



Mysore Chapter

eNewsletter

Edition - 91

August 2011



Independence Day @ Mysore Chapter



CS Mysore
is 4 years young!
Congratulations
to its 1800+ Members



Jallianwala Bagh (1919) - Maval (2011)
Mindset reminds the same...

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"WORDS WORTH MILLIONS"



" It is the prime responsibility of every citizen to feel that his country is free and to defend its freedom is his duty."

- Sardar Vallabhbhai Patel

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MESSAGE FROM CHAIRPERSON



Dear Members and
Students of CS fraternity,

I'm glad to inform you all that Mysore Chapter's Building Project is nearing the completion stage and we'll be casting the Auditorium roof by fifteenth of this month. This has been possible by the continued support from the fellow members like you all and we thank you for the same.

In view of the First ICSI Corporate Governance Week celebrated from 8th to 12th August 2011, I think it is time for all of us to question ourselves as to what is our individual contribution in this regard as responsible professionals. We all talk a lot on 'Green Pledge', 'Green Initiative', and 'Sustainability'... but do we really practice it?

We all know what irreparable damage plastic is causing but have we ever said no to the plastic bag while shopping? When we attend a twenty min phone call at office, do we remember to switch off the monitor? Amidst a lot of work on a busy day, do we remember to print on both sides of paper?

Friends, these small actions that we include into our daily routine are the ones that really make the difference and I'm sure we all are well aware of it. What is required is to implement it in practice. I hope all of us realize our basic responsibility and practice 'Governance' is its true sense.

Wishing you all a very happy Independence Day.

Yours in CS fraternity,

CS. Srilatha T G

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Interactive session on 'CS Profession To Become More Challenging'



On 12th July 2011, an interactive session on 'CS Profession to become more Challenging' with the Central Council Member CS. Atul Mehta was held at the chapter. The Council Member shared with the students and members about the new initiatives of the institute regarding training and syllabus, examination, career opportunities, new areas of practice etc. Around fifty students and members actively participated in the session.

Investor Awareness Week, 2011



On Account of the India Investors Week 2011 organised by MCA from 12th to 17th July 2011, the Chapter had organized a number of Programs in the allotted districts of Mysore, Chamrajnagar and Mandya. 15 Investor Awareness Programs were conducted from 12th to 16th of July 2011 at various places like Kuderu, Chamarajnagar, Nanjangud, Mandya, Maddur, Bharathinagar, Hanur, Ramapura, Kollegal, Basaveshwarnagar, Pandavapura, K R Pet, Hunsur, Srirangapattana and Mysore.

Around 1700 people in these districts were reached. CS. Anshuman A S and CS. Srilatha TG were the resource persons for these programs and were supported by Mr. Nagasubramanya B B, Mr. Varun D B and Ms. Jhanaki R V, Students of the Chapter.

Career Guidance Program

The Chapter had arranged **15 Career Awareness Programs** on 12th, 13th, 14th, 15th, 16th and 27th of July at 15 different colleges in Mandya, Chamarajanagar, Mysore and Kodagu District like Government P U Colleges in Kuderu, Mandya, Maddur, Bharathinagar, Ramapura, Hanur and KR Pet, Govt First Grade College in Srirangapatna and Hunsur, JSS PU College in Chamarajanagar, Nanjangud, Ramapura, Vasavi Composite College in Kollegal, Vijaya Composite College in Pandavapura,

Jawahar Navodaya Vidyalya in Madikeri etc. The students were addressed by CS. Anshuman A S and CS. Srilatha T G and they were given an insight to the Company Secretaries Course and the Career Prospects for CS. Around 1,970 students were benefitted by this program.



Cricket Match

The Annual Cricket match between CA and CS students was held on 17th July 2011 at Mahajana College Grounds, Jayalakshmpuram, Mysore. The Match was inaugurated by CS. Sunil Kumar B G, Secretary of Mysore Chapter and CA. Satyanarayana, Chairman, SICASA. The SICASA Team won the exciting Match and bagged the rolling shield. Mr. Sundaresh, a CS Executive Program Student was the Man of the Match.



Training for Trainers

On 23rd and 24th of July, 2011 Mysore Chapter jointly with the MCA had organized a Training Program for resource persons. Sponsored by the Investor Education and Protection Fund of the MCA, this program was conducted to provide training to the resource persons so as to enable them to conduct



Investor Awareness Programs in their respective towns. Around 18 participants who are professors/professionals from various towns of Mysore, Chamarajnagar and Mandya Dist. Participated in this 2 days training program. The program was inaugurated by Mr. Ponraj. A Sehar, Deputy Registrar of Companies, Bangalore and was coordinated by CS. Anshuman A S and CS. Srilatha T G of Mysore Chapter of ICSI. The participants were trained by eminent resource persons like CS. C K Sabareeshan, CS. M C Bansali, CS. Srilatha TG, Mr. S N Prasad, Mr. Ullas Rao, Mr. M K Srikanth, Mr. Abijith S, Mr. Ponraj etc.. from Mysore and Bangalore.

