# *the* CMA e-Bulletin

OCTOBER 2016 | VOL. 4 | NO. 10

The Institute of Cost Accountants of India

*(Statutory body under an Act of Parliament)*

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## DIRECTORATE OF RESEARCH & JOURNAL

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## CONTENTS



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# INDIAN ECONOMY

## News

➲ **Retail inflation to soften further, Oct CPI seen at 4.1%: Report**

October CPI inflation could decline to 4.1 per cent from 4.3 per cent last month as the impact from a favorable base effect more than offsets the sequential increase in CPI index. Retail inflation is expected to soften to 4.1 per cent in October and ease further to sub-4 per cent level by November-December, largely helped by favourable base effect, says a Citigroup report. According to the global financial services major, CPI inflation is likely to slide further to sub-4 per cent print by November-December before firming towards 4.5 per cent by March 2017.

Read more at: http://indianexpress.com/article/business/retail-inflation-to-soften-further-october-cpi-seen-at-4-1-per-cent-report-4363840/

➲ **Wholesale prices cool in October**

India's wholesale prices rose at a slower-than-expected pace in October, gaining 3.39 percent from a year earlier, government data showed. The data compared with a 3.75 percent annual rise forecast by economists in a Reuters poll. In September, prices rose a provisional 3.57 percent.

Last month, wholesale food prices rose 4.34 percent year-on-year, compared with a provisional 5.75 percent gain in September.

Read more at: http://www.moneycontrol.com/news/economy/indias-wholesale-prices-rise-339-year-on-yearoctober_7962241.html?utm_source=ref_article

➲ **Industrial output rises 0.7 per cent year-on-year in September**

India's industrial output rose 0.7 percent in September from a year earlier, mainly driven by electricity and manufacturing sectors, government data showed. Economists surveyed by Reuters had forecast a 0.5 percent increase in output compared with a provisional 0.7 percent year-on-year contraction in August.

Read more at: http://in.reuters.com/article/india-economy-output-idINKBN13617P

➲ **India's service activity picks up pace in October**

India's service activity gained momentum in October led by an upturn in incoming new business, a private survey showed. The Nikkei India Services Business Activity Index rose to 54.5 in October after it dropped to 52 in September. A reading above 50 on the index indicates economic expansion while a figure below that indicates contraction.

"The service sector joined its manufacturing counterpart in offering a more upbeat level of performance this month, providing reassurance in the sustainability of the upturn of India's economy ," said Pollyanna De Lima, Economist at Markit and author of the report.

Read more at: http://economictimes.indiatimes.com/news/economy/indicators/indias-service-activity-picks-up-pace-in-october/articleshow/55219610.cms

➲ **Manufacturing growth up, October Purchasing Managers Index at 22-month high**

India's manufacturing sentiment picked up to a 22-month high in October on the back of strong output growth and new orders, a private survey showed, providing more cheer after the core sector recorded a robust performance in September.

The seasonally adjusted Nikkei India Manufacturing Purchasing Managers Index (PMI) climbed to 54.4 in October from 52.1the previous month, data released showed. It was the highest reading since December 2014 and the sharpest monthly jump in nearly five years. A reading above 50 on this survey-based index denotes expansion. Data released on Monday showed core sector growth at a three-month high of 5 per cent in September.

Read more at: http://economictimes.indiatimes.com/news/economy/indicators/manufacturing-growth-up-october-purchasing-managers-index-at-22-month-high/articleshow/55192051.cms

➲ **FDI in India rises 30 per cent to $21.6 billion in April-Sep**

Foreign direct investment (FDI) into the country grew by over 30 per cent to USD 21.62 billion during the first half of 2016-17. During April-September of 2015-16, India received FDI worth USD 16.63 billion, an official said. "Ease of doing business and relaxation in the FDI policy are helping attract more and more FDI. The recent easing in sectors like civil aviation and construction will help in attracting more overseas funds," the official added. The sectors that receive maximum inflows include computer hardware and software, trading business, automobile industry and chemicals. India receives maximum FDI from countries, including Mauritius, Singapore, the Netherlands and Japan.

Read more at: http://economictimes.indiatimes.com/news/economy/finance/fdi-in-india-rises-30-per-cent-to-21-6-billion-in-april-sep/articleshow/55271609.cms

➲ **April-October indirect tax mop-up grows 26.7%, direct tax 10.6%**

The government's revenue collection in April to October saw indirect tax-mop up growing at an impressive 26.7 per cent while that of direct tax came in at 10.6 per cent. The total direct and indirect tax collections at the end of October stood at Rs 8.62 lakh crore, more than half the Rs 16.26 lakh crore target for 2016-17. The government is eyeing 12.64 per cent growth in direct tax at Rs 8.47 lakh crore for the current fiscal and 10.8 per cent in indirect tax at Rs 7.79 lakh crore.

Read more at: http://www.business-standard.com/article/economy-policy/apr-oct-indirect-tax-mop-up-grows-26-7-direct-tax-10-6-116111000041_1.html

➲ **PE investment in realty up 22 per cent at Rs 28K crore in Jan-Sept**

Private equity (PE) investments in the real estate sector increased by 22 per cent to Rs 28,300 crore in the first nine months of this year with investors' rising interest in the office and retail assets, says property consultant Cushman & Wakefield.

In its latest report on Private Equity investments in Real Estate (PERE), C&W said that "the year to date (till September 30) inflows in 2016 increased 22 per cent to Rs 28,300 crore billion (USD 4.24 billion), up from Rs 23,200 (USD 3.6 billion) recorded during the same period last year".

Of the total PE inflow, housing sector garnered maximum at Rs 15,040 crore -- a slight drop from Rs 15,539 crore in the year-ago period. PE investment in office segment stood at Rs 6,182 crore in the first three quarters of the 2016 calendar year as against Rs 4,091 crore in the year-ago period.

Read more at: http://economictimes.indiatimes.com/news/economy/finance/pe-investment-in-realty-up-22-per-cent-at-rs-28k-crore-in-jan-sept/articleshow/55203956.cms

➲ **India's gross-value added growth to hit 7.6 per cent this year: DBS**

India's gross-value added growth is expected to quicken to 7.6 percent this year from 7.2 percent in 2015-16, driven by sustained support from public capex spending, says a DBS report. According to the global financial services major, while private sector activity remains subdued, high frequency fiscal numbers point to sustained support from public capex spending.

"We expect gross-value added growth to quicken to 7.6 percent year-on-year this year from 7.2 percent in FY15/16," DBS said in a research note. According to DBS, after an upside surprise from China, India manufacturing PMIs also jumped in October, affirming signs of a cyclical upturn in the region. India's October Nikkei manufacturing PMI ticked up to nearly two-year high of 54.4 from September's 52.1.

Read more at: http://huntnews.in/p/detail/645852351145257?xlang=en&uc_param_str=dnfrpfbivesscpgimibtbmntnijblauputoggdnw&pos=1478069100001&channel=economics&chncat=category_english

➲ **India's foreign exchange reserves inch up by $16 mn**

India's foreign exchange reserves inched up by $16.6 million to $367.15 billion as on October 28, the Reserve Bank of India (RBI) has said. According to the RBI's weekly statistical supplement, the overall forex reserves increased to $367.15 billion from $367.14 billion for the week ended October 21. Segment-wise, the Foreign Currency Assets (FCAs) -- the largest component of the forex reserves rose by $21.6 billion to $341.94 billion during the week under review.

Read more at: http://economictimes.indiatimes.com/news/economy/finance/indias-foreign-exchange-reserves-inch-up-by-16-mn/articleshow/55263674.cms

➲ **Export growth in September significant development: Nirmala Sitharaman**

FDI into the country grew by over 30 per cent to $21.62 billion during the first half of 2016-17 on account of government's policies, reinforcing India's image of a "shining star", she said.

Export growth of 4.62 per cent in September was a "very significant development", bringing hope to exporters who are battling depressed demand globally, Commerce and Industry Minister Nirmala Sitharaman said on Monday. Arresting 2-month fall, exports grew by 4.62 per cent to $22.9 billion in September riding on the sectors such as engineering and gems and jewellery.

Read more at: http://indianexpress.com/article/business/economy/export-growth-of-4-62-per-cent-in-sept-very-significant-development-nirmala-sitharaman-4374970/

➲ **Bhutan signs new trade pact with India**

ndia and Bhutan today signed the Agreement on Trade, Commerce and Transit that aims to enhance trade between the two countries through trade facilitation, cutting down documentation and adding additional exit/entry points for Bhutan's trade with other countries. Commerce Minister Nirmala Sitharaman and the Minister for Economic Affairs, Royal Government of Bhutan, Tengye Lyonpo Lekey Dorji signed the Agreement, Commerce Ministry said.

"The new bilateral Trade Agreement aims to enhance trade between the two countries through trade facilitation by improving procedures, cutting down on documentation and adding additional exit/entry points for Bhutan's trade with other countries," it added.

Read more at: http://economictimes.indiatimes.com/news/economy/foreign-trade/bhutan-signs-new-trade-pact-with-india/articleshow/55393371.cms

➲ **India, Japan ink 10 pacts, cover areas like space, agriculture**

India and Japan on Friday signed 10 pacts covering a range of areas such as boosting Japanese investment in infrastructure, railways, and for cooperation in space and agriculture, as part of agreements to bolster bilateral ties. An MoU was signed between the National Investment and Infrastructure Fund Limited and Japan Overseas Infrastructure Investment Corporation for Transport and Urban Development to enable cooperation and promote investment in infrastructure projects in railways & transportation; port terminals; toll roads; airport terminals and urban development.

Read more at: http://indianexpress.com/article/india/india-news-india/india-japan-ink-10-pacts-cover-areas-like-civil-nuclear-deal-space-agriculture-4370248/

➲ **India pitches for Chinese investment under 'Make in India'**

BEIJING: India has made a strong pitch for Chinese investments under the Make in India initiative in a range of sectors like infrastructure development and solar energy at two events in the booming eastern Zhejiang province.

Nagaraj Naidu, Director-General of Investment Trade and Promotion Division of Ministry of External Affairs, introduced the overall investment environment and guidelines for benefit of companies from Huzhou city at the India-China Business and Investment Forum and India Week celebrations.

A 60-member Indian business delegation headed by Prakash Gupta, Consul-General of Indian Consulate in Shanghai, took part in the events from October 31. The events were jointly organised by the consulate and the local Huzhou government. The cooperation with Huzhou was a unique initiative bringing together economic, commercial and cultural aspects and intends to transport a truly Indian experience, said a statement from the consulate. India's strong pitch for Chinese investments at the two events was mainly directed towards infrastructure development, solar panels, roads, smart cities, urban transportation and power sectors.

Read more at: http://economictimes.indiatimes.com/news/economy/foreign-trade/india-pitches-for-chinese-investment-under-make-in-india/articleshow/55202416.cms

# BANKING

## Notifications / Circulars

➲ **Priority Sector Lending - Targets and Classification: Lending to non-corporate farmers – System wide average of last three years**

It was communicated vide our Circular No. FIDD.CO.Plan.BC.08/04.09.01/2015-16 dated July 16, 2015 on the captioned subject, that the system-wide average of the last three years achievement with regard to overall direct lending to non-corporate farmers will be notified in due course, and thereafter at the beginning of each year.

In this regard, the applicable system wide average figure for computing achievement under priority sector lending for the FY 2016-17 is 11.70 percent.

*Source: Notification No. RBI/2016-17/55 [FIDD.CO.Plan.BC.14/04.09.01/2016-17] dated: September 1, 2016*

Read more at: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10587&Mode=0

➲ **Guidelines on Sale of Stressed Assets by Banks**

The Reserve Bank of India, as part of the Framework for Revitalising Distressed Assets in the Economy, had amended certain guidelines relating to sale of non-performing assets (NPAs) by banks to Securitisation Companies (SCs)/ Reconstruction Companies (RCs) (created under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002) vide circular dated February 26, 2014.

In order to further strengthen banks' ability to resolve their stressed assets effectively, it has been decided to put in place an improved framework governing sale of such assets by banks to SCs/RCs/other banks/Non Banking Financial Companies /Financial Institutions etc.

*Source: Notification No. RBI/2016-17/56 [DBR.No.BP.BC.9/21.04.048/2016-17] dated: September 1, 2016*

Read more at: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10588&Mode=0

➲ **Advances against Term Deposits of Non-members**

In terms of our circular UBD.No.BL.(SEB)5A/07.01.00-2001/02 dated August 8, 2001, Salary Earners' Primary (Urban) Co-operative Banks (SEBs) applying for permission to open branches

should ensure, inter alia, that their byelaws do not contain provisions for giving loans to outsiders (non-employees) by enrolling them as members / nominal members.

