



CONTENTS

- **RBI & FEMA**
- **Foreign Trade**
- **Corporate**
- **Securities**
- **Competition**
- **Indirect Taxes**
 - Customs
 - Central Excise
 - Service Tax
- **Intellectual Property Rights**
- **Consumer**
- **Environment**

RBI & FEMA

1.1 WHEN TO COMPULSORILY FILE FORM FC-TRS

RBI has mandated that an investee company has to file form FC-TRS with the AD Category-I bank in cases where the NR investor, including an NRI, has acquired and continues to hold control in an Indian company in accordance with SEBI (Substantial Acquisition of shares and Takeover) Regulations. Further, AD Banks are also directed to approach Regional Office concerned of RBI, Foreign Exchange Department in place of Central Office to regularize the delay in submission of form FC-TRS by the transfer / transferee, beyond the prescribed period of 60 days. *[A.P. (DIR Series) Circular No.127, dated 2nd May, 2014]*

1.2 NO PENALTY ON NON-MAINTENANCE OF MINIMUM BALANCE IN DORMANT ACCOUNTS: RBI

As part of a consumer protection initiative RBI has advised that banks are not permitted to levy penal charges for non-maintenance of minimum balances in any inoperative account. *[DBOD. Dir.BC.No. 109 /13.03.00/2013-14, dated 6th May, 2014]*

1.3 MINORS OVER 10 YEARS OF AGE CAN OPEN AND OPERATE BANK INDEPENDENT SAVINGS BANK ACCOUNTS

With a view to promote financial inclusion RBI has issued guidelines allowing Minors above 10 years of age to open and independently operate savings bank account and use other facilities like ATM and cheque books. Banks may, however, keeping in view their risk management systems, fix limits in terms of age and amount up to which minors may be allowed to operate the deposit accounts independently. Further, earlier minors were permitted to open fixed /savings deposit bank account only with their mothers as guardians but now minors are permitted to open a savings/fixed/recurring bank deposit account through either his/her natural guardian or legally appointed guardian. *[DBOD.No.Leg.BC.108/09.07.005/2013-14, dated 6th May, 2014]*

1.4 NO PRE-PAYMENT CHARGES ON FLOATING RATE HOME LOANS

RBI has advised the banks not to charge foreclosure charges/pre-payment penalties on all floating rate term loans, sanctioned to individual borrowers, with immediate effect. *[DBOD. Dir.BC.No.110/13.03.00/2013-14, dated 7th May, 2014]*

1.5 GUIDELINES ON 'INVESTMENTS IN MARKET INFRASTRUCTURE COMPANIES (MICs) BY PRIMARY (URBAN) COOPERATIVE BANKS (UCBs)

In view of the representations received from some UCBs regarding investment in shares of MICs, RBI has decided the following:

- (i) Investments made by UCBs for acquiring membership of MICs will be reckoned as Non-SLR investments;
- (ii) UCBs are allowed to exceed the limit for investments in Non-SLR/unlisted securities prescribed in Circular dated January 30, 2009, if it becomes necessary to do so for acquiring membership of MICs;
- (iii) The MICs eligible for such investments by UCBs are Clearing Corporation of India Ltd., National Payments Corporation of India and Society for World Wide Inter-Bank Financial Tele-Communication (SWIFT). The list of eligible MICs will be updated from time to time by RBI. - *UBD.BPD.(PCB).Cir.No 58/16.20.000/2013-14, dated 7th May, 2014.*

1.6 RBI SIMPLIFIES PROCEDURE FOR RESCHEDULEMENT OF ECB

As a measure of simplification of the existing procedures, RBI has decided to delegate the power to the designated AD Category – I banks to allow re-schedulement of the ECBs wherein changes were made in draw-down schedule and / or repayment schedule. However the delegation power is subject to the conditions mentioned in the circular. *[A.P. (DIR Series) Circular No. 128, dated 9th May, 2014]*

1.7 RBI TIGHTENS NORMS TO CURB RE-LOAN FINANCING VIA ECB ROUTE

RBI has barred eligible Indian companies from raising ECBs from overseas branches or subsidiaries of Indian banks for the purpose of refinance/repayment of the rupee loans raised from the domestic banking system. *[A.P. (DIR Series) Circular No.129, dated 9th May, 2014]*

1.8 UCBS SHOULD NOT LEND MORE THAN 75% AGAINST GOLD

RBI has decided to prescribe a 'Loan to Value' (LTV) Ratio of not exceeding 75 per cent for banks which lend against Gold jewellery (including bullet repayment loans against pledge of gold jewellery). Therefore, henceforth loans sanctioned by banks would not be allowed to exceed 75 per cent of the value of gold ornaments and jewellery. Further, in order to standardise the valuation and make it more transparent for borrowers, gold jewellery accepted as collateral would have to be valued at the average closing price of 22-carat gold for the preceding 30 days. *[UBD.CO.BPD.PCB.Cir.No.60/13.05.001/2013-14, dated 9th May, 2014]*

1.9 RBI ALLOWS FOREIGN BRANCHES / SUBSIDIARIES OF INDIAN BANKS TO SELL STRUCTURED PRODUCTS

RBI has decided that if foreign branches/subsidiaries of Indian banks propose to offer structured financial and derivative products that are not specifically permitted by the RBI in the domestic market, they may do so only at the established financial centres outside India like New York, Singapore, Hong Kong, Frankfurt, Dubai etc. Further, the foreign branches or subsidiaries of any such bank should ensure that their entities dealing with such products should have adequate knowledge, understanding and risk management capability for handling such products. RBI also directed banks to offer such products in foreign branches in compliance with the host country regulations. *[DBOD.No.BP.BC.111/21.04.157/2013-14, dated 12th May, 2014]*

1.10 INVESTMENTS IN RIDF TO BE TREATED AS PRIORITY SECTOR LENDING

RBI has decided to include the outstanding deposits, placed by banks under Rural Infrastructure Development Fund (RIDF) and certain other funds established with NABARD, on account of their shortfall in lending to priority sector as part of indirect agriculture under priority sector classification. Further, the outstanding deposits under the above funds with NABARD as on preceding March 31 will form part of Adjusted Net Bank Credit. *[RPCD.CO.Plan. BC 101/04.09.01/ 2013-14, dated 15th May, 2014]*

1.11 UNDERTAKING OF ACTIVITY BY THE UCBS AS PAN SERVICE AGENTS (PSA)

RBI has decided that Financially Sound and Well Managed UCBS, may act as PAN Service Agents (PSA) by entering into a tie-up with NSDL e-Governance Infrastructure Limited or with any other agency authorized by the Income Tax Department, for this purpose with prior approval of the Reserve Bank. *[UBD.CO.BPD.(PCB) Cir No. 63/13.05.000/2013-14, dated 16th May, 2014]*

