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RBI/FEMA

1. RELAXATIONS IN RAISING AND REDEMPTION OF LONG TERM (SUBORDINATED) DEPOSITS BY CO-OPERATIVE BANKS

The Reserve Bank of India (RBI) after review of guidelines for raising and redeeming Long Term Subordinated Deposits (LTDs) by co-operative banks has prescribed certain disclosure requirements. Eligible co-operative banks may now raise LTDs without prior approval of the RBI, subject to Tier I capital; banks may also redeem LTDs on maturity without seeking prior approval of the RBI. Further, banks availing benefit of the relaxations will have to make additional disclosures to investors, clarifying the features and risks of the debt instrument. Co-operative banks should not invest in LTDs issued by other co-operative banks. – The bank has a track record of regulatory compliance and no monetary penalty has been imposed on the bank for violation of RBI directives / guidelines during the two financial years preceding the year in which the LTDs are being issued. - *[DCBR. BPD. Cir No. 21/09.18.201/2016-17, dated 7th July, 2016]*

2. REPORTING OF BANK GUARANTEE ON BEHALF OF SERVICE IMPORTERS DISCONTINUED

Upon a review of the reporting requirements relating to bank guarantees and also to reduce the burden of related compliances, RBI has advised banks to discontinue submission of reports on guarantees issued by banks in favour of non-residents service providers with immediate effect. The banks have been required to maintain records of such invocations and furnish the required details to the RBI whenever sought. The directions contained in circular have been issued under Section 10 (4) and 11 (1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions / approvals, if any, required under any other law. - *[A.P. (DIR Series) Circular No. 1, dated 7th July, 2016]*

3. AMENDMENT TO MASTER DIRECTION ON KYC – OPERATIONALISATION OF CENTRAL KYC REGISTRY AND KYC NORMS FOR FOREIGN PORTFOLIO INVESTORS (FPIs)

The RBI has notified that the 'live run' of the Central KYC Records Registry (CKYCR) would start with effect from July 15, 2016 in phased manner beginning with new 'individual accounts'. CKYCR would receive, store, safeguard and retrieve the KYC records in digital form of a client, for which necessary amendments have been made. Government has authorised the Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI), to act as and perform the functions of the CKYCR. In the first phase, Scheduled Commercial Banks (SCBs) may upload the Know Your Customer (KYC) data with CERSAI, in respect of new individual accounts opened on or after July 15, 2016.

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Regulated Entities (**REs**) other than banks can also participate in the live run of CKYCR by preparing a plan for uploading the data. - **[DBR. AML. BC. No. 1/14.01.001/2016-17, dated 8th July, 2016]**

4. STCBS/CCBS ALLOWED TO MAKE INVESTMENTS IN NON-SLR INSTRUMENTS

With a view to provide greater flexibility to State and Central Co-operative Banks (**StCBs/CCBs**), RBI has allowed StCBs/CCBs to make investments in Non-SLR instruments subject to the conditions mentioned in the circular. StCBs / CCBs shall disclose details of issuer-wise composition of Non-SLR investments and non-performing investments in 'Notes on Accounts' in their balance sheet. - **[DCBR. BPD. BC. No. 01/19.51.026/2016-17, dated 14th July, 2016]**

5. LIMIT OF LOANS EXTENDED BY NBFC-MFIS

RBI has raised the limit of the loans extended by Non-Banking Financial Company- Micro Finance Institutions (**NBFC-MFIs**) for which the tenure of the loan shall not be less than 24 months, to ₹30,000/- from the earlier limit of ₹ 15,000/- - **[FIDD. CO. Plan. BC. No. 8/04.09.001/2016-17, dated 28th July, 2016]**

6. EXTENSION OF GUIDELINES FOR RELIEF MEASURES IN AREAS AFFECTED BY NATURAL CALAMITIES TO NBFCs

RBI has issued guidelines for banks in respect of matters relating to relief measures to be provided in areas affected by natural calamities vide FIDD. No. FSD. BC. 52/05.10.001/2014-15 dated March 25, 2015, FIDD No. FSD. BC. 12/05.10.001/2015-16

dated August 21, 2015 and FIDD. No. FSD. BC. 27/05.10.001/2015-16 dated June 30, 2016. It has been decided to extend the said guidelines, *mutatis mutandis*, to NBFCs, in areas affected by natural calamities as identified for implementation of suitable relief measures by the institutional framework viz., District Consultative Committee/ State Level Bankers' Committee. - **[DNBR (PD) CC. No. 083/03.10.001/2016-17, dated 28th July, 2016]**

