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**Mysore Chapter**

# eMagazine



**BSE**

**Direct Listing**

For Private Circulation Only



***JULY 26,***  
***KARGIL***  
***VIJAY DIVAS***



**E- Magazine from  
The Institute of Company  
Secretaries of India  
Mysore Chapter**

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# Message from Chairman



**Dear Readers,**

The July month opens the gate for the ICSI national level competitions and the busy days for the students who have just begun. Exams are over and now the ICSI national competitions are on and the Chapter is geared up to conduct the Chapter level competitions, to start with, it will be the All India Company Law Quiz, 2013 and the Chapter students have registered for the competition. The Chapter level competition was held on 4<sup>th</sup> July, 2013 and winners of the competition will go to SIRC for Regional level competition. In last week of June month the Chapter had organised a one day seminar on the topic The Companies Bill, 2012 and the speakers from Hyderabad and Bangalore did commendable job by sharing their knowledge with the delegates. The staff, students and Chapter members did great job in organising and managing the whole day seminar and I thank each one of them for their commitment and hope that they will keep this energy going in future seminars.

The Chapter has organised oral coaching classes for the executive students and the number of students getting registered has been very encouraging. I am sure that the new panel of expert faculties will definitely lessen the fear of each student who joins the class and help them prepare better for the exams.

More competitions are in line for the students, I urge the students to be in touch with the Chapter and get themselves registered for the competition and do take part in the competition. I wish you all the students' fraternity good luck in your competition attempts.  
Good Wishes to all..!!!

*Yours in CS fraternity,  
CS. Sunil Kumar B G*

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# BSE Direct Listing

**Value Unlocking Opportunity for Companies Listed Exclusively on Regional Stock Exchanges**

Regional stock exchanges have lost their relevance due to aggressive expansion of BSE and NSE. There is a limited possibility of value unlocking for the Shareholders of the companies listed exclusively on regional stock exchanges.

**Direct Listing can be solution.**

Government had been regularly taking different measures since independence to ensure overall development of capital markets in India. One such important initiative was launch of regional stock exchanges across different states in order to increase confidence level of local investors who were scared of investing in IPOs of new companies. It was made mandatory for every company to get listed on their respective regional stock exchange while coming out with an IPO. Needless to mention, many regional stock exchanges were set up for a variety of tax and other reasons. At one point of time, India used to boast of having nearly 2 dozen active stock exchanges spread across different states of the country.

However, with the aggressive expansion by two national level exchanges i.e. Bombay Stock Exchange (BSE) and National Stock Exchange (NSE) by spreading their terminals across the country over last few years, these regional stock exchanges have lost their relevance.

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Moreover, it is no longer compulsory for the companies to get listed on a regional stock exchange which makes the situation even more vulnerable for the regional stock exchanges. In fact, most of the regional stock exchanges have no trading for last several years and there is no possibility of having trading in the nearby future. Shareholders of the companies listed exclusively on regional stock exchanges currently do not have any exit option and hence, there is limited possibility of value unlocking for them.

SEBI issued a circular in May 2012 to make it very clear that risk mitigation is very important for all the stock exchanges and simultaneously introduced strict norms for own clearing corporation, minimum paid-up capital, shareholding pattern, restriction on brokers on holding stake, etc. SEBI has taken a strict stand and advised all the stock exchanges to comply with the basic eligibility norms if they wish to continue their operations. Alternatively, it also provided an option for them to voluntarily wind-up.

In the event of winding-up of a regional stock exchange, it would certainly be a great loss to the companies listed on them as well as their shareholders. Hence, in consultation with SEBI, the BSE has recently introduced new 'Direct Listing' mechanism for the companies listed exclusively on regional stock exchanges by prescribing basic eligibility norms. Every company which fulfils following norms can submit a formal application to BSE for getting listed on its main board along with necessary supporting documents:

