PAPER – 5: ADVANCED MANAGEMENT ACCOUNTING

QUESTIONS

Value Added/ Non Value Added

1. Queenstown Furniture (QF) manufactures high-quality wooden doors within the forests of Queenstown since 1952. Management is having emphasize on creativity, engineering, innovation and experience to provide customers with the door they desire, whether it is a standard design or a one-of-a-kind custom door. The following information pertains to operations during April:

Processing time	9.0 hrs.*	Waiting time	6.0 hrs.*
Inspection time	1.5 hr.*	Move time	7.5 hrs.*
Units per batch	60 units		

(*) average time per batch

Required

Compute the following operational measures:

(i) Average non-value-added time per batch

(ii) Average value added time per batch

(iii) Manufacturing cycle efficiency

(iv) Manufacturing cycle time

Activity Based Costing at Hospital

2. 'SM' hospital is a primary medical care facility and trauma center that serves National Capital Territory. The hospital offers all the medical/ surgical services of typical small hospital.

Required

(i) Using your (limited, moderate, or in-depth) knowledge of a hospital's operations, identify 4 key activities that are important.

(ii) For each of the activities, suggest an appropriate cost driver.

Life Cycle Costing

3. In WM Ltd. the 'OB' equipment is about to be replaced either by 'CF' system or by an 'OF' system. Finance costs 12% a year and the other estimated costs are as follows:

	CF (₹)	OF (₹)
Initial Cost	28,000	40,000
Annual Operating Costs	24,000 p.a.	18,000 p.a.

Required

If the company expected the new system (either CF or OF) to last at least for 12 years, which system should be chosen?

4. Examine the **Validity** of following statements:

(i) In the introduction stage, usual marketing strategy is to strengthen the supply chain relationships to make the product easily accessible by target customers.

(ii) In the introduction stage, competitors will purchase the product to carry out reverse engineering and understand how the product works, so that they can develop their own similar, but different product.

(iii) In the introduction phase, the firm will seek to avoid this competition by maintaining its selling price at the end of the introduction stage.

(iv) In the growth stage, if the product cannot be differentiated in other ways, the firm may need further reductions in selling price to maintain growth.

(v) In the maturity stage, firms are tempted to engage in costly promotional price wars to wean away market share from competitors.

(vi) In the decline stage, failing sales may induce firms to slash marketing expenditure. Brand loyalty will be exploited to create profits.

JIT Production System > Backflush Costing System

5. Napier Company uses a backflush costing system with three trigger points:

(a) Purchase of Direct Materials

(b) Completion of Good Finished Units of Product

(c) Sales of Finished Goods

You are provided with the following information for July 2016.

Direct Materials Purchased	₹2,64,000	Conversion Costs Allocated	₹1,20,000
Direct Materials Used	₹2,55,000	Costs Transferred to Finished Goods	₹3,75,000
Conversion Costs Incurred	₹1,26,600	Cost of Goods Sold	₹3,57,000

Required

(i) Prepared journal entries for July (without disposing of under allocated/ over allocated conversion costs).

(ii) Under an ideal JIT production system, how would the amounts in your journal entries change from the journal entries in requirement (i)?

Note

- There are no beginning inventories.
- Assume there are no direct material variances.

Cost Classification

6. Swastik Ltd. manufactures and sells 4 Valve Engine (DTK-I). Company appoints Mr. Watson to coordinate shipments of the DTK-I from the factory to distribution warehouses located in various parts of the India so that goods will be available as orders are received from customers. Swastik Ltd. is unsure how to classify his annual salary of ₹24,00,000 in its cost records. The company's cost analyst says that Mr. Watson's salary should be classified as manufacturing cost; the finance controllers says that it should be classified as selling cost; and the managing director says that it does not matter which way Mr. Watson's salary cost is classified.

Required

Which view point is correct and why?

7. ANZB Financial Services Limited is an Indian banking and financial services company headquartered in Chennai, Tamil Nadu. Apart from lending to individuals, the company grants loans to micro, small and medium business enterprises. Listed below are several costs incurred in the loan division of ANZB Financial Services Limited.

   (i) Remuneration of the loan division manager.

   (ii) Cost of Printer Paper, File Folders, View Binders, Ink, Toner & Ribbons used in the loan division.

   (iii) Cost of the division's MacBook Pro purchased by the loan division manager last year.

   (iv) Cost of advertising in business newspaper by the bank, which is allocated to the loan division.

   Cost Classification

Controllable by the loan division manager	Direct cost of the loan division	Sunk Cost
Uncontrollable by the loan division manager	Indirect Cost of the loan division	Out of Pocket Cost

Required

For each Cost, indicate which of the above mentioned Cost Classification best describe the cost.

Note

More than one classification may apply to the same cost item.

Relevant Costing

8. Aves Airlines Ltd. operates its services under the brand 'Yellow Bird'. The 'Yellow Bird' route network spans prominent business metropolis as well as key leisure destinations across the Indian subcontinent. 'Yellow Bird', a low-fare carrier launched with the objective of commoditizing air travel, offers airline seats at marginal premium to train fares across India.

Profits of the 'Yellow Bird' have been decreasing for several years. In an effort to improve the company's performance, consideration is being given to dropping several flights that appear to be unprofitable.

Income statement for one such flight from 'New Delhi' to 'Kullu' (Y-09) is given below (per flight):

	₹	₹
Ticket Revenue (175 seats x 80% Occupancy x ₹7,000 ticket price)		9,80,000
Less: Variable Expenses (₹1,400 per person)		1,96,000
Contribution Margin		7,84,000
Less: Flight Expenses:		
Salaries, Flight Crew	2,05,000	
Salaries, Flight Assistants	45,500	
Baggage Loading and Flight Preparation	72,000	
Overnight Costs for Flight Crew and Assistants at destination	18,000	
Fuel for Aircraft	2,55,000	
Depreciation on Aircraft	51,000*	
Liability Insurance	1,53,000	
Flight Promotion	35,000	
Hanger Parking Fee for Aircraft at destination	15,000	8,49,500
Net Gain / (Loss)		(65,500)

** Based on obsolescence*

The following additional information is available about flight Y-09.

- Members of the flight crew are paid fixed annual salaries, whereas the flight assistants are paid by the flight.

- The baggage loading and flight preparation expense is an allocation of ground crew's salaries and depreciation of ground equipment.
- One third of the liability insurance is a special charge assessed against flight Y-09 because in the opinion of insurance company, the destination of the flight is in a "high-risk" area.
- The hanger parking fee is a standard fee charged for aircraft at all airports.
- If flight Y-09 is dropped, 'Golden Bird' Airlines has no authorization at present to replace it with another flight.

Required

Prepare an analysis showing what impact dropping flight Y-09 would have on the airline's profit.

Qualitative Factors

9. State any 5 Qualitative Factors relevant for decision making.

Budget & Budgetary Control

10. Country N's regional administration is organized in 10 states, with 9 of them subdivided into 210 municipalities. The municipal sector is a provider of vital services to the country N's public. The municipalities have wide powers over the local economy, with the state exercising strict supervision. They have the right to tax and to use their resources to support education, libraries, social security, and public works such as streetcar lines, gas and electricity works, roads, and town planning, but they are usually aided in these activities by state funds. The municipalities submit a budget each year to respective state which forms the basis of the fund received.

    The following information is available as part of the 2016 budget preparation about a municipality NZ.

    Street Maintenance

    Like all structures, streets deteriorate over time. Deterioration is primarily due to accumulated damage from vehicles, however environmental effects often contribute. In 2016 it is anticipated that 5 km of the street will need maintenance but a contingency of extra 10% has been decided.

    In 2015 the average cost of a street maintenance was ₹14 million per km maintained, but this excluded any cost effects of extreme weather conditions. The following probability estimates have been made in respect of 2016

Weather Type Predicted	Probability	Increase in Maintenance Cost
Good	0.65	0

Poor	0.05	+5%
Lousy	0.30	+30%

Inflation on street revamping costs is anticipated to be 2% between 2015 & 2016.

New Streets

New streets are budgeted on a zero basis and will have to enter for funds along with other capital projects such as hospitals and libraries.

Required

(i) Calculate the budgets for street maintenances for 2016.

(ii) Explain the process involved for zero based budgeting.

Variance Analysis in Activity Based Costing

11. N & S Co. (NSC) is a multiple product manufacturer. NSC produces the unit and all overheads are associated with the delivery of units to its customers.

Particulars	Budget	Actual
Overheads (₹)	4,000	3,900
Output (units)	2,000	2,100
Customer Deliveries (no.'s)	20	19

Required

Calculate Efficiency Variance and Expenditure Variance by adopting ABC approach.

Interpretation of Variances

12. State possible **Impact on Variances** in each of the following independent situations:

(i) More units were produced than was budgeted.

(ii) Careless handling of materials by production personnel

(iii) The purchase of inferior quality material

(iv) New competition entered the market.

(v) New suppliers were used.

(vi) New production staff were recruited.

(vii) Market share has fallen from 20% to 18%

13. Explain whether a production manager should be accountable for direct labour and direct materials cost variances.

Balanced Score Card

14. AEB Banking Corp. is the world's largest card issuer by purchase volume and having vision statement "to be leading provider of payment solutions in India".

Required

Suggest performance indicators to include in the Balanced Scorecard.

Linear Programming

15. In a chemical industry two products P and Q are made involving two operations. The production of Q also results in a by-product R. The product P can be sold at a profit of ₹ 3 per unit and Q at a profit of ₹ 8 per unit. The by-product R has a profit of ₹ 2 per unit. Forecast show that upto 5 units of R can be sold. The company gets 3 units of R for each unit of Q produced. The manufacturing times are 3 hrs per unit for P on each of the operation one and two and 4 hrs and 5 hrs per unit for Q on operation one and two respectively. Because the product R results from producing Q, no time is used in producing R. The available times are 18 hrs and 21 hrs of operation one and two respectively. The company desires to know that how much P and Q should be produced keeping R in mind to make the highest profit.

Required

Formulate LP model for this problem.

Simulation

16. JCB Ltd. is considering a new project which will require an initial investment of ₹ 25,000. The company has determined the following probabilities for net cash flows for three years generated by this project:

Annual Net Cash Flows

Year 1		Year 2		Year 3	
CF	Prob.	CF	Prob.	CF	Prob.
7,500	0.20	10,000	0.10	7,500	0.10
10,000	0.50	12,500	0.30	10,000	0.20
12,500	0.30	15,000	0.20	12,500	0.50
		17,500	0.40	15,000	0.20

The firm wants to perform 5 simulation runs of this project's life. The firm's cost of capital is 10%.

To simulate the probability distributions of annual net cash flows, use the following sets of random numbers

4, 4, 2; 9, 6, 3; 5, 7, 8; 0, 1, 6; 3, 1, 5

Required

Using simulation results. Calculate the average NPV.

Note

Assign a value ranging from 0 to 9 (in digits) to each year's cash flow in such a way that the number of digits assigned is proportionate to the probability of cash flow.

SUGGESTED ANSWERS/ HINTS

1. (i) Average Non Value Added Time *per batch*

= Inspection Time + Waiting Time + Move Time

= 1.5 hr. + 6.0 hrs. + 7.5 hrs.

= 15 hrs.

(ii) Average Value Added Time per batch

= Processing Time

= 9 hrs.

(iii) Manufacturing Cycle Efficiency

$$= \frac{\text{Processing Time}}{\text{Processing Time + Inspection Time + Waiting Time + Move Time}}$$

$$= \frac{9.0\text{ hrs.}}{9.0\text{ hrs.} + 1.5\text{ hr.} + 6.0\text{ hrs.} + 7.5\text{ hrs.}}$$

= 37.5%

(iv) Manufacturing Cycle Time

$$= \frac{\text{Total Production Time}}{\text{Units per Batch}}$$

$$= \frac{24\text{ hrs.}}{60\text{ units}}$$

= 0.40 hrs. *per unit*

2. Activities / Cost Drivers for 'SM' hospital

Activities	Cost Driver
Purchase of medical supplies, maintain records/inventory (dispense medications)	Number of medication orders filled
Reservation/Scheduling, inpatient registration, billing and	Number of patients

insurance verification (admit patients)	admitted
Prepare patient, perform ECG procedure, interpret results (administer ECG tests)	Number of tests
Obtain specimens, perform test, report results (administer laboratory tests)	Number of test by type

3. Calculation of Life-cycle Costs

	CF (₹)	OF (₹)
Initial Cost	28,000	40,000
Add: Annual Operating Costs	1,48,656 (₹24,000 × 6.194)	1,11,492 (₹18,000 × 6.194)
Total Life Cycle Costs	1,76,656	1,51,492

The annuity of 12% finance costs for 12 years is 6.194.

Analysis

When we compare only the initial cost, we will tend to purchase CF system, for its cheap acquisition cost. But when we compare the total life-cycle costs, the OF system is most preferable, for its lowest total life-cycle costs.

4. Valid or Invalid

Sl. No.	Statements	Valid or Invalid
(i)	In the introduction stage, usual marketing strategy is to strengthen the supply chain relationships to make the product easily accessible by target customers.	Valid
(ii)	In the introduction stage, competitors will purchase the product to carry out reverse engineering and understand how the product works, so that they can develop their own similar, but different product.	Valid
(iii)	In the introduction phase, the firm will seek to avoid this competition by maintaining its selling price at the end of the introduction stage.	Invalid
(iv)	In the growth stage, if the product cannot be differentiated in other ways, the firm may need further reductions in selling price to maintain growth.	Valid
(v)	In the maturity stage, firms are tempted to engage in costly promotional price wars to wean away market share from competitors.	Valid

(vi)	In the decline stage, failing sales may induce firms to slash marketing expenditure. Brand loyalty will be exploited to create profits.	Valid

5. (i) Journal Entries for July are as follows

	₹	₹
E.1 Material and In-Process Inventory Control Accounts Payable Control (Direct Materials Purchased)	2,64,000	 2,64,000
E.2 Conversion Costs Control Various Accounts (Conversion Cost Incurred)	1,26,600	 1,26,600
E.3 Finished Goods Control Materials and In-Process Inventory Control Conversion Costs Allocated (**standard cost** of finished goods completed)	3,75,000	 2,55,000 1,20,000
E.4 Cost of Goods Sold Finished Goods Control (**standard cost** of finished goods sold)	3,57,000	 3,57,000

(ii) Zero inventory is the goal of an *ideal* JIT production system. Accordingly, entry (E.3) would be ₹3,57,000 finished goods production, not ₹3,75,000. If the marketing division could only sell goods costing ₹3,57,000, the JIT production system would call for direct materials purchases and conversion costs lower than ₹2,64,000 and ₹1,26,600, respectively, in entries (E.1) and (E.2).

☞

When a JIT system in created, the amount of inventory retained in a company drops continuously. Raw materials inventory is reduced because suppliers deliver only small quantities of parts as and when they are needed. Work-in-process inventory drops because the conversion to machine cells and the use of Kanban Cards greatly reduces the need to pile up inventory between machines. Finally, finished goods inventory drops because inventory is produced only when there are orders in hand from customers (though finished goods inventories are also allowed to build if a company experiences high seasonal sales). Consequently, the cost of maintaining inventory declines, which in turn reduces the overhead costs associated with inventories that are charged to products.

6. **Selling Costs** would include all costs necessary to secure customer orders and get the finished product into the hands of customers.

The responsibility of Mr. Watson as described in the problem is coordination of shipments of DTK-I from the factory to distribution warehouses and same would appear to fall in this class.

Accordingly, the finance controller is correct in his view point that the salary cost should be classified as selling cost.

7. **Cost Incurred – Cost Classification**

S. No.	Cost Incurred	Classification 1	Classification 2	Classification 3
(i)	Remuneration of the loan division manager.	Uncontrollable by the loan division manager.	Direct cost of the loan division.	Out of Pocket Cost
(ii)	Cost of Printer Paper, File Folders, View Binders, Ink, Toner & Ribbons used in the loan division.	Controllable by the loan division manager.	Direct cost of the loan division.	Out of Pocket Cost
(iii)	Cost of the division's MacBook Pro purchased by the loan division manager last year.	Controllable by the loan division manager.	Direct cost of the loan division.	Sunk Cost
(iv)	Cost of advertising in business newspaper by the bank, which is allocated to the loan division.	Uncontrollable by the loan division manager.	Indirect Cost of the loan division.	Out of Pocket Cost

8. **Statement Showing Impact on Airline's Profit if Flight Y-09 is Discontinued**

	₹	₹
Contribution Margin lost if the flight is discontinued		(7,84,000)
Less: Flight Costs which can be avoided if the flight is discontinued:		
Flight Promotion	35,000	
Fuel for Aircraft	2,55,000	
Liability Insurance (1/3 x ₹1,53,000)	51,000	

Salaries, Flight Assistants……	45,500	
Overnight Costs for Flight Crew and Assistants……	18,000	4,04,500
		(3,79,500)

If Aves Airlines Ltd. goes for discontinuation of flight K-09, its profit will go down by ₹3,79,500.

Following costs are **not relevant** to the decision:

- Salaries, flight crew - Fixed annual salaries which will not change
- Baggage loading and flight preparation- This is an allocated cost, which will continue even if the flight is discontinued.
- Depreciation of aircraft -Sunk Cost
- Liability insurance (two third)
- Hanger parking fee- This cost will be incurred regardless of whether the flight is made.

9. Qualitative Factors may include:

(i) The liquidity risk;

(ii) The state of the economy, and its levels of inflation;

(iii) Effect of new technological breakthroughs;

(iv) Effect of a decision on employee morale, motivation, leadership and so on;

(v) Effect of a decision on long-term future profitability;

(vi) Effect of a decision on a company's public image and the reaction of customers.

10. (i) The street maintenance budget will be based on 5 km of street maintenance; it is common to include a contingency in case streets unexpectedly need maintenance.

The weather conditions could add an extra cost to the budget if poor or lousy conditions exist.

The adjustment needed is based on an expected value calculation:

(0.65 × 0%) + (0.05 × 5%) + (0.30 × 30%) = 9.25%

Hence the budget (after allowing for a 2% inflation adjustment) will be:

5 km × ₹14 million × 1.0925 × 1.02 = ₹7,80,04,500

(ii) Zero based budgeting involves following main steps:

- Determination of a set of objects is the pre-requisite and essential step in the direction of ZBB technique.
- Deciding about the extent to which the technique of ZBB is to be applied whether in all areas of municipal activities or only in a few selected areas on trial basis.

- Identify those areas where decisions are required to be taken.
- Developing decision packages and *ranking them in order of decreasing benefits.*

  For example, The Municipality have to decide which of the activities offer the greatest value for money (VFM) or the greatest benefit for the lowest cost.

  Legal obligations are 'must do' activities; others may be viewed as discretionary.
- Preparation of budget that is translating decision packages into practicable units/items and allocating financial/resources.

In real terms the Zero base budgeting is simply an extension of the cost, benefit, analysis method to the area of corporate planning and budgeting.

11. Computation of Variances

Efficiency Variance = Cost Impact of *undertaking activities* more/ less than *standard*

= (21 deliveries* – 19 deliveries) × ₹200

= ₹400 F

(*) $\left(\frac{20\,\text{Deliveries}}{2{,}000\,\text{units.}}\right) \times 2{,}100\,\text{units}$

Expenditure Variance = Cost impact of paying more/ less than standard for actual activities undertaken

= 19 deliveries × ₹200 – ₹3,900

= ₹100 (A)

12. Impact on Variances

Sl. No.	Independent Situations	Impact on Variances
(i)	More units were produced than was budgeted.	Favourable Fixed Overhead Volume
(ii)	Careless handling of materials by production personnel	Adverse Material Usage
(iii)	The purchase of inferior quality material	Adverse Material Usage Favourable Material Price
(iv)	New competition entered the market.	Adverse Sales Price
(v)	New suppliers were used.	Adverse Material Price
(vi)	New production staff were recruited.	Adverse Labour Efficiency
(vii)	Market share has fallen from 20% to 18%	Adverse Market Share Variance

13. Performance should be measured against the element of direct cost which the manager can *control*. For example,

The purchase manager is responsible for the price of raw materials to be purchased at the time of *purchase*.

The production manager is responsible for the amount of raw material *used*, and this responsibility exercised when the materials are used in production. However, he/ she may not be able to influences the cost of material, the quality of the material, the cost of labour and the quality of labour.

14. Balanced Scorecard 'Credit Card Company'.

Financial **Indicators of Performance**	**Customers** **Indicators of Performance**
Increase market share	Discourage businesses off cheques
Reduce debt	Focus on large spenders
Increase % fee	Issue more cards

Learning and Growth **Indicators of Performance**	**Internal Processes** **Indicators of Performance**
Outsource IT jobs	Increased marketing spend
Improve staff training levels	Achieve economies to scale
Acquire other companies	Offer more products

15. Let y_1, y_2, y_3 be the number of units produced of products P, Q and R respectively.

Objective function:

Then the profit gained by the industry is given by

$$Z = 3y_1 + 8y_2 + 2y_3$$

Here it is assumed that all the units of products P and Q are sold.

Condition-1:

In first operation, P takes 3 hrs of manufacturer's time and Q takes 4 hrs of manufacturer's time. Therefore, total number of hours required in first operation becomes-

$$3y_1 + 4y_2$$

In second operation, per unit of P takes 3 hrs of manufacturer's time and per unit Q takes 5 hrs of manufacturer's time. Therefore, the total number of hours used in second operation becomes

$$3y_1 + 5y_2$$

Since there are 18 hrs available in first operation and 21 hrs in second operation, the restrictions become

$$3y_1 + 4y_2 \leq 18$$

$$3y_1 + 5y_2 \leq 21$$

Condition-2:

Since the maximum number of units of R that can be sold is 5, therefore,

$$y_3 \leq 5$$

Condition-3:

Further, the company gets three units of by product R for every unit of product Q produced, therefore

$$y_3 = 3y_2$$

Now, the allocation problem of the industry can be finally put in the following linear programming problem:

Maximise

$$Z = 3y_1 + 8y_2 + 2y_3$$

Subject to the Constraints:

$$3y_1 + yx_2 \leq 18$$

$$3y_1 + 5y_2 \leq 21$$

$$y_3 \leq 5$$

$$y_3 = 3y_2$$

$$y_1, y_2, y_3 \geq 0$$

16. Assigning Digit Values to Cash Flows

Year 1			Year 2			Year 3		
CF	Prob.	Digits	CF	Prob.	Digits	CF	Prob.	Digits
7,500	0.20	0-1	10,000	0.10	0-0	7,500	0.10	0-0
10,000	0.50	2-6	12,500	0.30	1-3	10,000	0.20	1-2
12,500	0.30	7-9	15,000	0.20	4-5	12,500	0.50	3-7
			17,500	0.40	6-9	15,000	0.20	8-9

Identifying Cash Flows Matching Random Numbers

Set	Year 1		Year 2		Year 3	
	R. No.	CF	R. No.	CF	R. No.	CF
1	4	10,000	4	15,000	2	10,000

2	9	12,500	6	17,500	3	12,500
3	5	10,000	7	17,500	8	15,000
4	0	7,500	1	12,500	6	12,500
5	3	10,000	1	12,500	5	12,500

Calculated Simulated Average NPVs

Set	Year 1		Year 2		Year 3		Initial Outflow	NPV
	PVF* = 0.909		PVF* = 0.826		PVF* = 0.751			
	CF	PV	CF	PV	CF	PV		
1	10,000	9,090	15,000	12,390	10,000	7,510	25,000	3,990
2	12,500	11,363	17,500	14,455	12,500	9,388	25,000	10,206
3	10,000	9,090	17,500	14,455	15,000	11,265	25,000	9,810
4	7,500	6,818	12,500	10,325	12,500	9,388	25,000	1,531
5	10,000	9,090	12,500	10,325	12,500	9,388	25,000	3,803
							Total	29,340
							Average NPV	**5,868**

* PVF (Present Value Factor) at 10% discount rate.

PAPER – 6: INFORMATION SYSTEMS CONTROL AND AUDIT

QUESTIONS

Concepts of Governance and Management of Information Systems

1. (a) What is Governance of Enterprise IT (GEIT)? Explain its key benefits in brief.

   (b) Discuss the key governance practices for evaluating risk management.

2. Discuss the seven enablers of COBIT 5 framework.

3. As an IT consultant, elaborate on the major benefits of Governance to the Management of an enterprise.

Information System Concepts

4. Discuss limitations of Management Information Systems (MIS).

5. Distinguish between General-purpose planning languages and Special-purpose planning languages.

6. Discuss the impact of IT on Information Systems for different sectors.

Protection of Information Systems

7. Discuss Information Security Policy and its hierarchy.

8. Discuss Asynchronous Attacks.

9. Discuss Data Resource Management Controls under Managerial Controls.

Business Continuity Planning and Disaster Recovery Planning

10. Differentiate between Recovery Plan and Test Plan.

11. Discuss Incremental Backup, its advantages and disadvantages.

12. Discuss Objectives and Goals of Business Continuity Planning (BCP).

Acquisition, Development and Implementation of Information Systems

13. Discuss the Agile Model and its manifesto.

14. Differentiate between File conversion and System Conversion under System implementation phase of System Development Life Cycle (SDLC).

15. What can be the major Developer-related issues and challenges in achieving the System Development objectives?

Auditing of Information Systems

16. What are the various categories of Information systems (IS) Audit?

17. Discuss the role of auditors in evaluating the implementation of Security Management Controls and Operations Management Controls.

Information Technology Regulatory Issues

18. (a) Discuss the provision given in IT (Amendment) Act, 2008 that gives "Penalty for breach of confidentiality and privacy".

    (b) Discuss the Audit Report norms set up by SEBI for System Controls and Audit.

Emerging Technologies

19. Discuss Green Computing Best Practices, in brief.

20. Discuss "Community Cloud" and its characteristics under Cloud Computing environment.

Short Note Based Questions

21. Write short notes on following:

    (a) Storage as a Service (STaaS)

    (b) Firewall

    (c) Folksonomy

    (d) Types of Audit Trail

    (e) Disadvantages of Full Backup

22. Differentiate between the following:

    (a) Physical Controls and Logical Controls under Batch Controls

    (b) Corrective Controls and Compensatory Controls

    (c) System Analysis and System Design

    (d) Hardware Acquisition and Software Acquisition

    (e) Asset and Threat

Questions based on the Case Studies

23. Examine the legal position in the given situations as per the IT Act, 2000.

    (a) Mr. X is a Government servant whose profile is to maintain the records of all the employees of the organization. The intruder Mr. Z personates as the senior member of the organization's management team and retrieved the critical data from Mr. X on mobile phone. State the liabilities of Mr. Z under the given situation.

    (b) Also, state the liability of Mr. X in the above situation.

24. (a) XYZ is a government agency that had been developing and adopting office automation systems at random and in isolated pockets of its departments. At the same time, it was felt that the organisation needs to follow some specification for

their Information Security Management System (ISMS). As an IT consultant, explain to the management to why they should follow ISO 27001:2013 standard?

(b) The management of an enterprise PQR is in lookout of an integrated information system that combines most of information systems and designed to produce information and support decision making for different levels of management and business functions. Suggest the solution and also list its benefits.

25. (a) During the equipment installation in ABC shopping mall, its construction contractor wishes to ensure that the installation is protected against any kind of water damage. Discuss some of the major ways with which the same can be achieved.

(b) As a consultant, suggest the validation methods that may be adopted by the management of ABC Mall to validate the vendor's proposal.

SUGGESTED ANSWERS/HINTS

1. (a) Governance of Enterprise IT (GEIT): Governance of Enterprise IT is a sub-set of corporate governance and facilitates implementation of a framework of Information Systems' controls within an enterprise as relevant and encompassing all key areas. The primary objectives of GEIT are to analyze and articulate the requirements for the governance of enterprise IT, and to put in place and maintain effective enabling structures, principles, processes and practices, with clarity of responsibilities and authority to achieve the enterprise's mission, goals and objectives.

Major benefits of GEIT are as follows:

- It provides a consistent approach integrated and aligned with the enterprise governance approach.
- It ensures that IT-related decisions are made in line with the enterprise's strategies and objectives.
- It ensures that IT-related processes are overseen effectively and transparently.
- It confirms compliance with legal and regulatory requirements.
- It ensures that the governance requirements for board members are met.

(b) The key governance practices for evaluating risk management are as follows:

- **Evaluate Risk Management:** This continually examines and makes judgment on the effect of risk on the current and future use of IT in the enterprise. This further considers whether the enterprise's risk appetite is appropriate and that risks to enterprise value related to the use of IT are identified and managed;
- **Direct Risk Management:** This directs the establishment of risk management practices to provide reasonable assurance that IT risk management practices

are appropriate to ensure that the actual IT risk does not exceed the board's risk appetite; and

- ♦ **Monitor Risk Management:** This monitors the key goals and metrics of the risk management processes and establishes how deviations or problems will be identified, tracked and reported on for remediation.

2. **Enablers of COBIT 5:** Enablers are factors that, individually and collectively, influence whether something will work; in this case, governance and management over enterprise IT. Enablers are driven by the goals cascade, i.e., higher-level IT related goals defining 'what the different enablers should achieve'. The COBIT 5 framework describes seven categories of enablers, which are as follows:

- **Principles, Policies and Frameworks** are the vehicle to translate the desired behaviour into practical guidance for day-to-day management.
- **Processes** describe an organized set of practices and activities to achieve certain objectives and produce a set of outputs in support of achieving overall IT-related goals.
- **Organizational structures** are the key decision-making entities in an enterprise.
- **Culture, Ethics and Behaviour** of individuals and of the enterprise is very often underestimated as a success factor in governance and management activities.
- **Information** is pervasive throughout any organization and includes all information produced and used by the enterprise. Information is required for keeping the organization running and well governed, but at the operational level, information is very often the key product of the enterprise itself.
- **Services, Infrastructure and Applications** include the infrastructure, technology and applications that provide the enterprise with information technology processing and services.
- **People, Skills and Competencies** are linked to people and are required for successful completion of all activities and for making correct decisions and taking corrective actions.

3. Some of the major benefits of Governance to the management of an enterprise are as follows:

- Achieving enterprise objectives by ensuring that each element of the mission and strategy are assigned and managed with a clearly understood and transparent decisions rights and accountability framework;
- Defining and encouraging desirable behavior in the use of IT and in the execution of IT outsourcing arrangements;
- Implementing and integrating the desired business processes into the enterprise;

- Providing stability and overcoming the limitations of organizational structure;
- Improving customer, business and internal relationships and satisfaction, and reducing internal territorial strife by formally integrating the customers, business units, and external IT providers into a holistic IT governance framework; and
- Enabling effective and strategically aligned decision making for the IT Principles that define the role of IT, IT Architecture, IT Infrastructure, Application Portfolio and Frameworks, Service Portfolio, Information and Competency Portfolios and IT Investment & Prioritization.

4. Major limitations of Management Information Systems (MIS) are given below:

- The quality of the outputs of MIS is basically governed by the quantity of input and processes.
- MIS is not a substitute for effective management, which means that it cannot replace managerial judgment in making decisions in different functional areas. It is merely an important tool in the hands of executives for decision making and problem solving.
- MIS may not have requisite flexibility to quickly update itself with the changing needs of time, especially in fast changing and complex environment.
- MIS cannot provide tailor-made information packages suitable for the purpose of every type of decision made by executives.
- MIS takes into account mainly quantitative factors, thus it ignores the non-quantitative factors like morale and attitude of members of organization, which have an important bearing on the decision making process of executives or senior management.
- MIS is less useful for making non-programmed decisions. Such types of decisions are not of the routine type and thus require information, which may not be available from existing MIS to executives.
- The effectiveness of MIS is reduced in enterprises, where the culture of hoarding information and not sharing with other holds.
- MIS effectiveness decreases due to frequent changes in top management, organizational structure and operational team.

5. **General-purpose planning languages:** These are the languages that allow users to perform many routine tasks, for example; retrieving various data from a database or performing statistical analyses. The languages in most electronic spreadsheets are good examples of general-purpose planning languages. These languages enable user to tackle abroad range of budgeting, forecasting, and other worksheet-oriented problems.

Special-purpose planning languages: These are the languages that are more limited in what they can do, but they usually do certain jobs better than the general-purpose

planning languages. Some statistical languages, such as Statistical Analysis System (SAS) and Statistical Package for the Social Sciences (SPSS), are examples of special purpose planning languages.

6. The impact of IT on Information Systems for different sectors is explained below:

(i) **E-business –** This is also called electronic business and includes purchasing, selling, production management, logistics, communication, support services and inventory management through the use of internet technologies. The advantage of E-business are 24 hours sale, lower cost of doing business, more efficient business relationship, eliminate middlemen, unlimited market place and access with broaden customer base, secure payment systems, easier business administration and online fast updating. Only investment is needed in the purchase of space on internet, designing and maintenance of website. Different types of business can be done e.g. it may be B2B (Business to Business), B2C (Business to Customer), C2C (Customer to Customer) and C2B (Customer to Business). Because of no limitations of time and space, people prefer to involve in E-business. Thus, we can say that IT has given new definition to business.

(ii) **Financial Service Sector –** The financial services sector (banks, building societies, life insurance companies and short term insurers) manages large amounts of data and processes enormous numbers of transactions every day. All the major financial institutions operate nationally and have wide networks of regional offices and associated electronic networks. Now-a-days most of the services are offered by the financial services on internet, which can be accessed from anywhere and anytime that makes it more convenient to the customers. It also reduces their cost in terms of office staff and office building. Through the use of internet and mobile phones, financial service sectors are in direct touch with their customers and with adequate databases, it will be easier for service sectors to manage customer relationships.

(iii) **Wholesaling and Retailing –** A visit to any large store will show that IT has become a vital part of retailing. Retail business uses IT to carry out basic functions including till systems for selling items, capturing the sales data by item, stock control, buying, management reports, customer information and accounting. The laser scanners used in most grocery supermarkets and superstores to read product bar codes are among the most distinctive examples of modern computer technology. By using internet or mobile phones retailers can collect and exchange data between stores, distribution centers, suppliers and head offices. IT can be used in wholesale for supply chain logistics management, planning, space management, purchasing, re-ordering, and analysis of promotions. Data mining and data warehousing applications helps in the analysis of market baskets, customer profiles and sales trends. E-commerce among partners (suppliers, wholesalers, retailers, distributors) helps in carrying out transactions.

(iv) **Public sectors –** It includes services provided by the government mainly hospitals, police stations, universities etc. IT/IS can be used to keep records of the cases, respective people involved it, other related documents and can consult the existing data warehouse or databases to take appropriate actions. For example, IS like ERP can be implemented in a university to keep record of its employees in terms of their designation, leaves availed, department, achievements that can be used further in analyzing their performance.

(iv) **Others –** IT is efficiently used in entertainment industry (games, picture collection etc.), agriculture industry (information is just a mouse click away to the farmers), Tour industry (railway, hotel and airline reservations) and consultancy etc. Thus, we can say that IT has changed the working style of business world drastically and make it simpler day-by-day with its advancement.

7. **Information Security Policy –** This policy provides a definition of Information Security, its overall objective and the importance that applies to all users. Various types of Information Security Policies are as follows:

- **User Security Policies** – These include User Security Policy and Acceptable Usage Policy.
  - **User Security Policy –** This policy sets out the responsibilities and requirements for all IT system users. It provides security terms of reference for Users, Line Managers and System Owners.
  - **Acceptable Usage Policy –** This sets out the policy for acceptable use of email, Internet services and other IT resources.
- **Organization Security Policies** – These include Organizational Information Security Policy, Network & System Security Policy and Information Classification Policy.
- **Organizational Information Security Policy –** This policy sets out the Group policy for the security of its information assets and the Information Technology (IT) systems processing this information. Though it is positioned at the bottom of the hierarchy, it is the main IT security policy document.
- **Network & System Security Policy –** This policy sets out detailed policy for system and network security and applies to IT department users.
- **Information Classification Policy –** This policy sets out the policy for the classification of information.
- **Conditions of Connection –** This policy sets out the Group policy for connecting to the network. It applies to all organizations connecting to the Group, and relates to the conditions that apply to different suppliers' systems.

8. **Asynchronous Attacks:** They occur in many environments where data can be moved asynchronously across telecommunication lines. Numerous transmissions must wait for the clearance of the line before data being transmitted. Data that is waiting to be

transmitted are liable to unauthorized access. Such attacks are called Asynchronous Attacks. These attacks are hard to detect because they are usually very small pin like insertions. There are many forms of asynchronous attacks; some of them are given as follows:

- **Data Leakage:** Data is a critical resource for an organization to function effectively. Data leakage involves leaking information out of the computer by means of dumping files to paper or stealing computer reports and tape.
- **Wire-tapping:** This involves spying on information being transmitted over telecommunication network.
- **Piggybacking:** This is the act of following an authorized person through a secured door or electronically attaching to an authorized telecommunication link that intercepts and alters transmissions. This involves intercepting communication between the operating system and the user and modifying them or substituting new messages. A special terminal is tapped into the communication for this purpose.
- **Shutting Down of the Computer/Denial of Service:** This is initiated through terminals or microcomputers that are directly or indirectly connected to the computer. Individuals, who know the high-level systems log on-ID initiate shutting down process. The security measure will function effectively if there are appropriate access controls on the logging on through a telecommunication network. When overloading happens, some systems have been proved to be vulnerable to shutting themselves. Hackers use this technique to shut down computer systems over the Internet.

9. **Data Resource Management Controls:** Many organizations now recognize that data is a critical resource that must be managed properly and therefore, accordingly, centralized planning and control are implemented. For data to be managed; better users must be able to share data; data must be available to users when it is needed, in the location where it is needed, and in the form in which it is needed. Further it must be possible to modify data fairly easily and the integrity of the data be preserved. If data repository system is used properly, it can enhance data and application system reliability. It must be controlled carefully, however, because the consequences are serious if the data definition is compromised or destroyed. Careful control should be exercised over the roles by appointing senior, trustworthy persons, separating duties to the extent possible and maintaining and monitoring logs of the data administrator's and database administrator's activities.

   The control activities involved in maintaining the integrity of the database is as under:

   (a) Definition Controls: These controls are placed to ensure that the database always corresponds and comply with its definition standards.

   (b) Existence/Backup Controls: These ensure the existence of the database by establishing backup and recovery procedures. Backup refers to making copies of the data so that these additional copies may be used to restore the original data

after a data loss. Backup controls ensure the availability of system in the event of data loss due to unauthorized access, equipment failure or physical disaster; the organization can retrieve its files and databases. Various backup strategies are Dual recording of data; Periodic dumping of data; Logging input transactions; and Logging changes to the data.

(c) Access Controls: Access controls are designed to prevent unauthorized individual from viewing, retrieving, computing or destroying the entity's data. Controls are established in the following manner:

- User Access Controls through passwords, tokens and biometric Controls; and
- Data Encryption: Keeping the data in database in encrypted form.

(d) Update Controls: These controls restrict update of the database to authorized users in two ways; either by permitting only addition of data to the database or allowing users to change or delete existing data.

(e) Concurrency Controls: These controls provide solutions, agreed-upon schedules and strategies to overcome the data integrity problems that may arise when two update processes access the same data item at the same time.

(f) Quality Controls: These controls ensure the accuracy, completeness, and consistency of data maintained in the database. This may include traditional measures such as program validation of input data and batch controls over data in transit through the organization.

10. Recovery Plan: Recovery plans set out procedures to restore full information system capabilities. Recovery plan should identify a recovery committee that will be responsible for working out the specifics of the recovery to be undertaken. The plan should specify the responsibilities of the committee and provide guidelines on priorities to be followed. The plan might also indicate which applications are to be recovered first. Members of a recovery committee must understand their responsibilities. Again, the problem is that they will be required to undertake unfamiliar tasks. Periodically, they must review and practice executing their responsibilities so they are prepared should a disaster occur. If committee members leave the organization, new members must be appointed immediately and briefed about their responsibilities.

Test Plan: The final component of a disaster recovery plan is a test plan. The purpose of the test plan is to identify deficiencies in the emergency, backup, or recovery plans or in the preparedness of an organization and its personnel for facing a disaster. It must enable a range of disasters to be simulated and specify the criteria by which the emergency, backup, and recovery plans can be deemed satisfactory. Periodically, test plans must be invoked. Unfortunately, top managers are often unwilling to carry out a test because daily operations are disrupted. They also fear a real disaster could arise as a result of the test procedures.

To facilitate testing, a phased approach can be adopted. First, the disaster recovery plan can be tested by desk checking and inspection and walkthroughs, much like the validation procedures adopted for programs. Next, a disaster can be simulated at a convenient time-for example, during a slow period in the day. Anyone, who will be affected by the test (e.g. personnel and customers) also might be given prior notice of the test so they are prepared. Finally, disasters could be simulated without warning at any time. These are the acid tests of the organization's ability to recover from a catastrophe.

11. **Incremental Backup:** An Incremental Backup captures files that were created or changed since the last backup, regardless of backup type. The last backup can be a full backup or simply the last incremental backup. With incremental backups, one full backup is done first and subsequent backup runs are just the changed files and new files added since the last backup.

For example - Suppose an Incremental backup job or task is to be done every night from Monday to Friday. This first backup on Monday will be a full backup since no backups have been taken prior to this. However, on Tuesday, the incremental backup will only backup the files that have changed since Monday and the backup on Wednesday will include only the changes and new files since Tuesday's backup. The cycle continues this way.

Advantages of Incremental Backup

- Much faster backups.
- Efficient use of storage space as files is not duplicated. Much less storage space used compared to running full backups and even differential backups.

Disadvantages of Incremental Backup

- Restores are slower than with a full backup and differential backups.
- Restores are a little more complicated. All backup sets (first full backup and all incremental backups) are needed to perform a restore.

12. **Objectives and Goals of Business Continuity Planning**

The primary objective of a Business Continuity Plan is to minimize loss by minimizing the cost associated with disruptions and enable an organization to survive a disaster and to re-establish normal business operations. In order to survive, the organization must assure that critical operations can resume normal processing within a reasonable time frame. The key objectives of the contingency plan should be to:

- Provide the safety and well-being of people on the premises at the time of disaster;
- Continue critical business operations;
- Minimize the duration of a serious disruption to operations and resources (both information processing and other resources);

- Minimize immediate damage and losses;
- Establish management succession and emergency powers;
- Facilitate effective co-ordination of recovery tasks;
- Reduce the complexity of the recovery effort; and
- Identify critical lines of business and supporting functions.

The goals of the Business Continuity Plan should be to:

- Identify weaknesses and implement a disaster prevention program;
- minimize the duration of a serious disruption to business operations;
- facilitate effective co-ordination of recovery tasks; and
- reduce the complexity of the recovery effort.

13. **Agile Model:** This is an organized set of software development methodologies based on the *iterative and incremental* development, where requirements and solutions evolve through collaboration between self-organizing, cross-functional teams. It promotes adaptive planning, evolutionary development and delivery; time boxed iterative approach and encourages rapid and flexible response to change. It is a conceptual framework that promotes foreseen interactions throughout the development life cycle.

    Agile Manifesto is based on following 12 features:

    - Customer satisfaction by rapid delivery of useful software;
    - Welcome changing requirements, even late in development;
    - Working software is delivered frequently (weeks rather than months);
    - Working software is the principal measure of progress;
    - Sustainable development, able to maintain a constant pace;
    - Close, daily co-operation between business people and developers;
    - Face-to-face conversation is the best form of communication (co-location);
    - Projects are built around motivated individuals, who should be trusted;
    - Continuous attention to technical excellence and good design;
    - Simplicity;
    - Self-organizing teams; and
    - Regular adaptation to changing circumstances.

14. **File Conversion:** Because large files of information must be converted from one medium to another, this phase should be started long before programming and testing are completed. The cost and related problems of file conversion are significant whether they

involve on-line files (common database) or off-line files. In order for the conversion to be as accurate as possible, file conversion programs must be thoroughly tested. Adequate control, such as record counts and control totals, should be required output of the conversion program. The existing computer files should be kept for a period of time until sufficient files are accumulated for back up. This is necessary in case, the files must be reconstructed from scratch after a "bug" is discovered later in the conversion routine.

System Conversion: After on-line and off-line files have been converted and the reliability of the new system has been confirmed for a functional area, daily processing can be shifted from the existing information system to the new one. All transactions initiated after this time are processed on the new system. System development team members should be present to assist and to answer any questions that might develop. Consideration should be given to operating the old system for some more time to permit checking, matching and balancing the total results of both systems.

15. **Developer Related Issues**: Achieving the objectives of the system development is essential but many times, such objectives are not achieved as desired. An analysis on 'why organizations fail to achieve their systems development objectives' reveals bottlenecks. The developer-related bottlenecks refer to the issues and challenges with regard to the developers. Some of them are as follows:

- **Lack of Standard Project Management and System Development Methodologies:** Some organizations do not formalize their project management and system development methodologies, thereby making it very difficult to consistently complete projects on time or within budget.
- **Overworked or Under-Trained Development Staff:** In many cases, system developers often lack sufficient educational background and requisite state of the art skills. Furthermore, many companies do a little to help their development personnel stay technically sound, and more so a training plan and training budget do not exist.

16. Information Systems (IS) Audit has been categorized into five types:

(i) **Systems and Application:** An audit to verify that systems and applications are appropriate, are efficient, and are adequately controlled to ensure valid, reliable, timely, and secure input, processing, and output at all levels of a system's activity.

(ii) **Information Processing Facilities:** An audit to verify that the processing facility is controlled to ensure timely, accurate, and efficient processing of applications under normal and potentially disruptive conditions.

(iii) **Systems Development:** An audit to verify that the systems under development meet the objectives of the organization and to ensure that the systems are developed in accordance with generally accepted standards for systems development.

(iv) **Management of IT and Enterprise Architecture:** An audit to verify that IT management has developed an organizational structure and procedures to ensure a controlled and efficient environment for information processing.

(v) **Telecommunications, Intranets, and Extranets:** An audit to verify that controls are in place on the client (end point device), server, and on the network connecting the clients and servers.

17. The role of Auditors w.r.t evaluation of implementation of Security Management Controls is as under:

- Auditors must evaluate whether security administrators are conducting ongoing, high-quality security reviews or not;
- Auditors check whether the organizations audited have appropriate, high-quality disaster recovery plan in place; and
- Auditors check whether the organizations have opted for an appropriate insurance plan or not.

The role of Auditors w.r.t evaluation of implementation of Operations Management Controls is as under:

- Auditors should pay concern to see whether the documentation is maintained securely and that it is issued only to authorized personnel.
- Auditors can use interviews, observations, and review of documentation to evaluate -
  - ♦ the activities of documentation librarians;
  - ♦ how well operations management undertakes the capacity planning ad performance monitoring function;
  - ♦ the reliability of outsourcing vendor controls;
  - ♦ whether operations management is monitoring compliance with the outsourcing contract; and
  - ♦ whether operations management regularly assesses the financial viability of any outsourcing vendors that an organization uses.

18. (a) Section 72 of the IT (Amendment) Act, 2008 gives the definition on "Penalty for breach of confidentiality and privacy".

[Section 72] Penalty for breach of confidentiality and privacy

Save as otherwise provided in this Act or any other law for the time being in force, any person who, in pursuance of any of the powers conferred under this Act, rules or regulations made thereunder, has secured access to any electronic record, book, register, correspondence, information, document or other material without the consent of the person concerned discloses such electronic record, book, register, correspondence, information, document or other material to any other person shall

be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both.

(b) Audit Report Norms set up by SEBI for System Controls and Audit are as follows:

- The Systems Audit Reports and Compliance Status should be placed before the Governing Board of the Stock Exchanges/Depositories and the system audit report along with comments of Stock Exchanges / Depositories should be communicated to SEBI.
- The Audit report should have explicit coverage of each Major Area mentioned in the TOR, indicating any Nonconformity (NCs) or Observations (or lack of it). For each section, auditors should also provide qualitative input about ways to improve the process, based upon the best practices observed.

19. Green Computing Best Practices are as follows:

Develop a sustainable Green Computing plan

- Involve stakeholders to include checklists, recycling policies, recommendations for disposal of used equipment, government guidelines and recommendations for purchasing green computer equipment in organizational policies and plans;
- Encourage the IT community for using the best practices and encourage them to consider green computing practices and guidelines.
- On-going communication about and campus commitment to green IT best practices to produce notable results.
- Include power usage, reduction of paper consumption, as well as recommendations for new equipment and recycling old machines in organizational policies and plans; and
- Use cloud computing so that multiple organizations share the same computing resources, thus increasing the utilization by making more efficient use of hardware resources.

Recycle

- Dispose e-waste according to central, state and local regulations;
- Discard used or unwanted electronic equipment in a convenient and environmentally responsible manner as computers emit harmful emissions;
- Manufacturers must offer safe end-of-life management and recycling options when products become unusable; and
- Recycle computers through manufacturer's recycling services.

Make environmentally sound purchase decisions

- Purchase of desktop computers, notebooks and monitors based on environmental attributes;
- Provide a clear, consistent set of performance criteria for the design of products;
- Recognize manufacturer efforts to reduce the environmental impact of products by reducing or eliminating environmentally sensitive materials, designing for longevity and reducing packaging materials; and
- Use Server and storage virtualization that can help to improve resource utilization, reduce energy costs and simplify maintenance.

Reduce Paper Consumption

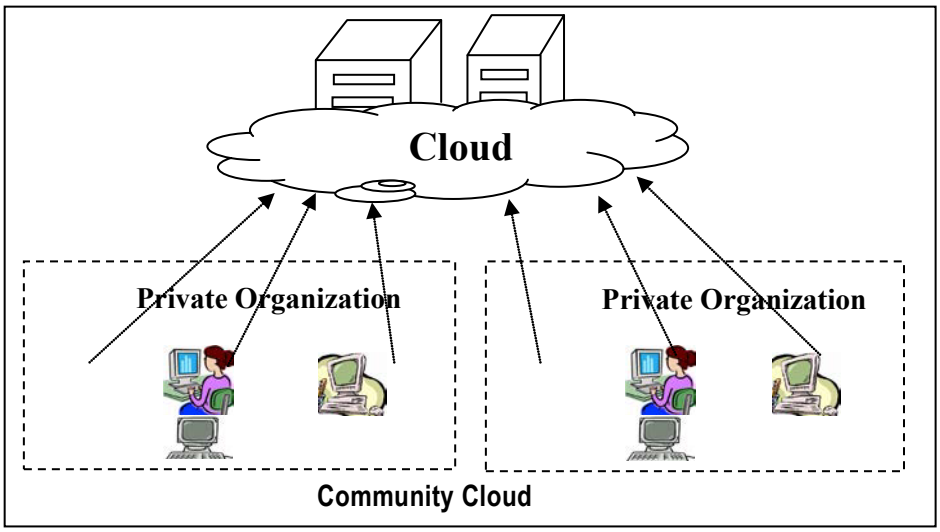
- Reduce paper consumption by use of e-mail and electronic archiving;
- Use of "track changes" feature in electronic documents, rather than redline corrections on paper;
- Use online marketing rather than paper based marketing; e-mail marketing solutions that are greener, more affordable, flexible and interactive than direct mail; free and low-cost online invoicing solutions that help cut down on paper waste; and
- While printing documents; make sure to use both sides of the paper, recycle regularly, use smaller fonts and margins, and selectively print required pages.

Conserve Energy

- Use Liquid Crystal Display (LCD) monitors rather than Cathode Ray Tube (CRT) monitors;
- Develop a thin-client strategy wherein thin clients are smaller, cheaper, simpler for manufacturers to build than traditional PCs or notebooks and most importantly use about half the power of a traditional desktop PC;
- Use notebook computers rather than desktop computers whenever possible;
- Use the power-management features to turn off hard drives and displays after several minutes of inactivity;
- Power-down the CPU and all peripherals during extended periods of inactivity;
- Try to do computer-related tasks during contiguous, intensive blocks of time, leaving hardware off at other times;
- Power-up and power-down energy-intensive peripherals such as laser printers according to need;
- Employ alternative energy sources for computing workstations, servers, networks and data centers; and

- Adapt more of Web conferencing offers instead of travelling to meetings in order to go green and save energy.

20. **Community Cloud:** The community cloud is the cloud infrastructure that is provisioned for exclusive use by a specific community of consumers from organizations that have shared concerns (eg. mission security requirements, policy, and compliance considerations). It may be owned, managed, and operated by one or more of the organizations in the community, a third party or some combination of them, and it may exist on or off premises. In this, a private cloud is shared between several organizations. This model is suitable for organizations that cannot afford a private cloud and cannot rely on the public cloud either.



Characteristics of Community Clouds are as follows:

- **Collaborative and Distributive Maintenance:** In this, no single company has full control over the whole cloud. This is usually distributive and hence better cooperation provides better results.
- **Partially Secure:** This refers to the property of the community cloud where few organizations share the cloud, so there is a possibility that the data can be leaked from one organization to another, though it is safe from the external world.
- **Cost Effective:** As the complete cloud is being shared by several organizations or community, not only the responsibility gets shared; the community cloud becomes cost effective too.

21. (a) **Storage as a Service (STaaS):** STaaS, an instance of IaaS, provides storage infrastructure on a subscription basis to users who want a low-cost and convenient way to store data, synchronize data across multiple devices, manage off-site backups, mitigate risks of disaster recovery, and preserve records for the long-term.

It is an ability given to the end users to store the data on the storage services provided by the service provider. STaaS allows the end users to access the files at any time from any place. STaaS provider provides the virtual storage that is abstracted from the physical storage of any cloud data center. STaaS is also a cloud business model that is delivered as a utility.

(b) **Firewall:** Organizations connected to the Internet and Intranet often implements an electronic firewall to insulate their network from intrude. A Firewall is a system that enforces access control between two networks. To accomplish this, all traffic between the external network and the organization's Intranet must pass through the firewall. Only authorized traffic between the organization and the outside is allowed to pass through the firewall. The firewall must be immune to penetrate from both outside and inside the organization. In addition to insulating the organization's network from external networks, firewalls can be used to insulate portions of the organization's Intranet from internal access also.

(c) **Folksonomy:** This allows the free classification of information available on the web, which helps the users to classify and find information, using approaches such as tagging. Also known as Social Bookmarking, the bookmarks in a folder are not stored on the user's computer rather tagged pages are stored on the web increasing the accessibility from any computer connected to the Internet.

(d) Two types of audit trails that should exist in each subsystem are as follows:

- **Accounting Audit Trail:** An Accounting Audit Trail maintains a record of events within the subsystem; and
- **Operations Audit Trail:** An Operations Audit Trail maintains a record of the resource consumption associated with each event in the subsystem.

(e) Disadvantages of Full Backup are as follows:

- Backups can take very long as each file is backed up again every time the full backup is run.
- Full Backup consumes the most storage space compared to incremental and differential backups. The exact same files are stored repeatedly resulting in inefficient use of storage.

22. (a) **Physical Controls:** These controls are groups of transactions that constitute a physical unit. For example – source documents might be obtained via the email, assembled into batches, spiked and tied together, and then given to a data-entry clerk to be entered into an application system at a terminal.

Logical Controls: These are group of transactions bound together on some logical basis, rather than being physically contiguous. For example - different clerks might use the same terminal to enter transaction into an application system. Clerks keep control totals of the transactions into an application system.

(b) Corrective Controls: Corrective controls are designed to reduce the impact or correct an error once it has been detected. Corrective controls may include the use of default dates on invoices where an operator has tried to enter the incorrect date. A Business Continuity Plan (BCP) is considered to be a corrective control. Some of the Corrective Controls may be Contingency planning; Backup procedure; Rerun procedures; Change input value to an application system; and Investigate budget variance and report violations.

Compensatory Controls: Controls are basically designed to reduce the probability of threats, which can exploit the vulnerabilities of an asset and cause a loss to that asset. Sometimes, while designing and implementing controls, organizations because of different constraints like financial, administrative or operational, may not be able to implement appropriate controls. In such a scenario, there should be adequate compensatory measures, which may although not be as efficient as the appropriate control, but reduce the probability of loss to the assets. Such measures are called compensatory controls.

(c) System Analysis: System Analysis is the process of gathering and interpreting facts, diagnosing problems, and using the information to recommend improvements to the system.

System Design: System Design is the process of planning and structuring a new business system or one to replace or complement an existing system.

(d) Hardware Acquisition: In case of procuring such machinery as machine tools, transportation equipment, air conditioning equipment, etc., the management can normally rely on the time tested selection techniques and the objective selection criteria can be delegated to the technical specialist. The management depends upon the vendor for support services, systems design, education and training etc., and expansion of computer installation for almost an indefinite period; therefore, this is not just buying the machine and paying the vendor for it but it amounts to an enduring alliance with the supplier.

Software Acquisition: Once user output and input designs are finalized, the nature of the application software requirements must be assessed by the systems analyst. This determination helps the systems development team to decide "what type of application software products is needed" and consequently, the degree of processing that the system needs to handle. This helps the system developers in deciding about the nature of the systems software and computer hardware that will be most suitable for generating the desired outputs, and also the functions and capabilities that the application software must possess. At this stage, the system developers must determine whether the application software should be created in-house or acquired from a vendor.

(e) Asset: Asset can be defined as something of value to the organization; e.g., information in electronic or physical form, software systems, employees.

Irrespective of the nature of the assets themselves, they all have one or more of the following characteristics:

- They are recognized to be of value to the organization.
- They are not easily replaceable without cost, skill, time, resources or a combination.
- They form a part of the organization's corporate identity, without which, the organization may be threatened.
- Their data classification would normally be Proprietary, Highly confidential or even Top Secret.

It is the purpose of Information Security Personnel to identify the threats against the risks and the associated potential damage to, and the safeguarding of Information Assets.

Threat: Any entity, circumstance, or event with the potential to harm the software system or component through its unauthorized access, destruction, modification, and/or denial of service is called a Threat. A Threat is an action, event or condition where there is a compromise in the system, its quality and ability to inflict harm to the organization. Threat has capability to attack on a system with intent to harm. Every system has a data, which is considered as a fuel to drive a system, data is nothing but assets. Assets and threats are closely correlated. A threat cannot exist without a target asset. Threats are typically prevented by applying some sort of protection to assets.

23. (a) Mr. Z is liable under Section 66D of IT Act, 2000. Section 66D deals with the punishment for cheating by personation by using computer resource. According to the provision, whoever, by means of any communication device or computer resource cheats by personating, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine which may extend to one lakh rupees.

(b) Mr. X is not liable as he was convinced that he is providing the data to the rightful person. So providing the information will utmost good faith will not make him liable.

24. (a) A company XYZ should adopt ISO 27001 for the following reasons:

- It is suitable for protecting critical and sensitive information.
- It provides a holistic, risk-based approach to secure information and compliance.
- Demonstrates credibility, trust, satisfaction and confidence with stakeholders, partners, citizens and customers.
- Demonstrates security status according to internationally accepted criteria.

- Creates a market differentiation due to prestige, image and external goodwill.
- If a company is certified once, it is accepted globally.

(b) The management of an enterprise PQR should opt for the implementation of Enterprise Resource Planning (ERP). ERP is process management software that allows an organization to use a system of integrated applications to manage the business and automate many back office functions related to technology, services and human resources. ERP software integrates all facets of an operation, including product planning, development, manufacturing, sales and marketing. ERP software is considered an enterprise application as it is designed to be used by larger businesses and often requires dedicated teams to customize and analyze the data and to handle upgrades and deployment. In contrast, Small business ERP applications are lightweight business management software solutions, customized for the business industry we work in.

Benefits of Enterprise Resource Planning (ERP) are as follows:

- Streamlining processes and workflows with a single integrated system.
- Reduce redundant data entry and processes and in other hand it shares information across the department.
- Establish uniform processes that are based on recognized best business practices.
- Improved workflow and efficiency.
- Improved customer satisfaction based on improved on-time delivery, increased quality, shortened delivery times.
- Reduced inventory costs resulting from better planning, tracking and forecasting of requirements.
- Turn collections faster based on better visibility into accounts and fewer billing and/or delivery errors.
- Decrease in vendor pricing by taking better advantage of quantity breaks and tracking vendor performance.
- Track actual costs of activities and perform activity based costing.
- Provide a consolidated picture of sales, inventory and receivables.

25. (a) Some of the major ways of protecting the installation against water damage are as follows:

- **Water Detectors:** These should be placed under the raised floor, near drain holes and near any unattended equipment storage facilities.
- **Strategically Locating the Computer Room:** To reduce the risk of flooding, the computer room should not be located in the basement or ground floor of a

multi-storey building. Studies reveal that the computer room located in the top floors is less prone to the risk of fire, smoke and water.

- Some of the other major ways of protecting the installation against water damage are as follows:
  - Wherever possible have waterproof ceilings, walls and floors;
  - Ensure an adequate positive drainage system exists;
  - Install alarms at strategic points within the installation;
  - In flood areas have the installation above the upper floors but not at the top floor;
  - Water proofing; and
  - Water leakage Alarms.

(b) Some of the proposal validation methods that may be adopted in order to validate vendor's proposal are as follows:

- **Checklists:** It is the most simple and a subjective method for validation and evaluation. The various criteria are put in check list in the form of suitable questions against which the responses of the various vendors are validated. For example, Support Service Checklists may have parameters like Performance; System development, Maintenance, Conversion, Training, Back-up, Proximity, Hardware and Software.
- **Point-Scoring Analysis:** Point-scoring analysis provides an objective means of selecting a final system. There are no absolute rules in the selection process, only guidelines for matching user needs with software capabilities. Thus, even for a small business, the evaluators must consider such issues as the company's data processing needs, its in-house computer skills, vendor reputations, software costs, and so forth.
- **Public Evaluation Reports:** Several consultancy as well as independent agencies compare and contrast the hardware and software performance for various manufacturers and publish their reports in this regard. This method has been frequently and usefully employed by several buyers in the past. For those criteria, however, where published reports are not available, reports would have to be made to other methods of validation. This method is particularly useful where the buying staff has inadequate knowledge of facts.
- **Benchmarking Problems related Vendor's Solutions:** Benchmarking problems related to vendors' proposals are accomplished by sample programs that represent at least a part of the buyer's primary work load and include considerations and can be current applications that have been designed to represent planned processing needs. That is, benchmarking problems are

oriented towards testing whether a solution offered by the vendor meets the requirements of the job on hand of the buyer.

- **Testing Problems:** Test problems disregard the actual job mix and are devised to test the true capabilities of the hardware, software or system. For example, test problems may be developed to evaluate the time required to translate the source code (program in an assembly or a high level language) into the object code (machine language), response time for two or more jobs in multi-programming environment, overhead requirements of the operating system in executing a user program, length of time required to execute an instruction, etc. The results, achieved by the machine can be compared and price performance judgment can be made.

PAPER – 7: DIRECT TAX LAWS

QUESTIONS

Residential Status and Scope of Total Income

1. XYZ Bank Inc, a US banking company, has a branch in India, XYZ Bank Ltd. During the P.Y.2015-16, the Indian branch paid ₹ 70 crore towards interest to its head office, XYZ Bank Inc. What are the tax consequences of such interest payment by the Indian branch to the head office? Is the Indian branch required to deduct tax at source on such payment? Discuss.

Income which do not form part of total income [Charitable Trusts]

2. (a) An institution having "advancement of any other object of general public utility" as its main object is registered under section 12AA. Its total receipts for the P.Y.2015-16 is ₹ 50 lakhs, out of which receipts from trading activity is ₹ 15 lakhs. Would the institution continue to retain its "charitable status" and be eligible for exemption under section 11 for A.Y.2016-17, if it applies its receipts from trading activity towards its main object? Discuss.

   (b) What would be your answer if the main object of the above institution is "Yoga"?

Profits and gains of business or profession

3. Mr. Harish commenced operations of the businesses of setting up a warehousing facility for storage of food grains, sugar and edible oil on 1.4.2015.

	Particulars	Food grains	Sugar	Edible Oil
		₹ in lakh		
(1)	Profits from business (computed) before allowing deduction under section 35AD/section 32	125	60	30
(2)	Capital expenditure on land and building purchased exclusively for the business (January 2015 - March 2015) and capitalized in the books of account as on 1st April, 2015	120	90	75
(3)	Cost of land included in (2) above	75	60	45
(4)	Capital expenditure incurred during P.Y.2015-16 on extension/reconstruction of building purchased and used exclusively for the business	30	20	10

Compute Mr. Harish's total income and tax liability for the A.Y.2016-17, assuming that Mr. Harish does not have any income other than income from the above businesses.

4. Aroma Ltd. is engaged in the business of growing and manufacturing tea in India. For the previous year ending on 31.03.2015, its composite business profits before allowing deduction under section 33AB is ₹ 30,00,000. On 28.09.2015, it deposited a sum of ₹ 5,50,000 in the Tea Development Account. On 14.12.2015, it withdraws ₹ 5 lakhs, from deposit account which is utilized as under:

   ₹ 3,00,000 for purchase on non-depreciable asset as per the scheme specified.

   ₹ 1,50,000 for purchase of computers to be installed in the office premises.

   ₹ 50,000 was spent for the purpose of scheme on 22.4.2016.

   (i) You are required to determine the tax consequences that may arise from the above transactions in the assessment year 2016-17.

   (ii) What will be the tax consequence if the asset which was purchased for ₹ 3,00,000 is sold for ₹ 4,00,000 in June, 2016?

Capital Gains

5. Beta Limited has transferred its Unit Omega to Delta Limited by way of slump sale on January, 17th, 2016. The summarised Balance Sheet of Beta Limited as on that date is given below:

Liabilities	₹ (in lakhs)	Assets	₹ (in lakhs)
Paid up capital	850	Fixed Assets :	
Reserve & surplus	310	Unit Gamma	75
Liabilities:		Unit Sigma	75
Unit Gamma	20	Unit Omega	275
Unit Sigma	55	Other Assets:	
Unit Omega	45	Unit Gamma	260
		Unit Sigma	400
		Unit Omega	195
Total	**1,280**	**Total**	**1,280**

Using the further information given below, compute the capital gain arising from slump sale of Unit Omega and tax on such capital gain.

(i) Cost inflation index for financial year 2004-05 and financial year 2015-16 are 480 and 1081, respectively.

(ii) Lump sum consideration on transfer of Unit Omega is ₹ 440 lakhs.

(iii) Fixed assets of Unit Omega includes land which was purchased at ₹ 30 lakhs in August 2006 and revalued at ₹ 45 lakhs as on March 31, 2015.

(iv) Other fixed assets are reflected at ₹ 230 lakhs (i.e. ₹ 275 lakhs less value of land) which represents written down value of those assets as per books. The written down value of these assets under section 43(6) of the Income-tax Act, 1961 is ₹ 205 lakhs.

(v) Unit Omega was set up by Beta Limited in May, 2004.

Income of other persons included in assessee's total income

6. Mrs. Sharadha, wife of Mr. Sriram, is a partner in a firm. Her capital contribution to the firm as on 01-04-2015 was ₹ 10 lakhs, out of which ₹ 6 lakhs was contributed out of her own sources and ₹ 4 lakhs was contributed out of gift from her husband.

As further capital was needed by the firm, she further invested ₹ 3 lakhs on 01.06.2015 out of the funds gifted by her husband. She received interest on capital of ₹ 1,00,000 and share of profit of ₹ 1,20,000 for the financial year 2015-16 from the firm.

Advise Mr. Sriram as to the applicability of the provisions of section 64(1)(iv) and the manner thereof in respect of the above referred transactions.

Deductions from gross total income

7. The following are the particulars of investments and payments made by Mr. Bhuvan, aged 52 years, employed with Omicron Ltd., during the previous year 2015-16:

- Deposited ₹ 1,35,000 in public provident fund
- Paid life insurance premium of ₹ 25,000 on the policy taken on 1.7.2012 to insure his life (Sum assured – ₹ 2,00,000).
- Deposited ₹ 50,000 in a five year term deposit with bank.
- Paid mediclaim premium of ₹ 27,000 to insure his health and that of his spouse.
- Paid mediclaim premium of ₹ 23,000 to insure the health of his mother aged 73 years and incurred medical expenses of ₹ 28,000 on his father, aged 81 years, in respect of whom he was unable to take a mediclaim policy.
- Contributed ₹ 50,000 to Clean Ganga Fund and ₹ 25,000 Swacch Bharat Kosh.
- Contributed ₹ 2,25,000, being 15% of his salary, to the NPS of the Central Government. A matching contribution was made by Omicron Ltd.

Compute the total income of Mr. Bhuvan for A.Y.2016-17, assuming that his gross total income is ₹ 20 lakh [comprising of income from salaries computed (including all taxable allowances and perquisites) ₹ 19,88,000 and interest on savings bank account ₹ 12,000].

Assessment of various entities

8. A business trust, registered under SEBI (Real Estate Investment Trusts) Regulations, 2014, gives particulars of its income for the P.Y.2015-16:

(1) Rental income from directly owned real estate assets – ₹ 4 crore

(2) Short-term capital gains on sale of listed shares of Lambda Ltd. – ₹ 2 crore;

(3) Dividend income from Lambda Ltd. – ₹ 3 crore;

(4) Interest income from Lambda Ltd. – ₹ 5 crore;

(5) Short-term capital gains on sale of developmental properties – ₹ 1 crore

(6) Interest received from investments in unlisted debentures of real estate companies – ₹ 20 lakh;

Lambda Ltd. is an Indian company in which the business trust holds controlling interest. The business trust holds 60% of the shareholding of Lambda Ltd.

Discuss the tax consequences of the above income earned by the business trust in the hands of the business trust and the unit holders, assuming that the business trust has distributed ₹ 14 crore to the unit holders in the P.Y.2015-16.

9. The net profit of Phi Ltd. as per profit and loss account for the previous year 2015-16 is ₹ 200 lakhs after debiting/crediting the following items:

(i) Provision for income-tax: ₹ 17 lakhs

(ii) Dividend Distribution tax: ₹ 3 lakhs

(iii) Securities transaction tax: ₹ 2 lakh

(iv) Transfer to General Reserve: ₹ 5 lakhs

(v) Provision for deferred tax: ₹ 12 lakhs

(vi) Proposed Dividend: ₹ 6 lakhs

(vii) Preference Dividend: ₹ 4 lakhs

(viii) Provision for permanent diminution in value of investments: ₹ 3 lakhs

(ix) Provision for gratuity based on actuarial valuation: ₹ 7 lakhs

(x) Depreciation debited to Profit & Loss Account is ₹ 22 lakhs. This includes depreciation on revaluation of assets to the tune of ₹ 6 lakhs.

(xi) Agricultural income: ₹ 4 lakhs (Expenditure to earn agricultural income : ₹ 1 lakh)

(xii) Long term capital gains exempt under section 10(38) : ₹ 7 lakhs (Expenditure to earn long-term capital gains : ₹ 1 lakh)

(xiii) Transfer from Special Reserve: ₹ 2 lakhs

(xiv) Transfer from Revaluation Reserve: ₹ 7 lakhs

Brought forward business losses and unabsorbed depreciation as per books of the company are as follows:

Previous year	Brought forward business loss (₹ in lakhs)	Unabsorbed Depreciation (₹ in lakhs)
2011-12	4	3
2012-13	3	-
2013-14	6	2

Compute the book profit of Phi Ltd. under section 115JB for the A.Y. 2016-17. Compute the tax liability of the company for the A.Y.2016-17, if the total income computed as per the provisions of the Income-tax Act, 1961 is ₹ 130 lakhs.

