stated in sub-rule (1) and sub-rule (2) of rule 6. When sub-rule (2) is read, that throws light that the assessee has chosen a way of maintaining its record which enabled it to substantially allocate the cenvat credit of service tax suffered by the department 'C' to the department 'A' and partly to the department 'B', it has complied to the provisions of sub-rule (2) of rule 6. Once the conduct of the assessee is very clear because of the proportionality of the credit allocated, due to its division of the department and maintenance of records, there cannot be any presumption by revenue that the assessee's case falls under rule 6(3).
- It is also apparent from record that the order passed by the Adjudicating Authority is unreasonable for the reason that as against credit of Rs. 6.66 lakh allocated to the department 'B' which provided exempted service, disallowance of entire credit of Rs. 1.11 crores allocated to department 'A' providing taxable service is contrary to the principle of proportionality. Therefore, the entire disallowance does not call for any decision in favour of revenue.

Case Law: CESTAT, Chennai Bench, Sify Technologies Ltd. v. Commissioner of Service Tax, LTU, Chennai

➲ **In case of multilevel marketers, profit earned on direct marketing (sale and purchase of goods along with turnover-based discount/commission) cannot be charged to service tax; however, commission on downline marketing by sponsoring sub-distributors would be liable to service tax**

Section 65(19) of the Finance Act, 1994 - Taxable services -

Business Auxiliary Services - Assessee was engaged in multilevel marketing of products of Amway whereunder it was: (a) buying and selling goods of Amway (direct marketing) and (b) appointing sub-distributors (downline marketing) - Department demanded service tax on commission earned in Direct Marketing and Downline Marketing - Assessee argued that they were not commission agents, but, were buying and selling products of Amway - HELD : Profit earned by assessee-distributor from purchase and sale of goods and also turnover-based commission granted by Amway on basis of purchase and sales made by assessee, could not be charged to service tax - However, commission earned by assessee on basis of volume of purchases made by his sales group (i.e., second or third level of sub-distributors sponsored by assessee), was liable for service tax - Since these issues as well as applicability of Small service provider's exemption were not examined, matter was remanded back. [Partly in favour of assessee/Matter remanded]

Circulars and Notifications : Notification No. 6/2005-ST, dated 1-3-2005

CaseLaw: CESTAT, Chennai Bench, Smt. A. Vijaya v. Commissioner of Central Excise, Salem

SEBI

Notifications / Circulars

➲ **Review of Annual Custody / Issuer Charges**

SEBI vide circular No. MRD/DoP/SE/Dep/Cir-4/2005 dated January 28, 2005 has allowed the custody/issuer charges to be collected by the depositories from the issuers in the manner specified therein. Subsequently, the charges and the methodology were revised vide Circular Nos. MRD/DoP/SE/Dep/Cir-2/2009 dated February 10, 2009 and CIR/MRD/DP/05/2011 dated April 24, 2011 respectively. The Depository Systems Review Committee (DSRC) has, with an objective of promoting financial inclusion and expanding the reach of depository services to tier II and tier III towns, recommended that the revenue source of the depositories may be augmented and Depository Participants (DPs) may be incentivized by having a revenue sharing mechanism between depositories and DPs. It has also suggested that the annual issuer charges may be enhanced and the incremental revenue be shared suitably by the depositories with their Participants for promoting the Basic Services Demat Accounts (BSDA) and opening new accounts in tier II and tier III towns.

After deliberation, it has been decided to revise the per folio charges from Rs 8.00 (eight) to Rs. 11.00 (eleven), subject to a minimum as mentioned below:

Nominal Value of admited securities (Rs.)	Annual Custody Fee payable by an issuer to each depository (Rs.)
Upto 5 crore	9000
Above 5 crore and upto 10 crore	22,500
Above 10 crore and upto 20 crore	45,000
Above 20 Crore	75,000

Source: *Circular CIR/MRD/DP/18/2015, dated: December 09, 2015*

Read more at: http://www.sebi.gov.in/cms/sebi_data/attachdocs/1449659863183.pdf

➲ **Introduction of system-driven disclosures in securities market**

SEBI has specified the disclosure requirements relating to acquisition, sale and pledge of securities under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as "SAST Regulations") and SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as "PIT Regulations") in order to bring in transparency and promote orderly conduct in the market. Since the Stock Exchanges, Depositories and Registrar and Share Transfer Agents (hereinafter referred to as "RTAs") have adopted advanced systems and technologies, it has been decided to explore the possibility of disclosing such information based on these systems.