1.12 RBI RELAXES NORMS TO RAISE FUNDS VIA EXTERNAL COMMERCIAL BORROWINGS

RBI has decided to delegate powers to banks to approve proposals for raising ECBs by companies belonging to manufacturing, infrastructure, hotels, hospitals and software sectors from indirect equity holders and group companies under automatic route. Raising ECB for companies in miscellaneous services (like training activities (but not educational institutes), research and development activities and companies supporting infrastructure sector) from direct/indirect equity holders and group companies are also allowed to raise funds through this

facility. Trading business, logistics services, financial services and consultancy services are, however, not covered under the facility. *[A.P. (DIR Series) Circular No.130, dated 16th May, 2014]*

1.13 RBI EXTENDS LOAN TENURES FOR EXPORTERS TO 10 YEARS

RBI has decided (subject to certain conditions) to permit banks to allow exporters having a minimum of three years' satisfactory track record to receive long-term export advance up to a maximum tenor of 10 years to be utilised for execution of long-term supply contracts for export of goods. Existing norms allow banks to give loans for up to one year only. *[A.P. (DIR Series) Circular No.132, dated 21st May, 2014]*

1.14 BANK BRANCHES / ATMS TO BE MADE ACCESSIBLE TO PERSONS WITH DISABILITIES

RBI has reiterated that all new ATMs to be installed by commercial banks from July 2014 onwards would provide audible instructions and Braille keypads to customers. Further, banks are asked to make necessary arrangements to provide all existing ATMs/future ATMs with ramps so that wheel chair users/persons with disabilities can easily access them. *[DBOD.No.Leg.BC.113/09.07.005/2013-14, dated 21st May, 2014]*

1.15 RBI RELAXES NORMS FOR IMPORT OF GOLD BY BANK

RBI has declared that Star Trading Houses / Premier Trading Houses (STH/PTH) which are registered as nominated agencies by DGFT may now import gold (subject to certain conditions) under 20:80 scheme. Under the 20:80 scheme an importer has to ensure that at least one-fifth, or 20 per cent, of every lot of imported gold is exclusively made available for the purpose of exports and the balance for domestic use. *[A.P. (DIR Series) Circular No.133, dated 21st May, 2014]*

1.16 CCTV COVERAGE MUST FOR CASH OPERATIONS AT CURRENCY CHESTS: RBI

RBI has advised the banks that coverage of CCTVs surveillance should also cover all cash operations in the vaults / strong rooms and other cash handling areas to identify any mischief / irregularity and also to the Memorandum on the procedure to be followed in connection with opening of the Currency Chests issued to the banks in which, it was advised to the banks that Potdar from the Chest Remitting bank should accompany soiled note remittance. *[DCM (CC) No.G - 20/03.39.01/2013-14, dated 23rd May, 2014]*

1.17 RBI TIGHTENS MERGER AND AMALGAMATION NORMS FOR NBFCs : RBI NOD MANDATORY TO TAKEOVER, ACQUIRE CONTROL OF NBFCs

To ensure 'fit and proper' character of the management of NBFCs, it has been decided that the prior written permission of RBI shall be required for -

- (i) any takeover or acquisition of control of an NBFC, whether by acquisition of shares or otherwise.
- (ii) any merger or amalgamation of an NBFC with another entity or any merger or amalgamation of an entity with an NBFC that would give the acquirer/another entity control of the NBFC.
- (iii) any merger/amalgamation of an NBFC with another entity or any merger/amalgamation of an entity with an NBFC which would result in acquisition/transfer of shareholding in excess of 10 percent of the paid up capital of the NBFC.
- (iv) before approaching the court or tribunal seeking order for mergers or amalgamations with other companies or NBFCs. *[DNBS (PD) CC.No.376/03.10.001/2013-14, dated 26th May, 2014]*

1.18 BANKS MAY LAUNCH SEMI-CLOSED PRE-PAID SYSTEMS

RBI has permitted banks, which have installed ATMs and issued ATM-cum-Debit Cards, to introduce 'Semi-Closed Pre-paid Payment Instruments' permitting payment of utility bill/ essential services up to Rs. 10,000. These payment instruments shall be redeemable at a group of clearly identified merchant locations/ establishments which

enter into contracts specifically with the UCB to accept the payment instruments. These instruments shall not permit cash withdrawal or redemption by the holder. *[UBD.CO.BPD.PCB.Cir. No. 65/09.69.000/2013-14, dated 27th May, 2014]*

1.19 RBI ASKS NBFCs TO ROUND OFF TRANSACTION VALUES TO NEAREST RUPEE

RBI has advised NBFCs that all transactions, including payment of interest on deposits/ charging of interest on advances, should be rounded off to the nearest rupee, i.e. fractions of 50 paise and above shall be rounded off to the next higher rupee and fractions of less than 50 paise should be ignored. However, cheques/ drafts issued by clients containing fractions of a rupee should not be rejected by them. *[DNBS.CC.PD.No.377/03.10.01/2013-14, dated 27th May, 2014]*

1.20 IMPORTERS TO BOOK FORWARD FOREX CONTRACTS UP TO 50% OF ELIGIBLE LIMIT: RBI

With a view to providing importers with greater flexibility in hedging facility, RBI has decided to allow importers to book forward contracts, under the past performance route, up to 50 per cent of the eligible limit. Importers, who have already booked contracts up to previous limit of 25 per cent in the current financial year, shall be eligible for difference arising out of the enhanced limits. *[A.P.(DIR Series) Circular No.135, dated 27th May, 2014]*

1.21 CRYSTALLIZATION OF INOPERATIVE FOREIGN CURRENCY A/C INTO RUPEE A/C

RBI has directed banks to convert credit balances in any inoperative foreign currency (FC) denominated deposit into Indian rupee if the former remains not in use for three years from the date of maturity of deposit. Manner for such conversion is also prescribed in the circular. *[A.P. (DIR Series) Circular No.136, dated 28th May, 2014]*

1.22 FORMATION OF NEW STATE OF TELANGANA – ASSIGNMENT OF SLBC CONVENORSHIP

RBI has decided to assign the SLBC convenorship of Telangana State to State Bank of Hyderabad. The SLBC responsibility for the State of Andhra Pradesh (after carving out Telangana) has been retained with Andhra Bank. *[RPCD.CO.LBS.No.13027/02.01.001/2013-14, dated 28th May, 2014]*

FOREIGN TRADE

2.1 AGENCIES AUTHORISED TO ISSUE CERTIFICATE OF ORIGIN

The structure of Appendix-4D of Handbook of Procedure Vol.I 2009-2014 has been changed and all Bilateral/Regional Trade Agreements in operation have been included along with their respective agencies authorized to issue Certificates of Origin (Preferential). Two new agencies have also been authorized to issue Certificate of Origin (Preferential), namely Marine Products Export Development Authority (MPEDA) for marine products under all trade agreements and Textiles Committee for textiles and made ups under India-Japan Comprehensive Economic Partnership Agreement (IJEPA). *[Public Notice No. 59/2009-2014 (RE-2013), dated 15th May, 2014 (DGFT)]*