FOREIGN TRADE

1. INCLUSION OF INLAND CONTAINER DEPOT

ICDs located at Hosur (Tamil Nadu) and Nattakkam Village (Kottayam Taluk and District) are included under para 4.37 (a) Hand Book of Procedures (2015-2020) for availing export promotion benefits. - **[Public Notice No. 20/2015-2020, 1st July, 2016, (DGFT)]**

2. IMPORT POLICY FOR DRONES

(UAS)/Unmanned Aerial Vehicle (UAVs)/Remotely Piloted Aircraft (RPAs)/drones is 'Restricted'; it would require prior clearance of Directorate General of Civil Aviation (DGCA) and import licence from DGFT. - **[Notification No. 16/2015-2020, 27th July, 2016, (DGFT)]**

3. IMPORT POLICY OF POPPY SEEDS AMENDED

The Department of Revenue has been delegated power to frame the detailed guidelines regarding registration of contracts with Narcotics

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Commissioner, Gwalior for import of poppy seeds. This condition is in addition to restrictions which include that- Import permitted only from Australia, Austria, France, China, Hungary, the Netherlands Poland, Slovakia, Spain, Turkey and Czech Republic, United Kingdom, Democratic People's Republic of Korea, Macedonia, Germany and Ukraine; subject to appropriate license from competent authority of exporting country; and all import contacts shall be registered with the narcotics commissioner, Gwalior (Madhya Pradesh). - **[Notification No. 17/2015-2020, 29th July, 2016, (DGFT)]**

CORPORATE

1. THE COURT OF ADDITIONAL SESSION JUDGE - DWARKA HAS BEEN DESIGNATED AS SPECIAL COURT UNDER COMPANIES ACT, 2013

The Court of Additional Sessions Judge-03, South-West District, Dwarka, has been designated as Special Court for the purposes of providing speedy trial of offences punishable under the Companies Act, 2013 with imprisonment of two or more years. - **[27th July, 2016, Ministry of Corporate Affairs]**

2. RELAXATION OF ADDITIONAL FEES AND EXTENSION OF LAST DATE OF FILING AOC-4, AOC-4 (XBRL) AND AOC-4 (CFS)

Revision of form AOC-4 (XBRL) and AOC-4 (CFS). Financial statements and annual returns will have to be filed by companies within 30 days and 60 days of conclusion of AGM or the last day by which AGM ought to have been held. To give companies more time to get familiarized with new forms it has

been decided to allow companies to file their financial statements and annual returns on or before 29.10.2016 where due date for holding annual general meeting is on or after 01.04.2016. - **[General Circular No. 08/2016, 29th July, 2016, Ministry of Corporate Affairs]**

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SECURITIES

1. SIMPLIFICATION ON ACCOUNT OPENING KIT

It has been decided by SEBI that stock broker/depository participant can obtain the preference of client and accordingly make available these standard documents to the clients, either in electronic form or physical form. In case the documents are made available in electronic form, stock broker/ depository participant shall maintain logs of the same. Stock exchanges / depositories / stock brokers/ depository participants, however, shall continue to make the aforesaid documents available on their website and keep the clients informed about the same. SEBI shall take Steps to implement this circular and ensure its compliance in respect of all new clients from August 01, 2016. - **[CIR/MIRSD/64/2016, 12th July, 2016, (SEBI)]**

2. CLEARING CORPORATION SHALL NOT ACCEPT FIXED DEPOSIT RECEIPTS

SEBI, in view of the practice that some banks which are also trading members/ clearing members on the Stock Exchange/Clearing Corporation have placed Fixed Deposit Receipts issued by them as Collateral, with the Clearing Corporation, has decided that:

(a) Clearing corporation shall not accept Fixed Deposit Receipts (FDRs) from trading/clearing

