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1. RBI & FEMA

1.1 ON NBFCs:

1.1.1 Time Extended, For Completing UCIC Allotment, To Existing Customers By NBFCs

Whereas RBI, vide its circular dated 3rd May, 2014, had advised the Non Banking Financial Companies (“NBFCs”) to initiate steps for allotting Unique Customer Identification Code (“UCIC”), for their Customers in India, while entering into any new relationships for individual customers, and to existing individual customers by end-June 2013. But now, this deadline for completing the process of allotting UCIC to their existing

customers has been extended to 31st December, 2014. *[DNBS (PD).CC.No.402/03.10.42/2014-15, dated 1st August, 2014]*

1.1.2 Non-Deposit Taking NBFCs Having Asset Size Of Rs. 1000 Crore And Above Allowed To Trade In Interest Rate Futures

RBI has allowed the non-deposit taking NBFCs with asset size of Rs. 1000 crore and above to participate in the interest rate futures market permitted on recognized stock exchanges as trading members, subject to compliance of RBI/ SEBI guidelines. *[DNBS.CC.PD.No.406/03.10.01/2014-15, dated 12th August, 2014]*

1.1.3 Guidelines Laid Down For NBFCs On Lending Against Shares

With an aim to curb volatility in capital market, RBI has advised NBFCs to maintain a loan-to-value (“LTV”) ratio of 50% in case of lending against collateral of shares. Also, they have been asked to accept only 'Group 1' securities as collateral for loans of value more than Rs. 5 lakh. All NBFCs with asset size of Rs.100 crore and above shall report online to stock exchanges, information on the shares pledged in their favour, by borrowers for availing loans. Currently, lending against shares carried out by NBFCs is not subject to specific instructions apart from the general prudential regulation applicable to all NBFCs. *[DNBS (PD).CC. No. 408 /03.10.001/2014-15, dated 21st August, 2014]*

1.1.4 Appointment Of Non-Deposit Accepting NBFCs With Asset Size Of Rs. 100 Crore And Above As Sub-Agents Under Money Transfer Service Schemes

In order to broaden the network of sub-agents under Money Transfer Service Schemes (“MTSS”), RBI has permitted Non-Deposit Accepting NBFCs with asset size of Rs. 100 crore and above to act as sub-agents under MTSS subject to the following conditions:

- a) There is no co-mingling of the Indian agent’s funds with that of the NBFC’s funds.
- b) The Indian agent should maintain with a designated bank, a security deposit in favour of the NBFC sub-agent. The amount of the security deposit to be maintained may be mutually decided between the Agent and the sub-agent. It should be ensured that the payouts of NBFC sub-agents pending reimbursement by the agents should not, at any point of time, be higher than the security deposits.
- c) No NBFC, acting as sub-agent, should appoint any other entity as its sub-agent.

NBFCs desirous to act as sub-agents under the MTSS shall have to take prior approval of the Reserve Bank. Application in this regard may be forwarded to the concerned Regional Offices of the Reserve Bank of India. [DNBS.CC.PD. No. 405/03.10.01/2014-15, dated 12th August, 2014]

1.2 ON MONETARY POLICY: Statutory Liquidity Ratio Reduced

RBI has reduced the Statutory Liquidity Ratio (“SLR”) of Scheduled Commercial Banks, Local Area Banks, Urban Co-operative Banks & Regional Rural Banks from 22.5 per cent of the Net Demand and Time Liabilities (“NDTL”) to 22.0 per cent with effect from the fortnight beginning 9th August, 2014. *[DBOD.Ret.BC.29/12.02.001/2014-15, dated 5th August, 2014 & UBD.BPD.(PCB).Cir. No. 7/16.26.000/2014-15, dated 5th August, 2014 & RPCD.RRB.BC.No.24/03.05.33/2014-15, dated 6th August, 2014]*

1.3 ON PROJECT FINANCE: Norms For Refinancing Long Term Project Loans Eased

RBI has relaxed the norms in respect of existing project loans. Now, banks may refinance such loans with certain new riders, including taking-over of a minimum of 25 per cent of an outstanding loan, from the prior condition of 50 per cent by way of full or partial take-out financing, even without a pre-determined agreement with other banks or financial institutions and fix a longer repayment period, and the same would not be considered as restructuring in the books of the existing as well as taking over lenders. Other conditions include, fixing repayment period based on life cycle and cash flow from project and upon satisfaction from boards of existing and new banks about project viability, etc. But it is important to note that this facility will be available only once during the life of the existing project loans. *[DBOD.BP.BC. No. 31/21.04.132/2014-15, dated 7th August, 2014]*

1.4 ON MORTGAGE GUARANTEE COMPANIES: Guidelines On Registration And Operations Revised

The new guidelines applicable to mortgage guarantee companies (“MGCs”) allows them to treat , mortgage guarantees provided by them as contingent liabilities, while calculating capital adequacy; and the credit conversion factor applicable to these contingent liabilities will be 50% as against the present 100%. As per the extant guidelines, MGCs have to provide for a lower appropriation to contingency reserves if provisions made towards losses exceeded 35 per cent of the premium or fee earned during a financial year, but it does not specify the exact level of such contingency reserves. An MGC may now utilise contingency reserves without prior approval of RBI for the purpose of meeting and making good losses suffered by mortgage guarantee holders. However, such a measure can be initiated only after exhausting all other avenues and options to recoup losses. [DNBS (PD) CC. No.20/MGC/03.011.001/2014-15, dated 8th August, 2014]

