

Annual Subscription ₹ 100/-
Single Copy ₹ 10/-

ICSI
ICSI - WIRC

Regn. No. MH/MR/South-107/2012-14, to
Post at Patrika Channel, Sorting Office, Mumbai - 400 001
Registered with the Registrar of Newspaper
New Delhi under Regn. No. 39907/82
Posted and Printed on 20th & 21st of every month

FOCUS

VOL. XXIX No. 4
APRIL, 2012

“प्रगतिश्च विकासश्च जीवनं जीवनं खलु।”

A MONTHLY JOURNAL FOR CORPORATE EXECUTIVES & PROFESSIONALS

Special Features

- *Message from RD (West) MCA*
- *Interview with SAT Presiding Officer*

Surmounting the new challenges!

This Journal is printed on recycled environmental friendly paper.

Go Green



Dear All,

"The purpose of life is a life of purpose" - Robert Byrne

The excitement and enthusiasm continue as I communicate to you through this third issue of the revamped Focus. We continued with our plan of action for the year 2012 and successfully achieved various milestones. Equally important, many initiatives are in advance stage of finalisation or implementation.

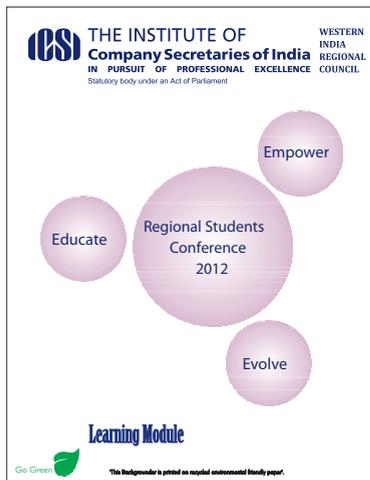
We had a **gala fund raising awareness programme in the Asia's biggest hall** - The Shanmukhananda Hall, Mumbai. About **one thousand participants** witnessed and enjoyed perhaps the biggest cultural evening organised by ICSI-WIRC ever. We were honoured with numerous dignitaries gracing the event including the

ICSI President, Vice President, Secretary & CEO, Central Council members - S/Shri Ashok Pareek (from east), Atul Mehta, B Narasimhan and Umesh Ved besides regional council members and dignitaries from industry and regulators such as SEBI, MCA, RBI and the like. Sincere thanks to the Fund Raising Committee, and Shri R Narayanan for his guidance and contribution in organising the event. I do look forward to organise more such events. As I write to you, **the renovation project has started at ICSI-WIRO. I take this opportunity to appeal each one of you to please come forward and be part of this noble initiative by contributing your share.**

We continued having increased number of **members' programs** with focus on quality. **Speakers' having subject expertise, well planned and organised schedule, and backgrounders** have become the **hallmark of the ICSI-WIRC's** programs. I thank you all for an **overwhelming response** to each and every program and do look forward to your active participation in future programs as well.



A request to all those who have not become part of ICSI-WIRC's PMS, to please take this prestigious membership of ICSI-WIRC. We are in the process of rolling out a series of programs for PMS members such as free health check-up, cultural get-togethers and much more. To start with, a free health camp is being organised by ICSI-WIRC jointly with MCA, Mumbai for WIRC-PMS members and MCA officials on 28th April, 2012.



We further improved 'Focus' giving it a shape of an **international-level corporate magazine** with articles on varied topics and various other value-added features. I thank advertisers / sponsors for their financial contribution and writers for content support.

We are in advance stage of rolling out various initiatives for students. We held successfully the **first students' conference for the year 2012 organised by Pune Chapter** with the theme 'Educate, Evolve and Empower'. Complements to Pune Chapter! The revamped backgrounder with useful articles and write-ups is a unique delivery to the students' of ICSI-WIRC. During my visit to Pune Chapter, I interacted with the Chairman Pune Chapter alongwith its Managing Committee members and discussed various initiatives to be pursued by ICSI-WIRC jointly with the Chapter.

We are launching new OTC with various useful services to our students and request all members to spread awareness about our OTC. Details of this important student-servicing initiative is being released.

I am sure, by now, you would have received schedule of the **Two-days PCS Conference on 'Mergers & Acquisitions'** to be organised at Lonavla on 4th and 5th May, 2012. The Calendar of other professional development programs is also provided in this Focus so that you can block your diary in advance and plan your schedule accordingly.

Please do write at cschairman.wirc@gmail.com Your suggestions and inputs would help achieve the overall objectives towards our theme of the year 2012 - *"Educate, Empower & Execute"*.

Best Wishes,



Cordially - Mahavir Lunawat
April 16, 2012

Requests...

- Become a member of CS Benevolent Fund (CSBF)
- Help in fund-raising initiatives of ICSI-WIRC
- Become a member of WIRC Professional Membership Scheme (PMS)



Dear Readers,

**“Do not follow where the path may lead.
Go instead where there is no path and leave a trail.”**

- Harold R McAlindon

As you would agree with me, in today’s competitive and dynamic corporate environment, Company Secretariship as a profession provides an ideal platform to launch yourself in all spectrum of corporate world and take control of it – a highly lucrative profession with an important responsibility for the efficient management of the corporate sector. Gone were the days when company secretaries were only meant for secretarial compliances.

It’s an ideal time and opportunity for our fraternity to stand up and create their own niche in the market - be it Taxation, Accounting, Finance, FEMA, IPR, M&A. Even the study materials / training programs recommended / conducted by our institute are business oriented, focusing on the current business requirement (from taxation, finance and legal perspective), so that our professional colleagues / budding professionals can be always ready for the corporate challenge.