Source: *Circular - CIR/CFD/DCR/17/2015, dated: December 01, 2015*

Read more at: http://www.sebi.gov.in/cms/sebi_data/attachdocs/1448970446882.pdf

FOREIGN TRADE

Notifications / Circulars

➲ **Export Policy of Onions Removal of Minimum Export Price on Onions**

Export of onion for the item description at Serial Number 51 & 52 of Chapter 7 of Schedule 2 of ITC (HS) Classification of Export & Import Items has been permitted without any Minimum Export Price (MEP) vide *Notification No. 29 /2015-20 dated: 24 December, 2015.*

Read more at: http://dgft.gov.in/Exim/2000/NOT/NOT15/noti29.pdf

➲ Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) (Amendment) Regulations, 2015

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 (Borrowing or Lending in Foreign Exchange) Regulations, 2000 (Notification No. FEMA. 3/2000-RB dated 3rd May 2000) namely : Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) (Amendment) Regulations, 2015.

Amendment of the Schedule I:
In the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000 (Notification No. FEMA. 3/2000-RB dated 3rd May 2000) in Schedule I, after paragraph 3, the following shall be inserted, namely:-
4 : Provided that under these Regulations, the Reserve Bank may, in consultation with the Government of India, prescribe for the automatic route, any provision or proviso regarding various parameters listed in paragraphs 1 to 3 above of this Schedule or any other parameter as prescribed by the Reserve Bank and also prescribe the date from which any or all of the existing proviso will cease to exist, in respect of borrowings from overseas, whether in foreign currency or Indian Rupees, such as addition / deletion of borrowers eligible to raise such borrowings, overseas lenders / investors, purposes of such borrowings, change in amount, maturity and all-in-cost, norms regarding security, pre-payment, parking of ECB proceeds, reporting and drawal of loan, refinancing, debt servicing, etc.

Amendment to the Schedule II:
In the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000 (Notification No. FEMA. 3/2000-RB dated 3rd May 2000) in Schedule I, after paragraph 5, the following shall be inserted, namely:-

6 : Provided that under these Regulations, the Reserve Bank may, in consultation with the Government of India, prescribe for the approval route, any provision or proviso regarding various parameters listed in paragraphs 1 to 5 above of this Schedule or any other parameter as prescribed by the Reserve Bank and also prescribe the date from which any or all of the existing provisions will cease to exist, in respect of borrowings from overseas, whether in foreign currency or Indian Rupees, such as addition / deletion of borrowers eligible to raise such borrowings, overseas lenders / investors, purposes of such borrowings, change in amount, maturity and all-in-cost, norms regarding security, pre-payment, parking of ECB proceeds, reporting and drawal of loan, refinancing, debt servicing, etc.

Source: Notification No.FEMA.358/2015-RB, dated: December 02, 2015

➲ Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015

In exercise of the powers conferred by clause (a) and clause (e) of Section 9, clause (d) and clause (g) of sub-section (2) of Section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999), and in supersession of Notification No. FEMA 11/ 2000-RB dated May 3, 2000, as amended from time to time, the Reserve Bank of India makes regulations, namely Limits for possession and retention of foreign currency or foreign coins:-

Limits for possession and retention of foreign currency or foreign coins:-
For the purpose of clause (a) and clause (e) of Section 9 of the Act, the Reserve Bank specifies the following limits for possession or retention of foreign currency or foreign coins, namely :
i) Possession without limit of foreign currency and coins by an authorised person within the scope of his authority;
ii) Possession without limit of foreign coins by any person;
iii) Retention by a person resident in India of foreign currency notes, bank notes and foreign currency travellers' cheques not exceeding US$ 2000 or its equivalent in aggregate, provided that such foreign exchange in the form of currency notes, bank notes and travellers cheques;

- was acquired by him while on a visit to any place outside India by way of payment for services not arising from any business in or anything done in India; or
- was acquired by him, from any person not resident in India and who is on a visit to India, as honorarium or gift or for services rendered or in settlement of any lawful obligation; or
- was acquired by him by way of honorarium or gift while on a visit to any place outside India; or
- represents unspent amount of foreign exchange acquired by him from an authorised person for travel abroad.

