

eMagazine



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CS M C Bhansali
Chairman
Mysore Chapter

-: Editorial Team :-

CS Dattatri H M

CS Sarina C H

CS Omkar Gayatri

CS Abhishek Bharadwaj

CS Ajay Madaiah

CS Vijay Shyam Acharya

CS Madhur N Agrawal

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Dear Professional Colleagues & Students,

Congratulations to all those students who have succeeded in the recently announced December 2015 exam results!

Students at Mysore chapter have started their preparation for the Annual event of the Chapter on 26th March, 2016 Umang'16. I request the students to actively involve and participate in various competitions & programs, as it gives an opportunity to foray into the competitive world.

During the month of February 2016, the Chapter conducted 2 career awareness programs at colleges in Mysore and has reached out to more than two hundred students, creating awareness about the profession and our Institute. The Chapter also conducted an Open house session on "Financial Statement Analysis".

The Mysore Chapter has also planned a Full Day Seminar on "Secretarial Standards & Form INC 29 on 27th March 2016, Sunday. We invite all members to attend this seminar and make it a success.

The Union budget 2016 has focused on boosting the Rural Economy and the Agricultural Sector. The proposed compliance window for domestic black money holders is a welcome move to curb money laundering and a considerable amount of importance has been given to the infrastructural development. In a nut shell, this year's budget is progressive and hopes we reach the targeted economic growth.

My best wishes for Umang 2016.

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enewsletter.icsimysore@gmail.com

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Legal Metrology Law:

Complexity and Multiplicity of Compliances

Enforcement of Standards and Weights and Measures Act is entrusted with the Directorate of Legal Metrology in each state which is essentially a 3-tier Organisation comprising Inspectors of legal Metrology at the field level, Assistant Controller of Legal Metrology at the district level and Controller of Legal Metrology with four Deputy Controllers sitting at the State Level. Legislations enacted by Central Government to regulate Legal Metrology:

1. The Legal Metrology Act, 2009
2. The Legal Metrology (Packaged Commodities) Rules, 2011
3. The Legal Metrology (General) Rules, 2011
4. The Legal Metrology (Approval of Models) Rules, 2011
5. The Legal Metrology (National Standards) Rules, 2011
6. The Legal Metrology (Numeration) Rules, 2011
7. The Indian Institute of Legal Metrology Rules, 2011

Compliance under the Act :

Sl	Provisions	Details
1	Applicability:	Persons Engaged in : Manufacturing, Retail or Wholesale trading, Repairing of any weight or measure, Importing and/or Packaging any item. Persons who are using any weight or measure in any transaction or Industrial Production or Protection.
2	Maximum Retail Price (MRP):	The commodities to have the Maximum Retail Price (MRP) printed on the packages along with the words “inclusive of all taxes”.
3	MRP once printed cannot be increased.	Certain items may be packed to offer any free quantity provided it is included in the standard size and the MRP is reduced proportionately. As per the Packaged Commodity Rules, the net content shall not be disclosed if the commodities are given free of cost.
4	Principal display panel	Total area of the pack where all the mandatory requirements are specified in one place, on one side of the pack. No separate sticker should be affixed; No over writing
5	Statutory Declarations on Products	The following mandatory declarations shall be made on the packages either at the factory level or at manufacturing level (depot of the factory). a. The name and address of the manufacturer or packer or importer. b. The common or generic name of the commodity. c. The net quantity of the content. d. Month and year of manufacturer or packing or import. e. Retail sale price: MRP (including all taxes) f. Size/dimension of the commodity when relevant.

		g. Name, address and telephone no. of the Consumer complaint Cell. h. Marking "GM" for genetically modified food items.
6	Re-stickering: Re-stickering is not permissible	Packers are not permitted to affix individual stickers or labels on the package for altering or making declarations. However for reducing the MRP, a sticker with revised lower MRP (inclusive of all taxes) may be affixed and the same shall not cover the MRP declaration made by the manufacturer or the packer, on the label of the package.
7	Import of Products:	To ensure that proper registration is obtained for importing the products. The pre-packed commodities to carry the specific declarations on their labels as specified in the import policy. The importer has to comply with all the necessary declaratory compliances before selling, distributing, delivering, displaying or storing the imported goods.
8	Double stamping	A weight or measure or product manufactured in one state and sold or transferred to another state will require double verification and stamping - both at the end of manufacturing state and at the end of user state.

Note: The provisions of Legal Metrology Act are not applicable for the commodities meant for Industrial Use.

License: Sec. 23 provides that no person shall manufacture, repair or sell, or offer, expose or possess for repair or sale, any weight or measure unless he holds a licence issued by the Controller. No licence to repair shall be required by a manufacturer for repair of his own weight or measure in a State other than the State of manufacture of the same.

Section 25 to 47 states penalties for various offences: Sec. 48 deals with the compounding of offences punishable under Section 25, Sections 27 to 39, Sections 45 to 47 or any rule made either before or after the institution of the prosecution on payment for credit to the Government of such sum as may be prescribed. Such sum shall not exceed the maximum amount of the fine which may be imposed under this Act for the offence so compounded. Penalties range from Rs 5,000 to Rs 1,00,000 & imprisonment up to two years; and for the second and subsequent offence imprisonment up to 5 years.

Offences By Companies On Nomination: Any company, as per Sec. 49 may, by order in writing, nominate directors to be responsible under Legal Metrology Act for preventing the company of any offence or the company has to give notice to Legal Metrology Director/ Controller/ Authorized legal metrology office in a prescribed form indicating such director has been nominated along with written consents and where a company has different establishments /branches/ units, different persons to be responsible can be nominated. This section also provides nomination to continue until he ceases to be a director or any cancellation notice is received from the company or nominee himself makes a request to cancel the nomination.