Pursuant to the deliberations in the 32nd Standing Advisory Committee meeting held on December 14, 2015, it has been decided to permit SEBs to grant advances against term deposits of non-members, subject to the following conditions:

(i) The SEB should be fulfilling all the criteria for financially sound and well managed (FSWM) UCBs laid down in our circulars UBD.CO.LS (PCB) Cir.No.20/07.01.000/2014-15 and DCBR. CO.LS (PCB) Cir.No.4/07.01.000/2014-15 dated October 13, 2014 and January 28, 2015 respectively.

(ii) The SEB should have in place an Audit Committee of the Board of Directors which is constituted and functioning in compliance with the instructions contained in our circular UBD. No.Plan.(PCB).9/09.06.00-94/95 dated July 25, 1994.

(iii) The bye-laws of SEB should have a provision for giving loans to non-members against term deposits held in their own name singly or jointly with other non-members/ members.

(iv) The SEB should maintain a reasonable margin against such advances at all times as per the polic.

(v) No credit facilities, other than advances against term deposits, shall be granted to non-members.

*Source: Notification No. RBI/2016-17/57 [DCBR.BPD (PCB). BC.No.3/12.05.001/2016-17] dated: September 1, 2016*

### ➲ Guidelines on Sale of Stressed Assets by Banks

The Reserve Bank of India, as part of the Framework for Revitalising Distressed Assets in the Economy, had amended certain guidelines relating to sale of non-performing assets (NPAs) by banks to Securitisation Companies (SCs)/ Reconstruction Companies (RCs) (created under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002) vide circular dated February 26, 2014.
In order to further strengthen banks' ability to resolve their stressed assets effectively, it has been decided to o put in place an improved framework governing sale of such assets by banks to SCs/RCs/other banks/Non Banking Financial Companies / Financial Institutions etc.

*Source: Notification No. RBI/2016-17/56 [DBR.No.BP. BC.9/21.04.048/2016-17] dated: September 1, 2016*

For detailed guidelines please visit: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10588&Mode=0

### ➲ Free Annual Credit Report to individuals

The Committee to Recommend Data Format for Furnishing of Credit Information to Credit Information Companies (Chairman: Shri Aditya Puri) constituted by the Reserve Bank of India (RBI) had recommended that each customer of a credit institution should be provided one base level consumer Credit Information Report (CIR) free of cost every year by each Credit Information Company (CIC).

Given the importance of the credit report in an individual's financial matters, he/she is entitled to have a copy of the report upon request. Further, the objective of providing the free credit report would not be fully met unless this report includes details that figure in the full credit report that is accessed by the credit institutions while considering the request for fresh credit facilities. The report should also provide an opportunity to the borrower to have the errors, if any, in her/his credit history rectified. Taking into account these objectives, it has been decided, in exercise of the powers conferred upon Reserve Bank of India by sub-section (1) of Section 11 of Credit Information Companies (Regulation) Act, 2005, to direct Credit Information Companies to provide access in electronic format, upon request and after due authentication of the requester, to one free full credit report (FFCR) including credit score, once in a year (January- December), to individuals whose credit history is available with the CIC. This report must show the latest position of the credit institutions' exposure to the individual as per records available with the CIC. The contents of the FFCR shall be the same as appearing in the most detailed version of the reports on the individual provided to credit institutions, including the credit score. A directive DBR.CID. BC.No.10/20.16.042/2016-17 dated September 1, 2016 to this effect is enclosed.

All CICs shall put in place necessary systems to provide access to the above described FFCR once, at any time, during a year, upon request, to individuals whose credit data they hold, from the year commencing January 1, 2017. The CICs shall notify on their website the procedure for accessing the FFCR, and also have a board approved policy in this regard.

Source: Notification No. RBI/2016-17/58 [DBR.CID. BC.No.11/20.16.042/2016-17] dated: September 1, 2016

Read more at: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10590&Mode=0

### ➲ Merchant Discount Rates (MDR) structure – unbundling of charges

A reference is invited to our circulars DPSS.CO.PD. No.2361/02.14.003/2011-12 dated June 28, 2012 and DPSS. CO.PD.No.27/02.14.003/2012-13 dated July 04, 2012 wherein

directions pertaining to merchant discount rates (MDR) for debit card transactions were issued.

It has been brought to our notice that in many instances charges for merchants are bundled and a composite fee is levied on merchants irrespective of the type of card used. This practice hinders adherence to the extant regulatory mandate. Further, this not only disincentivises merchants from accepting cards but also gives them scope to indiscriminately pass on the costs to the customers in the form of surcharge.

In order to bring greater transparency in MDR applicable at merchant level, it is advised that the acquiring banks shall:

i) ensure that MDR are clearly unbundled for different categories of cards;

ii) enter into separate agreements or annexes within the same agreement for debit, credit and prepaid cards so as to bring in more clarity and transparency; and

iii) educate the merchants regarding the charges associated with different categories of cards, at the time of acquisition.

*Source: Notification No. RBI/2016-17/59 [DPSS.CO.PD No.639/02.14.003/2016-17] dated: September 1, 2016*

Read more at: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10591&Mode=0

➲ **Master Direction- Non-Banking Financial Company - Account Aggregator (Reserve Bank) Directions, 2016**

The Reserve Bank of India, (the Bank), in exercise of the powers conferred under section 45JA of the Reserve Bank of India Act, 1934 (hereinafter referred to "the Act"), and of all the powers enabling it in this behalf, hereby issues these directions for compliance of the same by every non-banking financial company undertaking the business of Account Aggregator as defined herein. These directions shall be known as the "Non-Banking Financial Company - Account Aggregator (Reserve Bank) Directions, 2016".

**Registration and matters incidental thereto:**

(a) No entity other than a company shall undertake the business of an Account Aggregator.

(b) No company shall commence or carry on the business of an Account Aggregator without obtaining a certificate of registration from the Bank.

Provided that, entities being regulated by other financial sector regulators and aggregating only those accounts relating to the financial information pertaining to customers of that particular sector will be excluded from the above registration requirement.

(c) Subject to the above proviso, entities that are undertaking the business of an Account Aggregator, as defined at paragraph 3(iv) of these directions, as on the date of effect of these directions, shall apply for registration as an Account Aggregator, in compliance with these directions, to the Bank within a month from that date. Such companies, which have applied to the Bank for registration as an NBFC - Account Aggregator, shall be permitted to continue the business of an Account Aggregator till their application for issue of Certificate of Registration is rejected or twelve months from date of the application, whichever is earlier.

(d) Every company seeking registration with the Bank as an Account Aggregator shall have a net owned fund of not less than rupees two crore, or such higher amount as the Bank may specify.

Provided that, those companies not having a Net Owned Fund of minimum of Rupees two crore at the time of seeking registration, shall meet the Net Owned Fund criteria within the period of validity of the in-principle approval for grant of certification of registration given by the Bank.

**Duties and Responsibilities of an Account Aggregator:**

- Account Aggregator shall provide services to a customer based on the customer's explicit consent.
- Account Aggregator shall ensure that the providing of services to a customer. shall be backed by appropriate agreements/ authorisations between the Account Aggregator, the customer and the Financial information providers.
- Account Aggregator shall not support transactions by customers.
- Account Aggregator shall ensure appropriate mechanisms for proper customer identification.
- Account Aggregator shall share information as referred to under paragraph 3(iv) only with the customer to whom it relates or any other financial information user as authorized by the customer in accordance with the terms of the consent provided by the customer.
- Account Aggregator shall not undertake any other business other than the business of account aggregator. Deployment of investible surplus by an Account Aggregator in instruments, not for trading, shall however be permitted.
- No financial information of the customer accessed by the Account Aggregator from the financial information providers shall reside with the Account Aggregator.
- Account Aggregator shall not use the services of a third party service provider for undertaking the business of account aggregation.
- User authentication credentials of customers relating to accounts with various financial information providers shall not be accessed by the Account Aggregator.

- Account Aggregator shall have a Citizen's Charter that explicitly guarantees protection of the rights of a customer. The Account Aggregator shall not part with any information that it may come to acquire from/ on behalf of a customer without the explicit consent of the customer.
- In the event of any difference in position of financial information in the statement generated by/from the Account Aggregator and the books of the Financial information provider, the position as reflected in the records of the Financial information provider shall be considered as correct.

*Source:Notification No. RBI/DNBR/2016-17/46 [Master Direction DNBR.PD.009/03.10.119/2016-17], dt. September 02, 2016*

Read more at: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10598&Mode=0

➲ **Income Declaration Scheme, 2016 – Acceptance of Cash Over the Counter**

In reference to the Circular DBOD.No.Leg.BC.38/09.07.005/2008-09 dated August 28, 2008 wherein banks have been advised to ensure that their branches invariably accept cash from all their customers who desire to deposit cash at the counters. Further, they were also advised to refrain from incorporating clauses, in the terms and conditions, which restrict deposit of cash over the counters.

The Income Declaration Scheme, 2016 (the Scheme) has come into effect from June 1, 2016 and some declarants may like to pay their tax dues in cash. In this connection, it has been brought to our notice by the Government that banks are hesitant in allowing deposit of large amounts of cash by the declarants under the Scheme, with them, for credit to Government account.

Thus banks are advised to invariably accept cash, irrespective of amount, over the counters from all declarants who desire to deposit cash at the counters, including deposits under the above Scheme through challan ITNS- 286. In this connection, banks shall comply with the Know Your Customer requirements for customers and walk-in customers as contained in Master Direction – Know Your Customer Direction, 2016 issued vide DBR.AML.BC.No.81/14.01.001/2015-16 dated February 25, 2016.

*Source: Notification No. RBI/2016-17/62 [DBR.No.Leg.BC.13/09.07.005/2016-17] dated: September 8, 2016*

Read more at: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10599&Mode=0

➲ **Security and Risk Mitigation Measures for Card Present and Electronic Payment Transactions – Issuance of EMV Chip and PIN Cards**

A reference is invited to our circular DPSS (CO) PD No.2112/02.14.003/2014-15 dated May 07, 2015 and DPSS.CO.PD.No.448/02.14.003/2015-16 dated August 27, 2015 on the captioned subject wherein directions were issued with timelines for migration to EMV Chip & PIN cards.

Despite the extension of time given to banks in this regard, some banks have approached us seeking further extension of the time line for complying with the above instructions.

Keeping in the mind the objective to further enhance the security and risk mitigation in card present transactions, and also the impact it may have on achieving the timeline for complete migration of all existing magstripe cards, it has been decided not to grant any further extension beyond the respective timeline indicated in circular dated August 27, 2015 for new issuances and full migration to EMV Chip and PIN cards.

*Source: Notification No. RBI/2016-17/63 [DPSS.CO.PD No.812/02.14.003/2016-17] dated: September 15, 2016*

Read more at: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10600&Mode=0

➲ **'Doubling Farmers' Income by 2022' - Measures**

Government of India in the Union Budget 2016-17 had announced its resolve to double the income of farmers by 2022. Several steps have been taken towards attaining this objective including setting up of an inter-ministerial committee for preparation of a blue print for the same. This agenda has also been reiterated by the government in several forums and has acquired primacy from the point of view of rural and agricultural development.

The strategy to achieve this goal, inter-alia, include:

- Focus on irrigation with large budgets, with the aim of "per drop, more crop"
- Provision of quality seeds and nutrients based on soil health of each field
- Investments in warehousing and cold chains to prevent post-harvest crop losses
- Promotion of value addition through food processing
- Creation of a national farm market, removing distortions and develop infrastructure such as e-platform across 585 stations
- Strengthening of crop insurance scheme to mitigate risks at affordable cost
- Promotion of ancillary activities like poultry, bee-keeping and fisheries.

Needless to emphasize that acceleration in income generation is significantly dependent on better capital formation in agriculture. Towards this, banks should revisit their documentation for

crop loans, simplify them where required and ensure speedy sanctioning and disbursal of loans within specified time limits.

The Lead Bank Scheme through its various forums monitors and reviews the performance of banking developments in the State/ district/block with special reference to Annual Credit Plans, Government Sponsored Programs, flow of credit to priority sector, etc. for enhancing the flow of bank finance particularly to the rural areas.

The Scheme, which ensures inter-departmental/governmental coordination in financial sector, should therefore be leveraged to further the objective of doubling farmer's income by 2022. Lead banks are accordingly advised to ensure the following:

- Work closely with NABARD in preparation of Potential Linked Plans (PLPs) & Annual Credit Plans keeping the above strategy in consideration.
- Include 'Doubling of Farmer's Income by 2022' as a regular agenda under Lead Bank Scheme in various forums such as SLBC, DCC, DLRC and BLBC.
- For the purpose of monitoring and reviewing the progress, Lead banks may use the benchmarks as may be provided by NABARD.