1.5 ON ATMs: Number Of Free Transactions At ATMs To Be Reduced to Three at Six Metro Cities in the Country From 1st November 2014

The number of mandatory free ATM transactions for savings bank account customers at other banks’ ATMs are reduced from the present five to three transactions per month (inclusive of both financial and non-financial transactions) for transactions done at the ATMs located in the six metro centres, viz. Mumbai, New Delhi, Chennai, Kolkata, Bengaluru and Hyderabad. At other locations i.e. other than the six metro centres mentioned above, the present facility of five free transactions for savings bank account customers shall remain unchanged.

Also banks are advised that at least five free transactions (inclusive of financial and non financial transactions) per month should be permitted to the savings bank account customers for use of own bank ATMs at all locations. The ceiling / cap on customer charges of Rs.20/- per transaction (plus service tax, if any) will be applicable. However, this reduction will not apply to small / no frills / Basic Savings Bank Deposit account holders who will continue to enjoy five free transactions, as hitherto. This directive shall come into effect from 1st November, 2014. [DPSS.CO.PD. No. 316/02.10.002/2014-2015, dated 14th August, 2014]

1.6 ON BORROWERS FROM J&K: Credit Relaxations To Borrowers From J&K To Continue Upto 31st MARCH, 2016

RBI has decided that the concessions / credit relaxations to borrowers / customers in the State of Jammu & Kashmir, as laid down in Circular No. DBOD.No.BP.BC.77/21.04.012/2003-2004 dated April 21, 2004, will continue up to 31st March, 2016. [DBOD.No.BP.BC.32/21.04.012/2014-15, dated 14th August, 2014]

1.7 ON URBAN CO-OPERATIVE BANKS: Clarifications On Review Of Norms For Opening Of Onsite/Off-Site ATMs By Urban Co-Operative Banks

RBI has clarified that the existing instructions issued vide circular No.UBD.PCB.Cir.No.46/09.69.000/07-08 dated 26th May, 2008 read with para 5.1 of the Master Circular dated 1st July, 2014 will continue to be applicable for opening on-site ATMs under the automatic route and FSWM UCBs may set up on-site ATMs without the prior approval of RBI. Further, FSWM UCBs, which are not eligible to open off-site ATMs as per revised criteria, may seek prior approval of Reserve Bank as envisaged in circular UBD.CO.LS.Cir.No.64/07.01.000/2009-10 dated 4th May, 2010. [UBD.CO.LS (PCB) Cir.No.8 /07.01.000/2014-15, dated 20th August, 2014]

1.8 ON ECB: Procedure Simplified For Refinancing Of ECB At Lower All-In-Cost

Till now refinancing of existing External Commercial Borrowings (“ECB”) by raising fresh ECB at lower all-in-cost was permitted subject to the condition that the outstanding maturity of the original loan is maintained. The cases, where the Average Maturity Period (“AMP”) of the fresh ECB is more than the residual maturity of existing ECB, are examined by the RBI under the approval route. After a review, RBI has now simplified the procedure by delegating powers to the AD Category – I banks to approve even those cases where the AMP of the fresh ECB is exceeding the residual maturity of the existing ECB under the automatic route, subject to the conditions mentioned in the circular. The modification to the ECB policy will come into force with immediate effect. [A.P. (DIR Series) Circular No.21, dated 27th August, 2014]

1.9 ON ACQUISITION OF GOVT. SECURITIES: Procedure For Purchase Of Eligible Govt. Securities By Eligible Investors

With a view to providing flexibility in regard to the manner in which government securities can be acquired by eligible investors (SEBI registered Foreign Institutional Investors, Qualified Foreign Investors, registered Foreign Portfolio Investors and long term investors registered with SEBI). RBI has now removed any stipulation as to the manner of acquisition from the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000. Consequently, the eligible investors can acquire such securities in any manner as per the prevalent/approved market practice. [A.P. (DIR Series) Circular No.22, dated 28th August, 2014]

2. FOREIGN TRADE**2.1 CARGO TRACING AND TRACKING: Effective Date Deferred, For Affixing Bar-Codes On Mono-Carton As Secondary Level Packaging, To 01.04.2015**

As per Public Notice No. 62 dated 26.06.2014, Mono cartons are to be treated as part of Secondary Level Packaging and accordingly the requirement of affixing bar-codes on Mono-carton as Secondary Level Packaging became effective from 26.06.2014. Now the effective date of affixing bar-codes on Mono-carton as Secondary Level Packaging has been deferred to 1st April, 2015. There shall be no other change in Public Notice No. 62 dated 26.06.2014. **[Public Notice No.68/(RE 2013)/2009-14, dated 6th August, 2014, (DGFT)]**

