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RBI & FEMA

1.1 MASTER CIRCULARS

The Reserve Bank of India (“RBI”) has issued updated Master Circulars which may be accessed from the RBI website.

1.2 BANKS ADVISED TO USE THE SECURITY INCIDENT TRACKING PLATFORM FOR REPORTING ON SECURITY INCIDENTS

For the purpose of building a repository of security incidents related information for the Banking Industry, RBI has advised that Chief Information Security Officers (“CISOs”) of RRBs/StCBs/CCBs to make use of the Security Incident Tracking Platform developed by IDRB by reporting all Information on Security, particularly security incidents, external attacks, internal compromises etc. through the above platform. Banks would be able to report security incidents in an

anonymous manner, thus, keeping the information reported by the banks confidential. *[RPCD.CO.RRB.RCB.BC.No.11/03.05.33/2014-15, dated 2nd July, 2014]*

1.3 RBI RESTORES THE LIMIT OF OVERSEAS DIRECT INVESTMENT UP TO 400% OF THE NET WORTH

RBI has decided to restore the limit of Overseas Direct Investments (“ODI”) / Financial Commitment (“FC”) to be undertaken by an Indian Party under the automatic route to the limit prevailing, as per the extant FEMA provisions, prior to August 14, 2013.

This allows an Indian company to undertake FC or invest up to 400% of the net worth in all its JVs and/or Wholly Owned Subsidiaries abroad. Earlier in August, 2013, RBI reduced the ODI limit to 100% of net worth of company from 400% for all Indian companies in view of the prevailing macro economic situation.

However, any FC exceeding USD 1 (one) billion (or its equivalent) in a financial year will require prior approval of RBI even if the total commitment of the Indian party is within the permissible limit. *[A.P. (DIR Series) Circular No.1, dated 3rd July, 2014]*

1.4 RBI EASES LENDING NORMS FOR IMPORT OF DIAMONDS

RBI has now allowed lenders to give trade credit or issue letters of credit for import of rough, cut and polished diamonds for a period of 180 days from the date of shipment, as against 90 days earlier. However, RBI cautioned that banks should ensure the necessary due diligence to be undertaken during such import transactions to avert violations related to KYC norms and anti-money laundering standards. Further, any large or abnormal increase in the volume of business would be closely examined to ensure that the transactions are bonafide. *[A.P. (DIR Series) Circular No.2, dated 7th July, 2014]*

1.5 RBI ACCORDS RECOGNITION TO PARTLY PAID UP SHARES AND WARRANTS, AS PERMISSIBLE INSTRUMENTS, FOR FOREIGN INVESTMENTS

Foreign investors, which were till now, allowed only to invest in equity shares and compulsorily and mandatorily convertible preference shares or debentures recognised as FDI compliant instruments. They have now been allowed to invest in the partly paid up shares and warrants of Indian companies. RBI has declared that partly paid equity shares and warrants issued by an Indian company in accordance with the provision of

the Companies Act, 2013 and the SEBI guidelines, as applicable, shall be eligible instruments for the purpose of FDI and FPI by FIIs / RFPIs, subject to compliance with FDI and FPI schemes and other conditions mentioned in the circular. *[A.P.(DIR Series) Circular No.3, dated 14th July, 2014]*

1.6 RBI REVISES GUIDELINES FOR ISSUE OF LONG TERM BONDS BY BANKS – FINANCING OF INFRASTRUCTURE AND AFFORDABLE HOUSING

RBI has revised the guidelines for issue of long-term bonds. Banks can now issue such long-term bonds with a minimum maturity of seven years. These bonds will now be exempted from computation of net demand and time liabilities (“NDTL”) and would not be subjected to CRR/SLR requirements. This exemption will be subject to a ceiling of the eligible credit which has been decided by the RBI. *[DBOD.BP.BC.No.25/08.12.014 /2014-15, dated 15th July, 2014]*

1.7 RBI ENHANCES INVESTMENT LIMIT IN GOVERNMENT SECURITIES, AVAILABLE TO FIIs/QFIs/FPIs, BY USD 5 BILLION

RBI has decided to enhance the investment limit in government securities, available to FIIs/QFIs/FPIs, by USD 5 billion, while simultaneously reducing the amount available to long term investor from USD 10 billion to USD 5 billion within the overall limit of USD 30 billion. *[A. P. (DIR Series) Circular No. 13, dated 23rd July, 2014]*

1.8 MONEY CHANGERS TO ENSURE STRICT COMPLIANCE OF STANDARDS FOR ISSUING PRE-PAID FOREX CARDS

RBI has clarified that prepaid foreign currency cards are a form of foreign currency, similar to foreign currency notes or travellers cheques. As such, the authorised dealers/FFMCs selling pre-paid foreign currency cards for travel purposes are required to comply with the same rigorous standards of due diligence and KYC as they would in case they were selling foreign currency notes/ travellers cheques to their customers. *[A.P. (DIR Series) Circular No.14, dated 25th July, 2014]*

1.9 TERM OF CEILING ON ALL-IN-COST LIMIT ON EXTERNAL COMMERCIAL BORROWINGS EXTENDED

RBI has decided that the all-in-cost ceiling for external commercial borrowings and Trade credits for imports into India will continue to be applicable till December 31, 2014 and is subject to review thereafter. The ceiling had expired on June 30, 2014. All-in-cost ceiling involves every cost in a financial transaction like arranger fee, upfront fee, management fee, handling/processing charges, out of pocket and legal expenses. *[A.P. (DIR Series) Circular No.16 & A.P. (DIR Series) Circular No.17, dated 28th July, 2014]*