*Source: Notification No. RBI/2016-17/66 [FIDD.CO.LBS.BC.No.16 /02.01.001/2016-17] dated: September 29, 2016*

Read more at: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10614&Mode=0

**➲Aadhaar-based Authentication for Card Present Transactions**

A reference is invited to our circular dated November 26, 2013 on Security and Risk Mitigation Measures for Card Present Transactions wherein the banks were advised that all new card present infrastructure has to be enabled for both EMV Chip and PIN and Aadhaar (biometric validation) acceptance.

With the substantial increase in number of Aadhaar card holders in the country, we reiterate our above mentioned instructions and advise banks to ensure that all new card acceptance infrastructure deployed with effect from January 1, 2017 are enabled for processing payment transactions using Aadhaar-based biometric authentication also.

*Source: Notification No. RBI/2016-17/70 [DPSS.CO.PD No.892/02.14.003/2016-17] dated: September 29, 2016*

Read more at: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10618&Mode=0

# CUSTOMS

## Notifications / Circulars

➲ CBEC further amended Notification No.12/2012-Customs, dated 17.03.2012 so as to inrease the effective rate of Basic Customs Duty for Marble and Travertine blocks, Marble slabs and Granite slabs with effect from 01.10.2016 vide Notification No. 49/2016-Cus,dt. 16-09-2016.

Read more at: http://www.cbec.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2016/cs-tarr2016/cs49-2016.pdf

➲ CBEC vide Notification No. 51/2016-Cus, dt. 23-09-2016 amended Notification No.12/2012-Customs dated: 17th March, 2012, so as to: 1. Reduce import duty on potatoes from 30% to 10% up to 31.10.2016. 2. Reduce import duty on wheat from 25% to 10% up to 29.02.2017. 3. Reduce import duty on palm oil from 12.5% to 7.5% for crude palm oil of edible grade, and from 20% to 15% for refined palm oil of edible grade.

Read more at: http://www.cbec.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2016/cs-tarr2016/cs51-2016.pdf

➲ CBEC further amended Notification No.12/2012-Customs dated the 17th March, 2012, so as to retain the basic customs duty on ghee, butter and butter oil at 40% beyond 30.09.2016, for a further period up to 31.03.2017.

*Source: Notification No. 53/2016-Cus,dt. 29-09-2016*

Read more at: http://www.cbec.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2016/cs-tarr2016/cs53-2016.pdf

➲ Tariff Notification in respect of Fixation of Tariff Value of Edible Oils, Brass Scrap, Poppy Seeds, Areca Nut, Gold and Sliver - Notification No. 123/2016-Cus (NT), dt. 30-09-2016.

Read more at: http://www.cbec.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2016/cs-nt2016/csnt123-2016.pdf

➲ Rate of exchange of conversion of the foreign currency with effect from 23rd September, 2016 - Notification No. 122/2016-Cus (NT), dt. 22-09-2016.

Read more at: http://www.cbec.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2016/cs-nt2016/csnt122-2016.pdf

➲ **CBEC vide Circular No. 44/2016, dated: 22-09-2016 has issued a Circular on setting up of 'Custom Clearance Facilitation Committee' (CCFC) for Land customs stations and Inland Container Depots.**

For more details visit: http://www.cbec.gov.in/resources//htdocs-cbec/customs/cs-circulars/cs-circulars-2016/circ44-2016cs.pdf

➲ **Circular No. 45/2016, dated: 23-09-2016:** Explains option extended by DGFT for surrendering one benefit in case of simultaneous issuance of SHIS and Zero duty EPCG/PE EPCG - Circular No. 45/2016, dated: 23-09-2016.

Read more at: http://www.cbec.gov.in/resources//htdocs-cbec/customs/cs-circulars/cs-circulars-2016/circ45-2016cs.pdf

### Anti - dumping duty

➲ CBEC levied anti-dumping duty on imports of Para Nitroaniline, originating in, or exported from People's Republic of China, (imposed vide notification No. 88/2011-Customs, dated 9th September, 2011) for a period of one year i.e. upto and inclusive of the 8th September, 2017 vide Notification No. 49/2016-Cus (ADD), dt. 07-09-2016.

Read more at: http://www.cbec.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2016/cs-add2016/csadd49-2016.pdf

➲ CBEC imposed definitive anti-dumping on all imports of Glass Fibre and Articles thereof falling under heading 7019 of the First schedule to the Customs Tariff Act, 1975 , originating in or exported from China PR - Notification No. 48/2016-Cus (ADD), dt. 01-09-2016.

Read more at: http://www.cbec.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2016/cs-add2016/csadd48-2016.pdf

# CENTRAL EXCISE

## Notifications / Circulars

➲ **Notification No. 45/2016-CENT, dt. 20-09-2016**: CBEC seeks to amend Cenvat Credit Rules, 2004 so as to amend the requirement of enclosing photocopies of the railway receipts (RRs) with the STTG certificate.

Read more at: http://www.cbec.gov.in/resources//htdocs-cbec/excise/cx-act/notifications/notfns-2016/cx-nt2016/cent45-2016.pdf

➲ **Notification No. 46/2016-CENT,dt.26-09-2016**: CBEC amends Notification No. 20/2016-CE (NT) dated 01.03.2016 [Central Excise (Removal of Goods at Concessional Rate of Duty for manufacture of Excisable and other Goods) Rules, 2016].

Read more at: http://www.cbec.gov.in/resources//htdocs-cbec/excise/cx-act/notifications/notfns-2016/cx-nt2016/cent46-2016.pdf

➲ **Circular No. 1046/34/2016-CX, dated: 16-09-2016**: Supply of goods manufactured by EOUs without payment of Central Excise Duty against Advance Licence/Authorisation.

Read more at: http://www.cbec.gov.in/resources//htdocs-cbec/excise/cx-circulars/cx-circulars-2016/circ1046-2016cx-signed.pdf

➲ **Circular No. 1047/35/2016-CX, dated: 16-09-2016**: Rebate of duties paid on raw materials used in manufacture or processing of export goods and admissibility of duty drawback in such cases.

Read more at: http://www.cbec.gov.in/resources//htdocs-cbec/excise/cx-circulars/cx-circulars-2016/circ1047-2016cx-signed.pdf

➲ **Circular No. 1048/36/2016-CX, dt. 20-09-2016**: Service tax certificate for transportation of goods by rail (STTG Certificate).

Read more at: http://www.cbec.gov.in/resources//htdocs-cbec/excise/cx-circulars/cx-circulars-2016/circ1048-2016cx-signed.pdf

➲ **Circular No. 1049/37/2016-CX, dt. 29-09-2016:** Revised Monetary Limits for adjudication of Show Cause Notice in Central Excise and Service Tax.

For further details visit: http://www.cbec.gov.in/resources//htdocs-cbec/excise/cx-circulars/cx-circulars-2016/circ1049-2016cx-revised.pdf

➲ **Amendment of Form ARE-2** - Notification No. 44/2016-CENT dt. 16-09-2016.

Read more at: http://www.cbec.gov.in/resources//htdocs-cbec/excise/cx-act/notifications/notfns-2016/cx-nt2016/cent44-2016.pdf

➲ **Gold and Silver articles:** The CBEC vide Notification No.34/2016-Central Excise dated 8th Sept, 2016 has issued amendments to its earlier notifications relating to Articles of Goldsmiths' or silversmiths' wares of precious metal or metal clad with precious metals.

For details visit: www.cbec.gov.in

## Case Laws:

➲ **Excise & Customs: If refund is granted after 3 months from date of receipt of duly-completed application, assessee is automatically entitled to interest on belated refund from date after expiry of said 3 months, to date of grant of refund**

Section 27A of the Customs Act, 1962, read with section 11BB of the Central Excise Act, 1944 - Interest - On delayed refunds -

Assessee imported spares and consumables, but, could not claim customs exemption, as Essentiality Certificate required as a condition of exemption was not available - Later, assessee got such Essentiality Certificate and claimed exemption/refund on 4-4-2003 - Department rejected same as premature, as Essentiality Certificate was not attached - After several rounds of litigation, in year 2011, Department raised certain queries and sought documents - Assessee duly supplied documents, etc. on 20-6-2011 - Department still denied refund - After appeals/writs, department finally granted refund on 11-7-2014 - Assessee sought interest on belated refund - HELD : Since refund application filed in 2003 was premature/incomplete, hence, date of receipt of refund claim is 20-6-2011 when all documents had been attached - Since refund was granted after 3 months from date of receipt of refund application, assessee is entitled to interest from 20-9-2011 to 11-7-2014 - A copy of present order was sent to Secretary, Ministry of Finance and Chairman, CBEC to ensure that refund claims are expeditiously disposed of and revenue loss is avoided. [In favour of assessee]

Circulars and Notifications: Notification No. 21/2002-Cus, dated 1-3-2002

*Case laws: High Court of Bombay, Shelf Drilling International Inc. v. Union of India [2016] 74 taxmann.com 73 (Bombay)*

➲ **Excise & Customs : Word 'buyer' in section 11B(2) [proviso (e)] or section 12B can be a 'buyer downstream'; hence, even a consumer can make refund claim and no refund can be granted if burden of duty stands transferred to ultimate consumer;**

**Excise & Customs: Assessee is entitled for filing a claim for refund on basis of credit notes raised by him towards turnover discount;**
**Excise & Customs : If incidence of duty was passed on once by assessee to his buyer and there is no material to show that assessee's buyer did not pass it onto ultimate consumer, then, even if assessee has issued credit notes to his buyer, refund cannot be allowed to assessee**

Section 11B of the Central Excise Act, 1944 - Refund - Doctrine of unjust enrichment - As per section 11B(2) [proviso (d)], refund of duty is allowed to manufacturer only if he has not passed on burden thereof to "any other person" - As per section 11B(2) [proviso (e)], refund of duty is allowed to "buyer" also, if he has not passed on burden thereof to "any other person" - Word "buyer" in section 11B(2) [proviso (e)] can be a 'buyer downstream as well'; hence, even a consumer can make an application for refund - It might be difficult to identify who had actually borne burden but such verification would assist revenue in finding out whether manufacturer/buyer filing refund claim are being unjustly enriched; if it is not possible to identify person/persons who have borne duty, excess duty will remain in Consumer Welfare Fund which will be utilized for benefit of consumers. [In favour of revenue]

Section 11B, read with sections 4 , 12A and 12B of the Central Excise Act, 1944, section 83 of the Finance Act, 1994 and section 27 of the Customs Act, 1962 - Refund - Doctrine of unjust enrichment - Assessee-manufacturer allowed turnover discounts by way of credit notes and claimed refund of excess duty pertaining to such turnover discounts - Department denied refund claim on ground that : (a) refund cannot be claimed based on credit notes issued after removal; and (b) in any case, since burden of duty was passed onto 'ultimate consumer', refund cannot be allowed - Assessee argued that : (a) credit notes are eligible; and (b) manufacturer has to satisfy unjust enrichment vis-à-vis his buyer and not 'ultimate consumer' - HELD : Trade discounts cannot be disallowed only because they are not payable at time of each invoice or deducted from invoice price but, at later point of time; hence, assessee is entitled for filing a claim for refund on basis of credit notes raised by him towards turnover discount - Admittedly, incidence of duty was originally passed onto assessee's buyer - There is no material to show that assessee's buyer did not pass it onto any other person - There is a statutory presumption under section 12B duty has been passed onto buyer (which includes, ultimate consumer) - Since burden of duty originally paid by assessee was passed onto 'any other person', hence, assessee cannot claim refund of said duty as he would be unjustly enriched. [In favour of revenue]

**FACTS-I:**

- The assessee filed a refund claim on 19-7-1988 and a supplementary refund claim on 15-6-1989 towards excise duty paid on various taxes and discounts such as turnover tax, surcharge, additional sales discounts, transitory insurance, excise discounts, additional discounts and turnover discounts.
- The Tribunal denied refund on ground that :
- Refund is allowable only if he had not passed on the duty burden to his buyers. The buyer in turn, would be entitled to claim refund only if he has not passed on the incidence of duty to any other person.
- The event which gives rise to cause of action for refund is payment of duty made in respect of goods cleared from the factory and once the duty burden has been passed on to the buyer at the time of clearance, issuance of credit note at a later point of time would not entitle the assessee to claim any refund.
- Burden of duty is normally passed by the manufacturer and the dealer to the ultimate consumer.
- The High Court allowed refund on ground that :
- Refund cannot be denied on the ground that there was no evidence to show who is the ultimate consumer of the product and as to whether the ultimate consumer had borne the burden of the duty.
- Section 11-B of the Act cannot be construed as having reference to the ultimate Consumer and it would be sufficient for the claimant to show that he did not pass on the burden of duty to any other person.

▪ The claim for refund made by the manufacturer is not dependent on the identification of the ultimate consumer.
▪ The word 'buyer' used in section 12-B of the Act does not refer to ultimate consumer and has reference only to the person who buys the goods from the person who has paid duty i.e. the manufacturer.
▪ Hence, the assessee was not entitled for refund despite the assessee proving that the duty was not passed on to its buyers.
▪ In another matter, the assessee continued to pay duty at higher rate, despite reduction in duty. Later, assessee filed refund claim of excess duty based on credit note issued to its buyer.