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members as collateral, which are issued by the trading/ clearing member themselves or banks who are associate of trading/ clearing member;

(b) Trading/Clearing Members who have deposited their own FDRs or FDRs of associate banks shall replace such collateral, with other eligible collateral as per extant norms, within a period of six months from the date of issuance of the circular. - *[CIR/MRD/DRMNP/65/2016, 15th July, 2016, (SEBI)]*

3. OPERATIONALISATION OF CENTRAL KYC RECORDS REGISTRY

SEBI has directed that Central Registry of Securitization and Asset Reconstruction and Security interest of India (CERSAI) setup under SRFAESI Act, 2002 which has been authorized to act as, and to perform the functions of, the Central KYC Records Registry including receiving, storing, safeguarding and retrieving the KYC records in digital form of a client. In that respect the KYC template finalised by CERSAI shall be used by the registered intermediaries as Account Opening Form for the Individuals. The KYC template for “individuals” and the “Central KYC Registry Operating Guidelines 2016” for uploading KYC records on CKYCR. The requirement for Permanent Account Number (PAN) would continue to be mandatory for completing the KYC process.

In the first phase, the registered intermediaries shall upload the KYC data with CKYCR, in respect of all individual accounts opened on or after August 1, 2016. - *[CIR/MIRSD/ 66 /2016, 21st July, 2016, (SEBI)]*

INDIRECT TAXES

a. CUSTOMS

1. SUGAR EXPORTED UNDER ADVANCE AUTHORIZATION SCHEME EXEMPTED FROM EXPORT DUTY

Notification No. 27/2011-Customs, dated the 1st March, 2011 amended, so as to provide exemption from export duty to sugar exported under Advance authorization Scheme subject to specified conditions. - *[Notification No. 41/2016-Customs, dated 6th July, 2016]*

2. MANUFACTURER OR MERCHANT-EXPORTER TO BE REGISTERED WITH THE COTTON TEXTILES EXPORT PROMOTION COUNCIL

Notification No. 12/2012-Customs, dated 17.03.2012 [S. No. 284A] amended, so as to provide that the manufacturer or merchant-exporter, referred to therein, may also be registered with the Cotton Textiles Export Promotion Council, in addition to Apparel Export Promotion Council or the Synthetic and Rayon Textile Export Promotion Council and may seek certification from any of the aforesaid bodies for the purposes of availing duty free import entitlement under the said entry. - *[Notification No. 42/2016-Customs, dated 11th July, 2016]*

3. EXEMPTION FROM EXPORT DUTY TO ORGANIC SUGAR

Notification No. 27/2011-Customs, dated 01.03.2011 amended, so as to provide exemption from export duty to Organic sugar up to 10,000 MT in a year beginning with October and ending with September subject to specified conditions. The exemption for the period ending with 30th September, 2016 shall be

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restricted to 2500 MT. - *[Notification No. 43/2016-Customs, dated 26th July, 2016]*

4. HONNAVAR NOTIFIED AS CUSTOMS PORT

Notification No. 62/1994-Customs (N.T.) dated 21.11.1994 amended, so as to notify Honnavar in Karnataka as a port under section 7(1)(a) of the Customs Act. - *[Notification No. 97/2016 - Customs (N.T.), dated 8th July, 2016]*

5. ADD ON PURIFIED TEREPHTHALIC ACID

Anti-dumping duty imposed on "Purified Terephthalic Acid" including its variants Medium Quality Terephthalic Acid (MTA) and Qualified Terephthalic Acid (QTA), originating in or exported from China PR, Iran, Indonesia, Malaysia and Taiwan, for a period of five years from the date of imposition of provisional anti-dumping duty. - *[Notification No. 28/2016 - Customs (ADD), dated 5th July, 2016]*

6. EXPANDED POLYPROPYLENE BEADS AND TER-POLYMER EXEMPTED FROM ADD

Notification No. 7/2016-Customs (ADD) dated 08.03.2016 amended, to exclude Expanded Polypropylene beads and ter-polymer from the description of goods attracting anti-dumping duty. - *[Notification No. 29/2016 - Customs (ADD), dated 5th July, 2016]*