FOREIGN TRADE

2.1 EXPORT POLICY OF ONIONS HAS BEEN AMENDED, TO ADD MINIMUM EXPORT PRICE

Export of all varieties of onions as described at Serial Number 51 & 52 of Chapter 7 of Schedule 2 of ITC(HS) will be subject to a Minimum Export Price (“MEP”) of US\$ 500 per MT. *[Notification No 86 (RE-2013)/2009-14, dated 2nd July, 2014 (DGFT)]*

2.2 GOVERNMENT PROHIBITS IMPORT OF FOIE GRAS

Import policy of the item ‘foie gras’ covered under EXIM Code 0207 43 00 has been revised from free to ‘prohibited’. After revision, the import policy reads, as under:

Exim Code	Item Description	Policy	Policy Conditions
0207 43 00	Fatty livers, fresh or chilled	Free, except 'foie gras' which is prohibited	Import of 'foie gras' is Prohibited

[Notification No 87 (RE-2013)/2009-14, dated 3rd July, 2014 (DGFT)]

2.3 EXPORT POLICY ON SUGAR AMENDED

The quantity ceiling for export of organic sugar has been removed till the time export of sugar is permitted "Freely". Export of organic sugar would be permitted subject to registration of quantity with DGFT and certification by APEDA as sugar being organic sugar. There is no change in other conditions relating to export of sugar. *[Notification No 88 (RE-2013)/2009-14, dated 4th July, 2014, (DGFT)]*

2.4 AMENDMENTS IN THE REWARD/INCENTIVE SCHEMES OF CHAPTER 3 OF FOREIGN TRADE POLICY 2009-14 - APPENDIX 37A, OF HANDBOOK OF PROCEDURE (VOL. I)

DGFT has amended the Handbook of Procedures (Vol. I) (Appendices and Aayat Niryat Forms) 2009-2014 to withdraw the VKGUY benefit, on Skimmed Milk Powder. *[Public Notice No.67/(RE 2013)/2009-14, dated 15th July, 2014 (DGFT)]*

CORPORATE

3.1 MCA ISSUES CLARIFICATION ON RELATED PARTY TRANSACTIONS UNDER SECTION 188 OF THE COMPANIES ACT, 2013

Transactions arising out of Compromises, Arrangements and Amalgamations dealt with under specific provisions of the Companies Act, 1956/Companies Act, 2013, will not attract the requirements of section 188 of the Companies Act, 2013. After making necessary compliances under Section 297 of the Companies Act, 1956, which already came into effect before the commencement of Section 188 of the Companies Act, 2013 will not require a fresh approval under section 188 of the Companies Act, 2013. - *[General Circular No, 30/2014, dated 17th July, 2014, (MCA)]*

3.2 CLARIFICATION ON TRANSITIONAL PERIOD FOR RESOLUTIONS PASSED UNDER COMPANIES ACT, 1956

MCA has clarified that the resolutions approved or passed by companies under the relevant applicable provisions of the Companies Act, 1956 (Old Act) during the period, 1st September, 2013 to 31st March, 2014, can be implemented, in accordance with provisions of the Old Act, notwithstanding the repeal of the relevant provision subject to the conditions below:

- (a) that the implementation of the resolution actually commenced before 1st April, 2014 and
- (b) that this transitional arrangement will be available upto expiry of one year from the passing of the resolution or six months from the commencement of the corresponding provision in New Companies Act whichever is later. *[General Circular No. 32/2014, dated 23rd July, 2014, (MCA)]*

3.3 SECTION 203 OF COMPANIES ACT, 2013

Public companies having paid-up share capital of rupees one hundred crore or more and annual turnover of rupees one thousand crore or more which are engaged in multiple businesses and having appointed Chief Executive Officer for each such business shall be the class of companies for the purposes of the second proviso to sub-section (1) of section 203 of the said Act. *[Notification dated 25th July, 2014, (MCA)]*

SECURITIES

4.1 CIRCULAR RELATING TO ISSUANCE AND PROCESSING OF DELIVERY INSTRUCTION SLIP TO BE EFFECTIVE FROM 1ST OCTOBER 2014

The effective date of the circular, issued to strengthen the supervisory and monitoring role of the depositories and their participants, with respect to issuance and processing of Delivery Instruction Slip (“DIS”) has been extended to 1st October, 2014. Further, the DPs shall not accept old DIS for execution from a BO who has been issued new DIS, it is clarified by the SEBI that a period of one month may be given for receipt of DIS by the BOs. The DPs may accept old DIS during this transit period. The depositories shall ensure the implementation of the above within the stipulated timelines. Other provisions of the circular would remain unchanged. Accordingly the securities market regulator advised the DPs to:

- (a) bring the provisions of this circular to the notice of their DPs and also to disseminate the same on their website; and
- (b) make amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision as may be applicable/necessary;
- (c) communicate to SEBI, the status of implementation of the provisions of this circular in the Monthly Development Report. *[CIR/MRD/DP/ 22 /2014, dated 4th July, 2014 (SEBI)]*

4.2 DEADLINE OF CIRCULAR PROVIDING 'GUIDELINES ON DISCLOSURES, REPORTING AND CLARIFICATIONS UNDER ALTERNATE INVESTMENT FUND REGULATIONS' EXTENDED, CLARIFIED

SEBI has extended the deadline for sending of annexure to the placement memorandum to the investors under clause 2(a)(iii) is extended till August 31, 2014 under 'Guidelines on disclosures, reporting and clarifications under Alternate Investment Fund (“AIF”) Regulations'.