10. Rho Limited is an Indian company in which 55% of the shares are held by Zeta Limited. Rho Limited declared a dividend amounting to ₹ 42 lakhs to its shareholders for the financial year 2014-15 in its Annual General Meeting held on 7th June, 2015. Dividend distribution tax was paid by Rho Limited on 15st June, 2015. Zeta Limited declared an interim dividend amounting to ₹ 50 lakhs on 11th November, 2015

    Compute the amount of dividend distribution tax payable by Zeta Limited, an Indian company.

11. A partnership firm consisting of three partners Ravi, Rajan and Rahul is engaged in the business of manufacturing and selling water coolers.

    Turnover of the business for the year ended 31st March, 2016 amounts to ₹ 82 lakh. Bad debts written off in the books are ₹ 1,12,000. Interest at 12% is provided to partner Rahul on his capital of ₹ 7 lakh as authorized by the partnership deed.

    The firm had business loss of ₹ 90,000 and unabsorbed depreciation of ₹ 70,000 carried forward from Assessment Year 2015-16. The firm did not pay tax under presumptive tax system in assessment year 2015-16. The firm opts for presumptive taxation under section 44AD for Assessment Year 2016-17.

    (i) Compute the income of the firm chargeable under the head "Profits and gains of business or profession."

    (ii) What would be the liability for interest under sections 234B and 234C, if the firm has not paid any advance tax?

Taxation of non-residents

12. The details given hereunder relate to US citizens, Mr. Fredrick Trotiville (aged 28), a US football player and his sister, Ms. Susan Trotiville (aged 22), a singer, for the A.Y. 2016-17–

	Particulars	Mr. Fredrick Trotiville	Ms. Susan Trotiville
(1)	Participation in football tournaments in India	₹ 25 lakhs	
(2)	Winnings from lotteries in India (net)	₹ 69,100	

(3)	Contribution of an article relating to the sport of football in a sports magazine in India	₹ 21,000	
(4)	Performance in a music show in India		₹ 3 lakhs

With reference to the provisions of the Income-tax Act, 1961, you are required to –

(i) Compute the total tax liability of Mr. Frederick Trotiville and Ms. Susan Trotiville for the A.Y.2016-17, assuming that both of them are non-residents.

(ii) Discuss whether the above income are subject to deduction of tax at source.

(iii) Explain whether it is necessary for them to file their return of income for A.Y.2016-17.

Transfer Pricing

13. Discuss whether transfer pricing provisions under the Income-tax Act, 1961 are attracted in respect of the following cases -

(i) XY Ltd., an Indian company, has two units, X & Y. Unit X, which commenced business two years back, is engaged in the development of a highway project, for which purpose an agreement has been entered into with the Central Government. Unit Y is carrying on the business of trading in steel. Unit Y transfers steel of the value of ₹ 80 lakhs to Unit X for ₹ 68 lakhs.

(ii) Transfer of industrial design by X Ltd., an Indian company, to Y Inc., a US company, which guarantees 20% of the borrowings of X Ltd.

(iii) Marketing management services provided by LMN Inc., a French company to MNO Ltd., an Indian company. LMN Inc. is a "specified foreign company" as defined in section 115BBD, in relation to MNO Ltd.

(iv) Ms. Poorna, a resident Indian, is a director of ABC Ltd, an Indian company. ABC Ltd. pays salary of ₹ 22 lakhs per annum to Manasi, who is Ms. Poorna's daughter.

(v) Purchase of equipment by A Ltd., an Indian company, from B Inc., a Japanese company. A Ltd. is the subsidiary of B Inc.

Assessment Procedure

14. The assessment of CNK Associates, a partnership firm, for the assessment year 2013-14 was made under section 143(3) on 31st July, 2015. The Assessing Officer made an addition of ₹ 2 lakhs under section 40(a)(ia) due to short deduction of tax at source. He also made an addition of ₹ 5 lakhs on account of unexplained cash credit. The assessee contested addition on account of unexplained cash credit in appeal to the Commissioner (Appeals). The appeal was decided in January, 2016 against the assessee. Should the firm apply for revision to the Commissioner under section 264 or rectification to the Assessing Officer under section 154 with regard to disallowance under section 40(a)(ia)? Discuss.

15. Discuss the correctness or otherwise of the following statements with reference to the provisions of the Income-tax Act, 1961 –

    (i) The Assessing Officer has to obtain the sanction of the Joint Commissioner for issue of notice for reassessment of income under section 148, after the expiry of a period of four years from the end of the relevant assessment year.

    (ii) Mr. Ganesh, 61 years, who has stayed in India for 200 days during the P.Y.2015-16, is the beneficial owner of a house property in U.K., purchased in May, 2015. He has stayed in India for 200 days every year in each of the last ten previous years, preceding the P.Y.2015-16. He has to furnish his return of income for A.Y.2016-17 only if his total income exceeds ₹ 3,00,000.

Appeals and Revision

16. Discuss the correctness or otherwise of the following statements with reference to the provisions of the Income-tax Act, 1961:

    (i) An appeal before Income-tax Appellate Tribunal cannot be decided in the event of difference of opinion between the Judicial Member and the Accountant Member on any point.

    (ii) A High Court does not have an inherent power to review an earlier order passed by it on merits.

Settlement Commission

17. Upsilon Ltd. has received a notice under section 148 for the A.Y.2013-14 on 22-09-2016. It also anticipates similar notices for the Assessment Years 2011-12 and 2012-13, in respect of which it has already filed its return of income. While examining the books of account and other documents of the company, a large amount of concealed income has been noticed. Advise Upsilon Ltd. the proper course of action.

Penalties

18. Discuss the following issues in the context of the provisions of the Income-tax Act, 1961, with specific reference to clarification given by the Central Board of Direct Taxes along with the relevant legal decision followed -

    (i) Does the period of limitation for imposition of penalty under sections 271D and 271E commence when assessment order is passed by the Assessing Officer or when notice is issued by the Joint Commissioner?

    (ii) What is the period of limitation for imposition of penalty under sections 271D and 271E? Is it dependent on the pendency of appeal against the assessment or other order referred to in section 275(1)(a)?

Provisions for deduction and collection of tax at source

19. Fly High Ltd. has paid a sum of ₹ 20 lakhs during the year ended 31-3-2016 to Airports Authority of India towards landing and parking charges. The company has deducted tax at source@2% under section 194C on the said payment and remitted the tax deducted within the prescribed time. The Assessing Officer contended that landing and parking charges were levied for use of the land of the airport and hence, the payment was in the nature of rent attracting TDS@10% under section 194-I. Discuss the correctness or otherwise of the contention of the Assessing Officer.

20. Discuss the following issues in the context of the provisions of the Income-tax Act, 1961, with specific reference to clarification given by the Central Board of Direct Taxes -

    (i) Moon TV, a television channel, made payment of Rs.50 lakhs to a production house for production of programme for telecasting as per the specifications given by the channel. The copyright of the programme is also transferred to Moon TV. Would such payment be liable for tax deduction at source under section 194C? Discuss.

    Also, examine whether the provisions of tax deduction at source under section 194C would be attracted if the payment was made by Moon TV for acquisition of telecasting rights of the content already produced by the production house.

    (ii) Mudra Adco Ltd., an advertising company, has retained a sum of ₹ 15 lakhs, towards charges for procuring and canvassing advertisements, from payment of ₹ 1 crore due to Cloud TV, a television channel, and remitted the balance amount of ₹ 85 lakhs to the television channel. Would the provisions of tax deduction at source under section 194H be attracted on the sum of ₹ 15 lakhs retained by the advertising company?

SUGGESTED ANSWERS

1. As per section 5(2), the total income of a non-resident would include all income received or deemed to be received in India in the relevant previous year and all income which accrues or arises or is deemed to accrue or arise to him in India in that year.

Section 9(1)(v) lays down the circumstances under which the interest income is deemed to accrue or arise in India. Under section 9(1)(v), income by way of interest is deemed to accrue or arise in India, if it is payable by—

(a) the Government ; or

(b) a person who is a resident, except where the interest is payable in respect of any debt incurred, or moneys borrowed and used, for the purposes of a business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India ; or

(c) a person who is a non-resident, where the interest is payable in respect of any debt incurred, or moneys borrowed and used, for the purposes of a business or profession carried on by such person in India.

In order to provide clarity and certainty, on the issue of taxability of interest payable by the permanent establishment (PE) of a non-resident engaged in banking business to the head office, an *Explanation* has been inserted in section 9(1)(v). Accordingly, in the case of a non-resident, being a person engaged in the business of banking, any interest payable by the PE in India of such non-resident to the head office shall be deemed to accrue or arise in India. Such interest shall be chargeable to tax in addition to any income attributable to the PE in India.

Further, the PE in India shall be deemed to be a person separate and independent of the non-resident person of which it is a PE and the provisions of the Act relating to computation of total income, determination of tax and collection and recovery would apply accordingly.

Also, the PE in India has to deduct tax at source on any interest payable to either the head office outside India. Non-deduction would result in disallowance of interest claimed as expenditure by the PE and may also attract levy of interest and penalty in accordance with relevant provisions of the Act.

In this case, XYZ Bank Inc. is a non-resident engaged in banking business having a PE (i.e., a branch, XYZ Bank Ltd.) in India. Accordingly, any interest payable by the branch in India to the head office, XYZ Bank Inc. located outside India, shall be deemed to accrue or arise in India, in the hands of XYZ Bank Inc. Such interest shall be chargeable to tax in India in the hands of XYZ Bank Inc. in addition to any income attributable to the branch in India.

Further, the Indian branch, XYZ Bank Ltd., shall be deemed to be a person separate and independent of XYZ Bank Inc. of which it is a branch and the provisions of the Act relating to computation of total income, determination of tax and collection and recovery would apply accordingly.

Also, the Indian branch, XYZ Bank Ltd., has to deduct tax at source on any interest payable to its head office, XYZ Bank Inc. Non-deduction would result in disallowance of interest claimed as expenditure by XYZ Bank Ltd. and also attract levy of interest and penalty.

2. **(a)** Section 2(15) defines "charitable purpose" to include relief of the poor, education, yoga, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest and the advancement of any other object of general public utility.

However, the "advancement of any other object of general public utility" shall not be a charitable purpose, if the institution is carrying on any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to

any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income derived from such activity, unless –

(i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and

(ii) the aggregate receipts from such activity or activities during the previous year, do not exceed 20% of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year.

In this case, the main object of the institution is "advancement of any other object of general public utility". Since it derives income from an activity in the nature of trade during a financial year, it would lose its "charitable" status for that year, even if it applies such income for its main objects, unless -

(i) receipts from such activity does not exceed 20% of the total receipts in that year; and

(ii) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility.

In this case, the receipts from such activity are 30% of total receipts. Hence, the institution will lose its charitable status and will not get the benefit of tax exemption under section 11 or 12 in the P.Y.2015-16, even if it applies such receipts for its main object and irrespective of whether the registration issued is cancelled or not.

(b) Yoga has been specifically included in the definition of "charitable purpose" by the Finance Act, 2015 with effect from A.Y.2016-17. Hence, it would no longer fall under the residual clause "advancement of any other object of general public utility". Therefore, an institution having yoga as its main object would not be subject to the restrictions which are applicable to the residuary object "advancement of any other object of general public utility". Such institution would continue to retain its "charitable" status, even if it derives income from an activity in the nature of trade.

3. Computation of total income of Mr. Harish for A.Y.2016-17

Particulars	₹ (in lakhs)	
Profits and gains of business or profession		
Profits and gains from the specified business of setting up a warehousing facility for storage of food grains and sugar ***[See Working Note below]***		22.50
Profit from business of setting up of warehouse for storage of edible oil (before providing for depreciation under section 32)	30.00	
Less: Depreciation under section 32		
10% of ₹ 40 lakh, being (₹ 75 lakh – ₹ 45 lakh + ₹ 10 lakh)	4.00	26.00
Total Income		**48.50**

Computation of tax liability for A.Y.2016-17

Particulars		₹ in lakhs
Tax liability under the normal provisions of the Income-tax Act, 1961 [30% of ₹ 38.50 lakhs (₹ 48.50 lakhs – ₹ 10 lakhs) + ₹ 1.25 lakhs]		12.80
Add: Education cess and SHEC@3%		0.38
Total tax liability		**13.18**
Adjusted Total Income	**₹ in lakhs**	
Total Income		48.50
Add: Deduction under section 35AD **[See Working Note below]**	162.50	
Less: Depreciation under section 32 [10% of ₹ 125 lakh]	12.50	150.00
Adjusted Total Income		**198.50**
AMT@18.5%		36.72
Add: Surcharge@12%		4.41
		41.13
Add: Education cess and SHEC@3%		1.23
Tax liability under section 115JC		**42.36**
Since the regular income-tax payable is less than the AMT payable, the adjusted total income of ₹ 198.50 lakhs shall be deemed to be the total income of Mr. Harish and tax is payable@18.5% thereof *plus* surcharge@12% (since adjusted total income exceeds ₹ 1 crore) *plus* cess@3%. Therefore, the tax liability is ₹ 42.36 lakhs.		
AMT Credit to be carried forward under section 115JD		
Tax liability under section 115JC		42.36
Less: Tax liability under the regular provisions of the Income-tax Act, 1961		13.18
		29.18

Working Note:

Computation of income from specified business under section 35AD

	Particulars	Food Grains	Sugar	Total
		₹ (in lakhs)		
(A)	Profits from the specified business of setting up a warehousing facility (before providing deduction under section 35AD)	125.00	60.00	185.00

	***Less*: Deduction under section 35AD**			
(B)	Capital expenditure incurred prior to 1.4.2015 (i.e., prior to commencement of business) and capitalized in the books of account as on 1.4.2015 (excluding the expenditure incurred on acquisition of land) = ₹ 45 lakh (₹ 120 lakh – ₹ 75 lakh) and ₹ 30 lakh (₹ 90 lakh – ₹ 60 lakh)	45.00	30.00	75.00
(C)	Capital expenditure incurred during the P.Y.2015-16	30.00	20.00	50.00
(D)	**Total capital expenditure (B + C)**	**75.00**	**50.00**	**125.00**
(E)	**Deduction under section 35AD**			
	150% of capital expenditure (food grains)	112.50		112.50
	100% of capital expenditure (sugar)		50.00	50.00
	Total deduction u/s 35AD for A.Y.2016-17	**112.50**	**50.00**	**162.50**
(F)	Profits from specified business of setting up and operating a warehousing facility for storage of food gains and sugar (A-E)	12.50	10.00	**22.50**

Notes:

(i) Weighted deduction@150% of the capital expenditure is available under section 35AD for A.Y.2016-17 in respect of specified business of setting up and operating a warehousing facility for storage of agricultural produce which commences operation on or after 01.04.2012. Food grains constitute agricultural produce and therefore, the capital expenditure incurred for setting up a warehousing facility for storage of food grains is eligible for weighted deduction@150% under section 35AD.

(ii) Deduction of 100% of the capital expenditure is available under section 35AD for A.Y.2016-17 in respect of specified business of setting up and operating a warehousing facility for storage of sugar, where operations are commenced on or after 01.04.2012.

(iii) However, since setting up and operating a warehousing facility for storage of edible oil is not a specified business, Mr. Harish is not eligible for deduction under section 35AD in respect of capital expenditure incurred for such business.

(iv) Mr. Harish can, however, claim depreciation@10% under section 32 in respect of the capital expenditure incurred on buildings. It is presumed that the buildings were put to use for more than 180 days during the P.Y.2015-16.

4. (i) Tax consequences in the hands of Aroma Ltd. for the A.Y. 2016-17

Particulars	Amount taxable in ₹
₹ 5,00,000 being the amount withdrawn from Tea Development Account has to be utilized in the prescribed manner, otherwise, the withdrawn amount would be chargeable to tax as business income. In the given case, the taxability of withdrawal amount based on their utilization is as follows:	
- ₹ 3,00,000, out of the amount withdrawn from the deposit account, utilised for purchase of non-depreciable asset as per the specified scheme. [As per section 33AB(6), no deduction would be allowed under section 33AB since amount is spent out of ₹ 5,50,000 deposited in Tea Development Account, which has already been allowed as deduction in A.Y.2015-16 **(See Working Note below)**].	Not taxable
- ₹ 1,50,000, being the amount utilized for purchase of computers to be installed in the office premises is not a permissible utilization. Hence, the amount would be deemed as profits and gains of business of the previous year 2015-16 as per section 33AB(4).	1,50,000
- ₹ 50,000 was spent for the purpose of scheme on 22.04.2016. As per section 33AB(7), this amount would be taxable since the same is not utilized during the same previous year (i.e., P.Y. 2015-16) in which the amount is withdrawn from the deposit account.	50,000
The entire amount of ₹ 5 lakh (forming part of ₹ 5.50 lakh deposited in Tea Development Account) was deducted in the assessment year 2015-16 before segregation of agricultural and non-agricultural income **(See Working Note below)**. Therefore, when any part of such amount becomes taxable, the agricultural and non-agricultural portions of income must be segregated. Accordingly, ₹ 80,000, being 40% of ₹ 2,00,000 (₹ 1,50,000 + ₹ 50,000) would be chargeable to tax as business income and the balance ₹ 1,20,000, being 60% of ₹ 2,00,000 would be agricultural income exempt from tax.	

Working Note:

Computation of Business Income of Aroma Ltd. for the A.Y. 2015-16

Particulars	₹
Composite business profits before allowing deduction under section 33AB	30,00,000
Less: Deduction under section 33AB(1) would be the lower of:	

- Amount deposited in Tea Development Account on or before 30.9.2015 [i.e., ₹ 5,50,000]	
- 40% of profits of such business [i.e., ₹ 12,00,000, being 40% of ₹ 30,00,000]	5,50,000
	24,50,000
Less: 60% of ₹ 24,50,000, being agricultural income [as per Rule 8]	14,70,000
Business income chargeable to tax	**9,80,000**

(ii) Consequences, if asset purchased out of deposit account is sold during the previous year 2016-17

As per section 33AB(8), if the asset is sold before the expiry of eight years from the end of the previous year in which it was acquired, then, the cost of such asset shall be deemed to be the profits and gains from business or profession of the previous year in which the asset is sold.

Therefore, ₹ 3,00,000 would be deemed to be the business income (composite) for the A.Y.2017-18. However, since the full cost of the asset was deducted in the assessment year 2015-16 (being part of ₹ 5,50,000 deposited in Tea Development Account) before segregation of agricultural income and non-agricultural income, the agricultural and non-agricultural portions of income should be segregated in the year in which such amount becomes taxable on account of sale of asset before the expiry of eight years. Therefore, ₹ 1,80,000, being 60% of ₹ 3,00,000 would represent agricultural income. The balance ₹ 1,20,000 being 40% of ₹ 3,00,000 would be chargeable to tax as business income.

Moreover, the difference between the sale consideration and purchase price of the asset would be chargeable to tax as "Short term capital gains", which is computed as follows:

Sales consideration	4,00,000
Less: Cost of acquisition	3,00,000
Short term capital gain	**1,00,000**

5. Computation of capital gain on slump sale of Unit Omega under section 50B

Particulars	₹ (in lakhs)
Sale consideration for the slump sale of Unit Omega	440
Less: Net worth of Unit Omega *(Refer Note 1 below)*	385
Long term capital gain arising on slump sale	**55**

Computation of tax liability of Beta Ltd. on slump sale of Unit Omega

Particulars	₹ (in lakhs)
Tax on capital gains@20%	11.00
Add: Education cess@2% and Secondary and higher education cess@1%	0.33
Total tax liability on capital gain arising on slump sale of Unit Omega	**11.33**

Notes:

(1) The net worth of an undertaking transferred by way of slump sale shall be deemed to be the cost of acquisition and cost of improvement for the purposes of section 48 and 49 [Section 50B(2)].

Computation of net worth of Unit Omega

Particulars	₹ (in lakhs)
(A) Book value of non-depreciable assets:	
(i) Land (Revaluation is to be ignored for computing net worth)	30
(ii) Other assets	195
(B) Written down value of depreciable assets under section 43(6)	205
Aggregate value of total assets	430
Less: Value of liabilities of Unit Omega	45
Net worth of Unit Omega	**385**

(2) Since Unit Omega is held for more than 36 months, the capital gains of ₹ 55 lacs arising on transfer of such unit would be a long term capital gain taxable under section 112. However, indexation benefit is not available in the case of a slump sale.

6. As per section 64(1)(iv), in computing the total income of any individual, there shall be included all such income as arises, directly or indirectly, subject to the provisions of section 27(i), to the spouse of such individual from assets transferred directly or indirectly to the spouse by such individual otherwise than for adequate consideration or in connection with an agreement to live apart.

In this instant case, Mr. Sriram has gifted money to his wife, Mrs. Sharadha. Mrs. Sharadha, in turn, invested such gifted money in the capital of a partnership firm, of which she is a partner. Mrs. Sharadha has also contributed a sum of ₹ 6 lakhs out of her own resources to the capital of the firm.

As per *Explanation 3* to section 64(1), for the purpose of clubbing under section 64(1)(iv), where the assets transferred, directly or indirectly, by an individual to his spouse are

invested by the transferee-spouse in the nature of contribution of capital as a partner in a firm, proportionate interest on capital will be clubbed with the income of the transferor-spouse. Such proportion has to be computed by taking into account the value of the aforesaid investment **as on the first day of the previous year** to the total investment by way of capital contribution as a partner in the firm as on that day.

In view of the above provision, interest received by Mrs. Sharadha from the firm shall be included in total income of Mr. Sriram to the extent of ₹ 40,000 i.e., ₹ 1,00,000 x ₹ 4,00,000/ ₹ 10,00,000.

Share of profit amounting to ₹ 1,20,000 is exempt from income-tax under the provisions of section 10(2A). The provisions of section 64 will not apply, if the income from the transferred asset itself is exempt from tax.

Note: It is assumed that rate of interest on capital contributed by Mrs. Sharadha does not exceed 12% p.a.

7. (i) Computation of total income of Mr. Bhuvan for the A.Y. 2016-17

Particulars	₹
Salaries (Computed)	19,88,000
Income from other sources [Interest on savings bank account]	12,000
Gross Total Income	**20,00,000**
Less: Deduction under Chapter VIA **[See Working Note below]**	4,90,000
Total Income	**15,10,000**

Working Note:

Deduction available to Mr. Bhuvan under Chapter VI-A for A.Y.2016-17

Section	Particulars	₹	₹
80C	Deposit in public provident fund	1,35,000	
	Life insurance premium paid ₹ 25,000 (deduction restricted to ₹ 20,000, being 10% of ₹ 2,00,000, being sum assured, since the policy was taken after 31.3.2012)	20,000	
	Five year term deposit with bank	50,000	
		2,05,000	
	Restricted to		1,50,000
80CCD(1)	Contribution to NPS of the Central Government, ₹ 1,75,000 [₹ 2,25,000 – ₹ 50,000, being deduction under section 80CCD(1B)], restricted to 10% of salary [₹ 2,25,000 x 10/15] **[See Note 1]**		1,50,000
			3,00,000

80CCE	Aggregate deduction under sections 80C and 80CCD(1), ₹ 3,00,000, but restricted to		1,50,000
80CCD(1B)	₹ 50,000 would be eligible for deduction in respect of contribution to NPS of the Central Government		50,000
80CCD(2)	Employer contribution to NPS, restricted to 10% of salary **[See Note 2]** [₹ 2,25,000 × 10/15]		1,50,000
80D	Medical insurance premium of self and spouse ₹ 27,000, restricted to	25,000	
	Mediclaim premium of mother, being a senior citizen 23,000		
	Medical expenses of father, being a very senior citizen 28,000		
	51,000		
	Restricted to	30,000	55,000
80G	Contribution to Clean Ganga Fund (100% deduction without qualifying limit)	50,000	
	Contribution to Swachh Bharat Kosh (100% deduction without qualifying limit)	25,000	75,000
80TTA	Interest on savings bank account ₹ 12,000, restricted to		10,000
Deduction under Chapter VI-A			**4,90,000**

Notes:

(1) The deduction under section 80CCD(1B) would not be subject to overall limit of ₹ 1.50 lakh under section 80CCE. Therefore, it is more beneficial for Mr. Bhuvan to claim deduction of ₹ 50,000 under section 80CCD(1B) first in respect of contribution to NPS. Thereafter, the remaining amount of ₹ 1,75,000 can be claimed as deduction under section 80CCD(1), subject to a maximum of 10% of salary.

(2) The entire employer's contribution to notified pension scheme has to be first included under the head "Salaries" while computing gross total income and thereafter, deduction under section 80CCD(2) would be allowed, subject to a maximum of 10% of salary.

(3) Under section 80D, deduction for medical insurance premium paid for self and spouse is restricted to a maximum of ₹ 25,000. Further, medical insurance premium paid for mother, who is a resident senior citizen, and medical expenses incurred for father, who is a resident and very senior citizen, in respect of whom no mediclaim policy has been taken, would be restricted to ₹ 30,000.

(4) Contribution to Clean Ganga Fund and Swachh Bharat Kosh would qualify for 100% deduction under section 80G with effect from A.Y.2016-17.

(5) Though income computed under the head "Salaries" is ₹ 19,88,000 (which includes all taxable allowances and perquisites), but for computation of deduction under section 80CCD, salary only includes dearness allowance, if the terms of employment so provide. It excludes all other allowances and perquisites. In this case, "salary" for the purpose of computation of deduction under section 80CCD would be ₹ 15,00,000 [i.e., ₹2,25,000/15%].

8. Tax consequences in the hands of the business trust and its unit holders

(1) **Rental income of ₹ 4 crore from directly owned real estate assets:** Any income of a business trust, being a REIT, by way of renting or leasing or letting out any real estate asset owned directly by such business trust is exempt in the hands of the trust as per section 10(23FCA).

Where the income by way of rent is credited or paid to a business trust, being a REIT, in respect of any real estate asset held directly by such REIT, no tax is deductible at source under section 194-I.

The distributed income or any part thereof, received by a unit holder from the REIT, which is in the nature of income by way of renting or leasing or letting out any real estate asset owned directly by such REIT is deemed income of the unit holder as per section 115UA(3).

The rental component of income received from REIT in the hands of each unit-holder would be determined in the proportion of 4/15.2, by virtue of section 115UA(1).

The business trust has to deduct tax at source@10% under section 194LBA in case of distribution to a resident unit holder and at rates in force in case of distribution to a non-resident unit holder.

(2) **Short-term capital gains of ₹ 2 crore on sale of listed shares of Lambda Ltd.:** As per section 115UA(2), the business trust is liable to pay tax@15% under section 111A in respect of short-term capital gains on sale of listed shares of Lambda Ltd., being a special purpose vehicle.

Any distributed income referred to in section 115UA, to the extent it does not comprise of interest referred to in section 10(23FC) and rental income referred to in section 10(23FCA) received by unit holders, is exempt in their hands under section 10(23FD).

Therefore, by virtue of the exemption contained in section 10(23FD), there would be no tax liability on the capital gain component of income distributed to unit holders,.

(3) **Dividend income of ₹ 3 crore from Lambda Ltd.:** There would be no tax liability in the hands of the business trust since dividend is subject to dividend distribution

tax under section 115-O in the hands of Lambda Ltd; Hence, the dividend income is exempt under section 10(34) in the hands of the business trust.

Further, by virtue of section 10(23FD), there would be no tax liability on the dividend component of income distributed to unit holders in their hands.

(4) **Interest income of ₹ 5 crore from Lambda Ltd.:** There would be no tax liability in the hands of business trust due to pass-through status enjoyed by it under section 10(23FC) in respect of interest income from Lambda Ltd., being the special purpose vehicle. Therefore, Lambda Ltd. is not required to deduct tax at source on interest payment to the business trust.

However, the business trust has to deduct tax at source under section 194LBA –

- @10%, on interest component of income distributed to resident unit holders; and
- @5%, on interest component of income distributed to non-corporate non-resident unit holders and foreign companies.

Interest component of income distributed to unit holders is taxable in the hands of the unit holders – @5%, in case of unit holders, being non-corporate non-residents or foreign companies; and at normal rates of tax, in case of resident unit holders.

The interest component of income received from the business trust in the hands of each unit-holder would be determined in the proportion of 5/15.2, by virtue of section 115UA(1).

(5) **Short-term capital gains of ₹ 1 crore on sale of developmental properties:** It is taxable at maximum marginal rate of 34.608% in the hands of the business trust as per section 115UA(2). There would be no tax liability in the hands of the unit holders on the capital gain component of income distributed to them, by virtue of the exemption contained in section 10(23FD).

(6) **Interest of ₹ 20 lakh received in respect of investment in unlisted debentures of real estate companies:** Such interest is taxable@34.608%, being the maximum marginal rate, in the hands of the business trust, as per section 115UA(2). However, there would be no tax liability in the hands of the unit holders on the interest component of income distributed to them, by virtue of section 10(23FD).

Notes:

(1) New Chapter XII-FA, containing the special provisions relating to business trusts, has been inserted w.e.f. A.Y.2015-16. Section 115UA(1) provides that any income distributed by a business trust to its unit holders shall be deemed to be of the same nature and in the same proportion in the hands of the unit holder, as it had been received by, or accrued to the business trust.

(2) Section 10(23FC) exempts any income of a business trust by way of interest received or receivable from a Special Purpose Vehicle (SPV). Section 10(23FCA)

exempts any income of a business trust being a REIT, by way of renting any real estate asset directly owned by it. Thus, the business trust enjoys a pass-through status in respect of interest received or receivable from a SPV and rental income from real estate asset owned directly by it.

(3) SPV means any company or LLP in which the business trust holds controlling interest and any specified percentage of shareholding or interest, as may be required by the regulations under which such trust is granted registration [not less than 50% as per the current SEBI (Real Estate Investment Trusts) Regulations, 2014]. Since Lambda Ltd. is an Indian company in which the business trust holds controlling interest and 60% of shareholding, it is a special purpose vehicle. It is presumed that Lambda Ltd. fulfills the other conditions specified in the regulations to qualify as an SPV.

(4) The distributed income of the business trust, to the extent it comprises of interest referred to in section 10(23FC) and rental income referred to in section 10(23FCA), is deemed to be the income of the unit holder in the previous year of distribution and subject to tax in the hands of the unit holder in that year. Accordingly, the business trust is required to deduct tax at source on the interest component and rental component of income distributed to its unit holders.

(5) Any distributed income referred to in section 115UA, to the extent it does not comprise of interest referred to in section 10(23FC) and rental income referred to in section 10(23FCA), received by unit holders is exempt in their hands under section 10(23FD).

(6) Section 115UA(2) provides that subject to the provisions of sections 111A and 112, the total income of a business trust shall be chargeable to tax at the maximum marginal rate.

9. Computation of Book Profit of Phi Ltd. under section 115JB for A.Y.2016-17

Particulars		₹	₹
Net Profit as per Profit & Loss Account			2,00,00,000
Add: **Net Profit to be increased by the following amounts as per Explanation 1 to section 115JB**			
Income-tax paid or payable or provision therefor			
Provision for income-tax	₹ 17,00,000		
Dividend distribution tax	₹ 3,00,000	20,00,000	
Provision for deferred tax		12,00,000	
Transfer to General Reserve		5,00,000	
Provision for diminution in the value of investment		3,00,000	
Dividend paid or proposed			
Proposed dividend	6,00,000		

Preference dividend	4,00,000	10,00,000	
Expenditure to earn income exempt u/s 10 [except section 10(38)]			
Expenditure to earn agricultural income [Exempt u/s 10(1)]		1,00,000	
Depreciation		22,00,000	73,00,000
			2,73,00,000
Less: **Net Profit to be reduced by the following amounts as per Explanation 1 to section 115JB**			
Amount credited to profit and loss account from Special Reserve		2,00,000	
Depreciation (excluding depreciation on account of revaluation of fixed assets) (i.e., ₹ 22,00,000 – ₹ 6,00,000)		16,00,000	
Amount credited to profit and loss account from revaluation reserve (to the extent of depreciation on revaluation)		6,00,000	
Brought forward business loss or unabsorbed deprecation as per books of account, whichever is less taken on cumulative basis		5,00,000	
Income exempt u/s 10 [except section 10(38)]			
Agricultural Income [since it is exempt under section 10(1)]		4,00,000	33,00,000
Book Profit			**2,40,00,000**
Computation of tax liability of Phi Ltd. for A.Y.2016-17			
18.5% of book profit			44,40,000
Add: Surcharge@7% (since total income > ₹ 1 crore but less than ₹ 10 crore)			3,10,800
			47,50,800
Add: Education cess @ 2%		95,016	
Secondary and higher education cess @ 1%		47,508	1,42,524
Tax liability on book profit under section 115JB			**48,93,324**
Total income computed as per the provisions of the Income-tax Act, 1961		**1,30,00,000**	
Tax payable @ 30%			39,00,000
Add: Surcharge@7%			2,73,000
			41,73,000
Add: Education cess @ 2%		83,460	
Secondary and higher education cess @ 1%		41,730	1,25,190
Tax Payable as per the Income-tax Act, 1961			**42,98,190**

In case of a company, it has been provided that where income-tax payable on total income computed as per the provisions of the Act is less than 18.5% of book profit, the book profit shall be deemed as the total income and the tax payable on such total income shall be 18.5% thereof *plus* surcharge, if applicable, *plus* education cess @2% and secondary and higher education cess @1%. Accordingly, in this case, since income-tax payable on total income computed as per the provisions of the Act is less than 18.5% of book profit, the book profit of ₹ 2,40,00,000 is deemed to be the total income and income-tax is payable @ 18.5% thereof *plus* surcharge@7% *plus* education cess @2% and secondary and higher education cess @1%. The tax liability, therefore, works out to ₹ 48,93,324.

Section 115JAA provides that where tax is paid in any assessment year in relation to the deemed income under section 115JB(1), the excess of tax so paid, over and above the tax payable under the other provisions of the Income-tax Act, 1961, will be allowed as tax credit in the subsequent years. The tax credit is, therefore, the difference between the tax paid under section 115JB(1) and the tax payable on the total income computed in accordance with the other provisions of the Act.

Particulars	₹
Tax on book profit under section 115JB	48,93,324
Less: Tax on total income computed as per the other provisions of the Act	42,98,190
Tax credit to be carried forward	**5,95,134**

This tax credit is allowed to be carried forward for ten assessment years succeeding the assessment year in which the credit became allowable. Such credit is allowed to be set off against the tax payable on the total income in an assessment year in which the tax is computed in accordance with the provisions of the Act, other than section 115JB, to the extent of excess of such tax payable over the tax payable on book profits in that year.

Notes:

(1) Securities transaction tax does not form part of income-tax and hence, should not be added back to net profit for computing book profit.

(2) Provision for gratuity based on actuarial valuation is a provision for meeting an ascertained liability. Therefore, it should not be added back for computing book profit.

(3) Long-term capital gains on sale of equity shares through a recognized stock exchange on which securities transaction tax (STT) is paid is exempt under section 10(38). One of the adjustments to the book profit is that exempt income under section 10, which is credited to profit and loss account, would be deducted in arriving at the book profit. However, deduction of such long-term capital gains is not allowed for computing book profit. Consequently, expenditure to earn such income should not be added back to arrive at the book profit. Section 10(38) also provides that such long term capital gain of a company shall be taken into account in computing the book profit and income-tax payable under section 115JB.

10. As per section 115-O, dividend distribution tax at the rate of 17.304% (i.e., 15% plus surcharge @12%, education cess@2% and secondary and higher education cess@1%) is leviable on dividend declared, distributed or paid by a domestic company. As per section 115-O(1A), a holding company receiving dividend from its domestic subsidiary company can reduce the same from dividend declared, distributed or paid by it. The dividend from its domestic subsidiary company should be received in the same financial year in which the holding company declares, distributes or pays the dividend. Further, the dividend shall not be considered for reduction more than once.

The conditions to be fulfilled for this purpose are as follows:

(1) The domestic subsidiary company should have paid the dividend distribution tax which is payable on such dividend;

(2) The recipient holding company should be a domestic company;

For this purpose, a holding company is a company which holds more than 50% of the nominal value of equity shares of another company.

Section 115-O(1B) provides that for the purposes of determining the tax on distributed profits payable in accordance with section 115-O, any amount by way of dividends referred to in section 115-O(1), as reduced by the amount referred to in section 115-O(1A) [referred to as net distributed profits], shall be increased to such amount as would, after reduction of the tax on such increased amount at the rate specified in section 115-O(1), be equal to the net distributed profits.

On the basis of the aforesaid provisions, dividend distribution tax payable by Zeta Limited shall be computed as follows:

Particulars	₹ in lakh
Dividend distributed by Zeta Ltd.	50.00
Less: Dividend received from subsidiary Rho Ltd. (55% of ₹ 42 lacs)	23.10
Net distributed profits	**26.90**
Add: Increase for the purpose of grossing up of dividend 26.90 × 15/85	4.75
Gross dividend	**31.65**
Additional income-tax payable by Zeta Ltd. u/s 115-O [15% of ₹ 31.65 lakh]	4.75
Add: Surcharge@12%	0.57
	5.32
Add: Education cess@2% and SHEC@1%	0.16
	5.48

In case any domestic company (Zeta Ltd., in this case) receives any dividend during the year from any subsidiary company (Rho Ltd., in this case) and such subsidiary company (Rho Ltd.) has paid the DDT as payable on such dividend, then, dividend distributed by

the holding company (Zeta Ltd.) in the same year to the extent of dividend received from the subsidiary (Rho Ltd.), shall not be subject to DDT under section 115-O.

Therefore, Zeta Ltd. can reduce the amount of dividend received from Rho Ltd. for computation of dividend distribution tax. Therefore, dividend distribution tax payable by Zeta Ltd. shall be 17.304% of ₹ 31.65 lakhs (grossed up amount) i.e. ₹ 5.48 lakhs.

11. (i) Computation of income of the firm chargeable under the head "Profits and Gains of business or profession"

Particulars	₹
Presumptive income under section 44AD (8% of ₹ 82 lakh) **[See Note 1]**	6,56,000
Less: Interest @ 12% to Rahul(12% of ₹ 7 lakh) **[See Note 3]**	84,000
	5,72,000
Less: Brought forward business loss under section 72 **[See Note 4]**	90,000
Income of the firm chargeable under the head **"Profits and Gains of business or profession"**	**4,82,000**

Notes:-

(1) A partnership firm falls within the definition of "eligible assessee" under section 44AD. The threshold limit of turnover for applicability of presumptive taxation scheme under section 44AD is ₹ 100 lakh (i.e., the turnover should not exceed ₹ 100 lakh). In this case, since the turnover of the business of the firm is ₹ 82 lakh, it falls within the definition of "eligible business" and therefore, the firm is eligible to opt for presumptive taxation under section 44AD. 8% of the total turnover would be deemed to be the business income of the firm.

(2) As per section 44AD(2), all deductions allowable under sections 30 to 38 shall be deemed to have been allowed in full and no further deduction shall be allowed.

Accordingly, no deduction shall be allowed for bad debts since the same is deductible under section 36(1)(vii); Similarly, no deduction shall be allowed for unabsorbed depreciation since the same is deductible under section 32(2).

(3) However, where the "eligible assessee" is a firm, salary and interest would be allowed as deduction subject to the conditions and limits prescribed under section 40(b). Therefore, interest@12% to partner Rahul, which is authorized by the partnership deed, is allowable as deduction.

(4) Further, business loss of previous year 2014-15 can be set-off against current year business income as per section 72.

(ii) As per section 44AD(4), the provisions of Chapter XVII-C would not apply to an eligible assessee in so far as they relate to the eligible business. Therefore, an assessee opting for presumptive taxation scheme under section 44AD is relieved from

the requirement of advance tax payments. It would be a sufficient compliance if self assessment tax is paid while filing its return of income on or before the 'due date'.

Therefore, in this case, the firm is not required to make advance tax payments. Accordingly, there would be no liability for interest under sections 234B and 234C.

12. (i) Computation of tax liability of Mr. Frederick Trotiville for the A.Y.2016-17

Particulars	₹	₹
Income taxable under section 115BBA		
Income from participation in football tournaments in India	25,00,000	
Contribution of article in a magazine in India	21,000	
	25,21,000	
Tax@20% under section 115BBA on ₹ 25,21,000		5,04,200
Tax@30% under section 115BB on income of ₹ 1,00,000 (₹ 69,100 + ₹ 30,900) by way of winnings from lotteries		30,000
		5,34,200
Add: Education cess@2% and Secondary and higher education cess @1%		16,026
Total tax liability of Mr. Frederick Trotiville		**5,50,226**

Ms. Susan Trotiville is a non-resident entertainer, whose income of ₹ 3 lakh from a music show in India is taxable@20% under section 115BBA. Therefore, her total tax liability is ₹ 61,800 (being 20% of ₹ 3 lakhs plus education cess@2% and secondary and higher education cess@1%).

(ii) Yes, the above income are subject to deduction of tax at source.

Income referred to in section 115BBA is subject to deduction of tax at source@20% under section 194E.

Income referred to in section 115BB (i.e., winnings from lotteries) is subject to deduction of tax at source@30% under section 194B.

Since Mr. Frederick Trotiville and Ms. Susan Trotiville are non-residents, the amount of tax to be deducted calculated at the prescribed rates mentioned above, would be increased by education cess@2% and secondary and higher education cess@1%.

If tax has been so deducted under section 194E and 194B, then the net tax liability would be Nil for both Mr. Frederick Trotiville and Ms. Susan Trotiville.

(iii) Section 115BBA provides that if the total income of the non-resident sportsman or non-resident entertainer comprises of only income referred to in that section and tax deductible at source has been fully deducted, it shall not be necessary for him to file his return of income.

In this case, although Mr. Frederick Trotiville is a non-resident sportsman, he has winnings from lotteries as well. Therefore, he cannot avail the benefit of exemption from filing of return of income as contained in section 115BBA. Hence, he has to file his return of income for A.Y.2016-17.

However, since Ms. Susan Trotiville's income comprises of only income referred to in section 115BBA, in respect of which tax is deductible under section 194E, she need not file his return of income for A.Y.2016-17, if tax has been so deducted.

13. (i) Unit X is eligible for deduction@100% of the profits derived from its eligible business (i.e., the business of developing an infrastructure facility, namely, a highway project in this case) under section 80-IA. However, Unit Y is not engaged in any "eligible business". Since Unit Y has transferred steel to Unit X at a price lower than the fair market value, it is an inter-Unit transfer of goods between eligible business and other business, where the consideration for transfer does not correspond with the market value of goods. Therefore, this transaction would fall within the meaning of "specified domestic transaction" to attract transfer pricing provisions, if the aggregate value of transactions specified in section 92BA during the year exceeds a sum of ₹ 20 crore.

(ii) The scope of the term "intangible property" has been amplified to include, *inter alia*, industrial design, which is a engineering related intangible asset. Transfer of intangible property falls within the scope of the term "international transaction". Since Y Inc., a US company, guarantees not less than 10% of the borrowings of X Ltd., an Indian company, Y Inc. and X Ltd. are deemed to be associated enterprises under section 92A(2). Therefore, since transfer of industrial design by X Ltd., an Indian company, to Y Inc., a US company, is an international transaction between associated enterprises, the provisions of transfer pricing are attracted in this case.

(iii) Clause (i) of *Explanation* to section 92B amplifies the scope of the term "international transaction". According to the said *Explanation*, international transaction includes, *inter alia*, provision of marketing management services. LMN Inc. is a specified foreign company in relation to MNO Ltd. Therefore, the condition of MNO Ltd. holding shares carrying not less than 26% of the voting power in LMN Inc is satisfied. Hence, LMN Inc. and MNO Ltd. are deemed to be associated enterprises under section 92A(2). Since the provision of marketing management services by LMN Inc. to MNO Ltd. is an "international transaction" between associated enterprises, transfer pricing provisions are attracted in this case.

(iv) This transaction falls within the meaning of "specified domestic transaction" under section 92BA, since the salary payment has been made to a related person referred

to in section 40A(2)(b) i.e., relative (i.e., daughter) of Ms. Poorna, who is a director of ABC Ltd. However, such a transaction would be treated as a "specified domestic transaction" to attract transfer pricing provisions only if the aggregate of such transactions as specified in section 92BA during the year by ABC Ltd. exceeds a sum of ₹ 20 crore.

(v) Purchase of tangible property falls within the scope of "international transaction". Tangible property includes equipment. B Inc. and A Ltd. are deemed to be associated enterprises under section 92A(2), since B Inc., being a holding company of A Ltd., fulfils the condition of holding shares carrying not less than 26% of the voting power in A Ltd. Therefore, purchase of equipment by A Ltd., an Indian company, from B Inc., a Japanese company, is an international transaction between associated enterprises, and consequently, the provisions of transfer pricing are attracted in this case.

14. The Commissioner cannot exercise his power of revision under section 264 where the order sought to be revised has been made the subject of an appeal to the Commissioner (Appeals) or to the Appellate Tribunal [Section 264(4)], even if the relief claimed in the revision is different from the relief claimed in the appeal. This was the view of the Supreme Court in the case of *Hindustan Aeronautics Limited vs. CIT (2000) 243 ITR 808* (SC). It is not open to the assessee to seek recourse to revision under section 264 after the appeal is decided. Therefore, although the matter of addition of ₹ 2 lakhs under section 40(a)(ia) was not taken before the Commissioner (Appeals), the assessee, CNK Associates cannot apply for revision under section 264 in respect of the same.

Under section 154(1A), where any matter had been considered and decided in any proceeding by way of appeal or revision, rectification of such matter cannot be done by the Assessing Officer. However, in respect of the matter which has not been considered and decided in the appeal or revision, the order of the Assessing Officer can be rectified under section 154. Thus, the assessee can apply to the Assessing Officer for rectification of the order in respect of addition under section 40(a)(ia), as this matter has not been considered and decided in any proceeding by way of appeal or revision.

In view of above, the assessee, CNK Associates should seek rectification under section 154.

15. (i) The statement is *not* correct.

As per section 151(1), the Assessing Officer has to obtain the prior sanction of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner for issue of notice for reassessment of income under section 148 after the expiry of a period of four years from the end of the relevant assessment year.

Only in a case where notice is issued within four years from the end of the relevant assessment year, the Assessing Officer has to obtain the prior sanction of the Joint Commissioner.

(ii) The statement is *not* correct.

Since Mr. Ganesh has stayed in India for 182 days or more during the P.Y.2015-16, he is a resident for the A.Y.2016-17. Further, since has stayed in India for more than 729 days in the last seven previous years and is resident in India in each of the last ten previous years, on account of his stay in India being 182 days or more in each year, he is a resident and ordinarily resident for the A.Y.2016-17.

As Mr. Ganesh is the beneficial owner of house property purchased outside India in the P.Y.2015-16, he has to compulsorily file his return of income in the prescribed form and manner for A.Y.2016-17, whether or not his total income exceeds the basic exemption limit in that year.

16. (i) The statement is *not* correct.

As per the provisions of section 255(4), in the event of difference in opinion between the members of the Bench of the Income-tax Appellate Tribunal on any point, the point shall be decided on the basis of the opinion of the majority of the members. In case the members are equally divided, they shall state the point or points of difference and the case shall be referred by the President of the Tribunal for hearing on such point(s) by one or more of the other members of the Tribunal. Such point or points shall be decided according to the opinion of majority of the members of the Tribunal who have heard the case, including those who first heard it.

(ii) The statement given is *not* correct.

The Supreme Court, in *CIT v. Meghalaya Steels Ltd. (2015) 377 ITR 112*, observed that the power of review would inhere on High Courts, being courts of record under article 215 of the Constitution of India. There is nothing in article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. The Supreme Court further observed that section 260A(7) does not purport in any manner to curtail or restrict the application of the provisions of the Code of Civil Procedure. Section 260A(7) only states that all the provisions that would apply qua appeals in the Code of Civil Procedure would apply to appeals under section 260A. The Supreme Court opined that this does not in any manner suggest either that the other provisions of the Code of Civil Procedure are necessarily excluded or that the High Court's inherent jurisdiction is in any manner affected.

Note – On account of the Supreme Court ruling in *CIT v. Meghalaya Steels Ltd. (2015) 377 ITR 112,* students may ignore the answer to Q. 2(ii) in page 24.2 of the printed copy of the December 2015 edition of the Practice Manual, which is based on the Madhya Pradesh High Court ruling in *Deepak Kumar Garg v. CIT (2010) 327 ITR 448.* Also, the students may ignore the Madhya Pradesh High Court ruling (Case No.9) reported in page 88 of the printed copy of the August 2015 edition of the publication "Select Cases in Direct and Indirect Tax Laws - 2015".

17. An assessee may, at any stage of a case relating to him, make an application in the prescribed form and manner to the Settlement Commission under section 245C.

"Case" means any proceeding for assessment which may be pending before an Assessing Officer on the date on which such application is made.

A proceeding for assessment or reassessment or recomputation under section 147 is deemed to have commenced from the date of issue of notice under section 148. Where a notice under section 148 is issued for any assessment year, a proceeding under section 147 shall be deemed to have commenced on the date of issue of such notice and **the assessee can approach the Settlement Commission for other assessment years as well**, even if notice under section 148 for such other assessment years **have not been issued** but could have been issued on that date. However, a return of income for such other assessment years should have been furnished under section 139 or in response to notice under section 142.

In the case on hand, Upsilon Ltd. has received a notice under section 148 for the A.Y. 2013-14 and also anticipates similar notices for the assessment years 2011-12 and 2012-13 for which return of income has been furnished.

Moreover, since after examination of the books of account, a large amount of concealed income is also noticed, it is presumed that the second condition that the additional amount of income-tax payable on the income disclosed in the application should exceed ₹ 10 lakhs would also be satisfied.

Based on these facts, assuming that the necessary conditions are fulfilled, Upsilon Ltd. may approach the Settlement Commission to have his case settled and apply for grant of immunity from penalty and prosecution.

18. (i) The Kerala High Court, in *Grihalakshmi Vision v. Addl. CIT (2015) 379 ITR 100*, observed that the question to be considered is whether proceedings for levy of penalty are initiated with the passing of the order of assessment by the Assessing Officer or whether such proceedings commence with the issuance of the notice by the Joint Commissioner. From the statutory provisions, it is clear that the competent authority to levy penalty is the Joint Commissioner. Therefore, only the Joint Commissioner can initiate proceedings for levy of penalty. Such initiation of proceedings could not have been done by the Assessing Officer. The statement in the assessment order that the proceedings under Section 271D and 271E are

initiated is inconsequential. On the other hand, if the assessment order is taken as the initiation of penalty proceedings, such initiation would be by an authority who is not competent to do so and the proceedings thereafter would be proceedings without jurisdiction. Thus, the initiation of the penalty proceedings is only with the issuance of the notice by the Joint Commissioner to the assessee to which he has filed his reply.

The CBDT *Circular No.9/2016 dated 26.4.2016* clarifies that the above judgement reflects the "Departmental View". Accordingly, the Assessing Officers (below the rank of Joint Commissioner of income-tax) have to make a reference to the Range Head, regarding any violation of the provisions of section 269SS and section 269T, as the case may be, in the course of the assessment proceedings (or any other proceedings under the Act). The Assessing Officer (below the rank of Joint Commissioner of Income-tax) shall not issue the notice in this regard. The Range Head will issue the penalty notice and shall dispose/complete the proceedings within the limitation prescribed under section 275(1)(c).

Note *- The Circular further clarifies that where any High Court decides this issue contrary to the "Departmental View", the "Departmental View" thereon shall not be operative in the area falling in the jurisdiction of the relevant High Court.*

(ii) The Delhi High Court, in *CIT v. Worldwide Township Projects Ltd. (2014) 367 ITR 433*, observed that is well settled that penalty under section 271D or section 271E is independent of the assessment. The action inviting imposition of penalty is granting of loans above the prescribed limit otherwise than through banking channels and as such infringement of section 269SS is not related to the income that may be assessed or finally adjudicated. In this view, section 275(1)(a) would not be applicable and the provisions of section 275(1)(c) would be attracted.

The CBDT, in its *Circular No.10/2016 dated 26.4.2016*, clarified that it is a settled position that the period of limitation of penalty proceedings under section 271D and section 271E is governed by the provisions of section 275(1)(c). Therefore, the limitation period for the imposition of penalty under these provisions would be the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later. The limitation period is not dependent on the pendency of appeal against the assessment or other order referred to in section 275(1)(a).

19. The issue as to whether the charges fixed by the Airport Authority of India (AAI) for landing and parking facility for the aircraft are for the “use of the land” by the airline company came up before the Supreme Court in *Japan Airlines Co. Ltd. v. CIT / CIT v. Singapore Airlines Ltd. (2015) 377 ITR 372*.

The Supreme Court observed that the charges which are fixed by the AAI for landing and take-off services as well as for parking of aircrafts are not for the "use of the land". These

charges are for services and facilities offered in connection with the aircraft operation at the airport which include providing of air traffic services, ground safety services, aeronautical communication facilities, installation and maintenance of navigational aids and meteorological services at the airport.

There are various international protocols which mandate all authorities manning and managing these airports to construct the airport of desired standards which are stipulated in the protocols. The services which are required to be provided by these authorities, like AAI, are aimed at passengers' safety as well as for safe landing and parking of the aircrafts. Therefore, the services are not restricted to merely permitting "use of the land" of airport. On the contrary, it encompasses all the facilities that are to be compulsorily offered by the AAI in tune with the requirements of the protocol.

The Supreme Court observed that the charges levied on air-traffic includes landing charges, lighting charges, approach and aerodrome control charges, aircraft parking charges, aerobridge charges, hangar charges, passenger service charges, cargo charges, etc. Thus, when the airlines pay for these charges, treating such charges as charges for "use of the land" would tantamount to adopting a totally simplistic approach which is far away from the reality.

The Supreme Court opined that the substance behind such charges has to be considered and when the issue is viewed from this angle, keeping the larger picture in mind, it becomes very clear that the charges are not for use of the land *per se* and, therefore, it cannot be treated as "rent" within the meaning of section 194-I. The Supreme Court, thus, concurred with the view taken by the Madras High Court in *Singapore Airlines* case and overruled the view taken by the Delhi High Court in *United Airlines/Japan Airlines* case.

Applying the rationale of the Supreme Court ruling to the facts of this case, the contention of the Assessing Officer that landing and parking charges are levied for use of the land of airport and hence, the charges are in the nature of rent to attract the provisions of tax deduction at source under section 194-I is **not** correct.

Note – In view of the above Supreme Court ruling, students may ignore the answer to Q.9 in pages 28.6 and 28.7 in the printed copy of the December, 2015 edition of the Practice Manual, based on the Delhi High Court ruling in *Japan Airlines Co. Ltd.'s* case and Madras High Court ruling in *Singapore Airlines Ltd.'s* case. Also, students may ignore the said Delhi High Court ruling and Madras High Court ruling [case no.12] reported in pages 112-113 of the printed copy of the August 2015 edition of the publication "Select Cases in Direct and Indirect Tax Laws – 2015".

20. (i) The CBDT has, vide *Circular No. 4/2016 dated 29.2.2016*, clarified that while applying the relevant provisions of TDS on a contract for content production, a distinction is required to be made between:

(i) a payment for production of content/programme as per the specifications of the

broadcaster/telecaster; and

(ii) a payment for acquisition of broadcasting/telecasting rights of the content already produced by the production house.

In the first situation where the content is produced as per the specifications provided by the broadcaster/telecaster and the copyright of the content/programme also gets transferred to the telecaster/broadcaster, such contract is covered by the definition of the term `work' in section 194C and, therefore, subject to TDS under that section.[1]

However, in a case where the telecaster/broadcaster acquires only the telecasting/ broadcasting rights of the content already produced by the production house, there is no contract for ''carrying out any work", as required in section 194C(1). Therefore, such payments are not liable for TDS under section 194C. However, payments of this nature may be liable for TDS under other sections of Chapter XVII-B of the Act.

In this case, since the programme is produced by the production house as per the specifications given by Moon TV, a television channel, and the copyright is also transferred to the television channel, the same falls within the scope of definition of the term 'work' under section 194C. Therefore, the payment of Rs.50 lakhs made by Moon TV to the production house would be subject to tax deduction at source under section 194C.

If, however, the payment was made by Moon TV for acquisition of telecasting rights of the content already produced by the production house, there is no contract for ''carrying out any work", as required in section 194C(1). Therefore, such payment would not be liable for tax deduction at source under section 194C.

(ii) The issue of whether fees/charges taken or retained by advertising companies from media companies for canvasing/booking advertisements (typically 15% of the billing) is 'commission' or 'discount' to attract the provisions of tax deduction at source has been clarified by the CBDT vide its *Circular No.5/2016 dated 29.2.2016.*

The Circular draws reference to the Allahabad High Court ruling in the case of *Jagran Prakashan Ltd.* and the Delhi High Court ruling in the matter of *Living Media Limited.* In both the cases, the Courts have held that the relationship between the media company and the advertising agency is that of a 'principal-to-principal' and, therefore, not liable for TDS under section 194H.[2] Though these decisions are in

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[1] This position clearly flows from the definition of `work' given in clause (iv)(b) of the *Explanation* to section 194C and the same has also been clarified vide Q. No. 3 of Circular No. 715 dated 8.8.1995.

[2] The SLPs filed by the Department in the matter of *Living Media Ltd.* and *Jagran Prakashan Ltd.* have been dismissed by the Supreme Court *vide* order dated 11-12-2009 and order dated 5-5-2014, respectively.

respect of print media, the ratio is also applicable to electronic media/television advertising as the broad nature of the activities involved is similar.

In view of the above, the CBDT has clarified that no liability to deduct tax is attracted on payments made by television channels to the advertising agency for booking or procuring of or canvassing for advertisements.

Accordingly, in view of the clarification given by CBDT, no tax is deductible at source on the amount of ₹ 15 lakhs retained by Mudra Adco Ltd., the advertising company, from payment due to Cloud TV, a television channel.

Part I: Statutory Update – Direct Tax Laws

Significant Notifications and Circulars issued between 1.5.2015 and 30.4.2016

I. NOTIFICATIONS

1. Nature of Business Relationship, for the purpose of clause (b)(viii) of *Explanation* below section 288(2), prescribed [Notification No. 50/2015, dated 24.6.2015]

Explanation below section 288(2) defines an "accountant" to mean a "Chartered Accountant" as defined in section 2(1)(b) of the Chartered Accountants Act, 1949, holding a valid certificate of practice under section 6(1) of the said Act, but does not include [except for appearing as an authorized representative under section 288(1)] in case of a non-corporate assessee, *inter alia* a person who, whether directly or indirectly, has **business relationship with the assessee** of such nature as may be prescribed.

Consequently, the CBDT has, in exercise of the powers conferred by section 295 read with sub-clause (b) (*viii*) of *Explanation* below section 288(2), inserted Rule 51A prescribing the nature of business relationship. Accordingly, the term "business relationship" shall be construed as any transaction **entered into for a commercial purpose, other than**,—

(i) commercial transactions which are **in the nature of professional services** permitted to be rendered by an auditor or audit firm under the Act and the Chartered Accountants Act, 1949 and the rules or the regulations made under those Acts;

(ii) commercial transactions which are **in the ordinary course of business of the entity at arm's length price** - like sale of products or services to the auditor, as customer, in the ordinary course of business, by entities engaged in the business of telecommunications, airlines, hospitals, hotels and such other similar businesses."[1]

2. No tax to be deducted in respect of the income specified under section 10(23FBA) received by an Investment Fund [Notification No. 51/2015, dated 24.6.2015]

Section 197A(1F) provides that no deduction of tax shall be made from such

[1] Section 141(3) of the Companies Act, 2013 contains a similar disqualification in case of a company; for which purpose "business relationship" has been defined in the like manner in Rule 10(4) of the Companies (Audit & Auditors) Rules, 2014. It may be noted that in case of a company, a person who is not eligible for appointment as an auditor of the said company in accordance with section 141(3) of the Companies Act, 2013 is not included in the definition of "accountant" [except for appearing as an authorised representative under section 288(1)]

specified payment to such institution, association or body or class of institutions, associations or bodies as may be notified by the Central Government.

Accordingly, the Central Government has, vide this notification, notified that no tax has to be deducted in respect of **payments of the nature specified in section 10(*23FBA*)** [i.e., any income other than the income chargeable under the head "Profits and gains of business or profession"] **received by any investment fund.**[2]

3. Notification of Cost Inflation Index for Financial Year 2015-16 [Notification No. 60/2015, dated 24.7.2015]

Clause (v) of Explanation to section 48 defines "Cost Inflation Index", in relation to a previous year, to mean such Index as the Central Government may, by notification in the Official Gazette, specify in this behalf, having regard to 75% of average rise in the Consumer Price Index (Urban) for the immediately preceding previous year to such previous year.

Accordingly, the Central Government has, in exercise of the powers conferred by clause (v) of Explanation to section 48, specified the Cost Inflation Index for the **financial year 2015-16 as 1081**.

S. No.	Financial Year	Cost Inflation Index	S. No.	Financial Year	Cost Inflation Index
1.	1981-82	100	19.	1999-2000	389
2.	1982-83	109	20.	2000-01	406
3.	1983-84	116	21.	2001-02	426
4.	1984-85	125	22.	2002-03	447
5.	1985-86	133	23.	2003-04	463
6.	1986-87	140	24.	2004-05	480
7.	1987-88	150	25.	2005-06	497
8.	1988-89	161	26.	2006-07	519
9.	1989-90	172	27.	2007-08	551
10.	1990-91	182	28.	2008-09	582
11.	1991-92	199	29.	2009-10	632
12.	1992-93	223	30.	2010-11	711
13.	1993-94	244	31.	2011-12	785
14.	1994-95	259	32.	2012-13	852
15.	1995-96	281	33.	2013-14	939

[2] "Investment Fund" means any fund established or incorporated in India in the form of a trust or a company or a LLP or a body corporate which has been granted a certificate of registration as a Category I or a Category II Alternative Investment Fund and is regulated under the SEBI (AIF) Regulations, 2012, made under the SEBI Act, 1992.

16.	1996-97	305	34.	2014-15	1024
17.	1997-98	331	**35.**	**2015-16**	**1081**
18.	1998-99	351			

4. Basis for determining the period of stay in India for an Indian citizen, being a member of the crew of a foreign bound ship leaving India [Notification No. 70/2015, dated 17.8.2015]

Section 6(1) of the Income-tax Act, 1961 provides that an individual is said to be resident in India in any previous year, if he—

(a) is in India in that year for a period or periods amounting in all to 182 days or more; or

(b) having within the four years preceding that year been in India for a period or periods amounting in all to 365 days or more, is in India for a period or periods amounting in all to 60 days or more in that year.

However, where an Indian citizen leaves India as a member of crew of an Indian ship or for the purpose of employment outside India, he will be resident only if he stayed in India for 182 days during the previous year.

Thus, under section 6(1), the conditions to be satisfied by an individual to be a resident in India are provided. The residential status is determined on the basis of the **number of days of his stay in India** during a previous year.

However, in case of **foreign bound ships** where the destination of the **voyage is outside India**, there is **uncertainty** regarding the manner and the basis of **determining the period of stay in India for an Indian citizen, being a crew member**.

To remove this uncertainty, ***Explanation 2* has been inserted to section 6(1)** to provide that in the case of an individual, being a citizen of India and a member of the crew of a foreign bound ship leaving India, the **period or periods of stay in India** shall, in respect of such voyage, be determined in the **prescribed manner** and subject to the prescribed conditions.

Accordingly, the CBDT has, in exercise of the powers conferred by *Explanation 2* to section 6(1) read with section 295, vide this notification, with retrospective effect from 1st April, 2015, inserted Rule 126 in the Income-tax Rules, 1962 to compute the period of stay in such cases.

According to Rule 126, in case of an individual, being a citizen of India and a member of the crew of a ship, the **period or periods of stay in India** shall, in respect of an eligible voyage, **not include** the period **commencing from the date** entered into the Continuous Discharge Certificate in respect of **joining the ship** by the said individual for the eligible voyage and **ending on the date** entered into the Continuous Discharge Certificate in respect of **signing off by that individual from the ship** in respect of such voyage.

The *Explanation* to this Rule defines the meaning of the following terms:

Terms	Meaning
Continuous Discharge Certificate	This term has the meaning assigned to it in the Merchant Shipping (Continuous Discharge Certificate-cum-Seafarer's Identity Document) Rules, 2001 made under the Merchant Shipping Act, 1958.
Eligible voyage	A voyage undertaken by a ship engaged in the carriage of passengers or freight in international traffic where- (i) for the voyage having originated from any port in India, has as its destination any port outside India; and (ii) for the voyage having originated from any port outside India, has as its destination any port in India.

5. Certain districts of Bihar notified as backward areas under the first proviso to section 32(1)(iia) and section 32AD(1) [Notification No. 71/2015, dated 17.8.2015]

In order to encourage the setting up of industrial undertakings in the backward areas of the States of Andhra Pradesh, Bihar, Telangana and West Bengal, section 32AD(1) provides for a deduction of an amount equal to 15% of the actual cost of new plant and machinery acquired and installed in the assessment year relevant to the previous year in which such plant and machinery is installed, if the following conditions are satisfied by the assessee–

(a) the assessee sets up an undertaking or enterprise for manufacture or production of any article or thing on or after 1st April, 2015 in any backward area notified by the Central Government in the State of Andhra Pradesh or Bihar or Telangana or West Bengal; and

(b) the assessee acquires and installs new plant and machinery for the purposes of the said undertaking or enterprise during the period between 1st April, 2015 and 31st March, 2020 in the said backward areas.

Further, in order to encourage acquisition and installation of plant and machinery for setting up of manufacturing units in the notified backward areas of the States of Andhra Pradesh, Bihar, Telangana and West Bengal, first proviso has been inserted to section 32(1)(iia) to allow higher additional depreciation at the rate of 35% (instead of 20%) in respect of the actual cost of new machinery or plant (other than a ship and aircraft) acquired and installed during the period between 1st April, 2015 and 31st March, 2020 by a manufacturing undertaking or enterprise which is set up in the notified backward areas of these specified States on or after 1st April, 2015.

Accordingly, the Central Government has, vide this notification, notified the

following **21 districts of the State of Bihar** as backward areas under the first proviso to section 32(1)(iia) and section 32AD(1): -

S. No.	District	S. No.	District
1.	Patna	12.	Samastipur
2.	Nalanda	13.	Darbhanga
3.	Bhojpur	14.	Madhubani
4.	Rohtas	15.	Purnea
5.	Kaimur	16.	Katihar
6.	Gaya	17.	Araria
7.	Jehanabad	18.	Jamui
8.	Aurangabad	19.	Lakhisarai
9.	Nawada	20.	Supaul
10.	Vaishali	21.	Muzaffarpur
11.	Sheohar		

6. News agency notified for the purpose of section 10(22B) [Notification No. 72/2015, dated 24.8.2015]

Section 10(22B) provides that any income of a news agency set up in India solely for collection and distribution of news as the Central Government may notify shall be exempt, subject to the condition that such news agency applies its income or accumulates it for application solely for collection and distribution of news and does not distribute its income in any manner to its members.

Accordingly, the Central Government has, through this notification, specified the **Press Trust of India Limited, New Delhi** as a news agency set up in India solely for collection and distribution of news, for the purpose of section 10(22B) for three assessment years 2016-17 to 2018-19. The income of such news agency will not be included in computing the total income of a previous year of such agency for these three years, provided it applies its income or accumulates it for application solely for collection and distribution of news and does not distribute its income in any manner to its members.

7. Exemption in respect of transport allowance under Rule 2BB extended to deaf and dumb employees [Notification No. 75/2015, dated 23.09.2015]

The CBDT has, in exercise of the powers conferred by section 295 read with section 10(14), amended Rule 2BB, which *inter alia* provides the limit of exemption of up to ₹ 1,600 p.m., in respect of transport allowance granted to an employee and up to ₹ 3,200 p.m., for an employee who is blind or orthopedically handicapped, with disability of lower extremities, to meet his expenditure for the purpose of commuting between the place of his residence and the place of his duty.

Consequent to the amendment made vide this notification, the exemption up to ₹ 3,200 p.m. in respect of transport allowance can be claimed by a blind ***or deaf and dumb*** or orthopedically handicapped employee with disability of lower extremities to meet his expenditure for the purpose of commuting between the place of his residence and the place of his duty.

8. Simplification of format and procedure for self-declaration in Form No.15G & 15H [Notification No. 76/2015, dated 29.09.2015]

Tax payers seeking non-deduction of tax from certain incomes are required to file a self-declaration in Form No. 15G or Form No.15H as per section 197A. In order to reduce the cost of compliance and ease the compliance burden for both the tax payer and the tax deductor, the CBDT has simplified the format and procedure for self-declaration of Form No.15G or 15H. The procedure for submission of the forms by the deductor has also been simplified.

Under the simplified procedure contained in new Rule 29C, a payee can submit the self-declaration either in paper form or electronically. The deductor will not deduct tax and will allot a Unique Identification Number (UIN) to all self-declarations in accordance with the procedure as specified by the Principal Director General of Income-tax (Systems) under sub-rule (7) of new Rule 29C. The particulars of self-declarations will have to be furnished by the deductor along with UIN in the quarterly TDS statements. The requirement of submitting physical copy of Form 15G and 15H by the deductor to the income-tax authorities has been dispensed with. The deductor will, however be required to retain Form No.15G and 15H for seven years. The revised procedure shall be effective from 1st October, 2015.

9. Transfer Pricing Rules amended to incorporate "range concept" and "use of multi-year data" [Notification No. 83/2015, dated 19.10.2015]

Section 92C(2) provides that the arm's length price (ALP) in relation to an international transaction or specified domestic transaction has to be determined by applying the most appropriate method.

As per the first proviso to section 92C(2), where more than one price is determined by applying the most appropriate method, the ALP shall be taken to be the arithmetical mean of such prices.

However, if the variation between the ALP so determined and the price at which the international transaction or specified domestic transaction has actually been undertaken does not exceed such percentage, not exceeding 3%, as may be notified by the Central Government, the price at which the transaction has actually been undertaken would be deemed to be the ALP.

In the year 2014, the Finance Minister, in his budget speech, had proposed to introduce the "range concept" for determination of ALP, for aligning Transfer Pricing Regulations in India with the best practices.

Accordingly, a third proviso was inserted in section 92C(2) to provide that in case of an international transaction or specified domestic transaction undertaken on or after

1.4.2014, where more than one price is determined by the most appropriate method, the ALP shall be computed in the prescribed manner (based on "range concept" to be specified by way of Rules) and the computation methodology given in the first and second proviso, based on arithmetic mean, shall be ignored.

The CBDT has, in exercise of the powers conferred by section 92C read with section 295 prescribed the manner of computation of arm's length price applicable for international transactions and specified domestic transactions undertaken on or after 1.4.2014.