**HELD-I:**

**1. Credit note is a valid document to claim refund:**

▪ It was held by the Special Bench of CEGAT, that the turnover discount is not an admissible abatement on the ground that the quantum of discount was not known prior to the removable of the goods. In an appeal filed by the assessee, this Court by its judgment dated 11-3-1997 held that the turnover discount is an admissible deduction. This Court approved the normal practice under which discounts are given and held that the discount is known to the dealer at the time of purchase.
▪ The revenue's submission that any credit note that was raised post clearance will not be taken into account for the purpose of a refund by the Department is incorrect. It was held by this Court in Union of India v. Bombay Tyre International (P.) Ltd. [1984] 1 SCC 467 that trade discounts shall not be disallowed only because they are not payable at the time of each invoice or deducted from the invoice price. It is the submission of the assessee that the turnover discount is known to the dealer even at the time of clearance which has also been upheld by this Court. It is clear from the above that the assessee is entitled for filing a claim for refund on the basis of credit notes raised by him towards turnover discount.
2. Buyer includes downstream buyer - Refund denied, if burden of duty is passed on to ultimate consumer
▪ In the instant case, the assessee has admitted that the incidence of duty was originally passed on to the buyer. There is no material brought on record to show that the buyer to whom the incidence of duty was passed on by the assessee did not pass it on to any other person. There is a statutory presumption under section 12-B of the Act that the duty has been passed on to the ultimate consumer. It is clear from the facts of the instant case that the duty which was originally paid by the assessee was passed on. The refund claimed by the assessee is for an amount which is part of the excise duty paid earlier and passed on. The assessee who did not bear the burden of the duty, though entitled to claim deduction, is not entitled for a refund as he would be unjustly enriched.
▪ Section 11-B (2) of the Act contemplates that the amount of refund determined by the Authorities shall be credited to the fund. The Proviso to section 11-B (2) permits the refund to be paid to the applicant instead of being credited to the fund if such amount is relatable to the manufacturer, the buyer or any other such class of applicants as notified by the Central Government.
▪ The assessee's arguments that "the claim for refund can be made only by the manufacturer or his buyer and any enquiry pertaining to unjust enrichment should be restricted only to the manufacturer and his buyer and the ultimate buyer/consumer will not figure in the scheme of sections 11-B, 12-A, 12-B and 12-C of the Act" are liable to be disapproved.
▪ The sine qua non for a claim for refund as contemplated in section 11-B of the Act is that the claimant has to establish that the amount of duty of excise in relation to which such refund is claimed was paid by him and that the incidence of such duty has not been passed on by him to any other person. Section 11-B (2) provides that, in case it is found that a part of duty of excise paid is refundable, the amount shall be credited to the fund. Section 2 (ee) defines fund to mean the Consumer Welfare Fund established under section 12-C. There is a proviso to section 11-B(2) which postulates that the amount of excise duty which is refundable may be paid to the applicant instead of being credited to the fund, if such amount is relatable to the duty of excise paid by the manufacturer and he had not passed on the incidence of such duty to any other person. Clause (e) to proviso of section 11-B(2) also enables the buyer to receive the refund if he had borne the duty of excise, provided he did not pass on the incidence of such duty to any other person. There is a third category of a class of applicants who may be specified by the Central Government by a notification in the official gazette who are also entitled for refund of the duty of excise. A plain reading of Clauses (d), (e) and (f) of the proviso to section 11-B (2) shows that refund to be made to an applicant should be relatable only to the duty of excise paid by the three categories of persons mentioned therein i.e. the manufacturer, the buyer and a class of applicants notified by the Central Government. Clause (e) refers to the buyer which is not restricted to the first buyer from the manufacturer. The buyer mentioned in the above clause can be a buyer downstream as well.
▪ A consumer can make an application for refund is clear from paras 98 and 99 of the judgment of this Court in Mafatlal Industries Ltd. v. Union of India [1997] 5 SCC 536. This court is bound by the said findings of a Larger Bench of this Court. The word 'buyer' in Clause (e) to proviso to section 11-B (2) of the Act cannot be restricted to the first buyer from the manufacturer.
▪ Another submission which remains to be considered is the requirement of verification to be done for the purpose of finding out who ultimately bore the burden of excise duty. It might be difficult to identify who had actually borne the burden but such verification would definitely assist the revenue in finding out whether the manufacturer or buyer who makes an application for refund are being unjustly enriched. If it is not possible to identify the person/persons who have borne the duty, the amount of excise duty collected in excess will remain in the fund which will be utilized for the benefit of the consumers as provided in section 12-D.
▪ Hence, the judgment of the High Court is liable to be set aside. The assessee is not entitled to refund as it would result in unjust enrichment.

**FACTS-II:**

- The assessee is a 100 per cent Export Oriented Unit (EOU) manufacturing cotton yarn. The assessee filed an application for refund on 14-8-2002 on the ground that it had paid excess excise duty at the rate of 18.11 per cent instead of 9.20 per cent.
- The assessee initially passed on the duty incidence to its customers. Later the assessee returned the excess duty amount to its buyers, which was evidenced by a certificate issued by the Chartered Accountant on 2-8-2002.
- The High Court allowed refund claim.

**HELD-II:**

- Except for a factual dispute about the genuineness of the certificate issued by the Chartered Accountant and the credit notes raised by the assessee regarding the return of the excess duty paid by the assessee, there is no dispute in this case of the duty being passed on to any other person by the buyer. As it is clear that the assessee has borne the burden of duty, it cannot be said that it is not entitled for the refund of the excess duty paid. Hence, refund was upheld.

*Case law: Supreme Court of India, Commissioner of Central Excise, Madras v. Addison & Co. Ltd [2016] 73 taxmann.com 319 (SC)*

# SERVICE TAX

## Notifications / Circulars

➲ CBEC amends Entry 62 of notification No. 25/2012 - Service Tax, dated the 20th June, 2012, so as to exempt services provided by Government or a local authority by way of allowing a business entity to operate as a telecom service provider or use radio frequency spectrum during the period prior to 1st April, 2016 on payment of license fee or spectrum user charges, as the case may be vide **Notification No. 39/2016-Service Tax dt. 02-09-2016**.

Read more at: http://www.cbec.gov.in/resources//htdocs-servicetax/st-notifications/st-notifications-2016/st39-2016.pdf

➲ CBEC seeks to exempt taxable service provided by State Government Industrial Development Corporations/ Undertakings by way of granting long term (thirty years, or more) lease of industrial plots to industrial units from so much of service tax which is leviable on the one time upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable for such lease vide **Notification No. 41/2016-Service Tax dt. 22-09-2016**.

Read more at: http://www.cbec.gov.in/resources//htdocs-servicetax/st-notifications/st-notifications-2016/st41-2016.pdf

➲ **Notification No. 45/2016-Service Tax dt. 30-09-2016**

Whereas, the Central Government is satisfied that in the period commencing on and from the first day of April, 2013 and ending with the tenth day of July, 2014 (hereinafter referred to as the said period) according to a practice that was generally prevalent, there was non levy of service tax, on the provision of the service of transportation, by educational institutions as defined in clause (1) of section 66 D of the Finance Act, 1994(32 of 1994) during the said period, to students, faculty and staff of such institutions and this service was liable to service tax, in the said period, which was not being paid according to the said practice.

Now, therefore, in exercise of the powers conferred by section l 1C of the Central Excise Act, 1944 (1 of 1944), read with section 83 of the Finance Act, 1994 (32 of 1994), the Central Government hereby directs that the service tax payable under section 66B of the Finance Act, 1994 but for the said practice, on the service of transportation, by educational institutions as defined in clause (l) of section 66 D of the Finance Act, 1994(32 of 1994) during the said period, to students, faculty and staff of such institutions, shall not be required to be paid.

Read more at: http://www.cbec.gov.in/resources//htdocs-servicetax/st-notifications/st-notifications-2016/st45-2016.pdf

## Case Laws:

➲ **If protest is lodged within reasonable time of assessee becoming aware that amounts were not recoverable as tax/duty, then, as per proviso to section 11B (1), time-limit of 1 year for filing refund claim would not apply**

Section 11B of the Central Excise Act, 1944, read with sections 65(25b), 65(30a) and 83 of the Finance Act, 1994 and section 27of the Customs Act, 1962 - Refund - Duty/Tax paid under protest - Period 2006 to 30-6-2010 - Assessee-builder was providing construction services and relying upon Circular dated 16-2-2006, it started paying service tax in 2006 - On 24-4-2007, assessee filed protest contending that service tax is not leviable, but, they are paying same under protest - Assessee filed refund claim on 26-2-2009 for period 2006 onwards - Department rejected refund claim as time-barred being beyond 1 year from date of payment of tax and opined that there was no protest, as payment was made voluntarily - Assessee argued that builder's services were made taxable only from 1-7-2010; hence, tax paid for prior period was refundable.

**HELD :** Since levy itself came into force from 1-7-2010, amounts collected without authority of law could not be subject to restriction of time-limit under section 11B - Here, protest was filed before expiry of one year - Since protest was lodged within reasonable time of assessee becoming aware that amounts were not recoverable as Service Tax, hence, as per proviso to section 11B(1), time-limit would not apply and therefore, refund claim was within time. [In favour of assessee]

*Case Laws: High Court of Delhi, Mera Baba Realty Associate (P.) Ltd. v. Commissioner of Service Tax, Delhi [2016] 73 taxmann.com 366 (Delhi)*

➲ **Service Tax: Subsequent notifications adding new services in parent notification for eligibility of export incentive are prospective and therefore, assessee cannot claim refund/exemption on new services for period prior to date of their addition.**

**Service Tax: In case of 'limited remand' for verification of refund claim vis-à-vis documents, adjudicating authority can examine eligibility per se of refund claim.**

Section 93 of the Finance Act, 1994 - Exemptions - Service tax - Refund of tax paid on services used for export goods - Assessee-exporter claimed refund of service tax paid on services used for export under Notification No. 41/2007-ST - Department argued that services for which refund was claimed were added by subsequent Notification Nos. 3/2008-ST, 17/2008-ST and 33/2008-ST and therefore, exemption/refund cannot be allowed for prior periods - Tribunal allowed refunds even for prior periods holding that addition of new services in 2008 was clarificatory and retrospective from 2007 - HELD : Clarificatory notifications relate back to date of base notification; but, subsequent notifications can be regarded as clarificatory only if there was something in base notification itself requiring clarity - Subsequent Notifications were issued in 2008, adding new services, but, same were expressly made effective prospectively from date of their publication - Since new services added by '2008 notifications' did not figure at all in base notification, hence, '2008 notifications' cannot be regarded as clarifying '2007 Notification' - Hence, assessee cannot claim refund/exemption on new services for period prior to date of their addition. [In favour of revenue]

Section 11B of the Central Excise Act, 1944, read with sections 83, 85 and 93 of the Finance Act, 1994 - Refund - General - In first round, adjudicating authority rejected refund claim and on appeal, Commissioner (Appeals) remanded matter back - In second round, adjudicating authority allowed partial refund and on appeal, Commissioner (Appeals) allowed substantial refunds and remitted matter back for verification of documents - In third round, adjudicating authority rejected partial refund on ground that same pertained to new services added by subsequent notifications - Assessee argued that in view of 'limited remand', denial of refund on a new ground was bad - HELD : Since Commissioner (Appeals) remitted matter for verification twice, scope of remand was widened - Secondly, since exemption/refund applications are to be construed strictly and narrowly; hence, it cannot be said that adjudicating authority lacked primary jurisdiction merely because of a circumscribed demand - Hence, adjudication order was valid. [In favour of revenue]

Circulars and Notifications: Notification No. 40/2007-ST, dated 17-9-2007, Notification No. 41/2007-ST, dated 6-10-2007, Notification No. 3/2008-ST, dated 19-2-2008, Notification No. 17/2008-ST, dated 1-4-2008 and Notification No. 33/2008-ST dated 7-12-2008.

