

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**

RBI/FEMA

1. FINAL GUIDELINES ON LARGE EXPOSURES FRAMEWORK ISSUED BY RBI

RBI has issued final Guidelines on the norms for Banks' exposure to large business concerns and the said lending Bank's total advances to a single counterparty cannot be higher than 20 per cent of its capital base. However, in exceptional cases, Board of Bank may allow an additional 5 per cent exposure of the Bank's available eligible capital base. The Guidelines states that Banks must apply these exposures at the same level as the risk-based capital requirements are applied, that is, a Bank shall comply with the these norms at two levels - the consolidated level and the solo level. The new norms must be implemented in full by March 31, 2019. *-[DBR. No. BP. BC. 43/21.01.003/2016-17, dated 1st December, 2016]*

2. RBI ANNOUNCED TECHNICAL AUDIT OF PREPAID PAYMENT INSTRUMENT ISSUERS

Taking note of the rise of the alternate modes of payment, specifically e-wallets after withdrawal of legal tender characteristics of Rs.500 and Rs.1000 Bank Notes, RBI is of the view that digital

ecosystem should remain robust and fully secure to build confidence in the public.

In view of this, all authorised entities/Banks issuing PPIs in the country are advised to:

- i. carry out a special audit by the empanelled auditors of Indian Computer Emergency Response Team (CERT-In) on a priority basis and take immediate steps thereafter to comply with the findings of the audit report. The audit should cover compliance as per security best practices, specifically the application security lifecycle and patch/vulnerability and change management aspects for the system authorised and adherence to the process flow approved by the Reserve Bank of India. Banks may also be guided by the circular *DBS. CO/ CSITE/ BC. 11/33.01.001/2015-16 on Cyber Security Framework in Banks dated June 02, 2016.*
- ii. take appropriate measures for dealing with phishing attacks effectively, considering that the new customers are the first time users of the digital channels. Best Safety and security practices may be disseminated to the customers periodically.
- iii. implement additional measures dynamically depending upon the risk perception or threats as they emerge. *-[DPSS. CO. OSD. No. 1485/06.08.005/2016-17, dated 9th December, 2016]*

3. STANDALONE PDS CAN DISTRIBUTE RELIEF/SAVINGS BONDS

Drawing a reference to Para A.1 of the Master Direction on Relief/Savings Bonds dated July 1, 2016 under which Agency Banks can enrol/register brokers for distribution of Relief/Savings Bonds and also to Para 12 of (Master Direction) Standalone Primary Dealers

DECEMBER 2016

(Reserve Bank) Directions, 2016 giving a list of permitted activity for the Standalone Primary Dealers, RBI allowed Standalone PDs to distribute Relief/Savings Bonds under the non-core activities, as brokers of authorized entities, subject to adherence to the Terms and Conditions listed in the Master Direction on Relief/Savings Bonds. - *[IDMD. PDRD. No. 08/03.64.00/2016-17, dated 13th December, 2016]*

4. RATIONALISATION OF CUSTOMER CHARGES FOR IMMEDIATE PAYMENT SERVICE (IMPS), UNIFIED PAYMENT INTERFACE (UPI) & UNSTRUCTURED SUPPLEMENTARY SERVICE DATA (USSD)

Following the withdrawal of legal tender characteristics of Rs.500 and Rs.1000 Bank Notes, RBI has decided, as a temporary measure, that all participating Banks and Prepaid Payment Instrument (PPI) issuers shall not levy any charges on customers for transactions upto Rs.1000 settled on the Immediate Payment Service (IMPS), USSD-based *99# and Unified Payment Interface (UPI) systems.

The said measures are effective from January 1, 2017 to March 31, 2017. -*[DPSS CO. PD. No. 1516/02.12.004/2016-17, dated 16th December, 2016]*

5. NOTIFICATION OF PRADHAN MANTRI GARIB KALYAN DEPOSIT SCHEME (PMGKDS), 2016

Offering one last window to black money holders, the government has come out with a Scheme giving black money holders time until March-end to come clean by paying 50 per cent tax on bank deposits of junk currencies made post demonetisation. The Pradhan Mantri Garib Kalyan Yojana (PMGKY) came into effect from 17 December 2016. It will remain open until March

31, 2017. This Scheme shall be applicable to every declarant under the Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojana, 2016. -*[IDMD. CDD. No. 1453/14.04.050/2016-17, dated 16th December, 2016 & IDMD. CDD. No. 1454/14.04.050/2016-17, dated 16th December, 2016]*

6. NOTIFICATION OF PROCEDURAL GUIDELINES FOR SERVICING THE SOVEREIGN GOLD BONDS

RBI has announced procedural Guidelines for servicing of Sovereign Gold Bonds, in the interest of operational flexibility and ease in servicing the customers. Sovereign gold Bonds are linked to the price of gold, which means that investors would get the same return on these instruments as they would by purchasing physical gold.