Appeal from Mysore Chapter

It is our pleasure to inform you that making of ICSI Bhavan at Mysore is on schedule and is expected to be completed by November 2011. We request you to kindly go through the project details at the Chapter website www.icsi.edu/mysore. Please provide us your valuable suggestions.



Your contribution for the project will not only augment the resources but will assure us that colleagues from all over the country are with us. Further, we will be very much obliged if you can use your good offices for obtaining donations from Corporates, philanthropists etc.

LIVING ROOM



"DEDICATION FOR A CAUSE"

Mahatma Gandhi went from city to city; village to village collecting funds for the Charkha Sangh, eventually the funds were for Indian freedom fight.

During one of his tours he addressed a meeting in Orissa. After his speech a poor old woman got up. She was bent with age, her hair was grey and her clothes were in tatters. The volunteers tried to stop her, but she fought her way to the place where Gandhiji was sitting. "I must see him," she insisted and going up to Gandhiji touched his feet. Then from the folds of her sari she brought out a copper coin and placed it at his feet.



Gandhiji picked up the copper coin and put it away carefully.

The Charkha Sangh funds were under the charge of Jamnalal Bajaj. He asked Gandhiji for the coin but Gandhiji refused. "I keep cheques worth thousands of rupees for the Charkha Sangh," Jamnalal Bajaj said laughingly "yet you won't trust me with a copper coin."

"This copper coin is worth much more than those thousands," Gandhiji said. "If a man has several lakhs and he gives away a thousand or two, it doesn't mean much. But this coin was perhaps all that the poor woman possessed. She gave me all she had. That was very generous of her. What a great sacrifice she made. That is why I value this copper coin more than a crore of rupees."

FLAWS IN FORM 32

WITH RESPECT TO APPOINTMENT OF A COMPANY SECRETARY

The Companies Act under Section 5 explicitly lists "Officer who is in default". Presently, the Secretary of the company seems to be only professional herein. Thus, section cast on secretary all legal responsibilities of company's legal administration. Section 383A read with the Companies (Appointment and Qualification of Secretary) Rules, 1988 as amended puts companies in three classes:

1. Companies required to have Whole time Secretary,
2. Company have option to have a whole - time Secretary or obtaining a compliance Certificate from a Company Secretary in whole time practice, and
3. Companies require a Compliance Certificate.

Section 2(45) define 'Secretary' as a 'Company Secretary' within the meaning of Section 2 (1) (c) of the Company Secretaries Act, 1980 and **includes any other individual** possessing the prescribed qualifications and appointed to perform the duties which may be performed by a secretary under the Act and any other ministerial and administrative duties. Further, the Rules classify 'Secretary' of a company into 'Whole - time Company Secretary' and other 'Secretary'. The 'whole -time Secretary' must be a member of institute of Company Secretaries of India. The 'Secretary', may have any one or more qualification specified in Rule 2 (4). Whenever paid - up capital of the company increase to the amount fixed for compulsory appointment of 'whole - time Secretary' under Rule 2 (1) the company is bound to appoint a 'whole - time Company Secretary'.

For the purpose of appointment of a 'Secretary', a company should have to file e-Form 32. Unlike many other forms, this Form 32 does not mention authorized Capital and Paid up Capital of the company. Hence, first check point regarding the requirement for appointment of 'Secretary' is completely missing. Secondly, the e-form just ask, 'whether the Secretary is a member of ICSI'. In case, filing person fills 'NO', it never give message regarding requirement of 'whole-time Secretary'. This e-form comes with a message that this e-Form has been

taken on the file on the basis of statement of correctness given by the filing company. Hence, form 32 goes to official record of the RoC without any scrutiny. *Unfortunately, where paid - up capital of the company is more than prescribed limit for appointment of 'whole - time Secretary', one can 'safely' presume that such 'secretary' is 'whole - time Secretary' with prescribed qualification.*

Further, the e-form should be digitally signed only by persons whose digital signatures have already been registered. For registration of digital signature of a 'Secretary' it asks for PAN number of the person and not membership number of the ICSI. At the time of transition from manual to digital system, MCA ask all 'Secretaries' in employment to file their DIN3 form. This form also did not have any proper in-built error detecting mechanism and guidance process.

