

1. **RBI & FEMA**
2. **Foreign Trade**
3. **Corporate**
4. **Securities**
5. **Competition**
6. **Indirect Taxes**
  - a. **Customs**
  - b. **Central Excise**
  - c. **Service Tax**
7. **Intellectual Property Rights**
8. **Consumer**
9. **Environment**

## RBI/FEMA

### 1. STATUS HOLDERS TO BE ENTITLED TO EXPORT FREELY EXPORTABLE ITEMS ON FREE OF COST BASIS FOR EXPORT PROMOTION

The Government of India vide amendment Notification No. 9/2015-2020 dated June 4, 2015, has notified that the Status Holders shall be entitled to export freely exportable items on free of cost basis for export promotion subject to an annual limit of Rs. 10 lakh or 2% of average annual export realization during preceding three licensing years whichever is lower.

The abovementioned facility had been extended to the Status Holders vide para 2.52.1 of Handbook of Procedures- Vol-I of Foreign Trade Policy 2004-2009.

In this regard, the Reserve Bank of India (RBI) has instructed AD Category – I banks to consider requests from Status Holder exporters for grant of Export Declaration Form (EDF) waiver, for export of goods free of cost based on the revised norm. The directions have been issued under Section 10(4) and Section 11(1) of the FEMA Act, 1999. - **[A.P. (DIR Series) Circular No. 53, dated 3rd March, 2016]**

### 2. APPLICATION OF MINIMUM CAPITAL ADEQUACY NORMS TO STATE AND CENTRAL COOPERATIVE BANKS (STCBS/DCCBS) REVIEWED

On a review of extant instructions on items eligible for inclusion in Tier I and Tier II capital, RBI has decided to permit State and Central Cooperative Banks to also include the following items under Tier I capital:

- (i) Contributions received from associate / nominal members where the bye-laws permit allotment of shares to such members and provided there are restrictions on withdrawal of such shares as applicable to regular members.
- (ii) Contribution / non-refundable admission fees collected from the nominal and associate members which are held separately as 'Reserves' under appropriate head are not refundable.
- (iii) Outstanding amount in Special Reserve created under Section 36(1) (viii) of the Income Tax Act, 1961 if the bank has created Deferred Tax Liability (DTL) on this Reserve.

These instructions are applicable from financial year i.e. April 1, 2015. - **[DCBR. CO. RCBD. Cir. No. 12/19.51.012/2015-16, dated 10th March, 2016]**

### 3. RISK WEIGHTS ASSIGNED TO SOVEREIGN DEBT HAS BEEN REVIEWED

Based on the representations received from the industry, the risk weights assigned to exposures to domestic sovereigns have been reviewed and RBI has decided that deposit accepting NBFCs, systemically important non-deposit taking NBFCs, all NBFC-MFIs and all NBFC-IFCs are required to maintain a

MARCH 2016

minimum capital ratio consisting of Tier I and Tier II capital which shall not be less than 15 per cent of its aggregate risk weighted assets on-balance sheet and of risk adjusted value of off-balance sheet items. The risk weights assigned are as under:

**A. Exposures to Central Government:**

- (i) Fund based and non-fund based claims on the Central Government will attract a zero risk weight.
- (ii) Central Government guaranteed claims will attract a zero risk weight.

**B. Exposures to State Government:**

- (i) Direct loan/ credit/ overdraft exposure and investment in State Government securities will attract zero risk weight.
- (ii) State Government guaranteed claims, which have not remained in default, will attract 20 per cent risk weight. However, if the loans guaranteed by the State Government have remained in default for a period of more than 90 days, a risk weight of 100% should be assigned.

***-[DNBR (PD) CC. No. 076/03.10.001/2015-16, dated 10th March 2016]***

**4. DISCONTINUATION OF SUBMISSION OF REPORT PERTAINING TO NEFT TRANSACTIONS BY WALK-IN CUSTOMERS**

Vide Para 7 of the circular DPSS. CO. EPPD No. 1583/04.03.01/2013-14 dated January 21, 2014 banks were advised to submit data pertaining to NEFT transactions by walk-in customers (i.e. those not having an account with the bank) in a prescribed format on a quarterly basis starting from quarter ended March 31, 2014.

RBI has discontinued the requirement of submission of the report by member banks, from the quarter ended March 31, 2016. However, banks are advised

to maintain such data at their end in case RBI calls for ad-hoc reports regarding the data for NEFT transactions by walk-in customers. ***-[DPSS. CO. EPPD No. 2157/04.03.01/2015-16, dated 17th March, 2016]***

**5. REVISED FRAMEWORK FOR REVIVAL AND REHABILITATION OF MICRO, SMALL AND MEDIUM ENTERPRISES (MSMES) NOTIFIED**

In order to provide a simpler and faster mechanism to address the stress in the accounts of MSMEs and to facilitate the promotion and development of MSMEs, the Ministry of Micro, Small and Medium Enterprises, Government of India, vide its Gazette Notification dated May 29, 2015 had notified a 'Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises'.

Certain changes in the captioned framework have been carried out in consultation with the Government of India, Ministry of MSME in order to make it compatible with the existing regulatory guidelines on 'Income Recognition, Asset Classification and provisioning pertaining to Advances' issued to banks by RBI. Accordingly, a revised Framework along with operating instructions has been notified by the RBI. ***-[FIDD. MSME & NFS. BC. No. 21/06.02.31/2015-16, dated 17th March, 2016]***

**6. STANDALONE PRIMARY DEALERS PERMITTED TO PARTICIPATE IN EXCHANGE-TRADED CURRENCY FUTURES ON APPROVED STOCK EXCHANGES**

RBI has issued guidelines permitting stand-alone Primary Dealers (PDs) to deal in the currency futures contracts traded on recognized stock exchanges subject to certain conditions including adherence to certain risk control measures and without diluting

MARCH 2016

their existing obligations in the Government-securities market.

As per these guidelines, RBI said exposure to currency futures will be treated as a non-core activity for PDs and only those who have a minimum net owned fund of Rs. 250 crore will be allowed to participate in currency futures.

Further, among other conditions, PDs are permitted to take part in the currency futures market either as clients or direct trading/clearing members of the currency derivatives segment of the stock exchanges recognised by SEBI. *-[FMRD. FMD. No. 02.03.183/7/2015-16, dated 17th March, 2016]*

## 7. EXTENSION OF VALUE-ADDED SERVICES THROUGH ATMS

With a view to provide operational freedom to banks, RBI has permitted Primary (Urban) Co-operative Banks and State Co-operative Banks to offer all their products and services through the ATM channels, provided the technology permits the same and adequate checks are put in place to prevent the channel from being misused to perpetrate frauds on the banks / other genuine customers. *-[DCBR. CO. BPD. BC. No. 13/19.51.008/2015-16, dated 23rd March, 2016]*

## 8. DISCONTINUATION OF SUBMISSION OF STATEMENTS TO RBI AT THE TIME OF OPENING OF DIAMOND DOLLAR ACCOUNT

Vide Master Direction on Reporting under FEMA, 1999, as updated from time to time, banks were advised by RBI to submit quarterly reports giving details of the name and address of the firm/company in whose name the Diamond Dollar Account is opened along with the date of opening / closing the Diamond Dollar Account to Chief General Manager-in-Charge, Foreign Exchange

Department, Reserve Bank of India, Trade Division, Amar Building, Mumbai – 400 001.

Further, in terms of Part IX, Para 1(f) of the Master Direction *ibid*, Banks were also required to submit fortnightly statements giving data on DDA balances maintained by them to the Reserve Bank at the abovementioned address.

Now with a view to liberalizing the procedure, it has been decided by RBI to dispense with the abovementioned requirements with immediate effect. However, banks may maintain the above database at their own end and make available the same as and when called upon by the Reserve Bank of India. *-[A.P. (DIR Series) Circular No. 54, dated 23rd March, 2016]*

## 9. INVESTMENT LIMIT OF FOREIGN PORTFOLIO INVESTORS IN CENTRAL GOVERNMENT BONDS HAS BEEN INCREASED

RBI has increased the investment limit of foreign portfolio investors (FPIs) in Central Government's bonds to Rs. 2 lakh crore, from the existing limit of Rs. 1,79,500 crore, in two tranches by July 5, 2016.