As per the Guidelines, Receiving Offices, (*viz.* all scheduled commercial Banks (excluding Regional Rural Banks), recognised Stock Exchanges (National Stock Exchange and BSE), designated Post Offices and the Stock Holding Corporation of India) have now to identify a Nodal Office or Branch for servicing these Bonds.

All Applications received at various Branches or offices can be forwarded to the Nodal Office for further processing after initial scrutiny. Further, the customers can now make requests for their Bonds to be converted to a dematerialised form, either at the time of subscription or at any subsequent occasion. -*[IDMD No. 1569/14.04.050/2016-17, dated 23rd December, 2016]*

7. GOVT ALLOWED MORE GRACE PERIOD FOR FARM LOAN REPAYMENT

Government has allowed an additional grace period of 60 days for prompt repayment incentive of 3% to farmers whose crop loan repayments are due between November 1 and December 31, if

DECEMBER 2016

they repay within 60 days from that period. - *[FIDD. No. FSD. BC. 19/05.04.02/2016-17, dated 26th December, 2016]*

8. FLEXIBILITY IN REGARD TO THE MANNER OF PURCHASE AND SALE OF SECURITIES OTHER THAN SHARES OR CONVERTIBLE DEBENTURES OF AN INDIAN COMPANY BY A PERSON RESIDENT OUTSIDE INDIA

With a view to providing flexibility in regard to the manner in which the non-convertible Debentures/Bonds issued by Indian Companies can be acquired by FPIs, RBI has decided to allow them to transact in such Instruments either directly or in any manner as per the prevalent/approved market practice. – *[A.P. (DIR Series) Circular No. 23, dated 27th December, 2016]*

9. RBI INTRODUCES INTEREST RATE OPTION AND THE TRADING TO BE EFFECTIVE FROM JANUARY 31, 2017

In order to widen the ambit of the domestic Capital Markets, RBI has issued Guidelines for the introduction of trading in interest rate options, effective from January 31, 2017.

While options trading have been in place in the Equity Market, it was introduced in the Commodities Market in September, 2016, Derivative Trading with interest rates Option as the underlying factor has been limited to the Future Trading so far. Trade in interest rate options will be permitted at Exchanges authorised by the SEBI as well as the Over-the-counter (OTC) Market. Exchanges will have to seek prior approval from the RBI in order to enable Trade in interest rate options.

All entities with an underlying interest rate risk will be eligible to participate in the market in order to hedge their risk. Participants will not be permitted

to run net short positions in the interest rate options market. -*[FMRD. DIRD. 12/14.01.011/2016-17, dated 29th December, 2016]*

10. SANCTION OF ADDITIONAL WORKING CAPITAL LIMITS TO MICRO AND SMALL ENTERPRISES (MSES)

Consequent upon withdrawal of legal tender of Rs.500 and Rs.1000 Bank Notes and based on the feedback that some MSEs are facing temporary difficulties in carrying out their normal business due to cash flow mismatches, RBI has advised the Banks that they may use the facility of providing 'Additional Working Capital Limit' (approved by their Boards as above) to their MSE borrowers, to overcome the difficulties arising out of such cash flow mismatches.

It has been clarified that this would be a onetime measure up to March 31, 2017 and should thereafter be normalised in fresh working capital assessment cycle. -*[FIDD. MSME & NFS. BC. No. 20/06.02.31/2016-17, dated 29th December, 2016]*

FOREIGN TRADE

1. CONTINUATION OF MINIMUM IMPORT PRICE (MIP) ON 19 HS CODES OF IRON AND STEEL

The applicability of Minimum Import Price (MIP) for 19 HS Codes under Chapter 72 of ITC (HS), 2012- Schedule-1 (Import Policy) on Iron and Steel Products is further extended till 4th February, 2017. -*[Notification No. 31/2015-2020, 3rd December, 2016, (DGFT)]*

DECEMBER 2016

2. ENLISTMENT OF SEVEN PSIA FTP 2015-20

Seven Pre-Shipment Inspection Agencies (PSIA) have been approved under the heading "New PSIAs recognized in terms of FTP 2015-20" in Appendix 2G. *-[PUBLIC NOTICE NO. 47/2015-2020, 15th December, 2016, (DGFT)]*

3. REMOVAL OF MINIMUM EXPORT PRICE (MEP) ON EXPORT OF POTATOES

Export of Potatoes, Fresh or Chilled at Serial Number 50A of Chapter 7 of Schedule 2 of ITC (HS) Classification of Export & Import Items shall be permitted without any Minimum Export Price. *-[Notification No. 32/2015-2020, 27th December, 2016, (DGFT)]*