In a real life situation, a new company having paid up capital less than Rupees 25Lakh appointed a Law graduate as its Secretary in January 2007. In October 2007, company increased it's paid up share capital to Rs. 3 Crores. With fear of loss of job, present secretary never informed the management about legal requirement. With effect from March 2009 the ministry came with new amendment. Once again in June 2010, his company increased its paid up share capital to Rs. 10 Crores.



Though Companies Act permits appointment of a Company Secretary who is a member of ICSI and who is not a member of ICSI; Form 32 does not provide a check point for confirming this. Read on to know how this lapse can mislead.

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The Master data of the company available on the

MCA21 portal shows paid up capital of the company above thresh - hold limit and 'view signatory details' shows such person as secretary of company, any prudent man may consider such person a 'whole - time secretary' of the company and thus treat him as 'company Secretary'.

In the present case, MCA21 System along with company and its secretary are co accused of non compliance of Section 24 (a) and Section 25 (1) (b) of the Company Secretaries Act.

REVOCATION OF SUSPENSION

FINAL OPPORTUNITY FOR SUSPENDED COMPANIES ON BSE

Listing means admission of securities of an issuer to trading privileges on a stock exchange through a formal agreement after compliance with specified norms. The prime objective of admission to dealings on the Exchange is to provide liquidity and marketability to securities, as also to provide a mechanism for effective management of trading. Thus Listing is the admission of securities to dealings on a recognized stock exchange. In India, securities are currently getting listed on the Bombay Stock Exchange (BSE) and the National Stock Exchange (NSE). As per primary estimates, there are around 5000 listed companies on BSE of which around 30% companies are suspended due to variety of reasons such as:

- Non-payment of listing fees.
- Non-compliance with listing requirements.
- Non-compliance with provisions of the Listing Agreement.
- Non-redressal of investors' complaints despite repeated reminders.
- Unfair trading practices at the behest of the promoters / management.
- Malpractices such as fake original or duplicate or share certificates deliberately issued by the management.
- Whereabouts of the company and / or its promoters / directors not known.

Existing Procedure for Revocation of Suspension: There is no pre-defined process for revocation of suspension. However, based on practical experience as well as on discussion with BSE executives / practicing professionals, we understand that following procedure is followed for revocation of suspension:

- Complete all pending compliances under the Listing Agreement / Securities Laws.
- Submit an application to BSE for revocation of suspension of the securities of the Company.
- Resolve all the queries of BSE and provide necessary information, as required by them.
- Approach SEBI / BSE in respect of investor grievances and resolve them.
- If required, make a formal representation in the review meeting of BSE.
- On getting 'In-Principle' approval from BSE, comply with all the terms and conditions as mentioned therein.
- Make payment of reinstatement fees as demanded by BSE.
- Inform Share Transfer Registrar in respect of lock-in of Promoters' shares.
- Take all necessary measures as directed by BSE.



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Out of 5000+ listed companies, about 30% are suspended due to various reasons. There was no predefined process for revocation of such suspension. Now BSE has come out with new norms to be effective from 01st October 2011.

New Norms for Revocation of Suspension: BSE allows revocation of suspension on completion of necessary compliances by the Company. In order to prevent misuse of listing status, BSE has issued new norms for 'Revocation of Suspension' which will be applicable w.e.f. October 1, 2011. These norms can be classified into following 2 categories:

- Revocation of suspension, where the suspension is for a period more than 1 year:** The companies which will seek revocation of suspension will be required to comply with the norms as given below:

No.	Particulars	Norms	Analysis / Issues
1	Issued and Paid up capital	Minimum paid up capital of Rs. 10 crores	1) BSE does not permit QIP, Bonus, Rights Issue, etc
		OR	Raising capital will be a herculean task.

	Net worth	Minimum net worth of Rs. 50 crores (excluding revaluation reserves) in 3 immediately preceding financial years	2) Clarity needed while determining net worth in case of corporate actions like M&A
2	Profit making track record	Distributable profits in terms of sec. 205 of Companies Act, 1956 for atleast 3 out of 5 immediately preceding financial years based on audited financial results with the last financial year reporting profit. Provided that extraordinary income shall not be considered for calculating distributable profit and latest 3 Financial Years should comprise a period of atleast 12 months.	Profit making track record is made mandatory, however, quantification has not be done.
3	Public Shareholding	Meeting with the requirements of SCRA, SCRR and Listing Agreement.	Quite a few reputed companies have very large promoters' holding.
4	Number of public shareholders	Minimum 500	Many small companies have less than 500 shareholders.
5	Trading in Compulsory Demat	Minimum of 50% of the public shareholding should be held in demat form. Provided that where the company has not signed with either/ both the depositories for dematerialization, it shall submit a letter from the relevant depository rejecting admission of the security in the depository	1) Suspended companies won't be able to force its shareholders to get shares converted to demat form? 2) Many suspended companies might not get registered with depositories due to net worth below 1 crore.
6	Information Memorandum	Information Memorandum as provided in Schedule II of Companies Act, 1956 to the extent applicable, as certified by the Company Secretary/ MD of the Company	Preparation of Information Memorandum would be an incremental cost.
7	Other Conditions	i) Entire issued capital of the company must be listed. ii) No investor complaints pending against the company. iii) The company is in compliance with clauses of the listing agreement, filings under SEBI regulations/ circulars, SCRA and SCRR. iv) The shareholding of promoter and promoter group entities shall be under lock-in for a period of 6 months from the date of commencement of trading, post revocation of suspension. v) Company should have its own website. vi) Payment of reinstatement fees as applicable.	If any part of share capital is unlisted, it must be listed. All investor complaints need to be resolved prior to listing. Compliances with various securities laws need to be made. Lock-in requirements have gone up from 3 months to 6 months. Own website is made mandatory. Payment of reinstatement fees is mandatory.