7. ADD ON 1,1,1,2-TETRAFLUOROETHANE OR R-134A

Anti-dumping duty imposed on 1,1,1,2-Tetrafluoroethane or R-134a originating in or

exported from People's Republic of China for a period of five years. - *[Notification No. 30/2016 - Customs (ADD), dated 11th July, 2016]*

8. CEILING IN PAYMENTS IN INDIAN CURRENCY FOR PURCHASES BY PASSENGERS AT DUTY FREE SHOPS AT INTERNATIONAL AIRPORTS RAISED

The ceiling in payments in Indian currency for purchases by passengers at duty free shops at International Airports has been raised from Rs. 5,000/- to Rs. 25,000/-. The passengers are now permitted to purchase goods at duty free shops in Indian rupees up to an amount not exceeding Rs 25,000/-. Duty-free shops are also instructed to display rupee prices as well as currency conversion rates. - *[Circular No. 31/2016-Customs, dated 6th July, 2016]*

9. PROCEDURE REGARDING DUTY FREE SHOPS

CBEC has prescribed procedure for maintaining of records, filing of returns and receipt, accountal and disposal of goods by duty free shops. - *[Circular No. 32/2016-Customs, dated 13th July, 2016]*

10. MERGER OF TWO FACILITATION SCHEMES NAMELY ACCREDITED CLIENT PROGRAMME (ACP) AND AUTHORIZED ECONOMIC OPERATOR (AEO)

CBEC has decided to merge the two facilitation schemes namely ACP and AEO into a combined three-tier AEO programme, and also enhance the scope of these programmes so as to provide further benefits to the entities who have demonstrated strong internal control system and willingness to comply with the laws administered by the Central

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Board of Excise and Customs. Direct delivery of imported goods from wharf to warehouse and direct port delivery of exports, deferred payment of customs duties, and focus on small and medium entities that handle 25 documents or more annually are prominent features of the new scheme. - *[Circular No. 33/2016-Customs, dated 22nd July, 2016]*

11. REQUIREMENT OF WAREHOUSING LICENSE FOR EOUs REMOVED

Notification No. 52/2003-Customs dated 31.3.2003 amended so as to remove the mandatory warehousing requirements for EOUs, STPIs, EHTPs, etc. - *[Circular No. 35/2016-Customs, dated 29th July, 2016]*

12. PROCEDURE PRESCRIBED FOR EXPORT OF GOODS SOLD THROUGH E-COMMERCE FROM FPOS AT CHENNAI, DELHI AND MUMBAI

Para 3.05 of the Foreign Trade Policy (FTP) 2015-20 provides for export of goods through select foreign post offices as a part of e-Commerce exports. Such exports are also entitled for rewards under MEIS. The CBEC has now prescribed the procedure for export of goods sold through e-commerce from FPOs at Chennai, Delhi and Mumbai through this circular. Any difficulty faced in the implementation of this circular may be brought to the notice of the Board. - *[Circular No. 36/2016-Customs, dated 29th July, 2016]*

b. CENTRAL EXCISE

1. RATE OF EXCISE DUTY ON JEWELLERY IN FORCE FROM 1ST AUGUST, 2016 AND NEW PROCEDURES NOTIFIED

- Notification No. 12/2012-Central Excise amended, so as to prescribe 1% excise duty (without input and capital goods credit) on parts of articles of jewellery falling under heading 7113 of the Central Excise Tariff Act, 1985 (5 of 1986), and to prescribe a criteria for classification of an articles of jewellery or part of articles of jewellery or both as that of a particular precious metal. - *[Notification No. 26/2016 – Central Excise, dated 26th July, 2016]*
- Partially exempts Central Excise duty on articles of jewellery falling under heading 7113 manufactured by re-conversion of jewellery or mounting of precious stone given by the retail customer. - *[Notification No. 27/2016; Central Excise, dated 26th July, 2016]*
- Notification No. 8/2003-Central Excise dated 1st March, 2003 amended, so as to increase the SSI Exemption limit to Rs 10 crore and the SSI Eligibility limit to Rs 15 crore for articles of jewellery or parts of articles of jewellery or both, falling under heading 7113. - *[Notification No. 28/2016 – Central Excise, dated 26th July, 2016]*
- Notification No. 17/2011-Central Excise, dated the 1st March, 2011 amended, so as to exclude handicrafts falling under heading 7113 from the purview of excise duty exemption for "handicrafts". - *[Notification No. 29/2016 – Central Excise, dated 26th July, 2016]*
- Tariff values for articles of jewellery or parts of articles of jewellery or both, falling under heading 7113 notified. - *[Notification No. 33/2016; Central Excise (N.T.), dated 26th July, 2016]*

