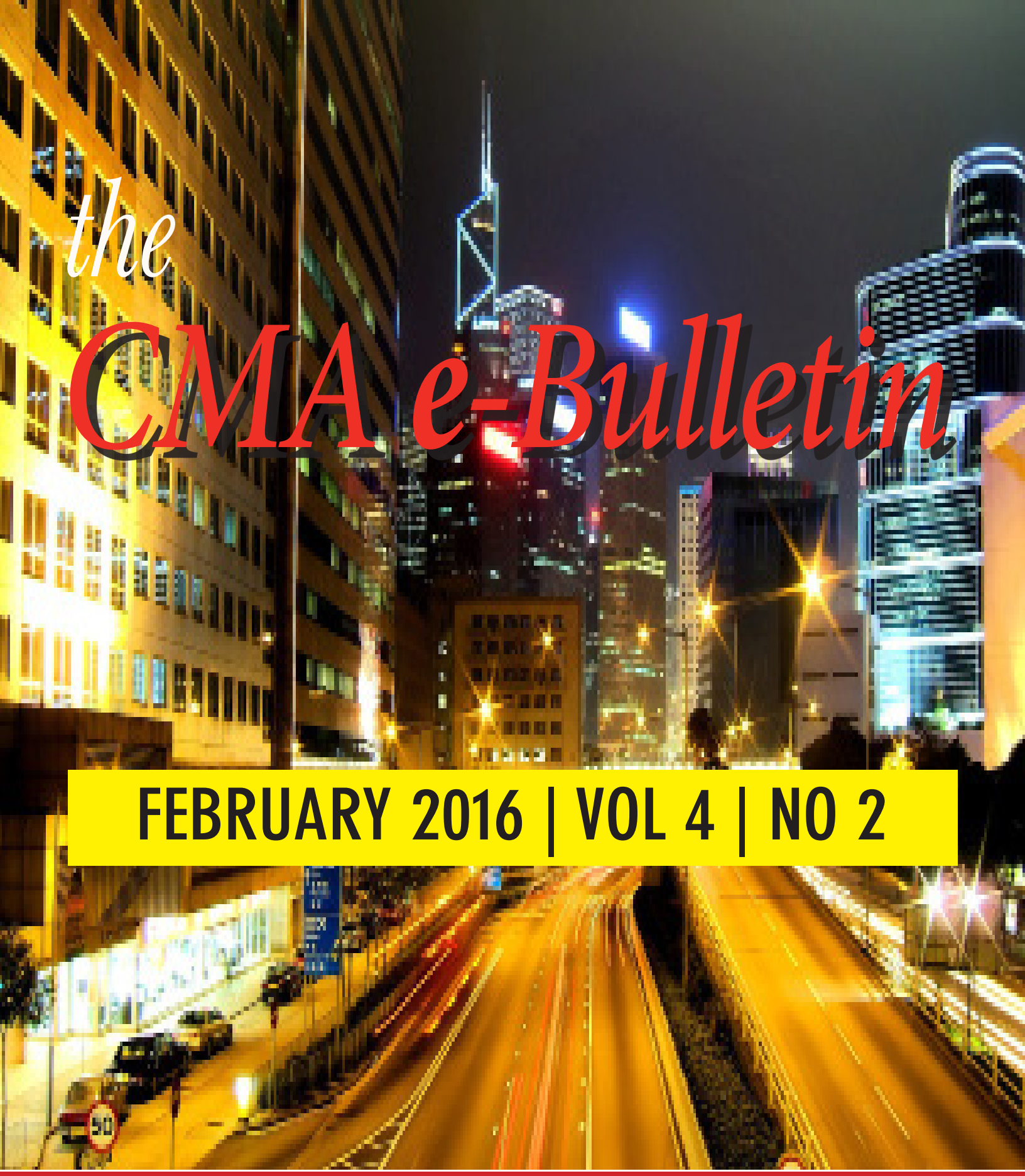

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The Institute of Cost Accountants of India

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The Institute of Cost Accountants of India

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INDIAN ECONOMY

News

Retail inflation picks up for 5th month to 5.61 pct in Dec

India's annual consumer price inflation edged up for the fifth straight month in December to 5.61 percent on rising food prices, from a year ago period, government data showed. Economists surveyed by Reuters had predicted retail inflation would accelerate to 5.6 percent in December compared with 5.41 percent in November. Retail food inflation in December came in at 6.40 percent, higher than 6.07 percent recorded in the previous month.

Source: Source: Reuters |Jan 12, 2016

December exports fall for 13th month, exporters brace for tough times

India's merchandise exports fell for the 13th successive month in December, as orders from the United States and Europe shrank and exporters grappled with a competitively weaker Chinese yuan. The deteriorating global economic growth outlook and rising volatility in currency markets have dampened Indian exports, although the blow has been softened by a collapse in the country's oil import bill.

Source: Reuters |Jan 18, 2016

India's wholesale prices fall for 14th straight month in December

India's wholesale prices fell for a 14th straight month in December, declining an annual 0.73 percent, driven down by tumbling oil prices, government data showed. The pace of fall, however, was slower than a 1.15 percent annual decline forecast by economists in a Reuters poll. In November, the index fell a provisional 1.99 percent. The wholesale fuel prices dropped 9.15 percent from a year ago in December, while prices of manufactured goods declined 1.36 percent year on year.

Food prices last month, however, gained 8.17 percent year-on-year, compared with a provisional 5.20 percent gain in November. India's wholesale prices fell for a 14th straight month in December, declining an annual 0.73 percent, driven down by tumbling oil prices, government data showed.

Source: http://www.newindianexpress.com/business/news/Indias-Wholesale-Prices-Fall-for-14th-Straight-Month-in-December/2016/01/14/article3227656.ece

India services PMI hits 10-month high in December

Growth in India's services firms rose at its fastest pace in 10 months in December as demand picked up, a business survey showed. The Nikkei/Markit Services Purchasing Managers' Index surged to 53.6 in December from November's 50.1, marking a sixth month above the 50-level that separates growth from contraction.

Full Story: http://www.moneycontrol.com/news/economy/indiaservices-pmi-hits-10-month-highdecember_4891781.html

Factory activity contracts in Dec for first time in over two years - PMI

Indian manufacturing activity contracted in December for the first time in more than two years, hurt by softening domestic demand, adding pressure on the central bank to ease policy, a business survey showed.

Nikkei's Manufacturing Purchasing Managers' Index, compiled by Markit, fell to a 28-month low of 49.1 in December from November's 50.3. It was also the first reading below the 50 threshold that separates growth from contraction since October 2013. "India's manufacturing sector took a turn for the worse at the year-end, with already gloomy internal demand further hampered by floods in the south of the country," said Pollyanna De Lima, economist at Markit.

Source: Reuters | Jan 4, 2016

India says Chinese currency depreciation "worrying" for exports

India's commerce minister Nirmala Sitharaman said Chinese yuan' s depreciation is "a worrying development" for the country's exports.

China allowed the biggest fall in the yuan in five months on, pressuring regional currencies and sending global stock markets tumbling as investors feared it would trigger competitive devaluations. Merchandise exports have been falling for the past 12 months.

Read more at: http://economictimes.indiatimes.com/news/economy/foreign-trade/chinese-currency-depreciation-worrying-for-indian-exports-nirmala-sitharaman/articleshow/50497051.cms

China, euro zone and U.S. manufacturing suggest global economy still fragile

The global economy finished last year on a fragile footing, with factory activity in China shrinking for the 10th month running in December, while euro zone manufacturing picked up but U.S. activity slowed.

Source: Reuters | Jan 4, 2016

BANKING

Notifications / Circulars

➲ **Credit information reporting in respect of Self Help Group (SHG) members**

RBI on January 14, 2016 notified the scheduled commercial banks and all credit information companies. A review has been made to an earlier circular on data format for furnishing of credit information to CIC and other regulatory measures. RBI constituted a working group with members from within RBI, NABARD, banks and credit information companies (CICs), to study the implementation challenges and suggest measures to address them. Underscoring the importance of credit information reporting in respect of the SHG members for financial inclusion, credit decision of banks and Micro Finance Institutions (MFIs) and credit quality of the SHG loan portfolios, the working group has emphasised the need for putting in place the credit information reporting for SHG members sooner than later. Nonetheless, the group has suggested following a phased approach to the implementation of the RBI direction so as to ensure that the data quality is not compromised. This circular sets out the implementation requirements in the first two phases, i.e., Structure of credit information collection and reporting and other operational instructions.

Read more at: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10227&Mode=0

Source: Notification No. RBI/2015-16/291 [DBR.CID.BC.No.73/20.16.56/2015-16] dated: January 14, 2016

➲ **Direct Benefit Transfer (DBT) Scheme – Seeding of Aadhaar in Bank Accounts – Clarification**

RBI on January 14, 2015 notified the scheduled commercial banks regarding the use of Aadhaar to facilitate delivery of social welfare benefits by direct credit to the bank accounts of beneficiaries. In this connection, in view of the Hon'ble Supreme Court of India's interim orders dated August 11, 2015 and October 15, 2015 (W.P. (c) No. 494 of 2012) on usages of Aadhaar, it is clarified that use of Aadhaar Card and seeding of bank accounts with Aadhaar numbers is purely voluntary and it is not mandatory.