S.NO	Particulars	Norms
1.	Issued and Paid up Capital	Minimum paid up capital of Rs. 3 crores and positive net worth
2.	Net worth	
3.	Profit making track record	Distributable profits in terms of sec. 205 of Companies Act, 1956 for at least 1 out of 2 immediately preceding financial years based on audited financial results.  Provided further that the total period of latest 2 Financial Years should comprise a period of at least 24 months; Provided that extraordinary income shall not be considered for calculating distributable profit.
4.	Listing track record with Recognized Stock Exchange	Listed on any recognized Stock Exchange
5.	Public Shareholding	Public Shareholding should be Meeting with the requirements of SCRA, SCRR and Listing Agreement.  If the company is non complaint with respect to clause 40A of the listing agreement at time of applying for direct listing, the company shall submit the undertaking from Managing Director/ person authorized by Board of Directors of the company, that the company shall comply with the clause 40A of the listing agreement as per the extend regulations and timelines stipulated by SEBI
6.	No. of public shareholders	Minimum 500
7.	Trading in Compulsory Demat	Minimum of 50% of the public shareholding should be held in demat form
8.	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.  Note: Not required if the company has been trading in the permitted securities category at BSE for a period of not less than 1 year or is listed on any Exchange with nationwide trading terminals
9.	Withdrawal/ Rejection	Companies can make a fresh application after a period of 3 months
10.	Confirmation from RSE	The company shall submit a confirmation from any one of the recognized or regional stock exchange(s) : a. Entire issued capital of the company must be listed on the recognized stock exchange b. No investor complaints pending against the company c. The securities proposed to be listed are not under suspension.
11.	Compliance Status by Company	The company shall furnish the compliance status with the critical clauses of the listing agreement viz. Clauses 15, 16, 31, 35, 40a, 41, 47, 49, 54 and Sec Audit, filings under SEBI regulations/ circulars, SCRA and SCRR for the last 1 year
12.	Action against company/ promoters/ promoter group	Where the company or the promoters or promoter group entities or the directors are have been debarred or disciplinary action taken by SEBI or a

	entities/ directors	recognized stock exchange, then a period of at least 1 year has elapsed since the expiry of the debarment period.
13.	Reference to BIFR or winding up	Company should not be referred to BIFR and no winding up order should have been passed against the company
14.	Company website	The company shall have its own website which is in compliance with Clause 54 of the Listing Agreement containing information about products, management team, annual reports for last three financial years, shareholding pattern, quarterly results, report on corporate governance, code of conduct, name of the company secretary & compliance officer and contact details, RTA - name and contact details
15.	SCORES authentication	Company should have obtained SCORES authentication from SEBI. The company shall also submit the nil Investors Complaints Report extracted from SCORES.

It is estimated that there are around 10000 listed companies in India and merely half of them are listed on BSE. 'Direct Listing' provides an interesting opportunity for remaining 5000 companies listed on regional stock exchanges to migrate to BSE and create value for all the stakeholders.

Since 'Direct Listing' is a new initiative, the process is yet to get stable. However, if all the documents are available and necessary compliances are being done by the company, the process can be over in a span of 3 to 6 months. Due to limited awareness, not many companies have come forward so far for getting listed on BSE. However, it would be recommended for companies listed on regional stock exchanges to take quick action for tapping this golden opportunity and get first-mover advantage before there is change in the eligibility criteria by the market regulators.



## International Trademark Registration: Now effective in India

India acceded to the Madrid Protocol on 8<sup>th</sup> April 2013, making the same effective in India beginning 8<sup>th</sup> July 2013, as per the Information Notice No. 15/2013 dated 29<sup>th</sup> May, 2013 issued by WIPO and Public Notice issued by the Controller General of Patents, Designs and Trade Marks (CGPDTM) on 8<sup>th</sup> July 2013. A notification dated 5<sup>th</sup> July 2013, issued by the Ministry of Commerce and Industry, DIPP, also notified that the Trade Marks (Amendment) Rules, 2013 which incorporate provisions relating to international registration of trademarks as under the Madrid Protocol, and brings in some amendments to the existing law, have also come into force from the 8<sup>th</sup> of July 2013.

The accession to the Madrid Protocol comes as a major advantage to the domestic applicants of India, as it gives the applicant an ability to file international application on the basis of a pending application in a Contracting Party to the Protocol or for a registered mark in the jurisdiction of the Contracting Party. The Madrid Protocol is a treaty that provides for the international registration of trademarks, by filing of a single application in one language, for ensuring registration in several countries.

Thus, an Indian applicant can make an application for registration in as many as 89 member countries to the Protocol, apart from India through a single application. Simultaneously, this also implies that trademark owners can get their trademarks protected in the Indian jurisdiction, as well as in the jurisdiction of the 89 other member countries through a single application. A list of the Contracting Parties to the Protocol can be found at [http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty\\_id=8](http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=8). Registering through the Madrid Protocol does not create an international right per se, it only creates a bunch of national rights, administered centrally.