Incorporation of "Range Concept" in Transfer Pricing Rules

In case of an international transaction or specified domestic transaction undertaken on or after 1.4.2014, where more than one price is determined by the most appropriate method, the arm's length price shall be computed in the prescribed manner specified in Rule 10CA.

Rule 10CA(1) provides that where in respect of an international transaction or a specified domestic transaction, the application of the most appropriate method referred to in section 92C(1) **results in determination of more than one price**, then, the arm's length price in respect of such international transaction or specified domestic transaction has to be computed on the basis of the **dataset constructed by placing such prices in an ascending order** as provided in Rule 10CA(2).

However, where the most appropriate method is the resale price method or cost plus method or transactional net margin method and the comparable uncontrolled transaction has been identified on the basis of data relating to the current year and the enterprise undertaking the said uncontrolled transaction, [not being the enterprise undertaking the international transaction or the specified domestic transaction referred to in sub-rule (1)], has in either or both of the two financial years immediately preceding the current year undertaken the same or similar comparable uncontrolled transaction then,-

(i) the most appropriate method used to determine the price of the comparable uncontrolled transaction undertaken in the current year shall be applied in similar manner to the comparable uncontrolled transaction or transactions undertaken in the aforesaid period and the price in respect of such uncontrolled transactions shall be determined; and

(ii) the weighted average of the prices, computed in accordance with the manner provided in sub-rule (3), of the comparable uncontrolled transactions undertaken in the current year and in the aforesaid period preceding it shall be included in the dataset instead of the price referred to in sub-rule (1).

Further, where the most appropriate method is the resale price method or cost plus method or transactional net margin method where the comparable uncontrolled transaction has been identified on the basis of the data relating to the financial year immediately preceding the current year and the enterprise undertaking the said uncontrolled transaction, [not being the enterprise undertaking the international transaction or the specified domestic transaction referred to in sub-rule (1)], has in

the financial year immediately preceding the said financial year undertaken the same or similar comparable uncontrolled transaction then, -

(i) the price in respect of such uncontrolled transaction shall be determined by applying the most appropriate method in a similar manner as it was applied to determine the price of the comparable uncontrolled transaction undertaken in the financial year immediately preceding the current year; and

(ii) the weighted average of the prices, computed in accordance with the manner provided in sub-rule (3), of the comparable uncontrolled transactions undertaken in the aforesaid period of two years shall be included in the dataset instead of the price referred to in sub-rule (1).

Also, in such cases, where the use of data relating to the current year for determination of ALP subsequently at the time of assessment establishes that,-

(i) the enterprise has not undertaken same or similar uncontrolled transaction during the current year; or

(ii) the uncontrolled transaction undertaken by an enterprise in the current year is not a comparable uncontrolled transaction,

then, irrespective of the fact that such an enterprise had undertaken comparable uncontrolled transaction in the financial year immediately preceding the current year or the financial year immediately preceding such financial year, the price of comparable uncontrolled transaction or the weighted average of the prices of the uncontrolled transactions, as the case may be, undertaken by such enterprise shall **not** be included in the dataset.

Rule 10CA(3) provides that where an enterprise has undertaken comparable uncontrolled transactions in more than one financial year, then for the purposes of sub-rule (2) the weighted average of the prices of such transactions shall be computed in the following manner, namely:-

	Method used to determine the prices	**Manner of computation of weighted average of the prices**
(i)	The resale price method	By assigning weights to the quantum of sales which has been considered for arriving at the respective prices
(ii)	The cost plus method	By assigning weights to the quantum of costs which has been considered for arriving at the respective prices
(iii)	The transactional net margin method	By assigning weights to the quantum of costs incurred or sales effected or assets employed or to be employed, or as the case may be, any other base which has been considered for arriving at the respective prices.

Rule 10CA(4) provides that where the most appropriate method applied is –

(i) a method other than the profit split method or a method prescribed by the CBDT under section 92C(1)(f); and

(ii) the dataset constructed in accordance with sub-rule (2) consists of six or more entries,

an arm's length range beginning from the thirty-fifth percentile of the dataset and ending on the sixty-fifth percentile of the dataset shall be constructed.

If the price at which the international transaction or the specified domestic transaction has actually been undertaken is within the said range, then, the price at which such international transaction or the specified domestic transaction has actually been undertaken shall be deemed to be the arm's length price [Rule 10CA(5)].

If the price at which the international transaction or the specified domestic transaction has actually been undertaken is outside the said arm's length range, the arm's length price shall be taken to be the median of the dataset [Rule 10CA(6)].

In a case where the provisions of Rule 10CA(4) are not applicable, the arm's length price shall be the arithmetical mean of all the values included in the dataset. However, if the variation between the arm's length price so determined and price at which the international transaction or specified domestic transaction has actually been undertaken does not exceed such percentage not exceeding three percent. of the latter, as may be notified[3] by the Central Government in the Official Gazette in this behalf, the price at which the international transaction or specified domestic transaction has actually been undertaken shall be deemed to be the arm's length price [Rule 10CA(7)].

Meaning of certain terms [Rule 10CA(8)]

	Term	Meaning
(a)	the thirty-fifth percentile of a dataset (having values arranged in an ascending order)	The lowest value in the dataset such that at least 35% of the values included in the dataset are equal to or less than such value. However, if the number of values that are equal to or less than the aforesaid value is a whole number, then the thirty-fifth

[3] 1% in respect of wholesale trading and 3% in respect of all other cases (for A.Y.2015-16) [Notification No.86/2015 dated 29.10.2015]. Wholesale trading, for this purpose, means an international transaction or specified domestic transaction of trading in goods, which fulfils the following conditions, namely:-

(i) **purchase cost** of finished goods is **80% or more of the total cost** pertaining to such trading activities; and

(ii) **average monthly closing** inventory of such goods is **10% or less of sales** pertaining to such trading activities.

		percentile shall be the arithmetic mean of such value and the value immediately succeeding it in the dataset.
(b)	the sixth-fifth percentile of a dataset (having values arranged in an ascending order)	The lowest value in the dataset such that at least 65% of the values included in the dataset are equal to or less than such value. However, if the number of values that are equal to or less than the aforesaid value is a whole number, then, the sixty-fifth percentile shall be the arithmetic mean of such value and the value immediately succeeding it in the dataset.
(c)	the median of the dataset (having values arranged in an ascending order)	The lowest value in the dataset such that at least 50% of the values included in the dataset are equal to or less than such value. However, if the number of values that are equal to or less than the aforesaid value is a whole number, then, the median shall be the arithmetic mean of such value and the value immediately succeeding it in the dataset.

Use of multiple year data:

Sub-rule (5) has been inserted in Rule 10B to provide that in case the most appropriate method for determination of ALP of a transaction entered into on or after 1.4.2014 is the resale price method or cost plus method or the transactional net margin method, then, the data to be used for analyzing the comparability of an uncontrolled transaction with an international transaction shall be –

(a) the data relating to the current year; or

(b) the data relating to the financial year immediately preceding the current year, if the data relating to the current year is not available at the time of furnishing the return of income by the assessee, for the assessment year relevant to the current year.

However, where the data relating to the current year is subsequently available at the time of determination of arm's length price of an international transaction or a specified domestic transaction during the course of any assessment proceeding for the assessment year relevant to the current year, then, such data shall be used for such determination irrespective of the fact that the data was not available at the time of furnishing the return of income of the relevant assessment year.

10. Co-operative Societies procuring and marketing milk eligible to opt for Safe Harbour Rules *[Notification No 90/2015, dated 8-12-2015]*

Under section 92CB(2), the CBDT is empowered to make rules for safe harbour. Further, section 92D empowers the CBDT to make rules regarding keeping and maintenance of specified information and document for assessees entering into an international transaction or specified domestic transaction as well as to prescribe the period for which information and documents shall be kept and maintained. Accordingly, in exercise of the powers conferred under such sections, the CBDT has amended Rules 10D, 10THA, 10THB, 10THC and 10THD.

(1) **Eligible assessee to include a co-operative society engaged in the business of procuring and marketing milk and milk products [Rule 10THA]**: The scope of eligible assessee under Rule 10THA has been extended and it now also includes a person who has exercised a valid option for application of safe harbor rules in accordance with the provisions of Rule 10THC and is a co-operative society engaged in the business of procuring and marketing milk and milk products.

(2) **Eligible specified domestic transaction to include purchase of milk or milk products by a co-operative society from its members [Rule 10THB]**: Accordingly, Rule 10THB now includes purchase of milk or milk products by a co-operative society from its members as an eligible specified domestic transaction.

(3) **Specified circumstance in which transfer price declared by the co-operative society can be accepted by the income-tax authorities [Rule 10THC]**: In effect, where a co-operative society engaged in the business of procuring and marketing milk and milk products has entered into an eligible transaction of purchase of milk or milk products from its members in any previous year relevant to an assessment year and the option exercised by the co-operative society is treated to be validly exercised under Rule 10THD, the transfer price declared by the co-operative society will be accepted by the income-tax authorities, if it is in accordance with the specified circumstance [as per Rule 10THC] given below:

The price of milk or milk products is determined at a rate which is fixed on the basis of the quality of milk, namely, fat content and Solid Not Fat (SNF) content of milk; and -

(a) the said rate is irrespective of,-

(i) the quantity of milk procured;

(ii) the percentage of shares held by the members in the co-operative society;

(iii) the voting power held by the members in the society; and

(b) such prices are routinely declared by the co-operative society in a transparent manner and are available in public domain."

(4) **Information and documents to be kept and maintained under section 92D in case of an eligible assessee referred to in Rule 10THA [Rule 10D(2A)]:**

Rule	Eligible Assessee	Information and documents to be kept and maintained
10THA(i)	A government company engaged in the business of generation, supply, transmission or distribution of electricity	(i) a description of the ownership structure of the assessee enterprise with details of shares or other ownership interest held therein by other enterprises; (ii) a broad description of the business of the assessee and the industry in which the assessee operates, and of the business of the associated enterprises with whom the assessee has transacted; (iii) the nature and terms (including prices) of specified domestic transactions entered into with each associated enterprise and the quantum and value of each such transaction or class of such transaction; (iv) a record of proceedings, if any, before the regulatory commission and orders of such commission relating to the specified domestic transaction; (v) a record of the actual working carried out for determining the transfer price of the specified domestic transaction; (vi) the assumptions, policies and price negotiations, if any, which have critically affected the determination of the transfer price; and (vii) any other information, data or document, including information or data relating to the associated enterprise, which may be relevant for determination of the transfer price.

10THA(ii)	A co-operative society engaged in the business of procuring and marketing milk and milk products	(i) a description of the ownership structure of the assessee co-operative society with details of shares or other ownership interest held therein by the members; (ii) description of members including their addresses and period of membership; (iii) the nature and terms (including prices) of specified domestic transactions entered into with each member and the quantum and value of each such transaction or class of such transaction; (iv) a record of the actual working carried out for determining the transfer price of the specified domestic transaction; (v) the assumptions, policies and price negotiations, if any, which have critically affected the determination of the transfer price; (vi) the documentation regarding price being routinely declared in transparent manner and being available in public domain; and (vii) any other information, data or document which may be relevant for determination of the transfer price.

11. (i) Monetary limits of specified transactions which require quoting of PAN enhanced with effect from 1st January, 2016 *[Notification No. 95/2015, dated 30-12-2015]*

The Government is committed to curbing the circulation of black money and widening of tax base. To collect information of certain types of transactions from third parties in a non-intrusive manner, it is mandatory under Rule 114B of the Income-tax Rules, 1962 to quote PAN where the transactions exceed a specified limit. To bring a balance between burden of compliance on legitimate transactions and the need to capture information relating to transactions of higher value, Rule 114B has been substituted to enhance the monetary limits of certain transactions which require quoting of PAN.

S. No.	Nature of transaction	Value of transaction
1.	Sale or purchase of a motor vehicle or vehicle, as defined in the Motor Vehicles Act, 1988 which requires registration by a registering authority under that Act, other than two wheeled vehicles.	All such transactions
2.	Opening an account [other than a time-deposit referred to at Sl. No.12 and a Basic Savings Bank Deposit Account] with a banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act).	All such transactions
3.	Making an application to any banking company or a co-operative bank to which the Banking Regulation Act, 1949, applies (including any bank or banking institution referred to in section 51 of that Act) or to any other company or institution, for issue of a credit or debit card.	All such transactions
4.	Opening of a demat account with a depository, participant, custodian of securities or any other person registered under section 12(1A) of the Securities and Exchange Board of India Act, 1992.	All such transactions
5.	Payment to a hotel or restaurant against a bill or bills at any one time.	Payment in cash of an amount exceeding ₹ 50,000.
6.	Payment in connection with travel to any foreign country or payment for purchase of any foreign currency at any one time.	Payment in cash of an amount exceeding ₹ 50,000.
7.	Payment to a Mutual Fund for purchase of its units	Amount exceeding ₹ 50,000.
8.	Payment to a company or an institution for acquiring debentures or bonds issued by it.	Amount exceeding ₹ 50,000.

9.	Payment to the Reserve Bank of India for acquiring bonds issued by it.	Amount exceeding ₹ 50,000.
10.	Deposit with a banking company or a co-operative bank to which the Banking Regulation Act, 1949, applies (including any bank or banking institution referred to in section 51 of that Act).	Deposits in cash exceeding ₹ 50,000 during any one day.
11.	Purchase of bank drafts or pay orders or banker's cheques from a banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act).	Payment in cash of an amount exceeding ₹ 50,000 during any one day.
12.	A time deposit with, - (i) a banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act); (ii) a Post Office; (iii) a Nidhi referred to in section 406 of the Companies Act, 2013; or (iv) a non-banking financial company which holds a certificate of registration under section 45-IA of the Reserve Bank of India Act, 1934, to hold or accept deposit from public.	Amount exceeding ₹ 50,000 or aggregating to more than ₹ 5 lakh during a financial year.
13.	Payment for one or more pre-paid payment instruments, as defined in the policy guidelines for issuance and operation of pre-paid payment instruments issued by Reserve Bank of India under the Payment and Settlement Systems Act, 2007, to a banking company or a co-operative bank to which the Banking Regulation Act, 1949, applies	Payment in cash or by way of a bank draft or pay order or banker's cheque of an amount aggregating to more than ₹ 50,000 in a financial year.

	(including any bank or banking institution referred to in section 51 of that Act) or to any other company or institution.	
14.	Payment as life insurance premium to an insurer as defined in the Insurance Act, 1938.	Amount aggregating to more than ₹ 50,000 in a financial year.
15.	A contract for sale or purchase of securities (other than shares) as defined in section 2(h) of the Securities Contracts (Regulation) Act, 1956.	Amount exceeding ₹ 1 lakh per transaction
16.	Sale or purchase, by any person, of shares of a company not listed in a recognised stock exchange.	Amount exceeding ₹ 1 lakh per transaction.
17.	Sale or purchase of any immovable property.	Amount exceeding ₹ 10 lakh or valued by stamp valuation authority referred to in section 50C at an amount exceeding ₹ 10 lakh
18.	Sale or purchase, by any person, of goods or services of any nature other than those specified at Sl. No. 1 to 17 of this Table, if any.	Amount exceeding ₹ 2 lakh per transaction:

Minor to quote PAN of parent or guardian

Where a person, entering into any transaction referred to in this rule, is a minor and who does not have any income chargeable to income-tax, he shall quote the PAN of his father or mother or guardian, as the case may be, in the document pertaining to the said transaction.

Declaration by a person not having PAN

Further, any person who does not have a PAN and who enters into any transaction specified in this rule, shall make a declaration in Form No.60 giving therein the particulars of such transaction.

Non-applicability of Rule 114B

Also, the provisions of this rule shall not apply to the following class or classes of persons, namely:-

(i) the Central Government, the State Governments and the Consular Offices;

(ii) the non-residents referred to in section 2(30) in respect of the transactions other than a transaction referred to at Sl. No. 1 or 2 or 4 or 7 or 8 or 10 or 12 or 14 or 15 or 16 or 17 of the Table.

Meaning of certain phrases:

	Phrase	Inclusion
(1)	Payment in connection with travel	Payment towards fare, or to a travel agent or a tour operator, or to an authorized person as defined in section 2(c) of the Foreign Exchange Management Act, 1999
(2)	Travel agent or tour operator	A person who makes arrangements for air, surface or maritime travel or provides services relating to accommodation, tours, entertainment, passport, visa, foreign exchange, travel related insurance or other travel related services either severally or in package
(3)	Time deposit	Any deposit which is repayable on the expiry of a fixed period.

(ii) Furnishing of statement of financial transaction [Rule 114E] *[Notification No. 95/2015, dated 30-12-2015]*

The statement of financial transaction required to be furnished under section 285BA(1) of the Income-tax Act, 1961 shall be furnished by every person mentioned in column (3) of the Table below in respect of all the transactions of the nature and value specified in the corresponding entry in column (2) of the said Table, which are registered and recorded by him on or after 1st April, 2016.

S. No.	Nature and value of transaction	Class of person (reporting person)
1.	(a) Payment made in cash for purchase of bank drafts or pay orders or banker's cheque of an amount aggregating to ₹10 lakh or more in a financial year. (b) Payments made in cash aggregating to ₹ 10 lakh or more during the financial year for purchase of pre-paid instruments issued by Reserve Bank of India under the Payment and Settlement Systems Act, 2007. (c) Cash deposits or cash withdrawals (including through bearer's cheque) aggregating to	A banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act)

	₹ 50 lakhs or more in a financial year, in or from one or more current account of a person.	
2.	Cash deposits aggregating to ₹ 10 lakhs or more in a financial year, in one or more accounts (other than a current account and time deposit) of a person.	(i) A banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act); (ii) Post Master General as referred to in the Indian Post Office Act, 1898.
3.	One or more time deposits (other than a time deposit made through renewal of another time deposit) of a person aggregating to ₹ 10 lakhs or more in a financial year of a person.	(i) A banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act); (ii) Post Master General as referred to in the Indian Post Office Act, 1898; (iii) Nidhi referred to in section 406 of the Companies Act, 2013; (iv) NBFC which holds a certificate of registration under section 45-IA of the Reserve Bank of India Act, 1934, to hold or accept deposit from public.
4.	Payments made by any person of an amount aggregating to- (i) ₹ 1 lakh or more in cash; or (ii) ₹ 10 lakh or more by any other mode, against bills raised in respect of one or more credit cards issued to that person, in a financial year.	A banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act) or any other company or institution issuing credit card.
5.	Receipt from any person of an amount aggregating to ₹ 10 lakh or more in a financial year for acquiring bonds or	A company or institution issuing bonds or debentures.

	debentures issued by the company or institution (other than the amount received on account of renewal of the bond or debenture issued by that company).	
6.	Receipt from any person of an amount aggregating to ₹ 10 lakh or more in a financial year for acquiring shares (including share application money) issued by the company.	A company issuing shares
7.	Buy back of shares from any person (other than the shares bought in the open market) for an amount or value aggregating to ₹ 10 lakh or more in a financial year.	A company listed on a recognised stock exchange purchasing its own securities under section 68 of the Companies Act, 2013.
8.	Receipt from any person of an amount aggregating to ₹ 10 lakh or more in a financial year for acquiring units of one or more schemes of a Mutual Fund (other than the amount received on account of transfer from one scheme to another scheme of that Mutual Fund).	A trustee of a Mutual Fund or such other person managing the affairs of the Mutual Fund as may be duly authorised by the trustee in this behalf.
9.	Receipt from any person for sale of foreign currency including any credit of such currency to foreign exchange card or expense in such currency through a debit or credit card or through issue of travellers cheque or draft or any other instrument of an amount aggregating to ₹ 10 lakh or more during a financial year	Authorised person as referred to in section 2(c) of the Foreign Exchange Management Act, 1999.
10.	Purchase or sale by any person of immovable property for an amount of ₹ 30 lakhs or more or valued by the stamp valuation authority referred to in section 50C at ₹ 30 lakhs or more	Inspector-General appointed under the Registration Act, 1908 or Registrar or Sub-Registrar appointed under that Act
11.	Receipt of cash payment exceeding ₹ 2 lakh for sale, by any person, of goods or services of any nature (other than those specified at Sl. Nos. 1 to 10 of this rule, if any).	Any person who is liable for audit under section 44AB of the Act.

Manner of application of threshold limit: The reporting person mentioned in column (3) of the Table under sub-rule (2) [other than the person at Sl.No.9] shall, while aggregating the amounts for determining the threshold amount for reporting in respect of any person as specified in column (2) of the said Table,-

(a) take into account all the accounts of the same nature as specified in column (2) of the said Table maintained in respect of that person during the financial year;

(b) aggregate all the transactions of the same nature as specified in column (2) of the said Table recorded in respect of that person during the financial year;

(c) attribute the entire value of the transaction or the aggregated value of all the transactions to all the persons, in a case where the account is maintained or transaction is recorded in the name of more than one person;

(d) apply the threshold limit separately to deposits and withdrawals in respect of transaction specified in item (c) under column (2), against Sl. No. 1 of the said Table.

12. Scope of Safe Harbour Rules expanded *[Notification No.5/2016 dated 17-2-2016]*

Under section 92CB(2), the CBDT is empowered to make rules for safe harbour. Accordingly, in exercise of the powers conferred under the said section read with section 295, the CBDT has amended Rules 10THA, 10THB and 10THC:

Rule	Particulars	Existing Provision	Amendment
10THA	Meaning of "Eligible assessee"	A person who has exercised a valid option for application of safe harbor rules and is a Government company engaged in the business of generation, transmission or distribution of electricity.	The scope of eligible assessee under Rule 10THA has been expanded to include a person who has exercised a valid option for application of safe harbor rules in accordance with the provisions of Rule 10THC and is Government company engaged in the business of ***supply*** of electricity.
10THB	Eligible specified domestic transaction	A specified domestic transaction undertaken by an eligible assessee and which comprises of, inter alia, ***supply of electricity by a***	Rule 10THB has been amended to provide that an eligible specified domestic transaction would include a specified domestic transaction undertaken by an eligible

		generating company.	assessee and which comprises of, *inter alia*, supply of electricity. ***The requirement that supply of electricity should be by a generating company has been removed.***
10THC	Circumstances when transfer price declared by the assessee in respect of eligible specified domestic transaction shall be accepted by income-tax authorities.	In respect of supply, transmission or wheeling of electricity, when the tariff is determined by the Appropriate Commission in accordance with the provisions of the Electricity Act, 2003.	In respect of supply, transmission or wheeling of electricity, when the tariff is determined ***or the methodology for determination of the tariff is approved*** by the Appropriate Commission in accordance with the provisions of the Electricity Act, 2003.

13. 'Atal Pension Yojna' notified under section 80CCD(1) *[Notification No. 7/2016 dated 19-02-2016]*

Section 80CCD(1) empowers the Central Government to notify a pension scheme, contribution to which would qualify for deduction in the hands of an individual assessee.

Accordingly, in exercise of the powers conferred by section 80CCD(1), the Central Government has notified the 'Atal Pension Yojana (APY)' as published in the Gazette of India, Extraordinary, Part I, Section 1, vide number F. No. 16/1/2015-PR dated 16th October, 2015 as a pension scheme, contribution to which would qualify for deduction under section 80CCD in the hands of the individual.

14. Oil wells included in New Appendix I under Mineral Oil concerns under "III. Plant and Machinery" to be eligible for depreciation@15% *[Notification No. 13/2016 dated 03-03-2016]*

The CBDT has, vide this notification, included Oil wells as entry (c) under sub-item (xii) "Mineral Oil concerns" under item (8) of sub-heading III "Plant and Machinery" in new Appendix I.

The rate of depreciation for oil-wells included as entry (c) is 15%.

The amendment shall come into force on 1st April, 2016.

15. Method of determination of period of holding of capital assets in certain cases *[Notification No. 18/2016, dated 17-03-2016]*

Section 2(42A) provides for the meaning of the term "short-term capital asset" as a capital asset held by an assessee for not more than thirty-six months immediately preceding the date of its transfer. Clause (i) of *Explanation 1* to section 2(42A) provides for inclusion/ exclusion of certain periods in respect of specified transactions listed thereunder for the purpose of determination of the period of holding of asset. Clause (ii) of *Explanation 1* to section 2(42A) provides that in respect of capital assets, other than those mentioned in clause (i), the period for which the capital asset is held by the assessee shall be determined subject to rules made in this behalf by the CBDT.

Accordingly, the CBDT has inserted new Rule 8AA in the Income-tax Rules, 1962 to provide for method of determination of period of holding of capital assets, other than the capital assets mentioned in clause (i) of the *Explanation 1* to section 2(42A). Specifically, in the case of a capital asset, being a share or debenture of a company, which becomes the property of the assessee in the circumstances mentioned in section 47(x), there shall be included the period for which the bond, debenture, debenture-stock or deposit certificate, as the case may be, was held by the assessee prior to the conversion. The said rule shall come into force with effect from 01-04-2016.

Note: *Section 47(x) provides that any transfer by way of conversion of bonds or debentures, debenture-stock or deposit certificates in any form, of a company into shares or debentures of that company shall not be regarded as transfer for the purposes of levy of capital gains tax.*

16. Investment in Stock certificate as defined in the Sovereign Gold Bonds Scheme, 2015 notified as eligible form of investment by a charitable trust *[Notification No. 21/2016, dated 23-03-2016]*

Section 11(2)(b) provides that where 85% of the income is not applied, or is not deemed to have been applied, to charitable or religious purposes in India during the previous year but is accumulated or set apart, either in whole or in part, for application to such purposes in India, such income so accumulated or set apart shall not be included in the total income of the previous year of the person in receipt of the income, provided, *inter alia*, the money so accumulated or set apart is invested or deposited in the forms or modes as specified in section 11(5).

Rule 17C provides for the various forms or modes of investment or deposits by a charitable or religious trust or institution. The CBDT has, vide this notification, amended Rule 17C to insert clause (ix) to include Investment in “Stock Certificate” [as defined in clause (c) of paragraph 2 of the Sovereign Gold Bonds Scheme, 2015, published in the Official Gazette vide notification number G.S.R. 827(E), dated 30th October, 2015] as an eligible form/mode of investment.

II. CIRCULARS

1. Tax not to be deducted from payments made to Corporations whose income is exempt under section 10(26BBB) [Circular No. 7/2015, dated 23-04-2015]

The CBDT had earlier issued Circular No. 4/2002 dated 16.07.2002 which laid down that there would be no requirement for tax deduction at source from payments made to such entities, whose income is unconditionally exempt under section 10 and who are statutorily not required to file return of income as per the section 139.

Section 10(26BBB), inserted by the Finance Act, 2003 w.e.f. 01.04.2004, exempts any income of a corporation established by a Central, State or Provincial Act for the welfare and economic up liftment of ex-service-men being the citizen of India. The corporations covered under section 10(26BBB) are also statutorily not required to file return of income as per the section 139.

Now, the CBDT has, vide this circular, clarified that since corporations covered under section 10(26BBB) satisfy the two conditions of Circular No. 4/2002 i.e., unconditional exemption of income under section 10 and no statutory liability to file return of income under section 139, they would also be entitled for the benefit of the said circular.

Hence, there would be no requirement for tax deduction at source from the payments made to such corporations since their income is anyway exempt under section 10.

2. Clarifications on Rollback Provisions of Advance Pricing Agreement Scheme [Circular No. 10/2015, dated 10-06-2015]

An Advance Pricing Agreement (APA) is an agreement between a taxpayer and a taxing authority on an appropriate transfer pricing methodology for a set of transactions over a fixed period of time in future. They offer better assurance on transfer pricing methods and provide certainty and unanimity of approach.

Keeping in mind the benefits offered by the APAs, sections 92CC and section 92CD were introduced in the transfer pricing regime by the Finance Act, 2012 to provide a framework for formulation of APAs between the tax payer and the income-tax authorities.

Subsequently, the Advance Pricing Agreement Scheme was notified vide Notification No. 36/2012, dated 30/8/2012, thereby inserting Rules 10F to 10T and Rule 44GA in the Income-tax Rules, 1962.

In order to reduce current pending as well as future litigation in respect of the transfer pricing matters, the Finance (No. 2) Act, 2014 has inserted sub-section (9A) in section 92CC to provide for a roll back mechanism in the APA scheme.

Accordingly, the APA may, subject to such prescribed conditions, procedure and manner, provide for determining the ALP or for specifying the manner in which ALP is to be determined in relation to an international transaction entered into by a

person during any period not exceeding four previous years preceding the first of the previous years for which the APA applies in respect of the international transaction to be undertaken.

The CBDT has, vide Notification No.23/2015 dated 14.3.2015, in exercise of the powers conferred by section 92CC(9) and 92CC(9A) read with section 295, prescribed the conditions, procedure and manner for determining the arm's length price or for specifying the manner in which arm's length price is to be determined in relation to an international transaction in which the roll back provisions have to be given effect to[4].

Subsequent to this notification of the rules, the CBDT has issued Circular No.10/2015 dated 10.6.2015 adopting a Question and Answer format to clarify certain issues arising out of the said Rules. The questions raised and answers to such questions as per the said Circular are given hereunder:

Question 1

Under rule 10MA(2)(ii) there is a condition that the return of income for the relevant roll back year has been or is furnished by the applicant before the due date specified in Explanation 2 to section 139(1). It is not clear as to whether applicants who have filed returns under section 139(4) or 139(5) of the Act would be eligible for roll back.

Answer

The return of income under section 139(5) can be filed only when a return under section 139(1) has already been filed. Therefore, the return of income filed under section 139(5) of the Act, replaces the original return of income filed under section 139(1). Hence, if there is a return which is filed under section 139(5) to revise the original return filed before the due date specified in Explanation 2 to sub-section (1) of section 139, the applicant would be entitled for rollback on this revised return of income.

However, rollback provisions will not be available in case of a return of income filed under section 139(4) because it is a return which is not filed before the due date.

Question 2

Rule 10MA(2)(i) mandates that the rollback provision shall apply in respect of an international transaction that is same as the international transaction to which the agreement (other than the rollback provision) applies. It is not clear what is the meaning of the word "same". Further, it is not clear whether this restriction also applies to the Functions, Assets, Risks (FAR) analysis.

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[4] Refer pages 16.34-16.38 of November 2015 Edition of the Study Material of Final Paper 7 : Direct Tax Laws or pages 136-140 of Supplementary Study Paper – 2015 of Final Course for Notification No.23/2015 dated 14.3.2015.

Answer

The international transaction for which a rollback provision is to be allowed should be the same as the one proposed to be undertaken in the future years and in respect of which the agreement has been reached. There cannot be a situation where rollback is finalised for a transaction which is not covered in the agreement for future years. The term same international transaction implies that the transaction in the rollback year has to be of same nature and undertaken with the same associated enterprise(s), as proposed to be undertaken in the future years and in respect of which agreement has been reached. In the context of FAR analysis, the restriction would operate to ensure that rollback provisions would apply only if the FAR analysis of the rollback year does not differ materially from the FAR validated for the purpose of reaching an agreement in respect of international transactions to be undertaken in the future years for which the agreement applies.

The word "materially" is generally being defined in the Advance Pricing Agreements being entered into by CBDT. According to this definition, the word "materially" will be interpreted consistently with its ordinary definition and in a manner that a material change of facts and circumstances would be understood as a change which could reasonably have resulted in an agreement with significantly different terms and conditions.

Question 3

Rule 10MA(2)(iv) requires that the application for rollback provision, in respect of an international transaction, has to be made by the applicant for all the rollback years in which the said international transaction has been undertaken by the applicant. Clarification is required as to whether rollback has to be requested for all four years or applicant can choose the years out of the block of four years.

Answer

The applicant does not have the option to choose the years for which it wants to apply for rollback. The applicant has to either apply for all the four years or not apply at all. However, if the covered international transaction(s) did not exist in a rollback year or there is some disqualification in a rollback year, then the applicant can apply for rollback for less than four years. Accordingly, if the covered international transaction(s) were not in existence during any of the rollback years, the applicant can apply for rollback for the remaining years. Similarly, if in any of the rollback years for the covered international transaction(s), the applicant fails the test of the rollback conditions contained in various provisions, then it would be denied the benefit of rollback for that rollback year. However, for other rollback years, it can still apply for rollback.

Question 4

Rule 10MA(3) states that the rollback provision shall not be provided in respect of an international transaction for a rollback year if the determination of arm's length price of the said international transaction for the said year has been the subject matter of an appeal before the Appellate Tribunal and the Appellate Tribunal has

passed an order disposing of such appeal at any time before signing of the agreement. Further, Rule 10 RA(4) provides that if any appeal filed by the applicant is pending before the Commissioner (Appeals), Appellate Tribunal or the High Court for a rollback year, on the issue which is subject matter of the rollback provision for that year, the said appeal to the extent of the subject covered under the agreement shall be withdrawn by the applicant.

There is a need to clarify the phrase "Tribunal has passed an order disposing of such appeal" and on the mismatch, if any, between Rule 10MA(3) and Rule 10RA(4).

Answer

The reason for not allowing rollback for the international transaction for which Appellate Tribunal has passed an order disposing of an appeal is that the ITAT is the final fact finding authority and hence, on factual issues, the matter has already reached finality in that year. However, if the ITAT has not decided the matter and has only set aside the order for fresh consideration of the matter by the lower authorities with full discretion at their disposal, the matter shall not be treated as one having reached finality and hence, benefit of rollback can still be given.

There is no mismatch between Rule 10MA(3) and Rule 10RA(4).

Question 5

Rule 10MA(3)(ii) provides that rollback provision shall not be provided in respect of an international transaction for a rollback year if the application of rollback provision has the effect of reducing the total income or increasing the loss, as the case may be, of the applicant as declared in the return of income of the said year. It may be clarified whether the rollback provisions in such situations can be applied in a manner so as to ensure that the returned income or loss is accepted as the final income or loss after applying the rollback provisions.

Answer

It is clarified that in case the terms of rollback provisions contain specific agreement between the Board and the applicant that the agreed determination of ALP or the agreed manner of determination of ALP is subject to the condition that the ALP would get modified to the extent that it does not result in reducing the total income or increasing the total loss, as the case may be, of the applicant as declared in the return of income of the said year, the rollback provisions could be applied. For example, if the declared income is ₹ 100, the income as adjusted by the TPO is ₹ 120, and the application of the rollback provisions results in reducing the income to ₹ 90, then the rollback for that year would be determined in a manner that the declared income ₹ 100 would be treated as the final income for that year.

Question 6

Rule 10RA(7) states that in case effect cannot be given to the rollback provision of an agreement in accordance with this rule, for any rollback year to which it applies,

on account of failure on the part of applicant, the agreement shall be cancelled. It is to be clarified as to whether the entire agreement is to be cancelled or only that year for which roll back fails.

Answer

The procedure for giving effect to a rollback provision is laid down in Rule 10RA. Sub-rules (2), (3), (4) and (6) of the Rule specify the actions to be taken by the applicant in order that effect may be given to the rollback provision. If the applicant does not carry out such actions for any of the rollback years, the entire agreement shall be cancelled.

This is because the rollback provision has been introduced for the benefit of the applicant and is applicable at its option. Accordingly, if the rollback provision cannot be given effect to for any of the rollback years on account of the applicant not taking the actions specified in sub-rules (2), (3), (4) or (6), the entire agreement gets vitiated and will have to be cancelled.

Question 7

If there is a Mutual Agreement Procedure (MAP) application already pending for a rollback year, what would be the stand of the APA authorities? Further, what would be the view of the APA Authorities, if MAP has already been concluded for a rollback year?

Answer

If MAP has been already concluded for any of the international transactions in any of the rollback year under APA, rollback provisions would not be allowed for those international transactions for that year but could be allowed for other years or for other international transactions for that year, subject to fulfilment of specified conditions in Rules 10MA and 10RA. However, if MAP request is pending for any of the rollback year under APA, upon the option exercised by the applicant, either MAP or application for roll back shall be proceeded with for such year.

Question 8

Rule 10MA(1) provides that the agreement may provide for determining ALP or manner of determination of ALP. However, Rule 10MA(4) only specifies that the manner of determination of ALP should be the same as in the APA term. Does that mean the ALP could be different?

Answer

Yes, the ALP could be different for different years. However, the manner of determination of ALP (including choice of Method, comparability analysis and Tested Party) would be same.

Question 9

Will there be compliance audit for roll back? Would critical assumptions have to be validated during compliance audit?

Answer

Since rollback provisions are for past years, ALP for the rollback years would be agreed after full examination of all the facts, including validation of critical assumptions. Hence, compliance audit for the rollback years would primarily be to check if the agreed price or methodology has been applied in the modified return.

Question 10

Whether applicant has an option to withdraw its rollback application? Can the applicant accept the rollback results without accepting the APA for the future years?

Answer

The applicant has an option to withdraw its roll back application even while maintaining the APA application for the future years. However, it is not possible to accept the rollback results without accepting the APA for the future years. It may also be noted that the fee specified in Rule 10MA(5) shall not be refunded even where a rollback application is withdrawn.

Question 11

For already concluded APAs, will new APAs be signed for rollback or earlier APAs could be revised?

Answer

The second proviso to Rule 10MA(5) provides for revision of APAs already concluded to include rollback provisions.

Question 12

For already concluded APAs, where the modified return has already been filed for the first year of the APA term, how will the time-limit for filing modified return for rollback years be determined?

Answer

The time to file modified return for rollback years will start from the date of signing the revised APA incorporating the rollback provisions.

Question 13

In case of merger of companies, where one or more of those companies are APA applicants, how would the rollback provisions be allowed and to which company or companies would it be allowed?

Answer

The agreement is between the Board and a person. The principle to be followed in case of merger is that the person (company) who makes the APA application would only be entitled to enter into the agreement and be entitled for the rollback provisions in respect of international transactions undertaken by it in rollback years.

Other persons (companies) who have merged with this person (company) would not be eligible for the rollback provisions.

To illustrate, if A, B and C merge to form C and C is the APA applicant, then the agreement can only be entered into with C and only C would be eligible for the rollback provisions. A and B would not be eligible for the rollback provisions. To illustrate further, if A and B merge to form a new company C and C is the APA applicant, then nobody would be eligible for rollback provisions.

Question 14

In case of a demerger of an APA applicant or signatory into two or more companies (persons), who would be eligible for the rollback provisions?

Answer

The same principle as mentioned in the previous answer, i.e., the person (company) who makes an APA application or enters into an APA would only be entitled for the rollback provisions, would continue to apply. To illustrate, if A has applied for or entered into an APA and, subsequently, demerges into A and B, then only A will be eligible for rollback for international transactions covered under the APA. As B was not in existence in rollback years, availing or grant of rollback to B does not arise.

3. Deduction in respect of cost of production allowable under section 37 in the case of Abandoned Feature Films [Circular No. 16, dated 6.10.2015]

The deduction in respect of the cost of production of a feature film certified for release by the Board of Film Censors in a previous year is provided in Rule 9A.

In the case of abandoned films, however, since certificate of Board of Film Censors is not received, in some cases no deduction was allowed by applying Rule 9A of the Rules or by treating the expenditure as capital expenditure.

The CBDT has examined the matter in light of judicial decisions on this subject. The order of the Hon'ble Bombay High Court dated 28.1.2015 in ITA 310 of 2013 in the case of *Venus Records and Tapes Pvt. Ltd.* on this issue has been accepted and the aforesaid disputed issue has not been further contested.

Consequently, it is clarified that Rule 9A does not apply to abandoned feature films and that the expenditure incurred on such abandoned feature films is **not** to be treated as a capital expenditure. The cost of production of an abandoned feature film is to be treated as revenue expenditure and allowed as per the provisions of section 37 of the Income-tax Act, 1961.

4. Interest from non-SLR Securities of Banks: Whether chargeable under the head "Profits and gains of business or profession" or "Income from other sources"? *[Circular No. 18, dated 2.11.2015]*

The issue addressed by this circular is whether in the case of banks, expenses relatable to investment in non-SLR securities need to be disallowed under section 57(i), by considering interest on non-SLR securities as "Income from other sources."

Section 56(1)(id) provides that income by way of interest on securities shall be chargeable to income-tax under the head "Income from Other Sources", if the income is not chargeable to income-tax under the head "Profits and Gains of Business and Profession".

The CBDT has examined the matter in light of the judicial decisions on this issue. In the case of *CIT* v. *Nawanshahar Central Cooperative Bank Ltd. [2007] 160 Taxman 48 (SC),* the Apex Court held that the **investments made by a banking concern are part of the business of banking**. Therefore, the income arising from such investments is attributable to the business of banking falling **under the head "Profits and Gains of Business and Profession".**

5. Revision of monetary limits for filing of appeals by the Department before Income Tax Appellate Tribunal and High Courts and SLP before Supreme Court – A significant measure for reducing litigation *[Circular No. 21/2015, dated 10-12-2015]*

The CBDT has, through this circular, revised the monetary limits for filing of appeals by the Department with the objective of reducing litigation as a part of its initiatives to reduce grievances of the tax payers.

Accordingly, henceforth, appeals/ SLPs shall not be filed in cases where the tax effect does not exceed the monetary limits given hereunder -

S. No.	Appeals in income-tax matters	Monetary limit (₹)
1.	Before Appellate Tribunal	10,00,000
2.	Before High Court	20,00,000
3.	Before Supreme Court	25,00,000

It is also clarified that an appeal should not be filed merely because the tax effect in a case exceeds the monetary limits prescribed above. Filing of appeal in such cases is to be decided **on merits** of the case.

Meaning of Tax Effect:

	Case	Tax effect
(i)	In cases not covered in (ii), (iii) and (iv) below	The tax on the total income assessed **(-)** The tax that would have been chargeable had such total income been reduced by the amount of income in respect of the issues against which appeal is intended to be filed ("disputed issues"). ***Note** - However, the tax will not include any interest thereon, except where chargeability of interest itself is in dispute.*

(ii)	In case the chargeability of interest is the issue under dispute	The amount of interest
(iii)	In cases where returned loss is reduced or assessed as income	The tax effect would include notional tax on disputed additions
(iv)	In case of penalty orders	Quantum of penalty deleted or reduced in the order to be appealed against

Manner of calculation of tax effect of different assessment years:

The Assessing Officer has to calculate the tax effect separately for every assessment year in respect of the disputed issues in the case of every assessee. If, in the case of an assessee, the disputed issues arise in more than one assessment year, appeal can be filed in respect of such assessment year or years in which the tax effect in respect of the disputed issues exceeds the specified monetary limit. No appeal shall be filed in respect of an assessment year or years in which the tax effect is less than the monetary limit specified. In other words, henceforth, appeals can be filed only with reference to the tax effect in the relevant assessment year. However, in case of a composite order of any High Court or appellate authority, which involves more than one assessment year and common issues in more than one assessment year, appeal shall be filed in respect of all such assessment years even if the 'tax effect' is less than the prescribed monetary limits in any of the year(s), if it is decided to file appeal in respect of the year(s) in which 'tax effect' exceeds the monetary limit prescribed. In case where a composite order/judgement involves more than one assessee, each assessee shall be dealt with separately.

Department not precluded from filing an appeal against disputed issues for subsequent assessment years if the tax effect exceeds the specified monetary limits in those years

In a case where appeal before a Tribunal or a Court is not filed only on account of the tax effect being less than the monetary limit specified above, the Commissioner of Income-tax shall specifically record that "even though the decision is not acceptable, appeal is not being filed only on the consideration that the tax effect is less than the monetary limit specified in this instruction". Further, in such cases, there will be no presumption that the Income-tax Department has acquiesced in the decision on the disputed issues. The Income-tax Department shall not be precluded from filing an appeal against the disputed issues in the case of the same assessee for any other assessment year, or in the case of any other assessee for the same or any other assessment year, if the tax effect exceeds the specified monetary limits.

Cases in respect of which appeal is not filed due to tax effect being less than specified monetary limit not to have any precedent value

In the past, a number of instances have come to the notice of the Board, whereby an assessee has claimed relief from the Tribunal or the Court only on the ground that the Department has implicitly accepted the decision of the Tribunal or Court in the case of the assessee for any other assessment year or in the case of any other assessee for the same or any other assessment year, by not filing an appeal on the same disputed issues. The Departmental representatives/counsels must make every effort to bring to the notice of the Tribunal or the Court that the appeal in such cases was not filed or not admitted only for the reason of the tax effect being less than the specified monetary limit and, therefore, no inference should be drawn that the decisions rendered therein were acceptable to the Department. Accordingly, they should impress upon the Tribunal or the Court that such cases do not have any precedent value. As the evidence of not filing appeal due to this instruction may have to be produced in courts, the judicial folders in the office of Cs IT must be maintained in a systemic manner for easy retrieval.

Circumstances when appeal can be filed even if tax effect is less than the specified monetary limit

Adverse judgments relating to the following issues should be **contested on merits** notwithstanding that the tax effect entailed is less than the specified monetary limits or there is no tax effect:

(a) Where the Constitutional validity of the provisions of an Act or Rule are under challenge, or

(b) Where Board's order, Notification, Instruction or Circular has been held to be illegal or ultra vires, or

(c) Where Revenue Audit objection in the case has been accepted by the Department, or

(d) Where the addition relates to undisclosed foreign assets/bank accounts.

Specified monetary limit not to apply to writ matters and direct tax matters other than income-tax

Filing of appeals in other direct tax matters shall continue to be governed by the relevant provisions of statute and rules. Further, filing of appeal in cases of income-tax, where the tax effect is not quantifiable or not involved, such as the case of registration of trusts or institutions under section 12A, shall not be governed by the specified monetary limits and decision to file appeal in such cases may be taken **on merits** of a particular case.

Clarification on applicability of Circular No 21/2015, dated 10-12-2105 [Letter F. No. 279/Misc./M-142/2007 - ITJ (Part), dated 08-03-2016]

The monetary limits for filing appeals before the Income Tax Appellate Tribunals and High Courts were raised to ₹ 10 lakhs and ₹ 20 lakhs, respectively, by Circular 21/2015 dated 10.12.2015.

The issue under consideration is whether such circular would be applicable to cross objections filed by the Department before the Income-tax Appellate Tribunal under section 253(4) and to references to the High Court under sections 256(1) and 256(2).

The CBDT has examined the matter and clarified that the monetary limit of ₹10 lakhs for filing appeals before the ITAT would apply equally to cross objections under section 253(4). Cross objections below this monetary limit, already filed, should be pursued for dismissal as withdrawn/not pressed. Filing of cross objections below the monetary limit may not be considered henceforth.

Similarly, references to High Courts below the monetary limit of ₹ 20 lakhs should be pursued for dismissal as withdrawn/not pressed. References below this limit may not be considered henceforth.

6. Allowability of Employer's Contribution to funds for welfare of employees paid after the due date under the relevant Act but before the due date of filing of return of income under section 139(1) *[Circular No.22/2015 dated 17-12-2015]*

Under section 43B of the Income-tax Act, 1961, certain deductions are admissible only on payment basis. The CBDT has observed that some field officers disallow employer's contributions to provident fund or superannuation fund or gratuity fund or any other fund for the welfare of employees, by invoking the provisions of section 43B, if it has been paid after the 'due dates' as per the relevant Acts.

The CBDT has examined the matter in light of the judicial decisions on this issue. In the case of *Commissioner vs. Alom Extrusions Ltd, [2009] 185 Taxman 416,* the Apex Court held that the deduction is allowable to the employer assessee if he deposits the contributions to welfare funds on or before the 'due date' of filing of return of income.

Accordingly, the settled position is that ***if the assessee deposits any sum payable by it by way of tax, duty, cess or fee, by whatever name called, under any law for the time being in force, or any sum payable by the assessee as an employer by way of contribution to any provident fund or superannuation fund or gratuity fund or any other fund for the welfare of employees, on or before the 'due date' applicable in his case for furnishing the return of income under section 139(1) of the Act, no disallowance can be made under section 43B of the Act.***

It is further clarified that this Circular does <u>not</u> apply to claim of deduction relating to employee's contribution to welfare funds which are governed by section 36(1)(va) of the Income-tax Act, 1961.

7. Applicability of provisions for deduction of tax at source under section 194A on interest on fixed deposit made in the name of the Registrar General of Court or the depositor of the Fund on directions of Courts [*Circular No.23/2015, dated 28-12-2015*]

Section 194A stipulates deduction of tax at source (TDS) on interest other than interest on securities if the aggregate of amount of such interest credited or paid to the account of the payee during the financial year exceeds the specified amount.

In the case of UCO Bank in Writ Petition No. 3563 of 2012 and CM No. 7517/2012 vide judgment dated 11/11/2014, the Hon'ble Delhi High Court has held that the provisions of section 194A do not apply to fixed deposits made in the name of Registrar General of the Court on the directions of the Court during the pendency of proceedings before the Court. In such cases, till the Court passes the appropriate orders in the matter, it is not known who the beneficiary of the fixed deposits will be. Amount and year of receipt is also unascertainable. The Delhi High Court, thus, held that the person who is ultimately granted the funds would be determined by orders that are passed subsequently. At that stage, undisputedly, tax would be required to be deducted at source to the credit of the recipient. The High Court has also quashed Circular No.8/2011.

The CBDT has accepted the aforesaid judgment. Accordingly, it is clarified that interest on FDRs made in the name of Registrar General of the Court or the depositor of the fund on the directions of the Court, will not be subject to TDS till the matter is decided by the Court. However, once the Court decides the ownership of the money lying in the fixed deposit, the provisions of section 194A will apply to the recipient of the income.

8. Applicability of Supreme Court Guidelines on recording of satisfaction note under section 158BD to apply to proceedings under section 153C for the purposes of assessment of income of a person other than the person in respect of whom search is initiated under section 132 or books of account are requisitioned under section 132A *[Circular No.24/2015, dated 31-12-2015]*

The issue of recording of satisfaction for the purposes of section 158BD/153C has been subject matter of litigation.

The Hon'ble Supreme Court in the case of *M/s Calcutta Knitwears* in its detailed judgment in Civil Appeal No. 3958 of 2014 dated 12-3-2014 (available in NJRS at 2014-LL-0312-51) has laid down that for the purpose of section 158BD of the Act, recording of a satisfaction note is a pre-requisite and the satisfaction note must be prepared by the Assessing Officer before he transmits the record to the other Assessing Officer who has jurisdiction over such other person under section

158BD[5]. The Supreme Court held that "the satisfaction note could be prepared at any of the following stages:

a. at the time of or along with the initiation of proceedings against the searched person under section 158BC; or

b. in the course of the assessment proceedings under section 158BC; or

c. immediately after the assessment proceedings are completed under section 158BC of the searched person.

Several High Courts have held that the provisions of section 153C are substantially similar/ *pari-materia* to the provisions of section 158BD and therefore, the above guidelines of the Supreme Court, apply to proceedings under section 153C, for the purposes of assessment of income of other than the searched person. This view has been accepted by CBDT.

It is further clarified that even if the Assessing Officer of the searched person and the "other person" is one and the same, then also he is required to record his satisfaction as has been held by the Courts.

9. Applicability of TDS provisions on payments by broadcasters or Television Channels to production houses for production of content or programme for telecasting *[Circular No. 04/2016, dated 29-2-2016]*

The issue of applicability of TDS provisions on payments made by broadcasters/ telecasters to production houses for production of content or programme for broadcasting/ telecasting has been examined by CBDT.

The issue under consideration is whether payments made by the broadcaster/telecaster to production houses for production of content/programme are payments under a 'work contract' liable for tax deduction at source under section 194C or a contract for 'professional or technical services' liable for tax deduction at source under section 194J of the Income-tax Act, 1961.

In this regard, the CBDT has clarified that while applying the relevant provisions of TDS on a contract for content production, a distinction is required to be made between:

(i) a payment for production of content/programme as per the specifications of the broadcaster/telecaster; and

[5] Section 158BC lays down the procedure for block assessment dealt with in Chapter XIV-B of the Income-tax Act, 1961, which applies where search is initiated under section 132 or books of account are requisitioned under section 132A on or before 31.5.2003. Section 158BD provides that where the Assessing Officer is satisfied that any undisclosed income belongs to any person, other than the person with respect to whom search is made under section 132 or books of account are requisitioned under section 132A, then, the books of account, other documents seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed under section 158BC against such other person and the provisions of Chapter XIV-B shall apply accordingly.

(ii) a payment for acquisition of broadcasting/ telecasting rights of the content already produced by the production house.

In the first situation where the content is produced as per the specifications provided by the broadcaster/ telecaster and the copyright of the content/programme also gets transferred to the telecaster/ broadcaster, such contract is covered by the definition of the term `work' in section 194C and, therefore, subject to TDS under that section. This position clearly flows from the definition of `work' given in clause (iv)(b) of the *Explanation* to section 194C and the same has also been clarified vide Q. No. 3 of Circular No. 715 dated 8.8.1995.

However, in a case where the telecaster/broadcaster acquires only the telecasting/ broadcasting rights of the content already produced by the production house, there is no contract for ''carrying out any work", as required in section 194C(1). Therefore, such payments are not liable for TDS under section 194C. However, payments of this nature may be liable for TDS under other sections of Chapter XVII-B of the Act.

10. Applicability of TDS provisions on payments by television channels and publishing houses to advertisement companies for procuring or canvassing for advertisements *[Circular No. 05/2016, dated 29-2-2016]*

The issue of applicability of TDS provisions on payments made by television channels or media houses publishing newspapers or magazines to advertising agencies for procuring and canvassing for advertisements has been examined by the CBDT.

The CBDT noted that there are two types of payments involved in the advertising business:

(i) Payment by client to the advertising agency, and

(ii) Payment by advertising agency to the television channel/newspaper company

The applicability of TDS on these payments has already been dealt with in Circular No. 715 dated 8-8-1995, where it has been clarified in Question Nos. 1 & 2 that while TDS under section 194C (as work contract) will be applicable on the first type of payment, there will be no TDS under section 194C on the second type of payment e.g. payment by advertising agency to the media company.

However, another issue has been raised in various cases as to whether the fees/charges taken or retained by advertising companies from media companies for canvasing/booking advertisements (typically 15% of the billing) is 'commission' or 'discount'. It has been argued by the assessees that since the relationship between the media company and the advertising company is on a principal-to-principal basis, such payments are in the nature of trade discount and not commission and, therefore, outside the purview of TDS under section 194H. The Department, on the other hand, has taken a stand in some cases that since the advertising agencies act on behalf of the media companies for procuring advertisements, the margin retained

by the former amounts to constructive payment of commission and, accordingly, TDS under section 194H is attracted.

The issue has been examined by the Allahabad High Court in the case of *Jagran Prakashan Ltd.* and Delhi High Court in the matter of *Living Media Limited* and it was held in both the cases that the relationship between the media company and the advertising agency is that of a 'principal-to-principal' and, therefore, not liable for TDS under section 194H. The SLPs filed by the Department in the matter of *Living Media Ltd.* and *Jagran Prakashan Ltd.* have been dismissed by the Supreme Court *vide* order dated 11-12-2009 and order dated 5-5-2014, respectively. Though these decisions are in respect of print media, the ratio is also applicable to electronic media/television advertising as the broad nature of the activities involved is similar.

In view of the above, the CBDT has clarified that no TDS is attracted on payments made by television channels/newspaper companies to the advertising agency for booking or procuring of or canvassing for advertisements. It is also further clarified that 'commission' referred to in Question No.27 of the CBDT's Circular No. 715 dated 8-8-1995 does not refer to payments by media companies to advertising companies for booking of advertisements but to payments for engagement of models, artists, photographers, sportspersons, etc. and, therefore, is not relevant to the issue of TDS referred to in this Circular.

11. Surplus on sale of shares and securities - whether taxable as capital gains or business income? *[Circular No. 06/2016, dated 29-2-2016]*

Section 2(14) defines the term "capital asset" to include property of any kind held by an assessee, whether or not connected with his business or profession, but does not include any stock-in-trade or personal assets subject to certain exceptions. As regards shares and other securities, the same can be held either as capital assets or stock-in-trade/trading assets or both.

Determination of the character of a particular investment in shares or other securities, whether the same is in the nature of a capital asset or stock-in-trade, is essentially a fact-specific determination and has led to a lot of uncertainty and litigation in the past.

Parameters laid down by CBDT and Courts to distinguish shares held as investments and shares held as stock in trade

Over the years, the courts have laid down different parameters to distinguish the shares held as investments from the shares held as stock-in-trade. The CBDT has also, through Instruction No. 1827, dated August 31, 1989 and Circular No. 4 of 2007 dated June 15, 2007, summarized the said principles for guidance of the field formations.

Principles to determine whether gains on sale of listed shares and other securities would constitute capital gains or business income

Disputes, however, continue to exist on the application of these principles to the facts of an individual case since the taxpayers find it difficult to prove the intention

in acquiring such shares/securities. In this background, while recognizing that no universal principle in absolute terms can be laid down to decide the character of income from sale of shares and securities (i.e. whether the same is in the nature of capital gain or business income), CBDT realizing that major part of shares/securities transactions takes place in respect of the listed ones and with a view to reduce litigation and uncertainty in the matter, in partial modification to the aforesaid Circulars, further instructs the Assessing Officers to take into account the following while deciding whether the surplus generated from sale of listed shares or other securities would be treated as Capital Gain or Business Income —

a) **Where assessee opts to treat such shares and securities as stock-in-trade**: Where the assessee itself, irrespective of the period of holding the listed shares and securities, opts to treat them as stock-in-trade, the income arising from transfer of such shares/securities would be treated as its business income,

b) **Listed shares and securities held for a period of more than 12 months**: In respect of listed shares and securities held for a period of more than 12 months immediately preceding the date of its transfer, if the assessee desires to treat the income arising from the transfer thereof as Capital Gain, the same shall not be put to dispute by the Assessing Officer. However, this stand, once taken by the assessee in a particular Assessment Year, shall remain applicable in subsequent Assessment Years also and the taxpayers shall not be allowed to adopt a different/contrary stand in this regard in subsequent years;

c) **Other cases**: In all other cases, the nature of transaction (i.e. whether the same is in the nature of capital gain or business income) shall continue to be decided keeping in view the aforesaid Circulars issued by the CBDT.

Principles listed above not to apply in case of sham transactions

It is, however, clarified that the above shall not apply in respect of such transactions in shares/securities where the genuineness of the transaction itself is questionable, such as bogus claims of Long Term Capital Gain/Short Term Capital Loss or any other sham transactions.

Objective of formulation of principles: Reducing litigation and ensuring consistency

It is reiterated that the above principles have been formulated with the sole objective of reducing litigation and maintaining consistency in approach on the issue of treatment of income derived from transfer of shares and securities. All the relevant provisions of the Act shall continue to apply on the transactions involving transfer of shares and securities.

12. Does a consortium of contractors formed to implement large infra projects necessarily constitute an AOP? [*Circular No. 07/2016, dated 07-03-2016*]

A consortium of contractors is often formed to implement large infrastructure projects, particularly in Engineering Procurement and Construction ('EPC') contracts and Turnkey

Projects. The tax authorities, in many cases have taken a position that such a consortium constitutes an Association of Persons ('AOP') i.e., a separate entity for charging tax. The claim of taxpayers, on the other hand, is contrary to this view. This has led to tax disputes particularly in those cases where each member of the consortium, although jointly and severally liable to the contractee, has a clear distinction and role in scope of work, responsibilities and liabilities of the consortium members.

Existence of AOP: Determined by facts and circumstances of a case and no formula for universal application exists

The term AOP has not been specifically defined in the Income-tax Act, 1961. The issue as to what would constitute an AOP was considered by the Apex Court in some cases. Although certain guidelines were prescribed in this regard, the Court opined that there is no formula of universal application so as to conclusively decide the existence of an AOP and it would rather depend upon the particular facts and circumstances of a case. In the specific context of the EPC contracts/Turnkey projects, there are several contrary ruling of various Courts on what constitutes an AOP.

Consortium arrangement for executing EPC/Turnkey contracts – Necessary attributes for not being treated as an AOP

With a view to avoid tax-disputes and to have consistency in approach while handling these cases, the CBDT has decided that a consortium arrangement for executing EPC/Turnkey contracts which has the following attributes may not be treated as an AOP:

(a) each member is independently responsible for executing its part of work through its own resources and also bears the risk of its scope of work i.e., there is a clear demarcation in the work and costs between the consortium members and each member incurs expenditure only in its specified area of work;

(b) each member earns profit or incurs losses, based on performance of the contract falling strictly within its scope of work. However, consortium members may share contract price at gross level only to facilitate convenience in billing;

(c) the men and materials used for any area of work are under the risk and control of respective consortium members;

(d) the control and management of the consortium it not unified and common management is only for the *inter-se* co-ordination between the consortium members for administrative convenience;

There may be other additional factors also which may justify that consortium is not an AOP and the same shall depend upon the specific facts and circumstances of a particular case, which need to be taken into consideration while taking a view in the matter.

Non-applicability of Circular where consortium members are Associated Enterprises

This Circular shall not be applicable in cases where all or some of the members of the consortium are Associated Enterprises within the meaning of section 92A of the

Act. In such cases, the Assessing Officer will decide whether an AOP is formed or not keeping in view the relevant provisions of the Act and judicial jurisprudence on this issue.

13. Commencement of limitation for penalty proceedings under sections 271D and 271E *[Circular No.9/2016 dated 26.4.2016]*

There are conflicting interpretations of various High Courts on the issue whether the limitation for imposition of penalty under sections 271D and 271E commences at the level of the Assessing Officer (below the rank of Joint Commissioner of Income-tax) or at level of the Range authority i.e., the Joint Commissioner of Income-tax/Additional Commissioner of Income-tax.

Some High Courts have held that the limitation commences at the level of the authority competent to impose the penalty i.e., Range Head, while others have held that even though the Assessing Officer is not competent to impose the penalty, the limitation commences at the level of the Assessing Officer, where the Assessing Officer has issued show cause notice or referred to the initiation of proceedings in assessment order.

The CBDT is of the view that for the sake of clarity and uniformity, the conflict needs to be resolved by way of a "Departmental View".

The Kerala High Court, in *Grihalaxmi Vision v. Addl. CIT*, observed that the question to be considered is whether proceedings for levy of penalty are initiated with the passing of the order of assessment by the Assessing Officer or whether such proceedings have commenced with the issuance of the notice by the Joint Commissioner. From the statutory provisions, it is clear that the competent authority to levy penalty is the Joint Commissioner. Therefore, only the Joint Commissioner can initiate proceedings for levy of penalty. Such initiation of proceedings could not have been done by the Assessing Officer. The statement in the assessment order that the proceedings under Section 271D and 271E are initiated is inconsequential. On the other hand, if the assessment order is taken as the initiation of penalty proceedings, such initiation is by an authority who is incompetent and the proceedings thereafter would be proceedings without jurisdiction. If that be so, the initiation of the penalty proceedings is only with the issuance of the notice by the Joint Commissioner to the assessee to which he has filed his reply.

The CBDT Circular clarifies that the above judgement reflects the "Departmental View". Accordingly, the Assessing Officers (below the rank of Joint Commissioner of income-tax) have to make a reference to the Range Head, regarding any violation of the provisions of section 269SS and section 269T, as the case may be, in the course of the assessment proceedings (or any other proceedings under the Act). The Assessing Officer (below the rank of Joint Commissioner of Income-tax) shall not issue the notice in this regard. The Range Head will issue the penalty notice and shall dispose/complete the proceedings within the limitation prescribed under section 275(1)(c).

The Circular further clarifies that where any High Court decides this issue contrary to the "Departmental View", the "Departmental View" thereon shall not be operative in the area falling in the jurisdiction of the relevant High Court. However, the CCIT concerned should immediately bring the judgment to the notice of the Central Technical Committee (CTC). The CTC shall examine the said judgment on priority to decide as to whether filing of SLP to the Supreme Court will be adequate response for the time being or some legislative amendment is called for.

14. Limitation for penalty proceedings under section 271D and 271E – whether to be determined under section 275(1)(a) or section 275(1)(c) *[Circular No.10/2016 dated 26.4.2016]*

The issue whether the limitation for imposition of penalty under sections 271D and 271E, is determined under section 275(1)(a) or section 275(1)(c), has given rise to considerable litigation.

The Delhi High Court, in *CIT v. Worldwide Township Projects Ltd*., has considered this issue and observed that is well settled that a penalty under this provision is independent of the assessment. The action inviting imposition of penalty is granting of loans above the prescribed limit otherwise than through banking channels and as such infringement of section 269SS is not related to the income that may be assessed or finally adjudicated. In this view, section 275(1)(a) would not be applicable and the provisions of section 275(1)(c) would be attracted. The judgment has been accepted by the CBDT.

In view of the above, it is a settled position that the period of limitation of penalty proceedings under section 271D and section 271E of the Act is governed by the provisions of section 275(1)(c). Therefore, the limitation period for the imposition of penalty under these provisions would be the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later. The limitation period is not dependent on the pendency of appeal against the assessment or other order referred to in section 275(1)(a).

15. Payment of interest on refund under section 244A of excess TDS deposited under section 195 *[Circular No.11/2016 dated 26.4.2016]*

The procedure for refund of tax deducted at source under section 195 to the person deducting the tax is set out in CBDT Circular No.7 /2007 dated 23.10.2007. Circular No.7/2007 states that no interest under section 244A is admissible on refunds to be granted in accordance with the circular or on the refunds already granted in accordance with Circular No.769 or Circular No.790 dated 20.4.2000.

The issue of eligibility for interest on refund of excess TDS to a tax deductor has been a subject matter of controversy and litigation. The Supreme Court of India, in *Tata Chemical Limited 1, Civil Appeal No. 6301 of 2011 vide order dated 26.02.2014,* held that refund due and payable to the assessee is debt-owed and

payable by the Revenue. Though there is no express statutory provision for payment of interest on the refund of excess amount/tax collected by the Revenue, the Government cannot shrug off its apparent obligation to reimburse the deductors lawful monies with the accrued interest for the period of undue retention of such monies. The State having received the money without right, and having retained and used it, is bound to make the party good, just as an individual would be under like circumstances. The obligation to refund money received and retained without right implies and carries with it the right to interest. "

In view of the above judgment of the Apex Court, it is settled that if a resident deductor is entitled for the refund of tax deposited under section 195, then it has to be refunded with interest under section 244A from the date of payment of such tax.

Part II: Judicial Update – Direct Tax Laws

Significant Legal Decisions

Residential Status and Scope of Total Income

1. Can consideration for supply of software embedded in hardware tantamount to 'royalty' under section 9(1)(vi)?

CIT v. Alcatel Lucent Canada (2015) 372 ITR 476 (Del)

Facts of the case: The assessee, a company incorporated in France, was engaged in manufacture, trade and supply equipment and services for GSM Cellular Radio Telephones Systems. It supplied hardware and software to various entities in India. Software licensed by the assessee embodied the process which is required to control and manage the specific set of activities involved in the business use of its customers. Software also made available the process to its customers, who used it to carry out their business activities. The Assessing Officer contended that the consideration for supply of software embedded in hardware is 'royalty' under section 9(1)(vi).

Appellate Authorities' Views: The Commissioner (Appeals) and Tribunal held that the consideration for supply of embedded software (which is part of the hardware supplied to the assessee customers) did not constitute royalty and therefore, section 9(1)(vi) was not attracted.

High Court's Observations: The High Court, at the outset, noted that the Tribunal had relied upon the precedent in the case of *DIT v. Ericsson A.B. (2012) 343 ITR 470 (Del),* where the High Court observed that what was sold by the assessee to its Indian customers was a GSM which consisted of both hardware and software. The High Court had also observed that -

(i) the software that was loaded on the hardware did not have any independent existence;

(ii) the software supply is an integral part of GSM mobile telephone system and is used by the cellular operators for providing cellular services to its customers;

(iii) the software is embedded in the system and there could not be any independent use of such software;

(iv) this software merely facilitates the functioning of the equipment and is an integral part of the hardware.

Further, the High Court had also referred the decision of the Apex Court in *Tata Consultancy Services v. State of Andhra Pradesh (2004) 271 ITR 401*, wherein it was held that software incorporated on a media would be goods liable to sales tax.

High Court's Decision: The High Court concurred with the decision of the Tribunal holding that where payment is made for hardware in which the software is embedded and the software does not have independent functional existence, no amount could be attributed as 'royalty' for software in terms of section 9(1)(vi).

Incomes which do not form part of total income

2. Where an institution engaged in imparting education incidentally makes profit, would it lead to an inference that it ceases to exist solely for educational purposes?

Queen's Educational Society v. CIT (2015) 372 ITR 699 (SC)

Facts of the case: The assessee, an educational institution, showed a net surplus of ₹ 6.59 lakhs and ₹ 7.83 lakhs, respectively, for the assessment years 2000-01 and 2001-02. Since it was established with the sole object of imparting education, it claimed exemption under section 10(23C)(iiiad). The Assessing Officer rejected the claim of exemption on the ground that the assessee has made profits and did not exist solely for educational purposes. The Commissioner (Appeals) allowed the assessee's claim and the Tribunal dismissed the Revenue's appeal holding that the assessee was engaged undoubtedly in imparting education and the profit was only incidental to the main object of spreading education. However, the High Court restored the order of the Assessing Officer on the reasoning that the institution made profit, year on year, and hence, was not eligible for tax exemption.

Supreme Court's Observations: The Supreme Court observed that the provisions of section 10(23C)(iiiad) provide for three requirements, namely,

(i) the education institution must exist solely for educational purposes;

(ii) it should not be for purposes of profit; and

(iii) the aggregate annual receipts of such institution should not exceed the amount as may be prescribed. Such monetary limit is ₹ 1 crore as per Rule 2BC.

The Supreme Court concurred with the Tribunal's reasoning that profit is only incidental to the main object of spreading education. If there is no surplus arising out of the difference between receipts and outgoings, the trust will not be able to achieve the objectives. Any education institution cannot be run in rented premises for all the times and without necessary equipment and without paying to the staff engaged in imparting education. The assessee is not getting any financial aid/assistance from the Government or other philanthropic agency and, therefore, to achieve the objective, it has to raise its own funds. However, such surplus would not come within the ambit of denying exemption under section 10(23C)(iiiad).

Further, the Apex Court made reference to the tests culled out in its own decisions in the case of *Addl. CIT v. Surat Art Silk Cloth Manufacturers Association [1980] 121 ITR 1,*

Aditanar Educational Institution v. Addl. CIT [1997] 224 ITR 310 and American Hotel and Lodging Association Educational Institute v. CBDT [2008] 301 ITR 86, which would apply for determining whether an educational institution exists solely for education purposes and not for purposes of profit.

The Apex Court, after analyzing the legal provisions and precedents, summed up the law common to section 10(23C)(iiiad)/(vi):

(a) Where an educational institution carries on the activity of education primarily for educating persons, the fact that it makes a surplus does not lead to the conclusion that it ceases to exist solely for educational purposes and becomes an institution for the purpose of making profit;

(b) The predominant object test must be applied – the purpose of education should not be submerged by a profit making motive;

(c) A distinction must be drawn between the making of surplus and an institution being carried on "for profit". Merely because imparting of education results in making a profit, it cannot be inferred that it becomes an activity for profit;

(d) If after meeting expenditure, surplus arises incidentally from the activity carried on by the educational institution, it will not cease to be one existing solely for educational purposes; and

(e) The ultimate test is whether on an overall view of the matter in the concerned assessment year, the object is to make profit as opposed to educating persons.