4. PROCEDURE FOR CLAIMING DUTY CREDIT SCRIPS BENEFITS UNDER CHAPTER-3 OF FTP 2009-14 FOR EXPORTS WHERE LET EXPORT ORDER (LEO) DATE IS 31.3.2015 BUT DATE OF EXPORT IS ON OR AFTER 01.04.2015

Notifying the procedure for claiming duty credit scrips under Chapter 3 benefits of FTP 2009-14 for exports where LET export order (LEO) date is 31.3.2015 but date of export is on or after 01.04.2015, the Director General of Foreign Trade clarifies that the shipments, where the LEO date is on or prior to 31.03.2015, but the Date of Export is on or after 01.04.2015, shall be incentivized with the Chapter 3 benefits as was available in the FTP 2009-14. It is also clarified that in all such cases, the LEO date shall be treated as date of export.

Applications for availing benefit under this Public Notice are to be filed with RAs concerned by 31 March, 2017 and in all such cases Late Fee under Para 9.3 of HBP (2009-15) will not be applicable. However, applications received after 31 March, 2017 and in all such cases late Fee under Para 9.3 of HBP (2009-15) will not be applicable.

However, applications received after 31 March 2017 will be subject to Late Fee as applicable under Para 9.3 of HBP (2009-14). *-[Public Notice No. 48/2015-2020, 29th December, 2016, (DGFT)]*

5. ALLOCATION OF QUANTITY FOR EXPORT OF PREFERENTIAL QUOTA SUGAR TO USA UNDER TRQ

The quantity of raw sugar *i.e.* 8424 MTs (Eight Thousand Four Hundred and Twenty Four Metric Tons) to be exported to USA under Tariff Rate Quota (TRQ) up to 30.09.2017 has been notified. *-[Public Notice No. 52/2015-2020, 30th December, 2016, (DGFT)]*

6. CERTIFICATION OF ORIGIN OF GOODS FOR EUROPEAN UNION GENERALISED SYSTEM OF PREFERENCES (EU-GSP)

The European Union (EU) has introduced a Self-Certification Scheme for certifying the rules of origin under Generalised System of Preferences (GSP) from 1.01.2017 onwards. Under the Registered Exporter System (REX) being introduced from 1.1.2017, exporters with a REX number will be able to self-certify the Statement on Origin of their goods being exported to EU under the GSP Scheme.

The registration on REX is without any fee or charges and this system would eventually phase

DECEMBER 2016

out the current system of issuance of Certificates of Origin (Form-A) by the Competent Authorities listed in Appendix-2C of FTP (2015-20) by 1.1.2018 (one year transition period). The details of the scheme are at Annexure 1 to Appendix 2C of the Foreign Trade Policy (2015-20). **-[Public Notice No. 51/2015-2020, 30th December, 2016, (DGFT)]**

7. EXTENDING MERCHANDISE EXPORTS FROM INDIA SCHEME (MEIS) BENEFIT FOR ONIONS FRESH OR CHILLED

The MEIS benefit for export of 'Onions Fresh or Chilled' under ITC (HS) code 07031010 is extended up to 31 March, 2017. **-[Public Notice No. 49/2015-2020, 30th December, 2016, (DGFT)]**

CORPORATE

1. PETITION FOR MISMANAGEMENT AND OPPRESSION DISMISSED AT THE THRESHOLD FOR CONCEALMENT AND MISREPRESENTATION OF FACTS BY THE PETITIONER

Case relates to a Petition under sections 397 and 398 alleging oppression and mismanagement by a majority of shareholders. The allegation in short relates to inducement on the part of Respondents to become investors in the Company to the exclusion of the Petitioner in the management of day to day affairs of the Company.

The Company, Indiahawks Private Limited, was incorporated to raise Capital from its Promoters and Directors and invest the sums to earn high returns for the investors.

The Petitioner alleges that he was approached by the Respondents to invest in the Company. He was given the proposal that the incorporated Company will raise Capital from its Promoters, Directors and relatives, and invest or lend out the same to earn interest or return on appreciation of investment.

Thereafter, lured by the proposal, the Petitioner subscribed to the Memorandum and Articles of Association of the Company. The Petitioner alleged that the respondents, contrary to the proposal made to the Petitioner, were utilizing the funds for their own personal ventures without taking into account the returns generated by the Company.