The company so convicted under this Act for contravention of any of the provisions thereof, the penalty will be to publish an advertisement in newspapers at the expense of the company as the court may direct. Every decision or order under Sections 15 to 20, Sec. 22, Sections 27 to 39, Section 41 or any rule made there by the legal metrology officer are appealable under Section 50 of the Act.

If convicted or penalty levied, The Directors responsible attract disqualification under section 164 of the Companies Act, 2013 & he shall vacate office under section 167.

Challenges

- There is a lack of practical procedures available for revision of the Maximum Retail Price (MRP) of the products.
- There is a lack of procedure with regard to the treatment of imported goods on par with the domestically manufactured goods (Even at the point of import). This lack would render the Packaged Commodity Rules highly impractical, ambiguous and prone to litigation.
- The Packaged Commodity rules alone have more than 30 mandatory compliances required to be adhered to by the retailers, apart from various other compliances in the subsequent rules.

- d. It is very difficult to explain the concerned officers when the goods are meant for wholesale, industrial or institutional consumption. The labelling requirements shall not be applicable if the goods are not meant for retail sale. Therefore, the industry is forced to approach the courts to give relief from the ambiguity and inflexibility of legal metrology and labelling law regime in the country.
- e. The exporter located in a foreign territory would be unaware of the Indian labelling laws therefore such goods are always prone to inadvertent non-compliance.
- f. Similarly when the transactions are not linear (i.e. Goods passed on to many buyers through high sea sale agreement) there is very little scope for complying with the labelling laws.

3M India Limited (3M) was recently involved in a litigation with the officers of the Legal Metrology Department in Mumbai for not disclosing an email id for consumer complaints, thereby allegedly violating Section 6 (2) of the Legal Metrology (Packaged commodities) Rules, 2011. A criminal complaint was filed against 3M and its entire Board of Directors and certain products of 3M were seized by the department. The company later filed an application before the Bombay High Court seeking quashing of the complaint and setting aside of the impugned complaint and order of issuance of summons, The Bombay High Court was pleased to quash the entire criminal complaint. **(Concluded)**

Chapter Activities

Career Awareness Program at Seshadripuram Degree College

On 11.02.2016, Chapter organised a Career Counseling Program at Seshadripuram Degree & PU College, Mysore. Around 150 students from B. Com., & BBM attended the program. CS Ajay Madaiah B B, Member, Mysore Chapter addressed the gathering.

Career Awareness Program at Maharani's Arts & Commerce College for Women on 25.02.2016

Around 60 students from M.com attended the program. CS Manjunath S, Member, addressed the gathering.

The Counselors of the Mysore Chapter explained in detail to the Audience the course offered by the Institute and the criteria for eligibility for the course, examination, requirements of training etc. They also highlighted the importance of making the right career choice so as to be successful in life, about the role of



a Company Secretary and importance of the profession of Company Secretary in the changing economic scenario. Brochures containing brief details of the Company Secretary ship Course were distributed to the participants. The Counselors clarified various doubts and queries raised by the participants while thanking the Managements of the Colleges for providing the Institute the opportunity to address the students.

Open House on “Financial Statement Analysis”

On 31.01.2016 & 07.02.2016, an Open House was arranged by ICSI-Mysore Chapter on “Financial Statement Analysis”. Ms. Vijaya Rao, Member, Managing Committee, Mysore Chapter conducted the session. The participants discussed on the basics of financial statements, ratios etc. The topic also dealt with the Company Secretary’s role in financial statement analysis. The discussion was based on the publication of the ICSI-Balance Sheet analysis. Students and Members of the Mysore Chapter participated actively.

Nitza Agrait Vilá
Commercial Legal Lead,
Microsoft India
nagrait@microsoft.com



Apurva Mehta
Commercial Attorney,
Microsoft India
apurva.mehta@microsoft.com



‘Cloud Computing’ as a Tool to Enable and Enhance Compliance

Part III

Cloud Computing as a Tool for Legal Compliance

This is the third and final in a series of three articles entitled *Cloud Computing as a Tool to Enable and Enhance Compliance*. The first article published in January is entitled “What is Cloud Computing and Why Should Compliance Professionals Care?” It described what the cloud is, including the benefits and some of the challenges to be addressed. The second article published in February is entitled “Tips on How to Assess and Choose a Cloud Service Provider” (CSP). It described a framework to evaluate a CSP based on its practices on security, privacy, compliance, and transparency. This third and final article of the series is entitled “The Cloud as a Tool for Legal Compliance in India”. It will analyze how the Cloud can be used in a legally compliant way by Indian organizations, will identify some “smart” cloud contractual terms, and list some features that can help enhance the compliance function.

Please provide us with feedback on these articles and let us know if there are any areas you would like us to address.

1. What laws and regulations constitute the least common denominator for all Indian organizations considering moving workloads to the cloud?

Any organization considering moving to the cloud, would certainly like to understand how their CSP or intermediary complies primarily with the –

- (i) **The Indian Information Technology Act, 2000 (“ITA”):** The ITA seeks to regulate transfers of records that contain personal information with provisions such as Prior Consent of User, Restrictions on purposes for which data can be collected, Disclosures, Transfer and Security practices. Specifically, as per Section 43A of ITA, the IT Rules are applicable where the parties do not have a contractual arrangement inter-se on what ‘reasonable security practices and procedures’ may be applicable.
- (ii) **The Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2011 (“Privacy Rules”):** Under Rule 8 (2) & (3) of the Privacy Rules, the International Standards Organization (ISO/IEC 27001:2013) family of standards has been identified as one of the reasonable security standards and procedures under the Rules.
- (iii) **The Indian Contract Act, 1872:** The Indian Contract Act, 1872, governs the contractual relationship between parties - individuals, companies, governments. It deals with all aspects of contracts, such as scope of activities, obligations of each party, performance, enforceability of contracts, indemnities and guarantees, jurisdiction and dispute resolution among others.