Apex Court's Decision: Based on the above principles and tests, the Apex Court upheld the Tribunal's view that the assessee was engaged in imparting education and the profit was only incidental to the main object of spreading education. Hence, it satisfies the conditions laid down in section 10(23C)(iiiad) for claim of exemption thereunder.

Profits and gains from business or profession

3. Under what head of income should income from letting out of godowns and provision of warehousing services be subject to tax - "Income from house property" or "profits and gains of business or profession"?

CIT v. NDR Warehousing P Ltd (2015) 372 ITR 690 (Mad)

Facts of the case: The assessee engaged in the business of warehousing, handling and transport business claimed income from letting out of buildings and godowns as business income. The Assessing Officer assessed such income as "Income from house property".

Appellate Authorities' Observations: The Commissioner (Appeals) observed that the assessee's activity was not merely letting out of warehouses but storage of goods with provision of several auxiliary services such as pest control, rodent control and fumigation service to prevent the goods stored from being affected by vagaries of moisture and

temperature. Further, service of security and protection was also provided to the goods stored. There is, therefore, no dispute that the assessee carries on the activity in an organised manner. These activities are more than mere letting out of the godown for tenancy.

The Tribunal noted that the objects clause of the memorandum of association of the company clearly shows that the assessee-company was incorporated with the object of carrying on the business of warehousing and letting/renting of godowns and providing facilities for storage of articles or things and descriptions whatsoever. The profit and loss account of the assessee-company shows that its main source of income is storage charges and maintenance or user charges. Even substantial part of the expenses also relate to the salaries of employees engaged in the maintenance and upkeep of the godowns and warehouses. Based on these facts, Tribunal concurred with the findings of the Commissioner (Appeals) and held that the income of the assessee from letting out of warehouses and godowns is chargeable under the head "Profits and gains of business or profession" and not "Income from house property".

High Court's Decision: The High Court observed that the Commissioner (Appeals) as well as the Tribunal had not only gone into the objects clause of the memorandum of the assessee but also individual aspects of the business to come to the conclusion that it was a case of warehousing business, and, therefore, the income would fall under the head "Profits and gains of business or profession".

Accordingly, the High Court held that the income earned by the assessee from letting out of godowns and provision of warehousing services is chargeable to tax under the head "Profits and gains of business or profession" and not under the head "Income from house property".

4. Can section 41(1) be invoked in respect of long standing credit balances of sundry creditors admitted as liability in the Balance Sheet?

Principal CIT v. Matruprasad C.Pandey (2015) 377 ITR 363 (Guj)

Facts of the case: A notice under section 142(1) was served upon the assessee along with a detailed questionnaire. On verification of the Balance Sheet, the Assessing Officer noticed that the assessee had shown sundry creditors amounting to ₹197.73 lakhs in the Balance Sheet, for which the assessee was asked to furnish a copy of the ledger account of the last three years, break-up of the amounts outstanding along with complete name, address, PAN and confirmation letters. The assessee failed to produce the break-up of the amounts appearing in the Balance Sheet and therefore, a show cause notice was issued as to why the amounts should not be added to his total income as unexplained credit. The Assessing Officer further observed that in this case, the outstanding liabilities of ten sundry creditors, who were very old, was ₹ 56.52 lakhs and the payment has reached the stage of cessation. Consequently, the Assessing Officer treated the long standing creditors as no longer payable/cessation of liabilities under section 41(1) and

hence, added such amount to the total income by invoking the provisions of section 41(1).

Appellate Authorities' Views: The Commissioner (Appeals) confirmed the addition of ₹ 56.52 lakhs by invoking section 41(1). However, the Appellate Tribunal deleted such addition in respect of outstanding credit balances of certain parties brought forward from earlier years by invoking section 41(1).

High Court's Observations: The High Court observed that the Assessing Officer invoked section 41(1) by doubting certain creditors which were appearing in the balance sheet for the past several years. At no point of time earlier, the Assessing Officer doubted the credit worthiness or identity of the creditors.

The Court referred the decision of its own division bench in the case of *CIT v. Nitin S.Garg (2012) 22 taxmann.com 59* wherein it was observed that where the assessee had continued to show the admitted amounts as liabilities in its Balance Sheet and no interest had been paid on those loans, section 41(1) cannot be invoked merely because they were outstanding for the last so many years. The Division Bench noted that the Assessing Officer shall have to prove that the assessee has obtained the benefits in respect of such trading liabilities by way of remission or cessation thereof.

High Court's Decision: The High Court held that addition on the ground that the amounts were outstanding for several years cannot be made under section 41(1) unless and until it is found that there was remission or cessation of liability that too during the previous year, relevant to the assessment year in question. Even if the credit balances are outstanding for long time, such balances cannot be subjected to tax by invoking section 41(1), unless there is a remission/cessation of liability in the year under question.

5. Where the lump sum amount paid as One Time Settlement (OTS), without bifurcation of interest and principal, has been offered to tax under section 41(1), can the assesseee claim benefit of deduction of interest (interest paid plus interest waived) under section 43B?

CIT v. KLN Agrotechs (P) Ltd (2015) 375 ITR 301 (Kar.)

Facts of the case: The assessee company is engaged in the business of manufacture and trading of refined edible oil. It had taken working capital loan from Canara Bank aggregating to ₹ 441.30 lakhs. Due to default in repayment of loan, the bank declared the account as NPA. The total outstanding payable by the company was ₹ 635.26 lakhs which included principal amount of ₹ 441.30 and interest amount of ₹ 193.96 lakhs. During the assessment year in question, the assessee arrived at One Time Settlement (OTS) scheme with the bank. As per the OTS, the assessee paid ₹ 378.72 lakhs (against the total outstanding of ₹ 635.26 lakhs) to the bank.

In the return filed, the assessee offered as income ₹ 256.54 lakhs being the difference between the amount outstanding (₹ 635.26 lakhs) and the actual amount paid

(₹ 378.72 lakhs). The assessee also claimed the interest of ₹193.96 lakhs as deduction under section 43B.

The Revenue rejected the claim of deduction under section 43B in respect of ₹ 193.96 lakhs and charged to tax the entire amount of ₹ 256.54 lakhs considering the actual amount paid as the amount adjusted towards the principal outstanding amount.

Appellate Tribunal's view: The Appellate Tribunal, however, allowed the claim of the assessee holding that the assessee cannot be subjected to double jeopardy i.e., it could not be subjected to tax on the entire waived amount as well as subjected to disallowance of interest under section 43B, as the said two effects are mutually exclusive and cannot co-exist.

High Court's Observations & Decision : The High Court concurred with the Tribunal's view that if out of the total sum of ₹ 256.54 lakhs which has been offered and subjected to tax by the assessee in its return, the amount of unpaid interest of ₹ 193.96 lakhs is deducted then the waived principal sum would come to ₹ 62.58 lakhs (i.e., ₹441.30 lakhs *minus* ₹ 378.72 lakhs), which is the amount which ought to have been taxed under section 41(1).

Based on the above reasoning, the High Court held that either the interest amount has to be allowed as deduction under section 43B or the sum offered for tax (as waived by the bank) has to be reduced by the amount of interest. In either case, the effective amount which is subjected to tax, would come to the same.

Note - *The rationale of the Karnataka High Court ruling in the above case can be explained with the help of a simple example:*

The following are particulars of OTS scheme of A Ltd. with ABC Bank -

	Particulars	***Principal Interest ₹ in lakhs***		***Total ₹ in lakhs***
(1)	**Amount Outstanding (Working Capital loan)**	**400**	**150**	**550**
(2)	**Payment under OTS scheme with bank**			300
	Option 1	150	150	
	Option 2	300	-	
	Option 3	200	100	
(3)	**Waiver [(1) – (2)]**			250
	Option 1	250	-	
	Option 2	100	150	
	Option 3	200	50	

In all three cases above, let us assume that A Ltd. has offered ₹ 250 lakhs (i.e., ₹ 550 lakhs - ₹ 300 lakhs) as income under section 41(1) and claimed the interest paid/waived as deduction under section 43B.

*In **Option 1**, A Ltd. has rightly offered ₹ 250 lakhs, being waiver of principal amount, as income under section 41(1). In this case, the interest of ₹ 150 lakhs actually paid would be deductible under section 43B on payment basis.*

*In **Option 2**, A Ltd. should have offered only ₹ 100 lakhs, being waiver of principal amount, as income under section 41(1). However, it has offered the entire amount of ₹ 250 lakhs waived, as income under section 41(1). Therefore, A Ltd.'s claim of ₹ 150 lakhs, being interest waiver, as deduction under section 43B would result in effectively bringing to tax the principal waiver of ₹ 100 lakhs.*

*In **Option 3**, A Ltd. should have offered only ₹ 200 lakhs, being waiver of principal amount, as income under section 41(1) and claimed interest of ₹ 100 lakhs paid as deduction under section 43B. However, A Ltd. has offered the entire amount of ₹ 250 lakhs waived, as income under section 41(1). Therefore, A Ltd. claim for deduction of ₹ 150 lakhs [₹ 100 lakhs, being interest paid + ₹ 50 lakhs, being interest waived] under section 43B would effectively bring to tax the principal waiver of ₹ 200 lakhs.*

This, in effect, is the rationale of the court ruling, i.e., where the entire amount waived has been offered as income under section 41(1), the claim of interest waived and interest paid as deduction under section 43B would effectively bring to tax, the principal amount waived.

6. When would the interest income earned on share application money deposited with a bank for a specified period in accordance with the statutory requirement become taxable?

CIT v. Henkel Spic India Ltd (2015) 379 ITR 322 (SC)

Facts of the case: The assessee came out with a public issue of shares on January 29, 1992. The date of closure is February 3, 1992 (A.Y.1992-93). The share application money collected from the applicants were deposited in the bank for 46 days in accordance with the requirement of law. On this deposit, assessee earned interest of ₹183.32 lakhs. The shares were ultimately allotted in June 1992 (A.Y.1993-94). The applicants who were not allotted the shares got their application money refunded along with the interest. However, the Assessing Officer taxed the entire interest income in the year of public issue i.e., A.Y.1992-93 and ignored the subsequent event viz. allotment of shares in the A.Y.1993-94.

Assessee's Contention: The assessee contended that interest on deposit would only accrue in the assessment year 1993-94, being the year of allotment, since shares were allotted in June 1992. Before that time, the amount was kept in trust by the assessee and belonged to the applicants who wanted to subscribe for the shares. The assessee also contended that after certain amounts were refunded, which included interest to those

whose application money was returned, the actual amount of interest which was left became the income and, therefore, this income accrued only in the year 1993-94.

High Court's Observations: The High Court noted that the company is required to keep the money in a bank account which yields interest. The interest so earned cannot be regarded as an amount which is fully available to the assessee for its own use, since interest is an amount which accrued on a fund which was held in trust until the allotment of shares got completed and moneys are returned to those to whom shares are not allotted.

The High Court also observed that no part of this fund, i.e., neither the principal nor the interest, can be utilized by the company until the allotment process is completed. When the amount is repaid in cases of non-allotment of shares, it has to be repaid with such interest as may be prescribed having regard to the length of time or period of delay in returning the money to them. It is only after the allotment process is completed and all moneys which are refundable are refunded with interest, wherever interest becomes payable, the balance remaining application money can be regarded as belonging to the company. The application money as also interest earned remain in trust in favour of the general body of the applicants until the process of allotment is completed in all respects.

As the amount of interest in the bank account includes interest payable to the applicants to whom the shares are not allotted, the trust would terminate only after allotment. The interest on balance application money (in respect of which shares have been allotted) amount would accrue to the company only after completion of allotment.

Apex Court's Decision: The Apex Court, therefore, upheld the decision of the High Court holding that the interest income accrues to the company only in the assessment year in which the allotment is completed.

7. Can compensation paid by the assessee-company to its tenants for vacating the premises in order to earn higher rent by re-letting out the same, be allowed as revenue expenditure incurred for the business, if the main object of the assessee-company as per its Memorandum of Association is to acquire and develop properties and to deal with the same by way of sale, lease, letting out etc.?

Shyam Burlap Co Ltd v. CIT (2016) 380 ITR 151 (Cal)

Facts of the case: The assessee company acquired premises and raised two new constructions on the said premises. It sold one of the new constructions and the profit and loss arising therefrom was assessed under the head 'Profits and Gains from Business or Profession'. The ground floor of the second new construction was given on lease. The lease rent was to be revised every five years. However, the lessee refused to increase the lease rent on the ground of business difficulties after the expiry of the said period. The said lessee offered to vacate the premises provided the assessee paid adequate compensation. The assessee company agreed to pay ₹ 50 lakhs as compensation. There was another tenant who also agreed to vacate the premises

against a compensation of ₹ 3.50 lakhs. The assessee paid the compensation to both the tenants and obtained the possession.

The aggregate amount of compensation of ₹ 53.50 lakhs claimed as business expenditure treating it as revenue in nature. However, the Assessing Officer disallowed the claim of the assessee by treating the amount of compensation as capital expenditure on the ground that such payment was made for acquiring a benefit of enduring nature.

Appellate Authorities' views: After examination of the object clause of the Memorandum of Association (MOA) of the assessee company, the Commissioner (Appeals) found that 85 percent of the income of the assessee is from rent and lease rentals. Based on this fact, it held that the income from rent constituted the assessee's business income and that the compensation of ₹ 53.50 lakhs was expenditure laid out wholly and exclusively for the purposes of business on grounds of commercial expediency. Thus, it is a revenue expenditure allowable as deduction from business income.

However, the Tribunal supported the view of the Assessing Officer that such expenditure was capital in nature and disallowed the claim of the assessee.

High Court's Observations: The High Court referred to the decision of the Apex Court in the case of *Chennai Properties and Investments Ltd. v. CIT (2015) 373 ITR 673,* wherein it was laid down that the objects of the company must also be kept in mind while interpreting the nature of rental income and the head under which the same is taxable. In that case, it was held that since the main object of the company was to earn rental income by letting out of properties, such income constituted its business income and not income from house property.

Accordingly, the High Court, in this case, took note of the objects clause of the MOA of the assessee which permitted the assessee to carry on the business of letting out premises. Also 85% of the assessee's income was by way of deriving rent and lease rentals. The compensation paid was to obtain possession from the lessee / tenant so as to earn a higher rental income. Thus, the payment of compensation had arisen out of business necessity and commercial expediency.

As the compensation was not for acquiring a property, it cannot be said that the payment made was for having a benefit of enduring nature. The compensation, in fact, was paid to the existing tenants to have their portions vacated to have new tenants with higher rent and, thus, to earn higher rental income which was a business activity permitted by the memorandum.

The assessee, being the owner of the property, was carrying on business by letting out of properties and the compensation paid to the existing tenants was for deriving higher rent by re-letting out the properties which was in line with the MOA of the company.

High Court's Decision: The High Court, accordingly, held that when income from letting out of premises is treated as income from business based on the facts and circumstances of the case and the rationale of the Supreme Court ruling in *Chennai Properties'* case, the compensation paid to tenants for vacating the premises to facilitate the assessee to derive higher rent by re-letting out the premises, is deductible as revenue expenditure.

8. Can interest paid upfront to the debenture holders be allowed as deduction in the first year itself or should the same be spread over the life of the debentures, being five years in this case, when such interest is shown as deferred revenue expenditure in the books of account?

Taparia Tools Ltd v. Joint CIT (2015) 372 ITR 605 (SC)

Facts of the case: The assessee issued non-convertible debentures and gave two options as regards payment of interest to the subscribers / debenture holders. They could either receive interest periodically (i.e. half-yearly) at 18% per annum, over a period of 5 years or opt for one time upfront payment of ₹ 55 per debenture. In the second option, ₹ 55 per debenture was to be paid immediately upfront on account of interest. At the end of the debenture period of five years, the debentures were to be redeemed at the face value of ₹ 100. The said upfront payments of interest on debentures were shown by the assessee as deferred revenue expenditure in the books of accounts to be written off over a period of five years. Notwithstanding this accounting treatment given to the payment qua interest, assessee claimed such expenditure as fully deductible expenditure in the first year, being the year of payment. The Assessing Officer, however, treated the expenditure as "deferred revenue expenditure" to be allowed over the tenure of debentures and hence, allowed only one-fifth of the payment made and disallowed the balance of claim.

Supreme Court's Observations: The Supreme Court observed that while examining the allowability of deduction, the Assessing Officer has to consider the genuineness of borrowing. Under section 36(1)(iii), any amount paid on account of interest is an admissible deduction, if the capital was borrowed by the assessee and the borrowing was for the purpose of business or profession. The Supreme Court opined that once the genuineness was proved and the conditions of section 36(1)(iii) read with section 43(2) were satisfied, the benefit of deduction in the year in which the amount of interest was actually paid or incurred cannot be denied. In the present case, the Assessing Officer has not disputed the issue of debentures and use of funds for business purposes.

Moreover, the Supreme Court also noted that there is no concept of deferred revenue expenditure in the Income-tax Act, 1961 except under specified sections such as section 35D meant for amortization over a period of time. Normally, revenue expenditure is deductible in the year in which it is incurred. However, if the assessee wants to spread the expenditure over a period of ensuing years, it can be allowed only if the principle of

'matching concept' is satisfied. Entries in the books of account are not conclusive and the matter has to be examined on the touchstone of the provisions contained in the Act.

The Supreme Court took note that the assessee had issued debentures with two options for payment of interest and if the interest is allowed by spread over it would amount to treating both the methods of interest payment at par, which was clearly unsustainable. By discharging the liability in the first year itself, the assessee had benefitted by making payment of a lesser amount of interest in comparison to the interest which was payable under the first option over a period of five years. When the assessee did not seek spread over of expenditure and had claimed the entire expenditure in the same year and a return was filed in that manner, the Assessing Officer was bound to carry out the assessment by applying the provisions of the Act and not to go beyond the said return. The statute enables and entitles the assessee to claim the entire upfront interest paid in the year of payment.

Supreme Court's Decision: The Supreme Court, accordingly, held that the assessee would be entitled to deduction of the entire upfront interest paid in the same year in which the amount was actually paid.

Capital Gains

9. Can advance given for purchase of land, building, plant and machinery tantamount to utilization of capital gain for purchase and acquisition of new machinery or plant and building or land, for claim of exemption under section 54G?

Fibre Boards (P) Ltd v. CIT (2015) 376 ITR 596 (SC)

Facts of the case: The assessee-company had an industrial unit in Thane, which had been declared a notified urban area by notification dated September 22, 1967, issued under section 280Y(d) of the Income-tax Act, 1961 *vide* Notification dated 22.09.1967. The assessee, in order to shift its industrial undertaking from an urban area to a non-urban area, sold its land, building and plant and machinery situated at Thane and out of the capital gains so earned, paid advances of various amounts to different persons for purchase of land, plant and machinery, construction of factory and building in the year 1991-92. The assessee claimed exemption under section 54G of the Income-tax Act, 1961, on the capital gains earned from the sale proceeds of its erstwhile industrial undertaking situated in Thane in view of the advances so made, which was more than the capital gains earned by it. The Assessing Officer refused to grant exemption to the assessee under section 54G on the ground that the non-urban area had not been declared to be so by any general or special order of the Central Government and that giving advances did not amount to utilisation of capital gains for acquiring the assets.

Appellate Authorities' views: The CIT (Appeals) dismissed the case of the assessee while the Appellate Tribunal allowed the appeal by stating that even an agreement to purchase is good enough and that Explanation to section 54G is declaratory in nature and would be retrospectively applicable.

High Court's Decision: The High Court reversed the order of the Appellate Tribunal and denied the exemption on the reasoning that the notification declaring Thane to be an urban area stood repealed with the repeal of the section under which it was made. Further the expression "purchase" in the section 54G cannot be equated with the expression "towards purchase" and accordingly the advance for purchase of land, plant and machinery would not entitle the assessee to claim exemption under section 54G.

Supreme Court's Observations: The Apex Court observed that, on a conjoint reading of the Speech of the Finance Minister introducing the Finance Bill, 1987, and the Notes on Clauses and Memorandum explaining the provisions of the Finance Bill of 1987, it becomes clear that the idea of omitting section 280ZA of the Income-tax Act, 1961 and introducing section 54G on the same date was to do away with the tax credit certificates scheme together with the prior approval required by the Board and to substitute the repealed provision with the new scheme contained in section 54G. Once section 280ZA was omitted from the statute book, section 280Y(d) having no independent existence would for all practical purposes also cease to exist. Section 280Y(d) which was a definition section defining "urban area" for the purpose of section 280ZA alone was also omitted subsequently by the Finance Act, 1990. Apart from this, section 54G(1) by its *Explanation* introduces the very definition contained in section 280Y(d) in the same terms. It is obvious that both provisions are not expected to be applied simultaneously and it is clear that the *Explanation* to section 54G(1) repeals, by implication, section 280Y(d).

Unlike section 6 of the General Clauses Act, 1897 which saves certain rights, section 24 merely continues notifications, orders, schemes, rules, etc., that are made under a Central Act which is repealed and re-enacted with or without modification. The idea of section 24 of the 1897 Act is, as its marginal note shows, to continue uninterrupted subordinate legislation that may be made under a Central Act that is repealed and re-enacted with or without modification.

Section 54G gives a time limit of 3 years after the date of transfer of capital asset in the case of shifting of industrial undertaking from urban area to any area other than urban area. The expression used in section 54G(2) is that the amount "which is not utilized by him for all or any of the purposes aforesaid has to be deposited in the capital gain account scheme".

For the purpose of availing exemption, all that was required for the assessee is to "utilise" the amount of capital gain for purchase and acquisition of new machinery or plant and building or land. Since the entire amount of capital gain, in this case, was utilized by the assessee by way of advance for acquisition of land, building, plant and machinery, the assessee was entitled to avail exemption/deduction under section 54G.

Supreme Court's Decision :To avail exemption under section 54G in respect of capital gain arising from transfer of capital assets in the case of shifting of industrial undertaking from urban area to non-urban area, the requirement is satisfied if the capital gain is given as advance for acquisition of capital assets such as land, building and / or plant and machinery.

Note *– In this case, two issues have been touched upon, namely, whether notification of an area as an urban area under a repealed provision would hold good under the re-enacted provision and whether advance given for purchase of an eligible asset would tantamount to utilisation of capital gains for purchase of the said asset for availing exemption under section 54G. The former issue was decided taking support from section 24 of the General Clauses Act, 1897, which provides for uninterrupted subordinate legislation in case of repeal and re-enactment, with or without modification. The latter issue was also decided in favour of the assessee by holding that payment of advance for purchase of eligible asset would tantamount to utilisation of capital gains for purchase of the said asset.*

10. Whether, for the purpose of computing the period of holding of the property, the date of allotment letter issued by the builder of the flat or the date of registration of the property has to be considered for determining the nature of capital asset – long-term or short-term?

CIT v. S.R.Jeyashankar (2015) 373 ITR 120 (Mad)

Facts of the case: In the present case, the assessee had entered into an agreement with M/s Vishranthi Homes Pvt. Ltd.(VHPL) for purchase of undivided share in a piece of land as well as for construction of a flat under a project promoted by the said builder *vide* agreement dated February 22, 2005. Over a period of time, the payments were made and the transaction was concluded with registration of undivided share of land on August 4, 2005. Thereafter, the assessee sold the entire unit by a sale deed dated April 10, 2008, well after 36 months from the date of agreement i.e., February 22, 2005, and claimed the difference between the sale consideration and the indexed cost of acquisition as long-term capital gains. The Assessing Officer, however, took a view that the undivided share of land was registered on August 4, 2005, and since the property was purchased in the month of August, 2005, and sold in April, 2008, the capital gains arising from sale will be assessed as short-term capital gains only and, accordingly, the Assessing Officer denied benefit of section 2(29A) of the Income-tax Act, 1961 and made addition.

Appellate Authorities' Views: The Commissioner (Appeals) placed reliance on Circular No.471 dated 15.10.1986 and allowed the claim of the assessee. The Tribunal, after taking into consideration the decisions of the Punjab and Haryana High Court, in the cases of *Mrs. Madhu Kaul v. CIT [2014] 363 ITR 54 and Vinod Kumar Jain v. CIT [2012] 344 ITR 501 a*nd Circular No. 471, dated 15.10.1986, held that the date of allotment of

the flat has to be adopted as date of acquisition of the immovable property when it comes to acquiring a flat from the promoter of the flat by way of executing construction agreement and not the date of the sale deed for purchase of the undivided share in land. Accordingly, the Tribunal confirmed the order of the Commissioner (Appeals).

High Court's Observations: The Madras High Court noted that the Tribunal had relied on the decision of the Punjab and Haryana High Court in *Mrs. Madhu Kaul's case,* where it was held that the date of allotment under a scheme framed by the DDA is to be taken as the date of acquisition and the mere fact that the actual possession was delivered later does not distract the fact that the allottee was conferred a right to hold the property on issuance of allotment letter and the payment of balance instalments, identification of a particular flat and delivery of possession are consequential acts that relate back to and arise from the date rights were conferred by the allotment letter. In effect, the Punjab & Haryana High Court held that the allottee gets the title to the property on issuance of allotment letter and payment in instalments is only a consequential act upon which delivery of possession to the property flows. The Madras High Court also noted that the Punjab & Haryana High Court had taken a similar view in *Vinod Kumar Jain's* case.

In this case, the Madras High Court observed that the right to the property flows from the date of agreement with the builder i.e., from February, 2005. Over a period of time, payments were made and the transaction was concluded in accordance with the terms of the agreement by registering the undivided share in land and handing over of the flat subsequently.

High Court's Decision: Accordingly, the Madras High Court held that the assessee had rightly claimed the benefit of long-term capital gain, since the holding period exceeded 36 months (i.e., from 22.02.2005, being the date of agreement, to 10.04.2008, being the date of sale of property).

Deductions from Gross Total Income

11. Can the Commissioner reject an application for grant of approval under section 80G(5) on the ground that the trust has failed to apply 85% of its income for charitable purposes?

CIT v. Shree Govindbhai Jethalal Nathavani Charitable Trust (2015) 373 ITR 619 (Guj)

Facts of the case: The assessee trust filed an application in Form 10G for grant of approval under section 80G(5)[1]. It also filed copies of trust deed and registration certificate dated 18th August, 2011 with the approving authority. As per the trust deed, the main objects of the trust are educational, social activities, etc. In order to verify the facts

[1] Section 80G(5)(i) provides that donation to any institution or fund would qualify for deduction thereunder only if it is established in India for a charitable purpose and derives such income which would not be liable to inclusion in its total income under the provisions of sections 11 and 12 or section 10(23AA)/(23C).

stated in the application, the trust was asked to produce books of account, relevant vouchers, donation book and minutes in original. On perusal of the books for financial year 2011-12, it was found that the trust had not applied 85% of its income and therefore, the Commissioner rejected the application of the assessee seeking approval under section 80G(5) and Rule 11AA of the Income-tax Rules, 1962.

Tribunal's view: On appeal, the Tribunal noted the decision of Punjab and Haryana High Court in the case of *CIT v. O.P. Jindal Global University (2013) 38 Taxmann 366*, in which it was held that at the time of granting approval of exemption under section 80G, only the objects of the trust are required to be examined and the aspect of application of funds can be examined by the Assessing Officer at the time of framing the assessment. Consequently, the Tribunal held that the Commissioner has erred in refusing to grant recognition to the trust under section 80G(5).

High Court's Observations: The High Court was of the view that the issue in the present case is now not *res integra* in view of the decision of the Division Bench of this Court in the case of *N.N.Desai Charitable Trust v. CIT (2000) 246 ITR 452 (Guj).* In that case, the Division Bench observed that, while considering the application for the purpose of section 80G, the authority cannot act as an assessing authority and the enquiry should be confined to finding out if the institution satisfies the prescribed conditions. The Division Bench also made the following observations:

(i) Section 80G does not relate to assessment of the trust or the institution whose income is not liable to be included in the computation of taxable income under various provisions of the Act. Primarily, section 80G is related to giving deduction in respect of donations made by a person to such trusts and institutions.

(ii) There are two distinct concepts. The first is whether an institution or fund is such whose income is not liable to be included in the computation of total income, has to be determined on the basis of its status or character. The second is the actual assessment of income, which necessarily takes place in future after donation is received by the donee, on fulfilment of other conditions about application of income by the eligible trusts, which in the very nature of things can operate only after receipt of income. The two are different concepts.

(iii) The liability to assessment is neither affected on account of grant of recognition under section 80G nor on whether the donor ultimately gets deduction in respect of such donation. Once a trust is registered under section 12AA, its income from property includes donation which is covered by section 11(1)(d) or under section 12. Such donations are deemed to be income from property, which are not to be included in the total income under section 11 or section 12. The enquiry under section 80G, hence, cannot go beyond that.

(iv) The scope of enquiry cannot include an enquiry as to whether, at the close of the previous year, the donee-trust will actually be able to apply 85% of its income because non-fulfillment of some conditions by the donee-trust as regards

application or accumulation cannot be ascertained *in praesenti*, when the donation is made. The question of whether the trust will be able to apply 85% of its income can be determined only from the facts existing at the close of the assessment year.

The High Court also noted that similar views were expressed by the Punjab and Haryana High Court in the case of *CIT v. O. P. Jindal Global University (2013) 38 Taxmann.com 366.*

High Court's Decision: The High Court, thus, concurred with the decision of the Tribunal setting aside the order passed by the Commissioner refusing to grant registration under section 80G(5) to the assessee-trust due to the reason that it has not applied 85% of its income for charitable purposes.

Assessment Procedure

12. Can a notice under section 148 for a particular assessment year be issued solely on the ground that survey under section 133A was carried on at the business premises of the assessee, where nothing had been found therein which would indicate escapement of income chargeable to tax for the said assessment year?

Hemant Traders v. ITO (2015) 375 ITR 167 (Bom)

Facts of the case: In the present case, the assessee is a partnership firm and registered as a Commission agent of the onion potato market under the Agricultural Produce Market, Committee, Navi Mumbai. The firm is regularly assessed to income-tax. The firm filed a return of income for A.Y.2010-11 on October 14, 2010 along with audit report, audited Balance Sheet and Profit & Loss Account for the year ended 31.3.2010. The return was processed and intimation under section 143(1) was issued on 20.02.2012, seeking clarification. No assessment order was passed. The assessee claimed that the profit as per the return of income was accepted. Meanwhile, a survey under section 133A was carried out at the business premises of the assessee on 7th January 2011 pertaining to A.Y. 2011-12. However, the survey party did not find any discrepancy in the books of account. Further, the survey report did not contain any reference to any transactions for A.Y. 2010-11. In March 2014, the assessee was issued a notice under section 148 for the A.Y. 2010-11 based on the said survey.

The assessee preferred a writ challenging the issue of notice on the reasoning that no satisfaction was recorded of the escapement of income in the survey report or in any other relevant material. *Ex-facie,* the reassessment was bad in law.

High Court's Observations: The High Court perused the survey report which recorded that there was a group of assessees who were engaged in wholesale trading of potato on commission basis. The survey was conducted based on the allegations that these parties were resorting to hoarding of potatoes and making huge profits by fluctuating the day-to-day price of potatoes in the market. During survey, the assessee's books of account, cash balance and stocks were physically verified and inventory prepared. The

report revealed cash difference of ₹ 5,020 and the explanation given was that the same pertained to the day-to-day and miscellaneous expenditure incurred on the day of survey. The report also revealed physical stock difference of 672 bags of potatoes. The explanation for such difference was recorded.

Neither the survey report nor any other material indicated escapement of income chargeable to tax for A.Y. 2010-11. The Assessing Officer had nothing before him to record his belief or satisfaction that escapement of income had taken place.

Merely because survey had taken place cannot be a ground for reopening the assessment without valid material or evidence at the time of issue of notice. Whenever there was shortage of potatoes in the market, such powers of survey were invoked. Where nothing has been found during the survey operations to indicate that income chargeable to tax has escaped assessment, then the survey report ought not to be the basis for reopening of assessment. Something more was required in law for the Assessing Officer to exercise his powers.

High Court Decision: The High Court, accordingly, held that since there is absolutely no material to indicate escapement of income for the relevant assessment year, the issue of notice to initiate reassessment proceedings under section 148 on the basis of survey which had taken place is not valid. Therefore, the proceedings initiated under section 148 are quashed at the threshold itself.

13. Will the subsequent amendment of law with retrospective effect validate a reassessment notice issued on a different ground before the retrospective amendment was made?

Godrej Industries Ltd v. B.S.Singh Dy.CIT (2015) 377 ITR 1 (Bom)

Facts of the case: The assessee-company filed its return of income for the assessment year 2000-01 declaring total income as 'Nil' and a book profit of ₹ 52.70 crores. This resulted in 'book profit' being assessed to income-tax. Later, the Assessing Officer issued notice under section 148 for the reason that income chargeable to tax had escaped assessment on the ground that the provision for doubtful debts and provision for depletion of long-term investment debited to the profit and loss account were unascertained liabilities and, hence, in terms of clause (c) of the *Explanation* to section 115JA, i.e., they were to be added back to the net profit for arriving at the book profits.

The assessee preferred a writ challenging the maintainability of the notice issued under section 148.

Revenue's Contention: The Revenue contended that at the time of issuing the impugned notice on March 29, 2007, the position was not clear. The position became clear only when Parliament introduced/added clause (g) to the *Explanation* to section 115JA of the Act with retrospective effect from April 1, 1998, and which reads as under:

"(g) the amount or amounts set aside as provision for diminution in the value of any asset."

Thus, the Revenue submitted that the impugned notice is sustainable on the basis of above clause (g) of the *Explanation* to section 115JA, inserted by the Finance (No.2) Act, 2009 retrospectively with effect from 1st April, 1998.

High Court's Observations: The High Court observed that an identical issue had come up in *Rallis India Ltd. v. Asst. CIT [2010] 323 ITR 54 (Bom)* wherein a reopening notice was*, inter alia*, issued on the ground that the book profits have to be increased by the provision made for doubtful debts and for diminution in the value of investment in view of clause (c) of the *Explanation* to section 115JB. In the said case, the High Court recorded the fact that the Apex Court had, in *CIT v. HCL Comnet Systems and Services Ltd. [2008] 305 ITR 409*, held that the provision for doubtful debts is a provision made for diminution in the value of assets and is not a liability. Thus, it would not fall under clause (c) of the *Explanation* to section 115JA of the Act. Consequent to the aforesaid decision of the Apex Court, the Parliament has amended the *Explanation* both under section 115JA as well as section 115JB of the Act in 2009 by adding clause (g) and clause (i) with retrospective effect from April 1, 1998, and April 1, 2001, respectively. The Court held that though the amendment was made with the retrospective effect, the critical date is the date on which the Assessing Officer exercises jurisdiction under section 148 of the Act and the subsequent amendment could not have been and is in fact not a ground on which the Assessing Officer sought to reopen the assessment. It was held that the validity of a reopening notice of Assessing Officer is to be determined with reference to the reasons which are recorded in support of thereof and nothing else.

In this case also, it is clear that the reasons stated for reopening the assessment are that provision for doubtful debts and depletion in value of investments are both amounts set aside for meeting liabilities other than ascertained liabilities and hence, constitute income escaping assessment. The reasons recorded are not valid as the said items were not related to liabilities as perceived by the Assessing Officer. These provisions are made to take care of the likely fall in the value of assets.

The High Court observed that it is the Assessing Officer's belief at the time of issuing the reassessment notice that determines the validity of the notice. In this case, he wanted to apply clause (c) of the *Explanation* to section 115JA and whereas the issues got covered by subsequent amendment by means of insertion of clause (g) to the *Explanation* to section115JA by the Finance (No.2) Act, 2009 with retrospective effect from 1.4.1998. The subsequent event could not put life into the Assessing Officer's reason that income chargeable to tax had escaped assessment when the reasons as originally recorded are still born.

High Court's Decision: The position of law on the date of issue of notice under section 148 must be looked into and the retrospective amendment subsequent to issue of notice could not validate a notice issued earlier. It could only amount to change of opinion and the notice for reopening of assessment would become unsustainable.

The High Court, accordingly, allowed the writ and held that the reason for reopening the assessment cannot get validated by the retrospective amendment of law.

***Note** – It may be noted that section 115JA levying MAT was applicable from A.Y.1997-98 to A.Y.2000-01. From A.Y.2001-02, MAT is attracted under section 115JB. Clause (c) of Explanation 1 to section 115JB requires addition of amount set aside to provisions made for meeting liabilities, other than ascertained liabilities, to the net profit for arriving at the book profit for levy of MAT. Clause (i) was inserted by the Finance (No.2) Act, 2009 retrospectively with effect from 1st April, 2001 providing for addition of amount set aside as provision for diminution in the value of any asset, to the net profit for arriving at the book profit for levy of MAT. The rationale of the above ruling would, therefore, also apply in the context of examining the validity of notice issued for reopening an assessment on the basis of clause (c) of Explanation 1 to section 115JB, consequent to subsequent retrospective insertion of clause (i) in Explanation 1 to section 115JB.*

14. Can the Assessing Officer make a reassessment on fresh grounds when the original reasons recorded for reopening the assessment does not survive?

N. Govindaraju v. ITO (2015) 377 ITR 243 (Kar)

Facts of the case: The assessee, an individual, deriving income from house property, transport business, capital gains and other sources filed his return of income declaring total income of ₹ 4.82 lakhs and agricultural income of ₹ 1.62 lakhs. The return was processed under section 143(1). Subsequently, a notice under section 148 was issued stating that the assessee had converted agricultural land into non-agricultural purposes, formed sites and sold the same but while arriving at the indexation benefit it was taken up to the date of sale instead of the date of conversion as per section 45(2). Thus, the reason for reassessment was the excessive indexation benefit availed by the assessee. However, in reassessment, the Assessing Officer adopted fair market value which was less than what was adopted by the assessee and also sought to disallow 50% of the expenses incurred on transfer. The original reason which prompted the reassessment was dropped and based on fresh grounds, reassessment was completed.

Issue under consideration: One of the issues under consideration before the High Court was whether the reassessment based on fresh grounds would be valid when the original reason which prompted the reassessment, does not survive.

Assessee's contention *vis-s-vis* Revenue's contention: The assessee contended that the reason for which notice was issued has to survive and it is only thereafter that "any other income" which is found to have escaped assessment can also be assessed or

reassessed in such proceeding. On the other hand, the Revenue claimed that section 147 is in two parts which have to be read independently; the phrase "such income" in the first part is with regard to reasons which have been recorded and the phrase "any other income" is with regard to cases where no reasons are recorded in the notice but they come to the notice of the Assessing Officer during the course of reassessment proceeding. Both being independent, once the satisfaction in the notice is found sufficient, addition can be made on all grounds i.e., for reasons which have been recorded and also for items for which no reasons were recorded. All that is necessary is that, during the course of the proceedings under section 147, income chargeable to tax must have escaped assessment.

High Court's Observations: The High Court observed that the controversy revolved around *Explanation 3* to section 147 inserted by the Finance (No.2) Act 2009 retrospectively with effect from 1.4.1989. The Court took note of Circular No.5/2010 issued by CBDT after the amendment in Paragraph 47 with caption 'Clarificatory amendment in respect of reassessment proceeding under section 147". Para 47.3 reads as under:

"Therefore, to articulate the legislative intention clearly *Explanation 3* has been inserted in section 147 to provide that the Assessing Officer may examine, assess or reassess any issue relevant to income which comes to his notice subsequently in the course of proceedings under this section, notwithstanding that the reason for such issue has not been included in the reasons recorded under section 148(2)".

The High Court observed that it is true that if the foundation goes, then, the structure cannot remain. Meaning thereby, if notice has no sufficient reason or is invalid, no proceedings can be initiated. However, this can be verified at the initial stage by challenging the notice. If the notice is challenged and found to be valid, or where the notice is not at all challenged, then, in either case, it cannot be said that notice is invalid. As such, if the notice is valid, then the foundation remains and the proceedings on the basis of such notice can continue. The High Court reiterated that once the proceedings have been initiated on a valid notice, it becomes the duty of the Assessing Officer to levy tax on the entire income (including "any other income") which may have escaped assessment and comes to his notice during the course of the proceedings initiated under section 147.

High Court's Decision: The High Court held that, in effect, once satisfaction of reasons for the notice is found sufficient i.e. if the notice under section 148(2) is found to be valid, then, the Assessing Officer may do reassessment in respect of any other item of income which may have escaped assessment, even though the original reason for issue of notice under section 148 does not survive.

This decision has dissented from the decisions in the case of *CIT v. Jet Airways (I) Ltd (2011) 331 ITR 236 (Bom); Ranbaxy Laboratories Ltd v. CIT (2011) 336 ITR 136 (Del).*

Note *– In this case, the reassessment on the basis of reasons, which did not form the original reasons to believe, but were subsequently discovered by the Assessing Officer, was held to be valid, even though the original reasons did not survive.*

However, the High Court further delved into the additional grounds, and held that the Tribunal was not justified in arriving at the fair market value of the property in question on 1.4.1981 without considering the material on record, including the valuation report, filed by the assessee. The matter was thus to be remanded to the Assessing Officer for determination of the fair market value of the property in question in accordance with law.

Further, without assigning any reason, the Assessing Officer had disallowed 50% of the total expenditure claimed by the assessee towards transfer and brokerage charges, even when the same had been paid by cheque and the receipt for which was obtained from the broker. When the specific case of the assessee was that heavy brokerage had to be paid because the property was under litigation and that it was occupied by unauthorised persons for which payment had to be made to get it vacated, disallowance could not be made on the ground that brokerage was generally being paid at the rate of 1-2%. The High Court opined that when the said brokerage was paid by cheque and there was sufficient reason for paying higher brokerage, the entire amount ought to have been allowed and disallowance of 50% was not justified in law.

Thus, in this case, though the High Court upheld that reassessment could be made on fresh grounds even when the original reasons recorded for reopening the assessment did not survive, additions made on the basis of such fresh grounds were turned down by the High Court, since the reasons were not justified to merit such additions.

15. Would the reassessment proceedings initiated under section 147 against the legal heirs of the deceased assessee be valid if notice of reassessment was sent to the legal heirs after the limitation period, though a notice addressed to the deceased assessee was sent prior to the limitation period?

Vipin Walia v. ITO (2016) 382 ITR 19 (Del)

Facts of the case: A notice under section 148 dated 27th March, 2015 was addressed to the assessee for the assessment year 2008-09. The notice got returned unserved with the postal authorities endorsing on it the remarks "addressee expired". Later, the Assessing Officer issued a letter dated 15.06.2015 to the petitioner seeking details of legal heirs/successors of the deceased (assessee) to complete the proceedings for the assessment year 2008-09.

The assessee, being one of the legal representatives of the deceased, wrote to the Assessing Officer pointing out that the proceedings initiated under section 148 were barred by limitation. The Assessing Officer proceeded to make the assessment under section 147 which the assessee challenged by means of a writ.

High Court's Observations: The High Court took note of section 159 which sets out the procedure to be adopted when the assessment is made on the legal representatives. Section 159(2)(a) states that any proceeding already taken against an assessee 'before his death' shall be deemed to have been taken against the legal representative. As per section 159(2)(b), any proceeding which could have been taken against the deceased if he had survived, may be taken against the legal representative of the deceased assessee, even if it had not been taken while the assessee was alive.

The Assessing Officer initiated proceedings under section 147 against the deceased for the assessment year 2008-09. The time limit for issue of notice was 31.03.2015, since the income escaping assessment exceeded ₹1 lakh. On March 27, 2015 when the notice was issued, the assessee was already dead. If the Department intended to proceed under section 147, it could have done so prior to 31.03.2015 by issuing a notice to the legal representatives of the deceased. Beyond that date, it could not have proceeded in the matter even by issuing notice to the legal representatives of the assessee.

High Court's Decision: The High Court, accordingly, held that issue of notice on the legal representatives beyond the limitation time would render the reassessment proceedings invalid.

Advance Ruling

16. Can Authority for Advance Ruling (AAR) reject an application for advance ruling on the ground that proceedings are already pending before the Income-tax authority, where notice under section 143(2) in printed format has been served on the applicant-assessee before the date of filing the said application for advance ruling? What would be the position if notice under section 142(1) along with detailed questionnaire has also been issued to the applicant assessee before the date of filing of the said application for Advance Ruling?

Hyosung Corporation v. AAR (2016) 382 ITR 371 (Del)

Facts of the case: The assessee-company incorporated in South Korea was engaged in several projects in India and has been regularly assessed to income-tax from assessment year 2008-09 onwards. It filed an application for advance ruling for the assessment years 2008-09, 2009-10 and 2010-11.

For the assessment years 2008-09 and 2009-10, notices under section 143(2) were issued and subsequently, before the date of filing applications with AAR, notice under section 142(1) along with a questionnaire was issued. For the assessment year 2010-11, notice under section 143(2) was issued before the date of filing of application with the AAR and notice under section 142(1) along with a questionnaire was served on the assessee after the date of filing of application with the AAR.

The applications for all the assessment years were objected by the Revenue on the reasoning that the proceedings were already pending before the Assessing Officer and in view of the bar under proviso to section 245R(2), it could not entertain the applications.

Accordingly, the AAR rejected the applications of the assessee for all the assessment years.

High Court's Observations: The High Court observed that the assessee received notices under section 143(2) in a standard pre-printed format and also received notices under section 142(1) accompanied by questionnaire for all the assessment years. The High Court noted that mere issue of notice under section 143(2) in pre-printed format will not amount to 'already pending' proceedings for the purpose of applying proviso to section 245R(2).

However, issue of notices under section 142(1) accompanied by a questionnaire which raised the question of supply contracts which were executed overseas would nevertheless make the proceedings pending. This is more so when such notices were issued before filing of the applications by the assessee with the AAR.

High Court's Decision: The High Court, accordingly, held that rejection of application filed by the assessee for the assessment years 2008-09 and 2009-10 was not erroneous and did not call for any interference, since the notice under section 142(1) along with questionnaire were issued before the date of making an application for advance ruling.

However, notice under section 142(1) issued for the assessment year 2010-11 after the date of filing of application will not result in the proceedings being 'already pending' before an Income-tax authority for the purpose of applying proviso to section 245R(2).

Thus, the application for the assessment year 2010-11 cannot be rejected by the AAR. However, for the assessment years 2008-09 and 2009-10, the rejection of the application by AAR is tenable in law, since notice under section 142(1) along with detailed questionnaire was issued before the date of filing of such application.

Appeals and Revision

17. Can mere non-mention or non-discussion of enquiry made by the Assessing Officer in the assessment order justify invoking revisionary jurisdiction under section 263?

CIT v. Krishna Capbox (P) Ltd (2015) 372 ITR 310 (All)

Facts of the case: The assessee filed its return of income declaring total income of ₹ 8.15 lakhs. The return was processed under section 143(1) and later, the case was selected for scrutiny and statutory notice under section 143(2) was issued. During the course of scrutiny, the Assessing Officer raised certain queries which were answered by the assessee. The Assessing Officer, after being satisfied with the replies given, completed the assessment by accepting the declared income. Subsequently, the Commissioner invoked revisionary jurisdiction under section 263 by holding that the Assessing Officer had not made enquiry on certain aspects, such as -

(i) Non-verification of source of investment in respect of addition in fixed assets;

(ii) Non-confirmation of sundry creditors by the assessee;

(iii) Non-enquiry of unsecured loan by the Assessing Officer;

(iv) Not obtaining the copy of bank statements;

(v) Non-verification of genuineness of shareholders;

(vi) Deduction of freight paid without deduction of tax at source.

Assessee's contention *vis-a-vis* Revenue's Contention: The assessee contended that all the aspects contested by the Commissioner were enquired by the Assessing Officer. The Revenue took the defence that no enquiry was made by the Assessing Officer in respect of the issues set out in the notice issued under section 263 and hence, revisionary jurisdiction was correctly assumed.

Tribunal's view: The Tribunal noted that all necessary enquiries were made and all the requisite documents were placed in the paper book. Once enquiry was made, mere non-discussion or non-mention in the assessment order cannot lead to the assumption that the Assessing Officer did not apply his mind or that he had not made any enquiry on the subject for invoking section 263.

High Court's Observations: The High Court noted the Bombay's High Court's view in *Cellular Ltd. v. DCIT (2008) 301 ITR 407* that if a query is raised during the assessment proceedings and responded to by the assessee, the mere fact that it is not dealt with in the assessment order would not lead to a conclusion that no mind had been applied to it.

High Court's Decision: The High Court concurred with the decision of the Tribunal and held that since the relevant enquiries and replies are available on 'record' (i.e., the paper book), the Commissioner cannot invoke revisionary jurisdiction merely because there was no mention of such enquiry and verification in the assessment order.

Note - *The Finance Act, 2015 inserted Explanation 2 to section 263(1) to clarify, inter alia, that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if in the opinion of the Principal Commissioner or Commissioner, the order is passed without making inquiries or verification which should have been made.*

The rationale of this ruling would hold good even after insertion of Explanation 2 to section 263(1), since in this case, the Tribunal has recorded a finding of fact that necessary enquiries have been made by the Assessing Officer even though the same was not specifically mentioned in the assessment order. Mere non-discussion or non-mention about the enquiry made by the Assessing Officer in the assessment order cannot be a ground for invoking revisionary jurisdiction under section 263.

18. Can the Commissioner invoke revisionary jurisdiction under section 263, when the subject matter of revision (i.e., whether the manner of allocation of revenue amongst the members of AOP would affect the allowability and/or quantum of deduction under section 80-IB) has been decided by the Commissioner (Appeals) and the same is pending before the Tribunal?

CIT v. Fortaleza Developers (2015) 374 ITR 510 (Bom)

Facts of the case: The assessee, an Association of Person (AOP) consisting of promoters and builders, was constituted by means of an agreement dated April 29, 2003 between M/s Raviraj Kothari and Co. (RRK) and M/s Sanand Properties Pvt. Ltd. (SPPL). The AOP filed its return of income for the assessment year 2007-08 declaring total income of ₹ 4.14 lakhs after claiming deduction under section 80-IB(10) of ₹ 1454.47 lakhs. The assessment was completed under section 143(3) disallowing fully the claim of deduction under section 80-IB(10). The assessee preferred an appeal before Commissioner (Appeals) who held that the assessee had fulfilled all the conditions laid down in section 80-IB(10) and hence, directed the Assessing Officer to allow the deduction.

The order of Commissioner (Appeals) was challenged before the Tribunal by the Revenue. During the pendency of the appeal before the Tribunal, the Commissioner issued a notice under section 263 asking the assessee to show cause as to why the assessment order should not be set aside. The notice under section 263 specified that the method of allocation of revenue gave the assessee undue benefit by way of a higher claim of deduction under section 80-IB(10) contrary to clause (7) of the AOP agreement.

Clause (7) of the agreement laid down that SPPL shall be entitled to 35% of the amount received from the purchasers of the housing units. Out of the balance 65% of the said receipts, all required and relevant expenditure for the purpose of the business of the AOP shall be met with and whatever net balance remains thereafter, shall be determined as the share of income of RRK.

On perusal of clause (7) of the agreement, the Commissioner contended that share of revenue pertaining to SPPL was not eligible for deduction under section 80-IB(10). Accordingly, the Commissioner set aside the assessment order of the assessee and directed to recompute the income on the basis of the clause (7) of the AOP agreement. The assessee challenged the revision order passed by the Commissioner under section 263 before the Tribunal.

Appellate Authorities' Views: The Tribunal observed that the quantum of deduction under section 80-IB(10) will depend upon the income earned from the project in question. The quantum of deduction will not depend on the mode of distribution of shares amongst members of the association of persons as income of association of persons is taxable at the maximum marginal rate. It is also observed by the Tribunal that the allowability or otherwise of deduction under section 80-IB(10) is not dependent upon the manner in which the profit has been distributed amongst the members of the AOP but is dependent

upon the income earned from an eligible project and the fulfilment of the conditions laid down in the section. Also, the deduction is available to an undertaking and not to the individual constituent of an undertaking. The Tribunal further held that the Commissioner cannot exercise jurisdiction under section 263 in respect of deduction under section 80-IB, which was the subject matter of appeal.

High Court's Views: The High Court took note of all the facts and sequence of events with regard to the matter in appeal. The Court was of the view that the contract between the two parties was self-explanatory and the interpretation placed by the assessee on clause (7) and claiming deduction under section 80-IB(10) is in order.

High Court's Decision : When the order of the first appellate authority is complete and the appeal is pending before the Tribunal, the Commissioner is precluded from invoking section 263 for revision of the very same matter decided by the first appellate authority since clause (c) of the *Explanation 1* to section 263 debars the same.

Accordingly, the High Court held that the order passed by the Assessing Officer got merged with the order of the first appellate authority. The very same issue cannot be revised by invoking revisionary jurisdiction under section 263.

19. Does the High Court have the inherent power under the Income-tax Act, 1961 to review its own order on merits?

CIT v. Meghalaya Steels Ltd. (2015) 377 ITR 112 (SC)

Facts of the case: In this case, the High Court had considered whether deduction is allowable under section 80-IB on transport subsidy and interest subsidy and on the central excise duty refund received by it. Finally, after stating that two substantial questions of law arose under section 260A, the High Court proceeded to answer the two questions. Against this judgement, the assessee filed a review petition whereupon the Division Bench of the High Court recalled its entire order for adjudication on the ground that it had not formulated the substantial questions of law before hearing of the appeal and had not invited the parties to have their say in the matter which amounted to denial of opportunity of effective hearing to the parties concerned, particularly, the review petitioners. Further, it had on an earlier occasion prior to passing the order, reserved the judgement on whether substantial questions of law in fact existed at all.

Revenue's contention *vis-à-vis* Assessee's contention: The Revenue contended that, by virtue of section 260A(7), only those provisions of the Civil Procedure Code could be looked into for the purposes of section 260A as were relevant to the disposal of appeals, and since the review provision contained in the Code of Civil Procedure is not so referred to, the High Court would have no jurisdiction under section 260A to review such judgment. The assessee-petitioner, however, contended that High Courts being courts of record under article 215 of the Constitution of India, the power of review would in fact inhere in them.

Supreme Court's Observations: The Supreme Court concurred with the assessee's submission that High Courts being courts of record under article 215 of the Constitution of India, the power of review would inhere in them. Further, it noted that in another case[2], in a slightly different context while dealing with power of review of writ petitions filed under article 226, the Supreme Court had observed that there is nothing in article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. In that case, the High Court had entertained the second petition since the interested parties were not given an effective opportunity of being heard, before passing the judgement; therefore, keeping in mind the requirement of the principles of natural justice, the High Court had exercised its inherent power of review.

Supreme Court's Decision: The Supreme Court went ahead to further observe that it is clear on a cursory reading of section 260A(7), that it does not purport in any manner to curtail or restrict the application of the provisions of the Code of Civil Procedure. Section 260A(7) only states that all the provisions that would apply qua appeals in the Code of Civil Procedure would apply to appeals under section 260A. That does not in any manner suggest either that the other provisions of the Code of Civil Procedure are necessarily excluded or that the High Court's inherent jurisdiction is in any manner affected.

***Note** – On account of the Supreme Court's view that the High Court has an inherent power under the Income-tax Act, 1961 to review its own order, students may ignore the Madhya Pradesh High Court ruling reported in page 88 of the of the printed copy of the August 2015 edition of the publication "Select Cases in Direct and Indirect Tax Laws – 2015". Students may also ignore the answer to Q.2(ii) in "Chapter 24: Appeals and Revision" in the printed copy of the December 2015 edition of the Practice Manual on Final Paper 7: Direct Tax Laws, which is based on the Madhya Pradesh High Court's view in Deepak Kumar Garg's case.*

20. Can the original assessment order under section 143(3), which was subsequently modified to give effect to the revision order under section 264, be later on subjected to revision under section 263?

CIT v. New Mangalore Port Trust (2016) 382 ITR 434 (Karn)

Facts of the case: The assessee-trust, a government undertaking carrying on commercial activities in one of the major ports was enjoying exemption under section 10(20) since its inception. On March 27, 2006, the assessee applied for registration under section 12A. However, the said application for registration was rejected by the Commissioner. On appeal before the Appellate Tribunal, the Commissioner was directed to grant registration under section 12AA to the assessee w.e.f. 1 April, 2003. To give

[2] *Shivdeo Singh v. State of Punjab AIR 1963 SC 1909*

effect to the order of the Tribunal, the Commissioner granted registration on July 27, 2009. Subsequent to the registration, an assessment order was passed by the Assessing Officer under section 143(3) on December 27, 2009. The assessee filed a revision petition under section 264 which was allowed and the matter was remanded to the Assessing Officer to compute the income of the assessee in terms of the order of revision under section 264. The Assessing Officer gave effect to the revision order vide order dated May 27, 2011. Thereafter, the original order passed under section 143(3), dated December 27, 2009 was revised by the Commissioner under section 263 on March 22, 2012.

The revision order under section 263 passed by Commissioner was challenged by the assessee before the Appellate Tribunal. The Tribunal set aside the revision order of the Commissioner passed under section 263.

Assessee's Contentions: The assessee contended before the High Court that the order passed by the Assessing Officer under section 143(3) on December 27, 2009 does not exist subsequent to the order of Commissioner passed under section 264, being given effect to by the Assessing Officer vide order dated May 27, 2011. The said order dated December 27, 2009 which no longer subsists, was revised by the Commissioner under section 263. In this case, invoking of *suo motu* revision powers by the Commissioner under section 263 is not justifiable.

High Court's Observations: The High Court took note of the sequence of events and undisputed facts that the assessment order dated 27 December 2009 passed by the Assessing Officer was no longer in existence. The High Court concluded that the Tribunal arrived at the conclusion only after considering the factual position that Commissioner had no jurisdiction to revise the order which was not in existence.

High Court's Decision: The High Court, accordingly, held that the order passed by the Commissioner under section 263, revising the non-existing order is *void ab initio* and is a nullity in the eyes of law.

Deduction, Collection and Recovery of Tax

21. Whether chit dividend paid to subscribers of chit fund is in the nature of 'interest' in terms of section 2(28A) to attract deduction of tax at source under section 194A?

CIT v. Avenue Super Chits (P) Ltd (2015) 375 ITR 76 (Kar)

Facts of the case: The assessee-company engaged in chit fund business had several chit groups which consisted of 25 to 40 customers each. Each subscriber has to subscribe an equal amount based on the value of chit. There are two types of chit. One is the lottery system and other is auction system. Under the auction system, during each instalment of the chit, the highest bidder got the chit amount. The unsuccessful members would earn dividend [chit dividend as defined under section 2(h) of Chit Fund Act, 1982].

Revenue's Contentions: The Revenue contended that when the successful bidder in an auction took the prize money earlier to the period to which he is entitled, he is liable to pay an amount to others who contributed to take the prize money, the amount so paid is nothing but interest which is liable for tax deduction under section 194A. The assessee had failed to do so, and therefore, he is treated as an assessee-in-default under section 201 and is liable to pay interest under section 201(1A).

Appellate Authorities Views : The Commissioner (Appeals) held that the amount paid by way of dividend could not be called as 'interest' in terms of section 2(28A) of the Income-tax Act, 1961 and hence, there was no liability on the part of the assessee to deduct tax at source. The Tribunal affirmed the findings of Commissioner (Appeals).

High Court's Observations: The High Court noted the decision of *CIT v. Sahib Chits (Delhi) (P) Ltd (2010) 328 ITR 342 (Del)* wherein section 2(28A) was referred to decide that chit dividend cannot be treated as interest. Further, section 194A has no application to such (chit) dividend and therefore, there is no obligation on the part of the assessee to make any deduction under section 194A before such dividend is paid to the subscribers of the chit.

High Court's Decision: The High Court held that the above judgment squarely applies to the facts of this case. Therefore, auction chit dividend paid to subscribers of the chit is not 'interest' as defined in section 2(28A) of the Income-tax Act, 1961 and therefore, tax deduction in terms of section 194A is not attracted.

Notes:

(1) Meaning of certain terms:

Term	*Section*	*Meaning*
Dividend	2(h) of Chit Fund Act, 1982	The share of the subscriber in the amount of discount available under the chit agreement for rateable distribution among the subscribers at each instalment of the chit.
Discount	2(g) of the Chit Fund Act, 1982	The sum of money or the quantity of grain which a prized subscriber is, under the terms of the chit agreement, required to forego and which is set apart under the said agreement to meet the expenses of running the chit or for distribution among the subscriber or for both.
Interest	2(28A) of the Income-tax Act, 1961	Interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) and includes any service fee or other charge in respect of the moneys borrowed or debt incurred or in

		respect of any credit facility which has not been utilized.

(2) Example (to explain the concept of Chit Fund):

Let us suppose 50 persons come together to organise a chit and each of them undertake to contribute ₹ 1,000. The total chit amount would be ₹ 50,000 (₹ 1,000 × 50). Let us further suppose that the fund would operate for a period of 50 months. Thus, the member subscribers and the number of months for which the chit would operate would be the same. In this example, at the end of each month, an amount of ₹ 50,000 (₹ 1,000 × 50) would be available in the kitty of the chit fund. The said amount would be put to auction and those subscribers who are interested in drawing the money early because of their needs may participate in the auction. The successful bidder, who is normally the person who offers the highest discount, is given the chit amount.

For example, let us assume that there are three bidders offering to take the chit for ₹ 50,000. They offer ₹ 40,000, ₹ 35,000 and ₹ 33,000, respectively. The chit would be given to that subscriber who is willing to take it for ₹ 33,000, since he has offered a discount of ₹ 17,000. This leaves a balance of ₹ 17,000 in the kitty. The amount of ₹ 17,000 which represents the discount which the successful bidder has foregone becomes the dividend which is to be distributed to the subscribers.

22. Where remuneration paid to doctors is variable based on number of patients and treatment given to them, would the liability to deduct tax at source arise under section 192 or under section 194J?

CIT v. Manipal Health Systems (P) Ltd (2015) 375 ITR 509 (Kar)

Facts of the case: The assessee-company is an institution providing health services. A survey under section 133A was conducted on the business premises of the assessee in order to ascertain the TDS compliance. While conducting the survey, the Assessing Officer found that the assessee company has deducted tax on payment made to doctors under section 194J. The Assessing Officer came to a conclusion that there existed an employer-employee relationship between the hospital and the doctors engaged by it, and hence, the assessee was required to deduct tax at source under section 192. Accordingly, the Assessing Officer computed the liability for short deduction of tax at source under section 201(1) and section 201(1A). The assessee challenged the said demand before the Commissioner (Appeals).

Appellate Authorities' Views: The Commissioner (Appeals) allowed the claim holding that the doctors cannot be construed as employees of the assessee-company. The Tribunal dismissed the appeal filed by the Revenue.

High Court's Observations: The High Court observed that to decide whether the relationship of employer-employee existed or not, the contract entered into between the parties has to be seen - whether the same is a **"contract for service"** or a **"contract of**

service". In order to ascertain the nature of contract, multiple-factor tests have to be applied. The independence test, control test, intention test are some of the tests adopted to distinguish between 'contract for service' and 'contract of service'.

The High Court examined the terms of the contract entered into between the asseesee-company and the doctors. As per the said terms,

- The remuneration paid to the doctors depends on the treatment given to patients and on the number of patients - if the number of patients are more, remuneration would be on a higher side or if no patients, no remuneration;
- The timing of the doctors is fixed; and
- They cannot have private practice or attend any other hospital.

It was observed that mere provision of non-competition clause in the agreement shall not change the nature of contract from profession to that of employment. Imposing a condition of bar to private practice is to make use of the expertise, skill of a doctor exclusively for the assessee-company, i.e., to get the attention and focus of the professional skill and expertise only to the patients of the assessee-company and to discourage doctors from transferring patients to their own clinics or any other hospital. The High Court also noted the Tribunal's finding that none of the doctors are entitled to gratuity, provident fund, leave travel allowance and other terminal benefits. It is also pertinent to note that the doctors have filed their returns of income for the relevant assessment years showing the income received from the assessee-company as professional income and the same is said to have been accepted by the Department.

In *CIT (TDS) v. Apollo Hospitals International Ltd. (2013) 359 ITR 78*, the Gujarat High Court took a view that consultant doctors were not getting salary but payment to them was in the nature of professional fees liable to tax deduction at source under section 194J.

High Court's Decision: Considering the totality of facts and terms of the agreement, the Court held that in this case, the consultancy charges paid to doctors rendering professional service would be subject to tax deduction under section 194J and not section 192.

23. Are landing and parking charges paid by an airline company to Airports Authority of India in the nature of rent to attract tax deduction at source under section 194-I?

Japan Airlines Co. Ltd. v. CIT / CIT v. Singapore Airlines Ltd. (2015) 377 ITR 372 (SC)

Facts of the case: The assessees in both the cases are foreign airlines. Being international airlines, they fly their aircrafts to several destinations across the world, including New Delhi. For landing the aircrafts and parking thereof at the Indira Gandhi International Airport (IGIA), New Delhi, the Airports Authority of India (AAI) levies charges on these airlines. The airlines are deducting tax @2% under section 194C for

payment of landing and parking charges in respect of its aircrafts to AAI and remitting the same. However, the income-tax authorities are of the view that tax is to be deducted at the higher rate applicable under section 194-I *(currently, 10%)*.

Issue under consideration: The issue under consideration is whether landing and parking charges paid by the airline companies to AAI is in the nature of rent to attract tax deduction at source under section 194-I.

Delhi High Court's view *vis-a-vis* Madras High Court's view: On this issue, contrary views were expressed by the Delhi High Court in *Japan Airlines Co. Ltd.*'s case and the Madras High Court in *Singapore Airlines Ltd.'s* case.

The Delhi High Court observed that "rent" as defined in section 194-I has a wider meaning than rent in common parlance and includes any agreement or arrangement for use of land. The Delhi High Court further observed that when the wheels of the aircraft coming into an airport touch the surface of the airfield, use of the land of the airport immediately begins. Similarly, for parking the aircraft in that airport, again, there is use of the land. Therefore, the Delhi High Court, following its own judgment in the case of *United Airlines v. CIT (2006) 287 ITR 281* held that landing and parking fee were "rent" within the meaning of the provisions of section 194-I, as they were payments for the use of the land of the airport.

The Madras High Court, however, expressed a contrary view on the above issue in *CIT v. Singapore Airlines Ltd. (2012) 209 Taxman 581 (Mad.).* The Court has observed that only if the agreement or arrangement has the characteristics of lease or sub-lease or tenancy for systematic use of the land, the charges levied would fall for consideration under the definition of 'rent' for the purpose of section 194-I.

The Madras High Court further observed that the principles guiding the levy of charges on landing and take-off show that the charges are with reference to the number of facilities provided by the Airport Authority of India in compliance with the international protocols and the charges are not made for any specified land usage or area allotted. The charges are for various facilities offered to meet the requirement of passenger safety and for safe landing and parking of the aircraft. Thus, the charges levied are, at the best, in the nature of fee for the services offered rather than in the nature of rent for the use of the land.

Therefore, the levy of charges, which is not only for the use of land, but for maintenance of various services, including technical services involving navigation, would not automatically bring the transaction and the charges within the meaning of either lease or sub-lease or tenancy or any other agreement or arrangement in the nature of lease or tenancy so that the charges would fall within the meaning of 'rent' as appearing in *Explanation* to section 194-I.

Thus, the Madras High Court held that going by the nature of services offered by the AAI in respect of landing and parking charges, collected from the assessee, there is no ground to accept that the payment would fit in with the definition of "rent" as given under section 194-I.

Supreme Court's Observations: The Apex Court considered the moot question as to whether landing and take-off facilities on the one hand and parking facility on the other hand would tantamount to use of land. After due consideration of the views of the Delhi High Court and the Madras High Court on this issue, the Supreme Court concluded that the Madras High Court's view is justified on the basis of sound rationale and reasoning.

The Supreme Court observed that the charges which are fixed by the AAI for landing and take-off services as well as for parking of aircrafts are not for the "use of the land". These charges are for services and facilities offered in connection with the aircraft operation at the airport which include providing of air traffic services, ground safety services, aeronautical communication facilities, installation and maintenance of navigational aids and meteorological services at the airport.

There are various international protocols which mandate all authorities manning and managing these airports to construct the airport of desired standards which are stipulated in the protocols. The services which are required to be provided by these authorities, like AAI, are aimed at passengers' safety as well as for safe landing and parking of the aircrafts. Therefore, it is not mere "use of the land". On the contrary, it encompasses all the facilities that are to be compulsorily offered by the AAI in tune with the requirements of the protocol.

For example, runways are not constructed like any ordinary roads. Special technology is required for the construction of these runways for smooth landing and take-off of the aircrafts. Specialised kind of orientation and dimensions are needed for these runways which are prescribed with precision and those standards are to be adhered to. Further, there has to be proper runway lighting, runway safety area, runway markings, etc. Technical specifications for such lighting, safety area and markings are stipulated which have to be provided. The technical specifications keep in mind the basic fact, namely, on landing, the aircraft is light on fuel and usually less than 5% of the weight of the aircraft touches the runway in one go. On take-off, the aircraft is heavy but as the aircraft accelerates, the weight gradually moves from the wheels to the wings. The technological aspects of these runways have been emphasized in some detail to highlight the precision in designing and engineering which goes into making these runways fool proof for safety purposes. The purpose is to show that the AAI is providing all these facilities for landing and take-off of an aircraft and in this whole process, "use of the land" pales into insignificance.

The Supreme Court observed that the charges levied on air-traffic includes landing charges, lighting charges, approach and aerodrome control charges, aircraft parking charges, aerobridge charges, hangar charges, passenger service charges, cargo charges, etc. Thus, when the airlines pay for these charges, treating such charges as charges for "use of the land" would tantamount to adopting a totally simplistic approach which is far away from the reality.

Supreme Court's Decision: The Supreme Court opined that the substance behind such charges has to be considered and when the issue is viewed from this angle, keeping the full and larger picture in mind, it becomes very clear that the charges are not for use of the land *per se* and, therefore, it cannot be treated as "rent" within the meaning of section 194-I. The Supreme Court, thus, concurred with the view taken by the Madras High Court in *Singapore Airlines* case and overruled the view taken by the Delhi High Court in *United Airlines/Japan Airlines* case.