Source: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10225&Mode=0

➲ **Financial Literacy Centres (FLCs) – Revised Guidelines**

RBI on January 14, 2016 notified the scheduled commercial banks about certain revision on guidelines under a circular titled FinancialLiterary Materials. Subsequent to the financial inclusion efforts by RBI and opening of accounts by banks through the PMJDY, consid erable ground has been covered in the field of financial inclusion. FLCs and rural branches of banks may adopt a tailored approach for different target groups viz. farmers, micro and small entrepreneurs, school children, SHGs, senior citizens etc. There should also be adequate synchronization at the ground level between the different stakeholders viz. LDM, DDM of NABARD, LDO of RBI, District and Local administration, Block level officials, NGOs, SHGs, BCs, Farmers' clubs, panchayats, PACS, village level functionaries etc. during the conduct of financial literacy camps. In view of the above, the guidelines have been revised to align with the current financial landscape. Accordingly, the revised guidelines for Financial Literacy Centres of Lead Banks and the operational guidelines for the conduct of camps by FLCs and rural branches of banks have been prepared and are given in the notification.

Read more at: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10222&Mode=0

Source: Notification No. RBI/2015-16/285 [DBR.No.BP.BC.71/21.06.201/2015-16] dated: January 14, 2016

➲ **Repurchase of Inflation Indexed Bond**

The Government of India notifies repurchase of "1.44 per cent Inflation Indexed Government Stock-2023" (hereinafter called the Government Stocks) vide a notification dated: January 08, 2016.

Mode of Repurchase: The repurchase of the Government Stocks will be undertaken through reverse auction by the Government of India and in one or more tranches by multiple price auction method. The date of repurchase / settlement will be notified by the Reserve Bank of India. Nominal Amount of Repurchase: The repurchase of "1.44 per cent Inflation Indexed Government Stock-2023" will be for an aggregate amount of Rs. 6,500 Crore.

Payment: The payment for the repurchase of the Government Stocks will be made by the Government of India from its cash balances maintained with the CAS, RBI, Nagpur. Such payment will include the accrued interest on the nominal value of the successful bids/offer accepted by the Reserve Bank of India. The Government Stocks repurchased in the manner will get prematurely redeemed and interest will cease to accrue on such redeemed Government Stocks.

Statutory Provision: With respect to any such matter which has not been provided under this notification, the Government Stock shall be governed by the Government Securities Act, 2006 and the Government Securities Regulations, 2007 framed there under and the earlier corresponding Notification(s) Issued by the GOI.

Read more at: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10215&Mode=0

➲ **Acceptance of cheques bearing a date as per National Calendar (Saka Samvat) for payment**

Government of India has accepted Saka Samvat as National Calendar with effect from March 22, 1957 and all Government statutory orders, notifications, Acts of Parliament, etc. bear both the dates i.e., Saka Samvat as well as Gregorian Calendar. Therefore, a cheque written in Hindi and bearing a date in Hindi is a valid instrument. All Co-operative Banks are therefore advised that they should accept cheques bearing a date as per National Calendar (Saka Samvat) for payment, if otherwise found in order. It is also advised to ascertain the Gregorian calendar date corresponding to the National Saka calendar in order to avoid payment of stale cheques.

Source: Notification No. RBI/2015-16/297 [DCBR.BPD.(PCB/RCB). Cir. No. 9 /12.05.001/2015-16] dated: January 21, 2016

Read more at: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10237&Mode=0

➲ **Payment of Agency Commission on pension accounts**

As we know that agency banks are being compensated at Rs. 65 per transaction for handling pension computation, payment and related services on behalf of Central and State Government. As per the norms followed by the Government, a pensioner's account should not have more than 14 credit transactions in a calendar year attributable to pension and related arrear payments, if any.

It has however come to our notice that certain banks are apportioning payment of arrears on account of Dearness Relief (DR) and/or delay in start of pension monthwise, thus, resulting in inflated agency commission claims. It is reiterated that number of commisionable transactions for payment of agency commission on account of pension in a year should not exceed 14. This includes one monthly credit for payment of net pension and a maximum of two per year for payment of arrears on account of increase in DR, if applicable.

It is also reiterated that cases involving payment of arrears on account of late start/restart of pension qualifies as a single transaction for claiming of agency commission. In other words, any payment of arrears on account of late start/restart of pension should be effected in a single credit transaction instead of separate monthly credits.

Some of the Central Government Departments and State Governments prefer to compute the pension figures on their own and pass them on to banks for payment. Such transactions may be included under non-pension payments, on which agency commission is payable on a turnover basis as per the existing norms (currently at 5.5 paise per Rs. 100/-).

Source: Notification No. RBI/2015-16/294 [DGBA.GAD.No. 2278/31.12.010/2015-16] dated: January 21, 2016

Read more at: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10234&Mode=0

➲ **Master Direction - Money Changing Activities**

In terms of Section 10 of the Foreign Exchange Management Act, 1999, Reserve Bank authorizes persons designated as Authorized Persons to deal in foreign exchange as, inter alia, an Authorized Dealer or a money changer. Authorized Money Changers (otherwise called a Full Fledged Money Changers) and Authorized Dealers Category II entities (AD Cat II) carry out specified (current account) foreign exchange transactions with their customers/constituents. In addition, Authorized Money Changers and AD Category II can also appoint franchisees to undertake purchase of foreign exchange from residents and non-residents.

Source: Notification No. RBI/FED/2015-16/17 [FED Master Direction No.3/2015-16] dated: January 1, 2016

Read more at: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10206&Mode=0

➲ **Export of Goods and Services – Project Exports**

RBI on January 14, 2016 notified a circular on Export of goods and services. Regulation 18 of the Foreign Exchange Management (Export of Goods and Services) Regulations, 2000, in terms of which export of goods or services on deferred payment terms or in execution of a turnkey project or a civil construction contract requires prior approval of the approving authority, which shall consider the proposal in accordance with the guidelines issued by the Reserve Bank from time to time. As it has been advised by the Government of India that i) the 'OCCI' has been renamed as 'Project Export Promotion Council' (PEPC) and ii) civil construction contracts may include turnkey engineering contracts, process and engineering consultancy services and Project construction items (excluding steel & Cement) along with civil construction contracts, it has been decided to make the necessary changes in Memorandum of Instructions on Project and Service Exports (PEM) accordingly.

Read more at: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10223&Mode=0

➲ **Non-Fund Based Facility to Non-constituent Borrowers of Bank**

Scheduled Commercial Banks can grant non-fund based facilities

including Partial Credit Enhancement (PCE) to those customers, who do not avail any fund based facility from any bank in India, subject to the following conditions:

a) **Board Approved Policy:** Banks shall formulate a comprehensive Board approved loan policy for grant of non-fund based facility to such borrowers.

b) **Verification of Customer credentials:** The banks shall ensure that the borrower has not availed any fund based facility from any bank operating in India. However, at the time of granting nonfund based facilities, banks shall obtain declaration from the customer about the non- fund based credit facilities already enjoyed by them from other banks.

c) **Credit Appraisal and due-diligence:** Banks shall undertake the same level of credit appraisal as has been laid down for fund based facilities.

d) **Compliance with Know Your Customer (KYC) Norms / Anti-Money Laundering (AML) Standards / Combating of Financing of Terrorism (CFT) / Obligation of banks under PMLA, 2002.** The instructions/ guidelines on KYC/AML/ CFT applicable to banks, issued by RBI from time to time, shall be adhered to in respect of all such credit facility.

e) **Submission of Credit Information to CICs:** Credit information relating to grant of such facility shall mandatorily be furnished to the Credit Information Companies (specifically authorized by RBI). Such reporting shall be subject to the guidelines under Credit Information Companies (Regulation) Act, 2005.

f) **Exposure Norms:** Banks shall adhere to the exposure norms as prescribed by RBI from time to time.

Source: Notification No. RBI/2015-16/281 [DBR.Dir.BC. No.70/13.03.00/2015-16] dated: January 07, 2016

Read more at: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10212&Mode=0

➲ Amended circular on Gold Monetisation Scheme, 2015

In exercise of the powers conferred under Section 35A of the Banking Regulation Act, 1949, the Reserve Bank of India hereby directs that the Reserve Bank of India (Gold Monetisation Scheme, 2015) Master Direction No.DBR.IBD.No.45/ 23.67.003/ 2015-16 dated October 22, 2015 be modified as under:

- The principal and interest on STBD shall be denominated in gold. In the case of MLTGD, the principal will be denominated in gold. However, the interest on MLTGD shall be calculated in Indian Rupees with reference to the value of gold at the time of the deposit.
- **Persons eligible to make a deposit** - Resident Indians (Individuals, HUFs, Proprietorship & Partnership firms, Trusts including Mutual Funds/Exchange Traded Funds registered under SEBI (Mutual Fund) Regulations and Companies) can make deposits under the scheme. Joint deposits of two or more eligible depositors are also allowed under the scheme and the deposit in such case shall be credited to the joint deposit account opened in the name of such depositors. The existing rules regarding joint operation of bank deposit accounts including nominations shall apply to these gold deposits.
- All deposits under the scheme shall be made at the CPTC;

Provided that at their discretion, banks may accept the deposit of gold at the designated branches, especially from the larger depositors;
Provided further that banks may, at their discretion, also allow the depositors to deposit their gold directly with the refiners that have facilities to carry out final assaying and to issue the deposit receipts of the standard gold of 995 fineness to the depositor.

- Designated banks shall inform the RBI of their decision to participate in the Scheme as soon as the policy to implement the Scheme is approved by their Board.

Read more at: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10240&Mode=0

Source: Notification No. RBI/2015-16/300 [DBR.IBD. BC.74/23.67.001/2015-16] dated: January 21, 2016

➲ Sale of India Gold Coin (IGC)

MMTC has been authorized by the Central Government to manufacture India Gold Coins (IGC) with Ashok Chakra and supply these coins to the domestic market. MMTC has clarified to the Reserve Bank that the gold used for the IGC will be only that mobilized domestically under the existing Gold Deposit Scheme (GDS) and Gold Monetization Scheme (GMS). In view of this, it has been decided to allow the designated banks as defined in the Master Direction on Gold Monetization Scheme, dated October 22, 2015, to sell the IGCs minted by MMTC. The terms and conditions shall be as per the contract between the designated bank and MMTC. The current restriction on selling of imported gold coin by the banks as contained in FED (AP. Dir) circular No.79 dated February 18, 2015 will continue.