2.2 EXPORT BENEFITS: Exports To Iran Realized In Indian Rupees, Allowed To Avail Export Benefits At Par With Export Proceeds Realized In Freely Convertible Currency

The word 'specific' has been deleted from Para 2.40A of Foreign Trade Policy, 2009-2014. It now reads as export proceeds against exports to Iran realized in Indian rupees are permitted to avail exports benefits/ incentives under the Foreign Trade Policy, 2009-14, at par with export proceeds realized in freely convertible currency. **[Notification No 89 (RE-2013) / 2009-2014, dated 6th August, 2014, (DGFT)]**

2.3 FTP AMENDED: Para 4.1.15 Of FTP, 2009-2014 Amended

The Ministry of Commerce & Industry has amended the Para 4.1.15 of the Foreign Trade Policy. Now the Quantity of input to be allowed under Advance Authorisation/DFIA shall be in proportion to the quantity of input actually used or consumed in production. **[Notification No 90 (RE-2013) / 2009-2014, dated 21st August, 2014, (DGFT)]**

2.4 ONION EXPORT: Minimum Export Price of Onions Revised

The Ministry of Commerce & Industry has amended the Export Policy of Onions. Now export of onion for the item description at Serial Number 51 & 52 of Chapter 7 of Schedule 2 of ITC(HS) Classification of Export & Import Items shall be permitted subject to a Minimum Export Price ("MEP") of US\$ 300 per MT F.O.B. **[Notification No 91 (RE-2013) / 2009-2014, 21st August, 2014, (DGFT)]**

3. CORPORATE

3.1 COMPANIES ACT, 2013: Schedule VII Amended, Slum Area Development Added As New CSR Activity

The Ministry of Corporate Affairs has amended the Schedule VII of the Companies Act, 2013. In Schedule VII, after the item (x), the following item and entry shall be inserted, namely:

“(xi) slum area development.

Explanation. For the purposes of this item, the term 'slum area' shall mean any area declared as such by the Central Government or any State Government or any other competent authority under any law for the time being in force.” [Notification dated 6th August, 2014, (MCA)]

3.2 COMPANIES ACT, 2013: Provisions in schedule II Regarding “useful life of an asset” Amended

The Ministry of Corporate Affairs has amended the Schedule II of the Companies Act, 2013 with regard to “useful life of an asset” for computing the depreciation. The amendment notification inter alia provides that the useful life of an asset shall not ordinarily be different from the useful life specified in Part C of the said Schedule II and the residual value of an asset shall not be more than five per cent, of the original cost of the asset. However, if a company decided to adopt a useful life different from what is specified in Part C or uses a residual value different from the limit specified above, the financial statements shall disclose such difference(s) and provide justification in this behalf duly supported by technical advice. [Notification S.O. 237(E), dated 29th August, 2014, (MCA)]

3.3 COMPANY LAW SETTLEMENT SCHEME 2014: Scheme Notified

Under section 403 and 460 of the Companies Act, 2013, Central Government has decided to introduce a Scheme namely “Company Law Settlement Scheme 2014” condoning the delay in filing the Annual Return and Financial Statements with the Registrar. By availing the Scheme, immunity from prosecution may be availed on the payment of a reduced additional fee of 25% of the actual additional fees payable as per section 403 read with Companies (Registration Offices and Fee) Rules, 2014 for filing those belated documents under the Companies Act, 1956/2013 and the Rules made thereunder. The details of the scheme are provided in the circular. [General Circular No. 34/2014, dated 31st August, 2014, (MCA)]

4. SECURITIES

4.1 LISTING AGREEMENT: Stock Exchanges Advised To Strengthen Monitoring Framework To Ensure Compliance With Corporate Governance Norms

The Securities and Exchange Board of India taking note of the fact that some listed companies belonging to a common group have held their AGM with a time gap of 15 minutes between two AGMs. Accordingly, the Stock Exchanges are advised to step up and equip monitoring framework and to ensure that requirements laid down by Principles of Corporate Governance in the revised Clause 49 of the Listing Agreement are followed which are scheduled to take effect from 1st October, 2014. [CIR/CFD/DIL/4/2014, dated 1st August, 2014 (SEBI)]

4.2 “OFFER FOR SALE”: Mechanism Modified

In order to expand the companies using Offer for Sale (“OFS”) mechanism and to encourage retail participation in OFS, SEBI has modified the OFS frameworks. Now, the OFS mechanism shall be available to top 200 companies by market capitalization in any of the last four completed quarters. Any non-promoter shareholder of eligible companies holding at least 10% of share capital may also offer shares through the OFS mechanism. Minimum 10% of the offer size shall be reserved for retail investors. Apart from this the conditions and framework laid down in the circular are also to be complied with. **[CIR/MRD/DP/ 24 /2014, dated 8th August, 2014 (SEBI)]**

4.3 SEBI (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS: Formats For Disclosure Revised

The format for continual disclosures under regulation 30(1) and 30(2) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (popularly known as SEBI Takeover Code) has been revised and is placed as Annexure-1 in the circular. **[CIR/CFD/POLICYCELL/5/2014, dated 25th August, 2014, (SEBI)]**