The Supreme Court was, however, not in agreement with the Madras High Court's view that the words "any other agreement or arrangement for the use of any land or any building" have to be read *ejusdem generis* and it should take its colour from the earlier portion of the definition, namely, "lease, sub-lease and tenancy", thereby, limiting the ambit of the words "any other agreement or arrangement". The Supreme Court observed that this reasoning was not correct. A bare reading of the definition of "rent" contained in *Explanation* to section 194-I would make it clear that in the first place, the payment, by whatever name called, under any lease, sub-lease, tenancy is to be treated as "rent". This is rent as understood in the traditional sense. However, the second part is independent of the first part which gives a much wider scope to the term "rent". Accordingly, whenever payment is made for use of any land or any building by any other agreement or arrangement, that is also to be treated as "rent". Once such a payment is made for use of land or building under any other agreement or arrangement, such agreement or arrangement gives the definition of "rent" a very wide connotation. The Supreme Court observed that the interpretation of the Delhi High Court appears to be correct to that extent i.e., to the extent that the scope of the definition of rent under section 194-I is very wide and not limited to what is understood as rent in common parlance; though the Delhi High Court did not apply this definition correctly to the present case as it failed to notice that in substance the charges paid by these airlines are not for "use of land" but for other facilities and services wherein the use of the land was only a minor and insignificant aspect. Thus, the Supreme Court was of the considered view that the Delhi High Court did not correctly appreciate the nature of charges that are paid by the airlines as landing and parking charges, in the sense, it did not appreciate that such charges were not, in substance, for use of land but for various other facilities extended by the Airports Authority of India to the airlines.

Note *– Consequent to the above Supreme Court judgement overruling the Delhi High Court judgement in United Airlines/ Japan Airlines case and upholding the Madras High Court judgement in Singapore Airlines case, students may ignore the Delhi High Court ruling in Japan Airlines case reported in pages 112-113 of the printed copy of the August 2015 edition of the publication "Select Cases in Direct and Indirect Tax Laws – 2015". Students may also ignore the answer to Q.9 of "Chapter 28: Deduction, Collection and Recovery of Tax" in the printed copy of the December 2015 edition of the Practice Manual*

on Final Paper 7: Direct Tax Laws, which is based on the above High Court rulings. The said question has to be now answered on the basis of the above Supreme Court ruling.

24. Would transaction charges paid by the members of the stock exchange for availing fully automated online trading facility, being a facility provided by the stock exchange to all its members, constitute fees for technical services to attract the provisions of tax deduction at source under section 194J?

CIT v. Kotak Securities Ltd (2016) 383 ITR 1 (SC)

Facts of the case: The assessee company was engaged in the business of share broking, depositories, mobilisation of deposits and marketing public issues. Being a member of the Bombay Stock Exchange (BSE), it made payment to the Stock Exchange by way of transaction charges in respect of fully automated online trading facility and other facilities. These services are available to all the members of the stock exchange in respect of every transaction that is entered into. Revenue contended that tax is deductible at source under section 194J considering such transaction charges as "fees for technical services".

High Court's Decision: The Bombay High Court held that the transaction charges paid by a member of the BSE to the stock exchange to transact business of sale and purchase of shares amounts to payment of a "fee for technical services" and hence, tax is deductible at source under section 194J.

Supreme Court's Observations: The Apex Court made the following observations:

- The services provided by the stock exchange are available to all members in respect of every transaction that is entered into. There is nothing special, exclusive or customized in the service that is rendered by the stock exchange.
- A member who wants to conduct his daily business in the stock exchange has no option but to avail such services. Each and every transaction by a member involves the use of such services provided by the stock exchange for which the member is required to pay transaction charge based on the transaction value besides charges for the membership of the stock exchange.
- Technical services like managerial and consultancy service are in the nature of specialised services made available by the service provider to cater to the special needs of the customer-user as may be felt necessary. ***It is the above feature that would distinguish or identify a service provider from a facility offered.***
- However, there is no exclusivity in the services rendered by the stock exchange and each and every member has to avail such service in the normal course of trading in securities in the stock exchange.

Supreme Court's Decision: The Apex Court, accordingly, held that the service provided by the BSE for which transaction charges are paid failed to satisfy the test of specialized,

exclusive and individual requirement of the user or the consumer who may approach the service provider for such assistance or service.

Therefore, the transaction charges paid to BSE by its members are not for technical services but are in the nature of payments made for facilities provided by the stock exchange. Such payments would, therefore, not attract the provisions of tax deduction at source under section 194J.

25. Is tax is required to be deducted under section 195 on the demurrage charges paid to a foreign shipping company which is governed by section 172 for the purpose of levy and recovery of tax?

CIT v. V.S. Dempo & Co P Ltd (2016) 381 ITR 303 (Bom) (FB)

Facts of the case: In the present case, the assessee, being a company engaged in the business of mining and export of processed iron ore as also in construction business, claimed demurrage charges paid to a foreign shipping company on which no tax was deducted at source under section 195 as deductible expenditure. Since tax was not deducted at source under section 195, the Assessing Officer, in view of provisions of section 40(a)(i), disallowed the claim of expenditure in respect of such demurrage charges paid.

High Court's Observations: The High Court took note of the Tribunal's observation that section 40(a)(i) would apply only when there is an obligation to deduct tax at source. The Tribunal placed reliance upon the CBDT Circular No. 723 dated September 19, 1995 to support its conclusion that there was no obligation to deduct tax at source in respect of payment made towards demurrage charges to non-resident shipping company falling within the scope of section 172. The Revenue did not dispute that section 172 applied in the present case. Section 172 is a charging as well as machinery provision in respect of non-resident shipping companies. It provides for determination and collection of tax. Thus, no obligation to deduct at source under section 195 would arise in respect of payment of demurrage charges to such companies.

The High Court also noted that section 172 is a complete code that applies to non-resident Indians and section 195 is part of recovery provision under the Income-tax Act, 1961.

The provisions of section 172 would apply notwithstanding anything contained in the other provision of this Act, for the purpose of the levy and recovery of tax in the case of any ship, belonging to or chartered by a non-resident which carries passengers, etc. shipped at a port in India. Since section 172(1) begins with a non-obstante clause, it would prevail over other provisions of the Act including section 195. Thus, the provisions contained thereunder would take care of the manner of determination of income from shipping business of non-residents as well as the levy and recovery of tax thereon.

High Court's Decision: The High Court, accordingly, held that since section 172 dealing with shipping business of non-residents contains a non-obstante clause and applies both for the purpose of the levy and recovery of tax in the case of any ship carrying passengers etc., belonging to or chartered by a non-resident and shipping at a port in India, there would be no obligation on the payer-assessee to deduct the tax at source under section 195 on payment of demurrage charges to the non-resident shipping company.

26. Can items of finished products from ship breaking activity which are usable as such be treated as "Scrap" to attract provisions for tax collection at source under section 206C?

CIT v. Priya Blue Industries (P) Ltd (2016) 381 ITR 210 (Guj)

Facts of the case: The assessee-company, engaged in ship breaking activity, sold old and used plates, wood etc. It did not produce any document or papers to show collection of tax at source on sale of such items and payment thereof to the credit of the Central Government nor was certificate in Form No.27C produced. The Assessing Officer observed that such items were in the nature of scrap and therefore, the assessee was under an obligation to collect tax at source from the buyers of scrap. Accordingly, he raised a demand under section 201(1) and interest under section 201(1A). The assessee claimed that such items are usable as such, and are hence not 'scrap' to attract the provisions for collection of tax at source.

Appellate Authorities' views: The Commissioner (Appeals) observed that the assessee was engaged in ship breaking activity and the products obtained from the activity were finished products which constituted sizable chunk of production done by the ship breakers. The Commissioner (Appeals) agreed with the assessee that such products though commercially known as 'scrap' were definitely not "waste and scrap". He further agreed with the contention of the assessee that the items in question were usable as such and, therefore, do not fall within the definition of "scrap" as given in clause (b) of *Explanation* to section 206C(1).

The Tribunal firstly recorded a list of items sold by the assessee from the ship breaking activity. It found that the assessee collected and paid tax, for seven items, but did not collect tax at source on certain items viz. old and used plates; non-excisable (exempted) goods like wood etc. It observed that the 'waste and scrap' must be from manufacture or mechanical working of material which is *definitely not usable as such because of breakage, cutting up, wear and other reasons.* Since the assessee is engaged in ship breaking activity, these items/products are finished products obtained from such activity which are usable as such and hence, are not 'waste and scrap' though commercially known as scrap. Accordingly, the Tribunal also decided the issue in favour of the assessee.

High Court's Decision: The High Court concurred with the views of the Tribunal and held that any material which is usable as such would not fall within the ambit of the expression 'scrap' as defined in clause (b) of the *Explanation* to section 206C.

27. Is levy of interest under section 234B attracted in a case where the assessment order does not contain any specific direction for payment of interest, but is accompanied by form ITNS 150 containing a calculation of interest payable on tax assessed?

CIT v. Bhagat Construction Co (P) Ltd (2016) 383 ITR 9 (SC)

Facts of the case: The assessment order passed did not contain any direction for the payment of interest under section 234B. The appellate order also simply stated that interest is payable under section 234B, without any further substantiation. The amount of interest payable under section 234B was contained in the Income-tax Computation Form or 'Form for Assessment of Tax/Refund (I.T.N.S 150)'.

Apex Court's Observations: The Apex Court observed that the facts of the present case are squarely covered by the three judges' bench decision of this court in the case of *Kalyankumar Ray v. CIT (1991) 191 ITR 634,* wherein it was held that the Form I.T.N.S 150 is also a form for determination of tax payable and when it is signed or initialled by the Assessing Officer, it is certainly an order in writing by the Assessing Officer determining the tax payable within the meaning of section 143(3). The said form also contains the calculation of interest payable on the tax assessed. This form must, therefore, be treated as part of the assessment order.

The Supreme Court further observed that the provisions of section 234B are attracted the moment an assessee liable to pay advance tax has failed to pay such tax or the advance tax paid by him is less than 90% of the assessed tax. The assessee, thus, becomes liable to pay simple interest at 1% for every month or part of the month.

Supreme Court's Decision: The Apex Court, accordingly, held that the levy of interest under section 234B is automatic when the conditions specified therein are satisfied and the assessment order is accompanied by the prescribed form containing the calculation of interest payable.

PAPER – 8 : INDIRECT TAX LAWS

QUESTIONS

Note: All questions have to be answered on the basis of position of law as amended by the Finance Act, 2015 and relevant Notifications/Circulars issued till 30.04.2016.

Valuation of excisable goods

1. S Cloth Mills sold 1,000 meters of cloth to P Garments on 10.01.2016 from its depot located at Ahmedabad @ ₹ 110 per meter. The said 1,000 meters cloth consignment was dispatched to the depot from the factory located in Surat on 05.01.2016.

   Ex-factory price on 05.01.2016 was ₹ 120 per meter. The details of sales of identical variety of cloth effected from Ahmedabad depot on the two relevant dates are as follows:-

On 05.01.2016			On 10.01.2016		
Cloth sold (in meters)	**No. of buyers**	**Rate per meter (₹)**	**Cloth sold (in meters)**	**No. of buyers**	**Rate per meter (₹)**
230	7	122	300	5	108
850	2	125	1,000	1	110
555	3	115	665	3	105
710	3	128	258	5	115

   Calculate the assessable value of 1,000 meters of cloth sold by S Cloth Mills to P Garments for the purpose of determination of excise duty.

Manufacture and SSI exemption

2. ABC Printers starts its business in January, 2016. It purchases duty paid GI Paper from the market and carries out printing on it according to design and specifications of customer– Xavier Ltd. in February, 2016. The printing is done on jumbo rolls of GIP twist wrappers.

   On the paper, logo and name of the product is printed in colorful form and the same is delivered to Xavier Ltd. in jumbo rolls without slitting. Xavier Ltd. intends to use this paper as a wrapping/packing paper for packing of its goods.

   Revenue contends that the process undertaken by ABC Printers amounts to manufacture.

   You are required to advise ABC Printers whether the process undertaken by it amounts to manufacture? If yes, whether it is eligible to claim the benefit of SSI exemption under *Notification No. 8/2003 CE dated 01.03.2003* in financial year 2015-16*?*

Demand and penalty

3. ABC Ltd. was engaged in manufacture of various toilet preparations such as after-shave lotion, deo-spray, mouthwash, skin creams, shampoos, etc. ABC Ltd. procured Extra

Natural Alcohol (ENA) from the local market on payment of duty, to which Di-ethyl Phthalate (DEP) was added so as to denature it and to render the same unfit for human consumption.

The addition of DEP to ENA resulted into an intermediate product i.e. Di-ethyl Alcohol. The denaturing process in the cosmetic industry was a statutory requirement under the Medicinal & Toilet Preparations (M&TP) Act, 1955. ABC Ltd. did not pay excise duty on denatured ethyl alcohol as similar units in the industry were also not paying duty on the same.

The Central Excise Officer issued a show cause notice to ABC Ltd. on 20.12.2015 (received by ABC Ltd. the next day) demanding the excise duty of ₹ 12,00,000 alongwith interest under section 11AA of the Central Excise Act, 1944 and penalty under section 11AC of the Central Excise Act, 1944, alleging that the said intermediate product was liable to central excise duty.

It invoked the extended period of limitation contending that non-disclosure of manufacture of Di-ethyl Alcohol amounted to suppression of material facts.

Based on the above information, you are required to answer the following questions:

(i) Examine, with the help of a decided case, if any, can the extended period of limitation be invoked in case of ABC Ltd.?

(ii) What will be the amount of penalty payable by ABC Ltd., if it pays duty and interest (as demanded in the SCN) on 05.01.2016 (before adjudication order)?

(iii) In case ABC Ltd. does not pay the duty and interest and matter is adjudicated and an order determining duty at ₹ 11,50,000 alongwith interest and penalty is passed under section 11A(10) of the Central Excise Act, 1944, will ABC Ltd. have an option to get its penalty reduced?

CENVAT credit

4. Examine the availability of the CENVAT credit with respect to following items in view of the recent amendments made in the CENVAT Credit Rules, 2004 (hereinafter referred to as CCR, 2004):

   (i) Equipment or appliance used in an office located within a factory.

   (ii) Capital goods having a value upto ₹ 10,000 per piece.

   (iii) Tools of Chapter 82 of the Central Excise Tariff sent to another manufacturer or job-worker for production of goods.

Registration under central excise

5. State briefly with reasons whether registration under the Central Excise Act, 1944 and rules made thereunder is required in the following cases:

   (i) ABC Ltd. imports some goods from US and wishes to issue a CENVATable invoice.

(ii) Mines engaged in production of coal in respect of which there is centralized billing and accounting system at the office registered under Central Excise Law.

Exemption from service tax

6. Divyakripa Trust, an entity registered under section 12AA of the Income-tax Act, 1961, has furnished you the following details with respect to the activities undertaken by it. You are required to compute its service tax liability from the information given below:

Particulars	₹
Amount received for the Yoga camps organized for elderly people	4,83,000
Payment made for the services received from a service provider located in US, for the purposes of providing 'charitable activities'	5,50,000
Amount received for counseling of mentally disabled persons	10,50,000
Amount received for renting of commercial property owned by the trust	1,50,000
Amount received for activities relating to preservation of forests and wildlife	12,35,000

Note: Service tax and Swachh Bharat Cess (hereinafter referred to as SBC) have been charged separately wherever applicable. Divyakripa Trust is not eligible for small service providers' exemption (hereinafter referred to as SSP exemption).

7. Compute the service tax liability in each of the following independent cases ignoring the SSP exemption and assuming the receipts as exclusive of service tax and SBC, wherever applicable:

Particulars	Gross amount charged (₹)
Services provided by Government to various individuals by way of issuance of driving licence	1,05,000
Services provided by BIRAC approved bio-incubators to incubatees	15,00,000
Transportation of passengers by ropeway	5,20,000
Express parcel post services provided by the Hasanchowk Post Office to various individuals*	8,00,000
**Amount charged does not exceed ₹ 5,000 in any of the transactions*	

Construction services

8. A land owner enters into an agreement with a builder, whereby, he gives land to the builder to construct a residential complex and sell flats/houses of such complex to buyers. The builder, in turn, agrees to assign a portion of the constructed area, in the form of flats in favour of the land owner. The remaining flats are sold by the builder to various buyers.

With reference to a recent circular issued by CBEC, discuss how will the value of construction service provided by the builder to the land owner be determined?

Service of supply of food/any other article of human consumption/any drink in a restaurant or as outdoor catering

9. Section 66E(i) of the Finance Act, 1994 which levies service tax on the service portion of activity wherein goods being food or any other article for human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of activity, is *ultra vires* the Article 366(29A)(f) of the Constitution.

   Examine the validity of the statement with reference to a decided case law, if any.

Computation of service tax liability

10. Singhal Classes is engaged in providing taxable commercial training and coaching services to students in Rajasthan. You are required to compute service tax payable in cash by Singhal Classes for the financial year 2015-16 from the following information pertaining to said financial year assuming that service tax has been paid on the services availed.

Particulars	Amount charged or paid for services (₹)
Coaching fees collected from the students	50,00,000
Services of catering, photography and tents availed for the celebrations organized, after completion of the academic sessions, for meritorious students	5,50,000
Rent paid for hiring of examination hall for the purpose of conducting examination for students undergoing the coaching	4,50,000
Travelling expenses incurred for the business tours	3,50,000
Advertisement expenses incurred for promoting Singhal Classes	1,00,000

Note: Service tax and SBC have been charged separately on all the above services, wherever applicable. Ignore SSP exemption.

Point of Taxation

11. Hindustani Enterprises is engaged in providing certain taxable services. It has entered into a contract with Mr. Prakash on 01.04.2016, for providing said services at an agreed consideration of ₹ 10,00,000.

    At the time of entering into the contract, liability to deposit 50% of the service tax on the said services was on the service receiver. The said services were provided on 08.04.2016 for which invoice was issued the next day.

With effect from 15.04.2016, liability of service receiver to pay service tax was reduced from 50% to 40%. Mr. Prakash made the payment for the services received, on 20.04.2016.

Compute service tax payable by Mr. Prakash and by Hindustani Enterprises assuming that service tax and SBC have been charged separately. Ignore the SSP exemption.

Special audit under service tax

12. Raman Ltd. is engaged in providing the taxable services and has been filing its service tax returns regularly. However, its jurisdictional Commissioner of Central Excise has the reasons to believe that Raman Ltd. has not correctly computed the value of its taxable services for the previous year.

Can the jurisdictional Commissioner direct such person to get its accounts audited by a Chartered Accountant to the extent and for the period as may be specified by him? Discuss briefly.

Will your answer be different if Raman Ltd. contends that its accounts for the previous year have been audited under the Income-tax Act, 1961?

Registration under service tax

13. Raghuraman Pvt. Ltd. (RPL) starts providing manpower recruitment agency services on July 1, 2015. The details of the bills raised by it during July to September, 2015 are given as under:

Bill No.	Date	Value of taxable services (₹)
1.	03.07.2015	50,000
2.	15.07.2015	1,27,500
3.	25.07.2015	1,05,000
4.	26.08.2015	1,55,000
5.	09.08.2015	2,30,000
6.	18.08.2015	2,13,000
7.	30.08.2015	1,07,000
8.	01.09.2015	31,500
9.	17.09.2015	1,85,000
10.	25.09.2015	69,500

RPL applies for registration on 22.11.2015. Is RPL at any default? If yes, what is the maximum amount of penalty leviable under section 77(1)(a) of the Finance Act, 1994 assuming that RPL intends to avail exemptions available to it, if any, under service tax law?

Basic concepts of service tax

14. ABC College General Council, a society, running internationally renowned schools, allowed other schools to use the name - 'ABC school', its logo and motto, and as a consideration thereof received 'collaboration fees' from such schools which comprised of a non-refundable amount and annual fee.

    Examine, with the help of a decided case law, whether service tax is leviable in the present case.

SEZ exemption

15. XYZ Ltd. has manufacturing operations in the SEZ. The Development Commissioner of SEZ granted an extension of 1 year to XYZ Ltd. to start manufacturing operations (which were authorised operations of the SEZ). XYZ Ltd. procured certain services (scientific and technical consultancy) during this period (before beginning of the manufacture) in order to enable it to undertake manufacturing activity.

    Later, when it applied for refund of service tax paid on such input services under *Notification No. 12/2013 ST dated 01.07.2013,* the refund was denied on the ground that since the services were received before the authorised operations (i.e., manufacturing) started, the said input services would not be considered to have been used in authorised operations of SEZ unit, and thus, would not get qualified for refund.

    You are required to comment on the veracity of the Revenue's claim, with the help of a decided case law, if any.

Baggage Rules, 2016

16. Mr. Sujoy, an Indian entrepreneur, went to London to explore new business opportunities on 01.04.2015. His wife also joined him in London after three months. The following details are submitted by them with the Customs authorities on their return to India on 15.04.2016.-

    (a) used personal effects worth ₹ 80,000,

    (b) 2 music systems each worth ₹ 50,000,

    (c) the jewellery brought by Mr. Sujoy worth ₹ 48,000 [20 grams] and the jewellery brought by his wife worth ₹ 96,000 [40 grams].

    Determine their eligibility with regard to duty free baggage allowances as per the Baggage Rules, 2016.

Duty drawback under custom laws

17. Calculate the amount of duty drawback allowable under the Customs Act, 1962 in the following cases:

    (a) Param imported a car from U.S. for his personal use and paid ₹ 9,20,000 as import duty. However, the car was re-exported immediately without bringing it into use.

(b) Rama imported a music player from Singapore and paid ₹ 15,000 as import duty. She used it for five months but re-exported the same after five months.

(c) Shivam Ltd. exported 1,500 kgs of a metal of FOB value of ₹ 1,00,000. Rate of duty drawback on such export was ₹ 40 per kg. Market price of goods was ₹ 42,000 (in wholesale market).

Valuation of imported goods

18. Compute the assessable value of a machinery and its accessories imported through vessel from USA, for determination of customs duty from the following data:

Particulars	Amount
FOB price of machinery imported	US $ 6,000
FOB price of accessories (charged separately) compulsorily supplied alongwith the machinery	US $ 600
Ocean freight	
--Machinery	US $ 1,000
--Accessories	US $ 100
Insurance charges	
--Machinery	US $ 67.50
--Accessories	US $ 6.75
Local (Indian) agent's commission to be paid	₹ 6,600
Transportation from Indian port to factory	₹ 5,600

Date of presentation of bill of entry is 20.10.2015. Exchange rate notified by CBEC on 20.10.2015 is US $ 1= ₹ 62

Date of arrival of vessel is 25.10.2015. Exchange rate notified by CBEC on 25.10.2015 is US $ 1= ₹ 60

Provisions relating to illegal import under customs

19. Samar, a resident of Mumbai, deals in import and export of uncut gems like rubies, emeralds. He brought a large quantity of uncut rubies into India clandestinely without payment of duty. During search conducted by customs officer, in the office premises of Samar, large quantities of uncut rubies were recovered.

Samar was neither able to offer any satisfactory explanation nor produce any documents in relation to the import of such uncut rubies and therefore, the rubies were seized by the officers. Subsequently, he filed a claim for availing the benefit of exemption meant for such imported goods under the Customs Act, 1962.

However, the Department contended that the goods brought by Samar, did not come within the purview of imported goods. The Department thus, rejected his claim stating

that the benefit of exemption is only meant for imported goods and cannot be given to the smuggled goods.

You are required to examine the veracity of the Department's contention with the help of a decided case law.

Foreign Trade Policy

20. Subham wants to import by air a laptop from USA. Such laptop has been used by Bhupati - the seller for few months there. Subham contends that he can freely import such laptop without any restriction/ authorization. Examine the correctness of Subham's claim in the light of the provisions of FTP 2015-2020.

SUGGESTED ANSWERS

1. Computation of assessable value:-

i. In the given case, since goods are sold from depot, transaction value (viz. ₹ 110 per meter) cannot be accepted for ascertaining the assessable value of the goods. The value of the said goods shall be determined as per rule 7 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 (hereinafter referred to as Valuation Rules).

ii. Rule 7 of the Valuation Rules stipulates that if excisable goods are sold from a depot after their clearance from the place of removal, the value shall be the normal transaction value of such goods sold from such other place (depot) at the time of removal from factory/warehouse. Hence, the normal transaction value of 1,000 meters of cloth sold from the Ahmedabad depot on 05.01.2016 shall be taken as assessable value.

iii. (a) *Circular No. 354/81/2000 CX dated 30.06.2000* clarifies that if goods are sold from depot, "normal transaction value" under rule 2 of Valuation Rules is the transaction value at which the greatest aggregate quantity of goods from depots etc., are sold at or about the time of removal of the goods from the factory/warehouse.

(b) Further, with regard to greatest aggregate quantity, *Circular No. 643/34/2002 CX dated 01.07.2002* clarifies that in this context, the time period should be taken as the whole day and the transaction value of the "greatest aggregate quantity" would refer to the price at which the largest quantity of identical goods are sold on a particular day, irrespective of the number of buyers.

iv. Accordingly, the price at which the largest quantity of identical variety of cloth is sold on 05.01.2016 shall be taken as greatest aggregate quantity. The largest quantity sold during the day is 850 meters of cloth. The price at which it is sold i.e. ₹ 125, shall be considered for computing the normal transaction value.

Therefore, assessable value of the cloth = 1,000 mtrs. × ₹ 125 = ₹ 1,25,000.

2. Yes, process undertaken by ABC Printers amounts to manufacture. The facts of the given case are similar to the case of *CCE v. Fitrite Packers 2015 (324) ELT 625 (SC)*. In the given case, the Supreme Court referred to one of its earlier judgments in the case of *Servo-Med Industries Pvt. Ltd. v. CCEx. 2015 (319) ELT 578* wherein the Apex Court had culled out four categories of cases to ascertain whether a particular process would amount to manufacture or not:

(i) Where the goods remain exactly the same even after a particular process - There is obviously no manufacture involved. Process which remove foreign matter from goods complete in themselves and / or processes which clean goods that are complete in themselves fall in this category.

(ii) Where the goods remain essentially the same after the particular process – Again there can be no manufacture. This is for the reason that the original article continues as such despite the said process and the changes brought about by the said process.

(iii) Where the goods are transformed into something different and / or new after a particular process but the said goods are not marketable - No manufacture of goods takes place. Examples within this group are cases where the transformation of goods having a shelf life which is of extremely small duration.

(iv) Where the goods are transformed into goods which are different and / or new after a particular process and such goods are marketable as such - It is in this category that manufacture of goods can be said to take place.

Considering the above categories of cases, in *Fitrite Packers* case, the Apex Court observed that GI paper was meant for wrapping and its use did not undergo any change even after printing - the end use thereof was still the same namely wrapping / packaging. However, whereas the blank paper could be used as wrapper for any kind of product, after the printing of logo and name of the specific product thereupon, its end use got confined to only that particular and specific product of the particular company / customer. The printing, therefore, was not merely a value addition, but had transformed the general wrapping paper to special wrapping paper.

The Supreme Court held that the process of aforesaid particular kind of printing resulted into a product i.e., paper with distinct character and use of its own which it did not bear earlier. The Court emphasised that there has to be a transformation in the original article and this transformation should bring out a distinctive or different use in the article, in order to cover the process under the definition of manufacture. Since these tests were satisfied in the said case, the Apex Court held that the process amounted to manufacture.

In view of the aforesaid decision, it can be concluded that the process under taken by ABC Printers amounts to manufacture.

Eligibility for SSI exemption: An assessee is eligible to claim the SSI exemption under *Notification No. 8/2003 CE dated 01.03.2003* if its value of clearances in the previous financial year does not exceed ₹ 400 lakh (₹ 4 crore). However, clearances of products bearing other's brand name are not eligible for SSI exemption. Clearances of goods in the nature of packing materials and meant for use as packing material by/on behalf of the person whose brand name they bear are, however, eligible for SSI exemption even if they bear the brand name of others.

In the given case, since ABC Printers has started its business in financial year 2015-16, its value of clearances in previous financial year 2014-15 is Nil. Although the product manufactured by ABC Printers bears the brand name of Xavier Ltd., since such goods are in the nature of packing materials and meant for use as packing material by Xavier Ltd. whose brand name they bear, ABC Printers is eligible for SSI exemption under *Notification No. 8/2003 CE dated 01.03.2003.*

3. **(i)** No, the extended period of limitation cannot be invoked in case of ABC Ltd. The issue, as to whether non-disclosure as regards manufacture of Di-ethyl Alcohol amounts to suppression of material facts thereby attracting the extended period of limitation under section 11A of the Central Excise Act, 1944, was decided by the Gujarat High Court in case of the *CC Ex. & C v. Accrapac (India) Pvt. Ltd. 2010 (257) E.L.T. 84 (Guj.).*

In the instant case, the Tribunal noted that denaturing process in the cosmetic industry was a statutory requirement under the Medicinal & Toilet Preparations (M&TP) Act. Thus, addition of DEP to ENA to make the same unfit for human consumption was a statutory requirement. Hence, failure on the part of the assessee to declare the same could not be held to be suppression as Department, knowing the fact that the assessee was manufacturing cosmetics, must have the knowledge of the said requirement. Further, as similarly situated assessees were not paying duty on denatured ethyl alcohol, the assessee entertained a reasonable belief that it was not liable to pay excise duty on such product.

The High Court upheld the Tribunal's judgment and pronounced that non-disclosure of the said fact on part of the assessee would not amount to suppression so as to call for invocation of the extended period of limitation.

In view of the aforesaid judgment, it can be concluded that extended period of limitation cannot be invoked in case of ABC Ltd.

(ii) Proviso to section 11AC(1)(a) of the Central Excise Act, 1944 stipulates that where any excise duty has not been paid for any reason other than the reason of fraud/collusion/wilful mis-statement/ suppression of facts/contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty and if such duty along with interest payable under section 11AA is paid either before the issue of show cause notice or within 30 days of issue of show cause notice (but before adjudication order), no penalty is payable by the person

liable to pay duty or the person who has paid the duty and all proceedings in respect of said duty and interest will be deemed to be concluded.

Thus, if ABC Ltd. pays the duty and interest within 30 days of issue of show cause notice (but before adjudication order), no penalty will be payable by ABC Ltd. and all proceedings in respect of said duty and interest will be deemed to be concluded.

(iii) In case ABC Ltd. does not pay the duty and interest and matter is adjudicated and an order determining duty at ₹11,50,000 alongwith interest and penalty is passed under section 11A(10) of the Central Excise Act, 1944; ABC Ltd. has an option to pay reduced penalty of 25% of the penalty imposed, in accordance with the provisions of section 11AC(1)(b) of the Central Excise Act, 1944, provided ABC Ltd. pays the following amounts within 30 days of the date of communication of the order of the Central Excise Officer who has determined such duty:

- Duty as determined under section 11A(10) of the Central Excise Act, 1944;
- Interest payable thereon under section 11AA of the Central Excise Act, 1944; and
- Reduced penalty (25% of the penalty imposed).

4. (i) With effect from 01.04.2016, *Notification No. 13/2016 CE (NT) dated 01.03.2016* has amended definition of capital goods as contained rule 2(a) of CCR, 2004 to allow CENVAT credit only on those equipment or appliance which are used in an office located within the factory and not outside the factory. Thus, CENVAT credit is available on the equipment or appliance used in an office located within a factory.

(ii) With effect from 01.04.2016, *Notification No. 13/2016 CE (NT) dated 01.03.2016* has amended the definition of inputs as contained in rule 2(k) of the CCR, 2004 by inserting clause (v) to it.

The scope of said definition has been widened to include in it all capital goods which have a value up to ₹ 10,000 per piece. Thus, on such capital goods, whole of the CENVAT credit can be taken in the same year in which they are received.

Consequential amendment has been made in said definition [Item (C)] to provide that input excludes those capital goods whose value exceeds ₹ 10,000 per piece.

(iii) Earlier, rule 4(5)(b) extended the CENVAT credit in respect of jigs, fixtures, moulds and dies sent by manufacturer of final products to:-

(a) another manufacturer for the production of goods, or

(b) a job worker for the production of goods on his behalf

according to his specifications.

With effect from 01.04.2016, rule 4(5)(b) has been amended vide *Notification No. 13/2016 CE (NT) dated 01.03.2016* to allow a manufacturer of final products to take CENVAT credit on tools of Chapter 82 of the Central Excise Tariff in addition to

credit on jigs, fixtures, moulds & dies, when the same are sent to another manufacturer or a job-worker for production of goods as per specification of manufacturer of final products.

5. (i) ABC Ltd. is required to obtain registration under central excise. As per rule 9(1) of the Central Excise Rules, 2002, an importer who issues a CENVATable invoice is required to take registration under the Central Excise Law.

(ii) Mines engaged in production of specified goods in respect of which there is centralized billing/ accounting system at the premises/ office registered under Central Excise Law are exempt from taking registration under the Central Excise Law vide *Notification No. 10/2011 C.E. (N.T.) dated 24.03.2011* issued under rule 9 of the Central Excise Rules, 2002. Coal is one of such specified goods.

Thus, mines engaged in production of coal in respect of which there is centralized billing and accounting system at the office registered under Central Excise Law are not required to take registration.

6. Computation of service tax liability of Divyakripa Trust:

Particulars	₹
Amount received for the Yoga camps organized for elderly people [Note 1]	Nil
Payment made for the services received from a service provider located in US, for the purposes of providing charitable activities [Note 2]	Nil
Amount received for counseling of mentally disabled persons [Note 1]	Nil
Amount received for activities relating to preservation of forests and wildlife [Note 1]	Nil
Amount received for renting of commercial property owned by the trust [Note 3]	1,50,000
Value of Taxable service	1,50,000
Service tax @ 14% (A)	21,000
SBC @ 0.5% (B)	750
Service tax liability [(A)+(B)]	**21,750**

Notes:

1. Services provided by an entity registered under section 12AA of the Income-tax Act, 1961 by way of charitable activities are exempt from service tax vide Mega Exemption *Notification No. 25/2012 ST dated 20.06.2012*. The definition of term charitable activities, *inter alia*, means activities relating to:
   - advancement of yoga
   - care or counselling of terminally ill persons or persons with severe physical or mental disability.

- preservation of environment including watershed, forests and wildlife.

2. Service receiver is liable to pay service tax in case of a taxable service provided by any person located in a non-taxable territory and received by any person located in the taxable territory. However, where such services are received by an entity registered under section 12AA of the Income-tax Act, 1961 for the purposes of providing charitable activities from a provider of service located in a non - taxable territory, they are exempt from service tax vide Mega Exemption *Notification No. 25/2012 ST dated 20.06.2012*.

3. Renting of commercial property owned by the trust is liable to service tax.

7. Computation of service tax liability:

Particulars	Gross amount charged (₹)	Service tax (including SBC) [₹]
Services provided by Government to various individuals by way of issuance of driving licence [Note 1]	Nil	Nil
Services provided by BIRAC approved bio-incubators to incubatees [Note 2]	Nil	Nil
Transportation of passengers by ropeway [Note 3]	5,20,000	= ₹ 5,20,000 × 14.5% =₹ 75,400
Express parcel post services provided by the Hasanchowk Post Office to various individuals [Note 4]	8,00,000	= ₹ 8,00,000 × 14.5% =₹ 1,16,000

Notes:

1. Services provided by Government or a local authority by way of issuance of, *inter alia*, driving licence have been exempted from service tax by a new entry inserted in Mega exemption *Notification No. 25/2012 ST dated 20.06.2012* vide *Notification No. 22/2016 ST dated 13.04.2016*.

2. With effect from 01.04.2016, all taxable services provided by bio-incubators recognized by the BIRAC, under Department of Biotechnology, Government of India are exempt from service tax provided such bio-incubators have fulfilled the specified conditions. Assuming that said conditions have been fulfilled in the given case, service tax is not payable on services provided by BIRAC approved bio-incubators to incubatees [*Notification No. 32/2012 ST dated 20.06.2012* as amended by *Notification No. 12/2016 ST dated 01.03.2016*].

3. With effect from 01.04.2016, Mega exemption *Notification No. 25/2012 ST dated 20.06.*2012 has been amended vide *Notification No. 9/2016 ST dated 01.03.2016* to withdraw the exemption available with respect of transportation of passengers, with

or without accompanied belongings by ropeway, cable car or aerial tramway. Thus, services of transportation of passengers by ropeway are liable to service tax.

4. Services provided by Government or a local authority are exempt from service tax where the gross amount charged for such services does not exceed ₹ 5,000/- [Mega exemption *Notification No. 25/2012 ST dated 20.06.2012* as amended by *Notification No. 22/2016 ST dated 13.04.2016]*.

However, said threshold limit of ₹ 5,000/- will not be applicable with respect to services provided by the Department of Posts by way of, *inter alia,* express parcel posts services provided to a person other than Government. Thus, even though the amount charged for express parcel post services does not exceed ₹ 5,000 in any of the transactions, the benefit of exemption is not available and service tax is payable on said services.

8. According to the CBEC Education Guide on Taxation of Services, 2012, value of construction service provided to such land owner will be the value of the land when the same is transferred and the point of taxation will also be determined accordingly. However, *Circular No. 151/2/2012 ST dated 10.02.2012* states that value of land may not be ascertainable ordinarily and therefore, value, in the case of flats given to first category of service receiver, that is, the land owner, is determinable in terms of section 67(1)(iii) read with rule 3(a) of Service Tax (Determination of Value) Rules, 2006.

Accordingly, the value of these flats would be equal to the value of similar flats charged by the builder/developer from the second category of service receivers i.e. the buyers. In case the prices of flats/houses undergo a change over the period of sale (from the first sale of flat/house in the residential complex to the last sale of the flat/house), the value of similar flats as are sold nearer to the date on which land is being made available for construction should be used for arriving at the value for the purpose of tax. Service tax is liable to be paid by the builder/developer on the 'construction service' involved in the flats to be given to the land owner, at the time when the possession or right in the property of the said flats are transferred to the land owner by entering into a conveyance deed or similar instrument (e.g. allotment letter).

The Circular dated 10.2.2012 is in accordance with the provisions relating to valuation as laid down in the Finance Act, 1994 and the Service Tax (Determination of Value) Rules, 2006.

In view of the above, it is directed that in valuing the service of construction provided by a builder/developer to a land owner, who transfers his land to builder, for getting, in return, constructed flats/dwellings from builder/developer, the valuation will be in accordance with the Board Circular dated 10.2.2012 and not the Education Guide.

9. The statement is not valid. Section 66E(i) of the Finance Act, 1994 is intra vires the Article 366(29A)(f) of the Constitution of India. The High Court, in case of *Hotel East Park v. UOI 2014 (35) STR 433 (Chhatisgarh),* observed as under:

(i) The High Court observed that a tax on the sale and purchase of food and drinks within a State is in exclusive domain of the State. The Parliament cannot impose a tax upon the same. Similarly, there is no entry in List II or List III of the Seventh Schedule to the Constitution under which service tax can be imposed. There is no legislative competence with the States to impose a tax on any service.

(ii) The High Court, further, observed that Article 366(29A)(f) of the Constitution does not indicate that the service part is subsumed in the sale of the food; it rather separates sale of food and drinks from service. Section 65B(44) as well as section 66E(i) of the Finance Act, 1994, charge service tax only on the service part and not on the sales part. It indicates that the sale of the food has been taken out from the service part.

(iii) The quantum of services to be taxed is explained under rule 2C of the Service Tax (Determination of Value) Rules, 2006 read with *Notification No. 25/2012 ST dated 20.06.2012* notified by the Central Government. Rule 2C presumes a fixed percentage of bill value as the value of taxable service on which service tax should be charged. However, there is no provision in VAT Act to bifurcate the amount of bill into sale and service.

The High Court held that section 66E(i) of the Finance Act, 1994 is *intra vires* the Article 366(29A)(f) of the Constitution of India. Further, the High Court held that no VAT can be charged over the amount meant for service and that the amount over which service tax has been charged should not be subject to VAT. The High Court directed the State Government to frame such rules and issue clarifications to this effect to ensure that the customers are not doubly taxed over the same amount. The rules may be in conformity with the bifurcation as provided under the Finance Act, 1994 or ensure that the Commercial Tax authorities do not charge VAT on that part of the value of the food and drink on which service tax is being assessed.

10. Computation of service tax liability of Singhal Classes

Particulars	₹
Service tax on coaching fees collected from the students = ₹ 50,00,000 × $\frac{14.5}{100}$	7,25,000
Less: CENVAT credit available with respect to service tax paid on:	
--services of catering, photography and tents availed for the celebrations organized, after completion of the academic sessions, for meritorious students [Note 2(i)]	Nil
--rent paid for hiring of examination hall for the purpose of conducting examination for students undergoing the coaching [Note 2(ii)]	65,250

=₹ 4,50,000 × $\frac{14.5}{100}$	
--travelling expenses incurred for the business tours [Note 2(i)]	Nil
--advertisement expenses for promoting Singhal Classes [Note 1] =₹ 1,00,000 × $\frac{14.5}{100}$	14,500
Service tax payable in cash	6,45,250

Notes:

1. Services used in relation to advertisement are eligible input services as per the definition of input service under rule 2(l) of the CCR, 2004.
2. As per Rajasthan High Court decision in case of *Bansal Classes v. CCE & ST 2015 (039) STR 0967 (Raj.):*

   (i) since the activities of catering, photography and tent services are provided after the students pass their coaching classes, they cannot be said to have been used to provide the output service of commercial training or coaching. Further, the travelling expenses incurred by assessee for the business tours cannot be related to provision of commercial training or coaching service.

   Therefore, CENVAT credit of the service tax paid on catering, photography and tent services and travelling expenses is not available.

   (iii) CENVAT credit in respect of service tax paid on renting of immovable property service [hiring of examination hall] are allowed to an assessee engaged in providing commercial training and coaching services.

11. As per the second proviso inserted in rule 7 of the Point of Taxation Rules, 2011 vide *Notification No 21/2016 ST dated 30.03.2016,* where there is change in the liability or extent of liability of a person required to pay tax as recipient of service notified under section 68(2) of the Finance Act, 1994, in case service has been provided and the invoice issued before the date of such change, but payment has not been made as on such date, the point of taxation shall be the date of issuance of invoice.

Since in the given case services have been provided (i.e. on 08.04.2016) and invoice has also been issued (i.e. on 09.04.2016) before date of change in the extent of liability of service recipient (i.e. on 15.04.2016), the point of taxation will be 09.04.2016, i.e. the date of issuance of invoice.

The amount of service tax (including SBC) on the consideration of ₹ 10,00,000 is as follows:

= ₹ 10,00,000 × 14.5%

=₹ 1,45,000

Since the point of taxation (viz. 09.04.2016) lies prior to change in the extent of liability of service recipient, Hindustan Enterprises will pay 50% of the service tax [₹ 72,500] and remaining 50% of the service tax will be paid by Mr. Prakash [₹ 72,500].

12. Section 72A(1) of Finance Act, 1994, *inter alia*, provides that if the Principal Commissioner of Central Excise/ Commissioner of Central Excise has reasons to believe that any person liable to pay service tax has failed to declare or determine the value of a taxable service correctly, he may direct such person to get his accounts audited by a Chartered Accountant or a Cost Accountant nominated by him, to the extent and for the period as may be specified by him.

Therefore, in the present case, jurisdictional Commissioner of Central Excise can direct Raman Ltd. to get its accounts audited by a Chartered Accountant nominated by him, to the extent and for the period as may be specified by him.

Further, section 72A(3) provides that the Commissioner of Central Excise is empowered to direct a special audit even if the accounts of such person have been audited under any other law for the time being in force.

Therefore, the contention of Raman Ltd. that its accounts for the previous year have been audited under the Income-tax Act, 1961 cannot be accepted and it will have to comply with the order, if any, of the jurisdictional Commissioner to get its accounts audited.

13. Since RPL has started its business in the current year, it would be entitled for small service providers' exemption available under *Notification No. 33/2012 ST dated 20.06.2012.* Thus, RPL will be exempt from paying service tax on the taxable services of aggregate value up to ₹10 lakh.

However, section 69 of the Finance Act, 1994 read with the Service Tax (Registration of Special Category of Persons) Rules, 2005 provides that a provider of taxable service whose aggregate value of taxable services in a financial year exceeds ₹ 9,00,000 has to make an application for registration within a period of 30 days of exceeding the aggregate value of taxable service of ₹ 9,00,000.

The aggregate value of taxable services of A Ltd. exceeds ₹ 9,00,000 on 30.08.2015 when it issues Bill No. 7 of ₹ 1,07,000. Thus, A Ltd. should apply for registration on or before 29.09.2015. However, the application for registration is made on 22.11.2015. Thus, there is delay of total 54 days.

RPL will, therefore, be liable to a penalty under section 77(1)(a) of the Finance Act, 1994 which may extend upto ₹10,000.

14. The said question was examined by the High Court in the case of *Mayo College General Council v. CCEx. (Appeals) 2012 (28) STR 225 (Raj).* The High Court held that when the petitioner permitted other schools to use their name, logo as also motto, it clearly tantamounted to providing 'franchise service' to the said schools and if the petitioner realized the 'franchise' or 'collaboration fees' from the franchise schools, the petitioner

was duty bound to pay service tax to the Department. Thus, service tax is leviable in the given case.

15. No, Revenue's claim that XYZ Ltd. is not entitled to refund is not tenable in law. The facts of the given case are similar to the case of *Commissioner of Service Tax v. Zydus Technologies Limited 2014 (35) STR 515 (Guj.)* wherein the High Court relied on its decision passed in the case of *CCEx. v. Cadila Healthcare Ltd. 2013 (30) STR 3 (Guj.)* and held that no error has been committed by the CESTAT in holding that the assessee shall be entitled to refund; as though the operations of the assessee did not reach to the commercial production stage, the input services of scientific and technical consultancy procured by them were in relation to the manufacture which would take place at a later date.

The High Court, referring to said decision, held that the services rendered for a period prior to actual manufacture of final product is commercial activity/production and assessee is entitled to exemption by way of refund claimed.

In the light of the aforesaid discussion, it can be concluded that Revenue's claim that XYZ Ltd. is not entitled for refund, is not tenable.

16. As per rule 3 of the Baggage Rules, 2016, an Indian resident arriving from any country other than Nepal, Bhutan or Myanmar, shall be allowed clearance free of duty articles in his bona fide baggage, that is to say, used personal effects and travel souvenirs; and articles [other than certain specified articles], upto the value of ₹ 50,000 if these are carried on the person or in the accompanied baggage of the passenger.

Thus, there is no customs duty on used personal effects and travel souvenirs and general duty free baggage allowance is ₹ 50,000 per passenger. Thus, duty liability of Mr. Sujoy and his wife is nil for the used personal effects worth ₹ 80,000 and 2 music systems each worth ₹ 50,000.

As per rule 5 of the Baggage Rules, 2016, the additional jewellery allowance is as follows:

Jewellery brought by	Additional duty free allowance
Gentleman Passenger	Jewellery upto a weight, of 20 grams with a value cap of ₹ 50,000.
Lady Passenger	Jewellery upto a weight, of 40 grams with a value cap of ₹ 1,00,000

However, the additional jewellery allowance is applicable only to a passenger residing abroad for more than 1 year.

Consequently, there is no duty liability on the jewellery brought by Mr. Sujoy as he had stayed abroad for period exceeding 1 year and weight of the jewellery brought by him is 20 grams with a value less than ₹ 50,000.

However, his wife is not eligible for this additional jewellery allowance as she had stayed abroad for a period of less than a year. Thus, she has to pay customs duty on the entire amount of jewellery brought by her as she has already exhausted the general duty free baggage allowance of ₹ 50,000 allowed under rule 3.

17. (a) As per section 74 of the Customs Act, 1962, when any identifiable imported goods are re-exported, 98% of the import duty is re-paid as drawback provided the goods are identified to the satisfaction of the Assistant/Deputy Commissioner of Customs as the goods which were imported and the same were entered for export within two years from the date of payment of the import duty.

Thus, assuming that the car had been identified to the satisfaction of the Assistant/Deputy Commissioner of Customs as the one which was imported, Param can claim duty drawback of ₹ 9,01,600 (98% of ₹ 9,20,000).

(b) As per section 74 of the Customs Act, 1962 read with *Notification No. 19/65 Cus dated 06.02.1965,* 85% of the import duty is allowed to be paid as drawback in respect of goods which are used after their importation and which have been out of customs control for more than 3 months but not more than 6 months. Hence, Rama can claim duty drawback of ₹ 12,750.

(c) As per section 76 of the Customs Act, 1962, no drawback is allowed in respect of any goods, the market price of which is less than the amount of drawback due thereon. In this case, the market price of the goods is ₹ 42,000, which is less than the amount of duty drawback, i.e. 1,500 kgs × ₹ 40 = ₹ 60,000. Hence, Shivam Ltd. is not entitled to claim duty drawback in this case.

18. Although the accessories are supplied compulsorily alongwith the machinery, but since the price of the accessories is not included in the price of the machinery and is charged separately, the accessories will not be charged at the same rate as applicable to the machinery.

Hence, separate assessable values for the machinery and accessories have to be computed in accordance with the proviso (a) to section 19 of the Customs Act, 1962 read with Accessories (Condition) Rules, 1963 in the following manner:

Particulars	Accessories US $	Machinery US $
FOB price	600.00	6,000.00
Add: Ocean Freight	100.00	1,000.00
Add: Insurance charges	6.75	67.50
Total CIF value excluding agent's commission	706.75	7,067.50
Exchange rate is 1 US $ = ₹ 62 [Note 1]		

	₹	₹
Total in Indian currency	43,818.50	4,38,185.00
Add: Local agent's commission (allocated on *pro-rata* basis)	600.00	6,000.00
CIF value	44,418.50	4,44,185.00
Add: Landing charges @1% of CIF value [Note 2]	444.19	4,441.85
Assessable value	44,862.69	4,48,626.85
Assessable value (rounded off)	**44,863**	**4,48,627**

Notes:

(1) Rate of exchange notified by CBEC as prevalent on the date of filing of bill of entry would be the applicable rate [Third proviso to section 14(1) of the Customs Act, 1962].

(2) Even if there is no information regarding landing charges, still they are charged @ 1% of CIF value [Clause (ii) of first proviso to rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].

(3) Cost of transport of the imported goods upto the place of importation is only includible in the assessable value. Thus, transportation charges from Indian port to factory of importer will not be included in the assessable value [Clause (a) of rule 10(2) of Customs (Determination of Value of Imported Goods) Rules, 2007].

19. Yes, the Department's contention is valid in law. The facts of the given case are similar to the case of *CCus. (Prev.), Mumbai v. M. Ambalal & Co. 2010 (260) E.L.T. 487 (SC).* In the instant case, the question which arose before the Apex Court for consideration was whether goods that were smuggled into the country could be considered as 'imported goods' for the purpose of granting the benefit of the exemption notification.

The Apex Court held that the smuggled goods could not be considered as 'imported goods' for the purpose of benefit of the exemption notification. It opined that if the smuggled goods and imported goods were to be treated as the same, then there would have been no need for two different definitions under the Customs Act, 1962.

The Court observed that one of the principal functions of the Customs Act was to curb the ills of smuggling on the economy. Hence, it held that it would be contrary to the purpose of exemption notifications to give the benefit meant for imported goods to smuggled goods.

Thus, Samar is not eligible to claim exemption as goods brought by him cannot be treated as imported goods since they were brought into India clandestinely without payment of duty.

20. Import of second hand capital goods including their re-furnished/re-conditioned spares is allowed freely. However, import of second hand PC, laptop, air conditioner, DG set and photocopier will require authorization. In view of above, Subham's claim is not correct as second hand laptops can be imported only against an authorization.

PART I : STATUTORY UPDATE

SECTION A: CENTRAL EXCISE

Significant Notifications and Circulars issued between 1st May, 2015 and 30th April, 2016

CHAPTER 1: BASIC CONCEPTS

1. Clarification on excisability of re-refined used or waste-oil

Various units are engaged in re-refining of waste oil or used lubricating oil collected from the transformers, service stations of vehicles etc. Used oil contains impurities and contaminants. In refining units, waste or used oil undergoes various processes to render it usable. The oil so obtained from such waste or used oil is packed and sold as base oil, lubricating oil and transformer oil etc. to the consumers for further use.

Classification

"Waste oil" has been defined in Note 3 of Chapter 27 of First Schedule of Central Excise Tariff Act, 1985 as waste containing mainly petroleum oils and oils obtained from bituminous minerals, whether or not mixed with water. These include:

(a) such oils no longer fit for use as primary products (for example, used lubricating oils, used hydraulic oils and used transformer oil);

(b) sludge oils from the storage tanks of petroleum oils, mainly containing such oils high concentration of additives (for example, chemicals) used in the manufacture of primary products; and

(c) such oil in the form of emulsions in water or mixtures with water, such as those resulting from oil spills, storage tank washing, or from the use of cutting oils for machining operations.

Under Central Excise Tariff heading 2710, waste oil is divided into two sub classifications at eight digit level, with two dash (--), namely 27109100 and 27109900. Waste oil is classifiable in either of them depending upon its composition. Lubricating oil on the other hand is classifiable under CETH 27101980, a heading specifically covering lubricating oil.

It may be noted that used lubricating oil collected from service stations is not fit for use as primary products and will therefore be classified as waste oil whereas processed waste oil, which becomes fit for use as lubricating oil would qualify as primary product, and will be classified as lubricating oil.

Manufacture

Waste oil after processing may become lubricating oil but this process would not amount to manufacture in view of the judgement of Tribunal in case of *Collector vs Mineral Oil*

Corporation [1999(114) ELT 166] upheld by Hon'ble Supreme Court [2002(140) ELT 248(SC)]. However, the issue also needs to be examined in light of Chapter Note 4 of Chapter 27 which was inserted in the Central Excise Tariff by the Finance Act, 2000.

Chapter Note 4 of Chapter 27 is a deeming fiction on manufacture and provides that:

"In relation to the lubricating oils and lubricating preparations of heading 2710, labelling or re-labelling of containers and re-packing from bulk pack to retail packs or the adoption of any other treatment to render the product marketable to the consumers, shall amount to manufacture."

This Chapter note applies only to "lubricating oils and lubricating preparations of heading 2710". Other goods falling under CETH 2710 are not covered by the Chapter Note. Thus for a re-refining unit, the test for levy of central excise duty is whether the lubricating oil (produced from the waste oil) has undergone any of the process listed in Chapter Note 4 of Chapter 27 as explained above. Where such process has been carried out, it would amount to manufacture and central excise duty would be leviable.

[Circular No. 1024/12/2016 CX dated 11.04.2016]

CHAPTER 2: CLASSIFICATION OF EXCISABLE GOODS

1. Withdrawal of circular classifying coconut oil packed in small size containers upto 200 ml as Hair oil

Earlier, *Circular No. 890/10/2009 dated 3.6.*2009 had clarified that coconut oil packed in small container of sizes upto 200 ml was classifiable under Central Excise Tariff Heading 3305 as Hair oil.

However, in the case of *Raj Oil Mills Ltd. v. CCE2014 (314) ELT 541 (Tri.-Mumbai)* [maintained by SC], it has been held that edible coconut oil in retail packing of 200 ml or less is classifiable under Chapter 15 covering animal or vegetable fats and oils and not under Chapter 33 covering Cosmetics and Toilet Preparation.

Further, in the case of *Capital Technologies Ltd. & Ors v. CCE 2015 (321) ELT 479 (Tri.-Bang.)* [maintained by SC] also, it was held that the edible coconut oil packed in retail packs of 50 ml, 100 ml, 200 ml and 500 ml would be classifiable as coconut oil under heading 1513 and not as Hair oil under heading 3305.

Thus, in view of the said judicial pronouncements, aforesaid circular has been withdrawn vide ***Circular No.1007/14/2015 CE dated 12.10.2015***. The issue of classification would be decided considering the facts of the case read with the judicial pronouncements.

CHAPTER 3: VALUATION OF EXCISABLE GOODS

1. Notification fixing tariff value for jewellery rescinded

The Central Government had fixed tariff value for jewellery (other than sliver jewellery) under heading 7113 of the Central Excise Tariff vide *Notification No. 9/2012 CE (NT) dated 17.03.2012*. The said notification has been rescinded vide ***Notification No. 7/2016 CE (NT) dated 01.03.2016.*** Thus, the valuation for jewellery will be governed by provisions of section 4 of the Central Excise Act, 1944 (transaction value).

[Effective from 01.03.2016]

2. Imported set top boxes to be valued under section 4 of the Central Excise Act, 1944 for the purpose of computing CVD

Issue: Set top boxes (STBs) are imported by a Direct to Home (DTH) broadcasting service provider and provided free of cost to the consumers of DTH service. The issue is whether, in such conditions, the value for the purposes of calculation of CVD be determined on the basis of retail sale price (RSP) in terms of proviso to section 3(2) of the Customs Tariff Act, 1975?

Clarification: The issue stands decided by Hon''ble Tribunal in case of *M/s Bharti Telemedia Ltd. Vs Commissioner of Customs (Import), Nhava Sheva 2016 (331) ELT 138 (Tri.-Mumbai)*, wherein it has been held that one of the conditions to be met for CVD to be levied on retail sale price is that under the Legal Metrology Act, there should be requirement to declare on the package, the retail sale price (RSP) of the goods.

The Tribunal held that the retail sale price is defined (under Legal Metrology Act) as the maximum price at which retail package may be sold and retail package means packages which are intended for retail sale to the ultimate consumer. In other words, the retail price will be required to be declared on the package only if it is intended for retail sale. It is seen from the definition of sale under Legal Metrology Act, 2009 that there should be a transfer of property for any consideration or there should be a transfer on the hire-purchase system or by any system of payment by any installments. In the present case, there is no transfer of property or hire-purchase system involved nor any system of payment by installments. Thus, there appears to be no sale in the use of the set top box by the ultimate consumer. After detailed analysis, the Tribunal held that in the given circumstances CVD would not be leviable on the basis of retail sale price.

In view of the above, it has been clarified that the judgement of the Tribunal in case of M/s Bharti Telemedia Ltd. (supra), may be followed for assessment of CVD on imported STBs, where the circumstances are identical.

[Circular No. 1020/8/2016 CX dated 11.03.2016]

Note: *Though this Circular is in relation to valuation of CVD, it has been included under Chapter on Valuation of Excisable Goods as the principle discussed in the Circular is in relation to valuation of excisable goods based on retail sale price under section 4A of the Central Excise Act, 1944.*

CHAPTER 4: CENVAT CREDIT

1. The following amendments have been made in CENVAT Credit Rules, 2004 [CCR] vide ***Notification No. 13/2016 CE (NT) dated 01.03.2016*** **unless specified otherwise**:

(i) Scope of definition of capital goods widened [Rule 2(a)]

The scope of definition of capital goods has been widened to include within its ambit the following goods:

(a) Wagons falling under sub-heading 8606 92 of the Central Excise Tariff

(b) Equipment or appliance used in an office located within a factory - It may be noted that CENVAT credit will be allowed only on those equipment or appliance which are used in an office located within the factory and not outside the factory.

(c) Capital goods used outside the factory of the manufacturer of the final products for pumping of water, for captive use within the factory.

[Effective from 01.04.2016

(ii) Scope of definition of inputs widened [Rule 2(k)]

The scope of definition of inputs has been widened to include within its ambit the following goods:

(a) All goods used for pumping of water for captive use.

(b) All capital goods which have a value up to ₹ 10,000 per piece – Thus, on such capital goods, whole credit can be taken in the same year in which they are received. Consequential amendment has been made in the definition [item (C)] to provide that input excludes those capital goods whose value exceeds ₹ 10,000 per piece.

[Effective from 01.04.2016]

(iii) Services by way of sale of dutiable goods on commission basis is sales promotion and thus, an eligible input service [Rule 2(l)]

Circular No. 943/04/2011 CX dated 29.04.2011 clarified that credit is admissible on the services of sale of dutiable goods on commission basis. Also, the Punjab and Haryana High Court in the case of *Commissioner v. Ambica Overseas 2012 (25) STR 348 (P& H)* held that credit would be allowed on sales commission. However, the Gujarat High Court in the case of *Commissioner v. M/s. Cadila Healthcare Ltd. 2013 (4) STR 3 (Guj.)* held that commission agent is directly concerned with the sales rather than sales promotion and as such the services provided by such commission agent would not fall within the purview of the main or inclusive part of the definition of input service as laid down in rule 2(l) of the Rules.

In order to settle the controversy, an explanation has been inserted in the definition of input service under rule 2(l) vide ***Notification No. 2/2016 CE (NT) dated 03.02.2016*** to clarify that sales promotion includes services by way of sale of dutiable goods on commission basis.

[Effective from 03.02.2016]

(iv) Restriction on ship breaking units to avail only 85% CENVAT credit of CVD done away with [Rule 3(1)(vii)]

Proviso to clause (vii) of rule 3(1) restricted CENVAT credit of CVD (leviable under section 3(1) of the Customs Tariff Act) paid on ships, boats and other floating structures for breaking up [Entry 8908 00 00 of the Customs Tariff], to the extent of 85%.

The said proviso has been omitted vide ***Notification No. 1/2016 CE (NT) dated 01.02.2016*** with retrospective effect from 01.03.2015. Thus, ship breaking units would be entitled to avail 100% credit of the CVD paid with effect from 01.03.2015.

[Effective from 01.03.2015]

The rationale of the amendment has been explained in ***Circular No. 1014/2/2016 CX dated 01.02.2016.*** In order to understand the reason for deletion of the proviso, it is necessary to first understand the rationale behind its inclusion.

Proviso to rule 3(1)(vii) was inserted vide *Notification No. 3/2011 CE (NT) dated 01.03.2011*. In the breaking of ships, products of section XV (base metals and articles of base metal) are obtained which are deemed to be manufactured as provided in section note 9 of Section XV of the First Schedule to the Central Excise Tariff Act, 1985. On the other hand, a number of used serviceable articles such as pumps, air conditioners, furniture, kitchen equipment, wooden panels etc. are also generated. These are generally sold as second hand goods by ship breaking units but no excise duty is payable as they do not emerge from a manufacturing process. At the same time, ship breaking units were allowed to avail full credit of additional duty of customs paid on the ship when it was imported for breaking. This anomaly was resulting in excess utilization of CENVAT credit. Rule 3 was accordingly amended to prescribe that CENVAT credit shall not be allowed in excess of 85% of the additional duty of customs paid on ships, boats etc. imported for breaking.

Further, amendment in rule 6 was carried out in Budget of 2015, to provide that credit would be required to be reversed even for non-excisable goods produced as by-products in the process of manufacture of excisable goods. This amendment brought non-excisable goods and exempt goods at par and no credit is now available on either of them.

Thus, there arose a conflict regarding reversal of credit in relation to non-excisable goods which emerge during breaking of ship viz. whether restriction/reversal of credit needs to be done under proviso to rule 3(i)(vii) or under rule 6. To resolve the

conflict, the provision restricting CENVAT credit to 85% under proviso to rule 3(i)(vii) has been deleted.

Consequently, ship breaking units would be entitled to avail 100% credit of the CVD paid with effect from 01.03.2015 but would also be required to follow provisions of rule 6 with effect from 01.03.2015. This beneficial amendment of deleting proviso to rule 3(i)(vii) has been done retrospectively with effect from 01.03.2015, that is the date from which reversal of CENVAT credit for non-excisable goods was provided in rule 6.

(v) Swachh Bharat Cess cannot be paid by utilizing CENVAT credit of any other duty

A proviso has been inserted in rule 3(4) vide ***Notification No. 2/2016 CE (NT) dated 03.02.2016*** to lay down that the CENVAT credit of any duty specified in rule 3(1) will not be utilised for payment of the Swachh Bharat Cess.

[Effective from 03.02.2016]

(vi) CENVAT credit of only NCCD to be utilised for payment of the NCCD payable on all goods [Rule 3(4)]

National Calamity Contingent duty (NCCD) is presently leviable under section 136 of the Finance Act, 2001 on pan masala, tobacco products, crude petroleum, mobile phones and motor vehicles. Rule 3(4) allows credit of only NCCD to be utilised for payment of the NCCD payable on tariff items 8517 12 10 and 8517 12 90 [mobile phones]. Thus, there was no restriction on utilization of credit of other duties allowable under rule 3(1) for payment of NCCD levied on other goods, namely, pan masala, tobacco products, crude petroleum, and motor vehicles.

However, with effect from 01.03.2016, rule 3(4) has been amended to provide that CENVAT credit of any duty specified in sub-rule (1), except NCCD, cannot be utilized for payment of NCCD leviable under section 136 of the Finance Act, 2001 **on any product.**

[Effective from 01.03.2016]

(vii) Jewellery manufacturer (excluding manufacturer of plain silver jewellery) having turnover upto ₹ 12 crore in preceding year eligible to avail 100% CENVAT credit on capital goods in the year of purchase [Rule 4(2)(a)]

As per explanation to rule 4(2)(a) read with third proviso to the said rule, an assessee whose aggregate value of clearances of all excisable goods for home consumption in the preceding financial year does not exceed ₹ 4 crore (computed in accordance with SSI notification), can take 100% CENVAT credit on capital goods in the financial year when the same are received by him.

With effect from 01.03.2016, excise duty has been imposed on articles of jewellery [excluding silver jewellery, other than studded with diamonds/ruby/emerald/sapphire] with a higher threshold exemption upto ₹ 6 crore in a year and eligibility limit of ₹ 12 crore. Consequently, the explanation to rule

4(2)(a) has been amended to provide that a manufacturer of such jewellery will be allowed to take 100% CENVAT credit on capital goods in the year of purchase, if his aggregate value of clearances of all excisable goods for home consumption in the preceding financial year, did not exceed ₹ 12 crore.

[Effective from 01.03.2016]

(viii) CENVAT credit allowed on tools of Chapter 82 of the Central Excise Tariff sent to another manufacturer or job-worker for production of goods [Rule 4(5)(b)]

Earlier, rule 4(5)(b) extended the CENVAT credit in respect of jigs, fixtures, moulds and dies sent by manufacturer of final products to:-

(a) another manufacturer for the production of goods, or

(b) a job worker for the production of goods on his behalf

according to his specifications.

Rule 4(5)(b) has now been amended to allow a manufacturer of final products to take CENVAT credit on tools of Chapter 82 of the Central Excise Tariff in addition to credit on jigs, fixtures, moulds and dies, when the same are sent to another manufacturer or a job-worker for production of goods as per his specifications.

A manufacturer has also been allowed to take credit on such goods when the same are sent directly to the premises of another manufacturer or job-worker without bringing them to his own premises.

[Effective from 01.04.2016]

(ix) Permission given for sending inputs/partially processed inputs outside factory to a job-worker and clearance therefrom on payment of duty to be valid for 3 financial years [Rule 4(6)]

Earlier, under rule 4(6), the permission given by an Assistant/Deputy Commissioner to a manufacturer of the final products for sending inputs or partially processed inputs outside his factory to a job-worker and clearance therefrom on payment of duty was valid for a financial year.

Sub-rule (6) of rule 4 has been amended to provide that the said permission would be valid for three financial years.

[Effective from 01.04.2016]

(x) Service tax paid on assignment charges of a natural resource to be allowed as CENVAT credit spread over the time for which the rights have been assigned [Rule 4(7)]

(1) Time limit of one year for availing credit on input service not to apply in case of services provided by way of assignment of right to use any natural resource: Rule 4(7) has been amended to provide that in case of services provided by the Government or a local authority or any other person by way of assignment of right to use any natural resource, CENVAT credit can

be taken on the basis of the documents specified in rule 9(1) even after the period of 1 year from the date of issue of such a document ***[Notification No. 24/2016 CE (NT) dated 13.04.2016]***.

[Effective from 13.04.2016]

(2) ***Notification No. 24/2016 CE (NT) dated 13.04.2016*** has inserted two provisos in rule 4(7) as under:

(a) CENVAT credit of service tax paid in a financial year, on the onetime charges payable in full upfront or in instalments, for the service of assignment of the right to use any natural resource by the Government, local authority or any other person, will be spread evenly over a period of three years.

(b) Where the manufacturer of goods or output service provider, as the case may be, further assigns such right assigned to him by the Government or any other person, in any financial year, to another person against consideration, such amount of balance CENVAT credit as does not exceed the service tax payable on the consideration charged by him for such further assignment, shall be allowed in the same financial year.

[Effective from 13.04.2016]

(xi) Rule 6 simplified and rationalized [Rule 6]

Significant amendments have been made in rule 6 by re-drafting sub-rules (1), (2), (3), (3A), (3B) and (4), inserting new sub-rules (3AA) and (3AB) and amending sub-rule (7). Each of such amendments is discussed hereunder:

Substituted sub-rule (1)

(1) No CENVAT credit allowed on inputs/input services used in manufacture of exempted goods/for provision of exempted services: CENVAT credit will not be allowed on:-

(i) such quantity of input used in or in relation to the manufacture of exempted goods or for provision of exempted services

or

(ii) input service used in or in relation to the manufacture of exempted goods and their clearance upto the place of removal or for provision of exempted services

The credit which is not allowed will be calculated and paid in terms of the provisions of sub-rule (2) or sub-rule (3), as the case may be.

Exception - Jewellery job-worker: CENVAT credit on inputs will not be denied to a job worker referred to in rule 12AA of the Central Excise Rules, 2002 (jewellery job worker), on the ground that the said inputs are used in the manufacture of goods cleared without payment of duty under the provisions of that rule [Proviso to sub-rule (1)].

Since, as per rule 12AA, the liability of payment of duty has been cast on the principal manufacturer, goods are cleared by a job-worker without payment of duty. However, CENVAT credit on the inputs used in the manufacture of such goods is not denied by virtue of the proviso to rule 6(1) mentioned above.

(2) Exempted goods/final products include non-excisable goods: For the purposes of this rule, exempted goods or final products as defined in clauses (d) and (h) of rule 2 include non-excisable goods cleared for a consideration from the factory [Explanation 1].

Value of non –excisable goods for the purpose of this rule, will be the invoice value. If such invoice value is not available, the value will be determined by using reasonable means consistent with the principles of valuation contained in the Central Excise Act, 1944 and the rules made thereunder [Explanation 2].

It is to be noted that the above explanations are applicable only to rule 6. By virtue of the said Explanation, inputs and input services used in the manufacture of non-excisable goods also attract the reversal provisions under rule 6. To illustrate, if a manufacturer uses common inputs and input services to manufacture dutiable and non-excisable goods, credit on input or input services used in the manufacture of non-excisable goods will have to be reversed in accordance with the provisions of rule 6.

(3) Exempted service includes an activity which is not a service: For the purposes of this rule, exempted services as defined in clause (e) of rule 2 include an activity, which is not a 'service' as defined in section 65B(44) of the Finance Act, 1994 [provided that such activity has used inputs or input services][1] [Explanation 3].

Value of such an activity as specified above in Explanation 3, will be the invoice/agreement/contract value. If such value is not available, the value will be determined by using reasonable means consistent with the principles of valuation contained in the Finance Act, 1994 and the rules made thereunder [Explanation 4].

It is to be noted that the above explanations are applicable only to rule 6. By virtue of the Explanation 3, inputs and input services used in the provision of any activity which is not a service under 65B(44) of Finance Act, 1994 (e.g. providing service without any consideration) will also attract the reversal provisions under rule 6. For example, if a service provider uses common inputs and input services for provision of a taxable service and an activity which is not a service, credit on input and input services used in the provision of the activity not amounting to service will have to be reversed in accordance with the provisions of rule 6.

[1] Inserted vide ***Notification No. 24/2016 CE (NT) dated 13.04.2016***

It is worthwhile to note here that since exempted service *inter alia* means services on which no service tax is leviable under section 66B of Finance Act, 1994, credit on inputs or input services used in provision of non-taxable services is also required to be reversed under rule 6.