2) **Revocation of suspension, where the suspension is for a period less than 1 year:** The companies which will seek revocation of suspension will be required to comply with the norms as given below:

- i) Entire issued capital of the company must be listed.
- ii) No investor complaints pending against the company.
- iii) The company is in compliance with clauses of the listing agreement, filings under SEBI regulations/ circulars, SCRA and SCRR.
- iv) Company should have its own website.
- v) Payment of reinstatement fees as applicable.

Conclusion: Given the strictness of new norms, it would be a Herculean task to get suspension revoked for smaller companies from next quarter onwards. Perhaps, it is the last opportunity for all those companies and they should take quick action in next 2 months to get actively listed again. It's actually, now or never.



THEORY OF ALL THE THEORIES

'Re-inventing the wheel' is something that man has been following ever since the wheel has been invented. The reason it took centuries for the wheel to

be invented is because we have a tendency to look for things at places other than, right in front of us. The Almighty showed us the sun and the moon right in front of our eyes to show if things are round, they move but man took centuries to discover it and then this discovery was later called 'invention of the wheel'.

It's not new for man to complicate things to an extent where he gets completely lost and confused. Some get pleasure in using complicated terms so that the listener feel that 'Oh! This person knows so much...we can never be as smart as him/her'.

Equity Market is one such place where 'experts' use terminologies and jargons to make the subject 'extremely complicated'. How else would the generally educated public entrust their money to these 'experts'?

Let's take a look at a few theories, the easiest is the theory of Moving averages. These are further classified into Simple Moving Averages and Exponential Moving Averages; each of these is further divided into 20 day, 50 day, 100 day and 200 day. As per this theory when any of these Moving Averages dissects the other, a trend change is indicated. Then within the Moving Averages is built another theory called MACD (Moving Average Convergence - Divergence). The other indicators are Average Directional Index, Average True Range, Bollinger Bands, Commodity Channel Index, Force Index, Money Flow Index, Parabolic Stop and Reversal, Pivot Points, RSI, Stochastic etc., Each of these are further divided into sub theories, like the Stochastic alone has Stochastic Crossover, Stochastic touched and Rebounded from Limit, Stochastic Crossing Limit, Stochastic Limit Exceeded, Stochastic Rebounding in Oversold region, Stochastic Rebounding in Oversold region and Touching limit, Stochastic in Specified Range, Stochastic Failure Swing, Stochastic Divergence with Price, Stochastic Convergence with price etc.,

The Japanese too have created theories. They have created theories based on candle sticks, which are mainly divided

into four theories, Bullish Reversal, Bullish Continuation, Bearish Reversal and Bearish Continuation. Each of these theories is further classified into many more theories. For example the Bullish Reversal theory has an Abandoned baby, Bullish Counterattack line, Bullish Engulfing, Hammer (Black), Harami (Black / White), Hammer (white), Harami Cross (Black), Homing Pigeon, Inverted Hammer (Black / White), Morning White Star, Morning Doji Star, Morning Black Star, Piercing Pattern, Three White Soldiers, Tweezer Bottom Hammer, Tweezer Bottom Piercing Pattern...

Certain analysts created theories in their own name like Marc Chaikin created 'Chaikin Money Flow, Ralph Elliott created the Elliott Wave Theory, JM Hurst's Harmonic Price Patterns, Mr. Goichi Hosada's ultimate tongue twister -


Ichimoku Kinko Hyo. As we say in life, when nothing works we look up to the Almighty and that's when the analyst looked upon the Fibonacci ratio - The Golden Ratio in which the entire universe and everything within the universe is built, including humans. Unfortunately it does not necessarily work in the Equity Markets - perhaps God is not very

interested in the Equity Markets.