Possession of foreign exchange by a person resident In India but not permanently resident therein:-

Without prejudice to clause (iv) of Regulation 3, a person resident in India but not permanently resident therein may possess without limit foreign currency in the form of currency notes, bank notes and travellers cheques, if such foreign currency was acquired, held or owned by him when he was resident outside India and, has been brought into India in accordance with the regulations made under the Act.

Explanation : for the purpose of this clause, 'not permanently resident' means a person resident in India for employment of a specified duration (irrespective of length thereof) or for a specific job or assignment, the duration of which does not exceed three years.

Source: Notification No. FEMA 11(R)/2015-RB dated: December 29, 2015

➲ **Foreign Exchange Management (Realisation, repatriation and surrender of foreign exchange) Regulations, 2015**

In exercise of the powers conferred by Section 8, sub-section (6) of Section 10, clause (c) of sub-section (2) of Section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999), and in supersession of Notification No. FEMA 9/ 2000-RB dated May 3, 2000, as amended from time to time the Reserve Bank makes the following regulations relating to the manner of, and the period for, realisation of foreign exchange, repatriation of realised foreign exchange to India and its surrender, namely Foreign Exchange Management (Realisation, Repatriation and Surrender of Foreign Exchange) Regulations, 2015.

Duty of persons to realise foreign exchange due :-

A person resident in India to whom any amount of foreign exchange is due or has accrued shall, save as otherwise provided under the provisions of the Act, or the rules and regulations made thereunder, or with the general or special permission of the Reserve Bank, take all reasonable steps to realise and repatriate to India such foreign exchange, and shall in no case do or refrain from doing anything, or take or refrain from taking any action, which has the effect of securing -that the receipt by him of the whole or part of that foreign exchange is delayed; or that the foreign exchange ceases in whole or in part to be receivable by him.

Manner of Repatriation:-

(1) On realisation of foreign exchange due, a person shall repatriate the same to India, namely bring into, or receive in, India and –
sell it to an authorised person in India in exchange for rupees; or
retain or hold it in account with an authorised dealer in India to the extent specified by the Reserve Bank; or
use it for discharge of a debt or liability denominated in foreign exchange to the extent and in the manner specified by the Reserve Bank.
(2) A person shall be deemed to have repatriated the realised foreign exchange to India when he receives in India payment in rupees from the account of a bank or an exchange house situated in any country outside India, maintained with an authorised dealer.

Period for surrender of realised foreign exchange:-

A person not being an individual resident in India shall sell the realised foreign exchange to an authorised person under clause (a) of sub-regulation (1) of regulation 4, within the period specified below:-
(1) foreign exchange due or accrued as remuneration for services rendered, whether in or outside India, or in settlement of any lawful obligation, or an income on assets held outside India, or as inheritance, settlement or gift, within seven days from the date of its receipt;

(2) in all other cases within a period of ninety days from the date of its receipt.

Period for surrender in certain cases :-

(1) Any person not being an individual resident in India who has acquired or purchased foreign exchange for any purpose mentioned in the declaration made by him to an authorised person under sub-section (5) of Section 10 of the Act does not use it for such purpose or for any other purpose for which purchase or acquisition of foreign exchange is permissible under the provisions of the Act or the rules or regulations or direction or order made thereunder, shall surrender such foreign exchange or the unused portion thereof to an authorised person within a period of sixty days from the date of its acquisition or purchase by him.
(2) Notwithstanding anything contained in sub-regulation (1), where the foreign exchange acquired or purchased by any person not being an individual resident in India from an authorised person is for the purpose of foreign travel, then, the unspent balance of such foreign exchange shall, save as otherwise provided in the regulations made under the Act, be surrendered to an authorised person -

- within ninety days from the date of return of the traveller to India, when the unspent foreign exchange is in the form of currency notes and coins; and
- within one hundred eighty days from the date of return of the traveller to India, when the unspent foreign exchange is in the form of travellers cheques.

Period for surrender of received/ realised/ unspent/ unused foreign exchange by Resident individuals.-

A person being an individual resident in India shall surrender the received/realised/unspent/unused foreign exchange whether in the form of currency notes, coins and travellers cheques, etc. to an authorised person within a period of 180 days from the date of such receipt/realisation/purchase/acquisition or date of his return to India, as the case may be.