CSP compliance to these above laws and regulations namely ITA, Privacy rules and Indian Contract Act constitute the least common denominator for all Indian organization considering moving to the Cloud. Please note that there may

certainly be other laws that apply to your organization due to your particular industry. We are not covering those in this article, but we have done extensive research for the following industries and are happy to share what we have learned: banking, insurance, capital markets, health, and public sector.

2. How does leading CSP comply with these least common denominator?

Organizations should ask their CSP for examples of how the CSP meets these least common denominators – ITA, Privacy Rules and Indian Contract Act. As an example, Microsoft provides clear and detailed contract documentation that covers compliances with ITA, Privacy Rules and Indian Contract Act applicable to itself as a CSP. Through its detailed contractual commitments, Microsoft shares it's –

- (A) **Security:** Security Policy about building security by design and ongoing security commitments for its Products, using best in class security, encryption for data in transit and data at rest, doing employee background verification and sharing details about its digital cyber security program.
- (B) **Privacy:** High bar approach to privacy, including adherence to strict EU data privacy directives, restricting customer data access to essential and qualified personnel, complete responsibility for sub-contractors and flow-through terms, use of customer data strictly limited to providing the service.
- (C) **Compliance:** Microsoft adheres to a broad set of compliance requirements for cloud services by leading through various Industry certifications like ISO 27001: Security Management, SOC 2: Security Control Effectiveness, amongst others and provides tools such as Audit logs, periodic Audit Reports to help organizations meet their cloud compliance requirements.

Organizations should ask the CSP to provide an appropriate level of transparency into its security, privacy and compliance practices and actions to help protect organization's information. Organizations should consider having provisions relating to Security, Privacy and Compliance captured in their CSP contracts.

3. Is the Government of India open to procuring the Cloud?

Yes, the Government of India is not only open, but is actually enthusiastic about the procurement of cloud. In May 2013, Department of Electronics and IT (DeiTY), Ministry of IT, Government of India embarked upon a "GI Cloud" initiative - coined as "MeghRaj" - in order to utilise and harness the benefits of Cloud. The focus of this initiative was to evolve a strategy and implement various components (including a governance mechanism) to ensure proliferation of the Cloud in government. Things were moving slowly, but recently DeiTY has published tender specifications for empanelment of CSPs to facilitate cloud adoption.

Several other departments/entities/regulators such as Reserve Bank of India, Securities Exchange Board of India, and Insurance Regulatory and Development Authority of India have some guidelines that are used to evaluate technology outsourcing providers including CSPs. Broadly speaking, these guidelines require (1) a detailed due diligence on the service provider, (2) a comprehensive contract between the entity and the CSP - including a clear scope, termination provisions, and SLAs, and (3) that such services not impede/impair the ability of the regulator to perform its supervisory functions. As an example, the Microsoft Cloud has been evaluated by several government department/entities/regulators and is being actively used by them for providing various services that benefit from such hyper scale Cloud.

4. What should I expect from my CSP on the legal and policy compliance fronts?

First, the CSP should commit to comply with the law and regulations applicable to its role as a CSP; primarily as a data processor.

Second, and probably most importantly, the CSP should enable you and your organization to meet your legal and policy requirements. As an example, Microsoft helps customers perform a gap analysis of Microsoft's controls against your organization's requirements. You should ask other vendors to do so as well.

Third, it is important that the CSP work with regulators to help them understand the latest technologies and to get their views on how the CSP and its customers can be compliant with the applicable regulatory frameworks.

5. How does the CSP treat an organization's data? What should my "smart" contractual terms be?

Since the CSP hosts the organization's data, its rights with respect to that data should be limited. Your organization must insist on comprehensive and clear contract with its selected CSP detailing all aspects relating to (i) Data: such as confidentiality, ownership, location, security commitments, data transfer, and data retention, (ii) Privacy: use of the data only for providing the service, restrictions on access by third parties, deletion at the end of the term, and (iii) Legal & Compliance: provisions relating to jurisdiction, sub-contracting, meaningful service level obligations, incidence notification, independent verification of key commitments, detailed termination provisions, grievance redressal and liability. For an example of the type of commitments that are leaders in the industry, go to Microsoft's Online Services Terms found [here](http://www.microsoftvolumelicensing.com/DocumentSearch.aspx?Mode=3&DocumentTypeId=31) (<http://www.microsoftvolumelicensing.com/DocumentSearch.aspx?Mode=3&DocumentTypeId=31>).

6. What are some of the features of cloud services that can help enhance my organization's monitoring and compliance?

The following is a list of three services enabled by the Microsoft cloud that can actually help a compliance organization to monitor what happens to its data. Explore these further and also ask the other CSP's you are evaluating whether they are able to provide these kinds of protections as well:

- (i) **Customer Lock Box.** Within Microsoft data centers, staff's access to the IT systems that store customer data is strictly controlled via Role Based Access Control (RBAC) and Lock Box processes. Access control is an automated process that follows the separation of duties principle and granting least privilege. This process ensures that the engineer has met the eligibility requirements such as cloud background screen, fingerprinting, required security training and access approvals. Engineers request access for particular tasks into a lock box. The lock box process determines the duration and level of access apart from determining whether another engineer needs to be involved in a monitoring capacity. All access is logged and audited. Customer Lock Box is able to insert the customer into the approval work flow.
- (ii) **Encryption.** Microsoft encrypts data in transit in various ways, including the following:
 - a. between the customer and the service, protects user from interception of their communication and helps ensure transaction integrity. Typically, Secure Sockets Layer (SSL); and
 - b. between data centers, protects from bulk interception of data. Commonly Transport Layer Security (TLS) at the application level or Internet Protocol Security (IPsec)/other at the network level.