Source: [http://www.corporateprofessionals.in/Madrid\\_Protocol\\_Becomes\\_Effective\\_In\\_India.html](http://www.corporateprofessionals.in/Madrid_Protocol_Becomes_Effective_In_India.html)



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Have you thought on going green in life? Do you think it is really going to help? I vote for this. Yes, constantly practicing green initiatives in our day to day life helps to conserve energy, save trees and wild life, ultimately, leading to a better future for our bountiful world.

To know about go green concept, click <http://gogreenindia.co.in/>.

Go green is the fundamental thought of environmentalism. Environmentalism is a broad philosophy, ideology and social movement regarding concerns for environmental conservation and improvement of the health of the environment, particularly as the measure for this health seeks to incorporate the concerns of non-human elements. Environmentalism advocates the preservation, restoration and/or improvement of the natural environment, and may be referred to as a movement to control pollution or protect plant and animal diversity. For this reason, concepts such as a land ethic, environmental ethics, biodiversity, ecology and the biophilia hypothesis figure predominantly.

You can find the latest news, tips, studies and technology at this site and it's all green. This site also provides us information on:

Global Warming  
Developmental Issues  
Pollution

Wild & Wacky  
The Good Earth  
Flora & Fauna

Special Reports  
Top Stories  
Blogs.

After manmade cum natural disaster of Uttarakhand, we have to learn the lesson and not only preach, but also practice green initiatives to save our mother land with sustainable development. LET US GO GREEN.

## Activities @ Mysore Chapter:

### **SEMINAR ON COMPANIES BILL 2012**

Chapter had organized One day seminar on “Companies Bill 2012” at its auditorium, Mysore on 30<sup>th</sup> June, 2013.

The seminar was attended by about 25 delegates from different parts of southern India. The seminar was inaugurated by Chief Guest, CS. M.N.V. Krishna Mohan, MD & CFO, AT&S India Pvt. Ltd. CS. Aahalada Rao V, PCS, Hyderabad and CS. Madhwesh K, PCS Bangalore., deliberated on various facets of new concepts in the Companies Bill 2012.



# What made the difference?

## Living Room

One day a traveler was walking along a road on his journey from one village to another. As he walked he noticed a monk tending the ground in the fields beside the road. The monk said "Good day" to the traveler, and the traveler nodded to the monk. The traveler then turned to the monk and said "Excuse me, do you mind if I ask you a question?"

"Not at all," replied the monk.

"I am coming from the village in the mountains and now going to the village in the valley. I was wondering if you knew what it is like in the village in the valley?"

"Tell me," said the monk, "What was your experience of the village in the mountains?"

"Dreadful," replied the traveler, "to be honest I am glad to be away from there. I found the people most unwelcoming. When I first arrived I was greeted coldly. I was never made to feel part of the village no matter how hard I tried. The villagers keep very much to themselves, they don't take kindly to strangers. So tell me, what can I expect in the village in the valley?"

"I am sorry to tell you," said the monk, "**but I think your experience will be much the same there**".

The traveler hung his head despondently and walked on.



A while later another traveler was journeying down the same road and he also came upon the monk.

"I'm going to the village in the valley," said the second traveler, "Do you know what it is like?"

"I do," replied the monk "But first tell me - where have you come from?"

"I've come from the village

in the mountains."

"And how was that?"

"It was a wonderful experience. I would have stayed if I could but I am committed to travelling on. I felt as though I was a member of the family in the village. The elders gave me much advice, the children laughed and joked with me and people were generally kind and generous. I am sad to have left there. It will always hold special memories for me. And what of the village in the valley?" he asked again.

**"I think you will find it much the same"** replied the monk, "Good day to you".

"Good day and thank you," the traveler replied, smiled, and journeyed on.

## Words worth millions

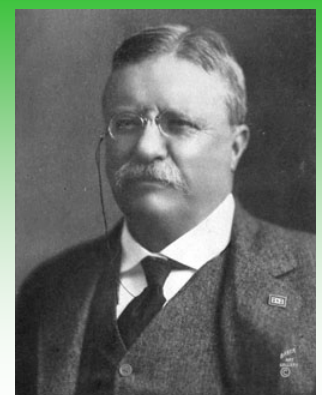
Pray not for lighter burdens but for stronger backs.