Reference: Notification No. RBI/2015-16/298 [DBR.IBD. BC.75/23.67.001/2015-16] dated: January 21, 2016

Read more at: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10238&Mode=0

INCOME TAX

Notifications / Circulars

➲ **Electronic Verificaton Code (EVC) for elctronically filed Income Tax Return - Additional Modes**

Ad ditional modes of generating Electronic Verification Code (E VC) have been notified vide *Notification No. 1/2016 dated 19/01/2016* in addition to EVC notified vide earlier Notification No. 2/2015 dated 13/07/2015. The two additional modes are i) By pre-validating Bank account details and ii) By pre-validating Demat account details.

Read more at: http://www.incometaxindia.gov.in communications/notification/notification1_2016_evc.pdf

➲ **Income-tax (1st Amendment) Rules, 2016 -**

Exercise of option etc under section 11 :

- The option to be exercised in accordance with the provisions of the Explanation to subsection (1) of section 11 in respect of income of any previous year relevant to the assessment year beginning on or after the 1st day of April, 2016 shall be in Form No. 9A and shall be furnished before the expiry of the time allowed under sub-section (1) of section 139 for furnishing the return of income of the relevant assessment year.
- The statement to be furnished to the Assessing Officer or the prescribed authority under sub-section (2) of section 11 or under the said provision as applicable under clause (21) of section 10 shall be in Form No. 10 and shall be furnished before the expiry of the time allowed under sub-section (1) of section 139, for furnishing the return of income.
- The option in Form No. 9A referred to in sub-rule (1) and the statement in Form No.10 referred to in sub-rule (2) shall be furnished electronically either under digital signature or electronic verification code.
- The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be, shall-

(i) specify the procedure for filing of Forms referred to in sub-rule (3)
(ii) specify the data structure, standards and manner of generation of electronic verification code, referred to in sub-rule (3), for purpose of verification of the person furnishing the said Forms; and (iii) be responsible for formulating and implementing appropriate security, archival and retrieval policies in relation to Forms so furnished."

Source: Notification No.3/2016 /2015 [F. No. 142/16/2015-TPL] / SO 127 (E) dated: 14th January, 2016
Read more at: http://www.incometaxindia.gov.in/communications/notification/notification3_2016.pdf

➲ Article 27 w.r.t. "Exchange of Information" under DTAA between the Government of the Republic of India and the Government of the Republic of Belarus has been amended vide Notification No.02/2016 dated 13th Jan 2016.

Read more at: http://www.incometaxindia.gov.in/communications/notification/notification2_2016.pdf

Case Laws

➲ **Where deemed short term capital gain arose on account of sale of depreciable assets that was held for a period to which long term capital gain would apply, assessee would be entitled to claim setting off said gain against brought forward long term capital losses and unabsorbed 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]

FACT

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 set off 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 deeming fiction 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.

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

➲ **Interest paid to partners on capital contribution is not a statutory allowance under section 40(b) but is an expenditure under section 36(1)(iii) and, thus, if this expenditure is incurred in relation to income which does not form part of total income as envisaged under section 14A, same shall only be allowed as deduction only against exempt income under section 14A or in other words, such interest expenditure on partner's capital shall be disallowed under section 14A**

IT/ILT: Deduction of export commission paid to foreign agents for sourcing of export orders in favour of assesse-firm without deduction of tax at source under section 195 is to be allowed where export commission paid to foreign brokers is not a sum chargeable to tax in hands of foreign brokers as contemplated under section 195 and is neither a fee for technical/managerial services as defined in explanation 2 to Section 9(1)(vii) so as to bring it to tax under fiction created by deeming provisions of Section 9

HELD-I

• Interest paid by assessee firm to partners on capital contribution is covered as an 'expenditure' as envisaged u/s 36(1)(iii) and assessee firm has to firstly establish its claim of deduction of interest on capital by satisfying provisions of Section 36(1)(iii) and then, section 40(b) puts limitation on allowability of interest once it passes requirements of provisions of Section 36(1)(iii).

• Interest on partner's capital is an expenditure, which is allowable as an expenditure being incurred by assesse firm in relation to an income which does not form part of total income of assessee firm under Act, and shall be allowed as deduction from tax free income earned by assessee firm as envisaged under section 14A and shall go to reduce exempt income earned by assessee firm or in other words, disallowance of interest on partners' capital is to be upheld.

HELD-II

• There was no cogent material to prove that foreign brokers have any managerial expertise and services rendered by them is for their self-use and their own benefit to maximize commission income. Thus, no income of these foreign agents have accrued or arisen in India or deemed to have accrued or arisen in India as contemplated under section 9 to bring in within fold of chargeability of tax under Act and, hence, same cannot be brought to tax within provisions of Act.

• Obligation to deduct tax at source under section 195 arises only when payment is chargeable to tax under provisions of Act, in hands of non-resident.

• Where non-resident foreign brokers rendered services outside India in relation to export orders and recovery of sale proceeds, where by said foreign brokers did not have place of establishment in India, commission paid to such foreign brokers would not be taxable in India.

Source: In The ITAT Mumbai Bench 'C', Assisstant Commissioner of Income-tax -19(3), Mumbai v. Pahilajrai Jaikishin [2016] 66 taxmann.com 30 (Mumbai - Trib.)

CENTRAL EXCISE

Notifications / Circulars

➲ **General guidelines for implementation of e-payment of refund/ rebate**

In order to speed up the transfer of the fund directly to the beneficiary's bank account after sanction of the refund/rebate claim and there by promote ease of doing business, CBEC issues General guidelines for implementation of epayment of refund/ rebate.

Procedure for e-payment: While filling refund / rebate claim for the first time, the claimants opting for this facility shall provide one-time authorisation in duplicate, duly certified by the beneficiary bank in prescribed format. One copy shall be retained by the department and one copy shall be sent to the bank with the first refund sanction order of the applicant.

Read more at: http://www.cbec.gov.in/resources//htdocs-cbec/excise/cx-circulars/cx-circulars-2016/circ1013-2016cx.pdf

Source: *Circular No. 1013/1/2016-CX, dated: January 12, 2016*

➲ **Proper certificate under Notification No. 108/95-Central Excise, dated 28.08.1995**

It has been clarified that, Certificates issued by the concerned Superintending Engineering and countersigned by Chief Engineer in the rank of Joint Secretary in the Ministry of Road Transport & Highways, Government of India should be considered to avail exemption of Central Excise duty for the goods required for the execution of work financed by International Funding Organization like World Bank under notification no.108/95 - Central Excise dated 28.08.1995 as amended vide *Instruction No.F.No.96/41/2015- CX., dated 7th Jan 2016*.

Read more at: http://www.cbec.gov.in/resources//htdocs-cbec/excise/cx-instructions/cx-instructions-2016/cert-under%20notfn108-95ce-e.pdf

➲ Further increase in the Basic Excise Duty rates on Petrol and Diesel (both unbranded and branded) w.e.f. 16th day of January, 2016 vide Notification No. 02/2016-CE, dated: January 15, 2016.

Case Laws

➲ **Software loaded in memory unit is fundamental necessity for function of telephone/mobiles and cannot be regarded as optional/separately identifiable software; hence, such firm software is includible in value of imported mobiles**

Section 14 of the Customs Act, 1962 - Valuation of Imported Goods - Transaction Value - General - Assessee imported Fixed Wireless Terminals (FWT), a type of Cellular phones with CDMA technology, with CD ROMs/inbuilt memory containing software meant for upgradation of phones in future - Assessee did not include value of software in value of phones and filed separate bills of entry for hardware portion (FWT), being dutiable and software portion (CD ROMs/chips, being exempt) - Department sought inclusion of software in value of hardware and demanded duty on combined value of both - HELD : Logic/programme loaded in memory unit is fundamental necessity for function of FWT telephone and cannot be regarded as any optional or identifiable software in a recorded media; hence, benefit of Note 6 to Chapter 85 cannot be availed - Since memory unit is an essential part of circuit board inside FWT and is an integral functional component, there are no two items for valuation - Only item of import is FWT and therefore, there cannot be any segregation of value assignable to software separately - Hence, duty was leviable on combined value of both. [In favour of revenue]

Section 18, read with section 28AA, of the Customs Act, 1962 - Interest - On delayed payment of duty/tax - Position prior to 13-7-2006 - Levy of interest can only be by a substantive provision and prospective only - Since, at time of resorting to provisional assessment in 2003-04, there was no statutory provision authorizing imposing of interest on differential duty, hence, provision for interest introduced from 13-7-2006 could not be applied for prior period. [In favour of assessee]

Section 125, read with sections 110 and 110A, of the Customs Act, 1962 - Confiscation - Redemption fine - Assessees challenged confiscation and redemption fine on ground that there was no seizure at all or ever and even otherwise, there cannot be any fine without redemption of goods - HELD : In this case, there was neither a seizure nor provisional release under bond and, hence, question of payment of redemption fine either to release goods or in terms of bond does not arise - There can be no redemption fine in absence of any seizure or provisional release of such seized goods under proper bond - Hence, redemption fine was set aside. [In favour of assessee]

Section 114A, read with sections 18 and 28, of the Customs Act, 1962 - Penalty - For evasion of duty/tax - In matter involving duty demand arising on finalization of provisional assessment, department levied penalty under section 114A - Assessee argued that no penalty can be levied when there is no demand under section 28 and demand is made only under section 18 - HELD : Penalty under section 114A is imposable only on person who is liable to pay duty as determined under section 28(8) - In this case, duty has not been determined under section 28 and differential duty was determined in terms of sections 14 and 18 [without reference to section 28] - Hence, invoking section 114A is not tenable. [In favour of assessee]

Section 112, read with section 111, of the Customs Act, 1962 - Penalty - Smuggling/Illegal Import - When main assessees viz. importers are held to be not liable for penalty under section 114A, then, no personal penalty can be imposed on their directors, etc. under section 112. [In favour of assessee]

FACTS

- Assessee imported Fixed Wireless Terminals (FWT), a type of Cellular phones with CDMA technology, with CD ROMs containing software meant for upgradation of phones in future.
- Assessee did not include value of software in value of phones and filed separate bills of entry for hardware portion (FWT) and software portion (CD ROMs).
- CESTAT Mumbai held that since phones are complete in themselves, software cannot be treated as integral part and cannot be included in value of phones.
- In some other matters, CESTAT Bangalore upheld inclusion of software in value of phones based on department's evidence that :

(a) foreign exporter wanted to sell phones and software as one package with single invoice but splitting was done at instance of assessees; and

(b) some other assessees had paid duty on combined value.