4.4 GRIEVANCE REDRESSAL MECHANISM: Information To Be Prominently Displayed

The Securities and Exchange Board of India has instructed that offices of all Stock Brokers (its registered Sub-Broker(s) and Authorized Person(s)) and Depository Participants shall prominently display basic information, as provided in Annexure-A, about the grievance redressal mechanism available to investors. For other intermediaries, the information as provided in Annexure-B shall be prominently displayed in their offices. The intermediaries shall take necessary steps to implement the provisions of this circular and ensure its full compliance in respect of all its offices on or before 60 days from the date of this circular. **[CIR/MIRSD/3/2014, dated 28th August, 2014, (SEBI)]**

4.5 “MATERIAL MISTAKE” IN TRADING INTERPRETED BY SAT: Trades, If Executed Negligently Or In Breach Of Duty Cannot Be Considered Material Mistake And Therefore Not Qualify For Annulment, SAT Holds

The case relates to orders entered by a dealer of Emkay on 5 October 2012, that had led to a flash-crash of over 900 points (fall of 15.5%) in the NSE's benchmark index Nifty, forcing the bourse to temporarily halt trading. Emkay had approached SAT after NSE refused to accept its request for annulment of the erroneous trades. SAT has upheld NSE's contention that norms related to trades on exchange should be inviolable to ensure sanctity of dealings on the exchange. If trades are executed due to negligence or breach of duty they cannot be considered material mistake and therefore not qualify for annulment. Material mistake in the trade' would be attributable to unforeseen circumstances, which vitiate sanctity of the trades executed on

exchange. [M/s. Emkay Global Financial Services Limited v. The National Stock Exchange of India Limited & Ors., dated 26th August, 2014, (SAT)]

4.6 ENTITLEMENT TO WITHDRAW PUBLIC OFFER: Failure On The part Of SEBI To Offer Its Comments On The Draft Letter Of Offer Within The Stipulated Time Does Not Entitle Appellants To Withdraw Public Offer, SAT Holds

The appellants made a request for withdrawal from public offer. The grounds were, there has been a delay of more than two years in approving the draft letter of offer which has frustrated the public offer, as otherwise regulation 18(2) of SAST provides for 21 days to approve the draft of the letter of offer. Secondly the public offer was made impossible because the promoters had encumbered the most valuable property of the company. SAT held that, SEBI was not justified in taking more than two years for approving the draft letter of offer, but in the facts of present case, grievance of appellants that the public offer is frustrated and has become impossible to perform, was not accepted. [Mr. Pramod Jain v. SEBI, dated 6th August, 2014 (SAT)]

4.7 APPLICABILITY OF JUDICIAL DISCIPLINE ON SEBI'S ADJUDICATING OFFICERS: Refusal On The Part Of The Adjudicating Officer To Consider Decision Of Another Adjudicating Officer Of SEBI Is Highly Improper, SAT Holds

Unless facts and circumstances set out in an order passed by Adjudicating Officer are materially different from the facts and circumstances of the case in hand, it would be just and proper for the Adjudicating Officer to follow the earlier order so that there is uniformity in the quasi-judicial orders passed by the Adjudicating Officers' of SEBI. [R.M. Shares Trading Private Limited. V. SEBI, dated 7th August, 2014. (SAT)]

4.8 SHARES & TAKEOVERS (SAST) REGULATIONS, 2011: Obligation To Make Disclosures Under Regulation 30(2) And 30(3) Of SAST Regulations, 2011 Is Mandatory Irrespective Of Declaration Under Regulation 8(2), SAT Holds

Regulations 30(2) and 30(3) of the Substantial Acquisition of Shares & Takeovers (SAST) Regulations, 2011 deal with "continual disclosures". The appellant failed to make disclosure of their aggregate shareholding and voting rights in the target company within 7 working days from end of financial year. The fact that declaration was made under regulation 8(2) does not absolve the appellants from making declaration under regulation 30(2) and 30(3). Also appellants were obliged to make declaration irrespective of the fact that there was trading in shares or not. [Vijay Jain & Ors. v. SEBI, dated 13th August, 2014, (SAT)]

5. COMPETITION

5.1 **ANTI-COMPETITIVE BEHAVIOUR: CCI Penalises Automobile Original Equipment Manufacturers**

The commission observed that the Original equipment Manufacturers (OEMs) are the sole supplier of genuine spare parts and diagnostic tools in the aftermarket. Therefore, for each make of an automobile the OEM is in a monopolistic position with respect to the supply of spare parts and repair and maintenance services. The OEMs also follow a policy where the warranty clauses on their brand of automobiles get absolutely cancelled if the automobile owner approaches an independent repairer or other repairers outside the official distribution network. OEMs thus adopt a rent-seeking behaviour where they substantially mark-up the price of their spare parts from the price at which such spare parts are procured. The OP's were held to have contravened the provision of Act by their anti-competitive practices and commission ordered for cease and desist, to put in place an effective system to make spare parts and diagnostic tools available, allow Original Equipment Suppliers (OESs) to sell spare parts in open market without restrictions, not to impose a blanket condition that warranties would be cancelled if the consumer avails of services of any independent repairer. Commission, further, imposed a penalty of 2% of total turnover in India of the opposite parties. [Shri Shamsher Kataria v. Honda Sael Cars India Ltd. & Ors., dated 25th August, 2014, (CCI)]