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- Articles of Jewellery (Collection of Duty) Rules, 2016 notified, applicable to articles of jewellery or parts of articles of jewellery or both falling under heading 7113. - **[Notification No. 34/2016 – Central Excise (N.T.), dated 26th July, 2016]**
- Central Excise Rules, 2002 amended in relation to articles of jewellery or parts of articles of jewellery or both, falling under heading 7113. - **[Notification No. 35/2016; Central Excise (N.T.), dated 26th July, 2016]**
- CENVAT Credit Rules, 2004 amended in relation to articles of jewellery or parts of articles of jewellery or both, falling under heading 7113. - **[Notification No. 36/2016 – Central Excise (N.T.), dated 26th July, 2016]**
- A modified format for quarterly return, ER-8 prescribed, for return of excisable goods cleared at the Central Excise duty rate of 1% [including articles of jewellery or parts of articles of jewellery or both, falling under heading 7113] or 2%. - **[Notification No. 37/2016; Central Excise (N.T.), dated 26th July, 2016]**
- Notification No. 35/2001-Central Excise (N.T.) amended, so as to provide that a person engaged in the manufacture of articles of jewellery or parts of articles of jewellery or both, falling under chapter heading 7113 to get registered and exempting such person from the requirement to submit plan of the factory premises under simplified registration procedure. - **[Notification No. 38/2016; Central Excise (N.T.), dated 26th July, 2016]**
- Notification No. 17/2006-Central Excise (N.T.) dated the 1st August, 2006 amended so as to exempt a manufacturer or principal manufacturer of articles of jewellery or parts of articles of jewellery or both, falling under heading 7113 from filing of annual return. - **[Notification No. 39/2016; Central Excise (N.T.), dated 26th July, 2016]**

- Notification No. 36/2001-Central Excise (N.T.) dated 26th June, 2001 amended, so as to exempt a manufacturer or principal manufacturer of articles of jewellery or parts of articles of jewellery or both, falling under heading 7113 from taking central excise registration till he exhausts his full exemption limit. - **[Notification No. 40/2016; Central Excise (N.T.), dated 26th July, 2016]**

2. BUNKER FUELS CAN BE CLEARED WITHOUT PAYMENT OF EXCISE DUTY TO A CUSTOMS BONDED WAREHOUSE

Notification no. 17/2004-CE (NT) dated 04.09.2004 amended to notify that bunker fuels can now be cleared without payment of excise duty to a customs bonded warehouse for supply to the specified Indian Ships / Vessels. - **[Notification No. 31/2016; Central Excise (N.T.), dated 4th July, 2016]**

Procedure has also been prescribed for such duty free supply of bunker fuel to ships/vessels. - **[Circular No. 1034/22/2016-CX, dated 1st July, 2016]**

3. PHYSICAL VERIFICATION OF READYMADE GARMENT FACTORIES WAIVED OFF FOR GRANTING CENTRAL EXCISE REGISTRATION

Notification No. 35/2001-Central Excise (N.T.) dated 26.06.2001 amended, to exempt mandatory physical verification of manufacturing premises in respect of manufacturers of readymade garments and made up articles of textiles for granting central excise registration. - **[Notification No. 32/2016 – Central Excise (N.T.), dated 11th July, 2016]**

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4. CLARIFICATIONS REGARDING RECOVERY OF CONFIRMED DEMANDS DURING THE PENDENCY OF STAY APPLICATION

CBEC has issued clarifications regarding recovery of confirmed demand of tax during the pendency of stay application in relation to indirect taxes. Confirmed demand of tax arises, when after examining the submissions of a tax payer, an order is issued confirming demand of tax from a tax payer.