By now, you have had enough confusion just by reading these names, even before getting into details. You might be feeling like 'this equity market is not my cup of tea'.

Still we shall learn all these theories if we get profits in the equity markets. However, all theories come with disclaimer "THE SIGNALS GENERATED BY THESE THEORIES MAY OR MAY NOT COME TRUE. BEST OF LUCK." Very obvious, if it was so easy to make profits learning these theories then all of us would spend all our time learning these theories! In fact more than 50% of the time theories fail.

So what about equity markets then, do I invest or not? I thought and put my research, learning, understanding and experience together to create my very own ten commandments. Just 10 simple rules! Beginning next month I shall share one commandment in every issue. If you catch the next 10 issues, in less than a year you should will be a master of your own finances.



Market is full of theories and sub theories which fail in more than 50% cases. Binding stock market by theories has not been a success so far. Author has put his research and experience, to frame 10 commandments. Catch up next 10 issues.

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Writing is an art! All are not born with this art, but it sure can be developed if we make best use of the opportunity! Worrying about the opportunity? Here is a site www.acsecinews.net to publish our reports and news. This is a news network for corporate professionals in India.

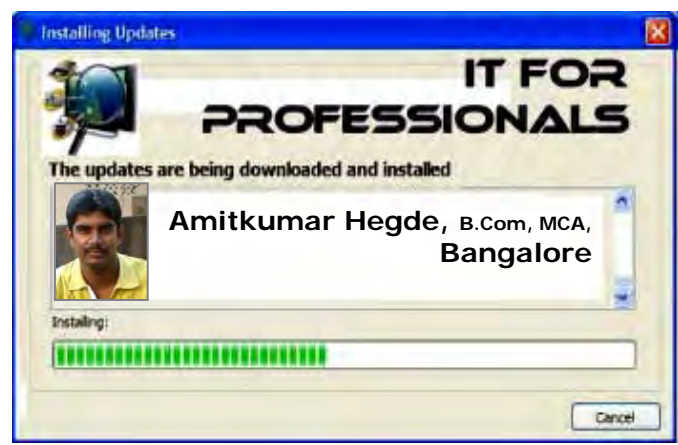
Chartered Accountants, Company Secretaries, Cost Accountants, Lawyers, Consultants and Students can send their reports and views to editorial team for perusal. Interested Professionals along with their report, can send Name, Location, Mobile Number, and source of information which is published after review by Editorial team.

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SAVE A WEB-PAGE AS PDF INSTANTLY



Often we come across a situation where in we want to save a web page as PDF or an image to take a printout or to send it to someone else. Earlier we used to print a page as PDF with a PDF printer or used to take a screenshot of the page. Now we have a handy little browser addon which does the job for us.

iWeb2Print offers a small addon to Mozilla Firefox or Google Chrome which adds to the browser toolbar. Install the Chrome or Firefox addon from www.sciweavers.org/free-online-html-to-pdf and you are all set to go.

Whenever you want to save a page as a PDF or an image, just click on the toolbar button which loads a small bubble and allows you to do some settings before you click on save. You can choose the page size, orientation; choose to convert it to black and white (gray scale) removing background and so on. Once you are done, just click on "Save as PDF". Similarly it allows you to save the web page as an image also. All you have to do is switch to "image" tab and click on save.

<http://www.sciweavers.org> has quite a few Productivity Tools such as i2OCR which converts scanned documents, iPdf2Split for splitting larger PDF files. iPdf2Merge is another nice utility which allows merging multiple PDF documents in to one, which comes in handy.

IT NEWS BOTNET INFECTS 4.5 MILLION PC'S

Researcher Sergey Golovanov has warned that a botnet named TDL-4, but also known as TDSS and Alureon, is "the most sophisticated threat today". A botnet is a network of home computers that have been infected by a virus that allows a hi-tech criminal to use them remotely. Often botnet controllers steal data from victims' PCs or use the machines to send out spam or carry out other attacks. TDL-4 is thought to have infected 4.5 million PC's, 5% of which are in the UK. One reason the botnet is so difficult to take down is the communications between the infected computers and the command and control centre are encrypted, and can also be controlled via P2P in case the control servers are knocked offline. (<http://www.itnewser.co.uk/>)



% of Completion method in development of flats

Percentage of Completion is an accounting method in which the revenues and expenses of long-term contracts are recognized yearly as a percentage of the work completed during that year. This is the opposite of the completed contract method, which allows taxpayers to defer the reporting of any income and expenses until a long-term project is completed. This method is commonly used in construction projects.