- In CCE v. Bhagyanagar Metals Ltd. [2015] 64 taxmann.com 202/ [2016] 53 GST 75, the Supreme Court remanded that issue back to larger Bench of Tribunal.
- Assessee raised in fresh plea relying upon Note 6 of Chapter 85, that Flash memory unit inside the WLL Cell Phones imported by them was a media carrying the software and accordingly eligible for exemption.

HELD

I. New arguments can be considered in view of full remand by Supreme Court :

- It is necessary to address the preliminary objection raised by revenue regarding admissibility of a totally new plea which was never raised in any of the proceedings till date. Though the present

plea is totally inconsistent with the pleas made in the first round of litigation up to the Supreme Court; however, considering that such assertion is based on legal principles for classification (Note 6 of Chapter 85 and other related principles for classification), it is fit and proper to consider this plea on merit for a decision. As the present proceedings is to look at all the available evidences and legal provisions applicable afresh, it is necessary to consider this plea, for a proper resolution of the dispute.

II. Software is not separate from hardware — Note 6 of Chapter 85 inapplicable

- From the technical details, it is clear that the memory unit, which is a part of ARM7TDI Micro processor sub-system, is clearly an integral part of the internal circuit of the telephone. This contains both volatile (temporary) and non-volatile (permanent) data, without which activation of the phone is not possible. It is not correct to call such memory unit as a storage media for software.
- The applicability of Note 6 depends on availability of a identifiable, separate media. From the technical analysis above it cannot be said that there is any identifiable, separate media in the present case.
- There is no remote possibility for calling the 'memory unit' as one of the media. The memory unit is clearly part of the circuit board of the telephone and more appropriately covered under Tariff Heading 85.42.
- Tariff Heading 85.42 covers Electronic Integrated Circuits whether or not combined with memories. Such memories may be in the form of DRAMS SRAMS PROMS EPROMS EEPROMS etc. Note 5 of Chapter 85 provides that the classification of Articles defined in the said note, Headings 85.41 and 85.42 shall take precedence over any other heading in this schedule which might cover them by reference to, in particular, their function. The printed circuit board is an integrated component with various sub-circuits. The memory unit which identifies the individual phone as well as contains essential basic command are integrated to the said circuit board. These are not removable in normal course or inter-changeable. As such, there is no separate media containing software that can be presented with the phone and classified under Tariff Heading 85.24. In other words, there are no two separate, distinct goods for assessment, namely (a) CDMA Fixed Wireless Telephone and (b) a media containing software presented with such telephone.
- It is further to be noted that the claim of the assessees all along, till the current proceedings, is that the software is contained in CD-ROM presented separately along the FWT cell phones at the time of import. Now, for the first time they have made this claim that the memory unit is in built and part of the main circuit inside the phone; should be considered as a media for classification and consequently eligible for exemption available to software. The technical literature, nature of the said memory unit and nature of the software contained in the memory unit clearly rule out the possibility of calling this part of the printed circuit board separately as a media for software. It is also not the claim of the assessees that such media carrying the software for FWT phones is anywhere available separately for trading.
- It is the clearly admitted fact that the software/data loaded on the Flash memory is specific to the user/customer. It contains caller ID and caller block software. The phones imported have embedded software with required parameters for its functioning.

III. Firm Software includible in value of hardware

- The present case deal with Fixed Wireless phones, with PCB inside, a part of which is claimed as a recorded media for software. As examined with technical literature, the logic/programme loaded in the said memory unit is the fundamental necessity for the function of the FW telephone. It cannot be compared to any optional or identifiable software as a recorded media. Such software as available for computers are nowhere comparable to the programme software pre-loaded in the memory chip of the PCB.

- In the matter of valuation, one of the important aspects to be taken into account is the condition of the goods at the time they leave the factory. The memory unit/chip is an essential part of PCB inside the telephone and is an integral functional component. Hence, in the present case there are no two items for valuation. The item of import is FWT and as such should be subjected to classification and assessment accordingly.
- In the present case, the Fixed Wireless phones as imported require to be classified and assessed as phones with no segregation of value assignable to the software separately, as claimed by the importers.

IV. Interest not payable, in absence of any provision

- The assessees contested the interest liability in the present case. The imports took place in 2003-2004. The goods were assessed provisionally to duty and were allowed to be cleared in terms of section 18 of the Customs Act, 1962 on execution of PD Bonds. Provisions for interest was introduced vide section 18(3) only from 13-7-2006. Levying interest can only be by a substantive provision, hence, such levy can only be prospective. Hence, in respect of provisional assessment prior to 13-7-2006 interest would not be leviable by invoking section 18(3) of the Customs Act, 1962. Since, at the time of resorting to the provisional assessment there was no statutory provision authorizing imposing of interest on the differential duty, (the provision which was introduced with effect from 13-7-2006) there is no interest liability in these cases.

V. Redemption fine not payable

- Assessees contested confiscation of impugned goods and imposition of redemption fine on ground that there was no seizure at all or ever, either of the phones or the CD-ROMS imported by the assessees. Assessees had not executed any bond for provisional

release of any goods in terms of section 110A of the Customs Act, 1962. Hence, in the absence of any seizure, confiscation or imposition of redemption fine are not sustainable. The assessee's contentions were correct.

▪ Further, assessees pleaded that the fine is payable, if at all, only on redemption of goods. Here there is neither a seizure nor provisional release under bond and, hence, the question of payment of redemption fine either to release the goods or in terms of the bond does not arise. There can be no redemption fine in the absence of any seizure or provisional release of such seized goods under proper bond. In the present case in the absence of such events, redemption fine imposed is not sustainable.

VI. Penalties not leviable, as no intention to evade

▪ Assessees challenged penalty under section 114A on ground that no penalty can be levied, as there was no evasion and issue was one of interpretation of provisions and further, there was no demand under section 28 and demand, if any, was only under section 18.
▪ Penalty under section 114A is imposable in cases where duty has not been levied or has been short levied by reason of collusion or any wilful mis-statement or suppression of facts. The person who is liable to pay duty as determined under sub-section (8) of section 28 shall be liable to pay penalty equal to the duty so determined. In this case, the duty has not been determined under section 28 of the Customs Act. The differential duty was determined in terms of section 14(1) [without any reference to section 28] of the Customs Act for which invoking section 114A is not legally tenable.
▪ As such, considering that the main assessees are held to be not liable for penalty in view of the above legal position, the individual assessees are also not liable for penalty under section 112.

Read more at: https://gst.taxmann.com topstories/101010000000166859/value-of-mobile-phone-to-include-value-of-software-meant-for-its-up-gradation.aspx?Id=101010000000166859&mode=home&Page=CIRNO

Source: CESTAT, HYDERABAD BENCH (LARGER BENCH) Bhagyanagar Metals Ltd. v. Commissioner of Central Excise, Hyderabad-II [2016] 67 taxmann.com 33 (Hyderabad-CESTAT)

➲ **When net duty demand (after adjusting credit) was reduced to Nil, then, since there was no outstanding duty payable, question of payment of interest and penalty would not arise**

Section 11AA of the Central Excise Act, 1944, read with rule 3 of the Cenvat Credit Rules, 2004, section 75 of the Finance Act, 1994 and section 28AA of the Customs Act, 1962 - Interest - On delayed payment of duty/tax - Assessee was neither paying duty nor taking credit - Department demanded duty - Tribunal allowed credit whereupon net duty demand was reduced to Nil - Department demanded interest - HELD : When Act and rules permit adjustment of CENVAT Credit, and when CENVAT Credit was granted, there was no outstanding duty payable - Therefore, question of payment of interest does not arise. [In favour of assessee]

Section 11AC of the Central Excise Act, 1944, read with section 78 of the Finance Act, 1994 and section114A of the Customs Act, 1962 - Penalty - For evasion of duty/tax - Assessee was neither paying duty nor taking credit - Department demanded duty - Tribunal allowed credit whereupon net duty demand was reduced to Nil - Department demanded penalty - HELD : When Act and rules permit adjustment of CENVAT Credit, and when CENVAT Credit was granted, there was no outstanding duty payable - Therefore, question of payment of penalty does not arise. [In favour of assessee]

Section35B , read with sections 35, 35A and 35G, of the Central Excise Act, 1944 - Appeals - Maintainability of - General - When contents of departmental communication are impregnated with missiles (demands), which may at any time, escape and hit against assessees, then, assessees are entitled to challenge same, even if it is worded as a 'letter' and not as an 'order'. [In favour of assessee]

FACTS

▪ The department demanded duty on mercerized cotton yarn during the period from 1-4-2003 to 1-11-2003.
▪ The Tribunal upheld demand of duty but allowed credit and thus, net duty was NIL.
▪ After some years, department issued letter demanding interest and penalty.
▪ The appellate authority dismissed appeal on ground that letter was not appealable.
▪ The assessee argued that since net duty was NIL, i.e., demand was already paid in form of availability of cenvat credit, interest and penalty cannot be demanded.
▪ The assessee also argued that impugned communication was in nature of an order and was, therefore, appealable.
▪ The department argued that interest and penalty are automatic and not discretionary.