It has further been clarified that disclosure of disciplinary history shall be applicable for the last 5 years and where monetary penalty is involved, in cases where penalty is greater than Rs. 5 lakhs. With respect to disputed tax liabilities, the same shall not apply to liabilities in personal capacity of an individual. Contingent liabilities shall be as disclosed in books of accounts of the entity. *[CIR/IMD/DF/16/2014, 18th July, 2014, (SEBI)]*

4.3 ORDER PASSED BY FORWARD MARKET COMMISSION WOULD NOT IPSO FACTO APPLY TO SECURITIES MARKET: SAT

In this case the Appellant was in the business of developing technology products to facilitate trading on exchanges such as stock exchanges and commodity exchanges. Shares of appellant were listed on Bombay Stock Exchange (“BSE”), National Stock Exchange of India Ltd. (“NSEIL”), Ahmedabad Stock Exchange and Madras Stock Exchange. About 58,000 public shareholders hold about 54% of the paid-up equity share capital of the appellant which itself was a company in which there was a wide spread and substantial public interest.

The question before SAT was, whether SEBI by impugned order was justified in holding that the appellant was disqualified to acquire or hold shares of Relevant Entities under regulation 20(1)(b)(v) of the Security Exchange and Clearing Corporation (“SECC”) Regulations solely based on order passed by Forward Market Commission (“FMC”) which was yet to attain finality as a writ petition before the Bombay High Court to challenge decision of FMC is pending.

Hon'ble Securities Appellate Tribunal, considering totality of matter, held that entire case has been dealt in an un-professional manner and justice has not been done by Respondent (SEBI) in many aspects of the cases, starting with issue of SCN - which does not contain any reasoning and to dealing with the matter in adjudicating proceedings, wherein new reasoning, not contained in SCN, has been introduced, and most important relevant provision of showing bearing of FMC order on FTIL (Appellant) in MCX regarding Appellant's shareholding in stock exchanges and clearing corporations, which is the *raison-d'être* of the entire case, has been dealt in a lackadaisical manner without due seriousness or with logical reasoning; resulting in a situation where no purposeful/meaningfulness "bearing" of FCA order to stock exchanges has been brought out or to import declaration of FTIL as not "fit and proper person" by FMC for FTIL to be also not a "fit and proper person" in matter of shareholding in stock exchanges and clearing corporation. Accordingly, the impugned decision of the Respondent is set aside and appeal is allowed. [*Financial Technologies (India) Ltd. v. SEBI, dated 9th July, 2014, (SAT)*]

4.4 SO LONG AS THE MEMBERSHIP SUBSISTS, APPELLANT WAS OBLIGED TO PAY YEARLY MEMBERSHIP SUBSCRIPTION: SAT

SAT has held that deactivating the terminal as Appellant failed to maintain minimum level of net worth does not *ipso facto* amount to cancellation of the membership of the Appellant as registered trading member of the Respondent (a stock exchange) and therefore would continue be liable to pay annual membership fee. [*Mrs. Dina Parikh v. Inter Connected Stock Exchange of India Ltd. & SEBI, dated 18th July, 2014, (SAT) as amended vide Order dated 25th July, 2014*]

4.5 LAW ONLY REQUIRES PROMOTERS TO MENTION THEIR OWN SHAREHOLDING WHICH THEY ARE HOLDING IN THEIR OWN RIGHT AND THERE IS NO SCOPE FOR INCLUSION OF ANY THIRD PARTY SHARES THEREIN: SAT

The Tribunal *inter alia* held that a minute perusal of provisions of Clause 35 of the Listing agreement read with detailed format makes it abundantly clear that the law only requires promoters to mention their own shareholding which they are holding in their own right and there is no scope for inclusion of any third party shares therein. It was further held that an inadvertent, unintentional, minor and venial wrong reporting under clause 35 of the Listing Agreement is one thing; and a conscious and well considered decision to include huge number of shares of third parties by the promoters of the company into their shares, knowing fully well that the third parties' shares do not belong to the promoters, for reflecting the same in the shareholding pattern of the promoters to the Stock Exchanges under Clause 35 is a very serious matter and cannot be pardoned. This modus operandi adopted by the Appellants and their promoters in the present case would undoubtedly amount to unfair trade practice, if not a fraud played upon the market. [*GHCL Limited & Ors. v. SEBI, dated 31st July, 2014 (SAT)*]

COMPETITION

5.1 THE LEGAL MACHINERY UNDER THE CCI CANNOT BE MOVED BY A PERSON WHO HAS NO CONCERN WHATSOEVER WITH THE SUBJECT: COMPAT

In this case the COMPAT held that the Informant had no *locus standi* as he was not in any manner concerned with the purchase or ownership of the car against whom he complained. Informant is not a purchaser of the car. It is this company, of which he is a Director, which had purchased the car. Nor was anything been argued before the commission that this company had authorized the informant to initiate the case u/s 19 before the CCI. Under the circumstances, the CCI would have been justified in rejecting the information on the basis of lack of *locus standi*. [*Jeetender Gupta v. CCI & Ors., dated 4th July, 2014, (Competition Appellate Tribunal)*]

5.2 CCI IMPOSES PENALTY OF Rs. 2567.27 LAKH ON ADANI GAS LIMITED, FOR ABUSING ITS DOMINANT POSITION

The Competition Commission of India found that the opposite party (“OP”) had contravened the provision of Section 4(2)(a)(i) of the Competition Act by imposing unfair conditions on the buyers under Gas Sales Agreement (“GSA”). Abusing its dominant position in the relevant market of supply and distribution of natural gas in Faridabad has put unconscionable terms and conditions in GSA, which are unilateral and lopsided, besides being heavily tilted in favour of OP. *[Faridabad Industries Association (FIA) v. M/s Adani Gas Limited, dated 3rd July, 2014, (CCI)]*

INDIRECT TAXES

– CUSTOMS

6.1 NOTIFICATIONS PURSUANT TO THE PROPOSED CHANGES, RELATED TO CUSTOMS LAW AND RATES OF DUTIES, IN FINANCE (NO.2) BILL, 2014 ISSUED:

- (a) Notification No. 24/2005 - Customs dated 1st March, 2005 amended, so as to levy BCD @ 10% on specified telecommunication products not covered under the ITA. *[Notification No. 11/2014 - Customs, dated 11th July, 2014]*
- (b) Notification No. 12/2012 - Customs dated 17th March, 2012 amended, so as to make necessary changes in the specified entries therein like –
 - i. BCD on fatty acids, crude palm stearin, RBD and other palm stearin and specified industrial grade crude oils is being reduced from 7.5% to Nil for manufacture of soaps and oelochemicals subject to actual user condition. BCD is also being reduced on crude glycerine from 12.5% to 7.5% in general and from 12.5% to Nil for manufacture of soaps subject to actual user condition.
 - ii. BCD on denatured ethyl alcohol is being reduced from 7.5% to 5%.
 - iii. Full exemption from basic customs duty is being granted to de-oiled soya extract, groundnut oil cake/oil cake meal, sunflower oil cake/oil cake meal, canola oil cake/oil cake meal, mustard oil cake/oil cake meal, rice bran/rice bran oil cake and palm kernel cake, up to 31.12.2014.
 - iv. Basic Customs Duty on steel grade dolomite and steel grade limestone is being reduced from 5% to 2.5%.
 - v. The duty structure on non-agglomerated coal of various types is being rationalized at 2.5% BCD and 2% CVD. Accordingly, the BCD on Coking coal is being increased from NIL to 2.5% and on steam coal and bituminous coal from 2% to 2.5%. The BCD on anthracite coal and other coal is being reduced from 5% to 2.5%. The CVD on Anthracite coal, Coking coal and other Coal is being reduced from 6% to 2%.
 - vi. Liquefied Propane and Butane mixture, Liquefied Propane, Liquefied Butane and Liquefied Petroleum Gases (LPG) imported by the Indian Oil Corporation Limited, Hindustan Petroleum Corporation Limited or Bharat Petroleum Corporation Limited, for supply to Non-Domestic Exempted Category (NDEC) customers is being fully exempted retrospectively w.e.f. 08.02.2013 and upto 10.07.2014. The exemption shall continue w.e.f. 11.07.2014.
 - vii. The duty free entitlement for import of trimmings & embellishments and other goods used by the readymade textile garment sector for manufacture of garments for export is being increased from 3% to 5%.
 - viii. Full exemption from Basic Customs Duty is being granted to pre-forms of precious and semi-precious stones.

- ix. Basic Customs Duty on half-cut or broken diamonds is being increased from NIL to 2.5% and on cut & polished diamonds including lab-grown diamonds and colored gemstones from 2% to 2.5%.
 - x. Basic Customs Duty on stainless steel flat products (CTH 7219 and 7220) is being increased from 5% to 7.5%.
 - xi. Basic Customs Duty on LCD and LED TV panels of below 19 inches is being reduced from 10% to NIL and BCD is being exempted on specified parts of LCD and LED panels for TVs.
 - xii. CVD exemption on portable X-ray machine / system is being withdrawn.; etc. **[Notification No. 12/2014 - Customs, dated 11th July, 2014]**
- (c) Notification No. 81/2005 - Customs dated 8th September, 2005 amended, so as to reduce BCD to 5% on machinery required for setting up of compressed bio-gas (Bio-CNG) projects. **[Notification No. 13/2014 - Customs, dated 11th July, 2014]**
 - (d) Notification No. 01/2011 - Customs dated 6th January, 2011 amended, so as to reduce BCD to 5% and CVD to Nil on machinery for initial setting up of solar energy production projects. **[Notification No. 14/2014 - Customs, dated 11th July, 2014]**
 - (e) Notification No. 27/2011 - Customs dated 1st March, 2011 amended, so as to increase the export duty on Bauxite from 10% to 20%. **[Notification No. 15/2014 - Customs, dated 11th July, 2014]**
 - (f) Notification No. 27/2011 - Customs dated 1st March, 2011 amended, so as to increase the export duty on Bauxite from 10% to 20%. **[Notification No. 16/2014 - Customs, dated 11th July, 2014]**
 - (g) Notification No. 10/2008 - Customs dated 15th January, 2008 amended, so as to delete tariff item 3903 19 90 in respect of India-Singapore Comprehensive Economic Co-operation Agreement (CECA). As a result, BCD on Polystyrene (other than moulding powder) is being increased from 1.15% to 7.5%. **[Notification No. 17/2014 - Customs, dated 11th July, 2014]**
 - (h) Notification No. 13/2012 - Customs dated 17th March, 2012 amended, so as to provide for levy of education cess on CVD portion of customs duty leviable on imported IT products. **[Notification No. 18/2014 - Customs, dated 11th July, 2014]**
 - (i) Notification No. 14/2012 - Customs dated 17th March, 2012 amended, so as to provide for levy of secondary and higher education cess on CVD portion of customs duty leviable on imported IT products. **[Notification No. 19/2014 - Customs, dated 11th July, 2014]**
 - (j) Notification No. 39/96 - Customs dated 23rd July, 1996 amended, so as to omit the words 'Portable X-ray machine/system' and to provide exemption for goods imported by NTRO. **[Notification No. 20/2014 - Customs, dated 11th July, 2014]**
 - (k) Notification No. 30/98 - Customs (NT) dated 2nd June, 1998 amended so as to amend Baggage Rules, 1998 to:-
 - i. raise the free baggage allowance from Rs.35,000 to Rs.45,000.
 - ii. reduce the duty free allowance of cigarettes from 200 to 100, of cigars from 50 to 25 and of tobacco from 250 gms to 125 gms. **[Notification No. 50/2014 - Customs (NT), dated 11th July, 2014]**
 - (l) The Scheme of Advance Ruling is being extended to "Resident Private Limited Companies". **[Notification No. 51/2014 - Customs (NT), dated 11th July, 2014]**