In India, on bare understanding of the Real estate industry, it seems to be very easy to understand. The developer collects money at every stage of construction. Usually developer collects 90% to 95% of the sale value on completion of structure, whereas he would have spent only about 40% to 50% of the construction cost apart from land cost. Simultaneously profit and cost recognition also takes place based on percentage of completion (POC) method as specified in accounting standards. Proportionate amount of work-in-progress and current liabilities are transferred to the profit and loss account as cost of sales and revenue respectively. Depending upon the size of the project, developer would have tied-up with the banker for project loan. As and when developer sells the flats, customers are identified and collection of receivable becomes more certain. In

spite of the fact that there is debt in the books of accounts, the source of repayment is assured as parties are identified.

In a scenario where 90% of the project is sold and 40% of construction is complete approximately 36% of the profits are recognized. Assuming a profit margin of 30%, developer would have realized almost this entire cost + profit, but yet to spend the same on construction. Therefore only 36% of profit (i.e., 36% of margin which is 30%) is recognized. In other words 10.8% (30% X 36%) is recognized. Needless to say, those P&L ratios reflect a lower numbers, whereas Balance Sheet would be bulky with huge current liability. All land payments are accounted at cost. Therefore, the measurement of the net worth would be based on historic value and not actual. All balance sheet ratios like ROE, Return on fixed assets, returns on total assets are computed on historic value account in current assets.

In such scenario, can anyone barely rely on this financials prepared bases on this Method of Accounting? Or is it not necessary to consider the dynamics of industry before analyzing the financials on standard set of ratios and other financial test tools?

Pick of the Month

Standard & Poor

This is the Credit Rating Agency with offices in 23 countries and a history that dates back more than 150 years and this is known to investors worldwide as a leader of financial- market intelligence. Today Standard & Poor's strives to provide investors who want to make better informed investment decisions with market intelligence in the form of credit ratings, indices, investment research and risk evaluations and solutions. This Agency is having its corporate office in New York. This agency has recently downgraded the rating awarded to Long term bonds issued by United States of America from AAA to AA+.



Did you Know

Students have the right to inspect Answer sheets

The Supreme Court on 9th August 2011 said examinees have a right to inspect answer-sheets. The evaluated answer-sheets are covered under the definition of the "information" under the Right to Information (RTI) Act. It upheld the judgment of the Calcutta High Court which had said "rejection for inspection of answer-sheets cannot be sustained". The apex court dismissed the appeals of Central Board of Secondary Education (CBSE), West Bengal Board of Secondary Education, West Bengal Council for Higher Education, University of Calcutta, Institute of Chartered Accountants of India and West Bengal Central School Service Commission which had challenged the February 5, 2009 judgment.



By:

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Team Genicon,
Chennai

CA. Ashit Shah,
Mumbai



payable if differential duty is paid before finalization of assessment in terms of CE Rules.

Tata Motors Ltd. Vs. CCE (2011(269) ELT415)

Service Tax

Notifications/Circulars

The Central Government has clarified the meaning of the term 'completion of service' under the Point of Taxation Rules, 2011 and the Service Tax Rules, 1994 to include not only actual provision of the underlying service but also the completion of all other auxiliary activities, which enable the service provider to be in a position to issue the invoice. Consequently, the period of 14 days for issuance of an invoice commences when all the relevant auxiliary activities have been successfully concluded. The clarification would be equally applicable to cases of continuous supply of services.

Circ. 144/13/2011 - ST dt. 18.07.11

Case Law

The Tribunal has held that penalty is not imposable where service tax is paid in full with interest before issue of SCN.

CST Vs. Independent News Services Pvt. Ltd. (2011(23) STR 23)

The Tribunal has held that the services rendered at the customers site by hiring sub-contractor are eligible input services under the CENVAT Credit Rules, 2004.

CCE Vs. Areva T&D India Ltd. (2011 (23) STR 33)

The Tribunal has held that transfer of CENVAT Credit is to be allowed where only the name of assessee company has changed without change in its constitution even if the order allowing credit was in the previous name

CCE Vs. Sri Varahiamman Steels Pvt. Ltd. (2011 (23) STR 91)

The Tribunal has held that the definition of input services under CENVAT Credit Rules, 2004 cannot be interpreted so literally so as to treat all services utilized in business as input services eligible for CENVAT

CENVAT

Notifications/Circulars

High Speed Diesel (HSD) intended for sale without a brand name has been exempted from Central excise duty.

Notn. No. 33/2011 - CE dt. 25/06/11

A new format of ER-1 monthly return has been prescribed.

Notn. No. 16/2011 - CE dt. 18/7/11

Case Laws Valuation

The Tribunal has held that the insurance claim received in respect of damaged finished goods is not includible in the value, when such goods are sold as scrap to the buyer.