HELD

▪ When the content of the communication was impregnated with missiles (demands), which may at any time, escape and hit against the assessees, then the assessees are entitled to challenge the same, though it is worded as a letter and not as an order. It was really astonishing to read such a finding by the appellate authority that the appeal is not maintainable, by construing the communication as a letter and not as an order.
▪ When the input duty credit is allowed, the duty is deemed to have been paid on the original date of payment of duty. When input duty credit is allowed, then there is no question of any liability to pay further duty.
▪ In the absence of the department challenging the findings of

the Tribunal that there is no justification to deny Cenvat Credit, the revenue has no case and the department is not at liberty to demand either interest or penalty.

▪ When the Central Excise Act, 1944 and the Rules framed thereunder, permit the adjustment of Cenvat Credit, and when the Cenvat Credit is granted, there is no outstanding duty payable and therefore, the question of payment of interest and penalty do not arise.

Source: High Court of Madras, Vikash J. Shah v. Commissioner (Appeals), Coimbatore

➲ **Since law talks about inter-connectivity between body corporates, proprietary concerns cannot be regarded as 'inter-connected undertakings'; therefore, proprietary concerns of directors cannot be regarded as 'related person' of company**

Section 4 of the Central Excise Act, 1944 read with rules 2(b) , 9 and 10 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 - Valuation under Central Excise - Transaction value - Related Person - Period prior to 1-12-2013 - Assessee-company had three directors KK, RK and AK - Assessee sold goods to five buyers being : (a) three proprietorships of directors; (b) a company having all three as directors; and (c) a proprietorship of relative of directors - Department rejected transaction value on ground that buyers were related persons being inter-connected/relative - HELD : Since law talks about inter-connectivity between body corporates, hence, four buyers being proprietary concerns were not related - Further, valuation rule 9 cannot be applied where all goods are not sold to related persons - Furthermore, a juristic person being assessee-company cannot be termed as 'relative' of any buyer as definition of 'relative' under Companies Act only covers natural persons being Individuals - Parties cannot be regarded as relative merely because profit accruing from sale through related persons goes to same family; even otherwise, profit of assessee-company would flow to its shareholders - Hence, impugned demand was set aside. [In favour of assessee]

ORDER

B.Ravichandran, Technical Member - The Revenue is in appeal against the order dated 22.3.2007 of the Commissioner (Appeals)-I, Raipur.

The brief facts of the case are that the respondent are engaged in the manufacture of M.S. Ingots liable to central excise duty. The proceedings were initiated against them for short payment of central excise duty on the goods cleared to related buyers. After due process, the Original Authority vide order dated 13.11.2006 held that the respondents are liable to pay the differential duty of Rs.16,78,974/- with interest. He imposed penalty of Rs.1,50,000/- on the appellant. On appeal, the Commissioner (Appeals) vide order dated 22.03.2007 set aside the order and allowed the appeal. Aggrieved by this, the Revenue is before us in appeal.

Ld. AR reiterated the grounds in the appeal. He submitted that the Directors/Partners/Proprietors of the respondent and the buyers units were common/relatives in terms of Schedule-I A of Section 6 of the Companies Act, having relationship and running, controlling and managing the inter-connected undertakings. The profit accruing from the sale through related persons goes to the same family or relative, as deemed in Section 4(3)(b) read with Section 2 (41) of the Companies Act, 1956 and thereby mutuality of interest gets established and Section 4 (1)(b) of Central Excise Act, 1944 is invokable.

The respondent vide their letter dated 23.11.2015 filed further written submissions and requested the case to be decided on merits.

We have heard the ld. AR and perused the appeal records. The original order dated 13.11.2006 as well as the impugned order 22.03.2007 examined in detail the various legal provisions and their application to the facts of the case. The point for decision is whether or not the respondent paid correct central excise duty for sale of final products to five buyers, who are said to be related to them or the declared sale value is vitiated. The respondent is a Public Limited Company having three Directors viz. S/Shri Krishna Kumar Agarwal, Rajesh Kumar Agarwal and Anand Kumar Agarwal. Out of five buyers, four are proprietary concerns. These are M/s. Kishan Steel Rolling Mills, Proprietor, Shri Rajesh Kumar Agarwal, Shri Kishan Mechanical Works, Proprietor, Shri Anand Kumar Agarwal, Shree Krishan Steel Unit-II, Proprietor, Shri Naval Kishor Agarwal and Shee Ram Steels, Proprietor, Shri Krishna Kumar Agarwal. The fifth buyer, M/s. Cosmos Ispat Pvt. Ltd is a Private Limited Company having three Directors. The Original Authority held that the respondent and the four buyers, who are proprietary concerns, do not fall under the category of inter-connected undertakings under Section 2(g) of MRTP Act. The Original Authority found that the respondent and M/s. Cosmos Ispat Pvt. Ltd. are inter-connected undertakings in terms of sub-clause (iv) of Explanation-I in Section 2(g) of MRTP Act. The Original Authority further held that the respondent and all the buyers are related in terms of sub-clause (ii) of Clause (b) of sub-section (3) of Section 4 of the Central Excise Act. He arrived at this conclusion treating the companies also as natural person and being relative of one another. The impugned order rejected the findings of the Original Authority regarding the respondent and the buyers being relative. It was further held that since all goods produced were not sold to these buyers, the scheme as contemplated under Rule 9 of Valuation Rules will not be applicable regarding the respondent and M/s. Cosmos Ispat Pvt. Ltd. being inter-connected undertakings. The lower Appellate Authority held that the transaction value under Section 4(1)(a) of the Act is applicable as there is no evidence that the price charged is not

the sole consideration for sale or any additional consideration was flowing directly or indirectly from the buyers to the respondent. The impugned order concluded that the respondent are not covered and hence not contravened the provisions of Section 4(1)(b) read with the Central Excise Rules and Valuation Rules. He set aside the original order.

We find that the appeal against the above detailed findings of the lower authorities is not based on any sound legal principles. We find that the Revenue asserted in the appeal that in terms of MRTP Act, two body corporates will be treated as under the same management if one or more Directors constitute 1/4th of the Directors of the other. Hence, it was pleaded by the Revenue that all the buyers are inter-connected with the respondent. We find that this submission is legally untenable and misconceived. The provisions of MRTP Act talks about inter-connectivity between two body corporates. Here, it is an admitted fact that four out of the five buyers are proprietory concerns. The respondent is a Public Limited Company. The Revenue also relied on the provisions of Rule 9 without specifically alleging that all the goods manufactured by the respondent are sold, to or through these purported related persons.

Further, we find that the Revenues assertion that a jurisdic person also can have a relative in terms of Section 2(41) of the Companies Act is totally untenable. The relative as defined under Section 2(41) should be in such way as specified in Section 6 of the Companies Act. In terms of Section 6, a person shall be deemed to be a relative of other, if, and only if, they are members of a HUF or husband and wife or one is related to other, in a manner like father, mother, daughter, brother, etc. A corporate entity, the respondent being a Public Limited Company, cannot fit into being called a relative in this context. It is apparent that the understanding by Revenue is due to mixing up of related person with relative. Further, the submission that the profit accruing from sale through related persons goes to same family or relative is without any factual support and in any case the respondent being Public Limited Company the profit, if any, should flow to all the shareholders.

After careful examination of the impugned order and the grounds of appeal by the Revenue, we find no reason to interfere with the impugned order and as such, the appeal filed by the Revenue is dismissed.

Source: CESTAT, NEW DELHI BENCH, Commissioner of Central Excise, Raipur v. Akash Ispat Ltd.
[2016] 67 taxmann.com 10 (New Delhi - CESTAT)

Read more at: https://gst.taxmann.com/topstories/101010000000166753/proprietary-concerns-of-directors-cant-be-held-as-related-person-of-company.aspx

➲ **Usage of goods at factory site given to contractor doesn't constitute captive consumption**

Site given to contractor within factory constitutes a 'separate factory'; hence, oxygen manufactured by assessee and used by such contractor for processing of scrap cannot be regarded as 'oxygen used in assessee's factory' and cannot be exempted under Notification No. 67/95-CE

Section 5A of the Central Excise Act, 1944 - Exemptions - Central Excise - Captive Consumption - Assessee was manufacturing iron and steel products - Assessee : (a) gave site within its factory to FSNL for processing scrap, (b) supplied oxygen manufactured by assessee to FSNL for such processing; and (c) used processed scrap for further manufacture by assessee - Department demanded duty on oxygen supplied to FSNL - Assessee argued that clearance of oxygen to FSNL within factory was 'use within same factory'; therefore, oxygen was exempt under Notification No. 67/95-CE - HELD : Exemption under Notification No. 67/95 is available if input (viz. oxygen) is used within factory of its production - Factors such as consideration, ownership of goods or various contractual arrangements are not relevant to decide excise duty liability - Here, FSNL was a separate entity and had established its factory within assessee's factory - Therefore, oxygen manufactured by assessee was not used within assessee's factory but was used by FSNL's factory (though on behalf of assessee) - Hence, exemption could not be allowed. [In favour of revenue]

Circulars and Notifications : Notification No. 67/95-C.E., dated 16-3-1995

Source: CESTAT, New Delhi Bench, Steel Authority of India Ltd. v. Commissioner of Central Excise, Raipur
[2016] 66 taxmann.com 331 (New Delhi - CESTAT)

Read more at: https://gst.taxmann.com/topstories/101010000000166750/usage-of-goods-at-factory-site-given-to-contractor-doesnt-constitute-captive-consumption.aspx

CUSTOMS

Notifications / Circulars

➲ **Amendment in Customs Brokers Liscensing Regulations, 2013**

In exercise of the powers conferred by sub-section (2) of section 146 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 Brokers Licensing Regulations, 2013, namely Customs Brokers Licensing (Amendment) Regulations, 2016 vide *Notification No. 01/2016-Customs (N.T.) dated: 5th January, 2016*.