2.2 ENLISTMENT UNDER APPENDIX 4C

Trade Promotion Council of India is enlisted for issuing Certificate of Origin (Non Preferential). *[Public Notice No. 60/2009-2014 (RE-2013), dated 15th May, 2014, (DGFT)]*

CORPORATE**3.1 THERE CAN BE NO PRESUMPTION OF INABILITY TO PAY DEBTS WHERE THE SAME ARE NOT ACCEPTED AS SUCH. PROCEEDINGS BEFORE A COMPANY COURT ARE NOT RECOVERY PROCEEDINGS: Delhi HC**

In the case under consideration Petitioner had raised a claim towards the supplies made to the respondent. The respondent, disputed the claim of the petitioners on the ground that the petitioners supplied inferior quality material due to which the respondent alleged that it had suffered huge losses which the petitioners were liable to make good. Dispute existed even before issuance of statutory notice u/s 434(1)(a) of the Companies Act, 1956. With regard to the delayed payment charges claimed by the petitioner, the same can by no stretch be considered to be a debt admitted by the respondent. Mere mentioning a stipulation with regard to delayed payment interest in a bill or invoice would not per se constitute an agreement for payment of interest. The Court did not accept that the respondent company was unable to pay its debts and is liable to be wound up by virtue of Section 433(e) of the Act. *[M/s Nakshatra steel sales & services ltd v. M/s Radlay metal products pvt. Ltd, dated 5th May, 2014 (High court of Delhi)]*

3.2 IT IS WELL WITHIN THE DOMAIN OF THE COMPANY JUDGE SEIZED OF A WINDING UP PETITION TO ENTER INTO THE QUESTION OF INTEREST AND THE RATE THEREOF: Delhi HC

Faced with a question that whether the respondent would also be liable to pay interest on the amount claimed by the petitioner. Hon'ble Delhi HC has held that the Company Judge is empowered to determine the question of interest and the rate thereof on applying the principle of the restitution and rejected the contention of the respondent that question of interest should be left to be determined by a Civil Court. *[Mr. Sandeep sabharwal v. M/s M-tech developers ltd, dated 7th May, 2014, (High Court of Delhi)]*

SECURITIES**RISK MANAGEMENT FRAMEWORK FOR FOREIGN PORTFOLIO INVESTORS (FPI) UNDER THE SEBI (FOREIGN PORTFOLIO INVESTORS) REGULATIONS, 2014 UNVEILED**

4.1 The SEBI (FPI) Regulation, 2014 shall commence into effect from June 1, 2014. The trades of FPIs in Category I, II & III shall be margined on a T+1 basis. The traders of FPIs who are corporate bodies, Individuals or Family offices shall be margined on an upfront basis as per the extant margining framework for the non-institutional trades. Position Limits of category I & II FPIs shall be as presently available to FIIs and in case of Category II as applicable to clients. Also entities who trade on behalf of FPIs shall inform the stock brokers of the details of FPIs on whose behalf they trade and stock brokers in turn shall inform the Stock Exchanges. Custodians / DDPs shall provide necessary details related to FPIs, including categorisation of FPIs, to the stock exchanges. *[CIR/MRD/DP/15/2014, dated 15th May, 2014 (SEBI)]*

4.2 COMPANIES ELIGIBLE FOR SHIFTING FROM TRADE FOR TRADE SETTLEMENT (TFTS) TO NORMAL ROLLING SETTLEMENT

Companies listed in Annexure A to the circular have established connectivity with both depositories NSDL and CDSL and stock exchanges may consider shifting the trading in these securities to normal Rolling Settlement subject to at least 50% of other than promoter holdings as per clause 35 of Listing Agreement are in dematerialized mode. For this purpose listed companies shall obtain a certificate from RTA or a practicing CS/CA. *[CIR/MRD/DP/ 16 /2014, dated 16th May, 2014]*

4.3 DIRECTIONS TO STOCK EXCHANGES TO DEAL WITH COMPANIES EXCLUSIVELY LISTED ON NON-OPERATIONAL STOCK EXCHANGES

SEBI, vide its circular dated May 30, 2012 (Exit Circular) had issued guidelines in respect of exit options to stock exchanges. If the stock exchange is not able to achieve the prescribed turnover of Rs 1000 Crore on continuous basis or does not apply for voluntary surrender of recognition and exit before the expiry of two years from the date of SEBI circular dated May 30, 2012, SEBI shall proceed with compulsory de-recognition and exit of the stock exchanges. By way of fresh circular, SEBI has listed out directions to stock exchanges to deal with companies listed on non-operational stock exchanges. *[CIR/MRD/DSA/18/2014, dated 22nd May, 2014]*

4.4 CIRCULAR ON MUTUAL FUNDS

Vide its latest Circular, SEBI has decided to increase the limit of cash transactions in mutual funds from the existing limit of Rs.20,000 per investor, per mutual fund, per financial year to Rs.50,000, subject to compliance with Prevention of Money Laundering Act, 2002 and Rules. Through the present circular changes have also been made in the guidelines for Investment/Trading in Securities by Employees of Asset Management Companies (AMCs) and Trustees of Mutual Funds. *[CIR/IMD/DF/10/2014, dated 22nd May, 2014]*

4.5 PENALTY IMPOSED FOR NOT MAKING PUBLIC ANNOUNCEMENT FOR ACQUISITION OF SHARES OF TARGET COMPANY

In a case where there was an increase in the shareholding of all the appellants who were acting in concert by 6.85% of the total paid up capital of the target company. That was beyond the shareholding limit of 5% per annum prescribed under Regulation 11(1) of the Takeover Regulations which mandates the promoters and person acting in concert (PAC) to make public announcement and to make an open offer in accordance with the Takeover Regulations. *[Sangeeta Sethia & Ors. v. SEBI, dated 5th May, 2014 (SAT)]*

4.6 SAT REDUCES THE PENALTY IMPOSED, FOR NOT MEETING INVESTOR GREIVANCE REDUCED, FROM Rs. 45 LAC TO RS. 5 LAC

When Adjudicating Officer imposed a penalty of Rs 45 lac for having failed in redressing investor grievances within the specified time. Before SAT, the Appellant contended that it was a defunct company and still from time to time redressed the investor grievances. During pendency of appeal all investor grievances were redressed except for 25. The company asked for 8 more weeks to settle them, and based on this undertaking penalty was reduced. *[Jay Energy and S. Energies Ltd. v. SEBI, dated 7th May, 2014 (SAT)]*

4.7 ORDER OF AO QUASHED AS ACQUISITION OF SHARES WAS BY WAY OF TRANSMISSION AND NOT TRANSFER

Adjudicating Officer of SEBI imposed penalty of Rs. 12 Lakhs upon Appellant under Section 15A(b) of the SEBI Act, 1992. However, SAT quashed the order remanded the case back for fresh order as acquisition of shares in the present case was by way of transmission and not by transfer and therefore provisions of SEBI (Prohibition of Insider Trading) Regulations, 1992 and SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 were not attracted. *[Mrs. Devyani Chandrakant Doshi v. SEBI, dated 8th May, 2014, (SAT)]*