To educate a man in mind and not in morals is to educate a menace to society.

Nobody cares how much you know, until they know how much you care.

The most important single ingredient in the formula of success is knowing how to get along with people.

**Theodore Roosevelt**





Compilation:  
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# Bar Code



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A barcode is an optical machine-readable representation of data relating to the object to which it is attached. Originally barcodes systematically represented data by varying the widths and spacing of parallel lines, and may be referred to as linear or one-dimensional. Later they evolved into rectangles, dots, hexagons and other geometric patterns in two dimensions (2D). Although 2D systems use a variety of symbols, they are generally referred to as barcodes as well. Barcodes originally were scanned by special optical scanners called barcode readers. Later, scanners and interpretive software became available on devices including desktop printers and smartphones.

An early use of one type of barcode in an industrial context was sponsored by the Association of American Railroads in the late 1960s. Developed by General Telephone and Electronics (GTE) and called KarTrak ACI (Automatic Car Identification), this

scheme involved placing colored stripes in various combinations on steel plates which were affixed to the sides of railroad rolling stock. Two plates were used per car, one on each side, with the arrangement of the colored stripes representing things such as ownership, type of equipment, and identification number.

Barcodes became commercially successful when they were used to automate supermarket checkout systems, a task for which they have become almost universal. Their use has spread to many other tasks that are generically referred to as automatic identification and data capture (AIDC). The very first scanning of the now ubiquitous Universal Product Code (UPC) barcode was on a pack of Wrigley Company chewing gum in June 1974. At present it is used in varied fields including Laboratories, Libraries, Stores, Supermarket and Health care industry.

## Did you know?

### Tag-Along/ Drag-Along

If any company has received Venture Capital/Private Equity investment money at any point in time, it gets to see either a Tag-Along or Drag-Along Clause or both clauses in shareholders' agreement.

First, a **Tag-Along** clause is one that protects the interests of the minority shareholder/s in the event of a third party purchase of the company. This type of clause will prevent any majority shareholder/s in the company from selling their shares to a third party unless the third party is willing to purchase the shares of the minority shareholder/s under the same conditions. Conversely, a **Drag-Along** clause is one that protects the interests of the majority shareholder/s. With this type of clause, if the majority shareholder/s wishes to sell their shares to a third party, the minority shareholder/s is forced to also sell their shares under the same conditions. This prevents the minority shareholder/s from refusing to sell their shares to the third party and threatening the success of the deal.

## Pick of the month



**Can a Company appoint a person as its manager who is already the manager of two other companies?**

Section 386(4) of the Companies Act, 1956 provides that the Central Government may, by order, permit any person to be appointed as a manager of more than two companies if the Central Government is satisfied that it is necessary that the companies should, for their proper working, function as a single unit and have a common manager. Therefore, the appointment of a manager would be feasible only if the Central Government can be satisfied that the companies should, for their proper working, function as a single unit and have a common manager and, on that basis, the Central Government passes an order approving the proposed appointment.





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**Service Tax Updates**  
**CA. Ashit Shah,**  
**Mumbai**

**FEMA Updates**  
**Team Genicon,**  
**Chennai**



## **CUSTOMS & FTP** **Notifications/ Circulars**

Seeks to amend the notification No. 96/2008-Customs, dated 13th August, 2008 so as to include "Republic of Haiti" in the list of Least Developed Countries

*33/2013-Cus, dt. 19-06-2013*

Seeks to extend the levy of anti-dumping duty imposed vide notification No. 75/2008-Customs, dated the 10th June, 2008 on imports of 'Acetone', originating in, or exported from, Korea RP for a further period of one year i.e. upto and inclusive of 9th June, 2014

*12/2013 - Cus (ADD), dt 25-06-2013*

Seeks to extend the levy of anti-dumping duty imposed vide notification No. 74/2011-Customs, dated the 12th August 2011 on imports of 'Pentaerythritol', originating in, or exported from, Chinese Taipei for a further period of one year i.e. upto and inclusive of 27th April, 2014

*13/2013 - Cus (ADD), dt 25-06-2013*

Seeks to impose anti-dumping duty on imports of 'Acetone', exported from M/s Chang Chun Plastics Co Ltd, Chinese Taipei and were subjected to provisional assessment by order vide notification No. 44/2011-Customs, dated the 27th May, 2011

*14/2013 - Cus (ADD), dt 03-07-2013*

Seeks to levy anti-dumping duty imposed on imports of 'Poly Vinyl Chloride Resin, originating in, or exported from, European Union.