5.2 **CLASSIC EXAMPLE OF "EXCLUSIONARY CONDUCT": The Zero Transaction Fees Policy, By NSE, Is A Classic Example Of Exclusionary Conduct, COMPAT Holds**

The Competition Appellate Tribunal upheld an order passed against the NSE by the Competition Commission of India (CCI). In May 2011, CCI had found the NSE guilty of abusing its dominant position in stock market. A penalty of Rs 55.5 crore was imposed on the exchange for adopting unfair trade practices in currency derivatives (CD) trading. The appellate Tribunal rejected NSE's argument that relevant market for this case was "stock exchange services for CD Segment in India," and held that the definition of 'relevant market' should consider all stock exchange services. The CCI investigation was based on a 2011 complaint by rival exchange MCX-SX that had alleged that NSE was cross-subsidising its currency derivative (CD) segment through profits from other segments and using its dominant position to scuttle rivals. [The National Stock Exchange of India Ltd. v. CCI & MCX Stock Exchange Limited, dated 5th August, 2014, (COMPAT)]

6. INDIRECT TAXES

CUSTOMS

6.1 DUTY ON SUGAR: Duty On Raw As Well As Refined/White Sugar Increased

Notification No.12/2012-Cus dated 17.3.2012 amended, so as to increase duty of import on raw as well as refined/white sugar from 15% to 25%. [Notification No. 26/2014 - Customs, dated 21st August, 2014]

6.2 INTEREST ON DELAYED REFUND: 6% Rate Of Interest Fixed, To Be Paid On Delayed Refund Of Pre-Deposit Made Under Section 129E Of The Customs Act

The Central Government has fixed the rate of interest at 6% per annum to be paid on delayed refund of Pre-deposit made under Section 129E of the Customs Act, 1962. [Notification No. 70/2014 - Customs (N.T), dated 12th August, 2014]

6.3 SAFEGUARD DUTY ON SEAMLESS PIPES AND TUBES: Levied On Imports Of Seamless Pipes And Tubes

The Central Government has levied safeguard duty on imports of Seamless Pipes and Tubes into India for a period of two and half years at the following rate, namely:-

- a. 20% ad valorem when imported during the period from 13th August, 2014 to 12th August, 2015 (both days inclusive);
- b. 10% ad valorem when imported during the period from 13th August, 2015 to 12th August, 2016 (both days inclusive); and
- c. 5% ad valorem when imported during the period from 13th August, 2016 to 12th February, 2017. [Notification No. 02/2014 - Customs (SG), dated 13th August, 2014]

6.4 SAFEGUARD DUTY ON SATURATED FATTY ALCOHOLS: Levied On Imports Of Saturated Fatty Alcohols

The Central Government has levied safeguard duty on imports of Saturated Fatty Alcohols with carbon chain length of C8, C10, C12, C14, C16 and C18 including single, blends and unblended (not including branched isomers) which includes blends of a combination of carbon chain lengths, C12-C14, C12-C16, C12-C18, C16-18 and C14-C16 (commonly categorized as C12-C14), falling under sub-heading 2905 17 or 3823 70, for a period of two hundred days unless revoked at the rate of 20% ad valorem. [Notification No. 03/2014 - Customs (SG), dated 28th August, 2014]

6.5 EXEMPTION UNDER SECTION 25(2) OF THE CUSTOMS ACT, 1962: Guidelines Revised For Considering The Pending And Future Requests

Central Government has issued fresh guidelines for considering request for ad-hoc exemption from payment of Customs Duty under Section 25(2) of Customs Act, 1962 in cases involving circumstances of an exceptional nature like charitable purposes, medical purposes, etc. The said guidelines stipulate the form and manner for seeking the exemption from payment of Customs Duty. [Circular No. 09/2014 - Customs, dated 19th August, 2014]

6.6 ANTI-DUMPING DUTY ON IMPORTS OF “SODIUM NITRITE”: Levy Extended For A Further Period Of Five Years

The Anti Dumping Duty (“ADD”) levied on imports of sodium nitrite, falling under the tariff item 2834 originating in or exported from the European Union, has been extended for a further period of five years i.e. up to 8th August, 2019 unless revoked earlier. [Notification No. 37/2014 - Customs (ADD), dated 8th August, 2014]

6.7 ANTI-DUMPING DUTY ON IMPORTS OF “POLYPROPYLENE”: Levy Extended For A Further Period Of One Year

The Anti Dumping Duty (“ADD”) levied on imports of Polypropylene, falling under Chapter 39 of the First Schedule to the Customs Tariff Act originating in or exported from Singapore, has been extended for a further period of one year i.e. up to and inclusive of 29th July, 2015 unless revoked earlier. [Notification No. 38/2014 - Customs (ADD), dated 13th August, 2014]