COMPETITION

5.1 NO QUESTION OF ABUSE OF DOMINANCE BY BROADCASTER IF BROADCASTER AND THE MULTI SYSTEM OPERATOR WERE NOT COMPETING WITH EACH OTHER: COMPAT

In the instant case, contrary to the finding of CCI, COMPAT came to a finding that conduct of appellants did not lead to denial of market access and opportunity to compete to broadcaster Respondent No 1 and consequent violation of S. 4(2)(c). The COMPAT viewed that since Appellants and the Respondent No. 1 were at different levels of the production or supply chain in the market of cable T.V. services. Therefore there is no room for considering that the broadcaster and the Multi System Operators (MSOs) are competing with each other in the given supply chain of the provisions of cable TV services in the extant regulated telecommunication regime. Thus, the question of denial of market access to the broadcaster by a MSO cannot arise. Impugned order of CCI set

aside. *[M/s. Fast Way Transmission Pvt. Ltd. v. Kansan News Pvt. Ltd., dated 2nd May, 2014 (Competition Appellate Tribunal)]*

5.2 DLF ABUSED ITS DOMINANT POSITION AND COMMITTED BREACH OF SECTION 4(2)(a)(i) AND 4(2)(a)(ii) OF ACT: COMPAT

In the case under consideration the point in issue was whether there was an imposition of one sided or unfair conditions on the day when the Apartment Buyer's Agreement (ABAs) came into being. Both sections 3 and 4 of the Act were not available on the day when these agreements were executed. But imposition post 20th May 2009 could be looked by CCI. There was an abuse of dominance, in first not disclosing the number of floors, at least after section 4 of the Act came on the legal scene and then in proceeding with the construction of additional floors, increasing the number of apartments by 53%. Penalty of Rs.630 crores at 7% of turnover imposed by CCI was sustained. *[M/s. DLF Limited v. CCI & Ors., dated 19th May, 2014 (Competition Appellate Tribunal)]*

INDIRECT TAXES

– CUSTOMS

6.1 CUSTOMS DUTY EXEMPTION NOTIFICATION UNDER SECTION 25(1) OF THE CUSTOMS ACT, 1962

The Department has notified that the Goods intended for display or demonstration (as described in Schedule I of this notification) when imported into India for display or use at any event (as specified in Schedule II of this notification) are exempted from the whole of the duty of customs leviable thereon and from the whole of the additional duty leviable thereon. These exemptions are subject to the conditions as mentioned in the notification such as the said goods are imported under an FICCI/TAITRA Carnet issued in accordance with the Agreement between the India-Taipei Association in Taipei and the Taipei Economic and Cultural Center in India on the FICCI/TAITRA Carnet for the Temporary Admission of Goods signed on 20th March, 2013. *[Notification No. 10/2014 - Customs, dated 12th May, 2014]*

6.2 CENTRAL BOARD OF EXCISE AND CUSTOMS NOTIFIES“THE FICCI/TAITRA CARNET (FORM OF BILL OF ENTRY AND SHIPPING BILL) REGULATIONS, 2014”

The Central Board of Excise and Customs (“CBEC”) announced and notified the FICCI/TAITRA Carnet (Form of bill of entry and shipping bill) Regulations, 2014. As per these Regulations, the bill of entry or the shipping bill to be presented by an importer or an exporter of any goods for import or export under the agreement between the India-Taipei Association in Taipei and the Taipei Economic and Cultural Center in India on the FICCI / TAITRA Carnet for the temporary admission of Goods signed on 20th March, 2013 shall be in the form in Appendix-2 or Appendix-3 to these regulations. *[Notification No. 40/2014 - Customs (N.T.), 12th May, 2014]*

6.3 THE CENTRAL GOVERNMENT EXTENDS LEVY OF ANTI-DUMPING DUTY ON “VITAMIN-E ALL FORMS EXCLUDING NATURAL FORMS”BY ONE YEAR

Anti Dumping Duty (“ADD”) levied on imports of Vitamin-E of all forms excluding natural forms, falling under chapter 29 or 23, originating in, or exported from, People’s Republic of China, has been extended for a further period of one year *i.e.* upto 26th March, 2015 unless revoked earlier. *[Notification No. 16/2014 - Customs (ADD), dated 9th May, 2014]*

6.4 THE CENTRAL GOVERNMENT EXTENDS LEVY OF ANTI-DUMPING DUTY ON IMPORTS OF “FLAX FABRIC”BY ONE YEAR

Anti Dumping Duty (“ADD”) levied on imports of Flax Fabric, falling under chapter 53, originating in, or exported from, the European Union, the People’s Republic of China and Hong Kong, has been extended for a further period of one year *i.e.* upto 25th March, 2015 unless revoked earlier. *[Notification No. 17/2014 - Customs (ADD), dated 9th May, 2014]*

6.5 THE CNETRAL GOVERNMENT EXTENDS LEVY OF ANTI-DUMPING DUTY ON IMPORTS OF All “FULLY DRAWN OR FULLY ORIENTED YARN/ SPIN DRAW YARN/ FLAT YARN OF POLYESTER”BY ONE YEAR

Anti Dumping Duty (“ADD”) levied on imports of all Fully Drawn or Fully Oriented Yarn/ Spin Draw Yarn/ Flat Yarn of Polyester, falling under chapter 54, originating in, or exported from, the People’s Republic of China, Thailand and Vietnam, has been extended for a further period of one year *i.e.* upto 25th March, 2015 unless revoked earlier. *[Notification No. 18/2014 - Customs (ADD), dated 9th May, 2014]*

6.6 THE CENTRAL GOVERNMENT EXTENDS LEVY OF ANTI-DUMPING DUTY ON IMPORTS OF “COLD ROLLED FLAT PRODUCTS OF STAINLESS STEEL”BY ONE YEAR

Anti Dumping Duty (“ADD”) levied on imports of Cold Rolled Flat Products of Stainless Steel, falling under Custom Tariff Heading (CTH) 7219, originating in, or exported from, People’s Republic of China, Korea RP, European Union, South Africa, Taiwan (Chinese Taipei), Thailand and USA, has been extended for a further period of one year *i.e.* upto 21th April, 2015 unless revoked earlier. *[Notification No. 20/2014 - Customs (ADD), dated 12th May, 2014]*

6.7 THE CENTRAL GOVERNMENT EXTENDS LEVY OF ANTI-DUMPING DUTY ON IMPORTS OF “NYLON TYRE CORD FABRIC”BY ONE YEAR

Anti Dumping Duty (“ADD”) levied on imports of Nylon Tyre Cord Fabric (“NTCF”), falling under chapter 59, originating in, or exported from, People’s Republic of China, has been extended for a further period of one year *i.e.* upto 28th April, 2015 unless revoked earlier. *[Notification No. 21/2014 - Customs (ADD), dated 16th May, 2014]*