Further, the Petitioner also claimed wastage of funds of the Company in organizing meetings of the Promoters in Bangkok for which one Respondent also brought his family at Company's expense. The Petitioner also alleged that there was conspiracy and collusion between the Respondents to siphon off funds of the Company and this is reflected in the statements of the Company, where the Balance-Sheet does not reflect an equity investment of Rs. 22.3 lakhs and also shares issued at a later date were not shown in the Balance Sheet. Also notice of Annual General Meeting or Board Meeting was never received and his signatures were never sought on the Balance Sheet which is a clear violation as the Petitioner is also a Director in the Subsidiary Company.

In response, the Respondent stated that trial on the charge of fraud is pending against the Petitioner as he had under false pretence extracted money for investment in non-existing plots. It was also alleged that contrary to the allegations, the

DECEMBER 2016

Petitioner was in full control of management of the Company.

The National Company Law Tribunal (NCLT) noted that the idea of incorporation of the Company was mutual and Petitioner was not induced by any proposal to start a non-banking Finance Company. The Principal Bench of the Tribunal noted that there is clear suppression of facts on the part of the Petitioner relating to its involvement in the formation of the Company.

Fact based analysis also showed that the Petitioner had access to the Company's assets and records and thus his allegation of denial of access to the Company's records was refuted. Further, Minutes of the meeting also showed involvement of the Petitioner in the affairs of the Company and his being vested with authority to sign banking transactions. Thus, the Tribunal found suppression of facts and malafide intention on part of the Petitioner in filing this suit. Accordingly, the Petition was rejected at the threshold. *-[Anil Gupta & Ors, v. Yogesh Mahajan & Ors., 20th December, 2016, (NCLT)]*

*** **

SECURITIES

1. REVIEW OF GUIDELINES FOR CO-LOCATION/ PROXIMITY OF HOSTING FACILITY

Stock Exchanges are advised to allow direct connectivity between co-location facility of one recognized Stock Exchange and the co-location facility of other recognized Stock Exchanges.

Stock exchanges are also advised to allow direct connectivity between servers of a Stock Broker placed in co-location facility of a recognized Stock

Exchange and servers of the same Stock Broker placed in co-location facility of a different recognized Stock Exchange. This facility should be available to all the co-located Brokers, who are desirous of availing such connectivity, in a fair and equitable manner.

To ensure fair and equitable access to the co-location facility it is clarified that co-location facility provided by third party shall be deemed to have been provided by Stock Exchanges, and thus Stock Exchanges shall ensure complete control and jurisdiction over the matters related to its co-location facility.

Further, Stock Exchanges will remain responsible for the action of such outsourced entities. Stock Exchanges will also be required to submit quarterly compliance report. The Circular also clarifies that facility that allows Stock Brokers/data vendors to connect to Stock Exchange trading system over a Local Area Network (LAN) shall fall within the definition of 'colocation/proximity hosting' as provided in SEBI Circular dated 13th May 2015. *-[SEBI/HO/MRD/DP/CIR/P/2016/129, 1st December, 2016, (SEBI)]*

2. APPLICABILITY OF PRINCIPLES OF FINANCIAL MARKET INFRASTRUCTURE (PFMI) ON COMMODITY DERIVATIVE EXCHANGES

Commodity Derivative Exchanges which are currently providing in-house clearing services and having annual turnover of more than Rs 5 lakh crore in previous financial year shall be deemed to be systematically important Financial Market Infrastructure (FMIs).

Thus, such Commodity Derivative Exchanges shall be required to comply with the Principles of Financial Market Infrastructures. -

DECEMBER 2016

*[SEBI/HO/CDMRD/DMP/CIR/P/2016/13
7, 16th December, 2016, (SEBI)]*

3. SYSTEM DRIVEN DISCLOSURES IN SECURITIES MARKET

The Depositories and Stock Exchanges, through present Circular are advised to make arrangements so that disclosures of all transactions of promoter/promoter group in dematerialized mode beyond the threshold limits (prescribed in SEBI Circular dated 1st December, 2015) may be disseminated on their websites from 2nd January, 2017. -*[CFD/DCR/CIR/2016/139, 21st December, 2016, (SEBI)]*

4. FILING OF FORMS PAS-4 AND PAS-5 IN CASE OF ISSUANCE OF DEBT SECURITIES ON PRIVATE PLACEMENT BASIS

Rule 14 (1) of the Companies (Prospectus and Allotment of Securities) Rules, 2014, states that any offer or invitation to subscribe to securities through issue of private placement by a Company should be in Form PAS-4.

Further, Rule 14 (3) requires that a Company should maintain record of private placement offer in Form PAS-5. Rule 14(3) also prescribes that form PAS 4 and PAS 5 are to be filed with the Registrar with prescribed Fee and where the Company is listed with SEBI within a period of 30 days of circulation of private placement offer letter.