[Effective from 01.04.2016]

Substituted sub-rule (2)

CENVAT credit on inputs/input services used exclusively in manufacture of exempted goods/provision of exempted services to be reversed: A manufacturer who exclusively manufactures exempted goods for their clearance upto the place of removal or a service provider who exclusively provides exempted services has to pay (i.e. reverse) the whole amount of credit of input and input services. Thus, in effect, such manufacturer or service provider will not be eligible for credit of any inputs and input services.

Effective from 01.04.2016]

Substituted sub-rule (3)

(1) Option to pay 6% of the value of exempted goods or 7% of exempted services or reverse proportionate credit

(a) A manufacturer who manufactures two classes of goods, namely:

(i) non-exempted goods removed;

(ii) exempted goods removed,

or

(b) an output service provider who provides two classes of services, namely:

(i) non-exempted services;

(ii) exempted services,

has to follow any one of the following options applicable to him, namely :-

(i) pay an amount equal to 6% of value of the exempted goods and 7% of value of the exempted services[2] subject to a maximum of the sum total of opening balance of the credit of input and input services available at the beginning of the period to which the payment relates and the credit of input and input services taken during that period ***[Notification No. 13/2016 CE (NT) dated 01.03.2016 read with Notification No. 23/2016 CE (NT) dated 01.04.2016];***

OR

[2] Pursuant to the increase in service tax rate from 12% to 14% from June 1, 2015, rate of reversal for exempted services under erstwhile rule 6(3) had also been increased from 6% to 7% from 01.06.2015 vide ***Notification No. 14/2015 CE (NT) dated 19.05.2015***

(ii) pay an amount as determined under sub-rule (3A).

(2) Duty paid on exempted goods to be reduced from 6% amount: If any duty of excise is paid on the exempted goods, the same will be reduced from the amount payable under clause (i). For example, goods cleared under *Notification No. 1/2011 CE dated 01.03.2011* are exempted goods in terms of rule 2(d) of CCR and excise duty @ 2% is paid on such goods. Therefore, such 2% duty will be reduced from 6% amount [First proviso to sub-rule (3)].

(3) Amount payable to be 7% of the exempted value of taxable service in case of partial exemption on the condition of non-availment of credit: If any part of the value of a taxable service has been exempted on the condition that no CENVAT credit of inputs and input services, used for providing such taxable service, will be taken then the amount specified in clause (i) will be 7% of the value so exempted. For example, 60% abatement is available on radio taxi services if CENVAT credit on inputs, input services and capital goods, used for providing the said taxable service, is not taken. Therefore, 7% amount will be payable on the value of exempted service i.e., 60% of the gross amount charged for the said service. In other words, the amount required to be paid shall be 4.2% (7% of 60) of the full value of the radio taxi service [Second proviso to sub-rule (3)].

(4) Amount payable to be 2% of the exempted value in case of transport of goods/passengers by rail: In case of transportation of goods or passengers by rail, the amount required to be paid under clause (i) will be an amount equal to 2% of value of the exempted services [Third proviso to sub-rule (3)].

(5) Option exercised applicable for all exempted goods or exempted services and whole financial year: If the manufacturer of goods or the output service provider, avails any of the option under this sub-rule, he will have to exercise such option for all exempted goods manufactured by him or, as the case may be, all exempted services provided by him, and such option cannot be withdrawn during the remaining part of the financial year [Explanation 1].

(6) No CENVAT credit can be taken on the duty or tax paid on any goods and services that are not inputs or input services [Explanation 2].

(7) As per Explanation 3, for the purposes of this sub-rule and sub-rule (3A)-

(a) Non-exempted goods removed means the final products excluding exempted goods manufactured and cleared upto the place of removal.

(b) Exempted goods removed means the exempted goods manufactured and cleared upto the place of removal.

(c) Non-exempted services means the output services excluding exempted services.

[Effective from 01.04.2016]

Substituted sub-rule (3A)

There had been a controversy with respect to the expression "Total CENVAT credit taken on input services" (denoted as P or G) used in the formula prescribed under erstwhile sub-rule (3A) of rule 6. The Department was of the opinion that since the rule uses the term "total CENVAT credit taken on input services", entire CENVAT credit (including the CENVAT credit on input services which are used exclusively in the manufacture of dutiable goods or provision of taxable output services) taken by the assessee need to be considered for the purpose of reversal. Assessees on the other hand contended that the reversal formula would cover only the CENVAT credit on common input services for which separate accounts cannot be maintained. Department's stand led to far more reversal of CENVAT credit than the credit attributable to the input services used in exempted services or exempted goods.

There were divergent views of the various Benches of CESTAT on this issue. The Chennai Bench of CESTAT while delivering an interim stay order in the case of *Sify Technologies 2014-TIOL-60-CESTAT-MAD* took a *prima-facie* pro-assessee view and granted stay against the recovery of demand. Tribunal held that the formula as prescribed needs to be applied only to CENVAT credit availed on common input services. However, Mumbai Bench of CESTAT while passing stay order in the case of *Thyssenkrupp Industries (I) Pvt. Ltd. vs. CCE, Pune 2014 (310) ELT 317 (Tri.-Mumbai)* took a prima facie view that the prescribed formula in rule 6(3A) for reversal needs to be applied to CENVAT credit on all the input services taken during the year by the assessee and not to the CENVAT credit of only common input services availed by him.

A new formula has now been prescribed under the amended sub-rule (3A) to rectify the above-mentioned anomaly. The new formula is in line with the overall objective of rule 6 which seeks to disallow the credit on inputs and input services used exclusively in the manufacture of exempted goods or provision of exempted services and does not envisage reversal of credit taken on inputs or input services which are used exclusively in manufacture of dutiable goods or provision of taxable services. Thus, the new formula requires reversal of credit only in respect of common inputs and input services which are used in manufacture of both dutiable and exempted goods or for provision of taxable and exempted services.

The provisions of the new sub-rule (3A) are discussed hereunder:

Procedures and conditions for reversing proportionate credit For determination of amount required to be paid under clause (ii) of sub-rule (3), the manufacturer of goods or the output service provider will follow the following procedure and conditions, namely :-

(a) the manufacturer of goods or the provider of output service shall intimate in writing to the Superintendent of Central Excise giving the following particulars, namely :-

(i) name, address and registration number of the manufacturer of goods or provider of output service;

(ii) date from which the option under this clause is exercised or proposed to be exercised;

(iii) description of inputs and input services used exclusively in or in relation to the manufacture of exempted goods removed or for provision of exempted services and description of such exempted goods removed and such exempted services provided;

(iv) description of inputs and input services used exclusively in or in relation to the manufacture of non-exempted goods removed or for the provision of non-exempted services and description of such non-exempted goods removed and non-exempted services provided;

(v) CENVAT credit of inputs and input services lying in balance as on the date of exercising the option under this condition;

Formula to determine amount to be reversed proportionately

(b) The manufacturer or the output service provider will determine the credit required to be paid, out of the total credit of inputs and input services taken during the month, denoted as **T**, in the following sequential steps and provisionally pay every month, the amounts determined under sub-clauses (i) and (iv), namely:-

(i) the amount of CENVAT credit attributable to inputs and input services used exclusively in or in relation to the manufacture of exempted goods removed or for provision of exempted services shall be called ineligible credit, denoted as **A**, and shall be paid;

(ii) the amount of CENVAT credit attributable to inputs and input services used exclusively in or in relation to the manufacture of non-exempted goods removed or for the provision of non-exempted services shall be called eligible credit, denoted as **B**, and shall not be required to be paid;

(iii) credit left after attribution of credit under sub-clauses (i) and (ii) shall be called common credit, denoted as **C** and calculated as,-

$$C = T - (A + B)$$

Explanation.-Where the entire credit has been attributed under sub-clauses (i) and (ii), namely ineligible credit or eligible credit, there shall be left no common credit for further attribution.

(iv) the amount of common credit attributable towards exempted goods removed or for provision of exempted services shall be called ineligible common credit, denoted as **D** and calculated as follows and shall be paid-

$$D = (E/F) \times C$$

Where **E** is the sum total of –

(a) value of exempted services provided; and

(b) value of exempted goods removed,

during the preceding financial year.

Where **F** is the sum total of-

(a) value of non-exempted services provided,

(b) value of exempted services provided,

(c) value of non-exempted goods removed, and

(d) value of exempted goods removed,

during the preceding financial year.

However, where no final products were manufactured or no output service was provided in the preceding financial year, the CENVAT credit attributable to ineligible common credit shall be deemed to be **50%** the common credit;

(v) remainder of the common credit shall be called eligible common credit and denoted as **G**, where,-

$$G = C - D$$

Explanation.- For the removal of doubts, it is hereby declared that out of the total credit T, which is sum total of A, B, D, and G, the manufacturer or the provider of the output service shall be able to attribute provisionally and retain credit of B and G, namely, eligible credit and eligible common credit and shall provisionally pay the amount of credit of A and D, namely, ineligible credit and ineligible common credit.

(vi) where manufacturer or the provider of the output service fails to pay the amount determined under sub-clause (i) or sub-clause (iv), he shall be liable to pay the **interest** from the due date of payment till the date of payment of such amount, at the rate of **15% per annum**;

(c) The manufacturer or the output service provider will determine the amount of CENVAT credit attributable to exempted goods removed and provision of exempted services for the whole of financial year, out of the total credit denoted as **T (Annual)** taken during the whole of financial year in the following manner, namely :-

(i) the CENVAT credit attributable to inputs and input services used exclusively in or in relation to the manufacture of exempted goods removed or for provision of exempted services on the basis of inputs and input services actually so used during the financial year, shall be called Annual ineligible credit and denoted as **A (Annual)**;

(ii) the CENVAT credit attributable to inputs and input services used exclusively in or in relation to the manufacture of non-exempted goods removed or for the provision of non-exempted services on the basis of inputs and input services actually so used shall be called Annual eligible credit and denoted as **B (Annual)**;

(iii) common credit left for further attribution shall be denoted as **C (Annual)** and calculated as-

C(Annual) = T(Annual) – [A(Annual) + B(Annual)]

(iv) common credit attributable towards exempted goods removed or for provision of exempted services shall be called Annual ineligible common credit, denoted by **D (Annual)** and shall be calculated as, -

D(Annual) = (H/I) x C(Annual)

Where **H** is sum total of-

(a) value of exempted services provided; and

(b) value of exempted goods removed;

during the financial year.

Where **I** is sum total of

(a) value of non-exempted services provided,

(b) value of exempted services provided,

(c) value of non-exempted goods removed; and

(d) value of exempted goods removed;

during the financial year.

(d) The manufacturer or the output service provider shall pay on or before the 30th June of the succeeding financial year, an amount equal to difference between the total of the amount of Annual ineligible credit and Annual ineligible common credit and the aggregate amount of ineligible credit and ineligible common credit for the period of whole year, namely, **[{A(Annual) + D(Annual)} – {(A+D) aggregated for the whole year)}],** where the former of the two amounts is greater than the later.

(e) Where the amount under clause (d) is not paid by the 30th June of the succeeding financial year, the manufacturer of goods or the provider of output service, shall, in addition to the amount of credit so paid under clause (d), be liable to pay on such amount an **interest at the rate of 15% per annum**, from

the 30th June of the succeeding financial year till the date of payment of such amount.

(f) The manufacturer or the provider of output service, shall at the end of the financial year, take credit of amount equal to difference between the total of the amount of the aggregate of ineligible credit and ineligible common credit paid during the whole year and the total of the amount of annual ineligible credit and annual ineligible common credit, namely, **[{(A+D) aggregated for the whole year)} – {A(Annual) + D(Annual)}]**, where the former of the two amounts is greater than the later.

Other conditions

(g) The manufacturer of the goods or the provider of output service shall intimate to the jurisdictional Superintendent of Central Excise, within a period of 15 days from the date of payment or adjustment, as per the provisions of clauses (d), (e) and (f) , the following particulars, namely :-

(i) details of credit attributed towards eligible credit, ineligible credit, eligible common credit and ineligible common credit, month-wise, for the whole financial year, determined as per the provisions of clause (b);

(ii) CENVAT credit annually attributed to eligible credit, ineligible credit, eligible common credit and ineligible common credit for the whole of financial year, determined as per the provisions of clause (c);

(iii) amount determined and paid as per the provisions of clause (d), if any, with the date of payment of the amount;

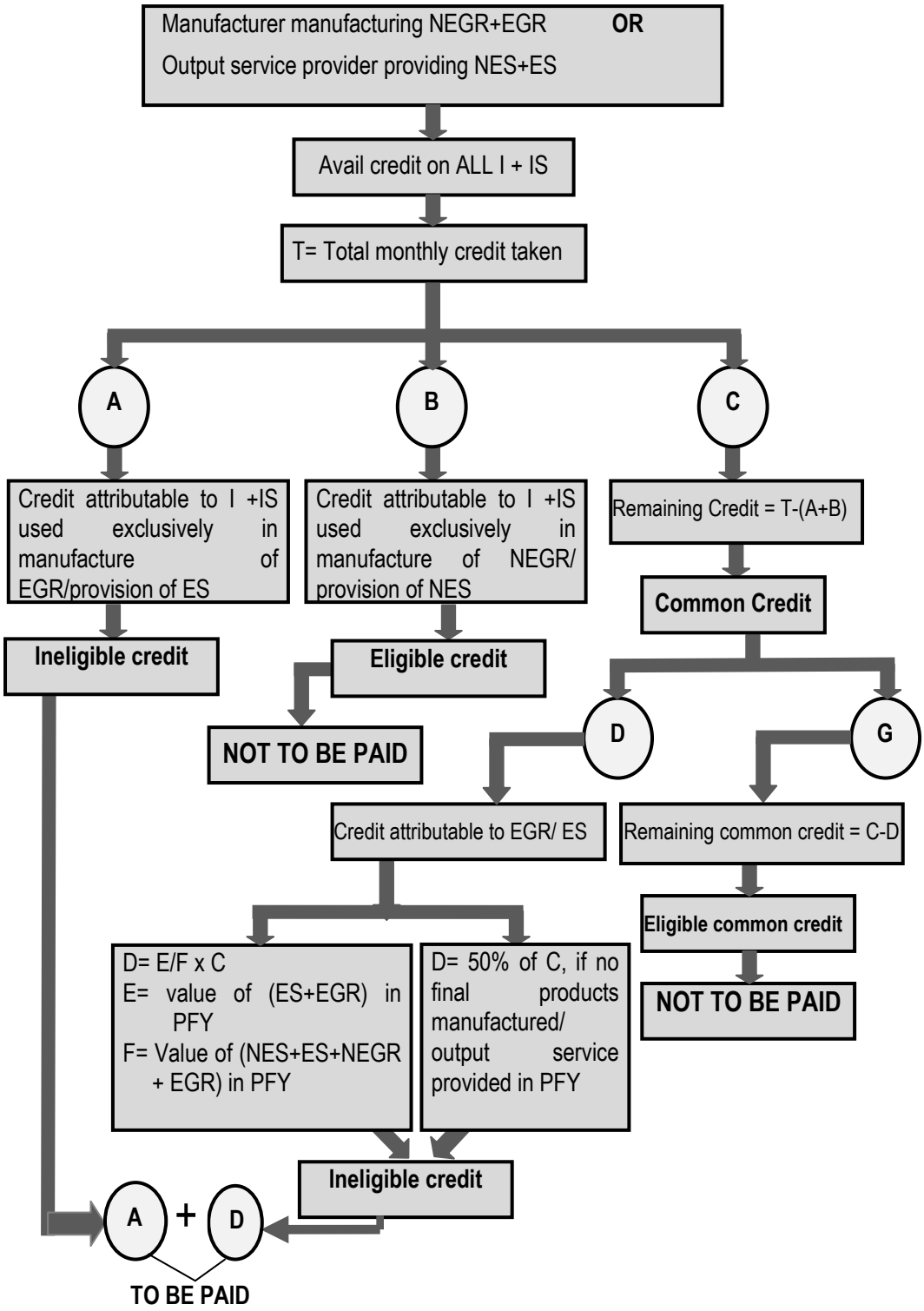
(iv) interest payable and paid, if any, determined as per the provisions of clause (e); and

(v) credit determined and taken as per the provisions of clause (f), if any, with the date of taking the credit.

[Effective from 01.04.2016]

The provisions of sub-rule (3A) have been summarised in the following diagram:

NEGR	:	Non exempted goods removed	**EGR**	:	Exempted goods removed
NES	:	Non exempted services	**ES**	:	Exempted service
I	:	Inputs	**IS**	:	Input Services
PFY	:	Preceding Financial Year	**FY**	:	Financial Year
SFY	:	Succeeding Financial Year			



At the end of the year actual amounts of **A + D** will be computed for the whole year in the similar manner as described above by taking annual figures of **T B & C** and **H** [value of ES + EGR during the FY] & **I** [Value of NES + ES + NEGR + EGR during the FY] in place of **E & F**.

Shortfall, if any, will be paid by 30th June of the SFY failing which interest @ 15% will be payable from 30th June of SFY till the date of payment of such amount.

Excess amount paid, if any, can be taken as credit. If the amount to be paid provisionally is not paid by the due date of payment, interest @ 15% will be payable from the due date of payment till the date of payment of such amount.

New sub-rule (3AA)

Central Excise Officer can allow proportionate reversal of CENVAT credit under sub-rule (3)(ii) even if prior intimation not given: A manufacturer or an output service provider who has failed to exercise the option under sub-rule (3) and follow the procedure of giving prior intimation provided under sub-rule (3A), may be allowed by a Central Excise Officer, competent to adjudicate such case, to follow the procedure and pay the amount under sub-rule (3)(ii). The amount will be calculated for each of the months, *mutatis-mutandis* in terms of sub-rule (3A)(c), with interest calculated at the rate of 15% per annum from the due date for payment of amount for each of the month, till the date of payment thereof.

[Effective from 01.04.2016]

New sub-rule (3AB)

Transitional provision: Sub-rule (3AB) has been inserted as a transitional provision to provide that the existing rule 6 of CCR would continue to be in operation upto 30.06.2016, for the units who are required to discharge the obligation in respect of financial year 2015-16.

[Effective from 01.04.2016]

Substituted sub-rule (3B)

Banks/other financial institutions can either reverse CENVAT credit in terms of sub-rules (1), (2) or (3) OR reverse 50% of the credit availed every month: A banking company and a financial institution including a non-banking financial company, engaged in providing services by way of extending deposits, loans or advances, in addition to options given in sub-rules (1), (2) and (3), will have the option to pay for every month an amount equal to 50% of the CENVAT credit availed on inputs and input services in that month.

Therefore, the new sub-rule allows banks and other financial institutions to reverse credit in respect of exempted services on actual basis **in addition** to the only option of 50% reversal which was available earlier.

[Effective from 01.04.2016]

Substituted sub-rule (4)

CENVAT credit not allowed on capital goods used exclusively in manufacture of exempted goods/provision of exempted services for 2 years from commencement of commercial production/provision of services: No CENVAT credit will be allowed on capital goods used exclusively in the manufacture of exempted goods or in providing exempted services for a period of two years from the date of commencement of the commercial production or provision of services, as the case may be.

Where capital goods are received after the date of commencement of commercial production or provision of services, as the case may be, the period of two years will be computed from the date of installation of such capital goods.

However, this provision does not apply to capital goods used in the manufacture of final products or in providing output services which are exempt on the basis of the value or quantity of clearances made or services provided in a financial year.

[Effective from 01.04.2016]

(xii) Reversal of credit not required in case of ethanol produced from molasses generated from cane crushed in the sugar season 2015-16 [Rule 6(6)]

The provisions of sub-rules (1), (2), (3) and (4) of rule 6 would not apply to ethanol produced from molasses generated from cane crushed in the sugar season 2015-16 i.e. 1st October, 2015 onwards, for supply to the public sector oil marketing companies, namely, Indian Oil Corporation Ltd., Hindustan Petroleum Corporation Ltd. or Bharat Petroleum Corporation Ltd., for the purposes of blending with petrol, under *Notification No.12/2012 CE dated 17.03.2012*. This has been done by inserting clause (ix) in sub-rule (6).

In case of such removal, though ethanol is removed without payment of duty, CENVAT credit on inputs/capital goods/input services used in the manufacture of ethanol can be availed. Further, where common inputs/input services are used to manufacture ethanol and other dutiable final product, reversal of credit or payment of amount on removal of ethanol will not be required.

The above amendment has been made vide ***Notification No. 21/2015 CE (NT) dated 07.10.2015.***

[Effective from 01.10.2015]

(xiii) Manner of distribution of credit by input service distributor [Substituted rule 7]

Rule 7 dealing with distribution of credit on input services by an Input Service Distributor has been completely rewritten to allow an Input Service Distributer to distribute the input service credit to an outsourced manufacturing unit also in addition to its own manufacturing units. Consequential amendment has also been made in the definition of input service distributor in rule 2(m).

The provisions of amended rule 7 are explained hereunder:

The input service distributor shall distribute the CENVAT credit in respect of the service tax paid on the input service to its manufacturing units or unit providing output service or an outsourced manufacturing units subject to the following conditions, namely :—

(a) the credit distributed against a document referred to in rule 9 does not exceed the amount of service tax paid thereon

(b) the credit of service tax attributable as input service to a particular unit shall be distributed only to that unit

(c) the credit of service tax attributable as input service to more than one unit but not to all the units shall be distributed only amongst such units to which the input service is attributable and such distribution shall be *pro rata* on the basis of the turnover of such units, during the relevant period, to the total turnover of all such units to which such input service is attributable and which are operational in the current year, during the said relevant period

(d) the credit of service tax attributable as input service to all the units shall be distributed to all the units *pro rata* on the basis of the turnover of such units during the relevant period to the total turnover of all the units, which are operational in the current year, during the said relevant period

(e) outsourced manufacturing unit shall maintain separate account for input service credit received from each of the input service distributors and shall use it only for payment of duty on goods manufactured for the input service distributor concerned

(f) credit of service tax paid on input services, available with the input service distributor, as on the 31st of March, 2016, shall not be transferred to any outsourced manufacturing unit and such credit shall be distributed amongst the units excluding the outsourced manufacturing units

The provisions of this clause will, *mutatis-mutandis*, apply to any outsourced manufacturer commencing production of goods on or after the 1st of April, 2016.

(g) provisions of rule 6 will apply to the units manufacturing goods or provider of output service and will not apply to the input service distributor.

For the purposes of this rule –

(i) **"Unit"** includes the premises of a provider of output service or the premises of a manufacturer including the factory, whether registered or otherwise or the premises of an outsourced manufacturing unit [Explanation 1].

(ii) **Total turnover** will be determined in the same manner as determined under rule 5. The turnover of an outsourced manufacturing unit shall be

the turnover of goods manufactured by such outsourced manufacturing unit for the input service distributor [Explanation 2].

(iii) **"Relevant period"** shall be -

(a) if the assessee has turnover in the financial year preceding to the year during which credit is to be distributed for month or quarter, as the case may be, the said financial year; or;

(b) if the assessee does not have turnover for some or all the units in the preceding financial year, the last quarter for which details of turnover of all the units are available, previous to the month or quarter for which credit is to be distributed [Explanation 3].

(iv) **"Outsourced manufacturing unit"** means a job-worker who is liable to pay duty on the value determined under rule 10A of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 on the goods manufactured for the input service distributor or a manufacturer who manufactures goods, for the input service distributor under a contract, bearing the brand name of such input service distributor and is liable to pay duty on the value determined under section 4A of the Central Excise Act, 1944 [Explanation 4].

[Effective from 01.04.2016]

(xiv) Manufacturers with multiple manufacturing units enabled to maintain a common warehouse for inputs and distribute inputs with credits to the individual manufacturing units [New rule 7B]

A new rule 7B has been inserted to prescribe the provisions relating to **"Distribution of credit on inputs by warehouse of manufacturer"**.

The new rule lays down that a manufacturer having one or more factories, will be allowed to take credit on inputs received under the cover of an invoice issued by a warehouse of the said manufacturer, who receives inputs under cover of documents specified under rule 9, towards the purchase of such inputs. Procedures applicable to a first stage dealer or a second stage dealer would apply, *mutatis mutandis*, to such a warehouse of the manufacturer ***[Notification No. 13/2016 CE (NT) dated 01.03.2016 read with Notification No. 23/2016 CE (NT) dated 01.04.2016].***

[Effective from 01.04.2016]

(xv) Invoice issued by a service provider for clearance of inputs/capital goods also to be an eligible document under rule 9 [Rule 9(1)(a)(i)]

Prior to 01.04.2016, only an invoice issued by a manufacturer for clearance of inputs or capitals goods could be a valid document for availing CENVAT credit under rule 9(1)(a)(i). Rule 9(1)(a)(i) has been amended to provide that an invoice issued by a service provider for clearance of inputs or capitals goods will also be a valid document for availing CENVAT credit.

[Effective from 01.04.2016]

(xvi) Certificate issued by an Appraiser of Customs to be a valid document under rule 9 for goods imported through authorised courier [Rule 9(1)(d)]

Prior to 31.12.2015, certificate issued by an appraiser of customs was a valid document for availing credit in respect of goods imported through a Foreign Post Office in terms of rule 9(1)(d).

Clause (d) of sub-rule (1) of rule 9 has been amended vide ***Notification No. 27/2015 CE (NT) dated 31.12.2015*** to provide that a certificate issued by an appraiser of customs will also be a valid document for availing CENVAT credit in respect of goods imported through an authorized courier registered with the Principal Commissioner of Customs or the Commissioner of Customs in-charge of the customs airport.

[Effective from 31.12.2015]

(xvii) Manufacturer/output service provider to file an annual return [Substituted rule 9A]

Prior to 01.04.2016, rule 9A required a manufacturer to furnish certain information relating to principal inputs. However, the said rule has now been substituted to provide for filing of an annual return by a manufacturer or output service provider to the Superintendent of Central Excise for each financial year, by 30th day of November of the succeeding year in the form as specified by a notification by the Board. Provisions relating to filing of annual return under rule 12 of the Central Excise Rules, 2002 will, *mutatis-mutandis*, apply to the annual return required to be filed under this rule.

[Effective from 01.04.2016]

(xviii) Manner of utilization of credit as prescribed under rule 14(2) done away with [Rule 14(2)]

Rule 14 governs the provisions relating to recovery of CENVAT credit wrongly taken and utilized or erroneously refunded. Prior to 01.04.2016, sub-rule (2) of rule 14 prescribed a procedure based on FIFO method for determining whether a particular credit has been utilized.

The said sub-rule has now been omitted. ***DOF No. 334/8/2016 TRU dated 29.02.2016*** has clarified that now, whether a particular credit has been utilized or not will be ascertained by examining whether during the period under consideration, the minimum balance of credit in the account of the assessee was equal to or more than the disputed amount of credit.

[Effective from 01.04.2016]

2. Refund application for CENVAT credit under rule 5 in case of export of services to be filed within 1 year from the date of (a) receipt of payment, if provision of service has been completed prior to receipt of such payment or (b) issue of invoice, if payment has been received in advance prior to the date of issue of the invoice - ***[Notification No. 27/2012 CE (NT) dated 18.06.2012]***

Rule 5 of CENVAT Credit Rules, 2004 allows refund of CENVAT credit subject to the procedure, safeguards, conditions and limitations prescribed under *Notification No. 27/2012 CE (NT) dated 18.06.2012*

The said notification has been amended vide ***Notification No. 14/2016 CE (NT) dated 01.03.2016*** to provide that the refund application in the Form A along with the documents specified therein and enclosures relating to the quarter for which refund is being claimed will be filed as under:

(i) in case of manufacturer, before the expiry of the period specified in section 11B of the Central Excise Act, 1944;

(ii) in case of service provider, before the expiry of one year from the date of –

  (a) receipt of payment in convertible foreign exchange, where provision of service had been completed prior to receipt of such payment; or

  (b) issue of invoice, where payment for the service had been received in advance prior to the date of issue of the invoice.

[Effective from 01.03.2016]

3. No refund of CENVAT credit under rule 5B to service providers providing manpower supply/ security services – *[Notification No. 12/2014 CE (NT) dated 03.03.2014]*

Rule 5B of the CENVAT Credit Rules, 2004 provides that service providers, rendering notified reverse charge services, being unable to utilise the CENVAT credit availed on inputs and input services for payment of service tax on such output services, shall be allowed refund of such unutilised CENVAT credit.

In this regard, earlier following partial reverse charge services were notified vide ***Notification No. 12/2014 CE (NT) dated 03.03.2014:***

(i) renting of a motor vehicle designed to carry passengers on non-abated value, to any person who is not engaged in a similar business;

(ii) supply of manpower for any purpose or security services; or

(iii) service portion in the execution of a works contract

Since with effect from 01.04.2015, service tax with respect to supply of manpower for any purpose or security services is payable on the basis full reverse charge, service providers of said services will no longer be eligible for refund of CENVAT credit. Further, application in Form A for claiming refund has also been suitably modified.

The above amendment has been made vide ***Notification No. 15/2015 CE (NT) dated 19.05.2015.***

[Effective from 01.04.2015]

4. Withdrawal of Circulars/Instruction on excisability of bagasse, aluminium/ zinc dross

Excisability of bagasse and similar other by-products or wastes arising during the course of manufacture of an excisable product has been an issue under dispute. The issue came before the Hon'ble Supreme Court in a case of *M/s Union of India and Orsvs M/s DSCL Sugar Ltd 2015-TIOL-240-SC-CX dated 15.07.2015*. Hon'ble Supreme Court examined the issue and reaffirmed that bagasse is not a manufactured product. The judgement applies to both periods, before and after the insertion of explanation in section 2(d) of the Central Excise Act, 1944 by the Finance Act, 2008. It may also be noted that Hon'ble High Court of Bombay in case of *M/s Hindalco Industries Ltd. vs. Union of India 2015 (315) ELT10 (Bom.)* came to similar conclusion in relation to dross and skimming of aluminium, zinc or other non-ferrous metal.

In the light of the above judgments, Circulars of the Board on the subject viz. *904/24/2009 CX dated 28.10.2009, 941/02/2011 CX dated 14.02.2011 and Instruction issued vide F.No.17/02/2009 CX (Pt.) dated 12.11.2014* have become non-est and thus, rescinded.

It may also be noted that rule 6 of the CENVAT Credit Rule (CCR), 2004 was amended with effect from 01.03.2015 by inserting explanation 1 and explanation 2 in sub-rule (1) of rule 6. These explanations continue in the present rule 6 also. Consequently, bagasse, dross and skimmings of non-ferrous metals or any such by product or waste, which are non-excisable goods and are cleared for a consideration from the factory need to be treated like exempted goods for the purpose of reversal of credit of input and input services, in terms of rule 6 of the CENVAT Credit Rules, 2004.

[Circular No. 1027/15/2016 CX dated 25.04.2016]

CHAPTER-5: GENERAL PROCEDURES UNDER CENTRAL EXCISE

1. Following amendments have been made in Central Excise Rules, 2002 [CER] vide ***Notification No. 8/2016 ST dated 01.03.2016*** **unless specified otherwise**:

(i) In case of provisional assessment, interest will be payable even when the amount is paid before final assessment [Rule 7(4)]

Rule 7 prescribes the provisions relating to provisional assessment. Sub-rule (4) of the said rule, which provides for payment of interest on duty payable under provisional assessment, has been substituted by a new sub-rule.

The substituted sub-rule (4) provides that the assessee will be liable to pay interest on amount paid/payable on the goods under provisional assessment, but not paid on the prescribed due date, at the rate notified under section 11AA of the Central Excise Act. The interest will be payable for the period starting with the **first day after the due date** till the date of actual payment, **whether such amount is paid before or after the issue of order for final assessment**. Earlier, the interest was payable, consequent to order for final assessment, from the first day of the month succeeding the month for which such amount is determined till the date of payment thereof.

The intent of the amendment has been clarified vide an explanation as under:

Goods under provisional assessment are cleared in the month of January, 2015 and a provisional duty of Rs. 5000 is paid on 6th February, 2015 [due date under sub-rule (1) of rule 8]. Thereafter, a further duty of Rs. 9000 is paid on 15th April, 2015, and on the same day the documents for final assessment are submitted by the assessee. Final assessment order is issued on 18th June, 2015, assessing the duty payable on goods as Rs 15000, and consequently the assessee pays a duty of Rs. 1000 on 30th June, 2015. No interest will be payable on Rs. 5000, interest will be payable on Rs. 9000 from 7th February, 2015, till 15th April, 2015, and interest will be payable on Rs. 1000 from 7th February, 2015, till 30th June, 2015 as due date for payment of duty of Rs. 15000 is 6th February, 2015.

[Effective from 01.03.2016]

(ii) Facility of quarterly payment of duty extended to jewellery manufacturers (excluding manufacturer of plain silver jewellery) having domestic clearances upto ₹ 12 crore in the preceding financial year [Rule 8]

Rule 8 extends the facility of quarterly payment of duty to assessees who are eligible to avail the exemption under a notification based on the value of clearances in a financial year (SSIs). The eligible assessees are those whose aggregate value of clearances did not exceed ₹ 400 lakh in the preceding financial year.

The said rule has been amended to extend the facility of quarterly payment of duty to jewellery manufacturer (excluding manufacturer of articles of silver jewellery not

studded with diamond, ruby, emerald or sapphire) if his aggregate value of clearances of all excisable goods for home consumption in the preceding financial year did not exceed ₹ 12 crore.

[Effective from 01.03.2016]

(iii) Requirement of manual attestation of the transporter's copy of invoice dispensed with [Rule 11(8)]

Prior to 01.03.2016, rule 11(8) provided that where the duplicate copy of the invoice meant for transporter is digitally signed, a hard copy of the duplicate copy of the invoice meant for transporter and self-attested by the manufacturer would be used for transport of goods. Such manual attestation of the transporter's copy of invoice has been done away with.

[Effective from 01.03.2016]

(iv) CBEC empowered to extend the time period for filing returns under rules 12 and 17 in circumstances of special nature [Rules 12 and 17]

Rule 12 prescribing provisions for filing of returns, has been amended. A new sub-rule (7) has been inserted therein vide ***Notification No. 25/2015 CE (NT) dated 09.12.2015*** to provide that the CBEC may, by an order extend the period specified in this rule by such period as deemed necessary under the circumstances of special nature to be specified therein.

Similarly, CBEC may, by an order extend the period for the return to be filed by an EOU under rule 17(3) by such period as deemed necessary in circumstances of special nature to be specified therein.

[Effective from 09.12.2015]

(v) Annual Return to replace the Annual Information Statement and Annual Installed Capacity Statement discontinued [Rules 12 and 17]

(a) In place of Annual Financial Information Statement [ER-4], an Annual Return will have to be filed by central excise assessees including 100% EOUs by 30th November of the succeeding year.

[Effective from 01.04.2016]

(b) Requirement of filing Annual Installed Capacity Statement has been dispensed with.

[Effective from 01.04.2016]

2. Centralised registration allowed to manufacturers of aluminium roofing panels subject to fulfillment of specified conditions

Every manufacturing unit engaged in the manufacture of aluminium roofing panels* has been exempted from obtaining the central excise registration, subject to fulfillment of the following conditions:

(i) such roofing panels are consumed at the site of manufacture for execution of the project and

(ii) manufacturer of such goods has a centralised billing or accounting system in respect of such goods manufactured by different manufacturing units and he opts for registering only the premises or office from where such centralised billing or accounting is done.

The above amendment has been made vide ***Notification No. 17/2015 CE (NT) dated 08.06.2015***

**falling under tariff item 7610 90 10 of the First Schedule to the Central Excise Tariff Act, 1985*

[Effective from 08.06.2015]

3. Amendments relating to registration of factory/premises of jewellery manufacturers

(i) Facility of centralized registration granted to jewellery manufacturers (excluding manufacturer of plain silver jewellery) having centralised billing or accounting system

With effect from 01.03.2016, excise duty of 1% (without CENVAT credit) or 12.5% (with CENVAT credit) has been levied on articles of jewellery [excluding silver jewellery not studded with diamonds/ruby/emerald/sapphire].

Jewellery manufacturers (excluding manufacturer of articles of silver jewellery not studded with diamond, ruby, emerald or sapphire) having centralised billing or accounting system in respect of such goods manufactured by different factories/premises have been given an option of centralised registration vide ***Notification No. 5/2016 CE (NT) dated 01.03.2016.***

Thus, every manufacturing factory/premises of such manufacturer need not be registered and only the factory/premises/office, from where such centralised billing or accounting is done and where the accounts/records showing receipts of raw materials and finished excisable goods manufactured or received back from job workers are kept, will need to be registered.

The manufacturer will have to give details of all premises (other than those of job worker's), from where such goods are removed for domestic clearance. Centralised registration is only an option for such manufacturer; he is free to take separate registrations for all factories/premises where the accounts/records showing receipts of raw materials and finished excisable goods manufactured or received back from job workers are kept.

[Effective from 01.03.2016]

(ii) Requirement of post registration physical verification of the premises done away with for the factory/premises of jewellery manufacturers (excluding manufacturer of plain silver jewellery) – *Notification No. 35/2001 CE (NT) dated 26.06.2001.*

Registration once applied for shall be granted within two working days along with simplified registration procedure as prescribed under *Notification No. 35/2001 CE (NT) dated 26.06.2001*. Further, there will be no post registration physical verification of the premises in case of jewellery manufacturers (excluding manufacturer of articles of silver jewellery not studded with diamond, ruby, emerald or sapphire) ***[Notification No. 6/2016 CE (NT) dated 01.03.2016].***

[Effective from 01.03.2016]

4. Single registration allowed for two or more premises of the same factory located within a close area on fulfillment of specified conditions – *Notification No. 36/2001 CE (NT) dated 26.06.2001*

Notification No. 36/2001 CE (NT) dated 26.06.2001 grants exemption to specified persons from obtaining central excise registration. The said notification has been amended vide ***Notification No. 19/2016 CE (NT) dated 01.03.2016*** to extend the facility of single registration to two or more premises of the same factory located within a close area. The Commissioner of Central Excise may allow single registration for two or more premises of the same factory, if the following conditions are satisfied:

(i) such premises are located within a close area in the jurisdiction of a Range Superintendent;

(ii) manufacturing process undertaken therein are interlinked;

(iii) units are not operating under any of the area based exemption notifications; and

(iv) there is proper accounting of the movement of goods from one premise to other and other conditions and limitations, if any, are complied with.

[Effective from 01.03.2016]

5. Conditions, safeguards and procedure for preserving digitally signed records and issuing digitally signed invoices prescribed

Rule 10(4) and rule 11(8) provide for authentication of every page of excise records preserved in electronic form and of invoices respectively, by means of digital signatures. Further, rule 10(5) and rule 11(9) have authorized CBEC to notify the conditions, safeguards and procedure to be followed by an assessee for preserving digitally signed records and issuing digitally signed invoices.

In this regard, following conditions, safeguards and procedure have been prescribed vide ***Notification No. 18/2015 CE (NT) dated 06.07.2015*:**

(a) Every assessee proposing to use digital signature shall use Class 2* or Class 3** Digital Signature Certificate duly issued by the Certifying Authority in India.

***Class 2 Certificate:** These certificates are issued for both business personnel and private individuals use and are available for download after verifying a person's identity against a trusted and pre-verified database.

****Class 3 Certificate:** This certificate is issued to individuals as well as organizations. Since these are high assurance certificates, primarily intended for e-commerce applications, they shall be issued to individuals only on their personal (physical) appearance before the Certifying Authorities.

(b) Every assessee proposing to use digital signatures shall intimate the following details to the jurisdictional Deputy/ Assistant Commissioner of Central Excise, at least 15 days in advance:

- name, e-mail id, office address and designation of the person authorised to use the digital signature certificate;
- name of the Certifying Authority;
- date of issue of digital certificate and validity of the digital signature with a copy of the certificate issued by the Certifying Authority along with the complete address of the said Authority.

However, in case of any change in aforesaid details, complete details shall be submitted afresh within 15 days of such change.

In case of assessees already using digital signature, aforesaid details should be intimated within 15 days of issue of this notification.

(c) Every assessee who opts to maintain records in electronic form:

(i) and has more than one factory/ service tax registration shall maintain separate electronic records for each factory/ service tax registration.

(ii) shall on request (in a letter or e-mail) by a Central Excise Officer, produce the specified records in electronic form and invoices through e-mail or on a specified storage device in an electronically readable format for verification of the authenticity of the document.

(iii) shall ensure that appropriate backup of records in electronic form is maintained and preserved for a period of 5 years immediately after the financial year to which such records pertain.

(d) A Central Excise Officer, during an enquiry, investigation or audit, may direct an assessee to furnish printouts of the records in electronic form and invoices and may resume printouts of such records and invoices after verifying the correctness of the same in electronic format; and after the print outs of such records in electronic form have been signed by the assessee or any other person authorised by the assessee in this regard, if so requested by such Central Excise Officer.

[Effective from 06.07.2015]

***Note**: The above conditions will also apply in case of preservation of service tax records in electronic form and authentication of service tax invoices by digital signatures.*

Further, all importers and exporters using services of Customs Brokers for formalities under Customs Act, 1962, shipping lines and air lines have also been required to file

customs documents under digital signature certificates mandatorily with effect from 01.01.2016. The importers/ exporters desirous of filing Bill of Entry or Shipping Bill individually may however have the option of filing declarations/ documents without using digital signature [Circular No. 26/2015 Cus. dated 23.10.2015].

6. New Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable and Other Goods) Rules, 2016 notified

The existing Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable and Other Goods) Rules, 2001 have been substituted with the new Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable and Other Goods) Rules, 2016 vide ***Notification No. 20/2016 CE (NT) dated 01.03.2016 (further amended by Notification No. 22/2016 CE (NT) dated 15.03.2016)***. The new rules have been simplified. Now the duty exemptions to importer/manufacturer would be allowed on the basis of self-declaration as against the earlier practice of obtaining permissions from the central excise authorities. These rules facilitate the Make in India campaign.

The new rules have come into effect from 16.03.2016. The salient features of the new rules are discussed hereunder:

(1) Application [Rule 2]

(i) These rules will apply to a manufacturer who intends to avail of the benefit of an exemption notification issued under section 5A(1) of the Central Excise Act, 1944 granting exemption of duty to excisable goods when used for the purpose specified in that notification.

(ii) An un-registered manufacturer including manufacturers of exempted goods or non-excisable goods will be eligible to avail the benefits of the provisions of these rules after taking central excise registration.

(2) Information by applicant manufacturer to obtain benefit [Rule 4]

(i) An applicant manufacturer (a manufacturer who intends to receive goods for specified use at concessional rate of duty) will provide an information in prescribed form [Form I] in duplicate to the jurisdictional Assistant/Deputy Commissioner who will forward one copy of such information to the jurisdictional range Superintendent of the supplier manufacturer (a manufacturer who supplies excisable goods at concessional rate of duty to applicant manufacturer).

(ii) The applicant manufacturer will provide the information from time to time to receive subject goods in quantities commensurate with expected consumption in the manufacturing process for a period of one year or less. Subject goods means the excisable goods which applicant manufacturer intends to procure at concessional rate of duty.

(iii) The applicant manufacturer will execute a general bond with surety. However, a letter of undertaking will suffice if no show cause notice has been issued

under section 11A(4) of the Central Excise Act, 1944 against the applicant manufacturer or where no action is proposed under any notification issued in pursuance of rule 12CCC of the Central Excise Rules, 2002 or rule 12AAA of the CENVAT Credit Rules, 2004 against such applicant manufacturer.

(iv) The applicant manufacturer will forward a copy of information duly signed by his authorized signatory, to the supplier manufacturer for procuring subject goods.

(3) Procedure to be followed by supplier manufacturer of subject good [Rule 5]

(i) The supplier manufacturer will avail the benefit on the basis of information so received by him.

(ii) He will have to maintain record of information so received on the basis of which goods have been removed, the removal details, such as number and date of invoice, description, quantity and value of subject goods and amount of excise duty paid at concessional rate and retain the same in his records.

(4) Applicant manufacturer to submit quarterly returns [Rule 6]

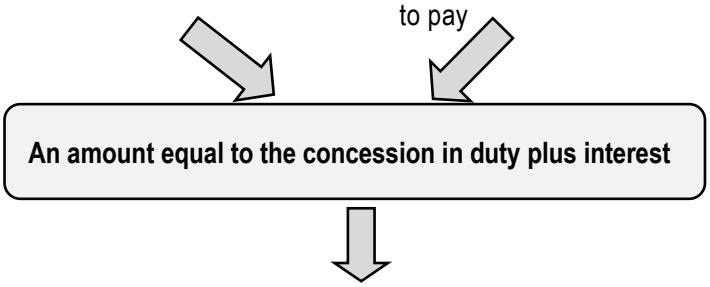
(i) The applicant manufacturer will have to maintain invoice-wise record of quantity and value of subject goods received, the quantity of subject goods consumed for the intended purpose, and the quantity remaining in stock.

(ii) He will have to submit a quarterly return on the basis of such records in Form II by 10thday of the month following each quarter of the financial year.

(5) Recovery of duty in certain cases [Rule 7]

If the goods are not used for the intended purpose, applicant manufacturer will be liable to pay

If the applicant manufacturer is found to be non-existent, the supplier manufacturer will be liable to pay



The provisions of section 11A, **except the time limit mentioned in the said section for demanding duty** and section 11AA of the Central Excise Act, 1944 will apply *mutatis mutandis*, for effecting such recoveries.

Amount = Full duty leviable on such goods (excluding any exemption) - Duty already paid, if any, at the time of removal from the factory of the supplier manufacturer of the subject goods

Return of subject goods – Subject goods may be returned to the supplier manufacturer, if on receipt they are found to be

- defective; or
- damaged; or
- unsuitable; or
- surplus to the needs of the applicant manufacturer.

The supplier manufacturer will add such returned goods to his non-duty paid stock.

Loss of subject goods by natural causes or in transport: Subject goods will be deemed not to have been used for the intended purpose **even** if any of the quantity of the subject goods is lost or destroyed-

- by natural causes; or
- by unavoidable accidents during transport from the place of procurement to the applicant manufacturer's premises or from the supplier manufacturer's premises to the place of procurement; or
- during handling or storage in the applicant manufacturer's premises.

Therefore, in all the above situations, benefit of concessional duty will not be available.

[Effective from 16.03.2016]

7. Clarification on invoices for transit sale through dealer

If goods are directly sent to any person on the direction of the registered dealer, the invoice will also contain the details of the registered dealer as the buyer and the person as the consignee, and that person will take CENVAT credit on the basis of the registered dealer's invoice [Third proviso to rule 11(2)]. Further, if the goods imported under the cover of a bill of entry are sent directly to buyer's premises, the invoice issued by the importer should mention that goods are sent directly from the place or port of import to the buyer's premises [Fourth proviso to rule 11(2)].

In this regard, following clarifications have been issued:

(i) Where a registered dealer negotiates sale of an entire consignment from a manufacturer/a registered importer and orders direct transport of goods to the consignee, credit can be availed by the consignee on the basis of invoice issued by the manufacturer or the registered importer. In such cases no CENVATABLE invoice shall be issued by the registered dealer in favour of the consignee though commercial invoice can be issued. Where a registered dealer negotiates sale of goods from the total stock ordered on a manufacturer or an importer to multiple buyers and orders direct transportation of goods to the consignees and the manufacturer or the importer is willing to issue individual invoices for each sale in favour of the consignees for such individual sale, the same procedure shall apply.

(ii) Where a registered dealer negotiates sale by splitting a consignment procured from a manufacturer or a registered importer and issues CENVATABLE invoices for each of the sale, it would now be possible for the dealer to order direct transport of the consignments as per the individual sales to the consignee without bringing the goods to his godown. This would save time and transportation cost for the dealer adding to ease of doing business. This is a new facility which flows from the amended provisions. Procedure as prescribed in the third proviso of rule 11(2) shall be applicable in such case.

(iii) Where a un-registered dealer negotiates sale of an entire consignment from a manufacturer or a registered importer and orders direct transport of goods to the consignee, credit can be availed by the consignee on the basis of invoice issued by the manufacturer or the registered importer. As the dealer is not registered, there is no question of issuing any CENVATABLE invoice by him. Such dealers as in the past can continue to be un-registered.

(iv) Where goods are sold by the registered importer to an end-user (say a manufacturer) who would avail credit on the basis of importer's invoice and the goods are transported directly from the port or warehouse at the port to the buyer's premises, the amendment prescribes that for such movement the factum of such direct transport to the buyer's premises needs to be recorded in the invoice.

[Circular No. 1003/10/2015 CX dated 05.05.2015]

CHAPTER 6: EXPORT PROCEDURES

1. Exemption from sealing in a package/container to export of bulk cargo [for e.g. coal, iron-ore, alumina concentrate, heavy machinery etc.] which is difficult to seal in packages/container

The conditions and procedure relating to export (under bond) without payment of duty to all countries except Bhutan are contained in *Notification No. 42/2001 CE (NT) dated 26.06.2001* issued under rule 19 of the Central Excise Rules, 2002. The said notification stipulates that before clearing the export consignments from the factory/ warehouse/ any other approved premises, goods needs to be sealed-either by Central Excise Officer after examination of such goods or by the exporter himself under self-sealing and self-certification.

However, bulk cargo e.g. coal, iron-ore, alumina concentrate, heavy machinery etc. are difficult to seal in packages or container. Consequently, ***Notification No. 23/2015 CE (NT) dated 30.10.2015*** has been issued which provides that where the nature of goods is such that the goods cannot be sealed in a package or a container such as coal or ore, etc., exemption from sealing of package or container may be granted by the Principal Chief Commissioner/ Chief Commissioner of Central Excise subject to safeguard as may be specified by him in the permission.

The safeguards shall, *inter-alia*, include the following:-

(i) method of verification of quantity and quality of goods including testing of goods where necessary at the place of removal or despatch and at the port of export or SEZ, where the goods are received;

(ii) no remission of duty shall be allowed for loss of goods within transit;

(iii) permission shall be given on case to case basis for a specified period not exceeding 1 year at a time and may be withdrawn in case of misuse; and

(iv) any additional safeguards as may be specified.

[Effective from 30.10.2015]

2. Export rebate not allowable when Indian market price of goods exported is less than the rebate claimed

Notification No. 19/2004 CE (NT) dated 06.09.2004 prescribes the conditions and procedures relating to export under claim of rebate under rule 18 of the Central Excise Rules, 2002. One of the conditions prescribed under the said notification for claiming export rebate was that the market price of the excisable goods at the time of exportation should not be less than the amount of rebate of duty claimed.

Notification No. 19/2004 CE (NT) dated 06.09.2004 has been amended vide ***Notification No. 18/2016 CE (NT) dated 01.03.2016*** to provide that the **Indian** market price of the excisable goods at the time of exportation should not be less than the amount of rebate

of duty claimed. It has also been provided that the rebate claim should be lodged before the expiry of the period specified in section 11B of Central Excise Act, 1944 with the concerned officer.

[Effective from 01.03.2016]

3. Chartered Engineer certificate to be submitted for claiming rebate of inputs used in goods exported

Notification No. 21/2004 CE (NT) dated 06.09.2004 prescribes the procedure for claiming rebate of excise duty paid on excisable goods used in the manufacture or processing of export goods. The procedure required filing of a declaration by the manufacturer and verification of details like manufacturing process, input-output ratio, wastages etc., by the Departmental officer.

The said notification has been amended by ***Notification No. 21/2016 CE (NT) dated 01.03.2016*** to provide that in addition to the declaration, a manufacturer will also have to file a Chartered Engineer's Certificate for correctness of ratio of input and output where SION is notified. The permission for manufacture and export of finished goods before commencement of export will be given on the basis of such certificate. Thus, there will be no verification by Assistant/Deputy Commissioner. In case, there is any doubt on the correctness of the declaration, the Assistant/Deputy Commissioner will visit the factory.

Further, it has been clarified that no CENVAT credit will be availed by the manufacturer and rebate claim need to be filed before the expiry of period specified under section 11B of the Central Excise Act, 1944.

[Effective from 01.03.2016]

CHAPTER 8: DEMAND, ADJUDICATION AND OFFENCES

1. Interest on delayed payment of excise duty reduced from 18% to 15%

Interest payable under section 11AA of the Central Excise Act, 1944 on delayed payment of excise duty has been reduced from 18% to 15% vide ***Notification No. 15/2016 CE (NT) dated 01.03.2016***.

[Effective from 01.04.2016]

2. Co-noticees eligible for waiver of penalty if the main noticee pays duty, interest and penalty [Rule 26 of Central Excise Rules, 2002]

Rule 26 of Central Excise Rules, 2002 has been amended to provide that that where any proceeding for the person liable to pay duty have been concluded under clause (a) or clause (d) of sub-section (1) of section 11AC of the Central Excise Act, 1944 in respect of duty, interest and penalty, all proceedings in respect of penalty against other persons, if any, in the said proceedings shall also be deemed to be concluded.

In other words, co-noticees would not be required to pay the penalty, if the person liable to pay duty has paid the duty and applicable interest in terms of clause (a) of section 11AC(1) or duty, interest and 15% penalty in terms of clause (d) of section 11AC(1).

[Effective from 01.03.2016]

CHAPTER 10: APPEALS

1. Monetary limits for filing appeals by the Department before CESTAT and High Courts revised

In exercise of the powers conferred by section 35R of the Central Excise Act, 1944 made applicable to service tax vide section 83 of the Finance Act, 1944 and section 131 BA of the Customs Act, 1962 and in partial modification of earlier instruction issued from *F.No. 390/Mis./163/2010-JC dated 17.08.2011*, the CBEC has fixed the following monetary limits below which appeal shall not be filed in the Tribunal, High Court and the Supreme Court:

S.No.	Appellate Forum	New Monetary Limit	Original Monetary Limit
1.	CESTAT	₹ 10,00,000/-	₹ 5,00,000/-
2.	High Courts	₹ 15,00,000/-	₹ 10,00,000/-
3.	Supreme Courts	₹ 25,00,000/-	₹ 25,00,000/-

Earlier, the Instruction laid down that adverse judgments relating to the following should be contested irrespective of the amount involved:

(a) Where the constitutional validity of the provisions of an Act or Rule is under challenge; or

(b) Where Notification/ Instruction/ Order or Circular has been held illegal or ultra vires.

The instruction has been further amended to provide that adverse judgments relating to classification and refunds issues which are of legal and/or recurring nature should also be contested irrespective of the amount involved.

[Instruction F.No.390/Misc./163/2010 JC dated 17.12.2015]

2. Committee of Commissioners/ Chief Commissioners cannot review the same order twice

As per the provisions of section 129A(2) or section 129D of the Customs Act, 1962, section 35B(2) or section 35E of the Central Excise Act, 1944 and section 86(2A) or section 86(2) of Finance Act, 1994 power of review of order of Commissioner (Appeals) or order of Principal Commissioner/ Commissioner as an adjudicating authority vests with the Committee of Commissioners and Committee of Chief Commissioners respectively and there is no provision for reviewing the same order twice.

[Instruction F.No.390/Review/36/2014 JC dated 17.03.2016]

CHAPTER 12: WAREHOUSING

1. Interest payable on diversion of goods, which were warehoused for exports, for home – consumption reduced from 24% to 15%

CBEC Circular No. 581/18/2001 CX dated 29.06.2001 provided that where the goods are diverted for home-consumption in full or in part the exporter shall be liable to pay interest @ 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.

The said Circular has been amended vide ***Circular No. 1019/7/2016 CX dated 29.02.2016*** to reduce such rate of interest from 24% to 15%. **The Circular has come into effect from 01.04.2016.**

CHAPTER 13: EXEMPTION BASED ON VALUE OF CLEARANCES (SSI)

1. Higher threshold exemption (SSI exemption) for jewellery manufacturers

With effect from 01.03.2016, excise duty of 1% (without CENVAT credit) or 12.5% (with CENVAT credit) has been levied on articles of jewellery [excluding silver jewellery not studded with diamonds/ruby/emerald/sapphire].

The SSI exemption for such jewellery manufacturers would be upto ₹ 6 crore in a year with an eligibility limit of ₹ 12 crore in the preceding year for such jewellery manufacturers. Thus, a jewellery manufacturer will be eligible for exemption from excise duty on first clearances upto ₹ 6 crore during a financial year, if his aggregate domestic clearances during preceding financial year did not exceed ₹ 12 crore ***[Notification No. 8/2016 CE dated 01.03.2016]***.

The SSI exemption for the month of March, 2016 for jewellery manufacturers will be ₹ 50 lakh, subject to the condition that value of clearances for home consumption by a manufacturer from one or more factory/premises of production or manufacture, or from a factory/premises of production or manufacture by one or more manufacturers during the financial year 2014-15 should not be more than ₹ 12 crore.

Necessary amendments have been made in *Notification No. 8/2003 CE dated 01.03.2016* in this regard.

[Effective from 01.03.2016]

2. Clearances made for export to Nepal not to be treated as clearances for home consumption under SSI exemption notification

Consequent upon abolition of the duty refund procedure for exports to Nepal, *Notification No.8/2003 CE dated 01.03.2003* has been amended vide ***Notification No. 8/2016 CE dated 01.03.2016*** so as to exclude value of clearances made for export to Nepal from the definition of clearances for home consumption under the said notification. Thus, now clearances made to Nepal will be treated like normal exports and will not be considered for the purpose of computing the limits of ₹ 400 lakh or ₹ 150 lakh, as the case may be, under *Notification No. 8/2003 CE dated 01.03.2003.* However, clearances to Bhutan will continue to be included in the definition of clearances for home consumption.

[Effective from 01.03.2016]

CHAPTER 14: NOTIFICATIONS, DEPARTMENTAL CLARIFICATIONS AND TRADE NOTICES

1. Board Circulars contrary to Supreme Court and High Court judgments (where Board has decided not to file an appeal on merit) not binding on Departmental officers

Supreme Court in case of *Ratan Melting & Wire Industries v. CCE 2008 (231) E.L.T. 22 (S.C.)* has held that circulars and instructions issued by the Board are no doubt binding in law on the authorities under the respective statutes, but when the Supreme Court or the High Court declares the law on the question arising for consideration, it would not be appropriate for the Court to direct that the circular should be given effect to and not the view expressed in a decision of this Court or the High Court. So far as the clarifications/circulars issued by the Central Government and of the State Government are concerned they represent merely their understanding of the statutory provisions. They are not binding upon the Court. It is for the Court to declare what the particular provision of statute says and it is not for the Executive. A circular which is contrary to the statutory provisions has really no existence in law.

In the light of the aforesaid judgment, CBEC has clarified that Board Circulars contrary to the judgements of Hon'ble Supreme Court and High Court judgments where Board has decided not to file an appeal on merit, become non-est in law and should not be followed.

All pending cases decided after the date of the judgement would conform to the law laid down by the Hon'ble Supreme Court or High Court, as the case may be, irrespective of whether the circular has been rescinded or not.

[Circular No. 1006/13/2015 CX dated 21.09.2015]

SECTION B: SERVICE TAX

Significant Notifications and Circulars issued between 1st May, 2015 and 30th April, 2016[3]

CHAPTER 1: BASIC CONCEPTS

1. 0.5% Swachh Bharat Cess to be levied on value of all or any of taxable services from November 15, 2015 [Section 119 of the Finance Act, 2015]

Section 119 of the Finance Act, 2015 empowered the Central Government to impose a Swachh Bharat Cess (SBC) on all or any of the taxable services at a rate of 2% on the value of such taxable services. This cess was to be levied from such date as may be notified by the Central Government.

The following amendments have been made in this regard:

(i) The levy of SBC has become effective from **15th November, 2015** ***[Notification No. 21/2015 ST dated 06.11.2015].***

(ii) W.e.f. 15.11.2015, all taxable services have been exempted from payment of such amount of SBC, which is in excess of SBC calculated at the rate of 0.5% of the value of taxable services. Thus, effectively, the rate of SBC becomes 0.5% and new rate of service tax plus SBC becomes 14.5%.

SBC will not be leviable on services which are exempt from service tax under sub-section (1) of section 93 of the Finance Act, 1994 (general exemption) or [sub-section (2) of section 93 of Finance Act, 1994 (special order)][4] or otherwise not leviable to service tax under section 66B of the Finance Act, 1994 ***[Notification No. 22/2015 ST dated 06.11.2015].***

(iii) Value of taxable services for the purposes of SBC will be the value as determined in accordance with the Service Tax (Determination of Value) Rules, 2006. Further, the same will be leviable only on the abated value of taxable service as per *Notification No. 26/2012 ST dated 20.06.2012* ***[Notification No. 22/2015 ST dated 06.11.2015*** amended by ***Notification No. 23/2015 ST dated 12.11.2015].***

(iv) Provisions of reverse charge as contained in *Notification No. 30/2012 ST dated 20.06.2012* will be applicable for the purposes of SBC *mutatis mutandis* ***[Notification No. 24/2015 ST dated 12.11.2015].***

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[3] ***Notification Nos. 13-16 ST all dated 19.05.2015*** notifying June 1, 2015 as the effective date of certain amendments made by the Finance Act, 2015 and Budget 2015 Notifications have already been included in the Supplementary Study Paper-2015 as also incorporated in the November, 2015 Edition of the Study Material of Paper 8: Indirect Tax Laws. Therefore, the same have not been given again in this Statutory Update.

[4] Inserted by ***Notification No. 05/2016 ST dated 17.02.2016***

(v) W.e.f. 15.11.2015, alternative rate for payment of SBC in case of air travel agents, life insurance, foreign exchange and lottery will be service tax liability multiplied by 0.5 divided by 14. This has been done by inserting a new sub-rule (7D) in rule 6 of the Service Tax Rules, 1994 – *Discussed in detail in Chapter 6: Service Tax Procedures.*

(vi) SBC paid on specified services used in an SEZ will be entitled for refund under *Notification No. 12/2013 ST dated 01.07.2013 – Discussed in detail in Chapter 5: Exemptions and Abatements.*

(vii) SBC paid on all services used in providing services which are exported in terms of rule 6A of the Service Tax Rules, 1994 will be entitled for rebate under *Notification No. 39/2012 dated 20.06.2012 – Discussed in detail in Chapter 2: Place of Provision of Services.*

(viii) Separate Accounting Codes have been allotted for SBC vide ***Circular No. 188/7/2015 ST dated 16.11.2015***.

2. Any service provided by the Government or local authority to a business entity taxable from April 1, 2016 [Section 66D(a)(iv)& 65B(49)]

(i) Services provided by Government or a local authority, excluding certain services, were covered in the Negative List of services vide clause (a) of section 66D. The excluded services were specified under sub-clauses (i) to (iv) of clause (a).

(ii) Sub-clause (iv) covered support services provided by the Government or local authority to business entities thereby making the same liable to service tax.

(iii) The Finance Act, 2015 had amended the said sub-clause (iv) by substituting the words **"support services"** with the words **"any service"** to exclude all services provided by the Government or local authority to a business entity from the Negative List.

(iv) Consequently, the definition of "support service" as provided under section 65B(49) had also been omitted vide the Finance Act, 2015.

(v) The said amendments, however, did not become effective with the enforcement of the Finance Act, 2015 and were to become effective from a date to be notified later on.

(vi) Now, the effective date has been notified as **1st April, 2016** vide ***Notification Nos. 6/2016 ST dated 18.02.2016 & 15/2016 ST dated 01.03.2016***. Therefore, from 01.04.2016, all the services provided by Government or Local Authority to a business entity have become taxable.

(vii) Further, service tax on these services was made payable under reverse charge. The said amendment has also become effective from 01.04.2016 – *Discussed in detail in Chapter 6: Service Tax Procedures.*

(viii) Simultaneously, services provided by Government or a local authority to a business entity with a turnover up to ₹ 10 lakh in the preceding financial year have been exempted from service tax. *[Amendments in exemptions have been discussed in detail in Chapter 5: Exemptions and Abatements.]*

[Effective from 01.04.2016]

(ix) CBEC has issued ***Circular No. 192/02/2016 ST dated 13.04.2016*** to clarify the following aspects pertaining to the taxation of services provided by Government to business entities:

Sl. No.	Issue	Clarification
1.	Services provided by Government or a local authority to another Government or a local authority	Such services have been exempted vide *Notification No. 25/2012 ST dated 20.6.2012* as amended by *Notification No. 22/2016 ST dated 13.4.2016*. However, the said exemption does not cover services specified in sub-clauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act, 1994.
2.	Services provided by Government or a local authority to an individual who may be carrying out a profession or business	1. Services by way of grant of passport, visa, driving license, birth or death certificates have been exempted vide *Notification No. 25/2012 ST dated 20.6.2012* as amended by *Notification No. 22/2016 ST dated 13.4.2016.* 2. Further, for services provided upto a taxable value of ₹ 5000/-, Sl. No. 5 below may please be seen.
3.	Service tax on taxes, cesses or duties	Taxes, cesses or duties levied are not consideration for any particular service as such and hence not leviable to service tax. These taxes, cesses or duties include excise duty, customs duty, service tax, State VAT, CST, income tax, wealth tax, stamp duty, taxes on professions, trades, callings or employment, octroi, entertainment tax, luxury tax and property tax.
4.	Service tax on fines and penalties	1. It is clarified that fines and penalty chargeable by Government or a local authority imposed for violation of a statute, bye-laws, rules or regulations are not leviable to service tax. 2. Fines and liquidated damages payable to Government or a local authority for non-performance of contract entered into with Government or local authority have been exempted vide *Notification No. 25/2012*

		ST dated 20.6.2012 as amended by *Notification No. 22/2016 ST dated 13.4.2016*.
5.	Services provided in lieu of fee charged by Government or a local authority	1. It is clarified that any activity undertaken by Government or a local authority against a consideration constitutes a service and the amount charged for performing such activities is liable to service tax. It is immaterial whether such activities are undertaken as a statutory or mandatory requirement under the law and irrespective of whether the amount charged for such service is laid down in a statute or not. As long as the payment is made (or fee charged) for getting a service in return (i.e., as a *quid pro quo* for the service received), it has to be regarded as a consideration for that service and taxable irrespective of by what name such payment is called. It is also clarified that service tax is leviable on any payment, in lieu of any permission or license granted by the Government or a local authority. 2. However, services provided by the Government or a local authority by way of: (i) registration required under the law; (ii) testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, required under the law, have been exempted vide *Notification No. 25/2012 ST dated 20.6.2012* as amended by *Notification No. 22/2016 ST dated 13.4.2016*. 3. Further, services provided by Government or a local authority where the gross amount charged for such service does not exceed ₹5000/-have

		been exempted vide *Notification No. 25/2012 ST dated 20.6.2012* as amended by *Notification No. 22/2016 ST dated 13.4.2016*. However, the said exemption does not cover services specified in sub-clauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act, 1994. Further, in case of continuous service, the exemption shall be applicable where the gross amount charged for such service does not exceed ₹ 5000/- in a financial year.
6.	Services in the nature of allocation of natural resources by Government or a local authority to individual farmers	Services by way of allocation of natural resources to an individual farmer for the purposes of agriculture have been exempted vide *Notification No. 25/2012 ST dated 20.6.2012* as amended by *Notification No. 22/2016 ST dated 13.4.2016*. Such allocations/auctions to categories of persons other than individual farmers would be leviable to service tax.
7.	Services in the nature of change of land use, commercial building approval, utility services provided by Government or a local authority	Regulation of land-use, construction of buildings and other services listed in the Twelfth Schedule to the Constitution which have been entrusted to Municipalities under Article 243W of the Constitution, when provided by governmental authority are already exempt under *Notification No. 25/2012 ST dated 20.6.2012*. The said services when provided by Government or a local authority have also been exempted from service tax vide *Notification No. 25/2012 ST dated 20.6.2012* as amended by *Notification No. 22/2016 ST dated 13.4.2016*.
8.	Services provided by Government, a local authority or a governmental authority by way of any activity in relation to any function entrusted to a	Such services have been exempted vide *Notification No. 25/2012 ST dated 20.6.2012* as amended by *Notification No. 22/2016 ST dated 13.4.2016*.

	Panchayat under Article 243G of the Constitution	
9.	When does the liability to pay service tax arise upon assignment of right to use natural resource where the payment of auction price is made in 10 (or any number of) yearly (or periodic) installments under deferred payment option for rights assigned after 01.04.2016?	Rule 7 of the Point of Taxation Rules, 2011 has been amended vide *Notification No. 24/2016 ST dated 13.04.2016* to provide that in case of services provided by Government or a local authority to any business entity, the point of taxation shall be the earlier of the dates on which: (a) any payment, part or full, in respect of such service becomes due, as indicated in the invoice, bill, challan, or any other document issued by Government or a local authority demanding such payment; or (b) such payment is made. Thus, the point of taxation in case of the services of the assignment of right to use natural resources by the Government to a business entity shall be the date on which any payment, including deferred payments, in respect of such assignment becomes due or when such payment is made, whichever is earlier. Therefore, if the assignee/allottee opts for full upfront payment then service tax would be payable on the full value upfront. However, if the assignee opts for part upfront and remainder under deferred payment option, then service tax would be payable as and when the payments are due or made, whichever is earlier.
10.	How to determine the date on which payment in respect of any service provided by Government or a local authority becomes due for determination of point of taxation?	The date on which such payment becomes due shall be determined on the basis of invoice, bill, challan, or any other document issued by the Government or a local authority demanding such payment [Point of Taxation Rules, 2011 as amended by *Notification No. 24/2016 ST dated 13.4.2016*].
11.	Whether service tax is	Rule 6(2)(iv) of the Service Tax

	payable on the interest charged by Government or a local authority where the payment for assignment of natural resources is allowed to be made under deferred payment option?	(Determination of Value) Rules, 2006 has been amended vide *Notification No. 23/2016 ST dated 13.04.2016* so as to provide that interest chargeable on deferred payment in case of any service provided by Government or a local authority to a business entity, where payment for such service is allowed to be deferred on payment of interest, shall be included in the value of the taxable service.
12.	When and how will the allottee of the right to use natural resource be entitled to take CENVAT credit of service tax paid for such assignment of right?	The CENVAT Credit Rules, 2004 have been amended vide *Notification No. 24/2016 CE (NT) dated 13.4.2016*. Consequently, the CENVAT credit of the service tax on one time charges (whether paid upfront or in installments) paid in a year, may be allowed to be taken evenly over a period of 3 (three) years [Rule 4(7) of CENVAT Credit Rules, 2004 as amended]. Service tax paid on royalty in respect of natural resources and any periodic payments shall be available as credit in the year in which the same is paid. Amendments have also been made in CENVAT Credit Rules, 2004 so as to allow CENVAT credit to be taken on the basis of the documents specified in sub-rule (1) of rule 9 of CENVAT Credit Rules, 2004 even after the period of 1 year from the date of issue of such a document in case of services provided by the Government or a local authority or any other person by way of assignment of right to use any natural resource [Fifth Proviso to sub-rule (7) of rule 4 of CENVAT Credit Rules, 2004].
13.	On basis of which documents can CENVAT credit be availed in respect of services provided by Government or a local authority?	CENVAT credit may be availed on the basis of challan evidencing payment of service tax by the service recipient [Clause (e) of sub-rule (1) of rule 9 of CENVAT Credit Rules, 2004].