6.2 MERE ISSUANCE OR DISPATCH OF THE NOTICES TO THE PETITIONERS WOULD NOT AMOUNT TO "GIVING" OF THE NOTICE

The issue in this case was whether mere dispatch of a notice under Section 124(a) of the Customs Act, 1962 ("Act") would imply that the notice was "given" within the meaning of Section 124(a) and Section 110(2) of the Act. It was held that mere issuance or dispatch of the notices to the petitioners would not amount to "giving" of the notice as contemplated both in the ordinary sense as also in law. DRI was directed to return currencies and goods seized from petitioners. *[Purushottam Jajodia & Ors v. Directorate of Revenue Intelligence (DRI), New Delhi & Anr, dated 24th July, 2014 (Delhi HC)]*

– CENTRAL EXCISE

6.3 NOTIFICATIONS PURSUANT TO THE PROPOSED CHANGES, RELATED TO EXCISE LAW AND RATES OF DUTIES, IN FINANCE (NO.2) BILL, 2014 ISSUED:

- (a) Notification No. 1/2011 - CE dated 1st March, 2011 amended, so as to make necessary changes in the specified entries therein like –
 - i. Concessional excise duty of 2% without CENVAT credit and 6% with CENVAT credit is being extended to gloves specially designed for use in sports.
 - ii. Optional excise duty of 2% (without CENVAT) / 6% (with CENVAT) on writing and printing paper for printing of educational textbooks is being withdrawn and instead a uniform excise duty of 6% with CENVAT is being levied.
 - iii. Excise duty on hand operated sewing machine (2% without CENVAT / 6% with CENVAT) is being rationalized by levying concessional excise duty on sewing machines other than those operated with electric motors (whether in-built or attachable to the body); etc. *[Notification No. 8/2014 – Central Excise, dated 11th July, 2014]*
- (b) Notification No. 2/2011 – CE dated 1st March, 2011 amended, so as to make necessary changes in the specified entries therein like Excise duty on recorded smart cards is being increased from 2% without CENVAT and 6% with CENVAT to a uniform rate of 12%. *[Notification No. 9/2014 – Central Excise, dated 11th July, 2014]*
- (c) Notification No. 33/2005 - CE dated 8th September, 2005 amended, so as to provide for full exemption from excise duty on machinery required for setting up of compressed biogas plant (Bio-CNG). *[Notification No. 14/2014 – Central Excise, dated 11th July, 2014]*
- (d) Notification No. 15/2010 - CE dated 27th February, 2010 amended, so as to provide for exemption of excise duty on machineries required for initial setting up of solar energy production projects. *[Notification No. 15/2014 – Central Excise, dated 11th July, 2014]*
- (e) Notification No. 42/2008 - CE dated 1st July, 2008 amended, so as to prescribe new rate of duty to Pan Masala and Gutkha. *[Notification No. 16/2014 – Central Excise, dated 11th July, 2014]*
- (f) Notification No. 23/2003 - CE dated 31st March, 2003 amended, so as to avoid double levy of cess on DTA clearances 100% EOUs i.e. education cess and secondary & higher education cess (customs component) is being exempted on goods cleared by an EOU into the DTA. *[Notification No. 18/2014 – Central Excise, dated 11th July, 2014]*

- (g) Notification No. 67/1995 - CE dated 16th March, 1995 amended so as to exempt intermediate goods manufactured and consumed captively for further manufacture of matches. *[Notification No. 19/2014 – Central Excise, dated 11th July, 2014]*
- (h) Notification No. 03/2010 - CE dated 22nd June, 2010 rescinded, so as to increase rate of Clean Energy Cess. The Clean Energy cess is being increased from Rs.50 per tonne to Rs.100 per tonne. *[Notification No. 20/2014 – Central Excise, dated 11th July, 2014]*
- (i) The Scheme of Advance Ruling is being extended to “Resident Private Limited Companies”. *[Notification No. 18/2014 – Central Excise (NT), dated 11th July, 2014]*

6.4 AMENDMENTS IN THE CENTRAL EXCISE RULES, 2002

Central Excise Rules, 2002 amended, to the effect that -

- i. E-payment is being made mandatory for all assesseees subject to certain exceptions.
- ii. Sub-rule (3A) of rule 8 is being substituted to provide that in case of default in payment of duty, the assessee shall on his own pay a penalty of 1% per month on the amount of duty not paid for each month or part thereof. *[Notification No. 19/2014 – Central Excise (NT), dated 11th July, 2014]*

6.5 AMENDMENTS IN THE CENTRAL EXCISE VALUATION RULES, 2000

Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 amended, so as to provide that in cases where excisable goods are sold at a price below the manufacturing cost and profit and there is no additional consideration flowing from the buyer to the assessee directly or from a third person on behalf of the buyer, value for the assessment of duty shall be deemed to be the transaction value. *[Notification No. 20/2014 – Central Excise (NT), dated 11th July, 2014]*

6.6 AMENDMENTS IN THE CENVAT CREDIT RULES, 2004

CENVAT Credit Rules, 2004 amended to the effect that -

- i. Rule 12A is being amended so as to disallow transfer of credit by a large taxpayer from one unit to another.
- ii. A new sub-rule (qa) is being inserted in Rule 2 to introduce the definition of “place of removal”.
- iii. Rule 4(1) (for input credit) and Rule 4(7) (for input service credit) are being amended in order to fix a time limit of six months for availment of the CENVAT Credit. *[Notification No. 21/2014 – Central Excise (NT), dated 11th July, 2014]*

– SERVICE TAX

6.7 AMENDMENTS IN THE SPECIFIED ENTRIES PRESCRIBING TAXABLE PORTION

Notification No. 26/2012 - Service Tax dated 20th June, 2012 amended, so as to make necessary amendments in the specified entries prescribing taxable portion and the conditions for availing the exemption therein like:-

- i. The condition for availing abatement in case of GTA service is being amended with immediate effect to clarify that the condition for non-availment of credit is required to be satisfied by the service providers only. Service recipient will not be required to establish satisfaction of this condition by the service provider.