Accordingly, Forms PAS 4 and PAS 5 shall be filed with SEBI in soft copy in PDF format only in compact disc. -*[SEBI/ HO/ IMD/ DF1/ CIR/ P/ 2016/140, 23rd December, 2016, (SEBI)]*

5. REVIEW OF POSITION LIMITS FOR STOCK DERIVATIVE CONTRACT

The combined options and futures position limits, for Stock Brokers, FPIs (categories 1 and II) and Mutual Funds, shall be 20% of the applicable Market Wide Position Limit (MWPL). -*[SEBI/HO/MRD/DP/CIR/P/2016/143, 27th December, 2016, (SEBI)]*

6. CONTINUOUS DISCLOSURES AND COMPLIANCES BY REITs

SEBI circular prescribes the financial and non-financial disclosures that are required to be made by REIT to Stock Exchanges where its units are listed, as per Regulation 23 of SEBI (Real Estate Investment Trust) Regulations, 2014.

For the disclosure of Financial Information (FI) timelines have been prescribed- FI for first half of the year shall be provided within 45 days from the end of half year, annual FI shall be provided within 60 days from the end of financial year and FI for the second half of the year shall be submitted with the annual FI. Nature of financial information has also been explained.

FI shall contain comparative information on key financial heads. FI shall be prepared according to Indian Accounting Standards. The Annual FI shall include the following: Balance Sheet, Statement of Profit and Loss, Statement of changes in unit holders equity, Statement of cash flows, Statement of net assets at fair value, Statement of total returns at fair value and also explanatory notes.

The half-yearly FI shall however, include- Statement of Profit and Loss and explanatory notes. In addition REITs shall also disclose Net Distributable Cash Flows (NDCF) and Manager's

DECEMBER 2016

Fees. Before submission of FI, approval of Board of Directors/Governing Body of the Manager shall be sought. REITs are also required to provide FI of Manager and audited financial Statements of Manager for the latest year, along with comparative figures.

Along with FI, REITs are also required to furnish non-financial information. In this regard, the REIT is required to get into listing agreement with all the Stock Exchanges where they propose to list their units. REIT are also required to disclose unit holding pattern for each class of unit holders. The format for this purpose is also provided in the Circular. The REITs are also required to go through a credit rating review annually. Further, REITs are required to host a website and also have a grievance redressal mechanism. - **[CIR/IMD/DF/146/2016, 29th December, 2016, (SEBI)]**

COMPETITION

1. APPELLATE COMMISSION ORDERS INVESTIGATION AGAINST UBER FOR PREDATORY PRICING

The Appellant, Meru Travels Solutions Cabs having failed to establish *prima facie* case for investigation before the Competition Commission of India (CCI), they argued their case before the Appellate Commission, alleging abuse of dominance by the respondent, Uber.

The Appellant sought to establish their case by showing evidence of large venture capital support of Uber, and its strategy to burn \$1billion in six to nine months in order to achieve a target figure of one million trips per day. To establish a case for

predatory pricing, the Appellant alleged that before the entry of Uber in the market for radio taxi service, average market price of radio taxis existing in Delhi NCR were around Rs.23 per km. Uber launched its services @Rs. 20 per km and subsequently reduced the prices to Rs. 12 per km and Rs. 7 per km.

In addition, it was also alleged that Uber was paying its drivers/car owners unreasonably high incentives over and above trip fare, resulting in per trip loss of Rs.204 to Uber. Consequently, the Appellant has lost its market share and also made loss of Rs. 107 crore, after the entry of Uber.

Uber on the other hand has increased its market share to around 50%. The CCI did not find the case fit to be investigated and accepted the contention made by the Respondent that prerequisite for establishing the charge of abuse of dominance, is the establishment of dominance. Also the nature of report relied upon by the Appellant was considered dubious, as Uber was not interviewed in the process.

The Appellate Commission agreed that in the matter of abuse of dominance, the most important exercise is to form an opinion about the dominance of relevant entity in the relevant market. Thus, the first step is to delineate relevant market. In this regard, the Appellate Commission considered erroneous the view of the Commission to restrict relevant market to only Delhi rather than NCR.

The Appellate Commission also found that certain portions of the report relied upon by the Appellant were unchallenged by the Respondent. The Appellate Commission also noted that dominant position according to Explanation to Section 4 means “position of strength” and does not say that

DECEMBER 2016

this position of strength necessarily has to come out of market share in statistical terms. Taking assistance from sub-clauses of Section 19(4) of the Competition Act, the Appellate Commission also held that the information made available by the Appellant has to be seen in the context of overall picture as it exists in the radio taxi service market in term of funding, global developments, statements made by leaders in the business and also indication that network expansion was one of the primary purposes of the Respondent's business operation.