It has been clarified that in cases where stay application is pending before Commissioner (Appeals) or CESTAT for periods prior to 06.08.2014, no recovery shall be made during the pendency of the stay application. It may be noted that the law on the issue was amended on 06.08.2014, where after filing of appeal requires payment of 7.5 or 10 per cent of tax demand, depending on stage of appeal, obviating the need for appellate authority to hear any stay application.

Further, in cases where demand is confirmed by Hon'ble CESTAT or Hon'ble High Court recovery proceeding may be initiated after a period of sixty days from the date of the order provided that no stay is in operation. - *[Circular No. 1035/23/2016-CX, dated 4th July, 2016]*

5. CLARIFICATION REGARDING SCOPE OF EXPRESSION "SITE" TO AVAIL EXEMPTION ON GOODS MANUFACTURED AT CONSTRUCTION SITE

CBEC has issued clarification that the expression "site" as defined under Notification No. 12/2012-Central Excise, dated 17.03.2012 cannot be given a restrictive meaning while interpreting the same so long as the premises under consideration for availing

benefit of exemption under S. No. 186 of the said notification fulfils following conditions:-

- (i) The said premises are made available to the manufacturer of goods by way of a specific mention in the contract/agreement for such construction work.
- (ii) The goods under Chapter 68 (except 6804, 6805, 6811, 6812 and 6813), for which exemption is claimed are manufactured at the said premises; and
- (iii) Such goods manufactured at the said premises are exclusively used for the construction work, as per the relevant contract or agreement.

Rescinding the Circular No. 456/22/99-CX, dated 18.05.1999, the CBECE has further directed that each case may be decided taking into consideration the facts of the individual case, examined in light of the above clarification. - *[Circular No. 1036/24/2016-CX, dated 6th July, 2016]*

6. DIGITALLY SIGNED INVOICES CAN BE AUTHENTICATED THROUGH MANUAL SIGNATURES

CBEC has clarified that a manufacturer or a service provider who opts to issue invoices authenticated by digital signature may print a copy of such invoice and sign them manually and forward the same to such customers who are unable to accept or receive the digitally signed invoices.

Such invoices in effect would be authenticated by two signatures, digital signature as well as manual signature and would be considered to be in conformity with rule 11 of Central Excise Rules, 2002 or Rule 4A and 4C of the Service Tax Rules, 1994.

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Such invoices would also be a valid document to avail CENVAT credit. - **[Circular No. 1038/26/2016-CX, dated 6th July, 2016]**

c. SERVICE TAX

1. INSTRUCTIONS REGARDING PROVISIONAL ATTACHMENT OF PROPERTY UNDER SECTION 73C OF THE FINANCE ACT, 1994

CBEC has issued instructions that attachment of the property without waiting for a reply to show cause notice, and without giving any opportunity and without giving any notice, was in gross violation of Rule 3 of the Service Tax (Provisional Attachment of Property) Rules, 2008 read with paragraph 2 (iii) of the Circular dated 1st July, 2008. The instructions were based on the recent order of the Allahabad High Court. - **[Circular No. 196/06/2016 - Service Tax, dated 27th July, 2016]**

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INTELLECTUAL PROPERTY RIGHTS

1. USE BY DEFENDANTS OF THE MARK TOYOTA, THE TOYOTA DEVICE MARK, TOYOTA INNOVA AND PRIUS AMOUNTS TO INFRINGEMENT AND PASSING OFF

In this case, the Plaintiff had moved the court for permanent injunction restraining infringement of trademark, passing off, damage, delivery up against the defendants, namely, Deepak Mangal, Sandeep Verma, M/s Prius Auto Industries Pvt. Ltd., and M/s Prius Auto Accessories Pvt. Ltd. in order to protect the plaintiff's well-known trademark i.e. TOYOTA, the Toyota Device mark, TOYOTA INNOVA and

for passing off of the mark PRIUS used by the defendants.

It was held that the defendants are not the registered proprietors of the trademarks TOYOTA, INNOVA and the TOYOTA DEVICE. They have used the trademarks TOYOTA, INNOVA and the TOYOTA DEVICE, which are identical to the plaintiff's trademarks, in the course of trade and such as that their use is likely to be taken as being used as trademark. The use of the plaintiff's trademarks by the defendants on their product packaging, samples, brochures etc. is bound to mislead consumers into believing that the products actually emanate from the plaintiff itself thereby establishing a false association between both the parties. A decree be drawn accordingly.