In this issue of ‘Focus’, as always, we have tried to include articles which will not only update the reader’s knowledge but will also give a glimpse of new practice area where our members can foray.

In today’s Professional world, dealing with different section of society like management, clients, friends, colleagues, etc. requires specific skills with professionalism, article “How to say No” tried to cover those aspects.

This issue also includes certain compliance related articles which though seems very general, but are of great importance in day to day working of the corporate viz compliance u/s 314 of the Companies Act, regularization of share capital, compliance calendar of different statutes.

Chairman of WIRC - Mr. Mahavir Lunawat has initiated various programs in the current year and one among those is a series of “State Annual Conference” in all the states of Western Region - first of such conference is proposed to be held in the month of May at Bhopal for the state of Madhya Pradesh. The idea for such state conference is to get better visibility and try to weave a close relationship with the respective state government and departments so as to get better recognition for the profession.

Let’s gear up for the challenges!!

CS Amit Kumar Jain

RD Column



Dear Professionals,

Sub: NAMES THROUGH STP

As you are all aware, the facility to obtain names for registering a company through STP (Straight Through Process) by getting the Form 1A certified by professionals is available in the MCA-21 portal. However, in practice it is seen that majority of applications are still being sent to ROC offices for processing. As a result the work in ROC offices are getting accumulated. It is, therefore, necessary for the professionals to avail the STP route so that names are availed immediately and unnecessary clogging of work items in the MCA-21 portal is avoided. The professionals have to take the responsibility to ensure that the name guidelines are complied while certifying the Form 1A and that in case of inadvertent mistake, they withdraw the name availed and apply afresh with new names.

The professionals have a fear that Ministry would proceed against them in case of wrong certification. Such a fear is misplaced. As long as the guidelines are followed while certifying Form 1A and in case of advertent mistake if the names obtained are withdrawn forthwith the chances of the action against the professionals are remote.

The intention of the Ministry is not to punish but to guide. The intention of the professional should accordingly relate to compliance and not violation of the guideline issued.

We hope to see more and more professionals adopting the STP route for getting the names approved for registering a company in future.

(S. M. AMEERUL MILLATH)
Regional Director (West)
Ministry of Corporate Affairs



THE INSTITUTE OF
Company Secretaries of India

IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

WESTERN
INDIA
REGIONAL
COUNCIL

Health Check up & Blood Donation camp

ICSI-WIRC jointly with Ministry of Corporate Affairs is conducting "first of its type" health camp in Mumbai	DAY & DATE Saturday 28th April, 2012 TIME : 08.00 am to 04.00 pm
This event will cover a comprehensive health check-up (FREE) including BP, Blood Sugar, ECG, serum creatinine, Eye Check up etc. Besides, a blood donation camp has been organized as well.	VENUE MCA Office, Everest, 5th Floor 100 Marine Drive, Mumbai - 400002

Free for all WIRC- PMS Members & MCA Officials

For enrollment, please contact:- Before 25th April 2012
ICSI-WIRC Office at 13 Jolly Maker Chambers No.2, First Floor,
Nariman Point, Mumbai - 400021 Tel Nos.: 22047569 / 22047580
Email: archana.sawant@icsi.edu / bharatkumar.rathod@icsi.edu / sudipto.pal@icsi.edu

Coordinator :- Dr. S.K.Jain

CS Mahavir Lunawat
Chairman, ICSI-WIRC

CS Ragini Chokshi
Secretary, ICSI-WIRC

CS Hitesh Kothari
Chairman, Health, Sport & Culture
Committee ICSI - WIRC

Educate, Empower and Execute

EDITORIAL ADVISORY BOARD

EDITOR	:	CS AMIT KUMAR JAIN
MEMBERS	:	CS B RENGANATHAN CS DR. D. K. JAIN CS HEMANT PANDYA CS KAUSHIK JHAVERI CS M. G. SUBRAMANIAM CS N. HARIHARAN CS RAJKUMAR ADUKIA CS R. KALIDAS CS S. D. ISRANI CS SURESH VISHWANATHAN CS YOGESH CHANDE
EX-OFFICIO MEMBERS	:	CS MAHAVIR LUNAWAT CS RAGINI CHOKSHI

WIRC of ICSI Premises,
No.13, 56 & 57,
Jolly Maker Chambers No.2,
Nariman Point, Mumbai - 400 021.
Tel. No.: 22047604 / 22047580
Email: wiro@icsi.edu; sudipto.pal@icsi.edu

Monthly **TARIFF** for advertisement in Focus

Type	Size	Employment	Non Employment
Inside Front Cover Page	18 x 18	20,000	30,000
Back Inner Cover Page	18 x 18	17,500	25,000
Full Page (Colour)	18 x 18	15,000	20,000
Half Page (Colour)	12 x 18	10,000	12,000
Half Page (B&W)	12 x 18	8,000	10,000
Quarter Page (Colour)	12 x 9	5,000	7,000
Principle Sponsorship*	18 x 18	1,00,000	

Annual Contract : (1) Out of 12 issues you have to remit only 10 issue charges, i.e. 2 issues will be free. (2) *For Principle Sponsorship: Out of 12 issues you have to remit only 9 issue charges (i.e. 3 issues will be free) - INR 9,00,000.