While observing that aggregator based radio taxi service has revolutionized the market, it also held that there is need to further investigate the matter. The business practices adopted by the Respondent of offering discounts and incentives, though carries efficiency improvements, may also be anti-competitive, and this needs to be investigated by the Director General. *-[Meru Travels Solutions Private Limited v. CCI and Uber India Systems Pvt. Ltd., 7th December, 2016, (COMPAT)]*

2. CHALLENGE AGAINST CCI'S ORDER ON LEVERAGE OF DOMINANCE BY CAR COMPANIES IN THE SECONDARY MARKET FOR SPARE PARTS UPHELD BY THE APPELLATE COMMISSION

Competition Commission of India (CCI) vide its order dated 25th August, 2014 in *Shamsheer Kataria v. Honda Siel Cars India Ltd.*, had imposed penalties on fourteen car manufacturers for leveraging their dominance in the secondary market of spare parts and diagnostic tools and imposing unfair restrictions on Original Equipment Suppliers (OES) from selling spare parts to independent repairers. The Appellants, Ford, Toyota and Nissan appealed against this

order. The Appellate Commission held that, Ford, Toyota and Nissan are in a position of dominance with respect to their respective spare parts in the aftermarket.

The Appellants are violating their dominant position by imposing unfair restrictions on the purchase and sale of spare parts on their authorized dealers and their OES.

The Appellants have also violated Section 4(2)(c) of Competition Act by denying market access to independent repairers of automobiles to the spare parts in the aftermarkets. The Appellants also leveraged their dominant position in the market of spare parts to enter into or protect other relevant market i.e. repair and maintenance market, and thus in violation of Section 4(2)(e).

The Appellants were also held in violation of Section 3 as they imposed restrictions on OES from selling spare parts in the aftermarket to independent repairers, causing refusal to deal.

The Appellate Commission admitted that the aim here was to correct the distortions in the aftermarket, so that OES have more freedom in the sale of spare parts in the aftermarket, that independent repairers have competitive freedom and access to essential inputs such as spare parts and that the consumers have more choice between independent repairers and authorized dealers.

Accordingly, a cease and desist order was passed by the Appellate Commission ordering the Appellants to immediately cease the practices held to be in violation of Act and make spare parts and diagnostic tools available. The Appellants were also directed to permit OES to sell spare parts in the open market free of any restrictions including on price. Further, the Appellants were also

DECEMBER 2016

directed not to impose any condition which reads that warranty would be cancelled if consumer avails of services of any independent repairer. On the aspect of penalty, the Appellate Commission held that the established rule in this regard has been refined to mean that penalty levied on the turnover should mean turnover of the product subject to anti-competitive practice and not the turnover of the entire multi-product enterprise. Thus, the Appellate Commission ordered CCI to compute the monetary penalty on the basis of turnover of spare part business. *-[M/s Toyota Kirloskar Motor Pvt. Ltd, M/s Ford India Pvt Ltd and M/s Nissan Motor India Pvt Ltd v. CCI, 9th December, 2016, (COMPAT)]*

INDIRECT TAXES

a. CUSTOMS

1. WITHDRAWAL OF CVD EXEMPTION FOR GOLD COINS AND FINDINGS

Notification No. 12/2012-Customs dated 17th March, 2012 has been amended, so as to withdraw CVD exemption on gold coins having gold content not below 99.5%, and gold findings. – *[Notification No. 59/2016 – Customs, dated 1st December, 2016]*

2. EXEMPTION OF WHEAT FROM IMPORT DUTY

Notification No. 12/2012-Customs dated the 17th March, 2012 has been amended, so as to reduce import duty on wheat falling under Tariff Items 1001 1900 or 1001 9910 from 10% to Nil without an end date. *-[Notification No. 60/2016-Customs, dated 8th December, 2016]*

3. WITHDRAWAL OF BCD EXEMPTION FOR TECHNIUM-99M

Notification No 12/2012-Customs dated 17.03.2012 amended, so as to withdraw the exemption from Basic Customs Duty on import of Technitium-99m. *-[Notification No. 61/2016-Customs, dated 27th December, 2016]*

4. WITHDRAWAL OF BCD EXEMPTION TO TEXTILE MANUFACTURER FOR EXPORTS

The CBEC has withdrawn BCD exemption, available to specified fabrics, of value equivalent to 1% of the FOB value of exports in the preceding financial year, for manufacture of textile garments for exports, subject to the specified conditions. *-[Notification No. 62/2016-Customs, dated 31st December, 2016]*

5. DEEPER TARIFF CONCESSIONS IN RESPECT OF SPECIFIED GOODS WHEN IMPORTED FROM ASEAN UNDER THE INDIA-ASEAN FREE TRADE AGREEMENT