6.8 ANTI-DUMPING DUTY ON IMPORTS OF “CEFTRIAXONE SODIUM STERILE”: Levied For A Period Of Five Years

The Anti Dumping Duty (“ADD”) levied on imports of Ceftriaxone Sodium Sterile, falling under the tariff items 2941 or 2942 originating in or exported from People's Republic of China, for a period of five years i.e. up to 14th August, 2019 unless revoked earlier. [Notification No. 39/2014 - Customs (ADD), dated 14th August, 2014]

6.9 RECOVERY PROCEEDINGS AGAINST ASSETS OF ANOTHER UNIT OF GROUP COMPANY, WHETHER PERMISSIBLE: Not Permissible U/S 142 In The Absence Of Evidence That Entire Import Was At Instance Of Group Companies, Holds Bombay HC

In this case Department issued a letter to the Secretary/ Chairman of Chhadva Premises Coop Society Limited directing them not to transfer the property rights as recovery of Govt. dues is pending from M/s Surlux Medicare. The parties were before the High Court seeking relief by way of writ under Article 226 of the Constitution of India. On perusal of the case, Hon'ble High Court observed that there was nothing to hold that there was a close connection or that

the entire import was at the instance of the Group Companies. It was held that the Petitioner No.1 which is stated to be owner of the asset could be deprived of its right, title and interest therein and particularly to transfer the flat in favour of the Petitioner Nos.2 and 3. The connection between the Petitioner Nos. 2 and 3 and with the alleged Group of Companies has not been established. Held that impugned communication of the revenue to prohibit transfer of property rights was not justified. Accordingly, writ petition allowed. [**Surlux Diagnostic Ltd. & Ors. v. Assistant Commissioner of Customs & Anr.**, dated 25th August, 2014 (Bombay HC)]

– CENTRAL EXCISE

6.10 INTEREST ON DELAYED REFUND: 6% Rate Of Interest Fixed, To Be Paid On Delayed Refund Of Pre-Deposit Made Under Section 35f Of The Central Excise Act

The Central Government has fixed the rate of interest at 6% per annum to be paid on refund of Pre-deposit made under Section - 35F of the Central Excise Act, 1944. [**Notification No. 24/2014 – Central Excise (NT)**, dated 12th August, 2014]

– SERVICE TAX

6.11 THE FINANCE (NO.2) ACT 2014: CLAUSES A, B, C OF THE SECTION 114 OF THE FINANCE (NO.2) ACT 2014 TO BECOME EFFECTIVE FROM 1st OCTOBER, 2014

1st October, 2014 has been notified as the date on which the following amendments brought in by the Finance (No. 2) Act, 2014 (clause A, B and C of section 114) come into effect:

- Services tax payable on services provided by radio taxis,
- Service tax payable on selling of space or time slots in internet websites, mobile advertisements, out-of-home media, bill boards, aerial advertising, etc.
- Delinking of rate of exchange for service tax from the Customs notified rates. [**Notification No. 18/2014 - Service Tax**, dated 25th August, 2014]

6.12 SERVICE TAX RULES AMENDED: A New Rule '11' Has Been Inserted Into The Service Tax Rules, 1994

A new rule 11 has been inserted in the Service Tax Rules, 1994 which provides that rate of exchange applicable shall be the rate of exchange as per generally accepted accounting principles on the date when point of taxation arises in terms of the Point of Taxation Rules, 2011. Further, rule 12 has been inserted empowering the CBEC and Chief Commissioners of

Central Excise to issue instructions for any incidental or supplementary matters for the implementation of the provisions of the Act. The said rules 11 and 12 shall come in to effect from 1st October, 2014. [Notification No. 19/2014 - Service Tax, dated 25th August, 2014]

6.13 RULE 5A(2) OF THE SERVICE TAX RULES, 1994 HELD ULTRA VIRES: Section 72A And Section 94(1) Of The Finance Act, 1994 By The Delhi High Court

Hon'ble Delhi High Court has quashed rule 5A(2) of the Service Tax Rules, 1994 that provided for a general audit by officers or by audit party designated by the Commissioner or the Comptroller and Auditor General of India ("CAG"). The only type of audit contemplated under section 72A of the Finance Act, 1994 was held to be the special audit to be conducted under specified circumstances only. Accordingly, the rule 5A was held ultra vires section 72A and section 94(1) of the Finance Act, 1994. [Travelite (India) v. UoI and Ors, dated 4th August, 2014 (Delhi HC)]

6.14 BENEFITS UNDER NOTIFICATION 1/2006-ST AND UNDER NOTIFICATION 6/2005-ST CAN BE SIMULTANEOUSLY AVAILED: CESTAT

In this case, the Learned Appellate Authority has confirmed the service tax demand along with interest thereon and also imposed penalties under the various provisions of the Finance Act, 1994. Aggrieved of the same, the appellant filed the Appeal before the Hon'ble Tribunal.