Half Yearly Contract : (1) Out of 6 issues you have to remit only 5 issue charges, i.e. 1 issue will be free. (2)* For principle Sponsorship: Out of 6 issues you have to remit only 5 issue charges, i.e. 1 issue will be free.

Term of Payment : Advance Payment in favour of 'WIRC of ICSI' by way of a Cheque /Demand Draft payable at Mumbai alongwith your release order / advertisement material.

CONTENTS

MESSAGES

Chairman's Communique
From the Editor
RD Column

LEGAL WORLD

- 1 Case Laws
- 2 Circulars and Notifications
- 6 Legal updates
- 7 Corporate Law Stories

CORPORATE LAW

- 8 Holding of office or place of Profit by Directors
- 10 What is "Sufficient Cause" - A Legal View Point
- 12 Regularisation of Share Capital in a Company

SEBI LAW

- 14 Continual Disclosure

FEMA

- 15 A Diminutive Ready Reckoner

FINANCE AND TAX

- 18 Private Equity : An Overview
- 20 Importance of proper and effective Asset Allocation

OTHER EMERGING AREAS

- 22 MSMEs and Emerging Role of Company Secretary

WORDS FROM THE REGULATOR

- 24 P K Malhotra, SAT

SOFT & COMMUNICATION SKILLS

- 26 How to say "No"

DATES TO REMEMBER

- 28 Compliance Calendar

NEWS & EVENTS

- 32 News & Events at WIRC and Chapters

OTHERS

- 36 Health Tips
- 38 Media Coverage
- 39 Miscellaneous

Disclaimer

The ICSI is not in any way responsible for the result of any action taken on the basis of the advertisement published in the journal.

MORE SAVINGS PER SQ.CM.



You always stand to benefit by advertising with the Market Leaders in Statutory/Financial Advertisement Releases – The Free Press Journal and Navshakti. We are one of the fastest growing newspapers and No. 1 choice of many Company Secretaries when it comes to releasing Audited and Unaudited Financial or Statutory Advertisements. Our clientele include organisations of all sizes and types – private and public. Most of our readers are well educated with many being opinion leaders with influence in their peer group. This ensures that you get better yield per insertion, i.e. more value for money!

A recent survey revealed the following insights into our readership:

- **Leader with 65% share of financial & statutory advertisement market**
- 64% of the FPJ readers are in the age group of 21-40 years
- 60% of the FPJ readers pour over the FPJ from 2 hours to 30 minutes
- 60% of the FPJ readers are graduates or post graduates



The Voice of Mumbai

Pune | Indore | Bhopal

Free Press House, Free Press Journal Marg, 215 Nariman Point, Mumbai 400021
T: 022 2287 4566 extn.124 | E-mail: ad@fpj.co.in | www.freepressjournal.in

Professional's Website ????

Already running more than 3000 Websites for Professionals



Why should I have one ?



I already have it.



What is its Use ?



I am a busy professional.



I don't have time to create and maintain one.

YES YOU ARE RIGHT !
YOU DON'T NEED A WEBSITE!!!
YOU NEED A WEBSITE PLUS+
WHAT IS THIS WEBSITE PLUS + ???

IT IS YOUR VIRTUAL OFFICE WHICH CONTAINS:

Web Address (Domain)	Document Management System
Firm's Details.	SMS Facility
Unique updation facility	SMS Alert
Bulletins - Circulars etc.	Email Management
Calculators	What's New
Acts/Rules	Dedicated Server.
Utilities - Ready Reckoner	1GB Server Space
Forms / Resolutions / Deeds	Windows Server
Calender for Important Dates	SQL Server 2005 Database

WEBSITE
~~X~~
VIRTUAL
 ✓
OFFICE

BRANDING
 +
ONLINE
OFFICE

Web-e-SCHEDULE VI B/S & XBRL

A Complete Software Solution for Preparation of Balance Sheet & Automatic Conversion to XBRL

WEB-XBRL

Complexity to Simplicity

Revised
 Schedule VI

A Complete software solution for preparation & filing of Annual Reports in XBRL Format



WEBTEL ELECTROSOFT (P) LTD.

Regd. Off. : 1002, Vikrant Tower, Rajendra Place, New Delhi - 110008

Ph. : 011-45054000 (30 Lines)

Mumbai Off. : 022-400008, Tel.: 022-23000380-82

Kolkata Off. : Ph. : 9331015949, 9331015952

Parwanoo Off (H.P.), Ph. : 01792-232397

E-mail contact@webtel.in Website : www.webtel.in

Our Presence : Delhi, Mumbai, Kolkata, Chennai, Bangalore, Ahmedabad, Hyderabad, Jaipur, Punjab, U.P., H.P., U.K. & CANADA

CASE LAWS AT A GLANCE

RECENT JUDGEMENTS ON COMPANY LAW



CS Ajay Kumar, Practising Company Secretary, Mumbai

1. ANNUAL GENERAL MEETING

Act of holding an Annual General Meeting by company is an obligation or a duty cast on company by governing statute and not a right. ROC has authority to extend statutory time prescribed under section 166 beyond period of three months. A general meeting of a company will not be an Annual General Meeting unless business that is statutorily required to be transacted thereat is gone through. Requirement of holding an Annual General Meeting is for benefit of members of company and not for benefit of company itself or those in management thereof. Company has suo motu authority to hold its Annual General Meeting beyond time prescribed by statute. There is express or implied bar on a Civil Court, in an appropriate action, to compel company to discharge statutory obligation of holding its Annual General Meeting, notwithstanding period prescribed thereof having expired. - **SADHAN KUMAR GHOSH V. BENGAL BRICK FIELD OWNERS' ASSOCIATION** [2011] 108 SCL 124/11/267 (CAL.)