- ii. Service of transportation of passenger by air-conditioned contract carriages is taxable with immediate effect.
- iii. The condition against entry No. 9 is amended with effect from 1st October 2014, to allow the credit of input service of renting of a motor cab if such services are received from a person engaged in the similar line of business i.e. a sub-contractor providing services of renting of motor cab to the main contractor. The whole of the CENVAT credit has been allowed with respect to input service of renting of any motor cab, received from a person who is paying service tax on 40% of the value of services.
- iv. Taxable portion in respect of transport of goods by vessel is being reduced from 50% to 40%.; etc. *[Notification No.08/2014 - Service Tax, dated 11th July, 2014]*

6.8 AMENDMENTS IN SERVICE TAX RULES,1994

Service Tax Rules, 1994 amended to the effect that:-

- i. Service provided by a Director to a body corporate is being brought under the reverse charge mechanism.
- ii. Services provided by Recovery Agents to Banks, Financial Institutions and NBFC is being brought under the reverse charge mechanism.
- iii. E-payment of service tax is being made mandatory with effect from the 1st Oct 2014. Relaxation from e-payment may be allowed by the Deputy Commissioner/Asst. Commissioner on case to case basis. *[Notification No.09/2014 - Service Tax, dated 11th July, 2014]*

6.9 SIMPLIFICATION OF PARTIAL REVERSE CHARGE MECHANISM

Notification No. 30/2012 - ST dated 20th June, 2012 amended, so as to prescribe that w.e.f. 1st October 2014, in renting of motor vehicle, where the service provider does not take abatement the portion of service tax payable by the service provider and service receiver will be modified as 50% each. *[Notification No.10/2014 - Service Tax, dated 11th July, 2014]*

6.10 AMENDMENTS IN SERVICE TAX (DETERMINATION OF VALUE) RULES, 2006

Service Tax (Determination of Value) Rules, 2006 amended such that category “B” and “C” of works contracts are merged into one single category, with percentage of service portion as 70%; this change will come into effect from 1st October, 2014. This rationalization by way of merger of categories has been made to avoid disputes of classification between these two categories. *[Notification No.11/2014 - Service Tax, dated 11th July, 2014]*

6.11 AMENDMENT IN THE INTEREST RATE APPLICABLE IN CASES OF DELAYED PAYMENT OF SERVICE TAX

With effect from 1st Oct 2014, simple interest rate applicable in cases of delayed payment of service tax has been notified as follows:-

- i. Delay up to six months – 18%
- ii. More than six months and up to one year - 18% for the first six months of delay and 24% for the delay beyond six months.
- iii. More than one year – 18% for the first six months of delay; 24% for the period beyond six months up to one year and 30% for any delay beyond one year. *[Notification No.12/2014 - Service Tax, dated 11th July, 2014]*

6.12 AMENDMENTS IN POINT OF TAXATION RULES, 2011

Point of Taxation Rules, 2011 (“**POTR**”) amended, to provide that point of taxation in respect of reverse charge will be the payment date or the first day that occurs immediately after a period of three months from the date of invoice, whichever is earlier. This amendment will apply only to invoices issued after 1st October, 2014. A transition rule is being prescribed (new rule 10 of POTR). [*Notification No.13/2014 - Service Tax, dated 11th July, 2014*]

6.13 AMENDMENTS IN PLACE OF PROVISION OF SERVICES RULE, 2012

Place of Provision of Services Rule, 2012 amended as follows:-

- i. Provision for prescribing conditions for determination of place of provision of repair service carried out on temporarily imported goods is being omitted. The second proviso to rule 4(a) is being amended to prescribe that it would suffice for the purpose of exclusion of repair service from applicability of rule 4(a) that the goods imported for repair are exported after repair without being put to any use other than that which is required for such repair. It may be noted that this exclusion does not apply to goods that arrive in the taxable territory in the usual course of business and are subject to repair while such goods remain in the taxable territory, e.g., any repair provided in the taxable territory to containers arriving in India in the course of international trade in goods will be governed by rule 4.
- ii. The definition of intermediary is being amended to include the intermediary of goods in its scope. Accordingly, with effect from 1.10.2014, an intermediary of goods, such as a commission agent or consignment agent shall be covered under rule 9(c) of the Place of Supply of Services Rules.
- iii. Service consisting of hiring of Vessels (excluding yachts) and Aircraft is being excluded from rule 9(d). Accordingly, hiring of vessels, or aircraft, irrespective of whether short term or long term, will be covered by the general rule, that is, the place of location of the service receiver. Hiring of yachts would however continue to be covered by rule 9 (d).