In addition, via Rights Management Services or RMS, the customer may enable the ability to encrypt and assign usage restrictions to content with the use of templates – Confidential, Confidential View Only, and Do Not Forward.

- (iii) **Security Center.** This is an administrator portal where you can get a view of all of your security settings across the entire online service environment. Not only that, but it gives you policy based recommendations on how to make it more secure and ideas on how to fix it. This incorporates machine learning into your compliance work. The Operations Management Suite actually allows you to do the same thing but across on premises and across providers.

This is only a short list of examples of the innovation that is being incorporated into enterprise online services that can help you in your compliance function.

Conclusion: This article has provided you how the cloud can be used in a legally compliant way by Indian organizations, examples of cloud use in government, provisions to consider in your smart CSP contracts and details about location of data and what happens when any government request access to that data.



The President's Father

On his first day in office, the President entered to give his inaugural address, one man stood up. He was a rich aristocrat. He said, "Mr. President, you should not forget that your father used to make shoes for my family." And the whole Senate laughed; they thought they had made a fool of President.

But certain people are made of a totally different mettle. President looked at the man directly in the eye and said, "Sir, I know that my father used to make shoes for your family, and there will be many others here, because he made shoes the way nobody else can.

He was a creator. His shoes were not just shoes; he poured his whole soul into them. I want to ask you, have you any complaint? Because I know how to make shoes myself. If you have any complaint I can make you another pair of shoes. But as far as I know, nobody has ever complained about my father's shoes. He was a genius, a great creator and I am proud of my father".

The whole Senate was struck dumb. "No one can hurt you without your consent. It is not what happens to us that hurts us. It is our response that hurts us"

Words Worth Millions



Funeral of trees

"The mediocre teacher tells. The good teacher explains. The superior teacher demonstrates. The great teacher inspires."

- William Arthur Ward

"You are not here merely to make a living. You are here in order to enable the world to live more amply, with greater vision, with a finer spirit of hope and achievement. You are here to enrich the world, and you impoverish yourself if you forget the errand."

-Woodrow Wilson

"Example is not the main thing in influencing others. It is the only thing."

-Albert Schweitzer



Manjunath S. Bhat, M.Com, LLB
CS Professional Student, Bengaluru
msbhat321@gmail.com

e-Tools for the Professionals



Astro File Manager

An Android application for Smart Phones and Tabs

Astro File Manager is an Android based application for Smart Phones and Tabs which allows you to navigate between internal memory, external memory and other areas like podcasts, music, videos, ringtones and downloads in a fast and easy way. Application can access the data from external sources like Drop box, Google drive, Face book and PC as well. While changing the devices *Astro File Manager* allows you to take backup of all the application and data stored in your device.

Specification: 1. Price- Free 2. Required Android- Varies with devices

Download *Astro File Manager* app here: <https://play.google.com/store/apps/details?id=com.metago.astro&hl=en>

Trans-Pacific trade deal (TPP)

Web Reading

TPP involved 12 countries: the US, Japan, Malaysia, Vietnam, Singapore, Brunei, Australia, New Zealand, Canada, Mexico, Chile and Peru.

The agreement could create a new single market something like that of the EU. Those in favour say this trade deal will unleash new economic growth among countries involved. Those against - particularly some Americans - fear it could mean jobs will move from the US to developing countries. They also do not like the fact the five-year talks were held largely in secret.

With the signing of the Trans Pacific Partnership (TPP) agreement, one of the biggest and most significant trade deals in recent times, there is widespread speculation on how the TPP will affect India. The majority view is that this deal would adversely affect India's trade and welfare.

Experts say it would be increasingly difficult for India to export to the majority TPP partners even if it becomes a part of RCEP. Most significantly, the TPP may isolate India from being a significant export partner with the US, with whom it enjoys a preferential access.

Being an agreement made to create huge impact on international trade, corporate professionals are expected to know this better. Click the links below to know more:

- https://en.wikipedia.org/wiki/Trans-Pacific_Partnership
- <http://www.thehindubusinessline.com/opinion/transpacific-trade-deal-puts-india-in-a-spot/article8342603.ece>
- <http://www.bbc.com/news/business-32498715>
- <https://ustr.gov/tpp/>



News Room



CS Chakri Hegde
chakri.hegde@gmail.com



CS Vijayalakshmi Karur
vijukarur@gmail.com

NEWS EXPRESS

- Companies have to pay service tax on services availed from government from next fiscal year
- Proposed tax on provident fund withdrawals announced in this year budget rolled back
- CRISIL downgrades eight midcap banks including Syndicate and Corporation bank
- Rajya Sabha passes landmark Real Estate Bill with a promise to secure the interests of homebuyers and developers in equal measure and remove corruption and inefficiency from the realty sector.
- SEBI to crack whip on wilful defaulters while fund-raising norms are set to be made easier for start-ups as part of wide-ranging reforms in capital markets.
- CBI names 5 IDBI Bank executives in Rs 950 Cr loan misuse case by Mallya
- India-UK DTAA benefits applicable to partnership firms – CBDT Clarifies

US blocks India's efforts to boost local production of solar cells and solar modules

The United States has blocked India's efforts to boost local production of solar cells and solar modules, which would have brought energy to millions of people in dire need of it, by denouncing it to the World Trade Organisation claiming that giving priority to local production violated WTO rules. India argued that local production helps the country meet its climate commitments under the United Nations Framework Convention on Climate Change (UNFCCC), but the WTO rejected the argument. They stated that domestic policies seen as violating WTO rules, cannot be justified on the basis that they fulfill UNFCCC or other international climate commitments.