2. FURTHER ISSUE OF SHARE CAPITAL

SEPL had taken over appellant-company by acquiring 71.9 per cent of its shares. Appellant was facing difficulty for arranging funds for project undertaken by it so SEPL lent its own funds as unsecured loans to appellant. Appellant came out with right issue and there was understanding between appellant and SEPL that if and when appellant came out with a rights issue, unsecured loans would be adjusted against share price. SEPL's entitlement to rights shares was equivalent to loan granted by it to appellant. Appellant filed draft letter of offer with SEBI in which it was specifically mentioned that unsecured loans lying in books of company and due to SEPL would be adjusted towards price of shares as per entitlement of latter. SEBI asked appellant to ensure that unsecured loans of promoters were not adjusted against allotment of shares against their entitlements. All that SEPL had done was that it received shares in rights issue and made payment by adjustment of unsecured loans which were payable on demand, same could not be said to be conversion of a loans into equity. Methodology adopted was only a mode of payment for shares received in rights issue and since all necessary disclosures had been made by appellant in offer document, section 81(1) was alone applicable. Therefore, direction issued by Board requiring appellant not to adjust unsecured loans advanced by promoters towards price of shares allotted in rights issue was to be set aside. - **SRM ENERGY LTD. V. SEBI** [2011] 108 SCL 100/11 252 (SAT. MUM)

3. REGISTRATION WITH NAME BEING IDENTICAL WITH OR TOO NEARLY RESEMBLING WITH NAME OF ANOTHER COMPANY - POWER OF

REGIONAL DIRECTOR TO ORDER CHANGE IN NAME - WHEN INTERFERENCE OF COURT IS NOT CALLED FOR - SECTIONS 20 AND 22

The parameters of the provisions of the Trade Marks Act, 1999 are different from the provisions of sections 20 and 22. Even if an action of infringement or passing off action may lie under the Trade Marks, but such action may not be sustainable under the Act. The court, while considering the issue within the parameters of sections 20 and 22, will have to be satisfied that the name of the company is similar or too nearly resembles with the name of another company. Distinguishing features in the names of the petitioner and respondent-company are such that it cannot be said that the name of the respondent-company too nearly resembles the name of the Petitioner-company, the Regional Director's order rejecting the Petitioner-company's application seeking change of name would not call for any interference. - **BISAZZA INDIA LTD. V. PINO BISAZZA GLASS (P.) LTD.** [2011] 101 CLA 416 (GUJ.)

4. BOARD DELEGATING ITS POWER TO CHAIRMAN-CUM-MANAGING DIRECTORS TO TAKE DISCIPLINARY ACTION AGAINST EMPLOYEE -CAN A DELEGATE SUB-DELEGATE ITS POWERS EVEN WITH AUTHORIZATION OF BOARD OF DIRECTORS-SCHEDULE I, TABLE-A

Administrative Rules cannot override the provisions of the Act. Since the Act does not allow sub-delegation of power by the Board of directors of the company and the Board of a government corporation, which has been registered under the Companies Act, allows sub-delegation of power by its managing director to any other employee of the corporation under an administrative rule such sub-delegation cannot clothe the managing director of the corporation to sub-delegate his power to any other person. - **MD. SHAMIN AHMED V. UNION OF INDIA** [2011] 101 CLA 81 (GAU.)

5. DOCTRINE OF EQUITY WHEN CANNOT BE INVOKED TO INTERFERE WITH DECISIONS OF DOMESTIC FORUM TO GRANT INTERIM RELIEF - SECTION 397/398

The Petitioners were well aware of all the acts closely held company from time to time as they were attending various meetings and the fact that it was not economically viable to run the unit which lead to its closure and there was nothing on record to assume that the company created third party right over its fixed assets, the doctrine of equity cannot be invoked to interfere with the decisions of the domestic forum and no interim relief can be granted by the Company Law Board - **WILLIAM ASKEW SOMERVILLE V. EASTERN SCALES (P.) LTD.** [2011] 101 CLA 105 (CLB)

Circulars & Notifications

CS Piyush Bindal, Practising Company Secretary, Bhopal

SERVICE TAX

1. Clarification on Point of Taxation Rules – regarding Circular No.154/5/ 2012 – ST

Source: www.servicetax.gov.in

1. Notification No.4/2012 - Service Tax dated the 17th March 2012 has amended the Point of Taxation Rules 2011 w.e.f. 1st April 2012, inter- alia, amending Rule 7 which applied to individuals or proprietary firms or partnership firms providing taxable services referred to in sub-clauses (g), (p), (q), (s), (t), (u), (za) and (zzzzm) of clause (105) of section 65 of the Finance Act, 1994. Rule 7 determined the point of taxation in such cases as the date of receipt of payment. The provisions have been amended both in the Point of Taxation Rules 2011 and the Service Tax Rules 1994 such that from 1st April, 2012 the payment of tax shall be allowed to be deferred till the receipt of payment upto a value of Rs. 50 lakhs of taxable services. The facility has been granted to all individuals and partnership firms, irrespective of the description of service, whose turnover of taxable services is fifty lakh rupees or less in the previous financial year.
2. Representations have been received, in respect of the specified eight services, requesting clarification on determination of point of taxation in respect of invoices issued on or before 31st March, 2012 where the payment has not been received before 1st April 2012.
3. The issue has been examined. For invoices issued on or before 31st March, 2012, the point of taxation shall continue to be governed by the Rule 7 as it stands till the said date. Thus in respect of invoices issued on or before 31st March, 2012 the point of taxation shall be the date of payment.