FPIs can only invest in securities that have a residual maturity of three years. Even so, foreign investors have exhausted their limits in government securities, indicating the huge appetite for these bonds.

In addition to the Central Government's bonds, FPIs can also invest up to Rs. 14,000 crores in State Development Loans (earlier this limit was Rs. 7,000 crores). Including the long-term investors, FPIs' limits in Central Government and State Government Securities go up to Rs. 2,14,000 crore from Rs. 1,86,500 crores now.

The above limits increased with effect from April 4, 2016 and July 5, 2016 respectively. These directions have been issued under sections 10(4) and 11(1) of

MARCH 2016

the Foreign Exchange Management Act, 1999 (42 of 1999) -[A.P. (DIR Series) Circular No. 55, dated 29th March, 2016]

## 10. EXTERNAL COMMERCIAL BORROWINGS (ECB) GUIDELINES REVISED

Taking into account prevailing external funding sources, particularly for long term lending and the critical needs of infrastructure sector of the country, the extant ECB guidelines have been reviewed by the RBI in consultation with the GoI.

Accordingly, RBI has decided to make the following changes in the ECB framework:

- (i) Companies in infrastructure sector, Non-Banking Financial Companies - Infrastructure Finance Companies (NBFC-IFCs), NBFCs-Asset Finance Companies (NBFC-AFCs), Holding Companies and Core Investment Companies (CICs) will also be eligible to raise ECB under Track I of the framework with minimum average maturity period of 5 years, subject to 100 per cent hedging.
- (ii) For the purpose of ECB, "Exploration, Mining and Refinery" sectors which are not included in the Harmonised list of infrastructure sector but were eligible to take ECB under the previous ECB framework (c.f. A.P. (DIR Series) Circular No. 48 dated September 18, 2013) will be deemed as in the infrastructure sector, and can access ECB as applicable to infrastructure sector under (i) above.
- (iii) Companies in infrastructure sector shall utilize the ECB proceeds raised under Track I for the end uses permitted for this Track. NBFCs-IFCs and NBFCs-

AFCs will, however, be allowed to raise ECB only for financing infrastructure.

- (iv) Holding Companies and CICs shall use ECB proceeds only for on-lending to infrastructure Special Purpose Vehicles (SPVs).
- (v) The individual limit of borrowing under the automatic route for aforesaid companies shall be as applicable to the companies in the infrastructure sector (currently USD 750 million).
- (vi) Companies in infrastructure sector, Holding Companies and CICs will continue to have the facility of raising ECB under Track II of the ECB framework.

The directions has been issued under section 10(4) and 11(2) of the Foreign Exchange Management Act, 1999 (42 of 1999) -[A.P. (DIR Series) Circular No.56, dated 30th March, 2016]

## 11. FDI LIMIT INCREASED IN INSURANCE SECTOR

Limit of foreign direct investment has been enhanced in insurance sector from 26 to 49 percent under the automatic route subject to certain terms and conditions which have been notified through Notification No. FEMA. 366/2016-RB dated March 30, 2016. -The directions have been issued under section 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999). -[A.P. (DIR Series) Circular No.58, dated 31st March, 2016]

## 12. RBI EASES NORMS FOR DIAMOND IMPORTS

To ease the operational difficulties faced by importers, RBI has allowed banks to approve clean



MARCH 2016

credit facility given by foreign supplier to Indian importers of rough, cut and polished diamonds, even beyond 180 days. At present the banks are permitted to approve clean credit to Indian importers for a period not exceeding 180 days. However, the permission comes with some strict conditions as specified in the circular. **-[A.P. (DIR Series) Circular No. 57, dated 31st March, 2016]**

\*\*\*\*\*

## FOREIGN TRADE

### 1. AMENDMENT TO THE LIST OF AGENCIES WHICH ARE AUTHORIZED TO ISSUE GENERALIZED SYSTEM OF PREFERENCES (GSP)

In exercise of powers conferred under paragraph 2.04 of the Foreign Trade Policy 2015- 2020, the Director General of Foreign Trade (DGFT) made amendment to the list of agencies authorized to issue Generalized System of Preferences (GSP) Certification to include Tobacco Board. According to the notification, the Tobacco Board, Guntur is empowered to issue GSP Certificate for tobacco and tobacco products. **-[Public Notice No. 63/2015-2020, 7th March, 2016, (DGFT)]**

### 2. NEW STANDARD INPUT OUTPUT NORMS UNDER CHEMICAL AND ALLIED PRODUCT GROUP NOTIFIED

DGFT has notified new Standard Input Output Norms (SION) for export products falling under the Chemicals and Allied Products Group. The detailed list of new SION numbers with product names, export quantity and quality can be found in the notice. **-[Public Notice No. 64/2015-2020, 17th March, 2016, (DGFT)]**

### 3. CORRECTION IN FOCUS PRODUCT SCHEME (FPS) FOR “OTHER BRAKES

### AND SERVO BRAKES AND PART THEREOF”

The HS code 87082900 which was wrongly mentioned prior to 25.2.2014 for “Other-Brakes and Servo Brakes and Part thereof” was rectified in Public Notice No. 52 dated 25.2.2014. However, as the intention was to incentivise “Other-Brakes and Servo Brakes and Part thereof”, the matter was reviewed and it was decided that Focus Product Scheme (FPS) benefit can be granted for export of item with description “Other-Brakes and Servo Brakes and Part thereof” either under ITC HS code 87083000 or 87082900, if exported prior to issuance of Public Notice No.52 dated 25.2.2014.

However, if FPS benefit has been granted by any Regional Authorities on the basis of ITC HS code 87082900 alone, where the description is other than “Other-Brakes and Servo Brakes and Part thereof”, such cases need to be reviewed by RA and if it is found that the same has been wrongly granted, recovery should be made by RAs. **-[Public Notice No. 65/2015-2020, 18th March, 2016, (DGFT)]**

### 4. ALLOCATION OF ADDITIONAL QUANTITY FOR EXPORT OF SUGAR TO USA UNDER TARIFF RATE QUOTA

DGFT has allocated an additional quantity of 723 MTs of raw cane sugar to be exported to USA under Tariff Rate Quota (TRQ) upto 30.09.2016. **-[Public Notice No. 66/2015-2020, 21st March, 2016, (DGFT)]**

### 5. RECONSTITUTION OF BOARD OF TRADE (BOT)

It has been decided by the DGFT, Ministry of Commerce & Industry under as per Para 300 of Foreign Trade Policy Statement 2015-2020 to

MARCH 2016

reconstitute the Board of Trade. The objective is to have continuous discussion and consultation with trade and industry and advise the Government on policy measures related to Foreign Trade Policy. The circular notifies the terms of reference and members appointed to the board. The Minister for Commerce and Industry will be the Chairperson. *-[Trade Notice No. 21/2015, 23rd March, 2016, (DGFT)]*

## 6. TEXTILE COMMITTEE TO ISSUE CERTIFICATE OF ORIGIN (COO) UNDER VARIOUS FREE TRADE AGREEMENTS/PREFERENTIAL TRADE AGREEMENTS

List of Agencies Authorized to Issue Certificate of Origin (COO) (Preferential) has been revised by the DGFT to include Textile Committee for issuing COO under 11 Free/Preferential Trade Agreements. *[Public Notice No. 67/2015-2020, 30th March, 2016, (DGFT)]*

## 7. CLARIFICATIONS ON TRADE FACILITATION MEASURES ISSUED

It has been clarified by DGFT that as per Trade Notices No. 12/2015 and No. 14/2015, the objective was to enable and encourage members to communicate through IT enabled and efficient methods with DGFT offices and it was never the intention that a person is to be denied an opportunity to meet with an officer in any DGFT office, if the applicant desires to have his concerns addressed. If the head of the office or an officer of Joint DGFT rank or above is not available at that time, he or she may meet the senior most officers available in the office.

It has been decided that there will be an open house for applicants between 2.30 PM and 3.30 PM on every Wednesday in all RA offices to address

pending issues of applicants. To the extent possible the Head of Office will preside over the open house. *-[Trade Notice No. 22/2015, 31<sup>st</sup> March, 2016, (DGFT)]*

\*\*\*\*\*

## CORPORATE

### 1. COMPANIES (SHARE CAPITAL AND DEBENTURES) RULES, 2014 HAVE BEEN FURTHER AMENDED

SEBI has notified new norms whereby entities can take into consideration unaudited accounts, that have been subject to limited review by auditors while making calculation for buyback offers. The circular dated 10th March reads as “where the audited accounts are more than six months old, the calculations with reference to buyback shall be on the basis of unaudited accounts not older than six months from the date of offer document which are subjected to limited review by auditors of the company.”