*15/2013 - Cus (ADD), dt 03-07-2013*

Seeks to extend the levy of anti-dumping duty imposed vide notification No. 133/2008-Customs, dated the 12th December, 2008 on imports of 'Rubber Chemicals', originating in, or exported from, Peoples's Republic of China for a further period of one year i.e. upto and inclusive of 4th May, 2014

*16/2013 - Cus (ADD), dt 05-07-2013*

Seeks to extend the levy of anti-dumping duty imposed vide notification No. 92/2011-Customs, dated the 20th September,

2011 on imports of 'Rubber Chemical', originating in, or exported from, Korea RP for a further period of one year i.e. upto and inclusive of 4th May, 2014

*17/2013 - Cus (ADD), dt 05-07-2013*

Amends Notification No. 12/2012-Cus. Dated March 17, 2012 to increase additional duty of customs (CVD) on gold ores and gold bars from 4% to 6%.

*No. 31/2013-Cus. dated June 5, 2013*

## **Case Law**

The CESTAT, relying upon decision of Larger Bench in the case of Hico Enterprises Vs. CC [2005-TIOL-1100-CESTAT-MUM-LB], held that duty cannot be demanded from importer who was a bonafide transferee not having any knowledge about DEPB scrip having been obtained by fraud.

*Commissioner of Customs Vs. Gopi Chand Krishan Kumar Bhatia [2013-TIOL-920-CESTAT-DEL]*

The CESTAT held that mention of wrong currency in the bill of entry is a clerical mistake and when on account of such clerical error higher amount of duty has been paid then re-assessment is not required before filing of refund claim, as the clerical mistake can be corrected in terms of the provisions of Section 154 of the Customs Act, 1962 ("the Customs Act").

*Secure Meters Ltd. Vs. Commissioner of Customs [2013-TIOL-984-CESTAT-DEL]*

The High Court of Delhi held that unless exceptional circumstances carved out in Section 138B of the Customs Act, 1962 ("the Customs Act"), viz. where the person who had given statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by adverse party, or whose presence cannot be obtained without an amount of delay and expense which under circumstances of the case the Court considers unreasonable, etc., are existing, denial of right to cross examine cannot be justified.

*Basudev Garg Vs. Commissioner of Customs [2013-TIOL-464-HC-DEL-CUS]*

The High Court of Mumbai held that Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 ["the Valuation Rules"] contains procedure which proper officer is required to follow before rejecting declared value of imported

goods. When proper officer has reason to doubt truth or accuracy of value, he may ask importer to furnish further information including documents or other evidence. If importer fails to supply information or if proper officer still has reason to doubt truth or accuracy of the declared value despite the information furnished, he is under a mandate in terms of sub-rule (2) of Rule 12 of the Valuation Rules to furnish to importer grounds in writing for doubting truth or accuracy of declared value before he proceeds to reject the same.

*Forbo Siegling Movement Systems India Pvt.Ltd. Vs. Union of India [2013-TIOL-458-HCMUM-CUS]*

## CENVAT

### Notifications/ Circulars

Amends Notification No. 12/2012-CE, dated March 17, 2012 to increase excise duty on gold bars to from 5% to 7%.

*No. 20/2013-CE dated June 5, 2013*

The CBEC has clarified that term 'penalty' used in para 2 of earlier Instruction F. No. 390/ Misc./163/2010 - JC dated August 17, 2011 in the context of monetary threshold limits prescribed for filing appeals by the department before the Tribunal, the High Courts and the Supreme Court of India includes both penalty and redemption fine.

*The Central Board of Excise & Customs Instruction ("the CBEC") F. No. 390/ Misc./163/2010 - JC dated June 3, 2013*

### Case Law

The High Court of Madhya Pradesh held that there being no provision for claiming Modvat credit within a period of six months from date of issuance of documents in Rule 57H of the Excise Rules, 1944 ("the Excise Rules"), availment of Modvat credit thereunder beyond six months would not be hit by time bar. With Rule 57H of the Excise Rules beginning with a non obstante clause, provisions of Rule 57G which have six month time limit would not apply to availment of Modvat credit under Rule 57H thereof.