Read More on following links:

<http://www.pressenza.com/2016/03/us-v-indias-solar-panels-preview-ttp-ttip-ceta-tisa-etc/>

WTO case exposes Barack Obama's hypocrisy:

<http://www.livemint.com/Opinion/UUpLGwKvldtdkMWvxT6cLN/WTO-case-exposes-Barack-Obamas-hypocrisy.html>

India to Appeal WTO Verdict On Domestic Solar Content Usage, Again:

<http://cleantechnica.com/2016/03/08/india-appeal-wto-verdict-domestic-solar-content-usage/>

India Concludes 'Watershed' Military Exercise With ASEAN-Plus Nations

India completes the first ever multinational exercise conducted by ground forces on its soil. The field training exercise (FTX), called "Force 18," involved the ten countries of Southeast Asia along with their eight dialogue partners – India, Australia, China, Japan, New Zealand, Russia, South Korea, and the United States – under the framework of the ASEAN Defense Ministers' Meeting Plus (ADMM Plus), which is emerging as the premier venue for defense and security issues in the region. According to the Indian defense ministry, it was the first-ever multinational exercise ever conducted by ground forces on Indian soil.

Amazing facts in legal world

- Under the original laws of Copyright, Star Wars would have been allowed to be remade in 2005
- Harvard Law Library allegedly has a book bound by human skin





Udyog Aadhaar

The MSMED Act, 2006 mandated the filing of Memorandum by all Micro, Small and Medium Scale Enterprises with District Industries Centres. The Central Government, in suppression of the previous regulations now requires that every micro, small and medium scale enterprises to file Udyog Aadhaar Memorandum online at <http://udyogaadhaar.gov.in> maintained by the Ministry of MSME and is introduced as a replacement for filing of memorandum with DIC. It is linked to the Aadhaar number of the proprietor / managing partner / authorised person of the entity getting registered. The application process includes the validation of the Aadhaar of the authorised person, providing of certain details of the entity being registered, NIC codes of the product line dealt with and requires no submission of proof documents. The process does not require any fee payment and if necessary, the government can call for further information / documentation.

The filing of Udyog Aadhaar Memorandum is mandatory for the new enterprises and is optional for the existing enterprises who have filed EM 1 / EM 2 / hold SSI registration. Similar to the erstwhile procedure, the new entities are categorised and registered as EM 1 (New entities) / EM 2 (existing entities) / SSI categories respectively. Udyog Aadhaar being linked to the entrepreneur's Aadhaar, has no restriction on filing more than one Udyog Aadhaar Memorandum using same Aadhaar Number. The Central Government has notified Udyog Aadhaar through Notification No. S.O. 2576(E) dated 18th September 2015.

Did
You
Know?

Electronic Cheque

Electronic cheques are another form of Electronic tokens. They are designed to accommodate the many individuals and entities that might prefer to pay on credit or through some mechanism other than cash. Once registered, a buyer can then contact sellers of goods and services. To complete a transaction, the buyer sends a check to the seller for a certain amount of money. These checks may be sent using Email or other Transport methods. When deposited, the cheque authorises the transfer of account balances from the account against which the cheque was drawn to the account to which the cheque was deposited. The electronic cheques are modeled on paper checks, except that they are initiated electronically. They use digital signatures for signing and endorsing and require the use of digital certificates to authenticate the payer, the payer's bank and bank account. They are delivered either by direct transmission using telephone lines or by public networks such as the Internet.

Whether the penalties prescribed under SEBI regulations are discretionary?

The penalties are **ABSOLUTE AND NON DISCRETIONERY** says the recent judgment of a bench of Supreme Court in the case of *Chairman SEBI vs. Roofit Industries Ltd.* on 26 November, 2015 set aside the SAT orders. This decisions falls in line with the previous decisions of SC in the cases of *SEBI v. Shriram Mutual Fund (68 SCL 216 (SC))* and *Swedish Match AB v. SEBI (122 Comp. Case. 83 (SC) (2004))* respectively (*Shriram and Swedish Match*) where in it ruled "once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established then the penalty is to follow" and "The Board does not have any discretion in the matter and, thus, the adjudication proceeding is a mere formality. Imposition of penalty upon the appellant would, thus, be a foregone conclusion."

Pick of
the
month

Regulatory Updates

Compiled by:

CS Abhishek Bharadwaj A.B.
Partner, AAA & Co, Bengaluru
csabhishekbharadwaj@gmail.com



CUSTOMS & FTP

Notifications/Circulars/News

The Central Government has comprehensively revised its instructions for examination of related party import transactions as trade facilitation measures. Following are some of the relevant points:

-The administrative control of the SVB section has been given back to jurisdictional Chief Commissioner/ Principal Commissioner/ Commissioner in place of the Director General of Valuation (DGoV);

-In cases where the import takes place through Mumbai/ Delhi/ Chennai/ Kolkata/ Bengaluru, the importer will be free to select the SVB of the Customs House of import or the Customs House nearest to its corporate office;

-For the sake of reducing transaction costs, no security in the form of extra duty deposit shall be obtained from importers, subject to a few exceptions;

-All matters of renewal, where there is no change in facts, will be closed on the basis of specified declaration from the importer;

-Pendency should be brought down by 10% in each month so that all existing cases (commenced upto 31 December, 2015) are disposed of latest by 31 October, 2016.