*Case law: High Court of Delhi, Principal Commissioner of Service Tax, Delhi-I v. T.T. Ltd. [2016] 73 taxmann.com 283 (Delhi)*

➲ **Service Tax : Condition that 'details of exporters invoice should be specifically mentioned in lorry receipt and shipping bill' is a mandatory condition, which acts as an evidence of actual export and therefore, non-compliance with said condition would lead to denial of refund/exemption of service tax paid on transport of export goods**

Section 93 of the Finance Act, 1994 - Exemptions - Service tax - Refund of tax paid on services used for export goods - Period from January, 2008 to March, 2008 - Assessee claimed exemption/refund under Notification No. 41/2007-ST for service tax paid on transport of export goods (iron ore) by road (GTA) from inland container depot to port of export - Notification No. 3/2008-ST added condition that 'details of exporters invoice should be specifically mentioned in lorry receipt and shipping bill' - Department rejected refund claim on ground that said condition was not fulfilled - Assessee claimed that it is a common practice for exporters of iron ore that : (a) since huge quantity cannot be transported by a single lorry, quantities are aggregated at port; and (b) export invoice/shipping documents are prepared later; therefore, strict compliance of condition cannot be made - Tribunal upheld assessee's contention - HELD : Mention of 'details of exporters invoice in lorry receipt and shipping bill' is a evidentiary condition viz. it is an evidence of export and is an eligibility condition to be fulfilled mandatorily; it is not a matter of procedure - Object of requiring 'mention of details of exporters invoice in lorry receipt and shipping bill' is to ensure that what had reached port was actually consignment of that exporter and that there was no duplication of claim - Since said condition lies at essence of grant of exemption, theory of substantial compliance cannot be invoked to rule out strict compliance - Since said condition was not complied with, hence, exemption/refund could not be granted. [In favour of revenue]

Circulars and Notifications: Notification No. 41/2007-ST, dated 6-10-2007, Notification No. 3/2008-ST, dated 19-2-2008

**FACTS:**

- For period from January, 2008 to March, 2008, assessee claimed exemption/refund under Notification No. 41/2007-ST for service tax paid on transport of export goods (iron ore) by road (GTA) from inland container depot to port of export.
- Notification No. 3/2008-ST added condition that 'details of exporters invoice should be specifically mentioned in lorry receipt and shipping bill'.
- Department rejected refund claim on ground that said condition was not fulfilled.

▪ Assessee claimed that it is a common practice for exporters of iron ore that :
(a) since huge quantity cannot be transported by a single lorry, quantities are aggregated at port; and
(b) export invoice/shipping documents are prepared later; therefore, strict compliance of condition cannot be made.
▪ Tribunal upheld assessee's contention.

**HELD:**

**1. Rules of construction of exemption notifications:**

▪ The rules of interpretation to be applied to exemption notifications are slightly different from the rules of interpretation applicable to the charging provisions. Exemption is a creation of statute and must be construed strictly.
▪ The operation of exemption notifications had to be judged not by the object which the rule making authority had in mind, but by the words which it had employed to effectuate the legislative intent. In a taxing statute there is no room for any intendment and that the entire matter is governed wholly by the language of the notification. If the tax-payer is within the plain terms of the exemption it cannot be denied its benefit by calling in aid any supposed intention of the exempting authority. If such intention can be gathered from the construction of the words of the notification or by necessary implication there from, the matter is different.
▪ In case of ambiguity or doubt regarding an exemption provision in a fiscal statute, the ambiguity or doubt will be resolved in favour of the revenue and not in favour of the assessee.
▪ The principle of construction of a statute that the exemption provisions would be attracted only when requisite conditions there for are satisfied, would also apply in a case of constitutional interpretation.

**2. Application of Principles of law to the facts on hand:**

▪ The main contention of the respondent/Assessee is that the condition is a mere matter of procedure and that therefore some amount of laxity can be given with regard to its compliance. According to the respondent/Assessee, they have satisfied the substantial requirements (1) of export of iron ore; (2) of payment of service tax on the service of transportation of material from the place of removal to the port; and (3) of actual export of the material. Therefore, the failure to have the details of the exporters invoice mentioned in the lorry receipt and corresponding shipping bill, on account of the peculiar nature of the trade, cannot be a ground for denying the benefit of the exemption notification.
▪ But unfortunately, condition No. 3 cannot be construed as a mere matter of procedure. It is a matter of evidence. The original notification dated 6-10-2007 did not make the applicability of exemption, conditional. But by an amendment to the original notification, the grant of exemption was made conditional. Therefore, the object of the amendment is very clear to the effect that proof of eligibility to claim exemption was made equivalent to the eligibility for exemption.
▪ The Courts always tell statutory authorities that if something is required to be done by law in a particular manner, it shall be done only in that manner and not otherwise. After repeatedly advising statutory authorities to the above effect, it would be awkward for a Court to say that even if something is not done in accordance with the procedure prescribed by law, the same can be condoned.
▪ What could at the most be done by Courts or even by the statutory authorities is to condone certain insignificant requirements. For instance, if an application for extension of the benefit of exemption has to be endorsed by someone, but was endorsed by some other person, the mistake can be condoned as mere procedural in nature. But when the very availability of the benefit of exemption is made contingent upon the fulfillment of certain conditions, those conditions cannot be dismissed as matters of procedure.
▪ The object of requiring the details of exporters invoice to be mentioned in the lorry receipt and the corresponding shipping bill is to ensure that what had reached the port was actually the consignment of that exporter and that there was no duplication of the claim. Therefore, the relaxation of such a condition would tantamount to the removal of the very life breath of the notification.

**3. Theory of substantial compliance:**

▪ Doctrine of substantial compliance seeks to preserve the need to comply strictly with the conditions or requirements that are important to invoke an exemption. What can be forgiven is the non-compliance of unimportant and tangential requirements or requirements that are so confusingly or incorrectly written that an earnest effort at compliance should be accepted.
▪ The law is well settled that a person who claims exemption or concession has to establish that he is entitled to that exemption or concession. A provision providing for an exemption, concession or exception, as the case may be, has to be construed strictly with certain exceptions depending upon the settings on which the provision has been placed in the statute and the object and purpose to be achieved. If exemption is available on complying with certain conditions, the conditions have to be complied with. The mandatory requirements of those conditions must be obeyed or fulfilled exactly, though at times, some latitude can be shown, if there is a failure to comply with some requirements which are directory in nature, the non-compliance of which would not affect the essence or substance of the notification granting exemption.
▪ Of course, some of the provisions of an exemption notification may be directory in nature and some are mandatory in nature. A distinction between the provisions of a statute which are of substantive character and were built in with certain specific objectives of policy, on the one hand, and those which are merely procedural and technical in their nature, on the other, must be kept clearly distinguished. Whereas the eligibility clause in relation to an exemption notification is given strict meaning where for the notification has to be interpreted in terms of its language, once an assessee satisfies the eligibility clause, the exemption clause therein may be construed literally. An eligibility criteria, therefore deserves a strict construction, although construction of a condition thereof may be given a liberal meaning if the same is directory in nature.

▪ Doctrine of substantial compliance is a judicial invention, equitable in nature, designed to avoid hardship in cases where a party does all that can reasonably be expected of it, but failed or faulted in some minor or inconsequent aspects which cannot be described as the essence or substance of the requirements. The acceptance of a plea of substantial compliance depended upon two things, viz., (a) facts and circumstances of the case and (b) the purpose and object sought to be achieved and the context of the prerequisites which are essential to achieve the object and purpose.
▪ Substantial compliance is insisted where mandatory or directory requirements are lumped together and that in cases where substantial compliance has been found, there has been actual compliance with the statute, albeit procedurally faulty. The test for determining the applicability of the substantial compliance doctrine has been the subject of a myriad of cases and quite often, the critical question to be examined is whether the requirements relate to the substance or essence of the statute, if so, strict adherence to those requirements is a pre-condition to give effect to that doctrine. On the other hand, if the requirements are procedural or directory in that they are not of the essence of the thing to be done but are given with a view to the orderly conduct of business, they may be fulfilled by substantial, if not strict compliance. In other words, a mere attempted compliance may not be sufficient, but actual compliance with those factors which are considered as essential.
▪ Therefore, what can be condoned, is that which is not the essence of the thing to be done, but that which is prescribed merely for the orderly conduct of the business. In the case on hand all the four conditions stipulated in the amended notification, are intended to ensure that there are checks and balances for the authority conferred with the power of processing the application for exemption to arrive at a subjective satisfaction that the requirements are fulfilled. If the Courts recognize some amount of latitude for the authorities, who are vested with the power to process the application for exemption, then the same may tantamount to enlarging the scope of the discretionary power on the part of those authorities.
▪ Many times the exercise of discretion, one way or the other, leads to complications, when there are no guidelines for the exercise of the power of discretion. Once a full-fledged system is put in place, for the exercise of discretion, the compliance with the requirements of such a system alone will remove any kind of arbitrary exercise of power. The Courts are obliged to interpret notifications of this nature, in such a manner that the power of discretion is reduced to the minimum.
▪ Hence, condition No. 3 in the exemption notification at serial No. 6 of the table under the schedule, is also the substance or essence of the exemption notification and the compliance with the same is mandatory.

*Case law: High Court of Andhra Pradesh, Principal Commissioner of Service Tax, Customs, Central Excise & Service Tax, Hyderabad Service Tax Commissionerate v. R.R. Global Enterprises (P.) Ltd. [2016] 73 taxmann.com 263 (Andhra Pradesh)*

# INCOME TAX

## Notifications / Circulars

➲ **Enquiry or investigation in respect of document/evidence relating to Income Declaration Scheme (IDS), 2016 found during the course of Search u/s 132 or Survey action u/s 133A of the Income-tax Act,1961**

The Income Declaration Scheme, 2016 (hereinafter referred to as 'the Scheme') came into effect on 1st June, 2016. To address doubts and concerns raised by the stakeholders, the Board has issued five sets of FAQs vide Circular Nos. 17, 24, 25,27 & 29 of 2016. To allay apprehensions relating to the income/asset declared under the Scheme vis-à-vis search and survey action by the Income-tax Department, the following clarification is issued.

It is clarified that wherever in the course of search under section 132 or survey operation under section 133A of Income-tax Act, 1961, any document is found as a proof for having already filed a declaration under the Scheme, including acknowledgement issued by the Income-tax Department for having filed a declaration, no enquiry would be made by the Income-tax Department in respect of sources of undisclosed income or investment in movable or immovable property declared in a valid declaration made in accordance with the provisions of the Scheme.

*Source: Circular No. 32 of 2016 [F.NO.299/124/2016/IT-INV.III], dated 1-9-2016*

Read more at: http://incometaxindia.gov.in/communications/circular/ids-circular-no-32-of-2016.pdf

➲ **Income Declaration Scheme, 2016 - Acceptance of Cash over the Counter**

In reference to the Circular DBOD. No. Leg. BC 38/09.07.005/2008-09 dated August 28, 2008 wherein banks have been advised to ensure that their branches invariably accept cash from all their customers who desire to deposit cash at the counters. Further, they were also advised to refrain from incorporating clauses, in the terms and conditions, which restrict deposit of cash over the counters.

As we all know that the Income Declaration Scheme, 2016 (the Scheme) has come into effect from June 1, 2016 and some declarants may like to pay their tax dues in cash. In this connection, it has been brought to our notice by the Government that banks are hesitant in allowing deposit of large amounts of cash by the declarants under the Scheme, with them, for credit to Government account.

Banks are advised to invariably accept cash, irrespective of amount, over the counters from all declarants who desire to deposit cash

the counters, including deposits under the above Scheme through challan ITNS- 286. In this connection, banks shall comply with the Know Your Customer requirements for customers and walk-in customers as contained in Master Direction — Know Your Customer Direction, 2016 issued vide DBR.AML. BC. No. 81/14 01.001/2015-16 dated February 25, 2016.

Source: Circular - DBR. No. Leg. BC. 13/09.07.005/2016-17, dated: 8th September 2016

Read more at: http://incometaxindia.gov.in/communications/circular/ids_2016-acceptance_cash_over_counter.pdf

➲ **Clarifications on the Direct Tax Dispute Resolution Scheme, 2016 vide Income Tax Circular No. 33/2016 dated: 12 September 2016.**

Read more at: http://incometaxindia.gov.in/communications/circular/circular33_2016.pdf

➲ **Notification No. 88/2016 [F.No.133/23/2015-TPL] / SO 3080(E), dated: 29th September, 2016: Income-Tax (Twenty Third Amendment) Rules, 2016 - Amendment in Form No.3CD.**

Read more at: http://www.incometaxindia.gov.in/communications/notification/notification882016.pdf

➲ **Notification No. 87/2016 [F.No.133/23/2015-TPL] / SO 3079(E): Section 145 of the Income-tax Act, 1961 - Method of Accounting - Revised Income Computation and Disclosure Standards (ICDS) Notified under section 145(2), dated: 29 September 2016.**

In exercise of the powers conferred by sub-section (2) of section 145 of the Income - tax Act, 1961 (43 of 1961, the Central Government hereby notifies the income computation and disclosure standards as specified in the Annexure to Notification (No. 87/2016 dated: 29 September 2016) to be followed by all assessees (other than an individual or a Hindu undivided family who is not required to get his accounts of the previous year audited in accordance with the provisions of section 44AB of the said Act) following the mercantile system of accounting, for the purposes of computation of income chargeable to income - tax under the head "Profits and gains of business or profession" or "Income from other sources".