Earlier only audit accounts that were not older than six months from the date of offer document were to be considered for making the calculations for shares buyback and other securities.

A further addition to rule 17(5) has been made which provides that if all members agree to the proposal, the offer for buy back may remain open for a period not less than fifteen days. *-[Ministry of Corporate Affairs Notification, 10th/29th March, 2016]*

### 2. COMPANIES (INCORPORATION) SECOND AMENDMENT RULES, 2016

MARCH 2016

New format for Form No. INC-11, "Certificate of Incorporation", has been notified. *-[Ministry of Corporate Affairs Notification, 23rd March, 2016]*

### 3. NEW MCA-21 PORTAL LAUNCHED FOR FILING OF DOCUMENTS

Seeking to improve the delivery of services MCA has launched a new MCA-21 portal which allows electronic filings of various documents under Companies Act, the MCA has launched new portal.

One of the main features of MCA-21 is to shift company registration process to Central Registration Centre (CRC). The CRC established vide notification dated 22nd January 2016 will exercise functional jurisdiction of processing and disposal of e-forms and all related matters pertaining to registration of companies.

The CRC shall process forms pertaining to registration of companies *i.e.* e-forms INC-2 (incorporation of one person company), INC-7 (incorporation of private limited company) and INC- 29 (integrated incorporation) along with linked forms INC-22 (to declare registered office), DIR-12 (appointment of directors) and URC-1 (for registration under section 366) and any other forms as may be notified by the Central Government filed along with the prescribed fee.

For the new MCA-21 portal company e-forms have been revised to make them compatible. The previous e-forms will not be compatible with MCA-21. The latest version of the forms is there for download from the website under the head 'Company Forms Download'.

The following e-Forms are not available in the new MCA-21 portal temporarily:

1. **CRA 4** - Form for filing Cost Audit Report with the Central Government.
2. **23 C** - Form of application to the Central Government for appointment of cost auditor.
3. **23 D** - Information by cost auditor to Central Government
4. **I-XBRL** - Form for filing XBRL document in respect of cost audit report and other documents with the Central Government
5. **A-XBRL** - Form for filing XBRL document in respect of compliance report and other documents with the Central Government
6. **Refund** - Application for requesting refund of fees paid.
7. **23 AC** - Form for filing balance sheet and other documents with the Registrar
8. **23 AC- XBRL** - Form for filing XBRL document in respect of balance sheet and other documents with the Registrar
9. **23 ACA** - Form for filing Profit and Loss account and other documents with the Register
10. **23 ACA-XBRL** - Form for filing XBRL document in respect of Profit and Loss account and other documents with the Registrar
11. **20B** - Form for filing annual return by a company having a share capital with the Registrar
12. **Form 66 (Until FY 2014)** - Form for submission of compliance certificate with the Registrar.
13. **21 A** - Particulars of annual return for the company not having share capital
14. **23 B** - Information to the Registrar by company for appointment of auditor

The following new e-forms will come into effect immediately:

- (a) CHG-8 (previously attachment)
- (b) INC-12 (previously attachment)
- (c) Investor Complaint e-form



MARCH 2016

(d) Serious Complaint e-form.

The following new e-forms will come into effect from the date of notification (to be notified later):

(a) **IEPF-1** - Statement of amounts credited to Investor Education and Protection Fund;

(b) **IEPF-2** - Statement of unclaimed or unpaid amounts;

(c) **IEPF-3** - Statement of shares and unclaimed or unpaid dividend not transferred to the Investor Education and Protection Fund;

(d) **IEPF-4** - Statement of shares transferred to the Investor Education and Protection Fund;

(e) **IEPF-5** - Application to the Authority for an order for payment of dividend etc. out of the Fund;

(f) **IEPF-6** - Statement of shares and unclaimed or unpaid amounts to be transferred to the Investor Education and Protection Fund.

A new Service 'Upload Details of Security Holders/Debenture Holders/Depositors' has been introduced for uploading relevant details of Security Holders/Debenture Holders/Depositors for forms MGT-7, PAS-3 and DPT-4 in excel instead of submitting CD to concerned RoC office. These forms will not be approved if details are not uploaded using this service.

The following e-forms are withdrawn:

(a) **1INV** - Statement of amounts credited to investor education and protection fund.

(b) **5INV** - Statement of unclaimed and unpaid amounts.

(c) **Investor Complaint Form** – a new version has been released. *-[Ministry of corporate Affairs, 27th March, 2016]*

\*\*\* \*\*

## SECURITIES

### 1. CLARIFICATION ON APPLICABILITY OF INDIAN ACCOUNTING STANDARDS TO DISCLOSURES IN OFFER DOCUMENTS UNDER SEBI (ICDR) REGULATIONS, 2009

ICDR regulation requires disclosure of financial information for five years preceding the filing of offer document. Ministry of Corporate Affairs has notified the roadmap for implementation of Indian Accounting Standard beginning 2016-17. To align the two and have the disclosure of financial information in accordance with Indian AS in the offer document, the circular prescribes filing of offer document upto 31st March, 2017, the all five preceding statements of financial information can be in Indian Generally Accepted Accounting Practice (GAAP).

If the offer document is filed between 1st April 2017 and 31st March, 2018 only the financial statements of 5th and 4th year can be in Indian GAAP while the three latest statements have to be in accordance with Indian AS.

The same is the case with offer document filed between 1st April 2018 and 31st March 2019. For offer document filed between 1st April 2019 and 31st March 2020 only the statement of 5th year can follow Indian GAAP while the latest four have to adhere to Indian AS and by 1st April, 2020 all five preceding statements have to be in accordance with Indian AS.

The circular provides the issuer of offer document the discretion to present statements for all the five year period using Indian AS framework. The issuer company shall clearly disclose the fact that the financial information has been disclosed in



MARCH 2016

accordance with Indian AS while suitably explaining the difference between Indian AS and the previously applicable accounting standards, and the impact of transition to Indian Accounting Standards as envisioned in para 22 of Indian AS 101 on first time adoption of Indian Accounting standard.

The issuer company shall also provide transitional disclosures in compliance with para 23 to 26 of Indian AS 101 in the annual financial statements and in para 32 of Indian AS 101 in the interim financial statements presented in the offer document.  
**[SEBI/HO/CFD/DIL/CIR/P/2016/47, 31st March, 2016, (SEBI)]**

## 2. INVESTMENT LIMITS IN GOVERNMENT DEBT FOR FPIs ENHANCED

It has been decided by SEBI that there shall be Enhanced investment limits for Foreign Portfolio Investor(s) FPIs in government debt for next half year. Accordingly the revised FPI debt limits would be as follows:

Type of Instrument	Present Upper Cap (INR cr)	Revised Upper Cap with effect from April 04, 2016 (INR cr)	Revised Upper Cap with effect from July 05, 2016 (INR cr)
Government Debt	135,400	140,000	144,000
Government	44,100	50,000	56,000

Debt – Long Term			
State Development Loans	7,000	10,500	14,000
<b>Total</b>	<b>186,500</b>	<b>200,500</b>	<b>214,000</b>

- (i) The free limit as on 3<sup>rd</sup> April, 2016 within Rs. 1,35,400 government debt limit combined with the enhanced new debt limit of Rs.4,600 shall be auctioned off on exchange platform on 4<sup>th</sup> April. A similar auction of government debt worth Rs 5,035 cr was conducted on exchange platform on 28<sup>th</sup> March, 2016. The circular states that any unutilised limits from auction held on 28<sup>th</sup> march and 4<sup>th</sup> April and also made available through sale/redemption of securities by FPIs would be auctioned off on 25<sup>th</sup> April, 2016.
- (ii) The incremental limits of INR 5,900 cr and INR 6,000 cr for Long Term FPIs shall be available for investment on tap with effect from April 04, 2016 and July 05, 2016 respectively.
- (iii) The incremental limits of INR 3,500 cr each for investment by FPIs in SDLs shall be available for investment on tap with effect from April 04, 2016 and July 05, 2016 respectively.
- (iv) Further, keeping in view the extent of utilisation of the limits for Central Government securities by long term and other investors, it has been decided that from the next half-year onwards i.e. from October 01, 2016, any unutilised limit within the Government debt limit for Long Term FPIs, at the end of the half-year, shall be made available for investment as additional limit to all categories of FPIs for the subsequent half-year. -  
**[IMD/FPIC/CIR/P/2016/45, 29th March, 2016, (SEBI)]**

### 3. CIRCULAR ON MUTUAL FUND ISSUED

#### A. Consolidated Account Statement (CAS):

CAS which at present provides information in terms of name of schemes where investors has invested, number of units held and its market value shall now, also provide total cost of investment in each scheme. Further CAS issued half-yearly shall also contain the amount of commission paid by AMCs/MFs to distributors during the half year period against the concerned investor's total investment in each MF scheme and the scheme's average total expense ratio. The circular mandates that such CAS shall be issued to all MF investors, excluding those where no commission against their investment has been paid to distributors.