2. Clarification on Point of Taxation Rules – regarding Circular No.155/6/ 2012 – ST

Source: www.servicetax.gov.in

1. Notification No. 2/2012 - Service Tax dated the 17th March, 2012 has rescinded Notification No. No. 8/2009 - Service Tax, dated the 24th February, 2009, thus restoring the effective rate of service tax to 12% wef 1st April, 2012. Further the Notification No. 26/2010-Service Tax, dated the 22nd June, 2010 has been superseded by Notification No. 6/2012 - Service Tax dated the 17th March, 2012, wef 1st April, 2012.
2. It has been brought to the attention of the Board that some airlines are collecting differential service tax on tickets issued before 1st April, 2012 for

journey after 1st April, 2012, causing inconvenience to passengers. Representations have also been received in this regard. The position of law in the above respect is clear and is detailed below.

3. Rule 4 of the Point of Taxation Rules 2011 deals with the situations of change in effective rate of tax. In case of airline industry, the ticket so issued in any form is recognized as an invoice by virtue of proviso to Rule 4A of Service Tax Rules 1994. Usually in case of online ticketing and counter sales by the airlines, the payment for the ticket is received before the issuance of the ticket. Rule 4(b)(ii) of the Point of Taxation Rules 2011 addresses such situations and accordingly the point of taxation shall be the date of receipt of payment or date of issuance of invoice, whichever is earlier. Thus the service tax shall be charged @10% subject to applicable exemptions plus cesses in case of tickets issued before 1st April, 2012 when the payment is received before 1st April, 2012.
 4. In case of sales through agents (IATA or otherwise including online sales and sales through GSA) the payment is received by the agent and remitted to airlines after some time. When the relationship between the airlines and such agents is that of principal and agent in terms of the Indian Contract Act 1872, the payment to the agent is considered as payment to the principal. Accordingly as per Rule 4(b)(ii), the point of taxation shall be the date of receipt of payment or date of issuance of invoice, whichever is earlier. Thus the service tax shall be charged @10% subject to applicable exemptions plus cesses in case of tickets issued before 1st April, 2012 when the payment is received before 1st April, 2012 by the agent.
 5. However, to the extent airlines have already collected extra amount as service tax and do not refund the same to the customers, such amount will be required to be paid to the credit of the Central Government under Section 73A of the Finance Act 1994 (as amended).
- #### 3. Service tax paid on taxable services used for export of goods at the post-manufacture stage – electronic refund through the Indian Customs EDI System -- Notification 52/2011-ST - review -- regarding Circular No. 156/7 /2012-ST
- Source: www.servicetax.gov.in
1. A Committee has been constituted with Director General of Service Tax, Smt. Sanghamitra Panda as Chairperson, to review the scheme for electronic refund of service tax paid on taxable services

“Whatever course you decide upon, there is always someone to tell you that you are wrong. There are always difficulties arising which tempt you to believe that your critics are right. To map out a course of action and follow it to an end requires courage.” - Ralph Waldo Emerson

used for export of goods, made operational vide Notification 52/2011-ST dated 30th December, 2011. Other members of the Committee are Commissioner of Service Tax, Mumbai-1, Shri Sushil Solanki and Director, TRU, Shri. J. M. Kennedy.

- The Committee has been instructed, as a part of the review, to (a) evolve a scientific approach for the fixation of rates in the schedule of rates for service tax refund; and (b) propose a revised schedule of rates for service tax refund, taking into account the revision of rate of service tax from 10% to 12% and also movement towards 'Negative List' approach to taxation of services. The Committee may interact with/call for data from, the field formations, export promotion councils, chambers of commerce or any other business or industry association, as may be required. The Committee will submit its report to the Chairman, CBEC, before 20/06/2012. Views and suggestions may be posted at the e-mail address: feedbackonestr@gmail.com

CUSTOMS

1. Applicability of exemption under Sr. No. 4 of the Notification 4/2006 - CE dated 1/3/2006 on import of Ore Concentrates - regarding

Circular No.09 / 2012 - Customs

Source: www.cbec.gov.in

- Doubts have been raised whether on imports of Ore Concentrate classifiable under Chapter 26 of the First Schedule to the Customs Tariff Act, 1975, the benefit that is admissible to "Ore" under Serial Number 4 of the Notification No. 4/2006 - CE dated 1.3.2006 can be granted to the "Concentrate" of that Ore. The issue was taken up for discussion during the Conference of Chief Commissioners of Customs on Tariff and allied matters held in May 2011.
- The matter related to: (a) whether the term 'Ore' includes Concentrate, and (b) Whether insertion of Chapter Note 4 in the Chapter 26 will have any impact on the admissibility of notification benefit to Concentrates, was examined. The Conference noted the HS definitions of Ore and Concentrate are as follows:

"The term 'ore' applies to metalliferous minerals associated with the substances in which they occur and with which they are extracted from the mine; it also applies to native metals in their gangue (e.g. metalliferous sands").

"The term 'concentrates' applies to ores which have had part or all of the foreign matter removed by special treatments, either because such foreign matter might hamper subsequent metallurgical operations or with a view to economical transport".

It was also seen that the recent changes in the Central Excise Tariff treating the concentration of ore as amounting to manufacture would not in any

way change the definition of Ore or Concentrate for the purpose of classification. This has been reiterated in a number of judgments and also vide Board Circular No.696/12/2003 - CX dated 26.2.2003.