Read more at: http://www.incometaxindia.gov.in/communications/notification/notification872016.pdf

➲ **Notification No. 86/2016 [F.No.142/13/2015-TPL] / SO 3075(E):** Section 145 of the Income-tax Act, 1961 - Method of Accounting - Income Computation and Disclosure Standards (ICDS) Notified under section 145(2) - Rescission of Notification No. SO 892(E), Dated 31-3-2015, dated: 29th September 2016.

In exercise of the powers conferred by sub-section (2) of section 145 of the Income - tax Act, 1961(43 of 1961), the Central Government hereby rescinds the notification of the Government of India in the Ministry of Finance, Department of Revenue, published in the Gazette of India, Part - II, Section 3, Sub - section (ii), vide notification number S.O. 892(E) dated the 31st March, 2015, except as respects things done or omitted to be done before such rescission.

Read more at: http://www.incometaxindia.gov.in/communications/notification/notification862016.pdf

➲ **Notification No. 85 /2016 [F.No.142/13/2015-TPL] / SO 3075(E), dated: 28 September 2016**: Backward Area Notification for the State of Andhra Pradesh for the purpose of Tax incentives under Section 32AD and 32 of the Income-tax act,1961.

Read more at: http://www.incometaxindia.gov.in/communications/notification/notification852016.pdf

➲ **Notification No. 80/2016 [F. No. 503/07/1993-FT&TR-IV] / SO 2894(E), dated: 8th September, 2016:** Section 90 of the Income-tax Act, 1961 - Double Taxation Agreement - Agreement for exchange of information with foreign countries - Seychelles, dated: 6 September 2016

Whereas, an Agreement between the Government of the Republic of India and the Government of the Republic of Seychelles for the Exchange of Information with respect to Taxes (hereinafter referred to as the said Agreement) as set out in the Annexure to this notification, was signed at New Delhi on the 26th day of August, 2015;

And whereas, the said Agreement entered into force on the 28th day of June, 2016 being the date of the later of the notifications of the completion of the procedures required by the respective laws for entry into force of the said Agreement, in accordance with paragraph 2 of Article 12 of the said Agreement;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies that all the provisions of said Agreement, as annexed hereto as Annexure, shall be given effect to in the Union of India, in accordance with Article 12 of the said Agreement.

Read more at: http://www.incometaxindia.gov.in/communications/notification/notification802016.pdf

➲ **Notification No. 78/2016 [F. No. 203/29/2005/ITA.II] / SO 2883(E):** Section 35(1) (ii) of the Income-tax Act, 1961 - Scientific research expenditure - Approved scientific research associations or institutions - Rescission of Notification No. SO

2428 [No. 229/2007 (F. No. 203/29/2005/ITA-II)], dated 21-8-2007, dated: 6 September 2016.

Read more at: http://www.incometaxindia.gov.in/communications/notification/notification78_2016.pdf

## Case Laws:

➲ **Once a defect is noticeable on receipt of TDS certificate, it is for assessee/deductee who makes claim of refund on basis of said certificate to get defect cured and, therefore, in such a situation, interest is not payable under section 244A on account of delay in curing defect in TDS certificate**

Section 244A of the Income-tax Act, 1961 - Refunds - Interest on (TDS certificates) - Assessment year 1995-96 - Whether once a defect is noticeable on receipt of TDS certificate, it is for assessee/deductee who makes claim of refund on basis of said certificate to get defect cured and, therefore, in such a situation, interest is not payable under section 244A on account of delay in curing defect in TDS certificate - Held, yes [In favour of revenue]

**FACTS:**

▪ For relevant year, assessment order was passed under section 143(3) wherein assessee was found entitled to refund. However, interest was not granted under section 244A on account of the delay in curing the defects in the TDS certificates.
▪ The assessee filed an application before the Chief Commissioner to grant interest under section 244A on the TDS amount refunded to them.
▪ The Chief Commissioner rejected assessee's application on ground that delay in curing the defects in TDS certificates was attributable to assessee.

**HELD:**

▪ There is no dispute regarding the obligation on the part of the department in giving simple interest on the amount of refund as provided under section 244A(1). However, section 244A(2) indicates that if the proceedings resulting in the refund are delayed for reasons attributable to the assessee, the period of delay so attributable shall be excluded from the period for which interest is payable.
▪ As provided under the Statute, if any question arises regarding the period to be excluded, it has to be decided by the Chief Commissioner or Commissioner, whose decision is said to be final.
▪ The question is whether in the facts of the present case, the Chief Commissioner was justified in rejecting interest for the period of delay. The factual aspects are not in dispute. However, the contention urged by the assessee is twofold. The first contention is that the words 'proceedings resulting in the refund' as stated in section 244A(2) can only mean the proceedings which culminated in order and not the entire proceedings by which the return has been processed. Secondly, as far as the claim for refund is concerned, it becomes due at the moment the TDS certificates, after curing the defects, has been accepted. Once it is accepted, it is a confirmation that the amount had come to the account of the department. The delay for curing the defects in the TDS certificates does not amount to a delay in the proceedings resulting in the refund.
▪ The Statute clearly indicates that where refund of any amount becomes due with the assessee, he shall be entitled to receive simple interest as stated therein, in addition to the amount of refund. The question is, as to when the amount becomes due. The amount becomes due only when all the procedures are completed. It does not become due on the date when the amount is deposited by the deductor to the department. It becomes due only after finalisation of the returns. Of course, if the delay is on the part of the department in finalizing the returns, interest is payable from the date on which it becomes due, i.e., from the 1st day of April of the assessment year to the date on which the refund is granted. However, sub-section (2) draws a slight deviation from section 244A (1) by which the assessee is deprived of the interest, if the delay in the proceedings resulting in refund is attributable to the assessee whether wholly or in part. Therefore the first contention is totally out of place. The delay in the proceedings resulting in refund is definitely with reference to the finalisation of returns and not in regard to the proceedings for refund.
▪ The other contention urged by the assessee is that curing defects in the TDS certificates cannot be a reason which could be attributable to the assessee. TDS certificates are issued by the director and defects, if any, can be corrected by them only. If mistakes are noted, the same are sent for correction and the time spent for obtaining the corrected TDS certificates and presenting the same before the department shall not be a reason for denying interest.
▪ The finding of the department is that there was enough time between the date of obtaining of the certificates and filing of the return for the assessee with its network of officers and infrastructure to get the defects cured.
▪ In the counter affidavit filed by the 1st respondent it is submitted that for the assessment year 2001-02, interest was not granted from November 2001 to April 2004. For the assessment year 1992-93, interest was not granted for the period from January 1993 to March 1995. In respect of the assessment year 1993-94 interest was not granted from August 1994 to December 1994 and for the assessment year 1995-96 interest was not granted for various dates as TDS certificates were resubmitted on various dates after curing the defects. It is stated that the orders were passed after due application of mind.
▪ Under section 199, any deduction made in accordance with the provisions of Chapter XVII and paid to the Central Government shall be treated as payment of tax on behalf of the person from whom income tax deduction was made. Section 200 deals with the duty of the person deducting tax. Any person deducting any sum in accordance with the provisions of the Chapter shall pay within the prescribed time the sum so deducted to the credit of the Central Government or as the Board directs. They have also

filed a statement in terms of sub-section (3). Section 201 relates to the consequences of failure to deduct or pay. Section 203 further indicates that every person deducting tax in accordance with the provisions of the Chapter shall within such period as may be prescribed from the time of credit or payment of the sum, furnish to the person to whose account the credit is given or to whom such payment is made. A certificate to the effect that tax has been deducted and specifying the amount so deducted, rate of tax and such other particulars, as may be prescribed.

▪ Therefore, there cannot be any dispute about the fact that the obligation to provide a certificate for deducting tax is on the deductor. The question is, if there is any defect in such certificate, and the assessee fails to get it cured before filing of the return, assessee can be termed as a person who has caused the delay. No doubt, as rightly held by the respondent, if the defect is noticeable on receipt of the certificate, it is for the deductee who makes a claim on the basis of the certificate to get the defects cured. This is an instance where substantial time had elapsed for curing the defects, which according to the department, is attributable to the assessee.

▪ When such a view is possible and the claim for interest is denied on that specific period, this Court will not be justified in taking a different view. No doubt, as rightly contended by the assessee, once the defect is cured, the parties have to go back to their original position, but the question is whether there is an obligation on the part of the department to pay interest on the amount to be refunded. When a statute in the form of section 244A (2) clearly specifies that interest need not be paid if the proceedings of refund is delayed for reasons attributable to the assessee, in that event, the respondents having refused interest on the basis of factual finding relying upon the statutory provision, this Court will not be justified in interfering with the said orders.

▪ This is an instance where interest has been paid but denied only for certain period for reasons stated in the impugned orders, since the delay has been attributed to the assessee.

▪ The writ petition is, therefore, dismissed.

*Case Law: High Court of Kerala, State Bank of Travancore v. Chief Commissioner of Income-tax, Thiruvananthapuram*
*[2016] 75 taxmann.com 6 (Kerala)*

➲ **IT: Where Assessing Officer made addition of notional interest in respect of interest free advances given by assessee-firm to its sister concern, since said advance was given in normal course of its business and, thus, it was in nature of trade advance, impugned addition was to be set aside.**

**IT: Where assessee in normal course of business, gave advance to suppliers for purchase of raw materials, in view of fact that suppliers neither supplied raw materials nor returned money, amount paid to them was to be allowed as bad debt.**

I. Section 143 of the Income-tax Act, 1961 - Assessment - Additions to income (Notional interest) - Assessment year 2009-10 - Assessee firm, was engaged in business of footwear - For relevant year, assessee filed its return declaring certain taxable income - During course of assessment proceedings, Assessing Officer noticed that assessee had advanced interest free advance to partners and a sister concern without charging any interest - He further found that assessee had borrowed funds on which it had paid huge interest - He thus made addition of notional interest in respect of interest free advances given to partners of firm and sister concern - It was noted from records that partners had drawn amount out of funds standing credit in their capital account - Further, assessee had given advance to its sister concern in normal course of its business and, thus, it was in nature of trade advance - Whether, on facts, assessee had not diverted any interest bearing funds to its partners or sister concerns and, therefore, impugned addition made by Assessing Officer was not sustainable - Held, yes [In favour of assessee]

II. Section 36(1)(vii) of the Income-tax Act, 1961 - Bad debts (Trade advance) - Assessment year 2009-10 - Whether where assessee in normal course of business, gave advance to suppliers for purchase of raw materials, in view of fact that suppliers neither supplied raw materials nor returned money, amount paid to them was to be allowed as bad debt - Held, yes [In favour of assessee]

**FACTS-I:**

▪ The assessee firm was engaged in the business of footwear. For relevant year, assessee filed its return declaring certain taxable income.

▪ During the course of assessment proceedings, the Assessing Officer noticed that the assessee had advanced interest free advance to partners and a sister concern without charging any interest. He further found that the assessee had borrowed funds on which it had paid huge interest.

▪ He thus made addition of notional interest in respect of interest free advances given to partners of the firm and sister concern.

▪ The Commissioner (Appeals) opined that the partners had withdrawn funds from their earlier contributions. As regards advances given to sister concerns, the Commissioner (Appeals) took a view that the assessee had given advances to its sister concerns in the normal course of business and the advances were in the nature of trade advances. He thus directed the Assessing Officer to delete notional interest charged on advances given to partners and sister concerns.

▪ On revenue's appeal:

**HELD-I:**

▪ It is the contention of the assessee that the partners had drawn amount out of funds standing credit in their capital account and no interest bearing fund has been given to the partners. The assessee further contended that it has given advances to its sister concern in the normal course of business and the advance given to sister concerns is having business nexus, therefore, the Assessing Officer was not correct in holding that the assessee has given

interest free advances to sister concerns out of borrowed funds.
▪ There is force in the arguments of the assessee for the reason that the partners have withdrawn an amount of Rs. 59,73,600/- during the financial year 2006-07, relevant to assessment year 2007-08 out of the amount standing to the credit of their capital account. Though the assessee is having borrowed funds, the borrowed funds represent the deployment of funds in the business assets in the form of stock in trade and receivables. The assessee has not diverted any interest bearing funds to its partners or sister concerns. The amount of advance given to partners and sister concerns is debited to the capital account of the partners, still there is a credit balance in the partners capital account, therefore, the Assessing Officer was not correct in holding that the assessee has diverted its interest bearing funds to its partners and sister concerns. The Commissioner (Appeals) after considering the relevant details rightly deleted additions made by the Assessing Officer. There is no reason to interfere with the order of the Commissioner (Appeals).