**B. Enhancing Scheme Related Disclosures:** MFs shall provide the name of the schemes fund manager along with the duration he/she has been managing the scheme. Top 10 holdings by issuer and fund allocation towards various sectors along with a website link to obtain scheme's latest monthly portfolio holding. Scheme's expense ratio and portfolio turnover ratio. Scheme Information Document (SID) shall also contain information about the AMC's board of directors, concerned schemes fund managers and other key managerial personnel. SID shall also contain Illustration of impact of expense ratio on scheme's returns. MFs are also mandated to host information pertaining to each scheme managed by AMC on their website.

**C. Disclosure of Executive Remuneration:** MFs/AMCs are also obliged to disclose name and remuneration given to CEO, CIO and COO. Further, the name, designation and remuneration of employees receiving annual salary equivalent or above INR 60 lakh and monthly salary exceeding INR 5 lakh per month if employed for part of the

financial year. Also required is ratio of CEO's remuneration to median remuneration.

**D. Internal Credit Risk Assessment:** In order to ensure that MFs / AMCs are able to carry out their own credit assessment of assets and reduce reliance on credit rating agencies, all MFs/ AMCs are required to have an appropriate policy and system in place to conduct an in-house credit risk assessment / due diligence before investing in fixed income products.

**E. Deployment of NFO proceeds in Collateralized Borrowing and Lending Obligation (CBLO):** MFs can deploy New Fund Offer (NFO) proceeds in CBLO before the closure of NFO period but without charging any investment management and advisory fees on funds deployed. The appreciation received from investment in CBLO shall be passed on to investors.

**F. Soft Dollar Arrangement:** Which entails AMC executing trades through a particular broker with him providing free research, hardware, software and non research related services. Any such arrangement has to be disclosed and limited only to benefits of investor.

**G. Submission of MCR:** Monthly Cumulative Report shall be submitted to SEBI by 3rd working day of each month. This circular is issued to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

Part A of the circular shall be effective from 1st October while rest of the parts from 1st April, 2016. *-[SEBI/HO/IMD/DF2/CIR/P/2016/42, 18th March, 2016, (SEBI)]*

#### 4. SECURITIES AND EXCHANGE BOARD OF INDIA (INTERNATIONAL FINANCIAL SERVICE CENTRE) GUIDELINES, 2015 – INCLUSION OF COMMODITY DERIVATIVES

The Finance Act, 2015 has amended Securities Contracts (Regulation) Act, 1956 to include "Commodity Derivatives" as securities. Further, "Commodity Derivatives" shall be eligible as securities for trading and the stock exchanges operating in IFSC may permit dealing in Commodity Derivatives. *-[CIR/MRD/DSA/41/2016, 17th March, 2016, (SEBI)]*

#### 5. INVESTMENT BY FPIs IN REAL ESTATE INVESTMENT TRUSTS, INFRASTRUCTURE INVESTMENT TRUSTS, ALTERNATE INVESTMENT FUNDS AND CORPORATE DEBT UNDER DEFAULT

SEBI has allowed Foreign Portfolio Investors (FPIs) to invest in units of Real Estate Investment Trusts (REITs) and InvIts (Infrastructure Investment Trusts) and Category-III Alternative Investment Funds (AIFs). It is done to attract funds into country's real estate and infrastructure segments. Besides, SEBI has allowed FPIs to invest in Category-III Alternative Investment Fund (AIF) - a class of pooled-in investment vehicles for real estate, private equity and hedge funds. FPI will not hold more than 25 per cent stake in such AIFs.

SEBI has also allowed FPIs to acquire Non-Convertible Debentures/bonds, which are under default, either fully or partly, in the repayment of principal on maturity or principal instalment in the case of an amortising bond. Such bonds restructured based on negotiations with the issuing Indian

company will have a minimum revised maturity of three years. The FPIs will have to disclose to the debenture trustees, the terms of their offer to the existing debenture holders /beneficial owners of such bonds under default, from whom they propose to acquire. All investments by FPIs in such bonds shall be within the extant corporate debt limit of INR 244,323 cr. *-[CIR/IMD/FPIC/39/2016, 15th March, 2016, (SEBI)]*

#### 6. INTRODUCTION OF NEW EXCHANGE TRADED CROSS CURRENCY DERIVATIVES AND EXCHANGE TRADED OPTIONS CONTRACT

Detailed guidelines have been issued by RBI that would enable exchanges to launch cross-currency future contracts involving the Euro, Japanese yen and the Pound sterling. Currently futures contracts are available only for currency pairs that have the rupee as one leg. For futures contracts in cross-currencies, 12 standardized monthly contracts will be made available to investors and the contracts will be settled in cash (rupees).

The open position limit across all contracts should not exceed 15% of the total open interest for each cross-currency pair. The existing position limits of \$5 million per exchange for non USD-INR contracts, all put together, for residents and FPIs, without having to establish underlying exposure, shall remain unchanged.

The final settlement price of the cross-currency derivatives contracts shall be computed using the RBI (Reserve Bank of India) reference rate for USD-INR and the corresponding exchange rate published by RBI for EUR-INR, GBP-INR and JPY-INR, as applicable, on the last trading day of the contract. Open positions for FPIs are limited to 6% of the total open positions across all contracts. Exchanges

MARCH 2016

can levy appropriate margins on investors, the regulator said, adding that margins would be collected in rupees. The trading session for currency derivatives has also been extended. It is from 9 AM to 7:30 PM from now on.

Exchanges would also launch options contracts of euro-rupee, yen-rupee and pound sterling-rupee. Currently, options contract for only a single currency pair—dollar/rupee—is available. In options contracts, premium style European call and put options will be allowed. The trading session for options have been retained at 9am to 5pm. Three serial monthly contracts followed by three quarterly contracts will be launched. -  
**[SEBI/HO/MRD/DP/CIR/P/2016/000000003  
8, 9th March, (SEBI)]**

\*\*\*\*\*

## COMPETITION

### 1. COMPETITION COMMISSION OF INDIA HAS THE JURISDICTION TO ENTERTAIN COMPLAINTS FOR ABUSE OF DOMINANT POSITION BY A PATENT HOLDER

The question, in the instant case, before the Delhi High Court was whether Competition Commission of India has the jurisdiction to commence any proceeding in relation to a claim of royalty by a proprietor of a patent.

Ericsson argued that any claim against the fairness of royalty has to be dealt under the Patent Act and not questioned under Competition Act. The Judge ruled that there is no “irreconcilable repugnancy” between the Patent Act and the Competition Act and the jurisdiction of Competition Commission to

investigate “complaints for abuse of dominance in respect of Patent rights” cannot be ousted.

This case forms part of the long pending smart phone wars where complaints for violation of patents has been filed by Ericsson who holds number of Standard Essential Patents seeking injunction against mobile phone manufacturers like Micromax, Iball, Intex and Xiaomi.

In response the manufacturers had approached Competition Commission of India pleading abuse of dominance by Ericsson which has tried to extract higher royalty rates under the threat of injunction, refused to disclose licensing terms despite FRAND commitment and aggressively enforcing their patents to force parties to effectively settle on unfavourable and inequitable licensing terms. CCI *prima facie* concluded abuse of dominance on part of Ericsson and ordered Director General to investigate.