It was noticed by the Tribunal that if the benefit of the Notification 1/2006-ST is not considered while computing the exemption and eligibility limits under Notification 6/2005-ST, it would certainly result in taking away the benefit granted under Notification 6/2005. In this case during the period in dispute, a small scale exemption up to limit of Rs. 10 lakhs was available subject to the condition that during the preceding financial year, the value of taxable service rendered did not exceed Rs. 10 lakhs.

For computing the value of taxable services, Notification no. 1/2006-ST dated 01.03.2006 provides for abatement. In respect of the construction services undertaken by the appellant, the abatement is 67% and tax has to be paid on 33% of the value of the services rendered. If the abated value were taken into account, the turnover of the appellant during the preceding financial year did not exceed Rs.10 lakhs. Therefore, during the impugned period, the appellant was eligible for the small scale exemption. This aspect has been completely overlooked by the lower authorities. Accordingly, the Hon'ble Tribunal granted unconditional waiver of pre-deposit of the dues adjudged against the appellant and stayed the recovery thereof during the pendency of the appeal. [Dayalal Hiralal Patel v. CCE, Aurangabad, dated 11th August, 2014 (CESTAT)]

7. INTELLECTUAL PROPERTY RIGHTS

7.1 **BUSINESS IN ONE'S OWN NAME PERMISSIBLE, PROVIDED DONE IN BONAFIDE MANNER: Supreme Court On Section 35 Of The Trade Marks Act**

In the instant case Plaintiff/defendant claiming trade mark of their surname 'RAKYAN' filed a suit praying, inter alia, that the defendants/appellants should be restrained from doing their business in the name and style of 'NEENA AND RAVI RAKYAN'. By virtue of the impugned order, the defendants were restrained from doing their business in the concerned name. Without expressing any opinion, Hon'ble Supreme Court ("SC") was of the view that the interlocutory order passed by the Court below was not just and proper in view of the provisions of Section 35 of the Act. Section 35 of the Act permitted anyone to do his business in his own name in a bona fide manner. In the instant case, it was not in dispute that the defendants were doing their business in their own name and their bona fides was not disputed. It was also not in dispute that the plaintiff and appellants were related to each other and practically all the family members are in the business of jewellery. Looking at the provisions of Section 35 of the Act, SC held that there was no prima facie case in favour of the plaintiff and therefore, the defendants could not have been restrained from doing their business. [**Precious Jewels & Anr. v. Varun Gems**, dated 4th August, 2014 (Supreme Court of India)]

7.2 **ASSIGNOR/ORIGINAL PATENTEE DOES NOT COMPLAIN ABOUT USE OF TECHNOLOGY BY DEFENDANTS: Injunction Refused By Delhi High Court**

Plaintiff No.1 filed instant suit against defendants for injunction. Plaintiffs alleged that infringement of patent which was titled as "a method and a device for making a handover decision in a mobile communication system". Hon'ble Delhi High Court held that plaintiffs had not been able to establish prima facie case about patent of plaintiffs being violated by defendant Nos. 3 and 4 from evidence which was produced. Balance of convenience was not in favour of plaintiffs because assignor/original patentee, namely, Nokia Telecommunication as well as licensee to whom patented technology had been given to be commercially exploited by plaintiffs, had not chosen to complain about use of technology by defendant Nos.3 and 4, either prior to assignment or even after grant of license. [**Vringo Infrastructure Inc. & anr. v. Indiamart Intermesh Ltd. & Ors.**, dated 5th August, 2014 (Delhi HC)]

8. CONSUMER

8.1 **SURVEYOR'S REPORT HAS SIGNIFICANT EVIDENTIARY VALUE, UNLESS PROVED OTHERWISE: NCDRC Reiterates Settled Law**

This is an important document which was placed before the Commission, but the two lower fora, have not considered the report. Non-consideration of this important document has resulted in serious miscarriage of justice and vitiates the judgment passed by the lower fora. Theft had taken place and the complainant is entitled to the value assessed by the Surveyor. [M/s B. R. Exports v. United India Insurance Co. Ltd, dated 1st August, 2014, (NCDRC)]

8.2 COMPENSATION IN CASES OF FAILED STERILIZATION OPERATION ARISES ON ACCOUNT OF NEGLIGENCE OF THE SURGEON AND NOT BECAUSE OF CHILD BIRTH: NCDRC

There was no negligence in conducting the operation, it was laproscopic sterilisation. The doctor who performed the surgery has not committed breach of any duty cast on her, as a surgeon. The surgery was performed by a technique known and recognized by medical science. Having gathered the knowledge of conception in spite of having undergone sterilization operation, if the couple opts for bearing the child, it ceases to be an unwanted child. Compensation for maintenance and upbringing of such a child cannot be claimed. [Guru Teg Bahadur Hospital v. Babita, dated 7th August, 2014, (NCDRC)]

8.3 WHEN NATIONAL COMMISSION MAY REFUSE TO EXERCISE JURISDICTION UNDER SECTION 21(B) OF THE ACT: If Concurrent Findings Of Facts Given By The Fora Below And No Jurisdictional Or Legal Error Shown, Holds NCDRC