Note: Amendments relating to point of taxation, valuation of taxable service, exemptions and CENVAT credit referred to in the above table have been discussed in detail in Chapter 3: Point of Taxation, Chapter 4: Valuation of Taxable Service, Chapter 5: Exemptions and Abatements of Section B: Service Tax and Chapter 4: CENVAT Credit of Section A: Central Excise respectively.

3. All testing and ancillary activities to testing rendered during testing of seeds are covered in the negative list and are thus, not liable to service tax

Issue: Whether all activities incidental to seed testing are leviable to service tax and only the activity in so far it relates to actual testing has been exempted in the negative list under section 66D(i) of the Finance Act, 1994?

Clarification: Seed is not covered under the definition of agriculture produce. All services relating to agriculture by way of agriculture operations directly relating to production of agriculture produce including testing are covered in section 66D(i). Testing and certification can be done as per the Act and rules made thereunder in this regard. Testing cannot stand in isolation of certification and other ancillary activities. Testing cannot be random; somebody has to register for testing. If certificate is not received and seeds are not tagged, testing is irrelevant. Therefore, all processes are a part of the composite process and cannot be separated from testing.

Agricultural operations have not been defined in the Chapter V of the Finance Act, 1994 but an inclusive and indicative list of such operations has been given in section 66D(i) namely, cultivation, harvesting, threshing, plant protection or testing. The exemption is thus, not limited to only these specified operations. The word 'seed' from testing in agricultural operations was deleted vide the Finance Act, 2013 so as to broaden the scope of coverage of the negative list entry and to cover any testing in agricultural operations in negative list, which are directly linked to production of agriculture produce and not to limit its scope only to seeds.

In view of the above, it has been clarified that all testing and ancillary activities to testing such as seed certification, technical inspection, technical testing, analysis, tagging of seeds, rendered during testing of seeds, are covered within the meaning of 'testing' as mentioned in section 66D(d)(i) of the Finance Act, 1994. Therefore, such services are not liable to service tax under section 66B of the Finance Act, 1994.

[Circular No.189/8/2015 ST dated 26.11.2015]

4. Applicability of service tax on the services received by apparel exporters in relation to fabrication of garments: The terms of agreement and scope of activity undertaken by the service provider would determine the nature of service being provided which would vary from case to case.

Issue: Whether services received by apparel exporters from third party on job work is a service of manpower supply, which neither falls under the negative list nor is specifically exempt and thus, liable to service tax?

OR

Whether services received by them is of job work involving a process amounting to manufacture or production of goods, and thus, would fall under negative list and hence would not attract service tax?

Clarification: The CBEC has clarified as under:

Manpower supply service: The nature of manpower supply service is quite distinct from the service of job work. The essential characteristics of manpower supply service are that the supplier provides manpower which is at the disposal and temporarily under effective control of the service recipient during the period of contract. Service provider's accountability is only to the extent and quality of manpower. Deployment of manpower normally rests with the service recipient. The value of service has a direct correlation to manpower deployed, i.e., manpower deployed multiplied by the rate. In other words, manpower supplier will charge for supply of manpower even if manpower remains idle.

Job work: On the other hand, the essential characteristics of job work service are that service provider is assigned a job e.g. fabrication/stitching, labeling etc. of garments in case of apparel. Service provider is accountable for the job he undertakes. It is for the service provider to decide how he deploys and uses his manpower. Service recipient is concerned only as regard the job work. In other words service receiver is not concerned about the manpower. The value of service is function of quantum of job work undertaken, i.e. number of pieces fabricated etc. It is immaterial as to whether the job worker undertakes job work in his premises or in the premises of service receiver.

Therefore, the exact nature of service needs to be determined on the facts of each case which would vary from case to case. The terms of agreement and scope of activity undertaken by the service provider would determine the nature of service being provided.

It may be noted that every job work is not covered under the negative list. Only if the job work involves a process on which duties of excise are leviable under section 3 of the Central Excise Act, 1944, would it be covered under negative list in terms of Section 66D(f) read with section 65B(40) of the Finance Act, 1994.

The issue of applicability of service tax will accordingly be decided taking into account the nature of agreement/contract and the service being provided.

[Circular No.190/9/2015 ST dated 15.12.2015]

5. Construction service provided by a builder/developer to a land owner, who transfers his land/development rights to builder, for getting, in return, constructed flats/dwellings from builder/developer –*Circular No. 151/2/2012 ST dated 10.2.2012* to prevail over Education Guide

In a tri-partite construction business model, there are 3 parties involved:

i. The land owner;

ii. The builder/developer; &

iii. The contractor (who undertakes the construction)

Typically, in such a model, the land owner enters into an agreement with the builder, whereby, the land owner gives either land /development rights (to construct/develop a residential complex and sell flats/houses of such complex to buyers) to the builder. The builder/developer, in turn, agrees to assign a portion of the constructed area, in the form of flats in favour of the land owner. The remaining flats are sold by the builder/developer to various buyers. The builder/developer receives consideration for the construction service provided by him, from two categories of service receivers:

i. from land owner, in the form of land /development rights; and

ii. from other buyers, normally in the form of money.

CBEC Education Guide vs. *Circular No. 151/2/2012 ST dated 10.2.2012*: According to CBEC Education Guide on Taxation of Services, 2012 value of construction service provided to such land owner will be the value of the land when the same is transferred and the point of taxation will also be determined accordingly. However, *Circular No. 151/2/2012 ST dated 10.2.2012* states that value of land / development rights in the land may not be ascertainable ordinarily and therefore, value, in the case of flats given to first category of service receiver, that is, the land owner, is determinable in terms of section 67(1)(iii) read with rule 3(a) of Service Tax (Determination of Value) Rules, 2006.

Accordingly, the value of these flats would be equal to the value of similar flats charged by the builder/developer from the second category of service receivers. In case the prices of flats/houses undergo a change over the period of sale (from the first sale of flat/house in the residential complex to the last sale of the flat/house), the value of similar flats as are sold nearer to the date on which land is being made available for construction should be used for arriving at the value for the purpose of tax. Service tax is liable to be paid by the builder/developer on the 'construction service' involved in the flats to be given to the land owner, at the time when the possession or right in the property of the said flats are transferred to the land owner by entering into a conveyance deed or similar instrument (e.g. allotment letter).

The Circular dated 10.02.2012 is in accordance with the provisions relating to valuation as laid down in the Finance Act, 1994 and the Service Tax (Determination of Value) Rules, 2006. The Education Guide is neither a "Departmental Circular" nor a manual of instructions issued by the CBEC. To that extent it does not command the required legal backing to be binding on either side in any manner. Hence, Circulars such as the present one would prevail over the Education Guide, 2012.

In view of the above, it is directed that in valuing the service of construction provided by a builder/developer to a landowner, who transfers his land/development rights to builder, for getting, in return, constructed flats/dwellings from builder/developer, the valuation will be in accordance with the Board Circular dated 10.02.2012 and not the Education Guide.

[Instruction F. No. 354/311/2015 TRU dated 20.01.2016]

6. Incentives received by air travel agents from computer reservation system companies (CCRS) are liable to service tax

Air travel agents (ATA) receive incentives from the companies providing computer reservation system (CCRS) like Galileo, Amadeus, etc. The CCRS do not charge any amount for providing access to their internet system for booking of air tickets by the ATAs. Rather, the CCRS are providing certain incentives either for achieving the targeted booking of air tickets or for loyalty for booking of air tickets using their software system.

It has been clarified that incentives received by the ATAs from the companies providing computer reservation system (CCRS) are for using the software and platform provided by the CCRS like Galileo, Amadeus, etc. The CCRS are providing these incentives either for achieving the targeted booking of air tickets or for loyalty for booking of air tickets using their software system. Thus, the service provided by CCRS is to the Airlines and ATA is promoting the service provided by CCRS to Airlines. Thus, the service provided by the ATAs to CCRS is neither covered in the negative list (section 66D of the Finance Act, 1994) nor exempt by a notification. Therefore, service tax is leviable on the same.

[DOF No. 334/8/2016 TRU dated 29.02.2016]

7. Services provided by Institutes of Language Management (ILMs) are liable to service tax

Institutes of Language Management (ILMs) are engaged by various schools/institutions to develop knowledge and language skills of students. The services provided by the ILMs are not covered by section 66D(l) of the Finance Act, 1994 or Entry 9 of *Notification No. 25/2012 ST* as they are not providing pre-school education or education up to higher secondary school (or equivalent) or education for obtaining a qualification recognized by law. It is the schools/colleges/institutions (in which the students take admissions) which provide such education. The ILMs provides services to such educational institutions, which helps such educational institutions in providing services specified in the negative list. Thus, it is clarified that services provided by ILMs are not eligible for exemption under section 66D(l) of the Finance Act, 1994 or under Sl. No. 9 of *Notification No. 25/2012 ST*.

[DOF No. 334/8/2016 TRU dated 29.02.2016]

CHAPTER 2: PLACE OF PROVISION OF SERVICE

1. Swachh Bharat Cess paid on services used in providing services which are exported entitled for rebate - *Notification No. 39/2012 ST dated 20.06.2012*

Sub-rule (2) of rule 6A of Service Tax Rules, 1994 provides that where any service is exported in terms of sub-rule (1), the Central Government may, by notification, grant rebate of service tax or duty paid on input services or inputs, as the case may be, used in providing such service and the rebate shall be allowed subject to such safeguards, conditions and limitations, as may be specified, by the Central Government, by notification.

In exercise of this power, the Central Government has issued *Notification No. 39/2012 ST dated 20.06.2012* providing the safeguards, conditions and limitations for claiming rebate on inputs and input services. The notification grants rebate of the whole of the duty paid on excisable inputs or the whole of the service tax and cess paid on all input services, used in providing service exported in terms of rule 6A of the said rules, to any country other than Nepal and Bhutan, subject to the conditions, limitations and procedures specified therein.

Notification No. 39/2012 ST dated 20.06.2012 has been amended vide ***Notification No. 03/2016 ST dated 03.02.2016*** to provide that Swachh Bharat Cess paid on all services used in providing services which are exported in terms of rule 6A of the Service Tax Rules, 1994 will also be entitled for rebate.

[Effective from 03.02.2016]

CHAPTER 3: POINT OF TAXATION

1. The following amendments have been made in Point of Taxation Rules, 2011 [POTR]:

(i) When there is a change in the service tax liability or extent of liability of the service recipient, date of issuance of invoice to be the POT under rule 7, if service has been provided and the invoice issued before date of such change, but payment has not been made as on such date [Rule 7]

A third proviso has been inserted in rule 7 vide ***Notification No 21/2016 ST dated 30.03.2016.*** The new proviso lays down that where there is change in the liability or extent of liability of a person required to pay tax as recipient of service notified under section 68(2) of the Finance Act, 1994, in case service has been provided and the invoice issued before the date of such change, but payment has not been made as on such date, the point of taxation shall be the date of issuance of invoice.

[Effective from 30.03.2016]

(ii) In case of services provided by Government to business entities, POT under rule 7 will be the date on which payment becomes due or the date when payment is made, whichever is earlier [Rule 7]

A fourth proviso has been inserted after third proviso in rule 7 vide ***Notification No. 24/2016 ST dated 13.04.2016*** to lay down that in case of services provided by the Government or local authority to any business entity, the point of taxation will be the earlier of the dates on which, -

(a) any payment, part or full, in respect of such service becomes due, as specified in the invoice, bill, challan or any other document issued by the Government or local authority demanding such payment; or

(b) payment for such services is made.

[Effective from 13.04.2016]

CHAPTER 4: VALUATION OF TAXABLE SERVICE

1. In case of service provided by Government to a business entity, interest chargeable on deferred payment to be included in the value of the taxable service [Rule 6(2)(iv) of the Service Tax Determination of Value Rules, 2006]

Rule 6(2) of the Service Tax (Determination of Value) Rules, 2006 enlists the various payments that are not included in the value of any taxable service. Interest on delayed payment of any consideration for the provision of services or sale of property, whether movable or immovable is one such payment which is not included in the value of the taxable service in terms of clause (iv) of the sub-rule (2) of rule 6.

A proviso has been inserted in rule 6(2)(iv) vide ***Notification No. 23/2016 ST dated 13.04.2016*** to lay down that the said clause will not apply to any service provided by Government or a local authority to a business entity where payment for such service is allowed to be deferred on payment of interest or any other consideration. In other words, the interest chargeable on deferred payment in case of any service provided by Government or a local authority to a business entity, where payment for such service is allowed to be deferred on payment of interest or any other consideration, will be included in the value of the taxable service.

[Effective from 13.04.2016]

CHAPTER-5: EXEMPTIONS AND ABATEMENTS

Exemptions

I. MEGA EXEMPTION NOTIFICATION AMENDED

Mega Exemption *Notification No. 25/2012 ST dated 20.06.2012* has been amended vide ***Notification No. 9/2016 ST dated 01.03.2016,*** **unless specified otherwise.** The amendments are discussed in the following two broad categories:

(A) New exemptions/scope of existing exemptions enhanced

(B) Exemptions withdrawn/restricted

(C) Restoration of exemptions withdrawn last year for projects, contracts which were entered into before withdrawal of the exemption

(A) NEW EXEMPTIONS/SCOPE OF EXISTING EXEMPTIONS ENHANCED

(i) Specified services provided by the Indian Institutes of Management (IIM) exempted

Ministry of Human Resource Development (MHRD), vested with the power to recognise educational courses for the purpose of recruitment to posts under Government of India, has clarified that the Post Graduate Programmes in Management and Fellowship Programmes conducted by IIMs are equivalent to MBA and Ph.D degrees, respectively, (as also clarified by associations like Association of Indian Universities, Inter–University Board of India etc.).

In view of this, a new entry 9B has been inserted in the mega exemption notification exempting the services provided by the Indian Institutes of Management (IIM), as per the guidelines of the Central Government, to their students, by way of the following educational programmes, except Executive Development Programme:

(a) two year full time residential Post Graduate Programmes in Management for the Post Graduate Diploma in Management, to which admissions are made on the basis of Common Admission Test (CAT), conducted by IIM;

(b) fellow programme in Management;

(c) five year integrated programme in Management.

CBEC has clarified vide ***DOF No. 334/8/2016 TRU dated 29.02.2016*** that since exemption given to the above programmes of IIMs is clarificatory in nature, liability to pay service tax in respect of the said programmes for the past period will also become infructuous.

[Effective from 01.03.2016]

(ii) Services by assessing bodies empanelled centrally by DGT, Ministry of Skill Development & Entrepreneurship under SDI scheme exempted

A new Entry 9C has been inserted to exempt the services of assessing bodies empanelled centrally by Directorate General of Training (DGT), Ministry of Skill Development and Entrepreneurship (MSDE) by way of assessments under Skill Development Initiative (SDI) Scheme.

Ministry of Skill Development & Entrepreneurship (MSDE) coordinates the various skill development efforts fragmented across the country, for building the vocational and technical training framework, skill up-gradation, building of new skills, and innovative thinking not only for existing jobs but also jobs that are to be created. SDI Scheme is launched by MSDE.

DGT, MSDE empanels **assessing bodies** to assess the competencies of the persons trained under SDI Scheme. Such assessment is done by assessors of high competence, repute and integrity – sector wise and area wise.

[Effective from 01.04.2016]

(iii) Services provided by way of skill/vocational training by DDU-GKY training providers exempted

A new Entry 9D has been inserted to exempt the services provided by training providers (Project implementation agencies) under Deen Dayal Upadhyaya Grameen Kaushalya Yojana (DDU-GKY) under the Ministry of Rural Development (MoRD) by way of offering skill or vocational training courses certified by National Council For Vocational Training.

Deen Dayal Upadhyaya Grameen Kaushalya Yojana (DDU-GKY) is the skilling and placement initiative of the Ministry of Rural Development (MoRD), Government of India, for poor and disadvantaged rural youth. The skill training is imparted under said program by the **Project Implementation Agencies** which are organisations from specific sector industries, education and training or NGOs who have a reputation in delivering skilling, training and development programs. They are responsible for carrying out skill gap assessment, enrollment, training, counselling, placement, post placement support, career progression and other services.

[Effective from 01.04.2016]

(iv) Threshold limit of consideration charged per performance in folk or classical art forms of music/ dance/ theatre raised from ₹ 1,00,000 to ₹ 1,50,000

Earlier, exemption granted vide Entry 16 to services provided by a performing artist in folk or classical art forms of (i) music, or (ii) dance, or (iii) theatre, was available only where amount charged was upto ₹ 1,00,000 for a performance.

With effect from 01.04.2016, the threshold exemption limit of consideration charged for services provided by a performing artist in folk or classical art forms of music, dance or theatre, has been increased from ₹ 1,00,000 to ₹ 1,50,000 per performance.

It may be noted that said services provided by an artist as brand ambassador will continue to remain taxable as before.

[Effective from 01.04.2016]

(v) General insurance provided under Niramaya Health Insurance Scheme exempted

Entry 26 exempts services of general insurance business provided under specified schemes.

A new clause (q) has been inserted in the said entry to exempt services of general insurance business provided under Niramaya Health Insurance Scheme implemented by National Trust*

**a Trust constituted under the provisions of the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999.*

Niramaya Health Insurance Scheme: In order to provide an affordable health insurance facility to persons with developmental disabilities viz, autism, cerebral palsy, mental retardation & multiple disabilities, Niramaya Health Insurance Scheme is launched by National Trust, in collaboration with private/ public insurance companies.

[Effective from 01.04.2016]

(vi) Annuity under the National Pension System (NPS) exempted

A new Entry 26C has been inserted to exempt the services of life insurance business provided by way of annuity under the NPS regulated by Pension Fund Regulatory and Development Authority of India (PFRDA) under the Pension Fund Regulatory and Development Authority Act, 2013.

[Effective from 01.04.2016]

(vii) Services by specified bodies exempted

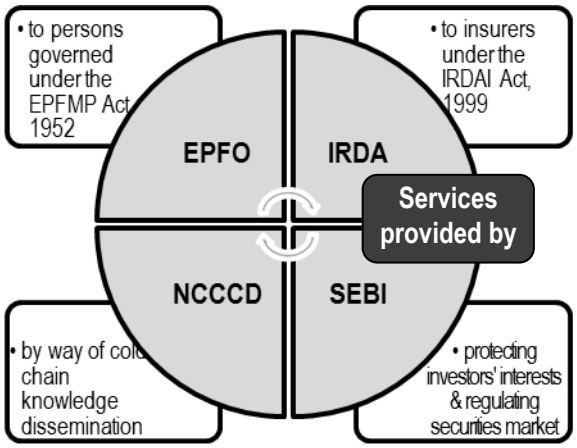
New Entries 49 to 52 have been inserted to exempt the services provided by the following bodies:

(a) Services provided by Employees Provident Fund Organisation (EPFO) to persons governed under the Employees Provident Funds and Miscellaneous Provisions (EPFMP) Act, 1952.

(b) Services provided by Insurance Regulatory and Development Authority of India (IRDA) to insurers under the Insurance Regulatory and Development Authority of India (IRDAI) Act, 1999.

(c) Services provided by Securities and Exchange Board of India (SEBI) set up under the Securities and Exchange Board of India Act, 1992 by way of protecting the interests of investors in securities and to promote the development of, and to regulate, the securities market.

(d) Services provided by National Centre for Cold Chain Development (NCCCD) under Ministry of Agriculture, Cooperation and Farmer's Welfare by way of cold chain knowledge dissemination.



[Effective from 01.04.2016]

(viii) Yoga included in the definition of charitable activities

Services by an entity registered under section 12AA of the Income-tax Act, 1961 by way of charitable activities are exempt from service tax vide Entry 4.

The definition of 'charitable activities', *inter alia,* includes activities relating to advancement of religion or spirituality. Now yoga has also been included therein vide ***Notification No. 20/2015 ST dated 21.10.2015***. Thus, services relating to advancement of yoga provided by charitable entities registered under section 12AA of the Income-tax Act, 1961 will not be liable to service tax e.g., service tax will not be payable on fee charged for yoga camps conducted by charitable trusts.

[Effective from 21.10.2015]

(ix) Services provided by (i) business facilitator/business correspondent with respect to Basic Savings Bank Deposit Accounts covered by Pradhan Mantri Jan Dhan Yojana and (ii) an intermediary to business facilitator/business correspondent with respect to such services, exempt from service tax

With a view to promote financial inclusion, Entry 29 has been amended vide ***Notification No. 20/2015 ST dated 21.10.2015*** to exempt the services provided by a business facilitator or a business correspondent to a banking company with respect to Basic Savings Bank Deposit Accounts covered by Pradhan Mantri Jan Dhan Yojana (PMJDY) by way of account opening, cash deposits, cash withdrawals, obtaining e-life certificates and Aadhar seeding, in the rural area branches of banking companies, from service tax. Further, the services provided by any person as an intermediary to a business facilitator or a business correspondent with respect to the above mentioned services, have also been exempted from service tax.

For this purpose, Basic Savings Bank Deposit Account has been defined to mean a Basic Savings Bank Deposit Account opened under the guidelines issued by Reserve Bank of India relating thereto.

[Effective from 21.10.2015]

Business facilitator/Business correspondent/Bank Mitras

Business facilitator or Business correspondent popularly known as Bank Mitra represents a bank. It enables a bank to expand its outreach and offer limited range of banking services at low cost, particularly where setting up a brick and mortar branch is not viable.

Scope of activities of Bank Mitra include creating awareness about savings and other products and education and advice on managing money and debt counselling, identification of potential customers, collection and preliminary processing of various forms for deposits including verification of primary information/ data, filling of applications/ account opening forms, collection and payment of small value deposits and withdrawals, receipt and delivery of small value remittances/ other payment instructions, furnishing of mini account statements and other account information, etc.

(x) Services provided by Government or a local authority to a business entity with a turnover up to ₹ 10 lakh in preceding FY exempted

A new entry 48 has been inserted vide ***Notification No. 07/2016 ST dated 18.02.2016*** to exempt the services provided by Government or a local authority to a business entity with a turnover up to ₹ 10 lakh in the preceding financial year.

[Effective from 01.04.2016]

(xi) Specified services provided by Government or a local authority exempted

The following services rendered by Government or a local authority have been exempted vide ***Notification No. 22/2016 ST dated 13.04.2016***:

1. Services in relation to any function entrusted to a municipality under article 243W of the Constitution

Hitherto, services by a Governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243W of the Constitution were exempt from service tax vide Entry 39.

The aforesaid entry has been amended to extend the said exemption to services provided by the Government or a local authority too.

[Effective from 13.04.2016]

2. Services provided to another Government or local authority

A new entry 54 has been inserted to exempt the services provided by Government or a local authority to another Government or local authority.

Exemption not available with respect to specified services provided by Department of Posts, services in relation to an aircraft or a vessel and, transport of passengers or goods

However, the exemption is not available with respect to following services provided by Government or a local authority as specified in sub-clauses (i),(ii) and (iii) of clause (a) of section 66D of the Finance Act, 1994:

(i) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Government;

(ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;

(iii) transport of goods or passengers.

[Effective from 13.04.2016]

3. Services provided by way of issuance of passport, visa, driving licence, birth certificate or death certificate

A new entry 55 has been inserted to exempt the services provided by Government or a local authority by way of issuance of passport, visa, driving licence, birth certificate or death certificate.

[Effective from 13.04.2016]

4. Services where gross amount charged does not exceed ₹ 5000

A new entry 56 has been inserted to exempt the services provided by Government or a local authority where the gross amount charged for such services does not exceed ₹ 5000/-.

Threshold limit not applicable to specified services provided by Department of Posts, services in relation to an aircraft or a vessel and transport of passengers or goods.

However, aforesaid threshold limit of ₹ 5000/- will not be applicable with respect to following services provided by Government or a local authority, as specified in sub-clauses (i),(ii) and (iii) of clause (a) of section 66D of the Finance Act, 1994:

(i) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Government;

(ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;

(iii) transport of goods or passengers.

Threshold limit in case of continuous supply of services

In case where continuous supply of service* is provided by the Government or a local authority, the exemption shall apply only where the gross amount charged for such service does not exceed ₹ 5000/- in a financial year.

**as defined in clause rule 2(c) of the Point of Taxation Rules, 2011*

[Effective from 13.04.2016]

5. Services by way of tolerating non-performance of a contract

A new entry 57 has been inserted to exempt the services provided by Government or a local authority by way of tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to the Government or the local authority under such contract.

[Effective from 13.04.2016]

6. Services of registration, testing, calibration, safety check/certification relating to protection/safety of workers, consumers or public at large, required under any law

A new entry 58 has been inserted to exempt the services provided by Government or a local authority by way of-

(a) registration required under any law for the time being in force;

(b) testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, required under any law for the time being in force.

[Effective from 13.04.2016]

7. Right to use natural resources assigned before 1st April, 2016

A new entry 61 has been inserted to clarify that services provided by Government or a local authority by way of assignment of right to use any natural resource where such right to use was assigned by the Government or the local authority before 1st April, 2016 are exempt from service tax.

However, said exemption shall apply only to service tax payable on one time charge payable, in full upfront or in installments, for assignment of right to use such natural resource.

Assignment of right to use natural resources to an individual farmer for the purposes of agriculture exempt

Services provided by Government or a local authority by way of assignment of right to use natural resources to an individual farmer for the purposes of agriculture are exempted from service tax, even when assigned on or after 1st April, 2016. This exemption has been granted by inserting a new entry 59.

[Effective from 13.04.2016]

8. Services in relation to any function entrusted to a Panchayat under article 243G of the Constitution

A new entry 60 has been inserted to exempt the services by Government, a local authority or a governmental authority by way of any activity in relation to any function entrusted to a **Panchayat** under article 243G of the Constitution.

[Effective from 13.04.2016]

9. Services of inspection, container stuffing etc. in relation to import export cargo after office hours or on holidays

A new entry 63 has been inserted to exempt the services provided by Government by way of deputing officers after office hours or on holidays for inspection or container stuffing or such other duties in relation to import export cargo on payment of Merchant Overtime charges (MOT).

[Effective from 13.04.2016]

(xi) Specified construction related services provided under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana exempted

Housing for All (Urban) Mission or Pradhan Mantri Awas Yojana (hereinafter referred to as PMAY) is a programme launched by the Ministry of Housing and Urban Poverty Alleviation (MoHUPA) which envisions provision of Housing for All by 2022 when the nation completes 75 years of its independence. The mission seeks to address the housing requirement of urban poor including slum dwellers through following, *inter alia,* programme verticals:

(i) Slum rehabilitation of slum dwellers with participation of private developers using land as a resource

(ii) Affordable Housing in Partnership with public & private sectors

(iii) Subsidy for Beneficiary-led individual house construction.

In order to incentivise aforesaid schemes, following exemptions from service tax have been incorporated in the mega exemption notification*:*

(a) Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a civil structure or any other original works pertaining to:

- 'In-situ rehabilitation* of existing slum dwellers using land as a resource through private participation' under PMAY, only for existing slum dwellers.

  ****In-situ rehabilitation*** *means reconstructing slums in areas they exist, without moving the residents.*

- 'Beneficiary-led individual house construction/ enhancement under PMAY'.

[New items (ba) and (bb) inserted in Entry 13]

[Effective from 01.03.2016]

(b) Services by way of construction, erection, commissioning, or installation of original works pertaining to low cost houses up to a carpet area of 60 m^2 per house in a housing project approved by the competent authority under:

(A) "Affordable Housing in Partnership" component of PMAY, or

(B) any housing scheme of a State Government.

[New item (ca) inserted in Entry 14]

[Effective from 01.03.2016]

(B) EXEMPTIONS WITHDRAWN/RESTRICTED

(i) Exemption in respect of services provided by (i) a senior advocate to an advocate or partnership firm of advocates and (ii) a person represented on an arbitral tribunal to an arbitral tribunal withdrawn

With effect from 01.04.2016, clause (b) and clause (c) of Entry 6 have been substituted to withdraw the exemption hitherto available in respect of the services provided by a senior advocate to an advocate or partnership firm of advocates or to a business entity with a turnover up to ₹ 10 lakh in the preceding financial year and services provided by a person represented on an arbitral tribunal to an arbitral tribunal.

Senior advocate has the meaning assigned to it in section 16 of the Advocates Act, 1961 which, *inter alia,* provides that an advocate may, with his consent, be designated as senior advocate if the Supreme Court or a High Court is of opinion that by virtue of his ability standing at the Bar or special knowledge or experience in law he is deserving of such distinction. Senior advocates shall, in the matter of their practice, be subject to such restrictions as the Bar Council of India may, in the interest of the legal profession, prescribe.

The comparative position prior to and post amendment in Entry 6 has been illustrated in the following table:

Services provided by	**Whether exempted from service tax?**	
	Prior to amendment	**Post amendment**
An arbitral tribunal to - (i) any person other than a business entity; or (ii) a business entity with a turnover up to ₹ 10 lakh in the preceding financial year.	✓	✓
A partnership firm of advocates or an individual advocate other than senior advocate by way of legal services to- (i) an advocate or partnership firm of advocates providing legal services ; (ii) any person other than a business entity; or (iii) a business entity with a turnover up to ₹ 10 lakh in the preceding financial year.	✓	✓
A senior advocate by way of legal services to an advocate or partnership firm of advocates providing legal services.	✓	✗

A senior advocate by way of legal services to a person other than business entity, i.e. a person ordinarily carrying out any activity relating to industry, commerce or any other business or profession.	✓	✓
A senior advocate by way of legal services to a business entity with a turnover up to ₹ 10 lakh in the preceding financial year.	✓	✗
A person represented on an arbitral tribunal to an arbitral tribunal.	✓	✗

[Effective from 01.04.2016]

(ii) Exemption to transportation of passengers by ropeway, cable car or aerial tramway withdrawn

With effect from 01.04.2016, clause (c) to Entry 23 has been omitted to withdraw the exemption hitherto available to transportation of passengers, with or without accompanied belongings by ropeway, cable car or aerial tramway.

[Effective from 01.04.2016]

(iii) Exemption to construction, erection, commissioning or installation of original works pertaining to monorail and metro withdrawn

Earlier, services by way of construction, erection, commissioning or installation of original works pertaining to railways, including monorail or metro were exempt from service tax under entry 14(a) of the notification.

Entry 14(a) has now been amended to **exclude monorail and metro from the scope of said exemption.** Thus, service tax will be payable on construction, erection, commissioning or installation of original works pertaining to monorail and metro. The exemptions covered under other items [(b) to (e)] of entry 14 of the notification are, however, not changed.

Further, it has been clarified by an explanation inserted to said item (a) that aforesaid exemption pertaining to monorail or metro will be available, where contracts were entered into before 01.03.2016, on which appropriate stamp duty, was paid.

[Effective from 01.03.2016]

(C) Restoration of exemptions withdrawn last year for projects, contracts which were entered into before withdrawal of the exemption

(i) With effect from 01.04.2015, exemption with respect to the following three out of six specified services of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration when

provided to the Government, a local authority, or a Governmental authority, was withdrawn:

(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

(b) a structure meant predominantly for use as

(i) an educational,

(ii) a clinical, or

(iii) an art or cultural establishment;

(c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the *Explanation* 1 to clause (44) of section 65B of the Finance Act, 1994.

The aforesaid exemption has been restored till 31.03.2020, by inserting a new Entry 12A, in respect of the services provided under a contract which had been entered into prior to 01.03.2015 and on which appropriate stamp duty, where applicable, had been paid prior to such date.

[Effective from 01.03.2016]

(ii) With effect from 01.04.2015, exemption with respect to services by way of construction, erection, commissioning or installation of original works pertaining to an airport or port was withdrawn.

The aforesaid exemption has been restored till 31.03.2020, by inserting a new Entry 14A, in respect of the services provided under a contract which had been entered into prior to 01.03.2015 and on which appropriate stamp duty, where applicable, had been paid prior to such date. The said exemption would be subject to production of certificate from the Ministry of Civil Aviation or Ministry of Shipping, as the case may be, that the contract had been entered into prior to 01.03.2015.

[Effective from 01.03.2016]

II. OTHER EXEMPTIONS

1. Services provided by BIRAC approved bio-incubators to incubatees also exempted

Notification No. 32/2012 ST dated 20.06.2012 exempts all taxable services provided by TBI/ STEP recognised by NSTEBD, Department of Science & Technology from service tax provided such TBI/ STEP have fulfilled the conditions prescribed in the said notification.

With effect from 01.04.2016, such exemption has also been extended to all taxable services provided by **bio-incubators recognized by the BIRAC, under Department of Biotechnology, Government of India** provided such bio-incubators have also fulfilled the aforesaid conditions. This amendment has been made vide ***Notification No. 12/2016 ST dated 01.03.2016***.

TBI stands for Technology Business Incubators

STEP stands for Science and Technology Entrepreneurship Parks

NSTEBD stands for National Science and Technology Entrepreneurship Development Board

BIRAC stands for Biotechnology Industry Research Assistance Council

[Effective from 01.04.2016]

2. Refund of Swachh Bharat Cess to SEZ units/developers

Notification No. 12/2013 ST dated 01.07.2013 exempts services received by a unit located in Special Economic Zone (SEZ) or a Developer of SEZ - which are used for the authorized operations - from whole of service tax leviable thereon. Exemption is *ab-initio* where services are used *exclusively* for the authorized operations and exemption is claimed. However, where *ab-initio* exemption is admissible but not claimed, refund of service tax is allowed. ***Notification No. 02/2016 ST dated 03.02.2016*** has amended the said notification to provide that along with service tax, refund of Swachh Bharat Cess is also available in such case.

Further, *Notification No. 12/2013 ST* provides that refund of service tax is also allowed in case where specified services are not *exclusively* used for the authorized operations. Service tax paid on the specified services that are common to the authorised operation in an SEZ and the operation in domestic tariff area [DTA unit(s)] is distributed amongst the SEZ Unit/Developer and the DTA unit (s) in the manner as prescribed in rule 7 of the CENVAT Credit Rules, 2004. The amount of service tax so distributed to SEZ unit/Developer is available as refund [hereinafter referred as (A)]. *Notification No. 02/2016* has amended the said notification to provide that refund of Swachh Bharat Cess in such case will be determined as follows:

$$= \left[\frac{(A) \times \text{Effective rate of Swachh Bharat Cess}}{\text{Rate of service tax}} \right] = \left(\frac{(A) \times 0.5}{14} \right)\%$$

[Effective from 03.02.2016]

3. Definition of specified services under *Notification No. 41/2012 ST dated 29.06.2012* amended

Notification No. 41/2012 ST dated 29.06.2012 grants rebate of service tax to the exporters of goods, on the **"specified services"** used in the export of such goods. Clause (i) of definition of specified services has been amended vide ***Notification No. 01/2016 ST dated 03.02.2016*** in the following manner:

Prior to Amendment	After the Amendment
"Specified services" means- (i) in the case of excisable goods, taxable services	"Specified services" means- (i) in the case of excisable goods, taxable services that have been used beyond

that have been used beyond the **place of removal**, for the export of said goods.	**factory or any other place or premises of production or manufacture of the said goods**, for their export.

Consequently, definition of 'place of removal' has been omitted in the said notification.

[Effective from 03.02.2016]

4. Service tax exempt on software recorded on media when RSP is required to be declared on the package

(i) With effect from 21.12.2010, media falling under Chapter 85 with recorded information technology software (ITS) has been notified under section 4A of the Central Excise Act. Accordingly, central excise duty/CVD is paid on the value of such media with recorded ITS and the assessable value of such media is required to be determined on the basis of the retail sale price (RSP) affixed on the package of such media under the Legal Metrology Act, 2009.

(ii) ***DOF No. 334/8/2016 TRU dated 29.02.2016*** explains that in respect of transactions involving supply of such media bearing RSP, not amounting to sale/deemed sale, service tax has been exempted. Thus, only central excise duty is levied on such transactions.

(iii) ***Notification No. 11/2016 ST dated 01.03.2016*** has been issued to exempt taxable ITS services from service tax when such ITS is recorded on a media* on which it is required, under the provisions of the Legal Metrology Act, 2009 or under any other law for the time being in force, to declare on package of such media, the retail sale price (RSP). The exemption is subject to the condition that-

(a) the value of the package of such media is determined under section 4A of the Central Excise Act, 1944 for the purpose of levy of excise duty or CVD (if imported); and

(b) (1) the appropriate excise duty has been paid by the manufacturer, duplicator or the person holding the copyright to such software, as the case may be, in respect of such media manufactured in India; or

(2) the appropriate customs duties including CVD have been paid by the importer in respect of such media which has been imported into India;

(c) service provider has made a declaration on the invoice that no amount in excess of the retail sale price of such media has been recovered from the customer.

(iv) Here, appropriate excise duty means duty leviable under section 3 of the Central Excise Act, 1944 and notification issued under section 5A(1) of the

Central Excise Act. Similarly, appropriate customs duties mean the duties of customs leviable under section 12 of the Customs Act, 1962 and any of the provisions of the Customs Tariff Act, 1975 and a notification issued under section 25(1) of the Customs Act.

* *under Chapter 85 of the First Schedule to the Central Excise Tariff Act, 1985*

[Effective from 01.03.2016]

(v) In certain situations like delivering customized software on media, such media with recorded ITS is not required to bear the RSP when supplied domestically or imported. There were difficulties in the assessment of such media to central excise duty/CVD besides giving rise to the issue of double taxation – levy of central excise duty/CVD as well as service tax.

(vi) ***DOF No. 334/8/2016 dated 29.02.2016*** further clarifies that in order to resolve the issue, media with recorded ITS which is not required to bear RSP, has been exempted from so much of the central excise duty/CVD as is equivalent to the duty payable on the portion of the value of such ITS recorded on the said media, which is leviable to service tax. In such cases, manufacturer/importer would therefore, be required to pay central excise duty/CVD only on that portion of value representing the value of the medium on which it is recorded along with freight and insurance. The exemption is subject to the fulfillment of certain conditions. Thus, the levy of central excise duty/CVD and service tax will be mutually exclusive ***[Notification No. 11/2016 CE and 11/2016 Cus. both dated 01.03.2016].***

5. Services provided under the Power System Development Fund Scheme of the Ministry of Power exempted from service tax

Exemption from service tax has been granted vide ***Notification No. 17/2015 ST dated 19.05.2015*** to taxable services provided under the Power System Development Fund Scheme of the Ministry of Power by way of-

(A) re-gasification of Liquefied Natural Gas (LNG)* imported by the Gas Authority of India Limited (GAIL);

(B) transportation of the incremental Re-gasified Liquefied Natural Gas (RLNG) (e-bid RLNG) to specified power generating companies or plants

subject to fulfillment of certain conditions prescribed in the exemption notification.

However, the exemption shall not be available if such RLNG and LNG are used for generation of electrical energy by captive generating plant as defined in section 2(8) of the Electricity Act, 2003.

Further, the exemption shall be valid only till 31.03.2017.

[Effective from 19.05.2015]

**Re-gasification is a process of converting Liquefied Natural Gas (LNG) back to natural gas at atmospheric temperature. Generally, natural gas is liquefied for ease of transportation.*

Abatements

1. Abatement *Notification No. 26/2012 ST dated 20.06.2012* has been amended vide ***Notification No. 8/2016 ST dated 01.03.2016*** **unless otherwise provided** as under:

Description of taxable service	% of abatement		Effective date	Change in conditions, if any
	Prior	After		
Transport by rail or vessel				
Transport of goods by rail* ***(other than service specified below)***	70	70	***01.04.2016***	***Condition providing that for claiming the abatement, CENVAT credit on input services used for providing the taxable service should not have been taken under the provisions of CENVAT Credit Rules, 2004, has been done away with. Thus, now CENVAT credit on input services can be taken along with the abatement benefit.***
Transport of goods in containers by rail by any person other than Indian Railways	70	***60***	***01.04.2016***	
Transport of passengers, with or without accompanied belongings by rail	70	70	***01.04.2016***	
Transport of goods in a vessel	70	70	***01.04.2016***	
Services of Goods Transport Agency				
Services of goods transport agency in relation to transportation of goods ***other than used household goods***	70	70	***01.04.2016***	Condition for availing abatement is unchanged whether the GTA service has been provided in relation to transportation of used household goods or any goods other than the same.
Services of goods transport agency in relation to transportation of used household goods	70	***60***	***01.04.2016***	
Other Services				
Services provided by a foreman of chit fund in relation to chit	Nil	***30***	***01.04.2016***	***CENVAT credit on inputs, capital goods and input services, used for providing the taxable service has***

				not been taken under the provisions of the CENVAT Credit Rules, 2004
Services by a tour operator in relation to,- ***(i) a tour, only for the purpose of arranging or booking accommodation for any person***	90	90	***01.04.2016***	No change in conditions
(ii) a tour other than (i) above**	75/60	***70***	***01.04.2016***	No change in conditions
Construction of a complex, building, civil structure or a part thereof, intended for a sale to a buyer, wholly or partly except where entire consideration is received after issuance of completion certificate by the competent authority	75/70	***70***	***01.04.2016***	No change in conditions

Note – The amendments made in the abatement notification are given in bold.

*****DOF No. 334/8/2016 TRU dated 29.02.2016*** *has clarified that service provided by the Indian Railways to Container Train Operators (CTOs) of haulage of their container train (rake of wagons with containers) is a service of "Transport of Goods by Rail" and is, therefore, eligible for abatement and tax treatment accordingly, that is, for abatement at the rate of 70% with credit of input services.*

***Consequently, with effect from 01.04.2016, definition of 'package tour' has been omitted.*

Cost of fuel to be included in consideration charged for availing abatement for renting of motor cab service

For the purposes of abatement with respect to renting of motor cab service, the amount charged shall be the sum total of the amount charged for the service including the **fair market value of all goods (including fuel)** and services supplied by the recipient(s) in or in relation to the service, whether or not supplied under the same contract or any other contract.

However, the fair market value of goods and services so supplied may be determined in accordance with the generally accepted accounting principles.

[Effective from 01.04.2016]

2. 70% abatement available on ancillary services provided by a GTA in the course of transportation of goods

It has been clarified that ancillary services such as loading/ unloading, packing/unpacking, transshipment, temporary storage etc., would form part of the goods transport agency's (GTA) service if such services are provided by a GTA in the course of transportation of goods and the charges for such services are included in the invoice issued by the GTA, and not by any other person. Thus, abatement of 70%, applicable to GTA service, would also be available to the ancillary services. In other words, a single composite service need not be broken into its components and need not be considered as constituting separate services, if it is provided as such in the ordinary course of business. Thus, a composite service should be treated as a single service based on the main or principal service.

It has also been clarified that in cases where GTA undertakes to deliver goods at a destination within a stipulated time, it should be considered as services of GTA in relation to transportation of goods. Thus abatement of 70% will be applicable if the entire transportation of goods is by road and the GTA issues a consignment note, by whatever name called.

[Circular No. 186/5/2015 ST dated 05.10.2015]

Note: The above Circular refers to only one rate of abatement for service of transportation of goods by a Goods Transport Agency as the same was issued prior to the categorization of services of goods transport agency into transportation of used household goods and other goods.

CHAPTER 6: SERVICE TAX PROCEDURES

1. Following amendments have been made in Service Tax Rules, 1994 vide ***Notification No. 19/2016 ST dated 01.03.2016,*** **unless specified otherwise:**

(i) Service tax on legal services provided by senior advocate to be paid under forward charge [Rule 2(1)(d)(i)(D)(ii)]

Prior to 01.04.2016, rule 2(1)(d)(i)(D)(II) laid down that in relation to service provided by an individual advocate or a firm of advocates by way of legal services, to any business entity located in the taxable territory, the recipient of such service is the person liable to pay service tax.

Rule 2(1)(d)(i)(D)(II) has been amended to provide that in relation to service provided by a firm of advocates or an individual advocate other than a senior advocate by way of legal services, the recipient of such service will be the person liable to pay service tax. Thus, in case of legal services provided by a senior advocate service tax would be payable under forward charge. It may be recalled that with effect from 01.04.2016, exemption available on services provided by a senior advocate to an advocate or partnership firm of advocates has been withdrawn *[Refer Chapter 5: Exemptions and Abatements]*.

Consequential amendments have also been made under *Reverse Charge Notification No. 30/2012 ST dated 20.06.2012* vide ***Notification No. 18/2016 ST dated 01.03.2016.***

[Effective from 01.04.2016]

(ii) Service tax levy shifted from reverse charge to forward charge in case of services provided by mutual fund agents/distributors to a mutual fund/asset management company [Rule 2(1)(d)(i)]

In Union Budget, 2015, as a policy decision to prune exemptions, the exemption to services provided by mutual fund agents/distributors to a mutual fund or an asset management company was withdrawn. However, these services were put under reverse charge liability, i.e., the Mutual Fund or the Asset Management Company were made liable to pay service tax for the services received from such agents/distributors. Item (EEA) was inserted in rule 2(1)(d)(i) to provide that in relation to service provided by a mutual fund agent or distributor to a mutual fund or asset management company, the recipient of the service will be the person liable to pay service tax.

Rule 2(1)(d)(i)(EEA), however, has been deleted this year to the effect that such services have now been put under forward charge, i.e. the mutual fund agents/distributors (service provider) have been made liable to pay service tax. The small sub-agents down the distribution chain will still be eligible for small service provider exemption [threshold turnover of ₹ 10 lakh/year].

Consequential amendment has also been made under *Reverse Charge Notification No. 30/2012 ST dated 20.06.2012* vide ***Notification No. 18/2016 ST dated 01.03.2016.***

[Effective from 01.04.2016]

(iii) Facility of (a) quarterly payment of service tax and payment of service tax on receipt basis extended to OPC having service turnover upto ₹ 50 lakh in the previous financial year (b) quarterly payment of service tax extended to HUF [Rule 6(1)]

The concept of One Person Company (OPC) in India was introduced through the Companies Act, 2013 to support entrepreneurs who on their own are capable of starting a venture by allowing them to create a single person economic entity with limited liability. OPC has been defined in section 2(62) of the Companies Act, 2013.

The benefits of quarterly payment of service tax and payment of service tax on receipt basis, which are available to individual and partnership firms, have been extended to OPC whose aggregate value of services provided from one or more premises is up to ₹ 50 lakh in the previous financial year.

Further, the benefit of quarterly payment of service tax has also been extended to HUF.

Rule 6 which deals with the payment of service tax and prescribes relaxation for individual or proprietary firm or partnership firm, has been amended accordingly.

[Effective from 01.04.2016]

(iv) Composition rate in case of single premium annuity policies to be 1.4% of the single premium charged [Rule 6(7A)]

Sub-rule (7A) of rule 6 provides an option to an insurer carrying on life insurance business to pay tax:

(i) on the gross premium charged from a policy holder reduced by the amount allocated for investment, or savings on behalf of policy holder, if such amount is intimated to the policy holder at the time of providing of service;

(ii) in all other cases, 3.5% of the premium charged from policy holder in the first year and 1.75% of the premium charged from policy holder in the subsequent years;

towards the discharge of his service tax liability instead of paying service tax at the rate specified in section 66B of the Finance Act, 1994.

A new clause (ia) has been inserted in sub-rule (7A) of rule 6 to rationalize the service tax liability on single premium annuity (insurance) policies other than the ones covered in clause (i) above (i.e. in cases where the amount allocated for investment or savings in behalf of policy holder is not intimated to the policy holder at the time of providing of service). Now, the effective alternate service tax rate

(composition rate) in case of such single premium annuity policies would be **1.4%** of the single premium charged from the policy holder.

[Effective from 01.04.2016]

(v) Composition rates fixed for Swachh Bharat Cess for air travel agents, life insurance, foreign exchange and lottery [New sub-rule (7D) of rule 6]

Sub-rules (7), (7A), (7B) and (7C) of rule 6, provide for alternative rates of service tax in case of four services namely, service of booking of tickets for travel by air provided by an air travel agent, life insurance service, purchase or sale of foreign currency including money changing and promotion, marketing, organising/assisting in organising lottery.

A new sub-rule (7D) has been inserted in rule 6 vide ***Notification No. 25/2015 ST dated 12.11.2015*** to fix the alternative rate for Swachh Bharat Cess (SBC) for these services which is service tax liability, computed on the basis of alternative rates provided under sub-rules (7), (7A), (7B) or (7C), as the case may be, multiplied by 0.5 and dividing the product by 14. The said option once exercised, will apply uniformly in respect of such services and cannot be changed during a financial year under any circumstances.

[Effective from 15.11.2015]

(vi) Provisions introduced for filing of Annual Returns [Rule 7]

Rule 7 prescribes the provisions for filing returns. The following amendments have been made in rule 7:

(a) A new sub-rule (3A) has been inserted in rule 7 to provide that notwithstanding anything contained in sub-rule (1), every assessee will submit an annual return for the financial year to which the return relates by the 30th day of November of the succeeding financial year. The form and manner of filing the return will be specified in the notification by the CBEC.

(b) Sub-rule (4) of rule 7, which empowers the CBEC to extend the due date for filing of ST-3 returns under circumstances of special nature, has been amended to provide that CBEC may also extend the due date for filing of such Annual Return under circumstances of special nature.

(c) Another new sub-rule (3B) has been inserted in rule 7 to provide that the Central Government may, subject to such conditions or limitations, exempt an assessee or class of assessees from filing such annual return.

[Effective from 01.04.2016]

(vii) Annual return filed by the due date may be revised within 1 month from the date of its submission [Rule 7B(2)]

Rule 7B prescribes the provisions for revision of ST-3 returns. A new sub-rule (2) has been inserted in rule 7B to provide that an assessee who has filed the Annual

Return under sub-rule (3A) of rule 7 by the due date may submit a revised return within a period of 1 month from the date of submission of the said annual return.

[Effective from 01.04.2016]

(viii) Delayed filing of Annual Return to attract a late fee of ₹ 100 per day for the period in default subject to a maximum of ₹ 20,000 [Rule 7C(2)]

Rule 7C prescribes the amount to be paid for delay in furnishing ST-3 returns. A new sub-rule (2) has been inserted in rule 7C to provide that where the Annual Return under sub-rule (3A) of rule 7 is filed by the assessee after the due date, the assessee will have to pay to the credit of the Central Government, an amount calculated at the rate of ₹ 100 per day for the period of delay in filing of such return, subject to a maximum of ₹ 20,000.

[Effective from 01.04.2016]

2. Service tax payable by the recipient of service in relation to ALL services provided by Government to business entities (except specified services) from April 1, 2016

In relation to certain **support services** provided or agreed to be provided by Government or local authority to any business entity located in the taxable territory, the person liable to pay service tax was the recipient of service.

However, consequent to the amendment made by the Finance Act, 2015 in section 66D(a)(iv) of Finance Act, 1994, all services provided by Government/local authority to a business entity had been removed from the negative list and not just support services. Therefore, rule 2(1)(d)(i)(E) had been amended to provide that in case of **all** taxable services (and not just support services) provided or agreed to be provided by Government/ local authority (excluding certain specified services) to any business entity located in the taxable territory, service tax would be payable by recipient of such service.

However, the amendment in the negative list did not become effective with the enforcement of the Finance Act, 2015 and was to be become effective from a date to be notified later on. Thus, the amendment in rule 2(1)(d)(i)(E) was also not made effective.

Now, since the amendment in the negative list has become effective from 01.04.2016, the amendment in the rules has also become effective from 01.04.2016 vide ***Notification No. 17/2016 ST dated 01.03.2016***.

Similarly, the amendment in the *Reverse Charge Notification No. 30/2012 ST dated 20.06.2012* has also become effective from 01.04.2016 vide ***Notification No. 16/2016 ST dated 01.03.2016***. Further, a consequential amendment has also been made under the said notification vide ***Notification No. 18/2016 ST dated 01.03.2016.***

[Effective from 01.04.2016]

3. Reserve Bank of India and State Electricity Board/Electricity Distribution or Transmission Licensee/any other entity authorized for such functions to file Annual Information Return in respect of specified transactions

(i) Section 15A of the Central Excise Act, 1944 empowers the Central Government to

prescribe an authority or agency with whom an Information Return shall be filed by the specified persons. Provisions of section 15A apply to service tax law also vide section 83 of the Finance Act, 1994.

(ii) In exercise of the powers conferred by section 15A, read with section 37 of the Central Excise Act, 1944 and section 94, read with section 83 of the Finance Act, 1994, the Central Government has issued **Service Tax and Central Excise (Furnishing of Annual Information Return) Rules, 2016 vide *Notification No. 4/2016 ST dated 15.02.2016.*** These rules have come into force from 01.04.2016.

(iii) Rule 3 of the said rules requires the **Reserve Bank of India (RBI)** to furnish an Annual Information Return giving details of foreign remittances for the receipt of certain specified services for such entities whose value of remittances aggregates to more than ₹ 50 lakh in a financial year to which the return pertains.

(iv) Similarly, a **State Electricity Board (SEB) or an Electricity Distribution or Transmission Licensee under the Electricity Act 2003 (EDTL), or any other entity entrusted with such functions by the Central Government or State Government** will have to furnish the Annual Information Return. The return will be in respect of the electricity consumed by such manufacturers, using an induction furnace or rolling mill to manufacture goods falling under Section XV of the First Schedule to the Central Excise Tariff Act, 1985 whose aggregate value of clearances exceeds ₹ 150 lakh in the financial year to which the return pertains. Such manufacturers will be identified and intimated to SEB/EDTL/other entity by the Principal Chief Commissioner or Chief Commissioner incharge of the Central Excise or Service Tax Zone, by 30th June of the subsequent financial year.

(v) Rule 4 provides that such Information Return referred will be filed electronically with the Directorate General of Systems and Data Management by 31st December of the financial year following the financial year to which the return pertains. The Board can, however, extend such due date.

[Effective from 01.04.2016]

CHAPTER 7: DEMAND, ADJUDICATION AND OFFENCES

1. Monetary threshold limits enhanced for prosecution and arrest in central excise and service tax

Prosecution

Revised guidelines have been issued on prosecution under central excise and service Tax. The significant aspects of the guidelines are:

(a) Monetary limit: Prosecution will normally not be launched unless evasion of central excise duty or service tax, or misuse of CENVAT credit in relation to offences specified under section 9(1) of the Central Excise Act, 1944 or section 89(1) of the Finance Act, 1994 is equal to or more than **₹ 1 crore**. It may be noted that though there is no change in the monetary limits (₹ 50 lakh) prescribed under the concerned sections, these directions have been issued to optimally utilize limited resources of the Department.

(b) Habitual evaders: Notwithstanding the above limits, prosecution can be launched in the case of a company/ assessee habitually evading tax/ duty or misusing CENVAT credit facility.

A company/ assessee would be treated as habitually evading tax/ duty or misusing CENVAT credit facility, if it has been involved in 3 or more cases of confirmed demand (at the first appellate level or above) of central excise duty or service tax or misuse of CENVAT credit involving fraud, suppression of facts etc. in past 5 years from the date of the decision such that the total duty or tax evaded or total credit misused is equal to or more than ₹ **1 crore**.

(c) Authority to sanction prosecution: The criminal complaint for prosecuting a person can be filed only after obtaining the sanction of the Principal Chief/Chief Commissioner of Central Excise or Service Tax as the case may be. Once the sanction for prosecution has been obtained, criminal complaint in the court of law will be filed as early as possible by an officer of the jurisdictional Commissionerate authorized by the Commissioner.

(d) Cases when prosecution would not be filed: Prosecution would not be filed merely because a demand has been confirmed in the adjudication proceedings particularly **in cases of technical nature or where interpretation of law is involved.**

(e) Adequacy of evidence: One of the important considerations for deciding whether prosecution can be launched is the availability of adequate evidence. The standard of proof required in a criminal prosecution is higher as the case has to be established beyond reasonable doubt whereas the adjudication proceedings are decided on the basis of preponderance of probability. Therefore, even cases where demand is confirmed in adjudication proceedings, evidence collected would be

weighed so as to likely meet the test of being beyond reasonable doubt for recommending prosecution. Decision will be taken on case-to-case basis considering various factors, such as, nature and gravity of offence, quantum of duty/tax evaded or CENVAT credit wrongly availed and the nature as well as quality of evidence collected.

(f) Stage for launching of prosecution: Normally, prosecution may be launched immediately on completion of adjudication proceedings.

If the party deliberately delays completion of adjudication proceedings, prosecution may be launched even during the pendency of the adjudication proceedings, where offence is grave and qualitative evidences are available [in view of the decision of Supreme Court in case of *Radhe Shyam Kejriwal 2011 (266) ELT 294* [discussed in detail under Customs section].

[Circular No.1009/16/2015 CX dated 23.10.2015]

Arrest

Pursuant to the enhancement in prosecution limits, monetary limits for arrest have also been enhanced. Henceforth, arrest of a person in relation to offences specified under clauses (a) to (d) of section 9(1) of the Central Excise Act, 1944 or under clauses (i) or (ii) of section 89(1) of the Finance Act, 1994, may be made in cases where the evasion of central excise duty/ service tax or the misuse of CENVAT credit is equal to or more than **₹ 1 crore.**

[Circular No.1010/17/2015 CX dated 23.10.2015]

2. Clarification on provisions of section 73, 76 and 78 of the Finance Act, 1994 and section 11AC of the Central Excise Act, 1944 after amendments made vide Finance Act, 2015

Consequent to the amendments made to section 73, 76 and 78 of the Finance Act, 1994 and section 11AC of the Central Excise Act, 1944, vide Finance Act, 2015 with effect from 14.05.2015, following clarifications have been issued with regard to detections made during audit, investigation or scrutiny:

Waiver of written show cause notice by assessee

(i) In a case involving the extended period of limitation, if an assessee pays the service tax/central excise duty, interest and penalty equal to 15% of the tax/duty and makes a request in writing that a written SCN may not be issued to them, then in such cases the SCN can be oral and the representation (if he desires) against it also oral. In other words, an assessee can request for an informed waiver of a written SCN.

(ii) The Supreme Court in the case of *Commissioner of Customs, Mumbai versus Virgo Steels reported in 2002(141) ELT 598 (SC) = 2002-TIOL-1572-SC-CUS-LB* has held that:

"14. From the ratio laid down by the Privy Council and followed by this Court in the above cited judgments, it is clear that even though a provision of law is mandatory

in its operation if such provision is one which deals with the individual rights of person concerned and is for his benefit, the said person can always waive such a right.

15. Bearing in mind the above decided principle in law, if we consider the mandatory requirement of issuance of notice under Section 28 of the Act, it will be seen that that requirement is provided by the Statute solely for the benefit of the individual concerned, therefore, he can waive that right. In other words, this Section casts a duty on the Officer to issue notice to the person concerned of the proposed action to be taken. This is not in the nature of a public notice nor any person, other than the person against whom the proceedings are initiated, has any right for such a notice. Thus, the right of notice being personal to the person concerned the same can be waived by that person.

16. If the above position in law is correct, which we think it is. M/s Virgo Steels, having specifically waived its right for a notice, cannot now be permitted to turn around and contend that the proceedings initiated against them are void for want of notice under Section 28 of the Act, so as to frustrate the statutory duty of the Revenue to demand and collect customs duty which M/s Virgo Steels had intentionally evaded."

(iii) Although this decision is in relation to section 28 of the Customs Act, 1962, the principles laid down are equally applicable to SCNs issued under other statutes. Hence, an assessee can waive the requirement of a written SCN.

(iv) Further, section 124 of the Customs Act, 1962 provides, *inter alia,* that no order confiscating any goods or imposing any penalty on any person shall be made unless the owner of the goods or such person is given a notice in writing, an opportunity of making a representation in writing and a reasonable opportunity of being heard. The section also provides that the notice and the representation may, at the request of the person concerned, be oral. This provision has been made applicable to the Central Excise Act, 1944 vide *Notification number 68/63 CE dated 04.05.1963* issued under section 12 of the Central Excise Act. 1944. The said section of the Central Excise Act is also applicable to service tax vide section 83 of the Finance Act, 1994.

(v) If the grounds on which the department feels that there has been short/non-payment of tax/duty are intimated to the assessee orally with its quantification and the assessee indicates in writing that he has been informed about such grounds and he accepts the grounds and the quantification and is waiving the requirement of a written SCN, then a written SCN need not be issued.

(vi) It is to be noted that clause (i) of the second proviso to section 78 of the Finance Act, 1994 and clause (d) of sub-section (1) of section 11AC of the Central Excise Act, 1944 refer to a 30 day period, from the date of service of the notice, within which the assessee may make the payment of tax/duty, interest and reduced penalty of 15%. In case the assessee makes a written request for waiver of a

written SCN, the 30 day period can be computed from the date of receipt of such a letter by the department.

(vii) There is no bar on an assessee making the payment of tax/duty, interest and reduced penalty of 15% even before the date of receipt of such a letter by the department. Such an assessee cannot be placed on a worse footing than one who pays tax/duty, interest and reduced penalty of 15% within 30 days of the receipt of the SCN/receipt of letter by the department.

Conclusion of proceedings

(i) Conclusion of proceedings may be approved by an officer equal in rank to the officer who is competent to adjudicate such cases.

(ii) The conclusion of proceedings should invariably be intimated to the assessee in writing. There is no need to issue an adjudication order. Further, there is no need to undertake review of such conclusion of proceedings.

(iv) As per section 73(3) of the Finance Act, 1994, in cases not involving fraud, suppression of facts, etc, if the assessee pays the tax and interest thereon, on the basis of his own ascertainment or that ascertained by the department, no penalty is payable and no show cause notice shall be served under sub-section (1) of section 73 in respect of the amount so paid.

(v) As per provisions of clause (i) of proviso to section 76, in such cases not involving fraud, suppression of facts, etc, if the tax and interest thereon is paid within 30 days of the issuance of SCN, no penalty shall be payable and the proceedings shall be deemed to be concluded.

(vi) Provisions of section 73 and 76 have to be read harmoniously to conclude that in cases not involving fraud, suppression of facts, etc., if the assessee pays the tax along with interest, **either within 30 days of issuance of SCN or before the issuance of SCN,** then in such cases proceedings shall be deemed to be concluded.

(vii) Legal provisions for similar closure in central excise are present in clause (a) of sub-section (1) of section 11 AC of the Central Excise Act, 1944.

[Instruction F.No.137/46/2015 ST dated 18.08.2015]

SECTION C: CUSTOMS AND FOREIGN TRADE POLICY

Significant Notifications and Circulars issued between 1st May, 2015 and 30th April, 2016

CHAPTER 2: LEVY OF AND EXEMPTIONS FROM CUSTOMS DUTY

1. New Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2016 notified

The existing Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996 have been substituted with the new Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2016 vide ***Notification No. 32/2016 Cus (NT) 01.03.2016 (further amended by Notification No. 39/2016 Cus (NT) 15.03.2016***). The new rules aim to simplify the rules, including allowing duty exemptions to importer/manufacturer based on self-declaration as against the earlier practice of obtaining permissions from the central excise authorities. Need for additional registration has also been done away with.

The new rules have become effective from 16.3.2016. The salient features of the new rules are discussed hereunder:

(1) Application [Rule 2]

(i) These rules will apply to an importer, being a manufacturer, who intends to avail the benefit of an exemption notification issued under section 25(1) of the Customs Act, 1962 (hereinafter referred to as manufacturer) granting exemption of duty to **imported goods used for the manufacture of any excisable commodity**, even if such excisable commodity is not chargeable to excise duty or is exempted from whole of excise duty.

(ii) These rules will apply only in respect of such exemption notification which provides for the observance of these rules.

(2) Information about intent to avail benefit of exemption notification [Rule 4]

(i) The manufacturer will provide the following information to the jurisdictional Deputy/Assistant Commissioner of Central Excise, namely-,

(1) the name and address of the manufacturer,

(2) the excisable goods produced in his factory,

(3) the nature and description of imported goods used in the manufacture of such goods.

(ii) If the manufacturer is not registered, such manufacturer will obtain central excise registration and provide the said particulars to Deputy/Assistant Commissioner of Central Excise.

(3) Procedure to be followed [Rule 5]

(i) The manufacturer will provide information –

(a) in duplicate, to the jurisdictional Deputy/Assistant Commissioner of Central Excise in respect of the estimated quantity and value of the goods to be imported, particulars of the exemption notification applicable on such import and the port of import in respect of a particular consignment for a period not exceeding 1 year; and

(b) one set, to the Deputy/Assistant Commissioner of Customs at the port of importation.

(ii) The manufacturer will submit a continuity bond with such surety undertaking to pay the amount equal to the difference between the duty leviable on such inputs but for the exemption and that already paid, if any, at the time of importation, along with applicable interest. Interest will be payable for the period starting from the date of importation of the goods on which the exemption was availed and ending with the date of actual payment of the entire amount of the difference of duty that he is liable to pay.

(iii) The Deputy/Assistant Commissioner of Central Excise will forward one copy of information received from the manufacturer to the Deputy/Assistant Commissioner of Customs at the port of importation.

(iv) On receipt of the copy of the information, the Deputy/Assistant Commissioner of Customs at the port of importation will allow the benefit of the exemption notification to manufacturer. The said manufacturer, while filing bill of entry under section 46 of the Act, will, *inter-alia*, provide the details of his registration number of the factory where the inputs are meant to be used.

(4) Manufacturer who intends to avail the benefit of an exemption notification to give information regarding receipt of imported goods and maintain records [Rule 6]

(i) The manufacturer will provide the information of the receipt of the imported goods in his factory within two days (excluding holidays, if any) to the jurisdictional Superintendent of Central Excise. He will maintain the account of quantity and value of goods imported, the quantity of imported goods consumed in accordance with provisions of the exemption notification, the quantity of goods re-exported, if any, under rule 7 and the quantity remaining in stock, bill of entry wise and will produce the said account as and when required.

(ii) The manufacturer will submit a quarterly return by 10th day of the following quarter.

(5) Re-export or clearance of unutilized or defective goods [Rule 7]

(i) The manufacturer who has availed the benefit of exemption notification may re-export the unutilized or defective imported goods, with the permission of the

jurisdictional Deputy/Assistant Commissioner of Central Excise within 3 months from the date of import. However, the value of such goods for re-export should not be less than the value of the said goods at the time of import.

(ii) Such manufacturer may also clear the unutilized or defective imported goods, with the permission of the jurisdictional Deputy/Assistant Commissioner of Central Excise within a period of 3 months from the date of import on payment of import duty equal to the difference between the duty leviable on such goods but for the exemption availed and that already paid, if any, at the time of importation along with applicable interest. Interest will be payable for the period starting from the date of importation of the goods on which the exemption was availed and ending with the date of actual payment of the entire amount of the difference of duty that he is liable to pay.

(6) Recovery of duty in certain case [Rule 8]

The manufacturer who has availed the benefit of an exemption notification should use the goods imported in accordance with the conditions mentioned in the concerned exemption notification or take action under rule 7. In the event of any failure, the Deputy/Assistant Commissioner of Central Excise will invoke the Bond to initiate the recovery proceedings of the amount equal to the difference between the duty leviable on such goods but for the exemption and that already paid, if any, at the time of importation, along with applicable interest.

[Effective from 16.03.2016]

CHAPTER 7: IMPORTATION, EXPORTATION AND TRANSPORTATION OF GOODS

1. New Baggage Rules, 2016 notified

The existing Baggage Rules, 1998 have been substituted with the new Baggage Rules, 2016 vide ***Notification No. 30/2016 Cus (NT) dated 01.03.2016 (further amended by Notification No. 43/2016 Cus (NT) dated 31.03.2016).*** The new rules aim to simplify and rationalize multiple slabs of duty free allowance for various categories of passengers.

The new rules have come into effect from 01.04.2016. The salient features of the new rules are discussed hereunder:

(i) **General duty free baggage allowance:** The general duty free baggage allowance for different class of passengers coming from different countries is given hereunder:

Rule No.	Class of passenger	Origin country from which the passenger is coming	Articles allowed free of duty
3	Indian resident or Foreigner residing in India or Tourist of Indian origin, excluding an infant	Any country other than Nepal, Bhutan or Myanmar	(i) Used personal effects and travel souvenirs; and (ii) Articles up to the value of **₹ 50,000** (excluding articles mentioned in Annexure I), if carried on in person or in the accompanied baggage of the passenger
3	Tourist of foreign origin excluding infant	Any country other than Nepal, Bhutan or Myanmar	(i) Used personal effects and travel souvenirs; and (ii) Articles up to the value of **₹ 15,000** (excluding articles mentioned in Annexure I), if carried on in person or in the accompanied baggage of the passenger
4	Indian resident or Foreigner residing in India or Tourist, excluding an infant	Nepal, Bhutan or Myanmar	(i) Used personal effects and travel souvenirs; and (ii) Articles up to the value of **₹ 15,000** (excluding articles mentioned in Annexure I), if carried on in person or in the accompanied baggage of the passenger **On arriving by land:** Only used personal effects.

(ii) When a passenger is an infant, only used personal effects will be allowed duty free. The general duty free baggage allowance of a passenger cannot be pooled with the general duty free baggage allowance of any other passenger.

(a) **"Infant"** means a child not more than two years of age;

(b) **"Resident"** means a person holding a valid passport issued under the Passports Act, 1967 and normally residing in India;

(c) **"Tourist"** means a person not normally resident in India, who enters India for a stay of not more than six months in the course of any twelve months period for legitimate non-immigrant purposes;

(d) **"Personal effects"** means things required for satisfying daily necessities but does not include jewellery.

(iii) **Jewellery Allowance [Rule 5]:**

Rule No.	Class of passenger	Origin country from which the passenger is coming	Articles allowed free of duty
5	Passenger residing abroad for more than one year	Any country	**Gentleman:** Jewellery upto a weight of **20 gms with a value cap of ₹ 50,000** **Lady passenger:** Jewellery upto a weight of **40 gms with a value cap of ₹ 1,00,000**

(iv) **Transfer of residence [Rule 6]:** A person, who is engaged in a profession abroad, or is transferring his residence to India, will be allowed duty free clearance of articles on his return in the manner given in the Appendix below. This allowance would be in addition to the general duty free baggage allowance under rule 3 or 4, as the case may be.

Appendix

Duration of stay abroad	Articles allowed free of duty	Conditions	Relaxation
From 3 months upto 6 months	Personal and household articles, other than those mentioned in Annexure I or Annexure II but including articles mentioned in	Indian passenger	-

	Annexure III upto an aggregate value of ₹ 60,000		
From 6 months upto 1 year	Personal and household articles, other than those mentioned in Annexure I or Annexure II but including articles mentioned in Annexure III, upto an aggregate value of ₹ 1,00,000	Indian passenger	-
Minimum stay of 1 year during the preceding 2 years	Personal and household articles, other than those mentioned in Annexure I or Annexure II but including articles mentioned in Annexure III upto an aggregate value of ₹ 2,00,000	The Indian passenger should not have availed this concession in the preceding 3 years.	-
Minimum stay of 2 years or more	Personal and house household articles, other than those listed at Annexure I or Annexure II but including articles mentioned in Annexure III upto an aggregate value of ₹ 5,00,000	(i) Minimum stay of 2 years abroad, immediately preceding the date of his arrival on transfer of residence;	The shortfall of upto 2 months in stay abroad can be condoned by Deputy/ Assistant Commissioner of Customs if the early return is on account of - (i) terminal leave or vacation being availed of by the passenger; or (ii) any other special circumstances for reasons to be

			recorded in writing.
		(ii) Total stay in India on short visit during the two preceding years should not exceed 6 months; and	The Principal Commissioner/ Commissioner may condone short visits in excess of 6 months in special circumstances for reasons to be recorded in writing.
		(iii) Passenger has not availed this concession in the preceding 3 years.	No relaxation

(v) **Currency [Rule 7]:** The import and export of currency under these rules will be governed in accordance with the provisions of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015, and the notifications issued thereunder.