Ericsson approached Delhi High Court to prevent the investigation questioning the jurisdiction of the commission in the matter. Delhi High Court has however refused and has accepted the patent hold up doctrine by Justice Vibhu Bakhri observing in para 199-200 that “there is good ground to hold that seeking injunctive reliefs by an SEP holder in certain circumstances may amount to abuse of its dominant position.”

The writ petition was disposed of without costs. Consequently, connected miscellaneous petition was closed. -**[Telefonaktiebolaget LM Ericsson (Publ) v. Competition Commission of India, 30<sup>th</sup> March, 2016, (Delhi High Court)]**

\*\*\*\*\*



MARCH 2016

## INDIRECT TAXES

### a. CUSTOMS

#### 1. EXEMPTION OF CVD ON IMPORTED MEDIA WITH RECORDED INFORMATION TECHNOLOGY SOFTWARE

The Central Government, has exempted media with recorded Information Technology Software, under Chapter 85 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), on which it is not required, under the provisions of the Legal Metrology Act, 2009 (1 of 2010), to declare on the package of the said media thereof, the retail sale price, from so much of the additional duty leviable thereon under sub-section (1) of section 3 of the said Customs Tariff Act and determined under section 14 of the Customs Act, or the rules made thereunder, read with sub-section (2) of section 3 of the said Customs Tariff Act, as is equivalent to the duty payable on the portion of the value of such Information Technology Software recorded on the said media, which is leviable to service tax under section 66B read with section 66E of the Finance Act, 1994.

Provided that the importer shall make a declaration in the format specified in Annexure-I, regarding value of such Information Technology Software recorded on the said media, which is leviable to service tax under section 66B read with section 66E of the said Finance Act, to the Principal Commissioner of Customs or the Commissioner of Customs, as the case may be.

Provided further that the person liable to pay service tax is registered under section 69 of the said Finance Act, read with rule 4 of the Service Tax Rules, 1994 and undertakes to pay service tax leviable thereon in the format specified in Annexure-I to the Notification. *-[Notification*

*No. 11/2016 - Customs, dated 1st March, 2016]*

#### 2. BUDGET 2016: CHANGES IN CUSTOMS DUTY

The Notification No. 12/2012-Customs, dated the 17th March, 2012, Notification No. 25/1999-Customs, dated 28.02.1999, Notification No. 25/2002-Customs, dated the 01.03.2002, Notification No. 24/2005-Customs, dated the 01.03.2005 & Notification No. 81/2005-Customs, dated the 08.09.2005 were amended so as to carry out Budgetary changes and to make necessary changes in the specified entries therein so as to carry out Budgetary changes. Details are contained in Joint Secretary (TRU – I) DO letter dated 29.02.2016. *-[Notification No. 12/2016 - Customs, Notification No. 17/2016 - Customs, Notification No. 18/2016 - Customs, Notification No. 19/2016 - Customs & Notification No. 22/2016 - Customs, dated 1st March, 2016]*

#### 3. INCREASE OF VALUE LIMIT FOR BONAFIDE GIFTS IMPORTED BY POST OR AS AIR FREIGHT

Notification No. 171/93-Customs, dated 16.09.1993 has been further amended by the Ministry of Finance (Department of Revenue) so as to increase the value limit for bonafide gifts imported by post or as air freight from Rs. Ten thousand to Rs. Twenty thousand. *-[Notification No. 13/2016 - Customs, dated 1st March, 2016]*

#### 4. WITHDRAWAL OF EXEMPTION TO IMPORTS OF FEW ITEMS RELATING TO DEFENCE AND INTERNAL SECURITY FORCES

Notification No. 39/96-Customs, dated the 23.07.1996 has been so amended as to omit

MARCH 2016

exemption of duty under S. No. 9, 9A, 10, 10A with effect from 01.04.2016. Consequently direct imports by Government of India or State Governments under S. Nos. 9 and 10 will attract customs duties at applicable rates and imports under S. Nos. 9A and 10A will attract BCD. - **[Notification No. 14/2016 - Customs, dated 1st March, 2016]**

## **5. EXPORT DUTY ON IRON ORE, CHROMIUM ORES AND CONCENTRATES & BAUXITE REDUCED**

Notification No. 27/2011-Customs, dated 01.03.2011 has been amended so as to reduce export duty on-

- (i) Iron ore lumps (below 58% Fe content) [2601 11 21 and 2601 11 22] from 30% to Nil;
- (ii) Iron ore fines (below 58% Fe content) [2601 11 41 and 2601 11 42] from 10% to Nil;
- (iii) Chromium ores and concentrates, all sorts [2610] from 30% to Nil.; and
- (iv) Bauxite (natural), not calcined [2606 00 10] and bauxite (natural) calcined [2606 00 20] from 20% to 15%.

-**[Notification No. 15/2016 - Customs, dated 1st March, 2016]**

## **6. PROJECT IMPORT REGULATIONS, 1986 AMENDED**

Concessional 5% BCD is being extended to "cold chain including pre-cooling unit, pack houses, sorting and grading lines and ripening chambers". Consequently in the Project Imports Regulations, 1986, in the table, against serial number 3H, in the entry under heading "Name of the Plant or Project, for the words, "Cold

storage, cold room (including for farm level pre-cooling)", the words "Cold storage, cold room (including for farm level pre-cooling), cold chain including pre-cooling unit, packhouses, sorting and grading lines and ripening chambers" are being substituted. -**[Notification No. 20/2016 - Customs & Notification No. 21/2016 - Customs, dated 1st March, 2016]**

## **7. CONTINUATION OF BCD ON WHEAT, GHEE BUTTER & BUTTEROIL**

The relevant notification, dated 17th March, 2012, has further amended notification No. 12/2012-Customs, so as to:

- (i) continue BCD @ 25% on import of wheat beyond 31.03.2016 upto 30.06. 2016;
- (ii) retain BCD @ 40% on import of Ghee Butter and Butteroil, beyond 31.03.2016 for a period upto 30.09.2016.

-**[Notification No. 24 /2016-Customs, dated 28th March, 2016]**

## **8. CUSTOMS DUTY ON CUT/POLISHED DIAMONDS IMPORTED FOR TESTING/CERTIFICATION EXEMPTED**

Central government has exempted cut/polished diamonds imported for purposes of testing/certification from the levy of custom duty. -**[Notification No. 25 /2016-Customs, dated 30th March, 2016]**

MARCH 2016

## 9. DEEPER TARIFF CONCESSIONS IN RESPECT OF SPECIFIED GOODS IMPORTED UNDER THE INDIA-JAPAN COMPREHENSIVE ECONOMIC PARTNERSHIP AGREEMENT

Notification No. 69/2011-Customs, dated 29th July, 2011 has been amended so as to provide deeper tariff concessions in respect of specified goods imported under the India-Japan Comprehensive Economic Partnership Agreement (IJEPA), *w.e.f.* 1st of April, 2016. - *[Notification No. 28 /2016-Customs, dated 31st March, 2016]*

## 10. BAGGAGE RULES, 2016 NOTIFIED

Under the new rules, *w.e.f.* 1st April 2016, duty free baggage allowance carried by an international passenger, when coming to India, is increased from Rs 45,000 to Rs 50,000 per person, without age or stay restrictions, and the duty-free allowance slabs have been rationalised.

However, limits for importing alcohol, cigarettes, cigars, tobacco, etc remain unchanged. Also, international passenger, when coming to India, need not file declarations if not carrying dutiable goods as part of baggage. - *[Notification No. 30/2016 - Customs (N. T.), dated 1st March, 2016]*

## 11. CUSTOMS (IMPORT OF GOODS AT CONCESSIONAL RATE OF DUTY FOR MANUFACTURE OF EXCISABLE GOODS), RULES 2016 NOTIFIED

New and simpler rules for procedure of import for manufacture and export have been notified, replacing the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules 2001.