*CCE Vs. Raymonds Ltd. [2013-TIOL-502-HCMP-CX]*

The High Court of Madras held that Circular No. 967/01/2013-CX dated January 01, 2013 ("Circular 967/2013") on initiation of recovery proceedings under the Central Excise Act, 1944 ("the Excise Act") and the Customs Act can at best be taken as an instruction to field formations and accordingly it is directory and not mandatory in nature.

*Givaudan India Pvt. Ltd. Vs. Union of India [2013-TIOL-480-HC-MAD-CX]*

The dispute before the High Court of Uttarakhand was regarding scope of term 'substantial expansion' as used in Notification No. 50/203-CE dated June 10, 2003 ("Notification 50/2003"). The High Court held that if existing plant and machinery is replaced with new plant and machinery and, by reason thereof, the erstwhile installed capacity is increased by more than 25 per cent thereof, such expansion effort will come within the four corners of the term 'substantial expansion' as used in Notification 50/2003.

*CCE Vs. Rana Castings Ltd. [2013-TIOL-459-HC-UKHAND-CX]*

## Service Tax

### Notifications/Circulars

Amendment in the Exemption Notification relating to Focus Market Scheme: Some amendment has been made in the exemption notification of Focus Market Scheme (FMS) which was issued under Notification No. 6/2013 dated 18-04-2013.

*No. 11/2013 - dated 13-06-2013*

Exemption Notification for units located in SEZ and developer of SEZ: Exemption has been provided in respect of services received by units located in SEZ and developer of SEZ and used for the authorized operation from the whole of tax leviable thereon. This exemption is by way of Refund of service tax on the specified services. Various forms viz. Form A-1, Form A-2, Form A-3 and Form A4 have also been notified to claim the refund of service tax.

*No. 12/2013 - dated 1st July 2013]*

Revenue Secretary, Shri Sumit Bose had assured while addressing the representatives of CII, FICCI, PHD Chambers of Commerce, Associated Chambers of Commerce (ASSOCHAM) and Institute of Chartered Accountants of India (ICAI) that the concerns of the industry relating to Service Tax Voluntary Compliance Encouragement Scheme (VCES) 2013 will be duly addressed and the necessary clarification(s) wherever required, will be issued at the earliest.

*Voluntary Compliance Encouragement Scheme, 2013*

### Case Law

The High Court of Kerala held that merely because franchise agreement enables franchisees to use trademark on products of assessee, it cannot be said that franchisees have got effective control of trademark of franchisor. In terms of franchise agreement, franchisees' rights are limited. Even during subsistence of franchise agreement, franchisor can use trade mark on its own and can enter into franchise agreement with other parties. Thus, effective control over trademark is with franchisor during the term of the franchise agreement. Accordingly, there is no transfer of right to use trademark in a franchise agreement and transaction is not exigible to VAT. Transaction constituting franchise service is leviable to service tax only.

*Malabar Gold Private Limited Vs. Commercial Tax Officer [2013-TIOL-512-HC-KERALA-ST]*

The CESTAT held that the Fertiliser (Control) Order, 1985 provides that fertilizer cannot be marketed without packaging. Thus of fertilizer is a statutory requirement Therefore, manufacture of fertilizer as a product would be complete packaging is over. Activity of packaging would form an integral part of the manufacturing activity of fertilizer and cannot be viewed as a service activity exigible to service tax under service as defined in Section 65 (76b) Finance Act, 1994 which excludes the scope any activity of 'manufacture' as defined in the Excise Act.

*New Era Handling Agency Vs. CCE [TIOL-975-CESTAT-MUM]*

Appellant had not paid service tax nor filed service tax returns under the category of Rent-a-car Services. Department had issued Show Cause Notice (SCN) and Appellant had paid the service tax along with Interest. Department had levied penalty under section 76 and 77 for late payment of service tax. Appellant had prayed for waiver of penalties under section 76 & 77 on the ground of small business and service tax was not collected by appellant. Hon'ble Tribunal observed that looking to the size of operation carried out by the appellant and fact that appellant had co-operated in proceedings and paid service tax with interest when demanded penalty under section 76 was liable to be set aside invoking provisions of section 80.