These changes will come into effect from 1st October, 2014. [*Notification No.14/2014 - Service Tax, dated 11th July, 2014*]

6.14 CONDONATION OF DELAY OF 213 DAYS IN FILING APPEAL: HIGH COURT OF MADRAS

Hon'ble Madras High Court while condoning delay held that a person suffering from cardiac disease or problem must take rest and therefore cannot function as a normal person. Order of Tribunal disbelieving the applicant's plea by stating that there is no advice for taking bed rest and dismissing COD cannot be sustained. Medical Certificate produced by the appellant is not fully convincing nonetheless appeal for condonation of delay is allowed on terms. [*M/s Tojo Tyre Retread v. CESTAT & Anr., dated 18th June, 2014 (Madras HC)*]

INTELLECTUAL PROPERTY RIGHTS

7.1 DECEPTIVE SIMILARITY IN TRADEMARK, DEFENDANT RESTRAINED

In this case the Plaintiff filed instant suit for permanent injunction seeking restraint against defendant from selling, distributing, advertising or dealing in alcoholic beverages, especially IMFL or goods of any description bearing trade mark 'Collector's Choice' or any other mark deceptively similar to plaintiff's trade mark 'Officer's Choice'. Court found prima facie case in favour of plaintiff and hence, defendant was restrained during pendency of suit from selling, distributing, advertising or otherwise dealing in goods bearing any mark/ label similar or deceptively similar to plaintiff's mark/label 'Officer's Choice' or from doing anything leading to passing off their goods. [*Allied Blenders and Distillers Pvt. Ltd. v. Shree Nath Heritage Liquor Pvt. Ltd., dated 1st July, 2014 (Delhi HC)*]

7.2 COPYRIGHT OWNERS WOULD BE ALLOWED TO LICENSE THEIR WORKS THEMSELVES OR THROUGH THEIR AUTHORIZED AGENTS UNDER SECTION 30 OF THE COPYRIGHT (AMENDMENT) ACT, 2012

It was held that what Section 33 forbids is an engagement in the “business of issuing and granting” licenses in works in which copyright subsists. This cannot mean that a copyright owner cannot appoint an agent to grant any interest on behalf of the copyright owner. That is something that Section 30 in permits. The express permission in Section 30 cannot be excluded by an extension of the express prohibition in Section 33. All that the two sections, read together, require is that the factum of agency must be disclosed so that the licensee knows that it has a valid license from the copyright owner; i.e., that it is made known by the agent that it is acting on behalf of the holder of copyright in the works in question, even though the licensee may throughout deal only with the agent and never directly with its principal. The minute the principal is undisclosed and the license is issued and granted in the agent’s own name, the prohibition in Section 33 comes into play.

In this matter, Court observed that Novex had not clearly disclosed its agency, if indeed there was one. Therefore it was held that mere mention of the license being of the works of others does not sufficiently indicate any agency to take Novex out of the mischief forbidden by Section 33 and into the permissive regime of Section 30. [*Leopold Café & ors. v. Novex Communications Pvt. Ltd, dated 17th July, 2014 (Bombay HC)*]

7.3 BOMBAY HIGH COURT DISMISSES BAYER’S CHALLENGE, UPHOLDS COMPULSORY LICENSE ON NEXAVAR

Bombay High Court dismissed a writ petition filed by Bayer challenging the IPAB order upholding the compulsory license granted to Natco for Sorafenib Tosylate (Nexavar). Nexavar is a crucial medicine for patients suffering from kidney and liver cancer. In 2012, the Patent Controller granted the compulsory license to Natco to produce its version of the Sorafenib Tosylate. Bayer appealed this decision before the IPAB which upheld the decision of the Patent Controller. Against that order, Bayer approached the Bombay High Court by way of the present writ petition. However, now that the Bombay high Court has refused to interfere in this matter, thereby Natco is now allowed to continue producing the product and sell it at a lower price. [*Bayer Corporation v. U.O.I & Ors., dated 15th July, 2014 (Bombay HC)*]

CONSUMER

8.1 IT IS “CONTRACT FOR SERVICE” AND NOT “CONTRACT OF SERVICE” WHICH IS UNDER PURVIEW OF CONSUMER PROTECTION ACT: NCDRC

Hon’ble National Consumer Disputes Redressal Commission (“NCDRC”) held that the opposite parties (“OPs”) being Government doctors were discharging duties in the Department of Obstetrics and Gynecology, Motilal Nehru Medical College, Allahabad. The services to the patients are without any consideration. Both are employed under the State Govt, of Uttar Pradesh. The treatment in Govt. hospital is being done free of cost, hence, it will not fall under the Consumer Protection (“C.P.”) Act, 1986. Also a doctor is not negligent if he is acting in accordance with standard practice, merely because there is a body of opinion who would take a contrary view. Thus, the OP-1 and OP-2 were rendering their services as a Govt doctors, it is a “Contract of Service” and not a “Contract for Service”, which is not under preview of C. P. Act. [*Afsana Bano v. Dr. Manju Verma, dated 1st July, 2014, (NCDRC)*]

8.2 CONSUMER PROTECTION ACT IS A SOCIAL LEGISLATION AND CONSUMER FORUM IS NOT EXPECTED TO BE BOGGED DOWN BY HYPER TECHNICALITIES: NCDRC

In this case the question before the Commission was whether the State Commission was correct in law in holding that since the agreement for sale was insufficiently stamped, it was liable to be impounded and till

appropriate stamp duty was paid, the complaint could not be entertained. The commission held that non-payment of sufficient stamp duty was not material for the purpose of determining the question as to whether there was any deficiency in service. [*Sanjay Kumar Gupta v. Keshav Kishan Barma*, dated 3rd July, 2014, (NCDRC)]

8.3 IF THE DISCHARGE VOUCHER OR RECEIPT IS FOUND TO HAVE BEEN EXECUTED VOLUNTARILY, THE CLAIMANT WILL BE BOUND BY IT: NCDRC

In the instant case, NCDRC held that, in the absence of any plea of fraud, coercion or undue influence a plea at any stage anterior to the filing of the complaint, the Complainant was estopped from questioning the correctness of Surveyor's report for release of the amount and allege deficiency in service on the part of the Insurance Company for not accepting in totality the claim preferred by them. [*M/s. Tata AIG General Insurance Co. Ltd v. M/s. Nissan Electronics Ltd*, dated 3rd July, 2014, (NCDRC)]