- *[Notification No. 32/2016 - Customs (N. T.), dated 1st March, 2016]*

## 12. RATE OF INTEREST ON DELAYED PAYMENT OF CUSTOMS DUTY RATIONALIZED

Notification No. 17/2011-Cus (N.T) dated 01.03.2011 has been superseded and the rate of interest under section 28AA of the Customs Act, 1962 has been rationalised to 15% per annum as against present rate of 18% in case of delayed payment of Customs duty. - *[Notification No. 33/2016 - Customs (N. T.), dated 1st March, 2016]*

## 13. INDIA-ASEAN TRADE IN GOODS AGREEMENT (SAFEGUARD MEASURES) RULES, 2016 NOTIFIED

The central government has notified the India-ASEAN Trade in Goods Agreement (Safeguard Measures) Rules, 2016. - *[Notification No. 37/2016 - Customs (N. T.), dated 1st March, 2016]*

## 14. LEVY OF SAFEGUARD DUTY ON IMPORTS OF HOT-ROLLED FLAT PRODUCTS OF NON-ALLOY AND OTHER ALLOY STEEL IN COILS

Safeguard duty has been levied on imports of Hot-rolled flat products of non-alloy and other alloy Steel in coils of a width of 600 mm or more for a period of two years and six months. - *[Notification No. 1/2016-Customs (SG), dated 29th March, 2016]*

## 15. LEVY OF ADD ON PHENOL

Anti-dumping duty has been levied on Phenol, originating in, or exported from the European Union, Singapore and Korea RP, for a period of five years under this Notification. - *[Notification*



MARCH 2016

*No. 6/2016-Customs (ADD), dated 8th March, 2016]*

## 16. LEVY OF ADD ON POLYPROPYLENE

Anti-dumping duty has been levied on Polypropylene, originating in, or exported from Singapore, for a period of five years. - *[Notification No. 7/2016-Customs (ADD), dated 8th March, 2016]*

## 17. LEVY OF ADD ON IMPORTS OF ALL KINDS OF PLASTIC PROCESSING MACHINES

Anti-dumping duty has been levied on imports of all kinds of plastic processing machines or injection moulding machines, also known as injection presses, having clamping force equal to or more than 40 tonnes, and equal to or less than 3200 tonnes, used for processing or moulding of plastic materials originating in, or exported from Chinese Taipei, Philippines, Malaysia or Vietnam for a period of five years. - *[Notification No. 9/2016-Customs (ADD), dated 15th March, 2016]*

## 18. LEVY OF ADD ON 2-ETHYL HEXANOL

Anti-dumping duty has been levied on 2-Ethyl Hexanol, originating in, or exported from the European Union, Indonesia, Korea RP, Malaysia, Chinese Taipei and USA for a period of five years. - *[Notification No. 10/2016-Customs (ADD), dated 29th March, 2016]*

## 19. LEVY OF ADD ON IMPORTS OF TYRE CURING PRESSES

Anti-dumping duty has been levied on imports of Tyre Curing Presses also known as Tyre Vulcanisers or Rubber Processing Machineries for tyres, excluding Six Day Light Curing Press for curing bi-cycle tyres originating in, or

exported from China PR for a period of five years. - *[Notification No. 11/2016-Customs (ADD), dated 29th March, 2016]*

## 20. LEVY OF PROVISIONAL ADD ON GLAZED/UNGLAZED PORCELAIN/VITRIFIED TILES

Provisional anti-dumping duty levied on Glazed/Unglazed Porcelain/Vitrified tiles in polished or unpolished finish with less than 3% water absorption, originating in, or exported from the China PR for a period not exceeding six months. - *[Notification No. 12/2016-Customs (ADD), dated 29th March, 2016]*

## 21. CLARIFICATION REGARDING OTHER PERSONS (CO-NOTICES) USED IN SUB-SECTION (2) & SUB-SECTION (6) OF THE SECTION 28 OF THE CUSTOMS ACT, 1962

Under section 28 of the Customs Act 1962, a case is deemed to be concluded, and proceedings against the person from whom duty is demanded and all other persons are deemed to be concluded if he pays the duty with interest and 25% of the penalty within the stipulated time. The CBEC has now through a circular clarified that (i) the proceedings against other persons on whom penalty was proposed stand concluded in case the stipulated payments are made by the main notice; and (ii) this does not refer to seizure or confiscation cases. - *[Circular No. 11/2016 - Customs, dated 15th March, 2016]*

## 22. CUSTOMS DEPARTMENT CANNOT TAKE SHELTER UNDER THE DEVICE OF 'DETENTION' OF GOODS IN ORDER TO AVOID THE CONSEQUENCES FLOWING FROM THE 'SEIZURE' OF GOODS



MARCH 2016

In the instant case, it has been held that in the absence of any provision in the Customs Act that permits 'detention' of goods, the Court has to proceed on the basis that what was effected was a 'seizure' of Nepalese currency. In the present case since no SCN was given within six months or extended period, the inevitable consequence, therefore, is that the seized goods shall be returned to the person from whose possession it was seized. *-[Mohd Salman Khan v. UOI & Ors., dated 28th March, 2016 (Delhi HC)]*

## b. CENTRAL EXCISE

### 1. WITHDRAWAL OF EXCISE DUTY EXEMPTION UNDER THE EXISTING AREA BASED EXEMPTIONS, FOR PRODUCTION OF, GOLD AND SILVER FROM GOLD DORE, SILVER DORE OR ANY OTHER RAW MATERIAL

The excise duty exemption under the existing area based exemptions for production of gold and silver from gold dore, silver dore or any other raw material has been prospectively withdrawn. Thus, a new industrial unit engaged in production of refined gold from gold dore, silver dore or any other raw material, which commences commercial production on or after 1st day of March, 2016, shall not be eligible for the said excise duty exemption.

Also, an existing industrial unit as on 1st of March, 2016, which undertakes substantial expansion of existing capacity or installs fresh plant, machinery or capital goods for production of gold or silver from gold dore, silver dore or any other raw material, by using such expanded capacity or such fresh plant, machinery or capital goods, and commences commercial production from such expanded capacity or such fresh plant, machinery or capital goods, on or after 1st March, 2016, shall not be eligible for the said

excise duty exemption. *-[Notification No.5/2016 – Central Excise, dated 1st March, 2016 & Notification No.6/2016 – Central Excise, dated 1st March, 2016]*

### 2. DUTY ON READYMADE GARMENTS & TEXTILE MADE-UPS IMPOSED

- i. Basic Excise Duty of 2% (without CENVAT credit) or 12.5% (with CENVAT credit) has been imposed on readymade garments and made up articles of textiles falling under Chapters 61, 62 and 63 (heading Nos. 6301 to 6308) of the Central Excise Tariff, except those falling under 6309 00 00 and 6310, of retail sale price (RSP) of Rs. 1000 and above when they bear or are sold under a brand name. However, in respect of readymade garments and made up articles of textiles other than those mentioned above, the optional levy of Nil (without CENVAT credit) or 6% (with CENVAT credit) in case of garments / articles of cotton, not containing any other textile material and Nil (without CENVAT credit) or 12.5% (with CENVAT credit) in case of garments / made up articles of other composition, as the case may be, shall continue. *-[Notification No. 15/2016 - Central Excise, dated 1st March, 2016 & Notification No. 7/2016 - Central Excise, dated 1st March, 2016 & Notification No. 9/2016 - Central Excise, dated 1st March, 2016]*
- ii. The tariff value for readymade garments and made up articles of textiles has also been increased from 30% to 60% which shall apply to all goods mentioned in the notification No. 20/2001-Central Excise (N.T.) dated 30.04.2001. *-[Notification No. 11/2016– Central Excise (N.T), dated 1st March, 2016]*
- iii. The SSI exemption has been restricted for the month of March, 2016 to Rs.12.5 lakh, subject

MARCH 2016

to the condition that the turnover during financial year 2014-15 has not exceeded Rs. 4 crore. -*[Notification No. 8/2016 - Central Excise, dated 1st March, 2016]*

### 3. DUTY ON DISPOSABLE ALUMINIUM FOIL CONTAINERS

The excise duty structure on disposable aluminium foil containers has been changed from 2% without CENVAT credit and 6% with CENVAT credit to 2% without CENVAT credit and 12.5% with CENVAT credit. -*[Notification No. 10/2016-Central Excise, dated 1st March, 2016]*