6.8 THE CENTRAL GOVERNMENT IMPOSES ANTI-DUMPING DUTY ON IMPORTS OF “PERSULPHATES”FOR A PERIOD OF FIVE YEARS

Anti Dumping Duty (“ADD”) levied on imports of Persulphates, falling under chapter 28, originating in or exported from Taiwan, Turkey and USA, for a period of five years (unless revoked, superseded or amended earlier) from the date of publication of this notification in the Official Gazette and shall be paid in Indian currency. *[Notification No. 22/2014 - Customs (ADD), dated 16th May, 2014]*

6.9 THE CENTRAL GOVERNMENT CONSIDERING THE PRELIMINARY FINDINGS OF THE DESIGNATED AUTHORITY IMPOSES ANTI-DUMPING DUTY ON IMPORTS OF “PHENOL”BY SIX MONTHS

Anti Dumping Duty (“ADD”) levied on imports of Phenol, falling under chapter 29, originating in or exported from Chinese Taipei and USA, for a period of six months (unless revoked, amended or superseded earlier) from the date of publication of this notification in the Gazette of India and shall be paid in Indian currency. *[Notification No. 23/2014 - Customs (ADD), dated 16th May, 2014]*

6.10 THE CENTRAL GOVERNMENT CONCEDRING THE REQUISITION OF DESIGNATED AUTHORITY IMPOSES ANTI-DUMPING DUTY ON IMPORTS OF “PHENOL”FOR A PERIOD OF FIVE YEARS

Anti Dumping Duty (“ADD”) levied on imports of Methylene Chloride, originating in or exported from the European Union, United States of America and Korea RP for a period of five years from the date of imposition of the provisional ADD, that is, 21st October, 2013. *[Notification No. 24/2014 - Customs (ADD), dated 21st May, 2014]*

6.11 SECTION 23 IS A GENERAL PROVISION WHEREAS SECTION 58 & SECTION 65 OF THE CUSTOMS ACT ARE SPECIFIC PROVISIONS AND THEY HAVE TO BE COMPLIED IN TOTO AND PREFERRED OVER THE GENERAL PROVISION

In the instant case where finished goods as well as raw materials were destroyed in fire And the Appellant (a 100% EOU) contested demand for duty in terms of the provisions of Section 72 of the Customs Act which had procured duty free imported and indigenous goods for use in manufacture of bulk drugs/pharmaceuticals. CESTAT held that since one of the conditions of the licence and warehousing bond executed by the appellant is that the appellant shall insure the goods deposited in the warehouse at least for a value equal to the duty, by failing to do so, there is a clear breach of Sections 58 & 65 of the Customs Act, 1962. Therefore Duty correctly demanded in terms of the provisions of Section 72 of the Customs Act and Remission sought of Customs duty by the appellant under Section 23 of the Customs Act, 1962 denied. Also, Section 23 is a general provision whereas Section 58 & Section 65 are specific provisions and they have to be complied *in toto* and preferred over the general provision. *[Sandoz Pvt Ltd v. CCE, Belapur, dated 7th May, 2014 (CESTAT)]*

6.12 ASSESSEE ENTITLED FOR THE REFUND, IF IT SATISFIES THE CONDITIONS OF THE NOTIFICATION FOR REFUND OF SAD

In the present case the Commissioner (Appeal) when denied refund on the ground that in the ledger account amount of SAD is shown as recoverable. On appeal, Hon’ble CESTAT held that the learned Commissioner (Appeals) has gone beyond the issue and his holding that the appellants have shown the amount recoverable on account of SAD after sale has been effected, is not correct. As the appellant has fulfilled the conditions of notification 102/07-Cus and also have been able to prove that the amount of SAD has not been passed on the buyer by way of a certificate issued by the Chartered Accountant and an undertaking given by them, the appellants are entitled for refund of claim of SAD. *[Prasad Enterprises Dev International v. CC, Mumbai, dated 13th May, 2014 (CESTAT)]*

6.13 FOR IMPOSITION OF PENALTY UNDER SECTION 114(iii) OF CUSTOMS ACT, 1962, CONFISCATION OF OFFENDING GOODS IS ESSENTIAL

In a case CESTAT has held that if the Show Cause Notice (“SCN”) alleges that the drawback has been wrongly availed, it cannot be said that assessee was having an intention to suppress facts. Moreover, there is no demand of Customs duty, so penalty under Section 114A of the Customs Act, 1962 cannot be imposed. Further, for imposition of penalty under Section 114(iii) of the Customs Act, 1962, confiscation of offending goods is essential and as there is no such proposal in SCN, penalty under the said Section also is not imposable. *[Maharashtra Solvent Extraction Pvt Ltd v. CC (Export), Nhava Sheva, dated 15th May, 2014 (CESTAT)]*

– CENTRAL EXCISE

6.14 TRANSFER OF CENVAT CREDIT EXISTING IN THE EOU ACCOUNT TO THE DTA UNIT ON DEBONDING OF EOU IS PERMISSIBLE

Hon’ble Tribunal has held that *prima facie* transfer of CENVAT Credit available in Export Oriented Unit (“EOU”) account to the Domestic Tariff Area (“DTA”) unit on debonding of EOU is permissible. It is further observed by the Tribunal that inputs and capital goods on which CENVAT Credit was availed by EOU were further utilized in DTA unit and therefore they are eligible for credit. *[Mercury Fittings Pvt Ltd v. CCE, Chennai, dated 6th May, 2014 (CESTAT)]*

6.15 NON-FOLLOWING OF THE PROCEDURE OF RULE 4(5) OF THE CENVAT CREDIT RULES, 2004 FOR SENDING THE CENVATABLE RAW MATERIAL TO THE JOB WORKER WILL NOT DISENTITLE A MANUFACTURER FROM AVAILING CENVAT CREDIT

When subordinate authorities observed that the appellants did not follow the procedure as per the provisions of Rule 4(5) of the CENVAT Credit Rules, 2004 for sending the cenvatable raw material to the job worker, for conversion, held that the shortage of the raw material is established and the appellant is liable to reverse the Credit. Taking contrary view Hon'ble Tribunal has held that mere non-following the procedure of rule 4(5) of CCR, 2004 would not disentitle a manufacturer from availing CENVAT credit. *[M/s Alu Bond Enterprises & M/s Alstrong Enterprises v. CCE, J&K, dated 9th May, 2014 (CESTAT)]*

6.16 GUWAHATI HC HIGHLIGHTS THE MERITS OF CONDONING DELAY FOR FILING APPEAL

When the Tribunal dismissed the appeal filed by the writ petitioner on the ground of limitation. Since the appeal was dismissed on the ground of limitation, the Tribunal did not examine the issue involved in the appeal on merits. Hon'ble High Court of Guwati held that in case of dismissal of appeal by Tribunal, although the proper remedy is to file an appeal under Section 35G of the Central Excise Act, 1944 rather than a Writ Petition, nonetheless since both can be filed in the High Court not much significance is attached to this technicality.