Notification No. 46/2011-Customs dated 01.06.2011 has been amended, so as to provide deeper tariff concessions in respect of specified goods when imported from ASEAN under the India-ASEAN Free Trade Agreement *m.e.f.* 01.01.2017 and to carry out editorial changes as a result of HS 2017 changes. *-[Notification No. 63/2016 – Customs, dated 31st December, 2016]*

DECEMBER 2016

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

Notification No. 69/2011-Customs, dated 29th July, 2011 has been amended so as to deepen the concessional rate of basic customs duty in respect of tariff item 8408 20 20 [engines of a kind used for the propulsion of specified motor vehicles – of cylinder capacity exceeding 250 cc] and 8708 40 00 [gear box and parts thereof, of specified motor vehicles], *m.e.f.* 1st of January, 2017, when imported under the India-Japan Comprehensive Economic Partnership Agreement (IJCEPA) and to carry out editorial changes as a result of HS 2017 changes. - *[Notification No. 64/2016 – Customs, dated 31st December, 2016]*

7. DEEPER TARIFF CONCESSIONS IN RESPECT OF SPECIFIED GOODS WHEN IMPORTED FROM MALAYSIA UNDER THE INDIA - MALAYSIA COMPREHENSIVE ECONOMIC COOPERATION AGREEMENT

Notification No. 53/2011-Customs dated 01st July, 2011 has been amended, so as to provide deeper tariff concessions in respect of specified goods imported from Malaysia under the India-Malaysia Comprehensive Economic Cooperation Agreement (IMCECA) *m.e.f.* 01.01.2016 and to carry out editorial changes as a result of HS 2017 changes. - *[Notification No. 65/2016 – Customs, dated 31st December, 2016]*

8. DEEPER TARIFF CONCESSIONS IN RESPECT OF SPECIFIED GOODS WHEN IMPORTED FROM KOREA RP UNDER THE INDIA-KOREA COMPREHENSIVE ECONOMIC PARTNERSHIP AGREEMENT

Notification No. 152/2009-Customs dated 31.12.2009 has been amended, so as to provide deeper tariff concessions in respect of specified goods imported from Korea RP under the India-Korea Comprehensive Economic Partnership Agreement (CEPA) *m.e.f.* 01.01.2017 and to carry out editorial changes as a result of HS 2017 changes. - *[Notification No. 66/2016 – Customs, dated 31st December, 2016]*

9. RAIGANJ STATION NOTIFIED AS CUSTOMS STATION FOR EXPORT

The CBEC has notified Raiganj Railway Station in the district of Uttar Dinajpur, West Bengal as a Land Customs Station through which goods are allowed to be exported to Birol in Bangladesh by rail through Radhikapur. - *[Notification No. 146/2016-Customs (N.T.), dated 14th December, 2016]*

10. GUIDELINES FOR THE SALE OF SEIZED / CONFISCATED GOLD MODIFIED

The CBEC has instructed its field formations that in addition to the State Bank of India, the sale of seized/ confiscated Gold found ripe for disposal can be routed through all Public Sector Banks (approved by RBI to import and sell gold), MMTC Ltd. & STC Ltd. - *[Circular No. 57/2016 – Customs, dated 1st December, 2016]*

11. ROLL OUT OF EXPRESS CARGO CLEARANCE SYSTEM (ECCS) AS A PILOT PROJECT AT COURIER TERMINAL, SAHAR, MUMBAI

In response to the phenomenal growth in the volume of import/export through the courier mode, the CBEC has launched a new system known as Express Cargo Clearance System (ECCS) as a pilot project at Courier Terminal, CSI Airport, Mumbai *m.e.f.* 5th December, 2016 to carry out automated assessment and clearance

DECEMBER 2016

under the Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010. Till date the clearance was done by filing the Customs documents manually. - *[Circular No. 58/2016 – Customs-IV, dated 2nd December, 2016]*

12. AUTHORIZED COURIERS ALLOWED TO OUTSOURCE CERTAIN FUNCTIONS

The CBEC has allowed authorized couriers engaged in import and export activities to outsource functions like pick-up, delivery of inward cargo, and transportation for officials and housekeeping activities. - *[Circular No. 59/2016 – Customs, dated 2nd December, 2016]*

b. CENTRAL EXCISE

1. MODIFICATIONS IN EXEMPTION FOR GOLD COINS

Notification No. 12/2012-Central Excise dated 17th March, 2012 amended, in respect of the excise duty exemption on branded gold coins of purity 99.5% and above to introduce a condition that CENVAT credit should not have been taken. – *[Notification No. 36/2016 – Central Excise, dated 1st December, 2016]*

c. SERVICE TAX

1. SERVICE TAX EXEMPTION TO BANKS FOR SETTLEMENT OF CARD TRANSACTION OF UPTO RS. 2000

Exemption Notification No. 25/2012-ST dated 20.06.2012 has been amended, so as to exempt services by an acquiring Bank, to any person in relation to settlement of an amount upto two thousand rupees in a single transaction transacted through credit card, debit card, charge card or other

payment card service. - *[Notification No. 52/2016-Service Tax, dated 8th December, 2016]*