**FACTS-II:**

▪ During relevant year, assessee gave advances to suppliers towards purchase of raw materials. The suppliers neither supplied the raw materials nor returned advances. The assessee thus wrote off said amount in its books of account and claimed deduction for same under section 36(1)(vii).
▪ The Assessing Officer was of the opinion that advances to suppliers were in the nature of capital advances and hence, the assessee was not eligible for write off capital advances either under the provisions of section 36(1)(vii) or section 37.
▪ The Commissioner (Appeals), however, allowed assessee's claim.
▪ On revenue's appeal:

**HELD-II:**

▪ The assessee has given advances in the normal course of business towards purchase of raw materials. When the suppliers neither supplied the goods nor returned the advances, the assessee has written off advances as irrecoverable. The Assessing Officer disallowed the amount for the reason that these advances are appearing under the head 'current assets', but not under the head 'sundry debtors'. The assessee has filed a paper book wherein he has furnished copies of ledger account of parties and also financial statements. On perusal of the paper book filed by the assessee, it is found that these advances were given in the normal course of business towards purchase of raw materials. When the suppliers not supplied the goods, the assessee has classified these advances under the head 'advances to suppliers' and kept under current assets. The assessee has written off these advances in the books of account as bad debts.
▪ Even if these amounts are not allowed as deduction under section 36(1)(viii) of the Act, the assessee can always claim deduction under section 37, as the scope of section 37 is vide enough to include all such amounts paid for the purpose of business and are to be allowed unless and otherwise the advance is capital in nature. In the present case, on perusal of the details available on record, it is apparent that these advances are given for the purpose of purchase of raw materials. The assessee has written off these advances in the books of account. Therefore, that the Assessing Officer erred in holding that the advances are in the nature of capital advances and hence, not allowable as deduction under section 37 of the Act.

▪ The Commissioner (Appeals) after considering the relevant details rightly deleted additions made by the Assessing Officer. There is no reason to interfere with the order of the Commissioner (Appeals). ▪ In the result, the appeal filed by the revenue is dismissed.

*Case Law: In the ITAT Visakhapatnam Bench, Deputy Commissioner of Income-tax, Circle-2(1), Vijayawada v. Friends Shoe Company [2016] 74 taxmann.com 100 (Visakhapatnam - Trib.)*

➲ **Once return filed by assessee becomes invalid under section 139(9) not due to denial of liability but due to some other reason such as short payment of tax, it would not automatically become a nullity and, thereby, ousting all officers of revenue from taking cognizance whatsoever, of information furnished in said return of income**

Section 139, read with section 240, of the Income-tax Act, 1961 - Return of income - Invalid return (Scope of) - Assessment year 2013-14 - Assessee-company was engaged in integrated business of purchasing, transporting, storing, processing, handling of food grains and thereafter selling same in domestic and overseas market - For relevant year, assessee filed its return declaring certain taxable - Since assessee was facing liquidity crunch at that point of time, it failed to pay entire tax demand - Assessing Officer, thus, declared return filed by assessee as invalid return under section 139(9) - Thereupon, a notice was issued under section 226(3) for attachment of various bank accounts of assessee - Assessee filed instant petition contending that once return filed was declared as invalid under section 139(9), it became a nullity and, thereby, ousting all officers of revenue from taking cognizance whatsoever, of information furnished in said return of income - Whether nullification of return not due to denial of liability but due to other reasons such as short payment of tax on account of financial crunch, would not automatically lead to situation as contended by assessee - Held, yes - Whether therefore, assessee's petition was to be dismissed - Held, yes [In favour of revenue]

**FACTS:**

▪ The assessee-company was engaged in the integrated business of purchasing, transporting, storing, processing, handling of food grains and thereafter selling the same in the domestic and overseas market. For relevant year, the assessee filed its return declaring certain taxable income. Since the assessee was facing liquidity

crunch at that point of time, it failed to pay entire tax demand.
- The assessee received notice issued by the department under section 139(9). By said notice, the revenue's position was that non-payment of tax and interest, as shown in the return of income constituted 'defect' under Explanation (aa) to the proviso of section 139(9). The assessee was therefore, required to rectify the defect within the specified period, failing which the return of income was to be treated as invalid return.
- As the defect was not rectified, the revenue declared the return of income filed by the assessee for the assessment year 2013-14 as invalid return under section 139(9).
- After declaring the return of income as invalid return, the revenue invoking coercive action for recovery of the tax and interest shown in the above invalid return of income, issued impugned notice under section 226(3), thereby attaching various bank accounts of the assessee.
- The assessee filed instant petition challenging validity of the aforesaid notice on ground that once the return of income had been treated as invalid, then, the said return of income would become non est, thereby, ousting all the officers of the revenue from taking cognizance whatsoever, of the information furnished in the said return of income.

**HELD:**

- There is no dispute that when the assessee filed its return, it admitted tax liability. Though the return was initially without the full tax amount it claims that after filing returns it deposited Rs. 65 crores. There was yet a shortfall of about Rs. 24 crores; since this shortfall was not made good - not because the assessee disclaimed liability, but rather because of its financial constraint, the Assessing Officer declared the return invalid. When the revenue has sought to take coercive measures, the assessee contends that because of the declaration of the Assessing Officer under section 139(9), the amounts paid or deposited by it, are refundable and that the return was in effect a nullity; consequently the revenue has no authority to claim the amounts that it does.
- The moot question is whether the nullification on ground of non-compliance not due to denial of liability - but other reasons, automatically leads to a situation contended by the assessee. Facially, the contention is insubstantial, because section 139, even while obliging the officer to a course of action, i.e., declaring the return invalid, also says significantly that 'and the provisions of this Act shall apply as if the assessee had failed to furnish the return'. Furthermore, section 240, itself is premised upon some authority of the revenue officials to decide whether the entire amount deposited, or part of it, or none at all, has to be refunded.

- In the light of aforesaid, the writ petition being without merit is dismissed.

*Case Law: High Court of Delhi, Shakti Bhog Foods Ltd. v. Deputy Commissioner of Income-tax [2016] 74 taxmann.com 204 (Delhi)*

➲ Section 22, read with section 254, of the Income-tax Act, 1961 - Income from house property - Chargeable as (Property income vs. Business income) - Assessment years 2003-04 to 2007-08 - In course of appellate proceedings, Tribunal held that income earned by assessee from sub lease of property was to be assessed as income from house property - Assessee filed instant application seeking rectification of Tribunal's order on ground that in a subsequent decision of Supreme Court, income earned from sub-lease of property had been assessed as business income - It was noted that in case of assessee before Supreme Court, main activity was to acquire property and thereupon let out same - However, in instant case neither object nor main business activity of assessee-company was to take on lease and sub-let properties - Whether since order passed by Supreme Court relied upon by assessee was distinguishable on facts, same could not be applied to assessee's case - Held, yes - Whether, therefore, assessee's application seeking rectification of Tribunal's order under section 254(2) was to be dismissed - Held, yes [In favour of revenue]

**FACTS:**

- In the course of appellate proceedings, the Tribunal held that income earned by assessee from sub lease of property was to be assessed as income from house property.
- The assessee filed instant petitions seeking rectification of Tribunal's order contending that in the light of the decision of the Supreme Court in the case of Chennai Properties & Investments Ltd. v. CIT [2015] 56 taxmann.com 456/231 Taxman 336/373 ITR 673 of 2004 the rental income earned by the assessee from sub lease of the property was required to be assessed as 'business income'.

**HELD:**

- There is no disagreement to the contention of the assessee that the law declared by the Supreme Court is the law of the land and the same is binding on all subordinate Courts including the Tribunal. Further, the Supreme Court in the case of Chennai Properties & Investments Ltd. (supra) has held that from the facts and circumstances of the case before them, an irresistible conclusion was that the letting of the property was in fact the business of the assessee. However, the facts of the case of 'Chennai Properties & Investment Ltd.' (supra) were entirely different as that of the case of the assessee.
- In case of Chennai Properties & Investments Ltd. (supra) in the memorandum of association of the appellant company, it was mentioned that the main object of the appellant company was to acquire and hold the property and to let out those properties as well as make advance upon the securities and lands and buildings or other properties or any interest therein. The Supreme Court emphasized that holding the aforesaid properties and earning income by letting out those properties was the main objective of the company. Thus, Supreme Court treated the income of the assessee in that case as 'business income' of the assessee.

▪ In the instant case, the Tribunal noted that the income from sub lease of the premises was to be assessed as rental income of the assessee. This Tribunal also took note of the services provided by the assessee along with renting of the building. The Tribunal also held that the said services rendered by the assessee was not part of any organized activity with a view to earn such income and held that the income from services on the facts of the case has to be assessed as income from other sources and all expenses incurred by the assessee for earning of such income has to be allowed as deduction under section 57.
▪ It was also held that if any expenditure in relation to services which is also included in relation to expenses on repair and maintenance of the portion of the building let out, such expenses have to be excluded as the same were already covered in the statutory allowance under section 24(c) while computing the house property income.
▪ The above narrated part of the order of the Tribunal reveals beyond doubt that the Tribunal has well considered the proposition of law that if an income is earned from the business activity of letting out of the properties or the commercial exploitation of the property by way of organized activities of taking properties on lease and letting out etc. then the income is to be assessed as business income of the assessee as held subsequently by the Supreme Court in the case of 'Chennai Properties & Investments Ltd.' (supra).
▪ The Tribunal in its wisdom has held that the facts of the case of the assessee do not suggest that the assessee was in the business of commercial exploitation of the property or leasing out of the properties and held that the income earned by the assessee from the sub lease of the premises was simple case of letting out of the property and thus income there from was assessable under the head 'Income from the house property'.
▪ The main object of the assessee in this case is providing advisory, consultancy and technical services in the area of real estate and properties such as architectural, civil construction, maintenance and related services. None of the above objects suggest that letting out of the premises was the business activity of the assessee. The premises in question even have not been developed by the assessee. The premises in question has been taken on lease by the assessee and further subletted. In the case in hand it is neither the object nor the business activity of the assessee company to take on lease and sub let the properties.
▪ The Tribunal, as the facts were available before it, has given a categorical factual finding. There is no mistake apparent on record in this case as the said case law is not applicable because the factual finding given by the Tribunal is contrary to the facts of the cases before the Supreme Court as relied upon by the assessee.
▪ The Tribunal, vide impugned order, has not only considered the submissions of the assessee but has given a categorical finding on all of the issues which were raised before the Tribunal by the assessee.
▪ It is well settled that the power of rectification under section 254(2) can be exercised only when the mistake which is sought to be rectified is an obvious and patent; mistake which is apparent from the record, and not a mistake which requires to be established by arguments and a long drawn process of reasoning on points on which there may conceivably be two opinions. The Tribunal, under such circumstances, has no jurisdiction under section 254(2) to pass the second order.
▪ In view of aforesaid, there was no merit in instant application and the same is accordingly hereby dismissed.

*Case Law: In the ITAT Mumbai Bench 'C', Prolific Consultancy Services (P.) Ltd. v. Income-tax Officer, Ward 8 (2) (4), Mumbai [2016] 74 taxmann.com 203 (Mumbai - Trib.)*

➲ **Where assessee earned income from sub-lease of property, since neither main object nor business activity of assessee was to take on lease and sub-let properties, amount in question was rightly assessed as income from house property**

Section 22, read with section 254, of the Income-tax Act, 1961 - Income from house property - Chargeable as (Property income vs Business income) - Assessment years 2003-04 to 2007-08 - In course of appellate proceedings, Tribunal held that income earned by assessee from sub lease of property was to be assessed as income from house property - Assessee filed instant application seeking rectification of Tribunal's order on ground that in a subsequent decision of Supreme Court, income earned from sub-lease of property had been assessed as business income - It was noted that in case of assessee before Supreme Court, main activity was to acquire property and thereupon let out same - However, in instant case neither object nor main business activity of assessee-company was to take on lease and sub-let properties - Whether since order passed by Supreme Court relied upon by assessee was distinguishable on facts, same could not be applied to assessee's case - Held, yes - Whether, therefore, assessee's application seeking rectification of Tribunal's order under section 254(2) was to be dismissed - Held, yes [In favour of revenue]

**FACTS:**

▪ In the course of appellate proceedings, the Tribunal held that income earned by assessee from sub lease of property was to be assessed as income from house property.
▪ The assessee filed instant petitions seeking rectification of Tribunal's order contending that in the light of the decision of the Supreme Court in the case of Chennai Properties & Investments Ltd. v. CIT [2015] 56 taxmann.com 456/231 Taxman 336/373 ITR 673 of 2004 the rental income earned by the assessee from sub lease of the property was required to be assessed as 'business income'.

**HELD:**

▪ There is no disagreement to the contention of the assessee that the law declared by the Supreme Court is the law of the land and the same is binding on all subordinate Courts including the Tribunal. Further, the Supreme Court in the case of Chennai Proper-

ties & Investments Ltd. (supra) has held that from the facts and circumstances of the case before them, an irresistible conclusion was that the letting of the property was in fact the business of the assessee. However, the facts of the case of 'Chennai Properties & Investment Ltd.'(supra) were entirely different as that of the case of the assessee.