No. 04/2016 & 05/2016-Customs, dated 9 February, 2016

The Central Government has extended Indian Customs Single Window clearance facility to new ports, and made the following key improvements:

-Facility of message exchange with Food Safety Standards Authority of India and Department of Plant Protection, Quarantine & Storage;

-Lab Module has been introduced for online process of referring samples for testing;

-Approvals/ NOC from other government agencies (if any) will also be obtained online. *No. 03/2016-Customs, dt 3 Feb, 2016*

The Central Government has notified road connecting Sikta, District West Champaran, in the State of Bihar and Bhiswabazarin Nepal as Land Customs Station for the purpose of unloading of imported goods and loading of export goods.

No. 26/2016-Customs (N.T.) dated 18 February, 2016

The Central Government has decided, in the interest of trade facilitation, to close Advance Authorisation Licences, where supplies to SEZ had been made and proceeds realised in Indian Rupees in relation to Advance Authorisation scheme under [FTP 2009-14](#). - *Notice 16/2015-20, dated 10 February, 2016*

The Central Government has decided to adopt an online processing system for SCOMET application in addition to online filing of such application. Further, the list of requisite documents to be uploaded with DGFT along with SCOMET application has also been notified. - *Notice 20/2015-20, dated 19 Feb, 2016*

Case Law

Contemporaneous price was applicable when imported rags were of the same character, quantity, quality and country of origin, and value of imported rags could not be re-determined in the absence of cogent reason for rejection of invoice value.

Prayas Woollens Private Limited v CC (2016 (332) ELT 376)

Transaction value of imported goods could not be enhanced based on general statement of the indenting agents, when there is no evidence of payment over and above the invoice value.

JMD Oils Private Limited v CC (2016-TIOL-347-CESTAT-DEL)

Fingerprint readers which work on optical technology and involve flat sensors for compact design, would be classifiable under CTH 8471 as automatic data processing machine, and not under CTH 8543, since the product is more specifically covered under CTH 8471. *STJ Electronics P.Limited vCC (2016-TIOL-456-CESTAT-DEL)*

An importer would be allowed SAD refund by way of re-credit in Reward Scrips, when SAD was paid by using such Reward Scrips. The principle was that a right given under any exemption notification could not be taken away by issue of a Circular.

CC v Birla Furukawa FiberOptics Ltd. (2016-TIOL-327-CESTAT-MUM)

Goods stocked in a Duty Free Shop beyond the expiry of permissible period were deemed to be goods improperly removed, and were liable to Customs Duty.- *India Tourism Development Corporation v CC (2016-TIOL-418-CESTAT-MUM)*

The value of software preloaded on hardware at the time of import had to be included in the value of hardware for the purpose of levy of Custom Duty.

Huawei Technologies Co Ltd v CC (2016-TIOL-454-CESTAT-HYB)

Government could extend the period of re-export of specified goods imported under ATA Carnet for display or use at any specified event, if it was necessary to do so in the public interest, since this was specifically provided for in the notification.

CC v LNG Security Services P. Ltd (2016-TIOL-445-CESTAT-DEL)

Conversion of free shipping bill into drawback shipping bill was possible, subject to establishing the identity of the goods.

Air India Ltd. v CC (2016-TIOL-323-CESTAT-MUM)

Government was empowered to withdraw or amend retrospectively any concessions or incentives granted by it as a privilege.- *TT Ltd. v Union of India (2016 (332) ELT 400)*

Non-production of supporting documents after completion of export obligation could attract penal provisions; and that production of an FIR for loss of documents could not be a substitute for such statutory requirement.

Shreeji Industries Ltd. v Adtl Directorate General of Foreign Trade (2016 (332) ELT 251)

Ministry of Corporate Affairs

Notifications/Circulars/News

In exercise of the powers conferred under the proviso to clause (d) of sub-section (2) of section 68 of the Companies Act, 2013 (18 of 2013) (Act), the Central Government hereby notifies that the debt to capital and free reserves ratio shall be 6:1 for government companies within the meaning of clause (45) of section 2 of the Companies Act, 2013 which carry on Non-Banking Finance Institution activities and Housing Finance activities.

Order [F. No. 01/04/2013 CL-V (Pt-II)] dated 10th March 2016

In the Companies (Share Capital and Debentures) Rules, 2014, in rule 17, in sub-rule (1), in clause (n), after sub-clause (iii), the following proviso shall be inserted, namely:-

"Provided that where the audited accounts are more than six months old, the calculations with reference to buy back shall be on the basis of un-audited accounts not older than six months from the date of offer document which are subjected to limited review by the auditors of the company."