Read more at: http://www.cbec.gov.in/htdocs-cbec/customs/cs-act/notifications/notfns-2016/cs-nt2016/csnt01-2016

➲ **Clearance - 24x7 - shall be facilitated at Krishnapatnam Sea Port in Nellore, Andhra Pradesh**

As per *Circular No. 01 /2016 - Customs dated: 6th January, 2016*, CBEC has now decided that the facility of 24x7 Customs clearance for specified imports viz. goods covered by 'facilitated' Bills of Entry and specified exports viz. factory stuffed containers and goods exported under free Shipping Bills will be made available at Krishnapatnam Sea port in Nellore, Andhra Pradesh. This would be the 19th Sea port in the country where 24x7 facility would be in operation.

➲ **Clearance of Livestock and Livestock products**

In reference to Board's Circular No. 13/2007- Customs dated 2nd March, 2007, board has already issued instructions reiterating the provisions for import of Livestock/Livestock products to ensure that clearance of Livestock/Livestock products is done after proper quarantine check and issue of no objection certificate by Animal Quarantine Officer.
Now it has been decided that Customs should commence standard procedure of referral to quarantine authorities in respect of Diplomatic Cargo and baggage. However, priority may be accorded to such consignments of Diplomatic Missions. Para 6 of the Circular 13/2007-Customs dated 2nd March, 2007 stands modified to this effect.

Source: Circular No. 02/2016, dated: January 27, 2016

Read more at: http://www.cbec.gov.in/htdocs-cbec/customs/cs-circulars/cs-circulars-2016/circ02-2016cs

➲ Central Government specifies goods, to which the provisions of section 70 (2) of the Customs Act, 1962 shall apply, when they are deposited in a warehouse namely:

(1) aviation fuel, motor spirit, mineral turpentine, acetone, methanol, raw naptha, vaporizing oil, kerosene, high speed diesel oil, batching oil, diesel oil, furnace oil and ethylene dichloride, kept in tanks; (2) wine, spirit and beer, kept in casks;
(3) liquid helium gas kept in containers; and
(4) crude stored in caverns.

Source: *Notification No. 03/2016-Cus (NT),dt. 11-01-2016*

➲ Rate of exchange of conversion of the foreign currency with effect from 22nd January, 2016 vide Notification No. 14/2016-Cus (NT),dt. 21-01-2016.

Read more at: http://www.cbec.gov.in/htdocs-cbec/customs/cs-act/notifications/notfns-2016/cs-nt2016/csnt14-2016

➲ Tariff Notification in respect of Fixation of Tariff Value of Edible Oil, Brass, Poppy Seed, Areca Nut, Gold and Sliver vide Notification No. 16/2016-cus (NT) dated: January 29, 2016.

Read more at: http://www.cbec.gov.in/htdocs-cbec/customs/cs-act/notifications/notfns-2016/cs-nt2016/csnt16-2016

➲ CBEC seeks to levy definitive anti-dumping duty on Mulberry Raw Silk (not thrown) of grade 3A and below, originating in, or exported from the People's Republic of China, for a period of five years vide *Notification No. 01/2016-cus (ADD) dated: January 28, 2016.*

➲ CBEC seeks to levy definitive anti-dumping duty on Melamine, originating in, or exported from the People's Republic of China, for a period of five years vide Notification No. 02/2016-cus (ADD) dated: January 28, 2016.

➲ Notification No. 01/2016-cus (CVD) dated: January 19, 2016 Seeks to levy definitive countervailing duty on import of Castings for wind-operated electricity generators whether or not machined, in raw, finished or sub-assembled form, or as a part of a sub-assembly, or as a part of an equipment/ component meant for wind-operated electricity generators originating in, or exported from the People's Republic of China for a period of five years.

Case Laws

➲ **Value of mobile phone to include value of software meant for its up-gradation**

Section 14 of the Customs Act, 1962 - Valuation of Imported Goods - Transaction Value - General - Assessee imported Fixed Wireless Terminals (FWT), a type of Cellular phones with CDMA technology, with CD ROMs/inbuilt memory containing software meant for upgradation of phones in future - Assessee did not include value of software in value of phones and filed separate bills of entry for hardware portion (FWT), being dutiable and software portion (CD ROMs/chips, being exempt) - Department sought inclusion of software in value of hardware and demanded duty on combined value of both - HELD : Logic/programme loaded in memory unit is fundamental necessity for function of FWT telephone and cannot be regarded as any optional or identifiable software in a recorded media; hence, benefit of Note 6 to Chapter 85 cannot be availed - Since memory unit is an essential part of circuit board inside FWT and is an integral functional component, there are no two items for valuation - Only item of import is FWT and therefore, there cannot be any segregation of value assignable to software separately - Hence, duty was leviable on combined value of both. [In favour of revenue]

Section 18, read with section 28AA, of the Customs Act, 1962 - Interest - On delayed payment of duty/tax - Position prior to 13-7-2006 - Levy of interest can only be by a substantive provision

and prospective only - Since, at time of resorting to provisional assessment in 2003-04, there was no statutory provision authorizing imposing of interest on differential duty, hence, provision for interest introduced from 13-7-2006 could not be applied for prior period. [In favour of assessee]

Section 125, read with sections 110 and 110A, of the Customs Act, 1962 - Confiscation - Redemption fine - Assessees challenged confiscation and redemption fine on ground that there was no seizure at all or ever and even otherwise, there cannot be any fine without redemption of goods - HELD : In this case, there was neither a seizure nor provisional release under bond and, hence, question of payment of redemption fine either to release goods or in terms of bond does not arise - There can be no redemption fine in absence of any seizure or provisional release of such seized goods under proper bond - Hence, redemption fine was set aside [In favour of assessee]

Section 114A, read with sections 18 and 28, of the Customs Act, 1962 - Penalty - For evasion of duty/tax - In matter involving duty demand arising on finalization of provisional assessment, department levied penalty under section 114A - Assessee argued that no penalty can be levied when there is no demand under section 28 and demand is made only under section 18 - HELD : Penalty under section 114A is imposable only on person who is liable to pay duty as determined under section 28(8) - In this case, duty has not been determined under section 28 and differential duty was determined in terms of sections 14 and 18 [without reference to section 28] - Hence, invoking section 114A is not tenable. [In favour of assessee]

Section 112, read with section 111, of the Customs Act, 1962 - Penalty - Smuggling/Illegal Import - When main assessees viz. importers are held to be not liable for penalty under section 114A, then, no personal penalty can be imposed on their directors, etc. under section 112. [In favour of assessee]

Source: CESTAT, Hyderabad Bench (Larger Bench) Bhagyanagar Metals Ltd. v. Commissioner of Central Excise, Hyderabad-II [2016] 67 taxmann.com 33 (Hyderabad-CESTAT)

Read more at: https://gst.taxmann.com/topstories/101010000000166859/value-of-mobile-phone-to-include-value-of-software-meant-for-its-up-gradation.aspx

SERVICE TAX

Notifications / Circulars

➲ **Report of the High Level Committee; recommendation regarding valuation of flats for levy of Service Tax**

It has been pointed out by the High Level Committee that there is a divergence of view between Para 6.2.1 of the Education Guide 2012 and the CBEC Circular No. 151/2/2012-ST dated 10.2.2012 on how flats handed over to land owners are to be valued for the purpose of levy of service tax. The two views need to be reconciled. The HLC has opined that the guidelines communicated by the said Circular are more appropriate.

According to the **CBEC Education Guide on Taxation of Services, 2012,** value of construction service provided to such land owner will be the value of the land when the same is transferred and the point of taxation will also be determined accordingly.

However, **Circular No. 151/2/2012-ST dated 10.2.2012** states that value of land / development rights in the land may not be ascertainable ordinarily and therefore, value, in the case of flats given to first category of service receiver, that is, the land owner, is determinable in terms of section 67(1)(iii) read with rule 3(a) of Service Tax (Determination of Value) Rules, 2006.

Accordingly, the value of these flats would be equal to the value of similar flats charged by the builder/developer from the second category of service receivers. In case the prices of flats/houses undergo a change over the period of sale (from the first sale of flat/house in the residential complex to the last sale of the flat/house), the value of similar flats as are sold nearer to the date on which land is being made available for construction should be used for arriving at the value for the purpose of tax.

Service tax is liable to be paid by the builder/developer on the 'construction service' involved in the flats to be given to the land owner, at the time when the possession or right in the property of the said flats are transferred to the land owner by entering into a conveyance deed or similar instrument (e.g. allotment letter).

The **Circular dated 10.2.2012** is in accordance with the provisions relating to valuation as laid down in the Finance Act, 1994 and the Service Tax (Determination of Value) Rules, 2006. As regards the **Education Guide**, it has been clearly stated in the Education Guide, 2012 that it is merely an educational aid based on a broad understanding of a team of officers on the issues. It is neither a "Departmental Circular" nor a manual of instructions issued by the Central Board of Excise and Customs. To that extent it does not command the required legal backing to be binding on either side in any manner. The guide was released purely as a measure of facilitation so that all stakeholders could obtain some preliminary understanding of the new issues for smooth transition to the new regime. Hence, Circulars such as the present one would prevail over the Education Guide, 2012.