▪ In case of Chennai Properties & Investments Ltd. (supra) in the memorandum of association of the appellant company, it was mentioned that the main object of the appellant company was to acquire and hold the property and to let out those properties as well as make advance upon the securities and lands and buildings or other properties or any interest therein. The Supreme Court emphasized that holding the aforesaid properties and earning income by letting out those properties was the main objective of the company. Thus, Supreme Court treated the income of the assessee in that case as 'business income' of the assessee.

▪ In the instant case, the Tribunal noted that the income from sub lease of the premises was to be assessed as rental income of the assessee. This Tribunal also took note of the services provided by the assessee along with renting of the building. The Tribunal also held that the said services rendered by the assessee was not part of any organized activity with a view to earn such income and held that the income from services on the facts of the case has to be assessed as income from other sources and all expenses incurred by the assessee for earning of such income has to be allowed as deduction under section 57.

▪ It was also held that if any expenditure in relation to services which is also included in relation to expenses on repair and maintenance of the portion of the building let out, such expenses have to be excluded as the same were already covered in the statutory allowance under section 24(c) while computing the house property income.

▪ The above narrated part of the order of the Tribunal reveals beyond doubt that the Tribunal has well considered the proposition of law that if an income is earned from the business activity of letting out of the properties or the commercial exploitation of the property by way of organized activities of taking properties on lease and letting out etc. then the income is to be assessed as business income of the assessee as held subsequently by the Supreme Court in the case of 'Chennai Properties & Investments Ltd.' (supra).

▪ The Tribunal in its wisdom has held that the facts of the case of the assessee do not suggest that the assessee was in the business of commercial exploitation of the property or leasing out of the properties and held that the income earned by the assessee from the sub lease of the premises was simple case of letting out of the property and thus income there from was assessable under the head 'Income from the house property'.

▪ The main object of the assessee in this case is providing advisory, consultancy and technical services in the area of real estate and properties such as architectural, civil construction, maintenance and related services. None of the above objects suggest that letting out of the premises was the business activity of the assessee. The premises in question even have not been developed by the assessee. The premises in question have been taken on lease by the assessee and further subletted. In the case in hand it is neither the object nor the business activity of the assessee company to take on lease and sub let the properties.

▪ The Tribunal, as the facts were available before it, has given a categorical factual finding. There is no mistake apparent on record in this case as the said case law is not applicable because the factual finding given by the Tribunal is contrary to the facts of the cases before the Supreme Court as relied upon by the assessee.

▪ The Tribunal, vide impugned order, has not only considered the submissions of the assessee but has given a categorical finding on all of the issues which were raised before the Tribunal by the assessee.

▪ It is well settled that the power of rectification under section 254(2) can be exercised only when the mistake which is sought to be rectified is an obvious and patent; mistake which is apparent from the record, and not a mistake which requires to be established by arguments and a long drawn process of reasoning on points on which there may conceivably be two opinions. The Tribunal, under such circumstances, has no jurisdiction under section 254(2) to pass the second order.

▪ In view of aforesaid, there was no merit in instant application and the same is accordingly hereby dismissed.

*Case Laws: In the ITAT Mumbai Bench 'C', Prolific Consultancy Services (P.) Ltd. v. Income-tax Officer, Ward 8 (2) (4), Mumbai [2016] 74 taxmann.com 203 (Mumbai - Trib.)*

➲ **Where assessee received a waiver of interest of certain amount and offered same as income under section 41(1) and claimed deduction under section 80HHC on entire amount of deemed income and High Court upheld assessee's claim, SLP was to be dismissed**

Section 80HHC, read with section 41(1), of the Income-tax Act, 1961 - Deductions - Exporters (Computation of deduction) - Assessment year 2001-02 - During year, assessee received a waiver of interest of certain amount as a result of one time settlement with Bank - It offered said amount as income under section 41(1) and claimed deduction under section 80HHC on entire amount of deemed income - Assessing Officer held that in terms of Explanation (baa) to section 80HHC, ninety per cent of amount of deemed income had to be excluded from profits of business - Tribunal allowed appeal of assessee - High Court held that on correct interpretation of Explanation (baa) to section 80HHC read

with section 41(1), exclusion of 90 per cent of deemed income was not correct - It further held that in terms of judgment of Supreme Court rendered in case of ACG Associated Capsules (P.) Ltd. v. CIT [2012] 343 ITR 89/205 Taxman 136 (Mag.)/18 taxmann.com 137, net interest alone was to be excluded for purposes of computing deduction allowable to assessee - Whether SLP filed against order of High Court was to be dismissed - Held, yes.

*Case Law: Supreme Court of India, Commissioner of Income-tax, Shimla v. Purewal & Associates Ltd [2016] 74 taxmann.com 169 (SC)*

# SEBI

➲ **Unique Client Code**

It shall be mandatory for the members of the commodity derivatives exchanges to use Unique Client Code (UCC) for all clients transacting on the commodity derivatives exchanges. The commodity derivatives exchanges shall not allow execution of trades without uploading of the UCC details by the members of the exchange vide Circular No. SEBI/HO/CDMRD/ DMP / CIR/P/2016/87, dated September 16, 2016.

Read more at: http://www.sebi.gov.in/cms/sebi_data/attachdocs/1474022564366.pdf

➲ **Commodity derivatives – miscellaneous norms**

**Re-issuance of norms specified by erstwhile FMC:**

1. As per Section 131 [B] of the Finance Act, 2015 all rules, directions, guidelines, instructions, circulars, or any like instruments, made by the erstwhile Forward Markets Commission (FMC) or the Central Government applicable to recognised associations under the Forward Contracts Regulation Act, 1952 (FCRA) would continue to remain in force for a period of one year from the date on which FCRA was repealed (September 29, 2015), or till such time as notified by SEBI, whichever is earlier.

2. Erstwhile FMC, from time to time, had prescribed certain norms for National Commodity Derivatives Exchanges related to disclosure of disablement of member terminals, timelines for marking delivery intention and location premium/discount vide the following circulars:
a. Circular No. 6/3/2006/MKT-II (VOL-II) dated June 30, 2006
b. Circular No. 6/2/2009-M&S (3) dated December 30, 2010
c. Circular No. 2/1/2010/PER/NCDEX dated August 07, 2009

3. It has been decided to re-issue/update such norms prescribed for National Commodity Derivatives Exchanges by the erstwhile FMC as follows:
a. Disclosure of disablement of member terminals: The disablement of terminals of the members along with duration of disablement due to shortage of funds, margin money etc., shall be disclosed by Exchange on its website at the end of every quarter i.e., 30th June, 30th September, 31st December and 31st March.
b. Timelines for marking delivery intention: Exchanges may decide the timelines for submission of delivery instruction by members based on their assessment of the time required for marking as well as for modifying any delivery intentions wrongly marked.
c. Location premium/discount: Exchanges shall determine and disclose for contracts the location premium/discount prior to launch of the contract in various commodities.

**Clarifications/corrigendum to earlier circulars:**
4. The provisions of circular SEBI/HO/CDMRD/DRMP/CIR/P/2016/80 dated September 7, 2016 on "Mechanism for regular monitoring of and penalty for short collection/ non-collection of margins from clients" require only initial margins to be collected upfront by members (from their clients) and penalty structure to be applicable from T day for short-collection/non-collection of only initial margins. It is clarified that extreme loss margin (ELM) is also required to be collected upfront and the penalty structure specified in clause 3(iv) of the said circular is applicable from T day for ELM too.

*Source: Circular No. SEBI/HO/CDMRD/DRMP/CIR/P/2016/93, dated: September 26, 2016*

Read more at: http://www.sebi.gov.in/cms/sebi_data/attachdocs/1474888017641.pdf

➲ **Position Limits for Commodity Derivatives, clubbing of open positions, penalties for violation of position limits**

1. Erstwhile FMC had from time to time prescribed norms with regard to Position limits for all commodity derivatives, clubbing of open positions, penalties for violation of position limits apart from prescribing numerical limits for each commodity. After taking over regulations of commodity derivatives market, SEBI vide its circulars CIR/CDMRD/DMP/2/2016 dated January 15, 2016 and CDMRD/DMP/CIR/32/2016 dated January 29, 2016 has issued revised norms with regard to position limits of agricultural commodity derivatives.
2. This circular is hereby issued in continuation of the above said SEBI circulars with an objective of consolidating and updating norms with regard to position limits and also to prescribe numerical position limits for all commodities which are presently being traded on the Commodity Derivatives Exchanges.

**3. General Norms for Position Limits in Commodity Derivatives:**

The following norms shall be applicable to the Agricultural as well as Non- Agricultural commodity derivatives at commodity level:

3.1. Numerical value of overall client level open position limits, shall be applicable for each commodity as are provided in table given in Annexure- A to this circular.

3.2. The Exchanges, however, in their own judgment, may prescribe limits lower than what is prescribed by SEBI by giving advance notice to the market under intimation to SEBI.

3.3. For the purpose of position limits, norms applicable on client level positions shall also be applicable to the proprietary positions of trading members and while calculating member's open positions, his proprietary positions shall be treated and computed like a client's positions.

3.4. For the purpose of calculating overall position of a member, the overall position of its all clients (as determined in Clause 3.1 or 4.1 below) shall be added without netting off among themselves as also against proprietary positions of the member. Thus, all long clients and all short clients shall be added up separately and higher of the two shall be reckoned as Member's open position in a commodity derivative.

**4. Position Limits for Non Agricultural Commodity Derivatives:**

The following norms shall continue to be applicable to Non- Agricultural commodity derivatives at commodity level:-

4.1. For the purpose of calculating overall position of a client, all long and short positions of the client across all contracts shall be netted out.
4.2. Client level position limits shall be equivalent to the numerical level limit as given in table in Annexure- A or 5% of market-wide open interest, whichever is higher.
4.3. Member level position limits shall be 10 times of the numerical value of client level position limits or 20% of the market-wide open interest, whichever is higher.

**5. Position Limits for Agricultural Commodity Derivatives:**

As prescribed vide SEBI circulars dated January 15, 2016 and January 29, 2016, following norms shall be applicable on Agricultural commodity derivatives at commodity level:-

5.1. For the purpose of calculating positions of a client, all long and short positions of the client across all contracts shall be added up separately and higher of the two shall be considered as his overall open position.
5.2. The overall Client level position limits across all contracts shall be equivalent to the numerical level limit as given in table in Annexure- A of Circular - SEBI/HO/CDMRD/DMP/CIR/P/2016/96 September 27, 2016.
5.3. The overall member level position limits across all contracts shall be 10 times the numerical value of client level position limit or 15% of the market-wide open interest, whichever is higher.

5.4. **Near Month Position Limits:** In case of near month contracts :

5.4.1. Client level position limits shall be equivalent to the one fourth of the overall Client level position limit as prescribed in table in Annexure- A of the Circular No. SEBI/HO/CDMRD/DMP/CIR/P/2016/96 September 27, 2016.

5.4.2. Member level position limits shall also be equivalent to the one fourth of the overall member level position limit.

5.5. The overall Exchange wide gross position limit, in case of the agricultural commodities, shall be capped at 50% of the annual estimated production and Imports of the commodity. The annual estimates for production and imports may be sourced from the available estimates published by Government of India/Ministry of Agriculture/ Institutions/Agencies/ other Departments of Central and State Government, as may be appropriate.

**6. Clubbing of Open Positions:**

While calculating open positions for the purpose of position limits, Exchanges shall take suitable measures for clubbing of open positions of clients/members who may be acting in concert to circumvent the norms of position limits. The broad guidelines for clubbing of open positions are provided in Annexure- B to the Circular - SEBI/HO/CDMRD/DMP/CIR/P/2016/96 September 27, 2016.

**7. Monitoring of position limits:**

SEBI directed that Exchanges shall monitor the open position on a real time basis, and shall endeavor that no client or member breaches the open position limits 'at end of the day' as well as 'during intra-day trading'. Penalty shall be levied on those breaching the position limits at end of the day as well as during intra-day trading as provided in Annexure-C to the Circular - SEBI/HO/CDMRD/DMP /CIR/P/2016/ 96 dated 27th Sept, 2016.

Read more at: http://www.sebi.gov.in/cms/sebi_data/attachdocs/1474982551917.pdf

➲ **Enhanced supervision of stock brokers/depository participants**

SEBI constituted a committee on "Enhanced Supervision of Stock Brokers" which included representatives from Stock Exchanges, Depositories and Brokers. With a view to implement the recommendations, the guidelines as Annexed to the circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95, dated: September 26, 2016.

Read more at: http://www.sebi.gov.in/cms/sebi_data/attachdocs/1474895821251.pdf

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