2. FOREIGN DATABASE ETC ALLOWED TO ISSUE ONLINE INVOICE WITHOUT DIGITAL SIGNATURE TILL 31ST JANUARY, 2017

Service Tax Rules, 1994 has been amended, so as to allow a person located in non-taxable territory providing online information and database access or retrieval services to a non-assessee online recipient to issue online invoices not authenticated by means of a digital signature for a period upto 31st January, 2017. - *[Notification No. 53/2016-Service Tax, dated 19th December, 2016]*

*** **

INTELLECTUAL PROPERTY RIGHTS

1. SOME AMOUNT OF SALES HAVE TO BE SHOWN IN ORDER TO ESTABLISH PRIORITY RIGHTS IN A MARK

The Delhi High Court while deciding whether interim injunction can be granted or not in a suit for passing off, reiterated a settled position of law that some amount of sales have to be shown in order to establish priority rights in a mark and at the same time mere casual, intermittent or experimental use may not be sufficient to gain rights in a mark. The HC took reliance of the Bombay HC judgment in *Consolidated Foods Corporation v. Brandon and Company Private Ltd.*, AIR 1965 Bom. 35 and other relevant judgments on the point that "for the purpose of claiming proprietorship, it is not necessary that the mark should have been used for considerable any length of time. As a matter of fact, a single actual use with intent to continue such use *eo instanti* confers a right to such mark as a trade mark.

DECEMBER 2016

It is sufficient if the article with the mark upon it has actually become a vendible article in the market with intent on the part of the proprietor to continue its production and sales." -[M/s AZ Tech (India) & Anr. vs. M/s Intex Technologies (India) Ltd. & Anr., dated 24th December, 2016 (Delhi HC)]

2. DEFENDANTS RESTRAINED FROM USING THE DOMAIN NAME WWW.LAPCARESERVICES.COM WHICH IS INFRINGING THE REGISTERED TRADE MARK OF THE PLAINTIFF 'LAPCARE'

The Plaintiff is engaged in the business of import, export and distribution of IT hardware and allied products under the registered Trademark LAPCARE since 2002. It is stated that the trademark LAPCARE has been extensively and continuously used by the Plaintiff since its adoption. It is further stated that the Plaintiff in the month of June 2011, became aware that the Defendants were offering the same kind of goods and services as that of the Plaintiff through the Defendants' website with the domain name www.lapcareservices.com.

The Court observed that the mark LAPCARE has been used by the Plaintiff for more than a decade and enjoys reputation and goodwill associated with the Plaintiff. Also, that the Defendants are carrying on their business in the same field as that of the Plaintiff and are infringing the registered mark of the Plaintiff by using the trade name LAPCARE for similar goods and services and advertising the same through their website: www.lapcareservices.com.

Held that the Plaintiff is entitled to a decree of permanent injunction as prayed for by the Plaintiff. -[M/S Rx Infotech Pvt. Ltd v. Gopinath T. And Anr., dated 22nd December, 2016 (Delhi HC)]

CONSUMER

1. COMPENSATION AWARDED SHOULD NOT BE EXCESSIVE AND SHOULD RELATE TO DEFICIENCY IN SERVICE

The Complainant/Respondent availed of a loan of Rs. 4.75 Lakhs from LIC Housing Finance and in lieu of the loan, the original property papers were handed over to the custody of the Petitioner. The loan was paid back and the Complainant demanded the title deed back from the Petitioner but was told that the documents had been misplaced. The Complainant raised a claim based on this deficiency in service and demanded compensation for loss and hardship caused. State Commission ordered the Petitioner herein to provide the property papers within one month or provide 85% value of the house @ 18% interest and Rs. 5 lakh as punitive damages and Rs. 20,000 as litigation cost. The Petitioner has appealed against this order.

The Commission held that compensation awarded was excessive. Although the re-sale value of an immovable property diminish/erode, if the title deeds of the said property are lost/misplaced, the compensation awarded should be for the deficiency in service and accordingly, compensation awarded was reduced to Rs. 5 lakhs.

-[LIC Housing Finance Ltd., v. Rajeev Kumar Jain, 8th December, 2016, (NCDRC)]

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 for a detailed description about the LEXport and services being offered by it.