- In view of Chapter Note 4 to Chapter 26 of CETA, 1985 inserted vide Finance Act 2011, Ores and Concentrates are two distinct products. Thus, Concentrates suffer Central Excise duty being a manufactured product. The implication for imported Concentrates is that the benefit of exemption of additional duty of Customs leviable under Section 3 of Customs Tariff Act, 1975 in terms of a notification that applies only to Ores is no longer available to Concentrates, even if Concentrates and Ores fall under the same tariff heading.
- Thus, it is concluded in the Conference that the benefit of exemption notification under Sr. No. 4 of the Notification 4/2006-CE dated 1.3.2006 will be available only to imported Ores and not to imported Concentrates.

2. Refund of 4% CVD (SAD)-Extension of time upto 30th June, 2012, for using re-credited 4% CVD (SAD) amount in DEPB-Regarding

Circular No.10/2012-Customs

Source: www.cbec.gov.in

- Your kind attention is invited to the Circular No.02/2012-Customs, dated 16-02-2012, regarding procedure on refund of 4% CVD (SAD). The above Circular provides the facility of manual filing of Bill of Entry for utilizing the amount of re-credited 4% CVD refunds (SAD) for payment of duty in case of re-credited DEPB/ Reward Scheme scrips upto 31-03-2012.
- The matter has been examined in consultation with Director General of Foreign Trade (DGFT) and it has been decided to extend time limit for using re-credited DEPB scrips/ Reward Scheme scrips in case of 4% CVD (SAD) upto 30-06-2012.
- Board also directs all Chief Commissioner of Customs to ensure that all pending application for refund of 4% SAD paid through DEPB/reward scrips are disposed of by 30-04-2012. The Chief Commissioner may constitute a special team to liquidate these refund claims. The report in this regard should be sent to Board by 04-05-2012.
- Board also reiterates Para 8 of Board's Circular No. 27/2010-Customs, dated 13-08-2010 wherein it was mentioned that in the interest of ensuring expeditious grant of refund of 4% SAD, the importers may be advised to make the initial payment of 4% CVD in cash. DGFT has also informed that no re-crediting shall be done if such payment is made by means of scrips. In other words, in future exporters should pay SAD component in cash if they want a refund.

"Most of the important things in the world have been accomplished by people who have kept on trying when there seemed to be no hope at all." - Dale Carnegie

CENTRAL EXCISE

1. Revised Treaty of Trade between India and Nepal

Circular No. 961/04/2012-CX

[Source: www.cbec.gov.in](http://www.cbec.gov.in)

1. As you are aware, Duty Refund Procedure (DRP) prescribed by Notification No. 20/2004-CE(NT) dated 6.9.2004 has been rescinded vide Notification No. 25/2011-CE(NT) dated 5.12.2011 w.e.f 1st March, 2012. Export to Nepal under claim of rebate is permissible under Notification No. 19/2004-CE(NT) dated 6.9.2004 as amended by Notification No. 24/2011-CE(NT) dated 5.12.2011 issued under rule 18 of Central Excise Rules, 2002 and under bond/LUT vide Notification No. 42/2001-CE(NT) dated 26.6.2001 [as amended by Notification No. 26/2011-CE(NT) dated 5.12.2011] in terms of Rule 19 of Central Excise Rules, 2002.
2. Clarifications have been sought as to whether in view of rescinding of Notification No. 20/2004-CE(NT) dated 6.9.2004, goods cleared under DRP invoices by Indian exporters from their factories etc. prior to 1st March, 2012 but yet to be exported to Nepal within the time limit of six months prescribed in Notification No. 20/2004-CE(NT) are to be treated as exports under DRP procedure or as normal export in terms of Notification No. 19/2004-CE(NT) dated 6.9.2004 as amended. It is clarified that such exports shall be treated as exports under the DRP procedure and duty refund will accordingly be credited to the Govt. of Nepal as per the procedure laid down under the DRP. The rebate element will not be admissible to Indian exporters in respect of such goods.
3. Further, Board has also been requested to clarify whether exports under claim of rebate under amended Notifications No. 19/2004-CE(NT) dated 6.9.2004 or under bond in terms of amended Notification No. 42/2001-CE(NT) dated 26.6.2001 are to be permitted even when the export proceeds are paid in Indian Rupees. It is clarified that neither Rule 18 or Rule 19 of Central Excise Rules, 2002, nor the above mentioned notifications make any distinction on the basis of mode of payment of currency for exports. It is therefore clarified that exports to Nepal will continue to be permissible irrespective of whether the payments are made in Indian currency or foreign convertible currency as long as they are in accordance with applicable RBI guidelines.
4. Difficulties, if any, faced in this regard may be brought to the notice of Board immediately.