Exemption:- Nothing in these regulations shall apply to foreign exchange in the form of currency of Nepal or Bhutan.

Source: Notification No. FEMA 9 (R)/2015-RB dated: December 29, 2015

➲ **Foreign Exchange Management (Insurance) Regulations, 2015**

In exercise of the powers conferred by sub-section (2) of Section 47

of the Foreign Exchange Management Act, 1999, (42 of 1999), and in super cession of its Notification No.FEMA.12/2000-RB, dated May 3, 2000, as amended from time to time, the Reserve Bank of India makes the following Regulations with respect to the holding by a person resident in India of a general or life insurance policy issued by an insurer outside India, namely Foreign Exchange Management (Insurance) Regulations, 2015.

Permission to take or hold a general insurance policy issued by an insurer outside India:

(i) A person resident in India may take or continue to hold a health insurance policy issued by an insurer outside India provided aggregate remittance including amount of premium does not exceed limit prescribed under the Liberalised Remittance Scheme.
(ii) No person shall take out or renew any policy of insurance in respect of any property in India or any ship or other vessel or aircraft registered in India with an insurer whose principal place of business is outside India without permission of Insurance Regulatory and Development Authority of India (IRDA).
(iii) A person resident in India may take or continue to hold a general insurance policy other than referred in (i) and (ii) above, issued by an insurer outside India, provided that, the policy is held, under a specific or general permission of the Central Government.
(iv) A person resident in India may continue to hold any general insurance policy issued by an insurer outside India when such person was resident outside India.

Provided further that where the premium due on a general insurance policy has been paid by making remittance from India, the policy holder shall repatriate to India through normal banking channels, the maturity proceeds or amount of any claim due on the policy, within a period of seven days from the receipt thereof.

Permission to take or hold a life insurance policy issued by an insurer outside India:

(i) A person resident in India may take or continue to hold a life insurance policy issued by an insurer outside India, provided that, the policy is held, under a specific or general permission of the Reserve Bank of India.
(ii) A person resident in India may continue to hold any life insurance policy issued by an insurer outside India when such person was resident outside India.
Provided further that where the premium due on a life insurance policy has been paid by making remittance from India, the policy holder shall repatriate to India through normal banking channels, the maturity proceeds or amount of any claim due on the policy, within a period of seven days from the receipt thereof.

Source: Notification No. FEMA. 12(R)/2015-RB dated: December 29, 2015

➲ **Foreign Exchange Management (Export and import of currency) Regulations, 2015**

In exercise of the powers conferred by clause (g) of sub-section (3) of Section 6, subsection (2) of Section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999), and in supersession of Notification No. FEMA 6/ 2000-RB dated May 3, 2000, as amended from time to time, the Reserve Bank makes the following regulations for export from and import into, India of currency or currency notes, namely :

Export and Import of Indian currency and currency notes :-

(1) Save as otherwise provided in these regulations, any person resident in India:

- may take outside India (other than to Nepal and Bhutan) currency notes of Government of India and Reserve Bank of India notes up to an amount not exceeding Rs.25000/- (Rupees Twenty Five Thousand Only) per person or such amount and subject to such conditions as notified by Reserve Bank of India from time to time;
- may take or send outside India (other than to Nepal and Bhutan) commemorative coins not exceeding two coins each.

(2) Save as otherwise provided in these regulations, any person resident outside India, not being a citizen of Pakistan or Bangladesh, and visiting India:

- may take outside India currency notes of Government of India and Reserve Bank of India notes up to an amount not exceeding Rs.25000 (Rupees Twenty Five Thousand Only) per person or such other amount and subject to such conditions as notified by Reserve Bank of India from time to time.
- may bring into India currency notes of Government of India and Reserve Bank of India notes up to an amount not exceeding Rs.25000 (Rupees Twenty Five Thousand Only) per person or such other amount and subject to such conditions as notified by Reserve Bank of India from time to time.

Prohibition on Export of Indian coins:-
No person shall take or send out of India the Indian coins which are covered by the Antique and Art Treasure Act, 1972.