F. No. 01/04/2013 CL-V (part-II) dated 10th March 2016

HC Dismisses amalgamation petition, upholds ED's objection on co.'s links to Saradha scam entity

Calcutta HC dismisses petition filed u/s 391-394 of Cos. Act, 1956, for company amalgamation, observes that one of the petitioner co. had business transactions with legal entity under the control and management of person who is involved in chit fund scam; Notes that investigation in chit fund scam (Saradha chit fund scam) is underway and SC has issued various directions for monitoring it, observes that though CBI has not objected to the Scheme, Enforcement Directorate ('ED') opposed the scheme as approving it would hamper discovery of proceeds of crime involved and money laundering under Prevention of Money Laundering Act; HC peruses Co. (Court) Rules, 1959, notes that it is necessary to direct issuance of notice in newspapers for ascertaining public views, states that such procedures can be adopted after adjudicating on ED objections, as such objections are substantial; HC holds "apprehension of ED cannot be termed to be without basis. The allegation is of an economic offence.... the allegations are yet to be established before a Court of law. Nonetheless, the gravity of the allegations and the nature of the offences alleged, in my view, require a Court to adopt a cautious approach"; Observes that sanction of amalgamation scheme would make available to the persons in control and management of cos. various materials which would otherwise not be available but for the grant of sanction, to camouflage the crime already committed; Observes that if Scheme is sanctioned it would prevent better investigation and would assist in shielding a crime, holds "Scheme, if sanctioned, has every potentiality of allowing an offender of an economic offence not only to camouflage and hide the economic offence but to set this sanction up as a defence to such investigation. The order of sanction has every potential of seriously prejudicially the ongoing investigation. Scheme itself then may result in an economic offence"; Observes that sanctioning of scheme would permit the person controlling the cos. / transferee co. to contend before authorities that HC has looked into allegations of commission of alleged economic offences and did not find any merit thereto, holds "this would allow the accused to scuttle ongoing investigation": Calcutta HC

CENVAT

Notifications/Circulars/News

CENVAT Credit Rules have been amended to include an explanation in the definition of input service, to clarify that sales promotion includes services by way of sale of dutiable goods on commission basis. The Rules have been further amended to provide that CENVAT credit cannot be used for making payment of Swachh Bharat Cess. *No. 2/2016-CE (N.T.) dt 3 Feb, 2016*

As per earlier circular to issue certificates as proof of duty payment, whenever requests made by the Small Scale Industries, to facilitate trade. However, the CBEC Vide its Circular extending this facility, by issuing a Certificate as proof of payment of Central Excise duty, to all categories of industries to facilitate trade. *No. 1017/5/2016-CX dt 29 Feb, 2016*

Where the goods are diverted for home consumption in full or in part the exporter shall be liable to pay interest @15% per annum (corresponding interest rate @ 24% per annum) on the amount of duty payable on such goods from the date of clearance from the

factory of production or any other premises approved, till the date of payment of duty and clearance. This circular shall come into force on 1.4.2016. *No. 1019/7/2016-CX dt 29th Feb, 2016*

CBEC will allow the single Central Excise registration only when the manufacturer makes the declaration that if two or more premises of the same factory were separated by way of public road or canal or railway line. Now, this condition has been done away with. *No. 1019/7/2016-CX dated 29th February, 2016*

CBEC vide Circular empowers the Commissioner of Central Excise to grant single registration subject to the fulfillment of the following conditions:

The two or more premises of the same factory are located within a close area which is under Jurisdiction of the same Range Superintendent.

The manufacturing processes should be interlinked.

Units must not be operating under any area based exemption notification.

Proper accounts should be maintained for movement of goods from one premise to another.

This circular shall come into force from 1st of March, 2016.

No. 1016/4/2016-CX dated 29th February, 2016

The present limit for arrest and prosecution in Central Excise cases is One Crore Rupees which was made effective vide Circular No. 1010/17/2015-CX dated 23.10.2015. Comptroller and Auditor General of India submitted its report regarding administration of prosecution and penalty in Central Excise and Service Tax. Central Excise cases involving duty amount less than Five Lakhs Rupees and undergoing prosecution in the courts for more than fifteen years may be considered for withdrawal from prosecution as per CBEC Circular. This has come into force from 1st of March, 2016. *-No 1018/6/2016-CX dt 29th Feb, 2016*

Case Law

Clearance of manufactured car for use by company officials was assessable under Rule 4 (i.e. price adopted for customers) and not under Rule 8 (i.e. 115% of the cost of production).

Skoda Auto (India) Ltd v CCE (2016-TIOL-85-CESTAT-MUM)

Excess collection on account of freight from buyer could not form part of the assessable value of the goods unless the Revenue produced evidence to show that value of the goods was collected in the garb of the freight charges. - *CCE v Manchukonda Prakasham & Co (2016-TIOL-100-CESTAT-BANG)*

Valuation of physician samples distributed free of cost had to be done on cost of production basis, and not based on value of the same goods sold in the market. - *Centaur Pharmaceuticals Pvt Ltd v CCE (2016-TIOL-299-CESTAT-MUM)*

Capital goods have a life over several accounting years, and as such, the intention at the time of installation to use such capital goods in the manufacture of dutiable products was the relevant factor. In such cases, the temporary use of such capital goods for few months in manufacture of only exempted goods did not disentitle the assessee from availing CENVAT Credit and utilising it for manufacture of dutiable goods.

CCE v Pepsico India Holdings Ltd (2016-TIOL-51-CESTAT-MUM)

Repair and maintenance of the goods during the warranty period was an activity relating to sale of goods, and such an activity was eligible for credit as input services. - *Seiko Watch v CCE*

Courier Bill of Entry was an eligible document for taking credit as per Rule 9 of CENVAT Credit Rules, 2004.

CCE v Interface Microsystems (2016-TIOL-34-CESTAT-DEL)

CENVAT credit could not be denied on loss of base oil when shortage was within the permissible limit of 0.1%.

Indian Oil Corporation Ltd v CCE (2016-TIOL-24-CESTAT-MUM)

Demand of 5% of the sale price would not apply in a case where exempted final product emerged as an unavoidable waste or by-product, and compliance with rule 6(2) was impossible.