Interpreting Section 21 (B) of the Consumer Protection Act, 1986, the National Commission has held that it interfere with the order of the State Commission where such State Commission has exercised jurisdiction not vested in it by law, or has failed to exercise jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity. [Subhash S/o Bahadur Singh v. M/s Gautam Automobiles Pvt. Ltd, dated 8th August, 2014, (NCDRC)]

8.4 ACTION FOR DAMAGES FOR NEGLIGENCE: Burden Of Proof Rests Primarily On The Complainant, Holds NCDRC

In the instant case, NCDRC viewed it the bounden duty of patient-deceased to check the medicines before or while leaving the pharmacy. He should have showed the medicines, either to the doctor or the staff nurse or any on-duty Assistant doctor in OP-1 hospital. The patient should be prudent enough or alert while consuming medicines. [Consumer Protection Council v. Tiruchi Speciality Hospital, dated 11th August, 2014, (NCDRC)]

8.5 COMPLAINTS UNDER UNDER SECTION 125 TO 136 OF INDIAN ELECTRICITY ACT: Consumer Fora Have No Jurisdiction, Holds NCDRC

Cases falling within Sections 126 to 135 of Indian Electricity Act are not maintainable before Consumer Fora and consumer can take recourse, for redressal of his grievance before the appropriate Authority under Indian Electricity Act. Perusal of record revealed that demand had been raised on the basis of tampering of meter seals, which amounts to theft prima facie. [Nirmala Devi v. Punjab State Electricity Board, Patiala, dated 11th August, 2014, (NCDRC)]

8.6 A CONTRACT OF INSURANCE IS BASED UPON UTMOST GOOD FAITH: NCDRC Holds

There were clear violations by the Complainant of the terms and conditions of the insurance policy. Commission made it clear that merely accepting the premium did not amount to condoning the delay, particularly since the receipt issued while accepting the premium clarified that it was only an acknowledgment of the cash and cheque received and did not create any liability on ECGC of any kind whatsoever. [Export Credit Guarantee Corporation of India Ltd v. Pentagon Screws & Fasteners Ltd, dated 12th August, 2014, (NCDRC)]

8.7 ARRIVING AT “JUST COMPENSATION” IS THE DUTY OF THE CONSUMER FORA: NCDRC

Every method or mode adopted for assessing compensation has to be considered in the background of “just” compensation which is the pivotal consideration. Having regard to the age of both the parents and the Appellants, and the fact that claim was preferred by the Appellants as far as back as in the year 2000, the compensation paid by the fora below was enhanced by a further sum of Rs. 1,75,000. The case relates to appellants mother being engulfed by fire while lighting stove. It was established that the gas stove had a missing nozzle pin. [Vijay Kumar Barman & Ors. v. Baghela Gas Service & Ors., dated 29th August, 2014, (NCDRC)]

9. ENVIRONMENT

9.1 WRIT PETITIONS AGAINST GREEN TRIBUNAL'S ORDER: DISMISSED BY MADRAS HIGH COURT

Madras High Court has passed orders dismissing 18 writ petitions that challenged the order of National Green Tribunal (“NGT”) allowing the public works department (“PWD”) to continue its sand quarry operations in 18 places along the stretches of the Cauvery and Kollidam rivers, running along the districts of Karur, Trichy, Thanjavur, Tiruvarur and Nagapattinam. [The Times of India, dated 7th August, 2014]

9.2 MINISTRY OF ENVIRONMENT AND FORESTS SAYS “COAL IS MINERAL”: NGT Issues Notice To MoEF Against Its Such Determination

NGT has served notices on secretary, MoEF, GoI among others for labeling coal as mineral instead of a bio-resource product. Notices were served by green panel while hearing a petition by Chhindwara's Iklehra village panchayat and village biodiversity management committee that challenged ministry's decision and demanded 2% royalty on coal mined from the area. [The Times of India, dated 12th August, 2014]

9.3 CHECK AIR POLLUTION CONTROL DEVICES IN UTTARAKHAND: NGT To USPCB

Heeding a plea to check air pollution from industries in Uttarakhand, NGT has directed the State Pollution Control Board (“USPCB”) to inspect all air pollution control devices installed in iron and steel units in Jasodharpur Industrial Area (“JIA”) near Kotdwar. [The Times of India, dated 20th August, 2014]

9.4 PAY Rs. 24 LAKH FOR REFORESTATION: NGT Orders Developer

NGT has directed a developer to pay 24lakh within four weeks towards reforestation in connection with allegations of large-scale felling of trees to develop a property at Bethora, Ponda, for commercial profits. [The Times of India, dated 25th August, 2014]

9.5 DEVELOP GREEN BELT ON KHAN, SARASWATI RIVERS LIKE SABARMATI RIVER FRONT: NGT DIRECTS

NGT has directed to develop green belt along the Khan and Saraswati rivers on lines with Thames river in London or Sabarmati river front in Ahmedabad, Mula or Mutha river developed in the cultural capital of Maharashtra - Pune. The direction of NGT has come as a result of petition filed by social activist about bringing back Khan and Saraswati rivers, flowing through the city, to life. The rivers have virtually been turned into nallahs with sewer water from all corners of the city being discharged into them. [The Times of India, dated 28th August, 2014]

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