Prohibition on export and import of foreign currency:-
Except as otherwise provided in these regulations, no person shall, without the general or special permission of the Reserve Bank, export or send out of India, or import or bring into India, any foreign currency.

Import of foreign exchange into India:-
A person may -

- send into India without limit foreign exchange in any form other than currency notes, bank notes and travellers cheques;
- bring into India from any place outside India without limit

foreign exchange (other than unissued notes),

provided that bringing of foreign exchange into India under clause;

(b) shall be subject to the condition that such person makes, on arrival in India, a declaration to the Custom authorities in Currency Declaration Form (CDF) annexed to these Regulations;

provided further that it shall not be necessary to make such declaration where the aggregate value of the foreign exchange in the form of currency notes, bank notes or traveller's cheques brought in by such person at any one time does not exceed US$10,000 (US Dollars ten thousands) or its equivalent and/or the aggregate value of foreign currency notes brought in by such person at any one time does not exceed US$ 5,000 (US Dollars five thousands) or its equivalent.

Export of foreign exchange and currency notes:-

(1) An authorised person may send out of India foreign currency acquired in normal course of business,

(2) Any person may take or send out of India -

- Cheques drawn on foreign currency account maintained in accordance with Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) Regulations, 2000;
- foreign exchange obtained by him by drawal from an authorised person in accordance with the provisions of the Act or the rules or regulations or directions made or issued thereunder ;
- currency in the safes of vessels or aircrafts which has been brought into India or which has been taken on board a vessel or aircraft with the permission of the Reserve Bank ;

(3) Any person may take out of India -

- foreign exchange possessed by him in accordance with the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015;
- unspent foreign exchange brought back by him to India while returning from travel abroad and retained in accordance with the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015;

(4) Any person resident outside India may take out of India unspent foreign exchange not exceeding the amount brought in by him and declared in accordance with the proviso to clause (b) of Regulation 6, on his arrival in India.

Export and import of currency to or from Nepal and Bhutan:-

Notwithstanding anything contained in these regulations, a person may–

(1) take or send out of India to Nepal or Bhutan, currency notes of Government of India and Reserve Bank of India notes (other than notes of denominations of above Rs.100 in either case); provided that an individual travelling from India to Nepal or Bhutan can carry Reserve Bank of India currency notes of denomination Rs.500/- and/or Rs.1000/- up to a limit of Rs.25,000/- ;

(2) bring into India from Nepal or Bhutan, currency notes of Government of India and Reserve Bank of India notes (other than notes of denominations of above Rs.100 in either case) ;

(3) take out of India to Nepal or Bhutan, or bring into India from Nepal or Bhutan, currency notes being the currency of Nepal or Bhutan.

Source: Notification No. FEMA 6 (R)/RB-2015 dated: December 29, 2015

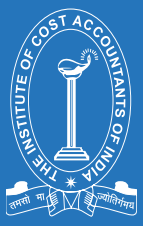
➲ FDI in services rises 20% to $1.46 bn in first half of FY16

With the government taking steps to improve ease of doing business and attract investments, FDI inflows into the services sector grew by about 20 per cent to $1.46 billion (Rs 9,404 crore) in the first six months of the current fiscal. The services sector, which includes banking, insurance, outsourcing, R&D, courier and technology testing, had received foreign direct investment (FDI) worth $1.22 billion (Rs 7,366 crore) in the same period last fiscal, according to the Department of Industrial Policy and Promotion (DIPP) data. According to experts, measures announced by the government are helping these sectors attract more investments. Earlier this year, the government hiked the FDI cap in insurance sector to 49 per cent. In banking sector also, the government has eased the norms and permitted portfolio investors to buy up to 74 per cent stake in local private banks with full fungibility.

Other sectors which have attracted healthy foreign inflows during the first half of this fiscal include computer software and hardware ($3.05 billion), trading ($2.3 billion) and automobile ($1.46 billion).

Strong inflows in these sectors propelled the overall FDI into the country by 13% to $16.63 billion during April-September 2015. The government has announced a series of steps like fixing timeliness for approvals to improve the ease of doing business in the country. The services sector contributes about 60% to India's GDP and receives high foreign inflows.

Source: http://www.business-standard.com/article/pti-stories/fdi-in-services-rises-20-to-1-46-bn-in-first-half-of-fy16-115121300103_1.html



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