Further, Hon'ble High Court held that the Tribunal should have condoned the delay in filing the appeal by the writ petitioner (appellant) instead of dismissing it on the ground of limitation. The delay in filing the appeal was hardly of 2 months and 19 days and keeping in view the ground stated in the present writ petition (*i.e.* on the ground of illness of staff), we are inclined to hold that it constitutes sufficient cause within the meaning of Section 5 of the Limitation Act in filing the appeal beyond the statutory period prescribed for its filing. Condoning the delay always advances the cause of justice and affords opportunity to parties to contest their case on merits whereas; declining to condone results in depriving them of an opportunity of hearing on merits. By this expression, we do not mean to suggest that in every case the Court should always condone the delay. All that we wish to say is that by and large, the approach of the Court should be to ensure that substantial justice is done to parties by affording them an opportunity of hearing on the merits of the case. *[M/s Pawan Enterprises & Anr v. UOI & Ors., dated 19th May, 2014 (Guwahati HC)]*

– SERVICE TAX

6.17 CONSTRUCTION OF COMPLEX ON THE LAND BELONGING TO OTHER UNDER THE COVER OF A POWER OF ATTORNEY, THE CONSTRUCTION IS TREATED AS CONSTRUCTION OF COMPLEX SERVICE FOR THE PURPOSES OF SERVICE TAX: CESTAT, MUMBAI

In this case, when a land owner executed a Power of Attorney POA in favour of Applicant for entering upon the land for construction of complex. CESTAT held that as title of land is not transferred to the applicant they cannot be treated as owner of the land on which the complex is constructed. *Prima facie* applicant has provided Construction of Complex Service which is taxable. *[Harihar Infrastructure Dev. Corp. v. CCE, Nagpur, dated 5th May, 2014 (CESTAT)]*

6.18 FOR SEEKING CONDONATION OF DELAY ON THE GROUND OF 'SUFFICIENT CAUSE', APPELLANT HAS TO ESTABLISH THAT THE DELAY HAS OCCURRED DUE TO CIRCUMSTANCES BEYOND HIS CONTROL AND WAS INEVITABLE: PUNJAB AND HARYANA HC

Hon'ble High Court has held that for seeking condonation of delay on the ground of 'sufficient cause', appellant has to establish that in spite of acting with due care and caution the delay had occurred due to circumstances beyond his control and was inevitable. Plea that proprietor of the assessee-firm was not in a good state of mind

and was going under medical treatment for the last three years and, therefore, could not pursue the matter is not substantiated. [*M/s Kamal Electricals v. CESTAT & Anr., dated 7th May, 2014 (Punjab & Haryana HC)*]

6.19 ISSUE OF SUBSEQUENT SHOW CAUSE NOTICE FOR THE SAME PERIOD IS VOID AND ILLEGAL: CESTAT, MUMBAI

In a latest case CESTAT has held that when for the same period, proceedings had already commenced against the respondent through a SCN in July, 2005, then there was no need to issue another SCN in July, 2007. The second SCN was void & illegal. [*CCE, Aurangabad v. Bharat Sanchar Nigam Ltd, dated 12th May, 2014 (CESTAT)*]

6.20 IF THE ASSESSEE HAS PAID THE AMOUNT OF DUTY ALONG WITH INTEREST BEFORE ISSUANCE OF SHOW CAUSE NOTICE THE PENALTY SHOULD BE REDUCED TO 25% OF DUTY WHICH IS TO BE PAID WITHIN 30 DAYS FROM THE DATE OF COMMUNICATION OF ORDER

Brief facts of the case are that the appellant was providing the services of glass wool coating to the sugar factories. During the audit in a sugar factory, it came to the knowledge of the department that the sugar factory has received these services from the appellant on which the appellant has not paid the service tax. The appellant has also obtained registration with the department. Immediately, on pointing out by the department, the appellant paid the service tax along with interest and also paid the remaining amount during the course of proceedings. Later-on, a show-cause notice was issued for demanding the service tax along with interest and penalties under sections 76, 77 and 78 of the Finance Act, 1994. Both the lower authorities confirmed the demand of service tax along with interest and imposition of penalties under section 76, 77 and 78 of the Act (*ibid.*).

In the facts Hon'ble Tribunal has held that penalties under section 76 and 78 cannot be imposed simultaneously. Therefore, penalty imposed under section 76 is dropped. Further, no option was given to the appellant to pay 25% of duty as penalty. As they have paid the service tax along with interest before the issuance of show-cause notice, as per the provisions of section 11AC of the Central Excise Act, 1944 the penalty is reduced to 25% of duty which is to be paid within 30 days from the date of this order failing which they would be liable to pay 100% of the duty amount as penalty. [*Fibrex Industries v. CCE, Aurangabad, dated 12th May, 2014 (CESTAT)*]

6.21 A COMPANY REGISTERED UNDER THE INDIAN COMPANIES ACT WAS OUTSIDE THE AMBIT OF DEFINITION OF THE "CONSULTING ENGINEER" BEFORE THE PERIOD 1ST MAY 2006

As the assessee was a company registered under the Companies Act, 1956, they were outside the purview of the definition of 'Consulting Engineer' during the relevant period 2001-03 as 'body corporate' was brought within the ambit of the definition only *w.e.f.* 01.05.2006. Therefore, no Service Tax would be payable. [*CCE, Jaipur v. Consulting Engineers Groups Ltd, dated 15th May, 2014 (CESTAT)*]

INTELLECTUAL PROPERTY RIGHTS

7.1 CONTROLLER GENERAL OF PATENTS DESIGNS AND TRADEMARKS LAUNCHES A STOCK AND FLOW BASED DYNAMIC TRADEMARK UTILITY

The Controller General of Patents Designs and Trademarks ("CGPD™") has launched a Stock and Flow based "Dynamic Trademark Utility" which will provide the applicants/stakeholders with the facility to view the Trade marks under different stocks and the flow of TM applications among the various stocks – [*CGPD™, dated 20th May, 2014*]

7.2 ONLINE FILING OF INDUSTRIAL ENTREPRENEUR MEMORANDUM AND INDUSTRIAL LICENSE IS MANDATORY

Online filing of Industrial Entrepreneur Memorandum (IEM) and Industrial License (IL) would be mandatory *n.e.f.* 15th May 2014, to avail online filing of services from the comfort of one's workstation. For that one may login to www.ebiz.gov.in. – [CGPDTM, dated 13th May, 2014]