(vi) **Unaccompanied Baggage [Rule 8]:** The various provisions in the above rules are also applicable to the unaccompanied baggage, unless specifically excluded, if unaccompanied baggage had been in possession, abroad, of the passenger and is dispatched within 1 month of his arrival in India or such further period as the Deputy/Assistant Commissioner may allow.

The said unaccompanied baggage can also land in India upto 2 months before the arrival of the passenger. However, if the passenger is not able to arrive in India within two months due to circumstances beyond his control like sudden illness to himself or any member of family, natural calamities, disturbed conditions, disruption of the transport or travel arrangements in the country etc., the Deputy/Assistant Commissioner may extend the said period of 2 months upto a maximum of 1 year for reasons to be recorded.

(vii) **Crew baggage [Rule 9]:** These baggage rules are also applicable to the members of the crew engaged in foreign going conveyance for importation of their baggage, when they are finally paid off on termination of their engagement. However, other crew members of a vessel and aircraft will be allowed to bring items like chocolates, cheese, cosmetics and other petty gift items for their personal or family use for a value not exceeding ₹ 1500.

(viii) Family, under these rules, includes all persons who are residing in the same house and form part of the same domestic establishment.

(ix) Goods listed in Annexure I, II and III are given below:

ANNEXURE–I

(See rule 3, 4 and 6)

1. Fire arms.
2. Cartridges of fire arms exceeding 50.
3. Cigarettes exceeding 100 sticks or cigars exceeding 25 or tobacco exceeding 125 gms.
4. Alcoholic liquor or wines in excess of two litres.
5. Gold or silver in any form other than ornaments.
6. Flat Panel (Liquid Crystal Display/Light-Emitting Diode/ Plasma) television.

ANNEXURE–II

(See rule 6)

1. Colour Television.
2. Video Home Theatre System.
3. Dish Washer.
4. Domestic Refrigerators of capacity above 300 litres or its equivalent.
5. Deep Freezer.
6. Video camera or the combination of any such Video camera with one or more of the following goods, namely:-
   (a) television receiver;
   (b) sound recording or reproducing apparatus;
   (c) video reproducing apparatus.
7. Cinematographic films of 35 mm and above.
8. Gold or Silver, in any form, other than ornaments.

ANNEXURE III

(See rule 6)

1. Video Cassette Recorder or Video Cassette Player or Video Television Receiver or Video Cassette Disk Player.
2. Digital Video Disc player.

3. Music System.
4. Air-Conditioner.
5. Microwave Oven.
6. Word Processing Machine.
7. Fax Machine.
8. Portable Photocopying Machine.
9. Washing Machine.
10. Electrical or Liquefied Petroleum Gas Cooking Range
11. Personal Computer (Desktop Computer)
12. Laptop Computer (Note book Computer)
13. Domestic Refrigerators of capacity up to 300 litres or its equivalent.

Consequential amendments have been made in Customs Baggage Declaration Regulations, 2013 vide ***Notification No. 31/2016 Cus (NT) 01.03.2016***. Further, under the amended Regulations, the baggage declaration will have to be filed only by those passengers who carry dutiable or prohibited goods or have anything to declare.

Notification No. 136/1990 Cus dated the 20th March, 1990 providing the effective rate of duty on baggage of the passengers after availing the duty free concession has been superseded by ***Notification No. 26/2016 Cus dated 31.03.2016.*** The rate of duty, however, remains at 35%. This rate of duty is not applicable to fire arms, cartridges of fire arms exceeding 50, cigarettes, cigars or tobacco in excess of the quantity prescribed for importation free of duty under the relevant baggage rules and goods imported through a courier service.

[Effective from 01.04.2016]

Earlier, the domestic passengers travelling along with international passengers in the international flight flying in its domestic leg were required to file Customs Declaration Form. Now, the domestic passengers who board international flights in the domestic leg are not required to file the Customs Baggage Declaration Form.

[Circular No. 08/2016 Cus dated 08.03.2016]

2. Vessels carrying exclusively coastal goods exempted from the provisions of sections 92, 93, 94, 95, 97 and 98(1) of the Customs Act, 1962

(i) All vessels carrying exclusively coastal goods have been exempted from the provisions of sections 92, 93, 94, 95, 97 and 98(1) of the Customs Act, 1962 vide ***Notification No. 56/2016 Cus (NT) dated 27.04.2016***. Earlier, such vessels were exempted from the provisions of sections 92, 93, 94, 97 and 98(1) of the Customs Act, 1962. Thus, the exemption from the provisions of section 95 was not available earlier.

[Effective from 27.04.2016]

(ii) In case of vessels carrying exclusively coastal goods and operating from berths used by vessels carrying imported goods or export goods, provisions of sections 30 and 41 of the Customs Act, 1962 have been made applicable. The person-in-charge of such vessel or his agent will deliver to the proper officer, a coastal manifest, prior to the arrival of the vessel or departure, as the case may be. A new format for filing a coastal manifest in respect of such vessels, has been notified vide ***Notification No. 57/2016 Cus (NT) dated 27.04.2016.*** Sections 30 and 41 provide for delivery of Import General Manifest/Import Report or Export Manifest/Export Report respectively.

[Effective from 27.04.2016]

(iii) ***Circular No. 14/2016 Cus 27.04.2016*** has clarified that *Circular No. 40/97 Cus dated 19.09.97* issued by the CBEC on this subject has been withdrawn consequent to the change in position of law.

(iv) The revised procedure shall apply to Indian vessels, Indian flag foreign vessels or foreign vessels eligible for cabotage* relaxation issued by the Ministry of Shipping.

(v) There shall be no examination of the coastal goods.

(vi) Random checks may be carried out from time to time to ensure that no export goods or imported goods are inadvertently or by intention loaded onto such coastal vessels.

Relevant extract of the sections mentioned above

Section 92 - Entry of coastal goods

(1) The consignor of any coastal goods shall make an entry thereof by presenting to the proper officer a bill of coastal goods in the prescribed form.

(2) Every such consignor while presenting a bill of coastal goods shall, at the foot thereof, make and subscribe to a declaration as to the truth of the contents of such bill.

Section 93 - Coastal goods not to be loaded until bill relating thereto is passed, etc.

The master of a vessel shall not permit the loading of any coastal goods on the vessel until a bill relating to such goods presented under section 92 has been passed by the proper officer and has been delivered to the master by the consignor.

Section 94 - Clearance of coastal goods at destination

(1) The master of a vessel carrying any coastal goods shall carry on board the vessel all bills relating to such goods delivered to him under section 93 and shall, immediately on arrival of the vessel at any customs or coastal port, deliver to the proper officer of that port all bills relating to the goods which are to be unloaded at that port.

(2) Where any coastal goods are unloaded at any port, the proper officer shall permit clearance thereof if he is satisfied that they are entered in a bill of coastal goods delivered to him under sub-section (1).

Section 95 - Master of a coasting vessel to carry an advice book

(1) The master of every vessel carrying coastal goods shall be supplied by the Customs authorities with a book to be called the "advice book".

(2) The proper officer at each port of call by such vessel shall make such entries in the advice book as he deems fit, relating to the goods loaded on the vessel at that port.

(3) The master of every such vessel shall carry the advice book on board the vessel and shall on arrival at each port of call deliver it to the proper officer at that port for his inspection.

Section 96 - Loading and unloading of coastal goods at customs port or coastal port only

No coastal goods shall be loaded on, or unloaded from, any vessel at any port other than a customs port or a coastal port appointed under section 7 for the loading or unloading of such goods.

Section 97 - No coasting vessel to leave without written order

(1) The master of a vessel which has brought or loaded any coastal goods at a customs or coastal port shall not cause or permit the vessel to depart from such port until a written order to that effect has been given by the proper officer.

(2) No such order shall be given until –

(a) the master of the vessel has answered the questions put to him under section 38;

(b) all charges and penalties due in respect of that vessel or from the master thereof have been paid or the payment secured by such guarantee or deposit of such amount as the proper officer may direct;

(c) the master of the vessel has satisfied the proper officer that no penalty is leviable on him under section 116 or the payment of any penalty that may be levied upon him under that section has been secured by such guarantee or deposit of such amount as the proper officer may direct;

(d) the provisions of this Chapter and any rules and regulations relating to coastal goods and vessels carrying coastal goods have been complied with.

Section 98 - Application of certain provisions of this Act to coastal goods, etc.

(1) Sections 33, 34 and 36 shall, so far as may be, apply to coastal goods as they apply to imported goods or export goods.

All the above extracted provisions of the Customs Act are not applicable to vessels carrying exclusively coastal goods.

**Cabotage is the transport of goods or passengers between two places in the same country by a transport operator from another country.*

3. Integrated Declaration under Indian Customs Single Window Project

(i) CBEC has taken-up the task of implementing 'Indian Customs Single Window Project' to facilitate trade. This project envisages that the importers and exporters would electronically lodge their Customs clearance documents at a single point only with the Customs.

(ii) The required permission, if any, from Partner Government Agencies (PGAs) such as Animal Quarantine, Plant Quarantine, Drug Controller, Food Safety and Standards Authority of India, Textile Committee etc. would be obtained online without the importer/exporter having to separately approach these agencies.

(iii) This would be possible through a common, seamlessly integrated IT systems utilized by all regulatory agencies, logistics service providers and the importers/exporters. The Single Window would thus provide the importers/exporters a single point interface for clearance of import and export goods thereby reducing dwell time and cost of doing business.

(iv) This online clearance under Single Window Project has been rolled out at main ports and airports in Delhi, Mumbai, Kolkata and Chennai so far. It will be gradually extended across the country.

(v) CBEC has since developed the 'Integrated Declaration', under which all information required for import clearance by the concerned government agencies has been incorporated into the electronic format of the Bill of Entry.

(vi) The Customs Broker or Importer shall submit the "Integrated Declaration" electronically to a single entry point, i.e. the Customs Gateway (ICEGATE). Separate application forms required by different PGAs would be dispensed with.

(vii) The Integrated Declaration will be applicable for consignments to be cleared under the Indian Customs EDI Systems. For the clearance of imported goods in the manual mode, separate documents prescribed by the respective agencies will continue to apply.

(viii) Apart from incorporating such forms, the Integrated Declaration will also include different types of undertakings, declarations, and letters of guarantee that are presently required to be submitted on company letter heads.

(ix) Upon filing of the Integrated Declaration, the bill of entry will automatically be referred to concerned agency, if required, based on risk. The system has been modified to enable simultaneous processing of bill of entry by PGA and Customs. The Integrated Declaration has become effective from 1st April, 2016.

[Circular No. 10/2016 Cus dated 15.03.2016]

Consequently, w.e.f. 01.04.2016, in the Bill of Entry (Electronic Declaration) Regulations, 2011, the term Electronic Declaration has been substituted with the term, Electronic Integrated Declaration vide ***Notification No. 45/2016 Cus (NT) dated 01.04.2016.***

CHAPTER 8: WAREHOUSING

1. Crude stored in caverns notified under section 70(2) of the Customs Act, 1962

Section 70(1) of the Customs Act, 1962 provides that when any warehoused goods to which this section applies are at the time of delivery from a warehouse found to be deficient in quantity on account of natural loss, the Assistant/Deputy Commissioner of Customs may remit the duty on such deficiency. Sub-section (2) provides that the provisions of this section would apply to such warehoused goods as the Central Government, having regard to the volatility of the goods and the manner of their storage, may, by notification in the Official Gazette specify.

Accordingly, *MF(DR) Notification No.122/63 Cus dated 11.05.1963* as amended notified the following goods to which the provisions of section 70 would apply when they are deposited in a warehouse, namely:

(1) aviation fuel, motor spirit, mineral turpentine, acetone, methanol, raw naptha, vaporizing oil, kerosene, high speed diesel oil, batching oil, diesel oil, furnace oil and ethylene dichloride, kept in tanks;

(2) liquid helium gas kept in containers; and

(3) wine, spirit and beer, kept in casks

The said notification has been superseded vide ***Notification No. 03/2016 Cus (NT) dated 11.01.2016.*** The new notification specifies all the goods which were notified by the old notification and further, in addition to the existing goods, it has also specified crude stored in caverns as the goods to which the provisions of section 70(2) would apply.

[Effective from 11.01.2016]

CHAPTER 9: DEMAND AND APPEALS

1. Interest rate on delayed payment of customs duty reduced from 18% to 15%

Notification No. 17/2011 Cus (NT) dated 01.03.2016 providing interest for delayed payment of customs duty has been superseded by ***Notification No. 33/2016 Cus (NT) dated 01.03.2016*** so as to rationalize the interest rate on delayed payment of customs duty under section 28AA of the Customs Act, 1962 from 18% to 15%.

[Effective from 01.04.2016]

2. 'Other persons' mentioned in sub-section (2) and sub-section (6) of section 28 of the Customs Act, 1962 are co-noticees in the SCN for their acts of commission or omission other than demand of duty

(i) Section 28 of the Customs Act, 1962 provides for deemed conclusion of proceedings once the person to whom a demand of duty notice has been issued has paid all dues.

(ii) Provision of deemed conclusion of proceedings was introduced in the section 28 so as to bring about closure to the cases where the dues to the Government could be realized without going through the process of adjudication on one hand and to cut the protracted litigation which generally follows the adjudication on the other.

(iii) The provisions governing deemed conclusion of proceedings are stated in proviso to sub-section (2) and in clause (i) of sub-section (6) of section 28.

(iv) Proviso to sub-section (2) lays down that where notice under clause (a) of sub-section (1) has been served and the proper officer is of the opinion that the amount of duty along with interest payable thereon under section 28AA or the amount of interest, as the case may be, as specified in the notice, has been paid in full within thirty days from the date of receipt of the notice, no penalty shall be levied and the proceedings against such person or other persons to whom the said notice is served under clause (a) of subsection (1) shall be deemed to be concluded.

(v) Clause (i) of sub-section (6) provides that where the duty with interest and penalty has been paid in full, then, proceedings in respect of such person or other persons to whom the notice is served under sub-section (1) or sub-section (4), shall, without prejudice to the provisions of sections 135, 135A and 140 be deemed to be conclusive as to the matters stated therein.

(vi) This Circular aims to clarify the scope and interpretation of other persons in the above context.

(vii) The provision of deemed conclusion is contingent upon the person to whom a show cause notice has been issued under sub-section (1) or sub-section (4) paying up all the dues of duty, interest and penalty as the case may be. Only in such a circumstance of compliance, shall closure of proceedings against other persons come into effect. Therefore, as a corollary, other persons imply person(s) to whom

no demand of duty is envisaged with notice served under sub-section (1) or sub-section (4) as the case may be.

(viii) Other persons who happen to be co-noticees in the SCN for their acts of commission or omission other than demand of duty would be benefitted by the deemed closure in cases where the compliance of conditions mentioned in proviso to sub-section (2) or clause (i) of sub-section (6), as the case may be, by the main noticee to whom *inter-alia* a demand of duty has been issued has been fulfilled.

(ix) Further, all such cases where proceedings reach closure stage under the provisions of section 28, an order to the effect must be invariably issued by the concerned adjudicating authority.

(x) Section 28 primarily deals with the recovery of duty or erroneous refund. While introducing the facility of deemed conclusion, enabling provision was made for payment of interest and/ or penalty. Therefore, all such SCNs or cases which involve duty, interest and/ or payment of penalty shall be covered by the above clarification.

(xi) However, cases involving seizure of goods under section 110 of the Customs Act, or cases where confiscation provisions under sections 111, 113, 115, 118, 119, 120 and 121 are invoked, would be out of purview of this Circular.

[Circular No. 11/2016 Cus dated 15.03.2016]

CHAPTER 11: DUTY DRAWBACK

1. The following amendments have been made in the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 vide ***Notification No. 109/2015 Cus (NT) dated 16.11.2015***:

(i) Drawback allowed on wheat [Rule 3]

Earlier, rule 3 provided that no drawback shall be allowed, *inter alia*, on wheat falling within heading 1001 of the First Schedule to the Customs Tariff Act, 1975. However, rule 3 has been amended so as to bring wheat under the brand rate mechanism. Consequential amendments have been made in rule 6 and rule 7.

[Effective from 23.11.2015]

(ii) Amount equal to the customs component of the AIR to be paid provisionally, pending processing of the application for brand rate of drawback [Rule 7]

Rule 7 prescribes the provisions relating to fixation of special brand rate. The said rule has been amended to provide that provisional drawback amount as may be specified by the Central Government will be paid by the proper officer of customs pending processing of the application for brand rate of drawback.

As per ***Notification No. 110/2015 Cus (NT) dated 16.11.2015***, this amount would be equal to the customs component of all industry rate corresponding to the export goods, if applicable.

[Effective from 23.11.2015]

2. Safeguard duties are rebatable as duty drawback

With respect to safeguard duties which are leviable under section 8B or section 8C of the Customs Tariff Act, 1975 read with section 12 of the Customs Act, it is clarified that these are rebatable as drawback in terms of section 75 of the Customs Act.

Since safeguard duties are not taken into consideration while fixing All Industry Rates of drawback, the drawback of the same can be claimed under an application for Brand Rate under rule 6 or rule 7 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. This implies that drawback shall be admissible only where the inputs which suffered safeguard duties were actually used in the goods exported as confirmed by the verification conducted for fixation of Brand Rate.

Further, where imported goods subject to safeguard duties are exported out of the country as such, then the drawback payable under section 74 of the Customs Act would also include the incidence of safeguard duties as part of total duties paid, subject to fulfillment of other conditions.

[Circular No. 23/2015 Cus dated 29.09.2015]

CHAPTER 12: PROVISIONS RELATING TO ILLEGAL IMPORT, ILLEGAL EXPORT, CONFISCATION, PENALTY AND ALLIED PROVISIONS

1. Monetary threshold limits enhanced for prosecution and arrest under customs

Prosecution

Revised guidelines have been issued on prosecution under Customs Act, 1962. The significant aspects of the guidelines are:

(a) Person liable to be prosecuted: As per the provisions of the Customs Act, prosecution may be launched against any person including legal person for offences covered under sections 132, 133, 134, 135, 135A or 136 of the Customs Act, 1962.

(b) Threshold limits for launching of prosecution: CBEC has laid down the following threshold limits for launching prosecution:

S.No.	Particulars	Threshold limits
(i)	**Baggage and Outright smuggling cases:**	
	Cases involving unauthorized importation in baggage/ cases under Transfer of Residence Rules	CIF value of the goods involved is₹ 20 lakh or more
	Outright smuggling of high value goods such as precious metal, restricted items or prohibited items notified under section 11 of the Customs Act, 1962 or goods notified under section 123 of the Act or offence involving foreign currency	Value of offending goods is ₹ 20 lakh or more
(ii)	**Appraising Cases/ Commercial Frauds**	
	Importation of trade goods involving willful mis-declaration in value/ description of goods/ concealment of restricted goods/ goods notified under section 11 of the Act	CIF value of the offending goods is ₹ 1 crore or more
	Fraudulent availment of drawback or attempt to avail of drawback or any exemption from duty provided under the Customs Act, 1962	Amount of drawback or exemption from duty is ₹ 1 crore or more
	Exportation of trade goods involving willful mis-declaration in value /description, concealment of restricted goods or goods notified under section 11 of the Customs Act, 1962	FOB value of the offending goods is₹ 1 crore or more

(c) Exceptions:

Threshold limit will not apply in following cases:

(i) In case of habitual offenders or where criminal intent is evident in ingenious way of concealment, where prosecutions can be considered irrespective of the value of goods/currency involved in such professional or habitual offenders, etc. provided the cumulative value of 3 or more such offences in past 5 years from the date of the decision exceeds the threshold limit(s) indicated in above table.

(ii) In cases involving offences relating to items i.e., fake Indian currency notes (FICN), arms, ammunitions and explosives, antiques, art treasures, wild life items and endangered species of flora and fauna, prosecution would be launched invariably, irrespective of value of offending goods involved.

(iii) In respect of cases involving non-declaration of foreign currency by foreign nationals and NRIs detected at the time of departure back from India, exceeding the threshold limits of ₹ 20 lakh, if it is claimed that the currency has been legally acquired and brought into India, prosecution would not be considered as a routine.

Prosecutions will not be launched as a matter of routine and/or in cases of technical nature, where the additional claim for duty is based solely on a difference of interpretation of the law.

(d) Authority to sanction prosecution: Prosecution may be launched after due sanction by the Commissioner / Principle Commissioner or Additional Director General / Principle Additional Director General of Revenue Intelligence (collectively known as 'sanctioning authority'). However, in case of habitual offenders and appraising cases/commercial frauds, prior approval of the Chief Commissioner/Principal Chief Commissioner or Director General/Principal Director General of Revenue Intelligence, as the case may be, will be required for launching prosecution.

(e) Stage for launching of prosecution: Normally, prosecution may be launched immediately on completion of adjudication proceedings.

Exceptions:

(i) Prosecution in respect of cases involving offences relating to items i.e. FICN, arms, ammunitions and explosives, antiques, art treasures, wild life items and endangered species of flora and fauna may preferably be launched immediately after issuance of show cause notice.

(ii) If the party deliberately delays completion of adjudication proceedings, prosecution may be launched even during the pendency of the adjudication proceedings, where offence is grave and qualitative evidences are available [in view of the decision of Supreme Court in case of *Radhe Shyam Kejriwal 2011 (266) ELT 294**.

Further, in following cases investigation may be completed in time bound manner preferably within **six months** and adjudication may be expedited to facilitate launching of prosecution. These cases are:

(A) Case where arrest has been made during investigation (for commercial fraud cases as well as outright smuggling cases) or in the case of a habitual offender.

(B) Case where arrest has not been made but it relates to outright smuggling of high value goods such as precious metal, restricted items or prohibited items notified under section 11 or goods notified under section 123 of the Customs Act, 1962 or foreign currency where the value of goods is ₹ 20 lakh or more.

[Circular No. 27/2015 Cus dated 23.10.2015]

Arrest

Pursuant to the enhancement in threshold limits for prosecution, threshold limits for arrest have also been enhanced vide ***Circular No. 28/2015 Cus dated 23.10.2015.*** Threshold limits for arrest are also the same as mentioned in case of initiating prosecution. It has been clarified that powers of arrest should be exercised in exceptional situation.

However, such threshold limit would not apply in case of offences relating to FICN, arms, ammunitions and explosives, antiques, art treasures, wild life items and endangered species of flora and fauna. In such cases, arrest, if required on the basis of facts and circumstances of the case, may be considered irrespective of value of offending goods involved.

* The Supreme Court of India in the case of *Radhe Shyam Kejriwal 2011 (266) ELT 294 (SC)* had*, inter alia,* observed that

(i) adjudication proceedings and criminal proceedings can be launched simultaneously;

(ii) decision in adjudication proceedings is not necessary before initiating criminal prosecution;

(iii) adjudication proceedings and criminal proceedings are independent of each other in nature and

(iv) the findings against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution.

CHAPTER 13: SETTLEMENT COMMISSION

1. Settlement Commission has no jurisdiction to settle cases relating to gold smuggling

The Mumbai Bench of the Settlement Commission had decided some cases holding that they have the jurisdiction even in respect of goods specified under section 123 of the Customs Act, 1962, and have accordingly allowed the settlement of cases of gold smuggling. However, a divergent view was taken by the Kolkata bench of the Settlement Commission.

The said issue has been considered by the Delhi High court in case of *Additional Commissioner of Customs v. Shri Ram Niwas Verma [W.P. (C) No. 7363/2014 & CM 17221/ 20 L4]* vide its order dated 25th August 2015, holding that Settlement Commission has no jurisdiction to decide cases in relation to smuggling of the goods specified under section 123 of the Customs Act, 1962.

In view of the said order of the Delhi High Court, it has been clarified that Settlement Commission has no jurisdiction to entertain the matters in relation to the goods specified under section 123 of the Customs Act, 1962 which include gold.

[F. No. 275/46/2015 CX. 8A dated 01.10.2015]

Students may note that for November, 2016 examinations, notification/circulars issued till 30.04.2016 are relevant. This Statutory Update contains notifications/circulars issued between 01.05.2015 and 30.04.2016 which are relevant for November, 2016 examination. Students are required to go through these notifications/circulars carefully as they would have to be applied while answering the questions in November, 2016 examination.

Part II : Judicial Update – Indirect Tax Laws

Significant Recent Legal Decisions

"Select Cases in Direct and Indirect Tax Laws – An Essential Reading for the Final Course" is a compilation of the significant decisions of Supreme Court, High Court and Larger Bench of Tribunal. August, 2015 edition of the said publication is relevant for November, 2016 examination. Students may note that in addition to the cases reported in the said publication, following significant recent legal decisions are also relevant for November, 2016 examination:-

SECTION A: CENTRAL EXCISE

CHAPTER 1: BASIC CONCEPTS

1. Does printing on jumbo rolls of GI paper as per design and specification of customers with logo and name of product in colourful form, amount to manufacture?

CCE v. Fitrite Packers 2015 (324) ELT 625 (SC)

Facts of the Case: The assessee purchased duty paid GI paper from the market and carried out printing on it according to the design and specifications of the customer. The printing was done on jumbo rolls of GIP twist wrappers. On the paper, logo and name of the product was printed in colourful form and the same was delivered to the customers in jumbo rolls without slitting. The customer intended to use this paper as a wrapping/packing paper for packing of their goods.

Point of Dispute: Revenue contended that the process amounted to manufacture and the assessee was liable to pay excise duty thereon. However, the Tribunal, when the matter was brought before it, concluded that printing was only incidental and primary use of GI printing paper roll was for wrapping, which was not changed by the process of printing. Aggrieved by the Tribunal's order, the Revenue appealed before the Supreme Court.

Supreme Court's Observations: The Supreme Court referred to one of its earlier judgments in the case of *Servo-Med Industries Pvt. Ltd. v. CCEx. 2015 (319) ELT 578*. In this case, the Apex Court had culled out four categories of cases to ascertain whether a particular process would amount to manufacture or not:

(i) Where the goods remain exactly the same even after a particular process - There is obviously no manufacture involved. Process which remove foreign matter from goods complete in themselves and / or processes which clean goods that are complete in themselves fall in this category.

(ii) Where the goods remain essentially the same after the particular process – Again there can be no manufacture. This is for the reason that the original article

continues as such despite the said process and the changes brought about by the said process.

(iii) Where the goods are transformed into something different and / or new after a particular process but the said goods are not marketable - No manufacture of goods takes place. Examples within this group are cases where the transformation of goods having a shelf life which is of extremely small duration.

(iv) Where the goods are transformed into goods which are different and / or new after a particular process and such goods are marketable as such - It is in this category that manufacture of goods can be said to take place.

The Apex Court observed that GI paper was meant for wrapping and its use did not undergo any change even after printing - the end use thereof was still the same namely wrapping / packaging. However, whereas the blank paper could be used as wrapper for any kind of product, after the printing of logo and name of the specific product thereupon, its end use got confined to only that particular and specific product of the particular company / customer. The printing, therefore, was not merely a value addition but had transformed the general wrapping paper to special wrapping paper.

Supreme Court's Decision: The Supreme Court held that the process of aforesaid particular kind of printing resulted into a product i.e., paper with distinct character and use of its own which it did not bear earlier. The Court emphasised that there has to be a transformation in the original article and this transformation should bring out a distinctive or different use in the article, in order to cover the process under the definition of manufacture. Since these tests were satisfied in the present case, the Apex Court held that the process amounted to manufacture.

2. Whether the word 'include' used in a statutory definition enlarges the scope of preceding words or restricts their scope?

Ramala Sahkari Chini Mills Ltd. v. CCEx. 2016 (334) ELT 3 (SC)

Supreme Court's Decision: The Supreme Court referring to the case of *Regional Director, Employees' State Insurance Corporation* v. *High Land Coffee Works of P.F.X. Saldanha and Sons & Anr. [(1991) 3 SCC 617]* held that that the word "include" in a statutory definition is generally used to enlarge the meaning of the preceding words and it is by way of extension, and not with restriction.

CHAPTER 2: VALUATION OF EXCISABLE GOODS

1. Whether the pre-delivery inspection charges (PDI) and after sales service (ASS) charges are to be included in the assessable value?

CCEx. v. TVS Motors Co. Ltd. 2016 (331) ELT 3 (SC)

The issue which arose for consideration, in the instant case, was whether PDI charges and ASS charges are to be included in the assessable value. The Department contended that PDI charges and ASS charges are includible in the assessable value by virtue of *Circular No. 643/34/2002 CX dated 1-7-2002* wherein it has been clarified that said charges are to be included in the assessable value.

Supreme Court's Observations: The Apex Court observed that where manufacturer himself provides the ASS and incurs any expenditure thereon, the same is not deductible from the price charged by him from his buyer. However, where the manufacturer has sold his goods to his dealer and dealer thereafter provides ASS to the customer and incurs expenditure therefor, it cannot be added back to the sale price charged by the manufacturer from the dealer for computing the assessable value. This is more so, where the ASS are provided by the dealer many weeks after the goods have been sold to him by the manufacturer. Such post-sale activity undertaken by the dealer is not relevant for the purpose of excise duty since the goods have already been marketed to the dealer.

The Apex Court, further, noted that Clause No. 7 of *Circular No. 643/34/2002 CX dated 1-7-2002* and *Circular No. 681/72/2002 CX dated 12-12-2002* (to the extent it affirms the aforesaid circular) had been struck down by the Bombay High Court in case of *Tata Motors Ltd. v. UOI 2012 (286) ELT 161 (Bom.)*. The Apex Court agreed with the following pertinent observations made by the Bombay High Court in the said case:

(i) The High Court observed that the term 'transaction value', under section 4(3)(d) of the Central Excise Act, 1944, comprises of price actually paid or payable by the buyer and includes additional amount that the buyer is liable to pay to or on behalf of the assessee by reason of sale or in connection of sale whether payable at the time of sale or at any other time including the amount charged for or to make provision for certain items such as advertising etc. One such item is servicing.

Department appeared to take the benefit of the term 'servicing' used in the said definition, for the purpose of adding the PDI and ASS to the assessable value by resorting to Clause 7 of the Circular dated 1st July, 2002 and Circular dated 12th December, 2002. However, the records indicated that apart from the price which was paid by the dealer to the manufacturer, no amount was recovered by the manufacturer from the dealer/customer. Thus, the stand of the Department that the expenses incurred for PDI and ASS was to be included in the assessable value of the car was negatived on the ground that the petitioners did not charge the dealer any amount equivalent to the cost incurred towards PDI and ASS.

(iii) The Department contended that the expenses incurred for PDI and ASS must be included in the transaction value for the reason that the warranty given by the manufacturer was linked with such expenses. The High Court rejected Revenue's said claim observing that it only implied that manufacturer would undertake the responsibility to provide the benefit of warranty to customer only when the customer had availed PDI and ASS, but had no bearing on the assessable value.

(iii) The High Court opined that in Clause 7 of Circular dated 1st July, 2002, reference to rule 6 of the Central Excise (Determination of Price of Excisable Goods) Rules, 2000 was not correct. Valuation Rules, in the first place, would not apply in the instant case as this transaction did not fall within the ambit of section 4(1)(b) of the Central Excise Act, 1944 because the transaction of sale of a car between the manufacturer and the dealer was governed by the provisions of section 4(1)(a) of the Central Excise Act, 1944.

The Apex Court, further referred to *Circular No. 354/81/2000-TRU dated 30.06.2000*, wherein it was inferred from the definition of 'transaction value' that if any amount is paid or payable by the buyer to or on behalf of the assessee on account of the factum of sale of goods, then such amount cannot be claimed to be not part of the transaction value. The law recognizes such payment to be part of the transaction value i.e. assessable value, for those particular transactions.

Supreme Court's Decision: In view of the aforesaid discussion, the Apex Court held that PDI and free ASS would not be included in the assessable value under section 4 of the Central Excise Act, 1944, for the purpose of paying excise duty.

2. Can the value of gunny bags, returned by the buyers, be excluded from the assessable value in the absence of any agreement between the seller and the buyer?

Tata Chemicals Ltd v. Collector of Central Excise 2016 (334) ELT 580 (SC)

Facts of the Case: The assessee manufactured and sold soda ash in gunny bags. The assessee claimed that there was an arrangement between the assessee and the buyers of soda ash that gunny bags in which soda ash was supplied by the assessee can be returned and upon such return the value thereof will be refunded to the buyers.

Point of Dispute: The issue which arose for consideration was whether the value of the gunny bags in which soda ash was supplied by the assessee was to be included in the assessable value of the finished product.

Supreme Court's Observations: The Supreme Court, referring to the judgments in *Mahalakshmi Glass Works (P) Ltd. v. Collector 1988 (36) ELT 727 (SC)* and *Triveni Glass Ltd. v. UOI 2005 (181) ELT 289 (SC),* noted that if an arrangement exists between the seller and the buyer of excisable goods for return of packing materials by the buyer to the seller, carrying an obligation on the seller to return the value of the packing material to the buyer on such return; then such value is not to be included in the assessable value

of the finished product. Further, in such case, the question of actual return is not relevant. However, on the basis of the materials placed before it, the Apex Court inferred that assessee had not succeeded in establishing that such an arrangement existed. The Court did not find any obligation taken by the assessee to refund the value of the gunny bags to the buyer in terms of any arrangement between the parties.

Supreme Court's Decision: The Supreme Court held that in the absence of factual foundation in support of the fact that such an arrangement existed between the parties, the value of gunny bags returned by the buyers could not be excluded from the assessable value.

Note: The above principle has also been endorsed by the Supreme Court in an earlier case. In case of CCE v. Hindustan Safety Glass Works 2004 (181) ELT 178, the Apex Court had decided that even though wooden crates/boxes used for transporting the glass sheets may be durable, but if no arrangement is made for making them returnable by buyer, their cost is includible in value of glass sheets.

CHAPTER 4: CENVAT CREDIT

1. Is the assessee entitled to avail CENVAT credit of service tax paid on outward transportation of goods cleared from factory?

CCE v. Haryana Sheet Glass Ltd. 2015 (39) STR 0392 (P&H)

Facts of the Case: Assessee availed CENVAT credit of service tax paid on outward transportation of goods cleared from factory. The assessee was of the view that the transportation of goods from factory to the premises of the petitioner ought to be treated as input service. However, the Revenue disallowed the credit holding that the assessee was not entitled to credit of the service tax towards outgoing freight. The Appellate Tribunal, allowed the appeal of the assessee.

High Court's Decision: The High Court relied upon one of its earlier decision in the case of *Ambuja Cements Ltd. v. Union of India 2009 (236) ELT 431 (P&H)* and upheld the decision of the Tribunal.

The High Court held that outward transportation up to the place of removal falls within the expression "input service". The place of removal, in terms of the Circular* of the Board is a question of fact. If a manufacturer is to deliver the goods to the purchaser, the place of removal would not be a factory gate of the manufacturer but that of the purchaser. In the given case, there is no evidence that the property in goods stood transferred to the purchaser at the factory door of the assessee. Therefore, the assessee is entitled to avail CENVAT credit of service tax paid on outward transportation of goods cleared from factory.

Note: *(1) The above case establishes that factory cannot necessarily be the place of removal in all cases. Only if the property in goods is transferred at factory gate, the sale will get complete at the factory gate, and then the factory will be considered as the place of removal.*

**(2) The circular referred to in the above case law was issued at an earlier point of time on 23.08.2007. However, a recent circular [Circular No. 988/12/2014 CX dated 20.10.2014] issued by the Board clarifies that the place of removal needs to be ascertained in term of provisions of Central Excise Act, 1944 read with provisions of the Sale of Goods Act, 1930. Payment of transport, inclusion of transport charges in value, payment of insurance or who bears the risk are not the relevant considerations to ascertain the place of removal. The place where sale has taken place or when the property in goods passes from the seller to the buyer is the relevant consideration to determine the place of removal.*

2. Can a commercial training and coaching institute claim CENVAT credit in respect of the input services of catering, photography and tent services used to encourage the coaching class students, maintenance and repair of its motor vehicle and travelling expenses?

Bansal Classes v. CCE & ST 2015 (039) STR 0967 (Raj.)

Facts of the case: The assessee is engaged in providing taxable commercial training and coaching services to students. It organises celebrations during the academic sessions whereby the services of catering, photography and tents are used. During these celebrations, students successful in coaching are rewarded so as to encourage the existing students and to motivate the new students. Further, it hires examination hall on rent basis for the purpose of conducting examination for students under the coaching. It also undertakes the maintenance and repair of vehicles used by it and incurs travelling expenses for the business tours.

It has availed CENVAT credit on the aforesaid services availed by it. However, Revenue alleged that CENVAT credit on such services was not admissible as these are not covered under the definition of input services under rule 2(l) of the CENVAT Credit Rules, 2004 since not used in/ in relation to providing output services.

When appealed before Tribunal, it held that assessee is eligible for CENVAT credit in respect of service tax paid on renting of immovable property service of hiring of examination hall, but disallowed the CENVAT credit availed with respect to other activities. The assessee appealed to High Court against the said order.

High Court's observations: The High Court agreed with the view taken by the Tribunal that once the students pass their coaching classes, the activities of catering, photography and tent services cannot be said to have been used to provide the output service of commercial training or coaching. Similarly, the assessee maintains and repairs its motor vehicle during the course of the business and there is no material to show that maintenance and repairs have any nexus to commercial training or coaching. Likewise, the travelling expenses incurred by assessee for the business tours cannot be related to provision of commercial training or coaching.

High Court's decision: The High Court upheld the Tribunal's decision. Thus, the assessee is not eligible for CENVAT credit of the service tax paid on catering, photography and tent services, maintenance and repair of its motor vehicle and travelling expenses.

3. Whether assessee is entitled to claim CENVAT credit of service tax paid on house-keeping and landscaping services availed to maintain their factory premises in an eco-friendly manner?

Commr. of C. Ex., & S.T., LTU v. Rane TRW Steering Systems Ltd. 2015 (039) STR 13 (Mad.)

Facts of the case: Assessee had availed credit of service tax paid on house-keeping and gardening services. However, Revenue disallowed the credit and also imposed

penalty on the ground that the assessee was not eligible to avail credit of service tax on these services.

High Court's observations: The High Court noted that principle enunciated in case of *CCE v. Millipore India Pvt. Ltd. 2012 (26) S.T.R. 514 (Kar.)* is applicable to the case on hand. In this case, the Karnataka High Court held that landscaping of factory or garden certainly would fall within the concept of modernization, renovation, repair, etc., of the office premises. At any rate, the credit rating of an industry is depended upon how the factory is maintained inside and outside the premises. The environmental law expects the employer to keep the factory without contravening any of those laws. That apart, now the concept of corporate social responsibility is also relevant. It is to discharge a statutory obligation, when the employer spends money to maintain their factory premises in an eco-friendly manner, certainly, the tax paid on such services would form part of the costs of the final products.

High Court's decision: The High Court agreeing with and following the ratio laid down in the aforesaid decision held that where an employer spends money to maintain their factory premises in an eco-friendly manner, the tax paid on such services would form part of the cost of the final products. Therefore, housekeeping and gardening services would fall within the ambit of input services and the assessee is entitled to claim the benefit of CENVAT credit on the same.

4. In case the assessee pays the service tax that he was not liable to pay, can it claim the CENVAT credit of such service tax?

CCEx. & S.T. v. Tamil Nadu Petro Products Ltd. 2015 (40) STR 878 (Mad.)

Facts of the Case: The assessee paid the service tax on an input service, even at a time when there was no liability on it to pay the service tax. Since it made the payment under the impression that it was liable to pay such service tax, it claimed CENVAT credit to that extent.

Point of Dispute: Department contended that in such a case, the only course open to the assessee was to claim refund and not to make use of CENVAT credit.

High Court's Decision: The High Court held that if upon a misconception of the legal position, the assessee had paid the tax that it was not liable to pay and such assessee also happens to be an assessee entitled to CENVAT credit, the availing of the said benefit cannot be termed as illegal.

CHAPTER 6 : EXPORT PROCEDURES

1. Whether rule 18 of Central Excise Rules, 2002 (CER) allows export rebate of excise duty paid on both inputs as well as the final product manufactured from such inputs?

Spentex Industries Ltd v. CCE 2015 (324) ELT 686 (SC)

Rule 18 of CER stipulates that where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods **OR** duty paid on material used in the manufacturing or processing of such goods. The issue in the instant case was that the word 'OR' used in between the two kinds of duties in respect of which rebate can be granted, postulates grant of one of the two duties or both the duties.

Supreme Court's Observations: The Apex Court made the following significant observations:

(i) Rules 18 and 19 of CER provide two alternatives to an exporter for getting the benefit of exemption from paying excise duty.

(ii) Under rule 19 of CER, the exporter is not required to pay any excise duty at all. When the exporter opts for this method, he is not required to pay duty either on the final product, i.e., on excisable goods or on the material used in the manufacture of those goods. The intention thus, is that goods meant for exports are free from any excise duty.

(iii) Once this scheme is kept in mind, it cannot be the intention of the Legislature to provide rebate only on one item in case a particular exporter opts for other alternative under rule 18, namely, paying the duty in the first instance and then claiming the rebate. Giving such restrictive meaning to rule 18 would not only be anomalous but would lead to absurdity as well and would defeat the very purpose of grant of remission from payment of excise duty in respect of export goods. It may also lead to invidious discrimination and arbitrary results.

(iv) The Central Government has issued necessary notifications under rule 18 for rebate in respect of both the duties, i.e., on intermediate product as well as on the final product. Further, and which is more significant, these notifications providing detailed procedure for claiming such rebates contemplate a situation where excise duty may have been paid both on the excisable goods and on material used in the manufacture of those goods and enable the exporter to claim rebate on both the duties.

(v) It is to be borne in mind that it is the Central Government which has framed the Rules as well as issued the notifications. If the Central Government itself is of the opinion that the rebate is to be allowed on both the forms of excise duties, the rule in question has to be interpreted in accordance with this understanding of the rule maker.

(vi) Though, the principle is that the word 'or' is normally disjunctive and 'and' is normally conjunctive, there may be circumstances where these words are to be read as *vice versa* to give effect to manifest intention of the Legislature as disclosed from the context.

The Supreme Court also referred to the order passed by the Revision Authority on the said issue (when the matter was brought before it vide a revision petition) wherein the Authority had held that the word 'OR' occurring in rule 18 cannot be given literal interpretation as that leads to various disastrous results. Therefore, 'or' has to be read as 'and' to carry out the objectives of the rule 18 and also to bring it at par with rule 19 and also because that is what was intended by the rule maker in the scheme of things.

Supreme Court's Decision: The Supreme Court held that normally the two words 'or' and 'and' are to be given their literal meaning. However, wherever use of such a word, viz., 'and'/'or' produces unintelligible or absurd results, the Court has power to read the word 'or' as 'and' and *vice versa* to give effect to the intention of the Legislature which is otherwise quite clear. The Apex Court held that the exporters/appellants are entitled to both the rebates under rule 18 and not one kind of rebate.

Note: This case is in line with the Government's policy of neutralising the duty element (both Customs and Central Excise) on the goods exported with a view to promote exports of domestic products and make then internationally competitive.

This case overrules the Rajasthan High Court's decision in the case of Rajasthan Textile Mills v. UOI 2013 (298) ELT 183 reported in Select Cases in Direct and Indirect Tax Laws – 2015 [August 2015 Edition]. In this case, the High Court had held that under rule 18 of the Central Excise Rules, 2002, rebate can be claimed either on excisable goods or on materials used in the manufacture or processing of such goods i.e. on raw material, but not on both.

2. Can rebate under rule 18 of the Central Excise Rules, 2002, be claimed of the excise duty paid on the goods exported when the duty drawback of excise duty paid on inputs and service tax paid on inputs used in manufacture of such export goods has already been availed?

Raghav Industries Ltd v. UOI 2016 (334) ELT 584 (Mad.)

Facts of the Case: The petitioner manufactured the synthetic yarn and blended textile yarn and exported the same on payment of excise duty by utilizing the CENVAT credit of duty paid on capital goods used in manufacture of such yarn. It filed the claim for rebate of the excise duty paid on such finished goods under rule 18 of the Central Excise Rules, 2002. The yarn is made up of the duty paid raw materials, viz., polyester staple fiber/ polyester viscose staple fiber. The petitioner did not avail the CENVAT credit of the duty paid on the raw materials.

Point of Dispute: The petitioner, relying on the judgment of Apex Court in case of *Spentex Industries Ltd. v. CCEx. 2015 (324) ELT 686 (SC)*, submitted that rule 18 of

the Central Excise Rules, 2002 provides for simultaneous rebate of duty paid on the excisable goods exported as well as rebate of duty paid on the raw materials used in the manufacture of said export goods. Since the petitioner had not claimed refund of excise duty paid on the raw materials and the yarn exported by it was covered under Duty Drawback Scheme, it claimed duty drawback of the excise duty paid on inputs and service tax paid on input services.

The Department rejected the rebate claim contending that since petitioner had availed duty drawback for the central excise and service tax portions, grant of rebate of the duty paid on export goods would amount to granting double benefit.

High Court's Observations: The High Court observed that after clearing the goods on payment of duty under claim for rebate, the petitioner should not have claimed drawback for the central excise and service tax portions; or they should have paid back the drawback amount availed before claiming rebate. Since this was not done, availing both the benefits would certainly result in double benefit.

While sanctioning rebate, since the export goods were one and the same, the benefits availed by the petitioner on the said goods under different schemes were required to be taken into account for ensuring that the sanction did not result in undue benefit to the claimant. The 'rebate' of duty paid on excisable goods exported and 'duty drawback' of the duty paid on inputs and service tax paid on input services, used in manufacture of export goods are governed by rule 18 of the Central Excise Rules, 2002 and the Customs, Central Excise Duties and Service Tax Drawback Rules 1995 respectively . Both the rules intend to give relief to the exporters by offsetting the duty paid. When the petitioners had availed duty drawback of customs, central excise and service tax with respect to the exported goods, they were not entitled for the rebate under rule 18 of the Central Excise Rules, 2002 as it would result in double benefit.

In the *Spentex Industries Ltd.* judgment relied upon by the petitioner, the Supreme Court had held that the benefit of rebate on the inputs on one hand as well on the finished goods exported on the other hand would fall within the provisions of rule 18 of Central Excise Rules, 2002 and the exporters were entitled to both the rebates under the said rule. However, in the case on hand, the benefits claimed by the petitioners were covered under two different statutes - one under Customs, Central Excise Duties and Service Tax Drawback Rules 1995 issued under Section 75 of the Customs Act, 1962 and the other under rule 18 of the Central Excise Rules, 2002 issued under the Central Excise Act, 1944. Since the issue involved was covered under two different statutes, the said judgment was not applicable to the facts of the present case.

Further, as per the proviso to rule 3 of the Central Excise Duties and Service Tax Drawback Rules, 1995, the petitioner was not entitled to claim both the benefits.

High Court's Decision: The High Court held that the Department had rightly rejected the rebate claim filed by the petitioner because when the petitioners had availed duty drawback with respect to the exported goods, they were not entitled for the rebate under rule 18 of the Central Excise Rules, 2002 as it would result in double benefit.

CHAPTER 11 : REMISSION OF DUTY AND DESTRUCTION OF GOODS

1. Can excise duty be remitted for the loss of molasses where the molasses were stored in an open pit instead of being stored in a steel storage tank?

U.P. State Sugar Corporation Ltd. v. CCE 2016 (334) ELT 434 (All.)

Facts of the Case: The assessee had three tanks for storage of molasses with a combined capacity of 1,20,000 quintals. However, only 1,07,828 quintals of molasses were kept therein. Thus, additional 12,172 quintals could also be kept therein.

Instead, the assessee stored 28,956.20 quintals in an open pit. During the summer conditions, as a result of rise in temperature, the molasses stored in the open pit turned into black carbonized lumps and became waste.

Point of Dispute: The assessee applied for remission of duty on such molasses in terms of rule 21 of the Central Excise Rules, 2002 claiming that molasses had been lost by natural phenomenon beyond its control.

The Tribunal gave a finding that the act of assessee in not fully utilising the steel tanks for storing molasses and storing them in the open pit could not be said to be a *bonafide* act. Thus, it granted the remission of only part of quantity of the molasses, but declined to grant the remission of balance quantity which could have been kept in the steel tank.

High Court's Decision: The High Court held that the assessee was duty bound to keep the molasses in the three tanks to their fullest capacity. Since assessee had not utilized the three tanks to the fullest capacity, the Tribunal had been justified in granting remission of only part of the quantity of the molasses and refusing to grant remission on the balance quantity which could have been stored in the steel tank.

CHAPTER 13 : EXEMPTION BASED ON VALUE OF CLEARANCES (SSI)

1. Whether an assessee using a foreign brand name, assigned to it by the brand owner with right to use the same in India exclusively, is eligible for SSI exemption?

CCE v. Otto Bilz (India) Pvt. Ltd 2015 (324) ELT 430 (SC)

Facts of the case: The assessee was availing the benefit of SSI exemption notification and was using a brand name 'BILZ' of a foreign company. The foreign company had assigned the said brand name in favour of the assessee under an agreement with right to use the said trade mark in India exclusively. The Revenue contended that since the assessee was using a brand name of a foreign company, it was ineligible to seek exemption under the aforesaid Notification.

Supreme Court's Decision: The Supreme Court held that because of the aforesaid assignment, the assessee was using the trade mark in its own right as its own trade mark and therefore, it could not be said that it was using the trade mark of another person. The assessee was entitled to SSI exemption.

2. Should the clearances of two divisions of the assessee having separate central excise registration, be clubbed for determining the turnover for claiming SSI exemption?

Premium Suiting (P) Ltd v. CCEx. 2016 (331) ELT 589 (All.)

Facts of the case: The assessee had two divisions – textile division wherein cloth was manufactured and chemical division wherein Polymer Vinyl Acetate, etc. were manufactured. Both the divisions were in separate factories. The assessee claimed the benefit of SSI exemption notification.

Point of Dispute: The Department alleged that clearances of the two divisions should be clubbed together for the purposes of granting the benefit under SSI notification since both factories had common directors and were housed in the same premises. Further, for the purpose of Income-tax and sales tax, they had a common PAN and Sales Tax Registration and their Income-Tax Assessment and the Sales Tax Assessment were also common.

The assessee contended that the clearances of two divisions could not be clubbed as two factories had separate entrances and managing staff. Moreover, central excise registration for two divisions was separate.

High Court's Observations: The High Court, referring to the SSI exemption notification, noted that a manufacturer is entitled for SSI exemption if the aggregate value of clearances of all excisable goods for home consumption from one or more factories of a manufacturer or from a factory by one or more manufacturers does not exceed the specified turnover in the preceding financial year.

The Court observed that in the instant case, two divisions-chemical and textile- were of one manufacturer was evident from the fact that common balance sheet was being filed. The fact that two factories had separate entrances, managing staff and central excise registration, was irrelevant.

Therefore, the clearances of two divisions manufacturing an excisable goods had to be clubbed while considering turnover for the SSI exemption. Since the aggregate clearances exceeded the specified turnover limit, the assessee was not entitled for SSI exemption.

High Court's Decision: The High Court affirmed the Tribunal's decision of clubbing the clearances of the goods of the two divisions of the assessee and that the assessee could not avail the SSI exemption.

CHAPTER 14: NOTIFICATIONS, DEPARTMENTAL CLARIFICATIONS & TRADE NOTICES

1. Can the benefit of exemption notification be granted to assessee where one of the conditions to avail the exemption is not strictly followed?

CCE v. Honda Siel Power Products Ltd. 2015 (323) E.L.T. 644 (S.C.)

Facts of the case: The assessee was availing the benefit of an exemption notification. One of the conditions to avail the benefit of said notification was that duty was to be paid in either of two modes of payment of duty – in cash or through account current. However, the assessee cleared the goods through utilization of CENVAT credit which was not the prescribed mode mentioned as per said condition.

Point of dispute: The issue which arose for consideration was as to whether the assessee was entitled to avail the benefit of said notification.

Supreme Court's Decision: The Apex Court observed that the assessee was required to fulfill the condition in *stricto senso* viz. to pay the duty either in cash or through account current if it wanted to avail the benefit of exemption notification and not through adjustment of CENVAT credit which was not the mode prescribed in the aforesaid condition. *It is trite that exemption notifications are to be construed strictly and even if there is any doubt same is to be given in favour of the Department.*

The Supreme Court held that once it is found that the conditions had not been fulfilled the obvious consequence would be that the assessee was not entitled to the benefit of said notification.

SECTION B: SERVICE TAX

CHAPTER 7 : DEMAND, ADJUDICATION AND OFFENCES

1. Can service tax be demanded by a speaking order without issuing a show cause notice but after issuing a letter and giving the assessee an opportunity to represent his case along with personal hearing?

CCE v. Vijaya Consultants, Engineers and Consultants 2015 (040) STR 0232 (AP)

Facts of the Case: The Deputy Commissioner issued an order to the respondent demanding service tax. The appeal before the Commissioner (Appeals) challenging the order of the Deputy Commissioner ended up in dismissal confirming the order of the Deputy Commissioner. The CESTAT, on consideration of the arguments of the respondent and perusal of the record, found that the respondent was never issued a show cause notice as required under section 73 of the Finance Act, 1994. Hence the Tribunal set aside the order of the adjudicating authority. Aggrieved by this order, Revenue preferred appeal to High Court.

Appellant's (Revenue) Contentions: Revenue contended that the CESTAT was not justified in setting aside the speaking order passed by the competent adjudicating authority and confirmed by appellate authority, on the short ground of non-issuance of show cause notice as the respondent was suitably put on notice vide a letter. Thereafter the respondent had filed a 20 page explanation and fully utilized opportunity of personal hearing. The Revenue was of the view that since the respondent was afforded an opportunity of personal hearing before the case was decided, speaking order was passed after observing the principles of natural justice. Therefore, there was a substantial compliance on the part of the Revenue and the non-issuance of show cause notice was only a technical breach on their part.

Respondent's (assessee) Contentions: The respondent submitted that there was a categorical finding of the Tribunal that there was fundamental breach of compliance of the statutory provision (i.e., non-issuance of SCN) which is the basic requirement to initiate the very proceedings under service tax law. Therefore, the order of the Tribunal was unassailable and did not call for any interference by this Court.

High Court's Observations: The High Court observed that a perusal of section 73 of the Finance Act, 1994 leaves no doubt that there is a requirement of issuance of notice stating whether the noticee falls within the category of section 73(1)(a) or 1(b) of the Act *[now section 73(1) and proviso to section 73(1)]* and further specify the amount of service tax that is payable.

The High Court observed that in the present case no notice was issued to the respondent and reliance was placed on a letter. The letter did not satisfy the requirements of the notice as there was no allegation that a specified amount was required to be paid as service tax and even no period was mentioned therein.

High Court's Decision: The High Court held that by no stretch of imagination, the said letter could be treated as a show cause notice satisfying the requirement of section 73 of the Act. The High Court further held that the procedural requirement of issuance of notice and calling for explanation cannot be dispensed with as otherwise the demand of money in the name of tax would be in violation of the very procedure prescribed under the Act. The High Court thus, dismissed the appeal.

2. Based on the contractual arrangement, can the assessee ask the Department to recover the tax dues from a third party or wait till the assessee recovers the same?

Delhi Transport Corporation v. Commissioner Service Tax 2015 (038) STR 673 (Del.)

Facts of the Case: The appellants entered into contracts with seven various agencies for display of advertisements, *inter alia*, on bus-queue shelters and time-keeping booths. The terms of the contract clearly stated that it would be the responsibility of the contractors/advertisers to pay directly to the concerned authority the tax/levy imposed by such authority in addition to the license fee.

The Department issued show cause notice asking the appellant to pay service tax along with interest and penalties on the service of display of advertisements rendered by them.

Appellant's Contentions: The appellant argued that they were under a *bona fide* belief that the liability to remit service tax stood transferred to the recipient qua the agreements; this caused the failure to file returns and remit service tax. They relied upon *Rashtriya Ispat Nigam Limited* v. *Dewan Chand Ram Saran 2012 (26) STR 289 (SC)* to urge that having entered into the contracts in the nature mentioned above, it was a legitimate expectation that the service tax liability would be borne by the contractors/advertisers and, thus, there was no justification for the appellant being held in default or burdened with penalties.

High Court's Observations: The High Court observed that there is no dispute that services provided are taxable and that the appellant is liable to pay service tax thereupon. Further, the reliance of the appellant on *Rashtriya Ispat Nigam Limited's* case regarding transferring of service tax liability by way of a contract was correct. The High Court, however, observed that the said ruling of Supreme Court cannot detract from the fact that in terms of the statutory provisions it is the appellant which is to discharge the liability towards the Revenue on account of service tax.

The High Court agreed with the observations of CESTAT that the plea of "*bona fide* belief" is devoid of substance. The appellant was a public sector undertaking and should have been more vigilant in compliance with its statutory obligations. It could not take cover under the plea that contractors engaged by it having agreed to bear the burden of taxation, there was no need for any further action on its part. For purposes of the taxing statute, the appellant was an assessee, and statutorily bound to not only get itself registered but also submit the requisite returns as per the prescription of law and rules framed thereunder.

High Court's Decision: The High Court held that undoubtedly, the service tax burden can be transferred by contractual arrangement to the other party. However, on account of such contractual arrangement, the assessee cannot ask the Revenue to recover the tax dues from a third party (the other party) or wait for discharge of the liability by the assessee till it has recovered the amount from its contractors (the other party).

Note: In the case of Rashtriya Ispat Nigam Limited[1], the Supreme Court held that the provisions concerning service tax are relevant only between the appellant as an assessee (service receiver in this case) under the statute and the tax authorities. This statutory provision can be of no relevance to determine the rights and liabilities between the appellant and the respondent (service provider) as agreed in the contract between two of them. There was nothing in law to prevent the appellant from entering into an agreement with the respondent handling contractor that the burden of any tax arising out of obligations of the respondent under the contract would be borne by the respondent.

3. Whether the order served on a member of the family of the assessee, is a proper service of order?

Jyoti Enterprises v. CCEx. & ST 2016 (41) STR 0019 (All.)

Facts of the Case: The order-in-original, in assessee's case, was passed by the Department. However, the assessee was unaware of the order passed and came to know about it two years later when the Department started recovery proceedings.

Point of Dispute: The assessee argued that there was no proper service of order by the Department. However, Department submitted that the order was served 2 years ago at the residential premises of the assessee to a person named Virendra Yadav who represented himself to be assessee's nephew.

The assessee contended that the order was required to be served to the person for whom it was intended, namely, the assessee or its authorised agent. Since Virendra Yadav was neither the authorised representative nor the order was served upon the assessee, there was no proper service of the order.

High Court's Observation: The High Court observed that if the order is served on a member of the family of the assessee, it is duly served and there is sufficient service of the order. No assertion was made by the assessee that Virendra Yadav was not a family member or that he was not connected with the business. The assessee had nowhere stated that Virendra Yadav was not her nephew. Further, nothing has been stated that the address where the service of the original order was made was incorrect.

High Court's Decision: The High Court held that the order in original was duly served upon the assessee.

[1] Reported at page no. 178 of August, 2015 Edition of Select Cases in Direct and Indirect Tax Laws – 2015

4. Can the period of limitation be computed from the date of forwarding of the order where such order has not been received by the assessee?

Enestee Engineering Pvt. Ltd. v. UOI 2016 (41) STR 0061 (Bom.)

Facts of the Case: The adjudication order was passed and was forwarded to the assessee. However, assessee did not receive the same. It learned about the order only after receipt of a letter from the Superintendent, nearly after two years, directing it to pay the dues as per said order. Thereafter, a copy of that order was made available to the assessee.

Point of Dispute: The appeal filed by the assessee against the said order was rejected by the Commissioner (Appeals) as well as by the Tribunal, as being barred by limitation.

The assessee contended that the appeal could not be held to be barred by limitation as no order was received by it.

High Court's Observation: The High Court noted that the period of limitation prescribed under erstwhile section 85(3) [now section 85(3A)] of the Finance Act, 1994 to prefer an appeal against order-in-original is 3 months [now 2 months]. The said period begins from the date of receipt of the decision or the order of adjudicating authority. Further, section 37C(2) of the Central Excise Act, 1944 stipulates that every decision/order passed or any summons/notice issued under the said Act is deemed to have been served on the date on which such decision, order or summons is tendered or delivered by post or is affixed in the prescribed manner.

Thus, a perusal of section 37C (as supported by erstwhile section 85(3) [now section 85(3A)] of the Finance Act, 1994) shows insistence upon the service of such adjudication order upon the assessee. Hence, the observation in the Tribunal's order that the order-in-original had been forwarded to the assessee on a particular date was not sufficient in the eyes of law to start computing the period of limitation.

The High Court observed that neither the order of Commissioner (Appeals) nor the order of Tribunal recorded a finding that the adjudication order was actually tendered to the assessee on a particular date or received by him on a particular date.

High Court's Decision: The High Court quashed and set aside both the orders - order of Commissioner (Appeals) and the order of Tribunal, and placed back the matter for fresh consideration before Commissioner (Appeals).

SECTION C: CUSTOMS

CHAPTER 2 : LEVY OF AND EXEMPTIONS FROM CUSTOMS DUTY

1. In case of import of crude oil, whether customs duty is payable on the basis of the quantity of oil shown in the bill of lading or on the actual quantity received into shore tanks in India?

Mangalore Refinery & Petrochemicals Ltd v. CCus. 2015 (323) ELT 433 (SC)

Facts of the Case: The assessee imported crude oil. On account of ocean loss, the quantity of crude oil shown in the bill of lading was higher than the actual quantity received into the shore tanks in India. The assessee paid the customs duty on the actual quantity received into the shore tanks.

Point of Dispute: The Department contended that the quantity of crude oil mentioned in the various bills of lading should be the basis for payment of duty, and not the quantity actually received into the shore tanks in India. This was stated on the basis that duty was levied on an *ad valorem* basis and not on a specific rate. The assessee contended that it makes no difference as to whether the basis for customs duty is at a specific rate or is *ad valorem*, inasmuch as the quantity of goods at the time of import alone is to be looked at.

Tribunal's Observations: The Tribunal accepted the Department's contentions on the basis of the following reasons:

(i) Duty ought to be levied on the total payment made by the assessee irrespective of the quantity received.

(ii) An *ad valorem* duty would necessarily lead to this result but duty levied at the specific rate would not. The quantity of goods to be considered in the latter case will only be the quantity of crude oil received in the shore tank.

(iii) Section 14 of the Customs Act, 1962 kicks in when the duty is on an *ad valorem* basis and sections 13 and 23 of the Act do not stand in the way because it is not the question of demanding duty on goods not received, but it is the demand of duty on the transaction value. In spite of the "ocean loss", the assessee has to make payment on the basis of the bill of lading quantity.

Supreme Court's Observations: The assessee raised the issue before the Supreme Court. The Apex Court noted the following:

(i) The levy of customs duty under section 12 of the Act is only on goods imported into India. Goods are said to be imported into India when they are brought into India from a place outside India. Unless such goods are brought into India, the act of importation which triggers the levy does not take place.

(ii) If the goods are pilfered after they are unloaded or lost or destroyed at any time before clearance for home consumption or deposit in a warehouse, the importer is not liable to pay the duty leviable on such goods. This is for the reason that the

import of goods does not take place until they become part of the land mass of India and until the act of importation is complete which under sections 13 and 23 happen only after an order for clearance for home consumption is made and/or an order permitting the deposit of goods in a warehouse is made.

(iii) Under section 23(2), the owner of the imported goods may also at any time before such orders have been made relinquish his title to the goods and shall not be liable to pay any duty thereon. In short, he may abandon the said goods even after they have physically landed at any port in India but before any of the aforesaid orders have been made. This again is for the good reason that the act of importation gets complete when goods are in the hands of the importer after they have been cleared either for home consumption or for deposit in a warehouse.

(iv) Further, as per section 47 of the Customs Act, the importer has to pay import duty only on goods that are entered for home consumption. Obviously, the quantity of goods imported will be the quantity of goods at the time they are entered for home consumption.

The Supreme Court stated that Tribunal's reasoning for concluding that the bill of lading quantity alone should be considered for the purpose of valuing the imported goods is incorrect in law. The Apex Court examined each of the reasons given by the Tribunal as under:

(i) The Tribunal lost sight of the fact that a levy in the context of import duty can only be on imported goods, that is, on goods brought into India from a place outside of India. Till that is done, there is no charge to tax.

(ii) The taxable event in the case of imported goods is "import". The taxable event in the case of a purchase tax is the purchase of goods. The quantity of goods stated in a bill of lading would perhaps reflect the quantity of goods in the purchase transaction between the parties, but would not reflect the quantity of goods at the time and place of importation. A bill of lading quantity, therefore, could only be validly looked at in the case of a purchase tax but not in the case of an import duty.

(iii) The Tribunal wholly lost sight of sections 13 and 23 of the Act. Where goods which are imported are lost, pilfered or destroyed, no import duty is leviable thereon until they are out of customs and come into the hands of the importer. It is clear, therefore, that it is only at this stage that the quantity of the goods imported is to be looked at for the purposes of valuation.

(iv) The basis of the judgment of the Tribunal is on a complete misreading of section 14 of the Customs Act. First and foremost, the said section is a section which affords the measure for the levy of customs duty which is to be found in section 12 of the said Act. Even when the measure talks of value of imported goods, it does so at the time and place of importation, which again is lost sight of by the Tribunal.

(v) The Tribunal's reasoning that somehow when customs duty is *ad valorem* the basis for arriving at the quantity of goods imported changes, is wholly unsustainable. Whether customs duty is at a specific rate or is *ad valorem* does not make the least difference to the statutory scheme. Customs duty whether at a specific rate or *ad*

valorem is not leviable on goods that are pilfered, lost or destroyed until a bill of entry for home consumption is made or an order to warehouse the goods is made. This is for the reason that the import is not complete until what has been stated above has happened.

Supreme Court's Decision: The Supreme Court set aside the Tribunal's judgment and declared that the quantity of crude oil actually received into a shore tank in a port in India should be the basis for payment of customs duty.

CHAPTER 12: PROVISIONS RELATING TO ILLEGAL IMPORT, ILLEGAL EXPORT, CONFISCATION, PENALTY & ALLIED PROVISIONS

1. In case of seizure of goods under section 110 of the Customs Act, 1962, can the show cause notice [required to be issued under section 124(a) within six months of seizure] be issued to the Customs House Agent [now Custom Broker] of the importer instead of importer himself?

Santosh Handlooms v. CCus. 2016 (331) ELT 44 (Del.)

The issue which arose for consideration was whether in case of seizure of goods under section 110 of the Customs Act, 1962, the show cause notice [required to be issued under section 124(a) within six months of seizure] can be issued to the Customs House Agent [now Custom Broker] of the importer instead of importer himself.

High Court's observations: The High Court made the following significant observations:

(i) Finance Act, 2012 had consciously amended section 153 of the Customs Act, 1962 to do away with the service of orders, decisions, summons and notices on the agent. The CHA [now Custom Broker], is an agent, who operates under a special contract with an importer or exporter, and in this context is authorized to perform various functions to clear the goods from customs. It is no part of the general duty cast upon the CHA to accept service of notices, summons, orders or decisions of the customs authorities, unless he has been specially authorized to do so.

(ii) A conjoint reading of the definition of a Custom Broker in regulation 2(c) along with regulation 11(a) of the Custom Brokers Licensing Regulations, 2013, implies that it is no part of the usual and ordinary duty of the CHA to accept service of orders, summons, decisions or notices issued by the custom authorities.

In case CHA represents that he has such an authority, he would have to produce the same before the concerned statutory authority. In the given case, the Department neither sought production of the authority from CHA nor did CHA supply any such documents to the custom authorities, which could, in the ordinary course, had persuaded the Department to serve the notice on the CHA.

Therefore, in the ordinary course, the customs authorities were required to follow the provisions of section 153 of the Customs Act, 1962, which required the service to be effected on the importer i.e. the petitioner in this case.

(iii) With regard to Department's reliance on sections 146 and 147 of the Customs Act, 1962, the Court observed that.

(a) section 146 statutorily recognizes the appointment of a CHA and safeguards this appointment by providing that only that person will act as a CHA who holds a licence granted in that behalf in accordance with the Custom Brokers Licensing Regulations, 2013,

(b) section 146A, *inter alia*, provides that a CHA who has obtained his licence under section 146 of the Customs Act, can act as an authorized representative of a person who is entitled to/is required to appear before an officer of customs or Appellate Tribunal in connection with proceedings under the Customs Act.

As regards business relating to entry/departure of conveyance is concerned or import/export of goods to a custom station is concerned, a CHA regularly acting for and on behalf of the owner/importer/exporter of goods, may have the implied authority to act in the matter. However, that will not authorise the CHA to dawn the robe of an authorized representative, as envisaged in section 146 of the Customs Act.

(c) section 147 is an omnibus section which generally covers all acts of agency. Acts of agency, which involve business of entry/departure of conveyance or import/export of goods at the custom stations, would be covered under section 147 of the Customs Act. Other acts would also be covered, provided there is due authorization conferred on the agent to act on behalf of the owner, importer or exporter of goods.

The CHA has no general authority to act in respect of every act that the owner, importer/exporter is called upon to do or may be required to do under the provisions of the Act. Keeping in view of this object and/or the purpose, the legislature has consciously provided that service of orders, decisions or summons or notices, can only be effected in the manner provided in clause (a) of section 153 by serving it upon the person for whom it is intended, in this case, the noticee. The intention for notice being served only on the intended person is to enable him to take a decision as to who would thereafter be entitled or authorized to appear for him before the concerned statutory authority.

High Court's Decision: In the light of above discussion, the High Court held that the show cause notice served on CHA [now Custom Broker] is not tenable in law.

Note: Definition of Custom Broker as per ***regulation 2(c) of the Custom Brokers Licensing Regulations, 2013*** *reads as under:*

"Custom Broker" means a person licensed under these regulations to act as agent for the transaction of any business relating to the entry or departure of conveyances or the import or export of goods at any Customs Station.

Further, ***regulation 11(a) of the Custom Brokers Licensing Regulations, 2013*** *reads as under:*

A Customs Broker shall obtain an authorisation from each of the companies, firms or individuals by whom he is for the time being employed as a Customs Broker and produce such authorisation whenever required by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be.