CCE Vs. Ratnatraya Heat Exchangers Ltd. (2011(269) ELT 419)

CENVAT Credit

The Karnataka High Court has held that CENVAT credit is eligible on machinery being used in the manufacture of both exempted finished goods and dutiable by product generated during the manufacturing process.

CCE Vs. Rajashri Packers Ltd. (2011 (268) ELT 337)

The Tribunal has held that credit is permissible in respect of fuel used as inputs in the generation of electricity to the extent it is being used in the manufacture of dutiable goods.

CCE Vs. Rajasthan Textile Mills (2011 (268) ELT 524)

The Andhra Pradesh High Court has held that CENVAT credit is available on the entire consignment of gas received as inputs in the factory, even if a certain portion is left over in the cylinders and returned along with the cylinder to supplier.

CCE Vs. Andhra Paper Mill Ltd. (2011 (269) ELT 79)

The Tribunal has held that CENVAT credit is admissible on goods received in the factory and dismantled to find out the technology used.

CRI Pumps Pvt. Ltd. Vs. CCE (2011-TIOL-633-CESTAT-MAD)

The larger bench of the tribunal has held in absence of a specific provision, no refund of unutilized credit is admissible on closure of unit.

Steel Strips Vs. CCE (2011(269) ELT 257)

Others

The Tribunal has held that in absence of a definition of the term 'capital goods' in the exemption notification, the same has to be interpreted in a sense in which it is understood in common parlance and thus pre-fabricated structures, PUFF panels and RPF panels required for carrying manufacturing activity in cold room would qualify as 'capital goods'. The definition given in Credit Rules cannot be applied for interpreting exemption notification.

CCE Vs. Kejriwal Bee Care (I) Ltd (2011 (185) ECR 310)

The Tribunal while distinguishing Apex Court judgment in SKF India Ltd., has held that no interest is

Credit unless reasonable nexus between the input services and output activity can be established.

Stanadyne Amalgamations Pvt Ltd Vs CCE (2011-TIOL-881-CESTAT-MAD)

Customs

Case Laws

The Tribunal has held that interest for delay in sanction of the refund amount is granted from the expiry of three months from the date of filing of the refund application and not from the date of an order passed by an appellate authority.

Motorola India Pvt. Ltd. Vs CC (2011 - TIOL-880)

The Tribunal has held that the limitation period for filing refunds in relation to the duty paid under protest would be reckoned from the date of order passed by appellate authority in favour of appellant.

Redington India Ltd. Vs CC (2011-TIOL - 863)

The Supreme Court in has held that it is not open to the Tribunal to examine directions issued by the High Court and refusal to carry it out tantamounts to denial of justice

and destroys the principle of hierarchy of courts.

RBF Rig Corporation Vs CC(2011 (185) ECR 466)

The High Court has held that the relevant date for computation of rate of duty in cases of export of goods is the date of passing of a "Let Export Order" and subsequent change in the rate of duty does not render the earlier order invalid.

CCE Vs Kineta Minerals and Metals Ltd. (2011 (269) ELT 494)

Foreign Trade Policy

Case Laws

The Tribunal has held that duty demand cannot be made if the test report which is the basis for duty demand is not provided to the assessee as it will tantamount to violation of natural justice.

VM Salgaocar & Bros Pvt. Ltd. Vs CC (2011-TIOL-871)

The High Court of Gujarat has held that clearance of goods from one EOU to another EOU is to be treated as physical exports for refund of unutilized cenvat credit.

CC Vs Shilpa Copper Wire Industries (2011(269) E.L.T 17)

The High Court of Delhi has held that the conversion of DEPB shipping bill to DEPB cum drawback shipping bill is at the discretion of customs authorities and cannot be claimed as a right by the exporter.

Terra Films Pvt. Ltd. Vs CC 2011(268) E.L.T 443(Del.)

FEMA

Regularization of Liaison / Branch Offices of foreign entities:

The Foreign entities who have established their liaison office or branch office in India before the year 2000 i.e., before enacting the FEMA should approach the RBI within 90 days for obtaining permission if they were not obtained. If the foreign entities who have established LO or BO with permission from the government of India may also approach RBI for allotment of UIN.

Sources: July 15, 2011 & A.P. (DIR Series) Circular No. 02

Legal News:

Pension Floor for EPF Members likely to be increased to Rs 1,000

The government may raise its contribution to the employees' pension fund marginally to raise monthly pension payout to over 5 crore salaried persons covered under the Employees Provident Fund (EPF) Act. A corresponding increase in the contribution of the employer's contribution to the pension funds of these workers would take the minimum pension to Rs. 1,000 a month. The employee contributes 12% of his/her basic salary to the provident fund and a matching contribution is made by the employer. Of the employer's contribution, 8.33% (of basic pay) goes to the pension fund, to which the government also contributes 1.16% of the basic pay.