8.4 OPPOSITE PARTY FAILED TO FILE HIS WRITTEN STATEMENT WITHIN THE TIME PRESCRIBED IN THE ACT, REVISION PETITION DISMISSED

NCDRC has held that Section 13 (2) (b) (ii) of the Act confers power upon the fora below to proceed ex parte against the opposite party where the OP omits or fails to take any action to represent his case within the time given by the fora below. The effect of ex parte order is that complainant's right to file written statement stood forfeited particularly when the prescribed period for filing written statement had already expired and he could only join the later proceedings. There was no occasion for the State Commission to allow the petitioner to file written statement belatedly when ex parte order in existence. [*M/s Accanoor Associates v. Akanksha Co-operative Housing Ltd*, dated 16th July, 2014, (NCDRC)]

8.5 MEDICAL NEGLIGENCE IS AN ACT OF COMMISSION OR AN ACT OF OMISSION WHICH A PRUDENT DOCTOR OF AVERAGE SKILL, KNOWLEDGE AND EXPERIENCE WOULD NOT DO: NCDRC

NCDRC while directing, OP hospital to pay compensation of Rs.25 Lakh, for medical negligence. The complaint was filed by Mrs. Manjeet Chawla and her two sons alleging medical negligence in treatment and deficiency in services by the doctors at ESCORTS Heart Institute & Research Centre, New Delhi causing death of Mr. Pritpal Singh Chawla (the husband of the complainant). It was held that the OP had miserably failed to discharge its duty. It was a wrong decision and advises for the patient to undergo immediate angiography. The angiography was conducted without baseline ECHO and other investigation. It was not a Standard practice. The ICU staffs were careless and negligently monitored the patient, who suffered prolonged severe hypoglycemia and unfortunate death on the same day. OP is also guilty of overwriting and making corrections in the medical records. [*Mrs. Manjeet Chawla v. ESCORTS Heart Institute & Research Centre*, dated 17th July, 2014, (NCDRC)]

8.6 PETITIONER WAS ONLY AN APPLICANT, HE DOES NOT FALL WITHIN THE DEFINITION OF CONSUMER BECAUSE ALLOTMENT OF PLOT / FLAT WAS YET TO BE DONE: NCDRC

In a revision petition the petitioner claiming the failure of the respondent (HUDA) to allot the plot / flat to be deficiency in service, the petitioner filed a consumer complaint seeking directions to the HUDA to allot him a plot of 100 sq. yds under the above noted policy as the complainant belong to economically weaker section. The complainant also prayed for award on compensation.

The Hon'ble Commission considering the fact that the complainant has not been able to point out any material irregularity in the impugned order for the reason that petitioner has not been able to establish that he fulfils the eligibility criteria under the Aashiana/JNNRUM scheme floated by HUDA. Hon'ble Commission upheld the decision of the State Commission which, relying upon the judgment of the National Commission in Punjab Urban Planning and Development Authority and Anr. Vs. Krishan Pal Chander 2010 CTJ 415, has taken a

view that since the petitioner was only an applicant, he does not fall within the definition of consumer because allotment of plot / flat was yet to be done. NCDRC holding that in view of the above position State Commission cannot be faulted, therefore it dismissed the revision petition. *[Vijay Kumar v. Haryana Urban Development Authority, dated 22nd July, 2014, (NCDRC)]*

8.7 INSURANCE COMPANY FAILED TO PROVE THAT THE DEATH WAS SUICIDE WHICH WAS COVERED UNDER POLICY EXCLUSION CLAUSE AND WAS OBLIGED TO PAY THE CLAIM: NCDRC

In order to repudiate the claim lodged by the complainants, the petitioner company was required to prove by independent evidence that the deceased insured had actually committed suicide which, the petitioner insurance company failed to do. The deceased insured was suffering from schizophrenia, there was no evidence to prove that she actually committed suicide by jumping into the well. The Opponent No.1 & 2 had failed to prove statement before the police, investigator's report and the doctor's report by independent evidence. In view of the above, Hon'ble Commission dismisses the revision petition filed by the insurance company. *[Bajaj Allianz General Insurance Co. Ltd. v. Shri Jayantibhai Nathanbhai Monpara, dated 24th July, 2014, (NCDRC)]*

ENVIRONMENT

9.1 AN AWARD, DECISION OR ORDER OF THE NGT CAN ONLY BE CHALLENGED BEFORE THE SUPREME COURT WITHIN 90 DAYS OF ITS COMMUNICATION: HIGH COURT OF BOMBAY

In this case, Hon'ble Bombay High Court declined to entertain a Petition and held that under Section 22 of the National Green Tribunal ("NGT") Act, 2010, a remedy has been provided to any person aggrieved by any order of the tribunal to prefer an appeal before the apex court. *[The Times of India, dated 24th July, 2014]*

9.2 STATE GOVERNMENT TO ENSURE THAT NO CONSTRUCTION IS PERMITTED WITHIN 300 METRES ZONE OF THE FULL TANK LEVEL OF UPPER LAKE: NGT

NGT Central Zone has yet again directed the State Government to ensure that no construction should be permitted within 300 metres zone of the full tank level ("FTL") of Upper Lake. Currently, 'No Construction Zone' has not yet been extended beyond 50 metres of the lake. *[The Times of India, dated 5th July, 2014]*

9.3 NGT RESTRAINS PUNJAB FROM SPENDING FUNDS FOR CONTROLLING WATER POLLUTION: NGT

NGT has restrained Punjab from spending the first instalment of Rs. 16.13 crores being disbursed by Union Urban Development Ministry for controlling contamination of under-ground water in the state till it examines the details as to how they want to spend the money. *[The HindustanTimes, dated 30th July, 2014]*

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