*Royal Travels - (2013) 35 Taxmann.com 19 (Ahmedabad - CESTAT)*

Service tax on Air Conditioning Restaurants and Bar and Hotels providing Short term accommodation Services is unconstitutional.

The Tribunal held that when bullock carts are supplied without bullocks, possession and control over the same does not lie with service provider. Therefore, mere activity of renting of bullock cart does not come within the purview of taxable service namely 'supply of tangible goods machinery, equipments and appliances use, without transferring right and effective control of such machinery, equipments and appliances'.

*Bhima SSK Ltd. Vs. CCE [2013 CESTAT-MUM]*

The Tribunal held that in terms of agreement between assessee and contract bottling units (CBUs), CBUs are supposed to manufacture product for and on behalf of assessee assesses equipment. In terms of agreement, CBUs have no right to use IPR of assessee there is no transfer of any IPR to CBU from assessee. The nature of transaction between assessee and CBU indicates that assessee brand on his own account and there is no representational right given to CBUs. The commercial interest of CBUs is to earn consideration for bottling or manufacturing alcoholic beverage. Therefore, it cannot be said that assessee is providing franchise service to CBUs.

*Diageo India Pvt. Ltd. Vs. CCE [2013 790-CESTAT-MUM]*

The High Court of Allahabad held that Commissioner of Commercial Tax has power to prescribe transit declaration form which must accompany goods passing through the State of Uttar Pradesh. When the Uttar Pradesh Value Added Tax Act, 2008 itself authorizes an administrative authority to sub delegate its power, there is no difficulty with regard to its validity since sub within the term of statute itself.

*Prakash Parcel Service Limited Vs. State of Uttar Pradesh & Others*

## VAT, Sales Tax and Entry Tax

### Case Law

The High court at Calcutta held that Bengal Tax on Entry of Goods into Local Areas Act, 2012 ("the West Bengal Entry Tax Act" as ultra vires Article 304(b) of the Constitution on the grounds:

- that it is a drafted enactment fraught with errors it does not indicate proportionate measurable benefits to be provided in lieu of levy;
- that data on the basis of which the compensatory tax is sought to be levied is neither disclosed in the West Bengal Entry Tax Act nor in affidavit filed by the State and that there is no disclosure of quantifiable benefits or proportionality of levy to the quantifiable benefits.

Therefore, the West Bengal Entry Tax does not meet the test of compensatory tax

*Bharti Telemedia Ltd. Vs. State of West Bengal & Ors. [2013-VIL-48-CAL]*

Question of law before the High Court of Punjab and Haryana in the context of Haryana Value Added Tax Act, 2003

(Haryana VAT Act") was whether an appellate authority could grant benefit to the State without an appeal being filed by it or cross-objections being filed preferred by a dealer. The High Court held that the Haryana VAT Act contemplate enhancement of tax without availment of remedy of appeal or cross objections by the State.

*Global Business India Pvt. Ltd. Vs. State of Haryana [2013-VIL-46-P&H]*

## FEMA

### Notifications/ Circulars

The RBI has extended the time limit from 15 days to 30 days for submitting form DPX1, PEX-1 and TCS-1 with AD Bank / Exim Bank Working Group by the exporter who is undertaking Project Exports and Service contracts abroad.

*A.P. (DIR Series) Circular No.118 dated July 28, 2013*

The RBI has decided to discontinue the raising of ECB in Renminbi (Chinese Currency) by the Indian Infrastructure Companies' from the date of issue of this circular.

*AP DIR Circular No.117 dated June 25, 2013.*

The RBI has revised the policy for availing ECB for low cost affordable housing projects as detailed below;

Developers/builders should have a minimum of three (3) year's experience in undertaking residential projects with good track record.

The condition of minimum paid-up capital of not less than INR 50 crore, as per the latest audited balance sheet, for HFCs stands withdrawn. However, the condition of the minimum Net Owned Funds remains unchanged.

The aggregate limit for ECB under the low cost affordable housing scheme is extended for the financial years 2013-14 and 2014-15 with a ceiling of USD 1 billion in each of the two years, subject to review thereafter.

The ECB availed of by developers and builders shall be swapped into Rupees for the entire maturity on fully hedged basis.

As per the existing policy, the payment for spectrum allocation may initially be met out of the Rupee resources by the successful bidders, to be refinanced with a long term ECB, under the approval route, subject to the condition that ECB should be raised within 12 months from the date of payment of the final installment to the Government.