N S Ispat Pvt Ltd v CCE (2016-TIOL-71-CESTAT-DEL)

Denial of CENVAT credit on the ground that the supplier had not paid duty was not tenable when there was no finding on conclusion of a proper proceeding at the supplier's end.

Malhotra Cables PvtLtd vCCE (2016-TIOL-90-CESTAT-DEL)

Demand of 10% of value of goods under Rule 6(3) was not sustainable on supplies made to SEZ Developers.

Cemetile Industries v CCE (2016-TIOL-105-CESTAT-MUM)

Benefit of export to Nepal could not be denied merely on the ground that the duplicate copy of the Nepal invoice was not forwarded by the Customs officer to the jurisdictional Central Excise officer, when the appellant had produced relevant documents, viz. shipping bills and BRCs, before the adjudication authority.-

Neelam Steels v CCE (2016-TIOL-195-CESTAT-DEL)

Benefit of exemption under Notification no. 6/2002-CE could not be denied merely on the ground that the requisite certificate was not produced at the time of clearance of the goods.

KEI Industries Ltd v CCE (2016-TIOL-61-CESTAT-DEL)

GST (VAT, Sales Tax and Entry Tax)

Case Laws

Sale of motor vehicle was co-terminous with the registration of a motor vehicle. The Supreme Court opined that since motor vehicle could not be used by the purchaser until it was registered, appropriation was deemed to take place only when the goods were handed over at or near the office of registration authority in a deliverable and registerable condition. Thus, the sale was deemed to have taken place at the time, or immediately before, the vehicle was brought by the seller to the office of the registration authority.

CCT v KTC Automobiles (Civil Appeal No 2446 of 2007)

The input tax credit could not be denied to the buyer for failure on the seller's part to report the transaction to the department.

Sri Lakshmi Textiles v the CCT and others (2016-VIL-81-MAD)

Form F had to be furnished by the dealer when goods were sent to other States for job work.-

Johnson Matthey Chemicals India Pvt. Ltd. v The State of Maharashtra (2016-TIOL-310-HC-MUM-VAT)
AppyFizz had to be classified as aerated branded fruit drink, and not fruit juice-based drink for levy of VAT. The classification of a product as fruit juice-based drink under Central Excise and Salt act WAS irrelevant in view of the fact that Kerala VAT Act DID not refer to HSN based codification, which WAS a basis of classification for excise purposes.

Parle Agro Pvt. Ltd v CCT

Benefit of stock transfer was not allowable solely on the strength of declaration in F form. The assessee was liable to produce necessary supporting documents such as lorry receipt, delivery notes, etc., in addition to declaration in F form to substantiate the inter-state movement of goods for reasons otherwise than by way of sales.

Panasonic India Pvt. Ltd v The State of Kerala

Service Tax

Notifications/Circulars/News

The scheme of grant of rebate of service tax paid on input services by exporters of goods under notification no. 41/2012-ST has been amended. Presently, services used beyond the place of removal, as per the Central Excise Act, were eligible for rebate. Now, the eligibility of rebate has been extended to services used beyond the factory or any other place or premises of production or manufacture of the said goods, for their export. Further, the rate at which rebate is granted under the notification (when claiming rebate at specified rates, instead of on actual basis) is increased, considering the increase in service tax rates.

No. 1/2016-ST dt 3 February, 2016

Notification no. 12/2013-ST granting outright exemption or refund of service tax on input services received and used by the Special Economic Zone ('SEZ') unit or developer has been amended. Now the SEZ unit or developer can claim refund of SwachhBharat Cess charged by the service providers, if outright exemption is not claimed. The notification also provides for refund of SwachhBharat Cess component in cases where there are common services used for SEZ and DTA units, and the credit of service tax on such common services is distributed to the SEZ.

No. 2/2016-ST dt 3 February, 2016

Notification no. 39/2012-ST, which grants rebate of service tax paid on input services by a service exporter if no CENVAT credit is claimed, has been amended. Now, such exporter of services can also claim rebate of SwachhBharat Cess paid on the eligible input services.

-No. 3/2016-ST dt 3 February, 2016

The CBEC has notified 1 April, 2016 as the effective date on which the amended section 109 (1) of the Finance Act, 2015 will come into effect. As a result, with effect from 1st April, 2016, any services provided by the Government to business entities would be subject to service tax.

- No. 6/2016-ST dt 18 Feb, 2016

The CBEC has exempted the services provided by Government or a local authority to a business entity with a turnover up to Rs.1 million in the preceding financial year. The notification will be effective 1 April, 2016.

- No. 7/2016-ST dt 18 Feb, 2016

Case Laws

No service tax would be applicable on amounts collected by the builder for maintenance of building, since the builder was under statutory obligation as per provisions of Maharashtra Ownership Flats (Regulations of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 to maintain the building before handing it over to the society.

Omega Associates v CST (TS-35-CESTAT-2016(MUM))

When employees sitting in India access the servers/ computer networks of the clients abroad, at least part of the services could be said to have been performed outside India, and the services qualified as export of services.-

CCEx v HSBC Software Development (India) Pvt.Ltd. (2016-TIOL-415-CESTAT-MUM)

Maintenance of software was not subject to ST before 1.06.2007.-

Polaris Software Lab Ltd v CCEx)

Turnover of onsite services provided through overseas branch had to be considered towards export turnover as well as total turnover of business, to determine the amount of CENVAT credit eligible for refund to exporter of service.

CCEx v Zensar Technologies Ltd (TS-740-CESTAT-2015(MUM))

No ST would be applicable on transfer of IPR which was not covered under Indian law in force.

Whirlpool v CCE&ST