In view of the above, it is directed that in valuing the service of construction provided by a builder/developer to a landowner, who transfers his land/development rights to builder, for

getting, in return, constructed flats/dwellings from builder/ developer, the Service Tax assessing authorities should be guided by the said Board Circular dated 10.2.2012 and not the Education Guide.

Source: Instruction - F.No.354/311/2015-TRU, Government of India, Ministry of Finance, Department of Revenue(Tax Research Unit) dated: 20th January, 2016

Read more at: http://www.cbec.gov.in/resources//htdocs-servicetax/st-instructions/st-instructions-2016/st-ins-hlc-rpt-valuatn-flats.pdf;jsessionid=D71321FB676E6367A93186C05C77F1CC

Case Laws

➲ **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]

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

➲ **Service Tax: Definition of 'clearing and forwarding agent' nowhere requires clearing to be effected from factory; hence, taxability under said service would arise even if such agent does not effect clearing of goods from factory of client**

Section 65(25) of the Finance Act, 1994 - Taxable services - Clearing and Forwarding Agent's Services - Assessee was engaged in receiving, forwarding, loading, unloading, storing of goods sent by client - Department demanded service tax under C&F Agent's services - Assessee argued that it was not engaged in clearance of goods from "factory"; therefore, it was not covered under C&F agent's services - HELD : In view of activities performed by assessee, it is squarely covered within definition of C&F agent - Definition of C&F agent nowhere requires clearing to be effected from factory - Hence, demand was confirmed. [In favour of revenue]

Section 73 of the Finance Act, 1994, read with section 11A of the Central Excise Act, 1944 and section 28 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 - Bona fide belief is not a hallucinatory belief; it is a genuine belief of a reasonable person operating in an appropriate environment - Hence, when terms of agreement are so clear that any reasonable person would have no basis to entertain a belief that services rendered by it are not taxable, department is right in invoking extended period. [In favour of revenue]

Section 86 of the Finance Act, 1994, read with section 35C of the Central Excise Act, 1944 and section 129B of the Customs Act, 1962 - Appeals - Orders of - Appellate Tribunal - Even if reasoning of Commissioner (Appeals) is inadequate, Tribunal can use different reasoning based on transactional documents and come to an appropriate finding - Tribunal is not in any way bound by reasoning of lower authorities in this regard. [In favour of revenue]

Source: CESTAT, New Delhi Bench, Somani Agenciesn v. Commissioner of Central Excise & Service Tax, Indore
[2016] 66 taxmann.com 79 (New Delhi - CESTAT)

➲ **Credit of input and input service available if assessee paid ST on full price of works contract: HC**

Where assessee has paid service tax on full contract price of a works contract and availed credit of inputs and services and there is no revenue loss to department, department cannot seek to deny credit relying upon valuation rule 2A

Section 65(105)(zzzza), read with sections 65(25b) and 67, of the Finance Act, 1994, rule 2A of the Service Tax (Determination of Value) Rules, 2006 and rule 3 of the Cenvat Credit Rules, 2004 - Taxable services - Works contract services - Assessee paid service tax on entire contract/construction price and took credit of inputs and input service - Department argued that assessee had to apply rule 2A ibid and accordingly, service tax was payable as per said rule and credit had to be disallowed - Tribunal found that there was no revenue loss and hence, held in favour of assessee.

HELD : When tax liability has been discharged on full contract price and credit has been taken, revenue was not put to loss - Hence, leaving question of law open, present appeals were disposed of, as there was no revenue loss. [In favour of assessee]

Source: High Court of Bombay, Commissioner of Central Excise, Customs & Service Tax, Vapi v. S.V. Jiwani [2016] 66 taxmann.com 329 (Bombay)

FOREIGN TRADE

Notifications / Circulars

➲ **Amendment in import policy conditions of apples under Exim code 0808 10 00 of Chapter 08 of ITC (HS), 2012 – Schedule –1 (Import Policy)**

Now import of Apples covered under Tariff code 08081000 is also allowed through sea ports & air ports in Kolkata, Chennai, Mumbai & Cochin and land ports and airport in Delhi and also allowed through India's land border vide *Notification No. 30/2015-2020 dated 12/01/2016*.

Read more at: http://dgft.gov.in/Exim/2000/NOT/NOT15/noti30.pdf

➲ **Amendment in export policy of Pulses**

Now export of Roasted Gram (whole/split) in consumer packs of 1 (one) Kg has been permitted vide *Notification No. 31/2015-2020 dated 20/01/2016*.

Read more at: http://dgft.gov.in/Exim/2000/NOT/NOT15/noti3116.pdf

➲ **Amendment in import policy conditions of Natural Rubber under Exim code 400110 of Chapter 40 of ITC (HS), 2012-Schedule-1 (Import Policy)**

Import of Natural Rubber of all varieties/Forms covered under Tariff Code 4001 is allowed only through sea ports of Chennai in addition to JNPT vide *Notification No. 32/2015-2020 dated 20/01/2015*.

Read more at: http://dgft.gov.in/Exim/2000/NOT/NOT15/noti3216.pdf

➲ **Amendment in Paragraph 4.18 of the Foreign Trade Policy 2015-20**

Facility for import of Natural Rubber under Advance Authorizations issued or revalidated on or after 21.01.2016 will not available with immediate effect up to 31.03.2016 vide *Notification No. 33/2015-2020 dated 21/01/2015.*

Read more at: http://dgft.gov.in/Exim/2000/NOT/NOT15/noti3316.pdf

➲ **Amendment in para 2.05 (c) of Foreign Trade Policy (2015 - 20) vide Notification No. 34 /2015 - 2020, dated: 29 January, 2016**

From now only two documents are required to be uploaded / submitted along with the digital photograph while applying for Importer - Exporter Code (IEC). Further, applications for IEC/ modification in IEC can be made only in online mode by applicants through digital signatures with effect from 1.4.2016.

Read more at: http://dgft.gov.in/Exim/2000/NOT/NOT15/noti3416.pdf

➲ **Foreign currency accounts by a person resident in India) Regulations, 2015**

In exercise of the powers conferred by Section 9 and clause (e) of sub-section (2) of section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999), and in supersession of Notification No. FEMA 10/2000-RB dated May 3, 2000, as amended from time to time, the Reserve Bank of India makes the following regulations for opening, holding and maintaining of Foreign Currency Accounts and the limits up to which amounts can be held in such accounts by a person resident in India, namely Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) Regulations, 2015.

➲ **Restriction on holding foreign currency account by a person resident in India:-**

Save as otherwise provided in the Act or rules or regulations made there under, no person resident in India shall open or hold or maintain a foreign currency account:

- Provided that a Foreign Currency Account held or maintained before the commencement of these Regulations by a person resident in India with special or general permission of the Reserve Bank, shall be deemed to be held or maintained under these Regulations:
- Provided further that the Reserve Bank, may on an application made to it, permit a person resident in India to open or hold or maintain a Foreign Currency Account, subject to such terms and conditions as may be considered necessary.

Opening, holding and maintaining Foreign Currency Accounts in India:

(A) Exchange Earners' Foreign Currency Account:-

A person resident in India may open, hold and maintain with an authorised dealer in India, a Foreign Currency Account to be known as Exchange Earners' Foreign Currency (EEFC) Account, subject to the terms and conditions of the Exchange Earners' Foreign Currency Account Scheme.

(B) Resident Foreign Currency Account:-

(1) A person resident in India may open, hold and maintain with an authorised dealer in India a Foreign Currency Account, to be known as a Resident Foreign Currency (RFC) Account, out of foreign exchange :

- received as pension or any other superannuation or other monetary benefits from his employer outside India; or
- realised on conversion of the assets referred to in sub-section (4) of section 6 of the Act, and repatriated to India; or
- received or acquired as gift or inheritance from a person referred to in sub-section (4) of section 6 of the Act; or

(2) The funds in a Resident Foreign Currency Account opened or held or maintained in terms of sub-regulation (1) shall be free from all restrictions regarding utilisation of foreign currency balances including any restriction on investment in any form, by whatever name called, outside India.

(3) Resident individuals are permitted to include resident relative(s) as joint holder(s) in their Resident Foreign Currency account on 'former or survivor' basis. However, such resident Indian relative joint account holder shall not be eligible to operate the account during the life time of the resident account holder.

(C) Resident Foreign Currency (Domestic) Account

A resident Individual may open, hold and maintain with an Authorised Dealer in India a foreign currency account, to be known as Resident Foreign Currency (Domestic) Account, out of foreign exchange acquired in the form of currency notes, bank notes and travellers' cheques as under:

- by way of payment for services not arising from any business in or anything done in India while on a visit to any place outside India; or
- 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
- by way of honorarium or gift while on a visit to any place outside India; or
- in the form of unspent amount of foreign exchange acquired by him from an authorised person for travel abroad; or
- as gift from a relative; or
- by way of earning through export of goods/ services, or
- as royalty, honorarium or by any other lawful means;
- representing the disinvestment proceeds received by the resident account holder on conversion of shares held by him to ADRs/ GDRs under the DR Scheme, 2014 approved by the Government of India.
- by way of earnings received as the proceeds of life insurance policy claims/ maturity/ surrender values settled in foreign currency from an insurance company in India permitted to undertake life insurance business by the Insurance Regulatory and Development Authority.

Debits to the account shall be for payments towards a current account transaction in accordance with the provisions of the Foreign Exchange Management (Current Account Transactions) Rules, 2000 and towards a capital account transaction permissible under the Foreign Exchange Management (Permissible Capital.