### 4. BUDGET 2016: CHANGES IN CENTRAL EXCISE

Notification No. 12/2012-Central Excise dated 17.03.2012, Notification No. 62/91-Central Excise dated 25.07.1991, Notification No. 42/2008-Central Excise dated 01.07.2008 & Notification No. 6/2005-Central Excise dated 01.07.2008 has been amended so as to carry out Budgetary changes. -*[Notification No. 12/2016-Central Excise, Notification No. 13/2016-Central Excise, Notification No. 17/2016-Central Excise & Notification No. 18/2016-Central Excise, dated 1st March, 2016]*

### 5. EFFECTS OF BUDGETARY CHANGES ON POWER GENERATION PROJECTS

Notification No. 33/2005- Central Excise, dated 8th September, 2005 has been amended so that in case of power generation project based on municipal and urban waste, valid agreement between importer with urban local body for processing of municipal solid waste for not less than ten years from the date of commissioning of project has been prescribed for availing customs and excise duty concessions as an alternative to the existing condition of “production of valid

power purchase agreement between the importer/producer of power and the purchaser, for the sale and purchase of electricity generated using non-conventional materials”. -*[Notification No. 14/2016-Central Excise, dated 1st March, 2016]*

### 6. CHANGES IN CLEAN ENERGY CESS

- i. The Schedule Rate of Clean Energy Cess, levied on coal, lignite and peat, has been increased from Rs.300 per tonne to Rs.400 per tonne vide Clause 232 of the Finance Bill, 2016. The increase in rate of Clean Energy Cess will come into effect immediately owing to a declaration under the Provisional Collection of Taxes Act, 1931. Accordingly, notification No.1/2015-Clean Energy Cess, dated 1st March, 2015 is being rescinded and the rate of Rs. 400 per tonne will operate through the Schedule. Further, the Clean Energy Cess has been renamed as Clean Environment Cess. The changes will come into force with effect from the date of enactment of the Finance Bill, 2016. -*[Notification No. 1/2016-Clean Energy Cess, dated 1st March, 2016]*
- ii. Clean Energy Cess on all goods produced or extracted as per traditional and customary rights enjoyed by local tribals without any license or lease in the State of Nagaland has been fully exempted. Notification No. 5/2010-Clean energy Cess, dated 22.06.2010 has been amended in this regard. -*[Notification No. 2/2016-Clean Energy Cess, dated 1st March, 2016]*

### 7. NOTIFICATION OF INFRASTRUCTURE CESS

An Infrastructure Cess, as duty of excise, has been imposed by the Central Government on motor vehicles falling under heading 8703 vide Clause 159 read with the Eleventh Schedule of

MARCH 2016

the Finance Bill, 2016. By virtue of declaration under the Provisional Collection of Taxes Act, 1931, the Cess will come into force with immediate effect. The effective rates of the Infrastructure Cess are as under:

**(a) Nil on :**

- i. Three wheeled vehicles,
- ii. Electrically operated vehicles,
- iii. Hybrid vehicles,
- iv. Hydrogen vehicles based on fuel cell technology,
- v. Motor vehicles which after clearance have been registered for use solely as taxi (subject to prescribed conditions),
- vi. Cars for physically handicapped persons (subject to prescribed conditions), and
- vii. Motor vehicles cleared as ambulances or registered for use solely as ambulance (subject to prescribed conditions);

**(b) 1% on Petrol/LPG/CNG driven motor vehicles of length not exceeding 4m and engine capacity not exceeding 1200cc;**

**(c) 2.5% on Diesel driven motor vehicles of length not exceeding 4m and engine capacity not exceeding 1500cc;**

**(d) 4% on all categories of motor vehicles other than those listed at (a), (b) and (c) above; - [Notification No. 1/2016-Infrastructure Cess, dated 1st March, 2016]**

Further, the Cenvat Credit Rules have been amended to provide that CENVAT credit cannot be utilised for payment of this Infrastructure Cess. Further, no credit of this Cess would be available under the Cenvat Credit Rules, 2004. - **[Notification No.13/2016-Central Excise (N.T.) dated 01.03.2016]**

## 8. CENTRALIZED REGISTRATION FOR MANUFACTURERS OF ARTICLES OF JEWELLERY

Through recent notification, Optional centralized registration has been extended to and requirement of post registration physical verification has been done away with for the manufacturers of Articles of Jewellery [excluding articles of silver jewellery, other than studded with diamonds, ruby, emerald or sapphire]. - **[Notification No. 5/2016- Central Excise (N.T.) & Notification No. 6/2016- Central Excise (N.T.) dated 1st March, 2016]**

## 9. HIGH COURT HAS JURISDICTION TO INTERFERE AT SHOW CAUSE NOTICE STAGE IF THERE IS ABUSE OF PROCESS OF LAW

The Madras HC, in the instant case has observed that normally, the Writ Court does not interfere at the stage of issuance of show cause notices by the authorities for the reason that the authorities should provide an ample opportunity to put forth their contentions before the authorities concerned and to satisfy the authorities about the absence of case for proceeding against the persons against whom the show cause notices have been issued.

Where a show cause notice is issued either without jurisdiction or in an abuse of process of law, in that case, the writ Court can interfere even at the stage of issuance of show cause notice. It should be *prima-facie* established to be so. In the case on hand, on the face of the show cause notices, it is clear that the demand made by the respondent is time barred under Section 11 A of the Central Excise Act. Thus, it was held that when the demand made by the respondent itself is time barred under the Act, High Court can interfere at the stage of issuance of show cause notice itself. SCN set aside. -**[Madura Coats Ltd**



MARCH 2016

*v. Deputy Commissioner of Central Excise, Madurai, dated 9th March, 2016 (Madras HC)]*

## c. SERVICE TAX

### 1. BUDGETARY AMENDMENTS TO THE EXEMPTION NOTIFICATION

Notification No. 25/2012-Service Tax, dated 20th June 2012 has been amended, so as to amend certain existing entries granting exemption on specified services and inserting new entries for granting exemption from service tax on specified services. *-[Notification No. 9/2016-Service Tax, dated 1st March, 2016]*

### 2. AMENDMENT TO POINT OF TAXATION RULES, 2011

Section 67A has been proposed to be amended to obtain specific rule making powers in respect of Point of Taxation Rules, 2011. Point of Taxation Rules, 2011 has been amended accordingly. The amendment in the rules would come into force with effect from the date of enactment of the Finance Bill, 2016. *-[Notification No. 10/2016-Service Tax, dated 1st March, 2016]*

### 3. RATE OF INTEREST ON DELAYED PAYMENT OF SERVICE TAX RATIONALIZED

Interest rates on delayed payment of duty/tax across all indirect taxes has been proposed to be made uniform at 15%, except in case of service tax collected but not deposited with the Central Government, in which case the rate of interest will be 24% from the date on which the service tax payment became due. Further, in case of assesses, whose value of taxable services in the preceding year/years covered by the notice is less than Rs. 60 Lac, rate of interest on delayed

payment of service tax will be 12%. *-[Notification No. 13/2016-Service Tax & Notification No. 14/2016-Service Tax, dated 1st March, 2016]*

### 4. SERVICES PROVIDED BY GOVERNMENT OR LOCAL AUTHORITIES TO BUSINESS ENTITIES TO BE TAXABLE w.e.f. 01.04.2016

Finance Act, 1994 was amended vide Finance Act, 2015 so as to make any service (and not only support services) provided by Government or local authorities to business entities taxable from a date to be notified later. 1st April, 2016 has now been notified as the date from which any service provided by Government or local authorities to business entities shall be taxable. *-[Notification No. 15/2016-Service Tax, dated 1st March, 2016]*

### 5. ST-3 RETURN FORM AMENDED TO INCLUDE SWACHH BHARAT CESS

CBEC has amended ST-3 return format to include entries for Swachh Bharat cess. *-[Notification No. 20/2016-Service Tax, dated 8th March, 2016]*

### 6. POINT OF TAXATION RULES AMENDED

Point of Taxation (Second Amendment) Rules, 2016 has been introduced in order to amend Point of Taxation Rules, 2011 so as to prescribe point of taxation as the date of issuance of invoice in case of change in liability to pay service tax by the service recipient. *-[Notification No. 21/2016-Service Tax, dated 30th March, 2016]*

### 7. SERVICE TAX DUES OF PROPRIETORSHIP FIRM CANNOT BE RECOVERED BY ATTACHING BANK ACCOUNT OF PRIVATE LTD COMPANY



In the instant case it was held that attachment and recovery of service tax demand from bank account of a company as against the dues recoverable from proprietorship concern, is wholly illegal and impermissible. Impugned order quashed. *-[M/s Atchaya Engineering Pvt. Ltd v. The Additional Commissioner, Service Tax & Ors., dated 4th March, 2016 (Madras HC)]*

## **8. ISSUE OF CLASSIFICATION IS TO BE DECIDED BY THE COMMISSIONER OF SERVICE TAX AT THE END OF SERVICE PROVIDER AND NOT BY THE COMMISSIONER WHO IS DEALING WITH THE SERVICE RECIPIENT**

M/S Indian Hotels Company Ltd. (IHCL) provided taxable service under “Management or Business Consultant's Service” to the appellant and paid service tax thereon. Being the recipient of such service, the appellant took 100% credit of service tax paid on such services under Rule 6(5) of CCR. A SCN was issued to the appellant for denying the credit on the ground that the services provided by IHCL are covered under Business Auxiliary Service under Section 65(105)(zzb) and not under Section 65(105)(r) as claimed by IHCL.