Supreme Court to decide if tips to hotel staff will attract TDS

The SC will decide whether tips paid for availing services in the restaurants constitute salary at the hands of the recipients and whether the assessee is liable to deduct tax at source (TDS) on such payments. The issue has been raised by ITC Ltd before a bench headed by Justice DK Jain, which sought a reply from the IT department. The company, which runs a hotel chain, has challenged the Delhi high court judgment that held that the receipt of such tips constitutes income at the hands of the recipient and is chargeable to the income tax under the head "salary" under Sec. 15 of the IT Act.

Stricter Law coming on Money Laundering

The Prevention of Money Laundering (Amendment) Bill, 2011, is likely to propose sweeping changes in the procedures relating to attachment and confiscation of property. It may also bring in more reporting entities and a new category of offences with cross-border implications. The changes are in line with recommendations of the global Financial Action Task Force (FATF), an inter-governmental policy making body, with a mandate to establish international standards for combating money laundering and terror financing.



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India is 2nd largest recipient of WTO Aid-for-Trade:

India remained the second largest recipient of WTO Aid-for-Trade in 2009, receiving assistance of over \$ 1.5 billion, even as global commitments to create physical and institutional infrastructure to multiply trade opportunities shot up to \$ 40 billion, says a study. The report was jointly prepared by the Paris-based Organisation for Economic Cooperation and Development and the World Trade Organisation (WTO). Asia now ranks as the second largest regional recipient, with \$ 15.4 billion (38 per cent of total flows). However, Aid-for-Trade (AFT) flows to India declined in 2009 from a high of \$ 3.4 billion in 2008. With the industrialized countries caught in grave fiscal and budgetary crises, the South-South assistance for AFT offers a window of opportunity, the WTO official said, adding that capacity building and creating new physical infrastructure is essential to realize the advantages of trade liberalization.

WTO Finding against EU

China welcomed findings by the World Trade Organization's Appellate Body in a Chinese antidumping case against the European Union. The Appellate Body supported China's position on the EU's application of antidumping tariffs to imports of certain metal fasteners from China. Both the EU and China had filed appeals after the WTO in December condemned the tariffs, handing Beijing its biggest legal victory so far at the WTO. China joined the WTO in 2001. Its exports to the rich world immediately soared, leading to tensions over currency values, public contracts, access to the Chinese market by Western companies and charges of "dumping," or exporting to a foreign country below cost.

EU under WTO fire over trade barriers

The European Union (EU) came in for much criticism in its recent Trade Policy Review (TPR) by the World Trade Organization (WTO). Even as a WTO secretariat report stated that "long-standing barriers to market access and other measures that distort international competition remain in place", over 40 countries expressed their frustration at the trade barriers and submitted over 1,000 written questions to the EU on its practices. At the review, while most delegations were hard-hitting in their

statements, India was unusually low-key. India took up with EU customs officials the incidents of seizure of Indian pharmaceutical consignments for Latin American and African countries during their transit through Europe in 2008 and 2009. Reminding the EU of its assurance that such seizures would not recur and the relevant regulation would be amended and made explicit.

India, Pak to compete for vacancy at WTO's highest court

India and Pakistan are going to battle it hard for a vacancy for judge at the WTO's highest court for trade disputes- the Appellate Body-- after New Delhi nominated former trade envoy Ujal Singh Bhatia as its candidate. As more candidates are expected join the race for two vacancies at the Appellate Body that will be filled by the end of this year, India and Pakistan have already queered the pitch by nominating their recent trade envoys. "I am pleased to inform you our decision to nominate Ujal Singh Bhatia as India's candidate for the membership of the Appellate Body," India's trade envoy Ambassador Jayant Dasgupta told his counterpart Ambassador Elin Ostebo Johansen, the chair for the WTO's dispute settlement body.

India threatens to move WTO against EU's carbon tax

India has threatened to move WTO against the European Union if it fails to withdraw carbon tax to be imposed on flights landing or taking off from European airports from January 2012. Even though the additional per passenger cost would be around six US dollars, Indians would be paying approximately about one billion US dollars a year to Europe. Similar cost for China would be about four billion US dollars. In the world's first, the European Union earlier this year decided to bring aviation sector from January 2012 under EU Emission Trade Scheme, which imposed a penalty for failing to keep carbon emissions within 10,000 tonnes a year.

It would mean that a Boeing 747 flying from Delhi to London will exhaust this quota within a month and thereafter, will have to pay the environmental degradation tax for landing on European airports. The decision was taken after EU found that aviation sector was spewing 20 % more carbon dioxide into the environment than previously estimated.