7.3 FOREIGN WORDS USED IN REGISTRATION OF TRADEMARK COULD NOT BE HELD AS DECEPTIVE IN THE INDIAN CONTEXT: BOMBAY HC

When the Registrar of Trade Marks had inserted a disclaimer on the registration of the plaintiff's mark viz., 'registration of the trade mark would give no right to the exclusive use of the descriptive matters'. However, the plaintiff had contended that the said disclaimer did not restrict their rights to the exclusive usage of the word 'RISO' and the proprietor of a disclaimed word could still maintain an action for passing off. In view of the contention Hon'ble HC held that it was true that certain words were often borrowed from a foreign language and commonly used in India, however, 'RISO' was not one such word which was commonly used in India. Therefore, there was a possibility that people buying these products might not be well versed with the Italian meaning of the word 'RISO' and therefore it could not be said that the said mark 'RISO' was descriptive in nature as contended by the defendant. Thus, the said disclaimer on the registration of the plaintiff's mark did not apply to the word 'RISO' in the instant case. [Kamani Oil Industries Pvt. Ltd. v. Bhuwaneshwar Refineries Pvt. Ltd., dated 9th May, 2014 (Bombay HC)]

7.4 IF TRADEMARKS ARE IDENTICAL, THERE IS INFRINGEMENT: DELHI HC

The issue in this case before the court was, whether the use of the mark "ALL-AROUND" or "ALLROUNDER" by the defendant is an infringement of the registered trademark of the plaintiff "ALLROUND". Both the plaintiff and defendant are using the said mark on the same good *i.e.* tooth paste. Held that *prima facie* use of the mark "ALL-AROUND PROTECTION" and "ALLROUNDER" is an infringement of the registered trade mark of the plaintiff "ALLROUND". The broad and essential features of the three marks are identical. There are various similarities in the essential features of the said marks which are likely to deceive and confuse a consumer. [Anchor Health and Beauty Care Pvt. Ltd. v. Procter and Gamble Manufacturing (Tianjin) Co. Ltd. & Ors., dated 9th May, 2014 (Delhi HC)]

CONSUMER**8.1 IGNORANCE AS TO UNDIAGNOSED AILMENTS CANNOT LEAD TO PRESUMPTION AS TO CONCEALMENT OF PREVIOUS ILLNESS: NCDRC**

Deceased/Insured was treated for only typhoid and malaria when hospitalized and multiple myeloma (blood cancer) was undiagnosed. It cannot be presumed that the insured/deceased was aware of his aforesaid ailments and he concealed the previous illness, at the time of submission of proposal form. [Bajaj Allianz Life Insurance Co. Ltd. v. M/s Raj Kumar, dated 1st May, 2014, (NCDRC)]

8.2 SURVEYOR REPORT IS NOT A FINAL WORD

After due examination of photographs available and also report of the surveyor, the NCDRC after hearing both the sides and perusal of the photographs produced by the Complainant and the report of the surveyor, the NCDRC came to the conclusion that the entire stock was damaged in rain and the admissible claim arrived at by the opposite party is not the correct evaluation. Hence, dismissed the revision petition. [United India Insurance Company Ltd. v. NT Babu, dated 1st May, 2014, (NCDRC)]. [United India Insurance Company Ltd. v. NT Babu, dated 1st May, 2014, (NCDRC)]

8.3 CONSUMER FORA HAS NO JURISDICTION TO GO INTO THE CORRECTNESS OF DEMAND FOR “EXTENSION FEE”

NCDRC has held that charging of extension fee does not fall within the purview of “service” and Consumer Fora has no jurisdiction to go into correctness of demands made on account of “extension fee”. *[PUDA, Ludhiana v. Dr. Santosh Arora, dated 5th May, 2014, (NCDRC)]*

8.4 WHEN A COMPLAINANT CANNOT BE SAID TO BE ENGAGED IN COMMERCIAL ACTIVITY (PURPOSE)

In a case NCDRC has held that Respondent/Complainant being a registered merchant exporter under the Export Promotion Council for Handicrafts. And also being a single individual involved in earning his livelihood by placing and procuring orders for the purpose of export and is, therefore, very much a ‘consumer’. As NCDRC noted that the notebooks were not purchased “off the shelf” by the Respondent/Complainant from the Petitioner/Opposite Party but had been manufactured/fabricated by the Petitioner/Opposite Party on the basis of particular specifications indicated by the Respondent/Complainant. *[Shahid v. K.P. Dharmaian, dated 6th May, 2014, (NCDRC)]*

8.5 THE TERMS AND CONDITIONS OF HEALTH INSURANCE POLICY HAVE TO BE CONSTRUED STRICTLY: NCDRC

In the instant case NCDRC took a view that an insurance contract is a species of commercial transactions and while deciding the dispute between the insured and the insurer, held that it is clear from the clause of the Insurance contract that if the insured contracts a disease within first 30 days of the commencement of insurance policy, the insurance company shall not be liable to indemnify the insured for expenses unless it is shown that the insured had a continuous health insurance policy with some Indian Insurance Company just prior to taking of insurance cover. In the instant case, there is nothing on the record to suggest that the insured had a previous health insurance cover for a continuous period of 12 months. *[Col. T.S. Bakshi Retd. v. Star Health & Allied Insurance Co. Ltd., dated 6th May, 2014 (NCDRC)]*

8.6 IN THE ABSENCE OF REASONABLE COMPETENCE MEDICAL NEGLIGENCE STANDS ESTABLISHED: NCDRC

In the given fact that when both the OPs were qualified doctors, but they failed to use their best professional judgment and due care during diagnosis and treatment of the patient. The incompetence emanated from the fact that there was a delayed diagnosis and also it was a wrong diagnosis, by OP-1 who failed to diagnose Strangulated Hernia correctly which subsequently resulted in patient’s death. Further the treatment given to the patient was not as per the Standards of Practice. The hospital records lack several details pertaining to Operative notes, procedural aspects, etc. The OPs did not exercise reasonable competence in this case. Compensation of Rs.10,00,000 awarded @ 9% with litigation expenses. *[Rajmal Singh (LR) v. Dr. Madhu Gupta, dated 8th May, 2014 (NCDRC)]*

CONSUMER FORA HAS NO JURISDICTION TO ENTERTAIN COMPLAINT ARISING OUT OF FATAL MOTOR ACCIDENT : NCDRC

NCDRC, in a controversy as to the jurisdiction of consumer for a in the given facts of a case referred to Section 175 Motor Vehicle Act (“M.V. Act”) and held that Claim Tribunal constituted for the area under M.V. Act had jurisdiction to entertain any claim for compensation arising out of the fatal accident and Consumer Protection Act being a general law must yield to a special law. *[Rajasthan State Road Transport Corporation v. Mr. Kuldeep Singh, dated 9th May, 2014, (NCDRC)]*

8.7 NON-DISBURSEMENT OF LOAN DOES NOT AMOUNT TO DEFICIENCY IN SERVICE: NCDRC

NCDRC in the instant case viewed that non disbursement of loan does not amount to deficiency in service as it was mandated under the law to make enquiries before sanctioning the loan. *[Ganesh Madhavrao Masleka v. State Bank of India, dated 16th May, 2014 (NCDRC)]*