Now, it has been decided that ECB window for financing 3G spectrum rupee loans, that are still outstanding in telecom operator's books of accounts, will be open upto March 31, 2014.

*APDIR Circular No.114 dated June 25, 2013*

### Master Circulars issued by RBI:

The RBI have issued the Master circular on various subjects which are consolidates the earlier circulars issued during the previous years and the Master circular will be effective from July 01, 2013 to June 30, 2014.

You may access the master circulars at [http://www.rbi.org.in/scripts/BS\\_ViewMasterCirculardetails.aspx](http://www.rbi.org.in/scripts/BS_ViewMasterCirculardetails.aspx)



## **FIPB rejects four FDI proposals, defers one**

The government has rejected as many as four proposals and deferred one in its last meeting because there was no clarity about sources of funds and beneficiaries of investments, sending clear signal that government may be desperate for foreign funds but it will insist on antecedence of funds. Over 40% of FDI into India is routed through Mauritius and tax havens like Cayman Islands and Virgin Islands. In most cases, the authorities fail to trace the investor sitting at the end of the chain. The finance ministry has been working on new disclosure norms on source of funds and beneficial ownership to weed out any suspicious investment at the first stage itself.

## **India warns US, says new visa bill is against WTO rules**

India has threatened US that the draft new visa bill aimed at streamlining H-1B and L-1 working visas that is presently lying with their senate should not be passed in its current format as it is against World Trade Organization (WTO) rules. The proposed comprehensive immigration bill, if passed, will put the Indian companies at jeopardy the most while adversely impacting their margins.

## **US solar industry calls on India to remove trade barriers**

The US solar energy industry representatives said India's industrial policy discriminates against its exports and hoped that New Delhi will come to the table to discuss the trade barriers. It has alleged that India's local content requirement "discriminates against US solar exports and, thereby, provides an unfair competitive advantage to India's domestic solar manufacturers."

## **Oil Ministry exempts small, isolated gas fields from pricing policy**

The oil ministry has exempted small, isolated fields from its gas utilisation and pricing policy. It will give them full marketing freedom and impose no obligation to seek customers from the fertilizer and power sectors.

## **RBI penalizes 22 banks for violating customer ID rules**

RBI has penalized 22 banks for violating for violating rules for customer identification, anti-money laundering norms. It has imposed a fine of Rs. 49.5 crore (ranging from 5 million rupees

(\$83,400) to around 30 million rupees) on 22 banks, including SBI, PNB, Yes Bank, Kotak Mahindra, Canara Bank and Bank of India. The RBI had carried out a study of books of accounts and compliance systems of banks in April 2013 which revealed many didn't adhere to KYC rules.

## **WTO refuses Indian request to dismiss U.S. trade dispute**

The US launched the legal challenge at WTO in March 2012, contesting Indian restrictions on imports of poultry, pigs and related products. India says its checks on U.S. imports are justified by concerns about bird flu, but the US argues the rules are a "disguised" illegal restriction on foreign trade and not backed by science. India tried to have the U.S. complaint dismissed on technical objections, including that the allegation was not precise enough and did not spell out the legal argument. WTO did not agree for the same.

## **India is discriminating against US telecom manufacturers: TIA**

Expressing deep concerns over India's policy of preferring domestically manufactured information and communication technology (ICT) goods, the apex body of US telecom industry has told lawmakers that this will have negative impact on exports and economic competitiveness. The Telecommunication Industry Association (TIA) wrote in a letter to US lawmakers saying that, Indian policy is harmful to global trade, and may be inconsistent with India's WTO obligations.

## **Suspension of anti-diabetes drug pioglitazone may be withdrawn**

The government was planning to revoke the recent suspension of marketing of anti-diabetic drug pioglitazone. Instead of a blanket ban, there could be a boxed warning on the packaging of the drug, cautioning patients about its possible side effects. Major pharma companies like sell pioglitazone in India, an estimated market of around Rs 700 crore annually.

## **Ireland approves 'life-saving' abortions**

Irish lawmakers approved abortion for the first time in limited cases where the mother's life is at risk, in a vote that revealed deep divisions in the predominantly Catholic nation. The change was prompted by the death last year of an Indian woman Savita Halappanavar due to complications from her pregnancy, but more broadly ends years of uncertainty over the legal status of terminations in Ireland.