In the interest of justice, equity and fair play, the defendants are granted two months' time to change the impugned trademarks. - **[Toyota Jidosha Kabushiki Kaisha Vs. Deepak Mangal and Ors, dated 8th July, 2016 (Delhi HC)]**

2. SUMMARIZING ARTISTIC WORK UNDER COPYRIGHT ACT AND DESIGNS ACT

In the instant case the court has summarized Artistic work under copyright act and designs Act as follows-

- (a) The definition of 'artistic work' has a very wide connotation as it is not circumscribed by any limitation of the work possessing any artistic quality. Even an abstract work, such as a few lines or curves arbitrarily drawn would qualify as an artistic work. It may be two dimensional or three dimensional. The artistic work may or may not have visual appeal.

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- (b) The rights to which a holder of an original artistic work is entitled are enumerated in Section 14(c) of the Copyright act.
- (c) It is the exclusive right of the holder of a Copyright in an original artistic work to reproduce the work in any material form. For example, a drawing of an imaginary futuristic automobile, which is an original artistic work, may be reproduced in the three-dimensional material form using an element, such as a metal sheet.
- (d) The design protection in case of registered works under the Designs Act cannot be extended to include the copyright protection to the works which were industrially produced.
- (e) A perusal of the Copyright Act and the Designs Act and indeed the Preamble and the Statement of Objects and Reasons of the Designs Act makes it clear that the legislative intent was to grant a higher protection to pure original artistic works such as paintings, sculptures etc and lesser protection to design activity which is commercial in nature. The legislative intent is, thus, clear that the protection accorded to a work which is commercial in nature is lesser than and not to be equated with the protection granted to a work of pure art.
- (f) The original paintings/artistic works which may be used to industrially produce the designed article would continue to fall within the meaning of the artistic work defined under Section 2(c) of the Copyright Act, 1957 and would be entitled to the full period of copyright protection as evident from the definition of the design under Section 2(d) of the Designs Act. However, the intention of producing the artistic work is not relevant.
- (g) This is precisely why the legislature not only limited the protection by mandating that the

copyright shall cease under the Copyright Act in a registered design but in addition, also deprived copyright protection to designs capable of being registered under the Designs Act, but not so registered, as soon as the concerned design had been applied more than 50 times by industrial process by the owner of the copyright or his licensee.

- (h) In the original work of art, copyright would exist and the author/holder would continue enjoying the longer protection granted under the Copyright Act in respect of the original artistic work per se.
- (i) If the design is registered under the Designs Act, the Design would lose its copyright protection under the Copyright Act. If it is a design registerable under the Designs Act but has not so been registered, the Design would continue to enjoy copyright protection under the Act so long as the threshold limit of its application on an article by an industrial process for more than 50 times is reached. But once that limit is crossed, it would lose its copyright protection under the Copyright Act. This interpretation would harmonize the Copyright and the Designs Act in accordance with the legislative intent.

- [Dart Industries Inc & Anr. vs Techno Plast & Ors., dated 21st July, 2016 (Delhi HC)]

3. TRADEMARK TAVOLINE INFRINGES THE TRADEMARK VALVOLINE

In this case the issue was whether the trademark TAVOLINE adopted by the defendants infringing the trademark VALVOLINE of the plaintiffs. The court denied the contention of the counsel for the defendants that the past relationship between the parties is not relevant for determining the issue of infringement by the defendants of trademark of the

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plaintiffs, observed that the question of infringement cannot be decided in vacuum and is to be decided in the context of the facts. In this factual matrix the Hon'ble HC held that the similarity in the two trademarks, is restricted not only to the alphabets 'LINE' but extends to 'VOLINE', hence the Hon'ble court deemed it a fit case for grant of decree for permanent injunction. - *[Ashland Licensing and Intellectual Property Llc & Anr Vs. Dinesh Mahajan & Ors., dated 12th July, 2016 (Delhi HC)]*

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