8.8 CONSUMER PROTECTION ACT DOES NOT HAVE RETROSPECTIVE EFFECT: NCDRC

Looking at the fact that the cause of action had arisen between the year 1979 and 1981, and the Consumer Protection Act having coming into force in the year 1986, hence in the given facts Consumer Protection Act cannot be invoked for the transactions carried out before its notification in the official gazette.. *[Arvind Pundlik Dhamne v. Raghuvir Wamnrao Joshi, dated 20th May, 2014 (NCDRC)]*

8.9 COMPLAINANT DID NOT COME WITH 'CLEAN HANDS', INSURANCE COMPANY NOT LIABLE TO PAY

In view of the fact that driver of the vehicle was not holding a valid driving licence at the time of accident and there was delay in intimation to Insurance Co. and not lodging FIR, it was held that complainant violated terms and conditions of the Insurance policy. Further it was also held that on account of delay, Insurance Company was deprived of an opportunity to investigate the incident and thus violated terms of the policy and hence insurance company cannot be saddled with the liability to pay compensation. *[ICICI Lombard General Insurance Co. Ltd. v. Pawan Kumar, dated 28th May, 2014]*

ENVIRONMENT**9.1 NATIONAL GREEN TRIBUNAL BANS ALL MINING IN SARISKA TIGER RESERVE AND ADJOINING JAMUARAMGARH SANCTUARY**

National Green Tribunal (hereinafter "NGT") has banned mining activities in 84 stone and marble quarries located inside and within 1 km radius of the Sariska tiger reserve and adjoining Jamwa Ramgarh Sanctuary. *[The Times of India, dated 5th May, 2014]*

9.2 NGT DIRECTS POLLUTION CONTROL AUTHORITIES TO INSPECT POLLUTING INDUSTRIES

The principal bench of NGT has directed Pollution Authorities (Central Pollution Control Board (CPCB), UP Pollution Control Board (UPPCB) and National Ganga River Basin Authority) to jointly conduct inspection of nearly 1,000 industries in UP for polluting Ganga by releasing untreated effluents into its waters. *[The Times of India, dated 7th May, 2014]*

9.3 DELHI ,GWALIOR, RAIPUR AMONG TOP 4 CITIES IN THE WORLD WITH DIRTIEST AIR: WHO

With Delhi leading the pack, Gwalior in Madhya Pradesh and Chhattisgarh's Capital Raipur are among top four cities of the world with the dirtiest air, according to a WHO study . Of 20 cities in the world with dirtiest air, 13 are from India. *[The Times of India, dated 9th May, 2014]*

9.4 GREEN TRIBUNAL'S EASTERN ZONE BENCH OPENS AT KOLKATA

The National Green Tribunal's eastern zone bench has been inaugurated at Rajarhat New Town Kolkata. The jurisdiction of this bench twelve states in the eastern region including West Bengal, Bihar, Odisha, Jharkhand and the seven sisters from the north-east region apart from Andaman and Nicobar Islands. *[The Times of India, dated 25th May, 2014]*

9.5 NGT BANS ALL NON-FOREST ACTIVITIES IN MANDA KHAL AND GADOLI KHAL FOREST REGIONS

NGT has banned all non-forest activities in Manda Khal and Gadoli Khal forest regions in Pauri (Uttarakhan). The sites were being used for dumping municipal waste and debris by stone-crushers. NGT ordered permanent closure of the hotmix plants and activities by the stone-crushers operating in the forest area with immediate effect. *[The Times of India, dated 28th May, 2014]*

9.6 NGT ALLOWS VIZHINJAM PORT AUTHORITIES TO GO AHEAD WITH THE TENDERING PROCESS

NGT has allowed Vizhinjam port authorities to go ahead with the tendering process, including calling for Requests for Qualification (RFQ), to build the port superstructure and operate the proposed deep-water container transshipment port. The NGT passed the order while hearing a petition filed by Vizhinjam residents, Marydas and Wilfred, against the EC given to the project by the MoEF. *[The Times of India, dated 28th May, 2014]*

9.7 NGT DIRECTS MoEF AND DELHI GOVERNMENT TO IDENTIFY AND ASSESS THE STATUS OF WETLANDS IN THE NATIONAL CAPITAL

NGT has directed the MoEF and the Delhi government to identify and assess the status of wetlands in the capital. It has also directed them to submit a plan for conservation and management of the wetlands. *[The Times of India, dated 29th May, 2014]*

9.8 NGT RESTRAINS KGS INTERNATIONAL AIRPORT LTD. FROM SETTING UP PROPOSED GREENFIELD AIRPORT AT ARANMULA

NGT has restrained KGS International Airport Ltd. from setting up the proposed greenfield airport at Aranmula in Pathanamthitta district. On the ground that: (1) the consultant, Enviro Care India Private Ltd, was not competent to prepare the Environment Impact Assessment (EIA) report; (2) Further, the public hearing conducted for the proposed airport was in violation of the mandatory provisions under the EIA Notifications, 2006; (3) The recommendations of the Environment Assessment Committee for grant of EC had also been violated. *[The Hindu, dated 29th May, 2014]*

OTHERS

10.1 SC'S CONSTITUTIONAL BENCH HOLDS "CONTRACT FOR MANUFACTURE, SUPPLY AND INSTALLATION OF LIFTS IN A BUILDING", ASA "WORKS CONTRACT" AND NOT A "CONTRACT FOR SALE"

The contract for manufacture, supply and installation of lifts in a building is a "works contract" and not a "contract for sale". The Constitutional bench (5Judges) of the Supreme Court has overruled an earlier decision of a 3-member bench in State of AP v. Kone Elevator India Pvt Ltd, wherein it had been held that the main object of the contract was to sell the lifts, and that the works done for installation was incidental to the sale of lifts. The Apex Court in the instant case held that the "dominant nature test" or "overwhelming component test" were not applicable to the transaction in hand. After the lifts were assembled and installed with skill and labour at site, it became a permanent fixture of the building, and hence it was not a case of sale of chattel or a chattel being attached to another chattel. *[M/S. Kone Elevator India Pvt. Ltd. v. State of Tamil Nadu and Ors, dated 6th May, 2014 (Supreme Court)]*

Contact Us:***Delhi***

R-1, No. 401-402, SF,
Hauz Khas Enclave,
New Delhi – 110016, India

***Tel. : 91-11-26510505/
91-11-26511505
E-mail : delhi@lexport.in***

Bangalore

516, 10th A Cross, 29th Main
Sector 1, HSR Layout
Bangalore - 560102, India

***Tel. : 91-80-2258 0308 /
91-8050162057
E-mail : bangalore@lexport.in***

The information contained herein is of a general nature and is not intended as legal advice/opinion. No one should act upon such information without appropriate legal advice after a thorough examination of particular facts. Although every efforts is taken to provide accurate and timely information but there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future.