2. Payment of arrears from Cenvat Credit earned at a later date

Circular No.962/05/2012-CX

[Source: www.cbec.gov.in](http://www.cbec.gov.in)

1. Reference was received from the field formation seeking clarification on the issue as to whether the arrears of duty can be paid by utilizing the cenvat credit which has accrued subsequent to the period to which the arrears pertained. Such clarification has been sought in view of first proviso to rule 3(4) of the Cenvat Credit Rules, 2004. As per this proviso, "While paying duty of excise or service tax, as the case may be, the cenvat credit shall be utilized only to the extent such credit is available on the last day of the month or quarter, as the case may be, for payment of duty or tax relating to that month or the quarter, as the case may be."
2. Doubts have been raised whether these restrictions will be applicable to duty payable in terms of Section 11A or duty paid after due date in terms of rule 8 of the Central Excise Rules, 2002.
3. The matter has been examined in the Board. Practice ascertained from field formations points out that in majority of cases the payment of demands confirmed under Section 11A are being permitted to be paid by utilizing cenvat credit without linking the same to the period to which these demand pertain.
4. A harmonious reading of rule 8 of Central Excise Rules' 2002 and first proviso to rule 3 (4) of the Cenvat Credit Rules, 2004 indicates that the restriction with regard to the utilization of cenvat credit is relating to the normal payment of duty in terms of rule 8 of the Central Excise Rules, 2002, where duty for a particular month or quarter is to be discharged by the 5th of the next month. For this proviso, the cenvat credit allowed to be used is what was in balance on the last date of that month or quarter and not what accrued thereafter. Even in case of duty paid late in terms of rule 8, the credit available for utilization will remain same i.e. the credit in balance on the last date of month or quarter, as the case may be.
5. Further duty payable under rule 8 is on a different footing from duty payable under Section 11A. Duty under Rule 8 is paid after self determination by the assessee unlike Duty payable under Section 11A where generally the duty is determined by the Central Excise officer and the payment is mandated after such determination. There is no time limit prescribed under Section 11A i. e., monthly or quarterly unlike the date prescribed under Rule 8 (i.e., 5th of the next month). Therefore, the restriction on the utilization of the cenvat credit accruing subsequent to the last date of the month or quarter in which the arrears arise is not applicable

to the demands confirmed under Section 11A of the Central Excise Act, 1944.

3. Clarification Regarding Mega Power Project (MPP) exemption - reg.

Circular No. 963/06/2012-CX

Source: www.cbec.gov.in

1. Representations have been received seeking clarification regarding the entry at S. No. 91B of Notification No.6/2006-CE dated 1.3.2006 (present entry no. 338 of Notification No. 12/2012-CE dated 17.3.2012). Sl.No.91B of Notification No.6/2006-CE dated 1.3.2006 prescribes exemption to specified goods when supplied to Mega Power Projects. The exemption is available subject to condition No.28 which, inter alia, prescribes that in case the certificate issued by the Joint Secretary in the Ministry of Power regarding the project having the status of Mega Power Project is provisional, the Chief Executive Officer of the Project has to furnish a Fixed Deposit Receipt (FDR) for an amount equal to the Central Excise duty payable for a term of thirty six months or more to the Deputy Commissioner or the Assistant Commissioner of Central Excise having jurisdiction.

2. Representations have been received in the Board seeking clarification on certain issues relating to clearances of goods for Mega Power Projects under the aforesaid Notification. These have been examined by the Board and the following issues are clarified for guidance of the field formations and the trade:

- a) Whether the FDR is required to be submitted to the jurisdictional officer in-charge of the Mega Power Project or to the jurisdictional officer in-charge of the factory from where the goods are cleared for supply to such project: It is clarified that the FDR is required to be submitted to the jurisdictional Deputy Commissioner or Assistant Commissioner, in-charge of the factory from where the goods are cleared in terms of this notification and not to the jurisdictional officer, in-charge of the Project.
- b) Whether only one FDR is required to be submitted in respect of the clearances which are likely to take place over a period of time or the fixed deposits can be submitted at regular intervals: It is clarified that the notification do not provide for submission of a single FDR. The FDRs can be submitted by the Project Director at regular intervals as and when the clearances take place. However, each FDR has to be for a period of thirty six months or as stipulated in the notification.
- c) Clarification has also been sought as to whether the provisions of Central Excise

(Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 are applicable to such clearances: These rules are applicable in case the inputs are removed for further use by a manufacturer and not for use in a project. In fact neither entry no.91B of Notification No.6/2006-CE dated 1.3.2006, as amended, nor condition no.28 corresponding to the said entry prescribes that to avail the exemption, the procedures prescribed under the above mentioned Rules have to be followed. Therefore, it is clarified that the provisions of Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 are not applicable in case of such removals.

4. Clarification regarding classification of structural components of Boiler and admissibility of CENVAT credit on these structural components - reg.

Circular No.964/07/2012-CX

Source: www.cbec.gov.in

1. Reference has been received from Trade seeking clarification regarding classification of structural parts/components of Boiler and admissibility of CENVAT credit on these parts/components to the buyers of the Boilers. It has been represented that CENVAT credit is being denied to the supporting structural parts of the Boilers at the buyers' end by classifying the same under Chapter 73 as structural parts and not as a part of Boiler. These are not being covered under the definition of inputs under the CENVAT Credit Rules, 2004, on account of exclusion given in rule 2 (k)(iv)(B)(b). This denial is on the ground that these are used for structures for support of Capital goods, without which the Capital goods can function.
2. The matter has been examined in the Board. The Boilers are a combination of various systems such as Coal Handling System, Coal Feeding System, Draft Air System, Demineralization Plant, Boiler Feed Water System, Boiler Tubes, Boiler Drums, Super Heat System, Flue Gases Treatment System and Ash Handling System etc. All these Systems work in tandem to make a modern Boiler. These Systems comprise of many parts including structural components which are essentially the part of Boiler by way of technical specifications. As per Section Note 4 to the Section XVI of the First Schedule to the Central Excise Tariff Act, 1985, " Where a machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in Chapter 84 or Chapter 85, then the whole falls to be classified in the heading appropriate to that function."