It was held that IHCL is not managing or conducting the hotel business of appellant on their behalf but are only providing management consultancy and advise by posting key senior personnel to assist appellant to conduct their hotel business with their own infrastructure and manpower. Services are correctly classifiable under Management & Business Consultant's Services and not under Business Auxiliary Service. Moreover, jurisdictional officers at recipient's unit are not empowered to review or revise the classification at supplier/ provider's end. *-[M/s Piem Hotels Ltd v. CST, Mumbai & Anr., dated 30th March 2016 (CESTAT)]*

\*\*\* \*\*

## **INTELLECTUAL PROPERTY RIGHTS**

### **1. 'DATAMATICS' IS A WORD OF COMMON USAGE**

The Plaintiff, in the present case, claimed to be part of a group of companies, several of whom have been using the word "Datamatics" as part of their corporate names. The grievance of the Plaintiff was that, around the month of August 2013, the Plaintiff came to know of the existence of the Defendant with the word "Datamatics" as part of the latter's trading name and style, namely, "Royal Datamatics Pvt. Ltd."

The Plaintiff, in these premise, filed the instant suit claiming a permanent injunction restraining the Defendant from using the word "Datamatics" in any way in connection with its business or activities, including as part of its corporate or trading name. After considering various aspects like common usage of the word 'Datamatics', defence of honest and concurrent user, balance of convenience, etc., the Hon'ble High Court held that the Plaintiff, is not entitled to the equitable relief of an interlocutory injunction. *-[Datamatics Global Services Limited v. Royal Datamatics Private Limited, dated 28th March, 2016 (Bombay HC)]*

### **2. THE LAW IN RELATION TO THE SCOPE IN AN APPEAL AGAINST NON GRANT OF INTERIM INJUNCTION REITERATED**

Hon'ble Delhi HC has held that the law in relation to the scope in an appeal against non grant of interim injunction is well settled as noted in the decision reported as 1990 (supp) SCC 727 Wander Ltd. & Anr. Vs. Antox India P. Ltd. The Supreme Court cautioned the Division Benches noting that the Appellate Court will not interfere with the exercise of discretion of the Court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily or

MARCH 2016

capriciously or perversely or where the court has ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. It was held that the appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by the court below was reasonably possible on the material. **-[Entertainment Network (India) Ltd v. HT Media Limited, dated 21st March, 2016 (Delhi HC)]**

\*\*\*\*\*

## CONSUMER

### 1. COMMISSION AWARDS 2 LAKH IN DAMAGES FOR WRONGFULLY REPORTING CIBIL DEFAULT

The Complainant, in the instant case, argued that despite settling all his credit card dues he was shown as defaulter in Credit Information Bureau (India) Ltd (CIBIL) report. On account of which his application for education loan of Rs4 lakh from State Bank of India was rejected. Studying the details the commission noted that the complainant had paid in full and settled the debt and the bank had issued full and final settlement account statement and closed his credit card from that date. Some eleven year later when he applied for an education loan his application was rejected with a remark "CIBIL defaults, file rejected".

The complainant asked the bank to rectify records and also approached banking ombudsman, but the bank failed to follow instructions issued by the ombudsman. The commission here sided with state commission and directed the bank to rectify the error and awarded Rs.2 lakh in damages. **- [Moneylife, 31st March, 2016]**

### 2. FAILURE TO PROVIDE TIMELY MEDICAL TREATMENT, A VIOLATION OF RIGHT TO LIFE

AIIMS was held guilty for referring a patient suffering from apparent cardiac arrest and not providing appropriate ambulance service. Patient was brought to the hospital with severe pain in chest but was referred to safdarjung hospital for lack of a spare bed. As no ambulance was available the patient was transported in a car in the early hours of the day.

The Commission found AIIMS's conduct negligent in not providing lifesaving preliminary care and appropriate transport service to the adjoining hospital. Damages were awarded from the date of initial application filed in 1999. **-[Times of India 25th March, 2016]**

\*\*\*\*\*

## ENVIRONMENT

### 1. CENTRE NOTIFIES THE COUNTRY'S MAIDEN CONSTRUCTION AND DEMOLITION WASTE MANAGEMENT RULES 2016

Taking an important step towards handling the problem of air polluting dust from ongoing construction activities across India, the centre has notified the Construction and Demolition Waste Management Rules, 2016 to stipulate proper disposal and recycling of such waste. Littering or obstruction to public drains, water bodies, traffic and direct dumping of construction and demolition (C&D) waste in landfill sites are completely prohibited under the rules. It has been made mandatory for the local authorities to commission the new rules. **-[The Times of India, dated 29th March, 2016]**

MARCH 2016

## 2. GOVT NOTIFIES ENVIRONMENT NORMS FOR NEW GENSETS

The Centre has notified stringent environment standards for new gensets in order to check air and noise pollution. Under the new standards, manufacturers across the country are required to obtain certification for engine products by empanelled agencies which will help in regulating the unorganised sector. It will also help in curbing illegal import of gensets, which have been observed to have higher air and noise pollution levels. *-[The Times of India, dated 23rd March, 2016]*

## 3. CENTRE BANS PLASTIC BAGS BELOW 50 MICRONS

The Centre has notified new plastic waste management rules for the country, replacing the earlier ones made five years ago. The new rules, which are more stringent than the previous rules, will be implemented across the country within 6 months. Under the new rules, carrying certain do's and don'ts for manufacturers, distributors, municipal bodies and panchayats, the government banned the manufacturing of plastic bags of below 50 microns as thinner bags currently pose a major threat to environment due to its non-disposability.

Manufacturers of plastic bags will have to make certain payments to states for its post-use disposal. The money, collected by the states from the manufacturers, will be given to local civic bodies and panchayats for taking multiple measures to dispose off plastic bags properly. *-[The Times of India, dated 18th March, 2016]*

## 4. MINISTRY OF ENVIRONMENT UNVEILS NEW CATEGORIES OF INDUSTRIES FOR GREEN NOD

The environment ministry has released new categorisation of industries, exempting 36 types of

industries from taking environmental clearance. Under the new categorisation, industries which pollute the most have been put in the 'Red' category while the moderately polluting units are classified 'Orange'. Industries that have a significantly low pollution load have been placed in the 'Green' category while those that operate without causing any pollution have been categorised as 'White'.

The newly introduced 'White' category includes cotton and woollen hosiery (dry process only without any dyeing, washing operation), electric lamp (bulb) and CFL manufacturing by assembling, scientific and mathematical instrument manufacturing, solar power generation through photovoltaic cells, wind power and mini-hydel power (less than 25 MW of capacity) among others. *-[The Times of India, dated 6th March, 2016]*

\*\*\*\*\*

**Disclaimer:** The information contained in this Newsletter is for general purposes only and LEXport is not, by means of this newsletter, rendering accounting, business, financial investment, legal, tax, or other professional advice or services. This material is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Further, before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor. LEXport shall not be responsible for any loss sustained by any person who relies on this newsletter.

As used in this document, "LEXport" means LEXport - Advocates and Legal Consultants.

Please see [www.lexport.in/about-firm.aspx](http://www.lexport.in/about-firm.aspx) for a detailed description about LEXport and services being offered by it.