(D) A Unit in a Special Economic Zone (SEZ)

A unit located in a Special Economic Zone may open hold and maintain a Foreign Currency Account with an authorized dealer in India provided that,

- all foreign exchange funds received by the unit in the Special Economic Zone (SEZ) are credited to such account,
- no foreign exchange purchased in India against rupees shall be credited to the account without prior permission from the Reserve Bank,
- the funds held in the account shall be used for bona fide trade transactions of the unit in the SEZ with the person resident in India or otherwise,
- the balances in the accounts shall be exempt from the restrictions imposed under Rule 5, except item 1(ii) of the Schedule III, of the Government of India Notification No.GSR.381(E) dated May 3, 2000, as amended from time to time.

Provided that the funds held in these accounts shall not be lent or made available in any manner to any person or entity resident in India not being a unit in Special Economic Zones.

(E) Diamond Dollar Accounts (DDAs)

An Authorized Dealer Category-I bank in India may allow firms and companies who comply with the eligibility criteria stipulated in the Foreign Trade Policy of Government of India, in force from time to time and the directions as may be issued by Reserve Bank of India, from time to time, to open, hold and maintain Diamond Dollar Accounts (DDAs) in India subject to the terms and conditions of the DDA Scheme specified in Schedule II.

(F) Exporters: A person resident in India, being an exporter who has undertaken a construction contract or a turnkey project outside India or who is exporting services or engineering goods from India on deferred payment terms may open, hold and maintain a Foreign Currency Account with a bank in India, provided that -

- approval as required under the Foreign Exchange Management (Export of goods and services) Regulations, 2015 has been obtained for undertaking the contract/ project/ export of goods or services, and
- the terms and conditions stipulated in the letter of approval have been duly complied with.

Read more at: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10261&Mode=0

Source: Notification No. FEMA 10 (R) /2015-RB dated: January 21, 2016

➲ **Foreign Exchange Management (Acquisition and transfer of immovable property outside India) Regulations, 2015**

Restriction on acquisition or transfer of immovable property outside India:-
Save as otherwise provided in the Act or in these regulations, no person resident in India shall acquire or transfer any immovable property situated outside India without general or special permission of the Reserve Bank.

Exemptions:- Nothing contained in these regulations shall apply to the property :

- held by a person resident in India who is a national of a foreign state;
- acquired by a person resident in India on or before 8th July 1947 and continued to be held by him with the permission of the Reserve Bank.

Acquisition and Transfer of Immovable Property outside India:-

(1) A person resident in India may acquire immovable property outside India, -
(a) by way of gift or inheritance from a person referred to in sub-section (4) of Section 6 of the Act, or referred to in clause (b) of regulation 4;
(b) by way of purchase out of foreign exchange held in Resident Foreign Currency (RFC) account maintained in accordance with the Foreign Exchange Management (Foreign Currency accounts by a person resident in India) Regulations, 2015;
(c) jointly with a relative who is a person resident outside India, provided there is no outflow of funds from India;

(2) A person resident in India may acquire immovable property outside India, by way of inheritance or gift from a person resident in India who has acquired such property in accordance with the foreign exchange provisions in force at the time of such acquisition.

(3) A company incorporated in India having overseas offices, may acquire immovable property outside India for its business and for residential purposes of its staff, in accordance with the direction issued by the Reserve Bank of India from time to time.

Explanation: For the purposes of these regulations, 'relative' in relation to an individual means husband, wife, brother or sister or any lineal ascendant or descendant of that individual.

Source: Notification No. FEMA 7(R)/ 2015-RB dated: January 21, 2016

Read more at: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10257&Mode=0

SEBI

➲ **Revision in Position Limits for Agricultural Commodities**

In continuation of SEBI Circular No CIR/CDMRD/DMP/2/2016 dated January 15, 2016, the following directions are hereby issued with respect to provisions of open position limits for futures contracts on agricultural commodities:

(I) Client level -

a. Overall position limit for a particular commodity shall be restricted to numerical position limits as mandated from time to time. For the present, the numerical position limits as existing shall be continued. It is clarified that client level position limit equal to 5% of market wide open interest permitted earlier, is hereby discontinued.
b. As prescribed vide SEBI circular dated January 15, 2016, near month position limit for a particular commodity shall be restricted to one-fourth of the client level overall position limit in that commodity.
c. For the purpose of calculating overall position, all long and short positions of the client across all contracts on the underlying will be added up separately and higher of the two shall be considered as overall open position.
d. For calculating near month open position, higher of long and short positions of the client in near month contracts to be considered.
e. Thus henceforth, netting out near month contract with off-setting positions in far months contracts shall not be permitted for the purpose of computation of near month position of any client.
of computation of near month position of any client.

(II) Member level –

a. Overall position limit for a particular commodity shall be the numerical position limits as mandated from time to time or 15% of market wide open interest, whichever is higher.

b. As prescribed vide SEBI circular dated January 15, 2016, near month position limit for a particular commodity shall be one-fourth of the member's overall position limit in that commodity.

c. For the purpose of calculating overall position, the position of the clients as determined in (I)c above will be added without netting off among themselves as also against proprietary position of the member (which will also be treated like a client position). All longs and shorts will be added up separately and higher of the two will be reckoned.

d. For calculating near month open position, the position of the clients as determined in (I)d above will be added without netting off among themselves as also against proprietary position of the member (which will also be treated like a client position). All longs and shorts will be added up separately and higher of the two will be reckoned.

e. Position limits for member's proprietary positions shall be same as client level position limits.

The above provisions shall be effective from March 01, 2016 onwards.

Source: Circular - CDMRD/DMP/CIR/32/2016 dated: January 29, 2016

Read more at: http://www.sebi.gov.in/cms/sebi_data/attachdocs/1454071477614.pdf

➲ **Amendment to SEBI Circular CIR/MRD/DSA/33/2012 dated December 13, 2012 pursuant to amendment in Regulation 2(1)(b) of SECC Regulations, 2012**

Pursuant to the approval of SEBI Board in its meeting held on November 30, 2015, SEBI has notified the amendments to the definition of associate as contained in Regulation 2(1)(b) of SECC Regulations.

Consequent to the amended definition of 'associate' as contained in Regulation 2(1)(b) of SECC Regulations, it has been decided to review the provisions of Para 14(1) of SEBI Circular No: CIR/MRD/DSA/33/2012 dated December 13, 2012.

Accordingly, the Para 14.1 of the SEBI Circular No: CIR/MRD/DSA/33/2012 dated December 13, 2012 providing clarification with respect to composition of governing board under regulation 23(7), is replaced as under:

a) no trading member or clearing member, or their associates and agents, irrespective of the stock exchange/ clearing corporation of which they are members, shall be on the governing board of any recognised stock exchange or recognised clearing corporation.

b) a person who is a director in an entity, that itself is a trading member or clearing member or has associate(s) as trading member(s) or clearing member(s) in terms of regulation 2(1)(b), he/she will be deemed to be trading member or clearing member:

Provided a person will not be deemed to be Clearing Member and / or Trading Member or their associate for the purpose of Regulation 23(7), if he/she is on the board of a Public Financial Institution (PFI) or Bank which is in Public Sector or which either has no identifiable ultimate promoter or the ultimate promoter is in Public Sector or has well diversified shareholding, and such PFI or Bank or its associate is a Clearing Member and / or Trading Member. Further, independent directors of associates of PFI or Bank in Public Sector, who are Clearing Member and or Trading Member and where the majority shareholding is that of such PFI or Bank in Public Sector, will not be deemed to be Clearing Member and / or Trading Member for the purpose of Regulation 23(7).

(c) The appointment shall be subject to fulfillment of other requirements and satisfaction of SEBI in accordance with Regulation 2(1)(b).

(d) Recognised Stock Exchange and recognised Clearing Corporation, shall monitor and ensure the compliance of the Regulation 23(7) on continuous basis, to ensure that directors appointed, on their governing board, do not get associated with Trading Member or Clearing Member after approval and appointment.

Source: Circular - SEBI/HO/MRD/DSA/CIR/P/2016/30 January 22, 2016
Read more at: http://www.sebi.gov.in/cms/sebi_data/attachdocs/1453469527594.pdf

➲ **Securities And Exchange Board Of India (Depositories And Participants) (Amendment) Regulations, 2016**

In exercise of the powers conferred by Section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) read with Section 25 of the Depositories Act, 1996 (22 of 1996), the Board makes the Regulations to further amend the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996, namely Securities and Exchange Board of India (Depositories and Participants) (Amendment) Regulations, 2016.

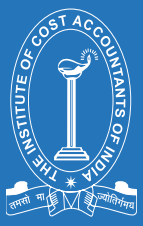
Every depository shall credit five per cent or such percentage as may be specified by the Board, of its profits from depository opera tions every year to the Investor Protection Fund.

Read more at: http://www.sebi.gov.in/cms/sebi_data/attachdocs/1453376331122.pdf

Source: Notification No.SEBI/LAD-NRO/GN/2015-16/032 dated: 21st January, 2016

➲ **Know Your Client Requirements - Clarification on voluntary adaptation of Aadhaar based e-KYC process** vide Circular - CIR/MIRSD/29/2016, dated: January 22, 2016.

Read the full notification at: http://www.sebi.gov.in/cms/sebi_dataattachdocs/1453470677181.pdf



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

(Statutory body under an Act of Parliament)

HEADQUARTERS
CMA Bhawan
12, Sudder Street, Kolkata 700 016
Tel: +91 33 2252 1031/1034/1035/1492
Fax: +91 33 2252 7993/1026/1723
Email Id: cma.ebulletin@icmai.in

DELHI OFFICE
CMA Bhawan
3, Institutional Area, Lodhi Road,
New Delhi – 110 003
Tel: +91-11-24622156/57/58, 24618645
Fax: +91-11-43583642

OFFICE OF RESEARCH & JOURNAL
CMA Bhawan, 4th Floor
84, Harish Mukherjee Road
Kolkata 700 025, India
Board: +91-33-2454 0086/87/0184
Fax: +91-33-2454 0063

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