"Most people never run far enough on their first wind to find out they've got a second. Give your dreams all you've got and you'll be amazed at the energy that comes out of you." - William James

- Accordingly it is clarified that those structural components which are to be used essentially as a part of Boiler System would be classifiable as parts of Boiler only under Heading 8402 of the Tariff. It is further clarified that since these structural components are nothing but the parts and accessories of the Boiler, they would be covered by the definition of inputs under Rule 2(k)(iii) of

the CENVAT Credit rules, 2004 (i.e. all goods for generation of electricity & steam). Further these structural components shall not be hit by the exclusion clause to the said definition of inputs, as these are not used for laying of foundation or making of structures for support of capital goods, but are essentially the part of said Boilers.

LEGAL UPDATES

Saagar Madan, Legal Practitioner, Mumbai

REGISTRATION OF COMPANIES OR LLPS WHICH HAVE AS ONE OF THEIR OBJECTS IS THE OBJECTS TO CARRY ON THE PROFESSION OF CHARTERED ACCOUNTANT, COST ACCOUNTANT, ARCHITECT, COMPANY SECRETARY ETC.

Key Highlights

- At the time of incorporation of companies where one of the objects is to carry on the business of Banking, Insurance or to practice the profession of Chartered Accountancy, Cost Accountancy and Company Secretaries, then the concerned Registrar of Companies shall incorporate the same only on production of in-principle approval/NOC from the concerned regulator/professional Institutes.
- Where one of the objects is to carry on the business/profession of Architecture, then the concerned Registrar of Companies /Registrar of LLP shall incorporate the same only on production of in-principle approval/NOC from the concerned regulator.

REVIEW OF REGULATORY COMPLIANCE AND PERIODIC REPORTING FOR BANKERS TO ISSUE

Key Highlights

- Bankers to an Issue (BTIs) are required to furnish periodical reports on quarterly and annual basis in electronic form in the prescribed format.
- The revised format will include the status of regulatory compliances and investor grievances redressal.
- The Board of directors of BTI shall, henceforth, review the report and record its observations on (i) the deficiencies and non-compliances, and (ii) corrective measures initiated to avoid such instances in future.
- With effect from half year ending March 2012, the Compliance Officer of the BTI shall send the report in the revised format in excel format to SEBI.

PAYMENT OF CHEQUES/DRAFTS/PAY ORDERS/BANKER'S CHEQUES - VALIDITY PERIOD OF CHEQUES

Key Highlights

- Reserve Bank has directed that with effect from April 1, 2012, banks should not make payment of cheques/drafts/pay orders/banker's cheques bearing that date

or any subsequent date, if they are presented beyond the period of three months from the date of such instrument.

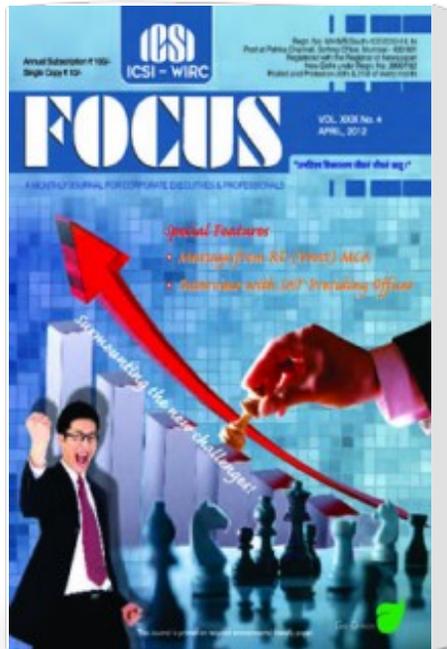
RATIONALISATION OF OVERSEAS DIRECT INVESTMENTS BY INDIAN PARTY

Key Highlights

- It has been decided that proposals from the Indian party for creation of charge in the form of pledge/mortgage/hypothecation on the immovable/movable property and other financial assets of the Indian Party and their group companies may be considered by the Reserve Bank under the approval route within the overall limit fixed (presently 400%) for financial commitment subject to submission of a 'No Objection' by the Indian Party and their Group companies from their Indian lenders.
- It has been decided that the bank guarantee issued by a resident bank on behalf of an overseas JV/WOS of the Indian party, which is backed by a counter guarantee/collateral by the Indian party, shall be reckoned for computation of the financial commitment of the Indian Party and reported accordingly.
- It has been decided that issuance of personal guarantee by the promoters of the Indian Party as presently allowed under the General Permission shall also be extended to the indirect resident individual promoters of the Indian Party with the same stipulations as in the case of personal guarantee by the direct promoters.
- It has now been decided that the proposals from the Indian party for undertaking financial commitment without equity contribution in JV/WOS may be considered by the Reserve Bank under the approval route.
- Where the law of the host country does not mandatorily require auditing of the books of account of JV/WOS, the Annual Performance Report (APR) may be submitted by the Indian party based on the unaudited annual accounts of the JV/WOS.
- It has been decided that Compulsorily Convertible Preference Shares shall be treated on par with equity shares and the Indian party shall be allowed to undertake financial commitment based on the exposure to JV by way of CCPS.

"The goal you set must be challenging. At the same time, it should be realistic and attainable, not impossible to reach. It should be challenging enough to make you stretch, but not so far that you break." - Rick Hansen

e-Focus April 2012 by ICSI



Publisher : ICSI

Author : ICSIW Editorial Team

Type the URL : <http://www.kopykitab.com/product/103>



Get this eBook